

Peggy Hunt (Utah State Bar No. 6060)  
Chris Martinez (Utah State Bar No. 11152)  
**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)

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

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

<p>R. WAYNE KLEIN, as Receiver,  Plaintiff,  v.  INNOVATIVE SERVICES, LLC, the ESTATE OF MICHAEL D. MEMMOTT, JR., SAWTELL CAPITAL, LLC, and JOHN DOES 1-5,  Defendants,</p>	<p><b>PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND MEMORANDUM OF LAW IN SUPPORT</b></p> <p><b>(First Cause of Action)</b></p> <p>2:13-cv-00566</p> <p>The Honorable David Nuffer</p>
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Pursuant to Federal Rule of Civil Procedure 56, and DUCivR 56-1, Plaintiff 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 in the case styled as *Securities and Exchange Commission v. National Note of Utah, LC et al.*, Case No. 2:12-cv-00591-BSJ (D. Utah) (Jenkins, J.) (the "Civil Enforcement Action"), by and through his counsel, respectfully seeks summary judgment on the First Cause of Action of the Receiver's Complaint against the Estate of Michael D. Memmott, Jr. (the "Memmott Estate") and Sawtell Capital, LLC ("Sawtell") ("Defendants").

This Motion is supported by the Memorandum of Law set forth herein. Additionally, the Receiver submits the Declaration of Receiver R. Wayne Klein (the “Klein Declaration”), a true and correct copy of which is attached hereto as Exhibit A. A proposed Order is attached hereto as Exhibit B.

## MEMORANDUM OF LAW

### I.

#### INTRODUCTION

National Note of Utah, LC (“National Note”) and its many affiliated entities (collectively, the “NNU Enterprise”) were operated as a Ponzi scheme by Wayne LaMar Palmer (“Palmer”) prior to the commencement of the Civil Enforcement Action. The Receiver is charged with, among other things, recovering property for the benefit of National Note’s investors.

This action is a pure collection action. It is undisputed that National Note lent Sawtell and Michael D. Memmott, Jr. (“Memmott”) \$180,000, and that Sawtell and Memmott were obligated to repay National Note \$180,000, plus interest and costs of collection. It cannot be disputed that only \$10,000 was paid to National Note on this obligation. Sawtell and Memmott (who has since died and thus the Memmott Estate), still owe National Note \$170,000, plus interest and costs of collection. Accordingly, the Receiver is entitled to summary judgment against Sawtell and the Memmott Estate on his First Cause of Action for breach of contract in the amount of \$170,000, plus interest and costs of collection.

### II.

#### PROCEDURAL HISTORY

1. On June 25, 2012, the Securities and Exchange Commission (the “SEC”) filed a *Complaint* against National Note and Palmer thus commencing the Civil Enforcement Action,

alleging that Palmer operated the NNU Enterprise as a Ponzi scheme and asserting various causes of action for securities fraud.<sup>1</sup>

2. Also on June 25, 2012, the Court in the Civil Enforcement Action entered its *Order Appointing Receiver and Staying Litigation* (the “Receivership Order”),<sup>2</sup> appointing the Receiver as the receiver for the NNU Enterprise and the assets of Palmer.

3. The Receiver is charged with, among other things, investigating the NNU Enterprise, and he is authorized to bring suit to recover property of the Receivership Estate.<sup>3</sup>

4. On June 21, 2013, the Receiver commenced the above-captioned case,<sup>4</sup> and on July 2, 2014, the Receiver filed his First Amended Complaint.<sup>5</sup>

5. On or about February 12, 2015, Memmott passed away. On March 18, 2015, the Receiver filed a *Motion for Leave to Substitute Parties Pursuant to Fed. R. Civ. P. 25(a)* (the “Substitution Motion”) seeking leave of Court to substitute the Memmott Estate for Memmott as a Defendant in this action.<sup>6</sup>

6. On April 23, 2015, the Court granted the Substitution Motion and ordered that the Memmott Estate be “substituted as a party in this case in place of Defendant Michael D. Memmott, Jr. and all claims asserted in the Complaint against Michael D. Memmott, Jr. are asserted against” the Memmott Estate.<sup>7</sup>

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<sup>1</sup> Civil Enforcement Action Docket No. 1.

