

Peggy Hunt (Utah State Bar No. 6060)
John J. Wiest (Utah State Bar No. 15767)
DORSEY & WHITNEY LLP
136 South Main Street, Suite 1000
Salt Lake City, UT 84101-1685
Telephone: (801) 933-7360
Facsimile: (801) 933-7373
Email: hunt.peggy@dorsey.com
wiest.john@dorsey.com

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
REQUESTING DISALLOWANCE OF
PROOF OF CLAIM NO. 1128 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 JULY
7, 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 Proof of Claim No. 1128 and Memorandum of Law in Support* (the “Motion”). For the reasons stated, the Receiver respectfully requests that the Court, after notice, grant this Motion and disallow Proof of Claim No. 1128 (“POC 1128”) in its entirety. *POC 1128 was a Proof of Claim that the Receiver initially recommended for disallowance in its entirety on the basis that the Claimant had not actually made a cash investment but was relying on rights that she had obtained based on an assignment from another investor. However, as a result of the Court’s ruling rejecting the Receiver’s recommendation to disallow similar Proofs of Claim at a hearing on May 18, 2016, the Receiver has withdrawn that initial recommendation. Notwithstanding, as discussed below, POC 1128 should be disallowed in its entirety on a wholly different grounds—payments made on account of the investment exceed the amount of principal invested.* For this reason, the Receiver requests that POC 1128 be disallowed in its entirety.

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”).¹

2. Pursuant to the Receivership Order, the Receiver was appointed and a

¹ Docket No. 9 (Receivership Order).

Receivership Estate was created. NNU and forty-one of its affiliated companies (collectively with NNU, “National Note”) and all of Palmer’s known assets were placed in the Receiver’s control.² 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,³ investigate and prosecute claims,⁴ and “to develop a plan for the fair, reasonable, and efficient recovery and liquidation of all remaining . . . Receivership Property”⁵

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”),⁶ 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*

² See generally, *id.*

³ *Id.* at ¶ 7.

⁴ *Id.* at ¶¶ at 7, 42-45.

⁵ *Id.* at ¶ 52; see *id.* at ¶ 7.

⁶ Docket No. 999.

Bar Date Notice and Claim-Related Forms,⁷ 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 Claim 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 Claim Procedure Order.

5. On March 4, 2016, the Receiver filed Receiver's *Supplemental Certificate of Service of Bar Date Notice and Claim-Related Forms*,⁸ 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 Claim Procedure Order on persons identified since the filing of the initial Certificate of Service.

The Claims Disallowance Motion

6. On September 21, 2015, POC 1128 was submitted to the Receiver. A redacted copy of POC 1128 is attached hereto as Exhibit A.

7. 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. The Receiver notified the holder of POC 1128 that he was recommending that the POC be disallowed in its entirety on the basis of the Claimant had not actually paid money to National Note, but was asserting a claim based on rights that had been assigned to it by another investor ("No Funds

⁷ Docket No. 1032.

⁸ Docket No. 1087.

Paid Basis”). The *Receiver’s Initial Claims Report* (the “Claims Report”)⁹ that was filed with the Court also reported POC 1128 as a Proof of Claim that the Receiver was recommending for disallowance on the No Funds Paid Basis.¹⁰

8. In conjunction with that recommendation, the Receiver filed a *Motion Requesting Disallowance of Proofs of Claim and Memorandum of Law in Support* (the “Claims Disallowance Motion”),¹¹ seeking disallowance of, among others, POC 1128. The basis of the recommendation for disallowance as to POC 1128 was the No Funds Paid Basis.¹²

9. The holder of POC 1128 did not object to the Claims Disallowance Motion.

Withdrawal of the Claims Disallowance Motion as to POC 1128 Due to an ABI Holding

10. On May 18, 2016, the Court conducted a hearing on the Claims Disallowance Motion.

11. At that hearing, the Court addressed an objection to that Motion filed by Gerry Petty, a claimant holding a Proof of Claim similar to POC 1128. The Court sustained the objection made, rejecting the No Funds Paid Basis for disallowing the claims.

12. Accordingly, the basis for disallowing POC 1128 as recommended by the Receiver in the Claims Disallowance Motion has been rejected by the Court.

13. The Court subsequently entered its *Order Granting in Part and Denying in Part Receiver’s Motion Requesting Disallowance of Non-Objecting Claimants’ Proofs of Claim* (the

⁹ Docket No. 1088.

