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13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**
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16 SECURITIES AND EXCHANGE
17 COMMISSION,

18 Plaintiff,

19 vs.

20 EDWIN YOSHIHIRO FUJINAGA and
21 MRI INTERNATIONAL, INC.,

22 Defendants,

23 and

24 CSA SERVICE CENTER, LLC
25 THE FACTORING COMPANY,
26 JUNE FUJINAGA, and
27 THE YUNJU TRUST,

28 Relief Defendants.

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

**NOTICE OF MOTION AND
OPPORTUNITY TO OBJECT,**

and,

**MOTION FOR ORDER (1)
AUTHORIZING, APPROVING AND
CONFIRMING THE PRIVATE SALE OF
REAL PROPERTY LOCATED AT
1145 ARROYO MESA ROAD, SOLVANG,
CALIFORNIA; AND (2) GRANTING
RELIEF FROM LOCAL RULE 66-5
PERTAINING TO NOTICE TO
CREDITORS**

NOTICE OF MOTION

NOTICE IS HEREBY GIVEN that this *Motion for Order (1) Authorizing, Approving and Confirming the Private Sale of Real Property Located at 1145 Arroyo Mesa Road, Solvang, California and (2) Granting Relief from Local Rule 66-5 Pertaining to Notice to Creditors* (the "Motion") is made by Robb Evans & Associates LLC (the "Receiver").

By this Motion, the Receiver requests the Court enter an order (a) authorizing the Receiver to sell approximately 61.73 acres of rural / equestrian real property known as 1145 Arroyo Mesa Road, Solvang, California (described in more detail below) owned by Relief Defendant CSA Service Center, LLC ("CSA") by private sale with published notice of sale but

1 without a formal pre-planned overbid session, and (b) granting relief from LR¹ 66-5 pertaining to
2 notice to creditors.

3 **NOTICE OF OPPORTUNITY TO OBJECT**

4 **PURSUANT TO LR 66-5, YOU ARE HEREBY GIVEN 14 DAYS' NOTICE OF**
5 **THIS MOTION.** This is your **DEADLINE** to file and serve any opposition, objection, and/or
6 points and authorities in response to the Motion, unless such deadline is extended by the Court.²
7 See LR 7-2(b). The failure of an opposing party to file points and authorities in response to the
8 Motion constitutes consent to the granting of the Motion and the relief requested herein. See e.g.,
9 LR 7-2(d).

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

14 **NOTICE** is further given that no hearing has been scheduled on
15 the Motion, and that if no opposition is filed within 14 days of this
16 notice, that the Motion may be granted without a hearing.

17 See LR 78-1 (providing that “[a]ll motions may be considered and decided with or without a
18 hearing.”).

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24 ¹ As used herein, the term “LR” shall mean and refer to the Local Rules of Civil Practice for the
25 United States District Court for the District of Nevada.

26 ² Should you wish to verify that the Court did not change the standard 14-day deadline to
27 respond to the Motion, you may either check the ECF docket for this case, accessible with an
28 account at <https://ecf.nvd.uscourts.gov/cgi-bin/login.pl> and/or by contacting the Receiver’s
attorney, Michael Lynch, by email to Michael@LynchLawPractice.com, or by calling (702) 684-
6000.

SUMMARY OF RELIEF REQUESTED

By this Motion, the Receiver is requesting the Court enter:

1. An order authorizing, approving and confirming the private sale of real property known as 1145 Arroyo Mesa Road, Solvang, California, consisting of approximately 61.73 acres of vacant rural / equestrian real property improved by a barn with small apartments and an arena owned by relief defendant CSA, located in the Santa Ynez Valley, approximately 35 miles northwest of Santa Barbara, California, and identified by the Santa Barbara County Assessor’s Office as Parcel Numbers 137-100-064 and 065 (the “Real Property”). CSA and/or its predecessor-in-interest apparently purchased the Real Property with the intention of subdividing the land and building a housing development, but despite the size of the parcel, given local zoning, building, water service limitations to the site, and other development restrictions, several appraisers have determined that the highest and best use of the Real Property is as a single family residential estate with the potential use as an owner-occupied vineyard and/or horse boarding facility. The Receiver is requesting authority to consummate this sale on the terms and conditions discussed below, which include notice of this proposed sale and an opportunity to object or respond, but without pre-arranged formal overbid proceedings. The sale proposed by the Receiver is on an “as is – where-is” basis and on the terms more fully set forth in the Purchase and Sale Agreement,³ to Andrew Solt and/or his assignee and Claudia Falkenburq and/or her assignee (collectively, the “Prospective Buyers”) arm’s length buyers, at a purchase price of \$1 million. An authenticated copy of the Purchase and Sale Agreement is attached as **Exhibit “1”** to the Declaration of Brick Kane filed contemporaneously herewith in support of this Motion (the “Kane Declaration”);

2. An order authorizing the Receiver to execute all documents and instruments necessary or convenient to complete, implement, effectuate and close the sale of the Real Property to the Prospective Buyers, free and clear of liens, debts and claims, including but not limited to that certain deed of trust for the benefit of Defendant MRI International, Inc. currently

³ The term “Purchase and Sale Agreement” is defined in the Recitals section hereinbelow.

