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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.

**MEMORANDUM IN SUPPORT
OF RECEIVER'S MOTION FOR
PERMISSION 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, submits this memorandum in support of his motion for permission to finalize settlement agreements described below.

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.")

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. (*See generally 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 already filed suit against many parties, seeking the recovery of payments made improperly. In the following instances, the recipients of funds have agreed to settle with the Receiver without the need for the Receiver to initiate litigation against them. The Receiver now seeks confirmation of the following settlements (collectively defined as the "Settlement Agreements"):

1. **PRDBJ**. This entity was an investor in Winsome, sending \$25,000.00 to Winsome for investment and receiving distributions of \$27,500.00. A settlement agreement dated October 15, 2011 requires PRDBJ to return the \$2,500.00 excess to the Receiver. This amount has been paid to the Receiver, but will be returned to PRDBJ if the Court declines to

approve the settlement agreement.

2. Scott Orchard. Orchard invested \$50,000.00 in Winsome in 2007 and received \$58,000.00 when his investment was withdrawn in 2008. In a settlement agreement dated October 19, 2011, Orchard agreed to return the excess \$8,000.00 to the Receiver by November 4, 2011.

3. Donald Lee. Lee invested \$100,000.00 in Winsome in 2006 and received distributions totaling \$106,000.00. Based on the Receiver's demand, Lee has returned the \$6,000.00 excess to the Receiver. These funds are in the Receivership bank account.

4. Howard Patron. Patron was the victim of a fraud perpetrated by another person associated with Winsome and Andres. Patron made a \$500,000.00 bridge loan in September 2008 to another entity. In November 2008, Andres notified Patron that Andres was the custodian for the company that had received Patron's short-term loan. Subsequently, Andres caused Bear & Bull Strategies (a company controlled by Andres) to pay \$500,000.00 to Patron. Pursuant to a settlement agreement dated October 25th, 2011, Patron will pay \$450,000.00 to the Receiver in three installments. The first installment of \$25,000.00 is being paid contemporaneously with the execution of the settlement agreement. The second installment of \$25,000.00 will be paid by November 30, 2011. The final payment of \$400,000.00 will be paid to the Receiver by January 31, 2012. The settlement agreement provides that Patron can have an additional five months to make the final installment payment by increasing the final payment amount to \$425,000.00.

5. David and Betty Thorrez. Betty Thorrez is a sister to Defendant Robert Andres. Andres caused Winsome to send \$75,000.00 to David and Betty Thorrez in 2006 and 2007. Pursuant to a settlement agreement dated October 26, 2011, David and Betty Thorrez will pay

\$75,000.00 to the Receiver by November 15, 2011, or within five days of Court approval of the settlement if Court approval is after November 11, 2011.

ANALYSIS

The Receiver respectfully 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 settlement agreements with PRDBJ, Scott Orchard, Donald Lee, and David and Betty Thorrez represent a full return of the money the Receiver has demanded. Further, the Receiver's settlement with Howard Patron entails a recovery of 90% of the amount

he has demanded from Mr. Patron, and will result in a significant recovery for the receivership estate without being forced to engage in possibly expensive and time-consuming litigation. 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 26th day of October, 2011.

MANNING CURTIS BRADSHAW
& BEDNAR, LLC

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

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of October, 2011, 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 MOTION FOR PERMISSION TO FINALIZE SETTLEMENT AGREEMENTS** upon the following:

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