

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 FOR AUTHORIZATION OF SALE
OF 2018 FORMULA 350 CROSSOVER BOWRIDER PORT CRUISER**

Receiver Gregory S. Milligan, with the consent of the Securities and Exchange Commission (the “SEC”), the Office of the United States Attorney (the “U.S. Attorney’s Office”), and Defendant Kevin B. Merrill (“Merrill”), respectfully files this Motion for Authorization of Sale of 2018 Formula 350 Crossover Bowrider Port Cruiser (the “Sale Motion”). The facts and circumstances supporting this Sale Motion are set forth in the Declaration of Gregory S. Milligan (the “Milligan Declaration”), attached hereto as **Exhibit A**, and the Declaration of Glenn Runyan (the “Runyan Declaration”), attached hereto as **Exhibit B**. In further support of this Sale Motion, the Receiver states as follows:

I. BACKGROUND

1. The Receivership Estate¹ in this case includes a 2018 Formula 350 Crossover Bowrider Port Cruiser, Hull No. TNRD1491C818 (the “Vessel”), which is owned and titled solely in the name of Merrill. *See* Milligan Declaration at ¶ 3.

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 noted.

2. On April 22, 2019, the Receiver filed the Motion for Entry of an Order Authorizing Retention and Employment of Superyacht Sales and Charter LLC as Broker (the “Superyacht Motion”) with Merrill’s Consent. *See* Dkt. No. 132.

3. On April 23, 2019, the Court granted the Superyacht Motion and authorized Superyacht Sales and Charter LLC (“Superyacht”) to market the Vessel for sale. *See* Dkt. No. 134.

4. The Vessel in this case is a 2018 model with an inboard/outboard motor, which is less popular than similar newer models with outboard motors. *See* Runyan Declaration at ¶ 5.

5. The 2020 model of the Formula 350 Crossover Bowrider Port Cruiser—which is two years newer than the Vessel—will sell for approximately \$380,000.00 to \$400,000.00 brand new. *See* Runyan Declaration at ¶ 6.

6. After consulting with Superyacht and reviewing sale listings for similar yachts, the Receiver decided to set the initial list price for the Vessel at \$339,000.00. *See* Milligan Declaration at ¶ 6.

7. Superyacht received multiple offers for the Vessel that were substantially below the initial list price and were not within what it considered to be the range of the fair market value for the Vessel. *See* Runyan Declaration at ¶ 7.

8. After diligently marketing the Vessel, Superyacht received an offer from Cliff Antonell (the “Buyer”) to purchase the Vessel for \$300,000.00 (the “Purchase Price”). *See* Runyan Declaration at ¶ 8. A copy of the Purchase and Sale Agreement for Brokerage Vessel (the “Contract”) is attached as **Exhibit 1** to the Runyan Declaration.

9. The Purchase Price is not contingent on financing or inspections, and the Buyer made a \$30,000.00 deposit on the purchase on June 28, 2019. *See* Runyan Declaration at ¶ 9.

10. Unlike real property, there is no readily available database or source to compare the final sale price of yachts that are a similar make, model, and year as the Vessel. *See* Runyan Declaration at ¶ 10.

11. Rather, to determine comparable sale prices, Superyacht relies upon its industry expertise and applies a reasonable reduction in the percentage of a list price at the time of sale to determine the expected range of a final sale price. *See* Runyan Declaration at ¶ 11.

12. Based on a search of current inventory and recent sales, Superyacht was able to identify one other 2018 Formula 350 Crossover Bowrider Port Cruiser with a pending sale. The comparable vessel had a list price of \$329,900.00 at the time it went under contract. *See* Runyan Declaration at ¶ 12.

13. Based on Superyacht's expertise and experience, Superyacht believes the \$300,000.00 Purchase Price for the Vessel is within the range for comparable recent sales of similar yachts and present market value for the Vessel. *See* Runyan Declaration at ¶¶ 13, 14.

14. The Receiver believes that the sale of the Vessel to the Buyer at this time pursuant to the terms of the Contract is in the best interest of the Receivership Estate to maximize the recovery and preservation of Receivership Assets. *See* Milligan Declaration at ¶ 10.

15. If approved by the Court, the proposed 10% commission of \$30,000.00 (the "Commission") would be paid to Superyacht out of the Purchase Price at closing. *See* Milligan Declaration at ¶ 11.

II. RELIEF REQUESTED

16. The Receiver seeks Court authorization to sell the Vessel to the Buyer for the Purchase Price and pursuant to the other terms and conditions described in this Sale Motion. Pursuant to the Order Granting Receiver Gregory S. Milligan's Motion for Entry of an Order Authorizing Retention and Employment of Superyacht Sales and Charter LLC as Broker (Dkt.

No. 134), the Receiver also seeks Court authorization to pay the Commission out of the Purchase Price.

17. The Purchase Price is within the range of comparable sales and Superyacht's opinion of present market value for the Vessel. *See* Runyan Declaration at ¶ 14.

