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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 v.

15 GINA CHAMPION-CAIN AND ANI
16 DEVELOPMENT, LLC,

17 Defendants, and

18 AMERICAN NATIONAL
19 INVESTMENTS, INC.,

20 Relief Defendant.
21

Case No.: 3:19-cv-1628-LAB-AHG

**ORDER GRANTING MOTION FOR
APPROVAL OF SALE OF
PERSONAL PROPERTY, LIQUOR
LICENSE, AND ASSIGNMENT OF
COMMERCIAL LEASE
ASSOCIATED WITH THE OCEAN
BEACH SURF RIDER
RESTAURANT**

[ECF No. 462]

22
23 **I. BACKGROUND**

24 As described in prior orders, *see, e.g.*, ECF Nos. 54, 162, 163, this is an action
25 brought by the Securities and Exchange Commission (“SEC”) against Defendants ANI
26 Development, LLC (“ANI Development”) and Gina Champion-Cain and Relief Defendant
27 American National Investments, Inc. (“ANI Inc.”), alleging violations of federal securities
28 laws based on a purportedly fraudulent liquor license loan scheme. ECF No. 1.

1 On September 3, 2019, the Court established an equitable receivership and appointed
2 Krista L. Freitag (“Receiver”) as the receiver of ANI Development and ANI Inc.,
3 authorizing her to take control over all funds and assets owned, managed, or in the
4 possession or control of the receivership entities. *See* ECF No. 6 at 14-16. In that role, the
5 Receiver acts under the control and direction of the Court to facilitate the “orderly and
6 efficient administration of the estate . . . for the benefit of creditors.” *SEC v. Hardy*, 803
7 F.2d 1034, 1038 (9th Cir. 1986). *See also Atl. Tr. Co. v. Chapman*, 208 U.S. 360, 370
8 (1908) (explaining that a motion to appoint a receiver to take charge of property is “to the
9 end that the property might be cared for and preserved for all who had or might have an
10 interest in the proceeds of its sale. . . . Immediately upon such appointment and after the
11 qualification of the receiver, the property [within the equitable receivership] passed into
12 the custody of the law, and thenceforward its administration was wholly under the control
13 of the court by its officer [], the receiver.”).

14 On December 11, 2019, the presiding judge in this action, Chief Judge Burns,
15 granted the parties’ Joint Motion (ECF No. 156) to give limited consent to the undersigned
16 to hear and directly decide all motions filed in this action to approve sales of receivership
17 assets. ECF No. 160. *See also* 28 U.S.C. § 636(c); CivLR 72.1(g). All property sale motions
18 are set before the undersigned pursuant to that grant of consent.

19 The Receiver filed the Motion for Approval of Sale of Personal Property, Liquor
20 License, and Assignment of Commercial Lease Associated with the Ocean Beach Surf
21 Rider Restaurant (“Surf Rider Motion”) on September 17, 2020, seeking court approval of
22 the sale of assets associated with the Ocean Beach Surf Rider Restaurant, which leases the
23 premises located at 2163 Abbott Street, San Diego, CA. ECF No. 462-1 at 5; *see also* ECF
24 No. 76-2 at 8-9 (listing “Surf Rider Pizza – Ocean Beach” in the Preliminary Real Estate
25 and Liquor License Asset Schedule filed on October 3, 2019). The assets are owned by
26 2163 Abbott Street, LP, an affiliated receivership entity, and “include personal property
27 (furniture, fixtures, and equipment), a liquor license, contracts, and a leasehold interest in
28 the restaurant premises (“Assets”).” ECF No. 462-1 at 5; *see also* ECF No. 6 at 5 (the

1 Court's Appointment Order, listing 2163 Abbott Street, LP as an entity subject to the
2 equitable receivership). Though the Receiver is authorized to sell personal property without
3 prior court approval (*see* ECF No. 219 at 9), the Receiver concluded that the net recovery
4 for the receivership estate would be greater if the Assets were sold as a package. ECF No.
5 462-1 at 5; ECF No. 462-2, Freitag Decl., ¶ 3.

6 On September 21, 2020, the Court entered an order setting a briefing schedule and
7 an October 26, 2020 hearing on the Surf Rider Motion. ECF No. 465. The Court set a
8 deadline of October 5, 2020 for responses in opposition to the motion and noted that “[i]f
9 no opposition is filed by the deadline, and the overbid submission deadline has passed with
10 no overbids, the Court may take the motion under submission without oral argument.” *Id.*
11 at 2. No opposition was filed. Further, bid qualifications from prospective bidders seeking
12 to submit overbids pursuant to the notice and auction process set forth in 28 U.S.C. §§ 2001
13 and 2002 (described in more detail below) were due by October 12, 2020. *See* ECF No.
14 462-1 at 12. The Receiver filed a Notice of Non-Receipt of Qualified Overbids regarding
15 the Surf Rider Motion on October 13, 2020. ECF No. 475. Accordingly, the Court took the
16 motion under submission on the papers on October 21, 2020. ECF No. 485.

