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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 RESPONSE TO FT
HOLDING TRUST – KATANA'S
OBJECTION TO RECEIVER'S
RECOMMENDATION TO DISALLOW
PROOF OF CLAIM 1463**

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 *Response* to the *Objection to Receiver's Recommendation To Disallow Proof of Claim 1463* (the "Objection") filed on behalf of FT Holding Trust – Katana ("Claimant"),¹ objecting to the *Receiver's Motion Requesting Disallowance of Proofs of Claim and Memorandum of Law in Support* (the "Claims Disallowance Motion").² Unless otherwise stated, all capitalized terms are

¹ Docket No. 1114.

² Docket No. 1092.

as defined in the Motion. The Receiver submits herewith the *Declaration of R. Wayne Klein* (the “Receiver Declaration”) in support of this Response which is attached hereto as **Exhibit 1**.

For the reasons stated herein and in the Claims Disallowance Motion, the Receiver respectfully requests that the Court overrule the Claimant’s Objection and grant the Claims Disallowance Motion, disallowing Claimant’s Proof of Claim, designated as Proof of Claim No. 1463 (“POC 1463”), in its entirety. Alternatively, if POC 1463 is allowed, the Receiver requests that POC 1463 be allowed in an amount not to exceed \$250,000.00.

I.

BACKGROUND

Fast Track Letter on Behalf of Claimant and Investor Questionnaire

1. By letter dated August 1, 2012, from Fast Track Group (“Fast Track”) to the Receiver (“Fast Track Letter”), Fast Track stated that it was submitting an “Investor Questionnaire” form to the Receiver. A true and correct copy of the Fast Track Letter and the attached Investor Questionnaire is attached to the Receiver Declaration as **Exhibit A**.

2. The Fast Track Letter and Investor Questionnaire were submitted on behalf of the Claimant and FT Holding Trust – ROI 1 (“ROI”). In regard to the Claimant, the Fast Track Letter states, “[Claimant] FT Holding Trust – Katana is the legal entity invested into Homeland Minerals, LLC and is administered by Fast Track Capital, Inc. A total of \$500,000.00 was invested”³

3. The Investor Questionnaire is executed by James Sand as “Trustee.”⁴

4. The Investor Questionnaire requested information from the respondent for, among other things, “resolution of claims.”⁵ In the portion of the Investor Questionnaire that requested

³ Receiver Declaration, Exh. A (Fast Track Letter).

⁴ Receiver Declaration, Exh. A (Investor Questionnaire, p. 4).

contact information, Mr. Sand wrote: “See Attached” and identified an email at “Jim@fasttrackcapital.com.”⁶

5. The attachment referred to in the Investor Questionnaire is the Fast Track Letter, which is executed by Mr. Sand on behalf of Fast Track⁷, and which states in relevant part that “[f]urther correspondence on further information on this claim can be forwarded to:

Fast Track Capital, Inc.
Unit 20-10 Carleton Drive
St Albert, AB
T8N7L2”⁸

6. The Receiver was thereafter contacted by telephone and email by Alexis Assadi (“Assadi”) who identified himself as being affiliated with Fast Track and requested notice of the claims process. The Receiver’s records did not record whether Assadi indicated on whose behalf he or Fast Track might assert a Proof of Claim.⁹

7. At no time was the Receiver notified that the Claimant should be contacted through anyone but Fast Track.¹⁰

⁵ *Id.*, p. 1.

⁶ *Id.*

⁷ In the *Declaration of Richard Pon, Trustee*, Docket No. 1114-1, filed as Exhibit A to the Claimant’s Objection, Mr. Pon testifies that Mr. Sand left his position as Trustee of the Claimant in “early 2012.” Pon Declaration ¶ 18. Mr. Sand executed the Fast Track Letter as CEO of Fast Track and Trustee, and the Letter is dated August 1, 2012. These statements further confuse the relationship between Fast Track and the Claimant. But, the Receiver does not contest that Mr. Sand was no longer at Fast Track or the Claimant at the time of service.

⁸ Receiver Declaration, Exh. A (Fast Track Letter, p. 2).

⁹ Receiver Declaration, ¶ 5.