1 encumbering title to the Real Property, and approving and deeming the appraisers identified
2 hereinbelow as the three appraisers appointed by the Court for purposes of 28 U.S.C. § 2001(b);

3 3. An order authorizing the Receiver to permit and/or cause to be paid from the
4 proceeds of the sale of the Real Property (a) all ordinary and customary closing costs, (b) all
5 costs and expenses required to be paid under the terms of the Purchase and Sale Agreement by
6 the seller from the proceeds of sale, and (c) real property tax liens and assessments, prorated up
7 to the date of closing. In this instance, a broker's commission will not be owing or paid because
8 although the Receiver had the Real Property listed and marketed for sale with a qualified real
9 estate broker for an extended period, as discussed below, given the lack of the broker's success,
10 the Receiver ultimately decided it was in the estate's best interests to allow the listing
11 agreements to expire, and negotiated the proposed sale without a broker's involvement. The
12 broker previously engaged by the Receiver reported he expended sustained and exhaustive
13 efforts to market and sell the Real Property, which ultimately proved to be unsuccessful. The
14 Receiver's previous broker's efforts, as reported by the broker to the Receiver, are summarized
15 below and supported by the Declaration of Michael F. Lynch, undersigned counsel to the
16 Receiver, filed contemporaneously herewith in support of this Motion (the "Lynch Declaration");

17 4. An order deeming notice of this Motion to be sufficient under LR 66-5 and
18 federal law based on the service of the Notice of the filing of this Motion, the Notice of the
19 Opportunity to Object, the Motion, the Kane Declaration and the Lynch Declaration, on all
20 known non-consumer creditors of the estate, but not on the tens of thousands of potential foreign
21 creditors, and further based upon the publication of the terms of the sale in accord with the
22 procedures described below; and

23 5. An order for such additional relief as may be necessary or appropriate to allow the
24 Receiver to effectuate the sale of the Real Property, including but not limited to: (a) entry of an
25 order authorizing the Real Property sale in a form acceptable to the title company insuring title in
26 connection with the sale, and (b) entry of an order finding that any licensed title insurer and the
27 Prospective Buyers may rely on this Order as authorizing the Receiver to transfer legal title to
28 the Real Property free and clear of all liens and encumbrances.

1 This Motion is made pursuant to 28 U.S.C. §§ 2001, 2002, LR 66-5, and other applicable
2 law and is based upon the facts and equities of this case, the Notice of Motion and Opportunity
3 to Object hereinabove, the accompanying Memorandum of Points and Authorities, the Kane
4 Declaration and the authenticated exhibits attached thereto, the Lynch Declaration, and any
5 reply, and upon all other pleadings and documentary evidence as may be presented to the Court
6 by the Receiver in support of this Motion.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

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

9 Robb Evans & Associates LLC was appointed receiver (the “Receiver”) in the above-
10 captioned case by that certain *Order Appointing an Equitable Receiver* entered on February 23,
11 2015 (ECF No. 194), which commanded and authorized the Receiver to, among other things,
12 take and retain immediate possession, custody, and control of certain property owned or
13 controlled by Defendant Edwin Fujinaga and others, including relief defendant CSA.

14 The duties and responsibilities of the Receiver were enlarged by that certain *Order*
15 *Appointing a Full Equitable Receiver to Assume Control over the Defendants’ Assets and*
16 *Enforce the Final Judgment* entered on May 15, 2015 (ECF No. 226) (the “Order Appointing
17 Receiver”). The Order Appointing Receiver supersedes the previous order and directs the
18 Receiver to take and retain immediate possession, custody, and control of all assets owned or
19 controlled, directly or indirectly, by any of the Defendants in the SEC Receivership Litigation,
20 including Defendant MRI International, Inc. and/or relief defendant CSA. *Id.*

21 Under the Order Appointing Receiver, the Receiver is authorized, empowered, and
22 directed to perform certain duties and responsibilities as reasonably appropriate and necessary to
23 comply with and effectuate the goals and purposes of the equitable receivership. *Id.* at p.2.
24 Included in these enumerated duties is the ability to retain one or more qualified real estate
25 brokers to list and market the Real Property, subject to Court approval prior to the substantial
26 commitment, liquidation, or transfer of Defendants’ assets. *Id.* at p.5.

1 **II. THE RECEIVER REQUESTS THE COURT APPROVE THE PROPOSED SALE**
2 **TO ACHIEVE EQUITY FOR THE BENEFIT OF THE ESTATE**

3 28 U.S.C. § 2001 sets forth procedures pertaining to the sale of real property by a federal
4 receiver. Subsection (a) pertains to procedures for the public sale of real property. Subsection (b)
5 pertains to the sale of real property at a private sale and states:

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

23 28 U.S.C. § 2001(b).

24 Courts are granted discretion in setting the terms and conditions for judicial sales and the
25 Court's discretion will not be disturbed on appeal except where abuse of discretion is shown.
26 United States v. Branch Coal Corp., 390 F. 2d 7 (3rd Cir. 1968), cert. den. Sun Protection Co. v.
27 United States, 391 U.S. 966, 88 S. Ct. 2034 (1968). The Court has substantial discretion in
28 receivership matters in setting 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

1 are based on the facts and circumstances of each case. The discretion granted in connection with
2 sales of assets is consistent with the broad discretion accorded to the Court sitting in equity in
3 receivership proceedings to make orders concerning the administration and supervision of the
4 estate that will promote equity, efficiency and cost-effectiveness in the estate's administration.
5 See generally Securities and Exchange Commission v. Hardy, 803 F.2d 1034 (9th Cir. 1986);
6 Securities and Exchange Commission v. Black, 163 F.3d 188 (3rd Cir. 1998); Securities and
7 Exchange Commission v. Elliot, 953 F.2d 1560 (11th Cir. 1992).

8 Under § 2001(b), in order for a sale to be approved, the minimum purchase price for the
9 property must exceed two-thirds of the average value in three appraisals of the property by
10 appraisers appointed by the court. The statute does not define what constitutes an "appraisal" for
11 the purpose of § 2001(b).

12 As the Ninth Circuit noted in Hardy, 803 F. 2d at 1037: "A district court's power to
13 supervise an equity receivership and to determine the appropriate action to be taken in the
14 administration of the receivership is extremely broad" and subject to review under an abuse of
15 discretion standard. See also Branch Coal., 390 F. 2d 7 (courts granted discretion in setting the
16 terms and conditions for judicial sales and the court's discretion will not be disturbed on appeal
17 except for abuse of discretion).

