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KRISTA FREITAG

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. GINA CHAMPION-CAIN and ANI DEVELOPMENT, LLC, Defendants, AMERICAN NATIONAL INVESTMENTS, INC., Relief Defendant.	Case No. 3:19-cv-01628-LAB-AHG Ctrm: 14A Judge Hon. Larry Alan Burns **DECLARATION OF KRISTA L. FREITAG IN SUPPORT OF RECEIVER'S MOTION FOR AUTHORITY TO PURSUE CLAIMS AGAINST CHICAGO TITLE** Date: July 13, 2020 Time: 11:15 a.m.

I, Krista L. Freitag, declare:

1. I am the Court-appointed permanent receiver for Defendant ANI Development, LLC, Relief Defendant American National Investments, Inc., and their subsidiaries and affiliates ("Receivership Entities"). I make this declaration in support of my Motion for Authority to Pursue Claims Against Chicago Title ("Motion"). I have personal knowledge of the facts stated herein, and if called upon to do so, I could and would personally and competently testify to them.

2. I and my team have made significant progress on the forensic accounting being conducting pursuant to the Court's appointment order; based upon such progress to date, it appears that beginning in 2011, Defendant Gina Champion-Cain ("Cain") offered an investment opportunity relating to the financing of purchases of California liquor licenses. While my understanding is investors were told their funds would be held in escrow accounts at Chicago Title and only used to fund specified underlying liquor license transfer(s), and many of them were provided with form escrow agreements ("Form Escrows") to that effect, the actual agreements governing the Chicago Title accounts which received investor funds show that the accounts were not truly escrow accounts. The actual agreements gave Cain complete discretion and control over the deposited investor funds. With that control, Cain, with the direct assistance from Chicago Title, transferred significant amounts of investor monies, none of which funded liquor licenses as represented in the scheme.

3. Based on my review of records maintained by the Receivership Entities and obtained from third parties, I believe Chicago Title actively participated in and provided substantial assistance to Cain's fraud, including, among other things, (i) Chicago Title escrow agents made various statements and representations to facilitate the fraudulent scheme; (ii) its agents signed some Form Escrows, and were aware that Cain otherwise forged signatures and used a false e-mail address to impersonate them; (iii) it did not establish separate escrow accounts for the sole

benefit of investors; (iv) it gave Cain unfettered control over investor funds and processed numerous wire transfers into and out of ANI Development and other Receivership Entity accounts at Cain's request; and (v) it personally profited from the scheme through substantial transactional fees, while its agents received cash bribes and other lavish gifts from Cain.

4. I have consulted with my general counsel, Allen Matkins Leck Gamble Mallory & Natsis, LLP ("Allen Matkins"), regarding the factual and legal bases for claims against Chicago Title on behalf of the Receivership Entities. We have determined that there is a substantial basis for such claims, that I notably have unique standing to prosecute them, and that I am in the best position to do so on a cost-effective basis. Among other things, my team and I have forensic accounting expertise and I have negotiated a contingent fee arrangement with counsel at Allen Matkins, who have in-depth knowledge of this matter and experience with these types of claims, including those notably unique to the Receivership Entities.

5. Allen Matkins, in consultation with me, has prepared a draft complaint against Chicago Title which describes the potential claims in more detail and is attached hereto as **Exhibit A**. Any recovery on these claims will be available for the Receivership Entities' investors. I believe pursuing claims against Chicago Title is in the equitable best interests of the Receivership Entities and their stakeholders, and I respectfully request that the Court authorize me to do so.

6. A case against Chicago Title will likely involve significant attorney time spent on pleading challenges, discovery motions, summary judgment motions, and possibly trial. Furthermore, my counsel will need to coordinate with plaintiffs' counsel for the other cases against Chicago Title. The assets of the receivership estate should be preserved and protected, as much as possible, for the equitable benefit of defrauded investors. Moreover, although I believe the claims against Chicago Title have significant merit and the receivership estate should prevail, all

litigation matters carry some risk. Accordingly, I negotiated with Allen Matkins to handle this matter on a contingent fee basis.

7. Under the proposed fee arrangement, Allen Matkins would be entitled to a contingent fee of 20% of the total amount recovered if the case settles prior to mediation, 25% of the total amount recovered if the case settles prior to the final status conference and 30% of the total amount recovered through settlement or judgment if the case resolves after the final status conference, with an understanding that if the litigation results in one settlement of multiple Receiver and investor cases brought against Chicago Title, Allen Matkins' fee would be calculated in conjunction with and in relationship to the fees awarded in the other potential contingent fee cases. Routine litigation costs for the Chicago Title case would be advanced in the ordinary course and reimbursement sought through Allen Matkins' normal quarterly interim fee applications reflecting its ongoing work on other matters pertaining to the receivership. For litigation expenditures in the Chicago Title case exceeding $50,000 (such as the retention of experts), I propose to seek Court approval by way of motion.

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

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on June 4th, 2020, at Los Angeles County, California.

