

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,
22 LLC; PALETTE COBALT INVESTMENT
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

ORDER ON EX PARTE
APPLICATION, APPOINTING
A RECEIVER AND FREEZING
DEFENDANTS' ASSETS

Date: 8/31/09
Time: 11:00 am
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 August 31, 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. No appearances were made on behalf of any Defendant as no prior
6 notice was provided to them of the application or hearing. After consideration of Plaintiff's
7 Complaint, Ex Parte Application and Memorandum of Points and Authorities in support thereof, and
8 Declarations and exhibits filed in support thereof by Plaintiff in this action, and FOR GOOD
9 CAUSE APPEARING FOR THE ISSUANCE OF THIS ORDER EX PARTE WITH NO NOTICE
10 TO DEFENDANTS

11 IT IS HEREBY ORDERED THAT:

12 1. An Order granting the relief described below is hereby issued and is to remain in effect until
13 Friday September 5, 2009 at 5:00 p.m. and then will expire at that time if no further Ex Parte hearing
14 on this matter is scheduled by plaintiff and held in this court with prior notice of that hearing being
15 provided to Defendants at least 25 hours prior to hearing. At that hearing the court will consider the
16 extension of the relief ordered below and the additional relief requested by Plaintiffs in this
17 application of issuing a temporary restraining order and ordering the receiver to take custody and
18 control over all defendants and their assets. Under these terms and condition the following order is
19 hereby issued
20

21 **AS AGAINST ALL DEFENDANTS**

22
23 2. An Order is hereby, issued placing an immediate freeze on all funds, negotiable instruments
24 and/or assets held in any bank or other accounts, certificates of deposit or otherwise, without
25 limitation, in the name of or for the benefit of Defendants Michael P. Gamboa, individually and
26 doing business as Gamboa and Company, MPG, LLC; Mark H. Poore; RMB Operations, LLC; The
27 Palette Sienna International Fund, LLC; The Palette Group, LLC; The Palette II Group, LLC; The
28 Palette III Group, LLC; The Palette IV Group, LLC; The Palette Aqua Investment Fund, LLC; The

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

8 3. Robb Evans and Associates LLC is appointed a receiver, for the purpose of locating and
9 effectuating and noticing the freeze of all real and personal property and assets of Defendants
10 Michael P. Gamboa, individually and doing business as Gamboa and Company, MPG, LLC; Mark
11 H. Poore; RMB Operations, LLC; The Palette Sienna International Fund, LLC; The Palette Group,
12 LLC; The Palette II Group, LLC; The Palette III Group, LLC; The Palette IV Group, LLC; The
13 Palette Aqua Investment Fund, LLC; The Palette Cobalt Investment Fund, LLC; Eplay, LLC; Eplay
14 Investments 2 LLC; Poga Management Partners, LLC; 401K Retirement Solutions, LLC and MXM
15 Investments, LLC whether directly or indirectly owned, beneficially or otherwise by, or in the
16 possession, custody or control of Defendants, (hereinafter "receivership Defendants"), and their
17 respective subsidiaries and affiliates, and their successors and assigns wherever situated, or to which
18 receivership Defendants have any right of possession, custody or control, beneficially or otherwise,
19 irrespective of whosoever holds such assets, including all such assets which receivership Defendants
20 carry or maintain, or which may be received during the pendency of this receivership, in order to
21 located and effectuate the notice of the freeze of assets. The receivers powers specifically includes
22 the ~~and~~ authority to notify any banks, securities broker dealers or real estate agents which have
23 custody or control of ~~and~~ of Defendants assets of the freeze of Defendants assets and accounts to
24 prevent any withdrawals or transfer of those assets.

25 THIS ORDER FURTHER PROVIDES THAT:

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

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

1 1. To have access to all defendants financial and business records in order to
2 review the records and observe, and discover all the real and personal property, premises bank and
3 brokerage accounts and other assets of, or in the possession of or under the control of receivership
4 Defendants, beneficially or otherwise, or wherever else situated, all accounts of receivership
5 Defendants in financial depository or other institutions, and of any other property in which
6 receivership Defendants have an interest, regardless by whom it may be held, beneficially or
7 otherwise, on an ongoing and continual basis pursuant to this Court's order.

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

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

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

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

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

7. Neither Plaintiff, the Commissioner of Corporations, the State of California, the Department of Corporations, nor any officer, employee nor 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: August 31, 2009

PETER J. BUSCH
JUDGE OF THE SUPERIOR COURT