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12 KRISTA L. FREITAG

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 WESTERN DIVISION

16 SECURITIES AND EXCHANGE
COMMISSION,

17 Plaintiff,

18 v.

19 WORLD CAPITAL MARKET INC.;
WCM777 INC.; WCM777 LTD. d/b/a
20 WCM777 ENTERPRISES, INC.; and
MING XU a/k/a PHIL MING XU,

21 Defendants,

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

27 Relief Defendants.
28

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

**MOTION FOR APPROVAL OF SALE
OF PAYMENTS DUE UNDER
SETTLEMENT AGREEMENT WITH
ZAYDA ABERIN AND ZHB
INTERNATIONAL CORP.**

Date: July 24, 2017
Time: 1:30 p.m.
Ctrm: 7A
Judge: Hon. John F. Walter

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on July 24, 2017, at 1:30 p.m. in
3 Courtroom 7A of the above-entitled Court, located at 350 W. 1st Street, Los Angeles,
4 California 90012, Krista L. Freitag ("Receiver"), the Court-appointed receiver for
5 Defendants World Capital Market Inc., WCM777 Inc., and WCM777 Ltd. d/b/a
6 WCM777 Enterprises, Inc., and Relief Defendants Kingdom Capital Market, LLC;
7 Manna Holding Group, LLC; Manna Source International, Inc.;
8 WCM Resources, Inc.; To Pacific, Inc.; ToPacific; and their subsidiaries and
9 affiliates (collectively, "Receivership Entities"), will and hereby does move the Court
10 for an order approving the sale of payments due under the settlement agreement with
11 Zayda Aberin and ZHB International Corp. ("Motion").

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 Court,
18 350 W. 1st Street, Suite 4311, Los Angeles, California 90012-4565, and serve the
19 same on the undersigned not later than 21 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: June 22, 2017

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Edward Fates

EDWARD G. FATES
Attorneys for Receiver
KRISTA L. FREITAG

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. BACKGROUND FACTS**

3 Through her investigation, the Receiver discovered that during the three
4 months preceding the filing of this action, between January and March 2014,
5 ToPacific Inc. made payments to Governmental Impact, Inc. ("GII") in the
6 aggregate amount of \$750,000. This amount was paid to GII in connection with an
7 agreement dated January 30, 2014, for GII and its principal, James Dantona
8 ("Dantona"), to provide certain consulting and governmental advocacy services for
9 Defendant Phil Ming Xu. Of the \$750,000 in payments made to GII, at least
10 \$100,000 was subsequently paid to Zayda Aberin, an individual ("Aberin"), by way
11 of a check dated February 4, 2014, and another \$225,000 was subsequently paid to
12 ZHB International Corp. ("ZHB") by way of two checks dated February 4, 2014,
13 and March 3, 2014. Aberin and ZHB acknowledge they received these payments
14 totaling \$325,000. Freitag Decl., ¶ 2.

15 On August 19, 2014, the Receiver filed a Motion for Authority to Pursue
16 Claims Against GII, Dantona, Aberin, and ZHB ("Motion") to recover the full
17 \$750,000 transferred to GII initially and later disbursed to Dantona, Aberin and
18 ZHB, or for their benefit. On September 22, 2014, the District Court granted the
19 Receiver's Motion. Freitag Decl., ¶ 3.

20 On September 26, 2014, the Receiver initiated a disgorgement action by filing
21 a Complaint for Fraudulent Transfer, Unjust Enrichment, and Constructive Trust
22 against GII, Dantona, Aberin and ZHB in the District Court, entitled *Freitag v.*
23 *Governmental Impact, Inc., et al.*, Case No. 2:14-cv-07518-JFW-MRW
24 ("Disgorgement Action"), seeking disgorgement of the entire \$750,000. Freitag
25 Decl., ¶ 4.

