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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.

**RECEIVER'S RENEWED MOTION  
SEEKING APPROVAL OF  
SETTLEMENT AGREEMENT WITH  
GREEN APPLE HOLDING, LLC**

Civil No. 2:12-00591

The Honorable Bruce S. Jenkins

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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 Renewed Motion and approving the settlement agreement discussed below with Green Apple Holding, LLC ("Green Apple"). This Renewed Motion is supported by the *Memorandum of Law* contained herein and the *Declaration of R. Wayne Klein, Receiver* (the "Receiver Declaration"), filed concurrently herewith. A proposed form of Order is attached hereto as **Exhibit A**.

**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”).<sup>1</sup> 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.<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>
- “[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>

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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).

<sup>5</sup> *Id.* at ¶ 7(C).

- “[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 AGREEMENT AND THE FACTS SURROUNDING IT**

#### *The Mortgage and Tax-Deed Sale*

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. In June 2005, NNU loaned \$277,000.00 to Kevin Thoresen (the “Thoresen Loan”). The Thoresen Loan was secured by a mortgage in favor of NNU (the “Mortgage”) on a residential building lot located in Lee County, Florida (the “Property”).<sup>10</sup>

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<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 ¶ 5.

<sup>10</sup> *Id.* at ¶ 6.

5. According to NNU's records, Thoresen made some payments to NNU, but his total payments to NNU were less than the accrued interest on the Thoresen Loan. Thoresen currently owes more than \$277,000.00 on the Thoresen Loan.<sup>11</sup>

6. Real property taxes for the Property became delinquent in or around 2010, and were duly levied and assessed against the Property by the appropriate political subdivisions of the State of Florida. Thereafter, the Lee County Tax Collector issued a tax certificate against the Property.<sup>12</sup>

7. The tax certificate was not redeemed within the period prescribed by Fla. Stat. § 197.502,<sup>13</sup> and application was duly made for the issuance of a tax deed (the "Tax Deed") for the Property and the sale of the Tax Deed (the "Tax-Deed Sale") was scheduled for May 27, 2014.<sup>14</sup>

8. On April 3, 2014, the Lee County Clerk of Court (the "Clerk") sent notice of the Tax-Deed Sale (the "Notice") to National Note. The Notice was addressed to NNU at its former place of business. The Notice was returned to the Clerk marked "RETURN TO SENDER NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD."<sup>15</sup>

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<sup>11</sup> See *id.* at ¶ 7 & Exhibit 1 (Thoresen Loan Payment History).

<sup>12</sup> *Id.* at ¶ 8.

<sup>13</sup> Under Fla. Stat. § 197.502, the holder of a tax certificate may file an application for a tax deed with the tax collector of the county where the property described in the certificate is located any time after two years have elapsed since April 1 of the year of issuance of the tax certificate and before the cancellation of the certificate.

<sup>14</sup> Receiver Declaration at ¶ 9.

<sup>15</sup> See *id.* at ¶ 10 & Exhibit 2 (Returned Notice).

9. The Clerk held the Tax-Deed Sale on May 27, 2014.<sup>16</sup> The Receiver, on behalf of NNU, did not receive the Notice or otherwise become aware of the Tax-Deed Sale until after the Tax-Deed Sale had been conducted.<sup>17</sup>

10. Bridego Investment Corporation (“Bridego”) was the highest bidder at the Tax-Deed Sale and purchased the Tax Deed for \$61,518.50.<sup>18</sup>

Global Discovery’s Recovery of the Excess Proceeds of the Tax Deed Sale

11. In June 2014, the Receiver was contacted by an asset recovery company—Global Discoveries Ltd. (“Global Discoveries”). Global Discoveries indicated to the Receiver that it had identified a NNU asset—without indicating what the asset was—and offered to seek to recover the asset on a contingency basis.<sup>19</sup>

12. On June 19, 2014, the Receiver signed a contingency agreement with Global Discoveries (the “Global Discoveries Agreement”).<sup>20</sup> After the Receiver signed the Global Discoveries Agreement, Global Discoveries revealed for the first time that the asset was the Mortgage.<sup>21</sup>

13. On December 3, 2014, Global Discoveries filed a complaint in Florida state court seeking a determination that the Mortgage had priority over all other liens and claims (the

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<sup>16</sup> *Id.* at ¶ 11.

<sup>17</sup> *Id.* at ¶ 12.

<sup>18</sup> *See id.* at ¶ 11 & Exhibit 3 (Tax Deed).

