

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 ALAN S. WEINGER
Deputy Commissioner
3 KIRK E. WALLACE (SBN 129953)
Corporations Counsel
4 DEPARTMENT OF CORPORATIONS
5 71 Stevenson Street, Suite 2100
6 San Francisco, California 94105
Telephone: (415) 972-8546

7
8 Attorneys for the People of the State of California

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE CITY AND COUNTY OF SAN FRANCISCO

11 THE PEOPLE OF THE STATE OF
12 CALIFORNIA, by and through the
13 COMMISSIONER OF CORPORATIONS,

14 Plaintiff,

15 vs.

16 MICHAEL P. GAMBOA; individually and
17 doing business as GAMBOA & COMPANY;
MPG, LLC; MARK H. POORE; RMB
18 OPERATIONS, LLC; PALETTE SIENNA
INTERNATIONAL FUND, LLC;
19 PALETTE GROUP, LLC; PALETTE II
GROUP, LLC; PALETTE III GROUP,
20 LLC; PALETTE IV GROUP, LLC;
21 PALETTE AQUA INVESTMENT FUND,
LLC; PALETTE COBALT INVESTMENT
22 FUND, LLC; THE CRIMSON FUND, LLC;
23 EPLAY, LLC; EPLAY INVESTMENTS
LLC; EPLAY INVESTMENTS 2 LLC;
24 POGA MANAGEMENT PARTNERS, LLC;
25 401K RETIREMENT SOLUTIONS, LLC;
26 MXM INVESTMENTS, LLC and DOES 1-
100

27 Defendants.
28

Case No.: CGC-09-492027

~~PROPOSED~~ ORDER ON EX PARTE
APPLICATION, APPOINTMENT OF
A RECEIVER, FREEZING DEFENDANTS'
ASSETS AND ISSUING A TEMPORARY
RESTRAINING ORDER

Date: 9/3/2009
Time: 11:00 a.m.
Dept: 301

1 The Ex Parte Application for Temporary Restraining Order, asset freeze and appointment of
2 a receiver came on the Ex Parte writs and receivers calendar on September 3, 2009 at 11:00 a.m. in
3 Department 301, before the Honorable Judge Peter J. Busch presiding. Kirk Wallace, Corporations
4 Counsel, appeared for Plaintiff, the People of the State of California, by and through the California
5 Corporations Commissioner. _____ appeared on behalf of
6 Defendants. More that 25 hours prior notice was provided to all defendants in this action of the Ex
7 Parte application and hearing as established by the Declaration of Kirk Wallace filed in this action.
8 After consideration of Plaintiff's Complaint, Ex Parte Application and Memorandum of Points and
9 Authorities in support thereof, and Declarations and exhibits filed in support thereof by Plaintiff in
10 this action, and FOR GOOD CAUSE APPEARING FOR THE ISSUANCE OF THIS ORDER EX
11 PARTE:

12 IT IS HEREBY ORDERED THAT:

13 **AS AGAINST DEFENDANTS** MICHAEL P. GAMBOA; individually and doing business as
14 GAMBOA & COMPANY; MPG, LLC; and MARK H. POORE;

15 1. A temporary restraining order is hereby issued against all Defendants listed immediately above
16 restraining and enjoining all Defendants, their officers, directors, successors in interest, agents,
17 employees, attorneys in fact, and all persons acting in concert or participating with them, or any of
18 them, except the Receiver in the lawful exercise of his duties under the receivership, from directly or
19 indirectly:

20 a. Violating California Corporations Code sections 25235 subdivision (d) and section 25238
21 by engaging in fraudulent, deceptive, manipulative or unethical practices as an investment adviser,
22 including but not limited to fraudulently obtaining client money by means of misstatement or
23 omission of material fact, diverting client funds for personal use including borrowing client funds,
24 failing to disclose to clients in writing conflicts of interest, failing to keep books and record and have
25 clients' accounts audited by an outside accountant on an annual basis, failure to maintain minimum
26 net worth requirements, and making false statements in advertising all within the meaning of the
27 California Code of Regulations, Title 10, sections 260.235, 260.235.2, 260.237 and 260.238;

28 b. Violating California Corporations Code section 25404 by making knowingly false
statements to the Department of Corporations during the course of licensing and examination with

1 the intent to impede, obstruct or influence the administration or enforcement of the California
2 Corporations Code;

3 c. Violating Financial Code §22100 by engaging in the business of a finance lender or
4 broker in this state without first applying for and securing from the Commissioner of Corporations a
5 license authorizing Defendants to act in the capacity of a finance lender or broker unless exempted.

