

1 DAVID R. ZARO (BAR NO. 124334)  
NORMAN M. ASPIS (BAR NO. 313466)  
2 ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
3 865 South Figueroa Street, Suite 2800  
Los Angeles, California 90017-2543  
4 Phone: (213) 622-5555  
Fax: (213) 620-8816  
5 E-Mail: dzaro@allenmatkins.com  
naspis@allenmatkins.com

6 EDWARD G. FATES (BAR NO. 227809)  
7 ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
8 One America Plaza  
600 West Broadway, 27th Floor  
9 San Diego, California 92101-0903  
Phone: (619) 233-1155  
10 Fax: (619) 233-1158  
E-Mail: tfates@allenmatkins.com

11 Attorneys for Receiver  
12 KRISTA FREITAG

13 UNITED STATES DISTRICT COURT  
14 SOUTHERN DISTRICT OF CALIFORNIA

15  
16 SECURITIES AND EXCHANGE  
COMMISSION,  
17  
Plaintiff,  
18  
v.  
19 GINA CHAMPION-CAIN and ANI  
20 DEVELOPMENT, LLC,  
21  
Defendants,  
22 AMERICAN NATIONAL  
INVESTMENTS, INC.,  
23  
Relief Defendant.

Case No. 3:19-cv-01628-LAB-AHG  
Ctm: 14A  
Judge Hon. Larry Alan Burns

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
RECEIVER'S MOTION FOR  
APPROVAL OF SALE OF 812 SAN  
RAFAEL PLACE PROPERTY**

Date: November 30, 2020  
Time: 9:30 a.m.  
Courtroom: TBD  
Mag. Judge: Hon. Allison H. Goddard

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page**

I.	BACKGROUND FACTS .....	5
II.	PROPOSED SALE.....	7
III.	LEGAL STANDARD .....	7
A.	The Court's Authority to Approve Sale .....	8
B.	28 U.S.C. § 2001 .....	9
IV.	DISCUSSION .....	10
V.	CONCLUSION .....	12

**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

1

2

3

4 *Beet Growers Sugar Co. v. Columbia Trust Co.*

5 3 F.2d 755 (9th Cir. 1925)..... 9

6 *Blakely Airport Joint Venture II v. Federal Sav. and Loan Ins. Corp.*

7 678 F. Supp. 154 (N.D. Tex. 1988)..... 9

8 *Breeding Motor Freight Lines, Inc. v. Reconstruction Finance Corp.*

9 172 F.2d 416 (10th Cir. 1949)..... 10

10 *CFTC. v. Topworth Int'l, Ltd.*

11 205 F.3d 1107 (9th Cir. 1999)..... 8

12 *First Nat'l Bank v. Shedd*

13 121 U.S. 74 (1887) ..... 8

14 *Gockstetter v. Williams*

15 9 F.2d 354 (9th Cir. 1925)..... 9

16 *Miners' Bank of Wilkes-Barre v. Acker*

17 66 F.2d 850 (2d Cir. 1933)..... 8

18 *Regions Bank v. Egyptian Concrete Co.*

19 2009 U.S. Dist. LEXIS 111381, at \*8 (E.D. Mo. 2009) ..... 10

20 *SEC v. American Capital Invest., Inc.*

21 98 F.3d 1133 (9th Cir. 1996)..... 8

22 *SEC v. Capital Consultants, LLC*

23 397 F.3d 733 (9th Cir. 2005)..... 7, 8

24 *SEC v. Capital Cove Bancorp LLC*

25 2015 U.S. Dist. LEXIS 174856, at \*13 (C.D. Cal. 2015)..... 10

26 *SEC v. Elliot*

27 953 F.2d 1560 (11th Cir. 1992)..... 7, 8

28 *SEC v. Goldfarb*

2013 U.S. Dist. LEXIS 118942, at \*5 (N.D. Cal. 2013)..... 9

*SEC v. Hardy*

803 F.2d 1034 (9th Cir 1986)..... 7

*SEC v. Kirkland*

2007 U.S. Dist. LEXIS 45353, at \*5 (M.D. Fla. 2007) ..... 10

*SEC v. Wencke*

622 F.2d 1363 (9th Cir. 1980)..... 7

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page(s)**

**Statutes**

28 U.S.C. § 2001..... 9  
 28 U.S.C. § 2001(a) ..... 9, 11  
 28 U.S.C. § 2001(b)..... 9  
 28 U.S.C. § 2002..... 9, 10

**Treatises**

2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 342  
 (3d ed. 1992)..... 9  
 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 344  
 (3d ed. 1992)..... 9  
 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 482  
 (3d ed. 1992)..... 8  
 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers  
 § 482(a) (3d ed. 1992). ..... 9  
 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 487  
 (3d ed. 1992)..... 8  
 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 489  
 (3d ed. 1992)..... 9  
 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 491  
 (3d ed. 1992)..... 9  
 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 500  
 (3d ed. 1992)..... 8

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 Approval of Sale of 812 San Rafael Place Property ("Motion").

