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*Attorneys for the BTJD Claimants*

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

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SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

MANAGEMENT SOLUTIONS, INC., a  
Texas Corporation; WENDELL A.  
JACOBSON; ALLEN R. JACOBSON,

Defendants.

**RED CASTLE INC. RETIREMENT  
TRUST'S OBJECTION TO THE  
RECEIVER'S MAY 14, 2015  
CLAIMS ANALYSIS REPORT**

Case No. 2:11-cv-01165

Judge Bruce S. Jenkins

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Red Castle Inc. Retirement Trust and its principal and trustee Reid Brady (collectively "**Red Castle**"), by and through the undersigned counsel, herein submits its Objection to the Receiver's May 14, 2015 Claims Analysis Report (the "**Report**"). For the reasons set forth herein, the Court should disregard the proposed Report and order the Receiver to reserve sufficient funds to satisfy Red Castle's claim entirely, or alternatively, rescind Red Castle's previously lodged objection to the Receiver's proposed Plan of Distribution (the "**Plan**") and allow Red Castle's objections to the Plan to be heard.

## **BACKGROUND**

### ***Red Castle's Claim and the Receiver's Proposed Plan***

1. On approximately August 19, 2014, Red Castle submitted its proposed claim to the Receiver (the "***Claim***"), setting forth the basis of Red Castle's Claim and setting the amount at \$280,000. *See Claim*, a true and correct copy of which is attached hereto as **Exhibit A**.

2. On February 27, 2015, Gil A. Miller, the Court-appointed receiver in this matter (the "***Receiver***"), submitted his proposed Plan, [Docket No. 2311-2](#), together with a Motion for Approval of the Plan (the "***Plan Motion***"), [Docket No. 2311](#).

3. On March 30, 2015, Red Castle, together with other claimants referred to as the "***BTJD Claimants***," objected to the Plan and the Plan Motion (the "***BTJD Objection***"), [Docket No. 2395](#).

4. Red Castle, together with most of the BTJD Claimants, objected to the Plan generally and specifically to its classification as an "Insider" under the Plan and placed in "Class 9" of the Plan as a "Non-Participant" to the Plan. *Id.* at 6–7.

5. Red Castle observed, among other things, that the term "Insider" and its application to Red Castle was inappropriately based on an unfounded Ponzi presumption, that the Plan's proposed definition and application of "Insider" status was so baseless and so broad as to render it meaningless (or worse—capture within its ambit practically every individual and entity involved with Management Solutions, Inc. "***MSI***"), and that the Plan, by its very terms, offended Due Process. *Id.* at 6–12.

### ***The BTJD Claimants' Conditional Stipulation to the Plan and the Plan Hearing***

6. Following discussions with the Receiver, the Receiver and the BTJD Claimants arrived at a Stipulated Withdrawal of the BTJD Objection (the "***Withdrawal***"), [Docket No. 2452](#).

7. In exchange for the Withdrawal, the Receiver agreed to, among other terms,
  - a. “reclassify” the BTJD Claimants “as Class 5 Claimants under the Plan, subject to the Receiver’s claims process outlined in the Receiver’s [Plan Motion] and in Article V of the [Plan] (the ‘*Claims Process*’),” and
  - b. “reserve sufficient funds to pay any and all of the BTJD Claimants’ claims, on an equal footing and treatment as the Class 5 Claimants, in the event that any or all of the BTJD Claimants’ respective claims are deemed meritorious by the Receiver or by the Court.”

*Id.* at 2–3, ¶¶ 3, 8.

8. On April 13, 2015, the Court conducted a hearing on the Plan and the Plan Motion (the “*Plan Hearing*”). [Docket No. 2458](#).

9. At the Plan Hearing, the Court noted that contested matters existed and that objections to the Plan had been filed and asked the Receiver how much he had reserved “in the way of set-asides” for those contested matters, to which the Receiver’s counsel indicated the Receiver planned to “hold[ ] back” approximately \$30 million. *See* Transcript of Plan Hearing, 11:4–10.

