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**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

<p>SECURITIES AND EXCHANGE COMMISSION,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>ART INTELLECT, INC., a Utah corporation, d/b/a MASON HILL and VIRTUAL MG, PATRICK MERRILL BRODY, LAURA A. ROSER, and GREGORY D. WOOD,</p> <p style="text-align: center;">Defendants.</p>	<p>MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT WITH JPMORGAN CHASE BANK</p> <p>2:11-cv-00357 TC</p> <p>Judge Tena Campbell</p>
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Pursuant to Fed. R. Civ. P. 7(b) and DUCivR 7-1(a)(2)(G), the Receiver in the above-entitled matter, R. Wayne Klein (the "Receiver"), by and through undersigned counsel, respectfully moves the Court to approve a Settlement Agreement with JP Morgan Chase Bank ("Chase") in this action. The precise relief sought and grounds in support of this Motion are contained herein.

PRECISE RELIEF SOUGHT AND GROUNDS FOR MOTION

The Receiver and Chase have reached a settlement of the Receiver's demand that Chase return payments to it by Art Intellect that were improper based on theories of fraudulent transfer and other theories. Accordingly, the Receiver respectfully requests that the Court enter the

proposed order attached hereto as Exhibit A, approving the below-described Settlement Agreement and Release entered into between the Receiver and Chase.

The specific factual and legal grounds justifying the precise relief sought are as follows:

Background

1. On April 18, 2011, the above-captioned case was commenced by the Securities and Exchange Commission (“SEC”) against Art Intellect, Inc., (“Art Intellect”), Laura A. Roser (“Roser”), and others, and, in conjunction therewith, the Court entered, in relevant part, an Order Appointing Receiver, Freezing Assets and Other Relief (“Receivership Order”).

2. The Receiver was appointed on April 18, 2011 and given possession and control of Art Intellect and all the assets of Roser and others.

3. The Court has directed and authorized the Receiver to, among other things, to “take custody, control and possession of all Receivership Property . . . [and] to sue for and collect . . . from third parties all Receivership Property” (Receivership Order at 4.)

4. On or about May 11, 2011, Roser commenced a civil action against Chase in a case entitled *Laura A. Roser v. J.P. Morgan Chase & Co. [and others]*, United States District Court in the District of Utah, Civil No. 2:11CV00432 (the “Roser Action”).

5. Pursuant to a May 14, 2013 stipulation (“Stipulation”) with the Receiver, Roser transferred to the Receiver possession and title to her assets, including: (a) the home for which payments were made to Chase and (b) Roser’s rights to the Roser Action. The Stipulation was approved by the Court on May 20, 2013 (Dkt. No. 285.) Since July 1, 2013, the Receiver has had control of Roser’s home.

The Chase Settlement Agreement

6. As a result of his financial analysis and investigation, the Receiver determined that he has claims and causes of action against Chase based on monies paid to Chase by Art Intellect that the Receiver believes were for the personal benefit of Roser and not Art Intellect.

7. Prior to commencing suit, the Receiver made demand on Chase for the return of \$76,957.76 that the Receiver alleges was paid to Chase by Art Intellect. Based on the demand made, the Receiver entered into a Settlement Agreement and Release (“Settlement Agreement”) with Chase on September 11, 2013. The Settlement Agreement: (a) has been negotiated at arm’s length and in good faith by the Receiver and Chase, (b) will avoid the expense, delay and inherent risks of further litigation, and (c) will result in the collection of funds for the benefit of the Receivership Estate.

8. The Settlement Agreement, which is subject to approval by this Court, has the following principal terms:

- a. Upon approval of the Settlement Agreement by the Court, Chase will pay to the Receivership Estate \$65,000.00 pursuant to the terms of the Settlement Agreement;
- b. The Receiver will stipulate to dismiss the Roser Action with prejudice;
and
- c. The Receiver will deliver a special warranty deed to Chase, conveying the Receiver’s interest in Roser’s home to Chase.

Applicable Law and Analysis

9. 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. & Exch. Comm’n v. Credit Bankcorp, Ltd., No. 99 CIV. 11395, 2001 WL 1658200, at *2
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(S.D.N.Y. Dec. 27, 2001) (quoting 3 Ralph Ewing Clark, *A Treatise on the Law and Practice of Receivers*, § 770 (3d Ed. 1959)).

10. "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, 324 (10th Cir. 1984). The Court in *Jones* 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.

11. Here, the Settlement Agreement is "fair, reasonable and adequate" for at least the following reasons: (a) it was fairly and honestly negotiated at arm's length and in good faith by the parties; (b) the value of an immediate recovery outweighs the mere possibility of future relief after potentially protracted and expensive litigation; and (c) the terms of the proposed settlement are fair and reasonable. Furthermore, while the Receiver is confident of his right to recover on the claims at issue and there may be no doubt as to the ultimate outcome of the litigation, risks associated with litigation are inherent and those risks, together with potential collection risks and the costs associated therewith, make the proposed settlements fair, adequate and reasonable.

12. The Settlement Agreement will result in the payment of \$65,000.00 to the Receivership Estate.

13. In light of these factors, the Receiver believes the Settlement Agreement is just and fair and should be approved.

CONCLUSION

Accordingly, for the reasons set forth herein, the Receiver requests that the Court enter the proposed Order attached hereto as Exhibit A, approving the Settlement Agreement.

DATED this 6th day of November, 2013.

CLYDE SNOW & SESSIONS

/s/ Jennifer A. James

Jennifer A. James

*Attorneys for Court-Appointed
Receiver R. Wayne Klein*

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above was served via email on this 6th day of November, 2013 on the following:

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The Court, having reviewed the Court-Appointed Receiver R. Wayne Klein's Motion for Approval of Settlement Agreement with JPMorgan Chase Bank ("Motion"), being fully apprised of the matter, and for good cause, does hereby ORDER, ADJUDGE and DECREE that the Motion is GRANTED and the Settlement Agreement is APPROVED on the terms set forth therein. DATED this ____ day of November, 2013.

BY THE COURT:

TENA CAMPBELL
U.S. District Court Judge