

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

ARTHUR NADEL,  
SCOOP CAPITAL, LLC,  
SCOOP MANAGEMENT, INC.,

Defendants.

CASE NO.: 8:09-cv-0087-T-26TBM

SCOOP REAL ESTATE, L.P.,  
VALHALLA INVESTMENT PARTNERS, L.P.,  
VALHALLA MANAGEMENT, INC.,  
VICTORY IRA FUND, LTD,  
VICTORY FUND, LTD,  
VIKING IRA FUND, LLC,  
VIKING FUND, LLC, AND  
VIKING MANAGEMENT, LLC.

Relief Defendants.

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**RECEIVER'S UNOPPOSED MOTION TO APPROVE  
SALE OF THE ASSETS OF RESPIRO, INC.**

Pursuant to 28 U.S.C. §§ 754, 2001, and 2004; Fed. R. Civ. P. 66; and Rule 3.01 of the Local Rules of the Middle District of Florida, Burton W. Wiand, as Receiver (the “Receiver”), respectfully moves the Court for an order, in substantially the form attached as **Exhibit 1**, (i) authorizing him to sell the assets of Receivership Entity Respiro, Inc. (the

“**Assets**”) pursuant to the Purchase Agreement attached as **Exhibit 2**, and (ii) relieving him from the requirements of 28 U.S.C. §§ 2001 and 2004.

### **BACKGROUND**

On January 21, 2009, the Securities and Exchange Commission (“**Commission**”) initiated this action to prevent the defendants from further defrauding investors of hedge funds operated by them. That same day, the Court entered an order appointing Burton W. Wiand as Receiver for Defendants Scoop Capital, LLC and Scoop Management, Inc. and Relief Defendants Scoop Real Estate, L.P.; Valhalla Investment Partners, L.P.; Valhalla Management, Inc.; Victory Fund, Ltd.; Victory IRA Fund, Ltd.; Viking IRA Fund, LLC; Viking Fund, LLC; and Viking Management, LLC (the “**Order Appointing Receiver**”) (Doc. 8). The Court subsequently granted several motions to expand the scope of the Receivership to include other entities owned or controlled by Arthur Nadel (“**Nadel**”). (*See generally* Docs. 17, 44, 68, 81, 153, 172, 454, 911, 916, 1024.) All of the entities in receivership are hereinafter collectively referred to as the “**Receivership Entities.**” Pursuant to the Order Appointing Receiver, the Receiver was directed to, *inter alia*, administer and manage the business affairs, funds, assets, choses in action, and any other property of the Receivership Entities.

### **VALUE OF THE ASSETS AND THE RECEIVER’S MARKETING EFFORTS**

#### **Respiro, Inc., Background**

Respiro is a Sarasota, Florida, company focused on providing home respiratory services and medical equipment to patients. The company’s core business model involves the purchase of specialized medical equipment directly from the manufacturers, for which it

receives Medicare reimbursement meant to cover both the equipment price and the price of providing services to individual patients using that equipment. The company's success depends on the continuation of this favorable reimbursement agreement with Medicare, as well as cultivating and maintaining relationships with health service professionals who prescribe certain products and services offered by Respiro to their patients.

The Receiver's investigation revealed that Respiro was largely funded with proceeds paid to Christopher Moody ("**C. Moody**") from Arthur Nadel's Ponzi scheme. Specifically, Respiro received more than \$500,000 in transfers from C. Moody and his wife, Tamara Moody ("**T. Moody**"), and T. Moody held 60% of the company's shares. On September 21, 2012, the Court entered an Order granting the Receiver's Motion to Expand the Scope of Receivership to Include Respiro, Inc., and ordered the delivery, assignment, and transfer of all share certificates by all Respiro shareholders to the Receiver (Doc. 916).

After assuming control of Respiro, the Receiver began investigating the value and status of Respiro. The Receiver's investigation revealed significant concerns about the ability of Respiro to continue as a going concern. Specifically, the Receiver learned that, prior to the inclusion of Respiro in the Receivership estate, the company had been denied a bid to continue receiving reimbursement from Medicare for the purchase of various medical equipment. This inability to continue receiving Medicare reimbursement had a significant negative impact on Respiro's business. Additionally, Respiro has since seen an unfavorable shift in industry conditions, including a measurable decline in the number of patient referrals it has received from health service professionals. Finally, the company continues to suffer the loss of key personnel required to conduct day-to-day operations.

**Value of Respiro's Assets and the Receiver's Marketing Efforts**

As detailed in the List of Assets included in the Agreement, Respiro's current assets consist of various medical equipment, several automobiles, patient files, and office equipment. To determine the market price of the automobiles, the Receiver obtained quotes from Edmonds.com and Kelly Blue Book – two internet websites routinely used as a benchmark in the valuation of automobiles. Edmonds.com estimated the total value of the automobiles as between \$19,884 and \$26,727, while Kelly Blue Book valued the automobiles at between \$23,741 and \$30,141. The office equipment is outdated, and likely has little saleable value. Finally, the equipment on hand is primarily refurbished, and the Receiver does not believe that any private sale would result in any meaningful proceeds.

Having obtained no material interest from any prospective purchasers, and in light of the precarious state of Respiro's business operations, the Receiver enlisted the services of a business broker to locate a purchaser for some or all of Respiro's assets. The only offer received did not survive the due diligence process. The Receiver then resurrected earlier discussions with Matrix Medical, LLC ("**Buyer**") to sell the Assets for \$65,000 subject to a possible decrease discussed below (the "**Agreement**"), contingent upon this Court's approval. As previously noted, a true and correct copy of the Agreement is attached hereto as **Exhibit 2**. The Agreement contemplates the purchase of Respiro's assets, patient files, and on-hand equipment, and also provides that the purchase price may be decreased by \$250 for each deficient and/or missing patient file. Buyer has conducted a partial review of Respiro's files and has proposed to deduct (i) \$6,750 based on both missing and deficient files, and (ii) \$12,500 for amounts billed by Buyer since assuming responsibility for

servicing Respiro's customers but which have been paid to Respiro. This would result in a net purchase price of approximately \$45,750. The Receiver believes this proposal is fair, and that approval of the Agreement is in the best interests of the Receivership Estate as it represents the current value of the Assets – especially in light of the Receiver's significant doubts as to Respiro's ability to continue to operate as a going concern. This includes (i) Respiro's continuing obligation to provide services for its customers, and (ii) the threat of the continued loss of essential personnel. The Agreement contains a proposed closing date of October 20, 2013, and the Receiver believes that approval of the Agreement in a timely fashion is warranted. In light of the foregoing, the Receiver respectfully requests that this Court enter an order approving the sale of the Assets, and requests that the Court waive, or find that the Receiver has substantially complied with, the procedures in 28 U.S.C. § 2001(b) applicable to the private sale of property by a receiver.

#### **MEMORANDUM OF LAW**

#### **I. THE COURT HAS BROAD POWERS OVER THIS RECEIVERSHIP'S ADMINISTRATION AND THE SALE OF THE ASSETS IS IN THE RECEIVERSHIP ESTATE'S BEST INTEREST**

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *S.E.C. v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *S.E.C. v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). The relief sought by the Receiver falls squarely within those powers. The Receiver believes that the proposed sale of the Assets, which will result in the

net recovery of \$45,750.00 (i.e., \$65,000 minus \$6,750 as a result of deficient files and \$12,500 for recent bills paid to Respiro even though services were provided by Buyer) and the satisfaction of any current obligations to patients, is in the best interests of and represents the best possible realistic recovery for the Receivership estate. The relief sought is in furtherance of the duties and authorities bestowed upon the Receiver by the Order Appointing Receiver.

A court imposing a receivership assumes custody and control of all assets and property of the receivership and it has broad equitable authority to issue all orders necessary for the proper administration of the receivership estate. *See S.E.C. v. Credit Bancorp Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002); *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980). The court may enter such orders as may be appropriate and necessary for a receiver to fulfill his duty to preserve and maintain the property and funds within the receivership estate. *See, e.g., Official Comm. Of Unsecured Creditors of Worldcom, Inc. v. S.E.C.*, 467 F.3d 73, 81 (2d Cir. 2006). The goal of a receiver charged with liquidating assets is to obtain the best value available under the circumstances. *Fleet Nat'l Bank v. H & D Entertainment, Inc.*, 926 F. Supp. 226, 239-40 (D. Mass. 1996) (citations omitted). Further, the paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See, e.g., Four B. Corp. v. Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997).

The relief sought by the Receiver falls squarely within those powers. In light of the considerations discussed above, sale of the Assets is in the best interest of the Receivership estate, and would result in the recovery of approximately \$45,750.00. As a result, the

Receiver respectfully requests that the Court grant the relief requested in this motion and enter the proposed order attached as Exhibit 1.

**II. THE COURT HAS THE AUTHORITY TO WAIVE THE REQUIREMENTS OF 28 U.S.C. §§ 2001 AND 2004, AND THE CIRCUMSTANCES HERE WARRANT SUCH WAIVER**

28 U.S.C. §§ 2001 and 2004 govern the “sale” of property. However, these statutory requirements can be and are often waived by courts. 28 U.S.C. § 2004 (“**Section 2004**”) governs the sale of personal property and provides as follows:

Any personalty sold under any order or decree of any court of the United States shall be sold in accordance with Section 2001 of this Title, unless the court orders otherwise.

28 U.S.C. § 2004 (emphasis added). 28 U.S.C. § 2001(b) (“**Section 2001(b)**”) addresses private sales and provides as follows:

(b) After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

28 U.S.C. § 2001(b)

Thus, “unless the Court orders otherwise” pursuant to Section 2004, Section 2001(b) requires a court to appoint three disinterested persons as appraisers and to direct in which

newspaper a notice of proposed sale be published prior to confirmation of a sale. Here, using the discretion afforded by Section 2004, the Court should “order otherwise” in this instance with regard to (i) the need for three appraisals and (ii) the publication in newspapers of notice of any sale. The Court’s authority to deviate from the requirements of Section 2004 is supported by caselaw and is in the best interests of the Receivership estate.

The Receiver believes he is in position to adequately evaluate the value of the Assets, and that full compliance with Section 2004 and Section 2001(b) would result in the unwarranted expenditure of funds and resources of the Receivership estate. Additionally, due to the precarious nature of Respiro’s current business state, compliance with the statutory requirements could have a further detrimental impact on Respiro’s operations and potentially result in the Buyer walking away from this transaction. Thus, the Receiver requests that the Court authorize deviation from the statutory appraisal and notice requirement associated with the proposed sale of the Assets.

Courts have recognized the discretion afforded to them by Section 2004 in approving a discretionary deviation from the requirements of Section 2001. *See, e.g., Tanzer United States v. Stonehill*, 83 F.3d 1156, 1160 (9th Cir. 1996) (emphasizing statutory language, “unless the court orders otherwise,” and concluding that “it is at the district court’s discretion whether to obtain appraisals [in sales of] personal property”); *see also SEC v. Kirkland*, 2008 WL 4264532, \*2 (M.D. Fla. 2008) (approving sale of personalty without appraisals or publication where costs of compliance would significantly offset the purchase offer); *United States v. Kerner*, 2003 WL 22905202, \*2 (E.D. Mich. 2003) (“Under...28 U.S.C. § 2004, which states that the requirements of section 2001 must be followed ‘unless the court orders



otherwise,' the Court clearly has the discretionary authority to confirm the private sale [made without strict adherence to the requirements in Section 2001].”).

