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5 *Attorney for the Receiver,*  
6 *Robb Evans & Associates LLC*

7 **UNITED STATES DISTRICT COURT**

8 **DISTRICT OF NEVADA**

9 SECURITIES AND EXCHANGE  
COMMISSION,

10 Plaintiff,

11 vs.

12 EDWIN YOSHIHIRO FUJINAGA and  
13 MRI INTERNATIONAL, INC.,

14 Defendants,

15 and,

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

18 Relief Defendants.  
19

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

**NOTICE OF MOTION AND  
OPPORTUNITY TO OBJECT TO  
THE RECEIVER’S MOTION FOR  
AN ORDER:**

**(1) AUTHORIZING, APPROVING  
AND CONFIRMING THE SALE OF  
REAL AND PERSONAL PROPERTY  
LOCATED AT 9009 GREENSBORO  
LANE;**

**(2) APPROVING SALE AND  
OVERBID PROCEDURES; AND**

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

20 **NOTICE OF MOTION**

21 **YOU ARE HEREBY GIVEN NOTICE:**

22 That Robb Evans & Associates LLC, as receiver (the “Receiver”) hereby files  
23 *Motion for an Order: (1) Authorizing, Approving and Confirming the Sale of Real and*  
24 *Personal Property Located at 9009 Greensboro Lane; (2) Approving Sale and Overbid*  
25 *Procedures; and (3) Granting Relief from Local Rule 66-5 Pertaining to Notice to*  
26 *Creditors (the “Motion”), which Motion is included hereinbelow.*

1                   **NOTICE OF YOUR OPPORTUNITY TO OBJECT TO THE MOTION**

2                   **PURSUANT TO LCR 66-5,<sup>1</sup> YOU ARE HEREBY GIVEN 14 DAYS'**

3 **NOTICE OF THIS MOTION.** If no opposition, objection, and/or points and  
4 authorities in response to the Motion is filed and served within 14 days of this Notice, the  
5 Court may grant the Motion without further notice or hearing. This is your **DEADLINE**  
6 to file and serve any opposition, objection, and/or points and authorities in response to the  
7 Motion, unless such deadline is extended by the Court.<sup>2</sup> See LCR 7-2(b). The failure of  
8 an opposing party to file points and authorities in response to the Motion constitutes a  
9 consent to the granting of the Motion. See LCR 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 a response or an objection within the time permitted, an order  
13 granting the requested relief may be entered by the court without further notice or  
14 hearing.

15                   **NOTICE IS FURTHER GIVEN THAT NO HEARING**  
16 **HAS BEEN SCHEDULED ON THE MOTION, AND IF**  
17 **NO OBJECTION, OPPOSITION, AND/OR POINTS**  
18 **AND AUTHORITIES IN SUPPORT, IS FILED WITHIN**  
19 **14 DAYS OF THIS NOTICE, THAT THE MOTION**  
20 **MAY BE GRANTED WITHOUT A HEARING.**

21 *See* LCR 78-1.<sup>3</sup>

22 \_\_\_\_\_  
23 <sup>1</sup> The term "LCR" means and refers to the Local Rules of Civil Practice for the United States  
24 District Court for the District of Nevada. A copy of the LCR may be downloaded from  
25 [http://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-](http://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure)  
26 [procedure](http://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure), last checked March 15, 2018.

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

<sup>3</sup> Providing, in relevant part, "All motions may be considered and decided with or without a  
hearing. Any party making or opposing a motion who believes oral argument may assist the  
court and wishes to be heard may request a hearing by inserting the words ORAL ARGUMENT  
REQUESTED below the title of the document on the first page of the motion or response. Parties  
must not file separate motions requesting a hearing."

**SUMMARY OF RELIEF REQUESTED**

By this Motion, the Receiver is requesting:

1. An order approving the proposed sale and overbid procedures for the residential real located at, what is commonly referred to as, 9009 Greensboro Lane, Las Vegas, Nevada, and identified by the Clark County Assessor as parcel no. 138-29-110-019 (the “Real Property”). The Real Property is situated on a 36,590 sq. ft. lot with golf course frontage within a guard-gated community, improved by a custom residence with 7,606 sq. ft. of living space, which Real Property is owned by Relief Defendant CSA Service Center, LLC. The Receiver also requests the court authorize and confirm the sale of the Real Property and the Personal Property<sup>4</sup> located therein, on an “as is” basis more fully described in the Residential Purchase Agreement (the “Purchase and Sale Agreement”) entered into on March 8, 2018 by private sale either (a) to Bart Eric Wilson and Tonya Smith (collectively, the “Proposed Buyer”), an arm’s length buyer, for a purchase price of \$2,300,000.00 pursuant to the terms, conditions, and waivers set forth in the Purchase and Sale Agreement, an authenticated copy of which is attached as Exhibit 1 to the Declaration of M. Val Miller in support of this Motion (the “Miller Declaration”) filed contemporaneously herewith, or (b) to such higher qualified overbidder who timely submits the highest qualified overbid at a subsequent overbid session after Court approval of this Motion, to be conducted under the terms and conditions more fully set forth herein and approved by the Court, which sale the Receiver requests be approved and confirmed without further notice, hearing or order. The overbid

