

MANNING CURTIS BRADSHAW  
& BEDNAR LLC

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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.

**MEMORANDUM IN SUPPORT  
OF RECEIVER'S FIFTH MOTION  
FOR PERMISSION 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, submits his memorandum in support of his motion for permission

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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.")

to finalize settlement agreements described below.

### **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 already filed suit against many parties, seeking the recovery of payments made improperly. In the following seven instances, the settlements will resolve lawsuits the Receiver has already filed. The Receiver now seeks confirmation of the following settlements (collectively defined as the "Settlement Agreements"):

1. **Sheppard Mullin.** Sheppard Mullin is a law firm that received \$12,155.72 from Winsome as payment for legal services that Sheppard Mullin provided to an associate of Andres. The Receiver filed suit against Sheppard Mullin in December 2011 seeking recovery of the funds. Sheppard Mullin has agreed to repay the \$12,155.72 when the Court has approved the

settlement and the Receiver has dismissed the lawsuit against the law firm.

2. Nordstrom FSB. US Ventures paid \$28,760.70 to Nordstrom FSB as payments for credit card charges incurred by a relative of Holloway. The Receiver filed suit against Nordstrom on December 17, 2011. Nordstrom and the Receiver have agreed to a settlement in which Nordstrom will pay the Receiver \$22,000.00 to settle the lawsuit. This represents a return of 76.5% of the amount paid to Nordstrom. Nordstrom also agreed to provide information to the Receiver about the nature of the charges to the credit card.

3. Mark Bush. Mark Bush is an investor who received \$464,259.38 more in distributions than the amount he invested. However, three other companies affiliated with Bush lost money in their transactions with Winsome: i) South Oil, a company he owns, lost \$46,000.00, ii) Fortis Energy was underpaid by \$63,729.35—which was reimbursed to Fortis Energy by Bush along with an additional \$86,270.65 in expected profits, and iii) Three Sisters Trust has not received any return on its \$100,000.00 investment. These losses total \$296,000.00. Bush was affiliated with XTL, LLC, another company that made a profit, but the owner of that company has already agreed to return its overpayments to the Receiver.

The Receiver filed suit against Bush on January 9, 2012. Bush and the Receiver have entered into a settlement agreement pursuant to which Bush will pay the Receiver \$275,000.00. The settlement amount will be paid to the Receiver by December 31, 2013, with a minimum of \$35,000.00 paid each quarter. This represents a return of all the overpayments for the combined entities plus \$20,469.62. In addition, Bush has agreed to pay the Receiver 50% of any monies he recovers from Fortis Energy as overpayments Bush made to Fortis.

4. Norbert Keeney. The Receiver sued Keeney on January 20, 2012 alleging that

Keeney received \$130,002.44 from US Ventures improperly. Keeney provided documents to the Receiver demonstrating that he provided \$100,000.00 to US Ventures before it was under the control of Holloway and sent \$100,000.00 to the brokerage account of US Ventures in early 2005. Keeney also asserted that he bought \$35,000.00 worth of computers for Holloway to use in running US Ventures. The Receiver and Keeney have agreed to a settlement in which Keeney will pay \$20,000.00 to the Receiver by December 31, 2012. At least \$5,000.00 will be paid each quarter. The first payment has been received.

5. Sacred Site Properties. Sacred Site invested \$350,000.00 with Winsome and received distributions totaling \$363,842.53. The Receiver filed suit against the company on January 18, 2012. As part of a settlement agreement dated April 19, 2012, the company has agreed to repay the \$13,842.53 in excess distributions. The company lacks the financial ability to make the entire payment at once, so the Receiver has agreed to allow payments over a two-year period, with a minimum monthly payment of \$576.77. Upon approval of this settlement agreement by the Court, the Receiver will dismiss the lawsuit against Sacred Site.

6. JKKB, Jonathan Bogard. JKKB provided the Receiver with bank records demonstrating that it sent \$155,000.00 to Winsome. The Receiver filed suit against JKKB and Bogard on January 17, 2012. JKKB has acknowledged receiving distributions totaling \$168,385.71, an excess of \$18,385.71. However, JKKB has ceased operations and its owner, Jonathan Bogard was discharged in bankruptcy in 2009. As a result, both defendants are financially unable to pay the amount being sought by the Receiver and the bankruptcy may be a defense to the Receiver's claims. Pursuant to a settlement agreement, these defendants have agreed to provide to the Receiver all the documents they have and to provide assistance in the

Receiver's investigation, including making Bogard available for an interview. The Receiver will dismiss the lawsuit against these defendants.

7. Jason Buck. The Receiver filed suit against Buck on January 17, 2012, seeking the return of \$9,507.50 paid to Buck. In response, Buck has asserted that a payment made to US Ventures by an affiliated entity was for the benefit of Buck. In addition, Buck has provided information showing he received a bankruptcy discharge in 2010. In a settlement agreement dated April 18, 2012, Buck agreed to provide documents showing that the payments by the affiliated entity were for the benefit of Buck and to waive any claims against the Receivership fund. The Receiver has agreed to dismiss the lawsuit against Buck.

#### ANALYSIS

The Receiver requests that the Court allow him to finalize the 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." Each of the Settlement Agreements was negotiated fairly and honestly, and is the result of an arm's length transaction. The Receiver's settlements with Sheppard Mullin, Bush, Keeney, and Sacred Site will result in a return of the full amount of payments or excess payments received from US Ventures and Winsome. The settlement with Nordstrom will provide a return of 76% of the amount paid to Nordstrom, along with Nordstrom's promise to provide documents and account information to the Receiver. The remaining two settlements with Buck and JKKB/Bogard are reasonable in light of the bankruptcy discharges of Buck and Bogard. In addition, Buck is waiving claims he might otherwise assert and Bogard has provided documents and information to the Receiver regarding his transactions.

All these settlement avoid the expenditure of any further attorneys fees and receiver time that otherwise would be required in actions against these persons. They involve the recovery of more than \$340,000.00. In light of these factors, the Receiver believes all these settlement agreements are just and fair and should be approved.

Therefore, the Court should allow the Receiver to finalize the Settlement Agreements.

**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 23rd day of April, 2012.

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 on this 23rd day of April, 2012, I caused to be served in the manner indicated below a true and correct copy of the attached and foregoing **MEMORANDUM IN SUPPORT OF RECEIVER'S FIFTH MOTION FOR PERMISSION TO FINALIZE SETTLEMENT AGREEMENTS** upon the following:

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- VIA HAND DELIVERY
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