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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

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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.

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

**NOTICE OF RECEIVER’S
MOTION FOR ORDER
(1) AUTHORIZING RECEIVER TO
SELL LIMITED PARTNERSHIP
INTEREST IN MHS CAPITAL
PARTNERS, L.P., FREE AND
CLEAR OF LIENS AND
ENCUMBRANCES, AND
(2) APPROVING COMPROMISE
WITH THE BANKRUPTCY
ESTATE OF GM FUNDING, LLC**

Date: September 15, 2014
Time: 10:00 a.m.
Place: Courtroom 10D
411 West Fourth Street
Santa Ana, California

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22 **PLEASE TAKE NOTICE** that David A. Gill, the permanent receiver (the
23 “Receiver”) appointed in the above-captioned case, has filed a motion for an order
24 (1) authorizing the Receiver to sell the limited partnership interest owned by
25 Westmoore Investment, L.P. (“Westmoore”) in MHS Capital Partners, L.P., a
26 Delaware Limited Partnership (“MHS”) (the “Partnership Interest”), to MHS for the
27 sum of \$88,390.50 (the “Sale Proceeds”), (2) approving a separate settlement
28 agreement with Jeffrey I. Golden, the Chapter 7 trustee (the “Trustee”) for the estate

1 of GM Funding, LLC (the “GM Estate”), under which the Receiver will pay the
2 Trustee \$10,000 from the Sale Proceeds in full and complete satisfaction of the GM
3 Estate’s alleged first-priority security interest in the Partnership Interest, and
4 (3) providing that the Partnership Interest conveyed to MHS will be free and clear of
5 all liens and encumbrances.

6 The motion is based on the following grounds:
7

8 **RECEIVER’S PROPOSED SALE TO MHS CAPITAL PARTNERS, L.P.**

9 Westmoore holds a limited partnership interest in MHS which appears to
10 constitute approximately 2-3% of MHS’ total partnership interests. Subject to Court
11 approval, the Receiver has agreed to sell the Partnership Interest to MHS for the sum
12 of \$88,390.50. The Sale Price is equal to Westmoore’s initial \$60,000 contribution
13 in MHS, plus \$28,390.50 in appreciation. The specific terms and conditions of the
14 proposed sale are contained in a Transfer Agreement appended to the motion. Based
15 upon documentation provided by MHS, the Receiver believes that the Sale Price is
16 fair, reasonable, and in the best interests of Westmoore’s receivership estate.
17

18 **RECEIVER’S PROPOSED SETTLEMENT WITH THE GM ESTATE**

19 On behalf of the GM Estate, the Trustee has asserted a security interest in the
20 Partnership Interest. The Receiver disputes that the GM Estate has such an interest
21 because, among other things, the Receiver asserts that the language in each of the
22 outstanding promissory notes given by Westmoore and its affiliates in favor of GM
23 Funding do not reasonably identify collateral, as required by California law. Since
24 the records of Westmoore and its affiliates indicate that they collectively owe GM
25 Funding over \$4 million, if the GM Estate does hold an enforceable lien against the
26 Partnership Interest the Partnership Interest has no value to the receivership estate.
27 To avoid the time and expense of litigation, the Receiver and the Trustee agreed to a
28 compromise pursuant to which the Receiver will pay the GM Estate \$10,000 in full

1 satisfaction of the GM Estate’s alleged security interest in the Partnership Interest.
2 The specific terms and conditions of the proposed compromise are contained in an
3 Agreement appended to the motion. Under the circumstances, the Receiver believes
4 that this compromise is a fair and reasonable settlement of the Trustee’s alleged
5 claims and the Receiver’s defenses thereto.

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7 **RECEIVER’S REQUEST THAT THE ORDER PROVIDE THAT THE**
8 **PARTNERSHIP INTEREST WILL BE CONVEYED TO MHS FREE AND**
9 **CLEAR OF ALL LIENS AND ENCUMBRANCES**

10 The Receiver’s Transfer Agreement with MHS (the “Sale Agreement”)
11 provides, in part, as follows:

12 The Order approving this Transfer Agreement shall provide
13 that Transferor’s sale of the Transferred Interest shall be
14 free and clear of all liens and encumbrances, or will
15 otherwise provide that the Transferor’s sale of the
Transferred Interest is not subject to any alleged existing
liens and encumbrances.

16 The Receiver therefore requests that the Court’s order provide that the Partnership
17 Interest sold to MHS is free and clear of any and all liens and encumbrances.

