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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 FOR
REAPPOINTMENT AND
MEMORANDUM OF LAW**

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 respectfully requests that the Court enter the proposed Order attached hereto as Exhibit A, reappointing the Receiver. The purpose for this request is to allow the Receiver to timely file Notices of Receivership pursuant to 28 U.S.C. § 754 in numerous judicial districts where, since his appointment, he has discovered property of the Receivership Estate. In support hereof, the Receiver states as follows.

MEMORANDUM OF SUPPORT

I.

BACKGROUND

1. On June 25, 2011, the above-captioned case was commenced by the Securities and Exchange Commission 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

2. Pursuant to the Receivership Order, the Receiver was appointed, and NNU, and its subsidiaries and affiliated companies (the “Palmer Entities” collectively for purposes of this Motion, “NNU”), and all Palmer’s assets were placed in the Receiver’s control.²

3. 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
- “To take custody, control and possession of all Receivership Property and records relevant thereto from the Receivership Defendants and/or the Palmer Entities; to sue for and collect, recover, receive and take into possession from third parties all Receivership Property and records relevant thereto[.]”⁴
- “To bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging his duties as Receiver[.]”⁵

¹ Docket No. 9 (Receivership Order).

² *See generally, id.*

³ *Id.* at ¶ 7(A).

⁴ *Id.* at ¶ 7(B).

⁵ *Id.* at ¶ 7(I).

4. On or before July 5, 2012, and in accord with the Receivership Order and 28 U.S.C. § 754, the Receiver filed Notices of Receivership in five (5) federal judicial districts based on his knowledge of the property of the Receivership Estate at the time of his appointment, as follows: (a) District of Alaska; (b) District of Arizona; (c) District of Idaho; (d) District of Minnesota; and (e) District of Montana.

5. As a result of his investigation of the estate, which is ongoing, the Receiver has determined that there exists property of the Receivership Estate in twenty-six (26) additional federal judicial districts, as follows: (a) Central District of California; (b) Eastern District of California; (c) Northern District of California; (d) Southern District of California; (e) District of Colorado; (f) Middle District of Florida; (g) Southern District of Florida; (h) District of Hawaii; (i) Northern District of Illinois; (j) Southern District of Indiana; (k) Western District of Louisiana; (l) Western District of Missouri; (m) District of Nevada; (n) District of New Mexico; (o) District of North Dakota; (p) Western District of Oklahoma; (q) District of Oregon; (r) Eastern District of Pennsylvania; (s) Middle District of Pennsylvania; (t) Eastern District of Texas; (u) Northern District of Texas; (v) Southern District of Texas; (w) Western District of Texas; (x) Eastern District of Virginia; (y) Western District of Washington; and (z) District of Wyoming (collectively, the "Additional Districts").

6. Accordingly, reappointment of the Receiver is necessary to allow him to timely file Notices of Receivership in the Additional Districts pursuant to the Receivership Order and 28 U.S.C. § 754.

II.

ARGUMENT

A. Personal Jurisdiction Over Defendants in Receivership Actions is Based on 28 U.S.C. § 754

Section 754 of title 28 of the United States Code governs the rights of receivers appointed by a federal court and states:

A receiver appointed in any civil action or proceeding involving property, real, personal or mixed, situated in different districts shall, upon giving bond as required by the court, be vested with complete jurisdiction and control of all such property with the right to take possession thereof.

He shall have capacity to sue in any district without ancillary appointment, and may be sued with respect thereto as provided in section 959 of this title.

Such receiver shall, within ten days after the entry of his order of appointment, file copies of the complaint and such order of appointment in the district court for each district in which property is located. The failure to file such copies in any district shall divest the receiver of jurisdiction and control over all such property in that district.⁶

When a “Notice of Receivership” (which includes a copy a receivership order) is filed in accordance with § 754, Courts uniformly hold that personal jurisdiction exists over defendants who reside in the districts where the Notice of Receivership is filed.⁷ Where personal jurisdiction is based on § 754, the “minimum contacts” test of *International Shoe Co. v. Washington*,⁸ does not apply.⁹ Due process is satisfied through the application of § 754 as long as exercise of jurisdiction “is not so extremely inconvenient or unfair that it outweighs the

⁶ 28 U.S.C. § 754.

⁷ See *SEC v. Am. Capital Invs., Inc.*, 98 F.3d 1133, 1144 (9th Cir. 1996); *Haile v. Henderson National Bank*, 657 F.2d 816, 823 (6th Cir. 1981) (holding that district court could exercise personal jurisdiction over defendants who resided elsewhere as long as the proper documents under § 754 were filed in the district where the defendants were located).

⁸ 326 U.S. 310 (1945).

