

1 Cornelia J. B. Gordon (SBN 320207)
cgordon@mcnamarallp.com
2 MCNAMARA SMITH LLP
655 West Broadway, Suite 900
3 San Diego, California 92101
Tel.: 619-269-0400
4 Fax: 619-269-0401

5 *Attorneys for Receiver,*
Thomas W. McNamara

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

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11 PEOPLE OF THE STATE OF CALIFORNIA,
by and through the COMMISSIONER OF
12 BUSINESS OVERSIGHT,

13 Plaintiff,

14 v.

15 SILVER SADDLE COMMERCIAL
DEVELOPMENT, LP, a California limited
16 partnership; SILVER SADDLE RANCH &
CLUB, INC., a California corporation; THE
17 GALILEO COMMERCIAL PROPERTY
OWNERS ASSOCIATION, INC., a California
18 non-profit corporation; THOMAS M. MANEY,
an individual; and DOES 1 through 100,
19 inclusive,

20 Defendants.

21 And,

22 MARIAN G. DUCREUX, an individual;
CLIFFORD J. REYNOLDS, an individual;
23 WAYNE A. PEDERSEN, an individual; and
Relief Does 1 through 10, inclusive,

24 Relief Defendants.
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27
28

Case No. 37-2019-00049151-CU-MC-CTL

**RECEIVER'S NOTICE OF MOTION AND
MOTION TO APPROVE SALE OF
GALILEO PROJECT LAND**

IMAGED FILE

Judge: Hon. Joel R. Wohlfeil
Dept.: C-73
Hearing Date: April 15, 2022
Time: 9:00 a.m.

Action filed: September 9, 2019
Trial Date: May 6, 2022

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NOTICE OF MOTION AND MOTION

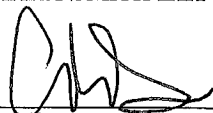
TO THIS HONORABLE COURT, THE PARTIES, AND OTHER PARTIES IN INTEREST AND/OR THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on April 15, 2022 at 9:00 a.m., or as soon thereafter as this matter can be heard, in Department C-73 of the Superior Court of the State of California, County of San Diego, Central Division, Hall of Justice Courtroom, Thomas W. McNamara, as Court-appointed receiver (“Receiver”), will and hereby does move the Court for permission to sell the eight remaining significant parcels of land which were part of the Galileo Project, and which together comprise a total of approximately 1,021.94 acres of vacant desert land, with clear title to Aaron Mamann for \$900,000, free of all liens and encumbrances. In the alternative, should the Court be disinclined to clear title in order to effectuate the sale, the Receiver asks the Court to void and expunge the investor deeds and their recordation and thereafter approve the sale.

The Receiver’s motion is based upon the following Memorandum of Points and Authorities, the concurrently-filed Declarations of Teresia Knight and Cornelia Gordon, the pleadings and papers on file in this action, any matters upon which the Court may or must take judicial notice; any evidence or argument presented at the hearing on the motion, and any other matters the Court deems proper.

Dated: March 4, 2022

MCNAMARA SMITH LLP

By: 

Cornelia J. B. Gordon
*Attorneys for Receiver,
Thomas W. McNamara*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Thomas W. McNamara, as Court-appointed Receiver, hereby moves the Court for
5 permission to sell the eight remaining significant parcels of land which were part of the Galileo
6 Project (APN 457-020-05, APN 457-020-13, APN 457-020-14, APN 457-020-16, APN 457-020-
7 25, APN 457-030-04, APN 457-030-05, and APN 457-030-10, referred to herein collectively as
8 the “Galileo Project Land”), and which together comprise a total of approximately 1,021.94 acres
9 of vacant desert land, with clear title to Aaron Mamann (“Mamann” or the “Proposed Buyer”) for \$900,000, free of all liens and encumbrances.¹ In the alternative, should the Court be
10 disinclined to clear title in order to effectuate the sale, the Receiver asks the Court to void and
11 expunge the investor deeds and their recordation and thereafter approve the sale.
12

13 As the Court is aware, Defendants offered investors an investment in the so-called
14 “Galileo Project,” which was sometimes marketed to investors as “LandBanking Plus.”
15 Participating investors would purchase an undivided interest in the Galileo Project Land and be
16 provided membership in the Galileo Commercial Property Owners Association, Inc. (which was
17 supposed to manage the investors’ undivided interests). For a monthly fee, they would also have
18 access to and membership in the Silver Saddle Ranch (the “Ranch”), a resort located
19 approximately 15 miles from California City which was an integral part of Defendants’ sales
20 pitch. The Court previously approved the sale of the Ranch, which was solely owned by
21 Receivership Defendant Silver Saddle Ranch & Club, Inc., to Mamann for \$2,100,000 on
22 November 6, 2020. (ROA # 376.)

