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12 THOMAS A. SEAMAN

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 SOUTHERN DIVISION

16 SECURITIES AND EXCHANGE
COMMISSION,
17 Plaintiff,

18 v.

19 EMILIO FRANCISCO; PDC CAPITAL
GROUP, LLC; CAFFE PRIMO
INTERNATIONAL, INC.; SAL ASSISTED
20 LIVING, LP; SAL CARMICHAEL, LP; SAL
CITRUS HEIGHTS, LP; SAL KERN
21 CANYON, LP; SAL PHOENIX, LP; SAL
WESTGATE, LP; SUMMERPLACÉ AT
SARASOTA, LP; SUMMERPLACE AT
22 CLEARWATER, LP; SUMMERPLACE AT
CORRELL PALMS, LP; TRC TUCSON, LP;
23 CLEAR CURRENTS WEST, LP; CAFFE
PRIMO MANAGEMENT, LP; CAFFE
24 PRIMO MANAGEMENT 102, LP; CAFFE
PRIMO MANAGEMENT 103, LP; CAFFE
25 PRIMO MANAGEMENT 104, LP; CAFFE
PRIMO MANAGEMENT 105, LP; CAFFE
26 PRIMO MANAGEMENT 106, LP; CAFFE
PRIMO MANAGEMENT 107, LP; and
27 CAFFE PRIMO MANAGEMENT 108, LP,
28 Defendants.

Case No. 8:16-cv-02257-CJC-DFM

**DECLARATION OF THOMAS A.
SEAMAN IN SUPPORT OF
MOTION FOR TURNOVER OF
FUNDS TRANSFERRED TO
BIENERT, MILLER &
KATZMAN, PLC**

Date: October 23, 2017
Time: 1:30 p.m.
Ctrm: 9B, 9th Floor
Judge: Hon. Cormac J. Carney

1 I, Thomas A. Seaman, declare:

2 1. I am the Court-appointed permanent Receiver for the Defendant entities¹
3 (collectively, "Receivership Entities"). I make this declaration in support of my
4 Motion for Turnover of Funds Transferred to Bienert, Miller & Katzman, PLC. I
5 have personal knowledge of the facts set forth in this declaration and, if called as a
6 witness, could and would testify competently to such facts under oath.

7 2. At the outset of the receivership, I took possession and control of the
8 Named Entities and those immediately identifiable subsidiaries and affiliates,
9 including, but not limited to, each of the limited liability companies ("LLCs")
10 associated with the limited partnerships ("LPs") named in the complaint. As
11 discussed in my First Report (Dkt. No. 32), I discovered additional LPs and LLCs

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14 ¹ The entities included in the receivership are PDC Capital Group, LLC ("PDC"); Caffè Primo
15 International, Inc. ("Caffè Primo"); SAL Senior Living, LP ("SAL Senior Living");
16 SAL Carmichael, LP ("SAL Carmichael"); SAL Citrus Heights, LP ("SAL Citrus Heights");
17 SAL Kern Canyon, LP ("SAL Kern Canyon"); SAL Phoenix, LP ("SAL Phoenix");
18 SAL Westgate, LP ("SAL Westgate"); Summerplace at Sarasota, LP ("Sarasota");
19 Summerplace at Clearwater, LP ("Clearwater"); Summerplace at Correll Palms, LP ("Correll
20 Palms"); TRC Tucson, LP ("TRC Tucson"); Clear Currents West, LP ("Clear Currents"); Caffè
21 Primo Management, LP ("CPM"); Caffè Primo Management 102, LP ("CPM 102"); Caffè
22 Primo Management 103, LP ("CPM 103"); Caffè Primo Management 104, LP ("CPM 104");
23 Caffè Primo Management 105, LP ("CPM 105"); Caffè Primo Management 106, LP
24 ("CPM 106"); Caffè Primo Management 107, LP ("CPM 107"); Caffè Primo
25 Management 108, LP ("CPM 108"); and their subsidiaries and affiliates, including but not
26 limited to, Summerplace Management, LLC ("Summerplace Management"); PDC Partners
27 Management, Inc. ("PDC PM"); and FDC Partners Management, Inc. ("FDC PM")
28 (collectively, "Named Entities"); and their subsidiaries and affiliates Summerplace
Management, LLC; PDC Partners Management, Inc.; FDC Partners Management, Inc.;
KPF Capital, LLC; FDC Capital Partners, LLC; MSL US Fund I, LLC; MPoint Land &
Development, Inc.; Woodcrest Construction Management, Inc.; Professional Loading
Service, LLLP; WDC Capital Group, LLC; WDC Capital Partners, LLC; KPF Investment
Management, Inc.; Meridian Summerplace at Snug Harbor, LLC; Meridian Summerplace at
Snug Harbor, LP; Summerplace at Correll Palms, LLC; Summerplace at Correll Palms, LP;
Summerplace at Winter Haven, LLC; Summerplace at Winter Haven, LP; Summerplace at Sun
City, LLC; Summerplace at Sun City, LP; Meridian at Sun City, LLC; Summerplace at
Orlando-Summerfield, LLC; Summerplace at Orlando-Summerfield, LP; Summerplace at
Kissimmee, LLC; Summerplace at Kissimmee, LP; Summerplace at Merced, LLC;
Summerplace at Merced, LP; SAL-PDC, LLC; SLALMC, LLC; SAL Lincoln Village, IL;
Lincoln Village IL, LLC; Lincoln Village IL, LP; Lincoln Village SNF, LLC; Lincoln
Village SNF, LP; FCM Development Group, LLC; ADC Capital Group, LLC; NCDC Capital
Partners, LLC; Summerplace at Bonney Lake MC, LLC; Summerplace at Bonney
Lake MC, LP; Summerplace Management, LLC; Summerplace Development, LLC; Defiance
Charters, LLC; and Red Sunshine Holdings, Ltd. (collectively, "Affiliated Entities").

