

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 18-61017-CIV-ALTONAGA/SELTZER

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

POINTBREAK MEDIA, LLC, *et al.*,

Defendants.

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**RECEIVER JONATHAN E. PERLMAN'S MOTION FOR  
AUTHORITY TO SELL CERTAIN PERSONAL PROPERTY**

Jonathan E. Perlman, Esq., the court-appointed Receiver (the "Receiver") for the Receivership Defendants<sup>1</sup>, by and through undersigned counsel, files this Motion for Authority to Sell Certain Personal Property (the "Motion").

**I. INTRODUCTION**

On May 8, 2018, this Court entered an Ex Parte Temporary Restraining Order with Asset Freeze ("TRO") against the Defendants. [ECF No. 12]. In addition, this Court appointed Jonathan E. Perlman, Esq. as temporary receiver of the Receivership Defendants. [*Id.* at 14]. On May 9, 2018, the Receiver and his team secured the locations utilized by the Receivership Defendants at 550 Fairway drive, # 104, Deerfield Beach, Florida 33441; 4730 N.W. 2<sup>nd</sup> Ave., Boca Raton, Florida 33431 (the "Boca Office"); and 951 Broken Sound Parkway, Suite 188,

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<sup>1</sup> The "Receivership Defendants" or "Receivership Entities" shall mean Pointbreak Media, LLC; DCP Marketing, LLC; Modern Spotlight LLC; Modern Spotlight Group LLC; Modern Internet Marketing LLC; Modern Source Media; Perfect Image Online LLC; Allstar Data, LLC; National Business Listings, LLC; Pinnacle Presence, LLC; and their divisions, subsidiaries, affiliates, predecessors, successors, assigns, and any fictitious business entities or business names created or used by these entities, or any of them. [ECF No. 175].

Boca Raton, Florida. Pursuant to the TRO, the Receiver and his team took possession of the personal property located at these locations.

On June 7, 2018, this Court appointed Jonathan E. Perlman, Esq. as permanent Receiver and entered a Preliminary Injunction (the “PI”) directing and authorizing the Receiver to, among other things, “[a]ssume full control of Receivership Entities,” and “[t]ake exclusive custody, control, and possession of all Assets and Documents of, or in the possession, custody, or under the control of, any Receivership Entity, wherever situated.” [ECF No. 64 at 14]. The PI further provides that the Receiver conserve, hold and manage all receivership assets (the “Receivership Estate”), and perform all acts necessary or advisable to preserve the value of those assets, in order to prevent irreparable loss, damage or injury to consumers or creditors of the Receivership Defendants. [*Id.*].

The current tenant at the Boca Office is MG Media Solutions, Inc. (the “Tenant”). The Tenant expressed interest in purchasing certain personal property located at the Boca Office (the “Personal Property”). The Receiver and the Tenant have reached an agreement, whereby the Receiver would sell the Personal Property to the Tenant for the total amount of \$2,800.

Accordingly, after considering the available options, the Receiver finds it to be in the best interests of the Receivership Estate to sell the Personal Property to the Tenant.

## **II. THE PERSONAL PROPERTY**

The Receiver, by this Motion, seeks the Court’s authority to sell the Personal Property to the Tenant for the total amount of \$2,800. Specifically, the Personal Property the Receiver seeks to sell is:

- 1 Epson Laser Network Printer;
- 1 Credenza and Desk;
- 47 Used Office Chairs;
- Office Cubicles; and
- 1 Conference Room Table

Prior to discussing a potential sale of the Personal Property to the Tenant, the Receiver conferred with Eric Rubin of Moecker Auctions, Inc. (“Moecker”), a licensed auctioneer and appraiser. Moecker has familiarized itself with the Personal Property and provided the Receiver with its thoughts on its value and has advised the Receiver that a sale at this time provides the best opportunity to maximize value. The proposed sale exceeds the valuations provided by Moecker. Based on the foregoing, the Receiver has concluded that selling the Personal Property to the Tenant represents the most advisable course of action consistent with the Receiver’s duty to collect, preserve and maintain the assets of the Receivership Estate.

### **III. MEMORANDUM OF LAW**

#### **A. This Court Has the Authority to Order the Receiver to Sell the Personal Property, which is in the Best Interest of the Receivership Estate.**

Summary proceedings are appropriate and proper to protect equity receivership assets. *United States v. Arizona Fuel Corp.*, 739 F. 2d 455 (9th Cir. 1984) (citing *Bien v. Robinson*, 208 U.S. 423, 428, 28 S.Ct. 379, 381 (1908)); 2 Clark on Receivers 584 at 954 (3d ed. 1059). In *SEC v. Elliot*, 953 F. 2d 1560 (11th Cir. 1992), the Eleventh Circuit approved this expedited format, observing that summary proceedings improve judicial efficiency, avoid formalities that would slow down the time necessary to settle disputes, decrease litigation costs and prevent further dissipation of receivership assets. *Id.* at 1566.

