

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**

<p>R. WAYNE KLEIN, as Receiver, Plaintiff, v. DREW BRINAR and JOHN DOES NOS. 1-5, Defendant.</p>	<p>COMPLAINT (Ancillary to Case No. 2:12-cv-00591) Civil No. _____</p>
--	--

R. Wayne Klein, the Court-Appointed Receiver (the “Receiver” or “Plaintiff”) of National Note of Utah, LC (“National Note”), its subsidiaries and affiliates (collectively, unless otherwise stated, National Note and all subsidiaries and affiliated entities are referred to herein as “NNU”), and the assets of Wayne LaMar Palmer (“Palmer”), in the case styled as *Securities and Exchange Commission v. National Note of Utah, LC et al.*, Case No. 2:12-cv-00591 (D. Utah) (Jenkins, J.) (the “SEC Civil Enforcement Case”), hereby files this Complaint against Drew Brinar (“Brinar”) and John Does Nos. 1-5 (“Defendant Does”) (collectively, “Defendant”) and

states, alleges and avers as follows:

STATEMENT OF THE CASE

1. NNU was operated as an enterprise with all of the characteristics of a Ponzi scheme through which money was solicited from investors.¹ Upon information and belief, Defendant borrowed money from NNU, without giving any value for the transferred money, and has failed to repay that money. The Receiver seeks to recover the amount owed by the Defendant for the benefit of the receivership estate established in the SEC Civil Enforcement Case discussed in greater detail below.

PARTIES

2. Pursuant to an Order Appointing Receiver and Staying Litigation entered on June 25, 2012 in the SEC Civil Enforcement Case (the “Receivership Order”),² Plaintiff is the duly-appointed Receiver for National Note and Palmer “together with any and all subsidiaries and affiliated entities of National Note and Palmer. . . .”³

3. Upon information and belief, Defendant Brinar is a resident of or is domiciled in in the State of Arizona.

4. Upon information and belief, Defendant Does are currently unknown parties who received loan proceeds from NNU, or are persons to whom Brinar has transferred monies received from NNU.

¹ See SEC Civil Enforcement Case, Docket No. 1 (Complaint).

² SEC Civil Enforcement Case, Docket No. 9.

³ *Id.* (Receivership Order, pp. 1-2).

JURISDICTION AND VENUE

5. Subject matter jurisdiction is proper in this Court pursuant to 28 U.S.C. §1367.
6. The Court has personal jurisdiction over Defendant.
7. Venue is proper in this Court pursuant to 28 U.S.C. § 754.

FACTS

The Ponzi Scheme

8. Since at least 1994 until the commencement of the SEC Civil Enforcement Case, NNU raised capital by soliciting investors to purchase promissory notes, which typically promised to pay interest at a rate of interest above market rates.

9. Upon information and belief, investors understood that they were investing in an enterprise that, among other things, bought and sold mortgage notes, underwrote and made loans, or bought and sold real estate assets through National Note, or one of many affiliated entities subject to the Receivership Order, all of which are referred to herein collectively as “NNU.”

10. Typically, investment funds were deposited in a commingled bank account controlled by NNU. NNU would then transfer such investor funds to another bank account (the “Investor Account”).

11. Monies on deposit in the Investor Account were commingled, and transfers to investors by NNU were made from the commingled funds on deposit in that Investor Account.

12. NNU paid monies to persons for bringing investors to NNU.

13. At all times relevant hereto, NNU was insolvent.

The Amounts Transferred to Defendant

14. Defendant received \$234,192.60 from NNU (the “Transfers”).
15. On information and belief, NNU received nothing in return for the Transfers.
16. Defendant has not repaid the Transfers to NNU.
17. In total, Defendant owes NNU \$234,192.60.

The SEC Civil Case and the Receiver’s Appointment

18. On June 25, 2012, the SEC Civil Enforcement Case was filed, alleging that NNU is a Ponzi scheme, and seeking, among other things, orders (a) restraining and enjoining NNU and Palmer from continuing to violate federal securities laws, (b) freezing assets and prohibiting NNU from transferring, changing, wasting, dissipating, converting, concealing, or otherwise disposing of assets, (c) prohibiting NNU from destroying, mutilating, concealing, transferring, altering, or otherwise disposing of NNU’s books and records, (d) imposing civil money penalties against NNU and Palmer, and (e) requiring the disgorgement by NNU and Palmer of all ill-gotten gains received by them pursuant to the scheme.⁴

19. Also on June 25, 2012, as a result of the filing of the SEC Civil Enforcement Action, the Court entered a Temporary Restraining Order and Order to Show Cause against the Defendant⁵ and the Receivership Order appointing the Receiver.⁶ Since that time, both National Note and Palmer have stipulated to a Preliminary Injunction Order that prohibits National Note

⁴ SEC Civil Enforcement Case, Docket No. 1 (Complaint).

