

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. CEDRIC JOHNSON, CYNTHIA JOHNSON, and JOHN DOES 1-5, Defendants.</p>	<p>COMPLAINT (Ancillary to Case No. 2:12-cv-00591) Civil No. 2:14cv00479 Magistrate Judge Paul M. Warner</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 Cedric Johnson, Cynthia Johnson, and John Does 1-5 (“Defendant Does” and together with Cedric Johnson and Cynthia Johnson, “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, Defendants were NNU investors who received monies from NNU, and the Receiver seeks to avoid the transfers and/or recover the value of the transfers from Defendants for the benefit of the receivership estate established in the SEC Civil Enforcement Case discussed in greater detail below. Additionally, the Receiver seeks a declaration that Defendants have no valid interest in real property of the Receivership Estate.

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 Cedric Johnson is a resident of or is domiciled in in the State of Virginia.

4. Upon information and belief, Defendant Cynthia Johnson is a resident of or is domiciled in in the State of Virginia.

5. Upon information and belief, Defendant Does are currently unknown parties who have received monies or property from NNU, or are persons to whom Cynthia and/or Cedric

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).

Johnson have transferred monies or property received from NNU.

JURISDICTION AND VENUE

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

FACTS

The Ponzi Scheme

9. 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.

10. 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.”

11. 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”).

12. 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.

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

Defendants’ Investment and the Transfers

14. Starting on or about 1994, Cedric Johnson commenced investing with NNU.

Histories of Cedric Johnson's investment(s) and various accounts from 1994 through the present are attached hereto as Exhibit A.

15. Cedric Johnson paid NNU cash in the total amount of \$862,482.09 from 1994 through 2007 (the "Cedric Principal Cash Investment").

16. As set forth on Exhibit A, NNU transferred a total of \$1,057,601.86 in cash to Cedric Johnson (the "Cedric Total Transfers").

17. Of the Cedric Total Transfers, \$195,119.77 is an amount that is over and above the Cedric Principal Cash Investment (the "Cedric False Profit Transfers") (collectively, the Cedric Total Transfers and the Cedric False Profit Transfers are the "Cedric Transfers").⁴

18. Starting on or about 2005, Cynthia Johnson commenced investing with NNU. A history of Cynthia Johnson's investment is attached hereto as Exhibit B.

19. Cynthia Johnson paid NNU cash in the total amount of \$47,399.52 from 2005 through 2007 (the "Cynthia Principal Cash Investment").

20. As set forth on Exhibit A, NNU transferred a total of \$56,077.58 in cash to Cynthia Johnson (the "Cynthia Total Transfers").

21. Of the Cynthia Total Transfers, \$8,678.06 is an amount that is over and above the Cynthia Principal Cash Investment (the "Cynthia False Profit Transfers") (collectively, the Cynthia Total Transfers and the Cynthia False Profit Transfers are the "Cynthia Transfers").⁵ Collectively the Cedric Transfers and the Cynthia Transfers are the "Transfers").

⁴ See Exh. A.

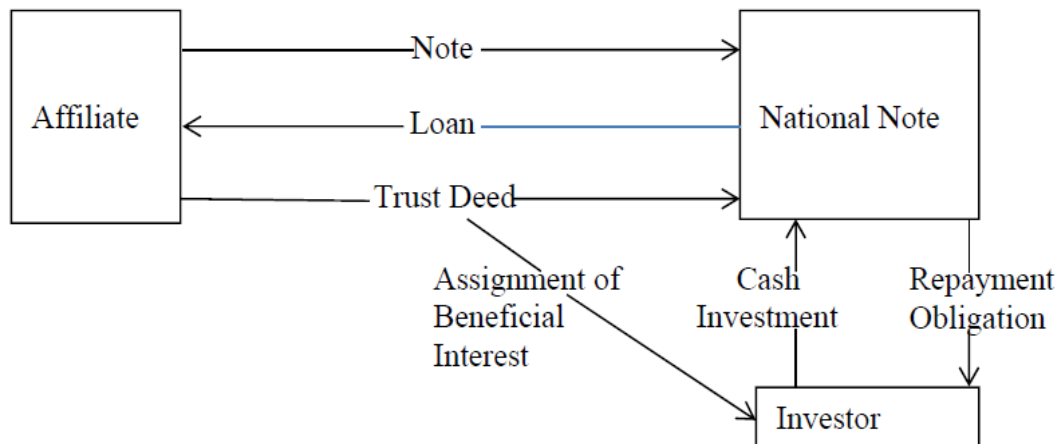
⁵ See Exh. B.

