

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND  
SOUTHERN DIVISION

*In re* SANCTUARY BELIZE LITIGATION

No: 18-cv-3309-PJM

**MOTION FOR ORDER APPROVING AND CONFIRMING SALE OF REAL  
PROPERTY COMMONLY KNOWN AS 3905 MARCUS AVENUE, NEWPORT BEACH,  
CALIFORNIA [SUPPORTING DECLARATION OF BRICK KANE FILED  
CONCURRENTLY HEREWITH]**

The temporary receiver Robb Evans & Associates LLC (“Receiver”), the temporary receiver appointed pursuant to the Ex Parte Temporary Restraining Order With Asset Freeze, Writs *Ne Exeat*, Appointment of a Temporary Receiver and Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue (Doc. 13) (“TRO”), extended pursuant to the Extension of Temporary Restraining Order and Interim Preliminary Injunction (Doc. 34) (“Interim Preliminary Injunction”), hereby moves the Court for the following relief:

1. An order authorizing and confirming the sale of the real property commonly known as 3905 Marcus Avenue, Newport Beach California (“Newport Beach Property”), Assessor’s Parcel No. 423-076-05, and legally described as:

Lot 3 in Block 339 of the Canal Section of Newport Beach,  
in the City of Newport Beach, County of Orange, State of  
California, as per Map recorded in Book 4, Page 98 of  
Miscellaneous Maps, in the Office of the County Recorder  
of said Orange County.

on an “as is” basis as more fully described in the sale contract documents by private sale to Dominic Tucci and Elizabeth Tucci (“Buyer”), an arm’s length buyer, at a purchase price of \$2,250,000, pursuant to the California Residential Purchase Agreement and Joint Escrow Instructions, Seller Multiple Counter-Offer No. 1, Additional Terms and “As-Is” Purchase Addendum, Buyer Counter Offer No. 1, Counter Offer No. 2, and Seller Response and Buyer Reply to Request for Repair No. 1 (collectively, the “Sale Contract”), attached as Exhibit 1 to the accompanying declaration of Brick Kane (“Kane Declaration”) filed in support of this Motion.

2. An order authorizing, pursuant to the Residential Listing Agreement attached as Exhibit 2 to the Kane Declaration, a sales commission in the amount of 5% of the purchase price paid by the Buyer shall be paid from the proceeds of the sale at close of escrow, and providing that no other sales commission shall be paid from the proceeds of the sale or shall be paid by or be the responsibility of the Receiver under any circumstances.

3. An order providing that the sale of the Property by private sale to the Buyer under the Sale Contract is approved and confirmed by said order without further notice, hearing or additional order.

4. An order authorizing the Receiver to execute all documents and instruments necessary or appropriate to complete, implement, effectuate and close the sale of the Marcus Property to the Buyer, including but not limited to the deed conveying title to the Marcus Property as provided herein.<sup>1</sup>

5. An order providing that the sale of the Marcus Property to the Buyer is being sold in an “as is” condition, without any warranties or representations, with all faults known and

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<sup>1</sup> The Receiver has established a Qualified Settlement Fund to hold the proceeds from the liquidation of receivership assets designated as the Ecological Fox LLC et al. Receivership QSF.

unknown, as more particular set forth in the Sale Contract.

6. An order providing that any licensed title insurer and the Buyer may rely on said order as authorizing the Receiver to transfer legal title to the Property free and clear of all liens and encumbrances.

7. An order authorizing the Receiver to permit and/or cause to be paid from the proceeds of sale all ordinary and customary closing costs, all costs and expenses required to be paid pursuant to the terms of the Sale Contract by the Receiver from the proceeds of sale, the sales commission described above at paragraph 2, all real property tax liens and prorated real property taxes due up to the date of closing, and the balance due under the obligation secured by the deed of trust in favor of the Cloughesy Family Trust of 1996 by Timothy Cloughesy, its Trustee.

8. An order providing that, as set forth in the Order Granting Temporary Receiver's Motion for Order Authorizing Listing for Sale and Marketing of Real Property Commonly Known as 3905 Marcus Avenue, Newport Beach, California, by Receiver ("Sale Order") (Doc. 518), after payment of the sums set forth above at paragraph 7, all net proceeds from the sale of the Marcus Property shall be paid to the Receiver and be the sole and exclusive property of the receivership estate, free and clear of all other liens and encumbrances, if any exist.

9. An order for such additional relief as may be necessary or appropriate to allow the Receiver to effectuate the sale of the Marcus Property, including without limitation the entry of an order authorizing such sale in form acceptable to the title company insuring title in connection with the sale of the Marcus Property.

This Motion is made pursuant to 28 U.S.C. § 2001 and the Sale Order.

