

1 DAVID R. ZARO (BAR NO. 124334)
NORMAN M. ASPIS (BAR NO. 313466)
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
naspis@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
INVESTMENTS, INC.,
23
Relief Defendant.

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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
RECEIVER'S MOTION FOR
AUTHORITY TO PURSUE
CLAWBACK CLAIMS AND
APPROVAL OF PROPOSED
PROCEDURES**

Date: December 14, 2020
Time: 11:15 a.m.
Courtroom: 14A
Judge: Hon. Larry Alan Burns

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1 Krista Freitag ("Receiver"), the Court-appointed permanent receiver for
2 Defendant ANI Development, LLC ("ANI"), Relief Defendant American National
3 Investments, Inc., and their subsidiaries and affiliates ("Receivership Entities"),
4 submits this Memorandum of Points and Authorities in Support of her Motion for
5 Authority to Pursue Clawback Claims and Approval of Proposed Procedures
6 ("Motion").

7 I. INTRODUCTION

8 This case concerns a Ponzi scheme involving a fictitious liquor license
9 lending program. The scheme spanned approximately eight (8) years, during which
10 time investors¹ paid significant sums of money directly and indirectly to the
11 Receivership Entities, and the Receivership Entities made payments directly and
12 indirectly to investors, aggregators, insiders and other third parties. The assets of
13 the Receivership Estate include claims to recover these payments (or transfers),
14 which include but are not limited to (a) investor profits, (*i.e.*, amounts the
15 Receivership Entities paid to investors above and beyond their total amounts paid to
16 the Receivership Entities), (b) referral fees and commissions the Receivership
17 Entities paid to those who referred investors to the scheme, (c) amounts paid to
18 insiders and other parties related to or affiliated with the Receivership Entities or
19 Gina Champion-Cain, and (d) amounts paid to other third parties (e.g., gifts,
20 donations) without reasonably equivalent value received in exchange (collectively,
21 "Wrongful Transfers"). The Receiver has standing to pursue claims to recover these
22 Wrongful Transfers under the California Uniform Voidable Transactions Act
23 ("CUVTA") and that such Wrongful Transfers from Ponzi schemes are presumed to
24 be voidable transactions subject to recovery.

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28 ¹ The term "investors" is used herein to include all persons, institutions and/or
entities who paid money into the liquor license lending program, whether the
money was characterized as an investment or loan.

1 As is common in Ponzi schemes, some investors received substantial profits
2 ("Profiting Investors") and some received well less than they invested, if they
3 received any payments at all ("Losing Investors"). In order to recover and return as
4 much as possible to the Losing Investors, it is necessary to pursue recovery of not
5 only profits paid to Profiting Investors (which may include referral fees or
6 commissions), but also other amounts paid to aggregators, insiders and other third
7 parties. Accordingly, the Receiver seeks authority to pursue claims for recovery of
8 these Wrongful Transfers ("Clawback Claims") and to settle Clawback Claims in
9 accordance with the below described proposed procedures. The proposed
10 procedures are designed to create an efficient and effective system of resolving
11 Clawback Claims, either through settlement or litigation, while conserving judicial
12 and receivership estate resources.

13 **II. CLAWBACK CLAIMS**

14 Investors who indirectly or directly deposited their funds primarily did so
15 believing that they were funding loans to purchasers of California liquor licenses.
16 Funds were invested in a variety of ways, and primarily via the following: (1)
17 investors (or their retirement account custodian) sent money to Chicago Title, (2)
18 investors sent money to other investors and/or entities, who then sent such funds
19 (directly or after aggregating with other monies) on to Chicago Title or to a
20 Receivership Entity directly, and (3) investors (or their retirement account
21 custodian) sent money directly to a Receivership Entity. Funds were paid out from
22 the Receivership Entities primarily in the same ways (in reverse). Declaration of
23 Krista Freitag filed herewith ("Freitag Decl."), ¶ 2.

24 Federal equity receiverships such as this one are judicial proceedings in
25 equity designed to right the wrong suffered by all victims of a fraudulent scheme.
26 Allowing Profiting Investors, aggregators, insiders and other third parties
27 ("Prospective Defendants") to retain profits, referral fees, commissions, and other
28 amounts received from the Ponzi scheme while Losing Investors and other

1 claimants suffer devastating losses would be inequitable and run counter to the
2 purposes of this receivership. Accordingly, the law allows the Receiver to pursue
3 claims on behalf of the receivership estate to recover such transfers. The recoveries
4 from these Clawback Claims will go to the receivership estate and be available for
5 distribution to Losing Investors and other claimants.

