

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
KEVIN B. MERRILL, et al.,)
)
Defendants.)

Case No.: 1:18-cv-02844-RDB

**RECEIVER GREGORY S. MILLIGAN’S MOTION TO APPROVE
PROCEDURES FOR SALE OF AUTOMOBILES AND FOR ORDER
AUTHORIZING RETENTION, EMPLOYMENT, AND COMPENSATION OF
PRESTIGE MOTOR CAR IMPORTS, LLC AS BROKER**

Receiver Gregory S. Milligan, of the firm Harney Management Partners, LLC (the “Receiver”), with the consent of the Securities and Exchange Commission (the “SEC”) and the Office of the United States Attorney (the “U.S. Attorney’s Office”), respectfully submits this Motion to Approve Procedures for Sale of Automobiles and for Order Authorizing Retention, Employment, and Compensation of Prestige Motor Car Imports, LLC (“Prestige”) as Broker (the “Motion”). The facts and circumstances supporting this Motion are set forth in the Declaration of Brett David (the “David Declaration”), which is attached hereto as **Exhibit A**, and the Declaration of Gregory S. Milligan (the “Milligan Declaration”), which is attached hereto as **Exhibit B**. In further support of this Motion, the Receiver states as follows:

I. BACKGROUND

1. Pursuant to the Receiver’s Initial Preservation Plan, the Receiver has identified several vehicles as property of the Receivership Estate.¹ See Dkt. No. 54 at 21. By this Motion,

¹ Capitalized terms herein shall have the same meaning as used in the First Amended Order Appointing Temporary Receiver (the “Receivership Order”) (Dkt. No. 62) unless otherwise

the Receiver seeks to employ, retain, and compensate Prestige to market and sell the following vehicles and all other vehicles the Receiver may discover during the course of his investigation that are owned by or held in the name of any of the Receivership Parties:

- 2018 Cadillac Escalade, VIN No. 1GYS4DKJOJR194076;
- 2015 Bentley Flying Spur, VIN No. SCBET9ZA7FC042592;
- 2016 Ferrari 488, VIN No. ZFF79ALA3G0217973;
- 2015 Harley-Davidson VRSCDX Night Rod, VIN No. 1HD1HHH18FC805081;
- 2015 BMW S1000R Motorcycle, VIN No. WB10D210XFZ352440;
- 2015 Ferrari 458 Spider Especial, VIN No. ZFF78VHA7F0213197;
- 2018 Land Range Rover, VIN No. SALGS2RE6JA501496;
- 2016 Tesla Model S, VIN No. 5YJSA1E49GF155262;
- 2015 Porsche 918, VIN No. WP0CA2A13FS800561;
- 2016 Mercedes Benz Sprinter 2500, VIN No. WDAPE8CDXGP323201;
- 2018 Cadillac Escalade ESV, VIN No. 1GYS4KKJ4JR384130;
- 2017 Audi R8 5.2 Plus Coupe, VIN No. WUAKBAFX1H7902028;
- 2017 Land Rover Range Rover, VIN No. SALGS5FE7HA341466;
- 2017 Land Rover Range Rover Sport, VIN No. SALWz2FE6HA145282;
- 2017 Rolls Royce Dawn Convertible, VIN No. SCA666D57HU107107;
- 2017 Rolls Royce Wraith Coupe, VIN No. SCA665C58HUX86607;
- 2008 Bugatti Veyron, VIN No. VF9SA25C78M795164;
- 2014 Pagani Huayra, VIN No. ZA9H11RAYYSF76034;
- 2017 Lamborghini Aventador, VIN No. ZHWUT3ZDXHLA05923;
- 2018 Lamborghini Huracan, VIN No. ZHWUS4ZF6JLA10746;
- 2015 Porsche 918 Coupe, VIN No. WP0CA2A13FS800561; and
- 2016 Ford F-150, VIN No. 1FTEW1EG3GFA83463.

