

Peggy Hunt (Utah State Bar No. 6060)
Chris Martinez (Utah State Bar No. 11152)
Tyson C. Horrocks (Utah State Bar No. 12557)

DORSEY & WHITNEY LLP

136 South Main Street, Suite 1000

Salt Lake City, UT 84101-1685

Telephone: (801) 933-7360

Facsimile: (801) 933-7373

Email: hunt.peggy@dorsey.com

martinez.chris@dorsey.com

horrocks.tyson@dorsey.com

Attorneys for Court-Appointed Receiver R. Wayne Klein

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

NATIONAL NOTE OF UTAH, LC, a Utah
Limited Liability Company and WAYNE
LaMAR PALMER, and individual,

Defendants.

**RECEIVER'S MOTION AND
MEMORANDUM IN SUPPORT
REQUESTING ORDER APPROVING
(1) PUBLIC SALE OF PROPERTY
FREE AND CLEAR OF INTERESTS,
(2) METHOD AND FORM OF
PUBLICATION NOTICE, AND (3)
PUBLIC AUCTION PROCEDURES**

(EXPRESSWAY UNIT # 305)

2:12-cv-00591 BSJ

The Honorable Bruce S. Jenkins

R. Wayne Klein, the Court-Appointed Receiver (the "Receiver") of National Note of Utah, LC, its subsidiaries and affiliates, and the assets of Wayne LaMar Palmer, by and through his counsel and pursuant to 28 U.S.C. §§ 2001(a) and 2002 and the *Order Appointing Receiver and Staying Litigation* entered by this Court in this case, respectfully requests that the Court

enter the proposed Order attached hereto as **Exhibit B**, approving (1) the public sale of certain real property described below pursuant to public sale free and clear of interests; (2) the Receiver's proposed method and form of publication notice for the public sale; and (3) approving the Receiver's proposed auction procedures governing such public sale set forth below. This Motion is supported by the Declaration of R. Wayne Klein, Receiver (the "Receiver Declaration").

MEMORANDUM OF SUPPORT

I.

BACKGROUND

1. On June 25, 2011, the above-captioned case was commenced by the Securities and Exchange Commission (the "SEC") against Defendants National Note of Utah, LC ("NNU") and Wayne LaMar Palmer ("Palmer") (collectively, the "Receivership Defendants"), and in conjunction therewith the Court entered, in relevant part, an Order Appointing Receiver and Staying Litigation (the "Receivership Order").¹ Pursuant to the Receivership Order, the Receiver was appointed, and NNU, and forty-one of its affiliated companies (the "Palmer Entities"), including Expressway Business Park, LLC (collectively for purposes of this Motion, "NNU"), and all Palmer's assets were placed in the Receiver's control.²

2. The Court has directed and authorized the Receiver to, among other things, do the following:

- "[D]etermine the nature, location and value of all property interests of the Receivership Defendants and the Palmer Entities . . . [.]"³

¹ Docket No. 9 (Receivership Order).

² See generally, *id.*

³ *Id.* at ¶ 7(A).

- “To take custody, control and possession of all Receivership Property and records . . . [.]”⁴
- “To use Receivership Property for the benefit of the Receivership Estates . . . [.]”⁵
- “[T]o take immediate possession of all real property of the Receivership Defendants and the Palmer Entities”⁶
- “[T]ransfer, compromise, or otherwise dispose of any Receivership Property, other than real estate, in the ordinary course of business, on the terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership Property.”⁷
- “[L]ocate, list for sale or lease, engage a broker for sale or lease, cause the sale or lease, and take all necessary and reasonable actions to cause the sale or lease of all real property in the Receivership Estates, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property.”⁸
- “[S]ell, and transfer clear title to, all real property in the Receivership Estates” upon order of the Court “pursuant to procedures as may be required by this Court and additional authority such as 28 U.S.C. §§ 2001 and 2004.”⁹

II.

REAL PROPERTY TO BE SOLD AT AUCTION

3. Since his appointment, the Receiver has identified numerous real properties as being part of the Receivership Estate, and where appropriate has listed such properties for sale.¹⁰

4. Relevant to the present Motion is real property known as Expressway Business Park Condominium Development, Unit # 305 located at 1078 North 1110 East, Spanish Fork,

⁴ *Id.* at ¶ 7(B).

⁵ *Id.* at ¶ 7(D).

⁶ *Id.* at ¶ 19.

⁷ *Id.* at ¶ 37.