6 **I. BACKGROUND FACTS**

7 The residential properties in the receivership estate include a single-family  
8 residence located at 812 San Rafael Place in the Mission Beach neighborhood of San  
9 Diego ("812 San Rafael Property"). The 812 San Rafael Property is 1,370 square  
10 feet with three bedrooms and three bathrooms. The 812 San Rafael Property was  
11 purchased for \$1,290,000 on September 30, 2013 by San Rafael Place LLC (an  
12 affiliated Receivership Entity). The 812 San Rafael Property is used as a vacation  
13 rental property. Freitag Decl., ¶ 2.

14 Upon her appointment, the Receiver and her staff performed an analysis of the  
15 value of the 812 San Rafael Place Property, including a review of automated  
16 valuation scores for the property and a survey of the market comparable properties.  
17 The Receiver and her staff also consulted with and interviewed licensed brokers with  
18 experience selling residential properties in the Mission Beach area. Ultimately,  
19 based on a combination of its experience and low listing commission, the Receiver  
20 selected Pacific Pines Real Estate ("Broker") and the 812 San Rafael Property was  
21 listed for sale on the Multiple Listing Service (MLS) on or about January 1, 2020.  
22 The original list price was \$1,699,900. Freitag Decl., ¶ 3.

23 To market the 812 San Rafael Property, Broker listed the property on the local  
24 MLS and its website, held multiple open houses and showed the property to all  
25 interested parties. Due to the lack of offers for the property at the \$1,699,900 list  
26 price, and the fact that a global pandemic has negatively affected the short-term  
27 economic prospects for hospitality properties, the Receiver, in consultation with  
28 Broker, periodically reduced the list price until it reached the current range of

1 \$1,499,000 to \$1,599,000. Additionally, once the pandemic hit and in compliance  
2 with guidance from the California Association of Realtors, 3D marketing and  
3 socially distant property tours were enforced. A total of three offers were received.  
4 The Receiver negotiated terms with the prospective buyers and the property went  
5 into escrow on or around September 9, 2020 with a purchase price of \$1,565,000.  
6 The buyer is Carmel Creek LLC ("Buyer"). Freitag Decl., ¶ 4.

7 Like the 1617 Thomas Avenue, 805 Brighton Court, 724 Zanzibar Court, and  
8 809 San Rafael properties previously sold by the Receiver with approval from the  
9 Court (as well as the 737 Windemere Court property, which sale is expected to close  
10 soon), the 812 San Rafael Property is encumbered by a deed of trust in favor of Axos  
11 Bank. With the 1617 Thomas Avenue, 805 Brighton Court, 724 Zanzibar Court and  
12 809 San Rafael properties now sold, the Axos Bank portfolio loan now covers three  
13 residential properties included in the receivership estate (including the 737  
14 Windemere Court Property). Assuming the 737 Windemere Court sale closes first,  
15 the Axos Bank loan will have been fully paid off and nothing further will be owed to  
16 Axos Bank. If, on the other hand, the 737 Windemere Court has not closed when the  
17 sale proposed herein is prepared to close, then the Receiver estimates that \$187,000  
18 will be owed on the Axos Bank loan (this number is calculated before application of  
19 the October 2020 mortgage payment). Freitag Decl., ¶ 5.

20 Assuming a December closing (after December 10<sup>th</sup>), the Receiver estimates  
21 that less than one thousand dollars of property taxes will be credited to seller at  
22 closing. The estimated costs for title, escrow, and recording are \$7,825, and the  
23 commission to be paid to Broker is \$51,125 (\$39,125 of which is to be paid to  
24 Buyer's broker). Accordingly, the net sale proceeds to be paid to the receivership  
25 estate after payment of or receiving credit for the above amounts (but before rental  
26 deposits received for post-closing reservations are credited to the buyer) are  
27 estimated to be in the range of \$1.506 million (again, assuming the 737 Windemere  
28 Court sale closes first). Freitag Decl., ¶ 6.

1 **II. PROPOSED SALE**

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

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

7 **Purchase Price.** The purchase price is \$1,565,000, which will be financed.

8 **Deposit.** Buyer has deposited \$15,000 into escrow.

9 **Closing Date.** Closing shall occur upon entry of the Court order approving  
10 the sale.

11 **III. LEGAL STANDARD**

12 "The power of a district court to impose a receivership or grant other forms of  
13 ancillary relief does not in the first instance depend on a statutory grant of power  
14 from the securities laws. Rather, the authority derives from the inherent power of a  
15 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369  
16 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly  
17 and efficient administration of the estate by the district court for the benefit of  
18 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment  
19 of a receiver is authorized by the broad equitable powers of the court, any  
20 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,  
21 953 F.2d 1560, 1569 (11th Cir. 1992).

