Peggy Hunt (Utah State Bar No. 6060)
Chris Martinez (Utah State Bar No. 11152)
Jeffrey M. Armington (Utah State Bar No. 14050)
DORSEY & WHITNEY LLP
136 South Main Street, Suite 1000
Salt Lake City, UT 84101-1685
Telephone: (801) 933-7360
Facsimile: (801) 933-7373
Email: hunt.peggy@dorsey.com
martinez.chris@dorsey.com
armington.jeff@dorsey.com

Attorneys for Court-Appointed Receiver R. Wayne Klein

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. NATIONAL NOTE OF UTAH, LC, a Utah Limited Liability Company and WAYNE LaMAR PALMER, and individual, Defendants.	**RECEIVER'S MEMORANDUM IN OPPOSITION TO LEON HARWARD'S REQUEST TO RECONSIDER HIS MOTION TO INTERVENE** 2:12-cv-00591 BSJ The Honorable Bruce S. Jenkins

R. Wayne Klein, the Court-Appointed Receiver (the "Receiver") of National Note of Utah, LC and affiliated entities (collectively, "NNU") and the assets of Wayne LaMar Palmer ("Palmer"), opposes the *Request to Reconsider* (the "Request to Reconsider")[1] the Court's "Order"[2] denying an earlier *Motion to Intervene*[3] (the "Motion") filed by Leon Harward

[1] Docket No. 565.

[2] Docket No. 529.

[3] Docket No. 488.

("Harward") and West Side Enterprises ("West Side") in which Harward seeks leave to intervene in the above-captioned case to obtain money ahead of NNU investors on the basis of an alleged fractional ownership interest in one of NNU's affiliated entities, Expressway Commercial Park, LLC ("ECP"). As already determined by this Court and for the reasons stated herein and in the *Receiver's Memorandum in Opposition to Leon Harward & West Side Enterprises Request to Intervene* (the "Intervention Opposition") filed in opposition to the original Motion,[4] a copy of which is attached hereto as **Exhibit 1**, the Request to Reconsider is without merit. It is respectfully requested that the Request to Reconsider be denied.

INTRODUCTION

The above-captioned lawsuit involves the civil enforcement of securities laws by the Securities and Exchange Commission (the "SEC") related to what is alleged to be an enterprise operated by Palmer as a Ponzi scheme that took in at least $100 million. In this second renewed attempt, Harward seeks to intervene in the SEC's lawsuit pursuant to Federal Rule of Civil Procedure 24, arguing that pursuant to a transfer that occurred since he filed his original Motion he owns a 30% interest in ECP, an insolvent limited liability company. Harward mistakenly believes that as a result of this alleged 30% interest he is entitled to receive 30% of the gross proceeds of real property titled in ECP's name that is sold by the Receiver on behalf of the Receivership Estate.[5] Harward entirely ignores the fact that ownership in a limited liability company does not entitle members to an interest in sale proceeds, especially when there is *no* equity in the company. As discussed below, the Receiver has provided Harward significant information establishing that ECP has no equity from which ECP members could receive a

[4] Docket No. 522.

[5] Motion at ¶ 5.

distribution. In fact, the books and records of the Receivership Estate show that ECP owes in excess of $10 million to NNU.[6]

In addition to the infirmities with Harward's position as to his right to assert rights on behalf of ECP or to any sale proceeds, the Order denying the Motion should not be reconsidered for at least the following reasons: (a) Harward has no right to intervene as a matter of right or through permissive intervention under Federal Rule of Civil Procedure 24,[7] (b) the Motion and now the Request to Reconsider are procedurally improper under Federal Rule of Civil Procedure 24(c) because a proposed complaint in intervention is not attached;[8] (c) Harward has acted in violation of this Court's Receivership Order;[9] and (d) Harward has not met his burden to be granted relief from this Court's Order pursuant to Federal Rule of Civil Procedure 60(b).[10] Accordingly, as more thoroughly set forth below, the Request to Reconsider should be denied.

BACKGROUND

1. On June 25, 2011, this case was commenced by the SEC against Palmer and NNU, and in conjunction therewith the Court entered, in relevant part, an Order Appointing Receiver and Staying Litigation (the "Receivership Order").[11] Pursuant to the Receivership

---

[6] If anything, as the 30% owner of ECP, Harward may be responsible for paying back 30% of the amount that ECP owes to NNU. Harward's position, in which it demands 30% of the gross sale proceeds, also fails to take into account that Expressway Business Park properties sold by the Receiver have been sold for less than their inflated "book" values, which leaves nothing for interest holders such as Harward, and that the Receivership Estate has incurred significant costs to sell the properties.

[7] *See infra* Parts I and II.

[8] *See infra* Part III.

[9] *See infra* Part IV.

[10] *See infra* Part V.

[11] Docket No. 9 (Receivership Order).

Order, the Receiver was authorized to take control of numerous entities, including ECP.[12]

2. Before the Receiver's appointment, ECP purchased land located in Spanish Fork, Utah and the "Expressway Business Park" was built on some of the property. The Expressway Business Park is comprised of 46 business condominium units – 42 of which were sold prior to the Receiver's appointment and 4 of which remained unsold – as well as a large but irregular parcel of undeveloped and partially developed land.[13] The Receiver has sold two of the 4 unsold units, Unit # 305 and Unit # 215, through Court-approved sales.[14] The Court has also approved of the Receiver's release of the two remaining units, Unit # 109 and Unit # 204, to their respective lenders because those units did not have any equity.[15] The Receiver continues to market the large parcel of undeveloped and partially developed land, which is adjacent to the condominium units.[16]

3. On August 13, 2013, in violation of the express terms of the Receivership Order, Harward filed a *Notice of Interest* with the Utah County Recorder's Office, which was recorded as Entry No. 77471:2013 (the "Notice of Interest"), attempting to assert an interest in Expressway Business Park. A copy of the Notice of Interest is attached as Exhibit A to the Intervention Opposition attached hereto as Exhibit 1.[17]

---

[12] *See generally, id.*

[13] *See* Fifth Status Report [Docket No. 510] at p. 6.

[14] Docket Nos. 270 and 393.

[15] Docket Nos. 241 and 364.

[16] *See* Fifth Status Report [Docket No. 510] at p. 6.

[17] *See* Request to Reconsider at "Purchase and Sale Agreement" attachment. Not only was the Notice of Interest filed in violation of the Receivership Order, *see* discussion below at Part IV, but the Notice of Interest was signed by Harward individually at a time when Harward could not claim any interest in ECP. To the extent necessary, the Receiver will take appropriate action related to the Notice of Interest, which may include a request for an Order to Show Cause as to why Harward should not be

4. By letter to the Court from Harward dated August 21, 2013, a copy of which is attached to the Intervention Opposition as Exhibit B (the "Harward Letter"), Harward stated, without providing any proof, that he and West Side are 30% owners of ECP. He further alleged that based thereon he was entitled to 30% of the gross sale proceeds of the units in the Expressway Business Park.[18]

5. By letter dated August 23, 2013, the Receiver responded to the Harward Letter (the "First Receiver Letter"), a copy of which is attached to the Intervention Opposition as Exhibit C, providing Harward with among other things: (a) income statements for ECP from 2003 to 2012 showing a cumulative loss of $10,596,250.09; (b) balance sheets for ECP from 2003 to 2012 showing a net equity of *negative* $10,598,190.09; and (c) a copy of the Receivership Order.[19]

6. The First Receiver Letter also explains that: (a) ECP operated at a loss; (b) all units had been sold for less than their book value; (c) NNU, and not West Side or Harward, provided the funding for ECP's projects; (d) Harward could assert a claim for a share of the Receivership proceeds; and (e) the Receivership Order prevents the filing of the Notice of Interest.[20] Accordingly, the Receiver requested that Harward withdraw the Notice of Interest and encouraged Harward to engage an attorney.[21]

7. On September 19, 2013, the Receiver sent another letter to Harward (the "Second

---

held in contempt for his failure to withdraw this void and improperly asserted interest in the Expressway Business Park.

[18] *See* Exh. 1 (Intervention Opposition at Exhibit B, p. 2).

[19] *See* Exh 1 (Intervention Opposition at Exhibit C).

[20] *See id.*, pp. 2-3).

[21] *Id.* at p. 3.

Receiver Letter"), a copy of which is attached to the Intervention Opposition as Exhibit D. The Second Receiver Letter includes a list of files that the Receiver has identified as likely being related to ECP, and explains NNU's interest payment scheme.[22]

8. During the course of these communications, the Receiver also requested information on which Harward or West Side's alleged 30% interest in ECP was based. This information was never received.

9. On October 21, 2013, without any further discussions with the Receiver, Harward, representing himself *pro se* and purporting to represent West Side, filed the Motion seeking to intervene in this case.

10. On November 8, 2013, the Receiver filed the Intervention Opposition attached hereto as Exhibit 1.

11. On November 12, 2013, the Court held a hearing on the Motion and on November 14, 2013, the Court entered the Order denying the Motion.[23]

12. On November 18, 2013, West Side and Harward executed a "Purchase and Sale Agreement" conveying West Side's alleged 30% interest in ECP to Harward (the "Transfer").[24]

13. On December 30, 2013, Harward filed the Request to Reconsider asking that the Court reconsider its Order denying the Motion in light of the Transfer.[25]

---

[22] *See* Exh. 1 (Intervention Opposition at Exhibit D, pp. 1-2).

[23] Docket No. 529.

[24] *See* Request to Reconsider at "Purchase and Sale Agreement" attachment. West Side's ownership of a 30% interest in ECP is unclear and has not been established in the Motion or the Request to Reconsider.

[25] Request to Reconsider at pp 1-2.

ARGUMENT

I. Harward Still Does Not Meet The Requirements For Intervention as of Right Under Fed. R. Civ. P. 24(a)(2).

Although Harward does not specify whether he seeks to intervene as a matter of right pursuant to Rule 24(a) of the Federal Rules of Civil Procedure or to intervene permissively pursuant to Rule 24(b) in either the Motion or in the Request to Reconsider, he nevertheless fails to meet either requirement.

