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A. Jacobson and Allen R. Jacobson*

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

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

Defendants.

**STIPULATED MOTION TO APPROVE
SETTLEMENT AGREEMENT WITH
JACOBSON PARTIES**

Civil Action No. 2:11-cv-01165

Judge Bruce S. Jenkins

Gil A. Miller, the Court-appointed receiver in this matter (the “Receiver”) has come to terms to settle all disputes with Evan K. Jacobson, Hally Jacobson, Preston Jacobson, McKay Jacobson, Tanner Jacobson, Jeniel Jacobson, Britni Gabriel, and the nine Sage Canyon Entities¹ (the “Evan Group”); Gene and Laraine Jacobson; Melba Jacobson; Cami Jacobson; Greg and Jenny Bailey; Brandon and April Jacobson; Scott and Ellen Daley; Brett and Emily Lovell; and

¹ Sage Canyon Management, Inc.; Sage Canyon Cabin, LLC; Sage Canyon Creek, LLC; Sage Canyon Meadows, LLC; Sage Canyon Oaks, LLC; Sage Canyon Park, LLC; Sage Canyon Pines, LLC; Sage Canyon Ridge, LLC; and Sage Canyon View, LLC.

Red Castle Inc. Retirement Trust (collectively, the “Jacobson Parties”). The Receiver and the Jacobson Parties request that the Court approve the settlement as detailed in the Memorandum below.

MEMORANDUM

I. Background.

A. The claims proposed to be settled with the Evan Group.

Evan Jacobson brought a complaint in intervention (CM/ECF No. 1624) seeking, in sum, the removal of Parkwood Management Company, LLC; Starwood Management Company; Parkwood Capital, LLC; Sagewood Capital, LLC; and Wool City, Inc. from the receivership. In response, the Receiver filed a counterclaim and third party complaint (CM/ECF No. 2198; together with CM/ECF No. 1624, the “Evan Group Litigation”) in which the Receiver brought claims against Evan Jacobson to recover for transfers of amounts totaling \$6,391,236 related to a transaction involving Retail City Partners and Corral City, as well as claims against the Evan Group for transfers totaling at least \$1,392,500 related to the purchase and improvement of the property known as the Pavilion Property. The proposed settlement would resolve all claims in the Evan Group Litigation, as well as any others, between the Receiver and the Evan Group.

B. The claims proposed to be settled that were submitted as part of the claims process in this case.

The Jacobson Parties submitted numerous claims to the Receiver as part of the claims process in this case, which are summarized below and are collectively referred to as the “Jacobson Parties’ Claims.”

Evan K. Jacobson and Hally Jacobson (for themselves and purportedly on behalf of Parkwood Capital, LLC; Sagewood Capital, LLC; Starwood Management Company, Inc.; Dixie

Winds, LLC; Wool City, Inc.; EJ Edwards Ranch, LP; and Circle J Farms Limited Partnership²)

submitted the following claims:

Sagewood Capital, LLC	Claim Number 0362	\$ 172,454.22
Parkwood Capital, LLC	Claim Number 0363	\$ 659,055.30
EJ Edwards Ranch, LP	Claim Number 0364	\$ 619,295.00
Dixie Winds, LLC	Claim Number 0365	\$ 4,192,514.45
Circle J Limited Partnership	Claim Number 0366	\$ 98,910.93
Wool City, Inc.	Claim Number 0498	\$ 1,186,149.58
Starwood Management, Inc.	Claim Number 0499	\$ 708,607.80
TOTAL		\$ 7,636,987.28

Gene and Laraine Jacobson (for themselves and, in part, purportedly on behalf of Sun Winds, LLC; Golden J, LLC; and Provident Development Group³) submitted the following claims to the Receiver:

Sun Winds, LLC (purported investments in Escena Properties)	Claim Number 0327	\$ 619,295.00
Sun Winds, LLC (purported investments in Council Properties, LLC and Summerwinds, LLC)	Claim Number 0328	\$1,420,000.00
Golden J, LLC	Claim Number 0341	\$1,425,634.00
Provident Development Group (purported investment in Mountain Enterprises, LLC)	Claim Number 0345	\$8,452,542.00
TOTAL		\$11,917,471.00

² All except EJ Edwards Ranch are receivership entities.

³ All are receivership entities.

Melba Jacobson (on behalf of herself and, in part, purportedly on behalf of Boca Raton, LLC⁴) submitted the following claims to the Receiver:

Melba B. Jacobson Owner of 24.75% of Circle J Farms Limited Partnership	Claim Number 0474	\$ 317,509.80
Boca Raton, LLC (Melba B. Jacobson as 99% owner and managing member) for its investments in Council Properties, LLC; Summerwinds, LLC; CarVala, LLC; and Johnson Land Holdings	Claim Number 0478	\$ 3,142,652.01
Boca Raton, LLC (Melba B. Jacobson as 99% owner and managing member) for its purported tenant-in-common interest in Escena Properties, LP property	Claim Number 0479	\$ 619,295.00
Melba B. Jacobson for half of tax refunds	Claim Number 0480	\$ 362,959.82
TOTAL		\$ 4,442,416.63