National Note's Investment Scheme

22. National Note represented to investors that their investment in National Note would be secured by real property. National Note did not own real property sufficient to secure these investments. Accordingly, National Note devised a scheme pursuant to which National Note would purport to grant security to investors, when in truth, National Note would take investors' money and give them no security in return. National Note's scheme was as follows.

23. First, National Note would purport to lend money to an affiliated entity (the "Affiliate"). The Affiliate would execute a promissory note, pursuant to which it agreed to repay the loan to National Note (the "Affiliate Note"). The Affiliate Note would then be secured by a Trust Deed executed by the Affiliate in favor of National Note (the "Affiliate Trust Deed").

24. National Note then solicited money from investors by promising that their investment would be secured by Assignments of Beneficial Interest in Trust Deed (the "ABIs"). The ABIs purported to assign National Note's "right, title and interest" in the Affiliate Trust Deed. National Note did not assign its interest in the Affiliate Note to the investors. The following diagram shows National Note's scheme:



25. The investors purportedly received an assignment of National Note's secured interest in real property. This secured interest gave National Note the right to foreclose on the underlying real property if the Affiliate defaulted on the Affiliate Note. If, however, the Affiliate never defaulted and the Affiliate Note was paid, the Affiliate Trust Deed was cancelled and the secured interest disappeared.

26. The Affiliate was not a party to any of the ABIs and there was no privity of contract between the Affiliate and the investors. Accordingly, there was no contract pursuant to which the Affiliate was obligated to pay the Affiliate Note payments to the investors instead of National Note. Moreover, the ABI did not assign National Note's rights under the Affiliate Note to the investors. Accordingly, the ABI did not give the Investor the right to demand payment under the Affiliate Note.

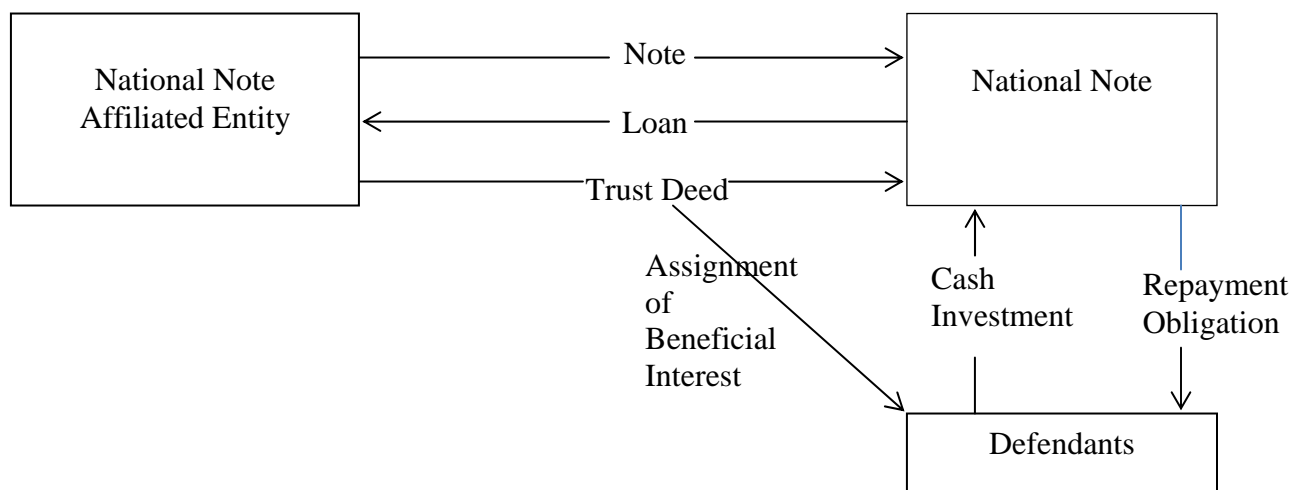
27. The end result of this scheme was that the investors received no security at all. If National Note breached its agreement with the investor, the investor had no foreclosure rights as a result of the assignment of National Note's interest in the Affiliate Deed of Trust, because the Affiliate Deed of Trust was security for the Affiliate Note, not the agreement between National Note and the investors.

