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22 UNITED STATES DISTRICT COURT  
 23 SOUTHERN DISTRICT OF CALIFORNIA

24 SECURITIES AND EXCHANGE  
 25 COMMISSION,  
 26  
 27 Plaintiff,  
 28  
 29 v.  
 30 GINA CHAMPION-CAIN and ANI  
 31 DEVELOPMENT, LLC,  
 32  
 33 Defendants,  
 34  
 35 AMERICAN NATIONAL  
 36 INVESTMENTS, INC.,  
 37  
 38 Relief Defendant.

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

**JOINT MOTION FOR ENTRY OF  
 PROTECTIVE ORDER AND  
 APPROVAL OF REPOSITORY AND  
 ALLOCATION OF PRODUCTION-  
 RELATED COSTS**

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1 Krista Freitag (the "Receiver"), the Court-appointed permanent receiver for  
2 Defendant ANI Development, LLC, Relief Defendant American National  
3 Investments, Inc. ("ANI"), and their subsidiaries and affiliates (collectively, the  
4 "Receivership Entities"), the Securities and Exchange Commission (the  
5 "Commission"), Defendant Gina Champion-Cain, and the undersigned interested  
6 parties (collectively, the "Moving Parties") submit this Joint Motion for Entry of  
7 Protective Order and Approval of Repository and Allocation of Production-Related  
8 Costs (the "Motion"), pursuant to which the Moving Parties move for entry of a  
9 protective order (the "Protective Order") to govern the treatment of documents and  
10 information that the Receiver will produce through an online repository, and seek  
11 Court approval of both the Receiver's use of the repository in lieu of other document  
12 discovery methods and the Receiver's proposed equitable allocation of the associated  
13 production costs in connection therewith, as detailed herein.

14 **I. BACKGROUND FACTS.**

15 The Receiver was appointed on September 3, 2019, pursuant to this Court's  
16 Order; Granting The Parties' Joint Motion And Stipulated Request By All Parties For  
17 A Preliminary Injunction Order And Order (1) Freezing Assets; (2) Requiring  
18 Accountings; (3) Prohibiting Destruction Of Documents; And (4) Appointing A  
19 Permanent Receiver ("Appointment Order") (Dkt. No. 6). By virtue of the  
20 Appointment Order, the Receiver was authorized and empowered to, among other  
21 things: (1) collect and take custody of all books, records, papers, and other real or  
22 personal property of the Receivership Entities (collectively, with the Receivership  
23 Entities' other assets, funds, and collateral, the "Assets"), and marshal such materials,  
24 to the extent necessary; (2) conduct such investigation and discovery as may be  
25 necessary to locate and account for the Assets; and (3) access, monitor, and review  
26 all mail, electronic mail, and video phone of the Receivership Entities. See  
27 Appointment Order, Section X.

28

1 Pursuant to the authority conveyed to her via the Appointment Order, and in  
2 pursuit of her duties thereunder, the Receiver has collected a significant volume of  
3 electronic and physical records related to the Receivership Entities, which electronic  
4 data presently exceeds eighty (80) terabytes of storage. (Declaration of Krista  
5 Freitag ["Freitag Decl."] ¶ 2.) Broadly, these records can be categorized as follows:  
6 (1) electronic data, documents, and information stored by the Receivership Entities  
7 using remote cloud storage as well as computers, a server and hard drives located at  
8 the Receivership Entities' offices; (2) hard-copy documents and information retrieved  
9 by the Receiver and her staff from the Receivership Entities' offices, real property  
10 assets and operating locations; and (3) data, documents, and information obtained by  
11 the Receiver in response to subpoenas served upon third parties. (Id.)

12 The Receiver understands that many of these records (the "Materials") may be  
13 relevant to pending and future litigation matters relating to, or arising from, the ANI  
14 Alcoholic Beverage Control liquor license lending program ("Program") that is the  
15 subject of the above-captioned enforcement action. (Id. at ¶ 3.) Throughout the  
16 course of the receivership, numerous interested parties have made formal and  
17 informal requests to the Receiver for documents relating to the Program. While the  
18 Receiver produced certain materials informally, it quickly became clear that  
19 numerous interested parties involved in current and forthcoming/potential litigation  
20 between investors in the Program and Chicago Title Company or Chicago Title  
21 Insurance Company (collectively, "Chicago Title") wished to obtain documents in  
22 the Receiver's possession as soon as possible. (Id.)

