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13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15
16 SECURITIES AND EXCHANGE
COMMISSION,
17
18 Plaintiff,
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20 v.
GINA CHAMPION-CAIN and ANI
DEVELOPMENT, LLC,
21
22 Defendants,
AMERICAN NATIONAL
INVESTMENTS, INC.,
23
24 Relief Defendant.

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

**RECEIVER'S AMENDMENT TO
MOTION FOR AUTHORITY TO
PURSUE CLAIMS AGAINST
CHICAGO TITLE [DOC. NO. 323];
AND STATEMENT IN OPPOSITION
TO STAY OF INVESTOR ACTIONS**

Date: April 12, 2021
Time: 3:00 p.m.
Ctrm: 14A
Judge: Hon. Larry Alan 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 (collectively "Receivership
4 Entities"), submits this Amendment to Motion For Authority to Pursue Claims
5 Against Chicago Title and Statement in Opposition to Stay of Investor Actions
6 ("Amended Motion"). By this Amended Motion, the Receiver seeks authority to file
7 her lawsuit against Chicago Title in State Court and requests that the Court not stay
8 the remaining Investor Actions already pending in State Court.

9 In June 2020, the Receiver filed her Motion For Authority to Pursue Claims
10 Against Chicago Title (the "Motion"). [Doc. No. 323.] In light of the Court's
11 statements at and ruling following the December 17, 2020 hearing on the Motion,
12 the Receiver understands that the Court intends to grant the Motion at the hearing on
13 April 12, 2021.

14 When the Receiver filed the Motion in June 2020, there were two related
15 investors actions against Chicago Title pending in this Court (the *Ovation* and *Allred*
16 cases) and the Receiver believed it would be best to file her proposed action against
17 Chicago Title in this Court as well. Since then, however, both of the related investor
18 actions that were in this Court have been dismissed and refiled in San Diego
19 Superior Court. In addition, over the past year, there have been settlements
20 involving many individual investors, and the Receiver has had the opportunity to
21 substantially complete her accounting as to Chicago Title related losses (and
22 represented and "unrepresented" investors, i.e. absent members of the putative
23 class). The Receiver's counsel has also observed depositions taken in the investor
24 lawsuits pending in State Court (the "Investor Actions") and has further investigated
25 the claims against Chicago Title and others. The Investor Actions now involve eight
26 lawsuits currently coordinated before Judge Ronald Styn (with another two lawsuits
27 expected to be transferred to Judge Styn shortly) and the plaintiffs in the Investor
28 Actions have adopted a model complaint.

1 As discussed further below, the Receiver believes it is in the best interests of
2 the receivership estate and the most efficient use of resources to pursue the
3 receivership estate's claims against Chicago Title in San Diego Superior Court and
4 to have her case coordinated with the Investor Actions. Although the receivership
5 estate's claims against and losses caused by Chicago Title are separate and distinct
6 from the investors' claims, the receivership estate's claims arise from the same series
7 of events (Chicago Title's actions as co-conspirator with Gina Champion-Cain in the
8 Ponzi scheme) and have common issues of law and fact. There are significant time
9 efficiencies, cost savings and other advantages to having the receivership estate's
10 lawsuit and Investor Actions coordinated before the same court. These efficiencies
11 and cost savings arise out of coordinated case management, joint discovery,
12 coordinated motion practice, and hearings. All of these savings will inure to the
13 benefit of the receivership estate and similarly conserve the individual investor
14 resources. Of course, this coordination will also conserve judicial resources and
15 reduce the risk of inconsistent rulings (an issue Chicago Title has previously raised
16 in these proceedings.)

17 The Receiver also agrees with the investor groups that a stay of investor
18 actions against Chicago Title is not appropriate or supported by the law. Moreover,
19 no party to this case has filed a motion seeking a stay, nor has any non-party
20 properly sought to intervene for purposes of doing so.

