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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

GINA CHAMPION-CAIN AND ANI
DEVELOPMENT, LLC,

Defendants, and

AMERICAN NATIONAL
INVESTMENTS, INC.,

Relief Defendant.

Case No.: 3:19-cv-1628-LAB-AHG

ORDER:

(1) GRANTING REQUEST TO APPROVE SALE OF PERSONAL PROPERTY, LIQUOR LICENSE, AND ASSIGNMENT OF COMMERCIAL LEASE ASSOCIATED WITH MISSION BEACH SURF RIDER RESTAURANT TO WINNING BIDDER; and

(2) GRANTING IN PART AND DENYING IN PART MOTION FOR APPROVAL OF SALE

[ECF Nos. 408, 454]

1 **I. BACKGROUND**

2 As described in prior orders, *see, e.g.*, ECF Nos. 54, 162, 163, this is an action
3 brought by the Securities and Exchange Commission (“SEC”) against Defendants ANI
4 Development, LLC (“ANI Development”) and Gina Champion-Cain and Relief Defendant
5 American National Investments, Inc. (“ANI Inc.”), alleging violations of federal securities
6 laws based on a purportedly fraudulent liquor license loan scheme. ECF No. 1.

7 On September 3, 2019, the Court established an equitable receivership and appointed
8 Krista L. Freitag (“Receiver”) as the receiver of ANI Development and ANI Inc.,
9 authorizing her to take control over all funds and assets owned, managed, or in the
10 possession or control of the receivership entities. *See* ECF No. 6 at 14-16. In that role, the
11 Receiver acts under the control and direction of the Court to facilitate the “orderly and
12 efficient administration of the estate . . . for the benefit of creditors.” *SEC v. Hardy*, 803
13 F.2d 1034, 1038 (9th Cir. 1986). *See also Atl. Tr. Co. v. Chapman*, 208 U.S. 360, 370
14 (1908) (explaining that a motion to appoint a receiver to take charge of property is “to the
15 end that the property might be cared for and preserved for all who had or might have an
16 interest in the proceeds of its sale. . . . Immediately upon such appointment and after the
17 qualification of the receiver, the property [within the equitable receivership] passed into
18 the custody of the law, and thenceforward its administration was wholly under the control
19 of the court by its officer [], the receiver.”).

20 On December 11, 2019, the presiding judge in this action, Chief Judge Burns,
21 granted the parties’ Joint Motion (ECF No. 156) to give limited consent to the undersigned
22 to hear and directly decide all motions filed in this action to approve sales of receivership
23 assets. ECF No. 160. *See also* 28 U.S.C. § 636(c); CivLR 72.1(g). All property sale motions
24 are set before the undersigned pursuant to that grant of consent.

25 The Receiver filed the Motion for Approval of Sale of Personal Property, Liquor
26 License, and Assignment of Commercial Lease Associated with Mission Beach Surf Rider
27 Restaurant (“Surf Rider Motion”) on August 3, 2020, seeking court approval of the sale of
28 assets associated with the now closed Mission Beach Surf Rider Restaurant, which leased

1 the premises located at 3772-3774 Mission Boulevard, San Diego, CA. ECF No. 408-1 at
2 5; *see also* ECF No. 76-2 at 8 (listing “Surf Rider Pizza – Mission Beach” in the
3 Preliminary Real Estate and Liquor License Asset Schedule filed on October 3, 2019).¹
4 The assets are owned by 2163 Abbott Street, LP, an affiliated receivership entity, and
5 “include personal property (furniture, fixtures, and equipment), a liquor license, contracts,
6 and a leasehold interest in the restaurant premises (“Assets”).” *Id.*; *see also* ECF No. 6 at
7 5 (the Court’s Appointment Order, listing 2163 Abbott Street, LP as an entity subject to
8 the equitable receivership). Though the Receiver is authorized to sell personal property
9 without prior court approval (*see* ECF No. 219 at 9), the Receiver concluded that the net
10 recovery for the receivership estate would be greater if the Assets were sold as a package.
11 ECF No. 408-1 at 5; ECF No. 408-2, Freitag Decl., ¶ 3.

