

EXHIBIT 3

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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

WELLS FARGO CAPITAL FINANCE,
INC., formerly known as Wells Fargo
Foothill, Inc., a California operation, as
Administrative Lender and Agent on
behalf of itself, Bank of America, N.A. and
The CIT Group/Business Credit, Inc.,

Plaintiff,

v.

NORTH PACIFIC GROUP, INC., an
Oregon corporation; NOR PAC
ENTERPRISES, INC., an Oregon
corporation; RTH LUMBER CO., an
Oregon corporation; and BURNS
HOLDINGS, INC., a dissolved Oregon
corporation,

Defendants.

Case No. CV 10-65-KI

**ORDER ON RECEIVER'S MOTION
FOR ORDER AUTHORIZING SALE OF
ACCOUNTS RECEIVABLE TO
UNIVERSITY MANAGEMENT
ASSOCIATES AND CONSULTANTS
CORP. FREE AND CLEAR OF LIENS**

This matter comes before the Court upon the Receiver's Motion For Order Authorizing Sale of Accounts Receivable to University Management Associates and Consultants Corp. Free and Clear of Liens filed December 16, 2011 (the "Motion") [Dkt.

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657]. In the Motion the Receiver requests approval of a proposed sale of certain accounts receivable identified in Exhibit A to the Motion (the "Receivables").

NOW, THEREFORE, based upon the declaration of Edward Hostmann filed in support of the Motion and the Court being advised that the Motion was served upon all parties receiving ECF notice, including all parties known to assert a lien against the Receivables, and that no objections to the Motion were filed within the time period specified in the Motion, and good cause appearing therefore and the Court being otherwise fully advised in the premises now, therefor;

IT IS HEREBY FOUND AND DETERMINED THAT

1. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to FRCP 52. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. This Court has federal diversity jurisdiction over this case and ancillary subject matter jurisdiction to hear and determine the Motion and enter this sale order. This Court is empowered to hear, determine, and provide the relief requested in the Motion.

3. Adequate and sufficient notice has been provided of the Motion, such notice was good and sufficient, reasonable, and appropriate under the particular circumstances in this matter, and reasonably calculated to reach and apprise all holders of liens, claims, encumbrances, and other interests, about the sale of the Receivables; and no other or further notice of the Motion, or the entry of this sale order is required.

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4. No responses or objections have been filed in response to the Motion, timely or otherwise.

5. Approval at this time of the Motion and sale of the Receivables is in the best interests of creditors, and other parties in interest and consistent with the provisions of the Second Modified Distribution Plan of Receiver (the "Plan").

6. The Receiver has demonstrated both (i) good, sufficient, and sound business purpose and justification, and (ii) compelling circumstances for consummating the sale of the Receivables in that, among other things, a sale of the Receivables will maximize its value for the estate.

7. The terms of the sale of the Receivables are fair and reasonable. The purchase price payable thereunder is fair and reasonable and constitutes reasonably equivalent value and fair consideration under the laws of the United States. Net proceeds received from the sale will be distributed pursuant to the provisions of the Plan.

8. The sale of the Receivables was negotiated, proposed, and entered into by the parties without collusion, in good faith and from arm's-length bargaining positions. The purchaser of the Receivables is not an affiliate of, or otherwise related to, any of the North Pacific entities, the Receiver, or North Pacific's secured lenders that are identified as the Plaintiffs in this action. There is no common identity among the purchaser of the Receivables and North Pacific's officers, directors, or equity owners.

9. The Receiver has full corporate power and authority to transfer title to the Receivables, and to execute and deliver a bill of sale for the Receivables, and to execute and deliver any and all other documents required for their transfer to the purchaser.

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NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED
THAT:

A. The Motion is granted.

B. The Receiver is authorized to complete the sale of the Receivables identified in Exhibit A to this Order to University Management Associates and Consultants Corp. for the sales price of \$100,000. The Receiver is authorized to execute such documents and take such other actions as may be reasonably necessary to complete the sale and transfer of the Receivables.

C. Except as set forth in this paragraph, upon closing, the Receivables shall be transferred to Purchaser free and clear of all mortgages, security interests, pledges, liens, judgments, encumbrances, restrictions or charges of any kind or nature, if any. The sale and transfer of the Receivable from Curt Bean Lumber Co. shall remain subject to the terms of the Order Approving Settlement With the Law Firm of Dover Dixon Horne, PLLC [Dkt. 617] entered by the Court.

D. The Receiver is excused from compliance with 28 U.S.C. § 2004 concerning sales of personal property through federal court proceedings.

E. The Receiver is directed to serve a copy of this Order on all account debtors identified in Exhibit A at their currently known address; such service shall be sufficient notice of the transfer of the Receivables. Thereafter, all future payments on the Receivables shall be made to:

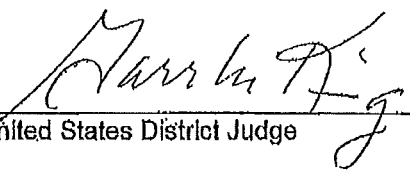
University Management Associates and Consultants Corp.
c/o Paul Rome
223 BW Stlger Street, Suite 12
Hackettstown, NJ 07840

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OF ACCOUNTS RECEIVABLE TO UNIVERSITY MANAGEMENT ASSOCIATES AND
CONSULTANTS CORP. FREE AND CLEAR OF LIENS

or at such other location and to such other party as University Management Associates and Consultants Corp. may in its discretion direct.

F. This Court retains jurisdiction (i) to enforce and implement the terms and provisions of the sale of the Receivables, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith, (ii) to resolve any disputes, controversies or claims arising out of or relating to the sale of the Receivables, and (iii) to interpret, implement and enforce the provisions of this Order.

