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Attorneys for Court-Appointed Receiver R. Wayne Klein

**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 SEEKING
ALLOWANCE OF RECOMMENDED
REDUCED CLAIMS 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 ASKING THE COURT TO ALLOW YOUR PROOF OF CLAIM IN THE RECOMMENDED AMOUNT SET FORTH IN EXHIBIT A - WHICH IS LESS THAN THE AMOUNT STATED IN YOUR PROOF OF CLAIM.

YOU DO NOT NEED TO TAKE ANY ACTION IF YOU DO NOT DISPUTE THE RECOMMENDED AMOUNT.

IF YOU WANT TO CONTEST THE AMOUNT RECOMMENDED BY THE RECEIVER, 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 ALLOW YOUR PROOF OF CLAIM IN THE RECOMMENDED AMOUNT.

PLEASE NOTE THAT THE RECEIVER IS REQUESTING THAT YOUR CLAIM BE ALLOWED IN THE RECOMMENDED AMOUNT, BUT THAT DOES NOT MEAN THAT YOU WILL RECEIVE A DISTRIBUTION IN THIS CASE IN THE AMOUNT OF THE CLAIM THAT

IS ALLOWED BY THE COURT BECAUSE THE RECEIVER DOES NOT HAVE SUFFICIENT FUNDS TO PAY ALL ALLOWED CLAIMS IN FULL.

At this time, it is unclear how much will be available to pay Allowed Proofs of Claim in this case, but it is necessary for Proofs of Claim that have been submitted to be allowed or disallowed by the Court so that a plan of distribution may be proposed and distributions can commence.

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 Seeking Allowance of Recommended Reduced Claims and Memorandum in Support* (the “Motion”). For the reasons stated, the Receiver respectfully requests that the Court, after notice as discussed below, grant this Motion and allow the Proofs of Claim designated in the Receiver’s *Initial Claims Report*¹ as the “Recommended Reduced Allowed Claims” in the amounts recommended by the Receiver 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

¹ Docket No. 1088.

² Docket No. 9 (Receivership Order).

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 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

³ See generally, *id.*

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.

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.

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)

⁹ Docket No. 1087.

¹⁰ Docket No. 1088.

¹¹ Claims Report, Exhibit A-1.

“Recommended Stipulated Allowed Claims”;¹² (c) “Recommended Reduced Allowed Claims”;¹³ and (d) “Recommended Disallowed Claims.”¹⁴

II.

THE PRESENT MOTION TO ALLOW CLAIMS IN REDUCED AMOUNT

9. The present Motion pertains only to the allowance of Recommended Reduced Allowed Claims.¹⁵ Each of the Recommended Reduced Allowed Claims is a claim for which the Receiver initially recommends an allowed claim in an amount *less than* the amount asserted by the claimant in its Proof of Claim. Thus, the Receiver is *not* recommending that these Proofs of Claim be disallowed, but rather that each Proof of Claim be allowed in a “Recommended Amount” that is less than the amount asserted in the Proof of Claim.

10. Exhibit A is a listing of each of the Recommended Reduced Allowed Claims, identifying claimants by Proof of Claim number,¹⁶ and stating the “Recommended Amount” for each Proof of Claim. The Recommended Amount for each Proof of Claim is the amount of the claim that the Receiver is recommending for allowance. If the Court enters an Order allowing the Proof of Claim in the Recommended Amount, the amount greater than that amount stated in the Proof of Claim will be deemed disallowed.

11. Generally, the Receiver is recommending allowance of a Proof of Claim in an amount less than that asserted based on one or more of six categories which are discussed in

¹² Claims Report, Exhibit A-2.

¹³ Claims Report, Exhibit A-3.

¹⁴ Claims Report, Exhibit A-4.

¹⁵ The Receiver will file motions related to the treatment of the Recommended Allowed Claims, Recommended Stipulated Allowed Claims and Recommended Disallowed 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.

greater detail in paragraph 18 below. The right-hand column on Exhibit A notes each of the six 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 reduce the amount stated in the Proof of Claim. *Claimants should note that the categories listed in Exhibit A for their respective Proofs of Claim match the explanations given in the Receiver's notice to them following his review of their 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 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-1c.

