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

<p>SECURITIES AND EXCHANGE COMMISSION,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>NATIONAL NOTE OF UTAH, LC, a Utah Limited Liability Company and WAYNE LaMAR PALMER, an individual,</p> <p style="text-align: center;">Defendants.</p>	<p><b>RECEIVER’S NOTICE OF WAYNE SCHOLLE’S FAILURE TO COMPLY WITH COURT ORDER AND RENEWED MOTION FOR ORDER TO SHOW CAUSE AS TO WHY WAYNE SCHOLLE SHOULD NOT BE HELD IN CONTEMPT AND MEMORANDUM IN SUPPORT</b></p> <p>2:12-cv-00591 BSJ</p> <p>The Honorable Bruce S. Jenkins</p>
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In accordance with this Court’s November 26, 2012 *Order on Court’s Order to Show Cause*,<sup>1</sup> a copy of which is attached hereto as **Exhibit A** (the “OSC Order”), R. Wayne Klein, the Court-Appointed Receiver in the above-captioned case (the “Receiver”), by and through his counsel, respectfully submits this *Notice of Wayne Scholle’s Failure to Comply with Court Order*

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<sup>1</sup> Docket No. 83.

*and Renewed Motion for Order to Show Cause as to Why Wayne Scholle Should Not Be Held in Contempt and Memorandum in Support* (the “Renewed Motion”).

This Renewed Motion is supported by the *Declaration of R. Wayne Klein* (the “Receiver Declaration”) which has been filed concurrently herewith. A proposed Order is submitted herewith and is attached hereto as **Exhibit B**.

## **MEMORANDUM IN SUPPORT**

### **I.**

#### **BACKGROUND**

##### **The First Order to Show Cause**

1. On September 18, 2012, the Receiver filed a *Motion (1) for Order to Show Cause as to Why Wayne Scholle Should Not Be Held in Contempt, and (2) for Order of Turnover and Disgorgement* (the “First Motion for Order to Show Cause”), attached to which was the Receiver’s Declaration in support of that First Motion (the “First Receiver Declaration”).<sup>2</sup> A copy of the Memorandum in Support of the First Motion for Order to Show Cause, along with the First Receiver Declaration, is attached hereto as **Exhibit C**. The facts and evidence set forth in the First Motion for Order to Show Cause and the First Receiver Declaration are incorporated herein by reference.

2. Generally, in the First Motion for Order to Show Cause, the Receiver maintained that Wayne Scholle (“Scholle”), a former employee of one of the entities in receivership, took 400 one-ounce silver coins (the “Silver Coins”) with knowledge of the receivership, converted them to his own use, and refused to return the Silver Coins or their value to the Receiver upon

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<sup>2</sup> Docket No. 59.

demand.<sup>3</sup>

3. On October 10, 2012, the Court entered an *Order Granting Receiver's Motion (1) for Order to Show Cause as to Why Wayne Scholle Should Not be Held in Contempt, and (2) for Order of Turnover and Disgorgement* (the "OSC"),<sup>4</sup> a copy of which is attached hereto as **Exhibit D**, ordering Scholle to answer the First Motion for Order to Show Cause by October 25, 2012, to turn over the Silver Coins, and to appear at a hearing on November 7, 2012, to show cause as to why he should not be held in contempt.

4. The OSC was served on Scholle on October 18, 2012.<sup>5</sup>

5. Scholle never filed an answer to the First Motion for Order to Show Cause.

6. Scholle did appear at the scheduled November 7, 2012 hearing on the First Motion to Show Cause and the OSC. At the hearing, the parties reached an agreement which was put on the record whereby Scholle agreed to pay the receivership estate a total of \$9,000.00 in three installments:

- \$5,000.00 on November 16, 2012;
- \$2,000.00 on December 31, 2012; and
- \$2,000.00 on February 28, 2013.<sup>6</sup>

7. On or about November 26, 2012, the Court entered its *Order on Court's Order to*

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<sup>3</sup> See Exh. C (First Motion for Order to Show Cause and First Receiver Declaration).

<sup>4</sup> Docket No. 65.

<sup>5</sup> Docket No. 69.

<sup>6</sup> See Docket No. 87; Receiver Decl. ¶ 5.

