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10 *Attorneys for Receiver*
Geoff Winkler of American Fiduciary Services

11
12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA

14 SECURITIES AND EXCHANGE
COMMISSION,

15 Plaintiff,

16 v.

17 PROFIT CONNECT WEALTH
18 SERVICES, INC., JOY I. KOVAR, and
19 BRENT CARSON KOVAR,

20 Defendants.

Case No. 2:21-cv-01298-JAD-BNW

**MOTION FOR ORDER IN AID OF
RECEIVERSHIP TO APPROVE (1)
RETENTION OF AUCTIONEER TO
AUCTION PERSONAL PROPERTY, (2)
AUTHORITY TO SELL VEHICLE, AND
(3) DISPOSITION OF PERSONAL
PROPERTY WITH A VALUE OF \$1,000
OR LESS; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF GEOFF WINKLER
IN SUPPORT THEREOF**

[Hearing requested¹

21
22
23
24 In accordance with Local Rule 66-6 and this Court’s August 6, 2021, order (ECF
25 No. 26) (the “Receiver Order”) appointing Geoff Winkler of American Fiduciary

26
27 ¹ The Receiver requests the hearing be set at either the same time as the hearing for
28 the Receiver’s status report or sooner, and in any event, no later than November 19,
2021, so that the Receiver may schedule the auction prior to the December holidays
in order to maximize returns to the investors

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1 Services, LLC, as the permanent receiver of Profit Connect Wealth Services, Inc., and
2 any subsidiaries and affiliates (together, “Profit Connect”), the Receiver moves this
3 Court for an order authorizing him to retain James G. Murphy Co., Inc. as his
4 auctioneer (the “Auctioneer”) to liquidate Profit Connect's personal property. In
5 addition, the Receiver seeks authority (1) to sell a truck that he recovered from an
6 employee by either selling it to a dealer for fair market value or by including it in the
7 auction, and (2) to exclude from the auction and to sell any item of personal property
8 with a value of \$1,000 or less in the exercise of his business judgment and without
9 the necessity of a further Court order. The Receiver is informed that the Securities
10 & Exchange Commission has no objection to the relief sought in this Application.

11 This Motion is based on the below memorandum of points and authorities, the
12 declaration of Geoff Winkler (Ex. 1), a copy of the Auctioneer Engagement Agreement
13 and the proposal that accompanied it (Ex. 2), all papers on file, and any argument the
14 Court may call and consider.

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 The Receiver Order vested the Receiver with control over all of Profit Connect’s
17 assets and charged him with monetizing the assets so that disbursements can be
18 made to creditors.

19 **I. RELEVANT BACKGROUND AND PROCEDURAL HISTORY**

20 The Securities and Exchange Commission initiated this action against Profit
21 Connect, Joy Kovar, and Brent Kovar on July 8, 2021, by the sealed, ex parte filing
22 of a complaint and motion for temporary restraining order seeking, among other
23 things, the freezing of defendants’ assets and the appointment of a receiver over Profit
24 Connect. The Court granted the ex parte temporary restraining order, in part, by
25 allowing the asset freeze to proceed but set the motion for a hearing in order to
26 provide defendants an opportunity to be heard on the temporary receivership request.

27 On July 23, 2021, defendants stipulated to modify the temporary restraining
28 order to appoint the Temporary Receiver. On August 6, 2021, following another

1 stipulation of the parties, the Court converted the temporary restraining order to a
2 preliminary injunction and appointed the Receiver as the permanent receiver of
3 Profit Connect.

