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**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

<p>R. WAYNE KLEIN, as Receiver, Plaintiff, v. INNOVATIVE SERVICES, LLC; MICHAEL D. MEMMOTT, JR., SAWTELL CAPITAL, LLC; and JOHN DOES NOS. 1-5, Defendants.</p>	<p>FIRST AMENDED COMPLAINT (Ancillary to Case No. 2:12-cv-00591) Civil No. 2:13cv00566 Honorable David Nuffer</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 First Amended Complaint

against Innovative Services, LLC, Michael D. Memmott, Jr., and Sawtell Capital, LLC and John Does Nos. 1-5 (“Defendant Does”) (collectively, “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 borrowed or otherwise obtained funds from NNU, and have not returned those funds to NNU. The Receiver seeks to recover those funds 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, Innovative Services, LLC (“Innovative”) is a Utah limited liability company with its principal place of business in Utah.

4. Upon information and belief, Michael D. Memmott, Jr. (“Memmott”) is a Utah resident.

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).

5. Upon information and belief, Sawtell Capital, LLC (“Sawtell”) is a Utah limited liability company with its principal place of business in Utah.

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

JURISDICTION AND VENUE

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

8. The Court has personal jurisdiction over Defendants.

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

FACTS

The Ponzi Scheme

10. 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.

11. 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.”

12. 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”).

13. 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.

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

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

The Contract

16. National Note and Sawtell entered into a written contract, entitled Multi-Advance Commercial Note (the "Contract"). A true and correct copy of the Contract is attached hereto as Exhibit A.

17. The Contract required National Note to lend \$180,000 to Sawtell.

18. The Contract required Sawtell to repay National Note the \$180,000, plus twelve per cent interest. In case of default, the interest rate increased to 18%.

19. Memmott signed the Contract, and pursuant to its terms, agreed to personally repay National Note the \$180,000 that National Note lent to Sawtell.

20. National Note distributed the \$180,000 to Sawtell and Sawtell's designees, including Memmott.

21. Sawtell has failed to repay the \$180,000. On information and belief, Sawtell has only repaid \$10,000, leaving a principal balance owed of \$170,000 plus interest.

22. Memmott has failed to repay the \$180,000.

23. The Contract states that National Note may recover all fees and costs, including attorneys' fees incurred in any legal action brought to recover the amount owed to National Note under the Contract.

The Amounts Transferred to Others

24. Memmott instructed National Note to distribute \$20,000 of the loan proceeds directly to Innovative (the “Transfers”).

25. On information and belief, NNU has received only \$10,000 in payments in return for the Transfers.

The SEC Civil Case and the Receiver’s Appointment

26. 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

27. 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 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

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

28. 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
(Breach of Contract)

29. The Receiver realleges and incorporates herein by reference each of the preceding allegations as if set forth completely herein.

30. The Contract is a valid, enforceable and legally binding contract, pursuant to which Sawtell and Memmott agreed to repay the amount that National Note loaned to Sawtell.

31. National Note has complied with all obligations it owed under the Contract.

32. Sawtell and Memmott have breached the Contract by failing to repay the amount lent to Sawtell by National Note.

33. Sawtell and Memmott's breach of the contract has damaged National Note. Specifically, Sawtell and Memmott have failed to repay National Note the \$170,000, plus interest, that they owe to National Note.

34. National Note is entitled to a judgment in the amount of \$170,000 caused by Sawtell and Memmott's breach of contract, plus applicable pre-judgment and post-judgment interest, costs, and attorneys' fees.

⁷ *Id.*, Docket Nos. 45 and 46.

⁸ *Id.*, Docket No. 315 .

SECOND CLAIM FOR RELIEF

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

35. The Receiver realleges and incorporates herein by reference each of the preceding allegations as if set forth completely herein.

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

37. NNU made the Transfers to Innovative in furtherance of the Ponzi scheme.

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

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

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

THIRD CLAIM FOR RELIEF

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

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

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

43. NNU paid the Transfers to Innovative in furtherance of the Ponzi scheme.

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

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

46. 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.

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

FOURTH CLAIM FOR RELIEF

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

48. The Receiver realleges and incorporates herein by reference each of the preceding allegations as if set forth completely herein.

49. NNU was engaged in a Ponzi scheme.

50. NNU paid the Transfers to Innovative in furtherance of the Ponzi scheme.

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

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

53. 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.

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

recover the Transfers to Innovative or, in the event such Transfers were transferred, from the Defendant Does.

FIFTH CLAIM FOR RELIEF

(Constructive Trust)

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

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

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

58. The Transfers can be traced to wrongful behavior.

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

60. 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 Defendants.

SIXTH CLAIM FOR RELIEF

(Unjust Enrichment)

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

62. The \$170,000 transferred to Defendants was property of National Note.

63. The transfer of \$170,000 conferred a benefit upon Defendants.

64. The Defendants knowingly benefitted from the transfer to them of \$170,000.

65. Allowing Defendants to retain the \$170,000 transferred to them would unjustly enrich Defendants and would be inequitable.

66. Absent return of the \$170,000 transferred to them, the receivership estate will be damaged by Defendants' unjust enrichment and may have no adequate remedy at law.

67. Defendants must disgorge the \$170,000 transferred to them.

SEVENTH CLAIM FOR RELIEF
(Disgorgement)

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

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

70. The Transfers were ill-gotten by Innovative.

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

72. 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 Defendants as follows:

A. Pursuant to the Receiver's First Claim for Relief, judgment against Sawtell and Memmott and in favor of Plaintiff in the total amount of \$170,000.00, plus prejudgment interest, costs, and attorneys' fees.

B. Pursuant to the Receiver's Second Claim for Relief, judgment against Innovative 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 \$10,000.00.

C. Pursuant to the Receiver's Third Claim for Relief, judgment against Innovative

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 \$10,000.00.

D. Pursuant to the Receiver's Fourth Claim for Relief, judgment against Innovative 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 \$10,000.00.

E. Pursuant to the Receiver's Fifth Claim for Relief, judgment against Innovative imposing a constructive trust for the benefit of the receivership estate on any and all Transfers.

F. Pursuant to the Receiver's Sixth Claim for Relief, judgment against Defendants for unjust enrichment, and requiring Defendants to disgorge \$170,000.00 to National Note.

G. Pursuant to the Receiver's Seventh Claim for Relief, entry of an Order requiring Innovative to disgorge the Transfers in the total amount of \$10,000.00.

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 2nd day of July, 2014.

DORSEY & WHITNEY LLP

/s/ Chris Martinez

Peggy Hunt
Chris Martinez
Jeffrey M. Armington
Attorneys for Receiver

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that the above **AMENDED COMPLAINT** was filed with the Court this 2nd day of July, 2014 and served on all parties who have requested notice in this case.