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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; SUMMERPLACE 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; CAFFE  
PRIMO MANAGEMENT 106, LP; CAFFE  
27 PRIMO MANAGEMENT 107, LP; and  
28 CAFFE PRIMO MANAGEMENT 108, LP,  
Defendants.

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

**NOTICE OF MOTION AND  
MOTION FOR AUTHORITY TO  
PURSUE CLAIMS AGAINST  
NEIL RICHARDSON AND THE  
RICHARDSON FAMILY TRUST;  
MEMORANDUM OF POINTS  
AND AUTHORITIES**

Date: February 26, 2018  
Time: 1:30 p.m.  
Ctrm: 9B, 9th Floor  
Judge: Hon. Cormac J. Carney

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

2 **PLEASE TAKE NOTICE** that on February 26, 2018, 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,<sup>1</sup> will and hereby does move the Court for an  
6 order authorizing the Receiver to pursue claims against Neil Richardson and the  
7 Richardson Family Trust ("Motion").

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

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

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

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

4  
5 Dated: January 25, 2018

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

6  
7 By:           /s/ Edward Fates          

8 EDWARD G. FATES  
9 Attorneys for Receiver  
10 THOMAS A. SEAMAN  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Neil Richardson ("Richardson"), who worked closely with Defendant Emilio  
4 Francisco, Robert Ferrante, and Chris Fox to identify, acquire, and entitle properties  
5 for development as senior living facilities, obtained a \$2 million promissory note  
6 and deed of trust (held in the name of his family trust) via very unusual  
7 circumstances. Richardson had previously worked with FCM Capital Partners  
8 ("FCM"), which acquired the property known as the Carmichael Property. FCM  
9 also worked with PDC, so Richardson came to know Francisco, Ferrante and Fox  
10 through that relationship. Richardson then got into a dispute with FCM, the two  
11 sued each other, and Richardson recorded a *lis pendens* on the Carmichael Property.  
12 Richardson, who claimed to be owed \$2 million by FCM, then began working  
13 directly for PDC. PDC then purchased the Carmichael Property from FCM.

14 However, instead of FCM resolving its dispute with Richardson, PDC agreed  
15 to pay Richardson the \$2 million allegedly owed by FCM. It is not clear why PDC  
16 simply assumed the entire \$2 million debt FCM allegedly owed Richardson. This is  
17 not the only mysterious turn in the story though. Instead of PDC or the entity that  
18 acquired the Carmichael Property (SAL Carmichael) agreeing to pay Richardson the  
19 \$2 million, a separate entity that owned a separate property (SAL Westgate) was  
20 saddled with the obligation to Richardson, including a \$2 million note and a Deed of  
21 Trust on its property.

22 It is clear that SAL Westgate and its EB-5 investors received nothing of value  
23 in exchange for the \$2 million promissory note and Deed of Trust. The debt, if it  
24 was owed at all, was owed by FCM and mysteriously assumed by PDC and SAL  
25 Carmichael. The Receiver, therefore, seeks authority to pursue claims against  
26 Richardson and his family trust to avoid the Deed of Trust, quiet title to the SAL  
27 Westgate property, and equitably subordinate the claims of Richardson to the claims  
28 of the EB-5 investors.

1 **II. BACKGROUND FACTS**

2 The Receiver's investigation to date indicates that in or around 2013,  
3 Richardson and Chris Miller of FCM were working together to identify properties  
4 for development. Richardson claims he loaned significant sums of his personal  
5 funds to Miller/FCM. However, to date, no evidence of these personal loans has  
6 been provided to the Receiver by Richardson. In 2013, FCM purchased a property  
7 located in Carmichael, California ("Carmichael Property"). The working  
8 relationship between Richardson and Miller apparently soured and the two sued  
9 each other (and related entities) in or around 2014. Richardson recorded a  
10 *lis pendens* against the Carmichael Property. Declaration of Thomas Seaman filed  
11 herewith ("Seaman Decl."), ¶ 2.