<sup>19</sup> *Id.* at ¶ 13.

<sup>20</sup> *Id.* at ¶ 14 & Exhibit 4 (Global Discoveries Agreement).

<sup>21</sup> *Id.* at ¶ 15.

“Recovery Lawsuit”). In the Recovery Lawsuit, the Florida Court entered an order (the “Interpleader Order”) requiring the Clerk to pay the excess proceeds of the Tax-Deed Sale—\$38,069.91—into the court’s registry. It also awarded the Clerk \$398.00 in costs and \$2,160.00 in attorney fees.<sup>22</sup> The Florida Court also issued an injunction prohibiting the parties “from commencing or prosecuting any further action or actions at law or in equity against the Clerk for and in respect to the rights and obligations regarding such funds between the parties to th[e] action.”<sup>23</sup>

14. The Florida Court eventually granted summary judgment in favor of Global Discoveries and awarded Global Discoveries the remaining proceeds of the Tax-Deed Sale—\$35,511.91.<sup>24</sup>

15. After Global Discoveries took its share of the proceeds and its attorney fees under the Global Discoveries Agreement, the Receiver recovered \$16,018.75 for the benefit of the Receivership Estate.<sup>25</sup>

*The Present Dispute with Green Apple*

16. On October 10, 2016, Green Apple, as the successor-in-interest of Bridego, filed a *Complaint to Quiet Title* (the “Quiet Title Complaint”) in the Circuit Court of the Twentieth Judicial Circuit in and for Lee County Florida, seeking to quiet title in the Property.<sup>26</sup> The Quiet

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<sup>22</sup> *Id.* at ¶ 16 & Exhibit 5 (Interpleader Order).

<sup>23</sup> *Id.* at Exhibit 5 (Interpleader Order).

<sup>24</sup> *Id.* at ¶ 17 & Exhibit 6 (Summary Judgment Order).

<sup>25</sup> *Id.* at ¶ 18.

<sup>26</sup> *Id.* at ¶ 19 & Exhibit 7 (Quiet Title Complaint).

Title Complaint names NNU as a defendant.<sup>27</sup> The Receiver has provided Green Apple with a copy of the Receivership Order and Green Apple has agreed to stay the proceedings relating to the Quiet Title Complaint.<sup>28</sup>

17. The Receiver is aware that there is a buyer that has tentatively agreed to purchase the Property for approximately \$114,000.00. That purchase price is contingent upon Green Apple being able to deliver a deed free and clear of the Mortgage.<sup>29</sup>

18. The Receiver and Green Apple have 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 (the "Settlement Agreement") subject to Court approval. Under the Settlement Agreement, Green Apple will pay \$10,000.00 to the Receivership Estate from the proceeds of the sale of the Property and the Receiver will release NNU's mortgage against the Property. The lawsuit will be dismissed.<sup>30</sup>

19. On December 23, 2016, the Receiver filed his *Motion Seeking Approval of Settlement Agreements with Turpin Parties and Green Apple Holding, LLC* (the "Motion"), seeking approval of the Settlement Agreement.<sup>31</sup>

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<sup>27</sup> See *id.*

<sup>28</sup> *Id.* at ¶ 20.

<sup>29</sup> *Id.* at ¶ 21.

<sup>30</sup> *Id.* at ¶ 22 & Exhibit 8 (Settlement Agreement).

<sup>31</sup> Docket No. 1248.

20. On January 13, 2017, this Court held a hearing on the Motion (the “Hearing”). The Court refused to approve the Settlement Agreement at the hearing, but reserved ruling pending receiving more information about the Thoresen Loan, the Mortgage, and the Settlement Agreement.<sup>32</sup>

21. Since the Hearing, the Receiver has researched both the facts and the law and engaged in further negotiation with Green Apple. After this further research and negotiation, the Receiver believes that the Settlement Agreement is in the best interests of the Receivership Estate and is the best option for dealing with the Mortgage.<sup>33</sup>

### III.

#### **APPLICABLE LAW AND ANALYSIS**

22. 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>34</sup>

23. “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>35</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

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<sup>32</sup> See Docket No. 1255, Minute Entry.

<sup>33</sup> Receiver Declaration ¶ 23.

<sup>34</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>35</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).



