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Attorney for Trustee

U.S. COURTS  
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GARY S. BURKE  
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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF IDAHO

In re: )  
 )  
DAVID SILVA and ) Case No. 93-02385-JDP  
SHARON SELMASKA, )  
 ) MOTION FOR APPROVAL OF  
 ) COMPROMISE AND SALE OF  
Debtors. ) ESTATE ASSETS  
\_\_\_\_\_ )

COMES NOW, JOHN KROMMENHOEK, the duly appointed, qualified, and acting Trustee of the above-named Debtors, by and through his attorney of record, and pursuant to Rules 6004(c), 9014, and 9019(a) of the *Bankruptcy Rules*, and Rule 2002.1 of the *Local Bankruptcy Rules*, hereby moves this Court for its approval of the compromise of the controversies existing between the bankruptcy estate of the above-named Debtors and Barbara Wussler, William A. "Doc" Wussler, and The Court Room, Inc. (the Defendants and Cross-Complainants in Adversary Proceeding No. 94-6203) and its approval of the sale at open auction of the below-described property of the estate.

**MOTION FOR APPROVAL OF COMPROMISE  
AND SALE OF ESTATE ASSETS - 1.**

83.

### MOTION FOR APPROVAL OF COMPROMISE

The Trustee represents that he has investigated the facts and has conferred with said Defendants/Cross-Complainants and with their counsel in an effort to resolve these matters. The Trustee further represents that it appears to be in the best interest of the estate, in order to avoid additional lengthy and expensive litigation, to compromise and settle this claim upon the terms and conditions set forth in that Compromise Settlement Agreement and Mutual Release, a copy of which is attached hereto as Exhibit "A," for the following reasons:

1. The assets of the estate (including the New Jersey Bank judgment as described in Exhibit "A") should be sufficient to pay off all claims except for the claim of Barbara Wussler;

2. It appears that the Defendants/Cross-Complainants may have certain potential defenses and/or offsets to the Trustee's causes of action; and

3. The parties agree that the Debtor, David Silva, will retain his right to continue to prosecute his interests in such claims against those Defendants/Cross-Complainants.

### MOTION FOR APPROVAL OF SALE

The Trustee also hereby moves this Court for its approval of the Trustee's proposed sale of the below-described assets of the bankruptcy estate. In support of this Motion, the Trustee respectfully represents as follows:

1. The Debtors, at the time of the filing of the bankruptcy petition, owned certain property (hereinafter referred to as the "Property") currently consisting of all of the estate's causes of action embodied as the various claims and cross-claims in connection with San Diego County Superior Court Case No. 694631 (*Zimmerman v. Wussler*), Idaho Bankruptcy Court Adversary Proceeding No. 94-06203 (*Wussler v. Silva*), and United States District Court, District of Idaho, Case No. CV 97-0511-S-EJL (*Wussler v. Krommenhoek*).

2. The Trustee is of the opinion that said causes of action should be sold at a public auction. Such a sale would maximize the proceeds of sale for the bankruptcy estate and, at the same time, would minimize the expense of lengthy litigation which now would serve to potentially benefit only a single remaining creditor (after the distribution of the New Jersey bank judgment), against whom such causes of action have been filed.

3. The Trustee will personally conduct the auction of said property.

4. In the opinion of the Trustee, the best interests of the creditors of the bankruptcy estate will be served by the public auction of said causes of action pursuant to the terms of Exhibit "A," attached hereto.

5. The parties to this compromise have expressly agreed that the Debtor will retain his right to prosecute his interests in such causes of action in the San Diego County Superior Court case

to the extent that such interests are not the property of this bankruptcy estate.

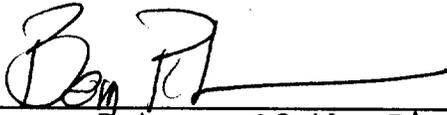
6. The Trustee proposes to sell said property at an auction conducted at the law offices of Barry Peters located at number 101 Eagle Glen Lane, Suite A, in the city of Eagle, Idaho on the 5th day of May, 1998, at 10:00 A.M. Any interested purchaser may participate by telephone by making arrangements with the attorney for the Trustee at least 24 hours prior to the sale.