18 **III. THE COURT SHOULD APPROVE THE RECEIVER'S PROPOSED SALE OF** 19 **THE SOLVANG REAL PROPERTY**

20 As described in more detail above, the Real Property is a long-vacant residential /
21 agricultural property consisting of approximately 61.73 acres improved by a stall barn and two
22 apartments and an enclosed shop building. Kane Declaration at ¶ 7. The Receiver has been
23 advised that the improvements to the Real Property are outdated and in need of fairly substantial
24 updating and upgrading. *Id.* For example, repairs of approximately \$20,000 were necessary to
25 repair broken and damaged water facilities for the Real Property in the second half of 2019.
26 Kane Declaration at ¶ 8.

27 Further, a caretaker's services are required to preserve the Solvang Real Property, whose
28 fees are approximately \$1,500 per month, and the Estate must also pay HOA assessments in the

1 approximate amount of \$5,000 per year. *See* Kane Declaration at ¶ 9; *see also* Notice of Filing
2 the Receiver’s Report at ECF No. 542, page 7 of 12.

3 In addition, the Solvang Real Property is currently accruing real property taxes and
4 assessments in the approximate amount of \$48,000 per year, which the Receivership Estate has
5 been paying as reflected in a recent preliminary title report obtained for the Real Property by the
6 Receiver, a copy of which is attached as **Exhibit “2”** to the Kane Declaration. *See also*, Kane
7 Declaration at ¶ 10.

8 A. Marketing Efforts

9 In order to preserve the value of the assets for the benefit of consumers and creditors, the
10 Receiver engaged Richard Condit of the Santa Ynez Valley Real Estate Company (the “Santa
11 Ynez Broker”) to list and market the Real Property for sale. A copy of the first Listing
12 Agreement dated December 30, 2015 (the “Listing Agreement”), is attached to the Kane
13 Declaration as **Exhibit “3”**. According to the Santa Ynez Broker’s website, the brokerage firm
14 was founded in 1960, and Mr. Condit, who was the primary broker engaged in marketing the
15 Real Property for sale, co-owns the brokerage with his son.⁴

16 The Real Property did not sell during the term of the first Listing Agreement, and the
17 Receiver subsequently extended, renewed, and modified the Listing Agreement numerous times.
18 *See* Kane Declaration at ¶ 6. The Receiver and/or the Santa Ynez Broker have been actively
19 engaged in efforts to sell this Real Property for years; in total, the Real Property was listed for
20 sale for a combined total of almost 950 days. *See* Kane Declaration at ¶ 11.

21 According to information provided to the Receiver’s counsel by the Santa Ynez Broker,
22 the brokerage is the oldest serving real estate brokerage company in the Santa Ynez Valley, and
23 it represents a cross section of buyers and sellers and its listings range from large ranches to
24 condominiums and commercial property. *See* the Marketing Information Data Sheet prepared by
25 the Santa Ynez Broker, a true and correct copy of which is attached to the Lynch Declaration at
26 **Exhibit “1”**. *See also* Lynch Declaration at ¶ 3. The Santa Ynez Broker represented to
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28 ⁴ Available at <https://www.santaynezvalley.com/about.php>, last checked February 26, 2020; *see also*

1 undersigned counsel that he and his brokerage firm were “very adept at handling properties”
2 such as the Real Property. *Id.* The Santa Ynez Broker further represented that the Real Property
3 was advertised and marketed extensively (a) locally, (b) in the larger Santa Barbara County,
4 California area, (c) across California, and (d) nationally. *Id.* The Santa Ynez Broker represented
5 to the Receiver that it marketed the Real Property extensively, by, without limitation:

- 6 i. Full MLS Exposure and marketing to all agents in local, regional, and
7 statewide areas including Santa Ynez Valley FLEX MLS, Santa Barbara FLEX
8 MLS & Central Coast Regional MLS.
- 9 ii. Use of high-quality photos in the marketing effort.
- 10 iii. Broker’s open houses.
- 11 iv. Office/Broker’s promotions.
- 12 v. Extended and continuous advertising of the Real Property in Estates &
Homes Magazine (an affiliate of the Wall Street Journal and other publications).
- 13 vi. Extended and ongoing advertising of the Real Property in the Santa
14 Barbara News Press, Santa Ynez Valley News, Horse properties.com and Luxury
Real Estate Magazine.
- 15 vii. Advertisements in realtor.com.
- 16 viii. Advertisements in Yahoo.
- 17 ix. Advertisements in RedFin.
- 18 x. Advertisements in Trulia.
- 19 xi. Advertisements in Zillow.
- 20 xii. Advertised and marketed in the Santa Ynez Broker’s business website:
21 www.santaynezvalley.com.
- 22 viii. Fielded more than 80 inquiries about the Real Property.
- 23 ix. Conducted over 47 on-site showings of the Real Property.

24 *Id.* Despite these continuing efforts over the combined course of approximately 950 days on the
25 market, the Santa Ynez Broker was unable to secure a *bona fide* viable proposed purchase and
26 sale agreement for the Real Property. *See* Kane Declaration at ¶¶ 11, 12. On information and
27 belief, the Santa Ynez Valley is a small market located in a rural area, and there are limited
28 experts who are experienced with real property like the Real Property. *See* Kane Declaration at ¶

1 13. Accordingly, the Receiver extended the Broker's listing agreement numerous times and
2 lowered the listing price numerous times. *See* Kane Declaration at ¶ 6. Unfortunately,
3 negotiations with each previous party that expressed a modicum of interest in the Real Property
4 eventually failed, and ultimately, prior to the sale at issue in this Motion secured by the Receiver
5 on its own, the Santa Ynez Broker was unable to secure any fully executed purchase and sale
6 agreement(s). *See* Kane Declaration at ¶ 14.

