

1 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
2 DAVID R. ZARO (BAR NO. 124334)
865 South Figueroa Street, Suite 2800
3 Los Angeles, California 90017-2543
Phone: (213) 622-5555
4 Fax: (213) 620-8816
E-Mail: dzaro@allenmatkins.com

5 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
6 EDWARD G. FATES (BAR NO. 227809)
One America Plaza
7 600 West Broadway, 27th Floor
8 San Diego, California 92101-0903
Phone: (619) 233-1155
9 Fax: (619) 233-1158
E-Mail: tfates@allenmatkins.com

10 Attorneys for Receiver
11 THOMAS A. SEAMAN

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14
15 SECURITIES AND EXCHANGE
COMMISSION,
16 Plaintiff,

17 v.

18 EMILIO FRANCISCO; PDC CAPITAL
GROUP, LLC; CAFFE PRIMO
INTERNATIONAL, INC.; SAL ASSISTED
19 LIVING, LP; SAL CARMICHAEL, LP; SAL
CITRUS HEIGHTS, LP; SAL KERN
20 CANYON, LP; SAL PHOENIX, LP; SAL
WESTGATE, LP; SUMMERPLACE AT
21 SARASOTA, LP; SUMMERPLACE AT
CLEARWATER, LP; SUMMERPLACE AT
22 CORRELL PALMS, LP; TRC TUCSON, LP;
CLEAR CURRENTS WEST, LP; CAFFE
23 PRIMO MANAGEMENT, LP; CAFFE
PRIMO MANAGEMENT 102, LP; CAFFE
24 PRIMO MANAGEMENT 103, LP; CAFFE
PRIMO MANAGEMENT 104, LP; CAFFE
25 PRIMO MANAGEMENT 105, LP; CAFFE
PRIMO MANAGEMENT 106, LP; CAFFE
26 PRIMO MANAGEMENT 107, LP; and
CAFFE PRIMO MANAGEMENT 108, LP,
27 Defendants.

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

DECLARATION OF THOMAS A. SEAMAN IN SUPPORT OF MOTION OF RECEIVER, THOMAS A. SEAMAN, FOR ORDER: (1) APPROVING FINAL REPORT AND ACCOUNTING; (2) AUTHORIZING PAYMENT OF FINAL FEE APPLICATIONS OF RECEIVER AND PROFESSIONALS; (3) AUTHORIZING DESTRUCTION OF DOCUMENTS; AND (4) DISCHARGING AND RELEASING RECEIVER

Date: January 24, 2021
Time: 1:30 p.m.
Ctrm: 7C
Judge: Hon. Cormac J. Carney

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF THOMAS A. SEAMAN

I, Thomas A. Seaman, declare as follows:

1. I am the Court-appointed permanent receiver (the "Receiver") for PDC Capital Group, LLC, and its subsidiaries and affiliates, (collectively, the "Receivership Entities" or "Entities"). I was appointed as Receiver in the above-captioned action on January 23, 2017, by virtue of this Court's Preliminary Injunction Order (the "Appointment Order") (ECF No. 36). I have personal knowledge of the facts set forth in this Declaration, and make this Declaration in support of the concurrently-filed Motion of Receiver for Order: (1) Approving Final Report and Accounting; (2) Authorizing Payment of Final Fee Applications of Receiver and Professionals; (3) Authorizing Destruction of Documents; and (4) Discharging and Releasing Receiver (the "Closing Motion").

2. Since my appointment I have administered the estate of the Receivership Entities (the "Estate" or "Receivership Estate") and all receivership assets (the "Assets" or "Receivership Assets") in accordance with the Court's instructions including, but not limited to: (1) marshaling, preserving and, ultimately, liquidating Receivership Assets; (2) performing accountings and analysis of the Receivership Entities' financial activities; (3) eliminating and addressing the Entities' liabilities; (4) recommending the claims process, a plan for distribution, and making distributions; and (5) preparing reports for this Court.

