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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  
20 ASSISTED LIVING, LP; SAL  
CARMICHAEL, LP; SAL CITRUS  
21 HEIGHTS, LP; SAL KERN  
CANYON, LP; SAL PHOENIX, LP;  
22 SAL WESTGATE, LP;  
SUMMERPLACE AT SARASOTA, LP;  
23 SUMMERPLACE AT  
CLEARWATER, LP; SUMMERPLACE  
24 AT CORRELL PALMS, LP;  
TRC TUCSON, LP; CLEAR  
25 CURRENTS WEST, LP; CAFFE  
PRIMO MANAGEMENT, LP; CAFFE  
26 PRIMO MANAGEMENT 102, LP; et al.,

27 Defendants.  
28

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

**NOTICE OF MOTION AND  
MOTION OF RECEIVER,  
THOMAS A. SEAMAN, FOR  
ORDER APPROVING: (1) SALE OF  
CITRUS HEIGHTS PROPERTY,  
SACRAMENTO PROPERTY, AND  
CARMICHAEL PROPERTY;  
(2) OVERBID PROCEDURES; AND  
(3) REAL ESTATE BROKER  
COMMISSION; MEMORANDUM  
OF POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

Date: May 21, 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 May 21, 2018, at 1:30 p.m. in Courtroom 9B of  
3 the above-entitled Court, located at 411 W. Fourth Street, Santa Ana, California  
4 92701, Thomas A. Seaman ("Receiver"), the Court-appointed receiver for the  
5 Receivership Entities,<sup>1</sup> will and hereby does move the Court for an order approving  
6 the sale of the Citrus Heights Property, Sacramento Property, and Carmichael  
7 Property (collectively, the "California Properties"), overbid procedures; and a real  
8 estate broker's commission ("Motion"). Pursuant to the sale and overbid procedures  
9 that were previously approved by the Court pursuant to the Order Granting  
10 Receiver's Motion for Order Authorizing the Receiver to Market Receivership Assets  
11 for Sale, Establish Sale Procedures, and Engage Brokers, ("Sale Procedures Order")  
12 (Dkt. No. 102), the Receiver requests the Court approve the sale of the California  
13 Properties to Carefield SH Management, LLC ("Buyer") free and clear of liens and  
14 encumbrances (with one of the disputed liens attaching to the sale proceeds),  
15 pursuant to the purchase and sale agreement or to the highest bidder at the conclusion

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17 <sup>1</sup> 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;  
25 FDC Capital Partners, LLC; MSL US Fund I, LLC; MPoint Land & Development, Inc.;  
26 Woodcrest Construction Management, Inc.; Professional Loading Service, LLLP; WDC Capital  
27 Group, 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 ("SLALMC"); 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 of the auction, if qualified overbids are received. The Receiver also requests the  
2 Court to approve a real estate broker's commission.

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

7 **Procedural Requirements:** If you oppose this Motion, you are required to  
8 file your written opposition with the Office of the Clerk, United States District Court,  
9 411 W. Fourth Street, Santa Ana, California 92701, and serve the same on the  
10 undersigned not later than 21 days prior to the hearing.

11 IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION by the  
12 above date, the Court may grant the requested relief without further notice. This  
13 Motion is made following the conferences of counsel pursuant to L.R. 7-3, which  
14 was initiated on April 3, 2018.<sup>2</sup>

15  
16 Dated: April 6, 2018

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

17  
18 By:           /s/ David R. Zaro

19 DAVID R. ZARO  
20 Attorneys for Receiver  
THOMAS A. SEAMAN

21  
22  
23  
24  
25  
26 <sup>2</sup> The Securities and Exchange Commission reviewed and did not object to the filing. Counsel  
27 for Receiver exchanged emails with counsel for Mr. Francisco who said he would not speak  
28 with his client until he returned to his office. Despite counsel's request, he did not state any  
objection and simply said he would not respond until next week. The Receiver is filing the  
Motion because it is necessary to start the publication process and Mr. Francisco did not object  
to the prior sale of these same properties.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In accordance with the Sale Procedures Order, the Receiver moves this Court  
4 for an order authorizing him to sell the real properties more particularly described in  
5 Exhibit A, to the concurrently filed Declaration of Thomas A. Seaman ("Seaman  
6 Declaration" or "Seaman Decl."), which properties are commonly known as the  
7 Citrus Heights Property, the Sacramento Property, and the Carmichael Property  
8 including all permits, entitlements and architectural plans (collectively, the  
9 "California Properties") on the terms generally described below and more  
10 specifically set forth in the Purchase and Sale Agreement and Joint Escrow  
11 Instructions, dated as of April 2, 2018 ("PSA"). A true and correct copy of the PSA  
12 is attached as Exhibit B to the Seaman Declaration.

