

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
6 865 South Figueroa Street, Suite 2800
7 Los Angeles, California 90017-2543
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;
MANNA SOURCE INTERNATIONAL,
INC.; WCM RESOURCES, INC.;
AEON OPERATING, INC.; PMX
JEWELS, LTD.; TOPACIFIC INC.;
TO PACIFIC INC.; VINCENT J.
MESSINA; and INTERNATIONAL
MARKET VENTURES,

Relief Defendants.

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

**NOTICE OF MOTION AND
MOTION FOR:**

**(1) APPROVAL OF SALE OF SANTA
BARBARA REAL PROPERTY AND
OVERBID PROCEDURES FOR
SALE;**

**(2) AUTHORITY TO PAY REAL
ESTATE BROKER'S COMMISSION;
AND**

**(3) AUTHORITY TO SELL
DIAMONDS; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: October 3, 2016
Time: 1:30 p.m.
Ctrm: 16
Judge: Hon. John F. Walter

1 **TO ALL INTERESTED PARTIES:**

2 **PLEASE TAKE NOTICE** that on October 3, 2016, at 1:30 p.m. in
3 Courtroom 16 of the above-entitled Court, located at 312 North Spring Street,
4 Los Angeles, California 90012, Krista L. Freitag, the Court-appointed permanent
5 receiver for Defendants World Capital Market Inc.; WCM777 Inc.; WCM777 Ltd.
6 d/b/a WCM777 Enterprises, Inc.; and Relief Defendants Kingdom Capital
7 Market, LLC; Manna Holding Group, LLC; Manna Source International, Inc.;
8 WCM Resources, Inc.; ToPacific Inc.; To Pacific Inc.; and their subsidiaries and
9 affiliates, will and hereby does move the Court for: (1) Approval of Sale of Santa
10 Barbara Real Property and Overbid Procedures for Sale; (2) Authority to Pay Real
11 Estate Broker's Commission; and (3) Authority to Sell Diamonds.

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

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

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

23

24 Dated: August 31, 2016

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

25

By: /s/ Edward Fates

26

EDWARD G. FATES
Attorneys for 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, Krista L. Freitag ("Receiver"), the Court-appointed permanent
5 receiver for Defendants World Capital Market Inc.; WCM777 Inc.; WCM777 Ltd.
6 d/b/a WCM777 Enterprises, Inc.; and Relief Defendants Kingdom Capital
7 Market, LLC; Manna Holding Group, LLC; Manna Source International, Inc.; WCM
8 Resources, Inc.; ToPacific Inc.; To Pacific Inc.; and their subsidiaries and affiliates
9 ("Receivership Entities"), took possession of and assumed authority and control over
10 all assets of the Receivership Entities, including the vacant land located in the City of
11 Cuyama in Santa Barbara County and more particularly described by its Assessors'
12 Parcel Numbers 147-090-024-00 and 147-100-028-00 ("Santa Barbara Property").
13 As previously reported, the Receiver also took possession of and assumed authority
14 and control over two (2) flawed diamonds that were previously cut from a 39.80-
15 carat rough diamond paid for by the Receivership Entities ("Diamex Diamonds").

16 Since taking possession of these assets, the Receiver has diligently marketed
17 the assets for sale through commercially reasonable and customary channels. For the
18 Santa Barbara Property, the Receiver has received and accepted an offer to purchase
19 the property for \$530,000 on an "AS IS, WHERE IS" basis, subject to Court
20 approval, and now seeks approval of the sale. As for the Diamex Diamonds, the
21 Receiver has spent considerable time and effort to polish and cut the stones and
22 market them for sale. Despite her efforts, however, and due to the flawed and low-
23 quality of the diamonds, the Receiver has obtained no substantial offers to purchase
24 the diamonds. That said, the Receiver has successfully negotiated a sale of the
25 Diamex Diamonds to Mr. Arun Jain, in exchange for payment of \$2,000, and now
26 seeks Court approval of the sale.

27 As explained herein, the proposed sale price for the Santa Barbara Property is
28 the highest offer received for the property and represents a significant cash recovery

1 for the estate. The proposed sale price for the Diamex Diamonds is also reasonable
2 given the flawed nature and condition of the diamonds and given that no other offers
3 have been received despite the Receiver's considerable efforts to market the
4 diamonds for sale. Thus, the Receiver believes the proposed sale prices for the Santa
5 Barbara Property and the Diamex Diamonds are the best prices attainable for these
6 assets, absent an overbid for the Santa Barbara Property, and respectfully requests
7 the Court grant the Motion.

