

1 **RAINES FELDMAN LITTRELL LLP**
Kathy Bazoian Phelps (State Bar No. 155564)
2 *kphelps@raineslaw.com*
1900 Avenue of the Stars, Suite 1900
3 Los Angeles, California 90067
Telephone: (310) 440-4100
4 Facsimile: (310) 691-1943

5 *Successor Receiver*

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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 v.

14 JOHN V. BIVONA; SADDLE RIVER
15 ADVISORS, LLC; SRA MANAGEMENT
ASSOCIATES, LLC; FRANK GREGORY
16 MAZZOLA,

17 Defendants. and

18 SRA I LLC; SRA II LLC; SRA III LLC;
19 FELIX INVESTMENTS, LLC; MICHELE
J. MAZZOLA; ANNE BIVONA; CLEAR
20 SAILING GROUP IV LLC; CLEAR
SAILING GROUP V LLC.

21 Relief Defendants.

Case No.: 3:16-cv-01386-EMC

**MOTION BY RECEIVER KATHY
BAZOIAN PHELPS FOR ORDER
AUTHORIZING: (1) SALE PURSUANT
TO 28 U.S.C. § 2004 OF SHARES OF
LOOKOUT, INC.; AND (2)
MODIFICATION OF THE
DISTRIBUTION PLAN**

[No Hearing Set]

1 Kathy Bazoian Phelps, the successor receiver (the “Receiver”) of SRA Management
 2 Associates, LLC, SRA I, LLC, SRA II, LLC, SRA III, LLC, Clear Sailing Group IV, LLC
 3 (“CSG IV”), Clear Sailing Group V, LLC, Felix Multi-Opportunity Fund I, LLC, Felix Multi-
 4 Opportunity Fund II, LLC, Felix Management Associates, LLC, NYPA Fund I, LLC, NYPA
 5 Fund II, LLC, NYPA Management Associates, LLC and Solis Associates Fund LLC
 6 (collectively, the “Receivership Entities” and their estates, the “Receivership Estate”), hereby
 7 files this Motion for Order Authorizing: (1) Sale Pursuant to 28 U.S.C. § 2004 of Shares of
 8 Lookout, Inc. (“Lookout”); and (2) Modification of the Distribution Plan (the “Motion”).¹

9 **I. INTRODUCTION**

10 The Receiver seeks authority to sell the Receivership Estate’s economic interest in
 11 106,237 shares of Lookout Preferred Stock and 106,237 shares of Lookout Common Stock
 12 (the “Lookout Shares”). In 2014, prior to the initiation of the receivership in this case, Landon
 13 Capital Management LLC (“Landon” or “Investor”) entered into a contract (the “Forward
 14 Contract”) with a counterparty (the “Counterparty”) to purchase the beneficial interest in the
 15 Lookout Shares. Under the Forward Contract, the Counterparty sold its interest in the Lookout
 16 Shares and was to remain the record owner of the Lookout Shares while certain transfer
 17 restrictions remained in effect, or upon Landon’s request and with Lookout’s permission, the
 18 Lookout Shares could be transferred to Landon.²

19 Also in 2014, CSG IV entered into an agreement with Chasm Capital Group LLC
 20 (“Chasm”), the sole member of Landon, to acquire a 100% membership interest in Landon.³

21
 22 ¹ The Receiver has served this Motion on the Securities and Exchange Commission and the
 23 Investor Advisory Committee, neither of whom indicated opposition to the Motion. A
 24 stipulation with all parties was deemed impractical given, among other things, the entry of
 25 judgment against the defendants and pending bankruptcy of defendant John Bivona. (L.R. 7-
 11 1(a). The Receiver has also served this Motion on the Counterparty’s personal
 representative, Chasm Capital Group LLC, and Equity Acquisition Company Ltd.

26 ² The Forward Contract is confidential and therefore the Counterparty will not be named in
 this public filing.

27 ³ See Membership Interest Purchase Agreement dated July 15, 2014 attached to the
 Declaration of Kathy Bazoian Phelps (“Phelps Declaration”) as Exhibit “1.”