A court has broad equitable authority to issue all orders necessary for the proper administration of the receivership estate. *See S.E.C. v. Malek*, No. 09-3583-cv, 2010 WL

4188029, at \*2 (2d Cir. Oct. 25, 2010); *S.E.C. v. Hardy*, 803 F. 2d 1034, 1388-39 (9th Cir. 1986); *Liberte Capital Grp., LLC v. Capwill*, 248 Fed. Appx. 650, 2007 WL 2733335, at \*4-5 (6th Cir. Sept. 20, 2007). This authority includes the power to permit a receiver to sell personal property where appropriate to protect the receivership estate. *See FTC v. E.M. Sys. & Servs., LLC*, No. 8:15-cv-1417-T-23EAJ, 2016 WL 11110381, at \*1-3 (M.D. Fla. March 4, 2016) (magistrate judge granted receiver's motion to sell personal property of the receivership estate).

The relief sought by the Receiver falls squarely within this Court's broad equitable powers, and the sale of the Personal Property to the Tenant will benefit the Receivership Estate. Accordingly, the Receiver respectfully requests this Court to grant the relief requested in this Motion.

**B. This Court Has the Authority to Waive the Requirements of §§ 28 U.S.C. 2001 and 2004, and the Circumstances Here Warrant Such Waiver.**

Sale of personal property by federal equity receivers is governed by 28 U.S.C. § 2004, which states, “[a]ny personalty sold under any order or decree of any court of the United States shall be sold in accordance with Section 2001 of this title, *unless the court orders otherwise*” (emphasis added). Section 2001(b) requires, among other things, that before confirming a private sale, the Court shall obtain three appraisals from disinterested persons and shall publish the terms of the sale in newspaper(s) of general circulation. 28 U.S.C. § 2001(b). The Receiver has conferred with Moecker, who has provided an appraisal of the Personal Property. Moreover, the Receiver believes that the cost of obtaining three appraisals, storing the Personal Property, moving the Personal Property, marketing the Personal Property and liquidating the Personal Property far exceeds the fair market value of the Personal Property. The Receiver requests that the Court waive the appraisal and publication requirements of § 2001(b) with respect to the sale

of the Personal Property because it is in the best interests of the Receivership Estate.

Federal Courts have recognized the discretion afforded to them by Section 2004 in approving a discretionary deviation from the requirements of Section 2001. *See, e.g., S.E.C. v. Kirkland*, No. 6:06-cv-183, 2008 WL 4264532, at \*1-3 (M.D. Fla. Sept. 12, 2008) (adopting magistrate judge's report and recommendation, where magistrate judge recommended "that, pursuant to 28 U.S.C. § 2004, the Court waive the requirements of § 2001 (b) with respect to the sale of the motorcycle" because the costs of compliance would significantly offset the purchase offer); *E.M. Systems & Services, LLC*, 2016 WL 11110381, at \*3 (M.D. Fla. March 4, 2016) (excusing the Receiver from the judicial sales procedures prescribed in 28 U.S.C. §§ 2001 and 2004 with respect to the sale of personal property); *United States v. Stonehill*, 83 F. 3d 1156, 1160 (9th Cir. 1996) (holding that section 2004 permitted the district court to dispense with appraisal requirement for sale of personal property); *Wells Fargo Capital Finance, Inc. v. North Pacific Grp., Inc.*, No. CV 10-65-KI, Order on Receiver's Motion for Order Authorizing Sale of Accounts Receivable (D. Ore. Jan. 24, 2012) (holding that "[t]he Receiver is excused from compliance with 28 U.S.C. § 2004 concerning sales of personal property through federal court proceedings."); *United States v. Kerner*, No. 00-75370, 2003 WL 22905202, at \*2 (E.D. Mich. Oct. 24, 2003) ("Under . . . 28 U.S.C. § 2004, which states that the requirements of section 2001 must be followed 'unless the court orders otherwise,' the Court clearly has the discretionary authority to confirm the private sale [made without adherence to the requirements of section 2001]"). Here, the costs of complying with 2001(b) would greatly exceed the value of the Personal Property and would represent a drain on the Receivership Estate. Accordingly, based upon the circumstances, the Receiver would request the Court to waive the requirements of 28 U.S.C. §2001(b).

#### **IV. CONCLUSION**

By way of this Motion, the Receiver believes that the sale of the Personal Property to the Tenant is in the best interests of the Receivership Estate. The relief sought herein is an appropriate exercise of the Receiver's business judgment.

The Receiver has conferred with counsel for the FTC, and they have authorized the Receiver to state that they have no objection to the relief sought herein. The Receiver has also attempted to confer with Defendants Dustin Pillonato and Justin Ramsey and counsel for the other Defendants, but received no response.

**WHEREFORE**, the Receiver, Jonathan E. Perlman, Esq., respectfully requests that this Court enter an order (i) granting the Receiver authority to sell the Personal Property to the Tenant for \$2,800; (ii) relieving the Receiver from the requirements of 28 U.S.C. §§ 2001 and 2004 governing the sale of the Personal Property; and (iii) for such other and further relief as is just and proper.

