

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

CASE NO.: 2:11-CV-479-JES-DNF

PROCEEDING ANCILLARY TO CASE NO. 2:09-CV-229-FtM-29SPC

DANIEL S. NEWMAN, as receiver for FOUNDING
PARTNERS CAPITAL MANAGEMENT COMPANY;
FOUNDING PARTNERS STABLE-VALUE FUND, LP,
FOUNDING PARTNERS STABLE-VALUE FUND II, LP,
FOUNDING PARTNERS GLOBAL FUND, LTD., and
FOUNDING PARTNERS HYBRID-VALUE FUND, LP,

Plaintiff,

v.

WILLIAM L. GUNLICKS IRREVOCABLE TRUST f/b/o
NISSA COX, *et al.*,

Defendants.

JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT

Daniel S. Newman, solely as the receiver (the "Receiver") for Founding Partners Capital Management Company; Founding Partners Stable-Value Fund, L.P.; Founding Partners Stable-Value Fund II; Founding Partners Global Fund, Ltd.; and Founding Partners Hybrid-Value Fund, L.P., along with Defendants, William L. Gunlicks Irrevocable Trust f/b/o Nissa; William L. Gunlicks Irrevocable Trust f/b/o Annalee Good; William L. Gunlicks Irrevocable Trust f/b/o William V. Gunlicks; Nissa Cox, individually and in her capacity as Trustee of the Cox Trust; Annalee Good, individually and in her capacity as Trustee of the Good Trust; and William V. Gunlicks, individually and in his Capacity as Trustee of the Gunlicks Trust (collectively, the "Defendants), jointly submit this Motion for Approval of Settlement Agreement.

INTRODUCTION

The Receiver seeks an order approving the settlement between the Receiver and the Defendants (the "Settlement Agreement," attached as **Exhibit A**). Based on sworn financial statements produced by Defendants, additional documentation provided by Defendants' spouses, and affidavits executed by Defendants, all of which were a material inducement to the Receiver's agreement to settle this matter, the Receiver believes it is in the best interests of the Receivership Estate to settle his claims against the Defendants for the sum of \$30,000 and other valuable consideration. The Receiver has full recourse against the Defendants for the shorter of five (5) years from the effective date of the Settlement Agreement or the length of the Receivership if the sworn financial statements are proven to be materially false. Upon Court approval, the Settlement Agreement provides for exchange of mutual limited releases, to be effective upon full repayment to the Receiver of the \$30,000 settlement amount.

DISCUSSION

I. APPOINTMENT OF RECEIVER AND THE RECEIVERSHIP ORDER

On April 20, 2009, the United States Securities and Exchange Commission filed its complaint ("SEC Action") against Founding Partners Capital Management Company ("FPCM") and William L. Gunlicks ("Gunlicks"), alleging that FPCM and Gunlicks engaged, and were engaging, in a scheme to defraud investors and violate the federal securities laws (SEC Action, D.E. 1). In the SEC action, the SEC sought, among other relief, entry of a temporary restraining order and a preliminary injunction.

On April 20, 2009, the Court entered an Order Freezing Assets of FPCM and Gunlicks (the "Asset Freeze Order"). The Asset Freeze Order also applies to Stable-Value, Stable-Value II, Global Fund and Hybrid-Value. Also, on April 20, 2009, the Court entered an order (the

“Initial Receivership Order”) appointing a receiver (the “Initial Receiver”) for the Receivership Entities. (SEC Action, D.E. 9).