8 **II. RELEVANT FACTS**

9 **A. The Santa Barbara Property**

10 Relief Defendant Kingdom Capital Market, LLC ("KCM") purchased the
11 Santa Barbara Property on or around January 16, 2014, for \$700,000. *See*
12 Declaration of Krista L. Freitag ("Freitag Decl.") ¶ 3. The Santa Barbara Property is
13 vacant land located in Santa Barbara County and is served by natural springs, well
14 water, and a private road. *Id.* As explained by the broker for KCM, the Santa
15 Barbara Property was intended by Defendant Ming Xu to be developed as the "New
16 Kingdom City" development. *Id.*

17 After securing the Santa Barbara Property, the Receiver promptly obtained
18 insurance for the property, and since that time, the Receiver has interviewed three (3)
19 separate brokers. Ultimately, the Receiver selected Century 21 Hometown Realty
20 ("Broker") to act as broker and market the Santa Barbara Property for sale. *Id.* at ¶ 4.
21 Although each of the brokers interviewed are highly qualified, Broker has significant
22 and highly localized experience for sales of similar properties involving vacant land,
23 and was agreeable to a higher initial listing price for the Santa Barbara Property. *Id.*
24 Broker also agreed to a total commission of 6% for the sale, 3% of which will be
25 paid to the buyer's broker. *Id.* Based on the Receiver's extensive experience in real
26 estate transactions, the amount of the commission is commercially reasonable and
27 consistent with the real estate industry standard for sales of similar commercial
28 property. *Id.* Typical commissions for vacant land are higher than for residential

1 properties and generally range from 6% to 10%. *Id.* Therefore, the Receiver
2 engaged Broker to assist with the sale of the Santa Barbara Property, subject to Court
3 approval. *Id.*

4 **B. The Receiver's Marketing Efforts For The Santa Barbara Property**

5 The Receiver and Broker have diligently marketed the Santa Barbara Property
6 through commercially reasonable and customary channels and successfully generated
7 interest in the property through their efforts. *Id.* at ¶ 5. Specifically, since Broker
8 was engaged in March 2015, it has aggressively marketed the Santa Barbara Property
9 through customary multiple listing services, including the Multiple Listing Service,
10 LoopNet, and LandWatch. *Id.* Broker also sent almost 600 separate mailings to
11 property owners within 10 miles of the Santa Barbara Property to provide marketing
12 materials. *Id.* Through these efforts, Broker received a wide range of inquiries from
13 prospective buyers, responded to each inquiry, and conducted a total of nine (9)
14 separate showings for the property. *Id.*

15 During this process, the Receiver and her staff were made aware of a possible
16 issue regarding competing water rights for the Santa Barbara Property. *Id.* at ¶ 6.
17 The Receiver learned that a downstream property owner claims rights to the water
18 that passes through the Santa Barbara Property. Specifically, a prior owner of the
19 Santa Barbara Property had set up a holding pond for water on the property, and the
20 downstream property owner raised concerns regarding the impact of the pond on the
21 amount of water drawn by the Santa Barbara Property. *Id.* The holding pond no
22 longer exists on the Santa Barbara Property, but this possible issue regarding
23 competing water rights was fully disclosed to all prospective purchasers during the
24 marketing process. *Id.*

25 From the Receiver and Broker's marketing efforts, a total of four (4) offers to
26 purchase the Santa Barbara Property were received. *Id.* at ¶ 7. These offers ranged
27 from \$250,000 for one of the two parcels making up the Santa Barbara Property, to
28 the highest offer of \$500,000 submitted by the proposed buyers, Jason C. Bosma,

1 Heather M. Bosma, Malcom Victor Ricci, and Kathleen Ann Ricci ("Buyer"), which
2 was later negotiated up to the proposed purchase price of \$530,000. *Id.* Notably, the
3 next highest offer received was \$450,000. *Id.* Although the price of the proposed
4 sale at \$530,000 is lower than the amount paid by KCM for the Santa Barbara
5 Property, the Receivership Entities appear to have overpaid for other properties and
6 assets, and the Receiver believes the proposed sale price is fair and reasonable in
7 light of the extensive marketing efforts conducted and the other offers received. *Id.*
8 Based on the Receiver's review of the Santa Barbara Property and her extensive
9 experience in real estate transactions, the Receiver believes, in her reasonable
10 business judgment, the proposed sale of the Santa Barbara Property to Buyer, subject
11 to overbid, is fair and reasonable, in the best interests of the receivership estate, and
12 will generate the highest and best value for the receivership estate. *Id.* at ¶ 8.