Further, Courts have specifically exercised their authority to deviate from the requirements of Section 2001 when faced with the proposed sale of personal property by a receiver under Section 2004. *See Wells Fargo Capital Finance, Inc. v. North Pacific Group*, No. CV10-65-KI, Order on Receiver’s Motion for Order Authorizing Sale of Accounts Receivable (D. Ore. Jan. 24, 2012) (excusing receiver from “compliance with 28 U.S.C. § 2004 concerning sales of personal property through federal court proceedings”); *SEC v. Billion Coupons, Inc.*, 2009 WL 2143531, \*4 (D. Hawai’i 2009) (finding good cause to exercise discretion and permit receiver to sell personal and real property in manner other than as provided by federal statute, including 28 U.S.C. §§ 2001, 2004); *Federal Trade Commission v. Jeremy Johnson et. al.*, No. 2:10-cv-02203-RLH-GWF, Order (D. Nev. August 25, 2011) (allowing receiver to liquidate private limited liability membership interest and authorizing deviation from sale and publication procedures of 28 U.S.C. §§ 2001 and 2004); *SEC v. Lydia Capital, LLC, et al.*, No. 1:07-cv-10712-RGS, Order Granting Receiver’s Motion for Authorization to Sell Asset of the Receivership Estate (D. Mass. March 16, 2011) (“Given the Receiver’s efforts in marketing the portfolio of policies, including the Sale Policy, the third-party offers the Receiver obtained from disinterested bidders in the marketplace, and the notices provided to all interested parties, neither an independent appraisal or publication is necessary under 28 U.S.C. §§ 2001 and 2004”) (emphasis added). Copies of these orders are attached hereto as **Exhibit 3**.

### III. THERE EXIST NO KNOWN CLAIMS OR INTERESTS IN THE ASSETS

Deviation from the requirements of Section 2001(b) is not only warranted by the circumstances, but also by the absence of any known outstanding claims, liens, or encumbrances relating to the Assets. While the Receiver is not aware of any claims, liens, or encumbrances relating to the Assets, nevertheless to eliminate any risk whatsoever, the Receiver seeks an Order allowing him to transfer the Assets free and clear of any and all liens, encumbrances, and claims. This Court's broad authority over the Receivership estate includes the equitable power to "sell property free of liens, transferring the liens to the proceeds." *Seaboard Nat'l Bank v. Rogers Milk Products Co.*, 21 F.2d 414, 416 (2d Cir. 1927); *see also Quilling v. Trade Partners, Inc.*, 2007 WL 296211 (W.D. Mich. 2007) (approving receiver's sale of property free and clear of all liens and encumbrances and ordering that any liens or claims associated with the property would attach to the proceeds of the sale).

Finally, because no known claim, lien, or encumbrance affecting the Receivership estate's interests in the Assets will remain outstanding, no hearing on this Motion is necessary. Instead, aside from filing this Motion in the public docket, the Motion and supporting papers will be posted and easily accessible to any interested party on the Receivership's website ([www.nadelreceivership.com](http://www.nadelreceivership.com)) promptly after they are filed. This procedure will provide any interested party with sufficient notice and opportunity to be heard in accordance with Section 2001(b). *See, e.g., North Pacific Group, Inc.*, No. CV10-65-KI (D. Ore. Jan. 24, 2012) ("no other or further notice of the Motion or the entry of this sale order is required"); *Lydia Capital, LLC, et al.*, No. 1:07-cv-10712-RGS (D. Mass. March 16,

2011) (provision of motion and proposed order to parties, investors, and creditors of receivership, along with posting copy on receiver's website, was sufficient and reasonable where time was of the essence); *Albert Fase Kaleta et al.*, No. 4:09-cv-3674 (S.D. Tex. August 10, 2010) (granting emergency motion waiving receiver's compliance with Section 2004, including notice requirements).

### **CONCLUSION**

For these reasons, the Receiver moves the Court for entry of an order in substantially the form of the proposed Order attached as Exhibit 1 (i) approving the sale of the Assets, (ii) waiving appraisal and publication requirements under 28 U.S.C. §§ 2001 and 2004, and (iii) allowing the Receiver to transfer the Assets free and clear of any and all claims, liens, and encumbrances.

### **CERTIFICATE UNDER LOCAL RULE 3.01(g)**

Undersigned counsel has conferred with counsel for the SEC and is authorized to represent to the Court that this motion is unopposed.

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on September 30, 2013, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

**s/Gianluca Morello**

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*Attorneys for the Receiver, Burton W. Wiand*

# EXHIBIT 1

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

ARTHUR NADEL,  
SCOOP CAPITAL, LLC,  
SCOOP MANAGEMENT, INC.,

CASE NO.: 8:09-cv-0087-T-26TBM

Defendants,

SCOOP REAL ESTATE, L.P.,  
VALHALLA INVESTMENT PARTNERS, L.P.,  
VALHALLA MANAGEMENT, INC.,  
VICTORY FUND, LTD,  
VIKING IRA FUND, LLC,  
VIKING FUND, LLC, AND  
VIKING MANAGEMENT, LLC.

Relief Defendants. /

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**ORDER**

Before the Court is the Receiver's Unopposed Motion to Approve Sale of the Assets of Respiro, Inc. (the "Motion") (Dkt. \_\_\_\_). Upon due consideration of the Receiver's powers as set forth in the Order Appointing Receiver (Dkt. 8) and the Orders Reappointing Receiver (Dkts. 140, 316, 493, and 935), it is **ORDERED AND ADJUDGED** that the Motion (Dkt. \_\_\_\_ ) is **GRANTED**.

The Court finds that the sale reflected in the Motion is in the best interest of the Receivership estate for the reasons detailed in the Motion. The Court also finds that the Motion includes sufficient grounds for waiving the requirements of 28 U.S.C. § 2001(b) for three independent appraisals and publication of the terms of the sale under the discretion afforded this Court by 28 U.S.C. § 2004.

The Receiver is hereby authorized to sell the assets of Respiro, Inc., as detailed in Exhibit 2 to the Motion, in the manner set forth in the Motion, and such sale will be free and clear of any and all claims, liens, and encumbrances.

**DONE and ORDERED** in chambers in Tampa, Florida this \_\_\_\_ day of \_\_\_\_\_, 2013.

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**RICHARD A. LAZZARA**  
**UNITED STATES DISTRICT JUDGE**

**COPIES FURNISHED TO:**  
Counsel of Record

# EXHIBIT 2



PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT ("Agreement") entered into as of the 5<sup>th</sup> day of September, 2013, by and between RESPIRO, INC. ("Seller"), a Florida corporation, with its principal place of business at 5355 McIntosh Road, Suite A, Sarasota, Florida 34233 and MATRIX MEDICAL, LLC ("Buyer"), a Florida limited liability company, with its principal place of business at 408 N. Alexander Street, Plant City, Florida 33563.

WITNESSETH:

WHEREAS, Seller desires to sell certain assets of its respiratory and home medical equipment business (the "Business") at 5355 McIntosh Road, Suite A, Sarasota, Florida 34233; and

WHEREAS, Seller is currently an asset of the Receivership in Sec. & Exch. Comm'n v. Arthur Nadel, et al., Case No. 8:09-cv-87-T-26TBM (M.D. Fla.) (the "SEC Receivership Action"); and

WHEREAS, Buyer desires to buy certain assets of the Business pursuant to the terms and conditions contained herein; and

NOW THEREFORE, in consideration of the mutual covenants, agreements, representations and warranties herein contained, and intending to be legally bound, and subject to the approval of the Court presiding over the SEC Receivership Action ("SEC Receivership Court"), the parties hereto agree as follows:

1. Sale of Assets. Seller shall sell to Buyer, and Buyer shall purchase and acquire Seller's equipment as more fully set forth in Schedule A, attached hereto and all records, customer lists and correspondence of Seller (collectively, the "Assets"). Seller acknowledges and agrees this Buyer is only purchasing selected Assets of Seller and that Buyer shall not assume any liens, liabilities or obligations of Seller, and nothing herein shall be construed as imposing any liability or obligation upon Buyer other than those specifically provided for herein. Buyer specifically assumes no liability with respect to any outstanding warranties of Seller, whether express or implied. Seller shall be solely and fully responsible and liable for all of Seller's payables, liabilities and obligations not specifically assumed herein by Buyer. This Agreement contemplates the sale and transfer of only the purchased Assets described or otherwise referred to herein, and does not contemplate the sale of all assets of Seller (such as cash, prepaid expenses, deposits, settlements, etc.).

2. Representations. Seller represents and warrants to the Buyer that:

(a) Seller is the owner of and has good and marketable title to the Business and to all of the Assets, and that the Business and the Assets are free of all encumbrances, liens, and security interests.

(b) Seller is a corporation duly organized, validly existing and in good standing under the laws of the state of Florida and has all requisite power and authority (corporate and other) to own its Assets and to conduct its business as now conducted.

(c) Seller has all power and capacity necessary to execute, deliver and perform this Agreement and to carry out his or its obligations hereunder and thereunder.

(d) This Agreement has been duly executed by Seller and is the valid and legal binding obligations of Seller, enforceable against Seller in accordance with the terms hereof and thereof.

(e) Neither the execution, delivery nor the performance by Seller of this Agreement violates or will violate any provision of law, of any order, judgment or decree of any court or other governmental or regulatory authority, or of the respective charter documents or bylaws of Seller.

3. Purchase Price.

(a) The total Purchase Price to be paid by Buyer to Seller for the sale and transfer of Seller's Assets to Buyer in accordance with the provisions of this Agreement is the sum of Sixty-Five Thousand and 00/100 Dollars (\$65,000.00).

(b) Buyer shall deposit in the escrow account of Trinkle, Redman, Swanson, Coton, Davis & Smith, P.A. the sum of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) within five (5) days of execution of this Agreement. Within ten (10) days of said deposit and delivery of all files to buyer, Buyer shall review files and all assets of Seller and, after verifying said assets are acceptable, shall deposit the remaining sum of Forty Thousand and 00/100 Dollars (\$40,000.00) into the escrow account. In the event assets are deemed unacceptable by buyer, all monies will be refunded to buyer.

(c) Seller shall immediately, upon execution of this Agreement, make available to Buyer any and all records, files and materials of the Seller, including access to Seller's offices. Seller also agrees to facilitate the disclosure of information and reports from Seller's third-party billing service.

(d) During the period of time between the date of this Agreement and the Closing Date, Seller shall permit Buyer to have reasonable access to the books, records, contracts and other documents and information concerning the customers of Seller.