6 **III. PROPOSED PROCEDURES**

7 The Receiver's proposed procedures for pursuing Clawback Claims are
8 designed to resolve the claims as efficiently as possible, conserve judicial and
9 existing receivership estate resources, and maximize recoveries for the benefit of
10 victims of the scheme. Given the timing of transfers to Profiting Investors, the
11 Receiver seeks to move promptly and expeditiously so as to avoid losing the ability
12 to recover transfers that fall outside the seven-year statute of repose, which is
13 discussed further below. Of course, when it comes to litigation, the Receiver's goals
14 must be balanced with the due process rights of the Prospective Defendants.
15 Accordingly, the Receiver proposes the following procedures for pursuing
16 Clawback Claims.

17 **A. Settlements**

18 The Receiver recommends Prospective Defendants be given an incentive to
19 settle Clawback Claims promptly without litigation. Litigation is expensive and
20 time-consuming, consumes judicial and receivership estate resources and by its very
21 nature, carries some level of risk. Accordingly, the Receiver proposes and seeks
22 approval of the following settlement procedures:

- 23 • The Receiver will vet and send demand letters to Prospective
24 Defendants stating the total amount of profits, referral fees or other
25 amounts paid to them which are subject to recovery by the Receiver
26 ("Profit Amount"). The letters will include the payment details and a
27 response deadline, state the Receiver's intention to pursue Clawback
28 Claims to recover the Profit Amount, along with the legal basis for such

claims, and offer to settle the Clawback Claims without litigation as follows:

Profit Amount	Lump Sum Settlement	12 Monthly Installments
First \$100,000	70%	75%
Next \$250,000	75%	80%
Next \$500,000	80%	85%
All amounts over \$850,000	85%	90%

- For example, as reflected in the following table, if a Prospective Defendant received a Profit Amount of \$2,500,000 from the Ponzi scheme, the settlement amount (for the initial 90 days and without litigation having been commenced, as discussed below) would be \$2,060,000 if paid in one lump sum:

Profit Amount	Lump Sum Settlement %	Discount	Cumulative Discount %
First \$100,000	70%	\$30,000	30%
Next \$250,000	75%	\$62,500	26.4%
Next \$500,000	80%	\$100,000	22.6%
\$850,000 -- \$2,500,000	85%	\$247,500	17.6%
Total Discount		\$440,000	
Total Settlement Payment		\$2,060,000	

- The demand letter will also advise that the offer will expire 90 days from the date of the letter. Once 90 days has passed, if the proposed settlement has not been accepted, the Receiver may proceed to file a complaint and the minimum settlement amount will increase to 85% for the first \$500,000, and 90% for all amounts over \$500,000. Again,

1 using the example of a Prospective Defendant who received Profit
2 Amount of \$2,500,000, the minimum settlement amount after litigation
3 is commenced would increase to \$2,225,000 (11% cumulative
4 discount). This would be a minimum threshold – not a set amount –
5 such that if significant litigation expenses are incurred in connection
6 with a particular clawback action (through pleading challenges,
7 discovery, motion for summary judgment, or otherwise), the Receiver,
8 in her discretion, could increase the settlement demand accordingly.

- 9 • A template settlement agreement and stipulated judgment will be
10 provided with the demand letter in the forms attached hereto as
11 Exhibits A and B. All terms of the settlement agreement will be final
12 (the Prospective Defendant can choose the lump sum or 12 monthly
13 installments by clearly marking the appropriate line in the agreement).
14 The stipulated judgment will be for the full Profit Amount. In order to
15 accept the lump sum settlement offer, the Prospective Defendant must
16 sign the settlement agreement and return it to the Receiver with a
17 certified funds or wire transfer for the lump sum settlement sum. In
18 order to accept the 12 monthly installments settlement offer, a
19 Prospective Defendant must sign the settlement agreement and
20 stipulated judgment and return them to the Receiver along with the
21 initial monthly installment payment (the first of the 12 monthly
22 installments) via certified funds or wire transfer. The offer will not be
23 deemed accepted until the signed documents and lump sum or first
24 installment payment has been received.
- 25 • Settlement agreements executed in compliance with these procedures
26 will be immediately effective, without further Court approval.
- 27 • Stipulated judgments signed as part of the 12 monthly installments
28 settlement will be held by the Receiver and not filed with the Court or