13 **C. The Diamex Diamonds And The Receiver's Efforts To Market The**
14 **Diamonds For Sale**

15 As previously reported in the Receiver's interim reports, World Capital
16 Market Inc. ("WCM") transferred \$1,100,000 to PMX Jewels, Ltd ("PMX Jewels")
17 and another \$200,000 to the personal account of Phillip Du Toit, the CEO of
18 PMX Jewels. *Id.* at ¶ 9. PMX Jewels purportedly used these funds to make three (3)
19 separate acquisitions of diamonds and to invest in mining operations in Sierra Leone.
20 *Id.* Through her investigation, the Receiver located the product of one of the
21 diamond acquisitions previously held by Diamex, Inc. in New York. *Id.* The
22 Diamex Diamonds consist of what was originally a 39.80-carat rough diamond that
23 was sawn into two (2) pieces by Diamex, weighing approximately 17.25 carats and
24 10.54 carats respectively.¹ *Id.*

25
26
27 ¹ A true and correct recent picture of the Diamex Diamonds is attached as Exhibit 3
28 to the Receiver's concurrently submitted declaration, which features the Diamex
Diamonds on the left of the picture as compared to a typical diamond on the right.
As can be seen from the picture, the Diamex Diamonds are flawed in that they do
not have the same color or level of clarity as the typical diamond.

1 Through the course of this litigation, on November 14, 2014, the Court
2 determined that PMX Jewels had no legitimate claim to the \$1.3 million it received
3 from WCM (directly and through Philip Du Toit). *See* Dkt. No. 251 (Minute Order
4 re: Relief Demands PMX Jewels, Ltd.'s Claim to Funds.). Following this
5 determination, the Receiver settled with Diamex regarding costs it had incurred for
6 its services and secured the delivery of the Diamex Diamonds to a diamond cutter in
7 Los Angeles, Precision Cut Diamond Cutting ("Los Angeles Diamond Cutter"). *See*
8 Freitag Decl. at ¶ 10. The Receiver's Los Angeles Diamond Cutter reviewed the
9 Diamex Diamonds and advised the Receiver that the diamonds are flawed and
10 further had to order special cutting wheels from Israel in order to complete the
11 cutting and polishing of the stones.² *Id.* Unfortunately, although the wheels were
12 obtained, the wheels were still not strong enough to complete cutting and polishing
13 of the Diamex Diamonds. *Id.*

14 During this process, the Receiver engaged a master gemologist appraiser, Gem
15 Appraisals Unlimited, LLC – Theresa L. Brossmer ("Master Appraiser"), who, along
16 with the Los Angeles Diamond Cutter, advised the Receiver that the estimated costs
17 to complete the cutting and polishing of the Diamex Diamonds would be
18 approximately \$10,000 - \$12,000 in labor and \$2,000 to purchase a set of stronger
19 wheels from Belgium. *Id.* at ¶ 11. However, the Master Appraiser, along with the
20 Los Angeles Diamond Cutter, did not believe, given the softening of the diamond
21 market and the lack of quality in the stones, that they would obtain \$12,000 on the
22 open market upon completion (assuming the stronger wheels were effective at
23 completing the cutting and polishing). *Id.* The Master Appraiser also advised the
24 Receiver, after conferring with two well-known auction houses, Heritage and
25 Bonham's, that the auction houses would not take the Diamex Diamonds on
26 consignment for auction, citing the following salability issues, (1) the original rough

27
28 ² It is important to note that Diamex in New York had also ordered special wheels
to attempt to finish the stones.