12 In 2014, Richardson began working for PDC. In July 2015, SAL Carmichael  
13 bought the Carmichael Property from FCM for \$1.9 million. At the same time,  
14 PDC, SAL Carmichael, and Richardson signed a Settlement Agreement by which  
15 PDC and SAL Carmichael agreed to pay Richardson \$2 million. A promissory note  
16 in the amount of \$2 million in favor of Richardson ("Note") was issued, but not by  
17 PDC or SAL Carmichael. Instead, an entirely separate entity, SAL Westgate signed  
18 the Note and a Deed of Trust securing the obligation to Richardson, which was  
19 recorded against the Westgate Property. SAL Westgate was not involved in the  
20 purchase of the Carmichael Property or the Richardson settlement in any manner  
21 and received nothing of value from the transaction. Seaman Decl., ¶ 3.

22 In 2016, Richardson had a falling out with PDC. In May 2016, Richardson  
23 sued Robert Ferrante, Defendant Emilio Francisco, PDC, and FDC Capital  
24 Group, LLC ("FDC") in Orange County Superior Court. Later that same month,  
25 PDC, Francisco and Ferrante filed two separate lawsuits against Richardson, his  
26 family trust, his family members, and related entities in Orange County Superior  
27 Court. Among other things, Richardson claimed PDC misled him into performing  
28 services, but never paid him the agreed upon amounts or commissions for his work.

1 PDC claimed Richardson misrepresented his expertise in real estate development,  
2 failed to provide promised services, and then created his own company to compete  
3 with PDC, including stealing clients, trade secrets, and business opportunities. The  
4 complaints allege that Richardson participated in obtaining a boat and Ferrari  
5 automobile, although the two sides dispute who had control of these luxury assets  
6 and for whose benefit they were obtained. Seaman Decl., ¶ 4.

7 After the filing of this action by the Securities and Exchange Commission and  
8 the appointment of the Receiver by the Court, the Orange County Superior Court  
9 held a hearing and determined that all claims against PDC and FDC were enjoined  
10 and stayed pursuant to the Court's Preliminary Injunction Against All Defendants.  
11 Seaman Decl., ¶ 5.

### 12 III. PROPOSED ACTION

13 The Receiver seeks authority to file an action in this Court, as a related action  
14 to this case, against Richardson, individually and as trustee of his family trust, in  
15 whose name the note and Deed of Trust were issued. The complaint will include  
16 causes of action (a) to avoid the Note and Deed of Trust as fraudulent/voidable  
17 transfers in exchange for which SAL Westgate received nothing of value, (b) to  
18 quiet title to the Westgate Property, also known as the Sacramento Property, in the  
19 event the proposed sale of the property does not close as expected, and (c) to  
20 equitably subordinate the claims of Richardson and his family trust to the claims of  
21 the EB-5 investors. As discussed below, the Receiver believes such causes of action  
22 are supported by the facts and applicable law, and therefore should be pursued for  
23 the benefit of the receivership estate and the EB-5 investors. Seaman Decl., ¶ 6.

### 24 IV. ARGUMENT

25 "The power of a district court to impose a receivership or grant other forms of  
26 ancillary relief does not in the first instance depend on a statutory grant of power  
27 from the securities laws. Rather, the authority derives from the inherent power of a  
28 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369

1 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly  
2 and efficient administration of the estate by the district court for the benefit of  
3 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment  
4 of a receiver is authorized by the broad equitable powers of the court, any  
5 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,  
6 953 F.2d 1560, 1569 (11th Cir. 1992).

7 District courts have the broad power of a court of equity to determine the  
8 appropriate action in the administration and supervision of an equity receivership.  
9 *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth  
10 Circuit explained:

11 A district court's power to supervise an equity receivership  
12 and to determine the appropriate action to be taken in the  
13 administration of the receivership is extremely broad. The  
14 district court has broad powers and wide discretion to  
15 determine the appropriate relief in an equity receivership.  
16 The basis for this broad deference to the district court's  
supervisory role in equity receiverships arises out of the  
fact that most receiverships involve multiple parties and  
complex transactions. A district court's decision  
concerning the supervision of an equitable receivership is  
reviewed for abuse of discretion.

