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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 <i>et al.</i> ,	STATUS REPORT IN ADVANCE OF JANUARY 30, 2015 CONFERENCE
Plaintiff,	Civil No. 2:14-cv-00614
v.	The Honorable Bruce S. Jenkins
LARRY L. ADAMS, <i>et al.</i> ,	
Defendants.	

Plaintiff R. Wayne Klein, the Court-Appointed Receiver (the “Receiver”) of National Note of Utah, LC, its subsidiaries and affiliates (collectively, “National Note”), and the assets of Wayne LaMar Palmer in the case styled as *Securities and Exchange Commission v. National Note of Utah, LC et al.*, Case No. 2:12-cv-00591-BSJ (D. Utah), by and through his counsel, respectfully submits this *Status Report In Advance of January 30, 2015 Conference* (the “Report”). This Report is submitted to the Court for consideration as part of the Scheduling Conference scheduled by this Court for January 30, 2015.

BACKGROUND

1. The Receiver contests the validity and enforceability of “Assignments of Beneficial Interests” (“ABIs”) that were issued to some National Note investors and recorded against certain real property owned by National Note.

2. The Receiver requested that holders of ABIs voluntarily release their ABIs prior to him commencing litigation against them, and as a result many ABIs were released without the expense of litigation.

3. The Receiver then commenced litigation against all known holders of ABIs who did not voluntarily release their ABIs. This litigation was filed in several different ways:

(a) the above-captioned case was filed against 130 ABI holders (the “Omnibus Case”);

(b) a lawsuit to invalidate ABIs recorded against the “Autumn Ridge Property” was filed against eighteen (18) ABI holders (the “Autumn Ridge Lawsuit”);¹

(c) a lawsuit to invalidate ABIs recorded against the “Farrell Property” (the “Farrell Lawsuit”)² was filed against three (3) ABI holders;

(d) a lawsuit to invalidate an ABI recorded against the “Elkhorn Ridge Lot #48 Property” (the “Elkhorn Ridge Lawsuit”)³ was filed against one (1) ABI holder; and

(e) requests for declaratory relief were made in numerous lawsuits filed against National Note investors who received ABIs in addition to false profits from National Note (the “Clawback Cases”).

¹ *Klein v. Bingham et al.*, Case No. 2:13cv00845 (D. Utah) (Nuffer, C.J.).

² *Klein v. Shah*, Case No. 2:13cv00810 (D. Utah) (Wells, J.).

³ *Klein v. Harvest Time Ministries*, Case No. 2:13cv00742 (D. Utah) (Waddoups, J.).

4. In accordance with guidance from the Court, it is the Receiver's intent to have the ABI issues resolved by this Court as part of this Omnibus Case. The Receiver has been working diligently for the last several months attempting to get the various matters in a procedural posture where this can be done effectively and efficiently. The status of each of these matters is discussed below.

The Present Omnibus Case

5. On August 25, 2014, the Receiver filed a Complaint commencing the above-captioned case, seeking a declaratory judgment that ABIs held by 130 Defendants are invalid and unenforceable. Attached hereto as **Exhibit A** is a list of all Defendants and the status of the Omnibus Case as to each Defendant. The information in **Exhibit A** is summarized as follows:

a. **Dismissed**: After the commencement of this Omnibus Case, a total of eighty (80) Defendants voluntarily released their ABIs, and thus the Receiver has filed Notices of Dismissal with respect to each of these Defendants.⁴

b. **Defaulted**: Twenty six (26) Defendants were served with a summons and Complaint, but have not responded.⁵ With respect to these Defendants: (i) the Court has entered Default Judgments against nine (9) Defendants; (ii) the Receiver has requested Default Judgment against sixteen (16) Defendants; and (iii) the Receiver has requested the entry of a Default Certificate against one (1) Defendant.

c. **Not Served**: Fourteen (14) Defendants have not been served with the summons and Complaint because the Receiver has had difficulty locating the Defendants

⁴ Exhibit A, pp. 1-2.