23 Rather than respond to piecemeal document requests and subpoenas, which  
24 would unduly consume the limited resources of the receivership estate, the Receiver  
25 investigated the viability of creating a document repository from which relevant  
26 documents could be produced quickly and in a cost-effective manner. (Id. at ¶ 4.)  
27 To that end, the Receiver's team analyzed the various forms in which information  
28 was stored, consulted with numerous vendors concerning potential approaches to

1 compilation, preparation, storage and production of information, and met and  
2 conferred with counsel for the Commission, Defendants, Chicago Title, and a  
3 majority of the investors. (Id.) Through this process, the parties identified a  
4 methodology for identifying relevant electronic data in order to narrow the scope and  
5 reduce the expense of the eventual production. The Receiver's team simultaneously  
6 conducted a review of hundreds of boxes of hard copy documents to identify relevant  
7 materials, which are being imaged in searchable form. (Id.)

8 Through this transparent and inclusive process, the Receiver has created the  
9 framework for a centralized database (the "Repository") that will allow the Materials  
10 to be uploaded and disseminated to: (1) all interested parties (collectively, the  
11 "Interested Parties") whose funds were deposited into escrow with Chicago Title, or  
12 otherwise invested in connection with, or loaned to, the Receivership Entities and/or  
13 Gina Champion-Cain, as part of the Program; (2) the Commission; and (3) Chicago  
14 Title (the "Repository Recipients"), subject to the terms of the Protective Order and  
15 this Motion. (Id. at ¶ 5.) The Receiver believes production of the Materials through  
16 the Repository is the most timely and cost-effective way to disseminate this  
17 information to those interested in obtaining it. (Id.)

18 Some of the Materials contain confidential investor information and, in the  
19 case of records relating to Chicago Title escrow and bank accounts, contain  
20 information unrelated to the Receivership Entities or the Program. The Receiver  
21 recognizes that at least some of these materials are normally kept confidential for  
22 competitive and privacy reasons, and that a protective order is necessary and  
23 appropriate to govern the treatment of such Materials in order to ensure they are kept  
24 confidential. (Id. at ¶ 6.) Therefore, the Moving Parties respectfully request that the  
25 Court enter the Protective Order, attached hereto as **Exhibit A**.

26 Ms. Champion-Cain has asserted that certain communications within the  
27 Materials involving her and her attorneys are protected by the attorney-client  
28 privilege. Therefore, the applicable communications will be provided to

1 Ms. Champion-Cain's counsel, who will conduct a privilege review and provide a  
2 privilege log. Once the communications claimed by Ms. Champion-Cain to be  
3 privileged have been identified and removed, the Receiver will provide a hard drive  
4 with the Materials contained within the Repository to the Repository Recipients,  
5 subject to the Court granting this Motion. (Id.)

6 In anticipation of uploading the Materials to the Repository, the Receiver, with  
7 the assistance of her team, consulted with several vendors regarding the expenses  
8 associated with scanning eighty-six (86) boxes of physical files and preparing  
9 approximately 800 gigabytes of data to be produced in bates-stamped, fully  
10 searchable format to the Repository. (Id. at ¶ 7.) Based on the price proposals from  
11 several vendors, the Receiver estimates that the total cost to complete this process  
12 will be approximately \$105,000.00, broken down as follows:

- 13 • Approximately \$55,000.00 to scan the eighty-six (86) boxes of physical  
14 files, including logical unitization and standard coding for search  
15 capabilities;
- 16 • Approximately \$20,000.00 to apply Logical Document Determination to  
17 documents received electronically from third parties via the Receiver's  
18 various subpoenas so that the documents are fully searchable; and
- 19 • Approximately \$30,000.00 to process the approximately 800 gigabytes  
20 of data, including bates stamping the Materials and producing them in a  
21 fully searchable format. (Id.)

22 Given the considerable costs of producing the Materials to the Repository, and  
23 the Receiver's efforts to conserve limited receivership estate resources for the benefit  
24 of the Receivership Entities' investors and creditors, the Receiver proposes allocating  
25 the costs associated with the Repository to be borne, in three equal shares, by: (1)  
26 the receivership estate, (2) Chicago Title, and (3) the Interested Parties, collectively.  
27 (Id. at ¶ 8.) Once the work necessary to produce the Materials to the Repository is  
28



1 complete, the Receiver will provide Chicago Title and the Interested Parties with a  
2 final breakdown of the total costs incurred in connection therewith. (Id.)

3 In the event the Receiver obtains or locates/discovers additional documents or  
4 information related to the Program, via the issuance of third-party subpoenas or  
5 otherwise, the Receiver proposes to meet and confer with the Repository Recipients  
6 regarding the potential production of such materials, and an equitable allocation of  
7 costs in connection therewith, as appropriate, under the structure set forth in this  
8 Motion. (Id. at ¶ 9.)