17 *Id.* (citations omitted); *see also CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115  
18 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,  
19 and 'we generally uphold reasonable procedures instituted by the district court that  
20 serve th[e] purpose' of orderly and efficient administration of the receivership for  
21 the benefit of creditors."). Accordingly, the Court has broad discretion in approving  
22 procedures for the sale of receivership estate assets.

23 Here, the Receiver seeks authority to pursue claims that he believes are in the  
24 best interest of the receivership estate. These claims include the following:

25 **A. Avoidance of Note and Deed of Trust as Fraudulent Transfers**

26 The lack of any consideration provided to SAL Westgate in connection with  
27 the Deed of Trust gives rise to a claim of fraudulent conveyance (now called  
28 voidable transaction) which will extinguish the Deed of Trust. Under California's



1 Uniform Voidable Transactions Act ("CUVTA"), a transfer is subject to avoidance  
2 when made with (1) actual intent to defraud, or (2) constructive fraudulent intent  
3 based on the lack of reasonably equivalent value provided in exchange. *See* Cal.  
4 Civ. Code § 3439.04(a); *see also*, *Optional Capital, Inc. v. DAS Corp.*, 222 Cal.  
5 App. 4th 1388, 1401-1402 (2014); *Donell v. Kowell*, 533 F.3d 762, 770-771  
6 (9th Cir. 2008) ("*Kowell*"); *In re Cohen*, 199 B.R. 709, 715-716 (9th Cir. 1996).  
7 When seeking recovery of funds fraudulently transferred under the CUVTA, "fraud,  
8 in the sense of morally culpable conduct, need not be present in either category of  
9 fraudulent transfer." *In re Cohen*, 199 B.R. at 716.

10 Under section 3439.04(a)(2) of the CUVTA, constructive fraud is found  
11 where the debtor made the transfer without receiving reasonably equivalent value in  
12 exchange and either:

13 (A) Was engaged or was about to engage in a business or a  
14 transaction for which the remaining assets of the debtor  
15 were unreasonably small in relation to the business or  
16 transaction. [Or,]

17 (B) Intended to incur, or believed or reasonably should  
18 have believed that the debtor would incur, debts beyond  
19 the debtor's ability to pay as they became due.

20 Cal. Civ. Code § 3439.04(a)(2).

21 Determining whether reasonably equivalent value was given involves  
22 "comparing what the debtor surrendered and what the debtor received." *In re*  
23 *Pajaro Dunes Rental Agency*, 174 B.R. 557, 578 (Bankr. N.D. Cal. 1994)). The  
24 determination of value must be made from the viewpoint of creditors, not the debtor  
25 himself. *Hansen v. Cramer*, 39 Cal. 2d 321, 324 (1952) ("What constitutes 'a fair  
26 equivalent' or 'a fair consideration' under the Fraudulent Conveyance Act must be  
27 determined from the stand point of creditors."); *see also*, *Patterson v. Missler*,  
28 238 Cal. App. 2d 759, 766 (1965) (citing *Hansen*).

Here, FCM allegedly owed \$2 million to Richardson. PDC and SAL  
Carmichael agreed to pay Richardson \$2 million. It is not clear why PDC and SAL



1 Carmichael did this or if adequate consideration was provided by FCM. Regardless,  
2 however, absolutely no consideration was received by SAL Westgate, which owns a  
3 different property and has different EB-5 investors than SAL Carmichael. SAL  
4 Westgate owed obligations to its EB-5 investors, which it is financially unable to  
5 meet and certainly cannot meet with the \$2 million Deed of Trust encumbering its  
6 property. Accordingly, the Note and Deed of Trust are fraudulent transfers subject  
7 to avoidance under California law.

