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10 Attorneys for Receiver
11 THOMAS HEBRANK

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14
15 SECURITIES AND EXCHANGE
COMMISSION,

16 Plaintiff,

17 v.

18 PACIFIC WEST CAPITAL GROUP,
19 INC.; ANDREW B CALHOUN IV;
PWCg TRUST; BRENDA CHRISTINE
20 BARRY; BAK WEST, INC.; ANDREW B
CALHOUN JR.; ERIC CHRISTOPHER
21 CANNON; CENTURY POINT, LLC;
MICHAEL WAYNE DOTTA; and
22 CALEB AUSTIN MOODY (dba SKY
STONE),

23 Defendants.
24

Case No. 2:15-cv-02563-DDP-FFM

**NOTICE OF MOTION AND
MOTION FOR APPROVAL OF
PROCEDURES FOR THE
ADMINISTRATION OF CLAIMS
AGAINST THE RECEIVERSHIP
ESTATE; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: February 10, 2020
Time: 10:00 a.m.
Ctrm.:9C
Judge:Hon. Dean D. Pregerson

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on February 10, 2020, at 10:00 a.m. in
3 Courtroom 9C of the above-entitled Court, located at 350 W. 1st Street, 6th Floor,
4 Los Angeles, California 90012, Thomas Hebrank ("Receiver"), the Court-appointed
5 receiver for the PWCG Trust, will and hereby does move the Court for Approval of
6 Procedures for the Administration of Claims Against the Receivership Estate
7 ("Motion").

8 This Motion is based on this Notice of Motion and Motion, the attached
9 Memorandum of Points and Authorities, the documents and pleadings already on file
10 in this action, and upon such further oral and documentary evidence as may be
11 presented at the time of hearing.

12 **Procedural Requirements:** If you oppose this Motion, you are required to
13 file your written opposition with the Office of the Clerk, United States District Court,
14 350 W. 1st Street, Suite 4311, Los Angeles, California 90012-4565, and serve the
15 same on the undersigned not later than 21 days prior to the hearing.

16 **IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION** by the
17 above date, the Court may grant the requested relief without further notice. This
18 Motion is made following the conference of counsel pursuant to L.R. 7 3.

19

20 Dated: January 10, 2020

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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By: /s/ David R. Zaro

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DAVID R. ZARO
Attorneys for Receiver
THOMAS HEBRANK

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In accordance with the Judgment Against Defendant PWCG Trust
4 ("Appointment Order") (Dkt. 145), the Receiver has analyzed the amounts investors
5 deposited into and received from PWCG Trust and requests approval of procedures
6 to fairly and efficiently analyze and determine claims against the receivership estate.
7 Determining the allowed amount of each investor's claim is a key step in the
8 receivership process and will provide the foundation for a fair and equitable
9 distribution of funds from the receivership estate.

10 The Receiver has analyzed and verified the accounting records of investor
11 transactions with PWCG Trust and determined them to be accurate and reliable for
12 purposes of determining amounts invested by investors and amounts distributed to
13 investors in return. Accordingly, the Receiver proposes to send a letter to each
14 investor, explaining the claims process and stating what the PWCG Trust records
15 show to be the allowed amount of their claim (the net loss from their deposits and
16 distributions from PWCG Trust). If investors agree with the statement of their
17 claim, they need take no further action – the Receiver will recommend to the Court
18 that they have an allowed claim in that amount. If, on the other hand, investors
19 dispute the amount of their claim, they will have 90 days to submit their response to
20 the Receiver along with copies of all documents they believe support their own
21 calculation. The Receiver will review the responses, communicate directly with the
22 investors with the goal of resolving as many disputes as possible, and then file a
23 motion seeking approval of all investor claim amounts, including asking the Court
24 to resolve any remaining disputes. Declaration of Thomas Hebrank filed herewith
25 ("Hebrank Decl."), ¶ 2.

26 This straight forward claims process is designed to minimize administrative
27 expenses associated with reviewing claims, while still providing any investors who
28 dispute their claims (and which disputes cannot be resolved through informal

1 discussion and exchange of information) with the opportunity to have their claims
2 decided by the Court. Although the Receiver expects the number of unresolved
3 claim disputes to be very low, if any, due process requires that any investors with
4 such unresolved disputes have the opportunity to have their claims determined by
5 the Court. Hebrank Decl., ¶ 3.