DATED: 1-24-2012, 2012


United States District Judge

PRESENTED BY:

SUSSMAN SHANK LLP

/s/ Jeffrey C. Miskey

By: _____
Jeffrey C. Miskey, OSB No. 850674
Martin P. Meyers, OSB No. 990829
Portland, OR 97205
(503) 227-1111
Attorneys for Edward Hostmann, Inc., as Receiver

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NORTH PACIFIC GROUP	
ACCOUNTS RECEIVABLE BALANCE AS OF 11/11/11	
Account Name	Balance
Kenneth Andy Davis	\$ 580,043.00
Brown Lumber	207,089.30
Heartwood Inc	151,007.43
Callfornia Designer Cabinets	141,175.13
Loysville Structures	132,525.72
Grand Lumber Co Inc	128,321.06
Cut Right Wood Products LLC	110,039.46
Holley Moulding Inc.	74,008.33
New England Floor Supply	63,430.96
Robnson & Robnson Inc	62,582.50
A R Kramer Company	46,107.09
Buffalo River Hardwoods Inc.	44,192.90
Gamboa & Co Inc	43,594.85
Empyrean International LLC	34,864.65
Dodd Woodworking	34,692.85
Closestac	34,376.93
Atlantic Timber LLC	33,800.00
Connecticut Solid Surface LLC	31,586.35
Caribbean Wood Products	28,631.88
Heartwood Inc	27,637.81
Arts Custom Cabinets Inc	27,593.43
Davco Supply Inc	21,263.02
Atlantic Pile Inc.	20,877.28
Marshall Building Corp	19,952.16
Kiosko	17,987.73
Pinecreek Structures c/o Bells Springs Structures	17,900.32
Gemline Frame Co	17,220.52
Hamilton Fixture Company	14,676.38
Pinecreek Structures	13,899.43
Bakersfield Woodworks Inc	13,445.40
Sahs Inc	12,749.02
Architechural Casework	11,986.82
The Closet Factory	11,737.01
Paul Drews dba California Drawers	11,550.39
Bingham Lumber Inc	10,256.75
Ontario Wood Products	9,202.96
Apple Valley Woodworks LLC	8,960.28
New World Panels LLC	8,539.04
Fireplace Fronts LLC	8,106.38
AHJ Marketing Inc.	7,996.26

NORTH PACIFIC GROUP	
ACCOUNTS RECEIVABLE BALANCE AS OF 11/11/11	
Account Name	Balance
Southwest Moulding Inc	7,952.60
Trio Lumber Company	7,919.13
Brown Street Furniture	7,064.78
Havel Floorcovering Inc	6,492.54
New England Cabinet	6,362.36
Barry Fishelberg Co Inc	6,161.39
Barrington Hardware Inc	6,108.78
Imperial Valley Lumber Co	4,647.90
Pops Barns	4,599.33
Bay Woodworking LLC	4,139.50
West Hartford Stair Cab Inc	3,955.72
Tri State Window & Door Inc	3,021.95
Wood Pro Inc	2,948.82
Northend Hardwoods	2,519.26
L.Incoln Store Fixtures	2,515.82
Ulrich Lumber & Builders Supply	2,409.51
JDS Flooring Assoc LLC	1,177.60
Nashua Woodcraft	1,045.73
Storage Systems Inc	771.28
D & G Enterprises	617.92
Tkalcao Lumber Inc	613.66
Archwood Inc	508.00
E C Crosby & Sons	140.00
SUB-TOTAL AR BEFORE CURT BEAN LUMBER	2,379,291.31
Curt Bean Lumber Co.	968,091.36
TOTAL - ALL AR	3,347,382.67

2009 WL 2143531

Only the Westlaw citation is currently available.
United States District Court, D. Hawai'i.

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

BILLION COUPONS, INC., et al., Defendants.
U.S. Commodity Futures Trading Commission,
Plaintiff,

v.

Billion Coupons, Inc., Etc., et al., Defendants.

Civil Nos. 09-00068 JMS-LEK, 09-00069
JMS-LEK. | July 13, 2009.

Attorneys and Law Firms

Dohoang T. Duong, John B. Bulgozdy, Victoria A. Levin,
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Kurt S. Fritz, Paul Alston, Alston Hunt Floyd & Ing,
Michael A. Glenn, Honolulu, HI, Peter A. Davidson,
Erwin Cohan & Jessup LLP, Beverly Hills, CA, for
Defendants.

Barry A. Fisher, Fleishman & Fisher, Los Angeles, CA,
pro se.

Opinion

FINDINGS AND RECOMMENDATION TO GRANT RECEIVER'S MOTION TO ESTABLISH PROCEDURE FOR THE SALE OF PERSONAL AND REAL PROPERTY IN THE RECEIVERSHIP ESTATE

LESLIE E. KOBAYASHI, United States Magistrate
Judge.

*1 Before the Court is Receiver Barry A. Fisher's
("Receiver") Motion to Establish Procedure for the Sale
of Personal and Real Property in the Receivership Estate,
filed on April 3, 2009 ("Motion"). No opposition to the
Motion has been filed. After careful consideration of the
Motion, supporting memorandum and declaration, this
Court HEREBY FINDS AND RECOMMENDS that the

district judge GRANT the Motion for the reasons set forth
below.

BACKGROUND

On February 18, 2009, Plaintiff Securities and Exchange
Commission ("SEC") filed its complaint in Civil Number
09-00068 JMS-LEK alleging that Defendants Marvin R.
Cooper ("Cooper") and Billion Coupons, Inc., also known
as Billion Coupons Investment, ("BCI") (collectively
"Defendants") were involved in the fraudulent offer and
sale of more than \$4 million of securities. On February
18, 2009, Plaintiff United States Commodity Futures
Trading Commission ("CFTC") filed its complaint in
Civil Number 09-00069 JMS-LEK alleging that
Defendants were involved in the fraudulent offer and sale
of more than \$4 of foreign currency futures contracts.
Also on February 18, 2009, the district judge granted a
temporary restraining orders in both cases which, among
other things, appointed Mr. Fisher as the temporary
receiver. SEC and CFTC both moved for consolidation of
the two cases. The district judge granted the motions to
consolidate on March 2, 2009.

On March 3, 2009, the district judge issued an order
granting preliminary injunction which, among other
things, appointed Mr. Fisher as the permanent receiver
and granted to him several powers, rights, duties and
responsibilities, including "to make such payments and
disbursements from the funds and assets taken into
custody, control, and possession or thereafter received by
him ..., and to incur, or authorize the making of, such
agreements as may be necessary and advisable in
discharging his ... duties as Permanent Receiver[.]"
[Preliminary Injunction and Orders: (1) Freezing Assets,
(2) Appointing a Permanent Receiver, (3) Prohibiting the
Destruction of Documents, (4) and Requiring
Accountings, filed 3/3/09 (dkt. no. 36) ("3/3/09 Order"),
at 10.]

