

1 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
2 DAVID R. ZARO (BAR NO. 124334)
PETER A. GRIFFIN (BAR NO. 306201)
3 865 South Figueroa Street, Suite 2800
Los Angeles, California 90017-2543
4 Phone: (213) 622-5555
Fax: (213) 620-8816
5 E-Mail: dzaro@allenmatkins.com
pgriffin@allenmatkins.com

6 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
7 EDWARD G. FATES (BAR NO. 227809)
8 One America Plaza
600 West Broadway, 27th Floor
9 San Diego, California 92101-0903
Phone: (619) 233-1155
10 Fax: (619) 233-1158
E-Mail: tfates@allenmatkins.com

11 Attorneys for Receiver
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
22 SARASOTA, LP; SUMMERPLACE AT
CLEARWATER, LP; SUMMERPLACE AT
23 CORRELL PALMS, LP; TRC TUCSON, LP;
CLEAR CURRENTS WEST, LP; CAFFE
24 PRIMO MANAGEMENT, LP; CAFFE
PRIMO MANAGEMENT 102, LP; CAFFE
25 PRIMO MANAGEMENT 103, LP; CAFFE
PRIMO MANAGEMENT 104, LP; CAFFE
26 PRIMO MANAGEMENT 105, LP; et al.,

27 Defendants.
28

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

**NOTICE OF MOTION AND
MOTION FOR ORDER
REQUIRING TURNOVER OF
DOCUMENTS BY ERIC CHESS
BRONK, ESQ. OR, IN THE
ALTERNATIVE, FOR ORDER
TO SHOW CAUSE RE: CIVIL
CONTEMPT FOR FAILURE TO
COMPLY WITH PRELIMINARY
INJUNCTION [DKT. NO. 36]**

Date: December 4, 2017
Time: 1:30 pm
Ctrm: 9B, 9th Floor
Judge: Hon. Cormac J. Carney

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on December 4, 2017, at 1:30 p.m. in
3 Courtroom 9B of the above-entitled Court, located at 411 W. Fourth Street,
4 Santa Ana, California 92701, Thomas A. Seaman ("Receiver"), the Court-appointed
5 receiver for the Receivership Entities,¹ will and hereby does move the Court for an
6 Order Requiring Turnover of Records by Eric Chess Bronk, Esq. or, in the
7 Alternative, for an Order to Show Cause re: Civil Contempt for Failure to Comply
8 With Preliminary Injunction Against All Defendants [Dkt. No. 36] ("Motion").

9 The Motion is made on the grounds that the Receivership Entities' former
10 counsel, Mr. Bronk, has impeded the Receiver's discharge of his duties under the
11 Preliminary Injunction Against All Defendants ("PI Order"), by failing to turn over
12 all electronic files, records, and emails in his possession, custody, or control
13 concerning or related to the Receivership Entities ("Documents"). Mr. Bronk
14 originally contended he did not have any Documents other than what the Receiver
15 already had. When the Receiver challenged this, Mr. Bronk contended that

16 _____
17 ¹ As used herein, "Receivership Entities" refers to the following specifically named entities:
18 PDC Capital Group, LLC; Caffe Primo International, Inc.; SAL Assisted Living, LP; SAL
19 Carmichael, LP; SAL Citrus Heights, LP; SAL Kern Canyon, LP; SAL Phoenix, LP; SAL
20 Westgate, LP; Summerplace at Sarasota, LP; Summerplace at Clearwater, LP; Summerplace at
21 Correll Palms, LP; TRC Tucson, LP; Clear Currents West, LP; Caffe Primo Management, LP;
22 Caffe Primo Management 102, LP through Caffe Primo Management 108, LP (collectively,
23 "**Named Entities**"); and their subsidiaries and affiliates Summerplace Management, LLC;
24 PDC Partners Management, Inc.; FDC Partners Management, Inc.; KPF Capital, LLC; FDC
25 Capital Partners, LLC; MSL US Fund I, LLC; MPoint Land & Development, INC; Woodcrest
26 Construction Management, INC; Professional Loading Service, LLLP; WDC Capital Group,
27 LLC; WDC Capital Partners, LLC; KPF Investment Management, INC; Meridian
28 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, "**Affiliates**").

