

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

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

SUN EMPIRE, LLC, ECAM, LLC a/k/a
EMPIRE CAPITAL ASSET
MANAGEMENT, DELILAH A.
PROCTOR, SHAUNTEL A. MCCOY,
SUN INVESTMENT SAVINGS AND
LOAN, SUN GROUP, BICH QUYEN
NGUYEN, and JOHNNY E. JOHNSON,

Defendants,

SUN COMMERCE AND
INVESTMENT, INFINITY
INVESTMENT CLUB, LLC, SUNLAND
INVESTMENT CLUB, LLC,
RECOMMENDED SERVICES, INC.,
and TYCOON CLUB
INTERNATIONAL, LLC,

Relief Defendants.

Case No. SACV09-399 DOC (RNBx)

**ORDER REGARDING CLAIMS
PROCEDURE AND DISTRIBUTION
PLAN**

1 After considering the filings in connection with the Receiver's Status Brief
2 Re: Proposed Claims Procedure and Distribution Plan, hearing argument and
3 investor comments concerning a proposed claims procedure and distribution plan,
4 and reviewing the record in this case, the Court ORDERS:

5
6 1. The money in the following bank accounts, as set forth on Exhibit I
7 to the Receiver's Third Report and Second Account to Court (Docket Doc. No.
8 344), shall be transferred to the Receiver's control:

- 9 • Wells Fargo account XXXXXXXXX4047 in the name of ASHYLA
10 Investments, Inc.
- 11 • Wells Fargo account XXXXXXXXX8779 in the name of Baja
12 Energy, LLC
- 13 • Wells Fargo account XXXXXXXXX8753 in the name of Baja
14 Equities, LLC
- 15 • Wells Fargo account XXXXXXXXX8761 in the name of Baja Sand
16 and Gravel, LLC
- 17 • Wells Fargo account XXXXXXXXX3464 in the name of Cattleya
18 Investments Inc.
- 19 • Wells Fargo account XXXXXXXXX368 in the name of Delilah
20 Proctor
- 21 • Wells Fargo account XXXXXXXXX2600 in the name of Equity
22 Investments Source-One, Inc.
- 23 • Wells Fargo account XXXXXXXXX7315 in the name of Infinity
24 Investment Club, LLC
- 25 • Wells Fargo account XXXXXXXXX3753 in the name of Nara
26 Ventures, LLC
- 27 • Wells Fargo account XXXXXXXXX8003 in the name of
28 Recommended Services, Inc.

- 1 • Wells Fargo account XXXXXXXX1468 in the name of Rising
2 Phoenix Tech, LLC
- 3 • Wells Fargo account XXXXXXXX2410 in the name of Sun
4 Celebrity, LLC
- 5 • Wells Fargo account XXXXXXXX9490 in the name Sun Empire
6 LLC
- 7 • Wells Fargo account XXXXXXXX3829 in the name of Sun Empire
8 LLC
- 9 • Wells Fargo account XXXXXXXX5235 in the name of Sunland
10 Investment Club, LLC
- 11 • Wells Fargo account XXXXXXXX0679 in the name of the Real
12 McCoy Realty & Lending
- 13 • Wells Fargo account XXXXXXXX7570 in the name of Tycoon
14 Club International, LLC
- 15 • Bank of America Account XXXXXXXX6955 in the name of
16 Empire Capital Asset Management

17 2. The Receiver shall take reasonable steps to obtain claims from all
18 potential claimants (“Potential Claimants”) who invested with and transferred
19 money to the Defendants and their affiliates, and to other third parties as alleged
20 in the Third Amended Complaint and in the Receiver’s Third Report and Second
21 Account to Court. Where the Receiver deems necessary, after consultation with
22 the Commission, the Receiver may modify the claims procedure and distribution
23 plan, without prior Court approval, to facilitate a fair claims process to
24 accomplish the general purposes of this Order. There shall not be any
25 distribution to any Potential Claimant without prior Court approval.

26
27 **Claims Procedure**
28

1 3. The Receiver shall administer a claims procedure to identify the
2 victims of the investment scheme and determine who is eligible to receive a
3 distribution from the Distribution Fund.

4 4. With the assistance of the Commission staff, the Receiver shall
5 identify Potential Claimants from the records obtained during discovery in this
6 litigation.

