

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

**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.<sup>1</sup> 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

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27 <sup>1</sup> 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

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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