

1 DAVID R. ZARO (BAR NO. 124334)
 2 NORMAN M. ASPIS (BAR NO. 313466)
 3 ALLEN MATKINS LECK GAMBLE
 4 MALLORY & NATSIS LLP
 5 865 South Figueroa Street, Suite 2800
 6 Los Angeles, California 90017-2543
 7 Phone: (213) 622-5555
 8 Fax: (213) 620-8816
 9 E-Mail: dzaro@allenmatkins.com
 10 naspis@allenmatkins.com

11 EDWARD G. FATES (BAR NO. 227809)
 12 ALLEN MATKINS LECK GAMBLE
 13 MALLORY & NATSIS LLP
 14 One America Plaza
 15 600 West Broadway, 27th Floor
 16 San Diego, California 92101-0903
 17 Phone: (619) 233-1155
 18 Fax: (619) 233-1158
 19 E-Mail: tfates@allenmatkins.com

20 Attorneys for Receiver
 21 KRISTA FREITAG

22 UNITED STATES DISTRICT COURT
 23 SOUTHERN DISTRICT OF CALIFORNIA

24 SECURITIES AND EXCHANGE
 25 COMMISSION,
 26
 27 Plaintiff,
 28
 29 v.
 30 GINA CHAMPION-CAIN and ANI
 31 DEVELOPMENT, LLC,
 32
 33 Defendants,
 34
 35 AMERICAN NATIONAL
 36 INVESTMENTS, INC.,
 37
 38 Relief Defendant.

Case No. 3:19-cv-01628-LAB-AHG

**MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF
 RECEIVER'S SECOND MOTION
 FOR APPROVAL OF SALE OF 1775
 DIAMOND PROPERTY**

Date: November 2, 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
17
18
19
20
21
22
23
24
25
26
27
28

Page

| | | |
|------|---|----|
| I. | BACKGROUND FACTS | 5 |
| II. | PROPOSED SALE..... | 7 |
| III. | LEGAL STANDARD | 7 |
| A. | The Court's Authority to Approve Sale | 8 |
| B. | 28 U.S.C. § 2001 | 9 |
| IV. | DISCUSSION | 11 |
| V. | CONCLUSION | 13 |

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)..... 9

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

7 678 F. Supp. 154 (N.D. Tex. 1988)..... 9

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)..... 8

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)..... 9

18 *Regions Bank v. Egyptian Concrete Co.*

19 2009 U.S. Dist. LEXIS 111381, at *8 (E.D. Mo. 2009) 11

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)..... 8

24 *SEC v. Capital Cove Bancorp LLC*

25 2015 U.S. Dist. LEXIS 174856, at *13 (C.D. Cal. 2015)..... 10

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) 10

SEC v. Wencke

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

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

Page(s)

Statutes

| | |
|--------------------------|-----------|
| 28 U.S.C. § 2001..... | 9 |
| 28 U.S.C. § 2001(a)..... | 9, 10, 11 |
| 28 U.S.C. § 2001(b)..... | 9 |
| 28 U.S.C. § 2002..... | 10 |

Treatises

| | |
|---|---|
| 2 Ralph Ewing Clark, <u>Treatise on Law & Practice of Receivers</u> § 342 (3d ed. 1992)..... | 9 |
| 2 Ralph Ewing Clark, <u>Treatise on Law & Practice of Receivers</u> § 344 (3d ed. 1992)..... | 9 |
| 2 Ralph Ewing Clark, <u>Treatise on Law & Practice of Receivers</u> § 482 (3d ed. 1992)..... | 8 |
| 2 Ralph Ewing Clark, <u>Treatise on Law & Practice of Receivers</u> § 482(a) (3d ed. 1992). | 9 |
| 2 Ralph Ewing Clark, <u>Treatise on Law & Practice of Receivers</u> § 487 (3d ed. 1992)..... | 9 |
| 2 Ralph Ewing Clark, <u>Treatise on Law & Practice of Receivers</u> § 489 (3d ed. 1992)..... | 9 |
| 2 Ralph Ewing Clark, <u>Treatise on Law & Practice of Receivers</u> § 491 (3d ed. 1992)..... | 9 |
| 2 Ralph Ewing Clark, <u>Treatise on Law & Practice of Receivers</u> § 500 (3d ed. 1992)..... | 9 |

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 Second Motion for Approval of Sale of 1775 Diamond Property ("Motion").

6 The property that is the subject of this Motion was also the subject of a prior
7 sale approval motion, notice of non-receipt of qualified overbid, and Court order
8 approving the sale. Dkt. 684, 693, 695. However, the approved buyer, Abdullah
9 Hafid, with a purchase price of \$419,000, failed to close his sale transaction.
10 Accordingly, his earnest money deposits totaling \$12,570 was forfeited and paid
11 from escrow to the receivership estate and the Receiver put the property back on the
12 market. This Motion is the result of those further marketing efforts.

