

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

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 140 KELLER STREET PROPERTY TO WINNING BIDDER; and

(2) GRANTING IN PART AND DENYING IN PART MOTION FOR APPROVAL OF SALE OF 140 KELLER STREET PROPERTY

[ECF Nos. 615, 643]

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

19 Pursuant to 28 U.S.C. § 2001(a), realty in the possession of an appointed receiver is
20 subject to a public sale process, “upon such terms and conditions as the court directs.”
21 28 U.S.C. § 2002 further requires that notice be published once a week for at least four
22 weeks prior to the sale in at least one newspaper regularly issued and of general circulation
23 in the county, state, or judicial district where the realty is located. The purpose of such
24 notice “is to inform the public of the kind and condition of the property to be sold, the time,
25 the place, and the terms of the sale. It is to secure bidders and prevent the sacrifice of the
26 property.” *Breeding Motor Freight Lines v. R.F.C.*, 172 F.2d 416, 422 (10th Cir. 1949).
27 Therefore, the safeguards of notice and opportunity to submit overbids help to ensure that
28 the sale is able to fetch the best price possible, which is consistent with the principle that

1 “a primary purpose of equity receiverships is to promote orderly and efficient
2 administration of the estate by the district court for the benefit of creditors.” *Hardy*, 803
3 F.2d at 1038. *See also United States v. Grable*, 25 F.3d 298, 303 (6th Cir. 1994) (noting
4 that “the intent of” the requirement in 28 U.S.C. § 2001 that property be sold in the county
5 in which the land is situated is “to bring a better price at the sale”).

6 The Receiver filed a Motion for Approval of Sale of 140 Keller Street Property (the
7 “140 Keller Street Motion”) on March 9, 2021. ECF No. 615. The motion concerns one of
8 the real properties within the receivership estate, an approximately 10,000 square foot
9 office/co-work center located at 140 Keller Street, Petaluma, California 94952, APN #006-
10 363-025 Parcel I (the “140 Keller Street Property”). *See* ECF No. 615-1 at 2; ECF No. 76-
11 2 at 5 (listing the 140 Keller Street Property in the Preliminary Real Estate and Liquor
12 License Asset Schedule filed on October 3, 2019).

13 At the time the motion was filed, the intended buyer of the 140 Keller Street Property
14 was Cara Recine and Anthony Sanchez, and the intended sale price was \$2,040,000. ECF
15 No 615-1 at 3, 4. In the motion, the Receiver proposed compliance with 28 U.S.C. §§ 2001
16 and 2002 by publishing notice once a week for four weeks in the Santa Rosa Press
17 Democrat, a newspaper of general circulation in Sonoma County, of a public auction for
18 the property on April 5, 2021. *Id.* at 8. Potential bidders were invited to qualify for the
19 auction by submitting a signed purchase and sale agreement, an earnest money deposit of
20 \$66,000, and proof of funds by March 29, 2021. *Id.*

21 The Court set a deadline of March 24, 2021 to file any response in opposition to the
22 140 Keller Street Motion, and ordered the Receiver to file a notice of non-receipt of
23 overbids if no qualified overbids were received by March 29, 2021. ECF No. 618. No
24 opposition to the 140 Keller Street Motion was filed. However, on March 31, 2021, the
25 Receiver filed a Notice of Receipt of Qualified Overbids, reporting that two qualified
26 overbids were received for the 140 Keller Street Property. ECF No. 631. The Receiver,
27 through her broker, obtained the consent of the original buyer and each of the qualified
28 overbidders to conduct the live auction via Zoom call on April 5, 2021. *Id.*