23 ///

24 _____
25 ¹ Beyond the two single-family homes titled in the name of Receivership Defendant High Plains
26 Mesa Holdings, LP, which the Court recently gave the Receiver permission to list for sale, the
27 remaining Receivership Estate properties are mostly undeveloped single-family residential lots
28 spaced throughout the desert near California City. These lots were generally purchased by
Defendants at tax sales and offered as sales incentives for Galileo Project purchasers who paid in
cash. The lots are *de minimis* in value, and the money needed to market and sell them would
outweigh any likely return. The Receiver has not and does not intend to pay the real estate taxes
for the lots and expects them to eventually end up being sold in a tax sale.

1 Though the matter was not before the Court at that time, concurrent with (though not
2 contingent upon) the sale of the Ranch, the Receiver also entered into an agreement with
3 Mamann to purchase the Galileo Project Land for an additional \$900,000, subject to Court
4 approval. (See ROA #395.) In connection with the sales agreement, Mamann paid a \$100,000
5 deposit for the Galileo Project Land into escrow. While the Receiver's office was preparing a
6 motion for the Court's consideration last year, the Receiver was contacted by counsel purporting
7 to represent a group of investors. (ROA #529 at p. 2.) Counsel claimed he was preparing a
8 battery of challenges to this Court's rulings, threatened to file an action in federal court, and
9 otherwise strenuously objected to the sale of the Galileo Project Land. (*Id.* at pp. 2-3.) Based on
10 these representations, the Receiver refrained from filing the motion to allow the Court rule on the
11 expected challenges. (*Ibid.*) The Receiver returned the deposit to escrow, but Mamann decided
12 to remain under contract to purchase the Galileo Project Land until such time as the Receiver
13 sought Court approval of the sale. (See ROA #529, ROA #619.) It has been more than eleven
14 months since the investors' purported counsel contacted the Receiver and none of the threatened
15 challenges have been filed.

16 With the trial date (May 6, 2022) approaching, the Receiver believes it is the appropriate
17 point to present the sale of the Galileo Project Land to Mamann for approval, given the extended
18 time necessary to fully consummate any sale.² Sale of the property, however, will not be
19 possible without the Court's intervention to clear title to the Galileo Project Land, in which the
20 thousands of investors in Defendants' LandBanking Plus venture hold undivided, fractional
21 interests. The Receiver asks the Court to approve the sale and enter an order clearing title in
22 order to effectuate the sale. In the alternative, the Receiver asks that the Court effectively clear
23 title by expunging the investor deeds and then approve the sale.

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27 _____
28 ² Even if the Court were to grant approval of the sale, the sale cannot proceed until the appeal
period for the Court's order (60 days) has elapsed.

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II.

FACTUAL BACKGROUND

A. The Galileo Project Land

While membership in the Ranch was a pivotal part of Defendants’ pitch to investors (see, e.g., ROA #65 at pp. 8-10), the investors’ actual investment was in the Galileo Project Land itself. Defendants offered the investors a bundle of related features: an undivided interest in the Galileo Project Land; membership in the Galileo Commercial Property Owners Association that they claimed would manage the undivided interests, which included a development fund that could be as big as \$8 million; and membership in, and the option to actually buy, the Ranch, though the investors’ purchase option expired in January 2017, well before the Receiver’s appointment. (*Id.* at pp. 9, 12-13.) The real property component of the offering – the Galileo Project – was presented as 4,000 undivided interests, each representing approximately one-quarter acre. The undivided interest ownership concept was presented as LandBanking Plus, described as an “innovation in group purchasing power” which allowed small investors to pool money with other small investors to own and control a large parcel of prime real property. (*Ibid.*) Units were not cheap: beginning June 2018, full units of the Galileo Project were priced at \$31,990 (\$41,990 less “First Day Incentive” of \$10,000).³ (*Id.* at pp. 13-14.) Half and quarter units were priced at \$21,990 and \$15,990. (*Ibid.*)

Unfortunately, the land itself is worth far, far less than Defendants charged investors. For example, at \$31,990 per unit, the price per acre was \$127,000, and the sale of proposed 4,000 units would bring in an incredible \$127 million. (*Id.* at p. 14.) The desert land at issue has never been worth more than a small fraction of this figure. In a Declaration filed in support of the TRO,⁴ Joseph Aiu, a California Department of Real Estate (“DRE”) appraiser and current DRE

³ As reflected in the Receiver’s Preliminary Report, the price Defendants charged for each unit increased over time. Pricing at the outset of the enterprise in 2011 seemed to have been significantly lower. (See ROA #65 at p. 14, fn. 15.) The \$31,990 price appears to have been first deployed in June 2018. (*Ibid.*)

⁴ Mr. Aiu’s declaration was sealed by Court order on September 9, 2019. (See ROA #9.) The seal was dissolved on October 1, 2019, per the Court’s oral order at the hearing held on September 24, 2019.