7 There was exceptionally scant interest shown in the Real Property, and perhaps the most
8 serious buyer balked due to its (apparent) concerns regarding, without limitation, real or
9 perceived (a) environmental issues and other site deficiencies, (b) the fact an 80-page set of
10 Covenants, Conditions, and Restrictions, which are under the sole control of a single neighboring
11 property owner, are recorded against the Real Property and (c) potential problems with obtaining
12 clear title to the Real Property and/or adequate title insurance. Lynch Declaration at ¶ 3.

13 B. Appraised Value

14 The Receiver obtained three (3) self-contained written appraisals of the Real Property by
15 certified and licensed real estate appraisers based on comparable sales data, other market data,
16 and the fact the Receiver is selling the Real Property in a receivership capacity, as-is and where-
17 is and without warranty. *See* Kane Declaration at ¶ 15. The three appraisals were obtained from
18 (1) Sharon A. Steele, SRA, California Appraisal Certification No. AG001591 of Mid State
19 Appraisal Services, (2) Max R. Knupper, Senior Appraiser, California Appraisal Certification
20 No. AG006357 of Schenberger, Taylor, McCormick & Jecker, Inc., and (3) Michael Neal
21 Arnold, MAI, MRICS, California Appraisal Certification No. AG002089 of Hammock, Arnold,
22 Smith & Company (each an "Appraiser", and collectively, the "Appraisers"). *See* Kane
23 Declaration at ¶ 16.

24 After review and independent consideration of each Appraiser's qualifications,
25 certifications, experience, education, as well as the Receiver's agents' interview of each
26 Appraiser, the Receiver believes each appraiser is a well-qualified independent appraiser within
27 the meaning of 28 U.S.C. § 2001(b). *See* Kane Declaration at ¶ 17. By this Motion the Receiver
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1 requests the Court appoint, approve and deem the Appraisers identified hereinbelow as three
2 qualified independent appraisers within the meaning of 28 U.S.C. § 2001(b).

3 At the Receiver's request, all three of these Appraisers based their opinions of value for
4 the Real Property upon several extraordinary assumptions,⁵ including the fact that this would be
5 a sale by a receiver appointed by the Federal District Court for the District of Nevada, that the
6 buyer would take title subject to the seller's necessary disclaimer of all warranties,
7 representations, promises, agreements of any kind or character whatsoever, as set forth in more
8 detail in the seller's "AS-IS" Purchase Addendum attached to the Purchase and Sale Agreement,⁶
9 and that the sale would need to be concluded within 60-90 days. See Kane Declaration at ¶ 18.

10 Considering each of the three appraised valuations separately, and also considering the
11 mean of these appraised values collectively, the proposed purchase price of \$1 million exceeds
12 the minimum threshold for approval of a private sale of two-thirds of the adjusted fair market
13 value as required under 28 U.S.C. § 2001. See Kane Declaration at ¶ 19. The sale of the Real
14 Property on the terms in the Purchase and Sale Agreement is in the best interests of the
15 receivership estate. See Kane Declaration at ¶ 20.

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19 ⁵ An "extraordinary assumption" is a term of art used in real property appraisals. In a recent
20 Order entered by the Honorable Miranda M. Du, District Court Judge, the Court recognized:

21 An extraordinary assumption is a term of art in the appraisal context meaning "an
22 assumption, directly related to a specific assignment, as of the effective date of the
23 assignment results, which, if found to be false, could alter the appraiser's opinions or
24 conclusions." Under the Uniform Standards of Professional Appraisal Practice
25 ("USPAP"), an appraiser may only use an extraordinary assumption if the following
26 conditions are satisfied: (1) the extraordinary assumption is required to properly develop
27 credible opinions and conclusions; (2) the appraiser has a reasonable basis for the
28 extraordinary assumption; (3) use of the extraordinary assumption results in a credible
analysis; and (4) the appraiser complies with the disclosure requirements set forth in
USPAP for extraordinary assumptions.

29 United States of America v. 400 Acres of Land et al., Case No. 2:15-cv-01743-MMD-NJK (Dist.
30 Ct. Nev. August 29, 2019) (internal citations omitted).

31 ⁶ The Purchase and Sale Agreement, with all addenda, is attached as Exhibit 1 to the Kane
32 Declaration

1 C. Notice of Sale and Opportunity to Object.

2 28 U.S.C. § 2001(b) provides that “[b]efore confirmation of any private sale, the terms
3 thereof shall be published in such newspaper or newspapers of general circulation as the court
4 directs at least ten days before confirmation.” Section 2001(b) further provides that “[t]he private
5 sale should not be confirmed if a bona fide offer is made, *under conditions prescribed by the*
6 *court*, which guarantees at least a ten percent increase over the price offered in the private sale.”
7 (emphasis added).

8 The Court has substantial discretion setting the conditions of a receiver’s private sale of
9 real property. See Pewabic Mining, 145 U.S. at 356 (the provisions for notice and other
10 conditions shall be determined by the Court “as will in his judgment best protect the rights of all
11 interested, and make the sale most profitable to all”). See also Cumberland Lumber, 171 F. 352;
12 Bidwell, 176 F. 174. The terms and conditions of the judicial sale that the Court may adopt are
13 based on the facts and circumstances of each case. The discretion granted in connection with
14 sales of assets is consistent with the broad discretion accorded to the Court sitting in equity in
15 receivership proceedings to make orders concerning the administration and supervision of the
16 estate that will promote equity, efficiency and cost-effectiveness in the estate’s administration.
17 See generally Hardy, 803 F.2d 1034, Black, 163 F.3d 188, and Elliot, 953 F.2d 1560.