9 Accordingly, and for the reasons set forth herein, the Moving Parties  
10 respectfully request that the Court enter the Protective Order to govern the treatment  
11 of the Materials, and approve both the Receiver's use of the Repository in lieu of  
12 other document discovery methods and the Receiver's proposed equitable allocation  
13 of the associated production costs in connection therewith.

## 14 II. DISCUSSION.

### 15 A. The Protective Order is Necessary and Appropriate to Govern the 16 Treatment of the Materials.

17 Federal Rule of Civil Procedure 26(c) provides for protective orders with  
18 respect to all discovery. Based upon good cause shown, the Court may issue any  
19 order which justice requires to protect a party from annoyance, embarrassment,  
20 oppression, or undue burden or expense, including an order requiring that  
21 confidential information not be revealed, or only be revealed in a specific way. See  
22 Fed. R. Civ. P. 26(c)(1)(G). Moreover, as recognized by the Ninth Circuit, the Court  
23 has great flexibility to fashion the terms of protective orders limiting the production,  
24 use, and subsequent disclosure of confidential information. See Phillips ex rel.  
25 Estates of Byrd v. Gen. Motors Corp., 307 F.3d 1206, 1211 (9th Cir. 2002) ("The law  
26 . . . gives district courts broad latitude to grant protective orders to prevent disclosure  
27 of materials for many types of information, including, *but not limited to*, trade secrets  
28 or other confidential research, development, or commercial information."); see also

1 Seattle Times Co. v. Rhinehart, 467 U.S. 20, 36 (1984) ("Rule 26(c) confers broad  
2 discretion on the trial court to decide when a protective order is appropriate and what  
3 degree of protection is required.").

4 The burden is on the party seeking the order to "show good cause" by  
5 demonstrating harm or prejudice that will result if no protective order is granted. See  
6 Gen. Motors Corp., 307 F.3d at 1210-11. "If a court finds particularized harm will  
7 result from disclosure of information to the public, then it balances the public and  
8 private interests to decide whether a protective order is necessary." Id. at 1211.  
9 However, "a party seeking the protection of the court via a blanket protective order  
10 typically does not make a 'good cause' showing required by Rule 26(c) with respect  
11 to any particular document." Foltz v. State Farm Mut. Auto. Ins. Co., 331 F.3d 1122,  
12 1133 (9th Cir. 2003). Instead, "[b]lanket protective orders are entered to facilitate  
13 the exchange of discovery documents. They make no findings that a particular  
14 document is confidential or that a document's disclosure would cause harm." Small  
15 v. Univ. Med. Ctr. of S. Nevada, No. 2:13-CV-00298-APG, 2015 WL 1281549, at \*3  
16 (D. Nev. Mar. 20, 2015). As other district courts in this circuit have recognized, "the  
17 use of blanket protective orders conserves judicial resources – and taxpayer money –  
18 by eliminating the requirement that a party move for a protective order every time  
19 that party produces documents they contend are confidential." Van v. Wal-Mart  
20 Stores, Inc., No. C 08-5296 PSG, 2011 WL 62499, at \*2 (N.D. Cal. Jan. 7, 2011).

21 Here, a blanket protective order is necessary and appropriate to govern the  
22 treatment of the Materials produced to the Repository. As previously indicated, the  
23 Materials contain confidential investor information, including sensitive financial  
24 information, and, in certain instances, information that is unrelated to the  
25 Receivership Entities or the Program. Therefore, the unrestricted public disclosure  
26 of some of the Materials could cause prejudice and harm to the Receivership Entities'  
27 investors and creditors, and other persons and entities. Accordingly, pursuant to  
28 Federal Rule of Civil Procedure 26(c), good cause exists for the Court to issue a

1 protective order to govern the treatment, including the use and disclosure, of the  
2 Materials.

3 The Moving Parties respectfully submit that the Protective Order, attached  
4 hereto as Exhibit A, provides adequate and appropriate protections for the Materials,  
5 while ensuring that the Repository Recipients may use them for legitimate and lawful  
6 purposes. The Moving Parties, therefore, respectfully request that the Court enter the  
7 Protective Order.