Dated: October 3, 2019

By: /s/ Gary Owen Caris

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UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND  
SOUTHERN DIVISION

*In re* SANCTUARY BELIZE LITIGATION

No: 18-cv-3309-PJM

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR  
ORDER APPROVING AND CONFIRMING SALE OF REAL PROPERTY  
COMMONLY KNOWN AS 3905 MARCUS AVENUE, NEWPORT BEACH,  
CALIFORNIA**

**I. INTRODUCTION AND STATEMENT OF FACTS**

A. Background Facts

The Temporary Receiver, Robb Evans & Associates LLC (“Receiver”) was appointed as Temporary Receiver in this action pursuant to the Ex Parte Temporary Restraining Order with Asset Freeze, Writs *Ne Exeat*, Appointment of a Temporary Receiver, and Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue (“TRO”) issued by the Court on November 5, 2018 (Doc. 13). Under the TRO, the Receiver became temporary receiver over all named Corporate Defendants (except for Atlantic International Bank, Ltd.) and over the assets of Andris Pukke (“Pukke”) and Peter Baker (“Baker”) valued at \$1,000 or more. The TRO was extended by the Extension of Temporary Restraining Order and Interim Preliminary Injunction (Doc. 34) filed November 29, 2018 (“Interim Preliminary Injunction”).

The FTC filed a motion to amend the Complaint and a proposed Amended Complaint for Permanent Injunction and Other Equitable Relief (“Amended Complaint”) on December 28, 2018 adding Michael Santos (“Santos”) and Newport Land Group, LLC (“NLG”) as defendants.

(Doc. 87) The Court granted the motion to amend on January 11, 2019. (Doc. 107) On February 13, 2019 the Court entered a Stipulated Preliminary Injunction as to Santos and Defendants Rod Kazazi, Foundation Partners, Brandi Greenfield, BG Marketing LLC, Frank Costanzo, Deborah Connelly, Ecological Fox LLC, Angela Chittenden, and Beach Bunny Holdings LLC (Doc. 164) (“Stipulated Preliminary Injunction”). Under the Stipulated Preliminary Injunction, the Receiver remained as receiver over the stipulating Receivership Entities BG Marketing, LLC, Ecological Fox, LLC, and Foundation Partners, and NLG was expressly added as a named Receivership Entity. The Receiver remains temporary receiver over the remaining Receivership Entities named in the TRO and over the assets of Pukke and Baker.

On August 2, 2019 the Court issued its Memorandum Opinion in Support of Preliminary Injunction (Doc. 539-1). A hearing on the text of the preliminary injunction was held on September 24, 2019. It is anticipated that the Receiver will become permanent receiver serving during the pendency of this case pursuant to a preliminary injunction, once entered. In addition, various duties were assigned to the Receiver pursuant to the Order Governing Interim Receivership Management (Doc. 559) regarding Sanctuary Belize, which was entered on August 23, 2019, further indicating that the Receiver’s appointment will no longer be considered temporary.

B. 3905 Marcus, LLC and the Property it Owns

On June 17, 2019 the Receiver filed its Motion for Order Authorizing Listing for Sale and Marketing of Real Property Commonly Known as 3905 Marcus Avenue, Newport Beach, California by Receiver (Doc. 497) (“Sale Motion”). As more particularly set forth in the Sale Motion, the Receiver explained why it should be permitted to market and sell the real property commonly known as 3905 Marcus Avenue, Newport Beach, California (“Marcus Property”). In

the Sale Motion, the Receiver explained that the holder of record title on the Marcus Property is 3905 Marcus, LLC (“Marcus LLC”). The sole owner of record of Marcus LLC was Relief Defendant Angela Chittenden (“Chittenden”) and the sole Manager of Marcus LLC was Defendant Rod Kazazi (“Kazazi”). At all relevant times, Chittenden was the putative spouse of Pukke and the mother of two of his children. Based on this information, as well as the Receiver’s preliminary forensic accounting investigation, early in the receivership the Receiver determined that Marcus LLC should be considered a non-party Receivership Entity.<sup>1</sup> Section XVI.W of the TRO authorized the Receiver to determine if any non-party was a Receivership Entity and, if so, treat that entity as a Receivership Entity and exercise all of its rights and duties specified in the TRO as to that non-party Receivership Entity. On December 11, 2018, counsel for the Receiver advised the parties to the lawsuit and various other parties in interest of its determination that Marcus LLC was a Receivership Entity as required by Section XVI.X of the TRO. In that letter, the Receiver advised the parties that its determination could be challenged by filing a motion with the Court. No such motion was ever filed. The only known asset in the name of Marcus LLC is the Marcus Property.

