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8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 **SECURITIES AND EXCHANGE**
13 **COMMISSION,**

14 Plaintiff,

15 vs.

16 **ROBERT A. FERRANTE and MARILYN R.**
17 **THOMASSEN,**

18 Defendants.
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Case No.

COMPLAINT

1 Plaintiff Securities and Exchange Commission (“SEC”) alleges:

2 **JURISDICTION AND VENUE**

3 1. The Court has jurisdiction over this action pursuant to Sections 20(b),
4 20(d)(1) and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§
5 77t(b), 77t(d)(1) & 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27(a) of the
6 Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1),
7 78u(d)(3)(A), 78u(e) & 78aa(a). Defendants have, directly or indirectly, made use of
8 the means or instrumentalities of interstate commerce, of the mails, or of the
9 facilities of a national securities exchange in connection with the transactions, acts,
10 practices and courses of business alleged in this Complaint.

11 2. Venue is proper in this district pursuant to Section 22(a) of the Securities
12 Act, 15 U.S.C. § 77v(a), and Section 27(a) of the Exchange Act, 15 U.S.C. §
13 78aa(a), because certain of the transactions, acts, practices and courses of conduct
14 constituting violations of the federal securities laws occurred within this district.
15 Defendants Robert Ferrante and Marilyn R. Thomassen reside and did business in
16 this district.

17 **SUMMARY**

18 3. Defendants Robert Ferrante and Marilyn R. Thomassen were
19 participants in a fraudulent scheme, together with PDC Capital Group, LLC (“PDC
20 Capital”), and its principal, Emilio Francisco, as alleged in the action captioned *SEC*
21 *v. Emilio Francisco, et al.*, Case No. 8:16-cv-02257-CJC-DFM. Beginning in
22 January 2013 and continuing through January 2017, Ferrante, Thomassen, and PDC
23 Capital perpetrated a fraudulent scheme to defraud at least 135 investors out of at
24 least \$9.5 million, using 19 different “EB-5” offerings made primarily to investors in
25 China. PDC Capital offered investments in assisted living facilities, Caffè Primo
26 restaurants, and a packaging facility, that purportedly qualified under the “EB-5
27 Immigrant Investor Program” administered by the U.S. Citizenship and Immigration
28 Service (“USCIS”). In the offerings, PDC Capital and the respective offering

1 entities fraudulently represented that an investor's entire \$500,000 capital
2 contribution deposited in escrow would be used to develop a specific project, and
3 that only administration fees would be available to pay expenses of the limited
4 partnership and PDC Capital until the project was completed.

5 4. Through the concurrent and consecutive offerings, PDC Capital raised
6 approximately \$72 million from the 135 investors, consisting of approximately
7 \$66.344 million in net capital contributions and approximately \$5.687 million in
8 administration fees, all of which were deposited into escrow accounts maintained by
9 Thomassen. Contrary to the representations to investors, Thomassen allowed
10 Francisco and Ferrante to divert at least \$19.2 million of investors' funds deposited
11 into escrow accounts to accounts controlled by PDC Capital, Francisco, and
12 Ferrante. Ferrante and Francisco misappropriated at least \$9.5 million of the
13 diverted funds to support the PDC Capital's business and to pay their personal
14 expenses.

15 5. By engaging in this conduct, Defendants Ferrante and Thomassen have
16 violated, and continue to violate, the antifraud provisions of Section 17(a)(1) and (3)
17 of the Securities Act, 15 U.S.C. § 77q(a)(1) & (3), and Section 10(b) of the
18 Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5(a) and (c) thereunder, 17 C.F.R.
19 240.10b-5(a) and (c).

20 6. Plaintiff seeks entry of judgment against Defendants, permanent
21 injunctive relief including conduct-based injunctions, disgorgement of their ill-gotten
22 gains with prejudgment interest thereon, and civil penalties against each of them
23 pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section
24 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

25 **THE DEFENDANTS**

26 7. **Robert A. Ferrante** ("Ferrante") resides in Newport Beach, California,
27 and is a real estate developer and business promoter. From January 2013 through
28 January 2017, Ferrante was Francisco's partner in PDC Capital and the 19 offering

1 entities used in the fraudulent scheme. Ferrante was also partners with Francisco in
2 PDC Capital Group FZ LLC, based in Dubai, United Arab Emirates (“PDC Dubai”),
3 which received funds from PDC Capital. Ferrante controlled multiple companies
4 that were involved in PDC Capital projects, including Envision Consultants, LLC;
5 Envision Development Group, LLC; FCM Development Group, LLC; KPF Capital,
6 LLC; MPoint Land & Development, Inc.; and MSL US Fund I, LLC. In 2005,
7 Ferrante pled guilty to filing a false tax return and taking unreported kickbacks from
8 a developer while working as a consultant to a union pension plan, and he was
9 sentenced to four months in prison and ordered to pay a \$10,000 fine and \$243,925
10 in restitution. Ferrante has never been registered with the SEC. During investigative
11 testimony in this matter, Ferrante asserted his Fifth Amendment privilege against
12 self-incrimination in response to all substantive questions.