⁵ Exhibit A, p. 3.

inasmuch as National Note's records do not include current address or contact information.⁶ Many of these Defendants had investments held by retirement custodians (primarily, American Pension Services which is in receivership), and there are no records with addresses. The Receiver has been diligently attempting to locate these Defendants. On January 28, 2015, the Court entered an *Order Granting Motion for Extension of Time to Serve Summons and Complaint*,⁷ allowing the Receiver until March 31, 2015 to serve these Defendants. If service is not successful, the Receiver will request authorization to serve by publication.

d. Answered: Four (4) Defendants have filed an Answer, with the Receiver has been informed that three (3) other Defendants will also answer the Complaint.⁸

e. Other: With regard to the remaining three (3) Defendants:

(i) The Complaint must be amended to name the estates of Defendants Richard Kermit Fulmer and Jenny Adamson, as the Receiver has discovered that these Defendants are now deceased; and

(ii) The Receiver has discovered that Sadee Dawn Adamson is a minor. Although she was properly served and has defaulted, the Receiver must, consistent with Federal Rule of Civil Procedure 55, ensure that a representative appears on her behalf before he can move for a default judgment.⁹

6. In addition, the Receiver has determined that the Complaint must be amended to include two (2) additional parties as Defendants -- Vetco, Inc. and Denise Lewis. These are

⁶ Exhibit A, p. 4.

⁷ Docket No. 295.

⁸ Exhibit A, p. 4.

⁹ Exhibit A, p. 4.

persons who the Receiver has recently discovered still hold ABIs for which no complaint to invalidate has been filed. Attached hereto as **Exhibit B** is a list of all parties that the Receiver intends to request be added as Defendants in this Omnibus Case, including the two (2) recently discovered ABI holders.

The Autumn Ridge Lawsuit

7. On September 13, 2013, the Receiver commenced the Autumn Ridge Lawsuit against eighteen (18) holders of ABIs recorded against the Autumn Ridge Property. As a result of voluntary releases of ABIs and the entry of Default Judgments, at this time, only four (4) Defendants (the “Autumn Ridge Remaining Defendants”) remain in that Lawsuit, and there is A Default Judgment pending against one of those Defendants—a Motion for Default Judgment was filed on January 22, 2015.

8. The Receiver intends to amend the Complaint in this Omnibus Case to add the three-non-defaulting Autumn Ridge Remaining Defendants as defendants in this action promptly after the Default Judgment against the defaulting Defendant is entered and all pending requests for Default Judgment in this Omnibus Case have been entered. The Autumn Ridge Lawsuit will be dismissed and the validity and enforceability of all ABIs that were involved in that Lawsuit will be resolved by this Court in this Omnibus Case.

9. To save expense, the Receiver has delayed moving to amend the Complaint in this Omnibus Case to include the three (3) Autumn Ridge Remaining Defendants. Specifically, if the Receiver had sought leave to file an amended complaint before the dismissal and/or entry of default judgment against many of the Omnibus Case Defendants, service of the amended complaint on the numerous Defendants herein would have been required. This would have cost

the Receivership Estate a significant amount in fees and costs and would have delayed resolution of the Receiver's claims against Defendants against whom judgments have been obtained earlier this month. The Receiver intends to file a Motion for Leave to file an amended complaint as soon as all pending Default Judgments are entered.

10. A list of the Autumn Ridge Remaining Defendants to be included as part of this Omnibus Case is included as part of **Exhibit B**.

The Farrell Lawsuit

11. On September 3, 2013, the Receiver commenced the Farrell Lawsuit against three (3) holders of ABIs recorded against the Farrell Property (the "**Farrell Defendants**").

12. Based on direction from this Court, the Receiver intends to amend the Complaint in this Omnibus Case to add the Farrell Defendants as defendants in this action. The Farrell Lawsuit will be dismissed and the validity and enforceability of all ABIs that were involved in that Lawsuit will be resolved by this Court in this Omnibus Case.

13. To save expense, the Receiver has delayed moving to amend the Complaint in this Omnibus Case to include the three Farrell Defendants. Specifically, if the Receiver had sought leave to file an amended complaint before the dismissal and/or entry of default judgment against many of the Omnibus Case Defendants, service of the amended complaint on the numerous Defendants herein would have been required. This would have cost the Receivership Estate a significant amount in fees and costs. The Receiver intends to file a Motion for Leave to file an amended complaint as soon as all pending Default Judgments are entered.

