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9
10 UNITED STATES BANKRUPTCY COURT

11 CENTRAL DISTRICT OF CALIFORNIA – SAN FERNANDO VALLEY DIVISION

12 In re

13 NATIONWIDE AUTOMATED SYSTEMS,
14 INC.,

15 Debtor,

Case No. 1:14-bk-14313-VK

Chapter 7

**STIPULATION RE DISMISSAL OF
INVOLUNTARY CHAPTER 7 PETITION
FILED AGAINST NATIONWIDE
AUTOMATED SYSTEMS, INC.**

[NO HEARING REQUIRED]

1 This Stipulation ("Stipulation") re Dismissal of Involuntary Chapter 7 Petition ("Petition")
2 of Nationwide Automated Systems, Inc. is entered into by and between the petitioning creditors
3 Sheida Ashley, Darlene Petruna, and Shelley Christensen ("Petitioning Creditors"), on the one
4 hand, and William Hoffman, the duly appointed federal equity receiver ("Receiver") of
5 Nationwide Automated Systems, Inc. ("Debtor" or "NASI"), on the other hand, (collectively the
6 "Parties") with reference to the following:

7 **RECITALS**

8 A. On September 17, 2014, the Securities Exchange Commission ("SEC") filed a
9 complaint, under seal, for violations of federal securities laws against the Debtor, among others, in
10 the action entitled *SEC v. Nationwide Automated Systems, Inc.*, U.S. District Court, Central
11 District of California, Western Division (Los Angeles), Case No. CV 14-07249 SJO (FFMx)
12 (Judge J. Otero) ("SEC Action"). The Receiver was appointed pursuant to court order entered in
13 the SEC Action on September 30, 2014 ("Receiver/TRO Order").

14 B. The SEC brought the SEC Action against defendants NASI and its principals Joel
15 Gillis and Edward Wishner (the "Receivership Defendants"), among other things, to assert
16 numerous claims for violations of securities laws, to enjoin fraudulent business and investment
17 activities of the Receivership Defendants, and to recover fraudulent transfers from the
18 Receivership Defendants and others. In the SEC Action, the SEC also named as defendants Oasis
19 Studio Rentals, LLC, Oasis Studio Rentals #2, LLC, and Oasis Studio Rentals #3, LLC, entities
20 affiliated with and/or controlled by the Receivership Defendants that received substantial sums
21 from NASI.

22 C. In the SEC Action, the SEC described a "Ponzi" scheme involving the victims of
23 the Receivership Defendants' fraudulent activities who were investors who had contributed
24 significant sums of money to purchase an interest in Automated Teller Machines ("ATMs"). After
25 purchasing the interest in the ATMs, the investors would then lease-back the ATMs to NASI, and
26 as consideration for the lease-back, the investors were guaranteed a rate of return for a fixed term
27 period. The SEC alleged that instead of being repaid from legitimate lease-back payments from
28 NASI, the investors were actually repaid by new investor funds. Further, and to the unfortunate

1 plight of the investors, the SEC alleged that many of the ATMs advertised as being NASI-owned
2 were not in fact owned by NASI.

3 D. Section XIII(A) and (B) of the Receiver/TRO Order conferred upon the Receiver
4 the full powers of an equity receiver over NASI and its subsidiaries and affiliates (collectively,
5 "NASI Receivership Entities"), with full power over all funds, assets, collateral, premises, books,
6 records, and property (collectively, "Receivership Property") of the NASI Receivership Entities.
7 The Receiver was also authorized, empowered and directed to take custody, control, and
8 possession of all Receivership Property and be added as the sole signatory for all accounts of the
9 NASI Receivership Entities. A copy of the Receiver/TRO Order is attached hereto as Exhibit "A."

10 E. Further, Section XVI(A) of the Receiver/TRO Order ("Injunction Provision")
11 specifically provides that "except by leave of Court, during the pendency of this receivership, all
12 clients, investors, trust beneficiaries, note holders, creditors, claimants, lessors and all other
13 persons or entities seeking relief of any kind, in law or in equity, from Defendant Nationwide
14 Automatic Systems, Inc., or its subsidiaries or affiliates . . . are hereby restrained and enjoined
15 from, directly or indirectly, with respect to these persons and entities: [from] commencing,
16 prosecuting, continuing or enforcing any suit or proceeding (other than the present action by the
17 SEC or any other action by the government) against any of them; . . ."

