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11 Attorneys for Receiver
12 KRISTA FREITAG

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

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16 SECURITIES AND EXCHANGE
COMMISSION,
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Plaintiff,
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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

**RECEIVER'S STATUS REPORT
REGARDING MOTION FOR
AUTHORITY TO PURSUE CLAIMS
AGAINST CHICAGO TITLE**

Date: December 17, 2020
Time: 1:30 p.m.
Courtroom: 14A
Mag. Judge: Hon. Larry A. Burns

1 Krista Freitag ("Receiver"), the Court-appointed permanent receiver for
2 Defendant ANI Development, LLC, Relief Defendant American National
3 Investments, Inc., and their subsidiaries and affiliates ("Receivership Entities"),
4 submits this Status Report Regarding Motion for Authority to Pursue Claims Against
5 Chicago Title ("Motion").

6 At the hearing held on August 26, 2020, the Court instructed the Receiver to
7 file a status report no later than December 1, 2020. In deciding to continue the
8 hearing on the Motion for approximately 90 days, the Court noted that Chicago Title
9 Company and Chicago Title Insurance Company (together "CTC") had recently
10 reached a settlement with one group of investors (known as the SIP Investors) and
11 had scheduled mediations with other groups of investors. The Court was inclined to
12 let the scheduled mediations occur during the interim period, noting that "[b]y then, I
13 assume that if settlement efforts are going to succeed, they will have done so."

14 The Court also noted that the Receiver's forensic accounting was not yet
15 completed and that the accounting would clarify the total number of investors in the
16 Ponzi scheme, how many of them were not actively part of an existing lawsuit
17 against CTC, and what the losses associated with those investors were. The Receiver
18 addresses both points below and attaches her preliminary forensic accounting report,
19 which focuses on the investor and loss issues discussed at the August 26 hearing.

20 I. CTC SETTLEMENTS

21 At the August 26 hearing, counsel for CTC stated that they had scheduled
22 mediations with (a) Ovation/Banc of California, who, at the time, had a lawsuit
23 against CTC pending in this Court and later dismissed their federal lawsuit and filed
24 a lawsuit in San Diego Superior Court, and (b) the group of investors represented by
25 Michael Kirby, who has a lawsuit against CTC pending in San Diego Superior Court.
26 The Receiver understands that these mediations took place in September, but did not
27 result in settlements. The Receiver is advised that CTC has recently reached several
28 small settlements with a small group of investors represented by Gary Aguirre and

1 several other individual investors who are not represented by counsel. The total
2 amount of these settlements is reported to be \$1,642,738.92. Therefore, although
3 CTC was able to reach one significant settlement with the SIP Investors back in June,
4 no major settlements have been reached since then.

5 CTC's approach appears to have been to hold piecemeal, separate negotiations
6 with discrete investors and investor groups. Most recently, they have been
7 negotiating with individual investors (some unrepresented by counsel). This
8 approach is not only incredibly inefficient, but it will drag out
9 proceedings. Moreover, these settlements with individuals reflect relatively low
10 settlement amounts (several in the range of 50-57.5% of claimed losses). The
11 Receiver contends that if the Court authorizes her to proceed with her proposed
12 action, she will be in a position to efficiently and effectively prosecute claims against
13 CTC on behalf of the Receivership Entities, including claims to recover the
14 Receivership Entities' liability to investors for their losses from the scheme. The
15 Receiver, as the Court-appointed representative of the entire receivership estate, is
16 truly in a unique position to maximize a recovery through a global settlement or
17 through litigation before this Court.¹

18 **II. ACCOUNTING ANALYSIS OF INVESTOR LOSSES**

19 The Receiver has been working diligently on her forensic accounting, which is
20 a detailed analysis and reconciliation of the sources of money that came into the
21 Receivership Entities, Chicago Title and certain Kim Peterson accounts, how money
22 was transferred between and among the Receivership Entities, Chicago Title and
23 certain Kim Peterson accounts and where the money went when it was paid out. The
24 forensic accounting, which currently reflects over \$1 billion of transactional detail, is
25

26 ¹ The Receiver, through counsel, has asked CTC on multiple occasions if it would
27 be willing to discuss a global settlement. The Receiver proposed that the putative
28 investor class in the pending *Allred* action participate in such discussions and
made it clear she would be open to having counsel for other investor groups
participate as well. Thus far, CTC has declined this invitation.

1 now close to being complete; the Receiver is gathering additional documents in an
 2 attempt to further clarify individual investor transactional detail (primarily in Kim
 3 Peterson and custodian accounts).² Given the material progress, the overall picture
 4 of the total investor population and their losses from the Ponzi scheme is now much
 5 clearer.

