

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

5 Attorneys for Non-Parties  
Seattle Funding Group of California, LLC;  
6 and SFG Income Fund VI, LLC

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UNITED STATES DISTRICT COURT

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SOUTHERN DISTRICT OF CALIFORNIA

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11 SECURITIES AND EXCHANGE  
COMMISSION,

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13 Plaintiff,

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15 v.

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17 GINA CHAMPION-CAIN AND ANI  
DEVELOPMENT, LLC

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19 Defendants,

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21 AMERICAN NATIONAL  
INVESTMENTS, INC.,

22

23 Relief Defendant.

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

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

[901-915 West Washington, San Diego]

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JOINT MOTION

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

2. This joint motion concerns a three unit commercial/retail building located at 901, 903 & 915 West Washington Street, San Diego, California, APN 444-611-12-00 (the "W. Washington Property"). American National Investments, Inc., purchased the W. Washington Property in March, 2018 for \$2,100,000 with a \$1,365,300 interest-only loan originated by Seattle Funding Group of California (the "W. Washington Loan"). The W. Washington Loan was immediately assigned to SFG Income Fund VI, LLC (the "Lender"). The W. Washington Loan is secured by a first deed of trust.

3. The W. Washington Loan went into default for failure to make the monthly payment due on September 1, 2019. The Receiver made only one loan payment in the amount \$10,266.13. The W. Washington Loan matured on January 1, 2020.

1           4.       The W. Washington Property is currently occupied by two tenants – a  
2 florist and an ice cream shop. However, the leases for both tenants need work to bring  
3 them to market standards. The florist has been operating under a month-to-month  
4 lease since May 2017 when their last term expired. For the ice cream shop, although a  
5 fully executed lease was located, the tenant's principal has claimed that the signature  
6 on the lease document is not hers and instead has been paying only a small fraction of  
7 the market rate for the space. Thus far, the Receiver and the tenants have been unable  
8 to come to terms on a new lease. The Receiver was able to evict a third tenant, and  
9 those premises have since remained unoccupied.

10           5.       Because the W. Washington Property's lease documentation and  
11 payment history did not support a stabilized asset and because the environmental  
12 reports had not been commissioned, the Receiver preliminarily concluded that the  
13 property could not be marketed in its as-is condition and yield any significant return to  
14 the receivership estate. For this reason, the Receiver made only a single monthly Loan  
15 payment in the amount of \$10,266.13 and did not pay the first or second installment  
16 of real property taxes for the year 2019-2020. The Receiver did begin work to  
17 stabilize the asset and commission environmental reports. In December 2019, the  
18 Receiver also commissioned an appraisal of the property, however that report was not  
19 received until January 2020. The appraisal indicated a \$2.1 million Leased Fee  
20 valuation, assuming the leases were performing and in effect. In February 2020, an  
21 unsolicited offer was received in the amount of \$2.1 million. Shortly thereafter, the  
22 COVID-19 global pandemic significantly changed the business environment at large  
23 and particularly the prospects for retail sales. In March 2020, California governor  
24 Gavin Newsom issued a "Safer-at-Home Order ("SAH Order") placing significant

1 restrictions on business operations which effectively shut down the operations of the  
2 W. Washington Property tenants. While the SAH Order has been subsequently eased,  
3 and both remaining tenants have re-opened, the operating environment remains  
4 difficult. The offer received in February was subsequently withdrawn and  
5 resubmitted in the amount of \$1,100,000. A survey of comparable leasing spaces  
6 before and after the SAH Order has revealed an approximate 25% drop in lease rates.  
7 Additionally, the Receiver consulted with a broker who opined that the value of the  
8 W. Washington Property with the current leases in place could be as low as \$675,000.

9         6. The W. Washington Loan has a current balance of \$1,621,684.12,  
10 including default interest, which will increase as interest accrues and attorney fees are  
11 incurred in relation to the default. This balance includes a \$105,000 “hold back”  
12 which was provided for at the inception of the loan due to potential environmental  
13 concerns. The current balance of the holdback is \$102,600.00. The final balance of  
14 the holdback would be credited to the loan balance if the loan were able to be paid off  
15 through a sale of the property.

