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U.S. DISTRICT COURT

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DISTRICT OF UTAH

BY: _____
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IN THE UNITED STATES DISTRICT COURT
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,
an individual,

DEFENDANTS.

COMPLAINT

Case: 2:12cv00591

Assigned To : Jenkins, Bruce S.

Assign. Date : 6/25/2012

Description: SEC v. National Note of Uta
h et al

Plaintiff, Securities and Exchange Commission (the "Commission"), for its Complaint
against Defendants National Note of Utah, LC and Wayne L. Palmer (collectively,
"Defendants") alleges as follows:

INTRODUCTION

1. This matter involves an ongoing offering fraud and Ponzi scheme operated by
Wayne L. Palmer ("Palmer") through National Note of Utah, LC ("National Note"), an entity he

controls which operates out of offices located in West Jordan, Utah. Since at least 2004, Palmer has raised more than \$100 million from over 600 investors in National Note.

2. Palmer represents to investors in National Note that it purchases and sells collateralized loans such as mortgages, trust deed notes, options, leases and purchase contracts; underwrites and funds collateralized commercial and residential loans; and purchases, manages, and sells real property. Palmer tells investors that his and National Note's expertise in this area allows it to generate returns of 15 to 20% annually, and that for this reason it is able to guarantee its investors a 12% return.

3. Palmer also represents to investors that the 12% return will be derived from the real estate projects in which National Note invests, and that National Note has "a perfect record" in that it has never missed a payment of principal or interest to an investor.

4. Palmer omits to disclose to investors, however, that National Note is conducting all its business with related entities; that National Note itself is insolvent and unable to make investor interest payments according to their terms; and that investor returns are being paid from the funds of new investors.

5. Because investors are being repaid from new investor funds, Palmer's operation is a classic Ponzi scheme.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction by authority of Sections 20 and 22 of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. §§ 77t and 77v] and Sections 21 and Section 27 of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78u and 78aa].

7. Defendants, directly and indirectly, singly and in concert, have made use of the means and instrumentalities of interstate commerce and the mails in connection with the transactions, acts and courses of business alleged herein, certain of which have occurred within the District of Utah.

8. Venue for this action is proper in the District of Utah under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and under Section 27 of the Exchange Act [15 U.S.C. § 78aa] because certain of the transactions, acts, practices, and courses of business alleged in this Complaint took place in this district and because certain of the defendants reside in and transact business in this district.

9. Defendants, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices, and course of business alleged herein and in transactions, acts, practices, and courses of business of similar purport and object.

10. Defendants' conduct took place in connection with the offer, purchase and/or sale of promissory notes issued by National Note, which are securities.

DEFENDANTS

11. **National Note of Utah, LC** ("National Note") is a Utah limited liability company organized on December 30, 1992. National Note's principal place of business is in West Jordan, Utah. It is owned and controlled by Palmer.

12. **Wayne L. Palmer**, 57, is the sole owner and managing member of National Note. Palmer resides in West Jordan, Utah.

STATEMENT OF FACTS

BACKGROUND

1. Palmer has been in the real estate and real estate financing business since 1976. In 1992, Palmer formed National Note.
2. Palmer makes all business decisions for National Note and all decisions regarding the use of investor funds.
3. Palmer solicits investors to purchase National Note promissory notes which pay interest at a fixed annual rate of 12% with a minimum investment of \$25,000. These notes carry a term of between two and five years.
4. Palmer signs each investor promissory note on behalf of National Note.
5. The promissory notes issued by National Note are securities.
6. Palmer locates new investors primarily by word of mouth and referrals. In addition, he teaches real estate seminars across the country, and also makes contact with potential investors at these speaking engagements.
7. Palmer tells investors that National Note uses their funds to buy and sell mortgage notes, underwrite and make loans, or buy and sell real estate assets.
8. Palmer assures investors that he is able to pay the promised returns of 12% annually because National Note is successfully investing the funds in projects and assets earning annual returns of 15-20%.
9. Palmer represents to investors that both their 12% return and the safety of their principal are guaranteed and risk free. He claims that National Note "has a perfect record," in that it has never failed to make a principal or interest payment.

10. The promissory notes issued to investors state that they are secured by National Note's interest in "notes, trust deeds, and security agreements secured by real estate, mobile homes, and vehicles." This too gives investors confidence that their funds are at little risk.

