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14 UNITED STATES DISTRICT COURT
 15 SOUTHERN DISTRICT OF CALIFORNIA

17 SECURITIES AND EXCHANGE
 COMMISSION,

18 Plaintiff,

19 v.

20 GINA CHAMPION-CAIN and ANI
 21 DEVELOPMENT, LLC,

22 Defendants,

23 AMERICAN NATIONAL
 INVESTMENTS, INC.,

24 Relief Defendant.
 25
 26
 27
 28

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

Ctrm: 14A
 Judge Hon. Larry Alan Burns

**MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF
 MOTION FOR AUTHORITY TO
 PURSUE CLAIMS AGAINST
 CHICAGO TITLE**

Date: July 13, 2020
 Time: 11:15 a.m.

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1 **I. INTRODUCTION**

2 The Receiver is investigating potential claims against third parties that could
3 bring additional funds into the receivership estate and enhance the recovery for
4 defrauded investors. During her investigation, the Receiver learned details of the
5 relationship between Defendant Gina Champion-Cain ("Cain") and Chicago Title
6 Company and Chicago Title Insurance Company (collectively, "Chicago Title").
7 Evidence obtained by the Receiver clearly shows that Chicago Title had knowledge
8 of Cain's fraudulent scheme to defraud investors. Chicago Title knew that
9 prospectus and offering material used by the Receivership Entities represented that
10 investor funds would be placed in individual escrow accounts maintained by
11 Chicago Title, yet no such escrow accounts existed. Rather, the accounts
12 maintained at Chicago Title by the Receivership Entities were deposit accounts over
13 which Cain had total control. In addition, among other things, Cain paid two
14 different Chicago Title employees thousands of dollars in cash bribes in exchange
15 for their cooperation. The Receiver believes Chicago Title, with knowledge that
16 Cain was operating an unlawful scheme, helped assure, and expressly
17 misrepresented to, prospective investors that Cain's scheme was legitimate. In doing
18 so, Chicago Title enabled and substantially assisted Cain in carrying out the scheme.
19 While her forensic accounting is ongoing, the Receiver believes the scheme caused
20 the Receivership Entities to incur tens of millions of dollars in debt and liabilities to
21 investors that they will not be able to repay; the exact amount of investor losses will
22 be determined through the Receiver's forensic accounting being conducted pursuant
23 to the Court's appointment order and the prospective claims process in this action.

24 The Receiver seeks authorization to pursue claims against Chicago Title using
25 her general counsel, Allen Matkins Leck Gamble Mallory & Natsis, LLP ("Allen
26 Matkins"). The Receiver recognizes that litigation is expensive and Chicago Title
27 may aggressively defend the claims. Accordingly, Allen Matkins has agreed to
28 handle this matter on a contingent basis, with a tiered contingent fee ranging from

1 20-30% of the total recovery depending on when this matter is resolved, as
2 discussed further below. The Receiver believes these terms are fair and reasonable
3 in light of Allen Matkins' in-depth knowledge of this matter, skill and experience.
4 This arrangement will allow the Receiver to pursue claims against Chicago Title at
5 minimal risk to the receivership estate, with the goal of securing a substantial
6 recovery for the benefit of defrauded investors.

7 **II. FACTUAL AND PROCEDURAL BACKGROUND**

8 The Receiver and her team have made significant progress on her forensic
9 accounting and based upon such progress to date, it appears that beginning in 2011,
10 Cain offered an investment opportunity relating to the financing of purchases of
11 California liquor licenses. Declaration of Krista L. Freitag filed herewith ("Freitag
12 Decl."), ¶ 2. Per the complaint filed by the Securities and Exchange Commission
13 ("Commission"), through the liquor license investment program, Cain raised over
14 \$300 million from approximately 50 investors nationwide