1 On April 12, 2021, the Receiver filed a Notice of Results of Auction for 140 Keller
2 Street Property and Request to Approve Sale to Winning Bidder. ECF No. 643 (“Notice of
3 Results”). In the Notice of Results, the Receiver requests that the Court approve the sale of
4 the 140 Keller Street Property to the winning bidder, 140 Keller Street, LLC (an Ohio
5 limited liability company) (“Winning Bidder”), and also to approve the sale of the property
6 to the back-up bidder (and original intended buyer) Cara Recine and Anthony Sanchez
7 (“Back-Up Bidder”) in the event the Winning Bidder does not close the sale for any reason.
8 *Id.* at 2-3. The Winning Bidder submitted a bid of \$2,600,000 for the property, while the
9 Back-Up Bidder submitted the second-highest bid of \$2,525,000. *Id.* Other than approval
10 of the sale to the Winning Bidder (and the Back-Up Bidder if the sale falls through) at a
11 new sale price, all other relief requested in the 140 Keller Street Motion remains the same.
12 *Id.* at 3. That relief includes but is not limited to granting the Receiver the authority to
13 (1) pay off the mortgage on the property in favor of Seattle Funding Group, (2) pay Adam
14 Lewis Construction for work done on the 132 and 140 Keller Street properties prior to the
15 Receiver’s appointment, and subject to a mechanic’s lien recorded after the Receiver’s
16 appointment, and (3) pay the costs of sale, all from the sale proceeds.

17 Being fully advised and noting the lack of opposition to the 140 Keller Street Motion,
18 the Court will **GRANT** (1) the request to approve the sale of the 140 Keller Street Property
19 to the Winning Bidder; (2) the request to approve the sale of the 140 Keller Street Property
20 to the Back-Up Bidder if the Winning Bidder does not close the sale for any reason; and
21 (3) all relief requested in the 140 Keller Street Motion, other than the request to approve
22 the sale to the former buyer at the sale price of \$2,040,000. That portion of the 140 Keller
23 Street Motion will be **DENIED**.

24 II. LEGAL STANDARD

25 “[I]t is a recognized principle of law that the district court has broad powers and
26 wide discretion to determine the appropriate relief in an equity receivership.” *SEC v.*
27 *Lincoln Thrift Ass’n*, 577 F.2d 600, 606 (9th Cir. 1978). Where a district court sits in equity,
28 “[u]nless a statute in so many words, or by a necessary and inescapable inference, restricts

1 the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and
2 applied. "The great principles of equity, securing complete justice, should not be yielded
3 to light inferences, or doubtful construction." *Porter v. Warner Holding Co.*, 328 U.S.
4 395, 398 (1946).

5 "[A] district court's power to supervise an equity receivership and to determine the
6 appropriate action to be taken in the administration of the receivership is extremely broad."
7 *Hardy*, 803 F.2d at 1037. As part of this broad discretion, the district court sitting in equity
8 and having custody and control of property "has power to order a sale of the same in its
9 discretion. The power of sale necessarily follows the power to take control of and to
10 preserve property[.]" *SEC v. Am. Capital Investments, Inc.*, 98 F.3d 1133, 1144 (9th Cir.
11 1996), *abrogated on other grounds by Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83,
12 93-94 (1998) (quoting 2 Ralph E. Clark, Treatise on Law & Practice of Receivers § 482
13 (3d ed. 1992)). If the court approves an equitable receiver's proposed property sale, the
14 sale "does not . . . purport to convey 'legal' title, but rather 'good,' equitable title enforced
15 by an injunction against suit." *Id.* (citing 2 Clark, Treatise on Law & Practice of Receivers,
16 §§ 342, 344, 482(a), 487, 489, 491).

17 III. DISCUSSION

18 A. Background of the Property and Proposed Sale

19 As discussed in the Court's prior order granting the sale of the adjoining 132 Keller
20 Street property (ECF No. 166), both the 132 and 140 Keller Street Property were purchased
21 for \$2.9 million on November 2, 2015 by receivership entity 132 & 140 Keller Street, LLC.
22 ECF No. 615-1 at 2. *See also* ECF No. 6 at 4 (the Court's Appointment Order, listing 132
23 & 140 Keller Street, LLC as one of the receivership entities). At the time of purchase, the
24 132 & 140 Keller Street property was only one lot with two buildings on it: the 132 Keller
25 Street restaurant property, and the co-working office space at 140 Keller Street. ECF No.
26 615-1 at 2. The lot with the two buildings was split into two lots after purchase. *Id.*
27 Following the Receiver's appointment in September 2019, the 132 Keller Street property
28 (which had already ceased operations prior to the receivership) was sold upon Court

1 approval. *See* ECF No. 166. The co-working office space at 140 Keller Street continued to
2 operate, and has operated throughout the receivership. ECF No. 615-1 at 2.