⁸ *Id.* at ¶ 38.

⁹ *Id.* at ¶ 39.

¹⁰ Receiver Declaration ¶ 4.

Utah (“Expressway Unit # 305” or the “Property”).¹¹ The Property is more particularly described as:

LOT 305, EXPRESSWAY BUSINESS PARK CONDO PHASE 3, Spanish Fork, Utah, the same as identified in the recorded survey map as Entry No. 163806:2006 and Map Filing No. 2006-133 (as said recorded survey map may have heretofore been amended or supplemented), and in the Declaration of Covenants recorded as Entry No. 163807:2006 (as said Declaration may have heretofore been amended or supplemented). TOGETHER WITH the appurtenant non-exclusive easement interest in said project’s common areas as established in the Declaration of Covenants.¹²

Value and Marketing of the Property

5. The Receiver obtained an appraisal of the Property on or about January 10, 2013 from Gary R. Free and Stan C. Craft at Free and Associates, Inc. (the “Free Appraisal”), a copy of the Appraisal is attached to the Receiver Declaration as Exhibit A for the Court’s review.¹³ The Free Appraisal values the Property at \$65,000.¹⁴

6. On or about January 18, 2013, the Receiver cause the Property to be listed for sale through Commerce Real Estate Solutions (the “Listing Agent”) with a listing price of \$65,000, a copy of the Listing Agreement is attached to the Receiver Declaration as Exhibit B.¹⁵

7. The Property has been marketed through the multiple listing service and has been actively marketed by the realtor.¹⁶

8. In addition to the offer from the prospective buyer, the Receiver received

¹¹ Receiver Declaration ¶ 5.

¹² See Receiver Declaration, Exh. D (Title Report).

¹³ Receiver Declaration ¶ 6 & Exh. A (Free Appraisal). Because the Receiver proposes a public sale, appointment of three appraisers by the Court is not required. See 28 U.S.C. § 2001(a). But, the Receiver has provided the Court with a copy of the First Appraisal that he obtained for review.

¹⁴ Receiver Declaration, Exh. A, p. 31.

¹⁵ Receiver Declaration ¶ 7 & Exh. B (Listing Agreement).

¹⁶ Receiver Declaration ¶ 8.

expressions of interest from an owner of an adjacent unit; however, these “offers” were for well below the appraised value. The Receiver ultimately decided that the “Stalking Horse Bid” described below is the highest and best bid at this time.¹⁷

The Proposed Purchase Agreement and Stalking Horse Bid at Auction

9. On March 29, 2013, the Receiver received an offer to purchase the Property pursuant to the terms of the “Purchase Agreement” attached to the Receiver Declaration as Exhibit C. Pursuant to the Purchase Agreement, buyer will purchase the Property for \$64,000, and it has provided the Receiver with a \$1,000 escrow deposit.¹⁸ The offer is subject to higher and better offers.¹⁹

10. The Purchase Agreement has been negotiated by the Receiver with the prospective purchaser in good faith and at arm’s length.²⁰

11. The Receiver proposes using this offer as a stalking horse bid (the “Stalking Horse Bid”) at the public auction described below.²¹

Sale Costs and Net Sale Proceeds

12. The Receiver will be paying the ordinary costs of the sale, including market-rate closing costs and a standard 6% realtor commission at the time of closing of the sale of the Property.²²

13. Any interests against the Property, other than closing costs and property taxes,

¹⁷ Receiver Declaration ¶ 9.

¹⁸ Upon information and belief, the purchaser’s financing to purchase the Property has been pre-approved by the lending institution. See Receiver Declaration ¶ 11.

¹⁹ Receiver Declaration ¶ 10 & Exh. C, Addendum # 1 (Purchase Agreement).

²⁰ Receiver Declaration ¶ 12.

²¹ Receiver Declaration ¶ 13.

²² Receiver Declaration ¶ 14.

will not be paid at the time of closing of the sale. Rather, as proposed, any such interests (to the extent that they exist and without any waiver of the Receiver's rights and defenses related thereto) will survive the sale and will attach to the net sale proceeds, these being the sale proceeds, less the ordinary costs of sale (the "Net Sale Proceeds").²³

14. The Receiver will separately account for the Net Sale Proceeds pending resolution of any disputes related to interests that may exist against the Property.²⁴

Free and Clear Sale

15. The Receiver proposes to sell the Property free and clear of all interests therein, with any interests that may exist attaching to the Net Sale Proceeds. In so doing, the Receiver is in no way waiving any rights, claims, interests or defenses to any claims or interests made against the Property or to the Net Sale Proceeds.²⁵

16. To determine interests, if any against the Property, the Receiver obtained a preliminary title report (the "Title Report"),²⁶ a copy of which is attached as Exhibit D to the Receiver Declaration.