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19 As discussed in more detail above, the Receiver has been trying to sell the Solvang Real
20 Property since 2015 and had the Real Property listed and marketed for sale by a qualified broker
21 for a combined period of approximately 950 days. Kane Declaration at ¶ 11. Despite these
22 considerable and sustained efforts, including the efforts summarized in Section III (A) above, the
23 Real Property has proven to be an extraordinarily difficult asset to sell.

24 In order to consummate the execution of the current proposed Purchase and Sale
25 Agreement and open escrow, the Prospective Buyers were adamant that the Receiver request
26 Court approval to sell the Real Property *without* setting formal overbid procedures. Pursuant to
27 the proposed Purchase and Sale Agreement, should the Court determine this Motion should not
28 or cannot be granted without first promulgating formal overbid session procedures, the

1 Prospective Buyers will have the option to terminate the Purchase and Sale Agreement without
2 penalty, and have their escrow deposit fully refunded. *See* Ex. 1 to the Kane Declaration.

3 The Receiver respectfully submits that the Court has the authority to approve the
4 proposed sale on the terms summarized herein. First, the Receiver will provide notice of this
5 Motion, together with the notice of the opportunity to object, in accord with the notice provisions
6 set forth in Section V below. In addition, within 3 calendar days of the filing of this Motion, the
7 Receiver will cause to be published a notice of the terms of the proposed sale of the Real
8 Property (the “Published Notice”) in both (a) the Las Vegas Review Journal⁷ and (b) the Santa
9 Ynez Valley⁸ News, which is more than ten days prior to the 14-day deadline to file an objection
10 or response to this Motion. Should any interested party file an objection or response with the
11 Court, the Court will have the opportunity to evaluate that objection or response prior to the
12 deadline to file an opposition to this Motion and to issue overbid instructions and procedures at
13 that time if deemed necessary or advisable. Similarly, should any party or prospective buyer,
14 who the Receiver believes in good faith has the means and ability to consummate the sale on the
15 necessary terms, contact the Receiver, its attorney, or its agent directly, the Receiver will
16 promptly notify the Court, which will provide further assurances that the Court will have the
17 opportunity to evaluate any objection or response by any potentially interested party and to issue
18 overbid instructions and procedures at that time if deemed appropriate.

19 The Receiver requests that the Court approve these notice procedures because: (A) the
20 sale to the Prospective Buyers is non-contingent for an amount that exceeds the minimum two-
21 thirds of the average of the three appraised valuations obtained by the Receiver for the Real
22 Property that takes into account the actual market and sale conditions affecting the Real
23 Property, (B) the terms and conditions of the Purchase and Sale Agreement provide for closing to

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25 ⁷ The Las Vegas Review Journal is Nevada’s largest newspaper, and a newspaper of general
26 circulation serving all of Southern Nevada, which publishes daily. *See e.g.*,
https://en.wikipedia.org/wiki/Las_Vegas_Review-Journal, last checked February 19, 2020.

27 ⁸ The Real Property is located in the Santa Ynez Valley, and the Santa Ynez Valley News has
28 been in operation for nearly 90 years.
https://syvnews.com/places/business_professional_services/advertising/newspaper/santa-ynez-valley-news/business_1115857381.html, last checked February 19, 2020.

1 occur within five (5) business days after the last of the following conditions precedent to closing
2 are satisfied: (i) all requirements which may be imposed by the Court as a condition to the sale
3 are satisfied, and (ii) the expiration of any waiting period imposed by the Title Company as a
4 requirement of their issuance of a policy of title insurance, and (C) the Receiver wants to avoid
5 unnecessarily losing the Prospective Buyers from delay.

6 The Receiver requests that the Court approve the notice procedures, terms and conditions
7 summarized herein.

8 **IV. THE RECEIVER HAS SATISFIED OR WILL SETTLE OR SATISFY**
9 **ENCUMBRANCES AGAINST THE REAL PROPERTY.**

10 The Receiver has obtained a preliminary Title Report for the Real Property, which report
11 is dated February 14, 2020, Ex. 2 to the Kane Declaration, which identifies any liens or
12 encumbrances against the Real Property, including any liens for unpaid taxes or unpaid utility
13 charges. Any such unpaid taxes or charges, and any liens or claims against the Real Property,
14 will be satisfied, removed, or otherwise resolved by the receivership estate no later than the
15 actual closing date.

16 As identified in the Title Report, the Real Property is currently encumbered by, without
17 limitation, a Deed of Trust (the "MRI Deed of Trust") executed by relief defendant CSA as
18 Trustor in favor of Defendant MRI as Beneficiary, to secure a putative indebtedness of
19 \$190,000,000.00 from CSA to MRI, recorded on August 5, 2011, as Instrument No. 2011-44465
20 of the Official Records of the Santa Barbara County Recorder. By this Motion, the Receiver
21 specifically requests the order approve, authorize, and confirm the full release and reconveyance
22 of the MRI Deed of Trust, such that it is no longer an encumbrance against the Real Property, by
23 the Receiver in its capacity as the court-appointed receiver for MRI and CSA.

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1 **V. NOTICE OF THIS MOTION IS SUFFICIENT UNDER THE CIRCUMSTANCES**
2 **AND SHOULD BE APPROVED**

3 LR 66-5 provides in relevant part that, unless the court orders otherwise, “the receiver
4 must give all interested parties and creditors at least 14 days’ notice of the time and place of
5 hearings of ... [a]ll petitions for confirmation of sales of real or personal property....” LR 66-
6 5(c).

7 No hearing has been set on this Motion and the provisions of LR 66-5 do not specifically
8 apply. Nevertheless, the Receiver will serve the Motion, which includes the Notice of Motion
9 and the Notice of Opportunity to Object, the Kane Declaration, and the Lynch Declaration, on
10 the parties, the affected lienholders, and on all known non-consumer creditors of the estate and
11 on known taxing authorities with a potential claim in the receivership estate (“Notice Parties”),
12 to provide them notice and an opportunity to object and/or be heard concerning the Motion.

