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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, an
individual,

Defendants.

**RECEIVER’S EIGHTH MOTION
SEEKING APPROVAL OF SETTLEMENT
AGREEMENTS AND MEMORANDUM IN
SUPPORT**

**(Mont Palmer, Shauna Palmer and
Yardmasters Yearound Maintenance, Inc.;
Lynda Davis Swenson; Sharla Palmer; Eric
Myer; Sarah Mortensen; Takeo Iwamoto,
Takeo Iwamoto Ltd. Partnership and The
Takeo Iwamoto Family Trust; Debra
Palmer; and Danny Palmer)**

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 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 A**, approving the below-described Settlement Agreements and Releases entered into by the Receiver. This Motion is supported by the *Memorandum of Law* contained herein and the *Declaration of R. Wayne Klein, Receiver*, filed concurrently herewith (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” and collectively with NNU 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
- “[T]ake custody, control and possession of all Receivership Property and records. . . [.]”⁴

¹ Docket No. 9 (Receivership Order).

² *See generally, id.*

³ *Id.* at ¶ 7(A).

- “[M]anage, control, operate and maintain the Receivership Estates and hold in his possession, custody and control all Receivership Property, pending further Order of this Court[.]”⁵
- “[U]se Receivership Property for the benefit of the Receivership Estates, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging his duties as Receiver[.]”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
- “[P]ursue, resist and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against the Receivership Estates[.]”⁸

II.

THE SETTLEMENT AGREEMENTS AND RELEASES

3. As a result of his financial analysis and investigation of the Receivership Defendants conducted to date, the Receiver has determined that he has claims and causes of action against numerous parties related to these parties’ dealings with the Receivership Defendants prior to his appointment.⁹

4. Prior to commencing suit, the Receiver made demand on numerous parties for the return of monies paid to them by the Receivership Defendants. Based on demands made and lawsuits filed, the Receiver has entered into numerous settlement agreements, including the eight

⁴ *Id.* at ¶ 7(B).

⁵ *Id.* at ¶ 7(C).

⁶ *Id.* at ¶ 7(D).

⁷ *Id.* at ¶ 37.

⁸ *Id.* at ¶ 7(J).

⁹ Receiver Declaration ¶ 3.

Settlement Agreements and Releases that are the subject of this Motion.¹⁰ Each of these Settlement Agreements (a) has been negotiated at arm's length and in good faith by the Receiver 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.¹¹

5. The Settlement Agreements subject to the present Motion, all of which are subject to Court approval, are as follows:

a. Mont Palmer, Shauna Palmer & Yardmasters Yearound Maintenance, Inc.: On June 21, 2013, the Receiver filed suit against Mont Palmer, Shauna Palmer, and Yardmasters Yearound Maintenance, Inc. (collectively, "Mont Palmer"), alleging that Mont Palmer was an NNU investor who received a total of \$29,475.34 in excess of his principal investment with NNU. Mont Palmer thereafter provided verified financial information to the Receiver showing he would be unable to repay the full amount of the overpayment and requested additional time to return funds to the Receivership Estate. Based thereon, on March 31, 2014, the Receiver entered into a Settlement Agreement and Release with Mont Palmer, subject to Court approval, agreeing in part to compromise the Receivership Estate's claim against Mont Palmer. Under the Agreement, Mont Palmer has agreed to pay \$24,500.00 to the Receivership Estate. This amount will be paid by March 31, 2017. To date, Mont Palmer has paid \$6,500.00

¹⁰ Receiver Declaration ¶ 4.

¹¹ Receiver Declaration ¶ 5.

of the settlement amount. Additionally, Mont Palmer will sign documents necessary to release any assignments of beneficial interest or trust deeds recorded in favor of Mont Palmer in any property owned by NNU. The parties have also agreed to mutual releases.¹²

b. Lynda Swenson Davis: On June 21, 2013, the Receiver filed suit against Lynda Swenson Davis (“Davis”), alleging that she was an NNU investor who received a total of \$24,620.83 in excess of her principal investment with NNU. Davis thereafter provided verified financial information to the Receiver showing she would be unable to repay the full amount of the overpayment and requested additional time to return funds to the Receivership Estate. Based thereon, on April 2, 2014, the Receiver entered into a Settlement Agreement and Release with Davis, subject to Court approval, agreeing in part to compromise the Receivership Estate’s claim against her. Under the Agreement, Davis has agreed to pay \$19,000.00 to the Receivership Estate. This amount will be paid by November 30, 2015. To date, Davis has paid \$4,600.00 of the settlement amount. The parties have also agreed to mutual releases.¹³

