

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

SECURITIES AND EXCHANGE	§	
COMMISSION,	§	
	§	
Plaintiff,	§	Civil Action No. 4:09-cv-03674
v.	§	
	§	
ALBERT FASE KALETA and KALETA	§	
CAPITAL MANAGEMENT, INC.,	§	
	§	
Defendants,	§	
	§	
BUSINESSRADIO NETWORK, L.P. d/b/a	§	
BizRadio and DANIEL FRISHBERG	§	
FINANCIAL SERVICES, INC., d/b/a	§	
DFFS CAPITAL MANAGEMENT, INC.,	§	
	§	
Relief Defendants,	§	
Solely for the Purposes of	§	
Equitable Relief.	§	

**RECEIVER'S MOTION FOR ORDER APPROVING
PROPOSED SETTLEMENT AND FOR ANCILLARY ORDERS**

COMES NOW, Thomas L. Taylor III (“Receiver”), Court-appointed Receiver in the above styled action (the “Receivership Proceeding”) of Kaleta Capital Management, Inc. (“KCM”), BusinessRadio Network, L.P. d/b/a BizRadio (“BizRadio”), Daniel Frishberg Financial Services, Inc. d/b/a DFFS Capital Management, Inc. (“DFFS”), and all entities they own or control (the “Receivership Entities”), and respectfully submits this motion (the “Motion”) to approve the proposed settlement of claims of the Receivership Entities against David Wallace (“Wallace”), Costa Bajjali (“Bajjali”), West Houston WB Realty Fund, L.P. (“W. Houston Fund”), Wallace Bajjali Investment Fund II, L.P. (“WB Fund II”), LFW Economic Opportunity Fund, L.P. (“LFW Fund”), Spring Cypress Investments, L.P. (“Spring Cypress Investments”),

and Wallace Bajjali Development Partners, L.P. (“WB Dev. Partners”) (collectively the “Wallace Bajjali Parties”), and would respectfully show the Court as follows:

I. BACKGROUND

A. SEC Enforcement Actions and Appointment of the Receiver

1. On November 13, 2009, the Securities and Exchange Commission (“SEC”) commenced the above styled action against Defendants Albert Fase Kaleta (“Kaleta”) and KCM, alleging multiple violations of the antifraud provisions of the federal securities laws arising from the fraudulent offering of promissory-note securities. On December 2, 2009, the Court appointed Thomas L. Taylor III as receiver over KCM, eventually expanding the Receivership Estate to include Relief Defendants BizRadio and DFFS. *See Agreed Order Appointing Receiver*, Doc. 7; *See Order Modifying Order Appointing Receiver*, Doc. 34 (collectively the “Order Appointing Receiver”).¹

2. Subsequently, the SEC filed additional enforcement actions related to the Receivership Proceeding, including *SEC v. David Gordon Wallace Jr. and Costa Bajjali*, Civil Action No. 4:11-cv-1932, in the United States District Court for the Southern District of Texas, Houston Division (the “WB Enforcement Action”), alleging violations of §17(a)(2) and (3) of the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. §77q(a)(2) and (3)]. This action arose because the Wallace and Bajjali controlled WB Fund II and LFW Fund took debt and equity positions in BizRadio which exceeded the maximum positions Wallace and Bajjali represented to investors that those investment funds would take in any single business or project. Agreed Final Judgments were entered in the WB Enforcement Action against Wallace and

¹ Specific citations to pages or paragraphs within the “Order Appointing Receiver” refer to pages or paragraphs within Doc. 7. All capitalized terms not defined herein shall have the meaning ascribed to them in Doc. 7.

Bajjali, permanently enjoining each of them from future violations of §17(a) of the Securities Act and imposing civil penalties on each of them in the amount of \$60,000.

B. Receiver's Potential Claims Against the Wallace Bajjali Parties

3. The Receiver is authorized to take and have complete and exclusive control, possession, and custody of Receivership Assets and any assets traceable to assets owned by the Receivership Estate, and is further directed and authorized to collect all sums of money due or owing to the Receivership Estate. *See Order Appointing Receiver*, ¶¶ 4, 5(b). Receiver is further authorized to institute actions in this Court to obtain possession and/or recover judgment with respect to persons or entities who received assets traceable to the Receivership Estate. *Id.* ¶5(c). Receiver is also authorized to institute, prosecute, or compromise such actions that the Receiver deems necessary and advisable to carry out the Receiver's mandate. *Id.* ¶5(i). Receiver's authority to bring claims on behalf of the Receivership Entities bears directly on his proposed settlement with the Wallace Bajjali Parties.

