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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.
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Case No.: CGC-09-492027

ORDER ISSUING PRELIMINARY
INJUNCTION, APPOINTINTING A
RECEIVER, AND FREEZING
DEFENDANTS' ASSETS

Date: 10/8/2009
Time: 9:30 a.m.
Dept: 301

Complaint filed: August 31, 2009

1 The hearing on the Order to Show Cause issued by the court as to why a preliminary
2 injunction should not be issued consistent with the terms of the Temporary Restraining Order issued
3 by this court on September 3, 2009 came on for hearing on October 8, 2009 at 9:30 a.m. in
4 Department 301, before the Honorable Judge Peter J. Busch, Presiding. Kirk Wallace, Corporations
5 Counsel, appeared for Plaintiff, the People of the State of California, by and through the California
6 Corporations Commissioner. Attorney Michael A. Mazzocone appeared on behalf of the Defendants
7 Eplay, LLC, Eplay Investments LLC and Eplay Investments 2 LLC, which filed an opposition to the
8 Order to Show Cause. David Cummins appeared on behalf of Defendant Michael Gamboa and
9 Geoffery Rotwein appeared on behalf of Defendant Mark Poore. Defendants Gamboa and Poore
10 through their counsel stipulated to the issuance of the preliminary injunction with the understanding
11 that it is without prejudice to their ability to petition the court to modify the order and asset freeze in
12 the future to allow for the payment of attorneys fees and living expenses for defendants, and that the
13 order issued October 7, 2009 allowing such payments to be made on behalf of Michael Gamboa
14 shall remain in effect indefinitely unless modified by the court. No other defendant filed an
15 opposition to the issuance of the preliminary injunction.

16 FOR GOOD CAUSE APPEARING IT IS HEREBY ORDERED THAT:

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

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

24 a. Violating California Corporations Code sections 25235 subdivision (d) and section 25238
25 by engaging in fraudulent, deceptive, manipulative or unethical practices as an investment adviser,
26 including but not limited to fraudulently obtaining client money by means of misstatement or
27 omission of material fact, diverting client funds for personal use including borrowing client funds,
28 failing to disclose to clients in writing conflicts of interest, failing to keep books and records and

1 have clients' accounts audited by an outside accountant on an annual basis, failure to maintain
2 minimum net worth requirements, and making false statements in advertising all within the meaning
3 of the California Code of Regulations, Title 10, sections 260.235, 260.235.2, 260.237 and 260.238;

4 b. Violating California Corporations Code section 25404 by making knowingly false
5 statements to the Department of Corporations during the course of licensing and examination with
6 the intent to impede, obstruct or influence the administration or enforcement of the California
7 Corporations Code;

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

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

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

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

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

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1 **AS AGAINST ALL DEFENDANTS**

2 3. A preliminary injunction is hereby, issued and is to remain in effect during the pendency of
3 this action or until further order of the court placing an immediate freeze on all funds, negotiable
4 instruments and/or assets held in any bank or other accounts, certificates of deposit or otherwise,
5 without limitation, in the name of or for the benefit of Defendants Michael P. Gamboa, individually
6 and doing business as Gamboa and Company, MPG, LLC; Mark H. Poore; RMB Operations, LLC;
7 The Palette Sienna International Fund, LLC; The Palette Group, LLC; The Palette II Group, LLC;
8 The Palette III Group, LLC; The Palette IV Group, LLC; The Palette Aqua Investment Fund, LLC;
9 The Palette Cobalt Investment Fund, LLC; The Crimson Fund, LLC; Eplay, LLC; Eplay, Investments
10 LLC; Eplay Investments 2 LLC; Poga Management Partners, LLC; 401K Retirement Solutions, LLC
11 and MXM Investments, LLC directly or indirectly, and each of them. Further it is ordered that the
12 real properties located at 2139 North Beachwood Drive, Los Angeles, California owned by Mark
13 Poore and 119 Marguerite Avenue, Mill Valley, California and 241 Cardinal Road, Mill Valley,
14 California owned by Michael Gamboa, not be sold, mortgaged, encumbered or that any money be
15 withdrawn from any equity lines of credit which are secured by those properties until further order of
16 the court.

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

6 THIS ORDER FURTHER PROVIDES THAT:

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

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

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

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

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

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

6 5. To undertake an independent review into the affairs and transactions of
7 receivership Defendants and to file with this Court, within 120 days, and every six months thereafter,
8 a report detailing the receiver's findings of his review of the condition of receivership Defendants,
9 other affairs and transactions of receivership Defendants, reflecting the existence of any liabilities,
10 both those claimed by others to exist and those to which the receiver believes to be the legal
11 obligations of each of said receivership Defendants, including a review of any possible conflicts of
12 interest and any further information the receiver believes may assist in an equitable disposition of
13 this matter, and to include in the report the receiver's opinion regarding the ability of said
14 receivership Defendants to meet their obligations as they come due, and the receiver's
15 recommendation regarding the necessity for, and the best method of handling, preserving, or
16 disposing of said assets;

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

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

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

27 9. To make such payments and disbursements from the funds so taken into
28 custody, control and possession of the receiver or otherwise received by him, as may be necessary