6 **II. LEGAL AUTHORITY**

7 **A. District Courts Have Broad Equitable Powers to Administer** 8 **Receivership Matters**

9 "The power of a district court to impose a receivership or grant other forms of
10 ancillary relief does not in the first instance depend on a statutory grant of power
11 from the securities laws. Rather, the authority derives from the inherent power of a
12 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
13 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
14 and efficient administration of the estate by the district court for the benefit of
15 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment
16 of a receiver is authorized by the broad equitable powers of the court, any
17 distribution of assets must also be done equitably and fairly. See *SEC v. Elliot*,
18 953 F.2d 1560, 1569 (11th Cir. 1992).

19 District courts have the broad power of a court of equity to determine the
20 appropriate action in the administration and supervision of an equity receivership.
21 See *SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth
22 Circuit explained:

23 A district court's power to supervise an equity receivership
24 and to determine the appropriate action to be taken in the
25 administration of the receivership is extremely broad. The
26 district court has broad powers and wide discretion to
27 determine the appropriate relief in an equity receivership.
28 The basis for this broad deference to the district court's
supervisory role in equity receiverships arises out of the
fact that most receiverships involve multiple parties and
complex transactions. A district court's decision
concerning the supervision of an equitable receivership is
reviewed for abuse of discretion.

1 *Id.* (citations omitted); see also *CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115
2 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,
3 and 'we generally uphold reasonable procedures instituted by the district court that
4 serve th[e] purpose' of orderly and efficient administration of the receivership for
5 the benefit of creditors."). Accordingly, the Court has broad equitable powers and
6 discretion in formulating procedures, schedules, and guidelines for administration of
7 the receivership estate assets.

8 **B. Proposed Claim Procedures**

9 In overseeing a receivership, the court must "make rules which are practicable
10 as well as equitable." *Hardy* at 1039 (quoting *First Empire Bank-New York v.*
11 *FDIC*, 572 F.2d 1361, 1368 (9th Cir. 1978)). The Receiver requests the Court set
12 the following rules and procedures in the interest of fairly and efficiently
13 administering claims against the receivership estate:

14 First, all claim disputes should be resolved via summary proceedings, *i.e.* via
15 noticed motion. District Courts have the power to use "summary procedures in
16 allowing, disallowing, and subordinating claims of creditors . . ." *United States v.*
17 *Arizona Fuels Corp.*, 739 F.2d 455, 458 (9th Cir. 1984). Plenary proceedings to
18 resolve a disputed claim would unduly delay the administration of the case and
19 consume receivership estate resources.

20 Second, all claims should be calculated using a simple, money-in/money-out
21 formula that limits claims to each investor's net loss from PWCG Trust. The
22 money-in/money-out or "MIMO" formula has been endorsed by the Ninth Circuit
23 Court of Appeals and other courts in fraud cases where, like here, the assets of the
24 estate are insufficient to satisfy all claims in full. *See Capital Consultants*, 397 F.3d
25 at 738 (describing a net claim calculation as "an administratively workable and
26 equitable method of allocating the limited assets of the receivership"); *Topworth*,
27 205 F.3d at 1116; *In re Tedlock Cattle Company Inc.*, 552 F.2d 1351, 1354 (9th Cir.
28 1977); *In re Taubman*, 160 B.R. 964, 980-82 (Bankr. S.D. Ohio 1993). Thus, only

1 the amounts invested by and distributed to investors in PWCG Trust should be used
2 to determine allowed claim amounts and that all additional amounts claimed should
3 be disallowed. Similarly, the Receiver proposes that claims for accrued or unpaid
4 interest, late fees, attorney fees, consequential damages or lost profits arising from
5 non-payment, and punitive or tort damages be disallowed.