8 **B. The Court Should Approve the Receiver's Use of the Repository**  
9 **and the Proposed Cost Allocation for Production of the Materials to**  
10 **the Repository.**

11 Ordinarily, "the presumption is that the responding party must bear the  
12 expense of complying with discovery requests, but he may invoke the district court's  
13 discretion under Rule 26(c) to grant orders protecting him from 'undue burden or  
14 expense' in doing so, including orders conditioning discovery on the requesting  
15 party's payment of the costs of discovery." Oppenheimer Fund, Inc. v. Sanders, 437  
16 U.S. 340, 358 (1978). Specifically, Federal Rule of Civil Procedure 26(c) expressly  
17 recognizes this Court's authority to issue protective orders "specifying terms,  
18 including . . . the allocation of expenses, for the disclosure or discovery." Fed. R.  
19 Civ. P. 26(c)(1)(B). "Again and again, 'district courts have recognized the unique  
20 burden of producing documents stored on backup tapes and, by invoking Rule 26(c)  
21 to fashion order to protect parties from undue burden or expense, have conditioned  
22 production on payment by the requesting party.'" U.S. ex rel. Carter v. Bridgepoint  
23 Educ., Inc., 305 F.R.D. 225, 241 (S.D. Cal. 2015) (citing Hagemeyer N. Am., Inc. v.  
24 Gateway Data Scis. Corp., 222 F.R.D. 594, 601 (E.D. Wis. 2004)).

25 Courts typically employ a seven-factor test to determine whether an undue  
26 burden and expense exists with respect to discovery and, accordingly, whether cost  
27 shifting is appropriate under the circumstances. The seven factors are:

28

1 (1) The extent to which the [discovery] request is  
 2 specifically tailored to discover relevant information; (2)  
 3 The availability of such information from other sources; (3)  
 4 The total cost of production, compared to the amount in  
 5 controversy; (4) The total cost of production, compared to  
 6 the resources available to each party; (5) The relative  
 7 ability of each party to control costs and its incentive to do  
 8 so; (6) The importance of the issues at stake in the  
 9 litigation; and (7) The relative benefits to the parties of  
 10 obtaining the information.

11 OpenTV v. Liberate Techs., 219 F.R.D. 474, 477 (N.D. Cal. 2003) (citing Zubulake  
 12 v. UBS Warburg LLC, 217 F.R.D. 309, 322 (S.D.N.Y. 2003)) (holding that  
 13 "[b]ecause of the undue burden and expense involved in extracting and copying the  
 14 source code, some cost-shifting is warranted in this case.").

15 Moreover, where, as here, there are multiple parties involved and a significant  
 16 volume of documents and materials subject to discovery, federal courts have  
 17 frequently imposed a cost allocation mechanism in connection with document  
 18 depositories. See e.g., In re Two Appeals Arising Out of San Juan Dupont Plaza  
 19 Hotel Fire Litig., 994 F.2d 956, 965 (1st Cir. 1993) ("In this multidistrict litigation,  
 20 involving upward of 2000 parties and raising a googol of issues, Judge Acosta's  
 21 power to mandate contributions to, *inter alia*, a central discovery depository can  
 22 scarcely be doubted. . . . [R]ule [26] is flexible enough to serve as the source of  
 23 judicial authority for imposing cost-sharing orders in complex cases."); Van Harville  
 24 v. Johns-Manville Prod. Corp., 31 Fed. R. Serv. 2d 734 (S.D. Ala. 1981) ("Many  
 25 courts have, in cases of this magnitude, had a measure of practical success with the  
 26 use of central document depositories. An arrangement of that nature would . . .  
 27 provide a fair manner to allocate production costs, and reduce the unnecessary  
 28 expense of later wrangling over attempts to gain a free ride."); In re Air Crash  
Disaster at Stapleton Int'l Airport, Denver, Colo., on Nov. 15, 1987, No. MDL 751,  
 1988 WL 243502, at \*10 (D. Colo. Apr. 18, 1988) ("The plaintiffs, as a group, and

1 each defendant will provide a pro rata share of the costs of establishing  
2 the document depository. Defendants named in this litigation hereafter shall be  
3 required to pay a similar pro rata share unless the court, upon review, orders  
4 otherwise."); see also United States District Court for the Northern District of  
5 California, Checklist for Rule 26(f) Meet and Confer Regarding Electronically  
6 Stored Information (advising the parties to consider "[c]osts that the parties will  
7 share to reduce overall discovery expenses, such as the use of a common electronic  
8 discovery vendor or a shared document repository, or other cost-saving measures.").

9 Here, imposing an equal cost allocation amongst the Receiver, the Interested  
10 Parties, and Chicago Title for the expenses associated with producing the Materials  
11 to the Repository is appropriate, given the total costs of the production, the resources  
12 available to the parties, and the benefits that will be derived from producing the  
13 Materials in this efficient and cost-effective manner.

