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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 PROOF OF
CLAIM AND MEMORANDUM OF
LAW IN SUPPORT**

(Proof of Claim No. 1464)

Civil No. 2:12-00591

The Honorable Bruce S. Jenkins

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 *Motion Requesting Disallowance of Proof of Claim and Memorandum of Law in Support (Proof of Claim No. 1464)* (the "Motion") in response to *Correspondence from Lawrence McCullough Objecting to the Disallowance of Claim 1464* (the "Objection").¹ For the reasons stated, the Receiver respectfully requests that the Court grant this Motion and disallow the Proof of Claim designated as Proof of Claim No. 1464 ("POC 1464").

¹ Docket No. 1110 (Objection).

I.

BACKGROUND

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 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, among other things, the following

² Docket No. 9 (Receivership Order).

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 (Claim Procedure Order).

documents proposed by the Receiver to implement the filing and consideration of claims in this case: (a) a “Bar Date Notice”; and (b) a “Proof of Claim Form and Instructions” (the “Proof of Claim”). The Court also approved the method of service of the Bar Date Notice and Proof of Claim, and the Court set the bar date for filing Proofs of Claim in this case as November 3, 2015 (the “Bar Date”).⁸

4. On November 10, 2015, the Receiver filed *Receiver’s Certificate of Service of Bar Date Notice and Claim-Related Forms* (the “Certificate of Service”),⁹ 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 on all potential claimants identified at that time, including Lawrence McCullough (“McCullough”).¹⁰ The Certificate of Service, with the relevant portion of Exhibit 1 thereto, is attached hereto as **Exhibit A**.

5. On March 14, 2016, the Receiver filed *Receiver’s Motion Requesting Disallowance of Proofs of Claim and Memorandum of Law in Support* (the “Disallowed Claims Motion”),¹¹ seeking an Order disallowing 46 Proofs of Claim, including Proofs of Claim that were not timely filed.

Proof of Claim No. 1464

6. On March 31, 2016, almost five months after the expiration of the Bar Date and approximately two weeks after the filing of the Disallowed Claims Motion, McCullough

⁸ *Id.*

⁹ Docket No. 1032 (Certificate of Service).

¹⁰ *Id.* at Exh. 1.

¹¹ Docket No. 1092 (Disallowed Claims Motion).

submitted POC 1464 to the Receiver. A true and correct copy of POC 1464 is attached hereto as **Exhibit B**.

7. On April 1, 2016, the Receiver notified McCullough that the Receiver intended to recommend POC 1464 be disallowed in its entirety because it was filed after the Bar Date. A true and correct copy of the Receiver's notice to McCullough is attached hereto as **Exhibit C** ("April 1 Notice").

8. On April 4, 2016, McCullough filed the Objection in response to the Disallowed Claims Motion, although the Disallowed Claims Motion does not pertain to POC 1464. Presumably, McCullough filed the Objection in response to the Receiver's April 1 Notice stating that POC 1464 was not allowable because it was submitted late.

II.

RELIEF REQUESTED

9. For the reasons stated below, the Receiver requests that the Court enter an Order in the form attached hereto as **Exhibit D**, disallowing POC 1464 in its entirety.

III.

MEMORANDUM IN SUPPORT

10. The Court's Claim Procedure Order approved, among other things, the Bar Date Notice and the Proof of Claim form, and set the Bar Date as November 3, 2015.

11. The Bar Date Notice and the Proof of Claim form clearly stated that any Proofs of Claim had to be received by November 3, 2015, or they would be disallowed.¹²

12. The Bar Date Notice and the Proof of Claim form were served on McCullough on September 2, 2015.¹³

¹² See Claim Procedure Order, Exhs. 1, 2, & 3.

13. Even though McCullough had ample notice of the Bar Date, he did not submit POC 1464 until March 31, 2016, almost five months after the Bar Date and after the filing of the Disallowed Claims Motion.

14. The Receiver has recommended disallowance of all other untimely Proofs of Claim.¹⁴

15. In compliance with the claim procedures approved by the Court in the Claim Procedure Order, POC 1464 must be disallowed.

III.

CONCLUSION

For the reasons stated herein, the Receiver requests that the Court overrule the Claimant's Objection and grant this Motion, thus disallowing POC 1464 in its entirety. A proposed Order is attached hereto as **Exhibit D.**

DATED this 12th day of April, 2016.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt

Peggy Hunt

John J. Wiest

Attorneys for Receiver

¹³ See Certificate of Service, Exh. 1.

¹⁴ See Disallowed Claims Motion.

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of April, 2016, the foregoing **RECEIVER'S MOTION REQUESTING DISALLOWANCE OF PROOF OF CLAIM AND MEMORANDUM OF LAW IN SUPPORT (Proof of Claim No. 1464)** was filed with the Court and served via ECF on all parties who have requested notice in this case.

/s/ John J. Wiest

I hereby certify that on the 12th day of April, 2016, a true and correct copy of the foregoing **RECEIVER'S MOTION REQUESTING DISALLOWANCE OF PROOF OF CLAIM AND MEMORANDUM OF LAW IN SUPPORT (Proof of Claim No. 1464)** was served upon the person named below, at the address set out below by U.S. mail:

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

Lawrence McCullough
P.O. Box 655
Tiburon, CA 94920

/s/ Suanna Armitage