1 diamond crystal was sawn and pre-formed so a crystal or mineral collector would not
2 be interested, and (2) the diamonds are not finished so there would be no interest
3 from jewelry or diamond buyers (again it is not believed the finished stones would
4 fetch an amount greater than the estimated cost to complete the cutting and polishing
5 work). *Id.* A well-known rough stone dealer in Florida was also contacted, but also
6 expressed no interest in the stones. *Id.*

7 Given the above, the Receiver evaluated different options for disposition of the
8 Diamex Diamonds, including possibly donating them, but after further discussions
9 with the Master Appraiser and the Los Angeles Diamond Cutter, the Receiver was
10 able to secure an agreement to sell the Diamex Diamonds to Mr. Jain for \$2,000. *Id.*
11 at ¶ 12. Under the circumstances, the Receiver does not believe further efforts to
12 secure a buyer for the Diamex Diamonds will achieve a higher return for the
13 diamonds. Therefore, the Receiver believes, in her reasonable business judgment,
14 that the proposed sale of the Diamex Diamonds to Mr. Jain is fair and reasonable, in
15 the best interests of the receivership estate, and will generate the highest and best
16 value for the receivership estate. *Id.*

17 **III. PURCHASE AND SALE AGREEMENT FOR THE SANTA BARBARA**
18 **PROPERTY**

19 A copy of the Vacant Land Purchase Agreement and Joint Escrow Instructions
20 ("Purchase and Sale Agreement") for the sale of the Santa Barbara Property to Buyer
21 is attached as Exhibit 2 to the Receiver's declaration filed concurrently herewith. Its
22 terms are summarized as follows:³

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

25
26
27 ³ 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 **Purchase Price.** \$530,000. Broker's commission is 6% (or \$31,800), and the
2 estimated net proceeds to the receivership estate after payment of the proposed
3 Broker's commission is approximately \$493,205 (factoring in estimated escrow,
4 closing, and other costs). *See* Freitag Decl. ¶ 7.

5 **Closing Date.** Escrow to close within five (5) business days following Court
6 approval.

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

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

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

15 **Broker's Commission.** By separate agreement, the Receiver has agreed,
16 subject to Court approval, to pay Broker a commission of 6% of the final purchase
17 price. *See* Freitag Decl. ¶ 4. Pursuant to that agreement, Broker will compensate
18 cooperating and referring brokers, and thus would split the commission as Buyer is
19 separately represented. *Id.*

20 **IV. PROPOSED OVERBID PROCEDURES FOR THE SANTA BARBARA**
21 **PROPERTY**

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

23 (a) **Qualified Bidders.** To be determined a qualified bidder, a prospective
24 purchaser must: (i) provide a fully executed purchase and sale agreement for the
25 Santa Barbara Property in a form substantially similar to the Purchase and Sale
26 Agreement, (ii) provide evidence, in a form reasonably acceptable to the Receiver
27 that the Qualified Bidder has the ability to pay at least the minimum initial overbid
28 amount set forth below, and (iii) provide an earnest money deposit by wire transfer

1 or cashier's check in the amount of \$10,000 payable to the Receiver, which amount
2 shall be non-refundable to the qualified bidder with the highest and best bid at the
3 auction if for any reason (a) the highest and best bidder fails to close the sale or
4 (b) the highest and best bidder fails to provide the balance of the purchase price to
5 the Receiver on or before three (3) business days after this Court's approval of the
6 auction. Buyer is a Qualified Bidder. Each Qualified Bidder must provide the
7 above-described executed purchase and sale agreement and earnest money deposit to
8 the Receiver no later than five (5) business days before the hearing. Qualified
9 bidders shall appear at the hearing/auction in person, or through a duly authorized
10 representative. At that hearing, the Court will conduct an auction of the Santa
11 Barbara Property among any qualified bidders. The highest and best bidder's deposit
12 shall be applied to the purchase price, if the sale is approved by the Court.

13 (b) **Due Diligence.** All prospective bidders shall have had the opportunity to
14 inspect the Santa Barbara Property and any documentation relating thereto prior to
15 the auction.

16 (c) **Overbids.** The initial overbid shall be at least \$550,000. Subsequent
17 overbids shall be in increments of at least \$5,000. If no Qualified Bidder submits a
18 bid in the amount of the initial overbid or higher, the Purchase and Sale Agreement
19 will be submitted to the Court for approval in its current form.

