

1 Michael F. Lynch, Esq.
Nevada Bar No. 8555
2 **LYNCH LAW PRACTICE, PLLC**
3613 S. Eastern Ave.
3 Las Vegas, Nevada 89169
702.684.6000
4 702.413.8282 (direct)
702.543.3279 (fax)
5 Michael@LynchLawPractice.com

6 *Attorney for Receiver Robb Evans*
& Associates LLC

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

9 SECURITIES AND EXCHANGE COMMISSION,

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

10 Plaintiff,

11 vs.

12 EDWIN YOSHIHIRO FUJINAGA and
MRI INTERNATIONAL, INC.,

13 Defendants,

14 and

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

17 Relief Defendants.
18

**NOTICE OF MOTION AND MOTION
FOR ORDER (1) AUTHORIZING,
APPROVING AND CONFIRMING
SALE OF REAL PROPERTY
LOCATED AT 2955 COLEMAN AND
SALE AND OVERBID PROCEDURES
AND FOR RELATED RELIEF; (2)
AUTHORIZING SALE OF
PERSONAL PROPERTY VIA
AUCTION, AND (3) GRANTING
RELIEF FROM LOCAL RULE 66-5
PERTAINING TO NOTICE TO
CREDITORS**

19 **PLEASE TAKE NOTICE** that Robb Evans & Associates LLC the court-appointed
20 receiver ("Receiver") pursuant to the Court's Order Appointing a Full Equity Receiver to Assume
21 Control Over the Defendants' Assets and Enforce the Final Judgment (the "Order Appointing
22 Receiver") entered on May 15, 2015, (Dkt. 226) will and hereby does move the Court for the
23 following relief:

24 1. An order approving the proposed sale and overbid procedures for the real property
25 located at 2955 Coleman Street, North Las Vegas, Nevada 89032 (the "Coleman Real Property")
26 and identified by the Clark County Assessor as parcel no. 139-17-610-006, and authorizing and
27 confirming the sale of the Coleman Real Property on an "as is" basis more fully described in the
28 sale contract documents by private sale either (a) to Kyung S. Kim and Mike Barakat and/or their

1 assignee (the "Proposed Buyers"), arm's length buyers, at a purchase price of \$6,595,000.00
2 pursuant to the Offer and Acceptance Agreement and Earnest Money Receipt, first dated
3 December 7, 2015, (the "Offer and Acceptance Agreement") and attached as Exhibit 1 to the
4 Declaration of M. Val Miller in support of this Motion (the "Miller Declaration"), or (b) to such
5 higher qualified overbidder who hereafter submits the highest qualified overbid at a subsequent
6 overbid session to be conducted under the terms and conditions more fully set forth herein and
7 approved by the Court, which sale the Receiver requests be approved and confirmed without
8 further notice, hearing or order. The overbid procedures, terms and conditions for which the
9 Receiver seeks approval are set forth hereinbelow.

10 2. An order authorizing the Receiver to sell by auction the personal property located
11 at the Coleman Real Property, which consists primarily of pharmaceutical packaging and
12 handling equipment, along with packaging supplies, medical supplies, office furniture, fixtures,
13 and equipment, clean air hoods, material handling equipment, a motor-vehicle coach, and
14 assorted industrial and commercial equipment (the "Coleman Personal Property", and together
15 with the Coleman Real Property, the "Coleman Property") pursuant to the proposal to liquidate
16 via auction dated January 14, 2016, prepared by R.L. Spear Co., Inc., an authenticated copy of
17 which is attached to the Miller Declaration as Exhibit 2.

18 3. An order authorizing the Receiver to execute all documents and instruments
19 necessary or convenient to complete, implement, effectuate and close the sale of the Coleman
20 Real Property to the purchaser, including but not limited to the deed conveying title to the
21 Coleman Real Property.

22 4. An order authorizing the Receiver to permit and/or cause to be paid from the
23 proceeds of the sale of the Coleman Real Property (a) all ordinary and customary closing costs,
24 all costs and expenses required to be paid under the terms of the Offer and Acceptance
25 Agreement by the seller from the proceeds of sale, (b) all commissions provided for in the Offer
26 and Acceptance Agreement, the Receiver's listing agreement for the Coleman Real Property
27 attached as **Exhibit 3** to the Miller Declaration, and (c) all real property tax liens and prorated
28 real property taxes due up to the date of closing.

1 5. An order deeming notice of this Motion to be sufficient under Local Civil Rule
2 66- 5 based on the service of a notice of the filing of this Motion and the Motion on all parties
3 and service of a notice of the filing of the Motion on all known non-consumer creditors of the
4 estate concurrent with the filing of this Motion with the Court, but not on the tens of thousands
5 of potential foreign creditors; and

6 6. An order for such additional relief as may be necessary or appropriate to allow the
7 Receiver to effectuate the sale of the Coleman Property, including but not limited to, entry of an
8 order authorizing such sale in form acceptable to the title company insuring title in connection
9 with the sale of the Coleman Property

10 This Motion is made pursuant to 28 U.S.C. § 2001 and 2002 and Local Rules 66-5 and
11 66-10 and other applicable law and is based upon this Notice of Motion and Motion, the separate
12 Notice of Filing of the Motion served concurrently herewith, the accompanying Memorandum of
13 Points and Authorities, the Declaration of M. Val Miller (the “Miller Declaration”) and the
14 exhibits thereto filed in support hereof, any reply, and upon all other pleadings and documentary
15 evidence as may be presented to the Court by the Receiver in support of this Motion.