(e) Buyer shall notify Seller within 10 days after delivery of any file of the Seller that lacks a qualifying certificate of medical necessity, qualifying oxygen saturation levels and required progress notes (each a "Deficient File ") and which would serve to preclude

Buyer from to billing or collecting fees for services in connection with the customer..

(f) Buyer shall exercise its best efforts to cure any Deficient File. If a cure is impossible, Buyer shall notify Seller in writing of that fact and why at least 3 business days before closing. Any Deficient File that cannot be cured shall be designated "Failed Customer".

(g) At the Closing, the Purchase Price may be reduced for each Failed Customer, if any, by \$250.

(h) The asset valuations for each specific category as reflected in this section are accepted and agreed between the parties as being the agreed valuation of the Assets as of the Closing Date. The valuations for each specific category of Assets will be reported as follows:

<u>Asset</u>	<u>Category</u>	<u>Value</u>
i.	Equipment	\$65,000.00

4. Closing. The completion of the within contemplated transactions is herein designated as the "Closing". The Closing shall take place on or before October 20, 2013 ("Closing Date"), at a location agreed by the parties in writing.

5. Collection of Accounts. This sale shall not include any book accounts or other debts due to Seller in respect of its Business for services rendered prior to the Closing Date and such account receivables shall remain an asset of the Seller.

6. Conditions to Seller's Obligations. The obligation of Seller to complete the Closing hereunder are, at Seller's option, subject to the following conditions.

(a) Buyer shall have performed and complied with all agreements, terms and conditions required by this Agreement to be performed and complied with by Buyer on or before the Closing.

(b) Buyer shall not be in bankruptcy or similar proceedings.

7. Conditions to Buyer's Obligations. The obligations of Buyer to complete the Closing under this Agreement are, at Buyer's option, subject to fulfillment by Seller of each of the following conditions:

(a) All representations and warranties, if any, of Seller contained in this Agreement, shall be true in all material respects as of and at the Closing Date, with the same

affect as if said representations and warranties had been made on and as of Closing, except as otherwise contemplated or specifically permitted by the terms of this Agreement.

(b) Seller shall have performed and complied with all agreements, terms and conditions required by this Agreement to be performed and complied with by Seller on or before the Closing Date.

(c) Seller shall have delivered to Buyer the Bill of Sale attached hereto as Exhibit A and such other instruments and documents as Buyer shall reasonably request for the purpose of further perfecting the title of Buyer in Seller's Assets.

(d) After execution of this Settlement Agreement by all parties, the Receiver will promptly move the SEC Receivership Court for approval of this settlement.

8. Brokerage. The parties agree that a broker is not involved in connection with the making and carrying out of this Agreement.

9. Effectiveness. This Agreement supersedes any and all agreements, if any, previously made between the parties relating to the subject matter hereof, and there are no understandings or agreements other than those included herein.

10. Notices and Communications. Any notice, payment, request, instruction, or other document to be delivered hereunder shall be deemed sufficiently given if in writing and delivered personally or mailed by certified mail, postage prepaid, if to Seller, addressed to Seller, at:

Burton W. Wiand, Receiver  
Wiand Guerra King P.L.  
5505 W. Gray Street  
Tampa, Florida 33609

and if to Buyer, addressed to Buyer as first set forth above unless in each case Buyer and Seller shall have notified the other in writing of a different address.

11. Non-Waiver. No delay or failure on the part of either party in exercising any right hereunder, and no partial or single exercise hereof, will constitute a waiver of such right or of any other right hereunder.

12. Headings. Headings in this Agreement are for convenience only and are not to be used for interpreting or construing any provision hereof.

13. Governing Laws. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida.

14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

15. Binding Nature. The provisions of this Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

16. Survival of Representations and Warranties. Except as otherwise expressly limited in this Agreement or the schedules annexed hereto, the representations and warranties of Buyer and Seller extended hereunder or made in any exhibit, schedule or instrument of conveyance, shall survive the Closing and shall not be extinguished or otherwise merged by the Closing. Each party against whom liability is asserted under the provisions of this Agreement shall be given the opportunity to participate, directly or through its authorized representative, at its cost and expense, in the conduct of any negotiations relating to the settlements of any liability or any other proceeding instituted by any third party against either Seller or Buyer, as the case may be, giving rise to the alleged breach.

17. Time of Essence. Time is of the essence of this Agreement.

18. Expenses. Except as otherwise expressly provided herein, each party shall pay all of its own expenses incidental to the negotiation and preparation of the documentation relating to this Agreement and for entering into and carrying out the terms and conditions of this Agreement and consummating the transactions, irrespective of whether the transactions contemplated shall be consummated.

19. Amendment; Successors and Assigns. This Agreement shall not be altered or otherwise amended except pursuant to any instrument in writing signed by all of the affected parties hereto. Neither party may assign any of its rights, obligations, or liabilities arising hereunder without the prior written consent of the other, except as otherwise provided herein; any such assignment or attempted assignment shall be null and void.

20. Third Party Beneficiaries. Except for their proper heirs, successors, and assigns, the parties hereto intend that no third party shall have any rights or claims by reason of this Agreement.

21. Rules of Construction. The normal rules of construction which require the terms of and agreement to be construed most strictly against the drafter of such an agreement are hereby waived and relinquished by each party.

22. This Settlement Agreement and any dispute arising in connection with it shall be submitted to the Receivership Court for disposition for disposition by summary proceeding.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year above written.

BUYER:


MATRIX MEDICAL, LLC

By: 

Its: CFO / member

SELLER:

RESPIRO, INC.

By:   
Burton W. Wiand

Its:   
Court Appointed Receiver

Respiro, Inc. Asset List

(As of July 2, 2013)

• Supplies/Equipment

174 -- O2

126 -- CPAP

78 -- Heated Humidifiers

4 - Bi-PAP

58 -- Portable O2

17 -- Nebulizers

• Vehicles

2 -- 2008 GMC full-size delivery/service vans

1- 2009 Toyota Corolla

• Office

Chairs -11 / 7 Swivel and 4 Armed chairs

Cubicle -4

Desk-3

Conference table -1

File Cabinets-3 lateral 2 drawer and 2 lateral 4 drawer

Water machine -1

Refrigerator -1

Plants -3

Coffee table -1

Fans- 3

Safe -1

Wire rack -11

Table-1

Book cases -5

Copier/Fax machine small portable

Computers- Desk Top – 3 and Laptops -2

Printers -1

Shop vac

Calibration tank

Pulse oximetry -7

• **Warehouse**

Cpap 19

Auto cpap 3

BiPap 1

BiPap ASV 2

Humidifier 6

Concentrator 46

POC Sequel 1

POC Evergo 1

Nebulizer '10

Bed 1

Walker 4

Commode 2



Cylinders

AAA- 11

AA-30

B- 135

C-35

D-18

E-70

EXHIBIT A

[Insert Bill of Sale]

## ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the "Agreement") is made and effective as of the <sup>SK</sup> day of ~~August~~ <sup>September</sup>, 2013, by and between MATRIX MEDICAL, LLC ("Matrix"), RESPIRO, INC., ("Respiro"), Trinkle, Redman, Swanson, Coton, Davis & Smith, P.A. ("Escrow Agent").

### RECITALS:

WHEREAS, as of even date herewith, Matrix and Respiro have entered into a Purchase Agreement for Matrix to purchase certain business assets from Respiro ("Purchase Agreement"); and

WHEREAS, as a part of the Purchase Agreement, Matrix and Respiro have agreed to escrow Matrix's initial deposit of \$25,000.00 ("Initial Deposit") and the remaining \$40,000.00 of the Purchase Price ("Final Deposit") in the event the parties proceed with the transaction contemplated by the Purchase Agreement (the Initial Deposit and the Final Deposit are collectively referred to as the "Deposit"); and

WHEREAS, Matrix and Respiro desire to appoint Escrow Agent to act as an escrow agent and trustee of the Deposit; and

WHEREAS, the Escrow Agent has agreed to act as escrow agent and to hold the Deposit in trust upon the terms and subject to the conditions of this Agreement; and

WHEREAS, all of the parties to this Agreement desire to enter into this Agreement for the purpose aforesaid and to set forth and establish the terms and conditions upon which the Deposit may be released by the Escrow Agent.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto, the parties hereby agree as follows:

1. RECITALS. The recitals set forth above are true and correct and are incorporated here in reference.

2. ESTABLISHMENT OF ESCROW. Matrix and Respiro hereby appoint the Escrow Agent and the Escrow Agent hereby accepts such appointment to serve as the escrow agent for the purposes of receiving, holding in trust and disbursing as required hereunder subject to the terms and conditions hereinafter set forth.

3. ESCROW DEPOSIT. When the Purchase Agreement becomes effective and enforceable, Matrix shall provide the Initial Deposit to the Escrow Agent. The Escrow Agent will promptly notify Matrix and Respiro when it has received the Initial Deposit. In the event Matrix decides to proceed with the transaction contemplated in the Purchase Agreement, Matrix shall remit the Final Deposit to Escrow Agent within ten (10) days of Matrix's Initial Deposit.

Upon receipt of the Initial Deposit and Final Deposit, the Escrow Agent shall hold and maintain the Initial Deposit and Final Deposit pursuant to the terms of this Agreement.

4. RELEASE OF ESCROW. Escrow Agent shall return the Initial Deposit to Matrix upon Matrix's determination not to continue with the closing of the Purchase Agreement that is more particularly described in Section 3(b) of the Purchase Agreement. In the event Matrix does proceed with the closing of the Purchase Agreement, the Escrow Agent shall provide the Deposit, or a portion thereof, to Respiro on the closing date pursuant to the terms of the Purchase Agreement.

5. RELIANCE BY ESCROW AGENT. Except as otherwise expressly stated in the preceding paragraphs, Escrow Agent shall have no duty to examine or construe any document or other instrument deposited with Escrow Agent hereunder, nor shall Escrow Agent be required to examine or construe any document or other instrument entered into by and between the parties or any of them. Further, Escrow Agent shall have no responsibility for the authenticity or validity of any document or other instrument provided to Escrow Agent hereunder; Escrow Agent's sole duty with respect to such documents and instruments being limited to holding and disposing of the funds as herein provided.

6. GENERAL OBLIGATIONS AND DUTIES OF ESCROW AGENT. The escrow provisions of this Agreement shall remain in full force and effect until the obligation of the Escrow Agent to release the Deposit has been satisfied in full. In the event of a dispute regarding its duties or liabilities under the escrow provisions of this Agreement, the Escrow Agent may, in its reasonable discretion, continue to hold the Deposit in trust until the parties mutually agree to the disbursement thereof, or until the Receivership Court determines the rights of the parties thereto. The Escrow Agent may act upon any instrument or other writing believed by it in good faith to be genuine and signed or presented by the proper person, and the Escrow Agent shall not be liable in connection with the performance or nonperformance of its duties pursuant to the provisions of this Agreement, except for its willful misconduct or gross negligence, and it shall be under no duty or obligation to institute or defend any action, suit, or legal proceedings in connection herewith or to take any action likely to involve it in expense. All parties agree that the Escrow Agent, by virtue of its acting as escrow agent hereunder, shall not be precluded from representing Matrix as its legal counsel in connection with the Purchase Agreement or the Deposit. The Escrow Agent may resign as the Escrow Agent at any time upon giving notice to Matrix and Respiro of its desire to resign; provided, however, that resignation by the Escrow Agent shall take effect no sooner than (20) days after the giving of notice of resignation unless a successor escrow agent has been sooner designated by Matrix and Respiro and the Deposit has been delivered to the successor escrow agent.

