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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 STATUS REPORT ON  
MOTION FOR APPROVAL OF (1)  
PROPOSED DISTRIBUTION  
METHODOLOGY AND PLAN OF  
DISTRIBUTION, AND (2) PROPOSED  
INITIAL DISTRIBUTION, REPLY TO  
RESPONSES, AND REQUEST FOR  
ENTRY OF ORDER GRANTING  
MOTION**

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 *Status Report on Motion for Approval of (1) Proposed Distribution Methodology and Plan of Distribution, and (2) Proposed Initial Distribution, Reply to Responses, and Request for Entry of Order Granting Motion*. A proposed Order is attached hereto as **Exhibit A**. In support hereof, the Receiver represents as follows.

**I.**

**PROCEDURAL BACKGROUND**

1. On August 24, 2016 the Receiver filed *Receiver's Motion for Approval of (1) Proposed Distribution Methodology and Plan of Distribution, and (2) Proposed Initial Distribution, and Memorandum in Support* (the "Distribution Motion").<sup>1</sup>

2. The Distribution Motion affects each of the 435 holders of "Allowed Claims" listed on Exhibit A to the Distribution Motion and, potentially, the four holders of unresolved "ABI Proofs of Claim" identified in Exhibit B to the Distribution Motion (collectively, the "Relevant Claims").

3. In the Distribution Motion, the Receiver proposes to make an initial distribution of \$4,500,000.00 to holders of Allowed Claims using a hybrid *pro rata*/rising tide distribution methodology (the "Hybrid Method"), and reserving funds on account of the disputed ABI Proofs of Claim.<sup>2</sup>

4. The Distribution Motion was served on all holders of Relevant Claims,<sup>3</sup> and prominently states on its face that holders of Relevant Claims were required to file any response or objection to the Distribution Motion by no later than September 20, 2016 (the "Objection Deadline").

5. The Objection Deadline has passed. The vast majority of claimants have not objected to the Distribution Motion or the Hybrid Method of distribution proposed by the Receiver.

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<sup>1</sup> Docket No. 1196.

<sup>2</sup> Distribution Motion at ¶¶ 20-30.

<sup>3</sup> See Docket No. 1208, *Certificate of Service*.

6. Specifically, out of the total 439 Proofs of Claim affected, only 3 responses to the Distribution Motion have been filed.

(a) Two holders of three Allowed Claims filed objections to the Distribution Motion as follows:

- i. Sarah Blackwell, Claim No. 1375 (the “Blackwell Objection”);<sup>4</sup>  
and
- ii. Donald R. Hertz, Claim Nos. 1088 and 1089 (the “Hertz Objection”).<sup>5</sup>

(b) Additionally, Danny and Barbara Kiang, who did not submit timely Proofs of Claim, but who have requested leave to file late-filed Proofs of Claim, filed a response to the Distribution Motion (the “Kiang Response”).<sup>6</sup>

7. These papers and the Receiver’s reply to them are outlined below.

## II.

### **RECEIVER’S REPLY TO OBJECTIONS AND ADJUSTMENTS TO DISTRIBUTION PLAN**

#### **Blackwell Objection**

8. Ms. Blackwell initially submitted a Proof of Claim, designated as Claim No. 1375, in the amount of \$0.00. Based on that submission, the Receiver recommended that the Court afford Ms. Blackwell an Allowed Claim in the amount of \$0.00. In its *Order Granting*

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<sup>4</sup> Docket No. 1205.

<sup>5</sup> Docket No. 1206.

<sup>6</sup> Docket No. 1207.

*Receiver's Motion Seeking Allowance of Recommended Reduced Claims*,<sup>7</sup> Proof of Claim No. 1375 was allowed in the amount of \$0.00 ("Allowance Order").<sup>8</sup>

9. Ms. Blackwell asserts that her submission of a Proof of Claim in the amount of \$0.00 was in error, and that she in fact invested a total of \$17,748.94 in National Note and received no return on that investment. As part of the Blackwell Objection, she has attached an "Amended Proof of Claim," asserting a claim in the total amount of \$17,748.94.

10. The Receiver's records show that Ms. Blackwell received a distribution in the amount of \$210.52 from National Note which is not reflected in her Amended Proof of Claim, and thus her net principal investment is actually \$17,538.42.

