

1 Dean T. Kirby, Jr. 090114
Roberta S. Robinson 099035
2 KIRBY & McGUINN, A P.C.
707 Broadway, Suite 1750
3 San Diego, California 92101-5393
Telephone: (619) 525-1652
4 Facsimile: (619) 525-1651

5 Attorneys for Non-Parties
Seattle Funding Group of California, LLC;
6 SFG Income Fund VI, LLC; and Home
Assistance Services, Inc.
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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

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11 SECURITIES AND EXCHANGE
COMMISSION,

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13 Plaintiff,

14 v.

15 GINA CHAMPION-CAIN AND ANI
DEVELOPMENT, LLC

16
17 Defendants,

18 AMERICAN NATIONAL
INVESTMENTS, INC.,

19 Relief Defendant.
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Case No. 3:19-cv-01628-LAB-AHG

**JOINT MOTION FOR ORDER
GRANTING SEATTLE FUNDING
GROUP RELIEF FROM
PRELIMINARY INJUNCTION TO
FORECLOSE ON REAL PROPERTY**

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JOINT MOTION

1. Krista Freitag, the duly appointed receiver ("Receiver") for ANI Development, LLC, American National Investments, Inc. ("ANI") and their subsidiaries and affiliates; plaintiff Securities and Exchange Commission; Defendant Gina Champion-Cain; together with non-parties Seattle Funding Group of California, LLC, SFG Income Fund VI, LLC; ("Income Fund VI") and Home Assistance Services, Inc. ("Home Svcs") by and through their respective counsel of record, stipulate to limited relief from the Court's September 3, 2019 Order Granting the Parties' Joint Motion and Stipulated Request by Parties for a Preliminary Injunction Order and Order (1) Freezing Assets; (2) Requiring Accountings; (3) Prohibiting Destruction of Documents; and (4) Appointing Permanent Receiver ("Appointment Order"). [Dkt. 6.]

2. This joint motion concerns the mixed-use property located at 7569-7571/7565 University Ave. San Diego, California, APN 469-620-11 & 12 (the "University Ave. Property"). American National Investments, Inc., purchased the University Ave. Property in June 2018 for \$1.3 million. SFG Income Fund VI and Home Svcs ("Lenders") issued two interest-only loans that are secured, respectively, by a first and second trust deed encumbering the University Ave. Property (the "University Ave. Loans"). The University Ave. Loans matured on January 1, 2020. Given the physical status of the property and various other factors discussed herein, the Receiver initially determined that very little, if any, equity in the University Ave. Property would likely be realized for the benefit of the receivership estate. Thus, the Receiver has not made any debt service payments to Lenders since the SEC Action was filed. The combined outstanding principal balance on the interest-only University Ave. Loans is approximately \$910,000 and Lenders assert that, as of April 1, 2020, American National Investments, Inc. owed in excess of \$1,072,588.69 to Lenders.

3. Prior to the receivership, Defendants hired a contractor to make certain improvements to the University Ave. Property in anticipation of tearing down most (and at one point in their plans,

1 all) of the improvements located on the parcels to build a 16-unit apartment complex. The work
2 stopped shortly before the Receiver's appointment and the contractor was not paid for a portion of its
3 work. As a result, the Receiver is aware of a mechanic's lien on the University Ave. Property in the
4 approximate amount of \$16,580. Accordingly, after incorporating the property taxes owing, the total
5 amount potentially owing to the secured creditors is in excess of \$1.1 million.

6 4. As part of their construction plans, the Defendants had also hired contractors to
7 consolidate what had previously been two separate legal parcels into one parcel through a Parcel
8 Map Waiver ("PMW"). However, prior to the receivership, the cost to complete the Defendant's 16-
9 unit apartment plans was prohibitive and those plans were abandoned without a clear direction for
10 the project. As the improvements currently stand (a four-unit partially renovated apartment complex
11 and three small commercial units previously on one parcel and a single-family residence located on
12 the other parcel), it could have been easier to sell the legal parcels separately, however the City of La
13 Mesa does not have a PMW process to separate parcels once joined.