1 Accordingly, CSG IV is the owner of Landon and therefore the owner of the economic interest
2 in the Lookout Shares.

3 In 2016, CSG IV was placed into this receivership, and the Receivership Estate
4 succeeded to CSG IV's interest in the Forward Contract. While holding the Forward Contract
5 for the Lookout Shares was initially consistent with the court-approved Distribution Plan (Dkt.
6 No. 570-1) (the "Plan"), circumstances have changed now that the bulk of the Receivership
7 Estate has been distributed. The Receiver is attempting to wind down the receivership,
8 including by considering whether to sell the remaining non-public shares,.

9 The Receiver has been advised that the Receiver is unable to sell the Lookout Shares
10 on the secondary market since the estate's interest is presently the economic interest under a
11 forward contract, and there is presently not a market for the Lookout Shares in any event. The
12 Receiver has engaged in discussions over a several year period with the Counterparty about
13 repurchasing the economic interest in the Lookout Shares from the estate. The Counterparty
14 has unfortunately passed away, but his widow desires to repurchase the economic interest in
15 the Lookout Shares (the "Purchaser"). The Receiver has engaged in an arms-length negotiation
16 with the Purchaser to arrive at an agreed upon purchase price of \$0.11 per share for the
17 economic interest in the Lookout Preferred Stock and \$0.09 per share for the economic interest
18 in the Lookout Common Stock. The parties have documented their agreement in the
19 Repurchase Agreement attached to the Phelps Declaration as Exhibit "2" (the "Repurchase
20 Agreement").⁴ The benefit to the estate extends beyond the purchase price, as the sale at these
21 prices will generate a substantial tax loss which can be offset against the tax liability arising
22 from the recent sale by the Receiver of shares of Addepar, Inc.

23 The Receiver is therefore making the instant Motion to the Court seeking the following
24 relief:

25 1. Approval of the sale of the economic interest in Lookout Shares for the aggregate
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27 ⁴ The confidential names and contact information for the Counterparty and the Purchaser have
28 been redacted for this public filing.

1 purchase price of \$21,247.40 and approval of the Repurchase Agreement with the
2 Purchaser, as an appropriate private sale of personal property pursuant to 28 U.S.C.
3 § 2004, without the need for the Receiver to comply with the procedures set forth
4 in 28 U.S.C. § 2001.

- 5 2. Approval of the sale of the economic interest in 37,676 of the Lookout Shares which
6 are to be transferred to Equity Acquisition Company, Ltd. (“EAC”) pursuant to a
7 settlement agreement dated as of January 6, 2020 (Dkt. No. 547-2), approved by
8 this Court on January 15, 2020 (Dkt. No. 550) (the “EAC Settlement”), and
9 payment of its share of the proceeds of such sale to EAC in the amount of
10 \$3,767.60.
- 11 3. Approval for the Receiver to execute all documents necessary to consummate the
12 sale transaction and to pay any and all customary and reasonable fees associated
13 with that transaction.
- 14 4. Authorization to pay any tax liability associated with the sale of the Lookout
15 Shares, although a tax loss is expected from the sale.
- 16 5. Approval of the modification of the Distribution Plan entered in this case by Order
17 entered on May 25, 2020 (Dkt. No. 613) only as necessary to sell the Lookout
18 Shares and to hold the net proceeds in a reserve account for the benefit of the
19 Lookout investors (“Lookout Reserve Account”), subject to all other terms of the
20 Plan.
- 21 6. Authorization to allocate to the Lookout Reserve Account both the net sales
22 proceeds and the amount of tax savings generated from any tax loss arising from
23 the sale of the Lookout Shares (“Tax Loss Savings”). The Tax Loss Savings shall
24 be paid from the reserve account held for the Addepar Inc. investors (“Addepar
25 Reserve Account”) to the Lookout Reserve Account in the amount of tax savings
26 derived from offsetting the loss from the sale of the estate’s interest in the Lookout
27 Shares against any tax liability arising from the sale of the Addepar shares.

