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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
SEATTLE DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Case No. C-15-1350 JLR

Plaintiff,

vs.

RECEIVER’S MOTION FOR ORDER  
AUTHORIZING RECEIVER TO  
EMPLOY COUNSEL AND OTHER  
PROFESSIONALS

PATH AMERICA, LLC; PATH AMERICA  
SNOCO LLC; PATH AMERICA FARMERS  
MARKET, LP; PATH AMERICA KINGCO  
LLC; PATH AMERICA TOWER, LP; PATH  
TOWER SEATTLE, LP; POTALA TOWER  
SEATTLE, LLC; and LOBSANG DARGEY,

NOTE ON MOTION CALENDAR:  
November 13, 2015

Defendants, AND

POTALA SHORELINE, LLC; AND POTALA  
VILLAGE KIRKLAND, LLC,

Relief Defendants,

**I. INTRODUCTION**

In accordance with the this Court's October 22, 2015 Order Appointing Receiver (the "Appointment Order"), and the law governing federal equity receiverships, Michael A.

1 Grassmueck, the duly appointed receiver (the "Receiver") for Defendants Path America, LLC,  
2 Path America SnoCo, LLC, Path America Farmer's Market, LP, Path America KingCo, LLC,  
3 Path America Tower, LP, Path Tower Seattle, LP, and Potala Tower Seattle, LLC and Relief  
4 Defendants Potala Shoreline, LLC, and Potala Village Kirkland, LLC (collectively the  
5 "Receivership Entities" or "Entities"), hereby respectfully requests that this Court enter an Order  
6 authorizing the Receiver to retain (1) the firm of Allen Matkins Leck Gamble Mallory & Natsis  
7 LLP ("Allen Matkins"), as his general receivership counsel; (2) the firm of Karr Tuttle Campbell,  
8 P.S. ("Karr Tuttle"), as his local counsel; and (3) Darrell D. Dorrell CPA, PC dba Financial  
9 Forensics ("Financial Forensics") as his forensic accountants (collectively, "Professionals").

10 The Receiver is not an attorney or forensic accountant and does not have such  
11 professionals on staff. Considering the complexity and urgency of the numerous legal and  
12 factual issues facing the Receivership Entities, and pursuant to Section I(7)(F) of the  
13 Appointment Order authorizing the Receiver's engagement of attorneys and accountants, the  
14 Receiver has engaged Allen Matkins to serve as his general receivership counsel, Karr Tuttle to  
15 serve as his local counsel, and Financial Forensics to serve as his forensic accountants. Out of an  
16 abundance of caution and so as to comply with all potentially applicable requirements, the  
17 Receiver now requests that, pursuant to Local Civil Rule 66(c), the Court formally authorize and  
18 approve the engagements and professional compensation in accordance with the terms presented  
19 herein. Although the Receiver seeks authority to employ both Allen Matkins and Karr Tuttle as  
20 counsel, the Receiver, Allen Matkins, and Karr Tuttle will strive to realize synergies and  
21 efficiencies between general receivership counsel and local counsel, and will ensure that counsel  
22 does not duplicate efforts or work.

23 This Motion is based on this Notice of Motion and Motion and the below Memorandum  
24 of Points and Authorities, and the concurrently submitted Declarations of David R. Zaro ("Zaro  
25 Decl."), Diana K. Carey ("Carey Decl.") and Gregory A. Gadawski ("Gadawski Decl."), and any  
26 argument or evidence presented to the Court at any hearing on this Motion.

1 **II. PROCEDURAL HISTORY AND RELEVANT FACTUAL BACKGROUND**

2 This matter was initially brought before the Court pursuant to a Complaint filed on  
3 August 24, 2015, by the Securities and Exchange Commission (the "Commission"), alleging that  
4 the Defendants had exploited a federal visa program to defraud investors seeking investment returns  
5 and a path to United States residency. (*See, generally*, Dkt. # 1.)

