

1 DAVID R. ZARO (BAR NO. 124334)  
2 TED FATES (BAR NO. 227809)  
3 TIM C. HSU (BAR NO. 279208)  
4 ALLEN MATKINS LECK GAMBLE  
5 MALLORY & NATSIS LLP  
6 515 South Figueroa Street, Ninth Floor  
7 Los Angeles, California 90071-3309  
8 Phone: (213) 622-5555  
9 Fax: (213) 620-8816  
10 E-Mail: dzaro@allenmatkins.com  
11 tfates@allenmatkins.com  
12 thsu@allenmatkins.com

13 Attorneys for Court-appointed Receiver  
14 KRISTA L. FREITAG

15 **UNITED STATES DISTRICT COURT**  
16 **CENTRAL DISTRICT OF CALIFORNIA**  
17 **WESTERN DIVISION**

18 SECURITIES AND EXCHANGE  
19 COMMISSION,

20 Plaintiff,

21 v.

22 WORLD CAPITAL MARKET INC.;  
23 WCM777 INC.; WCM777 LTD. d/b/a  
24 WCM777 ENTERPRISES, INC.; and  
25 MING XU a/k/a PHIL MING XU,

26 Defendants,

27 KINGDOM CAPITAL MARKET, LLC;  
28 MANNA HOLDING GROUP, LLC;  
29 MANNA SOURCE INTERNATIONAL,  
30 INC.; WCM RESOURCES, INC.;  
31 AEON OPERATING, INC.; PMX  
32 JEWELS, LTD.; TOPACIFIC INC.;  
33 TO PACIFIC INC.; VINCENT J.  
34 MESSINA; and INTERNATIONAL  
35 MARKET VENTURES,

36 Relief Defendants.

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

NOTICE OF MOTION AND MOTION  
FOR ORDER APPROVING: (1) SALE  
OF EL MONTE WAREHOUSE,  
(2) OVERBID PROCEDURES, AND  
(3) REAL ESTATE BROKER'S  
COMMISSION; MEMORANDUM OF  
POINTS AND AUTHORITIES

Date: April 25, 2016  
Time: 1:30 p.m.  
Ctrm: 16  
Judge: Hon. John F. Walter

37 **TO ALL INTERESTED PARTIES:**

38 **PLEASE TAKE NOTICE** that on April 25, 2016, at 1:30 p.m. in  
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 El Monte Warehouse,  
8 (2) Overbid Procedures, and (3) Real Estate Broker's Commission.

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: March 22, 2016

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

22

23

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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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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the TRO and Preliminary Injunction Order issued by the Court at  
4 the outset of the case, the Receiver took possession of and assumed authority and  
5 control over all assets of the Receivership Entities, including the industrial  
6 warehouse and related office space located at 3620 Cypress Avenue, El Monte  
7 California ("El Monte Warehouse"). The Receiver and her broker have diligently  
8 marketed the property for sale through commercially reasonable and customary  
9 channels. The Receiver has accepted an offer to purchase the El Monte Warehouse  
10 for \$1,582,460.00 on an "AS IS, WHERE IS" basis, subject to Court approval, and  
11 now seeks approval of the sale.

12 As explained herein, the proposed sale price is more than 150% of the price  
13 originally paid by the Receivership Entities and represents a significant cash  
14 recovery to the estate. The Receiver believes the proposed sale price is the best  
15 price attainable, absent an overbid, and respectfully requests the Court grant the  
16 Motion and approve: (1) the sale of the El Monte Warehouse; (2) the proposed  
17 overbid procedures outlined herein; and (3) payment of the commission to the real  
18 estate broker.