On April 9, 2009, Receiver filed his Motion for Approval
of Receiver, on Behalf of Billion Coupons, Inc.,
Consenting to a Consent Order of Permanent Injunction
and Other Relief with Securities and Exchange
Commission ("Motion for SEC Permanent Injunction"),
and Motion for Approval of Receiver, on Behalf of
Billion Coupons, Inc., Consenting to a Consent Order of
Permanent Injunction and Other Equitable Relief with
U.S. Commodity Futures Trading Commission ("Motion
for CFTC Permanent Injunction"). The parties filed a
Stipulation regarding Motion for SEC Permanent

Injunction on May 7, 2009. The district judge issued his Orders as to Liability, Permanent Injunction and Other Relief Against Defendant Billion Coupons, Inc. (aka Billion Coupons Investment) regarding SEC's complaint on May 18, 2009 and May 20, 2009. On April 22, 2009, the Consent of Defendant Marvin R. Cooper to Judgment of Permanent Injunction and Other Relief as to the SEC complaint was filed. The Consent Order of Permanent Injunction and Other Equitable Relief Against Defendant Billion Coupon, Inc. as the CFTC complaint was filed on May 22, 2009.

*2 On April 3, 2009, Receiver filed the following: (1) Motion to Establish Procedure for the Sale of Personal and Real Property in the Receivership Estate, (2) Motion to Establish Claims Procedure and Bar Date, (3) Motion for Authority to Commence Litigation to Recover Fraudulent Transfers and Other Claims, for Authority to Make Settlement Offers, and for Subsequent Settlement Authority (collectively "Motions"). SEC and CFTC filed a statement of no opposition to the Motions on April 21, 2009. On April 29, 2009, this Court directed Receiver to prepare proposed Findings and Recommendations granting the Motions.

On June 12, 2009, Receiver filed the Ex Parte Application to File Under Seal Proposed Findings of Fact and Recommendation for Disposition of Receiver's Motion for Authority to Commence Litigation to Recover Fraudulent Transfers and Other Claims and for Authority to Make Settlement Offer, which was granted by this Court on June 23, 2009. Receiver was permitted to file the proposed findings and recommendation under seal.

Receiver also filed on June 10, 2009 the following: (1)(1) Proposed Findings of Fact (sic) and Recommendation for Disposition of Receiver's Motion to Establish Procedure for the Sale of Personal and Real Property in the Receivership Estate; (2) Proposed Findings of Fact (sic) and Recommendation for Disposition of Receiver's Motion to Establish Claims Procedure and Bar Date for Filing Claims; and (3) Proposed Findings of Fact (sic) and Recommendation for Disposition of Receiver's Motion for Authority to Commence Litigation to Recover Fraudulent Transfers and Other Claims and for Authority to Make Settlement Offer.

DISCUSSION

In the instant Motion, Receiver seeks to have the court "establish procedures for the sale of the personal and real property under the Receiver's custody and control so that

the property can be quickly liquidated...." [Mem. in Supp. of Motion at 2.] Receiver acknowledges that 28 U.S.C. § 2004 provides that any personalty sold under any court order shall be sold in accordance with 28 U.S.C. § 2001. See 28 U.S.C. § 2004. However, Receiver submits that the requirements of 28 U.S.C. § 2001 are too cumbersome. 28 U.S.C. § 2001(a) provides:

Any realty or interest therein sold under any order or decree of any court of the United States shall be sold as a whole or in separate parcels at public sale at the courthouse of the county, parish, or city in which the greater part of the property is located, or upon the premises or some parcel thereof located therein, as the court directs. Such sale shall be upon such terms and conditions as the court directs.

Property in the possession of a receiver or receivers appointed by one or more district courts shall be sold at public sale in the district wherein any such receiver was first appointed, at the courthouse of the county, parish, or city situated therein in which the greater part of the property in such district is located, or on the premises or some parcel thereof located in such county, parish, or city, as such court directs, unless the court orders the sale of the property or one or more parcels thereof in one or more ancillary districts.

*3 28 U.S.C. § 2001(a). Receiver is thus required to sell the personal property at a public auction. Alternatively, § 2001 provides that a private sale may be ordered but, before confirmation of such a sale, "the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities." 28 U.S.C. § 2001(b). Publication of the sale is also required. See *id.* Receiver argues that the time and cost of such requirements are onerous and expensive.

I. Sale of Personal Property

Receiver proposes an alternative procedure wherein the personal property can be sold quickly to maximize the sale proceeds, and to minimize storage fees and other costs: (1) as to automobiles and motorbikes, Receiver should be given discretion to sell these items for the best price that can be obtained (such as possibly assigning them for sale by private buyers or using Craigslist or similar databases) without court confirmation of these sales; and (2) as to aircraft, Receiver represents that there is a Piper Aztec with an approximate value of \$75,000.00 and a Kolb Twinstar MK II with an approximate value of \$7,500.00, and that the accrued storage and repair fees

for the aircraft are \$20,397.08 and \$600.00, respectively. [Mem. in Supp. of Motion at 5 n. 1.] Both aircraft are located outside of Hawai'i. [Id. at 5.] Receiver asks to be authorized to: sell the aircraft for the best price that can be obtained at the aircrafts' current locations; to pay up to ten percent of the sales price in brokers' commission; and to pay outstanding bills for the repair and storage of the aircraft from the proceeds of any sale of the aircraft. As to other personal property, Receiver represents that there are several items in storage which include computers, furniture and equipment, and that the best method for the sale of these items is public auction. Receiver requests authorization to sell these items in a public auction and to retain the services of a local auctioneer to conduct the auction. In addition, Receiver states that he may obtain other personal property purchased with BCI funds as he has demanded the return of high-end camera equipment and may obtain a portable GPS for airplanes. In the event that these items are recovered, Receiver requests authority to sell these and any other items recovered by consignment or offer for sale in Ebay¹ or other similar internet sites.