13 As permitted by the Sale Procedures Order, the Receiver and Howard Hamlin  
14 of Hamlin Gooding (the "Broker") have worked diligently to locate a buyer for the  
15 California Properties through commercially reasonable and customary channels,  
16 including, but not limited to, specifically targeting buyers reasonably believed to be  
17 interested or specializing in the purchase of real properties like the California  
18 Properties. The California Properties were thoroughly exposed to the market place  
19 and were listed on Costar – Loopnet, the most widely used commercial real estate  
20 website. The Broker also contacted 1,117 land buyers in its database. In addition,  
21 contact was made with 636 senior housing investors. As a result of these efforts, 52  
22 potential buyers requested and were provided due diligence packages and offers  
23 from 11 buyers were entertained and negotiated with the prospective buyers. The  
24 highest offer the Receiver was able to negotiate was from, Carefield SH  
25 Management, LLC ("Buyer"), and the Receiver agreed to a sales price of \$6,000,000  
26 ("Purchase Price"), on an "as-is, where-is" basis, subject to the PSA.<sup>3</sup> Based upon  
27

28 <sup>3</sup> The Buyer originally presented an offer to purchase the California Properties plus the Lincoln Red Rock Property in Lincoln, California. That offer was

1 the present facts and circumstances, and absent an overbid, the Receiver believes the  
2 Purchase Price is the best price attainable for the California Properties and  
3 respectfully requests the Court grant this Motion and approve: (1) the sale of the  
4 California Properties (either to Buyer or a successful overbidder) pursuant to the  
5 terms of the PSA; (2) the proposed overbid procedures described herein; (3) the  
6 release of the below described lien of Neil Richardson ("Richardson") with the  
7 attachment of such lien to the sale proceeds; and (4) payment of Broker's  
8 commission.

9 **II. RELEVANT FACTS**

10 **A. The Receiver's Appointment And Authority To Sell The California**  
11 **Properties**

12 On January 5, 2017, the Receiver was appointed temporary receiver for the  
13 Receivership Entities,<sup>4</sup> with full powers of an equity receiver set forth in the  
14 Temporary Restraining Order ("TRO"). (Dkt. No. 17.) On January 23, 2017, the  
15 Court entered its Preliminary Injunction Against All Defendants ("PI Order"),  
16 which, among other things, made the Receiver's appointment permanent. (Dkt.  
17 No. 36.)

18 Pursuant to the terms of the PI Order, the Receiver was appointed as the  
19 permanent receiver of the Receivership Entities, "with full powers of an equity  
20 receiver, including, but not limited to, full power over all funds, assets,  
21 collateral, . . . and other property belonging to, being managed by or in possession of  
22 or control of the [Receivership Entities] . . ." *Id.* The PI Order authorized the  
23 Receiver to take immediate possession of all real and personal property of the  
24  
25

26 ultimately rejected by the Receiver in favor of the settlement with MCC US, Inc.  
27 ("MCC"), which settlement is described more fully in the Receiver's Motion for  
28 Approval of Settlement Agreement with MCC US, Inc., Transfer of Projectscy  
and Ancillary Relief ("Settlement Motion"). [See Dkt. No. 213].

4 Terms previously defined in the Motion will be used and have the same meaning  
in this Memorandum of Points and Authorities.



1 Receivership Entities, wherever located, and to take such action as is necessary to  
2 preserve the assets of the Receivership Entities. *Id.*

3 On July 7, 2017, the Receiver filed the Motion of Receiver for Order  
4 Authorizing Receiver to Market Receivership Assets for Sale, Establish Sale  
5 Procedures and Engage Brokers ("Sale Procedures Motion") (Dkt. No. 81). On  
6 August 7, 2017, the Court granted the Sale Procedures Motion (Dkt. No. 102).

7 On December 5, 2017, the Court granted the Receiver's Motion to Sell the  
8 Sarasota Property. [Dkt. No. 142] Pursuant to this order, the Court agreed that the  
9 sale would be free and clear of mortgage recorded against the Sarasota Property in  
10 favor of MCC, with MCC's lien interest attaching to the sale proceeds. Since that  
11 time, the Receiver has been holding the sales proceeds in a separate bank account.

12 **B. The California Properties**

13 With regard to each of the below described California Properties, the  
14 Receiver has simultaneously marketed the property and explored the viability of  
15 developing the projects as described in the offering materials presented to the EB-5  
16 Investors. To that end, the Receiver attempted to find alternative sources of  
17 financing and restructuring of the projects to allow for the infusion of new capital  
18 and/or other options for successful completion of the projects. No suitable investors  
19 or transactions were identified. Seaman Decl., ¶¶ 3, 11-13. Moreover, as described  
20 below, the defendants encumbered the projects with loans leaving little prospect for  
21 further financing or development.

