

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

6 EDWARD G. FATES (BAR NO. 227809)
7 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
8 One America Plaza
600 West Broadway, 27th Floor
9 San Diego, California 92101-0903
Phone: (619) 233-1155
10 Fax: (619) 233-1158
E-Mail: tfates@allenmatkins.com

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
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

Ctrm: 14A
Judge Hon. Larry Alan Burns

**RECEIVER'S PROPOSAL FOR
PROPERTY SALE PROCEDURES**

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

1 Pursuant to the Court's Order entered on December 11, 2019 (Dkt. 164), Krista
2 Freitag ("Receiver"), the Court-appointed permanent receiver for Defendant ANI
3 Development, LLC, Relief Defendant American National Investments, Inc., and their
4 subsidiaries and affiliates ("Receivership Entities"), submits the following Proposed
5 Procedures for Sales of Receivership Assets.

6 **Proposed Sale Procedures for Real Property**

7 For sales of all real properties included in the receivership estate, the Receiver
8 proposes to follow the publication of notice and public auction requirements of
9 28 U.S.C. §§ 2001-2002. As is the case for sales already approved by the Court, the
10 properties are and/or will be listed with and marketed by qualified, licensed real
11 estate brokers.¹ The properties are sold on an "as is-where is" basis. The brokers
12 have and will conduct a customary and appropriate process of recommending a list
13 price, widely marketing the property, providing access for site inspections, soliciting
14 offers, negotiating with prospective purchasers to obtain the highest and best offer.

15 For residential properties, after (a) an offer is received, negotiated and
16 determined to be in the best interests of the receivership estate, (b) the buyer's ability
17 to complete the transaction is verified, (c) a purchase and sale agreement is signed
18 and earnest money deposited into escrow, and (d) the purchaser has removed all
19 contingencies (thereby putting their earnest money deposit at risk if they fail to
20 complete the transaction²), the Receiver will file a noticed motion seeking Court
21 approval of the sale, subject to overbid. The Receiver will publish notice of the sale
22 in a newspaper of general circulation in the area in which the property is located for
23 four consecutive weeks. The notice will state the deadline and requirements for
24 submitting a qualified overbid.

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27 ¹ The Receiver interviews and assesses multiple brokers before determining the
listing broker.

28 ² If the buyer is unable to close because they fail to win the auction or the Court
does not approve the sale, the buyer's earnest money deposit will be returned to
them.

1 For commercial properties, the process may vary slightly from residential
2 properties. As is customary in commercial transactions, upon execution of a
3 confidentiality agreement and access agreement, the broker will make available
4 certain due diligence materials (including a form purchase and sale agreement) for
5 buyer review. Depending on the marketing prospects of the property, the Receiver,
6 in consultation with the broker, may set a "Call for Offers" date or may wait for
7 offers to be received (similar to the marketing process for a residential property).

8 In a Call for Offers scenario, once (a) prospective purchasers have completed
9 their due diligence and removed all contingencies (thereby putting their earnest
10 money deposit at risk if they fail to complete the transaction³), (b) the buyer's ability
11 to complete the transaction is verified, and (c) purchase and sale agreements have
12 been submitted for review prior to the Call for Offers deadline, the Receiver will
13 review all submitted agreements and select the highest and best offer. Thereafter, the
14 Receiver will notify all prospective buyers of the highest and best offer, will qualify
15 prospective overbidders (as applicable), and upon deposit of the earnest money into
16 escrow by the proposed buyer, the Receiver will file a noticed motion seeking Court
17 approval of the sale, subject to overbid. The Receiver will publish notice of the sale
18 in a newspaper of general circulation in the area in which the property is located for
19 four consecutive weeks. The notice will state the deadline and requirements for
20 submitting a qualified overbid.

21 If, instead of a Call for Offers deadline, the Receiver determines, in
22 consultation with the broker, that it would be better to wait for offers, the process
23 will be materially similar to the residential sale process, except that commercial
24 property customary confidentiality agreements and access agreements will still be
25 required before due diligence information is made available to prospective buyers.

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28 ³ If the buyer is unable to close because they fail to win the auction or the Court
does not approve the sale, the buyer's earnest money deposit will be returned to
them.

