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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 SEEKING
ALLOWANCE OF PREVIOUSLY
DISPUTED CLAIMS AND
AUTHORIZATION TO RELEASE
FUNDS**

Civil No. 2:12-00591

The Honorable Bruce S. Jenkins

R. Wayne Klein, as receiver (the "Receiver") for National Note of Utah, LC and its affiliated entities ("National Note") and the assets of Defendant Wayne LaMar Palmer, by and through his counsel of record, hereby requests that the Court enter an Order allowing previously disputed Proofs of Claim as set forth below and authorizing him to release funds that have been reserved on account of such Proofs of Claim in the event that they are allowed. A proposed form of Order is attached hereto as **Exhibit A**.

In support hereof, the Receiver states as follows.

I.

BACKGROUND

The Initial Distribution Order and the Approved Methodology

1. On November 8, 2016, after notice to all parties in interest and opportunity to be heard, the Court entered an *Order Granting Receiver's Motion for Approval of (1) Proposed Distribution Methodology and Plan of Distribution, and (2) Proposed Initial Distribution as Modified* (the "Initial Distribution Order")¹ which, among other things, approved the Receiver's proposed methodology for distributing funds of the Receivership Estate to holders of "Allowed Claims" (the "Approved Methodology"), and authorized the Receiver to make an "Initial Distribution" in the total amount of \$4,526,507.28 to holders of Allowed Claims. A copy of the relevant portions of Initial Distribution Order is attached hereto as **Exhibit B** for the Court's convenience.

2. Allowed Claims in this case are limited to each holder's "Net Principal Investment"—which is calculated as the sum of all cash invested by the victim with National Note, less all cash paid to the victim by National Note prior to the commencement of the above-captioned case. Each holder of a claim also has been assigned a "Pre-Receivership Percentage Return" which is the percentage return that was paid on the victim's Net Principal Investment prior to the commencement of this case.

3. The Approved Methodology allows all victims in this case receive a one-time *pro rata* distribution from \$1.5 million on account of their respective Allowed Claims as part of the Initial Distribution, plus if eligible, "rising tide" distributions. Eligibility for rising tide distributions is based on the amount of each victim's Pre-Receivership Percentage Return.

¹ Docket No. 1231.

The Disputed Claims, the Reserved Funds and the ABI Suit

4. In the Initial Distribution Order, the only three “disputed” Proofs of Claim (collectively, the “Disputed Claims”) were those asserted by the only remaining defendants in the lawsuit that the Receiver had filed to invalidate their respective Assignments of Benefits of Interest (“ABIs”), designated as *Klein v. Adams et al.*, 2:14-cv-614-BSJ (D. Utah) (the “ABI Suit”). These Disputed Claims are identified as follows:

- a. Proof of Claim No. 1320, filed by Kristine S. Olson (“Olson Claim”), with a Net Principal Investment amount of \$277,582.19 and a Pre-Receivership Percentage Return of 40.09%;
- b. Proof of Claim No. 1321, filed by the Kristine S. Olson Profit Sharing Plan (“Profit Sharing Claim”), with a Net Principal Investment Amount of \$52,744.79 and a Pre-Receivership Percentage Return of 85.93%; and
- c. Proof of Claim No. 1401, filed by Lisa S. Shah (“Shah Claim”), with a Net Principal Investment amount of \$310,751.23 and a Pre-Receivership Percentage Return of 22.55%.²

5. Paragraph 6 of the Initial Distribution Order required the Receiver to reserve \$20,960.85 (the “Reserved Funds”) related to the Disputed Claims “until such time as an order is entered allowing or disallowing such Proofs of Claim.”

6. In accordance with the Initial Order, the Receiver reserved the Reserved Funds which are the total of the *pro rata* distribution that each holder of a Disputed Claim would be entitled to receive if their respective claims were Allowed Claims.³ At the time of the Initial

² See Exh. B (Initial Distribution Order, Exh. 2).