KRISTA L. FREITAG

Securities and Exchange Commission v. Gina Champion-Cain and ANI Development, LLC
USDC, Southern District of California, Case No. 3:19-cv-01628-LAB-AHG

INDEX OF EXHIBITS

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Attorneys for Plaintiff
KRISTA FREITAG, Receiver

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

KRISTA FREITAG, Receiver, Plaintiff, v. CHICAGO TITLE COMPANY, a California corporation; CHICAGO TITLE INSURANCE COMPANY; a Florida corporation, Defendants.	Case No. ___________________ COMPLAINT FOR: 1. AIDING AND ABETTING FRAUD 2. NEGLIGENCE 3. BREACH OF FIDUCIARY DUTY 4. AIDING AND ABETTING BREACH OF FIDUCIARY DUTY DEMAND FOR JURY TRIAL

Plaintiff Krista Freitag ("Freitag" or the "Receiver"), the Court-appointed permanent receiver for ANI Development, LLC ("ANI Development"), American National Investments, Inc. ("American National Investments"), and their subsidiaries and affiliates (collectively, the "Receivership Entities"), hereby brings the following Complaint against the above-captioned defendants and, on behalf of the Receivership Entities, alleges as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1345 and 1367, in that this case arises out of and is related to the matters at issue in *Securities and Exchange Commission v. Gina Champion-Cain, et al.*, Case No. 3:19-cv-01628-LAB-AHG (the "SEC Action"), which is now pending in this Court.

2. Venue in this District is proper under 18 U.S.C. § 1965 and 28 U.S.C. § 1391, as each defendant can be found, and a substantial part of the events and omissions that give rise to the action occurred, in this District.

PARTIES

3. Pursuant to an Order entered in the SEC Action on September 3, 2019 (the "Receivership Order"), Freitag is the duly appointed permanent equity receiver for the Receivership Entities.

4. Among other things, the Receivership Order authorizes the Receiver to pursue all claims and causes of action of the Receivership Entities against third parties for the benefit of the investors and creditors of the Receivership Entities. The claims alleged in this action are assets of the Receivership Entities, are brought on their behalf, and fall within that provision of the Receivership Order. This Court has ancillary and supplemental jurisdiction over these claims.

5. Defendant Chicago Title Company ("CTC") is a California corporation with its principal place of business in Los Angeles, California.

6. Defendant Chicago Title Insurance Company ("CTIC") is a Florida corporation doing business in California, with its principal place of business in Jacksonville, Florida.

7. CTC and CTIC are collectively referred to herein as "Chicago Title". Chicago Title is one of the largest escrow firms in the country and is a subsidiary of

Fidelity National Financial, Inc., a publicly traded Fortune 500 corporation. The acts and omissions of Chicago Title and its employees described below occurred in this District.

8. CTC and CTIC were and now are the agents, servants, employees, representatives, members, parent corporations, subsidiaries, owners, instrumentalities and/or alter egos of each other and, in doing the things alleged herein, were and are acting within the scope of their respective authority as agents, servants, employees, representatives, members, parent corporations, subsidiaries, owners, instrumentalities and/or alter egos with each other's permission, consent and/or ratification. Any allegation referring to CTC or CTIC refers to each of them, jointly and severally. They are under common ownership. They share the same officers and employees and use the same website on the Internet. In connection with the acts stated herein, they operated in a consolidated manner whereby a member of the general public dealing with Chicago Title would be unable to ascertain which specific entity he, she, or it was doing business. Recognizing the corporate separateness between CTIC and CTC would sanction fraud and render injustice on the Receivership Entities.

FACTUAL ALLEGATIONS

The Fraudulent Scheme

9. Gina Champion-Cain ("Cain") is the managing member of ANI Development and the founder and former CEO of American National Investments. In these capacities, Cain exercised control over the Receivership Entities. Cain, with the full knowledge and substantial assistance of Chicago Title, caused the Receivership Entities to raise money from investors by claiming to offer an investment opportunity relating to the financing of purchases of California liquor licenses.

10. It appears that beginning in 2011, Cain began offering investors an investment opportunity relating to the financing of purchases of California liquor licenses.

11. While the scheme evolved over time, Cain initially told investors that in order to buy a California liquor license, all money to purchase the license must be deposited into an escrow account. Cain thus offered investors a short-term opportunity to fund these escrows (through her LLC) while the ABC reviewed/approved the liquor license buyer's application in exchange for a return on and of those funds.

12. One of the ways the investment program was structured provided that Cain would submit to investors a purported list of pending liquor license applications, from which investors selected the license applications they wished to fund. The investor would then deposit funds into an account maintained by ANI Development at Chicago Title. Cain provided each investor with a form escrow agreement executed by ANI Development and Chicago Title ("Form Escrow") which provided that: (i) the investor's money could only be used to fund specified underlying liquor license transfer(s); (ii) the money would be held in an escrow account for this purpose at Chicago Title; and (iii) at the conclusion of the license transfer, Chicago Title would return the investor's funds to the investor along with the investor's agreed upon return (e.g., interest). As described below, it was the national reputation and financial strength of Chicago Title and the promised security of the investors' funds being safely held in escrow by Chicago Title that lured investors into the program.