⁹ *Haile*, 657 F.2d at 824.

congressionally articulated policy of allowing personal jurisdiction.”¹⁰ The burden is on the defendant to prove that due process is not satisfied,¹¹ and in the Tenth Circuit, the following five factors are considered: (1) the extent of the defendant’s contacts with the place where the action was filed; (2) the inconvenience to the defendant of having to defend in a jurisdiction other than that of his residence or place of business; (3) judicial economy; (4) the probable situs of the discovery proceedings and the extent to which the discovery proceedings will take place outside the state of the defendant’s residence or place of business; and (5) the nature of the regulated activity in question and the extent of the impact that the defendant’s activities have beyond the borders of his state of residence or business.¹² “[I]t is only in highly unusual cases that inconvenience will rise to a level of constitutional concern.”¹³ Based on this standard, this Court has found that due process has been satisfied in numerous receivership cases before it.¹⁴

Accordingly, compliance with § 754 is important in litigation related to recovery of property of a receivership estate. Because receivers reasonably cannot know the locations of all receivership property or where all possible defendants reside at the time of appointment or within ten days thereafter, courts allow for the reappointment of a receiver to allow sufficient time to file the notices required under § 754.¹⁵

¹⁰ *Terry v. Walker*, 369 F. Supp. 2d 818, 821 (W.D. Va. 2005).

¹¹ *See Peay v. Bellsouth Medical Assistance Plan*, 205 F.3d 1206, 1212 (10th Cir. 2000).

¹² *Id.* at 1212-13.

¹³ *Id.* at 1213.

¹⁴ *See Klein v. Abdalbaki*, No. 11-cv-00953, 2012 WL 2317357 (D. Utah June 18, 2012); *Klein v. Georges*, No. 12-cv-00076, 2012 WL 5844962 (D. Utah Nov. 19, 2012); *Klein v. Cornelius*, No. 11-cv-1159, 2012 WL 2261114 (D. Utah June 15, 2012); *Wing v. Apex Holding Co., LLC*, 09-cv-00022, 2009 WL 2843343 (D. Utah Aug. 27, 2009); *Wing v. Storms*, No. 02-cv-127, 2004 WL 724448 (D. Utah Feb. 5, 2004).

¹⁵ *See e.g., Miller v. Wulf*, 2012 U.S. Dist. LEXIS 164237, *2 (D. Utah Nov. 15, 2012) (The failure to file copies of the receivership complaint in any district “shall divest the receiver of jurisdiction and control over all property in that district. However, this technical deficiency may be remedied by reappointing the receiver,

B. Reappointment Allows the Receiver to File Notices Within the Ten-Day Window Required by 28 U.S.C. § 754

As noted, courts recognize that a receiver may be reappointed so that he or she can file the required documents under § 754 within ten days from such reappointment.¹⁶

Here, the Receiver has filed copies of the Complaint and the Order of his appointment, or Notices of Receivership, in five judicial districts within the ten-day period following his appointment in June 2012. Since his appointment, the Receiver has engaged in an intensive investigation of the assets of the Receivership Estate. As of this time, the Receiver has discovered additional property in the Additional Districts, including potential litigation claims against defendants located in the Additional Districts, which could not have been known to him within ten (10) days of his appointment. Accordingly, the Receiver requests that the Court issue an Order reappointing him in this action so that he can file Notices of Receivership in the Additional Districts so as to maximize the scope and value of the Receivership Estate.¹⁷

which restarts the ten-day period for the receiver's compliance with § 754."); *S.E.C. v. Vision Comm., Inc.*, 74 F.3d 287, 291 (D.C. Cir. 1996) ("the court may reappoint the receiver and start the ten-day clock of § 754 ticking once again."); *Warfield v. Arpe*, No. 3:05-cv-1457-R, 2007 WL 549467, *12 (N.D. Tex. Feb. 22, 2007) (finding jurisdiction over defendants where receiver filed complaint and order within ten days of reappointment); *Terry v. June*, 2003 WL 22125300, at *4 (W.D. Va. Sept. 12, 2003) ("Courts having addressed the issue unanimously suggest that an order of reappointment will renew the ten-day filing deadline mandated by Section 754.") (collecting cases).

¹⁶ *Id.*

¹⁷ The Receiver's investigation is ongoing, and he reserves the right to request further reappointment in the future if he discovers additional assets located in other districts.

III.

CONCLUSION

For the foregoing reasons, the Receiver respectfully requests that the Court issue an Order of Reappointment in the form attached hereto as **Exhibit A**.

DATED this 14th day of May, 2013.

DORSEY & WHITNEY LLP

 /s/ Peggy Hunt

Peggy Hunt

Chris Martinez

Jeffrey M. Armington

Attorneys for Receiver

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **RECEIVER'S MOTION FOR REAPPOINTMENT AND MEMORANDUM OF LAW**(the "Motion") was filed with the Court on this 14th day of May, 2013, and served via ECF on all parties who have requested notice in this case.

It is further hereby certified that the following parties were served with the Motion via first class mail, postage prepaid on May 14th, 2013:

Wayne L. Palmer
8816 South 2240 West
West Jordan, UT 84088

/s/ Peggy Hunt