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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(SAN FRANCISCO DIVISION)

MTGLQ INVESTORS, L.P., A Delaware
Limited Partnership

Plaintiff,

v.

ALAMEDA CHEMICAL & SCIENTIFIC,
INC., A CALIFORNIA CORPORATION;
ALAMEDA CHEMICAL & SCIENTIFIC OF
ARIZONA, INC., A CALIFORNIA
CORPORATION; ALAMEDA CHEMICAL &
SCIENTIFIC OF IDAHO, INC., A
CALIFORNIA CORPORATION; ALAMEDA
CHEMICAL & SCIENTIFIC OF SOUTHERN
CALIFORNIA, INC., A CALIFORNIA
CORPORATION; HIGH TECHNOLOGY
PACKAGING, INC., A CALIFORNIA
CORPORATION; MILLER LAND, CATTLE
& WINE #2 LIMITED LIABILITY
COMPANY, A CALIFORNIA LIMITED
LIABILITY COMPANY; MILLER LAND,
CATTLE & WINE #3 LIMITED LIABILITY
COMPANY, A CALIFORNIA LIMITED
LIABILITY COMPANY; MILLER LAND,
CATTLE & WINE #4 LIMITED LIABILITY
COMPANY, A CALIFORNIA LIMITED
LIABILITY COMPANY; RONALD F.
MILLER, INDIVIDUALLY; and L. ELAINE
MILLER, INDIVIDUALLY,

Defendants.

Case No. 09-04270 EDL

**ORDER AUTHORIZING THE SALE OF
CERTAIN PROPERTY OF THE
RECEIVERSHIP ESTATE,
ESTABLISHING BIDDING
PROCEDURES, APPROVING A BREAK-
UP FEE TO BE PAID TO THE
PROSPECTIVE PURCHASERS, AND
APPROVING A CERTAIN ASSET SALE
AGREEMENT ENTERED INTO BY THE
RECEIVER**

1 On May 4, 2010, Kyle Everett (“Receiver”), the receiver in the above-entitled action,
2 petitioned this Court for an order (1) authorizing the sale of the Sale Assets described below, (2)
3 approving certain bidding procedures and a break-up fee to be paid to the prospective purchaser
4 that is a party to the Purchase and Sale Agreement described below, and (3) approving the terms of
5 that certain Purchase and Sale Agreement relating to the sale of property located at 1336 N. 20th
6 Street, Nampa, Idaho.

7 Appearances at the hearing are as noted in the record. Having considered the Motion and
8 all related pleadings, any opposition thereto, and the arguments of counsel,

9 **THE COURT FINDS THAT:**

10 A. Notice of the Motion was proper and adequate.

11 B. The Buyer described below has acted in good faith and is entitled to the protections
12 of 28 U.S.C. §§ 2001 and 2004.

13 Based on the foregoing and the findings and conclusions stated orally in the record, and
14 good cause appearing therefore,

15 **IT IS HEREBY ORDERED THAT:**

16 1. The Notice of the Motion and the hearing thereon is approved as proper and
17 adequate under the circumstances.

18 **SALE OF ASSETS APPROVED:**

19 2. The Motion is granted and the assets to be sold are that certain real property located
20 at 1336 N. 20th Street, Nampa, Idaho, together with the buildings and improvements located
21 thereon and the rights and appurtenances pertaining thereto and all personal property including
22 machinery, equipment, fixtures, furniture, vehicles and other personal property, if any, located
23 thereon and owned by the corporate defendants (collectively, the “Nampa Facility”).

24 3. The Receiver is authorized to sell the Nampa Facility to Ronald W. Van Auker
25 (“Van Auker”) pursuant to the terms of the Purchase and Sale Agreement and Joint Escrow
26 Instructions (“Nampa PSA”) entered into by the Receiver on February 15, 2010, as amended,
27 subject to overbid as hereinafter set forth. The terms of the Nampa PSA are hereby approved.

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1 4. The Receiver may assent to non-material changes to the Nampa PSA without
2 further order of the Court.

3 5. Terms not otherwise defined in this Order shall have the meanings ascribed to them
4 in the Nampa PSA.

5 **SALE PROCEDURES AND BREAK-UP FEE:**

6 6. The Receiver is authorized to sell the Nampa Facility at a public auction subject to
7 higher and better bids, as determined by the Receiver in his sole and absolute discretion ("Over
8 Bid").

