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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

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
RECEIVER'S MOTION FOR  
APPROVAL OF SALE OF  
3816 MISSION BLVD. PROPERTY**

Date: February 26, 2021  
Time: 3:00 p.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  
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24  
25  
26  
27  
28

**Page**

I.	BACKGROUND FACTS .....	5
II.	PROPOSED SALE.....	6
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)..... 8

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

7 678 F. Supp. 154 (N.D. Tex. 1988)..... 8

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)..... 7

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

24 *SEC v. Capital Cove Bancorp LLC*

25 2015 U.S. Dist. LEXIS 174856, at \*13 (C.D. Cal. 2015)..... 9

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) ..... 9

*SEC v. Wencke*

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

1  
2  
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4  
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24  
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27  
28

**Page(s)**

**Statutes**

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

**Treatises**

2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 342  
 (3d ed. 1992)..... 8  
 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 344  
 (3d ed. 1992)..... 8  
 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). ..... 8  
 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)..... 8  
 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 491  
 (3d ed. 1992)..... 8  
 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 3816 Mission Blvd. Property ("Motion").

6 **I. BACKGROUND FACTS**

7 One of the commercial properties included in the receivership estate is a  
8 1,413 square foot, mixed-use building containing one commercial unit and one  
9 residential unit ("3816 Mission Blvd. Property"). The address for the commercial  
10 unit is 3816 Mission Boulevard, San Diego, California 92109 and the address for the  
11 residential unit is 733 Salem Court, San Diego, California 92109. The 3816 Mission  
12 Blvd. Property was purchased by The Gina Champion Cain Revocable Trust on  
13 March 2, 2015 for \$618,000. In April 2016, title was transferred to 3816 Mission  
14 Blvd., LLC, the current owner. Declaration of Krista Freitag filed herewith ("Freitag  
15 Decl."), ¶ 2.

16 Upon her appointment, the Receiver and her staff performed an analysis of the  
17 value of the 3816 Mission Blvd. Property, including a review of automated valuation  
18 scores for the property and a survey of the market comparable properties. The  
19 Receiver also consulted with multiple licensed brokers about the value of the  
20 property and terms of a potential listing agreement. Ultimately, the Receiver  
21 selected Compass Realty ("Broker") and had the 3816 Mission Blvd. Property  
22 initially listed for sale at \$1,250,000. Freitag Decl., ¶ 3.

23 To market the 3816 Mission Blvd. Property, Broker created marketing flyers  
24 with professional photos. The listing was sent out via email campaigns to a targeted  
25 list of brokers, and investors. Online advertising was placed on key websites that  
26 included local MLS and LoopNet. Post COVID-19, in compliance with guidance  
27 from the California Association of Realtors socially distant property tours were  
28 enforced. There was significant interest in the property throughout its marketing and

1 a total of four (4) offers were received, although three (3) were subsequently  
2 withdrawn due to buyer's reported inability to secure acceptable financing. Through  
3 Broker, the Receiver negotiated terms with the prospective buyers. Finally, the  
4 property went into escrow on or around December 30, 2020 with a purchase price of  
5 \$1,210,000. The proposed buyer is Mauricio Schwartzman ("Buyer"). Freitag Decl.,  
6 ¶ 4.

7 The 3816 Mission Blvd. Property is encumbered by a loan and deed of trust in  
8 favor of AXOS Bank. The amount required to pay off the loan (assuming a March  
9 2021 closing) is estimated to be \$486,000. Depending on when the sale closes  
10 (assuming a March 2021 closing), property taxes in the range of \$2,300 to \$3,300 are  
11 estimated to be owed by the receivership estate. The Broker's commission pursuant  
12 to the listing agreement is 4% of the sale price, or \$48,400. The costs of sale,  
13 including escrow, title and recording fees are estimated to be approximately \$9,000.  
14 While exact amounts will be determined at closing, after all the aforementioned  
15 amounts are paid out of escrow, the net sale proceeds for the receivership estate are  
16 estimated to be approximately \$664,000. Freitag Decl., ¶ 5.

## 17 **II. PROPOSED SALE**

18 The key terms of the proposed Purchase and Sale Agreement and Joint Escrow  
19 Instructions ("Agreement"), a copy of which is attached to the Freitag Decl. as  
20 Exhibit A, are summarized as follows:

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

23 **Purchase Price.** The purchase price is \$1,210,000, which amount will be paid  
24 in cash.

25 **Deposit.** Buyer has deposited \$50,000 into escrow.

26 **Closing Date.** Closing shall occur upon entry of the Court order approving  
27 the sale.

28

1 **III. LEGAL STANDARD**

2 "The power of a district court to impose a receivership or grant other forms of  
3 ancillary relief does not in the first instance depend on a statutory grant of power  
4 from the securities laws. Rather, the authority derives from the inherent power of a  
5 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369  
6 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly  
7 and efficient administration of the estate by the district court for the benefit of  
8 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment  
9 of a receiver is authorized by the broad equitable powers of the court, any  
10 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,  
11 953 F.2d 1560, 1569 (11th Cir. 1992).

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

16 A district court's power to supervise an equity  
17 receivership and to determine the appropriate action to be  
18 taken in the administration of the receivership is  
19 extremely broad. The district court has broad powers and  
20 wide discretion to determine the appropriate relief in an  
21 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.