6 On September 22, 2015, the Commission filed a motion seeking an order appointing a  
7 receiver over the entity Defendants Path America, LLC, Path America SnoCo LLC, Path America  
8 Farmer's Market, LP, Path America KingCo LLC, Path America Tower, LP, Path Tower Seattle,  
9 LP, and Potala Tower Seattle, LLC, as well as certain powers over Relief Defendants Potala  
10 Shoreline, LLC and Potala Village Kirkland, LLC. (Dkt. #38.)

11 Following oral argument on October 21, 2015, the Court entered the Appointment Order  
12 on October 23, 2015 (Dkt # 88), appointing Michael A. Grassmueck on the terms and conditions  
13 as set forth in the Appointment Order. (Dkt. #88 at p. 3-8.) The Receiver now seeks to engage  
14 professionals to assist him with performing his duties and obligations as reflected in the  
15 Appointment Order, and to assist with the orderly administration of the estate of the  
16 Receivership Entities ("Receivership Estate"). The qualifications of each firm and its  
17 professionals and their proposed billing rates are as set forth below and in the respective  
18 Declarations of Messrs. Zaro, Gadawski and Ms. Carey, submitted concurrently herewith.

19 **III. LEGAL AUTHORITY**

20 **A. District Court Power To Administer The Receivership.**

21 A district court's power to administer an equity receivership is extremely broad. SEC v.  
22 Hardy, 803 F.2d 1034, 1037 (9th Cir. 1986); SEC v. Forex Asset Management, LLC, 242 F.3d 325,  
23 331 (5th Cir. 2001); SEC v. Basic Energy & Affiliated Resources, 273 F.3d 657, 668 (6th Cir.  
24 2001); SEC v. Elliot, 953 F.2d 1560, 1566 (11th Cir. 1992); SEC v. Wang, 944 F.2d 80, 85 (2d Cir.  
25 1991).

26 "The power of a district court to impose a receivership or grant other forms of ancillary

1 relief does not in the first instance depend on a statutory grant of power from the securities laws.  
2 Rather, the authority derives from the inherent power of a court of equity to fashion effective relief."  
3 SEC v. Wencke, 622 F.2d 1363, 1369 (9th Cir. 1980). The "primary purpose of equity  
4 receiverships is to promote orderly and efficient administration of the Receivership Estate by the  
5 district court for the benefit of creditors." Hardy, 803 F.2d at 1038. The Ninth Circuit has  
6 explained:

7  
8 A district court's power to supervise an equity receivership and to  
9 determine the appropriate action to be taken in the administration  
10 of the receivership is extremely broad. The district court has broad  
11 powers and wide discretion to determine the appropriate relief in  
12 an equity receivership. The basis for this broad deference to the  
13 district court's supervisory role in equity receiverships arises out of  
14 the fact that most receiverships involve multiple parties and  
15 complex transactions.

16  
17 SEC v. Capital Consultants, LLC, 397 F.3d 733, 738 (9th Cir. 2005) (citations omitted); see  
18 also CFTC v. Topworth Int'l, Ltd., 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad  
19 deference' to the court's supervisory role, and 'we generally uphold reasonable procedures instituted  
20 by the district court that serve th[e] purpose' of orderly and efficient administration of the  
21 receivership for the benefit of creditors."). Accordingly, this Court has broad equitable powers and  
22 discretion in formulating procedures, schedules and guidelines for administration of the Estate, and  
23 should authorize the engagement and compensation of the professionals requested herein.

24  
25 **B. Deference To The Receiver's Business Judgment.**

26  
27 In the estate administration context, courts are deferential to the business judgment of  
bankruptcy trustees, receivers, and similar estate custodians. See, e.g., Bennett v. Williams, 892  
F.2d 822, 824 (9th Cir. 1989) ("[W]e are deferential to the business management decisions of a  
bankruptcy trustee."); Southwestern Media, Inc. v. Rau, 708 F.2d 419, 425 (9th Cir. 1983) ("The  
decision concerning the form of ... [estate administration] ... rested with the business judgment of  
the trustee."); In re Thinking Machines Corp., 182 B.R. 365, 368 (D. Mass. 1995) ("The application

1 of the business judgment rule ... and the high degree of deference usually afforded purely economic  
2 decisions of trustees, makes court refusal unlikely.") (rev'd on other grounds, In re Thinking  
3 Machines Corp., 67 F.3d 1021 (1st Cir. 1995)).

