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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.

**RECEIVER'S MOTION SEEKING  
APPROVAL OF SETTLEMENT  
AGREEMENT WITH FT HOLDING  
TRUST – KATANA REGARDING  
LATE-FILED CLAIM AND  
MEMORANDUM IN SUPPORT**

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 Motion and approving the below described agreement with FT Holding Trust – Katana (“Katana”) related to the allowance of its late-filed Proof of Claim. This Motion is supported by the *Memorandum of Law* contained herein and the *Declaration of R. Wayne Klein, Receiver* (the “Receiver Declaration”), attached hereto as **Exhibit A**. A proposed form of Order is attached hereto as **Exhibit B**.

**I.**

**BACKGROUND**

*General*

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, “pursue, 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>3</sup>

*The Katana Claim Objection*

3. On February 25, 2016, after the expiration of the November 3, 2015 Bar Date for submitting claims in this case,<sup>4</sup> FT Holding Trust – Katana (“Katana”) submitted a Proof of

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<sup>1</sup> Docket No. 9 (Receivership Order).

<sup>2</sup> See generally, *id.*

<sup>3</sup> *Id.* at ¶ 7(J).

<sup>4</sup> See Docket No. 999 (Claim Procedure Order).

Claim to the Receiver, designated as claim number 1463 (“POC 1463”), asserting a claim in the amount of \$500,000.00.

4. On March 14, 2016, the Receiver filed his *Motion Requesting Disallowance of Late-Filed Proof of Claim No. 1463* (the “Claim Disallowance Motion”),<sup>5</sup> seeking to disallow POC 1463 in its entirety as a late-filed claim.

5. On April 8, 2016, Katana filed an *Objection to Receiver’s Recommendation To Disallow Proof of Claim 1463* (the “Objection”).<sup>6</sup>

6. On May 5, 2016, the Receiver filed a *Reply* to the Objection.<sup>7</sup>

7. A hearing was held on the Claims Disallowance Motion on May 18, 2016, at which time it was determined that an evidentiary hearing was required.

8. On June 3, 2016, the Court entered an *Order Related to Receiver’s Motion Requesting Disallowance of Late-Filed Proof of Claim No. 1463*, ordering that counsel submit a proposed pretrial order by June 8, 2016 and scheduling a pretrial hearing for June 10, 2016 at 1:30 p.m.<sup>8</sup>

9. On June 8, 2016, the Receiver filed a *Notice of Meet and Confer Related to Receiver’s Motion Requesting Disallowance of Late-Filed Proof of Claim No. 1463 and Request for Additional Time to File a Proposed Pretrial Order*,<sup>9</sup> representing to the Court that (a) the

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<sup>5</sup> Docket No. 1092.

<sup>6</sup> Docket No. 1114.

<sup>7</sup> Docket No. 1130.

<sup>8</sup> Docket No. 1149.

<sup>9</sup> Docket No. 1159.

Receiver would serve discovery requests by June 9, 2016, (b) that he would be prepared to confer with Katana about the content of the pretrial order by no later than July 18, 2016, and (c) that the parties would present a proposed pretrial order by no later than July 25, 2016.

10. In conjunction therewith, on June 9, 2016, a *Motion Requesting Continuance of Time to File a Proposed Pretrial Order and Pretrial Hearing*,<sup>10</sup> requesting that the Court enter an Order (a) continuing the pretrial hearing from June 10, 2016 to August 3, 2016 at 1:30 p.m., and (b) continuing the time for the parties to submit a pretrial order to July 25, 2016. The Court entered an Order granting the requested continuance, and a pretrial hearing is scheduled for August 3, 2016 at 1:30 p.m.

11. The parties have issued discovery requests, and discovery has been ongoing.

*Proposed Settlement*

12. After the exchange of some, but not all discovery, the parties entered into good faith and arms' length negotiations and agreed to settle this dispute.<sup>11</sup>

13. Specifically, The Receiver has agreed, subject to Court approval, to allow the Katana POC 1463 in the reduced amount of \$200,000.00. Katana agrees that any amount over \$200,000.00 as set forth in POC 1463 will be disallowed in its entirety.<sup>12</sup>

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<sup>10</sup> Docket No. 1160.

<sup>11</sup> Receiver Declaration ¶ 3.

<sup>12</sup> Receiver Declaration ¶ 4.

**III.**

**APPLICABLE LAW AND ANALYSIS**

14. The Receiver requests that the Court approve the agreement discussed above. In support hereof, the Receiver provides the following analysis.

15. 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>13</sup>

16. “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>14</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>15</sup>

17. Here, the agreement with Katana is fair, reasonable and adequate for at least the following reasons: (a) it was fairly and honestly negotiated at arm’s length and in good faith by the parties; (b) the issues at question are fact intensive, the cost to litigate these issues will outweigh the benefits, and the outcome of the litigation, given its fact intensive nature, is

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<sup>13</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>14</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>15</sup> *Jones*, 741 F.2d at 324.

uncertain; and (c) allowance of the late-filed claim in the reduced amount of \$200,000.00 is fair and reasonable.<sup>16</sup>

18. The Receiver engaged in good faith and arms' length negotiations with Katana and has obtained a reduction of \$300,000.00 of Katana's POC 1463, reducing the amount of the claim by 60% for the benefit of the Receivership Estate. While the Receiver believes he would prevail in litigation objecting to POC 1463, due to the complexity of the particular facts of the case the related cost to obtain a total disallowance of the claim would likely exceed any net benefit to the Receivership Estate. Thus, the Receiver submits that entering into the agreement with Katana is in the best interest of the Receivership Estate.<sup>17</sup>

19. The settlement with Katana was negotiated fairly and honestly, and is the result of an arm's-length transaction. There has been no collusion between the parties.<sup>18</sup>

20. In light of these factors, the Receiver requests that the agreement with Katana 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 agreement with Katana, and allowing Katana a claim in this case in the amount of \$200,000.00.

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<sup>16</sup> Receiver Declaration ¶ 5.

<sup>17</sup> Receiver Declaration ¶ 6.

<sup>18</sup> Receiver Declaration ¶¶ 7-8.

DATED this 22nd day of July, 2016.

**DORSEY & WHITNEY LLP**

*/s/ Peggy Hunt* \_\_\_\_\_  
Peggy Hunt  
Megan K. Baker  
*Attorneys for Receiver*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22nd day of July, 2016, the foregoing **RECEIVER'S MOTION SEEKING APPROVAL OF SETTLEMENT AGREEMENT WITH FT HOLDING TRUST – KATANA REGARDING LATE-FILED CLAIM AND MEMORANDUM IN SUPPORT** was filed with the Court and served via ECF on all parties who have requested notice in this case.

/s/ Natasha Asmus

Furthermore, I hereby certify that on the 22nd day of July, 2016, a true and correct copy of the foregoing **RECEIVER'S MOTION SEEKING APPROVAL OF SETTLEMENT AGREEMENT WITH FT HOLDING TRUST – KATANA REGARDING LATE-FILED CLAIM AND MEMORANDUM IN SUPPORT** was served upon the person named below, at the address set out below by U.S. mail:

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

FT Holding Trust-Katana  
c/o Darwin H. Bingham  
Bradley W. Madsen  
Scalley Reading Bates Hansen & Rasmussen, P.C.  
15 W. South Temple, Suite 600  
Salt Lake City, UT 84101

/s/ Natasha Asmus