12 At the time the motion was filed, the intended buyer of the Assets was the Grind and
13 Prosper Hospitality Group LLC and the intended sale price was \$375,000. ECF No. 408-1
14 at 7. In the motion, the Receiver proposed to conduct an auction consistent with 28 U.S.C.
15 §§ 2001 and 2002 by publishing notice in the San Diego Union-Tribune once a week for
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18 ¹ In the Surf Rider Motion, the Receiver describes the former "Mission Beach Surf Rider
19 Restaurant" as being located at 3772-3774 Mission Blvd. ECF No. 408-1 at 5. However,
20 the Preliminary Real Estate and Liquor License Asset Schedule lists only a liquor license
21 and lease for "Surf Rider Pizza - Mission Beach" located at 3770 Mission Blvd. ECF No.
22 76-2 at 8-9. In order to clarify this discrepancy, the Court ordered the Receiver to file a
23 notice confirming whether these restaurants are the same facility and the correct address
24 for the restaurant. ECF No. 484. The Receiver promptly filed a notice confirming that the
25 3770 Mission Boulevard and 3772-3774 Mission Boulevard addresses represent the same
26 facility—the former Mission Beach Surf Rider Restaurant. ECF No. 486 at 2. Apparently
27 the 3772-3774 Mission Boulevard address is the one reflected in official county records,
28 on lease files, and on utility accounts for the building. *Id.* The 3770 Mission Boulevard
address is the business address the former restaurant actually used and also is the address
associated with the liquor license granted by the California Department of Alcoholic
Beverage Control. *Id.* In light of this clarification, the Court is satisfied that these addresses
represent the same receivership property, which includes assets subject to sale with Court
approval.

1 four weeks of a public auction for the property on September 3, 2020. *Id.* at 12. Potential
2 bidders were invited to qualify for the auction by submitting a signed purchase and sale
3 agreement, an earnest money deposit of \$55,000, and proof of funds by August 31, 2020.
4 *Id.*

5 The Court set a deadline of August 17, 2020 to file any response in opposition to the
6 Surf Rider Motion and ordered the Receiver to file a notice of non-receipt of overbids if no
7 qualified overbids were received by August 31, 2020. ECF No. 409. No opposition to the
8 Surf Rider Motion was filed. However, on September 2, 2020, the Receiver filed a Notice
9 of Receipt of Qualified Overbid, reporting that two qualified overbids were received for
10 the Assets. ECF No. 447. The Receiver, through her broker, obtained the consent of the
11 original buyer and the qualified overbidders to conduct the live auction via
12 videoconference on September 3, 2020. *Id.* at 2.

13 On September 11, 2020, the Receiver filed a Notice of Results of Auction for Sale
14 of Personal Property, Liquor License, and Assignment of Commercial Lease Associated
15 with Mission Beach Surf Rider Restaurant and Request to Approve Sale to Winning Bidder
16 (“Notice of Results”). ECF No. 454. In the Notice of Results, the Receiver requests that
17 the Court approve the sale of the Assets to the winning bidder, OMG Restaurant Group,
18 LLC, and also approve the sale of the Assets to the backup bidder, Las Hadas, Inc., in the
19 event the winning bidder does not close the sale for any reason. *Id.* at 2-3. The winning
20 bidder submitted a bid of \$402,500 for the Assets, while the backup bidder submitted the
21 second-highest bid of \$400,000. *Id.* Other than approval of the sale to the winning bidder
22 (and the backup bidder if the sale falls through) at a new sale price, all other relief requested
23 in the Surf Rider Motion—including authority to pay amounts due to the lender (if
24 applicable) and the costs of sale from the sale proceeds—remains the same. *Id.* at 3.