On May 13, 2009, the Court removed the Initial Receiver. (SEC Action, D.E. 70). On May 20, 2009, the Court entered an order (the “Receivership Order”) appointing Daniel S. Newman, Esq. replacement receiver of the Receivership Entities. (SEC Action, D.E. 73). The Receivership Order provides that the Receiver shall, among other things:

(a) Take immediate possession of all property, assets and estates of every kind of Founding Partners and each of the Founding Partners Relief Defendants, whatsoever and wheresoever located, including but not limited to all offices maintained by Founding Partners and the Founding Partners Relief Defendants, rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of Founding Partners and the Founding Partners Relief Defendants wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order... ;

(b) Investigate the manner in which the affairs of Founding Partners and the Founding Partners Relief Defendants were conducted and institute such actions and legal proceedings, for the benefit and on behalf of Founding Partners or the Founding Partners Relief Defendants and their investors and other creditors as the Receiver deems necessary against those individuals, corporations, partnerships, associations and/or unincorporated organizations which the Receiver may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred money or other proceeds directly or indirectly traceable from investors in Founding Partners and the Founding Partners Relief Defendants...; and

...

(f) Defend, compromise or settle legal actions, including the instant proceeding, in which Founding Partners, any of the Founding Partners Relief Defendants, or the Receiver are a party, commenced either prior to or subsequent to this Order, with authorization of this Court....

II. THE GUNLICKS FAMILY LITIGATION

Pursuant to the Receivership Order, on August 26, 2011, the Receiver filed suit against the Defendants, seeking recovery of \$251,730 (the "Gunlicks Family Litigation"). [D.E. 1]. The Receiver's claims arose from a series of allegedly fraudulent transfers made by William L. Gunlicks to trusts belonging to his three children, Nissa Cox, Annalee Good, and William V. Gunlicks (collectively, along with William L. Gunlicks, the "Gunlicks Family").

After being granted an enlargement of time to respond to the Complaint, on December 20, 2011, the Defendants filed their Motion to Dismiss. [D.E. 13]. At that time, Defendants were represented by Reginald Clyne, Esq.

Mr. Clyne moved to withdraw from his representation of the Defendants on March 23, 2012, before the hearing on Defendants' Motion to Dismiss. [D.E. 18]. Mr. Clyne filed an amended motion to withdraw in April 2012, and the Court granted the withdrawal on May 18, 2012. [D.E. 20, 21].

Over the next several months, the Defendants were granted continuances while they purportedly sought new counsel [D.E. 22, 23, 24, 25], and the Court set the Defendants' Motion to Dismiss for hearing on September 24, 2012 [D.E. 17].

Defendants appeared *pro se* at the September 24, 2012 hearing. On September 25, 2012, the Court entered an order granting in part and denying in part Defendants' Motion to Dismiss. [D.E. 34].

Shortly thereafter, Gabrielle D'Alemberte, Esq. filed a notice of limited appearance on behalf of the Defendants. [D.E. 37]. The Court terminated Ms. D'Alemberte's representation of Defendants on November 27, 2012, on grounds that Ms. D'Alemberte was not in good standing with the bar for the Middle District of Florida. [D.E. 42].

Finally, on December 11, 2012, Mr. Horan entered an appearance as counsel for the Defendants. [D.E. 43]. Mr. Horan has remained counsel for Defendants to date. On January 4, 2013, Defendants filed their Answer and Affirmative Defenses [D.E. 47], and settlement negotiations began between the parties.

Upon motion by the parties, the Court stayed expert-related discovery deadlines on October 8, 2013 [D.E. 54], before eventually staying all discovery deadlines on October 28, 2013 [D.E. 56].

On March 21, 2014, the parties filed a Joint Notice of Settlement, informing the Court that a settlement in principle had been reached, pending confirmatory due diligence and the approval of the relief sought herein – namely, the approval of the Settlement Agreement. [D.E. 57].

After filing the Joint Notice of Settlement, the parties continued negotiating the confirmatory due diligence required by the Receiver. The Court extended the stay of the proceedings on March 25 and March 31, 2014, at the request of the parties. [D.E. 58, 60]. On April 4, 2014, rather than request a third stay of the proceedings, the parties filed an Amended Case Management Report and endeavored to continue negotiating the confirmatory due diligence issues. [D.E. 62].

