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COOK STREET MASTER TRUST
8

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11

12 SECURITIES AND EXCHANGE
COMMISSION,

13 Plaintiff,

14 v.

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

21 Defendants.
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Case No. 2:15-CV-02563-FMO
(FFMx)

**RESPONSE OF COOK STREET
MASTER TRUST TO RECEIVER'S
MOTION FOR AUTHORITY TO:**

**(A) ENGAGE PORTFOLIO
MANAGEMENT AND
VALUATION CONSULTANT;**

**(B) TERMINATE MILLS,
POTOCZAK & COMPANY; AND**

**(C) USE PWCG TRUST RESERVE
FUNDS TO COVER UNFUNDED
PREMIUM PAYMENTS FOR AN
ADDITIONAL FIVE MONTHS**

Date: May 31, 2018
Time: 10:00am
Ctrm: 6D
Judge: Hon. Fernando M. Olguin

I. INTRODUCTION

1
2 Cook Street Master Trust (“CSMT”) is an investment trust managed by
3 BroadRiver Asset Management, L.P. (“BroadRiver”) that acquires interests in life
4 insurance policies as a means of achieving dependable, consistent returns which are
5 less volatile than those offered in other markets. CSMT, after being presented an
6 investment opportunity by Pacific West Capital Group (“Pac West”), and its
7 principal Andrew B. Calhoun IV (“Calhoun”), paid \$1.5 million to Pac West in
8 order to acquire fractional interests in life insurance policies owned by Pac West
9 and held by PWCG Trust, for which Mills Potoczak & Company (the “Trustee”) is
10 trustee. CSMT has been funding premiums for the fractional interests owned since
11 the acquisition, and requests the ability to continue making those payments in order
12 to assist the Receiver in minimizing the erosion of PWCG Trust’s reserves, such
13 that the overall health of PWCG Trust’s assets are maintained for its investors,
14 including CSMT.

15 CSMT’s interest is in continuing to fund the premium payments for the life
16 insurance policies that it has previously acquired in order to keep them from lapsing
17 and its investment safe. In this regard, CSMT stands willing and able to continue
18 making similar payments supporting the Receiver in his aims of maintaining
19 PWCG Trust’s assets’ viability and overall value. CSMT, as an investor in assets
20 held by PWCG, holds an interest in both continuing the existence of the insurance
21 policies for which it has acquired an interest, and in assisting the appointed
22 Receiver, whose *raison d’être* is the maximization of value of the remaining assets
23 of its estate for the assets’ investors, which include CSMT.

24 CSMT does not oppose any of the requests made by the Receiver in his May
25 2, 2018 Motion for Authority to (A) Engage Portfolio Management and Valuation
26 Consultants; (B) Terminate Mills Potoczak & Company; and (C) Use PWCG Trust
27 Funds to Cover Unfunded Premium Payments for an Additional Five Months (the
28 “Motion”), but instead respectfully seeks only that the Court modify Receiver’s

1 Proposed Order (Dkt. 153-2) to enable CSMT to continue funding the premium
 2 payments it already been in order to protect its fractional interests in life insurance
 3 policies held by PWCG Trust that it previously acquired its interest in.

4 2. STATEMENT OF FACTS

5 The receiver has provided certain information to the Court about CSMT in
 6 his recent declarations at DE 146-1 and 153-1. CSMT has provided a declaration
 7 from its trustee to clarify certain statements made by the receiver and to advise the
 8 Court of its position. CSMT entered into an agreement, effective July 2017 with
 9 Pac West (the “Pac West Acquisition”) . Declaration of Andrew Plevin (“Plevin
 10 Dec.”) ¶3. Pursuant to the Agreement, among other things, CSMT purchased all of
 11 Pacific West’s rights in insurance policies held by PWCG Trust that Pacific West
 12 had acquired after taking over and assuming premium payment obligations from
 13 defaulted investors, or what is known as “forfeited interests.” *Id.* Those rights were
 14 for various percentage ownerships in most of the policies owned by the Trust. *Id.*
 15 Additionally, pursuant to the Agreement, CSMT obtained the right to any
 16 subsequent forfeited interests in policies. Plevin Dec. ¶5. In November 2017,
 17 PWCG Trust notified that CSMT that CSMT would acquire additional interests as
 18 additional investors failed to make required premium payments. *Id.* As a percentage
 19 owner of policies in which it obtained interests, CSMT has taken over and assumed
 20 premium payment obligations for its proportional interests in those policies. *Id.*