3 Following her appointment, the Receiver and her staff analyzed the value of both the
4 132 and 140 Keller Street properties by conducting a review of automated valuation scores
5 for the property and a survey of the market comparable properties. *Id.* After selling the 132
6 Keller Street property with Court approval, the Receiver and her staff then consulted with
7 multiple licensed brokers about the terms of a potential listing agreement for the 140 Keller
8 Street Property, ultimately selecting Keegan & Coppin Co., Inc. (“Broker”) to list the
9 property for sale at a list price of \$2.5 million in October 2019. *Id.* at 2-3. As she did with
10 many of the restaurant properties in the receivership, the Receiver had the broker set up a
11 due diligence platform and issued a March 31, 2020 call-for-offers deadline for prospective
12 buyers. *Id.* at 3. However, interest in the property quickly dwindled due to the COVID-19
13 pandemic, and the Receiver gradually reduced the list price to \$2 million. *Id.* In
14 December 2020, the original buyer and Back-Up Bidder Cara Recine and Anthony Sanchez
15 made an offer of \$2,050,000. *Id.* Through Broker, the Receiver negotiated terms with Back-
16 Up Bidder, ultimately leading to the property going into escrow in December 2020, with
17 Back-Up Bidder to pay the original purchase price of \$2,040,000.¹ *Id.*

18 As previously noted, however, pursuant to 28 U.S.C. §§ 2001 and 2002, the Receiver
19 published notice in the Santa Rosa Press Democrat of a public auction for the property. and
20 received two qualified overbids. *Id.* at 8; *see also* ECF Nos. 631, 643. Based on the results
21 of the auction, the high bidder and current Buyer is 140 Keller Street, LLC, with a bid of
22 \$2,600,000. If the sale with Buyer falls through for any reason, the property will be sold to
23 Back-Up Bidder for \$2,525,000. ECF No. 643.

24 Both the Winning Bidder and Back-Up Bidder have executed a Form Purchase and
25 Sale Agreement and Joint Escrow Instructions (“Form PSA”), *Id.* and each of them also

26
27
28 ¹ The Receiver agreed to a \$10,000 reduction in the purchase price due to deferred
maintenance on the HVAC system for the building. ECF No. 615-1 at 3.

1 provided an earnest money deposit of \$66,000 (Buyer) and \$60,000 (Back-Up Bidder). *See*
2 ECF Nos. 643-1; 643-2. Pursuant to §§ 2.2(a) and 15.4 of the Form PSAs, the earnest
3 money deposit is non-refundable to Winning Bidder, and will only be returned to Back-Up
4 Bidder after the closing for the sale of the property to Winning Bidder occurs. After the
5 auction, on April 7 and April 9, 2021, respectively, both Winning Bidder and Back-Up
6 Bidder executed amendments to their respective Form PSAs with the Receiver, which,
7 among other terms, amend the purchase price in the Form PSAs to correspond with their
8 bids. ECF No. 643-1 at 56-58; ECF No. 643-2 at 56-59.

9 **B. Proposed Procedures and Distribution**

10 The 140 Keller Street Property is encumbered by a mortgage in favor of Seattle
11 Funding Group (“SFG”), with a principal balance due on the interest-only loan of
12 \$1,101,183.42. ECF No. 615-1 at 3. The Receiver intends to use the proceeds of the sale
13 of the property to pay off the mortgage, and estimates that an additional amount of
14 approximately \$8,500 will be owing at the time of closing. *Id.*

15 In addition, and as discussed at length in the Court’s prior order approving the sale
16 of the 132 Keller Street property (ECF No. 166 at 7-20), the 140 Keller Street Property is
17 also encumbered by a mechanic’s lien in favor of Adam Lewis Construction (“ALC”), a
18 contractor who performed work on the 132 and 140 Keller Street properties, and who
19 recorded the lien after the creation of the receivership. Although the Receiver disputed the
20 validity of the lien due to the timing of its recording, the Court determined that it had the
21 authority to approve the sale of 132 Keller Street property free and clear of the lien
22 regardless of its validity, but directed the Receiver to include a proposed distribution of the
23 sale proceeds of 140 Keller Street to pay the mechanic’s lien. *Id.* at 18-21. The Receiver
24 has done so in the 140 Keller Street Motion, proposing that \$82,527.17 of the sale proceeds
25 go to pay off the ALC lien. ECF No. 615-1 at 3-4.

