

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

26 Defendants.  
27  
28

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

**NOTICE OF MOTION AND  
MOTION OF RECEIVER, FOR  
ORDER AUTHORIZING THE  
SALE AND TRANSFER OF  
INTERESTS IN THE PHOENIX  
PROJECT AND APPROVAL OF:  
(1) THE SECOND AMENDED AND  
RESTATED LIMITED  
PARTNERSHIP AGREEMENT;  
(2) RESTRUCTURING LETTER  
AGREEMENT; AND  
(3) PROMISSORY NOTE**

Date: June 4, 2018  
Time: ~~1:30 pm~~ re-calendared to 3:00 pm  
Ctrm: 9B, 9th Floor  
Judge: Hon. Cormac J. Carney

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

2 **PLEASE TAKE NOTICE** that on June 4, 2018, at 1:30 p.m. in Courtroom 9B of  
3 the above-entitled Court, located at 411 W. Fourth Street, Santa Ana, California 92701,  
4 Thomas A. Seaman ("Receiver"), the Court-appointed receiver for the Receivership  
5 Entities, will and hereby does move the Court for an order from this Court approving the  
6 assignment and transfer of 100% of the interests of ADC Capital Partners, LLC ("ADC")  
7 and Summerplace Management, LLC ("Summerplace") in SAL Phoenix, LP, a Delaware  
8 limited partnership ("SAL Phoenix") through the redemption of such partnership interests  
9 and the admission of SAL Phoenix GP, LLC and Westgate Opportunity, LLC  
10 (collectively, "Buyer") as the new partners, and approving an amendment to the existing  
11 Amended and Restated SAL Phoenix Limited Partnership Agreement in which EB-5  
12 Investors<sup>1</sup> have an interest. Under the Second Amended and Restated Limited Partnership  
13 Agreement ("Restated Agreement") SAL Phoenix GP, LLC, a Delaware limited liability  
14 company, shall act as the general partner and take control of the proposed senior assisted  
15 living facility project to be developed at the real property located at and commonly known  
16 as 7410 North Zanjero Boulevard, Glendale, Arizona (sometimes the "Phoenix Property"  
17 or "Phoenix Project"). Per the Restated Agreement and related partnership, assignment  
18 and loan payoff agreements (collectively, the "Restructure Transaction"), the EB-5  
19 Investors will retain a significantly reduced interest in the project, however, they will also  
20 retain their claims against the Receivership Entities based upon their original investments.

21 Specifically, the Receiver seeks an order from the Court:

- 22 1) That the Court has jurisdiction over SAL Phoenix, ADC and  
23 Summerplace.
- 24 2) That the Receiver has authority and power to consummate the  
25 transactions contemplated by the Motion and to enter into:  
26  
27

28 <sup>1</sup> As used herein "EB-5 Investors" refers to those investors who consist of the 15 Class "A"  
Limited Partners in the SAL Phoenix Limited Partnership.

- 1 (a) The Second Amended and Restated Partnership Agreement to be
- 2 dated June 7, 2018;
- 3 (b) The transactions contemplated by that Restructuring Letter
- 4 Agreement dated April 30, 2018, and
- 5 (c) The Subordinated Promissory Note dated June 7, 2018.
- 6 3) That upon the consummation of the transactions described herein, no
- 7 owner, directly or indirectly, of Summerplace or ADC, nor the EB-5
- 8 Holders will have any claims against SAL Phoenix LP or any partner of
- 9 SAL Phoenix LP or any affiliates, owners, directors or employees
- 10 thereof as a result of the transactions approved by this Order.

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

15 IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION by the above  
 16 date, the Court may grant the requested relief without further notice. This Motion is made  
 17 following the conferences of counsel pursuant to L.R. 7-3, which was initiated on April 27,  
 18 2018.

