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7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 vs.

14 WESTMOORE MANAGEMENT,
15 LLC; WESTMOORE INVESTMENT,
LP.; WESTMOORE CAPITAL
16 MANAGEMENT, INC.;
WESTMOORE CAPITAL, LLC; and
17 MATTHEW R. JENNINGS,

18 Defendants.
19
20

Case No. 8:10-cv-00849-AG (MLGx)

**NOTICE OF MOTION FOR
ORDER (1) AUTHORIZING
RECEIVER TO SELL REAL
PROPERTY (1620 N. LAKE BLVD.,
TAHOE CITY, CALIFORNIA)
SUBJECT TO LIENS AND OTHER
ENCUMBRANCES, AND
(2) LIFTING INJUNCTION TO
PERMIT CONVEYANCE OF THE
REAL PROPERTY BY MATTHEW
JENNINGS**

Date: August 6, 2012
Time: 10:00 a.m.
Place: Courtroom 10D
411 West Fourth Street
Santa Ana, California

21 **PLEASE TAKE NOTICE** that David A. Gill, the permanent receiver (the
22 “Receiver”) appointed in the above-captioned case, has filed a motion for an order
23 authorizing the Receiver to sell all right, title and interest of Westmoore
24 Management, LLC, and Westmoore Capital, LLC (collectively “Westmoore”), in
25 real property located at 1620 North Lake Boulevard, Tahoe City, California (the
26 “Property”) to Helio Fialho and Therese Fialho, as Trustees of the Fialho Family
27 Trust (the “Buyer”), subject to existing liens and other encumbrances, for \$25,000
28 plus legal fees (up to a cap of \$5,000) and expenses incurred by the Receiver in

1 connection with the transaction. The Receiver is also requesting that, solely with
2 respect to the Property, and for the sole and limited purpose of permitting Matthew
3 Jennings to sell and convey title to the Property to the Buyer, the Court lift its
4 injunction prohibiting Mr. Jennings from transferring real property.

5
6 **Request for an Order Authorizing Sale of the Property to the Buyer**

7 At the time of the Receiver's appointment, Westmoore Capital, LLC ("WM
8 Capital"), as successor to Westmoore Capital, Inc., was the owner of the Property.
9 The Property is encumbered by various liens, the most senior of which is in favor of
10 a lender whose loan is being serviced by Bank of America (for ease of reference, the
11 lender is referred to herein as "BofA").¹ According to BofA, it currently is owed
12 approximately \$3.73 million. According to a July 2011 appraisal, the value of the
13 Property is approximately \$2.15 million. As a result, without even taking junior
14 liens into consideration, Westmoore does not appear to have any equity in the
15 Property.

16 Prior to the Receiver's appointment, real estate brokers sought approval from
17 BofA of a short sale of the Property to the Buyer for \$2 million. BofA has given
18 final approval of a short sale transaction in which Mr. Jennings is identified as the
19 seller, and the Buyer is prepared to close.

20 Subject to Court approval, to accommodate the short sale, the Receiver has
21 agreed to sell all of Westmoore's right, title and interest in the Property, subject to
22 liens and other encumbrances, to the Buyer for \$25,000 plus legal fees (up to a cap of
23 \$5,000) and expenses incurred by the Receiver in connection with the transaction. A
24 copy of the Purchase and Sale Agreement (the "Sale Agreement") is attached as

25 _____
26 ¹ The current beneficiary under the deed of trust is The Bank of New York Mellon
27 FKA The Bank of New York, as Trustee for the Certificateholders of the CWALT,
28 Inc., Alternative Loan Trust 2006-OA9 Mortgage Pass-Through Certificates, Series
OA-9.

1 Exhibit "2" to the Declaration of David A. Gill appended to the motion. The sale is
2 on an "as is" and "where is" basis. Other than his own legal fees over the \$5,000
3 cap, the Receiver will not be responsible for paying any costs associated with the
4 short sale, including but not limited to amounts owed to BofA and other lienholders,
5 commissions due to real estate brokers, and fees owed to the title and escrow
6 companies.

7 The Receiver believes that his proposed sale of the Property is in the best
8 interests of Westmoore and its estate. Under the proposed sale, the Receiver will
9 recover \$25,000, plus at least a partial reimbursement of legal fees and costs. If no
10 sale is approved, the Property likely will be foreclosed and the Receiver likely will
11 receive nothing on account of Westmoore's ownership interest.

12
13 **Request for an Order Lifting Injunction Solely with Respect to the Property**

14 The Property originally was purchased in or about June 2005 by Westmoore
15 Capital, Inc.² On or about November 23, 2005, title was conveyed to Matthew
16 Jennings, who obtained the loan now serviced by BofA. A few weeks later, on
17 December 12, 2005, title was conveyed from Mr. Jennings back to Westmoore
18 Capital, Inc.³ Since then, based on public real estate records, the Property
19 continually has been owned by WM Management or Westmoore Capital, Inc.
20 However, because Mr. Jennings was identified as the borrower under loan, he is
21 identified in the short sale transaction as the seller and BofA may require that the
22 Receiver convey title to Mr. Jennings so Mr. Jennings may, in turn, convey title to
23 the Buyer.