25 Being fully advised and noting the lack of opposition to the Surf Rider Motion, the
26 Court **GRANTS** (1) the request to approve the sale of the Assets to the winning bidder;
27 (2) the request to approve the sale of the Assets to the backup bidder if the winning bidder
28 does not close the sale for any reason; and (3) all relief requested in the Surf Rider Motion,

1 other than the request to approve the sale to the former buyer at the sale price of \$375,000.
2 That portion of the Surf Rider Motion is **DENIED**.

3 **II. LEGAL STANDARD**

4 “[I]t is a recognized principle of law that the district court has broad powers and
5 wide discretion to determine the appropriate relief in an equity receivership.” *SEC v.*
6 *Lincoln Thrift Ass’n*, 577 F.2d 600, 606 (9th Cir. 1978). Where a district court sits in equity,
7 “[u]nless a statute in so many words, or by a necessary and inescapable inference, restricts
8 the court’s jurisdiction in equity, the full scope of that jurisdiction is to be recognized and
9 applied. ‘The great principles of equity, securing complete justice, should not be yielded
10 to light inferences, or doubtful construction.’” *Porter v. Warner Holding Co.*, 328 U.S.
11 395, 398 (1946).

12 “[A] district court’s power to supervise an equity receivership and to determine the
13 appropriate action to be taken in the administration of the receivership is extremely broad.”
14 *Hardy*, 803 F.2d at 1037. As part of this broad discretion, the district court sitting in equity
15 and having custody and control of property “has power to order a sale of the same in its
16 discretion. The power of sale necessarily follows the power to take control of and to
17 preserve property[.]” *SEC v. Am. Capital Investments, Inc.*, 98 F.3d 1133, 1144 (9th Cir.
18 1996), *abrogated on other grounds by Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83,
19 93-94 (1998) (quoting 2 Ralph E. Clark, Treatise on Law & Practice of Receivers § 482
20 (3d ed. 1992)). If the court approves an equitable receiver’s proposed property sale, the
21 sale “does not . . . purport to convey ‘legal’ title, but rather ‘good,’ equitable title enforced
22 by an injunction against suit.” *Id.* (citing 2 Clark, Treatise on Law & Practice of Receivers,
23 §§ 342, 344, 482(a), 487, 489, 491).

24 Pursuant to 28 U.S.C. § 2001(a), realty in the possession of an appointed receiver is
25 subject to a public sale process, “upon such terms and conditions as the court directs.”
26 28 U.S.C. § 2002 further requires that notice be published once a week for at least four
27 weeks prior to the sale in at least one newspaper regularly issued and of general circulation
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1 in the county, state, or judicial district where the realty is located.² These safeguards of
2 notice and opportunity to submit overbids help to ensure that the sale is able to fetch the
3 best price possible, which is consistent with the principle that “a primary purpose of equity
4 receiverships is to promote orderly and efficient administration of the estate by the district
5 court for the benefit of creditors.” *Hardy*, 803 F.2d at 1038. *See also United States v.*
6 *Grable*, 25 F.3d 298, 303 (6th Cir. 1994) (noting that “the intent of” the requirement in 28
7 U.S.C. § 2001 that property be sold in the county in which the land is situated is “to bring
8 a better price at the sale”).

9 As for the sale of personal property, 28 U.S.C. § 2004 also lends the Court great
10 discretion in directing sales of personalty, requiring such sales to comply with § 2001
11 “unless the court orders otherwise.” The notice requirement of § 2002 governing realty
12 sales by the receiver does not apply to sales of personalty.³

13 **III. DISCUSSION**

14 **A. Background of the Property and Proposed Sale**

15 Upon appointment over the receivership, the Receiver reviewed the available
16 financials and determined that the Mission Beach Surf Rider Restaurant should be closed.
17 ECF No. 408-1 at 5. The Receiver consulted with multiple brokers and determined that the
18 net recovery for the receivership estate would be higher if she sold the personal property,
19 liquor license, contracts, and assignment of the lease as a package, as opposed to selling
20 the personalty through licensed auctioneers. *Id.*

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24 ² 28 U.S.C. § 2001 also provides for a private sale process under subsection (b), but the
25 requirements of that subsection are more stringent. The Receiver does not propose a private
26 sale here.