4 As reflected herein, the Receiver has determined, in his reasonable business judgment, that  
5 he requires the services of Allen Matkins, Karr Tuttle, and Financial Forensics and, accordingly,  
6 respectfully requests that the Court grant this Motion.

7 **IV. RELIEF REQUESTED.**

8 **A. Employment And Compensation Of Allen Matkins.**

9 1. Grounds for Employment of Allen Matkins as Receivership Counsel.

10 As explained above, the Receiver is not an attorney and does not have in-house  
11 receivership counsel. In the Receiver's reasonable business judgment, the potentially complex  
12 relationships between and among the Receivership Entities, and the business and financial  
13 transactions in which they engaged with one another, their investors, their principals, and third  
14 parties, along with the numerous practical and legal issues facing the Entities which require  
15 immediate attention, all militate in favor of the prompt employment and compensation of well-  
16 qualified legal counsel and other professionals, to assist the Receiver with, among other things:  
17 (a) marshaling, preserving, managing, and appropriately administering the assets of the  
18 Receivership Entities ("Receivership Assets"), including cash and substantial real property  
19 assets; (b) addressing legal issues related to the administration of the Receivership Entities and  
20 their business, including pressing issues in connection with the ongoing real property  
21 development projects that require immediate attention; (c) providing legal advice and support in  
22 connection with the Receiver's investigation of the Receivership Entities' business and financial  
23 activities, including undertaking the discovery authorized by the Appointment Order and  
24 evaluating the available methods of recovering Receivership Assets; (d) pursuing claims and  
25 causes of action, including, where appropriate, through litigation; (e) preparing the submissions  
26 to the Court required by the Appointment Order, including inventories, interim reports, fee

1 applications, and other requests for relief; and (f) providing legal advice relating to investor and  
2 creditor claims against the Receivership Estate and pursuing Court approval of any plans for the  
3 administration of investor and creditor claims and distribution of Receivership Assets, if any, and  
4 as appropriate.

5 Again, while the Appointment Order authorizes the Receiver to employ legal counsel, the  
6 Receiver nevertheless requests that the Courts specifically authorize and approve the  
7 employment and compensation of Allen Matkins as the Receiver's general receivership counsel  
8 pursuant to the terms described below.

9 2. Selection of Allen Matkins as Counsel.

10 The Receiver selected Allen Matkins because the firm is highly qualified to represent him  
11 in connection with this complex receivership, given its substantial experience and expertise in  
12 federal equity receiverships, real estate, litigation, employment, corporate, and tax matters.  
13 (Zaro Decl., ¶ 2.)

14 Allen Matkins has an active and prominent federal receiverships practice and has  
15 represented federal equity receivers in a substantial number of cases initiated by the Commission  
16 and other federal agencies, including in the United States District Court, Western District of  
17 Washington. (Id.) Attached hereto as Exhibit A is a list of cases where Allen Matkins has  
18 represented court-appointed receivers in federal enforcement actions. Attached hereto as  
19 Exhibit B is an overview of the Allen Matkins firm. Allen Matkins has not represented and has  
20 no relationship to any of the defendant parties in this matter. (Id. at ¶ 7.)

21 In addition to its substantial experience serving as counsel for receivers in federal  
22 enforcement actions, Allen Matkins attorneys are nationally recognized for their expertise in all  
23 manner of real estate transactions and construction projects, including large commercial and  
24 mixed-use projects. (Id. at ¶ 3.) Of particular relevance to the present matter, and in addition to  
25 other projects, Allen Matkins recently represented developers and property owners in the  
26 development of a 900,000 square foot office building in Century City, California; a new college

1 campus mix-used development with over 1,000 residential units in Brentwood, California; and  
2 the purchase of a 50,000 square foot land parcel in San Francisco, California, intended for  
3 construction of the Transbay Transit Tower, expected to be the tallest building on the West  
4 Coast. (Id.)

