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*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 style="text-align: right;">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: right;">Defendants.</p>	<p><b>RECEIVER'S THIRTEENTH MOTION SEEKING APPROVAL OF SETTLEMENT AGREEMENTS AND MEMORANDUM IN SUPPORT</b></p> <p><b>(Ralph S. Peiris and Ralph S. Peiris D.O., Inc.; Timothy F. Keeton; Kathy Sudbury and G&amp;K Sudbury, L.P.; Kent Haslam and the Kent &amp; Michelle Haslam Trust; Russell Wirtala; Sano Investment Group, LLC and Atlas Red, Inc.; Hong Shiek Chung)</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 ¶ 3.

has entered into numerous settlement agreements, including the seven 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 Receivership Estate will receive cash totaling \$93,000.00, and the release of certain interests in real estate and sale proceeds described 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. Each Settlement Agreement and Release subject to the present Motion, all of which are subject to Court approval, are described as follows:

a. Ralph S. Peiris ("Peiris") and Ralph S. Peiris, D.O., Inc. ("D.O."): On June 20, 2013, the Receiver filed suit against Peiris and D.O., alleging that they were NNU investors who received a total of \$11,457.16 in excess of their principal investment with NNU. On December 18, 2014, the Receiver obtained a default judgment against the defendants in the amount of \$11,457.16. After the judgment was entered, Peiris provided documentation showing that he had received a bankruptcy discharge in April 2011. The Receiver confirmed that Peiris received no distributions from National Note after April 2011 and, thus, the Receivership

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

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

Estate's claims against Peiris have been discharged.. The total funds that National Note paid to D.O. was in the amount of \$1,989.34. Based on this information, on or about March 20, 2015, the Receiver entered into a Settlement Agreement and Release with Peiris and D.O., subject to Court approval, agreeing in part to compromise the Receivership Estate's non-discharged claims. Under the Agreement, a total of \$1,000.00 has been paid 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 Peiris and D.O.<sup>12</sup>

b. Timothy F. Keeton ("Keeton"): The Receiver filed suit against Keeton on June 7, 2013 alleging that Keeton was an NNU investor who received a total of \$19,524.61 in excess of Keeton's principal investment with NNU, and certain ABIs recorded against three properties. The Receiver also filed suit against New Millennium Operating Company ("New Millennium") on June 20, 2013, alleging New Millennium was an entity that invested with NNU on behalf of Keeton and that New Millennium received \$11,431.71 in excess payments from NNU. Together, Keeton and New Millennium received a total of \$30,956.32 in payments from National Note over the amount of any principal investment. On or about April 16, 2015, the Receiver entered into a Settlement Agreement and Release with Keeton, subject to Court approval, agreeing in part to compromise the Receivership Estate's claim against Keeton. Under the Agreement, Keeton has agreed (a) to pay a total of \$24,000.00 to the Receivership Estate over time, with the last payment being due by no later than December 1, 2016, and (b) to release the ABIs which assert claims against properties in the total amount of \$76,720.78. To date,

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

Keeton has paid \$7,000.00 of the settlement amount. Upon approval of the Settlement Agreement and Release by this Court, the Receiver will file appropriate papers seeking dismissal of the lawsuits against Keeton and New Millennium.<sup>13</sup>

c. Kathy Sudbury and G&K Sudbury, L.P. (“Sudbury”): On August 22, 2014, the Receiver filed suit against the Sudbury and others, seeking a judgment declaring that ABIs held by them were invalid, including an ABI held by Sudbury recorded against real property located in Middleton, Idaho with a stated face value of \$245,000.00. Sudbury did not receive payments from National Note in excess of her principal investment, and in fact may not have received a return of her principal investment. On March 26, 2015, the Receiver entered into a Settlement Agreement and Release with Sudbury, subject to Court approval, under which Sudbury has released the ABI and waived any claim that Sudbury has a secured interest in any property or assets of the Receivership Estate. The Agreement does not, however, preclude Sudbury from submitting a claim for any investment losses. Upon approval of this Agreement, the Receiver will file appropriate papers seeking dismissal of the lawsuit against Sudbury.<sup>14</sup>

d. Kent Haslam and Kent & Michelle Haslam Trust (“Haslam”): The Receiver filed suit against Haslam on June 24, 2013, alleging that Haslam was an NNU investor who received a total of \$14,558.72 in excess of Haslam’s principal investment with NNU. On or about May 8, 2015, the Receiver entered into a Settlement Agreement and Release with Haslam, subject to Court approval, agreeing in part to compromise the Receivership Estate’s claim against Haslam. Under the Agreement, Haslam agreed to pay and has paid \$7,000.00 to the

