

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](mailto:hunt.peggy@dorsey.com)  
[martinez.chris@dorsey.com](mailto:martinez.chris@dorsey.com)  
[armington.jeff@dorsey.com](mailto: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,

vs.

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

Defendants.

**RECEIVER'S RESPONSE TO MOTION  
TO TRANSFER RELATED CASES AND  
SUPPORTING MEMORANDUM**

Case No: 2:12-CV-591 BSJ

The Honorable Bruce S. Jenkins

R. Wayne Klein, as receiver (the "Receiver") for National Note of Utah, LC ("NNU") and the assets of Defendant Wayne LaMar Palmer ("Palmer"), respectfully submits this Response to the *Motion To Transfer Related Cases and Supporting Memorandum* (the "Motion") filed by Defendants in twenty-three ancillary proceedings that have been commenced against them by the Receiver, described in the Motion as the "Investors."<sup>1</sup>

---

<sup>1</sup> Docket No. 654.

I.

**BACKGROUND**

1. On June 25, 2011, the above-captioned case was commenced by the Securities and Exchange Commission (the “Commission”) against Defendants NNU and Palmer, and in conjunction therewith the Court entered, in relevant part, an *Order Appointing Receiver and Staying Litigation* (the “Receivership Order”).<sup>2</sup> Pursuant to the Receivership Order, the Receiver was appointed, and NNU, forty-one of its affiliated companies, and all Palmer’s assets were placed in the Receiver’s control.<sup>3</sup>

2. On May 20, 2013, the Court entered an Order reappointing the Receiver,<sup>4</sup> and based on that Order, the Receiver filed *Notices of Appointment* in twenty six judicial districts, in addition to the five in which he had previously filed such Notices.

3. On May 21, 2013, the Court entered an amended Order allowing the Receiver to commence litigation.<sup>5</sup>

4. Since that time, the Receiver has filed over 150 lawsuits in the United States District Court for the District of Utah against, among others, the movant-Investors, seeking multiple types of recovery, including recovery of false profits, commissions paid, and payments owed under uncollected loans; as well as invalidation of Assignments of Beneficial Interests

---

<sup>2</sup> Docket No. 9 (Receivership Order).

<sup>3</sup> *See generally, id.*

<sup>4</sup> Docket No. 311.

<sup>5</sup> Docket No. 315.

(“ABIs”) made to select individuals prior to the entry of the Receivership Order. Pursuant to the Court’s assignment procedures, the lawsuits were randomly assigned among District of Utah judges.

5. At this time only approximately 46 lawsuits remain, as many of the cases have been settled or are cases in which default judgments have been entered.<sup>6</sup>

6. The Investors are defendants in 23 of the remaining 46 lawsuits, and all of the Investors are represented by the same law firm. These 23 lawsuits, each of which is identified in the Motion and defined as the “Ancillary Proceedings,” are currently assigned to several judges.

7. On October 9, 2013, the Investors in 22 of the Ancillary Proceedings filed a *Motion to Intervene and Supporting Memorandum* (the “Motion to Intervene”),<sup>7</sup> which was opposed by the Receiver in his *Memorandum in Opposition to Investors’ Motion to Intervene*, filed on October 28, 2013 (the “Intervention Opposition Memorandum”).<sup>8</sup> A copy of the Intervention Opposition Memorandum is attached hereto as **Exhibit 1** and incorporated by reference. The Investors’ Motion to Intervene was denied by this Court.<sup>9</sup>

8. On May 5, 2014, the Investors filed a motion in each of the Ancillary Proceedings, requesting that the Ancillary Proceedings be reassigned to one judge for

---

<sup>6</sup> In addition to monies paid back based on demand, the Receiver has presented settlement agreements to this Court for approval in the Receiver’s *First, Second, Third, Fourth, Fifth, Sixth, and Seventh Motions to Approve Settlement Agreement*. Docket Nos. 271, 324, 359, 422, 502, 568, 614. The Receiver will soon file an Eighth Motion to Approve Settlement Agreements with this Court. In total, the settlements have resulted in payments or promises of payment to the Receivership Estate totaling \$1,140,229.07.

<sup>7</sup> Docket No. 468.

<sup>8</sup> Docket No. 498.

<sup>9</sup> Docket No. 540.

consideration. Prior to filing these motions, counsel for the Investors did not approach the Receiver about stipulating to such relief, and had it done so, the Receiver likely have would so consented.<sup>10</sup>

9. These initial motions were ultimately denied or were withdrawn by the Investors when on May 16, 2014, the Investors filed the present Motion in this Court, requesting that the Ancillary Proceedings be transferred to this Court for consideration pursuant to DUCivLR 83-2(g). The Investors represent that the Ancillary Proceedings “are integrally related to each other and to this action . . . .”<sup>11</sup>

## **II.**

### **DISCUSSION**

The Receiver does not oppose the relief sought in the Motion, but does contest the Investors’ basis for the Motion. In short, the Receiver has no objection to the Ancillary Proceedings being considered by a single judge of this Court if the Court believes that to do so would serve the interests of efficiency and aid in judicial economy. Such basis is sufficient for transfer within the meaning of DUCivLR 83-2(g). While not requested in the Motion, the Receiver assumes that once transferred to a single judge, many of the Investors will want to have certain common issues related to the NNU enterprise determined on a consolidated basis so that issues such as insolvency and/or whether NNU was a Ponzi scheme during the period of the transfers made to the Investors may be applied to each of the Ancillary Proceedings against the Investors. Although this issue is not presently before the Court, this procedure may make

---

<sup>10</sup> See Exh. 1 (Intervention Opposition Memorandum, pp. 3 & 10 (Receiver states he would stipulate to the Court considering certain issues common to the Ancillary Proceedings on a consolidated basis)).

