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

12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 v.

16 WORLD CAPITAL MARKET INC.;
WCM777 INC.; WCM777 LTD. d/b/a
17 WCM777 ENTERPRISES, INC.; and
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.
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Case No. CV-14-2334-JFW-MRW

EX PARTE APPLICATION FOR
ORDER AUTHORIZING SALE OF
ADDITIONAL PERSONAL
PROPERTY (MANA FASHION
GARMENTS)

Ctrm: 16
Judge: Hon. John F. Walter

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

2 **PLEASE TAKE NOTICE** that as soon as the matter may be heard in
3 Courtroom 16 of the above-entitled Court, located at 312 N. Spring Street, Los
4 Angeles, CA 90012, Krista 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 Market,
7 LLC; Manna Holding Group, LLC; Manna Source International, Inc.; WCM
8 Resources, Inc.; ToPacific Inc.; To Pacific Inc.; and their subsidiaries and affiliates
9 (collectively, "Receivership Entities"), will and hereby does apply, *ex parte*, for an
10 Order Authorizing the Sale of Additional Personal Property ("Application").

11 This Application is made pursuant to Local Rule 7-19, *et seq.*, on the grounds
12 that selling certain garments before the upcoming holiday-season will provide the
13 best opportunity to secure the highest and best recovery from them for the
14 receivership estate.

15 **PLEASE TAKE FURTHER NOTICE** that counsel for the parties to this
16 action were notified of this Application in accordance with Local Rule 7-19.1, as
17 provided in more detail in the concurrently filed Declaration of Tim C. Hsu. The
18 Securities and Exchange Commission has indicated that it does not oppose the
19 Application. As of the date of this filing, the Receiver's counsel has not received
20 any response from any of the noticed parties.

21 This Application will be and is based upon this Notice of Ex Parte
22 Application and Application, the attached Memorandum of Points and Authorities,
23 the Declaration of Tim C. Hsu and Krista L. Freitag, and all documents and

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1 pleadings already on file in this action, and upon such further oral and documentary
2 evidence as may be presented at the time of the hearing.

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4 Dated: November 5, 2014

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

7 By: /s/ Tim C. Hsu

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In early October 2014, the Receiver learned MaNa Fashion, Inc. ("MaNa Fashion"), an entity owned by Defendant Ming Xu's sister, Sue Wang, is storing a large amount of garments (jeans, shorts, pants, and leggings) that appear to be garments purchased from MaNa Fashion with the \$1 million payment made to MaNa Fashion by the Receivership Entities ("Garments"). As discussed in her Second Interim Report, the Receiver has been investigating the transfers to MaNa Fashion and other entities associated with Ms. Wang since very early in the receivership. *See* Dkt. No. 129, pp. 26-27. Ms. Wang, however, had produced only a small number of documents and had not responded to the Receiver's requests for additional information, including but not limited to comprehensive bank documentation and the whereabouts of the garments allegedly purchased by the Receivership Entities.

In September 2014, the Receiver learned Ms. Wang is Ming Xu's sister.¹ In early October 2014, in response to the Receiver's repeated demands for information, Ms. Wang engaged new counsel who contacted the Receiver's counsel and explained that Ms. Wang is storing the Garments and acknowledged the Garments belong to the Receivership Entities.

The Receiver met with Ms. Wang and her counsel on October 13, 2014 to view the Garments, which fill approximately two 10' x 20' storage sheds. The Garments are mostly not sorted, packaged or organized by size or style, meaning that the purchaser will have to spend significant time organizing them and will not know whether it has a complete run of sizes for a particular product until such work

¹ The Receiver had previously inquired with Ming Xu about the transfer to MaNa Fashion, at which time Ming Xu did not disclose Ms. Wang was his sister. (Declaration of Krista L. Freitag ("Freitag Decl."), ¶ 6.) Thus, the Receiver was not previously aware of the existence of such a relationship until subsequently disclosed by Ms. Wang through her counsel

1 has been done. This, coupled with the fact the Garments appear to have been
2 purchased by Ms. Wang no more recent than nine (9) months ago and as far back as
3 2011, 2012 and 2013, limits their value to potential buyers.

