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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
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

**RECEIVER'S OPPOSITION TO
RICHARDSON FAMILY TRUST'S
MOTION FOR LEAVE OF COURT
TO FILE A CIVIL ACTION
AGAINST THE RECEIVER
THOMAS A. SEAMAN IN
CALIFORNIA SUPERIOR COURT**

Date: February 26, 2018
Time: 1:30 p.m.
Ctrm: 9B, 9th Floor
Judge: Hon. Cormac J. Carney

1 Thomas A. Seaman ("Receiver"), the Court-appointed receiver for the
 2 Defendant entities¹ (collectively, "Receivership Entities"), hereby submits this
 3 opposition to the Richardson Family Trust's Motion for Leave of Court to File a
 4 Civil Action Against the Receiver Thomas A. Seaman in California Superior Court
 5 ("Motion").

6 I. INTRODUCTION

7 What is clear from the Motion is that the Richardson Family Trust and Neil
 8 Richardson (together "Richardson"), a former employee/consultant of PDC Capital
 9 Group, LLC ("PDC"), seeks leave to sue the Receiver. Beyond that, the Motion is
 10 difficult to decipher. In particular, it is unclear (a) what claims Richardson intends
 11 to assert, (b) whether such claims will be brought against the Receiver in his official
 12 capacity as receiver or personal capacity, and (c) in what court Richardson's action
 13 will be filed. At certain points, the Motion makes reference to suing the Receiver in
 14 his capacity as receiver, but then it also discusses the limits of the Receiver's
 15

16 ¹ The entities included in the receivership are PDC Capital Group, LLC; Caffe Primo
 17 International, Inc.; SAL Senior Living, LP; SAL Carmichael, LP; SAL Citrus Heights, LP;
 18 SAL Kern Canyon, LP; SAL Phoenix, LP; SAL Westgate, LP; Summerplace at Sarasota, LP;
 19 Summerplace at Clearwater, LP; Summerplace at Correll Palms, LP; TRC Tucson, LP; Clear
 20 Currents West, LP; Caffe Primo Management, LP; Caffe Primo Management 102, LP; Caffe
 21 Primo Management 103, LP; Caffe Primo Management 104, LP; Caffe Primo Management
 22 105, LP; Caffe Primo Management 106, LP; Caffe Primo Management 107, LP; Caffe Primo
 23 Management 108, LP; and their subsidiaries and affiliates, including but not limited to,
 24 Summerplace Management, LLC; PDC Partners Management, Inc.; and FDC Partners
 25 Management, Inc. (collectively, "**Named Entities**"); and their subsidiaries and affiliates
 26 Summerplace Management, LLC; PDC Partners Management, Inc.; FDC Partners
 27 Management, Inc.; KPF Capital, LLC; FDC Capital Partners, LLC; MSL US Fund I, LLC;
 28 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; 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, "**Affiliated Entities**").

1 funds to Miller/FCM. However, to date, no evidence of these personal loans has
2 been provided to the Receiver by Richardson. In 2013, FCM purchased a property
3 located in Carmichael, California ("Carmichael Property"). The working
4 relationship between Richardson and Miller apparently soured and the two sued
5 each other (and related entities) in or around 2014. Richardson recorded a
6 *lis pendens* against the Carmichael Property.

7 In 2014, Richardson began working for PDC. In July 2015, SAL Carmichael
8 bought the Carmichael Property from FCM for \$1.9 million. At the same time,
9 PDC, SAL Carmichael, and Richardson signed a Settlement Agreement by which
10 PDC and SAL Carmichael agreed to pay Richardson \$2 million. A promissory note
11 in the amount of \$2 million in favor of Richardson ("Note") was issued, but not by
12 PDC or SAL Carmichael. Instead, an entirely separate entity, SAL Westgate, signed
13 the Note and a Deed of Trust securing the obligation to Richardson, which was
14 recorded against the Westgate Property ("Deed of Trust"). SAL Westgate was not
15 involved in the purchase of the Carmichael Property or the Richardson settlement in
16 any manner and received nothing of value from the transaction.

17 In 2016, Richardson had a falling out with PDC. In May 2016, Richardson
18 sued Robert Ferrante, Defendant Emilio Francisco, PDC, and FDC Capital
19 Group, LLC ("FDC") in Orange County Superior Court. Later that same month,
20 PDC, Francisco and Ferrante filed two separate lawsuits against Richardson, his
21 family trust, his family members, and related entities in Orange County Superior
22 Court. Among other things, Richardson claimed PDC misled him into performing
23 services, but never paid him the agreed upon amounts or commissions for his work.
24 PDC claimed Richardson misrepresented his expertise in real estate development,
25 failed to provide promised services, and then created his own company to compete
26 with PDC, including stealing clients, trade secrets, and business opportunities. The
27 complaints allege that Richardson participated in obtaining a boat and Ferrari
28

1 automobile, although the two sides dispute who had control of these luxury assets
2 and for whose benefit they were obtained.