c. Sharla Palmer: On February 21, 2013, the Receiver made demand on Sharla Palmer (“Sharla Palmer”), alleging that she was an NNU investor who received a total of \$745.35 in excess of her principal investment with NNU. Sharla Palmer provided information to the Receiver about her financial situation. Based thereon, on April 29, 2014, the Receiver entered into a Settlement Agreement and Release with Sharla Palmer, subject to Court approval, agreeing in part to compromise the Receivership Estate’s claim against her. Under the

¹² Receiver Declaration ¶ 6.

¹³ Receiver Declaration ¶ 7.

Agreement, Sharla Palmer has agreed to pay \$600.00 to the Receivership Estate. This amount has been paid. The parties have also agreed to mutual releases.¹⁴

d. Eric Myer: On June 19, 2013, the Receiver filed suit against Eric Myer (“Myer”), alleging that he was an NNU investor who received a total of \$5,404.11 in excess of his principal investment with NNU. Myer provided verified financial information to the Receiver showing an inability to repay the full amount and requested additional time to repay funds to the Receivership Estate. Based thereon, on May 6, 2014, the Receiver entered into a Settlement Agreement and Release with Myer, subject to Court approval, agreeing in part to compromise the Receivership Estate’s claim against him. Under the Agreement, Myer has agreed to pay \$4,000.00 to the Receivership Estate. This amount will be paid by October 3, 2014. To date, Myer has paid \$1,000.00. The parties have also agreed to mutual releases.¹⁵

e. Sarah Mortensen: On June 21, 2013, the Receiver filed suit against Sarah Mortensen (“Mortensen”), alleging that she was an NNU investor who received a total of \$8,567.36 in excess of her principal investment with NNU. Davis thereafter provided verified financial information to the Receiver showing she would be unable to repay the full amount of the overpayment. Based thereon, on May 23, 2014, the Receiver entered into a Settlement Agreement and Release with Mortensen, subject to Court approval, agreeing in part to compromise the Receivership Estate’s claim against her. Under the Agreement, Mortensen has agreed to pay \$3,000.00.00 to the Receivership Estate. This amount has been paid. Additionally, Mortensen will sign documents necessary to release any assignments of beneficial

¹⁴ Receiver Declaration ¶ 8.

¹⁵ Receiver Declaration ¶ 9.

interest or trust deeds recorded in favor of her in any property owned by NNU. The parties have also agreed to mutual releases.¹⁶

f. Takeo Iwamoto, Takeo Iwamoto Ltd. Partnership and The Takeo Iwamoto Family Trust: On June 21, 2013, the Receiver filed suit against Takeo Iwamoto, Takeo Iwamoto Ltd. Partnership and The Takeo Iwamoto Family Trust (collectively, "Iwamoto"), alleging that they were NNU investors who received a total of \$19,839.08 in excess of his principal investment with NNU. Iwamoto provided verified financial information to the Receiver showing an inability to repay the full amount. Based thereon, on May 7, 2014, the Receiver entered into a Settlement Agreement and Release with Iwamoto, subject to Court approval, agreeing in part to compromise the Receivership Estate's claim against Iwamoto. Under the Agreement, Iwamoto has agreed to pay \$17,000.00 to the Receivership Estate. This amount has been paid. The parties have also agreed to mutual releases.¹⁷

g. Debra Palmer: On June 24, 2013, the Receiver filed suit against Debra Palmer ("Debra Palmer"), alleging that Debra Palmer was an NNU investor who received a total of \$46,932.00 in excess of her principal investment with NNU. Debra Palmer thereafter provided verified financial information to the Receiver showing that she would not be able to pay any judgment obtained against her. On June 2, 2014, the Receiver entered into a Settlement Agreement and Release with Debra Palmer, subject to Court approval, agreeing to compromise the Receivership Estate's claim against her based on demonstrated financial hardship and circumstances. Under the Agreement, the parties have agreed to mutual releases, with Debra

¹⁶ Receiver Declaration ¶ 10.

¹⁷ Receiver Declaration ¶ 11.

