

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA**

In Re:

Case No. 19-24907-PGH

KAIZEN SOLUTIONS
INTERNATIONAL, LLC

Chapter 7

Debtor.

NOTICE OF FILING CORRECTED SETTLEMENT AGREEMENT

COMES NOW, Sonya S. Slott, Trustee, by and through undersigned counsel, hereby files her Notice of Filing of Corrected Settlement Agreement, as attached hereto as “Exhibit A”. The sole change is the substitution of a corrected signature page for the Trustee, supplanting the signature page contained at Court Document #50.

Dated: April 30, 2020

By: /s/ Mark Bonacquisti, Esq.

Mark Bonacquisti, Esq.
FBN 0703257

The Salkin Law Firm
PO Box 15580
Plantation, FL 33318
954-423-4469

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov

In re:

KAIZEN SOLUTIONS INTERNATIONAL, LLC,
Debtor.

Case No. 19-24907-PGH
Chapter 7

JOINT STIPULATION FOR SETTLEMENT AND RELEASES BETWEEN
TRUSTEE AND CREDITOR, SHAWN ROBOTKA

This Joint Stipulation for Settlement Agreement and Release (the “Stipulation”) is made this ____th day of April, 2020 (the “Effective Date”), and is entered into by and between (i) Sonya Salkin Slott, solely in her capacity as the Chapter 7 Trustee (“Trustee”) of the above-captioned debtor, Kaizen Solutions International, LLC (“Debtor”), on behalf of the bankruptcy estate of the Debtor (“Bankruptcy Estate”), and (ii) Creditor, Shawn Robotka (“Robotka”), who stipulate and agree in writing to this Stipulation as set forth below:

RECITALS

WHEREAS, On November 4, 2019 (the “Petition Date”), the Kaizen International Solutions, LLC the “Debtor”) filed a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code [ECF No. 1] (the “Petition”) in the United States Bankruptcy Court for the Southern District of Florida, Fort Lauderdale Division (the “Bankruptcy Case”); and

WHEREAS, the Trustee is the duly appointed and acting Chapter 7 trustee of the Debtor’s Bankruptcy Estate; and

WHEREAS, the Trustee has investigated the financial affairs and condition of the Debtor in the period prior to the Petition Date; and

WHEREAS, on December 22, 2016, Robotka filed his Verified Complaint in the matter styled *Shawn Robotka, derivatively on behalf of Kaizen Solutions International, LLC and*

individually, Plaintiff v. Kaizen Solutions International, LLC, a Florida limited liability company, a/k.a Kaizen International Solutions, LLC (“Kaizen International”), ADD Helium, LLC (“Add Helium”), Oncourse Training, LLC (“Oncourse”) and Peter Sotis, as managing member of Kaizen Solutions, LLC and individually (“Sotis”), Defendants (hereinafter, Kaizen, Add Helium, Oncourse and Sotis shall be referred to collectively as “Defendants”), Case No. 2016-023011-CACE-21 (the “State Court Action”), in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida (the “State Court”); and

WHEREAS, Robotka asserted claims in the Verified Complaint against the Defendants for Judicial Dissolution (Count I), Permanent Injunctive Relief (Count II), Accounting and/or Inspection of Records Pursuant to §605.0411, Fla. Stat. (Count III), Appointment of Receiver (Count IV), Breach of Operating Agreement (Count V), Breach of Fiduciary Duty (Count VI), and Fraudulent Misrepresentation and Omission (Count VII) (the “Robotka Claims”); and

WHEREAS, in the State Court Action, the Defendants filed counterclaims against Robotka for Count I – Conversion (Kaizen International), Count II – Conversion (Add Helium), Count III – Conversion (OnCourse Training), Count IV – Conversion (Rebreather World), Count V – Breach of Fiduciary Duty (Kaizen International), Count VI – Civil Theft (Kaizen International), Count VII – Civil Theft (Add Helium), Count VIII – Civil Theft (OnCourse Training), Count IX – Civil Theft (Rebreather World) and Count X – Injunction (All Counter-Claimants) (collectively, the “Counterclaims”); and

