

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.

**THE RECEIVER'S UNOPPOSED VERIFIED MOTION FOR APPROVAL  
OF AGREEMENT REGARDING REPAYMENT OF DEBT, TERMINATION  
OF RIGHTS AND REPURCHASE OF SECURITIES RELATING TO BONDS.COM**

Pursuant to 28 U.S.C. § 754, 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 entry of an order in substantially the form attached as **Exhibit 1** approving the arrangement reflected in the Receiver’s Letter Agreement Regarding Repayment of Indebtedness, Termination of Rights and Repurchase of Securities (the “**Agreement**”) with Bonds.com Group, Inc. and Bonds.com Holdings, Inc. (collectively,

“**Bonds.com**” or the “**company**”) to: (1) retire all indebtedness of Bonds.com held by the Receivership estate; (2) terminate all rights held by the Receivership estate to receive shares of Bonds.com common stock pursuant to several secured convertible promissory notes; and (3) if certain conditions are met, transfer 7,582,850 shares of Bonds.com common stock to the company. The Agreement is attached as Exhibit A to the Declaration of Burton W. Wiand in support of this motion (the “**Wiand Declaration**”), which declaration is being filed with this motion. Under the Agreement, the Receivership estate will receive from Bonds.com an upfront payment of \$2,250,000 and an additional \$5,000 if certain conditions are met (this additional payment is for the repurchase of the stock, and if the conditions are not met, the Receivership estate will retain that stock). Notably, this amount exceeds the amount of cash provided to Bonds.com in return for the Receivership’s interests (*i.e.*, \$1,840,636).

### **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 Investment**”); Valhalla Management, Inc. (“**Valhalla**”); Victory Fund, Ltd.; Victory IRA Fund, Ltd.; Viking IRA Fund, LLC; Viking Fund, LLC; and Viking Management, LLC (“**Viking**”) (the “**Order Appointing Receiver**”). (*See generally* 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.) All of the entities in receivership are collectively referred to as the “**Receivership Entities**.”

Pursuant to the Order Appointing Receiver, the Receiver has the duty and authority to: “administer and manage the business affairs, funds, assets, choses in action and any other property of the Defendants and Relief Defendants; marshal and safeguard all of the assets of the Defendants and Relief Defendants; and take whatever actions are necessary for the protection of the investors.” (Order Appointing Receiver at 1-2.) In particular, the Receiver was directed to:

[t]ake immediate possession of all property, assets and estates of every kind of the [Receivership Entities], whatsoever and wheresoever located belonging to or in the possession of the [Receivership Entities], including but not limited to all offices maintained by the [Receivership Entities], rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of the [Receivership Entities] wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court . . . .

(*Id.* at 2.)

#### **The Receivership’s Interests In Bonds.com**

Shortly after his appointment, the Receiver learned that proceeds of Nadel’s fraud had been used to acquire debt and equity interests in Bonds.com in the form of promissory notes, shares of stock, and warrants for additional shares. These interests have been the subject of several prior motions and orders (*see* Docs. 154, 155, 166, 168, 169, 499, and 500). Bonds.com developed and operates an online trading platform for the sale of fragmented lots

of fixed-income securities. The Receiver began investigating the value and status of these interests and whether any value could be realized for the benefit of defrauded investors early on in this Receivership.

The Receiver's investigation found that 7,582,850 shares of Bonds.com common stock and \$1,840,636 in debt instruments had been directly or indirectly acquired with proceeds of Nadel's fraud. This consisted of acquisitions by Valhalla Investment and by Nadel's associates, Christopher D. Moody ("**Chris Moody**") and Neil Moody (collectively, the "**Moody's**"), who were officers or principals of Valhalla and Viking, for their personal benefit, their trusts, or their relatives. The acquisition of equity was reflected in at least eleven separate stock certificates. On January 25, 2011, these stock certificates were consolidated into Certificate Number 1074-4 for 7,582,850 shares titled in the name of "Burton W. Wiand Conservator for Nadel et al". Due to the private nature of the circulation of Bonds.com's stock, the market for it is essentially illiquid, and the shares cannot easily be sold or exchanged for cash without substantial loss in value. Bonds.com stock (ticker symbol BDCG.OB) does not trade on a national securities exchange and is only available "over-the-counter" at a nominal price. For example, on March 30, 2012, 75,000 shares were sold over the counter for \$0.07 per share.

The Receivership estate also currently holds indebtedness in the form of promissory notes relating to \$1,840,636 in loans made to Bonds.com by the Moodys and Valhalla Investment. Following is a description of the promissory notes and the principal amount of each (collectively, the "**Notes**"):

- A Secured Convertible Promissory Note in the original principal amount of \$250,000 payable to the Neil Moody Revocable Trust;

- A Secured Convertible Promissory Note in the original principal amount of \$1,236,836 payable to the Christopher D. Moody Revocable Trust;
- A Secured Convertible Promissory Note in the original principal amount of \$50,000 payable to the Christopher D. Moody Revocable Trust;
- A Secured Convertible Promissory Note in the original principal amount of \$203,800 payable to Valhalla Investment Partners; and,
- Amendment No.2 to a Second Amended and Restated Grid Secured Promissory Note, dated November 9, 2009, originally issued by Bonds.com to Valhalla Investment Partners, L.P. (the “**Grid Note**”), with a \$100,000 principal amount outstanding under the Grid Note.