4 The Receiver has conducted an inventory of all of the personal property owned
5 by Profit Connect at its various locations and obtained proposals for disposition of
6 this property. These assets include new in-box, lightly-used, used, and heavily-used
7 items. Some inventory categories include apparel, electronics, computer products,
8 furniture, media, office supplies, hand tools, industrial tools, pool and plumbing
9 supplies, equipment, and large machinery such as a Forklift and a Scissor
10 lift. Included in this inventory are dozens and dozens of graphics cards,
11 motherboards, CPUs, RAM, solid state and traditional hard drives, complete gaming
12 computers and other similar equipment. There are nearly 100 new and used
13 televisions ranging in size from 43” to 100”. Additional technology includes cameras,
14 camera accessories and equipment, servers, server racks, networking technology, and
15 hundreds of peripherals. Furniture includes items for office and warehouse such as
16 desks, chairs, safes, pallet racks, cabinets, shelving, workbenches, and tool chests.
17 Much of the computer equipment is newer model, and the Receiver believes that
18 liquidating these items now, before they become outdated, will help increase the value
19 realized by the receivership estate. This personal property is currently being stored
20 in a warehouse on Speedway Boulevard that is leased. Once the personal property is
21 liquidated, the Receiver intends to surrender possession of the premises to the
22 landlord, which will reduce the administrative costs of the receivership estate.

23 Based on the Receiver's experience and the type of personal property at issue
24 here, he believes that an on-line auction is the most efficient method for liquidating
25 personal property and the method that generates the best results. The Receiver
26 obtained a couple of proposals from different auctioneers and has selected James G.
27 Murphy, Inc., which he has used before with excellent results. Attached as Exhibit 2
28 is a copy of the Auctioneer Engagement Agreement and the proposal that

1 accompanied it. The Receiver anticipates that the auction will occur the first week
2 in December 2021. The cost to the receivership estate will be the costs associated
3 with conducting lien searches, advertising, marketing, and labor. The 13% buyer's
4 premium will be paid by the successful bidders. The Auctioneer estimates the
5 advertising costs at approximately \$11,750.00 and the labor costs at \$9,300.00. The
6 auction is conservatively expected to generate approximately \$900,000.

7 There are a few items of personal property that the Receiver is requesting
8 authority to exclude from the auction and to sell for fair market value. These items
9 consist of cell phones and laptops utilized by former non-insider employees that these
10 employees have requested to purchase from the receivership estate. These items
11 have a fair market value of less than \$1,000 and will likely generate more for the
12 estate by being sold in this manner than by being included in the auction.

13 In addition, the Receiver has recovered a truck that was being driven by a
14 former employee and purchased by Profit Connect. It is a 2021 Ram 1500 Quad Cab
15 Big Horn that was purchased by Profit Connect from Chapmans Las Vegas (the
16 "Truck"). Title was held in the employee's name but has been signed over to Profit
17 Connect. Given the current used car market and the fact that the Truck is a newer
18 model, the Receiver believes that the highest recovery may result from simply selling
19 the Truck to a car dealer for its fair market value. In the unlikely event that a dealer
20 does not want to purchase the Truck from the Receiver, then the Receiver seeks
21 authority to elect to include it in the auction instead.

22 With respect to notice of this Motion, the Receiver is still compiling a list of
23 investors and creditors. This effort has been hampered by Profit Connect's books and
24 records, because it appears that most communications were done by email, not by
25 mail, so many mailing addresses are missing. Because of this issue and to save costs,
26 the Receiver is posting this Motion on the website that he established for the
27 receivership to provide information to investors. The website can be located at:
28 <https://profitconnect-receivership.com/>. In addition, the Receiver is emailing this

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1 Motion to all email addresses that he has for investors. The Receiver will be seeking
2 authority to serve most notices in this case in this manner in the status report that
3 will be filed October 29, 2021.

4 **II. LEGAL AUTHORITY**

5 “The power of a district court to impose a receivership ... derives from the
6 inherent power of a court of equity to fashion effective relief.”² “The primary purpose
7 of equity receiverships is to promote orderly and efficient administration of the
8 Receivership Estate by the district court for the benefit of creditors.”³ “[T]he practice
9 in administering an estate by a receiver ... must accord with the historical practice
10 in federal courts or with a local rule.”⁴

11 As the Ninth Circuit explained:

12 A district court’s power to supervise an equity receivership
13 and to determine the appropriate action to be taken in the
14 administration of the receivership is extremely broad. The
15 district court has broad powers and wide discretion to
16 determine the appropriate relief in an equity receivership.
The basis for this broad deference to the district court's
supervisory role in equity receiverships arises out of the
fact that most receiverships involve multiple parties and
complex transactions.⁵

17 With respect to the sale of personal property, 28 U.S.C. section 2004 requires
18 that any personal property sold by a receiver be sold in a manner consistent with 28
19 U.S.C. section 2001. This section requires that a sale be accomplished either (1)
20 through a public sale with notice published once a week for four weeks prior to the
21 sale in at least one newspaper of general circulation in the county where the

22 _____
23 ² *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980).

