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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,

vs.

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

Defendants.

**RECEIVER'S MOTION SEEKING
APPROVAL OF SETTLEMENT
AGREEMENTS WITH TURPIN
PARTIES AND GREEN APPLE
HOLDING, LLC**

Civil No. 2:12-00591

The Honorable Bruce S. Jenkins

R. Wayne Klein, as receiver (the "Receiver") for Defendant National Note of Utah, LC, and the assets of Defendant Wayne LaMar Palmer, by and through his counsel of record, respectfully requests that the Court enter an Order granting this Motion and approving the settlement agreements discussed below with the Turpin Parties, as defined below, and Green Apple Holding, LLC ("Green Apple"). This Motion is supported by the *Memorandum of Law* contained herein and the *Declaration of Receiver R. Wayne Klein* (the "Receiver Declaration") attached hereto as **Exhibit A**. A proposed form of Order is attached hereto as **Exhibit B**.

I.

PROCEDURAL BACKGROUND

1. On June 25, 2012, 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, forty-one of its affiliated companies (the “Palmer Entities”; with NNU for purposes of this Motion, “NNU”), and all of 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
- “[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

¹ Docket No. 9 (Receivership Order).

² *See generally, id.*

³ *Id.* at ¶ 7(A).

⁴ *Id.* at ¶ 7(B).

⁵ *Id.* at ¶ 7(C).

⁶ *Id.* at ¶ 7(D).

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 and liens on real estate.⁹

Turpin Parties

4. On April 23, 2014 the Receiver commenced a lawsuit against Michelle Turpin, P.C. (“Turpin PC”), Michelle Turpin & Associates PC (“Associates”; with Turpin PC, the “Turpin Parties”), and Michelle Turpin individually, captioned as *Klein v. Michelle Turpin et al.*, Civ. No. 2:14-cv-302 RJS (D. Utah) (the “Avoidance Lawsuit”), seeking to recover \$88,135.37 that NNU had transferred to the Turpin Parties as payment for tax legal services provided to Palmer prior to the Receiver’s appointment. Michelle Turpin was ultimately dismissed as a party to the Avoidance Lawsuit.¹⁰

5. Cross motions for summary judgment were filed in the Avoidance Lawsuit, and on July 5, 2016 the District Court entered a (1) *Memorandum Decision and Order*¹¹, granting the

⁷ *Id.* at ¶ 37.

⁸ *Id.* at ¶ 7(J).

⁹ Ex. A at ¶ 5 (Receiver Declaration).

¹⁰ *Id.* at 6 ¶.

¹¹ Docket No. 46.

motion for summary judgment filed by the Receiver, and granting in part the motion for summary judgment filed by the Turpin Parties in the Avoidance Lawsuit; and (2) a Judgment in favor of the Receiver in the total amount of \$78,135.77 (the “Judgment”).¹²

6. On August 3, 2016, Turpin PC filed a *Notice of Appeal* (the “Appeal”) which was transmitted to the United States Court of Appeals for the Tenth Circuit (“Tenth Circuit”). Associates did not file a notice of appeal.¹³

7. The Receiver and the Turpin Parties (the “Parties”) thereafter entered into good faith and arms’ length settlement discussions. Simultaneously, the Tenth Circuit contacted the Parties and informed the Parties that it had assigned this case to court-facilitated mediation pursuant to Tenth Circuit Rule 33.1 and Federal of Appellate Procedure 42(b).¹⁴

8. As a result of these settlement discussions, facilitated in part by the Tenth Circuit mediator, the Parties have reached a settlement agreement, subject to Court approval (the “Settlement Agreement”).¹⁵

9. The Settlement Agreement (a) has been negotiated at arm’s length and in good faith by the Parties, (b) will avoid the expense, delay and inherent risks of litigation, (c) will result in the collection of funds, and (d) has taken into account issues related to the collection of any judgment that may be obtained.¹⁶

10. Under the Settlement Agreement, Michelle Turpin has paid \$55,000.00 to the Receivership Estate (the “Total Cash Payment”), and the Parties agree to mutually release all

¹² Ex. A at ¶ 7 (Receiver Declaration).

¹³ *Id.* at ¶ 8.

¹⁴ *Id.* at ¶ 9.

¹⁵ *Id.* at ¶ 10.

¹⁶ *Id.* at ¶ 11.

claims against each other. No later than five days after payment of the Total Cash Payment, the Parties will file appropriate papers with the Tenth Circuit to dismiss the Appeal.¹⁷

Green Apple Holding

11. In June 2005, NNU loaned \$277,777.00 to Keven Thoresen (“Thoresen”) for the purchase of an undeveloped parcel of residential real estate (“Property”) in Lee County, Florida, which loan was secured by a mortgage against the Property. The Receiver believes that the loan was undersecured inasmuch as the Property was worth less than the amount owed to NNU.¹⁸

12. NNU’s records show that Thoresen made some loan payments, but his total payments to NNU were less than the accrued interest on the loan.¹⁹

13. In 2014, the Property was sold by Lee County at a tax deed sale. The Receivership Estate received a net total of \$16,018.75 from that sale.²⁰

14. Thoresen sued the Receivership Estate in Florida to quiet title to the Property presumably to try to obtain the surplus tax sale funds. This litigation was filed in violation of the litigation stay ordered by this Court, and the litigation was thereafter put on hold in recognition of that fact.²¹

15. Green Apple is the current owner of the Property, having paid approximately \$61,500.00 for the Property, and the Receiver is informed that it has been paying all costs associated with the Property. The Receiver is also informed that a buyer has tentatively agreed to

¹⁷ *Id.* at ¶ 12.

