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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 REGARDING PENDING
PROPERTY SALE MOTIONS**

[ECF Nos. 148, 150, 165, 169, 176]

1 **I. BACKGROUND**

2 The Court has recounted the procedural background of this case in several other
3 orders and will not rehash it in its entirety herein. *See* ECF Nos. 54, 162, 163, 166. Relevant
4 here, the Securities and Exchange Commission (“SEC”) brought this action against
5 Defendants Gina Champion-Cain and ANI Development, LLC, and Relief Defendant
6 American National Investments, Inc., on August 28, 2019, alleging Defendants engaged in
7 a liquor license escrow scheme that purportedly defrauded lenders and investors out of
8 more than \$120 million. Upon a stipulated joint motion by the parties, the Court established
9 an equity receivership and appointed Krista Freitag as a permanent Receiver of Defendant
10 ANI Development, LLC and Relief Defendant American National Investments, Inc. on
11 September 3, 2019. ECF No. 6 (“the Appointment Order”). In the Appointment Order, the
12 Court authorized the Receiver to take control over all funds and assets owned, managed,
13 or in the possession or control of the receivership entities. *See id.* at 14-16. The receivership
14 assets include all premises owned, leased, occupied, or otherwise controlled by the
15 receivership entities. *Id.* at 14.

16 On December 11, 2019, Chief Judge Burns granted the parties’ Joint Motion (ECF
17 No. 156) to give limited consent to the undersigned to hear and directly decide all motions
18 filed in this action to approve sales of receivership assets. ECF No. 160. *See also* 28 U.S.C.
19 § 636(c); CivLR 72.1(g). Pursuant to the grant of consent, the Court set a hearing on all
20 then-pending property motions for January 24, 2020. ECF No. 164. Further, the Court set
21 a briefing schedule dictating that any additional property sale motions related to
22 receivership assets that the Receiver filed by December 27, 2019 would be addressed at the
23 January 24th hearing. *Id.* The Court also set response and reply deadlines on any such
24 motions for January 10 and January 17, 2020, respectively. *Id.* Finally, the Court ordered
25 the Receiver to file proposed uniform sale procedures to govern all future property sale
26 motions in this action, which the Receiver did by the deadline of January 3, 2020, and
27 permitted objections to her proposal to be filed by January 10, 2020. *Id.*; ECF No. 195.

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1 Adopting in part the Receiver’s proposal, the Court issued an order establishing uniform
2 sale procedures on January 22, 2020. ECF No. 219.

3 In addition to the two pending property sale motions the Receiver had already filed
4 when the Court set its briefing schedule for the January 24, 2020 hearing, the Receiver
5 filed three more property sale motions by the deadline of December 27, 2019. These
6 motions include:

7 (1) the Receiver’s Motion for (A) Approval of Sale of Real Property Located at 805
8 Brighton Court; and (B) Authority to Pay Broker’s Commission (ECF No. 148) (“the
9 Brighton Court Motion”);

10 (2) the Receiver’s Motion for Authority to (A) Engage Licensed Auctioneer, (B)
11 Utilize Liquor License Broker to Sell Liquor Licenses, and (C) Sell Personal Property
12 (ECF No. 150) (“the Auctioneer Motion”);

13 (3) the Receiver’s Motion for (A) Approval of Sale of Rancho Mirage Property;
14 and (B) Authority to Pay Broker’s Commission (ECF No. 165) (“the Rancho Mirage
15 Motion”);

16 (4) a Joint Motion for Approval of Sale of Personal Property and Liquor License
17 Associated with the Restaurant Formerly Known as the Patio on 101 (ECF No. 169) (“the
18 Patio on 101 Motion”), filed by the Receiver, Plaintiff Securities and Exchange
19 Commission (“the SEC”), and Defendant Gina-Champion Cain; and

20 (5) a Joint Motion for Approval of Sale of Personal Property and Liquor License
21 Associated with the Patio on Goldfinch Restaurant (ECF No. 176) (“the Patio on Goldfinch
22 Motion”), filed by the Receiver, the SEC, and Defendant Gina-Champion Cain.

23 No express opposition was filed by any party or interested non-party by the deadline
24 of January 10, 2020. However, interested non-party CalPrivate Bank filed responses to the
25 Auctioneer Motion and the Rancho Mirage Motion on January 8 and January 9, 2020,
26 respectively. ECF Nos. 198, 204. The Court will discuss CalPrivate Bank’s responses in
27 more detail in its Discussion Section.

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1 The Court held a hearing on all five motions on January 24, 2020. ECF No. 225.
2 Upon review of the relevant briefing and in consideration of the testimony at the hearing,
3 the Court **GRANTS** all five motions, for the reasons explained more fully below.

4 **II. LEGAL STANDARD**

5 “[I]t is a recognized principle of law that the district court has broad powers and
6 wide discretion to determine the appropriate relief in an equity receivership.” *SEC v.*
7 *Lincoln Thrift Ass’n*, 577 F.2d 600, 606 (9th Cir. 1978). *See also SEC v. Hardy*, 803 F.2d
8 1034, 1037 (9th Cir. 1986) (“[A] district court’s power to supervise an equity receivership
9 and to determine the appropriate action to be taken in the administration of the receivership
10 is extremely broad.”).

