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22 UNITED STATES DISTRICT COURT  
23 SOUTHERN DISTRICT OF CALIFORNIA

24 SECURITIES AND EXCHANGE  
25 COMMISSION,  
26  
27 Plaintiff,  
28  
29 v.  
30 GINA CHAMPION-CAIN and ANI  
31 DEVELOPMENT, LLC,  
32  
33 Defendants,  
34  
35 AMERICAN NATIONAL  
36 INVESTMENTS, INC.,  
37  
38 Relief Defendant.

Case No. 3:19-cv-01628-LAB-AHG

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
RECEIVER'S MOTION FOR  
(A) APPROVAL OF SALE OF  
TENNYSON STREET PROPERTY;  
AND (B) RECOVERY OF PRIOR  
EARNEST MONEY DEPOSIT FROM  
ESCROW**

Date: August 3, 2020  
Time: 2:00 p.m.  
Courtroom: 3B  
Mag. Judge: Hon. Allison H. Goddard

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1 Krista Freitag ("Receiver"), the Court-appointed permanent receiver for  
2 Defendant ANI Development, LLC, Relief Defendant American National  
3 Investments, Inc., and their subsidiaries and affiliates ("Receivership Entities"),  
4 submits this Memorandum of Points and Authorities in Support of her concurrently-  
5 filed Motion for (a) Approval of Sale of Tennyson Street Property, and (b) Recovery  
6 of Prior Earnest Money Deposit from Escrow ("Motion").

7 **I. BACKGROUND FACTS**

8 One of the residential real properties included in the receivership estate is a  
9 single-family residence located at 3548 Tennyson Street, San Diego, California  
10 ("Tennyson Property"). The Tennyson Property is 1,502 square feet with  
11 four bedrooms and two bathrooms. The Tennyson Property was purchased on  
12 August 20, 2019 for \$840,000 and title was taken in the name of American National  
13 Investments, Inc. Freitag Decl., ¶ 2.

14 Having been purchased only about two weeks prior to the Receiver's  
15 appointment, the Tennyson Property was not occupied and while habitable, was in  
16 need of various repairs, including repairs to a non-functioning elevator to make the  
17 property wheelchair accessible. Upon her appointment, the Receiver and her staff  
18 performed an analysis of the value of the Tennyson Property, including a review of  
19 automated valuation scores for the property and a survey of the market comparable  
20 properties. The Receiver also consulted with multiple licensed brokers about the  
21 value of the property and terms of a potential listing agreement. Ultimately, the  
22 Receiver selected Resonate Real Estate ("Broker") and had the Tennyson Property  
23 listed for sale at \$865,000. Freitag Decl., ¶ 3.

24 The Broker initially held two open houses and shortly thereafter two offers  
25 were received, both near the listing price. After countering both offers for their  
26 highest and best price, the highest offer was from Matthew Minnick and Peyton  
27 Shealy ("Prior Buyer") in the amount of \$885,000. The Receiver and Prior Buyer  
28 then signed a Residential Purchase Agreement and Joint Escrow Instructions, along

1 with an Addendum that provides for the overbid, public auction, and Court approval  
2 process. Prior Buyer placed the required earnest money deposit into escrow (\$8,450)  
3 ("Prior Buyer Deposit") and then removed all contingencies other than Court  
4 approval. Freitag Decl., ¶ 4.

5 The Receiver filed her motion for approval of the sale to Prior Buyer  
6 (Dkt. 252), which was approved by the Court on March 17, 2020 (Dkt. 280). Prior to  
7 sale closing, however, Prior Buyer stated they would not close the transaction. The  
8 Receiver requested that the escrow company, Granite Escrow ("Escrow"), release the  
9 Prior Buyer Deposit to Receiver. Escrow advised that it would require an order from  
10 the Court confirming the Receiver can recover the Prior Buyer Deposit before it  
11 would release the funds to the Receiver. Freitag Decl., ¶ 5.

