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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

C. WESLEY RHODES, JR., RHODES
ECONOMETRICS, INC., THE RHODES
COMPANY, AND RESOURCE
TRANSACTIONS, INC.,

Defendant.

Case No. CV-06-1353-MO

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
OF RECEIVER TO APPROVE PROPOSED
INTERIM DISTRIBUTION OF ASSETS

Michael A. Grassmueck, the duly appointed receiver (the "Receiver") for Rhodes Econometrics, Inc., The Rhodes Company and Resource Transactions, Inc., as well as their respective predecessors, subsidiaries, affiliates and any entities controlled by them, including, but not limited to, Crossed Flags Farm, LLC, Northwest Collector Cars, LLC, fka Northwest Muscle Cars, LLC, and Dollhouse Ventures, LLC and an entity of unknown origin that is called PPS or PPS Partnership (collectively, the "Receivership Entities"), hereby submits this Memorandum in Support of Motion of Receiver to Approve Proposed Interim Distribution of

Assets (the “Motion”).

I. INTRODUCTION

In this receivership action, the Receiver has four general categories of responsibilities: (i) to secure, protect and recover assets, including tangible and intangible assets, and choses in action; (ii) to prepare an accounting and investigate the basis for the receivership proceeding; (iii) to analyze and develop, with Court approval, an equitable approach to distribution of assets and losses to investors; and (iv) to liquidate the assets and review and allow claims against the receivership estate. In accordance with these duties, the Receiver now proposes to make an interim distribution of the assets of the receivership estate.

II. GENERAL TERMS OF DISTRIBUTION

The Receiver contemplates distributions for three types of claims against the receivership estate: (i) administrative claims, comprised primarily of the expenses incurred by the Receiver and his professionals (“Administrative Claims”); (ii) creditor claims, comprised mainly of claims asserted by vendors or service providers for goods and services rendered to the Receivership Entities prior to the Receivership Date, and which have become Allowed Claims (“Creditor Claims”); and (iii) investor claims, comprised of claims held by persons or entities who invested funds with the Receivership Entities, and which have become Allowed Claims (“Investor Claims”).

The Receiver proposes to pay Creditor Claims and Investor Claims that have been determined to be Allowed Claims by the Receiver, and are the subject of the Amended Order Approving Omnibus Claims (Docket No. 306) (the “Amended Order”), pro rata from the receivership proceeds after payment of Administrative Claims. At this time, the Receiver estimates that each Allowed Claim will be paid based upon a pro rata distribution estimated to be

between 22-23%. The Receiver proposes that Administrative Claims,¹ after court approval, will be paid in full, out of a reserve of set-aside funds established by the Receiver to provide for the estimated ongoing operating costs of the receivership, and will be subject to Court approval for reasonableness.

Attached hereto as Exhibit A is an updated chart reflecting the claims the Receiver is honoring, consistent with the Amended Order and the proposed interim distributions to be made to each claimant if the Motion is approved by this Court. These are the “Allowed Claims.” The identity of the private investor claimants is indicated by number as opposed to name to protect their privacy, consistent with the Order Authorizing Notice And Filing Procedures Regarding Affected Investors (Docket No. 82) previously entered by this Court.

As described in the Receiver’s Declaration, the Receiver holds approximately \$5,623,000, which consists of the assets obtained upon appointment of the Receiver, assets sold by the Receiver during the course of the administration, settlement payments resulting from litigation commenced by the Receiver, and assets obtained as a result of the contempt orders entered against C. Wesley Rhodes, Jr. and Anne Rhodes. The Receiver believes that there will be additional recoveries from pending settlements, pending litigation, and sales of additional assets left to be administered. This is an interim distribution and the Receiver proposes to withhold funds to pay the administrative and operating expenses of the receivership as well as sufficient funds to pay the pro rata portion of the Allowed Claims. The amount the Receiver plans to set aside is \$1.6 million. Accordingly, the amount currently available for distribution is set at \$3,968,000, with the proposed distributions to each claimant set forth on Exhibit A, which

¹ By previous orders of this court, Administrative Claims have been paid through March, 2008, subject to a 20% holdback as requested by the Securities and Exchange Commission (the “SEC”).

equates to an estimated pro rata distributions to Creditor Claims and Investor Claims of approximately 18%. When it is appropriate, subject to his discretion, the Receiver will file a motion with the Court to make a final distribution and close the case.

