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15 **UNITED STATES DISTRICT COURT**
 16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 SECURITIES AND EXCHANGE
 18 COMMISSION,

19 Plaintiff,

20 v.

21 LOUIS V. SCHOOLER and FIRST
 22 FINANCIAL PLANNING
 23 CORPORATION d/b/a WESTERN
 24 FINANCIAL PLANNING
 25 CORPORATION,

26 Defendants.

Case No. 3:12-cv-02164-GPC-JMA

**EX PARTE APPLICATION FOR
 AUTHORITY TO (A) SELL OFFICE
 FURNITURE AND EQUIPMENT,
 AND (B) ESTABLISH A NEW WORK
 PLACE FOR REMAINING
 EMPLOYEES**

1 Thomas C. Hebrank ("Receiver"), Court-appointed receiver for First Financial
2 Planning Corporation d/b/a Western Financial Planning Corporation ("Western"),
3 and its subsidiaries and affiliates (collectively, "Receivership Entities"), submits this
4 Ex Parte Application for Authority to (A) Sell Office Furniture and Equipment, and
5 (B) Establish a New Work Place for Remaining Employees ("Application").

6 I. INTRODUCTION

7 Western owns the office furniture and equipment located at the premises it
8 leases at 5186 Carroll Canyon Road in San Diego ("Property"). The Property is
9 owned by LVS III, an entity controlled by Defendant Louis Schooler. LVS III listed
10 the Property for sale with a broker. The Receiver recently learned from the broker
11 that the Property is in escrow. The Receiver's counsel contacted counsel for
12 Defendants who confirmed the Property is in escrow and the sale is scheduled to
13 close in late August.

14 Most of the office furniture and equipment at the Property is not necessary for
15 Western's ongoing operations. Moving and storing the furniture and equipment
16 would involve considerable expense. Accordingly, the Receiver seeks permission to
17 sell the office furniture and equipment and to relocate Western's three remaining
18 employees to new offices, including leasing office space and taking such other
19 actions as are necessary and appropriate in setting up a suitable work place.
20 Furniture and equipment that can be efficiently moved and used in the new offices
21 will be retained. As always, the Receiver will make every effort to minimize
22 expenses and conserve receivership estate resources.

23 II. PROPOSED SALE PROCESS

24 The Receiver proposes to engage McCormack Auction Company, a very
25 experienced auctioneer located in San Diego, to conduct an onsite and online
26 auction of the office furniture and equipment. Having viewed the furniture and
27 equipment, McCormack estimates that the auction will generate about \$30,000 in
28 sale proceeds. McCormack will charge its standard commission for sales of this

1 nature, which is 10% of gross sale proceeds. McCormack also estimates expenses
2 of \$3,000 for marketing, set up, public preview, and removal. The sale process,
3 from the beginning of work to removal of all furniture and equipment, will take a
4 little over a month. Declaration of Thomas Hebrank filed herewith ("Hebrank
5 Declaration"), ¶ 2.

6 III. EX PARTE NOTICE

7 Prior to filing the Receiver circulated this application to counsel for
8 Defendants and counsel for the Securities and Exchange Commission. Counsel for
9 Defendants had not responded at the time of filing. Counsel for the Commission
10 advised that the Commission has no opposition.

11 IV. ARGUMENT

12 A. Broad Equitable Powers of the Court

13 "The power of a district court to impose a receivership or grant other forms of
14 ancillary relief does not in the first instance depend on a statutory grant of power
15 from the securities laws. Rather, the authority derives from the inherent power of a
16 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
17 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
18 and efficient administration of the estate by the district court for the benefit of
19 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). As the appointment
20 of a receiver is authorized by the broad equitable powers of the court, any
21 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,
22 953 F.2d 1560, 1569 (11th Cir. 1992).

23 District courts have the broad power of a court of equity to determine the
24 appropriate action in the administration and supervision of an equity receivership.
25 *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth
26 Circuit explained:

27 A district court's power to supervise an equity receivership
28 and to determine the appropriate action to be taken in the
administration of the receivership is extremely broad. The
district court has broad powers and wide discretion to

1 determine the appropriate relief in an equity receivership.
 2 The basis for this broad deference to the district court's
 3 supervisory role in equity receiverships arises out of the
 4 fact that most receiverships involve multiple parties and
 complex transactions. A district court's decision
 concerning the supervision of an equitable receivership is
 reviewed for abuse of discretion.

