

1 DAVID R. ZARO (BAR NO. 124334)
MICHAEL R. FARRELL (BAR NO. 173831)
2 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
3 865 South Figueroa Street, Suite 2800
Los Angeles, California 90017-2543
4 Phone: (213) 622-5555
Fax: (213) 620-8816
5 E-Mail: dzaro@allenmatkins.com
mfarrell@allenmatkins.com

6 EDWARD G. FATES (BAR NO. 227809)
7 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
8 One America Plaza
600 West Broadway, 27th Floor
9 San Diego, California 92101-0903
Phone: (619) 233-1155
10 Fax: (619) 233-1158
E-Mail: tfates@allenmatkins.com

11 Attorneys for Receiver
12 KRISTA FREITAG

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15
16 SECURITIES AND EXCHANGE
COMMISSION,

17 Plaintiff,

18 v.

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

21 Defendants,

22 AMERICAN NATIONAL
23 INVESTMENTS, INC.,

24 Relief Defendant.
25

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

**JOINT MOTION TO MODIFY
PRELIMINARY INJUNCTION ORDER
TO ALLOW FIRST CHOICE BANK TO
PROCEED WITH NON-JUDICIAL
FORECLOSURE ON REAL PROPERTY**

Courtroom: 14A

Judge: Hon. Larry Alan Burns

JOINT MOTION

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

12 2. This Joint Motion concerns a commercial condominium unit located at
13 369 10th Ave., San Diego, California (the "Property"). The Property is part of a
14 larger Carnation Building Complex and consists of approximately 3,750 rentable
15 square feet. The unit has been improved for restaurant use but is presently closed
16 and vacant.

17 3. On or about August 10, 2017, First Choice Bank ("Bank") made a loan
18 to Tenth and J, LLC ("10th and J") in the original principal amount of
19 \$1,199,000.00. The loan is secured by a deed of trust dated August 10, 2017 and
20 recorded as Document No. 2017-0373172 in the Official Records of the County of
21 San Diego on August 16, 2017. At the same time, an Assignment of Rents in favor
22 of Bank was recorded as Document No. 2017-0373173. The loan was made as part
23 of the 504 Program of the Small Business Administration of the United States
24 ("SBA").

25 4. The Bank loan is in default for the monthly payment due October 10,
26 2019 and all subsequent payments – ten payments in total currently. The current
27 balance secured by the Bank deed of trust, exclusive of recent fees and costs, is
28 \$1,206,039.27.

1 5. Pursuant to the rules of the 504 Program, after certain improvements
2 were constructed, the SBA made a loan to 10th and J in the original principal
3 amount of \$860,000. As of November, 2019, the principal balance was
4 \$796,793.88. Payments have not been made on this loan since then and the
5 outstanding secured obligation continues to increase.

6 6. Upon entry of the Appointment Order, the Receiver took possession of
7 the Property, in which a restaurant was being operated by an affiliated receivership
8 entity. At takeover, an initial analysis of the restaurant operations showed a
9 significant operating loss; accordingly, the restaurant operation was shuttered in the
10 early stages of the receivership. Additionally, a review of the potential market value
11 at the time revealed that there might not be sufficient equity in the property to sell it
12 and so the Receiver decided not to make mortgage payments. However, after
13 discussing the property with various brokers, it was decided to include the property
14 in the receivership marketing and sale process. After extensive marketing efforts
15 and exposure to the market, the "call for offers" deadline of February 3, 2020
16 elicited three offers with the highest and best offer at \$1.9 million. At \$1.9 million,
17 the second lienholder had agreed to proceed with the receivership sale under a short
18 sale scenario.

19 7. Subsequently, with the Covid-19 pandemic, the prospective purchaser
20 at \$1.9 million withdrew their offer due to the change of circumstances and the
21 prospects for a favorable sale became even more tenuous. The best offer submitted
22 post-pandemic required both lienholders take a significant discount, with one
23 lienholder likely to take a complete loss, discounts to which Bank was not prepared
24 to agree. As a restaurant site, the Property is, at least in the short term, adversely
25 affected in terms of value. With State mandated closures of indoor restaurant
26 dining, there are no current prospects of a turnaround.

27
28

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

- 4 a. Bank has a properly perfected security interest in the Property,
5 including a security interest in the rents and profits pursuant to
6 the deed of trust and the assignment of rents; and
7 b. The Property is unlikely to yield any significant return to the
8 receivership estate.

9 9. Bank had not taken any action to foreclose its lien on the Property prior
10 to the commencement of the receivership. If permitted to proceed now, Bank is thus
11 at least four months away from completing a foreclosure, assuming that no new
12 obstacles are 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 Bank. After conferring on this Property on multiple
15 occasions, the parties have agreed that it is now reasonable and appropriate for the
16 Bank 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
18 foreclosure the Receiver may continue any marketing efforts that are justified in her
19 reasonable business judgment. The parties are therefore requesting that the
20 Appointment Order be modified to implement this solution.

21 **STIPULATION**

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

25 11. That an Order may and should be entered providing that the injunctions
26 set forth in the Appointment Order be modified in the following particulars only,
27 and only with respect to the Bank's claim encumbering the Property.
28

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

9 13. That Bank retain all other rights and remedies it currently has,
 10 including if applicable, the right to petition this Court for further relief. The
 11 Receiver and ANI agree to execute and deliver such documents as Bank may
 12 reasonably request in order to complete the non-judicial foreclosure proceedings.

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

19 **REQUEST FOR RELIEF**

20 For the reasons stated above, the Commission, the Receiver, Defendant
 21 Champion-Cain, and non -party First Choice Bank, request that the Court issue an
 22 order granting the limited relief from the Appointment Order requested herein.

23 **IT IS SO STIPULATED.**

24 Dated: July 29, 2020

25 ALLEN MATKINS LECK GAMBLE
 MALLORY & NATSIS LLP

26 By: s/Edward G. Fates
 27 DAVID R. ZARO
 EDWARD G. FATES
 NORMAN M. ASPIS
 Attorneys for Receiver
 28 KRISTA FREITAG

1 Dated: July 29, 2020

U.S. SECURITIES AND EXCHANGE
COMMISSION

2
3 By: Kathryn C. Wanner
KATHRYN C. WANNER
ALEC JOHNSON
4 GARY Y. LEUNG
Attorneys for Plaintiff
5 U.S. SECURITIES AND
EXCHANGE COMMISSION

6
7 Dated: July 29, 2020

SCHEPER KIM & HARRIS LLP

8 By: Angela Machala
DAVID SCHEPER
9 ANGELA MACHALA
Attorneys for Defendant
10 GINA CHAMPION-CAIN

11 Dated: July 29, 2020

FOX JOHNS LAZAR PEKIN &
WEXLER, APC

12
13 By: George C. Lazar
GEORGE C. LAZAR
14 Attorneys for Interested Party and
Secured Creditor
15 FIRST CHOICE BANK

16 **SIGNATURE CERTIFICATION**

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

21 Dated: July 29, 2020

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

22
23 By: s/Edward G. Fates
24 DAVID R. ZARO
EDWARD G. FATES
25 NORMAN M. ASPIS
Attorneys for Receiver
26 KRISTA FREITAG