6 Third, as in a bankruptcy case, it should be a claimant's burden to establish a
7 valid claim against the receivership estate. *See Lundell v. Anchor Constr.*
8 *Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000); *Revere Copper & Brass, Inc.*
9 *v. Adriance Machine Works, Inc.*, 76 F.2d 876, 878 (2d Cir. 1935) (claimants failed
10 to sustain burden of proving claims against receivership). Here, the Receiver has
11 analyzed the accounting records for PWCG Trust, checked them against bank
12 account records, and determined them to be reliable for purposes of determining
13 investor claims. Investors who dispute their claim amounts should be required to
14 provide sufficient bank record support for their own calculation in order to rebut the
15 PWCG Trust accounting records. If they fail to do so, the net loss amount reflected
16 in the PWCG Trust accounting records should be accepted as their claim amount.

17 As discussed above, the Receiver will send a letter to each investor,
18 explaining the claims process and stating what the PWCG Trust accounting records
19 show to be the net loss from their deposits with PWCG Trust and distributions from
20 PWCG Trust. The proposed form of investor claims letter is attached to the
21 Hebrank Decl. as Exhibit A. Investors who agree with the claim amount stated in
22 the letter need take no further action – the Receiver will recommend that they have
23 an allowed claim in that amount.

24 Investors who dispute the amount of their claim should have 90 days from
25 mailing of the letters to submit their response to the Receiver along with copies of
26 all documents they believe support their own calculation of their claim. The
27 Receiver will review the responses, communicate directly with the investors with
28 the goal of resolving as many disputes as possible, and then file a motion seeking

1 approval of all claim amounts, including asking the Court to resolve any remaining
2 disputes.

3 **C. Returned Mail**

4 For any investor claim letters that are returned to the Receiver as not being
5 deliverable, the Receiver will conduct a reasonable search to locate a current
6 physical address or email address for the investor and resend the letter. The search
7 will include the records of PWCG Trust, as well as publicly available online
8 databases. Through these steps, the Receiver hopes to be able to locate and
9 successfully transmit claim letters to all investors. It should also be noted that
10 investors have been reminded throughout the receivership of the importance of
11 maintaining current contact information with the Receiver.

12 **D. Non-Investor Claims**

13 The Receiver is not presently aware of any valid non-investor claims against
14 PWCG Trust. To the extent any such claims exist, however, a deadline should be
15 established to submit non-investor claims to the Receiver such that when the time
16 comes to make distributions from the receivership estate, all claims have been
17 determined and distributions can be made on a pro rata basis to all with allowed
18 claims.

19 This case has been pending since 2015 and the receivership has been pending
20 since February 2018. Therefore, anyone with a connection to PWCG Trust who
21 might assert a claim should be aware of the case and the receivership. Accordingly,
22 the Receiver recommends that a deadline of 90 days from entry of the order
23 approving this Motion be set for all non-investor claims to be submitted to the
24 Receiver. Non-investor claimants must submit claims to the Receiver on or before
25 the claims deadline by submitting a narrative description of their claim in the form
26 of a letter, memorandum or brief, along with all relevant back-up documentation to
27 substantiate their claim.

28

1 In addition to providing notice to those receiving electronic notice of case
2 filings, the Receiver will post the order on his website for this receivership, which
3 has been used from the beginning of the receivership as an efficient means of
4 disseminating information to interested parties. In fact, interested parties who wish
5 to receive monthly updates regarding the receivership have been able to do so
6 throughout the case by signing up at the receivership website. Accordingly, a
7 deadline of 90 days for non-investor claims and posting of notice of the order on the
8 receivership website are appropriate steps to allow any non-investors who wish to
9 assert claims a reasonable and fair opportunity to do so.

10 As with investor claims, the Receiver will review any non-investor claims
11 that are received, attempt to resolve any disputes informally with the claimants, and
12 then file a motion with the Court with a recommendation regarding the allowed
13 amounts of the claims.

14 **III. CONCLUSION**

15 The rules and procedures proposed herein will promote an orderly, fair, and
16 efficient administration of claims, while complying with due process and providing
17 any claimants who dispute their claims with the opportunity to have their claims
18 resolved by the Court. Accordingly, the Receiver respectfully requests that the
19 Motion be granted.

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21 Dated: January 10, 2020

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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By: /s/ David R. Zaro

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DAVID R. ZARO
Attorneys for Receiver
THOMAS HEBRANK

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PROOF OF SERVICE

Securities and Exchange Commission v. Pacific West Capital Group, Inc., et al.,
USDC, Central District of California – Case No. 2:15-cv-02563-DDP-FFM

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 865 S. Figueroa Street, Suite 2800, Los Angeles, California 90017-2543.