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

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

18 Robb Evans & Associates LLC was appointed receiver (“Receiver”) in the above-
19 captioned case by that certain Order Appointing an Equitable Receiver entered on February 23,
20 2015 (Dkt. 194), which commanded and authorized the Receiver to, among other things, take
21 and retain immediate possession, custody, and control of certain commercial properties owned or
22 controlled by Defendant Edwin Fujinaga and others, including the Coleman Real Property.

23 The duties and responsibilities of the Receiver were enlarged by that certain Order
24 Appointing a Full Equitable Receiver to Assume Control over the Defendants' Assets and
25 Enforce the Final Judgment entered on May 15, 2015 (the “Order Appointing Receiver”) (Dkt.
26 226). The Order Appointing Receiver supersedes the previous order, and directs the Receiver to
27 take and retain immediate possession, custody, and control of all assets owned or controlled,
28

1 directly or indirectly, by any of the Defendants in the SEC Receivership Litigation, including
2 CSA Service Center, LLC, one of the Relief Defendants herein. *Id.*

3 Under the Order Appointing Receiver, the Receiver is authorized, empowered, and
4 directed to perform certain duties and responsibilities, as reasonably appropriate and necessary to
5 comply with and effectuate the goals and purposes of the equitable receivership. *Id.*, at p.2.
6 Included in these enumerated duties is the ability to retain one or more qualified real estate
7 brokers to list and market the Coleman Real Property, including any personal property located in
8 or at any such parcels, subject to Court approval prior to the substantial commitment, liquidation,
9 or transfer of Defendants' assets. *Id.*, at p.5.

10 **II. THE RECEIVER REQUESTS THE COURT APPROVE THE PROPOSED**
11 **SALES TO ACHIEVE EQUITY FOR THE BENEFIT OF THE ESTATE**

12 28 U.S.C. § 2001 provides the procedures pertaining to the sale of real property by a
13 federal receiver. Subsection (a) pertains to procedures for the public sale of real property.

14 Subsection (b) pertains to the sale of real property at a private sale and states:

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

28 U.S.C. § 2001(b).

29 Courts are granted discretion in setting the terms and conditions for judicial sales and the
30 Court's discretion will not be disturbed on appeal except where abuse of discretion is shown.

31 United States v. Branch Coal Corp., 390 F. 2d 7 (3rd Cir. 1968), cert. den. Sun Protection Co. v.
32 United States, 391 U.S. 966, 88 S. Ct. 2034 (1968). The Court has substantial discretion in
33 receivership matters in setting the overbidding procedures applicable to sales of real property.

1 See Pewabic Mining Co. v. Mason, 145 U.S. 349, 356, 36 L.Ed. 732, 12 S.Ct. 887 (1891) (the
2 provisions for notice and other conditions shall be determined by the Court "as will in his
3 judgment best protect the rights of all interested, and make the sale most profitable to all"). See
4 also Cumberland Lumber Co. v. Tunis Lumber Co., 171 F. 352 (4th Cir. 1909); Bidwell v. Huff,
5 176 F. 174 (5th Cir. 1909). The terms and conditions of the judicial sale that the Court may adopt
6 are based on the facts and circumstances of each case. The discretion granted in connection with
7 sales of assets is consistent with the broad discretion accorded to the Court sitting in equity in
8 receivership proceedings to make orders concerning the administration and supervision of the
9 estate that will promote equity, efficiency and cost-effectiveness in the estate's administration.
10 See generally Securities and Exchange Commission v. Hardy, 803 F.2d 1034 (9th Cir. 1986);
11 Securities and Exchange Commission v. Black, 163 F.3d 188, 199 (3rd Cir. 1998); Securities and
12 Exchange Commission v. Elliot, 953 F.2d 1560 (11th Cir. 1992).

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

17 As the Ninth Circuit noted in SEC v. Hardy, 803 F. 2d 1034, 1037 (9th Cir. 1986): "A
18 district court's power to supervise an equity receivership and to determine the appropriate action
19 to be taken in the administration of the receivership is extremely broad" and subject to review
20 under an abuse of discretion standard. See also United States v. Branch Coal Corp., 390 F. 2d 7
21 (3rd Cir. 1968) (courts granted discretion in setting the terms and conditions for judicial sales
22 and the court's discretion will not be disturbed on appeal except absent abuse of discretion).

23 **III. THE COURT SHOULD APPROVE THE RECEIVER'S PROPOSED SALE OF** 24 **THE COLEMAN REAL PROPERTY**

25 In order to preserve the value of the assets for the benefit of consumers and creditors, the
26 Receiver investigated hiring a broker to list and market for sale various real properties, including
27 the Coleman Real Property. Miller Declaration at ¶ 5. The Coleman Real Property is a
28 commercial property consisting of an approximately 68,318 square foot building situated on

1 approximately 3.55 acres, title to which is held in the name of CSA Service Center, LLC, one of
2 the Relief Defendants herein. Miller Declaration at ¶ 7.

