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4 Securities and Exchange Commission

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8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **SOUTHERN DIVISION**

12 **SECURITIES AND EXCHANGE**
13 **COMMISSION,**

14 Plaintiff,

15 vs.

16 **EMILIO FRANCISCO, et al.,**

17 Defendants.

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

CONSENT OF EMILIO
FRANCISCO

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1 1. Defendant Emilio Francisco (“Defendant”) acknowledges having been
2 served with the First Amended Complaint in this action, enters a general appearance,
3 and admits the Court’s jurisdiction over Defendant and over the subject matter of this
4 action.

5 2. Without admitting or denying the allegations of the amended
6 complaint (except as provided herein in paragraph 12 and except as to personal and
7 subject matter jurisdiction, which Defendant admits), Defendant hereby consents to
8 the entry of the final judgment in the form previously provided (the “Final
9 Judgment”) and incorporated by reference herein, which, among other things:

10 (a) permanently restrains and enjoins Defendant from violation of
11 Section 10(b) of the Securities Exchange Act of 1934
12 (“Exchange Act”), 15 U.S.C. § 78j(b) and Rule 10b-5
13 thereunder, 17 C.F.R. § 240.10b-5, controlling any person who
14 violates Section 10(b) of the Exchange Act and Rule 10b-5
15 thereunder, and from violation of Section 17(a) of the Securities
16 Act of 1933 (“Securities Act”), 15 U.S.C. § 77q(a);

17 (b) permanently restrains and enjoins Defendant from, directly or
18 indirectly, including but not limited to, through an entity owned
19 or controlled by Defendant, participating in the issuance,
20 purchase, offer, or sale of any security, provided, however, that
21 such injunction shall not prevent Defendant from purchasing or
22 selling securities for his own personal account;

23 (c) permanently restrains and enjoins Defendant from participating
24 in the issuance, offer, or sale of any security which constitutes
25 an investment in a “commercial enterprise” under the United
26 States Government EB-5 visa program administered by the
27 United States Citizenship and Immigration Service (“USCIS”),
28 including engaging in activities with a broker, dealer, or issuer,

1 or a Regional Center designated by the USCIS, for purposes of
2 issuing, offering, trading, or inducing or attempting to induce
3 the purchase or sale of any such EB-5 investment;

4 (d) orders Defendant to pay disgorgement in the amount of
5 \$1,826,976.52; and prejudgment interest thereon in the amount
6 of \$116,866.83;

7 (e) orders Defendant to pay a civil penalty in the amount of
8 \$369,534 under Section 20(d) of the Securities Act, 15 U.S.C. §
9 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. §
10 78u(d)(3).

11 3. Defendant acknowledges that the civil penalty paid pursuant to the
12 Final Judgment may be distributed pursuant to the Fair Fund provisions of Section
13 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair
14 Fund distribution is made, the civil penalty shall be treated as a penalty paid to the
15 government for all purposes, including all tax purposes. To preserve the deterrent
16 effect of the civil penalty, Defendant agrees that he shall not, after offset or
17 reduction of any award of compensatory damages in any Related Investor Action
18 based on Defendant's payment of disgorgement in this action, argue that he is
19 entitled to, nor shall he further benefit by, offset or reduction of such compensatory
20 damages award by the amount of any part of Defendant's payment of a civil
21 penalty in this action ("Penalty Offset"). If the court in any Related Investor
22 Action grants such a Penalty Offset, Defendant agrees that he shall, within 30 days
23 after entry of a final order granting the Penalty Offset, notify the Commission's
24 counsel in this action and pay the amount of the Penalty Offset to the United States
25 Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not
26 be deemed an additional civil penalty and shall not be deemed to change the
27 amount of the civil penalty imposed in this action. For purposes of this paragraph,
28 a "Related Investor Action" means a private damages action brought against

1 Defendant by or on behalf of one or more investors based on substantially the same
2 facts as alleged in the Complaint in this action.

3 4. Defendant agrees that he shall not seek or accept, directly or
4 indirectly, reimbursement or indemnification from any source, including but not
5 limited to payment made pursuant to any insurance policy, with regard to any civil
6 penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of
7 whether such penalty amounts or any part thereof are added to a distribution fund
8 or otherwise used for the benefit of investors. Defendant further agrees that he
9 shall not claim, assert, or apply for a tax deduction or tax credit with regard to any
10 federal, state, or local tax for any penalty amounts that Defendant pays pursuant to
11 the Final Judgment, regardless of whether such penalty amounts or any part thereof
12 are added to a distribution fund or otherwise used for the benefit of investors.