The four requirements for intervention as a matter of right under Rule 24(a) are as follows:

> (1) the application is timely, (2) the applicant claims an interest relating to the property or transaction which is the subject of the action, (3) the applicant's interest may be impaired or impeded, and (4) the applicant's interest is not adequately represented by the existing parties.[26]

"Failure to satisfy even one of these requirements is sufficient to warrant denial of a motion to intervene as a matter of right."[27]

Here, the Order denying the Motion should not be reconsidered because Harward has no right to intervene under Rule 24(a) inasmuch as he has no real property interest.

A. Harward Has Not Established an Interest in Real Property of the Receivership Estate

Rule 24(a)(2) requires a party seeking to intervene in litigation to demonstrate an interest relating to the property that is the subject of the action.[28] "[A] mere economic interest is not

---

[26] *Elliott Indus. Ltd. P'ship v. BP Am. Prod. Co.*, 407 F.3d 1091, 1103 (10th Cir. 2005); *see* Fed. R. Civ. P. 24(a).

[27] *Commodity Futures Trading Comm'n v. Heritage Capital Advisory Serv.*, 736 F.2d 384, 386 (7th Cir. 1984).

[28] Fed. R. Civ. P. 24(a)(2); *Elliott Indus. Ltd. P'ship*, 407 F.3d at 1103.

enough to justify a right to intervene."[29]

Here, unlike other prospective intervenors,[30] Harward has not asserted an interest in *any* property of the Receivership Estate or any particular transaction that the Receiver is attempting to consummate. Harward claims to have a mere *ownership* interest in ECP, one of the Receivership Entities.[31] But, his alleged 30% membership interest in a limited liability company which owns real property is not the same thing as holding an interest in the real property itself. At most, as a claimed holder of a membership interest in a limited liability company, Harward has only a stake in 30% of ECP's equity to the extent that any exists. As discussed above, ECP has no equity – the entity is hopelessly underwater and thus any membership interest that Harward may have is valueless.[32] Accordingly, Harward, as a minority member in a limited liability company with no value, does not hold an interest sufficient to meet the intervention requirements imposed by Rule 24(a)(2).

B. Harward's Alleged Interest in ECP is Not Being Impaired or Impeded

Rule 24(a)(2) next requires that a prospective intervenor "demonstrate that the disposition of this action may as a practical matter impair or impede their ability to protect their interest."[33] To meet this test, the party attempting to intervene must show that "impairment of its substantial legal interest is possible if intervention is denied."[34]

---

[29] *Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 571 (7th Cir. 2009).

[30] *See e.g.*, Docket Nos. 23, 28, and 89.

[31] Request to Reconsider pp. 1-2.

[32] *See supra* ¶ 4, Exh 1 (Intervention Opposition at Exhibit C). To the extent that Harward is attempting as a minority member to assert any right to control the disposition of ECP's real property, it does not appear that he has the right to do so under the Receivership Order.

[33] *Utah Ass'n of Counties v. Clinton*, 255 F.3d 1246, 1253 (10th Cir. 2001).

[34] *Id.*

In the Motion, Harward argued that his claim as a member "should not and cannot be extinguished or confiscated without 'Due Process.'"[35] The Receiver, however, has no intention to extinguish any claim Harward may have based on his membership interest in ECP – or for that matter, any claim that the Receivership Estate may have against Harward as the alleged holder of this 30% interest.

The Receiver intends to formulate a claim and distribution plan, which will require Court approval, and will ensure an equitable distribution of NNU's assets to all parties who have asserted allowable claims. Allowing Harward to intervene in this action as the holder of a membership interest in an insolvent limited liability company in an attempt to elevate his payment status is wholly unwarranted. Accordingly, Harward has not and cannot demonstrate that his interest in this case – an alleged 30% membership interest in one of the Receivership Entities – has been or will be impaired.

C. Harward's Interest in ECP is Adequately Represented by the Receiver

A party attempting to intervene must also show that its interests are not adequately represented by existing parties in the litigation,[36] and an applicant for intervention "bears the burden of showing inadequate representation."[37] To determine whether representation is adequate, courts assess the objective of the intervener. In general, "representation is adequate when the objective of the applicant for intervention is identical to that of one of the parties."[38]

---

35 Motion, ¶ 4.

36 *Wild Earth Guardians v. United States Forest Serv.*, 573 F.3d 992, 996 (10th Cir. 2009).

37 *Clinton*, 255 F.3d at 1254.

38 *San Juan County, Utah v. United States*, 503 F.3d 1163, 1204 (10th Cir. 2007) (internal quotations omitted).

And "the intervention test is not met when the applicants present only a difference in strategy."[39]

Here again Harward fails to carry his burden for intervention. From the Motion, it is clear that Harward seeks to recover as much value from his alleged membership interest as possible.[40] The Receiver is charged with maximizing the value of the Receivership Estate, including the value of ECP. Accordingly, Harward's objective is encompassed in the Receiver's objective. Thus, the Order denying the Motion should not be reconsidered and the Request to Reconsider should be denied.

II. Harward Does Not Meet The Requirements For Permissive Intervention Under Fed. R. Civ. P. 24(b).

Rule 24(b) gives the Court discretion to allow permissive intervention upon motion by a party who "has a claim or defense that shares with the main action a common question of law or fact."[41] "In exercising its discretion, the Court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights."[42] In acting on a request for permissive intervention, it is proper to consider, among other things, "whether the intervenors' interests are adequately represented by other parties," whether they "will significantly contribute to the full development of the underlying factual issues in the suit," "the nature and extent of intervenors' interest," and "their standing to raise relevant legal issues."[43]

Neither the Motion nor the Request to Reconsider specifies whether Harward seeks mandatory or permissive intervention, but for the reasons listed above in the context of

---

39 *SEC v. TLC Invs. & Trade Co.*, 147 F. Supp. 2d 1031, 1042 (C.D. Cal. 2001).

40 *See* Motion, ¶ 5.

41 Fed. R. Civ. P. 24(b)(1)(B).

42 Fed. R. Civ. P. 24(b)(3).

43 *Spangler v. Pasadena Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977).

mandatory intervention, permissive intervention is equally inappropriate. Most important, Harward has established no interest on which to base intervention, much less to have standing to raise relevant legal issues. Also: (a) the Receiver adequately represents Harward's claimed 30% membership interest in ECP; (b) as discussed in Part III below, Harward did not accompany the Motion with a pleading setting out the claim or defense for which intervention is sought so it is impossible to determine whether a common question of law or fact exists; and (c) allowing Harward to intervene will not contribute to the factual issues in this case.

Simply put, Harward wants to assert a right to payment that does not exist given his alleged status as a member in a hopelessly insolvent company. The Court should not sanction his intervention under either Rule 24(a) or Rule 24(b).

III. Harward Has Not Complied With The Requirements Of Rule 24(c).

Rule 24(c) states that a motion to intervene "***must*** . . . be accompanied by a pleading that sets out the claim or defense for which intervention is sought." (Emphasis added). The purpose of this rule is to place the parties on notice of the claimant's position, the nature and basis of the claim asserted, and the relief sought by the intervenor.[44] The requirement also allows the Court (and the parties) to judge in concrete terms the interest the party claims to have, and whether the motion meets the requirements of Rule 24(a).

In this case, the Motion was not accompanied by any pleading and the Request to Reconsider did not correct this deficiency. Accordingly, it is impossible to ascertain precisely what Harward seeks to accomplish through intervention, or even whether Harward seeks to intervene as a plaintiff or a defendant in this case. Also, absent a pleading, it is impossible for

[44] *See Dillard v. City of Foley*, 166 F.R.D. 503, 506 (D.C. Ala. 1996).

the Court to determine that Harward meets the requirements for intervention pursuant to Rule 24(a)(2). Accordingly, the Court should not reconsider its Order denying the Motion.[45]

IV. Harward's Filing of the Notice of Interest and his Failure to Withdraw the Notice Violate the Court-Imposed Litigation Stay.

Paragraph 32 of the Receivership Order states in relevant part that all of the following actions are stayed until further Order of this Court:

> All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, *or other actions of any nature involving*: (a) the Receiver, in his capacity as Receiver; (b) *any Receivership Property, wherever located*; (c) any of the Receivership Defendants and/or Palmer Entities, including subsidiaries and partnerships; or, (d) any of the Receivership Defendants' and/or Palmer Entities' past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as "Ancillary Proceedings").[46]

On August 23, 2013, the Receiver sent Harward a copy of the Receivership Order, directed Harward to the language in paragraph 32 of that Order, and asked Harward to withdraw the Notice of Interest on the basis that the Notice of Interest makes it more difficult for the Receiver to sell property of the Receivership Estate.[47] To date Harward has not withdrawn the Notice of Interest. Accordingly, Harward's failure to withdraw the Notice of Interest should be construed as a violation of this Court's Receivership Order and should bar Harward from intervening in this case.

---

[45] *See Hill v. Kan. Gas Serv. Co.*, 203 F.R.D. 631, 634 (D. Kan. 2001) (stating that the court can deny a motion to intervene for failure to attach a pleading).

[46] Receivership Order ¶ 32 (emphasis added).

[47] *See* Exh. 1 (Intervention Opposition at Exhibit C**,** p. 3).

V. The Request to Reconsider Must Be Denied Under Fed. R. Civ. P. 60(b).

A "motion for reconsideration, not recognized under the Federal Rules of Civil Procedure, may be construed in one of two ways: if it is filed within 10 days of the entry of judgment, it is treated as a motion to alter or amend the judgment under Rule 59(e); if filed more than 10 days after entry of judgment, it is treated as a motion for relief from judgment under Rule 60(b)."[48] Harward filed his Request to Reconsider the Order denying the original Motion forty-five days after the Court entered that Order. Thus, the Request to Reconsider must be treated as a motion for relief from judgment under Rule 60(b). Relief under this Rule is not appropriate and, thus the Request to Reconsider should be denied.

Rule 60(b) of the Federal Rules of Civil Procedure states:

> (b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.[49]

A decision to "grant relief as justice requires under Rule 60(b) is 'extraordinary and may only be

---

[48] *Price v. Philpot*, 420 F.3d 1158, 1167 n. 9 (10th Cir. 2005) (internal citations omitted).