3 The Coleman Real Property was subject to accruing liens for real property taxes which
4 had been delinquent since 2015, which taxes have now been paid, as reflected in a recent title
5 report obtained for the property by the Receiver, a copy of which is attached as Exhibit 1 to the
6 Miller Declaration. Miller Declaration at ¶ 8.

7 The Receiver obtained 2 appraisals of the Coleman Real Property and a written broker's
8 valuation, all three of which are based on comparable sales data and other market data. Miller
9 Declaration at ¶ 9. The Receiver has therefore complied with the valuation evidence provisions
10 of the statute. Further, any minor deviation from the statutory provision as to appointment of
11 three appraisers is warranted under the circumstances for several reasons, including the
12 inordinate expense associated with obtaining additional appraisals which is burdensome to the
13 estate under the circumstances; the fact that the valuations by both the local real estate brokers
14 and the appraiser are based on comparable sales data and the experience and knowledge of the
15 sales agents who actually deal in real estate in the local market and thus are reliable indicators of
16 the actual value likely to be realized from the marketing and sale of the property; and the fact
17 that the Coleman Real Property has been exposed to the marketplace itself and will continue to
18 be exposed to the public through the proposed overbid process to ensure the value of the property
19 is maximized for the estate.

20 On June 5, 2015, the Receiver entered into an exclusive right to sell listing agreement and
21 agency disclosure ("Listing Agreement") with Donna Alderson of CBRE, Inc. ("Broker"), a true
22 and correct copy of which is attached as Exhibit 2 to the Miller Declaration. Miller Declaration
23 at ¶ 10. The Broker is experienced in the sale of commercial real estate in Southern Nevada. *Id.*

24 In determining the listing terms, the Receiver relied on two appraisals of the Coleman
25 Real Property, and a broker's opinion of value, as well as the Receiver's Broker's analysis of and
26 recommendations regarding a listing price for the Coleman Real Property. Miller Declaration at
27 ¶ 11.

1 The Broker listed the Coleman Real Property for sale with the following services:

2 Property Line - <http://www.propertyline.com> (±800 Members in Las Vegas)

3 LoopNet - <http://www.loopnet.com> (±400 Members in Las Vegas)

4 Costar - <http://www.costar.com/> (±1,000 Members in Las Vegas)

5 Xceligent – <http://cdx.xceligent.com>

6 CBRE’s Website – <https://intranet.cbre.com/en-US>

7 Miller Declaration at ¶ 12. In addition, an e-mail blast advertising the Coleman Real Property
8 was sent to approximately 2,000 CBRE contacts, and an ad was placed in the Vegas Inc.
9 Magazine. Miller Declaration at ¶ 13.

10 The sale price of \$6,595,000.00 to the Proposed Buyers set forth in the Offer and
11 Acceptance Agreement exceeds the minimum threshold for the price that must be achieved for a
12 private sale in relation to the valuations of the Coleman Property obtained by the Receiver.
13 Miller Declaration at ¶¶ 14, 15. Therefore, the sale price component of § 2001(b) has been
14 satisfied.

15 Furthermore, in the Receiver’s considered opinion, the sale of the Coleman Real Property
16 on the terms in the Offer and Acceptance Agreement is in the best interests of the receivership
17 estate. Miller Declaration at ¶ 15. In light of the proposed overbid session with a published
18 notice, the Receiver has not disclosed the amount of these valuations of the property so as not to
19 interfere with the overbid process;¹ however, the purchase price of \$6,595,000.00 under the
20 Offer and Acceptance Agreement exceeds the minimum threshold for approval of a private sale
21 of two-thirds of the average of three appraisals of the property as required under 28 U.S.C. §
22 2001. Miller Declaration at ¶¶ 15, 16.

23 The Receiver seeks to sell the Coleman Real Property under the Offer and Acceptance
24 Agreement to the Proposed Buyers, who are unaffiliated, arm's length purchasers based on the
25 Receiver's investigation, subject to the Receiver's conduct of an overbid session after publication
26 of notice to provide an additional opportunity for interested purchasers to bid for the property.
27

28

¹ The Receiver will submit copies of the valuations with the Court for in camera inspection if requested by the Court.

1 Miller Declaration at ¶ 16. The Offer and Acceptance Agreement provides for an "as is," all cash
2 sale with the closing to occur, conditioned upon Court approval of this Motion, within 10 days of
3 the conclusion of the overbid session. *Id.*

4 The Receiver seeks approval to solicit overbids for the sale of the Coleman Real
5 Property, as contemplated by the Offer and Acceptance Agreement, and seeks an order on this
6 Motion that confirms the sale of the Coleman Real Property to the Proposed Buyers, their assign,
7 or such higher qualified overbidder who may make the highest overbid accepted by the Receiver
8 at the overbid session to be conducted under the proposed sale procedures set forth in this
9 Motion. Miller Declaration at ¶ 17. Under the circumstances, including the facts (a) the sale to
10 the Proposed Buyers is non-contingent for an amount that substantially exceeds the minimum
11 two-thirds of the average of the three valuations obtained by the Receiver for the Coleman Real
12 Property, (b) the terms and conditions of the Proposed Purchase Agreement that provide for
13 closing within 10 days of the conclusion of the overbid session, and (c) the Receiver's desire to
14 avoid unnecessary administrative expense through multiple motions to conclude the sale, the
15 Receiver requests that the Court approve the following notice and overbid procedures, terms and
16 conditions:²

17 1. The overbid session shall be conducted within 45 days of the date of entry of the
18 order granting this Motion. The overbid session will be conducted at the Robb Evans &
19 Associates LLC, 5560 S. Ft. Apache Road, Suite 120, Las Vegas, Nevada 89148.