26 On February 20, 2015, after Aberin and ZHB failed to respond or otherwise
27 appear in the Disgorgement Action, the Receiver requested entry of default against
28

1 Aberin and ZHB, which defaults were entered by the District Court on February 24,
2 2015. Freitag Decl., ¶ 5.

3 On May 13, 2015, upon the Receiver's request, the District Court entered
4 default judgment in the Disgorgement Action against Aberin and ZHB in the
5 amount of \$325,000 in favor of the Receiver ("Default Judgment") and issued that
6 certain Abstract of Judgment/Order dated May 14, 2015, for Case NO. 2:14-CV-
7 7518-JFW-MRW and recorded in the Official Records of Los Angeles County as
8 Document Id. No. 20150571029 on May 15, 2015 ("Abstract of Judgment").
9 Freitag Decl., ¶ 6.

10 On May 11, 2016, Aberin and ZHB filed a motion seeking to set aside the
11 Default Judgment ("Motion to Set Aside"). The Receiver filed her opposition to the
12 Motion to Set Aside on May 23, 2016, and Aberin and ZHB filed their reply to the
13 motion on May 30, 2016. On June 17, 2016, the District Court continued the
14 hearing on the Motion to Set Aside to August 8, 2016, and instructed the parties to
15 participate in a mediation, which they did on July 14, 2016. Freitag Decl., ¶ 7.

16 On the day the mediation was held, the Receiver, Aberin and ZHB reached an
17 agreement and executed that certain Settlement Agreement & Release ("Settlement
18 Agreement"), resolving all claims between them. The Settlement Agreement
19 provides that Aberin and ZHB, jointly, shall pay the Receiver the total sum of
20 \$72,500 ("Settlement Payment"). The Settlement Payment shall be made through
21 one initial payment of \$5,000 ("Initial Payment"), and 60 subsequent consecutive-
22 monthly payments ("Monthly Payments"). The amounts of each monthly payment,
23 which increase over time, are provided in the Settlement Agreement. The obligation
24 of Aberin and ZHB under the Settlement Agreement are secured by a Deed of Trust
25 and Assignment of Rents ("Deed of Trust") on the property located at and
26 commonly referred to as 5924 Normandy Drive, Calabasas, California ("Property").
27 Freitag Decl., ¶ 8.

28

1 The District Court approved the Settlement Agreement on August 18, 2016.
2 The Deed of Trust was recorded in the official property records for Los Angeles
3 County on the same date. Aberin and ZHB have timely made the Initial Payment
4 and all Monthly Payments due under the Settlement Agreement to date. The
5 remaining Monthly Payments due under the Settlement Agreement total \$60,750.
6 Freitag Decl., ¶ 9.

7 **II. PROPOSED SALE AND ASSIGNMENT**

8 The Receiver expects to be in a position to initiate the Court-approved final
9 distribution process and begin closure of the receivership estate in the fourth quarter
10 of 2017. Accordingly, the Receiver proposes to sell the remaining Monthly
11 Payments due under the Settlement Agreement such that the sale proceeds can be
12 distributed to investors with allowed claims and the collection of Monthly Payments
13 does not delay closure of the receivership. Freitag Decl., ¶ 10.

14 The Receiver talked to several known purchasers of notes/deeds of trust about
15 the possible sale and assignment of the Settlement Agreement and Deed of Trust.
16 Three prospective buyers expressed interest and two made acceptable initial offers.
17 The Receiver then instructed the two offerors to submit their best and final offers.
18 The highest offer was from Wolverine Endeavors VII, LLC ("Buyer") in the amount
19 of \$25,000. Subject to Court approval, Buyer and the Receiver have signed the
20 Assignment of Settlement Agreement & Release attached to the Freitag Declaration
21 as Exhibit A, and Buyer has transferred a \$2,500 deposit to the Receiver. The
22 remaining \$22,500 will be paid in cash within five business days of entry of an order
23 approving the Motion. As part of the proposed transaction, the Deed of Trust,
24 Default Judgment, and Abstract of Judgment will be assigned to Buyer. Freitag
25 Decl., ¶ 11.

26 **III. ARGUMENT**

27 "The power of a district court to impose a receivership or grant other forms of
28 ancillary relief does not in the first instance depend on a statutory grant of power

1 from the securities laws. Rather, the authority derives from the inherent power of a
2 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
3 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
4 and efficient administration of the estate by the district court for the benefit of
5 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment
6 of a receiver is authorized by the broad equitable powers of the court, any
7 distribution of assets must also be done equitably and fairly. See *SEC v. Elliot*,
8 953 F.2d 1560, 1569 (11th Cir. 1992).