21 During CSMT’s due diligence review, PWCG Trust confirmed that it had
 22 declared policy interests “forfeited” after a standard notification process that was
 23 followed with respect to each investor in a policy. Plevin Dec. ¶9. PWCG Trust
 24 advised CSMT, and gave CSMT copies of notice letters that demonstrate a process
 25 involving an initial letter that requested a payment from each policy investor, due to
 26 the exhaustion of reserve funds, for each investor’s proportional share of the
 27 necessary premium amount to keep policies in force, explaining the exhaustion of
 28 reserve funds and the investor’s obligation to contribute. *Id.* PWCG Trust would

1 send a second letter if the investor had not paid the requested amount within a
2 minimum of 30 days, in which it advised that failure to pay would result in the loss
3 of the investor's interest in the policy. *Id.* Thirty days or more after the second
4 letter, PWCG Trust would send its final request and advise that failure to pay by a
5 fixed date at least 30 days after the date of the third letter would result in forfeiture.
6 *Id.* Only after that fixed date would PWCG Trust declare a forfeit as to any investor
7 who failed to remit the additional premium to the Trustee.

8 CSMT has paid PWCG Trust \$875,467 for premiums for its proportional
9 share of policies. Plevin Dec. ¶6. CSMT has relied on PWCG Trust to maintain
10 accurate records regarding the premium payments made and the proportional shares
11 held by CSMT at all time. *Id.* The total death benefit owned by CSMT through its
12 acquisition of PWCG Trust interests is just over \$32 million. Plevin Dec. ¶7. Mr.
13 Hebrank has represented that the total face value, or net death benefit, of policies
14 held by PWCG Trust is \$126,650,578. *Id.* CSMT therefore owns approximately
15 25% of the net death benefit of policies held by PWCG Trust. *Id.*

16 PWCG Trust requested CSMT to fund unfunded premium payments for
17 interests which had not yet been forfeited but which may be forfeited later. Plevin
18 Dec. ¶10. Consequently, and to assist PWCG Trust in keeping policies in force,
19 CSMT advanced a series of payments totaling \$1,213,293.02 to PWCG Trust,
20 which PWCG Trust stated would be used to make premium payments and which
21 may later result in PWCG Trust assigning interests to CMST. *Id.*

22 CSMT also advanced a total of \$146,642.51 to enable PWCG Trust to make
23 certain premium payments for policies still in their contract period, meaning that
24 formal request for additional funds from investors could not be made but the
25 policies were nevertheless in danger of lapse. Plevin Dec. ¶11.

26 In total, CSMT has advanced \$1,359,935.53 to PWCG Trust for the purpose
27 of making premium payments to protect the interests of investors who, at least at
28 the time of the advance, had failed to pay premiums when due but had not yet been

1 subject to forfeiture. Plevin Dec. ¶12.

2 CSMT is familiar with, and is prepared to assist ITM 21st as it commences
3 its engagement, to provide any information that might be helpful based on the work
4 that CSMT has done over the past 12 months in analyzing the policies, policy
5 market values, optimum premium funding levels and other details that will be
6 necessary to complete the tasks for which ITM 21st will be engaged. Plevin Dec.
7 ¶13.

8 CSMT has dedicated funds for the premiums of the approximately 25%
9 interest that it has in PWCG Trust's policies and is well-positioned to make all
10 payments in a timely fashion. Plevin Dec. ¶15. Such payments will of course reduce
11 the need for cash to be drawn from the reserve funds. *Id.* CSMT does not oppose
12 the request to use reserve funds from policies in their contract periods to pay
13 premiums due on other policies. Plevin Dec. ¶14. CSMT has previously made this
14 offer to the Receiver in an attempt to assist the Receiver's administering of the
15 assets held by PWCG Trust. Plevin Dec. ¶16.

16 3. ARGUMENT

17 When an order is requested or made, a party need only state the action that it
18 wants the court to take or objects to, along with the grounds for the request or
19 objection. Fed. R. Civ. Proc. 46. Courts of equity have an inherent power to fashion
20 effective relief. *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). Further,
21 district courts have that broad power of a court of equity to determine appropriate
22 action in administration and supervision of a receivership. *See SEC v. Capital*
23 *Consultants, LLC*, 397 F.3d 7333, 738 (9th Cir. 2005). Broad deference will be
24 afforded to district courts in their supervisory role, and reasonable procedures will
25 generally be upheld that "serve the purpose of orderly and efficient administration
26 of the receivership for the benefit of creditors." *CFTC v. Topworth Int'l, Ltd.*, 205
27 F.3d 1107, 1115 (9th Cir. 1999).

