

Peggy Hunt (Utah State Bar No. 6060)  
Chris Martinez (Utah State Bar No. 11152)  
Nathan S. Seim (Utah State Bar No. 12654)

**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](mailto:hunt.peggy@dorsey.com)

[martinez.chris@dorsey.com](mailto:martinez.chris@dorsey.com)

[seim.nathan@dorsey.com](mailto:seim.nathan@dorsey.com)

*Attorneys for Court-Appointed Receiver R. Wayne Klein*

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

R. Wayne Klein, as Receiver of National Note  
of Utah, LC *et al.*,

Plaintiff,

v.

Nathan and Elise Bingham, Ronald Crossman,  
the Devyn Gilio-Flanner Trust, the Flamm  
Family Foundation, Lila Frandsen, Jeffrey Todd  
Heaton, the Holgate Family Trust, Mark and  
Susan Mathison, Ruby Packer, Keith and  
Geraldine Van Alstyne, Vetco, Inc., Lori and  
Ken Webb, Ethan Jack Wilson, and Roxane  
Wilson,

Defendants.

**COMPLAINT**  
**(Ancillary to Case No. 2:12-cv-00591)**

Case No. \_\_\_\_\_

Judge \_\_\_\_\_

R. Wayne Klein, the Court-Appointed Receiver (the “Receiver”) of National Note of Utah, LC, its subsidiaries and affiliates (collectively, “NNU”), and the assets of Wayne LaMar Palmer (“Palmer”), hereby files this Complaint against the above-captioned Defendants (collectively, the “Defendants”). In support hereof, the Receiver states as follows:

**PARTIES**

1. Plaintiff Receiver was appointed by this Court as the receiver for NNU on June 25, 2012.

2. Upon information and belief, Nathan and Elise Bingham are a married couple residing in Idaho.

3. Upon information and belief, Ronald Crossman is an individual residing in Utah.

4. Upon information and belief, the Devyn Gilio-Flanner Trust is a California trust.

5. Upon information and belief, the Flamm Family Foundation is a Utah entity.

6. Upon information and belief, Lila Frandsen is an individual residing in Utah.

7. Upon information and belief, Jeffrey Todd Heaton is an individual residing in Utah.

8. Upon information and belief, the Holgate Family Trust is an Idaho trust.

9. Upon information and belief, Mark and Susan Mathison are a married couple residing in Utah.

10. Upon information and belief, Ruby Packer is an individual residing in Utah.

11. Upon information and belief, Keith and Geraldine Van Alstyne are a married couple residing in Arizona.

12. Upon information and belief, Vetco, Inc. is a Nevada corporation.

13. Upon information and belief, Ken and Lori Webb are a married couple residing in Utah.

14. Upon information and belief, Ethan Jack Wilson is an individual residing in Nevada.

15. Upon information and belief, Roxane Wilson is an individual residing in Utah.

16. All Defendants are persons or entities that placed funds with NNU in exchange for promissory notes or other types of consideration.

### **JURISDICTION AND VENUE**

17. Jurisdiction is proper pursuant to 28 U.S.C. §§ 1367 and 754.

18. Venue is proper pursuant to 28 U.S.C. §§ 754 and 1692.

### **FACTUAL BACKGROUND**

#### ***NNU's Operation as a Ponzi Scheme***

19. On June 25, 2012, the Securities & Exchange Commission filed with the Court a complaint against NNU (the "SEC Complaint"), Case No. 2:12-cv-00591.<sup>1</sup>

20. The SEC Complaint alleges that Palmer operated NNU as a classic "Ponzi scheme" and asserts various causes of action for securities fraud.

21. Specifically, the SEC Complaint states that from at least 2004, Palmer solicited and raised more than \$100 million from over 600 "investors."

22. Additionally, the SEC Complaint alleges that Palmer represented to investors that NNU purchased and sold collateralized loans, as well as funded, managed and sold real property, and due to NNU's expertise and knowledge in these areas, the company was able to generate significant returns and guarantee investors at least a 12% return.