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

13 A district court's power to supervise an equity receivership
14 and to determine the appropriate action to be taken in the
15 administration of the receivership is extremely broad. The
16 district court has broad powers and wide discretion to
17 determine the appropriate relief in an equity receivership.
18 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
concerning the supervision of an equitable receivership is
reviewed for abuse of discretion.

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

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

27
28

1 **A. The Proposed Sale**

2 It is generally conceded that a court of equity having custody and control of
3 property has power to order a sale of the same in its discretion. *See, e.g., Elliot,*
4 *supra*, 953 F. 2d at 1566 (finding that the District Court has broad powers and wide
5 discretion to determine relief in an equity receivership). "The power of sale
6 necessarily follows the power to take possession and control of and to preserve
7 property." *See also SEC v. American Capital Invest., Inc.*, 98 F. 3d 1133, 1144
8 (9th Cir. 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds)
9 (citing 2 Ralph Ewing Clark, *Treatise on Law & Practice of Receivers* § 482 (3d ed.
10 1992) (citing *First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887))). "When a court of
11 equity orders property in its custody to be sold, the court itself as vendor confirms
12 the title in the purchaser." 2 Ralph Ewing Clark, *Treatise on Law & Practice of*
13 *Receivers* § 487).

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

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

1 broad discretion as to price and terms." *Gockstetter v. Williams*, 9 F. 2d 354, 357
2 (9th Cir. 1925).

3 Here, the Receiver seeks approval of the proposed sale of the Monthly
4 Payments for the benefit of the receivership estate. The sale, which was reached as
5 a result of arm's length negotiations with known purchasers of notes/deeds of trust,
6 will allow the Receiver to complete the distribution process without delay and seek
7 an order discharging her and closing the receivership. Additionally, the proposed
8 sale provides an immediate cash recovery of \$25,000, which amount can be
9 promptly distributed, rather than waiting to collect the Monthly Payments over the
10 next four years as required under the terms of the Settlement Agreement.

11 Keeping the receivership open involves expenses that would consume a
12 significant portion, if not all, of the Monthly Payments if they were collected over
13 the next four years. It would also delay the distribution process and closure of the
14 receivership in order to provide only a very small additional recovery for investors,
15 if anything. Accordingly, the proposed sale is in the best interests of the
16 receivership estate and should be approved.

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

18 Sales of personal property out of receivership are governed by 28 U.S.C.
19 section 2004, which provides that such property "shall be sold in accordance with
20 section 2001, unless the court orders otherwise." 28 U.S.C. § 2004 (emphasis
21 added). Courts have recognized that Section 2004 gives the Court broad discretion
22 to fashion the manner in which sales of personal property are conducted. *United*
23 *States v. Stonehill*, 83 F.3d 1156, 1160 (9th Cir. 1996); *SEC v. Wilson*,
24 2013 WL 1283437, at *1 (E.D. Mich. Mar. 28, 2013).

25 Here, the Receiver submits that the requirements under 28 U.S.C.
26 section 2001(b) for three independent appraisals and separate publication of notices
27 imposes a considerable financial burden on the receivership estate with no
28 corresponding benefit. Freitag Decl., ¶ 12. Accordingly, to the extent 28 U.S.C.

1 sections 2001 and 2004 require publication of notice and independent appraisals,
2 such provisions should be waived as having no bearing on the value of the Monthly
3 Payments or benefit to the receivership estate under the circumstances.

4 **IV. CONCLUSION**

5 For the reasons set forth herein, the Receiver respectfully requests an order
6 approving the sale and assignment of the Settlement Agreement, including the Deed
7 of Trust, Default Judgment, Abstract of Judgment and all rights thereunder, to
8 Buyer.

9
10 Dated: June 22, 2017

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Edward Fates

EDWARD G. FATES
Attorneys for Receiver
KRISTA L. FREITAG

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