11. National Note raised approximately \$50,000,000 in an unregistered offering of notes prior to September 2007.

12. In September 2007, National Note carried out a private placement of notes under Rule 506 of Regulation D and provided offerees with a private placement memorandum ("PPM") that included unaudited financial statements for the prior year. National Note raised approximately \$50,000,000 in this Rule 506 offering, which has been ongoing since 2007.

13. Some of the investors in notes since 2007 are accredited investors. These accredited investors were provided with the PPM.

14. Other investors were unaccredited, and these individuals did not receive the PPM. Instead, Palmer purports to have granted these unaccredited investors a direct security interest in a specific mortgage asset of National Note.

15. No registration statement has been filed as to any offering of notes by National Note.

16. Through at least February 2008, Palmer provided prospective investors with a glossy marketing brochure touting the National Note program. He also made this brochure available to attendees at the real estate seminars he conducted, on a table near the door.

17. Among other things, the brochure has a chart showing that National Note has paid a 12% return, without any variation whatsoever, from 1994 through 2003. It states that National Note's program provides double digit returns, monthly payments and safety of principal, all "Guaranteed."

18. The brochure also states that "National Note pays the interest payments to its clients even when the property owner fails to pay on the loan."

19. Some prospective investors received both the brochure and the PPM.

20. Both the brochure and PPM were prepared at Palmer's direction and under his supervision. The PPM was prepared by a law firm hired by Palmer.

21. Palmer is acting as an unregistered broker in connection with the offers and sales of notes, by actively and continuously soliciting investors and handling investor funds, and by paying commissions to third parties who solicit investors in behalf of National Note..

22. In total, since at least 2004 National Note has raised approximately \$100 million from more than 600 investors.

RELATED ENTITIES

23. In addition to National Note, Palmer has formed and controls approximately 50 related entities. Many of these entities (the "Related Entities") are formed under the umbrella of a holding company, Homeland Holding.

24. Since approximately 2010, National Note transacted business exclusively with the Related Entities.

25. Palmer represents to investors that the Related Entities are active in the real estate development business. He states that they are funded by loans from National Note, and that National Note holds mortgages from the Related Entities to secure its loans.

26. Palmer tells investors that the assets of the Related Entities secure their promissory notes, and that these assets are producing revenues sufficient to pay the 12% returns.

27. In fact, since 2009 the Related Entities have generated little revenue, and are not able to pay the debt service on their mortgages in favor of National Note.

28. In 2010, the Related Entities as a group generated revenue of only approximately \$300,000. By contrast, National Note's monthly obligation for investor returns is approximately \$1 million.

29. Palmer causes journal entries to be made in National Note's internal accounting system that allocate investor funds to the Related Entities, as if National Note has made a loan advance to them. He then journals the investor funds back to National Note as if the Related Entity has made an interest payment on its loan from National Note. Subsequently, the investor funds are paid out as returns to existing investors.

30. These internal accounting entries purport to represent revenue from the Related Entities; however, no funds are physically transferred between National Note and its Related Entities.

31. By conducting business exclusively with Related Entities, Palmer is able to advance funds to them on paper, giving the appearance that National Note's investments are successful, even though the entities have no revenue.

PONZI PAYMENTS

32. National Note investors initially deposit their funds into an account at JP Morgan Chase Bank titled "investor trust account." National Note immediately wires nearly all these investor funds to an account at Wells Fargo titled "investor interest account." National Note's internal accounting classifies the investor funds as income upon transfer to the Wells Fargo investor interest account.

33. From the Wells Fargo investor interest account, the funds are used to pay returns to other investors.

34. Palmer is a signatory on all the bank accounts of National Note and authorizes all transfers.

35. In 2009, National Note received approximately \$18.6 million from new investors and used approximately \$14 million (75%) of these new investor funds to make principal and interest payments to earlier investors.

36. In 2010, National Note received approximately \$22 million from new investors and used approximately \$18 million (81%) of these new investor funds to make principal and interest payments to earlier investors.

37. In 2011, National Note took in more than \$14.6 million from new investors and used approximately \$12.7 million (79%) of these new investor funds to make interest and principal payments to earlier investors.

38. For the period January 1, 2012 to March 31, 2012, National Note received approximately \$913,958 from new investors and used approximately \$740,105 (81%) of these new investor funds to make interest and principal payments to earlier investors.