Respectfully submitted this 21st day of December, 2018.

**GENOVESE JOBLOVE & BATTISTA, P.A.**

*Attorneys for Jonathan E. Perlman, Court-Appointed Receiver*

100 Southeast 2<sup>nd</sup> Street, Suite 4400

Miami, Florida 33131

Telephone: (305) 349-2300

Facsimile: (305) 349-2310

By: /s/ Michael Bild

Gregory M. Garno, Esq., FBN 87505

[ggarno@gjb-law.com](mailto:ggarno@gjb-law.com)

Michael Bild, Esq., FBN 1003841

[mbild@gjb-law.com](mailto:mbild@gjb-law.com)



**SERVICE LIST**

**Federal Trade Commission v. PointBreak Media, LLC, et al.**  
**USDC, SD Fla., Case No. 18-61017-CIV-ALTONAGA**

Evan M. Mendelson  
Christopher J. Erickson  
Brian M. Welke  
Federal Trade Commission  
600 Pennsylvania Ave. NW  
Mailstop CC-9528  
Washington, DC 20580  
(202) 326-3320; [emendelson@ftc.gov](mailto:emendelson@ftc.gov)  
(202) 326-3671; [cerickson@ftc.gov](mailto:cerickson@ftc.gov)  
(202) 326-2897; [bwelke@ftc.gov](mailto:bwelke@ftc.gov)  
Fax: (202) 326-3197  
*Attorneys for Plaintiff Federal Trade Commission*

Defendant Dustin Pillonato  
pillonatodc@gmail.com  
7411 Bristol Lane  
Parkland, FL 33067  
*Pro Se Defendant*  
(via email)

Defendant Justin Ramsey  
Jramsey9799@gmail.com  
19149 Skyridge Circle  
Boca Raton, FL 33498  
*Pro Se Defendant*  
(via email)

Aaron M. Cohen  
amc@aaronmcohenpa.com  
Aaron M. Cohen, PA  
Grand Bahamas Professional Park  
955 NW 17th Ave. Bldg. D  
Delray Beach, FL 33445  
Telephone: (561) 665-8020  
Facsimile: (561) 665-8021  
*Counsel for Defendants Steffan Molina, Perfect Image Online LLC,  
and Pinnacle Presence LLC*  
(via CM/ECF)



Kenneth Joseph Ronan  
kenronan@lavallebrown.com  
Lavalle Brown & Ronan, P.A.  
750 South Dixie Highway  
Boca Raton, FL 33432  
Telephone: (561) 395-0000  
Facsimile: (561) 395-9093  
*Counsel for Defendants Michael Pocker, Modern Spotlight LLC,  
Modern Internet Marketing LLC, and Modern Spotlight Group LLC*  
(via CM/ECF)

Chad Gottlieb  
CGottlieb@DarrowEverett.com  
DarrowEverett LLP  
101 NE Third Avenue, Suite 1500  
Fort Lauderdale, FL 33301  
Telephone: (954) 278-8355  
Facsimile: (401) 453-1201  
*Counsel for Defendant Ricardo Diaz*  
(via CM/ECF)

Andrew N. Cove  
anc@covelaw.com  
Cove Law  
225 South 21<sup>st</sup> Avenue  
Hollywood, FL 33020  
Telephone: (954) 921-1121  
Facsimile: (954) 921-1621  
*Counsel for Relief Defendants Jennefer Ramsey  
and Stephanie Watt*  
(via CM/ECF)

Mitchell N. Roth  
mroth@rothjackson.com  
Roth Jackson Gibbons Conklin, PLC  
8200 Greensboro Drive, Suite 820  
McLean, VA 22102  
Telephone: (703) 485-3535  
Facsimile: (703) 485-3523  
*Counsel for Relief Defendants Jennefer Ramsey  
and Stephanie Watt*  
(via CM/ECF)

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**ORDER**

**THIS CAUSE** came before the Court on Receiver Jonathan E. Perlman's Motion for Authority to Sell Certain Personal Property [ECF No. \_\_\_\_]. The Receiver wishes to sell the Personal Property to the Tenant for the total amount of \$2,800. (*See generally id.*). The Court having considered the Motion, and being otherwise fully advised in the premises, it is,

**ORDERED AND ADJUDGED** as follows:

1. Receiver, Jonathan E. Perlman's Motion is **GRANTED**.
2. The Receiver is authorized to sell the Personal Property to the Tenant for \$2,800 and take such other actions as may be reasonably necessary to preserve the Receivership Estate.
3. The Receiver is excused from compliance with 28 U.S.C. §§ 2001 and 2004 in the sale of the Personal Property.

**DONE AND ORDERED** in Miami-Dade County, Florida, this \_\_\_\_ day of December, 2018.

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**CECILIA M. ALTONAGA**  
**UNITED STATES DISTRICT JUDGE**

cc: counsel of record