20 2. The Receiver will cause to be published a notice of the proposed sale of the
21 Coleman Real Property to a qualified bidder at the overbid session to be conducted pursuant to
22 paragraph 1 above, which notice shall state the date, time and place of the overbid session, the
23 requirement for pre-qualification by overbidders and the terms and conditions of the overbidding
24 and sale of the Coleman Real Property, as described below ("Overbid Notice"). The Receiver
25 will cause the Overbid Notice to be published in Las Vegas Review Journal one time at least ten
26 days prior to the scheduled overbid session date. The Las Vegas Review Journal is Nevada's
27

28 _____
² Miller Declaration at ¶¶ 18, 19.

1 largest newspaper, which serves all of Southern Nevada, and publishes daily.^{3,4} The Las Vegas
2 Review Journal's circulation includes North Las Vegas, which is where the Coleman Real
3 Property is located.

4 3. Any person wishing to overbid at the overbid session shall be required to pre-
5 qualify with the Receiver no later than 10:00 a.m. two business days preceding the overbid
6 session by delivering to the Receiver's office located at 5560 S. Ft. Apache Road, Suite 120, Las
7 Vegas, Nevada 89148: (a) notice in writing of the prospective overbidder's intent to overbid
8 together with (b) written verification from a financial institution demonstrating to the Receiver's
9 satisfaction, in the Receiver's sole opinion and judgment, the prospective overbidder's ability to
10 complete and close a purchase of the Coleman Real Property through sufficient funds or credit
11 facilities within 10 days of the date of the overbid session, and (c) a cashier's check in the sum of
12 \$300,000.00 payable to "Robb Evans & Associates LLC, Receiver of MRI International, Inc. et
13 al.", which cashier's check shall become non-refundable upon acceptance of the overbidder's
14 overbid at the conclusion of the overbid session.

15 4. Overbidders bidding at the overbid session will be deemed to have completed all
16 inspections of the Coleman Real Property and will be deemed to have waived and/or removed all
17 contingencies in favor of the buyer under the Offer and Acceptance Agreement, including,
18 without limitation any contingency pertaining to inspection of title, and will be required to
19 complete a cash purchase of the Coleman Real Property and close escrow for the purchase within
20 10 days of the date of the overbid session. The successful overbidder will be required to execute
21 a purchase agreement for the Coleman Real Property substantially in the form of the Offer and
22

23
24 ³ This information was obtained from the Las Vegas Review Journal's website,
25 available at <http://www.reviewjournal.com/contacts>, last checked January 26, 2016.

26 ⁴ The foregoing publication provision meets the publication requirements for a
27 private sale under 28 U.S.C. section 201(b) discussed hereafter. However, the
28 Receiver also anticipates that the Broker will provide additional notice of the
overbid session through e-mail and/or the internet web sites where the property is
listed.

1 Acceptance Agreement together with a waiver of all buyer contingencies promptly after
2 conclusion of the overbid session.

3 5. The initial overbid shall be in the amount of \$7,254,500.00 (an amount that is
4 \$659,500.00, or 10%, higher than the purchase price under the Offer and Acceptance
5 Agreement), and all subsequent overbids shall be in an amount at least \$25,000 higher than the
6 preceding bid.

7 6. Pursuant to the Offer and Acceptance and the Receiver's listing agreement with
8 his Broker, a sales commission in the amount of 5% of the purchase price paid for the Coleman
9 Real Property by the Proposed Buyers, or if a higher overbid is received and accepted at the
10 overbid session, by the winning overbidder, shall be paid from the proceeds of sale of the
11 Coleman Real Property at close of escrow and shall be paid to the Broker as listing agent under
12 the Listing Agreement and a cooperating broker representing the buyer, if any, under the terms
13 of the Listing Agreement.

14 The Offer and Acceptance Agreement provides a very favorable sale of the Coleman
15 Real Property to well-qualified, independent all cash buyers on an "as is, where is" basis. Miller
16 Declaration at ¶ 19. The purchase price under the Offer and Acceptance Agreement is well in
17 excess of the two-thirds minimum of the average of the three valuations obtained by the Receiver
18 for the Coleman Real Property which is the minimum threshold price required to meet the terms
19 of 28 U.S.C. § 2001. Miller Declaration at ¶ 15.

