

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

martinez.chris@dorsey.com

seim.nathan@dorsey.com

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 ELEVENTH MOTION
SEEKING APPROVAL OF SETTLEMENT
AGREEMENTS AND MEMORANDUM IN
SUPPORT**

**(Richard and Larissa Powell; Jim Keller;
Van and Sharon Palmer; Cory Palmer and
Brilee Palmer; Tony Vega and Sonia
Canales; Senor Mortensen; Elan Financial
Services; Steve and Marilyn Van Gordon;
and Citibank, N.A.)**

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

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.

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

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.¹¹

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

a. Richard and Larissa Powell (collectively, the "Powells"): On June 13, 2013, the Receiver filed suit against the Powells, alleging that they were NNU investors who received a total of \$17,082.64 in excess of their principal investment with NNU. The Powells thereafter provided financial information to the Receiver showing that they would not be able to pay a judgment for the full amount of the overpayment and needing additional time to make a settlement payment. The Powells also agreed to release alleged monetary and property claims they might have asserted against the Receivership Estate. Based thereon, on or about September 8, 2014, the Receiver entered into a Settlement Agreement and Release with the Powells, subject to Court approval, agreeing in part to compromise the Receivership Estate's claim against the Powells. Under the Agreement, the Powells will pay \$9,000.00 to the Receivership Estate by

¹⁰ Receiver Declaration ¶ 4.

¹¹ Receiver Declaration ¶ 5.

March 1, 2015. In addition, the parties have agreed to mutual releases, including that Larissa Powell released her alleged claim for claimed investment losses in the amount of \$8,000.00 and Richard Powell released an Assignment of Beneficial Interest asserted to be in the amount of \$62,000.00 against certain real property of the Receivership Estate. After the settlement payment is paid in full, the Receiver will file appropriate papers seeking dismissal of the lawsuit against the Powells.¹²

b. Jim Keller (“Keller”): On June 7, 2013, the Receiver filed suit against Keller, alleging that NNU paid him \$10,000.00 and NNU received no benefit from the payment. Keller disputed any obligation to return funds to the Receivership Estate and asserted that he provided valuable advice and services to NNU. After further investigation of the facts and Keller’s claims, the Receiver entered into a Settlement Agreement and Release with Keller on or about September 25, 2014, subject to Court approval, agreeing in part to compromise the Receivership Estate’s claim against Keller. Under the Agreement, Keller has paid \$6,500.00 to the Receivership Estate and the parties have agreed to mutual releases. Upon approval of the Settlement Agreement and Release by this Court, the Receiver will file appropriate papers seeking dismissal of the lawsuit against Keller.¹³

c. Van and Sharon Palmer (collectively, “V. Palmer”): On June 20, 2013, the Receiver filed suit against V. Palmer, alleging that V. Palmer were NNU investors who received a total of \$5,668.13 in excess of V. Palmer’s principal investment with NNU. V. Palmer thereafter provided verified financial information to the Receiver showing that they

¹² Receiver Declaration ¶ 6.

¹³ Receiver Declaration ¶ 7.

would not be able to pay a judgment for the full amount of the overpayment. Based thereon, on or about September 29, 2014, the Receiver entered into a Settlement Agreement and Release with V. Palmer, subject to Court approval, agreeing in part to compromise the Receivership Estate's claim against V. Palmer. Under the Agreement, V. Palmer has paid \$4,000.00 to the Receivership Estate and the parties have agreed to mutual releases. Upon approval of the Settlement Agreement and Release by this Court, the Receiver will file appropriate papers seeking dismissal of the lawsuit against V. Palmer.¹⁴

d. Cory and Brilee Palmer (collectively, "C. Palmer"): On June 24, 2013, the Receiver filed suit against C. Palmer, alleging that C. Palmer were NNU investors who received a total of \$46,932.00 in excess of C. Palmer's principal investment with NNU. C. Palmer thereafter provided verified financial information to the Receiver showing that they would not be able to pay a judgment for the full amount of the overpayment and needing additional time to make settlement payments. Based thereon, on or about October 8, 2014, the Receiver entered into a Settlement Agreement and Release with C. Palmer, subject to Court approval, agreeing in part to compromise the Receivership Estate's claims against C. Palmer. Under the Agreement, C. Palmer will pay a total of \$21,600.00 to the Receivership Estate. This payment will be made via monthly payments of \$450.00 per month beginning November 15, 2014, and ending October 15, 2018, until the full amount of the settlement is paid. When the payments are made in full, C. Palmer will receive a release.¹⁵

¹⁴ Receiver Declaration ¶ 8.