6 **AS AGAINST DEFENDANTS** MICHAEL P. GAMBOA; individually and doing business as
7 GAMBOA & COMPANY; MPG, LLC; MARK H. POORE; RMB OPERATIONS, LLC; THE
8 PALETTE SIENNA INTERNATIONAL FUND, LLC; EPLAY, LLC;

9 2. A temporary restraining order is hereby issued restraining and enjoining all the Defendants
10 listed immediately above, their officers, directors, successors in interest, agents, employees,
11 attorneys in fact, and all persons acting in concert or participating with them, or any of them, except
12 the Receiver in the lawful exercise of his duties under the receivership, from directly or indirectly:

13 a. Violating Corporations Code section 25110 by offering or selling securities,
14 including but not limited to those issued by PSIF, Eplay, LLC, and RMB Operations, LLC without
15 those securities being qualified pursuant to the Corporate Securities Law of 1968, or unless exempt;

16 b. Violating Corporations Code section 25401 by offering or selling any
17 securities by means of any written or oral communication which includes an untrue statement of a
18 material fact or omits to state a material fact necessary in order to make the statements made, in light
19 of the circumstances under which they were made, not misleading.

20 **AS AGAINST ALL DEFENDANTS**

21 3. A temporary restraining order is hereby, issued and is to remain in effect during the pendency
22 of this action or until further order of the court placing an immediate freeze on all funds, negotiable
23 instruments and/or assets held in any bank or other accounts, certificates of deposit or otherwise,
24 without limitation, in the name of or for the benefit of Defendants Michael P. Gamboa, individually
25 and doing business as Gamboa and Company, MPG, LLC; Mark H. Poore; RMB Operations, LLC;
26 The Palette Sienna International Fund, LLC; The Palette Group, LLC; The Palette II Group, LLC;
27 The Palette III Group, LLC; The Palette IV Group, LLC; The Palette Aqua Investment Fund, LLC;
28 The Palette Cobalt Investment Fund, LLC; The Crimson Fund, LLC; Eplay, LLC: Eplay,

1 Investments LLC; Eplay Investments 2 LLC; Poga Management Partners, LLC; 401K Retirement
2 Solutions, LLC and MXM Investments, LLC directly or indirectly, and each of them. Further its is
3 ordered that the real properties located at 2139 North Beachwood Drive, Los Angeles, California
4 owned by Mark Poore and 119 Marguerite Ave, Mill Valley California and 241 Cardinal Road, Mill
5 Valley California owned by Michael Gamboa, not be sold, mortgaged, encumbered or that any
6 money be withdrawn from any equity lines of credit which are secured by those properties until
7 further order of the court.

8 4. Robb Evans and Associates LLC is appointed a receiver during the pendency of this action or
9 until further order of the court, to take possession of all real and personal property and assets of
10 Defendants Michael P. Gamboa, individually and doing business as Gamboa and Company, MPG,
11 LLC; Mark H. Poore; RMB Operations, LLC; The Palette Sienna International Fund, LLC; The
12 Palette Group, LLC; The Palette II Group, LLC; The Palette III Group, LLC; The Palette IV Group,
13 LLC; The Palette Aqua Investment Fund, LLC; The Palette Cobalt Investment Fund, LLC; Eplay,
14 LLC; Eplay Investments 2 LLC; Poga Management Partners, LLC; 401K Retirement Solutions, LLC
15 and MXM Investments, LLC whether directly or indirectly owned, beneficially or otherwise by, or
16 in the possession, custody or control of Defendants, and each of them, and such Does as may be
17 subsequently named (hereinafter "receivership Defendants"), and their respective subsidiaries and
18 affiliates, and their successors and assigns wherever situated, or to which receivership Defendants
19 have any right of possession, custody or control, beneficially or otherwise, irrespective of whosoever
20 holds such assets, including all such assets which receivership Defendants carry or maintain, or
21 which may be received during the pendency of this receivership, in order to obtain an adequate
22 accounting of receivership Defendants' assets and liabilities and to secure a marshalling of said
23 assets; and

24 THIS ORDER FURTHER PROVIDES THAT:

25 A. The receiver, prior to entry of his duties, shall take an oath to support the constitutions of the
26 United States and the State of California and shall be bonded according to law.