Palmer being barred from asserting any claims against or receiving any distribution from the Receivership Estate. Additionally, Debra Palmer will sign documents necessary to release any assignments of beneficial interest or trust deeds recorded in favor of her in any property owned by NNU.¹⁸

h. Danny Palmer: On June 24, 2013, the Receiver filed suit against Danny Palmer (“Danny Palmer”), alleging that Danny Palmer was an NNU investor who received a total of \$46,932.00 in excess of his principal investment with NNU. Danny Palmer thereafter provided verified financial information to the Receiver showing that he would not be able to pay any judgment obtained against him. On June 2, 2014, the Receiver entered into a Settlement Agreement and Release with Danny Palmer, subject to Court approval, agreeing to compromise the Receivership Estate’s claim against him based on demonstrated financial hardship and circumstances. Under the Agreement, the parties have agreed to mutual releases, with Danny Palmer being barred from asserting any claims against or receiving any distribution from the Receivership Estate. Additionally, Danny Palmer will sign documents necessary to release any assignments of beneficial interest or trust deeds recorded in favor of him in any property owned by NNU.¹⁹

III.

APPLICABLE LAW AND ANALYSIS

6. The Receiver requests that the Court approve the above-described Settlement Agreements. In support hereof, the Receiver provides the following analysis.

¹⁸ Receiver Declaration ¶ 12.

¹⁹ Receiver Declaration ¶ 13.

7. Courts recognize that a “receiver has the power, when so authorized by the court, to compromise claims either for or against the receivership and whether in suit or not in suit.”²⁰

8. “In determining whether to approve a proposed settlement, the cardinal rule is that the District Court must find that the settlement is fair, adequate and reasonable and is not the product of collusion between the parties.”²¹ The Tenth Circuit has explained:

In assessing whether the settlement is fair, reasonable and adequate the trial court should consider: (1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the settlement is fair and reasonable.²²

9. Here, each of the Settlement Agreements and Release is fair, reasonable and adequate for at least the following reasons: (a) they were fairly and honestly negotiated at arm’s length and in good faith by the parties; (b) the value of an immediate recovery outweighs the mere possibility of future relief after potentially protracted and expensive litigation; and (c) the terms of the respective proposed settlements are fair and reasonable. Furthermore, while the Receiver is confident of his right to recover on the claims at issue, 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.²³

²⁰ *Sec. & Exch. Comm’n v. Credit Bankcorp, Ltd.*, No. 99 CIV. 11395, 2001 WL 1658200, at *2 (S.D.N.Y. Dec. 27, 2001) (quoting 3 Ralph Ewing Clark, *A Treatise on the Law and Practice of Receivers*, § 770 (3d Ed. 1959)).

²¹ *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977); *see also Jones v. Nuclear Pharmacy, Inc.*, 741 F.2d 322, 324 (10th Cir. 1984).

²² *Jones*, 741 F.2d at 324.

²³ Receiver Declaration ¶¶ 14–15.

10. The Receiver, in an exercise of his business judgment, has determined that each of the Settlement Agreements and Releases is in the best interest of the Receivership Estate taking into account (a) the information that he has been provided related to each of the Defendants and the facts surrounding their transactions with NNU and/or their ability to pay a potential judgment, (b) potential claims that may exist against the Receivership Estate, and/or (c) the inherent costs and delay associated with litigation.²⁴

11. Together, the Settlement Agreements and Releases will result in the payment of approximately \$68,100.00 to the Receivership Estate. These settlements also will allow the Receiver to avoid expending additional time and legal fees pursuing litigation that is unlikely to result in additional recovery for the Receivership Estate.²⁵

12. 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.²⁶

13. In light of these factors, the Receiver believes these settlement agreements are just and fair and should be approved.²⁷

²⁴ Receiver Declaration ¶ 16.

²⁵ Receiver Declaration ¶ 17.

²⁶ Receiver Declaration ¶ 18.

²⁷ Receiver Declaration ¶ 19.

CONCLUSION

Accordingly, for the reasons set forth herein, the Receiver requests that the Court enter the proposed Order attached hereto as **Exhibit A**, approving the Settlement Agreements and Releases described above.

DATED this 9th day of June, 2014.