1 otherwise enforced, provided the Prospective Defendant timely makes
2 all required installment payments. If the Prospective Defendant
3 defaults on any payments and does not cure such default within
4 10 days, the Receiver, in her discretion, may file a complaint against
5 the Prospective Defendant together with the stipulated judgment
6 (requesting entry thereof) and proof of the Prospective Defendant's
7 default.

8 **B. Litigation**

9 As discussed above, if 90 days have passed from mailing of the demand letter
10 and a Prospective Defendant has not accepted the settlement offer, the Receiver may
11 file a complaint against the Prospective Defendant. In order to minimize the
12 administrative expenses associated with these cases, it is important they all be
13 managed and adjudicated by one District Court Judge and one Magistrate Judge who
14 are familiar with the underlying facts. Having the cases before this Court will also
15 avoid inconsistent rulings, which would complicate the litigation and potentially
16 lead to disparate treatment of similarly situated Profiting Investors. Accordingly,
17 the Receiver proposes and seeks Court approval of having these cases transferred to
18 this Court as related actions. If the Court approves this request, the Receiver will
19 file a Notice of Related Action with each complaint.

20 To the extent these cases do not settle, the Receiver anticipates they will be
21 resolved via summary judgment. As discussed below, the law is very clear
22 regarding federal equity receivership estate recovery of profits paid to investors,
23 referral fees, commissions and other transfers made from Ponzi schemes. The
24 salient facts of the subject Ponzi scheme are largely known at this point and have
25 been admitted by Defendant Gina Champion-Cain as part of her guilty plea in the
26 related criminal case.

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1 from the securities laws. Rather, the authority derives from the inherent power of a
2 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
3 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
4 and efficient administration of the estate by the district court for the benefit of
5 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment
6 of a receiver is authorized by the broad equitable powers of the court, any
7 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,
8 953 F.2d 1560, 1569 (11th Cir. 1992).

9 District courts have the broad power of a court of equity to determine the
10 appropriate action in the administration and supervision of an equity receivership.
11 *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth
12 Circuit explained:

13 A district court's power to supervise an equity receivership
14 and to determine the appropriate action to be taken in the
15 administration of the receivership is extremely broad. The
16 district court has broad powers and wide discretion to
17 determine the appropriate relief in an equity receivership.
18 The basis for this broad deference to the district court's
supervisory role in equity receiverships arises out of the
fact that most receiverships involve multiple parties and
complex transactions. A district court's decision
concerning the supervision of an equitable receivership is
reviewed for abuse of discretion.

19 *Id.* (citations omitted); *see also Commodities Futures Trading Comm'n. v. Topworth*
20 *Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad deference'
21 to the court's supervisory role, and 'we generally uphold reasonable procedures
22 instituted by the district court that serve th[e] purpose' of orderly and efficient
23 administration of the receivership for the benefit of creditors."). Accordingly, the
24 Court has broad equitable powers and discretion in the administration of the
25 receivership estate.

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1 **B. Voidable Transfers Under the CUVTA²; Receiver Standing**

2 Under the CUVTA, a transfer is subject to avoidance and recovery when
3 made with (1) actual intent to defraud or (2) constructive fraudulent intent based on
4 the lack of reasonably equivalent value provided in exchange. Cal. Civ. Code
5 § 3439.04(a). Federal equity receivers have standing to pursue fraudulent or
6 voidable transfer claims on behalf of entities in receivership against the recipients of
7 fraudulent transfers. *See Donell v. Kowell*, 533 F.3d 762, 776-777 (9th Cir. 2007).