These equity and debt interests in Bonds.com were transferred to the Receiver either by the course of appointment as Receiver over Receivership Entities, by Court-ordered transfer of the interests, or by the voluntary execution of stock powers to transfer ownership of the interests. Wiand Decl. ¶ 5. As a result of these transfers, the Receivership estate is one of the largest shareholders of Bonds.com. *Id.*

Through his investigation, the Receiver formed the belief that although Bonds.com was still in a development stage, it had a reasonable prospect for future success assuming it could continue to operate as a going concern. As a result, the Receiver determined it was not in the Receivership’s best interests to undertake procedures that would lead to the “call” of the debt held by the Receivership estate. *Id.* ¶ 6. Calling the debt, or pursuing legal action to enforce rights associated with that debt, likely would have resulted in the demise of Bonds.com and the material loss of value of the Notes and equity shares. *Id.*

The Receiver met with senior management of Bonds.com several times to discuss the company’s financial situation and monitor its progress, and some time ago agreed to the restructuring of the company’s debt obligations to the Receivership estate (as well as to other

stakeholders and creditors), to allow Bonds.com an opportunity to raise much-needed working capital to continue its business operations and development. Wiand Decl. ¶ 7. As a result, the Receiver filed his Motion for Leave to Agree to Restructuring Transactions with Bonds.com (Doc. 499), and that motion was granted on October 19, 2010 (*see* Doc. 500). The obligations related to the Notes were ultimately extended by the Receiver through October 12, 2013, with the Receiver having the right to demand payment starting on April 12, 2012. The Receiver concluded that it was in the best interest of the Receivership estate to extend the maturity date of the indebtedness because, the Receiver believed, it would allow larger investors to invest in the company and enhance the value of the Receivership's position. The Receiver's strategy has succeeded, as several bona fide investors have invested in Bonds.com and improved the company's financial condition through capital contributions, which in turn has allowed it to continue its development. *Id.* ¶ 8.

Bonds.com, however, continues to be dependent on outside investors for capital to support its ongoing operations and continued development, and thus the Receivership's interest still bears substantial risk. In light of that risk, of the purpose and goals of this Receivership – and, specifically, the balance between maximizing the value of receivership assets and providing prompt relief to defrauded investors – and of the development of Bonds.com's business and value since the Receivership's inception, the Receiver concluded that it was in the Receivership's best interest to liquidate the Receiver's debt and equity interests in Bonds.com in the near future. Accordingly, the Receiver commenced marketing efforts, which resulted in discussions with several potential purchasers and ultimately yielded an offer to purchase the Receiver's debt and equity interests in Bonds.com for \$2,000,000.

Wiand Decl. ¶¶ 10-11. The Receiver also entered into negotiations with Bonds.com, which led to an offer to acquire all of the Receiver's interests for \$2,255,000 (the "Offer") as reflected in the Agreement. *Id.* ¶¶ 12-13. This was the largest offer made to the Receiver, and exceeded the lower offer by at least \$250,000. The Receiver believes that the Offer maximizes the value of the Receivership's interest in Bonds.com under the circumstances, is fair and reasonable, and is in the best interest of the Receivership. *Id.* ¶ 14. Indeed, the Offer exceeds the amount of cash provided to the company by Valhalla Investment and the Moodys. And while the Receivership has a large equity position in the company – exceeding seven million shares – the Receiver faces great difficulty in liquidating that equity as the market for such shares is "thin," the share price has been only a matter of cents, and any effort to sell the shares would flood the market and result in an even lower share price. *Id.* ¶ 15.

Based on the two offers received, the unprofitability of Bonds.com to date, its continued need for capital infusions to fund operations, and the risk of continuing to hold the debt and equity interests, the Receiver determined that the transaction reflected in the Agreement is in the best interest of the Receivership estate. *Id.* ¶ 16. The Receivership estate will gain at least \$2,250,000 for the benefit of defrauded victims, and the transaction will reduce, if not eliminate, the uncertainty and risk associated with holding the equity and debt positions in the company. While future appreciation of these interests cannot be ruled out, there are also significant risks associated with continuing to hold these positions. Indeed, should the company lose the funding and support of its large investors that are

currently providing capital, a rapid decline in the company's debt and equity valuations would very likely occur.

**Purported Liens And Claims Have Been Waived**

The Receiver has previously made this Court aware of a claim made by American Momentum Bank as successor-in-interest of LandMark Bank (collectively, "**LandMark**") that, by virtue of a pledge made by Chris Moody after the entry of the Order Appointing Receiver, LandMark purportedly had a security interest in the Bonds.com equity and debt acquired by Chris Moody. Specifically, on August 19, 2010 and September 1, 2010, LandMark filed two Proofs of Claim relating to an obligation held by Chris Moody and his interest in Bonds.com debt and equity. These Proofs of Claim are identified as Claim Numbers 500 and 501 in the Receiver's motion for claims determination (the "**Claims Determination Motion**"), filed on December 7, 2011 (Doc. 675). These claims were based on a line of credit extended to Christopher Moody, and LandMark's attempt to securitize that debt with Christopher Moody's Bonds.com interests after Nadel's scheme collapsed. In the Claims Determination Motion, the Receiver recommended that Claims 500 and 501 be denied. In relevant part, the Court granted that motion on March 2, 2012 (Doc. 776).