1 investigator placed the value of the property at \$1,350 per acre and \$337.59 per individual unit –
2 well, well below the amount paid by investors to invest in the land. (Gordon Decl. Ex. 1) And
3 Mr. Aiu obtained that number by assuming the highest possible valuation of the land. (*Ibid.*)
4 Using the lowest possible valuation assessed by Mr. Aiu, the property would be valued at \$135
5 per acre and \$32.67 per individual unit. (See *id.*)

6 In short, the land is worth nowhere near what the investors paid. While the offer
7 accepted by the Receiver and discussed below is drastically below the amount of investor losses,
8 the Receiver does believe that it reflects a fair market value of the property.⁵ Before that sale can
9 be completed, however, the Receiver must clear title to the property. Here, because of the
10 structure of Defendants' investment offerings, there is no easy path to clear title. A traditional
11 quiet title action would be impossible given both the number of investors and the cost of service.
12 Unless the Court uses its equitable powers to clear title (or voids the investors' deeds) and
13 authorizes the sale of the land free and clear, the Receiver will not be able to sell it to the
14 Proposed Buyer – or any other serious buyer, for that matter – and the investors' interests will be
15 rendered worthless. In order to maximize the return to the investors, the Receiver asks that the
16 Court enter an order clearing title – or, in the alternative, expunging the investors' deeds – and
17 authorize the sale of the Galileo Project Land free and clear to the Proposed Buyer.

18 **B. Marketing, Past Offers, and the Current Offer**

19 The Receiver marketed and sold the Ranch and the Galileo Project Land through the real
20 estate firm Kidder Mathews, with Teresia Knight and Greg Myers as the listing agents.⁶
21 Initially, marketing focused on the Ranch, though parties who expressed an interest in the Ranch
22 were also introduced to the Galileo Project Land. Through their marketing of the Ranch, Kidder
23

24 ⁵ Prior to listing the Galileo Project land for sale, the Receiver had an extensive appraisal done.
25 This appraisal was long ago provided to counsel for DFPI and Defendant Maney and is being
26 provided to the Court under seal for its perusal. A redacted copy of the appraisal is being filed
27 with this motion. (See Gordon Decl. Ex. 2.)

28 ⁶ Ms. Knight has more than two decades of experience and specializes in the sale of retreat/camp
properties throughout California as well as commercial real estate sales and leasing throughout
the Inland Empire area of Southern California, and she is involved in more than two million
square feet worth of transactions on a yearly basis. (Knight Decl. ¶ 3.)

1 Mathews and Ms. Knight developed a pool of 48 potentially interested buyers. (See ROA #342
2 [discussing 48 potential buyers' interest in the Ranch based on Kidder Mathews' extensive
3 efforts to market the property, including distribution of 33,000 emails, posting the property on
4 major listing services, distribution of 348 brochures, and tours of the property for 12 groups].)
5 As discussed below, these were the same 48 individuals to whom the Receiver reached out when
6 soliciting best and final offers on the Ranch and the Galileo Project Land.

7 The Receiver originally accepted an offer for the Ranch from Kevin Feterik on July 2,
8 2020. (ROA #160 at pp. 5-6.)⁷ In accepting Feterik's offer, the Receiver also agreed to sell
9 Feterik the Galileo Project Land, should the Court approve its sale. (*Id.*) Defendant Thomas
10 Maney and a third party, Rick Jones, who claimed his offer was not given a full and fair
11 evaluation, both opposed the Receiver's motion. (ROA #174, 180.) Because of the concerns
12 raised by Mr. Jones, the Receiver determined it was necessary to reopen the sales process. (ROA
13 #256 at p. 3.) Feterik initially resisted cancellation of the two escrows (one for the Ranch and
14 one for the Galileo Project land), forcing the Receiver to ask the Court to intervene. (See
15 generally *id.*) Ultimately, Feterik agreed to cancel the escrows, which were cancelled on August
16 3, 2020, and Feterik's deposits were returned, after which the Receiver withdrew his motion.
17 (ROA #285 at p. 1.) Throughout this period, the Ranch remained listed for sale with the broker
18 and available on LoopNet (the largest commercial real estate marketplace) and other websites.

19 Following cancellation of the escrows, the Receiver reopened the sales process to allow
20 all parties which had previously expressed an interest in the Ranch (including Feterik) to submit
21 their best and final offers for the Ranch directly to the Receiver. (Knight Decl. ¶ 7.) At the same
22 time, Ms. Knight began marketing the Galileo Project Land alongside the Ranch. (*Ibid.*) During
23 the week of August 24, 2020, 7,724 emails were sent out advertising the Galileo Project Land,
24 Ms. Knight made personal contact with the 48 individuals who previously expressed an interest
25 in the Ranch, and brochures and information were distributed to various brokers throughout the
26

27 ⁷ Offers which were made prior to the Receiver's submission of Feterik's offer for the Court's
28 approval are detailed in the Receiver's prior motion to approve the sale of the Ranch. (See ROA
#160.)