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

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

Receivership Estate. Upon approval of the Settlement Agreement and Release by this Court, the Receiver will file appropriate papers seeking dismissal of the lawsuit against Haslam.<sup>15</sup>

e. Russell Wirtala (“Wirtala”): The Receiver filed suit against Wirtala on June 19, 2013 alleging that Wirtala was an NNU investor who received a total of \$78,807.41 in excess of Wirtala’s principal investment with NNU. Wirtala provided verified financial information to the Receiver asserting an inability to pay any judgment entered against him. On or about May 26, 2015, the Receiver entered into a Settlement Agreement and Release with Wirtala, subject to Court approval, agreeing in part to compromise the Receivership Estate’s claim against Wirtala. Under the Agreement, Wirtala will pay a total of \$45,000.00 to the Receivership Estate over time through monthly payments, with the final payment being due no later than April 2018. Upon approval of the Settlement Agreement and Release by this Court, the Receiver will file appropriate papers seeking dismissal of the lawsuit against Wirtala.<sup>16</sup>

f. Sano Investment Group, LLC (“Sano”) and Atlas Red, Inc. (“Atlas”): The Receiver filed suit against Sano and Atlas on June 19, 2013, alleging that Sano and Atlas were NNU investors who received a total of \$18,173.68 in excess of their principal investments with NNU. Sano and Atlas provided verified financial information to the Receiver asserting an inability to repay the full amount of overpayment. On or about May 8, 2015, the Receiver entered into a Settlement Agreement and Release with Sano and Atlas, subject to Court approval, agreeing in part to compromise the Receivership Estate’s claim against Sano and Atlas. Under the Agreement, Sano and Atlas will pay a total of \$5,000.00 to the Receivership Estate, in

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

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

monthly payments, with the last payment being due on or before December 2016. Sano and Atlas have also filed confessions of judgment that the Receiver may file with the Court in the event Sano and Atlas fail to make settlement payments when required. Upon approval of the Settlement Agreement and Release by this Court, the Receiver will file appropriate papers seeking dismissal of the lawsuit against Sano and Atlas.<sup>17</sup>

g. Hong Shiek Chung (“Chung”): The Receiver filed suit against Chung on June 17, 2013, alleging that Chung was an NNU investor who received a total of \$16,098.55 in excess of Chung’s principal investment with NNU. On May 15, 2015, an Order was entered granting the Receiver partial summary judgment, finding that profits that Chung received from NNU were avoidable, and ordering the parties to have their only remaining dispute (*i.e.*, the amount of profits) considered at a Court-supervised settlement conference.<sup>18</sup> On June 30, 2015, a settlement conference was presided over by the Honorable Paul M. Warner and the principal terms of a settlement were negotiated. Based on those negotiations, on June 30, 2015, the Receiver entered into a Settlement Agreement and Release with Chung, subject to Court approval, agreeing in part to compromise the Receivership Estate’s claim against Chung. Under the Agreement, Chung will pay \$11,000.00 to the Receivership Estate. One-half of this amount will be paid by July 31, 2015, and the balance will be paid in two installments over the next

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

<sup>18</sup> *Klein v. Chung*, Case No. 2:13 CV467 DBP (Memorandum Decision and Order entered May 11, 2015), Docket No. 22.



year. Upon approval of the Settlement Agreement and Release by this Court, the Receiver will file appropriate papers seeking dismissal of the lawsuit against Chung.<sup>19</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>20</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>21</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 expensive litigation; and (4) the judgment of the parties that the settlement is fair and reasonable.<sup>22</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

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<sup>19</sup> Receiver Declaration ¶ 12.