27 ³ Pursuant to the statutory grant of discretion, under the Court’s uniform sale procedures,
28 the requirements of § 2001 have been waived, and the Receiver need not seek Court
approval of sales of personal property within the receivership estate. ECF No. 219 at 9.

1 In preparation for sale of all of the restaurant-related properties included in the
2 receivership estate, the Receiver and her staff interviewed three licensed brokers with
3 experience selling restaurants in San Diego. *Id.* at 5. Ultimately, she chose two separate
4 brokers—broker Colliers International for stand-alone concept restaurant-related
5 properties owned by the receivership entities (a leased parking lot also was included in this
6 grouping), and broker Next Wave (“Broker”) for the Surf Rider Pizza and Bao Beach
7 restaurant concepts operated at leased and owned property locations. *Id.* at 5-6.

8 To market the Assets and other restaurant listings within the receivership estate,
9 Broker created individual marketing flyers for each listing and sent them out via email
10 campaigns to a targeted list of over 6,200 restaurant operators, buyers, brokers, and
11 investors. *Id.* at 6. Broker also used websites including CoStar, LoopNet, BizBuySell, and
12 Next Wave Commercial to advertise the listing and distributed press releases to numerous
13 local news publications. *Id.* Additionally, Broker hosted due diligence packages for each
14 property online and prepared an offering memorandum that summarized various marketing
15 points about the restaurant properties and detailed the Court sale process. *Id.* A form
16 Purchase and Sale Agreement and Joint Escrow Instructions (“Form PSA”) prepared by
17 Receiver and her counsel was provided by Broker to prospective purchasers. *Id.* The Form
18 PSA removes all contingencies and provides for the overbid, public auction, and Court
19 approval process. Prospective purchasers had until the Receiver’s “Call for Offers”
20 deadline to complete their due diligence and submit an executed Form PSA. *Id.*

21 The Call for Offers deadline passed and then only one offer was received, though it
22 was withdrawn as a result of Covid-19 pandemic-related concerns. *Id.* Broker continued to
23 market the Assets for months until eventually Grind and Prosper Hospitality Group LLC
24 offered \$375,000 and signed a Form PSA. *Id.* at 7. The Receiver, through counsel, finalized
25 the Form PSA. *Id.*

26 A complicating factor in this transaction is that all of the assets held by 2163 Abbott
27 Street, LP are subject to a UCC security interest in favor of First Choice Bank as security
28 for an SBA loan. *Id.* The First Choice Bank loan also is secured by a second Deed of Trust

1 on real property located at 4364 Valle Vista, San Diego (“Valley Vista Property”). *Id.* A
2 balance of approximately \$475,000 remains on the First Choice Bank loan. *Id.*

3 Following negotiations with the Receiver, the tenant at the Valle Vista Property
4 agreed to terminate her lease and vacate the property. *Id.* The Valle Vista Property now is
5 being marketed for sale and, if sold before the sale of the Assets closes, is expected to pay
6 off the First Choice Bank loan in full. *Id.*; ECF No. 408-2 ¶ 9. The Receiver believes this
7 scenario is reasonably likely because the Assets’ sale will not close until the California
8 Department of Alcoholic Beverage Control approves the transfer of the liquor license
9 (which is estimated to take three to six months). *Id.* If the Assets sell first, then the
10 receivership estate will recover nothing from this sale, but the net proceeds (anticipated to
11 be approximately \$350,000) will pay down the First Choice Bank loan and result in an
12 increased recovery for the estate when the Valle Vista Property eventually sells. ECF No.
13 408-1 at 7.⁴

14 In the Surf Rider Motion, the Receiver proposed compliance with the overbid and
15 auction process described in 28 U.S.C. § 2001 by publishing the following notice in the
16 San Diego Union-Tribune once a week for four weeks:

17 In the action pending in U.S. District Court for the Southern District of
18 California, Case No. 19-CV-01628-LAB-AHG, Securities and Exchange
19 Commission v. Gina Champion-Cain, et al., notice is hereby given that the
20 court-appointed receiver will conduct a public auction for the Mission Beach
21 Surf Rider restaurant business and personal property located at 3772-3774
22 Mission Blvd., San Diego, California 92109 in San Diego County, California.
23 Sale is subject to Court confirmation after the auction is held. Minimum bid
24 price is at least \$400,000. The auction will take place on September 3, 2020
25 at 1:30 p.m. in front of the entrance to the United States Courthouse, 221 W.
26 Broadway, San Diego, California. To be allowed to participate in the auction,
27 prospective purchasers must meet certain bid qualification requirements,
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⁴ It appears the Receiver’s marketing efforts were successful because on October 14, 2020,
the Receiver filed a motion seeking approval of the sale of the Valle Vista Property. ECF
No. 478. She intends to use the same auction process for that property and overbids are not
due until November 9, 2020. ECF No. 478-1 at 11.

1 including submitted a signed purchase and sale agreement, an earnest money
2 deposit of \$55,000, and proof of funds. All bidders must be qualified by 5:00
3 p.m. PT on August 31, 2020, by submitting the required materials to the
4 receiver at 501 West Broadway, Suite 290, San Diego, California, 92101.

5 *Id.* at 12. For those interested in qualifying as bidders, the notice also provided a phone
6 number and email address for the relevant point of contact. *Id.*

7 As previously noted, the Receiver filed a Notice of Receipt of Qualified Overbid
8 regarding the Surf Rider Motion on September 2, 2020. ECF No. 447. In the notice, the
9 Receiver informed the Court that, after filing the Surf Rider Motion, and in addition to
10 publishing the above notice in the San Diego Union-Tribune as proposed, she posted notice
11 of the motion on the receivership website anireceivership.com and continued to market the
12 property through Broker and notify potential purchasers about the opportunity to submit
13 an overbid by August 31, 2020. *Id.* at 2. As a result, she received two qualified overbids.
14 *Id.*

15 At the live auction via Zoom, OMG Restaurant Group, LLC, was the winning bidder
16 with a bid of \$402,500. ECF No. 454 at 2. The backup bidder, Las Hadas, Inc., bid
17 \$400,000. *Id.* at 3. To qualify as overbidders at the auction, both the winning bidder and
18 backup bidder had previously executed Form PSAs, removing all contingencies, and each
19 of them also provided an earnest money deposit. *See id.*, Exs. A, B. Pursuant to §§ 2.2(a)
20 and 14.4 of the Form PSAs, the earnest money deposit is non-refundable to the winning
21 bidder and will only be returned to the backup bidder after the closing for the winning
22 bidder occurs. *Id.* After the auction, on September 2, 2020, both the winning bidder and
23 the backup bidder executed amendments to their respective purchase and sale agreements
24 with the Receiver, which, among other terms, excluded Surf Rider intellectual property
25 from the sale of the Assets. ECF No. 454-1 at 51-53; ECF No. 454-2 at 50-52.

26 **B. Proposed Procedures and Distribution**

27 As part of the originally anticipated sale to Grind and Prosper Hospitality Group
28 LLC for \$375,000, the Receiver intended to pay Broker's commission, which is 6% of the

1 sale price because Broker is acting as the sole agent for the transaction. ECF No. 408-1 at
2 7. The Form PSA signed by the winning bidder, OMG Restaurant Group, LLC, confirms
3 that the winning bidder did not engage a broker in connection with the purchase. ECF No.
4 454-1 at 23 ¶ 13.1. The Form PSA signed by backup bidder, Las Hadas, Inc., indicates that
5 the backup bidder engaged a broker named Brian Cording, but that Mr. Cording would be
6 paid pursuant to a separate agreement he has with Broker. ECF No. 454-2 at 22 ¶ 13.1. The
7 Receiver estimates that costs of sale will be approximately \$1,875. ECF No. 408-1 at 7.