(collectively, the “Vehicles”).²

2. None of the above-identified Vehicles is appreciating in value such that holding the Vehicles in storage for any period of time would result in a greater sale price at a later date as opposed to being sold today. *See* Milligan Declaration at ¶ 13. In fact, the cost of regular maintenance alone will hasten the loss in value over time. *See id*; *see also* David Declaration at ¶ 9.

noted.

² As noted in the Receiver’s Initial Preservation Plan, the Receiver is not in physical possession of any of the Vehicles, which are currently in the custody of the United States Government. *See* Dkt. No. 54 at 21-22.

3. The Receivership Order requires the Receiver to “manage, control, operate, and maintain the Receivership Estate and hold in his possession, custody, and control all Receivership Assets pending further Order of this Court.” Dkt. No. 62 at ¶ 8(D).

4. The Receivership Order further requires the Receiver to “take such action as necessary and appropriate for the preservation of Receivership Assets or to prevent the dissipation or concealment of Receivership Assets.” Dkt. No. 62 at ¶ 8(G).

5. The Receivership Order also provides in relevant part that:

[T]he Receiver is authorized to solicit persons and entities (“Retained Personnel”) to assist him in carrying out the duties and responsibilities described in this Order. With the exception of the retention of counsel to represent him in this matter, the Receiver shall not engage any Retained Personnel without first obtaining an Order of the Court authorizing such engagement.

Dkt. No. 62 at ¶ 63.

II. RELIEF REQUESTED

A. Proposed Vehicle Sales Procedures.

6. The Receiver seeks Court authorization to adopt the Vehicle sales procedures (the “Vehicle Sales Procedures”) proposed by this Motion and to sell the Vehicles in accordance with such procedures.

7. Implementation of the Vehicle Sales Procedures will enable the Receiver to sell the Vehicles in an orderly, efficient, and equitable manner and to maximize the proceeds received from such sales without the need for unnecessary administrative expenses and fees. The Receiver believes that adoption of the Vehicle Sales Procedures and the sale of the Vehicles pursuant thereto is in the best interests of the Receivership Estate. *See* Milligan Declaration.

8. The Receiver’s proposed Vehicle Sales Procedures consist of the following.

a. Upon receipt and inspection of the Vehicles, and after consultation with Prestige, the Receiver will establish an initial retail price (“Initial Retail Price”) for each Vehicle.

- b. Prestige will thereafter market the Vehicles for sale to the public in accordance with the terms and conditions set forth in the consignment agreement (the “Consignment Agreement”) attached to the David Declaration as **Exhibit 1**.
- c. Prestige will market the Vehicles on its website, *www.prestigeimports.com*, and the Receiver will post notice of each Vehicle’s sale listing on the website to be created for this case, *www.merrill-ledford.com*, to provide adequate notice to the public of the proposed sales.
- d. Upon receipt of an offer to purchase a Vehicle that the Receiver deems is in the best interest of the Receivership Estate, after consultation with Prestige, the Receiver will file with the Court a notice of the proposed sale. A form notice of the proposed sale (the “Notice”) is attached hereto as **Exhibit C**. The Notice will be served on all Known Parties of Interest. As used in this Motion, the term “Known Parties of Interest” shall mean: (i) all counsel and/or pro se parties of record in this case who have registered to receive electronic service; (ii) all parties of record in this case who have not registered to receive electronic service; and (iii) any individuals or entities who have actually informed the Receiver that they hold a recorded lien on the Vehicle at issue. Any Known Parties of Interest appearing in this case who have registered to receive electronic service shall receive a copy of the Notice through the Court’s CM/ECF filing system. All other Known Parties of Interest shall receive a copy of the Notice through regular U.S. Mail. The Receiver will also post a copy of the Notice on the Receiver’s website for this case, *www.merrill-ledford.com*, to provide notice to the public of the proposed sales. The Notice will act as formal legal notice of the proposed sale and will require all Known Parties of Interest and any other individual or entity with objections to the proposed sale,

or with claims to or against the property to be sold, to timely respond to the notice or be deemed to consent to the sale.