[49] Fed. R. Civ. P. 60(b).

granted in exceptional circumstances.'"[50]

Here, there can be no argument that Rule 60(b) is inapplicable because: (1) the Order was not predicated on mistake, inadvertence, or excusable neglect; (2) no evidence existed at the time of the entry of the Order that has been recently discovered; (3) no fraud in connection with the Order exists; (4) the judgment is not void; and (5) the judgment has not been discharged and its application remains equitable. The alleged Transfer, even to the extent it could be deemed to have afforded Harward a 30% interest in ECP, does not change the fact that any request to intervene in this case by an ECP member, is improper. Accordingly, Harward has not met his burden to have the Court reconsider its prior Order.

CONCLUSION

For all of the foregoing reasons, the Request to Reconsider should be denied in its entirety.

DATED this 13th day of January, 2014.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt
Peggy Hunt
Chris Martinez
Jeffrey M. Armington
Attorneys for Receiver

[50] *Servants of the Paraclete v. Does*, 204 F.3d 1005, 1009 (10th Cir. 2000) *quoting Bud Brooks Trucking, Inc. v. Bill Hodges Trucking Co.*, 909 F.2d 1437, 1440 (10th Cir. 1990).

EXHIBIT 1

Peggy Hunt (Utah State Bar No. 6060)
Chris Martinez (Utah State Bar No. 11152)
Jeffrey M. Armington (Utah State Bar No. 14050)
DORSEY & WHITNEY LLP
136 South Main Street, Suite 1000
Salt Lake City, UT 84101-1685
Telephone: (801) 933-7360
Facsimile: (801) 933-7373
Email: hunt.peggy@dorsey.com
martinez.chris@dorsey.com
armington.jeff@dorsey.com

Attorneys for Court-Appointed Receiver R. Wayne Klein

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. NATIONAL NOTE OF UTAH, LC, a Utah Limited Liability Company and WAYNE LaMAR PALMER, and individual, Defendants.	**RECEIVER'S MEMORANDUM IN OPPOSITION TO LEON HARWARD & WEST SIDE ENTERPRISES REQUEST TO INTERVENE** 2:12-cv-00591 BSJ Judge Bruce S. Jenkins

R. Wayne Klein, the Court-Appointed Receiver (the "Receiver") of National Note of Utah, LC and affiliated entities (collectively, "NNU") and the assets of Wayne LaMar Palmer ("Palmer"), opposes the *Request to Intervene* (the "Motion")[1] filed by Leon Harward ("Harward") and West Side Enterprises ("West Side" and together with Harward, "Movants"). For the reasons stated herein, the Movants' Motion, in which the Movants seek to intervene in the above-captioned lawsuit to obtain money, ahead of NNU investors, on the basis of Movants' alleged fractional equity ownership of one of NNU's affiliated entities, Expressway Commercial

[1] Docket No. 488.

Park, LLC ("ECP"), is without merit.

INTRODUCTION

On June 25, 2011, the above-captioned case was commenced by the Securities and Exchange Commission (the "SEC") by filing a "Complaint"[2] against Defendants NNU and Palmer (collectively, the "Receivership Defendants"). The lawsuit involves the SEC's civil enforcement of securities laws related to what is alleged to be an enterprise operated by Palmer as a Ponzi scheme that took in at least $100 million.

Before the appointment of the Receiver, ECP purchased land located in Spanish Fork, Utah and the "Expressway Business Park" was built on some of the property. The Expressway Business Park is comprised of 46 business condominium units – 42 of which were sold prior to the Receiver's appointment – and a large but irregular parcel of undeveloped and partially developed land.[3] The Receiver has sold two of the units, Unit # 305 and Unit # 215, through Court-approved sales,[4] and the Court approved of the Receiver's release of the two remaining units, Unit # 109 and Unit # 204 to their respective lenders because those units did not have any equity.[5] The Receiver continues to market the large parcel of undeveloped and partially developed land, which is adjacent to the condominium units.[6]

Movants now seek to intervene in the SEC's lawsuit pursuant to Federal Rule of Civil Procedure 24, arguing that that they own 30% of the equity in ECP and that this interest therefore

---

2 Docket No. 1.

3 *See* Fifth Status Report [Docket No. 510] at p. 6.

4 Docket Nos. 270 and 393.

5 Docket Nos. 241 and 364.

6 *See* Fifth Status Report [Docket No. 510] at p. 6.

entitles them to receive 30% of the gross proceeds from any property sold.[7] Yet, Movants have not even established that they have *any* interest in ECP. And, even if they had made this showing, Movants' entirely ignore that there is *no* equity in ECP from which equity holders could receive a distribution. In fact, the books and records of the Receivership Estate show that ECP owes in excess of $10 million to NNU.[8]

In addition to the infirmities with the Movants' position as to their rights to assert rights on behalf of ECP or with respect to the sale proceeds, the Motion should be denied for the following reasons: (a) the Movants do not have an interest in any real property of the Receivership Estate; (b) any effort by the Movants to be paid a share of the proceeds from the sale of the Expressway Business Park properties should be done through the claims allowance process and not through intervention; (c) Movants' claimed interest as an equity owner will likely be subordinated to the claims held by NNU's investors and allowing Movants any opportunity to be paid ahead of investors improperly elevates the status of their claims; (d) the Motion is not procedurally proper because it does not attach a proposed complaint in intervention; (e) because Harward filed a *Notice of Interest* in violation of the litigation stay imposed by this Court, which he has not withdrawn, the Movants lack clean hands and should not be allowed to intervene; and (f) Harward cannot represent West Side *pro se*.

Accordingly, as more thoroughly set forth below, the Movants' Motion should be denied.

---

[7] Motion at ¶ 5. The Receiver has requested this information, but has not received it from the Movants. The Schedule K-1 attached to the Motion lists West Side as the holder of 30% of the equity in ECP, so it is unclear what interest if any Harward has as an individual. Motion at p. 4. Harward claims to be the manager of West Side, but he has not established this, and in any event as discussed below West Side cannot appear without counsel. The Motion thus appears to be made on behalf of West Side, who not having counsel, requires that the Motion be stricken.

[8] If anything, as the 30% owner of ECP, the Movants may be responsible for paying back 30% of the amount that ECP owes to NNU. ECP's position, in which it demands 30% of the gross sale proceeds, also fails to take into account that Expressway Business Park properties sold by the Receiver have been sold for less than their inflated "book" values, which leaves nothing for equity holders such as the Movants, and that the Receivership Estate has incurred significant costs to sell the properties.

BACKGROUND

1. On June 25, 2011, this case was commenced by the SEC against the Receivership Defendants, and in conjunction therewith the Court entered, in relevant part, an Order Appointing Receiver and Staying Litigation (the "Receivership Order").[9] Pursuant to the Receivership Order, the Receiver was appointed for NNU, and all Palmer's assets were placed in the Receiver's control.[10]

2. On August 13, 2013, in violation of the Receivership Order, Harward filed a *Notice of Interest* with the Utah County Recorder's Office, which was recorded as Entry No. 77471:2013 (the "Notice of Interest"), to preserve an alleged interest in Expressway Business Park. A copy of the Notice of Interest is attached hereto as **Exhibit A**. The Notice of Interest is signed by Harward individually, not on behalf of West Side, the entity that apparently owns a 30% interest in ECP. [11]

3. On August 21, 2013, Harward sent a letter to the Court, a copy of which is attached hereto as **Exhibit B** (the "Harward Letter"), stating without providing any proof that the Movants are 30% owners of ECP and should be entitled to 30% of the proceeds from the sales of units in Expressway Business Park.[12]

4. On August 23, 2013, the Receiver responded to the Harward Letter (the "First Receiver Letter") by letter containing the following information, among other things: (a) income statements for ECP from 2003 to 2012 showing a cumulative loss of $10,596,250.09; (b) balance sheets for ECP from 2003 to 2012 showing a net equity of *negative* $10,598,190.09; and (c) a

---

9 Docket No. 9 (Receivership Order).

10 *See generally, id*.

11 *See* Motion, K-1 Attachment.

12 *See* **Exhibit B**, p. 2.

copy of the Receivership Order. A copy of the First Receiver Letter is attached hereto as **Exhibit C**.

5. The First Receiver Letter also explained that: (a) ECP operated at a loss; (b) all units had been sold for less than their book value; (c) NNU, and not the Movants, provided the funding for ECP's projects; (d) the Movants could assert a claim for a share of the Receivership proceeds; and (e) the Receivership Order prevents the filing of the Notice of Interest.[13] Accordingly, the Receiver requested that Harward withdraw the Notice of Interest and encouraged Harward to engage an attorney.[14]

6. On September 19, 2013, the Receiver sent another letter to Harward (the "Second Receiver Letter"), a copy of which is attached hereto as **Exhibit D**. The Second Receiver Letter included a list of files that the Receiver had identified as likely being related to ECP, and explained NNU's interest payment scheme.[15]

7. During the course of these communications, the Receiver also requested information from ECP, asking them to establish their 30% interest, which was never received.

8. On October 21, 2013, without any further discussions with the Receiver, Harward, representing himself *pro se* and purporting to represent West Side, filed the Motion.

ARGUMENT

I. The Movants Do Not Meet The Requirements For Intervention as of Right Under Fed. R. Civ. P. 24(a)(2).

Although the Movants do not specify whether they seek to intervene as a matter of right pursuant to Federal Rule of Civil Procedure 24(a) or to intervene permissively pursuant to

---

[13] *See* **Exhibit C**, pp. 2-3.

[14] *Id.* at p. 3.

[15] *See* **Exhibit D**, pp. 1-2.

Federal Rule of Civil Procedure 24(b), they fail to meet either requirement.