11 Where a district court sits in equity, “[u]nless a statute in so many words, or by a
12 necessary and inescapable inference, restricts the court’s jurisdiction in equity, the full
13 scope of that jurisdiction is to be recognized and applied. ‘The great principles of equity,
14 securing complete justice, should not be yielded to light inferences, or doubtful
15 construction.’” *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946). The Court thus
16 has “inherent equitable authority to issue a variety of ‘ancillary relief’ measures in actions
17 brought by the SEC to enforce the federal securities laws.” *SEC v. Wencke*, 622 F.2d 1363,
18 1369 (9th Cir. 1980). In recognition of such “inherent equitable authority” of federal
19 district courts, the Ninth Circuit “has repeatedly approved imposition of a receivership in
20 appropriate circumstances.” *Id.*

21 As part of its wide discretion to direct the appropriate relief in an equity receivership,
22 the district court sitting in equity and having custody and control of property “has power
23 to order a sale of the same in its discretion. The power of sale necessarily follows the power
24 to take control of and to preserve property[.]” *SEC v. Am. Capital Investments, Inc.*, 98
25 F.3d 1133, 1144 (9th Cir. 1996), *abrogated on other grounds by Steel Co. v. Citizens for a*
26 *Better Env’t*, 523 U.S. 83, 93-94 (1998) (quoting 2 Ralph E. Clark, Treatise on Law &
27 Practice of Receivers § 482 (3d ed. 1992) (hereinafter “Clark on Receivers”).
28 Consequently, a federal equity receiver “can conduct a judicial sale of real property that is

1 property within their ‘possession and control’ and within the court’s territorial jurisdiction,
2 where all parties of interest have been brought before the court.” *Am. Capital Investments,*
3 *Inc.*, 98 F.3d at 1145 n.17 (citation omitted). However, if the court approves the sale, such
4 approval does not purport to convey legal title to the buyer; rather, the sale conveys
5 “‘good,’ equitable title enforced by an injunction against suit.” *Id.* (citing Clark on
6 Receivers §§ 342, 344, 482(a), 487, 489, 491). In so doing, the court “protects the purchaser
7 against interference and assures him a quiet title and quiet enjoyment.” *Id.* (quoting Clark
8 on Receivers § 487).

9 “The power of a district court to impose a receivership or grant other forms of
10 ancillary relief does not in the first instance depend on a statutory grant of power from the
11 securities laws. Rather, the authority derives from the inherent power of a court of equity
12 to fashion effective relief.” *Wencke*, 622 F.2d at 1369. *See also Am. Capital Investments,*
13 *Inc.*, 98 F.3d at 1145 (rejecting the assertion that “there is no federal common law of
14 receiverships” as “vastly overstated” because “the powers of sale of federal equity
15 receivers are well-established.”). Nonetheless, federal statutes do provide some authority
16 and guidance for courts overseeing equity receiverships. Pertinent here,
17 28 U.S.C. § 2001(a) provides for a public sale process of realty in the possession of an
18 appointed receiver “upon such terms and conditions as the court directs.” 28 U.S.C. § 2002
19 further requires that notice be published once a week for at least four weeks prior to the
20 sale in at least one newspaper regularly issued and of general circulation in the county,
21 state, or judicial district where the realty is located.¹ These statutory safeguards of notice
22 and opportunity to submit overbids help to ensure that the sale is able to fetch the best price
23 possible, which is consistent with the principle that “a primary purpose of equity
24 receiverships is to promote orderly and efficient administration of the estate by the district
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27 ¹ 28 U.S.C. § 2001 also provides for a private sale process under subsection (b), but the
28 requirements of that subsection are more stringent. The Receiver does not propose a private
sale here.

1 court for the benefit of creditors.” *Hardy*, 803 F.2d at 1038. *See also United States v.*
2 *Grable*, 25 F.3d 298, 303 (6th Cir. 1994) (noting that “the intent of” the requirement in 28
3 U.S.C. § 2001 that property be sold in the county in which the land is situated is “to bring
4 a better price at the sale”); *SEC v. Billion Coupons, Inc.*, No. CIV. 09-00068 JMSLEK,
5 2009 WL 2143531, at *3 (D. Haw. July 13, 2009), *report and recommendation adopted*,
6 No. CIV. 09-00068JMS-LEK, 2009 WL 2365696 (D. Haw. July 29, 2009) (approving a
7 receiver’s proposed alternative procedure for the sale of real property because the
8 alternative procedure “ha[d] sufficient safeguards in order to solicit the highest price that a
9 willing buyer in an arms-length negotiation will offer while conducting the sales in a timely
10 and cost-efficient manner that will maximize the net sales proceeds.”).

11 III. DISCUSSION

12 As a preliminary matter, the Court turns to CalPrivate Bank’s responses to the
13 Brighton Court Motion and the Auctioneer Motion. The Court will address both responses
14 at the outset rather than repeating the same analysis in its separate discussions of those
15 motions.

16 Both responses make clear that CalPrivate Bank “does not oppose” either motion
17 “but wants to ensure that its claim of a first priority perfected security interest in the assets
18 of Defendant ANI Development, LLC and of ANI License Fund, LLC, is preserved[.]”
19 ECF No. 198 at 1; *see also* ECF No. 204 at 1-2. CalPrivate Bank’s claim of a priority
20 security interest arises from a \$5 million commercial loan it made to ANI License Fund,
21 LLC in September 2015, which was later increased to \$12.5 million. *See* ECF No. 31-1,
22 Sowers Decl. According to CalPrivate Bank, the loan is secured by commercial security
23 agreements between CalPrivate Bank and ANI License Fund, LLC and Defendant ANI
24 Development LLC, which grant CalPrivate Bank a broad form security interest in all of the
25 assets of these two entities. *See id.*, Sowers Decl., Exs. C, D, E, & F. Additionally,
26 CalPrivate Bank indicated in its Response to the Receiver’s Proposed Procedures
27 Governing Future Property Sales Motions (ECF No. 205) that it would have filed similar
28 responses to both the Patio on 101 Motion and the Patio on Goldfinch Motion (collectively,

1 “the Joint Motions”) if not for its mistaken belief that no hearings had been set on those
2 motions. *See id.* at 205 (“Both sales [proposed in the Joint Motions], if approved,
3 apparently will generate significant net proceeds for the Receiver. Because no hearings
4 have been set for the joint motions, [CalPrivate Bank] has not responded to them, but again
5 asks that any approved Sales Procedures apply to such joint motions and include a
6 provision reserving [CalPrivate Bank’s] claim of a priority perfected security interest.”).

