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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 RECEIVER'S  
MOTION FOR APPROVAL OF  
SALE OF REAL PROPERTY  
LOCATED AT 7940 UNIVERSITY  
AVENUE, #9, LA MESA**

**[ECF No. 472]**

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 a permanent 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 passed into the custody of the law, and  
12 thenceforward its administration was wholly under the control of the court by its officer [],  
13 the receiver.”). On December 11, 2019, the presiding judge in this action, Chief Judge  
14 Burns, granted the parties’ Joint Motion (ECF No. 156) to give limited consent to the  
15 undersigned to hear and directly decide all motions filed in this action to approve sales of  
16 receivership assets. ECF No. 160. *See also* 28 U.S.C. § 636(c); CivLR 72.1(g). All property  
17 sale motions are set before the undersigned pursuant to that grant of consent.

18 On October 8, 2020, the Receiver filed the present Motion for Approval of Sale of  
19 Real Property Located at 7940 University Avenue, #9, La Mesa (the “University Avenue  
20 Motion”). ECF No. 472. The motion concerns one of the residential real properties within  
21 the receivership estate, a condominium located at 7940 University Avenue, #9, La Mesa,  
22 California (the “University Avenue Property”). *See* ECF No. 472-1 at 5; ECF No. 76-2 at  
23 6 (listing the University Avenue Property in the Preliminary Real Estate and Liquor  
24 License Asset Schedule filed on October 3, 2019).

25 On October 9, 2020, the Court entered an order setting a briefing schedule and a  
26 November 30, 2020 hearing on the University Avenue Motion. ECF No. 474. The Court  
27 set a deadline of October 23, 2020 for responses in opposition to the motion and noted that  
28 “[i]f no oppositions are filed by the deadline and the overbid submission deadline has

1 passed with no overbids, the Court may take the motion under submission without oral  
2 argument.” *Id.* at 2. No opposition was filed. Further, bid qualifications from prospective  
3 bidders seeking to submit overbids pursuant to the notice and auction process set forth in  
4 28 U.S.C. §§ 2001 and 2002 (described in more detail below) were due by  
5 November 2, 2020. *See* ECF No. 472-1 at 11; ECF No. 474 at 2. The Receiver filed a  
6 Notice of Non-Receipt of Qualified Overbids regarding the University Avenue Motion on  
7 November 3, 2020. ECF No. 495. Accordingly, the Court took the motion under  
8 submission on the papers. ECF No. 497.

9 For the reasons explained more fully below, the Court **GRANTS** the University  
10 Avenue Motion.

## 11 **II. LEGAL STANDARD**

12 “[I]t is a recognized principle of law that the district court has broad powers and  
13 wide discretion to determine the appropriate relief in an equity receivership.” *SEC v.*  
14 *Lincoln Thrift Ass’n*, 577 F.2d 600, 606 (9th Cir. 1978). Where a district court sits in equity,  
15 “[u]nless a statute in so many words, or by a necessary and inescapable inference, restricts  
16 the court’s jurisdiction in equity, the full scope of that jurisdiction is to be recognized and  
17 applied. ‘The great principles of equity, securing complete justice, should not be yielded  
18 to light inferences, or doubtful construction.’” *Porter v. Warner Holding Co.*, 328 U.S.  
19 395, 398 (1946).

20 “[A] district court’s power to supervise an equity receivership and to determine the  
21 appropriate action to be taken in the administration of the receivership is extremely broad.”  
22 *Hardy*, 803 F.2d at 1037. As part of this broad discretion, the district court sitting in equity  
23 and having custody and control of property “has power to order a sale of the same in its  
24 discretion. The power of sale necessarily follows the power to take control of and to  
25 preserve property[.]” *SEC v. Am. Capital Investments, Inc.*, 98 F.3d 1133, 1144 (9th Cir.  
26 1996), *abrogated on other grounds by Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83,  
27 93-94 (1998) (quoting 2 Ralph E. Clark, Treatise on Law & Practice of Receivers § 482  
28 (3d ed. 1992)). If the court approves an equitable receiver’s proposed property sale, the

1 sale “does not . . . purport to convey ‘legal’ title, but rather ‘good,’ equitable title enforced  
2 by an injunction against suit.” *Id.* (citing 2 Clark, Treatise on Law & Practice of Receivers,  
3 §§ 342, 344, 482(a), 487, 489, 491).

