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**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.

**DECLARATION OF RECEIVER R.
WAYNE KLEIN IN SUPPORT OF
RECEIVER'S SECOND MOTION
AND MEMORANDUM IN SUPPORT
REQUESTING ORDER APPROVING
SETTLEMENT AGREEMENTS**

**(Hazel J. Ellefsen Family Trust and
Clarence and Darlene Ellefsen; Scott
Beall; Dean T. and Marilyn Bawden;
Monica Packer; John S. and Charlotte
Van Ry and the John & Charlotte Van
Ry Trust; and Ross Paul)**

2:12-cv-00591 BSJ

The Honorable Bruce S. Jenkins

I, R. Wayne Klein, being of lawful age, declare, certify, verify and state as follows:

1. I am the Court-Appointed Receiver (the "Receiver") in the above-captioned case pursuant to the *Order Appointing Receiver and Staying Litigation* entered on June 25, 2012 [Docket No. 9] (the "Receivership Order").

2. I submit this Declaration in support of the *Receiver's Second Motion and Memorandum in Support Requesting Order Approving Settlement Agreements (Hazel J. Ellefsen Family Trust and Clarence and Darlene Ellefsen; Scott Beall; Dean T. and Marilyn Bawden; Monica Packer; John S. and Charlotte Van Ry and the John & Charlotte Van Ry Trust; and Ross Paul)* (the "Motion").¹

3. As a result of my financial analysis and investigation of the Receivership Defendants conducted to date, I have determined that I, as the Receiver, have claims and causes of action against numerous parties related to monies paid by the Receivership Defendants to such parties.

4. Prior to commencing suit, I made demand on numerous parties for the return of monies paid to them by the Receivership Defendants. Based on demand made, I have entered into six Settlement Agreements and Releases with certain parties.

5. Each of the Settlement Agreements: (a) has been negotiated at arm's length and in good faith by me and the respective parties; (b) will avoid the expense, delay and inherent risks of litigation; (c) will result in either the collection of funds for the benefit of the Receivership Estate or reduction of claims and/or defenses that can be asserted against the Receivership Estate; and (d) where applicable, has taken into account issues related to the collection of any judgment that may be obtained.

SETTLEMENT AGREEMENTS

6. On April 17, 2013, I entered into a Settlement Agreement and Release with the Hazel J. Ellefsen Family Trust (the "Ellefsen Trust"), Clarence Ellefsen ("Clarence"), and Darlene Ellefsen ("Darlene") and together with Ellefsen Trust and Clarence, the "Ellefsens").

¹ All capitalized terms used herein but not defined shall have the meanings attributed to them in the Motion.

The Ellefsen Trust, with Clarence as trustee, is an NNU investor which was paid \$49,671.39 in excess of the amounts it invested. Clarence had a separate investment account with NNU with a principal investment in the amount of \$100,000.00. Darlene also had a separate investment account with NNU with a principal investment in the amount of \$99,000.00. Under the Settlement Agreement, I will not seek to recover the \$49,671.39 in excess payments to the Ellefsen Trust, while Clarence and Darlene will waive any claims to recovery of funds from the Receivership Estate based on their unpaid principal investments. The Settlement Agreement and Release provides for the Ellefsens' full release of claims against or to any right to distribution from the Receivership Estate.

7. On April 19, 2013, I entered into a Settlement Agreement and Release with Scott Beall ("Beall"). I have asserted that Beall is an NNU investor who was paid \$12,117.81 in excess of the amounts he invested. Under the Settlement Agreement, Beall has agreed to repay the full overpayment to me for the benefit of the Receivership Estate. Based on his demonstrated financial hardship, Beall will pay the full overpayment amount by no later than December 31, 2013, with \$3,000.00 due each quarter, and the balance of \$3,117.81 due by December 31, 2013. The Settlement Agreement and Release provides for a full release of claims against or to any right to distribution from the Receivership Estate.

8. On April 29, 2013, I entered into a Settlement Agreement and Release with Dean T. Bawden and Marilyn Bawden (collectively, the "Bawdens"), who are NNU investors who received \$169,012.16 in overpayments on their investments. Under the Agreement, the Bawdens have agreed to repay the full overpayment to me for the benefit of the Receivership Estate by a date certain and to execute releases of the assignments of beneficial interest ("ABIs") held by the Bawdens. The Settlement Agreement and Release provides for a full release of claims against or

to any right to distribution from the Receivership Estate.

9. On April 29, 2013, I entered into a Settlement Agreement and Release with Monica Packer ("Packer"), an NNU investor who received \$15,100.00 in overpayments on her investments. Under the Agreement, Packer will repay the full overpayment to me for the benefit of the Receivership Estate by a date certain. The Settlement Agreement and Release provides for a full release of claims against or to any right to distribution from the Receivership Estate, and Packer represents therein that she was unaware of financial problems with NNU when she received payment and that she had no role in managing NNU or soliciting other investors.