1 week. (*Ibid.*) Interested parties were provided with certain due diligence materials (including a
2 preliminary title report and seller disclosures) and informed that they would be given another
3 opportunity to tour the property if they were interested. (*Ibid.*) On September 1, 2020, a sign
4 advertising the property was set up. (*Ibid.*) Three parties toured the Galileo Project Land on
5 Friday, September 4, 2020, and a fourth toured on Friday, September 11, 2020. (*Ibid.*)

6 A total of 48 parties were contacted during this best and final round, two of which
7 submitted offers. (*Id.* ¶ 9.) Ultimately, neither of the two offers submitted was acceptable.
8 (*Ibid.*) The proposed purchase price of the first offer was too low. (ROA #342 at p. 5.) The
9 second offer, which was made the night of Sunday, September 13 by Rick Jones, was for
10 \$1,800,000 for the Ranch (with an offer of \$800,000 for the Galileo Project land) but was also
11 determined to be unacceptable for a number of reasons discussed in greater detail in the
12 Receiver's motion to approve the sale of the Ranch. (See ROA #342 at pp. 4-5.)

13 Because neither offer was acceptable, the Receiver continued to market the Ranch and
14 the Galileo Project Land, which had remained listed during the entirety of the best and final
15 round. (Knight Decl. ¶ 9.) Subsequently, Mamman made an initial offer of \$1,800,000 for the
16 Ranch, with a concurrent offer for \$600,000 for the Galileo Project land. (*Id.* ¶ 10.) Four days
17 later, Mamman increased his offer to \$1,900,000 for the Ranch and \$650,000 for the Galileo
18 Project land. (*Id.* ¶ 11.) On September 23, 2020, the Receiver countered at \$2,100,000 for the
19 Ranch and \$900,000 for the Galileo Project land. (*Id.* ¶ 12.)⁸ Mamman agreed to the Receiver's
20 counteroffer. (*Id.* ¶ 13.)

21 **C. Opening of Escrow**

22 Escrow for the sale of the Galileo Project Land opened on September 29, 2020. (*Id.*
23 ¶ 13.) The Proposed Buyer then deposited \$100,000 into escrow, which became non-refundable
24 and which was released to the Receiver on November 30, 2020. (ROA #395 at pp. 3-4.) The
25

26 ⁸ Since another party submitted an offer to purchase both the Ranch and the Galileo Project, the
27 Receiver provided the counter to the other party as well. (ROA #342 at p. 5, note 3.) The
28 deadline to respond was September 28, 2020 at 4:00 p.m. (*Ibid.*) No further response was
received from the other party. (*Ibid.*) On the evening of September 28, the Receiver signed the
Proposed Buyer's purchase agreement. (*Ibid.*)

1 \$100,000 deposit was returned to escrow on June 4, 2021 after the motion to approve the sale of
2 the Galileo Project Land was tabled. (See ROA #619 at p. 5.) The Proposed Buyer chose to let
3 the deposit stay in escrow, where it remains.

4 III.

5 LEGAL STANDARD

6 “Most matters related to receiverships rest in the sound discretion of the trial court.”
7 (*City of Sierra Madre v. SunTrust Mortg., Inc.* (2019) 32 Cal.App.5th 648, 657.) Likewise,
8 “[t]here is wide discretion in the court in accepting a bid and confirming a judicial sale.” (*Lesser*
9 *& Son v. Seymour* (1950) 35 Cal.2d 494, 503.) “Judicial confirmation of a receiver’s sale rests
10 upon the appointing court’s sound discretion exercised in view of all the surrounding facts and
11 circumstances and in the interest of fairness, justice and the rights of the respective parties.
12 [Citation.] The proper exercise of discretion requires the court to consider all material facts and
13 evidence and to apply legal principles essential to an informed, intelligent, and just decision.
14 [Citation.]” (*Cal-Am. Income Prop. Fund VII v. Brown Dev. Corp.* (1982) 138 Cal.App.3d 268,
15 274.) When evaluating whether to approve a sale, “[a] court must engage in a two-level analysis,
16 first deciding whether a sale is required and then determining when the sale should take place.”
17 (*Id.* at p. 275 and footnote 7.) “Deference to the trial court’s decision “is the rule, even where the
18 court confirms extraordinary action by the receiver, such as a sale of real property.” (*City of*
19 *Santa Monica v. Gonzalez* (2008) 43 Cal.4th 905, 931.) “Where there is no evidence of fraud,
20 unfairness, or oppression, the court has wide discretion in approving the receiver’s proposed
21 actions.” (*Ibid.*)