*Show Cause* (defined above as the “OSC Order”),<sup>7</sup> memorializing the agreement put on the record at the hearing, and requiring Scholle to make the payments as set forth above.<sup>8</sup>

8. Importantly, the OSC Order also provides as follows:

The Court’s [OSC] is stayed. If Mr. Scholle makes the payments set forth in paragraph 1 of this Order, then the [OSC] shall be cancelled and the Receiver shall withdraw the [First Motion for Order to Show Cause]. If Mr. Scholle fails to make any of the payments, as set forth in paragraph 1 of this Order, then Mr. Scholle shall be in contempt of this Order and the Receiver shall provide notice to the Court of Mr. Scholle’s failure to comply with this Order. Upon receiving notice from the Receiver, the Court shall reschedule a hearing on the [OSC] and Mr. Scholle shall appear at the hearing to address whether the Court should sanction Mr. Scholle (1) for failing to comply with this Order; and (2) for the reasons set forth in the [First Motion for Order to Show Cause].<sup>9</sup>

9. The OSC Order shows that it was approved by Scholle.<sup>10</sup>

**Scholle’s Failure to Comply With the OSC Order**

10. Scholle made the first installment payment of \$5,000.00 on November 15, 2012. He has not made the second and third payments, and thus still owes a total amount of \$4,000.00 to the receivership estate pursuant to his agreement and the OSC Order.<sup>11</sup>

11. On May 30, 2014, after the Court had inquired about the status of this matter at an unrelated hearing, the Receiver sent a letter to Scholle, a copy of which is attached to the Receiver Declaration, attaching the OSC Order, and demanding that he comply with the OSC

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<sup>7</sup> Docket No. 83, attached hereto as Exh A.

<sup>8</sup> Exh. A (OSC Order ¶ 1).

<sup>9</sup> *Id.* ¶ 2.

<sup>10</sup> *Id.* p. 2.

<sup>11</sup> Receiver Declaration, ¶ 6.

Order.<sup>12</sup>

12. Scholle responded to the Receiver's May 30<sup>th</sup> letter by a letter addressed to the Receiver dated June 11, 2014, a copy of which is attached to the Receiver Declaration, stating that he was owed a total of \$9,137.67 from Old Glory Mint and that it was his "intention to pay the remaining \$4,000 from what I would fairly receive and which was owed to me."<sup>13</sup>

13. The Receiver responded to Scholle by letter dated June 16, 2014, a copy of which is attached to the Receiver Declaration, informing Scholle that he was required to comply with the OSC Order and that any amount owed to him by Old Glory Mint would be addressed as part of the claims process in this case.<sup>14</sup> The Receiver stated that he would give Scholle until June 20, 2014 to pay the remaining amount owed and if he did not comply he would notify the Court.<sup>15</sup>

14. Scholle has not yet paid the remaining \$4,000.000 to the Receiver.<sup>16</sup>

15. The Receiver has never withdrawn the First Motion for Order to Show Cause.

## **II.**

### **ARGUMENT**

Pursuant to ¶ 2 of the OSC Order quoted above, the Receiver hereby gives notice of Scholle's failure to comply with the OSC Order. Furthermore, the Receiver requests that the

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<sup>12</sup> Receiver Declaration, ¶ 8 & Exh. A (May 30, 2014 Letter from Receiver).

<sup>13</sup> Receiver Declaration, ¶ 9 & Exh. B (June 11, 2014 Letter from Scholle, p. 1).

<sup>14</sup> Receiver Declaration, ¶10 & Exh. C (June 14, 2014 Letter from Receiver).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at ¶ 11.

Court set the First Motion for Order to Show Cause and this Renewed Motion for hearing, ordering Scholle to appear and show cause as to why he should not be held in contempt.

It is respectfully submitted that the Court should hold Scholle in contempt as he has violated the OSC Order, not to mention the Receivership Order discussed in the First Motion for Order to Show Cause.<sup>17</sup> A person can be held in contempt of court if it is proven by clear and convincing evidence that (1) the court's order is valid and sufficiently specific in its definition of the conduct enjoined; (2) the enjoined party had "actual knowledge" of the order; and (3) the enjoined party disobeyed the order.<sup>18</sup> In civil contempt proceedings, "disobedience of the order need not be willful."<sup>19</sup> Rather, a person can be held in contempt for "failure to be reasonably diligent and energetic in attempting to accomplish what was ordered."<sup>20</sup> Applying this test, the Receiver has met his burden of establishing that Scholle is in contempt of the OSC Order (not to mention the Receivership Order).