8 In light of the higher winning bid (\$402,500) and backup bid (\$400,000), compared
9 to the formerly agreed-upon purchase price of \$375,000, the Court assumes an adjusted
10 Broker's fee in the range of \$24,000 to \$24,150, and a resultant adjusted estimate of net
11 sale proceeds in the range of \$374,000 to \$376,500.

12 **C. Court Approval of the Proposed Procedures and Sale**

13 The Court has reviewed the documents submitted by the Receiver in support of the
14 Surf Rider Motion, as well as the Notice of Results and request to approve the sale to the
15 winning bidder, or to the backup bidder if the winning bidder does not close the sale for
16 any reason. The Court finds that both the winning bid and the backup bid are fair,
17 reasonable, and will represent a decent return of proceeds to the receivership estate.

18 In particular, the Court notes with approval the Receiver's prudent decision to seek
19 advice from multiple brokers about the best way to maximize the estate's recovery before
20 opting to offer the personal property, liquor license, and lease assignment as a package.
21 The Receiver had authority to simply sell the personal property through licensed
22 auctioneers, which may have been the simpler route, though likely not the path to greatest
23 recovery. Instead, by bundling the Assets, Broker was able to broadly market and advertise
24 them, along with other restaurant properties and assets from the receivership, to a targeted
25 audience. The Receiver reports that Broker's advertising on multiple websites produced
26 over 150,000 ad views, and that press releases about the Next Wave-brokered restaurant
27 properties were placed in the San Diego Union-Tribune, San Diego Business Journal, Eater
28 San Diego, and elsewhere. ECF No. 408-1 at 6. In light of these efforts, and the fact that

1 Next Wave is the only broker on the deal, the Court finds Broker’s 6% commission—
2 which is within the range of industry standards—reasonable.

3 Although the current COVID-19 pandemic resulted in the withdrawal of the initial
4 offer, the Court recognizes the difficulty involved in securing fruitful offers for restaurant
5 locations during a time when indoor dining operations have intermittently been forbidden.
6 Nonetheless, the Receiver continued to market the property for another five months,
7 confirming she would not give up on securing the best return for the Assets. She also
8 concurrently worked on negotiating with the Valle Vista Property tenant in order to
9 facilitate sale of that property. By preparing that property for sale, the Receiver has
10 maximized the likelihood of paying off the First Choice Bank loan in full and, thus, clearing
11 the receivership estate of another debt.

12 Moreover, the Receiver’s publication of notice seeking qualified overbids in the San
13 Diego Union-Tribune (even though she was not required to utilize this procedure for
14 personal property), in addition to the solicitation of overbids through the receivership
15 website and continued efforts to market the property, establish that the Receiver put forth
16 her best efforts to ensure the highest price is obtained for property within the receivership
17 estate. The Court is convinced that the carrying out of the notice and auction process alone
18 suffices to show that the Receiver has secured the best and highest price for the Assets,
19 whether the sale closes with either the winning bidder or the backup bidder. The Court is
20 thus satisfied that the intent of the statutory scheme has been fulfilled.

21 Based on these considerations, and noting the lack of any opposition to the Surf
22 Rider Motion, the Court finds the Receiver has established that the proposed sale of the
23 Assets and proposed distribution of the sale proceeds, whether the sale closes with the
24 winning bidder or the backup bidder, are consistent with principles of equity and the goal
25 of a receivership to ensure the orderly and efficient administration of the estate for the
26 benefit of creditors. *See Hardy*, 803 F.2d at 1038.

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1 **IV. CONCLUSION**

2 Having considered the Receiver’s Motion for Approval of Sale of Personal Property,
3 Liquor License, and Assignment of Commercial Lease Associated with Mission Beach
4 Surf Rider Restaurant (ECF No. 408) and the Receiver’s Notice of Results of Auction for
5 Sale of Personal Property, Liquor License, and Assignment of Commercial Lease
6 Associated with Mission Beach Surf Rider Restaurant and Request to Approve Sale to
7 Winning Bidder (ECF No. 454), the Court **GRANTS IN PART** and **DENIES IN PART**
8 the Surf Rider Motion (ECF No. 408). Specifically, the Court **GRANTS** all relief requested
9 therein, other than the approval of the sale to the former intended buyer at the former
10 purchase price. That portion of the Surf Rider Motion is **DENIED**. The Court **GRANTS**
11 the Receiver’s request to approve the sale of the Assets to the winning bidder at the winning
12 bid price of \$402,500. If the winning bidder does not close the sale for any reason, the
13 Court further **APPROVES** the sale of the Assets to the backup bidder at the sale price of
14 \$400,000.

