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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

NATIONAL NOTE OF UTAH, LC, a Utah
Limited Liability Company and WAYNE
LaMAR PALMER, an individual,

Defendants.

**RECEIVER'S MOTION
REQUESTING DISALLOWANCE
OF PROOFS OF CLAIM AND
MEMORANDUM OF LAW IN
SUPPORT**

Case No: 2:12-CV-591 BSJ

The Honorable Bruce S. Jenkins

**YOU ARE RECEIVING THIS MOTION BECAUSE THE RECEIVER IS SEEKING AN
ORDER DISALLOWING YOUR PROOF OF CLAIM IN ITS ENTIRTY.**

**YOU DO NOT NEED TO TAKE ANY ACTION IF YOU DO NOT DISPUTE
DISALLOWANCE OF YOUR PROOF OF CLAIM.**

**IF YOU WANT TO CONTEST THE DISALLOWANCE OF YOUR PROOF OF CLAIM,
YOU MUST FILE AN OBJECTION WITH THE COURT BY NO LATER THAN APRIL
8, 2016. ABSENT THE FILING OF A WRITTEN OBJECTION, THE RECEIVER WILL
REQUEST THAT THE COURT DISALLOW YOUR PROOF OF CLAIM.**

**DISALLOWANCE OF YOUR PROOF OF CLAIM MEANS THAT YOU WILL NOT BE
ENTITLED TO RECEIVE A DISTRIBUTION IN THIS CASE.**

R. Wayne Klein, as receiver (the “Receiver”) for Defendant National Note of Utah, LC and the assets of Defendant Wayne LaMar Palmer, by and through his counsel of record, hereby files *Receiver’s Motion Requesting Disallowance of Proofs of Claim and Memorandum of Law in Support* (the “Motion”). For the reasons stated, the Receiver respectfully requests that the Court, after notice as discussed below, grant this Motion and disallow the Proofs of Claim designated in the Receiver’s *Initial Claims Report*¹ as the “Recommended Disallowed Claims”. A listing of the Recommended Disallowed Claims is set forth in Exhibit A attached hereto.

I.

BACKGROUND

The Civil Enforcement Action and the Receivership Estate

1. On June 25, 2012, the above-captioned case was commenced by the Securities and Exchange Commission against Defendants National Note of Utah, LC (“NNU”) and Wayne LaMar Palmer (“Palmer”), and in conjunction therewith the Court entered, in relevant part, an *Order Appointing Receiver and Staying Litigation* (the “Receivership Order”).²

2. Pursuant to the Receivership Order, the Receiver was appointed and a Receivership Estate was created. NNU and forty-one of its affiliated companies (collectively with NNU, “National Note”) and all Palmer’s known assets were placed in the Receiver’s control.³ Among other things, through the Receivership Order, the Court and directed and authorized the Receiver to assume control of, preserve and manage all assets of the Receivership

¹ Docket No. 1088.

² Docket No. 9 (Receivership Order).

³ *See generally, id.*

Estate,⁴ investigate and prosecute claims,⁵ and “to develop a plan for the fair, reasonable, and efficient recovery and liquidation of all remaining . . . Receivership Property”⁶

Claim Procedures Order and Compliance

3. On September 1, 2015, the Court entered an *Order Granting Receiver’s Amended Motion Seeking Approval of Proposed Claim Procedures and Accompanying Forms and Setting Bar Date* (the “Claim Procedure Order”),⁷ approving the following documents proposed by the Receiver to implement the filing and consideration of claims in this case: (a) a “Bar Date Notice”; (b) “Proof of Claim Form and Instructions” (the “Proof of Claim”); and (c) a “Publication Notice” to inform investors of the ability to file and the deadline to file Proof of Claim Forms. The Court also approved the method of service of the Bar Date Notice and Proof of Claim, as well as the method of publication notice. Finally, the Court set the bar date for filing Proofs of Claim in this case as November 3, 2015 (the “Bar Date”).

4. On November 10, 2015, the Receiver filed *Receiver’s Certificate of Service of Bar Date Notice and Claim-Related Forms*,⁸ which is incorporated herein by reference, certifying that he served the November 3, 2015 Bar Date Notice and Proof of Claim in accordance with the procedures approved in the Claims Procedure Order, and that he provided notice of the November 3, 2015 Bar Date by Publication Notice in accordance with the procedures approved in the Claims Procedure Order.

⁴ *Id.* at ¶ 7.

⁵ *Id.* at ¶¶ at 7, 42-45.

⁶ *Id.* at ¶ 52; *see id.* at ¶ 7.