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

23 Based on the foregoing, to the extent that LR 66-5 applies to this Motion, the Receiver
24 seeks an order finding that: service of (a) this Motion, which includes the foregoing Notice of
25 Motion and Opportunity to Object, (b) the Kane Declaration, and (c) the Lynch Declaration, by
26 first class U.S. Mail on all parties to this action and the Notice Parties identified above, together
27 with the Published Notice procedures summarized above; provides sufficient notice and an
28 opportunity for hearing to the interested parties and is adequate. As noted above, should any

1 party timely file an opposition to the Motion, the Court will have the opportunity to address such
2 opposition. Moreover, should any party contact the Receiver to lodge a more informal bona fide
3 objection or concern, the Receiver will promptly notify the Court of that objection or concern.
4 This limited notice is consistent with the notice approved by the Court concerning prior motions
5 and stipulations to sell real and personal property in this receivership case. (*See e.g.*, ECF Nos.
6 279,⁹ 304,¹⁰ 328,¹¹ 372,¹² 387,¹³ 392,¹⁴ and 492¹⁵).

7 Although LR 66-10 has been repealed, which formerly provided that a receiver is
8 directed to administer receivership estates “as nearly as may be in accordance with the practice
9 in the administration of estates in Chapter 11 bankruptcy cases”, it is relevant to the Receiver’s
10 requested relief herein that the rules concerning notice to creditors and claimants in bankruptcy
11 proceedings are consistent with the Receiver’s request herein. For example, orders limiting
12
13
14

15 ⁹ *See* Order Approving the Stipulation for Order Authorizing, Approving and Confirming Sale of
16 2875 Coleman and the personal property located therein With Overbid Procedures.

17 ¹⁰ *See* Order granting the Receiver’s Stipulation for Order Authorizing, Approving and
18 Confirming Sale of 2865 Coleman with Overbid Procedures.

19 ¹¹ *See* Order Granting the Receiver’s Motion for an Order Authorizing and Approving the Sale
20 via Auction of the Real Property Located at 2955 Coleman and Granting Relief from Local Rule
21 66-5 Pertaining to Notice to Creditors.

22 ¹² *See* Order (1) Authorizing, Approving and Confirming Sale of Real Property Located at 150 E
23 Harmon and Sale and Overbid Procedures and for Related Relief; (2) Authorizing Sale of
24 Personal Property via Auction, and (3) Granting Relief from Local Rule 66-5 Pertaining to
25 Notice to Creditors.

26 ¹³ *See* Order Approving the Joint Motion for Order Authorizing, Approving and Confirming the
27 Private Sale of Real Property [Without Overbid Procedures] Located at 47-4400 Hawaii Belt Rd.

28 ¹⁴ *See* Order (1) Authorizing, Approving and Confirming Sale of Real Property Located at 5330,
5370, and 5420 S. Durango Drive and Sale and Overbid Procedures and for Related Relief; and
(2) Granting Relief from Local Rule 66-5 Pertaining to Notice to Creditors.

¹⁵ *See* Order (1) Authorizing, Approving and Confirming the Sale of Real and Personal Property
Located at 9009 Greensboro Lane (2) Approving Sale and Overbid Procedures (3) Granting
Relief from Local Rule 66-5 Pertaining to Notice to Creditors.

1 notice when the Bankruptcy Code¹⁶ or FRBP¹⁷ would otherwise require notice to all creditors are
2 routinely granted in bankruptcy cases to promote the expeditious and economical administration
3 of bankruptcy estates. See In re First Alliance Mortgage Co., 269 B.R. 428, 442 (C.D. Cal. 2001)
4 (referencing in dicta in the court’s recitation of facts the bankruptcy court’s order limiting notice
5 issued in that case); 11 U.S.C. § 102(1)(A) (defining the phrase “after notice and a hearing” to
6 mean “after such notice as is appropriate in the particular circumstances, and such opportunity
7 for hearing as is appropriate in the particular circumstances”); 11 U.S.C. § 105(a) and (d)
8 (granting broad equitable powers to the court to issue orders “necessary or appropriate to carry
9 out the provisions” of title 11 including “prescribing such limitations and conditions as the court
10 deems appropriate to ensure the case is handled expeditiously and economically”); and FRBP
11 202(m) (authorizing the court to enter “orders designating the matters in respect to which, the
12 entity to whom, and the form and manner in which notices shall be sent except as otherwise
13 provided by these rules”).

14 **IV. CONCLUSION**

15 For the foregoing reasons, it is respectfully requested that the Court grant this Motion in
16 its entirety.

17 Dated: March 11, 2020

18 **LYNCH LAW PRACTICE, PLLC**

19 /s/ Michael F. Lynch
20 Nevada Bar No. 8555
21 3613 S. Eastern Ave.
22 Las Vegas, NV 89169
23 702.684.6000
24 702.543.3279 (fax)
25 Michael@LynchLawPractice.com

26 Counsel for the Receiver,
27 Robb Evans & Associates LLC

28 _____
16 The term “Bankruptcy Code” refers to 11 U.S.C. §§ 101-1532.

17 The term “FRBP” refers to the Federal Rules of Bankruptcy Procedure.

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2 Nevada Bar No. 8555
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7 702.543.3279 (fax)
8 Michael@LynchLawPractice.com

9 *Attorney for Receiver Robb Evans*
10 *& Associates LLC*

11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

13 SECURITIES AND EXCHANGE
14 COMMISSION,
15
16 Plaintiff,
17 vs.
18 EDWIN YOSHIHIRO FUJINAGA and
19 MRI INTERNATIONAL, INC.,
20
21 Defendants,
22
23 and
24 CSA SERVICE CENTER, LLC
25 THE FACTORING COMPANY,
26 JUNE FUJINAGA, and
27 THE YUNJU TRUST,
28
Relief Defendants.