13 8. **Marilyn R. Thomassen** (“Thomassen”) resides in Huntington Beach,
14 California. According to her California State Bar profile, Thomassen has an
15 undergraduate degree from the University of Notre Dame, and a law degree from the
16 Thomas Jefferson School of Law in San Diego, California. Thomassen has been a
17 member of the State Bar of the State of California since 1993. Thomassen joined the
18 law firm of Emilio N. Francisco & Associates as a partner in 2010. Beginning at
19 least in 2012, Thomassen practiced law under the name Marilyn R. Thomassen &
20 Associates, PC (“MTA”), and/or Thomassen Law Group. In 2015, Thomassen also
21 practiced under the d/b/a American Immigration Law Center (“AILC”). Also in
22 2015, Thomassen formed M. Thomassen Management, Inc. Thomassen served as
23 the escrow agent for PDC Capital’s EB-5 offerings, and as immigration counsel for a
24 number of investors in PDC Capital’s EB-5 offerings. During a deposition taken in
25 November 2017 in the case captioned *SEC v. Emilio Francisco, et al.*, Case No.
26 8:16-cv-02257-CJC-DFM, Thomassen asserted her Fifth Amendment privilege
27 against self-incrimination in response to all questions.
28

RELATED PARTIES

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2 9. **Emilio Francisco (“Francisco”)** resides in Newport Beach, California.
3 Francisco was the CEO and Chairman of PDC Capital and Caffè Primo
4 International, Inc. (“CPI”) until January 2017, when a receiver was appointed over
5 PDC Capital in the action *SEC v. Emilio Francisco, et al.*, Case No. 8:16-cv-02257-
6 CJC-DFM, where Francisco was named as a defendant along with PDC Capital.
7 Francisco also controlled other entities involved with PDC Capital, including PDC
8 Partners Management, Inc.; FDC Partners Management, Inc.; and Summerplace
9 Management, LLC. Francisco was partners with Ferrante in PDC Dubai. Francisco
10 was also identified as a marketing consultant for MTA, which is Defendant
11 Thomassen’s law firm.

12 10. **PDC Capital Group, LLC (“PDC Capital”)** is a Delaware limited
13 liability company, headquartered in Costa Mesa, California. PDC Capital was
14 formed by Emilio Francisco and Robert Ferrante in 2012. PDC Capital was placed
15 into receivership on January 5, 2017, in the action *SEC v. Emilio Francisco, et al.*,
16 Case No. 8:16-cv-02257-CJC-DFM, where it was named as a defendant along with
17 Francisco. PDC Capital was formed as a vehicle for managing EB-5 program
18 investments.

19 11. **Caffè Primo International, Inc. (“CPI”)** is a Delaware corporation,
20 which is owned by PDC Capital and Global Restaurant Partners, Inc. Francisco was
21 the CEO of CPI until it was placed into receivership on January 5, 2017. In October
22 2012, Ferrante’s entity, Envision Consultants, was engaged by Caffè Primo
23 restaurants to provide management and consulting services.

24 12. **SAL Assisted Living, LP (“SAL Lincoln”)** is a Nevada limited
25 partnership headquartered in Costa Mesa, California, which was formed to invest in
26 the construction and operation of an assisted living facility in Lincoln, California.

27 13. **SAL Carmichael, LP (“SAL Carmichael”)** is a Delaware limited
28 partnership headquartered in Costa Mesa, California, which was formed to invest in

1 the construction and operation of an assisted living facility in Carmichael, California,
2 through the entity SAL Carmichael LLC.

3 14. **SAL Citrus Heights, LP (“SAL Citrus Heights”)** is a Delaware
4 limited partnership headquartered in Costa Mesa, California, which was formed to
5 invest in the construction and operation of an assisted living facility in Citrus
6 Heights, California, through the entity SAL Citrus Heights, LLC.

7 15. **SAL Kern Canyon, LP (“SAL Kern Canyon”)** is a California limited
8 partnership headquartered in Costa Mesa, California, which was formed to invest in
9 the construction and operation of an assisted living facility in Stockton, California,
10 through the entity SAL Kern Canyon, LLC.

11 16. **SAL Phoenix, LP (“SAL Phoenix”)** is a Delaware limited partnership
12 headquartered in Salem, Oregon, which was formed to invest in the construction and
13 operation of an assisted living facility in Glendale, Arizona.

14 17. **SAL Westgate, LP (“SAL Westgate”)** is a Delaware limited
15 partnership headquartered in Costa Mesa, California, which was formed to invest in
16 the construction and operation of an assisted living facility in West Sacramento,
17 California, through the entity SAL Westgate, LLC.

18 18. **Summerplace at Sarasota, LP (“Summerplace at Sarasota”)** is a
19 Delaware limited partnership formed to invest in the construction and operation of
20 an assisted living facility in Sarasota, Florida, through the entity Summerplace at
21 Sarasota, LLC.