5 *Id.* (citations omitted); *see also Commodities Futures Trading Comm'n. v.*
 6 *Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad
 7 deference' to the court's supervisory role, and 'we generally uphold reasonable
 8 procedures instituted by the district court that serve th[e] purpose' of orderly and
 9 efficient administration of the receivership for the benefit of creditors.").
 10 Accordingly, the Court has broad equitable powers and discretion in the
 11 administration of the receivership estate and disposition of receivership assets.

12 **A. The Sale**

13 It is generally conceded that a court of equity having custody and control of
 14 property has power to order a sale of the same in its discretion. *See, e.g., S.E.C. v.*
 15 *Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (the District Court has broad powers
 16 and wide discretion to determine relief in an equity receivership). "The power of
 17 sale necessarily follows the power to take possession and control of and to preserve
 18 property." *See S.E.C. v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144 (9th Cir.
 19 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds) (*citing*
 20 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 482 (3d ed. 1992)
 21 (*citing First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887))). "When a court of equity
 22 orders property in its custody to be sold, the court itself as vendor confirms the title
 23 in the purchaser." 2 Ralph Ewing Clark, Treatise on Law & Practice of
 24 Receivers § 487.

25 "A court of equity, under proper circumstances, has the power to order a
 26 receiver to sell property free and clear of all encumbrances." *Miners' Bank of*
 27 *Wilkes Barre v. Acker*, 66 F.2d 850, 853 (2d Cir. 1933). *See also*, 2 Ralph Ewing
 28 Clark, Treatise on Law & Practice of Receivers § 500 (3rd ed. 1992). To that end, a

1 federal court is not limited or deprived of any of its equity powers by state statute.
2 *Beet Growers Sugar Co. v. Columbia Trust Co.*, 3 F.2d 755, 757 (9th Cir. 1925)
3 (state statute allowing time to redeem property after a foreclosure sale not applicable
4 in a receivership sale).

5 Generally, when a court appointed receiver is involved, the receiver, as agent
6 for the court, should conduct the sale of the receivership property. *Blakely Airport*
7 *Joint Venture II v. Federal Sav. and Loan Ins. Corp.*, 678 F. Supp. 154, 156
8 (N.D. Tex. 1988). The receiver's sale conveys "good" equitable title enforced by an
9 injunction against the owner and against parties to the suit. *See* 2 Ralph Ewing
10 Clark, Treatise on Law & Practice of Receivers §§ 342, 344, 482(a), 487, 489, 491
11 (3d ed. 1992). "In authorizing the sale of property by receivers, courts of equity are
12 vested with broad discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d
13 354, 357 (9th Cir. 1925).

14 Here, the Receiver seeks authority to sell office furniture and equipment
15 owned by Western and relocate Western's three remaining employees to a new
16 office. The vast majority of the office furniture and equipment is not necessary for
17 Western's continued operations. The expense of storing such furniture and
18 equipment is not warranted. Accordingly, the furniture and equipment should be
19 sold. The proposed auctioneer commission is reasonable and consistent with
20 standard rates in the auction industry. Hebrank Declaration, ¶ 3.

21 Furniture and equipment that can be used for Western's continued operations
22 and can be efficiently relocated will be retained. The Receiver should be authorized
23 to establish a new work place for the three remaining Western employees, including
24 leasing space, setting up internet and telephone lines, and taking such other actions
25 as are necessary and appropriate. As always, the Receiver will make every effort to
26 minimize expenses and conserve receivership estate resources.

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V. CAUSE FOR EX PARTE RELIEF

As noted above, the sale of the Property is scheduled to close in late August and the auction process, from start to finish, will take just over a month. Accordingly, it is imperative that work on the sale begin as soon as possible so there is sufficient time to generate interest in the furniture and equipment and the highest and best price is obtained.

VI. CONCLUSION

WHEREFORE, the Receiver requests an order authorizing him to (a) sell the office furniture and equipment owned by Western as described above, and (b) take all necessary and appropriate steps to establish a new work place for Western's remaining employees.

Dated: July 23, 2013

ALLEN MATKINS LECK GAMBLE
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By: /s/ Ted Fates
TED FATES
Attorneys for Receiver
THOMAS C. HEBRANK