II. Sale of Real Property

For the sale of real property, Receiver proposes that the court: 1) authorize Receiver to retain the services of a licensed real estate broker to sell the real property; and 2) require the broker to list the real property in the appropriate multiple listing service and to advertise it. Thereafter, Receiver should be authorized to sell the real property for the highest and best price that can be obtained.

Receiver has already been given full powers over BCI's assets. See 3/3/09 Order at 10-11; see also *S.E.C. v. Am. Capital Invs., Inc.*, 98 F.3d 1133, 1144 (9th Cir.1996). For the real property, the district court has discretion in setting the terms and conditions of the sale. See *United States v. Branch Coal Corp.*, 390 F.2d 7, 10 (3d Cir.1968). Receiver's proposed plans for the sale of personal and real property have sufficient safeguards in order to solicit the highest price that a willing buyer in an arms-length negotiation will offer while conducting the sales in a timely and cost-efficient manner that will maximize the net sales proceeds.

Footnotes

¹ Ebay is an internet website for on-line auctioning and shopping for goods and services.

CONCLUSION

*4 On the basis of the foregoing, this Court HEREBY FINDS that there is good cause for the district court to exercise its discretion and permit Receiver to sell personal and real property that he has recovered in the instant action in a manner other than as provided by federal statute, including 28 U.S.C. §§ 2001, 2004. This Court FURTHER FINDS that the proposed plans for the sale of personal and real property have sufficient safeguards for maximizing sale prices but also provide an efficient process to minimize carrying costs and other expenses that will need to be deducted from the gross sale proceeds.

The Court therefore RECOMMENDS that the district judge GRANT Receiver's Motion to Establish Procedure for the Sale of Personal and Real Property in the Receivership Estate, filed on April 3, 2009. This Court FURTHER RECOMMENDS that Receiver be given the following powers and directives: (1) as to automobiles and motorbikes, Receiver is given the discretion to sell these items for the best price that can be obtained (including assigning them for sale by private buyers or listing the items for sale on internet databases) without court confirmation of these sales; (2) as to aircraft, Receiver is authorized to sell the aircraft for the best price that can be obtained, to pay up to ten percent of the sales price in brokers' commission, and to pay outstanding bills for the repair and storage of the aircraft from the proceeds of any sale of the aircraft without court confirmation; (3) as to any other personal property, Receiver is authorized to place these items for sale by public auction, including by consignment or offer for sale on an internet website for an on-line auction or on-line sale; and (4) as to real property, Receiver is authorized to retain a licensed real estate broker to list and advertise the property, and Receiver is authorized to sell the real property for the highest price that can be obtained.

IT IS SO FOUND AND RECOMMENDED.

S.E.C. v. Billion Coupons, Inc., Not Reported in F.Supp.2d (2009)

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

FEDERAL TRADE COMMISSION,
Plaintiff,

vs.

JEREMY JOHNSON, individually, as officer
of Defendants I Works, Inc., Cloud Nine, Inc.,
CPA Upsell, Inc., Elite Debit, Inc., Internet
Economy, Inc., Market Funding, Inc., and
Success Marketing, Inc.; as a member of
Defendant Network Agenda LLC; and as the
de facto principal of numerous Defendant Shell
Companies; I WORKS, INC., *et al.*,
Defendants.

Case No.: 2:10-cv-02203-RLH-GWF

ORDER

(Motion for Order-#227)

Before the Court is Receiver Robb Evans of Robb Evans & Associates LLC's
("Receiver") **Motion for Order: (1) Authorizing and Confirming Sale of Personal Property
by Public Auction; (2) Authorizing and Confirming Sale and Redemption of Investment
Interest; (3) Authorizing Receiver to List and Offer for Sale Houseboats, Aircraft, and
Multiple Real Properties; and (4) Granting Relief From Local Rule 66-5 Pertaining to Notice
to Creditors ("Sale Motion") (##227, 228, filed May 27, 2011).** The Court has also considered
Defendants Duane Fielding, Network Agenda, LLC, and Anthon Holdings Corp.'s (collectively,
the "Fielding Defendants") Opposition (##239, 240, filed June 13, 2011), Defendants Jeremy D.

1 Johnson; I Works, Inc.; Cloud Nine Marketing, Inc.; CPA Upsell, Inc.; Elite Debit, Inc.; Internet
2 Economy, Inc.; Market Funding Solutions, Inc.; Success Marketing, Inc.; Fitness for Life, Inc.'s
3 (collectively, the "Johnson Defendants") Opposition (#245, filed June 20, 2011), the Receiver's
4 Reply to the Fielding Defendants' Opposition (#250, filed June 23, 2011), Plaintiff Federal Trade
5 Commission's ("FTC") Reply (#253, filed June 27, 2011), and the Receiver's Reply to the
6 Johnson Defendants' Opposition (#256, filed June 29, 2011).

7 **BACKGROUND**

8 As the parties are familiar with the facts of this case, the Court will not recount
9 them further except as necessary for the disposition of the Sale Motion. This dispute arises from
10 the FTC's investigation of Johnson and numerous affiliated individuals and corporations who
11 allegedly defrauded the public via internet scams. On December 21, 2010, the FTC filed its
12 complaint pursuant to the Federal Trade Commission Act, and the Electronic Fund Transfer Act,
13 to obtain permanent injunctive relief, restitution, disgorgement, and other equitable relief. On
14 February 10, 2011, the Court issued a Preliminary Injunction Order (#130) ("Preliminary
15 Injunction") that among other things appointed the Receiver to administer assets frozen by the
16 Preliminary Injunction. The Receiver now moves the Court to allow the sale of certain assets. For
17 the reasons discussed below, the Court grants the Sale Motion.

18 **DISCUSSION**

19 **I. The Receiver's Sale Motion**

20 Pursuant to 28 U.S.C. §§ 2001 and 2004, a district court has the authority to direct
21 an appointed receiver to arrange a public sale of any real property or personal property under the
22 receivership. § 2001(a). After all interested parties receive notice and a hearing, "the court may
23 order the sale of such realty or interest or any part thereof at private sale for cash or other
24 consideration and upon such terms and conditions as the court approves, if it finds that the best
25 interests of the estate will be conserved thereby" and a price is set at no less than two-thirds of the
26 appraised value. § 2001(b).