10. This amount was again affirmed and reemphasized by the Receiver later in the Plan Hearing. *See id.* at 27:4–8.

11. At the close of the Plan Hearing, the Court again noted that the Receiver “set aside amounts or properties that currently enjoy an existing contest, and that makes sense because those that have a specific interest in either a specific property or a question as to classification or a question as to amount, the [R]eceiver has indicated that they have set aside about 30, \$31 million.” *Id.* at 36:9–16.

12. The Court ultimately approved the Plan, but in its ruling and order required the Receiver to “expressly point out that [the Receiver] ha[d] set aside and ha[d] left for future determinations those contests amongst those who have objected.” *Id.* at 38:25–39:5.

13. On April 14, 2015, the Court entered an Order Granting Motion for Approval of Plan of Distribution, [Docket No. 2459](#).

***The Claim Analysis Report and Motion to Approve First Distribution***

14. On May 14, 2015, the Receiver filed a Motion to Approve Claims Analysis Report and attached his Report as Exhibit A thereto. [Docket No. 2522](#).

15. In the Report, the Receiver valued Red Castle’s Claim at \$145,853.34, a marked departure from the Claim of \$280,000 submitted by Red Castle. Docket No. 2522-1 at [Page].

16. On that same day, May 14, 2015, the Receiver also filed a Motion to Approve First Distribution (the “***Distribution Motion***”). [Docket No. 2523](#).

17. In the Distribution Motion, the Receiver attached as Exhibit B a document titled “First Distribution – Reserved Amounts.” [Docket No. 2523-2](#).

18. Exhibit B purports to lay out all of the reserved amounts for current contested matters, and indicates that only \$22,104,485.72 has been set aside from those amounts. *Id.*

19. Notably, and contrary to the terms of the Withdrawal, Red Castle’s claim amount has not been adequately reserved. *See id.*

20. Indeed, although Red Castle’s Claim is for \$280,000 the Receiver has only reserved the amount of Red Castle’s “Allowed Claim Amount” or \$145,853.34.

**ARGUMENT**

As demonstrated above, and for the reasons set forth below, the Receiver has failed to live up to his commitments in the Withdrawal. Accordingly, the Court should enforce the terms

of the Withdrawal and order the Receiver to reclassify Red Castle as a Class 5 participant and order the Receiver to either pay Red Castle the full amount of its Claim or reserve adequate funds from the receivership estate to fully satisfy Red Castle's Claim. In the alternative, the Court should rescind the Withdrawal, reopen the BTJD Objection and hear out Red Castle's original objection.

**I. THE RECEIVER IMPROPERLY INDUCED THE WITHDRAWAL OF RED CASTLE'S OBJECTION TO THE PLAN OF DISTRIBUTION.**

The Withdrawal is a binding agreement between the BTJD Claimants (including Red Castle) and the Receiver. The Tenth Circuit has long held that such stipulated agreements, even in the midst of litigation, must be honored. *See L.P.S. v. Lamm* 708 F.2d 537, 539 (10th Cir. 1983) (holding that courts "cannot overlook or disregard stipulations which are absolute and unequivocal," (quotation marks omitted)). As such, traditional contract remedies may be employed to ensure that the Withdrawal is enforced. Among those remedies available to contracting parties when a breach of contract is at issue are strict performance of the terms of the agreement or rescission of the agreement altogether. *See, e.g., World Alliance Consulting, Inc. v. DocPlanet.com, Inc.*, 57 Fed.Appx. 390, 392 (10th Cir. 2003) (observing that plaintiff in breach of contract claim may seek specific performance of the agreement); *Rosenfield v. HSBC Bank, USA*, 681 F.3d 1172, 1183 (10th Cir. 2012) (noting that party may "void a contract in equity— i.e., to make it such that the agreement [had] never been executed" (alteration in original) (internal quotation marks omitted)).