The Sale Motion further demonstrated that the acquisition of the Marcus Property was funded by the Receivership Entities, together with a loan from the Cloughesy Family Trust of 1996 by Timothy Cloughesy, its Trustee (“Cloughesy Loan”). In addition, all monthly payments made on the Cloughesy Loan prior to the inception of the receivership were made by the Receivership Entities. After purchase and prior to the receivership, the Receivership Entities

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<sup>1</sup> It was subsequently determined that Kazazi resigned as Manager of Marcus LLC approximately one week after the FTC lawsuit was commenced and Chittenden subsequently asserted, under oath, that her signatures on the operative corporate formation documents were forged and unauthorized.

also funded the payment of property taxes and design fees for the Marcus Property. Therefore, in the Sale Motion the Receiver proved that all of the funding for the Marcus Property, other than the Cloughesy Loan, came from the Receivership Entities.

C. Terms of the Order Granting the Sale Motion

Based on the evidence presented in the Sale Motion, to which there was no opposition, including the facts set forth above and additional facts supporting the need for a prompt sale of the Marcus Property, the Court granted the Sale Motion pursuant to its Order Granting Temporary Receiver's Motion for Order Authorizing Listing for Sale and Marketing of Real Property Commonly Known as 3905 Marcus Avenue, Newport Beach California By Receiver (Doc. 518) entered July 10, 2019 ("Sale Order"). The Sale Order specifically provided for the following:

1. The Receiver was authorized to engage a qualified real estate broker with experience and expertise in the Newport Beach residential real estate market providing for a broker's commission not to exceed an aggregate of 6% of the sales price to list and market for sale the Marcus Property.

2. In setting a sales price and marketing the Marcus Property, the Receiver was required to obtain at least two certified appraisals and one broker's opinion of value.

3. The Receiver was given sole authority with respect to the marketing and sale of the Marcus Property and was authorized to conditionally accept the highest and best offer for the property in the Receiver's sole opinion and judgment, subject to entry of a subsequent order of this Court approving and confirming such sale after a motion brought on notice to the parties pursuant to 28 U.S.C. §2001.

4. The net proceeds from the sale of the Marcus Property are to be paid to the Receiver and be the sole and exclusive property of the receivership estate.

Pursuant to the Sale Order, the Receiver has marketed the Marcus Property and obtained an arm's length, third party, well qualified buyer who is ready to close escrow within 30 days of the Court entering an order granting the instant Motion at an excellent price for the receivership estate.

D. Valuing the Property, Marketing the Property, Pre-Motion Bidding Process, and Sale Agreement with the Proposed Buyer

In anticipation of the Sale Order, the Receiver commenced efforts to value the Marcus Property. It was appraised in late February 2019 by William Walsh, Certified Residential Appraiser, of B & W Appraisal Services, Inc. A broker's opinion of value was obtained in March 2019 from Timothy Carr. After entry of the Sale Order, a second appraisal was obtained in July 2019 from Kenneth Mullinix, Certified Residential Appraiser, of Kenneth Mullinix & Associates.<sup>2</sup>

In anticipation of the Sale Order, the Receiver interviewed three prospective listing brokers, focusing its search on those brokers with extensive expertise and experience selling residential real estate in upscale areas of Orange County, California, including Newport Beach. Immediately following entry of the Sale Order, the Receiver entered into a listing agreement with broker Timothy Carr of Villa Real Estate. Carr is one of five founding members of Villa

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<sup>2</sup> The Receiver has not filed or disclosed these valuations to the Court in this Motion for various reasons. Given the pending status of the sale, there is a need to keep these valuations confidential should the sale fail to close for any reason. If the Court requires the valuations to be presented, the Receiver would request that the valuations be presented to the Court alone for *in camera* inspection or filed under seal. However, the key fact is that the purchase price under the proposed sale equals or exceeds the value determined by the two appraisals and the broker's opinion of value.

Real Estate, and exceptionally experienced and well regarded in the residential real estate market in Newport Beach, California and in particular Newport Island where the Marcus Property is located. Villa Real Estate is a large brokerage firm specializing in high end properties in the Orange County area.

The Receiver, in consultation with Carr, decided to aggressively list the Marcus Property at \$2,395,000 which was a listing price that substantially exceeded the appraisals and broker's opinion of value. Carr agreed to a 5% commission, which was lower than the 6% limit established in the Sale Order. While the Marcus Property is in a very desirable Bayfront location on Newport Island, with sunset-facing views of the water, the appraisers and brokers who were consulted consistently determined that the house was essentially a "tear down" given its very poor condition. The Receiver was advised that any prospective buyer, whether someone interested in living in the property or acquiring it for investment, would have to tear down the existing home and build a new home on the site. During the inspection period of this sale, it was further determined that the seawall on the property would need to be repaired or replaced, with estimates ranging from \$75,000 for repair of the seawall to \$175,000 for replacement. The cost to repair or replace the seawall was **not** factored into the appraisals or broker's opinion of value.

The property was formally listed on July 23, 2019. Carr's real estate team immediately created an e-mail campaign for the Marcus Property to inform other real estate agents of the new listing and invite them to the brokers' open house. The e-mail was sent to over 30,000 agents in the Orange County area who have opted in to receive e-mails from Carr. E-mail advertising also was sent to over 2,000 local residents who have opted in to receive e-mails from Carr.