16         7. As part of her due diligence, the Receiver obtained a Phase 1  
17 environmental report as to the W. Washington Property. The Lender has disbursed  
18 \$2,400.00 from the holdback to pay for the report. The Phase 1 report indicated that  
19 over fifty years ago, the W. Washington Property was the site of a gas station and the  
20 report recommended a Phase 2 limited subsurface investigation. The Lender has  
21 agreed to disburse funds from the holdback to pay for this report, which is underway  
22 at this time. By agreement, the Receiver will furnish a copy to the Lender when it has  
23 been completed.

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1 8. After conducting extensive due diligence and engaging in marketing  
2 efforts, the Receiver, in her reasonable judgment exercised in accordance with the  
3 duties of her appointment, has concluded that:

4 8.1 The Lender has a properly perfected security interest in the W.  
5 Washington Property, including a security interest in the rents and profits  
6 pursuant to the deed of trust; and

7 8.2 The W. Washington Property is unlikely to yield any significant  
8 return to the receivership estate.

9 9. The Lender had not taken any action to enforce the Loan prior to the  
10 commencement of the receivership. If permitted to proceed now, the Lender is thus at  
11 least four months away from completing a foreclosure, assuming that no obstacles are  
12 posed as a result of the COVID-19 crisis.

13 10. Since her appointment, the Receiver has maintained open lines of  
14 communication with the Lender. After conferring on this Property on multiple  
15 occasions, the parties have agreed that it is now reasonable and appropriate for the  
16 Lender to be permitted to exercise its remedies under the deed of trust, including  
17 prosecution of a foreclosure. During the period necessary to complete the foreclosure  
18 the Receiver may continue any marketing efforts that are justified in her reasonable  
19 business judgment. The parties are therefore requesting that the Appointment Order be  
20 modified to implement this solution.

21 STIPULATION

22 THEREFORE, the Commission, the Receiver, Champion-Cain, and the Lender,  
23 by and through their undersigned attorneys of record, hereby STIPULATE AND  
24 AGREE as follows:

1           11. That an Order may and should be entered providing that the injunctions  
2 set forth in the Appointment Order be modified in the following particulars only, and  
3 only with respect to the Lender’s claim encumbering the W. Washington Property.

4           12. That the injunctions be modified to permit the Lender to enforce its deed  
5 of trust by commencing and prosecuting non-judicial foreclosure proceedings, and by  
6 giving notice to tenants pursuant to California Civil Code section 2938(i), requiring  
7 that future rent payments be made directly to the Lender. Such foreclosure  
8 proceedings may be consummated without the necessity of any further order of the  
9 Court. The successful bidder at any foreclosure sale may acquire and take possession  
10 of the W. Washington Property free and clear of any interest of the receivership estate.

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

15           14. That nothing herein shall preclude the Receiver from soliciting or  
16 developing offers for the W. Washington Property pending the foreclosure sale. In the  
17 event an offer in an amount sufficient to pay secured claims and property taxes, to  
18 provide a net recovery for the receivership estate is secured, and the buyer has  
19 released contingencies, the Receiver will confer with Lender and seek Court approval  
20 of the sale.

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REQUEST FOR RELIEF

For the reasons stated above, the Commission, the Receiver, Defendant  
Champion-Cain, and non -party SFG Income Fund VI, request that the Court issue an  
order granting the limited relief from the Appointment Order requested herein.

IT IS SO STIPULATED.

Dated: July 7, 2020

ALLEN MATKINS LECK GAMBLE  
MALLORY & MATSIS LLP

By:     /s/ Ted Fates      
TED FATES  
Attorneys for Receiver  
KRISTA FREITAG

    /s/ Kathryn C. Wanner      
KATHRYN C. WANNER  
ALEC JOHNSON  
Attorneys for Plaintiff  
SECURITIES AND EXCHANGE  
COMMISSION  
  
SCHEPER KIM & HARRIS LLP

By:     /s/ Angela Machala      
ANGELA MACHALA  
Attorneys for Defendant  
GINA CHAMPION-CAIN  
  
KIRBY & McGUINN, A P.C.

By:     /s/ Dean T. Kirby, Jr.      
DEAN T. KIRBY, JR.  
Attorneys for Non-Parties  
Seattle Funding Group of California, LL  
and SFG Income Fund VI, LLC

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**SIGNATURE CERTIFICATION**

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

DATED: July 7, 2020

KIRBY & McGUINN, APC

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