1 Defendant Emilio Francisco, Robert Ferrante, and/or Chris Fox (collectively,
2 "Principals") assert that certain of the Documents (specifically emails and
3 attachments) are subject to the attorney-client privilege.

4 It is well-settled law that the Receiver stands in the shoes of the "client" for
5 each of the Receivership Entities (including the Named Entities and Affiliated
6 Entities²) and owns, holds, and controls the attorney-client privilege with regard to
7 all of the Receivership Entities. Therefore, Mr. Bronk has no right to assert the
8 attorney-client privilege on behalf of the Receivership Entities. Moreover,
9 Mr. Bronk has not demonstrated that a single Document is related to his independent
10 representation of any of the Principals.

11 Mr. Bronk's refusal to comply is based on the entirely unsupported contention
12 that he may have separately represented the Principals individually on matters
13 unrelated to the Receivership Entities, and therefore the Principals can assert the
14 attorney-client privilege over certain of the Documents. Mr. Bronk has not
15 produced: (a) engagement agreements between Mr. Bronk and any of the Principals,
16 (b) a description of personal legal matters on which Mr. Bronk has purportedly
17 represented the Principals, or (c) search terms designed to identify Documents
18 relating to these so-called personal legal matters.

19 Although the Receiver has already paid an e-discovery vendor more than
20 \$9,700 to procure a limited number of electronic Documents in Mr. Bronk's
21 possession, Mr. Bronk refuses to review the remaining Documents, prepare a proper
22 privilege log for Documents claimed to be privileged, and produce the non-
23 privileged Documents without the Receiver waiting an indeterminate period of time
24

25 ² The Receiver has provided Mr. Bronk and the Principals with information which
26 makes it patently clear the Affiliated Entities are affiliates of the Named Entities
27 by any definition of the term. Indeed, when the Principals challenged the
28 affiliate status of one entity – MPoint Capital Management, LLC – the Court
found the entity is an affiliate and denied their *ex parte* request to unfreeze its
bank account. Dkt. No. 80. As such, the Documents in Mr. Bronk's possession
must be turned over to the Receiver under the PI Order.

1 (beyond the six months that have already passed). The Documents are important to
2 the Receiver's ongoing investigation in terms of both identifying legal matters and
3 issues the Receivership Entities had Mr. Bronk handle and evaluating potential
4 claims against Mr. Bronk, which claims must be asserted in a timely manner.

5 Therefore, the Receiver requests the Court grant the Motion and Order as
6 follows:

- 7 • Mr. Bronk shall immediately turn over to the Receiver possession and control
8 of all Documents, including all documents and records in his possession,
9 custody, or control, including, but not limited to, attorney-client
10 communications, all emails, and documents (with attachments), text
11 messages, original files, records, deeds, title documents, corporate records
12 and all communications of any kind or nature which refer or relate to the
13 Receivership Entities, as well as the Principals, or any of them;
- 14 • In the event Mr. Bronk fails to timely turn over possession and control of the
15 Documents, an Order to Show Cause Why Mr. Bronk Should Not Be Found
16 in Contempt of Court for Failure to Comply with This Court's Orders shall be
17 entered such that Mr. Bronk shall be required to pay an amount determined by
18 the Court for each day of non-compliance;
- 19 • Mr. Bronk shall pay the Receiver \$9,700 paid by the Receiver to TERIS (an
20 outside e-discovery vendor) for records Mr. Bronk should have previously
21 turned over; and
- 22 • The Receiver is awarded attorney fees and costs in the amount of \$5,000
23 reflecting the approximate amount of attorney's fees and costs required to
24 prepare this Motion.

25 This Motion is based on this Notice of Motion and Motion, the attached
26 Memorandum of Points and Authorities, the Declaration of Thomas A. Seaman, the
27 documents and pleadings already on file in this action, and upon such further oral
28 and documentary evidence as may be presented at the time of hearing.