III.

RELIEF REQUESTED

13. The Receiver is requesting that each of the Proofs of Claim listed on Exhibit A be allowed in the Recommended Amount stated in Exhibit A based on one of the six categories noted on Exhibit A and discussed in greater detail below.

14. For the Proofs 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, allowing such Proofs of Claim in the Recommended Amount stated on Exhibit A.

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 Recommended Amount for objecting claimant. In each such instance, 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 allow the Proofs of Claims in the Recommended Amounts for each of the respective claimants as set forth in Exhibit A hereto. The Recommended Amount stated for each Proof of Claim is the amount of the claim that the Receiver believes should be allowed based on applicable law, the facts of the case, and equity.

18. Generally, for each Proof of Claim listed on Exhibit A, the Receiver is requesting that the Court allow the Proof of Claim in an amount less than that asserted based on at least one of the following six categories. *Claimants should review Exhibit A to be reminded of which of the following categories applies to their respective Proofs of Claim.*

a. Investor Inflated Principal Claims: This category applies to 28 of the Proofs of Claim listed on Exhibit A. Each of these Proofs of Claim has been submitted by a National Note investor who has stated that it is making a claim based on payments to National Note that exceed the amount that National Note recorded it received from the investor. No legal analysis is necessary. The Receiver’s request to reduce the amount asserted in each of these Proofs of Claim is based on facts showing that the amount of claim should be reduced.

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).

b. Investor Interest Claims: This category applies to 11 of the Proofs of Claim listed on Exhibit A. Each of these Proofs of Claim has been submitted by a National Note investor who has stated that it is claiming accrued, but unpaid interest, as part of its claim. It is well-established that in Ponzi scheme cases, investors are not entitled to claim interest on their investments.¹⁸ The Receiver's request to reduce the amount asserted in each of these Proofs of Claim is based on this rule and the Recommended Amount for each of these Proofs of Claim excludes claims for interest.

c. Investor Claims for Amount Greater than Net Principal Investment: This category applies to 66 of the Proofs of Claim listed on Exhibit A. Each of these Proofs of Claim has been submitted by a National Note investor who, in calculating its claim, has not deducted some or any of the distributions that it received from National Note prior to the Receiver's appointment. It is well-established that in Ponzi scheme cases, distributions of cash made to an investor by the Ponzi operator are actually payments on the investor's "claims for restitution or rescission against the [Ponzi operator] up to the amount of the initial investment."¹⁹ The Receiver's request to reduce the amount asserted in each of these Proofs of Claim is based on this rule and the Recommended Amount for each of these Proofs of Claim is based on the Receiver's reduction of all prior distributions as application to the principal, with the total allowed claim being recommended being the balance of that calculation.

¹⁸ See, e.g., *Klein v. McDonald*, No. 2:13-CV-498 TS, 2015 WL 3792366, at *3 (D. Utah June 18, 2015) (any payments to a Ponzi scheme investor above the amount of the initial investment are considered "false profits"); *Wing v. Gillis*, 525 F. App'x 795, 798 (10th Cir. 2013); *Scholes v. Lehmann*, 56 F.3d 750, 757–58 (7th Cir.1995).

¹⁹ *Donell v. Kowell*, 533 F.3d 762, 772 (9th Cir. 2008).

d. Homeland Mineral Claims: This category applies to five of the Proofs of Claim listed on Exhibit A. Each of these Proofs of Claim has been submitted by a claimant seeking recovery of funds it paid to purchase “net profit interests” in ores that Homeland Minerals, LLC stated it acquired from which it was represented platinum and gold would be extracted. The Receiver is recommending that the claimed net profit interests be allowed at 50% of the amounts invested because National Note promised these claimants that one-half of the net profit interest funds would be used to develop processes for extracting metals from the orders (even though, in reality, only a small portion was actually used for this purpose).

