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9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA  
11

12 SECURITIES AND EXCHANGE  
COMMISSION,

13 Plaintiff,

14 v.

15 TUCO TRADING, LLC and  
16 DOUGLAS G. FREDERICK,

17 Defendants.  
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Case No. 08-CV-0400 DMS (BLM)

**RECEIVER'S EX PARTE APPLICATION  
FOR ORDER APPROVING SALE OF  
OFFICE FURNITURE AND EQUIPMENT;  
DECLARATION OF TED FATES IN  
SUPPORT THEREOF**

1 Thomas F. Lennon ("Receiver"), Court-appointed permanent receiver for Tuco Trading,  
2 LLC ("Tuco"), applies for an order approving the sale of office furniture and equipment (the  
3 "Equipment") of Tuco. The Receiver has had the Equipment appraised by an experienced,  
4 independent appraiser and auctioneer. The appraised value is \$18,000. Defendant Douglas  
5 Frederick has offered to purchase the Equipment for \$21,000. The Equipment must be sold  
6 promptly in order to prevent the estate from having to incur moving and storage costs. The  
7 proposed sale will avoid these costs as well as the costs of advertising and auctioning the  
8 Equipment. Accordingly, the Receiver requests an order approving the sale to Mr. Frederick.

9 **I. BACKGROUND FACTS**

10 On March 4, 2008, the Securities and Exchange Commission ("SEC") filed its Complaint  
11 and Ex Parte Motion for Temporary Restraining Order and Orders: (1) Freezing Assets;  
12 (2) Appointing a Temporary Receiver; (3) Requiring Accountings; (4) Prohibiting the Destruction  
13 of Documents, (5) Granting Expedited Discovery; and (6) Order to Show Cause re Preliminary  
14 Injunction and Appointment of a Permanent Receiver. On March 5, 2008, the Court issued a  
15 Temporary Restraining Order and Orders: (1) Appointing a Temporary Receiver; (2) Requiring  
16 Accountings; (3) Prohibiting the Destruction of Documents, (4) Granting Expedited Discovery;  
17 and (5) Order to Show Cause re Preliminary Injunction and Appointment of a Permanent Receiver  
18 ("TRO"). The Receiver, the SEC and the Defendants sought clarification of the TRO, which was  
19 provided in the Court's Supplement to the TRO ("Supplement"), entered on March 6, 2008.

20 On March 14, 2008, the SEC filed the Consents of Tuco and Frederick, and a Joint Motion  
21 for Judgment of Permanent Injunction and Orders: (1) Freezing Tuco's Assets, (2) Appointing a  
22 Permanent Receiver for Tuco; and (3) Prohibiting the Destruction of Documents ("Judgment").  
23 The Court entered the Judgment on March 17, 2008.

24 On March 19, 2008, in response to the Receiver's application, the Court entered an Order  
25 in Aid of Receivership: (1) Allowing Notice by Email to Members; (2) Providing that  
26 Commissions Earned or Payable to Mr. Frederick are Property of the Receivership Estate;  
27 (3) Authorizing the Receiver to Enter into a Temporary Transaction with GLB Trading, Inc.; and  
28 (4) Granting Ancillary Relief.

1 Since his appointment, the Receiver, with the assistance of his professionals, has been  
2 working diligently to secure the assets of Tuco, review and analyze bank account and brokerage  
3 account records, reconcile the books and records of the company, investigate potential claims,  
4 resolve potential disputes, disseminate information to Tuco's members and creditors, and respond  
5 to member and creditor inquiries.

6 **The Equipment**

7 Tuco's primary offices are located at 909 Prospect Street, Suite 224, La Jolla, California.  
8 Tuco subleased office space in Dallas and Chicago. In order to minimize administrative expenses,  
9 the Receiver has given notice to the respective landlords at the La Jolla, Dallas and Chicago  
10 offices, informing them that Tuco will be terminating the leases and vacating the spaces no later  
11 than May 10, 2008.

12 The Equipment at the offices includes furniture, computers, monitors, servers,<sup>1</sup> printers, a  
13 scanner/copier, televisions and certain appliances. Some of this Equipment has been used by the  
14 Receiver in gathering data required for forensic accounting purposes.

15 The Receiver hired McCormack Auction Company ("McCormack") to appraise the  
16 Equipment. McCormack has more than 30 years experience in the appraisal and auctioneering  
17 business in Southern California. McCormack appraised the Equipment at \$18,000. McCormack  
18 also advised the Receiver that advertising and auctioning the Equipment would cost approximately  
19 \$4,000. The letter from McCormack is attached hereto as Exhibit A.

20 **The Sale**

21 Mr. Frederick offered to purchase the Equipment from Tuco for a purchase price  
22 of \$21,000. In light of the modest value of the Equipment, the need to close the offices as soon as  
23 possible, and the expense of advertising and auctioning the Equipment, the Receiver believes that  
24 the sale of the Equipment to Mr. Frederick is in the best interests of the receivership estate. The  
25 Receiver contends that Mr. Frederick's offer, which is \$3,000 higher than the appraised value, with  
26 minimal expense to the estate, represents the highest and best price for the Equipment.

27 \_\_\_\_\_  
28 <sup>1</sup> The servers, which have been used to support the Tuco back office accounting system, will be  
wiped and turned over without Tuco-related data on them.

1 The Receiver provided a draft of this application to the SEC before it was filed. The SEC  
2 informed the Receiver's counsel that it does not oppose the relief requested.