Carr also created a postal advertising campaign, advertising the Marcus Property listing in the Coastal Real Estate Guide, an advertising supplement in various local newspapers,

including the Newport Beach Independent and the Laguna Beach Independent. The Newport Beach Independent is delivered every Friday to more than 11,000 Newport Beach homes and over 125 commercial locations in Newport Beach, with estimated readership of 164,000. The Laguna Beach Independent is also delivered every Friday to more than 10,000 Laguna Beach homes and over 125 commercial locations in Laguna Beach, with monthly readership of approximately 150,000.

The Marcus Property was also listed in the California Regional Multiple Listing Service (“CRMLS”). The CRMLS provides listings to 96,000 participating agents throughout Southern California, through 38 participating associations of realtors and boards of realtors. Property listing information, including photographs, was also displayed on the internet through real estate websites, including Zillow, RedFin, realtor.com, trulia.com, Realty Trac.com, open listings.com and over 60 other internet sites. It also appeared in LuxuryRealEstate.com, a premier high-end syndication site, that has monthly visitors estimated at 477,000 from throughout the world, and Wall Street Journal’s websites for prospective buyers both domestically and abroad.

All of this electronic and print advertising and exposure led to numerous calls on the property and seven showings by appointment. Because of these extensive marketing efforts and its desirable location, the Receiver obtained five written offers on the Marcus Property within the initial two weeks of the listing. To maximize the purchase price, the Receiver did not counter any of these offers, but rather solicited the five written offerors to provide their best and final offers for the property. After receiving and evaluating offers, the Receiver determined that the offer from Dominic Tucci and Elizabeth Tucci (collectively, the “Buyer”) for \$2,300,000 was clearly superior to the other four offers. Dominic Tucci is a real estate agent with Villa Real Estate, and apparently will benefit from receiving back as much as 2% of the sale price as the

Buyer's agent. However, since the Receiver, as the seller, is required to pay the entire 5% commission in any event, this does not prejudice the receivership estate and likely prompted the Buyer to offer an amount clearly superior to all competing purchase offers.

During the inspection period, as a result of the need to repair or replace the seawall, the Buyer sought an \$85,000 repair credit. However, the Receiver offered to provide only a \$50,000 credit, which was accepted by the Buyer. This is a further benefit to the receivership estate because the seawall credit is less than the estimate to repair or replace the seawall, which has been estimated to cost somewhere between \$75,000 and \$175,000.

The contract to purchase the Marcus Property is set forth in the California Residential Purchase Agreement and Joint Escrow Instructions, Seller Multiple Counter-Offer No. 1, Additional Terms and "As-Is" Purchase Addendum, Buyer Counter Offer No. 1, Counter Offer No. 2, and Seller Response and Buyer Reply to Request for Repair No. 1 (collectively, the "Sale Contract"). All contingencies have been removed and the Buyer has elected to proceed with the transaction upon Court approval. The deposit of \$66,000 will become property of the receivership estate should the Court grant the Motion and the Buyer fail to close escrow for any reason not the fault of the Receiver.

**II. THE SALE OF THE MARCUS PROPERTY SHOULD BE APPROVED AND CONFIRMED UNDER 28 U.S.C. §2001, THE SALE ORDER AND APPLICABLE RECEIVERSHIP LAW**

Title 28 U.S.C. § 2001 sets forth the procedures pertaining to the sale of real property. Subsection (a) pertains to procedures for the public sale of real property and provides for the sale of real property by public sale at the courthouse where the Receiver was first appointed, at the courthouse where most of the property is located or at such other premises as the Court directs.

28 U.S.C. § 2001(a). Section § 2001(b) of Title 28 pertains to the sale of real property at private sale. That statute provides in part:

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 therein by private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be served thereby.

The time, manner, terms of sale and notice thereof are regulated by the court appointing the receiver. Courts are granted discretion in setting the terms and conditions for judicial sales and the Court's discretion will not be disturbed on appeal except where abuse of discretion is shown. *United States v. Branch Coal Corp.*, 390 F. 2d 7 (3rd Cir. 1968), *cert. den. Sun Protection Co. v. United States*, 391 U.S. 966, 88 S. Ct. 2034 (1968). The Court has substantial discretion in receivership matters in setting the overbidding procedures applicable to sales of real property. *See Pewabic Mining Co. v. Mason*, 145 U.S. 349, 356, 36 L.Ed. 732, 12 S.Ct. 887 (1891) (the provisions for notice and other conditions shall be determined by the Court “as will in his judgment best protect the rights of all interested, and make the sale most profitable to all”). *See also Cumberland Lumber Co. v. Tunis Lumber Co.*, 171 F. 352 (4th Cir. 1909); *Bidwell v. Huff*, 176 F. 174 (5th Cir. 1909). The terms and conditions of the judicial sale that the Court may adopt are based on the facts and circumstances of each case. The discretion granted in connection with sales of assets is consistent with the broad discretion accorded to the Court sitting in equity in receivership proceedings to make orders concerning the administration and supervision of the estate that will promote equity, efficiency and cost-effectiveness in the estate’s

administration. *See generally Securities and Exchange Commission v. Hardy*, 803 F.2d 1034 (9th Cir. 1986); *Securities and Exchange Commission v. Black*, 163 F.3d 188, 199 (3rd Cir. 1998); *Securities and Exchange Commission v. Elliot*, 953 F.2d 1560 (11th Cir. 1992).