39. Since at least 2009, National Note would not have been able to survive without an influx of new investor funds.

40. In October 2011, National Note stopped making investor interest payments according to their terms to most investors. While some investors have received sporadic payments, none has received the full amount due him.

41. When investors have complained to Palmer about the late or missing payments, he urges them to be patient and promises that payments will resume soon.

42. Although Palmer has stopped making payments according to the terms of the notes, he has continued to solicit new investors, while not disclosing that National Note is delinquent in making investor payments.

MISREPRESENTATIONS AND OMISSIONS

43. In its PPM and its marketing materials, National Note claims it uses investors' funds for hard money loans, the purchase of notes, and the acquisition of real estate. Palmer tells investors he deploys their funds in projects that earn sufficient returns to pay the promised 12% annual return.

44. Palmer failed to inform investors, and the National Note PPM and marketing brochure failed to disclose, that National Note simply used a majority of investors' funds to make principal and interest payments to earlier investors.

45. The unaudited financial statements provided to investors in the PPM falsely indicate that National Note generates income in the form of note interest sufficient to make investor interest payments. The PPM states that, "[i]nterest and principle [sic] payments on the Notes offered pursuant to this Offering Memorandum are paid out of the cash flow from the loans National Note makes to others."

46. National Note and Palmer never disclose to investors that National Note's investments are not paying sufficient income, in fact, are paying almost no income. Investor funds are simply reclassified as interest income as part of its internal accounting procedures and then paid out to earlier investors.

47. National Note's marketing brochure falsely assures investors that they will receive double digit returns, monthly payments, and safety of principal, "Guaranteed," and that investors can expect "12% returns with complete safety of principal."

48. In reality, National Note's returns are not guaranteed, and in fact are not being paid currently; and the investment does involve significant risk.

49. Palmer failed to disclose to new investors that as of October 2011 he had stopped making interest payments according to their terms to earlier investors.

50. Palmer neglected to tell investors that, since approximately 2010, National Note has transacted exclusively with the Related Entities. Through accounting entries he is creating the illusion that National Note's investments in the Related Entities are producing revenue, even though the Related Entities have generated little or no revenue for several years.

51. Investor promissory notes falsely state that they are secured by assets owned by National Note, leading the investors to believe that they have a lien and can foreclose on an asset in order to recover their investment. In reality, however, the accredited note holders have no lien or security interest in any asset whatsoever and are unsecured creditors of National Note, relying only on its promise to pay.

52. The misrepresentations and omissions detailed above are material to a reasonable investor.

53. Palmer acted with scienter. He controlled National Note's bank accounts and authorized all transfers of funds. He also made all the business decisions for National Note. He was well aware of the contents of both the marketing brochure and the PPM, since they were prepared at his direction and under his supervision. He knew that the representations being made to investors regarding the company's business and the use of investor funds were false.

**FIRST CAUSE OF ACTION
EMPLOYMENT OF A DEVICE, SCHEME OR ARTIFICE TO DEFRAUD
Violation of Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)]**

54. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 53, above.

55. Defendants, and each of them, by engaging in conduct described above, directly or indirectly, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, with scienter, employed devices, schemes, or artifices to defraud.

56. By reason of the foregoing, Defendants, and each of them, directly or indirectly, violated, and unless restrained and enjoined by this Court, will continue to violate, Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

**SECOND CAUSE OF ACTION
FRAUD IN THE OFFER AND SALE OF SECURITIES
Violations of Section 17(a)(2) and (3) of the Securities Act
[15 U.S.C. § 77q(a)(2) and (3)]**

57. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 53, above.

58. Defendants, and each of them, by engaging in the conduct described above, directly and indirectly, in the offer and sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, obtained money or property by means of untrue statements of material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and engaged in transactions, practices, or courses of business which operate or would operate as a fraud or deceit upon the purchaser.

59. By reason of the foregoing, Defendants, and each of them, directly or indirectly, violated, and unless restrained and enjoined will continue to violate, Section 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

**THIRD CAUSE OF ACTION
FRAUD IN CONNECTION WITH THE PURCHASE AND
SALE OF SECURITIES**

**Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5
thereunder [17 C.F.R. § 240.10b-5]**

60. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 53, above.