¹⁵ Receiver Declaration ¶ 9.

e. Tony Vega and Sonia Canales (collectively, “Vega”): On June 19, 2013, the Receiver filed suit against Vega, alleging that Vega were NNU investors who received a total of \$30,645.58 in excess of Vega’s principal investment with NNU. Vega disputes any obligation to repay the amounts Vega received. On or about October 30, 2014, the Receiver entered into a Settlement Agreement and Release with Vega, subject to Court approval, agreeing in part to compromise the Receivership Estate’s claims against Vega. Under the Agreement, Vega has paid \$27,600.00 to the Receivership Estate and the parties have agreed to mutual releases. Upon approval of the Settlement Agreement and Release by this Court, the Receiver will file appropriate papers seeking dismissal of the lawsuit against Vega.¹⁶

f. Senor Mortensen and the Mortensen Family Trust (collectively, “Mortensen”): On June 21, 2013, the Receiver filed suit against Mortensen, alleging that Mortensen were NNU investors who received a total of \$64,429.91 in excess of their principal investment with NNU. On or about October 31, 2014, the Receiver entered into a Settlement Agreement and Release with Mortensen, subject to Court approval, agreeing that Mortensen will pay the full \$64,429.91 over time, via monthly payments of \$5,000.00 beginning November 5, 2014 with the last payment of \$4,429.91 due by no later than November 5, 2015. The parties have also agreed to mutual releases of claims. As of this time, Mortensen has made several monthly payments toward this obligation. Upon approval of the Settlement Agreement and Release by this Court, the Receiver will file appropriate papers seeking dismissal of the lawsuit against Mortensen.¹⁷

¹⁶ Receiver Declaration ¶ 10.

¹⁷ Receiver Declaration ¶ 11.

g. U.S. Bank N.A. ND D/B/A Elan Financial Services (“Elan”): On June 24, 2013, the Receiver filed suit against KeyBank Card Services, alleging that NNU made payments to KeyBank on two credit card accounts held in the name of Palmer. KeyBank provided information showing that one of the accounts was under the control of Elan. On October 23, 2014, the Receiver filed an amended lawsuit that named Elan as a Defendant. Subsequently, Elan provided information to the Receiver acknowledging receipt of \$5,609.36, but disputing receipt of an additional \$900.00 asserted by the Receiver. Based thereon, on December 11, 2014, the Receiver entered into a Settlement Agreement and Release with Elan, subject to Court approval, agreeing in part to compromise the Receivership Estate’s claim against Elan. Under the Agreement, Elan will pay \$5,609.36 to the Receivership Estate. The Settlement Agreement and Release also includes mutual releases of claims.¹⁸

h. Steve and Marilyn Van Gordon (collectively, the “Van Gordons”): On June 13, 2013, the Receiver filed suit against the Van Gordons, alleging that they were NNU investors who received a total of \$27,616.08 in excess of their principal investment with NNU. The Van Gordons opposed the Receiver’s lawsuit by filing a Motion to Dismiss, which was denied on November 21, 2013. On November 17, 2014, the Receiver entered into a Settlement Agreement and Release with the Van Gordons, subject to Court approval, agreeing in part to compromise the Receivership Estate’s claims against the Van Gordons. Under the Agreement, the Van Gordons have paid a total of \$25,000.00 to the Receivership Estate, and the parties have

¹⁸ Receiver Declaration ¶ 12.

agreed to mutual releases. Upon approval of the Settlement Agreement and Release, the Receiver will file appropriate papers seeking dismissal of the lawsuit against the Van Gordons.¹⁹

i. Citibank N.A. (“Citibank”): On June 24, 2013, the Receiver filed suit against KeyBank Card Services, alleging that NNU made payments to KeyBank on two credit card accounts held in the name of Palmer. KeyBank provided information to the Receiver showing that one of the accounts was under the control of Citibank. On October 23, 2014, the Receiver filed an amended lawsuit that named Citibank as a Defendant. Separately on June 24, 2013, the Receiver filed a lawsuit against AT&T Universal Card Services Corp., alleging that NNU made payments to AT&T Universal Card on a credit card account held in the name of Palmer. Further investigation by the Receiver revealed that the AT&T Universal Card account was under the control of Citibank. Together, these lawsuits alleged that Citibank received \$100,285.65 in improper payments. Upon being served with the lawsuits relating to the KeyBank and AT&T Universal Card payments, Citibank provided information to the Receiver showing that some of the charges on the credit cards were for business purposes. Based thereon, the Receiver and Citibank have agreed upon the material terms of a Settlement Agreement and Release, subject to Court approval, agreeing in part to compromise the Receivership Estate’s claim against Citibank. Under the Agreement, Citibank will pay a total of \$75,214.00 to the Receivership Estate by no later than January 12, 2015 and the parties have agreed to mutual

