

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**SECURITIES EXCHANGE COMMISSION )**

**Plaintiff, )**

**vs. )**

**DAVID TANNER, et al., )**

**Defendants, )**

**and )**

**MARGARET F. SPENCER, et al., )**

**Relief Defendants. )**

**Civil Action No.: 05-4057-RDR**

**JOINT MOTION OF RECEIVER *PENDENTE LITE*, LARRY E. COOK,  
AND SERVER TO GO, INC. FOR ORDER APPROVING SETTLEMENT AGREEMENT**

COMES NOW the Receiver *Pendente Lite* Larry E. Cook (the “Receiver”), and Server to Go, Inc., (“STG”) by and through their respective counsel, and move the Court for its Order Approving Settlement Agreement, respectfully state as follows:

1. On March 7, 2006, the Receiver filed his Motion for Turnover of Property of the Receivership Estate Transferred to Server to Go, Inc. (the “Turnover Motion”) (Doc. # 188).
2. On March 31, 2006, STG filed its Response and Motion to Dismiss the Turnover Motion (Doc. # 195).
3. On April 10, 2006, the Receiver filed his Reply to STG’s Response (Doc. # 200).
4. On April 26, 2006, the court entered its Memorandum and Order Denying STG’s Motion to Dismiss and adopting the parties’ proposed scheduling order (Doc. # 205).
5. Since that time, the Receiver and STG have engaged in extensive discovery. The Receiver alleged in the Turnover Motion that STG received at least \$5,085,000 in investor funds (the “Funds”) between March 19, 2003 and March 29, 2005. Although STG admits to receiving

monies from or at the direction of a Mr. James Tucker equal in value to the Funds, STG denies that it is liable for the return of the Funds to the Receiver because STG provided to Mr. Tucker valuable services, labor and materials and an interest in a highly sophisticated computer software application commonly referred to as "EBank Central," whose development was funded largely by the Funds.

6. STG has represented and warranted to the Receiver that the \$5,085,000 it received are the only funds STG has ever received from or at the direction of Mr. Tucker.

7. The Receiver and the Commission believe James Tucker to be an alias used by Defendant David Tanner, and that his real name is likely to be Scott Klion.

8. Taking into account the uncertainty and cost of further litigation of the Turnover Motion, the Receiver and STG have agreed to settle this dispute, subject to Court approval, on the following terms: STG shall pay to the Receiver the sum of \$600,000 (the "Settlement Amount") within fifteen (15) business days of the entry of the Court's Order approving the settlement. Upon receipt of the Settlement Amount, the Receiver and STG shall mutually release the other from any and all claims arising out of the Turnover Motion and the underlying plenary action in accordance with the Settlement Agreement, a copy of which is attached hereto as **Exhibit A**.

9. The Receiver submits the proposed Settlement Agreement is in the best interest of the defrauded investors in this case. Although the Settlement Amount reflects only a portion of the total funds STG received, the Receiver has determined that most of the Funds have already been expended by STG for legitimate business purposes primarily to develop various software programs. The Receiver further submits that STG has viable defenses to his claims and that even should he ultimately succeed in the relief sought in the Turnover Motion, that STG does not have sufficient resources to pay the entire amount sought in the Turnover Motion. Moreover, the

Receiver, if successful in the relief sought in the Turnover Motion, may be placed in the untenable position of taking possession of the software programs largely developed with the Funds. The Receiver submits that it is unlikely he could recover any value for the investors out of the incomplete software programs which would then need to be marketed.

10. Notice of this joint motion is being provided to parties who have filed notices of appearance, and to the individual known as either James Tucker, David Tucker or Scott Kliion at the last known physical and email addresses that the Receiver has, as well as to last known counsel for that individual.

11. Counsel for the Commission has reviewed the instant Motion and concurs with the relief sought herein.

WHEREFORE, the Receiver and STG respectfully requests the Court enter its Order Approving the Settlement Agreement and for such other and further relief as the Court deems just and appropriate.

Dated: January 5, 2007

Respectfully submitted,

Lathrop & Gage L.C.

By: /s/ Brian M. Holland

Kenneth L. Weltz KS #9134  
Brian M. Holland KS #19989  
10851 Mastin Blvd., Bldg. 82, Ste. 1000  
Overland Park, KS 66210-1669  
Telephone: 913.451.5100  
Telecopier: 913.451.0875  
Attorneys for Larry E. Cook, Receiver

/s/ Terrence M. Summers

BLACKWELL SANDERS PEPER MARTIN, LLP  
Terrence M. Summers KS# 15141  
Douglas M. Schmidt KS# 70002  
4801 Main Street, Suite 10000  
Kansas City, Missouri 64112  
(816) 983-8000

(816) 983-8080 (Fax)  
dschmidt@blackwellsanders.com  
tsummers@blackwellsanders.com

and

/s/ Steven J. Cohen  
WACHTEL & MASYR, LLP  
Steven J. Cohen  
Howard Kleinhendler  
110 East 59<sup>th</sup> Street  
New York, New York 10022  
(212) 909-9505  
(212) 371-0320 (Fax)  
scohen@wmlp.com  
hkleinhendler@wmlp.com  
Attorneys for Server to Go, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5th day of January, 2007, I electronically filed the foregoing, with the Clerk of the Court for the District of Kansas, Topeka Division, by using the CM/ECF system which will send a notice of electronic filing to the following CM/ECF participants:

J. Kevin Edmundson, SEC

In addition, I hereby certify that a copy of the foregoing was sent via first class US Mail, postage prepaid, and by e-mail to the last known addresses for David Tanner a/k/a James Tucker a/k/a Scott Klion to:

James Tucker  
Green Shell Rd, No 13  
Dawn Beach  
Sint Maarten  
Netherland Antilles

jtucker52@hotmail.com

/s/ Brian M. Holland  
An attorney for Larry E, Cook, Receiver