³ *Id.*

Distribution, none of the holders of Disputed Claims were eligible for a rising tide distribution because their Pre-Receivership Percentage Return was greater than 20.05%.⁴

7. On April 3, 2018, the Tenth Circuit Court of Appeals dismissed the appeal that the holders of the Disputed Claims filed in the ABI Suit, and a mandate issued on April 25, 2018. As a result, this Court's judgment declaring the holders' ABIs to be invalid is a final order, and the holders do not have any claim on account of their respective ABIs.

8. Based on prior direction from this Court, the Receiver believes that there is now grounds to allow each of the Disputed Claims as general unsecured claims in the amount of the Net Principal Investment for each holder set forth in the Initial Order attached hereto and as outlined above.

II.

RELIEF REQUESTED

9. By this Motion, the Receiver requests that the Court enter an Order allowing each of the Disputed Claims.

10. Thus, each of the Disputed Claims would be an Allowed Claim in this case as follows: (a) the Shah Claim would be allowed in the total amount of \$277,582.19; (b) the Olson

⁴ Exh. B (Initial Distribution Order, Exh. 2). Filed concurrently herewith is the Receiver's *Motion Seeking Authorization to Make Second Distribution*. As set forth therein, holders of Allowed Claims with a return to date of less than 27.57% will now be eligible for a rising tide distribution. In making that Motion, the Receiver has assumed that the Shah Claim will be allowed as requested herein, and that Ms. Shah will be entitled to a rising tide distribution as part of the Receiver's second distribution inasmuch as her Pre-Receivership Percentage Return is only 22.55%. The Olson Claim and the Profit Sharing Claim are not eligible for a rising tide distribution as part of the second distribution because their respective Pre-Receivership Percentage Returns are in excess of 27.57%. *See id.*

Claim would be allowed in the total amount of \$52,744.79; and (c) the Profit Sharing Claim would be allowed in the total amount of \$310,751.23.⁵

11. The Receiver also requests that he be authorized to release the Reserved Funds from the Initial Distribution to each of the claimants on account of each of their Allowed Claims as follows: (a) \$7,973.27 on account of the Olson Claim; (b) \$5,900.22 on account of the Profit Sharing Claim; and (c) \$7,087.36 on account of the Shah Claim.

III.

CONCLUSION

12. The Receiver respectfully submits that the Court has the authority to allow the Disputed Claims as set forth herein, and that the relief requested herein is fair and equitable.⁶

13. Accordingly, the Receiver requests that the Court enter the proposed Order attached hereto as Exhibit A granting this Motion, allowing the previously Disputed Claims as Allowed Claims in this case, and authorizing the Receiver to release the Reserved Funds as set forth herein.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt

Peggy Hunt

John Wiest

Attorneys for Receiver

⁵ See Exh. B (Initial Order, Exh. 2).

⁶ See, e.g., *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).

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **RECEIVER'S MOTION SEEKING ALLOWANCE OF PREVIOUSLY DISPUTED CLAIMS AND AUTHORIZATION TO RELEASE FUNDS** was filed with the Court on this ___ day of May, 2018, and served via ECF on all parties who have requested notice in this case, and by email to the following:

Lisa Shah lisashah00@aol.com

Kristine S. Olson and the Kristen S. Olson Profit Sharing Plan (through counsel Paul Barton paul@olsenbarton.com)

/s/ Candy Long_____

EXHIBIT A

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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.

**ORDER GRANTING RECEIVER'S
MOTION SEEKING ALLOWANCE
OF PREVIOUSLY DISPUTED
CLAIMS AND AUTHORIZATION TO
RELEASE FUNDS**

Civil No. 2:12-00591

The Honorable Bruce S. Jenkins

The matter before the Court is the *Receiver's Motion Seeking Allowance of Previously Disputed Claims and Authorization to Release Funds* filed by R. Wayne Klein, as receiver (the "Receiver") for National Note of Utah, LC and its affiliated entities and the assets of Defendant Wayne LaMar Palmer (the "Motion"). The Court has reviewed the Motion, and has considered the record in this case and the applicable law, and based thereon

IT IS HEREBY ORDERED that:

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

- (2) Proof of Claim No. 1320 filed by Kristine S. Olson is **ALLOWED** in the amount of \$277,582.19, and the Receiver is **AUTHORIZED** to distribute \$7,973.27 on account of this claim;
- (3) Proof of Claim No. 1321 filed by the Kristine S. Olson Profit Sharing Plan is **ALLOWED** in the amount of \$52,744.79, and the Receiver is **AUTHORIZED** to distribute \$5,900.22 on account of this claim;
- (4) Proof of Claim No. 1401 filed by Lisa S. Shah is **ALLOWED** in the amount of \$310,751.23, and the Receiver is **AUTHORIZED** to distribute \$7,087.36 on account of this claim;
- (5) Each of these Proofs of Claim are deemed to be Allowed Claims for purposes of future distributions by the Receiver in this case.