20 Dated: May 1, 2018

ALLEN MATKINS LECK GAMBLE  
 MALLORY & NATSIS LLP

By: /s/ David R. Zaro  
 David R. Zaro  
 Attorneys for Receiver  
 THOMAS A. SEAMAN

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION AND RELEVANT BACKGROUND**

In return for a cash payment of \$213,750 and a promissory note in the amount of \$256,250 which is due in 18 months (with 5% monthly interest payments), the Receiver will give up any interest in SAL Phoenix. The EB-5 Investors will retain a diluted interest in SAL Phoenix, but will also retain an allowed claim against the assets of the receivership estate. To accomplish this transaction, the Phoenix Project partnership agreement must be amended. As detailed below, the Receiver recommends this transaction because it is in the best interests of the receivership estate and the EB-5 Investors.

**A. The Receiver's Appointment, Investigation and Analysis of the Phoenix Project.**

On January 5, 2017, the Receiver was appointed temporary receiver for the Receivership Entities<sup>2</sup>, with full powers of an equity receiver, including, but not limited to,

<sup>2</sup> As used herein, "Receivership Entities" refers to the following specifically named entities: PDC Capital Group, LLC; Caffe Primo International, Inc.; SAL Assisted Living, LP; SAL Carmichael, LP; SAL Citrus Heights, LP; SAL Kern Canyon, LP; SAL Phoenix, LP; SAL Westgate, LP; Summerplace at Sarasota, LP; Summerplace at Clearwater, LP; Summerplace at Correll Palms, LP; TRC Tucson, LP; Clear Currents West, LP; Caffe Primo Management, LP; Caffe Primo Management 102, LP through Caffe Primo Management 108, LP (collectively, "Named Entities"); and their subsidiaries and affiliates Summerplace Management, LLC; PDC Partners Management, Inc.; FDC Partners Management, Inc.; KPF Capital, LLC; FDC Capital Partners, LLC; MSL US Fund I, LLC; MPoint Land & Development, Inc.; Woodcrest Construction Management, Inc.; Professional Loading Service, LLLP; WDC Capital Group, LLC; WDC Capital Partners, LLC; KPF Investment Management, INC; Meridian Summerplace at Snug Harbor, LLC ("Snug Harbor"); Meridian Summerplace at Snug Harbor, LP; Summerplace at Correll Palms, LLC ("Correll Palms"); 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 ("Sun City"); Meridian at Sun City, LLC; Summerplace at Orlando-Summerfield, LLC; Summerplace at Orlando-Summerfield, LP ("Orlando"); Summerplace at Kissimmee, LLC; Summerplace at Kissimmee, LP ("Kissimmee"); Summerplace at Merced, LLC ("Merced"); 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 full power over all assets and property belonging to, being managed by or in the possession  
2 or control of the Receivership Entities, and was immediately authorized, empowered and  
3 directed to take certain actions as set forth in the Temporary Restraining Order ("TRO")<sup>3</sup>.  
4 Dkt. No. 17. On January 23, 2017, the Court entered its Preliminary Injunction Against  
5 All Defendants ("PI Order"), which, among other things, made the Receiver's appointment  
6 permanent. Dkt. No. 36.

7 Pursuant to the terms of the PI Order, the Receiver was appointed as the permanent  
8 receiver of the Receivership Entities, "with full powers of an equity receiver, including but  
9 not limited to, full power over all funds, assets, collateral, . . . and other property belonging  
10 to, being managed by or in possession of or control of the [Receivership Entities] . . . ". Id.  
11 The PI Order authorized the Receiver to take immediate possession of all real and personal  
12 property of the Receivership Entities, wherever located, and to take such action as is  
13 necessary to preserve the assets of the Receivership Entities. Id.

14 As explained herein and as reflected in the Receiver's Second Interim Report and  
15 Recommendations as of May 31, 2017 (the "Report"), [Dkt. No. 68, p. 8-16] and  
16 subsequently filed Receiver Reports, [Dkt. Nos. 143, 194 and 231], after reviewing the  
17 Phoenix Project, the immigration status of the EB-5 Investors whose funds were used, in  
18 part, to acquire the Phoenix Property and consultation with appropriate real estate  
19 professionals, the Receiver determined, in his reasoned business judgment, that the  
20 Receiver cannot proceed with the direct development of the Phoenix Project. The  
21 Receiver has also determined that a public sale or auction of the Phoenix Property in its "as  
22 is" condition will yield less money than is currently owed to the two secured lenders whose  
23 deeds of trust encumber the Phoenix Property. Accordingly, the Receiver is proposing to  
24 transfer the ownership of the Phoenix Project to a developer, acting through entities known  
25 as Westgate Opportunity, LLC, and SAL Phoenix GP, LLC [Buyer], who has asserted that  
26 it has the financial capability to complete the project as originally conceived and presented  
27

28 <sup>3</sup> Terms previously defined in the Motion will be used and have the same meaning  
in this Memorandum of Points and Authorities.