¹⁰ Receiver Declaration, ¶ 6.

Claim Procedures Order and Compliance

8. On September 1, 2015, the Court entered the Claim Procedure Order, approving, among other things, the Bar Date Notice, and setting November 3, 2015, as the Bar Date for claimants to file Proofs of Claim.¹¹

9. The Bar Date Notice and a Proof of Claim form were served on the Claimant on September 2, 2015, through Fast Track.¹² A copy of the relevant portion of the Certificate of Service certifying this fact is attached as **Exhibit B** to the Receiver Declaration.

10. Email and mail service on the Claimant directed to Mr. Sand at the addresses provided in the Fast Track Letter and Investor Questionnaire were initially attempted by the Receiver, but both were returned as non-deliverable.¹³

11. Service was also made on Fast Track through Assadi, and thus pursuant to the Fast Track Letter and the Investor Questionnaire, on the Claimant. Specifically, the Bar Date Notice and the Proof of Claim form were served on “alexis.assadi@fasttracktocashflow.com.”¹⁴

12. Assidi admits that he is the Chief Executive Officer of Fast Track to Cash Flow, Inc.¹⁵, which is identified in the Fast Track Letter as part of the Fast Track Group¹⁶, and that he received service of a Bar Date Notice and Proof of Claim Form.¹⁷

13. Based on service on Fast Track at the email address noted above, a Proof of Claim was submitted by Fast Track through Assadi as CEO of Fast Track Group on behalf of ROI prior

¹¹ Docket No. 999 (Claim Procedure Order).

¹² Docket No. 1032 (Certificate of Service).

¹³ Receiver Declaration ¶ 8 & Exh. B (Certificate of Service, Exhibit 1, p. 7 & Exhibit 7, p. 3).

¹⁴ Receiver Declaration ¶ 9 (Certificate of Service, Exhibit 1, p. 2).

¹⁵ Objection, Exhibit A (Declaration of Alexis Assadi ¶¶ 1-2).

¹⁶ Receiver Declaration, Exh. A (Fast Track Letter).

¹⁷ Objection, Exh. B. (Declaration of Alexis Assadi ¶ 28).

to the expiration of the Bar Date.¹⁸ A copy of the relevant portions of this Proof of Claim, along with the cover email from Fast Track, is attached to the Receiver's Declaration as **Exhibit C**.

POC 1463

14. On February 25, 2016, almost four months after the expiration of the Bar Date, the Claimant claims it submitted POC 1463 to the Receiver. The Receiver marked POC 1463 as having been received on February 26, 2016. A true and correct copy of POC 1463 is attached to the Receiver Declaration as **Exhibit D**.

15. POC 1463 is executed by Assadi as the Claimant's authorized agent, and by Richie Pon as "Trustee."¹⁹

16. In POC 1463, the Claimant asserts that it has a claim in the amount of \$500,000.00 based on its "Subscription for NPI Units."²⁰ Attached to POC 1463 is a *Subscription Agreement for NPI Units*, executed on behalf of the Claimant by Mr. Sand as "Trustee," showing Claimant's investment in "net profit interests" in ores that were claimed to have been acquired by Receivership Entity Homeland Minerals, LLC.

17. The Receiver does not dispute that the Claimant paid \$500,000.00 to Homeland Minerals, LLC on January 18, 2011.²¹

18. On February 24, 2016, after the expiration of the Bar Date and the submission of the ROI Proof of Claim, the Receiver received two telephone calls from a woman who identified herself as Amy Euong. A true and correct copy of the Receiver's notes is attached as **Exhibit E** to the Receiver Declaration (the "Fast Track Call Notes"). Ms. Euong represented that she was

¹⁸ Receiver Declaration ¶ 10; *accord* Objection, Exh. B (Declaration of Alexis Assadi ¶¶ 20-21).

¹⁹ Receiver Declaration, Exh. D (POC 1463, p.2).

²⁰ *Id.*, p. 1.