13. Cain caused ANI Development to enter into contracts with certain investors in an effort to procure their investments. For example, Cain distributed promissory notes to a group of investors on behalf of herself and ANI Development (the "Promissory Notes"). The Promissory Notes identified the investors, listed the liquor licenses the investors were supposedly funding, and specified the interest to

be paid to the investors for each license, with interest being paid no later than 364 days from the receipt of the investors' funds. Under the terms of the Promissory Notes, ANI Development and Cain personally guaranteed the principal and interest due to the investors. In addition, Cain caused ANI Development to enter into side agreements and funding agreements with other investors, whereby ANI Development agreed to only release investor funds to the investor who contributed said funds, in accordance with the Form Escrows. Cain caused ANI Development to enter into a security agreement with another investor, whereby ANI Development purportedly granted the investor a security interest in certain escrow accounts maintained at Chicago Title. Cain also caused ANI Development to represent in contracts that the investors would be lending funds into specific escrow accounts tied to liquor license transfer applications.

14. According to the SEC Action, through the liquor license investment program, Cain raised over $300 million from approximately 50 investors nationwide.[1]

15. The program was wholly illusory. First, the lists of liquor license applicants were fabricated and the purported license applicants had not taken loans from ANI Development. Second, a substantial number of the Form Escrows were fabricated as they contained the forged signatures of Chicago Title escrow officers. Third, the real agreements governing the purported escrow accounts – which Cain concealed from the investors (the "Concealed Non-Escrow")[2], and Chicago Title

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[1] Pursuant to the Receivership Order, the Receiver is conducting a forensic accounting of the Receivership Entities. Until that accounting is complete, the precise amount of investor funds, number of investors and other financial information will not be known. For purposes of the allegations of this Complaint, the Receiver has sufficient knowledge and information to believe the financial allegations in the SEC Action are generally accurate, with the proviso that the actual amounts as determined by the forensic accounting may be more or less than alleged by the SEC.

[2] The Concealed Non-Escrow was facially unlawful under the California Escrow Law, because it was not an "escrow" at all. Cal. Fin. Code 17003(a). The Concealed Non-Escrow was not made for "the purpose of effecting the sale, transfer, encumbering, or leasing of real or personal property to another person"—it was essentially just a depository account. Nor did it

expressly entered into with Cain – gave Cain complete discretion and control over the deposited investor funds. With that control, Cain, through ANI Development, directed that Chicago Title transfer significant amounts of investor funds to the Receivership Entities and at times, back to investors. Cain used investor funds to support the business operations of the Receivership Entities and to make payments to investors, including but not limited to commissions/referral fees and interest payments. While pursuant to the SEC Action, ANI Development owes its investors over $120 million, just $11 million remained in ANI Development's escrow account at Chicago Title when it was frozen.

Cain's Materially Misleading Statements and Omissions

16. Cain, personally and/or through ANI Development, made several materially misleading statements and representations to investors, or otherwise failed to disclose material information to them.

17. The Form Escrows Cain provided to investors, which Cain caused ANI Development to execute, were phony and contained false and misleading statements and representations about how investors' funds would be governed and used.

18. Cain falsely told investors that their money would be used to fund the transfer of liquor licenses, and represented that each investor's proceeds would be kept safe in an escrow account until they were transferred back to the investor.

19. For example, the Form Escrows stated that ANI Development and Chicago Title "understand that this is a limited escrow only and is being opened for the benefit of" a specified liquor license applicant, "who is applying for approval of a transfer to Applicant of a license issued by the California Department of Alcoholic

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condition release on "the happening of a specified event or the performance of a prescribed condition"—Cain could, and did, withdraw funds at will for any reason. And it did not entail delivery by Chicago Title to "a grantee, grantor, promisee, promisor, obligee, obligor, bailee, bailor, or any agent or employee of any of the latter"—the funds were simply often returned to accounts Cain controlled, the only beneficiary of the Concealed Non-Escrow.

Beverage Control." The escrow agreement then identified the license to be transferred by license number.

20. The Form Escrow further stated that the escrowed funds would be placed "into an interest-bearing account," and would only be released upon written instructions by ANI Development, and in that event, could only be transferred to a financial account maintained by investors.

21. Cain made related representations in a funding agreement she executed with an investor. In that funding agreement, Cain represented, among other things, that:

- Cain had entered into an agreement with a law firm which anticipated that Cain would provide funding for the firm's liquor license applicants;
- Investor funds would be placed in escrow at Chicago Title for the benefit of the firm's liquor license applicants; and
- Pursuant to her agreement with the law firm, Cain would be paid a fee for escrowing funds in connection with the firm's clients' liquor license applications.

22. In other agreements with investors, Cain represented that investor funds would only be released to the investor who contributed said funds, certain investors would receive a security interest in specific escrow accounts maintained at Chicago Title, and that investors would be lending funds into specific escrow accounts tied to liquor license transfer applications.

23. Cain also forged Chicago Title escrow officers' signatures on the Form Escrows, and imitated them by using @chicagotitleescrows.com e-mail addresses.