7 5. The Court approves two documents to be distributed to Potential
8 Claimants in this action: (a) Investor Claim Letter and Notice of Bar Date
9 (attached as Exhibit 1), and (b) Proof of Claim (attached as Exhibit 2). These
10 two documents shall be referred to as the “Claims Packet.” The Receiver shall
11 use his best efforts to provide all Potential Claimants with the Claims Packet.
12 Both the Receiver and the Securities and Exchange Commission shall post the
13 Claims Packet on their respective websites at www.richardweissmanreceiver.com
14 and www.sec.gov. The Receiver shall email the Claims Packet to any Potential
15 Claimants whose email addresses the Receiver has. The Receiver shall use
16 certified mail to send the Claims Packet to as many Potential Claimants as the
17 Receiver is reasonably able to identify.

18 6. With the assistance of the Commission staff, the Receiver shall use
19 reasonable efforts to locate any Potential Claimant whose Claim Packet has been
20 returned by the U.S. Postal Service (“USPS”) as undeliverable. The Receiver
21 shall immediately re-mail by certified mail any returned, undelivered Claims
22 Packet for which the USPS has provided a forwarding address.

23 7. All Proofs of Claim (“POC”) submitted to the Receiver must be
24 postmarked on or before the Bar Date of October 31, 2011. Any POC
25 postmarked after the Bar Date may be rejected by the Receiver. To make a
26 claim, each Potential Claimant must fully complete the POC (attached as Exhibit
27 2), sign the POC under penalty of perjury, and provide the requested supporting
28 documentation of their claim. A Potential Claimant’s failure or refusal to

1 complete and sign the POC shall be an appropriate ground for rejecting a claim.
2 Filing a POC with the Receiver shall constitute consent to the personal
3 jurisdiction of the Court over all aspects of the claims process, including
4 adjudication of claims and distribution of funds.

5
6 **Calculation of Share of Distribution**

7 8. Based on the information submitted by the Potential Claimants and
8 the records the Receiver possesses, the Receiver shall determine the total amount
9 of each claim, pursuant to the following guidelines.

10 9. No Private Investment Club (“PIC”) leader shall be entitled to any
11 distribution. Although some of the leaders of the PICs may not have known that
12 the investments were fraudulent, people who sell securities have an obligation to
13 conduct due diligence when recommending investments. See Gebhart v. SEC,
14 595 F.3d 1034, 1042-43 (9th Cir. 2010). By failing to conduct due diligence
15 before recommending the investments to others, the PIC leaders helped facilitate
16 the substantial investor losses in this case. Moreover, the PIC leaders received
17 commissions and referral fees for recommending investors. For these reasons, it
18 is equitable to exclude the PIC leaders from any distribution. The following
19 persons are PIC leaders who should not share in any distribution: Joe Ramirez,
20 Josephine Vicencio, Jessie Imanil, Leo Gilo, Lipeng Galech, Mario Lopez, Su-
21 Chih Brewer, Shauntel McCoy, Sollie Vitente, Cynthia Kern, Susie Garcia,
22 Victor Cantu, Elizabeth Cantu, Cherry Pie Abracosa, and Carol Le. (See Docket
23 Doc. No. 238-16.) Moreover, any employee of Sun Investment Savings and
24 Loan, Sun Group, Sun Commerce, Sun Empire, LLC or Empire Capital Asset
25 Management shall not be entitled to share in any distribution.

1 10. The remaining Potential Claimants shall receive a pro rata share of
2 the Distribution Fund, taking into account any Early Distributions.¹ Based on the
3 information in the POCs, as verified by the Receiver’s records, the Receiver shall
4 calculate each Potential Claimants’ pro rata shares as follows:

5 (a) The Receiver shall calculate the “Aggregate of Principal
6 Investments” of all Potential Claimants based on information provided on
7 line 3 of the Potential Claimants’ POCs;

8 (b) The Receiver shall determine the “Distribution Fund Basis” by
9 totaling the funds available for distribution that are held by the Receiver
10 plus the total amount of Early Distributions (regardless of whether they
11 were commissions, returns on investment or interest) paid to the Potential
12 Claimants.

13 (c) The Receiver shall determine the claimants’ pro rata share
14 (percentage) by dividing the Distribution Fund Basis by the Aggregate of
15 Principal Investments.

16 (d) The Receiver shall distribute to each Potential Claimant the
17 pro rata share of his or her principal investment (line 3 of the POC) less any
18 Early Distributions. If a Potential Claimant’s Early Distributions exceed
19 the claimant’s pro rata share of the distribution, the Potential Claimant will
20 not receive any distribution.

21 11. After the Receiver has completed the calculations, the Receiver shall
22 prepare a Report and Motion for Distribution. The Report and Motion for
23 Distribution shall be filed no later than November 28, 2011. The Report and
24 Motion shall identify distributions to be paid to claimants, as well as the claims
25 that the Receiver rejected and the Receiver’s grounds for rejecting them.