7 The Court finds that CalPrivate Bank’s responses do not raise any live dispute, and
8 thus warrant no action by the Court in this Order. In the response regarding the Brighton
9 Court property, CalPrivate Bank states that “the source of funds used by ANI Inc., as a
10 Receivership Entity, to purchase the property is not identified[,]” but “[t]he most likely
11 source of some or all of the funds used to purchase the property is the massive fraud that
12 the SEC alleges was perpetrated by Defendants Indeed, ANI Inc. is identified by the
13 SEC as the ‘Relief Defendant.’” ECF No. 204 at 2. Similarly, the brief lodged in response
14 to the Auctioneer Motion acknowledges that “[t]he source of funds used by Receivership
15 Entities to acquire the liquor licenses and personal property [at issue in the motion] is not
16 identified and does not appear to be known at this stage in the receivership. However, it
17 should be expected, until established to the contrary, that some or all of the funds originated
18 in the massive fraud that the SEC’s Complaint alleges was perpetrated by
19 Defendants” ECF No. 198 at 2. Therefore, it is clear from the responses that CalPrivate
20 Bank merely wants to preserve its claim to the assets of Defendant ANI Development, LLC
21 and ANI License Fund, LLC described above, although it admits that it is not yet known
22 whether the receivership assets at issue in the motion qualify as such. Therefore, the Court
23 finds the responses do not raise any ripe controversy. Indeed, CalPrivate Bank confirmed
24 during the hearing that it has no opposition to the proposed sales at issue, and merely wants
25 to ensure that its claim of a first-priority interest in the proceeds of the sales has been
26 properly reserved. As is true of all interested non-parties who have appeared in this action,
27 CalPrivate Bank’s claim of an interest is not waived by the Court’s approval of any sale of
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1 receivership assets. The Court will thus treat as unopposed all property sale motions
2 addressed in this Order.

3 **A. Brighton Court Motion (ECF No. 148)**

4 The Brighton Court Motion concerns a residential property within the receivership
5 estate located at 805 Brighton Court, San Diego, California. *See* ECF No. 76-1, Ex. A; ECF
6 No. 148-1 at 5. Receivership Entity 6050 El Cajon Blvd, LLC purchased the Brighton
7 Court property for \$950,000 on December 23, 2015. ECF No. 148-2, Freitag Decl. ¶ 2;
8 *see also* ECF No. 6 at 6 (Appointment Order listing 6050 El Cajon Blvd, LLC as a
9 receivership entity).

10 Following her appointment, the Receiver and her staff performed an analysis of the
11 value of the Brighton Court property, by reviewing automated valuation scores for the
12 property and surveying the market-comparable properties. ECF No. 148-1 at 5. The
13 Receiver also interviewed licensed brokers with experience selling residential properties
14 in the same area, ultimately selecting Pacific Pines Real Estate (“Broker”) as the broker to
15 list the property for sale on the Multiple Listing Service (“MLS”) at the end of September
16 2019 with a listing price of \$1,249,900. *Id.*; Freitag Decl. ¶ 3. Broker listed the property on
17 its own website in addition to the MLS and held an open house, ultimately receiving two
18 offers at or near the full list price. After negotiations, the property went into escrow in early
19 November 2019 with a purchase price of \$1,275,000. The intended buyer is Gregory John
20 and JoAnne Bliss Armer (“Buyer”). *Id.* ¶ 4.

21 Significantly, the Brighton Court property is one of seven properties in the
22 receivership estate encumbered by a deed of trust in favor of Axos Bank. Another such
23 property was the 1617 Thomas Avenue property, whose sale the Court has already
24 approved. ECF No. 163. *See also* ECF No. 148-2, Freitag Decl. ¶ 5. According to the
25 Receiver’s calculations, the total estimated market value of the other five properties subject
26 to the Axos Bank portfolio loan (not including the 1617 Thomas Avenue or Brighton Court
27 properties) is \$8,244,000. ECF No. 148-1 at 6 n.1. As explained in the Court’s prior order
28 on the 1617 Thomas Avenue property, the documents governing the loan provide for partial

1 release prices to facilitate the sale of separate properties. *See* ECF No. 163 at 7. The
2 Receiver’s estimate of the release price for the Brighton Court property is \$1,183,000, and
3 the Receiver represents to the Court in the Motion that she will verify the principal and
4 interest balances, as well as the release price, prior to closing.² ECF No. 148-1 at 6.

5 The Receiver filed the Brighton Court Motion on December 3, 2019. ECF No. 148.
6 The Receiver provided a breakdown of the key terms of the proposed Residential Purchase
7 Agreement and Joint Escrow Instructions (“Purchase Agreement”) between the Receiver
8 and Buyer therein. According to those terms, the sale is subject to qualified overbids
9 pursuant to the overbid and auction process mandated by 28 U.S.C. §§ 2001 and 2002, and
10 described in more detail below. Buyer has deposited \$40,000 into escrow. Per the listing
11 agreement, the Receiver intends to pay Broker a commission of \$12,000, plus 2.5% of the
12 gross sale price to be paid to Buyer’s broker, for a total commission of \$43,875.³ *See* ECF
13 No. 148-1 at 7.

14 Additionally, the Receiver proposed compliance with the overbid and auction
15 process set forth in 28 U.S.C. §§ 2001 and 2002 by publishing the following notice once a
16 week for four weeks in the San Diego Union-Tribune, a newspaper of general circulation
17 in San Diego County:

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21 ² During the January 24, 2020 hearing, the Court confirmed on the record that this
22 estimate remains accurate, although the timing of the closings on the Thomas Avenue and
23 Brighton Court properties may affect these numbers slightly.

