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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 SECOND 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

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**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 ALLOWED AMOUNT.**

**IF YOU WANT TO CONTEST THE AMOUNT RECOMMENDED BY THE RECEIVER, 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 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.**

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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 *Receiver’s Second 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 six Proofs of Claim (the “Relevant Claims”) in the amounts recommended by the Receiver in Exhibit A attached hereto. *The six Relevant Claims were claims that the Receiver initially recommended for disallowance in their entirety. 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 his initial recommendation and is now recommending that the Relevant Claims listed on Exhibit A be allowed, but in an amount less than the amount asserted in the Proofs of Claim submitted.*

**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”).<sup>1</sup>

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 of Palmer’s known assets were placed in the Receiver’s control.<sup>2</sup> 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,<sup>3</sup> investigate and prosecute claims,<sup>4</sup> and “to develop a plan for the fair, reasonable, and efficient recovery and liquidation of all remaining . . . Receivership Property . . . .”<sup>5</sup>

*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”),<sup>6</sup> 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

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<sup>1</sup> Docket No. 9 (Receivership Order).

<sup>2</sup> *See generally, id.*

<sup>3</sup> *Id.* at ¶ 7.

<sup>4</sup> *Id.* at ¶¶ at 7, 42-45.

<sup>5</sup> *Id.* at ¶ 52; *see id.* at ¶ 7.

<sup>6</sup> Docket No. 999.

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*,<sup>7</sup> 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*,<sup>8</sup> 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. 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 each of the holders of the Relevant Claims that he was recommending that their respective Proofs of Claim be disallowed in their entirety. The *Receiver’s Initial Claims Report* (the “Claims Report”)<sup>9</sup> that was filed with the Court also reported the Relevant Claims as

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<sup>7</sup> Docket No. 1032.

<sup>8</sup> Docket No. 1087.

<sup>9</sup> Docket No. 1088.

Proofs of Claim that the Receiver was recommending for disallowance.<sup>10</sup>

7. In conjunction with that recommendation, the Receiver filed a *Receiver's Motion Requesting Disallowance of Proofs of Claim and Memorandum of Law in Support* (the "Claims Disallowance Motion"),<sup>11</sup> seeking disallowance of, among others, the 6 Relevant Claims listed on Exhibit A.

*Withdrawal of the Claims Disallowance Motion as to the Relevant Claims*

8. On May 18, 2016, the Court conducted a hearing on the Claims Disallowance Motion, and also addressed certain objections to that Motion that had been filed by claimants holding Proofs of Claim similar to those asserted in the six Relevant Claims at issue here. The Court sustained the objections made, and ruled that such claims should not be disallowed on the basis asserted by the Receiver.

9. On the basis of that ruling, the Receiver has withdrawn his recommendation to disallow the six present Relevant Claims in their entirety.

10. The Receiver now requests that the Relevant Claims be allowed, but in amounts less than what is asserted in the Proofs of Claim.

**II.**

**THE PRESENT MOTION TO ALLOW CLAIMS IN REDUCED AMOUNT**

11. The present Motion pertains only to the allowance of the six Relevant Claims. For each, the Receiver recommends an allowed claim in an amount *less than* the amount asserted by

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<sup>10</sup> Claims Report, Exhibit A-4.

<sup>11</sup> Docket No. 1092. On May 24, 2016, the Court entered an *Order Granting in Part and Denying in Part Motion Requesting Disallowance of Non-Objecting Claimants' Proofs of Claim*. None of the present six Relevant Claims were included as Proofs of Claim disposed of by that Order because the Court's May 18th ruling related to Proofs of Claim similar to the Relevant Claims.

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.

12. Exhibit A is a listing of each of the Relevant Claims, identifying claimants by Proof of Claim number,<sup>12</sup> 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.

13. The Receiver is recommending allowance of the Relevant Claims in amounts less than that asserted by the claimants because the amount asserted by the claimants is greater than they are entitled to as a matter of law. Specifically, each of the Relevant Claims 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.”<sup>13</sup> Thus, the Receiver’s request to reduce the amount asserted in each of the Relevant Claims listed on Exhibit A is based on this rule. The Recommended Amount for each of these Proofs of Claim is the sum of the total amount each claimant paid minus the amounts distributed to the claimant by National Note or an affiliated entity.

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<sup>12</sup> 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.

<sup>13</sup> Donell v. Kowell, 533 F.3d 762, 772 (9th Cir. 2008).

14. At the time the Receiver serves this Motion on each claimant, the Receiver will also provide a spreadsheet listing the amounts of investment and distributions, showing how he calculated the Recommended Amount. Claimants are encouraged to contact the Receiver if their records differ from the explanation provided by the Receiver.

15. 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 July 7, 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-lc](http://www.kleinutah.com/index.php/receiverships/national-note-of-utah-lc).

### **III.**

#### **RELIEF REQUESTED**

16. The Receiver is requesting that each of the Relevant Claims listed on Exhibit A be allowed in the Recommended Amount stated in Exhibit A. The Recommended Amounts are less than the amount asserted by the claimants in each of the Relevant Claims for the reason set forth in paragraph 18 below.

### **IV.**

#### **MEMORANDUM IN SUPPORT**

17. The "district court has broad powers and wide discretion to determine relief in an equity receivership."<sup>14</sup>

18. Here, the Receiver is requesting that the Court allow six Relevant 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

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<sup>14</sup> *SEC v. Vescor Capital Corp.*, 599 E.3d 1189, 1194 (10<sup>th</sup> Cir. 2010), *quoted in Klein v. Penedo*, Order and Judgment, No. 14-4077 at 6 (10<sup>th</sup> Cir. Oct. 27, 2015). *See also Bendell v. Lancer Mang. Group, LLC*, 523 Fed. Appx. 554 (11<sup>th</sup> Cir. 2013); *SEC v. Safety Fin. Serv., Inc. v. Ark. Loan & Thrift Corp.*, 674 F.2d 368, 373 (5<sup>th</sup> Cir. 1982).



**CERTIFICATE OF SERVICE**

**IT IS HEREBY CERTIFIED** that the **RECEIVER'S SECOND MOTION SEEKING ALLOWANCE OF RECOMMENDED REDUCED CLAIMS AND MEMORANDUM OF LAW IN SUPPORT** was filed with the Court on this 8th day of June, 2016, and served via ECF on all parties who have requested notice in this case.

*/s/ John J. Wiest*

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**IT IS ALSO HEREBY CERTIFIED** that on this 8th day of June, 2016, the **RECEIVER'S SECOND MOTION SEEKING ALLOWANCE OF RECOMMENDED REDUCED CLAIMS AND MEMORANDUM OF LAW IN SUPPORT** was served on the following party by U.S. Mail postage prepaid:

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

*/s/ Suanna Armitage*

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**IT IS ALSO HEREBY CERTIFIED** that on this 8th day of June, 2016, the **RECEIVER'S SECOND MOTION SEEKING ALLOWANCE OF RECOMMENDED REDUCED CLAIMS AND MEMORANDUM OF LAW IN SUPPORT** was served on the following parties by email:

rliciardo@yahoo.com

davemusso@comcast.net

groundhogdoc@gmail.com

cherryann@reagan.com

staysathome@msn.com

mort007@regal-mfg.com

*/s/ John J. Wiest*

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