8 **C. The Ponzi Presumption**

9 Actual intent to defraud is presumed when the payments were made from a
10 Ponzi scheme. *In re Cohen*, 199 B.R. 709,717 (B.A.P. 9th Cir. 1996); *see also*
11 *Donell*, 533 F.3d at 767; *In re AFI Holding, Inc.*, 525 F.3d 700, 704 (9th Cir. 2008);
12 *In re Nat'l Consumer Mortgage, LLC*, 2013 U.S. Dist. LEXIS 5986 at *32-33 (D.
13 Nev. 2013) ("Courts presume actual intent in relation to a Ponzi scheme because the
14 debtor knows at the time of the transfer that the scheme ultimately must collapse.").
15 Once fraudulent intent is established, the burden then lies with the transferee to
16 show it took in good faith *and* provided equivalent value in exchange. *See* Cal. Civ.
17 Code § 3439.08(a); *In re Cohen*, 199 B.R. at 718-719. It is the transferor's actual
18 intent that matters – the transferee's intent does not matter unless it can also show it
19 provided value in exchange for the transfer. *In re Cohen*, 199 B.R. at 716-717 ("The
20 focus of the inquiry into actual intent is on the state of mind of the debtor."); *In re*
21 *Slatkin*, 525 F.3d 805, 814 (9th Cir. 2008), holding that transferor's operation of a
22 Ponzi scheme "with the actual intent to defraud his creditors conclusively
23 establishes the debtor's fraudulent intent under 11 U.S.C. § 548(a)(1)(A) and
24 California Civil Code § 3439.04(a)(1), and precludes relitigation of that issue").

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² California Uniform Voidable Transactions Act. Cal. Civ. Code § 3439 *et seq.*

1 **D. Profits and Referral Fees**

2 Payments made to Profiting Investors beyond the amount of their investment
3 are not considered to be in exchange for value. *In re United Energy Corp.*, 944 F.2d
4 589, 595 n.6 (9th Cir. 1991) ("Such excess amounts would be avoidable because the
5 debtor would not have received reasonably equivalent value for them."). This is
6 because such profits are fictitious as "they do not represent a return on legitimate
7 investment activity." *See In re Lake State Commodities, Inc.*, 253 B.R. 866, 872
8 (citing to *In re United Energy Corp.*, *supra*, 944 F.2d at 595). Thus, the Ninth
9 Circuit has adopted the "netting rule" whereby amounts paid to investors are netted
10 against their investments. *See Donell v. Ghadrnan*, 2013 U.S. Dist. LEXIS 26393,
11 *5 (C.D. Cal. 2013) (citing *Donell v. Kowell*, 533 F.3d at 771). Any excess in the
12 form of fictitious profits are subject to disgorgement. *Id.*

13 As it relates to commissions or referral fees, courts deem these payments
14 fraudulent transfers because generating investments for a Ponzi scheme provides no
15 legitimate value to the enterprise. *See In re Randy*, 189 B.R. 425, 441
16 (Bankr.N.D.Ill.1995) (holding that commissions paid pursuant to a Ponzi scheme
17 were fraudulent transfers because "the contract that underlies the transaction is
18 illegal, and therefore no value could have been given by the transferee to the debtor
19 for the transfer"); *Klein v. Andres*, 2013 U.S. Dist. LEXIS 129744, 2013 WL
20 4809260, *2 (D.Utah 2013) (rejecting the argument "that payments made as
21 compensation for drawing in new investors to a Ponzi scheme constitute an
22 exchange of reasonably equivalent value"); *In re Ramirez Rodriguez*, 209 B.R. 424,
23 434 (Bankr.S.D.Tex. 1997) ("As a matter of law, the defendant gave no value to the
24 debtors for the commissions attributable to investments made by others."); *In re Int'l*
25 *Loan Network, Inc.*, 160 B.R. 1, 16 (Bankr.D.D.C.1993) (defendants who enticed
26 new investors into Ponzi scheme, even if they had a contract, conferred no value
27 since such services were predicated upon an illegal agreement); *Wing v. Dockstader*,
28 482 Fed. Appx. 361, 2012 WL 2020666, *2 (10th Cir. 2012) (holding unlicensed

1 security broker could not enforce his right to referral fees where such right was
2 predicated upon an illegal contract). Indeed, "[i]t takes cheek to contend that in
3 exchange for the payments he received, the . . . Ponzi scheme benefited from his
4 efforts to extend the fraud by securing new investments." *Warfield v. Byron*, 436
5 F.3d 551, 560 (5th Cir. 2006). Therefore, for investor profits, referral fees, and
6 commissions paid from a Ponzi scheme, the transferor's actual intent to defraud is
7 presumed and there is no value provided in exchange.

