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ORIGINAL FILED
Superior Court of California
County of Los Angeles

JAN 24 2018

Sherri R. Carter, Executive Officer/Clerk
By Neli M. Raya, Deputy

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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF LOS ANGELES

9
10 LEONARD SCHRAGE, an Individual,
11 Plaintiff,
12 vs.
13 MICHAEL SCHRAGE, an Individual,
et. al.
14 Defendants.

CASE NO. BC 579623

NOTICE OF EX PARTE MOTION
AND EX PARTE MOTION OF
BYRON Z. MOLDO, RECEIVER, TO
APPROVE THE SALE OF CROSS-
COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF BYRON Z.
MOLDO; DECLARATION RE: EX
PARTE NOTICE

Date: January 24, 2018
Time: 8:30 a.m.
Dept.: 28

Judge: Hon. Joanne O'Donnell

19 TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF
20 RECORD:

21 PLEASE TAKE NOTICE that on January 24, 2018 at 8:30 a.m., or as soon
22 thereafter as counsel may be heard, in Department 28 of the above entitled court,
23 located at 111 N. Hill Street, Los Angeles, CA 90012, Byron Z. Moldo, Receiver
24 ("Receiver"), will and hereby does move the Court, on an ex parte basis, for an
25 order approving the sale of the Cross-Complaint filed in this case by defendants and
26 cross-complainants, Sage Holding Co., Inc.; Universal City Nissan, Inc.; Glendale
27 Nissan/Infiniti, Inc.; Sage Management Co., Inc.; Sage Downtown, Inc.; Sage MJL
28

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NOTICE OF EX PARTE MOTION AND EX PARTE MOTION OF BYRON Z. MOLDO, RECEIVER, TO
APPROVE THE SALE OF CROSS-COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES;
DECLARATION OF BYRON Z. MOLDO: DECLARATION RE: EX PARTE NOTICE

1 Properties, LLC; UCNP II, LLC; West Covina Nissan, LLC; Sky Blue, LLC;
 2 Valencia Holding Company, LLC; West Covina Auto Group, LLC; Covina MJL
 3 LLC; Sage North Hollywood, LLC; and UCN Partners, LP (“Receivership Entities”)
 4 against Plaintiff, Leonard Schrage. A true and correct copy of the Cross-Complaint
 5 is attached hereto as Exhibit “A”. The motion is being brought on an ex parte basis
 6 due to the fact that trial of this case and the Receivership Entities’ Cross-Complaint
 7 is set to begin on February 20, 2018. The Cross-Complaint was prepared and filed,
 8 prior to the Receiver’s appointment, by the Receivership Entities then attorneys,
 9 Loeb & Loeb. The Receiver has had his counsel review the Cross-Complaint and
 10 the factual basis and evidence for, and in support of, the asserted claims. Based on
 11 the Receiver’s review, and advice of his counsel, the Receiver does not believe it is
 12 in the best interests of the receivership estate to expend receivership estate funds in
 13 pursuing and trying the Cross-Complaint.

14 The Receiver has received an offer from Michael Schrage and Joseph Schrage
 15 to purchase the Cross-Complaint and the claims asserted therein for \$5,000.00. The
 16 sale of the Cross-Complaint is on an “as-is, where-is” basis, without any
 17 representations or warranties being made by the Receiver. The sale is subject to this
 18 Court’s approval and possible over bids.

19 The proposed sale of the Cross-Complaint and the terms are discussed in
 20 more detail in the attached Memorandum of Points and Authorities.

21 The Receiver believes the proposed sale is in the best interests of the
 22 receivership estate.

23 The Receiver’s Ex Parte Motion will be based on this Notice of Ex Parte
 24 Motion and Motion, the accompanying Memorandum of Points and Authorities, the
 25 Declaration of Byron Z. Moldo, the Declaration re: Ex Parte Notice, and upon such
 26 other evidence and argument as may be presented at the time of the hearing.

