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Court-Appointed Receiver

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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U.S. COMMODITY FUTURES  
TRADING COMMISSION,

Plaintiff,

v.

U.S. VENTURES LC, a Utah limited liability  
company, WINSOME INVESTMENT  
TRUST, an unincorporated Texas entity,  
ROBERT J. ANDRES and ROBERT L.  
HOLLOWAY,

Defendants.

**RECEIVER'S TENTH MOTION AND  
MEMORANDUM SEEKING  
APPROVAL TO FINALIZE  
SETTLEMENT AGREEMENTS**

Case No. 2:11CV00099 BSJ

Judge Bruce S. Jenkins

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R. Wayne Klein, the Court-Appointed Receiver<sup>1</sup> in this matter (the "Receiver"), by and  
through his counsel of record, notifies the Court that he has entered into eight additional

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<sup>1</sup> The Receiver has been appointed over U.S. Ventures LC ("USV"), Winsome Investment Trust ("Winsome"), and all the assets of Robert J. Andres ("Andres") and Robert L. Holloway ("Holloway"), (collectively, the "Receivership Defendants.")

preliminary settlement agreements of lawsuits he has filed and moves for approval to finalize those settlements.

### **BACKGROUND**

On January 25, 2011, the Court entered an Order Granting Plaintiff's Ex Parte Motion for Statutory Restraining Order, Expedited Discovery, Accounting, Order to Show Cause re Preliminary Injunction and Other Equitable Relief (the "Receivership Order"). (Doc. #15) With the Receivership Order, the Court placed U.S. Ventures, Winsome, and all the assets of Andres and Holloway under the control of the Receiver. (*See generally id.*) In the Receivership Order, the Court directed and authorized the Receiver to investigate the activities of the Receivership Defendants. (Doc. #15) In carrying out his responsibilities, the Receiver was authorized to: "Initiate, defend, compromise, [or] adjust . . . any actions . . . necessary to preserve or increase the assets of the Defendants . . . or to recover payments made improperly by the Defendants." (*Id.* ¶ 27(i)).

As a result of the financial analysis and investigation conducted to date, the Receiver has made demand on numerous parties for the return of payments improperly paid by Receivership Defendants. The Receiver has filed suit against many parties, seeking the recovery of payments made improperly. The following eight settlements will resolve lawsuits the Receiver has already filed and bring substantial funds into the Receivership Estate. The Receiver seeks confirmation of the following settlements (collectively defined as the "Settlement Agreements"):

1. Luis R. Rodriguez/Convenient Solutions, LLC. On January 17, 2012 the Receiver filed a lawsuit against Rodriguez and others alleging he received \$25,457.75 in overpayments on his investments. Rodriguez has provided verified information demonstrating

that he has declared bankruptcy and is financially unable to repay any of the amounts being sought by the Receiver. Pursuant to a settlement dated January 15, 2013, the Receiver has agreed to a settlement with Rodriguez and his company, Convenient Solutions. Under the settlement agreement, Rodriguez provided to the Receiver copies of all documents he and Convenient have relating to Andres and Winsome and have agreed to provide information requested by the Receiver. The Receiver will dismiss the lawsuit against Rodriguez and Convenient. Two other defendants in this action were dismissed previously when they were able to demonstrate that they were underpaid investors.

2. Joshua Carmody. The Receiver had sued Carmody on January 17, 2012 alleging he received \$12,300.00 from Winsome without Winsome receiving any benefit. Carmody provided documents to the Receiver demonstrating that the monies he received were given to Cindy Moore, another person being sued by the Receiver. Carmody provided verified financial information to the Receiver demonstrating that he suffers from severe chronic medical problems that impair his ability to earn money and that he is financially unable to repay any of the amounts being sought by the Receiver. Pursuant to a settlement agreement dated February 28, 2013, Carmody will provide the Receiver with copies of all documents in his possession relating to Andres, Winsome, Cindy Moore, and others. Carmody will also cooperate and provide assistance to the Receiver in lawsuits the Receiver has brought against others. In turn, the Receiver will dismiss the lawsuit against Carmody.

3. Duane Kilburg. The Receiver sued Kiburg on January 20, 2012 based on \$47,839.00 that was paid to him by US Ventures. Kilburg provided documents to the Receiver demonstrating that Kilburg has loaned \$50,000.00 to Holloway and that the payments to Kilburg

were for repayment of his loan to Holloway. Kilburg also provided verified financial statements to the Receiver demonstrating that Kilburg lacks the financial liquidity to be able to repay the Receiver the full amounts sought. In a settlement agreement signed March 18, 2013, Kilburg agreed to pay \$10,000.00 to the Receiver in return for dismissal of the lawsuit against him.

4. Russell V. Combs/Innovative Techknowledge Solutions. Combs and his company, Innovative Techknowledge, were paid \$50,000.00 by Winsome. The Receiver sued Combs and Innovative Techknowledge on January 5, 2012 seeking recovery of this amount. Combs informed the Receiver that he had been terminated from his position at the university as a consequence of the Receiver's lawsuit and provided verified financial information showing his inability to pay the amount being sought. In a settlement agreement dated March 18, 2013, Combs and Innovative Techknowledge agreed to pay \$1,000.00 in settlement by March 31, 2014, with a minimum amount being paid each month.