12 In the meantime, the Receiver continued to market the Tennyson Property  
13 through Broker. Multiple offers were received and the Receiver negotiated with the  
14 prospective purchasers. As noted above, the Tennyson Property needs significant  
15 repairs, which ultimately quelled interest from several prospective purchasers.  
16 Ultimately, the highest and best offer was from Gregory Campbell and Jared Mejeur  
17 ("Buyer") in the amount of \$885,000. However, in light of the significant repairs  
18 needed, the Receiver agreed to a credit to Buyer at closing in the amount of \$12,500.  
19 Freitag Decl., ¶ 6.

20 The Tennyson Property is encumbered by a deed of trust in favor of Seattle  
21 Funding Group ("SFG"). The outstanding principal balance on the interest-only loan  
22 is \$546,000, and the loan is being paid current. Depending on when the sale closes  
23 (assuming a July 2020 closing), the amount required to pay off the loan will likely be  
24 in the range of approximately \$546,000 to \$550,000. Depending on when the sale  
25 closes (assuming a July 2020 closing), the Receiver estimates that property taxes  
26 paid at closing will likely be in the range of approximately \$6,000 to \$7,000 (these  
27 numbers include a supplemental tax bill stemming from the August 2019 purchase).  
28 The Broker's commission pursuant to the listing agreement is 4% of the sale price, or

1 \$35,400, which amount will be split with Buyer's broker. The costs of sale,  
2 including escrow, title and recording fees are estimated to be approximately \$7,200.  
3 Finally, in addition to the repair credit at closing of \$12,500, the Receiver agreed to  
4 pay through escrow a sewer line repair in the amount of \$15,000 directly to the repair  
5 vendor. While exact amounts will be determined at closing, after all the  
6 aforementioned amounts are paid out of escrow, the net sale proceeds for the  
7 receivership estate are estimated to be in the range of approximately \$255,000 to  
8 \$265,000. Freitag Decl., ¶ 7.

## 9 **II. PROPOSED SALE**

10 The key terms of the proposed Residential Purchase Agreement and Joint  
11 Escrow Instructions, including Addendum thereto ("Agreement"), a copy of which is  
12 attached to the Freitag Declaration as Exhibit A, are summarized as follows:

13 **Overbid and Court Approval.** The sale is subject to qualified overbids  
14 pursuant to the public sale process laid out below and approval by the Court.

15 **Purchase Price.** The purchase price is \$885,000, which will be financed.

16 **Deposit.** Buyer has deposited \$11,000 into escrow.

17 **Closing Date.** Closing shall occur upon entry of the Court order approving  
18 the sale.

19 **Broker's Commission.** Pursuant to the listing agreement, Broker is to be paid  
20 a commission of 4% of the gross sales price, which amount will be split with Buyer's  
21 broker. In the proposed sale, the total commission would be \$35,400.

## 22 **III. LEGAL STANDARD**

23 "The power of a district court to impose a receivership or grant other forms of  
24 ancillary relief does not in the first instance depend on a statutory grant of power  
25 from the securities laws. Rather, the authority derives from the inherent power of a  
26 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369  
27 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly  
28 and efficient administration of the estate by the district court for the benefit of

1 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment  
2 of a receiver is authorized by the broad equitable powers of the court, any  
3 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,  
4 953 F.2d 1560, 1569 (11th Cir. 1992).

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

9 A district court's power to supervise an equity  
10 receivership and to determine the appropriate action to be  
11 taken in the administration of the receivership is  
12 extremely broad. The district court has broad powers and  
13 wide discretion to determine the appropriate relief in an  
14 equity receivership. 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.

15 *Id.* (citations omitted); *see also CFTC. v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115  
16 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,  
17 and 'we generally uphold reasonable procedures instituted by the district court that  
18 serve th[e] purpose' of orderly and efficient administration of the receivership for the  
19 benefit of creditors."). Accordingly, the Court has broad discretion in the  
20 administration of the receivership estate and the disposition of receivership assets.