13 I. BACKGROUND FACTS

14 One of the residential properties included in the receivership estate is a
15 condominium located at 1775 Diamond Street, #301, San Diego, California 92109
16 ("1775 Diamond Property"). The 1775 Diamond Property is approximately 653
17 square feet with one bedroom and one bathroom and was purchased in June 2016 for
18 \$300,000 by the Gina Champion Cain Revocable Trust. The ownership was
19 subsequently transferred to 6050 El Cajon Blvd LLC in August 2016 and then days
20 later transferred to the current owner, 2466 1st Avenue LLC (a Receivership Entity).
21 A former ANI employee lived at the property and failed to pay rent shortly after the
22 Receiver's appointment. The Receiver began efforts to evict the former employee in
23 February 2020, but those efforts were delayed due to the COVID-19 eviction
24 moratorium. An agreement to vacate the property was eventually reached just prior
25 to an eviction hearing and the former employee vacated the property in March 2021.
26 Declaration of Krista Freitag filed herewith ("Freitag Decl."), ¶ 2.

27 Upon her appointment, the Receiver and her staff performed an analysis of the
28 value of the 1775 Diamond Property, including a review of automated valuation

1 scores for the property and a survey of the market comparable properties. The
2 Receiver also consulted with multiple licensed brokers about the value of the
3 property and terms of a potential listing agreement. Ultimately, the Receiver
4 selected Pacific Pines Real Estate ("Broker") and had the 1775 Diamond Property
5 initially listed for sale at \$419,000 on April 12, 2021. Freitag Decl., ¶ 3.

6 To market the 1775 Diamond Property, Broker created marketing flyers with
7 professional photos. Online advertising was placed on key websites that included
8 local MLS. In compliance with guidance from the California Association of Realtors
9 socially distant property tours were enforced. There was significant interest in the
10 property throughout its marketing and a total of two (2) offers were initially received.
11 Through Broker, the Receiver negotiated terms with the prospective buyers. The
12 property went into escrow on or around May 24, 2021 with a purchase price of
13 \$419,000. The proposed buyer was Abdullah Hafid ("Original Buyer"). Freitag
14 Decl., ¶ 4.

15 As noted above, the Court approved the sale to Original Buyer. In the
16 following weeks, Original Buyer declined to close the sale transaction. Accordingly,
17 his earnest money deposit totaling \$12,570 was forfeited and paid from escrow to the
18 receivership estate and the Receiver, through Broker, put the property back on the
19 market. Freitag Decl., ¶ 5.

20 After the property was relisted, the Receiver received two additional offers.
21 Through Broker, the Receiver negotiated terms with the prospective buyers. The
22 property went into escrow again with Buyer (Jordan Johnson and Malia Wooten) on
23 or around September 1, 2021 with a purchase price of \$425,000. Freitag Decl., ¶ 6.

24 The 1775 Diamond Property is not encumbered by any debt (there previously
25 was a mortgage on the property that was paid off in June 2019, prior to the
26 receivership). Depending on when the sale closes (assuming a late November 2021
27 closing), property taxes of approximately \$825 are estimated to be owed by the
28 receivership estate. The Broker's commission pursuant to the listing agreement is 4%

1 of the sale price, or \$17,000, with 2.5% of the commission going to the buyer's
2 broker. The costs of sale, including escrow, title and recording fees are estimated to
3 be approximately \$3,500. In addition, the Receiver agreed to give Buyer a \$5,000
4 credit for repairs. While exact amounts will be determined at closing, after all the
5 aforementioned amounts are paid out of escrow, the net sale proceeds for the
6 receivership estate are estimated to be approximately \$398,675. Freitag Decl., ¶ 7.

7 **II. PROPOSED SALE**

8 The key terms of the proposed Purchase and Sale Agreement and Joint Escrow
9 Instructions ("Agreement"), a copy of which is attached to the Freitag Decl. as
10 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 \$425,000, which amount will be
14 financed.

15 **Deposit.** Buyer has deposited \$5,000 into escrow.

16 **Closing Date.** Closing shall occur upon entry of the Court order approving
17 the sale.

18 **III. LEGAL STANDARD**

19 "The power of a district court to impose a receivership or grant other forms of
20 ancillary relief does not in the first instance depend on a statutory grant of power
21 from the securities laws. Rather, the authority derives from the inherent power of a
22 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
23 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
24 and efficient administration of the estate by the district court for the benefit of
25 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment
26 of a receiver is authorized by the broad equitable powers of the court, any
27 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,
28 953 F.2d 1560, 1569 (11th Cir. 1992).