20 The Receiver proposes that the overbid session pursuant to the terms set forth above
21 which will provide further assurance that interested buyers have notice and an opportunity to
22 make a higher bid to acquire the property so long as they are qualified and met the same all cash,
23 as-is and ten-day closing terms of the Offer and Acceptance Agreement. Miller Declaration at ¶
24 19. The Receiver recommends approval and confirmation of the sale under the terms and
25 conditions set forth herein. *Id.*
26
27
28

1 **III. THE RECEIVER HAS SATISFIED OR WILL SETTLE OR SATISFY**
2 **ENCUMBRANCES AGAINST THE COLEMAN REAL PROPERTY FROM**
3 **SALES PROCEEDS**

4 The Receiver has obtained a preliminary Title Report for the Coleman Real Property,
5 which report is dated December 8, 2015, and on information and belief, the liens relating to
6 unpaid taxes and amounts duly owing have been satisfied. Miller Declaration at ¶ 8. To the
7 extent there are any remaining unpaid and valid liens, the Receiver intends to either settle or
8 satisfy such encumbrances against the Coleman Real Property prior to the sale. *Id.*

9 **IV. THE COURT SHOULD APPROVE THE RECEIVER'S PROPOSED AUCTION**
10 **OF THE COLEMAN PERSONAL PROPERTY**

11 Section 2004 provides that "[a]ny personal property sold under order or decree of any
12 court of the United States shall be sold in accordance with section 2001 of this title, unless the
13 court orders otherwise." Therefore, in the case of the sale of personal property, Section 2004
14 expressly states that the Court may modify the sale procedures set forth in Section 2001.

15 In this instance, the Receiver has determined that it is now appropriate to sell the
16 Coleman Personal Property,⁵ all of which is located at the Coleman Real Property. Miller
17 Declaration at ¶ 20. The Receiver submits that it makes economic sense to the receivership
18 estate to auction the Coleman Personal Property because (i) there is no business currently being
19 operated out of the Coleman Real Property and the Receiver has no intention or plans for
20 conducting business out of the Coleman Real Property, and (ii) the Coleman Personal Property
21 must be removed from the Coleman Real Property so that the real property may be sold, and an
22 auction will eliminate the time and cost of moving and/or storing the Coleman Personal Property,
23 as it will be auctioned off as-is and where-is. Miller Declaration at ¶ 21.

24 The Receiver has determined, based upon the nature of the Coleman Personal Property,
25 and the time and costs that would be incurred in connection with other methods of liquidation,

26 ⁵ For ease of reference, as defined hereinabove, the Coleman Personal Property
27 consists primarily of pharmaceutical packaging and handling equipment, along
28 with packaging supplies, medical supplies, office furniture, fixtures, and equipment,
clean air hoods, material handling equipment, a motor-vehicle coach, and assorted
industrial and commercial equipment

1 that it is in the best interests of the receivership estate and its creditors for the Receiver to engage
2 an auctioneer to liquidate the Personal Property. Miller Declaration at ¶ 22.

3 To that end, the Receiver has obtained a proposal from R.L. Spear Co., Inc. (“Spear”), a
4 recognized auctioneer of this type of personal property. Spear inspected the Coleman Personal
5 Property and has recommended a public on-line auction to maximize the return in a timely
6 fashion. An authenticated copy of Spear’s bid is attached to the Miller Declaration as Exhibit 4.
7 Miller Declaration at ¶ 23.

8 Spear is a well-known auctioneer of this type of property and it would be an inefficient
9 use of the estate’s funds for the Receiver to expend money hiring three appraisers in order to
10 comply with Section 2001(b). Miller Declaration at ¶ 24. The Receiver requests the Court
11 exercise its discretion under Section 2004 to modify the sale procedures set forth in Section
12 2001(b) with respect to the sale of the Coleman Personal Property because those requirements
13 are impractical and unnecessary in this instance. Miller Declaration at ¶ 25.

14 Spear has advised the Receiver that it will supplement its advertising campaign with
15 pictures of the Coleman Personal Property with descriptive text on its web site as well as with a
16 telemarketing campaign to likely buyers, such as medical supply businesses, clinics and
17 hospitals, liquidators, surplus dealers and other parties. Miller Declaration at ¶ 26. Spear will
18 also e-mail companies and persons who participate in auctions of this type. *Id.*

19 The Receiver further submits that Spear’s proposed compensation, in an amount equal to
20 (a) 10% of gross receipts is fair and appropriate, (b) a 13% buyer’s premium is customary, fair,
21 and appropriate. Miller Declaration at ¶ 27.

22 On this basis, and for these reasons, the Receiver requests an order authorizing the
23 Receiver to hire Spear to liquidate the Coleman Personal Property in accord with the Spear bid.
24 Miller Declaration at ¶ 28.

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

27 Local Civil Rule 66-5 provides for service of notice of the hearing on various motions by
28 a receiver concerning the administration of the estate. That rule provides for service of the notice
of hearing on such motions on all creditors of the receivership estate. No hearing has been set on

1 this Motion and the provisions of Local Civil Rule 66-5 do not specifically apply. Nevertheless,
2 the Receiver will serve notice of filing of the Motion on the parties, the affected lienholders, and
3 on all known non-consumer creditors of the estate and on known taxing authorities with a
4 potential claim in the receivership estate ("Notice Parties"), to provide them notice and an
5 opportunity to be heard concerning the Motion. This notice is consistent with notice previously
6 approved by the Court in this case.

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

17 To the extent that Local Rule 66-5 applies to this Motion, the Receiver seeks an order
18 that notice of this Motion is sufficient if notice of the filing of the Motion is given by serving
19 copies of all motion papers on the parties to the action and the affected lienholders and by
20 serving copies of the notice of filing of the motion on the Notice Parties identified above. The
21 Receiver submits that such service provides sufficient notice and an opportunity for hearing to
22 the interested parties and should be approved as adequate.