⁷ Docket No. 999.

⁸ Docket No. 1032.

5. On March 4, 2016, the Receiver filed Receiver's *Supplemental Certificate of Service of Bar Date Notice and Claim-Related Forms*,⁹ which is incorporated by reference, certifying that he served the November 3, 2015 Bar Date Notice and Proof of Claim in accordance with the procedures approved in the Claims Procedure Order on persons identified since the filing of the initial Certificate of Service.

6. As of December 22, 2015, the Receiver had completed his initial review of all Proofs of Claim that he received and he notified each claimant of his initial claim recommendation. As part of this process, the Receiver notified each claimant of the Receiver's recommendation as to the treatment of its claim and the basis for that recommendation, which includes the recommendations made herein.

Claims Report

7. On March 4, 2016, the Receiver filed the *Receiver's Initial Claims Report* (the "Claims Report"),¹⁰ reporting to the Court on the Proofs of Claim that had been submitted to him in this case, and that Claims Report, to the extent relevant, is incorporated herein.

8. The Receiver attached to the Claims Report various Exhibits that categorized Proofs of Claim that had been filed as follows: (a) "Recommended Allowed Claims";¹¹ (b) "Recommended Stipulated Allowed Claims";¹² (c) "Recommended Reduced Allowed Claims";¹³

⁹ Docket No. 1087.

¹⁰ Docket No. 1088.

¹¹ Claims Report, Exhibit A-1.

¹² Claims Report, Exhibit A-2.

¹³ Claims Report, Exhibit A-3.

and (d) “Recommended Disallowed Claims.”¹⁴

II.

THE PRESENT MOTION TO DISALLOW CLAIMS

9. The present Motion pertains only to the treatment of Recommended Disallowed Claims.¹⁵ Each of the Recommended Disallowed Claims is a Proof of Claim that the Receiver is recommending be disallowed in its entirety.

10. Exhibit A is a listing of each of the Recommended Disallowed Claims, identifying claimants by Proof of Claim number.¹⁶

11. Generally, the Receiver’s recommendation to disallow of each of the Proofs of Claim listed on Exhibit A is based on at least one of seven categories which are discussed in greater detail in paragraph 18 below. The right-hand column on Exhibit A notes each of the seven categories and, for each Proof of Claim, marks which categories apply to the Proof of Claim that form the basis for the Receiver’s recommendation to disallow the Proof of Claim. *Claimants should review Exhibit A to determine which of the categories applies to their respective Proofs of Claim.*

12. The Receiver will serve this Motion on each person listed on Exhibit A. The face of the Motion clearly states that that any objection to the relief sought in the Motion must be filed by April 8, 2016. The Claims Report and this Motion will also be posted on the Receiver’s website at www.kleinutah.com/index.php/receiverships/national-note-of-utah-lc.

¹⁴ Claims Report, Exhibit A-4.

¹⁵ The Receiver is filing motions related to the treatment of the Recommended Allowed Claims, Recommended Stipulated Allowed Claims and Recommended Reduced Allowed Claims separately.

¹⁶ The Receiver will deliver a copy of Exhibit A to the Court identifying claimants not only by claim number, but also by name, for use by the Court in camera.

III.

RELIEF REQUESTED

13. The Receiver is requesting that each of the Proofs of Claim listed on Exhibit A be disallowed in its entirety based on one of the seven categories noted on Exhibit A and discussed in greater detail below.

14. For each Proof of Claim for which no objection is filed with the Court, the Receiver requests that the Court enter an Order in the form attached hereto as Exhibit B, disallowing the Proof of Claim in its entirety.

15. For each Proof of Claim for which an objection is filed, the Receiver will file a response within the time permitted under the applicable Local Rules in support of his recommendation to disallow the Proof of Claim. The Receiver anticipates that the Court will hold a hearing on each of the objections. At this time, the Receiver does not know the extent of objections that may be filed and he reserves the right to ask the Court for any appropriate scheduling orders as to any one Proof of Claim or group of Proofs of Claim.

IV.