17 For the reasons explained more fully below, the Court **GRANTS** the Surf Rider
18 Motion.

19 **II. LEGAL STANDARD**

20 “[I]t is a recognized principle of law that the district court has broad powers and
21 wide discretion to determine the appropriate relief in an equity receivership.” *SEC v.*
22 *Lincoln Thrift Ass’n*, 577 F.2d 600, 606 (9th Cir. 1978). Where a district court sits in equity,
23 “[u]nless a statute in so many words, or by a necessary and inescapable inference, restricts
24 the court’s jurisdiction in equity, the full scope of that jurisdiction is to be recognized and
25 applied. ‘The great principles of equity, securing complete justice, should not be yielded
26 to light inferences, or doubtful construction.’” *Porter v. Warner Holding Co.*, 328 U.S.
27 395, 398 (1946).

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1 “[A] district court’s power to supervise an equity receivership and to determine the
2 appropriate action to be taken in the administration of the receivership is extremely broad.”
3 *Hardy*, 803 F.2d at 1037. As part of this broad discretion, the district court sitting in equity
4 and having custody and control of property “has power to order a sale of the same in its
5 discretion. The power of sale necessarily follows the power to take control of and to
6 preserve property[.]” *SEC v. Am. Capital Investments, Inc.*, 98 F.3d 1133, 1144 (9th Cir.
7 1996), *abrogated on other grounds by Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83,
8 93-94 (1998) (quoting 2 Ralph E. Clark, Treatise on Law & Practice of Receivers § 482
9 (3d ed. 1992)). If the court approves an equitable receiver’s proposed property sale, the
10 sale “does not . . . purport to convey ‘legal’ title, but rather ‘good,’ equitable title enforced
11 by an injunction against suit.” *Id.* (citing 2 Clark, Treatise on Law & Practice of Receivers,
12 §§ 342, 344, 482(a), 487, 489, 491).

13 Pursuant to 28 U.S.C. § 2001(a), realty in the possession of an appointed receiver is
14 subject to a public sale process, “upon such terms and conditions as the court directs.”
15 28 U.S.C. § 2002 further requires that notice be published once a week for at least four
16 weeks prior to the sale in at least one newspaper regularly issued and of general circulation
17 in the county, state, or judicial district where the realty is located.¹ These safeguards of
18 notice and opportunity to submit overbids help to ensure that the sale is able to fetch the
19 best price possible, which is consistent with the principle that “a primary purpose of equity
20 receiverships is to promote orderly and efficient administration of the estate by the district
21 court for the benefit of creditors.” *Hardy*, 803 F.2d at 1038. *See also United States v.*
22 *Grable*, 25 F.3d 298, 303 (6th Cir. 1994) (noting that “the intent of” the requirement in 28
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26 ¹ 28 U.S.C. § 2001 also provides for a private sale process under subsection (b), but the
27 requirements of that subsection are more stringent. The Receiver does not propose a private
28 sale here.

1 U.S.C. § 2001 that property be sold in the county in which the land is situated is “to bring
2 a better price at the sale”).

3 As for the sale of personal property, 28 U.S.C. § 2004 also lends the Court great
4 discretion in directing sales of personalty, requiring such sales to comply with § 2001
5 “unless the court orders otherwise.” The notice requirement of § 2002 governing realty
6 sales by the receiver does not apply to sales of personalty.²

7 **III. DISCUSSION**

8 **A. Background of the Property and Proposed Sale**

9 Upon appointment over the receivership, the Receiver reviewed the available
10 financials and determined that the Ocean Beach Surf Rider Restaurant should continue to
11 operate (with operational guidance from the Cohn Restaurant Group). ECF No. 462-1 at 5.
12 The Receiver consulted with multiple brokers and determined that the net recovery for the
13 receivership estate would be higher if she sold the personal property, liquor license,
14 contracts, and assignment of the lease as a package, as opposed to selling the personalty
15 through licensed auctioneers. *Id.*

16 In preparation for sale of all of the restaurant-related properties included in the
17 receivership estate, the Receiver and her staff interviewed three licensed brokers with
18 experience selling restaurants in San Diego. *Id.* at 5. Ultimately, she chose two separate
19 brokers—broker Colliers International for stand-alone concept restaurant-related
20 properties owned by the receivership entities (a leased parking lot also was included in this
21 grouping), and broker Next Wave (“Broker”) for the Surf Rider Pizza and Bao Beach
22 restaurant concepts operated at leased and owned property locations. *Id.* at 5-6.