61. Defendants, and each of them, by engaging in the conduct described above, directly or indirectly, by the use of means or instrumentalities of interstate commerce or use of the mails, in connection with the purchase or sale of securities, with scienter, (1) employed devices, schemes, or artifices to defraud; (2) made untrue statements of material fact or omitted to state a material fact necessary in order to make statements made, in light of the circumstances under which they were made not misleading; or (3) engaged in acts, practices, or courses of business that operated or would operate as a fraud and deceit upon other persons.

62. By reason of the foregoing, Defendants, and each of them, violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

**FOURTH CAUSE OF ACTION
OFFER AND SALE OF UNREGISTERED SECURITIES**

Violation of Sections 5(a) and (c) of the Securities Act [15 U.S.C. § 77e(a) and (c)]

63. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 53, above.

64. Defendants, and each of them, by engaging in the conduct described above, directly or indirectly, through use of the means or instruments of transportation or communication in interstate commerce or the mails, offered to sell or sold securities or, directly or indirectly, or carried such securities through the mails or in interstate commerce, for the purpose of sale or delivery after sale.

65. No registration statement has been filed with the Commission or has been in effect with respect to these securities.

66. By reason of the foregoing, Defendants, directly or indirectly violated, and unless enjoined will continue to violate, Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

**FIFTH CAUSE OF ACTION
OFFER AND SALE OF SECURITIES BY AN
UNREGISTERED BROKER OR DEALER
Violation of Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)]**

67. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 53, above.

68. Defendant Palmer, directly or indirectly, made use of the mails or the means or instrumentalities of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase and sale of, securities without being registered as a broker or dealer with the Commission or associated with a broker-dealer registered with the Commission.

69. By reason of the foregoing, Defendant Palmer violated, and unless restrained and enjoined will continue to violate, Section 15(a) of the Exchange Act [15 U.S.C. 78o(a)].

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court:

I

Issue findings of fact and conclusions of law that Defendants committed the violations charged herein.

II

Issue in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure orders that temporarily, preliminarily and permanently enjoin National Note and Palmer and their

officers, agents, servants, employees, attorneys, and accountants, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, and each of them, from engaging in transactions, acts, practices, and courses of business described herein, and from engaging in conduct of similar purport and object in violation of Sections 5(a), 5(c) and 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

III

Issue in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure orders that temporarily, preliminarily and permanently enjoin Palmer and his officers, agents, servants, employees, attorneys, and accountants, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, and each of them, from engaging in transactions, acts, practices, and courses of business described herein, and from engaging in conduct of similar purport and object in violation of Section 15(a) of the Exchange Act.

IV

Issue, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, orders that temporarily, preliminarily and permanently enjoin Defendants, and their officers, agents, servants, employees, attorneys, and accountants, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, and each of them, from: (A) transferring, changing, wasting, dissipating, converting, concealing, or otherwise disposing of, in any manner, any funds, assets, claims, or other property or assets owned or controlled by, or in the possession or custody of these Defendants; and (B) transferring, assigning, selling, hypothecating, or otherwise disposing of any assets of National

Note or related entities, including but not limited to those entities identified in accompanying pleadings.

V

Issue in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure orders that temporarily, preliminarily and permanently restrain and enjoin Defendants, and each of them, and their officers, agents, servants, employees, attorneys, and accountants, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, and each of them, from destroying, mutilating, concealing, transferring, altering, or otherwise disposing of, in any manner, books, records, computer programs, computer files, computer printouts, correspondence, including e-mail, whether stored electronically or in hard copy, memoranda, brochures, or any other documents of any kind that pertain in any manner to the business of Defendants.

VI

Enter an order directing Defendants, and each of them, to pay civil money penalties pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act.

VII

Enter an order directing Defendants to disgorge all ill-gotten gains received during the period of violative conduct and pay prejudgment interest on such ill-gotten gains.

VIII

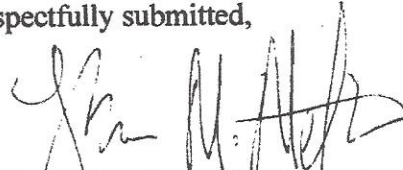
Grant such further equitable relief as this Court deems just, appropriate, and necessary, including, but not limited to, a freeze of assets and the appointment of a receiver for National Note and the Related Entities.

IX

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

Dated June 25, 2012.

Respectfully submitted,



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