22 A receiver’s sale of property, absent a court order, is controlled by California Code of
23 Civil Procedure Section 568.5. Section 568.5 states that a receiver may sell real property in his
24 or her possession “upon the notice and in the manner prescribed by Article 6 (commencing with
25 Section 701.510) of Chapter 3 of Division 2 of Title 9.” However, this statute does not affect
26 “the inherent equitable power of the court to prescribe the manner in which a receiver may sell
27 property.” (*People v. Riverside Univ.* (1973) 35 Cal.App.3d 572, 585.) “[T]he trial court
28 appointing the receiver has broad power to prescribe and, as necessary, change the manner in

1 which property is to be sold.” (*People v. Stark* (2005) 131 Cal.App.4th 184, 205.) Courts may,
2 for example, authorize a receiver to sell property “at private sale, at the best price attainable
3 under the circumstances.” (*People v. Riverside Univ., supra*, at p. 585.)

4 IV.

5 DISCUSSION

6 The order appointing the Receiver authorizes him “to preserve investors’ assets and to
7 foreclose and/or actively seek and negotiate with potential buyers, assignees or other parties who
8 may be interested in acquiring, purchasing, leasing, subleasing or renting real or personal
9 property of Receivership Defendants and to sell, lease, sublease or rent such real or personal
10 property of Receivership Defendants, subject to court approval.” (TRO ¶ 13; see also PI ¶ 13.)
11 As such, both the TRO and PI authorize him to market and sell Receivership property –
12 including the Galileo Project Land.

13 The purchase agreement signed by the Receiver and Mamann states that the sale of the
14 property with delivery of free and clear title is subject to, and contingent upon, Court approval.
15 While the Receiver believes that accepting the Proposed Buyer’s offer for the Galileo Project
16 Land was and is in the best interests of the Receivership Estate, any serious buyer would require
17 the same assurances. The Receiver thus asks the Court to clear title to the Galileo Project Land
18 (either by direct order or by expunging the investors’ deeds) and to approve the sale of the
19 Galileo Project Land at a price he believes reflects the fair market value of the property under the
20 present circumstances.

21 A. Title to the Parcels

22 1. The Court should enter an order clearing title to the Galileo Project Land.

23 “A court of equity has broad powers and comparatively unlimited discretion to do equity
24 without being bound by any strict rules of procedure.” (*Richmond v. Dofflemeyer* (1980) 105
25 Cal.App.3d 745, 766.) The Receiver submits that this is just the kind of situation where the
26 Court’s equitable intervention is necessary. The traditional remedy for a title dispute is a
27 partition action. But a partition suit would be prohibitively expensive many times over, as the
28 cost of service alone would be astronomical. The Receiver has roughly 2,800 investor email

1 addresses in his records. Assuming that number approximates the actual number of investors,
2 and assuming a perfect scenario – valid and updated physical addresses, service on first attempt,
3 no foreign service required – with service on average \$150 per person, it would cost \$420,000 to
4 serve all investors in a partition action, which is nearly half of the purchase price for the
5 property. Of course, these are not the present circumstances: at least some of the physical
6 addresses the Receiver has are invalid or incomplete, and at least some of the investors appear to
7 reside abroad, necessitating foreign service. Under these circumstances, effectuating service
8 could easily cost \$1 million or more.⁹

9 Where the agreed purchase price for the Galileo Project Land is \$900,000, and where the
10 cost of service could easily consume or exceed the purchase price, a partition suit would be self-
11 defeating and result in a net loss to the Receivership. If the Court does not clear title to these
12 parcels, the Receiver’s only alternative will be to sell them for a *de minimis* amount or abandon
13 them and let them go to tax sale.¹⁰ The only route that yields a guaranteed recovery for the
14 investors is a sale with clear title to a traditional buyer like the Proposed Buyer – and the cleanest
15 way to reach that point is for the Court to enter an order clearing title to the Galileo Project Land.

16 The Receiver submits that under the circumstances, the Court should exercise its
17 equitable powers and enter the necessary orders. Courts have significant discretion in this
18 regard. This is particularly true in receiverships, in which “[m]ost matters...rest in the sound
19 discretion of the trial court.” (*City of Sierra Madre v. SunTrust Mortg., Inc., supra*, 32
20 Cal.App.5th at p. 657.) Although impossible here for the reasons discussed above, the closest
21 analogue for the Receiver’s request (namely, that the Court enter an order clearing title) is a
22 partition action – and just as in a receivership, “a partition suit is in equity.” (*Richmond v.*
23 *Dofflemyer, supra*, 105 Cal.App.3d at p. 766.)

24 _____
25 ⁹ As noted below in Part IV.C, the Receiver intends to provide notice of this Motion to as many
26 investors as possible. Providing notice, however, is far less onerous than the service
27 requirements that filing a partition action would entail.

28 ¹⁰ Before a tax sale could occur, the Galileo Project Land would need to be in tax-defaulted status
for at least three years. (See Rev. & Tax. Code § 3691, subd. (a)(1)(A).) Given how long the
investors have already waited, the Receiver does not believe that forcing them to wait even
longer for *de minimis* tax sale proceeds would serve any purpose.

