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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

**NOTICE OF MOTION AND
MOTION OF RECEIVER,
THOMAS A. SEAMAN, FOR
ORDER APPROVING SALE OF
INTERESTS IN PROFESSIONAL
LOADING SERVICE, LLLP AND
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: November 4, 2019
Time: 1:30 p.m.
Ctrm: 7C, 7th Floor
Judge: Hon. Cormac J. Carney

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

2 **PLEASE TAKE NOTICE** that on November 4, 2019, at 1:30 p.m. in
3 Courtroom 7C of the above-entitled Court, located at 350 W. First Street, Los
4 Angeles, California 90012, Thomas A. Seaman ("Receiver"), the Court-appointed
5 receiver for the Receivership Entities,¹ will and hereby does move the Court for an
6 order approving the sale of the Receivership Entities' equity interest in
7 Professional Loading Service, LLLP, a Montana limited partnership, ("PLS")
8 owned by the Receiver, Thomas A. Seaman, in his capacity as Court-appointed
9 receiver for KPF and WDC (the "Motion"). The Receiver requests the Court
10 approve the sale of the equity interest in PLS to PLS Management, LLC, a
11 Montana limited liability company ("Buyer") free and clear of liens and
12 encumbrances, pursuant to the Partnership Interest Purchase and Sale Agreement
13 dated September 13, 2019. The sale price for the equity interests is \$275,000.

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

18 **Procedural Requirements:** If you oppose this Motion, you are required to
19 file your written opposition with the Office of the Clerk, United States District
20 Court, 350 W. First Street, Los Angeles, California 90012, and serve the same on
21 the undersigned not later than 21 days prior to the hearing.

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26 ¹ As used herein, "Receivership Entities" refers to the following specifically named entities
27 and their subsidiaries and affiliates including but not limited to PDC Capital Group, LLC;
28 Caffe Primo International, Inc.; SAL Assisted Living, LP; SAL Carmichael, LP; SAL Citrus
Heights, SAL Kern Canyon, LP; SAL Phoenix, LP; SAL Westgate, LP; Summerplace at
Sarasota, LP; KPF Investment Management, Inc. ("KPF"); and WDC Capital Group, LLC
("WDC") (collectively, the "Receivership Entities").

1 IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION by the
2 above date, the Court may grant the requested relief without further notice. This
3 Motion is made following the conference of counsel pursuant to L.R. 7-3.
4

5 Dated: September 20, 2019

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

7 By: /s/ David R. Zaro

8 DAVID R. ZARO
9 Attorneys for Receiver
10 THOMAS A. SEAMAN
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Receiver moves this Court for an order authorizing him to sell the
4 Receivership Entities' 51% equity interest (hereinafter, the "Interests") in
5 Professional Loading Service, LLLP, a Montana limited partnership ("PLS") to
6 PLS Management, LLC, a Montana limited liability company ("Buyer"), pursuant
7 to the terms generally described below and more specifically set forth in the
8 Partnership Interests Purchase and Sale Agreement, dated as of September 13,
9 2019 (the "PSA"). A true and correct copy of the PSA is attached as Exhibit A to
10 the concurrently filed Declaration of Thomas A. Seaman ("Seaman Declaration" or
11 "Seaman Decl.").

12 The sale of the Interests is an all cash transaction and reflects the sale of
13 assets and a settlement of Buyer's claims against the Receivership Entities.
14 Pursuant to the PSA, the Buyer will pay \$275,000 upon the closing date and
15 release all claims against the Receivership Entities including all claims, liabilities
16 and debts associated with the business as well as the real property owned by PLS.
17 After months of negotiations with several potential buyers it is the Receiver's
18 reasonable business judgment that the sale to the Buyer reflects best return that can
19 be achieved from this asset.

20 **II. RELEVANT FACTS**

21 **A. The Receiver's Authority To Sell The Interests And Basis**
22 **For Sale**

23 On January 5, 2017, the Receiver was appointed temporary receiver for the
24 Receivership Entities,² with full powers of an equity receiver set forth in the
25 Temporary Restraining Order ("TRO"). (Dkt. No. 17.) On January 23, 2017, the
26 Court entered its Preliminary Injunction Against All Defendants ("PI Order"),
27

28 ² Terms previously defined in the Motion will be used and have the same meaning in this Memorandum of Points and Authorities.

1 which, among other things, made the Receiver's appointment permanent. (Dkt.
2 No. 36.)