5. NOTICE. All notices, certificates, requests, demands, materials and other communications hereunder shall be in writing and shall be deemed to have been duly given by hand-delivery to the appropriate addresses below, as evidenced by a signed receipt for same, or shall be considered given by certified mail or overnight courier on the date actually received, as evidenced by a signed receipt for the same.

Respiro

Respiro, Inc. c/o  
Burton W. Wiand, Receiver  
Wiand Guerra King P.L.  
5505 W. Gray Street  
Tampa, Florida 33609

Matrix

Matrix Medical, LLC  
408 N. Alexander Street  
Plant City, Florida 33563.  
Telephone: (813) 759-2000  
Fax: (813) 759-2155

Escrow Agent

Keith C. Smith, Esq.  
Trinkle, Redman, Swanson, Coton, Davis & Smith, P.A.  
PO Box TT  
Plant City, FL 33564-9040  
Telephone: 813-752-6133  
Facsimile: 813-754-8957

6. BINDING AGREEMENT. This Agreement shall be binding upon all of the parties hereto and their respective heirs, personal representatives, successors and assigns.

7. MULTIPLE COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. Signature pages from one counterpart may be attached to another to form one fully executed instrument.

8. GOVERNING LAW, JURISDICTION, ATTORNEYS' FEES. This Agreement shall be deemed to be a contract made under the laws of the State of Florida and for all purposes shall be governed by and interpreted in accordance with the laws of the State of Florida. This Agreement and any dispute arising in connection with it shall be submitted to the Receivership Court, (which is the court charged with administering Sec. & Exch. Comm'n v. Arthur Nadel, et al., Case No. 8:09-cv-87-T-26TBM (M.D. Fla.) (the "SEC Receivership Action")) for disposition by summary proceeding.

9. HEADINGS FOR CONVENIENCE. The Section headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several Sections hereof.

10. SEVERABILITY. If any portion of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

11. ENTIRE AGREEMENT. This Agreement represents the complete and entire understanding and agreement between the Parties with respect to the subject matter contained herein. All prior inconsistent agreements, arrangements and/or understandings, whether oral or written are hereby declared null and void.

*(This space intentionally left blank)*

IN WITNESS WHEREOF, the Parties and the Escrow Agent have caused this Agreement to be executed as of the day and year above written.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name of Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name of Witness

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Printed Name of Witness

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Witness

\_\_\_\_\_  
Printed Name of Witness

TRINKLE, REDMAN, SWANSON, COTON, DAVIS  
& SMITH, P.A.

By: \_\_\_\_\_

Keith C. Smith, Esq.

RESPIRO, INC.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

MATRIX MEDICAL, LLC

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

# EXHIBIT 3



Jeffrey C. Misley, OSB No. 850674  
Martin P. Meyers, OSB No. 990829  
SUSSMAN SHANK LLP  
1000 SW Broadway, Suite 1400  
Portland, OR 97205-3089  
Telephone: (503) 227-1111  
Facsimile: (503) 248-0130

Attorneys for Receiver Edward Hostmann, Inc.

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

WELLS FARGO CAPITAL FINANCE,  
INC., formerly known as Wells Fargo  
Foothill, Inc., a California operation, as  
Administrative Lender and Agent on  
behalf of itself, Bank of America, N.A. and  
The CIT Group/Business Credit, Inc.,

Plaintiff,

v.

NORTH PACIFIC GROUP, INC., an  
Oregon corporation; NOR PAC  
ENTERPRISES, INC., an Oregon  
corporation; RTH LUMBER CO., an  
Oregon corporation; and BURNS  
HOLDINGS, INC., a dissolved Oregon  
corporation,

Defendants.

Case No. CV 10-65-KI

ORDER ON RECEIVER'S MOTION  
FOR ORDER AUTHORIZING SALE OF  
ACCOUNTS RECEIVABLE TO  
UNIVERSITY MANAGEMENT  
ASSOCIATES AND CONSULTANTS  
CORP. FREE AND CLEAR OF LIENS

This matter comes before the Court upon the Receiver's Motion For Order  
Authorizing Sale of Accounts Receivable to University Management Associates and  
Consultants Corp. Free and Clear of Liens filed December 16, 2011 (the "Motion") [Dkt.

Page 1 of 5- ORDER ON RECEIVER'S MOTION FOR ORDER AUTHORIZING SALE  
OF ACCOUNTS RECEIVABLE TO UNIVERSITY MANAGEMENT ASSOCIATES AND  
CONSULTANTS CORP. FREE AND CLEAR OF LIENS

657]. In the Motion the Receiver requests approval of a proposed sale of certain accounts receivable identified in Exhibit A to the Motion (the "Receivables").

NOW, THEREFORE, based upon the declaration of Edward Hostmann filed in support of the Motion and the Court being advised that the Motion was served upon all parties receiving ECF notice, including all parties known to assert a lien against the Receivables, and that no objections to the Motion were filed within the time period specified in the Motion, and good cause appearing therefore and the Court being otherwise fully advised in the premises now, therefor;

**IT IS HEREBY FOUND AND DETERMINED THAT**

1. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to FRCP 52. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. This Court has federal diversity jurisdiction over this case and ancillary subject matter jurisdiction to hear and determine the Motion and enter this sale order. This Court is empowered to hear, determine, and provide the relief requested in the Motion.

3. Adequate and sufficient notice has been provided of the Motion, such notice was good and sufficient, reasonable, and appropriate under the particular circumstances in this matter, and reasonably calculated to reach and apprise all holders of liens, claims, encumbrances, and other interests, about the sale of the Receivables; and no other or further notice of the Motion, or the entry of this sale order is required.

Page 2 of 5- ORDER ON RECEIVER'S MOTION FOR ORDER AUTHORIZING SALE OF ACCOUNTS RECEIVABLE TO UNIVERSITY MANAGEMENT ASSOCIATES AND CONSULTANTS CORP. FREE AND CLEAR OF LIENS

4. No responses or objections have been filed in response to the Motion, timely or otherwise.

5. Approval at this time of the Motion and sale of the Receivables is in the best interests of creditors, and other parties in interest and consistent with the provisions of the Second Modified Distribution Plan of Receiver (the "Plan").

6. The Receiver has demonstrated both (i) good, sufficient, and sound business purpose and justification, and (ii) compelling circumstances for consummating the sale of the Receivables in that, among other things, a sale of the Receivables will maximize its value for the estate.

7. The terms of the sale of the Receivables are fair and reasonable. The purchase price payable thereunder is fair and reasonable and constitutes reasonably equivalent value and fair consideration under the laws of the United States. Net proceeds received from the sale will be distributed pursuant to the provisions of the Plan.

8. The sale of the Receivables was negotiated, proposed, and entered into by the parties without collusion, in good faith and from arm's-length bargaining positions. The purchaser of the Receivables is not an affiliate of, or otherwise related to, any of the North Pacific entities, the Receiver, or North Pacific's secured lenders that are identified as the Plaintiffs in this action. There is no common identity among the purchaser of the Receivables and North Pacific's officers, directors, or equity owners.

9. The Receiver has full corporate power and authority to transfer title to the Receivables, and to execute and deliver a bill of sale for the Receivables, and to execute and deliver any and all other documents required for their transfer to the purchaser.

Page 3 of 5- ORDER ON RECEIVER'S MOTION FOR ORDER AUTHORIZING SALE OF ACCOUNTS RECEIVABLE TO UNIVERSITY MANAGEMENT ASSOCIATES AND CONSULTANTS CORP. FREE AND CLEAR OF LIENS

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED  
THAT:

- A. The Motion is granted.
- B. The Receiver is authorized to complete the sale of the Receivables identified in Exhibit A to this Order to University Management Associates and Consultants Corp. for the sales price of \$100,000. The Receiver is authorized to execute such documents and take such other actions as may be reasonably necessary to complete the sale and transfer of the Receivables.
- C. Except as set forth in this paragraph, upon closing, the Receivables shall be transferred to Purchaser free and clear of all mortgages, security interests, pledges, liens, judgments, encumbrances, restrictions or charges of any kind or nature, if any. The sale and transfer of the Receivable from Curt Bean Lumber Co. shall remain subject to the terms of the Order Approving Settlement With the Law Firm of Dover Dixon Horne, PLLC [Dkt. 617] entered by the Court.
- D. The Receiver is excused from compliance with 28 U.S.C. § 2004 concerning sales of personal property through federal court proceedings.
- E. The Receiver is directed to serve a copy of this Order on all account debtors identified in Exhibit A at their currently known address; such service shall be sufficient notice of the transfer of the Receivables. Thereafter, all future payments on the Receivables shall be made to:

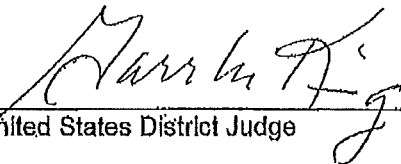
University Management Associates and Consultants Corp.  
c/o Paul Rome  
223 BW Stiger Street, Suite 12  
Hackettstown, NJ 07840

Page 4 of 5- ORDER ON RECEIVER'S MOTION FOR ORDER AUTHORIZING SALE  
OF ACCOUNTS RECEIVABLE TO UNIVERSITY MANAGEMENT ASSOCIATES AND  
CONSULTANTS CORP. FREE AND CLEAR OF LIENS

or at such other location and to such other party as University Management Associates and Consultants Corp. may in its discretion direct.

F. This Court retains jurisdiction (i) to enforce and implement the terms and provisions of the sale of the Receivables, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith, (ii) to resolve any disputes, controversies or claims arising out of or relating to the sale of the Receivables, and (iii) to interpret, implement and enforce the provisions of this Order.