1 The distribution of the proceeds from the Lookout Reserve Account to the Lookout
2 investors in Class 4G, and any other pertinent considerations or related issues, shall be the
3 subject of a separate motion by the Receiver, to be made at the appropriate time.

4 **II. PROCEDURAL BACKGROUND**

5 1. On October 11, 2016, the Court entered a Temporary Restraining Order and
6 Order to Show Cause why Preliminary Injunction Should Not Be Granted (the “TRO”) (Dkt.
7 No. 142). Pursuant to the TRO, Sherwood Partners was appointed as the temporary receiver
8 over the assets of the Receivership Entities.

9 2. The TRO provided “[u]pon further Order of this Court, pursuant to such
10 procedures as may be required by this Court and additional authority such as 28 U.S.C. §§
11 2001 and 2004, the Receiver will be authorized to sell, and transfer clear title to, all real
12 property in the Receivership Estates” (Dkt. No. 142, at 10).

13 3. Pursuant to the Revised Order Appointing Receiver entered on February 27,
14 2019, Kathy Bazoian Phelps was appointed as the successor receiver over the Receivership
15 Entities (Dkt. No. 469). Pursuant to Minute Order entered on June 27, 2019, Solis Associates
16 Fund was substantively consolidated with the Receivership Entities.

17 4. On January 15, 2020, the Court approved the Receiver’s settlement with Equity
18 Acquisition Company Ltd. (“EAC”) (Dkt. No. 550), where the Receiver transferred the right,
19 title and beneficial interest in, or contractual rights to, 37,676 shares of Lookout to EAC as set
20 forth in the Settlement Agreement (the “EAC Settlement”) (Dkt. No. 547-2).

21 5. The Court approved the Distribution Plan (Dkt. No. 570-1), with the possibility
22 for potential future adjustments including those relating to Failed Investment claims, and an
23 Amended Order was entered on May 25, 2020 (Dkt. No. 613) (“the Plan”).

24 6. On November 24, 2021, the Receiver moved the Court for authority to
25 consummate a proposed transaction by which the estate would sell 96,108 shares in Evernote
26 Corp. (“Evernote”) to EAC for \$1 per share (Dkt. No. 670) (the “Evernote Motion”). Because
27 Evernote was not yet a Successful Investment under the Plan, nor was it a Failed Investment
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1 under the Plan, the proposed sale of the estate’s position in Evernote was a modification to the
2 Plan. The Receiver requested that the Court authorize the Receiver to close the contemplated
3 transaction, pay all relevant fees and commissions, hold the proceeds from the Evernote sale
4 in a separate account, and discharge the estate’s obligation with respect to Evernote under the
5 EAC Settlement. *See* Dkt. No. 550. The Evernote Motion was approved by Order entered on
6 December 10, 2021 (Dkt. No. 674).

7 7. The Receiver filed a Motion to Modify the Plan on July 27, 2023 to address the
8 open issues in the Plan, the known tax consequences, the determination of deficiency claims,
9 and the priorities of distributions (Dkt. No. 704). The Receiver requested further modification
10 to the Plan related to Evernote in the Motion to Modify the Plan, as contemplated in the
11 Evernote Motion.

12 8. On October 31, 2023, the Court granted the Receiver’s Motion to Modify the
13 Plan in its entirety (Dkt. No. 716).

14 9. On October 11, 2024, the Receiver filed a motion to monetize the Addepar, Inc.
15 (“Addepar”) securities and sought authorization to sell them and modify the Plan in a similar
16 fashion to what the Court approved for the sale of Evernote securities (the “Motion to Approve
17 Addepar Sale”) (Dkt. No. 744).

18 10. The Court granted the Receiver’s Motion to Approve Addepar Sale on October
19 16, 2024 (Dkt. No. 748). The sale has been consummated and the Receiver has collected the
20 net sales proceeds of \$1,916,964.59.