19 **II. RELEVANT FACTS**

20 **A. Background of El Monte Warehouse**

21 Relief Defendant Kingdom Capital Market, LLC purchased the El Monte  
22 Warehouse on or around January 28, 2014 for \$1,051,750. (*See* Declaration of  
23 Krista L. Freitag ("Freitag Decl.") ¶ 3.) The El Monte Warehouse is an industrial  
24 property and consists of an 11,020 square foot warehouse and related office space  
25 situated on a 20,909 square foot lot in El Monte, California. (*Id.*) Upon her  
26 appointment, after securing the El Monte Warehouse, the Receiver discovered the  
27 property was used by the Receivership Entities as an office and to store various  
28 personal property including certain office equipment, furniture, and other items.

1 (*Id.*) These personal property items have since been sold pursuant to the Court's  
2 order dated October 14, 2014. (*Id.*)

3 Although the El Monte Warehouse was purchased in January 2014 and was  
4 being used by the Receivership Entities as an office and warehouse, the Receiver  
5 discovered that a certificate of occupancy had not been secured for the property and  
6 significant repairs were required. (*Id.* at ¶ 4.) Thus, during the second quarter of  
7 2015, the Receiver coordinated with the City of El Monte to conduct an inspection  
8 of the property, and is in the process of securing a certificate of occupancy from the  
9 city prior to the close of escrow. (*Id.*)

10 Around the same time, the Receiver interviewed various commercial real  
11 estate brokers in anticipation of a sale of the property. (*Id.* at ¶ 5.) In particular, the  
12 Receiver interviewed three different brokers and ultimately selected DAUM  
13 Commercial Real Estate Services ("Broker") to act as her broker and market the El  
14 Monte Warehouse for sale. Broker has significant and highly specialized experience  
15 in sales of similarly industrial commercial properties, and its business focuses  
16 almost exclusively on such properties. (*Id.*) Broker agreed to a total commission of  
17 5% for the sale, and further offered to discount the rate to 4% if Broker also  
18 represents the buyer.<sup>1</sup> (*Id.*) Based on the Receiver's extensive experience in real  
19 estate transactions, the amount of the commission is commercially reasonable and  
20 consistent with the real estate industry standard for sales of similar commercial  
21 property. Therefore, the Receiver engaged Broker to assist with the sale of the El  
22 Monte Warehouse, with Broker's commission subject to Court approval. (*Id.*)

23 With the assistance of Broker, the Receiver identified and conducted  
24 necessary repairs for the El Monte Warehouse in 2015, including installing new roof  
25 materials to prevent leaks, repainting and resurfacing the building's exterior, interior  
26

27 \_\_\_\_\_  
28 <sup>1</sup> The current proposed buyer is represented by an independent broker and thus the  
5% commission would apply unless Broker is able to separately secure a  
qualified overbidder who is ultimately approved by this Court.

1 and parking lot, and making other general repairs that were required. (*Id.* at ¶ 6.)  
2 With these repairs, which totaled approximately \$53,000, the El Monte Warehouse's  
3 appearance and structural quality was significantly improved, making it much more  
4 attractive to prospective purchasers, which assisted in securing the proposed  
5 purchase price at significant net recovery to the estate. (*Id.*)

6 **B. The Receiver's Marketing Efforts**

7 The Receiver and her Broker have diligently marketed the El Monte  
8 Warehouse through commercially reasonable and customary channels and  
9 successfully generated a significant amount of interest in the property through their  
10 efforts. (*Id.* at ¶ 7.) Specifically, when Broker was engaged in May 2015, Broker  
11 prepared an opinion of value which estimated a range of value for the property  
12 between \$1,421,580 to \$1,531,780. (*Id.*) Broker then worked with the Receiver and  
13 her staff to set an initial asking price and placed the El Monte Warehouse on  
14 customary multiple listing services for commercial property, including the national  
15 listing service Costar. (*Id.*) In addition, Broker also created and published  
16 promotional materials for the El Monte Warehouse and marketed the property  
17 through placement on Broker's website. (*Id.*) Broker also emailed information for  
18 the property to targeted prospective purchasers and marketed the property by  
19 canvassing the neighborhood on foot. (*Id.*)