4. W. Houston Fund, LFW Fund and Spring Cypress Investments (the "Note Entities") received funds from KCM which were proceeds of the fraudulent promissory-note offering perpetrated on investors by Kaleta and others. These transfers came in the form of executed promissory notes and expenses paid directly by KCM on behalf of the respective Note Entities (the "WB/KCM Notes"). The Receiver can potentially assert claims on the WB/KCM Notes in the form of, without limitation, breach of contract, money had and received, fraudulent transfer, and unjust enrichment. The principal amounts of the WB/KCM Notes that remain unpaid to KCM total \$879,176.35 and are detailed as follows: (a) W. Houston Fund – \$595,176.35; (b) LFW Fund – \$275,000; and (c) Spring Cypress Investments – \$9,000. Accrued interest is also due and owing on each of these obligations at varying rates and from varying

dates in 2008 and 2009. The Receiver can also potentially assert claims against certain of the Wallace Bajjali Parties arising from actions taken by them -- and not taken -- in relation to their involvement with BizRadio and its former directors and officers.

5. The Wallace Bajjali Parties have admitted the obligations of the Note Entities on the WB/KCM Notes but otherwise deny all liability to the Receivership Entities. They wish, however, to settle any potential claims which could be brought against them in order to buy peace and avoid the expense of protracted litigation, which would ensue without settlement or the entry of the proposed claim bar order.

C. Terms of the Receiver's Settlement Agreement with the Wallace Bajjali Parties

6. On behalf of the Receivership Estate and all persons who have substantive claims against the Receivership Estate, the Receiver has entered into the proposed Compromise Settlement and Release Agreement (the "Settlement Agreement," attached hereto as Exhibit 1 and incorporated by reference herein) with the Wallace Bajjali Parties, the essential terms of which are:

- (1) The Note Entities shall execute replacement promissory notes evidencing their existing obligations under the WB/KCM Notes (the "Replacement Notes," attached to the Settlement Agreement as Exhibits C through H) and shall satisfy those obligations by February 29, 2012 or, under certain conditions, not later than December 31, 2012;
- (2) Wallace and Bajjali shall execute personal Guaranty Agreements with respect to the Replacement Notes (attached to the Settlement Agreement as Exhibits I through T);
- (3) WB Dev. Partners shall execute a promissory note to Receiver, on behalf of KCM, for the payment of between \$300,000 and \$450,000, based on net cash flow from the Amarillo Project (further defined below) (the "Cash Flow Note," attached to the Settlement Agreement as Exhibit U), and shall make payments per the terms defined therein;
- (4) Wallace and Bajjali shall execute personal Guaranty Agreements with respect to the Cash Flow Note (attached to the Settlement Agreement as Exhibits V and W);

- (5) The Receiver shall fully release each of the Wallace Bajjali Parties from any and all claims which could be asserted by him on behalf of the Receivership Estate or the Receivership Entities against any of them;
- (6) The Wallace Bajjali Parties shall fully release the Receiver, the Receivership Estate, and the Receivership Entities from any and all claims which could be asserted by any of them against the Receiver, the Receivership Estate, and the Receivership Entities. Such release shall not impair the rights of the Wallace Bajjali Parties, excluding Wallace and Bajjali individually, to participate in the claims process for the Receiver's ultimate plan of distribution of Estate assets; and
- (7) The Receiver shall seek entry of the proposed final claim bar order (the "Bar Order," attached to the Settlement Agreement as Exhibit B) enjoining all BusinessRadio Note Holders (as defined in the Settlement Agreement) from commencing or continuing any legal proceeding and/or asserting or prosecuting any cause of action against any of the Wallace Bajjali Parties arising out of, in connection with, or relating to the BusinessRadio Note Plan (as defined in the Settlement Agreement), the loans made to BusinessRadio or its affiliates by the BusinessRadio Note Holders, and/or the notes issued by BusinessRadio or its affiliates to the BusinessRadio Note Holders. The Bar Order shall not impair the rights of the BusinessRadio Note Holders to participate in the claims process for the Receiver's ultimate plan of distribution of Estate assets. The Settlement Agreement is conditioned upon entry of such Order.