On **January 10, 2020**, I caused to be served on all the parties to this action addressed as stated on the attached service list the document entitled: **NOTICE OF MOTION AND MOTION FOR APPROVAL OF PROCEDURES FOR THE ADMINISTRATION OF CLAIMS AGAINST THE RECEIVERSHIP ESTATE; MEMORANDUM OF POINTS AND AUTHORITIES.**

- OFFICE MAIL:** By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with the firm's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.
- OVERNIGHT DELIVERY:** I deposited in a box or other facility regularly maintained by express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in sealed envelope(s) or package(s) designed by the express service carrier, addressed as indicated on the attached service list, with fees for overnight delivery paid or provided for.
- HAND DELIVERY:** I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.
- ELECTRONIC MAIL:** By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.
- E-FILING:** By causing the document to be electronically filed via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.
- FAX:** By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on **January 10, 2020** at Los Angeles, California.

/s/ Martha Diaz
Martha Diaz

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SERVICE LIST

Securities and Exchange Commission v. Pacific West Capital Group, Inc., et al.,
USDC, Central District of California – Case No. 2:15-cv-02563-DDP-FFM

Kelly Curtis Bowers
Securities and Exchange Commission
444 S. Flower Street, Suite 900
Los Angeles, CA 90071

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10 Attorneys for Receiver
11 THOMAS HEBRANK

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14
15 SECURITIES AND EXCHANGE
COMMISSION,

16 Plaintiff,

17 v.

18 PACIFIC WEST CAPITAL GROUP,
19 INC.; ANDREW B CALHOUN IV;
PWCg TRUST; BRENDA CHRISTINE
20 BARRY; BAK WEST, INC.; ANDREW B
CALHOUN JR.; ERIC CHRISTOPHER
21 CANNON; CENTURY POINT, LLC;
MICHAEL WAYNE DOTTA; and
22 CALEB AUSTIN MOODY (dba SKY
STONE),

23 Defendants.
24

Case No. 2:15-cv-02563-FMO (FFMx)

**DECLARATION OF THOMAS C.
HEBRANK IN SUPPORT OF
MOTION FOR APPROVAL OF
PROCEDURES FOR THE
ADMINISTRATION OF CLAIMS
AGAINST THE RECEIVERSHIP
ESTATE**

Date: February 10, 2020
Time: 10:00 a.m.
Ctrm.: 9C
Judge: Hon. Dean D. Pregerson

1 I, Thomas C. Hebrank, declare:

2 1. I am the Court-appointed receiver for PWCG Trust. I make this
3 declaration in support of my Motion for Approval of Procedures for the
4 Administration of Claims Against the Receivership Estate ("Motion"). I have
5 personal knowledge of the facts stated herein, and if called upon to do so, I could
6 and would personally and competently testify to them.

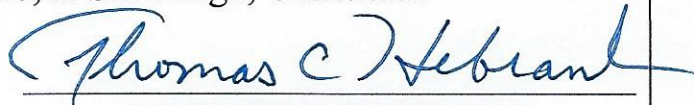
7 2. I have analyzed and verified the accounting records of investor
8 transactions with PWCG Trust and determined them to be accurate and reliable for
9 purposes of determining amounts invested by investors and amounts distributed to
10 investors in return. Accordingly, I propose to send a letter to each investor,
11 explaining the claims process and stating what the PWCG Trust records show to be
12 the allowed amount of their claim (the net loss from their deposits and distributions
13 from PWCG Trust). The proposed form of letter is attached hereto as Exhibit A. If
14 investors agree with the statement of their claim, they need take no further action – I
15 will recommend to the Court that they have an allowed claim in that amount. If, on
16 the other hand, investors dispute the amount of their claim, they will have 90 days to
17 submit their response to me along with copies of all documents they believe support
18 their own calculation. I will review the responses, communicate directly with the
19 investors with the goal of resolving as many disputes as possible, and then file a
20 motion seeking approval of all investor claim amounts, including asking the Court
21 to resolve any remaining disputes.