5 3. Proposed Terms of Allen Matkins' Employment and Compensation.

6 In addition to the cost savings and other benefits to the Receivership Estate of retaining  
7 highly experienced legal counsel, Allen Matkins has agreed to discount its ordinary billing rates  
8 on this matter by 10%. (Id. at ¶ 4.) Allen Matkins has further agreed not to adjust its billing  
9 rates for attorneys staffed on this matter until January 1, 2017, despite the fact that the firm's  
10 rates would ordinarily adjust in July of each year. (Id.) In other words, the Receiver will benefit  
11 from a 10% across-the-board discount for the duration of Allen Matkins' representation of the  
12 Receiver in this matter, along with an additional discount to be applied for 6 months after the  
13 period where Allen Matkins' rates would ordinarily be adjusted. (Id.)

14 In addition, Allen Matkins has agreed not to bill for travel time in connection with this  
15 matter, and will also limit its charges for out-of-pocket costs in the manner allowed by the Office  
16 of the United States Trustee in bankruptcy cases in this District. (Id.) Allen Matkins  
17 understands and agrees that payment of its fees and reimbursement of its expenses will be made  
18 only after an application and noticed hearing, as provided for in the Appointment Order. (Id. at  
19 ¶ 6.) Finally, to the extent the Receiver determines it is necessary to initiate litigation to recover  
20 Receivership Assets or otherwise pursue claims against third parties, the Receiver will file an  
21 application seeking authority to take such action, including an estimated budget for legal fees  
22 and costs.

23 4. Anticipated Allen Matkins Receivership Team.

24 At present, the Receiver anticipates that the Allen Matkins attorneys principally staffed  
25 on this matter will be Joshua A. del Castillo, David R. Zaro, and Tim C. Hsu.



1 Mr. del Castillo is a bankruptcy and creditors' rights litigator (partner) at Allen Matkins,  
 2 with nearly a decade of experience representing receivers appointed at the request of various  
 3 federal agencies, including the Commission. Mr. Zaro is the head of Allen Matkins'  
 4 receiverships practice, and likewise a bankruptcy and creditors' rights litigator (partner), with  
 5 decades of experience representing receivers appointed at the behest of the Commission and  
 6 other federal agencies. Mr. Hsu is a fourth-year litigation associate with a developing practice in  
 7 receivership matters. Attached hereto as Exhibits C, D, and E are the biographies of attorneys  
 8 del Castillo, Zaro, and Hsu.

9 Mr. del Castillo is expected to serve as lead counsel, and will provide legal advice  
 10 relating to the administration of the instant receivership, including in connection with all  
 11 necessary discovery and Receivership Asset recovery efforts, will supervise the preparation of all  
 12 Allen Matkins pleadings to be filed with the Court, and will coordinate all necessary legal  
 13 services. It is anticipated that Mr. Hsu will perform the bulk of the post-engagement, day-to-day  
 14 administration of this matter, and will be charged with necessary research and briefing of  
 15 materials for submission to the Court, subject to recommendations and revisions from Mr. del  
 16 Castillo. Mr. Zaro will consult and provide senior partner-level advice on matters arising in the  
 17 context of the receivership case, as appropriate.

18 The discounted rates Allen Matkins proposed to charge for the aforementioned Allen  
 19 Matkins attorneys are as follows:

<b>Attorney</b>	<b>General Service Description</b>	<b>Regular Rate</b>	<b>Special Rate</b>
David A. Zaro	Supervising Senior-Partner	\$745	\$670.50
Joshua .A. Castillo	Lead Counsel	\$550	\$495
Tim C. Hsu	Post-engagement administration; research and briefing	\$420	\$378



1 (Zaro Decl., ¶ 5.) The above-described staffing arrangement is expected to maximize efficiency  
2 and minimize costs to the Receivership Estate, and reflects an effective utilization of available  
3 resources.