<sup>11</sup> Motion, p. 2.

sense,<sup>12</sup> and transferring the Ancillary Proceedings to one judge would appear to facilitate that kind of anticipated procedure.

There are two issues, however, that the Receiver must address in response to the Investors' Motion.

*First*, in stipulating to the relief sought in the Motion, the Receiver is in no way agreeing with the arguments made by the Investors in support of the Motion. In addressing this issue, the Receiver notes that there is some confusion in the Motion as to the relatedness of the above-captioned *enforcement action* to the Ancillary Proceedings and the relatedness of the Ancillary Proceedings *to each other*. As to the first, for reasons already briefed and decided by this Court as part of the Intervention Motion, although the Ancillary Proceedings are at most related to the Commission's above-captioned enforcement case, they do not, as argued by the Investors, arise from the same transactions and events. Indeed, the enforcement action is against different defendants and the relief sought is wholly dissimilar to what is at stake in each of the Receiver's Ancillary Proceedings.<sup>13</sup> Additionally, while the Ancillary Proceedings are related to each other inasmuch as they are brought by the Receiver and involve NNU, it is important to note that each Proceeding is in fact very different from the others. There *may* be some commonality in each of the Ancillary Proceedings, but each involves unique facts and many involve different legal theories, grounds for recovery, and anticipated defenses. Indeed, some of the Ancillary Proceedings do not even involve the transfer of false profits or commissions, but are based on

---

<sup>12</sup> See Exh. 1 (Intervention Opposition Memorandum, pp. 3 & 10 (Receiver states he would stipulate to the Court considering certain issues common to the Ancillary Proceedings on a consolidated basis)).

<sup>13</sup> *Id.*

loan collection and determinations as to the invalidity of ABIs—which may not involve issues of the existence of a Ponzi scheme and/or insolvency at all.<sup>14</sup>

Second, while the Ancillary Proceedings are related to the Commission’s enforcement action and to each other, thus permitting transfer under Rule 83-2(g), it is unclear procedurally how a transfer, if it should occur, would be implemented. Specifically, it is unclear whether this enforcement action or the first-filed Ancillary Proceeding is the “lower-numbered case” for purposes of Rule 83-2(g). The Receiver does not take a position on this issue, but he notes the following.

If the Ancillary Proceedings are transferred to this Court because they are related to the enforcement action, for the reasons already stated, litigation of the Ancillary Proceedings should not impact the enforcement action which has its own unique parties and issues, including its own scheduling order. Under this scenario, the Investors should not be deemed to be parties to the enforcement action in any way.

If the Ancillary Proceedings are seen by the Court as being related to each other for purposes of transfer, transferring them to the judge assigned to the lowest case number requires consideration as follows. Based on the list of Ancillary Proceedings in ¶ 3 of the Motion, it appears that the one with the lowest number is *Klein v. Keeton*, Case No. 2:13-cv-00414-EJF. This case has been stayed because the defendant is in active military service. The next lowest number case in the list Ancillary Proceedings is *Klein v. Keller*, Case No. 2:13-cv-00418-RJS.

In either event, whether transferred to this Court or to the judge considering either the *Keeton* or the *Keller* case, the Receiver submits that each of the Ancillary Proceedings must be treated separately and independently. While they are related, each involves different parties,

---

<sup>14</sup> See Motion ¶ 4 (Investors note that “most” of the Ancillary Proceedings involve similar causes of action).

basis for and theories of recovery, and defenses. If and when a request is made to consider certain issues in the Ancillary Proceedings on a consolidated basis, the Receiver may not object to the same, but he reserves the right to address that issue when the specific Ancillary Proceedings in question are before one judge and the exact request for relief as to each of the Ancillary Proceedings is made. In other words, the Receiver submits that in stipulating to the relief herein, he is no way waiving any rights with regard to issues related to future requests to determine certain issues on a consolidated basis.

RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of June, 2014.

DORSEY & WHITNEY LLP

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

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that the above **RECEIVER'S RESPONSE TO MOTION TO TRANSFER RELATED CASES AND SUPPORTING MEMORANDUM** was filed with the Court on this 9<sup>th</sup> day of June, 2014, and served via ECF on all parties who have requested notice in this case. It was also served via email and U.S. Mail on the following:

Wayne L. Palmer  
8816 South 2240 West  
West Jordan, Utah 84088  
Waynelpalmer55@gmail.com

/s/ Heidi Daniels

Heidi Daniels