¹⁰ Claims Report, Exhibit A-4.

¹¹ Docket No. 1092.

¹² *Id.*, Exhibit A.

“Claims Order”).¹³ As part of the Claims Order, the Court denied without prejudice the Receiver’s Motion as to POC 1128.¹⁴

II.

THE PRESENT MOTION TO DISALLOW

14. After the Court’s ruling on the Claims Disallowance Motion, the Receiver revisited his review of POC 1128. Upon further review of POC 1128, the Receiver has determined that POC 1128 should be disallowed on entirely different grounds than the No Funds Paid Basis.

15. Specifically, as set forth in Exhibit B attached hereto, National Note paid all amounts owed for the principal investment made plus interest on account of the investment on which the holder of POC 1128 is basing her claim.

16. Thus, the holder of POC 1128 does not have an allowable claim against the Receivership Estate, and the Receiver is requesting that POC 1128 be disallowed in its entirety.

III.

MEMORANDUM IN SUPPORT

17. The “district court has broad powers and wide discretion to determine relief in an equity receivership.”¹⁵

18. Here, the Receiver is requesting that the Court disallow POC 1128 because the principal investment plus interest were paid on account of the investment on which POC 1128 is

¹³ Docket No. 1142.

¹⁴ *Id.* (Claims Order, ¶ 1 & Exh. 2).

¹⁵ *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).

based. In a Ponzi scheme, such as the present, claims for amounts in excess of principal investment are not allowable.¹⁶ Thus, since the principal investment on the investment in question here was paid in full, the holder of POC 1128 does not have an allowable claim.

19. The Receiver submits that the procedure proposed herein is fair and equitable, and that the basis for recommending disallowance of POC 1128 is appropriate given the applicable law and the facts.

IV.

CONCLUSION

WHEREFORE, the Receiver respectfully requests that the Court grant this Motion and disallow POC 1128 in its entirety. A proposed form of Order is attached hereto as Exhibit C.

DATED this 10th day of June, 2016.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt

Peggy Hunt

John J. Wiest

Attorneys for Court-Appointed Receiver

¹⁶ 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”).

EXHIBIT A

UNITED STATES DISTRICT COURT, DISTRICT OF UTAH Securities and Exchange Commission v. National Note of Utah, LC and Wayne LaMar Palmer <i>And</i> Bonneville Minerals, LLC; Centennial Aviation, LLC; The Corner Corporation; DPLM, LLC; Elkhorn Ridge, LLC; Expressway Business Park, LLC; Farrell Business Park, LLC; Freedom Minerals I, LLC; Freedom Minerals II, LLC; Homeland Development I, LLC; Homeland Development II, LLC; Homeland Funding Corp.; Homeland Holding Corp.; Homeland Minerals, LLC; Homeland Mortgage, Inc.; Homeland Mortgage L.C.; Indian Canyon, LLC; Koala T. Investments LLC; Land Utah, LC; Made Art Licensing, LLC; Montana One, LLC; ND I, LLC; NPL America, LLC; Network Leisure Shoppes, Inc.; Note Systems, Inc.; Old Glory Minting Company, LLC; Ovation 106, LLC; Passport Properties, L.C.; Pedigree Properties; Presidential Utah Properties, LC; Prime Wave I, LLC; The Property Company, LLC; Real Estate Finance Institute, Inc.; Riverbend Estates LC; Spanish Fork Development, LLC; Territory Land Company, Inc.; Top Flight, LLC; Traditions in Timber; Twin Pines Property, LC; and Vision Land, LLC.	PROOF OF CLAIM RECEIVER USE ONLY: Date Form received: <div style="text-align: right; font-size: 1.2em;">9/21/15</div> Claim Number: <u>1128</u> <input type="checkbox"/> Backup documents needed <input type="checkbox"/> Documents received						
CLAIMANT (The person or entity owed money by an entity listed above):							
Names(s): <u>[REDACTED]</u> Street: <u>[REDACTED]</u> City, State, Zip: <u>[REDACTED]</u> Telephone Number: <u>[REDACTED]</u> Email: <u>[REDACTED]</u>	<input type="checkbox"/> Check box if this claim is related to other claims <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%; padding: 2px;">List related claims</td> <td style="width: 80%;"></td> </tr> </table>	List related claims					
List related claims							
TOTAL AMOUNT CLAIMED: \$ _____							
BASIS FOR CLAIM (Check the boxes below for each category of claim you are making):							
<input checked="" type="checkbox"/> PROMISSORY NOTE. Check this box if you loaned money to or invested money with any of the companies listed above. Please provide the following information, if known: Account number(s): _____ <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%;">Total amount paid to companies:</td> <td style="border-bottom: 1px solid black; text-align: right;">\$ 19,000.00</td> </tr> <tr> <td>Total amount received back:</td> <td style="border-bottom: 1px solid black; text-align: right;">\$ -</td> </tr> <tr> <td style="text-align: right;">Total Claimed:</td> <td style="border-bottom: 1px solid black; text-align: right;">\$ 19,000.00</td> </tr> </table>		Total amount paid to companies:	\$ 19,000.00	Total amount received back:	\$ -	Total Claimed:	\$ 19,000.00
Total amount paid to companies:	\$ 19,000.00						
Total amount received back:	\$ -						
Total Claimed:	\$ 19,000.00						
<input type="checkbox"/> PRECIOUS METALS PURCHASE. Check this box if you purchased precious metals from Old Glory Mint and did not receive any or all the metals ordered. <i>Attach supporting documents.</i> Total Claimed: \$ _____							
<input type="checkbox"/> OTHER BASIS. Check this box if you are owed money by any of the companies listed above for any reason other than on account of a promissory note or precious metal purchase. Describe reason for claim: _____ <i>Attach supporting documents.</i> Total Claimed: \$ _____							

