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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **WESTERN DIVISION**

12 SECURITIES AND EXCHANGE
COMMISSION,

13 Plaintiff,

14 v.

15 WORLD CAPITAL MARKET INC.;
16 WCM777 INC.; WCM777 LTD. d/b/a
WCM777 ENTERPRISES, INC.; and
17 MING XU a/k/a PHIL MING XU,

18 Defendants,

19 KINGDOM CAPITAL MARKET, LLC;
MANNA HOLDING GROUP, LLC;
20 MANNA SOURCE INTERNATIONAL,
INC.; WCM RESOURCES, INC.;
21 AEON OPERATING, INC.; PMX
JEWELS, LTD.; TOPACIFIC INC.;
22 TO PACIFIC INC.; VINCENT J.
MESSINA; and INTERNATIONAL
23 MARKET VENTURES,

24 Relief Defendants.

Case No. CV-14-2334-JFW-MRW

NOTICE OF MOTION AND MOTION
FOR ORDER APPROVING: (1) SALE
OF LAKE ELSINORE PROPERTY;
(2) OVERBID PROCEDURES; AND
(3) REAL ESTATE BROKER'S
COMMISSION

Date: February 23, 2015
Time: 1:30 p.m.
Ctrm: 16
Judge: Hon. John F. Walter

25
26 **TO ALL INTERESTED PARTIES:**

27 **PLEASE TAKE NOTICE** that on February 23, 2015, at 1:30 p.m. in

28 Courtroom 16 of the above-entitled Court, located at 312 North Spring Street, Los

1 Angeles, California 90012, Krista L. Freitag (the "Receiver"), the Court-appointed
2 permanent receiver for Defendants World Capital Market Inc.; WCM777 Inc.;
3 WCM777 Ltd. d/b/a WCM777 Enterprises, Inc.; and Relief Defendants Kingdom
4 Capital Market, LLC; Manna Holding Group, LLC; Manna Source
5 International, Inc.; WCM Resources, Inc.; ToPacific Inc.; To Pacific Inc.; and their
6 subsidiaries and affiliates (collectively, "Receivership Entities"), will and hereby
7 does move the Court for an Order Approving: (1) Sale of Lake Elsinore Property;
8 (2) Overbid Procedures; and (3) Real Estate Broker's Commission (the "Motion").

9 This Motion is based on this Notice of Motion and Motion, the attached
10 Memorandum of Points and Authorities, the Declaration of Krista L. Freitag, the
11 documents and pleadings already on file in this action, and upon such further oral
12 and documentary evidence as may be presented at the time of the hearing.

13 **Procedural Requirements:** If you oppose this Motion, you are required to
14 file your written opposition with the Office of the Clerk, United States District
15 Court, 312 North Spring Street, Los Angeles, California 90012 and serve the same
16 on the undersigned not later than twenty-one (21) calendar days prior to the hearing.

17 IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION by the
18 above date, the Court may grant the requested relief without further notice. This
19 Motion is made following the conference of counsel pursuant to L.R. 7-3.

20
21 Dated: January 9, 2015

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
TED FATES
TIM C. HSU

22
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24 By: /s/ TIM C. HSU

TIM C. HSU
Attorneys for Court-appointed
Receiver KRISTA L. FREITAG

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Krista L. Freitag (the "Receiver"), the Court-appointed permanent receiver for Defendants World Capital Market Inc.; WCM777 Inc.; WCM777 Ltd. d/b/a WCM777 Enterprises, Inc.; and Relief Defendants Kingdom Capital Market, LLC; Manna Holding Group, LLC; Manna Source International, Inc.; WCM Resources, Inc.; ToPacific Inc.; To Pacific Inc.; and their subsidiaries and affiliates (collectively, "Receivership Entities"), was appointed by this Court with full powers of an equity receiver, and ordered, among other things, to take possession of and assume authority and control over the receivership estate, including that certain real property located at 16114 Grand Ave., Lake Elsinore, California (the "Lake Elsinore Property") – a single-family residence. (Declaration of Krista L. Freitag ("Freitag Decl."), ¶ 3.)