WHEREAS, the Trustee is aware that to date there have been only two proofs of claim filed in this Bankruptcy Case consisting of (i) Proof of Claim No. 2 filed by Robotka in the amount of \$200,484.27 arising from claims asserted by Robotka against the Debtor in the State Court Action (“Proof of Claim # 2”); and (ii) and Proof of Claim No. 1 filed by the law firm of Keller

Landsberg PA (“Keller Landsberg”) asserting an attorney’s charging lien arising from its pre-petition services to the Debtor in the State Court Action (“Proof of Claim #1”); and

WHEREAS, prior to the Petition Date, the State Court has exercised jurisdiction over the sum of \$102,942.00 (the “Funds”) in connection with the Robotka Claims filed in the State Court Action; and

WHEREAS, in the Schedules, as amended, filed by the Debtor in the Bankruptcy Case [ECF Nos. 16 and 22], the Funds are listed as “cash” or “cash equivalents” of the Debtor, which is disputed by Robotka; and

WHEREAS, the Funds are currently being held in escrow by Keller Landsberg solely in its capacity as former pre-petition counsel to the Debtor in the State Court Action; and

WHEREAS, on December 17, 2019, the Trustee filed the Motion for Turnover of Funds Held as a Result of State Court Litigation (the “Motion for Turnover”) [D.E. 35]; and

WHEREAS, on February 6, 2020, Robotka filed the Objection by Creditor, Shawn Robotka, To The Trustee’s Motion For Turnover Of Funds (the “Objection”) [D.E. 40]; and

WHEREAS, the Trustee and Robotka (collectively, “Parties” and as to each “Party”), have disputed before the above-captioned bankruptcy court (“Bankruptcy Court”) the interim possession of the Funds pending a final determination by the State Court of the ultimate entitlement to the Funds; and

WHEREAS, the Parties, absent an agreed resolution, would also be required to contest the ultimate entitlement to the Funds in the State Court Action.

STIPULATION FOR SETTLEMENT

NOW THEREFORE, in consideration for the mutual promises, covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which

are hereby acknowledged, the Parties agree, as follows:

1. The Parties agree that the above recitals are true and correct and are incorporated by reference herein.

2. This Stipulation is expressly subject to final approval by the Bankruptcy Court. Following the execution of this Stipulation, the Trustee shall promptly file a motion pursuant to Federal Rule of Bankruptcy Procedure 9019(a) ("Settlement Motion") seeking Bankruptcy Court approval of this Stipulation by the entry of a final, non-appealable order granting the Settlement Motion ("Approval Order"). The Parties agree that by entering into this Stipulation, no Party is admitting liability to any other Party, or to any third party, and the terms of this Stipulation shall be inadmissible in any court or other forum for the purposes of establishing the same.

3. The Parties shall allocate and distribute the Funds, to be paid out of escrow from Keller Landsberg, as follows:

- a. The Trustee, on behalf of the Bankruptcy Estate, shall receive the sum of \$25,000.00, to be received and administered as property of the Bankruptcy Estate (the "Settlement Funds"). The Settlement Funds shall be disbursed directly to the Trustee at her post office address underneath her signature below.
- b. Robotka shall receive the balance of the Funds, \$77,942.00 free and clear of claims, Counterclaims, and defenses of the Trustee, Bankruptcy Estate and Defendants in connection with the Bankruptcy Case and State Court Action (the "Robotka Funds"). The Robotka Funds shall be disbursed directly to the trust account of The Law Offices of Alan P. Dagen, P.A. (the "Dagen Law Firm").
- c. The Settlement Funds and Robotka Funds shall be released from escrow and disbursed to the Trustee and Dagen Law Firm, respectively, within five (5) days

from the entry of an Approval Order approving of the Settlement Motion.