15 The liquor license investment program was wholly illusory. The form escrow
16 agreements ("Form Escrows") purportedly governing many of the investments—
17 whereby (i) the investor's money could only be used to fund specified underlying
18 liquor license transfer(s); (ii) the money would be held in an escrow account for this
19 purpose at Chicago Title; and (iii) at the conclusion of the license transfer, Chicago
20 Title would return the investor's funds to the investor along with the investor's
21 agreed upon return—were fabricated and in most instances, contained the forged
22 signatures of Chicago Title escrow officers. The actual agreements governing the
23 Chicago Title accounts which received investor funds show that they were not truly
24 escrow accounts. The actual agreements gave Cain complete discretion and control
25 over the deposited investor funds. With that control, Cain, with the direct assistance
26 from Chicago Title, transferred significant amounts of investor monies, none of
27 which funded liquor licenses as represented in the scheme. Freitag Decl., ¶ 2. Per
28 the Commission's complaint, while ANI Development currently owes its investors

1 over \$120 million, just \$11 million remained in ANI Development's account at
2 Chicago Title when it was frozen.

3 Chicago Title actively participated in and provided substantial assistance to
4 Cain's fraud. Among other things: (i) Chicago Title escrow agents made various
5 statements and representations to facilitate the fraudulent scheme; (ii) its agents
6 signed some Form Escrows, were aware that Cain otherwise forged signatures and
7 used a false e-mail address to impersonate them; (iii) it did not establish separate
8 escrow accounts for the sole benefit of investors; (iv) it gave Cain unfettered control
9 over investor funds and processed numerous wire transfers into and out of ANI
10 Development and other Receivership Entity accounts at Cain's request; and (v) it
11 personally profited from the scheme through substantial transactional fees, while its
12 agents received cash bribes and other lavish gifts from Cain. Freitag Decl., ¶ 3.

13 On August 28, 2019, the Securities and Exchange Commission filed this
14 action against Cain, ANI Development and American National Investments (the
15 "SEC Action"). Several groups of investors have since filed lawsuits against
16 Chicago Title, including *Blake E. Allred, et al. v. Chicago Title Company, et al.*,
17 Case No. 3:19-cv-02129-LAB-AHG (the "Class Action Lawsuit"); and *Ovation*
18 *Finance Holdings 2 LLC, et al. v. Chicago Title Insurance Company, et al.*, Case
19 No. 3:19-cv-02031-LAB-AHG (the "Ovation Action"), which are pending in this
20 Court; and *Kim Funding, LLC, et al. v. Chicago Title Company, et al.*, Case No. 37-
21 2019-00066633-CU-FR-CTL (the "Kim Action"); *Wakefield Capital, LLC, et al. v.*
22 *Chicago Title Company, et al.*, Case Number 37-2020-00012568-CU-FR-CTL (the
23 "Wakefield Action"); and *Randolph L. Levin, et al. v. Chicago Title Company, et al.*,
24 case number to be assigned (the "Levin Action"), which are pending in San Diego
25 Superior Court.

26 The Receiver has consulted with Allen Matkins regarding the factual and
27 legal bases for claims against Chicago Title on behalf of the Receivership Entities.
28 The Receiver and her counsel determined that there is a substantial basis for such

1 claims, that she notably has unique standing to prosecute them, and that she is in the
2 best position to do so on a cost-effective basis. Among other things, the Receiver
3 and her team have forensic accounting expertise and she has negotiated a contingent
4 fee arrangement with counsel at Allen Matkins, who have in-depth knowledge of
5 this matter and experience with these types of claims, including those notably
6 unique to the Receivership Entities. Freitag Dec., ¶ 4.

7 Allen Matkins, in consultation with the Receiver, has prepared a draft
8 complaint against Chicago Title which describes the potential claims in more detail
9 and is attached to the Freitag Declaration. Any recovery on these claims will be
10 available for the Receivership Entities' investors. Pursuing claims against Chicago
11 Title is in the equitable best interests of the Receivership Entities and their
12 stakeholders, and the Receiver respectfully requests that the Court authorize her to
13 do so as presented herein. Freitag Decl., ¶ 5.