DATED: 1-24-2012, 2012

  
United States District Judge

PRESENTED BY:

SUSSMAN SHANK LLP

*/s/ Jeffrey C. Mlsley*

By: \_\_\_\_\_  
Jeffrey C. Mlsley, OSB No. 850674  
Martin P. Meyers, OSB No. 990829  
Portland, OR 97205  
(503) 227-1111  
Attorneys for Edward Hostmann, Inc., as Receiver

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Page 5 of 5- ORDER ON RECEIVER'S MOTION FOR ORDER AUTHORIZING SALE OF ACCOUNTS RECEIVABLE TO UNIVERSITY MANAGEMENT ASSOCIATES AND CONSULTANTS CORP. FREE AND CLEAR OF LIENS

SUSSMAN SHANK LLP, ATTORNEYS AT LAW  
1000 SW BROADWAY, SUITE 1400, PORTLAND, OREGON 97205-3089  
TELEPHONE (503) 227-1111 | FACSIMILE (503) 248-0130

X10000012.xls

<b>NORTH PACIFIC GROUP</b>	
<b>ACCOUNTS RECEIVABLE BALANCE AS OF 11/11/11</b>	
<b>Account Name</b>	<b>Balance</b>
Kenneth Andy Davis	\$ 580,043.00
Brown Lumber	207,089.30
Heartwood Inc	151,007.43
California Designer Cabinets	141,175.13
Loysville Structures	132,525.72
Grand Lumber Co Inc	128,321.06
Cut Right Wood Products LLC	110,039.46
Holley Moulding Inc.	74,008.33
New England Floor Supply	63,430.96
Robinson & Robinson Inc	62,582.50
A R Kramer Company	46,107.09
Buffalo River Hardwoods Inc.	44,192.90
Gamboa & Co Inc	43,594.85
Empyrean International LLC	34,864.65
Dodd Woodworking	34,692.85
Closestac	34,376.93
Atlantic Timber LLC	33,800.00
Connecticut Solid Surface LLC	31,586.35
Caribbean Wood Products	28,631.88
Heartwood Inc	27,637.81
Arts Custom Cabinets Inc	27,593.43
Davco Supply Inc	21,263.02
Atlantic Pile Inc.	20,877.28
Marshall Building Corp	19,952.16
Kiosko	17,987.73
Pinetree Structures c/o Bells Springs Structures	17,900.32
Gemline Frame Co	17,220.52
Hamilton Fixture Company	14,676.38
Pinetree Structures	13,899.43
Bakersfield Woodworks Inc	13,445.40
Sahs Inc	12,749.02
Architectural Casework	11,985.82
The Closet Factory	11,737.01
Paul Drews dba California Drawers	11,550.39
Bingham Lumber Inc	10,256.75
Ontario Wood Products	9,202.95
Apple Valley Woodworks LLC	8,960.28
New World Panels LLC	8,539.04
Fireplace Fronts LLC	8,106.38
AHJ Marketing Inc.	7,996.28

X\0000012.xls

<b>NORTH PACIFIC GROUP</b>	
<b>ACCOUNTS RECEIVABLE BALANCE AS OF 11/11/11</b>	
<b>Account Name</b>	<b>Balance</b>
Southwest Moulding Inc	7,952.60
Trio Lumber Company	7,919.13
Brown Street Furniture	7,064.78
Havel Floorcovering Inc	6,492.54
New England Cabinet	6,352.36
Barry Fishelberg Co Inc	6,161.39
Barrington Hardware Inc	6,108.78
Imperial Valley Lumber Co	4,647.90
Pops Barns	4,599.33
Bay Woodworking LLC	4,139.50
West Hartford Stair Cab Inc	3,955.72
Til State Window & Door Inc	3,021.95
Wood Pro Inc	2,948.82
Northend Hardwoods	2,519.26
Lincoln Store Fixtures	2,515.82
Ulrich Lumber & Builders Supply	2,409.51
JDS Flooring Assoc LLC	1,177.60
Nashua Woodcraft	1,045.73
Storage Systems Inc	771.28
D & G Enterprises	617.92
Tkalco Lumber Inc	613.66
Archwood Inc	508.00
E C Crosby & Sons	140.00
<b>SUB-TOTAL AR BEFORE CURT BEAN LUMBER</b>	<b>2,379,291.31</b>
Curt Bean Lumber Co.	968,091.36
<b>TOTAL - ALL AR</b>	<b>3,347,382.67</b>

S.E.C. v. Billion Coupons, Inc., Not Reported in F.Supp.2d (2009)

2009 WL 2143531

Only the Westlaw citation is currently available.  
United States District Court, D. Hawai'i.

SECURITIES AND EXCHANGE COMMISSION,  
Plaintiff,

v.

BILLION COUPONS, INC., et al., Defendants.  
U.S. Commodity Futures Trading Commission,  
Plaintiff,

v.

Billion Coupons, Inc., Etc., et al., Defendants.

Civil Nos. 09-00068 JMS-LEK, 09-00069  
JMS-LEK, | July 13, 2009.

#### Attorneys and Law Firms

Dohoang T. Duong, John B. Bulgozdy, Victoria A. Levin,  
U.S. Securities and Exchange Commission, Los Angeles,  
CA, Victoria A. Levin, Kenneth W. McCracken, U.S.  
Commodity Futures Trading Commission, Washington,  
DC, for Plaintiff.

Kurt S. Fritz, Paul Alston, Alston Hunt Floyd & Ing,  
Michael A. Glenn, Honolulu, HI, Peter A. Davidson,  
Erwin Cohan & Jessup LLP, Beverly Hills, CA, for  
Defendants.

Barry A. Fisher, Fleishman & Fisher, Los Angeles, CA,  
pro se.

#### Opinion

#### **FINDINGS AND RECOMMENDATION TO GRANT RECEIVER'S MOTION TO ESTABLISH PROCEDURE FOR THE SALE OF PERSONAL AND REAL PROPERTY IN THE RECEIVERSHIP ESTATE**

LESLIE E. KOBAYASHI, United States Magistrate  
Judge.

\*1 Before the Court is Receiver Barry A. Fisher's  
("Receiver") Motion to Establish Procedure for the Sale  
of Personal and Real Property in the Receivership Estate,  
filed on April 3, 2009 ("Motion"). No opposition to the  
Motion has been filed. After careful consideration of the  
Motion, supporting memorandum and declaration, this  
Court HEREBY FINDS AND RECOMMENDS that the

district judge GRANT the Motion for the reasons set forth  
below.

#### **BACKGROUND**

On February 18, 2009, Plaintiff Securities and Exchange  
Commission ("SEC") filed its complaint in Civil Number  
09-00068 JMS-LEK alleging that Defendants Marvin R.  
Cooper ("Cooper") and Billion Coupons, Inc., also known  
as Billion Coupons Investment, ("BCI") (collectively  
"Defendants") were involved in the fraudulent offer and  
sale of more than \$4 million of securities. On February  
18, 2009, Plaintiff United States Commodity Futures  
Trading Commission ("CFTC") filed its complaint in  
Civil Number 09-00069 JMS-LEK alleging that  
Defendants were involved in the fraudulent offer and sale  
of more than \$4 of foreign currency futures contracts.  
Also on February 18, 2009, the district judge granted a  
temporary restraining orders in both cases which, among  
other things, appointed Mr. Fisher as the temporary  
receiver. SEC and CFTC both moved for consolidation of  
the two cases. The district judge granted the motions to  
consolidate on March 2, 2009.

On March 3, 2009, the district judge issued an order  
granting preliminary injunction which, among other  
things, appointed Mr. Fisher as the permanent receiver  
and granted to him several powers, rights, duties and  
responsibilities, including "to make such payments and  
disbursements from the funds and assets taken into  
custody, control, and possession or thereafter received by  
him ... and to incur, or authorize the making of, such  
agreements as may be necessary and advisable in  
discharging his ... duties as Permanent Receiver[.]"  
[Preliminary Injunction and Orders: (1) Freezing Assets,  
(2) Appointing a Permanent Receiver, (3) Prohibiting the  
Destruction of Documents, (4) and Requiring  
Accountings, filed 3/3/09 (dkt. no. 36) ("3/3/09 Order"),  
at 10.]

On April 9, 2009, Receiver filed his Motion for Approval  
of Receiver, on Behalf of Billion Coupons, Inc.,  
Consenting to a Consent Order of Permanent Injunction  
and Other Relief with Securities and Exchange  
Commission ("Motion for SEC Permanent Injunction"),  
and Motion for Approval of Receiver, on Behalf of  
Billion Coupons, Inc., Consenting to a Consent Order of  
Permanent Injunction and Other Equitable Relief with  
U.S. Commodity Futures Trading Commission ("Motion  
for CFTC Permanent Injunction"). The parties filed a  
Stipulation regarding Motion for SEC Permanent



S.E.C. v. Billion Coupons, Inc., Not Reported in F.Supp.2d (2009)

Injunction on May 7, 2009. The district judge issued his Orders as to Liability, Permanent Injunction and Other Relief Against Defendant Billion Coupons, Inc. (aka Billion Coupons Investment) regarding SEC's complaint on May 18, 2009 and May 20, 2009. On April 22, 2009, the Consent of Defendant Marvin R. Cooper to Judgment of Permanent Injunction and Other Relief as to the SEC complaint was filed. The Consent Order of Permanent Injunction and Other Equitable Relief Against Defendant Billion Coupon, Inc. as the CFTC complaint was filed on May 22, 2009.

\*2 On April 3, 2009, Receiver filed the following: (1) Motion to Establish Procedure for the Sale of Personal and Real Property in the Receivership Estate, (2) Motion to Establish Claims Procedure and Bar Date, (3) Motion for Authority to Commence Litigation to Recover Fraudulent Transfers and Other Claims, for Authority to Make Settlement Offers, and for Subsequent Settlement Authority (collectively "Motions"). SEC and CFTC filed a statement of no opposition to the Motions on April 21, 2009. On April 29, 2009, this Court directed Receiver to prepare proposed Findings and Recommendations granting the Motions.

On June 12, 2009, Receiver filed the Ex Parte Application to File Under Seal Proposed Findings of Fact and Recommendation for Disposition of Receiver's Motion for Authority to Commence Litigation to Recover Fraudulent Transfers and Other Claims and for Authority to Make Settlement Offer, which was granted by this Court on June 23, 2009. Receiver was permitted to file the proposed findings and recommendation under seal.

Receiver also filed on June 10, 2009 the following: (1)(1) Proposed Findings of Fact (sic) and Recommendation for Disposition of Receiver's Motion to Establish Procedure for the Sale of Personal and Real Property in the Receivership Estate; (2) Proposed Findings of Fact (sic) and Recommendation for Disposition of Receiver's Motion to Establish Claims Procedure and Bar Date for Filing Claims; and (3) Proposed Findings of Fact (sic) and Recommendation for Disposition of Receiver's Motion for Authority to Commence Litigation to Recover Fraudulent Transfers and Other Claims and for Authority to Make Settlement Offer.

### DISCUSSION

In the instant Motion, Receiver seeks to have the court "establish procedures for the sale of the personal and real property under the Receiver's custody and control so that

the property can be quickly liquidated...." [Mem. in Supp. of Motion at 2.] Receiver acknowledges that 28 U.S.C. § 2004 provides that any personalty sold under any court order shall be sold in accordance with 28 U.S.C. § 2001. See 28 U.S.C. § 2004. However, Receiver submits that the requirements of 28 U.S.C. § 2001 are too cumbersome, 28 U.S.C. § 2001(a) provides:

Any realty or interest therein sold under any order or decree of any court of the United States shall be sold as a whole or in separate parcels at public sale at the courthouse of the county, parish, or city in which the greater part of the property is located, or upon the premises or some parcel thereof located therein, as the court directs. Such sale shall be upon such terms and conditions as the court directs.

Property in the possession of a receiver or receivers appointed by one or more district courts shall be sold at public sale in the district wherein any such receiver was first appointed, at the courthouse of the county, parish, or city situated therein in which the greater part of the property in such district is located, or on the premises or some parcel thereof located in such county, parish, or city, as such court directs, unless the court orders the sale of the property or one or more parcels thereof in one or more ancillary districts.