22 19. **Summerplace at Clearwater, LP (“Summerplace at Clearwater”)** is
23 a Delaware limited partnership formed to invest in the construction and operation of
24 an assisted living facility in Clearwater, Florida, through the entity Summerplace at
25 Clearwater, LLC.

26 20. **Summerplace at Correll Palms, LP (“Summerplace at Correll
27 Palms”)** is a Delaware limited partnership formed to invest in the construction and
28 operation of an assisted living facility in Titusville, Florida, through the entity

1 Summerplace at Correll Palms, LLC.

2 21. **TRC Tucson, LP (“TRC Tucson”)** is a Delaware limited partnership
3 formed to invest in the construction and operation of an assisted living facility in
4 Tucson, Arizona, which is owned by SET Real CO, LLC.

5 22. **Clear Currents West, LP (“Clear Currents West LP”)** is a Delaware
6 limited partnership headquartered in Costa Mesa, California. It was formed for the
7 purpose of investing in Clear Currents West, LLC, which was to renovate a
8 production facility for Clear Currents environmentally friendly agriculture and
9 cleaning products.

10 23. PDC Capital made eight offerings under the EB-5 program for the
11 construction and operation of individual “Caffe Primo” restaurants:

- 12 a. **Caffe Primo Management, LP (“Caffe Primo Management”)**
13 is a California limited partnership formed for the purpose of
14 investing in Caffe Primo Management 101, LLC.
- 15 b. **Caffe Primo Management 102, LP** is a Delaware limited
16 partnership formed for the purpose of investing in Caffe Primo
17 Management 102, LLC.
- 18 c. **Caffe Primo Management 103, LP** is a California limited
19 partnership formed for the purpose of investing in Caffe Primo
20 Management 102, LLC.
- 21 d. **Caffe Primo Management 104, LP** is a Delaware limited
22 partnership formed for the purpose of investing in Caffe Primo
23 Management 104, LLC.
- 24 e. **Caffe Primo Management 105, LP** is a Delaware limited
25 partnership formed for the purpose of investing in Caffe Primo
26 Management 105, LLC.
- 27 f. **Caffe Primo Management 106, LP** is a Delaware limited
28 partnership formed for the purpose of investing in Caffe Primo

1 Management 106, LLC.

2 g. **Caffe Primo Management 107, LP** is a Delaware limited
3 partnership formed for the purpose of investing in Caffe Primo
4 Management 107, LLC.

5 h. **Caffe Primo Management 108, LP** is a Delaware limited
6 partnership formed for the purpose of investing in Caffe Primo
7 Management 108, LLC.

8 **THE FRAUDULENT SCHEME**

9 **A. The EB-5 Program**

10 24. The EB-5 Immigrant Investor Program sets aside EB-5 visas for
11 participants who invest in commercial enterprises in the United States which create
12 jobs and meet certain other conditions.

13 25. Under the EB-5 Immigrant Investor Program, foreign investors who
14 invest capital in a “commercial enterprise” in the United States may petition the
15 USCIS (called an “I-526 Petition”) and receive conditional permanent residency
16 status for a two-year period. USCIS defines a “commercial enterprise” as any for-
17 profit activity formed for the ongoing conduct of lawful business.

18 26. The EB-5 Immigrant Investor Program requires a showing that the
19 foreign investor has placed the required amount of capital at risk for “the purpose of
20 generating a return” on the capital placed at risk. The foreign investor must invest at
21 least \$500,000 in a “Targeted Employment Area” and thereby create at least ten full-
22 time jobs for United States workers. A petitioner must establish eligibility at the
23 time of filing and a petition cannot be approved if, after filing, the immigrant
24 investor becomes eligible under a new set of facts or circumstances, which is
25 referred to by USCIS as a “material change.” If a material change occurs after the
26 approval of an immigrant petition, but before the investor has obtained conditional
27 permanent residence, such changes would constitute good and sufficient cause for
28 USCIS to issue a notice of intent to revoke, and, if not overcome, would constitute

1 good cause to revoke the approval of the petition. If the foreign investor satisfies
2 these and other conditions within the two-year period, the foreign investor may apply
3 to have the conditions removed from his or her visa and live and work in the United
4 States permanently.

5 **B. The Fraudulent Offerings**

6 **1. Offerings in Assisted Living Facilities and Clear Currents**

7 **West LP**

8 27. During the relevant period, PDC Capital offered and sold securities in
9 ten limited partnerships that were to finance, build, and operate assisted living
10 facilities in California, Florida, and Arizona: (1) SAL Assisted Living, (2) SAL
11 Carmichael, (3) SAL Citrus Heights, (4) SAL Kern Canyon, (5) SAL Phoenix, (6)
12 SAL Westgate, (7) Summerplace at Sarasota, (8) Summerplace at Clearwater, (9)
13 Summerplace at Correll Palms, and (10) TRC Tucson (the “Assisted Living LPs”).

14 28. In addition, PDC Capital offered and sold securities in Clear Currents
15 West LP, which was to renovate a production facility for Clear Currents’
16 environmentally friendly agriculture and cleaning products.