<sup>2</sup> Civil Enforcement Docket No. 9.

<sup>3</sup> Civil Enforcement Action Docket No. 9 (Receivership Order ¶ 7(a)-(k)) & Civil Enforcement Action Docket No. 240 (Order Granting Motion For Leave to Commence Legal Proceedings).

<sup>4</sup> Docket No. 2.

<sup>5</sup> Docket No. 17.

<sup>6</sup> Docket No. 25.

<sup>7</sup> Docket No. 26.

**III.**

**STATEMENT OF ELEMENTS AND UNDISPUTED MATERIAL FACTS**

**A. First Claim For Relief – Breach of Contract**

*i. Legal Elements and Authorities:*

The elements of a claim for breach of contract “are (1) a contract, (2) performance by the party seeking recovery, (3) breach of the contract by the other party, and (4) damages.”<sup>8</sup>

*ii. Material Facts Necessary to Meet the Elements:*

1. National Note and Sawtell entered into a written contract, entitled *Multi-Advance Commercial Note* (the “Contract”) dated December 21, 2009. A true and correct copy of the Contract is attached as **Exhibit 1** to the Klein Declaration.<sup>9</sup>

2. The Contract requires National Note to lend \$180,000 to Sawtell.<sup>10</sup>

3. By February 12, 2012, National Note had complied with this obligation by distributing a total of \$180,000 to Sawtell and Sawtell’s designees.<sup>11</sup>

4. Sawtell was required to repay National Note \$180,000, plus twelve per cent interest per year.<sup>12</sup>

5. Memmott signed the Contract, which expressly indicated that he was signing the document “Personally.”<sup>13</sup> By signing the Contract personally, the Contract obligates Memmott

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<sup>8</sup> Bair v. Axiom Design, L.L.C., 20 P.3d 388, 392 (Utah 2001).

<sup>9</sup> Klein Declaration at ¶ 4 & Ex. 1 (Contract).

<sup>10</sup> Id. at Ex. 1 (Contract).

<sup>11</sup> Id. at ¶ 5.

<sup>12</sup> Id. at Ex. 1 (Contract at ¶ 2).

<sup>13</sup> Id. at Ex. 1 (Contract at signature line).

to repay National Note the \$180,000 that National Note lent to Sawtell.<sup>14</sup> Specifically, the Contract states that each person who signs the Contract is

fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed . . . The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.<sup>15</sup>

6. A \$10,000 payment was made to National Note on May 3, 2012.<sup>16</sup>

7. On the date that the Receiver was appointed, \$170,000, plus interest was due to National Note.<sup>17</sup>

8. The Receiver demanded repayment of the amounts due and owing under the Contract.<sup>18</sup>

9. Sawtell and Memmott failed to repay the amounts due under the Contract and, accordingly, the Receiver was forced to commence this proceeding.<sup>19</sup>

10. The amount of interest currently owed pursuant to the Contract is in the total amount of \$108,948.<sup>20</sup>

11. National Note may recover all fees and costs, including attorneys' fees incurred in any legal action brought to recover the amount owed to National Note under the Contract.<sup>21</sup>

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<sup>14</sup> Id. Ex. 1 (Contract at ¶ 8).

<sup>15</sup> Id.

<sup>16</sup> Id. at ¶ 6.

<sup>17</sup> Id. at ¶ 7.

<sup>18</sup> Id. at ¶ 8.

<sup>19</sup> Id. at ¶ 9.

<sup>20</sup> Id. at ¶ 10(a) – (c).

<sup>21</sup> Id. Ex. 1 (Contract at ¶ 6.E).