14 The existing litigation concerning the Program (in this Court and the San  
15 Diego Superior Court) is generally focused on the liability of Chicago Title, if any,  
16 for losses and damages incurred in connection with the Program. Since Chicago  
17 Title is defending numerous actions, and given its substantial resources, it is fair for  
18 Chicago Title to bear a significant share of the cost burden. With respect to the  
19 investors, they are driving the vast majority of the litigation and will benefit greatly  
20 from having the Materials in order to assess their claims. The receivership estate has  
21 limited resources and should not be required to bear a disproportionate share of the  
22 considerable costs of compiling and producing the Materials. Moreover, the  
23 Receiver submits that production of the Materials through the Repository in lieu of  
24 doing so through traditional written discovery methods represents the most timely  
25 and cost-effective method of producing the Materials. The scope of the Materials is  
26 broad and inclusive and was developed in consultation with the Moving Parties. The  
27 Moving Parties therefore request that the Court approve use of the Repository as the  
28 means by which the Receiver will produce documents relevant to the Program and

1 bar all interested parties in litigation matters arising from the Program from serving  
2 written document requests or document subpoenas on the Receiver absent the  
3 Receiver's written consent or further order of this Court.

4 Weighing the seven factors above, the Court should exercise its discretion to  
5 allocate the costs of producing the Materials to the Repository in three equal shares  
6 between the receivership estate, Chicago Title, and the Interested Parties. Given (1)  
7 the considerable costs of producing the Materials to the Repository, (2) the  
8 Receiver's efforts to conserve limited receivership estate resources for the benefit of  
9 the Receivership Entities' investors and creditors, (3) the non-availability of a  
10 significant volume of the Materials from other sources, and (4) the benefits that  
11 Chicago Title and the Interested Parties will derive from obtaining this information  
12 via a streamlined process, as opposed to participating in the time-consuming process  
13 of issuing requests for production or subpoenas in each related action, an equal  
14 allocation of costs for production of the Materials to the Repository is appropriate  
15 and fair.

16 Based on the foregoing, the Moving Parties submit that sharing the costs  
17 between the Interested Parties, collectively, Chicago Title, and the receivership estate  
18 presents the most equitable allocation of the costs associated with producing the  
19 Materials to the Repository.

### 20 **III. CONCLUSION.**

21 For the foregoing reasons, the Moving Parties respectfully request that the  
22 Court enter the Protective Order to govern the treatment of the Materials, and  
23 approve the cost allocation structure regarding the production of the Materials to the  
24 Repository set forth above.

### 25 **IV. MEET-AND-CONFER CERTIFICATION.**

26 Pursuant to Federal Rule of Civil Procedure 26(c)(1), the Moving Parties have  
27 met and conferred, in good faith, regarding the Protective Order and the instant  
28 Motion.

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*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

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

Securities and Exchange Commission,  
Plaintiff,  
v.  
Gina Champion-Cain, an individual;  
and ANI Development, LLC, a  
Delaware corporation,  
Defendants, and  
AMERICAN NATIONAL  
INVESTMENTS, INC.,  
Relief Defendant.

Case No. 3:19-cv-01628 LAB-AHG  
**[PROPOSED] PROTECTIVE ORDER**

1 On June , 2020, Krista L. Freitag ("Receiver"), the Court-appointed permanent  
2 receiver for Defendant ANI Development, LLC, Relief Defendant American National  
3 Investments, Inc., and their respective subsidiaries and affiliates ("Receivership  
4 Entities"), filed a Motion for (1) Entry of Protective Order and (2) Approval of  
5 Receiver's Data Repository and Allocation of Related Costs ("Motion," ECF No. ) in  
6 connection with the above-captioned action. Pursuant to the Motion, the Receiver  
7 requested that the Court enter the instant Protective Order ("Order") to govern the  
8 treatment of documents and information ("Materials") that the Receiver will  
9 produce as part of a database of documents and information relevant to the ANI liquor  
10 license lending program ("Repository"). The Court recognizes that some of the  
11 Materials to be produced as part of the Repository are, for current competitive and/or  
12 privacy reasons, normally kept confidential.

13 Upon entry of this Order, the Receiver will be permitted to produce these  
14 confidential Materials to the Repository. As provided in and subject to the cost-  
15 allocation terms discussed in the Motion, all interested parties and interested non-parties  
16 whose funds were deposited into escrow with the Chicago Title Company or Chicago  
17 Title Insurance Company (collectively, "Chicago Title"), or otherwise invested in  
18 connection with, or loaned to, the Receivership Entities and/or Gina Champion-Cain  
19 (collectively, the "Parties," and individually, a "Party"), as part of the alleged scheme  
20 that is the subject of the above-captioned Securities and Exchange Commission  
21 ("Commission") enforcement action, will be granted access to the Repository, along  
22 with those parties identified below in Paragraph 2. The Parties, through their counsel,  
23 have agreed to be bound by the terms of this Order and, accordingly, will be able to  
24 access, review, and use the Materials contained within the Repository, subject to the  
25 terms and conditions set forth herein.