18 F. On September 19, 2014, two (2) days after the SEC Action was filed in the Federal
19 District Court and eleven (11) days prior to the entry of the Receiver /TRO Order, the Petitioning
20 Creditors filed the Petition. At the time the Petition was filed, the Petitioning Creditors were not
21 and could not be aware of the SEC Action, which was filed under seal, and the subsequently
22 entered Receiver/TRO Order. Since that time, the SEC Action has been unsealed and is now
23 viewable on the electronic docket.

24 G. After the Petition was filed, counsel for the Petitioning Creditors and counsel for
25 the Debtor, neither of whom knew of the sealed SEC Action or the subsequently entered
26 Receiver/TRO Order, entered into a stipulation for entry of order for relief ("Order for Relief
27 Stipulation"), which was filed on September 30, 2014 [Docket No. 10]. After the filing of the
28 Order for Relief Stipulation and the entry of the Receiver/TRO Order, the Receiver's counsel

1 contacted the Petitioning Creditors' counsel and advised that the Receiver intended to object to
2 approval of the Order for Relief Stipulation in the Involuntary Case.

3 H. The Receiver submits that notwithstanding the filing of the Petition, the actions
4 taken by the Federal District Court, the SEC, and the Receiver are valid and enforceable under
5 Section 362(b)(4) of the Bankruptcy Code (*i.e.*, the "governmental unit" exception to Section
6 362(a) does not stay the governmental unit's police or regulatory power). Case law recognizes that
7 the automatic stay exception under Section 362(b)(4) applies to allow a Federal District Court to
8 appoint a receiver, see *SEC v. Wolfson*, 309 B.R. 612, 620 (D. Utah 2004); and the Federal District
9 Court still retains jurisdiction over the receivership to enter orders to aid the receiver in collecting
10 and preserving property of the receivership estate, see *Commodity Futures Trading Com. v. Co.*
11 *Petro Marketing Group, Inc.*, 700 F.2d 1279, 1283 (9th Cir. 1983).

12 I. The Receiver submits that it is in the best interest of investors and creditors to have
13 only one exclusive proceeding in which NASI's operations would be managed and investigated,
14 and its assets administered, and that should be in the federal receivership proceeding in the SEC
15 Action.

16 J. The Receiver further submits that having two (2) concurrent proceedings affecting
17 NASI is unnecessary, would be a waste of receivership estate resources, and would have a
18 significant and negative impact upon investors. Among other things, there could be a confusing
19 and overlapping process where after an order for relief is entered in the Involuntary Case, a
20 bankruptcy trustee would be appointed for NASI, while the Receiver is already managing and
21 administering NASI and the other NASI Receivership Entities. This overlap would also result in
22 unnecessary and duplicative administrative expenses in these proceedings. For this reason, the
23 Injunction Provision enjoins all creditors from commencing or continuing suits or proceedings
24 against the NASI Receivership Entities.

25 K. Finally, the Receiver submits that any trustee appointed in the Involuntary Case
26 would also have to play catch-up to the Receiver, who has already expended substantial time and
27 effort in carrying out his duties under the Receiver/TRO Order, including (i) conferring with
28 investors regarding the status of operations of the NASI Receivership Entities, (ii) marshalling all

1 assets of the NASI Receivership Entities, (iii) taking possession of NASI Receivership Entities'
2 books and records and computers/electronic data, (iv) taking control of all NASI Receivership
3 Entities' bank accounts, (v) contacting parties involved in the ATM investment transactions, and
4 (vi) investigating the finances of the NASI Receivership Entities.

5 L. In his discussions with counsel for the Receiver, counsel for the Petitioning
6 Creditors expressed his concern about dismissing the Petition because, *inter alia*, a chapter 7
7 trustee has certain avoiding powers that a receiver does not have, such as avoiding preferences
8 under Section 547 of the Bankruptcy Code. The U.S. Trustee has expressed concerns about the
9 cost of maintaining a bankruptcy proceeding in addition to the Receivership proceeding. Based
10 primarily upon the concerns and desires of the U.S. Trustee, as well as the issues raised by counsel
11 for the Receiver, the Petitioning Creditors determined that it was in the best interests of all
12 concerned that the Petition be dismissed.

13 M. The U.S. Trustee has reviewed this Stipulation and, as acknowledged by signature
14 below, has no objections to the Stipulation. The U.S. Trustee's non-objection to this Stipulation
15 does not constitute the agreement of the U.S. Trustee with the legal and factual assertions of the
16 Receiver in this Stipulation. The Receiver represents that the SEC has also reviewed this
17 Stipulation and does not object to dismissal of the Petition.