24. Based on the foregoing, investors reasonably believed the liquor license funding program was legitimate and funded their investments.

25. But in reality, Cain, through ANI Development and with the direct assistance of Chicago Title, had unfettered access to the escrowed funds, and used that access to fund the Receivership Entities' unrelated business operations, pay

back earlier investors principal and interest, and to transfer money to its parent company, American National Investments and other Receivership Entities.

26. Pursuant to the SEC Action, in 2017, investors cumulatively deposited approximately $87.7 million into a pooled escrow account. No money was ever escrowed to actually facilitate, as represented to investors, the transfer of the liquor licenses identified in the Form Escrows.

27. Cain's investment strategy was wholly fictitious: the real agreements governing the Concealed Non-Escrow allowed Cain to direct Chicago Title to transfer funds to accounts she controlled at any time, and no investor funds were loaned to alcohol-license applicants. Neither of these facts was disclosed to investors.

28. Cain, ANI Development's controlling principal, acted knowingly, recklessly, and negligently in making material misstatements and omissions concerning ANI Development's supposed investment strategy and use of investor funds, and she failed to exercise reasonable care to ensure that investors were not deceived as to this information.

Chicago Title's National Reputation Enabled the Fraudulent Scheme to Operate.

29. According to its website, Chicago Title represents that it: (i) acts as the impartial "stakeholder" or depository, in a fiduciary capacity, for all documents and monies required to complete the transaction per written instructions of the principals; and (ii) its more than 150 years of experience coupled with the highest insurance reserves in the industry assure you of the greatest level of protection available. As an escrow company, Chicago Title owes fiduciary duties to persons who make deposits into a Chicago Title escrow account. Investors relied on and trusted Chicago Title to safeguard the money deposited into Chicago Title accounts.

30. Chicago Title's involvement in the fraudulent scheme brought what appeared to be legitimacy to the liquor license loan funding program. Investors'

funds were to be deposited in safe, secure escrow accounts with a company that had an established business reputation and a solid financial foundation.

31. Over the course of the liquor license loan funding program, Chicago Title and its officers and employees were aware of Cain and ANI Development's representations to investors regarding how investor funds would be used exclusively to fund the program. Chicago Title knew that prospectus and offering memoranda used by Cain and ANI Development represented to investors that Chicago Title was the escrow holder of investor funds for the liquor license loan funding program.

32. Chicago Title knew that no such program existed and knew that it was not opening any liquor license escrows. Rather, investor money was placed in a deposit account, over which Cain had total control. Despite this knowledge, as well as knowledge that investors relied on Chicago Title's involvement to bring legitimacy and safety to the program, Chicago Title represented to numerous investors that it was holding investor funds in escrow to fund the liquor license loan funding program.

33. Chicago Title did not disclose the true facts to investors that their deposits were not being held in escrow or being used for liquor license applications.

34. Chicago Title officers Della DuCharme ("DuCharme") and Betty Elixman ("Elixman") were in on Cain's fraudulent scheme. While acting in their capacities as escrow agents at Chicago Title, they were simultaneously working as part of the scheme.

35. DuCharme and Elixman, and thus Chicago Title, knew all along that, although Cain was soliciting loans for liquor license escrow accounts under the Form Escrow, those funds were, in fact, being deposited into an account governed by the Concealed Non-Escrow, under which Cain had full discretionary control. DuCharme, Elixman and Chicago Title knew that Cain was engaged in a massive fraud.

36. Elixman and DuCharme, and thus Chicago Title, also knew that Cain was imitating them by using @chicagotitleescrows.com e-mail addresses. Despite this knowledge, neither Elixman, DuCharme nor anyone else at Chicago Title did anything to stop this deceitful conduct. Rather, they participated in and benefitted substantially from the scheme, by accepting gifts, bribes and bonus compensation for their efforts.

37. In early 2017, a potential bank lender for an investor noticed the Form Escrows identified a "Wendy Reynolds" as the Chicago Title escrow officer. But the signature had been forged by Cain. When the bank called Chicago Title to verify Wendy Reynolds' signatures, the bank was told that nobody named Wendy Reynolds worked at Chicago Title. Cain attempted to explain this fact by claiming that Wendy Reynolds was a former Chicago Title employee, and that to aid things along, she could obtain substitute Form Escrows signed by a current Chicago Title escrow officer. The investor's bank considered proceeding with the loan based on newly signed documentation, but it required that an officer of Chicago Title sign an incumbency certificate certifying that the escrow officer had full authority to sign the Form Escrows on behalf of Chicago Title.

38. On or around February 1, 2017, Cain went to the San Diego Office of Chicago Title. There, DuCharme and an officer of Chicago Title executed an Incumbency Certificate and Authorization from Chicago Title ("Incumbency Certificate") certifying that DuCharme was "authorized to execute Escrow Agreements for the purpose of requesting draws from [the bank] pursuant to" a credit agreement between the investor and the bank, and that DuCharme was "duly elected, qualified, and acting as members, managers and(or) officers, as indicated, of [Chicago Title] and hold on the date hereof the offices or titles set forth opposite their respective names, and [that] the signatures set opposite each of their respective names are their genuine signatures[.]"