- e. With more than twenty (20) Vehicles that will need to be listed and sold in this case—with the potential for more than twenty separate buyers over varied periods of time—the Receiver seeks approval from the Court to establish the “negative notice” procedure set forth herein for each sale to avoid the unnecessary administrative fees and expenses that would accompany individual sale motions for each of the Vehicles.
- f. Specifically, the Receiver proposes to give all Known Parties of Interest and the public seven (7) days’ notice to review the terms of each proposed sale that will be included in the Notice, which will include the proposed purchase price, buyer’s name, buyer’s relationship to the Receivership Parties (if any), and other relevant purchase information the Receiver deems necessary to fully disclose the terms of each proposed sale. The Notice will be filed with the Court and mailed to all Known Parties of Interest not registered to receive electronic service, as set forth *supra*, on the same day (“Notice Date”).
- g. Each Notice will contain the following language directly below the title of the Notice:

This Notice of Proposed Sale (the “Notice”) seeks approval of the sale of a Vehicle of the Receivership Estate that may adversely affect you. If you oppose the sale of the Vehicle identified in this Notice, or if you have a claim to or against the Vehicle, you should immediately contact the undersigned counsel for Receiver Gregory S. Milligan (the “Receiver”). If you and the Receiver cannot agree, you must file a written objection (or a claim of ownership or interest in the vehicle, identifying the source of your claim) to the proposed sale within 7 days of the date this Notice was filed with the Court. Your objection or claim must state why the proposed sale should not be approved by the Court. If no party files a timely objection or claim, the proposed sale shall be deemed approved by the Court without further Order, thereby authorizing the Receiver to close the sale as soon as practicable.

- h. In the event no objection or claim is filed within seven days of the Notice Date, the Receiver will thereafter be authorized, without further Order of the Court, to consummate the transaction with the proposed buyer under the terms identified in the Notice.
- i. The Receiver would thereafter deposit and retain the proceeds of the sale in the bank account of the Receiver, thereby preserving the value of the Vehicles for the benefit of the Receivership Estate.
- j. In the event an objection or claim is filed within seven days of the Notice Date, such objecting party or party asserting a claim shall state why the proposed sale should not be approved by the Court and whether the objecting party has a proposed buyer who is willing to purchase the Vehicle for an amount that exceeds the proposed sale price in the Notice. To the extent that the objecting party alleges a claim to or against the Vehicle, the objecting party shall describe such claim.
- k. The Receiver's response to an objection or claim shall be filed within seven days of the filing of the objection.
- l. The Court may thereafter determine whether a hearing is necessary to (i) approve the sale, (ii) sustain the objection or claim, or (iii) order a public auction with the proposed buyer and terms under the Notice to act as a "stalking horse" bid, subject to higher and better offers.
- m. If no objection or claim is filed, or if the Court approves the sale subsequent to an objection or claim, the Receiver's sale of the Vehicles shall be free and clear of all liens, claims, and encumbrances, unless the Court orders that such liens, claims, or encumbrances shall attach to the proceeds of such sale.
- n. The Receiver shall, when reporting on the Receivership Estate generally, report on the results of all sales of Vehicles that closed prior to the date of the report.

B. Employment and Retention of Prestige.

9. The Receiver seeks to retain Prestige to represent the Receiver as the exclusive sales agent and broker for the marketing and sale of the Vehicles. The Receiver wishes to employ Prestige in accordance with the terms and conditions set forth in the Consignment Agreement attached to the David Declaration as Exhibit 1.

10. Prestige is a new motor vehicle franchised dealer licensed by the State of Florida for the sale and service of new Pagani, Lamborghini, Karma, and Lotus line make motor vehicles. Prestige has been a new motor vehicle dealer in the State of Florida since 1977. Further, as part of its new motor vehicle dealership operations, Prestige operates substantial used motor vehicle sales operations specializing in exotic and high end, high performance motor vehicles. *See* David Declaration at ¶ 4.