Here, the Withdrawal has already been breached by the Receiver. Indeed, even though the terms of the Withdrawal are clear and unambiguous and the Court itself emphasized those terms in its ruling on the Plan and the Plan Motion, the Receiver has failed to uphold his part of the bargain in the Withdrawal. As set forth below, the Receiver has failed to abide by the terms

of the Withdrawal by failing to reserve funds adequate to satisfy the full amount of Red Castle's claim. The Court should accordingly and strictly enforce the terms of the Withdrawal and order the Receiver to reclassify Red Castle as a Class 5 participant and to reserve sufficient funds for Red Castle's claim or, alternatively, rescind the Withdrawal altogether and allow Red Castle's objections to the Plan to be heard.

As set forth above, the Receiver agreed to "reserve sufficient funds to pay any and all of the BTJD Claimants' claims, on an equal footing and treatment as the Class 5 Claimants, in the event that any or all of the BTJD Claimants' respective claims are deemed meritorious by the Receiver or by the Court." Withdrawal at 3, ¶ 8. When pressed by the Court at the Plan Hearing, the Receiver insisted that he would reserve some \$30 million to cover the full amounts of contested claims. Background, *supra* ¶¶ 8–12.

The Receiver has utterly failed to comply with this obligation. In fact, in his Distribution Motion, the Receiver admits that he has only reserved \$22,104,485.72 to satisfy contested claims—nearly \$8 million less than the \$30 million he guaranteed to the Court would be set aside. [Docket No. 2523](#). Worse, and contrary to the terms of the Withdrawal, Red Castle's claim amount has not been adequately reserved. *See id.*, Exhibit B, [Docket No. 2523-2](#). Indeed, although Red Castle's claim amount had been \$280,000 the Receiver has only reserved \$145,853.34.

The Receiver's failure to reserve stands as an outright breach of the Withdrawal. Despite assurances to the BTJD Claimants, including Red Castle, that he would set aside funds to pay out their claims in full upon a successful appeal to the Receiver or to the Court, the Receiver has simply and conveniently recalculated Red Castle's Claim. Given the express terms of the Withdrawal and the Receiver's assurances in open court that he would adequately reserve funds

to satisfy all contested claims, the Court should not allow this preferential payout to stand, and should accordingly compel the Receiver to reserve adequate funds to satisfy Red Castle's claim—a total of \$280,000. Alternatively, the Court should rescind the Withdrawal altogether and allow Red Castle to object to the Plan and propose an alternative, more equitable plan of distribution.<sup>1</sup>

**II. EVEN SETTING ASIDE THE RECEIVER'S BREACH OF THE WITHDRAWAL, RED CASTLE ALSO OBJECTS TO THE CLAIM ANALYSIS BECAUSE THE RECEIVER HAS CALCULATED THE WRONG AMOUNT FOR RED CASTLE'S CLAIM.**

In addition to objecting to the Receiver's actions with respect to the reservation amount, Red Castle also objects to the amount of its Claim set forth in the Report. Specifically, the Receiver has classified Red Castle's unpaid claim as \$145,853.34. However, in reviewing those documents that the Receiver has provided to Claimant, together with Red Castle's own materials, it appears that Claimant is entitled to receive at least \$251,000. Although this amount may ultimately be subject to revision (up or down) based on further analysis, including analysis of documents Claimant hopes this Court will require the Receiver to produce, it is a minimum amount to which Red Castle is entitled and a number that is markedly different from that proposed by the Receiver. Accordingly, and based on this discrepancy, Red Castle objects to the amount of its claim as determined by the Receiver and set forth in the Report.

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<sup>1</sup> Given the Court's insistence that reserve funds be set aside to satisfy claims before approving the Plan, perhaps rescission of the Withdrawal and giving the chance to Red Castle and other affected Claimants to object to and propose a more adequate Plan is the best option.

DATED this 28th day of May, 2015.