There are four statutory components for the approval of a private sale under §2001(b). First, the property is to be appraised by three appraisers. The statute does not define what constitutes an “appraisal” for the purpose of §2001. In any event, the Court clarified this requirement in the Sale Order by requiring two certified appraisals and one broker’s opinion of value, which the Receiver obtained.

Second, a private sale must be for a price at least two-thirds the amount of the average of the appraised values. In this case, the sale price equals or exceeds each of the three Marcus Property valuations obtained by the Receiver, which is far in excess of the two-thirds threshold.

The third and fourth provisions call for publication of the terms of the sale in a newspaper of general circulation at least ten days before sale, with the private sale to be confirmed unless an overbidder bids at least 10% more than the price offered. The spirit of these provisions have been met and the expense and delay attendant to strict compliance with these provisions outweigh any possible benefit to the receivership estate. As set forth above, the Marcus Property was listed for sale in the California Regional Multiple Listing Service which was published to a large number of California real estate agents. It was also promoted by an extensive e-mail and postal campaign to agents and residence and published online on numerous real state websites. All of this generated five separate written purchase offers. The Receiver has already conducted a second round of “best and final” overbids among the five interested buyers who submitted written offers. This overbidding procedure generated substantially increased offers from two of the interested buyers from their initial offers. The Receiver believes that no further publication

or bidding is necessary or appropriate and that the cost and expense of entertaining a further publication and bidding process is not warranted and will not generate any further overbidding, let alone an overbid of 10% over \$2,250,000, which would require an overbid of \$2,475,000. There are three principal reasons for this. First, the sale price already equals or exceeds the appraised valuations obtained by the Receiver, even though those valuations did not take into account or discount for the seawall in need of repair or replacement estimated to be at least \$75,000. Second, the Marcus Property is essentially a “tear down,” the value of which lies in the land, not the improvements, thereby narrowing the window of value, because valuation is not subject to the vagaries of a buyer’s subjective tastes as may occur when acquiring a home which will not be razed. Third, the Buyer is a real estate agent whose bid likely has been increased by as much as 2% because of his dual status as Buyer and Buyer’s agent.

In addition, the Marcus Property is encumbered with the Cloughesy Loan. The Cloughesy Loan has a principal unpaid balance of \$1,430,000, and with unpaid interest, nearly \$1.6 million is owed on this debt. It bears interest at a substantial, above-market, interest rate of 10% per annum, or \$11,916.67 per month. In addition, real property taxes of approximately \$2,244 per month further erode the equity in the property to the detriment of the receivership estate. Given these factors, the harm in further delay and expense in publishing an overbidding notice substantially outweighs the remote possibility of any interested buyers paying more than \$2,250,000 for the Marcus Property, let alone 10% more as required by §2001.

The provisions of the Sale Order also have been met. The Receiver engaged a broker whose aggregate commission, split with the Buyer as his own broker, is 5%. This is less than the 6% limitation set out in the Sale Order. Further, the Receiver has obtained two certified appraisals and one broker’s opinion of value on the Marcus Property. Finally, based on the

Receiver previously demonstrating why 3905 Marcus LLC is a Receivership Entity in the Sale Motion, the Court already has determined that the net proceeds from the sale of the Marcus Property are to be paid to the Receiver and be the sole and exclusive property of the receivership estate.

**III. CONCLUSION**

Based on this Memorandum of Points and Authorities and the accompanying declaration of Brick Kane and exhibits attached thereto, it is respectfully requested that the Court grant the relief requested in the Motion and enter the proposed order submitted herewith.

Dated: October 3, 2019

By: /s/ Gary Owen Caris

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UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND  
SOUTHERN DIVISION

*In re* SANCTUARY BELIZE LITIGATION

No: 18-cv-3309-PJM

**DECLARATION OF BRICK KANE IN SUPPORT OF MOTION FOR ORDER  
APPROVING AND CONFIRMING SALE OF REAL PROPERTY COMMONLY  
KNOWN AS 3905 MARCUS AVENUE, NEWPORT BEACH, CALIFORNIA**

I, Brick Kane, declare:

