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11 Attorneys for Receiver
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.
24
25
26

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

Ctrm: 14A
Judge Hon. Larry Alan Burns

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
RECEIVER'S MOTION FOR
AUTHORITY TO (A) ENGAGE
LICENSED AUCTIONEER,
(B) UTILIZE LIQUOR LICENSE
BROKER TO SELL LIQUOR
LICENSES, AND (C) SELL
PERSONAL PROPERTY**

Date: January 24, 2020
Time: 3:30 p.m.
Courtroom: 3B
Mag. Judge: Hon. Allison H. Goddard

1 **I. INTRODUCTION**

2 Krista L. Freitag (the "Receiver"), the Court-appointed permanent receiver for
3 Defendant ANI Development, LLC, Relief Defendant American National
4 Investments, Inc., and their subsidiaries and affiliates ("Receivership Entities"),
5 seeks authority to engage a licensed auctioneer, to utilize a liquor license broker to
6 sell liquor licenses (where necessary), and to sell the personal property owned by the
7 Receivership Entities, including furniture, fixtures, and equipment associated with
8 restaurants, retail and other operations that have ceased or otherwise are not in use
9 ("Personal Property").

10 In the initial month of her appointment, and due primarily to the shortage of
11 cash in the receivership (caused by the withholding of approximately \$11.3 million
12 by Chicago Title), the Receiver was forced to quickly close most of the restaurant,
13 retail and other operations of the Receivership Entities.¹ Many of these operations,
14 especially the restaurants, had equipment and other Personal Property, including
15 liquor licenses, with material value. Certain of the restaurant and retail operations
16 operated in properties not owned by the Receivership Entities, so while a few leased
17 locations are being prepared for sale (which would including assigning the interest
18 in the lease and selling the personal property), the Receiver has worked diligently to
19 either remove, turn over (in the case of Fireside by the Patio) or negotiate a sale
20 (conditioned on Court approval) of the Personal Property such that possession of the
21 leased premises can be turned over to the respective landlords. The Receivership
22 Entities also leased five storage units and one office space in which significant
23 amounts of Personal Property were stored, all of which has been consolidated and
24
25

26 ¹ After proper evaluation, it may prove to be the case that some of the operating
27 locations that had to be quickly closed would have had no value to the
28 receivership estate anyway, but the withholding of cash by Chicago Title made
such evaluation prior to closure simply impossible. The Receiver had no choice
but to substantially reduce operating expenses in order to preserve the relatively
little cash on hand.

1 spaces turned over to the respective landlords. Declaration of Krista Freitag filed
2 herewith ("Freitag Decl."), ¶ 2.

3 The Receiver proposes to have the Personal Property sold by licensed,
4 qualified auctioneers at rates that are competitive in the auction industry. With
5 respect to restaurant furniture, fixtures, and equipment, the Receiver plans to engage
6 Abamex Auction Company ("Abamex") - a licensed and bonded auction company,
7 whose personnel also hold ISA (International Society of Appraisers) and GPPA
8 (Graduate, Personal Property Appraiser) designations - as the primary auctioneer.
9 With respect to liquor licenses associated with closed restaurants, the Receiver
10 proposes to utilize AAA Liquor License Consulting ("ALLC") to market and sell the
11 liquor licenses. ALLC specializes in the sale of liquor licenses in California.

12 It may be deemed necessary to engage one or more additional licensed liquor
13 license brokers and/or auctioneers to sell the Personal Property, particularly for the
14 miscellaneous and voluminous office furniture, fixtures and equipment and
15 household furniture. The Receiver may also determine that it is in the best interests
16 of the receivership estate to engage an art dealer to sell certain artwork and/or an
17 auto dealer to assist with the sale of a food truck owned by the Receivership
18 Entities. The Receiver requests authority to do so in her business judgment and at
19 rates competitive in the auctioneer/broker industry and will use her experience in
20 selling personal property to obtain the highest and best net recovery from all
21 personal property assets.

22 **II. PROPOSED SALE PROCESS**

23 As noted above, the Receiver proposes to engage Abamex, a licensed
24 auctioneer experienced in the sales of restaurant furniture, fixtures, and equipment
25 ("FF&E"), to advertise, market and auction the FF&E for sale. Abamex specializes
26 in the appraisal and sale of business assets, including restaurant FF&E and generally
27 charges a flat fee for auction set-up and marketing, and then the greater of a flat fee
28 or 12.5% of the gross sales proceeds, which is at or below most rates in the industry.

1 Information regarding Abamex is attached to the Freitag Decl. as Exhibit A. The
2 Receiver and her staff have many years of experience in personal property sales and
3 have utilized that expertise in selecting the most suitable auctioneer to maximize the
4 value of the FF&E at auction. Freitag Decl., ¶ 3.

