

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

Case No. 8:20-CV-325-T-35-NHA

BRIAN DAVISON;  
BARRY M. RYBICKI;  
EQUIALT LLC;  
EQUIALT FUND, LLC;  
EQUIALT FUND II, LLC;  
EQUIALT FUND III, LLC;  
EA SIP, LLC;

Defendants, and

128 E. DAVIS BLVD, LLC, et al.,

Relief Defendants.

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**RECEIVER'S UNOPPOSED SECOND MOTION TO SELL  
VEHICLE VIA CONSIGNMENT**

Burton W. Wiand, as receiver over the assets of the corporate and relief defendants (the “**Receiver**” and the “**Receivership**” or “**Receivership Estate**”) files this unopposed motion requesting that the Court approve the marketing and sale of a 1981 Land Rover Defender (VIN: SALLDHAD7BA244596) (the “**Defender**”) via consignment (*i.e.*, private sale) through Humble Imports, Inc. d/b/a ECD Automotive Design (“**ECD**”).

On May 15, 2024, the Receiver filed a Motion to Sell Vehicle via Consignment through Dimmitt Automotive Group. (Doc. 1126). That motion was granted by the Court on May 22, 2024. (Doc. 1153) Since that time, the Receiver has transported the vehicle to Dimmitt to begin the consignment process. However, Dimmitt required a large inspection fee to diagnose any issues with the vehicle. Given the amount of the inspection fee, the Receiver looked for other options to market and sell the vehicle.

The vehicle, a 1981 Land Rover Defender, was restored and custom built for Barry Rybicki by ECD Automotive Design in Kissimmee, Florida. ECD is well-known for the restoration and sale of these types of vehicles. Given ECD's familiarity with this specific vehicle and its custom design, the Receiver believes that ECD is in the best position to inspect, repair, market and sell the vehicle. The Receiver contacted ECD regarding potentially consigning the vehicle with ECD. Attached as **Exhibit 1** is ECD's Consignment Agreement under which ECD would receive a 10% consignment fee for the sale of the vehicle. If the sale price is above \$150,000, ECD would receive an extra 5% on any amount above \$150,000. Based upon the Receiver's research, this is a reasonable fee for such consignment services.

## ARGUMENT

### **I. THE COURT HAS BROAD POWER OVER THIS RECEIVERSHIP, AND THE SALE OF DEFENDER IS IN THE RECEIVERSHIP ESTATE'S BEST INTEREST.**

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *S.E.C. v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *S.E.C. v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). A court imposing a receivership assumes custody and control of all assets and property of the receivership, and it has broad equitable authority to issue all orders necessary for the proper administration of the receivership estate. *See S.E.C. v. Credit Bancorp Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002); *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980). The Court may enter such orders as may be appropriate and necessary for a receiver to fulfill his duty to preserve and maintain the property and funds within the receivership estate. *See, e.g., Official Comm. Of Unsecured Creditors of Worldcom, Inc. v. S.E.C.*, 467 F.3d 73, 81 (2d Cir. 2006). Any action taken by a district court in the exercise of its discretion is subject to great deference by appellate courts. *See United States v. Branch Coal*, 390 F. 2d 7, 10 (3d Cir. 1969). Such discretion is especially important considering that one of the ultimate purposes of a

receiver's appointment is to provide a method of gathering, preserving, and ultimately liquidating assets to return funds to creditors. *See S.E.C. v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982) (court overseeing equity receivership enjoys "wide discretionary power" related to its "concern for orderly administration") (citations omitted).

Given these principles, the Court should approve the proposed consignment of the Defender because the plan will provide a targeted clientele for this niche vehicle and garner reasonable value for the Receivership Estate. Further, the sale will avoid the accrual of additional, unnecessary carrying costs like insurance and maintenance. Once the Defender is sold, the Receivership will no longer own any vehicles.