27 B. The receiver is hereby authorized, empowered and directed:
28

1 1. To marshal, collect, review, observe, discover and take charge of all the real
2 and personal property, premises, bank and brokerage accounts, and other assets of, or in the
3 possession of or under the control of receivership Defendants, beneficially or otherwise, or wherever
4 else situated, all accounts of receivership Defendants in financial depository or other institutions, and
5 of any other property in which receivership Defendants have an interest, regardless by whom it may
6 be held, beneficially or otherwise, on an ongoing and continual basis pursuant to this Court's order.
7 The receiver shall report to this Court the results of the review, observation, discovery and abstracts
8 resulting from the activities of the receiver as ordered by this Court, and specifically on any
9 commingling of funds, unauthorized loans or other disposition of property of whatever description
10 between any and each of the receivership Defendants herein and/or any person, corporation, entity,
11 sole proprietorship, affiliate, association of whatever type or structure, whether or not said entities
12 are or are not Defendants in this action;

13 2. To employ attorneys McKenna, Long and Aldrich LLP as counsel for the
14 receiver to assist the receiver in the performance of his duties and responsibilities;

15 3. To employ other such persons, including accountants, investigators, clerical
16 and professional personnel, and the receiver's in-house staff and counsel, to perform such tasks as
17 may be necessary to aid the receiver in the performance of his duties and responsibilities, without
18 further order of the Court;

19 4. To file, within 30 days of his qualification and appointment hereunder, an
20 initial inventory of all property which he shall then have reviewed observed and/or discovered
21 pursuant to this Court's order. Additionally, the receiver is to file one or more supplemental
22 inventories when and if he shall subsequently come into knowledge of additional items appropriate
23 to the inventory;

24 5. To undertake an independent review into the affairs and transactions of
25 receivership Defendants and to file with this Court, within 120 days, and every six months thereafter,
26 a report detailing the receiver's findings of his review of the condition of receivership Defendants,
27 other affairs and transactions of receivership Defendants, reflecting the existence of any liabilities,
28 both those claimed by others to exist and those to which the receiver believes to be the legal

1 obligations of each of said receivership Defendants, including a review of any possible conflicts of
2 interest and any further information the receiver believes may assist in an equitable disposition of
3 this matter, and to include in the report the receiver's opinion regarding the ability of said
4 receivership Defendants to meet their obligations as they come due, and the receiver's
5 recommendation regarding the necessity for, and the best method of handling, preserving, or
6 disposing of said assets;

7 6. To invest funds of the receivership estate in any interest-bearing obligations of
8 the United States or in any interest-bearing accounts in financial institutions approved by the United
9 States Trustee as an authorized depository for funds of bankruptcy estate, without further order of
10 the Court; and to be the signatory on all bank accounts of receivership Defendants, and each of them;

11 7. To bring such proceedings as are necessary to enforce the provisions hereof,
12 including issuance of subpoenas to compel testimony or production of documents as to the existence
13 or location of assets or any other information pertinent to the business, financial affairs, and other
14 transactions of receivership Defendants;

15 8. To bring such proceedings as are necessary to modify the provisions hereof,
16 as the receiver deems appropriate;

17 9. To make such payments and disbursements from the funds so taken into
18 custody, control and possession of the receiver or otherwise received by him, as may be necessary
19 and advisable in discharging his duties as receiver, without further order of the Court, including,
20 without limitation, the payment of interim compensation to the receiver and persons or entities under
21 (b) and (c) above, subject to the provisions of paragraph 11;

22 10. To carry on any lawful business activity of the entities and persons or entities
23 in receivership, to preserve investors' assets and to foreclose and/or actively seek and negotiate with
24 potential buyers, assignees or other parties who may be interested in acquiring, purchasing, leasing,
25 subleasing or renting real or personal property of Defendants and to sell, lease, sublease or rent such
26 real or personal property of Defendants, subject to court approval;