²¹ Receiver Declaration ¶ 12.

calling on behalf of Assadi of Fast Track, and that Fast Track made investments with National Note and Homeland Minerals, LLC. Ms. Euong inquired, among other things, about whether a Proof of Claim could be submitted. The Receiver informed Ms. Euong that the Bar Date had expired and that he would recommend disallowance of any Proof of Claim submitted.²²

19. On February 29, 2016, the Receiver notified the Claimant through an email addressed to Assadi that the Receiver had received POC 1463 and that he intended to recommend POC 1463 be disallowed in its entirety because it was submitted after the Bar Date.

20. On March 14, 2016, the Receiver filed the Disallowed Claims Motion, seeking to disallow POC 1463 in its entirety as a late-filed claim.

21. On April 8, 2016, the Claimant filed the present Objection in response to the Disallowed Claims Motion.

II.

RELIEF REQUESTED

22. For the reasons stated in Part III(A) below, the Receiver requests that the Court enter an Order disallowing POC 1463 in its entirety because it was untimely submitted.

23. Alternatively, in the event that the Court determines that POC 1463 should be allowed, the Receiver requests for the reasons stated in Part III(B) below that POC 1463 be allowed in an amount not to exceed \$250,000.00.

²² Receiver Declaration ¶ 14 & Exh. E (Fast Track Call Notes).

III.

RESPONSE

A. POC 1463 Should Be Disallowed Because It was Not Timely Submitted

24. Fast Track informed the Receiver that the Claimant and ROI should be served with information through Fast Track.

25. The Bar Date Notice and the Proof of Claim form were served on the Claimant and ROI through Fast Track on September 2, 2015.²³

26. Fast Track, through Assadi as CEO of Fast Track Group, timely submitted a Proof of Claim for ROI.²⁴

27. Even though the Claimant, through Fast Track, had ample notice of the Bar Date, POC 1463 was not submitted until February 25, 2016, almost four months after the expiration of the Bar Date.

28. The Claimant maintains that POC 1463, which it admits was submitted long after the expiration of the Bar Date, should be allowed because: (a) there is no distribution plan; (b) the Claimant did not receive notice of the Bar Date prior to its expiration; (c) the Claimant did not delay in submitting POC 1463 after it claims it learned of the Bar Date; and (d) other late Proofs of Claim are being allowed.²⁵

29. The Receiver does not dispute that there is no distribution plan, and that if the Claimant is determined to have learned of the Bar Date as stated, there was no delay in filing POC 1463.

²³ See Receiver Declaration, Exh. B (Certificate of Service).

²⁴ Receiver Declaration, Exh. C (ROI Proof of Claim).

²⁵ Objection, pp. 10-14.

30. But, the Receiver disputes the Claimant's assertion of a lack of notice of the Bar Date prior to the expiration of the Bar Date because, as discussed above, Claimant requested that it be notified through Fast Track and Fast Track was served on September 2, 2016.

a. The Claimant's argument that Assadi was not connected to the Claimant at the time of service and that Assadi/Fast Track had no reason to believe that the email service he admits receiving was in relation to the Claimant contradicts prior information provided to the Receiver in the Fast Track Letter and Investor Questionnaire. It also contradicts the fact that a timely Proof of Claim was submitted for ROI by Assadi as CEO of Fast Track.²⁶

b. Furthermore, the Claimant has not provided sufficient evidence that the relationship between Fast Track and the Claimant that had existed on August 1, 2012 was not in effect between the time that the Court approved sending the claim notices and the Bar Date. Reasons that Fast Track's assertions might lack adequate supporting evidence include: (a) whether Fast Track had ceased "administering" the Claimant at some point in time after the Fast Track Letter; (b) the timing of when Assadi/Fast Track began its current "representation" of the Claimant; (c) that Fast Track was not the investor; or (d) the relationship of Mr. Pon to Fast Track. Indeed, the Receiver's telephone calls with Ms. Euong indicate that Fast Track, not Assadi in an individual capacity or as a consultant, would be filing a Proof of Claim for a Homeland Minerals, LLC investment. Furthermore, the Proof of Claim submitted for ROI was made by Fast Track.

31. Furthermore, the Claimant's contention that the Receiver has not recommended disallowance of other untimely Proofs of Claim is incorrect. In fact, the Receiver has recommended disallowance of all other untimely submitted Proofs of Claim similar to POC

²⁶ See Receiver Declaration, Exh. C (ROI Proof of Claim).