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

26 A district court's power to supervise an equity  
27 receivership and to determine the appropriate action to  
28 be taken in the administration of the receivership is  
extremely broad. The district court has broad powers  
and wide discretion to determine the appropriate relief in  
an equity receivership. The basis for this broad

1           deference to the district court's supervisory role in equity  
2           receiverships arises out of the fact that most  
3           receiverships involve multiple parties and complex  
4           transactions. A district court's decision concerning the  
5           supervision of an equitable receivership is reviewed for  
6           abuse of discretion.

7 *Id.* (citations omitted); *see also CFTC. v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115  
8 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,  
9 and 'we generally uphold reasonable procedures instituted by the district court that  
10 serve th[e] purpose' of orderly and efficient administration of the receivership for the  
11 benefit of creditors."). Accordingly, the Court has broad discretion in the  
12 administration of the receivership estate and the disposition of receivership assets.

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

14           It is widely accepted that a court of equity having custody and control of  
15 property has power to order a sale of the same in its discretion. *See, e.g., SEC v.*  
16 *Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (the District Court has broad powers  
17 and wide discretion to determine relief in an equity receivership). "The power of sale  
18 necessarily follows the power to take possession and control of and to preserve  
19 property." *See SEC v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144 (9th Cir.  
20 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds) (*citing*  
21 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 482 (3d ed. 1992)  
22 (*citing First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887))). "When a court of equity  
23 orders property in its custody to be sold, the court itself as vendor confirms the title  
24 in the purchaser." 2 Ralph Ewing Clark, Treatise on Law & Practice of  
25 Receivers § 487 (3d ed. 1992).

26           "A court of equity, under proper circumstances, has the power to order a  
27 receiver to sell property free and clear of all encumbrances." *Miners' Bank of*  
28 *Wilkes-Barre v. Acker*, 66 F.2d 850, 853 (2d Cir. 1933). *See also*, 2 Ralph Ewing  
Clark, Treatise on Law & Practice of Receivers § 500 (3d ed. 1992). To that end, a  
federal court is not limited or deprived of any of its equity powers by state statute.



1 *Beet Growers Sugar Co. v. Columbia Trust Co.*, 3 F.2d 755, 757 (9th Cir. 1925)  
 2 (state statute allowing time to redeem property after a foreclosure sale not applicable  
 3 in a receivership sale).

4 Generally, when a court-appointed receiver is involved, the receiver, as agent  
 5 for the court, should conduct the sale of the receivership property. *Blakely Airport*  
 6 *Joint Venture II v. Federal Sav. and Loan Ins. Corp.*, 678 F. Supp. 154, 156  
 7 (N.D. Tex. 1988). The receiver's sale conveys "good" equitable title enforced by an  
 8 injunction against the owner and against parties to the suit. *See* 2 Ralph Ewing  
 9 Clark, Treatise on Law & Practice of Receivers §§ 342, 344, 482(a), 487, 489, 491  
 10 (3d ed. 1992). "In authorizing the sale of property by receivers, courts of equity are  
 11 vested with broad discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d  
 12 354, 357 (9th Cir. 1925).

13 **B. 28 U.S.C. § 2001**

14 Specific requirements are imposed by 28 U.S.C. § 2001 for public sales of real  
 15 property under subsection (a) and specific requirements for private sales of real  
 16 property under subsection (b). Although both involve significant cost and delay, the  
 17 cost and delay of a public sale are significantly less than those for a private sale.  
 18 *SEC v. Goldfarb*, 2013 U.S. Dist. LEXIS 118942, at \*5 (N.D. Cal. 2013)  
 19 ("Section 2001 sets out two possible courses of action: (1) property may be sold in  
 20 public sale; or (2) property may be sold in a private sale, provided that three separate  
 21 appraisals have been conducted, the terms are published in a circulated newspaper  
 22 ten days prior to sale, and the sale price is no less than two-thirds of the valued  
 23 price."). Therefore, by proceeding under Section 2001(a), the receivership estate can  
 24 avoid the significant costs and delay of (a) the Court having to appoint three  
 25 disinterested appraisers, and (b) obtaining three appraisals from such appraisers.