1 **Procedural Requirements:** If you oppose this Motion and Order to Show
2 Cause, you are required to file your written opposition with the Office of the Clerk,
3 United States District Court, 411 W. Fourth Street, Santa Ana, California 92701,
4 and serve the same on the undersigned not later than 21 days prior to the hearing.

5 IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION by the
6 above date, the Court may grant the requested relief without further notice. This
7 Motion is made following the conference of counsel pursuant to L.R. 7-3.

8
9 Dated: October 27, 2017

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

10
11 By: /s/ Edward Fates

EDWARD G. FATES
Attorneys for Receiver
THOMAS A. SEAMAN

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Receiver brings this Motion in order to enforce the PI Order. In violation of the PI Order, Attorney Eric Bronk has refused to turn over the Documents, based on the Principals' unsupported contention that certain of the Documents are subject to the attorney-client privilege. The claim of privilege is based on a purported personal attorney-client relationship between Mr. Bronk and each of the Principals with no engagement agreements or identified scope of representation. The Receiver submits that Mr. Bronk's refusal to turn over records violates the PI Order and reflects nothing more than a blatant attempt to impede the Receiver's investigation.

By this Motion, the Receiver seeks an order requiring Mr. Bronk to immediately turn over the Documents. In the alternative, the Receiver asks for an Order to Show Cause Why Mr. Bronk Should Not Be Held in Contempt for Failure to Comply with the Preliminary Injunction Order. Finally, the Receiver requests payment of \$5,000 for his attorney fees and costs associated with bringing this Motion.

II. BACKGROUND FACTS

A. The Preliminary Injunction Order

On January 23, 2017, the Court entered the PI Order. The PI Order largely kept in place in the provisions of the TRO that had been entered on January 5, 2017. Section IX of the PI Order appointed Mr. Seaman as the permanent receiver with regard to the Named Entities and "their subsidiaries and affiliates." The Receiver was given "full power over all . . . books, records, papers and other property of the Receivership Entities." *Id.* The Receiver was, "empowered and directed: to have access to and to collect and take custody, control, possession and charge of . . . books, records, papers and other real and personal property, wherever located, of or managed by the Receivership Entities." *Id.* Section X of the PI Order further orders that Mr. Francisco and the Receivership Entities, "including all other entities in

1 receivership, and their officers, agents, servants, employees and attorneys, and any
2 other persons who are in custody, possession or control of any assets, collateral,
3 books, records, papers or other property of or managed by any of the entities in
4 receivership, shall forthwith give access to and control of such property to the
5 permanent receiver." *Id.* Section XII of the PI Order requires that during the
6 pendency of the receivership, attorneys, defendants and others are enjoined from
7 directly or indirectly: "doing any act or thing whatsoever to interfere with taking
8 control, possession or management by the permanent receiver here under . . ." *Id.*
9 Finally, Section XIII of the PI Order provides and orders that the receivership
10 defendants and the Receivership Entities, their subsidiaries and affiliates . . . and
11 attorneys cooperate with and assist the permanent receiver and take no action to
12 directly or indirectly hinder or obstruct or otherwise interfere with the permanent
13 receiver." The Principals and Mr. Bronk were provided copies of the PI Order.

14 **B. The Receiver's Demands for Documents from Mr. Bronk**

15 The Receiver has repeatedly asked Mr. Bronk to turn over all Documents,
16 including emails and email attachments, in his possession, custody, or control
17 pursuant to the foregoing provisions of the PI Order. To date, Mr. Bronk has
18 produced a small batch of Documents, but has failed to produce the balance of
19 records. Mr. Bronk has also refused to provide a proper log of Documents that he
20 contends are privileged.