## 3 II. ARGUMENT

4 "The power of a district court to impose a receivership or grant other forms of ancillary  
5 relief does not in the first instance depend on a statutory grant of power from the securities laws.  
6 Rather, the authority derives from the inherent power of a court of equity to fashion effective  
7 relief." SEC v. Wencke, 622 F.2d 1363, 1369 (9th Cir. 1980). The "primary purpose of equity  
8 receiverships is to promote orderly and efficient administration of the estate by the district court  
9 for the benefit of creditors." SEC v. Hardy, 803 F.2d 1034, 1038 (9th Cir 1986).

10 District courts have the broad power of a court of equity to determine the appropriate  
11 action in the administration and supervision of an equity receivership. See SEC v. Capital  
12 Consultants, LLC, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth Circuit explained:

13 A district court's power to supervise an equity receivership and to  
14 determine the appropriate action to be taken in the administration of the  
15 receivership is extremely broad. The district court has broad powers and  
16 wide discretion to determine the appropriate relief in an equity  
17 receivership. The basis for this broad deference to the district court's  
supervisory role in equity receiverships arises out of the fact that most  
receiverships involve multiple parties and complex transactions. A district  
court's decision concerning the supervision of an equitable receivership is  
reviewed for abuse of discretion.

18 Id. (citations omitted); see also Commodities Futures Trading Comm'n. v. Topworth Int'l,  
19 Ltd.; 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad deference' to the court's  
20 supervisory role, and 'we generally uphold reasonable procedures instituted by the district court  
21 that serve th[e] purpose' of orderly and efficient administration of the receivership for the benefit  
22 of creditors.").

23 The Ninth Circuit has confirmed a district court's broad authority to approve a sale of  
24 assets under the control of a federal equity receiver. SEC v. American Capital Investments, Inc.,  
25 98 F.3d 1133, 1143-1145 (9th Cir. 1996) abrogated on other grounds by Steel Co. v. Citizens for a  
26 Better Environment, 523 U.S. 83 (1998); Gockstetter v. Williams, 9 F.2d 354, 357 (9th Cir. 1925)  
27 ("In authorizing the sale of property by receivers, courts of equity are vested with a broad  
28 discretion as to price and terms."); see also Mellen v. Moline Malleable Iron Works, 131 U.S. 352

1 (1889) (under its general equity authority, the court has the power to order a sale of property);  
2 Broadway Trust v. Dill, 17 F.2d 486 (3d Cir. 1927) (in a receivership proceeding, the court has  
3 both the power and jurisdiction to order a sale of the property).

4 Here, the proposed sale to Mr. Frederick represents the highest and best price for the  
5 Equipment. The purchase price is \$3,000 higher than the appraised value. The estate will not  
6 incur the expense of advertising and auctioning the Equipment, which would consume a  
7 substantial portion of the value. The Equipment must also be sold promptly in order to avoid  
8 moving and storage expenses. Accordingly, the proposed sale is in the best interests of the  
9 receivership estate and its creditors.

10 **III. CONCLUSION**

11 Based on the foregoing, the Receiver requests entry of an order approving a sale of the  
12 Equipment to Mr. Frederick for \$21,000, and granting such other relief as the Court deems just  
13 and proper.

14  
15 Dated: May 1, 2008

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

17 By: /s/ Ted Fates

18 TED FATES  
Attorneys for Permanent Receiver Thomas F.  
19 Lennon

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**DECLARATION OF TED FATES**

I, Ted Fates, declare as follows:

1. I am an attorney at Allen Matkins Leck Gamble Mallory & Natsis LLP, counsel to Thomas F. Lennon ("Receiver"), permanent receiver for Tuco Trading, LLC, its subsidiaries and affiliates ("Tuco"). I make this declaration in support the Receiver's Ex Parte Application for Order Approving Sale of Office Furniture and Equipment. If called upon to testify, I would testify competently to the facts set forth in this declaration.

2. I provided a draft of this ex parte application to counsel for the SEC before it was filed. Mr. Searles of the SEC informed me that the SEC does not oppose the relief requested.

3. Notice of this ex parte application and the relief requested has been sent by e-mail this date to all Tuco Members.

4. This ex parte application is also being served upon all known Tuco creditors as shown on the attached Service List.

5. This ex parte application will also be available at the Receiver's website, [www.tflinc.com/cases\\_tuco.html](http://www.tflinc.com/cases_tuco.html).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 1, 2008, at San Diego, California.

/s/ Ted Fates  
TED FATES



April 30, 2008

Laura Guzman  
Thomas F Lennon Inc.  
7777 Alvarado Rd, Suite 712  
La Mesa, CA 91941

RE: Tuco Trading, LLC

Dear Mrs. Guzman,

In accordance with your request, we had the opportunity to visit the Tuco offices located in La Jolla, California and view the subject equipment. The equipment located at other offices was not viewed in person. However, a detailed description was provided. In my professional opinion, I believe \$18,000 to be a reasonable estimate of the value of the equipment. I have enclosed a CD of photographs to include for your file.

If you would like us to conduct a sale of the subject assets, we are willing and able. This can be accomplished for a commission of 10% of gross sales, plus marketing and moving costs. Expenses for moving and marketing are estimated at \$2000.

It is a pleasure to be of service, if you have any questions please contact me.

Regards,

  
Josh McCormack

Exhibit     A    

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