## **II. THE RECEIVER SEEKS THE COURT'S WAIVER OF THE REQUIREMENTS OF 28 U.S.C. §§ 2001 AND 2004.**

Personal property sold by a federal court receiver should generally be done in accordance with 28 U.S.C. § 2004 ("**Section 2004**") and, with respect to private sales and consignments (as opposed to auctions), 28 U.S.C. § 2001(b) ("**Section 2001(b)**"). Section 2004 reads, in relevant part, as follows:

Any personalty [like the Defender] 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.**

28 U.S.C. § 2004 (emphasis added). Section 2001(b) reads as follows:

After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court

may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

28 U.S.C. § 2001(b). Section 2001(b) imposes relatively onerous and costly procedures on the Receiver and the Court – *e.g.*, appointing three independent appraisers, publishing the terms of sale in a newspaper of general circulation, and holding a confirmation hearing. Under Section 2004, however, the Court has the discretion to waive strict compliance with Section 2001(b). Specifically, and as excerpted above, Section 2004 provides that personal property “shall be sold in accordance with [S]ection 2001 ... **unless the court orders otherwise.**” 28 U.S.C. § 2004 (emphasis added).

Using the discretion afforded by Section 2004, the Court should “order otherwise” by approving the Receiver’s consignment proposal without requiring him to (1) obtain three independent appraisals of the Defender, (2) publish the terms of the sale in a newspaper of general circulation, or

(3) schedule a confirmation hearing before the Court to approve the sale. First, three independent appraisals are not needed because of the data the Receiver has obtained through the unsuccessful auction process and ECD's expertise in restoration and sale of restored Land Rover vehicles. For example, the reserve auction price for the defender was \$150,000, but no potential purchaser ever bid above that amount. The Receiver and his professionals have had several conversations with interested buyers, however, which have provided insight into the lower and upper ranges of the vehicle's potential market value. Because the Defender is highly customized, the Receiver has set an initial consignment price of \$149,995. Formal appraisals are expensive and time-consuming. Given the previous auction attempts and the safeguards built into the consignment process, the Receiver requests that the Court waive the appraisal provisions of Section 2001(b). The Court has afforded the Receiver similar relief on prior occasions in this Receivership. *See, e.g.,* Doc. 890.

Second, the Court should not require the Receiver to solicit *bona fide* offers and to publish the terms of the sale in a newspaper of general circulation at least 10 days before the confirmation of the sale because this is also wasteful and unnecessary. The Receiver has been advertising the Defender for sale on the Receivership website and/or the auction website for months, if not years. Most people who buy a car from a dealer like ECD expect to drive it off the lot that same day. Buyers will not be willing to wait almost two weeks for the

notice period to expire and for the receiver to file a Notice of Lack of *Bona Fide* Offers with the Court, as he does in connection with certain private sales of real estate that take longer and are much more complicated to close. In the Receiver's extensive experience, no one has ever submitted a *bona fide* offer in response to a published notice.

Third, the Court should not require a hearing to confirm the sale. By granting this motion, the Court should afford the Receiver full authority to close the sale of the Defender pursuant to the Consignment Agreement and any necessary purchase and sale agreement between the buyer and the Receiver. The Receiver has sold several parcels of real property through the private sale process under Section 2001(b) in this Receivership, and the Court has yet to require a hearing. The sale of the Defender does not require a different result.

The waivers requested by the Receiver also routinely occur in other enforcement actions and receiverships, including those in this district. *See F.T.C. et al. v. E.M. Systems & Services, LLC et al.*, Case No. 8:15-cv-1417-T-23EAJ, Order (M.D. Fla. March 4, 2016) (finding good cause to excuse receiver from judicial sale procedures of 28 U.S.C. § 2001); *S.E.C. v. Kirkland*, 2008 WL 4264532, \*2 (M.D. Fla. 2008) (approving sale of personal property without appraisals or publication where costs of compliance would significantly offset sale proceeds); *S.E.C. v. Global Online Direct, Inc.*, Case No. 1:07-CV-0767-

WSD, Order Granting Receiver's Mot. For Order Authorizing the Sale of Certain Property (N.D. Ga. 2009) ("The Court hereby relieves the Receiver from the provisions of 28 U.S.C. §§ 2001-2002."); *S.E.C. v. Billion Coupons, Inc.*, 2009 WL 2143531, \*4 (D. Hawaii 2009) (authorizing receiver to deviate from requirements of 28 U.S.C. § 2001 where proposed plan contained sufficient safeguards for maximizing sales price, as well as efficient process to minimize costs and other expenses).

### **CONCLUSION**

Based on the foregoing, the Receiver respectfully moves the Court for entry of an order authorizing the Receiver to sell the Defender through consignment with ECD Automotive Design.

### **LOCAL RULE 3.01(G) CERTIFICATION**

Counsel for the Receiver has conferred with counsel for the SEC who does not object to the relief sought.