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A. Johnson Defendants' Opposition

In the Sale Motion, the Receiver asks the Court to authorize the sale or listing for sale of various real property and personal property which are under the Receiver's control. The Johnson Defendants oppose these proposed actions for several reasons. They argue that the office equipment would obtain greater value through means other than a local auction in southern Utah. They further argue that the vehicles identified for public auction are collector's items which will not realize their full value by auction in Hurricane, Utah, but will appreciate in value over time while in storage. In short, the Johnson Defendants oppose the Sale Motion because none of the items are perishable, the current depressed state of the economy favors waiting to sell any assets until a later time, and the assets should remain in place until a final determination is made.

The Court concludes that the Johnson Defendants' objections are without merit. The Receiver is charged with the duty to preserve the value of the assets of the receivership, which in this case must be accomplished by preventing the value of these assets and the estate as a whole from decreasing through ongoing expenses to maintain, insure, store, and protect those assets. The Court is satisfied that the Receiver has identified sound business reasons that justify the sale of these assets. Furthermore, nothing in the oppositions filed suggest that the parties with alleged interests in those assets to be sold now would be injured if their interests are converted to cash to be held by the Receiver.

B. Fielding Defendants' Opposition

The Fielding Defendants also oppose these proposed actions based on their purported ownership interest in one parcel of real property, one helicopter, and several additional motor vehicles that the Receiver identified for sale. They argue that the sale of these assets would be premature and would lead to an improper declaration of their value. Further, they contend that the proposed sale would violate the Receiver's duty to preserve the value of the assets pending final adjudication on the merits. In addition, they assert that the Receiver is not authorized to sell the individual Defendant Duane Fielding's assets because he is not specifically covered by the

1 Preliminary Injunction Order (#130, issued Feb. 10, 2011). In sum, the Fielding Defendants make
2 the same objections to the Receiver's Sale Motion as the Johnson Defendants, and as a result,
3 warrant the same conclusion.

4 In addition, the Court notes that the Fielding Defendants' purported ownership
5 interest in these assets seems incredibly aspirational given the evidence set forth by the Receiver.
6 Nevertheless, even if Mr. Fielding were to show a legitimate ownership interest in these assets, he
7 could seek appropriate compensation after the FTC's claims are fully adjudicated. The opposing
8 parties have failed to show that the Receiver's proposed actions would violate the Receiver's duty
9 to preserve assets, rather the Receiver has adequately shown the Court that liquidating these assets
10 will limit expenses and avoid further deterioration or loss of value. Therefore, the Court grants the
11 Receiver's Sale Motion.

12 **CONCLUSION**

13 Accordingly, and for good cause appearing,

14 IT IS HEREBY ORDERED that the Receiver's Motion for Order: (1) Authorizing
15 and Confirming Sale of Personal Property by Public Auction; (2) Authorizing and Confirming Sale
16 and Redemption of Investment Interest; (3) Authorizing Receiver to List and Offer for Sale
17 Houseboats, Aircraft, and Multiple Real Properties; and (4) Granting Relief From Local Rule 66-5
18 Pertaining to Notice to Creditors (#227) is GRANTED.

19 IT IS FURTHER ORDERED that:

20 A. The Receiver is authorized to sell the following personal property of the
21 Receivership Defendants: (a) office furniture (such as desks, chairs, sofas, cabinets, tables, etc.),
22 televisions, telephones, computers, office artwork and other similar personal property (collectively
23 the "Tabernacle Office Equipment") from the I Works offices formerly located at 249 East
24 Tabernacle Street, St. George, Utah known as the "Tabernacle Towers" currently being stored by
25 Statewide Auction Co., located at 5099 Wheeler Way, Hurricane, Utah; (b) the following vehicles:
26 1957 Chevrolet Belair Convertible (VIN #VC57L 188500), 1972 Chevrolet Nova SS Clone (VIN

1 #1X27F2L160461, License #FGM 994 – Oregon), 1952 Ford O Matic (VIN #B2LB102645,
2 License #FTL 488 UT), 1968 Oldsmobile (442 VIN #344778N1446554, License #785 NZZ UT),
3 1972 Chevrolet Chevelle SS 454 (VIN #1D37W2L585777), Honda Pilot Dune Buggy (ATV
4 License Yr. 2008 #08126055) (collectively, the “Vehicles”) and a custom made snow plane
5 (Engine No. 6008678) (“Snow Plane”) by public auction pursuant to the following terms,
6 conditions and procedures (“St. George Personal Property Sale Procedures”), and the sale and
7 publication procedures of 28 U.S.C. § § 2001 and 2004 are hereby modified accordingly:

8 1. The Receiver is authorized to employ Statewide Auction Company of Salt
9 Lake City, Utah (“Auctioneer”) to sell the St. George Personal Property at public auction to be
10 conducted at the business premises of the Auctioneer located at 5099 Wheeler Way, Hurricane,
11 Utah, pursuant to the Statewide Auction Company Contract dated as of May 4, 2011 (“St. George
12 Auction Contract”) attached as Exhibit 1 to the Declaration of Kenton Johnson (“Johnson
13 Declaration”) filed in support of the Sale Motion, and is authorized to compensate the Auctioneer
14 in accordance with the St. George Auction Contract by paying the Auctioneer an auction
15 commission of 15% of the gross sales price paid by the purchasers at the public auction for the St.
16 George Personal Property;

17 2. The Receiver is authorized to sell the St. George Personal Property
18 individually, in lots or in bulk at the discretion of the Receiver and the Auctioneer, with such
19 property to be sold “as is, where is, with all faults,” and without representation or warranty of any
20 kind or nature, express or implied, to the highest bidder at the sale for payment in cash, certified
21 funds or check with the approval of the Auctioneer;

22 3. The Auctioneer shall provide notice of the auction of the St. George
23 Personal Property by publishing a written notice of the date, time and place of the auction sale, the
24 terms of the sale and a summary of the property to be sold at the auction sale at least one time not
25 less than one week prior to the auction sale in the following newspapers: *Salt Lake Tribune*, the
26 *Deseret News* and *The Spectrum* in St. George;

