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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 GRANTING RECEIVER’S
MOTION FOR APPROVAL OF
SALE OF 4364 VALLE VISTA
PROPERTY**

[ECF Nos. 478]

I. BACKGROUND

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

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

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

19 The Receiver filed the Motion for Approval of Sale of 4364 Valle Vista Property
20 (“Valle Vista Motion”) on October 14, 2020. ECF No. 478. The motion concerns one of
21 the real properties within the receivership estate, a single-family residence located at 4364
22 Valle Vista in the Mission Hills neighborhood of San Diego, California (the “Valle Vista
23 Property”). *See* ECF No. 478-1 at 5; ECF No. 76-2 at 3 (listing the Valle Vista Property in
24 the Preliminary Real Estate and Liquor License Asset Schedule filed on October 3, 2019).
25 The Court set a filing deadline of November 12, 2020, for any oppositions to the motion.
26 ECF No. 474 at 2. No oppositions were filed.

27 Further, bid qualifications from prospective bidders seeking to submit overbids
28 pursuant to the notice and auction process set forth in 28 U.S.C. §§ 2001 and 2002

1 (described in more detail below) were due by November 9, 2020. *See* ECF No.
2 478-1 at 11. The Receiver filed a Notice of Non-Receipt of Qualified Overbids regarding
3 the Valle Vista Motion on November 10, 2020. ECF No. 500. The Court then took the
4 motion under submission on the papers. ECF No. 507.

5 For the reasons explained more fully below, the Court **GRANTS** the Valle Vista
6 Motion.

7 **II. LEGAL STANDARD**

8 “[I]t is a recognized principle of law that the district court has broad powers and
9 wide discretion to determine the appropriate relief in an equity receivership.” *SEC v.*
10 *Lincoln Thrift Ass’n*, 577 F.2d 600, 606 (9th Cir. 1978). Where a district court sits in equity,
11 “[u]nless a statute in so many words, or by a necessary and inescapable inference, restricts
12 the court’s jurisdiction in equity, the full scope of that jurisdiction is to be recognized and
13 applied. ‘The great principles of equity, securing complete justice, should not be yielded
14 to light inferences, or doubtful construction.’” *Porter v. Warner Holding Co.*, 328 U.S.
15 395, 398 (1946).

16 “[A] district court’s power to supervise an equity receivership and to determine the
17 appropriate action to be taken in the administration of the receivership is extremely broad.”
18 *Hardy*, 803 F.2d at 1037. As part of this broad discretion, the district court sitting in equity
19 and having custody and control of property “has power to order a sale of the same in its
20 discretion. The power of sale necessarily follows the power to take control of and to
21 preserve property[.]” *SEC v. Am. Capital Investments, Inc.*, 98 F.3d 1133, 1144 (9th Cir.
22 1996), *abrogated on other grounds by Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83,
23 93-94 (1998) (quoting 2 Ralph E. Clark, Treatise on Law & Practice of Receivers § 482
24 (3d ed. 1992)). If the court approves an equitable receiver’s proposed property sale, the
25 sale “does not . . . purport to convey ‘legal’ title, but rather ‘good,’ equitable title enforced
26 by an injunction against suit.” *Id.* (citing 2 Clark, Treatise on Law & Practice of Receivers,
27 §§ 342, 344, 482(a), 487, 489, 491).

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

13 III. DISCUSSION

14 A. Background of the Property and Proposed Sale

15 The Valle Vista Property was purchased for \$840,000 on July 26, 2014 by Joseph
16 Alex Himmelberg and transferred less than a year later to the Joseph Alex Himmelberg
17 and Gina Champion-Cain Trust Dated January 26, 2015 (“Trust”)². ECF No. 478-1 at 5. It
18 is a single-family residence with three bedrooms and one and a half bathrooms. *Id.*

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21 ¹ 28 U.S.C. § 2001 also provides for a private sale process under subsection (b), but the
22 requirements of that subsection are more stringent. The Receiver does not propose a private
23 sale here.