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<sup>4</sup> The term “Personal Property” as used herein shall mean the personal property located at the Real Property. Most of the items of significant value have already been recovered and are in the possession of the Receiver. The Receiver desires to sell the remaining Personal Property to the Purchaser as part of the Purchase and Sale Agreement given the costs of moving, storing, selling, and the likely delay to the current sale. The Personal Property consists primarily of household goods, home furnishings, and wall hangings (the term Personal Property, together with the Real Property, shall be referred to herein as the “Property”).

1 procedures, terms and conditions for which the Receiver seeks approval are set forth  
2 hereinbelow. The person or entity who ultimately closes on the Property pursuant to the  
3 terms of any order entered upon this Motion, whether it be the Proposed Buyer or a  
4 successful overbidder, shall be referred to herein as the “Purchaser”.

5 2. An order authorizing the Receiver to execute all documents and instruments  
6 necessary or convenient to complete, implement, effectuate and close the sale of the  
7 Property to the Purchaser, free and clear of all existing liens, encumbrances, debts and  
8 claims, including but not limited to the deed of trust granted by Relief Defendant CSA  
9 Service Center, LLC, as trustor, to Defendant MRI International, Inc. as the beneficiary,  
10 which deed of trust currently encumbers title to the Real Property, and approving and  
11 appointing the three appraisers identified below for purposes of 28 U.S.C. § 2001(b).

12 3. An order authorizing the Receiver to permit and/or cause to be paid from  
13 the proceeds of the sale of the Real Property (a) all ordinary and customary closing costs,  
14 all costs and expenses required to be paid under the terms of the Purchase and Sale  
15 Agreement by the seller from the proceeds of sale, (b) all commissions provided for in  
16 the Purchase and Sale Agreement or the Receiver's listing agreement for the Real  
17 Property (the “Listing Agreement”), and (c) all real property tax liens shall be prorated up  
18 to the date of closing. An authenticated copy of the Listing Agreement is attached as  
19 Exhibit 2 to the Miller Declaration.

20 4. An order deeming notice of this Motion to be sufficient under LCR 66-5  
21 based on the service of the Notice of Motion and Opportunity to Object to the Receiver’s  
22 Motion herein above, and the Motion enclosed hereinbelow, on all known non-consumer  
23 creditors of the estate, but not on the tens of thousands of potential foreign creditors; and

24 5. An order for such additional relief as may be necessary or appropriate to  
25 allow the Receiver to effectuate the sale of the Property, including but not limited to,  
26

1 entry of an order authorizing the Real Property sale in a form acceptable to the title  
2 company insuring title in connection with the sale.

3 This Motion is made pursuant to 28 U.S.C. §§ 2001, 2002 and LCR 66-5 and 66-  
4 10 and other applicable law and is based upon the facts of this case, the Notice of Motion  
5 and Opportunity to Object hereinabove, the accompanying Memorandum of Points and  
6 Authorities, the Miller Declaration and the authenticated exhibits attached thereto, any  
7 reply, and upon all other pleadings and documentary evidence as may be presented to the  
8 Court by the Receiver in support of this Motion.

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

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

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

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

24 Under the Order Appointing Receiver, the Receiver is authorized, empowered, and  
25 directed to perform certain duties and responsibilities, as reasonably appropriate and  
26 necessary to comply with and effectuate the goals and purposes of the equitable

1 receivership. *Id.* at p.2. Included in these enumerated duties is the ability to retain one or  
2 more qualified real estate brokers to list and market the Real Property, including any  
3 Personal Property located in or at any such parcels, subject to Court approval prior to the  
4 substantial commitment, liquidation, or transfer of Defendants' assets. *Id.* at p.5. With  
5 respect to the Real Property owned by Relief Defendant CSA Service Center, LLC, as  
6 authorized by the Order Appointing Receiver, the Receiver entered into an exclusive  
7 right to sell listing agreement and agency disclosure, identified and described in more  
8 detail below.