Rule 24(a)(2) and the Court of Appeals for the Tenth Circuit describe the four requirements for intervention as a matter of right as follows:

> (1) the application is timely, (2) the applicant claims an interest relating to the property or transaction which is the subject of the action, (3) the applicant's interest may be impaired or impeded, and (4) the applicant's interest is not adequately represented by the existing parties.[16]

"Failure to satisfy even one of these requirements is sufficient to warrant denial of a motion to intervene as a matter of right."[17]

Here, the Motion should be denied because the Movants have no real property interest. Furthermore, to the extent that they have any interest and could establish the same, they cannot show that their interests are impeded given the lack of equity in ECP or that the Receiver is not adequately representing any interest that may exist.

A. Movants Have Alleged an Interest in ECP, but Have Not Established an Interest in Property of the Receivership Estate

Rule 24(a)(2) requires a party seeking to intervene in litigation to demonstrate an interest relating to the property that is the subject of the action.[18] "[A] mere economic interest is not enough to justify a right to intervene."[19]

Here, unlike other prospective intervenors,[20] the Movants have not asserted an interest in any property of the estate or any particular transaction that the Receiver is attempting to

---

16 *Elliott Indus. Ltd. P'ship v. BP Am. Prod. Co.*, 407 F.3d 1091, 1103 (10th Cir. 2005).

17 *Commodity Futures Trading Comm'n v. Heritage Capital Advisory Serv.*, 736 F.2d 384, 386 (7th Cir. 1984).

18 Fed. R. Civ. P. 24(a)(2); *Elliott Indus. Ltd. P'ship*, 407 F.3d at 1103.

19 *Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 571 (7th Cir. 2009).

20 *See e.g.*, Docket Nos. 23, 28, and 89.

consummate. Movants claim to have an interest in ECP,[21] but their alleged 30% interest in a limited liability company, which owns real property, is not the same thing as holding an interest in the real property itself. At most, the holder of the equity interest, whoever that is proven to be, has only a stake in 30% of the value of the equity in ECP after all of ECP's debts and expenses are paid. As demonstrated above, ECP's equity is hopelessly underwater and valueless and thus any interest that the Movants may have is valueless.[22] Accordingly, the Movants, as alleged minority equity in a limited liability company with no value, do not hold an interest sufficient to meet the intervention requirements imposed by Rule 24(a)(2).

B. Movants' Alleged Interest in ECP is Not Being Impaired or Impeded

Federal Rule of Civil Procedure 24(a)(2) next requires that a prospective intervenor must "demonstrate that the disposition of this action may as a practical matter impair or impede their ability to protect their interest."[23] To meet this test, the party attempting to intervene must show that "impairment of its substantial legal interest is possible if intervention is denied."[24]

In the Motion, Movants argue that their claim as holders of equity "should not and cannot be extinguished or confiscated without 'Due Process.'"[25] The Receiver, however, has no intention to extinguish any claim the Movants may have as alleged holders of 30% of the equity of ECP – or for that matter, any claim that the Receivership Estate may have against holders of

---

[21] Motion, ¶ 1. But, again, the Schedule K-1 attached to the Motion lists only West Side as an equity holder. Thus, it is unclear what standing Harward has individually to allow him to bring this Motion. West Side, as the only potential equity holder, must be represented by counsel and, thus the Motion should be stricken.

[22] *See supra* ¶ 4, **Exhibit C**. To the extent that the Movants are attempting to assert any right to control the disposition of ECP's real property, it does not appear that they have the right to do so under the Receivership Order and the fact any holding in ECP that they may prove is less than a majority stake.

[23] *Utah Ass'n of Counties v. Clinton*, 255 F.3d 1246, 1253 (10th Cir. 2001).

[24] *Id.*

[25] Motion, ¶ 4.

this 30% interest. He has not sought in any way, and has no intent to seek any extinguishment of equity holders' rights. The fact is that as minority equity holders in a company that has negative equity, has no interest to extinguish—no interest exists as a matter of law.[26]

The Receiver intends to formulate a claim and distribution plan, which will require Court approval, and will ensure an equitable distribution of NNU's assets to all parties who have asserted allowable claims. Allowing Movants to intervene in this action as alleged equity in an insolvent limited liability company so to afford them an opportunity to attempt to elevate their payment status above investors and creditors of NNU is wholly unwarranted. Accordingly, Movants have not and cannot demonstrate that their interest in this case – an alleged 30% equity stake in one of the Receivership Entities – has been or will be impaired.

C. Movants' Interests in ECP are Adequately Represented by the Receiver

A party attempting to intervene must also show that its interests are not adequately represented by existing parties in the litigation.[27] And an applicant for intervention "bears the burden of showing inadequate representation."[28] To determine whether representation is adequate, courts assess the objective of the intervener. In general "representation is adequate when the objective of the applicant for intervention is identical to that of one of the parties."[29] And "the intervention test is not met when the applicants present only a difference in strategy."[30]

Here again the Movants fail to carry their burden. From their Motion, it is clear that the

---

[26] In fact, if the Movants own 30% of the equity in ECP they should be responsible for paying back 30% of the amount owed by ECP to NNU, to enhance recovery for NNU's creditors and investors.

[27] *Wild Earth Guardians v. United States Forest Serv.*, 573 F.3d 992, 996 (10th Cir. 2009).

[28] *Clinton*, 255 F.3d at 1254.

[29] *San Juan County, Utah v. United States*, 503 F.3d 1163, 1204 (10th Cir. 2007) (internal quotations omitted).

[30] *SEC v. TLC Invs. & Trade Co.*, 147 F. Supp. 2d 1031, 1042 (C.D. Cal. 2001).

Movants seek to recover as much value from their alleged equity interest as possible.[31] The Receiver is already pursuing an identical objective. While Movants' objective is limited solely to obtaining value for their alleged interest in ECP, the Receiver is charged with maximizing recovery for all parties with a claim to NNU's assets. Accordingly, the Movants' objective is encompassed in the Receiver's objective and the Receiver adequately represents the Movants. Thus, the Motion should be denied.

II. The Investors Do Not Meet The Requirements For Permissive Intervention Under Fed. R. Civ. P. 24(b).

Rule 24(b) of the Federal Rules of Civil Procedure gives the Court discretion to allow permissive intervention upon motion by a party who "has a claim or defense that shares with the main action a common question of law or fact."[32] "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights."[33] In acting on a request for permissive intervention, it is proper to consider, among other things, "whether the intervenors' interests are adequately represented by other parties," whether they "will significantly contribute to the full development of the underlying factual issues in the suit," "the nature and extent of intervenors' interest," and "their standing to raise relevant legal issues."[34]

The Motion does not specify whether the Movants seek mandatory or permissive intervention, but for the reasons listed above in the context of mandatory intervention, permissive intervention is equally inappropriate. Most important, the Movants have established

---

[31] *See* Motion, ¶ 5.

[32] Fed. R. Civ. P. 24(b)(1)(B).

[33] Fed. R. Civ. P. 24(b)(3).

[34] *Spangler v. Pasadena Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977).

no interest on which to base intervention, much less to have standing to raise relevant legal issues. Also: (a) the Receiver adequately represents the Movants' alleged 30% equity interest in ECP; (b) as discussed in Part III below, Movants have not accompanied their Motion with a pleading setting out the claim or defense for which intervention is sought so it is impossible to determine whether a common question of law or fact exists; and (c) the allowing the Movants to intervene will not contribute to the factual issues in this case.

Simply put, the Movants want to assert a right to payment before NNU's investors which does not exist given their alleged status as equity in an hopelessly insolvent company. The Court should not sanction their intervention under either Rule 24(a) or 24(b).

III. The Movants Have Not Complied With The Requirements Of Rule 24(c).

Rule 24(c) of the Federal Rules of Civil Procedure states that a motion to intervene "***must*** . . . be accompanied by a pleading that sets out the claim or defense for which intervention is sought." (Emphasis added). The purpose of this rule is to place the parties on notice of the claimant's position, the nature and basis of the claim asserted, and the relief sought by the intervenor.[35] The requirement also allows the Court (and the parties) to judge in concrete terms the interest the party claims to have, and whether the motion meets the requirements of Rule 24(a).

In this case, the Movants' Motion is not accompanied by any pleading. Because of this, it is impossible to ascertain precisely what the Movants seek to accomplish through intervention, or even whether the Movants seek to intervene as a plaintiff or a defendant in this case. Also, absent a pleading, it is impossible for the Court to determine that the Movants meet the

[35] *See Dillard v. City of Foley*, 166 F.R.D. 503, 506 (D.C. Ala. 1996).

requirements for intervention pursuant to Rule 24(a)(2). Accordingly, the Motion should be denied.[36]

IV. Harward's Filing of the Notice of Interest and his Failure to Withdraw the Notice Violate the Court-Imposed Litigation Stay.

Paragraph 32 of the Receivership Order states in relevant part that all of the following actions are stayed until further Order of this Court:

> All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, *or other actions of any nature involving*: (a) the Receiver, in his capacity as Receiver; (b) *any Receivership Property, wherever located*; (c) any of the Receivership Defendants and/or Palmer Entities, including subsidiaries and partnerships; or, (d) any of the Receivership Defendants' and/or Palmer Entities' past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as "Ancillary Proceedings").[37]

On August 23, 2013, the Receiver sent Harward a copy of the Receivership Order, directed Harward to the language in paragraph 32 of that Order, and asked Harward to withdraw the Notice of Interest on the basis that the Notice of Interest makes it more difficult for the Receiver to sell property of the Receivership Estate.[38] To date Harward has not withdrawn the Notice of Interest. Accordingly, Harward's failure to withdraw the Notice of Interest should be construed as a violation of this Court's Receivership **Order** and should bar Harward from intervening in this case.

---

[36] *See Hill v. Kan. Gas Serv. Co.*, 203 F.R.D. 631, 634 (D. Kan. 2001) (stating that the court can deny a motion to intervene for failure to attach a pleading).

[37] Receivership Order ¶ 32 (emphasis added).

[38] *See* **Exhibit C**, p. 3.

V. West Side Cannot be a Party to this Case Without Being Represented by an Attorney.

"A corporation or other business entity can only appear in court through an attorney and not a non-attorney corporate officer appearing *pro se*."[39] The Schedule K-1 attached to the Motion states that West Side is a limited liability company.[40] Accordingly, as a business entity, West Side must be represented by an attorney.[41] Thus, the Motion must be stricken as improperly filed as it pertains to West Side and Harward should not be allowed to represent West Side in any further matters before this Court.