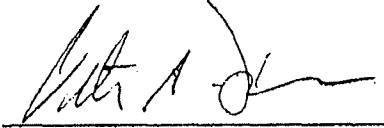
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DATED: January 22, 2018

ERVIN COHEN & JESSUP LLP

By: 

PETER A. DAVIDSON
Attorneys for Byron Z. Moldo, Receiver

MOTION

1
 2 Byron Z. Moldo, Receiver for (1) Corporations: Sage Holding Company,
 3 Inc., Universal City Nissan, Inc., Glendale Nissan/Infiniti, Inc., Sage Management
 4 Co., Inc. and Sage Downtown, Inc., (2) Limited Liability Companies: Sage MJL
 5 Properties, UCNP II, LLC, West Covina Nissan, LLC, Sky Blue, LLC, Valencia
 6 Holding Company, LLC, West Covina Auto Group, LLC, Covina MJL, LLC; Sage
 7 North Hollywood, LLC, and (3) Limited Partnership: UCN PARTNERS, L.P.
 8 (collectively, the "Receivership Entities") hereby moves the Court for an order
 9 approving the sale to Michael Schrage and Joseph Schrage ("Buyers"), for
 10 \$5,000.00, of the Cross-Complaint filed by the Receivership Entities in this case and
 11 the claims pled therein. A true and correct copy of the Cross-Complaint is attached
 12 hereto as Exhibit "A" ("Cross-Complaint").

POINTS AND AUTHORITIES

13
 14 1. On September 27, 2017 this Court appointed Byron Z. Moldo
 15 ("Receiver"), as Receiver for the Receivership Entities. A true and correct copy of
 16 the Receiver's Order of Appointment is attached hereto as Exhibit "B". On October
 17 19, 2017 this Court entered its order confirming the Receiver's appointment. A true
 18 and correct copy of the Court's Minute Order is attached here to as Exhibit "C".

19 2. The Order of Appointment provided, among other things, that the
 20 Receiver had the powers set forth in Corporations Code §2001, as well as all of the
 21 powers of receivers in cases of this kind, for all funds, assets, premises, collateral,
 22 and other assets belonging to or in the possession or control of the Receivership
 23 Entities or any of them.

24 3. Prior to his appointment as Receiver, the Receivership Entities filed the
 25 Cross-Complaint in this case against Plaintiff, Leonard Schrage.

26 4. After his appointment, the Receiver became aware of the Cross-
 27 Complaint. The Receiver has reviewed the Cross-Complaint, has discussed it with
 28 counsel for both the Plaintiff and the Defendants in this case, and has had his

1 counsel review the Cross-Complaint and the factual and legal basis for the claims
 2 asserted therein. Based on the Receiver's discussions and review, and advice of
 3 counsel, the Receiver does not believe it is in the best interests of the receivership
 4 estate to expend receivership estate funds and resources in pursuing and trying the
 5 Cross-Complaint. Rather than simply abandoning the Cross-Complaint, the
 6 Receiver inquired whether any party wished to acquire the Cross-Complaint.

7 The Receiver has received an offer to purchase the Cross-Complaint from
 8 Buyers for \$5,000.00. The sale is to be "as-is, where is" basis, without any
 9 representations or warranties being made by the Receiver and is subject to this
 10 Court's approval and possible overbids. The Receiver believes the proposed sale is
 11 in the best interests of the receivership estate and recommends that it be approved.

12 5. A list of the terms and conditions of the proposed sale as follows:

13 A. Assets being sold:

14 The Cross-Complaint filed in this case by the Receivership Entities and the
 15 claims pled therein, a true and correct copy of which is attached hereto as Exhibit
 16 "A".

17 B. Purchase Price: The purchase price for the Cross-Complaint is
 18 \$5,000.00. A \$1,000.00 deposit has been given to the Receiver. The balance of the
 19 purchase price is to be paid to the Receiver no later than five (5) calendar days
 20 following entry of this Court's order approving the sale.

21 C. Conditions of Sale: The sale of the Cross-Complaint and claims
 22 is "as-is, where-is", with no representations or warranties being made by the
 23 Receiver. The sale is subject to possible over bids and this Court's approval. The
 24 Receiver recommends that any over bid be at least \$1,000.00 higher than the present
 25 bid, and that any over bidder be required to provide the Receiver with cash or a
 26 check for \$1,000.00 prior to or at the hearing on this Motion in order to qualify to
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1 bid. All bids must be on the same terms and conditions as the proposed sale, except
 2 for price.

3 D. Commission: No commission is being paid as part of the sale.

4 It is the Receiver's belief that the terms of the proposed sale are in the best
 5 interests of the Estate and its creditors and that the sale should be approved. Absent
 6 the sale, the Receiver would have to either abandon the Cross-Complaint and plead
 7 claims, or try the Cross-Complaint and attend the trial of this case, at great expense
 8 to the receivership estate.