1 Courts in partition actions regularly weigh the equities when rendering their decisions;
2 for example, in order to authorize the sale of property and distribution of proceeds (as opposed to
3 the default remedy, division in kind), a court must determine that a sale “would be more
4 equitable than division of the property.” (Civ. Proc. Code § 872.820, subd. b.) When doing so,
5 courts take a commonsense approach, routinely considering the practical consequences of their
6 actions. For example, in *Jacoby v. Feldman* (1978) 81 Cal.App.3d 432, 444-45, a court ordered
7 dissolution of a partnership and the sale of its assets, including a piece of real property. The
8 plaintiffs in *Jacoby* argued for partition (division in kind) as opposed to a sale, but the court
9 nonetheless ordered – and the appellate court approved – the property’s sale, finding as follows:

10 Division would leave the plaintiffs and defendant as co-owners,
11 tenants in common. While defendant would then have a voice in
12 management, he would also have an absolute right to partition,
13 which would extend the litigation over the Wilshire property with
14 another equity proceeding pending... We conclude that, under the
15 circumstances presented here, the trial court properly rejected a
16 solution which would make the parties tenants in common with the
17 right of partition, ***which would eventually result in a sale of the***
18 ***property [anyway].***

15 (*Id.* at p. 445.) The court in *Jacoby* recognized that a division in kind would only force a second
16 round of partition litigation related to the property which would, in the end, have the same result:
17 a sale. Recognizing the futility of such a division, the court properly overrode the plaintiff’s
18 objections and ordered the property’s sale.

19 The situation before the Court here is analogous to that in *Jacoby*. Regardless of the
20 route taken, a sale is inevitable. If the Receiver were to somehow locate and serve each and
21 every one of the Galileo Project’s investors after filing a partition action, the result would have to
22 be a sale, as the number of investors would effectively make a division in kind impossible. If
23 this Court grants the Receiver’s request to sell the Galileo Project Land with clear title, there will
24 *also* be a sale with the proceeds distributed pro rata – except that in this instance, the enormous
25 cost of serving all of the Galileo Project investors would be avoided. By avoiding that cost, the
26 Receiver and/or Receivership Estate will avoid expending hundreds of thousands of dollars –

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28 ///

1 which could otherwise be distributed to investors pro rata along with the proceeds of the sale – to
2 effect service and litigate the action.¹¹

3 A sale is inevitable; the only question is how much it will cost the investors. The
4 Receiver believes that an order clearing title would be the most efficient and effective means of
5 resolving the title issues present here, and would maximize recovery for the investor victims.
6 Accordingly, he asks that the Court, acting in equity, exercise its discretion and enter the
7 necessary orders for the Galileo Project Land.

8 2. Alternatively, the Court should expunge the recorded investor deeds.

9 In the alternative, the Receiver asks the Court to void the grant deeds and expunge any
10 recordation of them under California Civil Code § 3412. Section 3412 states:

11 A written instrument, in respect to which there is a reasonable
12 apprehension that if left outstanding it may cause serious injury to
13 a person against whom it is void or voidable, may, upon his
application, be so adjudged, and ordered to be delivered up or
canceled.

14 The statute has two core components: for an instrument to be expunged, “(1) the instrument
15 [must be] void or voidable due to, for example, fraud; and (2) there [must be] a reasonable
16 apprehension of serious injury including pecuniary loss or the prejudicial alteration of one’s
17 position.” (*U.S. Bank Nat’l Assn. v. Naifeh* (2016) 1 Cal.App.5th 767, 778.) Although typically
18 brought as a claim, at least two California courts have applied the statute on motion. (See, e.g.,
19 *Ward v. Superior Court* (1997) 55 Cal.App.4th 60 [reversing trial court’s denial of motion for
20 expungement in nuisance suit brought by opposing party]; *The Formula Inc. v. Superior Court*
21 (2008) 168 Cal.App.4th 1455 [affirming trial court’s grant of expungement motion in quiet title
22 action on other grounds by application of Section 3412].)

23 As alleged by the People, each deed was a bundled component of an unregistered security
24 that Defendants were not authorized to sell – but which Defendants sold anyway, pursuant to “an
25 ongoing scheme to defraud investors in violation of the [Corporate Securities Laws].” (Third

26 _____
27 ¹¹ Similarly, if the Receiver were to abandon the property, it would be sold at a tax sale for
28 significantly less than what the Receiver is able to sell it for now – and the difference in price
(likely hundreds of thousands of dollars, if not more), which could have gone to investors, will
be lost to them. See footnote 1, *supra*.