18. The Receiver believes a private sale of the Vessel will yield a higher sale price than a public auction. *See* Milligan Declaration at ¶ 12.

19. In the Receiver's business judgment, the Commission proposed by Superyacht is fair market value for such services, will result in a net benefit to the Receivership Estate, and will reduce the administrative cost to the Receivership Estate. If Superyacht was required to submit a fee application, the burden of preparing the fee application would fall on the Receiver's professionals and would increase the burden on the Receivership Estate. Accordingly, the Receiver is requesting final approval for payment of Superyacht's Commission out of the Purchase Price at closing without need of further Court approval. *See* Milligan Declaration at ¶ 13.

20. As noted above, the SEC, U.S. Attorney's Office, and Merrill consent to the sale of the Vessel pursuant to the terms of the Contract. The sale of the Vessel is not subject to a 30-day objection period like the Real Property.

III. CONCLUSION

WHEREFORE, the Receiver respectfully requests that this Court enter an Order: (i) granting this Sale Motion; (ii) authorizing the Receiver to sell the Vessel to the Buyer free and clear of liens, claims, and encumbrances (with such liens, claims, and encumbrances, if any, to attach to the sales proceeds) for the Purchase Price and pursuant to the other terms disclosed in this Sale Motion; (iii) authorizing Superyacht to receive the Commission at closing from the Purchase Price; and (iv) granting such other relief as the Court deems just and proper.

Date: July 9, 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 July 9, 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):

Addy R. Schmitt
Miller & Chevalier Chartered
900 16th St NW
Washington, DC 20006
aschmitt@milchev.com

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

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

Baltimore County Office of Law (via E-Mail and U.S. Mail):

Susan B. Dubin
Baltimore County Office of Law
400 Washington Avenue
Towson, Maryland 21204
sdubin@baltimorecountymd.gov

Dundalk United Methodist Church (U.S. Mail):

Dundalk United Methodist Church
c/o Edward F. Mathus
6903 Mornington Road
Baltimore, Maryland 21222

Lienholders, Tax Assessors, and Other Interested Parties (U.S. Mail):

Florida Community Bank, N.A.
2325 Vanderbilt Beach Road
Naples, Florida 34109

Mortgage Electronic Registration Systems, Inc.
PO Box 2026
Flint, Michigan 48501-2026

Collier County, Florida Tax Assessor
3291 Tamiami Trail East
Naples, Florida 34112

Maryland Department of Assessments & Taxation
301 W. Preston Street
Baltimore, Maryland 21201-2395

Branch Banking and Trust Company,
A North Carolina Banking Corporation
PO Box 1290
Whiteville, North Carolina 28472

Talbot County, Maryland Finance Office
Talbot County Courthouse
11 North Washington Street, Suite 9
Easton, Maryland 21601

HSBC Bank USA, National Association, as trustee of
J.P. Morgan Alternative Loan Trust 2006-A5
c/o Howard n. Bierman, Trustee
c/o Select Portfolio Servicing, Inc.
3815 Southwest Temple
Salt Lake City, Utah 84115

Clark County, Nevada Tax Assessor
500 S. Grand Central Parkway
Las Vegas, Nevada 89155

First Financial Bank, N.A. Southlake
3205 E. Hwy. 114
PO Box 92840
Southlake, Texas 76092

Hunter Kelsey of Texas, LLC
4131 Spicewood Springs Road, Bldg. J-1A
Austin, Texas 78759

Frost Bank, f/k/a The Frost National Bank
c/o Michael J. Quilling
Quilling, Selander Lownds, Winslett & Moser, P.C.
2001 Bryan Street, Suite 1800
Dallas, Texas 75201

The City of Colleyville, Texas
c/o Victoria W. Thomas
Nichols, Jackson, Dilard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

Tarrant County, Texas Tax Assessor
100 E. Weatherford
Fort Worth, Texas 76196

J Trust
c/o Hillary RE. Badrow, Trustee
2801 Paramount Boulevard
Amarillo, Texas 79109

Dallas Central Appraisal District
2949 N. Stemmons Freeway
Dallas, Texas 75247-6195

Bozeman West
PO Box 1970
15632 West Main Street
Bozeman, Montana 59771-1970

Neil A. Patel
5308 Burgandy Court
Colleyville, Texas 76034

TIB – The Independent BankersBank
350 Phelps Court, Suite 200
PO Box 560528i
Dallas, Texas 75356-0528

Wachovia Mortgage, FSB
PO Box 659548
San Antonio, Texas 78265-9548

Denton County Tax Assessor
1505 E. McKinney Street
Denton, Texas 76209-4525

Potter County, Texas Tax Assessor
900 South Polk, Suite 106
Amarillo, Texas 79101

Wells Fargo Home Mortgage
P.O. Box 10335
Des Moines, IA 50306

Albertelli Law
Attn: Coury M. Jacobs
2201 W. Royal Lane, Suite 155
Irving, TX 75063