Respectfully submitted,  
**/s/ Katherine C. Donlon**  
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*Attorneys for Receiver Burton W. Wiand*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on August 15, 2024, I electronically filed the foregoing with the Clerk of this Court by using the CM/ECF system which will send notification of electronic filing to all counsel of record.

**/s/ Katherine C. Donlon**

# EXHIBIT 1

**CONSIGNMENT AGREEMENT**

This **CONSIGNMENT AGREEMENT** (the "**Agreement**") is entered into on by and between the following parties:

THE CONSIGNEE: HUMBLE IMPORTS INC d/b/a ECD AUTO DESIGN

Address: 4930 INDUSTRIAL LANE - UNIT 107  
KISSIMMEE, FL 34758

THE CONSIGNOR: Burton W Wiand

Address: 114 Turner Street , Clearwater, FL 33756

WHEREAS, Consignor desires to consign to Consignee, and Consignee desires to accept for consignment, the following motor vehicle (the "**Consigned Vehicle**"):

<b>Year</b>	<b>Make</b>	<b>Model</b>	<b>Vehicle Identification Number</b>	<b>Odometer reading</b>
1986	LAND ROVER	Defender 110	SALLDHAD7BA244596	EXEMPT

In consideration of the mutual agreements, covenants and promises hereinafter contained, the parties hereto agree as follows:

**1. CONSIGNED GOODS TO BE CONSIGNED.**

1.1 Consignor hereby agrees to consign the Consigned Vehicle to Consignee, on an exclusive basis, for marketing, exchange and/or sale by Consignee.

**2. DELIVERY OF CONSIGNED GOODS AND RECORDS**

2.1 Consignor will deliver the Consigned Vehicle to the Consignee at the following delivery location: 4930 INDUSTRIAL LANE - UNIT 107, KISSIMMEE, FL, 34758 (the "**Delivery Location**").

2.2 Consignor represents and warrants to the Consignee that except as set forth in Section 2.3 below: (i) Consignor holds good, valid and marketable title to the Consigned Vehicle, free and clear of all title defects or objections, liens, restrictions, claims, charges, security interests, or other encumbrances of any nature whatsoever, including any mortgages, leases, chattel mortgages, conditional sales contracts, collateral security arrangements and other title or interest retention arrangements, (ii) the Consigned Vehicle is adequate and appropriate for the uses to which it is being put, and is in good operating condition, (iii) there has not been any loss, damage or destruction to, or any interruption in the use of, the Consigned Vehicle, and (iv) the Consigned Vehicle is not currently damaged, and has never sustained damages, in excess of 80% of its retail value.

2.3 Consignor represents and warrants that the following are the sole exceptions to the representations contained in Section 2.2 above with respect to the Consigned Vehicle:

I am not aware of defects, but I am a receiver and have not

inspected the car.

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*(List all liens, defects, damages, etc. to the Consigned Vehicle. Write "NONE" if none.)*

1

4839-3622-8275, v. 1

### 3. CONSIGNMENT FEE

- 3.1 If Consignee sells the Consigned Vehicle during the Term of this Agreement, then Consignee shall pay to the Consignor an amount (the "**Consignment Fee**") equal to the following: (A) **10% of selling price. Receiver will pay an additional 5% on all amounts of sale price above \$150,000.**
- 3.2 Consignee shall have the sole and complete discretion to determine the ultimate sales price of the Consigned Vehicle to a third party purchaser, provided that such amount shall not be less than the Consignment Fee. In the event that Consignee receives an offer from a purchaser to purchase the Consigned Vehicle for an amount that is less than the Consignment Fee, the Consignee shall notify Consignor of such fact, and Consignee and Consignor shall mutually agree upon accepting such offer. **Agreed selling price shall be \$149,995.00.**
- 3.3 TO THE EXTENT THAT THE CONSIGNED VEHICLE IS SUBJECT TO ANY LIENS OR ENCUMBRANCES, THE CONSIGNOR HEREBY REPRESENTS AND WARRANTS TO THE Consignee THAT THE AGGREGATE AMOUNT OF ALL AMOUNTS PAYABLE TO THIRD PARTIES WITH RESPECT TO THE CONSIGNED VEHICLE IS LESS THAN THE CONSIGNMENT FEE.