23. According to the SEC Complaint, however, at all times relevant hereto, NNU was insolvent and unable to make investor payments according to its contractual terms. As such, NNU paid investors from the investment funds of new investors.

---

<sup>1</sup> NNU Case Docket No. 1.

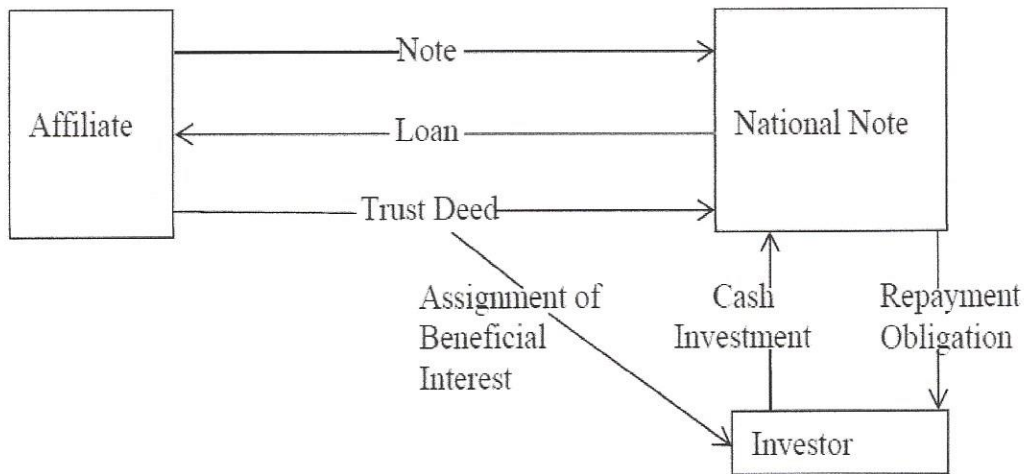
NNU's Investment Scheme (Assignments of Beneficial Interest)

24. NNU represented to investors that their investment in NNU would be secured by real property. NNU, however, did not own real property sufficient to secure these investments. Thus, NNU devised a scheme whereby it would purport to grant investors a security interest in real property, when in actuality, NNU would take investors' money and give them no security in return. NNU's scheme went as follows.

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

(b) Next, NNU would solicit money from investors by promising them that their investment would be secured by Assignments of Beneficial Interest in Trust Deed (the "ABIs"), which purported to assign to the investors NNU's "right, title and interest" in the Affiliate Trust Deed. NNU, however, did not assign its interest in the Affiliate Note to the investors, as required by applicable law. The following diagram shows NNU's scheme:





25. Pursuant to NNU's investment scheme, investors purportedly received an assignment of NNU's secured interest in real property. The secured interest, however, only gave NNU the right to foreclose on the underlying real property if the Affiliate defaulted on the Affiliate Note. On the other hand, if the Affiliate never defaulted and the Affiliate Note was paid, the Affiliate Trust Deed was cancelled and the secured interest went away.

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. As such, there was no contract pursuant to which the Affiliate was obligated to pay the Affiliate Note payments to the investors instead of NNU. Moreover, the ABI did not assign NNU's rights under the Affiliate Note to the investors. Thus, the ABI did not give investors 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 NNU breached its agreement with the investor, the investor had no foreclosure rights as a result of the assignment of NNU's interest in the Affiliate Deed of Trust because the Affiliate Deed of Trust was security for the Affiliate Note, not the agreement between NNU and the investors.

*Purported Assignments of Beneficial Interest to Defendants in  
Autumn Ridge Property*

28. Pursuant to the above-described investment scheme, on November 17, 2006, NNU affiliate Homeland Holding Corp. ("Homeland Holding") entered into a Multi Advance Trust Deed Note (the "Homeland Holding Note") with NNU, whereby Homeland Holding agreed to pay NNU \$4,000,000 plus interest in exchange for a loan that Homeland Holding received from NNU. A true and correct copy of the Homeland Holding Note is attached hereto as Exhibit A and incorporated herein by reference.