17. According to the Title Report, the following exceptions to title exist: (a) property taxes for the period of 2008-2012; (b) forty-one Assignments of Beneficial Interests have been filed against the Property; and (c) one Deed of Trust has been filed against the Property, the holders of which are identified on the Certificate of Service attached hereto.²⁷

18. A copy of this Motion is being served on the holders of these purported

²³ Receiver Declaration ¶ 15.

²⁴ Receiver Declaration ¶ 16.

²⁵ Receiver Declaration ¶ 17.

²⁶ Receiver Declaration ¶ 18 & Exh. D (Title Report).

²⁷ Receiver Declaration, Exh. D (Title Report).

interests.²⁸

Best Interests

19. The Receiver believes that the sale of Property as proposed is beneficial for and in the best interests of the Receivership Estate based on the appraised value of the Property and the amount of the Stalking Horse Bid, which was obtained through good faith and arms' length negotiations.²⁹

20. The Stalking Horse Bid is nearly equal to the appraised value, and through the proposed auction, the purchase price cannot go lower and might increase.³⁰

21. Notice of the auction described below will be served on all persons who submitted offers to purchase the Property during the Receiver's initial marketing of the Property, and will be posted on the Receiver's website.³¹

22. The SEC has been informed of the material terms of the sale, and has no objection thereto.³²

APPLICABLE LAW

23. The Receivership Order, as set forth above anticipates the relief sought by the Receiver herein and is within the scope of his duties under that Order.³³

24. Section 2001(a) of title 28 of the United States Code permits the Receiver to sell property of the receivership estate:

²⁸ Receiver Declaration ¶ 19 & Certificate of Service.

²⁹ Receiver Declaration ¶ 20.

³⁰ Receiver Declaration ¶ 21.

³¹ Receiver Declaration ¶ 22.

³² Receiver Declaration ¶ 23.

³³ See *supra* ¶¶ 1-2.

[A]t public sale in the district wherein such receiver was first appointed, at the courthouse of the county, parish, or city situated therein in which the greater part of the property in such district is located, or on the premises or some parcel thereof located in such county, parish, or city, as such court directs.³⁴

25. Section 2002 of title 28 of the United States Code requires that notice of such public sale be published:

[O]nce a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state, or judicial district of the United States wherein the realty is situated.³⁵

REQUESTED RELIEF

26. The Receiver requests that the Court enter the proposed Order attached hereto, thus (a) authorizing the sale of the Property free and clear of interests; (b) approving the form and method of publication notice as proposed herein; and (c) approving the proposed “Auction Procedures” described below.

Sale Free and Clear of Interests

27. Sale of the Property as proposed is within the scope of the Receiver’s authority under the Receivership Order as quoted in ¶ 2 above and 28 U.S.C. §§ 2001(a) and 2002 both quoted in ¶¶ 24 and 25 above, it is in the best interests of the Receivership Estate, and the sale serves the purposes of the receivership by providing a “realization of the true and proper value” of the Property.³⁶

28. The Court may order a sale of the Property free and clear of interests, provided that parties claiming interests against the property are given proper notice. Here, such notice will be provided, with any interests that may ultimately be determined to exist attaching to the Net

³⁴ 28 U.S.C. § 2001(a).

³⁵ 28 U.S.C. § 2002.

³⁶ Receivership Order ¶ 38; Receiver Declaration ¶ 20.

Sale Proceeds.³⁷

29. Upon completion of the sale and after the conclusion of the public auction discussed below, the Receiver will file with the Court a “Notice of Sale Results,” stating the purchase price that was obtained at public auction and reporting on the Net Sale Proceeds of the sale. This Notice of Sale Results will be served on those parties asserting interests in the Property noted in ¶ 17 above.³⁸

Publication Notice

30. To comply with the requirement of publication notice set forth in 28 U.S.C. § 2002, the Receiver seeks approval of the method and form of publication notice of the proposed sale of the Property described above.