III. THE PROPOSED SETTLEMENT

The Settlement Agreement was negotiated over a period of fourteen months. Below the Receiver addresses: (1) the material provisions of the Settlement Agreement; (2) the confidential financial statements and other confirmatory due diligence executed by the Defendants in connection with the Settlement Agreement (the "Financial Statements"); and (3) the cooperative assistance provided by the Defendants as a result of the negotiation of this settlement.

In essence, the Settlement Agreement provides that, in exchange for releasing the Defendants from the Receiver's claims and potential claims, the Defendants will pay \$30,000 to the Receivership Estate, as Mr. Gunlicks provided other cooperative assistance.

A. SETTLEMENT AMOUNT AND PAYMENTS

In consideration and exchange for the settlement of the Receiver's claims and the releases described in Section III(D) below, Defendants Nissa Cox, Annalee Good, and William V. Gunlicks (the "Individual Defendants") each agree to pay the Receiver \$10,000, totaling \$30,000 (the "Settlement Amount").

Each of the three Individual Defendants shall satisfy the Settlement Amount by paying the Receiver \$1,000 a month for ten consecutive months (the "Settlement Payments"), with the first payment due on the first day of the month that immediately follows the Effective Date of this Agreement, defined as the day the Court approves the Settlement Agreement, if approval is granted.

If any of the Individual Defendants breach the Settlement Agreement by failing to make a timely Settlement Payment, all three Individual Defendants will have their Settlement Payments accelerated. The acceleration will cause the Individual Defendants to be jointly and severally liable to the Receiver for the full Settlement Amount (i.e., \$30,000.00) less any payments already made under Section 2(b) of the Settlement Agreement.

Prior to accelerating the Settlement Payments, the Receiver's attorneys shall give to the Defendants' attorney notice of the acceleration by e-mail. The Individual Defendants may contest acceleration only by showing, within five (5) business days, timely tender of the alleged late payment.

Each Individual Defendant may pre-pay his or her \$10,000 share of the Settlement Amount at any time without penalty. Settlement Payments shall be made by check or credit card.

B. CONFIDENTIAL FINANCIAL STATEMENTS

Before entering into the Settlement Agreement, the Receiver required the Defendants to provide: (i) sworn financial statements reflecting their current financial conditions; (ii) documentation reflecting the financial condition of their spouses; and (iii) affidavits tracing the use of the monies at issue in the case and swearing that the Defendant trusts have been closed and are empty (collectively, the "Diligence"). In swearing to the accuracy of the Diligence, the Defendants represented and warranted that the Diligence is and was accurate, truthful, and reflective of Defendants' and their spouses financial condition as of the date of submission to the Receiver.

Defendants' provision of Diligence was a material inducement to the Receiver settling his claims and entering into the Settlement Agreement, the materiality of which Defendants acknowledged.

If the Diligence provided to the Receiver is proven to be materially false, to be determined by the District Court for the Middle District of Florida by in camera review upon Motion by the Receiver (provided in camera review is permitted by the District Court), the Releases described in Section III(D) below will be ineffective and the Receiver will be entitled to keep the monies paid by the Individual Defendants pursuant to the Settlement Agreement. In addition, the Receiver may seek to re-instate the claims alleged in this action, so long as such reinstatement occurs before the sooner of: (i) five (5) years from the Effective Date of the Settlement Agreement (as defined in the Agreement); or (ii) the termination of the Receivership.

C. COOPERATIVE ASSISTANCE

The Gunlicks Family has provided cooperative assistance with respect to understanding the Founding Partners business and its relationships with various third parties. Settlement negotiations with the Gunlicks Family allowed the Receiver and his counsel the opportunity to have frank and informative discussions about the Founding Partners business outside the formal discovery context, including in-person meetings and interviews with William L. Gunlicks.