17 29. For the Assisted Living LP offerings, PDC Capital, through PDC
18 Capital’s sales agents, provided investors with offering documents which included a
19 private placement memorandum (“PPM”) for the particular offering, an investor
20 questionnaire, a limited partnership agreement (“LP Agreement”), a spousal consent
21 form, a subscription agreement, an escrow agreement, a term sheet, and in some
22 cases, a sample promissory note between the Assisted Living LP and the Project
23 LLC.

24 30. According to the offering documents, in exchange for a \$500,000 capital
25 contribution and a \$45,000-\$55,000 administration fee, an investor received a limited
26 partnership interest in the specific offering. Investors were instructed to deposit their
27 entire investment, consisting of both the capital contribution and the administration
28 fee, into escrow accounts.

1 31. Under the terms of the offering documents, including the PPM for each
2 offering, the subscription agreement for each investor, and the escrow agreement for
3 each investor, the escrow agent was to release the funds directly to the specific
4 Assisted Living LP associated with the offering, which in turn was to lend the entire
5 amount of the capital contribution from the investor to the limited liability company
6 created specifically for that EB-5 offering (the “Project LLC”). The Clear Currents
7 West LP PPM also provides that the funds would be used for that specific project.

8 32. Thomassen, in her own name, in the name of her law firm MTA, or her
9 dba AILC, was identified as the escrow agent for each of the Assisted Living LP
10 offerings, and the Clear Current West LP offering.

11 33. The PPMs state that units in the limited partnerships being offered for
12 sale are “securities” and reference provisions of the federal securities laws.

13 34. The PPMs provide that the limited partnership would be run
14 “exclusively” by the General Partners who have “broad powers” over the day-to-day
15 management of the partnerships’ affairs, and that the investors (the limited partners)
16 generally have no power to participate in the management of the limited partnership.
17 The PPMs represent that success of the limited partnership is substantially dependent
18 on the performance of the General Partners and management. The PPMs state that
19 the General Partners are fiduciaries.

20 35. Each of the investors in the Assisted Living LPs and Clear Currents
21 West LP was required to sign a subscription agreement. The investors represented in
22 the subscription agreement that they had received and reviewed the PPM and related
23 documents. The subscription agreement recited that the entire capital contribution of
24 \$500,000 would be loaned to or invested in the Project LLC that was the subject of
25 the investment.

26 36. Each of the investors in the Assisted Living LPs and Clear Currents
27 West LP was required to sign an escrow agreement, which governed the escrow and
28 release of the investor’s funds.

1 37. Thomassen signed the escrow agreements as the representative of the
2 escrow agent for each offering, or allowed her signature to be affixed to the escrow
3 agreements.

4 38. The escrow agreements for the Assisted Living LPs and Clear Currents
5 West LP provide for the release of all investor funds to the limited partnership once
6 an investor was accepted and approved by the partnership. One exception is the SAL
7 Carmichael offering, which states that 80% of an investor's subscription proceeds
8 would be released upon approval of the first investor's I-526 petition, with the
9 remaining 20% released when the last investor's I-526 petition was approved.

10 39. By signing the escrow agreements, Thomassen represented to investors
11 that the escrow agent would honor the terms of the escrow agreement.

12 40. The PPMs for the Assisted Living LPs and Clear Currents West LP
13 represent how the investors' funds were to be used, and state that the proceeds from
14 the offering were to be used for the specific project, "except for all administration
15 fees."

16 41. The Assisted Living LP PPMs and Clear Currents West LP also
17 represent that any remuneration paid by the limited partnership to the General
18 Partners was to be paid only out of administration fees, loan interest proceeds, or
19 through dividends paid from the project company to the limited partnership as its
20 parents, so as to comply with USCIS requirements.

21 42. The PPMs state that investors would receive an accrued distribution on
22 their investment with a rate of return of 1.5% to 2%, and after five years, repayment
23 of their \$500,000 investment with any accrued interest.

24 **2. Caffe Primo Offerings**

25 43. During the relevant period, PDC Capital offered and sold securities in
26 eight limited partnerships that were to finance, build, and operate Caffe Primo
27 restaurants in California, specifically: (1) Caffe Primo Management, LP; (2) Caffe
28 Primo Management 102, LP; (3) Caffe Primo Management 103, LP; (4) Caffe Primo

1 Management 104, LP; (5) Caffe Primo Management 105, LP; (6) Caffe Primo
2 Management 106, LP; (7) Caffe Primo Management 107, LP; and (8) Caffe Primo
3 Management 108, LP (the “Caffe Primo LPs”).

4 44. Through a consulting agreement under the name Envision Consulting,
5 Defendant Ferrante was involved in the management and development of the Caffe
6 Primo restaurants.

7 45. The Caffe Primo LPs offered securities in the form of limited partnership
8 units in exchange for a \$500,000 capital contribution and a \$45,000 administration
9 fee. The Caffe Primo LPs were then to lend funds to an associated limited liability
10 company (“Caffe Primo LLCs”) for that particular offering and restaurant.

