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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiffs,

v.

**ART INTELLECT, INC., a Utah
corporation, d/b/a MASON HILL and
VIRTUAL MG, PATRICK MERRILL
BRODY, LAURA A. ROSER, and
GREGORY D. WOOD,**

Defendants.

**MEMORANDUM IN SUPPORT OF
RECEIVER'S MOTION FOR ORDER
APPROVING SETTLEMENT
AGREEMENT WITH THE
CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST
OF LATTER-DAY SAINTS (LDS
CHURCH)**

Case No. 2:11-cv-00357 TC

Honorable Tena Campbell

R. Wayne Klein, the Court-Appointed Receiver (the "Receiver") of Art Intellect, Inc. d/b/a Mason Hill and VirtualMG, submits this memorandum in support of his motion for approval of a settlement agreement reached between the Receiver and The Corporation of the President of The Church of Jesus Christ of Latter-day Saints ("LDS Church").

BACKGROUND

Between May 4, 2009 and April 11, 2011, Art Intellect made charitable contributions totaling \$29,400.00 to the LDS Church. The contributions were made from business bank accounts of Art Intellect on behalf of Laura Roser. The Receiver made demand on the LDS Church for a return of the funds, asserting that these funds were paid for the personal benefit of Roser but were derived from funds provided by investors.

The LDS Church, after evaluating the Court's preliminary injunction order dated October 20, 2011 (which made findings of fact that Roser and Brody were engaged in fraud) and the Court's contempt order dated November 15, 2011 (which found Roser and Brody in contempt of court), entered into negotiations with the Receiver to settle claims asserted by the Receiver. Those negotiations resulted in a settlement agreement signed on December 8, 2011.

SUMMARY OF SETTLEMENT AGREEMENT

Under the settlement agreement, the LDS Church will pay \$26,000.00 to the Receiver by December 18, 2011. In return, the Receiver agrees to a release of all claims against the LDS Church. The settlement agreement is specifically made subject to approval by the Court.

ANALYSIS

Order Appointing Receiver

Paragraph 8(j) of the Order Appointing Receiver authorizes the Receiver to "pursue, resist and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against the Receivership Estates." Similarly, Paragraph 43 of the Order directs the Receiver "to investigate, prosecute, . . . or otherwise participate in [or]

compromise . . . proceedings of any kind as may in his discretion, and in consultation with SEC counsel, be advisable or proper to recover and/or conserve Receivership Property.”

The Securities and Exchange Commission has advised the Receiver that the Commission does not oppose this settlement. The Receiver is not aware of any others who might object to this settlement.

Legal Standard

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 agreement is “fair, adequate, and reasonable.” It was negotiated fairly and honestly, and is the result of an arm’s length transaction. It represents 88.4% of the money demanded by the Receiver. It results 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 Agreement.

CONCLUSION

The Receiver asks the Court to approve the terms of the proposed settlement agreement with the LDS Church as being in the best interests of the Receivership Estate.

DATED this 9th day of December, 2011.

CLYDE SNOW & SESSIONS

/s/ Jennifer A. James
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Walter A. Romney, Jr.
*Attorneys for Court-Appointed
Receiver R. Wayne Klein*

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **MEMORANDUM IN SUPPORT OF RECEIVER'S MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT WITH THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS (LDS CHURCH)** was served via the CM/ECF system on this 9th day of December, 2011 on the following:

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