26
27 ¹ Because this was a Ponzi scheme, any money paid to investors before this
28 lawsuit was filed – whether commissions, fees, interest or returns on investment
– is money that came from other investors. Therefore, any payments to
investors before this lawsuit was filed shall be “Early Distributions.”

1 12. At the same time the Receiver files his Report and Motion, the
2 Receiver shall notify each Potential Claimant who submitted a POC how his or
3 her claim was resolved. The notice may be served by electronic mail if an email
4 address was provided in the POC, or by regular mail if there is no email address.
5 The Receiver need not notify any Potential Claimant who had an invalid address
6 or who executed a USPS certified mail receipt and did not file a POC.

7 13. By filing a POC, each Potential Claimant also consents as follows:

8 (a) After the Receiver has filed his Report and Motion, any
9 Potential Claimant's opposition or objection to the Receiver's determination
10 or denial of a claim shall be served by the Potential Claimant on the
11 Receiver and Commission's counsel by December 9, 2011. Any
12 oppositions or objections shall be sent to:

13 Richard Weissman, Receiver
14 12121 Wilshire Boulevard, Suite 600
15 Los Angeles, CA 90025

16 and

17 Molly M. White, Esq.
18 Securities and Exchange Commission
19 5670 Wilshire Boulevard, 11th Floor
20 Los Angeles, CA 90036

21 The Potential Claimant's objection or opposition shall be accompanied by a
22 declaration and evidence submitted under penalty of perjury as to the
23 accuracy, veracity and authenticity of such evidence. By December 14,
24 2011, the Receiver shall file with the Court a status report, presenting all
25 Potential Claimants' objections and oppositions. Any reply by the Receiver
26 and/or the Commission shall be filed by December 16, 2011.

27 (b) All claims and distribution issues shall be heard and
28 adjudicated by the Court sitting without a jury.

14. The Receiver's Report and Motion shall include an estimate and a
request to establish a reserve fund for the payment of the Receiver's fees and

1 expenses (“Reserve Fund”). The balance of available funds shall then be
2 allocated to the Distribution Fund, and will be disbursed pro rata to the Potential
3 Claimants as approved by the Court.

4 **Distribution Fund’s Taxes**

5 15. The Court finds that the Distribution Fund is deemed a Qualified
6 Settlement Fund (“QSF”) pursuant to Section 468B(g) of the Internal Revenue
7 Code, and related regulations, 26 C.F.R. §§ 1.468B-1 through 5, and that the QSF
8 complies with all related legal and regulatory requirements, including, but not
9 limited to, satisfying any reporting or withholding requirements imposed on
10 distributions from the QSF. The Receiver shall set aside a portion of the
11 Distribution Fund to pay taxes on the Distribution Fund’s income (“Tax
12 Reserve”).

13
14 **Disbursement Procedure**

15 16. All payments to claimants shall be accompanied by a
16 communication that includes: (a) a statement characterizing the distribution; (b)
17 a statement that checks will be void after 90 days; and (c) the name of a person to
18 contact, to be used if the claimant has questions regarding the distribution. Any
19 such letter shall first be submitted to Commission counsel for review and
20 approval. Distribution checks shall clearly indicate that the money is being
21 distributed from a Distribution Fund.


22 17. A Claimant’s acceptance of payment from the Distribution Fund
23 shall be deemed to release all claims and rights of appeal that such Claimant may
24 have against the Receiver, his agents and personnel, and the Commission in
25 connection with the administration of the Distribution Fund. All Claimants who
26 accept payment from the Distribution Fund shall be enjoined from prosecuting or
27 asserting any such claims in any Court.

1 18. All distribution checks shall bear a “stale date” of 90 days from the
2 date of the check. Checks that are not negotiated before the stale date shall be
3 void, and the issuing financial institution shall be instructed to stop payment on
4 those checks.

5 19. Checks returned as undeliverable by the USPS and for which a new
6 address has been provided will be repackaged and sent to the new address. For
7 checks returned as undeliverable by the USPS and for which no new address is
8 provided, no further action by the Receiver will be required or undertaken.
9 Where new address information is not available after a diligent search (and in no
10 event later than 90 days after the initial mailing of the original check), the check
11 shall be void and the Receiver shall instruct the issuing financial institution to
12 stop payment on such check.

13 20. If a Claimant’s check has not been negotiated within 90 days from
14 the date of issue and has been voided, the Receiver shall hold the allocated funds
15 for that check for an additional 30 days pending possible notification of a
16 Potential Claimant’s new address. After the additional 30 days, the Claimant’s
17 claim(s) shall be extinguished and fully released. All such funds will be returned
18 to the Distribution Fund.

19
20 Date: August 17, 2011



HONORABLE DAVID O. CARTER
UNITED STATES DISTRICT JUDGE