39. The Incumbency Certificate was signed by DuCharme and witnessed by Thomas Schwiebert, the Vice President of Commercial and Industrial Sales at Chicago Title.

40. The Receiver alleges on information and belief that simultaneous with executing the Incumbency Certificate, and in the presence of Schwiebert, DuCharme re-signed dozens of phony Form Escrow agreements. When funds were subsequently wired to Chicago Title in connection with ANI Development, Chicago Title was aware that said funds were provided in connection with Cain's fraudulent scheme.

41. On several occasions, investors had direct contact with Chicago Title, through DuCharme and Elixman.

42. For example, a certain investor spoke with DuCharme prior to ever funding any loans, and DuCharme confirmed (falsely) that the investor was wiring into a specific escrow account that was governed by an escrow agreement for which the investor was the beneficiary. And DuCharme signed correspondence and verbally confirmed to the investor's independent auditors that money tied to specific license escrows sat in Chicago Title escrow accounts.

43. A separate investor spoke with DuCharme via telephone and DuCharme confirmed (falsely) the structure and process of the escrows. In addition, the investor's relationship managers visited DuCharme and Elixman at Chicago Title's office and received confirmation that Chicago Title was holding the investor's funds and discussed the liquor license escrows.

44. The Receiver alleges on information and belief that DuCharme and Elixman had additional contact with other Receivership Entity investors and signed letters sent by investors' auditors confirming (falsely) that investor funds were being held in escrow.

45. DuCharme and Elixman's misconduct was integral to their roles as escrow officers for Chicago Title—setting up escrows and ensuring that the parties

who deposited money into them could have confidence that it was handled according to their Form Escrow instructions. Their misconduct involved misuse of Chicago Title's core product and undermined the essential purpose of placing funds in escrow—to ensure the safety of the escrowed funds.

46. DuCharme and Elixman's misconduct was reasonably related to the kinds of tasks that they were employed to perform, and was reasonably foreseeable in light of Chicago Title's business and DuCharme and Elixman's job responsibilities. That a Chicago Title escrow officer might participate in fraud using fraudulent escrow agreements and related documentation was a generally foreseeable risk inherent and incidental to Chicago Title's escrow business.

47. There is direct evidence in the form of the Incumbency Certificate that DuCharme and Elixman's superior Schwiebert—an officer of Chicago Title—was aware of what was transpiring. Given the circumstances, breadth and length of the fraud, there is substantial circumstantial evidence that higher management at Chicago Title would have been aware of the misconduct, had Chicago Title employed appropriate and/or legally required internal controls.

48. Through DuCharme and Elixman, as well as through Schwiebert, Chicago Title was aware that ANI Development's investors believed that the money they funded through escrows held at Chicago Title would be used only for specific liquor license escrows under the Form Escrows, which did not permit Cain to unilaterally withdraw the funds.

49. Through DuCharme and Elixman, and likely others, Chicago Title was aware that ANI Development's investors' money was not, in fact, being used for those purposes. Chicago Title's actions were not passive: Chicago Title initiated transfers to ANI Development and other Receivership Entities at Cain's request.

50. Chicago Title did not tell the investors these material facts, and it failed to timely stop the fraud and/or take action to prevent Cain from using ANI Development accounts to perpetrate Cain's fraudulent scheme.

51. Chicago Title never informed California liquor licensing authorities that funds had been placed in escrow for the transfer of a liquor license, as required under state regulations. In fact, the Chicago Title escrow accounts were not suitable for the transfer of liquor licenses, and the Chicago Title escrow officers involved did not handle these types of transactions.

52. DuCharme and Elixman engaging in misconduct while performing their duties as Chicago Title escrow officers was not so unusual or startling that it would seem unfair to include the loss resulting from the misconduct among other costs of Chicago Title's business. Chicago Title should be held to account for DuCharme and Elixman's acts and omissions.

53. As an institution, Chicago Title was reckless in preventing its employees from using the instrumentalities of its business to facilitate and engage in brazen acts of fraud. DuCharme and Elixman conducted their fraudulent activities out of Chicago Title's offices, using Chicago Title's bank accounts, telephones, computers, form escrow agreements and other documents, and its e-mail system.

54. As a "licensed sender of money or any other person who engages as a business in the transmission of funds," Chicago Title is a "financial institution," subject to the Bank Secrecy Act. 31 U.S.C. § 5312(a)(2)(R). The PATRIOT Act requires every financial institution covered by the Bank Secrecy Act to establish an anti-money laundering program. 31 U.S.C. § 5318(h). In particular, under the PATRIOT Act, "each financial institution shall establish anti-money laundering programs, including, at a minimum—(A) the development of internal policies, procedures, and controls; (B) the designation of a compliance officer; (C) an ongoing employee training program; and (D) an independent audit function to test programs." Treasury regulations enacted under the PATRIOT Act further require non-bank financial institutions to employ "know your customer" practices and to keep accurate records of financial transactions, including records regarding the

verification of the identity of those transmitting funds. 31 C.F.R. §§ 1010.220; 1010.410(e).