9 6. The Receiver prays that this Court approve and confirm the sale of the
 10 Cross-Complaint to the Buyers pursuant to the terms set forth herein, or to such
 11 other qualified buyer who makes a higher over bid. The Receiver also prays that
 12 this Court authorize and instruct the Receiver to execute any and all documents
 13 and/or instruments, and to do all other acts necessary to effect the sale and transfer
 14 of the Cross-Complaint and claims.

15 THE COURT HAS THE POWER TO ORDER THE SALE
 16 OF PROPERTY IN THE POSSESSION OF ITS RECEIVER

17 California Code of Civil Procedure §568 gives a receiver the power, under the
 18 control of the Court, not only to take and keep possession of property but also to
 19 make transfers of that property and to do such acts respecting the property as the
 20 Court may authorize. The Code specifically gives the Court power to authorize the
 21 sale of property in a receiver's possession. Prior to July 1, 1983 California Code of
 22 Civil Procedure §568.5 provided:

23 A receiver may, pursuant to an order of the court, sell real
 24 or personal property in his possession as such receiver,
 25 upon the notice and in the manner prescribed by law for
 26 the sale of such property under execution. The sale shall
 27 not be final until confirmed by the court. Sales made
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pursuant to this section shall not be subject to redemption.

[Emphasis added]

This code section has been interpreted to mean that although a receiver may sell property in his possession in the manner prescribed for the sale of property under execution, the court may authorize unconditionally other methods of sale. People v. Riverside University, 35 Cal. App. 3d, 572, 111 Cal. Rptr. 68 (1973).

Effective July 1, 1983 California Code of Civil Procedure §568.5 was amended to conform with changes to Article 6 of Chapter 3 of Division 2 of Title 9 of the Code of Civil Procedure relating to post-judgment sales of property which also took effect on July 1, 1983. The new statute, however, merely relates to the method of sale of property under execution and does not affect the court’s power to authorize other methods of sale in a receivership estate. The new statute specifically retains the language interpreted by the court in People v. Riverside University that “a receiver may pursuant to an order of the court, sell real or personal property in the receiver’s possession . . . (Emphasis added)”.

THE COURT HAS THE POWER TO AUTHORIZE THE RECEIVER TO SELL PROPERTY IN HIS POSSESSION AT EITHER A PRIVATE OR PUBLIC SALE

In People v. Riverside University, supra., the court stated “in the absence of a statute otherwise providing, the court may authorize the Receiver to sell property in his hands at either a private or public sale”. Supra. at 583. The court then made it clear that §568.5 of the California Code of Civil Procedure is not a statute otherwise providing. “It is our conclusion that the court may prescribe or ratify unconditionally a different mode of sale than that provided for execution sales.” Id. The Court felt that for a court to effectively discharge its responsibility in managing property in its hands for the best interests of all parties concerned it must have flexibility with regard to the time and manner in which property should be sold. Supra. at 585.

1 Likewise, in Lessor & Son v. Seymour, 35 Cal. 2d 494, 499 (1950) the court,
2 notwithstanding §568.5 of the California Code of Civil Procedure, relied on the
3 broad power of the court to determine the manner in which property should be sold.

4 We are satisfied that a court in an equity proceeding has
5 the power to change the manner of sale of the property in
6 its custody by a receiver appointed by it from that
7 previously prescribed by it in the order directing the sale,
8 and in that connection may make the sale itself although
9 the prior order called for it to be made by the receiver . . .
10 [t]he main function of the court is to manage or dispose of
11 the estate in the best manner possible and for the best
12 interest of the parties concerned. To effectively perform
13 that duty necessarily requires some flexibility and
14 continuity of jurisdiction in giving instructions to the
15 receiver as to the manner in which the property should be
16 sold to meet contingencies as they might arise.

17 In Wells Fargo Financial Leasing v. D&M Cabinets, et. al., 177 Cal.App. 4th
18 59 (2009) the court made clear that only when the receiver is a receiver appointed to
19 enforce a judgment under the Enforcement of Judgments law (C.C.P. §680.010 et.
20 seq.), and the property involved is a homesteaded residence, is the receiver required
21 to follow procedure for selling property set forth in C.C.P. §568.5 (effectively a
22 sheriff's sale). In all other cases the receiver is not so bound and may sell property
23 using other procedures. The court specifically cited People v. Riverside University,
24 supra., See, 177 Cal.App. 4th at 76-77.

25 “Generally speaking if no good reason appears for refusing to confirm a
26 receiver’s sale, such as chilling of bids or other misconduct or gross inadequacy of
27 price, the sale should be confirmed...” People v. Stark, supra. at 205-206, quoting
28 People v. Riverside University, supra. at 582.