e. Old Glory Mint Claims: This category applies to one Proof of Claim listed on Exhibit A. This Proof of Claim has been submitted by a claimant seeking recovery of funds that it paid for the purchase of precious metals to be minted into bars or coins. The Receiver does not dispute that the claimant is entitled to recovery for the undelivered metals, but is recommending that the amount of this claim be allowed based on the volume of metals purchased—priced at the spot price of metals on September 1, 2015—plus costs for minting and shipping.

f. Vendor/IRS Claims: There are two Proofs of Claim, one filed by a vendor and one by the Internal Revenue Service, that assert claims in excess of the amounts that the Receiver believes should be allowed based on the books and records in his custody. The Receiver is recommending that these Proofs of Claim, therefore, be allowed in the Recommended Amount set forth in Exhibit A, which amount is less than the amount that these claimants have asserted.

19. The Receiver submits that the procedure proposed herein is fair and equitable, and

that the basis for recommending that a Proof of Claim be allowed in a reduced amount is appropriate given the applicable law and the facts.

V.

CONCLUSION

WHEREFORE, the Receiver respectfully requests grant this Motion and allow each of the Proofs of Claim set forth in Exhibit A in the Recommended Amount stated therein. 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 J. Wiest

Attorneys for Court-Appointed Receiver

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that the **RECEIVER'S MOTION SEEKING ALLOWANCE OF RECOMMENDED REDUCED CLAIMS 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

REDUCTION CATEGORIES

The Receiver is recommending a reduction in the amount of each of the Proofs of Claim listed below. The basis for the reduction 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 = Investor Inflated Principal Claims (Motion ¶18)
- 2 = Investor Interest Claims (Motion ¶18)
- 3 = Investor Claims for Amount Greater than Net Principal Investment (Motion ¶18)
- 4 = Homeland Mineral Claims (Motion ¶18)
- 5 = Old Glory Mint Claims (Motion ¶18)
- 6 = Vendor/IRS Objections (Motion ¶18)

Claim No.	Total Claim	Recommended Amount	Reason for Reduction						
			1	2	3	4	5	6	
1003	\$110,054.40	\$108,993.66	X						
1003A	\$164,287.04	\$152,259.35			X				
1009	\$307,671.11	\$264,406.02			X				
1031	\$344,994.42	\$300,000.00		X					
1034	\$250,000.00	\$463,533.64	X		X				
1035	\$550,000.00		X		X				
1036	\$650,000.00		X		X				
1037	\$183,000.00		X		X				
1038	\$200,000.00	\$296,547.95	X		X				
1039	\$300,000.00		X		X				
1040	\$150,000.00	\$75,000.00				X			
1041	\$155,116.71	\$127,634.65	X		X				
1055	\$84,114.52	\$22,890.41			X				
1064	\$1,178,703.74	\$301,583.57	X	X	X				
1070	\$166,605.60	\$70,229.13	X						
1077	\$100,000.00	\$77,276.71		X	X				
1082	\$100,000.00	\$34,006.58			X				
1102	\$36,714.12	\$18,337.13	X		X				
1103	\$88,000.00	\$87,000.00			X				
1111	\$74,000.00	\$73,178.08			X				
1137	\$270,000.00	\$130,345.33			X				
1139	\$293,421.45	\$293,057.90			X				
1140	\$68,400.00	\$65,830.68			X				
1141	\$33,164.65	\$20,348.76	X	X	X				
1144	\$1,114.00	\$618.80					X		
1146	\$248,470.00	\$126,677.48	X		X				
1147	\$48,310.25	\$23,211.41	X		X				