24 ³ *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986.)

25 ⁴ Fed. R. Civ. P. 66.

26 ⁵ *SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005) (citations
27 omitted); *see also CFTC v. Topworth Int’l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999)
28 (“This court affords ‘broad deference’ to the court’s supervisory role, and ‘we generally
uphold reasonable procedures instituted by the district court that serve th[e] purpose
of orderly and efficient administration of the receivership for the benefit of
creditors.”).

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1 property is situated, or (2) through a private sale if, prior to the sale, the court has
2 appointed three independent parties to appraise the property and the sale price is
3 at least two-thirds of the appraised value, with additional limitations not relevant
4 here.⁶

5 The sale of the personal property by auction comports with these provisions,
6 as the sale will be a public sale via an online auction with four weeks of advertising
7 prior to the actual auction. A sale in this manner will ensure that the highest and
8 best price is received for each item and enable the Receiver to efficiently liquidate
9 the personal property for the benefit of the receivership estate. Disposition of this
10 property will, in turn, enable the Receiver to return possession of the warehouse to
11 the landlord and reduce administrative costs of the receivership estate. The
12 alternative would be cumbersome and require appraisals of the personal property
13 and then require the Receiver to locate buyers and to seek approval for the sales.
14 The auction is far more efficient and expected to generate the greatest return.

15 Enabling the Receiver to exclude certain items with a value of less than
16 \$1,000 from the auction in order to sell them to non-insider employees already in
17 possession of them will also enable the estate to generate more from these assets
18 than the auction would generate, because the non-insider employees willing to buy
19 them will be willing to pay more than they would be expected to generate at
20 auction, where they would likely be purchased for the resale market. This only
21 pertains to a small number of cell phones and computer equipment.

22 Similarly, permitting the Receiver to elect to sell the Truck to a car dealer for
23 fair market value is likely to result in recovery of the highest and best value for the
24 Truck, particularly in today's economy with supply chain issues affecting the
25 availability and price of cars.

26
27
28 ⁶ See 28 U.S.C. §§ 2001, 2002.

EXHIBIT "1"

DECLARATION OF GEOFF WINKLER

I, Geoff Winkler, declare as follows:

1. I am over 21 years old and am a founding member and the chief executive officer of American Fiduciary Services LLC, which is based on Portland, Oregon.

2. I am competent to testify to the matters presented in this declaration, and I submit this declaration in support of my motion for an order approving the retention of an auctioneer to auction personal property and to dispose of personal property with a value of \$1,000 or less (the "Motion"). This declaration is based on my personal knowledge, except where made on information and belief, and as to those matters, I believe them to be true.

3. By order entered on July 23, 2021, I was appointed as the temporary receiver over Profit Connect Wealth Services, Inc., and its affiliates and subsidiaries ("Profit Connect"). On August 6, 2021, upon order of the Court following stipulation of the parties, I was appointed as the permanent receiver.

4. My team and I have conducted an inventory of all of the personal property that is owned by Profit Connect that was located in the warehouse, retail space, the Pasadena location, and the North Las Vegas home. These assets include new in-box, lightly-used, used, and heavily-used items. Some inventory categories include apparel, electronics, computer products, furniture, media, office supplies, hand tools, industrial tools, pool and plumbing supplies, equipment, and large machinery such as a Forklift and a Scissor lift. Included in this inventory are dozens and dozens of graphics cards, motherboards, CPUs, RAM, solid state and traditional hard drives, complete gaming computers and other similar equipment. There are nearly 100 new and used televisions ranging in size from 43" to 100". Additional technology includes cameras, camera accessories and equipment, servers, server racks, networking technology, and hundreds of peripherals. Furniture includes items for office and warehouse such as desks, chairs, safes, pallet racks, cabinets, shelving,

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1 workbenches, and tool chests. Much of the computer equipment is newer model, and
2 I believe that liquidating these items now, before they become outdated, will help
3 increase the value realized by the receivership estate.

