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21 KRISTA FREITAG

22 UNITED STATES DISTRICT COURT  
23 SOUTHERN DISTRICT OF CALIFORNIA

24 SECURITIES AND EXCHANGE  
25 COMMISSION,

26 Plaintiff,

27 v.

28 GINA CHAMPION-CAIN and ANI  
DEVELOPMENT, LLC,

Defendants,

AMERICAN NATIONAL  
INVESTMENTS, INC.,

Relief Defendant.

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

**JOINT STIPULATION AND ORDER  
FOR LIMITED RELIEF**

Ctrm: 14A (14th Flr)  
Judge Hon. Larry Alan Burns

## JOINT STIPULATION

PLEASE TAKE NOTICE that Krista Freitag, the duly appointed receiver ("Receiver") for ANI Development, LLC, American National Investments, Inc., and their subsidiaries and affiliates, including 310 D Street, LLC, (collectively "Receivership Entities" or singularly, "Receivership Entity"), defendant Gina Champion-Cain and plaintiff Security and Exchange Commission ("SEC") by and through their counsel of record, stipulate to limited relief from this United States District Court's (the "Court"), 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. 67.]

## RECITALS

A. Section XIII and XIV of the Appointment Order restrains and enjoins all persons receiving notice of the Appointment Order from using certain self-help or otherwise taking any action to interfere with the Receiver's efforts to take control, possession, or management of any property of the Receivership Entities, potentially including creating or enforcing a mechanics lien upon any such property or commencing or prosecuting any lawsuit against a receivership entity or asset to foreclose any such mechanics lien.

B. The property of the receivership estate includes the D Street Apartment Project located at 301 D Street, Sacramento, California (the "Project"), which is partially constructed.

C. On March 1, 2018, American National Investments, Inc. ("ANI") entered into a contract with Waldron, Borga, Stowe, Inc., ("Architect") for the provision of architectural services for the Project. On July 6, 2018, ANI entered into an AIA construction contract with Tricorp Group, Inc., ("Tricorp") for the provision of general contracting services for the Project. Tricorp asserts that it

1 entered into contracts with various subcontractors (the “Subcontractor Claimants”)  
2 to perform work on the Project, who, allegedly in turn, entered into contracts with  
3 various subcontractors and material and equipment suppliers in connection with  
4 such work (the “Lower-Tier Claimants”).

5 D. After the commencement of construction, 301 D Street, LLC obtained a  
6 construction loan in the face amount of \$8.5 million (the “Loan”) from Seattle  
7 Funding Group of California, LLC, (“Lender”) with regard to the Project. On July 8,  
8 2019, Lender recorded a Deed of Trust with Assignments of Rents with Due on Sale  
9 and Encumbrance Clause in the Official Records of the Yolo County Recorder,  
10 County of Yolo, State of California, Document Number 2019-0015251-00 (the  
11 “Deed of Trust”), against the real property commonly referred to as 301-313 D  
12 Street, West Sacramento, California, Yolo County Assessor’s Parcel Number 010-  
13 483-001 (the “Property”).

14 E. Tricorp contends that construction on the Project commenced on or  
15 about August 4, 2018, and continued until work was suspended around the time of  
16 the appointment of the Receiver in 2019.

17 F. Tricorp, Architect, Subcontractor Claimants, and Lower-Tier Claimants  
18 (collectively “Construction Related Claimants”) assert that they furnished labor,  
19 services, equipment, and/or materials in the amounts stated on Exhibit A attached  
20 hereto and incorporated herein by this reference, in connection with work performed  
21 on the Project. The Construction Related Claimants and Lender are collectively  
22 referred to herein as “Claimants”.

23 G. Construction Related Claimants believe that they were required to  
24 record mechanics liens against the Property on or before certain dates or potentially  
25 risk losing such rights under California state law. Construction Related Claimants  
26 recorded such mechanics liens against the Property. The Receiver reserves any and  
27 all of her rights to dispute the amounts and/or validity of such mechanics liens.  
28

1           H.     On March 31, 2020, 301 D Street, LLC and Tricorp entered into an  
2 Agreement for Extension of Time to Commence Action to Foreclose Mechanics  
3 Liens and Notice of Extension of Credit (the “First Agreement for Extension of  
4 Time”), which Tricorp then recorded in the Official records of the Yolo County  
5 Recorder, County of Yolo, State of California, as Document Number 2020-0011218.  
6 Pursuant to the First Agreement for Extension of Time, the deadline for Tricorp to  
7 file an action to foreclose its mechanics lien was extended to at least August 13,  
8 2020. Lender asserts that the First Agreement for Extension of Time does not affect  
9 its right, if any, to assert limitations defenses. The Construction Related Claimants  
10 dispute Lender's assertion.