DATED this ____ day of May, 2018.

UNITED STATES DISTRICT COURT

The Honorable Bruce S. Jenkins
U.S. District Court Judge

EXHIBIT B

FILED
2016 NOV 8 PM 2:03
CLERK
U.S. DISTRICT COURT

Prepared and submitted by:

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**UNITED STATES DISTRICT COURT
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SECURITIES AND EXCHANGE
COMMISSION,

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vs.

NATIONAL NOTE OF UTAH, LC, a Utah
Limited Liability Company and WAYNE
LaMAR PALMER, an individual,

Defendants.

**ORDER GRANTING RECEIVER'S
MOTION FOR APPROVAL OF (1)
PROPOSED DISTRIBUTION
METHODOLOGY AND PLAN OF
DISTRIBUTION, AND (2) PROPOSED
INITIAL DISTRIBUTION AS
MODIFIED**

Civil No. 2:12-00591

The Honorable Bruce S. Jenkins

The matter before the Court is *Receiver's Motion for Approval of (1) Proposed Distribution Methodology and Plan of Distribution, and (2) Proposed Initial Distribution, and Memorandum in Support* [Docket No. 1196] (the "Distribution Motion"), seeking to authorize the Receiver's proposed distribution methodology for assets of the receivership estate, and an initial distribution to holders of "Allowed Claims" of \$4,500,000.00 pursuant to an approved distribution method. In the Distribution Motion, the Receiver also requests that he be authorized to reserve distributions that would be made to holders of disputed "ABI Proofs of Claim" until

such time as those disputes are resolved. The Distribution Motion gave notice that any response to the Motion must be filed by no later than September 20, 2016, and the Distribution Motion was served on all holders of Allowed Claims and disputed ABI Proofs of Claim. *See Certificates of Service* [Docket Nos. 1208 (original) and 1212 (amended)] (collectively, the “Certificate of Service”).

Three responses were filed by Sarah Blackwell [Docket No. 1205] (the “Blackwell Objection”); Donald R. Hertz [Docket No. 1206] (the “Hertz Objection”); and Danny and Barbara Kiang [Docket No. 1207] (the “Kiang Response”) (collectively, the “Responses”). The Receiver has filed a *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* [Docket No. 1211] (the “Status Report”).

The Receiver set forth his reply to the Responses in the Status Report and (1) outlined a settlement of the Blackwell Objection pursuant to which Sarah Blackwell’s Allowed Claim in the amount of \$0.00 will be amended, with Court approval, to be an Allowed Claim in the total amount of \$13,153.82 (the “Blackwell Agreement”); (2) outlined a settlement of the Kiang Response pursuant to which Danny and Barbara Kiang will be afforded, with Court approval, an Allowed Claim in the total amount of \$97,670.48 (the “Kiang Agreement”); and (3) argued that the Hertz Objection should be overruled. The Receiver has also requested that this Court enter an Order granting the Distribution Motion, subject to modifications meant to address the Blackwell Agreement, the Kiang Agreement and an error that the Receiver discovered related to the Allowed Claim of Larry McCullough, which requires an increase to the amount of the initial distribution proposed to Mr. McCullough on his Allowed Claim (the “McCullough”).

Adjustment”). As part of the modifications, the Receiver requested authority to make an initial distribution in the total amount of \$4,526,507.28 so as to make the initial distributions outlined on Exhibit 1 hereto, and to reserve potential initial distributions to holders of disputed claims as set forth on Exhibit 2 hereto. Exhibit 1 includes initial distributions that take into account the Allowed Claims as set forth in the Blackwell Agreement, the Kiang Agreement and to make the McCullough Adjustment.

