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5 *Attorney for the Receiver,*  
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7  
8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

10 \* \* \*

11 SECURITIES AND EXCHANGE  
12 COMMISSION,

13 Plaintiff,

14 v.

15 EDWIN YOSHIHIRO FUJINAGA and  
MRI INTERNATIONAL, INC.,

16 Defendants,

17 and

18 CSA SERVICE CENTER, LLC  
THE FACTORING COMPANY,  
19 JUNE FUJINAGA, and  
THE YUNJU TRUST,

20 Relief Defendants.  
21

Case No.: 2:13-cv-01658-JCM-CWH

**NOTICE OF MOTION AND  
OPPORTUNITY TO OBJECT  
and, MOTION FOR ORDER**

**(1) AUTHORIZING, APPROVING  
AND CONFIRMING SALE OF  
PERSONAL PROPERTY BY  
AUCTION; AND**

**(2) GRANTING RELIEF FROM  
LOCAL RULE 66-5 PERTAINING TO  
NOTICE TO CREDITORS**

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23 **NOTICE OF MOTION**

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25 **NOTICE IS HEREBY GIVEN** that Robb Evans & Associates LLC, as Receiver (the  
26 “Receiver”) hereby files its *Notice of Motion and Opportunity to Object and, Motion for Order*  
27 *(1) Authorizing, Approving and Confirming Sale of Personal Property by Auction; and (2)*  
28

1 *Granting Relief from Local Rule 66-5<sup>1</sup> Pertaining to Notice to Creditors* (the “Motion”), by  
2 which Motion the Receiver requests that the Court:

3 (1) Enter an order:

4 (a) authorizing the Receiver to engage Christie’s to sell personal property  
5 at auction, which property consists of fine jewelry and watches that have been  
6 recovered from Relief Defendant June Fujinaga,

7 (b) approve the terms of the auction set forth in the proposed agreement  
8 between the Receiver and Christie’s discussed in more detail below, and

9 (c) confirm each successful sale without further order of the court  
10 providing (i) it was conducted in full accord with the terms of the proposed  
11 agreement, (ii) providing the hammer price is at or above the agreed-upon reserve  
12 and/or providing the sale generates the same or greater return to the estate that  
13 would have resulted had the sale closed at not less than the reserve hammer price,  
14 and

15 (2) Enter an order granting relief from LR 66-5 pertaining to notice to creditors and for  
16 related relief.

17 **NOTICE OF OPPORTUNITY TO OBJECT**

18 **PURSUANT TO LR 66-5, YOU ARE HEREBY GIVEN 14 DAYS’ NOTICE OF**  
19 **THIS MOTION.** If no opposition, objection, and/or points and authorities in response to the  
20 Motion is filed and served within 14 days of this Notice, the Court may grant the Motion without  
21 further notice or hearing. This is your **DEADLINE** to file and serve any opposition, objection,  
22 and/or points and authorities in response to the Motion, unless such deadline is extended by the  
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26 <sup>1</sup> The terms “Local Rule” or “LR” shall mean and refer to the Local Rules of Civil Practice for  
27 the United States District Court for the District of Nevada, dated May 1, 2016 and amended  
28 August 1, 2017, which are available at <https://www.nvd.uscourts.gov/wp-content/uploads/2017/09/Local-Rules-of-Practice.pdf> last checked March 18, 2019.

1 Court.<sup>2</sup> See LR 7-2(b). The failure of an opposing party to file points and authorities in response  
2 to the Motion constitutes a consent to the granting of the Motion. See LR 7-2(d).

3 It is the duty of any objecting party to timely (a) file its objection, (b) if desired, to  
4 request that its objection be set for a hearing, and (c) properly notice all parties in interest. If you  
5 do not file and serve an objection within the time permitted, an order granting the requested  
6 relief may be entered by the court without further notice or hearing.

7 **NOTICE IS FURTHER GIVEN THAT NO HEARING HAS  
8 BEEN SCHEDULED ON THE MOTION, AND IF NO  
9 OBJECTION, OPPOSITION, AND/OR POINTS AND  
10 AUTHORITIES IN SUPPORT, IS FILED WITHIN 14 DAYS  
11 OF THIS NOTICE, THAT THE MOTION MAY BE  
12 GRANTED WITHOUT A HEARING.**

11 See LR 78-1.<sup>3</sup>

12 **SUMMARY OF RELIEF REQUESTED**

13  
14 By this Motion, the Receiver is requesting:

15 1. An order approving the sale by auction of certain personal property recovered  
16 from June Fujinaga after the Receiver's specific demand, which personal property consists of  
17 fine jewelry and watches (the "Jewelry") and authorizing and approving the Receiver's execution  
18 of the proposed agreement between the Receiver and Christie's (the "Seller's Agreement"), an  
19 authenticated copy of which is attached as **Exhibit "1"** to the Declaration of M. Val Miller in  
20 support of this Motion (the "Miller Declaration"), filed contemporaneously herewith.

