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Thomas W. McNamara

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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10
11 PEOPLE OF THE STATE OF CALIFORNIA,
by and through the COMMISSIONER OF
12 FINANCIAL PROTECTION AND
INNOVATION,

13 Plaintiff,

14 v.

15 SILVER SADDLE COMMERCIAL
16 DEVELOPMENT, LP, a California limited
partnership; SILVER SADDLE RANCH &
17 CLUB, INC., a California corporation; THE
GALILEO COMMERCIAL PROPERTY
18 OWNERS ASSOCIATION, INC., a California
non-profit corporation; THOMAS M. MANEY,
19 an individual; ACCELERATED ASSETS, LLC,
an Arizona limited liability company; SS
20 PURCHCO, LLC, a Delaware limited liability
company; PAHRUMP VALLEY REAL
21 ESTATE CO., LLC, a Nevada limited liability
company; and DOES 1 through 100, inclusive,

22 Defendants.

23 And,

24 MARIAN G. DUCREUX, an individual;
25 CLIFFORD J. REYNOLDS, an individual;
WAYNE A. PEDERSEN, an individual; and
26 Relief Does 1 through 10, inclusive,

27 Relief Defendants.
28

Case No. 37-2019-00049151-CU-MC-CTL

**NOTICE OF RECEIVER'S MOTION
FOR APPROVAL OF PROPOSED
DISTRIBUTION METHOD AND
PROCEDURES**

IMAGED FILE

Judge: Hon. Joel R. Wohlfeil
Dept.: C-73
Action filed: September 9, 2019
Trial Date: July 9, 2021

Hearing Date: March 19, 2021
Time: 9:00 a.m.

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TO THIS HONORABLE COURT, THE PARTIES, AND OTHER PARTIES IN INTEREST AND/OR THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on March 19, 2021 at 9:00 a.m., or as soon thereafter as this matter may be heard in the above-entitled Court, located at 330 W Broadway, San Diego, California 92101, Thomas W. McNamara, as Court-appointed receiver (“Receiver”), will and hereby does respectfully move this Court for an Order approving his proposed distribution method and procedures.

This motion is based on this application and memorandum of points and authorities, the pleadings and files in this matter, and any documentary or other evidence submitted at any hearing on the application.

Dated: February 8, 2021

MCNAMARA SMITH LLP

By: 

Cornelia J. B. Gordon
*Attorneys for Receiver,
Thomas W. McNamara*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Introduction**

3 The purpose of this motion is to obtain approval of a distribution method and plan
4 developed by the Court-appointed Receiver, Thomas W. McNamara (the “Receiver”). Prior to
5 filing, the Receiver provided a draft of the motion to Plaintiff, the Department of Financial
6 Protection and Innovation (“DFPI”), and Defendant Thomas Maney. The DFPI takes no position
7 on the motion and Defendant Maney has not communicated his final stand at the time of filing.

8 The Receiver requests this relief now in order to make a first interim distribution, which
9 will allow him to distribute proceeds from the sale of the Silver Saddle Ranch to investors as
10 soon as is practicable. Due to the limited assets in the Receivership Estate’s possession, none of
11 the investors will be made whole, but the Receiver’s intent is to do what he can to distribute the
12 funds he has acquired on an expedited basis. Accordingly, the Receiver requests the Court’s
13 approval of a distribution method and plan and leave to start the distributions process
14 immediately, consistent with the procedures set forth below, rather than wait until the case is
15 near its conclusion before making one all-encompassing distribution.

16 **II. Background**

17 This action was brought by the DFPI to enjoin alleged ongoing unlawful conduct by
18 Defendants related to the offering and sale of unqualified, non-exempt securities to thousands of
19 unsophisticated investors. Those securities were part of Defendants’ “LandBanking Plus”
20 investment offering, in which investors purchased fractional interests in vacant land located in
21 Kern County, California (known as the “Galileo Project”). After filing their complaint, the DFPI
22 obtained, among other things, appointment of the Receiver to marshal certain assets of the
23 Defendants for ultimate distribution to the victimized investors. (See Preliminary Injunction
24 (“PI”), ROA # 66.) With the sale of the Silver Saddle Ranch, the Receivership Estate has
25 sufficient funds to conduct a first interim distribution to those investors.