13 5. Defendant waives the entry of findings of fact and conclusions of law
14 pursuant to Rule 52 of the Federal Rules of Civil Procedure.

15 6. Defendant waives the right, if any, to a jury trial and to appeal from
16 the entry of the Final Judgment.

17 7. Defendant enters into this Consent voluntarily and represents that no
18 threats, offers, promises, or inducements of any kind have been made by the
19 Commission or any member, officer, employee, agent, or representative of the
20 Commission to induce Defendant to enter into this Consent.

21 8. Defendant agrees that this Consent shall be incorporated into the Final
22 Judgment with the same force and effect as if fully set forth therein.

23 9. Defendant will not oppose the enforcement of the Final Judgment on
24 the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal
25 Rules of Civil Procedure, and hereby waives any objection based thereon.

26 10. Defendant waives service of the Final Judgment and agrees that entry
27 of the Final Judgment by the Court and filing with the Clerk of the Court will
28 constitute notice to Defendant of its terms and conditions. Defendant further

1 agrees to provide counsel for the Commission, within thirty days after the Final
2 Judgment is filed with the Clerk of the Court, with an affidavit or declaration
3 stating that Defendant has received and read a copy of the Final Judgment.

4 11. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the
5 claims asserted against Defendant in this civil proceeding. Defendant
6 acknowledges that no promise or representation has been made by the Commission
7 or any member, officer, employee, agent, or representative of the Commission with
8 regard to any criminal liability that may have arisen or may arise from the facts
9 underlying this action or immunity from any such criminal liability. Defendant
10 waives any claim of Double Jeopardy based upon the settlement of this proceeding,
11 including the imposition of any remedy or civil penalty herein. Defendant further
12 acknowledges that the Court's entry of a permanent injunction may have collateral
13 consequences under federal or state law and the rules and regulations of self-
14 regulatory organizations, licensing boards, and other regulatory organizations.
15 Such collateral consequences include, but are not limited to, a statutory
16 disqualification with respect to membership or participation in, or association with
17 a member of, a self-regulatory organization. This statutory disqualification has
18 consequences that are separate from any sanction imposed in an administrative
19 proceeding. In addition, in any disciplinary proceeding before the Commission
20 based on the entry of the injunction in this action, Defendant understands that he
21 shall not be permitted to contest the factual allegations of the complaint in this
22 action.

23 12. Defendant understands and agrees to comply with the terms of 17
24 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to
25 permit a defendant or respondent to consent to a judgment or order that imposes a
26 sanction while denying the allegations in the complaint or order for proceedings,"
27 and "a refusal to admit the allegations is equivalent to a denial, unless the
28 defendant or respondent states that he neither admits nor denies the allegations."

1 As part of Defendant's agreement to comply with the terms of Section 202.5(e),
2 Defendant: (i) will not take any action or make or permit to be made any public
3 statement denying, directly or indirectly, any allegation in the complaint or
4 creating the impression that the complaint is without factual basis; (ii) will not
5 make or permit to be made any public statement to the effect that Defendant does
6 not admit the allegations of the complaint, or that this Consent contains no
7 admission of the allegations, without also stating that Defendant does not deny the
8 allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any
9 papers filed in this action to the extent that they deny any allegation in the
10 complaint; and (iv) stipulates solely for purposes of exceptions to discharge set
11 forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, that the allegations
12 in the complaint are true, and further, that any debt for disgorgement, prejudgment
13 interest, civil penalty or other amounts due by Defendant under the Final Judgment
14 or any other judgment, order, consent order, decree or settlement agreement
15 entered in connection with this proceeding, is a debt for the violation by Defendant
16 of the federal securities laws or any regulation or order issued under such laws, as
17 set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19) . If
18 Defendant breaches this agreement, the Commission may petition the Court to
19 vacate the Final Judgment and restore this action to its active docket. Nothing in
20 this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take
21 legal or factual positions in litigation or other legal proceedings in which the
22 Commission is not a party.