21 \_\_\_\_\_  
22 <sup>2</sup> Should you wish to verify that the Court did not change the standard 14-day deadline to  
23 respond to the Motion, you may contact the Receiver's attorney, Michael Lynch, at  
[Michael@LynchLawPractice.com](mailto:Michael@LynchLawPractice.com), or by telephone at (702) 684-6000.

24 <sup>3</sup> LR 78-1 provides, in relevant part:

25 All motions may be considered and decided with or without a hearing. Any party  
26 making or opposing a motion who believes oral argument may assist the court and  
27 wishes to be heard may request a hearing by inserting the words ORAL  
28 ARGUMENT REQUESTED below the title of the document on the first page of  
the motion or response. Parties must not file separate motions requesting a  
hearing.

1           2.       An order authorizing the Receiver to execute all documents and instruments  
2 necessary or convenient to complete, implement, effectuate and close the sale of each Lot to the  
3 successful buyer in accord with the Seller's Agreement.

4           3.       An order authorizing the Receiver to permit and/or cause to be paid from the  
5 proceeds of the sale of the Jewelry (a) all ordinary and customary closing costs, all costs and  
6 expenses due and owing under the terms of the Seller's Agreement by the seller from estate  
7 funds if incurred prior to the sale, or from the proceeds of sale if incurred post-sale, (b) all  
8 commissions provided for in the Seller's Agreement, and (c) all sales taxes required to be paid  
9 by law and/or as agreed to under the Seller's Agreement.

10          4.       An order authorizing, approving, and confirming the sale of each Lot<sup>4</sup> (without  
11 further order of the court) that fully conforms with (a) the terms, procedures, and conditions set  
12 forth in the with Seller's Agreement, and (2) all instructions and direction and terms of the order  
13 on this Motion.

14          5.       An order deeming notice of this Motion to be sufficient under LR 66-5 based on  
15 the service of notice of this Motion and the Miller Declaration (which includes a Notice of  
16 Motion and a Notice of an Opportunity to Object) on all known non-consumer creditors of the  
17 estate, but not on the tens of thousands of potential foreign creditors; and

18          6.       An order for such additional relief as may be necessary or appropriate to allow the  
19 Receiver to effectuate the sale of the Jewelry, including but not limited to, entry of an order  
20 authorizing such sale in a form acceptable to Christie's.

21               This Motion is made pursuant to 28 U.S.C. §§ 2001 and 2004 and LR 66-5 and the  
22 authority and directives given to the Receiver in this case, and other applicable law, and is based  
23 upon the Notice of Motion and the Notice of Opportunity to Object hereinabove, the  
24 accompanying Memorandum of Points and Authorities, the facts of this case, the Miller  
25 Declaration and the authenticated exhibits attached thereto, any reply, and upon all other

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28       <sup>4</sup> The term "Lot" as used herein shall mean and refer to (i) each piece of jewelry and/or each group of Jewelry deemed to be a collection and including (ii) each watch.

1 pleadings and documentary evidence as may be presented to the court by the Receiver in support  
2 of this Motion.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. INTRODUCTION AND SUMMARY OF RELEVANT FACTS.**

5 Robb Evans & Associates LLC was appointed receiver (the “Receiver”) in the above-  
6 captioned case by that certain *Order Appointing an Equitable Receiver* entered on February 23,  
7 2015 (ECF No. 194), which commanded and authorized the Receiver to, among other things,  
8 take and retain immediate possession, custody, and control of certain commercial properties  
9 owned or controlled by Defendant Edwin Fujinaga and others.

10 The duties and responsibilities of the Receiver were enlarged by that certain *Order*  
11 *Appointing a Full Equitable Receiver to Assume Control over the Defendants' Assets and*  
12 *Enforce the Final Judgment* entered on May 15, 2015 (ECF No. 226) (the “Order Appointing  
13 Receiver”). The Order Appointing Receiver supersedes the previous order and directs the  
14 Receiver to take and retain immediate possession, custody, and control of all assets owned or  
15 controlled, directly or indirectly, by any of the Defendants in the SEC Receivership Litigation.  
16 *Id.*

17 A Final Judgment Against June Fujinaga and the Yunju Trust (the “June Fujinaga Relief  
18 Defendants”), found that they are jointly and severally liable for disgorgement in the  
19 approximate amount of \$2.83 million (ECF No. 260, entered on August 11, 2015). The amount  
20 of the judgment was later reduced to \$2,333,382.18. (ECF No. 317). Other than the reduction in  
21 the amount of the judgment, the two judgments are identical.