3 After the filing of this action by the Securities and Exchange Commission and
4 the appointment of the Receiver by the Court, the Orange County Superior Court
5 held a hearing and determined that all claims against PDC and FDC were enjoined
6 and stayed pursuant to the Court's Preliminary Injunction Against All Defendants.
7 In the Motion, Richardson incorrectly contends certain investors have already
8 received distributions from the receivership, citing the Receiver's interim reports.
9 The Receiver's interim reports, however, state only that, *prior to the Receiver's*
10 *appointment*, certain investors received refunds from the entities in receivership in
11 the total amount of \$3,160,000. Receiver's Third Interim Report and
12 Recommendations, Dkt. No. 143, p. 2. No investors have received distributions
13 from the receivership estate since the Receiver's appointment. Such distributions
14 cannot be made without Court approval.

15 III. ARGUMENT

16 "The power of a district court to impose a receivership or grant other forms of
17 ancillary relief does not in the first instance depend on a statutory grant of power
18 from the securities laws. Rather, the authority derives from the inherent power of a
19 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
20 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
21 and efficient administration of the estate by the district court for the benefit of
22 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment
23 of a receiver is authorized by the broad equitable powers of the court, any
24 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,
25 953 F.2d 1560, 1569 (11th Cir. 1992).

26 District courts have the broad power of a court of equity to determine the
27 appropriate action in the administration and supervision of an equity receivership.
28

1 See *SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth
2 Circuit explained:

3 A district court's power to supervise an equity receivership
4 and to determine the appropriate action to be taken in the
5 administration of the receivership is extremely broad. The
6 district court has broad powers and wide discretion to
7 determine the appropriate relief in an equity receivership.
8 The basis for this broad deference to the district court's
9 supervisory role in equity receiverships arises out of the
10 fact that most receiverships involve multiple parties and
11 complex transactions. A district court's decision
12 concerning the supervision of an equitable receivership is
13 reviewed for abuse of discretion.

14 *Id.* (citations omitted); see also *CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115
15 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,
16 and 'we generally uphold reasonable procedures instituted by the district court that
17 serve th[e] purpose' of orderly and efficient administration of the receivership for
18 the benefit of creditors."). Accordingly, the Court has broad discretion in the
19 administration of receiverships.

20 **A. Richardson's Assertions of Receiver Misconduct Are Baseless**

21 Richardson's argument starts by correctly stating that he cannot bring an
22 action against the Receiver without first obtaining leave from this Court, citing
23 *Barton v. Barbour*, 104 U.S. 126, 131 (1881) and its progeny. Motion, pp. 11-12.
24 He then asserts the Receiver does not have absolute immunity and can be held
25 personally liable if he acts outside the authority granted to him by the Court, citing
26 *Ostrowski v. Miller*, 226 Cal.App.2d 79 (1964). Motion, pp. 12-13. Next,
27 Richardson asserts that a motion can be brought for relief from the Court's
28 injunction prohibiting legal actions against the Receivership Entities during the
pendency of the Receivership Estate, citing *SEC v. Wencke*, 742 F.2d 1230, 1231
(9th Cir. 1984). Richardson goes on to argue the Court has discretion to determine
whether he must assert his claim in this action or in a separate lawsuit. Motion,
p. 15. Based on this jumbled mix of legal principles and the fact the Receiver has
not yet formally challenged the Richardson Note and Deed of Trust, Richardson

1 asserts the Receiver has breached his fiduciary duties and is "continuing to abuse his
2 authority," and therefore Richardson should be allowed to sue him in an
3 "independent suit." Motion, p. 16.

4 Richardson's accusations regarding misconduct by the Receiver are
5 completely false. It is clear the Richardson Note and Deed of Trust are disputed.
6 They were disputed by PDC prior to the Receiver's appointment and the Receiver's
7 initial investigation indicated they are avoidable as fraudulent transfers. The
8 Receiver, therefore, did not make any payments on the Note and advised the Court
9 and interested parties in his interim reports that the Note and Deed of Trust are
10 disputed. The Receiver, through counsel, also made appearances in the state court
11 litigation to advise the state court of the scope of the Court's injunction/stay of
12 litigation, which the state court has properly observed.

13 Since that time, the Receiver has continued to investigate the facts and
14 circumstances surrounding the Note and Deed of Trust, including asking Richardson
15 to produce documents supporting his claim he was owed \$2 million by FCM, which
16 documents Richardson has not produced. The Receiver's further investigation has
17 confirmed the Receiver's initial conclusion that the Note and Deed of Trust are
18 avoidable as fraudulent transfers, as laid out in the Motion for Authority.

19 Moreover, the Receiver's counsel has spoken to Richardson's counsel on
20 numerous occasions over the last nine months and has explained the Receiver's
21 claims that the Note and Deed of Trust are avoidable as fraudulent transfers and has
22 also advised that the Receiver would seek approval of a sale of the SAL Westgate
23 property free and clear of the Deed of Trust, with the Deed of Trust attaching to the
24 sale proceeds. The Receiver has now filed the motion seeking approval of the sale
25 of the Westgate property, along with three other California properties. Dkt.
26 No. 156. Accordingly, the Receiver has performed his duties properly and made a
27 good faith effort to address and resolve the issues with Richardson. Richardson's
28 assertions that the Receiver has acted improperly are entirely baseless.