### 4. TITLE TO CONSIGNED VEHICLE

- 4.1 The Consigned Vehicle and records delivered to the Consignee pursuant to this Agreement shall be held by the Consignee as a Bailee-for-Hire, subject to the terms and conditions hereof, and the Consignor shall at all times retain title to all Consigned Vehicle and records wherever located (unless and until title to any part shall pass from the Consignor to the Consignee as provided in section 4.2).
- 4.2 Title to the Consigned Vehicle (and its related records) will automatically pass from the Consignor to the Consignee, free and clear of all liens and encumbrances, upon the later to occur of (i) notification by Consignee to Consignor that an offer with respect to the Consigned Vehicle has been accepted and that Consignee intends to deliver the Consigned Vehicle to a third party purchaser, and (ii) payment of any and all liens with respect to the Consigned Vehicle. Upon delivery of the aforementioned notice to Consignor, Consignor shall immediately, and no later than three (3) business days after receipt of such notice, deliver to Consignee the title with respect to the Consigned Vehicle, and shall authorize Consignee to pay off any and all outstanding liens or claims with respect to the Consigned Vehicle.

### 5. INDEMNIFICATION

- 5.1 Consignor shall protect, indemnify, and hold harmless Consignee and its successors, assigns, shareholders, subsidiaries, parent companies, affiliates, partners, contractors, directors, officers, servants, agents and employees (collectively, the "**Consignee Indemnitees**"), from any and all liabilities whatsoever which may arise due to any event, act or omission arising out of the purchase, manufacture, ownership, possession, registration, performance, transportation, management, sale, control, inspection, use or operation, design, condition, testing, delivery, leasing, maintenance, repair, service, modification, damage to the Consigned Vehicle, or otherwise in connection with the Consigned Vehicle or relating to loss or destruction of or damage to any property, or death or injury to any person caused by, relating

to or arising from or out of (in each case whether directly or indirectly) any of the foregoing matters and regardless of when the same arises or occurs, or whether it arises out of or is attributable to any act or omission, negligent or otherwise of Consignee or use, condition, possession, ownership, *provided, however*, that Consignor shall not be obligated to indemnify the Consignee Indemnitees for liabilities to the extent that such liabilities are caused by such Consignee Indemnitees' gross negligence or willful misconduct, as determined by a final order of a court of competent jurisdiction.

2

4839-3622-8275, v. 1

5.2 NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL CONSIGNEE BE LIABLE TO THE CONSIGNOR FOR ANY indirect, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS OR EXPECTED SAVINGS OR OTHER ECONOMIC LOSSES, OR FOR INJURY TO PERSONS OR PROPERTY) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, REGARDLESS OF WHETHER CONSIGNEE KNOWS OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING EXCLUSIONS AND LIMITATIONS SHALL APPLY TO ALL CLAIMS AND ACTIONS OF ANY KIND, WHETHER BASED ON CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR ANY OTHER GROUNDS. FURTHER, TO THE MAXIMUM EXTENT PERMITTED AT LAW, CONSIGNEE'S AGGREGATE LIABILITY FOR DAMAGES TO THE CONSIGNOR FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF ACTION (INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT, FRAUD, NEGLIGENCE, PRODUCTS LIABILITY AND STRICT LIABILITY), SHALL BE LIMITED TO THE CONSIGNMENT FEE.

#### **6. DISPOSAL OF NON SALABLE CONSIGNED GOODS.**

6.1 In the event that the Consigned Vehicle remains unsold, cannot be certified or is obsolete, then said Consigned Vehicle shall be inspected by representatives of Consignee and shall, at the option of Consignee (in consultation with the Consignor), either be disposed of by Consignee for its salvage value, scrapped in accordance with industry policies, or be returned to Consignor at Consignor's expense.

#### **7. RETURNED CONSIGNED VEHICLE.**

7.1 In the event that a third party purchaser, for whatever reason, seeks to return the Consigned Vehicle for credit, and Consignee accepts such return, the applicable amount of the Consignment Fee actually paid or credited, as applicable, to the Consignor shall be returned to Consignee by Consignor or, alternatively, debited on Consignor's account, as determined by the Consignee. Consignor shall pay any amounts due hereunder no later than three (3) business days after the date on which Consignee notifies Consignor of acceptance of the return of a Consigned Vehicle.