26 The Receiver obtained the Materials principally from the following sources,  
27 pursuant to the authority conveyed upon her by virtue of the receivership appointment  
28 order (ECF No. 6): (a) electronic data, documents, and information stored by the

1 Receivership Entities using remote cloud storage as well as computers, a server and  
2 hard drives located at the Receivership Entities' offices; (b) hard-copy documents and  
3 information retrieved by the Receiver and her staff from the Receivership Entities'  
4 offices and operating or storage locations; and (c) data, documents, and information  
5 obtained by the Receiver in response to subpoenas served upon third-parties.

6 The Materials may contain confidential and/or personal private information,  
7 trade secrets or other confidential information, as contemplated by Federal Rule of  
8 Civil Procedure 26(c)(1)(G). The purpose of this Order is to protect the confidentiality  
9 of any such information in the Materials as much as practical in connection with the  
10 instant action and any current or potential future legal action(s) relating to the ANI  
11 liquor license lending program. As used herein, the term "Confidential Information"  
12 shall mean all information and data contained or disclosed in any of the Materials,  
13 except as provided in Paragraph 14 below, including documents,  
14 portions of documents, and data, summaries, and compilations derived therefrom,  
15 whether or not previously designated as "CONFIDENTIAL," that includes or  
16 constitutes the following: (1) Social Security numbers; (2) dates of birth; (3) home  
17 addresses, except for city and state; (4) driver's license numbers; (5) bank account and  
18 routing numbers, except for the last four digits; and (6) trade secrets as defined in  
19 California Civil Code section 3426.1(d). The Receiver believes, in good faith, that the  
20 disclosure of Confidential Information could be potentially prejudicial to the commercial  
21 or personal interests of the original custodian(s).

## 22 GENERAL RULES

23 1. All Confidential Information produced by the Receiver to, and contained  
24 within, the Repository will be considered "CONFIDENTIAL," and shall be treated as  
25 such pursuant to the terms of this Order, whether or not the Materials are specifically  
26 designated as "CONFIDENTIAL."

27 2. Confidential Information shall be handled in the manner set forth below  
28 and, in any event, shall not be used for any purpose other than in connection with this

1 litigation and any current or potential future legal action(s) relating to the ANI liquor  
2 license lending program (collectively, "Related Actions"), unless and until such  
3 disclosure is approved in writing either by Chicago Title with respect to its Materials,  
4 the Receiver with respect to the Receivership Entities' Materials, or by order of this  
5 Court. Persons and entities who are granted access to the Repository shall, subject to the  
6 provisions of this Protective Order and any order approving the Motion, include: (1) the  
7 Parties; (2) a Party's counsel in connection with Related Actions; (3) the Commission,  
8 including personnel employed by the Commission; (4) the Receiver and her staff,  
9 consultants, and counsel; and (5) Chicago Title and its counsel in connection with  
10 Related Actions (together with (1)-(4), the "Repository Parties").

11 3. Subject to the provisions of this Protective Order, Confidential Information  
12 may be disclosed to a Party, staff and employees of a Party or Party's counsel; any  
13 person who actually was involved in the preparation of the document or who appears  
14 on the face of the document as the author, addressee, or other recipient or currently is  
15 affiliated with the party that originally produced or appears to have prepared said  
16 document; mediators or arbitrators and their staff in Related Actions; witnesses,  
17 deponents and court reporters in Related Actions; and juries and court personnel in  
18 Related Actions. In addition, Confidential Information may be disclosed to expert  
19 witnesses, investigators, vendors, and consultants engaged or retained by a Party or a  
20 Party's counsel in this matter or in Related Actions, once they have executed the  
21 form attached hereto as **Exhibit A**.

22 4. Whenever a deposition taken in the instant action or a Related Action  
23 involves a disclosure of Confidential Information:

- 24 a. that portion of the deposition shall be designated as containing  
25 Confidential Information subject to the provisions of this Order;  
26 such designation shall be made on the record whenever possible, but  
27 a party to the proceeding at issue may designate portions of  
28 depositions as containing Confidential Information after

1 transcription of the proceedings; a party to the proceeding at issue  
2 will have until twenty-one (21) days after receipt of the deposition  
3 transcript to inform the other party or parties to the action of  
4 the portions of the transcript to be designated  
5 "CONFIDENTIAL."