24 ² This Trust is not listed as a receivership entity in Chief District Judge Burns’s order
25 appointing the Receiver. *See* ECF No. 6. According to the Receiver, “the title company
26 will require that the Receiver be expressly authorized and directed in the sale approval
27 order to act on behalf of the Trust for all purposes related to the sale of the Valle Vista
28 Property.” ECF No. 478-1 at 12. The Receiver discussed this matter (through her counsel)
with counsel for Ms. Champion-Cain, who is the sole remaining grantor and trustee of the
Trust. ECF No. 478-1 at 12, ECF No. 478-2 ¶ 2. Though the Receiver represented that Ms.
Champion-Cain has no objection to this language being included in the sale approval order

1 Following her appointment, the Receiver and her staff analyzed the value of the
2 Valle Vista Property by reviewing automated valuation scores and a survey of market-
3 comparable properties. ECF No. 478-2 ¶ 3. The Receiver consulted with multiple licensed
4 brokers experienced in selling residential properties in the Mission Hills area. *Id.* She
5 ultimately selected Pacific Pines Real Estate (“Broker”) and listed the property for sale at
6 a listing price of \$1,349,000. *Id.*

7 Beginning in August 2020, Broker marketed the Valle Vista Property by listing it on
8 the local Multiple Listing Service (“MLS”) and its website. ECF No. 478-1 at 5. Broker
9 showed the property to over twenty interested parties and complied with the Covid-19
10 pandemic-related mandate of utilizing 3D marketing and socially-distanced property tours.
11 *Id.* at 5-6. One offer was received, but then withdrawn during negotiations. *Id.* at 6. The
12 Receiver and Broker then agreed to reduce the list price to a range of \$1,199,900 to
13 \$1,279,900, at which point they received two offers. *Id.* The Receiver negotiated terms
14 with the prospective buyers and, on September 16, 2020, the property went into escrow
15 with Kirsten Worley (“Buyer”) for a purchase price of \$1,150,000, with a \$19,000 credit
16 to Buyer³. *Id.*

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20 (see ECF No. 478-1 at 12), the Court found this representation insufficient (particularly
21 since the Receiver, not Ms. Champion-Cain, signed the Purchase Agreement).
22 Accordingly, the Court ordered the Receiver to file a declaration from Ms. Champion-Cain
23 in her capacity of trustee of the Trust. ECF No. 528. On December 10, 2020,
24 Ms. Champion-Cain filed a declaration wherein she declared: “I hereby expressly confirm
25 that the Receiver is authorized to act on behalf of The Joseph Alex Himmelberg and Gina
26 Champion-Cain Trust Dated January 26, 2015 for all purposed related to the sale of the
property located at 4364 Valle Vista, San Diego, California.” ECF No. 529-1 at 2. In light
of this declaration by the trustee of the Trust, the Court is satisfied that the Receiver is
authorized to sell the Valle Vista Property on behalf of the Trust.

27 ³ The Court has not found any mention of the \$19,000 credit to Buyer in the Purchase
28 Agreement or accompanying counteroffers. See ECF No. 478-3. However, as discussed
more fully below, the Court finds the proposed sale fair and reasonable, even with the

1 The Receiver and Buyer executed a California Residential Purchase Agreement and
2 Joint Escrow Instructions (“Purchase Agreement”), along with an Addendum making court
3 approval of the sale a condition of closing and providing for the overbid and auction
4 process required by 28 U.S.C. §§ 2001 and 2002. ECF No. 478-3. Buyer paid an initial
5 deposit of \$10,000, agreed to deposit an additional \$215,000 into escrow, and planned to
6 finance the remainder. *Id.* at 3.

7 In the Valle Vista Motion, the Receiver proposed compliance with the overbid and
8 auction process mandated by 28 U.S.C. §§ 2001 and 2002 by publishing the following
9 notice in the San Diego Union-Tribune once a week for four weeks:

10 In the action pending in U.S. District Court for the Southern District of
11 California, Case No. 19-CV-01628-LAB-AHG, Securities and Exchange
12 Commission v. Gina Champion-Cain, et al., notice is hereby given that the
13 court-appointed receiver will conduct a public auction for the real property
14 located at 4364 Valle Vista in San Diego County, California. Sale is subject
15 to Court confirmation after the auction is held. Minimum bid price is at least
16 \$1,175,000. The auction will take place on November 13, 2020 at 1:30 p.m.
17 in front of the entrance to the United States Courthouse, 221 W. Broadway,
18 San Diego, California or as otherwise determined by the Court. To be allowed
19 to participate in the auction, prospective purchasers must meet certain bid
20 qualification requirements, including submitted a signed purchase and sale
21 agreement, an earnest money deposit of \$11,000, and proof of funds. All
22 bidders must be qualified by 5:00 p.m. PT on November 9, 2020, by
23 submitting the required materials to the receiver at 501 West Broadway, Suite
24 290, San Diego, California, 92101.

