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7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 SECURITIES AND EXCHANGE  
COMMISSION,

11 Plaintiff,

12 v.

13 GINA CHAMPION-CAIN AND ANI  
DEVELOPMENT, LLC

14 Defendants, and

15 AMERICAN NATIONAL  
16 INVESTMENTS, INC.,

17 Relief Defendant.

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

**JOINT MOTION AND  
STIPULATED REQUEST FOR  
ORDER GRANTING LIMITED  
RELIEF FROM PRELIMINARY  
INJUNCTION**

[Proposed] Order submitted  
concurrently]

Complaint Filed: 08/28/2019  
Judge: Hon. Larry Alan Burns

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**JOINT MOTION**

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 (“SEC”); defendant Gina Champion-Cain; and Ms. Champion-Cain’s non-party spouse Steve Cain (collectively, the “Stipulating Parties”); 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 (the “Appointment Order”) [Dkt. 6].

The purpose of this Joint Motion is to enable Mr. Cain or his designee, to obtain a 100% interest in and take sole legal title to the couple’s family home, located at 4014 Bandini Street, San Diego, CA 92103 (the “Bandini house”), and provide for the recovery by the receivership estate of the vast majority of ANI funds used to purchase the Bandini house by allowing Mr. Cain to pay off a secured loan and simultaneously pay the receivership estate. This process will be referred to as the “Bandini transaction.”

The following paragraphs set forth the parties’ agreement as to the Bandini transaction, and their joint request for relief from this Court.

**I. Description of Assets and Claims**

This Joint Motion involves the following assets, which are subject to the Court’s freeze order [Dkt. 6].

**A. The Bandini House**

1. Mr. Cain and Ms. Champion-Cain purchased the Bandini house in 2015. They paid for the house primarily with the proceeds of the sale of their prior home originally purchased in 1994 (appx. \$750,000-\$950,000) and money from

1 ANI (appx. \$1.4 million). The Bandini house is subject to the Court’s freeze order  
2 [Dkt. 6]. The Bandini house was recently appraised with an estimated value of  
3 \$1.8 million.

4 2. Mr. Cain has asserted that the funds he and Ms. Champion-Cain used to  
5 purchase the Bandini house were generated from the sale of their prior house  
6 (address 2314 Fort Stockton Drive, San Diego, CA 92103) (appx. \$750,000-  
7 \$950,000) and were untainted funds. The Receiver disputes this claim and asserts  
8 that there is insufficient documentation to support the amount Mr. Cain and  
9 Ms. Champion-Cain claim to have contributed to the purchase.

10 3. Mr. Cain has not been charged with participating in or knowing about  
11 any of the allegedly fraudulent activities that are the subject of the SEC’s Complaint  
12 against Ms. Champion-Cain, and he maintains that he was unaware of any  
13 misconduct committed by his wife.

14 4. The Receiver has asserted a claim of approximately \$1.4 million to  
15 recover ANI funds used to purchase the Bandini home, which includes payments  
16 made by ANI to pay off a mortgage in favor of Seattle Funding Group initially used  
17 to purchase the Bandini house. In order to avoid the costs and uncertainties of  
18 litigation, the SEC and the Receiver have agreed to compromise and settle these  
19 claims with Mr. Cain for a total payment in the amount of \$1.3 million; such  
20 payment will be made directly from escrow to the receivership estate as part of the  
21 Bandini transaction.

22 5. First Choice Bank has first and second position liens on the Bandini  
23 house arising from two separate loans: (1) “The Fireside loan.” The Fireside By the  
24 Patio, LP and GCC I, LLC through the Gina Champion-Cain Revocable Trust DTD  
25 June 26, 2012 obtained a loan from First Choice Bank to improve the Fireside  
26 Restaurant leasehold interest. The loan was secured by a first position lien on the  
27 Bandini house. The current principal balance of the Fireside loan is approximately  
28 \$730,000. (2) “The Surf Rider loan.” 2163 Abbott Street, LP and GCC II, LLC