Samual I. White, P.C.
5040 Corporate Woods Drive, Suite 120
Virginia Beach, VA 23462

/s/ Lynn H. Butler

Lynn H. Butler

EXHIBIT A

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

**DECLARATION OF GREGORY S. MILLIGAN IN SUPPORT OF
RECEIVER GREGORY S. MILLIGAN'S MOTION FOR AUTHORIZATION OF SALE
OF 2018 FORMULA 350 CROSSOVER BOWRIDER PORT CRUISER**

Gregory S. Milligan declares, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, that the following is true and correct:

1. My name is Gregory S. Milligan and I am of sound mind and capable of making this Declaration. I have personal knowledge of the facts stated herein and they are true and correct.
2. I am the Court-appointed Receiver in the civil action styled *Securities and Exchange Commission v. Kevin B. Merrill, et al.*, Case No.: 1:18-cv-02844-RDB pending in the United States District Court for the District of Maryland.
3. The Receivership Estate¹ in this case includes a 2018 Formula 350 Crossover Bowrider Port Cruiser, Hull No. TNRD1491C818 (the "Vessel"), which is owned and titled solely in the name of Defendant Kevin B. Merrill ("Merrill").
4. On April 22, 2019, I filed the Motion for Entry of an Order Authorizing Retention and Employment of Superyacht Sales and Charter LLC as Broker (the "Superyacht Motion") with Merrill's Consent. *See* Dkt. No. 132.
5. On April 23, 2019, the Court granted the Superyacht Motion and authorized Superyacht Sales and Charter LLC ("Superyacht") to market the Vessel for sale. *See* Dkt. No. 134.
6. After consulting with Superyacht and reviewing sale listings for similar yachts, I decided to set the initial list price for the Vessel at \$339,000.00.

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 noted.

7. Superyacht received multiple offers for the Vessel that were substantially below the initial list price and were not within range of the fair market value for the Vessel.
8. After diligently marketing the Vessel, Superyacht received an offer from Cliff Antonell (the "Buyer") to purchase the Vessel for \$300,000.00 (the "Purchase Price"). A copy of the Purchase and Sale Agreement for Brokerage Vessel (the "Contract") is attached as Exhibit 1 to the Declaration of Glenn Runyan.
9. The Purchase Price is not contingent on financing or inspections, and the Buyer made a \$30,000.00 deposit on the purchase on June 28, 2019.
10. I believe that the sale of the Vessel to the Buyer at this time pursuant to the terms of the Contract is in the best interest of the Receivership Estate to maximize the recovery and preservation of Receivership Assets.
11. If approved by the Court, the proposed 10% commission of \$30,000.00 (the "Commission") would be paid to Superyacht out of the Purchase Price at closing.
12. I believe a private sale of the Vessel will yield a higher sale price than a public auction.
13. In my business judgment, the Commission proposed by Superyacht is fair market value for such services and will result in a net benefit to the Receivership Estate and will reduce the administrative cost to the Receivership Estate. If Superyacht was required to submit a fee application, the burden of preparing the fee application would fall on my professionals and would increase the burden on the Receivership Estate. Accordingly, I am requesting final approval for payment of Superyacht's Commission out of the Purchase Price at closing without need of further Court approval

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 9, 2019.



GREGORY S. MILLIGAN

EXHIBIT B

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

**DECLARATION OF GLENN RUNYAN IN SUPPORT OF
RECEIVER GREGORY S. MILLIGAN’S MOTION FOR AUTHORIZATION OF SALE
OF 2018 FORMULA 350 CROSSOVER BOWRIDER PORT CRUISER**

I, Glenn Runyan, declare pursuant to 28 U.S.C. § 1746 and under penalty of perjury as follows:

1. My name is Glenn Runyan and I am of sound mind and capable of making this Declaration. I have personal knowledge of the facts stated herein and they are true and correct.
2. I am a yacht broker with Superyacht Sales and Charter LLC (“Superyacht”) and maintain an office at 1515 SW 20th Street, Fort Lauderdale, Florida 33315.
3. I make this declaration in support of the Motion for Authorization of Sale of 2018 Formula 350 Crossover Bowrider Port Cruiser (the “Sale Motion”), filed by Receiver Gregory S. Milligan, of the firm Harney Management Partners, LLC (the “Receiver”), for authority to sell the 2018 Formula 350 Crossover Bowrider Port Cruiser, Hull No. TNRD1491C818 (the “Vessel”).¹
4. I have been a yacht broker for more than three years and am familiar with the marketing and sale of yachts similar to the Vessel.
5. The Vessel is a 2018 model with an inboard/outboard motor, which in my opinion is less popular than similar newer models with outboard motors.
6. The 2020 model of the Formula 350 Crossover Bowrider Port Cruiser—which is two


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 noted.

years newer than the Vessel—will sell for approximately \$380,000.00 to \$400,000.00 brand new depending on the options taken.