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This Court, therefore, should approve the proposed sale as requested, to the buyers or any qualified overbidder.

CONCLUSION

Based on the above-cited authority, this Court may authorize the sale of the Cross-Complaint. As a result, this Court should enter its order:

A. Approving the sale of the Cross-Complaint and the claims pled therein on the terms and conditions set forth herein to Buyers or to a successful over bidder.

B. Authorizing and instructing the Receiver to execute all documents and/or instruments, and to do all of the acts necessary to effect the sale and transfer of the Cross-Complaint.

C. For such further and other relief as the Court may deem just and appropriate.

DATED: January 22, 2018

Respectfully submitted,

ERVIN COHEN & JESSUP LLP

By: 

PETER A. DAVIDSON
Attorneys for Byron Z. Moldo, Receiver

DECLARATION OF BYRON Z. MOLDO

I, Byron Z. Moldo declare:

1. I am an attorney admitted to practice law in the State of California and before this Court. I am currently serving as the Receiver in this case for numerous corporations, limited liability companies and partnerships which own or are involved with a number of auto dealerships. I have personal knowledge of the facts set forth herein and could and would competently testify thereto.

2. Attached hereto as Exhibit "B" is a true and correct copy of this Court's order appointing me Receiver in this case. The order appointing me Receiver was confirmed by the Court pursuant to the Court's minute order of October 19, 2017, a true and correct copy of which is attached hereto as Exhibit "C". The entities I am Receiver over are set forth in footnote "1" of my order of appointment.

3. Prior to my appointment, a Cross-Complaint was filed in this case. A true and correct copy of the Cross-Complaint is attached hereto as Exhibit "A". The Cross-Complaint is now an asset of the receivership estate.

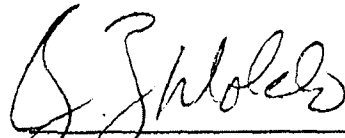
4. After my appointment I became aware of the Cross-Complaint. I reviewed the Cross-Complaint and discussed it with counsel for the plaintiff and the defendants in this case. I had my counsel review the Cross-Complaint and the factual and legal basis for the claims asserted therein. Based upon my review and discussions, and advice of counsel, I do not believe it is in the best interests of the receivership estate to expend receivership estate funds and resources in pursuing and trying the Cross-Complaint. Rather than simply abandoning the Cross-Complaint, I inquired whether any party wished to acquire the Cross-Complaint. I received an offer to purchase the Cross-Complaint from Michael Schrage and Joseph Schrage for \$5,000.00. The terms of the sale of the Cross-Complaint and the claims pled therein are the sale is on an "as-is, where-is" basis, without any warranty or representation being made by me as Receiver. The sale is subject to this Court's approval and possible over bids. I have spoken to counsel for Leonard Schrage who

1 indicated he might want to bid to purchase the Cross-Complaint. I believe the
2 minimum over bid should be \$6,000.00.

3 5. I believe the proposed sale, based on the terms and conditions, as
4 explained in the attached motion, is in the best interests of the receivership estate
5 and should be approved.

6 6. Ex parte approval of this sale is necessary because trial of this case and
7 the Cross-Complaint is set to start on February 20, 2018. There is not time for a
8 noticed motion to approve the sale and it would be a waste of receivership resources
9 to have my counsel prepare for and try the Cross-Complaint.

10 I declare under penalty of perjury that the foregoing is true and correct and
11 that this Declaration was executed on January 25, 2018 at Beverly Hills, California.

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Byron Z. Moldo, Receiver

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1 **DECLARATION OF BYRON Z. MOLDO RE NOTICE**

2 I, Byron Z. Moldo, declare as follows:

3 1. I am an attorney licensed to practice law in the State of California, a
4 partner in the law firm of Ervin Cohen & Jessup LLP, and the Receiver in the
5 above-entitled matter.

6 2. I make this declaration in support of the Notice of Ex Parte Motion and
7 Ex Parte Motion of Byron Z. Moldo, Receiver, to Approve the Sale of Cross-
8 Complaint; Memorandum of Points and Authorities; Declaration of Byron Z. Moldo
9 (“Motion”).

10 3. In accordance with California Rules of Court, Rule 3.1203, I notified
11 all parties of my intent to present the Motion, as follows:

12 a. On January 22, 2018 at 2:20 p.m., I telephoned Ivan Kallick of
13 Manatt, attorneys for plaintiff Leonard Schrage, and informed him that on January
14 24, 2018 at 8:30 a.m. in Department 28 of the Los Angeles County Superior Court
15 located at 111 North Hill Street, Los Angeles, I would present the Motion to the
16 Court to sell the Cross-Complaint, the terms of the sale and how to qualify to
17 overbid.