7. For the reasons set forth below, the Receiver represents to the Court that the proposed settlement with the Wallace Bajjali Parties is fair, equitable, and reasonable, and is in the best interests of the Receivership Estate and all who would claim substantive rights to distribution of Estate assets, and urges that the Court approve it.

8. The Receiver respectfully submits that this matter does not require oral argument, unless opposition to the Motion is subsequently submitted to the Court. Although not required by the Federal Rules of Civil Procedure, but at the request of the Wallace Bajjali Parties as a condition to settlement, notice of this Motion (including a copy of this Motion without exhibits and the proposed Bar Order) shall be served by regular, first-class United States mail on all persons and entities sought to be bound by the proposed Bar Order (a list of whom is attached to

the Settlement Agreement as Exhibit X). This Motion and all exhibits hereto are posted on the Receivership Estate's website at <http://www.kcmreceivership.com> where they may be reviewed in their entirety. A copy of this Motion (with exhibits) will be provided to any party upon request, which may be directed to:

Thomas L. Taylor III, Receiver
The Taylor Law Offices, P.C.
4550 Post Oak Place Drive, Suite 241
Houston, Texas 77027

9. The Receiver has discussed this Motion and the proposed Settlement Agreement with counsel for Plaintiff Securities and Exchange Commission ("SEC"), who does not oppose this motion.

II. ARGUMENT AND AUTHORITIES

A. Receiver's Authority to Enter into Settlement

10. Pursuant to the Order Appointing Receiver, the Receiver is directed and authorized to "[i]nstitute such actions or proceedings to ... obtain possession and/or recover judgment with respect to persons or entities who received assets ... traceable to the Receivership Estate." *Order Appointing Receiver*, ¶5(c). The Receiver is also authorized to "compromise ... actions or proceedings ... deem[ed] necessary and advisable to carry out [his] mandate ...," *Id.* ¶5(i). Furthermore, the Receiver is directed to "[p]reserve the Receivership Estate and minimize expenses in furtherance of maximum and timely disbursement thereof to claimants." *Id.* ¶5(j).

11. Consequently, although Court approval of the settlement is not expressly required by the Order Appointing Receiver, the settling parties submit the Settlement Agreement for the Court's review in order to ensure full transparency and notice to the Court and the public. The Parties also seek to obtain entry of the Bar Order from the Court, which is necessary to effectuate the Settlement Agreement.

B. The Settlement Is Fair and in the Best Interest of the Receivership Estate

a. The Receiver's Basic Fairness Assessment

12. The proposed Settlement Agreement is the result of months-long efforts by the Receiver and negotiations with the Wallace Bajjali Parties to come to settlement terms that are both fair and equitable to the Receivership Estate and all persons who have substantive claims against the Receivership Estate. The Receiver clearly has claims against the Note Entities upon the WB/KCM Notes; the Receiver also believes that additional claims could be asserted against Wallace and Bajjali as principals of the Note Entities. The Receiver believes there are valid causes of action which he could bring against the Wallace Bajjali Parties, though they are denied by the Wallace Bajjali Parties. The Receiver also has been charged by the Court with minimizing the expenses incurred by the Estate in order to effectuate a maximum distribution to Estate claimants. Receiver has taken these varying mandates into consideration in negotiating and analyzing this proposed Settlement Agreement.

13. In assessing the proposed Settlement Agreement, Receiver has analyzed (a) the potential claims he could bring against the Wallace Bajjali Parties, (b) the likelihood of success on the merits, (c) the expense of litigation (both to the Estate for prosecuting those claims and to the Wallace Bajjali Parties for defending against them -- expenses which would affect what funds would be available to satisfy any potential judgment in favor of the Receiver), (d) the length of any potential litigation, and (e) the personal and entity financials of the Wallace Bajjali Parties.