11           I.     On May 4, 2020, 301 D Street, LLC, Tricorp, and certain other  
12 Construction Related Claimants entered into an Agreement for Extension of Time to  
13 Commence Action to Foreclose Mechanics Liens and Notice of Extension of Credit  
14 (the “Second Agreement for Extension of Time”), which Tricorp then recorded in  
15 the Official Records of the Yolo County Recorder, County of Yolo, State of  
16 California, as Document Number 2020-0011218. Pursuant to the Second Agreement  
17 for Extension of Time, the deadline for Tricorp and certain other Construction  
18 Related Claimants to file an action to foreclose their mechanics liens was extended  
19 to at least September 16, 2020. Lender asserts that the Second Agreement for  
20 Extension of Time does not affect its right, if any, to assert limitations defenses.  
21 The Construction Related Claimants dispute Lender's assertion.

22           J.     During the course of the receivership, the Receiver worked to secure  
23 and protect the Project as she investigated and considered proposals to purchase  
24 and/or develop the Project. As part of her investigation and analysis, the Receiver  
25 worked with the City of West Sacramento, Tricorp, the Lender and others to  
26 facilitate a sale whereby the Receivership Entities could realize a recovery from the  
27 Project.

28

1 K. The Lender asserts that it has advanced funds to protect and secure the  
2 Project, in cooperation with Tricorp. The Lender asserts that additional, perhaps  
3 extensive, services will be necessary to protect and secure the Project from damage  
4 during the ensuing months, especially in preparation for the rainy season.

5 L. The Receiver, in her reasonable business judgment exercised in  
6 accordance with the duties of her appointment, has determined that, among other  
7 things, there is currently little or no equity in the Project or the Property above the  
8 amounts owed to secured creditors. Moreover, the cost and timing of prospective  
9 litigation concerning the stop notices and mechanics liens as well as the cost of  
10 maintaining the partially constructed project, outweigh the likely return to the  
11 Receivership Entities that may be achieved in the foreseeable future. As such,  
12 stipulating to the proposed relief is appropriate under these circumstances so long as  
13 such relief is limited to allowing the Claimants to pursue a foreclosure sale with  
14 regard to the Loan or the mechanic's liens, solely to recover their real property  
15 collateral, and/or file an action or consolidated actions in state court against 301 D  
16 Street, LLC and/or ANI to foreclose their mechanics liens. For avoidance of doubt,  
17 in no case will any party be entitled to pursue a deficiency judgement or claim  
18 against the Receiver or the Receivership Entities, except that the Construction  
19 Related Claimants may submit claims in accordance with any regular process for the  
20 submission and resolution of claims established by the Court in this action without  
21 further approval of the Court.

22 M. In agreeing to this Stipulation, the Receiver takes no position as to the  
23 validity of Claimants' claims against ANI, 301 D Street LLC or the other  
24 Receivership Entities, the mechanics liens, the claims asserted in claims of lien,  
25 and/or the Loan. Moreover, the Receiver expressly reserves the right to contest the  
26 validity, amount and priority of each mechanics lien, stop notice, deed of trust, Loan  
27 and other claims asserted by Claimants. The Receiver also reserves all claims  
28 against Claimants. In agreeing to this Stipulation, the Receiver is also not

1 consenting to the jurisdiction of California state courts with respect to any other  
 2 claim or cause of action by Claimants, or any of them, against ANI, 301 D Street,  
 3 LLC or the other Receivership Entities.

4 N. Under the circumstances unique to the receivership and the Project, the  
 5 Receiver believes, in her reasonable business judgment exercised in accordance with  
 6 the duties of her appointment, the limited relief from the Appointment Order is  
 7 appropriate.

### 8 **STIPULATION**

9 THEREFORE, the Receiver, Defendant Cain and the SEC hereby  
 10 STIPULATE AND AGREE as follows:

11 1. The Recitals set forth above as incorporated herein.

12 2. The Construction Related Claimants should be granted limited relief  
 13 from the prohibitions set forth in the Appointment Order for the purpose of  
 14 recording their mechanics liens against the Project in the amounts set forth in  
 15 Exhibit A.