D. RELEASES

Upon full payment of the \$30,000 Settlement Amount, the Receiver and the Individual Defendants will release and discharge each other from any and all claims, debts, liabilities, demands, obligations, costs, attorneys' fees, actions and causes of action related to the the conduct alleged in the Receiver's Complaint.

E. JURISDICTION

The United States District Court for the Middle District of Florida will retain jurisdiction to enforce the terms of the Settlement Agreement and decide any other issues arising from the Settlement Agreement. In the event an enforcement action or any other litigation arises from the Settlement Agreement, the prevailing party in that action will be entitled to an award of its attorneys' fees and costs.

IV. BEST INTERESTS OF THE RECEIVERSHIP ESTATE

The Receiver respectfully submits that the Court should approve the proposed Settlement Agreement because it is in the best interests of the Receivership Entities. The process of reaching the proposed settlement was fair, well-informed, and well-advised by the Receiver's professionals.

The ultimate inquiry in assessing a proposed receivership settlement is whether “the proposed settlement is fair.” *Sterling v. Stewart*, 158 F. 3d 1199, 1203 (11th Cir. 1998); *see In re Consol. Pinnacle West Sec. Litig./Resolution Trust Corp.-Merabank Litig.*, 51 F. 3d 194, 196-97 (9th Cir. 1995) (“We see no reason to upset the court’s conclusion that the settlement process and result were fair.”).

Determining the fairness of [a] settlement is left to the sound discretion of the trial court.” *Sterling*, 158 F. 3d at 1202 (11th Cir. 1998). The Court should examine the following broad array of factors: (1) the likelihood of success; (2) the range of possible discovery; (3) the point on or below the range of discovery at which settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved. *Sterling*, 158 F. 3d at 1204. *See also SEC v. Princeton Economic Int’l*, 2002 WL 206990, *2 (S.D.N.Y. 2002) (receivership court should consider “various factors including, inter alia: (1) the probable validity of the claim; (2) the apparent difficulties attending its enforcement through the courts; (3) the collectability of the judgment thereafter; (4) the delay and expenses of the litigation to be incurred; and (5) the amount involved in the compromise”).

For example, the district court in *Gordon v. Dadante* “analyze[d] the settlement as a whole, under the totality of the circumstances.” 2008 U.S. Dist. LEXIS 32281, *39, 48 (N.D. Ohio April 18, 2008). The Sixth Circuit affirmed, finding that the district court had fulfilled its responsibilities by engaging in an “independent analysis of the settlement,” as “the district court had extensive knowledge of the claims involved in the case, the valuation of those claims, and the nature of the settlement,” and thus “had more than sufficient information to assess the fairness of the settlement proposed.” 2009 U.S. App. LEXIS 15517 at **16, 23. As the district

court noted in a later approval proceeding, “the courts must recognize that plans relating to settlement of a receivership are inherently imperfect, “because no proposal can be [perfect],” and the “task at hand, however, is to do justice to the extent possible.” *Gordon v. Dadante*, 2010 U.S. Dist. LEXIS 1979, *13-14 (N.D. Ohio Jan. 11, 2010).

Here, the Receiver respectfully submits that the proposed Settlement Agreement is a fair, adequate, and reasonable resolution of the Gunlicks Family Litigation. There is still extensive, time-consuming, and costly litigation, discovery, and motion practice left to be done in this case. Further, it is likely that this case would proceed to trial based on the issues of fact raised in the claims and defenses. Three of the Receiver's six claims have been dismissed, and summary judgment is highly unlikely given the complex issues of fact.

While the Receiver is confident in his claims, considering the delays and high costs of litigation and the anticipated difficulty of collecting a judgment, the Receiver believes the outcome for the Receivership Entities and investors will be better under the Settlement Agreement than it would be if the Receivership Entities continued this litigation.

