

CAUSE NO. D-1-GV-10-000454

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	
RETIREMENT VALUE, LLC,	§	
RICHARD H. "DICK" GRAY,	§	
HILL COUNTRY FUNDING, LLC,	§	
a Texas Limited Liability Company,	§	
HILL COUNTRY FUNDING, a Nevada	§	
Limited Liability Company, and	§	
WENDY ROGERS,	§	
<i>Defendants,</i>	§	TRAVIS COUNTY, TEXAS
	§	
AND	§	
	§	
JAMES SETTLEMENT SERVICES, LLC,	§	
<i>ET. AL.</i>	§	
<i>Third-Party Defendants</i>	§	126 <sup>th</sup> JUDICIAL DISTRICT

**RECEIVER'S MOTION FOR APPROVAL  
OF SETTLEMENT WITH JOSEPH T. DONNANTUONI**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Eduardo S. Espinosa in his capacity as Temporary Receiver of Retirement Value, LLC, and files this Motion for Approval of Settlement with Joseph T. Donnantuoni as follows:

The Receiver has reached a settlement agreement with Third-Party Defendant/Licensee Joseph T. Donnantuoni ("The Licensee"). The Licensee has agreed to repay all or a negotiated percentage of the commissions he received from Retirement Value to the Receiver. The Licensee has also agreed to turn over all documents relating to Retirement Value and fully cooperate in any investigation by the Receiver or the State of Texas. The Licensee and Receiver

also agreed to full and complete mutual release, excluding any claim the Licensee may have for the return of the Licensee's investment.

The settlement agreement with the Licensee is attached and incorporated herein as follows:

Exhibit A      Joseph T. Donnantuoni                      \$ 20,000.00

Licensee is a Third-Party Defendant in the above-styled and numbered cause that has been served with process. Upon the Court's approval of its settlement agreement attached herein, the Receiver also requests that the Court dismiss the claims against Third-Party Defendant Joseph T. Donnantuoni with prejudice.

This Court previously approved a contingency fee for the Receiver's counsel with respect to these claims. A settlement statement showing the gross recovery, the amount of attorneys' fees, and the net proceeds payable to the Receiver is included immediately behind the settlement agreement. In summary, the fees are 37.5% for each settlement involving a cash payment.

This settlement is contingent upon the approval of this Court.

#### PRAYER

The Receiver prays that the Court approve the attached settlement and the distribution of the proceeds and request such other and further relief to which he may be justly entitled.

Respectfully submitted,



R. James George, Jr.  
State Bar No. 07810000  
John W. Thomas  
State Bar No. 19856425  
John R. McConnell  
State Bar No. 24053351  
George, Brothers, Kincaid & Horton LLP  
114 W Seventh, Suite 1100

Austin, TX 78701-3015  
Telephone: (512) 495-1400  
Facsimile: (512) 499-0094

ATTORNEYS FOR RECEIVER

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record herein by:

- U.S. Mail, First Class (as to Ackels, Lanahan, Williams, and D'Agostino only)
- Certified Mail (return receipt requested)
- Facsimile
- Federal Express Delivery
- Hand Delivery
- Electronic Service

on this the 27<sup>th</sup> day of December, 2012, to wit:

<p>Geoffrey D. Weisbart Mia L. Adams WEISBART SPRINGER HAYES, LLP 212 Lavaca Street, Suite 200 Austin, Texas 78701 (512) 652-5780 (512) 682-2074 fax gweisbart@wshllp.com madams@wshllp.com jblair@wshllp.com COUNSEL FOR THE CAIN INTERVENORS</p>	<p>Jack Hohengarten Jennifer Jackson TEXAS ATTORNEY GENERAL Financial and Tax Litigation Division 300 W. 15<sup>th</sup> Street, Sixth Floor Austin, Texas 78711-2548 (512) 475-3503 (512) 477-2348 fax jack.hohengarten@oag.state.tx.us jennifer.jackson@oag.state.tx.us COUNSEL FOR THE STATE OF TEXAS</p>
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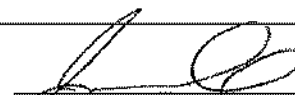
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<p>Todd A. Marquardt  MARQUARDT LAW FIRM  11919 Jones Maltsberger  San Antonio, Texas 78216  (210) 320-8800  (210) 247-9396 fax  todd@marquardtlawfirm.com  COUNSEL FOR THIRD PARTY DEFENDANT JAMES  STRIZAK</p>	<p>Barry A. Chasnoff  McLean Pena  Clayton Matheson  AKIN GUMP STRAUSS HAUER &amp; FELD LLP  300 Convent Street, Suite 1500  San Antonio, Texas 78205  (210) 281-7000  (210) 224-2035 fax  bchasnoff@akingump.com  mpena@akingump.com  cmatheson@akingump.com  ATTORNEYS FOR SOCIETY AND CORPORATION OF  LLOYD'S</p>