22 Both the original judgment and the amended judgment entered against the June Fujinaga  
23 Relief Defendants, which shall hereafter be collectively referred to herein as the “Final  
24 Judgment” provide that the assets and funds of the June Fujinaga Relief Defendants up to the  
25 amount of the Final Judgment, are included in the Receivership Estate established by the Court’s  
26 May 20, 2015 Order Appointing a Full Equitable Receiver (the “Order Appointing Receiver”)  
27 (ECF No. 226), and that all of the provisions of that Order Appointing Receiver are incorporated  
28 by reference and applicable herein. *See* Final Judgment at ¶ F (ECF Nos. 260, 317).

1 The provisions of the Order Appointing Receiver, made fully applicable to the June  
2 Fujinaga Relief Defendants by the Final Judgment, provide that the Receiver was appointed to be  
3 the receiver for all assets owned or controlled, directly or indirectly, by judgment debtors,  
4 including Relief Defendants and all of their assets. *See* Order Appointing Receiver at ¶ 2.

5 Under the Order Appointing Receiver, the Receiver is authorized, empowered, and  
6 directed to perform certain duties and responsibilities, as reasonably appropriate and necessary to  
7 comply with and effectuate the goals and purposes of the equitable receivership. *Id.* at ¶ 4.  
8 Included in these enumerated duties is to:

9 a. Levy on assets, file collection actions, file fraudulent  
10 transfer actions, and take all reasonable measures to enforce the  
11 Final Judgment as though the Receiver were the judgment creditor  
12 in this action....

12 b. Take and retain immediate possession, custody, and control of  
13 all assets owned or controlled, directly or indirectly, by any of the  
14 Defendants. The term "assets" as it is used in this Order includes,  
15 but is not limited to, real property, personal property, money and  
16 funds, and the books and records pertaining to the assets.

15 *Id.* at ¶ 4(a) and (b). As directed by the orders referenced above, the Receiver has evaluated  
16 various methods, including auction houses, to liquidate the Jewelry that would likely result in the  
17 highest return to the estate. The Receiver has determined that Christie's is the entity most suited  
18 to auction the Jewelry currently possessed by the estate.

19 **II. THE RECEIVER REQUESTS THE COURT APPROVE THE PROPOSED SALE**  
20 **BY AUCTION TO ACHIEVE EQUITY FOR THE BENEFIT OF THE ESTATE.**

21 28 U.S.C. § 2004 provides, in relevant part, that “[a]ny personalty sold under any order or  
22 decree of any court of the United States shall be sold in accordance with section 2001 of this  
23 title, unless the court orders otherwise.” Accordingly, the court is not bound to require strict  
24 compliance with section 2001 but has the discretion to approve alternative procedures pertaining  
25 to the sale of personal property by a federal receiver. The Receiver is proposing and seeking  
26 authority for the sale of the Jewelry by public auction. Christie's advertises its auctions well in  
27 advance, creates and distributes high quality catalogs with high-definition color photographs and  
28 descriptions of each lot. *See* Exhibit “2” to the Miller Declaration, which is an excerpt from a

1 recent Christie's Auction Catalog consisting of 35 pages taken from a 366-page catalog, and  
2 which includes terms that must be agreed to by the prospective buyer. The Receiver is informed  
3 and believes that Christie's approach to advertising and promoting its auctions, and the people it  
4 targets and draws to its auctions, provides the best reasonably practical option to return the  
5 maximum proceeds to the estate considering the type and quality of the Jewelry. This court has  
6 previously approved the sale of personal property recovered by the Receiver by auction. (See  
7 ECF Nos 274, 301, and 420).

8           There is no reason to delay the sale of the Jewelry, all of which has been turned over to  
9 the Receiver by Relief Defendant June Fujinaga upon the Receiver's demand. Moreover, the  
10 Jewelry is currently in the possession of the Receiver and getting the auction process started  
11 would remove the unwanted duty currently held by the Receiver to safeguard the jewelry. The  
12 Receiver has determined, based upon the nature and quality of the Jewelry, and the time and  
13 costs that would be incurred in connection with other methods of liquidation, that it is in the best  
14 interests of the receivership estate and its creditors for the Receiver to engage an auctioneer to  
15 liquidate the Jewelry.