21 **A. The Court's Authority to Approve Sale**

22 It is widely accepted that a court of equity having custody and control of  
23 property has power to order a sale of the same in its discretion. *See, e.g., SEC v.*  
24 *Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (the District Court has broad powers  
25 and wide discretion to determine relief in an equity receivership). "The power of sale  
26 necessarily follows the power to take possession and control of and to preserve  
27 property." *See SEC v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144 (9th Cir.  
28 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds) (*citing*



1 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 482 (3d ed. 1992)  
2 (citing *First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887)). "When a court of equity  
3 orders property in its custody to be sold, the court itself as vendor confirms the title  
4 in the purchaser." 2 Ralph Ewing Clark, Treatise on Law & Practice of  
5 Receivers § 487 (3d ed. 1992).

6 "A court of equity, under proper circumstances, has the power to order a  
7 receiver to sell property free and clear of all encumbrances." *Miners' Bank of*  
8 *Wilkes-Barre v. Acker*, 66 F.2d 850, 853 (2d Cir. 1933). *See also*, 2 Ralph Ewing  
9 Clark, Treatise on Law & Practice of Receivers § 500 (3d ed. 1992). To that end, a  
10 federal court is not limited or deprived of any of its equity powers by state statute.  
11 *Beet Growers Sugar Co. v. Columbia Trust Co.*, 3 F.2d 755, 757 (9th Cir. 1925)  
12 (state statute allowing time to redeem property after a foreclosure sale not applicable  
13 in a receivership sale).

14 Generally, when a court-appointed receiver is involved, the receiver, as agent  
15 for the court, should conduct the sale of the receivership property. *Blakely Airport*  
16 *Joint Venture II v. Federal Sav. and Loan Ins. Corp.*, 678 F. Supp. 154, 156  
17 (N.D. Tex. 1988). The receiver's sale conveys "good" equitable title enforced by an  
18 injunction against the owner and against parties to the suit. *See* 2 Ralph Ewing  
19 Clark, Treatise on Law & Practice of Receivers §§ 342, 344, 482(a), 487, 489, 491  
20 (3d ed. 1992). "In authorizing the sale of property by receivers, courts of equity are  
21 vested with broad discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d  
22 354, 357 (9th Cir. 1925).

23 **B. 28 U.S.C. § 2001**

24 Specific requirements are imposed by 28 U.S.C. § 2001 for public sales of real  
25 property under subsection (a) and specific requirements for private sales of real  
26 property under subsection (b). Although both involve significant cost and delay, the  
27 cost and delay of a public sale are significantly less than those for a private sale.  
28 *SEC v. Goldfarb*, 2013 U.S. Dist. LEXIS 118942, at \*5 (N.D. Cal. 2013)

1 ("Section 2001 sets out two possible courses of action: (1) property may be sold in  
 2 public sale; or (2) property may be sold in a private sale, provided that three separate  
 3 appraisals have been conducted, the terms are published in a circulated newspaper  
 4 ten days prior to sale, and the sale price is no less than two-thirds of the valued  
 5 price."). Therefore, by proceeding under Section 2001(a), the receivership estate can  
 6 avoid the significant costs and delay of (a) the Court having to appoint three  
 7 disinterested appraisers, and (b) obtaining three appraisals from such appraisers.

8 The requirements of a public sale under Section 2001(a) are that notice of the  
 9 sale be published as proscribed by Section 2002 and a public auction be held at the  
 10 courthouse "as the court directs." 28 U.S.C. § 2001(a); *SEC v. Capital Cove*  
 11 *Bancorp LLC*, 2015 U.S. Dist. LEXIS 174856, at \*13 (C.D. Cal. 2015); *SEC v.*  
 12 *Kirkland*, 2007 U.S. Dist. LEXIS 45353, at \*5 (M.D. Fla. 2007). In terms of  
 13 publication of notice, Section 2002 provides:

14 A public sale of realty or interest therein under any order,  
 15 judgment or decree of any court of the United States shall  
 16 not be made without notice published once a week for at  
 17 least four weeks prior to the sale in at least one  
 newspaper regularly issued and of general circulation in  
 the county, state, or judicial district of the United States  
 wherein the realty is situated.