11. Ms. Blackwell does not actually object to the Distribution Motion or the Hybrid Method of distribution that is proposed, but rather requests that the Court allow her Amended Proof of Claim and require that a distribution be made to her based on such Claim. In fact, the Blackwell Objection is labeled as an objection to the Court's Allowance Order, not an objection to the Distribution Motion.

12. Since the filing of the Blackwell Objection, the Receiver has been in contact with Ms. Blackwell, and a settlement agreement has been reached, subject to Court approval, under which the Receiver recommends that Ms. Blackwell's Amended Proof of Claim be allowed at a 25% discount, taking into account the distribution she received.

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<sup>7</sup> Docket No. 1116.

<sup>8</sup> *See id.*, Exh. 1.

13. Thus, the Receiver requests that the Court approve this agreement with Ms. Blackwell, and afford Ms. Blackwell an Allowed Claim in this case in the total amount of \$13,153.82.

14. If the Court adopts the Receiver's recommendation and grants the Distribution Motion, Ms. Blackwell will receive an initial distribution on account of her Allowed Claim in the total amount of \$3,512.82, which is \$314.16 on a *pro rata* basis and \$3,198.79 on a rising tide basis.

15. Instead of adjusting the distribution to be made to all other holders of Allowed Claims as outlined in the Distribution Motion, the Receiver will make the distribution to Ms. Blackwell from funds on hand in the Receivership Estate's Operating Account and in addition to the \$4.5 million distribution outlined in the Distribution Motion.

#### **Hertz Objection**

16. Mr. Hertz holds two Allowed Claims, designated as Claim Nos. 1088 and 1089.

17. Mr. Hertz is the only claimant who has objected to the Hybrid Method of distribution under the proposed Distribution Plan. Instead, Mr. Hertz wants the Court to require a straight *pro rata* distribution, with no rising tide method.<sup>9</sup>

18. The Receiver maintains that the Hertz Objection should be overruled.

19. The Distribution Motion sets forth the Receiver's rationale for proposing a Hybrid Method of distribution and he incorporates that Motion herein.<sup>10</sup> As stated therein, the Receiver believes that the Hybrid Method of distribution is the fairest methodology for distributing funds

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<sup>9</sup> See Hertz Objection.

<sup>10</sup> See Distribution Motion ¶¶ 12-19.

to holders of Allowed Claims in this case inasmuch as it will provide a distribution to all holders, but also make a larger recovery to those holders who lost a larger percentage of their money than others in this scheme.

20. The fact that none of the other holders of Relevant Claims objected to the Plan suggests that the vast majority of them accept the fairness of the Hybrid Method proposed by the Receiver.

21. For these reasons, the Receiver respectfully requests that the Court overrule the Hertz Objection.

#### **Kiang Response**

22. Danny and Barbara Kiang (the “Kiangs”) both invested with National Note. Specifically, Danny invested a total of \$97,670.48 and Barbara invested a total of \$53,652.43. Neither of the Kiangs received any return on their investments.

23. The Kiangs did not submit timely Proofs of Claim and do not presently hold Allowed Claims.

24. On September 13, 2016, the Court entered an *Order*<sup>11</sup> granting the Kiangs’ *Motion to Intervene and Memorandum in Support*,<sup>12</sup> thus allowing them leave to file a motion seeking allowance of a late-filed proof of claim. And, on September 14, 2016 the Kiangs filed a *Motion to Approve Late-Filed Claim Forms and Memorandum in Support* (the “Late Claim Motion”).<sup>13</sup>

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<sup>11</sup> Docket No. 1202.

<sup>12</sup> Docket No. 1197.

<sup>13</sup> Docket No. 1203.

25. In the Kiang Response to the Distribution Motion, the Kiangs “do not object to the proposed distribution methodology or procedure, or any other substantive ground upon which the Receiver bases the Plan of Distribution. Movants object simply because they seek inclusion in the Plan of Distribution...”<sup>14</sup>

26. Since the filing of the Late Claim Motion, the Receiver has been in contact with the Kiangs through counsel, and a settlement agreement has been reached, subject to Court approval, under which the Receiver recommends that the Kiangs be afforded an Allowed Claim in the total amount of \$97,670.48.

27. Thus, the Receiver requests that the Court approve this agreement, and afford the Kiangs an Allowed Claim in this case in the total amount of \$97,670.48.