22 Given the current circumstances, the Receiver does not believe it would be  
23 cost effective, appropriate, or feasible to raise new equity, and it is unlikely the  
24 amount of funds needed to complete construction of the projects can be borrowed  
25 based on the lack of equity in the property above the amount of debts. *Id.* Indeed,  
26 even if such funding could be secured, the continued development of the projects  
27 represents a far greater risk and a potentially lower return to the receivership estate  
28 than an immediate sale of the properties. In light of the foregoing, the Receiver

1 believes the sale of the California Properties, on an "as-is, where is" basis, will  
2 provide the highest return to the receivership estate. Seaman Decl. ¶ 14. Below is  
3 specific information relevant to each of the California Properties.

4 1. Carmichael Property.

5 The Carmichael Property is owned by SAL Carmichael, LLC. This project  
6 involved the development of a 130 unit assisted living facility in Carmichael,  
7 California. Seaman Decl. ¶ 3. PDC raised \$5 million from 10 EB 5 Investors in  
8 connection with the SAL Carmichael offering (not including administrative fees.)  
9 Only a portion of these proceeds went toward the purchase of the land. The USCIS  
10 initially approved one application, then revoked the approval. The USCIS denied  
11 eight applications, and issued a Notice of Intent to Deny one application.

12 In 2015, SAL Carmichael allegedly became indebted to Richardson for  
13 \$2.0 million. The Receiver disputes that Richardson is owed any money. Seaman  
14 Decl. ¶¶ 16-19.

15 The Receiver's investigation indicates that in or around 2013, Neil Richardson  
16 and Chris Miller of FCM Capital Partners ("FCM") were allegedly working together  
17 to identify properties for development. Richardson claims he loaned significant  
18 sums of his personal funds to Miller/FCM. However, no evidence of these personal  
19 loans has been provided to the Receiver by Richardson. In 2013, FCM purchased a  
20 property located in Carmichael, California [the Carmichael Property]. *Id.* The  
21 working relationship between Richardson and Miller apparently soured and the two  
22 sued each other (and related entities) in or around 2014. Richardson recorded a *lis*  
23 *pendens* against the Carmichael Property.

24 In 2014, Richardson began working for PDC. In July 2015, SAL Carmichael  
25 bought the Carmichael Property from FCM for \$1.9 million. *Id.* At the same time,  
26 PDC, SAL Carmichael, and Richardson signed a Settlement Agreement by which  
27 PDC and SAL Carmichael agreed to pay Richardson \$2 million. *Id.* A promissory  
28 note in the amount of \$2 million in favor of Richardson was issued, but not by PDC

1 or SAL Carmichael. Instead, an entirely separate entity, SAL Westgate signed a  
2 deed of trust securing the obligation to Richardson which was recorded against the  
3 Westgate Property. Id. SAL Westgate was not involved in the purchase of the  
4 Carmichael Property or the Richardson settlement in any manner and received  
5 nothing of value from the transaction. Id.

6 In 2016, Richardson had a falling out with PDC. In May 2016, Richardson  
7 sued Robert Ferrante, Defendant Emilio Francisco, PDC, and FDC Capital Group,  
8 LLC ("FDC") in Orange County Superior Court. Later the same month, PDC,  
9 Francisco and Ferrante filed two separate lawsuits against Richardson, his family  
10 members, and related entities in Orange County Superior Court. Among other  
11 things, Richardson claimed PDC misled him into performing services, but never  
12 paid him the agreed upon amounts or commissions for his work. PDC claimed  
13 Richardson misrepresented his expertise in real estate development, failed to  
14 provide promised services, and then created his own company to compete with  
15 PDC, including stealing clients, trade secrets, and business opportunities. The  
16 complaints allege that Richardson participated in obtaining a boat and Ferrari  
17 automobile, although the two sides dispute who had control of these luxury assets  
18 and for whose benefit they were obtained.

19 In light of the foregoing, the Receiver has filed a lawsuit against  
20 Mr. Richardson to set aside the deed of trust on the Sacramento Property, and void  
21 or subordinate the claims of Richardson [See 8:18-cv-00538-AG-SK, Dkt. No. 9.]

22 On December 8, 2016, the principals of PDC caused PDC to borrow  
23 \$650,000, secured by a deed of trust on the Carmichael Property. Seaman Decl. ¶ 3.  
24 These funds were diverted elsewhere. The Receiver is servicing the secured debt.  
25 The Receiver has worked to preserve entitlements and maintain the value of the  
26 Carmichael Property, however, for the reasons discussed above, there is no realistic  
27 prospect of the Receiver to obtain financing to develop the project.

28

1                   2.     The Sacramento Property.