24 ³ The Court notes that if the proposed sale is approved, the Receiver’s request for authority
25 to pay the Broker’s commission has already been granted by the Court’s December 5, 2019
26 Order Authorizing Hiring of Agents and Brokers. *See* ECF No. 153 (“[T]he Receiver is
27 authorized to hire brokers, auctioneers, and similar agents to list, market, and . . . to sell
28 such property as she is otherwise authorized to sell. In other words, to the extent the
Receiver is authorized to sell property, the Court authorizes her to pay the expenses of
selling it.”).

1 In the action pending in U.S. District Court for the Southern District of
2 California, Case No. 19-CV-01628-LAB-AHG, Securities and Exchange
3 Commission v. Gina Champion-Cain, et al., notice is hereby given that the
4 court-appointed receiver will conduct a public auction for the real property
5 located at 805 Brighton Court in San Diego County, California. Sale is subject
6 to Court confirmation after the auction is held. Minimum bid price is at least
7 \$1,325,000. The auction will take place on December 19, 2019 at 1:30 p.m.
8 in front of the entrance to the United States Courthouse, 221 W. Broadway,
9 San Diego, California. To be allowed to participate in the auction, prospective
10 purchasers must meet certain bid qualification requirements, including
submitting a signed purchase and sale agreement, an earnest money deposit
of \$44,000, and proof of funds. All bidders must be qualified by 5:00 p.m. PT
on December 17, 2019, by submitting the required materials to the
receiver at 401 W. A Street, Suite 1830, San Diego, California, 92101.

11 *Id.* at 11. For those interested in qualifying as bidders, the notice also provided a phone
12 number and email address for the relevant point of contact. *Id.*

13 On January 13, 2020, the Receiver filed a Notice of Non-Receipt of Qualified
14 Overbids regarding the Brighton Court Motion. ECF No. 208. There, the Receiver reported
15 that, consistent with the Motion, she published the above notice of the sale in the San Diego
16 Union-Tribune as required by 28 U.S.C. § 2002 and also posted the sale motion on the
17 receivership website www.anireceivership.com. *Id.* Additionally, the Broker continued to
18 market the property and notify potential purchasers about the opportunity to submit an
19 overbid and the proposed deadline to do so. *Id.* No overbids were submitted. *Id.* Therefore,
20 Gregory John and JoAnne Bliss Armer remain the intended Buyer.

21 The Court has reviewed the documents submitted by the Receiver in support of the
22 Brighton Court Motion and finds the purchase price of \$1,275,000 to be fair and
23 reasonable. This price exceeds the listing price by \$25,100 and exceeds the 2015 purchase
24 price of the property by \$325,000. ECF No. 148-2, Freitag Decl. ¶¶ 2-3. Before Buyer and
25 Receiver entered into the Purchase Agreement, Broker listed the property on MLS, held an
26 open house, and showed the property to interested buyers. *Id.* ¶ 7. The parties also
27 negotiated the terms of sale, going back and forth twice with counter-offers before coming
28 to a final agreement on terms and price of the sale. *See* ECF No. 148-3 at 13, 14.

1 Moreover, the Receiver’s publication of notice seeking qualified overbids in the San
2 Diego Union-Tribune complies with the requirements for the public sale procedures set
3 forth in 28 U.S.C. §§ 2001(a) and 2002. Therefore, upon review of the relevant factual
4 history and the Purchase Agreement itself, the Court finds the Purchase Agreement was
5 negotiated at arm’s-length and, further, that the Receiver implemented sufficient
6 safeguards by way of the notice and overbid process to solicit the highest possible price for
7 the property despite significant time and cost restraints. The Court is thus satisfied that the
8 intent of the statutory scheme—to ensure that the best and highest possible price is paid for
9 property within the receivership estate—has been fulfilled. The proposed broker’s
10 commission of approximately 3.5% of the purchase price (with 2.5% to go to the Buyer’s
11 broker and only \$12,000 to go to Broker) is consistent with industry standards and, as noted
12 above, the Court has already authorized Receiver to pay the Broker’s commission and all
13 sale costs in connection to any approved property sale. ECF No. 153.

14 Perhaps most importantly, the Receiver estimates that the principal balance of the
15 Axos Bank portfolio loan will be approximately \$3.2 million after the sale of 1617 Thomas
16 Avenue (already approved) and 805 Brighton Court, while the estimated market value of
17 the other five properties subject to the loan is \$8,244,000. Thus, the Receiver estimates that
18 net proceeds from the sale of all of the properties encumbered by the Axos Bank loan, if
19 sold within the next six months, will produce a net recovery to the receivership estate
20 between \$3.5 and \$4 million in the aggregate, not including rental revenues accrued in the
21 interim. ECF No. 148-1 at 6. Thus, approving the sale of the Brighton Court property will
22 permit the Receiver to pay off a significant portion of the remaining balance on the Axos
23 Bank loan and help the Receiver to sooner realize a significant recovery to the estate, for
24 the benefit of all creditors.

25 Finally, the Court questioned the Receiver further at the hearing to clarify certain
26 details of the proposed sale, including, e.g., whether the Receiver’s estimate in the Motion
27 regarding the amount to be paid to Axos Bank from the proceeds remains accurate,
28 confirming the approximate balance that will be left on the Axos Bank loan after the

1 closings of this property and the Thomas Avenue property encumbered by the same deed
2 of trust, and the status of the Receiver's efforts to sell the five other properties encumbered
3 by the loan. Based on these considerations, and noting in particular the lack of any express
4 opposition to the Motion, the Court finds the Receiver has sufficiently established that the
5 proposed sale of 805 Brighton Court and proposed distribution of the sale proceeds are
6 consistent with principles of equity and the goal of a receivership to ensure the orderly and
7 efficient administration of the estate for the benefit of creditors. *See Hardy*, 803 F.2d at
8 1038.