28. If the Court adopts the Receiver’s recommendation and grants the Distribution Motion, the Kiangs will receive an initial distribution on account of their Allowed Claim in the total amount of \$19,563.40, which is \$1,728.77 on a *pro rata* basis and \$17,834.63 on a rising tide basis.

29. Instead of adjusting the distribution to be made to all other holders of Allowed Claims as outlined in the Distribution Motion, the Receiver will make the distribution to the Kiangs from funds on hand in the Receivership Estate’s Operating Account and in addition to the \$4.5 million distribution outlined in the Distribution Motion.

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<sup>14</sup> Docket No. 1207 at p. 3.

**McCullough Adjustment**

30. Since filing the Distribution Motion, the Receiver has determined that he incorrectly listed the Claim No. 1464 held by Larry McCullough as being an Allowed Claim in the amount of \$40,453.00.<sup>15</sup>

31. However, the amount of this Allowed Claim is actually \$57,564.50.<sup>16</sup>

32. Thus, the distribution proposed to Mr. McCullough in the Distribution Motion is understated in the total amount of \$3,430.93. Specifically, Mr. McCullough should receive \$1,019.95 (not \$716.76) on account of his *pro rata* distribution, and \$10,521.98 (not \$7,394.24) on account of his rising tide distribution.<sup>17</sup>

33. Instead of adjusting the distribution to be made to all other holders of Allowed Claims as outlined in the Distribution Motion, the Receiver will make the additional distribution to Mr. McCullough from funds on hand in the Receivership Estate's Operating Account and in addition to the \$4.5 million distribution outlined in the Distribution Motion.

**III.**

**REQUEST FOR ENTRY OF ORDER GRANTING THE DISTRIBUTION  
MOTION AS MODIFIED HEREIN**

34. The Distribution Motion has been served on all the Relevant Claimants.

35. The Distribution Motion made clear on its face that any Relevant Claimant objecting to Distribution Motion was required to file an objection prior to the expiration of the Objection Deadline.

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<sup>15</sup> See Distribution Motion, Exh. A.

<sup>16</sup> See Docket No. 1167 ("Proof of Claim No. 1464 is **ALLOWED** in the amount of \$57,564.50").

<sup>17</sup> See Distribution Motion, Exhs. C & D.



36. Only two holders of Allowed Claims out of the total 439 Relevant Claimants have raised issues with the Distribution Motion, and two other persons who did not timely file Proofs of Claim have responded to the Distribution Motion.

37. For the reasons outlined above, the Receiver believes that the issues in the Blackwell Objection and the Kiang Response are remedied by the proposed agreements outlined herein, and he requests that the Court approve those agreements.

38. Furthermore, for the reasons outlined above, the Receiver asks that the Hertz Objection be overruled. Mr. Hertz is the only one of 439 Relevant Claimants who has objected to the Hybrid Method of distribution. This objection is not supported by legal authority and, in any event, the selection of a distribution plan is within the discretion of this Court. In the view of the Receiver, the pure *pro rata* distribution method advocated by Mr. Hertz is not, for the reasons outlined in the Distribution Motion, the best method to employ in this case.

39. The Receiver requests that the Court grant the Distribution Motion as prayed, except for the following amendments:

(a) Affording Ms. Blackwell an Allowed Claim in the total amount of \$13,153.82, and authorizing the initial distributions to Ms. Blackwell outlined above;

(b) Affording the Kiangs an Allowed Claim in the total amount of \$97,670.48, and authorizing the initial distributions to the Kiangs outlined above;

(c) Increasing the total distribution to Mr. McCullough outlined in the Distribution Motion by \$3,430.93.

(d) Authorizing interim distributions in the total amount of \$26,507.28, in addition to the \$4.5 million outlined in the Distribution Motion, to make the distributions to Ms. Blackwell, the Kiangs, and Mr. McCullough as noted above.

40. Accordingly, the Receiver requests that the Court enter the proposed Order attached hereto as **Exhibit A**, granting the Distribution Motion as amended herein.

DATED this 30<sup>th</sup> day of September, 2016.

**DORSEY & WHITNEY LLP**

*/s/ Peggy Hunt*

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Peggy Hunt

John J. Wiest

*Attorneys for Receiver*