29. As security for payment of the Homeland Holding Note, Homeland Holding executed a Deed of Trust in favor of NNU (the "Homeland Holding Deed of Trust"), which gave NNU a beneficial interest in certain real property located in Utah County, Utah, the description of which was attached to the Homeland Holding Deed of Trust (the "Autumn Ridge Property"). A true and correct copy of the Homeland Holding Deed of Trust is attached hereto as Exhibit B and incorporated herein by reference.

30. Thereafter, Defendants loaned money to NNU in various amounts, and in exchange, NNU issued promissory notes to Defendants (collectively, the "Defendant Promissory Notes"). The Defendant Promissory Notes, to the extent they are in the possession of the Receiver, are attached hereto as Exhibit C and incorporated herein by reference.

31. In connection with the Defendant Promissory Notes, NNU issued Defendants an Assignment of Beneficial Interest in Trust Deed (collectively, the "Autumn Ridge ABIs"), which purportedly gave each Defendant a security interest in the Autumn Ridge Property to secure Defendants' rights to payment under their respective Defendant Promissory Notes. True and

correct copies of the Autumn Ridge ABIs for each Defendant are attached hereto as Exhibit D and incorporated herein by reference.

32. However, while NNU issued and recorded an Autumn Ridge ABI for each Defendant, NNU did not assign to Defendants its rights or interest in the Homeland Holding Note. Moreover, because Homeland Holding is not a party to the Autumn Ridge ABIs, there is no privity of contract between Homeland Holding and Defendants. Accordingly, the Autumn Ridge ABIs did not give Defendants the right to demand payment under the Homeland Holding Note.

33. In the end, NNU's security interest in the Autumn Ridge Property merely gave NNU the right to foreclose on such property if Homeland Holding defaulted on the Homeland Holding Note. If, however, Homeland Holding never defaulted on the Homeland Holding Note, Defendants never had the right to foreclose on the Autumn Ridge Property, regardless of whether NNU breached its obligations under the Defendant Promissory Notes.

34. Further, even if NNU had assigned partial interests in the Homeland Holding Note to Defendants, which is disputed, (a) such grant of a partial interest in the Homeland Holding Note is void under applicable law; and (b) none of the Defendants perfected their interest in the Homeland Holding Note in accordance with Utah's Uniform Commercial Code. Accordingly, the Autumn Ridge ABIs are null, void and of no effect.

**FIRST CLAIM FOR RELIEF**

*(Declaratory Judgment Voiding the Autumn Ridge ABIs – All Defendants)*

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

36. NNU issued Defendants the Autumn Ridge ABIs to purportedly secure their rights to payment under their respective investment notes.

37. NNU, however, did not assign to Defendants NNU's interest in the underlying Homeland Holding Note.

38. Moreover, even if NNU had assigned to Defendants a partial interest in the Homeland Holding Note, which is disputed, such grant of a partial interest in the Homeland Holding Note is void under applicable law.

39. Further, even if NNU had assigned to Defendants a partial interest in the Homeland Holding Note, which is disputed, none of the Defendants perfected their interest in the Homeland Holding Note in accordance with Utah's Uniform Commercial Code.

40. Therefore, the Receiver requests entry of an Order declaring that the Autumn Ridge ABIs are null, void and of no effect.

**PRAYER FOR RELIEF**

WHEREFORE, the Receiver respectfully prays for relief as follows:

A. On the Receiver's First Claim for Relief, entry of an Order declaring that the Autumn Ridge ABIs are null, void and of no effect.

DATED this 12th day of September, 2013.

**DORSEY & WHITNEY LLP**

/s/ Peggy Hunt  
Peggy Hunt  
Chris Martinez  
Nathan Seim  
*Attorneys for Receiver*