18 If such realty is situated in more than one county, state,  
 19 district or circuit, such notice shall be published in one or  
 20 more of the counties, states, or districts wherein it is  
 21 situated, as the court directs. The notice shall be  
 22 substantially in such form and contain such description of  
 the property by reference or otherwise as the court  
 approves. The court may direct that the publication be  
 made in other newspapers.

23 This section shall not apply to sales and proceedings  
 24 under Title 11 or by receivers or conservators of banks  
 appointed by the Comptroller of the Currency.

25 The notice of sale is sufficient if it describes the property and the time, place,  
 26 and terms of sale. *Breeding Motor Freight Lines, Inc. v. Reconstruction Finance*  
 27 *Corp.*, 172 F.2d 416, 422 (10th Cir. 1949). The Court may limit the auction to  
 28 qualified bidders, who "(i) submit to the Receiver . . . in writing a bona fide and

1 binding offer to purchase the [property]; and (ii) demonstrate . . . , to the satisfaction  
2 of the Receiver, that it has the current ability to consummate the purchase of the  
3 [property] per the agreed terms." *Regions Bank v. Egyptian Concrete Co.*, 2009 U.S.  
4 Dist. LEXIS 111381, at \*8 (E.D. Mo. 2009).

5 **IV. DISCUSSION**

6 The Receiver believes the proposed sale to Buyer pursuant to the Agreement is  
7 in the best interests of the receivership estate. The Tennyson Property was listed on  
8 the MLS with a licensed broker and shown to multiple interested parties. The  
9 property was properly marketed, multiple offers were received, terms negotiated, and  
10 the Agreement signed. The purchase price therefore reflects the market value for the  
11 Tennyson Property, and after factoring credits for repairs which total \$27,500, is still  
12 \$17,500 greater than the purchase price from when it was acquired in August 2019.  
13 Freitag Decl., ¶ 8.

14 Moreover, the proposed sale is subject to overbid to further ensure the highest  
15 and best price is obtained. The Receiver proposes to conduct a public auction  
16 consistent with the requirements of Section 2001(a). Specifically, the Receiver will  
17 publish the following notice of the sale once a week for four weeks in the San Diego  
18 Union-Tribune, a newspaper of general circulation in the San Diego area:

19 In the action pending in U.S. District Court for the  
20 Southern District of California, Case No. 19-CV-01628-  
21 LAB-AHG, Securities and Exchange Commission v.  
22 Gina Champion-Cain, et al., notice is hereby given that  
23 the court-appointed receiver will conduct a public auction  
24 for the real property located at 3548 Tennyson Street,  
25 San Diego, California 92106-1847 in San Diego County,  
26 California. Sale is subject to Court confirmation after the  
27 auction is held. Minimum bid price is at least \$910,000.  
28 The auction will take place on July 17, 2020, at 1:30 p.m.  
in front of the entrance to the United States Courthouse,  
221 W. Broadway, San Diego, California or as the court  
otherwise directs. To be allowed to participate in the  
auction, prospective purchasers must meet certain bid  
qualification requirements, including submitting a signed  
purchase and sale agreement, an earnest money deposit  
of \$11,000, and proof of funds. All bidders must be  
qualified by 5:00 p.m. PT on July 14, 2020, by  
submitting the required materials to the receiver at 501  
West Broadway, Suite 290, San Diego, California,

1           92101. If interested in qualifying as a bidder, please  
2           contact Geno Rodriguez at (619) 567-7223 or  
3           grodriguez@ethreadvisors.com.