22 *Id.* (citations omitted); *see also CFTC. v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115  
23 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,  
24 and 'we generally uphold reasonable procedures instituted by the district court that  
25 serve th[e] purpose' of orderly and efficient administration of the receivership for the  
26 benefit of creditors."). Accordingly, the Court has broad discretion in the  
27 administration of the receivership estate and the disposition of receivership assets.  
28

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

2           It is widely accepted that a court of equity having custody and control of  
3 property has power to order a sale of the same in its discretion. *See, e.g., SEC v.*  
4 *Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (the District Court has broad powers  
5 and wide discretion to determine relief in an equity receivership). "The power of sale  
6 necessarily follows the power to take possession and control of and to preserve  
7 property." *See SEC v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144 (9th Cir.  
8 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds) (*citing*  
9 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 482 (3d ed. 1992)  
10 (*citing First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887))). "When a court of equity  
11 orders property in its custody to be sold, the court itself as vendor confirms the title  
12 in the purchaser." 2 Ralph Ewing Clark, Treatise on Law & Practice of  
13 Receivers § 487 (3d ed. 1992).

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

22           Generally, when a court-appointed receiver is involved, the receiver, as agent  
23 for the court, should conduct the sale of the receivership property. *Blakely Airport*  
24 *Joint Venture II v. Federal Sav. and Loan Ins. Corp.*, 678 F. Supp. 154, 156  
25 (N.D. Tex. 1988). The receiver's sale conveys "good" equitable title enforced by an  
26 injunction against the owner and against parties to the suit. *See* 2 Ralph Ewing  
27 Clark, Treatise on Law & Practice of Receivers §§ 342, 344, 482(a), 487, 489, 491  
28 (3d ed. 1992). "In authorizing the sale of property by receivers, courts of equity are



1 vested with broad discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d  
2 354, 357 (9th Cir. 1925).

3 **B. 28 U.S.C. § 2001**

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

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

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

26 If such realty is situated in more than one county, state,  
27 district or circuit, such notice shall be published in one or  
28 more of the counties, states, or districts wherein it is  
situated, as the court directs. The notice shall be  
substantially in such form and contain such description of  
the property by reference or otherwise as the court

1 approves. The court may direct that the publication be  
2 made in other newspapers.

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

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

#### 14 **IV. DISCUSSION**

15 The Receiver believes the proposed sale to Buyer pursuant to the Agreement is  
16 in the best interests of the receivership estate. The 3816 Mission Blvd. Property was  
17 listed with a licensed broker and shown to all interested parties. The property was  
18 properly marketed, four offers were received, highest and best terms negotiated, and  
19 the Agreement signed. The purchase price is fair and reasonable and reflects the  
20 market value of the property. Freitag Decl., ¶ 6.

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

26 In the action pending in U.S. District Court for the  
27 Southern District of California, Case No. 19-CV-01628-  
28 LAB-AHG, Securities and Exchange Commission v.  
Gina Champion-Cain, et al., notice is hereby given that  
the court-appointed receiver will conduct a public auction  
for the real property located at 3816 Mission Blvd. in San  
Diego County, California (also known as 733 Salem  
Court, San Diego, California). Sale is subject to Court

1 confirmation after the auction is held. Minimum bid  
2 price is at least \$1,225,000. The auction will take place  
3 on February 25, 2021, at 1:30 p.m. in front of the  
4 entrance to the United States Courthouse,  
5 221 W. Broadway, San Diego, California or as otherwise  
6 determined by the Court. To be allowed to participate in  
7 the auction, prospective purchasers must meet certain bid  
8 qualification requirements, including submitting a signed  
9 purchase and sale agreement, an earnest money deposit  
of \$55,000, and proof of funds. All bidders must be  
qualified by 5:00 p.m. PT on February 22, 2021, by  
submitting the required materials to the receiver at 501  
West Broadway, Suite 290, San Diego, California,  
92101. If interested in qualifying as a bidder, please  
contact Geno Rodriguez at (619) 567-7223 or  
grodriguez@ethreadvisors.com.

10 In order to conduct an orderly auction and provide sufficient time for the  
11 publication of notices discussed above, the Receiver will require bidders to complete  
12 the above steps by February 22, 2021 ("Bid Qualification Deadline") and conduct the  
13 live public auction on February 25, 2021.

14 The Receiver will inform all interested persons of the opportunity to overbid at  
15 the public auction, provided they qualify themselves to bid by the Bid Qualification  
16 Deadline by (a) signing a purchase and sale agreement for the properties on the same  
17 terms and conditions as Buyer, but with a purchase price of at least \$1,225,000,  
18 (b) providing the Receiver with an earnest money deposit of \$55,000, and  
19 (c) providing proof of funds necessary to close the sale transaction in the form of a  
20 current bank statement, cashier's check delivered to the Receiver, or other evidence  
21 deemed sufficient by the Receiver.

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

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**V. CONCLUSION**

For the reasons discussed above, the Receiver requests (a) approval of the sale of the 3816 Mission Blvd. Property to Buyer (or Buyer's designee) pursuant to the Agreement attached to the Freitag Declaration as Exhibit A, and (b) authority to take all steps necessary to close the sale, with the net sale proceeds after all third-party payments are made from escrow going to the receivership estate.

Dated: January 28, 2021

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By:           s/Edward G. Fates

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