III. BACKGROUND

The background facts leading up to the appointment of the Receiver are set out in more detail in the Receiver's First, Second, Third and Fourth Reports filed with this Court as Docket Numbers 42, 97, 180 and 269. The following is only a brief summary.

On September 21, 2006, the Securities and Exchange Commission (the "SEC") filed a complaint in this case against the defendants and sought the appointment of a receiver for Rhodes Econometrics, Inc. ("Econometrics"), The Rhodes Company ("Rhodes Company"), Resource Transactions, Inc. ("RTI") and their subsidiaries and affiliates, including but not limited to, Crossed Flags Farms, LLC, Corvette Specialties, Inc.,² Northwest Collector Cars, LLC (fka Northwest Muscle Cars, LLC), Dollhouse Ventures, LLC, and an entity of unknown origin that is called PPPS or PPPS Partnership ("PPPS"). This court appointed the Receiver as temporary receiver for the Receivership Entities on September 21, 2006 when it issued a temporary restraining order (the "TRO"). This court made the Receiver a permanent receiver for the Receivership Entities by order entered October 30, 2006 (the "Order").

During his investigation, the Receiver learned that Rhodes commingled assets among the various Receivership Entities and conducted his business in two ways: (1) he

² Corvette Specialties, Inc. was originally included as a Receivership Entity in the Temporary Restraining Order and the Preliminary Injunction. However, on November 2, 2006, the court entered a Stipulation and Order Modifying Preliminary Injunction to exclude Corvette Specialties, Inc. as a subsidiary or affiliate of Econometrics, Rhodes Company and RTI.

managed investments for individuals with custodial accounts through Econometrics; and (2) he solicited funds from investors for investment in “pooled,” “private,” “side” or “managed” accounts (the terms varied) that, unfortunately for these investors (the “Private Investors”), were for the most part not invested in stocks or bonds, but rather used for Rhodes’ and his family’s (including Anne’s) personal use, for the purchase of collector or other cars, the purchase of memorabilia, and other various expenses of Rhodes, Anne, their family members or the Receivership Entities. Rhodes often referred to the Private Investors’ funds or assets purchased with those funds as PPPS.

Upon being appointed, the Receiver took many actions to obtain control of and account for assets of the Receivership Entities, including but not limited to: taking physical control of the Rhodes Company and Econometrics office located at 4949 SW Meadows Road, No. 620, Lake Oswego, Oregon, as well as four self-storage units and a warehouse related to Dollhouse Properties; assuring that over 35 bank and investment accounts held by various institutions in the name of one or more of the Entities in Receivership were frozen and accounted for and obtained custody of such funds as appropriate; conducting a detailed inventory of all personal property located at the residence of Rhodes, Rhodes Econometrics and other sites owned and/or managed by Receivership Entities.

Ultimately, the Receiver sold many assets for the benefit of the estate, including classic cars, contemporary cars, personal property, office equipment, Dollhouse Properties LLC’s interests, real property sales and Veterinary Clinic Properties LLC et al., all of which are detailed below.

Additionally, on November 16, 2007, the Receiver learned of an undisclosed storage unit in Wilsonville, Oregon that was controlled by Rhodes and rented in the name of a Receivership Entity. It was determined that this storage unit had a high probability of containing both rightful assets of the estate and other items of importance to the case in general. The

Receiver took possession of the storage unit on November 17th, 2007 and found \$38,000 in cash, three rolex watches, and other personal property and records. Ultimately, based upon these facts among other, and upon the Receiver's motion, the Court held both Rhodes and Anne in contempt of court. As part of the contempt order entered against Rhodes, the Court ordered that all real and personal property of Rhodes constitutes property of the receivership estate.

As of this date, there are still some assets left to administered, but the Receiver believes it appropriate at this time to make an interim distribution given the cash on and the fact that the Creditors Claims and Investors Claims have been resolved by entry of the Amended Order.

This Motion, if granted, will enable the Receiver to move forward with a significant distribution, after which he expects that only a final distribution will need to be made.