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Claim No.	Total Claim	Recommended Amount	Reason for Reduction					
			1	2	3	4	5	6
1148	\$300,000.00	\$74,739.73			X			
1149	\$26,000.00	\$22,245.45			X			
1158	\$38,963.09	\$36,366.17			X			
1163	\$123,200.00	\$43,430.76			X			
1178	\$58,580.00	\$34,300.00	X		X			
1179	\$65,783.00	\$45,000.00	X					
1186	\$500,000.00	\$322,056.67			X			
1196	\$575,109.79	\$528,638.55			X			
1209	\$115,337.39	\$374.87						X
1215	\$108,318.39	\$94,670.69			X			
1218	\$270,410.96	\$220,410.96				X		
1219	\$904,211.00	\$826,712.62			X			
1220	\$120,000.00	\$39,261.37			X			
1221	\$22,517.37	\$17,000.00	X					
1222	\$34,361.74	\$30,030.27			X			
1231	\$440,000.00	\$37,938.64			X			
1239	\$260,000.00	\$130,000.00				X		
1240	\$1,172,241.33	\$843,943.11		X	X			
1248	\$134,012.39	\$34,487.78	X		X			
1252	\$32,421.37	\$19,221.37			X			
1255	\$98,000.00	\$87,930.14			X			
1267	\$77,913.00	\$36,129.62		X	X			
1293	\$158,671.73	\$67,457.89			X			
1296	\$94,500.00	\$72,500.00	X					
1297	\$19,167.00	\$1,894.32			X			

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- 6 = Vendor/IRS Objections (Motion ¶18)

Claim No.	Total Claim	Recommended Amount	Reason for Reduction					
			1	2	3	4	5	6
1302	\$80,874.00	\$17,464.91	X		X			
1309	\$7,473.68	\$402.57	X					
1319	\$43,000.00	\$27,937.13			X			
1325	\$300,000.00	\$167,918.11			X			
1331	\$170,410.96	\$220,410.96				X		
1333	\$181,000.00	\$1,779.13			X			
1336	\$88,537.02	\$79,336.22			X			
1342	\$36,858.08	\$34,058.08			X			
1343	\$90,173.27	\$90,058.08			X			
1356	\$106,696.35	\$67,058.89	X		X			
1366	\$208,386.67	\$33,658.86	X	X	X			
1371	\$50,000.00	\$43,892.08			X			
1372	\$46,500.00	\$46,027.81			X			
1379	\$512,064.00	\$414,710.83			X			
1382	\$828,967.97	\$20,872.06		X	X			
1383				X	X			
1395	\$33,633.00	\$33,532.72			X			
1397	\$72,000.00	\$71,815.00			X			
1405	\$204,028.99	\$146,628.99				X		
1408	\$6,452.14	\$5,712.47	X		X			
1426	\$20,879.40	\$16,150.29	X		X			
1437	\$40,000.00	\$23,214.33						X
1438	\$21,724.71	\$9,724.71	X		X			
1439	\$20,994.70	\$11,374.48			X			
1441	\$71,375.00	\$34,842.20	X		X			
1443	\$205,000.00	\$111,307.94			X			

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Claim No.	Total Claim	Recommended Amount	Reason for Reduction					
			1	2	3	4	5	6
1444	\$47,943.00	\$45,968.63			X			
1445	\$12,994.28	\$1,185.99			X			
1450	\$30,123.81	\$26,600.00		X	X			
1453	\$30,827.43	\$10,000.00	X	X				
Total Recommended Reduced Allowed Claims	\$15,474,780.02	\$8,613,351.69						

EXHIBIT B

Prepared and Submitted By:

Peggy Hunt (Utah State Bar No. 6060)
John Wiest (Utah State Bar No. 15767)

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Attorneys for Court-Appointed Receiver, R. Wayne Klein

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
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SECURITIES AND EXCHANGE
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Defendants.

**ORDER GRANTING RECEIVER'S
MOTION SEEKING ALLOWANCE
OF UNCONTESTED
RECOMMENDED REDUCED
CLAIMS**

Case No: 2:12-CV-591 BSJ

The Honorable Bruce S. Jenkins

The matter before the Court is the *Receiver's Motion Seeking Allowance of Recommended Reduced Claims and Memorandum of Law in Support* [Docket No. ____] (the "Motion"). No objections have been filed to the Motion by the claimants listed on Exhibit A. 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 **ALLOWED** in the Recommended Amount set forth on Exhibit A. The amount of each Proof of Claim in an amount in excess of the Recommended Amount is **DISALLOWED**.

DATED this ____ day of _____, 2016.

FOR THE COURT

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