4 If any real value is to be obtained from the Garments, they need to be sold
5 promptly and in advance of the upcoming holiday season. Accordingly, the
6 Receiver seeks authority to take all steps necessary to sell the Garments and will use
7 her experience and business judgment to negotiate and obtain the highest and best
8 price for the Garments.

9 **II. BACKGROUND FACTS**

10 As previously reported in the Receiver's Second Interim Report, through the
11 ToPacific entities, approximately \$1,000,000 was transferred to MaNa Fashion,
12 purportedly to purchase various articles of apparel, including jeans, shorts, pants and
13 leggings.² (Declaration of Krista L. Freitag ("Freitag Decl."), ¶¶ 3-4.) During her
14 initial investigation into this transfer, the Receiver and her counsel attempted to
15 contact Ms. Wang and serve subpoenas upon her and her related companies,
16 including leaving multiple messages with purported employees and attempting
17 service of subpoenas over a number of days. (*Id.*) No response to the Receiver's
18 attempts to contact Ms. Wang and her companies were received until the Receiver
19 located information for Ms. Wang's accountant, Dong & Associates, CPA, and
20 served the accountant with a subpoena. (*Id.*) The accountant provided an e-mail
21 address for Ms. Wang, and the Receiver's counsel e-mailed Ms. Wang a copy of the
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23 ² Pursuant to the Receiver's investigation, MaNa Fashion is also related to JJ
24 Sparkles, Inc. and Yuanhao, Inc. who had also received transfers of \$500,000
25 each from the Receivership Entities. (Freitag Decl., ¶ 5.) These entities are
26 interrelated as their public registrations with the California Secretary of State
27 show that Ms. Wang (who is also named as a salesperson for MaNa Fashion) is
28 the named agent for service of process for both MaNa Fashion and JJ Sparkles,
and Yuanhao's registered business address matches that of JJ Sparkles. (*Id.*) The
Receiver has also since learned Ms. Wang is the sister of the principal defendant
in this action, Ming Xu. (*Id.*) This information has been confirmed by counsel
for Ms. Wang and Ming Xu. (*Id.*) The Receiver is continuing her investigation
into the remaining funds disbursed to the other entities and will pursue these
matters as appropriate. (*Id.*)

1 subpoena and a demand for information. (*Id.*) Ms. Wang finally acknowledged the
2 Receiver's attempts to contact her on May 23, 2014 and thereafter engaged counsel
3 to respond to the subpoenas. (*Id.*) After further delays and demands for additional
4 time, Ms. Wang produced limited documents on July 18, 2014. (*Id.*)

5 Based on the documents produced and subsequent discussions with Ms. Wang
6 and her new counsel, the Receiver has confirmed that the \$1,000,000 was paid in
7 exchange for the Garments. (Freitag Decl., ¶ 7.) The Garments are currently stored
8 in a secure and independent storage facility accessible by Ms. Wang, who has
9 agreed the Receiver may sell and remove the Garments. (*Id.*)

10 The Receiver visited the storage facility to evaluate the marketability and
11 current condition of the Garments. (Freitag Decl., ¶ 8.) This visit revealed that the
12 Garments are mostly stored in disorganized fashion, with much of the articles of
13 apparel stuffed in large plastic bags and boxes with limited recognizable form of
14 organization either by style, size or other methods generally acceptable in the
15 industry. (*Id.*) As a whole, the Garments consist of approximately 100,000
16 individual, non-branded articles of apparel of mixed sizes and styles, most of which
17 appear to have been designed (and purchased by Ms. Wang) for previous seasons.
18 (*Id.*) Based on the Receiver's knowledge and experience in the garment industry,
19 such non-branded apparel with inconsistent sizes and styles have limited value and
20 are more readily suitable to bulk-sales to apparel wholesalers at discounted rates.
21 (*Id.*) Based on her experience, Receiver believes a sale of the Garments, if
22 attainable, may yield between \$100,000 and \$250,000 through a bulk sale. (*Id.*)