11 46. PDC Capital provided the following offering documents to investors in
12 the offerings of the Caffe Primo LPs: a private placement memorandum (“PPM”), an
13 investor questionnaire, a limited partnership agreement, a spousal consent form, a
14 subscription agreement, an escrow agreement, a joinder agreement, and a promissory
15 note.

16 47. The PPMs for the Caffe Primo LPs offered investors the opportunity to
17 purchase limited partnership units in a particular Caffe Primo LP. The PPMs refer to
18 the limited partnership units as “securities” and refer to provisions of the federal
19 securities laws. Each unit required the investment of at least \$500,000 for a capital
20 contribution. The investors’ funds in a particular offering were then pooled and used
21 to develop the particular Caffe Primo in which they were investing. The PPMs state
22 that the General Partners will conduct the day-to-day management of the limited
23 partnership, as fiduciaries.

24 48. The offering materials state that investors would receive a preferred rate
25 of return of 1.5% per year, with any remaining distributions to the General Partner.
26 After 5 years, investors will receive distributions until their capital contribution is
27 returned. In addition, once the capital contribution is returned, investors may
28 continue to share in a percentage of any remaining distributions.

1 49. The PPMs for the Caffe Primo LPs state that the funds will be used to
2 “build out and launch,” and for “legal and fees,” “corporation operations and
3 administrations,” and for “ongoing support and professional services,” which
4 includes, among other items, travel, marketing, and supplies for the particular limited
5 partnership. The PPMs also disclose that investors’ proceeds can be used for finder’s
6 fees and commissions, and for the majority of the offerings for the Caffe Primo LPs,
7 that PDC Capital will contribute \$300,000 to the project.

8 50. Thomassen, either individually or as MTA or dba AILC, was the escrow
9 agent for each of the Caffe Primo offerings.

10 51. Thomassen signed escrow agreements with each investor in the Caffe
11 Primo offerings, or allowed her signature to be affixed to the escrow agreements.

12 **C. The Fraudulent Scheme**

13 52. From about January 2013 to at least September 2016, PDC Capital
14 raised approximately \$72 million from at least 135 investors through offerings in the
15 19 EB-5 project limited partnerships. Of that amount, approximately \$66.344
16 million consisted of capital contributions, and approximately \$5.687 million
17 consisted administration fees.

18 53. Contrary to the representations to investors that the capital contributions
19 would be used solely for the particular project that was the subject of the offering, at
20 least \$9.5 million of investors’ capital contributions were misappropriated from the
21 escrow accounts to PDC Capital’s account, where the investors’ funds were used to
22 pay the expenses of PDC Capital, Ferrante, and others.

23 54. Contrary to the representations to investors that PDC Capital would only
24 be paid from the administration fees of approximately \$5.687 million, PDC Capital
25 used at least \$9.5 million of investors’ capital contributions to pay for its operations.
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1 **1. Ferrante's Role in the Fraudulent Scheme**

2 **a. Ferrante was involved in all aspects of marketing the**
3 **offerings**

4 55. Ferrante was a key participant in all aspects of the marketing of the
5 offerings in the PDC Capital fraudulent scheme.

6 56. Ferrante partnered with Francisco in forming PDC Capital in 2012.
7 PDC Capital described itself as a marketing company and solicited investors
8 primarily in China to invest in EB-5 projects.

9 57. Ferrante managed PDC Capital and the offerings in partnership with
10 Francisco.

11 58. Ferrante, as a partner of Francisco and working with PDC Capital,
12 solicited investors in the offerings through PDC Capital's website.

13 59. During the period from January 2013 through at least 2016, Ferrante and
14 other representatives of PDC Capital travelled to China on several occasions to meet
15 personally with potential investors. The trips were funded with money from PDC
16 Capital, which was transferred from escrow accounts which held investors' funds.

17 60. Ferrante, Francisco, and PDC Capital solicited investors in China
18 through PDC Capital's marketing staff in China, who worked with Chinese
19 marketing agencies to solicit EB-5 investors.

20 61. Ferrante supervised the management of the sales agents that PDC
21 Capital used in China.

22 62. Ferrante reviewed and approved the monthly budget for PDC Capital's
23 operations in China.

24 63. Ferrante and Francisco entered into marketing agreements with sales
25 agents in China through PDC Dubai, for the sales agents to sell the various PDC
26 Capital offerings.

27 64. Ferrante received updates concerning the progress of sales of PDC
28 Capital's offerings to investors. Ferrante was informed when a particular offering

1 was “oversold,” and advised concerning switching investors from one PDC Capital
2 offering to another.

3 65. Ferrante was responsible for deciding which offerings and projects
4 should be prioritized for sale.

5 66. In July 2013, Ferrante circulated documents for the Citrus Heights
6 offering and stated in an email that “we are launching Citrus Now” and “we are
7 going to start marketing now.”

8 67. Similarly, in a January 2015 email with the subject line “Push Tucson,”
9 Ferrante instructed PDC Capital staff: “Ready to start construction push Tucson.”

10 68. Ferrante supervised the preparation of offering documents, including
11 reviewing, editing, and approving the PPMs for different offerings.