14. A list of the Farrell Defendants to be included as part of this Omnibus Case is included as part of **Exhibit B**.

The Elkhorn Ridge Lawsuit

15. On August 6, 2013, the Receiver commenced the Elkhorn Ridge Lawsuit against one (1) holder of an ABI recorded against the Elkhorn Ridge Lot # 48 Property. On November 19, 2014, the Clerk entered a Default Certificate against Harvest Time and the Receiver is in the process of seeking the entry of a Default Judgment.

16. After the Default Judgment is entered, the Receiver intends to request dismissal of the Elkhorn Ridge Lawsuit.

The Clawback Cases

17. At this time, there are five (5) Clawback Cases remaining in which the Receiver has sued ABI holders who also received false profits. In these suits, the Receiver is seeking recovery of the false profits that were paid to the Defendants, as well as a declaratory judgment that their ABIs are invalid and unenforceable.

18. The Receiver has settled with Defendants in one of the still pending Clawback Cases, and he anticipates settling with Defendants in a second of the Clawback Cases shortly. Accordingly, it appears that these matters will be resolved.

19. As for the remaining three (3) Clawback Cases involving ABI issues, the Receiver believes the nexus of operative facts requires that the ABI issue be litigated as part of

the avoidance and recovery of false profits. The Receiver will request that these Clawback Cases be transferred to this Court if it is deemed necessary at this time.

DATED this 29th day of January, 2015.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt

Peggy Hunt

Chris Martinez

Sarah Goldberg

Attorneys for Receiver

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **STATUS REPORT IN ADVANCE OF JANUARY 30, 2015 CONFERENCE** was filed with the Court on this 29th day of January, 2015, and served via ECF on all parties who have requested notice in this case.

/s/ Peggy Hunt

EXHIBIT A

DEFENDANTS DISMISSED

1. ANITA K. BASHAW
2. MICHAEL BASHAW
3. MARY E. BEATTY
4. WILLIAM J. BEATTY
5. BLUE DIAMOND INVESTMENTS, L.P.
6. LAVOLA S. BROWNING
7. KANNON BURGOYNE
8. CHASE TRUST Dated APRIL 24, 2009
9. JARED A. CHASE
10. STEPHANIE P. CHASE
11. CHELTENHAM, LLC
12. KWANGSUN SARAH CHOE
13. RUTH CHRISTENSEN
14. HALERIE CLEVELAND
15. CLIFF COLE
16. RUTH COLE
17. L.C. CORDER
18. STEVEN A. DIAZ
19. DILLARD FAMILY TRUST
20. MACKEAL S. DILLARD
21. MERILU DILLARD
22. LARRY D. DIMICK
23. PAMA LEE GILLAM
24. RICARDO GONZALEZ
25. CIRA FRANCO VAZQUEZ
26. BARRY GORDON
27. RACHANEE GORDON
28. EVAN GRIDLEY
29. ROBERT D. HAHN
30. PHYLLIS S. HAHN
31. ALYCE HALVORSON
32. DAROLD HALVORSON
33. C. ANN HEATH
34. G. RODNEY HEATH
35. ROY HODELL
36. JOHN HUESTS
37. HUNTER T. HYDE
38. MARK JANIGA
39. BETSY A. JOHNSON
40. GIRISH JUNEJA
41. K&G MANAGEMENT, LLC
42. ZACHARY KEENAN SOUTIERE

