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Management Solutions, Inc., and related entities  
and for the assets of Wendell A. Jacobson and  
Allen R. Jacobson*

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 JACOBSON;  
and ALLEN R. JACOBSEN,

Defendants.

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**REQUEST FOR ORDER APPROVING  
PROPOSED FIRST DISTRIBUTION**

Civil Action No. 2:11-cv-01165

Judge Bruce S. Jenkins

Gil A. Miller, the Receiver for Defendants Management Solutions, Inc. (“MSI”), Wendell A. Jacobson, Allen R. Jacobson, and related entities (the “Receiver”), by and through counsel, hereby requests an order approving the Receiver’s Motion to Approve First Distribution (the “First Distribution Motion”) (ECF No. 2523).

As noted in the First Distribution Motion, the Receiver is anxious to make distributions to the Claimants in this case. Simultaneous with the First Distribution Motion, the Receiver filed

his Motion to Approve Claims Analysis Report (the “Claims Analysis Motion”) (ECF No. 2522). The Claims Analysis Motion (inter alia) calculates the amount of each investor’s claim. The Distribution Plan (ECF No. 2459) contemplates that claimants could object to how their claims are calculated in the Claims Analysis Motion – but the Distribution Plan notes that an actual distribution would be permissible *irrespective* based on the Receiver setting aside a reserve of funds to satisfy amounts in dispute. The First Distribution Motion and Claims Analysis Motion were filed on May 14, 2015. As the Receiver had expected, a number of individuals filed objections to their treatment under the Claims Analysis Motion (*see* ECF Nos. 2551 – 2553, 2555 – 2566). These objections primarily derive from alleged “insiders.” Consistent with the Distribution Plan, the Receiver has sufficient reserves (in cash and assets) to pay those objections if and when they fall due – accordingly the First Distribution Motion should be approved without delay.

The First Distribution Motion sought approval for distribution of \$103,142,762.35 (\$748,893.61 to tax claims, \$2,393,868.74 to trade creditor claims and \$100,000,000.00 to investor claimants). The First Distribution Motion noted that the Receivership estate at that time had a cash balance of \$130,044,109 – in other words that nearly \$27 million in cash remained in the estate following the first distribution. That balance was intended, amongst other things, as a reserve for disputed claims. To that end, the Receiver noted that anticipated disputed amounts totaled \$22,104,485.72 (as outlined in Exhibit B to the First Distribution Order Motion) – and as such, taking into account distributions and the disputed claim reserve, the receivership estate would still be cash positive by several million dollars.

As of today, the current cash balance of the Receivership estate is \$129,923,310. The Receivership estate also has at least \$17 million in other assets (including \$9 million in properties under contract, whose sales have been approved by the Court and are scheduled to close within 30 days).<sup>1</sup> Since the First Distribution Motion, the amount to be distributed has been reduced to \$103,009,445 based on a reduction in the claim owed to the IRS.<sup>2</sup> Using this adjusted distribution amount, there would still be at least \$44 million in cash and assets in reserve for disputes and administrative expenses. Several of the parties that have objected to the Claims Analysis Motion object, in part, to the amount the Receiver has agreed to reserve for their respective claims (the “Objecting Parties”).<sup>3</sup> Given that there are more than adequate assets in the estate, the Receiver will agree to increase the amount reserved for the disputes involving those Objecting Parties. Reserving the additional amounts claimed by such Objecting Parties, the total reserve amount has increased to \$30,614,036. The Summary attached as Exhibit A hereto delineates the amounts the Receiver will reserve for such disputes and represents the entire claim amounts demanded by the Objecting Parties.<sup>4</sup> The total amount of cash and assets

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<sup>1</sup> See e.g., Order Confirming Private Sale of Receivership Interest in Toscana Property and Approving Sale Clear of Liens (ECF No. 2428) (April 8, 2015).

<sup>2</sup> The Receiver and the IRS discovered that much of the penalties and interest being charged was for post-receivership periods, and the IRS has agreed to waive those amounts by amending its claim, which has been provided to the Receiver. In addition, with its claim, the IRS mistakenly included amounts owed by entities unrelated to the receivership. With said adjustments, the total amount of the IRS claim is now \$439,854.12, which is a \$133,317.11 reduction from its previous claim amount of \$573,171.23. The Receivership entities which have incurred taxes, penalties and interest to the IRS is summarized in Exhibit B attached herein.