14. The amount to be gained by the Receivership Estate from payments on the Replacement Notes is approximately \$1.2 to 1.3 million, in addition to the \$300,000 to \$450,000 in payments on the Cash Flow Note. Absent the proposed settlement, the obligations implicated

by the Replacement Notes bear no personal guarantees by Messrs. Wallace and Bajjali. The Receiver further estimates that litigating this dispute with the Wallace Bajjali Parties would cost the Estate, conservatively, \$250,000 to \$300,000. By settling the claims now, the economic impact to the estate could approach \$2 million.

b. The Replacement Notes

15. The Replacement Notes represent current indebtedness of the Note Entities to KCM, and replace the WB/KCM Notes with new repayment terms negotiated with the Wallace Bajjali Parties as part of the overall settlement now proposed. Receiver maintains that the Note Entities are liable for the full amount of the Replacement Notes, including accrued interest. The principal amounts owed on the Replacement Notes equal \$879,176.35. The weighted average interest rate owed on the Replacement Notes equals approximately 12.15%. The interest accrued on the Replacement Notes as of the filing of this Motion is approximately \$286,875.37.

16. The Replacement Notes extend the dates of maturity on the WB/KCM Notes until February 29, 2012. Payment in full of both principal and accrued interest is due on that date for all of the Replacement Notes, with a conditional extension of the maturity date based on each respective Note Entity's liquidity.² Because the Note Entities are real estate investment partnerships, their primary assets are real property investments, which affects each Note Entity's liquidity. If the respective Note Entity has not completed the sale of all or substantially all of its respective real estate assets and received the purchase price for same by February 29, 2012, the maturity date will extend to the sooner of (i) the fifth business day following the completed sale of all or substantially all of the respective Note Entity's real estate assets and receipt of the purchase price for same, or (ii) December 31, 2012.

² Prepayment terms are also provided for in the Replacement Notes.

17. While this offers the Note Entities certain flexibility in their maturity dates, if such flexibility is utilized the Receivership Estate will be compensated with the accruing interest on those Replacement Notes. Receiver believes this tradeoff is fair and reasonable, and indeed would receive approximately \$142,204.13 in additional interest if all Replacement Notes were not paid until December 31, 2012. Payment in full is to be guaranteed by Messrs. Wallace and Bajjali. The WB/KCM Notes are not personally guaranteed.

c. The Cash Flow Note

18. The Cash Flow Note is additional consideration negotiated by the Receiver for the release of the Wallace Bajjali Parties and the entry of the Bar Order. The Cash Flow Note is expected to pay the Receivership Estate between \$300,000 and \$450,000 in principal based on the Dedicated Cash Flow (as defined in the Cash Flow Note) that WB Dev. Partners receives in development fees from a Master Development Agreement by and between it and the City of Amarillo, Texas, dated February 15, 2011, and any Hotel Development Agreement or Multi-Purpose Event Venue Development Agreement later executed by the City of Amarillo and WB Dev. Partners (the "Development Agreements"). These agreements pertain to the \$113 million Phase I Development Plan and Plan of Finance Resolution that were unanimously approved by the Amarillo City Commission on August 23, 2011 for the development of a civic center hotel and multi-purpose event venue in downtown Amarillo (the "Amarillo Project").

19. Payments to the Receivership Estate under the Cash Flow Note shall equal, at a minimum, 15% of the quarterly net positive cash flow received by WB Dev. Partners over the life of the Amarillo Project until the stated principal amount of \$450,000 is received by the Receivership Estate, or until WB Dev. Partners has received all fees associated with the

Development Agreements. If, however, WB Dev. Partners pays \$300,000 to the Receivership Estate within the first 18 months of the note, the note will be discharged.

d. Personal Guaranty Agreements of Wallace and Bajjali

20. In further consideration of the release of the Wallace Bajjali Parties and the entry of the Bar Order, Receiver has obtained the Guaranty Agreements of Wallace and Bajjali on both the Replacement Notes and the Cash Flow Note.³ These Guaranty Agreements provide security to the Receivership Estate on the amounts already owed to the Estate, and those amounts being paid as additional consideration for the Settlement Agreement. Absent the settlement, Messrs. Wallace and Bajjali are not personal guarantors on the WB/KCM Notes.