Based on the Receiver's due diligence, the terms of the proposed settlement are fair and reasonable, representing a sensible means of assuring a beneficial outcome for the investors. All three of the Defendants are married with young children and myriad expenses. The Defendants have all sworn to the accuracy of the confidential financial statements they produced to the Receiver, which show that Defendants have limited assets that substantially impair the Receiver's ability to collect on any potential judgment in this action. In the event the confidential statements are found to be inaccurate, the Receiver has recourse to re-assert his claims and keep the funds that have been paid pursuant to the settlement.

V. OBJECTION PROCEDURE

As noted above, the determination of the fairness of a settlement is left to the sound discretion of the trial court. *See Sterling*, 158 F. 3d at 1202. While "the substance and amount of opposition to the settlement" is a factor for the Court's consideration pursuant to the *Sterling* test, the Receiver respectfully requests that the Court, in exercising its broad discretion, approve the Settlement Agreement with limited or no objection procedure.

It is the Receiver's position that given the amount at stake in this action, an expensive, elongated objection procedure would render the benefits of the settlement worthless to the Receivership Estate, and thus no objection procedure should be permitted.

If the Court determines, in its discretion, that some form of objection procedure is required before final approval of the Settlement Agreement is ordered, the Receiver requests that such procedure be limited in time and scope. The Receiver recommends that a fair but limited objection procedure would: (1) require the Receiver to post this Motion on the Receivership website; (2) require the Receiver to e-mail this Motion to any and all investors who have provided the Receiver with valid e-mail addresses¹; (3) provide ten (10) days for investors to file objections with the Court and send copies of the same to: **Broad and Cassel, c/o Trish Anzalone, 2 South Biscayne Blvd, Suite 2100, Miami, FL 33131**; and (4) provide ten (10) days for the Receiver's response.

CONCLUSION

The Receiver respectfully requests entry of an order approving the Settlement Agreement granting any further relief the Court deems just and proper.

¹ The Receiver respectfully requests that he not be required to take on the cost of preparing a physical mailing to all investors.

CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2014, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of notices of electronic filing generated by CM/ECF or in some other authorized manner for those counsel who are not authorized to receive electronically notices of electronic filing.

Respectfully submitted,

By: s/Jonathan Etra
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Counsel for Receiver
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SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (referred to herein as the "Agreement") is entered into and made effective this _____ day of _____ 2014, by and among Daniel S. Newman, not individually, but solely in his capacity as the Court-appointed receiver ("Receiver") for Founding Partners Capital Management Company; Founding Partners Stable-Value Fund, L.P.; Founding Partners Stable-Value Fund II, L.P.; Founding Partners Global Fund, Ltd.; and Founding Partners Hybrid-Value Fund, L.P. (collectively, the "Receivership Entities"), and William L. Gunlicks Irrevocable Trust f/b/o Nissa Cox (formerly Nissa C. Gunlicks); William L. Gunlicks Irrevocable Trust f/b/o Annalee Good; William L. Gunlicks Irrevocable Trust f/b/o William V. Gunlicks; Nissa Cox, individually and in her capacity as Trustee of the Cox Trust; Annalee Good, individually and in her capacity as Trustee of the Good Trust; and William V. Gunlicks, individually and in his Capacity as Trustee of the Gunlicks Trust (collectively, the "Defendants"). The Receiver and the Defendants are collectively referred to as the "Parties."

WHEREAS, the Receiver commenced a court action against Defendants in the United States District Court for the Middle District of Florida, styled *Daniel S. Newman v. William L. Gunlicks Irrevocable Trust f/b/o Nissa Cox, et al.*, Case No. 2:09-CV-229 (the "Action"); and

WHEREAS, the Parties hereto are desirous of resolving all disputes existing between them.

NOW THEREFORE, in consideration of the premises and mutual promises and covenants contained herein, the Parties agree as follows:

1. **Settlement.**

Receiver and Defendants hereby settle and compromise all claims between them, including any claims for attorneys' fees, costs and punitive damages, which Receiver has or may have had against the Defendants, or which the Defendants have or may have had against the Receiver.