20 Through these efforts, information on the El Monte Warehouse was displayed  
21 in more than 14,000 search results, viewed 245 times from such results, and  
22 separately viewed more than 300 times through the multiple listing service. (*Id.* at  
23 ¶ 8.) Broker received interest from various prospective buyers, corresponded and  
24 followed up with these buyers, and conducted 20 tours of the property. (*Id.*) As a  
25 result of these efforts, the Receiver initially received two competing offers from  
26 separate buyers in October 2015. (*Id.*) These competing buyers were levered to bid  
27 against one another, which resulted in a highest and best offer from Srinivas  
28 Yalamanchili for \$1,557,460. (*Id.*) This offer was accepted by the Receiver and



1 escrow was opened, but Yalamanchili later cancelled the purchase prior to  
2 expiration of the escrow contingency period. (*Id.*)

3 While in escrow with Yalamanchili, the Receiver received a third offer from  
4 the current buyer, Abba Properties, A Partnership ("Buyer"), but that offer was  
5 initially rejected as it was lower than the price presented by Yalamanchili. (*Id.* at  
6 ¶ 9-10.) Buyer then increased its offer to \$1,582,460, which is the highest and best  
7 offer received for the property, and was accepted by the Receiver after the escrow  
8 with Yalamanchili was cancelled. (*Id.*) As noted above, Buyer is represented by an  
9 independent broker. (*Id.*)

10 Notably, Buyer's offer is approximately \$50,000 higher than the high end of  
11 the estimated value range from the Broker's Opinion of Value, and the proposed  
12 sale, if finalized, will result in a net recovery to the estate of approximately  
13 \$530,000 over and above the initial purchase price for the property (less applicable  
14 commission and closing costs). (*Id.* at ¶ 9.) Based on the Receiver's review of the  
15 El Monte Warehouse and her extensive experience in real estate transactions, the  
16 Receiver believes in her reasonable business judgment that the proposed sale of the  
17 El Monte Warehouse to Buyer, subject to overbid, is fair and reasonable, in the best  
18 interests of the receivership estate, and will generate the highest and best value for  
19 the property.

20 **III. PURCHASE AND SALE AGREEMENT**

21 A copy of the Purchase and Sale Agreement and Joint Escrow Instructions  
22 ("Purchase and Sale Agreement") for the sale to Buyer is attached as **Exhibit 3** to  
23 the Receiver's declaration filed concurrently herewith. Its terms are summarized as  
24 follows:<sup>2</sup>

25  
26

27 <sup>2</sup> The terms of the Purchase and Sale Agreement are summarized herein for  
28 convenience only. In the event of any conflict between the Purchase and Sale  
Agreement and the summary provided herein, the Purchase and Agreement  
governs and controls.

1           **Court Approval.** All aspects of the Purchase and Sale Agreement and the  
2 sale are subject to approval by the Court.

3           **Purchase Price.** \$1,582,460. Because the Buyer is independently  
4 represented, Broker's commission is 5% (or \$79,123), and the estimated net  
5 proceeds to the receivership estate after payment of the proposed Broker's  
6 commission is approximately \$79,123 (factoring in estimated escrow, closing, and  
7 other costs of approximately \$12,957). (*See* Freitag Decl. ¶ 10.)

8           **Closing Date.** Escrow to close within ten business days following Court  
9 approval.

10           **Deposit.** Buyer has deposited \$50,000 into escrow, refundable only if the  
11 Court does not approve the sale to Buyer, or approves the sale to another party, or if  
12 the Receiver defaults on the sale.

13           **As Is/Where Is Purchase.** Buyer agrees to purchase the property on an "AS-  
14 IS, WHERE-IS" basis.

15           **Overbid Procedures.** The sale is subject to the proposed overbid procedures  
16 detailed herein. Pursuant to these procedures, if Buyer is not the highest qualified  
17 bidder at the auction, its deposit will be returned.