11. As a result of the foregoing Prestige has specialized knowledge and experience in the high-end and performance vehicle market for the types of vehicles the Receiver is seeking approval to sell. Based on that specialized knowledge and experience, Prestige has access to the limited segment of buyers who seek to purchase these high-end and performance vehicles. *See* David Declaration at ¶ 5.

12. The motor vehicles in which Prestige regularly deals, including the Vehicles identified herein, are low volume manufactured vehicles, meticulously fabricated, in many cases by hand, and have sophisticated components which require heightened attention and maintenance to avoid premature failure and resulting costly repair. Prestige, in the ordinary course of business, possesses unique training and qualifications, and holds numerous service and technical certifications for many manufacturers with which Prestige does business for the service, repair and maintenance of both the line makes it represents as a franchised dealer and the Vehicles referenced above. *See* David Declaration at ¶ 7.

13. Moreover, the above-identified Vehicles (particularly the Lamborghinis, Ferraris, Pagani, Bugatti, and Porsche) have a greater likelihood of deteriorating if ongoing maintenance is not being performed by individuals familiar with their care and handling, which will result in a significant decline in their marketable value. The ongoing maintenance is required regardless of whether the Vehicle is being driven or is sitting in a protected storage facility. More particularly, the manufacturer mandates certain service and service intervals to properly maintain the pertinent vehicle. Failure to satisfy service requirements and otherwise maintain adequate service history records can result in rendering the manufacturer's warranty invalid and otherwise negatively impact customer interest and vehicle retail sale value. *See* David Declaration at ¶ 8.

14. The Receiver believes that Prestige's team is qualified to represent the Receiver based on their years of experience and knowledge of the high-end exotic pre-owned vehicle market. *See* Milligan Declaration. Further, the Receiver considered hiring other brokers in the luxury vehicle market, and conducted due diligence in that regard. After such inquiry, the Receiver believes that Prestige's fees are at or below market rates and its experience and services represent a good value for the Receivership Estate. *See* Milligan Declaration. In addition, Prestige has facilitated the return to the Receivership Estate of more than \$775,000 in deposits made by the Defendants for the purchase of other vehicles. *See* Milligan Declaration at ¶ 9.

15. The Receiver has numerous assets to manage, preserve, and potentially liquidate in order to maximize the value of the Receivership Assets, including the Vehicles. Pursuant to the Receivership Order, the Receiver is to take such action as necessary and appropriate for the preservation of all Receivership Assets and, if necessary and upon approval from the Court, to oversee an orderly liquidation to preserve the value of the Receivership Assets. The Receiver requires the knowledge and experience of Prestige in the high-end vehicle market to effectively market and sell the Vehicles. *See* Milligan Declaration at ¶ 10.

16. The Receiver believes that Prestige and its team are qualified to represent the Receiver in the marketing and sale, upon Court Order, of the Vehicles for the benefit of the Receivership Estate. *See* Milligan Declaration at ¶ 11. The professional services that Prestige will render to the Receiver shall include providing advice and assistance in the marketing and sale of the Vehicles as well as delivery and detail services. *See* David Declaration at ¶ 11.

17. The Receiver requests approval of the compensation and reimbursement for services rendered by Prestige without need of further Court approval. In the Receiver's business judgment, the commission and reimbursement of pre-approved costs proposed by Prestige is fair market value and will result in a net benefit to the Receivership Estate and will reduce the administrative cost to the Receivership Estate. If Prestige was required to submit fee applications, the burden of preparing those fee applications would fall on the Receiver's professionals and would increase the financial burden on the Receivership Estate. Accordingly, the Receiver requests final approval of Prestige's compensation and services without need of further Court approval. *See* Milligan Declaration at ¶¶ 15-16.

18. As detailed in the Consignment Agreement attached to the David Declaration as Exhibit 1, upon the sale of any Vehicle, Prestige will be authorized to receive a commission from the sales proceeds (the "Commission") in an amount equal to 5.0% of the purchase price for the Vehicle without the need for further application to or Order from the Court. In addition, Prestige will be authorized to receive the pre-approved costs incurred for transportation, maintenance, repair, and sale from the sales proceeds or, in the event of termination of the Consignment Agreement, from the Receiver. *See* Consignment Agreement.