21 Chicago Title has repeatedly mischaracterized the receivership estate's claims
22 against Chicago Title as identical and duplicative of the investors' claims. They are
23 not. Simply put, the Investor Actions allege harm *to the individual investors* and
24 seek to recover damages caused to those individual investors by Chicago Title. The
25 receivership estate's lawsuit is based upon separate theories of liability in light of the
26 direct contract and fiduciary relationship that existed between the Receivership
27 Entities and Chicago Title. As such, the receivership estate's claims focus on the
28 damages to the Receivership Entities arising out of Chicago Title's breach of its duty

1 of care and its fraudulent conduct toward the Receivership Entities. Chicago Title's
2 wrongful conduct gave rise to separate harm to the receivership estate. There is no
3 dispute that part of the receivership estate's damage claim will include the amount of
4 the Receivership Entities' liability to investors (i.e. their right to rescission) resulting
5 from Chicago Title's fraudulent conduct.¹ As such, a *portion of the damages* sought
6 by the investors overlap with a *portion of the damages* sought by the Receiver.
7 With that said, the actual claims are separate and distinct – the Receiver is not
8 pursuing claims belonging to the investors and the investors are not pursuing claims
9 belonging to the receivership estate.

10 The Receiver seeks to recover the damages Chicago Title caused to the
11 receivership estate as a result of its fraud and conspiracy with Gina Champion-Cain,
12 including the amounts for which the receivership estate is liable to the investors
13 (subject to the reduction footnoted below), as well as fees ANI paid to Chicago
14 Title, consequential damages, punitive damages, and costs of suit. Again, the
15 Receivership Entities have direct contract and tort claims arising out of ANI's
16 contracts and business dealings with Chicago Title. The investors, on the other
17 hand, seek to recover the losses they suffered as a result of Chicago Title's fraud and
18 conspiracy with Gina Champion-Cain, as well as other amounts, including lost
19 interest, lost profits, consequential damages, punitive damages, treble damages, pre-
20 judgment interest, and costs of suits.

21 The fact that there are partially overlapping damage claims in coordinated,
22 multi-party lawsuits is not uncommon. However, there is no risk that Chicago Title
23 will be ordered to pay the same damage claims twice. Amounts the investors
24 recover from Chicago Title reduce that portion of the receivership estate's damage
25 claims and amounts the Receiver recovers from Chicago Title (which are then
26

27 ¹ In connection with investor settlements with Chicago Title that have been
28 approved by the Court, the Receiver has agreed to reduce the investor loss
portion of the receivership estate's damage claims against Chicago Title and to
not pursue Chicago Title for losses associated with the settling investors.

1 distributed to the investors through the receivership claims and distribution process)
2 reduce that portion of the investors' damage claims against Chicago Title. None of
3 this is particularly unique or difficult to address, especially when the various actions
4 against Chicago Title are coordinated before the same court.

5 Importantly, it is simply absurd for Chicago Title, having defrauded so many
6 different people and entities resulting in well in excess of \$150 million in losses, to
7 be complaining that they now face multiple lawsuits from the different people and
8 entities that they defrauded. The investors' claims against Chicago Title are not
9 duplicative of the receivership estate's claims, the investors' claims do not interfere
10 with the receivership estate's claims, and there is no reason to bar the investors from
11 pursuing their claims against Chicago Title concurrently with the Receiver's pursuit
12 of the receivership estate's claims.

13 With respect to Chicago Title's prior argument that ANI Development, LLC
14 ("ANI", a receivership entity) is a necessary party to the Investor Actions against
15 Chicago Title, that argument has already been made to Judge Styn and rejected. If
16 Chicago Title believes the filing of the receivership estate's action against Chicago
17 Title makes ANI a necessary party to the Investor Actions, Chicago Title can renew
18 its argument on that subject to Judge Styn. If Judge Styn determines ANI is a
19 necessary party, then the investors can seek to intervene in this action and move this
20 Court for relief from the litigation stay to name ANI as a defendant in their actions.
21 Regardless, however, those issues are not presently before this Court and can be
22 addressed at a future time if and when appropriate motions have been filed.

23 Dated: March 1, 2021

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