26 **III. Pro Rata Distribution Method**

27 As the Receiver noted in his Preliminary Report, investors paid tens of millions of dollars
28 into the Galileo Project. Unfortunately, the land is worth nowhere near the amount invested and

1 aside from the Ranch, the Galileo Project land is the only material asset of the Receivership
2 Estate. The assets held in the Receivership Estate will not make the investors whole.¹ The
3 Receiver therefore proposes to make pro rata distributions to each investor based on the amount
4 each investor paid into the Galileo Project. This will involve (1) calculating each investor's
5 claim and then (2) dividing this by the aggregate amount of all investor claims to get a pro rata
6 figure which (3) will be multiplied by the amount available for distribution.

7 For example, assume that Investor A's claim is \$30,000, Investor B's claim is \$50,000,
8 and aggregate investor claims of \$1,000,000. In that scenario, Investor A's pro rata share is 3%
9 and Investor B's pro rata share is 5%. If \$100,000 is distributed, then Investor A would get
10 \$3,000 and Investor B would get \$5,000.

11 Under the Receiver's proposal each investor's claim² will include:

- 12 1) The sum of the investor's recorded payments related to the purchase of the undivided
13 interest in the Galileo Project; and
- 14 2) The sum of recorded payments made into the Galileo Project's Capital Improvement
15 Fund.

16 Once the claims of all investors are finalized, then the aggregate amount of the investors' claims
17 will be determined. Each investor's claim will be divided into the aggregate claim figure to
18 determine each investor's pro rata share of any distribution.

19 ///

21 ¹ As the Receiver explained in his Preliminary Report:

22 Beginning June 2018, full units of the Galileo Project were priced at \$31,990
23 (\$41,990 less "First Day Incentive" of \$10,000) (which included \$2,000 for the
24 Capital Improvement Fund described below). Half and quarter units were priced
25 at \$21,990 and \$15,990. At \$31,990 per unit, the sale of 4,000 units would
26 aggregate to \$127 million or \$127,000 per acre. By any measure, such pricing
27 was astronomical and not supported by any market metric.

28 (ROA # 65, p. 12-13 [citation omitted].)

² The Receiver intends to utilize the data maintained by Equiant, which is an accounts receivable
servicer and acted as the third-party billing administrator for Silver Saddle, and internal Silver
Saddle records to calculate the preliminary investor claim figures which will be provided to the
investors for confirmation or challenge as described more fully below.

1 Under the circumstances, a pro rata distribution to investors is the most equitable course,
2 and one which is commonly proposed and approved by courts in similar situations. (Cf. *Mills v.*
3 *Superior Court of Fresno County* (1937) 20 Cal.App.2d 360, 363 [receiver for dissolved
4 partnership authorized to make “payment of the debts of the partnership or the pro rata
5 distribution of the assets among the creditors in the event the claims cannot be paid in full”];
6 *Commodity Futures Trading Com’n v. Topworth Intern., Ltd.* (9th Cir. 1999, as amended Mar.
7 23, 2000) 205 F.3d 1107, 1109 [affirming district court’s approval of receiver’s plan to
8 “distribut[e] any remaining assets to investors pro rata according to their net investment”];
9 *Securities and Exchange Commission v. Schooler* (S.D. Cal., June 17, 2019) Case No. 3:12-CV-
10 2164-GPC-JMA, 2019 WL 2501881, at *1 [adopting receiver’s proposed distribution plan,
11 which “determine[ed] investor claims ‘by the total payment made by each investor to the
12 Receivership Entities, less all payments received by each investor from the Receivership
13 Entities”].) The Receiver submits that in this case, as in the cited cases, a pro rata distribution is
14 the most equitable means of dividing the Receivership Estate’s limited assets among investors.³

15
16 ³ Some investors received “free” lots of land in California City or Pahrump, Nevada as an
17 incentive for paying cash-in-full for the fractional interest purchases. The Receiver evaluated if
18 and how to take these free lots into account when calculating investor loss (*i.e.*, subtracting the
19 lot value from the total invested, since the lot could be considered a gain and therefore a loss
offset, or by finding a way to return the lots back to the Receivership Estate for liquidation and
redistribution). Ultimately, the Receiver determined it was not in the best interests of the Estate
to take either approach for a number of reasons.