3. I have submitted Reports to the Court on a periodic basis reflecting the work performed and an accounting of receivership activities over the past four years. These Reports provide a detailed description of my work. (See ECF Nos. 32, 68, 143, 194, 231, 268, 295, 313, 341, 356, 371, 398.) The following highlight the most significant work that I performed in an effort to maximize the return to investors and creditors:

- 1 • Completing a detailed review and analysis of the business and financial
2 activities of the Receivership Entities, including but not limited to reviewing
3 and analyzing the investments made by the 134 investors seeking EB-5
4 immigration to the United States; evaluating the value, propriety, and
5 feasibility of the operating businesses and proposed real estate developments;
6 and valuing the real and personal property owned by the Receivership Entities;
- 7 • Marshaling, preserving and selling all of the receivership assets
8 ("Receivership Assets" or "Assets"), which resulted in gross recoveries in the
9 amount of \$17,359,648 for the benefit of the Receivership Entities;
- 10 • Promptly evaluating the operating businesses of the estate and
11 terminating operations resulting in significant savings to the estate;
- 12 • Reviewing and validating the investor claims in the amount of
13 \$66,340,000 and non-investor claims in the amount of \$147,695 and
14 developing and securing Court approval of the recommended equitable
15 treatment of allowed claims;
- 16 • Developing, and securing Court approval of the proposed plan for
17 distribution to holders of allowed claims, pursuant to which I made an initial
18 distribution, in the aggregate amount of \$9.378 million, on a *pro rata* basis to
19 all allowed, non-subordinated claimants;
- 20 • Taking control over and either operating or preserving partially
21 developed assisted living projects in California, Arizona and Florida and
22 enhancing their value through, among other things, operational changes and
23 capital improvements. Despite significant obstacles and issues with lenders
24 and regulators, I successfully sold all of the projects generating significant
25 returns to the Receivership;
- 26 • Notwithstanding the significant secured loans encumbering the raw land
27 acquired by PDC, I negotiated short-sales and settlements with lenders which
28

1 consistently returned revenue to the estate, even as to properties with no value
2 above the loan amount;

3 • Favorably resolving contingent administrative claims including taxes
4 and a contingent liability to the purchaser of Tucson TRC such that I was able
5 to make an additional distribution of \$1.310 million to investors;

6 • Successfully filing all receivership QSF tax returns as well as the 59
7 separate tax returns for pre-receivership tax periods with no tax payments
8 being required; and

9 • Successfully selling off unique assets including an operating skilled
10 nursing facility, a yacht in Mexico and a manufacturer of ammunition located
11 in Stevensville, Montana.

12 4. As previously reported to the Court, since the last Receiver Reports
13 were filed in March 2021 [ECF 389] and August 2021 [ECF 398], I concluded the
14 process of distributing funds to the investors and creditors with allowed claims. In
15 addition, I filed the qualified settlement fund tax returns and the 59 receivership
16 entity tax returns. In the past few months, I worked with the SEC to address the
17 requested Consent Judgment, and requests for documents and information
18 concerning the funds held in a safe deposit box claimed by Defendant Emilio
19 Francisco's daughter.

20 5. I believe that I have, with the assistance of my Professionals, fulfilled all
21 of my responsibilities to the fullest extent possible and have exhausted all reasonable
22 efforts to recover additions Receivership Assets for the benefit of the Estate.
23 Accordingly, my continued administration, will not increase the amount of Assets
24 available to the Receivership Estate or otherwise be of benefit to the investors or
25 other claimants. Thus, in my judgment, the costs of continuing the receivership now
26 outweigh the benefits.

27 6. Given this determination, and having fulfilled my responsibilities under
28 the Appointment Order, I believe it is now time to pay the final fee applications,

1 destroy the remaining documents and records, and discharge and release me. My
2 Final Report and Accounting (the "Final Report"), which includes my final
3 accounting for the Receivership, has been submitted to the Court concurrently with
4 this Declaration. The Final Report summarizes my actions and the actions of my
5 Professionals during the pendency of the receivership case. A copy of my final
6 accounting summary, reflecting recoveries and expenditures during the pendency of
7 the receivership, is attached as **Exhibit 1** to the Final Report. Concurrently with the
8 Closing Motion, my Professionals and I have also submitted our respective Final Fee
9 Applications, requesting payment of our respective outstanding fees and expenses
10 incurred through the termination of the receivership, including amounts held back
11 pursuant to the orders approving interim fee applications.