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

11 PLS is governed by that certain Agreement of Limited Partnership of
12 Professional Loading Service, LLLP, a Montana limited partnership dated May __,
13 2016 and formed as of March 29, 2016, (the "Limited Partnership Agreement").
14 KPF is a general partner in, and owns a 1% percentage interest (the "KPF
15 Interest") in PLS. WDC is a limited partner in, and owns a 50% percentage interest
16 (the "WDC Interest") in, the PLS. Buyer is a co-general partner in PLS. Seaman
17 Decl. ¶ 5.

18 After this appointment, the Receiver performed an accounting which
19 included tracing the sources and uses of investor proceeds. The Receiver
20 discovered transfers from accounts used by the Receivership Entities to receive
21 investor funds for the purchase of a tract of land in Sarasota, Florida which
22 included the property located at 5710 Draw Lane, Sarasota, Florida (the "Sarasota
23 Property"). A portion of the Sarasota Property was sold for \$9 million. *Id.* at 4.
24 The defendants then used \$2.0 million from those sale proceeds to the purchase
25 PLS. *Id.*

26 PLS owns and operates a small ammunition manufacturing facility located
27 at 3616 Eastside Highway, Stevensville, Montana 59876. PLS also owns the real
28 property where the facility is located.

1 At the outset of the receivership, the Receiver quickly took steps to secure
2 and preserve the enterprise and worked with the other equity members and the co-
3 general partner to operate the business pending a sale of the business. Seaman
4 Decl. ¶ 4.

5 PLS has not generated profits and the Receiver has occasionally advanced
6 funds to pay liability and products liability insurance, nor has nor has the Receiver
7 been able to locate a third party buyer for the business or the underlying real
8 property. Id. at ¶ 7. A myriad of obstacles have arisen that have made it difficult
9 to sell PLS or its assets to a third party. Among other things, a third party buyer
10 would need to have or obtain a federal license to manufacture and sell
11 ammunition. Moreover, it is evident that the business will require a substantial
12 capital investment if it is going to become a profitable enterprise. This is made
13 more difficult because of the remote location of the facility. In addition, there are
14 substantial liabilities that have accumulated that would need to be addressed as
15 part of any asset sale. Id. ¶ 8.

16 The Receiver determined that it is unlikely that the real property could be
17 sold separately. Id. ¶ 9. There are possible, although not confirmed,
18 environmental issues that would need to be addressed if the real property were to
19 be sold. The ammunition manufacturing facility has operated for years at this
20 location. As such, buyers would likely require extensive environmental testing
21 before considering a purchase of the land. Moreover, it is not clear that a third
22 party of the property purchaser would view PLS as a viable tenant. Seaman Decl.
23 ¶ 5.

24 The Receiver first began discussions with the Buyer in the spring of 2019.
25 Over the last several months the Receiver engaged in lengthy negotiations with the
26 Buyer and others. The Receiver and prospective buyers exchanged several offers
27 and letters of intent reflecting different sale structures (i.e. asset sale, conditional
28 sale, etc.) and the Receiver spent significant time in an effort to negotiate a

1 transaction which would yield a higher return to the estate. Id. ¶ 10.
2 Unfortunately, offers yielding a higher price were contingent upon the sale of the
3 real property in the future without a guaranteed return. Ultimately, the highest and
4 best offer was from Buyer in the amount of \$275,000. Seaman Decl. ¶ 3.

5 **B. Purchase and Sale Agreement**

6 A copy of the PSA for the sale to Buyer is attached as Exhibit A to the
7 Seaman Declaration. Its terms are summarized as follows:³

8 **Court Approval.** All aspects of the PSA and the sale are subject to Court
9 approval.

10 **Purchase Price.** \$275,000. The net proceeds to the receivership estate will
11 will be \$275,000.

12 **Closing Date.** The sale to close 5 business days following entry of the
13 order approving the sale.

14 **Deposit.** Buyer has deposited \$100,000 ("Deposit") into the Receiver's
15 account. This reflects a non-refundable Deposit to be applied to the Purchase
16 Price, subject to the terms set forth in the PSA.

17 **As Is/Where Is Purchase.** Buyer agreed to purchase the Interests on an
18 "as-is, where is" basis, with no representations or warranties made by the Receiver,
19 his professionals, or the Receivership Entities.

20 **Release and Indemnity.** Buyer agreed to release and fully discharge the
21 Receivership Entities, the Receiver and all professionals from any and all claims of
22 any kind or nature. In addition, the Buyer agreed to indemnify the Receivership
23 Entities, the Receiver and all professionals with regard to all liabilities or claims
24 arising out of the business operations and the real property and their improvements
25 including but not limited to all liabilities of PLS concerning operations or taxes.

