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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

GINA CHAMPION-CAIN AND ANI
DEVELOPMENT, LLC,

Defendants, and

AMERICAN NATIONAL
INVESTMENTS, INC.,

Relief Defendant.

Case No.: 3:19-cv-1628-LAB-AHG

**ORDER GRANTING JOINT
MOTION TO AMEND THE
COURT’S MAY 6, 2020 ORDER
GRANTING, INTER ALIA,
RECEIVER’S MOTION FOR
APPROVAL OF SALE OF
PERSONAL PROPERTY AND
ASSIGNMENT OF COMMERCIAL
LEASE ASSOCIATED WITH BAO
BEACH RESTAURANT**

[ECF Nos. 316, 321]

I. BACKGROUND

This matter comes before the Court on the Joint Motion (ECF No. 321) filed on June 2, 2020 by the parties to the case—Plaintiff Securities and Exchange Commission, Defendant Gina Champion-Cain, and Krista Freitag (“Receiver”), the Court-appointed permanent receiver for Defendant ANI Development, LLC, Relief Defendant American National Investments, Inc., and their subsidiaries and affiliates. The parties’ Joint Motion requests that the Court amend its May 26, 2020 Order Granting (1) Receiver’s Motion for Approval of Sale of the Swell Coffee Restaurant Property and Associated Personal Property; (2) Receiver’s Motion for Approval of Sale of the Saska’s Restaurant Property and Associated Personal Property and Liquor License; and (3) Receiver’s Motion for Approval of Sale of Personal Property and Assignment of Commercial Lease Associated with Bao Beach Restaurant (the “May 6, 2020 Order”) (ECF No. 316). In particular, the parties ask that the Court amend two paragraphs of the May 6, 2020 Order concerning the Receiver’s Motion for Approval of Sale of Personal Property and Assignment of Commercial Lease Associated with Bao Beach Restaurant (the “Bao Beach Motion”), approving a particular disbursement of funds from the sale of the Bao Beach restaurant assets and assignment of the Bao Beach commercial lease. *See* ECF No. 321.

II. DISCUSSION

As discussed in the Court’s May 6, 2020 Order, the Bao Beach restaurant property is located at 3735 Mission Boulevard, San Diego, CA 92109. ECF No. 289-1 at 5. The Bao Beach restaurant is leased by the receivership entities, placing the leasehold interest within the receivership estate. In addition to the leasehold interest, the receivership estate owns assets associated with the Bao Beach restaurant, including personal property (furniture, fixtures, and equipment), contracts, and intellectual property. *Id.* Upon due consideration, the Court granted the Receiver’s Motion to sell the Bao Beach restaurant assets and to assign the commercial lease held by the receivership estate to Buyer Oswaldo Rodriguez and Consuelo Rodriguez for \$28,000, to be paid in cash. ECF No. 316 at 15. The Court

1 also authorized the Receiver's specific proposed disbursement of the funds from the Bao
2 Beach sale. *Id.*

3 In the Joint Motion, the parties explain that the Bao Beach Motion and the Receiver's
4 supporting Declaration both mistakenly stated that the broker's commission to be paid to
5 Receiver's broker Next Wave (and to be split with the buyer's broker) out of the funds
6 from the Bao Beach sale was 10% of the purchase price, or \$2,800. ECF No. 321 at 2.
7 Therefore, the Court approved a disbursement of \$2,800 from the sale proceeds to pay the
8 broker fees. ECF No. 316 at 15, ¶ 16. This error also affected the Receiver's and the Court's
9 estimate of the amount of net sale proceeds of the Bao Beach Assets to be paid to the
10 receivership estate, stated to be in the range of \$23,000. *Id.* ¶ 18. However, the actual
11 commission agreed upon with Next Wave was a set amount of \$7,500. ECF No. 321 at 2.
12 Accordingly, the parties ask that the Court amend Paragraphs 16 and 18 on Page 15 of the
13 May 6, 2020 Order to approve the payment of \$7,500 to the broker out of the Bao Beach
14 sale proceeds, and to accurately reflect that the estimated net sale proceeds to be returned
15 to the receivership estate are \$18,300.

16 Being fully advised, the Court finds that the parties' proposed amendment does not
17 affect the Court's prior analysis and conclusion that proposed sale of the Bao Beach Assets,
18 as amended, is in the best interest of the receivership estate and is consistent with the goal
19 of the receivership to ensure the orderly and efficient administration of the estate.
20 Therefore, the Court **GRANTS** the Joint Motion (ECF No. 321).

21 **III. CONCLUSION**

22 The Court **GRANTS** the Joint Motion to Amend Order Granting: (1) Receiver's
23 Motion for Approval of Sale of the Swell Coffee Restaurant Property and Associated
24 Personal Property; (2) Receiver's Motion for Approval of Sale of the Saska's Restaurant
25 Property and Associated Personal Property and Liquor License; and (3) Receiver's Motion
26 for Approval of Sale of Personal Property and Assignment of Commercial Lease
27 Associated with Bao Beach Restaurant. ECF No. 321.

28 Accordingly, **IT IS ORDERED** as follows:

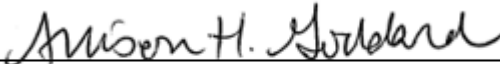
1 (1) Paragraph 16 on Page 15 of the Court's May 6, 2020 Order (ECF No. 316) is
2 **AMENDED** to reflect that the Receiver is authorized to pay Broker Next Wave the total
3 sum of \$7,500 in connection with the sale of the Bao Beach assets.

4 (2) Paragraph 18 on Page 15 of the Court's May 6, 2020 Order (ECF No. 316) is
5 **AMENDED** to reflect that the net sale proceeds from the Bao Beach assets (factoring in
6 the larger payment to Broker) are estimated to be \$18,300.

7 All other portions of the Court's May 6, 2020 Order remain in effect, except as
8 explicitly modified herein.

9 **IT IS SO ORDERED.**

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11 Dated: June 3, 2020

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14 Honorable Allison H. Goddard
15 United States Magistrate Judge
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