24 _____
25 ² Westmoore Capital, Inc., was subsequently converted to a limited liability
company, and WM Capital is the successor entity.

26 ³ It has been explained to the Receiver that the property was temporarily
27 transferred to Mr. Jennings because he was able to obtain better loan terms than
Westmoore Capital, Inc. Westmoore Capital, Inc.'s books do appear to reflect a
28 receipt of the loan funds on November 29, 2005.

1 The Receiver has therefore required various representations, warranties and
2 terms in the Sale Agreement. Among other things, the Sale Agreement provides that
3 if title is required by BofA to be conveyed to Mr. Jennings to accomplish the short
4 sale, the deed conveying title from Mr. Jennings to the Buyer must be recorded
5 simultaneously with the deed(s) from the Receiver to Mr. Jennings. In addition, the
6 Buyer has represented and warranted that, among other things:

- 7 (a) the Buyer is not affiliated with Mr. Jennings or any person or entity
8 affiliated with Mr. Jennings;
- 9 (b) the Buyer is not acting as an agent for Mr. Jennings or any person or
10 entity affiliated with Mr. Jennings; and
- 11 (c) no cash or other consideration has been or will be paid to Mr. Jennings
12 as a result of or in connection with the Buyer's purchase of the Property.

13 With these representations and warranties, if and only if BofA requires that title be
14 conveyed to Mr. Jennings to effectuate the short sale, the Receiver is comfortable
15 doing so.

16 On August 12, 2011, the Court entered its *Final Judgment as to Defendant*
17 *Matthew R. Jennings*. “[E]xcept as otherwise ordered by this Court,” Article XI of
18 that judgment prohibits Mr. Jennings from, among other things, transferring, selling
19 or otherwise disposing of Mr. Jennings’ real property. To alleviate any concern that
20 Mr. Jennings’ conveyance of the Property to the Buyer will violate the judgment, the
21 Receiver is requesting that the injunction be lifted solely with respect to the Property,
22 and for the sole and limited purpose of permitting Mr. Jennings to sell and convey
23 title to the Property to the Buyer.

24
25 The motion is based on this notice, the motion and its accompanying
26 Memorandum of Points and Authorities, declaration of David A. Gill, and Request
27 for Judicial Notice, the papers and pleadings filed with the Court in this case, and
28

1 such other papers and pleadings as may be properly presented to the Court at or
2 before the hearing on the motion.

3 **PLEASE TAKE FURTHER NOTICE** that a copy of the motion is available
4 for download at the Receiver's website: www.westmoorereceivership.com.

5 **PLEASE TAKE FURTHER NOTICE** that pursuant to an order of the Court,
6 the Receiver is authorized to serve this notice of the motion by posting the notice on
7 the Receiver's website. Service of the notice is deemed complete upon the posting of
8 the notice on the website.

9 **PLEASE TAKE FURTHER NOTICE** that Local Rule 7-9 requires that, not
10 later than twenty-one (21) days before the date designated for the hearing on the
11 motion, any party who opposes the motion file with the Court and serve upon the
12 Receiver such opposing party's opposition to the motion together with all evidence
13 upon which the party intends to rely in opposition to the motion. Failure to timely
14 comply with this requirement may be deemed by the Court to constitute consent to
15 the granting of the motion.


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17 DATED: July 2, 2012

DANNING, GILL, DIAMOND &
KOLLITZ, LLP

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By: 
JOHN N. TEDFORD IV
Attorneys for David A. Gill, Receiver

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PROOF OF SERVICE

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 1900 Avenue of the Stars, 11th Floor, Los Angeles, CA 90067-4402.

On July 2, 2012, I served true copies of the following document(s) described as **NOTICE OF MOTION FOR ORDER (1) AUTHORIZING RECEIVER TO SELL REAL PROPERTY (1620 N. LAKE BLVD., TAHOE CITY, CALIFORNIA) SUBJECT TO LIENS AND OTHER ENCUMBRANCES, AND (2) LIFTING INJUNCTION TO PERMIT CONVEYANCE OF THE REAL PROPERTY BY MATTHEW JENNINGS** on the interested parties in this action as follows:

SEE ATTACHED LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Danning, Gill, Diamond & Kollitz, LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on July 2, 2012, at Los Angeles, California.


CINDY CRIFE

1 Helio and Therese Fialho
2 275 Pleasant Lane
3 Arroyo Grande, CA 93420

4 Payal Cadman, Esq.
5 Reed Smith LLP
6 101 Second St., Suite 1800
7 San Francisco, CA 94105

8 Gordon Properties
9 760 Mattie Road, Suite A1
10 Pismo Beach, CA 93449

11 Maureen O'Keefe
12 Better Homes and Gardens Mason-McDuffie
13 950 N. Lake Blvd.
14 Tahoe City, CA 96145

15 Parties requesting service of notices by mail

16 Eleanor M. Egan Living Trust
17 ATTN: Eleanor Egan, Trustee
18 1893 Parkview Circle
19 Costa Mesa, CA 92627

20 Phyllis Fredericks
21 3718 Oakview Court
22 Fallbrook, CA 92028

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