1 to the EB-5 Investors in the offering memorandum. While the EB-5 Investors' limited  
2 partnership interests will be significantly diluted, the Restated Agreement will provide that  
3 the EB-5 Investors retain an interest in the Phoenix Project and thus keep alive the  
4 prospect of pursuing their immigration goals. In recognition of their reduced financial  
5 interest in the restructured partnership, the Receiver is proposing that each EB-5 Investor  
6 be allowed to retain an allowed claim against the Receivership Entities in the full amount  
7 of their principal investment.<sup>4</sup>

8 As detailed herein, the Receiver believes that the proposed transaction is reasonable  
9 and prudent and is in the best interest of the receivership estate, the EB-5 Investors and  
10 claimants. Declaration of Thomas A. Seaman in Support of Motion of Receiver for Order  
11 Authorizing Receiver to Sell and Transfer Interests in Phoenix Project ("Seaman Decl.")  
12 ¶¶ 18.

13 **B. The Phoenix Project.**

14 The Phoenix Project involves the conversion of an office building to a 189 unit  
15 senior living facility providing assisted living, memory care, and skilled nursing services.  
16 The office building was purchased for \$8.89 million, using a note carried by the seller in  
17 the amount of approximately \$1.3 million, a hard money loan of \$4.8 million, and  
18 approximately \$2.9 million of investor funds from SAL Phoenix. The joint owner of the  
19 Phoenix Project is Sante GP Westgate, LLC and SP RE Zanjero LLC (collectively  
20 "Sante") who have not contributed any equity. Sante received approximately \$1.86 million  
21 from SAL Phoenix to fund development and property expenses.

22 The Receiver's accounting shows that the EB-5 Investors invested \$7,500,000 into  
23 SAL Phoenix. The Phoenix Project accounting records, however, indicate that only  
24  
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26 <sup>4</sup> Most of the EB-5 Investors will have an allowed claim of \$500,000 as noted in  
27 the Receiver's Motion for Order (1) Approving Claims Process, (2) Setting  
28 Claims Bar Date, and (3) Establishing Summary Claims Procedures [Dkt.  
No. 233]. As noted in the Claims Motion, the Receiver has not made any  
determination as to the treatment of, or the amount of distribution to, EB-5  
Investors or other claimants.



1 \$4.768 million of these proceeds was invested in the project. Therefore, approximately  
2 \$2.7 million of investor funds appear to have been diverted elsewhere.

3 The hard money loan and the purchase money loan (collectively, the "Loans") have  
4 matured and both lenders have declared the Loans to be in default. The lenders have also  
5 requested that the Receiver agree to the lenders being granted relief from the Court's  
6 injunction to commence foreclosure. As noted below, based upon the valuation  
7 information obtained by the Receiver and the offers received from prospective purchasers,  
8 the sale of the Phoenix Property will yield less than the total amount currently owed on the  
9 Loans plus closing costs and fees.

10 As part of his work, the Receiver considered the following three disposition  
11 options: (1) proceed with development as originally conceived and described in the  
12 offering memoranda with regard to certain of the Projects, which offering memoranda  
13 were used to raise funds from investors seeking qualification as EB-5 investor applicants  
14 under the United States Customs and Immigration Service ("USCIS"); Immigrant Investor  
15 Program; (2) sell a controlling interest in the Projects to a new financial partner with or  
16 without regard to the impact on the applications or petitions of EB-5 Investors that are  
17 pending before USCIS; and (3) sell the Projects in their current "as-is" condition, including  
18 all entitlements and project documents. Seaman Decl. ¶ 15. In addition, the Receiver  
19 considered his role as a third party federal equity receiver, the nature of these proceedings  
20 and the proprietary of an equity receiver engaging in a lengthy and complex development  
21 of real estate projects. All of this would also involve the Court's oversight of the financing  
22 and construction of a significant number of such projects.