14 5. Given the secured (interest-only) debt balances and maturity dates, the property's
15 unresolved construction plans, and the combination of the two parcels into one, the Receiver initially
16 determined that very little, if any, equity in the University Ave. Property would likely be realized for
17 the benefit of the receivership estate. Given the creditor amounts owing (over \$1.1 million), the
18 Receiver also determined that engaging a broker to market the University Ave. Property, and
19 potentially paying the broker a commission of at least 4% of the purchase price (i.e., \$40,000 on a
20 hypothetical \$1 million transaction), would not be feasible.

21 6. Nonetheless, the Receiver did receive certain unsolicited expressions of interest in the
22 University Ave. Property from potential purchasers and was able to move one prospective buyer
23 toward a contract, but ultimately the buyer declined to move forward. Based on the expressions of
24 interest and the likelihood that there would be limited, if any, equity that could be realized for the

1 benefit of the receivership estate, the Receiver obtained a preliminary title report and solicited an
2 appraisal. The appraisal, which was completed prior to the economic shutdown due to the COVID-
3 19 pandemic, estimated the as-is value to be \$1.2 million. The appraisal also noted that the cost to
4 complete the construction would be approximately \$175,000 but would only increase the estimated
5 stabilized value after completion of construction to \$1.4 million.

6 7. Given this appraised value and in a final attempt to generate a recovery from the
7 University Ave. Property for the receivership estate, the Receiver conferred with Lenders on several
8 occasions to see if she could, (a) negotiate discounted payoffs with the mechanic's lien holders and
9 extensions of time with Lenders, and (b) work to materialize an offer through her in-house broker
10 (thus eliminating potential broker fees from the transaction) from the unsolicited expressions of
11 interest from potential buyers. These efforts did generate a prospective purchaser, but said purchaser,
12 after completion of his due diligence during the COVID-19 outbreak, terminated his contract. To
13 date, no subsequent offers for the University Ave. Property have materialized and it is uncertain that
14 under the current COVID-19 outbreak that an offer would materialize high enough to cover the
15 underlying liens and transactional costs.

16 8. As the result of the foregoing, the Parties hereto have agreed that it is reasonable and
17 appropriate for Lenders to be permitted to commence and prosecute a non-judicial foreclosure while
18 the Receiver continues to market the University Ave. Property for sale.

19 STIPULATION

20 THEREFORE, the Commission, the Receiver, Champion-Cain, SFG Income Fund VI, LLC
21 and Home Assistance Services, Inc., by and through their undersigned attorneys of record, hereby
22 STIPULATE AND AGREE as follows:

23 9. That an Order may and should be entered providing that the injunctions set forth the
24 Appointment Order be modified in the following particulars only, and only with respect to the

1 respective claims of SFG Income Fund VI, LLC and Home Services, Inc. (the “Lenders”) secured by
2 their respective deeds of trust, encumbering the University Ave. Property.

3 10. That the injunctions be modified to permit each of the Lenders, together or
4 separately, to enforce the security interests created under their respective deeds of trust by
5 commencing and prosecuting non-judicial foreclosure proceedings. Such foreclosure proceedings
6 may be consummated without the necessity of any further order of the Court. The successful bidder
7 at any foreclosure sale may acquire and take possession of the University Ave. Property free and
8 clear of any interest of the receivership estate.

9 11. That the Lenders retain all other rights and remedies they currently have, including
10 without limitation the right to petition this Court for further relief. The Receiver and ANI agree to
11 execute and deliver such documents as the Lenders may reasonably request in order to complete the
12 non-judicial foreclosure proceedings.

13 12. Nothing herein shall preclude the Receiver from soliciting or developing offers for
14 the University Ave. Property pending the foreclosure sale. In the event an offer in an amount
15 sufficient to pay secured claims and property taxes, to provide a net recovery for the receivership
16 estate is secured, and the buyer has released contingencies, the Receiver will confer with Lenders
17 and seek Court approval of the sale.

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SIGNATURE CERTIFICATION

Per this Court’s ECF Administrative Policies and Procedures, Section 2(f)(4), I hereby certify that all parties to this Joint Motion have agreed to its content and have authorized the filing with use of each of their electronic signatures.

DATED: April 21, 2020

KIRBY & McGUINN, APC

By: /s/ Dean T. Kirby, Jr.
Dean T. Kirby, Jr.
Attorneys for Non-Parties Seattle Funding
Group of California, LLC, SFG Income Fund
VI, LLC, and House Assistance Services, Inc.