1 4. The sales of the St. George Personal Property in accordance with the St.
2 George Personal Property Sale Procedures are hereby confirmed without further notice, hearing or
3 order, and the notice of the hearing on the Sale Motion and publication of notice of the sale as set
4 forth in such procedures is deemed sufficient pursuant to 28 U.S.C. §§ 2001 and 2004;

5 5. To the extent that any of the Vehicles is registered to or deemed to be
6 owned by Jeremy Johnson, the Preliminary Injunction Order, including Section XV.C thereof, is
7 hereby modified to allow the Receiver to sell the Vehicles in accordance with this Order;

8 B. The Receiver is authorized to sell the office furniture and equipment, such as office
9 cubicles, office chairs, telephone system with servers and telephone units, computer servers and
10 towers, keyboards, monitors, executive office furniture including desks, chairs and wood cabinets
11 (collectively, "Ephraim Office Equipment") found in the offices previously occupied by Zibby,
12 LLC ("Zibby"), an entity owned 50% by Jeremy Johnson and 50% by his wife, Charlo Johnson,
13 located at 11 West 700 South, Ephraim, Utah ("Ephraim Office") by public auction to be
14 conducted on the premises at 11 West 700 South, Ephraim, Utah pursuant to the following
15 proposed terms, conditions and procedures ("Ephraim Office Equipment Sale Procedures"), and
16 the sale and publication procedures of 28 U.S.C. §§ 2001 and 2004 are hereby modified
17 accordingly:

18 1. The Receiver is authorized to employ Statewide Auction Company of Salt
19 Lake City, Utah ("Auctioneer") to sell the Ephraim Office Equipment at the Ephraim Office
20 pursuant to the Statewide Auction Company Contract (Ephraim) dated as of May 4, 2011
21 ("Ephraim Auction Contract") attached as Exhibit 2 to the Johnson Declaration filed in support of
22 the Sale Motion, and is authorized to compensate the Auctioneer in accordance with the Ephraim
23 Auction Contract by paying the Auctioneer an auction commission of 15% of the gross sales price
24 paid by the purchasers at the public auction for the Ephraim Office Equipment;

25 ///
26 ///

1 2. The Receiver is authorized to sell the Ephraim Office Equipment
2 individually, in lots or in bulk in the discretion of the Receiver and the Auctioneer, with such
3 property to be sold "as is, where is, with all faults," and without representation or warranty of any
4 kind or nature, express or implied, to the highest bidder at the sale for payment in cash, certified
5 funds or check with the approval of the Auctioneer;

6 3. The Auctioneer shall provide notice of the auction of the Ephraim Office
7 Equipment by publishing a written notice of the date, time and place of the auction sale, the terms
8 of the sale and a summary of the property to be sold at the auction sale at least one time not less
9 than one week prior to the auction sale in the following newspapers: *Salt Lake Tribune*, the
10 *Deseret News* and a local newspaper of general circulation in Ephraim, Utah;

11 4. The sales of the Ephraim Office Equipment in accordance with the Ephraim
12 Office Equipment Sale Procedures are hereby confirmed without further notice, hearing or order,
13 and the notice of the hearing on the Sale Motion and publication of notice of the sale as set forth in
14 such procedures is deemed sufficient pursuant to 28 U.S.C. §§ 2001 and 2004;

15 C. The Receiver is authorized to liquidate and redeem the private limited liability
16 membership interest held by Orange Cat Investments, LLC Global Wealth Long/Short Commodity
17 Futures Fund, LLC ("Global Wealth LLC") managed by Marathon Investments, Inc. ("Marathon"),
18 by making a written request to Marathon for redemption of such investment in accordance with the
19 terms and provisions of the Amended and Restated Operating Agreement pertaining to Global
20 Wealth LLC ("Operating Agreement"), and the sale and publication procedures of 28 U.S.C. §§
21 2001 and 2004 are hereby modified accordingly to allow the Receiver to redeem and liquidate such
22 investment in accordance with the Operating Agreement.

23 D. The Receiver is authorized to list for sale two Skipperliner houseboats consisting of
24 a custom 3208 Marine model 1999 Skipperliner 75 foot houseboat named PEPS I and a 1994
25 Skipperliner 74 foot houseboat named Animal House (collectively, "Houseboats") owned by
26 Orange Cat Investments LLC with Aramark Sports and Entertainment Services, Inc. d/b/a Lake

1 Powell Resorts and Marinas ("Marine Broker") at prices to be determined in the Receiver's
2 discretion and judgment and to enter into a written exclusive listing agreement with the Marine
3 Broker in connection therewith providing for ordinary and customary terms and conditions for the
4 listing of similar watercraft including ordinary and customary sales commissions not to exceed 6%
5 of the gross sales price for the Houseboats, and further providing that acceptance of offers and
6 completion of any sales of the Houseboats is subject to entry of an order of this Court approving
7 such sale after notice and an opportunity for hearing;

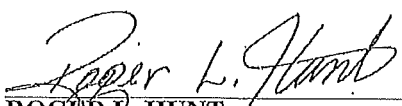
8 E. The Receiver is authorized to (1) engage one or more companies specializing in the
9 sale of helicopters and fixed wing aircraft to list for sale at prices to be determined in the
10 Receiver's discretion and judgment the following aircraft: (a) 1978 Cessna P210N, Tail No.
11 N4827P, (b) 2008 Robinson R44 Raven II helicopter, Tail No. N41286 owned by Trigger, LLC,
12 (c) 1968 Piper Navajo, Tail No. N300WA; (d) 2005 Robinson R44 Raven II helicopter, Tail No.
13 N321WT, (e) 2009 Piper Malibu Mirage, Tail No. N32ED, and (f) a 1978 Beech C24R, Tail No.
14 N20135 (collectively "Aircraft"), and (2) enter into written exclusive listing agreements with one
15 or more companies specializing in the listing and sale of the particular type and model of the
16 Aircraft ("Aircraft Brokers") providing for ordinary and customary terms and conditions for the
17 listing of similar Aircraft including ordinary and customary sales commissions in a range of 6% to
18 8% of the gross sales price for each of the Aircraft with a minimum commission amount of
19 \$10,000, providing for ordinary and customary advertising expenses, and further providing that
20 acceptance of offers and completion of any sales of the Aircraft is subject to entry of an order of
21 this Court approving each such sale after notice and an opportunity for hearing;

22 F. The Receiver is authorized to (1) engage local, regional or international real estate
23 brokers experienced in the sale of the types of real properties, including experience in residential
24 and commercial real estate and sales of raw land in the local market ("Sales Agents"), (2) list for
25 sale at prices to be determined in the Receiver's discretion and judgment the following residential
26 and commercial real property assets of the Receivership Defendants: (a) 82 West 700 South, St.