1. I am the President of Robb Evans & Associates LLC (“Receiver”), the Temporary Receiver in this action. This lawsuit was commenced on October 31, 2018 by the Federal Trade Commission (“FTC”) on October 31, 2018 with its filing of a Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”). The lawsuit named 17 entity defendants and seven individual defendants, in addition to five relief defendants. The Court issued its Ex Parte Temporary Restraining Order With Asset Freeze, Writs Ne Exeat, Appointment of a Temporary Restraining Order and Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue (“TRO”) on November 5, 2019. Under the TRO, the Receiver became temporary receiver over all named Corporate Defendants except for Atlantic International Bank, Ltd. (“AIBL”) and over the assets of Andris Pukke (“Pukke”) and Peter Baker (“Baker”) valued at \$1,000 or more. The Court extended the duration of the TRO pursuant to an Extension of Temporary Restraining Order and Interim Preliminary Injunction on November 20, 2018. The FTC filed a motion to amend the Complaint and a proposed Amended Complaint for Permanent Injunction and Other Equitable Relief (“Amended Complaint”) on

December 28, 2018 adding Michael Santos and Newport Land Group, LLC (“NLG”) as defendants. The Court granted the motion to amend on January 11, 2019. On February 13, 2019 the Court entered a Stipulated Preliminary Injunction as to Defendants Rod Kazazi, Foundation Partners, Brandi Greenfield, BG Marketing LLC, Frank Costanzo, Deborah Connelly, Ecological Fox LLC, Michael Santos, Angela Chittenden, and Beach Bunny Holdings LLC (“Stipulated Preliminary Injunction”). Under the Stipulated Preliminary Injunction, the Receiver remained as receiver over the stipulating Receivership Entities BG Marketing, LLC, Ecological Fox, LLC, and Foundation Partners, and NLG was expressly added as a named Receivership Entity. The Receiver remains temporary receiver over the remaining Receivership Entities named in the TRO and over the assets of Pukke and Baker. On August 2, 2019 the Court issued its Memorandum Opinion in Support of Preliminary Injunction. A hearing on the text of the preliminary injunction was held on September 24, 2019. It is anticipated that the Receiver will become permanent receiver serving during the pendency of this case pursuant to a preliminary injunction, once entered. In addition, various duties were assigned to the Receiver pursuant to the Order Governing Interim Receivership Management regarding Sanctuary Belize, which was entered on August 23, 2019, further indicating that the Receiver’s appointment will no longer be considered temporary.

2. I have been one of the members of Robb Evans & Associates LLC primarily responsible for the supervision, management and administration of the receivership estate, the Receiver’s taking possession and control of the business and operations of the Receivership Entities, as defined in the TRO, the review and investigation of the business, operations and assets of the Receivership Entities and the individuals whose assets are under receivership, and the Receiver’s exercise of the other powers and duties set forth in the TRO and Stipulated Preliminary

Injunction. I have been involved in the Receiver's ongoing review and detailed analysis of the Receivership Entities' financial records, banking records, and other business records and files. I was personally involved in the preparation and review of the Receiver's Report of Activities for the Period From November 6, 2018 to February 21, 2019 ("Receiver's Report") filed on February 22, 2019. I also have supervised the efforts to gain control of and, where appropriate, take steps to liquidate assets of the receivership estate. I have personal knowledge of the matters set forth in this declaration or have gained knowledge of them based on my supervision and management of other members and staff of Robb Evans & Associates LLC involved in this receivership. If I were called upon to testify as to these matters I could and would competently testify thereto based on my personal knowledge.

3. On June 17, 2019 the Receiver filed its Motion for Order Authorizing Listing for Sale and Marketing of Real Property Commonly Known as 3905 Marcus Avenue, Newport Beach, California by Receiver ("Sale Motion"). As more particularly set forth in the Sale Motion, the Receiver explained why it should be permitted to market and sell the real property commonly known as 3905 Marcus Avenue, Newport Beach, California ("Marcus Property"). In the Sale Motion, the Receiver explained that the holder of record title on the Marcus Property is 3905 Marcus, LLC ("Marcus LLC"). The sole owner of record of Marcus LLC was Relief Defendant Angela Chittenden ("Chittenden") and the sole Manager of Marcus LLC was Defendant Rod Kazazi ("Kazazi"). At all relevant times, Chittenden was the putative spouse of Pukke and the mother of two of his children. Based on this information, as well as the Receiver's preliminary forensic accounting investigation, early in the receivership the Receiver determined that Marcus LLC should be considered a non-party Receivership Entity. The Receiver subsequently learned that Kazazi resigned as Manager of Marcus LLC approximately one week after the FTC lawsuit

was commenced. In addition, Chittenden subsequently provided the Receiver with a declaration asserting that her signatures on the operative corporate formation documents were forged and unauthorized. Section XVI.W of the TRO authorized the Receiver to determine if any non-party was a Receivership Entity and, if so, treat that entity as a Receivership Entity and exercise all of its rights and duties specified in the TRO as to that non-party Receivership Entity. On December 11, 2018, counsel for the Receiver advised the parties to the lawsuit and various other parties in interest of its determination that Marcus LLC was a Receivership Entity as required by Section XVI.X of the TRO. In that letter, the Receiver advised the parties that its determination could be challenged by filing a motion with the Court. No such motion was ever filed. The only known asset in the name of Marcus LLC is the Marcus Property.