2             The Sacramento Property is owned by SAL Westgate, LLC. The property  
3 was purchased on April 14, 2014 , for \$2.022 million. Seaman Decl. ¶ 3. It consists  
4 of a 6.72 acre site which was to be developed as a 94 unit assisted living and 80 unit  
5 memory care facility in West Sacramento. PDC raised \$5 million from 10 EB-5  
6 Investors for SAL Westgate LLC (not including administrative fees), however, not  
7 all of the EB-5 Investor money went to the project. Of the 10 EB-5 applications  
8 submitted to the USCIS, six have been denied and four Notices of Intent to Deny  
9 have been issued.

10            As noted above, there is a recorded deed of trust in favor of Richardson for  
11 \$2,000,000 encumbering the Sacramento Property. Id. The Receiver has sued  
12 Richardson seeking to extinguish the Richardson deed of trust. Id. at ¶ 18. Some  
13 design and architectural work has been completed and the Receiver obtained an  
14 extension in the entitlements. For the reasons discussed above, there is no  
15 reasonable prospect for the Receiver to develop the project.

16                   3.     The Citrus Heights Property.

17            The Citrus Heights Property is owned by SAL Citrus Heights, LLC. The  
18 property was purchased on July 3, 2014 for \$1.288 million. Seaman Decl. ¶ 3. It  
19 consists of a 4.55 acre site to be developed as a 109 unit assisted living and memory  
20 care facility in Citrus Heights, California.

21            PDC raised \$5,500,000 from 11 EB-5 Investors for the SAL Citrus Heights  
22 project (not including administrative fees). Id. The USCIS has issued a Notice of  
23 Intent to Deny as to all 11 EB-5 Investors. Id.

24            PDC records show that certain of the funds raised from the EB-5 Investors  
25 were diverted and that only \$2.325 million went to the project. Id. The principals  
26 also arranged for an \$850,000 loan secured by the Citrus Heights Property on  
27 December 8, 2016. Id. Most of these loan proceeds were immediately diverted  
28 from the Citrus Heights project, notwithstanding that the project architects are owed

1 over \$200,000. The Citrus Heights project is fully entitled and construction could  
2 commence if funding can be obtained. For the reasons discussed above, there is no  
3 reasonable prospect for the Receiver to develop the project.

4 **C. EB-5 Issues**

5 The Receiver understands that a primary goal of the EB-5 Investors is to  
6 obtain permanent United States residency through participation in the EB-5 Program  
7 administered by the United States Customs and Immigration Services ("USCIS"),  
8 and that a sale of the California Properties will likely be deemed a "material change"  
9 and a failure to sustain the original investment that will jeopardize the EB-5  
10 Investors' eligibility for U.S. permanent residency. Seaman Decl. at ¶¶ 9, 11. With  
11 regard to each of the California Properties, most, if not all, the EB-5 Investors' I-526  
12 petitions have been denied or revoked by USCIS. The prospects for approval of  
13 petitions by USCIS were doomed by the prior actions of the "Principals", including  
14 but not limited to, the commingling of funds from different projects and diverting  
15 millions of dollars away from each of the California projects in contravention of  
16 their business plans and violations of the rules and regulations governing EB-5  
17 immigration. *Id.* As such, there is no realistic prospect of overcoming (or undoing)  
18 the pre-receivership actions in contravention of the USCIS guidelines or otherwise  
19 reaching the investors' immigration goals. *Id.* at ¶ 11. Therefore, the Receiver is  
20 pursuing the most financially viable option rather than pursuing a futile effort to  
21 reverse USCIS decisions by proposing new developments. *Id.*

22 **D. The Proposed Sale**

23 The Receiver has considered four disposition options with regard to the  
24 California Properties: (1) proceed with the developments as originally conceived  
25 and described in the offering memorandum of the USCIS; (2) sell a controlling  
26 interest in each of the California Properties to a new financial partner with or  
27 without regard to the impact on the applications or petitions of EB-5 Investors that  
28 are pending before USCIS; (3) sell each of the California Properties separately in its

1 "as-is" condition, including all present entitlements and project documents; and  
2 (4) sell the California Properties as a bulk sale to one buyer, subject to overbids.  
3 Seaman Decl. ¶ 7. The Receiver also considered his role as a federal equity  
4 receiver, the nature of these proceedings, the propriety of an equity receiver  
5 engaging in a lengthy and complex development of real estate projects, and the fact  
6 that development of these projects would also involve the Court's ongoing oversight  
7 of the financing, construction and start-up of an operating business. Id. at ¶ 8.

8 The Receiver has explored the prospects for obtaining financing or a  
9 development partner as to each of the California Properties, without success. Id.  
10 at ¶ 9 Based upon his investigation and analysis, the Receiver believes the sale of  
11 the California Properties as a bulk sale is in the best interest of the receivership. Id.  
12 at ¶¶ 11, 14.