On March 22, 2012, LandMark waived both of its claims. *See* Wiand Decl. ¶ 22, Ex. B. As such, LandMark no longer claims any interest in the Receivership's Bonds.com holdings. Further, no other claims relating to those interests were submitted, and the Receiver is not aware of any other actual or purported liens, encumbrances, or claims relating to those interests. *Id.* ¶ 23.



### **The Agreement**

Subject to the approval of this Court, the Agreement (1) retires all indebtedness of Bonds.com to the Receivership reflected in the Notes, (2) terminates the Receivership's rights to receive shares of Bonds.com common stock pursuant to the Notes ((1) and (2) are collectively referred to as the "**Debt Retirement**"), and (3) allows Bonds.com to repurchase 7,582,850 shares of common stock (the "**Stock Repurchase**," and collectively with the Debt Retirement, the "**Transaction**"). In consideration for this, the Receiver will receive (1) a payment of \$2,250,000 within five days following the entry of an order approving the Agreement and (2) if specified conditions are met, a payment of \$5,000 within one year of the entry of an order approving the Agreement for the shares of common stock held by the Receiver. *See* Wiand Decl. Ex. A. If the conditions for the Stock Repurchase are not satisfied within the contemplated period, the Receivership estate will retain its Bonds.com stock. Under the Agreement, all other rights and interests of the Receiver in Bonds.com, including the Receiver's security interest in the "Bonds.com" internet domain name, will terminate.

### **Significant And Fair Recovery For The Receivership Estate**

The Receiver has conducted a thorough analysis of Bonds.com's financial conditions and future prospects. The Receiver engaged in extensive and lengthy negotiations with multiple interested parties to liquidate the Receivership's Bonds.com interests, which resulted in two offers: the one reflected in the Agreement and a lower one. *Id.* ¶¶ 10-20. Additionally, the Receiver retained transactional counsel to assist with these matters and with valuing the Receivership's Bonds.com interests. *Id.* ¶ 19. Based on all of these efforts, the

Receiver has concluded that the Agreement will generate a significant and fair recovery for the Receivership estate and is in the Receivership estate's best interest. Wiand Decl. ¶ 16.

This conclusion is based on several factors, including:

- (a) The Receiver has not received any offer to date exceeding the Offer;
- (b) Bonds.com remains in a development phase, and while it remains optimistic about future prospects, the possibility remains that the company could be forced to cease operations, which would render the Receivership's holdings essentially worthless;
- (c) The company continues to be dependent on outside financial sources for continued operation, and the possibility exists that the company would fail if it cannot secure continued funding;
- (d) The company's debt has increased and its losses from operations have accelerated: in the most recent Quarterly Report filed November 21, 2011, the company reported a loss of \$23.66 million for the nine months ended September 30, 2011, which is an increase from the loss of \$9.219 million incurred in the year-ago period ending September 30, 2010;
- (e) The company currently needs additional funding; without the funding, there is substantial doubt about its ability to continue as a going concern, and should that occur, the interests currently held by the Receivership estate would become essentially worthless;
- (f) The Receivership's significant interests in the company deter additional outside investment, especially because anti-dilutive provisions in the Receivership's

convertible debt securities prevent the Receivership's interest – and its rights – from being diluted;

(g) The Bonds.com stock is essentially illiquid and the market for such shares is very “thin”;

(h) The restructuring of the debt obligations in 2010 helped increase the value of both the Receivership estate's interest and Bonds.com itself, and there is no guarantee that Bonds.com will be in a better position to retire the debt than now;

(i) The Receivership's interest must be liquidated in order for defrauded investors to realize any benefit; and

(j) Continuing to hold these interests has significant risks.

All of these considerations weigh heavily in favor of converting the Receivership estate's interests in money for defrauded investors and, specifically, in favor of proceeding with the transaction reflected in the Agreement. Indeed, in light of all of these considerations, the Receiver believes that whatever value could be assigned to the Receivership's interests, assuming a reasonable and accurate appraisal were even possible, the Receiver would not be able to obtain an amount that exceeds the amount contemplated under the Agreement.