9 **II. THE RECEIVER REQUESTS THE COURT AUTHORIZE THE**  
10 **PROPOSED REAL PROPERTY AND PERSONAL PROPERTY SALE TO**  
11 **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  
13 a federal receiver. Subsection (a) pertains to procedures for the public sale of real  
14 property. 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 be given  
16 by publication or otherwise as the court directs, the court may order the sale  
17 of such realty or interest or any part thereof at private sale for cash or other  
18 consideration and upon such terms and conditions as the court approves, if  
19 it finds that the best interest of the estate will be conserved thereby. Before  
20 confirmation of any private sale, the court shall appoint three disinterested  
21 persons to appraise such property or diverse groups of three appraisers each  
22 to appraise properties of different classes or situated in different localities.  
23 No private sale shall be confirmed at a price less than two-thirds of the  
24 appraised value. Before confirmation of any private sale, the terms thereof  
25 shall be published in such newspaper or newspapers of general circulation  
26 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).

“The Supreme Court has repeatedly emphasized the broad equitable powers of the  
federal courts to shape equitable remedies to the necessities of particular cases, especially  
where a federal agency seeks enforcement in the public interest.” *SEC v. Wencke*, 622  
F.2d 1363, 1371 (9th Cir. 1980); *see also SEC v. Hardy*, 803 F.2d 1034, 1037 (9th Cir.

1 1986). “The power of a district court to impose a receivership . . . derives from the  
2 inherent power of a court of equity to fashion effective relief.” *Wencke*, 622 F.2d at 1369.  
3 Receiverships are imposed for various purposes, such as marshalling and preserving  
4 assets from further misappropriations and dissipation and “conduct[ing] independent  
5 investigation of claims the entities might have against former management or other  
6 parties.” *Id.* at 1372.

7 Under 28 U.S.C. § 2001(b), in order for a sale to be approved, the minimum  
8 purchase price for the property must exceed two-thirds of the average value in three  
9 appraisals of the property by appraisers appointed by the court.

10 As the Ninth Circuit noted in *Hardy*, 803 F.2d at 1034: “A district court's power to  
11 supervise an equity receivership and to determine the appropriate action to be taken in the  
12 administration of the receivership is extremely broad” and subject to review under an  
13 abuse of discretion standard. *See also United States v. Branch Coal Corp.*, 390 F. 2d 7  
14 (3rd Cir. 1968) (courts granted discretion in setting the terms and conditions for judicial  
15 sales and the court's discretion will not be disturbed on appeal except absent abuse of  
16 discretion).

17 Here, the Proposed Buyer has agreed to a purchase price that is higher than two-  
18 thirds of the average value of the three appraisals obtained by the Receiver, as more fully  
19 discussed in this Motion.

20 **III. THE COURT SHOULD APPROVE THE RECEIVER’S PROPOSED SALE**  
21 **OF THE PROPERTY.**<sup>5</sup>

22 The Receiver submits the following verified facts in support of this Motion.

23 A. Title to the Real Property is held in the name of Relief Defendant CSA  
24 Service Center, LLC (“CSA”).

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26 <sup>5</sup> These facts are verified by the Miller Declaration at ¶ 7.

1           B.     The Receiver submits that it makes economic sense to sell the Real  
2 Property because, among other reasons, the receivership estate has no ongoing need of  
3 the Real Property. The monthly fixed and variable costs of maintaining the Real Property  
4 are not insignificant.

5           C.     The Real Property was subject to liens for accruing real property taxes and  
6 other liens. The Receiver has already satisfied most liens against the Real Property, but  
7 to the extent any real property liens remain, these will be satisfied along with property  
8 taxes accrued through the date of closing, at the time of closing from the sale proceeds.

9           D.     The Receiver obtained three independent appraisals of the Real Property  
10 (in addition to a written broker's valuation). All three of the independent appraisals are  
11 based on comparable sales data and other market data, in compliance with the valuation  
12 evidence provisions of the statute. Further, the Real Property has been exposed to the  
13 marketplace itself for a considerable time, and pursuant to the proposed overbid process,  
14 there are additional assurances that the Estate will realize the maximum practical value.

15           E.     As authorized by the Order Appointing Receiver, the Receiver entered into  
16 an exclusive right to sell listing agreement and agency disclosure ("Listing Agreement")  
17 commencing on February 28, 2018, with Coldwell Banker Premier Realty, by and  
18 through Greg Clemens (the "Broker"). The Receiver recently renewed this Listing  
19 Agreement, which is attached as Exhibit 2 to the Miller Declaration.

20           F.     The Broker is experienced in the sale of residential real estate in Southern  
21 Nevada, and in particular, has considerable experience and expertise in the area  
22 surrounding the Real Property.

23           G.     In determining the listing terms, the Receiver relied on three appraisals of  
24 the Real Property, the Broker's written opinion of value based upon comparable sales,  
25 and the Receiver's own analysis of and recommendations regarding comparable sales to  
26 set an appropriate listing price for the Real Property.



1 H. The qualified and independent appraisers are:

- 2 i. Tammy L. Howard and Matthew J. Lubway, MAI, of Valbridge
- 3 Property Advisors;
- 4 ii. W. Snow, Cert Res Appr., SRA, of The Appraisal Source; and
- 5 iii. R. Scott Dugan, SRA, of the R. Scott Dugan Appraisal Company, Inc.