21 11. The estate continues to hold shares in two pre-IPO securities (Lookout, Inc. and
22 ZocDoc, Inc.).

23 12. The Receiver files this Motion to monetize the Lookout securities and seeks
24 authorization to sell them and modify the Plan in a similar fashion to what the Court approved
25 for the sale of Evernote and Addepar securities.

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1 **III. BACKGROUND AND PROPOSED TRANSACTION**

2 **A. The Lookout Shares**

3 In 2014, the Counterparty and Landon entered into the Forward Contract whereby in
4 exchange for receipt of the purchase price, the Counterparty agreed to assign and transfer to
5 Landon 100% of its economic interest in the Lookout Shares. The Forward Contract provides
6 that the Counterparty would assign, transfer, and deliver the Lookout Shares to Landon (or its
7 assignee or designee) once the restrictions imposed on the Lookout Shares were removed.

8 CSG IV became the owner of the Lookout Shares when it entered into an agreement
9 with Chasm to acquire a 100% membership interest in Landon in 2014.

10 CSG IV was placed into receivership in 2016, and the Receiver was appointed as
11 successor receiver in 2019 (Dkt. No. 469). The Receivership Estate thereby succeeded to CSG
12 IV's interest in the Forward Contract, including the right to receive the Lookout Shares. The
13 Receivership Estate therefore has an economic interest in 106,237 shares of Lookout Preferred
14 Stock and 106,237 shares of Lookout Common Stock. As the Plan required the sale of shares
15 for the Plan Fund and distribution of shares to claimants only after the underlying company
16 had a liquidity event such as an initial public offering ("IPO") (Plan, at 15-16), holding the
17 Forward Contract was consistent with the Plan.

18 On January 15, 2020, the Court approved the EAC Settlement (Dkt. No. 550), where
19 the Receiver transferred the right, title, and beneficial interest in, or contractual rights to,
20 37,676 shares of Lookout to EAC (Dkt. No. 547-2).

21 As the Receiver noted in her most recent Status Report (Dkt. No. 691), circumstances
22 have changed now that the Receiver has sold or distributed the vast majority of the
23 Receivership Estate's stock holdings, with only shares in two pre-IPO companies remaining,
24 including Lookout. The Receiver has continued to monitor the possibilities for liquidating the
25 Receivership Estate's position in Lookout in order to efficiently wind down the estate and
26 make a final distribution to claimants.

27 As part of that evaluation, the Receiver has explored different liquidation options given
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1 the terms in the Forward Contract and given that the restrictions in the Forward Contract have
2 not been removed to date. The Forward Contract requires the Lookout Shares to be transferred
3 only in certain circumstances: either (1) the Lookout Shares are no longer subject to any
4 material transfer restrictions, or (2) upon the request of the Investor with Lookout's permission.
5 Phelps Decl. ¶ 16. The Receiver would need to overcome the restrictions imposed on the Shares
6 under the Forward Contract in order to sell the Lookout Shares. *Id.* In this regard, the Receiver
7 made repeated attempts to contact the Counterparty over the last few years in order to affect
8 the disposition of the Lookout Shares. *Id.* The Receiver sent a letter and proposed agreement
9 to the Counterparty on October 11, 2022 to assist with the transfer of the Lookout Shares to
10 the Receivership Estate. *Id.* The Forward Contract provides for notice of directed action to,
11 among other things, deliver the stock to the Investor (in whose shoes the Receiver now stands)
12 if Lookout provides its permission to effect a transfer and deliver the Shares to the Investor
13 without application of any ROFR to such transfer. *Id.* The Receiver has also asked for
14 Lookout's permission for such a transfer, but Lookout has not provided permission. Phelps
15 Decl. ¶ 17. The Receiver sought to take such action in connection with the Lookout Shares in
16 order to administer the stock in the Receivership Estate. *Id.*

