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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

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IN RE:)	CHAPTER 7
)	
VISCOM INTERNATIONAL, INC.,)	CASE NO. 11-65122-wlh
)	
Debtor.)	
)	

**NOTICE OF REQUIREMENT OF RESPONSE TO TRUSTEE’S MOTION FOR ORDER
APPROVING COMPROMISE AND SETTLEMENT BETWEEN THE CHAPTER 7
TRUSTEE AND RONALD HUTCHISON UNDER FEDERAL RULE OF BANKRUPTCY
PROCEDURE 9019**

PLEASE TAKE NOTICE that Jeffrey K. Kerr, the Chapter 7 trustee (the “Trustee”) in the above styled case, has filed a Motion and related papers with the Court seeking an order authorizing the settlement of a dispute with Ronald Hutchison. The complete terms of the proposed settlement are set forth in the Settlement Agreement between the Trustee and Ronald Hutchison, attached as Exhibit “A” to the Trustee’s motion. For the reasons set forth in the Trustee’s motion, the Trustee has concluded that settlement on these terms is in the best interests of the bankruptcy estate and creditors.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you oppose the proposed action or do not want the court to grant the relief requested, or if you want the court to consider your views, then on or before **September 23, 2013**, you or your attorney must:

- (1) File with the court a written response, explaining your positions and views as to why the requested relief should not be granted. The written Response must be filed at the following address:

Office of the Clerk
United States Bankruptcy Court
1340 United States Courthouse
75 Spring Street, SW
Atlanta, GA 30303-3367

If you mail your response to the Clerk for filing, you must mail it early enough so that the Clerk will **actually receive** it before the date stated above.

- (2) Mail or deliver a copy of your written response to the Trustee's attorney at the address stated below. You must attach a Certificate of Service to your written response stating when, how, and on whom (including addresses) you served the response.

If you or your attorney do not file a timely response, the court may decide that you do not oppose the proposed action or the relief sought, in which event the hearing scheduled below may be canceled and the court may enter an order authorizing the proposed action or granting the relief as requested without further notice and without a hearing.

If you or your attorney files a timely response, then a hearing will be held in Courtroom **1403**, United States Courthouse, 75 Spring Street, SW, Atlanta, GA at **10:30 a.m.** on **September 26, 2013.** You or your attorney must attend the hearing and advocate your position.

Bankruptcy Local Rule 9014-2 governs the requirement of a response.

Dated: August 22, 2013.

LAMBERTH, CIFELLI, STOKES,
ELLIS & NASON, P.A.
Attorneys for the Trustee

/s/ Stuart F. Clayton, Jr.

Stuart F. Clayton, Jr.

Georgia Bar No. 129743

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 7
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VISCOM INTERNATIONAL, INC.,)	CASE NO. 11-65122-wlh
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TRUSTEE’S MOTION FOR ORDER APPROVING COMPROMISE AND SETTLEMENT BETWEEN THE CHAPTER 7 TRUSTEE AND RONALD HUTCHISON UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019

COMES NOW Jeffrey K. Kerr, the Chapter 7 trustee for Viscom International, Inc., and files this Motion for Order Approving Compromise and Settlement with Ronald Hutchison under Federal Rule of Bankruptcy Procedure 9019, showing as follows:

I. BACKGROUND

1. This case was initiated by the filing of a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code on May 23, 2011 (the “Petition Date”).
2. Jeffrey K. Kerr was appointed as Chapter 7 trustee for Debtor (the “Trustee”) and continues serving in that capacity.
3. Within two years prior to the Petition Date, Debtor transferred \$85,366.11 to Ronald Hutchison (the “Transfer”), then an officer of Debtor.
4. The Trustee contends that the transfer to Hutchison is avoidable as a fraudulent transfer under 11 U.S.C. § 548 and avoidable for the benefit of the estate under 11 U.S.C. § 550.
5. On or about November 1, 2011, Trustee made demand on Hutchison for the return of the amount of the Transfer.

II. THE SETTLEMENT

6. After negotiations, Hutchison and the Trustee have reached an agreement that would settle the Trustee's claim for avoidance and recovery of the Transfer.