1463.²⁷ The Receiver acknowledges that he has not recommended disallowance of the limited Proofs of Claim discussed by the Claimant.²⁸ Those Proofs of Claim, however, involve very different facts than the present case because all were submitted after the Bar Date as a result of the fact that the Receiver did not serve the claimants with the Bar Date Notice until after the expiration of the Bar Date.²⁹ Here, the Receiver maintains that he did serve the Claimant prior to the expiration of the Bar Date.

32. Thus, in compliance with the claim procedures approved by the Court in the Claim Procedure Order, POC 1463 must be disallowed in its entirety.

B. Alternately, POC 1463 Should Be Allowed In a Reduced Amount

33. POC 1463 asserts a claim to recover \$500,000.00 that the Claimant 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.

34. On March 14, 2016, the Receiver filed a *Motion Seeking Allowance of Recommended Reduced Claims and Memorandum of Law in Support (“Reduced Claim Motion”)*³⁰ recommending that Proofs of Claim submitted by all other similarly situated claimants be allowed in reduced amounts. Specifically, the Receiver recommended that claimants seeking recovery of funds paid to purchase net profit interests in ores acquired by Homeland Minerals, LLC have their claims allowed at 50% of the amount invested because Homeland Minerals, LLC obtained investor funds using a Private Placement Memorandum,

²⁷ See Claims Disallowance Motion; Docket No. 1123 (Motion Requesting Disallowance of Proof of Claim (Proof of Claim No. 1464) (McCullough)).

²⁸ Objection at ¶¶ 17-22 & pp. 12-13.

²⁹ See Docket No. 1087 (Supplemental Certificate of Service of Bar Date Notice and Claim-Related Forms).

³⁰ Docket No. 1093.

relevant portions of which are attached to the Receiver Declaration as **Exhibit F**, representing to investors that one-half of their net profit interest funds would be used to develop processes for extracting metals.³¹

35. None of the other net profit interest claimants have contested this treatment of their respective Proofs of Claim and, therefore, the Receiver anticipates that the Reduced Claim Motion will be granted.

36. The Claimant should be treated the same as all other similarly situated holders of Proofs of Claim related to net profit interests in ores of Homeland Minerals, LLC.

37. Accordingly, in the event that the Court determines that POC 1463 should be allowed, he requests that it be allowed in the reduced amount of \$250,000.00.

IV.

CONCLUSION

For the reasons stated herein, the Receiver requests that the Court overrule the Claimant's Objection and grant the Disallowed Claims Motion, thus disallowing POC 1463 in its entirety. Alternatively, if the Court allows POC 1463, the Receiver requests that POC 1463 be allowed in an amount not to exceed \$250,000.00.

DATED this 5th day of May, 2016.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt

Peggy Hunt

John J. Wiest

Attorneys for Receiver

³¹ Reduced Claim Motion, p. 9.

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of May, 2016, the foregoing **RECEIVER'S RESPONSE TO FT HOLDING TRUST – KATANA'S OBJECTION TO RECEIVER'S RECOMMENDATION TO DISALLOW PROOF OF CLAIM 1463** 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 5th day of May, 2016, a true and correct copy of the foregoing **RECEIVER'S RESPONSE TO FT HOLDING TRUST – KATANA'S OBJECTION TO RECEIVER'S RECOMMENDATION TO DISALLOW PROOF OF CLAIM 1463** 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

FT Holding Trust-Katana
c/o Darwin H. Bingham
Bradley W. Madsen
Scalley Reading Bates Hansen & Rasmussen, P.C.
15 W. South Temple, Suite 600
Salt Lake City, UT 84101

/s/ Suanna Armitage

I hereby certify that on the 5th day of May, 2016, a true and correct copy of the foregoing **RECEIVER'S RESPONSE TO FT HOLDING TRUST – KATANA'S OBJECTION TO RECEIVER'S RECOMMENDATION TO DISALLOW PROOF OF CLAIM 1463** was served upon the persons named below, at the addresses set out below by email:

Darwin W. Bingham
dbingham@scalleyreading.net

Bradley W. Madsen
bmadsen@scalleyreading.net

/s/ John J. Wiest