26 The Receiver estimates that costs of sale including escrow, title and recording fees
27 will be approximately \$15,000. *Id.* The Broker’s fee pursuant to the listing agreement is
28 4% of the sale price, or \$81,600. *Id.* Based on these estimates, the Receiver estimated in

1 the 140 Keller Street Motion that the net sale proceeds for the receivership estate will be
2 in the range of \$752,000 to \$762,000. *Id.* at 4.

3 In light of the substantially higher winning bid (\$2,600,000) and back-up bid
4 (\$2,525,000) compared to the formerly agreed-upon purchase price of \$2,040,000,
5 however, the Court assumes an adjusted Broker's fee in the range of \$101,000 to \$104,000,
6 and a resultant adjusted estimate of net sale proceeds for the receivership estate in the range
7 of \$1.21 million to \$1.3 million. Upon inquiry from the Court, counsel for the Receiver has
8 confirmed an updated estimated net sale proceed amount of \$1.285 – 1.295 million will be
9 returned to the estate. Counsel has also confirmed that the second installment of property
10 taxes due on April 10, 2021 has now been paid, which will result in a small credit to the
11 receivership estate for property taxes, consistent with the Receiver's estimate in the 140
12 Keller Street Motion that the property tax reimbursement due to seller at closing will be in
13 the range of \$1,900 to \$3,800. *Id.* at 3.

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

15 The Court has reviewed the documents submitted by the Receiver in support of the
16 140 Keller Street Motion, as well as the Notice of Results and request to approve the sale
17 to Winning Bidder, or to Back-Up Bidder if Winning Bidder does not close the sale for any
18 reason. The Court finds that both the winning bid and the back-up bid are fair, reasonable,
19 and will represent a strong return of proceeds to the receivership estate. Coupled with the
20 \$1.8 million purchase price obtained for the 132 Keller Street property (*see* ECF No. 166),
21 both bids exceed the November 2015 \$2.9 million purchase price of both properties by
22 more than \$1.4 million. Despite the pandemic's devastating effect on interest from
23 prospective buyers, the Receiver continued marketing the property for more than eight
24 months after the initial call-for-offers deadline, before reducing the original list price and
25 accepting the offer of \$2,040,000 from the previous intended buyer. Even then, the
26 Receiver continued to market the property, and successfully secured two overbids well
27 above that purchase price. Additionally, Broker's proposed commission of 4% of sale price
28 is consistent with industry standards.

1 Moreover, the Receiver’s publication of notice seeking qualified overbids in the
2 Santa Rosa Press Democrat, in addition to the solicitation of overbids and holding of a
3 public auction, establish that the Receiver fully satisfied the requirements for the public
4 sale procedures set forth in 28 U.S.C. §§ 2001(a) and 2002, which are designed to ensure
5 the best price for real property is obtained. The Court is convinced that the carrying out of
6 the notice and auction process alone suffices to show that the Receiver has secured the best
7 and highest price for the 140 Keller Street Property, whether the sale closes with either
8 Winning Bidder with a sale price of \$2.6 million or Back-Up Bidder with a sale price of
9 \$2.525 million. The Court is thus satisfied that the intent of the statutory scheme—to ensure
10 that the best and highest possible price is paid for property within the receivership estate—
11 has been fulfilled. Even taking into account the need to pay off the loan on the property
12 from the sale proceeds, the anticipated return to the receivership estate is substantial.

13 Based on these considerations, and noting the lack of any opposition to the motion,
14 the Court finds the Receiver has established that the proposed sale of the 140 Keller Street
15 Property and proposed distribution of the sale proceeds, whether the sale closes with
16 Winning Bidder or Back-Up Bidder, are consistent with principles of equity and the goal
17 of a receivership to ensure the orderly and efficient administration of the estate for the
18 benefit of creditors. *See Hardy*, 803 F.2d at 1038.