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

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

25 These procedures were formulated by the Receiver with the goal of obtaining
26 the highest and best price for the Santa Barbara Property, thus ensuring a maximum
27 return to the receivership estate.
28

1 **V. NOTICE OF THE PROPOSED SALE FOR THE SANTA BARBARA**
2 **PROPERTY**

3 Notice of this Motion will be provided to all parties to the case, as well as
4 Buyer and all known potential bidders. The Receiver is also posting a copy of this
5 Motion on the receivership website (www.worldcapitalmarketreceivership.com),
6 accompanied by the following notice of the proposed sale and the opportunity to
7 overbid at the hearing:

8 In the action pending in U.S. District Court for the Central District of
9 California, Southern Division, Case No. CV-14-2334-JFW-MRW,
10 *Securities and Exchange Commission v. World Capital*
11 *Market Inc., et al.*, notice is hereby given that the court-appointed
12 Receiver has contracted to sell the vacant land located in the City of
13 Cuyama in Santa Barbara County and more particularly described by
14 its Assessors' Parcel Numbers 147-090-024-00 and 147-100-028-00.
15 Sale is subject to overbid and Court confirmation. Hearing is set for
16 October 3, 2016, at 1:30 p.m., in the courtroom of the Honorable
17 John F. Walter, United States Courthouse, 312 North Spring Street,
18 Los Angeles, California. Minimum overbid is \$550,000. Overbids
19 must be received by 5:00 p.m. Pacific Standard Time, at least
20 5 business days before the scheduled hearing, by the Receiver at
21 355 S. Grand Avenue, Suite 2450, Los Angeles, California, 90071 in
22 order to be considered. In addition, to be considered a qualified
23 bidder, a prospective purchaser must abide by the overbid procedures
24 as set forth in the sale motion, a copy of which is available on this
25 website. If interested in submitting an overbid, please contact Geno
26 Rodriguez at (619) 567-7223 or at grodriguez@ethreadvisors.com
27 for the form of Purchase and Sale Agreement and other information.

22 **VI. ARGUMENT**

23 "The power of a district court to impose a receivership or grant other forms of
24 ancillary relief does not in the first instance depend on a statutory grant of power
25 from the securities laws. Rather, the authority derives from the inherent power of a
26 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
27 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
28 and efficient administration of the estate by the district court for the benefit of

1 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment
2 of a receiver is authorized by the broad equitable powers of the court, any
3 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,
4 953 F.2d 1560, 1569 (11th Cir. 1992).

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

9 A district court's power to supervise an equity receivership
10 and to determine the appropriate action to be taken in the
11 administration of the receivership is extremely broad. The
12 district court has broad powers and wide discretion to
13 determine the appropriate relief in an equity receivership.
14 The basis for this broad deference to the district court's
15 supervisory role in equity receiverships arises out of the
16 fact that most receiverships involve multiple parties and
17 complex transactions. A district court's decision
18 concerning the supervision of an equitable receivership is
19 reviewed for abuse of discretion.

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

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

28 **A. The Sale Of The Santa Barbara Property Subject So Overbid**
Should Be Approved

It is generally conceded that a court of equity having custody and control of
property has power to order a sale of the same in its discretion. *See, e.g., SEC v.*
Elliott, 953 F.2d 1560, 1566 (11th Cir. 1992) (finding that the District Court has
broad powers and wide discretion to determine relief in an equity receivership).

1 "The power of sale necessarily follows the power to take possession and control of
2 and to preserve property." *See also SEC v. American Capital Invest., Inc.*, 98 F.3d
3 1133, 1144 (9th Cir. 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other
4 grounds) (*citing* 2 Ralph Ewing Clark, *Treatise on Law & Practice of Receivers*
5 § 482 (3d ed. 1992) (*citing First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887))).

6 "When a court of equity orders property in its custody to be sold, the court itself as
7 vendor confirms the title in the purchaser." 2 Ralph Ewing Clark, *Treatise on Law &*
8 *Practice of Receivers* § 487).

9 "A court of equity, under proper circumstances, has the power to order a
10 receiver to sell property free and clear of all encumbrances." *Miners' Bank of*
11 *Wilkes-Barre v. Acker*, 66 F.2d 850, 853 (2d Cir. 1933). *See also*, 2 Ralph Ewing
12 Clark, *Treatise on Law & Practice of Receivers* § 500. To that end, a federal court is
13 not limited or deprived of any of its equity powers by state statute. *Beet Growers*
14 *Sugar Co. v. Columbia Trust Co.*, 3 F.2d 755, 757 (9th Cir. 1925) (state statute
15 allowing time to redeem property after a foreclosure sale not applicable in a
16 receivership sale).