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<p>Andrew D'Agostino  Harvest Planning, LLC  41 Brook Street  West Sayville, New York 11796  <i>Pro Se</i></p>	<p>Gary J. Lenahan  228 Crawford Street  Beckley, West Virginia 25801  <i>Pro Se</i></p>
<p>Byron Tyghe Williams  P.O. Box 88  Mentor, Ohio 44061-0088  (440) 209-9977  <i>Pro Se</i></p>	

  
\_\_\_\_\_  
John R. McConnell



CAUSE NO. D-1-GV-10-000454

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
Receiver,	§	
v.	§	
RETIREMENT VALUE, LLC,	§	
ET AL.,	§	
Defendants,	§	TRAVIS COUNTY, TEXAS
JAMES SETTLEMENT SERVICES, LLC,	§	
ET AL.	§	
Third-Party Defendants	§	126 <sup>th</sup> JUDICIAL DISTRICT

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

THIS SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS ("Agreement") is made and entered into by and between Eduardo S. Espinosa in his capacity as Receiver of Retirement Value, LLC ("Receiver") and Joseph T. Donnantuoni, whose address is 15215 Berry Trail, Apt. 912, Dallas, Texas 75248 ("Defendant").

WHEREAS, Receiver asserted claims against Defendant Joseph T. Donnantuoni in a lawsuit styled *State of Texas v. Retirement Value, LLC, et. al., Cause No. D-1-GV-10-000454, in the 126<sup>th</sup> District Court, of Travis, County, Texas* ("the Lawsuit") making claims for, among other things, indemnity, illegally selling unregistered securities, aiding and abetting the illegal sale of unregistered securities by others, and for conspiring with and aiding and abetting the officers of Retirement Value in breaching their fiduciary duties to Retirement Value; and

WHEREAS, Defendant denies having any liability for those claims; and

WHEREAS, the parties desire to avoid further litigation, preparation and expense; to terminate all past, present and potential controversies between the parties; and to compromise and settle all the parties' differences of any type, including but not limited to those asserted in the Lawsuit; and

WHEREAS, Receiver and Defendant has agreed to resolve all claims that they have or may have against each other, including, but not limited to, the claims which were or could have been asserted in the Lawsuit, without admission by any party of the merits of the claims, demands, charges, and/or contentions of the others; and

WHEREAS, Receiver and Defendant covenants and warrants that they have not assigned, transferred, or subrogated any portion of any claim which they have against each other, other than to their attorneys of record, and further warrant that the undersigned are authorized to act in the capacities indicated:



NOW, THEREFORE, in consideration of the mutual promises and the covenants set forth herein, other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in full compromise, release, settlement, accord and satisfaction, and discharge of all claims or causes of action, known or unknown, the parties covenant and agree as follows:

1. Monetary Consideration. Defendant agrees to pay Receiver the total sum of **\$20,000.00** (the "Monetary Consideration"), to be paid in one payment of **\$15,000.00** to be paid upon the execution of this agreement, and the remainder of **\$5,000.00** to be paid in full on or before **February 28, 2014**. The payments shall be made by sending a cashier's check made payable to "George, Brothers, Kincaid & Horton, LLP's Trust Account" to the attorney for Receiver, John Thomas at George, Brothers, Kincaid & Horton, LLP, 114 West 7<sup>th</sup> Street, Suite 1100, Austin, Texas 78701. George, Brothers, Kincaid & Horton LLP will hold the money in its trust account until the court supervising the Retirement Value receivership has approved this settlement. Once that settlement is approved, George, Brothers, Kincaid & Horton, LLP will send Defendant a copy of the court order approving the settlement to the address above and distribute the money in the manner approved by the court.
2. Agreement to Cooperate: Defendant agrees to fully and completely cooperate, without reservation or claim of privilege, with Receiver and his attorneys in connection with any investigation they may be conducting or any lawsuit they may have filed or will file concerning Retirement Value or the events described in the Lawsuit (the "Agreement to Cooperate"). This Agreement to Cooperate includes, but is not limited to, producing any physical or electronic documents, tape recordings (whether in their possession or subject to their control) or other evidence concerning any such matters, answering questions, and giving testimony. Defendant represent that Defendant has produced all tape recordings, emails, letters, contracts, marketing material, cancelled checks or other physical or electronic documents concerning or relating in any way to Retirement Value by providing a copy to the attorney for Receiver, John Thomas at George, Brothers, Kincaid & Horton, LLP, 114 West 7<sup>th</sup> Street, Suite 1100, Austin, Texas 78701, [jthomas@gbkh.com](mailto:jthomas@gbkh.com).
3. Mutual Releases.
  - A. In return for the Monetary Consideration to be paid as stated herein, the Agreement to Cooperate, the Defendant's release, as set forth in Section 3.B. hereof, and other good and valuable consideration, the Receiver, for himself and his respective legal representatives, successors, and assigns hereby agrees to mutually, irrevocably, unconditionally and completely, RELEASE, ACQUIT AND FOREVER DISCHARGE Defendant and his heirs, successors and assigns ("Defendant Released Parties"), of and from any and all claims, demands, actions, liabilities, damages, losses, costs, expenses, attorneys' fees and causes of action of any nature, both past and present, known and unknown, accrued and unaccrued, foreseen and unforeseen, asserted and not asserted, discovered or not discovered whether at law, in equity or otherwise, either direct or consequential, which Receiver has or has ever had or may now have against Defendant arising out of or related to any matter or event, action or inaction, commission or omission, whatsoever that has occurred or failed to occur prior to the execution of this Agreement and all claims that were or could have been asserted by him in the Lawsuit.

B. In return for the Receiver's release, as set forth in Section 3.A. hereof, and other good and valuable consideration, Defendant, for himself and his respective heirs, executors, administrators, legal representatives, successors and assigns, hereby agrees to mutually, irrevocably, unconditionally and completely, RELEASE, ACQUIT AND FOREVER DISCHARGE Receiver and his parents, subsidiaries, predecessors, successors, assigns, insurers, and legal counsel ("Receiver Released Parties") of and from any and all claims, demands, actions, liabilities, damages, losses, costs, expenses, attorneys' fees and causes of action of any nature, both past and present, known and unknown, accrued and unaccrued, foreseen and unforeseen, asserted and not asserted, discovered or not discovered whether at law, in equity or otherwise, either direct or consequential, which Defendant has or has ever had or may now have against Receiver arising out of or related to any matter or event, action or inaction, commission or omission, whatsoever that has occurred or failed to occur prior to the execution of this Agreement and all claims that were or could have been asserted by him in the Lawsuit.

C. Receiver and Defendant further fully, completely, and unconditionally release and forever discharge the Defendant Released Parties and the Receiver Released Parties, respectively, from any claim that this Agreement was induced by any fraudulent or negligent act or omission, and/or result from any actual or constructive fraud, negligent misrepresentation, conspiracy, breach of fiduciary duty, breach of confidential relationship, or the breach of any other duty under law or in equity. It is the Receiver's and Defendant's intent that on and following the execution of this agreement that they shall have no further relationship with each other, other than rights that are expressly created in this agreement. Receiver and Defendant expressly understands and agrees that the exchange of releases does not apply to actions brought by any of them to enforce the terms of this Agreement, and Receiver and Defendant shall reserve and each has reserved all of their rights against the other to enforce the terms of this Agreement.

4. Other Proceedings and Dismissal. Receiver and Defendant hereby represent and confirm that they have not filed or otherwise initiated any pending lawsuit, complaint, charge, or other proceeding against each other apart from the claims and counterclaims in this lawsuit in any local, state, or federal court or agency. Defendant and Receiver each covenant and agree that they will not at any time hereafter commence, maintain, or prosecute any action at law or otherwise, or assert any claim, against the other for any actions, causes of action, obligations, costs, expenses, damages, losses, claims, liabilities, and demands released herein. Receiver agrees to present the court with an agreed order dismissing the Lawsuit against Defendant Joseph T. Donnantuoni with prejudice and with costs taxed against the party incurring same.
5. Non-Admission. Receiver and Defendant agrees that this Agreement is a compromise settlement of a disputed claim or claims, and shall not be deemed or construed at any time or for any purpose to be an admission by any released party of any violation of any right, contract, statute, or common law or of any wrongdoing.