4           In order to conduct an orderly auction and provide enough time for the  
5           publication of notices discussed above, the Receiver will require bidders to complete  
6           the above steps by July 14, 2020 ("Bid Qualification Deadline") and conduct the live  
7           public auction on July 17, 2020.

8           The Receiver will inform all interested persons of the opportunity to overbid at  
9           the public auction, provided they qualify themselves to bid by the Bid Qualification  
10          Deadline by (a) signing a purchase and sale agreement for the properties on the same  
11          terms and conditions as Buyer, but with a purchase price of at least \$910,000,  
12          (b) providing the Receiver with an earnest money deposit of \$11,000, and  
13          (c) providing proof of funds necessary to close the sale transaction in the form of a  
14          current bank statement, cashier's check delivered to the Receiver, or other evidence  
15          deemed sufficient by the Receiver.

16          In the event one or more prospective purchasers qualify themselves to bid, the  
17          auction will be conducted by the Receiver as noted above and bids will be allowed in  
18          increments of at least \$1,000. The Receiver will then file a notice advising the Court  
19          of the result of the auction (*i.e.*, the highest bid) and seek entry of an order  
20          confirming the sale.<sup>1</sup> Earnest money deposits provided by bidders who are  
21          unsuccessful will be promptly returned to them. In the event no prospective  
22          purchasers qualify themselves to bid by the Bid Qualification Deadline, the Receiver  
23          will notify the Court and seek entry of an order approving the sale to Buyer.

24          With respect to the Prior Buyer Deposit and release of same from Escrow,  
25          Prior Buyer removed all contingencies associated with the prior sale contract,  
26          making the Prior Buyer Deposit non-refundable, based on which the Receiver, with

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27          <sup>1</sup> In the event that multiple qualified overbids are received and participate in the  
28          auction, the Receiver will seek Court approval of the highest bid and the back-up  
29          bid, such that if the highest bidder fails to close the sale for any reason, the  
30          Receiver can proceed to close the sale with the back-up bidder without delay.

1 assistance from her counsel, prepared the prior sale approval motion (Dkt. 252) and  
2 obtained the prior approval order from the Court (Dkt. 280). The sale contract  
3 provides that the Prior Buyer Deposit shall be paid to the Receiver as liquidated  
4 damages in the event Prior Buyer failed to close the transaction after all  
5 contingencies had been released or otherwise satisfied, which they were. Dkt 252-3,  
6 California Residential Purchase Agreement and Joint Escrow Instructions, Section  
7 21.B. (p. 10 of 21); Contingency Removal No. 1 (p. 21 of 21). Moreover, the  
8 addendum to the sale contract signed by the Receiver and Prior Buyer provides that  
9 all disputes arising from or relating to the sale contract are to be decided by this  
10 Court. *Id.*, Addendum to California Residential Purchase Agreement and Joint  
11 Escrow Instructions (p. 15 of 21). Prior Buyer has not given any reason why the  
12 Prior Buyer Deposit should not be released to the Receiver pursuant to the prior sale  
13 contract.<sup>2</sup> Finally, Escrow has confirmed that it will release the Prior Buyer Deposit  
14 to the receivership estate via the Receiver if directed to do so by the Court.

15 **V. CONCLUSION**

16 For the reasons discussed above, the Receiver requests an order (a) approving  
17 the sale of the Tennyson Property to Buyer (or their designee) pursuant to the  
18 Agreement attached to the Freitag Declaration as Exhibit A, (b) authorizing the  
19 Receiver to take all steps necessary to close the sale, with the net sale proceeds after  
20 all third-party payments are made from escrow going to the receivership estate, and  
21 (c) directing Escrow to release the Prior Buyer Deposit to the receivership estate via  
22 the Receiver.

23 Dated: June 22, 2020

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By:           s/Edward G. Fates          

DAVID R. ZARO  
EDWARD G. FATES  
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KRISTA FREITAG

28 <sup>2</sup> Notice of the Motion, including the deadline to submit opposition, has been  
provided to Prior Buyer and Escrow.