23 Prior to the filing of this Application, the Receiver considered a possible sale
24 of the Garments to a potential buyer based in Puerto Rico who was introduced to the
25 Receiver by Ms. Wang. (Freitag Decl., ¶ 9.) The Receiver and her staff contacted
26 this buyer to negotiate terms, but ultimately, this buyer was unable to present a
27 viable offer. (*Id.*) At this time, given the impending holiday-season, the Receiver
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1 believes a prompt sale of the Garments, if attainable, will maximize the recovery for
2 the receivership estate. (*Id.*)

3 **III. ARGUMENT**

4 **A. District Courts Have Broad Equitable Powers to Administer**
5 **Receiverships.**

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

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

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

26 *Id.* (citations omitted); see also *Commodities Futures Trading Comm'n. v. Topworth*
27 *Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad deference'
28 to the court's supervisory role, and 'we generally uphold reasonable procedures

1 instituted by the district court that serve th[e] purpose' of orderly and efficient
2 administration of the receivership for the benefit of creditors.").

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

6 **B. The Proposed Sale Should Be Authorized.**

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

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

27 Generally, when a court-appointed receiver is involved, the receiver, as agent
28 for the court, should conduct the sale of the receivership property. *Blakely Airport*

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

8 Here, the Receiver seeks authority to sell the Garments for the benefit of the
9 receivership estate. The Garments are not necessary to any ongoing operations of
10 the receivership estate. The Garments are fashion items that lose value rapidly over
11 time, some of which are already several years old.

12 Based on her experience in the garment industry, the Receiver believes a sale
13 to an apparel wholesaler presents the best opportunity to obtain the highest and best
14 value for the Garments. Moreover, given the impending holiday-season, a prompt
15 sale will enhance the per unit price that can be obtained for the Garments.
16 Accordingly, in her reasoned business judgment, the Receiver recommends and
17 requests authority to take all necessary steps to effectuate a prompt sale of the
18 Garments.

19 The Receiver has many years of experience in handling auctions of personal
20 property, has direct experience running a design and wholesale footwear and
21 accessories company, and will utilize that expertise and experience to market the
22 Garments and negotiate with potential buyers for the highest per unit price. The
23 Receiver believes the sale may yield a total recovery between \$100,000 and
24 \$250,000.

25 **C. Further Notices/Appraisals Should Be Waived**

26 Sales for personal property out of receivership are governed by 28 U.S.C.
27 § 2004 which provides that such property "shall be sold in accordance with section
28 2001." 28 U.S.C. § 2004. 28 U.S.C. § 2001 provides that notice shall be given "by

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

12 Here, the Receiver submits that the requirements under 28 U.S.C. § 2001(b)
13 for three independent appraisals and separate publication of notice would impose a
14 considerable financial burden on the receivership estate with no corresponding
15 benefit given the limited value of the Garments. (Freitag Decl., ¶ 10.) The Receiver
16 will utilize her considerable experience in negotiating sales of personal property out
17 of receiverships to obtain the highest and best value for the Garments. (*Id.*)
18 Accordingly, to the extent 28 U.S.C. §§ 2001, 2004 and Local Rule 66-7 require
19 further mailing or publication of notice, appraisals, or other procedures, such
20 provisions should be waived.

21 **D. The Need for Immediate Relief.**

22 As explained herein, a prompt sale of the Garments before the holiday season
23 presents the best opportunity to maximize their value for the receivership estate as
24 retailers are gearing up for the biggest sales season of the year. (Freitag Decl., ¶ 9.)
25 In addition, the Garments are fashion items that lose value rapidly if not sold.
26 Immediate relief is thus necessary to allow the Receiver to take advantage of the
27 short window to sell the Garments before the holiday season.

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