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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, and individual,

Defendants.

**RECEIVER’S FIFTH MOTION AND  
MEMORANDUM IN SUPPORT  
REQUESTING ORDER APPROVING  
SETTLEMENT AGREEMENTS**

**(Dave and Carol Sieverts; Michelle  
Anderson; John Spinola; Ryan and  
Angela Bladen; Vasanti Peiris; Evan  
and Mary Kay Dale; Robert Meldrum;  
Wilton Battles; Carolyn Flynn; Joseph  
and Cynthia Buchman, and Twin  
Sisters, LLC; and Keith Hanson and  
Real Property Solutions)**

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”).<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>
- “To take custody, control and possession of all Receivership Property and records . . . [.]”<sup>4</sup>

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<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).

- “To manage, 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>
- “To use 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>
- “To pursue, 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 my 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 demand made and lawsuits filed, the Receiver has entered into eleven Settlement Agreements and Releases with

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<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.

certain parties.<sup>10</sup> 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.<sup>11</sup>

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

a. Sieverts: On June 21, 2013, the Receiver filed suit against Dave and Carol Sieverts ("Sieverts"), alleging that the Sieverts were NNU investors who received a total of \$71,068.13 in excess of their principal investment with NNU. Sieverts thereafter provided verified financial information to the Receiver and, based thereon, on September 12, 2013, the Receiver entered into a Settlement Agreement and Release with Sieverts subject to Court approval, agreeing in part to compromise the Receivership Estate's claim against them based on demonstrated financial hardship and circumstances. Under the Agreement, the Sieverts agreed to pay and have paid \$20,000.00 to the Receivership Estate.<sup>12</sup>

b. Anderson: On June 21, 2013, the Receiver filed suit against Michelle Anderson ("Anderson"), alleging that Anderson was a NNU investor who received a total of \$68,569.28 in excess of her principal investment with NNU. Anderson thereafter provided verified financial information to the Receiver and also demonstrated that she performed work for affiliates of NNU, including substantial amounts of work for which she did not receive

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

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

<sup>12</sup> Receiver Declaration ¶ 6.

compensation. Based on this information, on September 16, 2013, the Receiver entered into a Settlement Agreement and Release with Anderson subject to Court approval under which the Receiver will dismiss the lawsuit against Anderson without requiring repayment of any of the overpayment and Anderson will release her claims against the Receivership Estate.<sup>13</sup>

c. Spinola: On June 25, 2013, the Receiver filed suit against John Spinola (“Spinola”), seeking to avoid a deed of trust that National Note provided to Spinola on certain real property located in Kanab, Utah as a fraudulent transfer. On September 24, 2013, the Receiver entered into a Settlement Agreement and Release with Spinola subject to Court approval under which Spinola will release the deed of trust on the Kanab property.<sup>14</sup>

d. Bladen. On June 17, 2013, the Receiver filed suit against Ryan and Angela Bladen (“Bladen”), a married couple who were NNU investors who, the Receiver alleges, were paid a total of \$5,775.94 in excess of their principal investment. On September 19, 2013, the Receiver entered into a Settlement Agreement and Release with Bladen under which Bladen has agreed to pay \$5,000.00 to the Receivership Estate. As of this time, this amount has been paid.<sup>15</sup>

e. Peiris: On June 6, 2013, the Receiver filed suit against Vasanti Peiris (“Peiris”), alleging that NNU investor Peiris received a total of \$19,388.59 in excess of his principal investment with NNU. Peiris thereafter provided verified financial information to the Receiver and, based thereon, on September 26, 2013, the Receiver entered into a Settlement Agreement and Release with Peiris subject to Court approval, agreeing in part to compromise the Receivership Estate’s claim against him based on demonstrated financial hardship and

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<sup>13</sup> Receiver Declaration ¶ 7.