### **ARGUMENT**

#### **I. THE RESOLUTION REFLECTED IN THE AGREEMENT 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 its administration is extremely broad. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court, by imposing a receivership, assumed custody and control of all assets and property of

the Receivership, and it has broad authority to issue all orders necessary for the proper administration of the Receivership estate. *See SEC v. Credit Bancorp Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002); *SEC v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief (*Elliott*, 953 F.2d at 1566; *SEC v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982)), and it may enter such orders as may be appropriate and necessary for the Receiver to fulfill the 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. SEC*, 467 F.3d 73, 81 (2d Cir. 2006); *SEC v. Fischbach Corp.*, 133 F.3d 170, 175 (2d Cir. 1997)). The goal of the Receiver, having been charged in relevant part with liquidating assets, is to obtain the best value for the estate available under the circumstances. *Fleet Nat'l Bank v. H & D Entertainment, Inc.*, 926 F. Supp. 226, 239-40 (D. Mass. 1996). And 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 and in the Wiand Declaration, resolution of the Receivership's interests in Bonds.com as reflected in the Agreement is in the best interest of the Receivership estate, and would result in the recovery of at least \$2,250,000 for the benefit of defrauded investors. 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. TO THE EXTENT 28 U.S.C. § 2001 GOVERNS THIS MATTER, THE COURT HAS THE AUTHORITY TO WAIVE THOSE REQUIREMENTS, AND THE CIRCUMSTANCES HERE WARRANT SUCH WAIVER**

The primary component of the Transaction is the resolution of Bonds.com's debt obligations to the Receivership estate. That resolution does not trigger the requirements of 28 U.S.C. §§ 2001 and 2004 because it does not involve the "sale" of property; rather, it involves the extinguishment of debt. And although the Transaction includes the Stock Repurchase, which, standing alone, could implicate 28 U.S.C. 2004 ("**Section 2004**"),<sup>1</sup> that transaction is simply part of the resolution of Bonds.com's debt obligations to the Receivership estate, and is not an independent, stand-alone transaction. As such, it likely does not trigger Section 2004. Nevertheless, out of an abundance of caution, even assuming Section 2004 governed in any respect, the statutory requirements can and should be waived for the following reasons.

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:

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 interest of the estate will be conserved

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<sup>1</sup> See, e.g., *Griffith v. Jones*, 518 S.W.2d 435, 437 (Ct. App. Texas 1974) ("[s]hares of corporate stock are personal property in the nature of choses in action."); *U.S. v. All Funds in the Account of Property Futures, Inc.*, 2011 WL 5084319, \*14 (S.D. Fla. 2011) ("[u]nder Florida law, shares of stock are personal property..." (citations omitted)).

thereby. Before confirmation of any private sale, the Court shall appoint three disinterested persons to appraise such property or different groups or 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 ten percentum 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. To the extent the Agreement involves any sale of personal property, 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.

#### **Waiver Of The Appraisal Requirement Of Section 2001(b)**

As previously noted, unless the Court orders otherwise, Section 2001(b) requires a receiver to satisfy several requirements in connection with a proposed sale of personal property, including obtaining three independent appraisals. Here, the Receiver has engaged in efforts to market the Bonds.com holdings to obtain the highest possible value for them, and those efforts resulted in two offers. Wiand Decl. ¶¶ 10-21. As noted above and in the Wiand Declaration, the Receiver retained counsel with experience with both the valuation and sale of equity and debt securities to assist him with liquidating the Receivership’s interests in Bonds.com, evaluating a fair value for those interests, and reviewing the offers

received by the Receiver. Wiand Decl. ¶¶ 18-19. In light of his marketing efforts and the assistance provided by transactional counsel, the Receiver is in position to appropriately evaluate the value of the Receivership estate's interests in Bonds.com. And in any event, given the circumstances, a reliable fair market value appraisal of the Bonds.com holdings would likely be very difficult or impossible to obtain. Accordingly, the delay and expense associated with obtaining independent appraisals of the interests are not warranted under these circumstances, and neither is the cost and delay associated with publishing notice. Indeed, if the Agreement is not promptly approved, Bonds.com could decline to proceed with the Transaction. It is the Receiver's belief that this opportunity to liquidate the Receivership estate's interests in Bonds.com is unique, short-lived, and, to a large extent, a matter of good fortune.

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); *SEC v. Albert Fase Kaleta et al.*, No. 4:09-cv-3674, Order Granting Emergency Motion to Authorize Deviation From Requirements of 28 U.S.C. § 2004 for Sale of Personal Property Held by Receivership Estate (S.D. Tex. August 10, 2010) (authorizing Receiver "to sell the personal property held by the Receivership Estate without complying



with the requirements of 28 U.S.C. § 2004”); *SEC v. Medical Capital Holdings et al*, No. 8:09-cv-0818-DOC, Order Approving Sale of Stock in Viva Vision, Inc. (C.D. Cal. July 30, 2010) (granting receiver’s motion to waive appraisal requirement of 28 U.S.C. § 2004, which receiver estimated would cost \$75,000 - \$90,000 and delay sale approval by at least six weeks); *SEC v. Sean Nathan Healy et al.*, No. 1:09-cv-1331, Order Granting Receiver’s Motion for an Order Establishing Bidding Procedures and Approving the Sale of Vehicles (M.D. Pa. December 11, 2009) (granting receiver’s request to deviate from appraisal requirements of 28 U.S.C. § 2001 and allowing sale of personal property to highest and best offeror “as determined in the sole discretion of the receiver...”). Copies of these orders are attached hereto as **Composite Exhibit 2**.

