

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

27 Defendants.
28

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

**NOTICE OF MOTION AND
MOTION FOR APPROVAL OF
SETTLEMENT AGREEMENT
WITH SUMMERSET ASSISTED
LIVING, LLC; MEMORANDUM
OF POINTS AND AUTHORITIES**

Date: July 9, 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 July 9, 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, will and hereby does move the Court for an
6 order approving the proposed Settlement Agreement between the Receiver and
7 Summerset Assisted Living, LLC ("SAL"), the majority owner SAL-PDC, LLC
8 ("SAL-PDC"), which owns and operates an assisted living and memory care facility
9 located in Rancho Cordova, California. Under the proposed Settlement Agreement,
10 SAL will buy the Receivership Entities' minority interest in SAL-PDC for a cash
11 payment of \$150,000.

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 **IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION** by the
17 above date, the Court may grant the requested relief without further notice. This
18 Motion is made following the conferences of counsel pursuant to L.R. 7-3, which
19 was initiated on May 30, 2018.

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21 Dated: May 30, 2018

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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By: /s/ Edward Fates

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EDWARD G. FATES
Attorneys for Receiver
THOMAS A. SEAMAN

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND RELEVANT BACKGROUND

In March 2014, PDC Capital and SAL¹ formed SAL-PDC to own and operate an assisted living and memory care facility in Rancho Cordova. As part of the deal, PDC made a bridge loan to SAL-PDC in the amount of \$4,000,000 and acquired a 25% interest in the company (24% held by PDC Capital and 1% held by PDC Partners Management), with the other 75% owned by SAL. The bridge loan was fully repaid by SAL-PDC in June 2014.

Since that time, SAL alleges PDC has breached its obligations to provide additional capital and, as a result, SAL-PDC has had to obtain financing from other sources. Therefore, SAL has claimed the right to clawback 12.5% of the Receivership Entities' interest in SAL-PDC. Further, SAL claims the exclusive right under the SAL-PDC Operating Agreement to buy out the Receivership Entities' interest and has also asserted that it has grounds to judicially expel the Receivership Entities from SAL-PDC due to their breaches of the Operating Agreement.

Under the proposed Settlement Agreement, in return for a cash payment of \$150,000, the Receiver will transfer the Receivership Entities' interest in SAL-PDC to SAL. As detailed below, the Receiver recommends this transaction because it is in the best interests of the receivership estate.

¹ Terms previously defined in the Motion will be used and have the same meaning in this Memorandum of Points and Authorities.

1 **A. The Receiver's Appointment, Investigation, and Analysis of the**
2 **Rancho Cordova Project**

3 On January 5, 2017, the Receiver was appointed temporary receiver for the
4 Receivership Entities,² with full powers of an equity receiver, including, but not
5 limited to, full power over all assets and property belonging to, being managed by or
6 in the possession or control of the Receivership Entities, and was immediately
7 authorized, empowered and directed to take certain actions as set forth in the
8 Temporary Restraining Order ("TRO"). Dkt. No. 17. On January 23, 2017, the
9 Court entered its Preliminary Injunction Against All Defendants ("PI Order"),
10 which, among other things, made the Receiver's appointment permanent. Dkt.
11 No. 36.

12 Pursuant to the terms of the PI Order, the Receiver was appointed as the
13 permanent receiver of the Receivership Entities, "with full powers of an equity
14 receiver, including, but not limited to, full power over all funds, assets,
15 collateral, . . . and other property belonging to, being managed by or in possession of
16

17 ² 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;
19 SAL Carmichael, LP; SAL Citrus Heights, LP; SAL Kern Canyon, LP; SAL Phoenix, LP;
20 SAL Westgate, LP; Summerplace at Sarasota, LP; Summerplace at Clearwater, LP;
21 Summerplace at Correll Palms, LP; TRC Tucson, LP; Clear Currents West, LP; Caffe Primo
22 Management, LP; Caffe Primo Management 102, LP through Caffe Primo
23 Management 108, LP (collectively, "**Named Entities**"); and their subsidiaries and affiliates
24 Summerplace Management, LLC; PDC Partners Management, Inc.; FDC Partners
25 Management, Inc.; KPF Capital, LLC; FDC Capital Partners, LLC; MSL US Fund I, LLC;
26 MPoint Land & Development, Inc.; Woodcrest Construction Management, Inc.; Professional
27 Loading Service, LLLP; WDC Capital Group, LLC; WDC Capital Partners, LLC;
28 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 or control of the [Receivership Entities] . . . " *Id.* The PI Order authorized the
2 Receiver to take immediate possession of all real and personal property of the
3 Receivership Entities, wherever located, and to take such action as is necessary to
4 preserve the assets of the Receivership Entities. *Id.*

5 As explained herein and as reflected in the Receiver's Second Interim Report
6 and Recommendations as of May 31, 2017 ("Report") (Dkt. No. 68, p. 15), and
7 subsequently filed Receiver Reports (Dkt. Nos. 143, 194 and 231), PDC holds a
8 minority interest in SAL-PDC, which owns an assisted living and memory care
9 facility located in Rancho Cordova, California. The percentage of PDC's ownership
10 interest is disputed – it was originally 25% (24% held by PDC and 1% held by
11 PDC Partners Management), but SAL alleges that PDC defaulted under the
12 Operating Agreement and therefore SAL clawed back 12.5%, leaving the
13 Receivership Entities with only a 12.5% ownership interest. Declaration of
14 Thomas A. Seaman filed herewith ("Seaman Decl."), ¶ 2.