21 On January 6 and January 9, 2017, the Receiver, through his counsel, sent
22 letters to Mr. Bronk with copies of the TRO. The letters stated, among other things,
23 that "all documents and legal files of the Receivership Entities in your possession or
24 control or your firm's possession or control must be preserved for turnover to the
25 temporary receiver." Mr. Bronk did not produce any documents that were in his
26 possession, custody, or control at that time. Declaration of Edward G. Fates in
27 Support of Motion ("Fates Decl."), ¶¶ 2-3.

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1 Over the next few months, the Receiver's investigation continued under the
2 PI Order and various batches of documents were produced by Mr. Ferrante and
3 Mr. Fox, through their counsel, Richard Weintraub. Through this investigation and
4 review of documents, it became clear there were a large number of entities affiliated
5 with the entities named in the Complaint, including, without limitation, those
6 identified above as Affiliated Entities. In April 2017, the Receiver, through counsel,
7 sent a letter to Mr. Weintraub and Mr. Bronk demanding that control of the
8 Affiliated Entities be turned over to the Receiver and that all Documents of the
9 Affiliated Entities, including Documents in the possession of Mr. Weintraub and
10 Mr. Bronk, be turned over. Again, no Documents were produced by Mr. Bronk.
11 Fates Decl., ¶ 4.

12 When the Receiver's counsel again demanded that Mr. Bronk produce
13 Documents in his possession, custody, or control, he stated he did not have any
14 Documents other than what had been produced by Mr. Weintraub. The Receiver's
15 counsel explained that this could not be the case because the Receiver already
16 possessed certain documents produced by others which reflected Mr. Bronk's
17 participation in transactions going back for several years. Mr. Bronk then
18 acknowledged that he had emails and attachments relating to the Receivership
19 Entities that had not been turned over; however, he refused to turn them over
20 because it would be too time-consuming and expensive for him to review them.
21 Mr. Bronk then hired an e-discovery vendor, TERIS, to download his emails and
22 attachments so they could be searched. Mr. Bronk had TERIS turn a relatively
23 small batch of emails and attachments (approximately 1,340 documents) over to the
24 Receiver. No further documents were produced. Fates Decl., ¶ 5.

25 When the Receiver's counsel followed up, Mr. Bronk stated that
26 approximately 4,000 emails were ready to be produced, but TERIS was owed
27 \$8,700, he could not afford to pay TERIS, and TERIS would not do any further
28 work until the \$8,700 was paid. Mr. Bronk stated that another 9,000 emails had

1 been categorized as "potentially privileged" and needed to be filtered further to
2 remove any privileged documents. Mr. Bronk refused to state the basis for any
3 privilege, but said that his "individual clients" claim that some of the emails are
4 privileged. Fates Decl., ¶ 6.

5 In an effort to avoid using receivership estate and judicial resources on a
6 motion for turnover of documents, the Receiver agreed to pay \$8,700 to TERIS so
7 the 4,000 emails would be produced. TERIS then explained that the batch of emails
8 and attachments that was ready to be produced was actually 1,202 documents
9 (emails and attachments), that there were 12,089 documents in the "potentially
10 privileged" set,³ and that an additional payment of \$1,000 would be required to
11 produce the 1,202 documents in searchable format. The Receiver reluctantly paid
12 the additional \$1,000 and the 1,202 documents were produced. Fates Decl., ¶ 7.

13 In the meantime, Mr. Bronk sent the Receiver's counsel a list of search terms
14 he intended to use to identify privileged documents in the remaining 12,089
15 documents. The search terms, however, were all entities and people with direct ties
16 to the Receivership Entities. Accordingly, the search terms were entirely worthless
17 as they would result in identifying communications for which the Receiver holds the
18 privilege (not the Principals). Fates Decl., ¶ 8.

19 After six months of wasted effort to resolve this matter, payments to TERIS
20 of over \$9,700, and thousands of dollars in attorney fees, it is patently clear that
21 further discussions with Mr. Bronk will not be productive. The Receiver's counsel,
22 therefore, prepared this Motion and informed Mr. Bronk he would file it. In what
23 amounted to one final effort at obfuscation, delay, and gamesmanship, Mr. Bronk
24 stated he would pay TERIS to prepare a log of all 12,089 emails and he would ask
25
26

27 ³ Regarding the differences between 4,000 and 1,202 for the set of Documents that
28 was ready to be produced and 9,000 and 12,089 for the "potential privileged" set,
Mr. Bronk stated only that he must have confused the numbers. Fates Decl.
fn. 2.