Here, as explained above and in the Wiand Declaration, the Receiver has engaged in efforts to market the Bonds.com equity and debt interests to third parties, and received two offers that he believes fairly represent the value of the Receivership’s interests in the company. In light of his efforts; the two offers received – which ultimately provide the true “market” value, and thus the most realistic valuation of the Receiver’s interests in Bonds.com; the delay and costs associated with appraisals and publishing notice; and the risk that delaying the Transaction could jeopardize the Agreement, the Court should approve the requested deviation from the requirements of Section 2001(b) under the discretion provided by Section 2004. The ramifications of losing the Transaction would be very significant for the Receivership estate as there is no certainty it could ever again obtain \$2,255,000 to resolve its interests in Bonds.com.

**There Exist No Other Known Claims Or Interests  
In The Receivership's Bonds.com Holdings**

Deviation from the requirements of Section 2001(b) is not only warranted by the circumstances, but it also would not raise any issues because there are no known outstanding claims, liens, or encumbrances relating to the Receivership's Bonds.com interests. Wiand Decl. ¶¶ 22-23. As previously noted, LandMark was the only claimant that asserted any interest in the Receivership's Bonds.com holdings, but it has since waived its claims.

Although the Receiver is not aware of any claims, liens, or encumbrances relating to the Receivership's interest in Bonds.com, nevertheless to eliminate any risk whatsoever, and as contemplated by the Agreement, the Receiver seeks an Order allowing him to transfer his Bonds.com holdings 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 Bonds.com remains outstanding and because, as discussed in this Motion, any delay is unnecessary and could jeopardize the Agreement, 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). These authorities are attached as part of Composite Exhibit 2.

### **CONCLUSION**

For these reasons, the Receiver respectfully moves the Court for entry of an order in substantially the form of the proposed order attached as Exhibit 1 approving the Agreement with Bonds.com and, to the extent 28 U.S.C. § 2004 governs the Transaction, waiving any appraisal and publication requirements and allowing the Receiver to consummate the transaction reflected in the Agreement, including the transfer of the Receivership’s Bonds.com holdings free and clear of any and all claims, liens, and encumbrances in accordance with the Agreement.

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

Counsel for the Receiver has conferred with counsel for the Commission and is authorized to represent to the Court that this motion is unopposed.

**VERIFICATION OF RECEIVER**

I, Burton W. Wiand, Court-Appointed Receiver in the above-styled matter hereby certify that the information contained in this Motion is true and correct to the best of my knowledge and belief.



Burton W. Wiand, Court-Appointed Receiver

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on April 10, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

**I FURTHER CERTIFY** that on April 10, 2012, I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants.

Arthur Nadel, Register No. 50690-018  
FCI BUTNER LOW  
Federal Correctional Institution  
P.O. Box 999  
Butner, NC 27509

**s/Gianluca Morello**

Gianluca Morello, FBN 034997  
Email: [gmorello@wiandlaw.com](mailto:gmorello@wiandlaw.com)  
Michael S. Lamont, FBN 527122  
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WIAND GUERRA KING P.L.  
3000 Bayport Drive, Suite 600  
Tampa, FL 33607  
Tel: 813-347-5100  
Fax: 813-347-5198

*Attorneys for the Receiver, Burton W. Wiand*

# EXHIBIT A

**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.

\_\_\_\_\_ /

**ORDER**

Before the Court is the Receiver's Unopposed Verified Motion for Approval of Agreement Regarding Repayment of Debt, Termination of Rights and Repurchase of Securities Relating to Bonds.com (the "Motion") (Dkt. \_\_\_\_). Upon due consideration of the Receiver's powers as set forth in the Order Appointing Receiver (Dkt. 8), the Orders

Reappointing Receiver (Dkts. 140, 316, and 493), and applicable law, it is **ORDERED AND ADJUDGED** that the Motion is **GRANTED**.

The Agreement Regarding the Repayment of Debt, Termination of Rights and Repurchase of Securities (the "Agreement") between (i) the Receiver and (ii) Bonds.com Group, Inc. and Bonds.com Holdings, Inc. (collectively, "Bonds.com"), a copy of which is attached as Exhibit A to the Declaration of Burton W. Wiand, as Receiver, in Support of the Receiver's Unopposed Verified Motion for Approval of Agreement Regarding Repayment of Debt, Termination of Rights and Repurchase of Securities Relating to Bonds.com (the "Receiver's Declaration") (Dkt. \_\_\_\_), is hereby approved. The Receiver is authorized to enter into and complete the transaction reflected in the Agreement in accordance with the terms of the Agreement, including (i) the retirement of all indebtedness of Bonds.com held by the Receivership estate; (ii) the termination of all rights held by the Receivership estate to receive additional shares of Bonds.com common stock pursuant to certain Promissory Notes evidencing indebtedness owed by Bonds.com to the Receivership estate; and (iii) the repurchase by Bonds.com of 7,582,850 shares of common stock held by the Receiver, subject to the satisfaction of certain conditions detailed in the Agreement. Any and all claims relating to the Receivership estate's interests in Bonds.com are hereby extinguished, and all transfers of the Receivership estate's interests in Bonds.com to Bonds.com in accordance with the terms of the Agreement, including the transfer of Bonds.com common stock, will be free and clear of any and all liens, claims, or encumbrances.