1 In all real property sale scenarios, if a qualified overbid is received on or
2 before the published deadline and the proposed buyer (with highest and best offer) is
3 prepared to continue to bid, the Receiver will (a) notice to the Court that an auction
4 will be conducted, and (b) invite all qualified bidders to said auction. Such invitation
5 and notice to the Court will include auction instructions for the qualified bidders. At
6 the conclusion of the auction, the Receiver will file a notice of the highest/winning
7 (and if applicable, backup)⁴ bid, along with an amended proposed order seeking
8 approval of the sale to the highest/winning (and if applicable, backup) bidder.

9 If no qualified overbids are received on or before the published deadline, the
10 Receiver will advise the Court and seek approval of the sale to the original proposed
11 buyer. The Receiver will also seek authority to pay the commission for the real
12 estate broker (including the buyer's broker) from the sale proceeds.

13 **Summary of Proposed Sale Procedures for Personal Property**

14 There are voluminous personal property assets included in the receivership
15 estate, including restaurant furniture, fixtures and equipment, office furniture,
16 fixtures and equipment, liquor licenses, computers and household furniture. In
17 today's market, the value of used personal property, can be greatly impaired and
18 sales are usually conducted by licensed auctioneers. These sales generally occur
19 relatively quickly after a period of time for proper marketing. As such, not only
20 would a noticed motion to approve each sale be very costly, especially in relation to
21 the volume and value of the assets, but the delay could severely limit the pool of
22 interested buyers. Therefore, as provided in the Receiver's pending motion for
23 authority to sell personal property ("Personal Property Sale Motion") (Dkt. 150), the
24 Receiver proposes to follow standard auction procedures through one or more
25

26 ⁴ In the event that multiple qualified overbids are received, the Receiver will ask
27 the Court to approve the highest/winning bid *and* the next highest/backup bid
28 such that if the highest/winning bidder fails to close the sale, the Receiver may
proceed to close the sale with the backup bidder without delay.

1 licensed auctioneers for sales of personal property and requests authority to complete
2 such sales.⁵ The Receiver will report on the outcome of all personal property sales in
3 her quarterly interim reports.

4 Sales of liquor licenses must be approved by the California Department of
5 Alcoholic Beverage Control (“ABC”). There have been two landlords for closed
6 restaurants (The Patio on 101 and The Patio on Goldfinch) who have signed
7 contracts to purchase the liquor licenses and restaurant furniture, fixtures and
8 equipment associated with those restaurants. Joint Motions to approve these sales
9 are currently pending. Dkt. 169, 176.

10 For liquor licenses that are sold to third parties not associated with former
11 restaurant locations, pursuant to the Court's authorization to engage brokers, the
12 Receiver proposes to use AAA Liquor License Consulting (“ALLC”) to assist in
13 marketing the licenses and negotiating sales. As is standard in the industry, ALLC
14 would be paid a 10% commission by the buyers (nothing is paid by the seller). The
15 Personal Property Sale Motion seeks authorization to complete the liquor license
16 sales as proposed therein. Dkt. 150.

17 It should be noted that the Court has broad discretion in connection with sales
18 of personal property. *See* 28 U.S.C. § 2004 (“Any *personalty* sold under any order or
19 decree of any court of the United States shall be sold in accordance with section 2001
20 of this title, *unless the court orders otherwise.*”) (emphasis added). The Court,
21 therefore, can waive publication of notice and holding public auctions for personal
22 property, which, as noted above, could impose significant costs and severely limit
23 interest from prospective buyers.

24 **Conclusion**

25 The Receiver requests approval of these procedures for sales of real and
26 personal property assets included in the receivership estate as (a) meeting the
27

28 ⁵ The Court has authorized the Receiver to engage auctioneers to sell receivership
assets. Dkt. 153.

1 requirements of 28 U.S.C. § 2001-2002 for sales of real property, (b) being
2 consistent with industry customs and standards, (c) allowing all receivership assets to
3 be appropriately marketed to identify the highest and best offers, and (d) providing
4 an efficient sale process that will assist in maximizing the recovery from receivership
5 estate assets.

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Dated: January 3, 2019

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