6 I. After review and independent consideration of the three appraiser's  
7 opinions and reports, the appraisers' qualifications, certifications, experience, education,  
8 and designations, as well as the Receiver's interview of each prior to their engagement,  
9 the Receiver's informed opinion is that each are well-qualified independent appraisers  
10 within the meaning of 28 U.S.C. § 2001(b).

11 J. The Real Property has been very well advertised and marketed. Without  
12 limitation, some of the efforts undertaken by Broker include:

- 13 i. Use high quality photographs in marketing efforts alone with Drone
- 14 Photos
- 15 ii. High Impact Open House
- 16 iii. Office/Broker Promotion
- 17 iv. Uploaded to Las Vegas Multiple Listing Service
- 18 v. Advertise on Coldwell Banker Luxury Site
- 19 vi. Advertise on Realtor.Com
- 20 vii. Advertise on Yahoo
- 21 viii. Advertise on HGTV Front Door website
- 22 ix. Advertise on Trulia
- 23 x. Advertise on Zillow
- 24 xi. Print and Digital Advertising
- 25 xii. Door-Knocking Neighborhood
- 26 xiii. Email Blasts

- 1           xiv.       “Just Listed” Mailers to surrounding neighborhoods
- 2           xv.       Professional Luxury Marketing Brochures
- 3           xvi.       Fielded more than 30 inquiries from interested parties
- 4           xvii.      Conducted more than 18 on-site showings

5           K.       After several exchanges of offers/counteroffers, on March 2, 2018, the  
6 Receiver received an all cash offer from the Proposed Buyer for \$2,300,000.00 to  
7 purchase the Real Property, providing that the Personal Property is included, which the  
8 Receiver countered, and which counterproposal was accepted by the Proposed Buyer.  
9 The parties’ agreement was finalized and fully executed by March 13, 2018, when the  
10 Proposed Buyer waived all remaining contingencies, which waiver made it possible for  
11 the Receiver to bring the instant Motion.

12           L.       The Proposed Buyer has already deposited \$50,000 in earnest money  
13 pursuant to the Purchase and Sale Agreement, which is an “as is,” all cash sale, expressly  
14 conditioned on the Court’s approval and authorization for the sale. The Proposed Buyer’s  
15 has specifically waived all contingencies and has giving written consent of the Receiver’s  
16 proposed overbid proceedings.

17           M.       In the Receiver’s opinion, the sale of the Property on the terms in the  
18 Purchase and Sale Agreement is in the best interests of the receivership estate. In light of  
19 the proposed overbid session with a published notice, the Receiver has not disclosed the  
20 amount of these valuations of the Real Property so as not to interfere with the overbid  
21 process;<sup>6</sup> however, the purchase price of \$2,300,000.00 under the Purchase and Sale  
22 Agreement far exceeds the minimum threshold for approval of a private sale of two-  
23 thirds of the average of three appraisals of the Real Property as required under 28 U.S.C.  
24 § 2001(b).

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25           <sup>6</sup> The Receiver will submit copies of the valuations with the Court for in camera inspection if  
26 requested by the Court.

1 N. The Receiver seeks authority to sell the Real Property under the Purchase  
2 and Sale Agreement by private sale to either (a) the Proposed Buyer pursuant to the  
3 Purchase and Sale Agreement; or (b) any higher qualified overbidder who hereafter  
4 submits the highest qualified overbid at a subsequent overbid session to be conducted  
5 under the terms and conditions more fully set forth herein. Such sale shall only occur  
6 after publication of notice providing an additional and final opportunity for any interested  
7 buyers to bid for the Real Property. The Receiver submits that it is in the best interests of  
8 the receivership estate to sell the Real Property on an “as is” basis more fully described in  
9 the Purchase and Sale Agreement by private sale.

10 O. The Real Property has been well exposed to the marketplace for a sustained  
11 period and will continue to be exposed to the public through the proposed overbid  
12 process, which will ensure, upon information and belief and to the extent reasonably  
13 practical, that the value of the Real Property will be maximized for the estate.

14 **IV. THE COURT SHOULD APPROVE THE FOLLOWING OVERBID**  
15 **PROCEDURES.<sup>7</sup>**

16 The Court has substantial discretion in receivership matters in setting the  
17 overbidding procedures applicable to sales of real property. *See Pewabic Mining Co. v.*  
18 *Mason*, 145 U.S. 349, 356, 36 L.Ed. 732, 12 S.Ct. 887 (1891) (the provisions for notice  
19 and other conditions shall be determined by the Court “as will in his judgment best  
20 protect the rights of all interested, and make the sale most profitable to all”). *See also*  
21 *Cumberland Lumber Co. v. Tunis Lumber Co.*, 171 F. 352 (4th Cir. 1909); *Bidwell v.*  
22 *Huff*, 176 F. 174 (5th Cir. 1909). The terms and conditions of the judicial sale that the  
23 Court may adopt are based on the facts and circumstances of each case. The discretion  
24 granted in connection with sales of assets is consistent with the broad discretion accorded  
25 to the Court sitting in equity in receivership proceedings to make orders concerning the

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26 <sup>7</sup> The statements contained in this Section IV are verified by the Miller Declaration at ¶ 7.