1 George, Utah ("82 West Property"); (b) 575 East 30 North, Ephraim, Utah ("575 East Property"),
2 (c) 11 West 700 South, Ephraim, Utah ("11 West Property"); (d) 302 West Hilton Drive, St.
3 George, Utah ("Hilton Drive Property"); (e) 147 North 100 West, Mendon, Utah ("147 North
4 Property"); (f) 392 West 400 South, Manti, Utah ("392 West Property"); (g) 575 S. Main,
5 Richfield, Utah ("Richfield Property"); (h) 127 Hollister Avenue, Santa Monica, California
6 ("Hollister Property"); (i) No. 91 North Front Street, Belize City, Belize ("Belize Property") (j)
7 the five parcels of adjacent and/or related parcels of raw land identified as Parcel #4200-B-HV,
8 St. George, Utah, Parcel #4201-A-HV & Parcel #4201-B-HV, St. George, Utah and Parcel #4203-
9 HV & Parcel #4150-B-HV, St. George, Utah ("Washington County Land"); (k) Part Sec 25, T33S,
10 R16W, SLBM, Beryl, Utah ("Beryl Land"); and (l) 750 South Main, Highway 89, Ephraim, Utah
11 ("South Main Land"), and (3) enter into written exclusive listing agreements with such Sales
12 Agents providing for ordinary and customary terms and conditions for the listing of similar real
13 property assets including ordinary and customary sales commissions not to exceed 6% of the gross
14 sales price for each of the real properties, except for the Belize Property as to which the sales
15 commission should be in an amount not to exceed 10% of the gross sales proceeds, providing for
16 ordinary and customary advertising expenses, and further providing that acceptance of offers and
17 completion of any sales of the real properties is subject to entry of an order of this Court approving
18 each such sale after notice and an opportunity for hearing; and

19 G. Notice of the Sale Motion is hereby deemed sufficient under Local Rule 66-5 based
20 on the service of a notice of the Sale Motion's filing and the Sale Motion itself on all parties and
21 service of a notice of the Sale Motion's filing on all known non-consumer creditors of the estate
22 concurrent with the filing of the Sale Motion with the Court.

23 Dated: August 25, 2011.

24 
25 ROGER L. HUNT
26 United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION,)

Plaintiff,)

v.)

Case No. 07-cv-10712-RGS

LYDIA CAPITAL, LLC;)
GLENN MANTERFIELD; and)
EVAN ANDERSEN,)

Defendants.)

**ORDER GRANTING RECEIVER'S MOTION FOR AUTHORIZATION
TO SELL ASSET OF THE RECEIVERSHIP ESTATE**

NOW before the Court is Receiver's Motion for Authorization to Sell Asset of the Receivership Estate, and Brief in Support [Doc. No. ____] (the "Sale Motion"), by H. Thomas Moran, II, Court-Appointed Receiver ("Receiver") for Defendant Lydia Capital, LLC ("Lydia"). Having reviewed the Sale Motion and exhibits thereto, finding that no objections to the same have been received, and it appearing that the relief requested in the Sale Motion is in the best interest of the Receivership estate, after due deliberation thereon, and for good cause appearing therefore,

THE COURT HEREBY FINDS AND DETERMINES THAT:

1. This Court has jurisdiction over the subject matter of the Sale Motion.
2. Pursuant to the Court's Order of June 1, 2007, H. Thomas Moran, II was appointed the Receiver for the assets of Lydia ("Order of Appointment"), [Doc. No. 28].
3. Pursuant to the Order of Appointment, the Receiver was directed to take and retain immediate possession, custody and control of the funds and assets of Lydia, and of all other entities which Lydia owned, controlled, or benefited from, including the Lydia Capital

Alternative Investment Fund, LP (the "Fund"), and to take all steps the Receiver deems necessary to conduct an inventory of the assets and liabilities of Lydia and the Fund. Further, the Order of Appointment directed the Receiver to undertake the liquidation of any, or all, of the assets of Lydia or the Fund in connection with the exercise of his powers granted by the Order of Appointment, with due regard for the best long-term interests of the investors in the Fund. *Id.*

4. Notice of the Sale Motion and the proposed Order thereto was provided to: (1) all parties to this action, (2) the investors in Lydia and/or the Fund, and (3) those creditors of Lydia and/or the Fund of which the Receiver is aware. Additionally, the Receiver provided notice by posting a copy of the Receiver's Sale Motion and the proposed Order thereto on the Receiver's website: <http://www.lydiacapital.com>.

5. The Court finds that this notice, as carried out by the Receiver, is sufficient and reasonable in light of the circumstances and nature of the relief requested in the Sale Motion.

6. The Court finds that the Receiver has negotiated an Asset Purchase Agreement ("Purchase Agreement") with Seaport Group Life Assets, LLC ("Buyer") for the sale of a life insurance policy within the portfolio on the terms and conditions set forth in the Purchase Agreement between the Receiver and Buyer (the "Sale"). The policy being sold is described in the Purchase Agreement by policy code LYD 3351-01, with an adjusted face value amount of \$7,500,000 (the "Sale Policy"). A copy of the Purchase Agreement is attached as Exhibit "A" to the Sale Motion.

7. The Court finds that (1) the purchase price and other consideration contained in the Purchase Agreement provides fair and reasonable consideration for the Sale Policy; (2) the sale will provide a greater recovery for the Receivership's investors and creditors than would be provided by any other practical available alternative; (3) no other party has offered to purchase

the Sale Policy for greater economic value to the Receivership; and (5) the purchase price and other consideration constitute fair consideration under the laws of the United States, any state, territory, possession or the District of Columbia.

8. The Court finds that the sale of the Sale Policy proposed by the Sale Motion, as described in the Purchase Agreement is reasonable and in the best interests of the Receivership estate, the creditors and the investors in Lydia and/or the Fund.