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

<sup>15</sup> Receiver Declaration ¶ 9.

circumstances. Under the Agreement, the Receiver will dismiss the lawsuit against Peiris without requiring repayment of any of the overpayment.<sup>16</sup>

f. Flynn: On June 21, 2013, the Receiver sued NNU investor Carolyn Flynn (“Flynn”), alleging that Flynn received a total of \$17,154.54 in excess of her principal investment with NNU. Flynn thereafter provided verified financial information to the Receiver and, based thereon, on October 9, 2013, the Receiver entered into a Settlement Agreement and Release with Flynn subject to Court approval, agreeing in part to compromise the Receivership Estate’s claim against her based on demonstrated financial hardship and circumstances. Under the agreement, the Receiver will dismiss the lawsuit against Flynn without requiring repayment of any of the overpayment.<sup>17</sup>

g. Battles: On June 21, 2013, the Receiver filed suit against NNU investor Wilton Battles (“Battles”), alleging he received a total of \$25,376.82 in excess of his principal investment with NNU. Battles thereafter provided the Receiver with verified financial information, showing ability repay the false profits over time. On October 8, 2013, the Receiver entered into a Settlement Agreement and Release with Battles subject to Court approval, under which Battles has agreed to pay the entire \$25,376.82 to the Receivership Estate in monthly payments commencing on November 2013 through November 2014, with a final payment being due no later than December 31, 2014. The Receiver has agreed to dismiss the lawsuit against Battles.<sup>18</sup>

h. Meldrum: On June 13, 2013, the Receiver filed suit against NNU investor Robert E. Meldrum (“Meldrum”), alleging he received a total of \$7,308.50 in excess of his

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<sup>16</sup> Receiver Declaration ¶ 10.

<sup>17</sup> Receiver Declaration ¶ 11.

<sup>18</sup> Receiver Declaration ¶ 12.

principal investment with NNU. Meldrum thereafter provided the Receiver with verified financial information, showing ability repay a good portion of the false profits over time. On October 8, 2013, the Receiver entered into a Settlement Agreement and Release with Meldrum subject to Court approval, under which Meldrum has agreed to return \$7,000.00 in two payments -- with the first half of the settlement payment being due by the end of the month following Court approval of the Agreement, and the second half due by the end of the second month following Court approval. If this Settlement Agreement is approved by the Court, the Receiver will dismiss the lawsuit against Meldrum.<sup>19</sup>

i. Dale: On June 17, 2013, the Receiver caused a suit to be filed against NNU investors Evan Dale, Mary Kay Dale, and MKE Holdings, LLC (collectively, "Dale"), alleging that they received a total of \$11,632.69 in excess of their principal investments with NNU. Dale thereafter provided the Receiver with verified financial information showing that they have the ability to repay the false profits over time. On October 2, 2013, the Receiver entered into a Settlement Agreement and Release with Dale subject to Court approval under which Dale has agreed to return the entire \$11,632.69 in two payments – \$6,000.00 has been received, and the balance will be paid by no later than April 10, 2014. If this Settlement Agreement is approved by the Court, the Receiver will dismiss the lawsuit against Dale.<sup>20</sup>

j. Buchman: On June 17, 2013, the Receiver caused a suit to be filed against NNU investors Joseph G. Buchman, Cynthia Buchman and Twin Sisters, LLC (collectively, "Buchman"), alleging that they received a total of \$8,066.93 in excess of their principal investments with NNU. Buchman thereafter provided the Receiver with information as to

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<sup>19</sup> Receiver Declaration ¶ 13.

<sup>20</sup> Receiver Declaration ¶ 14.

certain unique facts and circumstances related to their dealings with Palmer and NNU. On October 14, 2013, the Receiver entered into a Settlement Agreement and Release with Buchman subject to Court approval under which Buchman has agreed to pay a total of \$5,000.00 by no later than October 31, 2013. If this Settlement Agreement is approved by the Court, the Receiver will dismiss the lawsuit against Buchman.<sup>21</sup>

k. RPS and Hanson: On June 21, 2013, the Receiver filed suit against NNU investor Real Property Solutions (“RPS”) and a person thought to be the manager of RPS, seeking recovery of a total of \$17,500.00 in payments to RPS. Thereafter, the Receiver discovered that Keith Hanson (“Hanson”) should have been named as a defendant. RPS and Hanson provided the Receiver with information indicating that RPS and Hanson had performed construction services for Presidential Utah Properties (“PUP”), a company related to NNU, and that Hanson may have an ownership interest in PUP. On October 18, 2013, the Receiver entered into a Settlement Agreement with RPS and Hanson subject to Court approval. Under the Settlement Agreement, the Receiver has agreed not to amend the lawsuit against RPS to include Hanson and to dismiss the lawsuit, and both RPS and Hanson have agreed to relinquish any claim they may have to the assets of the Receivership Estate and/or to any ownership interest in PUP.<sup>22</sup>

### **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.

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<sup>21</sup> Receiver Declaration ¶ 15.