1 administration and supervision of the estate that will promote equity, efficiency and cost-  
2 effectiveness in the estate's administration. *See generally Hardy*, 803 F.2d 1034; *SEC v.*  
3 *Black*, 163 F.3d 188, 199 (3rd Cir. 1998); *SEC v. Elliot*, 953 F.2d 1560 (11th Cir. 1992).

4 The Receiver seeks approval to solicit overbids for the sale of the Real Property,  
5 as contemplated by the Purchase and Sale Agreement and seeks an order approving this  
6 Motion in its entirety, and confirming the sale of the Real Property to the Proposed  
7 Buyer, its assign, or to such higher qualified overbidder who may make the highest  
8 overbid accepted by the Receiver at the overbid session to be conducted under the  
9 proposed sale procedures set forth in this Motion. The Receiver requests that the Court  
10 approve the following notice and overbid procedures because: (a) the sale to the Proposed  
11 Buyer is non-contingent for an amount that substantially exceeds the minimum two-thirds  
12 of the average of the three appraised valuations obtained by the Receiver for the Real  
13 Property, (b) the terms and conditions of the Purchase and Sale Agreement provide for  
14 closing within 10 days after the Receiver completes all requirements of the Court Order  
15 granting this Motion, and (c) the Receiver wants to avoid unnecessarily losing the  
16 Proposed Buyer from delay.

17 The Receiver requests that the Court approve the following notice and overbid  
18 procedures, terms and conditions:

19 1. The overbid session shall be conducted at the Receiver's office location at  
20 Robb Evans & Associates LLC, 3613 S. Eastern Ave. Suite 101, Las Vegas, Nevada  
21 89169;

22 2. The Receiver will cause to be published, a notice of the proposed sale of  
23 the Property to a qualified bidder at the overbid session to be conducted pursuant to the  
24 foregoing paragraph immediately above, which notice shall state the date, time and place  
25 of the overbid session, the requirement for pre-qualification by overbidders and the terms  
26 and conditions of the overbidding and sale of the Property, as described below ("Overbid

1 Notice”). The Receiver will cause the Overbid Notice to be published in the Las Vegas  
2 Review Journal one time at least ten days prior to the scheduled overbid session date. The  
3 Las Vegas Review Journal is Nevada’s largest newspaper, and a newspaper of general  
4 circulation serving all of Southern Nevada, which publishes daily;<sup>8,9</sup>

5 3. Any person wishing to overbid at the overbid session shall be required to  
6 pre-qualify with the Receiver no later than 10:00 a.m. two business days preceding the  
7 close of the 10-day overbid session period by delivering to the Receiver’s office located  
8 at 3613 S. Eastern Ave., Suite 101, Las Vegas, Nevada 89169: (a) notice in writing of the  
9 prospective overbidder’s intent to overbid together with (b) written verification from a  
10 financial institution demonstrating to the Receiver’s satisfaction, in the Receiver’s sole  
11 opinion and judgment, the prospective overbidder’s ability to complete and close a  
12 purchase of the Real Property through sufficient funds or credit facilities within 10 days  
13 after the Receiver completes all requirements of the Court Order granting this Motion,  
14 and (c) the tender of a cashier’s check, wire transfer, or other verified funds, in the sum of  
15 \$50,000.00 payable to “Robb Evans & Associates LLC, Receiver of MRI International,  
16 Inc. et al.”, at least 2 days prior to the close of the 10-day period, which deposit shall  
17 become non-refundable upon acceptance of the overbidder’s overbid at the conclusion of  
18 the overbid session;

19 4. Overbidders bidding at the overbid session will be deemed to have  
20 completed all inspections of the Real Property and will be deemed to have waived and/or  
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22 <sup>8</sup> This information was obtained from the Las Vegas Review Journal’s website, available at  
23 <https://www.reviewjournal.com/contact-us/>, last checked March 15, 2018 (“The Review-Journal  
is Nevada’s largest newspaper, which serves all of Southern Nevada and publishes daily.”)

24 <sup>9</sup> The foregoing publication provision meets the publication requirements for a private sale under  
25 28 U.S.C. § 2001(b). However, the Receiver also anticipates that the Broker will provide additional  
26 notice of the overbid session through e-mail and/or the Internet web sites where the Real Property  
is listed.