18           **Broker's Commission.** By separate agreement, the Receiver has agreed,  
19 subject to Court approval, to pay Broker a commission of 5% of the final purchase  
20 price, discounted to 4% if Broker also represents the ultimate buyer. (*See* Freitag  
21 Decl. ¶ 5.) Pursuant to that agreement, Broker will compensate cooperating and  
22 referring brokers, and thus would split the commission as applicable. (*Id.*) Broker  
23 has invested substantial time into preparing the El Monte Warehouse for sale,  
24 including by preparing a Broker's Opinion of Value, assisting the Receiver in  
25 identifying necessary repairs, recommending a contractor to perform the work,  
26 locating potential purchasers, marketing the El Monte Warehouse to them,  
27 negotiating terms, and preparing sale documents. (*Id.* at ¶¶ 6-7.) In addition, and  
28 since the Purchase and Sale Agreement with Buyer was signed, Broker has

1 continued to assist the Receiver in marketing the property to other potential  
2 purchasers and providing notice of the opportunity to overbid in an effort to promote  
3 active overbidding at the auction. (*Id.* at ¶ 11.) Based on the Receiver's extensive  
4 experience in real estate transactions, the amount of the commission is commercially  
5 reasonable compensation for the work required in order to secure a serious buyer  
6 and prospective overbidders for the El Monte Warehouse. (*Id.* at ¶ 5.)

7 **IV. PROPOSED OVERBID PROCEDURES**

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

9 (a) **Qualified Bidders.** To be determined a qualified bidder, a prospective  
10 purchaser must: (i) provide a fully executed purchase and sale agreement for  
11 the El Monte Warehouse in a form substantially similar to the Purchase and  
12 Sale Agreement, (ii) provide evidence, in a form reasonably acceptable to the  
13 Receiver that the Qualified Bidder has the ability to pay at least the minimum  
14 initial overbid amount set forth below, and (iii) provide an earnest money  
15 deposit by wire transfer or cashier's check in the amount of \$100,000 payable  
16 to the Receiver, which amount shall be non-refundable to the qualified bidder  
17 with the highest and best bid at the auction if for any reason (a) the highest  
18 and best bidder fails to close the sale or (b) the highest and best bidder fails to  
19 provide the balance of the purchase price to the Receiver on or before four  
20 business days after this Court's approval of the auction. Buyer is a Qualified  
21 Bidder. Each Qualified Bidder must provide the above-described executed  
22 purchase and sale agreement and earnest money deposit to the Receiver no  
23 later than 5 business days before the hearing. Qualified bidders shall appear  
24 at the hearing/auction in person, or through a duly authorized representative.  
25 At that hearing, the Court will conduct an auction of the El Monte Warehouse  
26 among any qualified bidders. The highest and best bidder's deposit shall be  
27 applied to the 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 El Monte Warehouse and any documentation relating thereto prior  
3 to the auction.

4 (c) **Overbids.** The initial overbid shall be at least \$1,607,460,000.  
5 Subsequent overbids shall be in increments of at least \$25,000. If no  
6 Qualified Bidder submits a bid in the amount of the initial overbid or higher,  
7 the Purchase and Sale Agreement will be submitted to the Court for approval  
8 in its current form.

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

12 (e) **As Is/Where Is Purchase.** The sale to any qualified bidder shall be on an  
13 "AS-IS, WHERE-IS" basis as described in the Purchase and Sale Agreement.

14 These procedures were formulated by the Receiver with the goal of obtaining  
15 the highest and best price for the El Monte Warehouse, thus ensuring a maximum  
16 return to the receivership estate.

17 **V. NOTICE OF THE PROPOSED SALE**

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

23 In the action pending in U.S. District Court for the Central  
24 District of California, Southern Division, Case No. CV-  
25 14-2334-JFW-MRW, *Securities and Exchange*  
26 *Commission v. World Capital Market Inc, et al.*, notice is  
27 hereby given that the court-appointed Receiver has  
28 contracted to sell the real property located at 3620  
Cypress Avenue, El Monte California. Sale is subject to  
overbid and Court confirmation. Hearing set for April 18,  
2016 at 1:30 p.m., courtroom of the Honorable John F.