<sup>22</sup> Receiver Declaration ¶ 16.



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.”<sup>23</sup>

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.”<sup>24</sup> The Court in *Jones* 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>25</sup>

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 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.<sup>26</sup>

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<sup>23</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>24</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>25</sup> *Jones*, 741 F.2d at 324.

<sup>26</sup> Receiver Declaration ¶ 17.

10. The Receiver, in an exercise of his business judgment, has determined that each of the Settlement and Agreements and Releases is in the best interests of the Receivership Estate taking into account 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, potential claims that may exist against the Receivership Estate, and/or the inherent costs and delay associated with litigation.<sup>27</sup>

11. In the case of the Settlement Agreement and Release with Spinola, the Receivership Estate will obtain a release of a deed of trust purported to secure a debt in the amount of \$125,000.00, thus creating potential equity for the Receivership Estate in the real property at issue.<sup>28</sup>

12. Together, these Settlement Agreements and Releases will result in the payment of a little more than \$69,000.00 to the Receivership Estate.<sup>29</sup>

13. 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.<sup>30</sup>

14. In light of these factors, the Receiver believes these settlement agreements are just and fair and should be approved.<sup>31</sup>

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<sup>27</sup> Receiver Declaration ¶ 18.

<sup>28</sup> Receiver Declaration ¶ 19.

<sup>29</sup> Receiver Declaration ¶ 20.

<sup>30</sup> Receiver Declaration ¶ 21.

<sup>31</sup> Receiver Declaration ¶ 22.

**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 30th day of October, 2013.

**DORSEY & WHITNEY LLP**

/s/ Peggy Hunt

Peggy Hunt

Chris Martinez

Jeffrey M. Armington

*Attorneys for Receiver*

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the above **RECEIVER'S FIFTH MOTION AND MEMORANDUM IN SUPPORT REQUESTING ORDER APPROVING SETTLEMENT AGREEMENTS (DAVE AND CAROL SIEVERTS; MICHELLE ANDERSON; JOHN SPINOLA; RYAN AND ANGELA BLADEN; VASANTI PEIRIS; EVAN AND MARY KAY DALE; ROBERT MELDRUM; WILTON BATTLES; CAROLYN FLYNN; JOSEPH AND CYNTHIA BUCHMAN, AND TWIN SISTERS, LLC; AND KEITH HANSON AND REAL PROPERTY SOLUTIONS)** (the "Motion") was filed with the Court on this 30th day of October, 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 30th day of October, 2013, the Motion was served on the following parties by electronic mail:

Dave and Carol Sieverts  
[carol.sieverts@slcc.edu](mailto:carol.sieverts@slcc.edu)

Michelle Anderson  
[macreative@hotmail.com](mailto:macreative@hotmail.com)

Ryan and Angela Bladen  
[ryan.bladen@umafs.org](mailto:ryan.bladen@umafs.org)

Visanti Peiris  
[vasantipeiris@hotmail.com](mailto:vasantipeiris@hotmail.com)

Carolyn Flynn  
[cflynnaz@gmail.com](mailto:cflynnaz@gmail.com)

Robert E. Meldrum  
[rtenn12@sbcglobal.net](mailto:rtenn12@sbcglobal.net)

Evan Dale, Mary Kay Dale, and MKE Holdings, LLC  
[edale@admin.nv.gov](mailto:edale@admin.nv.gov)

Joseph Buchman  
[drbuchman@gmail.com](mailto:drbuchman@gmail.com)

Keith Hanson  
[keith@brslc.com](mailto:keith@brslc.com)

John Spinola  
c/o Barry C. Toone  
Miller Guymon PC  
165 Regent St  
Salt Lake City, Utah 84111  
[toone@millerguymon.com](mailto:toone@millerguymon.com)

/s/ Jeffrey M. Armington

Furthermore, I certify that on the 30th day of October, 2013, the Motion was served on the following party by U.S. mail postage prepaid:

Wilton Battles  
9700 West Higgins Road, Suite 806  
Rosemont, IL 60018

/s/ Jeffrey M. Armington