23 Based on the foregoing, to the extent that Local Rule 66-5 applies to this Motion, the
24 Receiver seeks an order providing that the notice requirement of that rule shall be deemed
25 satisfied if notice of the filing of the Motion is given by serving copies of all motion papers on
26 the parties to the action and by serving copies of the notice of filing of the Motion on all known
27 non-consumer creditors. The Receiver submits that such service provides sufficient notice and an
28 opportunity for hearing to the interested parties and should be approved as adequate. This limited

1 notice is consistent with the notice approved by the court concerning the prior fee motions. (See
2 e.g., Dkt. 245).

3 There is ample authority for approval of the scope and method of notice as set forth
4 above. This Court, as a court of equity supervising the receivership estate, may make appropriate
5 administrative orders governing the receivership, including limitations on and changes in notice
6 and other procedures. See F.R.C.P. 5(a) and (c) (authorizing the court to modify service
7 procedures when numerous defendants are involved in litigation). In addition, pursuant to Local
8 Rule 66-10, a receiver is directed to administer receivership estates "as nearly as may be in
9 accordance with the practice in the administration of estates in Chapter 11 bankruptcy cases."
10 Orders limiting notice when the Bankruptcy Code or Rules would otherwise require notice to all
11 creditors are routinely granted in bankruptcy cases to promote the expeditious and economical
12 administration of bankruptcy estates. See In re First Alliance Mortgage Co., 269 B.R. 428, 442
13 (C.D. Cal. 201) (referencing in dicta in the court's recitation of facts the bankruptcy court's order
14 limiting notice issued in that case); 11 U.S.C. § 102(1)(A) (defining the phrase "after notice and
15 a hearing" to mean "after such notice as is appropriate in the particular circumstances, and such
16 opportunity for hearing as is appropriate in the particular circumstances"); 11 U.S.C. § 105(a)
17 and (d) (granting broad equitable powers to the court to issue orders "necessary or appropriate to
18 carry out the provisions" of title 11 including "prescribing such limitations and conditions as the
19 court deems appropriate to ensure the case is handled expeditiously and economically"); and F.R.
20 Bankr. P. 202(m) (authorizing the court to enter "orders designating the matters in respect to
21 which, the entity to whom, and the form and manner in which notices shall be sent except as
22 otherwise provided by these rules").

23 **IV. CONCLUSION**

24 For the foregoing reasons, it is respectfully requested that the Court grant relief as
25 requested in the Motion.

26 Dated February 4, 2016.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LYNCH LAW PRACTICE, PLLC

/s/ Michael F. Lynch
Michael F. Lynch
Nevada Bar No. 8555
3613 S. Eastern Ave.
Las Vegas, Nevada 89169
702.684.6000
702.413.8282 (direct)
702.543.3279 (fax)
Michael@LynchLawPractice.com

*Attorney for Receiver Robb Evans
& Associates LLC*

1 Michael F. Lynch, Esq.
Nevada Bar No. 8555
2 **LYNCH LAW PRACTICE, PLLC**
3613 S. Eastern Ave.
3 Las Vegas, Nevada 89169
702.684.6000
4 702.413.8282 (direct)
702.543.3279 (fax)
5 Michael@LynchLawPractice.com

6 *Attorney for Receiver Robb Evans*
& Associates LLC

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

9 SECURITIES AND EXCHANGE COMMISSION,

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

10 Plaintiff,

11 vs.

12 EDWIN YOSHIHIRO FUJINAGA and
MRI INTERNATIONAL, INC.,

13 Defendants,

14 and

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

18 Relief Defendants.

DECLARATION OF M. VAL MILLER IN SUPPORT OF MOTION FOR ORDER (1) AUTHORIZING, APPROVING AND CONFIRMING SALE OF REAL PROPERTY LOCATED AT 2955 COLEMAN AND SALE AND OVERBID PROCEDURES AND FOR RELATED RELIEF; (2) AUTHORIZING SALE OF PERSONAL PROPERTY VIA AUCTION, AND (3) GRANTING RELIEF FROM LOCAL RULE 66-5 PERTAINING TO NOTICE TO CREDITORS

19 I, M. VAL MILLER, declare:

20 1. I am an Executive Vice President and a member of Robb Evans & Associates
21 LLC, the court-appointed receiver (the "Receiver") in this case. I am one of the deputies to the
22 Receiver responsible for the day-to-day supervision of the receivership estate. If called upon to
23 testify as to the facts set forth in this declaration, I could and would testify competently thereto as
24 the facts are true and within my personal knowledge or I have gained knowledge of such facts
25 from the books and records of the receivership proceeding, including the books and records of
26 the entities subject to the receivership.

27 2. The Receiver was appointed to act as an equity receiver in the above-captioned
28 case by that certain Order Appointing an Equitable Receiver entered on February 23, 2015 (Dkt.

1 194), which commanded and authorized the Receiver to, among other things, take and retain
2 immediate possession, custody, and control of certain commercial properties owned or controlled
3 by Defendant Edwin Fujinaga and others.