7. I received multiple offers for the Vessel that were substantially below the initial list price and were not within range of the fair market value for the Vessel.
8. After diligently marketing the Vessel, I received an offer from Cliff Antonell (the "Buyer") to purchase the Vessel for \$300,000.00 (the "Purchase Price"). A copy of the Purchase and Sale Agreement for Brokerage Vessel (the "Contract") is attached as **Exhibit 1**.
9. The Purchase Price is not contingent on financing or inspections, and the Buyer made a \$30,000.00 deposit on the purchase on June 28, 2019.
10. Unlike real property, there is no readily available and reliable database or source to compare the final sale price of pre-owned yachts that are a similar make, model, and year as the Vessel.
11. Rather, to determine comparable sale prices, I rely upon my industry expertise and apply a reasonable reduction in the percentage of a list price at the time of sale to determine the expected range of a final sale price.
12. Based on a search of current inventory and recent sales, I was able to identify one other 2018 Formula 350 Crossover Bowrider Port Cruiser with a pending sale. The comparable sale had a list price of \$329,900.00 at the time it went under contract.
13. Based on my expertise and experience, I believe the \$300,000.00 Purchase Price for the Vessel is within the range for comparable recent sales of similar yachts.
14. The Purchase Price is within the range of comparable sales and Superyacht's opinion of present market value for the Vessel.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on July 5, 2019,



GLENN RUNYAN

EXHIBIT 1

**PURCHASE AND SALE AGREEMENT
FOR BROKERAGE VESSEL**



BUYER: Cliff Antonell	SELLER: Gregory S. Milligan, Receiver
Address: 1 Wildflower Lane, Wayland, MA 01778	Address: P.O. Box 90099, Austin, TX 78709
Nationality: American	Nationality: American
VESSEL NAME: FORMULA 350	MANUFACTURER: Formula
Model: 350 Crossover Bowrider	Length Overall: 35'
Year: 2018	<input type="checkbox"/> Doc or <input type="checkbox"/> Reg No.: 130928040 Flag: USA
Hull No.: TNRD1491C818	Engine Description: Twin Mercury Mercruiser
Selling Broker: Glenn Runyan - Supervacht Sales and Charter	Listing Broker: Glenn Runyan - Supervacht Sales and Charter
IMPORTANT DATES	PURCHASE PRICE
Offer Date: June 25, 2019	Purchase Price: USD \$300,000.00
Offer Expiration Date: June 28, 2019	Less Deposit: USD \$30,000.00
Accept/Reject Date: June 26, 2019	Less Trade Allowance (see Addendum): N/A
Closing Date: On or before August 9, 2019	Balance: USD \$270,000.00

Delivery Location: Fort Lauderdale, FL

NOTE: If Vessel is to be moved to the Delivery Location, such location must be specified with precision. The mere listing of a port or city is insufficient.

ADDITIONAL REGISTERED VESSELS INCLUDED Yes No

1. **Agreement.** Buyer agrees to purchase, and Seller agrees to sell, all right, title and interest to and in the Vessel described above on the terms and conditions set forth in this Purchase and Sale Agreement ("PSA"). Capitalized terms used in this PSA refer to the corresponding terms in the table above unless otherwise defined herein. The "Effective Date" of this PSA is the date on which it has been signed by both parties. "Vessel" also includes all gear, machinery, equipment, furniture, fuel, consumables, and all registered or unregistered tenders, toys, articles and appurtenances on board the Vessel and/or included on the Vessel's listing specification as of the date of this Agreement, except for items listed on the Exclusions List provided by the Seller or Listing Broker on the earlier of (a) five days from the Effective Date or (b) the Accept/Reject Date, which items are not included in the sale. Buyer will be deemed to have accepted the Exclusion List if it accepts the Vessel. Listing Broker and Selling Broker shall be referred to herein as the "Brokers." If there is a Trade Allowance, the conditions of the trade-in will be governed by the attached Trade-In Vessel Addendum. If either party fails to sign this PSA and deliver it to the other party on or before the Offer Expiration Date, this PSA will be ineffective.

2. **Deposit.** Within _____ business days (3 business days if left blank) following Seller's signature of this PSA, Buyer shall pay the Deposit to the Selling Broker's account, as acknowledged below, as a deposit toward the Purchase Price to be held subject to the terms of this PSA. Seller may refuse to permit Buyer to proceed with the trial run, survey and other inspections of the Vessel until the Deposit has cleared into the Selling Broker's escrow account.