16 3. The Lender and Tricorp shall be permitted to enter the Property and the  
 17 Project to inspect, secure and maintain the Project, provided, however, this  
 18 Agreement is not intended to and shall not create any obligation on the part of  
 19 Lender or Tricorp to inspect, secure or maintain the Project, which activities, if any,  
 20 shall be performed in the sole and absolute discretion of Lender or Tricorp. If the  
 21 Lender or Tricorp wish to enter or take other action with regard to the Property or  
 22 the Project, then Lender and/or Tricorp shall first secure customary liability  
 23 insurance coverage in a form and amount reasonably acceptable to the Receiver in  
 24 advance of entering the Property/Project or performing work thereon. The Receiver  
 25 shall be named as an additional insured under the foregoing described insurance  
 26 policy.

27 4. The Construction Related Claimants should be permitted to file an  
 28 action or consolidated actions against 301 D Street, LLC and ANI in California state

1 court to foreclose their mechanics liens. Such mechanics lien foreclosure action or  
2 actions and any foreclosure sale arising out of such action(s) may be consummated  
3 without the necessity of any further order of the Court.

4         5.       The Lender should be permitted to enforce the security interest created  
5 under its Deed of Trust by commencing and prosecuting a non-judicial foreclosure  
6 sale with regard to the Property and the Project. Lender may, but is not required to  
7 file and prosecute to judgment a judicial foreclosure sale action (either separately or  
8 as a cross-complaint). Lender waives any claims for a deficiency judgment against  
9 the Receivership Entities. Such judicial and non-judicial foreclosure proceedings  
10 may be consummated without the necessity of any further order of the Court. The  
11 successful bidder at any foreclosure sale may acquire and take possession of the  
12 Property and the Project free and clear of any interest of the receivership estate. For  
13 avoidance of doubt, a mechanic's lien is not an interest of the receivership estate.

14         6.       In connection with any judicial foreclosure proceeding, Lender is  
15 further authorized to seek the appointment of a receiver for the purpose of taking  
16 necessary steps to secure and protect the Property and the Project from damage.  
17 However, any order appointing a receiver shall provide that such receiver shall have  
18 no power to take action for any other purpose, and shall not have the power to sell  
19 the Property or the Project. For avoidance of doubt, except as specifically provided  
20 herein, the Claimants shall have no right to pursue a deficiency claim or any other  
21 claim arising out of the Loan, the mechanics liens or any foreclosure action  
22 concerning ANI or 301 D Street, LLC or any other Receivership Entity, except that  
23 the Claimants may submit claims (other than claims for deficiencies under the  
24 Loan), in accordance with any regular process for the submission and resolution of  
25 claims established by the Court in this action without further approval of the Court.

26         7.       Such relief from the prohibitions set forth in the Appointment Order  
27 shall be limited to Claimants and shall not extend to any other creditor of the  
28 Receivership Entities.



1           8.     The Receiver and Claimants shall retain all other contract rights they  
2 currently have, including without limitation the right to petition the Court for further  
3 relief from this Court.

4           9.     The Receiver's agreement to such limited relief provided to Claimants  
5 shall not be construed as taking any position as to the validity of the claims asserted  
6 against ANI or 301 D Street, LLC or any other Receivership Entity, the mechanics  
7 liens, the Loan, the claims asserted in their claims of lien, and the Receiver  
8 expressly reserves the right to contest the validity and/or amount of any claims  
9 against ANI or 301 D Street, LLC or any other Receivership Entity, the mechanics  
10 liens, the Loan and/or the claims asserted in any foreclosure lawsuit. By agreeing to  
11 such limited relief, the Receiver is also not consenting to the jurisdiction of  
12 California state courts with respect to any other claim or cause of action by  
13 Claimants against ANI or 301 D Street, LLC or any other Receivership Entity.

#### 14                               **REQUEST FOR RELIEF**

15           For the reasons stated above, the Commission, the Receiver and Defendant  
16 Champion-Cain, request the Court to issue an Order approving the forgoing  
17 Stipulation and granting the limited relief from the Appointment Order requested  
18 herein.