12 7. Pursuant to the Professionals and my Final Fee Applications,
13 (concurrently filed herewith), I respectfully request such authorization at this time to
14 pay me and my Professionals': (1) the final fees and costs of \$374,900.50; (2)
15 expenses of \$8026.58; (3) unpaid holdbacks in the aggregate amount of \$549,704.43;
16 and (4) \$21,219 for the cost to destroy records, prepare final tax returns and pay the
17 holdback for digital forensics. True and correct copies of the Allen Matkins' and my
18 invoices for the period from August 1, 2019 through November 15, 2021 are filed
19 along with Allen Matkins and my respective Final Fee Applications. I have
20 reviewed the Final Fee Applications, and believe the hourly rates charged were
21 appropriate, given the complexity and numerous legal issues that arose during the
22 course of the instant receivership. I am satisfied that both counsel and I made
23 reasonable efforts to have tasks completed at the lowest possible billing rate, and that
24 the total fees are fair and reasonable. I likewise believe that the Receivership,
25 investors and claimants greatly benefited from the services provided by Allen
26 Matkins and me.

27 8. I have prepared a Standardized Fund Accounting Report, attached
28 hereto as **Exhibit A**, for the Estate of the Receivership Entities in accordance with

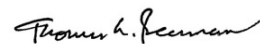
1 the Plaintiff Securities and Exchange Commission's (the "Commission") billing
2 requirements, summarizing my collections, disbursements, and financial activities on
3 behalf of the Receivership Entities and the Estate for the period from August 1, 2019
4 through November 15, 2021.

5 9. I am required to submit appropriate tax returns for each calendar year of
6 the pendency of the receivership. Based on my discussions with my accounting
7 professionals, I will file the Qualified Settlement Fund returns for the Entities for the
8 2021 tax year on or before April 15, 2021.

9 10. I have obtained and reviewed thousands of pages of material relevant to
10 the business and financial activities of the Receivership Entities, in hard copy and
11 digital form. Some of these documents contain private financial information. There
12 is no reason to maintain these documents and records and to do so would be quite
13 costly. Moreover, there are no funds available to pay for either physical or electronic
14 storage of the documents and records. I therefore request that, within thirty (30) days
15 after the entry of an order granting the Closing Motion, I be authorized to destroy all
16 of the documents and records. If the AUSA or the SEC request documents be
17 maintained, I recommend that they take possession of the records within 30 days in
18 order to avoid further costs being incurred to store the physical files and electronic
19 records.

20 I declare under penalty of perjury under the laws of the United States that the
21 foregoing is true and correct.

22 Executed this 17th day of December, 2021, at Irvine, California.

23 

24 _____
25 THOMAS A. SEAMAN
26
27
28

EXHIBIT A

STANDARDIZED FUND ACCOUNTING REPORT for PDC Capital Receivership
SEC vs. PDC Capital, et al Case number 8:16-cv-02257-CJC-DFM
Reporting Period 08/01/2019 to 12/31/2021


FUND ACCOUNTING (See instructions):			
	Detail	Subtotal	Grand Total
Line 1	Beginning Balance (07/31/2019):	11,287,932.55	11,287,933
	<i>Increases in Fund Balance:</i>		
Line 2	Business Income		-
Line 3	Cash and Securities	7,511	7,511
Line 4	Interest/Dividend Income	87,304	87,304
Line 5	Business Asset Liquidation	531,250	531,250
Line 6	Personal Asset Liquidation		-
Line 7	Third-Party Litigation Income		-
Line 8	Miscellaneous - Other		-
	Total Funds Available (Lines 1 - 8):	11,913,998	11,913,998
	<i>Decreases in Fund Balance:</i>		
Line 9	Disbursements to Investors	(10,687,108.67)	(10,687,108.67)
Line 10	Disbursements to Receivership Operations		
	<i>Line 10a Disbursement to Receiver or Other Professionals</i>	(1,151,278)	(1,151,278)
	<i>Line 10b Business Asset Expenses</i>	(75,611)	(75,611)
	<i>Line 10c Personal Asset Expenses</i>		-
	<i>Line 10d Investment Expenses</i>	-	-
	<i>Line 10e Third-Party Litigation Expenses</i>		-
	1. Attorney Fees		-
	2. Litigation Expenses	-	-
	Total Third-Party Litigation Expenses	-	-
	<i>Line 10f Tax Administrator Fees and Bonds</i>	-	-
	<i>Line 10g Federal and State Tax Payments</i>		-
	Total Disbursements for Receivership Operations		(1,226,890)
Line 11	Disbursements for Distribution Expenses Paid by the Fund:		
	<i>Line 11a Distribution Plan Development Expenses:</i>		
	1. Fees:		
	Fund Administrator.....	-	-
	Independent Distribution Consultant (IDC)..	-	-
	Distribution Agent.....	-	-
	Consultants.....	-	-
	Legal Advisors.....	-	-
	Tax Advisors.....	-	-
	2. Administrative Expenses	-	-
	3. Miscellaneous	-	-
	Total Plan Developmental Expenses		-
	<i>Line 11b Distribution Plan Implementation Expenses:</i>		
	1. Fees:		
	Fund Administrator.....	-	-
	IDC.....	-	-
	Distribution Agent.....	-	-
	Consultants.....	-	-
	Legal Advisors.....	-	-
	Tax Advisors.....	-	-
	2. Administrative Expenses	-	-
	3. Investor Identification:		
	Notice/Publishing Approved Plan.....	-	-
	Claimant Identification.....	-	-
	Claims Processing.....	-	-
	Web Site Maintenance/Call Center.....	-	-
	4. Fund Administrator Bond	-	-
	5. Miscellaneous	-	-
	6. Federal Account for Investor Restitution (FAIR) Reports Expenses	-	-
	Total Plan Implementation Expenses	-	-
	Total Disbursements for Distribution Expenses Paid by the Fund		-
Line 12	Disbursements to Court/Other:		
	<i>Line 12a Investment Expenses/Court Registry Investment System (CRIS) Fees</i>	-	-
	<i>Line 12b Federal Tax Payments</i>	-	-
	Total Disbursement to Court/Other:		-
	Total Funds Disbursed (Lines 9 - 11):		(11,913,998)
Line 13	Ending Balance (As of 12/31/2021):		-