4 Pursuant to 28 U.S.C. § 2001(a), realty in the possession of an appointed receiver is  
5 subject to a public sale process, “upon such terms and conditions as the court directs.”  
6 28 U.S.C. § 2002 further requires that notice be published once a week for at least four  
7 weeks prior to the sale in at least one newspaper regularly issued and of general circulation  
8 in the county, state, or judicial district where the realty is located.<sup>1</sup> These safeguards of  
9 notice and opportunity to submit overbids help to ensure that the sale is able to fetch the  
10 best price possible, which is consistent with the principle that “a primary purpose of equity  
11 receiverships is to promote orderly and efficient administration of the estate by the district  
12 court for the benefit of creditors.” *Hardy*, 803 F.2d at 1038. *See also United States v.*  
13 *Grable*, 25 F.3d 298, 303 (6th Cir. 1994) (noting that “the intent of” the requirement in  
14 28 U.S.C. § 2001 that property be sold in the county in which the land is situated is “to  
15 bring a better price at the sale”).

### 16 **III. DISCUSSION**

#### 17 **A. Background of the Property and Proposed Sale**

18 The University Avenue Property was purchased on April 25, 2018, by 2466 1st  
19 Avenue LLC (an affiliated receivership entity) for \$325,000. ECF No. 472-1 at 5; *see also*  
20 ECF No. 6 at 4 (the Court’s Appointment Order, listing 2466 1st Avenue LLC as an entity  
21 subject to the equitable receivership).

22 Following her appointment, the Receiver and her staff analyzed the value of the  
23 University Avenue Property by reviewing automated valuation scores and a survey of  
24 market-comparable properties. ECF No. 472-2 ¶ 3. The Receiver consulted with multiple  
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27 <sup>1</sup> 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 licensed brokers and ultimately selected Coldwell Banker West (“Broker”) and listed the  
2 property for sale at a listing price of \$340,000. *Id.*

3 Beginning in August 2020, Broker marketed the University Avenue Property by  
4 listing it on all of the major real estate platforms, including on the Multiple Listing Service  
5 (“MLS”), Zillow, Redfin, and Realtor.com. ECF No. 472-1 at 5. These advertising efforts  
6 resulted in twenty-three buyer showings within the first week. *Id.* Three prospective buyers  
7 made offers, and Broker sent multiple counteroffers. *Id.* The Receiver ultimately accepted  
8 an offer from Henry J. Tran and Crystal Q. Tran (“Buyers”) for \$351,000. *Id.* Broker  
9 represented that this is the highest sale price in the condominium complex. *Id.* at 5-6.

10 The Receiver and Buyers executed a California Residential Purchase Agreement and  
11 Joint Escrow Instructions (“Purchase Agreement”), along with an Addendum making court  
12 approval of the sale a condition of closing and providing for the overbid and auction  
13 process required by 28 U.S.C. §§ 2001 and 2002. ECF No. 472-3. Buyers paid an initial  
14 deposit of \$5,000 and will finance the remainder with a loan from the Veteran’s  
15 Administration. *Id.* at 3, 13. Buyers agreed that the sale would be as-is and expressly  
16 removed all contingencies other than Court approval. *Id.* at 14, 19 ¶ 6.11.

### 17 **B. Proposed Procedures and Distribution**

18 In the motion seeking approval of the sale, the Receiver proposed compliance with  
19 the overbid and auction process mandated by 28 U.S.C. §§ 2001 and 2002 by publishing  
20 the following notice in the San Diego Union-Tribune once a week for four weeks:

21 In the action pending in U.S. District Court for the Southern District of  
22 California, Case No. 19-CV-01628-LAB-AHG, Securities and Exchange  
23 Commission v. Gina Champion-Cain, et al., notice is hereby given that the  
24 court-appointed receiver will conduct a public auction for the real property  
25 located at 7940 University Avenue, #9 in San Diego County, California. Sale  
26 is subject to Court confirmation after the auction is held. Minimum bid price  
27 is at least \$356,000. The auction will take place on November 6, 2020 at 2:30  
28 p.m. in front of the entrance to the United States Courthouse, 221 W.  
Broadway, San Diego, California or as otherwise determined by the Court. To  
be allowed to participate in the auction, prospective purchasers must meet  
certain bid qualification requirements, including submitted a signed purchase

1 and sale agreement, an earnest money deposit of \$5,500, and proof of funds.  
2 All bidders must be qualified by 5:00 p.m. PT on November 2, 2020, by  
3 submitting the required materials to the receiver at 501 West Broadway, Suite  
4 290, San Diego, California, 92101.