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>36</sup>

24. Each of these elements are met in this instance and the Settlement Agreement is fair, reasonable, and adequate.

25. First, the Settlement Agreement was fairly and honestly negotiated and is the result of an arm's-length transaction. There has been no collusion between the parties. It is the result of a good faith negotiation between the Receiver and Green Apple.<sup>37</sup>

26. Second, there are serious questions of law and fact that place the ultimate outcome of the litigation in substantial doubt. Although the Receiver believes that he did not receive adequate notice of the Tax-Deed Sale,<sup>38</sup> it is likely that this issue was waived when Global Discoveries filed the Recovery Lawsuit. When Global Discoveries filed the Recovery Lawsuit, it should have also challenged the validity of the Tax-Deed Sale. The Receiver now faces serious issues related to waiver and res judicata—issues that Green Apple has indicated it will raise as defenses.<sup>39</sup>

27. Similarly, there are serious issues regarding whether a further lawsuit by the Receiver challenging the validity of the Tax-Deed Sale is valid under the Interpleader Order.

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<sup>36</sup> *Jones*, 741 F.2d at 324.

<sup>37</sup> Receiver Declaration ¶ 24.

<sup>38</sup> *See Jones v. Flowers*, 547 U.S. 220 (2006) (holding that when notice of a tax-deed sale is returned undeliverable, the state must take additional steps to notify the property owner before selling the property)

<sup>39</sup> *See* Receiver Declaration ¶ 25.

The Interpleader Order prohibits the parties “from commencing or prosecuting any further action or actions at law or in equity against the Clerk for and in respect to the rights and obligations regarding such funds between the parties to th[e] action.” The resolution of this issue is also uncertain.

28. Third, the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation. Although Receiver believes he may be successful in challenging the Tax-Deed Sale, he would face the hurdles described above. Litigating these issues would take significant time and cause the Receiver to have to expend significant funds.<sup>40</sup> Moreover, pursuant to Fla. Stat. § 197.602, even if the Receiver were successful in a suit seeking to invalidate the Tax-Deed Sale, the Receiver would be required to pay Green Apple the amount it paid for the Property (\$61,518.50), all taxes that Green Apple has paid on the Property, and 12 percent interest per year from the date of the issuance of the Tax Deed. Thus, the Receiver estimates that, even if he is able to successfully invalidate the Tax-Deed Sale, he will have to pay Green Apple at least \$82,000.00.<sup>41</sup>

29. Under the Settlement Agreement, the Receiver will obtain a total of \$10,000.00 in cash for the benefit of the Receivership Estate. The Property is worth far less than the Mortgage and the Receiver has already recovered a total of \$16,018.75 from the Tax-Deed Sale. The Settlement Agreement will prevent the Receiver from incurring costs of litigation, costs associated with the sale of the Property, and allow for the Receiver to obtain the funds more

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<sup>40</sup> *Id.* at ¶ 26.

<sup>41</sup> *See id.* at ¶ 27.

quickly.<sup>42</sup> It will also prevent the Receiver from having to find his own buyer for the Property—a task that could take a significant amount of time and delay the administration of the Receivership Estate. The Receiver believes that obtaining the \$10,000.00 settlement from Green Apple will thus allow for the best possible recovery for this claim and is in the best interest of the Receivership Estate.<sup>43</sup>

30. Finally, the Receiver believes that the Settlement Agreement is fair and reasonable.<sup>44</sup>

31. In light of these factors, the Settlement Agreement is fair, reasonable, and adequate and the Court should enter an order approving it.

#### IV.

#### CONCLUSION

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

DATED this 31st day of May, 2017.

**DORSEY & WHITNEY LLP**

/s/ Peggy Hunt  
Peggy Hunt  
Sarah Goldberg  
*Attorneys for Receiver*

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<sup>42</sup> *Id.* at ¶ 28.

<sup>43</sup> *Id.* at ¶ 29.

<sup>44</sup> *Id.* at ¶ 23.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 31st day of May, 2017, the foregoing **RECEIVER'S RENEWED MOTION SEEKING APPROVAL OF SETTLEMENT AGREEMENT WITH GREEN APPLE HOLDING, LLC** was filed with the Court and served via ECF on all parties who have requested notice in this case.

/s/ Leslie DeBry

I hereby certify that on the 31st day of May, 2017 a true and correct copy of the foregoing **RECEIVER'S RENEWED MOTION SEEKING APPROVAL OF SETTLEMENT AGREEMENT WITH GREEN APPLE HOLDING, LLC** was served upon the persons named below via email at the addresses set out below:

Darrin R. Schutt  
darrin.schutt@schuttlaw.com

/s/ Leslie DeBry