The Lake Elsinore Property was acquired by Relief Defendant Kingdom Capital Market, LLC ("KCM") on November 8, 2013 for \$550,000. (Freitag Decl., ¶ 4.) The property is approximately 0.85 acres and includes a residence with three bedrooms and two baths and a second building with two bedrooms and one bath. (*Id.*) Upon her appointment, the Receiver promptly assumed authority and control over the Lake Elsinore Property, at which time she discovered a non-paying occupant in the premises. (*Id.* at ¶ 5.) The Receiver instructed the occupant to vacate the property on several occasions, then commenced an unlawful detainer action, after which the occupant finally agreed to vacate. (*Id.*) Given that the ongoing maintenance of this residence entails significant carrying costs to the receivership estate, including costs for maintenance, security, insurance, property taxes, and other costs, the Receiver requested authorization from this Court to list the Lake Elsinore Property for sale. (*Id.* at ¶ 6.) On June 9, 2014, this Court granted the Receiver's request. Dkt. No. 86.

1 Since then, the Receiver engaged real estate broker J-Mar Realty ("Broker"),
2 who listed the Lake Elsinore Property on the Multiple Listing Service ("MLS") – the
3 customary platform for marketing and sale of residential property. (*Id.* at ¶ 7.)
4 After careful review of tentative offers submitted in response to the posting on MLS
5 and four open houses conducted at the Lake Elsinore Property, the Receiver
6 accepted an offer from Mr. Ka Sing Mok and Ms. Ling Chi Ngai ("Buyers") at
7 \$450,000, subject to overbid and Court approval. (*Id.*) In accepting the offer, the
8 Receiver carefully reviewed and considered an independent appraisal conducted in
9 connection with the proposed sale which values the property at \$400,000. (*Id.*) The
10 buyers are aware of the lower appraised value of the property. (*Id.*)

11 In accordance with the Receiver's acceptance, and subject to Court approval,
12 the Receiver and Buyers entered into a Residential Purchase Agreement and Joint
13 Escrow Instructions (the "Agreement"). (*Id.* at ¶ 8.) Among other things, the
14 Agreement specifies that the sale is subject to Court approval, is on an "AS
15 IS/WHERE IS" basis, and is subject to the overbid procedures described herein.
16 (*Id.*) The Agreement is attached as Exhibit A to the Freitag Decl. filed herewith.

17 In her reasonable business judgment, the Receiver believes the Agreement,
18 obtained through the commercially reasonable and customary method of listing on
19 the MLS with a licensed broker and after arm's length negotiations with Buyers, best
20 reflects the fair market value of the Lake Elsinore Property. (*Id.* at ¶ 9.) However,
21 to ensure the highest and best price is obtained, the sale to Buyers is subject to
22 overbid by potential purchasers that qualify themselves as bidders. The Receiver,
23 with the assistance of Broker, has continued to market the Lake Elsinore Property
24 with the goal of promoting active overbidding in accordance with the proposed
25 overbid procedures described herein. (*Id.*) Thus, in the event an overbid is
26 received, the Receiver requests that an auction be held at the hearing on the Motion
27 and that the sale to the highest and best bid be approved. To date, no potential
28

1 purchasers have indicated an intention to submit an overbid and all previous
2 tentative offers were not superior to this Buyers' offer. (*Id.*)

3 Accordingly, the Receiver respectfully requests that this Court grant this
4 Motion and approve: (1) the sale of the Lake Elsinore Property; (2) the proposed
5 overbid procedures; and (3) payment of Broker's commission.

6 **II. TERMS OF THE AGREEMENT**

7 A copy of the Agreement is attached as Exhibit A to the Freitag Declaration.
8 Its terms are summarized as follows:¹

9 **Court Approval.** All aspects of the Agreement and the sale are subject to
10 approval by the Court.