26 The requirements of a public sale under Section 2001(a) are that notice of the  
 27 sale be published as proscribed by Section 2002 and a public auction be held at the  
 28 courthouse "as the court directs." 28 U.S.C. § 2001(a); *SEC v. Capital Cove*

1 *Bancorp LLC*, 2015 U.S. Dist. LEXIS 174856, at \*13 (C.D. Cal. 2015); *SEC v.*  
2 *Kirkland*, 2007 U.S. Dist. LEXIS 45353, at \*5 (M.D. Fla. 2007). In terms of  
3 publication of notice, Section 2002 provides:

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

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

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

22 The notice of sale is sufficient if it describes the property and the time, place,  
23 and terms of sale. *Breeding Motor Freight Lines, Inc. v. Reconstruction Finance*  
24 *Corp.*, 172 F.2d 416, 422 (10th Cir. 1949). The Court may limit the auction to  
25 qualified bidders, who "(i) submit to the Receiver . . . in writing a bona fide and  
26 binding offer to purchase the [property]; and (ii) demonstrate . . . , to the satisfaction  
27 of the Receiver, that it has the current ability to consummate the purchase of the  
28 [property] per the agreed terms." *Regions Bank v. Egyptian Concrete Co.*, 2009 U.S.  
Dist. LEXIS 111381, at \*8 (E.D. Mo. 2009).

#### 23 **IV. DISCUSSION**

24 The Receiver believes the proposed sale to Buyer pursuant to the Agreement is  
25 in the best interests of the receivership estate. The 812 San Rafael Property has been  
26 listed on the MLS with a licensed broker for approximately 10 months and shown to  
27 any interested parties. The property was properly marketed, three offers were  
28 received, highest and best terms negotiated, and the Agreement signed. The

1 purchase price is fair and reasonable and reflects the current market value of the  
2 property. Freitag Decl., ¶ 7.

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

8 In the action pending in U.S. District Court for the  
9 Southern District of California, Case No. 19-CV-01628-  
10 LAB-AHG, Securities and Exchange Commission v.  
11 Gina Champion-Cain, et al., notice is hereby given that  
12 the court-appointed receiver will conduct a public auction  
13 for the real property located at 812 San Rafael Place in  
14 San Diego County, California. Sale is subject to Court  
15 confirmation after the auction is held. Minimum bid  
16 price is at least \$1,590,000. The auction will take place  
17 on November 6, 2020, at 1:30 p.m. in front of the  
18 entrance to the United States Courthouse,  
19 221 W. Broadway, San Diego, California or as otherwise  
20 determined by the Court. To be allowed to participate in  
21 the auction, prospective purchasers must meet certain bid  
22 qualification requirements, including submitting a signed  
23 purchase and sale agreement, an earnest money deposit  
24 of \$16,500, and proof of funds. All bidders must be  
25 qualified by 5:00 p.m. PT on November 2, 2020, by  
26 submitting the required materials to the receiver at 501  
27 West Broadway, Suite 290, San Diego, California,  
28 92101. If interested in qualifying as a bidder, please  
contact Geno Rodriguez at (619) 567-7223 or  
grodriguez@ethreadvisors.com.

20 In order to conduct an orderly auction and provide sufficient time for the  
21 publication of notices discussed above, the Receiver will require bidders to complete  
22 the above steps by November 2, 2020 ("Bid Qualification Deadline") and conduct the  
23 live public auction on November 6, 2020.

24 The Receiver will inform all interested persons of the opportunity to overbid at  
25 the public auction, provided they qualify themselves to bid by the Bid Qualification  
26 Deadline by (a) signing a purchase and sale agreement for the properties on the same  
27 terms and conditions as Buyer, but with a purchase price of at least \$1,590,000,  
28 (b) providing the Receiver with an earnest money deposit of \$16,500, and

1 (c) providing proof of funds necessary to close the sale transaction in the form of a  
2 current bank statement, cashier's check delivered to the Receiver, or other evidence  
3 deemed sufficient by the Receiver.

4 In the event one or more prospective purchasers qualify themselves to bid, the  
5 auction will be conducted by the Receiver as noted above and bids will be allowed in  
6 increments of at least \$1,000. The Receiver will then file a notice advising the Court  
7 of the result of the auction (*i.e.*, the highest bid) and seek entry of an order  
8 confirming the sale. In the event no prospective purchasers qualify themselves to bid  
9 by the Bid Qualification Deadline, the Receiver will notify the Court and seek entry  
10 of an order approving the sale to Buyer.

11 **V. CONCLUSION**

12 For the reasons discussed above, the Receiver requests (a) approval of the sale  
13 of the 812 San Rafael Property to Buyer (or their designee) pursuant to the  
14 Agreement attached to the Freitag Declaration as Exhibit A, (b) authority to take all  
15 steps necessary to close the sale, with the net sale proceeds after all third-party  
16 payments are made from escrow going to the receivership estate.

17  
18 Dated: October 8, 2020

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

19 By:           s/Edward G. Fates          

20 DAVID R. ZARO  
21 EDWARD G. FATES  
22 NORMAN M. ASPIS  
23 Attorneys for Receiver  
24 KRISTA FREITAG  
25  
26  
27  
28