12. As a result of the Receiver's demands for repayment going unanswered, the Receivership Estate has been forced to incur professional fees and costs necessary to commence and prosecute this action.<sup>22</sup>

#### IV.

#### ARGUMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, the Court "shall grant summary judgment if the movant shows there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Here, the material facts are undisputed, presenting pure issues of law for determination by the Court. For the reasons discussed below, the Court should grant summary judgment on the First Cause of Action of the Receiver's Complaint.

#### **A. THE RECEIVER IS ENTITLED TO SUMMARY JUDGMENT ON HIS FIRST CLAIM FOR RELIEF**

The elements of a claim for breach of contract "are (1) a contract, (2) performance by the party seeking recovery, (3) breach of the contract by the other party, and (4) damages."<sup>23</sup> The material facts set forth above establish that all of these elements are met.

First, Memmott, Sawtell, and National Note entered into the Contract.<sup>24</sup> Second, National Note performed under the Contract by distributing \$180,000 to Sawtell and its assigns.<sup>25</sup> Third, Memmott and Sawtell have breached the Contract by failing to repay the amount due under the Contract.<sup>26</sup> As of this date, despite demand, only \$10,000 has been repaid,

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<sup>22</sup> Id. at ¶ 11.

<sup>23</sup> Bair, 20 P.3d at 392.

<sup>24</sup> Part III.A.ii., ¶¶ 1 and 5.

<sup>25</sup> Part III.A.ii., ¶¶ 2-3.

<sup>26</sup> Part III.A.ii., ¶¶ 4, 6-9.

leaving \$170,000, plus interest and costs of collection, due and owing.<sup>27</sup> Fourth, National Note has been damaged. Under the express terms of the Contract, National Note is owed the principal sum of \$170,000, plus \$108,948 in interest and fees and costs incurred by the Receiver in collecting on the Contract.<sup>28</sup>

All elements of a claim for breach of contract have been met as a matter of law. The Receiver thus requests that the Court grant this motion and enter summary judgment in his favor and against the Defendants, jointly and severally, in the total amount of \$278,948, plus fees and costs to be established by affidavit.

V.

CONCLUSION

For the foregoing reasons, the Receiver respectfully requests that the Court grant this Motion, thereby entering summary judgment in favor of the Receiver on his First Claim for Relief against Defendants in the total amount of \$278,948, plus the amount of the Receiver's fees and costs incurred in bringing this action, to be subsequently established by affidavit.

DATED this 29<sup>th</sup> day of April, 2015.

**DORSEY & WHITNEY LLP**

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

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<sup>27</sup> Part III.A.ii., ¶¶ 6-12.

<sup>28</sup> Id.

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that the foregoing **PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND MEMORANDUM OF LAW IN SUPPORT** was filed with the Court on this 29<sup>th</sup> day of April, 2015 and was served via the Court's ECF system on counsel for Defendants.

/s/ Chris Martinez



**EXHIBIT A**

Peggy Hunt (Utah State Bar No. 6060)  
Chris Martinez (Utah State Bar No. 11152)  
**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)

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

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

<p>R. WAYNE KLEIN, as Receiver,  Plaintiff,  v.  INNOVATIVE SERVICES, LLC, MICHAEL D. MEMMOTT, JR., SAWTELL CAPITAL, LLC, and JOHN DOES 1-5,  Defendants,</p>	<p><b>DECLARATION OF WAYNE KLEIN IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND MEMORANDUM OF LAW IN SUPPORT</b></p> <p><b>(First Cause of Action)</b></p> <p>2:13-cv-00566</p> <p>The Honorable David Nuffer</p>
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I, R. Wayne Klein, being of lawful age, declare, certify, verify and state as follows:

1. I am the Court-Appointed Receiver (the "Receiver") in the civil enforcement action designated as *Securities and Exchange Commission v. National Note of Utah, LC et al.*, Case No. 2:12-cv-00591-BSJ (D. Utah) (Jenkins, J.), which was commenced on June 25, 2012 (the "Civil Enforcement Action") and all statements made herein are made in my capacity as Receiver.
2. I submit this Declaration in support of the *Plaintiff's Motion for Partial Summary Judgment and Memorandum of Law in Support* (the "Motion") in the above-captioned matter.
3. Pursuant to the *Order Appointing Receiver and Staying Litigation* entered on June 25, 2012 (the "Receivership Order"), the Court in the Civil Enforcement Action appointed me as

Receiver of National Note of Utah, LC ("National Note"), at least 41 related entities (together with National Note, the "NNU Enterprise"), and the assets of Wayne LaMar Palmer ("Palmer"). On the date that the Receivership Order was entered, I obtained control of the NNU Enterprise's office located in West Jordan, Utah, and I took custody and control of the books and records of the NNU Enterprise located at that office, including the paper files and computers. Since that time, I have obtained additional books and records of the NNU Enterprise and have engaged in an exhaustive investigation of the NNU Enterprises' books and records, business dealings, obligations, and contracts. The statements made herein are made based on my personal knowledge obtained through my investigation and examination of the books and records in my custody and control, including the financial and cash records of the NNU Enterprise.

4. National Note and Sawtell Capital, LLC ("Sawtell") entered into a written contract, entitled *Multi-Advance Commercial Note* (the "Contract") dated December 21, 2009. A true and correct copy of the Contract is attached hereto as Exhibit 1.

5. By February 12, 2012, National Note had distributed \$180,000 to Sawtell and Sawtell's designees.

6. A \$10,000 payment was made to National Note on May 3, 2012.

7. On the date that I was appointed, \$170,000, plus interest was due to National Note.

8. I thereafter demanded repayment of the amounts due and owing under the Contract.

9. Sawtell and Memmott failed to repay the amounts due under the Contract and, accordingly, I was required to commence the above-captioned proceeding to collect on the Contract.

10. The amount of interest currently owed pursuant to the Contract is as follows:

- a. From February 12, 2010, the date National Note paid a total of \$180,000, to May 3, 2012, the date that \$10,000 was paid, is 2 years and 82 days. Interest on \$180,000 at 12 percent for 2 years and 82 days equals \$47,952.00.
- b. From May 3, 2012 until April 30, 2015 is 2 years and 363 days. Interest on \$170,000 at 12 percent for 2 years and 363 days equals \$60,996.
- c. Thus, the total interest owed is \$108,948.

11. As a result of my demands for repayment going unanswered, the Receivership Estate has been forced to incur professional fees and costs necessary to commence and prosecute this action.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief

DATED this 29<sup>th</sup> day of April, 2015

  
R. Wayne Klein, Receiver

**EXHIBIT 1**

Loan No. 10-NNU-MM-001

**MULTI-ADVANCE COMMERCIAL NOTE**  
*(Fixed Rate)*

21 December, 2009

Salt Lake City, UT  
(City) (State)

**1. BORROWERS PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$180,000.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is National Note of Utah, LC.

I understand that the Lender may transfer this Note. The lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder".

**2. INTEREST**

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 12%.

The interest rate I will pay after any default described in Section 6(B) of this Note will be 18% per year.

**3. PAYMENTS**

**Time and Place of Payments**

I will pay principle and interest by making one final payment on or before the due date, in the amount of all accrued interest, plus the outstanding principal and any other loan charges outstanding.

I will make payments at National Note of Utah, LC, 1549 West 7800 South, West Jordan, UT 84088 or at a different place if required by the Note Holder.

**4. BORROWERS RIGHT TO PREPAY**

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When I make a prepayment, I will tell the Note Holder in writing that I am doing so.

I may make a full prepayment or partial prepayments without paying any prepayment charge. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

**5. LOAN CHARGES**

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

**6. BORROWER'S FAILURE TO PAY AS REQUIRED**

**(A) Late Charge for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of five calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 10% of my overdue payment of principal and interest. This charge will also apply to any balloon payment not received by the end of five (5) calendar days after the date it is due. I will pay this late charge promptly but only once on each late payment.