23 In considering each of the foregoing alternatives, the Receiver explored the  
24 prospects for the direct development of the Phoenix Property including an in-depth  
25 evaluation of proposed HUD financing. To assist him in this process, the Receiver  
26 consulted with Sante as well as a land use and development consultant with regard to the  
27 status and viability of the development options. *Id.* The Receiver also engaged an  
28 experienced real estate broker, Blueprint Healthcare Realty Advisors ("Broker"), to

1 provide preliminary valuation and marketing advice. The Broker provided valuation  
2 information and attempted to market the Phoenix Property. Several offers were received,  
3 however, in each case, the offers were insufficient to yield a net recovery for the  
4 receivership after payment of the secured lenders, closing costs, and the Broker's  
5 commission.

6 In light of the foregoing, the Receiver believes the proposed transfer of the  
7 Receiver's partnership interests in the Phoenix Project and the proposed Restated  
8 Agreement and Restructure Transaction reflect the only opportunity for the EB-5 Investors  
9 to achieve their original immigration goals while retaining their monetary claims against  
10 the Receivership Entities. In addition, there will be a modest monetary return to the  
11 Receivership Entities. In other words, the transfer of the Phoenix Project, as described  
12 herein, reflects the only opportunity for these EB-5 Investors and the receivership estate to  
13 achieve their respective goals.

14 **C. EB-5 Issues.**

15 The Receiver understands that a primary goal of the EB-5 Investors is to obtain  
16 permanent United States ("U.S.") residence through participation in the EB-5 Program  
17 administered by the USCIS, and that a sale of the Projects could be deemed a "material  
18 change" and a failure to sustain the planned investment that could jeopardize the EB-5  
19 Investors' eligibility for U.S. permanent residence. Seaman Decl. at ¶ 11. That is, as  
20 described in the Reports, the prior actions of the Principals and defendants in contravention  
21 of the rules and regulations governing EB-5 immigration related projects, suggests that  
22 more USCIS denials will be forthcoming and appeals of existing denials will be  
23 unsuccessful. [Dkt. No. 68, Report, p. 7.] Indeed, USCIS has already issued numerous  
24 denials based on defendants' prior actions. Id. While the USCIS' actions and  
25 communications to date indicate that it is more likely than not that USCIS will deny the  
26 remaining EB-5 Investors' petitions, it is hoped that the transfer of the Phoenix Project to a  
27 new financial partner capable of continuing the development and construction of the  
28 project as originally conceived will provide the EB-5 Investors an opportunity to achieve

1 their immigration goals and qualifications with USCIS.<sup>5</sup> It should be noted that EB-5  
2 Investors may be told that they may improve their chances of attaining USCIS approval of  
3 their petitions by investing further money into the Phoenix Project in order to cover the  
4 amount diverted from the Phoenix Project by the Defendants. The Receiver does not have  
5 any information regarding that issue, does not endorse this position and cannot provide  
6 advice as to further investments. Further, the Receiver is not aware of any USCIS  
7 regulation, notice, instruction or opinion that suggests that this strategy will be successful.

8 **D. Proposed Restructuring of Phoenix Project Limited Partnership.**

9 The restructuring of the partnership will proceed as follows, in accordance with that  
10 Restructuring Letter Agreement dated April 30, 2018 attached here to as Exhibit A (the  
11 "Restructuring Agreement"):

- 12 • The partnership agreement of SAL Phoenix, L.P. will be amended and  
13 restated to provide that the partnership will be composed of two classes of  
14 partnership interests: Common Partnership Interests and Preferred  
15 Partnership Interests and their rights will be as stated therein.
- 16 • The interests in SAL Phoenix currently held by the entities subject to the  
17 receivership (Summerplace Management, LLC and ADC Capital Partners,  
18 LLC) will be redeemed by the Partnership.
- 19 • The interests in SAL Phoenix currently held by Santé GP Westgate LLC and  
20 SP RE Zanjero LLC will also be redeemed, and as part of such redemption  
21 they will be reimbursed certain outstanding fees and costs as set forth in  
22 Annex B of the Restructuring Agreement. SAL Phoenix LP will enter into a  
23 Design Phase and Construction Phase Development Service Agreement with  
24 Santé Development, LLC, an affiliate of Santé GP Westgate LLC and SP RE  
25 Zanjero LLC, to provide pre-development, financing oversight, and  
26

27 \_\_\_\_\_  
28 <sup>5</sup> The Receiver reiterates that he is not optimistic concerning immigration issues  
nor that the current restructuring will result in investor's achieving their EB-5  
immigration goals with USCIS.