20 First, the lots are likely worth very little. Defendants routinely purchased the California City lots
21 for about \$500 at tax sales and the Pahrump lots were transferred from Defendant Accelerated
22 Assets to Defendant SSCD for little or no consideration, as best the Receiver has been able to
23 determine. The Receiver does not have an efficient and cost-effective way to determine the
24 value of each lot and, absent expensive appraisals which would likely cost substantially more
than the value of the lots, he would be left to make individualized, speculative valuations for
each lot. Beyond practical considerations, investors who paid cash in full are likely to have the
most significant losses, and it seems inequitable to reduce their recovery based on a speculative
valuation.

25 As to the alternative – attempting to retake and sell the lots, with the aim of distributing the
26 proceeds from those sales to the other investors – this is not economically feasible. It would
27 require a significant investment of resources (identifying the lots, tracking chain of title, and, if
investors were to object, likely litigating the turnover) with the result being the Receiver
28 obtaining what are generally unsalable, minimal-value lots, which would then have to be sold.
Accordingly, the Receiver has determined that it is in the best interests of the Receivership Estate
to calculate loss without consideration of the lots received by paid-in-full investors.

1 **IV. Proposed Distribution Procedure**

2 This motion seeks to create a plan of distribution that can be applied to the first interim
3 distribution and any subsequent distributions. The proposed procedures for the administration of
4 the restitution fund are set out in the proposed order being submitted herewith.⁴ However, the
5 Receiver’s proposed procedures can be summarized as follows:

6 **A. Preliminary Determination of Claims**

7 First, the Receiver will make a preliminary determination of each investor’s claim based
8 on third party billing administrator and internal records – that is, the total paid into the Galileo
9 Project and Capital Improvement Fund as described above (the “Preliminary Determination of
10 Claims”).

11 **B. Notice to Investors**

12 After the Preliminary Determination of Claims has been calculated, the Receiver will
13 provide notice of the determinations to the investors through: (i) notice posted on the Receiver’s
14 website, (ii) emails to investors (where email contact information is available), and (iii) letters
15 sent via the U.S. mail to investors. The proposed notice and letter are attached hereto as
16 Exhibit A.

17 **C. Challenges to the Receiver’s Preliminary Determinations of Claims**

18 The notice will explain that investors have thirty (30) days from the date the notice was
19 transmitted to challenge the Receiver’s Preliminary Determination of Claims in writing. If no
20 challenge is received before this thirty-day deadline has passed, the Receiver’s determination of
21 the investors’ claims will become final the following day (the “Bar Date”). Challenges to the
22 Receiver’s determinations submitted after the deadline will be rejected. The deadline will,
23 however, be extended an additional fourteen (14) days after the Bar Date for any claimant whose
24 mailed notice was returned to the Receiver as undeliverable and who did not open or view his or
25 ///

26 _____
27 ⁴ At the time of filing of this motion, the Receiver will email investors to alert them of the filing,
28 the date oppositions are due, and the hearing date. This will allow investors to oppose the
motion if they wish. The email will include a link to the Receiver’s website where the motion
will be posted for investors to review.

1 her emailed notice. In such cases, the Receiver will make a reasonable effort to obtain accurate
2 mailing and email addresses and resend the notice, if feasible.

3 **D. Review of Challenges to the Receiver’s Determinations**

4 The Receiver and his counsel or staff will review and evaluate all challenges transmitted
5 to the Receiver on or before the Bar Date. The Receiver will exercise his discretion in
6 determining whether to alter the preliminary determinations based on the evidence provided by
7 challenging investors. The Receiver will notify challenging investors of his determination within
8 fourteen (14) days of the Bar Date, or as soon thereafter as practicable, by sending his Final
9 Determination of Claims as discussed below.

10 **E. Publication of Final Determination of Claims**

11 The Receiver will provide notice of his Final Determination of Claims to investors
12 through a notice on the case website and by sending email and/or mail to investors. The
13 Receiver will then file a Notice of Final Determination of Claims and Proposed First Interim
14 Distribution with the Court. Any investor who sent a written challenge to the Receiver’s claims
15 determination which was denied may submit a written objection to the Court within fourteen (14)
16 days of the Receiver’s filing of the Final Determination of Claims. The deadline to object to the
17 Court is referred to herein as the “Court Objection Bar Date.”