<sup>20</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>21</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>22</sup> *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.<sup>23</sup>

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.<sup>24</sup>

12. Peiris and D.O.: The Receivership Estate will receive a little more than ½ of the total portion of profits that remain recoverable from D.O. in light of Peiris's discharge. Given the amount in question, the Receiver determined that, although the Estate holds a default judgment, he should settle for \$1,000.000 because taking action to collect the full judgment likely would not result in any net recovery. Accordingly, the Receiver believes that this agreement is the best agreement to be made and the Receivership Estate will be benefited from the \$1,000.00 settlement payment without the need for further litigation expense.<sup>25</sup>

13. Keeton: The \$24,000.00 settlement amount represents 77.5% of the amount that was overpaid to Keeton and New Millennium by NNU. In addition, under the agreement, Keeton has released three ABIs having a total face value of \$76,720.78. The Receiver believes that this settlement is beneficial given the complexity of the facts arising from the relationships

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<sup>23</sup> Receiver Declaration ¶¶ 13-21.

<sup>24</sup> Receiver Declaration ¶ 13.

<sup>25</sup> Receiver Declaration ¶ 14.

between Keeton and New Millennium, the apparent lack of financial ability to pay the full amount of any judgment obtained, and the time and expense and inherent risks of litigation..<sup>26</sup>

14. Sudbury: Sudbury's the release of the ABI is what was requested by the Receiver in his lawsuit against Sudbury and settlement is in the best interest of the Receivership Estate. Through the settlement, Sudbury preserves rights that Sudbury had to assert a claim against the Receivership Estate for her investment losses.<sup>27</sup>

15. Haslam: This amount of this settlement represents approximately 48% of the amount of net profits paid to Haslam. The Receiver agreed to this settlement amount in light of the factual and legal complexities of the case which would have required the Receivership Estate to expend additional expense to obtain a judgment for this amount or any amount higher than the settlement amount. In light of the relatively modest amount of false profits and the expected costs of continued litigation, the Receiver determined it would be most beneficial to the Receivership Estate to settle with Haslam. <sup>28</sup>

16. Wirtala and Sano and Atlas: These settlements will result in a return of approximately 51.5% of the amount demanded. While the Receiver is confident of a right to obtain judgments on the claims at issue, he likely will not be able to recover the full amount of such judgments given the respective financial standing of the parties. Moreover, continuing litigation will result in additional costs which likely will be more than the amount that will ultimately be recovered from each of the Defendants. In the case of Sano and Atlas, the

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<sup>26</sup> Receiver Declaration ¶ 15.

<sup>27</sup> Receiver Declaration ¶ 16.

<sup>28</sup> Receiver Declaration ¶ 18.

confessions of judgment obtained by the Receiver increase the likelihood that Sano and Atlas will pay the full settlement amount.<sup>29</sup>

17. Chung: Chung has agreed to pay \$11,000.00, representing approximately 68.3% of the amount of his overpayment. The Receiver agreed to this settlement amount based on the belief that proceeding to trial—even on the limited issue of the amount of profits that would need to be turned over by Chung—would cost at least \$5,000.00 in legal fees given the factual disputes that exist and expending this sum was not advisable given the relatively modest amount of false profits at issue.<sup>30</sup>

18. 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>31</sup>

19. 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>32</sup>

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<sup>29</sup> Receiver Declaration ¶ 19.

<sup>30</sup> Receiver Declaration ¶ 19.

<sup>31</sup> Receiver Declaration ¶ 20.

<sup>32</sup> Receiver Declaration ¶ 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 \_\_\_ day of July, 2015.

**DORSEY & WHITNEY LLP**

/s/ Peggy Hunt

Peggy Hunt

Chris Martinez

*Attorneys for Receiver*

**CERTIFICATE OF SERVICE**

I hereby certify that the above **RECEIVER'S THIRTEENTH MOTION SEEKING APPROVAL OF SETTLEMENT AGREEMENTS AND MEMORANDUM IN SUPPORT** (the "Motion") was filed with the Court on this 7th day of July, 2015, and served via ECF on all parties who have requested notice in this case.

Furthermore, I certify that on the 7th day of July, 2015, 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

Ralph Peiris  
5791 Cape Jewels Trail  
San Diego, CA 92130

Kent Haslam  
13827 Trail Rider Circle  
Draper, UT 84020

Hong Chung  
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Kathy Sudbury/G&K Sudbury  
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*/s/ Candy Longt*