18 b. On January 22, 2018 at 2:23 p.m., I telephoned Ira Rosenblatt of
19 R2 Law Group, attorneys for defendant Joseph Schrage, and left him a detailed
20 message that on January 24, 2018 at 8:30 a.m. in Department 28 of the Los Angeles
21 County Superior Court located at 111 North Hill Street, Los Angeles, I would
22 present the Motion to the Court to sell the Cross-Complaint to his clients and the
23 possibility of overbids.

24 c. On January 22, 2018 at 2:25 p.m., I telephoned Thomas Shuck of
25 Parker Milliken Clark O’Hara & Samuelian, attorneys for defendant Michael
26 Schrage, and left him a detailed message that on January 24, 2018 at 8:30 a.m. in
27 Department 28 of the Los Angeles County Superior Court located at 111 North Hill
28 Street, Los Angeles, I would present the Motion to the Court to sell the Cross-

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Complaint to his clients and the possibility of overbids.

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

Executed this 22nd day of January, 2018, at Beverly Hills, California.



BYRON Z. MOLDO

EXHIBIT A

13373.23

1 LOEB & LOEB LLP
2 DANIEL MURPHY (SBN 141006)
3 ddmurphy@loeb.com
4 W. ALLAN EDMISTON (SBN 228246)
5 aedmiston@loeb.com
6 10100 Santa Monica Blvd., Suite 2200
7 Los Angeles, CA 90067
8 Telephone: 310.282.2000
9 Facsimile: 310.282.2200

6 Attorneys for Defendants Sage Holding Co., Inc.; Universal City
7 Nissan, Inc.; Glendale Nissan/Infiniti, Inc.; Sage Management Co.,
8 Inc.; Sage Downtown, Inc.; Sage MJL Properties, LLC; UCNP II,
9 LLC; West Covina Nissan, LLC; Sky Blue, LLC; Valencia Holding
10 Company, LLC; West Covina Auto Group, LLC; Covina MJL LLC;
11 Sage North Hollywood, LLC; and UCN Partners, LP

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES

12 LEONARD SCHRAGE, an individual,
13 Plaintiff,
14 v.

Case No.: BC579623
Assigned to Hon. Yvette M. Palazuelos
Department 28

15 MICHAEL SCHRAGE, an Individual;
16 JOSEPH SCHRAGE, an Individual; SAGE
17 HOLDING COMPANY, INC., a California
18 Corporation; UNIVERSAL CITY NISSAN,
19 INC., a California Corporation; GLENDALE
20 NISSAN/INFINITI, INC., a California
21 Corporation; SAGE MANAGEMENT CO.,
22 INC., a California Corporation; SAGE
23 DOWNTOWN, INC., a California
24 Corporation; SAGE MJL PROPERTIES,
25 LLC., a California Limited Liability
26 Company; UCNP II, LLC., a California
27 Limited Liability Company; WEST COVINA
28 NISSAN, LLC., a California Limited
Liability Company; SKY BLUE, LLC., a
California Limited Liability Company;
VALENCIA HOLDING COMPANY, LLC.,
a California Limited Liability Company;
WEST COVINA AUTO GROUP, LLC., a
California Limited Liability Company;
COVINA MJL, LLC., a California Limited
Liability Company; SAGE NORTH
HOLLYWOOD, LLC., a California Limited
Liability Company; and UCN PARTNERS,
LP., a California Limited Partnership,

**CROSS-COMPLAINT OF SAGE
HOLDING CO., INC.; UNIVERSAL
CITY NISSAN, INC.; GLENDALE
NISSAN/INFINITI, INC.; SAGE
MANAGEMENT CO., INC.; SAGE
DOWNTOWN, INC.; SAGE MJL
PROPERTIES, LLC; UCNP II,
LLC; WEST COVINA NISSAN,
LLC; SKY BLUE, LLC;
VALENCIA HOLDING
COMPANY, LLC; WEST COVINA
AUTO GROUP, LLC; COVINA
MJL LLC; SAGE NORTH
HOLLYWOOD, LLC; AND UCN
PARTNERS, LP FOR:**

- 1. BREACH OF FIDUCIARY DUTY;
- 2. CONVERSION; AND
- 3. VIOLATIONS OF THE CALIFORNIA PRIVACY ACT

Complaint Filed: April 23, 2015
Trial Date: March 20, 2017

Defendants.