17 The Receiver has therefore learned that it is impractical, and perhaps impossible, to sell
18 the estate's economic interest in the Lookout Shares. Phelps Decl. ¶ 18. Lookout also advised
19 that it does not wish to reacquire the Shares itself and will not approve a sale on the secondary
20 market. *Id.* So even if the Counterparty would agree to assign, transfer, and deliver the Lookout
21 Shares to CSG IV, Lookout would not likely approve this transaction. *Id.* Also, if the Lookout
22 Shares are not reflected as being in the estate's name on Lookout's capitalization table, the
23 Receiver is advised that the Receiver will not be able to sell them on the secondary market. *Id.*

24 Therefore, as an alternative to the barriers imposed on a sale to a third party or
25 Lookout's refusal to approve a transfer, the Receiver also had a few discussions with the
26 Counterparty regarding other options for the disposition of the Shares. Phelps Decl. ¶ 19. The
27 Receiver sent repeated communications to the Counterparty to request the Counterparty's
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1 position on the disposition of the Shares. *Id.* The Receiver has been able to negotiate a
2 repurchase agreement with the Counterparty's widow to repurchase the economic interest in
3 the Lookout Shares, which can be done without the involvement of Lookout or the secondary
4 market since no shares will actually be changing hands. *Id.* The Receiver believes the
5 Repurchase Agreement is in the best interest of the Receivership Estate. *Id.*

6 **B. EAC's Interest in the Lookout Shares**

7 Currently, the Receivership Estate has 106,237 shares of Lookout Preferred Stock and
8 106,237 shares of Lookout Common Stock, including the 37,676 shares of Lookout the
9 Receiver is to transfer to EAC (the "EAC Shares"). The Receiver seeks approval in the instant
10 Motion of the sale of the Lookout Shares for the purchase price of \$0.11 per share for the
11 economic interest in the Lookout Preferred Stock and \$0.09 per share for the economic interest
12 in the Lookout Common Stock. The Receiver has spoken to EAC, and it has agreed to the sale
13 of the EAC Shares in the proposed transaction. Phelps Decl. ¶ 13. The Receiver therefore
14 requests authority to satisfy her obligations under the settlement with EAC by paying EAC's
15 portion of the Lookout sales proceeds to EAC.

16 **C. The Purchaser**

17 1. The Purchaser is the widow of the Counterparty. She is an individual who is the
18 executor of the Counterparty's estate. The Forward Contract provided that the rights and
19 obligations of the transaction parties will be binding upon and inure to the benefit of their
20 respective successors, assigns, heirs, executors, administrators, and legal representatives. The
21 Purchaser therefore continues to own the interest in the Lookout Shares but is contractually
22 obligated to deliver them to the Receiver if and when Lookout has a public offering.
23 Accordingly, the Lookout Shares will not actually change hands; rather, the economic interest
24 under the Forward Contract will merely be returned in exchange for the payment of
25 \$21,247.40. There will be no transaction fees or broker commissions, adding value to the
26 transaction. Phelps Decl. ¶ 20.

27 **D. Tax Consequences of Sale of Lookout Shares**

28 The Receiver believes that there will be positive tax consequences to the sale of the

1 Lookout Shares. Oxis Capital, the valuation experts previously retained by the Receiver
2 pursuant to the Order dated March 9, 2020 (Dkt. No. 577), estimated the value of the Lookout
3 Shares as of the date of the commencement of the Receivership to be \$10 per share. Since the
4 sale will be at \$0.11 per share for the economic interest in the Lookout Preferred Stock and
5 \$0.09 per share for the economic interest in the Lookout Common Stock, the Receiver is
6 advised there will be a tax loss of approximately \$2.1 million associated with this sale. Phelps
7 Decl. ¶ 21.