55. The California Escrow Law, Cal. Fin. Code § 17000, *et seq.*, further regulates the conduct of escrow agents and imposes detailed recordkeeping and auditing requirements. Cal. Fin. Code §§ 17404, 17406, 17406.1. The California Escrow Law makes it illegal for any escrow company or its officers or employees to: (1) "knowingly or recklessly [] direct, participate in, or aid or abet in a material way, any activity which constitutes theft or fraud in connection with any escrow transaction;" or (2) "[k]nowingly or recklessly make or cause to be made any misstatement or omission to state a material fact, orally or in writing, in escrow books, accounts, files, reports, exhibits, statements, or any other document pertaining to an escrow or escrow affairs." Cal. Fin. Code § 17414(a).

56. Despite all of this regulatory scrutiny—which was enacted to give confidence to the public, including Receivership Entity investors—Chicago Title permitted the scheme to go on for years, using internal systems that should have been subject to review and audit by Chicago Title employees and consultants. The ongoing fraud created a permanent record of escrow agreements, wire transfers, and electronic communications that could have been easily detected and stopped if Chicago Title followed the basic anti-money-laundering and "know your customer" procedures that any reasonable financial institution would follow. Even if the higher-ups in the San Diego Office of Chicago Title were unaware of the Form Escrows—and Schwiebert's signature on the Incumbency Certificate demonstrates otherwise—over the life of the scheme hundreds of millions of dollars were wired into and out of the Concealed Non-Escrow account—an unlawful one-party false escrow account with no apparent commercial purpose. The most rudimentary internal audit should have caught that as suspicious.

Chicago Title, Elixman, and DuCharme All Profited from Cain's Fraudulent Scheme.

57. Chicago Title made money from Cain's fraudulent scheme. Over the life of the scheme, hundreds of millions of dollars were wired into and out of the concealed account maintained by Cain at Chicago Title. The Receiver alleges, on information and belief based on pleadings and filings in other actions and discussions with counsel, that there were thousands of such transactions, and that Chicago Title received substantial compensation for its participation in Cain's fraudulent scheme. Chicago Title also benefitted by selling Cain escrow, title insurance, and other services in connection with her unauthorized business ventures, earning ample fees and commissions at each step. All of this activity increased profitability and likely led to compensation and bonus increases for the escrow officers and various Chicago Title executives.

58. DuCharme and Elixman personally profited directly from Cain's fraudulent scheme. In addition to numerous gifts and perks, Cain paid DuCharme and Elixman thousands of dollars in cash bribes over the course of the scheme.

59. For example, on January 20, 2018, Cain wrote DuCharme and Elixman checks for $13,000 and $5,000, respectively. The checks were from Cain's personal checking account and stated "Gift" in the memos. DuCharme and Elixman cashed the checks that same week.

60. On December 16, 2018, Cain wrote DuCharme and Elixman checks for $10,000 and $1,000, respectively. The checks were again from Cain's personal checking account and stated "Gift" in the memos. DuCharme and Elixman cashed the checks in the following weeks.

61. Cain also wined and dined DuCharme and Elixman at restaurants owned by Cain, providing them, along with their family and friends, with free food, drinks and other perks.

62. In August 2019, American National Investments purchased a high-end home in the Point Loma neighborhood of San Diego that had been specifically identified by a broker friend of DuCharme and which Cain intended to make

available to DuCharme and her family at a discounted rental rate. Cain further intended that the rental payments would be applied to a future purchase of the property by DuCharme from American National Investments on terms favorable to DuCharme.

63. By reason of Chicago Title's unlawful actions, including its knowledge of and involvement in Cain's fraudulent scheme, the Receivership Entities suffered financial losses and consequential damages including, but not limited to, receivership and exposure to liability to investors, in an amount to be proven at trial.

FIRST CAUSE OF ACTION

Aiding and Abetting Fraud

(Against All Defendants)

64. The Receiver hereby incorporates the above allegations by reference as if fully set forth herein.

65. Cain committed a massive fraud upon Receivership Entity investors.

66. Among other things, Cain, personally and/or through her control of the Receivership Entities, made factual representations to investors that were not true at the time they were made, for the clear purpose of enticing investors to invest in her fraudulent scheme.

67. For example, the Promissory Notes identified the investors, listed the liquor licenses the investors were supposedly funding, and specified the interest to be paid to the investors for each license, with interest being paid no later than 364 days from the receipt of the investors' funds. Cain caused ANI Development to enter into side agreements and funding agreements, whereby ANI Development agreed to only release investor funds to the investor who contributed said funds, in accordance with the Form Escrows. Cain caused ANI Development to enter into a security agreement whereby ANI Development purportedly granted an investor a security interest in certain escrow accounts maintained at Chicago Title. Cain also

caused ANI Development to represent that the investors would be lending funds into specific escrow accounts tied to liquor license transfer applications.