8 **E. Statute of Limitations and Statute of Repose**

9 Under the CUVTA, a claim for recovery of a voidable or fraudulent transfer
10 based on actual intent to defraud must be brought within four years of the transfer or
11 within one year of when the transfer was or reasonably could have been discovered
12 by the claimant. Cal. Civ. Code § 3439.09(a). Accordingly, claims to recover
13 investor profits, referral fees, and commissions paid from a Ponzi scheme, for which
14 actual intent to defraud is presumed, must be brought within four years of the
15 transfer or one year of when the court-appointed receiver discovered them
16 (generally through performing an accounting) or reasonably could have discovered
17 them. *See Donell v. Mojtahedian*, 976 F.Supp.2d 1183, 1188-1189 (C.D. Cal. 2013)
18 (rejecting argument that the one year limitations period from discovery begins to run
19 immediately upon a receiver's appointment).

20 The CUVTA also contains a seven-year statute of repose which limits
21 recoverable transfers to those that occurred within seven years of filing the
22 complaint. *See* Cal. Civ. Code § 3439.09(c). Accordingly, the maximum "reach
23 back" period for recoverable fraudulent transfers is seven years from the date a
24 complaint is filed.

25 **F. Pursuit of Clawback Claims**

26 Here, recovering fraudulent or voidable transfers is very important to
27 maximizing the funds in the receivership estate for distribution to victims of the
28 scheme. The law is clear that the profits paid to investors, referral fees,

1 commissions and other amounts transferred to insiders and third parties are
2 recoverable by the Receiver. Equity demands that those who received profits and
3 other financial gains from the Ponzi scheme be required to return those amounts for
4 distribution to victims of the scheme, including Losing Investors.

5 Given the firm factual and legal basis for the Clawback Claims, the proposed
6 settlement and case management procedures are tailored to provide a fair process for
7 resolving them, while at the same time reducing the use of judicial and receivership
8 estate resources. These procedures will provide Prospective Defendants with due
9 process and allow the Receiver to act promptly and efficiently to maximize the net
10 recovery from Clawback Claims.

11 **G. Proposed Settlement Parameters**

12 The Receiver's goal in formulating the proposed settlement parameters is to
13 maximize the net recovery for the receivership estate by providing a sufficient
14 incentive for Prospective Defendants at all Profit Amount levels to settle Clawback
15 Claims promptly and without litigation. Litigation necessarily consumes resources
16 of the receivership estate, as well as the Court, and although the Receiver believes
17 the Clawback Claims are very strong, all litigation involves some measure of risk.
18 The settlement parameters, however, should not allow for an outsized discount for
19 those who received the largest sums of profits, referral fees, or other payments.
20 Accordingly, the proposed settlement parameters include a graduated scale based on
21 the Profit Amounts involved (*i.e.*, as the Profit Amount goes up, the settlement
22 discount goes down). The Receiver believes this graduated scale balances the
23 objectives in a reasonable and fair manner and will promote the efficient resolution
24 of Clawback Claims. Freitag Decl., ¶ 3.

25 **H. Proposed Fee Arrangement for Counsel**

26 The Receiver has carefully considered whether the Clawback Claims should
27 be pursued on a contingent fee basis, but believes the net recovery will be greater if
28 counsel is paid on an hourly basis. The Receiver does not anticipate controversial

1 issues of law or fact with the Clawback Claims, other than perhaps the accounting of
2 transfers. Because any issues surrounding the amount or timing of transfers would
3 primarily involve work by the Receiver and her staff, rather than counsel, the
4 anticipated time expended by counsel on any given Clawback Claim would not
5 necessarily support the amount of fees paid under a typical contingent fee
6 arrangement. Moreover, as noted above, in pursuing judgments and/or once
7 judgments are obtained, the Receiver will use her business judgment in pursuing
8 collection and managing the fees and costs associated therewith. Accordingly, the
9 Receiver believes the net recovery for the receivership estate from Clawback Claims
10 will be greater if her counsel is compensated on an hourly basis, subject to Court
11 approval, rather than on a contingent fee basis. Freitag Decl., ¶ 4.