¹⁹ Receiver Declaration ¶ 13.

releases. Upon receipt of the signed Settlement Agreement and settlement payment, the Receiver will file appropriate papers with the Court seeking dismissal of the lawsuit.²⁰

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.”²¹

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.”²² 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.²³

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

²⁰ Receiver Declaration ¶ 14.

²¹ *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)).

²² *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).

²³ *Jones*, 741 F.2d at 324.

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.²⁴

11. All of the Settlement Agreements and Releases are beneficial to the Receivership Estate and the Receiver respectfully submits that each should be approved by the Court.

- a. Powells, V. Palmer, and C. Palmer: The Receiver reviewed financial information provided by each of these Defendants and determined that while he is confident of a right to obtain judgment on the claims at issue, he likely will not be able to recover the full amount of such judgments. Moreover, continuing litigation will result in additional costs which likely will be more than the amount that will ultimately be recovered from each Defendant. The Receiver engaged in good faith and arms' length negotiations with the respective parties and has obtained a total of \$34,600.00 in cash for the benefit of the Receivership Estate through the proposed Settlement Agreements and Releases. In the case of the Powells and C. Palmer the Receivership Estate will receive or has received payment of approximately one-half of the amount demanded. In the case of V. Palmer, approximately 75% of the amount demanded will be repaid. All of these settlements include a release of claims by the parties, including the release of V. Powell's alleged claims in the amount of \$8,000.00 and a \$62,000.00 Assignment

²⁴ Receiver Declaration ¶ 15.

of Beneficial Interest. Thus, each of the Settlement Agreements and Releases with these Defendants is in the best interest of the Receivership Estate.²⁵

- b. Keller, Vega, Van Gordons: The Receiver engaged in good faith and arms' length negotiations with the respective parties and has obtained a total of \$59,100.00 in cash for the benefit of the Receivership Estate through the proposed Settlement Agreements and Releases. In the case of Vega and the Van Gordons, the Receiver is recovering approximately 90% of the amount claimed, and in the case of Keller, he is recovering approximately 65% of the amount claimed. While the Receiver believes he would prevail in litigation and obtain judgments for the full amounts, the particular facts in each of these Defendants' cases and the positions being taken by the Defendants would have required the Receiver to expend significant additional effort and cost to obtain judgments for the full amount. Thus, the Receiver submits that entering into each of these Settlement Agreements and Releases is in the best interests of the Receivership Estate.²⁶
- c. Mortensen: The Receiver engaged in good faith and arms' length negotiations with Mortensen and will obtain a total of \$64,429.91 in cash for the benefit of the Receivership Estate through the proposed Settlement Agreement and Release, which is the full amount demanded, paid over time. Based on the Receiver's

²⁵ Receiver Declaration ¶ 18.

²⁶ Receiver Declaration ¶ 19.

review of Mortensen's ability to pay, payment of the full amount over time is in the best interest of the Receivership Estate.²⁷

- d. Elan and Citibank: The Receiver engaged in good faith and arms' length negotiations with these Defendants and will obtain a total of \$80,823.36 in cash for the benefit of the Receivership Estate through the proposed Settlement Agreements and Releases. In the case of Elan, only one disputed \$900.00 charge is not being repaid, and Citibank is repaying approximately 75% of the amount demanded, which the Receiver believes, based on his initial review of the charges, is close to the amount of Palmer's personal charges that were paid by NNU. The Receiver submits that these Settlement Agreements and Releases are in the best interests of the Receivership Estate because litigation relating to NNU's transfers on account of Palmer's personal credit cards will be factually intensive thus resulting in significant litigation costs. As such, the Receiver submits that these Settlement Agreements and Releases are in the best interest of the Receivership Estate.²⁸

12. 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.²⁹

13. In light of these factors, the Receiver believes each Settlement Agreement and Release is just and fair and should be approved.³⁰

²⁷ Receiver Declaration ¶ 20.