1 that were managed and controlled by Defendant Emilio Francisco, Robert Ferrante,
2 and Chris Fox ("Principals"). My counsel and I spent considerable time gathering
3 and analyzing information as to these LPs and LLCs and their relationship to the
4 Named Entities and the originally identified affiliates, including, but not limited to,
5 issuing subpoenas to Mr. Ferrante, some of the Affiliated Entities, and third parties.

6 3. In addition, as discussed in my Second Report (Dkt. No. 68), on several
7 occasions, my counsel and I met with the Principals at my office and at their offices.
8 At these meetings, the Principals and their counsel provided me with some
9 documents and information regarding their overall enterprise. Based on the totality
10 of the information I reviewed, it became apparent that the sole source of funding for
11 the Affiliated Entities was EB-5 Investor money or the proceeds of transactions
12 associated with EB-5 Investor money. Furthermore, Mr. Ferrante, Mr. Francisco and
13 Mr. Fox were the people who were principally responsible for directing the use of
14 EB-5 Investor money with regard to these Affiliated Entities. On April 11, 2017, I
15 advised Mr. Ferrante and Mr. Fox that the Affiliated Entities, including KPF, were
16 within the scope of the receivership under the preliminary injunction order
17 ("PI Order") due to their status as affiliates of the Named Entities. I therefore
18 demanded that Mr. Ferrante and Mr. Fox turn control of the Affiliated Entities over
19 to me.

20 4. Although Mr. Ferrante and Mr. Fox, through their counsel, stated that
21 they dispute that the Affiliated Entities are in fact affiliates, they nevertheless agreed
22 to turn control of them over to me. The transition in control took place on April 17,
23 2017, at the MPoint Land & Development offices at 15300 Barranca Parkway in
24 Irvine, California. My counsel and I met with Mr. Ferrante and one of his attorneys,
25 Eric Chess Bronk, imaged the computers used by the Affiliated Entities (with
26 assistance from my forensic computer specialist), gathered hard copy documents of
27 the Affiliated Entities, and took control of their bank accounts.

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1 5. The affiliation between KPF and the Named Entities is even more clear.
2 KPF was also controlled by Mr. Ferrante until he ceded control to me on April 17,
3 2017. Moreover, pursuant to the agreement signed between Defendant Francisco and
4 Mr. Ferrante in January 2016, KPF purported to hold controlling interests in various
5 assisted living projects that received EB-5 investor funds, including projects named
6 in the complaint and expressly included in the receivership (SAL Phoenix,
7 Summerplace at Sarasota, Summerplace at Clearwater, Summerplace at Correll
8 Palms, TRC Tucson).