9. The Court finds that good cause exists for granting the Sale Motion, and accordingly, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

(a) The Purchase Agreement attached as Exhibit "A" to the Sale Motion is hereby approved.

(b) The Receiver has demonstrated good, sufficient and sound business purpose and justification for the sale to Buyer and that compelling circumstances for the sale exist as the value of the Sale Policy could be harmed by any delay. Therefore, time is of the essence in consummating the sale.

(c) The sale of the Sale Policy is in the best interests of the Receiver, the creditors and the Receivership estate;

(d) Buyer has acted in good faith and is a good faith purchaser of the Sale Policy and has entered into the Purchase Agreement, without collusion and no party has engaged in conduct that would cause or permit the Purchase Agreement to be avoided;

(e) the Receiver has full power and authority to execute and deliver the Purchase Agreement and the other instruments and agreements to be executed and delivered by the Receiver to consummate the transactions contemplated in the Purchase Agreement, including without limitation, the right to assign to Buyer all of the Receiver's right, title, and interest in and

to the Sale Policy (including without limitation the death benefits associated with the Sale Policy) and certain medical information and records applicable to the insured of the respective Sale Policy, consisting of all rights which the Receiver has to: (i) obtain medical and health records in respect of the insured under the Sale Policy; (ii) contact from time-to-time at least one (1) designated representative of such insured to monitor their respective health status and life status; and (iii) obtain death certificates, as applicable with respect to any such deceased insured under the Sale Policy (collectively, the "Medical Information Rights");

(f) the Purchase Agreement constitutes, and such other instruments and agreements when duly executed will constitute, the binding obligation of the Receiver;

(g) the Receiver is the sole owner and sole beneficiary of all options, privileges, rights, title and interest in and to the Sale Policy and any and all proceeds thereof (including without limitation the death benefits associated with the Sale Policy);

(h) the sale of the Sale Policy in accordance with the terms of the Purchase Agreement is approved and as of the date of the Sale Order, the Receiver shall be directed to perform his obligations hereunder;

(i) the sale of the Sale Policy shall be free and clear of all liens, claims, encumbrances and other interests, other than Assumed Liabilities (as defined in Section 7 of the Purchase Agreement) (collectively, the "Liens"). The Liens shall mean, without limitation, any and all liens (statutory or otherwise), encumbrances, claims, rights, interests (including any interests of the investors in the Fund), charges, security interests, rights of first refusal, or options to purchase, including any of the foregoing which may arise under any order entered by the U.S. District Court in the Receivership Proceeding, together with any and all debts, losses, claims (including successor liability claims), damages, costs, expenses, demands, fines, judgments,

penalties, liabilities, commitments, sales commissions, contracts, responsibilities, and obligations of any kind or nature whatsoever, direct or indirect, absolute or contingent, other than the Assumed Liabilities, as defined in Section 7 of the Purchase Agreement;

(j) the Receiver shall deliver and Buyer shall receive the Policy Files, as defined in Section 2.2 of the Purchase Agreement, which delivery and receipt will be accomplished within fifteen (15) days after Closing, as defined in Section 5 of the Purchase Agreement;

(k) upon Closing, as defined in the Purchase Agreement, Buyer shall indemnify and hold Receiver harmless from any claims or demands resulting from or arising out of the Assumed Liabilities, as defined in Section 7 of the Purchase Agreement;

(l) the sale of the Sale Policy and the Purchase Agreement are not precluded by or contrary to any prior Order issued by the U.S. District Court, or any stay or any allegations challenging the bidding procedures and any modifications thereto, filed in the Receivership Proceeding and no further consents by any party are required to convey all of the Receiver's right, title and interest in the Sale Policy, the Medical Information Rights and the Policy Files to Buyer in accordance with the Purchase Agreement;

(m) the Buyer will wire transfer the sum of \$61,369.61 to the insurance company that issued the Sale Policy (the "Issuer") to pay the premium obligation due by March 14, 2011, and Buyer will promptly provide to the Receiver a copy of the bank confirmation showing such funds have been wired to the Issuer on or before March 14, 2011. Upon Closing, Buyer shall pay directly to the applicable issuing insurance companies all other premiums due under the Sale Policy, whether arising before or after the Closing Date as set forth in Section 9.9 of the Purchase Agreement (the "Additional Premiums"), and Buyer will accept the Sale Policy

in its "AS IS" condition and there shall be no right of rescission or other remedy, and the Purchase Price, as defined in the Purchase Agreement, shall be paid to the Receiver, free and clear of any claims of Buyer; and

(n) Given the Receiver's efforts in marketing the portfolio of policies, including the Sale Policy, the third-party offers the Receiver obtained from disinterested bidders in the marketplace, and the notices provided to all interested parties, neither an independent appraisal or publication is necessary under 28 U.S.C. §§ 2001 and 2004.

(o) The sale of the Sale Policy in accordance with the terms of the Purchase Agreement, attached as Exhibit "A" to the Sale Motion, is approved and the Receiver is directed to execute the Purchase Agreement and perform all obligations thereunder.

(p) The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

(q) The requirement that any motion or other request for relief be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Sale Motion, or otherwise waived.


(r) The ten-day stay of effectiveness of this Order pursuant to Fed. R. Civ. P. 62(a) is waived. Due to the fluctuations in value in the market and the cost of future premium payments due on the Sale Policy, the Receiver and Buyer need to consummate the sale as soon as possible.

(s) To the extent this Order is inconsistent with any prior order or pleading with respect to the Sale Motion in this case, the terms of this Order shall govern. In the event that this Order is inconsistent with the Purchase Agreement, however, the Purchase Agreement shall govern.

(i) The Court shall retain jurisdiction to resolve any disputes relating to the interpretation of the terms or conditions of this Order. Further, the Court shall retain jurisdiction to interpret, construe and enforce the Purchase Agreement attached as Exhibit "A" to the Sale Motion.

WHEREFORE, Receiver's Motion for Authorization to Sell Asset of the Receivership Estate is hereby granted.

DATED this 17th day of March, 2011.



RICHARD G. STEARNS,
UNITED STATES DISTRICT JUDGE

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