15 Accordingly, it is **ORDERED** as follows:

16 (1) The sale of the Assets associated with the former Mission Beach Surf Rider
17 Restaurant, which leased the premises located at 3772-3774 Mission Boulevard, San
18 Diego, CA, as described in Exhibit A to the Receiver’s Notice of Results⁵ (ECF No. 454),
19 by Krista L. Freitag, as receiver, to OMG Restaurant Group, LLC (“Winning Bidder”) is
20 confirmed and approved;

21 (2) The purchase price of \$402,500, to be paid by Winning Bidder for the Assets,
22 is confirmed and approved;

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26 ⁵ The Court notes again that this is the same property described on the Preliminary Real
27 Estate and Liquor License Asset Schedule and in the liquor license granted by the
28 California Department of Alcoholic Beverage Control as being located at 3770 Mission
Boulevard, San Diego, California.

1 (3) *If and only if the Winning Bidder does not close the sale for any reason*, the
2 sale of the Assets associated with the former Mission Beach Surf Rider Restaurant, which
3 leased the premises located at 3772-3774 Mission Boulevard, San Diego, CA, as described
4 in Exhibit B to the Receiver’s Notice of Results (ECF No. 454), by Krista L. Freitag, as
5 receiver, to Las Hadas, Inc. (“Backup Bidder”), at a purchase price of \$400,000, is
6 confirmed and approved;

7 (4) The Receiver is authorized to pay broker Next Wave a commission of up to
8 6% of the sale price, or \$24,150, according to the terms of their agreement;

9 (5) The Receiver is authorized to pay the costs of sale due from the seller at
10 closing, which amount is estimated to be \$1,875 (with the exact amount to be determined
11 at closing);

12 (6) The Receiver is authorized to pay First Choice Bank the remaining net profits
13 in order to pay down the loan, if the sale of the Assets closes before the sale of the Valle
14 Vista Property;

15 (7) If the Valle Vista Property closes first and the Receiver is able to pay off the
16 First Choice Bank loan in full from the profits of that sale, then the net sale proceeds of the
17 Assets’s sale, which are estimated to be in the range of \$374,000 to \$376,500 (with the
18 exact amount to be determined at closing), shall be paid to the receivership estate;⁶ and

19 (8) The Receiver is immediately authorized to complete the sale transaction,
20 including executing any and all documents as may be necessary and appropriate to do so.

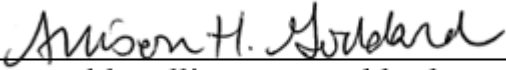
21 (9) If the sale of the Assets ultimately closes with the Backup Bidder, the Receiver
22 is authorized to complete the sale transaction with the Backup Bidder, including executing
23 any and all documents as may be necessary and appropriate to do so.

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26 ⁶ Because the Court understands that numerous contingencies (e.g., whether the sale closes
27 with the Winning Bidder or the Backup Bidder, etc.) may affect the net sale proceeds of
28 this particular sale, the Court approves the distribution of the net sale proceeds to the
receivership estate even if the final amount is outside of this range.

1 (10) After closing, the Receiver shall provide a full accounting of sale costs, the
2 precise amount, if any, used to pay off the loan to First Choice Bank, and the amount, if
3 any, ultimately returned to the receivership estate from the sale proceeds.

4 **IT IS SO ORDERED.**

5 Dated: October 23, 2020

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8 Honorable Allison H. Goddard
9 United States Magistrate Judge
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