13 The Buyer has presented an offer exceeding the amount of the combined  
14 separate offers received for the California Properties. The Receiver's real estate  
15 broker, Hamlin Gooding, commenced marketing the California Properties in the  
16 spring of 2017. Seaman Decl. ¶ 6. A virtual data room was established for each  
17 property to enable prospective buyers to conduct due diligence in an effective and  
18 cost efficient manner. Id. The Broker has worked with numerous parties to explore  
19 possible development, joint ventures, and purchases of the California Properties. To  
20 date, the Broker has received a number of formal inquires and offers from parties,  
21 however, none as valuable as the bulk offer from Buyer.

22 The Receiver and the Broker have negotiated with parties interested in  
23 purchasing individual assets. The Receiver has also considered the auction of each  
24 of the 3 properties based upon offers that have been received. Based upon the  
25 Receiver's analysis, the offer by the Buyer to purchase these 3 properties in bulk for  
26 \$6.0 million, exceeds the combined best offers received for the 3 separate  
27 properties. As such, the Receiver believes he has established a mechanism to ensure  
28 the highest recovery possible from the sale of the California Properties.

1           **E. Purchase and Sale Agreement**

2           A copy of the PSA for the sale to Buyer is attached as Exhibit B to the  
3 Seaman Declaration. Its terms are summarized as follows:<sup>5</sup>

4           **Court Approval.** All aspects of the PSA and the sale are subject to Court  
5 approval.

6           **Purchase Price.** \$6,000,000. The estimated net proceeds to the receivership  
7 estate after deducting payoffs of the undisputed loans on the California Properties,  
8 estimated escrow, tax, proration and other costs, will be approximately \$4,100,000  
9 (subject to the disputed Richardson lien as provided in the proposed order).<sup>6</sup>

10          **Closing Date.** Escrow to close within 33 days after Court approval of the  
11 sale.

12          **Deposit.** Buyer has deposited \$3,000,000 ("Deposit") into escrow. This  
13 reflects a non-refundable Deposit to be applied to the Purchase Price, subject to the  
14 overbid procedures and other terms set forth in the PSA.

15          **Sale Free and Clear of Richardson Lien.** The California Properties will be  
16 sold free and clear of the Richardson lien, with Richardson's lien attaching to the  
17 sale proceeds. The Receiver will hold the sale proceeds in a separate bank account  
18 subject to Richardson's disputed lien interests pending further order of the Court.

19          **As Is/Where Is Purchase.** Buyer agrees to purchase the California  
20 Properties on an "as-is, where is" basis, with no representations or warranties made  
21 by the Receiver, his professionals, or the Receivership Entities.

22          **Buyer's Representations and Warranties.** Buyer represents and warrants  
23 that it is qualified and capable of closing the purchase and sale transaction.

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25

26 <sup>5</sup> The terms of the PSA are summarized herein for convenience only. In the event  
27 of any conflict between the PSA and the summary provided herein or any  
28 <sup>6</sup> ambiguity as to the language used herein, the PSA shall govern and control.  
The face amount of the Richardson lien is \$2,000,000. As such, there are  
sufficient funds available to pay a lien claim, should the Court ultimately find  
Richardson's lien to be valid, which the Receiver disputes.

1           **Overbid Procedures.** The sale is subject to the proposed overbid procedures  
2 detailed in the PSA and Section III below. Pursuant to these procedures, if Buyer is  
3 not the highest qualified bidder at the auction, its Deposit will be returned.

4           **Notice.** The Receiver has provided notice to investors, creditors and others in  
5 accordance with the Sale Procedures Order and 28 U.S.C. § 2002.

6 **III. PROPOSED OVERBID PROCEDURES**

7           The Receiver requests the following overbid procedures be approved:

8           (a) **Qualified Bidders.** All those appearing to bid at the auction must be  
9 Qualified Bidders as described herein. A Qualified Bidder is a prospective  
10 purchaser who: (i) provides a fully executed purchase and sale agreement for the  
11 California Properties in a form substantially similar to the PSA; (ii) provides  
12 evidence in a form reasonably acceptable to the Receiver that the qualified bidder  
13 has the present ability to pay at least the minimum overbid amount; and  
14 (iii) provides an earnest money deposit by wire transfer or cashier's check in the  
15 amount of \$3,000,000, payable to the Receiver, which amount shall be  
16 non-refundable to the Qualified Bidder with the highest and best bid at the auction if  
17 for any reason (a) the highest and best bidder fails to timely close the sale or (b) the  
18 highest and best bidder fails to provide the balance of the purchase price to the  
19 Receiver one day prior to the Closing Date in accordance with the PSA. Buyer is a  
20 Qualified Bidder. Each Qualified Bidder must provide the above-described  
21 executed PSA and earnest money Deposit to the Receiver no later than 10 calendar  
22 days before the hearing date on the instant motion.