14 **III. THE PROPOSED FEE ARRANGEMENT**

15 A case against Chicago Title will likely involve significant attorney time
16 spent on pleading challenges, discovery motions, summary judgment motions, and
17 possibly trial. Furthermore, the Receiver's counsel will need to coordinate with
18 plaintiffs' counsel for the other cases against Chicago Title. The assets of the
19 receivership estate should be preserved and protected, as much as possible, for the
20 equitable benefit of defrauded investors. Moreover, although the Receiver believes
21 the claims against Chicago Title have significant merit and the receivership estate
22 should prevail, all litigation matters carry some risk. Accordingly, the Receiver
23 negotiated with Allen Matkins to handle this matter on a contingent fee basis.
24 Freitag Decl., ¶ 6.

25 Under the proposed fee arrangement, Allen Matkins would be entitled to a
26 contingent fee of 20% of the total amount recovered if the case settles prior to
27 mediation, 25% of the total amount recovered if the case settles prior to the final
28 status conference and 30% of the total amount recovered through settlement or

1 judgment if the case resolves after the final status conference.¹ Routine litigation
2 costs for the Chicago Title case would be advanced in the ordinary course and
3 reimbursement sought through Allen Matkins' normal quarterly interim fee
4 applications reflecting its ongoing work on other matters pertaining to the
5 receivership. For litigation expenditures in the Chicago Title case exceeding
6 \$50,000 (such as the retention of experts), the Receiver proposes to seek Court
7 approval by way of motion. Freitag Decl., ¶ 7.

8 The Receiver has worked diligently to formulate a cost-effective proposal for
9 the proposed case against Chicago Title, and believes the terms of the proposed
10 arrangement are (a) consistent with industry standards for contingent fee civil
11 litigation and (b) reasonable in light of the litigation risk, potential recovery, and
12 Allen Matkins' in-depth knowledge in this matter, skills and experience in civil
13 litigation matters. Allen Matkins would also be willing to handle this matter on a
14 straight hourly fee basis. However, such an arrangement would put receivership
15 assets at risk in the event the litigation does not result in recovery against Chicago
16 Title. The proposed arrangement will allow the Receiver to pursue the receivership
17 estate's claims against Chicago Title with minimal risk. Freitag Decl., ¶ 8.

18 **IV. LEGAL ARGUMENT**

19 **A. This Court Has Discretion To Grant The Receiver Authority To**
20 **Pursue Claims Against Chicago Title.**

21 "The power of a district court to impose a receivership or grant other forms of
22 ancillary relief does not in the first instance depend on a statutory grant of power
23 from the securities laws. Rather, the authority derives from the inherent power of a
24 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
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26
27 ¹ The Receiver and Allen Matkins recognize that if the litigation results in one
28 settlement of multiple Receiver and investor cases brought against Chicago Title,
Allen Matkins' fee will be calculated in conjunction with and in relationship to
the fees awarded in the Class Action Lawsuit and other potential contingent fee
cases.

1 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
2 and efficient administration of the estate by the district court for the benefit of
3 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986).

4 District courts have broad discretion to determine the appropriate actions to
5 be taken in the administration and supervision of an equity receivership. *SEC v.*
6 *Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). As the Ninth Circuit
7 has explained:

8 A district court's power to supervise an equity receivership
9 and to determine the appropriate action to be taken in the
10 administration of the receivership is extremely broad. The
11 district court has broad powers and wide discretion to
12 determine the appropriate relief in an equity receivership.
13 The basis for this broad deference to the district court's
14 supervisory role in equity receiverships arises out of the
15 fact that most receiverships involve multiple parties and
16 complex transactions. A district court's decision
17 concerning the supervision of an equitable receivership is
18 reviewed for abuse of discretion.

19 *Id.* (citations omitted); *see also CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107,
20 1115 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory
21 role, and 'we generally uphold reasonable procedures instituted by the district court
22 that serve th[e] purpose' of orderly and efficient administration of the receivership
23 for the benefit of creditors."). Accordingly, the Court has broad equitable powers
24 and discretion in the context of the administration of the instant receivership,
25 including broad power to authorize the Receiver to undertake litigation, when
26 necessary and appropriate, to attempt to recover substantial assets of the
27 Receivership Entities.