31. Accordingly, the Receiver proposes that the following notice be published in *The Salt Lake Tribune*, a newspaper published in Salt Lake City, Utah, and in the *Provo Daily Herald*, a newspaper published in Utah County, Utah and distributed to Spanish Fork, Utah, once a week for a period of four weeks prior to the public sale (the “Publication Notice Time”):

R. Wayne Klein, Receiver for National Note of Utah, LC and its affiliated entities (the “Receiver”) in the civil case styled as *Securities and Exchange Comm. v. National Note of Utah, LC et al.*, Civ. Case No. 2:12-cv-00591 (D. Utah) (“Civil Case”), gives notice of his intent to sell certain real property known as Expressway Business Park Condominium Development, Unit # 305 located at 1078 North 1110 East, Spanish Fork, Utah (the “Property”), more particularly described as LOT 305, EXPRESSWAY BUSINESS PARK CONDO PHASE 3, through a public auction to the highest bidder payable in lawful money of the United States on the ___ day of _____, 2013 at the hour of ___ on the Property at the above stated address, or as may be continued from time to time by the Receiver (the “Auction”). The Property will be sold at the Auction free and clear of all interests, “as is” with no representations and warranties. The Receiver has accepted an initial bid of \$64,000.00 with a \$1,000.00 down payment to act as the opening “Stalking Horse Bid” at Auction. Only “Qualified Bidders” may participate in the Auction. To be a Qualified Bidder, you must comply with the “Auction Procedures” that have been approved in the Civil Case, which Auction Procedures may be obtained on

³⁷ Receiver Declaration ¶ 15.

³⁸ Receiver Declaration ¶¶ 17-18.

the Receiver's website (<http://www.kleinutah.com/index.php/receiverships/national-note-of-utah-lc>) or upon request made to the Receiver's counsel at: Dorsey & Whitney LLP, attn: Michelle Montoya, 136 South Main Street, Suite 1000, Salt Lake City, Utah 84101; montoya.michelle@dorsey.com. The deadline for Qualified Bidders to submit bids, or the "Bid Deadline," is 5:00 p.m. (Mountain), _____, 2013.

Auction Procedures

32. The Receiver requests that the Court enter an Order approving the following proposed procedures to govern the public sale (collectively, or as may be amended by the Court's Order, the "Auction Procedures"), a copy of which are attached hereto as **Exhibit A**:

- a. The Receiver may conduct an auction of certain real property known as Expressway Business Park Condominium Development, Unit # 305 located at 1078 North 1110 East, Spanish Fork, Utah (the "Property"), at the conclusion of the Publication Notice Time (the "Auction") in accordance with these Auction Procedures.
- b. The Receiver will facilitate reasonable requests for inspections of the Property by interested parties prior to the "Bid Deadline" (defined below).
- c. Pursuant to the Purchase Agreement attached as Exhibit C to the Receiver Declaration, the Receiver has received an offer to purchase the Property for \$64,000.00 which includes a \$1,000.00 down payment, subject to higher and better bids at the Auction (the "SH Agreement"). The Receiver is treating the offer in the SH Agreement as the opening bid at Auction and is referred to herein as the "Stalking Horse Bid."
- d. To participate in the Auction, the potential purchaser must be a "Qualified Bidder."
- e. No person will deemed to be a Qualified Bidder unless the person:
 - i. Delivers to the Receiver for the benefit of the Receivership Estate cash or a cashier's check in the amount of \$1,000.00 as an initial deposit (all such deposits and the deposit posted in conjunction with the Stalking Horse Bid, being collectively, the "Initial Deposit") along with written proof of the Qualified Bidder's ability to obtain financing by the date of the Auction or a written representation that the Qualified Bidder's offer will be in cash, by no later than 5:00 p.m. Mountain Time at least two business days prior to the date set for the Auction (the "Bid Deadline");
 - ii. Agrees in writing that its Initial Deposit is non-refundable pending the Sale Closing Date (defined below) and will be applied as set forth in these

Auction Procedures;