²⁸ Receiver Declaration ¶ 21.

²⁹ Receiver Declaration ¶ 22.

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 23rd day of December, 2014.

DORSEY & WHITNEY LLP

 /s/ Peggy Hunt

Peggy Hunt

Chris Martinez

Nathan S. Seim

Attorneys for Receiver

³⁰ Receiver Declaration ¶ 23.

CERTIFICATE OF SERVICE

I hereby certify that service of the above **RECEIVER'S ELEVENTH MOTION SEEKING APPROVAL OF SETTLEMENT AGREEMENTS AND MEMORANDUM IN SUPPORT (RICHARD AND LARISSA POWELL; JIM KELLER; VAN AND SHARON PALMER; CORY PALMER AND BRILEE PALMER; TONY VEGA AND SONIA CANALES; SENOR MORTENSEN AND THE MORTENSEN FAMILY TRUST; ELAN FINANCIAL SERVICES; STEVE AND MARILYN VAN GORDON; AND CITIBANK, N.A.)** (the "Motion") was filed with the Court on this 23rd day of December, 2014, and served via ECF on all parties who have requested notice in this case.

Furthermore, I certify that on the 23rd day of December 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

Tony Vega and Sonia Canales
Steve and Marilyn Van Gordon
Richard and Larissa Powell
Van and Sharon Palmer
Cory Palmer and Brilee Palmer
Jim Keller
c/o Barry Toone, Esq.
Toone@millerguymon.com

Citibank, N.A.
c/o Katherine M. White
Katherine.M.White@Citi.com

Senor Mortensen
c/o Reid W. Lambert, Esq.
rlambert@wklawpc.com

Elan Financial Services
c/o Nancy Graves-Cronin
Nancy.Gravescronin@usbank.com

/s/ Candy Long

EXHIBIT A

Prepared and submitted by:

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
martinez.chris@dorsey.com
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>Plaintiff,</p> <p>v.</p> <p>NATIONAL NOTE OF UTAH, LC, a Utah Limited Liability Company and WAYNE LaMAR PALMER, and individual,</p> <p>Defendants.</p>	<p>ORDER GRANTING RECEIVER'S ELEVENTH MOTION SEEKING APPROVAL OF SETTLEMENT AGREEMENTS</p> <p>(Richard and Larissa Powell; Jim Keller; Van and Sharon Palmer; Cory Palmer and Brilee Palmer; Tony Vega and Sonia Canales; Senor Mortensen; Elan Financial Services; Steve and Marilyn Van Gordon; and Citibank, N.A.)</p> <p>2:12-cv-00591 BSJ</p> <p>The Honorable Bruce S. Jenkins</p>
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The matter before the Court is the *Receiver's Eleventh Motion and Memorandum in Support Requesting Order Approving Settlement Agreements (Richard and Larissa Powell; Jim*

Keller; Van and Sharon Palmer; Cory Palmer and Brilee Palmer; Tony Vega and Sonia Canales; Senor Mortensen; Elan Financial Services; Steve and Marilyn Van Gordon; and Citibank, N.A. [Docket No. ____] (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 R. Wayne Klein, Receiver* [Docket No. ____] (the “Receiver Declaration”), the record in this case, and applicable law. Based thereon, and for good cause appearing,

IT IS HEREBY ORDERED that:

- (1) The Motion is **GRANTED**;
- (2) The Settlement Agreement and Release with Richard and Larissa Powell as set forth in the Motion is **APPROVED**;
- (3) The Settlement Agreement and Release with Jim Keller as set forth in the Motion is **APPROVED**;
- (4) The Settlement Agreement and Release with Van and Sharon Palmer as set forth in the motion is **APPROVED**;
- (5) The Settlement Agreement and Release with Cory Palmer and Brilee Palmer as set forth in the motion is **APPROVED**;
- (6) The Settlement Agreement and Release with Tony Vega and Sonia Canales as set forth in the motion is **APPROVED**;
- (7) The Settlement Agreement and Release with Senor Mortensen and the Mortensen Family Trust as set forth in the motion is **APPROVED**;
- (8) The Settlement Agreement and Release with U.S. Bank N.A. ND D/B/A Elan Financial Services as set forth in the Motion is **APPROVED**;

(9) The Settlement Agreement and Release with Steve and Marilyn Van Gordon as set forth in the Motion is **APPROVED**; and

(10) The proposed Settlement Agreement and Release with Citibank N.A. 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