1 Walter, United States Courthouse, 312 North Spring  
2 Street, Los Angeles, California. Minimum overbid is  
3 \$1,607,460. Overbids must be received by 5:00 p.m.  
4 Pacific Standard Time, at least 5 business days before the  
5 scheduled hearing, by the Receiver at 355 S. Grand Ave.,  
6 Suite 2450, Los Angeles, California, 90071 in order to be  
7 considered. In addition, to be considered a qualified  
8 bidder, a prospective purchaser must abide by the overbid  
9 procedures as set forth in the sale motion, a copy of which  
is available on this website. If interested in submitting an  
overbid, please contact Geno Rodriguez at (619) 567-7223  
or at [grodriguez@ethreadvisors.com](mailto:grodriguez@ethreadvisors.com) for the form of  
Purchase and Sale Agreement and other information.

10 **VI. ARGUMENT**

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

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

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

1 fact that most receiverships involve multiple parties and  
2 complex transactions. A district court's decision  
concerning the supervision of an equitable receivership is  
3 reviewed for abuse of discretion.

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

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., *SEC v.*  
14 *Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (finding that the District Court has  
15 broad powers and wide discretion to determine relief in an equity receivership).  
16 "The power of sale necessarily follows the power to take possession and control of  
17 and to preserve property." See also *SEC v. American Capital Invest., Inc.*, 98 F.3d  
18 1133, 1144 (9th Cir. 1996), cert. denied 520 U.S. 1185 (decision abrogated on other  
19 grounds) (citing 2 Ralph Ewing Clark, *Treatise on Law & Practice of Receivers*  
20 § 482 (3d ed. 1992) (citing *First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887))).

21 "When a court of equity orders property in its custody to be sold, the court itself as  
22 vendor confirms the title in the purchaser." 2 Ralph Ewing Clark, *Treatise on Law*  
23 *and Practice of 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

1 is not limited or deprived of any of its equity powers by state statute. *Beet Growers*  
2 *Sugar Co. v. Columbia Trust Co.*, 3 F.2d 755, 757 (9th Cir. 1925) (state statute  
3 allowing time to redeem property after a foreclosure sale not applicable in a  
4 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 and Practice of Receivers* §§ 342, 344, 482(a), 487, 489,  
11 491. "In authorizing the sale of property by receivers, courts of equity are vested  
12 with broad discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d 354,  
13 357 (9th Cir. 1925).

14 Here, the proposed sale to Buyer for \$1,582,460, subject to the proposed  
15 overbid procedures, should be approved. In particular, the proposed overbid  
16 procedures are designed to (a) induce Buyer to remain in place as the initial, or  
17 "stalking horse" bidder, (b) allow qualified bidders to overbid, and (c) generate the  
18 highest and best price for the El Monte Warehouse. The proposed initial overbid of  
19 \$1,607,460 is sufficient to make the net proceeds to the estate (after payment of the  
20 Broker's commission, and estimated escrow, closing and repair costs) approximately  
21 \$25,000 greater than under the Purchase and Sale Agreement. The subsequent bid  
22 increments of \$25,000 are also sufficient to ensure an orderly and efficient auction  
23 at the hearing. The Receiver submits that these amounts are reasonable and fair to  
24 all interested parties.

25 In addition, the Receiver's Broker had prepared an opinion of value for the El  
26 Monte Warehouse, placed the property on customary multiple listing services for  
27 commercial property, conducted 20 tours, and generally marketed the property in  
28 accordance with generally accepted practices for sale of similarly situated

1 commercial properties. Through these efforts, the Receiver obtained Buyers' final  
2 offer and agreement to purchase the El Monte Warehouse at the price of \$1,582,460,  
3 which will generate an estimated net recovery to the estate of approximately  
4 \$530,000 over and above the price paid by KCM. Accordingly, the Receiver  
5 believes, in her reasonable business judgment, that the proposed sale to Buyer,  
6 subject to overbid, is fair and reasonable, in the best interests of the receivership  
7 estate, and will generate the highest and best value for the property.