17 Generally, when a court-appointed receiver is involved, the receiver, as agent
18 for the court, should conduct the sale of the receivership property. *Blakely Airport*
19 *Joint Venture II v. Federal Sav. and Loan Ins. Corp.*, 678 F. Supp. 154, 156
20 (N.D. Tex. 1988). The receiver's sale conveys "good" equitable title enforced by an
21 injunction against the owner and against parties to the suit. *See* 2 Ralph Ewing
22 Clark, *Treatise on Law & Practice of Receivers* §§ 342, 344, 482(a), 487, 489, 491.
23 "In authorizing the sale of property by receivers, courts of equity are vested with
24 broad discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d 354, 357
25 (9th Cir. 1925).

26 Here, the proposed sale to Buyer for \$530,000, subject to the proposed overbid
27 procedures, should be approved. In particular, the proposed overbid procedures are
28 designed to (a) induce Buyer to remain in place as the initial, or "stalking horse"

1 bidder, (b) allow qualified bidders to overbid, and (c) generate the highest and best
2 price for the Santa Barbara Property. The proposed initial overbid of \$550,000 is
3 sufficient to make the net proceeds to the estate (after payment of the Broker's
4 commission, and estimated escrow and closing costs) approximately \$18,500 greater
5 than under the Purchase and Sale Agreement. The subsequent bid increments of
6 \$5,000 are also sufficient to ensure an orderly and efficient auction at the hearing.
7 The Receiver submits that these amounts are reasonable and fair to all interested
8 parties.

9 In addition, Broker has placed the Santa Barbara Property on customary
10 multiple listing services for such properties, sent almost 600 targeted mailings to
11 prospective purchasers, conducted nine (9) property showings, and generally
12 marketed the property in accordance with generally accepted practices for sale of
13 similarly situated properties. *See* Freitag Decl. at ¶¶ 5-7. Through these efforts, the
14 Receiver obtained Buyer's final offer and agreement to purchase the Santa Barbara
15 Property at the price of \$530,000, which will generate an estimated net recovery to
16 the estate of approximately \$493,205 after payment of the proposed Broker's
17 commission (factoring in estimated escrow, closing, and other costs). *Id.*
18 Accordingly, the Receiver believes, in her reasonable business judgment, that the
19 proposed sale to Buyer, subject to overbid, is fair and reasonable, in the best interests
20 of the receivership estate, and will generate the highest and best value for the
21 property. *Id.*

22 The Receiver, with the assistance of Broker, is continuing to market the Santa
23 Barbara Property with the goal of promoting active overbidding in accordance with
24 the proposed overbid procedures described herein. *Id.* at ¶ 13. If qualified overbids
25 are received, the Receiver will provide prompt notice to this Court. *Id.* As of the
26 date of this filing, no other parties have expressed an interest in participating in the
27 overbid process. *Id.*

28

1 **B. The Sale Of The Diamex Diamonds Should Also Be Approved**

2 As explained herein, the Receiver has diligently endeavored to market the
3 Diamex Diamonds for sale out of receivership. However, the Diamex Diamonds are
4 flawed and the costs required to complete cutting and polishing such that they can be
5 readily marketed to a broader audience may very likely exceed their ultimate market
6 value. *See* Freitag Decl. at ¶¶ 10-12. The Receiver, with assistance from her Master
7 Appraiser, has further attempted to secure a sale of the Diamex Diamonds through
8 alternative means, including by way of auction and sale to a rough stone dealer, but
9 such attempts have been unsuccessful for a number of reasons, primarily related to
10 the softening of the diamond market and the nature and characteristics of the Diamex
11 Diamonds. *Id.*

12 Accordingly, the Receiver does not believe that further efforts to complete the
13 cutting and polishing of the Diamex Diamonds will return more value to the estate
14 than the \$2,000 that the Los Angeles Diamond Cutter has agreed to pay, and thus
15 further expenditure of receivership resources to continue marketing the Diamex
16 Diamonds would not be prudent under the circumstances. The Receiver therefore
17 believes, in her reasonable business judgment, that the proposed sale of the Diamex
18 Diamonds to the Mr. Jain, is fair and reasonable, in the best interests of the
19 receivership estate, and will generate the highest and best value for the receivership
20 estate, and thus should be approved.