C. Assessing the Potential Claims Against Wallace Bajjali Parties

21. The Receiver's overall fairness determination is based on the economic reality of the proposed settlement, which also takes into account the prospects for litigation the Receiver, and BusinessRadio Note Holders, could pursue against the Wallace Bajjali Parties. As noted above, the Receiver has standing to initiate and pursue litigation against the Wallace Bajjali Parties for claims related to the receipt of funds fraudulently obtained by KCM from investors, and other tort claims related to the business dealings between certain Wallace Bajjali Parties and the Receivership Entities and their former officers and directors. In evaluating those claims, and their potential outcomes, however, the Receiver is bound to make a realistic assessment of all factors bearing upon settlement versus extended litigation, the costs associated with it, the uncertainty of the outcome and -- most significantly -- the ability to collect any potential judgment obtained in amounts in excess of the amount which will be achieved in the present settlement proposal.

³ The Cash Flow Note Guaranty Agreements pertain to the payment of Dedicated Cash Flow, as defined in the Cash Flow Note, and do not guarantee the Receivership Estate will receive any specific amount.

22. The Wallace Bajjali Parties would vigorously defend all claims asserted against them in connection with the Receivership Proceeding, regardless of which potential plaintiff commenced the action. The protracted litigation would deplete actual and potential Receivership Estate assets in two material respects: (i) through the Estate's incurring legal fees associated with any litigation brought by the Receiver, and (ii) through the legal fees incurred by the Wallace Bajjali Parties in defense of litigation brought by the Receiver or otherwise. These defense costs of the Wallace Bajjali Parties would deplete the very funds available to satisfy an adverse judgment, if obtained by the Receiver.

23. The claims with the highest likelihood of success, in the Receiver's view, are those relating to the WB/KCM Notes. Other potential claims, including the tort claims described above, come with far more uncertainty in litigation. Furthermore, the Cash Flow Note and the Guaranty Agreements on the Cash Flow Note and the Replacement Notes exist only in the context of this settlement, and any judgment obtained on the WB/KCM Notes would have no security beyond the respective Note Entity's ability to pay. While obtaining a judgment on the WB/KCM Notes against the Note Entities is likely, in the Receiver's view, even if obtained, the Estate's ability to collect such a judgment would be contingent upon the Note Entities' ability to respond in judgment (with no personal guarantees from the principals) and could be impaired by the very litigation through which any such judgments were obtained.

24. The Wallace Bajjali Parties have made available to the Receiver Affidavits of Financial Condition and other financial documentation of the entities, subject to confidentiality agreements. The Receiver and the Wallace Bajjali Parties will make these documents available to the Court for in-camera inspection upon request. The Receiver is satisfied, based on the

financial documentation provided, that the settlement represents the maximum which could be paid by the Wallace Bajjali Parties.

25. It is the Receiver's judgment that protracted litigation against the Wallace Bajjali Parties, brought by him or by any other plaintiff, would render any monetary judgment against the Wallace Bajjali Parties materially uncollectable beyond the value of the present settlement. This settlement is the most effective way to maximize the value to the Receivership Estate and its claimants, BusinessRadio Note Holders included.

D. Enjoining Any Proceeding Against the Wallace Bajjali Parties is Necessary to Settlement

26. The entry by the Court of the Bar Order, enjoining the BusinessRadio Note Holders from commencing or continuing any legal proceeding and/or asserting or prosecuting any cause of action against any of the Wallace Bajjali Parties arising out of, in connection with, or in any way related to the BusinessRadio Note Plan, the loans made to BusinessRadio or its affiliates by the BusinessRadio Note Holders, and/or the notes issued by BusinessRadio or its affiliates to the BusinessRadio Note Holders., is a necessary condition to the execution of the Settlement Agreement. The Receiver's undertaking to support such a Bar Order was a necessary element of the negotiations in order for the Receiver to secure the Cash Flow Note and personal Guaranty Agreements of Messrs. Wallace and Bajjali on the Replacement Notes and the Cash Flow Note.

27. It is the wish of the Wallace Bajjali Parties to buy peace through settlement with the Receiver, wholly and finally. The Receiver was appointed to protect the interests of the defrauded investors and other creditors of the Receivership Estate, and to act in a manner that will maximize the eventual distribution to Estate claimants. In Receiver's opinion, the proposed

Settlement Agreement, including the Bar Order, offers the best and most economical solution for carrying out this mandate.