WHEREFORE, the Trustee prays for the Court to issue to all creditors and other parties in interest, pursuant to Rule 2002(a)(2) and (3) of the *Bankruptcy Rules*, notice that the Trustee wishes to compromise these matters and sell said causes of action and that, following the hearing on this Motion, that the Court issue an Order, pursuant Section 363 of the *Bankruptcy Code* and Rules 2002, 6004, and 9014 of the *Bankruptcy Rules*, approving the Trustee's proposed compromise and the sale of the above-described property in the time, place, and manner proposed by the Trustee in this Motion and in the Notice of Trustee's Motion for Approval of Compromise and Sale and Notice of Hearing filed contemporaneously herewith.

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DATED this 6<sup>th</sup> day of April, 1998.

BARRY PETERS, ATTORNEY AT LAW, P.A.

By   
\_\_\_\_\_  
Barry Peters, Of the Firm  
Attorney for Trustee

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**MOTION FOR APPROVAL OF TRUSTEE'S PROPOSED  
SALE OF ESTATE PROPERTY - 5.**

COMPROMISE SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Compromise Settlement Agreement And Mutual Release ("Agreement") is made and entered into by and among Barbara J. Wussler ("Mrs. Wussler"), William A. Wussler, also known as "Doc" Wussler ("Mr. Wussler") and The Court Room, Inc., a California corporation ("TCR, Inc."), on the one part, and John Krommenhoek, successor bankruptcy trustee of the Chapter 7 bankruptcy estate of Dave Silva d/b/a Nos Otnos, Inc., etc. ("Mr. Krommenhoek" or the "trustee"), on the other part (hereinafter the foregoing may sometimes be collectively referred to as the "parties"), and is executed in connection with the following recitation of facts:

RECITALS

A. In July 1981, Mrs. Wussler filed a complaint in the California Superior Court against David J. Silva (hereinafter "Mr. Silva" or the "debtor") and TCR, Inc. entitled Barbara J. Silva v. David J. Silva et al., Case No. 473407, alleging and/or seeking to impress a constructive trust, breach of contract, fraud, conversion, common counts, declaratory relief and appointment of receiver (the "Underlying Action");

B. On June 5, 1984 the California Superior Court entered a Judgment by Default (the "Judgment") in the Underlying Action awarding the following, among other things, in favor of Mrs. Wussler against the debtor:

(1) The principal sum of \$204,990.62 (hereinafter the "Monetary Award"); and

(2) Transfer of the following property from the debtor to Mrs. Wussler: (i) all 100% of stock in TCR, Inc.; and (ii) all right, title and interest in real property located in Solana Beach, California (hereinafter the "Property Award");

C. On August 8, 1993, Dave Silva and Sharon Selmasska jointly filed a Chapter 13 bankruptcy petition in the United States Bankruptcy Court, District of Idaho, Case No. 93-02385, which was later converted to a Chapter 7 proceeding;

D. C. Barry Zimmerman ("Mr. Zimmerman"), was the original duly appointed and qualified trustee of the Chapter 7 bankruptcy estate of Mr. Silva, and he was succeeded by Mr. Krommenhoek as the successor trustee of the Silva bankruptcy estate;

E. On March 18, 1994, Mrs. Wussler filed an Adversary Proceeding against the debtor entitled Barbara J. Wussler v. Dave Silva, Adversary Proceeding No. 94-06203, requesting the Idaho Bankruptcy Court to determine the Judgment to be a

nondischargeable obligation pursuant to §§ 523(a)(2)(A) and 523(a)(4) (the "Adversary Proceeding");