III. CONCLUSION

WHEREFORE, the Receiver respectfully requests that this Court enter an order: (i) granting this Motion; (ii) approving the proposed Vehicle Sales Procedures; (iii) authorizing the

Receiver to employ Prestige Motor Car Imports, LLC as broker for the Receiver pursuant to the Consignment Agreement; (iv) approving payment of Prestige Motor Car Imports, LLC's costs and fees without need of further Court approval; and (v) granting such other relief as the Court deems just and proper.

Date: March 8, 2019.

Respectfully Submitted,

/s/ Lynn H. Butler

Lynn H. Butler, *pro hac vice*
HUSCH BLACKWELL LLP
111 Congress Ave., Suite 1400
Austin, TX 78701
Tel: (512) 472-5456
Fax: (512) 479-1101
lynn.butler@huschblackwell.com

Brian P. Waagner, Fed. Bar No. 14954
HUSCH BLACKWELL LLP
750 17th Street, NW, Suite 900
Washington, D.C. 20006
Tel: (202) 378-2300
Fax: (202) 378-2318
brian.waagner@huschblackwell.com

Buffey E. Klein, *pro hac vice*
HUSCH BLACKWELL LLP
2001 Ross Avenue, Suite 2000
Dallas, Texas 75201
Tel: (214) 999-6100
Fax: (214) 999-6170
buffey.klein@huschblackwell.com

Counsel for Receiver Gregory S. Milligan

CERTIFICATE OF SERVICE

On March 8, 2019, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court for the District of Maryland, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically through the Court's CM/ECF filing system for all parties who have registered to receive electronic service. Additionally, the foregoing document was served on the following parties not registered for Court's CM/ECF filing system as indicated below:

Defendant Kevin B. Merrill (via U.S. Mail):

Kevin B. Merrill
Harford County Detention Center, #1335278
1030 Rock Spring Rd.
Bel Air, MD 21014

Criminal Counsel for Defendant Kevin B. Merrill (via E-Mail and U.S. Mail):

Elizabeth Genevieve Oyer
Office of the Federal Public Defender
100 S Charles St Ste 900 Tower II
Baltimore, MD 21201
liz_oyer@fd.org

Maggie Grace
Office of the Federal Public Defender
100 S Charles St, Tower II, 9th Floor
Baltimore, MD 21201
maggie_grace@fd.org

Criminal Counsel for Defendant Jay B. Ledford (via E-Mail and U.S. Mail):

Harry J Trainor , Jr
Trainor Billman Bennett and Milko LLP
116 Cathedral St Ste E
Annapolis, MD 21401
htrain@prodigy.net

Criminal Counsel for Defendant Cameron R. Jezierski (via E-Mail and U.S. Mail):

Joseph J Aronica
Duane Morris LLP
505 9th St NW Ste 1000
Washington, DC 20004
jjaronica@duanemorris.com

Criminal Counsel for Relief Defendant Amanda Merrill (via E-Mail and U.S. Mail):

David Z Seide
5301 Burling Terrace
Bethesda, MD 20814
seide.david@gmail.com

Relief Defendant Lalaine Ledford (via U.S. Mail):

Lalaine Ledford
10512 Courtney Cove Ave.
Las Vegas, NV 89144

Counsel for Baltimore County, Maryland (via E-Mail and U.S. Mail):

Susan B. Dubin
Chief Transactional Attorney
Baltimore County Office of Law
400 Washington Avenue
Towson, Maryland 21204
(410) 887-4420
sdubin@baltimorecountymd.gov

Wells Fargo Dealer Services (via U.S. Mail):

Wells Fargo Dealer Services
MAC T9017-026
PO Box 168048
Irving, TX 75016-8048

/s/ Lynn H. Butler

Lynn H. Butler