9 Therefore, the Court **GRANTS** the Motion (ECF No. 148) and **APPROVES** the
10 sale of 805 Brighton Court, San Diego, California to Buyer Gregory John and JoAnne Bliss
11 Armer at the proposed purchase price of \$1,275,000, to be paid in cash. The Court orders
12 the proceeds of the sale to be distributed from escrow at the close of sale as follows:

- 13 (1) Payment of the Broker's Commission in the amount of \$43,875 shall be paid to
14 Pacific Pines Real Estate;
- 15 (2) Payment of any outstanding real property taxes, to the extent any are due;
- 16 (3) Payment of reasonable and customary costs of sale, such as escrow fees, title
17 insurance, and recording fees. The Receiver shall provide a full accounting of
18 sale costs once the sale is complete for the Court to take into consideration in
19 approving future real property sales;
- 20 (4) Payment of the remainder of the sale proceeds to Axos Bank to go towards the
21 balance of the portfolio loan.

22 **B. Auctioneer Motion (ECF No. 150)**

23 The Receiver's Motion to engage a licensed auctioneer, utilize a liquor license
24 broker to sell liquor licenses, and to sell personal property explains that the receivership
25 estate includes restaurant and retail operations, many of which had to be quickly closed
26 during the initial month of the Receiver's appointment due to the cash shortage in the
27 receivership. ECF No. 150-1 at 2. These operations had equipment and other personal
28 property of material value, including liquor licenses. Therefore, the Receiver seeks to sell

1 the personal property so that the former restaurant and other retail locations can be turned
2 over to the possession of the respective landlords. *Id.* The Receiver proposes that the
3 personal property be sold by licensed auctioneers, and plans to engage Abamex Auction
4 Company as the primary auctioneer. With respect to the liquor licenses, the Receiver
5 proposes to use AAA Liquor License Consulting to market and sell the liquor licenses. *Id.*
6 at 3. Broadly, the Auctioneer Motion requests authority to sell personal property including
7 “furniture, fixtures, equipment, and liquor licenses associated with the closed restaurant,
8 retail and other operations,” as well as “office furniture, computer equipment and some
9 general household furniture.” ECF No. 150-1 at 7-8.⁴ The Receiver also requests waiver of
10 further notices/appraisals regarding sales of receivership personalty. *Id.* at 9-10.

11 Notably, the Motion has already been granted in significant part by Chief Judge
12 Burns in his Order Authorizing the Hiring of Agents and Brokers, which specifically
13 authorizes the Receiver to hire “brokers, auctioneers, and similar agents to list, market, and
14 to sell such property as she is otherwise authorized to sell.” ECF No. 153 at 1.

15 Additionally, as explained in the Court’s Order Establishing Uniform Property Sale
16 Procedures (ECF No. 219), sales of personal property within a receivership estate are not
17 constrained by the same statutory notice and auction requirements as sales of real property.
18 *See* 28 U.S.C. § 2004 (requiring sales of personalty to comply with § 2001 “unless the court
19 orders otherwise.”). Thus, the Court has already waived the requirements of § 2001 and
20 ordered that the Receiver need not file noticed motions seeking approval of such sales,
21 which renders moot the same request in the Auctioneer Motion. Further, the Court adopted

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24 ⁴ Because the personalty at issue goes beyond the restaurant equipment and liquor licenses,
25 the Receiver notes that it may also be deemed necessary to engage one or more additional
26 auctioneers to sell the personalty, particularly for the office furniture, fixtures, and
27 equipment and household furniture. Additionally, the Receiver may engage other agents
28 such as art dealers and auto dealers to sell other personalty and requests “authority to do so
in her business judgment and at rates competitive in the auctioneer/broker industry[,]”
promising to “use her experience in selling personal property to obtain the highest and best
net recovery from all personal property assets.” ECF No. 150-1 at 3.

1 the Receiver's proposed personalty sale procedures in full, which (1) require the Receiver
2 to follow standard auction procedures through one or more licensed auctioneers for sales
3 of personal property; (2) require sales of liquor licenses to be approved by the California
4 Department of Alcoholic Beverage Control; (3) authorize the Receiver to use AAA Liquor
5 License Consulting to assist in marketing the licenses and negotiating sales of liquor
6 licenses that are sold to third parties not associated with former restaurant locations; and
7 (4) authorize AAA Liquor License Consulting to receive the industry standard of a
8 10% commission, to be paid by the buyers. ECF No. 219 at 9-10.

9 Having reviewed the Auctioneer Motion, the Court finds nothing requested therein
10 to be inconsistent with the procedures the Court has already authorized. In the interest of
11 maximum clarity, however, the Court expressly **WAIVES** the requirements of
12 28 U.S.C. § 2001 and § 2004 regarding the appointment of appraisers by the Court and
13 publication of notices with respect to personalty sales. Finally, as explained above, no
14 express opposition to the Auctioneer Motion has been filed. Based on these considerations,
15 the Court **GRANTS** the Motion (ECF No. 150) in full. The Receiver may engage Abamex
16 as the primary auctioneer of restaurant equipment and use AAA Liquor License Consulting
17 as the broker to market and sell liquor licenses. This grant of authority also includes
18 authorizing the Receiver to engage additional liquor license brokers and/or auctioneers as
19 she deems necessary to sell the personalty in the receivership estate, particularly since, in
20 the Court's view, Chief Judge Burns has already authorized the Receiver to engage such
21 agents as she sees fit, as long as the related property sales themselves are approved.

22 The Receiver shall be bound by the Court's Uniform Property Sale Procedures in
23 conducting these sales. The grant of authority also incorporates by reference the Receiver's
24 own acknowledgment in the Auctioneer Motion that "some of the Personal Property is
25 subject to UCC security interests in favor of lenders[.]" and that "[n]othing herein is
26 intended to adjudicate or alter any UCC security interests or rights of secured lenders with
27 respect to Personal Property assets[.]" ECF No. 150-1 at 5. The Court finds that this
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1 assurance adequately responds to CalPrivate Bank’s request that its claim to a first-priority
2 perfected security interest in certain receivership assets not be deemed waived.