16           The Receiver reviewed three valuations, one which is by a jewelry appraiser that June  
17 Fujinaga commissioned, and two of which came from auction houses. Christie's valuations and  
18 proposed reserve prices were overall considerably higher than either the appraisal or the other  
19 auction house's valuation.<sup>5</sup> In the Receiver's opinion, the estate is likely to obtain a higher  
20 overall return through a Christie's auction than it would under other feasible methods. The  
21 Receiver has obtained the form contract used by Christie's and negotiated certain concessions  
22 from Christie's to its standard Seller's Contract given the nature of this case and to conform with  
23 the Receiver's authority, if granted under separate order, to act as the seller in its capacity as the  
24 Receiver, but the Receiver is not the owner or title holder of the property. *See* Seller's Contract,  
25 Exhibit 1 to the Miller Declaration.

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<sup>5</sup> The Receiver did not submit, file, or upload those valuations to the publicly accessible CM/ECF system. Should the court wish to view the valuations, the Receiver would promptly submit these documents for the court's *in camera* review.

1 Notwithstanding anything to the contrary provided in the Seller's Contract and/or the  
2 Catalog, Christie's has agreed that it will confer with the Receiver in good faith prior to the  
3 applicable catalog going to print to agree on the language set forth in the Headings for the  
4 Jewelry, which is defined as the "UPPERCASE type in the first line of the catalogue description"  
5 for each Lot. (see Ex. 2 to the Miller Declaration, marked as page 343 of the catalog, paragraph  
6 2(b)). Ultimately, Christie's has far more depth and breadth of experience with respect to fine  
7 jewelry and watches, so if necessary, Christie's may make the ultimate decision on the wording  
8 of the Headings in accord with Christie's business judgment.

9 Christie's is well respected and widely known for its auctions of high-end artwork,  
10 jewelry, and other valuable and authentic personal property. Christie's offers broad and diverse  
11 selling platforms offering a wide range of price points, categories, geographies, online-only  
12 auctions and important private collections, and employs experienced specialists in more than 80  
13 categories.<sup>6</sup> In addition, the Receiver is informed and believes that Christie's has access to a  
14 global database of potential buyers, a skilled marketing and public relations team, as well as a  
15 team of accomplished auctioneers.

16 The Receiver requests the Court exercise its discretion under 28 U.S.C. § 2004 to modify  
17 the sale procedures set forth in 28 U.S.C. § 2001(b) with respect to the sale of the Jewelry  
18 because those requirements are impractical and unnecessary in this instance.

19 The Receiver further submits that Christie's proposed compensation, in an amount equal  
20 to 6% of the hammer price is fair and appropriate. *See* Proposed Seller's Agreement at p.1., Ex. 1  
21 to the Miller Declaration. The Receiver further submits that the 25% buyer's premium, which  
22 shall not be taken from the seller's proceeds, on hammer prices up to \$250,000 is standard in all  
23 Christie's auctions, and is customary and appropriate in this instance. On this basis, and for the  
24 reasons set forth in this Motion, the Receiver requests an order authorizing and approving the  
25 Receiver's execution of the Seller's Agreement, and to authorize, approve and confirm each sale  
26 closed in accord with the order on this motion and with the Seller's Agreement. Similar requests

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28 <sup>6</sup> *See, e.g.*, <https://www.christies.com/services/estates-appraisals-valuations>;  
<https://www.christies.com/>, last checked March 22, 2019.



1 by the Receiver to sell Personal Property via orders granting authority, authorization, and  
2 confirmation of the sale of personal property by auction under similar terms. By stipulations  
3 approving the auctions at ECF Nos. 274 and 420, and by the Receiver’s motions at ECF Nos.  
4 328, 365, and 492.<sup>7</sup>

5 **III. NOTICE OF THIS MOTION IS SUFFICIENT UNDER THE CIRCUMSTANCES**  
6 **AND SHOULD BE APPROVED.**

7 LR 66-5 provides for service of notice of the hearing on various motions by a receiver  
8 concerning the administration of the estate. That rule provides for service of the notice of hearing  
9 on such motions on all creditors of the receivership estate. No hearing has been set on this  
10 Motion and the provisions of LR 66-5 do not specifically apply. Nevertheless, the Receiver will  
11 serve notice of filing of the Motion on the parties, the affected lienholders, and on all known  
12 non-consumer creditors of the estate and on known taxing authorities with a potential claim in  
13 the receivership estate (“Notice Parties”), to provide them notice and an opportunity to object  
14 and/or be heard concerning the Motion. This notice is consistent with notice previously approved  
15 by the Court in this case.

