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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
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

**REPLY TO LINCOLN INVESTORS
OPPOSITION TO RECEIVER'S
MOTION FOR APPROVAL OF
SETTLEMENT AGREEMENT
WITH MCC US, INC.**

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

1 An unidentified group of Lincoln Investors (the "Lincoln Investors"), filed an
2 Opposition (the "Opposition") [Dkt. 222] to Receiver's Motion for Approval of
3 Settlement Agreement with MCC US Inc.; Transfer of Lincoln Red Rock Property;
4 and Ancillary Relief (the "Settlement Motion".) [Dkt. 213] The Opposition is
5 unsupported by a declaration or other evidence aside from references to prior
6 arguments made by the Receiver in other pleadings.

7 The Receiver appreciates the Lincoln Investors' ongoing wish that the
8 Receiver would locate a financial partner to develop a senior assisted living facility
9 at the Lincoln Red Rock Property and thereby, hopefully, preserve the EB-5
10 Investors' ability to petition for citizenship and achieve their immigration goals. As
11 the Receiver has repeatedly explained in Receiver Reports, Receiver declarations
12 and motions, and in face-to-face meetings with certain of the Lincoln Investors,
13 there is simply no prospect for the Receiver to successfully pursue the development
14 of the Lincoln Red Rock Property.

15 In light of this reality, the Receiver has pursued a strategy which will yield the
16 greatest financial return to the Receivership Entities. This strategy has involved
17 with marketing the Lincoln Red Rock Property for sale and pursuing claims against
18 MCC US, Inc. ("MCC") in order to reduce or eliminate the Receivership Entities'
19 \$6.1 million debt to MCC.

20 The Settlement Agreement with MCC reflects the successful result of that
21 strategy. The settlement with MCC yields a far greater return to the Receivership
22 Entities than the Receiver could obtain by merely selling the Lincoln Red Rock
23 Property and then engaging in litigation with MCC.

24 The Opposition generally takes issue with the Receiver's recommendations
25 and business judgment based on two assertions: (1) The Receiver lacks concern as
26 to the immigration goals of the EB-5 Investors; and (2) The Receivership Entities
27 would be better off pursuing litigation with MCC than entering into a Settlement
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1 Agreement. Aside from generally restating information already before the Court in
2 prior pleadings, the Lincoln Investors offer no new or concrete evidence to support
3 their Opposition.

4 **I. THE RECEIVER HAS CONSIDERED EB-5 INVESTORS'**
5 **INTERESTS.**

6 The Receiver previously reported to the Court and all parties, including the
7 Lincoln Investors, that the Receiver has made significant efforts to locate a
8 developer or financial partner to take over the Lincoln Red Rock Property and
9 senior assisted living project in order to preserve the EB-5 Investors' immigration
10 goals. See Receiver's Third Interim Report and Recommendations [Dkt.143]; and
11 Receiver's Fourth Interim Report and Recommendations [Dkt. 194]; and Declaration
12 of Thomas A. Seaman In Support of Notice of Motion and Motion for Order
13 Approving: (1) Sale of Citrus Heights Property, Sacramento Property, Lincoln Red
14 Rock Property, and Carmichael Property; (2) Overbid Procedures; (3) Real Estate
15 Broker Commission [Dkt. 157]. ("Seaman Declaration" ¶ 3(a), ¶¶ 9-13.) In each of
16 these filings the Receiver explained at length the efforts that the Receiver went to
17 locate a financial partner or lender who would join the Receiver in the development
18 of the Lincoln Red Rock Property as originally conceived of in the private
19 placement memoranda issued to the Lincoln Investors. As also previously noted,
20 the Receiver met with certain of the Lincoln Investors on several occasions and
21 encouraged them to submit development or restructuring proposals to the Receiver
22 for consideration. Aside from an outline of a proposal containing no specific
23 sources of funding, no other proposal or financial information was provided by the
24 Lincoln Investors to the Receiver.

25 In order for the EB-5 Investors' immigration goals to be preserved, the
26 Lincoln Red Rock Property would need to be developed in a manner consistent with
27 the business plan submitted to USCIS and as reflected in the Private Placement
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1 Memorandum issued to the Lincoln Investors. As the Receiver has repeatedly
2 stated, there is no prospect for the Receiver to complete the Lincoln Red Rock
3 Project as originally conceived. Over the past year, no one has made a meaningful
4 proposal with regard to the development of the project. In the meantime, the MCC
5 debt has matured and continues to grow, the cost of maintaining the Lincoln Red
6 Rock Property continues to burden the estate, and the entitlements needed for the
7 development of the Lincoln Red Rock Property grow stale.

8 As such, the Receiver made the business decision to market and sell the
9 Lincoln Red Rock Property. The marketing efforts led to a non-contingent
10 arms-length contract to sell Lincoln and three other Sacramento area properties at a
11 minimum of \$8.8 million with indications overbidding may have risen to the \$9.5 to
12 \$10 million range. The sales price attained as a result of these efforts precipitated
13 settlement discussions with MCC and ultimately led to the MCC Settlement
14 Agreement involving both the resolution of MCC's \$6.1 million claim and the
15 transfer of the subject property to MCC at a higher net benefit to the receivership
16 estate.

17 **II. THE SETTLEMENT AGREEMENT WITH MCC TAKES INTO**
18 **CONSIDERATION THE DEFENSES TO MCC'S CLAIMS AND**
19 **MCC'S ASSOCIATION WITH PDC AND FRANCISCO.**

20 The settlement with MCC was made based upon the Receiver's strong belief
21 in the viability of the Receiver's defenses to the \$6.1 million secured claim of MCC.
22 In other words, the settlement reflects strength of the Receiver's position and by any
23 measure reflects a win for the Receivership Entities.

24 The Lincoln Investors are wrong when they state that Francisco and PDC will
25 remain as joint ventures with MCC in connection with the Lincoln project. MCC is
26 taking sole ownership of the Lincoln Red Rock Property pursuant to the terms of the
27 Settlement Agreement. Neither Mr. Francisco, PDC nor the Lincoln Investors will
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1 have any interest in the Lincoln Red Rock Property (or any future development)
2 after the closing of the settlement transaction.

3 It is also important to note that the economics of this transaction are very
4 favorable to the investors and the Receivership Entities. MCC has a secured claim
5 that is currently in excess of \$6.1 million. The Receiver has an appraisal for the
6 property which indicates that the "as is" value is less than \$2.2 million. The
7 Receiver has previously received offers to purchase the Lincoln Red Rock Property
8 in the \$3.0 million range. The MCC settlement also allows for the proceeds of the
9 Sarasota sale be available to the receivership estate for distribution to investors. It is
10 also notable that the Receiver has recovered \$2.4 million that had been diverted
11 from the Lincoln Red Rock Property project loan proceeds advanced by MCC.

12 In other words, from the Receiver's perspective, MCC is agreeing to pay the
13 Receiver \$2.6 million in exchange for a property with a value of approximately \$2.2
14 to \$3.0 million, while forgiving a \$6.1 million debt. If one takes into account the
15 cost and risk of litigation with MCC and \$2.4 million already recovered, it is evident
16 that the settlement MCC is beneficial to the Lincoln Investors as well as the
17 receivership estate.

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