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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,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>KEYBANK CARD SERVICES, KEYBANK CARDMEMBER SERVICES, and/or KEYBANK USA, NATIONAL ASSOCIATION,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">COMPLAINT</p> <p style="text-align: center;">(Ancillary to Case No. 2:12-cv-00591)</p> <p>Civil No. _____</p>
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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 KeyBank

Card Services, KeyBank Cardmember Services and/or KeyBank USA, National Association (collectively, “Defendant” or “Defendants”), 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 is an entity that received funds from NNU, and the Receiver seeks to avoid the transfers and/or recover the value of the transfers from Defendant for the benefit of the receivership estate established in the SEC Civil Enforcement Case discussed 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 the assets of Palmer “together with any and all subsidiaries and affiliated entities of National Note and Palmer. . . .”³

3. Upon information and belief, Defendants are entities that conduct business in the State of Utah.

JURISDICTION AND VENUE

4. Subject matter jurisdiction is proper in this Court pursuant to 28 U.S.C. §1367.

5. The Court has personal jurisdiction over Defendant.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 754.

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).

FACTS

The Ponzi Scheme

7. 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 above market rates.

8. 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.”

9. Typically, investment funds were deposited in a commingled bank account controlled by NNU.

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

The SEC Civil Case and the Receiver’s Appointment

11. 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

12. Also on June 25, 2012, as a result of the filing of the SEC Civil Enforcement Case, the Court entered a Temporary Restraining Order and Order to Show Cause against the defendants⁵ 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 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

13. 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

The Fraudulent Transfers

14. Upon information and belief, prior to the filing of the SEC Civil Enforcement Case, funds from NNU's comingled accounts in at least the amount of \$43,941.77 were transferred to Defendant relating to outstanding balances on credit card(s) issued by Defendant (all transfers to Defendant, including additional transfers that may be found through discovery or otherwise, are referred herein as the "Transfers"). The Transfers to the Defendant from January 1, 2007 forward are itemized in the schedule attached hereto as Exhibit A, which schedule is

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

⁵ *Id.*, Docket No. 7.

⁶ *Id.*, Docket No. 9.

⁷ *Id.*, Docket Nos. 45 and 46.

⁸ *Id.*, Docket No. 315.

incorporated herein by reference. To the extent additional transfers are found through discovery or otherwise, the Receiver will seek recovery of those transfers as well.

15. Upon information and belief, funds were also transferred to insiders of NNU, who used the funds to make payments to Defendant related to credit cards issued to NNU and/or insiders. To the extent that these transfers exist, they are included in the “Transfers” definition set forth above, and this Complaint may be amended to seek avoidance of such Transfers at a later date after further information is obtained.

FIRST CLAIM FOR RELIEF

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

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

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

18. The Transfers constitute an interest of NNU in property.

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

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

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

22. Pursuant to Utah Code Ann. §§ 25-6-5(1)(a) and 25-6-8, the Receiver may avoid and recover the Transfers to Defendant for the benefit of the receivership estate.

SECOND CLAIM FOR RELIEF

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

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

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

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

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

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

28. At the time the Transfers were made, 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.

29. Pursuant to Utah Code Ann. §§ 25-6-5(1)(b) and 25-6-8, the Receiver may avoid and recover the Transfers to Defendant for the benefit of the receivership estate.

THIRD CLAIM FOR RELIEF

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

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

31. NNU was engaged in a Ponzi scheme.

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

33. NNU had at least one creditor at the time that the Transfers were made or the obligations to Defendant were incurred.

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

35. NNU was insolvent at the time the Transfers were made or the obligations were incurred, or became insolvent as a result of the Transfers or the obligations incurred.

36. Pursuant to Utah Code Ann. §§ 25-6-6(1) and 25-6-8, the Receiver may avoid and recover the Transfers to Defendant for the benefit of the receivership estate.

FOURTH CLAIM FOR RELIEF
(Constructive Trust)

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

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

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

40. The Transfers can be traced to wrongful behavior.

41. An injustice would result if Defendant was allowed to keep the Transfers.

42. 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 made by NNU to Defendant.

FIFTH CLAIM FOR RELIEF
(Unjust Enrichment)

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

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

45. The Transfers conferred a benefit upon Defendant.

46. Upon information and belief, the Defendant knowingly benefitted from the Transfers.

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

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

49. Defendant must disgorge the amount of the Transfers for the benefit of the receivership estate.

SIXTH CLAIM FOR RELIEF
(Disgorgement)

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

51. The Transfers were made as part of and in furtherance of a Ponzi scheme.

52. The Transfers were ill-gotten by Defendant.

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

54. All Transfers made to Defendant 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.

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.