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
6 receivership and to determine the appropriate action to be
7 taken in the administration of the receivership is
8 extremely broad. The district court has broad powers and
9 wide discretion to determine the appropriate relief in an
10 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.

11 *Id.* (citations omitted); *see also CFTC. v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115
12 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,
13 and 'we generally uphold reasonable procedures instituted by the district court that
14 serve th[e] purpose' of orderly and efficient administration of the receivership for the
15 benefit of creditors."). Accordingly, the Court has broad discretion in the
16 administration of the receivership estate and the disposition of receivership assets.

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

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

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
13 not be made without notice published once a week for at
14 least four weeks prior to the sale in at least one
15 newspaper regularly issued and of general circulation in
16 the county, state, or judicial district of the United States
17 wherein the realty is situated.

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

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

29 The notice of sale is sufficient if it describes the property and the time, place,
30 and terms of sale. *Breeding Motor Freight Lines, Inc. v. Reconstruction Finance*
31 *Corp.*, 172 F.2d 416, 422 (10th Cir. 1949). The Court may limit the auction to
32 qualified bidders, who "(i) submit to the Receiver . . . in writing a bona fide and
33 binding offer to purchase the [property]; and (ii) demonstrate . . ., to the satisfaction
34 of the Receiver, that it has the current ability to consummate the purchase of the

1 [property] per the agreed terms." *Regions Bank v. Egyptian Concrete Co.*, 2009 U.S.
2 Dist. LEXIS 111381, at *8 (E.D. Mo. 2009).

3 **IV. DISCUSSION**

4 The Receiver believes the proposed sale to Buyer pursuant to the Agreement is
5 in the best interests of the receivership estate. The 1775 Diamond Property was
6 listed with a licensed broker and shown to all interested parties. The property was
7 properly marketed, four total offers were received with consistent pricing and terms,
8 highest and best terms were negotiated for the current offer, and the Agreement
9 signed. The purchase price is fair and reasonable and reflects the market value of the
10 property. Freitag Decl., ¶ 8.

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

16 In the action pending in U.S. District Court for the
17 Southern District of California, Case No. 19-CV-01628-
18 LAB-AHG, Securities and Exchange Commission v.
19 Gina Champion-Cain, et al., notice is hereby given that
20 the court-appointed receiver will conduct a public auction
21 for the real property located at 1775 Diamond Street,
22 #301, in San Diego County, California. Sale is subject to
23 Court confirmation after the auction is held. Minimum
24 bid price is at least \$430,000. The auction will take place
25 on October 21, 2021, at 1:30 p.m. in front of the entrance
26 to the United States Courthouse, 221 W. Broadway, San
27 Diego, California or as otherwise determined by the
28 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 \$5,500, and proof of funds. All bidders must be
qualified by 5:00 p.m. PT on October 18, 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.

1 In order to conduct an orderly auction and provide sufficient time for the
2 publication of notices discussed above, the Receiver will require bidders to complete
3 the above steps by October 18, 2021 ("Bid Qualification Deadline") and conduct the
4 live public auction on October 21, 2021.

5 The Receiver will inform all interested persons of the opportunity to overbid at
6 the public auction, provided they qualify themselves to bid by the Bid Qualification
7 Deadline by (a) signing a purchase and sale agreement for the properties on the same
8 terms and conditions as Buyer, but with a purchase price of at least \$430,000,
9 (b) providing the Receiver with an earnest money deposit of \$5,500, and
10 (c) providing proof of funds necessary to close the sale transaction in the form of a
11 current bank statement, cashier's check delivered to the Receiver, or other evidence
12 deemed sufficient by the Receiver.

13 In the event one or more prospective purchasers qualify themselves to bid, the
14 auction will be conducted by the Receiver as noted above and bids will be allowed in
15 increments of at least \$1,000. The Receiver will then file a notice advising the Court
16 of the result of the auction (*i.e.*, the highest bid) and seek entry of an order
17 confirming the sale. In the event no prospective purchasers qualify themselves to bid
18 by the Bid Qualification Deadline, the Receiver will notify the Court and seek entry
19 of an order approving the sale to Buyer.

20
21
22
23
24
25
26
27
28

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

V. CONCLUSION

For the reasons discussed above, the Receiver requests (a) approval of the sale of the 1775 Diamond 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: September 22, 2021

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: s/Edward G. Fates

DAVID R. ZARO
EDWARD G. FATES
NORMAN M. ASPIS
Attorneys for Receiver
KRISTA FREITAG