12 69. In January 2013, Ferrante advised in an email: “i [sic] am working on
13 the final ppm l;ncoln [sic] today, need to finish to close.”

14 70. In January 2013, Ferrante stated in an email that “Closings on Lincoln
15 start today in China.”

16 71. In May 2013, Ferrante wrote in an email: “re Lincoln, we now have 6
17 investors signed up we have only finished the final package, with ppm due diligence
18 and converted into chinese [sic] today with video power points etc.”

19 72. Ferrante was involved in the preparation, review, and approval of
20 marketing materials for the various projects.

21 73. Ferrante ordered the creation of a one-page handout for the Lincoln and
22 Carmichael projects, and the Caffè Primo offering, that could be provided to
23 interested parties, “explaining a little bit about the EB-5 program, something about
24 PDC Capital, and some information about the project.”

25 **b. Ferrante was involved in attempting to cover up the**
26 **fraudulent scheme**

27 74. In or around January 2016, Ferrante and entities he controlled, including
28 KPF Capital, entered into an agreement with Francisco, PDC Capital, and persons

1 and entities associated with Francisco. Under the terms of the agreement, PDC
2 Capital paid \$180,000 to KPF Capital; PDC Capital and Francisco transferred their
3 interests in eleven Florida and Arizona assisted living facilities to Ferrante's entities;
4 and Ferrante transferred his interest in PDC Capital to Francisco.

5 75. In or around May 2016, Ferrante's company MSL US Fund I entered
6 into an agreement with PDC Capital and one of its affiliates, in which they
7 transferred all of their interests in the Lincoln, Carmichael, Kern Canyon, Westgate,
8 Citrus Heights, and Lincoln Village I projects to MSL US Fund I. MSL US Fund I
9 did not pay any cash consideration for the transfer of these interests.

10 76. USCIS denied most of the I-529 applications filed by the investors in the
11 PDC Capital offerings. Ferrante arranged to have outside consultants review the
12 PPMs and offering documents for compliance with USCIS regulations and polices,
13 and then directed employees of PDC Capital and/or MTA to "fix" the projects, in an
14 effort to continue to conceal the misappropriation of funds and lull the investors, as
15 well to facilitate continued fundraising from investors.

16 77. In January 2017, in opposition to the SEC's motion for a temporary
17 restraining order and in an effort to maintain control of the assisted living projects,
18 the attorney for MSL US Fund I represented to the Court in the proceeding *SEC v.*
19 *Emilio Francisco, et al.*, that Ferrante was completely independent of Francisco, and
20 that MSL US Fund I was not related in any way to PDC Capital.

21 **c. Ferrante benefitted financially from the**
22 **misappropriated funds**

23 78. As a part-owner of PDC Capital, Ferrante benefitted from the \$9.5
24 million of investors' capital contributions that were misappropriated through the
25 fraudulent scheme.

26 79. PDC Capital's general ledger shows that approximately \$2.2 million of
27 investor funds transferred to PDC Capital's accounts was used to pay various credit
28 cards, including personal expenses of Ferrante. Ferrante's personal expenses, in an

1 amount in excess of \$900,000, were paid using proceeds of the misappropriated
2 investor funds.

3 80. In addition, PDC Capital's general ledger shows that Ferrante received
4 regular paychecks for his work at PDC Capital.

5 81. PDC Capital's general ledger also shows that Ferrante's dependents
6 received payments, and some of their personal expenses were also paid from the
7 misappropriated funds.

8 82. Ferrante and Francisco purchased three boats using misappropriated
9 investors' funds. Approximately \$1.035 million of investor funds was used to pay
10 the expenses on boats.

11 83. Over \$2.1 million of investors' funds were sent by PDC Capital to PDC
12 Dubai, which Ferrante owned with Francisco.

13 84. Through his company FCM Development, Ferrante arranged for him and
14 Francisco to receive payments from a third party which had received funds from the
15 Assisted Living companies managed by PDC Capital. Under this arrangement, at
16 least \$237,400 was transferred to Ferrante and Francisco.

17 85. Ferrante arranged to profit from sales of property to the Assisted Living
18 LPS. On or about July 1, 2013, an entity working in concert with Ferrante and PDC
19 Capital entered into a contract to purchase the property for the Lincoln project for
20 \$1.2 million. On or about July 31, 2013, the purchaser then entered into a contract to
21 sell the same property for \$6 million to the Lincoln LP on July 31, 2013, with an
22 agreement to split the \$4.8 million profit with Ferrante and his partner, after
23 permitting and planning expenses.

24 86. On or about February 11, 2013, an entity working in concert with
25 Ferrante and PDC Capital entered into a contract to purchase the Carmichael
26 property for \$1 million. On or about April 28, 2013, the purchaser entered into an
27 agreement with the Carmichael LP to sell it the property for \$6 million, with an
28 agreement to split the profit from the sale to Carmichael LP with Ferrante and his

1 partner, after payment of permitting and planning expenses.

2 87. Through his company KPF Capital, Ferrante received misappropriated
3 investors' funds from PDC Capital, including at least \$180,000 transferred to KPF
4 Capital in or about January 2016.