3 **C. Rancho Mirage Motion (ECF No. 165)**

4 The Rancho Mirage Motion concerns a single-family residence located at 83 Royal
5 Saint Georges Way, Rancho Mirage, California. ECF No. 165-1 at 5. The property is part
6 of the receivership estate because Relief Defendant American National Investments, Inc.
7 purchased the property for \$3.2 million on April 15, 2019. *Id.*

8 Following her appointment, the Receiver and her staff performed an analysis of the
9 value of the Rancho Mirage property, by reviewing automated valuation scores for the
10 property and surveying the market-comparable properties. *Id.* Additionally, the Receiver
11 took into account that, prior to Relief Defendant’s purchase, the property had previously
12 been on the market for 593 days. The Receiver also interviewed licensed brokers with
13 experience selling residential properties in the same area, two of whom believed that the
14 April 2019 \$3.2 million purchase price was too high and recommended a sale price of \$3
15 million instead. *Id.* Because of its recent lengthy exposure on the market, there was little
16 interest from brokers generally. Ultimately, the Receiver selected Keller Williams Realty
17 (“Broker”), which listed the property for sale on the MLS for the list price of \$2,999,000
18 on or about October 5, 2019. *Id.* at 6. Broker listed the property on its own website in
19 addition to the MLS and held an open house, ultimately receiving two offers at the full list
20 price in cash a few weeks apart. *Id.* After negotiations, the property went into escrow on or
21 around November 15, 2019 with a purchase price of \$2,999,000, to be paid in cash. The
22 intended buyer is Paul Antle (“Buyer”). *Id.*

23 The Rancho Mirage Property is encumbered by a deed of trust in favor of Seattle
24 Funding Group (“SFG”). The outstanding balance on the interest-only loan from SFG is
25 approximately \$1.55 million, and deferred interest through December 31, 2019 is
26 \$26,666.69. *Id.* Notably, both the short-term payment rate and the actual note rate will jump
27 to 8.99% (from 5.99% and 8.49%, respectively) on March 1, 2020, increasing the debt
28 service payment from \$7,737.08 per month to \$14,608.75 per month. *Id.* at 6 n.2. However,

1 SFG has agreed to waive default interest if the loan is brought current and taxes are paid
2 current, the loan does not go into monetary default again, and the loan is paid in full before
3 the maturity date in November 2020. *Id.* at 6.

4 The Receiver filed the Rancho Mirage Motion on December 12, 2019. ECF No. 165.
5 The Receiver provided a breakdown of the key terms of the proposed Residential Purchase
6 Agreement and Joint Escrow Instructions, including an Addendum (“Purchase
7 Agreement”) between the Receiver and Buyer therein. According to those terms, the sale
8 is subject to qualified overbids pursuant to the overbid and auction process mandated by
9 28 U.S.C. §§ 2001 and 2002. Buyer has deposited \$89,990 into escrow. Per the listing
10 agreement, the Receiver intends to pay Broker a commission of 4% of the gross sale price,
11 which will be split with Buyer’s broker, with 2.5% going to Buyer’s broker and 1.5% going
12 to Broker. ECF No. 165-1 at 7. The Receiver intends to pay the full balance owed to SFG
13 directly from escrow at closing, and estimates the net proceeds from the sale after that
14 payment will be \$1.26 million.

15 Additionally, the Receiver proposed compliance with the overbid and auction
16 process set forth in 28 U.S.C. §§ 2001 and 2002 by publishing the following notice once a
17 week for four weeks in the Desert Sun, a newspaper of general circulation in the Rancho
18 Mirage area:

19 In the action pending in U.S. District Court for the Southern District of
20 California, Case No. 19-CV-01628-LAB-AHG, Securities and Exchange
21 Commission v. Gina Champion-Cain, et al., notice is hereby given that the
22 court-appointed receiver will conduct a public auction for the real property
23 located at 83 Royal St. Georges Way, Rancho Mirage in Riverside County,
24 California. Sale is subject to Court confirmation after the auction is held.
25 Minimum bid price is at least \$3,049,000. The auction will take place on
26 January 9, 2020 at 1:30 p.m. in front of the entrance to the United States
27 Courthouse, 221 W. Broadway, San Diego, California. To be allowed to
28 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 \$98,989, and proof of funds. All
bidders must be qualified by 5:00 p.m. PT on January 7, 2020, by submitting
the required materials to the receiver at 401 W. A Street, Suite 1830, San

1 Diego, California, 92101.

2 *Id.* at 11. For those interested in qualifying as bidders, the notice also provided a phone
3 number and email address for the relevant point of contact. *Id.*

4 In her Reply to the present Motion, the Receiver reported that in addition to running
5 the above-described publication of notice in the Desert Sun as proposed, she also posted
6 the sale motion on the receivership website www.anireceivership.com and continued to
7 market the property through Broker, notifying potential purchasers about the opportunity
8 to submit an overbid and the deadline to do so. ECF No. 209. No qualified overbids were
9 received by the deadline of January 7, 2020 at 5:00 p.m. *Id.* Therefore, Paul Antle remains
10 the intended Buyer.

11 Upon review of the documents submitted by the Receiver in support of the Rancho
12 Mirage Motion, the Court **GRANTS** the Motion (ECF No. 165). Although it is lower than
13 the previous purchase price of \$3.2 million, the proposed purchase price of \$2,999,000 is
14 nonetheless fair and reasonable when viewed in light of all relevant circumstances. As
15 already explained, multiple brokers familiar with the real estate market in the area opined
16 that the previous purchase price was too high, and that the property would not sell for a
17 similar or higher price after its recent lengthy exposure to the market. The Court must also
18 take into account the need for the sale to occur quickly due to the nature of the Receiver's
19 agreement with SFG. If the proceeds of the sale are not realized and used to pay off the
20 loan in full prior to March 1, 2020, the debt service payments on the SFG loan will nearly
21 double. Further, if the Receiver does not meet her end of bargain by November 2020, SFG's
22 agreement to waive default interest will also fall through. Therefore, the Court recognizes
23 that time was of the essence in finding a buyer, and given the amount of time the property
24 previously languished on the market before Relief Defendant's purchase, the Receiver
25 acted reasonably in taking the advice of knowledgeable brokers to choose the list price (and
26 ultimate purchase price) of \$2,999,000. And after the sale is completed, the Receiver will
27 be able to pay off a significant debt of the receivership estate and return a net gain of
28 approximately \$1.26 million to the estate, which will ultimately benefit all creditors.

