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

<p>R. WAYNE KLEIN, as Receiver,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>SECURE AMERICAN GOLD EXCHANGE, LLC, a Utah limited liability company, JOHN DOES 1-5</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;"><b>COMPLAINT</b></p> <p style="text-align: center;"><b>(Ancillary to Case No. 2:12-cv-00591)</b></p> <p style="text-align: center;">Case No.: 2:14-cv-00869-BCW</p> <p style="text-align: center;">Magistrate Judge Brooke C. Wells</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, including Old Glory Minting Company LLC (“Old Glory”) 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 Secure American Gold Exchange, LLC and John Does 1-5 (“Defendant Does”) (collectively, “Defendants”), and states, alleges and avers as follows:

### **PARTIES**

1. Pursuant to an Order Appointing Receiver and Staying Litigation entered on June 25, 2012 in the SEC Civil Enforcement Case (the “Receivership Order”),<sup>1</sup> 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. . . .”<sup>2</sup> Old Glory Minting Company LLC (“Old Glory”) is one of the subsidiaries and affiliated entities over which the Plaintiff was appointed as the Receiver.

2. Secure American Gold Exchange, LLC (“Secure American”) is an expired Utah limited liability company.

3. Upon information and belief, Defendant Does are currently unknown parties to whom Secure American has transferred monies or property received from NNU.

### **JURISDICTION AND VENUE**

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

5. The Court has personal jurisdiction over Defendants.

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

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<sup>1</sup> SEC Civil Enforcement Case, Docket No. 9.

<sup>2</sup> *Id.* (Receivership Order, pp. 1-2).

## **FACTS**

### **The SEC Civil Case and the Receiver's Appointment**

7. 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.<sup>3</sup>

8. 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 defendants<sup>4</sup> and the Receivership Order appointing the Receiver.<sup>5</sup> 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.<sup>6</sup>

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<sup>3</sup> SEC Civil Enforcement Case, Docket No. 1 (Complaint).

<sup>4</sup> *Id.*, Docket No. 7.

<sup>5</sup> *Id.*, Docket No. 9.

<sup>6</sup> *Id.*, Docket Nos. 45 and 46.

9. 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.<sup>7</sup>

### **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 and others by NNU were made from the commingled funds on deposit in that Investor Account.

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

### **The Transfers to Secure American and Secure American’s Breach of Contract**

15. In 2011, Old Glory entered into an agreement (the “Agreement”) with Secure

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<sup>7</sup> *Id.*, Docket No. 315.

American pursuant to which Old Glory paid Secure American \$112,000.00. In exchange for this payment of \$112,000, Secure American agreed to deliver gold bullion to Old Glory.

16. Pursuant to the Agreement, Old Glory paid Secure American \$112,000.00.

17. In breach of the Agreement, Secure American did not deliver any of the promised gold bullion to Old Glory.

18. Secure American has not returned the \$112,000.00 to Old Glory despite repeated demands that it do so.

**FIRST CLAIM FOR RELIEF**

*(Breach of Contract)*

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

20. Old Glory and Secure American entered into the Agreement in 2011.

21. Old Glory has fulfilled all of its obligations under the Agreement.

22. Secure American has materially breached the Agreement by failing to provide the promised gold bullion.

23. Old Glory has been damaged by Secure American's breach of the Agreement.

24. By reason of the foregoing, Plaintiff is entitled to monetary relief against Secure American in an amount to be proven at trial, but in no event less than \$112,000.00.

**SECOND CLAIM FOR RELIEF**

*(Unjust Enrichment)*

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

26. The \$112,000.00 transferred to Secure American was comprised of property of Old Glory.

27. The transfer of \$112,000.00 to Secure American conferred a benefit upon Secure American.

28. Secure American knowingly benefitted from the receipt of the \$112,000.00.

29. Allowing Secure American to retain the \$112,000.00 would unjustly enrich Secure American and would be inequitable.

30. Absent return of the \$112,000.00, the receivership estate will be damaged by Secure American's unjust enrichment and may have no adequate remedy at law.

31. Secure American must disgorge the \$112,000.00.

**THIRD CLAIM FOR RELIEF**

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

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

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

34. NNU transferred, through Old Glory, the \$112,000 to Secure American (the "Transfers") in furtherance of the Ponzi scheme.

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

36. The Transfers were made with actual intent to hinder, delay or defraud a creditor of NNU.

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

**FOURTH CLAIM FOR RELIEF**

*(Avoidance of Fraudulent Transfers Under Utah Code Ann. §§ 25-6-5(1)(b) 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 that has all of the characteristics of a Ponzi scheme.

40. NNU made the Transfers, through Old Glory, to Secure American in furtherance of the Ponzi scheme.

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

42. The Transfers were made without receiving a reasonably equivalent value in exchange for the Transfers or obligations.

43. 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.

44. Pursuant to Utah Code Ann. §§ 25-6-5(1)(b) and 25-6-8, the Receiver may avoid and recover the Transfers to Secure American, or in the event such Transfers were transferred,

from the Defendant Does.

**FIFTH CLAIM FOR RELIEF**

*(Avoidance of Fraudulent Transfers Under Utah Code Ann. §§ 25-6-6(1) 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 a Ponzi scheme.

47. NNU made the Transfers, through Old Glory, to Secure American in furtherance of the Ponzi scheme

48. NNU had at least one creditor at the time that the Transfers were made.

49. The Transfers were made to Secure American without NNU receiving a reasonably equivalent value in exchange for the Transfers.

50. 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.

51. Pursuant to Utah Code Ann. §§ 25-6-6(1) and 25-6-8, the Receiver may avoid and recover the Transfers to Secure American, or in the event such Transfers were transferred, from the Defendant Does.

**SIXTH CLAIM FOR RELIEF**

*(Constructive Trust)*

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

53. The Transfers to Defendants were comprised of property of NNU and were made by NNU, through Old Glory, in furtherance of the Ponzi scheme.



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

55. The Transfers can be traced to wrongful behavior.

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

57. 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, through Old Glory, to Defendants.

#### **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 Secure American for its breach of contract in the amount of \$112,000, plus pre and post-judgment interest.

B. Pursuant to the Receiver's Second Claim for Relief, judgment against Secure American for unjust enrichment, and requiring Secure American to disgorge the \$112,000.

C. Pursuant to the Receiver's Third 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 \$112,000.

D. Pursuant to the Receiver's Fourth Claim for Relief, judgment against Defendants 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 \$112,000.

E. Pursuant to the Receiver's Fifth Claim for Relief, judgment against Defendants

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 \$112,000.00.

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

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

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

DATED this 26<sup>th</sup> day of November, 2014.

**DORSEY & WHITNEY LLP**

/s/ Chris Martinez

Peggy Hunt  
Chris Martinez  
Jeffrey M. Armington  
*Attorneys for Receiver*

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