68. All of these statements and representations were knowingly false when made by Cain. Cain had unfettered access to investor funds, and, at least in part, used that access and those funds to fund the Receivership Entities' unrelated business operations. No money was ever properly escrowed to actually facilitate, as represented to investors, the transfer of the liquor licenses identified in the false Form Escrows.

69. Cain made the statements and representations with the intent of inducing the reliance of ANI Development's investors.

70. The investors did, in fact, reasonably rely on Cain's false representations in deciding to invest in the liquor license loan funding program, and the investors' reliance on the misrepresentations were a substantial factor in proximately causing damage to the Receivership Entities and their investors.

71. Chicago Title had actual knowledge of Cain's fraudulent scheme. Among other things, DuCharme and Elixman knew that Cain was forging Form Escrows, using a false e-mail address to impersonate them, and operating the ANI Development escrow accounts under the Concealed Non-Escrow in such a way that, while investors were depositing millions of dollars into accounts believed to be controlled under the Form Escrows, Chicago Title was transferring money to Cain at her request and within her sole discretion.

72. DuCharme and Elixman's receipt of bribes from Cain to continue the fraud raises a strong inference that DuCharme and Elixman, and therefore Chicago Title, had actual knowledge of Cain's fraudulent scheme.

73. Chicago Title also actively participated in and provided substantial assistance to Cain's fraud. Among other things: (1) while acting in the scope of her authority and employment, DuCharme made various fraudulent statements and representations of her own to facilitate the scheme; (2) Chicago Title failed to

disclose facts while under an obligation to do so, under circumstances that permitted the scheme to continue, including failing to notify California authorities that the funds had been placed in escrow ostensibly to facilitate the transfer of liquor licenses; (3) DuCharme assisted Cain in signing numerous Form Escrows after a bank's diligence revealed them to be likely forgeries, perpetuating the scheme; (4) Chicago Title, DuCharme, and Elixman all personally profited from the scheme; (5) DuCharme and Elixman, while acting in the scope of their authority and employment with Chicago Title, processed hundreds of wire transfers into and out of ANI Development's escrow accounts under the Concealed Non-Escrow, knowingly permitting Cain to defraud ANI Development investors.

74. The Receivership Entities were injured by Chicago Title aiding and abetting Cain's fraudulent scheme. Because of Chicago Title's full knowledge of and substantial assistance in Cain's fraudulent scheme, the Receivership Entities suffered financial losses and consequential damages including, but not limited to, receivership, and exposure to liability to investors, in an amount to be proven at trial.

75. Chicago Title is liable for DuCharme and Elixman's active participation in Cain's fraudulent scheme under the doctrine of *respondeat superior* because, as alleged in Paragraphs 46-53 above, DuCharme and Elixman's fraud was committed within the scope of their employment with Chicago Title.

76. Chicago Title is also liable for DuCharme and Elixman's misconduct as the principal of agents who acted with actual or apparent authority for Chicago Title, and which agents were employed in managerial capacities and acted within the scope of their employment. Investors interacted with DuCharme and Elixman, believing they were duly authorized escrow agents acting within the scope of their authority when they, among other things, confirmed (falsely) to investors and their representatives that investor funds would (i) be held in escrow accounts; and (ii) be used to fund liquor license transfers.

77. To the extent DuCharme and Elixman's actions exceeded the scope of their authority, Chicago Title allowed investors to believe DuCharme and Elixman possessed the requisite authority, by: (i) holding DuCharme and Elixman out on Chicago Title's website as authorized escrow agents; (2) permitting DuCharme and Elixman to process millions of dollars of inbound wire transfers without apparent supervision; (3) permitting its escrow officers to facilitate a massive fraud using the means and instrumentalities of the company, without employing basic internal controls to detect and prevent the fraud.

78. DuCharme and Elixman, and through them, Chicago Title, acted with oppression, fraud, or malice in aiding and abetting Cain's fraud.

79. Chicago Title had knowledge of the unfitness of DuCharme and Elixman and acted with reckless disregard of the rights of the Receivership Entities in continuing to employ DuCharme and Elixman for years while they participated in Cain's fraudulent scheme. Moreover, Chicago Title expressly or implicitly authorized or ratified their actions when Schwiebert signed the Incumbency Certificate.

SECOND CAUSE OF ACTION

Negligence

(Against All Defendants)

80. The Receiver hereby incorporates the above allegations by reference as if fully set forth herein.

81. Chicago Title owed the Receivership Entities a duty of care because, pursuant to the Concealed Non-Escrow, which Chicago Title signed, and the Form Escrow, which in many instances Cain signed on behalf of Chicago Title and with Chicago Title's knowledge, Chicago Title served as ANI Development's purported escrow holder.

82. Chicago Title's duty of care included, among other things, a duty to exercise reasonable skill and ordinary diligence as ANI Development's purported

escrow holder, and a duty to monitor its business to ensure that its employees were not using the instrumentalities of Chicago Title to carry out and aid and abet a fraudulent scheme.