22 3. This straight forward claims process is designed to minimize
23 administrative expenses associated with reviewing claims, while still providing any
24 investors who dispute their claims (and which disputes cannot be resolved through
25 informal discussion and exchange of information) with the opportunity to have their
26 claims decided by the Court. Based on my experience in other cases, I expect the
27 number of unresolved claim disputes to be very low, if any.

28

1 I declare under penalty of perjury under the laws of the State of California
2 that the foregoing is true and correct.

3 Executed this 10 day of January 2020, at San Diego, California.

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5 THOMAS C. HEBRANK
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Thomas C. Hebrank
 Court Appointed
 Receiver for
 PWCG Trust

[Date]

[Investor Name]

[Investor Address]

Dear [Investor Name]

We are now in the investor claims verification phase of the receivership. This letter provides you with the detail from PWCG Trust's records regarding your investments in PWCG Trust and any distributions you received. The net total amount (total amount invested less total distributions received) will be the proposed allowed amount of your claim in the receivership. Distributions from the receivership will be made on a pro rata basis based on the allowed amount of investor claims.

Based on PWCG Trust's records, the amounts you invested in or paid to PWCG Trust and the amounts you received from PWCG Trust are as follows:

Investment #1		
Initial Investment	Policy Name and #	Amount
Capital Call or Other Contributions	Policy Name and #	Amount
Less: Proceeds or Other Amounts Paid	Policy Name and #	Amount
		Total
Investment #2		
Initial Investment	Policy Name and #	Amount
Capital Call or Other Contributions	Policy Name and #	Amount
Less: Proceeds or Other Amounts Paid	Policy Name and #	Amount
		Total
		Grand Total

As noted above, the net total amount shown on the table above is the calculation of your proposed allowed claim amount. This calculation is based on a simple "cash-in vs. cash-out" analysis for all investments. In other words, it is the total amount that was contributed by you (initial investment, subsequent payments, etc.) reduced by any distributions or other payments you received. Note, the Court has already determined that amounts above and beyond the simple "cash-in vs. cash-out" calculation provided herein, such as attorney fees, IRA administration fees, or other costs you may have incurred, may not be added to claims or included in allowed claim amounts.

Additionally, if your net total on the table is negative, because you have already received more cash than you invested, you will not have a proposed allowed claim.

Please review the table carefully. If you do not dispute the proposed allowed amount of your claim, you do not need to take any action. If, on the other hand, you do dispute the proposed allowed amount of your claim, you must contact my office at pwcg@ethreadvisors.com, clearly state the nature of your dispute, and provide documentation supporting your calculation of your claim amount. All claim disputes and supporting documentation must be received by my office by _____, 2020. Please note, once claim amounts are approved by the Court, they are set and will not be changed.

Sincerely,

Thomas C. Hebrank, CPA
 Receiver

PROOF OF SERVICE

Securities and Exchange Commission v. Pacific West Capital Group, Inc., et al.,
USDC, Central District of California – Case No. 2:15-cv-02563-DDP-FFM

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On **January 10, 2020**, I caused to be served on all the parties to this action addressed as stated on the attached service list the document entitled: **DECLARATION OF THOMAS C. HEBRANK IN SUPPORT OF MOTION FOR APPROVAL OF PROCEDURES FOR THE ADMINISTRATION OF CLAIMS AGAINST THE RECEIVERSHIP ESTATE.**

OFFICE MAIL: By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with the firm's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

OVERNIGHT DELIVERY: I deposited in a box or other facility regularly maintained by express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in sealed envelope(s) or package(s) designed by the express service carrier, addressed as indicated on the attached service list, with fees for overnight delivery paid or provided for.

HAND DELIVERY: I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

ELECTRONIC MAIL: By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

E-FILING: By causing the document to be electronically filed via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

FAX: By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on **January 10, 2020** at Los Angeles, California.

/s/ Martha Diaz
Martha Diaz

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SERVICE LIST

Securities and Exchange Commission v. Pacific West Capital Group, Inc., et al.,
USDC, Central District of California – Case No. 2:15-cv-02563-DDP-FFM

Kelly Curtis Bowers
Securities and Exchange Commission
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Los Angeles, CA 90071