6 The Receiver's Investor-Specific Preliminary Forensic Accounting Report is
 7 attached hereto as Exhibit A. Based on the forensic accounting work completed to
 8 date, the following table briefly summarizes the portions of the report that directly
 9 pertain to the number of losing investors (excluding profiting investors) and investor
 10 loss issues discussed at the August 26 hearing:

PRELIMINARY ACCOUNTING DATA	
Total Number of Unique Losing Investors	349
Approximate Total of Investor Net Losses	\$183 million
Total Number of Losing Investors not actively part of a lawsuit against CTC	149
Approximate Total of Net Losses for Losing Investors not actively part of a lawsuit against CTC	\$26 million

21 The details regarding this summary data and the Receiver's preliminary
 22 conclusions are contained in the report. *See* Exhibit A.

23 Most importantly, the data currently shows that 149 investors, or
 24 approximately 43% of all losing investors in the Ponzi scheme, are not actively part

26 ² At present, there is a net amount of more than \$6 million of funds invested which
 27 are not yet allocated to a specific investor as such detail is not available in the
 28 payment documentation; obtaining further detail from custodians is part of the
 pending work to be completed.

1 of an existing lawsuit against CTC.³ The Receiver has heard directly from some of
2 these investors who have expressed their hopes that she will be authorized to move
3 forward with her proposed action against CTC on behalf of the Receivership Entities
4 to maximize the assets of the receivership estate that will be available to distribute to
5 investors. The Receiver, therefore, requests authority to move forward and believes
6 it is in the best interests of the receivership estate that her proposed action against
7 CTC be allowed to proceed without further delay.

8

9 Dated: December 1, 2020

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

10

By: s/Edward G. Fates

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³ This does not include potential members of the putative class in the *Allred* matter.

EXHIBIT INDEX

EXHIBIT NO.	DESCRIPTION	PAGE NO.
Exhibit A	Receiver's Investor-Specific Preliminary Forensic Accounting and Report	7

EXHIBIT A

EXHIBIT A

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 16 SECURITIES AND EXCHANGE
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 19 GINA CHAMPION-CAIN and ANI
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 Defendants,
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 22 AMERICAN NATIONAL
 INVESTMENTS, INC.,
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 Relief Defendant.
 24
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Case No. 3:19-cv-01628-LAB-AHG

**RECEIVER'S INVESTOR-SPECIFIC
 PRELIMINARY FORENSIC
 ACCOUNTING AND REPORT**

Ctrm: 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, Relief Defendant American National
3 Investments, Inc., and their subsidiaries and affiliates ("Receivership Entities"),
4 hereby submits this Investor-Specific Preliminary Forensic Accounting and Report
5 ("Preliminary Forensic Report").

6 On August 28, 2019, the United States Securities and Exchange Commission
7 ("Commission" or "SEC") filed a Complaint which alleges Defendants Gina
8 Champion-Cain and ANI Development, LLC perpetrated a large-scale fraud, raising
9 over \$300 million from investors since 2012, and over \$100 million in the year prior
10 to the filing, for purported short-term, high-interest loans to parties seeking to
11 acquire liquor licenses (the "Scheme"). The Commission alleges the purported loans
12 were a sham and the Defendants were using monies raised from investors to support
13 the business operations of Defendants' affiliated entities and to make sham interest
14 payments to earlier investors.¹

15 On September 3, 2019, this Court (the Hon. Marilyn Huff) entered the Order;
16 Granting the Parties' Joint Motion and Stipulated Request by all Parties for
17 Preliminary Injunction Order and Order (1) Freezing Assets; (2) Requiring Accounts;
18 (3) Prohibiting the Destruction of Documents; and (4) Appointing a Permanent
19 Receiver (the "Appointment Order").

20 The Appointment Order directs the Receiver to "make an accounting, as soon
21 as practicable, to this Court and the SEC of the assets and financial condition of
22 Defendant ANI Development and Relief Defendant American National Investments
23 and to file the accounting with the Court and deliver copies thereof to all parties."

24 As discussed below, the Receiver has (a) reviewed and analyzed the bank
25 records, and books and records of the numerous Receivership Entities, (b) evaluated
26 the Scheme's sources of funds, and (c) evaluated the Scheme's use of funds. This
27

28 ¹ On July 22, 2020, Defendant, Ms. Champion Cain, pleaded guilty to Conspiracy,
Securities Fraud and Obstruction of Justice in the related criminal case.

1 Report covers the transactional history of the Receivership Entities' bank accounts
2 (as well as certain Chicago Title so-called escrow accounts and certain Kim
3 Peterson-related bank accounts²) for the period from May 27, 2011³ to September 3,
4 2019 (the date of entry of the Appointment Order) and summarizes the Receiver's
5 investor-specific findings based on the accounting work performed to date.