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

**DECLARATION OF BRICK KANE IN
SUPPORT OF MOTION FOR ORDER (1)
AUTHORIZING, APPROVING AND
CONFIRMING THE PRIVATE SALE OF
REAL PROPERTY LOCATED AT
1145 ARROYO MESA ROAD, SOLVANG,
CALIFORNIA; AND (2) GRANTING RELIEF
FROM LOCAL RULE 66-5 PERTAINING TO
NOTICE TO CREDITORS**

I, Brick Kane, declare:

1. I am the president and chief operating officer of Robb Evans & Associates LLC, the court-appointed equitable receiver (the “Receiver”) in this case.
2. I am one of the members of the Receiver and have primary responsibility for the supervision and administration of the receivership estate in this action. If called upon to testify as to the facts set forth in this declaration, I could and would testify competently thereto, as the facts are either personally known to me to be true, or have become known to me through knowledge gained through my supervision and administration of the receivership estate.
3. I make this Declaration in support of the *Motion for Order (1) Authorizing, Approving and Confirming the Private Sale of Real Property Located at 1145 Arroyo Mesa*

1 *Road, Solvang, California; and (2) Granting Relief from Local Rule 66-5 Pertaining to Notice to*
2 *Creditors* (the “Motion”), contemporaneously filed herewith.

3 4. Attached hereto as **Exhibit “1”** is a true, correct, and complete copy of the
4 proposed Purchase and Sale Agreement¹ for the Real Property last dated February 6, 2020, which
5 was negotiated at arm’s length.

6 5. Attached hereto as **Exhibit “2”** is a true, correct, and complete copy of the
7 preliminary Title Report for the Real Property dated February 14, 2020.

8 6. Attached hereto as **Exhibit “3”** is a true, correct, and complete copy of the first
9 Listing Agreement dated December 30, 2015 for the Real Property with Richard Condit of the
10 Santa Ynez Valley Real Estate Company (the “Santa Ynez Broker”) to list and market the Real
11 Property for sale (the “Listing Agreement”). The Receiver extended, renewed, and modified the
12 listing agreement numerous times and lowered the listing price numerous times

13 7. The Real Property is a long-vacant residential / agricultural property consisting of
14 approximately 61.73 acres improved by a stall barn and two apartments and an enclosed shop
15 building. According to site inspections and as reported to the Receiver, the improvements to the
16 Real Property are dated and in need of substantial updating and upgrading.

17 8. For example, repairs of approximately \$20,000 were necessary to repair broken
18 and damaged water facilities for the Real Property in the second half of 2019.

19 9. Further, a caretaker’s servicers are required to preserve the Solvang Real
20 Property, whose fees are approximately \$1,500 per month, and the Estate must also pay HOA
21 assessments in the approximate amount of \$5,000 per year.

22 10. Additionally, the Real Property accrues real property taxes and assessments in the
23 approximate amount of \$48,000 per year.

24 11. The Receiver has been actively engaged in efforts to sell this Real Property for
25 years; in total, the Real Property was listed for sale for a combined total of almost 950 days.
26

27
28 ¹ Capitalized terms not otherwise defined herein shall have the meanings as set forth in the Motion.

1 12. Despite these continuing and sustained efforts, the Santa Ynez Broker was unable
2 to secure a *bona fide* viable proposed purchase and sale agreement for the Real Property.

3 13. On information and belief, the Santa Ynez Valley is a small market located in a
4 rural area, and there are limited experts who are experienced with real property like the Real
5 Property.

6 14. Unfortunately, negotiations with each previous party that expressed a modicum of
7 interest in the Real Property eventually failed, and ultimately, prior to the sale at issue in this
8 Motion secured by the Receiver on its own, the Santa Ynez Broker was unable to secure any
9 fully executed purchase and sale agreement(s).

10 15. The Receiver obtained three (3) independent self-contained written appraisals, by
11 disinterested, certified, and licensed real estate appraisers, of the Real Property based on
12 comparable sales data, other market data, the fact the Receiver is selling the Real Property in a
13 receivership capacity, as-is and where-is and without warranty.

14 16. The three appraisals were obtained from (1) Sharon A. Steele, SRA, California
15 Appraisal Certification No. AG001591 of Mid State Appraisal Services, (2) Max R. Knupper,
16 Senior Appraiser, California Appraisal Certification No. AG006357 of Schenberger, Taylor,
17 McCormick & Jecker, Inc., and (3) Michael Neal Arnold, MAI, MRICS, California Appraisal
18 Certification No. AG002089 of Hammock, Arnold, Smith & Company (each an "Appraiser", and
19 collectively, the "Appraisers").

20 17. After review and independent consideration of each Appraiser's qualifications,
21 certifications, experience, education, as well as the Receiver's agents' interview of each
22 Appraiser, the Receiver believes each appraiser is a well-qualified independent appraiser within
23 the meaning of 28 U.S.C. § 2001(b).

24 18. At the Receiver's request, all three of these Appraisers based their opinions of
25 value for the Real Property upon several extraordinary assumptions, including the fact that this
26 would be a sale by a receiver appointed by the Federal District Court for the District of Nevada,
27 that the buyer would take title subject to the seller's necessary disclaimer of all warranties,
28 representations, promises, agreements of any kind or character whatsoever, as set forth in more

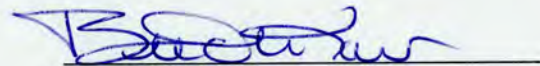
1 detail in the seller's "AS-IS" Purchase Addendum attached to the Purchase and Sale Agreement,
2 and that the sale would need to be concluded within 60-90 days.