5. Wright, Lindsey & Jennings, LLP. The Receiver filed a lawsuit against the law firm Wright, Lindsey & Jennings ("WLJ") on October 30, 2012 seeking to recover funds that Winsome sent to London at the direction of Elgin Clemons, a former employee of WLJ. WLJ cooperated fully in the Receiver's investigation. After the exchange of voluminous documents and extended negotiations, a settlement agreement was reached on March 18, 2013. Pursuant to the settlement agreement, WLJ will pay to the Receiver \$1,750,000.00 without admitting any liability. Upon approval of the settlement by the Court, the Receiver will dismiss the lawsuit against WLJ.

6. American Express Centurion Bank. The Receiver filed suit against American Express on January 23, 2012 seeking the return of \$764,002.57 that the Receiver alleges was sent

by Winsome to American Express. On March 26, 2013, a settlement agreement was signed pursuant to which American Express will pay \$575,000.00 to the Receiver. This amount will be paid to the Receiver within 30 days of approval of the settlement by the Court. If the Court approves the settlement, the Receiver will dismiss the lawsuit against American Express.

7. Nina Abdalbaki. The Receiver filed suit against Abdalbaki on October 13, 2011 seeking the recovery of \$132,250.00 paid to her by Winsome. Abdalbaki provided information to the Receiver showing that an affiliated entity had sent investment funds to Winsome that should be offset against payments to her and demonstrated that she had made personal loans in the amount of \$50,500.00 to Andres. In a settlement agreement dated March 24, 2013, Abdalbaki agreed to pay \$55,000.00 to the Receivership Entities. \$25,000.00 shall be paid by April 1, 2013 with the remaining \$30,000.00 paid by May 1, 2013. Upon approval of the settlement agreement by the Court and payment of the settlement amount, the Receiver will dismiss the lawsuit against Abdalbaki.

8. Christine Walker Williamson. The Receiver sued Ms. Williamson on January 20, 2012 seeking recovery of payments made to Ms. Williamson by Winsome in the amount of \$97,202.18. Ms. Williamson has provided verified information to the Receiver demonstrating that she lacks the assets and income to pay a judgment for the full amount sought in this lawsuit. She has agreed to pay \$22,750 to the Receiver in return for the dismissal of this lawsuit.

### **ANALYSIS**

The Receiver requests that the Court allow him to finalize these Settlement Agreements. Courts recognize that a "receiver has the power, when so authorized by the court, to compromise claims either for or against the receivership and whether in suit or not in suit." *SEC v. Bancorp*,

2001 WL 1658200 \*2 (S.D.N.Y. 2001) (quoting 3 Ralph Ewing Clark, *A Treatise on the Law and Practice of Receivers*, § 770 (3d Ed. 1959). "In determining whether to approve a proposed settlement, the cardinal rule is that the District Court must find that the settlement is fair, adequate and reasonable and is not the product of collusion between the parties." *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977); *see also Jones v. Nuclear Pharmacy, Inc.*, 741 F.2d 322, 325 (10th Cir. 1984). The *Jones* court explained:

In assessing whether the settlement is fair, reasonable and adequate the trial court should consider: (1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the settlement is fair and reasonable.

*Id.*

Here, each of the Settlement Agreements is "fair, adequate, and reasonable." The Settlement Agreements with Rodriguez, Carmody, and Combs are reasonable primarily because there is no realistic prospect of a financial recovery from any of them. The settlements are designed to avoid the Receivership having to expend more time and expenses in pursuing these lawsuits. At the same time, the Receiver will obtain information from each defendant that may be of assistance in his continuing litigation against other defendants.

The Settlement Agreements with American Express, Abdalbaki, Kilburg, Williamson, and WLJ are reasonable because of the substantial amount of funds they will bring into the receivership estate. These five settlements will bring over \$2,400,000.00 in additional funds into the Receivership Estate. In addition, these settlements will avoid additional litigation costs that otherwise would be incurred in pursuing these lawsuits.

Each of the Settlement Agreements was negotiated fairly and honestly, and is the result of an arm's length transaction. In light of these factors, the Receiver believes these settlement agreements are just and fair and should be approved.

**CONCLUSION**

For the foregoing reasons, the Receiver asks the Court to authorize the Receiver to finalize the Settlement Agreements described in this memorandum.

DATED this 26th day of March, 2013.

MANNING CURTIS BRADSHAW  
& BEDNAR, LLC

/s/ David C. Castleberry  
David C. Castleberry  
Aaron C. Garrett  
*Attorneys for R. Wayne Klein, Court-  
Appointed Receiver*

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of the foregoing **RECEIVER'S TENTH MOTION AND MEMORANDUM SEEKING APPROVAL TO FINALIZE SETTLEMENT AGREEMENTS** to be served in the method indicated below to the Defendant in this action this 26th day of March, 2013.

VIA FACSIMILE  
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 VIA U.S. MAIL  
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