16 In this case, there are believed to be a large number of potential consumer creditors who  
17 may have claims against the receivership defendants arising out of the business operations of the  
18 receivership defendants prior to the Receiver’s appointment, although the precise number,  
19 identity and location of such consumer creditors have not been determined by the Receiver. The  
20 Receiver has had discussions for counsel representing many of the foreign investors and has been  
21 advised that the number of consumer creditors is likely in the thousands. It is not realistically  
22 possible or beneficial to the estate and its creditors for the Receiver to attempt to identify and  
23 serve notice to the potential consumer creditors with notice of this and other similar  
24 administrative motions, and the expense and burden on the estate of attempting to effectuate such  
25 service would drain the estate's resources and cause undue administrative expense.

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<sup>7</sup> See fn.3, ¶ 4(h), and ¶ 5.



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6 *Attorney for Receiver Robb Evans*  
*& Associates LLC*

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

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11 \* \* \*

12 SECURITIES AND EXCHANGE  
13 COMMISSION,

14 Plaintiff,

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16 EDWIN YOSHIHIRO FUJINAGA and  
MRI INTERNATIONAL, INC.,

17 Defendants,

18 and

19 CSA SERVICE CENTER, LLC  
THE FACTORING COMPANY,  
20 JUNE FUJINAGA, and  
THE YUNJU TRUST,

21 Relief Defendants.  
22

Case No.: 2:13-cv-01658-JCM-CWH

**DECLARATION OF M. VAL MILLER IN  
SUPPORT MOTION FOR ORDER**

**(1) AUTHORIZING, APPROVING AND  
CONFIRMING SALE OF PERSONAL  
PROPERTY BY AUCTION; AND**

**(2) GRANTING RELIEF FROM LOCAL  
RULE 66-5 PERTAINING TO NOTICE TO  
CREDITORS**

23  
24 I, M. VAL MILLER, declare:

25 1. I am an Executive Vice President and a member of Robb Evans & Associates  
26 LLC, the court-appointed receiver (the "Receiver") in this case. I am one of the deputies to the  
27 Receiver responsible for the day-to-day supervision of the receivership estate. If called upon to  
28

1 testify as to the facts set forth in this declaration, I could and would testify competently thereto as  
2 the facts are true and within my personal knowledge or I have gained knowledge of such facts  
3 from the books and records of the receivership proceeding, including the books and records of  
4 the receivership.

5       2. I am authorized to make this Declaration in support of the Receiver's *Motion for*  
6 *Order (1) Authorizing, Approving and Confirming Sale of Personal Property by Auction; and*  
7 *(2) Granting Relief from Local Rule 66-5 Pertaining to Notice to Creditors* (the "Motion").

8       3. The Jewelry<sup>1</sup> that the Receiver proposes to place with Christie's for auction, is  
9 the same Jewelry that was recovered by the Receiver from June Fujinaga upon the Receiver's  
10 specific demand.

11       4. The Receiver has evaluated one appraisal, and two expert valuations of the  
12 Jewelry from three separate parties but has not publically included those valuations in support  
13 of the Motion to avoid chilling the bidding process. With respect to the valuations provided by  
14 different auction houses, the valuations and proposed reserved amounts that Christie's proposed  
15 provide the most favorable terms to the estate. The Receiver would, of course, promptly submit  
16 those valuations and reserves for the court's *in camera* review upon the court's request.

17       5. The Receiver is informed and believes that the Christie's approach to advertising  
18 and promoting its auctions, and the people it targets and draws to its auctions, provides the best  
19 reasonably practical option to return the maximum proceeds to the estate considering the type  
20 and quality of the Jewelry.

21       6. Attached hereto as **Exhibit "1"** is a true, correct, and complete copy of the  
22 negotiated Seller's Agreement. Pending court approval, the Receiver and Christie's are  
23 prepared to execute the Seller's Agreement and will proceed to liquidate the Jewelry via auction  
24 in accord with the Seller's Agreement and the court's order on this motion, providing the  
25 Motion is granted in its entirety.


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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings set forth in the Motion.

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7. Attached hereto as **Exhibit “2”** is a true and correct excerpt from a recent Christie’s auction catalog, which includes provisions applicable to the prospective buyer at pages 342—346, and 355 of the Catalog, or 6 of the 7 last pages of the excerpt.

These declarations are made under penalty of perjury under the laws of the State of Nevada and the United States of America.

Dated:



M. VAL MILLER  
Executive Vice President and a member of the  
Receiver, Robb Evans & Associates LLC