8 The Receiver is advised that this tax loss will offset the tax consequences from the sale
9 of the Addepar shares that took place in 2024 as well, with a potential tax savings of
10 approximately \$358,000. Phelps Decl. ¶ 22. As such, the Receiver proposes to allocate the
11 amount of savings from this tax loss to the Lookout investors in the newly formed Lookout
12 Reserve Account, along with the sales proceeds, and seeks to modify the Plan to do so. *Id.*

13 **E. Sales Price of Lookout Shares**

14 The Receiver performed a substantial amount of due diligence concerning the market
15 price for pre-IPO shares, including consulting with multiple brokers who transact pre-IPO
16 securities on the secondary market. The Receiver conferred with three of the top brokers in the
17 industry regarding pre-IPO sales on the secondary market. Phelps Decl. ¶23. All three brokers
18 have advised the Receiver that there is no interest on the secondary market for the Lookout
19 Shares. *Id.* The Receiver has also consulted with the Investment Advisory Committee in this
20 case and, unfortunately, the members of the committee were not able to offer any insight into
21 the value of the Shares. *Id.*

22 The Receiver has engaged in extensive discussions with the Purchaser and believes that
23 the agreed upon price of \$0.11 per share for the economic interest in the Lookout Preferred
24 Stock and \$0.09 per share for the economic interest in the Lookout Common Stock represents
25 the best price that the Receiver will be able to obtain for the Lookout Shares. Phelps Decl. ¶24.

26 **F. Lookout Investors**

27 The Receiver requests authority to segregate the net proceeds of the sale of the Lookout
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1 Shares for the benefit of the Lookout Investors and to allocate the benefit to the estate from the
2 tax loss to the Lookout Investors, who are designated as Class 4G in the Distribution Plan, in
3 a Lookout Reserve Account. Any further modification of the Plan with respect to the
4 distribution of the Lookout sale proceeds will be the subject of a separate motion, including
5 any issues relating to any Plan Fund contribution and applicability of deficiency claims.

6 **IV. THE CONTEMPLATED TRANSACTION IS IN THE BEST INTERESTS OF**
7 **THE RECEIVERSHIP ESTATE**

8 Under 28 U.S.C. § 2004, a receiver has broad discretion to sell the personalty of the
9 Receivership Estate so long as the court so orders. *See SEC v. Am. Cap. Invs., Inc.*, 98 F.3d
10 1133, 1144 (9th Cir. 1996) (approving receiver’s decision to sell receivership estate property),
11 *abrogated on other grounds by Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83 (1998);
12 *SEC v. Champion-Cain*, No. 3:19-CV-1628-LAB-AHG, 2021 WL 2104962, at *2 (S.D. Cal.
13 May 25, 2021) (same); *see also SEC v. Elliot*, 953 F.2d 1560, 1566 (11th Cir. 1992)
14 (authorizing receiver’s disposal of receivership assets). The Ninth Circuit has explained that
15 the Court’s power to approve such a sale derives from its broad equitable and supervisory
16 powers: “It is generally conceded that a court of equity having custody and control of property
17 has power to order a sale of the same in its discretion. The power of sale necessarily follows
18 the power to take possession and control of and to preserve property, resting in the sovereignty
19 and exercised through courts of chancery, or courts having statutory power to make the sale.”
20 *Am. Cap. Invs.*, 98 F.3d at 1144 (quoting 2 Clark on Receivers § 482 (3d ed. 1992) (emphasis
21 omitted)); *see also Liberte Capital Group LLC v. Capwill*, 462 F.3d 543, 551 (6th Cir. 2006)
22 (district court presiding over an equity receivership exercises the traditional, common law
23 powers of equity and, therefore, has broad powers in fashioning relief).

24 The Court also has wide discretion to set the terms and procedures used to sell personal
25 property so as to maximize the proceeds from such sales. *See U.S. v. Stonehill*, 83 F.3d 1156,
26 1160 (9th Cir. 1996) (holding that district court had discretion under § 2004 to tailor
27 requirements for selling personal property). The Court may also “make rules which are
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1 practicable as well as equitable.” *SEC v. Hardy*, 803 F.2d 1034, 1039 (9th Cir. 1986). In
2 determining whether to approve a sale, the Court should consider the unique facts and
3 circumstances surrounding the proposed sale, including the precarious financial condition of
4 the assets being sold. *See, e.g., Tanzer v. Huffines*, 412 F.2d 221, 222-23 (3d Cir. 1969)
5 (approving expedited sale in absence of financial appraisal and limited notice in light of
6 corporation’s deteriorating financial condition).