- iii. Agrees in writing to the approved Auction Procedures;
 - iv. Represents and warrants in writing that it has the ability to perform at Auction and on the Sale Closing Date (defined below);
 - v. Agrees in writing that the sale of the Property is “AS IS” with no representations and warranties; and
 - vi. Appears in person or through a qualified agent at the Auction and performs at Auction, as determined in the sole discretion of the Receiver, as provided in these Auction Procedures.
- f. If no Qualified Bidders exist on the expiration of the Bid Deadline, the Receiver, in his sole discretion, need not conduct the Auction and may sell the Property to the holder of the Stalking Horse Bid pursuant to the terms of the SH Agreement and such sale shall be deemed to be a sale of the Property at public auction under all applicable law.
- g. The Receiver will conduct the Auction. The Auction shall proceed in rounds. Bidding at the Auction shall begin with an initial minimum overbid of the Stalking Horse Bid in an amount of \$5,000.00 in cash, and shall subsequently continue in \$5,000.00 minimum cash overbid increments. However, the holder of the Stalking Horse Bid will be allowed to match any bid made by a Qualified Bidder without increasing such bid by the \$5,000 minimum cash overbid amount. Bidding will continue until the Receiver determines that he has received the highest and best offer for the Property, at which time he will close the Auction, with the person making the last bid prior to the Receiver’s close of the Auction bound to purchase the Property pursuant to the terms of the approved Auction Procedures (the “Successful Bidder”).
- h. Each Qualified Bidder and the holder of the Stalking Horse Bid agree that its last offer made is irrevocable until the date that sale of the Property closes to the Successful Bidder (the “Sale Closing Date”).
- i. Each Initial Deposit shall be retained by the Receiver until Sale Closing Date. On the Sale Closing Date, the Initial Deposit of the Successful Bidder will be applied to the purchase price accepted at Auction by the Receiver. Within ten business days of Sale Closing Date, the Receiver shall return all other Initial Deposits. In the event that the Successful Bidder’s sale does not close, the Receiver (i) shall retain the Initial Deposit of the Successful Bidder as damages, and (ii) the Qualified Bidder who made the next highest and best offer at Auction (the “Back-Up Bid”) shall be deemed the Successful Bidder. The Initial Deposit of the Qualified Bidder with the Back-Up Bid shall be applied by the Receiver to the purchase offer made at Auction. The Receiver may repeat the same Back-Up Bid

procedure provided herein to each Qualified Bidder, in the order of the highest and best offers received at Auction.

- j. Immediately upon the close of the Auction, the Successful Bidder must (i) sign a purchase agreement on terms materially similar to the terms of sale stated in SH Agreement; and (ii) must deliver to the Receiver an additional non-refundable deposit of 10% of the purchase price accepted at Auction (the “10% Deposit”). In the event that the Sale Closing Date does not occur for the Successful Bidder, the Successful Bidder’s Initial Deposit and this 10% Deposit will be retained by the Receiver as damages.

33. The Receiver submits that the proposed Auction Procedures are permitted under 28 U.S.C. §§ 2001(a) and 2002 and, therefore, requests that the Court approve the same.

CONCLUSION

Accordingly, for the reasons set forth herein, the Receiver requests that the Court enter the proposed Order attached hereto as **Exhibit B**, thus (a) authorizing the sale of the Property free and clear of interests; (b) approving the form and method of publication notice as proposed herein; and (c) approving the proposed Auction Procedures. The Receiver also requests any other relief appropriate under the circumstances.

DATED this 12th day of April, 2013.

DORSEY & WHITNEY LLP

 /s/ Tyson C. Horrocks

Peggy Hunt

Chris Martinez

Tyson C. Horrocks

Attorneys for Receiver

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **RECEIVER'S MOTION AND MEMORANDUM IN SUPPORT REQUESTING ORDER APPROVING (1) PUBLIC SALE OF PROPERTY FREE AND CLEAR OF INTERESTS, (2) METHOD AND FORM OF PUBLICATION NOTICE, AND (3) PUBLIC AUCTION PROCEDURES (EXPRESSWAY UNIT # 305)** was filed with the Court on this 12th day of April, 2013 and served via ECF on all parties who have requested notice in this case.

/s/ Tyson C. Horrocks

Furthermore, I certify that on the 12th day of April, 2013, the **RECEIVER'S MOTION AND MEMORANDUM IN SUPPORT REQUESTING ORDER APPROVING (1) PUBLIC SALE OF PROPERTY FREE AND CLEAR OF INTERESTS, (2) METHOD AND FORM OF PUBLICATION NOTICE, AND (3) PUBLIC AUCTION PROCEDURES (EXPRESSWAY UNIT # 305)** was served on the following parties by U.S. Mail postage prepaid:

Central Bank Spanish Fork
One North Main Street
Spanish Fork, UT 84660

Al Williams
Box 2656
Williston, ND 58802

LaVon H. or Lynn Livingston
759 North Catherine Street
Salt Lake City, UT 84116

Perpetual Income Family Limited
Partnership LLP
c/o Grant Davis
5806 Trail Ride Drive
Moseley, VA 23120