Defendants Invest with National Note

28. As outlined above, Defendants invested with National Note. Certain of their investments were documented by a Promissory Note (the "Johnson Note").

29. Consistent with the financing scheme outlined above, the Johnson Note was not secured by a deed of trust. Instead, National Note executed two separate Assignments of Beneficial Interest in Trust Deed in favor of Johnson (the "Johnson ABIs"). The Johnson ABIs

purported to assign National Note's interest in Trust Deeds for certain real property (the "Real Property"). The Trust Deeds were executed by a National Note affiliate in favor of National Note (the "Trust Deed"). The Trust Deeds were security for purported loans between National Note and the National Note affiliate (the "Notes"). National Note did not assign its beneficial interest in the Notes to Defendants. The following diagram illustrates the transactions:



31. National Note did not execute a trust deed for the Real Property in favor of Defendants. Moreover, the National Note affiliate is not a party to the Johnson ABIs. Indeed, there is no privity of contract between the National Note affiliate and Defendants. Finally, the Johnson ABIs did not assign National Note's rights under the Note to Defendants. Accordingly, the Johnson ABIs did not give Defendants the right to demand payment under the Note.

32. All that Defendants purported to receive through the Johnson ABIs was an assignment of National Note's security interest in the Trust Deeds. National Note's security interest merely gave National Note the right to foreclose on the Real Property if the National Note affiliate defaulted on the Notes. If, however, the National Note affiliate never defaulted

and the Notes were paid, the Trust Deeds were cancelled and the secured interest disappeared, regardless of whether National Note honored the Johnson Note.

33. Conversely, the Johnson ABIs gave Defendants no right to foreclose on the Real Property, had National Note defaulted on the Johnson Note. This is because the Trust Deed did not secure the Johnson Note. Accordingly, as a matter of law and fact, the Johnson ABIs gave no security to Defendants. The Johnson ABIs were nothing more than an unsecured note.

34. Moreover, the amount of the Johnson's investment was returned in full to Johnson. Thus, even if the Johnson ABIs were a valid security instrument, the obligation has been satisfied and the Johnson ABIs should be released.

The SEC Civil Case and the Receiver's Appointment

35. 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.⁶

36. 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

⁶ SEC Civil Enforcement Case, Docket No. 1 (Complaint).

defendants⁷ and the Receivership Order appointing the Receiver.⁸ 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.⁹

37. 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.¹⁰

FIRST CLAIM FOR RELIEF

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

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

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

40. NNU made the Transfers to Defendants in furtherance of the Ponzi scheme.

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

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

43. Pursuant to Utah Code Ann. §§ 25-6-5(1)(a) and 25-6-8, the Receiver may avoid and recover the Transfers to Defendants.

⁷ *Id.*, Docket No. 7.

⁸ *Id.*, Docket No. 9.

⁹ *Id.*, Docket Nos. 45 and 46.

¹⁰ *Id.*, Docket No. 315.

44. Alternatively, to the extent that Defendants took in good faith and for a reasonably equivalent value, the Receiver may avoid and recover the Cynthia False Profit Transfers and the Cedric False Profit Transfers from Defendants.

SECOND CLAIM FOR RELIEF

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

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

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

47. NNU made the Transfers to Defendants in furtherance of the Ponzi scheme.

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

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

50. 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.

51. Pursuant to Utah Code Ann. §§ 25-6-5(1)(b) and 25-6-8, the Receiver may avoid and recover the Transfers to Defendants.

52. Alternatively, to the extent that Defendants took in good faith and for a reasonably equivalent value, the Receiver may avoid and recover the Cynthia False Profit

Transfers and the Cedric False Profit Transfers from Defendants

THIRD CLAIM FOR RELIEF

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

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

54. NNU was engaged in a Ponzi scheme.

55. NNU made the Transfers to Defendants in furtherance of the Ponzi scheme

56. NNU had at least one creditor at the time that the Transfers were made or the obligation to Defendant was incurred.

57. The Transfers were made or the obligation to Defendants was incurred by NNU without NNU receiving a reasonably equivalent value in exchange for the Transfers or obligation.