23           (b) **The Auction Process.** Qualified Bidders shall appear at the  
24 hearing/auction in person, through a duly authorized representative. At that hearing,  
25 the Court, or at the Court's request, the Receiver, will conduct an auction of the  
26 California Properties among any Qualified Bidders. The highest and best bidder's  
27 deposit shall be applied to the purchase price, if the sale is approved by the Court.  
28 The initial overbid shall be no less than \$400,000 over the Purchase Price, or



1 \$6,400,000 ("Initial Overbid"). Subsequent overbids shall be in increments of at  
2 least \$25,000. If no Qualified Bidder submits a bid in the amount of the Initial  
3 Overbid or higher, the PSA will be submitted to the Court for approval in its current  
4 form. If the sale is concluded in which the buyer is a third party Qualified Bidder,  
5 then Seller shall pay Buyer its out of pocket expenses up to but not exceeding  
6 \$75,000. The Court may reject any and all bids following conclusion of the auction.

7 (c) **Due Diligence.** All prospective bidders shall have had the opportunity to  
8 inspect the California Properties and any documentation relating thereto prior to the  
9 auction.

10 (d) **No Contingencies.** The sale to any Qualified Bidder shall not be subject  
11 to any contingencies, including, without limitation, for financing, due diligence, or  
12 inspection.

13 (e) **As Is/Where Is Purchase.** The sale to any Qualified Bidder shall be on  
14 an "as-is, where is" basis as described in the PSA.

15 These procedures were formulated by the Receiver with the goal of obtaining  
16 the highest and best price for the California Properties, thus ensuring a maximum  
17 return to the receivership estate.

#### 18 **IV. BROKER'S COMMISSION**

19 By separate agreement, the Receiver has agreed, subject to Court approval, to  
20 pay a total commission of 6% of the amount of the purchase price. Seaman Decl.  
21 ¶¶ 19-20. Pursuant to that agreement, Broker shall be solely responsible for and will  
22 compensate cooperating and referring brokers. Id.

23 Since the PSA with Buyer was signed, the Receiver and Broker have sought  
24 out qualified overbidders for the California Properties and promoted active  
25 overbidding at the auction. Id. at ¶ 6. Based on the Receiver's extensive experience  
26 in real estate transactions, and in light of the challenges presented, the amount of the  
27 commission to Broker represents commercially reasonable compensation for the  
28 work required in order to secure prospective overbidders.

1 **V. NOTICE OF THE PROPOSED SALE**

2 Prior to filing this Motion, the Receiver has transmitted the PSA to counsel  
3 for the Securities and Exchange Commission, Mr. Francisco's counsel, and several  
4 attorneys who appeared in the action, representing various investors. The PSA was  
5 also posted on the Receiver's website.

6 The Receiver's counsel is serving this Motion by mail on all parties to the  
7 action who do not already receive electronic service, and by electronic means on all  
8 known parties with potential interest in purchasing the California Properties. The  
9 Receiver is also posting a copy of this Motion on the receivership website  
10 accompanied by the following notice of the proposed sale and the opportunity to  
11 overbid at the hearing:

12 **NOTICE OF SALE AND REQUEST FOR OVERBIDS**

13 In the action pending in U.S. District Court for the Central District of  
14 California, Case No. SACV 16-02257-CJC (DFMx), Securities and Exchange  
15 Commission v. Emilio Francisco, PDC Capital Group, LLC, et al., notice is  
16 hereby given that the court-appointed receiver for SAL Carmichael, LLC,  
17 SAL Westgate, LLC and SAL Citrus Heights, LLC will seek confirmation of  
18 the sale of land located at 7411 Fair Oaks Blvd, Carmichael, CA, APN: 258-  
19 0310-035; 2305 Jefferson Blvd, West Sacramento, CA, APN: 046-010-050-  
20 000; and 8220 Sunrise Blvd, Citrus Heights, CA, APN: 216-0090-012 for  
21 \$6,000,000, subject to an overbid auction. The minimum or first overbid  
22 price at the auction will be \$6,400,000, with incremental bids of \$25,000.  
23 The hearing to confirm the sale and the auction will take place on May 21,  
24 2018, at 1:30 p.m. Pacific time in the courtroom of the Honorable Cormac J.  
25 Carney located at 411 W. Fourth St., Santa Ana, CA, 92701, Courtroom 9B,  
26 9th Floor (or at such time and place as the Court directs). To qualify as  
27 bidder at the auction, prospective buyers must: 1) execute a non-contingent  
28 purchase and sale agreement, a copy of which may be obtained from the

1 Receiver's broker Howard Hamlin at (562) 537-5840 or by email at  
2 Howard@hamlingooding.com; 2) make a non-refundable earnest money  
3 deposit of \$3,000,000, which is applicable to the sale price and refundable  
4 immediately to unsuccessful overbidders; and 3) provide proof of liquid funds  
5 sufficient to conclude the sale as soon as practicable following Court  
6 approval. All bidders must be qualified by 4:00 p.m. Pacific time on May 11,  
7 2018, by submitting the foregoing to Thomas Seaman Company at 3 Park  
8 Plaza, Suite 550, Irvine, California, 92614.

