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5 Court Appointed Receiver
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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION
9

10	SECURITIES AND EXCHANGE	)	Case No.: SACV09-399 DOC
	COMMISSION	)	(RNBx)
11)	
	Plaintiff,	)	ASSIGNED JUDGE:
12		)	HON. DAVID O. CARTER
	vs.)	
13		)	NOTICE OF MOTION AND MOTION
	SUN EMPIRE, LLC, ECAM, LLC	)	FOR ORDER APPROVING
14	a/k/a EMPIRE CAPITAL ASSET	)	RECEIVER'S THIRD INTERIM
	MANAGEMENT, DELILAH A	)	REPORT AND SECOND ACCOUNT,
15	PROCTOR, SHAUNTEL A. MCCOY,	)	MEMORANDUM OF POINTS AND
	SUN INVESTMENT SAVINGS AND	)	AUTHORITIES IN SUPPORT
16	LOAN, SUN GROUP, BICH QUYEN	)	THEREOF
	NGUYEN, and JOHNNY E.)	
17	JOHNSON,	)	[FILED CONCURRENTLY WITH
		)	RECEIVER'S THIRD INTERIM
18	Defendants.	)	REPORT AND SECOND ACCOUNT]
)	
19	SUN COMMERCE AND INVESTMENT,)	
	INFINITY INVESTMENT CLUB,	)	DATE: August 1, 2011
20	LLC, SUNLAND INVESTMENT CLUB,	)	TIME: 8:30 A.M.
	LLC, RECOMMENDED SERVICES,)	COURTROOM: 9 D
21	INC. and TYCOON CLUB)	
	INTERNATIONAL, LLC,)	
22)	
	Relief Defendants.)	
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27 TO: THE HONORABLE DAVID O. CARTER, JUDGE, UNITED STATES
28 DISTRICT COURT, INTERESTED PARTIES AND COUNSEL OF RECORD:

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2 **NOTICE IS HEREBY GIVEN** that on August 1, 2011, at 8:30
3 a.m., in Courtroom 9-D, of the above-entitled Court, located
4 at 411 West Fourth Street, Santa Ana, California, 92701, the
5 Receiver herein, Richard Weissman ("Receiver"), will move the
6 Court for Orders approving the Receiver's Third Interim Report
7 and Second Account ("Third Report").

8 This Motion is made on the grounds:

9 (1) Concurrently with this Notice of Motion and Motion,
10 the Receiver is filing his Third Interim Report and Second
11 Account ("Third Report") which describes the Receiver's
12 actions and services during the period of February 1, 2010
13 through March 31, 2011 ("Reporting Period") in connection
14 with: (A) accounting for and tracing funds invested by the
15 victims of the Defendants' fraudulent investment scheme; (B)
16 establishing and proving damages incurred by the victims; and
17 (C) investigating potential claims of the Receivership; (D)
18 accounting for, tracing and seeking recovery of assets of the
19 Receivership; and (E) carrying out the Receiver's other duties
20 under the Orders appointing Receiver;

21 2. By this Motion and based upon the Third Report, the
22 Receiver is requesting that the Court issue an Order Approving
23 the Receiver's Third Report and granting additional relief as
24 requested in the Third Report.


25 This Motion is based on this Notice of Motion and Motion;
26 the Memorandum of Points and Authorities filed herewith; the
27 Third Report which is filed concurrently herewith, and the
28 exhibits filed with the Third Report; the Preliminary

1 Injunctions and Orders Appointing Receiver issued by the
2 Court, respectively, on April 30, 2009 and May 26, 2009; and
3 upon such additional orders, pleadings and oral and
4 documentary evidence as may be considered in connection with
5 the hearing and determination of this Motion and the Third
6 Report.

7 Dated: June 29, 2011

Respectfully submitted,

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Richard Weissman,
Receiver for Sun Empire, LLC, Sun
Commerce and Investment, Sun Group,
Sun Investment Savings and Loan,
ECAM, LLC, et al.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION.**

3 This action was brought by the Securities and Exchange
4 Commission ("SEC") to enjoin and restrain Defendants Bich
5 Quyen Nguyen ("Nguyen"), Johnny E. Johnson ("Johnson") and
6 Delilah A. Proctor's ("Proctor") (collectively, "Defendants")
7 violations of Section 15(a) of the Exchange Act, 15 U.S.C. §
8 78o(a) and fraud, and to seek civil penalties and restitution
9 for the victims of Defendants' fraudulent investment schemes.

10 The Receiver was appointed as permanent receiver under
11 orders issued by the Court on April 30, 2009 and May 26, 2009,
12 respectively ("Receivership Orders"), and was ordered to take
13 possession and control of the assets of certain entities,
14 including, without limitation, Sun Empire, ECAM, LLC, Empire
15 Capital Asset Management, Sun Investment Savings and Loan, Sun
16 Commerce and Investment, Infinity Investment Club, LLC,
17 Sunland Investment Club, LLC, Recommended Services, LLC,
18 Tycoon International Investment Club, LLC, and their
19 subsidiaries and affiliates ("Receivership Entities"). Under
20 the Receivership Orders the Receiver was authorized and
21 directed to account for investors' funds and to recover assets
22 for the benefit of the Receivership.

23 **II. PROCEDURAL HISTORY**

24 The Receiver filed his First Interim Report ("First
25 Report") on April 29, 2009, and his Second Interim Report and
26 First Account ("Second Report") on or about January 22, 2010.
27 The Court approved both the First and Second Reports in its
28 Order entered on February 24, 2010. (Doc. 174)

1 On or about January 12, 2011 the Court issued a Final
2 Judgment of Permanent Injunction and Other Relief ("Judgment")
3 (Docket No. 362.) and an Order Granting Disgorgement
4 ("Disgorgement Order") (Docket No. 325) against Defendants
5 Bich Quyen Nguyen, Johnnie Johnson and Delilah Proctor
6 (collectively, "Defendants").