6. DEFENSE AND INDEMNITY. Receiver further agrees to DEFEND, INDEMNIFY AND HOLD HARMLESS the Defendant Released Parties from any claim or cause of action of any kind hereafter filed or made against any of them which is brought by, through, or on behalf of Receiver and arising from any claim released under this Agreement. Defendant, likewise, agrees to DEFEND, INDEMNIFY AND HOLD HARMLESS the Receiver Released Parties from any claim or cause of action of any kind hereafter filed or made against any of them which is brought by, through, or on behalf of Defendant and arising from any claim released under this Agreement. This right of indemnity is conditioned upon prompt notice by the party claiming a right to indemnity on any such claim to the party against whom indemnity is sought and the party against whom indemnity is sought being given the right to defend the claim on which indemnity is sought. Receiver and Defendant warrant they are not presently aware of any facts that would give rise to a claim for indemnity under this paragraph. The right to indemnity in this paragraph is limited to Defendant Released Parties and Receiver Released Parties, as herein defined, and shall not be construed as granting a right to indemnity in favor of any other entities or persons related to or affiliated with the released parties. Receiver's indemnity obligation under this provision is limited to the monetary consideration actually paid by Defendant pursuant to paragraph 1 above.
7. Financial Disclosure. Concurrently with the execution of this Settlement Agreement, Defendant has provided the Receiver with a verified financial statement reflecting Defendant's recent income and Defendant's current assets and liabilities ("Verified Financials"), the form and substance of which has been reviewed and approved by the Receiver. Defendant hereby expressly acknowledges that: (i) the Receiver is relying upon the accuracy and completeness of the Verified Financials in granting the release set forth in paragraph 3.A. and assuming the indemnity obligations set forth in paragraph 6 of this Settlement Agreement; (ii) that such Verified Financials constitute a material inducement for the Receiver's acceptance, execution and delivery of this Settlement Agreement and (iii) that the Receiver's acceptance, execution and delivery hereof is expressly conditioned upon the Verified Financials' accuracy and completeness. If the Verified Financials contain a material falsehood made intentionally or with reckless disregard for the truth, then the releases contained in this Settlement Agreement shall be null and void and the Receiver shall be entitled to assert any claims he may have against Defendant or Defendant Release Parties. For purposes of this paragraph, an omission of an asset worth more than \$10,000 shall be deemed to be material and intentional.
8. Attorney's Fees. All parties to this Agreement will bear their own attorney's fees, expenses and costs in this lawsuit.
9. Reasonable Steps. The parties further warrant and represent that they will cooperate fully and execute any and all supplementary documents and to take such additional actions which reasonably may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.
10. Severability and Governing Law. If any single section or clause of this Agreement should be found unenforceable, it shall be severed and the remaining sections and clauses

shall be enforced in accordance with the intent of this Agreement. Texas law shall govern the validity and interpretation of this Agreement.

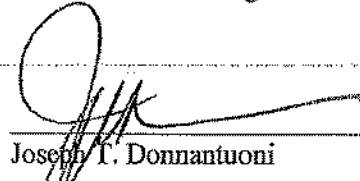
11. Waiver or Breach. The parties agree that one or more waivers or breaches of any covenant, term, or provision of this Agreement by any party shall not be construed as a waiver of a subsequent breach of the same covenant, term, or provision, or as a waiver or breach of any other covenant, term, or provision.
12. Entire Agreement. This Agreement contains the entire understanding between the parties and supersedes all prior agreements and understandings, oral or written, relating to the subject matter of this Agreement. The parties expressly acknowledge and agree that no provisions, representations, or warranties whatsoever were made, express or implied, other than those contained in this Agreement and that they are not relying on any statement or communication from the other party other than those expressly contained in this Agreement in deciding to execute this Agreement. This Agreement shall not be modified, amended, or terminated unless such modification, amendment, or termination is executed in writing and signed by authorized representatives of the affected parties. The parties hereby waive their right to make future oral agreements covering the same subject as this Agreement.
13. Construction. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any party. Any ambiguity, doubt or question as to applicability of Defendant's or Receiver's releases contained in this Agreement shall be resolved in all events in favor of waiver, release, relinquishment and disavowal of any possible claims. Defendant and Receiver agree that the waivers, releases, relinquishments and disavowals herein granted shall be with respect to claims, interests, rights, remedies and causes of action known or unknown, matured or unmatured, contingent or direct, existing or hereafter arising. Defendant and Receiver acknowledge (after full consideration of the consequences and after being fully advised in the premises) that the waiver and relinquishment of their respective claims contained in this agreement is full and complete, whether or not the factual basis for their respective claims or defenses are currently known to them.
14. Other Acknowledgments. Receiver and Defendant, and each of them, hereby represent and certify that they (1) have had an opportunity to read all of this Agreement; (2) have been given a fair opportunity to, and have been advised to, discuss and negotiate the terms of this Agreement by and through their legal counsel; (3) have been given a reasonable time to consider the Agreement; (4) understand the provisions of this Agreement; (5) have had ample opportunity to seek and have received advice from an attorney or other advisors regarding this Agreement or have otherwise waived their right to do so; (6) have determined that it is in their best interest to enter into this Agreement; (7) have not been influenced to sign this Agreement by any statement or representation by the other party or its legal counsel or other representative not contained in this Agreement; (8) have had sufficient time to investigate the existence of the claims and other rights hereby released and have satisfied themselves with respect to the same based upon their investigation and the advice of counsel, (9) are fully authorized to execute this