1 Defendants and Cross-Complainants, Sage Holding Co., Inc.; Universal City
2 Nissan, Inc.; Glendale Nissan/Infiniti, Inc.; Sage Management Co., Inc.; Sage Downtown,
3 Inc.; Sage MJL Properties, LLC; UCNP II, LLC; West Covina Nissan, LLC; Sky Blue,
4 LLC; Valencia Holding Company, LLC; West Covina Auto Group, LLC; Covina MJL
5 LLC; Sage North Hollywood, LLC; and UCN Partners, LP (“Cross-Complainants” or the
6 “Entity Defendants”) by way of their Cross-Complaint against Plaintiff Leonard Schrage
7 (“Cross-Defendant”) allege as follows:

8 **I. NATURE OF THE ACTION**

9 1. This is an action by family-owned companies against a family member over
10 his mismanagement of, and self-dealing in connection with, the family businesses.

11 2. In 1959, Morris Schrage aka Morris Sage (“Morris”) entered the automobile
12 dealership industry and through decades of hard work and with the benefit of his business
13 acumen, created a group of companies that became one of the largest family-owned car
14 dealership groups in the United States (the “Sage Businesses”).

15 3. The Sage Businesses consist of at least twelve separate operating entities,
16 plus a separate management company and a separate holding company. It was a deliberate
17 strategy of Morris to structure the dealerships as separate legal entities, either as a
18 corporation, a limited liability company, or a limited partnership.

19 4. Morris died in 2011, and he passed the ownership of the Sage Businesses to
20 his three sons, Defendants Michael Schrage (“Michael”) and Joseph Schrage (“Joseph”),
21 and Plaintiff and Cross-Defendant Leonard Schrage (“Leonard”). Although the percentage
22 ownership in each of the separate entities varies somewhat, overall, each of the three
23 brothers owns (or derives an economic benefit of) roughly one-third of the Sage
24 Businesses.

25 5. When Morris died, Leonard assumed a management role in the Sage
26 Businesses. Leonard was not successful in running the companies, and their performance
27 declined. Michael and Joseph determined to exercise their combined two-thirds control
28 and protect the companies and their own interests. In doing so, they discovered that, in

1 addition to being a poor manager, Leonard had been breaching his fiduciary duties to the
2 companies and their owners.

3 **II. THE PARTIES**

4 6. Cross-Complainant Sage Holding Co., Inc. is a California corporation.

5 7. Cross-Complainant Universal City Nissan, Inc. is a California corporation.

6 8. Cross-Complainant Glendale Nissan/Infiniti, Inc. is a California corporation.

7 9. Cross-Complainant Sage Management Co., Inc. is a California corporation.

8 10. Cross-Complainant Sage Downtown, Inc. is a California corporation.

9 11. Cross-Complainant Sage MJL Properties, LLC is a California limited
10 liability company.

11 12. Cross-Complainant UCNP II, LLC is a California limited liability company.

12 13. Cross-Complainant West Covina Nissan, LLC is a California limited liability
13 company.

14 14. Cross-Complainant Sky Blue, LLC is a California limited liability company.

15 15. Cross-Complainant Valencia Holding Company, LLC is a California limited
16 liability company.

17 16. Cross-Complainant West Covina Auto Group, LLC is a California limited
18 liability company.

19 17. Cross-Complainant Covina MJL LLC is a California limited liability
20 company.

21 18. Cross-Complainant Sage North Hollywood, LLC is a California limited
22 liability company.

23 19. Cross-Complainant UCN Partners, LP is a California limited partnership.

24 20. Cross-Defendant Leonard Schrage is, upon information and belief, an
25 individual residing and doing business in the city of Los Angeles in the county of Los
26 Angeles, California. Leonard is a director of each of the corporate defendants, and is an
27 owner of each of the limited liability company and limited partnership defendants (either
28 directly, through a trust, or through his ownership interest in a parent entity).

1 **III. VENUE AND JURISDICTION**

2 21. Venue and jurisdiction are proper in this Court because the acts and
3 omissions sued upon occurred within the County of Los Angeles, California, and the
4 Cross-Complainants and Cross-Defendant have actively and regularly engaged in business
5 within the County of Los Angeles. Furthermore, the real property at issue in this lawsuit is
6 situated within the County of Los Angeles. The amount in controversy in this action
7 exceeds the jurisdictional minimum of this Court.

