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7 **UNITED STATES DISTRICT COURT**  
8 **CENTRAL DISTRICT OF CALIFORNIA**  
9 **SOUTHERN DIVISION**  
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11 CONSUMER FINANCIAL  
12 PROTECTION BUREAU; MARIA T.  
13 VULLO, Superintendent of Financial  
Services of the State of New York,

14 Plaintiffs,

15 v.  
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17 PENSION FUNDING, LLC; PENSION  
18 INCOME, LLC; STEVEN COVEY;  
19 EDWIN LICHTIG; REX HOFELTER

20 Defendants.

Case No. 8:15-cv-01329-JLS-JCG

**ORDER GRANTING MOTION FOR  
APPROVAL OF SALE OF LOAN  
PARTICIPATION (Doc. 140)**

21 Before the Court is Receiver Krista L. Freitag's unopposed Motion for Approval of  
22 Sale of Loan Participation. (Mot., Doc. 140.) The Court finds this matter appropriate for  
23 decision without oral argument. *See* Fed. R. Civ. P. 78(b); C.D. Cal. R. 7-15. Accordingly,  
24 the hearing set for June 2, 2017, at 2:30 p.m. is VACATED. For the reasons stated below,  
25 the Court GRANTS the Receiver's Motion.

26 The Receiver seeks authorization to sell the receivership entities' participating  
27 interest in commercial real property, the collateral for which consists of three parcels of real  
28 property in Maryland. (Mem. at 1, Doc. 140.) Before the Receiver's appointment, the

1 receivership entities had invested \$1.6 million in the loan participation and received  
 2 \$214,864.52 in interest and \$400,000 in principal payments. (Freitag Decl. ¶ 4, Doc. 140-  
 3 1.) Since her appointment, the Receiver has collected an additional \$210,086.78 in interest  
 4 and \$100,000 in principal, leaving a principal balance of \$1.1 million. (*Id.* ¶ 4.) The loan  
 5 has since matured, but the borrower apparently is unable to satisfy the loan at this time and  
 6 the lead lender, Lynk Investments, LLC, has decided to allot the borrower more time to  
 7 repay the loan. (*Id.* ¶ 5.) As a participant, the Receiver has no control over the servicing or  
 8 enforcement of the loan and needs the permission of Lynk Investments to transfer the  
 9 receivership entities' interest. (*Id.* ¶¶ 3, 5.) So, the Receiver has asked Lynk Investments  
 10 whether it could acquire the Receiver's interest or find a suitable buyer. (*Id.* ¶ 6.) Lynk  
 11 Investments has found a buyer, Willow Investments, LLC, that is willing to purchase the  
 12 receivership entities' loan participation for \$800,000 after Lynk Investments pays down the  
 13 principal by an additional \$100,000, for a total recovery for the receivership entities of  
 14 \$900,000 on the \$1.1 million interest. (*Id.*) The Receiver has submitted a copy of the  
 15 Purchase and Sale Agreement, dated April 10, 2017 and signed by Willow Partners.  
 16 (Purchase and Sale Agreement, Exh. A, Doc. 140-1.)

17 “[A] district court’s power to supervise an equity receivership and to determine the  
 18 appropriate action to be taken in the administration of the receivership is extremely broad.”  
 19 *SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005) (alteration in original)  
 20 (citation and internal quotation marks omitted). “The power of sale necessarily follows the  
 21 power to take possession and control of and to preserve property . . . .” *SEC v. Am. Capital*  
 22 *Investments, Inc.*, 98 F.3d 1133, 1144 (9th Cir. 1996), *abrogated on other grounds by Steel*  
 23 *Co. v. Citizens for a Better Env’t*, 523 U.S. 83 (1998) (citation omitted). “Accordingly, the  
 24 Court has the inherent power to order a sale of receivership property and fashion any  
 25 distribution plan that is fair and equitable to the investors.” *SEC v. Schooler*, No. 3:12-CV-  
 26 2164-GPC-JMA, 2016 WL 3031824, at \*5 (S.D. Cal. May 25, 2016). Under 28 U.S.C. §  
 27 2004, a private sale of personal property requires three separate independent appraisals and  
 28 notice of the sale by publication, “unless the court orders otherwise.” 28 U.S.C. §§

2001(b), 2004. Thus, unlike a sale of real property, a district court retains discretion in private sales of personal property to waive the strict requirements of 28 U.S.C. § 2001(b). *United States v. Stonehill*, 83 F.3d 1156, 1160 (9th Cir. 1996); *Tanzer v. Huffines*, 412 F.2d 221, 223 (3d Cir. 1969). Here, Freitag contends that the requirements of section 2001(b) should be waived because the receivership entities have only a participatory interest and Lynk Investments must approve any transfer. (Freitag Decl. ¶ 8.) Considering the nature of this interest, the Court agrees that complying with section 2001(b) will produce little benefit and result in substantial costs to the receivership entities. The Court also finds the sale in the best interest of the receivership interests and accordingly GRANTS the Receiver's Motion.

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**IT IS HEREBY ORDERED THAT:**

1. The Receiver's Motion is GRANTED.
2. The Receiver's sale of the loan participation to Willow Partners, LLC is APPROVED.
3. The Receiver is authorized to complete the sale transaction immediately, including executing any and all documents as may be necessary and appropriate to do so. The requirements for a private sale under 28 U.S.C. § 2001(b) are waived.

DATED: May 31, 2017



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Hon. Josephine L. Staton  
United States District Judge