6 **I. EXECUTIVE SUMMARY**

7 Through the forensic accounting worked performed to date, the Receiver has
8 determined, on a preliminary basis, where the money received by the Receivership
9 Entities came from, how it was transferred between and among them, and where it
10 was disbursed. The Receivership Entities commingled assets and operated in concert
11 as one large, unitary enterprise. The investor activity reflects a Ponzi scheme where
12 earlier investors in the Scheme were paid from funds raised from later investors in
13 the Scheme.

14 More than 125 accounts (bank and so-called "escrow" accounts) involving
15 approximately 200,000 transactions and over \$1 billion of transactional detail
16 (including intercompany and inter-account transfers) have been reviewed and
17 categorized. More than 30 of the accounts reviewed to date include more than 4,300
18 investor deposits and/or disbursements. The Receiver intends to file a
19 comprehensive forensic accounting report breaking down this data promptly upon
20 completion of her accounting with regard to additional accounts for which records
21 are being collected. This report is preliminary and focused solely on investor data.

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25 ² Investor Kim Peterson, through entities he controlled, raised a substantial portion
26 of the money deposited into the Receivership Entities by other investors. The
27 funds sometimes went directly to accounts at Chicago Title and sometimes came
28 into the Scheme through Kim Peterson-related bank accounts.

27 ³ May 2011 was deemed an appropriate starting point for the accounting because
28 the bank records show the first deposit into a Chicago Title so-called escrow
account was May 27, 2011.

1 In terms of the losing investors, of which there are approximately 349 total
 2 unique third-party investors⁴ (excluding profiting investors), and based upon the best
 3 of the Receiver's knowledge at this time, the aggregate net loss amount is
 4 approximately \$183 million. Approximately **149** (43%) of the losing investors
 5 representing approximately **\$26 million**, or 14%, of the total net loss amount are not
 6 actively involved in a pending action against Chicago Title Company/Chicago Title
 7 Insurance Company ("CTC").⁵ Approximately 200 (or 57%) of the losing investors
 8 representing approximately \$157 million, or 86%, of the total net loss amount are
 9 participating in pending actions against CTC. This preliminary analysis presents
 10 investors' total money deposited into the Scheme by investors (directly through the
 11 Receivership Entities and through so-called Chicago Title escrow accounts and Kim
 12 Peterson accounts) less total money disbursed from the Scheme to investors (directly
 13 through the Receivership Entities and through so-called Chicago Title escrow
 14 accounts and Kim Peterson accounts).

15 **II. RECEIPTS & DISBURSEMENTS [SOURCES & USES] SUMMARY**

16 The following is a summary of the total receipts and disbursements into and
 17 out of the more than 125 accounts which have been reviewed to date:

Account Transaction Summary	Gross Totals
May 27, 2011 – Sept. 3, 2019 Receipts Total	\$1,110,070,780
May 27, 2011 – Sept. 3, 2019 Disbursement Total	(\$1,108,171,344)

25 ⁴ Until a claims process is completed, the total number of truly "unique" investors
 26 cannot be determined as certain individual investors also invested through
 27 individual retirement accounts, trusts, corporations, limited partnerships and
 28 limited liability companies. The Receiver will not be able to finalize how such
 investments are or are not aggregated until such time as the claims process is
 completed. This number also does not count Defendant Champion-Cain or Kim
 Peterson as investors (hence the use of the term third-party).

⁵ This does not include potential members of the putative class in the *Allred* matter.

1 These totals represent money to/from investors in the Scheme,
2 intercompany/inter-account transfers, and other sources/uses such as real estate and
3 operational revenues and expenses, miscellaneous investments and promissory notes,
4 insider transfers and other miscellaneous transactions. A breakdown of the sources
5 and uses of funds will be presented in the forthcoming more comprehensive
6 accounting report. Of these totals, based on the accounting work completed to date,
7 approximately \$372 million of investor funds were deposited into and approximately
8 \$207 million was paid from the Scheme.

9 **A. Investor Receipts & Disbursements**

10 The first payment made by an investor into Chicago Title appears to be on
11 May 27, 2011, and the last payment made to investors occurred on August 31, 2020,
12 just prior to entry of the Appointment Order on September 3, 2020. Approximately
13 491 unique third-party investors deposited funds into the Scheme (including profiting
14 investors). Many investors invested multiple times, through different (but affiliated)
15 entities, personal accounts, trust accounts, retirement custodial accounts, and joint
16 accounts. At this time, other than personal/retirement/joint accounts, these scenarios
17 are substantively counted as a unique investor; nonetheless, in a claims process,
18 affiliated investments may be aggregated.