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

59. Pursuant to Utah Code Ann. §§ 25-6-6(1) and 25-6-8, the Receiver may avoid and recover the Transfers to Defendants.

60. Alternatively, to the extent that Defendants took in good faith and for a reasonably equivalent value, the Receiver may avoid and recover the Cynthia False Profit Transfers and the Cedric False Profit Transfers from Defendants.

FOURTH CLAIM FOR RELIEF

(Constructive Trust)

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

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

63. Allowing Defendants to retain the Transfers would unjustly enrich Defendants and would be inequitable.

64. The Transfers can be traced to wrongful behavior.

65. An injustice would result if Defendants were allowed to keep the Transfers.

66. 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, or in the alternative if Defendants acted in good faith, for the Cynthia False Profit Transfers and the Cedric False Profit Transfers.

FIFTH CLAIM FOR RELIEF
(Unjust Enrichment)

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

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

69. The Transfers conferred a benefit upon Defendants.

70. The Defendants knowingly benefitted from the Transfers.

71. Allowing Defendants to retain the Transfers would unjustly enrich Defendants and would be inequitable.

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

73. Defendants must disgorge the amount of the Transfers, or if Defendants acted in good faith, the Cynthia False Profit Transfers and the Cedric False Profit Transfers, for the benefit of the receivership estate.

SIXTH CLAIM FOR RELIEF
(Disgorgement)

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

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

76. The Transfers were ill-gotten by Defendant.

77. Defendants have no claim to the Transfers made by NNU, or derivatively, from NNU's investors.

78. All Transfers made to Defendants, or if Defendants acted in good faith, the Cynthia False Profit Transfers and the Cedric False Profit Transfers, should be disgorged to the Receiver for the benefit of the receivership estate.

SEVENTH CLAIM FOR RELIEF
(Declaratory Judgment)

79. The Receiver incorporates by reference herein all previous paragraphs of this Complaint.

80. An actual controversy has arisen between the Receiver and Defendant regarding the enforceability of the Johnson ABIs.

81. The Receiver is entitled to a declaratory judgment that:

- a. The Johnson ABIs are invalid and never gave Defendants any security for their investment with National Note; or, alternatively;

- b. The obligation purportedly secured by the Johnson ABIs have been satisfied, and thus, the Johnson ABIs must be released.

82. A judicial declaration is necessary and appropriate at this time under the circumstances in order that the respective rights and duties of the parties may be determined.

PRAYER FOR RELIEF

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

A. Pursuant to the Receiver's First Claim for Relief, judgment against Defendants 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 \$1,113,679.44, or alternatively, the amount of the Cedric False Profit Transfers and the Cynthia False Profit Transfers, in the total amount of \$203,797.83.

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 \$1,113,679.44, or alternatively, the amount of the Cedric False Profit Transfers and the Cynthia False Profit Transfers, in the total amount of \$203,797.83.

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 \$1,113,679.44, or alternatively, the amount of the Cedric False Profit Transfers and the Cynthia False Profit Transfers, in the total amount of \$203,797.83.

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, or alternatively, all Cynthia False Profit Transfers and/or all Cedric False Profit 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 \$1,113,679.44, or alternatively, the amount of the Cedric False Profit Transfers and the Cynthia False Profit Transfers, in the total amount of \$203,797.83.

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 \$1,113,679.44, or alternatively, the amount of the Cedric False Profit Transfers and the Cynthia False Profit Transfers, in the total amount of \$203,797.83.

G. Pursuant to the Receiver's Seventh Claim for Relief, entry of an Order and Judgment declaring that:

- a. The Johnson ABIs are invalid and never gave Defendants any security for their investments with National Note.
- b. The obligation purportedly secured by the Johnson ABIs has been satisfied, and thus, the Johnson ABIs must be released.

H. Judgment for pre-judgment interest, costs, and fees, including reasonable attorney's fees, as may be allowed by law.

I. For such other and further relief as the Court deems just and proper.

DATED this 31st day of December, 2013.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt

Peggy Hunt

Chris Martinez

Jeffrey M. Armington

Attorneys for Receiver