1 Am. Compl. ¶ 6; compare with *U.S. Bank Nat'l Assn. v. Naifeh*, *supra*, 1 Cal.App.5th at p. 778
2 [instrument must be void or voidable “due to, for example, fraud”].) The unauthorized
3 recordation of a document is grounds for expungement: in both *Ward* and *The Formula Inc.*, the
4 courts expunged the recorded documents (a notice of noncompliance with CC&R’s and a lis
5 pendens based on an out-of-state action, respectively) after determining that those documents
6 were not authorized for recording. (*Ward v. Superior Court*, *supra*, 55 Cal.App.4th at pp. 66;
7 *The Formula Inc. v. Superior Court*, *supra*, 168 Cal.App.4th at pp. 1465.)

8 Here, the People have alleged that the deeds at issue were a component of fraudulent,
9 unregistered securities which Defendants were not authorized to sell – as such, the deeds were
10 similarly not authorized for recording.¹² With respect to the second requirement, absent an
11 expungement order, the investors’ deeds will prevent the Receivership Entities from selling a
12 significant Receivership asset and will cause the Receivership Estate (and ultimately the
13 investors) to lose a substantial amount of money, as discussed above. This is undoubtedly a
14 “serious injury.” For these reasons, the Receiver asks that in the alternative, the Court enter an
15 order expunging the investors’ deeds.

16 **B. Approval of the Sale**

17 If the Court clears title to the Galileo Project Land as the Receiver has requested, whether
18 by order or through expungement of the investors’ deeds, the only remaining issue is approval of
19 the sale proposed by the Receiver. For the reasons discussed below, the Receiver strongly
20 believes that sale of the Galileo Project Land is in the best interest of all interested parties.

21 1. The immediate sale of the Galileo Project Land is necessary.

22 Courts must engage in a “two-level analysis” before permitting a receiver to sell property,
23 “first deciding whether a sale is required and then determining when the sale should take place.”
24 (*Cal-Am. Income Prop. Fund VII v. Brown Dev. Corp.*, *supra*, 138 Cal.App.3d at p. 275 and
25 footnote 7.) The present circumstances satisfy that two-level analysis. The sale of the Galileo
26

27 ¹² There are further reasons to invalidate the conveyances, too; as one example, there is a strong
28 argument that there was no “meeting of the minds” on the contracts executed by investors (who
thought they were getting something very different from what Defendants actually delivered).

1 Project Land is one of the few remaining tasks for this Receivership, and until the property is
2 liquidated, the Receivership cannot close. The trial date (May 6, 2022) is approaching. If the
3 property is to be sold, it must be in the near term, as leaving it outstanding will prevent the
4 Receivership from closing near the time the trial concludes or the case is otherwise resolved.

5 2. The Court should authorize a private sale to the Proposed Buyer.

6 The Receiver also believes that the Court should authorize the private sale of the Galileo
7 Project Land. Absent a court order, the default is for the Receiver to proceed with the sale “upon
8 the notice and in the manner prescribed by Article 6.” (Code Civ. Proc. § 568.5.) Article 6
9 contains a number of restrictive requirements. (See, e.g., Code Civ. Proc. §§ 701.540 [requiring
10 posting of notice, service of notice on property occupant, publication of notice], 701.545 [notice
11 of sale cannot be given until 120 days after notice was served on judgment debtor], & 701.570
12 [sale at auction to highest bidder].) Complying with these requirements would jeopardize the
13 sale to the Proposed Buyer; it would also cause the Receivership to incur more expenses in the
14 interim. The Court has the authority to authorize a receiver to sell property “at private sale, at
15 the best price attainable under the circumstances.” (*People v. Riverside Univ., supra*, at p. 585.)
16 The Receiver asks that the Court authorize him to convey the Galileo Project Land by private
17 sale to the Proposed Buyer here, in order to allow the immediate sale of the property.

18 3. The Proposed Buyer’s offer is fair and reasonable.

19 When evaluating a receiver’s potential sale of property, courts look to “the surrounding
20 facts and circumstances and in the interest of fairness, justice and the rights of the respective
21 parties.” (See *Cal-Am. Income Prop. Fund VII v. Brown Dev. Corp., supra*, 138 Cal.App.3d at p.
22 274.) The Receiver submits that the facts and circumstances present here support approval of the
23 sale to the Proposed Buyer. As discussed above, the Ranch was extensively marketed by the
24 Receiver’s agent as described above, and all parties who expressed an interest in the Ranch were
25 invited to make an offer for the Galileo Project Land. The all-cash nature of the Proposed
26 Buyer’s offer is also beneficial, as it means that the Proposed Buyer does not need to secure
27 financing – resulting in a situation in which the proceeds can be distributed to investors
28 immediately after it is so ordered by the Court.

1 The Receiver understands that the Court may want to take extra care in its evaluation of
2 the Galileo Project Land's value, given that the investors as a whole paid far more for the
3 property than it is actually worth. In addition to the declaration of Joseph Aiu, the Receiver is
4 providing a copy of the appraisal he obtained for the Ranch and the Galileo Project Land under
5 seal concurrent with this filing. A redacted copy of that appraisal is being publicly filed with this
6 motion.