- 1 construction administrations services in consideration for a development fee  
2 and the right to receive certain distributions of Net Cash Flow of the  
3 Partnership.
- 4 • SAL Phoenix GP, LLC will become the general partner of SAL Phoenix and  
5 will hold a 0.1% Common Partnership Interest.
  - 6 • The outstanding Class A Limited Partnership Interests which currently  
7 represent a 5% interest in SAL Phoenix, will convert into one-half percent  
8 (0.5%) Common Partnership Interests (i.e., approximately 0.033% Common  
9 Partnership Interests per such Class A Limited Partner) and their capital  
10 accounts will be adjusted to \$16,600 in the aggregate, or \$1,107 per Class A  
11 Limited Partner (a reduction of approximately 94.8%).
  - 12 • Westgate Opportunity, LLC will hold a 99.4% Common Partnership Interest  
13 and will contribute to SAL Phoenix \$3.3 million, less any additional  
14 contributions by the existing Class A Limited Partner investors.
  - 15 • Existing Class A Limited Partner investors will be given the opportunity to  
16 make additional capital contributions. Class A Limited Partners who elect to  
17 make additional capital contributions will hold 100% of the "Preferred  
18 Interests" in SAL Phoenix, in proportion to their respective contributions.  
19 The holders of the Preferred Interests will receive a five percent (5%)  
20 preferred return (not compounded) on their additional capital contributions,  
21 and will be allocated the amount of their Additional Contributions before any  
22 other distributions are made, provided that such distributions shall not be  
23 made until they would not jeopardize their EB-5 process.
  - 24 • SAL Phoenix has entered into an Agreement for Discounted Payoff of Loan  
25 with Next Gen Zanjero Fund, LLC, an Arizona limited liability company, as  
26 successor-in-interest to Zanjero INCA, LLC, a Delaware limited liability  
27 company, in the amount of \$6,465,000 (the "Payoff Amount"). The junior  
28 lender, Select Zanjero Property LLC, has agreed to accept \$213,750 in cash

1 and to replace the balance of its outstanding loan with a new junior  
2 promissory note in the principal amount of \$256,250 which will bear interest  
3 at 5.0% per annum and have an 18 month term (the "Select Zanjero Note").

- 4 • An affiliate of Creditease Urbanite Capital will provide a \$5,600,000 (the  
5 "Bridge Loan") to SAL Phoenix which will bear interest at 8.0% per annum,  
6 have a loan fee of \$84,000 and have an 18 month term.
- 7 • SAL Phoenix will use the Bridge Loan and the additional capital  
8 contributions of Westgate Opportunity, LLC and any Class A Limited  
9 Partners to: (i) pay the Next Gen Zanjero Fund, LLC the Payoff Amount, (ii)  
10 pay Select Zanjero Property LLC \$213,750, (iii) pay certain other  
11 outstanding expenses as reflected in the Restructuring Agreement or  
12 otherwise approved by the new general partner, and (iv) make a payment of  
13 \$213,750 to the Receiver. Additionally, upon the closing of the restructuring  
14 as contemplated above, the Partnership will deliver the Select Zanjero Note  
15 to the junior lender and will deliver to the Receiver a promissory note in the  
16 principal amount of \$256,250 (the "Receiver's Note") which will bear  
17 interest at 5.0% per annum and have an 18 month term and which will be  
18 pari passu with the Select Zanjero Note. The Select Zanjero Note and the  
19 Receiver Note will be subordinate to the note to the Bridge Loan lender.
- 20 • Distributions of cash flow to the partners of SAL Phoenix will be made:
  - 21 ○ first to pay a 5% (non-compounded) preferred return on any additional  
22 capital contributions made by existing EB-5 Investors, provided that such  
23 distributions shall not be made until they would not jeopardize their EB-5  
24 process;
  - 25 ○ second, to repay any additional capital contributions made by existing  
26 EB-5 Investors, provided that such distributions shall not be made until  
27 they would not jeopardize their EB-5 process;