4 5. Based on my experience as a receiver and given the type of personal
5 property at issue here, I believe that an on-line auction is the most efficient method
6 for liquidating personal property and the method that generates the best results. I
7 obtained a couple of proposals from different auctioneers and have selected James G.
8 Murphy, Inc., which I have used before with excellent results. Attached as Exhibit 2
9 is a true and correct copy of the Auctioneer Engagement Agreement and the proposal
10 that accompanied it. We anticipate that the auction will occur the first week in
11 December 2021. The cost to the receivership estate will be the costs associated with
12 conducting lien searches, advertising, marketing, and labor as the 13% buyer's
13 premium will be paid by the successful bidders. The Auctioneer estimates the
14 advertising costs at approximately \$11,750.00 and the labor costs at \$9,300.00. The
15 auction is conservatively expected to generate approximately \$900,000.

16 6. Although I intend to sell nearly all of the personal property through the
17 auction, I am seeking authority to exclude certain items with a value of \$1,000 or less
18 from the auction and to sell them to non-insiders for fair market value in the exercise
19 of his business judgment and without the necessity of a further Court order. I seek
20 this authority because a handful of former non-insider employees have asked to
21 purchase their phones or computers from Profit Connect for fair market value and I
22 believe believes that disposing of these items in this manner will yield more for them
23 than they would through auction.

24 7. Based on a review of Profit Connect's books and records, I determined
25 that Profit Connect paid for the Truck that was being driven by a former employee
26 and held in her name. I was able to have her sign title to the Truck over to Profit
27 Connect and am in possession of the Truck. Given the current economy and the
28 supply chain shortages that have impacted the availability and price of vehicles, I

1 believe that selling the Truck to a car dealer for fair market value is likely to generate
2 the highest and best price for this asset.

3 8. As of the date of this declaration, I am still compiling a list of all
4 investors from Profit Connect's books and records. The books and records are missing
5 many of the investors' mailing addresses, as it appears that Profit Connect
6 communicated primarily via email. I have email addresses for most investors.
7 Because of the cost of service by mail on all investors and creditors and because I
8 have established a website for the receivership estate to communicate with investors
9 and creditors, I believe that service of the Motion by email and by posting on the
10 website more than satisfies the requirement that investors and creditors be given
11 notice of this Motion, which is a routine motion. The website is located at
12 <https://profitconnect-receivership.com/>. I will be seeking this relief more broadly in
13 the status report that I expect to file on October 29, 2021.

14 I declare under penalty of perjury that the foregoing is true and
15 correct. Executed on November 1, 2021.

16 /s/ Geoff Winkler

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EXHIBIT "2"



James G. Murphy Co.

Commercial & Industrial Auctioneers

October 13, 2021

Geoff Winkler, JD, MBA, CFE, CIRA
American Fiduciary Services LLC
715 NW Hoyt Street, #4364
Portland, OR 97208

Dear Geoff,

Thank you for the opportunity to submit a proposal to conduct an online only auction of Profit Connect located in Las Vegas, Nevada.

For over four decades, we have specialized in commercial, industrial and real estate auctions, including items such as yours. Last year alone we conducted over 110 auctions with a value of over forty six million dollars in twelve different states. I am also pleased to note that more than 95% of our clients return to us.

The following are just a few examples of high profile auctions the James G. Murphy Company has conducted in the past:

BN Genius, SEC vs Znetix, SEC vs Wesley Rhodes, SEC vs Global Online Direct, Pacific Fruit, Paula Baker/Bogle Gates, Boston Market, Schaffer Collection for US Marshals, Starbucks, Michael Mastro Bankruptcy, Ride the Ducks, Department of Revenue Unclaimed Safe Deposit Boxes, Geek Chic, Planetary Resources, Golazo Energy, Omak Wood Products and 13 Coins.