DORSEY & WHITNEY LLP

 /s/ Peggy Hunt

Peggy Hunt

Chris Martinez

Nathan S. Seim

Attorneys for Receiver

EXHIBIT A

Peggy Hunt (Utah State Bar No. 6060)
Chris Martinez (Utah State Bar No. 11152)
Nathan S. Seim (Utah State Bar No. 12654)

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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, an
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Defendants.

**ORDER GRANTING RECEIVER'S
EIGHTH MOTION SEEKING APPROVAL
OF SETTLEMENT AGREEMENTS AND
MEMORANDUM IN SUPPORT**

**(Mont Palmer, Shauna Palmer and
Yardmasters Yearound Maintenance, Inc.;
Lynda Davis Swenson; Sharla Palmer; Eric
Myer; Sarah Mortensen; Takeo Iwamoto,
Takeo Iwamoto Ltd. Partnership and The
Takeo Iwamoto Family Trust; Debra
Palmer; and Danny Palmer)**

2:12-cv-00591 BSJ

The Honorable Bruce S. Jenkins

The matter before the Court is the *Receiver's Eighth Motion Seeking Approval of Settlement Agreements and Memorandum in Support (Mont Palmer, Shauna Palmer and Yardmasters Yearound Maintenance, Inc.; Lynda Davis Swenson; Sharla Palmer; Eric Myer; Sarah Mortensen; Takeo Iwamoto, Takeo Iwamoto Ltd. Partnership and The Takeo Iwamoto*

Family Trust; Debra Palmer; and Danny Palmer) (the “Motion”), filed by R. Wayne Klein, the Court-Appointed Receiver (the “Receiver”) in the above-captioned case. The Court has reviewed the Motion, the *Declaration of Receiver R. Wayne Klein in Support of the Motion* (the “Receiver Declaration”), and applicable law. Based thereon, and for good cause shown,

IT IS HEREBY ORDERED THAT:

- (1) The Motion is **GRANTED**;
- (2) The Settlement Agreement and Release with Mont Palmer, Shauna Palmer and Yardmasters Yearound Maintenance, Inc., as set forth in the Motion, is **APPROVED**;
- (3) The Settlement Agreement and Release with Lynda Davis Swenson, as set forth in the Motion, is **APPROVED**;
- (4) The Settlement Agreement and Release with Sharla Palmer, as set forth in the Motion, is **APPROVED**;
- (5) The Settlement Agreement and Release with Eric Myer, as set forth in the Motion, is **APPROVED**;
- (6) The Settlement Agreement and Release with Sarah Mortensen, as set forth in the Motion, is **APPROVED**;
- (7) The Settlement Agreement and Release with Takeo Iwamoto, Takeo Iwamoto Ltd. Partnership, and The Takeo Iwamoto Family Trust, as set forth in the Motion, is **APPROVED**;
- (8) The Settlement Agreement and Release with Debra Palmer, as set forth in the Motion, is **APPROVED**; and

(9) The Settlement Agreement and Release with Danny Palmer, as set forth in the Motion, is **APPROVED**.

DATED this _____ day of _____, 2014

BY THE COURT:

Honorable Bruce S. Jenkins
U.S. District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that service of the above **RECEIVER'S EIGHTH MOTION SEEKING APPROVAL OF SETTLEMENT AGREEMENTS AND MEMORANDUM IN SUPPORT (MONT PALMER, SHAUNA PALMER AND YARDMASTERS YEAROUND MAINTENANCE, INC.; LYNDIA SWENSON DAVIS; SHARLA PALMER; ERIC MYER; SARAH MORTENSEN; TAKEO IWAMOTO, TAKEO IWAMOTO LTD. PARTNERSHIP AND THE TAKEO IWAMOTO FAMILY TRUST; DEBRA PALMER, AND DANNY PALMER)** (the "Motion") was filed with the Court on this 9th day of June, 2014, and served via ECF on all parties who have requested notice in this case.

Furthermore, I certify that on the 9th day of June 2014, the Motion was served on the following parties by U.S. First Class Mail, postage prepaid:

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

Furthermore, I certify that on the 9th day of June 2014, the Motion was served on the following parties by electronic mail:

Mont and Shauna Palmer
c/o Douglas Wawrzynski
douglas@bwlawpllc.com

Lynda Swenson Davis
c/o Kevin Catlett
kevin@cottonwoodlegal.com

Sharla Palmer
Sharla.18@hotmail.com

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