1 Additionally, before Buyer and Receiver entered into the Purchase Agreement,
2 Broker listed the property on MLS, held an open house, and showed the property to
3 interested buyers. The Receiver continued to market the property after entering into the
4 contingent Purchase Agreement with Buyer and made significant efforts to solicit qualified
5 overbids. The proposed broker's commission of approximately 4% of the gross sale price,
6 to be split with Buyer's broker, is consistent with industry standards and, as noted above,
7 the Court has already authorized Receiver to pay the Broker's commission and all sale
8 costs in connection to any approved property sale. ECF No. 153.

9 Moreover, the Receiver's publication of notice seeking qualified overbids in the
10 Desert Sun and on the receivership website complies with the requirements for the public
11 sale procedures set forth in 28 U.S.C. §§ 2001(a) and 2002. Therefore, upon review of the
12 relevant factual history and the Purchase Agreement itself, the Court finds the Purchase
13 Agreement represents a fair, arm's-length negotiation and, further, that the Receiver
14 implemented adequate safeguards by way of the notice and overbid process to solicit the
15 highest possible price for the property despite significant time and cost restraints. As the
16 Court has found with respect to the other approved real estate sales, the Court is satisfied
17 that the proposed sale is consistent with the aims of an equitable receivership to ensure the
18 orderly and efficient administration of the estate for the benefit of creditors. *See Hardy*,
19 803 F.2d at 1038.

20 Finally, the Court questioned the Receiver further at the hearing to clarify certain
21 details of the proposed sale, including, e.g., confirming that the details included in the
22 Motion regarding the Receiver's agreement with Seattle Funding Group are still current,
23 confirming that the Receiver could not state the precise amount to be paid to SFG at
24 closing, but that SFG and the Receiver agreed that the Court should require payment of an
25 amount sufficient to discharge the SFG lien, and confirming that the Receiver has not
26 entered into agreements with any other creditors regarding the use of the estimated
27 remaining net proceeds, and that those proceeds will go into the receivership estate. Based
28 on these considerations, and noting in particular the lack of opposition to the Motion, the

1 Court finds the Receiver has sufficiently established that the proposed sale of the Rancho
2 Mirage property and proposed distribution of the sale proceeds is in the best interest of the
3 receivership estate and should be approved.

4 Therefore, the Court **GRANTS** the Motion (ECF No. 165) and **APPROVES** the
5 sale of 83 Royal Saint Georges Way, Rancho Mirage, California to the intended Buyer
6 Paul Antle at the proposed purchase price of \$2,999,000, to be paid in cash. The Court
7 orders the proceeds of the sale to be distributed from escrow at the close of sale as follows:

- 8 (1) Payment of the Broker's Commission in the amount of \$119,960 shall be paid to
9 Keller Williams Realty, which will bear the responsibility of fulfilling the
10 agreement to split that amount with Buyer's broker;
- 11 (2) Payment of any outstanding real property taxes, to the extent any are due;
- 12 (3) Payment of reasonable and customary costs of sale, such as escrow fees, title
13 insurance, and recording fees. The Receiver shall provide a full accounting of
14 sale costs once the sale is complete for the Court to take into consideration in
15 approving future real property sales;
- 16 (4) Payment to Seattle Funding Group directly from escrow at closing, in an amount
17 sufficient to extinguish SFG's interest in the property;
- 18 (5) The remainder of the proceeds will go to the receivership estate.

19 The Court's grant of this Motion should not be construed to extinguish any purported
20 creditor's asserted interest in the remainder of the proceeds that will go into the estate.

21 **D. Patio on 101 and Patio on Goldfinch Motions (ECF Nos. 169, 176)**

22 Unlike the other motions at issue in this Order, the Patio on 101 and Patio on
23 Goldfinch Motions are Joint Motions joined by the SEC and Defendant Champion-Cain.
24 The Joint Motions are considered together because they ask for nearly identical relief.
25 Broadly, both motions concern former restaurant spaces that were leased to receivership
26 entities by landlord entities. Subject to court approval, the Receiver and the landlords have
27 entered into sale agreements allowing the landlord entities to purchase the liquor licenses,
28 the restaurant equipment, and other personal property in the former restaurant locations. In

1 both cases, the landlords have further agreed to excuse unpaid rent owed by the
2 receivership entity tenants as part of the sale agreements.

3 More specifically, in the Patio on 101 Motion, the parties ask the Court to approve
4 the sale agreement between the Receiver and Buyer MP1 RFE, LLC, who leased
5 commercial space to receivership entity ANI Commercial CA III, LP for the purpose of
6 operating the restaurant The Patio on 101. ECF No. 169 at 2. Now that The Patio on 101
7 has closed, Buyer wishes to obtain restaurant furniture, fixtures, and equipment left in the
8 space as well as the liquor license associated with the restaurant for a total price of
9 \$120,000. Per the terms of the proposed sale agreement, Buyer also agrees to release any
10 and all claims for unpaid rent owed by ANI Commercial CA III, LP or the receivership
11 estate, which the Receiver estimated at approximately \$51,000 through November 30,
12 2019. *Id.* at 3.