28 Receivers owe duties to the court and eventual owners of the receivership

1 estate's assets. *See Sovereign Bank v. Schwab*, 414 F.3d 450, 454 (3d Cir. 2005).
2 That duty manifests as an obligation to protect, preserve, administer, and distribute
3 appropriately the receivership estate's assets and must advocate, to the court,
4 courses of action that are consistent with these duties. *Liberte Capital Group, LLC*
5 *v. Capwill*, 462 F.3d 543, 551 (6th Cir. 2006); *SEC v. Private Equity Mgmt. Grp.,*
6 *Inc.*, 2009 WL 2019747 (C.D.Cal. 2009).

7 CSMT is requesting only a minor change in the Receiver's Proposed Order.
8 CSMT would like to continue funding premium payments for the fractional
9 interests in insurance policies held by PWCG Trust that it has previously funded,
10 such that its interests are not put at risk, and further that PWCG Trust's reserves are
11 not unnecessarily eroded. Further to the approximately \$1.4 million already
12 forwarded to PWCG Trust in premium payments, CSMT is prepared to continue
13 funding the premiums going forward. Preventing CSMT from funding these
14 payments would risk the value of all the life insurance policies held by PWCG
15 Trust because according to the Receiver, PWCG Trust's reserves will within the
16 next 12 months become insufficient to fund the policy premiums, thereby
17 imperiling all of the value stored in the insurance policies. The Receiver's Motion
18 concedes these points and warns "the vast majority of Policies will exhaust their
19 reserves before they mature and that all investors will eventually be in the position
20 of losing their investments if there is no alternative source of funding to pay the
21 premiums." Receiver's Motion, pg. 16.

22 Additionally, allowing CSMT to continue funding its obligations assists the
23 Receiver in his obligation to investigate PWCG Trust and the other involved
24 entities with fewer time constraints generated by the rapidly eroding reserve funds.
25 The Receiver will be better suited to perform his obligations assigned to him as an
26 officer of the Court by being able to make a more complete survey of the assets,
27 their valuations, and his ability to recover maximum value for the insurance
28 policies' investors, as is his legal obligation. The Receiver requests payments for

1 120 days in order to propose a means to address the unfunded premiums by means
2 of using the reserves, but with CSMT's involvement, the Receiver would be able to
3 stretch the existing reserves further and more accurately determine a more ideal
4 solution.

5 This course of action is in both CSMT's interest and in the Receiver's
6 interest, as allowing the PWCG Trust reserves to unnecessarily erode imperils all of
7 the insurance policies by shortening the overall amount of time that the Receiver
8 will be able to fund them. Allowing CSMT to continue funding its share of the
9 insurance policy premiums owed improves the likelihood of all investors in the
10 insurance policies owed by PWCG Trust to recover their investments.

11 4. CONCLUSION

12 Further to the above, CSMT respectfully requests that the Court modify
13 Receiver's Order to allow CSMT to continue to make premium payments for the
14 Unfunded Premium Payments for the policies which it has previously acquired as a
15 result of the Pac West Acquisition to prevent the unnecessary erosion of PWCG
16 Trust's reserve funds. Retaining PWCG Trust's reserve funds would assist the
17 Receiver maintain the overall value of the PWCG Trust's assets, of which CSMT
18 owns an interest. CSMT makes no opposition to any other facet of the Receiver's
19 Motion, and instead stands ready to assist Receiver in administering the PWCG
20 Trust, protecting the value of the policies contained therein, and continuing to
21 maximize the value of the Receiver's estate. CSMT therefore requests that the
22 Court grant Receiver's Motion, with the modification described herein.

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Dated: May 10, 2018

ARENT FOX LLP

By: /s/ Michael S. Cryan
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ARAM ORDUBEGIAN
JAKE GILBERT
Attorneys for
COOK STREET MASTER TRUST

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COOK STREET MASTER TRUST
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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 v.