The Court finds that the transaction reflected in the Agreement is in the best interest of the Receivership estate for the reasons detailed in the Motion and the Receiver's

Declaration. The Court also finds that, to the extent 28 U.S.C. §§ 2001 and 2004 apply to the transaction reflected in the Agreement, the Motion and the Receiver's Declaration include sufficient grounds for waiving the requirements of 28 U.S.C. § 2001(b) for three independent appraisals and publication of the terms of that transaction under the discretion afforded this Court by 28 U.S.C. § 2004.

Finally, the Court finds that in light of the fact that no known claim, lien, or encumbrance relating to the Receivership estate's interests in Bonds.com is outstanding, in lieu of a hearing on the Motion, the filing of the Motion in the Court's public docket and its publication on the Receivership's website provided sufficient notice and opportunity for any interested party to be heard in accordance with 28 U.S.C. § 2001(b).

**DONE** and **ORDERED** in chambers in Tampa, Florida this \_\_\_\_ day of \_\_\_\_\_, 2012.

---

RICHARD A. LAZZARA  
UNITED STATES DISTRICT JUDGE

**COPIES FURNISHED TO:**  
Counsel of Record



# COMPOSITE EXHIBIT B

**Jeffrey C. Misley, OSB No. 850674**  
**Martin P. Meyers, OSB No. 990829**  
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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:

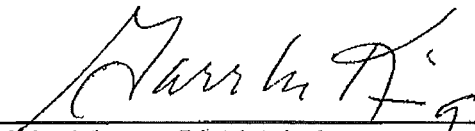
University Management Associates and Consultants Corp.  
c/o Paul Rome  
223 BW Stiger Street, Suite 12  
Hackettstown, NJ 07840

**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. Misley*

By: \_\_\_\_\_  
Jeffrey C. Misley, 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**

XI0000012.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	63,430.95
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
Closettec	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
Pinecreek Structures c/o Bells Springs Structures	17,900.32
Gemline Frame Co	17,220.52
Hamilton Fixture Company	14,676.36
Pinecreek Structures	13,899.43
Bakersfield Woodworks Inc	13,445.40
Sahs Inc	12,749.02
Architechural 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.	7,996.26

XI0000012.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
Tri State Window & Door Inc	3,021.95
Wood Pro Inc	2,948.82
Northend Hardwoods	2,519.25
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
Tkalcac 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

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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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

\* \* \*

FEDERAL TRADE COMMISSION,  
  
Plaintiff,

vs.

JEREMY JOHNSON, individually, as officer  
of Defendants I Works, Inc., Cloud Nine, Inc.,  
CPA Upsell, Inc., Elite Debit, Inc., Internet  
Economy, Inc., Market Funding, Inc., and  
Success Marketing, Inc.; as a member of  
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)

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

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

## 7 BACKGROUND

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

## 18 DISCUSSION

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

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

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


8 E. The Receiver is authorized to (1) engage one or more companies specializing in the  
9 sale of helicopters and fixed wing aircraft to list for sale at prices to be determined in the  
10 Receiver's discretion and judgment the following aircraft: (a) 1978 Cessna P210N, Tail No.  
11 N4827P, (b) 2008 Robinson R44 Raven II helicopter, Tail No. N41286 owned by Trigger, LLC,  
12 (c) 1968 Piper Navajo, Tail No. N300WA; (d) 2005 Robinson R44 Raven II helicopter, Tail No.  
13 N321WT, (e) 2009 Piper Malibu Mirage, Tail No. N32ED, and (f) a 1978 Beech C24R, Tail No.  
14 N20135 (collectively "Aircraft"), and (2) enter into written exclusive listing agreements with one  
15 or more companies specializing in the listing and sale of the particular type and model of the  
16 Aircraft ("Aircraft Brokers") providing for ordinary and customary terms and conditions for the  
17 listing of similar Aircraft including ordinary and customary sales commissions in a range of 6% to  
18 8% of the gross sales price for each of the Aircraft with a minimum commission amount of  
19 \$10,000, providing for ordinary and customary advertising expenses, and further providing that  
20 acceptance of offers and completion of any sales of the Aircraft is subject to entry of an order of  
21 this Court approving each such sale after notice and an opportunity for hearing;

22 F. The Receiver is authorized to (1) engage local, regional or international real estate  
23 brokers experienced in the sale of the types of real properties, including experience in residential  
24 and commercial real estate and sales of raw land in the local market ("Sales Agents"), (2) list for  
25 sale at prices to be determined in the Receiver's discretion and judgment the following residential  
26 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.	)	Case No. 07-cv-10712-RGS
	)	
LYDIA CAPITAL, LLC;	)	
GLENN MANTERFIELD; and	)	
EVAN ANDERSEN,	)	
	)	
Defendants.	)	

**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.

(t) 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.

  
\_\_\_\_\_  
RICHARD G. STEARNS,  
UNITED STATES DISTRICT JUDGE



IT IS, THEREFORE, ORDERED that the Receiver is hereby authorized to sell the personal property held by the Receivership Estate without complying with the requirements of 28 U.S.C. §2004.