3. **Survey Option; Acceptance of Vessel; Conditions of Survey.** Buyer's obligation to purchase the Vessel is subject to Buyer's satisfaction, in Buyer's sole discretion, with a trial run and survey of the Vessel though Buyer may elect not to have the Vessel inspected. If inspected: (a) Buyer will select the surveyor, (b) the surveyor, and not the Brokers, will be the sole party responsible for any errors or omissions with respect to the survey, notwithstanding that the Brokers may have provided information to and assisted Buyer with hiring the surveyor, (c) **Seller shall make the Vessel available and Buyer shall complete the trial run and survey as soon as practicable**, (d) Seller shall pay all running expenses for, and assume the risks associated with, the trial run, and Buyer shall pay **all** costs of the survey, including associated costs, e.g., haul-out, dry dock, and subcontractors' charges, (e) Buyer and its surveyor will be solely responsible for determining the scope of the survey and the trial run to assess the Vessel's conformity with Buyer's requirements and (f) Buyer shall deliver written notice of rejection or acceptance of the Vessel to Seller or the Listing Broker on or before the Accept/Reject Date. **Whether or not Buyer has inspected the Vessel, Buyer will be deemed to have rejected the Vessel if it fails to give timely written notice of its acceptance. Upon Buyer's acceptance of the Vessel, Seller will not make any use of the Vessel pending Closing (defined in Paragraph 4) except to move the Vessel to the Delivery Location.** If Buyer

Buyer's Initials:

^{DS}
CA

Seller's Initials: _____

rejects or is deemed to reject the Vessel, after all expenses incurred on Buyer's behalf have been paid, (i) the Selling Broker shall return the Deposit to Buyer, (ii) this PSA will terminate, and (iii) the parties and the Brokers will be released from any further liability hereunder. The Brokers will not be responsible for the cost to correct any defects or deficiencies noted during the trial run and survey.

4. **Closing.** The transfer of Vessel's ownership ("Closing") will occur on the Closing Date at the Delivery Location simultaneously with payment of all funds due from the Buyer and delivery of originals of all other documents necessary for transfer of good and marketable title to Buyer. If the Vessel must move to the Delivery Location, Seller should not deliver Vessel to the Closing Location unless funds have been paid in full or are being held subject to an escrow conditioned only upon delivery of the Vessel to the Delivery Location and release of title documents to the Buyer. Closing may be facilitated by overnight courier or electronic means. Seller shall deliver the Vessel (as defined in Paragraph 1) to Buyer at the Delivery Location except for fuel consumed during the trial run and any voyage to the Delivery Location. On or before the Closing Date, Seller must deliver to the Selling Broker all documents necessary to transfer title to the Vessel (and all other items hereby required to be delivered) to Buyer. At Closing, Buyer shall pay the Balance to Seller (subject to Paragraph 6) and/or to the Selling Broker for onward transfer to Seller by wire transfer. Any funds Seller owes to (i) the Brokers for the commission, storage, insurance, repairs and/or other items or (ii) the holder of any other Encumbrance, will be deducted from the amount due Seller by the Selling Broker prior to disbursement of funds to Seller, which hereby irrevocably instructs any Deposit holder to pay the Commission from the Deposit to the Brokers pursuant to the terms hereof.

5. **Brokers.** The parties acknowledge that the Selling Broker and Listing Broker are the only brokers that procured this PSA. If the Listing Broker and the Selling Broker are the same brokerage, the parties consent to that Broker acting as a dual-agent in this transaction, i.e., representing both Buyer and Seller, and the Broker may disclose to both parties facts known to the Broker materially affecting the Vessel's value or desirability; provided, however, that in such instance the Broker shall not, without Seller's consent, disclose to Buyer that Seller is willing to sell the Vessel for an amount less than the asking price or, without Buyer's consent, disclose to Seller that Buyer is willing to pay a price greater than the offering price. If the Listing Broker and the Selling Broker are different, the Listing Broker will represent Seller only and owe no duties, fiduciary or otherwise, to Buyer, and the Selling Broker will represent Buyer only and owe no duties, fiduciary or otherwise, to Seller (though paid by Seller). The Brokers are obligated to perform only the duties expressly set forth herein and no implied duties or obligations may be read into this PSA. Seller shall be solely responsible for payment of commission due to the Brokers in connection with the sale of the Vessel as set forth herein. Each party represents and warrants to the other that he has not employed or dealt with any other broker, agent or finder in carrying out the negotiations relating to the sale of the Vessel to Buyer and acknowledges that the Brokers are third-party beneficiaries to this PSA.

6. **Seller's Representations; Requirements for Closing.** Seller represents and warrants that it will transfer to Buyer good and marketable title to the Vessel, free and clear of all debts, claims, maritime or common law liens, security interests, encumbrances, excise taxes, and any other applicable taxes, customs' duties, or tariffs due to any state, country, regulatory and/or taxing authority of any kind whatsoever (collectively, "Encumbrances"). No less than two (2) business days before Closing, Seller shall deliver to Buyer (a) satisfactory evidence of title, (b) proof of payment or removal of all Encumbrances, (c) a guaranty and indemnification from Seller guaranteeing Seller's representations and warranties in this Paragraph 6, (d) if Seller is a legal entity, a personal guaranty and indemnification from Seller's beneficial owner(s) guaranteeing Seller's representations and warranties in this Paragraph 6, and (e) copies of any other documents necessary for transfer of good and marketable title to Buyer. Seller shall pay any cost associated with, and shall cooperate fully to obtain, any authorization for sale required from any governing authority. Any party which is a legal entity will provide to the other prior to Closing (i) proof that it is in good standing under the laws of the State or other jurisdiction under which the entity has been formed, (ii) a consent action or resolution demonstrating the entity's duly authorized decision to purchase or sell the Vessel as well as the authority of the individual delivering or accepting the Vessel and/or executing this PSA and/or purchase and sales documents, (iii) a power of attorney demonstrating the authority of the individual delivering or accepting the Vessel and (iv) as to Seller, its wire transfer information.