7. The significant terms of the settlement are set forth in the Settlement Agreement attached hereto as Exhibit "A".

8. In summary, the Settlement Agreement provides that Hutchison will deliver a check to Trustee's counsel in the amount of \$70,000.00. Upon entry of a final order no longer subject to appeal granting this Settlement Motion, the funds will become estate property and Trustee's counsel shall promptly deliver the funds to the Trustee. If no Order approving the Settlement Motion becomes final, the funds will be returned to Hutchison.

9. The Settlement Agreement also includes a mutual release between the Trustee and Hutchison.

III. ARGUMENT

10. Federal Rule of Bankruptcy Procedure 9019(a) provides in pertinent part that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a). The standard in this Circuit for determining whether to approve a compromise or settlement pursuant to Rule 9019(a) is set forth in Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.), 898 F.2d 1544 (11th Cir. 1990), cert. denied, 498 U.S. 959 (1990), in which the Eleventh Circuit stated as follows:

When a bankruptcy court decides whether to approve or disapprove a proposed settlement, it must consider:

- (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense,

inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Id. at 1549.

11. Through settlement on the terms outlined above, the claim of the Trustee against Ronald Hutchison is resolved without litigation. In consideration for Hutchison's payment of \$70,000.00 to the Trustee, he receives a release from further claims. The risk that that Hutchison might prevail in potential litigation of the avoidance claim is eliminated by the proposed settlement. The Trustee has concluded that eliminating that risk is worth the funds that Hutchison has agreed to pay.

12. After taking into consideration the avoidance of the costs and risks of litigation with regard to moving forward with litigation, the Trustee, in the exercise of his reasonable business judgment, believes that the proposed terms of the Settlement Agreement are in the best interest of the Debtor and creditors of the estate. The Settlement Agreement results in the resolution of a disputed claim in an expeditious and economical manner, without the need for litigation and the attendant costs and risks. In view of the costs and uncertainty that always accompanies litigation, and the known and certain benefit to be realized by the Estate under the terms of the Settlement Agreement, the Trustee believes that his Settlement Agreement should be approved by this Court.

WHEREFORE, under the standards set forth above, and for the reasons previously detailed herein, the Trustee believes that the Court should approve the Settlement Agreement and respectfully requests that the Court enter an Order (i) granting this Motion, (ii) approving the Settlement Agreement between the Trustee and Ronald Hutchison, (iii) authorizing the Trustee

to take any action necessary to effectuate the terms of the settlement, and (iv) granting to the parties such other and further relief as the Court deems just and appropriate.

Respectfully submitted, this 22nd day of August, 2013.

LAMBERTH, CIFELLI, STOKES,
ELLIS & NASON, P.A.
Attorneys for the Trustee

3343 Peachtree Road, N.E.
East Tower, Suite 550
Atlanta, GA 30326
(404) 262-7373

By: /s/ Stuart F. Clayton, Jr.
Stuart F. Clayton, Jr.
Georgia Bar No. 129743

**Exhibit "A" Follows
Settlement Agreement**

RELEASE OF CLAIMS

WHEREAS, Viscom International, Inc., is a business entity organized and existing under the laws of the State of Georgia ("Viscom International" or "the Company"); and

WHEREAS, on May 23, 2011, Viscom International, Inc. filed a voluntary petition under Chapter 7 of Title 11 of the United States Code initiating case no. 11-65122-wlh (the "Bankruptcy Case") in the United States Bankruptcy Court for the Northern District of Georgia (the "Bankruptcy Court"); and

WHEREAS, Jeffrey K. Kerr was appointed as the Chapter 7 trustee (the "Trustee") and continues to serve in that capacity; and

WHEREAS, on or about January 2009, the President of Viscom International, John Wise, declared that dividends would be paid in favor of the shareholders of the Company (the "Dividends"); and

WHEREAS, at the time of the declaration of the Dividends, Ronald Hutchison was an eight per cent (8%) shareholder of the outstanding stock of Viscom International; and

WHEREAS, in and around January 2009, Viscom International purportedly set aside and transferred the amount of \$85,366.11 to account for Ronald Hutchison's dividend payment, which, according to Hutchison, was without his knowledge or consent; and