28. This Court has already enjoined actions against the Defendants, the Receiver, and the Receivership Estate, ordering that that “all ... persons are hereby restrained and enjoined from ...,” without leave:

... commenc[ing] or continu[ing] ... any judicial, administrative, or other proceeding against the Receiver, any of the defendants, the Receivership Estate, or any agent, officer, or employee related to the Receivership Estate, arising from the subject matter of this civil action...

Order Appointing Receiver ¶7(a). The parties to the Settlement Agreement ask the Court to extend this stay as to any claim held by the BusinessRadio Note Holders against the Wallace Bajjali Parties, and to do so permanently, in order to effectuate the present settlement.

29. Blanket anti-litigation stays have repeatedly been upheld in circumstances affecting assets of a receivership estate. The 2nd Circuit, in holding that district courts have the power to issue an order staying a non-party from bringing litigation affecting an equity receivership, stated this authority of the Court is “derived from ‘the inherent power of a court of equity to fashion effective relief.’” *SEC v. Byers*, 609 F.3d 87, 91 (2nd Cir. 2010) (quoting *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980) (“*Wencke II*”).

30. The *Wencke II* court reasoned that a district court’s power to issue such a stay against litigation affecting the Receivership Estate by non-parties “rests as much on its control over the property placed in receivership as on its jurisdiction over the parties to the securities fraud action. The district court took control over the properties in question when it imposed the receivership and appointed [a] receiver to manage those properties.” *Wencke II*, 622 F.2d at 1369.

31. The 6th Circuit held similarly in *Liberte Capital Group, LLC v. Capwill*, 462 F.3d 543 (6th Cir.2006), concluding that:

[A] district court's equitable purpose demands that the court be able to exercise control over claims brought against [Receivership] assets. **The receivership court has a valid interest in both the value of the claims themselves and the costs of defending any suit as a drain on receivership assets.** To this extent, the receivership court may issue a blanket injunction, staying litigation against the named receiver and the entities under his control unless leave of that court is first obtained. This power extends to the institution of any suit, and not just a proceeding for execution of a judgment against the receivership in the receivership court.

Id. at 551-52 (emphasis added) (internal citations and quotations omitted). A district court has further authority to assert control over property and issue such injunctions when “the subject matter of the two suits is different or the jurisdiction is not concurrent ... where ... [a] state court has not [previously] taken actual possession of the property.” *Wencke II*, 622 F.2d at 1371-72 (emphasis added). In the present case, no state court currently holds constructive possession of the property at issue.

32. The *Byers* court, after joining the 9th and 6th Circuits in upholding the validity of anti-litigation stays, went on to state that “[a]n anti-litigation injunction is simply one of the tools available to courts to help further the goals of the receivership.” *Byers*, 609 F.3d at 92.

33. The goals of this Receivership are “to marshal, conserve, hold and, where necessary, operate [Receivership] assets” in order to ensure “the eventual return of [those] assets to investors harmed by the misconduct alleged” against Defendants by the SEC. *Order Appointing Receiver* at 1. The issuance of an injunction barring future litigation by the BusinessRadio Note Holders against the Wallace Bajjali Parties protects the value of assets which, if this settlement is approved by the Court, will become assets of the Receivership Estate,

by allowing the Receiver to take possession of the assets obtained through settlement with the Wallace Bajjali Parties without expending the cost -- or risking the uncertainty -- of litigation to obtain them.

34. The Receiver believes the proposed settlement with the Wallace Bajjali Parties is the best course of action to take to accomplish those goals. The Note Entities are paying to the Receivership Estate the entire current indebtedness owed to KCM under the WB/KCM Notes. The other Wallace Bajjali Parties are offering hundreds of thousands of dollars more, along with personal guarantees on all payments, in return for a release of claims by the Receiver and assurances that they will not have to re-litigate claims by BusinessRadio Note Holders in the future. The Receiver is satisfied that those settlement obligations undertaken by the Wallace Bajjali Parties is the maximum which they likely could bear while maintaining the economic viability necessary to discharge those obligations.

35. The entry of the proposed Bar Order leads to a higher and more secure settlement value, and therefore a larger recovery for the Receivership Estate and its claimants than would otherwise be available without it. As the Receiver has discussed at length above, individual claims by BusinessRadio Note Holders against the Wallace Bajjali Parties would cause protracted and costly litigation and any judgment obtained against the Wallace Bajjali Parties would not likely be collectable in greater amounts than those obtained by the Receivership through this settlement.