F. The debtor and the predecessor trustee, Mr. Zimmerman, filed a counterclaim and third party complaint in the Adversary Proceeding against Mrs. Wussler, Mr. Wussler and TCR, Inc. (sometimes hereinafter collectively referred to as the "Wusslers"), alleging that the Judgment entered in the Underlying Action was void under California law and that Mr. and Mrs. Wussler defrauded the debtor out of several assets, including the ownership of TCR, Inc. and the Solana Beach Property;

G. On February 1, 1995, the Idaho Bankruptcy Court filed its Memorandum Decision relating to motions filed by the Wusslers in this Adversary Proceeding whereby the court abstained from adjudging the issues relating to the validity and meaning of the Judgment to allow the parties an opportunity to obtain a ruling from the California state court as to the validity of the Judgment (the "Memorandum Decision"). The bankruptcy court also directed that the parties, in the interests of judicial economy, should have the California court clarify certain findings in the Judgment entered in the Underlying Action;

H. On or about February 1, 1995, the bankruptcy court entered an Order in accordance with its Memorandum Decision (the "Abstention Order") permitting the parties to take action in the California State Court seeking to set aside, amend, or to obtain other relief as to Mrs. Wussler's Judgment against the debtor;

I. In November 1995, the debtor and the predecessor trustee filed a lawsuit against the Wusslers in the San Diego Superior Court entitled C. Barry Zimmerman, et al., v. Barbara J. Wussler, et al., Case No. 694631, seeking, among other things: (1) to set aside the Judgment based on extrinsic fraud; and (2) to obtain a constructive trust against the Courtroom restaurant and the Solana Beach Property (hereinafter the "California Lawsuit");

J. On October 7, 1996, the Wusslers filed a cross-complaint in the California Lawsuit against the debtor, the trustees, Mr. Krommenhoek and Mr. Zimmerman, and the debtor's former attorney, Donald J. Rinaldo, alleging causes of action for: (1) declaratory relief; (2) equitable indemnity; (3) breach of fiduciary duty/negligence; (4) quantum meruit; (5) unjust enrichment/constructive trust; and (6) statutory violation;

K. On or about April 30, 1997, the trustee filed a motion with the bankruptcy court seeking, among other things, sanctions against the Wusslers for violating the automatic stay and the order of February 1, 1995, by filing the cross-complaint against the debtor and the trustees in the California Lawsuit;

L. On or about May 14, 1997, the Wusslers filed their motion with the bankruptcy court seeking, among other things, relief from the automatic stay, clarification of the Order of February 1, 1995, and leave to litigate the claims asserted against the trustee in the cross-complaint filed in the California Lawsuit;

M. On July 29, 1997, the Idaho Bankruptcy Court entered its Order determining some of the issues presented by the motions filed by the trustee and the Wusslers. The bankruptcy court determined that the claims asserted against the debtor, Mr. Silva, did not violate the court's Abstention Order or the automatic stay. The bankruptcy court determined that the claims against the trustee violated the Abstention Order and constituted a willful violation of the automatic stay under § 362(a) and violation of the Barton doctrine which subjected the Wusslers to a claim for sanctions (the "Sanction Order");

N. The Wusslers have timely appealed the Sanction Order, which is currently pending before the United States District Court, District of Idaho, Case No. CV 97-0511-S-EJL (the "Appeal Proceeding");

O. Mrs. Wussler filed a non-priority unsecured claim against the Silva bankruptcy estate in the amount of the principal sum of the Monetary Award under the Judgment, \$204,990.62, plus all interest accruing thereon pre-petition (the "Wussler Claim"). The trustee has represented to the Wusslers that the Silva bankruptcy estate administrative expenses are currently in the amount of approximately \$40,000, unsecured priority claims in the amount of approximately \$5,000, and non-priority unsecured claims (not including the claim of Mrs. Wussler) in the approximate amount of \$15,000;

P. The trustee has represented to Wusslers that in addition to the claims in the California lawsuit and the Sanction Order the only known asset of the Silva bankruptcy estate at the time of this Agreement is a default judgment entered against First Fidelity Bank, N.A., New Jersey, in the amount of approximately \$70,000, including principal, interest and costs (the "New Jersey Bank Judgment"). Said judgment is currently being appealed;