In addition, the following are a few statistics included for your review:

- 97,000 known auction buyers registered in our database.
- 37,829 individuals have signed up for and receive our weekly eblasts.
- In the last year alone murphyauction.com has had 1,089,309 sessions from 195 different countries and from every state in the United States.
- In the last year we have received web sessions from 523,513 new users.
- Our average users visits seven pages on our website each time they visit.
- Our average duration time for each user on our website is 3:52.
- Our annual spend on marketing surpasses \$600,000 and includes printed mailings, printed ads in publications, digital advertising and social media.

The online auction opening and closing dates are still to be determined. We will conduct a single day preview of all the items. We believe the auction will gross the following amount:

<u>Conservative</u>	<u>Optimistic</u>
\$901,100	\$1,151,900

Geoff Winkler
October 13, 2021
Page 2 of 2

Auction Fee

The James G. Murphy Company will charge zero commission plus advertising and labor expenses (see attached advertising & labor budgets). In addition, the James G. Murphy Company will charge and retain a 13% buyers premium from the buyers ONLY.

Advertising

The James G. Murphy Company goes to great lengths to thoroughly promote our auctions well in advance of the sale. Our award winning advertising department develops a custom advertising program for each auction. The specific media mix used for each auction is determined by the target buyers. Once an auction agreement is in place your items will be posted on our highly trafficked website murphyauction.com. Our website is designed to handle large quantities of photos and descriptions. This allows our bidders from around the world to have a voice in each auction we conduct.

Set-Up/Preview/Cashiering/Removal

The James G. Murphy Company will provide two weeks for a supervisor for auction set-up to clean, organize and lot; one week for a supervisor for preview and removal; and twenty hours for cashiering. We will require Profit Connect to furnish two laborers to assist our supervisor with the auction set-up and removal.

Accounting

The James G. Murphy Company will collect all monies and provide a complete accounting of the sale together with a check for the full amount owing within twenty one days after the auction closes.

I have attached a contract and a full company brochure for your review. Once again, thank you for your interest and consideration. If you have any questions, you may reach me at (425) 486-1246 or by email at colin@murphyauction.com.

Sincerely,



Colin Murphy
Vice President

CM/knr
Attachments

**PROFIT CONNECT
PROPOSED ADVERTISING/LABOR
BUDGETS FOR ONLINE ONLY AUCTION**

ADVERTISING

Brochure Printing (3,000 Brochures/4-Page)	\$1,700.00
Photography/Compilation	200.00
Mailing List	350.00
Mailing Labor/Compilation	200.00
Postage (2,800 @ .50)	1,400.00
Media Advertising	6,000.00*
Internet	400.00
Online Bidding Tool	1,000.00
Sign	300.00
Catalog	200.00
TOTAL ADVERTISING:	\$11,750.00

Internet

The James G. Murphy Company has an established award winning site on the internet which receives in excess of 1,500,000 hits per year. Photos of the equipment and descriptions will be available instantaneously worldwide.

* Reviewjournal.com, Las Vegas Sun, Dirt Venture Magazine, Machinetools.com, Machinio, Autotrader.com, Industrial Market Place, Social Media & Local Publications.

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LABOR

Set-Up/Preview/Cashiering/Removal

Labor for supervisor and cashier	<u>\$9,300.00</u>
TOTAL LABOR:	\$9,300.00*

* The above labor budget takes into consideration Profit Connect furnishing two laborers to assist our supervisor with the auction set-up and removal.

Geoff Winkler
CONTACT

855-880-0100
PHONE

James G. Murphy Inc.
Commercial/Industrial/Real Estate Auctioneers
Appraisals/Liquidations
P.O. Box 82160 - 18226 - 68th Ave. N.E.
Kenmore, Washington 98028
(425) 486-1246

AUCTIONEER ENGAGEMENT AGREEMENT

THIS AUCTIONEER ENGAGEMENT AGREEMENT ("Agreement") made and entered into on October 19, 2021 between the JAMES G. MURPHY CO., INC., of Kenmore, Washington, ("Auctioneer"), and Geoff Winkler, in his sole capacity as the receiver of Profit Connect Wealth Services, Inc. and any of its subsidiaries and affiliates - 715 NW Hoyt Street, #4364, Portland, OR 97208 ("Seller").