#### **8. TERM OF THE AGREEMENT.**

8.1 Unless earlier terminated pursuant to Section 8.2, the initial term of this Agreement shall commence on the Effective Date and shall remain in effect for a period of six (6) months from said date.

8.2 Consignee may terminate this Agreement at any time upon ten (10) days prior written notice to the Consignor. The Consignor may terminate this Agreement at any time. Termination of this Agreement pursuant to the terms of this Agreement shall not release any party from any obligation or liability incurred prior to the effective date of such termination. Upon the

termination of this Agreement, the Consignee shall, at Consignor's cost, promptly redeliver the unsold Consigned Vehicle to the Consignor at a location designated by Consignor. Following any expiration or termination of this Agreement, if the Consignee has paid for the cost of repair or detailing with respect to the Consigned Vehicle, then Consignor shall pay to the Consignee, no later than three (3) business days after the effective date of termination of this Agreement, the repair and detailing costs (including any applicable shipping costs).

3

4839-3622-8275, v. 1

**9. AMENDMENT OF AGREEMENT.**

9.1 The provisions of this Agreement may be modified only by a written amendment duly executed by authorized officers of Consignor and Consignee.

**10. BINDING EFFECT; ASSIGNMENT.**

10.1 This Agreement shall insure to the benefit of, and be binding upon, Consignee and Consignor as well as any successors and permitted assigns of the parties hereto. This Agreement may not be assigned in whole or in part by either party without the prior written consent of the other party, provided that Consignee may assign this Agreement to an affiliate or a successor in interest to the Consignee's business.

**11. GOVERNING LAW; VENUE.**

11.1 This Agreement shall be governed by the laws of the State of Florida without regard to Florida's choice of law principles. Venue for all suits arising pursuant to this Agreement shall lie exclusively in the courts of Orange County, Florida. By execution and/or adoption of this Agreement, each party hereby submits to the in personam jurisdiction of all courts of Orange County, Florida.

**12. DELAYS IN PERFORMANCE.**

12.1 Neither party shall be liable for damages when its performance is delayed or prevented by strike, fire, riot, war, rebellion, insurrection, acts of God, failure or shortage of transportation facilities, governmental regulations or other causes beyond its reasonable control; provided, however, that the affected party shall within seven (7) days notify the other party in writing of the cause of such delay or failure. The affected party shall use its best efforts to remove the cause of delay and to make up for lost time.

**13. NOTICE.**

13.1 Notices required by this Agreement shall be in writing and be deemed sufficient if given by certified mail return receipt requested, e-mail, or facsimile and are to be addressed to either party at such other address as such party may designate from time to time in writing.

**14. MISCELLANEOUS.**

14.1 The section headings in this Agreement are for convenience only and form no part of the terms and conditions hereof.

14.2 This Agreement does not create a partnership, joint venture or similar relationship between the parties, and no party shall have the power to obligate or bind the other party with respect to third parties in any manner whatsoever; provided, however, that Consignee shall have the power to sell the Consigned Vehicle in accordance with this Agreement. The parties agree not to

contend to the contrary or attempt to enforce any contrary intentions in any court. In addition, neither party shall represent to third parties that it is a partner of or joint venturer of the other.

14.3 The parties represent that they have negotiated this Agreement and that no agent or other broker has procured or otherwise participated to any extent in such negotiations or is entitled to any compensation therefore.

14.4 Any failure at any time of either party to enforce any provisions of this Agreement shall neither constitute a waiver of such provision nor prejudice the right of the Consignee or the Consignor to enforce such provision at any subsequent time.

14.5 In the event any party brings a suit in regard to this Agreement, the prevailing party shall recover from the non-prevailing party its reasonable expenses, court costs and attorneys' fees. As used herein, expenses, court costs and attorneys' fees include expenses, court costs and attorneys' fees incurred pre-litigation and in any appellate proceeding.

14.6 This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument. A facsimile signature on any counterpart hereto will be deemed an original for all purposes.

14.7 The vehicle will be kept indoors at all times unless being test driven.

14.8 All vehicles in our possession are fully covered under our dealer's insurance.

4

4839-3622-8275, v. 1

**[Signatures]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**"CONSIGNEE"**

HUMBLE IMPORTS INC  
d/b/a ECD AUTO DESIGN

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**"CONSIGNOR"**

Burton W Wiand:



Print Name: Burton W. Wiand

Date: 8-9-2024

6

4839-3622-8275, v. 1