4 3. The duties and responsibilities of the Receiver were enlarged by that certain Order
5 Appointing a Full Equitable Receiver to Assume Control over the Defendants' Assets and
6 Enforce the Final Judgment entered on May 15, 2015 (the "Order Appointing Receiver") (Dkt.
7 226). The Order Appointing Receiver supersedes the previous order, and directs the Receiver to
8 take and retain immediate possession, custody, and control of all assets owned or controlled,
9 directly or indirectly, by any of the Defendants in the SEC Receivership Litigation, including
10 CSA Service Center, LLC, one of the Relief Defendants herein. *Id.*

11 4. I am authorized to make this Declaration in support of the Receiver's *Motion for*
12 *Order (1) Authorizing, Approving and Confirming Sale of Real Property Located at 2955*
13 *Coleman and Sale and Overbid Procedures and for Related Relief; (2) Authorizing Sale of*
14 *Personal Property via Auction, and (3) Granting Relief from Local Rule 66-5 Pertaining to*
15 *Notice to Creditors* (the "Motion to Approve Sale and Procedures").

16 5. In order to preserve the value of the assets for the benefit of consumers and
17 creditors, the Receiver investigated hiring a broker to list and market for sale various real
18 properties and personal property located therein.

19 6. By the Motion to Approve Sale and Procedures, the Receiver seeks (a) an order
20 authorizing a proposed sale of the real property located at 2955 Coleman Street, North Las
21 Vegas, Nevada 89032 (the "Coleman Real Property") to an arm's length third party buyer and (b)
22 an order authorizing the Receiver to sell by auction the personal property located at the Coleman
23 Real Property, which consists primarily of pharmaceutical packaging and handling equipment,
24 along with packaging supplies, medical supplies, office furniture, fixtures, and equipment, clean
25 air hoods, material handling equipment, a motor-vehicle coach, and assorted industrial and
26 commercial equipment (the "Coleman Personal Property", and together with the Coleman Real
27 Property, the "Coleman Property").
28

The Coleman Real Property

1
2 7. The Coleman Real Property is a commercial property consisting of an
3 approximately 68,318 square foot building situated on approximately 3.55 acres, title to which is
4 held in the name of CSA Service Center, LLC, one of the Relief Defendants herein

5 8. The Coleman Real Property was subject to accruing liens for real property taxes
6 which had been delinquent since 2015, which taxes have now been paid, as reflected in a recent
7 title report obtained for the property by the Receiver, a true and correct copy of which is attached
8 hereto and incorporated herein as **Exhibit 1**. To the extent there are any remaining unpaid and
9 valid liens, the Receiver intends to either settle or satisfy such encumbrances against the
10 Coleman Real Property prior to the sale.

11 9. The Receiver obtained 2 appraisals of the Coleman Real Property and a written
12 broker's valuation, all three of which are based on comparable sales data and other market data.

13 10. On June 5, 2015, the Receiver entered into an exclusive right to sell listing
14 agreement and agency disclosure ("Listing Agreement") with Donna Alderson of CBRE, Inc.
15 ("Broker"), a true and correct copy of which is attached hereto and incorporated herein as
16 **Exhibit 2**. The Broker is experienced in the sale of commercial real estate in Southern Nevada.

17 11. In determining the listing terms, the Receiver relied on two appraisals of the
18 Coleman Real Property, and the broker's opinion of value, as well as the Broker's analysis of and
19 recommendations regarding a listing price for the Coleman Real Property.

20 12. The Receiver is informed and believes that the Broker listed the Coleman Real
21 Property for sale with the following services:

22 Property Line - <http://www.propertyline.com> (±800 Members in Las Vegas)

23 LoopNet - <http://www.loopnet.com> (±400 Members in Las Vegas)

24 Costar - <http://www.costar.com/> (±1,000 Members in Las Vegas)

25 Xceligent – <http://cdx.xceligent.com>

26 CBRE's Website – <https://intranet.cbre.com/en-US>

1 13. In addition, the Receiver is informed and believes that an e-mail blast advertising
2 the Coleman Real Property was sent to approximately 2,000 CBRE contacts, and an ad was
3 placed in the Vegas Inc. Magazine.

4 14. On December 7, 2015, the Receiver received an all cash offer from Kyung S. Kim
5 and Mike Barakat and/or their assignee (the "Proposed Buyers"), arm's length buyers, to
6 purchase the Coleman Real Property without any financing contingency for the purchase price of
7 \$6,595,000.00 pursuant to the Offer and Acceptance Agreement and Earnest Money Receipt,
8 first dated December 7, 2015, (the "Offer and Acceptance Agreement"). A true, correct, and
9 complete copy of the Offer and Acceptance Agreement is attached hereto as **Exhibit "3"**.

10 15. In the Receiver's opinion, the sale of the Coleman Real Property on the terms in
11 the Offer and Acceptance Agreement is in the best interests of the receivership estate. In light of
12 the proposed overbid session with a published notice, the Receiver has not disclosed the amount
13 of these valuations of the property so as not to interfere with the overbid process;¹ however, the
14 purchase price of \$6,595,000.00 under the Offer and Acceptance Agreement far exceeds the
15 minimum threshold for approval of a private sale of two-thirds of the average of three appraisals
16 of the property as required under 28 U.S.C. § 2001.