The remainder of the Jacobson Parties submitted claims in the following amounts:

Cami Jacobson	Claim Number 0523	\$ 320,508.60
Greg and Jenny Bailey	Claim Number 0343	\$ 1,396,953.62
Brandon and April Jacobson	Claim Number 0509	\$ 2,679,182.91
Scott and Ellen Daley	Claim Number 0179	\$ 319,259.80
Brett and Emily Lovell	Claim Number 0292-1	\$ 1,123,078.39
Red Castle Inc. Retirement Trust	Claim Number 0166	\$ 280,000.00
TOTAL		\$ 6,118,983.32

The total of the Jacobson Parties' claims listed above is \$30,115,858.23. The Receiver has objected to all of these claims. Pending the resolution of the disputes regarding these claims, the Receiver has reserved the amounts delineated in Exhibit A to the Receiver's Motion to

⁴ Boca Raton, LLC is a receivership entity.

Approve Second Distribution (CM/ECF No. 2784). The proposed settlement would resolve all of Jacobson Parties' Claims, as well as any others, between the Receiver and the Jacobson Parties.

C. Investor Board approval and Investor feedback.

The Investor Board, represented by Greg Hoole in this case, has reviewed the terms of the proposed settlement as outlined below, and has unanimously voted in favor of the settlement. Moreover, the Receiver sent the communication attached hereto as Exhibit A to 340 investors with known email addresses inquiring whether those investors were opposed to the settlement. As of October 8, 2015, the Receiver received three emails and two telephone calls from investors indicating their approval of the proposed settlement. He received two email communications from Scott Smith, which the Receiver believes are neutral on the settlement, encouraging the Receiver to do what is best, so the Receiver has attached a copy of those communications as Exhibit B for the Court's consideration.

II. Settlement Terms.

In lieu of costly litigation or other disputes regarding the Evan Jacobson Litigation and the Jacobson Parties' Claims, and subject to Court approval, the Receiver and the Jacobson Parties have now reached an agreement for settlement of all claims between them on the following terms:

A. Evan Jacobson, through his agent Southtowne Farms, LLC, will close on the purchase of the property known as Allred Farms as originally contemplated in the Receiver's Motion to Confirm a Private Sale of Property Known as Allred Farms, and to Approve Sale Free and Clear of Liens with Valid Liens to Attached to Proceeds (CM/ECF No. 2345), the Real

Estate Purchase Contract attached as Exhibit A thereto, and the Court's order approving such sale (CM/ECF No. 2511). The Real Estate Purchase Contract will be amended, including to extend the Settlement Date to be within 14 days from the entry of an order approving this Motion, and Evan Jacobson agrees to cause his agent to close the purchase of the Allred Farms property within that timeframe;

B. Evan Jacobson will pay the receivership estate an additional \$576,165.00 within 14 days from the entry of an order approving this Motion;

C. The Receiver will transfer the following properties to Gene Jacobson within 90 days from the entry of an order approving this Motion⁵:

- i. The remainder of the real property known as 'Circle J Farms,' which includes: (i) the 'Ag Land' consisting of approximately 147.56 acres, Sanpete County Parcel Numbers 21190, 21221, 21256 and 21221X; (ii) the 'West Farm' consisting of approximately 86.39 acres, Sanpete County Parcel Numbers 21213, 21217, 21219, 21220, 21240, 21214X and 21218X; and (iii) the 'Turkey Farm' consisting of approximately 49.32 acres, Sanpete County Parcel Numbers 21222, 21225, 21222X and 21222X1;
- ii. The property known as D&D Farms consisting of approximately 427.39 acres, Sanpete County Parcel Numbers 21260, 21261, 21262, 21284 and 21298;

⁵ The probable value of these entities is addressed in Section III below.

- iii. 488 North 100 West, Fountain Green, Utah, consisting of approximately 0.26 acres, Sanpete County Parcel Number 22025;
- iv. 468 North 100 West, Fountain Green, Utah, consisting of approximately 0.26 acres, Sanpete County Parcel Number 18139X1;
- v. 355 North State, Fountain Green, Utah, consisting of approximately 0.58 acres, Sanpete County Parcel Number 18127X;
- vi. 365 North State, Fountain Green, Utah, consisting of approximately 0.47 acres, Sanpete County Parcel Number 18130X;
- vii. 475 North State, Fountain Green, Utah, consisting of approximately 1.06 acres, Sanpete County Parcel Number 18136;
- viii. Pine Creek Ranch Lot 53, located in Mt. Pleasant, Utah, consisting of approximately 1.05 acres, Sanpete County Parcel Number 32202; and
- ix. All equipment, machinery, water rights, and water shares owned or controlled by the Receiver located on or connected with the foregoing properties in Sanpete County;

D. The Receiver will pay Gene Jacobson up to an additional \$80,000.00 for payment of his professional fees within 14 days from the entry of an order approving this Motion;