Q. Because the New Jersey Bank Judgment will potentially satisfy all claims and expenses of the bankruptcy estate with the exception of Mrs. Wussler's Claim, the trustee believes that his duties to the bankruptcy estate and all parties in interest, including the debtor, have been satisfied; and

R. The parties desire to settle any and all disputes between them, subject to the terms and conditions hereinafter provided.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants, agreements, and representations set forth herein, the parties hereby agree as follows:

1. Recitals Are Incorporated By Reference. It is expressly agreed that the above recitals are incorporated herein by reference and thereby made a part of this Agreement.

2. Claim Against Bankruptcy Estate. Upon entry of the order of the Bankruptcy Court, as set forth in Paragraph 9 below, Mrs. Wussler shall be allowed an unsecured non-priority claim in the Silva bankruptcy estate in the principal amount of the Judgment, plus interest accruing thereon pre-petition.

3. Disbursement To Creditors. Upon entry of the order of the Bankruptcy Court, as set forth in Paragraph 9 below, all disbursement of assets and proceeds of the Silva bankruptcy estate, including any proceeds arising from the New Jersey Bank Judgment, shall be disbursed by the trustee in the Silva bankruptcy estate according to the following order:

(a) First, payment of Chapter 7 administrative expenses allowed and approved by the bankruptcy court in the Silva bankruptcy proceeding until all such claims are paid in full;

(b) Second, payment of unsecured priority claims which have been timely filed and allowed by the bankruptcy court until all such claims are paid in full;

(c) Third, payment of allowed and timely filed unsecured non-priority claims which shall be disbursed as follows:

(i) First, 50% to Mrs. Wussler and 50% to all other allowed unsecured non-priority claims on a pro-rata basis, until all unsecured non-priority claims, other than the claim held by Mrs. Wussler, are paid in full;

(ii) Then, any and all remaining proceeds shall be paid to Mrs. Wussler until Mrs. Wussler's Claim is paid in full.

4. Stay Or Continuance Of Proceedings Pending Approval Of Agreement. Upon execution of this Agreement, the parties shall request that the California Lawsuit and the Appeal Proceeding be stayed or otherwise continued for a minimum period of thirty (30)

days following entry of the order by the Idaho Bankruptcy Court approving this Agreement, as set forth in Paragraph 9 below.

5. Dismissal Of Proceedings. Upon entry of the order of the Bankruptcy Court, as set forth in Paragraph 9 below, the trustee shall dismiss, with prejudice, his third party claims asserted in the Adversary Proceeding and withdraw from, and dismiss without prejudice, the trustee's claim in the California Lawsuit. The parties agree that such dismissals shall not affect the right of the debtor to prosecute his claims against the Wusslers in the California Lawsuit. Upon entry of the order of the Bankruptcy Court, as set forth in Paragraph 9 below, the Wusslers and TCR Inc. shall dismiss the Appeal Proceeding, with prejudice and shall dismiss with prejudice their claims against the trustee in the California Lawsuit.

6. Waiver Of Objections. Upon entry of the order of the Bankruptcy Court, as set forth in Paragraph 9 below, the Wusslers and TCR Inc. waive their right to assert objections to any application for allowance of administrative expenses which are filed in the Silva bankruptcy estate by the trustee and his counsel, Barry Peters, Esq. The trustee waives any objections to the claims asserted by Mrs. Wussler against the Silva bankruptcy estate.

7. Sale Of Estate's Claim. Upon entry of the order of the Bankruptcy Court, as set forth in Paragraph 9 below, the trustee shall sell, transfer and/or convey to the highest bidder in open auction in accordance with terms and conditions of § 363 of the Bankruptcy Code, any and all right, title and interest held by the trustee and/or the Silva bankruptcy estate in any of the allegations, claims and causes of action asserted in the California Lawsuit and the Underlying Action, including any and all interests in or to the residence described above as the Solana Beach Property and the stock and/or assets of TCR Inc. The trustee shall be responsible for providing all required notices of the sale described in this paragraph. The trustee expressly clarifies that the maximum value of the trustee's claims shall be equal to the sum of all allowed creditor claims (including Mrs. Wussler's Claim) and administrative expense claims, less any other asset of the estate.