11 **Purchase Price.** \$450,000. The estimated net proceeds to the receivership
12 estate after payment of the proposed Broker's commission of 5% is
13 approximately \$419,500 (factoring in customary escrow, closing, and repair costs of
14 approximately \$8,000).

15 **Closing Date.** Escrow to close once Court approval is granted.

16 **Deposit.** Buyers have deposited \$5,000 into escrow, refundable only if the
17 Court does not approve the sale to Buyers, or approves the sale to another party.

18 **As Is/Where Is Purchase.** Buyers agree to purchase the Lake Elsinore
19 Property on an "AS IS/WHERE IS" basis.

20 **Overbid Procedures.** The sale is subject to the proposed overbid procedures
21 detailed herein. Pursuant to these procedures, if Buyers are not the highest qualified
22 bidders at the auction, their deposit will be returned to them.

23 **Broker's Commission.** By separate agreement, the Receiver has agreed,
24 subject to Court approval, to pay Broker a commission of 5% of the final purchase
25 price. Pursuant to that agreement, Broker will compensate cooperating and referring
26

27 _____
28 ¹ The terms of the Agreement are summarized herein for convenience only. In the
event of any conflict between the Agreement and the summary provided herein,
the Agreement governs and controls.

1 brokers, as applicable. Broker has invested substantial time into preparing the Lake
2 Elsinore Property for sale, locating potential purchasers, marketing the Lake
3 Elsinore Property to them, negotiating terms, and preparing sale documents and
4 working with the Buyers' lender to secure the necessary financing to close the sale.
5 Since the Agreement with Buyers was signed, Broker has provided other potential
6 purchasers with due diligence materials and notice of the opportunity to overbid in
7 an effort to promote active overbidding at the auction.

8 **III. PROPOSED OVERBID PROCEDURES**

9 The Receiver requests that the following overbid procedures be approved:

10 (a) **Qualified Bidders.** To be determined a qualified bidder, a prospective
11 purchaser must: (i) provide a fully executed purchase and sale agreement for
12 the Lake Elsinore Property in a form substantially similar to the Agreement,
13 (ii) provide evidence, in a form reasonably acceptable to the Receiver that the
14 Qualified Bidder has the ability to pay at least the minimum overbid amount
15 set forth below, (iii) provide an earnest money deposit by wire transfer or
16 cashier's check in the amount of \$5,000 payable to the Receiver, which
17 amount shall be non-refundable to the qualified bidder with the highest bid at
18 the auction if for any reason (a) the high bidder fails to close the sale or
19 (b) the high bidder fails to provide the balance of the purchase price to the
20 Receiver one day prior to the closing. Buyers are a Qualified Bidder. Each
21 Qualified Bidder must provide the above-described executed purchase and
22 sale agreement and earnest money deposit to the Receiver no later than 10
23 calendar days before the hearing. Qualified bidders shall appear at the
24 hearing/auction in person, or through a duly authorized representative. At that
25 hearing, the Court will conduct an auction of the Lake Elsinore Property
26 among any qualified bidders. The high bidder's deposit shall be applied to the
27 purchase price, if the sale is approved by the Court.

28

1 (b) **Due Diligence.** All prospective bidders shall have had the opportunity to
2 inspect the Lake Elsinore Property and any documentation relating thereto
3 prior to the auction.

4 (c) **Overbids.** The initial overbid shall be at least \$470,000. Subsequent
5 overbids shall be in increments of at least \$5,000. If no Qualified Bidder
6 submits a bid in the amount of the initial overbid or higher, the Agreement
7 will be submitted to the Court for approval in its current form.

8 (d) **No Contingencies.** The sale to any qualified bidder shall not be subject
9 to any contingencies, including without limitation, for financing, due
10 diligence or inspection.