28 **B. Good Cause Exists To Grant The Receiver Authority To Pursue
Claims Against Chicago Title.**

As set forth in detail in the draft complaint submitted herewith, Cain engaged
in a scheme to defraud Receivership Entity investors. Among other things, Cain
misrepresented to investors that their money would be held in separate escrow
accounts and used solely to fund specified liquor license transfers. Cain, through

1 Chicago Title, transferred significant amounts of investor funds to ANI
2 Development and affiliated entities, including but not limited to its parent company,
3 American National Investments. Cain used investor funds to, among other things,
4 support the business operations of the Receivership Entities and make payments to
5 investors, including but not limited to commissions, referral fees, and interest
6 payments. Chicago Title was aware of this fraudulent scheme and actively
7 participated in and provided substantial assistance to Cain. Chicago Title's actions
8 and inactions form the basis for each of the claims for relief asserted by the Receiver
9 in the draft complaint.

10 The Receiver consulted with her counsel, who has in-depth knowledge of this
11 matter and extensive experience and expertise in this area of law, including in
12 situations where coordination with other counsel is required to establish the best
13 outcome for all investors, and determined that the claims for relief are meritorious,
14 and that the Receiver is uniquely well-situated to pursue such claims in a cost-
15 effective manner.

16 **C. The Receiver Has Unique Standing To Pursue Claims Against**
17 **Chicago Title.**

18 While others are currently pursuing claims against Chicago Title in the Class
19 Action Lawsuit, the Ovation Action, the Kim Action, the Wakefield Action and the
20 Levin Action, several unique factors support allowing the Receiver to separately and
21 uniquely pursue claims on behalf of the Receivership Entities.

22 First, the Receiver has direct claims against Chicago Title based on ANI
23 Development's relationships with Chicago Title, Cain and the investors. ANI
24 Development, not individual investors, entered into escrow agreements with
25 Chicago Title. Thus, only ANI Development can pursue claims based on its
26 contractual relationship with Chicago Title and the fiduciary duties owed by escrow
27 agents to their clients. ANI Development was also owed fiduciary duties by its
28 principal, Cain. Only the Receiver can pursue claims against Chicago Title for its

1 aiding and abetting Cain's breaches of her fiduciary duties owed to ANI
2 Development. With respect to damages recoverable in the Receiver's proposed
3 action, due to the fraudulent scheme which Chicago Title substantially assisted, ANI
4 Development has a contractual obligation to return each investor's funds. While
5 substantial progress has been made, the exact amount of investor losses will be
6 determined through the Receiver's forensic accounting being conducted pursuant to
7 the Court's appointment order and the prospective claims process in this action.

8 Second, only the Receiver was appointed by this Court to act in the best
9 interest of each and every Receivership Entity investor who suffered a loss. The
10 Ovation Action, the Kim Action, the Wakefield Action and the Levin Action only
11 pertain to certain investors or investor groups, and while the Class Action Lawsuit
12 could theoretically account for each remaining investor, there is a significant
13 likelihood of at least some investors opting out. The Receiver, through the
14 receivership claims process, is uniquely positioned to ensure that a recovery on
15 these claims will be distributed fairly and equitably to every investor in the scheme
16 who suffered a loss, which adds significant certainty and finality to settlement
17 negotiations.

18 Third, the Receiver can help ensure venue in this Court, which, given the
19 Court's extensive familiarity with the facts at issue, is the most convenient and
20 efficient forum in which to pursue the claims against Chicago Title. This Court has
21 subject matter jurisdiction to hear the Receiver's claims pursuant to 28 U.S.C.
22 §§ 1345 and 1367, in that the Receiver's claims arise out of and are related to the
23 matters at issue in the SEC Action. In the Class Action Lawsuit and the Ovation
24 Action, federal subject matter jurisdiction is premised upon the RICO claims alleged
25 therein, which claims could potentially be dismissed at the pleading stage.

26 **V. CONCLUSION**

27 The Receiver respectfully submits that it is in the best interests of the
28 Receivership Entities and the investors for the Court to authorize her to pursue

1 claims against Chicago Title as set forth herein. Therefore, the Receiver
2 respectfully requests her Motion be granted, in its entirety.

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Dated: June 5, 2020

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