1 and advisable in discharging his duties as receiver, without further order of the Court, including,
2 without limitation, the payment of interim compensation to the receiver and persons or entities under
3 (b) and (c) above, subject to the provisions of paragraph 11;

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

9 11. To institute, prosecute, defend, compromise, intervene in and become a party,
10 either in his own name or in the name of Defendants, to such suits, actions or proceedings as may be
11 necessary for the protection, maintenance, recoupment or preservation of the assets or property of
12 receivership Defendants, or in his custody, in his discretion, without further order of the Court; and

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

18 13. Upon the receiver's appointment, the receiver shall undertake an immediate
19 review of all readily available assets of the receivership Defendants in order to determine the
20 economic viability of a receivership. Upon such review, if the receiver determines that sufficient
21 assets are readily available to fund the receivership, then the receiver shall file such finding with the
22 Court, and the receivership shall continue until further order of the Court. If upon initial review the
23 receiver determines that readily available assets are insufficient to maintain the receivership, then the
24 receiver shall so notify the Court, and may request that the Court dissolve the receivership, or
25 modify the duties and responsibilities of the receiver, and Plaintiff will not oppose such request, it
26 being understood that the receiver and professionals employed by the receiver shall not be expected
27 to perform services unless readily available assets exist to pay the expenses of the receivership.
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1 14. The receiver shall cooperate fully with the California Department of
2 Corporations, and any other state and federal law enforcement and regulatory agencies having
3 jurisdiction over matters relating to the conduct or business of Defendants so as not to impair the
4 ability of said state and federal law enforcement regulatory agencies to perform their duly authorized
5 investigative and enforcement duties.

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

9 16. The receiver is vested with, and is authorized, directed and empowered to
10 exercise, all of the power of receivership Defendants, their officers, directors, shareholders, general
11 partners or persons who exercise similar powers and perform similar duties; and that receivership
12 Defendants, their officers, agents, employees, representatives, directors, successors in interest,
13 attorneys in fact and all persons acting in concert or participating with them, are hereby divested of,
14 restrained and barred from exercising any of the powers vested herein in the receiver.

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

21 18. Defendants, including, but not limited to the receivership Defendants, their
22 officers, directors, shareholders, agents, servants, employees, attorneys, salespersons, successors,
23 assigns, subsidiaries, affiliates, and other persons or entities under their control and all persons or
24 entities in active concert or participation with Defendants, and all persons owing a duty of disclosure
25 to Defendants, and each of them, shall cooperate with the receiver in his investigation and turn over
26 to the receiver records, documentation, charts and/or descriptive material of all funds, assets,
27 property owned beneficially or otherwise, and all other assets of receivership Defendants wherever
28 situated, and all books and records of accounts, title documents and other documents in the

1 possession or under their control, which relate, directly or indirectly, to assets of receivership
2 Defendants; and

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

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

9 b. Executing or issuing or causing the execution or issuance of any court
10 attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking
11 possession of or interfering with or creating or enforcing a lien upon any property owned or in the
12 possession of receivership Defendants, its subsidiaries or affiliates, or the receiver appointed therein,
13 wherever situated;

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

17 d. Creating, perfecting, or enforcing any lien or encumbrance against any
18 real or personal property;

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

20 f. Exercising any right of set-off;

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

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

24 i. Doing any act or thing whatsoever to interfere with the possession of
25 or management by the receiver herein and of the property and assets owned, controlled or in the
26 possession of receivership Defendants or to, in any way, interfere with the receiver or to interfere in
27 any manner during the pendency of this proceeding with the exclusive jurisdiction of this Court over
28 Defendants.

1 20. Any and all provisions of any agreement entered into by and between any third-party
2 and receivership Defendants, including, by way of illustration, but not limited to, the following types
3 of agreements (as well as any amendments or modifications thereto), mortgages, partnership
4 agreements, financial guarantee bonds, joint venture agreements, promissory notes, remarketing
5 agreements, loan agreements, security agreements, indemnification agreements, subrogation
6 agreements, subordination agreements, deeds of trust, pledge agreements, assignments of rents and
7 other collateral, financing statements, letters of credit, leases, insurance policies, guarantees, escrow
8 agreements, management agreements, real estate brokerage and rental agreements, servicing
9 agreements, consulting agreements, easement agreements, license agreements, franchise agreements,
10 construction contracts, or employment contracts that provide in any manner that the selection,
11 appointment, or retention of a receiver or trustee by any Court, or the entry of an order such as
12 hereby made, shall be deemed to be, or otherwise operate as a breach, violation, event of default,
13 termination, event of dissolution, event of acceleration, insolvency, bankruptcy, or liquidation, shall
14 be stayed, and the assertion of any and all rights, remedies relating thereto shall also be stayed and
15 barred, except as otherwise ordered by this Court, and this Court shall retain jurisdiction over any
16 causes of action that have arisen or may otherwise arise under any such provision.

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

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

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

IT IS SO ORDERED.

DATED: October 8, 2009

PETER J. BUSCH
JUDGE OF THE SUPERIOR COURT