7. **Risk of Loss; Force Majeure.** Seller will bear the risk of loss of or damage to the Vessel prior to Closing. If the Vessel is damaged subsequent to Buyer's acceptance and the necessary repairs will cost less than five percent (5%) of the Purchase Price and require fewer than 30 days to complete, then (a) Seller must repair the damage prior to Closing in accordance with sound marine practices to the standard of the Vessel immediately prior to the damage and Buyer may inspect such repair, (b) Buyer must pay the Balance and take delivery of the Vessel as repaired, and (c) the Closing Date will be extended by the length of the repair period. If the Vessel is damaged to a greater extent subsequent to Buyer's acceptance, either party may terminate this PSA with the same consequences as if Buyer had rejected the Vessel. Either party's obligation to perform will be suspended to the extent required to accommodate unforeseeable events beyond that party's reasonable control ("Force Majeure Events"), including, without limitation, acts of God, acts of terrorism, strikes, lockouts, riots, acts of war, fire, communication line failures, computer viruses, power failures, accidents, tropical storms, hurricanes, earthquakes, or other natural disasters. If a Force Majeure Event occurs, the time periods referred to in this PSA, including, without limitation, the Closing Date, will be deemed extended by the time necessary to permit the affected party to perform in accordance with this PSA; provided, however, if the Force Majeure Event delays the Closing Date for a period of at more than 30 days, either party may terminate this PSA with the same consequences as if Buyer had rejected the Vessel.

8. **Default.** *Notwithstanding anything herein to the contrary, if the Deposit is not paid when due* or Closing is not consummated due to Buyer's non-performance, including, without limitation, failure to pay the Balance or execute all documents necessary for completion of the

Buyer's Initials: 

Seller's Initials: _____

purchase by the Closing Date: (i) the Deposit shall be retained by (or if the Deposit was not paid, Buyer shall pay a like amount to) Seller and the Brokers as liquidated and agreed damages, as consideration for the execution of this PSA, in full settlement of all claims between the parties, (ii) the Selling Broker shall return to Buyer any other funds received from Buyer, and (iii) the parties will be relieved of all obligations under this PSA. Buyer and Seller agree that the Deposit will be applied first to payment of any unpaid costs or expenses that Buyer or Broker incurred against the Vessel and then divided fifty percent (50%) to the Seller and fifty percent (50%) to the Brokers, which the Brokers shall divide in the same proportions as the commission would have been divided had a sale been consummated. If the Closing is not consummated due to Seller's non-performance, the Deposit, and any other money paid or deposited by Buyer, pursuant to this PSA will be returned to Buyer upon demand ~~or Buyer will have the right of specific performance. Seller agrees that specific performance is reasonable in light of the uniqueness of the Vessel, difficulty of proof of loss, and the inconvenience or impossibility of otherwise obtaining an adequate remedy. On Seller's default, Seller shall forthwith pay the Brokers the same commission otherwise payable had the transaction closed.~~

9. **Sales and Use Taxes.** Sales or use taxes payable on Buyer's purchase of the Vessel, if applicable, are Buyer's responsibility, and Buyer shall pay the taxes due to the Selling Broker at Closing. Buyer hereby indemnifies and holds harmless Seller and the Brokers against and from any sales or use taxes for which Buyer is responsible.

10. **REPRESENTATIONS AND WARRANTIES.** SELLER AND THE BROKERS BELIEVE THAT ANY INFORMATION ANY OF THEM HAS PROVIDED ON THE VESSEL IS GOOD AND CORRECT AND OFFER THE INFORMATION IN GOOD FAITH, BUT DO NOT AND CANNOT GUARANTEE THE ACCURACY OF SUCH INFORMATION. BUYER WARRANTS AND REPRESENTS, AS OF THE TIME OF CLOSING, THAT IT (A) WILL HAVE FULLY INSPECTED AND MADE A TRIAL RUN OF THE VESSEL (OR HAVE VOLUNTARILY WAIVED THESE RIGHTS) AND (B) IS NOT RELYING ON ANY ADVERTISEMENTS, PROMISES, DESCRIPTIONS, AFFIRMATIONS, OR REPRESENTATIONS (WHETHER ORAL OR WRITTEN, PRIOR TO OR CONTEMPORANEOUS WITH THIS PSA) PROVIDED BY THE SELLER OR BROKERS. UPON CLOSING, BUYER WILL BE DEEMED TO HAVE ACCEPTED THE VESSEL IN ITS "AS IS" CONDITION. SELLER AND THE BROKERS HAVE GIVEN NO WARRANTY, EITHER EXPRESSED OR IMPLIED, AND MAKE NO REPRESENTATION AS TO THE CONDITION OF THE VESSEL, ITS FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY, **ALL OF WHICH ARE DISCLAIMED.**

11. **Financing.** Buyer's obligations are not contingent upon Buyer's obtaining financing. Buyer represents that it will arrange financing, if necessary. Buyer and Seller acknowledge that the Brokers have made no representations or warranties with respect to Buyer's ability to obtain financing, Buyer's qualifications to obtain any type of mortgage on the Vessel, or Buyer's ability to document or register the Vessel in any jurisdiction.