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27 _____
28 ³ The terms of the PSA are summarized herein for convenience only. In the
event of any conflict between the PSA and the summary provided herein or any
ambiguity as to the language used herein, the PSA shall govern and control.

1 **III. ARGUMENT**

2 **A. Broad Equitable Powers of the Court**

3 "The power of a district court to impose a receivership or grant other forms
4 of ancillary relief does not in the first instance depend on a statutory grant of
5 power from the securities laws. Rather, the authority derives from the inherent
6 power of a court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d
7 1363, 1369 (9th Cir. 1980). The "primary purpose of equity receiverships is to
8 promote orderly and efficient administration of the estate by the district court for
9 the benefit of creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). As
10 the appointment of a receiver is authorized by the broad equitable powers of the
11 Court, any distribution of assets must also be done equitably and fairly. *See*
12 *S.E.C. v. Elliot*, 953 F.2d 1560, 1569 (11th Cir. 1992).

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

17 A district court's power to supervise an equity
18 receivership and to determine the appropriate action to
19 be taken in the administration of the receivership is
20 extremely broad. The district court has broad powers
21 and wide discretion to determine the appropriate relief in
22 an equity receivership. The basis for this broad
23 deference to the district court's supervisory role in equity
24 receiverships arises out of the fact that most
25 receiverships involve multiple parties and complex
26 transactions. A district court's decision concerning the
27 supervision of an equitable receivership is reviewed for
28 abuse of discretion.

24 *Id.* (citations omitted); *see also Commodities Futures Trading Comm'n. v.*
25 *Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords
26 'broad deference' to the court's supervisory role, and 'we generally uphold
27 reasonable procedures instituted by the district court that serve th[e] purpose' of
28 orderly and efficient administration of the receivership for the benefit of

1 creditors."). Accordingly, the Court has broad equitable powers and discretion in
2 the administration of the receivership estate and disposition of receivership assets.

3 **B. The Proposed Sale of the Interests is Fair and Reasonable**

4 The Receiver has taken the necessary and appropriate steps to market the
5 business and the real property owned by PLS. The Receiver marketed PLS to
6 potential buyers, responded to inquiries from interested parties, and negotiated
7 with prospective purchasers. This process allowed the Receiver to entertain
8 competitive offers from interested purchasers. The Receiver solicited and received
9 letters of intent and negotiated with interested parties. The Receiver believes the
10 receivership estate is recovering an amount reflecting the present value of the
11 Interests based upon all of the facts and circumstances, including but not limited to
12 the outstanding liabilities of the business, working capital, the risk associated with
13 the operations of an ammunition factory, and the limited number of likely buyers.
14 Seaman Decl. ¶ 12-13.

15 Moreover, given the length of time required to locate a buyer, the physical
16 location of the facility and the property, and the financial condition of the
17 business, Receiver does not believe that a public auction would result in a higher
18 purchase price. To the contrary, an auction is likely to only give rise to an even
19 lower "fire sale" offer. As such, the Receiver believes the sale process achieved
20 the goal of obtaining the highest price for the Interests. Seaman Decl. ¶ 13.

21 In light of the condition of the business and the property, the nature of the
22 enterprise, its location, and the lack of any prospect for a successful auction, the
23 proposed sale is not subject to overbids or an auction. This approach is
24 permissible under 28 U.S.C. § 2004, which gives the Court discretion to approve
25 the private sale of personal property, such as the Interests, without the need for
26 publication of notice, appraisals, or an auction if, as is the case here, such
27 additional steps are unlikely to provide any material benefit to the receivership
28

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.

On **September 20, 2019**, I caused to be served the document entitled: **NOTICE OF MOTION AND MOTION OF RECEIVER, THOMAS A. SEAMAN, FOR ORDER APPROVING SALE OF INTEREST IN PROFESSIONAL LOADING SERVICE, LLLP AND MEMORANDUM OF POINTS AND AUTHORITIES** on all the parties to this action addressed as stated on the attached service list.

- OFFICE MAIL:** By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with the firm's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.
- OVERNIGHT DELIVERY:** I deposited in a box or other facility regularly maintained by express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in sealed envelope(s) or package(s) designed by the express service carrier, addressed as indicated on the attached service list, with fees for overnight delivery paid or provided for.
- HAND DELIVERY:** I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.
- ELECTRONIC MAIL:** By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.
- E-FILING:** By causing the document to be electronically filed via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.
- FAX:** By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

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I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on **September 20, 2019** at Los Angeles, California.

/s/ Martha Diaz

Martha Diaz

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SERVICE LIST

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

Emilio Francisco
15 Rue Saint Cloud
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