23 13. Defendant hereby waives any rights under the Equal Access to Justice
24 Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any
25 other provision of law to seek from the United States, or any agency, or any
26 official of the United States acting in his or her official capacity, directly or
27 indirectly, reimbursement of attorney's fees or other fees, expenses, or costs
28 expended by Defendant to defend against this action. For these purposes,

1 Defendant agrees that Defendant is not the prevailing party in this action since the
2 parties have reached a good faith settlement.

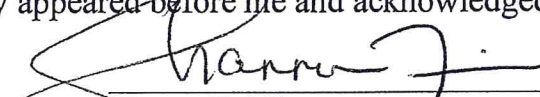
3 14. Defendant agrees that the Commission may present the Final
4 Judgment to the Court for signature and entry without further notice.

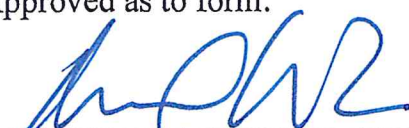
5 15. Defendant agrees that this Court shall retain jurisdiction over this
6 matter for the purpose of enforcing the terms of the Final Judgment.

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8 Dated: July 5, 2018


Emilio Francisco

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10 On July 5, 2018, 2018, Emilio Francisco, a person
11 known to me, personally appeared before me and acknowledged executing the
12 foregoing Consent.


Notary Public
Commission expires: April 6, 2019

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15 Approved as to form:
16 



17
18 Richard A. Weintraub
19 Weintraub Law Group PC
20 10085 Carroll Canyon Road, Suite 230
21 San Diego, CA 92131
22 (858) 566-7010
23 Attorney for Defendant Emilio Francisco
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PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is:

U.S. SECURITIES AND EXCHANGE COMMISSION,
444 S. Flower Street, Suite 900, Los Angeles, California 90071
Telephone No. (323) 965-3998; Facsimile No. (213) 443-1904.

On September 27, 2018, I caused to be served the document entitled **CONSENT OF EMILIO FRANCISCO** 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 this agency’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.

PERSONAL DEPOSIT IN MAIL: By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

EXPRESS U.S. MAIL: Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with Express Mail postage paid.

HAND DELIVERY: I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

UNITED PARCEL SERVICE: By placing in sealed envelope(s) designated by United Parcel Service (“UPS”) with delivery fees paid or provided for, which I deposited in a facility regularly maintained by UPS or delivered to a UPS courier, at Los Angeles, California.

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.

I declare under penalty of perjury that the foregoing is true and correct.

Date: September 27, 2018

/s/ John B. Bulgozdy

John B. Bulgozdy

1 **SEC v. Emilio Francisco, et al.**
2 **United States District Court—Central District of California**
3 **Case No. 8:16-cv-02257-CJC-DFM**

4 **SERVICE LIST**

5 **Emilio Francisco (served by email and UPS)**
6 15 Rue Saint Cloud
7 Newport Beach, CA 92660
8 Email: Emilio@drkawcenter.com
9 *Pro se*

10 **David R. Zaro, Esq. (served by CM/ECF only)**
11 **Edward G. Fates, Esq. (served by CM/ECF only)**
12 **Allen Matkins Leck Gamble Mallory & Natsis LLP**
13 865 S. Figueroa Street, Suite 2800
14 Los Angeles, CA 90017
15 Email: dzaro@allenmatkins.com
16 ***Attorney for Receiver Thomas A. Seaman, Receiver for: Defendant***
17 ***Caffe Primo International, Inc.; Defendant SAL Assisted Living, LP;***
18 ***Defendant SAL Carmichael, LP; Defendant SAL Citrus Heights, LP;***
19 ***Defendant SAL Kern Canyon, LP; Defendant SAL Phoenix, LP;***
20 ***Defendant SAL Westgate, LP; Defendant Summerplace at Clearwater,***
21 ***LP; Defendant Summerplace at Correll Palms, LP; Defendant***
22 ***Summerplace at Sarasota, LP; Defendant TRC Tucson, LP; Defendant***
23 ***Clear Currents West, LP; Defendant Caffe Primo Management, LP;***
24 ***Defendant Caffe Primo Management 102, LP; Defendant Caffe Primo***
25 ***Management 103, LP; Defendant Caffe Primo Management 104, LP;***
26 ***Defendant Caffe Primo Management 105, LP; Defendant Caffe Primo***
27 ***Management 106, LP; Defendant Caffe Primo Management 107, LP;***
28 ***Defendant Caffe Primo Management 108, LP***