8. Mutual Releases. Effective upon entry of the order of the Bankruptcy Court set forth in Paragraph 9 below, and except as to any claims arising from this Agreement, the parties to this Agreement, Mr. Wussler, Mrs. Wussler, TCR Inc. and Mr. Krommenhoek, for themselves and their attorneys described as H. Paul Kondrick and H. Paul Kondrick, A Professional Corporation, Richard C. Norton, Jon S. Gorski and the law firm of Moffatt, Thomas, Barrett, Rock & Fields, Chartered, Barry Peters, Barry

Peters, Attorney At Law, P.A., Jill Olofson and the law firm of Keesel, Young & Logan, A Professional Corporation, Kent McQuarter, Charles Richmond, Art Sloane and Martin Barbato, release, discharge and forever acquit one another from any and all claims, demands, causes of action, allegations, rights, attorneys' fees, costs and/or liabilities of any nature arising, known or unknown, and without limitation including those from or relating to the matters, facts and issues described in the Adversary Proceeding, California Lawsuit, Sanction Order and Appeal Proceeding, or otherwise. It is expressly understood, acknowledged and agreed that this release shall not apply to attorneys Donald Rinaldo and Robert Vreeland.

9. Bankruptcy Court Approval. This Agreement is subject to the entry of an order of the United States Bankruptcy Court, District of Idaho, approving this Agreement, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and, if necessary, approving or confirming debtor's right to continue to prosecute his claims against the Wusslers pending in the California Lawsuit. On execution of this Agreement by all parties, the trustee shall be responsible for applying to the Bankruptcy Court for an order approving this Agreement, and authorizing the parties to undertake the acts contemplated by the Agreement. In the event that the Bankruptcy Court fails to approve this Agreement, it shall not be binding on the parties and the parties do not release or waive any claims, rights or causes of action they may otherwise possess.

10. Representation And Warranties. Each of the parties to this Agreement represents, warrants and agrees as follows:

(a) Each party has received independent advice from his attorney and/or financial advisor with respect to the advisability of making the settlement provided for herein;

(b) Each party or agent therefor has read this Agreement and understands the contents thereof;

(c) Each of the individuals executing this Agreement on behalf of their respective parties possesses the power and authority to do so and thereby binds his or her respective parties;

(d) This Agreement is binding upon and shall inure to the benefit of each of the parties hereto, and their respective parents, subsidiaries, affiliates, joint venturers, predecessors, successors, divisions, shareholders, directors, officers, employees, attorneys, agents, representatives, heirs and assigns;

(e) Each of the parties hereto has cooperated and participated in the drafting and preparation of this Agreement. Accordingly, the parties acknowledge and agree that this Agreement shall not be construed or interpreted in favor of or against any party by virtue of the identity of its preparer;

(f) This Agreement is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral or written agreements and discussions. This Agreement may be amended only by an agreement in writing, signed by all the parties;

(g) In the event of any litigation arising under or concerning this Agreement, the prevailing party shall be entitled to recover attorneys' fees and costs from the non-prevailing party in such litigation;

(h) This Agreement and the release and other terms provided for herein, are made, executed, given, and accepted as part of a compromise and settlement of disputed claims. No provision of this Agreement, or any acceptance of the benefits thereof, by or on behalf of any of the parties hereto, shall be construed or deemed to be evidence of any admission of facts, matter, thing or liability of any kind to any other party. Each of the parties hereto denies any liability of any kind to any other party for any purpose and this settlement is made solely and entirely as a compromise. Neither this Agreement nor any of the terms hereof shall be offered or received as evidence in any proceeding as an admission of liability or wrong doing by any of the parties hereto;