6 b. the disclosing party will be obligated to exclude from attendance at  
7 the deposition, during such time as the Confidential Information is  
8 to be disclosed, any person other than the deponent, counsel  
9 (including their staff and associates), the court reporter,  
10 videographer and the person(s) agreed upon pursuant to Paragraphs  
11 2 and 3 above; and

12 c. those portions of original deposition transcripts containing  
13 Confidential Information, and all copies of the deposition  
14 transcripts, shall bear the legend "CONFIDENTIAL," as  
15 appropriate, and the original or any copy of a deposition transcript  
16 which contains Confidential Information ultimately presented to a  
17 court for filing shall not be filed unless it can be accomplished under  
18 seal, identified as being subject to this Order, and protected from  
19 being opened except by order of this Court or the judge presiding  
20 over the Related Action.

21 5. All of the Confidential Information produced by the Receiver to, and  
22 contained within, the Repository, and any and all reproductions of the Confidential  
23 Information, must be retained in the custody of the counsel for the Repository Parties  
24 identified in Paragraph 2, above, except that the Receiver and her staff may retain  
25 custody of copies as necessary.

26 6. Before any Confidential Information is filed with this Court or any court  
27 in connection with any Related Action(s), for any purpose, the party seeking to file such  
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1 material shall seek permission of this Court, or the court presiding over the Related  
2 Action, to file the applicable Material(s) under seal.

3 7. All Confidential Information shall be maintained as confidential by those  
4 inspecting or receiving it, and shall be used only for purposes of the Related Actions.  
5 Counsel for each Repository Party, and each person or entity receiving Confidential  
6 Information, shall take reasonable precautions to prevent the unauthorized or  
7 inadvertent disclosure of such information. If Confidential Information is disclosed  
8 to any person not authorized by this Order, the Repository Party responsible for the  
9 unauthorized disclosure shall immediately bring all pertinent facts relating to the  
10 unauthorized disclosure to the attention of the Receiver and, without prejudice to  
11 any rights and remedies of the Receiver and/or the original custodian(s) of the  
12 Material(s), shall make every reasonable effort to prevent further disclosure  
13 including, but not limited to, requesting the person(s) or entities that received the  
14 unauthorized disclosure to destroy the Confidential Information immediately.

15 8. The Materials may be used, subject to the terms of this Order, in any  
16 Related Action, and may be shared with the parties to such Related Action who agree  
17 to the terms of this Order and the cost-sharing provisions. All Repository Parties shall,  
18 upon the request of any other Repository Party, stipulate to the entry of a protective  
19 order with at least the protections in this Order in any Related Action.

20 9. Nothing in this Order will bar counsel from rendering advice to their  
21 clients with respect to any Related Action and, in the course thereof, relying upon  
22 any information designated as Confidential Information, provided that the contents of  
23 the Confidential Information shall not be disclosed.

24 10. The existence of this Order shall not be used by any person or entity as a  
25 basis for discovery that is otherwise improper under the Federal Rules of Civil  
26 Procedure.

27 11. Nothing within this Order shall be construed to prevent disclosure of  
28 Confidential Information if such disclosure is required by law or by court order.



1           12. This Order shall not prevent the Commission from complying with its  
2 obligations under law concerning disclosure of documents including, but not limited to,  
3 its published Routine Uses of Information in Forms 1661 and 1662, the Freedom of  
4 Information Act, and any other statutes or rules applicable to the Commission, or  
5 interfere with the Commission's use of information for law enforcement activities and  
6 to otherwise regulate, administer, and enforce the federal securities laws.

7           13. Upon the final discharge of the Receiver or termination of the instant case,  
8 whichever is later, counsel for each Repository Party shall, upon the request of the  
9 Receiver, use all reasonable efforts to destroy all Materials, including any copies or excerpts of  
10 such Materials, including from all machine-readable media on which it resides.  
11 “Reasonable efforts” shall not require the return or destruction of Materials that (i) are  
12 stored on backup storage media made in accordance with regular data backup  
13 procedures for disaster recovery purposes, (ii) are located in the email archive system  
14 or archived electronic files of departed employees, or (iii) are subject to legal hold  
15 obligations. If Materials are subject to a legal hold obligation at the time the Receiver  
16 makes a request for destruction, counsel for the Repository Party that is subject to such  
17 hold obligation shall promptly provide the Receiver with reasonable written proof  
18 thereof. Backup storage media will not be restored for purposes of returning or  
19 certifying destruction of Materials, but such retained information shall continue to be  
20 treated in accordance with the Order. Notwithstanding the foregoing, in the event that any  
21 Repository Party is involved in a Related Action that terminates after the discharge of the Receiver or the  
22 termination of the above-captioned action, such Repository Party will promptly destroy all Materials,  
23 including any copies, excerpts, and summaries of such Materials, including from all  
24 machine-readable media on which it resides, upon the termination of the related legal  
25 action(s). Counsel for each Repository Party may retain all correspondence,  
26 transcripts, written discovery, pleadings, briefs, memoranda, motions, and  
27 other documents filed with this Court or any court in connection with a Related Action  
28 that refers to or incorporates Confidential Information, and will continue to be bound

1 by this Order with respect to all such retained Confidential Information. Further,  
2 attorney work-product materials that contain Confidential Information need not be  
3 destroyed, but, if they are not destroyed, the person in possession of the attorney work  
4 product shall continue to be bound by this Order with respect to all such retained  
5 information.