4. The Sale Motion further demonstrated that the acquisition of the Marcus Property was funded by the Receivership Entities, together with a loan from the Cloughesy Family Trust of 1996 by Timothy Cloughesy, its Trustee (“Cloughesy Loan”). In addition, all monthly payments made on the Cloughesy Loan prior to the inception of the receivership were made by the Receivership Entities. After purchase and prior to the receivership, the Receivership Entities also funded the payment of property taxes and design fees for the Marcus Property. Therefore, in the Sale Motion the Receiver proved that all of the funding for the Marcus Property, other than the Cloughesy Loan, came from the Receivership Entities. Based on the evidence presented in the Sale Motion, to which there was no opposition, including the facts set forth above and additional facts supporting the need for a prompt sale of the Marcus Property, the Court granted the Sale Motion pursuant to its Order Granting Temporary Receiver’s Motion for Order Authorizing Listing for Sale and Marketing of Real Property Commonly Known as 3905 Marcus Avenue, Newport Beach California By Receiver entered July 10, 2019 (“Sale Order”). Among other things,

under the Sale Order the Receiver was given sole authority with respect to the marketing and sale of the Marcus Property. The Receiver was further authorized to conditionally accept the highest and best offer for the property in the Receiver's sole opinion and judgment, subject to entry of a subsequent order of this Court approving and confirming such sale. Pursuant to the Sale Order, the Receiver has marketed the Marcus Property and obtained an arm's length, third party, well qualified buyer who is ready to close escrow within 30 days of the Court entering an order granting the instant Motion at an excellent price for the receivership estate, as described below.

5. In anticipation of the Sale Order, the Receiver commenced efforts to value the Marcus Property. The Receiver obtained an appraisal by William Walsh, Certified Residential Appraiser, of B & W Appraisal Services, Inc. in late February 2019. A broker's opinion of value was obtained in March 2019 from Timothy Carr. After entry of the Sale Order, a second appraisal was obtained by the Receiver in July 2019 from Kenneth Mullinix, Certified Residential Appraiser, of Kenneth Mullinix & Associates. The Receiver has not filed or disclosed these valuations to the Court in this Motion for various reasons. Given the pending status of the sale, there is a need to keep these valuations confidential should the sale fail to close for any reason. If the Court requires the valuations to be presented, the Receiver would request that the valuations be presented to the Court alone for *in camera* inspection or filed under seal. Importantly, the purchase price under the proposed sale equals or exceeds the value determined by the two appraisals and the broker's opinion of value.

6. In anticipation of the Sale Order, the Receiver interviewed three prospective listing brokers, focusing its search on those brokers with extensive expertise and experience selling residential real estate in upscale areas of Orange County, California, including Newport Beach. Immediately following entry of the Sale Order, the Receiver entered into a listing

agreement with broker Timothy Carr of Villa Real Estate. Carr is one of five founding members of Villa Real Estate, and exceptionally experienced and well regarded in the residential real estate market in Newport Beach, California and in particular Newport Island where the Marcus Property is located. Villa Real Estate is a large brokerage firm specializing in high end properties in the Orange County area. A true and correct copy of the Residential Listing Agreement (without attachments made a part of the eventual Sale Contract) is attached hereto as Exhibit 2.

7. The Receiver, in consultation with Carr, decided to aggressively list the Marcus Property at \$2,395,000 which was a listing price that substantially exceeded the appraisals and broker's opinion of value. Carr agreed to a 5% commission, which was lower than the 6% limit established in the Sale Order. While the Marcus Property is in a very desirable bayfront location on Newport Island, with sunset-facing views of the water, the appraisers and brokers who were consulted consistently determined that the house was essentially a "tear down" given its very poor condition. The Receiver was advised that any prospective buyer, whether someone interested in living in the property or acquiring it for investment, would have to tear down the existing home and build a new home on the site. During the inspection period of this sale, it was further determined that the seawall on the property would need to be repaired or replaced, with estimates ranging from \$75,000 for repair of the seawall to \$175,000 for replacement. The cost to repair or replace the seawall was not factored into the appraisals or broker's opinion of value.

8. The property was formally listed on July 23, 2019. The Receiver was advised that Carr's real estate team immediately created an e-mail campaign for the Marcus Property to inform other real estate agents of the new listing and invite them to the brokers' open house. The e-mail was sent to over 30,000 agents in the Orange County area who have opted in to receive e-

mails from Carr. E-mail advertising also was sent to over 2,000 local residents who have opted in to receiving e-mails from Carr.