IT IS SO ORDERED.

DATED: August 10, 2010.

A handwritten signature in black ink, appearing to read "Nancy F. Atlas", written over a horizontal line.

Nancy F. Atlas  
United States District Judge

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

MEDICAL CAPITAL HOLDINGS,  
INC.; MEDICAL CAPITAL  
CORPORATION; MEDICAL  
PROVIDER FUNDING  
CORPORATION VI; SIDNEY M.  
FIELD; and JOSEPH J.  
LAMPARIELLO,

Defendants.

Case No. 8:09-cv-0818-DOC (RNBx)

**ORDER APPROVING SALE OF  
STOCK IN VIVA VISION, INC.**

Date: August 2, 2010  
Time: 8:30 a.m.  
Ctrm: 9D  
Judge: Hon. David O. Carter

1 The Court having considered the motion of Thomas A. Seaman ("Receiver"),  
2 Court-appointed permanent receiver for Medical Capital Holdings, Inc., Medical  
3 Capital Corporation, Medical Provider Funding Corporation VI, and their  
4 subsidiaries and affiliates, for an order approving sale of stock in Viva Vision, Inc.  
5 ("Motion"), and good cause appearing therefor, hereby orders as follows:

- 6 1. The Motion is granted;
- 7 2. The Stock Purchase Agreement attached as Exhibit B to the  
8 Declaration of Thomas A. Seaman in Support of the Motion is approved.

9  
10 **IT IS SO ORDERED.**

11  
12 DATED: July 30, 2010

  
13 JUDGE, UNITED STATES DISTRICT COURT

14 Submitted by:

15 ALLEN MATKINS LECK GAMBLE  
16 MALLORY & NATSIS LLP

17 By: /s/ Ted Fates

18 Ted Fates  
19 Attorneys for Thomas A. Seaman,  
Receiver

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>U.S. SECURITIES AND</b>	:	<b>CIVIL ACTION NO. 1:09-CV-1330</b>
<b>EXCHANGE COMMISSION,</b>	:	
<b>Plaintiff</b>	:	<b>(Judge Conner)</b>
	:	
<b>v.</b>	:	
	:	
<b>SEAN NATHAN HEALY,</b>	:	
<b>Defendant</b>	:	
	:	
<b>and</b>	:	
	:	
<b>SHALESE RANIA HEALY and</b>	:	
<b>SAND DOLLAR INVESTING</b>	:	
<b>PARTNERS, LLC,</b>	:	
<b>Relief Defendants</b>	:	

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<b>U.S. COMMODITY AND FUTURES</b>	:	<b>CIVIL ACTION NO. 1:09-CV-1331</b>
<b>TRADING COMMISSION,</b>	:	
<b>Plaintiff</b>	:	<b>(Judge Conner)</b>
	:	
<b>v.</b>	:	
	:	
<b>SEAN NATHAN HEALY,</b>	:	
<b>Defendant</b>	:	
	:	
<b>and</b>	:	
	:	
<b>SHALESE RANIA HEALY and</b>	:	
<b>SAND DOLLAR INVESTING</b>	:	
<b>PARTNERS, LLC,</b>	:	
<b>Relief Defendants</b>	:	

**ORDER**

AND NOW, this 11th day of December, 2009, upon consideration of the motion for an order establishing bidding procedures and approving the sale of vehicles (U.S. Securities and Exchange Commission v. Healy, Civ. A. No. 1:09-CV-1330 (M.D. Pa. filed July 12, 2009) [hereinafter Case No. 1330], Doc. 48; U.S.

Commodity and Futures Trading Commission v. Healy, Civ. A. No. 1:09-CV-1331

(M.D. Pa filed July 12, 2009) [hereinafter Case No. 1331], Doc. 44), filed by the court-appointed receiver, Melanie E. Damian, Esq. (the “receiver”), and upon further consideration of defendant and relief defendants’ opposition (Case No. 1330, Doc. 58; Case No. 1331, Doc. 52) to the receiver’s motion, and it appearing that the receiver “seeks to sell the vehicles in an efficient and expedient manner in order to maximize the proceeds of the Vehicle sales and to preserve the resources of the receivership estate,”<sup>1</sup> (Case No. 1330, Doc. 50 at 7; Case No. 1331, Doc. 45 at 7), and that the receiver contends that the vehicles at issue are being stored, insured, and

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<sup>1</sup> The receiver asserts authority to sell the vehicles pursuant to the court’s temporary restraining orders (“TROs”) and preliminary injunctions, which authorize her to take possession of defendant’s personal property. (See Case No. 1330, Doc. 12, 21; Case No. 1331, Doc. 14, 19.) In addition, one of the court’s TROs authorized the receiver to sell “all Receivership Property,” subject to the court’s approval. (See Case No. 1330, Doc. 12 at ¶ 25.) The court later extended the TROs and converted them to preliminary injunctions in virtually all respects, with certain modifications not relevant here. (See Case No. 1330, Doc. 21 at 3-4.)