4. Robokta agrees to dispute and challenge, to the extent permissible by law, the purported attorney's charging lien asserted by Keller Landsberg in the Funds, whether in the Bankruptcy Court and/or in the underlying State Court Action. To the extent Keller Landsberg may assert a general *unsecured* claim in this bankruptcy case, responsibility for objecting to such general unsecured claim (if any objection is to be interposed at all) shall lie with the Trustee.

5. The Trustee hereby assigns, confers, and transfers to Robotka any and all demands, claims and causes of action, and Counterclaims filed by the Kaizen International, Add Helium and Rebreather World in the State Court Action, which the Bankruptcy Estate has, may have and/or possess either prior to or after the Petition Date against Robotka and any of the Defendants, including any other additional joined parties to the State Court Action (the "Assigned Claims"). The Assigned Claims shall specifically include, but are not limited to, any and all fraudulent transfer claims arising under 11 U.S.C. §548 of the Code, Chapter 726, et. seq., of the Florida Statutes, and any other fraudulent transfer claims that may exist under other applicable state law, but excluding the Robotka Claims and any other independent claims which Robotka has against the Defendants in the State Court Action for which Robotka shall continue to hold all rights, title and interests in his individual capacity.

6. For purposes of this Stipulation, the assignment and transfer of the Assigned Claims is made without any warrant or representation by the Trustee as to either the existence or transferability of any such claims. In the event that such Assigned Claims are disputed, challenged and contested by any creditor, interested party, Defendants, person or entity, and/or otherwise determined to be non-transferrable by the Bankruptcy Court, the State Court, or such other court of competent jurisdiction, then in such event, Robotka is hereby granted and shall be deemed to

have and is vested with derivative standing by and through the Bankruptcy Estate under applicable provisions of the Bankruptcy Code to bring, commence, file, and prosecute such Assigned Claims in his individual name and capacity, but not on behalf or in the name of the Trustee (the “Derivative Standing”). Furthermore, if necessary, Robotka shall be entitled to seek an extension of deadlines under 11 U.S.C. §546 of the Bankruptcy Code with respect to the Assigned Claims and Derivative Standing.

7. To the extent Robotka may recover by way of settlement, final judgment, and collection of any sums upon the Assigned Claims in the State Court Action, then the net proceeds (after payment of attorney’s fees and costs incurred by Robotka) recovered shall be shared in the aggregate with the Bankruptcy Estate, as follows:

- (i) 20% up to the first \$100,000.00;
- (ii) 15% between \$100,000.01 to \$200,000.00; and
- (iii) 10% for anything over \$200,000.00

(hereinafter, the “Shared Proceeds”). The Bankruptcy Estate shall be entitled to participate in the Shared Proceeds unless and until the Bankruptcy Estate has received sufficient funds to pay all allowed claims pursuant to 11 U.S.C. §726(a)(1)-(5). Stated alternatively for the sake of clarity, the Bankruptcy Estate shall be entitled to participate in the Shared Proceeds unless and until further sharing would produce a surplus estate.

8. Upon the entry of the Approval Order, Robotka waives his filed Proof of Claim # 2 in this Bankruptcy Case (in the amount of \$200,484.27), and otherwise waives any claim he may have against the Trustee and/or the Bankruptcy Estate.

9. **Mutual Release.** Effective upon confirmation of receipt of the Settlement Funds by the Trustee and upon entry of the Approval Order by the Bankruptcy Court approving this

Stipulation, and except for the Assigned Claims to Robotka, the following releases only between the Trustee and Robotka shall apply (the “Releases”):

(a) the Trustee (on behalf of herself, the Debtor and Bankruptcy Estate) and Robotka, together with their respective successors and assigns, representatives, officers, directors, employees, agents, attorneys, professionals, and members (the “Released Parties”), hereby forever remise, release, acquit, satisfy, and forever discharge one another, of and from all manner of actions, causes of action, suits, debts, covenants, contracts, controversies, agreements, promises, claims and demands whatsoever, which the Released Parties ever had, may have or now have against one another, by reason of any matter, cause or thing whatsoever, whether known or unknown, from the beginning of time to the date of this Stipulation, including, without limitation, any and all claims, causes of action, demands, counterclaims, suits, debts, covenants, contracts, controversies, agreements, promises, and defenses whatsoever, together with the Counterclaims, which the Debtor and Bankruptcy Estate ever had, may have or now has against Robotka that were or could have been raised in the Bankruptcy Case, Motion for Turnover and the State Court Action (the “Released Claims”). Further, as part of the Released Claims, Robotka agrees to waive Proof of Claim #2 against the Bankruptcy Estate, and any additional claims against the Bankruptcy Estate pursuant to 11 U.S.C. § 502(h).