**(B) Default**

If I do not pay the full amount of each payment on the date it is due, I will be in default.

**(C) Notice of Default**

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount.

**(D) No Waiver By Note Holder**

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will have the right to do so if I am in default at a later time.

**(E) Payment of Note Holder's Costs and Expenses**

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all or it's costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorney's fees.

NNU\_INNOVATIVE\_000001

**7. GIVING OF NOTICES**

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class to me at the Property Address above or at a different address if I give of the Note Holder my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

**8. OBLIGATIONS OF PERSONS UNDER THIS NOTE**

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

**9. WAIVERS**

I and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

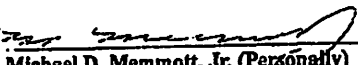
**10. ADDITIONAL ADVANCES BY LENDER**

The Security Instrument is recorded against the Property. The owner of the Property is obligated to make payments to preserve ownership of the Property which may include, but are not necessarily limited to property taxes, debts secured by other Mortgages, Deeds of Trust or Security Deeds, liens to suppliers of labor or materials, assessments of government entities and owners association dues (hereafter collectively, all such obligations are called "Property Charges"). I promise to pay all of the Property Charges when they are due. My failure to pay any of the Property Charges when due shall be an event of default under this Note. If I fail to pay any of the Property Charges when due, the Lender shall have the right, but not the obligation to pay any and all of such unpaid Property Charges to protect the lien of the Security Instrument. If the Lender makes any such payments, I agree to repay all amounts advanced by the Lender, plus a document preparation fee of \$15.00 plus a surcharge of ten percent (10%) of the amount advanced plus the document fee (hereafter collectively the "Lender Advance"). Failure on my part to repay any Lender Advance on demand shall be an event of default under this Note. The full amount of all Lender Advance shall be added to the principal amount due under this Note, shall bear interest at the interest rate of this Note and shall be secured by the Security Instrument.

**WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.**

Sawtell Capital, LLC

  
Michael D. Memmott, Jr., Managing Member

  
Michael D. Memmott, Jr. (Personally)

Social Security or Tax ID#

**EXHIBIT B**



*Prepared and Submitted By:*

Peggy Hunt (Utah State Bar No. 6060)  
Chris Martinez (Utah State Bar No. 11152)  
**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)

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

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

<p>R. WAYNE KLEIN, as Receiver,  Plaintiff,  v.  INNOVATIVE SERVICES, LLC, THE ESTATE OF MICHAEL D. MEMMOTT, JR., SAWTELL CAPITAL, LLC., and JOHN DOES 1-5,  Defendants.</p>	<p><b>ORDER GRANTING PLAINTIFF- RECEIVER'S MOTION FOR PARTIAL SUMMARY JUDGMENT</b></p> <p><b>(First Cause of Action)</b></p> <p>2:13-cv-00566</p> <p>The Honorable David Nuffer</p>
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The matter before the Court is the *Plaintiff's Motion for Partial Summary Judgment (First Cause of Action)* (the "Motion"). The Court has reviewed the Motion, the *Declaration of Wayne Klein In Support of Plaintiff's Motion for Partial Summary Judgment*, applicable law, and the record in this case. Based thereon and for good cause shown,

**IT IS HEREBY ORDERED THAT:**

- (1) The Motion is **GRANTED**; and

- (2) The Plaintiff is entitled to judgment against the Estate of Michael D. Memmott, Jr. and Sawtell Capital, LLC, jointly and severally, on Plaintiff's First Cause of Action in the amount of \$278,948, plus the amount of the Plaintiff's costs and attorney's fees incurred in bringing this action.
- (3) The Receiver shall file an affidavit establishing the fees and costs incurred by the Receivership Estate by no later than \_\_\_\_\_, 2015.
- (4) A separate judgment will be entered.

Dated this \_\_\_\_ day of May, 2015.

**BY THE COURT:**

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The Honorable David Nuffer  
United States District Court