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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  
19 v.  
20 GINA CHAMPION-CAIN and ANI  
DEVELOPMENT, LLC,  
21 Defendants,  
22 AMERICAN NATIONAL  
INVESTMENTS, INC.,  
23 Relief Defendant.  
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Case No. 3:19-cv-01628-LAB-AHG

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
RECEIVER'S MOTION FOR  
APPROVAL OF SALE OF  
140 KELLER STREET PROPERTY**

Date: April 30, 2021  
Time: 9:30 a.m.  
Courtroom: TBD  
Mag. Judge: Hon. Allison H. Goddard

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 140 Keller Street Property ("Motion").

6 **I. BACKGROUND FACTS**

7 One of the commercial properties included in the receivership estate is an  
8 approximately 10,000 square foot office/co-work center located at 140 Keller Street.  
9 Petaluma, California 94952, APN #006-363-025 Parcel I ("140 Keller Street  
10 Property"). The 140 Keller Street Property, along with the adjoining 132 Keller  
11 Street Property (which was previously sold by the Receiver with Court approval),  
12 was purchased by Receivership Entity 132 & 140 Keller Street, LLC, for \$2,900,000  
13 on November 2, 2015. Declaration of Krista Freitag filed herewith ("Freitag Decl."),  
14 ¶ 2.

15 After the 132 and 140 Keller Street property (which at the time was one lot),  
16 was purchased, the lot, which had two buildings on it – a restaurant located at 132  
17 Keller Street and a co-working office space located at 140 Keller Street – was split  
18 into two lots. The restaurant operations were closed prior to the receivership, but the  
19 co-working office space continued to operate (and has operated (or closed as  
20 required) under proper COVID-19 protocol throughout the receivership). Freitag  
21 Decl., ¶ 3.

22 Upon her appointment, the Receiver and her staff performed an analysis of the  
23 value of both 132 and 140 Keller Street, including a review of automated valuation  
24 scores for the property and a survey of the market comparable properties. The 132  
25 Keller Street Property was already in escrow as of the commencement of the  
26 receivership. After determining that the purchase was an arm's length transaction for  
27 a purchase price consistent with the market value, the Receiver sought and obtained  
28 Court approval to close the sale. The Receiver and her staff then consulted with

1 multiple licensed brokers about the terms of a potential listing agreement for the 140  
2 Keller Street Property. Ultimately, the Receiver selected Keegan & Coppin Co., Inc.  
3 ("Broker") to list the property for \$2,500,000 in October 2019. As the Receiver did  
4 with many of the restaurant properties in the receivership, she had Broker set up a  
5 due diligence platform and issued a call for offers from prospective buyers with a  
6 March 31, 2020 deadline. Freitag Decl., ¶ 4.

7           Unfortunately, once the pandemic hit, the initial interest from prospective  
8 buyers disappeared. The Receiver gradually reduced the list price to \$2,000,000. In  
9 December 2020, an offer in the amount of \$2,050,000 was received from Cara  
10 Recine and Anthony Sanchez ("Buyer"). Through Broker, the Receiver negotiated  
11 terms with Buyer. The property went into escrow in December 2020 and the  
12 Receiver agreed to a \$10,000 reduction in the purchase price to \$2,040,000 due to  
13 deferred maintenance on the HVAC system for the building. Freitag Decl., ¶ 5.

14           The Keller Street Property is encumbered by a mortgage in favor of Seattle  
15 Funding Group ("SFG"). The principal balance due on the interest only loan is  
16 \$1,101,183.42. Depending on when the sale closes, an additional amount of up to  
17 approximately \$8,500 will be owing. The Broker's commission pursuant to the  
18 listing agreement is 4% of the purchase/sale price, or \$81,600. Depending on when  
19 the sale closes, the property tax reimbursement due to seller at closing is estimated to  
20 be in the range of \$1,900 to \$3,800. The costs of sale due from seller, including title,  
21 recording, and escrow fees are estimated to be approximately \$15,000. Freitag Decl.,  
22 ¶ 6.

23           In addition, prior to the receivership, a contractor, Adam Lewis Construction  
24 ("ALC") performed work on the 132 and 140 Keller Street properties, which work  
25 was required for the lot split to be approved by the City of Petaluma. ALC was not  
26 paid for a portion of its work and recorded a mechanic's lien on the properties after  
27 the Receiver's appointment. The sale of the 132 Keller Street property was approved  
28 by the Court and allowed to close without payment to ALC (all of the sale proceeds,

1 after the costs of sale were paid, went to SFG to reduce the balance on the mortgage).  
2 It was ordered, however, that ALC would be paid from the proceeds of the sale of the  
3 140 Keller Street Property after the SFG mortgage is fully paid off. Dkt. 166. The  
4 amount to be paid to ALC is \$82,527.17. Freitag Decl., ¶ 7.

5 After the above amounts are paid, the estimated net sale proceeds to be paid to  
6 the receivership estate are in the range of \$752,000 to \$762,000. Freitag Decl., ¶ 8.

## 7 **II. PROPOSED SALE**

8 The key terms of the proposed Purchase and Sale Agreement and Joint Escrow  
9 Instructions ("Purchase Agreement"), a copy of which is attached to the Freitag  
10 Declaration as Exhibit A, are summarized as follows:

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

13 **Purchase Price.** The purchase price is \$2,040,000.