9 **VI. ARGUMENT**

10 "The power of a district court to impose a receivership or grant other forms of  
11 ancillary relief does not in the first instance depend on a statutory grant of power  
12 from the securities laws. Rather, the authority derives from the inherent power of a  
13 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369  
14 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly  
15 and efficient administration of the estate by the district court for the benefit of  
16 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment  
17 of a receiver is authorized by the broad equitable powers of the court, any  
18 distribution of assets must also be done equitably and fairly. *See SEC v. Elliott*,  
19 953 F.2d 1560, 1569 (11th Cir. 1992).

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

24 A district court's power to supervise an equity receivership and  
25 to determine the appropriate action to be taken in the  
26 administration of the receivership is extremely broad. The  
27 district court has broad powers and wide discretion to determine  
28 the appropriate relief in an equity receivership. 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.

1 *Id.* (citations omitted); *see also* *CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115  
2 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,  
3 and 'we generally uphold reasonable procedures instituted by the district court that  
4 serve th[e] purpose' of orderly and efficient administration of the receivership for  
5 the benefit of creditors.").

6 Accordingly, this Court has broad equitable powers and discretion in  
7 formulating procedures, schedules and guidelines for administration of the  
8 receivership estate and sale of receivership assets.

9 **A. The Sale Subject to Overbid Should Be Approved**

10 It is generally conceded that a court of equity having custody and control of  
11 property has power to order a sale of the same in its discretion. *See, e.g., Elliott*,  
12 953 F.2d at 1566 (11th Cir. 1992) (finding that the District Court has broad powers  
13 and wide discretion to determine relief in an equity receivership). "The power of  
14 sale necessarily follows the power to take possession and control of and to preserve  
15 property." *See also SEC v. Am. Capital Invest., Inc.*, 98 F.3d 1133, 1144 (9th Cir.  
16 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds) (citing  
17 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 482 (3d ed. 1992)  
18 (citing *First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887)). "When a court of equity  
19 orders property in its custody to be sold, the court itself as vendor confirms the title  
20 in the purchaser." 2 Ralph Ewing Clark, Treatise on Law and Practice of Receivers  
21 § 487).

22 "A court of equity, under proper circumstances, has the power to order a  
23 receiver to sell property free and clear of all encumbrances." *Miners' Bank of*  
24 *Wilkes-Barre v. Acker*, 66 F.2d 850, 853 (2d Cir. 1933). *See also*, 2 Ralph Ewing  
25 Clark, Treatise on Law & Practice of Receivers § 500. To that end, a federal court  
26 is not limited or deprived of any of its equity powers by state statute. *Beet Growers*  
27 *Sugar Co. v. Columbia Trust Co.*, 3 F.2d 755, 757 (9th Cir. 1925) (state statute  
28

1 allowing time to redeem property after a foreclosure sale not applicable in a  
2 receivership sale).

3 Generally, when a court-appointed receiver is involved, the receiver, as agent  
4 for the court, should conduct the sale of the receivership property. *Blakely Airport*  
5 *Joint Venture II v. Fed. Sav. and Loan Ins. Corp.*, 678 F.Supp. 154, 156 (N.D. Tex.  
6 1988). A receiver's sale conveys "good" equitable title enforced by an injunction  
7 against the owner and against parties to the suit. *See* 2 Ralph Ewing Clark, Treatise  
8 on Law and Practice of Receivers §§ 342, 344, 482(a), 487, 489, 491. "In  
9 authorizing the sale of property by receivers, courts of equity are vested with broad  
10 discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d 354, 357 (9th Cir.  
11 1925).

12 As detailed above, the Receiver has evaluated the prospects for development  
13 of the California Properties, reviewed appraisals for each property, marketed the  
14 properties, and carefully considered all offers to purchase the properties. In light of  
15 all of this information and analysis, the Receiver believes in his reasonable business  
16 judgment, that the sale to Buyer, subject to the auction, is in the best interest of the  
17 receivership estate.