9. The Receiver was further advised that Carr also created a postal advertising campaign, advertising the Marcus Property listing in the Coastal Real Estate Guide, an advertising supplement in various local newspapers, including the Newport Beach Independent and the Laguna Beach Independent. We learned that the Newport Beach Independent is delivered every Friday to more than 11,000 Newport Beach homes and over 125 commercial locations in Newport Beach, with estimated readership of 164,000, and that the Laguna Beach Independent is also delivered every Friday to more than 10,000 Laguna Beach homes and over 125 commercial locations in Laguna Beach, with monthly readership of approximately 150,000.

10. Per the Receiver's contract with Villa Real Estate, The Marcus Property was also listed in the California Regional Multiple Listing Service ("CRMLS"). The CRMLS provides listings to 96,000 participating agents throughout Southern California, through 38 participating associations of realtors and boards of realtors. Carr advised the Receiver that property listing information, including photographs, was also displayed on the internet through real estate websites, including Zillow, RedFin, realtor.com, trulia.com, Realty Trac.com, open listings.com and over 60 other internet sites. Carr further advised the Receiver that the Marcus Property also appeared in LuxuryRealEstate.com, a premier high-end syndication site, that has monthly visitors estimated at 477,000 from throughout the world, and Wall Street Journal's websites for prospective buyers both domestically and abroad.

11. All of this electronic and print advertising and exposure led to numerous calls on the property, seven showings by appointment and five written offers. Because of these extensive marketing efforts and its desirable location, the Receiver obtained five written offers on the

Marcus Property within the initial two weeks of the listing. To maximize the purchase price, the Receiver did not counter any of these offers, but rather solicited the five written offerors to provide their best and final offers for the property. After receiving and evaluating offers, the Receiver determined that the offer from Dominic Tucci and Elizabeth Tucci (collectively, the “Buyer”) for \$2,300,000 was clearly superior to the other four offers. Dominic Tucci is a real estate agent with Villa Real Estate, and apparently will benefit from receiving back as much as 2% of the sale price as the Buyer’s agent. However, since the Receiver, as the seller, is required to pay the entire 5% commission in any event, this does not prejudice the receivership estate and likely prompted the Buyer to offer an amount clearly superior to all competing purchase offers.

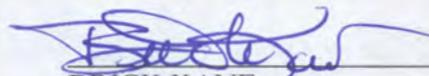
12. During the inspection period, as a result of the need to repair or replace the seawall, the Buyer sought an \$85,000 repair credit. However, the Receiver offered to provide only a \$50,000 credit, which was accepted by the Buyer. This is a further benefit to the receivership estate because the seawall credit is less than the estimate to repair or replace the seawall, which has been estimated to cost somewhere between \$75,000 and \$175,000.

13. The contract to purchase the Marcus Property is set forth in the California Residential Purchase Agreement and Joint Escrow Instructions, Seller Multiple Counter-Offer No. 1, Additional Terms and “As-Is” Purchase Addendum, Buyer Counter Offer No. 1, Counter Offer No. 2, and Seller Response and Buyer Reply to Request for Repair No. 1 (collectively, the “Sale Contract”). A true and correct copy of the Sale Contract is attached hereto as Exhibit 1. All contingencies have been removed and the Buyer has elected to proceed with the transaction upon Court approval. The deposit of \$66,000 will become property of the receivership estate should the Court grant the Motion and the Buyer fail to close escrow for any reason not the fault of the Receiver.

14. The Receiver believes that this is an excellent sale for the receivership estate and that no further publication or bidding is necessary or appropriate and that the cost and expense of entertaining a further publication and bidding process is not warranted and will not generate any further overbidding, let alone an overbid of 10% over \$2,250,000, which would require an overbid of \$2,475,000. There are three principal reasons for this. First, the sale price already equals or exceeds the appraised valuations obtained by the Receiver, even though those valuations did not take into account or discount for the seawall in need of repair or replacement estimated to be at least \$75,000. Second, the Marcus Property is essentially a “tear down,” the value of which lies in the land, not the improvements, thereby narrowing the window of value, because valuation is not subject to the buyer’s subjective tastes as may occur when acquiring a home which will not be razed. Third, the Buyer is a real estate agent whose bid likely has been increased by as much as 2% because of his dual status as Buyer and Buyer’s agent.

15. In addition, the Marcus Property is encumbered with the Cloughesy Loan. The Cloughesy Loan has a principal unpaid balance of \$1,430,000, and with unpaid interest, nearly \$1.6 million is owed on this debt. It bears interest at a substantial, above-market, interest rate of 10% per annum, or \$11,916.67 per month. In addition, real property taxes of approximately \$2,244 per month further erode the equity in the property to the detriment of the receivership estate. Given these factors, the harm in further delay and expense in publishing an overbidding notice substantially outweighs the remote possibility of any interested buyers paying more than \$2,250,000 for the Marcus Property.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on October 3, 2019 at Sun Valley, California.

  
BRICK KANE

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