⁵ *Id.*, Docket No. 7.

⁶ *Id.*, Docket No. 9.

and Palmer from committing any further acts in furtherance of the Ponzi scheme and that prohibits National Note and Palmer from withdrawing, transferring, selling, buying, pledging, encumbering, assigning, dissipating, concealing, or otherwise disposing of any of their assets.⁷

20. On or about May 21, 2013, the Court entered an Order authorizing the Receiver to commence legal proceedings for the benefit of and on behalf of the receivership estate.⁸

FIRST CLAIM FOR RELIEF

(Avoidance of Fraudulent Transfers Under Utah Code Ann. §§ 25-6-5(1)(a) and 25-6-8)

21. The Receiver re-alleges and incorporates herein by reference each of the preceding allegations as if set forth completely herein.

22. NNU was engaged in an enterprise with all of the characteristics of a Ponzi scheme.

23. NNU made the Transfers to Defendant in furtherance of the Ponzi scheme.

24. At all relevant times hereto, NNU had at least one creditor.

25. The Transfers were paid and any obligations to Defendant incurred with actual intent to hinder, delay or defraud a creditor of NNU.

26. Pursuant to Utah Code Ann. §§ 25-6-5(1)(a) and 25-6-8, the Receiver may avoid and recover the Transfers paid to Defendant or, in the event such Transfers were transferred, from the Defendant Does.

SECOND CLAIM FOR RELIEF

(Avoidance of Fraudulent Transfers Under Utah Code Ann. §§ 25-6-5(1)(b) and 25-6-8)

27. The Receiver re-alleges and incorporates herein by reference each of the

⁷ *Id.*, Docket Nos. 45 and 46.

⁸ *Id.*, Docket No. 315 .

preceding allegations as if set forth completely herein.

28. NNU was engaged in an enterprise that has all of the characteristics of a Ponzi scheme.

29. NNU paid the Transfers to Defendant in furtherance of the Ponzi scheme.

30. At all relevant times hereto, NNU had at least one creditor.

31. The Transfers were paid or the obligations to Defendant were incurred by NNU without receiving a reasonably equivalent value in exchange for the Transfers or obligations.

32. At the time the Transfers were paid, NNU (a) was engaged or was about to be engaged in a business or transaction for which the remaining assets of NNU were unreasonably small in relation to the business or transaction; or (b) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as such debts became due.

33. Pursuant to Utah Code Ann. §§ 25-6-5(1)(b) and 25-6-8, the Receiver may avoid and recover the Transfers paid to Defendant or, in the event such Loan Proceeds were transferred, from the Defendant Does.

THIRD CLAIM FOR RELIEF

(Avoidance of Fraudulent Transfers Under Utah Code Ann. §§ 25-6-6(1) and 25-6-8)

34. The Receiver re-alleges and incorporates herein by reference each of the preceding allegations as if set forth completely herein.

35. NNU was engaged in a Ponzi scheme.

36. NNU paid the Transfers to Defendant in furtherance of the Ponzi scheme.

37. NNU had at least one creditor at the time that the Transfers were made or the

obligation to Defendant was incurred.

38. The Transfers were paid or the obligation to Defendant was incurred by NNU without NNU receiving a reasonably equivalent value in exchange for the Transfers or obligation.

39. NNU was insolvent at the time the Transfers were paid or the obligation was incurred, or became insolvent as a result of the Transfers or the obligation incurred.

40. Pursuant to Utah Code Ann. §§ 25-6-6(1) and 25-6-8, the Receiver may avoid and recover the Transfers to Defendant or, in the event such Transfers were transferred, from the Defendant Does.

FOURTH CLAIM FOR RELIEF
(Constructive Trust)

41. The Receiver re-alleges and incorporates herein by reference each of the preceding allegations as if set forth completely herein.