27 11. To institute, prosecute, defend, compromise, intervene in and become a party,
28 either in his own name or in the name of Defendants, to such suits, actions or proceedings as may be

1 necessary for the protection, maintenance, recoupment or preservation of the assets or property of
2 receivership Defendants, or in his custody, in his discretion, without further order of the Court; and

3 12. To divert, take possession of and secure all mail of receivership Defendants,
4 in order to screen such mail, retaining so much as it relates to the business of receivership
5 Defendants, and forwarding to the individual or other appropriate addresses so much as is not, in the
6 receiver's opinion, appropriate for retention by him, and to effect a change in the rights to use any
7 and all post office boxes and other mail collection facilities used by receivership Defendants; and

8 13. Upon the receiver's appointment, the receiver shall undertake an immediate
9 review of all readily available assets of the receivership Defendants in order to determine the
10 economic viability of a receivership. Upon such review, if the receiver determines that sufficient
11 assets are readily available to fund the receivership, then the receiver shall file such finding with the
12 Court, and the receivership shall continue until further order of the Court. If upon initial review the
13 receiver determines that readily available assets are insufficient to maintain the receivership, then the
14 receiver shall so notify the Court, and may request that the Court dissolve the receivership, or
15 modify the duties and responsibilities of the receiver, and Plaintiff will not oppose such request, it
16 being understood that the receiver and professionals employed by the receiver shall not be expected
17 to perform services unless readily available assets exist to pay the expenses of the receivership.

18 14. The receiver shall cooperate fully with the California Department of
19 Corporations, and any other state and federal law enforcement and regulatory agencies having
20 jurisdiction over matters relating to the conduct or business of Defendants so as not to impair the
21 ability of said state and federal law enforcement regulatory agencies to perform their duly authorized
22 investigative and enforcement duties.

23 15. The receiver's powers are in addition to, and not by way of limitation of, the
24 powers described in Corporations Code sections 29540 and 25530(a), Financial Code section 22713,
25 and Government Code section 13975.1 and Code of Civil Procedure sections 564, *et seq.*

26 16. The receiver is vested with, and is authorized, directed and empowered to
27 exercise, all of the power of receivership Defendants, their officers, directors, shareholders, general
28 partners or persons who exercise similar powers and perform similar duties; and that receivership

1 Defendants, their officers, agents, employees, representatives, directors, successors in interest,
2 attorneys in fact and all persons acting in concert or participating with them, are hereby divested of,
3 restrained and barred from exercising any of the powers vested herein in the receiver.

4 17. Any state or federal law enforcement or regulatory agency having jurisdiction
5 over matters relating to Defendants' business shall be permitted to review, without exception, all
6 reports of the receiver and all books, records, and files of Defendants at any time during normal
7 business hours, with reasonable notice, and to make any abstracts or copies of said documents as it
8 desires, provided that nothing herein shall waive or abrogate any applicable attorney-client or other
9 legally recognized privilege; and

10 18. Defendants, including, but not limited to the receivership Defendants, their
11 officers, directors, shareholders, agents, servants, employees, attorneys, salespersons, successors,
12 assigns, subsidiaries, affiliates, and other persons or entities under their control and all persons or
13 entities in active concert or participation with Defendants, and all persons owing a duty of disclosure
14 to Defendants, and each of them, shall cooperate with the receiver in his investigation and turn over
15 to the receiver records, documentation, charts and/or descriptive material of all funds, assets,
16 property owned beneficially or otherwise, and all other assets of receivership Defendants wherever
17 situated, and all books and records of accounts, title documents and other documents in the
18 possession or under their control, which relate, directly or indirectly, to assets of receivership
19 Defendants; and

20 19. Except by leave of this Court and during the pendency of this receivership, all
21 claimants, creditors and other persons seeking relief of any kind, in law or in equity, from
22 receivership Defendants, and all others acting on behalf of any such persons, including sheriffs,
23 marshals, servants, agents and employees, are restrained from:

24 a. Commencing, prosecuting, continuing or enforcing any suit or
25 proceeding, except by motion before this Court;