18 **F. First Interim Distribution and Updated Pro Rata Calculations**

19 Once the Court Objection Bar Date has passed, the Receiver will file a response to any
20 investor objections filed with the Court, so that the Court can evaluate the Receiver’s
21 calculations. Once the Court has resolved any investor objections, the Receiver will file a
22 Proposed Order of Final Determination of Claims and First Interim Distribution. Upon issuance
23 of this Order, the Receiver will initiate a first interim distribution. Investor payments will be
24 made by check.

25 Investors will have ninety (90) days from the date of mailing to negotiate their check. If
26 a distribution check is not cashed within 90 days after it is mailed to the claimant, the Receiver

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28 ///

1 will cancel payment on that check and will not make any further distributions to that claimant.⁵
2 Any claimant who is otherwise entitled to a distribution but who failed to cash a distribution
3 check within the 90 days, may provide the Receiver with a written notice asserting his or her
4 claim to that cancelled distribution check and setting forth a current, deliverable address within
5 45 days after payment on that check has been canceled. Investors who take neither of these
6 actions (cashing the check within 90 days or sending written notice of a claim to the Receiver in
7 the 45 days thereafter) will be deemed to waive any claim to that distribution and will be forever
8 barred from receiving that distribution or asserting any claim against the Receivership Estate or
9 the Receiver. The claim will be expunged and the claimant will not be eligible to receive any
10 further distributions.

11 **G. Subsequent Distributions**


12 The Receiver will make subsequent interim and final distributions at his discretion
13 consistent with Order of Final Determination of Claims. Expunged claims will be deducted from
14 the aggregate claim amount when calculating subsequent distributions.

15 **V. Conclusion**

16 The Receiver respectfully requests that the Court approve his proposed distribution
17 procedures.

18
19 Dated: February 8, 2021

MCNAMARA SMITH LLP

20 By: 
21 _____
22 Cornelia J. B. Gordon
23 *Attorneys for Receiver,*
24 *Thomas W. McNamara*

25
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27 _____
28 ⁵ The Receiver will make his best effort to locate claimants whose distribution checks which are returned undeliverable.

EXHIBIT INDEX

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Exhibit

Page

A Proposed Notice to Investors 1

EXHIBIT A

Silver Saddle Receivership
People v. Silver Saddle Commercial Development, LP, et al.
San Diego County Superior Court
Case No. 37-2019-00049151-CU-MC-CTL

NOTICE TO SILVER SADDLE INVESTORS REGARDING CLAIM DETERMINATION

Investor Name
Investor Mail Address
Investor Email Address

We have identified you as a “Silver Saddle investor,” that is someone who invested in the Galileo Project (sometimes called LandBanking Plus).

Thomas Maney and the companies running these investments (the “Defendants”) were sued by the California Department of Financial Protection and Innovation (“DFPI”) in 2019.¹ Thomas W. McNamara was appointed as the Receiver in this case. As the Receiver, it is Mr. McNamara’s job to preserve the assets of the Receivership Estate. Last year, the Receiver obtained Court approval to sell the Silver Saddle Ranch & Club to a third party. That sale closed in January and the Receiver is now preparing to send money from the sale to the Silver Saddle investors.

The Receiver’s goal is to maximize the amount of money that each of the Silver Saddle investors will receive from the sale of the Defendants’ assets. However, because the ranch and the Galileo Project land are worth far less than the investors paid into the Galileo Project, no investor will be returned all of the money he or she invested. Instead, each investor will receive a share of the proceeds proportionate to his or her investment.

A simple example can help explain how this works. Let’s assume Investor A invests \$200, Investor B invests \$500, and Investor C invests \$300 for a total of \$1,000 invested. In other words, Investor A provided 20%, Investor B provided 50%, and Investor C provided 30% of the total investment. And let’s assume the receivership has \$100 to distribute to the investors. Investor A will receive \$20 (20% of the distribution), Investor B will receive \$50 (50% of the distribution) and Investor C will receive \$30 (30% of the distribution).

Claim Determination

We have reviewed records from Equiant and Silver Saddle which detail the investor payments recorded by the Defendants. We then calculated each investor’s total claim by adding (1) the amount he or she paid toward the purchase of an undivided fractional interest in the Galileo Project and (2) the amount contributed to the Galileo Capital Investment Fund (“CIF”). Based on these calculations, we have determined your claim is \$ _____.