14 **Deposit.** Buyer has deposited \$60,000 into escrow.

15 **Closing Date.** Closing shall occur within 5 days of entry of the Court order  
16 approving the sale.

## 17 **III. LEGAL STANDARD**

18 "The power of a district court to impose a receivership or grant other forms of  
19 ancillary relief does not in the first instance depend on a statutory grant of power  
20 from the securities laws. Rather, the authority derives from the inherent power of a  
21 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369  
22 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly  
23 and efficient administration of the estate by the district court for the benefit of  
24 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment  
25 of a receiver is authorized by the broad equitable powers of the court, any  
26 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,  
27 953 F.2d 1560, 1569 (11th Cir. 1992).

28

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

5 A district court's power to supervise an equity receivership  
 6 and to determine the appropriate action to be taken in the  
 7 administration of the receivership is extremely broad. The  
 8 district court has broad powers and wide discretion to  
 9 determine the appropriate relief in an equity receivership.  
 10 The basis for this broad deference to the district court's  
 11 supervisory role in equity receiverships arises out of the  
 12 fact that most receiverships involve multiple parties and  
 13 complex transactions. A district court's decision  
 14 concerning the supervision of an equitable receivership is  
 15 reviewed for abuse of discretion.

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

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

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

1 in the purchaser." 2 Ralph Ewing Clark, Treatise on Law & Practice of  
2 Receivers § 487 (3d ed. 1992).

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

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

20 **B. 28 U.S.C. § 2001**

21 Specific requirements are imposed by 28 U.S.C. § 2001 for public sales of real  
22 property under subsection (a) and specific requirements for private sales of real  
23 property under subsection (b). Although both involve significant cost and delay, the  
24 cost and delay of a public sale are significantly less than those for a private sale.  
25 *SEC v. Goldfarb*, 2013 U.S. Dist. LEXIS 118942, at \*5 (N.D. Cal. 2013)  
26 ("Section 2001 sets out two possible courses of action: (1) property may be sold in  
27 public sale; or (2) property may be sold in a private sale, provided that three separate  
28 appraisals have been conducted, the terms are published in a circulated newspaper

1 ten days prior to sale, and the sale price is no less than two-thirds of the valued  
2 price."). Therefore, by proceeding under Section 2001(a), the receivership estate can  
3 avoid the significant costs and delay of (a) the Court having to appoint three  
4 disinterested appraisers, and (b) obtaining three appraisals from such appraisers.

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

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

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

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

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

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**IV. DISCUSSION**

The Receiver believes the proposed sale to Buyer pursuant to the Purchase Agreement is in the best interests of the estate. The Keller Street Property was listed with a licensed broker for over a year and shown to all interested parties. The property was properly marketed and best terms negotiated, and the Agreement signed. The purchase price is fair and reasonable and reflects the market value of the property. Freitag Decl., ¶ 9.

Moreover, the proposed sale is subject to overbid to further ensure the highest and best price is obtained. The Receiver proposes to conduct a public auction consistent with the requirements of Section 2001(a). Specifically, the Receiver will publish the following notice of the sale once a week for four weeks in the Santa Rosa Press Democrat, a newspaper of general circulation in Sonoma County:

In the action pending in U.S. District Court for the Southern District of California, Case No. 19-CV-01628-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 140 Keller Street, Petaluma, California 94952 in Sonoma County, California. Sale is subject to Court confirmation after the auction is held. Minimum bid price is at least \$2,075,000. The auction will take place on April 5, 2021, at 1:30 p.m. in front of the entrance to the United States Courthouse, 221 W. Broadway, San Diego, California or as otherwise determined by the Court. To be allowed to participate in the auction, prospective purchasers must meet certain bid qualification requirements, including submitting a signed purchase and sale agreement, an earnest money deposit of \$66,000, and proof of funds. All bidders must be qualified by 5:00 p.m. PT on March 29, 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.

In order to conduct an orderly auction and provide sufficient time for the publication of notices discussed above, the Receiver will require bidders to complete the above steps by March 29, 2021 ("Bid Qualification Deadline") and conduct the live public auction on April 5, 2021.

1 The Receiver will inform all interested persons of the opportunity to overbid at  
2 the public auction, provided they qualify themselves to bid by the Bid Qualification  
3 Deadline by (a) signing a purchase and sale agreement for the properties on the same  
4 terms and conditions as Buyer, but with a purchase price of at least \$2,075,000,  
5 (b) providing the Receiver with an earnest money deposit of \$66,000, and  
6 (c) providing proof of funds necessary to close the sale transaction in the form of a  
7 current bank statement, cashier's check delivered to the Receiver, or other evidence  
8 deemed sufficient by the Receiver.

9 In the event one or more prospective purchasers qualify themselves to bid, the  
10 auction will be conducted by the Receiver as noted above and bids will be allowed in  
11 increments of at least \$25,000. The Receiver will then file a notice advising the  
12 Court of the result of the auction (*i.e.*, the highest bid) and seek entry of an order  
13 confirming the sale. Earnest money deposits provided by bidders who are  
14 unsuccessful will be promptly returned to them. In the event no prospective  
15 purchasers qualify themselves to bid by the Bid Qualification Deadline, the Receiver  
16 will notify the Court and seek entry of an order approving the sale to Buyer.

17 **V. CONCLUSION**

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

23  
24 Dated: March 9, 2020

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