83. Chicago Title breached its duty of care by, among other things, failing to exercise reasonable skill and ordinary diligence to detect or prevent DuCharme and Elixman from using Chicago Title's instrumentalities to carry out Cain's fraudulent scheme.

84. The Receivership Entities have been harmed as a result of Chicago Title's failures to abide by its duty of care. The Receivership Entities suffered financial losses and consequential damages including, but not limited to, receivership and exposure to liability to investors, in an amount to be proven at trial.

THIRD CAUSE OF ACTION

Breach of Fiduciary Duty

(Against All Defendants)

85. The Receiver hereby incorporates the above allegations by reference as if fully set forth herein.

86. Chicago Title owed the Receivership Entities a fiduciary duty because, pursuant to the Concealed Non-Escrow, which Chicago Title signed, and the Form Escrow, which Cain signed on behalf of Chicago Title and with Chicago Title's knowledge, Chicago Title served as ANI Development's purported escrow holder.

87. Chicago Title's fiduciary duties included, among other things, a duty to exercise reasonable skill and ordinary diligence, and a duty to refrain from acting against the Receivership Entities' interests in administrating the purported escrow accounts.

88. Chicago Title, through its agents acting within the scope of their employment, breached its fiduciary duty to the Receivership Entities by failing to exercise reasonable skill and ordinary diligence, and by knowing of and substantially assisting in Cain's fraudulent scheme, to Cain and Chicago Title's

benefit, and to the Receivership Entities' detriment. Chicago Title further breached its fiduciary duty by following the instructions of Cain, thereby causing ANI Development to breach its contracts, including the Promissory Notes, Form Escrow, side agreements and funding agreements with investors. Chicago Title is liable for DuCharme and Elixman's misconduct under the doctrine of *respondeat superior* and as the principal of agents acting with actual or apparent authority of Chicago Title.

89. The Receivership Entities have been harmed as a result of Chicago Title's breaches of its fiduciary duties. The Receivership Entities suffered financial losses and consequential damages including, but not limited to, receivership and exposure to liability to investors, in an amount to be proven at trial.

FOURTH CAUSE OF ACTION

Aiding and Abetting Breach of Fiduciary Duty

(Against All Defendants)

90. The Receiver hereby incorporates the above allegations by reference as if fully set forth herein.

91. At all relevant times, Cain was the managing member of ANI Development and the founder and CEO of American National Investments, and controlled all of the Receivership Entities. As such, Cain owed the Receivership Entities a fiduciary duty of care to act in the best interests of the Receivership Entities, and a fiduciary duty of loyalty to act in good faith and to refrain from putting her personal interests ahead of the interests of the Receivership Entities.

92. Cain's liquor license loan funding program was a fraud, satisfying all the elements of fraud, including that the known misrepresentations were false, the investors reasonably relied upon the misrepresentations as intended by Cain, and the investors' reliance on the misrepresentations were a substantial factor in proximately causing damage to the Receivership Entities and their investors.

93. Cain breached her fiduciary duties by engaging in the actions described above.

94. Chicago Title had actual knowledge of Cain's fiduciary duties described above, and had actual knowledge that Cain was breaching said fiduciary duties as a result of the conduct described above.

95. Chicago Title aided and abetted and provided substantial assistance to Cain in breaching her fiduciary duties to the Receivership Entities. Among other things: (1) while acting in the scope of her authority and employment, DuCharme made various fraudulent statements of her own to facilitate the scheme; (2) Chicago Title failed to disclose facts while under an obligation to do so, under circumstances that permitted the scheme to continue; (3) DuCharme assisted Cain in signing numerous Form Escrows after a bank's diligence revealed them to be likely forgeries, perpetuating the scheme; (4) Chicago Title, DuCharme, and Elixman all personally profited from the scheme; (5) DuCharme and Elixman, while acting in the scope of their authority and employment with Chicago Title, processed hundreds of wire transfers into and out of ANI Development's escrow accounts under the Concealed Non-Escrow, knowingly permitting Cain to defraud ANI Development investors. Chicago Title is liable for DuCharme and Elixman's misconduct under the doctrine of *respondeat superior* and as the principal of agents acting with actual or apparent authority of Chicago Title.

96. As a direct, substantial and proximate result of Chicago Title aiding and abetting and substantially assisting in Cain's breaches of fiduciary duty, the Receivership Entities suffered financial losses and consequential damages including, but not limited to, receivership and exposure to liability to investors, in an amount to be proven at trial. In committing the acts and omissions described above, Chicago Title acted fraudulently, oppressively and maliciously, and/or authorized, adopted or approved DuCharme and Elixman's conduct.

PRAYER FOR RELIEF

WHEREFORE, the Receiver prays for judgment against Defendants, and each of them, as follows:

1. For damages in an amount according to proof at trial;
2. For punitive damages;
3. For prejudgment interest as allowed by law;
4. For costs of suit herein incurred;
5. For disgorgement of escrow fees and similar compensation paid; and
6. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Dated: June 5, 2020

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
MARK R. HARTNEY
EDWARD G. FATES
PETER A. GRIFFIN

By:______________________________
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