

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

**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](mailto:hunt.peggy@dorsey.com)

[martinez.chris@dorsey.com](mailto:martinez.chris@dorsey.com)

[seim.nathan@dorsey.com](mailto:seim.nathan@dorsey.com)

*Attorneys for Court-Appointed Receiver R. Wayne Klein*

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

<p>SECURITIES AND EXCHANGE COMMISSION,</p> <p style="text-align: right;">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: right;">Defendants.</p>	<p><b>RECEIVER'S TENTH MOTION SEEKING APPROVAL OF SETTLEMENT AGREEMENTS AND MEMORANDUM IN SUPPORT</b></p> <p><b>(Kenneth Palmer; Robert W. Stensland and the Robert W. Stensland Trust; and First National Bank)</b></p> <p style="text-align: center;">2:12-cv-00591 BSJ</p> <p style="text-align: center;">The Honorable Bruce S. Jenkins</p>
---	---

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 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”).<sup>1</sup> 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.<sup>2</sup>

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 . . . [.]”<sup>3</sup>
- “[T]ake custody, control and possession of all Receivership Property and records. . . [.]”<sup>4</sup>

---

<sup>1</sup> Docket No. 9 (Receivership Order).

<sup>2</sup> *See generally, id.*

<sup>3</sup> *Id.* at ¶ 7(A).

<sup>4</sup> *Id.* at ¶ 7(B).

- “[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[.]”<sup>5</sup>
- “[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[.]”<sup>6</sup>
- “[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.”<sup>7</sup>
- “[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[.]”<sup>8</sup>

## 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.<sup>9</sup>

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 and information obtained by the Receiver as part of his investigation, the Receiver

---

<sup>5</sup> *Id.* at ¶ 7(C).

<sup>6</sup> *Id.* at ¶ 7(D).

<sup>7</sup> *Id.* at ¶ 37.

<sup>8</sup> *Id.* at ¶ 7(J).

<sup>9</sup> Receiver Declaration ¶ 3.

has entered into numerous settlement agreements, including the three Settlement Agreements and Releases that are the subject of this Motion discussed in further detail below.<sup>10</sup>

5. Each Settlement Agreement and Release (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 the collection of funds or the maximization of assets for the benefit of the Receivership Estate and/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.<sup>11</sup>

6. Each Settlement Agreement and Release subject to the present Motion, all of which are subject to Court approval, are described as follows:

a. Kenneth Palmer ("K. Palmer"): On June 24, 2013, the Receiver filed suit against K. Palmer, alleging that he was an NNU investor who received a total of \$18,527.00 in excess of his principal investment with NNU. K. Palmer thereafter provided verified financial information to the Receiver showing financial difficulty in repaying the full amount of the overpayment and needing additional time to pay the amount of the settlement. Based thereon, on September 12, 2014, the Receiver entered into a Settlement Agreement and Release with K. Palmer, subject to Court approval, agreeing in part to compromise the Receivership Estate's claim against K. Palmer. Under the Agreement, K. Palmer will pay \$9,300.00 to the

---

<sup>10</sup> Receiver Declaration ¶ 4.

<sup>11</sup> Receiver Declaration ¶ 5.

Receivership Estate. K. Palmer has already paid \$6,000, with the balance due by March 15, 2015. The parties have also agreed to mutual releases.<sup>12</sup>

b. Robert W. Stensland and Robert W. Stensland Trust (“Stensland”):

Stensland is an NNU investor who held two promissory notes issued to him by NNU. One of the notes, in the principal amount of \$175,000.00, states that it is secured by first priority liens on five lots of land owned by NNU in Toquerville, Utah (the “Almond Heights” subdivision).<sup>13</sup> Based on an investigation, the Receiver determined that he does not have a good faith basis for challenging the validity of Stensland’s liens, and that the liens may be oversecured. Furthermore, the Receiver was concerned that Stensland may sell all or a portion of his collateral at fire sale prices, negatively affecting the Receiver’s ability to maximize net proceeds from the remaining 17 lots owned by the Receivership Estate in the same subdivision. Thus, on September 11, 2014, the Receiver entered into a Settlement Agreement and Release with Stensland, subject to Court approval, limiting Stensland’s claims against the Receivership Estate, and setting forth a procedure for the sale of the Almond Heights lots in a manner that will result in net recoveries for the Receivership Estate. Under the Agreement, the Receiver will market the five Almond Heights lots held as collateral by Stensland, along with the other 17 lots in the Almond Height subdivision owned by the Receivership Estate. The Receivership Estate will receive 25% of the net sales proceeds of the sales of the five lots subject to Stensland’s liens. The Settlement Agreement and Release details the procedures the Receiver will follow in

---

<sup>12</sup> Receiver Declaration ¶ 7.