2. **Settlement Amount and Payments.**

- a. In consideration and exchange for the settlement and releases contained herein, Defendants Nissa Cox, Annalee Good, and William V. Gunlicks (the "Individual Defendants") each agree to pay the Receiver \$10,000, totaling \$30,000 (the "Settlement Amount").
- b. Each of the three Individual Defendants shall satisfy the Settlement Amount by paying the Receiver \$1,000 a month for ten consecutive months (the "Settlement Payments"), with the first payment due on the first day of the month that immediately follows the Effective Date of this Agreement.
- c. If any of the Individual Defendants breach this Agreement by failing to make a timely Settlement Payment, all three Individual Defendants will have their



Settlement Payments accelerated. The Receiver's attorneys shall give to the Defendants' attorney Notice of Acceleration by email. Defendants may contest acceleration only by showing within five (5) business days of the Notice of Acceleration timely tender of the alleged late payment (see Section 4, below). Upon a valid acceleration, the Individual Defendants will be jointly and severally liable to the Receiver for the full Settlement Amount (*i.e.*, \$30,000.00) less any payments already made under Section 2(b).

- d. The Individual Defendants' payment of the Settlement Amount resolves all claims of any nature, including attorney fees, which either Party has or may have had against the other.
- e. An Individual Defendant may pre-pay his or her \$10,000 share of the Settlement Amount at any time without penalty. Settlement Payments shall be made by check or credit card.

3. **Court Approval and Effective Date.**

This Agreement is not effective unless and until it is approved by the United States District Court for the Middle District of Florida. The Effective Date of this Agreement is defined as the date the Court enters an order approving the Agreement, if such approval is granted.

4. **Timeliness.**

The Individual Defendants' payments will be considered timely if they are made within seven (7) business days of the first day of the applicable month. However, if the first day of the month is a Saturday, Sunday, or federal holiday, the first day of the applicable month will be construed as the next date that is not a Saturday, Sunday or federal holiday.

5. **Confidential Financial Statements.**

The Defendants agree and acknowledge that the Receiver's receipt of their and their spouses' confidential financial statements was a material inducement to the Receiver settling his claims and entering into this Agreement. The Defendants represent and warrant that the signed financial statements they provided to the Receiver and his attorneys during settlement negotiations (which are confidential settlement documents) are and were accurate, truthful, and reflective of Defendants' and their spouses' financial condition as of the date of the financial statements. If the financial statements provided to the Receiver are proven to be materially false, to be determined by the District Court for the Middle District of Florida in camera (provided in camera review is permitted by the District Court), the Releases contained herein will be ineffective and the Receiver will be entitled to keep the monies paid by the Individual Defendants pursuant to this Agreement. In addition, if the financial statements provided to the Receiver are proven to be

materially false, in addition to the aforementioned relief, the Receiver may seek to re-instate the claims alleged in this action, so long as such re-instatement occurs before the sooner of: (i) the date that is five (5) years from the Effective Date of this Agreement; or (ii) the date of termination of the Receivership. The Receiver agrees and acknowledges that the Defendants' spouses submission of personal financial statements is not meant to be, and shall not be construed as, a submission to the jurisdiction of the United States District Court for the Middle District of Florida, or personal liability in this Action.

6. **Releases.**

- a. Upon the completion of the Individual Defendants' financial obligations listed in section 2(a)-(e), in consideration of the undertakings described above, but expressly excepting the rights and obligations created by this Agreement, Receiver, on his behalf and on behalf of the Receivership Entities, releases and discharges the Defendants from any and all claims, debts, liabilities, demands, obligations, costs, attorneys' fees, actions and causes of action related to the facts and circumstances underlying the Receiver's Complaint in this Action.
- b. Upon the completion of the Individual Defendants' financial obligations listed in section 2(a)-(e), in consideration of the undertakings described above, but expressly excepting the rights and obligations created by this Agreement, Defendants release and discharge the Receiver and the Receivership Entities from any and all claims, debts, liabilities, demands, obligations, costs, attorneys' fees, actions and causes of action related to the facts and circumstances underlying the Receiver's Complaint in this Action.