First, the OSC Order is valid and sufficiently specific. It requires Scholle to pay the Receiver \$9,000.00 in three installments, with each payment to be made by a certain date. Scholle has failed to complete his obligations under the OSC Order.

Second, Scholle has actual knowledge of the OSC Order and the Receiver's demand for compliance with the OSC Order.

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<sup>17</sup> See Exh. C (First Motion for Order to Show Cause).

<sup>18</sup> See, e.g., *Clearone Communications, Inc. v. Bowers*, 651 F.3d 1200, 1210 (10th Cir. 2011); *SEC v. Art Intellect, Inc.*, 2011 WL 5553647, 8-9 (D. Utah 2011).

<sup>19</sup> *Art Intellect, Inc.*, 2011 WL 5553647 at 8-9.

<sup>20</sup> *Bad Ass Coffee Co. of Hawaii, Inc. v. Bad Ass Ltd. P'ship*, 95 F.Supp.2d 1252, 1256 (D. Utah 2000).

Third, Scholle continues to disobey the OSC Order as he has refused pay the remaining \$4,000.00, and instead has chosen to retain that amount in payment for money allegedly owed to him by Old Glory Mint.

Having established all three factors as to the OSC Order (not to mention the Receivership Order), Scholle now has the burden to show otherwise.<sup>21</sup> Accordingly, the Receiver requests that the Court order Scholle to appear and show cause as to why he believes he is not in contempt and why he should not be sanctioned for his contempt, including being ordered to pay the Receiver's reasonable fees and costs in attending to this matter and being forced to bring the First Motion for Order to Show Cause and this present Renewed Motion.<sup>22</sup> The Receiver notes that he has attempted to deal with the issues outlined herein without resorting to the Court for relief. Yet, despite his representations to the Court and agreement to pay \$9,000.00, the express terms of the OSC Order and the Receiver's reasonable requests, Scholle has failed to comply with the Receivership Order and the OSC Order. Thus, the Receiver submits that sanctions, including fees and costs are appropriate relief, and the Receiver will provide a separate declaration of his fees and costs if the Court determines that this is appropriate relief.

### **III.**

### **CONCLUSION**

For the foregoing reasons, the Receiver requests that this Court grant this Renewed Motion, thus ordering Scholle to appear and show cause as to why he should not be sanctioned

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<sup>21</sup> See, e.g., *Clearone Communications*, 651 F.3d at 1210.

<sup>22</sup> See, e.g., *Walker v. City of Birmingham*, 388 U.S. 307 (1967) (failure to obey a court order may subject a person to sanctions for contempt).

for his contempt of the Receivership Order and the OSC Order, including being ordered to pay the Receiver's fees and costs in attending to this matter and in bringing the Renewed Motion.

DATED this 2nd day of July, 2014.

**DORSEY & WHITNEY LLP**

/s/ Peggy Hunt  
Peggy Hunt  
Chris Martinez  
Sarah Goldberg  
*Attorneys for R. Wayne Klein, Receiver*



**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that the above RECEIVER'S NOTICE OF WAYNE SCHOLLE'S FAILURE TO COMPLY WITH COURT ORDER AND RENEWED MOTION FOR ORDER TO SHOW CAUSE AS TO WHY WAYNE SCHOLLE SHOULD NOT BE HELD IN CONTEMPT AND MEMORANDUM IN SUPPORT (the "Renewed Motion") was filed with the Court this 2<sup>nd</sup> day of July, 2014 and served on all parties who have requested notice in this case.

Also, on this 2nd day of July, 2014, a copy of this Renewed Motion was served by U.S.

First Class Mail on the following:

Wayne Scholle  
1044 N. 440 W.  
Orem, Utah 84047

Wayne Green Esq.  
6491 N. 7<sup>th</sup> Ct.  
Fresno, CA 93710-4337

Wayne Palmer  
8816 South 2240 West  
West Jordan, UT 84088

Finally, on this 2nd day of July, 2014, a copy of this Renewed Motion was served by e-mail on the following:

Wayne Green      [iamgreenlaw@aol.com](mailto:iamgreenlaw@aol.com)

Wayne Scholle      [wks01@sbcglobal.net](mailto:wks01@sbcglobal.net)

/s/           Peggy Hunt