1. Engagement of Auctioneer; Acceptance of Engagement; Discretion of Auctioneer as to Conduct of Sale: No Reserve or Guaranteed Prices. Seller hereby engages the Auctioneer to sell at public auction the goods generally described as: items from Profit Connect Wealth Services, Inc., and any of its subsidiaries and affiliates (itemized description of which shall be set forth on a schedule of property to be sold, which schedule shall be prepared by Auctioneer in due course). The Auctioneer accepts such engagement and agrees to sell the goods at auction in accordance with this Agreement. All aspects of the auction, including preparation, advertising, determination of lots, conduct of the sale including all terms of sale, determination of qualification of bidders, and completion of all matters relating to the auction, shall be solely within the discretion and control of the Auctioneer. Auctioneer shall have the right to take all appropriate actions, in its discretion, to prepare the goods for auction, including, without limitation, testing, cleaning, improving, reconditioning, moving and combining or dividing lots; and any expenses incurred in such efforts shall be reimbursed to Auctioneer in accordance with paragraph 3 hereof. Seller understands that there are no minimum or reserve prices on goods sold pursuant to this Agreement, and further, that Auctioneer will not guarantee any selling price.

2. Sale Location. The sale is to be held at: Online Only Auction (murphyauction.com) – 6955 Speedway Blvd, T101 & T102, Las Vegas, NV 89115 ("Sale Premises"). Seller agrees to furnish the Sale Premises (including necessities related thereto, such as power, water, ordinary conveniences, and reasonable access) to Auctioneer rent-free for such period as is necessary to prepare, conduct and complete the auction.

3. Auctioneer's Compensation and Reimbursement for Expenses; Means of Payment.

(a) The **BUYER** shall pay to the Auctioneer as compensation for services to be rendered herein, **13% BUYERS PREMIUM**.

(b) In addition, the Seller agrees to reimburse the Auctioneer for all expenses incurred by the Auctioneer incident and necessary to prepare, to conduct, and to finalize the auction sale, including by way of example, and not by way of limitation, expenses of: advertising, labor, cataloging; checkout; transport; and UCC research and compliance expenditures, and collection costs, and attorney fees related to those of similar matters. A statement of itemized expenses shall be furnished by the Auctioneer to the Seller in the final statement. All the foregoing expenses shall not exceed **\$SEE PROPOSAL DATED OCTOBER 13, 2021** provided, that the following categories of expenses are not included within this limitation: utilities, including garbage; repairs; credit card discounts; rent; personal property taxes; and UCC research and compliance expenditures, and collection costs, and attorney fees related to those of similar matters.

(c) At the completion of the auction, the Auctioneer shall furnish to the Seller a complete list of all goods sold together with the sale prices obtained for each lot. After deducting from the gross proceeds the amounts due Auctioneer pursuant to this Agreement (as both compensation and reimbursable expenses), and after paying (or withholding in amount sufficient for payment to) other parties, including lienors, as may be required by law or pursuant to the terms of this Agreement or other agreements between Auctioneer and Seller, Auctioneer shall pay to the Seller the net proceeds, and payment shall be not later than 21 days after the sale date.

4. Seller's Title to Goods. Seller warrants that Seller has full authority to sell all goods identified on the Schedule of Property to be Sold; and further, that Seller will make all necessary documents of title available a minimum of three working days prior to scheduled date of auction. Seller warrants that its title to goods is free and clear of liens, with only those exceptions as Seller shall disclose in writing to Auctioneer. Seller authorizes Auctioneer to pay lienors (including governmental lienors), before paying net proceeds to Seller.

5. No Prior Transfer of Property. The Seller agrees not to sell or in any manner dispose of any of the property prior to auction. If any of the property is sold, the proceeds received by the Seller shall be included in the gross proceeds of the auction.