14 PACIFIC WEST CAPITAL GROUP,
15 INC.; ANDREW B. CALHOUN IV;
PWCG TRUST; BRENDA
16 CHRISTINE BARRY; BAK WEST,
INC.; ANDREW B. CALHOUN JR.;
17 ERIC CHRISTOPHER CANNON;
CENTURY POINT, LLC; MICHAEL
18 WAYNE DOTTA; AND CALEB
AUSTIN MOODY (dba SKY
19 STONE),

20 Defendant.
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Case No. 2:15-CV-02563-FMO
(FFMx)

**DECLARATION OF ANDREW
PLEVIN IN SUPPORT OF
RESPONSE OF COOK STREET
MASTER TRUST TO RECIEVER'S
MOTION FOR AUTHORITY TO:**

**(A) ENGAGE PORTFOLIO
MANAGEMENT AND
VALUATION CONSULTANT;**

**(B) TERMINATE MILLS,
POTOCZAK & COMPANY; AND**

**(C) USE PWCG TRUST RESERVE
FUNDS TO COVER UNFUNDED
PREMIUM PAYMENTS FOR AN
ADDITIONAL FIVE MONTHS**

Date: May 31, 2018
Time: 10:00am
Crtn: 6D
Judge: Hon. Fernando M. Olguin

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25 I, Andrew Plevin, declare PURSUANT TO 28 U.S.C. §1746 as follows:

26 1. I am over the age of 21 and I am capable of making this unsworn
27 declaration. I have not been convicted of a felony or crime involving dishonesty,
28

DECLARATION OF ANDREW PLEVIN
2:15-CV-02563-FMO (FFMX)

1 and the facts contained herein are within my personal knowledge and are true and
2 correct.

3 2. I am the Co-CEO of BroadRiver Asset Management L.P. and the
4 Managing Member of Brighton Trustees, LLC, the Trustee of Cook Street Master
5 Trust (“CSMT”).

6 3. As stated by Mr. Hebrank in his two declarations (D.E. 146-1 and 153-
7 1) Cook Street Master Trust (“CSMT”) entered into an agreement (the
8 “Agreement”), dated July 6, 2017 and attached to D.E. 146-1 as Exhibit A, with
9 Pacific West Capital Group, Inc. (“Pacific West”) and PWCG Trust. Pursuant to
10 the Agreement, among other things, CSMT purchased all of Pacific West’s rights in
11 insurance policies held by PWCG Trust that Pacific West had acquired after taking
12 over and assuming premium payment obligations from defaulted investors, or what
13 is known as “forfeited interests.” Those rights were for various percentage
14 ownerships in most of the policies owned by the Trust.

15 4. Pursuant to its obligation as a percentage owner of policies in which it
16 obtained interests, CSMT has taken over and assumed premium payment
17 obligations for its proportional interests in those policies.

18 5. Additionally, pursuant to the Agreement, CSMT obtained the right to
19 any subsequent forfeited interests in policies. In November 2017, PWCG Trust
20 notified CSMT that CSMT would acquire additional interests as additional
21 investors failed to make required premium payments. As a percentage owner of
22 policies in which it obtained interests, CSMT has taken over and assumed premium
23 payment obligations for its proportional interests in those policies.

24 6. In total, CSMT has paid PWCG Trust \$875,467 for premiums for its
25 proportional share of policies that have been acquired. PWCG Trust has advised
26 CSMT, and CSMT has reason to believe, that PWCG Trust has maintained records
27 of all of those premium payments and the precise proportional share held by CSMT
28 in all of those policies.

1 7. To clarify the statements of Mr. Hebrank D.E. 146-1 and 153-1,
2 CSMT acquired interests from Pacific West with an aggregate net death benefit of
3 \$28,206,155.85. CSMT acquired additional interests, as described above, with an
4 aggregate net death benefit of \$3,835,274.18. The total death benefit owned by
5 CSMT through its acquisition of interests is just over \$32 million. Mr. Hebrank has
6 represented that the total face value, or net death benefit, of policies held by PWCG
7 Trust is \$126,650,578. CSMT therefore owns approximately 25% of the net death
8 benefit of policies held by PWCG Trust.

9 8. Mr. Hebrank has recited the methods used to fund shortfalls in policy
10 reserves in his recent declaration (D.E. 153-1) at paragraphs 2 through 6. During
11 our due diligence review prior to entering into the Agreement, Pacific West and
12 PWCG Trust informed us of the policy funding methods that had been used, and
13 the description given by Mr. Hebrank in paragraphs 2, 3 and 4 is consistent with
14 what we were told. We understand that for a period of time, Pacific West used its
15 own funds to pay premiums that various investors had failed to make and received
16 the interests for which it had made premium payments.