6 14. The restrictions and obligations set forth within this Order do not apply to  
7 any information that: (a) the Repository Parties agree, or a court determines, is already  
8 public knowledge; (b) the Repository Parties agree, or a court  
9 determines, has become public knowledge other than as a result of disclosure by a  
10 Repository Party, its employees, or its agents in violation of this Order; or (c) a Party  
11 or Party's counsel already possesses or obtains from a separate source by which the  
12 information was not designated as confidential.

13 15. To the extent a Repository Party determines, in good faith, that any portion  
14 of the Materials includes or constitutes trade secrets as defined in California Civil Code  
15 section 3426.1(d), that Repository Party (a "Designating Party") may designate such  
16 materials as Confidential Information by written notice to all other Repository Parties.  
17 Any Repository Party may object to the designation of Confidential Information on the  
18 ground that such information does not constitute Confidential Information by serving  
19 written notice upon counsel for the Designating Party at any time, specifying the item(s)  
20 in question and the grounds for the objection. If a Repository Party objects to the  
21 designation of any materials as Confidential Information, the Repository Party  
22 challenging the designation shall arrange for a meet and confer conference under Local  
23 Civil Rule 26.1(a), which shall occur within ten (10) calendar days of service of the  
24 notice. If the parties cannot resolve the matter, the Repository Party challenging the  
25 designation may file a motion with the Court to resolve the dispute. Such motions must  
26 be filed with the magistrate judge within ten (10) calendar days of the Local Civil Rule  
27 26.1 conference, and may include the material at issue under seal for the Court's review.  
28 The Designating Party shall bear the burden of establishing that the document is entitled

1 to protection. Any contested information shall continue to be treated as Confidential  
2 Information subject to this Protective Order until the motion has been ruled upon.

3 16. This Order does not prohibit discussion of any Confidential Information  
4 with anyone if that person already has or obtains legitimate possession of the relevant  
5 Confidential Information.

6 17. Transmission by email or some other currently utilized method of  
7 transmission is acceptable for all notification purposes within this Order.

8 18. This Order may be modified by agreement of the Repository Parties,  
9 subject to approval by the Court.

10 19. The terms and conditions of this Order apply with full force and effect to  
11 any and all Related Action(s). The terms and conditions of this Order, as applied to any  
12 Related Action, may be enforced by this Court. The Repository Parties consent and  
13 submit to the jurisdiction of this Court with respect to enforcement of the Order,  
14 including the imposition of any sanction(s) by the Court for violation thereof.

15 20. In the event that the Receiver obtains additional data, documents, or  
16 information after entry of this Order relating to the ANI liquor license lending program,  
17 the Repository Parties shall meet and confer regarding the necessity, appropriateness  
18 and manner of the Receiver producing the additional data, documents, or information,  
19 the treatment of such data, documents, or information, and the parameters of any cost-  
20 sharing allocation, if necessary and appropriate.

21 21. Nothing contained herein waives or prejudices any Repository Party's  
22 rights regarding the demand for, access to, or production of any of the Materials, or any  
23 documents, information, or data related to the subjects of the above-captioned action.

24 22. Nothing contained herein constitutes an implied waiver of any rights  
25 regarding potential cost-sharing consistent with the Federal Rules of Civil Procedure,  
26 and the Receiver requests an allocation of costs associated with the production of the  
27 Materials to the Repository, as set forth in the Motion.  
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IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

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Judge,

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**EXHIBIT A**

I, \_\_\_\_\_, **DECLARE:**

I have read in its entirety and understand the Protective Order (the "Order") entered by the Court in this Action and have been provided with a copy of the Order.

1. I agree to be bound by the terms of the Order. I will use the Materials only for the purposes of this litigation and related legal actions, pursuant to the terms of the Order. I will hold such Materials in confidence and not disclose to any person or entity not qualified under the Order to receive it.

2. I will destroy all Materials in my possession, custody, and/or control in accordance with the terms of the Order.

3. I understand that violation of the terms of the Order will subject me to sanctions or penalties for contempt of the Order. I consent and submit to the jurisdiction of this Court for the purpose of enforcing the Order.

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

Dated: \_\_\_\_\_, 20\_\_ \_\_\_\_\_