\*3 28 U.S.C. § 2001(a). Receiver is thus required to sell the personal property at a public auction. Alternatively, § 2001 provides that a private sale may be ordered but, before confirmation of such a sale, "the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities." 28 U.S.C. § 2001(b). Publication of the sale is also required. See *id.* Receiver argues that the time and cost of such requirements are onerous and expensive.

#### I. Sale of Personal Property

Receiver proposes an alternative procedure wherein the personal property can be sold quickly to maximize the sale proceeds, and to minimize storage fees and other costs: (1) as to automobiles and motorbikes, Receiver should be given discretion to sell these items for the best price that can be obtained (such as possibly assigning them for sale by private buyers or using Craigslist or similar databases) without court confirmation of these sales; and (2) as to aircraft, Receiver represents that there is a Piper Aztec with an approximate value of \$75,000.00 and a Kolb Twinstar MK II with an approximate value of \$7,500.00, and that the accrued storage and repair fees

S.E.C. v. Billion Coupons, Inc., Not Reported in F.Supp.2d (2009)

for the aircraft are \$20,397.08 and \$600.00, respectively. [Mem. in Supp. of Motion at 5 n. 1.] Both aircraft are located outside of Hawai'i. [Id. at 5.] Receiver asks to be authorized to: sell the aircraft for the best price that can be obtained at the aircrafts' current locations; to pay up to ten percent of the sales price in brokers' commission; and to pay outstanding bills for the repair and storage of the aircraft from the proceeds of any sale of the aircraft. As to other personal property, Receiver represents that there are several items in storage which include computers, furniture and equipment, and that the best method for the sale of these items is public auction. Receiver requests authorization to sell these items in a public auction and to retain the services of a local auctioneer to conduct the auction. In addition, Receiver states that he may obtain other personal property purchased with BCI funds as he has demanded the return of high-end camera equipment and may obtain a portable GPS for airplanes. In the event that these items are recovered, Receiver requests authority to sell these and any other items recovered by consignment or offer for sale in Ebay<sup>1</sup> or other similar internet sites.

## II. Sale of Real Property

For the sale of real property, Receiver proposes that the court: 1) authorize Receiver to retain the services of a licensed real estate broker to sell the real property; and 2) require the broker to list the real property in the appropriate multiple listing service and to advertise it. Thereafter, Receiver should be authorized to sell the real property for the highest and best price that can be obtained.

Receiver has already been given full powers over BCI's assets. See 3/3/09 Order at 10-11; see also *S.E.C. v. Am. Capital Invs., Inc.*, 98 F.3d 1133, 1144 (9th Cir.1996). For the real property, the district court has discretion in setting the terms and conditions of the sale. See *United States v. Branch Coal Corp.*, 390 F.2d 7, 10 (3d Cir.1968). Receiver's proposed plans for the sale of personal and real property have sufficient safeguards in order to solicit the highest price that a willing buyer in an arms-length negotiation will offer while conducting the sales in a timely and cost-efficient manner that will maximize the net sales proceeds.

### Footnotes

<sup>1</sup> Ebay is an internet website for on-line auctioning and shopping for goods and services.

## CONCLUSION

\*4 On the basis of the foregoing, this Court HEREBY FINDS that there is good cause for the district court to exercise its discretion and permit Receiver to sell personal and real property that he has recovered in the instant action in a manner other than as provided by federal statute, including 28 U.S.C. §§ 2001, 2004. This Court FURTHER FINDS that the proposed plans for the sale of personal and real property have sufficient safeguards for maximizing sale prices but also provide an efficient process to minimize carrying costs and other expenses that will need to be deducted from the gross sale proceeds.

The Court therefore RECOMMENDS that the district judge GRANT Receiver's Motion to Establish Procedure for the Sale of Personal and Real Property in the Receivership Estate, filed on April 3, 2009. This Court FURTHER RECOMMENDS that Receiver be given the following powers and directives: (1) as to automobiles and motorbikes, Receiver is given the discretion to sell these items for the best price that can be obtained (including assigning them for sale by private buyers or listing the items for sale on internet databases) without court confirmation of these sales; (2) as to aircraft, Receiver is authorized to sell the aircraft for the best price that can be obtained, to pay up to ten percent of the sales price in brokers' commission, and to pay outstanding bills for the repair and storage of the aircraft from the proceeds of any sale of the aircraft without court confirmation; (3) as to any other personal property, Receiver is authorized to place these items for sale by public auction, including by consignment or offer for sale on an internet website for an on-line auction or on-line sale; and (4) as to real property, Receiver is authorized to retain a licensed real estate broker to list and advertise the property, and Receiver is authorized to sell the real property for the highest price that can be obtained.

IT IS SO FOUND AND RECOMMENDED.

S.E.C. v. Billion Coupons, Inc., Not Reported in F.Supp.2d (2009)

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7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**

9 \* \* \*

10 FEDERAL TRADE COMMISSION,  
11 Plaintiff,

12 vs.

13 JEREMY JOHNSON, individually, as officer  
14 of Defendants I Works, Inc., Cloud Nine, Inc.,  
15 CPA Upsell, Inc., Elite Debit, Inc., Internet  
16 Economy, Inc., Market Funding, Inc., and  
17 Success Marketing, Inc.; as a member of  
18 Defendant Network Agenda LLC; and as the  
*de facto* principal of numerous Defendant Shell  
Companies; I WORKS, INC., *et al.*,

Defendants.

Case No.: 2:10-cv-02203-RLH-GWF

**ORDER**

(Motion for Order-#227)

19 Before the Court is Receiver Robb Evans of Robb Evans & Associates LLC's  
20 ("Receiver") Motion for Order: (1) Authorizing and Confirming Sale of Personal Property  
21 by Public Auction; (2) Authorizing and Confirming Sale and Redemption of Investment  
22 Interest; (3) Authorizing Receiver to List and Offer for Sale Houseboats, Aircraft, and  
23 Multiple Real Properties; and (4) Granting Relief From Local Rule 66-5 Pertaining to Notice  
24 to Creditors ("Sale Motion") (##227, 228, filed May 27, 2011). The Court has also considered  
25 Defendants Duane Fielding, Network Agenda, LLC, and Anthon Holdings Corp.'s (collectively,  
26 the "Fielding Defendants") Opposition (##239, 240, filed June 13, 2011), Defendants Jeremy D.

Johnson; I Works, Inc.; Cloud Nine Marketing, Inc.; CPA Upsell, Inc.; Elite Debit, Inc.; Internet Economy, Inc.; Market Funding Solutions, Inc.; Success Marketing, Inc.; Fitness for Life, Inc.'s (collectively, the "Johnson Defendants") Opposition (#245, filed June 20, 2011), the Receiver's Reply to the Fielding Defendants' Opposition (#250, filed June 23, 2011), Plaintiff Federal Trade Commission's ("FTC") Reply (#253, filed June 27, 2011), and the Receiver's Reply to the Johnson Defendants' Opposition (#256, filed June 29, 2011).

### BACKGROUND

As the parties are familiar with the facts of this case, the Court will not recount them further except as necessary for the disposition of the Sale Motion. This dispute arises from the FTC's investigation of Johnson and numerous affiliated individuals and corporations who allegedly defrauded the public via internet scams. On December 21, 2010, the FTC filed its complaint pursuant to the Federal Trade Commission Act, and the Electronic Fund Transfer Act, to obtain permanent injunctive relief, restitution, disgorgement, and other equitable relief. On February 10, 2011, the Court issued a Preliminary Injunction Order (#130) ("Preliminary Injunction") that among other things appointed the Receiver to administer assets frozen by the Preliminary Injunction. The Receiver now moves the Court to allow the sale of certain assets. For the reasons discussed below, the Court grants the Sale Motion.

### DISCUSSION

#### I. The Receiver's Sale Motion

Pursuant to 28 U.S.C. §§ 2001 and 2004, a district court has the authority to direct an appointed receiver to arrange a public sale of any real property or personal property under the receivership. § 2001(a). After all interested parties receive notice and a hearing, "the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby" and a price is set at no less than two-thirds of the appraised value. § 2001(b).

1           **A.     Johnson Defendants' Opposition**

2           In the Sale Motion, the Receiver asks the Court to authorize the sale or listing for  
3 sale of various real property and personal property which are under the Receiver's control. The  
4 Johnson Defendants oppose these proposed actions for several reasons. They argue that the office  
5 equipment would obtain greater value through means other than a local auction in southern Utah.  
6 They further argue that the vehicles identified for public auction are collector's items which will  
7 not realize their full value by auction in Hurricane, Utah, but will appreciate in value over time  
8 while in storage. In short, the Johnson Defendants oppose the Sale Motion because none of the  
9 items are perishable, the current depressed state of the economy favors waiting to sell any assets  
10 until a later time, and the assets should remain in place until a final determination is made.

11           The Court concludes that the Johnson Defendants' objections are without merit.  
12 The Receiver is charged with the duty to preserve the value of the assets of the receivership, which  
13 in this case must be accomplished by preventing the value of these assets and the estate as a whole  
14 from decreasing through ongoing expenses to maintain, insure, store, and protect those assets. The  
15 Court is satisfied that the Receiver has identified sound business reasons that justify the sale of  
16 these assets. Furthermore, nothing in the oppositions filed suggest that the parties with alleged  
17 interests in those assets to be sold now would be injured if their interests are converted to cash to  
18 be held by the Receiver.

19           **B.     Fielding Defendants' Opposition**

20           The Fielding Defendants also oppose these proposed actions based on their  
21 purported ownership interest in one parcel of real property, one helicopter, and several additional  
22 motor vehicles that the Receiver identified for sale. They argue that the sale of these assets would  
23 be premature and would lead to an improper declaration of their value. Further, they contend that  
24 the proposed sale would violate the Receiver's duty to preserve the value of the assets pending  
25 final adjudication on the merits. In addition, they assert that the Receiver is not authorized to sell  
26 the individual Defendant Duane Fielding's assets because he is not specifically covered by the

1 Preliminary Injunction Order (#130, issued Feb. 10, 2011). In sum, the Fielding Defendants make  
 2 the same objections to the Receiver's Sale Motion as the Johnson Defendants, and as a result,  
 3 warrant the same conclusion.

4 In addition, the Court notes that the Fielding Defendants' purported ownership  
 5 interest in these assets seems incredibly aspirational given the evidence set forth by the Receiver.  
 6 Nevertheless, even if Mr. Fielding were to show a legitimate ownership interest in these assets, he  
 7 could seek appropriate compensation after the FTC's claims are fully adjudicated. The opposing  
 8 parties have failed to show that the Receiver's proposed actions would violate the Receiver's duty  
 9 to preserve assets, rather the Receiver has adequately shown the Court that liquidating these assets  
 10 will limit expenses and avoid further deterioration or loss of value. Therefore, the Court grants the  
 11 Receiver's Sale Motion.