12. **Counterparts.** The parties may sign this PSA in any number of identical counterparts, each of which will be deemed an original (including signatures evidenced via facsimile, email or other electronic means) as if the signatures were upon the same instrument.

13. **Binding Effect; Contemporaneous Contracts; Future Sales.** This PSA is binding on all parties, their heirs, personal representatives and/or assigns. Seller shall not sell the Vessel or enter into any contract for the sale of the Vessel while this PSA is in effect. If a sale is not consummated in accordance with the terms of this PSA, and Buyer and Seller enter into a contract between themselves for the sale of the Vessel, whether directly or through an entity under a party's ownership or control, within two years after this PSA is terminated, Seller agrees to pay the Brokers an amount identical to the commission the Brokers would have received had the transaction contemplated under this PSA closed.

14. **Escrowed Funds.** The parties acknowledge that (a) the Selling Broker will not be responsible for the Deposit until the funds have cleared into the Selling Broker's account, (b) the Selling Broker shall hold the Deposit in escrow once the funds have cleared and any other funds received by either Broker from any party will be held in trust for that party, (c) the Selling Broker may retain the commission due the Brokers prior to disbursement of the Deposit or Balance to Seller, and (d) in any dispute involving any funds held by the Brokers, Buyer and Seller will indemnify the Brokers for legal fees and costs relating in any way to the dispute, including those incurred in any appeals (which obligation is secured by a lien on the escrowed funds) and those relating to a claim for a commission, except as to a Broker found, in a final non-appealable judgment, to have engaged in willful misconduct or acted with gross negligence.

15. **Additional Terms.** _____

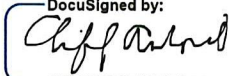
16. **Miscellaneous.** This PSA, including its exhibits and schedules, is the **entire agreement** between the parties pertaining to the subject matter hereof and **supersedes** all prior and contemporaneous negotiations, agreements, representations, warranties, and understandings pertaining thereto, be they in writing, oral, or otherwise. If a Broker becomes a party to any litigation involving this PSA, the Broker shall be reimbursed for their costs and attorney's fees, at all pretrial, trial and appellate levels, by the party or parties found to have breached this PSA. In the event of any dispute between the parties hereto arising out of the subject matter of this PSA, the prevailing party (including the Brokers) shall be entitled to recover reasonable expenses, attorney's fees and costs for all pretrial, trial and appellate proceedings. If any term, condition, or provision of this PSA is held to be unenforceable for any reason, it shall be interpreted to achieve the intent of the parties to this PSA to the extent possible rather than avoided. In any event, all other terms, conditions and provisions of this PSA shall be deemed valid and enforceable. There are no other duties, obligations, liabilities, or warranties, implied or otherwise, except as set forth herein. This PSA may not be amended or modified, except in writing, signed by Buyer and Seller. Notice and delivery given by or to the attorney or Broker representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by personal delivery, overnight courier, facsimile, email, or other electronic means, and shall be effective upon delivery with proof of delivery retained. Buyer may assign this PSA to

Buyer's Initials: 

Seller's Initials: _____

any member(s) of Buyer's immediate family or any entity owned or controlled by Buyer and/or any member(s) of his immediate family. Otherwise, neither party may assign this PSA without the other party's consent, which consent shall not be unreasonably withheld. No claim or right arising out of this PSA can be waived or discharged by one party, in whole or in part, unless in writing, nor shall any waiver be applicable except in the specific instance for which it is given. Paragraph headings are informational and included only for convenience.