6. Auctioneer's Right to Re-auction Unsold Goods. In the event the Auctioneer is unable to sell any item(s), the Auctioneer reserves the right to re-auction such item(s) within a reasonable time after the auction specified herein.

7. Agency of Auctioneer; Bills of Sale. Auctioneer is hereby engaged by the Seller as the agent of the Seller for purposes related to the subject auction. The Auctioneer shall have authority to execute bills of sale to purchasers at the auction, and to receive, demand, and collect sale proceeds.

8. Risk of Loss. Seller assumes all risk of loss to goods until risk of loss passes to buyer. Auctioneer will not be held responsible for fire, theft, vandalism, or other losses. Seller shall, at Seller's sole expense, keep articles insured until risk of loss passes to buyer and, at Auctioneer's request, shall provide the Auctioneer with proof of insurance sufficient in coverage.

9. No Hidden Defects. Seller warrants to Auctioneer, solely for the protection of Auctioneer, that there are no known hidden defects in the goods listed in the Schedule of Property to be Sold, with any exceptions being noted in writing and directed to Auctioneer a minimum of three working days prior to the scheduled date of auction.

10. Hazardous Materials. The Seller shall also assume, and shall indemnify Auctioneer from, all risk and all liability (including costs, expenses, fines, liabilities, and clean-up obligations) which may arise from the failure of any of the items sold or to be sold at auction to comply with any federal, state or local law, statute or regulatory agency regulations and requirements, including but not limited to requirements relating to environmental pollutants. The Seller shall pay all direct and indirect costs for the clean-up and removal of such items and any other cost that may be incurred due to the existence of environmental pollutants either on or in the items sold or on the premises of the auction.

11. Collection of Sales Tax. Auctioneer agrees to collect sales tax as required under state law and remit such sales tax to the state.

12. Seller's Indemnification of Auctioneer. Seller completely will indemnify and hold harmless Auctioneer from any loss, casualty, or liability (including all attorney's fees, costs, expenses, settlements, and judgments) incurred by or threatened against Auctioneer by any third party (including governmental parties) from any claim (whether or not suit is actually filed), on any grounds not the fault of Auctioneer, including, without limitation, the following instances:

- (a) Injury occurring upon the Sale Premises;
- (b) Claims asserting defects in Seller's title, or in Seller's right to consign for auction, any goods sold or to be sold;
- (c) Injury (including environmental injury or damage) resulting from any goods auctioned;
- (d) Claims caused by any breach of this Agreement by Seller.

Seller authorizes the Auctioneer to withhold net auction proceeds in amount and for such duration as is reasonably necessary to assure Auctioneer of indemnification hereunder; however, the Seller's obligation to indemnify shall not be limited to the amount of such net proceeds withheld, if any.

~~**13. Auctioneer's Right to Attorneys Fees and Expenses.** Seller will reimburse to Auctioneer any and all attorneys fees, and related expenses and costs (whether or not suit is filed) incurred by Auctioneer for any of the following reasons:~~

- ~~(a) To enforce any term of this Agreement;~~
- ~~(b) To determine or to cause the determination of conflicting or uncertain claims by third parties to the auction proceeds, whether by negotiation, arbitration, or commencement of suit (including interpleader action).~~

~~Seller authorizes Auctioneer to deduct from the auction proceeds any and all amounts necessary to reimburse Auctioneer for attorney's fees, costs and expenses hereunder; however, the Seller's obligation to reimburse hereunder shall not be limited to the amount of such net proceeds withheld, if any.~~

14. Auctioneer's Rights Upon Conflicting Claims to Net Proceeds. In the case of conflicting or uncertain claims (including Seller's and/or Auctioneer's own claims) to the proceeds, Seller acknowledges Auctioneer's right, and Seller hereby authorizes Auctioneer, to obtain determination of those claims (including filing of suit for interpleader), for the protection and release of Auctioneer from any further liability in regards to the proceeds. In any case of where Auctioneer shall interplead the disputed proceeds, Auctioneer shall be entitled to deduct in the ordinary course from the proceeds all commissions, expenses and indemnification amounts to which the Auctioneer is entitled under this Agreement, and before the net proceeds are interpleaded.

