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

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

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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.

**RECEIVER’S RESPONSE TO  
OBJECTION TO MOTION SEEKING  
ALLOWANCE OF RECOMMENDED  
REDUCED CLAIMS**

**(Proof of Claim No. 1231)**

Civil No. 2:12-00591

The Honorable Bruce S. Jenkins

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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 this *Response to Objection to Motion Seeking Allowance of Recommended Reduced Claims (Proof of Claim No. 1231)*, responding to *Defendant, Jensen’s Response and Objection to Receiver’s Motion to Disallow Claim* (the “Objection”) [Docket No. 1108] filed by the holder of Proof of Claim No. 1231 (“POC 1231”). The Objection is made to the *Receiver’s Motion Seeking Allowance of Recommended Reduced Claims and Memorandum of Law in Support* (the “Reduced Claims Motion”) [Docket No. 1093]. For the reasons set forth in the Reduced Claims

Motion and herein, the Receiver requests that the Objection be overruled and that POC 1231 be allowed in the amount of \$37,938.64. A proposed Order is attached hereto as **Exhibit A**.

**I.**

**PROCEDURAL BACKGROUND**

1. On March 4, 2016, the Receiver filed *Receiver's Initial Claims Report* (the "Initial Claims Report") [Docket No. 1088].
2. On March 14, 2016, the Receiver filed the Reduced Claims Motion, seeking an Order allowing 82 Proofs of Claim listed in Exhibit A to that Motion in amounts less than asserted in the claimants' respective Proofs of Claim.
3. POC 1231 is listed on Exhibit A to the Reduced Claims Motion.
4. On March 21, 2016, the Receiver filed *Receiver's Certificate of Service Regarding (1) Receiver's Initial Claims Report, and (2) Motion Seeking Allowance of Recommended Reduced Claims* [Docket No. 1103], certifying that the Initial Claims Report and Reduced Claims Motion had been served on, among others, the holder of POC 1231 (the "Claimant").
5. On April 4, 2016, the Claimant filed the present Objection. The Objection states that it is an objection is to the *Receiver's Motion Requesting Disallowance of Proofs of Claim* [Docket No. 1092],<sup>1</sup> but that Motion does not pertain to the Claimant. The only Motion relevant to the Claimant is the Reduced Claims Motion.<sup>2</sup>

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<sup>1</sup> Objection, p. 1.

<sup>2</sup> See Reduced Claims Motion, Exh. A (listing POC 1231).

**II.**

**RESPONSE**

6. A copy of POC 1231, redacted to take out personal information, is attached hereto as **Exhibit B.**

7. POC 1231 asserts a total claim in the amount of \$440,000.00.

8. On November 30, 2015, the Receiver served the Claimant with a letter explaining that he would recommend to the Court that POC 1231 be allowed in the reduced amount of \$37,938.64. A copy of this letter, redacted to take out personal information, is attached hereto as **Exhibit C.**

9. Specifically, the Receiver noted that in calculating his claim, the Claimant had not deducted some of the distributions that he had received from National Note prior to the Receiver's appointment. The Receiver provided the Claimant with an accounting of distributions made on his investment and invited the claimant to contact the Receiver if he did not agree with the accounting.<sup>3</sup>

10. The Claimant did not respond to the Receiver's letter related to POC 1231 and accordingly, the Receiver filed the Reduced Claims Motion seeking allowance of POC 1231 in the total reduced amount of \$37,938.64.<sup>4</sup>

11. Consistent with the position taken in the letter, in the Reduced Claims Motion<sup>5</sup> the Receiver has recommended that POC 1231 be allowed in the amount of \$37,938.64 because

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<sup>3</sup> See Exh. C.

<sup>4</sup> The Claimant submitted a total of three Proofs of Claim to the Receiver. The Receiver informed the Claimant that he would recommend that all three Proofs of Claim be allowed in a reduced amount. The Claimant responded to the Receiver on two of the Proofs of Claim, stipulating to allowance of those Claims in Receiver's recommended reduced amount. In the Objection, the Claimant only contests the Receiver's recommendation as to the amount of POC 1231.

any amounts over this amount are in excess of the Claimant's net principal investment and would constitute "false profits" which the Claimant may not recover from the Receivership Estate as a matter of law.<sup>6</sup>

12. The Objection does not address this issue. Rather, the Claimant appears to have copied an Objection that was filed by another claimant in response to the Receiver's Motion seeking to disallow a claim in its entirety based on issues other than those presented by POC 1231.<sup>7</sup>

13. As set forth in paragraph 18(c) of the Reduced Claims Motion, given the fact that National Note was operated as a Ponzi scheme, each claimant is only entitled to the amount of its investment less any distributions it received from National Note. 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."<sup>8</sup> The Receiver's recommendation that POC 1231 be reduced is based on this rule, and the Receiver has recommended that the allowed amount on POC 1231 equal the total amount invested by the Claimant less all distributions made by National Note to the Claimant.

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<sup>5</sup> Reduced Claims Motion at ¶ 18(c) & Exh. A at p. 2.

<sup>6</sup> 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).

<sup>7</sup> See Docket No. 1109 (Objection to Motion to Disallow Proof of Claim No. 1394).

<sup>8</sup> *Donell v. Kowell*, 533 F.3d 762, 772 (9th Cir. 2008).

**III.**

**CONCLUSION**

For all of the reasons stated in the Reduced Claims Motion and herein, the Receiver requests that the Court overrule the Claimant's Objection and grant the Reduced Claims Motion as to POC 1231, thus allowing POC 1231 in the total amount of \$37,938.64. A proposed Order is attached hereto as **Exhibit A.**

DATED this 11th day of April, 2016.

**DORSEY & WHITNEY LLP**

*/s/ Peggy Hunt*

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Peggy Hunt

John J. Wiest

*Attorneys for Receiver*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 11th day of April, 2016, the foregoing **RECEIVER'S RESPONSE TO OBJECTION TO MOTION SEEKING ALLOWANCE OF RECOMMENDED REDUCED CLAIMS (Proof of Claim No. 1231)** was filed with the Court and served via ECF on all parties who have requested notice in this case.

/s/ John J. Wiest

I also hereby certify that on the 11th day of April, 2016, a true and correct copy of the foregoing **RECEIVER'S RESPONSE TO OBJECTION TO MOTION SEEKING ALLOWANCE OF RECOMMENDED REDUCED CLAIMS (Proof of Claim No. 1231)** was served upon the person named below via email at the address set out below:

Verl Auer Jensen  
vajensen@gmail.com

/s/ John J. Wiest

I hereby certify that on the 11th day of April, 2016, a true and correct copy of the foregoing **RECEIVER'S RESPONSE TO OBJECTION TO MOTION SEEKING ALLOWANCE OF RECOMMENDED REDUCED CLAIMS (Proof of Claim No. 1231)** was served upon the persons named below, at the addresses set out below by U.S. mail:

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

Verl Auer Jensen  
10318 N. Golden Oak Ln.  
Highland, UT 84003-9440

/s/ Suanna Armitage