4 The Receiver therefore respectfully requests that the Court authorize and approve the  
5 employment and compensation of Allen Matkins as the Receiver's lead receivership counsel in  
6 accordance with the terms described herein.

7 **B. Employment And Compensation of Karr Tuttle.**

8 1. Grounds for Employment of Karr Tuttle as Local Counsel.

9 In addition to employing Allen Matkins, the Receiver also seeks to employ Karr Tuttle as  
10 local counsel because he requires local counsel to assist him with carrying out the duties and  
11 responsibilities reflected in the Appointment Order, in particular those matters requiring  
12 knowledge of Washington law and practices and other matters as requested by the Receiver.  
13 Again, while the Appointment Order authorizes the Receiver to employ legal counsel, the  
14 Receiver nevertheless requests that the Courts specifically authorize and approve the  
15 employment and compensation of Karr Tuttle as the Receiver's local counsel pursuant to the  
16 terms described below. Karr Tuttle will coordinate with Allen Matkins to protect against any  
17 unnecessary duplication of services.

18 2. Selection of Karr Tuttle as Counsel.

19 The Receiver selected Karr Tuttle because the firm is highly qualified to represent him in  
20 connection with this complex receivership, given its substantial experience and expertise in the  
21 field of receiverships and insolvency matters. Karr Tuttle's receivership attorneys are  
22 knowledgeable about all aspects of receiverships in the state of Washington, and work closely  
23 together to advise on secured and unsecured financing, real property and commercial  
24 transactions, employment matters, and the purchase and sale of troubled companies or distressed  
25 real estate. Attached hereto as Exhibit F is a description of the firm's Receivership Practice  
26 Group. In particular, Diana K. Carey's practice focuses heavily on bankruptcy and commercial

1 litigation, creditor/debtor rights, avoidance actions, collections, real estate transactions, and  
 2 insolvency proceedings. (Carey Decl., ¶ 2.) Ms. Carey was previously certified in Business  
 3 Bankruptcy Law by the American Board of Certification, and has been involved in over 130  
 4 receiverships in the state of Washington, as well as in federal receiverships and ancillary  
 5 receiverships in other states. (Id.)

6 3. Proposed Terms of Karr Tuttle's Employment and Compensation and  
 7 Anticipated Receivership Team.

8 Karr Tuttle has agreed not to accept compensation for services rendered in this matter  
 9 except in accordance with the terms of this Motion and any Order' entered thereon, and as  
 10 required by Section XIII of the Appointment Order, understands that it will be paid only after an  
 11 application to the Court and a noticed hearing. (Id. at ¶ 5.) It is Karr Tuttle's practice to use the  
 12 professional with the lowest billing rate commensurate with the task. (Id. at ¶ 4.)

13 At present, the Receiver anticipates that the Ms. Carey will be the attorney at Karr Tuttle  
 14 principally responsible for handling litigation and court appearances, while George S. Treperinas  
 15 will be the attorney primarily responsible for overseeing asset sale and transaction matters. (Id.  
 16 at ¶ 3.) Attached hereto as Exhibits G and H are the biographies of attorneys Carey and  
 17 Treperinas. Their respective discounted hourly billing rates are as follows:

<b>Attorney</b>	<b>General Service Description</b>	<b>Regular Rate</b>	<b>Special Rate</b>
Diana K. Carey	Responsible Atty/Lit and Court matters	\$ 525.00	\$ 445.00
George S. Treperinas	Responsible Atty/Sale and Transaction matters	\$ 525.00	\$ 445.00

24 (Id.)

1 The discounted hourly billing rates of other professionals at Karr Tuttle who may assist  
2 on this matter are further detailed in the accompanying Carey Declaration submitted concurrently  
3 herewith. (Id.)