<sup>3</sup> See e.g., ECF No. 2553 at ¶ 21, ECF No. 2555 at ¶ 21, ECF No. 2556 at ¶ 14; ECF No. 2557 at ¶ 21; ECF No. 2558 at ¶ 20, ECF No. 2559 at 26; ECF No. 2560 at ¶ 21, ECF No. 2551 at ¶ 20, ECF No. 2562 at ¶ 21, ECF No. 2563 at ¶ 21, ECF No. 2564 at ¶ 20, ECF No. 2565 at ¶ 10

<sup>4</sup> Although the Receiver agrees to increase the reserve amount for the claims of the objecting parties, it should be noted that such reserve is inflated markedly, well above that likely ever to be

exceeds the aggregate of the distribution amount and reserve amount by several millions of dollars. Accordingly, the Court should enter an Order approving the immediate distribution of funds to investors, trade and tax claims consistent with this Request, while reserving for the amounts in Exhibit A pending further order of the Court. A proposed order to that effect is attached as Exhibit C.

Dated this 29th day of May, 2015.

HOLLAND & HART LLP

/s/ Doyle S. Byers

David K. Broadbent

Doyle S. Byers

Nathan Archibald

*Attorneys for Gil A. Miller, Receiver  
for Management Solutions, Inc., Wendell  
A. Jacobson and Allen R. Jacobson*

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(cont'd)..

paid out to any disputed claimants. That is, Objecting Parties largely each seek to have reserves held for the face amount of their claims as submitted to the Receiver, ignoring the mechanism for calculation of claims under the Plan of Distribution already approved by the Court. Originally, the Receiver sought to reserve an amount sufficient to pay their claims, if such claims were allowed and subject to the same calculation as all other Claimants. In order to obtain approval for the First Distribution, the Receiver is willing to increase the reserve amount for the objecting parties' claims, but it should be noted that he does not believe that the amount of the claims as submitted to the Receiver is the appropriate calculation as it is contrary to the already approved Plan of Distribution.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 29th day of May, 2015, I caused to be electronically filed the foregoing with the Court by CM/ECF and the Court will send electronic notification to all counsel. I also certify that I caused the foregoing to be served via first-class mail, postage prepaid on the following:

Greg B. Bailey  
P. O. Box 298  
Fountain Green, UT 84632

Lanny Waite  
Maxine Waite  
PO Box 192  
Logandale, NV 89021

*/s/ Nathan Archibald* \_\_\_\_\_

**INDEX OF EXHIBITS**

A: Summary of Claim Objections

B: Summary of Claim Objections

C: Proposed Order

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# **EXHIBIT A**

**Management Solutions, Inc., Receivership****Summary of Claim Objections and Total Amount Reserved by Receivership for Objections**

<b>Docket #</b>	<b>Objecting Party*</b>	<b>Objection to Claims Analysis Report Or First Distribution</b>	<b>Amount Previously Reserved</b>	<b>Additional Reserve Claimed</b>	<b>Total Reserved Amount</b>
2551	Falconhead Property Owners Association, Inc.	Yes	1,647,873.50	-	1,647,873.50
2554	Evan K. Jacobson and Hally Jacobson, et al.	Yes	7,636,987.28	-	7,636,987.28
2552	Black Cliffs Investments, LLC, Matthew Nielson, Jill Nielson, et al.	Yes	Providence Property	-	Providence Property
2555	Greg and Jenny Bailey	Yes	341,104.12	1,055,849.50	1,396,953.62
2553	Cami Jacobson	Yes	-	200,677.55	200,677.55
2556	Bement & Company P.C.	Yes	177,412.01	-	177,412.01
2565	Sean Hansen	Yes	-	89,100.00	89,100.00
2566	Gene P. Jacobson, Laraine Jacobson, Bradley Jacobson*	Yes	8,442,489.14	-	8,442,489.14
2567	Branch Banking & Trust Company	Yes	-	-	-
2557	Jason and Casey Coutts	Yes	428,680.00	311,972.00	740,652.00
2558	Scott and Ellen Daley	Yes	-	247,096.80	247,096.80
2560	Brandon and April Jacobson	Yes	1,620,224.18	1,057,958.73	2,678,182.91
2561	Laney Jacobson	Yes	-	234,059.00	234,059.00
2562	Brett and Emily Lovell	Yes	-	1,123,078.39	1,123,078.39
2563	Melba Jacobson/Boca Raton	Yes	-	3,505,611.83	3,505,611.83
2564	Red Castle	Yes	-	134,146.66	134,146.66
2559	Colonial Stone Brook Apartment Homes II, LLC	Yes	-	550,000.00	550,000.00
<b>Totals</b>			<b>20,294,770.23</b>	<b>8,509,550.46</b>	<b>28,804,320.69</b>
<b>Non-Objecting Party Reserves (Fannie Mae)</b>			<b>1,809,715.49</b>	<b>-</b>	<b>1,809,715.49</b>
<b>Total Amounts Reserved for Objecting and Non-Objecting Parties</b>			<b>\$ 22,104,485.72</b>	<b>\$ 8,509,550.46</b>	<b>\$ 30,614,036.18</b>