BENNETT TUELLER JOHNSON & DEERE

/s/ Eric B. Vogeler

Barry N. Johnson  
Brigman L. Harman  
Eric Boyd Vogeler  
*Attorneys for Red Castle*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 28th day of May, 2015, I electronically filed the foregoing **RED CASTLE INC. RETIREMENT TRUST'S OBJECTION TO THE RECEIVER'S MAY 14, 2015 CLAIMS ANALYSIS REPORT** via the Court's CM/ECF system, which in turn effected service on all counsel of record.

/s/ Kenzie Dunn

# EXHIBIT

# A

## Claim Form

### Section I – Determine Your Claim Category

Using the above definitions, determine the correct category of your claim based upon the circumstances under which your claim arises. The available categories are Priority Claimant, Secured Lender, TIC Claimant, Investor Claimant, Personal Injury Claimant, or Vendor. The category of your claim may change if it is determined you have selected an incorrect category. Depending on your individual circumstances, you may have multiple categories of claims. If so, please complete each section of the Claim Form that may apply.

### Section II – General Information (To be completed by all Claimants)

1. Claimant Name (if Claimant is a married couple, list both names):  
**Red Castle Inc. Retirement Trust**
  
2. Claimant address, phone number and email address (the Claimant has a continuing obligation to keep the Receiver informed of its current address)  
  
P.O. Box 257  
Fountain Green, Utah 84632  
435-851-0075  
reidbrady46@gmail.com
  
3. If Claimant is a Company, please provide the Federal Employer Identification Number of Claimant, if applicable. Social Security numbers are not required at this time.  
  
87-0668025
  
4. If Claimant is represented by an attorney, provide the name, address, phone number, and email address of the attorney:  
NONE
  
5. A. If Claimant is or was at any time related by blood or marriage to Wendell A. Jacobson, Melba Jacobson, Allen R. Jacobson, Cami Jacobson, or any of the individuals identified as Receivership Entities, explain that relationship:  
  
Not Applicable  
B. If Claimant is currently or was at any time employed by Wendell A. Jacobson, Melba Jacobson, Allen R. Jacobson, Cami Jacobson, or any of the individuals or entities identified as Receivership Entities, explain that employment relationship:  
  
Not Applicable

a. Identify the type of organization and state in which the Company is organized:  
N/A

b. Identify all Principals of the Company and the percentage ownership of each Principal.

If any Principal is a Company, identify the Principals of each Company down through each level until individuals are identified.

N/A

c. If the TIC Interest was acquired on behalf of Persons other than Principals in the Company, identify those Persons.

N/A

**Section VI – Investor Claimants (To be completed only by Investor Claimants)**

39. Identify the date and amount of each and every payment (whether cash or property) made by you to a Receivership Entity. Do not include Rollover Payments in this response (see question 42 below). State the purpose of each payment, such as investment, loan, etc. Provide copies of checks or wire transfer records demonstrating each payment or, if not available, provide copies of other records demonstrating such payment.

League Eleven

09-12-2011 280,000.00

Investment Loan Check # 1190

40. Identify the date and amount of each and every payment received by you from or on behalf of a Receivership Entity for any reason, including interest, principal, return of capital, profit from sale of a property, fees, reimbursement of expenses, or commissions. Provide copies of checks demonstrating each payment or, if checks are not available, provide copies of other records demonstrating such payment. Do not report Rollover Payments. (See question 42 below). Report only transactions in which you received cash.

NONE

41. For each payment identified in response to #40, above, state the reason for the payment, such as interest, principal, return of capital, profit from sale of a property, fees, reimbursement of expenses, or commissions.

NONE

42. Identify the date and amount of each and every Rollover Payment of your money to a Receivership Entity. Provide copies or records evidencing each transfer.

NONE

43. Are you owed any money by a Receivership Entity? If yes, identify the Receivership Entity that owes the money, explain the reason why it is owing, state the amount owing as of the Receivership Appointment Date, and show how the amount was calculated.