1 removed all contingencies in favor of the buyer under the Purchase and Sale Agreement,  
2 including, without limitation any contingency pertaining to inspection of title, and will be  
3 required to complete a cash purchase of the Real Property and close escrow for the  
4 purchase of the Real Property within 10 days after the Receiver completes all  
5 requirements of the Court Order granting this Motion. The successful overbidder will be  
6 required to execute a purchase agreement for the Real Property substantially in the form  
7 of the Purchase and Sale Agreement together with a waiver of all buyer contingencies  
8 promptly after conclusion of the overbid session; and

9 5. The initial overbid shall be in the amount not less than \$2,530,000.00 (an  
10 amount that is \$230,000.00, or 10%, higher than the purchase price under the Purchase  
11 and Sale Agreement), and all subsequent overbids shall be in an amount at least  
12 \$25,000.00 higher than the preceding bid.

13 6. As part of its requested relief, the Receiver further requests the Court  
14 authorize the following:

15 a. That pursuant to the Purchase and Sale Agreement and the Listing  
16 Agreement with Broker, a sales commission in the amount of 6% of the purchase  
17 price, or if a higher overbid is received and accepted at the overbid session, by the  
18 winning overbidder, shall be paid from the proceeds of the sale of the Real  
19 Property at close of escrow and shall be paid to Broker as listing agent under the  
20 Listing Agreement and a cooperating broker representing the buyer, if any, under  
21 the terms of the Listing Agreement;

22 b. That the Receiver is authorized to execute all documents and  
23 instruments necessary or convenient to complete, implement, effectuate and close  
24 the sale of the Real Property and the Personal Property, including but not limited  
25  
26

1 to, releasing the MRI Deed of Trust<sup>10</sup> currently encumbering the Real Property,  
2 and executing the deed conveying title to the Real Property;

3 c. That the Receiver is authorized to permit and/or cause to be paid  
4 from the proceeds of sale all ordinary and customary closing costs, all costs and  
5 expenses required to be paid under the terms of the Purchase and Sale Agreement  
6 by the seller from the proceeds of sale, all commissions provided for in the  
7 Purchase and Sale Agreement, the Listing Agreement, and all Real Property liens  
8 and Real Property taxes due up to the date of closing;

9 d. That pursuant to the Offer and Acceptance and the Receiver's Listing  
10 Agreement with its Broker, a sales commission in the amount of 6% of the  
11 purchase price paid for the Real Property plus a flat fee of \$495, or if a higher  
12 overbid is received and accepted at the overbid session, by the winning  
13 overbidder, which commission shall be shared between the seller's Broker and the  
14 Purchaser's broker, if any;

15 e. That the order on this Motion include a finding that the Purchase and  
16 Sale Agreement provides a very favorable sale of the Property to a well-qualified,  
17 independent all cash buyer on an "as is, where is" basis, without any warranties or  
18 representations from the Receiver, or this estate;

19 f. That the order on this Motion include findings that, (i) based upon  
20 the representations herein, which are verified by the Miller Declaration ¶ 7, the  
21 three appraisers identified above are appointed by the Court as qualified  
22 disinterested appraisers in satisfaction of the provisions of 28 U.S.C. § 2001, and  
23 (iii) that the purchase price under the Purchase and Sale Agreement is well in  
24

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25 <sup>10</sup> As with several other estate properties, MRI International, Inc. recorded a deed of trust against  
26 the Greensboro Property in the amount of \$190 million, which deed of trust is recorded as  
Instrument No. 201108010002632, Official Records of Clark County, and further described in  
the preliminary Title Report, exception 16, Exhibit 3 to the Miller Declaration.

1 excess of the two-thirds minimum of the average of the three appraisals obtained  
2 by the Receiver for the Real Property which is the minimum threshold price  
3 required to meet the terms of 28 U.S.C. § 2001; and

4 g. That the order includes a finding that the Receiver has complied with  
5 all applicable statutory and legal authorities, including the provisions of 28 U.S.C  
6 §§ 2001 *et seq.*, required to approve the Receiver's sale of the Real Property and  
7 the Personal Property under the terms and conditions set forth in this Motion.

8 The overbid procedures set forth above will provide further assurances to this  
9 Court, that any interested buyers have sufficient notice and opportunity to make an  
10 overbid to acquire the Real Property. The Receiver recommends approval and  
11 confirmation of the overbid procedures, and the sale under the terms and conditions set  
12 forth herein.

13 **V. THE RECEIVER HAS SATISFIED OR WILL SETTLE OR SATISFY**  
14 **ENCUMBRANCES AGAINST THE REAL PROPERTY FROM SALES**  
15 **PROCEEDS.<sup>11</sup>**

16 The Receiver has obtained a preliminary Title Report for the Real Property, which  
17 report is dated July 11, 2017, an authenticated copy of which is attached to the Miller  
18 Declaration as Exhibit 3, which identifies liens, claims, encumbrances and debts relating  
19 to unpaid taxes and utility charges. All encumbrances will be satisfied by no later than  
20 the closing date.