28

- third, to the holders of the Common Partnership Interests (Westgate Opportunity, LLC and the EB-5 Investors), *pro rata*, until they receive a return of their adjusted capital contributions, provided that distributions to the EB-5 Investors shall not be made until they would not jeopardize their EB-5 process;
- thereafter to the partners, including the general partner and any operator subsequently granted an interest, and to Santé Development, LLC, pursuant to a complex tiered formula.

## II. LEGAL ARGUMENT

### A. This Court Has Inherent Authority To Order The Disposition Of Receivership Assets.

"The power of a district court to impose a receivership or grant other forms of ancillary relief does not in the first instance depend on a statutory grant of power from the securities laws. Rather, the authority derives from the inherent power of a court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court for the benefit of creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986).

District courts have the broad power of a court of equity to determine the appropriate action in the administration and supervision of an equity receivership. *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005); *see also CFTC. v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role, and 'we generally uphold reasonable procedures instituted by the district court that serve th[e] purpose' of orderly and efficient administration of the receivership for the benefit of creditors."). In the estate administration context, courts are deferential to the business judgment of bankruptcy trustees, receivers, and similar estate custodians. *See, e.g., Bennett v. Williams*, 892 F.2d 822, 824 (9th Cir. 1989); *Southwestern Media, Inc. v. Rau*, 708 F.2d 419, 425 (9th Cir.

1 1983); *In re Thinking Machines Corp.*, 182 B.R. 365, 368 (D. Mass. 1995) (rev'd on other  
2 grounds, *In re Thinking Machines Corp.*, 67 F.3d 1021 (1st Cir. 1995)).

3 The Court's powers to administer the receivership and, specifically, to sell  
4 receivership assets, are not limited by the terms of private contracts. The Court's authority  
5 over the assets of a receivership estate derives from the Court's inherent power to exercise  
6 jurisdiction over assets taken into the receivership, rather than from underlying contracts.  
7 *SEC v. American Capital Investments, Inc.*, 98 F.3d 1133, 1143-45 (9th Cir.  
8 1996)(approving sale of property over limited partners' objections based on court's  
9 equitable powers, irrespective of state law or contract rights). Accordingly, this Court has  
10 broad equitable powers and discretion to grant this Motion and authorize and approve the  
11 terms of the Restated Agreement and Restructure Transaction.

12 Here, Court approval of the Restated Agreement and Restructure Transaction  
13 should be granted. In the Receiver's reasonable business judgment, the final terms  
14 of the Restructure Transaction provide the best opportunity, (albeit still uncertain) to  
15 complete the Phoenix Project development and perhaps achieve the immigration  
16 goals of the EB-5 Investors. Seaman Decl., ¶ 10. In particular, the proposed terms  
17 confirm Buyer's agreement to complete the development of the Phoenix Project in a  
18 manner consistent with the project's original business plan previously approved by  
19 USCIS. *Id.* While the terms of the Restated Agreement will substantially decrease  
20 the EB-5 Investors' financial interest in the Phoenix Project, the Receiver is allowing  
21 these EB-5 Investors to retain their claims against the Receivership Entities. As to  
22 the immigration issue, while it is impossible to gauge the likelihood of success in  
23 reversing the USCIS' prior decisions, the Receiver continues to believe that taking  
24 the Phoenix Project out of receivership and transferring it to a buyer committed to  
25 promoting economic growth through the Phoenix Project, appears to represent the  
26 only chance of achieving that objective. *Id.* at ¶ 11.

27  
28

1 **III. CONCLUSION**

2 For the foregoing reasons, the Receiver respectfully requests that the Court grant  
3 the Receiver's Motion in its entirety.