18 **B. The Sale Should Be Free and Clear of the Richardson Lien.**

19 The alleged debt owed to Richardson and the deed of trust on the Sacramento  
20 Property are in serious dispute. The Receiver believes the deed of trust is void. In  
21 addition to the claims asserted in the state court litigation by Richardson and related  
22 entities, on the one hand, and PDC, Mr. Francisco, and Mr. Ferrante, on the other  
23 hand, there is the fact that the owners of the Sacramento Property were saddled with  
24 a \$2 million deed of trust, but had no dealings with Richardson, Miller, or FCM and  
25 received nothing of value from Richardson. The evidence shows that Richardson  
26 claimed to be owed money by Miller/FCM, and for their own personal gain, the  
27 principals of PDC/SAL Carmichael agreed to pay Richardson \$2 million (in  
28 addition to purchasing the Carmichael Property from FCM for \$1.9 million). This

1 suggests adequate consideration was not given by FCM in connection with the  
2 settlement/purchase transaction. Accordingly, the Receiver believes there are strong  
3 claims against Richardson to avoid the promissory note and deed of trust given to  
4 him by SAL Westgate as fraudulent transfers made while SAL Westgate was under  
5 the control of Francisco and Ferrante.<sup>7</sup>

6 For the purposes of this Motion, the Court need only determine that there is a  
7 bona fide dispute regarding the deed of trust on the Sacramento Property in favor of  
8 Richardson, which there clearly is. Indeed, PDC and Richardson were involved in  
9 litigation against one another prior to the receivership and the validity of the  
10 Richardson deed of trust on the Sacramento property is in serious doubt.  
11 Accordingly, the Richardson deed of trust should be transferred to the sale proceeds  
12 from the Sacramento property with the same validity and priority as it had with  
13 respect to the Sacramento property. The sale process ensures that the highest and  
14 best value is obtained for the Sacramento property, so Richardson is not prejudiced  
15 in any way by the transfer of the lien to the sale proceeds.

16 The Receiver filed a motion for authority to pursue claims against Richardson  
17 and his related entities to avoid the deed of trust and promissory note as fraudulent  
18 transfers and to subordinate any claims held by Richardson to the claims of the EB-5  
19 investors. The Court granted the Receiver's motion and the Receiver has since filed  
20 and served the summons and complaint. In light of the dispute with regard to the  
21 Richardson deed of trust, it is fair and reasonable for the lien to attach to the net sale  
22 proceeds pending further adjudication of claims by this Court.

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<sup>7</sup> There may also be fraudulent transfer claims against FCM to the extent it is determined that PDC, SAL Carmichael, or SAL Westgate owe money to Richardson.

1           **C. The Proposed Sale Is In the Best Interest of the Receivership**  
2           **Estate.**

3           The proposed sale to the Buyer for \$6,000,000, subject to the proposed  
4 overbid procedures, should be approved. Having addressed treatment of the  
5 Richardson lien, the only remaining issue is whether the sale to Buyer or an  
6 overbidder is appropriate under the facts and circumstances of this receivership.  
7 The proposed overbid procedures are designed to (a) induce the Buyer to remain in  
8 place as the initial, or "stalking horse" bidder; (b) allow qualified bidders to overbid;  
9 and (c) generate the highest and best price for the California Properties. The  
10 proposed Purchase Price is sufficient to make the net proceeds to the estate  
11 approximately \$4,100,000, subject to adjudication of Richardson's disputed lien.  
12 Seaman Decl. ¶ 12. An initial overbid of \$400,000 and then increments of \$25,000  
13 for each subsequent overbid are sufficient to ensure an orderly and efficient auction  
14 at the hearing. The Receiver submits these amounts are reasonable and fair to all  
15 interested parties.

16           The Purchase Price and terms of the proposed sale to the Buyer were  
17 negotiated at arm's length and secured through a commercially reasonable manner.  
18 Seaman Decl. ¶¶ 12-14. While the Receiver believes the sale price of \$6,000,000  
19 exceeds the estimated fair market value of the California Properties sold separately,  
20 this assumption will be tested through an auction process after notice and an  
21 opportunity for third parties to consider the California Properties. Accordingly, the  
22 Receiver believes, in his reasonable business judgment, that the proposed sale to  
23 Buyer, subject to overbid, is fair and reasonable, in the best interests of the  
24 receivership estate, and will generate the highest return to the receivership estate.  
25 (Seaman Decl., ¶ 19.)

26           **A. Additional Relief**

27           The Receiver also requests authority to pay a real estate commission  
28 reflecting 6% of the final sale price paid by a successful overbidder. As explained

1 above, Broker's commission is fair and reasonable given the facts and circumstances  
2 of this case. (Seaman Decl., ¶ 20.)

3 **VII. CONCLUSION**

4 For the reasons set forth herein, the Receiver respectfully requests entry of an  
5 order approving and authorizing: (1) sale of the California Properties to Buyer or the  
6 highest and best bidder free and clear of the Richardson lien; (2) the proposed  
7 overbid procedures; and, if necessary, (3) payment of the proposed commission to  
8 Broker from the sale proceeds.

9  
10 Dated: April 6, 2018

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

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13 By:           /s/ David R. Zaro          

14 DAVID R. ZARO  
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