12 **V. CONCLUSION**

13 WHEREFORE, the Receiver requests authority to pursue Clawback Claims
14 and approval of the proposed procedures and settlement parameters for such claims
15 set forth above.

16
17 Dated: October 29, 2020

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: s/Edward G. Fates

DAVID R. ZARO
EDWARD G. FATES
NORMAN M. ASPIS
Attorneys for Receiver
KRISTA FREITAG

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EXHIBIT A

EXHIBIT A

SETTLEMENT & RELEASE AGREEMENT

This SETTLEMENT & RELEASE AGREEMENT ("**Agreement**"), dated as of _____, 202__ is made by and between KRISTA L. FREITAG ("**Receiver**"), in her capacity as Court-appointed permanent receiver for ANI DEVELOPMENT, LLC, AMERICAN NATIONAL INVESTMENTS, INC., and their subsidiaries and affiliates ("**Receivership Entities**"), and [NAME], a/an _____ ("**Transferee**").

RECITALS

A. On August 28, 2019, the Securities and Exchange Commission ("**Commission**") filed a Complaint in the United States District Court for the Southern District of California ("**District Court**") against Defendants Gina Champion-Cain ("**Champion-Cain**") and ANI Development, Inc., and Relief Defendant American National Investments, Inc. Concurrently with filing the Complaint, the Commission and Champion-Cain filed a Joint Motion and Stipulated Request by All Parties for a Preliminary Injunction Order and Orders (1) Freezing Assets; (2) Requiring Accountings; (3) Prohibiting the Destruction of Documents; and (4) Appointing a Permanent Receiver ("**Joint Motion**").

B. On September 3, 2019, the District Court granted the Joint Motion and entered its Order; Granting the Parties Joint Motion and Stipulated Request by all Parties for a Preliminary Injunction Order and Order (1) Freezing Assets; (2) Requiring Accountings; (3) Prohibiting the Destruction of Documents; and (4) Appointing a Permanent Receiver, including appointment of the Receiver on a permanent basis.

C. The Receiver alleges that within the last seven years, Transferee received \$ _____ ("**Profit Amount**") from the Receivership Entities in excess of any amounts paid or value provided to the Receivership Entities ("**Transfers**"). The Receiver has asserted claims against Transferee for return of the Profit Amount as representing one or more voidable transactions under the California Uniform Voidable Transactions Act.

D. The Receiver and Transferee have agreed to settle and resolve all disputes, and release all claims arising from the Transfers from the Receivership Entities to Transferee, under the terms and conditions provided herein.

E. The District Court via its _____ Order (Dkt No. _____), has authorized the Receiver to enter into this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and conditions hereinafter contained, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged the undersigned agree as follows:

1. Payment. By checking one of the two boxes below, Transferee selects, agrees, and covenants to make payment(s) to the Receiver in accordance with the applicable terms provided in the corresponding paragraph as follows:

Settlement Option A: Single, Lump Sum Payment. Transferee shall pay a total of \$_____ to the Receiver in a single, lump sum payment (via certified funds or wire transfer) concurrently with the execution of this Agreement.

Settlement Option B: Stipulated Judgment with Discounted Installment Payments. Transferee shall execute the Stipulated Judgment attached hereto as Exhibit 1 and deliver the same to the Receiver concurrently with the execution of this Agreement. The Stipulated Judgment, which is in favor of the Receiver in the Profit Amount, shall be held by the Receiver and not filed with the Court or enforced for as long as Transferee timely makes each of twelve (12) monthly installment payments in the amount of \$_____ (for a total payment of \$_____) via certified funds or wire transfer. The first installment payment shall be made concurrently with the execution of this Agreement and subsequent installment payments shall be due on the 1st day of the month. If all installment payments are timely made, then the remainder owed under the Stipulated Judgment shall be fully forgiven, shall no longer be owed by Transferee, and the Receiver shall then destroy the Stipulated Judgment. If any of the installment payments are not timely made, then the Receiver, in her sole discretion, may file the Stipulated Judgment with the Court and, once entered by the Court, enforce it against Transferee by all legally available means to collect and recover the remaining amount due on the Stipulated Judgment (after credit is given for installment payments made by Transferee).