21 To the extent there are any remaining unpaid and valid liens, the Receiver will  
22 either settle or satisfy such encumbrances against the Real Property prior to the sale.

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<sup>11</sup> The statements contained in this Section V are verified by the Miller Declaration at ¶ 7.



1 **VI. THE COURT SHOULD APPROVE THE RECEIVER'S PROPOSED SALE**  
2 **OF THE PERSONAL PROPERTY.<sup>12</sup>**

3 28 U.S.C. § 2004 provides that “[a]ny personal property sold under order or decree  
4 of any court of the United States shall be sold in accordance with 28 U.S.C. § 2001,  
5 unless the court orders otherwise.” Therefore, in the case of the sale of personal property,  
6 28 U.S.C. § 2004 expressly states that the Court may modify in its considerable  
7 discretion, the sale procedures set forth in 28 U.S.C. § 2001.

8 In this instance, the Receiver has long been concerned that the personal property  
9 would be very expensive to move, expensive to store, and expensive to ship. The  
10 Receiver has also long believed that the Personal Property left behind should not interfere  
11 with the highest and best return on the Real Property. In the particular sale at bar, the  
12 Proposed Buyer has agreed to a purchase price that the Receiver is convinced will offset  
13 any value that could have been returned for the attempted separate sale of the Personal  
14 Property, and that the benefits to the estate of the sale of the Real Property at bar  
15 outweighs any possible return from the Personal Property, particularly after expenses  
16 relating to a separate sale of the Personal Property are considered, which will necessarily  
17 expose the Personal Property to the attendant risks of theft, damage, or loss. The  
18 Receiver submits that it makes economic sense to the receivership estate to sell the  
19 Personal Property as part of the Property sale because the Personal Property would take a  
20 long time to sell, would have to be insured, would expose the Real Property to damage by  
21 the movers, and would expose the Personal Property to damage, loss, or threat.

22 Given the Receiver's perceived favorable purchase and sale terms, the Receiver is  
23 fully persuaded that the personal property should stay with the Real Property for, if  
24 nothing else, to avoid having to renegotiate the sales price and terms.

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25 <sup>12</sup> For ease of reference, as defined hereinabove, the Personal Property consists primarily of  
26 household goods, home furnishings, wall hangings, and miscellaneous artwork.

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

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

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

25 Based on the foregoing, to the extent that LCR 66-5 applies to this Motion, the  
26 Receiver seeks an order finding that notice of this Motion is sufficient if notice of the

1 filing of the Motion is given by serving copies of all motion papers on the parties to the  
2 action and the affected lienholders and by serving copies of this Motion on the Notice  
3 Parties identified above. Along with the publication of sale of the Real Property, the  
4 Receiver submits that such provides sufficient notice, and an opportunity for interested  
5 parties to object, and/or overbid, and should be approved as adequate under the  
6 circumstances. This limited notice is consistent with the notice approved by the court  
7 concerning prior motions and stipulations to sell real and personal property. (*See e.g.*,  
8 ECF Nos. 279,<sup>13</sup> 304,<sup>14</sup> 328,<sup>15</sup> 372,<sup>16</sup> 387,<sup>17</sup> and 392.<sup>18</sup>).

9 There is ample authority for approval of the scope and method of notice as set  
10 forth above. This Court, as a court of equity supervising the receivership estate, may  
11 make appropriate administrative orders governing the receivership, including limitations  
12 on and changes in notice and other procedures. *See* F.R.C.P. 5(a) and (c) (authorizing the  
13 court to modify service procedures when numerous defendants are involved in litigation).

14  
15  
16 <sup>13</sup> *See* Order Approving the Stipulation for Order Authorizing, Approving and Confirming Sale  
17 of 2875 Coleman and the personal property located therein With Overbid Procedures.

18 <sup>14</sup> *See* Order granting the Receiver's Stipulation for Order Authorizing, Approving and  
19 Confirming Sale of 2865 Coleman with Overbid Procedures.

20 <sup>15</sup> *See* Order granting the Receiver's motion for an order authorizing and approving the sale via  
21 auction of the real property located at 2955 Coleman and granting relief from local rule 66-5  
22 pertaining to notice to creditors.

23 <sup>16</sup> *See* Order (1) Authorizing, Approving and Confirming Sale of Real Property Located at 150 E  
24 Harmon and Sale and Overbid Procedures and for Related Relief; (2) Authorizing Sale of  
25 Personal Property via Auction, and (3) Granting Relief from Local Rule 66-5 Pertaining to  
26 Notice to Creditors.