5 ECF No. 472-1 at 11. For those interested in qualifying as bidders, the notice also provided  
6 a phone number and email address for the relevant point of contact. *Id.*

7 As previously noted, the Receiver filed a Notice of Non-Receipt of Qualified  
8 Overbids Regarding the University Avenue Motion on November 3, 2020. ECF No. 495.  
9 In the Notice, the Receiver informs the Court that, after filing the University Avenue  
10 Motion, and in addition to publishing the above notice in the San Diego Union-Tribune as  
11 proposed, she posted notice of the motion on the receivership website  
12 (anireceivership.com) and continued to market the property through Broker and notify  
13 potential purchasers about the opportunity to submit an overbid by November 2, 2020. *Id.*  
14 at 2. No overbids were submitted by the deadline. *Id.* Therefore, Henry J. Tran and Crystal  
15 Q. Tran remain the intended buyers.

16 The University Avenue Property is one of four properties in the receivership estate  
17 encumbered by a deed of trust in favor of Seattle Funding Group (the “SFG loan”). ECF  
18 No. 472-1 at 6. The estimated principal balance outstanding for the interest-only SFG loan  
19 at the time the Receiver filed the University Avenue Motion was \$1.1 million. *Id.* On  
20 October 16, 2020, the Court approved the sale of one of these properties—the Bella Pacific  
21 Property (ECF No. 481)—and the Receiver applied \$408,000 of the net sale proceeds to  
22 pay down the principal balance of the SFG loan (ECF No. 501-1 at 6 n.1). With regard to  
23 the University Avenue Property, SFG has agreed to extend the maturity date of the loan to  
24 March 1, 2021, and to a release price of 85% of the sale price of this property, or \$298,350.  
25 ECF No. 472-1 at 6. Taking into account subsequently accrued interest, the Receiver  
26 estimates the total amount paid to SFG at closing will be between \$302,000 and \$305,000.  
27 *Id.*

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1 Turning to the proposed distribution of the \$351,000, the Receiver anticipates a net  
2 gain for the receivership estate. She first intends to use the proceeds of the sale of the  
3 University Avenue Property to pay the release price. *Id.* Based on the assumption that the  
4 sale will close after December 10, 2020 (it may, in fact, close before then), the Receiver  
5 estimates that a few hundred dollars of property taxes will be credited to the seller. *Id.* The  
6 Receiver also anticipates that costs of sale including escrow, title, and recording fees will  
7 be approximately \$1,750. *Id.* Broker's commission pursuant to the listing agreement is  
8 \$14,040 (4% of the sales price) and will be split with Buyers' broker. *Id.* Based on these  
9 estimates, the Receiver expects that the net sale proceeds for the receivership estate will be  
10 in the range of \$30,000 to \$33,000. ECF No. 472-2 ¶ 5.

### 11 **C. Court Approval of Procedures and Proposed Sale**

12 The Court has reviewed the documents submitted by the Receiver in support of the  
13 University Avenue Motion, including the Purchase Agreement, and finds the purchase  
14 price of \$351,000 to be fair and reasonable. This price exceeds the April 2018 purchase  
15 price of the property by \$26,000 and is the highest sale price in the condominium complex  
16 in which it is located. The Receiver, through Broker, received three offers for the property  
17 and made counteroffers. In addition, the Receiver obtained other valuable concessions,  
18 such as sale of the property "as is," removal of all contingencies except Court approval,  
19 and making the sale subject to the requisite public notice and auction process of 28 U.S.C.  
20 §§ 2001 and 2002. *See* ECF No. 472-3 at 15-20. Additionally, the proposed total  
21 commission of 4% of the gross sale price, to be split by Broker and the broker for Buyers,  
22 is within the lower range of industry standards. And, importantly, the sale of the University  
23 Avenue Property brings the receivership estate closer to paying off the SFG loan in full,  
24 which will reduce the ongoing monthly expenses of the receivership estate and thus aid the  
25 Receiver in ultimately creating a better return for all creditors.