Defendant and relief defendants argue that the receiver’s purpose is to preserve assets against dissolution, and that the purpose of the court’s preliminary injunctions is merely to preserve the status quo. They contend that, at this stage in the litigation, the court should not permit the receiver to sell the vehicles. However, the court notes that it explicitly contemplated the sale of receivership property when it appointed the receiver and issued the TRO, which was later converted to the preliminary injunction, and it gave no indication that such a sale could not occur prior to a determination on the merits in plaintiffs’ favor. Therefore, the court is not persuaded that permitting the sale of the vehicles at issue at this time would expand the purpose of the receiver’s appointment or the purpose of the preliminary injunction.

Defendant and relief defendants also assert that the receiver “has been maintaining the cars . . . as she allegedly found them; she has clearly been able to maintain the status quo . . .” (Case No. 1330, Doc. 58 at 5; Case No. 1331, Doc. 52 at 5.) The court cannot agree that preserving the condition of the vehicles is synonymous with preserving the status quo, because the costs that accompany storing, insuring, and maintaining the vehicles deplete the estate’s assets.

maintained at the expense of the estate of Sean Healy and of certain assets of relief defendants (“the estate”), and that the vehicles depreciate in value at a rapid rate, and it further appearing that the receiver has proposed bidding procedures for the sale of the vehicles, and that defendant and relief defendants do not present any objections to method by which the receiver proposes to sell the vehicles,<sup>2</sup> and the court concluding that the prompt<sup>3</sup> sale of the vehicles will benefit the estate, it is hereby ORDERED that:

1. The motion (Case No. 1330, Doc. 48; Case No. 1331, Doc. 44) is GRANTED.<sup>4</sup>

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<sup>2</sup> The arguments raised by defendant and relief defendants all pertain to the propriety of the proposed sale, not the proposed procedures.

<sup>3</sup> Asserting that the costs associated with maintaining the vehicles and the vehicles’ ongoing depreciation deplete the assets of the estate, the receiver claims that she “has an imminent need to sell the vehicles.” (Case No. 1330, Doc. 48 at 2; Case No. 1331, Doc. 44 at 2.) Defendant and relief defendants invite the court to reject the receiver’s argument, but the court declines to do so. Even if the court assumes the truth of their contention that the receiver could maintain the vehicles at a lower cost, it would not be possible for the receiver to maintain them at no cost; hence, depletion of the assets of the estate would, in any event, continue for as long as the receiver maintained the vehicles. Defendant and relief defendants also dispute that the vehicles “would materially depreciate to the point that there would be a negative impact” on the estate during the time that it takes to reach a resolution of the case on the merits. (Case No. 1330, Doc. 58 at 8; Case No. 1331, Doc. 52 at 8.) However, they do not come forward with any evidence refuting the testimony of Anthony Cipriano, an exotic car specialist, that “[t]hese cars depreciate daily . . . and especially these exotics.” (Case No. 1330, Doc. 65, Ex. A at 50:21-23; Case No. 1331, Doc. 59, Ex. A at 50:21-23.) Thus, the court is not persuaded that the vehicles’ depreciation is likely to be insubstantial.

<sup>4</sup> The terms “vehicle(s),” “successful bidder(s),” “qualified bidder(s),” and “reserve price” shall have the meaning ascribed to them in the motion. (Case No. 1330, Doc. 48; Case No. 1331, Doc. 44)

- a. The proposed bidding procedures contained in the motion (Case No. 1330, Doc. 48; Case No. 1331, Doc. 44) and in the receiver's reply brief (Case No. 1330, Doc. 65 at n.2; Case No. 1331, Doc. 59 at n.2) are approved.
  - b. The sale of the vehicles in accordance with the terms and conditions of the Vehicle Sales Agreement (Case No. 1330, Doc. 48, Ex. C; Case No. 1331, Doc. 44, Ex. C) to the highest and best offeror as determined in the sole discretion of the receiver is approved.
  - c. The receiver is authorized to enter into and execute the Vehicle Sales Agreement (Case No. 1330, Doc. 48, Ex. C; Case No. 1331, Doc. 44, Ex. C) and all related title documents required to effectuate the sale of each vehicle.
  - d. The sale of each vehicle to the successful bidder(s), as determined in the sole discretion of the receiver, is approved without further order of this court.
  - e. The successful bidder which closes the sale of each vehicle is granted title to such vehicle(s) free and clear of all liens, claims, encumbrances, and interests.
  - f. The defendant and relief defendants are each ordered to execute any and all documents necessary to consummate the sale of each of the vehicles.
  - g. If no qualified bidder submits a bid equal to or greater than the reserve price of a particular vehicle, then that vehicle will not be sold at the auction proposed in the motion, and, thereafter, the receiver may continue to market such vehicle and sell it to any purchaser who will pay an amount equal to or greater than the reserve price set at the auction, as acceptable to the receiver.
2. All provisions of the court's preliminary injunctions (Case No. 1330, Doc. 21; Case No. 1331, Doc. 19) and applicable provisions of the court's TROs (Case No. 1330, Doc. 12; Case No. 1331, Doc. 14) remain in effect.

S/ Christopher C. Conner  
CHRISTOPHER C. CONNER  
United States District Judge