17 16. The Receiver seeks to sell the Coleman Real Property under the Offer and
18 Acceptance Agreement to the Proposed Buyers, who are unaffiliated, arm's length purchasers
19 based on the Receiver's investigation, subject to the Receiver's conduct of an overbid session
20 after publication of notice to provide an additional opportunity for interested purchasers to bid
21 for the property. The Offer and Acceptance Agreement provides for an "as is," all cash sale with
22 the closing to occur, conditioned upon Court approval of this Motion, within 10 days of the
23 conclusion of the overbid session.

24 17. The Receiver seeks approval to solicit overbids for the sale of the Coleman Real
25 Property, as contemplated by the Offer and Acceptance Agreement, and seeks an order on the
26 Motion to Approve Sale and Procedures that confirms the sale of the Coleman Real Property to
27

28 ¹ The Receiver will submit copies of the valuations with the Court for in camera inspection if requested by the Court.

1 the Proposed Buyer, or such higher qualified overbidder who may make the highest overbid
2 accepted by the Receiver at the overbid session to be conducted under the proposed sale
3 procedures set forth in the Motion to Approve Sale and Procedures.

4 18. Under the circumstances, including the fact the sale to the Proposed Buyer is non-
5 contingent for an amount that substantially exceeds the minimum two-thirds of the average of the
6 three valuations obtained by the Receiver for the Coleman Real Property, the terms and
7 conditions of the Proposed Purchase Agreement that provide for closing within 10 days of the
8 conclusion of the overbid session, and the Receiver's desire to avoid unnecessary administrative
9 expense through multiple motions to conclude the sale, the Receiver requests that the Court
10 approve the notice and overbid procedures, terms and conditions set forth in the Motion to
11 Approve Sale and Procedures.

12 19. The Receiver recommends approval and confirmation of the proposed sale to the
13 Proposed Buyers under the terms of the Offer and Acceptance Agreement, subject to overbidding
14 as requested in the Motion to Approve Sale and Procedures. The Offer and Acceptance
15 Agreement provides a very favorable sale of the Coleman Real Property to a well-qualified,
16 independent all cash buyers on an "as is, where is" basis.

17 **The Coleman Personal Property**

18 20. The Receiver has determined that it is now appropriate to sell the Coleman
19 Personal Property,² all of which is located at the Coleman Real Property.

20 21. The Receiver submits that it makes economic sense to the receivership estate to
21 auction the Coleman Personal Property because (i) there is no business currently being operated
22 out of the Coleman Real Property and the Receiver has no intention or plans for conducting
23 business out of the Coleman Real Property, and (ii) the Coleman Personal Property must be
24 removed from the Coleman Real Property so that the real property may be sold, and an auction
25

26 ² For ease of reference, as defined hereinabove, the Coleman Personal Property
27 consists primarily of pharmaceutical packaging and handling equipment, along
28 with packaging supplies, medical supplies, office furniture, fixtures, and equipment,
clean air hoods, material handling equipment, a motor-vehicle coach, and assorted
industrial and commercial equipment

1 will eliminate the time and cost of moving and/or storing the Coleman Personal Property, as it
2 will be auctioned off as-is and where-is.

3 22. The Receiver has determined, based upon the nature of the Coleman Personal
4 Property, and the time and costs that would be incurred in connection with other methods of
5 liquidation, that it is in the best interests of the receivership estate and its creditors for the
6 Receiver to engage an auctioneer to liquidate the Personal Property.

7 23. The Receiver has obtained a proposal from R.L. Spear Co., Inc. ("Spear"), a
8 recognized auctioneer of this type of personal property. Spear inspected the Coleman Personal
9 Property and has recommended a public on-line auction to maximize the return in a timely
10 fashion. A true, correct and complete copy of Spear's bid is attached hereto as **Exhibit "4"**.

11 24. Spear is a well-known auctioneer of this type of property and it would be an
12 inefficient use of the estate's funds for the Receiver to expend money hiring three appraisers in
13 order to comply with Section 2001(b).

14 25. The Receiver requests the Court exercise its discretion under Section 2004 to
15 modify the sale procedures set forth in Section 2001(b) with respect to the sale of the Coleman
16 Personal Property because those requirements are impractical and unnecessary in this instance.

17 26. Spear has advised the Receiver that it will supplement its advertising campaign
18 with pictures of the Coleman Personal Property with descriptive text on its web site as well as
19 with a telemarketing campaign to likely buyers, such as medical supply businesses, clinics and
20 hospitals, liquidators, surplus dealers and other parties. Spear will also e-mail companies and
21 persons who participate in auctions of this type.

22 27. The Receiver further submits that Spear's proposed compensation, in an amount
23 equal to (a) 10% of gross receipts is fair and appropriate, (b) a 13% buyer's premium is
24 customary, fair, and appropriate.

25 28. On this basis, and for these reasons, the Receiver requests an order authorizing the
26 Receiver to hire Spear to liquidate the Coleman Personal Property in accord with the Spear bid.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated February 4, 2016.



M. VAL MILLER

List of Exhibits

- Exhibit 1 Title Report for the Coleman Real Property
- Exhibit 2 Listing Agreement with Donna Alderson of CBRE, Inc.
- Exhibit 3 Offer and Acceptance Agreement
- Exhibit 4 Proposal from R.L. Spear Co., Inc.