It should be noted that on this basis the entire Motion should be stricken. Harward has not established any personal ownership of ECP. Rather the K-1 attached to the Motion shows that at most West Side is the holder of the 30% equity interest. This being the case, only West Side could assert the Motion and, having failed to comply with the requirement that a company engage counsel, the Motion should be stricken.

CONCLUSION

For all of the foregoing reasons, the Movants' Motion should be denied in its entirety.

DATED this 8th of November, 2013.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt
Peggy Hunt
Chris Martinez
Jeffrey M. Armington
Attorneys for Receiver

---

[39] *Tal v. Hogan*, 453 F.3d 1244, 1254 (10th Cir. 2006); accord *Isaacs v. Wells*, 2010 WL 1404432 (D.Utah 2010) (striking pleading that was filed on behalf of a limited liability company).

[40] Motion at p. 4.

[41] *See id.*

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above RECEIVER'S MEMORANDUM IN OPPOSITION TO LEON HARWARD & WEST SIDE ENTERPRISES REQUEST TO INTERVENE was filed with the Court on this 8th day of November, 2013, and served via ECF on all parties who have requested notice in this case.

/s/ *Jeffrey M. Armington*

EXHIBIT A

Recording requested by
West Side Enterprises & Leon Harward

When recorded mail to
Leon Harward
c/o West Side Enterprises
9202 Canyon Heights Drive
Cedar Hills, Utah 84062

ENT 77471:2013 PG 1 of 11
JEFFERY SMITH
UTAH COUNTY RECORDER
2013 Aug 13 12:02 pm FEE 30.00 BY SW
RECORDED FOR HARWARD, LEON

FOR USE OF COUNTY RECORDER

NOTICE OF INTEREST

This notice is intended to preserve an interest in real property from extinguishment by Wayne Klein, receiver for investors in or for National Note of Utah.

Claimant Leon Harward, for himself and as manager for West Side Enterprises, 9202 Canyon Heights Drive, Cedar Hills, Utah.

1. West Side Enterprises & Leon Harward are legal interest holders of 30% of Expressway Business Park.
2. The Securities Exchange Commission legal suit is against National Note and Wayne Palmer, and is against their interest only. Expressway Business Park is not a party to that law suit.
3. Wayne Klein as receiver, is not entitled the entirety of Expressway Business Park assets. The claim is limited to National Note and Wayne Palmers 70% interest.
4. The assets of Expressway Business Park are not being foreclosed upon.

The Description of Expressway Business Park property is included as part and parcel of attachments 1 thru 9.

I Leon Harward for myself and as manager for Expressway Business Park assert and affirm the claim of 30% interest in the referenced real estate belonging to Expressway Business Park.

Dated 13 Aug. 2013 Signed: Leon Harward

Leon Harward

ACKNOWLEDGEMENT

State of Utah

Utah County

On this 13 August, 2013, before me Leon Harward personally appeared Leon Harward who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged to me that he executed it.

Witness my hand and official seal.

JEANNE BOWEN
Notary Public, State of Utah
Commission # 653191
My Commission Expires
March 06, 2016

Signature: Jeanne Bowen

ATT-H

DUPLICATE TAX NOTICE
MAKE CHECK PAYABLE TO: UTAH COUNTY TREASURER
100 EAST CENTER, SUITE 1200, PROVO, UTAH 84606-3159

Serial Number	Pin	Tax District	Property Class	Prior Taxes Are Delinquent On This Parcel
27:010:0064	0347963	150	V	YEARS: 2010 2011

Property Address

Fees Detail

Recorded owner as of January 1, 2012
SPANISH FORK DEVELOPMENT LLC

Property Description (not for legal documents)
COM S 1975.5 FT & E 870.26 FT FR W 1/4 COR. SEC. 17, T8S, R3E, SLB&M.; N 0 DEG 18' 7" W 216.5 FT; N 89 DEG 41' 54" E 54.01 FT; N 0 DEG 18' 7" W 76.5 FT; N 89 DEG 41' 54" E 96 FT; S 26 DEG 37' 28" E 22.31 FT; S 48 DEG 44' 9" W 117.46 FT; S 89 DEG 41' 54" W 17.2 FT; S 0 DEG 18' 5" E 36 FT; ALONG A CURVE TO L (CHORD BEARS: S 45 DEG 18' 5" E 15.56 FT, RADIUS = 11 FT); N 89 DEG 41' 54" E 45 FT; N 0 DEG 18' 7" W 70 FT; N 89 DEG 41' 54" E 170 FT; S 0 DEG 18' 5" E 51.66 FT; ALONG A CURVE TO L (CHORD BEARS: N 66 DEG 58' 32" E 59.63 FT, RADIUS = 44 FT); N 0 DEG 18' 7" W 24.63 FT; N 89 DEG 41'(MORE)

Mortgage Company

2012 UTAH COUNTY TAX NOTICE

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

DUPLICATE TAX NOTICE

MAKE CHECK PAYABLE TO: UTAH COUNTY TREASURER
100 EAST CENTER, SUITE 1200, PROVO, UTAH 84606-3159

Serial Number	Pin	Tax District	Property Class	Prior Taxes Are Delinquent On This Parcel
27:010:0068	0347997	150	V	YEARS: 2008 2009 2010 2011

Property Address

Fees Detail

Recorded owner as of January 1, 2012
EXPRESSWAY BUSINESS PARK LLC

Property Description (not for legal documents)
COM N 223.86 FT & E 742.96 FT FR W 1/4 COR. SEC. 17, T8S R3E, SLB&M.; N 0 DEG 18' 6" W 194.6 FT; N 0 DEG 18' 7" W 186.99 FT; N 89 DEG 41' 54" E 408.96 FT; S 0 DEG 18' 6" E 383.5 FT; N 88 DEG 25' 32" E 27.54 FT; S 1 DEG 34' 28" E 10 FT; S 1 DEG 34' 28" E 108 FT; S 88 DEG 25' 32" W 135.97 FT; N 1 DEG 34' 25" W 129 FT; S 88 DEG 25' 30" W 300.39 FT TO BEG. AREA 3.936 AC.

Mortgage Company

2012 UTAH COUNTY TAX NOTICE

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

DUPLICATE TAX NOTICE

MAKE CHECK PAYABLE TO: UTAH COUNTY TREASURER
100 EAST CENTER, SUITE 1200, PROVO, UTAH 84606-3159

Serial Number	Pin	Tax District	Property Class	Prior Taxes Are Delinquent On This Parcel
27:010:0067	0347989	150	V	YEARS: 2008 2009 2010 2011

Property Address

Fees Detail

Recorded owner as of January 1, 2012
EXPRESSWAY BUSINESS PARK LLC

Property Description (not for legal documents)
COM N 911.2 FT & E 28.2 FT FR W 1/4 COR. SEC. 17, T8S, R3E, SLB&M.; N 89 DEG 41' 54" E 826.99 FT; S 0 DEG 18' 6" E 216.5 FT; N 89 DEG 41' 54" E 459.99 FT; N 0 DEG 18' 6" W 633.31 FT; N 52 DEG 30' 10" E 283.42 FT; N 65 DEG 15' 0" E 15.36 FT; S 0 DEG 37' 7" E 834.95 FT; N 89 DEG 19' 55" E 583 FT; S 34 DEG 25' 32" W 837.46 FT; ALONG A CURVE TO R (CHORD BEARS: S 79 DEG 25' 32" W 28.28 FT, RADIUS = 20 FT); N 55 DEG 34' 29" W 58.42 FT; ALONG A CURVE TO L (CHORD BEARS: N 73 DEG 34' 29" W 309.01 FT, RADIUS = 500 FT); S 88 DEG 25' 34" W 115.25 FT; N 1 DEG 34' 28" W 118.01 FT;(MORE)

Mortgage Company

SEE REVERSE SIDE FOR IMPORTANT INFORMATION
DUPLICATE TAX NOTICE
MAKE CHECK PAYABLE TO: UTAH COUNTY TREASURER
100 EAST CENTER, SUITE 1200, PROVO, UTAH 84606-3159

Values have been adjusted for Equalization.

Serial Number	Pin	Tax District	Property Class	Prior Year Delinquent Tax Information
38:400:0304	0701169	150	COC	

Property Address: 1082 N 1110 EAST - SPANISH FORK

Fees Detail:

Recorded owner as of January 1, 2012: EVOLUTION HOLDINGS LLC

Property Description (not for legal documents): LOT 304, EXPRESSWAY BUSINESS PARK CONDO PHASE 3. AREA 0.035 AC.

ENT 77471:2013 PG 4 of 11

Mortgage Company:

2012 UTAH COUNTY TAX NOTICE

SEE REVERSE SIDE FOR IMPORTANT INFORMATION
DUPLICATE TAX NOTICE
MAKE CHECK PAYABLE TO: UTAH COUNTY TREASURER
100 EAST CENTER, SUITE 1200, PROVO, UTAH 84606-3159

Values have been adjusted for Equalization.

Serial Number	Pin	Tax District	Property Class	Prior Year Delinquent Tax Information
38:400:0303	0701151	150	COC	

Property Address: 1094 N 1110 EAST - SPANISH FORK

Fees Detail:

Recorded owner as of January 1, 2012: EVOLUTION HOLDINGS LLC

Property Description (not for legal documents): LOT 303, EXPRESSWAY BUSINESS PARK CONDO PHASE 3. AREA 0.035 AC.

Mortgage Company:

2012 UTAH COUNTY TAX NOTICE

SEE REVERSE SIDE FOR IMPORTANT INFORMATION
DUPLICATE TAX NOTICE
MAKE CHECK PAYABLE TO: UTAH COUNTY TREASURER
100 EAST CENTER, SUITE 1200, PROVO, UTAH 84606-3159

Serial Number	Pin	Tax District	Property Class	Prior Taxes Are Delinquent On This Parcel
38:400:0307	0701193	150	V	YEARS: 2008 2009 2010 2011

Property Address: 1111 E EXPRESSWAY LA - SPANISH FORK

Fees Detail:

Recorded owner as of January 1, 2012: EXPRESSWAY BUSINESS PARK LLC

Property Description (not for legal documents): LOT 307, EXPRESSWAY BUSINESS PARK CONDO PHASE 3. AREA 0.053 AC.