7 This Memorandum of Law is filed in support of Receiver's
8 Third Interim Report and Second Account ("Third Report") filed
9 concurrently herewith.

10 **III AN ORDER APPROVING RECEIVER'S THIRD REPORT AND PROVIDING**
11 **REQUESTED INSTRUCTIONS TO RECEIVER IS NECESSARY AND**
12 **PROPER.**

13 **A. The Receiver's Third Report Complies with Rule 66 and**
14 **Should be Approved by the Court.**

15 The receiver shall serve and file with the Court a report
16 showing receipts and expenditures of the Receivership and a
17 report of the actions and transactions performed by the
18 Receiver during the reporting period. Fed.R.Civ.P. 66, L.R.
19 66-6.1.

20 Notice of hearing on all reports by the receiver must be
21 given to all parties and creditors of the receivership
22 entities. Fed.R.Civ.P. 66, L.R. 66-6.7(c).

23 The Receiver's Third Report, which is signed under penalty
24 of perjury, describes the activities undertaken and services
25 provided by the Receiver and his staff during the period of
26 January 1, 2010 through March 31, 2011 ("Reporting Period").
27 The Receiver is seeking an Order approving and ratifying the
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1 acts and transactions of the Receiver for the Reporting
2 Period.

3 **B. Instructions of Court Regarding Implementation of**
4 **Claims Administration Plan is Appropriate at this**
5 **Time Under The Circumstances Of This Case.**

6 It is well established that a district court has the
7 equitable authority to impose a receivership to preserve
8 assets against further misappropriation and dissipation, and
9 to clarify the financial affairs of the entities involved for
10 the benefit of innocent investors. See *SEC v. Wencke*, 622
11 F.2d 1363, 1372 (9th Cir. 1980) ("*Wencke II*"); *SEC v. Wencke*,
12 577 F.2d 619, 623 (9th Cir. 1978) ("*Wencke I*"); *SEC v. American*
13 *Principals Holding, Inc.*, 962 F.2d 1402, 1405-06 (9th Cir.
14 1992); *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1105
15 (2nd Cir. 1972). As the Ninth Circuit stated in *Wencke II*:

16 Appointment of the receiver in this case furthered several
17 subsidiary policies of the securities laws. The assets of
18 the corporate entities were marshaled and preserved
19 against further misappropriation and dissipation; the
20 financial affairs of the entities needed to be clarified
21 for the benefit of innocent shareholders; the receiver and
22 his staff could conduct independent investigation of
23 claims the entities might have against former management
24 or other parties, prosecution of which would benefit
25 investors and deter future violations; and defenses
26 against possibly fraudulent or collusive actions brought
27 against the entities could be discovered and asserted. As
28 we held in *Wencke I*, these are legitimate justifications

1 for the district court's imposition of a receivership.
2 *Wencke II*, 622 F.2d at 1372.

3 As the Court of Appeals for the Ninth Circuit stated in
4 *SEC v. Wencke*, 783 F.2d 829 (9th Cir. 1986) ("*Wencke III*"):

5 Our court, like many others has recognized that as
6 part of court's equitable powers under the Securities Acts
7 of 1933 and 1934, it may impose receiverships in
8 securities fraud action to prevent further dissipation of
9 defrauded investors' assets. (citing *SEC v. Wencke*, 622
10 F.2d at 1369). . . .

11 The primary purpose of allowing courts to establish
12 receiverships in securities fraud actions is to prevent
13 further dissipation of the assets of the defrauded
14 investors; the use of summary post-judgment proceedings
15 helps to effectuate this.

16 *Wencke III*, *supra*, 783 F.2d at 337, n. 9.

17 As reported in the Third Report, the Receiver is also
18 seeking instructions regarding the development of a proposed
19 claims administration procedure that would give notice to
20 potential claimants/victims of their right to file claims and
21 to determine the claimants' eligibility to receive pro-rated
22 distributions on account of their proven investment losses. As
23 noted in *Wencke*, *supra*, the Court is empowered in cases such as
24 this case to marshal and preserve assets. Likewise, the Court
25 has broad discretion to determine a procedure for the
26 administration of victims' claims and for distribution through
27 such a claims procedure on a prorated basis. *United States v.*
28 *Durham*, 86 F.3d 70,72-73 (5th Circ. 1996).

1 Pursuant to 28 U.S.C. § 754, federal receivers have broad
2 authority to administer, retrieve, and control of assets
3 belonging to the receivership. *SEC v. Ross*, 504 F.3d 1130,
4 1145 (9th Cir.2007). District Courts have broad equitable
5 authority to administer and supervise an equity receivership.
6 *SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th
7 Cir.2005). This power includes the power to authorize a
8 Receiver to administer a claims procedure. *SEC v. Capital
9 Consultants, supra*, at p. 737.

10 Given the broad plenary power of the Court in cases such
11 as this case, the Receiver's requests for orders for turnover
12 of the Frozen Funds and instructions regarding a proposed
13 claims administration process are entirely proper and timely
14 in this case. The requested Orders and instructions will
15 facilitate the Receiver's efforts to marshal assets and the
16 development of a proposed claims administration plan that will
17 enable the Court to determine the appropriate measure of
18 qualified investor losses and the proper *pro rata* recovery by
19 investors/victims.

20 **IV. CONCLUSION.**

21 For all the foregoing reasons, this Court is respectfully
22 requested to issue an Order approving the Receiver's Third
23 Report and Second Account as prayed for therein.

24 DATED: June 29, 2011

Respectfully submitted,

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27 Richard Weissman,
Receiver