26 As for the procedures followed, the Court finds that all of its uniform property sale  
27 procedures have been satisfied. *See* ECF No. 219. The Receiver's publication of notice  
28 seeking qualified overbids in the San Diego Union-Tribune, in addition to the solicitation

1 of overbids through the receivership website and continued efforts to market the property,  
2 establish that the Receiver satisfied the public sale and auction procedures set forth in  
3 28 U.S.C. §§ 2001 and 2002, which are designed to ensure that the best purchase price for  
4 realty within the receivership is obtained. Upon review of the factual history and the  
5 Purchase Agreement itself, the Court finds that the Receiver negotiated the best deal for  
6 the receivership estate and verified Buyers' ability to complete the transaction. Further, the  
7 Receiver provided the Court with a detailed breakdown of the proposed distributions from  
8 the sale proceeds, as required. The Court thus is satisfied that the intent of the statutory  
9 scheme—to ensure that the best and highest possible price is paid for property within the  
10 receivership estate—has been fulfilled.

11 Based on these considerations, and noting in particular the lack of any opposition to  
12 the University Avenue Motion, the Court finds the Receiver has established sufficiently  
13 that the proposed sale of the University Avenue Property and proposed distribution of the  
14 sale proceeds are consistent with principles of equity and the goal of a receivership to  
15 ensure the orderly and efficient administration of the estate for the benefit of creditors. *See*  
16 *Hardy*, 803 F.2d at 1038.

#### 17 **IV. CONCLUSION**

18 Having considered the Receiver's Motion for Approval of Sale of Real Property  
19 Located at 7940 University Avenue, #9, La Mesa (ECF No. 472) on its merits and noting  
20 that there is no opposition thereto, the Court **GRANTS** the Motion and **APPROVES** the  
21 proposed sale of the condominium located at 7940 University Avenue, #9, La Mesa,  
22 California to Buyers Henry J. Tran and Crystal Q. Tran, as described in the Purchase  
23 Agreement attached as Exhibit A to the Declaration of the Receiver (ECF No. 472-3). The  
24 purchase price of \$351,000 for the University Avenue Property is confirmed and approved.

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

3           (1)    The Receiver shall pay lender Seattle Funding Group the release price for the  
4 property, plus accrued interest on the loan, which amount is estimated to be approximately  
5 \$302,000 to 305,000 (with the exact amount to be determined at closing);

6           (2)    The Receiver shall pay the property taxes due from the seller at closing, if any  
7 (with the exact amount to be determined at closing);

8           (3)    The Receiver is authorized to pay broker Coldwell Banker West a commission  
9 of 4% of the sales price, or \$14,040, which amount will be split with Buyers' broker in a  
10 fashion consistent with the listing agreement and the description in the University Avenue  
11 Motion;

12          (4)    The Receiver shall pay the seller's share of the costs of sale, including escrow,  
13 title, and recording fees, which are anticipated to be approximately \$1,750; and

14          (5)    The Receiver is immediately authorized to complete the sale transaction,  
15 including executing any and all documents as may be necessary and appropriate to do so,  
16 with the remaining sale proceeds—which are estimated to be in the range of \$302,000 to  
17 \$305,000<sup>2</sup> (with the exact amount to be determined at closing)—going to the receivership  
18 estate.

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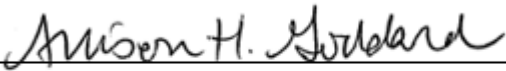
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26 <sup>2</sup> Because the Court understands that numerous contingencies (e.g., the amount of interest  
27 accrued on the loan before closing, the amount of property taxes owed, etc.) may affect the  
28 net sale proceeds of this particular sale, the Court approves the distribution of the net sale  
proceeds to the receivership estate even if the final amount is outside of this range.

1           **IT IS FURTHER ORDERED** that after closing, the Receiver shall provide a full  
2 accounting of sale costs, property tax credits received and/or property taxes paid, the  
3 precise release price paid to Seattle Funding Group, and the amount ultimately returned to  
4 the receivership estate from the sale proceeds.

5           **IT IS SO ORDERED.**

6 Dated: November 13, 2020

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9 Honorable Allison H. Goddard  
10 United States Magistrate Judge  
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