7 Moreover, if the Court is satisfied that a proposed sale is in the best interest of the
8 estate, it need not require that the Receiver satisfy the precise procedures set forth in 28 U.S.C.
9 § 2001, especially if those procedures are onerous in light of the circumstances. Section 2001
10 requires that for the sale of real property, (i) the property may be sold in a public auction sale;
11 or (ii) the property may be sold in a private sale, but there must be three separate appraisals
12 conducted, the terms must be published in a circulated newspaper 10 days prior to sale, and
13 the sale price must be no less than two-thirds of the valued price. Section 2004, on the other
14 hand, permits the sale of personal property in accordance with the Section 2001 real property
15 rules, “*unless the court orders otherwise.*” 28 U.S.C. § 2004 (emphasis added); *see FTC v.*
16 *Consumer Defense, LLC*, No. 2:18-CV-30 JCM (PAL), 2019 WL 266287, at *4 (D. Nev. Jan.
17 18, 2019) (authorizing sale of personal property using commercially reasonable sales methods
18 pursuant to Section 2004 after considering nature of asset and desire to preserve return for
19 estate) (citing *SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005)); *FTC v.*
20 *Universal Premium Services, Inc.*, No. 06-0849 SJO (OPx), 2006 WL 8442136, at *4 (C.D.
21 Cal. June 8, 2006) (approving sale of certain personal property and exercising discretion
22 pursuant to § 2004 to approve alternative procedures proposed by receiver because complying
23 with § 2001 would be “burdensome, time consuming, and expensive for the receivership
24 estate”).

25 The Receiver requests that the Court approve the contemplated transaction pursuant to
26 Section 2004, without the need for compliance with Section 2001 real property rules, as in the
27 best interests of the Receivership Estate. *See* 28 U.S.C. §§ 2001, 2004. The Receiver and her
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1 counsel have spent substantial time attempting to ascertain the private market for the sale of
2 the pre-IPO securities remaining in the estate, working with multiple brokers who specialize
3 in these markets. Obtaining appraisals of these securities, which would essentially require
4 appraising Lookout itself, is not a practical possibility, the cost of which would far outweigh
5 the value of the shares. The Receiver's valuation professional valued Lookout shares at \$10
6 per share as of October 2016. Phelps Decl. ¶ 21. The Receiver was not able to obtain valuation
7 estimates for trades on the secondary market from three brokers. Lookout itself would not offer
8 to purchase the Lookout Shares. In light of the lack of market for Lookout shares, the price of
9 \$0.11 per share for the economic interest in the Lookout Preferred Stock and \$0.09 per share
10 for the economic interest in the Lookout Common Stock appears fair, particularly given the
11 tax savings to the estate. *Id.* ¶ 22.

12 Moreover, dispensing with the requirement that the Lookout Shares be disposed of in
13 a public auction or after a published advertisement, which might have to be done by a registered
14 broker dealer in order to comply with the securities laws, avoids the additional expense of such
15 an auction or the need to resolve any conflict between the requirements of Section 2004 and
16 the application of federal securities laws and regulations.

17 The Receiver is further satisfied that the contemplated transaction complies with
18 applicable securities laws and regulations. The Receiver has consulted with her securities
19 counsel who has approved all of the documentation relating to the transaction. Phelps Decl. ¶
20 30. The Receiver is advised that the sale is permissible under Section 4(a)(1) of the Securities
21 Act of 1933. *See* 15 U.S.C. § 77d(a)(1) (exempting "transactions by any person other than an
22 issuer, underwriter, or dealer"). The Receiver is not the issuer of Lookout shares, nor is the
23 Receiver an underwriter within the meaning of 15 U.S.C. § 77b(a)(11) or 17 C.F.R. § 230.144
24 (commonly known as Rule 144), nor is the Receiver a dealer within the meaning of 15 U.S.C.
25 § 77b(a)(12). The sale is also permissible under Section 4(a)(7) of the Securities Act of 1933,
26 as Landon represented to the Counterparty that it was an accredited investor in the Forward
27 Contract, *see* 15 U.S.C. § 77d(a)(7) (exempting certain transactions involving accredited
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1 investors).