agreement in the capacities in which it is executed and (10) enter into this Agreement knowingly and voluntarily without coercion, duress, or fraud.

- 15. Valid Consideration. Receiver and Defendant each agree that this Agreement is supported by good, valuable, and sufficient consideration.
- 16. Change of Facts. Receiver and Defendant understand and agree that the facts in respect of which this Agreement is made may hereafter prove to be other than, or of different form than, the facts now known by either of them or believed by either of them to be true as set forth in this Agreement. Receiver and Defendant expressly accept and assume the risk of the facts proving to be so different, and each of the them agrees that all of the terms of this Agreement shall be, in all respects, effective and binding, and not subject to termination or rescission by either of them due to any such difference in facts.
- 17. Multiple Counterparts. The parties agree that this Agreement may be signed in multiple counterparts, each of which shall be deemed an original for all purposes.

The Parties have executed this Agreement on the following dates:

Date: 11/9/12

  
 \_\_\_\_\_  
 Joseph T. Donnantuoni

THE STATE OF Texas  
 COUNTY OF Dallas

§  
 §  
 §

BEFORE ME, the undersigned authority, on this day personally appeared Joseph T. Donnantuoni, known to me to be the person whose name is subscribed to the foregoing "Settlement Agreement and Release of all Claims" and acknowledged to me that she executed same for the purposes and considerations therein expressed and in the capacity or capacities indicated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 9th day of November 2012.



  
 \_\_\_\_\_  
 Notary Public, The State of Texas




**SETTLEMENT STATEMENT**


Pursuant to the Fee Agreement between Eduardo S. Espinosa in his capacity as Receiver of Retirement Value, LLC and George & Brothers, LLP, the settlement proceeds received from Licensee Joseph T. Donnantuoni shall be disbursed as follows:

<b>TOTAL SETTLEMENT:</b>	<b>\$ 20,000.00</b>
<b>LESS:</b>	
<b>ATTORNEYS' FEES (37.5%)</b>	<b>\$ 7,500.00</b>
<b>NET PROCEEDS TO CLIENTS:</b>	<b>\$ 12,500.00</b>

Our signatures below indicate that we have reviewed and understand the foregoing settlement statement and are in agreement with the division of the settlement proceeds as set out above.

  
Eduardo Espinosa

12/25/12  
Date

  
for John W. Thomas *w/ permission*

12/27/12  
Date



CAUSE NO. D-1-GV-10-000454

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	
RETIREMENT VALUE, LLC,	§	
ET AL.,	§	
<i>Defendants,</i>	§	TRAVIS COUNTY, TEXAS
AND	§	
	§	
JAMES SETTLEMENT SERVICES, LLC,	§	
ET AL.	§	
<i>Third-Party Defendants</i>	§	126 <sup>th</sup> JUDICIAL DISTRICT

**ORDER ON RECEIVER'S MOTION FOR APPROVAL OF SETTLEMENTS WITH LICENSEE JOSEPH T. DONNANTUONI**

This Court heard the Receiver's Motion for Approval of Settlement with Third-Party Defendant/Licensee Joseph T. Donnantuoni on the \_\_\_\_\_ day of January, 2013. The Court is of the opinion that the motion is well-taken and that it should be granted. It is therefore:

ORDERED that the Receiver's settlement with Joseph T. Donnantuoni is approved as are the legal fees associated with that settlement.

It is further ORDERED that the claims of Retirement Value brought by the Receiver against Joseph T. Donnantuoni are dismissed with prejudice.

Signed this \_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
THE HONORABLE GISELA D. TRIANA,  
JUDGE PRESIDING

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