43. REYA L. KEMPLEY
44. TARI C. KEMPLEY
45. LAURA KILPACK
46. TAMMARA LYNN KING
47. RAE LEE
48. DENISE LEONE
49. LINDA LIPNICKI
50. MAHAL KITA, INC.
51. TIFFANIE MCCOY
52. AMELIA K. MATHISON
53. HANNAH M. MATHISON
54. HOLLIE E. MATHISON
55. CYNTHIA JEAN MORREY
56. CHRISTIAN MORTENSEN
57. MICHAEL J. MORTENSEN
58. LOIS G. MORTENSEN
59. RONALD C. MURPHY
60. LONNY OLSON
61. MELINDA OLSON
62. DAVID S. PAUL
63. PERPETUAL INCOME PARTNERSHIP, LLP
64. ADRIENNE PERRY
65. CRISTOPHER RYAN
66. DOUGLAS SCHMIDT
67. MARGARET H. SEDENQUIST
68. MICHAEL W. SQUIRES
69. PATRICIA ANN SQUIRES
70. JOHN STOKER
71. STEPHANIE STOKER
72. WILLARD TATE
73. NADINE C. TATE
74. THUNDERHEAD INVESTMENTS, LC
75. NICHOLAS TUTTLE
76. MARISSA TUTTLE
77. LINDA TUXON
78. GERALD E. WALLIN
79. JANET E. WALLIN
80. AL WILLIAMS

DEFAULTING DEFENDANTS

1. JON M. BAIRD
2. MARK CARDONE
3. LISA R. CARDONE
4. JAVIER DEL CARPIO
5. DAVID L. FLYNN
6. SUMMER ADELE FROEHLICH
7. SHELDON J. HEATON
8. JAMIE L. HEATON
9. R'LENE HOGGAN
10. ROBERT LICCIARDO
11. AUDREY LICCIARDO
12. SUSAN LORING
13. DAN MADDOCK
14. TOR MEIER
15. JAMES EDGAR MOSS
16. PAULINE C. MOSS
17. NATIONAL NOTE OF SOUTHERN CALIFORNIA
18. CHAD PALMER
19. JULIE PALMER
20. PAUL MARTIN PALMER
21. LESLIE PAULA PROFFIT
22. CHERRY ANN REDD
23. PHILLIP REDD
24. H. COLEMAN SCHEULLER
25. XIAOPING SU
26. MICHAEL WALDEN

DEFENDANTS TO BE SERVED

1. KURT BROOKS
2. MICHAEL BRYANT
3. SHEILA BRYANT
4. KARAN HENDERSON
5. WILLIE HENDERSON
6. CYNTHIA HOLGATE-JOHNSON
7. ADAM H. JOHNSON
8. JANE LASH
9. DAVID MADDOCK
10. MENESINI REVOCABLE TRUST
11. ISABELLA MENESINI
12. MATTIE MAE SMALL
13. KRISTEN SPINOLA
14. MARYLOU WILLIAMS

RESPONDING DEFENDANTS

- | | |
|------------------------------|-------------|
| 1. LARRY ADAMS | Answered |
| 2. KIMBERLY J. BRASHER | Answered |
| 3. JACQUELINE F. CHRISTENSEN | Answered |
| 4. STEPHEN E. CHRISTENSEN | Answered |
| 5. OLSON PROFIT SHARING PLAN | Will Answer |
| 6. KRISTINE S. OLSON | Will Answer |
| 7. G&K SUDBURY | Will Answer |

MISCELLEOUS DEFENDANTS

- | | |
|--------------------------|---------------------------|
| 1. SADEE DAWN ADAMSON | Minor |
| 2. JENNY ADAMSON | Need to Substitute Estate |
| 3. RICHARD KERMIT FULMER | Need to Substitute Estate |

EXHIBIT B

AMEND OMNIBUS COMPLAINT TO ADD

- | | |
|------------------------|---|
| 1. RONALD CROSSMAN | AUTUMN RIDGE DEFENDANT |
| 2. LILA FRANSEN | AUTUMN RIDGE DEFENDANT |
| 3. JEFFREY TODD HEATON | AUTUMN RIDGE DEFENDANT |
| 4. DENISE LEWIS | NEWLY DISCOVERED
ABI/COTTONWOOD PROPERTY |
| 5. LISA SANDERS-SHAH | FARRELL DEFENDANT |
| 6. LAURIE VERTNER | FARRELL DEFENDANT |
| 7. MICHAEL VERTNER | FARRELL DEFENDANT |
| 8. VETCO, INC. | NEWLY DISCOVERED
ABI/CLEARVIEW PROPERTY |