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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 SIXTEENTH 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 two 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 relating to a lawsuit he filed and moves for approval to finalize those settlement agreements.

### **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"). Receivership Order, Doc. No. 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. *Id.* 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 settlements will resolve a lawsuit the Receiver has filed, which has consumed some litigation effort. The Receiver seeks confirmation of the following settlements:

1. Jennifer Chiu. On January 4, 2012, the Receiver filed a lawsuit against Warren Chiu, Jennifer Chiu (J. Chiu), Stephen Chiu, and others. The lawsuit seeks the recovery of significant funds paid to the defendants or to others on behalf of the defendants. Warren Chiu

appears to have a relationship with Robert Andres, who operated Winsome Investment Trust, and may have been marketer that solicited investments in Winsome. J. Chiu is the daughter of Warren Chiu. The Receiver obtained a \$767,570.63 judgment against Warren Chiu on November 26, 2013. The lawsuit filed by the Receiver separately sought recovery of \$39,000 paid to J. Chiu by Winsome. J. Chiu represented that the payments to her were reimbursements of expenses she paid for her father, Warren Chiu. The Receiver asserted that these payments were fraudulent transfers to J. Chiu for which Winsome received no benefit. Chiu provided verified financial statements asserting an inability to pay the entire amount sought by the Receiver. On June 29, 2014, the Receiver and J. Chiu signed a settlement agreement, subject to Court approval, pursuant to which J. Chiu has paid the Receivership Estate \$31,200.00. This represents 80% of the amount sought in the Receiver's lawsuit.

2. Stephen Chiu. Stephen Chiu (S. Chiu) is a son of Warren Chiu. The Receiver's lawsuit alleged that S. Chiu received \$12,000.00 in payments from Winsome. S. Chiu asserted that these were reimbursements for expenses he paid for Warren Chiu. S. Chiu provided the Receiver with bank records showing the expenses he paid for his father. S. Chiu additionally provided verified financial information asserting that he lacked the financial ability to repay the full amount sought by the Receiver. On June 28, 2014, the Receiver and S. Chiu signed a settlement agreement, subject to Court approval, pursuant to which J. Chiu will pay \$9,600.00 to the Receivership Estate. This represents 80% of the amount sought in the Receiver's 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, the Settlement Agreements are "fair, adequate, and reasonable." The Settlement Agreements are reasonable because they will bring in a little over \$40,000.00 to the Receivership Estate and represent 80% of the amount being sought by the Receiver. In addition, the settlements will result in the Receivership Estate no longer having to bear the costs of continued litigation.

The Settlement Agreements were negotiated fairly and honestly, and are the result of arm's length transactions. 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 with Jennifer Chiu and Stephen Chiu that are described in this memorandum.

DATED this 3rd day of July, 2014.

MANNING CURTIS BRADSHAW  
& BEDNAR, LLC

/s/ David C. Castleberry  
David C. Castleberry  
Christopher M. Glauser  
*Attorneys for R. Wayne Klein, Court-  
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**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of the foregoing **RECEIVER'S SIXTEENTH MOTION AND MEMORANDUM SEEKING APPROVAL TO FINALIZE SETTLEMENT AGREEMENTS** to be served in the method indicated below this 3rd day of July, 2014, addressed as follows.

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- VIA HAND DELIVERY
- VIA U.S. MAIL
- VIA FEDERAL EXPRESS
- VIA EMAIL
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