<sup>13</sup> Stensland’s second NNU promissory note is not affected by the Settlement Agreement and Release at issue here.

marketing these properties, including giving Stensland authority to decline sales offers presented to the Receiver. Stensland also agrees that his receipt of 75% of the net sales proceeds from the sales of the five lots will be his only remedy relating to his \$175,000.00 promissory note. Accordingly, Stensland will not file a claim against the Receivership Estate relating to that note and he will not assert that he is entitled to interest based on any potentially oversecured status. Stensland may terminate the Agreement and seek to foreclose related to his collateral if he is unsatisfied with efforts to market the properties.<sup>14</sup>

c. First National Bank (“FNB”): On August 28, 2014, the Court granted the Receiver’s motion to sell a home in Kanab, Utah (“Kanab Home”) that is property of the Receivership Estate, but which is subject to a lien held by FNB, who has intervened in this proceeding to assert its lien rights.<sup>15</sup> The Receiver had agreed with FNB that FNB would hold off on foreclosure proceedings while he attempted to sell the Kanab Home for some return to the Receivership Estate, but that he was required to sell the Home prior to October 1, 2014. The Receiver obtained an offer for the Kanab Home prior to this deadline, and the Court has entered an Order approving the sale of the Kanab Home.<sup>16</sup> As part of this deal, FNB had agreed to reduce its loan payoff by \$30,000.00, and the Receivership Estate was anticipated to obtain between \$12,000.00 and \$15,000.00 in sale proceeds, net of FNB’s reduced loan payoff and the payment of other anticipated tax assessments and costs of sale. Shortly before the Court approved the sale, and still within the due diligence period of the sales agreement, however, the

---

<sup>14</sup> Receiver Declaration ¶ 8.

<sup>15</sup> See Docket No. 179.

<sup>16</sup> Docket No. 746.

buyers identified a significant defect in the Kanab Home foundation, which would require approximately \$44,800.00 in remediation work. The buyers required that one half (1/2) of the cost of the remediation work, or \$22,400.00, be paid by the Receivership Estate, and that they would pay the other one-half portion of these costs. Yet, making this concession would result in no return to the Receivership Estate. Thus, the Receiver requested that FNB make additional concessions on the amount of loan payoff, so the sale could proceed. FNB was unwilling to absorb the entire additional loss without some contribution by the Receivership Estate. The Receiver then obtained an updated title report, showing that one of the anticipated closing costs, a road assessment, would be \$5,218.00 less than had been anticipated. Based on this information, the Receiver agreed, subject to Court approval, that the Receivership Estate would contribute the \$5,218.00 toward the sale and FNB would further reduce its payoff by \$22,400.00. On September 5, 2014, the Receiver entered into the proposed Settlement Agreement and Release with FNB memorializing this agreement. With this payment, the Receivership Estate's recovery from the sale of the Kanab Home will be \$12,944.90 which is close to what originally was anticipated when the offer to purchase the property was made.<sup>17</sup>

---

<sup>17</sup> Receiver Declaration ¶ 9.

### III.

#### APPLICABLE LAW AND ANALYSIS

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

8. 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.”<sup>18</sup>

9. “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.”<sup>19</sup> 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.<sup>20</sup>

10. Here, each Settlement Agreement 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.

---

<sup>18</sup> *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)).

<sup>19</sup> *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).

<sup>20</sup> *Jones*, 741 F.2d at 324.



11. As to K. Palmer, while the Receiver is confident of a right to recover on the claims at issue, K. Palmer has provided the Receiver with information establishing that collection of a judgment in the full amount demanded would be difficult. The Receiver engaged in good faith negotiations with K. Palmer to obtain payment of approximately half of the amount demanded, which based on the Receiver's review of K. Palmer's financial papers, he believes is a good settlement, especially in consideration of the costs associated with pursuing this matter to judgment. As a result of the Settlement Agreement and Release, the Receivership Estate will obtain \$9,300.00 now. Thus, the Receiver believes that the Settlement Agreement and Release with K. Palmer should be approved.<sup>21</sup>

12. The Settlement Agreement and Release with FNB will allow the Receiver to obtain net funds for the Receivership Estate in an amount of \$12,944.90. FNB and the buyers of the Kanab Home have made significant concessions as discussed above, and absent the Settlement Agreement and Release, which requires the Receivership Estate to contribute the funds that the Receiver had anticipated paying for assessments in any event, the Receivership Estate would receive no value from the Kanab Home as a result of the newly discovered structural problems with the property. Thus, the Receiver believes that this result is beneficial to the Receivership Estate and the Settlement Agreement and Release should be approved.<sup>22</sup>

13. Finally, the Settlement Agreement and Release with Stensland is beneficial to the Receivership Estate and should be approved. Stensland has rights related to his collateral in the Almond Heights subdivision. By entering into the Settlement Agreement and Release, the

---

<sup>21</sup> Receiver Declaration ¶ 10.

<sup>22</sup> Receiver Declaration ¶ 11.



**Chris Martinez**  
**Nathan S. Seim**  
*Attorneys for Receiver*

**CERTIFICATE OF SERVICE**

I hereby certify that service of the above **RECEIVER'S TENTH MOTION SEEKING APPROVAL OF SETTLEMENT AGREEMENTS AND MEMORANDUM IN SUPPORT (KENNETH PALMER, ROBERT W. STENSLAND AND THE ROBERT W. STENSLAND TRUST, AND FIRST NATIONAL BANK)** (the "Motion") was filed with the Court on this 26th day of September, 2014, and served via ECF on all parties who have requested notice in this case.

Furthermore, I certify that on the 26th day of September 2014, the Motion was served on the following parties by electronic mail or US Mail:

Wayne LaMar Palmer  
8816 South 2240 West  
West Jordan, UT 84008

Kenneth Palmer  
[Klpalmer1@gmail.com](mailto:Klpalmer1@gmail.com)

Robert W. Stensland  
[bstensland@comcast.net](mailto:bstensland@comcast.net)

First National Bank  
c/o Wayne Z. Bennett, Esq.  
[wzb@clydesnow.com](mailto:wzb@clydesnow.com)

/c/ Candy Long \_\_\_\_\_