3 19. Considering each of the three appraised valuations separately, and also
4 considering the mean of these appraised values collectively, the proposed purchase price of \$1
5 million exceeds the minimum threshold for approval of a private sale of two-thirds of the
6 adjusted fair market value as required under 28 U.S.C. § 2001.

7 20. The sale of the Real Property on the terms in the Purchase and Sale Agreement is
8 in the best interests of the receivership estate.

9 This declaration is made under penalty of perjury under the laws of the State of Nevada
10 and the United States of America.

11 Dated March 4, 2020.

12 

13 BRICK KANE
14 President and Chief Operating Officer of the
15 Receiver, Robb Evans & Associates LLC
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28

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 6 *Attorney for Receiver Robb Evans
 & Associates LLC*

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

9 SECURITIES AND EXCHANGE
 COMMISSION,

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

10 Plaintiff,
 11 vs.

**DECLARATION OF MICHAEL F. LYNCH
 IN SUPPORT OF MOTION FOR ORDER (1)
 AUTHORIZING, APPROVING AND
 CONFIRMING THE PRIVATE SALE OF
 REAL PROPERTY LOCATED AT
 1145 ARROYO MESA ROAD, SOLVANG,
 CALIFORNIA; AND (2) GRANTING RELIEF
 FROM LOCAL RULE 66-5 PERTAINING TO
 NOTICE TO CREDITORS**

12 EDWIN YOSHIHIRO FUJINAGA and
 MRI INTERNATIONAL, INC.,

13 Defendants,

14 and

15 CSA SERVICE CENTER, LLC
 THE FACTORING COMPANY,
 16 JUNE FUJINAGA, and
 THE YUNJU TRUST,

17 Relief Defendants.
 18

19 I, Michael F. Lynch, declare:

20 1. I am an attorney at law duly licensed and authorized to practice before all courts
 21 in the State of Nevada, and before the Ninth Circuit Court of Appeals, and am the managing
 22 member of Lynch Law Practice, PLLC ("Lynch Law"), court-appointed counsel for Robb Evans
 23 & Associates LLC, the court-appointed equitable receiver (the "Receiver"). If called upon to
 24 testify as to the facts set forth in this declaration, I could and would testify competently thereto as
 25 the facts are personally known to me to be true.

26 2. I make this Declaration in support of the *Motion for Order (1) Authorizing,*
 27 *Approving and Confirming the Private Sale of Real Property Located at 1145 Arroyo Mesa*
 28

1 *Road, Solvang, California; and (2) Granting Relief from Local Rule 66-5 Pertaining to Notice to*
2 *Creditors* (the “Motion”), contemporaneously filed herewith.

3 3. Attached hereto as **Exhibit “1”** is a true, correct, and complete copy of the
4 Marketing Information Data Sheet provided to me by the Santa Ynez Broker.¹ Richard Condit
5 drafted the Marketing Information Data Sheet and advised me that its contents are true and
6 correct, and that the Santa Ynez Broker expended the marketing efforts summarized therein.

7 4. I was actively involved in the negotiations with who was, in hindsight, the most
8 serious and motivated previous potential buyer of the Real Property prior to the Prospective
9 Buyers. The previous potential buyer balked due to their (apparent) concerns regarding, without
10 limitation, real or perceived (a) environmental issues and other site deficiencies at the Real
11 Property, (b) the fact an 80-page set of Covenants, Conditions, and Restrictions, which are under
12 the sole control of a single neighboring property owner are recorded against the Real Property
13 and (c) potential problems with obtaining clear title to the Real Property and/or adequate title
14 insurance.

15 This declaration is made under penalty of perjury under the laws of the State of Nevada
16 and the United States of America.

17 Dated March 11, 2020.

18
19 /s/ Michael F. Lynch
MICHAL F. LYNCH, ESQ.

20 Attorney for the Receiver, Robb Evans &
21 Associates LLC

22
23
24
25
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28 _____
¹ Capitalized terms not otherwise defined herein shall have the meanings as set forth in the Motion.

Exhibit 1

Santa Ynez Broker's Marketing Information Data Sheet

Exhibit 1

Santa Ynez Valley Real Estate Company Inc. is the longest serving company in the Santa Ynez Valley and was founded by Fillmore Condit in 1960. It is currently owned and operated by Richard Condit & Allan Jones (Principal Broker). The Santa Ynez Valley consists of 5 towns 2 of which are incorporated. The total population is approximately 25,000. The Real Estate Company represents a cross section of buyers and sellers which range from large ranches to condominiums and commercial property. We are very adept at handling properties such as the subject property.

The subject property would be considered Ranch property with a horse orientation. It has a 19 stall barn and two apartments and an enclosed shop building. All improvements are dated and in need of fairly substantial updating and upgrading.

The property has been advertised and marketed extensively not only locally but statewide and nationally.

Without limitation, some of the efforts undertaken by Santa Ynez Valley Real Estate Company Inc. include the following items:

- i. Full MLS Exposure and marketing to all agents in local, regional, and statewide area's including Santa Ynez Valley FLEX MLS, Santa Barbara FLEX MLS & Central Coast Regional MLS.
- ii. Use of high quality photos in the marketing effort.
- iii. Broker open houses.
- iv. Office/Broker promotions.
- v. Property has been advertised in Estates & Homes Magazine continuously which is also affiliated with WallStreet Journal and other publications.
- vi. Property has been advertised on an ongoing basis in the Santa Barbara News Press, Santa Ynez Valley News, Horse properties.com and Luxury Real Estate Magazine.
- vii. Advertised in realtor.com.
- viii. Advertised in Yahoo.
- ix. Advertised in RedFin.
- x. Advertised in Trulia.
- xi. Advertised in Zillow.
- xii. Included in our business website www.santaynezvalley.com.
- xiii. Fielded more than 80 inquires about the property.
- xiv. Conducted over 47 on-site showings of the property.