2 Based on the Receiver’s due diligence into the potential price of Lookout, the fact that
3 the Purchaser is acting in good faith, and the potential tax savings to the estate, the Receiver
4 believes that approval of the contemplated transaction is in the best interest of the estate.
5 Phelps Decl. ¶ 25.

6 **V. MODIFICATION OF THE PLAN REGARDING CONTRIBUTION TO THE**
7 **PLAN FUND**

8 The Plan contemplates a contribution of 30% of the gross investment in a security to
9 the Plan Fund for IPO shares, as a precondition for distribution after such security becomes a
10 Successful Investment.⁵ For Lookout, if this were a sale of a Successful Investment defined in
11 the Plan, that contribution would be “30% of the gross amounts invested by the Investor
12 Claimants.” Dkt. No. 570-1 at 15.

13 As set forth above, the Receiver believes that the contemplated transaction is the best
14 way to maximize the value of the estate’s holdings in Lookout. Phelps Decl. ¶ 27. But that
15 does not mean that the contemplated transaction turns Lookout into a Successful Investment
16 within the meaning or the equities of the Plan. Nor does that make Lookout a Failed
17 Investment, as the estate will still realize value from the sale.

18 The investors’ investments into Lookout through the Receivership Entities were
19 purchased at a price of \$10.00 to \$12.00 per share. Phelps Decl. ¶ 28. Of the 36 investors, 8 of
20 them paid \$10.00 per share and 28 paid \$12.00 per share. *Id.* Each of those investors also paid
21 an upfront cost to acquire the shares. *Id.* Given the resulting losses, the Receiver does not
22 believe it is appropriate or necessary to withhold \$593,055.90 (30% of their gross investment)
23 for these investors to fund the Plan Fund. *Id.* The Plan Fund appears sufficient at this time to
24 pay the Class 3 general unsecured creditors in full, and each other class of investor claims is
25 holding a reserve for unanticipated tax claims. *Id.* Therefore, the Receiver proposes
26 segregating the full amount of the net sales proceeds, along with the benefit to the estate from

27 _____
28 ⁵ Capitalized terms not otherwise defined in the Motion have the same meaning as in the Plan.

1 the tax loss, for the benefit of the Lookout investors in a Lookout Reserve Account. *Id.*

2 **VI. CONCLUSION**

3 The Receiver respectfully asks that the Court issue the Proposed Order (1) confirming
4 that the Lookout Shares are property of the Receivership Estate under the Forward Contract;
5 (2) approving the Repurchase Agreement and sale of the Lookout Shares for \$21,247.40; (3)
6 authorizing the Receiver to execute all documents necessary to consummate the sale
7 transaction and to pay any and all customary and reasonable fees associated with that
8 transaction not to exceed \$2,500; (4) authorizing the Receiver to pay EAC for its shares under
9 the EAC Settlement; (5) discharging the estate’s obligation with respect to Lookout under the
10 EAC Settlement; (6) authorizing the Receiver to pay EAC’s portion of the sales proceeds from
11 the sale of the Lookout Shares which was approved by Order entered on October 16, 2024
12 (Dkt. No. 748), by delivering such sales proceeds to EAC; (7) authorizing the Receiver to pay
13 any tax liability associated with the sale of the Lookout Shares, although a tax loss is expected
14 from the sale; (8) approving the Receiver to modify the Distribution Plan to allow for the sale
15 and for the Receiver to hold the proceeds from the Lookout sale in a separate account along
16 the benefit to the estate from the tax loss; and (9) for all other appropriate relief.

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18 Dated: November 27, 2024

RAINES FELDMAN LITRELL LLP

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By: /s/ Kathy Bazoian Phelps

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Kathy Bazoian Phelps

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Successor Receiver

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