4  
5 Dated: May 1, 2018

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

6  
7  
8 By: /s/ David R. Zaro

9 David R. Zaro  
10 Attorneys for Receiver  
11 THOMAS A. SEAMAN  
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**PROOF OF SERVICE**

*Securities and Exchange Commission v. Emilio Francisco; PDC Capital Group, LLC, et al.*  
USDC, Central District of California – Case No. 8:16-cv-02257-CJC-DFM

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 865 S. Figueroa Street, Suite 2800, Los Angeles, California 90017-2543.

A true and correct copy of the foregoing document(s) described below will be served in the manner indicated below:

**NOTICE OF MOTION AND MOTION OF RECEIVER FOR ORDER AUTHORIZING THE SALE OF TRANSFER OF INTERESTS IN THE PHOENIX PROJECT AND APPROVAL OF: (1) THE SECOND AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT OF SAL PHOENIX LP; (2) RESTRUCTURING LETTER AGREEMENT; AND (3) SUBORDINATED PROMISSORY NOTE**

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – the above-described document will be served by the Court via NEF. On **May 1, 2018**, I reviewed the CM/ECF Mailing Info For A Case for this case and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

- |                        |  |
|------------------------|--|
| Adrienne Dawn Gurley   | gurleya@sec.gov  |
| Anthony R Bisconti     | tbisconti@bmkattorneys.com,<br>admin@bmkattorneys.com  |
| Brad A Mokri           | amirmokri1@yahoo.com, mokrilaw@yahoo.com,<br>gmokrilaw@yahoo.com   |
| Brian C Lysaght        | blysaght@lysaghtlegal.com, pacer@lysaghtlegal.com  |
| Brian Matthew Grossman | brian@tessergrossman.com,<br>brooke@tessergrossman.com   |
| Christopher Lee        | chlee@seyfarth.com, rgarner@seyfarth.com   |
| Christopher L Walters  | clw@walters-law-group.com  |
| Christopher Paul Mader | cmader@baldwinlawgroup.com   |
| David R Zaro           | dzaro@allenmatkins.com, mdiaz@allenmatkins.com   |
| Edward G Fates         | tfates@allenmatkins.com, bcrfilings@allenmatkins.com,<br>jholman@allenmatkins.com, mlyons@allenmatkins.com,<br>thsu@allenmatkins.com |
| Geoffrey T Hill        | hillglaw@gmail.com   |
| John B Bulgozdy        | bulgozdyj@sec.gov, irwinma@sec.gov,<br>LAROFiling@sec.gov, lawjo@sec.gov, longoa@sec.gov   |

1	Lincoln Investors	cmader@baldwinlawgroup.com
2	Michael Abtin Shakouri	mshakouri@goodkinlynch.com
3	Michael R Farrell	mfarrell@allenmatkins.com, mlyons@allenmatkins.com
4	Michael Richard Weiss	michael.weiss@akerman.com, andrea.ordonez@akerman.com
5	Natasha Riggs	nriggs@lysaghtlegal.com
6	Peter Allen Griffin	pgriffin@allenmatkins.com
7	Richard A Weintraub	rick@weintraublawgroup.com
8	Timothy J Trager	ttrager@rppmh.com, kstanley@rppmh.com, mgehringer@rppmh.com

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2. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):** On **May 1, 2018**, I served the following person(s) and/or entity(ies) in this case by placing a true and correct copy thereof in a sealed envelope(s) addressed as indicated below. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion for party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 (one) day after date of deposit for mailing in affidavit. Or, I deposited in a box or other facility regularly maintained by FedEx, or delivered to a courier or driver authorized by said express service carrier to receive documents by the express service carrier, addressed as indicated below on the above-mentioned date, with fees for overnight delivery paid or provided for.

18 Eric C. Bronk **VIA U.S. Mail**  
19 Attorney at Law  
20 3857 Birch Street, Suite 606  
Newport Beach, CA 92660

21 Emilio Francisco **VIA U.S. Mail**  
22 15 Rue Saint Cloud  
Newport Beach, CA 92660

23 I declare that I am employed in the office of a member of the Bar of this Court at  
24 whose direction the service was made. I declare under penalty of perjury under the laws of  
25 the United States of America that the foregoing is true and correct. Executed on **May 1,**  
**2018** at Los Angeles, California.

26 /s/ Martha Diaz  
27 Martha Diaz  
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