Mortgage Company:

ATT #3

DUPLICATE TAX NOTICE

MAKE CHECK PAYABLE TO: UTAH COUNTY TREASURER
100 EAST CENTER, SUITE 1200, PROVO, UTAH 84606-3159

Serial Number	Pin	Tax District	Property Class	Prior Taxes Are Delinquent On This Parcel
38:400:0310	0701227	150	V	YEARS: 2008 2009 2010 2011

Property Address
1159 E EXPRESSWAY LA - SPANISH FORK

Fees Detail

Recorded owner as of January 1, 2012
EXPRESSWAY BUSINESS PARK LLC

Property Description (not for legal documents)
LOT 310, EXPRESSWAY BUSINESS PARK CONDO PHASE 3. AREA 0.053 AC.

ENT 77471:2013 PG 5 of 11

Mortgage Company

2012 UTAH COUNTY TAX NOTICE

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

DUPLICATE TAX NOTICE

MAKE CHECK PAYABLE TO: UTAH COUNTY TREASURER
100 EAST CENTER, SUITE 1200, PROVO, UTAH 84606-3159

Serial Number	Pin	Tax District	Property Class	Prior Taxes Are Delinquent On This Parcel
38:400:0308	0701201	150	V	YEARS: 2008 2009 2010 2011

Property Address
1127 E EXPRESSWAY LA - SPANISH FORK

Fees Detail

Recorded owner as of January 1, 2012
EXPRESSWAY BUSINESS PARK LLC

Property Description (not for legal documents)
LOT 308, EXPRESSWAY BUSINESS PARK CONDO PHASE 3. AREA 0.053 AC.

Mortgage Company

2012 UTAH COUNTY TAX NOTICE

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

DUPLICATE TAX NOTICE

MAKE CHECK PAYABLE TO: UTAH COUNTY TREASURER
100 EAST CENTER, SUITE 1200, PROVO, UTAH 84606-3159

Serial Number	Pin	Tax District	Property Class	Prior Taxes Are Delinquent On This Parcel
38:400:0309	0701219	150	V	YEARS: 2008 2009 2010 2011

Property Address
1149 E EXPRESSWAY LA - SPANISH FORK

Fees Detail

Recorded owner as of January 1, 2012
EXPRESSWAY BUSINESS PARK LLC

Property Description (not for legal documents)
LOT 309, EXPRESSWAY BUSINESS PARK CONDO PHASE 3. AREA 0.053 AC.

Mortgage Company

2012 UTAH COUNTY TAX NOTICE

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

DUPLICATE TAX NOTICE

MAKE CHECK PAYABLE TO: UTAH COUNTY TREASURER
100 EAST CENTER, SUITE 1200, PROVO, UTAH 84606-3159

Serial Number	Pin	Tax District	Property Class	Prior Taxes Are Delinquent On This Parcel
38:400:0313	0701250	150	V	YEARS: 2008 2009 2010 2011

Property Address
1213 E EXPRESSWAY LA - SPANISH FORK

Fees Detail

Recorded owner as of January 1, 2012
EXPRESSWAY BUSINESS PARK LLC

Property Description (not for legal documents)
LOT 313, EXPRESSWAY BUSINESS PARK CONDO PHASE 3. AREA 0.053 AC.

ENT 77471:2013 PG 6 of 11

Mortgage Company

2012 UTAH COUNTY TAX NOTICE

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

DUPLICATE TAX NOTICE

MAKE CHECK PAYABLE TO: UTAH COUNTY TREASURER
100 EAST CENTER, SUITE 1200, PROVO, UTAH 84606-3159

Serial Number	Pin	Tax District	Property Class	Prior Taxes Are Delinquent On This Parcel
38:400:0311	0701235	150	V	YEARS: 2008 2009 2010 2011

Property Address
1167 E EXPRESSWAY LA - SPANISH FORK

Fees Detail

Recorded owner as of January 1, 2012
EXPRESSWAY BUSINESS PARK LLC

Property Description (not for legal documents)
LOT 311, EXPRESSWAY BUSINESS PARK CONDO PHASE 3. AREA 0.053 AC.

Mortgage Company

2012 UTAH COUNTY TAX NOTICE

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

DUPLICATE TAX NOTICE

MAKE CHECK PAYABLE TO: UTAH COUNTY TREASURER
100 EAST CENTER, SUITE 1200, PROVO, UTAH 84606-3159

Serial Number	Pin	Tax District	Property Class	Prior Taxes Are Delinquent On This Parcel
38:400:0312	0701243	150	V	YEARS: 2008 2009 2010 2011

Property Address
1191 E EXPRESSWAY LA - SPANISH FORK

Fees Detail

Recorded owner as of January 1, 2012
EXPRESSWAY BUSINESS PARK LLC

Property Description (not for legal documents)
LOT 312, EXPRESSWAY BUSINESS PARK CONDO PHASE 3. AREA 0.053 AC.

Mortgage Company

Att #5

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

DUPLICATE TAX NOTICE

MAKE CHECK PAYABLE TO: UTAH COUNTY TREASURER
100 EAST CENTER, SUITE 1200, PROVO, UTAH 84606-3159

Serial Number	Pin	Tax District	Property Class	Prior Taxes Are Delinquent On This Parcel
38:400:0316	0701284	150	V	YEARS: 2008 2009 2010 2011

Property Address: 1243 E EXPRESSWAY LA - SPANISH FORK

Fees Detail:

Recorded owner as of January 1, 2012: EXPRESSWAY BUSINESS PARK LLC

Property Description (not for legal documents): LOT 316, EXPRESSWAY BUSINESS PARK CONDO PHASE 3. AREA 0.053 AC.

ENT 77471:2013 PG 7 of 11

Mortgage Company:

2012 UTAH COUNTY TAX NOTICE

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

DUPLICATE TAX NOTICE

MAKE CHECK PAYABLE TO: UTAH COUNTY TREASURER
100 EAST CENTER, SUITE 1200, PROVO, UTAH 84606-3159

Serial Number	Pin	Tax District	Property Class	Prior Taxes Are Delinquent On This Parcel
38:400:0314	0701268	150	V	YEARS: 2008 2009 2010 2011

Property Address: 1223 E EXPRESSWAY LA - SPANISH FORK

Fees Detail:

Recorded owner as of January 1, 2012: EXPRESSWAY BUSINESS PARK LLC

Property Description (not for legal documents): LOT 314, EXPRESSWAY BUSINESS PARK CONDO PHASE 3. AREA 0.053 AC.

Mortgage Company:

2012 UTAH COUNTY TAX NOTICE

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

DUPLICATE TAX NOTICE

MAKE CHECK PAYABLE TO: UTAH COUNTY TREASURER
100 EAST CENTER, SUITE 1200, PROVO, UTAH 84606-3159

Serial Number	Pin	Tax District	Property Class	Prior Taxes Are Delinquent On This Parcel
38:400:0315	0701276	150	V	YEARS: 2008 2009 2010 2011

Property Address: 1233 E EXPRESSWAY LA - SPANISH FORK

Fees Detail:

Recorded owner as of January 1, 2012: EXPRESSWAY BUSINESS PARK LLC

Property Description (not for legal documents): LOT 315, EXPRESSWAY BUSINESS PARK CONDO PHASE 3. AREA 0.053 AC.

Mortgage Company:

Att #6

2012 UTAH COUNTY TAX NOTICE

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

DUPLICATE TAX NOTICE

MAKE CHECK PAYABLE TO: UTAH COUNTY TREASURER
100 EAST CENTER, SUITE 1200, PROVO, UTAH 84606-3159

Serial Number	Pin	Tax District	Property Class	Prior Taxes Are Delinquent On This Parcel
38:400:0319	0701318	150	V	YEARS: 2008 2009 2010 2011

Property Address
1222 E 1130 NORTH - SPANISH FORK

Fees Detail

Recorded owner as of January 1, 2012
EXPRESSWAY BUSINESS PARK LLC

Property Description (not for legal documents)
LOT 319, EXPRESSWAY BUSINESS PARK CONDO PHASE 3. AREA 0.053 AC.

ENT 77471:2013 PG 8 of 11

Mortgage Company

2012 UTAH COUNTY TAX NOTICE

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

DUPLICATE TAX NOTICE

MAKE CHECK PAYABLE TO: UTAH COUNTY TREASURER
100 EAST CENTER, SUITE 1200, PROVO, UTAH 84606-3159

Serial Number	Pin	Tax District	Property Class	Prior Taxes Are Delinquent On This Parcel
38:400:0317	0701292	150	V	YEARS: 2008 2009 2010 2011

Property Address
1242 E 1130 NORTH - SPANISH FORK

Fees Detail

Recorded owner as of January 1, 2012
EXPRESSWAY BUSINESS PARK LLC

Property Description (not for legal documents)
LOT 317, EXPRESSWAY BUSINESS PARK CONDO PHASE 3. AREA 0.053 AC.

Mortgage Company

2012 UTAH COUNTY TAX NOTICE

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

DUPLICATE TAX NOTICE

MAKE CHECK PAYABLE TO: UTAH COUNTY TREASURER
100 EAST CENTER, SUITE 1200, PROVO, UTAH 84606-3159

Serial Number	Pin	Tax District	Property Class	Prior Taxes Are Delinquent On This Parcel
38:400:0318	0701300	150	V	YEARS: 2008 2009 2010 2011

Property Address
1232 E 1130 NORTH - SPANISH FORK

Fees Detail

Recorded owner as of January 1, 2012
EXPRESSWAY BUSINESS PARK LLC

Property Description (not for legal documents)
LOT 318, EXPRESSWAY BUSINESS PARK CONDO PHASE 3. AREA 0.053 AC.