11 These procedures were formulated by the Receiver with the goal of obtaining
12 the highest and best price for the Lake Elsinore Property, thus ensuring a maximum
13 return to the receivership estate.

14 **IV. NOTICE OF THE SALE**

15 Notice of this Motion will be provided to all parties to the case, as well as
16 Buyers and all known potential bidders. The Receiver is also posting a copy of this
17 Motion on the receivership website (www.worldcapitalmarketreceivership.com),
18 accompanied by the following notice of the proposed sale and the opportunity to
19 overbid at the hearing:

20 In the action pending in U.S. District Court for the Central
21 District of California, Southern Division, Case No. CV-
22 14-2334-JFW-MRW, *Securities and Exchange*
23 *Commission v. World Capital Market Inc, et al.*, notice is
24 hereby given that the court-appointed Receiver has
25 contracted to sell the real property located at 16114 Grand
26 Ave., Lake Elsinore, California, for the amount of
27 \$450,000. Sale subject to overbid and Court
28 confirmation. Hearing set for February 23, 2015 at 1:30
p.m., courtroom of the Honorable John F. Walter, United
States Courthouse, 312 North Spring Street, Los Angeles,
California. Minimum overbid is \$470,000. Overbids
must be received by 5:00 p.m. Pacific Standard Time, at

1 least 10 calendar days before the scheduled hearing, by
2 the Receiver at 355 S. Grand Ave., Suite 2450, Los
3 Angeles, California, 90071 in order to be considered. In
4 addition, to be considered a qualified bidder, a prospective
5 purchaser must abide by the overbid procedures as set
6 forth in the accompanying motion to the hearing, a copy
7 of which is available on this website. If interested in
8 submitting an overbid, please contact Geno Rodriguez at
(619) 567-7223 or at grodriguez@ethreadvisors.com for
the form of Purchase and Sale Agreement and other
information.

9 **V. ARGUMENT**

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

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

24 A district court's power to supervise an equity receivership
25 and to determine the appropriate action to be taken in the
26 administration of the receivership is extremely broad. The
27 district court has broad powers and wide discretion to
28 determine the appropriate relief in an equity receivership.
The basis for this broad deference to the district court's
supervisory role in equity receiverships arises out of the
fact that most receiverships involve multiple parties and
complex transactions. A district court's decision

1 concerning the supervision of an equitable receivership is
2 reviewed for abuse of discretion.

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

8 Accordingly, this Court has broad equitable powers and discretion in
9 formulating procedures, schedules and guidelines for administration of the
10 receivership estate and disposition of receivership assets.

11 **A. The Sale Subject to Overbid**

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

24 "A court of equity, under proper circumstances, has the power to order a
25 receiver to sell property free and clear of all encumbrances." *Miners' Bank of*
26 *Wilkes-Barre v. Acker*, 66 F.2d 850, 853 (2d Cir. 1933). *See also*, 2 Ralph Ewing
27 Clark, *Treatise on Law & Practice of Receivers* § 500. To that end, a federal court
28 is not limited or deprived of any of its equity powers by state statute. *Beet Growers*

1 *Sugar Co. v. Columbia Trust Co.*, 3 F.2d 755, 757 (9th Cir. 1925) (state statute
2 allowing time to redeem property after a foreclosure sale not applicable in a
3 receivership sale).

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

13 Here, the sale to Buyers, subject to the proposed overbid procedures, should
14 be approved. In particular, the proposed overbid procedures are designed to
15 (a) induce Buyers to remain in place as the initial, or "stalking horse" bidder,
16 (b) allow qualified bidders to overbid, and (c) generate the highest and best price for
17 the Lake Elsinore Property. The proposed initial overbid of \$470,000 is sufficient to
18 make the net proceeds to the estate (after payment of the Broker's commission,
19 escrow, closing and repair costs) approximately \$19,000 greater than under the
20 Agreement. The subsequent increments of \$5,000 in net proceeds to the
21 receivership estate are also sufficient to ensure an orderly and efficient auction at the
22 hearing. The Receiver submits that these amounts are reasonable and fair to all
23 interested parties.