15. Integration Clause. There are no representations, agreements or conditions relating to the subject matter hereof other than as expressly set forth in this contract which contains the entire agreement between the parties. The Seller acknowledges that no oral representations of warranties have been made by Auctioneer or by any of Auctioneer's agents or employees. No amendment or modification of the terms hereof shall be effective except in writing and signed by both Auctioneer and Seller.

16. Jurisdiction and Venue; Choice of Law. Seller agrees to submit irrevocably, at Auctioneer's election, to the jurisdiction and venue of the Superior Court of the State of Nevada (in which case Seller waives any right of removal, if any) or to the jurisdiction and venue of the United States District Court for the District of Nevada in any action concerning in any way this Agreement. This Agreement shall be governed by the laws of the State of Nevada.

AUCTIONEER

James G. Murphy Company, Inc.

By _____

Title _____

Date _____

SELLER

By _____

Title _____

Date _____

EXHIBIT "3"

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 SECURITIES AND EXCHANGE
4 COMMISSION,

5 Plaintiff,

6 v.

7 PROFIT CONNECT WEALTH
8 SERVICES, INC., JOY I. KOVAR, and
9 BRENT CARSON KOVAR,

10 Defendants.

Case No. 2:21-cv-01298-JAD-BNW

**ORDER GRANTING MOTION FOR
ORDER IN AID OF RECEIVERSHIP
TO APPROVE (1) RETENTION OF
AUCTIONEER TO AUCTION
PERSONAL PROPERTY, AND (2)
DISPOSITION OF PERSONAL
PROPERTY WITH A VALUE OF \$1,000
OR LESS**

11
12 Before the Court is the Court-Appointed Receiver, Geoff Winkler's Motion for
13 Order in Aid of Receivership to Approve (1) Retention of Auctioneer to Auction
14 Personal Property, and (2) Disposition of Personal Property with a Value of \$1,000 or
15 Less (ECF NO. __) ("Motion").

16 For good cause shown, IT IS HEREBY ORDERED that the Motion is
17 GRANTED.

18 The Court APPROVES the Receiver's retention of James G. Murphy, Inc. as
19 the auctioneer pursuant to the terms of the Auction Agreement attached to the
20 motion and authorizes the Receiver to execute the Auction Agreement;

21 The Court APPROVES the Receiver's request to elect to sell the Ford F150
22 truck described in the Motion to a car dealer for fair market value; and

23 The Court APPROVES the Receiver's request to exclude items of personal
24 property with a value of \$1,000 or less from the auction and to sell then for fair market

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SMILEY WANG-EKVALL, LLP
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CERTIFICATE OF SERVICE

STATE OF NEVADA, DISTRICT COURT, DISTRICT OF NEVADA

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 Orange, State of California. My business address is 3200 Park Center Drive, Suite 250, Costa Mesa, CA 92626.

On 11/1/2021, I served true copies of the following document(s) described as

MOTION FOR ORDER IN AID OF RECEIVERSHIP TO APPROVE (1) RETENTION OF AUCTIONEER TO AUCTION PERSONAL PROPERTY, (2) AUTHORITY TO SELL VEHICLE, AND (3) DISPOSITION TO PERSONAL PROPERTY WITH A VALUE OF \$1,000 OR LESS; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF GEOFF WINKER IN SUPPORT THEREOF on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

(X) (BY COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”)) – The foregoing document will be served by the court via NEF and hyperlinked to the document. On 11/1/2021, I checked the CM/ECF docket for this case and determined that the aforementioned person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated.

(X) (BY U.S. MAIL). I enclosed the document(s) in a sealed envelope or package and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Smiley Wang-Ekvall, LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with USPS in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Costa Mesa, California.

Executed on November 1, 2021, at Costa Mesa, California.

/s/ Lynnette Garrett

Lynnette Garrett

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SERVICE LIST

BY COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”):

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