STANDARDIZED FUND ACCOUNTING REPORT for USFIA - Cash Basis
SEC vs. PDC Capital, et al Case number 8:16-cv-02257-CJC-DFM
Reporting Period 08/01/2019 to 12/31/2021

Line 14	Ending Balance of Fund - Net Assets:			
Line 14a	Cash & Cash Equivalents			-
Line 14b	Investments			-
Line 14c	Other Assets or Uncleared Funds			-
	Total Ending Balance of Fund - Net Assets			-

OTHER SUPPLEMENTAL INFORMATION:

	<u>Detail</u>	<u>Subtotal</u>	<u>Grand Total</u>
<i>Report of Items NOT to be Paid by the Fund:</i>			
Line 15	Disbursement for Plan Administration Expenses Not Paid by the Fund:		
Line 15a	<i>Plan Development Expenses Not Paid by the Fund:</i>		
	1. Fees:		
	Fund Administrator.....	-	-
	IDC.....	-	-
	Distribution Agent.....	-	-
	Consultants.....	-	-
	Legal Advisors.....	-	-
	Tax Advisors.....	-	-
	2. Administrative Expenses	-	-
	3. Miscellaneous	-	-
	Total Plan Developmental Expenses Not Paid by the Fund		-
Line 15b	<i>Plan Implementation Expenses Not Paid by the Fund</i>		
	1. Fees:		
	Fund Administrator.....	-	-
	IDC.....	-	-
	Distribution Agent.....	-	-
	Consultants.....	-	-
	Legal Advisors.....	-	-
	Tax Advisors.....	-	-
	2. Administrative Expenses	-	-
	3. Investor Identification		
	Notice/Publishing Approved Plan.....	-	-
	Claimant Identification.....	-	-
	Claims Processing.....	-	-
	Web Site Maintenance/Call Center.....	-	-
	4. Fund Administrator Bond	-	-
	5. Miscellaneous	-	-
	6. FAIR Reporting Expenses	-	-
	Total Plan Implementation Expenses Not Paid by the Fund		-
Line 15c	<i>Tax Administrator Fees & Bonds Not Paid by the Fund</i>		-
	Total Disbursements for Plan Administration Expenses Not Paid by the Fund		-
Line 16	Disbursements to Court/Other Not Paid by the Fund:		
Line 16a	Investment Expenses/CRIS Fees	-	-
Line 16b	Federal Tax Payments	-	-
	Total Disbursement to Court/Other Not Paid by the Fund:		-
Line 17	DC & State Tax Payments	-	-
Line 18	No. of Claims:		
Line 18a	# of Claims Received This Reporting Period.....		
Line 18b	# of Claims Received Since Inception of Fund.....		
Line 19	No. of Claimants/Investors:		
Line 19a	# of Claimants/Investors Paid this Reporting Period.....		
Line 19b	# of Claimants/Investors Paid Since Inception of Fund.....		

Receiver: 

By: Thomas Seaman
 Receiver for PDC Capital

Date: November 18, 2021