WHEREAS, Jeffrey K. Kerr & Co., as accountant to the Trustee, has completed its review of the Debtor's tax returns and other financial records for the time period surrounding the above transfer and of an additional transfer of \$969,583.40 to John Wise, as a shareholder

of Debtor, in January, 2009. Based on that review, JKK&Co. has concluded that the transfers were made either while the Debtor was insolvent or that the transfers rendered the Debtor insolvent. Based on this analysis, the Trustee has concluded that the transfers to Wise and Hutchison are both avoidable fraudulent transfers under 11 U.S.C. § 548 and state law, subject to any applicable statutory defenses; and

WHEREAS, on or about August 12, 2010, Viscom International finally delivered a check in the amount of \$85,366.11 to counsel for Mr. Hutchison; and

WHEREAS, upon receipt of that payment, Mr. Hutchison, the managing partner of Network Enhanced Telecom, LLP ("NetworkIP"), states that he informed Viscom International and John Wise that a dividend should not have been declared and was improper and that the payment from Viscom International should properly be characterized as a payment to NetworkIP for payment toward Viscom International's overdue balance with NetworkIP; and

WHEREAS, at Mr. Hutchison's direction, Network IP applied his dividend payment from Viscom International to Viscom International's outstanding balance with NetworkIP; and

WHEREAS, on or about February 12, 2012, the Trustee demanded the return of the payment made by Viscom International to Ronald Hutchison;

WHEREAS, Ronald Hutchison believes his dividend should be characterized as a payment on account for services rendered by NetworkIP;

NOW THEREFORE, for and in consideration of the total sum of \$70,000.00, which has been paid to and received by Jeffrey K. Kerr as Chapter 7 trustee for Viscom International (the "Trustee"), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Trustee, does hereby now and forever fully and finally, release, acquit, and discharge Ronald Hutchison and NetworkIP, all subsidiaries, and related companies, their employees, principals, attorneys, successors, and assigns for all past and present claims of any kind or character and all liability accrued, which the bankruptcy estate of Viscom International, the Trustee or any of his agents, servants, employees or shareholders, has or may have against them or any of them, on account, or because of, all damages, claims, causes of action, demands and/or losses or injuries to person or property or both, whether developed or undeveloped, or both resulting or to result or sustained or received by Viscom International due to any act or omission of any or all of the Releasees herein which has taken place at any time prior to the execution of this Release of Claims.

The Trustee further agrees and stipulates that the payment of the above-described sums is not to be construed as an admission of liability on the part of any person, firm, or corporation released herein, and that the Releasees herein specifically deny any and all liability to the Trustee or the bankruptcy estate of Viscom International or any other person.

The Trustee further declares and represents that no promise, inducement or agreement not herein expressed has been made to it and that this Release contains the entire agreement between the parties as to the claims of the Viscom International bankruptcy estate and any

claims which it now possesses or may hereafter possess and that the terms of this Release are contractual and not a mere recital.

This Agreement may be executed in several counterparts, each of which shall be an original, so that all of which taken together shall constitute one and the same instrument.

The Bankruptcy Court shall retain jurisdiction over the enforcement of this Agreement.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Georgia.

The effectiveness of this agreement is contingent upon its approval by an Order of the Bankruptcy Court in the Bankruptcy Case that is final and no longer subject to appeal.

This 12th day of August, 2013.



JEFFREY K. KERR
CHAPTER 7 BANKRUPTCY TRUSTEE
FOR VISCOM INTERNATIONAL, INC.

RONALD HUTCHISON

claims which it now possesses or may hereafter possess and that the terms of this Release are contractual and not a mere recital.

This Agreement may be executed in several counterparts, each of which shall be an original, so that all of which taken together shall constitute one and the same instrument.

The Bankruptcy Court shall retain jurisdiction over the enforcement of this Agreement.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Georgia.

The effectiveness of this agreement is contingent upon its approval by an Order of the Bankruptcy Court in the Bankruptcy Case that is final and no longer subject to appeal.

This 15 day of August, 2013.

JEFFREY K. KERR
CHAPTER 7 BANKRUPTCY TRUSTEE
FOR VISCOM INTERNATIONAL, INC.



RONALD HUTCHISON