19 Investor deposits were made via multiple methods, including primarily via the
20 following: (1) investors (or their retirement account custodian) sent money to
21 Chicago Title, (2) investors sent money to other investors and/or entities, who then
22 sent such funds, or a portion thereof (directly or after aggregating the funds with
23 other funds) on to Chicago Title or to a Receivership Entity directly, and
24 (3) investors (or their retirement account custodian) sent money directly to a
25 Receivership Entity. Funds were paid out from the Receivership Entities primarily in
26 the same ways (in reverse). The investors and/or entities who raised/received funds
27 directly from other investors for the purpose of being invested in the Scheme are
28 referred to herein as "Aggregators".

1 Investors (and certain individuals who do not appear to be investors) also
 2 received referral fees or commissions for bringing other investors into the Scheme.
 3 Furthermore, certain investors may have received the benefit of various perks (e.g.,
 4 discounted or free short-term stays at vacation rental properties owned by the
 5 Receivership Entities and discounted or free food at the restaurants owned by the
 6 Receivership Entities).

7 Given the high profile nature of this case, the numerous communication
 8 platforms (e.g., the receivership-specific website where investors can register), the
 9 numerous records the Receiver has obtained (via subpoena or through representative
 10 counsel), the Receiver is confident she has substantially identified the investor
 11 population.

12 The following table reflects all investor account activity for all accounts
 13 reviewed to date (including profiting investors) for the period from May 27, 2011
 14 through September 3, 2019:

Total Unique Third-Party Investors	491
Investor Receipts (Money In)	\$ 372,074,000
Investor Disbursements (Money Out)	(\$207,476,000)
Net Total Investor Activity	\$ 164,598,000

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 21 These numbers include profits, referral fees, commissions and other amounts
 22 paid out to certain profiting investors, but do not reflect settlement payments
 23 received by certain investors after entry of the Appointment Order (*i.e.* payments
 24 received by certain investors under the SIP Investors' settlement with CTC or the
 25 Receiver's settlement with investor Charles Riharb). The Receiver is obtaining
 26 records for several additional Kim Peterson-related accounts, and is working to
 27 obtain additional custodian data in an attempt to allocate over \$6 million of net
 28

1 investment detail to the appropriate investors. The Receiver and her team will
2 complete the accounting for these records promptly upon receipt and then file a more
3 comprehensive forensic accounting report.

4 It is also critical to note that because of how certain investors and aggregators
5 treated and/or handled investor funds, a forensic accounting without a completed
6 claims process will not produce a final total net loss amount. For example, the
7 Receiver has received some records showing that certain investors aggregated funds
8 and sent such funds to the Receivership Entities on behalf of others (however, the
9 source payment records have no reference to the individual whose funds were
10 invested). Moreover, certain custodians sent lump sum monies without reference to
11 individual investor details; while the Receiver believes some of this will be clarified
12 and reconciled once additional records are received, it may not be possible to identify
13 the ultimate investor source solely through the forensic accounting process.
14 Ultimately, the instances in which payments cannot be fully or properly allocated to
15 one or more investors will need to be addressed, clarified and/or reconciled through
16 the investor claims process.

17 **III. SUMMARY OF ACCOUNTING WORK PERFORMED TO DATE**

18 The Receiver and her team performed the following procedures (at a
19 minimum) to ensure accuracy of the figures provided in this and the forthcoming
20 more comprehensive forensic accounting report:

21 ➤ Chicago Title So-Called Escrow Accounts

- 22 ○ Created a database from the underlying Chicago Title records
23 of more than 2,700 receipt and disbursement transactions from
24 10 separate Chicago Title so-called escrow accounts used in
25 the Scheme.
- 26 ○ Reconciled the inter-account transfers to/from the Chicago
27 Title accounts to the Receivership Entities and certain Kim
28 Peterson-related bank accounts.

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- Tested receipts and disbursements from the Chicago Title transactional database to underlying bank account detail.
- Reconciled the ending balance to the funds transferred to the Receivership Estate.

➤ Receivership Entities

- These bank accounts fall into two categories: [1] bank accounts that were maintained by the Receivership Entities' corporate office (primarily associated with the numerous real estate assets and operations), [2] bank accounts not maintained by the corporate office (accounts primarily utilized in the Scheme or personal accounts).
- For bank accounts maintained by the corporate office, copies of the QuickBooks files' beginning and ending cash balances were reconciled to the source bank documents, which included examining the underlying receipts, transfers and disbursements (check detail and/or wire support) on a test basis.
- For bank accounts not maintained by the corporate office, the Receiver's team created a database of the banking activity directly from the underlying source bank account documents, including statements, deposits, check copies and wire support.
- May 27, 2011 beginning balances were confirmed to the underlying bank account details.

1 obtain additional custodian detail and an accounting for several additional accounts
2 for which records are being obtained.

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4 Dated: December 1, 2020

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