7 **C. Notice to Investors**

8 The Receiver firmly believes that the sale of the Galileo Project Land without further
9 delay is in all interested parties' best interests. To give the investors a chance to be heard before
10 resolution of this motion, the Receiver will send a copy of the motion to each investor at the
11 email address(es) that were provided within one (1) business day of this Motion's filing. Within
12 the same time frame, the Receiver will post a copy of the motion prominently on the Regulatory
13 Resolutions website.

14 **V.**

15 **CONCLUSION**

16 For the foregoing reasons, the Receiver asks that the Court approve the sale of the Galileo
17 Project Land with clear title to the Proposed Buyer for \$900,000.

18 Dated: March 4, 2022

MCNAMARA SMITH LLP

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By: 

20

Cornelia J. B. Gordon
Attorneys for Receiver,
Thomas W. McNamara

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1 **PROOF OF SERVICE**

2 I, Jill Jacobs, declare as follows:

3 I am an employee of a member of the bar of this Court at whose direction was made in the
4 County of San Diego, State of California. I am over the age of 18 and not a party to the within
action; my business address is 655 West Broadway, Suite 900, San Diego, California 92101.

5 On March 4, 2022, I served the foregoing document(s) described as:

- 6 • **RECEIVER’S NOTICE OF MOTION AND MOTION TO APPROVE SALE OF GALILEO PROJECT LAND**
- 7
- 8 • **DECLARATION OF CORNELIA J. B. GORDON IN SUPPORT OF RECEIVER’S MOTION TO APPROVE SALE OF GALILEO PROJECT LAND**
- 9
- 10 • **DECLARATION OF TERESIA KNIGHT IN SUPPORT OF RECEIVER’S MOTION TO APPROVE SALE OF GALILEO PROJECT LAND**

11 on interested parties in this action by sending the original true copy(ies) thereof as follows:

12 **By Electronic Service:** I caused the document(s) to be electronically filed with the Clerk of
13 the Court using the Court’s e-filing system through One Legal and choosing e-service on the
persons at the email address(es) listed below.

14 **By First Class Mail:** I am readily familiar with the firm’s practice of collection and
15 processing correspondence for mailing with the United States Postal Service. Under that
16 practice, it would be deposited with United States postal service on that same day with postage
thereon fully prepaid at San Diego, California in the ordinary course of business. The envelope
was sealed and placed for collection and mailing on that date following ordinary business
practices.

17 **By Email:** I caused the documents to be sent to the persons at the email address(es) listed
18 below. I did not receive, within a reasonable time after the transmission, any electronic message
or other indication that the transmission was unsuccessful.

19 **VIA E-SERVICE**

20 Robert R. Lux
21 Boryana Arsova
California Department of Financial Protection
and Innovation
22 1455 Frazee Road, Suite 315
San Diego, CA 92108
23 Tel.: 619-610-1229
Fax: 619-209-3612
24 robert.lux@dfpi.ca.gov
boryana.arsova@dfpi.ca.gov
25 *Attorneys for Plaintiff*

VIA E-SERVICE

Mark T. Hiraide
Mitchell Silberberg & Knupp LLP
2049 Century Park East, 18th Floor
Los Angeles, CA 90067-3120
Tel.: 310-312-2000
Fax: 310-312-3100
mth@msk.com
*Attorneys for Defendants Thomas M. Maney;
Silver Saddle Commercial Development, LP;
and Silver Saddle Ranch & Club, Inc.*

1 **VIA E-SERVICE**

2 Orlando F. Cabanday
3 Cabanday Law Group
4 21221 S. Western Avenue, Suite 208
5 Torrance, CA 90501
6 Tel.: 310-997-2558
7 Fax: 310-984-1735
8 orlando@cabandaylawgroup.com
9 *Attorneys for Relief Defendants Marian G.*
10 *Ducreux and Richard C. Huebner*

VIA E-SERVICE

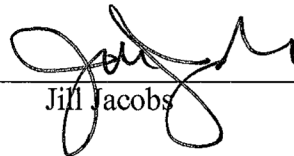
Clifford J. Reynolds
2525 North 20th Avenue
Pasco, WA 99301
Tel.: 661-972-9363
cliffordreynolds@yahoo.com
Defendant, In Pro Per

6 **VIA EMAIL & U.S. MAIL**

7 Maria Rosales
8 12352 Edgecliff Avenue
9 Sylmar, CA 91342
10 Tel.: 818-434-1590
11 mrsrinfinit@hotmai.com
12 *Defendant, In Pro Per*

13 (STATE): I declare under penalty of perjury under the laws of the State of California that the
14 above is true and correct.

15 Executed March 4, 2022, in San Diego, California.

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Jill Jacobs