18 Based on the Receiver’s review of filings with the California Secretary of
19 State, GM Funding’s alleged lien, if enforceable, has the highest priority among all
20 alleged liens against the Partnership Interest. The Trustee asserts that GM Funding’s
21 lien was perfected by its filing of a Financing Statement on July 17, 2009. In 2011 –
22 the year after the SEC filed its complaint in this case – GM Funding filed Financing
23 Statements on behalf of nine others with which it was apparently affiliated:

- 24 • James Batti • Mike Donovan • Susan Nichols
- 25 • Steve Batti • Rick Facon • Mary Lou Parker
- 26 • Gloria Davila • James Gillen • SCG Partners I, LLC

27 The Receiver disputes the validity of any security interests alleged by these persons,
28 as well as GM Funding’s alleged security interest. Among other things, Westmoore

1 was not properly identified in any of the Financing Statements, in at least some cases
2 the promissory notes did not properly identify Westmoore's assets as collateral, and
3 in at least some cases there is no evidence that Westmoore executed any documents
4 consenting to the granting of security interests in its assets. Also, since the records of
5 Westmoore and its affiliates indicate that they collectively owe GM Funding over \$4
6 million, if the GM Estate holds an enforceable lien against the Partnership Interest
7 there is no equity to which any alleged junior liens could attach.

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9 The motion is based on this notice, the motion and its accompanying
10 Memorandum of Points and Authorities, Declaration of David A. Gill, and Request
11 for Judicial Notice, the papers and pleadings filed with the Court in this case, and
12 such other papers and pleadings as may be properly presented to the Court in
13 connection with the motion.

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

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

20 **PLEASE TAKE FURTHER NOTICE** that Local Rule 7-9 requires that, not
21 later than twenty-one (21) days before the date designated for the hearing on the
22 motion, any party who opposes the motion file with the Court and serve upon the
23 Receiver such opposing party's opposition to the motion together with all evidence
24 upon which the party intends to rely in opposition to the motion. Failure to timely

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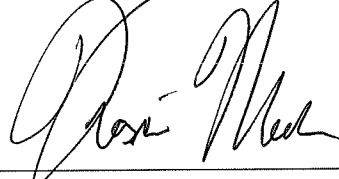
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1 comply with this requirement may be deemed by the Court to constitute consent to
2 the granting of the motion.

3
4 DATED: August 14, 2014

DANNING, GILL, DIAMOND &
KOLLITZ, LLP

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7 By: 

8 KEVIN D. MEEK
9 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 August 14, 2014, I served true copies of the following document(s) described as **NOTICE OF RECEIVER'S MOTION FOR ORDER (1) AUTHORIZING RECEIVER TO SELL LIMITED PARTNERSHIP INTEREST IN MHS CAPITAL PARTNERS, L.P., FREE AND CLEAR OF LIENS AND ENCUMBRANCES, AND (2) APPROVING COMPROMISE WITH THE BANKRUPTCY ESTATE OF GM FUNDING, LLC** on the interested parties in this action as follows:

SEE ATTACHED SERVICE 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 August 14, 2014, at Los Angeles, California.



VIVIAN SERVIN

| <u>SERVICE LIST</u> | |
|--|--|
| Mark Sugarman MHS Capital Partners, L.P. 580 California Street Suite 1701 San Francisco, CA 94104 | Rick Facon 131 Sea Country Lane Rancho Santa Margarita, CA 92688 |
| Counsel for MHS Capital Partners, L.P. John Clendenin, Esq. Cooley, LLP 3175 Hanover Street Palo Alto, CA 94304-1130 | Steve Batti 15400 N.W. Planet Court Banks, OR 97106 |
| Jeffrey I. Golden, Trustee Debtor: GM Funding, LLC 650 Town Center Drive, Suite 950 Costa Mesa, CA 92626 | Gloria Davila 8352 Edmaru Avenue Whittier, CA 90605 |
| Counsel for Jeffrey I. Golden, Trustee Anthony Bisconti, Esq. Bienert Miller & Katzman, LLP 903 Calle Amanacer Ste 350 San Clemente, CA 92673 | |
| GM Funding, LLC 7755 Center Avenue, Suite 1100 Huntington Beach, CA 92647 | |
| SCG Partners I, LLC a Nevada limited liability company P.O. Box 757 Walla Walla, WA 99362 | |
| Susan Nichols 31372 Flying Cloud Drive Laguna Niguel, CA 92677 | |
| James Gillen 1161 Summerview Lane Huntington Beach, CA 92648 | |
| James Batti, M.D. W. 9849 Vansickle Drive Iron Mountain, MI 49801 | |
| Mary Lou Parker 15400 N.W. Planet Court Banks, OR 97106 | |
| Mike Donovan 330 W. Madison Placentia, CA 92870 | |