Yes

League Eleven LLC

Personal Investment

280,000.00

On 9-12-2011 Red Castle invested 280,000.00 by check 1190

**My Total Claim is 280,000.00**

44. As to each investment identified in response #39 and #42, above, provide the following information as to representations or promises made to you:

a. Identify who made the representation or promises to you:

Wendell was asked if Red Castle could invest their retirement funds with him. Wendell's CPA helped organize the investment trust's strategy after which it invested it's money with no guarantees.

b. What would be done with your money (for example, what Investor LLC would receive your money and what property would be purchased with that money)?

I gave liberal latitudes as to where my money could be invested.

c. The ownership, value, liabilities, liens and financing of the property in which you would be investing:

I understood that only my investment would be at risk.

d. The financial condition of the Investor LLC and the corresponding Property LLC:

I don't remember the specifics.

e. Promised returns on your investment:

No promises were ever made

f. Safety and risk concerning your investment:

Only my investment would be at risk

g. Provide copies of all letters, emails, agreements and other documents evidencing these representations and promises.

I have been unable to locate any at this time.

45. Provide copies of all statements or accountings you received concerning your investment.

I haven't received my k-1 or any accounting.

46. If the Claimant is a Company, not an individual:

a. Identify the type of organization and state in which the Company is organized:

Corporation in the state of Utah

the invoice covers goods delivered or services provided both before and after the Receiver Appointment Date, identify the amounts which are for goods or services on or prior to the Receiver Appointment Date:

N/A

48. If not reflected in the invoices, explain the nature of the services provided or goods delivered:

N/A

49. State the terms upon which payment was to be made:

N/A

50. State the total amount of your claim: \$ \_\_\_\_\_

N/A

**Section VIII – Personal Injury Claimants (To be completed only by Personal Injury Claimants)**

51. Provide the date, location and circumstances giving rise to your claim.

N/A

52. Provide copies of any and all police reports, insurance reports, and witness statements concerning your claim.

N/A

53. Provide an itemization of the amount of your claim and documentation demonstrating the amount of damages, such as medical bills and invoices for repairs.

N/A

**Signature**

The undersigned declares under penalty of perjury pursuant to 28 United States Code § 1746 that the foregoing is true and correct.

Executed on Aug 19, 2014.

For Individuals:

Printed Name:

By: \_\_\_\_\_

For Companies:

Company Name: Red Castle Inc

*Red Castle Inc*

By *Neil C Brady*

b. Identify all Principals of the Company and the percentage ownership of each Principal. If any Principal is a Company, identify the Principals of each Company down through each level until individuals are identified.

100% Reid C Brady

c. If investments were made in a Receivership Entity on behalf of Persons other than Principals in the Company, identify those Persons.

None

**Section VII – Vendor Claimants (To be completed only by Vendor Claimants)**

47. Provide copies of all outstanding invoices for goods delivered or services provided by you to any Receivership Entity on or before the Receiver Appointment Date. Your response should be based on the date the goods were delivered or the services provided, not the date of the invoice. If the invoice is dated after the Receiver Appointment Date, state the date(s) upon which the goods were delivered or the services provided. If the invoice covers goods delivered or services provided both before and after the Receiver Appointment Date, identify the amounts which are for goods or services on or prior to the Receiver Appointment Date:

N/A

48. If not reflected in the invoices, explain the nature of the services provided or goods delivered:

N/A

49. State the terms upon which payment was to be made:

N/A

50. State the total amount of your claim: \$ \_\_\_\_\_

N/A

**Section VIII – Personal Injury Claimants (To be completed only by Personal Injury Claimants)**

51. Provide the date, location and circumstances giving rise to your claim.

N/A

52. Provide copies of any and all police reports, insurance reports, and witness statements concerning your claim.

N/A

53. Provide an itemization of the amount of your claim and documentation demonstrating the amount of damages, such as medical bills and invoices for repairs.