19           IT IS SO STIPULATED.

20  
21 Dated: July 28, 2020

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
DAVID R. ZARO  
EDWARD G. FATES  
NORMAN M. ASPIS

22  
23  
24  
25 By:           /s/ David R. Zaro          

26 DAVID R. ZARO  
27 Attorneys for Receiver  
28 KRISTA FREITAG



1 Dated: July 28, 2020

By: /s/ Kathryn C. Wanner

KATHRYN C. WANNER  
ALEC JOHNSON  
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SECURITIES AND EXCHANGE  
COMMISSION

6 Dated: July 28, 2020

SCHEPER KIM & HARRIS LLP  
DAVID SCHEPER  
ANGELA MACHALA

By: /s/ Angela Machala

ANGELA MACHALA  
Attorneys for Defendant GINA  
CHAMPION-CAIN

**SIGNATURE CERTIFICATION**

In accordance with Section 2(f)(4) of the Electronic Case Filing  
Administrative Policies and Procedures Manual, the filer hereby attests that all other  
signatories listed, and on whose behalf the filing is submitted, concur in the filing's  
content and have authorized the filing.

17 Dated: July 28, 2020

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
DAVID R. ZARO  
MICHAEL R. FARRELL

By: /s/ David R. Zaro

DAVID R. ZARO  
Attorneys for Receiver  
KRISTA FREITAG

# **EXHIBIT A**

## **EXHIBIT A – LIST OF MECHANICS LIENS**

1. Notice and Claim of Mechanics Lien in the amount of \$1,675,164.38, recorded by Tricorp Group, Inc., in the Official Records of the Yolo County Recorder, County of Yolo, State of California, as Document Number 2020-0001920, on January 22, 2020;
2. Mechanics Lien (Claim of Lien) in the amount of \$18,491.15, recorded by L & W Supply Corporation in the Official Records of the Yolo County Recorder, County of Yolo, State of California, as Document Number 2019-0031171, on December 11, 2019;
3. Claim of Lien in the amount of \$44,968.00 recorded by Pacific Wall Systems, Inc., in the Official Records of the Yolo County Recorder, County of Yolo, State of California, as Document Number 2019-0028110, on November 7, 2019;
4. Mechanics Lien in the amount of \$22,909.98 recorded by Waldron, Borja, Stowe, Inc., in the Official Records of the Yolo County Recorder, County of Yolo, State of California, as Document Number 2020-0011486, on April 22, 2020;
5. Mechanic's Lien in the amount of \$10,434.09 recorded by Intact Structural Supply, LLC, in the Official Records of the Yolo County Recorder, County of Yolo, State of California, as Document Number 2019-0029202, on November 19, 2019;
6. Claim of Mechanics Lien in the amount of \$82,896.13 recorded by Homewood Building Supply, LLC, in the Official Records of the Yolo County Recorder, County of Yolo, State of California, as Document Number 2019-0028842, on November 15, 2019;
7. Mechanic's Lien in the amount of \$234,491.68 recorded by Proframe, Inc., in the Official Records of the Yolo County Recorder, County of Yolo, State of California, as Document Number 2019-0027525, on October 31, 2019;
8. Mechanic's Lien in the amount of \$6,475.00 recorded by Waltex Construction, Inc., in the Official Records of the Yolo County Recorder, County of Yolo, State of California, as Document Number 2020-0000661, on January 16, 2020;
9. Mechanic's Lien in the amount of \$182,239.74 recorded by Baskerville-Parsons Constructors Inc., in the Official Records of the Yolo County Recorder, County of Yolo, State of California, as Document Number 2019-0033037, on December 30, 2019;
10. Mechanic's Lien in the amount of \$157,875 recorded by American Engineering Contractors, Inc., in the Official Records of the Yolo County Recorder, County of Yolo, State of California, as Document Number 2020-0002007, on January 24, 2020;

11. Mechanics Lien in the amount of \$70,657.50 recorded by Norogachi Construction, Inc./CA in the Official Records of the Yolo County Recorder, County of Yolo, State of California, as Document Number 2019-0029667, on November 22, 2019;
12. Mechanic's Lien (Claim of Lien) in the amount of \$4,447.15 recorded by Ferguson Enterprises LLC in the Official Records of the Yolo County Recorder, County of Yolo, State of California, as Document Number 2019-0028564, on November 13, 2019;
13. Mechanics Lien in the amount of \$107,018.89 recorded by Foothill Fire Protection, Inc., in the Official Records of the Yolo County Recorder, County of Yolo, State of California, as Document Number 2020 -0012719, on March 20, 2020;
14. Mechanic's Lien in the amount of \$12,655.60 recorded by Core & Main LP in the Official Records of the Yolo County Recorder, County of Yolo, State of California, as Document Number 2020-0012719, on May 5, 2020; and
15. Mechanic's Lien in the amount of \$44,217.73 recorded by Goodman Distribution, Inc., in the Official Records of the Yolo County Recorder, County of Yolo, State of California, as Document Number 2019-0032217, on December 20, 2019;