Cynthia Jean Morrey
2557 Rampart Terrace
Reno, NV 89509-8362

APS/FUB Dennis George DeCorsey
(DeCorsey)
10263 W Potter Drive
Peoria, AZ 85382

Karan or Willie Henderson
14004 Palawan Way, PH 5
Marina Del Rey, CA 90292

H. Coleman Scheuller
PO Box 3032
Augusta, ME 04330

Cliff and Ruth Cole
945 East 75 North
Bountiful, UT 84010

Entrust/FUB Nicole Marie Petrik
(Entrust)
Entrust Administration, Inc.
555-12th Street #1250
Oakland, CA 94607

Robert C. Kirk
Utah County Treasurer
100 E. Center Street
Suite 1200
Provo, UT 84606

APS/FUB Dennis George DeCorsey (APS)
American Pension Services, Inc.,
Custodian FBO for Dennis George
DeCorsey
4168 West 12600 South, Ste 300
Riverton, UT 84096

Dan or David Maddock
PO Box 166
Lysite, WY 82642

Velda S. Cowley
Box 318
Richmond, UT 84333

Timothy F. Keeton
28 Stockton Drive
Middletown, RI 02482

Entrust/FUB Nichole Marie Petrik (Petrik)
PO Box 3495
Sparks, NV 89432

Doris Finley
PO Box 1064
Jacksonville, TX 75766

Mark or Lisa R. Cardone
2312 Sound Avenue
Baiting Hollow, NY 11933

J. Edgar & Pauline C. Moss
840 Three Fountains Drive
Salt Lake City, UT 84107

Hunter T. Hyde
8221 South 700 East
Sandy, UT 84070

David L. Flynn PLLC
460 South 400 East
Bountiful, UT 84010

APS/FUB Cedric Johnson (APS)
American Pension Services, Inc.
Custodian FBO for Cedric Johnson
4168 West 12600 South, Ste 300
Riverton, UT 84096

APS/FUB Cedric Johnson (Johnson)
39945 Charles Town Pike
Hamilton, VA 20158

Sterling/FUB Gerald E. Wallin (Sterling)
Sterling Trust Company, PO Box 2526
Waco, TX 76702-2526

Sterling/FUB Gerald E. Wallin (Wallin)
550 West Plumb Lane, Ste. B510
Reno, NV 89509-3666

James C. York
10233 Cherryhurst Lane
Highlands Ranch, CO 80126

Lawrence Lloyd
7415 Miriam Way
Magna, UT 84044

K&G Management, LLC
c/o Gerry Heaton
501 West Main Canyon Road
Wallsburg, UT 84082

Vaughn or Penny Paul
10463 Weeping Willow Drive
Sandy, UT 84070

Blake Enterprises, LLC
c/o Lori McCool
14574 Millards Road
Poway, CA 92064

Robert or Lori McCool
14574 Millards Road
Poway, CA 92064

David or Marion Reyes or Nicholas AJ
Charron
6626 Brennan Avenue
West Hills, CA 91307

Michael Walden
A. Co. 121 Combat Support Hospital
APO, AP 96205

Larry or Evy Lofthouse
248 East 13800 South, Unit 42
Draper, UT 84020

Susan M. Kelly Trust dated 04-24-89
4359 Roundstone Drive
Sparks, NV 89436

The Zasadny Family Trust dated 11-20-97
7007 South Virginia Street, Suite A
Reno, NV 89511

John F. or Carolyn B. Woodman
5999 Nightengale Road
Gilmer, TX 75645

Kathleen Delacruz
11122 Zephyr Street
Westminster, CO 80021

Ken & Iris Heaton
123 2nd Avenue, #811
Salt Lake City, UT 84103

APS/FUB Nicholas Tuttle (APS)
American Pension Services, Inc.
Custodian FBO for Nicholas Tuttle
4168 West 12600 South, Ste 300
Riverton, UT 84096

APS/FUB Nicholas Tuttle (Tuttle)
8798 Lynrock Circle
Reno, NV 89523

APS/FUB Marissa Tuttle (APS)
American Pension Services, Inc.
Custodian FBO for Marissa Tuttle
4168 West 12600 South, Ste 300
Riverton, UT 84096

APS/FUB Marissa Tuttle (Tuttle)
8798 Lynrock Circle
Reno, NV 89523

s/ Tyson C. Horrocks

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