1 the Principals, through their respective counsel, to identify the documents on the log
2 they claim are privileged. Fates Decl., ¶ 9.

3 On October 17, 2017, Mr. Bronk sent the Receiver a copy of the log of 12,089
4 documents. This so-called log is nothing more than a list of documents with dates
5 and nothing more. In other words, it is entirely worthless and does nothing to
6 identify or describe the basis for a privilege claim.⁴ Accordingly, approximately
7 10 months into the receivership, and after more than six months of making demands
8 upon Mr. Bronk, and thousands of dollars expended, the receivership Documents in
9 Mr. Bronk's possession still have not been turned over to the Receiver. Fates Decl.,
10 ¶ 10.

11 III. ARGUMENT

12 A. The Receiver Controls the Attorney-Client Privilege for the 13 Receivership Entities, Including Affiliated Entities

14 It is well-settled law that the attorney-client privilege for entities placed in an
15 equity receivership is controlled by the receiver. *See United States v. Plache*,
16 913 F.2d 1375, 1381 (9th Cir. 1990); *CFTC v. Standard Forex, Inc.*, 882 F.Supp.
17 40, 42-43 (E.D.N.Y. 1995) (attorney-client privilege transfers to receiver because
18 receiver supplants prior management of entities in receivership).

19 Here, Mr. Bronk was formally engaged by Receivership Entities PDC Capital
20 Group, Inc. and KPF Capital, LLC, to represent them in a wide array of corporate,
21 securities, real estate, and other legal matters. Mr. Bronk also handled a similar
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23 ⁴ On October 13, 2017, the Receiver's counsel received an email from Christopher
24 Walters, counsel for Mr. Francisco, asking whether the Receiver intends to
25 preserve the privilege over communications produced by Mr. Bronk or waive it.
26 The Receiver's counsel explained that the Receiver could not make such a
27 determination until the communications were reviewed and the substance of
28 them considered. Mr. Walters stated that Mr. Francisco disputes that the
Receiver controls the attorney-client privilege for the Receivership Entities and
asked if the Receiver would agree to not waive the privilege without first
notifying Mr. Francisco and giving him the opportunity to object. The Receiver's
counsel responded that the Receiver did not agree to such a limitation on his
control of the attorney-client privilege. Fates Decl. fn. 3.

1 array of matters for numerous other Named Entities and Affiliated Entities included
2 in the receivership. Accordingly, the Receiver, by virtue of his appointment as
3 permanent equity receiver, controls the attorney-client privilege over any and all
4 communications between the Receivership Entities, including the Principals acting
5 in their capacities as principals of the Receivership Entities, and Mr. Bronk.

6 **B. Mr. Bronk Has Failed to Comply with the Court's PI Order**

7 Mr. Bronk, a licensed attorney, has actual notice of the PI Order, including
8 the provisions cited above directing the Defendants and their attorneys to turn all
9 documents of the Receivership Entities over to the Receiver, to affirmatively
10 cooperate and assist the Receiver, and to take no action to interfere with the
11 Receiver's performance of his duties. Nevertheless, Mr. Bronk has failed to turn
12 over the Documents for more than 10 months based on (a) his claim that complying
13 with the PI Order would be too time-consuming for him, and (b) an unsubstantiated
14 claim of privilege by the Principals. The evidence shows that these assertions are
15 entirely spurious. Mr. Bronk has simply engaged in extended gamesmanship in an
16 effort to delay the Receiver's investigation into Mr. Bronk and the Principals.

17 The Receiver made a concerted effort to work with Mr. Bronk to obtain his
18 compliance and even agreed to pay \$9,700 to obtain the Documents. Despite these
19 efforts, the vast majority of emails and attachments in Mr. Bronk's possession still
20 have not been produced.