MEMORANDUM IN SUPPORT

16. The “district court has broad powers and wide discretion to determine relief in an equity receivership.”¹⁷

17. Here, the Receiver is requesting that the Court disallow each of the Proofs of Claims listed in Exhibit A hereto.

18. Generally, for each Proof of Claim listed on Exhibit A, the Receiver is requesting

¹⁷ *SEC v. Vescor Capital Corp.*, 599 E.3d 1189, 1194 (10th Cir. 2010), *quoted in Klein v. Penedo*, Order and Judgment, No. 14-4077 at 6 (10th Cir. Oct. 27, 2015). *See also Bendell v. Lancer Mang. Group, LLC*, 523 Fed. Appx. 554 (11th Cir. 2013); *SEC v. Safety Fin. Serv., Inc. v. Ark. Loan & Thrift Corp.*, 674 F.2d 368, 373 (5th Cir. 1982).

that the Court disallow the Proof of Claim based on at least one of the following seven categories. *Claimants should review Exhibit A to determine which of the following categories applies to their respective Proofs of Claim.*

- Duplicate Claims: This category applies to four of the Proofs of Claim listed on Exhibit A. Each of these Proofs of Claim has been submitted in duplicate. The Receiver is recommending that only the duplicate Proof of Claim be disallowed in its entirety.
- Released/Waived Claims: This category applies to four of the Proofs of Claim listed on Exhibit A. Each of these Proofs of Claim has been submitted by a claimant who has entered into a settlement with the Receiver and as part of that settlement has released its right to file a Proof of Claim or receive a distribution in this case. Thus, the Receiver is recommending that these Proofs of Claim be disallowed.
- No Funds Paid: This category applies to six of the Proofs of Claim listed on Exhibit A. Each of these claimants has asserted a claim for an investment it claims it made with National Note, but the records in the Receiver's possession do not evidence that the claimant actually paid any money to National Note. Thus, the Receiver is requesting that these Proofs of Claim be disallowed.
- Commission Recipient: This category applies to one Proof of Claim listed on Exhibit A. The Receiver is recommending disallowance of this Proof of Claim because the claimant was paid commissions for soliciting investors for National Note.

- Real Estate Lien Holders: This category applies to 25 Proofs of Claim listed on Exhibit A. The Receiver is recommending that the Proofs of Claim of persons who assert interests against real property of the Receivership Estate be disallowed inasmuch as the holder of the interest has not released its interest and thus is asserting duplicate interests against property of the estate. Each of these claimants appear to have elected to seek recovery based on his or her interest, if any, recorded against property and, thus, his or her respective claims should be disallowed.
- Overpaid Investors: This category applies to six Proofs of Claim listed on Exhibit A. Each of these Proofs of Claim has been submitted by a National Note investor who makes a claim even though the investor has been paid an amount in excess of its principal investment. Such investors do not have a claim given that this case involves a Ponzi scheme.¹⁸ The Receiver is recommending that these claimants' Proofs of Claim be disallowed.
- Late-Filed Claim: This category applies to one Proof of Claim listed on Exhibit A. This Proof of Claim was submitted by a claimant on February 26, 2016, more than three months after the Bar Date, and after the same claimant submitted Proofs of Claim for other investments. Because the Proof of Claim was submitted so long after the Bar Date, the Receiver is recommending that this Proof of Claim be disallowed.

¹⁸ See, e.g., *In re Hedged-Investments Assocs., Inc.*, 84 F.3d 1286, 1290 (10th Cir. 1996) (holding that an investor in a Ponzi scheme had “no claim against [the Ponzi operator] in excess of her original investment”).

19. The Receiver submits that the procedure proposed herein is fair and equitable, and that disallowance of each of the Proofs of Claims listed on Exhibit A is appropriate given the applicable facts and the law.

V.

CONCLUSION

WHEREFORE, the Receiver respectfully requests grant this Motion and disallow each of the Proofs of Claim listed in Exhibit A in their entirety. The Receiver has submitted a proposed form of Order which is attached hereto as Exhibit B.

DATED this 14th day of March, 2016.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt

Peggy Hunt

John Wiest

Attorneys for Court-Appointed Receiver

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that the **RECEIVER'S MOTION REQUESTING DISALLOWANCE OF PROOFS OF CLAIM AND MEMORANDUM OF LAW IN SUPPORT** was filed with the Court on this 14th day of March, 2016, and served via ECF on all parties who have requested notice in this case, and was also served on the following parties by U.S. Mail postage prepaid:

Wayne L. Palmer
8816 South 2240 West
West Jordan, UT 84088

/s/Candy Long

EXHIBIT A

DISALLOWANCE CATEGORIES

The Receiver is recommending disallowance of each of the Proofs of Claim listed below.

Disallowance may be based on one or more of six reasons.