5 88. In or around December 2016, Ferrante's company MPoint borrowed \$5
6 million, using the Lincoln and Sarasota projects as security, and Ferrante's company
7 KPF Capital received over \$1 million of the loan proceeds without any identifiable
8 legal basis.

9 89. Ferrante's company, Envision Consulting, received investor funds
10 through its agreement with Caffe Primo.

11 90. The Caffe Primo entities made payments to FCM Development, which
12 then made payments for Ferrante's personal expenses.

13 91. Ferrante also benefitted financially from the misappropriation of
14 property from Summerplace at Sarasota, when a portion of the land purchased using
15 investors' funds was sold, and among other uses, a portion of the proceeds from the
16 sale was used to purchase an ammunition company in Montana in which Ferrante
17 held an interest.

18 **d. Ferrante acted with scienter, or alternatively, was**
19 **negligent**

20 92. At all relevant times in engaging in this scheme to defraud, Ferrante
21 acted with a high level of scienter.

22 93. Ferrante knowingly diverted investors' capital contributions to benefit
23 himself and his associates, and engaged in transactions designed to divert profits to
24 him at the expense of the investors.

25 94. Ferrante knowingly entered into arrangements with third parties to
26 purchase properties and then resell them to the Assisted Living LPs at a higher price,
27 while splitting the profits with Ferrante and his partner.

28 95. Ferrante knowingly used properties purchased with investor funds to

1 borrow \$5 million which he and his companies had no means to repay, and then
2 diverted some of the loan proceeds to his own benefit.

3 96. In the alternative, Ferrante was negligent and failed to exercise
4 reasonable care in communications with investors, and expenditures of the investors'
5 funds.

6 **2. Thomassen's Role in the Fraudulent Scheme**

7 97. Thomassen served as the escrow agent for each of PDC Capital's
8 nineteen offerings. As the escrow agent, Thomassen signed escrow agreements with
9 the investors, and owned all of the bank accounts used to receive payments of capital
10 contributions and administration fees from investors in the PDC Capital offerings.

11 98. Between 2013 and 2015, Thomassen opened at least seven accounts at
12 one bank ("Bank A"); at least three accounts at a second bank ("Bank B"); at least
13 one account at a third bank ("Bank C"), while maintaining a banking relationship
14 with a fourth bank ("Bank D").

15 99. At different times, investors were directed to send their capital
16 contributions and administration fees to different Thomassen accounts at Bank A,
17 Bank B, and Bank C.

18 100. Thomassen's employees were responsible for managing the accounts at
19 Bank A, Bank B, and Bank C.

20 101. In a complete abrogation of her responsibilities to the investors as
21 escrow agent, Thomassen allowed Francisco and others to direct the transfers of
22 investor funds in the various accounts she owned, directly or indirectly, at Banks A,
23 B, and C.

24 102. Thomassen and persons working under her direction commingled
25 investor capital contributions from different offerings, and investor administration
26 fees from different offerings, in the various bank accounts held at Bank A, Bank B,
27 and Bank C.

28 103. Thomassen and persons working under her direction transferred, without

1 any apparent business reason, investor funds between different accounts at the same
2 bank, such as transferring funds from one account at Bank A to another account at
3 Bank A.

4 104. Thomassen and persons working under her direction transferred, without
5 any apparent business reason, investor funds between banks, such as transferring
6 funds from an account at Bank A to an account at Bank B. In this manner, investor
7 funds were further commingled and the source of the funds was obscured.

8 105. Thomassen and persons working at her direction transferred over \$19.2
9 million of investor funds from the escrow accounts, directly or indirectly through
10 intermediary accounts, to PDC Capital's account.

11 106. PDC Capital recorded the receipt of investor funds on its general ledger
12 as a "due to M. Thomassen," although Thomassen did not independently have the
13 funds to loan to PDC Capital.

14 107. At all times, Thomassen was aware of the transactions in the various
15 accounts held in her name, and in the name of her firm and d/b/a.

16 108. At all times, Thomassen acted with scienter.

17 109. Thomassen willfully failed to perform her duties as an escrow agent
18 under the terms of the escrow agreements she signed, and used her name, bank
19 accounts, and employees to conceal that the escrow agreements were fake and PDC
20 Capital controlled the investor funds in the escrow accounts.

21 110. Thomassen recklessly allowed PDC Capital to control the disbursements
22 from the Thomassen accounts to PDC Capital, the Assisted Living LPs, the Project
23 LLCs, Clear Currents LP, and the Caffe Primo LPs.

24 111. In the alternative, Thomassen was negligent, and exercised reasonable
25 care as the escrow agent for the investors' funds.