8 **IV. FACTUAL BACKGROUND**

9 **A. THE SCHRAGE FAMILY BUSINESS**

10 22. The three Schrage brothers own, directly or indirectly, interests in at least
11 fourteen entities within the family business: (1) Sage Holding Company, Inc.;
12 (2) Universal City Nissan, Inc.; (3) Glendale Nissan/Infiniti, Inc.; (4) Sage Management
13 Co., Inc.; (5) Sage Downtown, Inc.; (6) Sage MJL Properties, LLC; (7) UCNP II, LLC;
14 (8) West Covina Nissan, LLC; (9) Sky Blue, LLC; (10) Valencia Holding Company, LLC;
15 (11) West Covina Auto Group, LLC; (12) Covina MJL, LLC; (13) Sage North Hollywood,
16 LLC; and (14) UCN Partners, LP.

17 **B. LEONARD'S MALFEASANCE**

18 23. Not long after the death of their father, Leonard began to engage in conduct
19 which, unchecked, would have led to the demise of the Sage Businesses, including, but not
20 limited to the following.

21 **1. Provided College Coaches With Cars**

22 24. To serve personal goals, Leonard arranged sweetheart deals with college
23 athletics coaches. Without the knowledge of his brothers, Leonard directed the family
24 dealership, Glendale Nissan/Infiniti, Inc., to "lend" on a cost-free basis, two new luxury
25 vehicles to two college athletics coaches, with one vehicle being then passed to a different
26 coach. After nearly two years for one of the cars, and over three years for the other, the
27 cars have not been returned to the dealership.

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2. Made Numerous Unauthorized And Secret Side-Deals, Including With An Auto Body Shop

25. Upon information belief, Leonard had an economic interest in an automobile repair center (the "Body Shop").

26. The Body Shop was completely unrelated to any of the Sage Businesses. However, Leonard required all of the Sage Businesses to refer customers to the Body Shop.

27. The Body Shop obtained its parts for repairs from the Sage Businesses, but did not pay for the parts, eventually accumulating approximately \$1 million in debt to the Sage Businesses for the purchase of auto parts. Despite Joseph's inquires, Leonard refused to attempt to collect on the debt from the Body Shop, and refused to stop referring customers to the Body Shop.

28. Moreover, the Body Shop services were below average, and many customers afterwards complained about being referred to the Body Shop. Worried that the reputation of the Sage Businesses was suffering, Joseph pleaded with Leonard to stop referring clients to such a disreputable shop. But Leonard persisted in referring clients thereto.

3. Converted Company Dodgers Tickets To Himself

29. The family business has long used highly coveted Los Angeles Dodgers premium baseball season tickets to incentivize the employees of the companies and to entertain their manufacturers. The ticket investment is over \$80,000 annually. Leonard has converted the tickets by secreting the password necessary to access the tickets to himself. This has deprived the Sage Businesses from marketing the brand, and rewarding highly performing key employees. Moreover, to deflect attention from his own misconduct, Leonard has falsely accused that Joseph has sold Dodgers tickets through his girlfriend.

4. Converted The Super Bowl Prize Award To Himself

30. The West Region 2015 Super Bowl Challenge incentive package provided by Nissan North America, Inc. was presented to the dealership that finished with the

1 highest attainment of its respective November and December 2015 goals. The award
2 included two tickets to the Super Bowl game, plus \$5,000 to cover travel and
3 accommodations.

4 31. Universal City Nissan, Inc. won the award, but rather than reward one of the
5 dealership's employees, Leonard claimed the award for himself, without consultation with
6 or authorization from Michael and Joseph. Specifically, Leonard had the tickets delivered
7 to his home address, and a check for \$5,000 written to him.

8 **5. Self-Dealing Regarding Demos**

9 32. Leonard appeared at the Mercedes-Benz of Valencia dealership on February
10 16, 2016, and demanded that he be given a 2016 Mercedes-Benz S 5-Speed Sedan at an
11 MSRP of \$118,590 to use as a "demo." Leonard was told by the general manager of the
12 store, and then by Michael, the president and majority shareholder of the company, that
13 Leonard could not take the car because it would negatively affect the dealership's
14 allocation of cars with the manufacturer (unsold inventory, such as this demo, reduces the
15 dealership's allocation). Leonard already has five "demos." Leonard told the employee
16 that he was going to take the car anyway.