9 6. KPF was also the recipient of significant funds from the Named
10 Receivership Entities. As discussed in the my Second Report (Dkt. No. 68,
11 pp. 20-24), in December 2016, the Principals caused the Receivership Entities to
12 encumber five projects with deeds of trust reflecting a total \$7.7 million in debt.
13 After the lenders set aside \$496,000 in interest reserves, the net cash loan proceeds
14 received by the Principals were \$7.204 million. More specifically, in early
15 December 2016, just weeks before the Securities and Exchange Commission's
16 ("Commission") case was filed, the Principals by and through KPF, PDC, and
17 MPoint, borrowed \$7.7 million using as collateral the SAL Assisted Living,
18 SAL Citrus, SAL Carmichael, SAL Kern Canyon and Sarasota properties. These
19 properties received little or no benefit from the loans.

20 7. These were hard money loans made to MPoint bearing interest rates
21 ranging from 6%-11% and maturing at dates ranging from 3 months to 24 months.
22 Neither MPoint nor any of the five projects produce income or have other reserves
23 available to pay the loans. Nor have I discovered concrete plans for the repayment of
24 these short term debts, aside from the SAL Lincoln bond scheme. As such, the
25 business reasoning for taking out the loans is, at best, a mystery.

26 8. The net loans proceeds after interest reserves were as follows:
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1	SAL Lincoln	\$5,000,000.00
2	SAL Citrus	570,247.76
3	SAL Carmichael	566,452.34
4	SAL Kern Canyon	1,067,725.70
	Total Loan Proceeds	<u>\$7,204,425.80</u>

5 The following is a summary of how the foregoing net loan proceeds were
6 used:

7	Use of Net Loan Proceeds	\$ Millions
8	Used on collateral for loans	\$1.296
9	Used on non-collateral projects	.777
10	Used for Caffe Primo	.100
11	Used for purported expenses and unknown purposes	.252
12	Taken by KPF	1.025
13	Taken by Huttenheim	.398
	Seized by Receiver	3.356
	Total Loan Proceeds	<u>\$7.204</u>

14 9. Of the \$1,025,000 taken by KPF, I have recovered only \$60,000. I have
15 thus far traced the funds taken by KPF to both individuals and various projects. A
16 review of KPF's December 2016 and January 2017 bank statements shows that KPF
17 may have used some of the loan proceeds to purchase or improve various projects, as
18 well as for payments to insiders and their personal expenses. For example, the bank
19 records show that KPF made the following disbursements:

- 20 • Wire to Robert Ferrante for \$12,700;
- 21 • Payment of \$238,000 to Wallis Boyington who performed the architectural
22 drawings for most of the named Summerplace projects in Florida, and
23 Affiliated Entities' investments in other Florida projects;
- 24 • Wires to Mexico for the Beroca yacht owned by the Receivership Entities
25 totaling \$40,627.48;
- 26 • Transfers to a Florida project identified as Summerplace at Stuart totaling
27 \$9,939.76;

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- 1 • Transfers to Spruce Creek Commercial Properties in Ocala Florida totaling
- 2 \$100,000 to make mortgage payments for the Summerplace at Orlando
- 3 project;
- 4 • The transfer at issue in this Motion to BM&K in the amount of \$50,000;
- 5 and
- 6 • A transfer to William Wurch in the amount of \$12,500, which appears to be
- 7 another legal retainer.

8 10. Even after the temporary restraining order was entered on January 5,
9 2017, KPF continued to disburse the loan proceeds. Specifically, on January 15,
10 2017, KPF received an additional \$25,000 and on January 19, 2017, KPF received
11 \$60,000 of the loan proceeds, which \$60,000 payment I have recovered. Post-
12 receivership, KPF made various other payments using the loan proceeds, including
13 the following:

14	01/05/2017	Jose Rafael Gastelum (yacht captain)	\$5,000.00
15	01/05/2017	Wright Credit Services (Chris Fox)	\$12,000.00
16	01/06/2017	Dennis Miller	\$18,800.00
17	01/06/2017	Chris Fox	\$25,000.00
18	01/06/2017	Eric Bronk	\$10,000.00
19	01/06/2017	Eric Bronk	\$10,000.00
20	01/06/2017	Robert Ferrante	\$25,000.00
21	01/06/2017	Robert Ferrante	\$25,000.00
22	01/06/2017	Tom Bienert	\$50,000.00
23	01/06/2017	Balboa Bay Club (Ferrante March rent)	\$9,000.00
24	01/06/2017	Balboa Bay Club (Ferrante April rent)	\$9,000.00
25	01/06/2017	Balboa Bay Club (Ferrante May rent)	\$9,000.00
26	01/06/2017	Rick Weintraub	\$25,000.00
27	01/06/2017	Chanel Ferrante	\$15,000.00
28	01/06/2017	Cash	\$2,500.00
	01/13/2017	David Friedman	\$1,500.00
	01/18/2017	Unknown payee	\$1,853.28
	01/19/2017	Robert Ferrante	\$25,000.00
	01/19/2017	Unknown payee	\$8,900.00