21 **C. Further Notices/Appraisals For The Santa Barbara Property And**
22 **The Diamex Diamonds Should Be Waived**

23 Sales for personal property out of receivership is governed under 28 U.S.C.
24 § 2004 which provides that such property "shall be sold in accordance with
25 section 2001." 28 U.S.C. § 2004. Section 2001, in turn, which governs sales of real
26 property out of federal receivership, provides that notice shall be given "by
27 publication or otherwise as the court directs . . ." 28 U.S.C. § 2001(b). Thus, "[t]he
28 statute on its face vests the court with discretion in directing the terms and conditions

1 of the public sale." *Keybank Nat'l Ass'n v. Perkins Rowe Assocs., L.L.C.*, 2012 U.S.
2 Dist. LEXIS 157828, *4 (M.D. La. 2012); *see also U.S. v. Little*, 2008 U.S. Dist.
3 LEXIS 93467, *4-5 (E.D. Cal. 2008) (finding that "[t]he Court has broad discretion
4 in setting the terms and conditions of a sale pursuant to 28 U.S.C. § 2001."); *U.S. v.*
5 *Heasley*, 283 F.2d 422 (8th Cir. 1960) (finding that in the context of 28 U.S.C.
6 § 2001(b), "the matter of confirming a judicial sale rests in the sound judicial
7 discretion of the trial court . . ."); *U.S. v. Peters*, 777 F.2d 1294 (7th Cir. 1985)
8 (noting that 28 U.S.C. § 2001(a) authorizes a court to direct the terms and conditions
9 of the sale).

10 Here, the proposed notices of sale of the Santa Barbara Property provided by
11 publication on the Receiver's website are reasonable given the extensive marketing
12 efforts undertaken by the Receiver and Broker, which efforts included extensive
13 advertisement of the Santa Barbara Property in commercially reasonable and
14 customary channels, and the Receiver and Broker's continuing efforts to market and
15 publicize the sale of the property and the opportunity to overbid. *See Freitag Decl.* at
16 ¶¶ 5-7, 12. The Receiver also believes that further mailing or publication of notice
17 and obtaining independent appraisals for the Santa Barbara Property pursuant to
18 28 U.S.C. § 2001(b) would impose significant costs on the receivership estate with
19 little or no corresponding benefit. *Id.* at ¶ 14. Likewise, the requirements for
20 appraisal and publication should be waived for sale of the Diamex Diamonds as the
21 statutory requirements impose considerable financial burden on the receivership
22 estate with no corresponding benefit given the limited value of the Diamex
23 Diamonds and in light of the lack of interest from any prospective purchasers despite
24 the Receiver's diligent marketing efforts. *Id.*

25 Accordingly, to the extent 28 U.S.C. §§ 2001, 2002, 2004 and Local Rule 66-7
26 require further mailing or publication of notice, appraisals, or other procedures, the
27 Receiver respectfully submits that such provisions should be waived.

28

1 **D. Additional Relief**

2 Pursuant to its broad equitable powers with respect to the administration of
3 receivership assets, the Receiver requests that the Court authorize payment from the
4 proceeds of sale of the Santa Barbara Property, the valid liens,⁴ taxes, and any other
5 claims on the property, subject to any objections to such liens, taxes, or claims by the
6 Receiver. The Receiver also requests authority to pay Broker a commission in the
7 amount of 6% of the final purchase price. Based on her extensive experience in real
8 estate transactions, the Receiver believes that such commission is commercially
9 reasonable and consistent with real estate industry standards, and therefore should be
10 approved.

11 **VII. CONCLUSION**

12 For the reasons set forth herein, the Receiver respectfully requests entry of an
13 Order approving and authorizing: (1) sale of the Santa Barbara Property to Buyer or
14 the highest and best bidder; (2) the proposed overbid procedures for the Santa
15 Barbara Property; (3) payment of the proposed 6% commission to Broker from the
16 sale proceeds; and (4) sale of the Diamex Diamonds to the Mr. Jain.

17
18 Dated: August 31, 2016

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

19
20 By: /s/ Edward Fates

EDWARD G. FATES
Attorneys for Receiver
KRISTA L. FREITAG

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28 ⁴ The Receiver is not aware of any valid monetary liens on the Santa Barbara
Property, which was purchased by KCM with all cash.