36. The economics of the settlement overwhelmingly favor its execution and approval by the Court; the fairness of the entry of the Bar Order in favor of the Wallace Bajjali Parties must be considered in that light. The Wallace Bajjali Parties cannot obtain finality unless the Bar Order is entered by the Court as part of the proposed settlement. The Wallace Bajjali Parties

would not have agreed to the proposed settlement with the Receiver if the Court did not protect them from claims asserted by individual investors post-settlement.

37. The substantial, actual economic value of the proposed settlement has already been discussed. But for entry of the Bar Order, that value cannot be achieved, and failing to do so would operate to the severe disadvantage of all Receivership Entity investors, including the BusinessRadio Note Holders. The Receiver has also evaluated the proposed settlement with the Wallace Bajjali Parties in terms of resources available to fund on-going litigation, and then actually satisfy any judgment that might eventually be rendered against them. The economic impact of the settlement is large -- negatively so to the Wallace Bajjali Parties and positively so to the Receivership Estate and those who have a claim to its assets. By the settlement, the Estate stands to obtain approximately between \$1.5 and 1.75 million in payments over the next five to sixteen months, while saving approximately \$250,000 or more in litigation costs. The estimated total economic value for the Estate of the settlement approaches \$2 million.

38. In the absence of a settlement, including the entry of the Bar Order, the Receivership Estate and every person who claims a right to distribution of its assets would be subject to the uncertainties and expense of future litigation and an outcome that is highly unlikely to result in greater actual recovery. The Bar Order is necessary to achieve it. The value of this settlement cannot be achieved without acceptance and implementation of each element of the Settlement Agreement.

E. Relief from the Court's Deadline to Add New Parties

39. Receiver also requests the Court grant him relief from the current Scheduling Order deadline to add third parties of September 23, 2011 in relation to the Wallace Bajjali Parties to facilitate consideration of the present Motion. Consideration of this Motion will

certainly extend beyond this deadline, and, if this Motion were to be denied, in whole or in part, the Receiver would need additional time to either attempt to negotiate new settlement terms with, or file litigation against, the Wallace Bajjali Parties.

III. CONCLUSION

40. The negotiated settlement with the Wallace Bajjali Parties is a significant step toward realization of a maximum asset recovery for the ultimate benefit of individuals who have a claim to Estate assets. After this settlement is approved by the court and becomes final, the Receivership Estate will receive payments in excess of \$1.2 million, with the potential for payments exceeding \$1.75 million within the next sixteen months. If the proposed settlement is not approved, however, a singular opportunity will be lost as will the realizable worth of the Estate. The Receiver therefore urges the Court that the negotiated settlement with the Wallace Bajjali Parties, in its entirety, is overwhelmingly fair, equitable and reasonable, and should be approved.

IV. RELIEF REQUESTED

The Receiver respectfully requests that this Court enter orders:

- (1) Approving the Settlement Agreement;
- (2) Enjoining the BusinessRadio Note Holders from commencing or continuing any legal proceeding and/or asserting or prosecuting any cause of action against the Wallace Bajjali Parties arising out of, in connection with, or in any way related to the BusinessRadio Note Plan, the loans made to BusinessRadio or its affiliates by the BusinessRadio Note Holders, and/or the notes issued by BusinessRadio or its affiliates to the BusinessRadio Note Holders ; and
- (3) Granting the parties all other relief to which they are legally and equitably entitled.

Date: September 12, 2011

Respectfully submitted,

THE TAYLOR LAW OFFICES, P.C.

By: /s/ Thomas L. Taylor, III

Thomas L. Taylor, III
State Bar No. 19733700
Andrew M. Goforth
State Bar No. 24076405

4550 Post Oak Place Drive
Suite 241
Houston, Texas, 77027
Telephone: (713) 626-5300
Facsimile: (713) 402-6154
taylor@liltaylorlaw.com
goforth@liltaylorlaw.com

COUNSEL FOR RECEIVER

CERTIFICATE OF SERVICE

On September 12, 2011, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Southern District of Texas, using the electronic case filing system. I hereby certify that I have served all counsel of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Thomas L. Taylor, III

Thomas L. Taylor, III