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Court-Appointed Receiver

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

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 FOURTEENTH MOTION
AND MEMORANDUM SEEKING
APPROVAL TO FINALIZE
SETTLEMENT AGREEMENTS**

Case No. 2:11CV00099 BSJ

Judge Bruce S. Jenkins

R. Wayne Klein, the Court-Appointed Receiver¹ in this matter (the "Receiver"), by and
through his counsel of record, notifies the Court that he has entered into three additional

¹ 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. 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 three settlements will resolve lawsuits the Receiver has already filed and bring a moderate amount of funds into the Receivership Estate. The Receiver seeks confirmation of the following settlements (collectively defined as the "Settlement Agreements"):

1. **Jacki Barrientes**. Barrientes is a relative of an investor and third-party marketer of Winsome. Andres had Winsome pay \$20,000.00 to Barrientes. The Receiver sued Barrientes on January 17, 2012, seeking repayment of the amounts paid to her. On August 27, 2013, a settlement agreement was reached between the Receiver and Barrientes whereby Barrientes will

pay \$10,000.00 to the Receivership Estate. Barrientes has given verified financial information to the Receiver demonstrating financial hardship, making her unable to repay the full amount sought by the Receiver. The settlement amount will be paid in twelve monthly installments, with the full payment being completed by August 1, 2014. Barrientes has made her first required payment. Upon approval of this settlement by the Court, the Receiver will dismiss the lawsuit against Barrientes.

2. Arnel Cruz, Phoebus Group, LLC, and SA2, Inc. Cruz was the original owner of the entity, U.S. Ventures, L.C. Holloway later became a partner with Cruz, with each owing 50%. Still later, Holloway bought out Cruz's interest in U.S. Ventures and became the sole owner of the company. Cruz is the sole owner of Phoebus Group, LLC and SA2, Inc. Holloway caused U.S. Ventures to pay \$99,678.00 to Cruz, Phoebus, and SA2. The Receiver sued Cruz, Phoebus, and SA2 on December 2, 2011, seeking repayment of the funds they received. In anticipation of settlement, Cruz provided verified financial information to the Receiver demonstrating financial hardship and claiming an inability to repay any of the amount sought by the Receiver. Cruz provided a sworn affidavit regarding his financial condition and that of the two companies he controlled, and provided other documents demonstrating his inability to pay the amounts sought by the Receiver. Cruz also provided the Receiver with documents in his possession relating to US Ventures. On September 16, 2013, Cruz signed an agreement and release with the Receiver. The agreement covers Cruz, Phoebus, and SA2. Under the agreement, the Receiver agrees to cease seeking payment of funds from Cruz and to dismiss the lawsuit against him and his companies. In return, Cruz: i) represented that the two companies that received funds from U.S. Ventures have been dissolved and will not be reinstated, ii) agreed

to cooperate with the Receiver and any law enforcement agencies seeking his assistance with any litigation or law enforcement proceedings, and iii) signed a tolling agreement that will allow the Receiver to refile the lawsuit against Cruz if the Receiver finds that Cruz has assets or has misrepresented information leading up to the settlement. Upon approval of this settlement by the Court, the Receiver will dismiss the lawsuit against Cruz and his companies.

3. Cindy Moore and Lincoln Moore. Cindy Moore is a friend of Andres and was an essential component of one of the sources of money that Andres claimed would be coming to Winsome. Andres sent significant funds to Cindy Moore or to others on her behalf (including her son, Lincoln), claiming that those expenditures would result in the release of \$24.8 million in “inheritance funds” that had been frozen. Andres sent \$1,113,570.00 to Cindy Moore, \$78,456.00 to Lincoln Moore, and \$1.8 million to others on behalf of Cindy Moore. Cindy Moore has insisted that most of the money paid to her and Lincoln were wired to destinations in Africa and elsewhere to facilitate the release of a supposed inheritance. Cindy Moore and Lincoln Moore have provided financial information to the Receiver in support of their claim that they are destitute. Cindy Moore is undergoing cancer treatment and lacks funds to pay for her medical treatment. On September 30, 2013, a settlement agreement was signed between the Receiver and Cindy and Lincoln Moore whereby the Receiver will dismiss the lawsuit against Cindy and Lincoln Moore. Pursuant to the agreement, Cindy and Lincoln Moore agreed to provide assistance to the Receiver with his efforts to collect monies on behalf of the investors in Winsome by providing copies of all documents in their possession relating to their dealings with Robert Andres and Winsome Investment Trust, by responding to questions by the Receiver, and by providing assistance in the future as reasonably requested by the Receiver. Upon approval of

this settlement by the Court, the Receiver will dismiss the lawsuit he filed against the Moores.

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"—albeit disappointing. Each defendant asserted a financial inability to pay and provided verified financial information. Despite these claims, the Receiver was able to obtain an agreement by which Barrientes will repay half of the monies she received, bringing \$10,000.00 into the Receivership Estate. While the settlements with Cruz and the Moores will not result in a return of money to the receivership estate, it is apparent that Cruz, Cindy Moore, and Lincoln Moore

have no assets of substantial value that can be recovered and that continued efforts to obtain judgments, identify assets, and recover funds from them are extremely likely to result in litigation costs that significantly exceed recovery amounts. Accordingly, a primary motivation for the settlements against them is to avoid additional litigation costs that otherwise would be incurred in continuing to pursue 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 1st day of October, 2013.

MANNING CURTIS BRADSHAW
& BEDNAR, LLC

/s/ David C. Castleberry
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Chris 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 FOURTEENTH MOTION AND MEMORANDUM SEEKING APPROVAL TO FINALIZE SETTLEMENT AGREEMENTS** to be served in the method indicated below to the Defendant in this action this 1st day of October, 2013.

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