24 In addition, the Receiver's Broker has marketed the Lake Elsinore Property
25 through four open houses and the posting on MLS in accordance with generally
26 accepted practices for sale of similarly situated single-family residences. Through
27 this process, the Receiver obtained Buyers' final offer and agreement to purchase
28 the Lake Elsinore Property at the price of \$450,000, which is \$50,000 above the

1 property's appraised value. The Receiver believes the proposed sale and overbid
2 procedures are reasonable and will generate the highest and best value for the Lake
3 Elsinore Property.

4 **B. Further Notices/Appraisals Should Be Waived**

5 28 U.S.C. § 2001 governing such sales of real property out of receivership
6 provides that notice shall be given "by publication or otherwise as the court directs
7" 28 U.S.C. § 2001(b). Thus, "[t]he statute on its face vests the court with
8 discretion in directing the terms and conditions of the public sale." *Keybank Nat'l*
9 *Ass'n v. Perkins Rowe Assocs., L.L.C.*, 2012 U.S. Dist. LEXIS 157828, *4 (M.D. La.
10 2012); *see also U.S. v. Little*, 2008 U.S. Dist. LEXIS 93467, *4-5 (E.D. Cal. 2008)
11 (finding that "[t]he Court has broad discretion in setting the terms and conditions of
12 a sale pursuant to 28 U.S.C. § 2001."); *U.S. v. Heasley*, 283 F.2d 422 (8th Cir. 1960)
13 (finding that in the context of 28 U.S.C. § 2001(b), "the matter of confirming a
14 judicial sale rests in the sound judicial discretion of the trial court ..."); *U.S. v.*
15 *Peters*, 777 F.2d 1294 (7th Cir. 1985) (noting that 28 U.S.C. § 2001(a) authorizes a
16 court to direct the terms and conditions of the sale).

17 Here, the notice of sale provided by mail and publication on the Receiver's
18 website is reasonable given the residential nature of the Lake Elsinore Property, the
19 posting of the Lake Elsinore Property on the MLS, and the open houses and other
20 customary marketing efforts conducted by Broker. The Receiver submits that
21 further mailing or publication of notice, or obtaining additional independent
22 appraisals imposes significant costs to the receivership estate with little or no
23 corresponding benefit. Accordingly, to the extent 28 U.S.C. §§ 2001, 2002 and
24 Local Rule 66-7 require further mailing or publication of notice, appraisals, or other
25 procedures, such provisions should be waived.

26 **C. Additional Relief**

27 Pursuant to its broad equitable powers with respect to the administration of
28 receivership assets, the Receiver requests that the Court authorize payment from the

1 proceeds of sale of the Lake Elsinore Property, the valid liens,² taxes, and any other
2 claims on the Lake Elsinore Property, subject to any objections to such liens, taxes,
3 or claims by the Receiver.

4 Finally, the Receiver requests authority to pay Broker a commission in the
5 amount of 5% of the final purchase price. Based on her extensive experience in real
6 estate transactions, the Receiver believes that such commission is commercially
7 reasonable and consistent with real estate industry standards.

8 **VI. CONCLUSION**

9 For the reasons set forth herein, the Receiver respectfully requests entry of an
10 Order approving and authorizing: (1) sale of the Lake Elsinore Property to Buyers or
11 the highest bidder; (2) the proposed overbid procedures; and (3) payment of the
12 proposed 5% commission to Broker from the sale proceeds.

13

14 Dated: January 9, 2015

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
TED FATES
TIM C. HSU

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By: /S/ TIM C. HSU

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TIM C. HSU
Attorneys for Court-appointed
Receiver KRISTA L. FREITAG

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28 ² The Receiver is not aware of any valid liens on the Property, which was
purchased by KCM with all cash.