E. The Jacobson Parties each hereby releases and waives any and all claims, demands, actions, causes of action, damages, costs, expenses, and other rights of any nature whatsoever, whether known or unknown, presently existing or arising in the future, against the Receiver and his agents, attorneys or associates, including without limitation: (i) the claims asserted in the Evan Group Litigation; (ii) the Jacobson Parties' Claims submitted to the

Receiver as part of the claims process in this case, which shall be deemed withdrawn; (iii) those arising out of or in any way relating to the above-captioned case or any of the facts alleged in the pleadings therein, and any other complaint or claim; and (iv) any right to make any claim for payment in the above captioned case, whether as an investor, creditor, lender, or otherwise. The foregoing does not apply to the portions of Scott and Ellen Daley's claim (Claim Number 0179) and Red Castle Inc. Retirement Trust's claim (Claim Number 0166) that were acknowledged by the Receiver in the Claims Analysis Report filed for approval by the Court (*see* Motion for Approval of Claims Analysis Report at CM/ECF No. 2522). The Receiver agrees that Scott and Ellen Daley and Red Castle Inc. Retirement Trust each may retain any distributions the Receiver has already made for their respective claims and may participate in any future distributions based on the amounts as scheduled in the Claims Analysis Report for their respective claims, but Scott and Ellen Daley and Red Castle Inc. Retirement Trust each agree to waive and withdraw their respective claims for amounts in excess of the amounts as scheduled by the Receiver in the Claims Analysis Report;

F. The Receiver hereby releases and waives any and all claims, demands, actions, causes of action, damages, costs, expenses, and other rights of any nature whatsoever, whether known or unknown, presently existing or arising in the future, against each of Jacobson Parties, including without limitation, those claims asserted in the Evan Group Litigation and those claims arising out of or in any way relating to the above-captioned case or any of the facts alleged in the pleadings therein, and any other complaint or claim;

G. The Jacobson Parties waive any right to participate in the receivership proceedings following the entry of an order approving this settlement and the transfer of the assets noted above; and

H. The Jacobson Parties and the Receiver agree that this Court shall have sole and exclusive jurisdiction over all claims and disputes arising under or relating to this settlement, and such shall be governed by the laws of the State of Utah.

III. Settlement Summary.

To highlight the range of possible results in the event the Evan Group Litigation and the disputes regarding the Jacobson Parties' Claims were fully tried, if the Receiver were totally successful on his claims against the Evan Group and on his objections to the Jacobson Parties' Claims, no claims would be paid to the Jacobson Parties, and the Receiver would have a judgment of approximately \$7.8 million against the Evan Group. On the other hand, if the Jacobson Parties' were totally successful on their claims, the Receiver would not recover anything, and he would have to pay the Jacobsons Parties based on their claims submitted in the amount of approximately \$30 million.

The appraised value of the real property, less assumed closing costs, the Receiver would transfer to Gene Jacobson pursuant to the agreement is approximately \$2 million, but the Receiver believes it is actually worth much less. The Receiver has been trying to sell these properties for several years and has been unable to do so. The properties would likely need to be auctioned off, and the Receiver believes they would likely yield only approximately \$1-1.3 million total.

Assuming \$1.3 million total value for all the assets the Receiver would transfer to Gene Jacobson, plus the \$80,000.00 for Gene Jacobson's professional fees, the settlement would require the Receiver to relinquish \$1,380,000.00 total in cash and assets to resolve all claims. In return, the Receiver would receive \$576,165.00 from Evan Jacobson, and Evan Jacobson would perform on the purchase of the Allred Farm, which will result in an additional \$100,000.00 to the estate as compared to the purchase by the backup buyer that the Court already approved for the Allred Farm. Consequently, the Receiver will receive an additional \$676,165.00 (\$576,165.00 + \$100,000.00) from the proposed settlement. Therefore, the Receiver believes the net cost to the estate for the proposed settlement is approximately \$703,835.00 (\$1,380,000.00 – \$676,165.00).

The Receiver has the duty to preserve the assets of the estate. The proposed settlement preserves assets in that it will save the receivership estate the costs of litigation, avoid the risks of such litigation, and allow the Receiver to distribute a sizable amount to the investors much sooner than if the Receiver must wait until the conclusion of litigation. In the event the proposed settlement is approved, the Receiver will be able to make a distribution of approximately \$21,000,000.00 with Court approval, and the Receiver simultaneously files herewith his Conditional Motion to Approve Third Distribution requesting such approval. Following this distribution, Class 5 Investors will have received approximately a 94% Percentage Return. If the proposed settlement and the Third Distribution are approved, the Receiver anticipates that the Class 5 Investors will likely ultimately receive a 100% Percentage Return, although the Receiver cannot guarantee a 100% Percentage Return for Class 5 Investors because there remain various disputes and contingencies to be resolved in the receivership.

IV. Conclusion.

Based on the foregoing, the Receiver and the Jacobson Parties request that the Court approve the proposed settlement.

DATED this 15th day of October, 2015.

HOLLAND & HART LLP

/s/ Doyle S. Byers

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(Signed by Filing Attorney with permission of
Barry Johnson)*

INDEX OF EXHIBITS

- A - Receiver Communication to Investors.
- B - Email Communications from Scott Smith.

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