42. The Transfers paid were comprised of property of NNU and were made by NNU in furtherance of the Ponzi scheme.

43. Allowing Defendant to retain the Transfers would unjustly enrich Defendant and would be inequitable.

44. The Transfers can be traced to wrongful behavior.

45. An injustice would result if Defendant were allowed to keep the Transfers.

46. A constructive trust for the benefit of the receivership estate must be imposed for the benefit of the receivership estate in the amount of the Transfers paid by NNU to Defendant.

FIFTH CLAIM FOR RELIEF
(Unjust Enrichment)

47. The Receiver re-alleges and incorporates herein by reference each of the preceding allegations as if set forth completely herein.

48. The Transfers were comprised of property of NNU and were made by NNU in furtherance of the Ponzi scheme.

49. The Transfers conferred a benefit upon Defendant.

50. The Defendant knowingly benefitted from the Transfers.

51. Allowing Defendant to retain the Transfers would unjustly enrich Defendant and would be inequitable.

52. Absent return of the Transfers, the receivership estate will be damaged by Defendant' unjust enrichment and may have no adequate remedy at law.

53. Defendant must disgorge the amount of the Transfers.

SIXTH CLAIM FOR RELIEF
(Disgorgement)

54. The Receiver re-alleges and incorporates herein by reference each of the preceding allegations as if set forth completely herein.

55. The Transfers were paid as part of and in furtherance of a Ponzi scheme.

56. The Transfers were ill-gotten by Defendant.

57. Defendant has no claim to the Transfers paid by NNU, or derivatively, from NNU's investors.

58. The Transfers should be disgorged to the Receiver for the benefit of the receivership estate.

PRAYER FOR RELIEF

WHEREFORE, the Receiver prays for Judgment against Defendant as follows:

- A. Pursuant to the Receiver's First Claim for Relief, judgment against Defendant avoiding the Transfers under Utah Code Ann. §§ 25-6-5(a)(1) and 25-6-8, and permitting Plaintiff's recovery of the value of the Transfers in the total amount of \$234,192.60.
- B. Pursuant to the Receiver's Second Claim for Relief, judgment against Defendant avoiding the Transfers under Utah Code Ann. §§ 25-6-5(a)(2) and 25-6-8, and permitting Plaintiff's recovery of the value of the Transfers in the total amount of \$234,192.60.
- C. Pursuant to the Receiver's Third Claim for Relief, judgment against Defendant avoiding the Transfers under Utah Code Ann. §§ 25-6-6(1) and 25-6-8, and permitting Plaintiff's recovery of the value of the Transfers in the total amount of \$234,192.60.
- D. Pursuant to the Receiver's Fourth Claim for Relief, judgment against Defendant imposing a constructive trust for the benefit of the receivership estate on any and all Transfers.
- E. Pursuant to the Receiver's Fifth Claim for Relief, judgment against Defendant for unjust enrichment, and requiring Defendant to disgorge the Transfers in the total amount of \$234,192.60.
- F. Pursuant to the Receiver's Sixth Claim for Relief, entry of an Order requiring Defendant to disgorge the Transfers in the total amount of \$234,192.60.
- G. Judgment for pre-judgment interest, costs, and fees, including reasonable attorney's fees, as may be allowed by law.
- H. For such other and further relief as the Court deems just and proper.

DATED this 21st day of June, 2013.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt

Peggy Hunt

Chris Martinez

Jeffrey M. Armington

Attorneys for Receiver

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS R. Wayne Klein, as Receiver</p> <p>(b) County of Residence of First Listed Plaintiff <u>Salt Lake</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Peggy Hunt Dorsey & Whitney, LLP 136 South Main Street #1000, SLC, UT 84101; 801-933-7360</p>	<p>DEFENDANTS DREW BRINAR and JOHN DOES NOS. 1-5,</p> <p>County of Residence of First Listed Defendant <u>Arizona</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
---	---

<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p><i>(For Diversity Cases Only)</i></p> <table style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;"><input type="checkbox"/> 1</td> <td style="width:10%;"><input type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business In This State</td> <td style="width:10%;"><input type="checkbox"/> 4</td> <td style="width:10%;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4														
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
			<p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			<p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation

VI. CAUSE OF ACTION

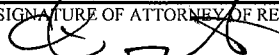
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 754

Brief description of cause:
Recovery of the value of transfers from Defendant for the benefit of the receivership estate.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 234,192.60 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE Jenkins DOCKET NUMBER 2:12-cv-00591

DATE 6/20/13 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____