A list of the reasons is below and more specifically explained in the Motion in the paragraph noted here:

- 1 = Duplicate Claims (Motion ¶18)
- 2 = Released/Waived Claims (Motion ¶18)
- 3 = No Funds Paid (Motion ¶18)
- 4 = Commission Recipient (Motion ¶18)
- 5 = Real Estate Liens Holder (Motion ¶18)
- 6 = Overpaid Investors (Motion ¶18)
- 7 = Late-Filed Claim

Claim No.	Total Claim	Recommended Amount	Disallowance Categories						
			1	2	3	4	5	6	7
1012	\$105,000.00	\$0.00		X					
1013	\$202,500.00	\$0.00		X					
1042	\$2,589.63	\$0.00					X		
1043	\$102,029.69	\$0.00					X		
1044	\$7,063.37	\$0.00					X		
1045	\$368,943.00	\$0.00			X				
1060	\$96,079.31	\$0.00	X						
1069	\$35,085.76	\$0.00	X						
1078	\$162,099.12	\$0.00					X		
1107	\$107,167.00	\$0.00					X		
1108	\$1,193.66	\$0.00					X		
1112	\$48,000.00	\$0.00					X		
1121	\$10,440.00	\$0.00			X				
1128	\$19,000.00	\$0.00			X			X	
1152	\$227.50	\$0.00			X				
1182	\$7,538.00	\$0.00					X		
1202	\$77,175.00	\$0.00		X					
1211	\$97,259.00	\$0.00				X			
1223	\$355,706.19	\$0.00					X		
1242	\$46,217.82	\$0.00					X		
1266	\$20,000.00	\$0.00					X		
1288	\$175,000.00	\$0.00					X		
1300	\$27,886.02	\$0.00					X		
1301	\$54,000.00	\$0.00						X	
1320	\$277,582.19	\$0.00					X		
1321	\$52,744.79	\$0.00					X		
1324	\$124,597.10	\$0.00					X		
1328	\$17,420.68	\$0.00					X		

DISALLOWANCE CATEGORIES

The Receiver is recommending disallowance of each of the Proofs of Claim listed below.

Disallowance may be based on one or more of six reasons.

A list of the reasons is below and more specifically explained in the Motion in the paragraph noted here:

- 1 = Duplicate Claims (Motion ¶18)
- 2 = Released/Waived Claims (Motion ¶18)
- 3 = No Funds Paid (Motion ¶18)
- 4 = Commission Recipient (Motion ¶18)
- 5 = Real Estate Liens Holder (Motion ¶18)
- 6 = Overpaid Investors (Motion ¶18)
- 7 = Late-Filed Claim

Claim No.	Total Claim	Recommended Amount	Disallowance Categories						
			1	2	3	4	5	6	7
1329	\$17,420.68	\$0.00					X		
1350	\$55,886.65	\$0.00						X	
1369	\$519,743.84	\$0.00					X		
1374	\$952,000.00	\$0.00					X		
1386	\$32,010.00	\$0.00			X				
1390	\$47,431.23	\$0.00						X	
1393	\$55,818.44	\$0.00			X				
1394	\$101,978.17	\$0.00					X		
1401	\$316,871.23	\$0.00					X		
1402	\$466,876.04	\$0.00					X		
1418	\$49,544.36	\$0.00	X						
1420	\$79,500.00	\$0.00	X						
1428	\$5,000.00	\$0.00						X	
1446	\$29,170.00	\$0.00						X	
1456	\$650,000.00	\$0.00		X					
1457	\$9,634.34	\$0.00					X		
1462	\$19,368.48	\$0.00					X		
1463	\$500,000.00	\$0.00							X
Total Recommended Disallowed Claims	\$6,508,798.29	\$0.00							

EXHIBIT B

Prepared and Submitted By:

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**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
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SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

NATIONAL NOTE OF UTAH, LC, a Utah
Limited Liability Company and WAYNE
LaMAR PALMER, an individual,

Defendants.

**ORDER GRANTING RECEIVER’S
MOTION REQUESTING
DISALLOWANCE OF PROOFS
OF CLAIM**

Case No: 2:12-CV-591 BSJ

The Honorable Bruce S. Jenkins

The matter before the Court is the *Receiver’s Motion Requesting Disallowance of Proofs of Claim and Memorandum of Law in Support* [Docket No. ____] (the “Motion”). The Court has reviewed the Motion, including Exhibit A attached thereto, the *Certificate of Service* filed by the Receiver related to the Motion [Docket No. ____], and the record in this case. Based thereon and for good cause shown,

IT IS HEREBY ORDERED that:

- (1) The Motion is **GRANTED**; and
- (2) Each of the Proofs of Claim listed on Exhibit A hereto is **DISALLOWED** in its entirety.

DATED this ____ day of _____, 2016.

FOR THE COURT

The Honorable Bruce S. Jenkins
Judge, United States District Court