2. Mutual Release. On the condition that all payments due under Section 1 above have been fully made and effective only upon satisfaction of such condition, the Receiver, on the one hand, and Transferee on the other hand, and each of them, for themselves, their agents, employees, partners, directors, officers, successors and assigns, forever, irrevocably and unconditionally release and discharge one another, and their respective officers, directors, representatives, heirs, executors, administrators, receivers, successors, assigns, predecessors, agents, attorneys and employees, of and from any and all claims, demands, debts, obligations, liabilities, costs, expenses, rights of action, causes of action, awards and judgments arising from the Transfers, all of which are hereinafter called, "**Released Claims.**"

Each of the Receiver and Transferee acknowledges and agrees that the Released Claims may include claims of every nature and kind whatsoever, whether known or unknown, suspected or unsuspected and further acknowledge that they may be presently unknown or unsuspected, and may be based upon hereafter discovered facts different from, or in addition to, those which they now know, or believe to be true. Nevertheless, the parties agree that the foregoing release shall be and remain effective in all respects, notwithstanding such different or additional facts, or the discovery thereof, and further hereby expressly waive and relinquish any and all rights provided in California Civil Code Section 1542 which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO

EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

The Receiver and Transferee expressly waive and release any rights and benefits that they have or may have under any similar law or rule of any other jurisdiction pertaining to the matters released herein. It is the intention of the parties through this Agreement and with the advice of counsel to fully, finally and forever settle and release the claims and disputes existing between them as provided herein, known or unknown. The releases herein given shall be and remain in effect as full and complete releases of all such matters notwithstanding the discovery of any additional claims or facts relating thereto.

3. Voluntary Signing. Each of the parties to this Agreement has executed this Agreement without any duress or undue influence.

4. Independent Counsel. Each of the parties acknowledge and agree that it has been represented by independent counsel of its own choice throughout all negotiations which preceded the execution of this Agreement, that it has executed and approved of this Agreement after consultation with said counsel, and that it shall not deny the validity of this Agreement on the ground that such party did not have the advice of legal counsel.

5. Governing Law and Venue. This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of California, and Federal Equity Receivership law, and subject to the exclusive jurisdiction of the District Court.

6. Waiver/Amendment. No breach of any provision of this Agreement can be waived unless in writing. Waiver of any one breach of any provision of this Agreement is not a waiver of any other breach of the same or of any other provision of this Agreement. Amendment of this Agreement may be made only by written agreement signed by the parties.

7. Fax and Counterparts. This Agreement may be executed by the parties hereto electronically and/or in counterparts and, if so executed, each electronic copy and/or counterpart shall have the full force and effect of an original.

8. Attorneys' Fees and Costs. The parties hereto shall each bear their own costs and attorneys' fees incurred in connection with the negotiation and documentation of this Agreement. If any proceeding, action, suit or claim is undertaken to interpret or enforce this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs incurred in connection with such dispute.

9. Notices. Notices to be provided hereunder shall be effective if sent to the following:

To Transferee:

To the Receiver:

Krista L. Freitag, Receiver
c/o Allen Matkins
600 W. Broadway, 27th Floor
San Diego, CA 92101
Attn: Ted Fates, Esq.

TRANSFeree:

By: _____
[NAME], a/an/its _____

KRISTAL. FREITAG, COURT-APPOINTED
PERMANENT RECEIVER FOR ANI
DEVELOPMENT, LLC, AMERICAN
NATIONAL INVESTMENTS, INC., AND THEIR
SUBSIDIARIES AND AFFILIATES

By: _____
KRISTA L. FREITAG, Receiver

EXHIBIT B

EXHIBIT B

1 DAVID R. ZARO (BAR NO. 124334)
NORMAN M. ASPIS (BAR NO. 313466)
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
naspis@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 KRISTA FREITAG, in her capacity as
Court-appointed permanent receiver for
17 ANI Development, LLC, American
National Investments, Inc., and their
18 subsidiaries and affiliates,

19 Plaintiff,

20 vs.

