

1 JOHN N. TEDFORD, IV (State Bar No. 205537)
jtedford@dgd.com
2 DANNING, GILL, DIAMOND & KOLLITZ, LLP
1900 Avenue of the Stars, 11th Floor
3 Los Angeles, California 90067-4402
Telephone: (310) 277-0077
4 Facsimile: (310) 277-5735
5 Attorneys for David A. Gill, Receiver

6
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, et al.,
16
Defendants.

Case No. 8:10-cv-00849-AG

**NOTICE OF MOTION OF DAVID
A. GILL, RECEIVER, FOR
AUTHORITY TO SELL AND
ASSIGN CLAIM AND JUDGMENT
AGAINST MATTHEW JENNINGS,
OR TO ASSIGN SUCH CLAIM
AND JUDGMENT TO THE SEC OR
ITS DESIGNEE**

Date: November 26, 2018
Time: 10:00 a.m.
Place: Courtroom 10D
411 West Fourth Street
Santa Ana, California

17
18
19
20
21 **PLEASE TAKE NOTICE** that on November 26, 2018, at 10:00 a.m., in
22 Courtroom 10D of the United States District Court for the Central District of
23 California, located at 411 West Fourth Street, Santa Ana, California, David A. Gill,
24 the permanent receiver (the “Receiver”) for certain entities generally known as
25 “Westmoore,” will move the Court for an order authorizing the Receiver to sell and
26 assign all of his right, title and interest in and related to a *Settlement and Release*
27 *Agreement* between the Receiver and Matthew R. Jennings (“Jennings”), pursuant to
28 which a stipulated judgment was entered against Jennings on June 19, 2015, in the

1 principal amount of \$5,000,000.00 (together, the “Claim”), in accordance with sale
2 procedures detailed in Exhibit “2” to the Receiver’s motion (the “Sale Procedures”).

3 The motion is based on the following grounds: During this case, the Receiver
4 filed lawsuits against certain of Westmoore’s former employees, investors, and
5 borrowers. On June 19, 2015, pursuant to a settlement between the Receiver and
6 Jennings, the Court entered a judgment against Jennings in the principal amount of
7 \$5 million. Jennings has not made any payments. He also has not complied with the
8 settlement’s reporting requirements. With interest, Jennings currently owes well
9 over \$6 million.

10 The Receiver is in the process of closing this receivership case. Given the
11 allegations made against Jennings by the Receiver and Westmoore’s investors, the
12 Receiver does not believe that it is appropriate for him to simply abandon the claim
13 and judgment upon closure of the case. Instead, the Receiver proposes to sell and
14 assign the Claim in accordance with the Sale Procedures.

15 In the motion, the Receiver is requesting that the Court approve the Sale
16 Procedures. Without limiting the detail in Exhibit “2” to the motion, the following
17 summarizes the Sale Procedures:

18 1. Any party wishing to present an offer for the Claim must do so at an
19 auction to be held at the Receiver’s office on October 26, 2018 (the “Auction”).

20 2. Only “Qualified Bidders” will be permitted to bid at the Auction. To
21 qualify as a Qualified Bidder, a bidder must satisfy the following requirements:

22 a. The bidder must notify the Receiver of his or her intent to bid by
23 no later than 5:00 pm on October 24, 2018.

24 b. At the Auction, the bidder must deliver to the Receiver a cashier’s
25 check in the amount of his or her opening bid (the “Deposit”).

26 c. The bidder must be willing to execute a declaration in the form
27 attached to the Sale Procedures.

28

1 3. Thirty people listed in paragraph 4 of the Sale Procedures, and their
2 relatives and affiliates, will not be permitted to bid.¹

3 4. The minimum bid will be \$5,000.

4 5. In his discretion, the Receiver will determine the increment by which
5 each successive bid must exceed the then-highest bid received.

6 6. At the conclusion of the Auction, the Receiver will identify the
7 person(s) presenting the highest and best bid (the “Successful Bidder”) and, subject
8 to Court approval, the price for which the Claim will be sold (the “Sale Price”). The
9 Successful Bidder will execute the declaration.

10 7. The Receiver will retain the Successful Bidder’s Deposit, which will be
11 applied to the Sale Price. The Deposit will be non-refundable in the event that, for
12 any reason, the Successful Bidder fails to close the sale timely.

13 8. As soon as practicable after the Auction, the Receiver will file a notice
14 with the Court identifying the Successful Bidder and the Sale Price, and advising the
15 Court that, at the hearing, the Receiver will request that the Court authorize him to
16 sell and assign the Claim to the Successful Bidder for the Sale Price.

17 9. By November 19, 2018 (*i.e.*, one week before the hearing), the
18 Successful Bidder must deliver to the Receiver a check for the balance of the Sale
19 Price. If the Successful Bidder fails to do so, the Receiver may request authority to
20 sell and assign the Claim to the second-highest bidder or to assign the Claim to the
21 Securities and Exchange Commission (the “SEC”) or its designee.

22 If no acceptable offer is received from a Qualified Bidder, the Receiver
23 requests authority to assign the Claim to the SEC.

24
25 _____
26 ¹ The thirty people include Jennings, certain of his friends and relatives, certain
27 of Westmoore’s former attorneys, certain of Westmoore’s former employees, certain
28 people who operated investment companies and other entities with which Westmoore
did business, and certain people with whom the Receiver settled during this case.

1 The motion is based on this notice, the motion and its accompanying
2 Memorandum of Points and Authorities and declaration of David A. Gill, the papers
3 and pleadings filed with the Court in this case, and such other papers and pleadings
4 as may be properly presented to the Court at or before the hearing on the motion.

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

7 **PLEASE TAKE FURTHER NOTICE** that pursuant to an order of the Court,
8 the Receiver is authorized to serve this notice of the motion by posting the notice on
9 the Receiver's website. Service of the notice is deemed complete upon the posting of
10 the notice on the website. The Receiver is also serving a copy of this notice by mail
11 on all parties in interest at their last known addresses.

12 **PLEASE TAKE FURTHER NOTICE** that Local Rule 7-9 requires that, not
13 later than 21 days before the date designated for the hearing on the motion, any party
14 who opposes the motion must file with the Court, and serve upon the Receiver, a
15 written opposition together with all evidence upon which the party intends to rely
16 support of its opposition. Failure to timely comply with this requirement may be
17 deemed by the Court to constitute consent to the granting of the motion.

18

19 DATED: October 9, 2018

DANNING, GILL, DIAMOND &
KOLLITZ, LLP

20

21

By: /s/ John N. Tedford, IV
JOHN N. TEDFORD, IV
Attorneys for David A. Gill, Receiver

22

23

24

25

26

27

28

1 **PROOF OF SERVICE**

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

5 On October 9, 2018, I served true copies of the following document(s)
6 described as **NOTICE OF MOTION OF DAVID A. GILL, RECEIVER, FOR
7 AUTHORITY TO SELL AND ASSIGN CLAIM AND JUDGMENT AGAINST
8 MATTHEW JENNINGS, OR TO ASSIGN SUCH CLAIM AND JUDGMENT
9 TO THE SEC OR ITS DESIGNEE** on the interested parties in this action as
10 follows:

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

19 All Parties of Interest at their last known addresses. The service list consists
20 of 841 names and/or addresses. The list is not attached to the document filed with
21 the court to help preserve the privacy of the recipients, and can be provided to the
22 court upon request.

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

28 I declare under penalty of perjury under the laws of the State of California that
the foregoing is true and correct.

Executed on October 9, 2018, at Los Angeles, California.

/s/ Patricia Morris
PATRICIA MORRIS