Mortgage Company

MAKE CHECK PAYABLE TO: UTAH COUNTY TREASURER
100 EAST CENTER, SUITE 1200, PROVO, UTAH 84606-3159

Serial Number	Pin	Tax District	Property Class	Prior Taxes Are Delinquent On This Parcel
38:400:0322	0701342	150	V	YEARS: 2008 2009 2010 2011

Property Address
1168 E 1130 NORTH - SPANISH FORK

Fees Detail

Recorded owner as of January 1, 2012
EXPRESSWAY BUSINESS PARK LLC

Property Description (not for legal documents)
LOT 322, EXPRESSWAY BUSINESS PARK CONDO PHASE 3. AREA 0.053 AC.

ENT 77471:2013 PG 9 of 11

Mortgage Company

2012 UTAH COUNTY TAX NOTICE

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

DUPLICATE TAX NOTICE

MAKE CHECK PAYABLE TO: UTAH COUNTY TREASURER
100 EAST CENTER, SUITE 1200, PROVO, UTAH 84606-3159

Serial Number	Pin	Tax District	Property Class	Prior Taxes Are Delinquent On This Parcel
38:400:0320	0701326	150	V	YEARS: 2008 2009 2010 2011

Property Address
1212 E 1130 NORTH - SPANISH FORK

Fees Detail

Recorded owner as of January 1, 2012
EXPRESSWAY BUSINESS PARK LLC

Property Description (not for legal documents)
LOT 320, EXPRESSWAY BUSINESS PARK CONDO PHASE 3. AREA 0.053 AC.

Mortgage Company

2012 UTAH COUNTY TAX NOTICE

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

DUPLICATE TAX NOTICE

MAKE CHECK PAYABLE TO: UTAH COUNTY TREASURER
100 EAST CENTER, SUITE 1200, PROVO, UTAH 84606-3159

Serial Number	Pin	Tax District	Property Class	Prior Taxes Are Delinquent On This Parcel
38:400:0321	0701334	150	V	YEARS: 2008 2009 2010 2011

Property Address
1192 E 1130 NORTH - SPANISH FORK

Fees Detail

Recorded owner as of January 1, 2012
EXPRESSWAY BUSINESS PARK LLC

Property Description (not for legal documents)
LOT 321, EXPRESSWAY BUSINESS PARK CONDO PHASE 3. AREA 0.053 AC.

Mortgage Company

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

DUPLICATE TAX NOTICE

MAKE CHECK PAYABLE TO: UTAH COUNTY TREASURER
100 EAST CENTER, SUITE 1200, PROVO, UTAH 84606-3159

Serial Number	Pin	Tax District	Property Class	Prior Taxes Are Delinquent On This Parcel
38:400:0325	0701375	150	V	YEARS: 2008 2009 2010 2011

Property Address
1128 E 1130 NORTH - SPANISH FORK

Fees Detail

Recorded owner as of January 1, 2012
EXPRESSWAY BUSINESS PARK LLC

Property Description (not for legal documents)
LOT 325, EXPRESSWAY BUSINESS PARK CONDO PHASE 3. AREA 0.053 AC.

ENT 77471:2013 PG 10 of 11

Mortgage Company

2012 UTAH COUNTY TAX NOTICE

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

DUPLICATE TAX NOTICE

MAKE CHECK PAYABLE TO: UTAH COUNTY TREASURER
100 EAST CENTER, SUITE 1200, PROVO, UTAH 84606-3159

Serial Number	Pin	Tax District	Property Class	Prior Taxes Are Delinquent On This Parcel
38:400:0323	0701359	150	V	YEARS: 2008 2009 2010 2011

Property Address
1158 E 1130 NORTH - SPANISH FORK

Fees Detail

Recorded owner as of January 1, 2012
EXPRESSWAY BUSINESS PARK LLC

Property Description (not for legal documents)
LOT 323, EXPRESSWAY BUSINESS PARK CONDO PHASE 3. AREA 0.053 AC.

Mortgage Company

2012 UTAH COUNTY TAX NOTICE

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

DUPLICATE TAX NOTICE

MAKE CHECK PAYABLE TO: UTAH COUNTY TREASURER
100 EAST CENTER, SUITE 1200, PROVO, UTAH 84606-3159

Serial Number	Pin	Tax District	Property Class	Prior Taxes Are Delinquent On This Parcel
38:400:0324	0701367	150	V	YEARS: 2008 2009 2010 2011

Property Address
1148 E 1130 NORTH - SPANISH FORK

Fees Detail

Recorded owner as of January 1, 2012
EXPRESSWAY BUSINESS PARK LLC

Property Description (not for legal documents)
LOT 324, EXPRESSWAY BUSINESS PARK CONDO PHASE 3. AREA 0.053 AC.

Mortgage Company

ATT #9

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

DUPLICATE TAX NOTICE

MAKE CHECK PAYABLE TO: UTAH COUNTY TREASURER
100 EAST CENTER, SUITE 1200, PROVO, UTAH 84606-3159

Serial Number	Pin	Tax District	Property Class	Prior Taxes Are Delinquent On This Parcel
38:400:0326	0701383	150	V	YEARS: 2008 2009 2010 2011

Property Address
1114 E 1130 NORTH - SPANISH FORK

Fees Detail

Recorded owner as of January 1, 2012
EXPRESSWAY BUSINESS PARK LLC

Property Description (not for legal documents)
LOT 326, EXPRESSWAY BUSINESS PARK CONDO PHASE 3. AREA 0.053 AC.

ENT 77471:2013 PG 11 of 11

Mortgage Company

2012 UTAH COUNTY TAX NOTICE

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

DUPLICATE TAX NOTICE

MAKE CHECK PAYABLE TO: UTAH COUNTY TREASURER
100 EAST CENTER, SUITE 1200, PROVO, UTAH 84606-3159

Serial Number	Pin	Tax District	Property Class	Prior Taxes Are Delinquent On This Parcel
38:377:0215	0700369	150	COC	YEARS: 2008 2009 2010 2011

Property Address
1151 E 1010 NORTH - SPANISH FORK

Fees Detail

Recorded owner as of January 1, 2012
EXPRESSWAY BUSINESS PARK LLC

Property Description (not for legal documents)
UNIT 215, EXPRESSWAY BUSINESS PARK CONDO PHASE 2. AREA 0.053 AC.

Mortgage Company

EXHIBIT B

E. LEON HARWARD
9202 Canyon Heights Drive
CEDAR HILLS, UTAH 84062
Telephone (801) 380-1110

August 21, 2013

The Honorable Bruce S. Jenkins
UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION
Federal Courts Building
350 South State Street
Salt Lake City, Utah 84101

RE: Case: 2:12cv00591

Judge Jenkins:

This letter is to inform the court of significant inconsistencies in the conduct of the receiver as he administers his authority to "freeze" the assets of National Note and Wayne Palmer and dispose of those assets in a manner consistent to preserve whatever investor interest is available.

My name is Leon Harward, and I speak on my behalf as well as the interest of West Side Enterprises, of which I am the owner and manager. West Side Enterprises is now and always has been an owner of interest in Expressway Business Park. That interest is reflected by an ownership of 30%. That interest existed from inception of Expressway Business Park and prior to National Notes acquisition of 70% and has continued unimpeded.

Wayne Palmer and National Note are not the "owners" of Expressway Business Park, but rather have a 70% interest only in the project. According to Mr. Klein's own instructions, he was or is to "freeze" the assets of National Note and Mr. Palmer. Mr. Klein's efforts to marshal any interest of Expressway is by a matter of law limited to what is actually owned by National Note and/or Wayne Palmer.

I, and West Side Enterprises are in no way part of or associated with the complaint and law suit filing by the Security Exchange Commission against Palmer and National Note.

Since Mr. Klein has chosen a remedy of law by marshalling the assets of National Note and selling its interest in Expressway, West Side Enterprises and myself should be entitled to 30% of the proceeds from such sales.

West Side Enterprises and (my) 30% of "equity" cannot be extinguished because of the alleged fraud, co-mingled funds, misuse of partnership monies as well as other items in the complaint.

I am including herewith for you review copies of the following:

Copy of a K1 affirming West Side Interest
Copy of the letter from the IRS indicating (me) as a "tax Partner"
Copy of the Notice of Interest filed with Utah County

Additional items if necessary are available. These items are most recent.

I believe it incumbent upon the court to clarify and preserve the equity referenced.

A copy of this letter and copies of the supporting documents are being sent to Mr. Thomas Melton and Mr. Wayne Klein as well.

Your time and consideration is appreciate and look forward to your response

Sincerely

Leon Harward & West Side Enterprises

Cc: Thomas Melton
15 West South Temple
Suite 1800
Salt Lake City, Utah
84101

R, Wayne Klein, Receiver
10 Exchange Pace
Suite 502
Salt Lake City, Utah
84111

EXHIBIT C

WAYNE KLEIN, RECEIVER FOR
NATIONAL NOTE OF UTAH, LC
10 Exchange Place, Suite 502, Salt Lake City, UT 84111, USA (801) 456-4593
wklein@kleinutah.com

August 23, 2013

E. Leon Harward
9202 Canyon Heights Drive
Cedar Hills, UT 84062

Re: Expressway Business Park, National Note of Utah
SEC v. National Note of Utah and Wayne L. Palmer, Case No. 2:12CV000591

Dear Mr. Harward:

I am responding to your August 21, 2013 letter to Judge Jenkins, the federal judge overseeing the National Note Receivership. Let me first apologize. I have not been keeping you sufficiently well informed relating to Expressway Business Park. I hope you are aware of the website that we have established for the Receivership. http://www.kleinutah.com/index.php/receiverships/national-note-of-utah-lc . The website is the most complete, up-to-date source of information about the status of the receivership. It includes developments regarding property sales and contains copies of the quarterly status reports that we file with the Court. I encourage you to check the website regularly as a means of keeping informed about developments in the receivership.

Enclosed Documents

In our prior telephone conversations and our two in-person meetings, you have identified documents that you would like regarding Expressway. I am enclosing copies of information as a follow-up to those meetings and conversations, including other information that I think you might find helpful. The following information is enclosed:

1. The income statements for Expressway from 2003 to 2012. You will see that Expressway suffered a loss in seven of those ten years and a cumulative loss of $10,596,250.09.