15 SAL-PDC has provided the Receiver with financial statements and operating
16 reports for the business, which indicate the facility generally operates at or near
17 break-even. Moreover, the company has approximately \$34 million in secured bank
18 debt and loans owed to investors that are senior in priority to the Receivership
19 Entities' equity interest. Therefore the business has very limited value. In addition,
20 the Receivership Entities only hold a minority interest and therefore have no ability
21 to control the actions of the company. Seaman Decl. ¶ 3.

22 Accordingly, the Receiver entered into negotiations with SAL regarding a
23 purchase of the Receivership Entities' minority interest, resulting in the proposed
24 Settlement Agreement, which is attached as Exhibit A to the Seaman Declaration.
25 Under the Settlement Agreement, SAL will pay \$150,000 to the receivership estate
26 within 10 business days of Court approval in exchange for the Receivership Entities'
27 interest in SAL-PDC. Seaman Decl. ¶ 4.

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1 **II. LEGAL ARGUMENT**

2 **A. This Court Has Inherent Authority To Order The Disposition Of**
3 **Receivership Assets**

4 "The power of a district court to impose a receivership or grant other forms of
5 ancillary relief does not in the first instance depend on a statutory grant of power
6 from the securities laws. Rather, the authority derives from the inherent power of a
7 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
8 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
9 and efficient administration of the estate by the district court for the benefit of
10 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986).

11 District courts have the broad power of a court of equity to determine the
12 appropriate action in the administration and supervision of an equity receivership.
13 *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005); *see also*
14 *CFTC. v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court
15 affords 'broad deference' to the court's supervisory role, and 'we generally uphold
16 reasonable procedures instituted by the district court that serve th[e] purpose' of
17 orderly and efficient administration of the receivership for the benefit of creditors.").
18 In the estate administration context, courts are deferential to the business judgment
19 of bankruptcy trustees, receivers, and similar estate custodians. *See, e.g., Bennett v.*
20 *Williams*, 892 F.2d 822, 824 (9th Cir. 1989); *Southwestern Media, Inc. v. Rau*,
21 708 F.2d 419, 425 (9th Cir. 1983); *In re Thinking Machines Corp.*, 182 B.R. 365,
22 368 (D. Mass. 1995) (rev'd on other grounds, *In re Thinking Machines Corp.*,
23 67 F.3d 1021 (1st Cir. 1995)).

24 The Court's powers to administer the receivership and, specifically, to sell
25 receivership assets, are not limited by the terms of private contracts. The Court's
26 authority over the assets of a receivership estate derives from the Court's inherent
27 power to exercise jurisdiction over assets taken into the receivership, rather than
28 from underlying contracts. *SEC v. American Capital Investments, Inc.*, 98 F.3d

1 1133, 1143-45 (9th Cir. 1996) (approving sale of property over limited partners'
2 objections based on court's equitable powers, irrespective of state law or contract
3 rights). Accordingly, this Court has broad equitable powers and discretion to grant
4 this Motion and approve the Settlement Agreement.

5 Here, the proposed Settlement Agreement will generate the maximum net
6 recovery from the Receivership Entities' minority interest in SAL-PDC. The
7 minority interest has very limited value considering the financial condition of
8 SAL-PDC, the fact that the business is controlled by the majority owner, SAL, and
9 the existing disputes with SAL concerning the Receivership Entities' percentage
10 ownership as well as SAL's claimed exclusive right to buy out the Receivership
11 Entities' interest. Under the circumstances, the Receiver does not believe any
12 outside third party would pay \$150,000 for the minority interest. Moreover, a
13 commission would have to be paid to a broker if the minority interest were to be
14 broadly marketed to third parties, making it even less likely that the net recovery
15 from such a sale would exceed \$150,000. Accordingly, the Receiver believes the
16 proposed Settlement Agreement is in the best interests of the receivership estate and
17 asks that it be approved. Seaman Decl. ¶ 5.

18 Moreover, because this is a transfer of personal property – an equity interest
19 in an LLC – the Court has discretion to waive and not require appraisals or
20 publication of notice. 28 U.S.C. section 2004 requires that sales of personal
21 property be conducted in accordance with 28 U.S.C. section 2001, "unless the court
22 orders otherwise." 28 U.S.C. § 2004. This language grants the Court discretion to
23 waive the general requirement of an appraisal under 28 U.S.C. section 2001(b). *See*
24 *Tanzer v. Huffines*, 412 F.2d 221, 222-23 (3d Cir. 1969) (court did not abuse its
25 discretion in approving private sale of stock without strict adherence to 28 U.S.C.
26 section 2001(b)). Due to the nature of the minority interest being transferred and the
27 existing claims and disputes with SAL, conducting appraisals and publishing notice
28 would impose substantial costs on the receivership estate with no corresponding

1 benefit. Accordingly, these provisions of 28 U.S.C. sections 2001(b) and 2004
2 should be waived.

3 **III. CONCLUSION**

4 For the foregoing reasons, the Receiver respectfully requests the Court grant
5 the Motion and approve the Settlement Agreement attached to the Seaman
6 Declaration as Exhibit A.

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8 Dated: May 30, 2018

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Edward Fates

EDWARD G. FATES
Attorneys for Receiver
THOMAS A. SEAMAN

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