19 **IV. CONCLUSION**

20 Having considered the Receiver’s Motion for Approval of Sale of 140 Keller Street
21 Property (ECF No. 615), as modified by the Receiver’s Notice of Results of Auction for
22 140 Keller Street Property and Request to Approve Sale to Winning Bidder (ECF No. 643),
23 the Court **GRANTS IN PART** and **DENIES IN PART** the 140 Keller Street Motion (ECF
24 No. 615). Specifically, the Court **GRANTS** all relief requested therein, other than the
25 approval of the sale to the former intended buyer at the former purchase price. The Court
26 **GRANTS** the Receiver’s request to approve the sale of the 140 Keller Street Property to
27 Winning Bidder at the winning bid price of \$2,600,000. If Winning Bidder does not close
28

1 the sale for any reason, the Court further **APPROVES** the sale of the 140 Keller Street
2 Property to Back-Up Bidder at the sale price of \$2,525,000.

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

4 (1) The sale of property located at 140 Keller Street, Petaluma, California 94952,
5 as described in Exhibit A of the Purchase and Sale Agreement and Joint Escrow
6 Instructions (including the Amendment thereto) attached as Exhibit A to the Notice of
7 Results of Auction of 140 Keller Street Property and Request to Approve Sale to Winning
8 Bidder (ECF No. 643-1 at 37), by Krista L. Freitag, as receiver, to 140 Keller Street, LLC
9 or its designee (“Winning Bidder”) is confirmed and approved;

10 (2) The purchase price of \$2,600,000, to be paid by Winning Bidder for the 140
11 Keller Street Property, is confirmed and approved;

12 (3) The Receiver is authorized to pay Adam Lewis Construction the amount of
13 \$82,587.17 from the sale proceeds;

14 (4) The Receiver is authorized to pay Seattle Funding Group from the sale
15 proceeds the amount necessary to pay off the mortgage on the 140 Keller Street Property,
16 which is estimated to be approximately \$1,101,183.42 (with the exact amount to be
17 determined at closing);

18 (5) The Receiver is authorized to pay any property taxes due on the property or,
19 as is more likely, to collect the small property tax credit anticipated to be due to seller at
20 closing (with the exact amount to be determined at closing), which amount will be returned
21 to the receivership estate;

22 (6) The Receiver is authorized to pay the costs for title, escrow, and recording,
23 which are estimated to be \$15,000 (with the exact amount to be determined at closing);

24 (7) The Receiver is authorized to pay Broker Keegan & Coppin Co., Inc. a
25 commission of 4% of the sale price;

26 (8) After the aforementioned estimated amounts are paid, the net sale proceeds,
27 which are estimated to be approximately \$1.285 million to \$1.295 million (with the exact
28 amount to be determined at closing), shall be paid to the receivership estate;

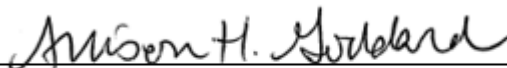
1 (9) The Receiver is immediately authorized to complete the sale transaction,
2 including executing any and all documents as may be necessary and appropriate to do so;
3 and

4 (10) *If and only if* Winning Bidder fails to close the sale transaction pursuant to
5 the Purchase and Sale Agreement and Joint Escrow Instructions (including the Amendment
6 thereto) attached to the Notice of Results of Auction as Exhibit A (ECF No. 643-1), then
7 the sale of the 140 Keller Street Property by the Receiver to Cara Recine and Anthony
8 Sanchez, or their designee (“Back-Up Bidder”) pursuant to the Purchase and Sale
9 Agreement and Joint Escrow Instructions (including the Amendment thereto) attached to
10 the Notice of Results of Auction as Exhibit B (ECF No. 643-2) for \$2,525,000 is approved,
11 the Receiver is authorized to make the payments from escrow described above, and the
12 Receiver is authorized to complete the sale to Back-up Bidder (or his designee), including
13 executing any and all documents as may be necessary and appropriate to do so.

14 After closing, the Receiver shall provide a full accounting of sale costs, the precise
15 amount used to pay off the SFG mortgage, property taxes paid (if any), and the amount
16 ultimately returned to the receivership estate from the sale proceeds.

17 **IT IS SO ORDERED.**

18
19 Dated: April 19, 2021

20 
21 _____
22 Honorable Allison H. Goddard
23 United States Magistrate Judge
24
25
26
27
28