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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 style="text-align: center;">RECEIVER'S FIFTEENTH MOTION SEEKING APPROVAL OF SETTLEMENT AGREEMENTS AND MEMORANDUM IN SUPPORT</p> <p style="text-align: center;">(Fred Myer and Secure American Gold Exchange)</p> <p style="text-align: center;">2:12-cv-00591 BSJ</p> <p style="text-align: center;">The Honorable Bruce S. Jenkins</p>
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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”).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).

⁴ *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[.]”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 and information obtained by the Receiver as part of his investigation, the Receiver

⁵ *Id.* at ¶ 7(C).

⁶ *Id.* at ¶ 7(D).

⁷ *Id.* at ¶ 37.

⁸ *Id.* at ¶ 7(J).

⁹ Receiver Declaration ¶ 2.

has entered into numerous settlement agreements, including the two Settlement Agreements and Releases that are the subject of this Motion discussed in further detail below. As a result of these Settlement Agreements and Releases, the Receiver's recommendation on the treatment of certain claims is established and the Receivership Estate will be assigned two judgments in the total amount of \$432,000.00.

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 continuing litigation, (c) will result in the acquisition 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.¹⁰

6. The Settlement Agreements and Releases that are the subject of the present Motion, all of which are subject to Court approval, are described as follows:

a. Secure American Gold Exchange ("SAGE"): On November 26, 2014, the Receiver filed suit against SAGE, seeking the recovery of \$112,000.00 paid to it by an NNU affiliate to purchase gold from sources that SAGE claimed to have in Africa. SAGE informed the Receiver that it would not have liquid assets to satisfy any judgment obtained and provided financial information to the Receiver to support this claim. From the information provided, the Receiver determined that, although SAGE had ceased operations, it obtained default judgments against three defendants in Florida that received funds from SAGE. On or about August 31, 2015, the Receiver entered into a Settlement Agreement and Release with SAGE, subject to

¹⁰ Receiver Declaration ¶ 4.

Court approval, agreeing to compromise the Receivership Estate's claim against SAGE. Under the Agreement, SAGE will assign to the Receiver all of its rights to two judgments in the total amount of \$432,000.00 against persons and entities in Florida. In addition, SAGE will provide to the Receiver all relevant documents relating to the judgments and will provide necessary assistance to the Receiver in collecting on the judgments. In return, the Receiver will dismiss the suit against SAGE.¹¹

b. Fred Myer ("Myer"): On June 19, 2013, the Receiver filed suit against Myer, alleging that he was an NNU investor who received a total of \$10,708.86 in excess of his principal investment with NNU. The demand by the Receiver was based, in part, on \$33,000.00 that NNU transferred to an investment account created for Vern Petty ("Petty") which the Receiver asserted should be treated as a cash disbursement to Myer thus creating a net investment profit to Myer in the amount of \$10,708.86. Myer disputed this claim, and asserted that only he, not Petty, had a right to assert a claim for \$33,000.00. In light of the relatively moderate amount at issue, on or about September 9, 2015, the Receiver entered into a Settlement Agreement and Release with Myer, subject to Court approval, agreeing to compromise the Receivership Estate's claims. Under the Agreement, Myer represents and warrants that he is the person with authority to assert a claim in the amount of \$33,000.00 and the Receivership Estate's claims against him for net investment profits are released. Myer agrees that if Petty submits a claim and if his claim is allowed by the Court, Myer will pay \$2,000.00 to the Receivership

¹¹ Receiver Declaration ¶ 5.

Estate. Upon approval of the Settlement Agreement and Release by this Court, the Receiver will file appropriate papers seeking dismissal of the lawsuit against Myer.¹²

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.”¹³

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.”¹⁴ 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.¹⁵

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

¹² Receiver Declaration ¶ 6.

¹³ *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)).

¹⁴ *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).

¹⁵ *Jones*, 741 F.2d at 324.

good faith by the parties; (b) the value of an immediate recovery or reduction of litigation expenses 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.¹⁶

11. Each of the Settlement Agreements, which were all negotiated in good faith and at arms' length, are beneficial to the Receivership Estate, and the Receiver respectfully submits that each should be approved by the Court.¹⁷

12. SAGE: The Receiver entered into the Settlement Agreement and Release based on SAGE's financial condition and evidence that it has ceased doing business. This Settlement Agreement and Release assigns two judgments totaling \$432,000.00 to the Receivership Estate to satisfy a debt in the amount of \$112,000.00 owed to NNU. The Receiver intends to take all necessary acts to execute on the judgments that have been assigned to the Receivership Estate. Accordingly, the Receiver submits that the Settlement Agreement and Release with SAGE is beneficial to and in the best interests of the Receivership Estate.¹⁸

13. Myer: The litigation the Receiver filed against Myer involves complicated legal issues which were hotly disputed by both sides. In light of the relatively small amount demanded by the Receiver, there was a significant risk that the litigation would cost more than any recovery ultimately obtained. At the same time, the Receiver was concerned about competing claims that might be filed by Myers and Petty and the treatment of those claims. The

¹⁶ Receiver Declaration ¶¶ 7, 10-11.

¹⁷ Receiver Declaration ¶ 7.

¹⁸ Receiver Declaration ¶ 8.

Settlement Agreement and Release with Myers deals with the treatment of potentially competing claims and provides remedies to the Receivership Estate in the event that Petty files a claim. In the Receiver's business judgment, having assessed potential litigation costs and risks, the Settlement Agreement and Release negotiated with Myer is beneficial to and in the best interest of the Receivership Estate.¹⁹

14. Each Settlement Agreement and Release was negotiated fairly and honestly, and is the result of an arm's-length transaction. There has been no collusion between the parties.²⁰

15. In light of these factors, the Receiver believes each Settlement Agreement and Release is just, fair and beneficial to the Receivership Estate. Accordingly, the Settlement Agreements and Releases should be approved.²¹

IV.

CONCLUSION

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

DATED this 19th day of October, 2015.

DORSEY & WHITNEY LLP

 /s/ Peggy Hunt
Peggy Hunt
Chris Martinez
Attorneys for Receiver

¹⁹ Receiver Declaration ¶ 9.

²⁰ Receiver Declaration ¶ 10.

²¹ Receiver Declaration ¶ 11.

CERTIFICATE OF SERVICE

I hereby certify that the above **RECEIVER'S FIFTEENTH MOTION SEEKING APPROVAL OF SETTLEMENT AGREEMENTS AND MEMORANDUM IN SUPPORT** (the "Motion") was filed with the Court on this 19th day of October, 2015, and served via ECF on all parties who have requested notice in this case.

Furthermore, I certify that on the 19th day of October, 2015, the Motion was served on the following parties by electronic mail or US Mail as follows:

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

Secure American Gold Exchange
c/o Chrystal Mancuso-Smith
cmancuso@padrm.com

Fred Myer
c/o Barry Toone, Esq.
Deborah Chandler, Esq.
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chandler@millertoone.com

/s/ Natasha Asmus