1 11. This is not a complete accounting of all loan proceeds disbursed by
2 KPF. My accounting work is continuing and, to the extent necessary, I may seek
3 authority to pursue claims against additional recipients of these funds.

4 12. In summary, KPF was an integral part of the Receivership Entities'
5 enterprise, was controlled by the Principals, received and disbursed significant sums
6 relating to the assisted living projects included in the receivership, and therefore
7 should be confirmed as an Affiliated Entity subject to the Court's PI Order.
8 Moreover, although I have been in control of KPF since April 2017, no evidence has
9 been put forth by the Principals suggesting KPF is not an Affiliated Entity.

10 **A. The Transfer from KPF to BM&K**

11 13. On December 9, 2016, KPF wired \$50,000 to BM&K. When I learned
12 of the transfer in May 2017, my counsel contacted BM&K and demanded return of
13 the funds. BM&K did not respond. When my counsel followed up, BM&K
14 acknowledged receipt of the \$50,000 transfer and stated that it represents
15 Mr. Ferrante on personal legal matters. The firm also stated that some of the \$50,000
16 had been applied to legal fees, but some remained in its trust account. BM&K
17 agreed that the funds would not be touched further and stated that it would discuss
18 the matter with Mr. Ferrante and provide a response to my demand. No response
19 was provided, however. When my counsel followed up again, BM&K eventually
20 stated that \$27,000 remained in its trust account and \$23,000 had been applied to
21 fees.²

22 14. As the Court noted in its order concerning MPoint, money is fungible
23 and all assets of the Receivership Entities were frozen and put in receivership, so it is
24 not necessary to establish that the source of the funds KPF wired to BM&K was
25 EB-5 investor funds. Dkt. No. 80. Nevertheless, the transfer to BM&K was made
26 shortly after Woodcrest Construction, which received the net proceeds of the
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² BM&K has not stated when the transfer(s) from its client trust account to itself occurred.

1 \$5,000,000 loan from MCC US, Inc. ("MCC Loan"), wired \$1,000,000 to KPF in
2 early December 2016. The MCC Loan was made to MPoint Land & Development,
3 which was also controlled by Mr. Ferrante and Chris Fox ("MPoint Land"), and was
4 secured by mortgages on the Lincoln and Sarasota properties. Therefore, the funds
5 wired to BM&K are derived from a loan taken by MPoint Land against properties
6 purchased with EB-5 investor funds. The MCC Loan impairs the value of these
7 properties and the amount I will be able to recover from them for the benefit of
8 investors.

9 15. As discussed above, Mr. Ferrante and BM&K have largely ignored the
10 my demands that the funds be returned, finally making an offer³ to settle the matter
11 almost three months after my demand was made and only after numerous follow up
12 communications from my counsel. I determined that the settlement offer was
13 unacceptable, but recognize that some expense would be incurred in recovering the
14 funds, offered to accept \$45,000 and allow BM&K to retain \$5,000. BM&K and
15 Mr. Ferrante did not respond to the counter offer or to further follow up
16 communications from my counsel. Therefore, despite my efforts, it does not appear
17 the funds will be turned over or the matter consensually resolved.

18 16. KPF is part of the overall EB-5 investment enterprise operated by the
19 Principals. The enterprise raised approximately \$70 million from approximately
20 140 investors. The assets of the receivership estate are woefully insufficient in value
21 to compensate investors for their losses. There are also various creditors with
22 mortgages and other secured obligations that cannot be kept current. Therefore, the
23 enterprise as a whole is insolvent and is incapable of paying its debts as they become
24 due.

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28 ³ BM&K labeled its email communicating the offer as a "Confidential Settlement
Communication," so the amount of the offer has not been disclosed herein.

1 I declare under penalty of perjury under the laws of the United States that the
2 foregoing is true and correct.

3 Executed this 13 day of September 2017, at Irvine, California.

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THOMAS A. SEAMAN