#### 12 CONCLUSION

13 Accordingly, and for good cause appearing,

14 IT IS HEREBY ORDERED that the Receiver's Motion for Order: (1) Authorizing  
 15 and Confirming Sale of Personal Property by Public Auction; (2) Authorizing and Confirming Sale  
 16 and Redemption of Investment Interest; (3) Authorizing Receiver to List and Offer for Sale  
 17 Houseboats, Aircraft, and Multiple Real Properties; and (4) Granting Relief From Local Rule 66-5  
 18 Pertaining to Notice to Creditors (#227) is GRANTED.

19 IT IS FURTHER ORDERED that:

20 A. The Receiver is authorized to sell the following personal property of the  
 21 Receivership Defendants: (a) office furniture (such as desks, chairs, sofas, cabinets, tables, etc.),  
 22 televisions, telephones, computers, office artwork and other similar personal property (collectively  
 23 the "Tabernacle Office Equipment") from the I Works offices formerly located at 249 East  
 24 Tabernacle Street, St. George, Utah known as the "Tabernacle Towers" currently being stored by  
 25 Statewide Auction Co., located at 5099 Wheeler Way, Hurricane, Utah; (b) the following vehicles:  
 26 1957 Chevrolet Belair Convertible (VIN #VC57L 188500), 1972 Chevrolet Nova SS Clone (VIN

1 #1X27F2L160461, License #FGM 994 – Oregon), 1952 Ford O Matic (VIN #B2LB102645,  
 2 License #FTL 488 UT), 1968 Oldsmobile (442 VIN #344778N1446554, License #785 NZP UT),  
 3 1972 Chevrolet Chevelle SS 454 (VIN #1D37W2L585777), Honda Pilot Dune Buggy (ATV  
 4 License Yr. 2008 #08126055) (collectively, the “Vehicles”) and a custom made snow plane  
 5 (Engine No. 6008678) (“Snow Plane”) by public auction pursuant to the following terms,  
 6 conditions and procedures (“St. George Personal Property Sale Procedures”), and the sale and  
 7 publication procedures of 28 U.S.C. § § 2001 and 2004 are hereby modified accordingly:

8           1.     The Receiver is authorized to employ Statewide Auction Company of Salt  
 9 Lake City, Utah (“Auctioneer”) to sell the St. George Personal Property at public auction to be  
 10 conducted at the business premises of the Auctioneer located at 5099 Wheeler Way, Hurricane,  
 11 Utah, pursuant to the Statewide Auction Company Contract dated as of May 4, 2011 (“St. George  
 12 Auction Contract”) attached as Exhibit 1 to the Declaration of Kenton Johnson (“Johnson  
 13 Declaration”) filed in support of the Sale Motion, and is authorized to compensate the Auctioneer  
 14 in accordance with the St. George Auction Contract by paying the Auctioneer an auction  
 15 commission of 15% of the gross sales price paid by the purchasers at the public auction for the St.  
 16 George Personal Property;

17           2.     The Receiver is authorized to sell the St. George Personal Property  
 18 individually, in lots or in bulk at the discretion of the Receiver and the Auctioneer, with such  
 19 property to be sold “as is, where is, with all faults,” and without representation or warranty of any  
 20 kind or nature, express or implied, to the highest bidder at the sale for payment in cash, certified  
 21 funds or check with the approval of the Auctioneer;

22           3.     The Auctioneer shall provide notice of the auction of the St. George  
 23 Personal Property by publishing a written notice of the date, time and place of the auction sale, the  
 24 terms of the sale and a summary of the property to be sold at the auction sale at least one time not  
 25 less than one week prior to the auction sale in the following newspapers: *Salt Lake Tribune*, the  
 26 *Deseret News* and *The Spectrum* in St. George;



1                   4.     The sales of the St. George Personal Property in accordance with the St.  
2     George Personal Property Sale Procedures are hereby confirmed without further notice, hearing or  
3     order, and the notice of the hearing on the Sale Motion and publication of notice of the sale as set  
4     forth in such procedures is deemed sufficient pursuant to 28 U.S.C. §§ 2001 and 2004;

5                   5.     To the extent that any of the Vehicles is registered to or deemed to be  
6     owned by Jeremy Johnson, the Preliminary Injunction Order, including Section XV.C thereof, is  
7     hereby modified to allow the Receiver to sell the Vehicles in accordance with this Order;

8                   B.     The Receiver is authorized to sell the office furniture and equipment, such as office  
9     cubicles, office chairs, telephone system with servers and telephone units, computer servers and  
10    towers, keyboards, monitors, executive office furniture including desks, chairs and wood cabinets  
11    (collectively, "Ephraim Office Equipment") found in the offices previously occupied by Zibby,  
12    LLC ("Zibby"), an entity owned 50% by Jeremy Johnson and 50% by his wife, Charlo Johnson,  
13    located at 11 West 700 South, Ephraim, Utah ("Ephraim Office") by public auction to be  
14    conducted on the premises at 11 West 700 South, Ephraim, Utah pursuant to the following  
15    proposed terms, conditions and procedures ("Ephraim Office Equipment Sale Procedures"), and  
16    the sale and publication procedures of 28 U.S.C. §§ 2001 and 2004 are hereby modified  
17    accordingly:

18                  1.     The Receiver is authorized to employ Statewide Auction Company of Salt  
19    Lake City, Utah ("Auctioneer") to sell the Ephraim Office Equipment at the Ephraim Office  
20    pursuant to the Statewide Auction Company Contract (Ephraim) dated as of May 4, 2011  
21    ("Ephraim Auction Contract") attached as Exhibit 2 to the Johnson Declaration filed in support of  
22    the Sale Motion, and is authorized to compensate the Auctioneer in accordance with the Ephraim  
23    Auction Contract by paying the Auctioneer an auction commission of 15% of the gross sales price  
24    paid by the purchasers at the public auction for the Ephraim Office Equipment;

25    ///

26    ///

1                   2.     The Receiver is authorized to sell the Ephraim Office Equipment  
 2 individually, in lots or in bulk in the discretion of the Receiver and the Auctioneer, with such  
 3 property to be sold "as is, where is, with all faults," and without representation or warranty of any  
 4 kind or nature, express or implied, to the highest bidder at the sale for payment in cash, certified  
 5 funds or check with the approval of the Auctioneer;

6                   3.     The Auctioneer shall provide notice of the auction of the Ephraim Office  
 7 Equipment by publishing a written notice of the date, time and place of the auction sale, the terms  
 8 of the sale and a summary of the property to be sold at the auction sale at least one time not less  
 9 than one week prior to the auction sale in the following newspapers: *Salt Lake Tribune*, the  
 10 *Deseret News* and a local newspaper of general circulation in Ephraim, Utah;

11                  4.     The sales of the Ephraim Office Equipment in accordance with the Ephraim  
 12 Office Equipment Sale Procedures are hereby confirmed without further notice, hearing or order,  
 13 and the notice of the hearing on the Sale Motion and publication of notice of the sale as set forth in  
 14 such procedures is deemed sufficient pursuant to 28 U.S.C. §§ 2001 and 2004;

15           C.     The Receiver is authorized to liquidate and redeem the private limited liability  
 16 membership interest held by Orange Cat Investments, LLC Global Wealth Long/Short Commodity  
 17 Futures Fund, LLC ("Global Wealth LLC") managed by Marathon Investments, Inc. ("Marathon"),  
 18 by making a written request to Marathon for redemption of such investment in accordance with the  
 19 terms and provisions of the Amended and Restated Operating Agreement pertaining to Global  
 20 Wealth LLC ("Operating Agreement"), and the sale and publication procedures of 28 U.S.C. §§  
 21 2001 and 2004 are hereby modified accordingly to allow the Receiver to redeem and liquidate such  
 22 investment in accordance with the Operating Agreement.

23           D.     The Receiver is authorized to list for sale two Skipperliner houseboats consisting of  
 24 a custom 3208 Marine model 1999 Skipperliner 75 foot houseboat named PEPS I and a 1994  
 25 Skipperliner 74 foot houseboat named Animal House (collectively, "Houseboats") owned by  
 26 Orange Cat Investments LLC with Aramark Sports and Entertainment Services, Inc. d/b/a Lake

Powell Resorts and Marinas ("Marine Broker") at prices to be determined in the Receiver's discretion and judgment and to enter into a written exclusive listing agreement with the Marine Broker in connection therewith providing for ordinary and customary terms and conditions for the listing of similar watercraft including ordinary and customary sales commissions not to exceed 6% of the gross sales price for the Houseboats, and further providing that acceptance of offers and completion of any sales of the Houseboats is subject to entry of an order of this Court approving such sale after notice and an opportunity for hearing;

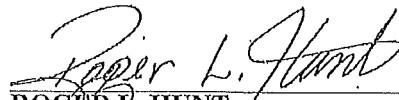
E. The Receiver is authorized to (1) engage one or more companies specializing in the sale of helicopters and fixed wing aircraft to list for sale at prices to be determined in the Receiver's discretion and judgment the following aircraft: (a) 1978 Cessna P210N, Tail No. N4827P, (b) 2008 Robinson R44 Raven II helicopter, Tail No. N41286 owned by Trigger, LLC, (c) 1968 Piper Navajo, Tail No. N300WA; (d) 2005 Robinson R44 Raven II helicopter, Tail No. N321WT, (e) 2009 Piper Malibu Mirage, Tail No. N32ED, and (f) a 1978 Beech C24R, Tail No. N20135 (collectively "Aircraft"), and (2) enter into written exclusive listing agreements with one or more companies specializing in the listing and sale of the particular type and model of the Aircraft ("Aircraft Brokers") providing for ordinary and customary terms and conditions for the listing of similar Aircraft including ordinary and customary sales commissions in a range of 6% to 8% of the gross sales price for each of the Aircraft with a minimum commission amount of \$10,000, providing for ordinary and customary advertising expenses, and further providing that acceptance of offers and completion of any sales of the Aircraft is subject to entry of an order of this Court approving each such sale after notice and an opportunity for hearing;

F. The Receiver is authorized to (1) engage local, regional or international real estate brokers experienced in the sale of the types of real properties, including experience in residential and commercial real estate and sales of raw land in the local market ("Sales Agents"), (2) list for sale at prices to be determined in the Receiver's discretion and judgment the following residential and commercial real property assets of the Receivership Defendants: (a) 82 West 700 South, St.