¹⁸ *Id.* at ¶ 13.

¹⁹ *Id.* at ¶ 14.

²⁰ *Id.* at ¶ 15.

²¹ *Id.* at 16.

purchase the Property from Green Apple for approximately \$114,000. The purchase is conditioned on Green Apple being able to deliver a deed free of NNU's mortgage.²²

16. The Receiver and Green Apple entered into arms' length and good faith negotiations related to NNU's lien against the Property and the quiet title action. As a result of these good faith negotiations, the Receiver has entered into a settlement agreement with Green Apple subject to Court approval. Under the agreement, Green Apple will pay \$10,000.00 to the Receivership Estate from the proceeds of the sale of the Property, and then the Receiver will release NNU's mortgage against the Property. The lawsuit will be dismissed.²³

III.

APPLICABLE LAW AND ANALYSIS

17. The Receiver requests that the Court approve the Settlement Agreements. In support hereof, the Receiver provides the following analysis.

18. 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."²⁴

19. "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."²⁵ 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

²² *Id.* at 17.

²³ *Id.* at 18.

²⁴ *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)).

²⁵ *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).

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.²⁶

20. Here, the Settlement Agreements are 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 proposed settlements are fair and reasonable.

21. The Settlement Agreements were negotiated fairly and honestly, and are the result of arm's-length transactions. There has been no collusion between the parties.²⁷

22. The Settlement Agreements are beneficial to the Receivership Estate.²⁸

23. The Receiver engaged in good faith and arm's length negotiations with the Turpin Parties and has obtained a total of \$55,000.00 in cash for the benefit of the Receivership through the Settlement Agreement. While the Receiver believes he would prevail in the Appeal and obtain the full amount of the Judgment, proceeding with the briefing and argument of the Appeal would require the Receiver to expend significant additional effort and cost to obtain the full amount of the Judgment. As such, the costs of litigation would likely exceed any excess recovery for the Receivership Estate. Therefore, the Receiver submits that the Settlement is in the best interest of the Receivership Estate.²⁹

24. The Receiver engaged in good faith and arm's length negotiations with Green

²⁶ *Jones*, 741 F.2d at 324.

²⁷ Ex. A at ¶ 13 (Receiver Declaration).

²⁸ *Id.* at ¶ 14.

²⁹ *Id.* at ¶ 15.

Apple and will obtain a total of \$10,000.00 in cash for the benefit of the Receivership Estate.³⁰ The Property is worth far less than NNU's lien against it, and the Receiver has recovered to date a total of \$16,018.75 from surplus tax deed sale proceeds. The Receiver believes that obtaining the \$10,000.00 in settlement from Green Apple will allow for the best recovery possible for this claim. Absent a settlement, the Receivership Estate would incur the cost of litigation, foreclosure and/or closing costs and, given the value of the Property, these costs would likely consume any recovery for the Receivership Estate. In addition, litigation would delay administration of the Receivership Estate.

25. In light of these factors, the Receiver believes that the Settlement Agreements are just and fair and should be approved by the Court.

IV.

CONCLUSION

For the reasons stated herein, the Receiver requests that the Court enter the proposed Order attached hereto as Exhibit B, approving the Settlement Agreements.

DATED this ___th day of December, 2016.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt _____
Peggy Hunt
Sarah Goldberg
John J. Wiest
Attorneys for Receiver

³⁰ *Id.* at ¶ 18.

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of December, 2016 the foregoing **RECEIVER'S MOTION SEEKING APPROVAL OF SETTLEMENT AGREEMENTS WITH TURPIN PARTIES AND GREEN APPLE HOLDING** was filed with the Court and served via ECF on all parties who have requested notice in this case.

/s/ John J. Wiest

I hereby certify that on the 23rd day of December, 2016 a true and correct copy of the foregoing **RECEIVER'S MOTION SEEKING APPROVAL OF SETTLEMENT AGREEMENTS WITH TURPIN PARTIES AND GREEN APPLE HOLDING** was served upon the persons named below, at the addresses set out below by U.S. mail:

Wayne L. Palmer
8816 South 2240 West
West Jordan, UT 84088

/s/ Suanna Armitage

I hereby certify that on the 23rd day of December, 2016 a true and correct copy of the foregoing **RECEIVER'S MOTION SEEKING APPROVAL OF SETTLEMENT AGREEMENTS WITH TURPIN PARTIES AND GREEN APPLE HOLDING** was served upon the persons named below via email at the addresses set out below:

Deborah Chandler
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/s/ Suanna Armitage