21 As noted above, despite the claims that certain of the Documents are subject
22 to the attorney-client privilege, no engagement agreements between Mr. Bronk, on
23 the one hand, and any of the Principals, on the other hand, have been produced; no
24 personal legal matters have been identified; and no descriptions of any privileged
25 documents or transactions have been identified. Mr. Francisco is represented by
26 Mr. Walters and Mr. Ferrante and Mr. Fox are represented by Mr. Weintraub. Both
27 Mr. Walters and Mr. Weintraub have appeared in Court in this action on behalf of
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1 their respective clients. Accordingly, the Principals' vague, unsupported claims of
2 privilege do not excuse Mr. Bronk's failure to comply with the PI Order.

3 **C. Summary Procedures Are Appropriate**

4 The use of summary procedures is appropriate where "the purpose is to obtain
5 equitable relief from a non-party against whom no wrongdoing is alleged[.]" *SEC v.*
6 *Cherif*, 933 F.2d 403, 414 (7th Cir. 1991) (internal quotation marks omitted); *see*
7 *also SEC v. Wencke*, 789 F.2d 829, 836-38 (9th Cir. 1986). It is especially proper
8 where a receiver can plausibly establish that the subjects of the proposed summary
9 proceedings are constructive trustees in possession of receivership property. *SEC v.*
10 *Ross*, 504 F.3d 1130, 1144 (9th Cir. 2007).

11 Here, Mr. Bronk is withholding Documents obtained in connection with his
12 representation of the Receivership Entities that rightfully belong to the Receivership
13 Entities, *i.e.*, his former clients. Mr. Bronk has failed to turn over such documents
14 in violation of the Court's PI Order. Accordingly, summary procedures are available
15 and appropriate to enforce the PI Order and require Mr. Bronk to turn over the
16 applicable Documents. The receivership estate should not have to incur the costs to
17 file a separate action simply to obtain Mr. Bronk's compliance with the Court's
18 PI Order.

19 **D. Mr. Bronk Should Be Ordered To Turn Over The Documents**
20 **Without Delay**

21 Mr. Bronk has had over 10 months to comply with the PI Order. Under the
22 most favorable showing, Mr. Bronk has specifically known of the Receiver's
23 demand since March 2016. His initial excuse for failing to comply was simply a lie.
24 His latest excuses lack any merit. In the meantime, his continued failure to comply
25 impedes the Receiver's investigation into the numerous entities, assets, loans,
26 contracts, transfers, and other matters Mr. Bronk handled for the Receivership
27 Entities. Importantly, the Receiver is evaluating claims against Mr. Bronk for his
28 role in the alleged harm to investors and, if appropriate, must assert such claims in a

1 timely manner. Therefore, the delay in Mr. Bronk's compliance with the PI Order
2 directly impedes the Receiver's performance of his duties and risks imposing further
3 harm on investors. Accordingly, Mr. Bronk should be ordered to immediately turn
4 over all of the Documents without further delay.

5 **E. Noncompliant Attorneys May Be Sanctioned With A Contempt**
6 **Citation For Willful Or Deliberate Violations Of The Preliminary**
7 **Injunction Order**

8 In contrast with criminal contempt proceedings, civil contempt sanctions may
9 be imposed in an ordinary civil proceeding upon notice and opportunity to be heard,
10 and neither a jury trial nor proof beyond a reasonable doubt is required. *Int'l Union,*
11 *UMWA v. Bagwell*, 512 U.S. 821, 827, 831-832 (1994). All that is required is a
12 showing that there is clear and convincing evidence, as there is here, of a failure to
13 comply with a court order requiring specific conduct. *U.S. v. City of Jackson, Miss.*,
14 359 F.3d 727, 731 (5th Cir. 2004). Direct contempt occurring in court may be
15 immediately adjudged and sanctioned summarily. *Int'l Union*, 512 U.S. at 827,
16 fn. 2.