23 To market the Assets and other restaurant listings within the receivership estate,
24 Broker created individual marketing flyers for each listing and sent them out via email
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27 ² Pursuant to the statutory grant of discretion, under the Court’s uniform sale procedures,
28 the requirements of § 2001 have been waived, and the Receiver need not seek Court
approval of sales of personal property within the receivership estate. ECF No. 219 at 9.

1 campaigns to a targeted list of over 6,200 restaurant operators, buyers, brokers, and
2 investors. *Id.* at 6. Broker also used websites including CoStar, LoopNet, BizBuySell, and
3 Next Wave Commercial to advertise the listing and distributed press releases to numerous
4 local news publications. *Id.* Additionally, Broker hosted due diligence packages for each
5 property online and prepared an offering memorandum that summarized various marketing
6 points about the restaurant properties and detailed the Court sale process. *Id.* A form
7 Purchase and Sale Agreement and Joint Escrow Instructions (“Form PSA”) prepared by
8 Receiver and her counsel was provided by Broker to prospective purchasers. *Id.* The Form
9 PSA removes all contingencies and provides for the overbid, public auction, and Court
10 approval process. Prospective purchasers had until the Receiver’s “Call for Offers”
11 deadline to complete their due diligence and submit an executed Form PSA. *Id.*

12 Three offers were received by the Call for Offers deadline, but all were subsequently
13 withdrawn—likely as a result of Covid-19 pandemic-related concerns. *Id.* at 7. Broker
14 continued to market the Assets without a specific deadline until eventually G Boys
15 Holdings LLC (“Buyer”) offered \$85,000 and signed a Form PSA. *Id.* The Receiver,
16 through counsel, finalized the Form PSA. *Id.*

17 In the Surf Rider Motion, the Receiver proposed compliance with the overbid and
18 auction process described in 28 U.S.C. §§ 2001 and 2002 by publishing the following
19 notice in the San Diego Union-Tribune once a week for four weeks:

20 In the action pending in U.S. District Court for the Southern District of
21 California, Case No. 19-CV-01628-LAB-AHG, Securities and Exchange
22 Commission v. Gina Champion-Cain, et al., notice is hereby given that the
23 court-appointed receiver will conduct a public auction for the Ocean Beach
24 Surf Rider restaurant business and personal property located at 2163 Abbott
25 Street, San Diego, California 92107 in San Diego County, California. Sale is
26 subject to Court confirmation after the auction is held. Minimum bid price is
27 at least \$95,000. The auction will take place on October 19, 2020 at 1:30 p.m.
28 in front of the entrance to the United States Courthouse, 221 W. Broadway,
San Diego, California. To be allowed to participate in the auction, prospective
purchasers must meet certain bid qualification requirements, including
submitted a signed purchase and sale agreement, an earnest money deposit of
\$16,500, and proof of funds. All bidders must be qualified by 5:00 p.m. PT

1 on October 12, 2020, by submitting the required materials to the receiver at
2 501 West Broadway, Suite 290, San Diego, California, 92101.

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

5 As previously noted, the Receiver filed a Notice of Non-Receipt of Qualified
6 Overbids regarding the Surf Rider Motion on October 13, 2020. ECF No. 475. In the notice,
7 the Receiver informed the Court that, after filing the Surf Rider Motion, and in addition to
8 publishing the above notice in the San Diego Union-Tribune as proposed, she posted notice
9 of the motion on the receivership website anireceivership.com and continued to market the
10 Assets through Broker and notify potential purchasers about the opportunity to submit an
11 overbid by October 12, 2020. *Id.* at 2. No overbids were submitted by the deadline. *Id.*
12 Therefore, G Boys Holdings LLC remains the intended buyer.

13 **B. Proposed Procedures and Distribution**

14 The Receiver intends to pay several expenses using the proceeds of the sale of the
15 Assets. Jacmar Foodservice Distribution holds a UCC security interest on the Assets, which
16 the Receiver estimates will cost \$27,500 to resolve. ECF No. 462-1 at 7. Broker's
17 commission under the listing agreement is 10% of the sale price, or \$8,500. *Id.* Buyer has
18 its own broker, so this amount will be split between the brokers. *Id.* The costs of sale are
19 estimated to be approximately \$1,000. *Id.* Based on these estimates, the Receiver
20 anticipates that the net sale proceeds for the receivership estate will be about \$48,000,
21 though the sale will not close until the California Department of Alcoholic Beverage
22 Control approves transfer of the liquor license (which is estimated to take from three to six
23 months). *Id.*