(b) Notwithstanding anything to contrary set forth in paragraph 8(a) above, the Releases and Released Claims shall not operate nor be construed to operate as a release, waiver, estoppel, or discharge of any of the (i) obligations of the Parties under this Stipulation; (ii) rights, title and interests of Robotka in the Robotka Claims and Assigned Claims, including, without limitation, the right, standing, and entitlement of Robotka to prosecute and litigate the Robotka Claims and Assigned Claims against the Debtor, Defendants and other third parties in connection

with the State Court Action and/or in any other court of competent jurisdiction; and (iii) does not contemplate any third-party beneficiaries (the “Excluded Claims”).

10. Robotka is granted full stay relief under 11 U.S.C. §362 to pursue and obtain a final judgment against the Debtor and Defendants in the State Court Action and to pursue the Assigned Claims, as well as, any and all collections efforts, whether pre or post judgment, against the Debtor, Defendants and third parties that may result from the Robotka Claims and/or Assigned Claims in connection with the State Court Action or such other actions filed by Robotka.

11. If this Stipulation is not approved by the Bankruptcy Court, then (a) the Parties shall possess all rights, claims and defenses which they possessed prior to executing this Stipulation; (b) this Stipulation shall be null and void; (c) any admissions contained herein shall be withdrawn and may not be used for any other purpose in this Court or any other Court; and (d) any funds paid to the Trustee pursuant to this Stipulation shall be returned within 14 days of the Court order.

12. Each Party acknowledges that it has entered into this Stipulation of their own free will, based upon its independent business judgment and advice of counsel of its choice, and without reliance on any representations of, or inducements from, any other party, except as specifically set forth herein.

13. This Stipulation represents the entire agreement of the Parties. No waiver or modification of a term or condition of this Stipulation will be valid or binding unless in writing and executed by each of the Parties to this Stipulation.

14. This Stipulation has been prepared after extensive negotiations between the Parties hereto, and if any ambiguity is contained herein, then in resolving such ambiguity, no weight shall be given in favor of or against any Party on account of its drafting of this Stipulation.

15. The Parties agree that this Stipulation may be executed in counterpart originals and

all such executed counterpart originals will together constitute the complete Stipulation. The Parties further agree that signatures affixed to facsimiles or electronic mail transmissions shall count as original signatures whether in counter-part or on a single document.

16. Each of the Parties to this Stipulation represents and warrants that it has full authority and power to execute, deliver and perform this Stipulation, and consummate all of the transaction contemplated hereunder on behalf of the Parties hereto.

17. Each of the Parties to this Stipulation agrees that any dispute regarding this Stipulation, after entry of final order approving same, is subject to the laws of Florida, and that venue for any dispute regarding this Stipulation shall be proper in the United States Bankruptcy Court for the Southern District of Florida, Fort Lauderdale Division, which shall have full jurisdiction over the same. The Parties hereby expressly waive any waivable challenges to Bankruptcy Court jurisdiction that might arise under any doctrines set forth in *Stern v. Marshall*, 564 U.S. 2 (2011) or its judicial progeny.

IN WITNESS HEREOF, the undersigned, being duly authorized, have caused this Stipulation to be executed as of the date shown above.

SONYA S. SLOTT, CHAPTER 7 TRUSTEE

Print: Sonya S Slott

Signature: [Handwritten Signature]

Dated: April 30, 2020

SHAWNA ROBOTKA

Print: Shawn Robotka

Signature: [Handwritten Signature]

Dated: April 29, 2020