13 In considering whether the tentative agreement with Buyer is in the best interest of
14 the receivership estate, the Receiver obtained appraisals from Abamex Auction Company
15 estimating that the personal property would fetch between \$18,000 and \$36,000 at auction,
16 netting only \$15,000-\$30,000 after auctioneer expenses. *Id.* at 2-3. Additionally, the
17 Receiver obtained an estimate from a licensed broker who specializes in the purchase and
18 sale of liquor licenses in California as well as from an attorney with experience in liquor
19 license matters, who opined that the liquor license value is approximately \$100,000-
20 \$150,000 (if tied to the leased premises) or approximately \$65,000-\$80,000 if sold to a
21 buyer who has to have the approved location associated with the license changed. *Id.* at 3.
22 Based on these estimates, the Receiver calculates that the highest possible price the estate
23 could obtain for the personalty and liquor license, if pulled from the premises, would be
24 \$110,000. Therefore, the Receiver believes that the sale agreement with Buyer MP1 RFE,
25 LLC for \$120,000 and forgiveness of unpaid rent will bring the highest possible amount of
26 money to the receivership estate, compared to having to sell the personal property through
27 auction and selling the liquor license on the open market. *Id.* at 3-4.

28

1 Similarly, the Patio on Goldfinch Motion is premised on a sale agreement, subject
2 to Court approval, between Receiver and Buyer Mission Hills, Retail, LLC, who initially
3 leased the restaurant space to receivership entity American National Investments, Inc. ECF
4 No. 176 at 2. The lease was later amended and assigned to ANI Commercial CA III, LP.
5 *Id.* Now that the restaurant has closed, Buyer seeks to purchase the restaurant furniture,
6 fixtures, and equipment in the former space as well as the liquor license associated with
7 the premises for a proposed purchase price of \$152,000. As part of the agreement, Buyer
8 will also release any and all claims for unpaid rent owed by ANI Commercial CA III, LP,
9 which the Receiver estimates at \$77,000 through December 31, 2019. Again, the Receiver
10 obtained an appraisal from Abamex Auction Company estimating the value of the personal
11 property to be \$68,895, which would net approximately \$60,000, and the Receiver obtained
12 an estimate of the value of liquor license at \$100,000-\$150,000 (if tied to the leased
13 premises) or approximately \$65,000-\$80,000 if sold to a buyer who has to have the
14 approved location associated with the license changed. *Id.* at 3. Consequently, the Receiver
15 estimates that the highest possible price the estate could obtain for the personalty and liquor
16 license, if pulled from the premises, would be \$140,000, and thus asserts that the proposed
17 sale for \$152,000 plus forgiveness of unpaid rent is fair, reasonable, and exceeds the value
18 the Receiver could otherwise obtain from these assets. *Id.* at 3-4.

19 Based on these considerations, the Court **GRANTS** both unopposed Joint Motions
20 (ECF Nos. 169, 176). The Court finds no significant analysis is required here, because the
21 details of the proposed sales, as outlined above, are fair and reasonable on their face. The
22 Court has reviewed the underlying sale agreements and finds them consistent with the
23 representations in the Joint Motions. The Court is persuaded that not only are the proposed
24 sales fair and reasonable, but they also represent the best and most efficient available use
25 of the personalty at issue for the benefit of the receivership estate. Further, the sales at issue
26 involve only personal property. Thus, in light of the Court's Order Establishing Uniform
27 Sale Procedures (ECF No. 219) and its analysis above regarding the Auctioneer Motion,
28

1 the Court finds these proposed personalty sales have already met the Court's established
2 requirements and have been impliedly approved under its prior analyses.

3 The Court thus **APPROVES** the proposed sales and distributions as follows:

4 (1) With respect to the sale of personal property and liquor license associated with
5 the restaurant formerly known as Patio on 101, the Court approves payment of
6 \$120,000 from Buyer MP1 RFE, LLC to the Receiver, less escrow costs, with all
7 net proceeds to go to the receivership estate.

8 (2) With respect to the sale of personal property and liquor license associated with
9 the restaurant formerly known as Patio on Goldfinch, the Court approves
10 payment of \$152,000 from Buyer Mission Hills, Retail, LLC to the Receiver, less
11 escrow costs, with all net proceeds to go to the receivership estate.

12 The Court's grant of these Motions should not be construed to extinguish any purported
13 creditor's asserted interest in the remainder of the proceeds that will go into the estate.

14 **IV. CONCLUSION**

15 For the reasons set forth above, the Court **ORDERS** as follows:

16 (1) the Receiver's Motion for (A) Approval of Sale of Real Property Located at 805
17 Brighton Court; and (B) Authority to Pay Broker's Commission (ECF No. 148) is
18 **GRANTED**;

19 (2) the Receiver's Motion for Authority to (A) Engage Licensed Auctioneer, (B)
20 Utilize Liquor License Broker to Sell Liquor Licenses, and (C) Sell Personal Property
21 (ECF No. 150) is **GRANTED**;

22 (3) the Receiver's Motion for (A) Approval of Sale of Rancho Mirage Property;
23 and (B) Authority to Pay Broker's Commission (ECF No. 165) is **GRANTED**;

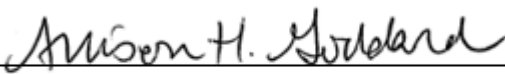
24 (4) the Joint Motion for Approval of Sale of Personal Property and Liquor License
25 Associated with the Restaurant Formerly Known as the Patio on 101 filed by the Receiver,
26 the SEC, and Defendant Gina-Champion Cain (ECF No. 169) is **GRANTED**;

1 (5) the Joint Motion for Approval of Sale of Personal Property and Liquor License
2 Associated with the Patio on Goldfinch Restaurant filed by the Receiver, the SEC, and
3 Defendant Gina-Champion Cain (ECF No. 176) is **GRANTED**.

4 Nothing herein should be construed as a waiver or extinguishment of any purported
5 creditor's claim of any interest in the net proceeds of the approved sales of receivership
6 assets that are slated for distribution to the receivership estate.

7 **IT IS SO ORDERED.**

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9 Dated: January 24, 2020

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Honorable Allison H. Goddard

12 United States Magistrate Judge
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