<sup>17</sup> *See* Order Approving the Joint Motion for Order Authorizing, Approving and Confirming the  
Private Sale of Real Property Located at 47-4400 Hawaii Belt Rd.

<sup>18</sup> *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 (ECF. No. 374).

1 For the reasons set forth above, this case is appropriate for notice to all of the  
2 Notice Parties, but not to tens of thousands of unknown creditors. The limited notice  
3 provides a significant reduction in expenses and added value to the receivership estate.

4 **CONCLUSION**

5 For the foregoing reasons, the Receiver respectfully requests that the Court grant  
6 this Motion in its entirety by entry of an order in substantially the same form as the  
7 proposed order which the Receiver will lodge contemporaneously herewith.

8 DATED March 16, 2018.

9 **LYNCH LAW PRACTICE, PLLC**

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

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

9 SECURITIES AND EXCHANGE  
COMMISSION,  
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.

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

**DECLARATION OF M. VAL MILLER IN  
SUPPORT OF THE RECEIVER’S  
MOTION FOR AN ORDER:**

**(1) AUTHORIZING, APPROVING AND  
CONFIRMING THE SALE OF REAL  
AND PERSONAL PROPERTY  
LOCATED AT 9009 GREENSBORO  
LANE;**

**(2) APPROVING SALE AND OVERBID  
PROCEDURES; AND**

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

19  
20 I, M. VAL MILLER, declare:

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

1 or I have gained knowledge of such facts from the books and records of the receivership  
2 proceeding, including the books and records of the entities subject to the receivership.

3 2. I am authorized to make this Declaration in support of the Receiver's  
4 Motion.<sup>1</sup>

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

10 4. The duties and responsibilities of the Receiver were enlarged by that certain  
11 Order Appointing a Full Equitable Receiver to Assume Control over the  
12 Defendants' Assets and Enforce the Final Judgment entered on May 15, 2015 (the "Order  
13 Appointing Receiver") (ECF No. 226). The Order Appointing Receiver supersedes the  
14 previous order and directs the Receiver to take and retain immediate possession, custody,  
15 and control of all assets owned or controlled, directly or indirectly, by any of the  
16 defendants in the SEC Receivership Litigation, including the owner of the Real Property:  
17 Relief Defendant CSA Service Center, LLC.

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20 ///

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23 \_\_\_\_\_  
24 <sup>1</sup> The term "Motion" as it is used herein shall mean "that certain *Notice of Motion and*  
25 *Opportunity to Object to the Receiver's Motion for an Order: (1) Authorizing, Approving and*  
26 *Confirming the Sale of Real and Personal Property Located at 9009 Greensboro Lane; (2)*  
*Approving Sale and Overbid Procedures; And (3) Granting Relief from Local Rule 66-5*  
*Pertaining to Notice to Creditors* filed contemporaneously herewith.

1           5. Defendant Edwin Fujinaga and Relief Defendant June Fujinaga<sup>2</sup> were  
2 previously using the Real Property (defined below) as their personal residence.

3           6. The Real Property is a residential property located at 9009 Greensboro  
4 Lane, Las Vegas, Nevada and identified by the Clark County Assessor as parcel no. 138-  
5 29-110-019. The Real Property is situated on a 36,590 sq. ft. lot with golf course  
6 frontage within a guard-gated community and improved by a custom home with  
7 approximately 7,606 sq. ft. of living space, which Real Property is owned by Relief  
8 Defendant CSA Service Center, LLC. The term “Real Property” is more precisely  
9 defined in the Motion.

10           7. I have carefully read, reviewed, and assisted in drafting Sections III – VI of  
11 the Motion, which Sections are incorporated herein by this reference, and I hereby aver  
12 that the statements, facts, figures, and calculations made therein are true, accurate, and  
13 correct to the best of my information, knowledge and belief.

14           8. Attached hereto as **Exhibit “1”** is a true, correct, and complete copy of the  
15 Residential Purchase Agreement first dated March 2, 2018, and fully executed on March  
16 8, 2018.

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20 <sup>2</sup> Final Judgment was entered in this case jointly and severally against June Fujinaga and  
21 the Yunju Trust in the amount of \$2,333,382.18 on August 11, 2015 (ECF No. 260). The  
22 Final Judgment was amended on March 14, 2016 (ECF No. 317) to reduce the Final  
23 Judgment by \$50,000. Both the Final Judgment and the Amended Final Judgment  
24 entered provide that the assets and funds of June Fujinaga and The Yunju Trust, up to the  
25 amount of the (Amended) Final Judgment, are included as improperly funds subject to  
26 disgorgement to the Receivership Estate, and fully subject to the terms set forth in the  
Court’s Order Appointing Receiver. All provisions and conditions set forth in the Order  
Appointing are subject to, among other things, disgorgement as specifically set forth in  
the Final Judgment disgorgement. (ECF No. 317 at ¶ F).