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FIRST CLAIM FOR RELIEF

Fraud in the Offer or Sale of Securities

Violations of Section 17(a)(1) and (3) of the Securities Act

(against all Defendants)

112. The SEC realleges and incorporates by reference paragraphs 1 through 111 above.

113. By engaging in the conduct described above, Defendants Ferrante and Thomassen, directly or indirectly, in the offer or sale of securities, and by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails directly or indirectly: employed devices, schemes, or artifices to defraud; and engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

114. At all relevant times, Defendant Ferrante acted with scienter and knowingly engaged in transactions to misappropriate and otherwise divert investor funds to himself and for his benefit, and to pay the operating expenses of PDC Capital to maintain the fraud. In the alternative, Defendant Ferrante was negligent.

115. At all relevant times, Defendant Thomassen acted with scienter in willfully failing to perform her duties under the escrow agreements, commingling investor funds, and allowing investors' capital contributions to be diverted to PDC Capital. In the alternative, Thomassen was negligent.

116. Each of the Defendants knew, or was reckless in not knowing, that he or she employed devices, schemes and artifices to defraud. Each of the Defendants knew, or was reckless or negligent in not knowing, that he or she engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

117. By engaging in the conduct described above, each of the Defendants violated, and unless restrained and enjoined will continue to violate, Sections 17(a)(1) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(1) & 77q(a)(3).

1 **SECOND CLAIM FOR RELIEF**

2 **Fraud in Connection with the Purchase or Sale of Securities**

3 **Violations of Section 10(b) of the Exchange Act**

4 **and Rules 10b-5(a) and 10b-5(c) Thereunder**

5 118. The SEC realleges and incorporates by reference paragraphs 1 through
6 111 above.

7 119. By engaging in the conduct described above, Defendants Ferrante, and
8 Thomassen, directly or indirectly, in the offer or sale of securities, and by the use of
9 means or instruments of transportation or communication in interstate commerce or
10 by use of the mails directly or indirectly: (a) employed devices, schemes, or artifices
11 to defraud; and (b) engaged in transactions, practices, or courses of business which
12 operated or would operate as a fraud or deceit upon the purchaser.

13 120. At all relevant times, Defendant Ferrante acted with scienter and
14 knowingly engaged in transactions to misappropriate and otherwise divert investor
15 funds to himself and for his benefit, and to pay the operating expenses of PDC
16 Capital to maintain the fraud. In the alternative, Defendant Ferrante was negligent.

17 121. At all relevant times, Defendant Thomassen acted with scienter in
18 willfully failing to perform her duties under the escrow agreements, commingling
19 investor funds, and allowing investors' capital contributions to be diverted to PDC
20 Capital. In the alternative, Thomassen was negligent.

21 122. Each of the Defendants knew, or was reckless in not knowing, that he or
22 she employed devices, schemes and artifices to defraud; and engaged in acts,
23 practices or courses of conduct that operated as a fraud on the investing public by the
24 conduct described in detail above.

25 123. By engaging in the conduct described above, each of the Defendants
26 violated, and unless restrained and enjoined will continue to violate, Section 10(b) of
27 the Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5(a) and (c) thereunder, 17
28 C.F.R. §§ 240.10b-5(a) & 240.10b-5(c).

1 **PRAYER FOR RELIEF**

2 WHEREFORE, the SEC respectfully requests that the Court:

3 **I.**

4 Issue findings of fact and conclusions of law that Defendants committed the
5 alleged violations.

6 **II.**

7 Issue orders, in forms consistent with Rule 65(d) of the Federal Rules of Civil
8 Procedure permanently enjoining Defendants Ferrante and Thomassen, and their
9 officers, agents, servants, employees, and attorneys, and those persons in active
10 concert or participation with any of them, who receive actual notice of the orders by
11 personal service or otherwise, and each of them, from violating Section 17(a) of the
12 Securities Act, 15 U.S.C. §77q(a), and Section 10(b) of the Exchange Act, 15 U.S.C.
13 §§ 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

14 **III.**

15 Issue orders, in forms consistent with Rule 65(d) of the Federal Rules of Civil
16 Procedure permanently enjoining Defendants Ferrante and Thomassen, and their
17 officers, agents, servants, employees, attorneys, subsidiaries and affiliates, and those
18 persons in active concert or participation with any of them, from, directly or
19 indirectly, participating in the offer or sale of any security which constitutes an
20 investment in a “commercial enterprise” under the United States Government EB-5
21 visa program administered by the United States Citizenship and Immigration Service
22 (“USCIS”).

23 **IV.**

24 Order Defendants to disgorge all funds received from their illegal conduct,
25 together with prejudgment interest thereon.

26 **V.**

27 Order Defendants to pay civil penalties under Section 20(d) of the Securities
28 Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. §

1 78u(d)(3).

2 **VI.**

3 Retain jurisdiction of this action in accordance with the principles of equity and
4 the Federal Rules of Civil Procedure in order to implement and carry out the terms of
5 all orders and decrees that may be entered, or to entertain any suitable application or
6 motion for additional relief within the jurisdiction of this Court.

7 **VII.**

8 Grant such other and further relief as this Court may determine to be just and
9 necessary.

10
11
12 Dated: September 27, 2018

/s/ John B. Bulgozdy

John B. Bulgozdy

Adrienne D. Gurley

Attorneys for Plaintiff

Securities and Exchange Commission