8 **B. Equitable Subordination of Claims**

9 The Court has discretion to subordinate claims of certain investors or  
10 creditors to the claims of other investors or creditors. *See United States v. Ariz.*  
11 *Fuels Corp.*, 739 F.2d 455 (9th Cir. 1984) (receivership courts may allow, disallow,  
12 or subordinate claims of creditors). Equitable subordination is appropriate where a  
13 claimant has engaged in inequitable conduct to advantage himself or herself to the  
14 disadvantage of other claimants. *See Henry v. Lehman Commercial Paper, Inc. (In*  
15 *re First Alliance Mortgage Co.)*, 471 F.3d 977, 1006 (9th Cir. 2006). Equitable  
16 subordination is particularly appropriate where the claimant involved is an insider of  
17 the debtor. *Id.*

18 At the time the Note and Deed of Trust were issued, Richardson had a close  
19 working and personal relationship with Francisco, Ferrante and Fox, had access to  
20 information about the Receivership Entities that investors did not, was a key person  
21 in the Receivership Entities' real estate transactions, and therefore was an insider of  
22 the companies. Richardson used his insider position to his personal advantage by  
23 taking a Note and Deed of Trust from SAL Westgate and thereby attempting to  
24 elevate his position over the claims of SAL Westgate's investors. Richardson had  
25 no legitimate claim against SAL Westgate and had no basis to take a Deed of Trust  
26 on SAL Westgate's property. Richardson claims he was owed \$2 million by FCM,  
27 but that debt was disputed by FCM and had no connection whatsoever to SAL  
28

1 Westgate. Accordingly, Richardson's claim is subject to equitable subordination to  
2 the claims of the EB-5 investors.

3 **C. Anticipated Fees and Costs**

4 Predicting the fees and costs that will be incurred in connection with any  
5 litigation matter is extremely difficult. If the proposed action against Richardson  
6 were to settle relatively early, the fees and costs would naturally be fairly low. If,  
7 however, the case were to be litigated through discovery and summary judgment,  
8 the Receiver, having consulted with counsel, estimates the fees and costs would be  
9 in the range of \$125,000 to \$200,000. If the case required a trial, the fees and costs  
10 would increase significantly, depending on the number of causes of action and  
11 defenses at issue and the length of trial. The Receiver will make every effort to  
12 keep fees and costs down and will take a pragmatic approach to settlement  
13 discussions. Allen Matkins will provide a 10% discount on its hourly rates for the  
14 proposed action, as it has for all work done in connection with the receivership.  
15 Seaman Decl., ¶ 7.

16 **D. Richardson's Motion for Leave to Sue the Receiver**

17 Richardson has filed a motion for leave to sue the Receiver. The motion is  
18 not clear whether Richardson seeks to sue the Receiver in his capacity as Court-  
19 appointed receiver for the Receivership Entities or in his personal capacity or what  
20 claims Richardson intends to assert. Clearly, Richardson does not have any claims  
21 against the Receiver personally as all actions taken by the Receiver have been in the  
22 performance of his Court-ordered duties as receiver. Instead, the only claims  
23 Richardson could possibly assert are claims against the Receiver in his capacity as  
24 receiver for PDC.

25 If the Receiver is authorized to file an action against Richardson, Richardson  
26 can assert his claims against PDC as counterclaims in the Receiver's action in this  
27 Court and, if the parties are unable to resolve the claims, the Court can adjudicate  
28 such claims and counterclaims in one proceeding, including Richardson's position

1 vis-à-vis other claimants against the receivership estate. There would be no  
2 jurisdictional basis to have the state court adjudicate claims against the receivership  
3 estate, which is a core aspect of this action, and doing so would be a waste of  
4 receivership and judicial resources. Indeed, the state court would not have  
5 jurisdiction over the Receiver's equitable subordination claim; only this Court can  
6 determine who has a valid claim against the receivership estate and what priority  
7 such claim has vis-à-vis other claims. Accordingly, Richardson's motion should be  
8 denied.

9 **V. CONCLUSION**

10 Based on the foregoing, the Receiver believes there are valid claims against  
11 Neil Richardson and his family trust that should be pursued for the benefit of the  
12 receivership estate and requests an order authorizing him to do so.

13  
14 Dated: January 25, 2018

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

15  
16 By:           /s/ Edward Fates          

17 EDWARD G. FATES  
18 Attorneys for Receiver  
19 THOMAS A. SEAMAN  
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