8 The Receiver, with the assistance of Broker, is continuing to market the El  
9 Monte Warehouse with the goal of promoting active overbidding in accordance with  
10 the proposed overbid procedures described herein. If qualified overbids are  
11 received, the Receiver will provide prompt notice to this Court. As of the date of  
12 this filing, no other parties have expressed an interest in participating in the overbid  
13 process.

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

15 Sales of real property out of federal receivership are governed by 28 U.S.C.  
16 § 2001, which provides that notice shall be given "by publication or otherwise as the  
17 court directs . . ." 28 U.S.C. § 2001(b). Thus, "[t]he statute on its face vests the  
18 court with discretion in directing the terms and conditions of the public sale."  
19 *Keybank Nat'l Ass'n v. Perkins Rowe Assocs., L.L.C.*, 2012 U.S. Dist. LEXIS  
20 157828, \*4 (M.D. La. 2012); *see also U.S. v. Little*, 2008 U.S. Dist. LEXIS 93467,  
21 \*4-5 (E.D. Cal. 2008) (finding that "[t]he Court has broad discretion in setting the  
22 terms and conditions of a sale pursuant to 28 U.S.C. § 2001."); *U.S. v. Heasley*, 283  
23 F.2d 422 (8th Cir. 1960) (finding that in the context of 28 U.S.C. § 2001(b), "the  
24 matter of confirming a judicial sale rests in the sound judicial discretion of the trial  
25 court . . ."); *U.S. v. Peters*, 777 F.2d 1294 (7th Cir. 1985) (noting that 28 U.S.C.  
26 § 2001(a) authorizes a court to direct the terms and conditions of the sale).

27 Here, the proposed notices of sale provided by mail and publication on the  
28 Receiver's website are reasonable given the extensive marketing efforts undertaken



1 by the Receiver and her Broker, which efforts included extensive advertisement of  
2 the El Monte Warehouse in commercially reasonable and customary channels, and  
3 the Receiver and her Broker's continuing efforts to market and publicize the sale of  
4 the property and the opportunity to overbid. The Receiver submits that further  
5 mailing or publication of notice and obtaining independent appraisals would impose  
6 significant costs on the receivership estate with little or no corresponding benefit.  
7 Accordingly, to the extent 28 U.S.C. §§ 2001, 2002 and Local Rule 66-7 require  
8 further mailing or publication of notice, appraisals, or other procedures, such  
9 provisions should be waived.

10 **C. Additional Relief**

11 Pursuant to its broad equitable powers with respect to the administration of  
12 receivership assets, the Receiver requests that the Court authorize payment from the  
13 proceeds of sale of the El Monte Warehouse, the valid liens,<sup>3</sup> taxes, and any other  
14 claims on the property, subject to any objections to such liens, taxes, or claims by  
15 the Receiver. The Receiver also requests authority to pay Broker a commission in  
16 the amount of 5% of the final purchase price, or the discounted rate of 4% if the  
17 ultimate buyer is represented by Broker. Based on her extensive experience in real  
18 estate transactions, the Receiver believes that such commission is commercially  
19 reasonable and consistent with real estate industry standards, and therefore should  
20 be approved.

21 **VII. CONCLUSION**

22 For the reasons set forth herein, the Receiver respectfully requests entry of an  
23 Order approving and authorizing: (1) sale of the El Monte Warehouse to Buyer or  
24 the highest and best bidder; (2) the proposed overbid procedures; (3) payment of the  
25 proposed commission to Broker from the sale proceeds at 5%, discounted to 4% if  
26 the ultimate buyer is represented by Broker.

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28 <sup>3</sup> The Receiver is not aware of any valid monetary liens on the Property, which  
was purchased by KCM with all cash.

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Dated: March 22, 2016

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

By:           /s/ Tim C. Hsu            
TIM C. HSU  
Attorneys for Court-appointed  
Receiver  
KRISTA L. FREITAG