1 through the Gina Champion-Cain Revocable Trust dated June 26, 2012 obtained a  
2 loan from First Choice Bank to improve the Mission Beach Surf Rider Restaurant  
3 leasehold interest. This loan was secured by a lien on the personal property  
4 associated with the Mission Beach Surf Rider Restaurant and real property located  
5 at 4205 Lamont Street Property (already sold by the Receiver, with the net sale  
6 proceeds going to pay down The Surf Rider loan) and real property located at 4364  
7 Valle Vista, San Diego, known as the “Valle Vista property.” The Surf Rider loan is  
8 also secured by a second position lien on the Bandini house. The current principal  
9 balance of The Surf Rider loan is approximately \$475,000. The parties believe there  
10 is sufficient equity in the Valle Vista Property and if necessary, the personal  
11 property to pay off The Surf Rider loan.

12 **B. The Schwab IRA Account**

13 6. Ms. Champion-Cain has a Rollover Individual Retirement  
14 Arrangement, Account Number XXXX-5789, held at Charles Schwab & Co., Inc.  
15 (the “IRA account”). The IRA account’s equity holdings were comprised of the  
16 securities of five different publicly-traded companies, worth approximately  
17 \$750,000. The IRA account is subject to the Court’s freeze order [Dkt. 6].

18 7. On August 20, 2020, Ms. Champion-Cain received the Court’s  
19 approval to liquidate any equity positions currently held in that IRA account so as to  
20 eliminate any market risk [Dkt. 431]. If the funds in this account are prematurely  
21 withdrawn, they are subject to prepayment penalties imposed by the IRS and  
22 Franchise Tax Board.

23 **C. Wells Fargo Bank Joint Account**

24 8. Mr. Cain and Ms. Champion-Cain jointly hold a bank account at Wells  
25 Fargo in the amount of approximately \$117,000 (the “Wells Fargo joint account”).  
26 The Wells Fargo joint account is subject to the Court’s freeze order [Dkt. 6].

27 9. Mr. Cain asserts a claim that approximately \$50,000 of the funds in the  
28 Wells Fargo joint account came from sources independent of Ms. Champion-Cain

1 and ANI.

2 **II. Summary of the Parties' Agreement**

3 10. In order to avoid the costs and uncertainties of litigation and to settle  
4 the various claims to the Bandini house and claims relating to Mr. Cain, the parties  
5 have agreed to the following and seek the Court's approval of the same.

6 11. First, the Receiver will sell the Mission Beach Surf Rider personal  
7 property and the Valle Vista property and use the proceeds to pay off The Surf Rider  
8 loan (appx. \$475,000). The Court approved the sale of the Mission Beach Surf  
9 Rider personal property on October 26, 2020 [Dkt. 488], and the proposed sale of  
10 the Valle Vista property has been submitted to the Court for approval with a hearing  
11 set for November 30, 2020 [Dkt. 478]. Ms. Champion-Cain will sign any and all  
12 documents as may be requested to assist the Receiver in completing the sale of the  
13 Valle Vista property, title to which is held in The Joseph Alex Himmelberg and  
14 Gina Champion-Cain Living Trust, for which Ms. Champion-Cain is Trustee.

15 12. Second, Mr. Cain will pay the Receiver \$1.3 million to settle the SEC  
16 and the Receiver's claims to the Bandini house, and will pay off the balance of the  
17 Fireside loan to First Choice Bank (appx. \$730,000). In exchange, the SEC and  
18 Receiver will release all claims to the Bandini house, and will request that the Court  
19 release the Bandini house from the freeze order and approve the transfer of title to a  
20 person or entity designated by Mr. Cain.

21 13. Mr. Cain will use to following sources of money to pay the Receiver  
22 and First Choice Bank: (1) the funds in the IRA account, after all prepayment  
23 penalties are withheld; (2) the Wells Fargo joint account; (3) traditional financing;  
24 and (4) personal loans from his family members (not Ms. Champion-Cain), which  
25 Mr. Cain will declare under oath are untainted funds.

26 14. All the transactions related to Mr. Cain's payments to the Receiver and  
27 First Choice Bank (described below) will flow through escrow and will occur  
28 simultaneously. Escrow will be instructed that if any of these transactions cannot be

1 completed for any reason, this agreement is void and any funds in the escrow  
2 account will be returned to the accounts/sources from which they came.