25 ECF No. 478-1 at 11. For those interested in qualifying as bidders, the notice also provided
26 a phone number and email address for the relevant point of contact. *Id.*

27 As previously noted, the Receiver filed a Notice of Non-Receipt of Qualified
28 Overbids regarding the Valle Vista Motion on November 10, 2020. ECF No. 500. In the
notice, the Receiver informed the Court that, after filing the Valle Vista Motion, and in

credit. Therefore, the Court will not hold up the sale on this issue, but will require a
complete accounting upon closing of the sale.

1 addition to publishing the above notice in the San Diego Union-Tribune, she posted notice
2 of the motion on the receivership website (anireceivership.com) and continued to market
3 the property through Broker and notify potential purchasers about the opportunity to submit
4 an overbid. *Id.* at 2. No overbids were submitted by the deadline. *Id.* Therefore, Kirsten
5 Worley remains the intended Buyer.

6 **B. Proposed Procedures and Distribution**

7 The Valle Vista Property is encumbered by a first position mortgage in favor of
8 Nations Direct Mortgage, LLC (“Nations Direct”) and a Small Business Administration
9 loan and deed of trust in favor of First Choice Bank. ECF No. 478-1 at 6. If the sale closes
10 in December, the Receiver estimates the amount required to pay off the Nations Direct loan
11 to be approximately \$493,000 (which includes accrued interest) and the amount required
12 to pay off the First Choice Bank loan to be approximately \$495,000.⁴ *Id.*

13 The Receiver estimates that, if the sale closes in December (after December 10,
14 2020), there will be a small credit to the seller at closing for property taxes. *Id.* The costs
15 of sale including escrow, title, and recording fees will be approximately \$5,650 and the
16 commission due to Broker under the listing agreement is \$12,000 plus 2.5% of the sale
17 price, or \$40,750, which amount will be split with Buyer’s broker. *Id.*

18 Based on these costs and estimates, the Receiver expects that the net sale proceeds
19 for the receivership estate will be approximately \$95,000. *Id.*

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23 ⁴ As with much of the real estate subject to the receivership, the First Choice Bank loan
24 encumbers more than one receivership property. In this case, the loan was partially paid
25 down with the sale of the 4205 Lamont Street, #12 property. ECF No. 478-1 at 6 n.1.
26 However, it still encumbers the personal property associated with the Mission Beach Surf
27 Rider restaurant (the Court has approved the sale of this property, but closing is pending
28 the California Department of Alcoholic Beverage Control’s approval of the liquor license
transfer (ECF No. 488)) and Steven and Gina Champion-Cain’s residence, located at 4014
Bandini Street, San Diego. *Id.* Assuming the Valle Vista Property sale closes first, it will
pay off the remainder of the First Choice Bank loan.

C. Court Approval of the Proposed Procedures and Sale

The Court has reviewed the documents submitted by the Receiver in support of the Valle Vista Motion, including the Purchase Agreement, and finds the purchase price of \$1,150,000 to be fair and reasonable. Even taking into account the \$19,000 buyer credit, this price exceeds the July 2014 purchase price of the property by \$291,000. The Receiver obtained valuable concessions, such as sale of the property “as is with all faults,” removal of all contingencies except Court approval, and making the sale subject to the requisite public notice and auction process of 28 U.S.C. §§ 2001 and 2002. *See* ECF No. 478-3 at 13-18. Additionally, the proposed total commission, which is less than 3.5% of the gross sales price and will be split between Broker and the broker for Buyer according to their agreement, is within the lower range of industry standards. The Court further finds the Receiver has demonstrated that Broker adequately marketed and advertised the property to be sure to fetch fair market value for the property. Broker showed the property to over twenty parties in the midst of a pandemic and received a total of three offers. *See* ECF No. 478-1 at 6. And, importantly, the proceeds of the sale will pay off both the Nations Direct and the First Choice Bank loans and still result in a sizable return to the receivership estate. *Id.* at 6-7.

