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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;"><b>RECEIVER'S SIXTEENTH MOTION SEEKING APPROVAL OF SETTLEMENT AGREEMENTS AND MEMORANDUM IN SUPPORT</b></p> <p style="text-align: center;"><b>(Kim R. Colin and Real Estate Investment Partners 401k PSP; and Corporation of the President of The Church of Jesus Christ of Latter-day Saints)</b></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”).<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>

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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).

- “[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

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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 ¶ 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.<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. 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. Kim R. Colin and Real Estate Investment Partners 401k PSP (as successor to Resource Realty Profit Sharing Plan) (collectively, "Colin"): Ms. Colin had multiple relationships with National Note, including as an investor and as a person who received commissions for recommending investors. Colin has submitted two Proofs of Claim to the Receiver, designated as Claim Nos. 1323 and 1324 (the "POCs"), asserting claims in the amount of \$190,501.55 based on losses related to Colin's investments. Colin asserts that these claims are secured by deeds of trust on four properties in the Almond Heights subdivision located in Toquerville, Utah. All four properties have been sold by the Receiver, and the Receivership Estate has obtained \$103,385.86 in net sales proceeds which are on deposit in the Real Estate Account. Colin asserts an interest in the entire \$103,385.86, and maintains that the remainder of

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<sup>10</sup> Receiver Declaration ¶ 3.

<sup>11</sup> Receiver Declaration ¶ 4.

the POC claims, or \$87,115.69, should be an allowed claim against the Receivership Estate. The Receiver contests Colin's claims. The Receiver maintains that Colin's secured claim does not exceed \$68,000.00, because at the time that the trust deeds were issued, Colin did not give value in excess of \$68,000.00. Further, the Receiver asserts that Colin is obligated to repay \$39,100.00 received in commissions from National Note and that, as a recipient of commissions, Colin is not entitled to any claim against the Receivership Estate. On or about February 1, 2016, the Receiver entered into a Settlement Agreement and Release with Colin, subject to Court approval, agreeing to compromise the parties' mutual claims against each other. Under the Agreement, the Receivership Estate will pay Colin \$50,000.00 of the Almond Heights net sale proceeds in full satisfaction of Colin's claims against the Receivership Estate. Colin, in turn, has agreed to waive all claims for any amount in excess of the agreed \$50,000.00 and agrees that Colin's POCs will be disallowed. If the Agreement is approved by the Court, the Receiver intends to transfer \$103,385.86 from the Real Estate Account to Receivership Estate's Operating Account and pay \$50,000.00 to Colin. Because there are no other interests against the Almond Heights net sale proceeds in question, the remaining balance of \$53,385.86 will remain on deposit in the Operating Account.<sup>12</sup>

b. Corporation of the President of The Church of Jesus Christ of Latter-day Saints (the "LDS Entities"): Since at least 1998 through the time of the Receiver's appointment, numerous transfers were made by the LDS Entities on account of Palmer's church membership, which transfers total \$210,460.14. The Receiver and the LDS Entities have worked cooperatively to gather information about these transfers, and have entered into a series of arms'

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<sup>12</sup> Receiver Declaration ¶ 5.

length agreements to toll any applicable limitations periods. On or about March 9, 2016, prior to commencing any litigation against the LDS Entities, the Receiver entered into a Settlement Agreement and Release with the LDS Entities, subject to Court approval. Under the Agreement the LDS Entities will return the entire \$210,460.14 in transfers that had been made, after entry of an Order approving the Agreement, and mutual releases will be provided.<sup>13</sup>

### 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>14</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>15</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

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<sup>13</sup> Receiver Declaration ¶ 6.

<sup>14</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>15</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).

expensive litigation; and (4) the judgment of the parties that the settlement is fair and reasonable.<sup>16</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; and (b) the terms of the respective proposed settlements are fair and reasonable.<sup>17</sup>

11. Colin: As a result of the Agreement, the Receiver has significantly reduced the total amount of Colin's secured claim, resulting in the Receivership Estate obtaining \$53,385.86 of the Almond Heights net sale proceeds. He has also obtained Colin's agreement to waive any claims as set forth in Colin's POC, which claims exceed \$87,000.00. In the Receiver's business judgment, this Agreement is beneficial to the Receivership Estate because litigation related to Colin's POCs and asserted secured claim would likely have been complicated, protracted, and expensive, and the result was unclear. Accordingly, the Receiver submits that the Settlement Agreement and Release with Colin is beneficial to and in the best interests of the Receivership Estate.<sup>18</sup>

12. LDS Entities: In the Receiver's business judgment, the Settlement Agreement and Release with the LDS Entities, which was negotiated in good faith and at arms' length after a significant exchange of information, is beneficial to the Receivership Estate. As a result of this

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<sup>16</sup> *Jones*, 741 F.2d at 324.

<sup>17</sup> Receiver Declaration ¶ 7.

<sup>18</sup> Receiver Declaration ¶ 8.

Agreement, \$210,460.14 will be recovered for the benefit of the Receivership Estate without the expense of litigation.<sup>19</sup>

13. 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.<sup>20</sup>

14. 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.<sup>21</sup>

#### 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 15th day of March, 2016.

**DORSEY & WHITNEY LLP**

/s/ Peggy Hunt

Peggy Hunt

John Wiest

*Attorneys for Receiver*

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<sup>19</sup> Receiver Declaration ¶ 9.

<sup>20</sup> Receiver Declaration ¶ 10.

<sup>21</sup> Receiver Declaration ¶ 11.



**CERTIFICATE OF SERVICE**

I hereby certify that the above **RECEIVER'S SIXTEENTH MOTION SEEKING APPROVAL OF SETTLEMENT AGREEMENTS AND MEMORANDUM IN SUPPORT** (the "Motion") was filed with the Court on this 15<sup>th</sup> day of March, 2016, and served via ECF on all parties who have requested notice in this case.

Furthermore, I certify that on the 15th day of March, 2016, 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

Kim R. Colin  
Kim@bestresource.com

LDS Entities  
c/o Matthew K. Richards  
Kirton & McConkie  
mrichards@kmclaw.com

\_\_\_\_\_  
/s/ Natasha Asmus

# EXHIBIT A

*Order Prepared and Submitted By:*

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

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

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SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

NATIONAL NOTE OF UTAH, LC, a Utah  
Limited Liability Company and WAYNE  
LaMAR PALMER, an individual,

Defendants.

**ORDER GRANTING RECEIVER'S  
SIXTEENTH MOTION SEEKING  
APPROVAL OF SETTLEMENT  
AGREEMENTS AND MEMORANDUM  
IN SUPPORT**

**(Kim R. Colin and Real Estate Investment  
Partners 401k PSP; and Corporation of the  
President of The Church of Jesus Christ of  
Latter-day Saints)**

Case No: 2:12-CV-591 BSJ

The Honorable Bruce S. Jenkins

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The matter before the Court is the *Receiver's Sixteenth Motion Seeking  
Approval of Settlement Agreements and Memorandum in Support (Kim R. Colin and*

*Real Estate Investment Partners 401k PSP; and Corporation of the President of The Church of Jesus Christ of Latter-day Saints*) (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* (the "Receiver Declaration") in support of the Motion, 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 Kim R. Colin and Real Estate Investment Partners 401k Profit Sharing Plan as set forth in the Motion is **APPROVED**; and
- (3) The Settlement Agreement and Release with the Corporation of the President of The Church of Jesus Christ of Latter-day Saints and affiliated entities as set forth in the Motion is **APPROVED**.

DATED this \_\_\_ day of March, 2016.

**BY THE COURT**

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The Honorable Bruce S. Jenkins  
United States District Court