2. The balance sheets for Expressway from 2003 to 2012. You will see that Expressway had negative equity every single year, culminating in a net equity of -$10,598,190.09 at the time that the Court ordered the closure of National Note and its affiliates in June 2012.

3. There were four units at Expressway Business Park that were still owned by Expressway at the time the receivership was created:

    a. Unit 109: This unit had a lien by Dr. Humpherys that was for an amount greater than the appraised value of the unit. The Court approved a settlement agreement

by which the property was relinquished to the lender. A copy of the title report for this property is attached. Information about the relinquishment of this property to the lender can be found on the receivership website. If you don't have the ability to view the website, let me know and I will print out copies of the Court filings and send them to you.

b. Unit 204: This unit had a lien by WGTS that was for an amount greater than the appraised value of the unit. The Court approved a settlement agreement by which the property was relinquished to the lender. A copy of the title report for this property is attached. Information on this transaction can be found on the website.

c. Unit 215: This unit is scheduled to be sold at auction on September 11, 2013 at 1:00. Attached are a copy of the title report and the notice of auction.

d. Unit 305: This unit was sold at auction on June 27, 2013. Attached are copies of the Notice of Public Sale Results and the title report for this property.

4. As you will see from some of the title reports, there are many liens, including assignments of beneficial interest, on the Expressway properties. Attached is a spreadsheet listing the ABIs held by each person relating to each Expressway lot. As Receiver, I am taking the position that all these ABIs are invalid liens on the real estate. Nevertheless, until that issue is resolved by the Court, we are keeping all proceeds from the sales of real estate, that are subject to ABIs or other liens, in a reserve account. The net proceeds from the sale of Expressway 305 went into the reserve account. Similarly, the net proceeds from the sale of Expressway 215 will go into the reserve account.

5. Two spreadsheets are attached detailing the financial transfers we have found to date between you and Expressway/National Note. These show $75,512.00 in payments to Westside Enterprises. These also show a payment from you to Old Glory Mint in the amount of $635.86. We don't see any money coming in to Expressway from you or Westside.

6. Finally, I am enclosing another copy of the Court's June 25, 2012 order appointing me as Receiver and imposing a stay of litigation. I believe I have previously given you a copy of this order, but want to make sure you have a copy. If you would like a full size copy of this order, it can be found on our website or I can mail one to you.

Comments and Additional Information

As you can see from the enclosed financial statements, Expressway operated at a loss. Their internal records show that while the company earned $10,943,654.45 in property sales, it had spent $11,009,546.21 in developing those units sold. Thus, the properties that were sold, were sold at a loss. This $11 million in "cost of goods sold" relates only to the value of these assets on the records of the company (the book value); it does not include other operating expenses, interest payments to National Note and banks, and costs of maintaining the properties. Thus, the losses on each property sold becomes much greater when these other costs are included.

In your letter to the Court, you indicated that you believe you are entitled to 30% of the sales proceeds from Expressway property. Of course, any share of sales that you would be entitled to would be based on net sales proceeds, not gross sales prices. As noted above, the units sold by Expressway before I was appointed were sold at a loss, so there were no net proceeds to share with you. Since my appointment, I have sold one unit and have a second unit scheduled for sale. The proceeds from these sales are and will be considerably less than the values of these units as carried on the books of Expressway. Again, there will be no net proceeds.

Based on our review of the financial records of Expressway, it appears that all the funding for development of the Expressway projects and operation of the company came from National Note or bank financing—but not you or Westside. If that is not accurate, please let me know. If that is accurate, it means that National Note would be entitled to recover its expenses and get its loans repaid before any proceeds would be available to share among the equity owners of Expressway, such as Westside.

If you would like additional financial information about Expressway, such as copies of the bank statements or other internal financial records of Expressway, please contact me and we can arrange to get copies made for you.

We hope to create a claims process later this year or early next year to allow investors, vendors, customers, and others to assert claims for a share of the proceeds recovered by the Receivership. Based on your 30% ownership of Expressway, you may be entitled to submit a claim for amounts you claim you are owed.[1] However, to the extent your claim is based on Westside's equity ownership of Expressway, that claim would face two hurdles: a) because Expressway had negative equity, your 30% ownership of Expressway is worthless and b) in general, investor and creditor claims must be satisfied before equity claims can be considered for payment. Nevertheless, you will be entitled to submit a claim and have the claim evaluated.

Your letter to the Court included a copy of a "Notice of Interest" that you filed with the Utah County Recorder. Please read paragraph 32 of the enclosed Order Appointing Receiver and Staying Litigation. That order prohibits anyone from making any filings that might impair the value of real estate or make it more difficult for the Receiver to sell property in the Receivership Estate. As such, I ask that you withdraw that filing. If you desire to assert liens on real estate or against any receivership assets, you must first obtain permission of the Court. That is done by intervening in the receivership litigation and asking the Court to lift the stay of litigation so you can record any liens against assets.

Finally, I encourage you to engage an attorney skilled in this area of the law. If you believe that the Receivership is obligated to pay you monies outside of the claims process, you should have your attorney file a motion with the Court seeking to lift the litigation stay. Your attorney also

---

[1] I note that the K-1 schedule that you sent indicates that Westside is a 30% owner of "Expressway Commercial Park, LLC." I don't know if that was the former name of Expressway, but the correct name of the company in the Receivership Estate is Expressway Business Park, LLC. In the end, I do not think the incorrect name has any effect, inasmuch as Expressway has negative net worth.

can advise you on the best way to bring information to the attention of the judge, so you are not accused of improper contact with the Court.

I will reiterate what I stated above. I am willing to give you, your accountants, and your attorneys access to the business records of Expressway. These are all in my control and I will allow you to review them or make copies of any documents you want. In addition, I will endeavor to answer questions you have. I am sorry that it has taken so long for me to get this information to you while I have been focused on other aspects of the receivership.

Sincerely,

Wayne

WAYNE KLEIN
Receiver

Enc.

cc: Peggy Hunt, Dorsey & Whitney (via email only)

EXHIBIT D

WAYNE KLEIN, RECEIVER FOR
NATIONAL NOTE OF UTAH, LC
10 Exchange Place, Suite 502, Salt Lake City, UT 84111, USA (801) 456-4593
wklein@kleinutah.com

September 19, 2013

E. Leon Harward
9202 Canyon Heights Drive
Cedar Hills, UT 84062

Re: Expressway Business Park, National Note of Utah
SEC v. National Note of Utah and Wayne L. Palmer, Case No. 2:12CV000591

Dear Mr. Harward:

Pursuant to our discussion yesterday, I am enclosing a list of files that we have identified as likely being related to Expressway Business Park. These are all files that we seized from National Note pursuant to the U.S. District Court's order freezing assets and appointing me as Receiver for National Note and 41 affiliated companies, including Expressway. We will make these files available to you in preparing your response to the Internal Revenue Service. You will note that some of these files are in a storage unit, so to the extent you want to review those files, we will need to set an appointment to meet at the storage unit.

In our discussions, you indicated that the IRS is concerned about the high interest rates that Expressway paid to National Note. I understand the IRS's concerns, since excessive interest rates (as well as loans with minimal interest rates) are often used to make financial transfers between related entities for the purpose of avoiding taxes that otherwise would be due.

As part of our receivership analysis, we have conducted a forensic accounting of the financial transactions of Expressway and National Note. Despite the outward appearance that high interest rates might have been a device for tax avoidance, our analysis has concluded that the high interest rates were paid (or credited) to National Note for a very different purpose—to feed an ongoing Ponzi scheme by National Note.

As part of the Ponzi scheme, National Note solicited money from investors. To induce investors to send money to National Note, the company promised to pay 12% interest on the promissory notes it issued to the investors.[1] In order to pay 12% interest, National Note had to earn more than 12% on the money it took from investors. The company told investors that it earned 18% on the money it was borrowing from them. In the early years of its existence (from 1995 to around 2002), National Note attempted to earn 18% by making hard-money loans and buying mortgage notes at a discount. However, the company found that many of these loans went bad and found few opportunities to earn 18% interest on high quality loans.

[1] In some cases, National Note promised to pay even higher rates to investors; some were paid as much as 18% interest.

Rather than admit that the business model was not working, National Note continued to solicit funds from investors. The company then loaned the investor funds to affiliated entities—at 18% interest. National Note then recorded these loans on its books as assets, so it could tell investors that it had loans backing the investor funds. However, most of these affiliate loans were fictitious. The affiliates would borrow money from National Note then turn around immediately and pay that money back to National Note as interest on the monies loaned previously. It was a spiral that got worse each year as the amount taken from investors ballooned.

Where did the money go? Some of it, of course, was used to pay distributions to investors. We have sued over 120 investors who were overpaid—having collectively received millions more in distributions than the principal amounts of their investments. But, many tens of millions were spent in failed property development ventures in Arizona, Utah, Idaho, and elsewhere. One of these was Expressway. Our analysis of the Expressway financial transactions showed that the rapidly-increasing amounts that Expressway owed to National Note soon resulted in Expressway owing more to National Note than the value of all of its assets.

Another extreme example is the Riverbend project in Middleton, Idaho. National Note (through its Riverbend affiliate) planned to develop a master community of residential and commercial projects. National Note combined $6.7 million of investor money with $3.7 million of borrowed money to purchase land for $10.4 million. The company spent another $8 million developing the project (including interests that Riverbend paid or owed to National Note and then capitalized as an asset). Thus, Riverbend had a basis of close to $20 million for the project. However, no construction was ever started. In August of this year, I obtained an appraisal for the land. The appraisal indicated a value of $1.2 million—less than the amount owed to the secured lender. Thus, close to $16 million of value has disappeared in that project alone.

The bottom line is that the 18% interest that Expressway paid (or credited) to National Note was not a tax avoidance scheme, but was simply a desperate attempt to keep a Ponzi scheme afloat. It succeeded for a while, but at the cost of owing investors $114 million.

Feel free to share these conclusions with the IRS. Agents of the Service are welcome to contact me for additional information regarding our forensic accounting and our Ponzi findings.

Sincerely,

Wayne Klein

WAYNE KLEIN
Receiver

Enc.