After the Status Report was filed, the Receiver filed a *Notice of Hearing* on the Hertz Objection to the Distribution Motion [Docket No. 1214] (the “Notice of Hearing”). Thereafter, the Hertz Objection was withdrawn [Docket No. 1218]. In addition, Proof of Claim number 1394 held by Kimberly Brasher, which was a disputed claim at the time that the Distribution Motion and the Status Report were filed, was resolved. The parties have agreed that Ms. Brasher should hold an Allowed Claim in this case in the total amount of \$99,505.40 (“Claim 1349 Stipulation”).

A hearing on the Distribution Motion was held on November 2, 2016. Peggy Hunt, Dorsey & Whitney LLP, appeared on behalf of Receiver R. Wayne Klein, and Mr. Klein was present as well. Amy J. Oliver appeared on behalf of the United States Securities and Exchange Commission. At the hearing, the Receiver informed the Court of the Claim 1394 Stipulation, and that making a distribution to Ms. Brasher will not modify the proposed initial distribution as set forth in the Distribution Motion because a reserve for holders of disputed claims was accounted for in the Distribution Motion. In light of the Claim 1349 Stipulation, the Receiver has removed this claim from the list of disputed claims included in the distribution reserve, and has accounted for the Claim 1349 Stipulation on Exhibit 1 hereto.

The Court has reviewed the Distribution Motion; the Certificate of Service; the Responses; the Status Report; the Notice of Hearing; the representations of the Receiver made on the record at the November 2, 2016 hearing; and the record in this case. The Court finds that notice of the opportunity to object to the Distribution Motion is proper and no further notice is required, and that the relief sought by the Receiver is appropriate.

Based thereon, and for good cause shown,

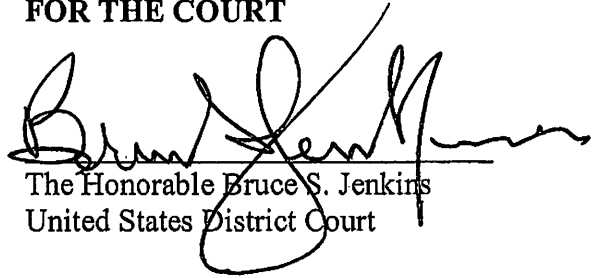
IT IS HEREBY ORDERED that:

- (1) The Distribution Motion as modified is **GRANTED**;
- (2) The distribution methodology for this initial distribution and for all future distributions made by the Receiver in this case as outlined in the Distribution Motion is **APPROVED**;
- (3) The Receiver is **AUTHORIZED** to make an initial distribution in the total amount of \$4,526,507.28;
- (4) The Receiver is **AUTHORIZED** to make an initial *pro rata* distribution to each holder of an Allowed Claim as outlined in Exhibit 1 attached hereto;
- (5) The Receiver is **AUTHORIZED** to make an initial rising tide distribution to each holder of an Allowed Claim as outlined in Exhibit 1 attached hereto; and
- (6) The Receiver is **AUTHORIZED** to reserve initial distributions related to disputed Proofs of Claim in the amounts set forth on Exhibit 2 hereto until such time as an

order is entered allowing or disallowing such Proofs of Claim.

DATED this 8th day of November, 2016.

FOR THE COURT



The Honorable Bruce S. Jenkins
United States District Court

EXHIBIT 2

Disputed Claims						
Proof of Claim Number	Claim Amount	Contingent Pro-Rata Distribution Amount	Contingent Rising Tide Distribution Amount	Total Distribution	Percentage Return After Both Distributions	Receiver Calculation of Net Principal Investment Amount
1320	\$277,582.19	\$7,973.27	\$0.00	\$7,973.27	40.09%	\$277,582.19
1321	\$52,744.79	\$5,900.22	\$0.00	\$5,900.22	85.93%	\$52,744.79
1401	\$316,871.23	\$7,087.36	\$0.00	\$7,087.36	22.55%	\$310,751.23
Totals	\$647,198.21	\$20,960.85	\$0.00	\$20,960.85		\$641,078.21