(i) The trustee shall be responsible for obtaining approval from the Bankruptcy Court in this bankruptcy proceeding of this Agreement, pursuant to Bankruptcy Rule 9019 and any other applicable statute or rule. Such court approval is a condition of this Agreement;

(j) This Agreement may be executed in two or more counter-parts, each of which put together shall constitute one original document;

(k) The failure of a party to this Agreement to exercise any right or remedy under the Agreement, or by law, shall not be a waiver of any obligation or right of the parties hereto, nor constitute a modification of the Agreement, nor constitute a waiver of any other similar default;

(l) Each of the parties warrants and represents that she/he/it shall execute and deliver any and all instruments, agreements, documents, and other writings, including but not limited to dismissals, with or without prejudice, as referenced herein, and to perform all other acts reasonably necessary to effect the terms, conditions and purposes of this Agreement;

(m) The parties hereto acknowledge that they are aware that they may hereafter discover facts different from, or in addition to, those that they now know, or believe, to be true with respect to the claims, causes of actions, rights, obligations, debts, liabilities, accounts, liens, damages, losses and expenses herein released ("Claims"), and each party, on its own part, agrees that the within release and agreement shall remain in effect in all respects as a complete and general release as to all matters released herein notwithstanding any such different or additional facts. In making and entering into this Agreement, the parties hereto assume the risk of any mistake of fact or of law if any party should subsequently discover that any fact relied upon by such party in entering into this Agreement is not true, or that such parties' understanding of the facts or law was incorrect, except as expressly stated herein. This Agreement is intended to be final and binding upon all parties regardless of any mistake of law or of fact or any other circumstance whatsoever except as stated herein to be incorporated;

(n) The parties hereto agree that each will not make, assert, or maintain against any other party released in this Agreement any claim, demand, action, suit or proceeding arising out of, or in connection with, matters respectively released herein. This Agreement may be pleaded as a full and complete defense to, and may be used as a basis for an injunction against any action, suit or other proceeding which may be prosecuted, instituted, or attempted by or on behalf of any party hereto in breach of this Agreement; and

(o) The parties hereby declare and represent that the full compensation for the damages allegedly sustained in connection with the aforementioned losses and claims is uncertain and indefinite, and that in making this Agreement, it is understood and agreed that the parties rely wholly on their own judgment, belief, and knowledge as to the nature, extent, and duration of said damages. The parties have not been influenced to any extent whatsoever in making this release by any representation or statement regarding said damages, or regarding any other matter, made by the person, persons, or entities hereby released, or by any other person or persons representing them, including attorneys.

THIS COMPROMISE SETTLEMENT AGREEMENT AND MUTUAL RELEASE is entered into on the last date below written and effective as of March 13, 1998.

Dated: 3/13/98

Barbara J. Wussler  
Barbara J. Wussler

Dated: 3/13/98

William A. Wussler  
William A. Wussler also known as  
"Doc" Wussler

THE COURT ROOM, INC., A California Corporation:

Dated: 3/13/98

By: Barbara J. Wussler  
Barbara J. Wussler, President

Dated: 3/17/98

John Krommenhoek  
John Krommenhoek, Successor  
Bankruptcy Trustee of the Chapter 7  
Bankruptcy Estate of Dave Silva  
d/b/a Nos Otnos, Inc., etc.

APPROVED AS TO FORM:

LAW OFFICES OF RICHARD C. NORTON:

Dated: 3/13/98

By: 

Richard C. Norton

Attorney for Barbara J. Wussler,  
William A. Wussler also known as  
"Doc" Wussler and The Court Room,  
Inc.

BARRY PETERS, ATTORNEY AT LAW,  
P.A.:

Dated: MARCH 16, 1998

By: 

Barry Peters

Attorney for John Krommenhoek,  
Successor Bankruptcy Trustee of the  
Chapter 7 Bankruptcy Estate of Dave  
Silva d/b/a Nos Otnos, Inc., etc.