As for the procedures followed, the Court finds that all of its uniform property sale procedures have been satisfied. *See* ECF No. 219. The Receiver’s publication of notice seeking qualified overbids in the San Diego Union-Tribune, in addition to the solicitation of overbids through the receivership website and continued efforts to market the property, establish that the Receiver satisfied the public sale and auction procedures set forth in 28 U.S.C. §§ 2001 and 2002, which are designed to ensure that the best purchase price for realty within the receivership is obtained. Upon review of the factual history and the Purchase Agreement itself, the Court finds that the Receiver negotiated the best deal for the receivership estate and verified Buyer’s ability to complete the transaction. The Receiver also promptly filed a declaration from Ms. Champion-Cain in order to clear up any uncertainty regarding the Receiver’s authority to act on behalf of the Trust. Further,

1 the Receiver provided the Court with a detailed breakdown of the proposed distributions
2 from the sale proceeds, as required. The Court thus is satisfied that the intent of the statutory
3 scheme—to ensure that the best and highest possible price is paid for property within the
4 receivership estate—has been fulfilled.

5 Based on these considerations, and noting the lack of any opposition to the Valle
6 Vista Motion, the Court finds the Receiver has established that the proposed sale of the
7 Valle Vista Property and proposed distribution of the sale proceeds are consistent with
8 principles of equity and the goal of a receivership to ensure the orderly and efficient
9 administration of the estate for the benefit of creditors. *See Hardy*, 803 F.2d at 1038.

10 **IV. CONCLUSION**

11 Having considered the Receiver’s Motion for Approval of Sale of 4364 Valle Vista
12 Property (ECF No. 478) on its merits and noting that there is no opposition thereto, the
13 Court **GRANTS** the Motion and **APPROVES** the proposed sale of the single-family
14 property located at 4364 Valle Vista, San Diego, California 92103 to Buyer Kirsten
15 Worley, as described in the Purchase Agreement attached as Exhibit A to the Declaration
16 of the Receiver (ECF No. 478-3). The Receiver is authorized and directed to act on behalf
17 of The Joseph Alex Himmelberg and Gina Champion-Cain Trust Dated January 26, 2015
18 for all purposes related to the sale of the property located at 4364 Valle Vista, San Diego,
19 California, 92103. The purchase price of \$1,150,000, with a \$19,000 buyer credit, for the
20 Valle Vista Property is confirmed and approved.

21 The Court **ORDERS** the proceeds of the sale to be distributed from escrow at the
22 close of sale as follows:

23 (1) The Receiver is authorized to pay Nations Direct Mortgage, LLC and First
24 Choice Bank all amounts due on the loans, including accrued interest, which total is
25 estimated to be approximately \$493,000 for the Nations Direct loan and approximately
26 \$495,000 for the First Choice Bank loan (with the exact amount to be determined at
27 closing);
28

1 (2) The Receiver shall pay the property taxes due from the seller at closing, if any
2 (with the exact amount to be determined at closing);

3 (3) The Receiver is authorized to pay broker Pacific Pines Real Estate a
4 commission of \$12,000 plus 2.5% of the sale price, or \$40,750⁵, which amount will be split
5 with Buyer’s broker in a fashion consistent with the listing agreement and the description
6 in the Valle Vista Motion;

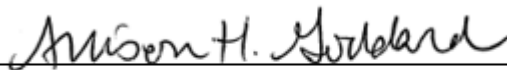
7 (4) The Receiver shall pay the seller’s share of the costs of sale, including escrow,
8 title, and recording fees, which are anticipated to be approximately \$5,650; and

9 (5) The Receiver is immediately authorized to complete the sale transaction,
10 including executing any and all documents as may be necessary and appropriate to do so,
11 with the remaining sale proceeds—which are estimated to be approximately \$95,000⁶ (with
12 the exact amount to be determined at closing)—going to the receivership estate.

13 **IT IS FURTHER ORDERED** that after closing, the Receiver shall provide a full
14 accounting of sale costs, property tax credits received and/or property taxes paid, and the
15 amount ultimately returned to the receivership estate from the sale proceeds.

16 **IT IS SO ORDERED.**

17 Dated: December 11, 2020

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19 _____
20 Honorable Allison H. Goddard
21 United States Magistrate Judge
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24 ⁵ The Valle Vista Motion lists the total as \$40,775, but by the Court’s calculations, it should
25 be \$40,750. Either amount is reasonable and is authorized by this order.

26 ⁶ Because the Court understands that numerous contingencies (e.g., the interest due on the
27 loans, the amount of property taxes owed, etc.) may affect the net sale proceeds of this
28 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.