5 The restaurant FF&E is extensive in volume, is now mostly consolidated in
6 two locations, but some does still remain in several non-operating (mostly owned)
7 restaurant locations (with the goal of realizing a greater value for it when the real
8 and/or personal property is sold).² Prior to the Receiver's appointment, much of the
9 non-operating FF&E was stored in numerous locations with little organization.
10 However, now that most has been consolidated into two locations and is organized,
11 a comprehensive inventory is underway and will be completed before the items are
12 sold. The Receiver intends to provide a progress report on the Personal Property
13 inventory with her next quarterly report. Freitag Decl., ¶ 4.

14 With respect to liquor licenses associated with closed restaurants, if
15 necessary, the Receiver proposes to utilize AAA Liquor License Consulting
16 ("ALLC") to market and sell the liquor licenses. ALLC specializes in the sale of
17 liquor licenses in California. ALLC will market the liquor licenses through its
18 network of restaurant and bar owners, attorneys who represent them, consultants,
19 and other contacts in the hospitality and liquor license industries. ALLC will make
20 sure all prospective buyers have the qualifications required by the Alcoholic
21 Beverage Commission for the transaction to be approved. ALLC will be paid a 10%
22 commission by the buyer of the liquor license (nothing is paid by the seller), which
23 rate is consistent with industry standards. Freitag Decl., ¶ 5.

24 To the extent it is advantageous to engage one or more additional auctioneers
25 or liquor license brokers, the Receiver requests authority to do so. The Receivership
26 Entities own many liquor licenses and a very large amount of office and restaurant
27

28 ² Restaurants that have closed are listed on Exhibit A to the Receiver's Verified
Initial Report, Dkt. 76-2, .

1 furniture, fixtures, and equipment. As a result, an additional liquor license broker
2 with buyer contacts may prove beneficial. It may also be beneficial to engage a
3 second auctioneer based in Orange County or Los Angeles for some of the FF&E.
4 The Receiver will evaluate these options during the course of the sales process and,
5 if appropriate, negotiate terms with additional auctioneers to ensure the fees and
6 expenses charged are at or below customary rates in the market and to maximize the
7 net recovery from the Personal Property assets.³ Freitag Decl., ¶ 6.

8 It should be noted that some of the Personal Property is subject to UCC
9 security interests in favor of lenders. The Receiver has and will continue to discuss
10 each security interest with each lender, as appropriate, in connection with sales of
11 Personal Property. Nothing herein is intended to adjudicate or alter any UCC
12 security interests or rights of secured lenders with respect to Personal Property
13 assets; in fact, the FF&E at the Fireside by the Patio location, which is encumbered
14 by a lien in favor of First Choice Bank that vastly exceeds its value, has been
15 surrendered to the bank to be liquidated. If any issues regarding security interests in
16 Personal Property arise, they will be addressed in a further motion to the Court
17 seeking specific relief.

18 **III. ARGUMENT**

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

27 ³ As noted above, the Receiver also may also determine that it is in the best
28 interests of the receivership estate to engage an art dealer to sell certain artwork
and/or an auto dealer to assist with the sale of a food truck owned by the
Receivership Entities.

1 of a receiver is authorized by the broad equitable powers of the court, any
2 distribution of assets must also be done equitably and fairly. See *SEC v. Elliot*,
3 953 F.2d 1560, 1569 (11th Cir. 1992).

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

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

14 Id (citations omitted); see also *Commodities Futures Trading Comm'n. v. Topworth*
15 *Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad deference'
16 to the court's supervisory role, and 'we generally uphold reasonable procedures
17 instituted by the district court that serve th[e] purpose' of orderly and efficient
18 administration of the receivership for the benefit of creditors.").

19 Accordingly, this Court has broad equitable powers and discretion in
20 formulating procedures, schedules and guidelines for administration of the
21 receivership estate and disposition of receivership assets.

22 **A. The Proposed Sale**

23 It is generally conceded 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., *Elliott*,
25 *supra*, 953 F.2d at 1566 (finding that the District Court has broad powers and wide
26 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 also *SEC v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144

1 (9th Cir. 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds)
2 (citing 2 Ralph Ewing Clark, *Treatise on Law & Practice of Receivers* § 482 (3d ed.
3 1992) (citing *First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887))). "When a court of
4 equity orders property in its custody to be sold, the court itself as vendor confirms
5 the title in the purchaser." 2 Ralph Ewing Clark, *Treatise on Law and Practice of*
6 *Receivers* § 487).

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

15 Generally, when a court-appointed receiver is involved, the receiver, as agent
16 for the court, should conduct the sale of the receivership property. *Blakely Airport*
17 *Joint Venture II v. Federal Sav. and Loan Ins. Corp.*, 678 F. Supp. 154, 156
18 (N.D. Tex. 1988). The receiver's sale conveys "good" equitable title enforced by an
19 injunction against the owner and against parties to the suit. *See* 2 Ralph Ewing
20 Clark, *Treatise on Law and Practice of Receivers* §§ 342, 344, 482(a), 487, 489,
21 491. "In authorizing the sale of property by receivers, courts of equity are vested
22 with broad discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d 354,
23 357 (9th Cir. 1925).