George, Utah ("82 West Property"); (b) 575 East 30 North, Ephraim, Utah ("575 East Property"),  
 (c) 11 West 700 South, Ephraim, Utah ("11 West Property"); (d) 302 West Hilton Drive, St.  
 George, Utah ("Hilton Drive Property"); (e) 147 North 100 West, Mendon, Utah ("147 North  
 Property"); (f) 392 West 400 South, Manti, Utah ("392 West Property"); (g) 575 S. Main,  
 Richfield, Utah ("Richfield Property"); (h) 127 Hollister Avenue, Santa Monica, California  
 ("Hollister Property"); (i) No. 91 North Front Street, Belize City, Belize ("Belize Property") (j)  
 the five parcels of adjacent and/or related parcels of raw land identified as Parcel #4200-B-HV,  
 St. George, Utah, Parcel #4201-A-HV & Parcel #4201-B-HV, St. George, Utah and Parcel #4203-  
 HV & Parcel #4150-B-HV, St. George, Utah ("Washington County Land"); (k) Part Sec 25, T33S,  
 R16W, SLBM, Beryl, Utah ("Beryl Land"); and (l) 750 South Main, Highway 89, Ephraim, Utah  
 ("South Main Land"), and (3) enter into written exclusive listing agreements with such Sales  
 Agents providing for ordinary and customary terms and conditions for the listing of similar real  
 property assets including ordinary and customary sales commissions not to exceed 6% of the gross  
 sales price for each of the real properties, except for the Belize Property as to which the sales  
 commission should be in an amount not to exceed 10% of the gross sales proceeds, providing for  
 ordinary and customary advertising expenses, and further providing that acceptance of offers and  
 completion of any sales of the real properties is subject to entry of an order of this Court approving  
 each such sale after notice and an opportunity for hearing; and

G. Notice of the Sale Motion is hereby deemed sufficient under Local Rule 66-5 based  
 on the service of a notice of the Sale Motion's filing and the Sale Motion itself on all parties and  
 service of a notice of the Sale Motion's filing on all known non-consumer creditors of the estate  
 concurrent with the filing of the Sale Motion with the Court.

Dated: August 25, 2011.

  
 \_\_\_\_\_  
 ROGER L. HUNT  
 United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

LYDIA CAPITAL, LLC;  
GLENN MANTERFIELD; and  
EVAN ANDERSEN,

Defendants.

Case No. 07-cv-10712-RGS

**ORDER GRANTING RECEIVER'S MOTION FOR AUTHORIZATION  
TO SELL ASSET OF THE RECEIVERSHIP ESTATE**

NOW before the Court is Receiver's Motion for Authorization to Sell Asset of the Receivership Estate, and Brief in Support [Doc. No. \_\_\_\_] (the "Sale Motion"), by H. Thomas Moran, II, Court-Appointed Receiver ("Receiver") for Defendant Lydia Capital, LLC ("Lydia"). Having reviewed the Sale Motion and exhibits thereto, finding that no objections to the same have been received, and it appearing that the relief requested in the Sale Motion is in the best interest of the Receivership estate, after due deliberation thereon, and for good cause appearing therefore,

**THE COURT HEREBY FINDS AND DETERMINES THAT:**

1. This Court has jurisdiction over the subject matter of the Sale Motion.
2. Pursuant to the Court's Order of June 1, 2007, H. Thomas Moran, II was appointed the Receiver for the assets of Lydia ("Order of Appointment"). [Doc. No. 28].
3. Pursuant to the Order of Appointment, the Receiver was directed to take and retain immediate possession, custody and control of the funds and assets of Lydia, and of all other entities which Lydia owned, controlled, or benefited from, including the Lydia Capital

Alternative Investment Fund, LP (the "Fund"), and to take all steps the Receiver deems necessary to conduct an inventory of the assets and liabilities of Lydia and the Fund. Further, the Order of Appointment directed the Receiver to undertake the liquidation of any, or all, of the assets of Lydia or the Fund in connection with the exercise of his powers granted by the Order of Appointment, with due regard for the best long-term interests of the investors in the Fund. *Id.*

4. Notice of the Sale Motion and the proposed Order thereto was provided to: (1) all parties to this action, (2) the investors in Lydia and/or the Fund, and (3) those creditors of Lydia and/or the Fund of which the Receiver is aware. Additionally, the Receiver provided notice by posting a copy of the Receiver's Sale Motion and the proposed Order thereto on the Receiver's website: <http://www.lydiacapital.com>.

5. The Court finds that this notice, as carried out by the Receiver, is sufficient and reasonable in light of the circumstances and nature of the relief requested in the Sale Motion.

6. The Court finds that the Receiver has negotiated an Asset Purchase Agreement ("Purchase Agreement") with Seaport Group Life Assets, LLC ("Buyer") for the sale of a life insurance policy within the portfolio on the terms and conditions set forth in the Purchase Agreement between the Receiver and Buyer (the "Sale"). The policy being sold is described in the Purchase Agreement by policy code LYD 3351-01, with an adjusted face value amount of \$7,500,000 (the "Sale Policy"). A copy of the Purchase Agreement is attached as Exhibit "A" to the Sale Motion.

7. The Court finds that (1) the purchase price and other consideration contained in the Purchase Agreement provides fair and reasonable consideration for the Sale Policy; (2) the sale will provide a greater recovery for the Receivership's investors and creditors than would be provided by any other practical available alternative; (3) no other party has offered to purchase

the Sale Policy for greater economic value to the Receivership; and (5) the purchase price and other consideration constitute fair consideration under the laws of the United States, any state, territory, possession or the District of Columbia.

8. The Court finds that the sale of the Sale Policy proposed by the Sale Motion, as described in the Purchase Agreement is reasonable and in the best interests of the Receivership estate, the creditors and the investors in Lydia and/or the Fund.

9. The Court finds that good cause exists for granting the Sale Motion, and accordingly, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

(a) The Purchase Agreement attached as Exhibit "A" to the Sale Motion is hereby approved.

(b) The Receiver has demonstrated good, sufficient and sound business purpose and justification for the sale to Buyer and that compelling circumstances for the sale exist as the value of the Sale Policy could be harmed by any delay. Therefore, time is of the essence in consummating the sale.

(c) The sale of the Sale Policy is in the best interests of the Receiver, the creditors and the Receivership estate;

(d) Buyer has acted in good faith and is a good faith purchaser of the Sale Policy and has entered into the Purchase Agreement, without collusion and no party has engaged in conduct that would cause or permit the Purchase Agreement to be avoided;

(e) the Receiver has full power and authority to execute and deliver the Purchase Agreement and the other instruments and agreements to be executed and delivered by the Receiver to consummate the transactions contemplated in the Purchase Agreement, including without limitation, the right to assign to Buyer all of the Receiver's right, title, and interest in and

to the Sale Policy (including without limitation the death benefits associated with the Sale Policy) and certain medical information and records applicable to the insured of the respective Sale Policy, consisting of all rights which the Receiver has to: (i) obtain medical and health records in respect of the insured under the Sale Policy; (ii) contact from time-to-time at least one (1) designated representative of such insured to monitor their respective health status and life status; and (iii) obtain death certificates, as applicable with respect to any such deceased insured under the Sale Policy (collectively, the "Medical Information Rights");

(f) the Purchase Agreement constitutes, and such other instruments and agreements when duly executed will constitute, the binding obligation of the Receiver;

(g) the Receiver is the sole owner and sole beneficiary of all options, privileges, rights, title and interest in and to the Sale Policy and any and all proceeds thereof (including without limitation the death benefits associated with the Sale Policy);

(h) the sale of the Sale Policy in accordance with the terms of the Purchase Agreement is approved and as of the date of the Sale Order, the Receiver shall be directed to perform his obligations hereunder;

(i) the sale of the Sale Policy shall be free and clear of all liens, claims, encumbrances and other interests, other than Assumed Liabilities (as defined in Section 7 of the Purchase Agreement) (collectively, the "Liens"). The Liens shall mean, without limitation, any and all liens (statutory or otherwise), encumbrances, claims, rights, interests (including any interests of the investors in the Fund), charges, security interests, rights of first refusal, or options to purchase, including any of the foregoing which may arise under any order entered by the U.S. District Court in the Receivership Proceeding, together with any and all debts, losses, claims (including successor liability claims), damages, costs, expenses, demands, fines, judgments,



penalties, liabilities, commitments, sales commissions, contracts, responsibilities, and obligations of any kind or nature whatsoever, direct or indirect, absolute or contingent, other than the Assumed Liabilities, as defined in Section 7 of the Purchase Agreement;

(j) the Receiver shall deliver and Buyer shall receive the Policy Files, as defined in Section 2.2 of the Purchase Agreement, which delivery and receipt will be accomplished within fifteen (15) days after Closing, as defined in Section 5 of the Purchase Agreement;

(k) upon Closing, as defined in the Purchase Agreement, Buyer shall indemnify and hold Receiver harmless from any claims or demands resulting from or arising out of the Assumed Liabilities, as defined in Section 7 of the Purchase Agreement;

(l) the sale of the Sale Policy and the Purchase Agreement are not precluded by or contrary to any prior Order issued by the U.S. District Court, or any stay or any allegations challenging the bidding procedures and any modifications thereto, filed in the Receivership Proceeding and no further consents by any party are required to convey all of the Receiver's right, title and interest in the Sale Policy, the Medical Information Rights and the Policy Files to Buyer in accordance with the Purchase Agreement;

(m) the Buyer will wire transfer the sum of \$61,369.61 to the insurance company that issued the Sale Policy (the "Issuer") to pay the premium obligation due by March 14, 2011, and Buyer will promptly provide to the Receiver a copy of the bank confirmation showing such funds have been wired to the Issuer on or before March 14, 2011. Upon Closing, Buyer shall pay directly to the applicable issuing insurance companies all other premiums due under the Sale Policy, whether arising before or after the Closing Date as set forth in Section 9.9 of the Purchase Agreement (the "Additional Premiums"), and Buyer will accept the Sale Policy

in its "AS IS" condition and there shall be no right of rescission or other remedy, and the Purchase Price, as defined in the Purchase Agreement, shall be paid to the Receiver, free and clear of any claims of Buyer; and

(n) Given the Receiver's efforts in marketing the portfolio of policies, including the Sale Policy, the third-party offers the Receiver obtained from disinterested bidders in the marketplace, and the notices provided to all interested parties, neither an independent appraisal or publication is necessary under 28 U.S.C. §§ 2001 and 2004.

(o) The sale of the Sale Policy in accordance with the terms of the Purchase Agreement, attached as Exhibit "A" to the Sale Motion, is approved and the Receiver is directed to execute the Purchase Agreement and perform all obligations thereunder.

(p) The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

(q) The requirement that any motion or other request for relief be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Sale Motion, or otherwise waived.


(r) The ten-day stay of effectiveness of this Order pursuant to Fed. R. Civ. P. 62(a) is waived. Due to the fluctuations in value in the market and the cost of future premium payments due on the Sale Policy, the Receiver and Buyer need to consummate the sale as soon as possible.

(s) To the extent this Order is inconsistent with any prior order or pleading with respect to the Sale Motion in this case, the terms of this Order shall govern. In the event that this Order is inconsistent with the Purchase Agreement, however, the Purchase Agreement shall govern.

(i) The Court shall retain jurisdiction to resolve any disputes relating to the interpretation of the terms or conditions of this Order. Further, the Court shall retain jurisdiction to interpret, construe and enforce the Purchase Agreement attached as Exhibit "A" to the Sale Motion.

WHEREFORE, Receiver's Motion for Authorization to Sell Asset of the Receivership Estate is hereby granted.

DATED this 17<sup>th</sup> day of March, 2011.

  
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RICHARD G. STEARNS,  
UNITED STATES DISTRICT JUDGE

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