18 N. Given that the Petitioning Creditors were not aware of the SEC Action at the time
19 the Petition was filed, and given that the Petition was filed in good faith, the Petitioning Creditors
20 requested that (a) the Receiver waive any claim NASI may have against the Petitioning Creditors
21 under Section 303(i) of the Bankruptcy Code, and (b) any priority claim for costs and attorney's
22 fees they would have in this Involuntary Case be recommended for approval by the Receiver as a
23 priority unsecured claim in the SEC Action. Subject to prove-up and determination of the
24 reasonableness of the costs and attorney's fees requested, the Receiver agrees to these requests
25 provided the Involuntary Case is promptly dismissed. The unsecured claim for costs and attorney
26 fees shall be recommended for priority over other investor and creditor general unsecured claims
27 but shall be subordinate to the approved priority administrative expense claims in the SEC Action.

28

1 NOW, THEREFORE, based upon the foregoing, it is hereby STIPULATED and AGREED
2 as follows:

3 **AGREEMENT**

4 1. Each of the Recitals contained in Paragraphs A through N above are incorporated
5 by reference as if set forth in full herein.

6 2. The Petition shall be dismissed, effective immediately upon entry of the order
7 approving this Stipulation.

8 3. Any claim NASI may have against the Petitioning Creditors under Section 303(i)
9 of the Bankruptcy Code is hereby waived.

10 4. The Receiver shall recommend the Petitioning Creditors' costs and attorneys' fees
11 incurred in connection with the Petition be allowed as a priority unsecured claim in the
12 receivership case, subject to prove-up of the fees and the Receiver's determination of
13 reasonableness of the fees requested.

14 5. The Parties represent and warrant that execution of this Stipulation by their
15 respective undersigned counsel is authorized and approved and shall be binding on the parties
16 themselves.

17 6. The Parties agree this Stipulation represents the complete agreement of the parties
18 hereto on the matters referred to herein. This Stipulation shall not be amended, modified, or
19 supplemented without prior written consent of the parties hereto and the approval of the Court.

20 7. Upon the Court's approval, this Stipulation immediately shall be binding upon and
21 shall inure to the benefit of the Parties and all of their respective representatives, agents, affiliates,
22 successors and assigns.

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24 Dated: October 16, 2014

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

25
26
27 By: 

YADE K. KIM

Attorneys for William Hoffman, as Receiver
for Nationwide Automated Systems, Inc.

28
STIPULATION RE DISMISSAL OF
INVOLUNTARY PETITION

1 Dated: October 15, 2014

LAW OFFICES OF ALAN F. BROIDY, APC

2
3 By: Alan F. Brody
4 ALAN F. BROIDY
5 Attorneys for Petitioning Creditors,
6 Sheida Ashley, Darlene Petruna, and Shelley
Christensen

7 ACKNOWLEDGMENT OF NO OBJECTIONS TO
8 STIPULATION:

9
10 Dated: October __, 2014

PETER C. ANDERSON
UNITED STATES TRUSTEE

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13 By: _____
14 RUSSELL CLEMENTSON
15 Attorney for the United States Trustee
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28

1 Dated: October __, 2014

LAW OFFICES OF ALAN F. BROIDY, APC

2

3

By: _____

4

ALAN F. BROIDY
Attorneys for Petitioning Creditors,
Sheida Ashley, Darlene Petruna, and Shelley
Christensen

5

6

7 ACKNOWLEDGMENT OF NO OBJECTIONS TO
8 STIPULATION:

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9

10 Dated: October 16, 2014

PETER C. ANDERSON
UNITED STATES TRUSTEE

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By: /s/ Russell Clementson

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RUSSELL CLEMENTSON
Attorney for the United States Trustee

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
515 South Figueroa Street, 9th Floor, Los Angeles, CA 90071.

A true and correct copy of the foregoing document entitled (*specify*): **STIPULATION RE DISMISSAL OF
INVOLUNTARY CHAPTER 7 PETITION FILED AGAINST NATIONWIDE AUTOMATED SYSTEMS, INC.**

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) October 16, 2014, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) October 16, 2014, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Debtor Pro Se:

Nationwide Automated Systems Inc.
5000 North Parkway Calabasas
Ste. 303
Calabasas, CA 91302

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) October 16, 2014, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed. Via Overnight Mail:

Hon. Victoria S. Kaufman
U.S.B.C. - Central District
San Fernando Valley Division
21041 Burbank Boulevard, Suite 354
Woodland Hills, CA 91367-6606

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

October 16, 2014

Lorrie Anderson

/s/ Lorrie Anderson

Date

Printed Name

Signature

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Contd.

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2. SERVED BY UNITED STATES MAIL: Contd.

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United States Trustee (SV)

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