24 Here, the Receiver seeks authority to sell Personal Property for the benefit of
25 the receivership estate. The Personal Property items proposed to be sold consist
26 mainly of furniture, fixtures, equipment, and liquor licenses associated with closed
27 restaurant, retail and other operations, but also include office furniture, computer
28

1 equipment and some general household furniture.⁴ The Personal Property should be
2 sold at auction (or per standard methods as it relates to the liquor licenses) with the
3 net proceeds being retained for the benefit of investors and creditors.

4 The Receiver and her staff have many years of experience in handling
5 auctions of personal property of receivership estates and have used that expertise
6 and experience to evaluate licensed, experienced auctioneers to conduct the sales.
7 The Receiver requests authority to engage Abamex as the primary auctioneer of
8 restaurant equipment and to utilize ALLC as broker to market and sell liquor
9 licenses. Both Abamex and ALLC are licensed, experienced, and well-regarded in
10 their respective fields. As discussed above, the proposed fee and commissions to be
11 paid (only by the buyers in the case of liquor licenses) are consistent with industry
12 standards.

13 To the extent it is beneficial to the receivership estate for the Receiver to
14 engage one or more auctioneers or brokers to assist in selling Personal Property, she
15 requests authority to do so. Used FF&E values are often greatly impacted by the
16 condition and passage of time (useful life). The Receiver submits that multiple
17 motions to engage licensed auctioneers and brokers, considering the delay and
18 additional costs associated therewith, is not warranted and would materially reduce
19 the net recovery from such Personal Property. The Receiver will ensure the
20 Personal Property is adequately marketed and advertised in advance of the
21 auction(s) and/or sales and will report on all auctions/sales activity in quarterly
22 interim reports. The Receiver will also negotiate with the auctioneers and/or
23 brokers to ensure that costs and fees charged are at or below industry standards to
24 maximize the net recovery.

25
26
27 ⁴ All computer hard drives of the Receivership Entities were fully imaged by the
28 Receiver with the assistance of a forensic computer specialist at the receivership
transition. Computer equipment that is sold will be wiped of all data prior to
sale.

1 **B. Further Notices/Appraisals Should Be Waived**

2 Sales of personal property out of receivership are governed under 28 U.S.C.
3 § 2004 which provides that such property "shall be sold in accordance with section
4 2001 of this title, *unless the court orders otherwise.*" 28 U.S.C. § 2004 (emphasis
5 added). Section 2001 provides that notice shall be given "by publication or
6 otherwise as the court directs . . ." 28 U.S.C. § 2001(b). Thus, "[t]he statute on its
7 face vests the court with discretion in directing the terms and conditions of the
8 public sale." *Keybank Nat'l Ass'n v. Perkins Rowe Assocs., L.L.C.*, 2012 U.S. Dist.
9 LEXIS 157828, *4 (M.D. La. 2012); *see also U.S. v. Little*, 2008 U.S. Dist. LEXIS
10 93467, *4-5 (E.D. Cal. 2008) (finding that "[t]he Court has broad discretion in
11 setting the terms and conditions of a sale pursuant to 28 U.S.C. § 2001."); *U.S. v.*
12 *Heasley*, 283 F.2d 422 (8th Cir. 1960) (finding that in the context of 28 U.S.C.
13 § 2001(b), "the matter of confirming a judicial sale rests in the sound judicial
14 discretion of the trial court . . ."); *U.S. v. Peters*, 777 F.2d 1294 (7th Cir. 1985)
15 (noting that 28 U.S.C. § 2001(a) authorizes a court to direct the terms and conditions
16 of the sale). Therefore, Sections 2004 and 2001(b) give the Court discretion in
17 determining procedures for the sale of personal property.

18 In today's market, used personal property asset values can be greatly impaired
19 and regardless, are commonly sold by licensed auctioneers via online auctions, often
20 with specified times to view items in person prior to sales. Auctioneers publicize
21 auctions via their websites and email marketing campaigns to known prospective
22 buyers in the applicable industries. Hiring three independent appraisers and
23 publishing notices of sales in newspapers imposes a considerable financial burden
24 on the receivership estate with no corresponding benefit to the receivership estate.
25 Freitag Decl., ¶ 7. Accordingly, the Receiver requests that the requirements of
26 Sections 2001 and 2004 regarding the appointment of appraisers by the Court and
27 publication of notices be waived.

28

1 **IV. CONCLUSION**

2 For the reasons set forth herein, the Receiver respectfully requests entry of an
3 Order approving and authorizing: (1) engagement of Abamex to market and sell
4 furniture, fixtures and equipment associated with closed restaurants, retail and other
5 operations, including payment of the commissions and fees to Abamex described
6 above; (2) utilization of ALLC to market and sell liquor licenses, with a 10%
7 commission on sales to be paid by the buyers, (3) engagement of one or more
8 additional auctioneers or brokers at rates competitive in the applicable
9 auctioneer/broker industry, to assist in sales of Personal Property if such
10 engagement will, in the Receiver's business judgment, assist in maximizing the net
11 recovery from such Personal Property.

12
13 Dated: December 4, 2019

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