4 **C. Employment And Compensation Of Financial Forensics.**

5 In addition to counsel, the Receiver seeks court authorization to employ and compensate  
6 Financial Forensics as his forensic accountants to assist the Receiver with his financial  
7 investigation obligations, including transaction analyses, asset tracing and recovery, financial  
8 analysis, disposition of investor funds, solvency determinations and other expert services as  
9 required. Financial Forensics specializes in forensic accounting and has particular expertise in  
10 the areas of business valuation, and guiding companies through business transitions. (Gadawski  
11 Decl., ¶¶ 3-4.) Mr. Gadawski is a partner of Financial Forensics and is a Certified Public  
12 Accountant, accredited in Business Valuation, Certified Valuation Analyst, Certified Insolvency  
13 and Restructuring Advisor, and a Certified Fraud Examiner. (Id.) He is also a member of the  
14 Oregon Society of Certified Public Accountants (OSCPA), the American Institute of Certified  
15 Public Accountants (AICPA), the National Association of Certified Valuation Analysts  
16 (NACVA), the Association of Certified Fraud Examiners (ACFE), and the Association of  
17 Insolvency and Restructuring Advisors (AIRA), and has served as an expert witness and  
18 consultant in a variety of complex matters and conducted fraud investigations. (Id.) Mr.  
19 Gadawski's resume is attached hereto as Exhibit I.

20 Mr. Gadawski will be the person principally responsible in assisting the Receiver in  
21 forensic accounting matters and his hourly billing rate is \$270 per hour. (Id. at ¶ 5.) The hourly  
22 billing rates of other professionals at Financial Forensics are further detailed in the  
23 accompanying Gadawski Declaration submitted concurrently herewith. (Id.)

24 **D. Compensation of Professionals.**

25 All Professionals have agreed not to accept compensation for services rendered in this  
26 matter except in accordance with the terms of this Motion and any Order entered thereon, and as

1 required by Section XIII of the Appointment Order, they understand that they will be paid only  
2 after an application to the Court and a noticed hearing. (Zaro Decl., ¶ 7; Carey Decl., ¶ 5;  
3 Gadawski ¶ 6.) All Professionals will use the person with the lowest billing rate appropriate for  
4 the task, and each firm agrees to submit applications for payment of fees and reimbursement of  
5 expenses in accord with Section XIII of the Appointment Order, or any later Orders entered by  
6 the Court. (Id.)

7 **E. Conflict/Connection With Other Parties.**

8 To the best of the Receiver and his Professionals' knowledge, neither Allen Matkins, Karr  
9 Tuttle or Financial Forensics, nor any of those entities' employees, hold an interest or represent  
10 any interest adverse to the parties in this matter, or the receivership estate, and have no prior  
11 connections with any party except as may be set forth in the Declarations of David R. Zaro,  
12 Diana K. Carey, and Greg Gadawski. (Zaro Decl., ¶ 8; Carey Decl., ¶ 6; Gadawski ¶ 7.)

13 **V. CONCLUSION**

14 For the foregoing reasons, the Receiver respectfully requests that this Court enter an Order:

- 15 1. Authorizing the Receiver to employ and compensate Allen Matkins, as his general  
16 receivership counsel, in accordance with the terms described herein  
17  
18 2. Authorizing the Receiver to employ and compensate Karr Tuttle, as his local  
19 counsel, in accordance with the terms described herein; and  
20  
21 3. Authorizing the Receiver to employ and compensate Financial Forensics, as his  
22 forensic accountants, in accordance with the terms described herein.

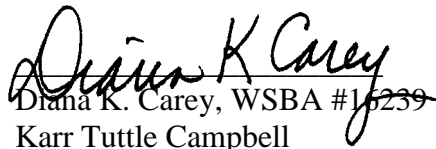
23 Dated this 29<sup>th</sup> day of October 2015

24 */s/ Michael A. Grassmueck*

25 \_\_\_\_\_  
26 Michael A. Grassmueck, Receiver

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Filed by:



Diana K. Carey, WSBA #16239

Karr Tuttle Campbell

701 Fifth Avenue, Suite 3300

Seattle, WA 98104

Proposed Local Counsel for Receiver, Michael A.  
Grassmueck