IV. LEGAL AUTHORITY FOR DISTRIBUTION

A few fundamental legal principles have emerged to guide judicial decision-making in federal equity receiverships. First, district courts supervising equity receiverships have broad power and wide discretion to determine an appropriate course of action. *SEC v. Hardy*, 803 F.2d 1034, 1037-38 (9th Cir. 1986). Second, a primary purpose of equity receiverships is to "promote orderly and efficient administration of the estate" for the benefit of creditors. *Id.* at 1038. Third, similarly situated victims of fraud should receive roughly equal treatment. *U.S. v. Real Property*, 89 F.3d 551,553 (9th Cir. 1996). With these overriding principles in mind, district courts often approve the pooling of assets and pro rata distribution under circumstances similar to those found in this case.

A common scenario in which courts impose asset pooling and ratable distribution is that of the "Ponzi Scheme," characterized by a commingling of investor monies and the use of new investor money to pay returns to existing investors. The original Ponzi Scheme case, *Cunningham v. Brown*, 265 U.S. 1 (1924) ("*Ponzi*"), involved Charles Ponzi, an individual who solicited funds for the purported purpose of investing in international postal coupons. In fact, the

funds were not invested in international postal coupons, but deposited in commingled accounts. Ponzi made promised returns to investors with new investors' money. In the subsequent bankruptcy case, the trustee sought to recover payments to certain investors obtained after news of the fraudulent scheme appeared in the press as preferential transfers. The court held that because all of the debtor's assets were the fruits of his fraud, the preferential transfers had to be returned and the fund distributed ratably. "[I]n their inability to identify their payments, [all of Ponzi's victims were] creditors, and nothing more." *Id.* Thus, the court said it was a case calling "strongly for the principle that equality is equity." *Id.* at 13.

Since *Ponzi*, numerous other Ponzi-type schemes have landed in bankruptcy and receivership courts. In the vast majority of these cases, asset pooling and ratable distributions have been approved. *See, e.g., In re Golden Triangle Capital, Inc.*, 171 B.R. 79 (9th Cir. BAP 1994); *In re North American Coin & Currency, Ltd.*, 767 F.2d 1573 (9th Cir. 1985) (pooling of traceable funds is proper where no legal distinction exists between those that can trace and those that cannot); *Securities and Exchange Commission v. Capital Consultants, Inc.*, 2002 U.S. Dist. LEXIS 27399 (D. Or. 2002) (approving pro rata distribution with exception for investors who could directed investments and defendant complies with such directions).

Similarly, here, the Receiver's proposal to distribute the receivership proceeds on a pro rata basis should be approved. Like in *Ponzi*, the investors and creditors in this case cannot trace their monies. The Receiver and his accountants long ago reported to this Court that monies received by various Receivership Entities were commingled and dispersed without accounting records that would enable virtually any of the investors to trace their investment. They are, "in their inability to identify their payments, creditors and nothing more." As equity was done in *Ponzi*, so should it be done here, by remitting to investors and creditors pro rata shares of the receivership proceeds.

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V. SET ASIDES FOR RECEIVER'S ADMINISTRATIVE EXPENSES

The Receiver proposes to make this interim distribution prior to the end of this case. Therefore, the Receiver must set aside sufficient funds to cover ongoing expenses of the receivership, including fees and costs.

Based on the estimated pro rata distribution of 18%, the Receiver proposes to set aside \$1.6 million for remaining distributions to claimants and for the payment of administrative and professional fees and costs, subject to Court approval for reasonableness. This approach is a practicable, orderly and efficient approach to payment. Because the professional fees and costs will be subject to the Court's approval for reasonableness, it is an appropriate exercise of this Court's discretion and power over this receivership estate.

VI. CONCLUSION

For all of the foregoing reasons, the Receiver respectfully requests that the Court approve the interim distribution on a pro rata basis in the amounts set forth in Exhibit A on the allowed Investor Claims and Creditor Claims.

DATED September 11, 2008.

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PROPOSED INTERIM DISTRIBUTION

SEC v. C. WESLEY RHODES et al.