~~17. Governing Law and Dispute Resolution. Check (a), (b) or (c). If none checked, (a) will apply. Any dispute involving this Agreement will be resolved: (a) in the courts located in the State of _____ (Florida, if left blank), (b) by binding arbitration in the State of _____ (Florida, if left blank), (c) by binding arbitration in London, England. If (a) or (b) is selected: (i) this Agreement will be governed by and interpreted according to the law of the State of _____ (Florida, if left blank) regardless of its principles of conflicts of laws and (ii) the proceedings will be conducted in the county of the main office of the Selling Broker, or if the Selling Broker has no office in Florida, in _____ (Fort Lauderdale, Florida, if no other city indicated). If (b) is selected, the Commercial Arbitration Rules of the American Arbitration Association ("AAA") in force when the arbitration is commenced will apply unless the following rules apply: _____. If the amount in controversy including counterclaims is not more than US\$1,000,000.00, the parties shall jointly select a single arbitrator from the list of arbitrators maintained by the International Yacht Broker Association ("IYBA") within twenty (20) days of the giving of notice of arbitration. If the parties are unable to agree upon the arbitrator, the IYBA shall have the power to make the appointment of the single arbitrator. If the amount in controversy is greater, the parties shall each appoint one arbitrator and the two arbitrators will jointly appoint a third arbitrator. If they cannot agree on the third arbitrator within 14 days, either party may request that the IYBA appoint the third arbitrator from the list of arbitrators maintained by the IYBA. The decision of the single arbitrator, or if a three arbitrator panel, any two of them will be final and binding on the parties. An action may be brought in a court of competent jurisdiction to enforce any arbitral award or compel arbitration. If (c) is selected: (i) this Agreement will be governed by and interpreted in accordance with English law regardless of its principles of conflicts of laws, (ii) the parties irrevocably agree that a dispute arising out of or in connection with this Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Paragraph, (iii) the arbitration shall be conducted in accordance with the rules of London Maritime Arbitrators Association ("LMAA") current when the arbitration is commenced, (iv) if the amount in dispute (including counterclaims) is less than USD\$100,000, its Small Claim Procedure will apply, while if greater than or equal to USD\$100,000 and less than USD\$400,000, its Intermediate Claims Procedure will apply. Whatever option is selected, the parties irrevocably submit to the exclusive jurisdiction of such court or arbitral forum, waive an objection they now or hereafter may have to venue or convenience of forum, agree that all claims relating to the proceeding will be decided only in such court or arbitral forum and, further, not to bring any claim relating to this Agreement in any other court or arbitral forum. The parties, having had the opportunity to seek legal counsel, waive trial by jury for claims arising under this Agreement, whether against each other or any Broker.~~

DocuSigned by:
BUYER: 
Print: Cliff Antonelli
Title: _____
Date: 6/26/2019

SELLER:

Print: _____
Title: _____
Date: _____

SELLING BROKER DEPOSIT CONFIRMATION (Subject to clearance of funds)

Print: _____
Title: _____

Amount: _____
Date: _____

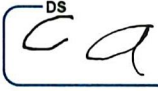
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Buyer's Initials: 
62ECD75FA8084E4...

Seller's Initials: _____

ADDENDUM TO PURCHASE AND SALE AGREEMENT FOR BROKERAGE VESSEL

1. **Agreement.** (additional terms to Section 1) Buyer and Seller agree that this PSA is subject to the approval of the United States District Court for the District of Maryland (the “Court”) in the case styled *Securities and Exchange Commission v. Kevin B. Merrill, et al.*, Cause No. 1:18-cv-02844-RDB (the “SEC Action”), and that the Closing will not occur unless and until it is authorized by the Court in the SEC Action.

17. **Governing Law and Dispute Resolution.** (replaces original Section 17) This PSA shall be governed by and construed and enforced in accordance with the laws of the State of Florida without regard to its conflict-of-law principles. Buyer and Seller, and any broker for such parties, agree that any disputes, claims and controversies between them arising out of or in any way related to this PSA, including without limitation contract, tort and indemnity disputes, resolved by the Court in the SEC Action.

Buyer's Initials: 
Date: 6/26/2019

Seller's Initials: _____
Date: _____

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

**ORDER GRANTING RECEIVER GREGORY S. MILLIGAN’S
MOTION FOR AUTHORIZATION OF SALE OF
2018 FORMULA 350 CROSSOVER BOWRIDER PORT CRUISER**

This matter is before the Court on the Motion for Authorization of Sale of 2018 Formula 350 Crossover Bowrider Port Cruiser (the “Sale Motion”) (Dkt. No. 152), filed by Receiver Gregory S. Milligan (the “Receiver”), the Court-appointed Receiver in the above-captioned case. The Court, having considered the Sale Motion and evidence submitted in support thereof, responses or objections, if any, the arguments of counsel, and the pleadings on file, finds that the Sale Motion should be, and hereby is, GRANTED.

It is therefore ORDERED that:

1. The Sale Motion is GRANTED in its entirety.
2. The Receiver is authorized to sell the 2018 Formula 350 Crossover Bowrider Port Cruiser, Hull No. TNRD1491C818 (the “Vessel”) to Cliff Antonell (the “Buyer”) for \$300,000.00 (the “Purchase Price”) pursuant to the Purchase and Sale Agreement for Brokerage Vessel attached to the Runyan Declaration as Exhibit 1.

3. Superyacht Sales and Charter LLC (“Superyacht”) is authorized to receive a 10% commission of \$30,000.00 to be paid to Superyacht out of the Purchase Price at closing without need of further application or Court approval.

IT IS SO ORDERED, this _____ day of _____, 2019.

HON. RICHARD D. BENNETT
UNITED STATES DISTRICT JUDGE