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.

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.

F. Pursuant to the Receiver's Sixth Claim for Relief, entry of an Order requiring Defendant to disgorge the Transfers.

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 24th day of June, 2013.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt

Peggy Hunt

Chris Martinez

Jeffrey Armington

Attorneys for Receiver

Account	Date	Type	#	Originator / Beneficiary	Orig / Bnf Bank	Orig / Bnf Bank #	Memo / Ref	Deposits	Withdrawals	Total Deposits	Total Withdrawals	Net	Notes
Key Bank Card Service								\$0.00	\$43,941.77	\$0.00	\$43,941.77	(\$43,941.77)	
1404	2/12/2008	Check	13617	Key Bank Card Service	Citibank	122401710	Acct 5416550025491219		\$76.54				
1404	3/11/2008	Check	13660	Key Bank Card Service	Citibank	122401710	Acct 5416550025491219		\$101.39				
1404	4/15/2008	Check	13740	Key Bank Card Service			Acct 541655025491219		\$132.57				
1530	2/1/2012	Checks Paid	1223	Key Bank Cardmember Services	US Bank	091000022	5480290003288510		\$11.93				
1530	10/21/2011	Wire Outs		Keybank Cardmember					\$29.43				
1530	10/28/2011	Wire Outs		Keybank Cardmember					\$900.00				
1404	1/12/2007	Check	12843	Key Bank Card Service			Acct 5416550025491219		\$184.84				
1404	2/12/2007	Check	12910	Key Bank Card Service					\$357.42				
1404	3/9/2007	Check	12982	Key Bank Card Service					\$323.24				
1404	4/13/2007	Check	13064	Key Bank Card Service					\$3,387.04				
1404	5/8/2007	Check	13093	Key Bank Card Service					\$935.37				
1404	6/8/2007	Check	13202	Key Bank Card Service					\$67.56				
1404	7/12/2007	Check	13248	Key Bank Card Service					\$165.36				
1404	8/10/2007	Check	13310	Key Bank Card Service					\$2,394.67				
1404	9/10/2007	Check	13358	Key Bank Card Service					\$6,021.70				
1404	10/11/2007	Check	13407	Key Bank Card Service					\$145.93				
1404	11/13/2007	Check	13472	Key Bank Card Service					\$5,503.49				
1404	12/14/2007	Check	13536	Key Bank Card Service					\$19.73				
1404	6/9/2009	Check	14418	Key Bank Card Service					\$971.95				
1404	7/13/2009	Check	14470	Key Bank Card Service					\$2,850.89				
1404	8/14/2009	Check	14516	Key Bank Card Service					\$487.04				
1404	9/8/2009	Check	14556	Key Bank Card Service					\$3,017.83				
1404	11/7/2008	Phone-Out		Key Bank Card Service			Acct 5416550025491219		\$10,285.85				Paybyphone-pyrrt 14099
3907	2/27/2012	Electronic Withdrawal		Cardmember Services					\$500.00				
1530	3/27/2012			Cardmember Services					\$2,000.00				

3907	4/26/2012 Electronic Withdrawal	Cardmember Services		\$2,000.00		
3907	5/29/2012 Electronic Withdrawal	Cardmember Services	Cardmember Services Electronic Payment 548029000328851 PPD ID: 5911111111	\$568.00		
3907	6/18/2012 Electronic Withdrawal	Cardmember Services	Elect Pymt 548029000328851 PPD ID: 5911111111	\$500.00		

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.)

I. (a) PLAINTIFFS
 R. Wayne Klein, as Receiver

(b) County of Residence of First Listed Plaintiff Salt Lake
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Peggy Hunt
 Dorsey & Whitney, LLP
 136 South Main Street #1000, SLC, UT 84101; 801-933-7360

DEFENDANTS
 KEYBANK CARD SERVICES, KEYBANK CARDMEMBER SERVICES, and/or KEYBANK USA, NATIONAL ASSOCIATION,

County of Residence of First Listed Defendant Salt Lake
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
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"/> 245 Tort Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <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	PERSONAL INJURY <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 PERSONAL PROPERTY <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 LABOR <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 IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <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)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<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 <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 \$** 43,941.77 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 6/24/13 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

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