Case No. 06-1353MO

Investors	Claim #	Amount Allowed	Proposed Distribution
	1	\$ 330,000.00	\$ 59,474.87
	2	\$ 101,500.00	\$ 18,293.03
	3	\$ 12,000.00	\$ 2,162.72
	4	\$ 1,000,000.00	\$ 180,226.89
	7	\$ 300,000.00	\$ 54,068.07
	8	\$ 380,000.00	\$ 68,486.22
	9	\$ 240,000.00	\$ 43,254.45
	10	\$ 186,326.50	\$ 33,581.05
	11	\$ 298,641.62	\$ 53,823.25
	12	\$ 785,112.39	\$ 141,498.36
	13	\$ 40,000.00	\$ 7,209.08
	14	\$ 10,000.00	\$ 1,802.27
	15	\$ 20,000.00	\$ 3,604.54
	16	\$ 686,030.99	\$ 119,141.23
	17	\$ 100,000.00	\$ 18,022.69
	18	\$ 1,288,941.55	\$ 232,301.92
	19	\$ 2,299,014.80	\$ 414,344.28
	20	\$ 76,666.67	\$ 13,817.40
	21	\$ 28,542.79	\$ 5,144.17
	22	\$ 218,000.00	\$ 39,289.46
	23	\$ 195,000.00	\$ 35,144.24
	24	\$ 115,000.00	\$ 20,726.09
	25	\$ 48,786.07	\$ 8,792.56
	26	\$ 25,000.00	\$ 4,505.67
	27	\$ 25,000.00	\$ 4,505.68
	28	\$ 1,217,450.84	\$ 196,417.38
	30	\$ 95,000.00	\$ 17,121.55
	32	\$ 50,000.00	\$ 9,011.34
	33	\$ 91,200.00	\$ 16,436.69
	34	\$ 314,399.58	\$ 56,663.26
	35	\$ 663,740.00	\$ 119,623.79
	37	\$ 23,637.78	\$ 4,260.16
	38	\$ 160,038.52	\$ 28,843.24
	39	\$ 43,345.54	\$ 7,812.03
	40	\$ 130,000.00	\$ 23,429.50
	42	\$ 687,464.76	\$ 123,899.63

PROPOSED INTERIM DISTRIBUTION

SEC v. C. WESLEY RHODES et al.

Case No. 06-1353MO

Claim #	Amount Allowed	Proposed Distribution
43	\$ 150,000.00	\$ 27,034.03
44	\$ 37,806.41	\$ 6,813.73
45	\$ 44,244.70	\$ 7,974.09
46	\$ 1,007,178.37	\$ 181,520.62
47	\$ 236,396.00	\$ 40,104.92
48	\$ 2,500.00	\$ 450.57
51	\$ 337,896.77	\$ 60,898.08
52	\$ 12,000.00	\$ 2,162.72
53	\$ 700,000.00	\$ 126,158.82
54	\$ 300,000.10	\$ 54,068.09
55	\$ 205,500.00	\$ 37,036.63
58	\$ 350,000.00	\$ 63,079.41
59	\$ 65,000.00	\$ 11,714.75
60	\$ 300,000.00	\$ 54,068.06
61	\$ 65,000.00	\$ 11,714.75
62	\$ 472,000.00	\$ 85,067.09
63	\$ 722,924.53	\$ 130,290.44
64	\$ 120,255.32	\$ 21,673.24
65	\$ 1,196,639.00	\$ 215,666.52
66	\$ 200,000.00	\$ 36,045.38
67	\$ 80,000.00	\$ 14,418.15
69	\$ 107,600.00	\$ 19,392.41
70	\$ 249,255.00	\$ 42,922.45
71	\$ 10,000.00	\$ 1,802.27
72	\$ 85,000.00	\$ 15,319.29
73	\$ 894,616.79	\$ 161,234.00
76	\$ 175,000.00	\$ 31,539.71
77	\$ 264,927.04	\$ 47,746.98
78	\$ 250,000.00	\$ 45,056.72
81	\$ 350,680.16	\$ 63,201.99
84	\$ 156,293.38	\$ 28,168.27
86	\$ 50,000.00	\$ 9,011.34
87	\$ 230,800.00	\$ 41,596.37
88	\$ 448,475.00	\$ 80,827.25
Sub Total	\$ 22,163,828.97	\$ 3,962,517.90

PROPOSED INTERIM DISTRIBUTION

SEC v. C. WESLEY RHODES et al.

Case No. 06-1353MO

	Claim #	Amount Allowed	Proposed Distribution
Creditors			
	5	\$ 6,305.00	\$ 1,136.33
	6	\$ 11,079.50	\$ 1,996.82
	31	\$ 408.04	\$ 73.54
	36	\$ 11,200.00	\$ 2,018.55
	41	\$ 270.19	\$ 48.70
	68	\$ 1,155.00	\$ 208.16
	Sub Total	\$ 30,417.73	\$ 5,482.10
Total		\$ 22,194,246.70	\$ 3,968,000.00

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DATED: September 11, 2008

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