9 7. Notice of the public auction shall be published setting forth the basic terms of sale
10 in the Idaho Press Tribune and the Idaho Statesman, once a week for at least four weeks prior to
11 the Closing Date. The notice shall be in a form substantially similar to the notice attached as
12 Exhibit C to the Receiver's declaration filed in support of the Sale Motion.

13 8. On the date that is five (5) business days prior to the Closing Date, the Receiver
14 shall conduct a public auction for Nampa Facility ("Auction"), subject of the following:

15 a. The Auction will be held at the Nampa Facility.

16 b. No prospective buyer shall be permitted to bid at the Auction unless, no
17 later than five (5) business days before the Auction (A) such party has been deemed financially
18 qualified by the Receiver or his advisors, in the Receiver's sole discretion, and the Receiver shall
19 have advised the respective buyer of such qualification prior to the Auction; (B) such prospective
20 buyer has delivered into escrow, or to the Receiver, good funds of not less than the amount of the
21 deposit pursuant to the Nampa PSA ("Deposit"); and (C) such prospective buyer has agreed in
22 writing to be bound by the terms of the Nampa PSA should the prospective buyer be the Winning
23 Bidder or the Backup Bidder at the Auction described below. Prospective buyers that meet all of
24 these qualifications shall be deemed Qualified Bidders.

25 c. If Van Auker is the only Qualified Bidder as of the last business day before
26 the Auction, the Receiver may cancel the Auction and sell the Nampa Facility to Van Auker
27 pursuant to the Nampa PSA and without further order of the Court.

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1 d. The initial bidding increment shall not be less than \$100,000 with
2 subsequent bids not less than \$50,000.

3 e. If there is an Over Bid, Van Auker shall have the right, but not the
4 obligation, to participate in the Auction and to be approved as the winning bidder, provided that
5 Van Auker shall have satisfied the same financial qualification requirements as the other
6 prospective buyers no later than five (5) business days before the Auction.

7 9. In addition to determining the winning bidder (the "Winning Bidder") as a result of
8 the Auction, the Receiver will identify and notice the Court of the next successful bidder as the
9 back-up bidder ("Back-Up Bidder").

10 10. In the event that Van Auker is not the Winning Bidder or the Back-Up Bidder, then
11 (i) Escrow Holder promptly shall disburse the Deposit (plus any interest that accrued while such
12 Deposit was held by Escrow Holder) to Van Auker, the Nampa PSA shall terminate, and Van
13 Auker shall no longer have any contractual right to purchase the Nampa Facility, and (ii) subject
14 to closing of the sale to the Winning Bidder or Back-Up Bidder and delivery by Van Auker to the
15 Receiver of reasonable supporting evidence of Van Auker's costs and expenses, up to \$100,000 of
16 such additional bid amount shall be paid to Van Auker by the Receiver out of the proceeds of the
17 sale as reimbursement for Van Auker's actual third party costs and expenses (including, without
18 limitation, reasonable attorneys' fees) in performing due diligence, preparing and entering into the
19 Nampa PSA, preparing other documents and taking other actions incident thereto, and for
20 expenses and rate lock fees incurred in connection with any purchase money financing. If Van
21 Auker is determined to be the Back-Up Bidder, the Deposit shall be returned to Van Auker, and
22 subject to the conditions set forth in clause (ii) of the preceding sentence, Van Auker shall be
23 reimbursed for the costs and expenses described in clause (ii), upon transfer of title to the Winning
24 Bidder.

25 11. If the Winning Bidder is unable to close on the Closing Date, the Winning Bidder's
26 entire deposit will be released to the Receiver and a per diem extension fee of \$500 will accrue. If
27 the Winning Bidder is unable to close the sale within an additional five (5) business days, the sale
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1 to the Winning Bidder will be cancelled and the Nampa Facility will be sold to the Back-Up
2 Bidder pursuant to the terms of the Nampa PSA.

3 12. The Receiver’s sale of the Nampa Facility pursuant to these procedures shall not
4 require further order of the Court.

5 13. The Nampa Facility is to be sold “as is” with the Receiver making no
6 representations or warranties, express or implied, at law or in equity, with respect to the title,
7 condition of assets, value of assets, or any other representations or warranties.

8 14. The Nampa Facility shall be deemed sold free and clear of liens, with the liens, if
9 any, attaching to the proceeds of the sale.

10
11 Dated: April 30, 2010

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14 _____
15 ELIZABETH D. LAPORTE
16 UNITED STATES MAGISTRATE JUDGE

17 Respectfully Submitted By:

18 Dated: March 26, 2010

19 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

20 By _____

21 J. BARRETT MARUM

22 Attorneys for Receiver
23 KYLE EVERETT
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