Investor Review of Claim Determination

Every investor should carefully review the Receiver’s claim determination. **If you agree that the claim determination is correct, you do not need to do anything and can skip to the section labeled “Distribution” below.**

If you think the Receiver’s claim determination is wrong, you have 30 days from _____ to send the Receiver’s office a letter or email challenging the calculations. At that time, you must provide all the information and documents supporting your challenge, for example bank statements and the front and back of _____

¹ More information about the case is available on the Receiver’s website, at <https://regulatoryresolutions.com/case/people-v-silver-saddle-commercial-development-lp-et-al/>.

cancelled checks. You can either mail the information to:

Silver Saddle Receiver
c/o Regulatory Resolutions
655 W. Broadway, Suite 900
San Diego, CA 92101

Or send via email at info@regulatoryresolutions.com.

Receiver's Review of Challenges and Final Determination

The Receiver will review each challenge and supporting documentation, and we may need to contact investors directly during this process to ask follow-up questions. Once final determinations are reached, every investor who made a challenge will be notified via mail and/or email and by posting notice on the receivership website of the final outcome.

Receiver's Notice of Final Claim Determinations and Proposed First Interim Distribution

After the Receiver reaches final determinations on all claims, a Notice of Final Determination and Proposed First Interim Distribution will be filed with the Court. Notice of this filing will be provided to investors by email and via posting on the receivership website.

Timeline for Court Challenge to Receiver's Confirmation of Claim Determination

Any investor who challenged the claim determination and disagrees with the Receiver's final determination of the investor's claim may submit an objection to the Court with 14 days of the filing of the Receiver's Notice of Final Claim Determination and Proposed First Interim Distribution. The Receiver will reply to any objections and the Court will rule. After the Court does so, the Receiver will submit a proposed Order to the Court consistent with the ruling.

If no objections are filed with the Court, the Receiver will promptly file a proposed Order approving the Receiver's claim determinations and First Interim Distribution.

Distribution

After the Court enters its Order, the Receiver intends to issue investor checks promptly. Investors will have 90 days to cash the checks. We anticipate there will be a second distribution if the Court rules that the Galileo parcel can be sold to a third party. The Receiver will provide additional information with the distribution(s).

* * *

If you believe the email or mail address the Receiver has for you is incorrect, you should immediately provide the correct address(es) to the Receiver by sending an email to: info@regulatoryresolutions.com, and write in the subject line, "Silver Saddle."

1 **PROOF OF SERVICE**

2 I, Jill Jacobs, declare as follows:

3 I am an employee of a member of the bar of this Court at whose direction was made in the
4 County of San Diego, State of California. I am over the age of 18 and not a party to the within
action; my business address is 655 West Broadway, Suite 900, San Diego, California 92101.

5 On February 8, 2021, I served the foregoing document(s) described as:

- 6 • **NOTICE OF RECEIVER’S MOTION FOR APPROVAL OF PROPOSED DISTRIBUTION METHOD AND PROCEDURES**
- 7
- 8 • **[PROPOSED] ORDER GRANTING RECEIVER’S MOTION FOR APPROVAL OF PROPOSED DISTRIBUTION METHOD AND PROCEDURES**
- 9

10 on interested parties in this action by sending the original true copy(ies) thereof as follows:

11 By Electronic Service: I caused the document(s) to be electronically filed with the Clerk of
12 the Court using the Court’s e-filing system through One Legal and choosing e-service on the
persons at the email address(es) listed below.

13 **VIA E-SERVICE**

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15 Boryana Arsova
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14 robertkvassay@yahoo.com
15 *Relief Defendant, In Pro Per*

16 **VIA E-SERVICE**

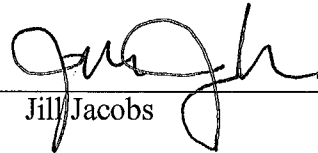
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18 Emily Rae
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23 Fax: 213-612-2499
24 mtu@orrick.com; emily.rae@orrick.com
25 *Attorneys for Defendants SS Purchco, LLC;
26 Pahrump Valley Real Estate Co., LLC; and
27 Accelerated Assets, LLC*

28 **VIA E-SERVICE**

Clifford J. Reynolds
2525 North 20th Avenue
Pasco, WA 99301
cliffordreynolds@yahoo.com
Defendant, In Pro Per

12 (STATE): I declare under penalty of perjury under the laws of the State of California that the
13 above is true and correct.

14 Executed February 8, 2021, in San Diego, California.

15 
16 _____
17 Jill Jacobs