10. On April 29, 2013, I entered into a Settlement Agreement and Release with John S. Van Ry, Charlotte Van Ry, and the John & Charlotte Van Ry Trust (collectively, the "Van Rys"). I have alleged that the Van Rys received \$55,652.97 in overpayments on their investments, and the Van Rys have alleged that they have suffered over \$405,000.00 in losses based on a number of allegations. Under the Agreement, the Van Rys will pay \$8,000.00 to me for the benefit of the Receivership Estate by a date certain. The Van Rys will also release any and all liens they hold against properties of the Receivership Estate, including the deed of trust against the Deer Meadows property in Duchesne County, Utah, purporting to secure a debt in the amount of \$40,000.00. The Settlement Agreement and Release provides for a full release of claims against or to any right to distribution from the Receivership Estate.

11. On May 13, 2013, I entered into a Settlement Agreement with Ross Paul ("Paul") an NNU investor who received \$6,004.31 in overpayments on his investments. Under the Agreement, Paul will repay the full overpayment to me for the benefit of the Receivership Estate by a date certain. The Settlement Agreement and Release provides for a full release of claims against or to any right to distribution from the Receivership Estate, and Paul represents therein

that he was unaware of financial problems with NNU when he received payment and that he had no role in managing NNU or soliciting other investors.

12. While I am confident of my right to recover on the claims at issue and there may be no doubt as to the ultimate outcome of the litigation, risks associated with litigation are inherent and those risks, together with potential collection risks and the costs associated therewith, make the proposed settlements fair, adequate and reasonable.

13. In the case of the Settlement Agreements and Releases with Beall, the Bawdens, Packer, and Paul the Receivership Estate will obtain full recovery of overpaid funds either in lump sum or over time.

14. In the case of the Settlement Agreement and Release with the Ellefsens, the Receivership Estate will waive its \$49,671.39 claim for overpayments in exchange for the Ellefsens' waiver of \$199,000.00 in claims based upon the unpaid principal amounts owed on their investments. Based on my analysis of those claims, I have determined in my business judgment that the reciprocal waiver of claims under the Settlement Agreement and Release is fair, reasonable and adequate.

15. In the case of the Settlement Agreement and Release with the Van Rys, the Receivership Estate will receive \$8,000.00 as a compromised sum of the \$55,652.97 in overpayments that reflects the Van Rys' potential claims against the Receivership Estate, which they assert exceed \$405,000.00. In addition, the Van Rys will release any liens they hold on any property owned by the Receivership Estate, including the deed of trust against the Deer Meadows property in Duchesne County, Utah. I have determined in my business judgment that reducing the amount paid by the Van Rys in exchange for getting the Van Rys to waive their claims against the Receivership Estate and release their liens against property of the

Receivership Estate, is in the best interests of the Receivership Estate.

16. Each of the Settlement Agreements and Releases was negotiated fairly and honestly, and is the result of an arm's length transaction. There has been no collusion between the parties.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED this 24th day of May, 2013.

A handwritten signature in blue ink, reading "Wayne Klein", is written over a horizontal line.

R. Wayne Klein, *Receiver*

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **DECLARATION OF RECEIVER R. WAYNE KLEIN IN SUPPORT OF RECEIVER'S SECOND MOTION AND MEMORANDUM IN SUPPORT REQUESTING ORDER APPROVING SETTLEMENT AGREEMENTS (Hazel J. Ellefsen Family Trust and Clarence and Darlene Ellefsen; Scott Beall; Dean T. and Marilyn Bawden; Monica Packer; John S. and Charlotte Van Ry and the John & Charlotte Van Ry Trust; and Ross Paul)** was filed with the Court on this 28th day of May, 2013, and served via ECF on all parties who have requested notice in this case.

/s/ Jeffrey M. Armington

Furthermore, I certify that on the 28th day of May, 2013, the Declaration was served on the following parties by U.S. Mail postage prepaid:

Wayne Palmer
8816 South 2240 West
West Jordan, Utah 84088
Defendant

Clarence Ellefsen
10149 South 1300 West
South Jordan, UT 84095

Scott Beall
757 Massachusetts Avenue, #403
Indianapolis, IN 46204

Dean & Marilyn Bawden
c/o Mona Burton, Esq.
Holland & Hart
222 South Main, Suite 2200
Salt Lake City, UT 84101

Monica Packer
320 West Arroyo Street
Reno, NV 89509

John & Charlotte Van Ry
PO Box 251
Nephi, UT 84648

Ross Paul
332 West 700 North
Santaquin, UT 84655

/s/ Jeffrey M. Armington