DISTRIBUTIONS: Distributions, if any, will be made to the Claimant identified above at the address listed. Please fill in this section only if you would like all or a part of any distribution made to a retirement custodian or another entity. If this portion is completed, all distributions will be made as directed unless instructed otherwise in writing.

Payee/Acct. No. (if applicable)	Address	% of Distribution

ADDITIONAL INFORMATION: If there is additional information the Receiver needs to know, please provide an explanation here:

SIGNATURE & VERIFICATION:

This Form must be signed by each person making the claim to be valid, or by an authorized agent of the claimant(s). *I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information and reasonable belief.*

Print Name: _____
 Signature: _____
 Title: OWNER Date: 9/18/15

Print Name: _____
 Signature: _____
 Title: _____ Date: _____

SUBMITTING YOUR COMPLETED FORM TO THE RECEIVER
DO NOT FILE YOUR FORM WITH THE COURT

This Form may be completed and submitted via U.S. Mail, overnight mail, or hand delivery addressed to the following: Claims c/o Klein & Associates, 10 E. Exchange Place, Suite 502, Salt Lake City, Utah 84111; or submitted by email at: Claims@kleinutah.com

COMPLETED FORM MUST BE RECEIVED BY THE RECEIVER ON OR BEFORE NOVEMBER 3, 2015.

[Questions? See Attached Instructions]

EXHIBIT B

Net Principal Calculation for Bessie Bradshaw			
	Deposits	Withdrawals	Net
Total for Investor from NoteSmith Account	\$120,000.00	\$111,994.56	\$8,005.44
Share of Investor Account Transferred to Claimant	\$28,148.16	\$26,270.34	\$1,877.82
Total for Tranferee's Separate NoteSmith Account	\$0.00	\$3,040.00	(\$3,040.00)
Total for Claimant	\$28,148.16	\$29,310.34	(\$1,162.18)

EXHIBIT C

Prepared and Submitted By:

Peggy Hunt (Utah State Bar No. 6060)
John J. Wiest (Utah State Bar No. 15767)
DORSEY & WHITNEY LLP
136 South Main Street, Suite 1000
Salt Lake City, UT 84101-1685
Telephone: (801) 933-7360
Facsimile: (801) 933-7373
Email: hunt.peggy@dorsey.com
wiest.john@dorsey.com

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.

**ORDER GRANTING RECEIVER'S
MOTION REQUEUSTING
DISALLOWANCE OF PROOF OF
CLAIM NO. 1128**

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 Proof of Claim No. 1128 and Memorandum of Law in Support* (the "Motion"). The Court has reviewed the Motion and the record in this case, and for good cause shown,

IT IS HEREBY ORDERED that:

(1) The Motion is **GRANTED**;

(2) Proof of Claim No. 1128 is disallowed in its entirety.

DATED this ____ day of June, 2016.

BY THE COURT

The Honorable Bruce S. Jenkins
United States District Court