N/A

**Signature**

The undersigned declares under penalty of perjury pursuant to 28 United States Code § 1746 that the foregoing is true and correct.

Executed on \_\_\_\_\_, 2014.

For Individuals:

Printed Name:

By: \_\_\_\_\_

For Companies:

Company Name: Red Castle Inc Retirement Trust

By: \_\_\_\_\_

Printed Name: Reid C Brady

Title: \_\_\_\_\_

EIN

For Companies:

## Claim Form

### Section I – Determine Your Claim Category

Using the above definitions, determine the correct category of your claim based upon the circumstances under which your claim arises. The available categories are Priority Claimant, Secured Lender, TIC Claimant, Investor Claimant, Personal Injury Claimant, or Vendor. The category of your claim may change if it is determined you have selected an incorrect category. Depending on your individual circumstances, you may have multiple categories of claims. If so, please complete each section of the Claim Form that may apply.

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1. Claimant Name (if Claimant is a married couple, list both names):  
**Red Castle Inc. Retirement Trust**
  
2. Claimant address, phone number and email address (the Claimant has a continuing obligation to keep the Receiver informed of its current address)  
  
P.O. Box 257  
Fountain Green, Utah 84632  
435-851-0075  
reidbrady46@gmail.com
  
3. If Claimant is a Company, please provide the Federal Employer Identification Number of Claimant, if applicable. Social Security numbers are not required at this time.  
  
87-0668025
  
4. If Claimant is represented by an attorney, provide the name, address, phone number, and email address of the attorney:  
NONE
  
5. A. If Claimant is or was at any time related by blood or marriage to Wendell A. Jacobson, Melba Jacobson, Allen R. Jacobson, Cami Jacobson, or any of the individuals identified as Receivership Entities, explain that relationship:  
  
Not Applicable  
B. If Claimant is currently or was at any time employed by Wendell A. Jacobson, Melba Jacobson, Allen R. Jacobson, Cami Jacobson, or any of the individuals or entities identified as Receivership Entities, explain that employment relationship:  
  
Not Applicable

Red Castle

Account number: 470001587 ■ September 1, 2011 - September 30, 2011 ■ Page 2 of 4

#39



Transaction history

Date	Check Number	Description	Deposits/ Credits	Withdrawals/ Debits	Ending daily balance
9/12	1190	Check		280,000.00	
9/15					

The Ending Daily Balance does not reflect any pending withdrawals or holds on deposited funds that may have been outstanding on your account when your transactions posted. If you had insufficient available funds when a transaction posted, fees may have been assessed.

Summary of checks written (checks listed are also displayed in the preceding Transaction history)

Number	Date	Amount	Number	Date	Amount
1190	9/12	280,000.00			

Account transaction fees summary

Service charge description	Units used	Units included	Excess units	Service charge per excess units (\$)	Total service charge (\$)
Paid Items	2	75	0	0.30	0.00
<b>Total service charges</b>					<b>\$0.00</b>

With Wells Fargo Business Online, you can get free\*, timely account alerts to notify you when important transactions occur. Choose to be notified when a deposit or withdrawal posts, when balances fall below a certain level, and more. You can also customize how you'd like to be notified - by email, text message, or both. It's an easy way to stay on top of critical business information.

Setting up alerts is easy. Simply sign on to Wells Fargo Business Online at [wellsfargo.com/blz](http://wellsfargo.com/blz). Select the "Messages & Alerts" tab, then select "Set Up/Modify Alerts".

\*For alerts sent to your wireless device, service provider and applicable account activity fees may apply.

 IMPORTANT ACCOUNT INFORMATION

IMPORTANT NOTICE - The enclosed Wells Fargo-Wachovia update insert contains a story entitled "Financial solutions for college". The display in the story refers to the Wells Fargo Student Loan for Parents. To learn more about this and other student loan products, please visit [wellsfargo.com/student](http://wellsfargo.com/student) today.