21 [NAME], TRANSFEREE,

22 Defendant.
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Case No.

**STIPULATION FOR ENTRY OF
JUDGMENT**

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STIPULATION FOR ENTRY OF JUDGMENT

Krista Freitag ("Receiver"), the Court-appointed permanent receiver for Defendant ANI Development, LLC, Relief Defendant American National Investments, Inc., and their subsidiaries and affiliates (collectively, "Receivership Entities") pursuant to this Court's Order; Granting The Parties' Joint Motion And Stipulated Request By All Parties For A Preliminary Injunction Order And Order (1) Freezing Assets; (2) Requiring Accountings; (3) Prohibiting Destruction Of Documents; And (4) Appointing A Permanent Receiver (Dkt. No. 6) in the Securities and Exchange Commission enforcement action styled *SEC v. Gina Champion-Cain and ANI Development, LLC, Defendants, and American National Investments, Inc., Relief Defendant*, S.D. Cal. Case No. 3:19-cv-01628-LAB-AHG (the "Action"), and [NAME] ("Transferee") hereby agree and stipulate to the entry of judgment on the terms set forth herein.

WHEREAS, the Receiver was appointed as the federal equity receiver in the Action for the Receivership Entities;

WHEREAS, in connection with her accounting of transactions relating to the Receivership Entities, including her review and analysis of business and other records relating to the Receivership Entities, the Receiver determined that Transferee received a total of \$XX in payments (the "Profit Amount") from one or more of the Receivership Entities in excess of any investment in or other value provided to the Receivership Entities (collectively, the "Transfers");

WHEREAS, the Receiver and Transferee have reached a settlement in connection with the Profit Amount and Transfers, and entered into a written settlement agreement (the "Settlement Agreement") pursuant to which Transferee agreed to stipulate to judgment in the full Profit Amount, but also agreed to make certain discounted installment payments to the Receiver, which, if all installments payments were timely made via certified funds or wire transfer, would result in a

1 release of any claims the Receiver presently has, or may have in the future, against
2 Transferee relating to the Profit Amount and the Transfers; and

3 **WHEREAS**, Transferee further agreed in the Settlement Agreement that in
4 the event Transferee defaults on the terms of payment as set forth in the Settlement
5 Agreement, Transferee agrees to the entry of a stipulated judgment against
6 him/her/it in the Profit Amount, or \$XX, less any certified fund payments made by
7 Transferee to the Receiver in satisfaction of this amount, and Transferee further
8 consents to entry of such judgment against him/her/it in the amount of \$YY (\$XX
9 less any payments made by Transferee to the Receiver).

10 **THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and
11 between the Receiver and Transferee, as follows:

12 1. In the event of a default under the Settlement Agreement, judgment
13 shall be entered against Transferee in the Profit Amount, less any payments made by
14 Transferee to the Receiver in satisfaction of this amount or \$YY;

15 2. A declaration by the Receiver or her designee, successor, or assign
16 shall be deemed sufficient evidence of a default under the Settlement Agreement
17 and of any payments made by Transferee for purposes of determining the amount of
18 judgment to be entered;

19 3. Transferee hereby acknowledges that the full Profit Amount (less any
20 payments made by Transferee to Receiver) is owed and further agrees to waive
21 notice of entry of judgment, any right to contest entry and enforcement of the
22 judgment, and any notice of motion or application for issuance of writs of execution
23 pursuant to said judgment;

24 4. Transferee further agrees to waive any findings of fact and conclusions
25 of law;

26 5. Transferee further waives his/her/its right to appeal, his/her/its right to
27 bring any motions for new trial, and any and all rights he/she/it may have to set
28 aside or overturn any judgment entered on this stipulation; and

1 6. The undersigned parties to this Stipulation for Entry of Judgment (the
2 “Stipulation”) have read the foregoing terms and provisions. The undersigned
3 parties hereby acknowledge that they understand the foregoing terms and provisions
4 of the Stipulation, their respective rights hereunder, and that the foregoing terms and
5 provisions are hereby agreed to and accepted.

6 **IT IS SO STIPULATED.**

7 Dated: _____, 2020

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

8
9
10 By: _____
11 EDWARD G. FATES
12 Attorneys for Receiver
KRISTA FREITAG

13
14 Dated: _____, 2020

COUNSEL

15
16 By: _____
17 Attorneys for Transferee

18
19 **APPROVED AS TO FORM AND CONTENT.**

20
21 Dated: _____, 2020

TRANSFEREE

22
23 By: _____
24 [NAME], a/an/its _____

25 Dated: _____, 2020

RECEIVER, KRISTA FREITAG

26
27 By: _____
28 KRISTA FREITAG
Court-appointed permanent receiver