17 Where, as here, there is a claim relating to indirect contempt of the remedial
18 civil variety, notice and an opportunity to be heard are appropriate, and the movant
19 must cite the provisions of the injunction he wishes to be enforced, allege non-
20 compliance, and ask the Court on the basis of these representations for the non-
21 complying person or entity to show cause why he or she should not be adjudged in
22 contempt. *John Roe, Inc. v. U.S. (In re Grand Jury Proceedings)*, 142 F.3d 1416,
23 1424 (11th Cir. 2000).

24 Mr. Bronk, a licensed attorney, has actual notice of the PI Order. Moreover,
25 the Receiver has cited the specific provisions of the PI Order, provided Mr. Bronk
26 with notice, and made repeated demands on him to comply with the PI Order. As
27 discussed above, the Receiver has demonstrated that Mr. Bronk has willfully refused
28 without good cause to turn over the Documents. He initially lied to the Receiver

1 asserting that he had no independent documents. Thereafter he engaged in
2 obfuscation, delay, and gamesmanship, including claims of poverty and a lack of
3 time. As discussed above, he went so far as to convincing the Receiver to pay
4 TERIS \$9,700 to obtain documents that should have been directly turned over to the
5 Receiver last January.

6 Accordingly, an order requiring turnover of the Documents by Mr. Bronk and
7 TERIS as well as sanctions are warranted against Mr. Bronk, and the Receiver
8 respectfully requests that the Court issue an order to show cause re: sanctions should
9 the Court determine that is the most direct means of obtaining Mr. Bronk's prompt
10 compliance with the PI Order.

11 **F. Federal Rules Provide That The Same Contempt Procedures Apply**
12 **To Mr. Bronk Even Though He Is Not a Party**

13 Federal Rules of Civil Procedure 71 provides in full that "[w]hen an order
14 grants relief for a nonparty or may be enforced against a nonparty, the procedure for
15 enforcing the order is the same as for a party." This rule, for example, allows a non-
16 party who has standing to enforce a court order entered in his or her favor. *Ennels v.*
17 *Alabama Inns Assoc.*, 581 F.Supp. 708, 710 (M.D. Ala 1984). As interpreted by the
18 Ninth Circuit, the rule also allows enforcement of an injunction "addressed to a non-
19 party" so long as he is "given notice of the injunction" and the rule permits the
20 "district court to use 'the same processes for enforcing obedience to the order as if
21 [he were] a party.'" *Irwin v. Macott*, 370 F.3d 924, 931-32 (9th Cir. 2004).

22 Here, although Mr. Bronk is not a party to this action, he has been given
23 notice of the PI Order, has been afforded the opportunity to be heard by the Court,
24 and therefore the Court can enforce the PI Order against Mr. Bronk, compel him to
25 turn the Documents over to the Receiver, and issue sanctions if he fails to comply.

26 **IV. CONCLUSION**

27 For the foregoing reasons, the Receiver respectfully requests the Court grant
28 the Motion and Order as follows:

1 1. Mr. Bronk and his agent TERIS shall immediately turn over to the
2 Receiver possession and control of all Documents, including all documents and
3 records in his possession, custody, or control, including, but not limited to, attorney-
4 client communications, all emails, and documents (with attachments), text
5 messages, original files, records, deeds, title documents, corporate records and all
6 communications of any kind or nature which refer or relate to the Receivership
7 Entities, or any of them;

8 2. In the event Mr. Bronk fails to timely turn over possession and control
9 of the Documents, an Order to Show Cause Why Mr. Bronk Should Not Be Found
10 in Contempt of Court for Failure to Comply with This Court's Orders shall be
11 entered such that Mr. Bronk shall be required to pay an amount determined by the
12 Court for each day of non-compliance; and

13 3. The Receiver is awarded \$9,700 in costs paid to TERIS and attorney
14 fees and costs in the amount of \$5,000 reflecting the approximate amount required
15 to prepare this Motion.

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17 Dated: October 27, 2017

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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19 By: /s/ Edward Fates

EDWARD G. FATES
Attorneys for Receiver
THOMAS A. SEAMAN

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