\*The Bradley Jacobson objection has been resolved and the objection will be withdrawn



# **EXHIBIT B**

**Management Solutions, Inc., Receivership****Claim Analysis - IRS (#0190)****Amendment 4 - Updated****As of May 29, 2015**

Entity	Date	Tax	Penalty	Interest	Type	Explanaton
PNL Venture, LTD	12/31/2005		2,000.00	615.14	Partnership	Late filing of partnership returns
Costa Azul, LLC	2/28/2009		14,400.00	823.52	Partnership	Late filing of partnership returns
Cletace, LLC	3/31/2009		14,580.00	798.39	Partnership	Late filing of partnership returns
Wells & Vala, LLC	6/30/2009		1,080.00	40.07	Partnership	Late filing of partnership returns
King Sage, Inc.	9/30/2011	6,911.00	114.00	-	Corp Income	Unpaid corporate income tax; failure to make estimated payments penalty
AC Apartments, Inc.	12/31/2011	3,849.00	23.00	-	Corp Income	Unpaid corporate income tax; failure to make estimated payments penalty
Squaw Springs, Inc.	12/31/2011	364,638.00	7,207.00	-	Corp Income	Unpaid corporate income tax; failure to make estimated payments penalty
Yellow Rose, Inc.	12/31/2011	-	592.00	-	Corp Income	Taxes paid by Receivership 12/16/2014; failure to make estimated payments penalty
Wool City, Inc.	12/31/2011	11,366.00	37.00	-	Corp Income	Unpaid corporate income tax; failure to make estimated payments penalty
Reese Road Apts, LLC	12/31/2011		780.00		Partnership	Late filing of partnership returns
Goodson, LLC	12/31/2012	5,000.00			Partnership	Estimate for unfiled tax return
Hondo Encinita, LLC	12/31/2012	5,000.00			Partnership	Estimate for unfiled tax return
		<u>396,764.00</u>	<u>40,813.00</u>	<u>2,277.12</u>		
Total:		<u>439,854.12</u>				

Amendment 4 of the IRS claim adjusted for tax payments made and recalculated penalties/interest through the receivership date.

Removed Platinum Protection from Amendment 4 of claim. Not receivership entity.

Removed Park International from Amendment 4 of claim. Our records do not show an entity of that name with that EIN as part of receivership.

# **EXHIBIT C**

*Proposed Order Prepared By:*

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SECURITIES AND EXCHANGE  
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vs.

MANAGEMENT SOLUTIONS, INC., a  
Texas corporation; WENDELL JACOBSON,  
an individual; and ALLEN R. JACOBSON, an  
individual,

Defendants.

**[PROPOSED]  
ORDER GRANTING REQUEST FOR  
FIRST DISTRIBUTION**

Civil Action No. 2:11-cv-01165

Judge Bruce S. Jenkins

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By Order dated April 15, 2015, this court authorized the plan of distribution of the assets in the receivership estate (ECF No. 2460) (“the Distribution Plan”). The Distribution Plan contemplated the filing of a Claims Analysis Report – calculating payments to each individual

claimant. The Distribution Plan also contemplated that a distribution to investors could take place if the Receiver retained sufficient funds to pay disputed amounts. The Receiver has filed his Claims Analysis Report (ECF No. 2522) and a number of objectors have filed disputes as to their individual claim calculation in the Claims Analysis Report (*see* ECF Nos. 2551 – 2553, 2555 – 2566) (the “Objecting Parties”). The Receiver has also filed his Motion to Approve First Distribution (the “First Distribution Motion”) (ECF No. 2523) and his Request for Order Approving Proposed First Distribution (“First Distribution Request”) (ECF No. 2568). The Receiver has represented in his First Distribution Request that he has sufficient assets in the Receivership Estate to reserve for disputed claims in an amount of \$30,614,036, which includes the full amount of the Objecting Parties’ disputed claims. Based on the Receiver’s representations in his First Distribution Motion and his First Distribution Request, and good cause appearing, the Motion to Approve First Distribution is GRANTED; accordingly, the Receiver may distribute \$103,009,445.35 consistent with the Distribution Plan and Claims Analysis Report (and such other prior orders of this court), including \$615,576.61 to tax claims, \$2,393,868.74 to trade creditor claims and \$100,000,000.00 to approved investor claims.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2015.

BY THE COURT

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Honorable Bruce S. Jenkins  
District Court Judge