26 b. Executing or issuing or causing the execution or issuance of any court
27 attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking
28 possession of or interfering with or creating or enforcing a lien upon any property owned or in the

1 possession of receivership Defendants, its subsidiaries or affiliates, or the receiver appointed therein,
2 wherever situated;

3 c. Commencing or continuing judicial or non-judicial foreclosure
4 proceedings or proceedings for the appointment of a receiver for any property owned or claimed by
5 receivership Defendants in this action;

6 d. Creating, perfecting, or enforcing any lien or encumbrance against any
7 real or personal property;

8 e. Accelerating the due date of any obligation or claimed obligation;

9 f. Exercising any right of set-off;

10 g. Taking, retaining, retaking or attempting to retake possession of any
11 real or personal property;

12 h. Withholding or diverting any rent or other obligation; and

13 i. Doing any act or thing whatsoever to interfere with the possession of
14 or management by the receiver herein and of the property and assets owned, controlled or in the
15 possession of receivership Defendants or to, in any way, interfere with the receiver or to interfere in
16 any manner during the pendency of this proceeding with the exclusive jurisdiction of this Court over
17 Defendants.

18 20. Any and all provisions of any agreement entered into by and between any third-party
19 and receivership Defendants, including, by way of illustration, but not limited to, the following types
20 of agreements (as well as any amendments or modifications thereto), mortgages, partnership
21 agreements, financial guarantee bonds, joint venture agreements, promissory notes, remarketing
22 agreements, loan agreements, security agreements, indemnification agreements, subrogation
23 agreements, subordination agreements, deeds of trust, pledge agreements, assignments of rents and
24 other collateral, financing statements, letters of credit, leases, insurance policies, guarantees, escrow
25 agreements, management agreements, real estate brokerage and rental agreements, servicing
26 agreements, consulting agreements, easement agreements, license agreements, franchise agreements,
27 construction contracts, or employment contracts that provide in any manner that the selection,
28 appointment, or retention of a receiver or trustee by any Court, or the entry of an order such as

1 hereby made, shall be deemed to be, or otherwise operate as a breach, violation, event of default,
2 termination, event of dissolution, event of acceleration, insolvency, bankruptcy, or liquidation, shall
3 be stayed, and the assertion of any and all rights, remedies relating thereto shall also be stayed and
4 barred, except as otherwise ordered by this Court, and this Court shall retain jurisdiction over any
5 causes of action that have arisen or may otherwise arise under any such provision.

6 21. The receiver, the receiver's employees and agents, and professionals employed by the
7 receiver, are entitled to monthly payment of interim compensation for services rendered, at their
8 normal hourly rates, and monthly reimbursement for all expenses incurred by them on behalf of the
9 receivership estate, and the receiver is authorized to make such payments without further order of the
10 Court. Within 10 days after such monthly payments, the receiver shall serve written notice upon the
11 counsel of record for receivership Defendants of the amount paid to each payee, with an itemization
12 of the services rendered or expenses incurred.

13 22. Interim monthly fees paid shall be subject to review and approval by this Court, on a
14 quarterly basis. This Court retains jurisdiction to award a greater or lesser amount as the full, fair
15 and final value of such services. In the event that extraordinary services are performed by the
16 receiver, or any professionals employed by the receiver, the Court may approve extraordinary
17 compensation to such persons.

18 23. Neither Plaintiff, the Commissioner of Corporations, the State of California, the
19 Department of Corporations, nor any officer, employee nor agent of the Department, shall have any
20 liability for the payment, at any time, for any such fees or expenses in connection with said
21 receivership.

22 IT IS FURTHER ORDERED

23 ~~6. A copy of this Order Issuing the Temporary Restraining Order, Asset Freeze and Appointing~~
24 ~~Receiver, The Ex Parte Application And Memorandum of Points and Authorities in support thereof,~~

25 ///

26 ///

27

28

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

~~the Declarations and Exhibits in support of the Application, the Complaint, together with a copy of the Order to Show Cause Re Preliminary Injunction shall be served on all Defendants no later than _____, pursuant to CCP §527(d)(2).~~

IT IS SO ORDERED.

DATED: September 3, 2009

PETER J. BUSCH
JUDGE OF THE SUPERIOR COURT