7. **No Admissions.**

This Agreement is expressly agreed to be in compromise of all disputes and disputed claims, and the Settlement Amount and/or the releases contained herein are not to be construed as admissions of liability, culpability, or wrongdoing on the part of the Defendants, which liability, culpability, or wrongdoing is expressly denied.

8. **Integration.**

This Agreement contains the entire Agreement between the Parties, and the terms of this Agreement are contractual and not a mere recital. The Parties agree that all prior negotiations and understandings between them have been merged herein, and that this Agreement may not be modified or changed, except by a writing signed by a duly authorized representative of each Party.

9. **Binding Nature.**

The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their estates, heirs, legal representatives, successors and assigns. The Parties represent and acknowledge that they have had an opportunity to, and have consulted with, counsel in connection with the execution of this Agreement.

10. **Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same agreement, notwithstanding that each Party is not signatory to the original or the same counterpart. Facsimile signatures shall be deemed as effective as original signatures.

11. **Disputes.**

Any dispute arising out of this Agreement or its terms shall be resolved exclusively through the United States District Court for the Middle District of Florida, and Florida law shall govern.

12. **Authority.**

Each of the signatories hereto represents that she/he has authority to execute this Agreement and to bind the Party or Parties on whose behalf she/he has signed.

13. **Severability.**

If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.

14. **Construction.**

Attorneys representing the Parties to this Agreement have negotiated at arms' length and participated in the drafting of this Agreement and, accordingly, any claimed ambiguity shall not be presumptively resolved either in favor of or against any Party hereto.

15. **Attorneys' Fees.**

The Parties will bear their own expenses, costs and/or attorneys' fees, including any costs or attorneys' fees incurred in connection with the Action, the controversy giving rise to the Action and the negotiation and execution of this Agreement. The Parties agree that in the event of any litigation to enforce this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs

from the non-prevailing Party in any action (including all paralegal, administrative, trial, bankruptcy and appellate proceedings).

16. **Jurisdiction.**

The United States District Court for the Middle District of Florida retains jurisdiction to enforce the terms of this Agreement and decide any other issues arising from this Agreement.

17. **Dismissal Without Prejudice.**

Upon the payment to the Receiver of the complete Settlement Amount, the Parties shall file a Joint Stipulation of Dismissal Without Prejudice. In the event the Receiver re-instates the claims asserted in this Action under Section 5 of the Agreement, the time between the Parties' entry into this Agreement and the Receiver's re-insitution of claims will not count towards staute of limitations, laches, repose, or any other defense based in whole or part on passage of time.

IN WITNESS WHEREOF, the Parties have affixed or caused to be affixed their respective signatures, effective on the day and year first written above.

DANIEL S. NEWMAN, THE RECEIVER

By: _____
Name: Daniel S. Newman
Title: Receiver

NISSA COX, INDIVIDUALLY AND AS
TRUSTEE OF THE WILLIAM L.
GUNLICKS IRREVOCABLE TRUST
F/B/O NISSA COX,

By: _____
Name: Nissa Cox (formerly Nissa C.
Gunlicks)
Title: Individually and as Trustee

ANNALEE GOOD, INDIVIDUALLY AND
AS TRUSTEE OF THE WILLIAM L.
GUNLICKS IRREVOCABLE TRUST
F/B/O ANNALEE GOOD,

By: _____
Name: Annalee Good
Title: Individually and as Trustee

WILLIAM V. GUNLICKS,
INDIVIDUALLY AND AS TRUSTEE OF
THE WILLIAM L. GUNLICKS
IRREVOCABLE TRUST F/B/O WILLIAM
V. GUNLICKS,

By: _____
Name: William V. Gunlicks
Title: Individually and as Trustee