24 **C. Court Approval of the Proposed Procedures and Sale**

25 The Court has reviewed the documents submitted by the Receiver in support of the
26 Surf Rider Motion, including the Form PSA, and finds the purchase price of \$85,000 to be
27 fair and reasonable. In particular, the Court notes with approval the Receiver's prudent
28 decision to seek advice from multiple brokers about the best way to maximize the estate's

1 recovery before opting to offer the personal property, liquor license, and lease assignment
2 as a package. The Receiver had authority to simply sell the personal property through
3 licensed auctioneers, which may have been the simpler route, though likely not the path to
4 greatest recovery. Instead, by bundling the Assets, Broker was able to broadly market and
5 advertise them, along with other restaurant properties and assets from the receivership, to
6 a targeted audience. The Receiver reports that Broker's advertising on multiple websites
7 produced over 150,000 ad views, and that press releases about the Next Wave-brokered
8 restaurant properties were placed in the San Diego Union-Tribune, San Diego Business
9 Journal, Eater San Diego, and elsewhere. *Id.* at 6. In light of these efforts, though it is at
10 the high end of the industry standard range, the Court also finds Broker's 10% commission
11 reasonable, particularly given that it will be split with Buyer's broker.

12 Although the current COVID-19 pandemic resulted in the withdrawal of three offers,
13 the Court recognizes the difficulty involved in securing fruitful offers for restaurant
14 locations during a time when indoor dining operations intermittently have been forbidden.
15 Nonetheless, the Receiver continued to market the property after the Call for Offers
16 deadline passed, confirming she would not give up on securing the best return for the
17 Assets. She also obtained other valuable concessions in the sale to Buyer, such as sale of
18 the property "as is," removal of all contingencies except Court approval, and making the
19 sale subject to the public notice and auction process of 28 U.S.C. §§ 2001 and 2002 (even
20 though she was not required to utilize this procedure for personal property). *See* ECF No.
21 462-3 at 18-35. The Court is convinced that the carrying out of the notice and auction
22 process alone suffices to show that the Receiver has secured the best and highest price for
23 the Assets. The Court is thus satisfied that the intent of the statutory scheme has been
24 fulfilled.

25 Based on these considerations, and noting the lack of any opposition to the Surf
26 Rider Motion, the Court finds the Receiver has established that the proposed sale of the
27 Assets and proposed distribution of the sale proceeds are consistent with principles of
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1 equity and the goal of a receivership to ensure the orderly and efficient administration of
2 the estate for the benefit of creditors. *See Hardy*, 803 F.2d at 1038.

3 **IV. CONCLUSION**

4 Having considered the Receiver's Motion for Approval of Sale of Personal Property,
5 Liquor License, and Assignment of Commercial Lease Associated with the Ocean Beach
6 Surf Rider Restaurant (ECF No. 462) on its merits and noting that there is no opposition
7 thereto, the Court **GRANTS** the Motion, and **APPROVES** the proposed sale of the Assets
8 associated with the Ocean Beach Surf Rider Restaurant, which leases the premises located
9 at 2163 Abbott Street, San Diego, CA to Buyer G Boys Holdings LLC, as described in the
10 Form PSA attached as Exhibit A to the Declaration of Krista L. Freitag (ECF No. 462-3).
11 The purchase price of \$85,000 for the Assets is confirmed and approved.

12 The Court further **ORDERS** the proceeds of the sale to be distributed from escrow
13 at the close of sale as follows:

14 (1) The Receiver shall pay lender Jacmar Foodservice Distribution the amount
15 necessary to satisfy the debt secured by its UCC security interest on the Assets, which
16 amount is estimated to be approximately \$27,500;

17 (2) The Receiver is authorized to pay broker Next Wave a commission of up to
18 10% of the sale price, or \$8,500, according to the terms of their agreement;

19 (3) The Receiver shall pay the seller's share of the costs of sale, which are
20 anticipated to be approximately \$1,000 (with the exact amount to be determined at closing);

21 and

22 (4) The Receiver is immediately authorized to complete the sale transaction,
23 including executing any and all documents as may be necessary and appropriate to do so,
24 with the remaining sale proceeds, after the above-referenced payments have been made
25 from escrow, going to the receivership estate.

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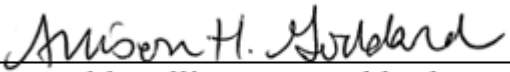
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1 (5) After closing, the Receiver shall provide a full accounting of sale costs, the
2 precise amount paid to Jacmar Foodservice Distribution, and the amount ultimately
3 returned to the receivership estate from the sale proceeds.

4 **IT IS SO ORDERED.**

5 Dated: October 26, 2020

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8 Honorable Allison H. Goddard
9 United States Magistrate Judge
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