17 **6. Surreptitiously Taped Conversations**

18 33. Upon information and belief, Leonard secretly recorded numerous
19 conversations between himself and unsuspecting third parties, including conversations
20 with employees of the Sage Businesses.

21 34. None of the recorded conversations include Leonard informing the
22 individual(s) he was speaking with that the conversation was being recorded.

23 35. None of the recorded conversations include Leonard asking for permission to
24 record the conversation.

25 36. Upon information and belief, each of the recorded conversations occurred
26 either over the telephone, or in private. Upon information and belief, each of the
27 individuals who Leonard recorded expected that under the circumstances of the
28 communication, it would be confined to the parties involved in the communication..

1 37. Upon information and belief, Leonard surreptitiously recorded other
2 confidential communications using electronic devices.

3 **7. Interfered With The Opening Of Sage Hyundai**

4 38. Even though management of the companies determined that it was in the
5 companies' best interests to acquire a Hyundai dealership on Vermont Avenue in Los
6 Angeles, Leonard not only objected to the acquisition, but has done everything he could to
7 sabotage the transaction. Defying all family business precedent, Leonard refused to be a
8 part of the application process, refused to allow his name to be a part of the consideration
9 of the approval process, and refused to provide his personal guarantee. Nevertheless,
10 Leonard maintains the same ownership interests in the dealership as do his two brothers,
11 Michael and Joseph. The reason has since become clear in that, upon information and
12 belief, Leonard has or is contemplating his own competing enterprise lurking in the wings.

13 **8. Mismanaged The Mercedes-Benz of Valencia Dealership**

14 39. Leonard mismanaged the Mercedes-Benz of Valencia dealership, which
15 caused it to lose money during a period in which similarly situated dealerships were
16 profitable. Among other acts, Leonard ignored letters from Mercedes-Benz USA
17 ("MBUSA") indicating that the Valencia dealership was undercapitalized and had violated
18 contractual requirements. MBUSA threatened to terminate the dealership as an authorized
19 seller of Mercedes-Benz vehicles.

20 **C. SUCCESS AFTER LEONARD'S DEPARTURE FROM**
21 **MANAGEMENT**

22 40. After Joseph's assumption of the corporate duties that Leonard had
23 abandoned, the companies' performances have improved dramatically. For example, the
24 Kia of Downtown LA dealership is the #1 Kia dealership in the nation for new car sales for
25 2016; the Glendale Infiniti dealership was the #1 dealership for new car sales in California
26 in 2015; the Glendale Infiniti dealership is now the #1 Infiniti dealership in the nation for
27 new car sales for 2016; the Universal City Nissan dealership was the #1 Nissan dealership
28 in the nation for new car sales for 2015; the Universal City Nissan dealership is now the #1

1 Nissan dealership in the nation for new car sales for 2016; the Glendale Infiniti dealership
2 received the Infiniti Award of Excellence 2013, 2014 and 2015; the Kia of Downtown Los
3 Angeles dealership received the Kia President's Club ~ Global Dealer of the Year award
4 for 2014; and the Mercedes-Benz of Valencia dealership received the Mercedes-Benz
5 "Best of the Best" award for 2015. The 2016 EBIDTA of Sage Holding Company, Inc. is
6 the highest that it has been in its history.

7 **FIRST CAUSE OF ACTION**

8 **(Breach of Fiduciary Duty Against Cross-Defendant Leonard)**

9 41. Cross-Complainants incorporate by reference the allegations of Paragraphs 1
10 through 41 as though set forth herein.

11 42. Cross-Defendant owed and continues to owe fiduciary duties to Cross-
12 Complainants.

13 43. Cross-Defendant's actions constitute a breach of his respective fiduciary
14 duties to each of the Cross-Complainants.

15 44. Cross-Complainants have suffered, and will continue to suffer, damages as a
16 direct and proximate result of Cross-Defendant's breaches of fiduciary duty, and are
17 entitled to recover compensatory damages.

18 45. In addition, Cross-Complainants are entitled to an order requiring Cross-
19 Defendant to disgorge all amounts by which he has been unjustly enriched as a result of his
20 breaches of fiduciary duty.

21 46. Cross-Defendant's breaches were willful, malicious, outrageous, and
22 oppressive. Cross-Complainants are, therefore, entitled to an award of punitive damages
23 against Cross-Defendant.

24 **SECOND CAUSE OF ACTION**

25 **(Conversion Against Cross-Defendant Leonard)**

26 47. Cross-Complainants incorporate by reference the allegations of Paragraphs 1
27 through 47 as though set forth herein.

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