17 9. During our due diligence review, PWCG Trust confirmed that it had
18 declared policy interests “forfeited” after a standard notification process that was
19 followed with respect to each investor in a policy. PWCG Trust advised us, and
20 gave us copies of notice letters that demonstrate a process involving an initial letter
21 that requested a payment from each policy investor, due to the exhaustion of
22 reserve funds, for each investor’s proportional share of the necessary premium
23 amount to keep policies in force, explaining the exhaustion of reserve funds and the
24 investor’s obligation to contribute. PWCG Trust would send a second letter if the
25 investor had not paid the requested amount within a minimum of 30 days, in which
26 it advised that failure to pay would result in the loss of the investor’s interest in the
27 policy. Thirty days or more after the second letter, PWCG Trust would send its
28 final request and advise that failure to pay by a fixed date at least 30 days after the

1 date of the third letter would result in forfeiture. Only after that fixed date would
2 PWCG Trust declare a forfeit as to any investor who failed to remit the additional
3 premium to the Trustee.

4 10. After CSMT acquired the interests outlined above, PWCG Trust
5 requested CSMT to fund unfunded premium payments for interests which had not
6 yet been forfeited but which may be forfeited later. Consequently, and to assist
7 PWCG Trust in keeping policies in force, CSMT advanced a series of payments
8 totaling \$1,213,293.02 to PWCG Trust, which PWCG Trust stated would be used to
9 make premium payments and which may later result in PWCG Trust assigning
10 interests to Cook.

11 11. CSMT also advanced a total of \$146,642.51 to enable PWCG Trust to
12 make certain premium payments for policies still in their contract period, meaning
13 that formal request for additional funds from investors could not be made but the
14 policies were nevertheless in danger of lapse.

15 12. In total, CSMT has advanced \$1,359,935.53 to PWCG Trust for the
16 purpose of making premium payments to protect the interests of investors who, at
17 least at the time of the advance, had failed to pay premiums when due but had not
18 yet been subject to forfeiture.

19 13. CSMT is familiar with ITM 21st, and in fact uses that company for
20 various services similar to the services for which the receiver seeks approval to
21 engage ITM 21st. Should the court decide to appoint ITM 21st, CSMT is
22 prepared to assist ITM 21st as it commences its engagement, to provide any
23 information that might be helpful based on the work that CSMT has done over the
24 past 12 months in analyzing the policies, policy market values, optimum premium
25 funding levels and other details that will be necessary to complete the tasks for
26 which ITM 21st will be engaged.

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1 14. CSMT does not oppose the request to use reserve funds from policies
2 in their contract periods to pay premiums due on other policies. CSMT has never
3 been requested by the Trustee to place any funds in reserve and consequently does
4 not believe that it has an interest in the use of reserves.

5 15. CSMT is prepared to continue making premium payments to PWCG
6 Trust for the roughly 25% interest that it has in policies held by PWCG Trust.
7 CSMT has dedicated funds for those premium payments and is well-positioned to
8 make all payments in a timely fashion. CSMT asks that the court modify the
9 request of the receiver and allow CSMT to pay the necessary premiums on its
10 allocable interests in policies. Such payments will of course reduce the need for
11 cash to be drawn from the reserve funds.

12 16. Prior to this filing, counsel for CSMT presented the suggestion to
13 counsel for the receiver that CSMT would pay its allocable premium. The
14 suggestion was not rejected out of hand, but is not included in the proposal. CSMT
15 asks the court to note its willingness to pay its obligation as well as the benefit that
16 such payments will have for the investors whose reserve funds will be otherwise
17 used for unfunded premium.

18 17. CSMT's request that the court allow CSMT to pay the necessary
19 premiums on its allocable interest in policies is conditioned on PWCG Trust
20 applying CSMT's payment only to CSMT's interests and not to any other interests.

21 17. In conclusion, CSMT recognizes the difficulties faced by Mr. Hebrank and
22 his team, as well as 21st, in assessing the financial picture with respect to the
23 policies, as well as valuation of the policies. Because of its acquisition of interests
24 from Pac West, and its subsequent tracking of policies and premium information,
25 CSMT has a substantial amount of information it can share with both the receiver
26 and 21st to assist in the process. More importantly, CSMT is prepared to provide
27 funding on the basis set forth above in accordance with proportionate interests in
28 policies which, as noted, is almost 25% of the policies held by PWCG Trust. Based

1 on the cash that CSMT is prepared to infuse into PWCG Trust, and the death
2 benefits that the receiver said that he expects to collect, the drain on policy reserves
3 should be substantially reduced, if not eliminated in short order.

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I declare under penalty of perjury under the law of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 10th day of May, 2018.

COOK STREET MASTER TRUST
By: Brighton Trustees, LLC, as Trustee

By: 
Name: Andrew Plevin
Title: Managing Member