3 **III. Steps to Complete the Bandini Transaction**

4 15. Once the Receiver pays off the Surf Rider loan (see above), the parties  
5 will open a mutually agreeable third-party escrow account with mutually agreeable  
6 instructions. Once the escrow account is opened, the following transactions will  
7 take place simultaneously, subject to Court approval.

8 16. *Schwab IRA Account.* The SEC and Receiver will release any claim  
9 they have on this IRA account and request that the Court release these funds from  
10 the freeze order. The parties will instruct Schwab to withhold any prepayment  
11 penalties due to both the IRS and California Franchise Tax Board and transfer the  
12 remaining funds into the escrow account.

13 17. *Wells Fargo Joint Account.* The SEC and Receiver will release any  
14 claim they have on this joint account and request that the Court release these funds  
15 from the freeze order. The parties will instruct Wells Fargo to transfer these funds  
16 into the escrow account.

17 18. *Personal Loans to Mr. Cain.* Mr. Cain will obtain the remaining  
18 necessary funds from a combination of traditional financing and a personal loan  
19 from family (not Ms. Champion-Cain) and will transfer all funds to the escrow  
20 account. Mr. Cain will provide a Declaration to the SEC and the Receiver stating  
21 that none of the funds or persons/entities providing the funding to pay off the  
22 Fireside loan and make the \$1.3 million payment to the receivership have any  
23 connection to Gina Champion-Cain (aside from any familial connection through  
24 Steven Cain) or any of the entities in receivership.

25 19. Once the above-described transactions are complete and the escrow  
26 account is fully funded, escrow will be irrevocably bound to disburse sufficient  
27 funds to pay off the Fireside loan with First Choice Bank (appx. \$730,000), and  
28 disburse \$1.3 million to the Receiver. Mr. Cain will be responsible for all escrow

1 costs. Any remaining funds in the escrow account (not expected to be significant)  
2 will be returned to Mr. Cain.

3 20. The SEC and Receiver will then release any claim they have on the  
4 Bandini house, and necessary transfers will be made in order to put the Bandini  
5 house into Mr. Cain's name as his sole and separate property, unless he chooses to  
6 take title in some other fashion.

7 21. The Receiver submits that the proposed settlement is in the best  
8 interests of the receivership estate in that it produces a \$1.3 million cash recovery in  
9 the near term, which is a favorable result considering the estimated net equity in the  
10 Bandini house (approximately \$1 million after the Fireside loan, broker commission,  
11 and other costs of sale), and the delay, costs, and risks associated with litigating the  
12 Receiver's and Mr. Cain's respective claims to such equity, as well as a potential  
13 First Choice foreclosure action.

14 22. The parties further agree that this agreement, once all of the above  
15 transactions are completed and the receivership estate receives \$1.3 million, will  
16 satisfy all claims that ANI and/or the Receiver has now or in the future, to the  
17 Bandini house.

18 23. The parties understand that if this request for relief is not granted, First  
19 Choice Bank intends to pursue a foreclosure action on the Bandini property.

## 20 **STIPULATION**

21 **THEREFORE**, the Stipulating Parties, by and through their undersigned  
22 attorneys of record, hereby **STIPULATE AND AGREE** as follows:

23 24. That an Order may and should be entered providing that the injunctions  
24 set forth in the Appointment Order be modified to permit the Bandini transaction to  
25 occur as outlined above (and as detailed in the concurrently-filed Proposed Order).

26 25. That all other provisions of this Court's prior orders shall remain in full  
27 force and effect. This Court shall retain jurisdiction for the purpose of  
28 implementing and carrying out the terms of this Joint Motion and Stipulation and to

1 entertain any suitable application or motion for additional relief within the  
2 jurisdiction of the Court.

3 **REQUEST FOR RELIEF**

4 For the reasons stated above, the Stipulating Parties request that the Court  
5 issue an Order approving the forgoing Stipulation and granting the limited relief  
6 from the Appointment Order requested herein.

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8 **IT IS SO STIPULATED.**  
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DATED: November 9, 2020

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DATED: November 9, 2020

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