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*Attorneys for Plaintiff R. WAYNE KLEIN, the
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.

**THE RECEIVER'S MOTION FOR
PERMISSION TO FINALIZE
SETTLEMENT AGREEMENT WITH
FORRES MCGRAW AND
MEMORANDUM IN SUPPORT**

Case No. 2:11CV00099 BSJ

Judge Bruce S. Jenkins

R. Wayne Klein, the Court-Appointed Receiver¹ (the "Receiver"), by and through his counsel of record, hereby notifies the Court that he has entered into a preliminary settlement agreement with Forres McGraw ("McGraw") settling the Receiver's efforts to collect on the

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").

judgment against McGraw.

The Receiver believes the McGraw settlement is fair, reasonable, and in the best interests of the investors who provided money to US Ventures and Winsome.

MEMORANDUM IN SUPPORT

Background

The Receiver filed suit against McGraw on January 20, 2012, seeking recovery of \$123,598.54 in payments made by US Ventures to McGraw. McGraw contested the litigation vigorously, filing an unsuccessful motion to dismiss, engaging in discovery, and seeking to vacate the judgment entered by the Court.

On April 15, 2014, this Court entered judgment in favor of the Receiver and against McGraw in the amount of \$123,598. Since that time, the Receiver has filed the judgment in Texas and engaged a law firm in Texas to collect the judgment. McGraw has filed a motion in Texas courts contesting the validity of the foreign judgment.

On December 12, 2016, the Receiver entered into an Agreement and Release with McGraw, subject to Court approval, agreeing to settle for an amount significantly less than the Judgment. Under the Agreement, McGraw has paid \$9,000.00 to the Receivership Estate and will transfer the Receiver title on lake property McGraw owns in Navarro County, Texas. McGraw represents that the property is worth \$15,000. The Agreement is conditioned on the property being transferred to the Receiver free and clear of all liens and encumbrances.

If the Agreement is approved by the Court, McGraw will transfer to the Receiver title to the property. If the property is free and clear of liens, the Receiver will file a notice of satisfaction of judgment against McGraw.

ANALYSIS

The Receiver requests that the Court approve the above-described Settlement Agreements and Releases. In support hereof, the Receiver provides the following analysis.

1. 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.”²

2. “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.”³ The Tenth Circuit has 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.⁴

3. Here, the Agreement and Release 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 negotiations have been long and intense, (c) McGraw’s contesting of the validity of the judgment in Texas courts would cause the Receivership to continue incurring expenses for the Receiver and his counsel, (d) Texas has laws very favorable to debtors,

² *Sec. & Exch. Comm’n v. Credit Bankcorp, Ltd.*, No. 99 CIV. 11395, 2001 WL 1658200, at *2 (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)).

³ *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).

⁴ *Jones*, 741 F.2d at 324.

including an unlimited homestead exemption and a prohibition on garnishing wages, and (e) the terms of the respective proposed settlements are fair and reasonable. While the Receiver will be collecting only a relatively small amount of the judgment, he will recover \$9,000.00 in cash and will have title to property that he will promptly market for sale. If this Agreement is approved, the Receiver will be obligated to compensate collection counsel in Texas 25% of the settlement amount, after payment of expenses. A very significant factor in the Receiver's decision to settle is the late stage of the Receivership. All litigation has been completed and the Receiver is recommending that all the other outstanding judgments be sold at auction, allowing the Receivership estate to be concluded. The Receiver believes that the McGraw settlement amount is significantly higher than the price the judgment likely would yield at auction.

In light of these factors, the Receiver believes the Agreement and Release is just, fair, and beneficial to the Receivership Estate. Accordingly, he requests that the Court enter the attached proposed order approving the Settlement and Release.

DATED this 15th day of December, 2016.

MANNING CURTIS BRADSHAW
& BEDNAR PLLC

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

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **THE RECEIVER'S MOTION FOR PERMISSION TO FINALIZE SETTLEMENT AGREEMENT WITH FORRES MCGRAW AND MEMORANDUM IN SUPPORT** to be served in the method indicated below to the Defendant in this action this 15th day of December, 2016.

VIA FACSIMILE
 VIA HAND DELIVERY
 VIA U.S. MAIL
 VIA FEDERAL EXPRESS
 VIA EMAIL
 VIA ECF

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Defendant

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Defendant

/s/ David C. Castleberry