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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. GINA CHAMPION-CAIN and ANI DEVELOPMENT, LLC, Defendants, AMERICAN NATIONAL INVESTMENTS, INC., Relief Defendant.	Case No. 3:19-cv-01628-LAB-AHG **RECEIVER'S OPPOSITION TO CHICAGO TITLE COMPANY'S MOTION FOR A FINDING THAT SETTLEMENTS ARE IN GOOD FAITH PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 877.6 AND APPROVAL OF SETTLEMENT AGREEMENTS** Date: April 5, 2021 Time: 11:15 a.m. Ctrm: 14A Judge: Hon. Larry Alan Burns

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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"), submits this Opposition to Chicago Title Company's Motion for a Finding that Settlements are in Good Faith Pursuant to California Code of Civil Procedure Section 877.6 and Approval of Settlement ("Motion").

I. INTRODUCTION

The Receiver, of course, wants defrauded investors to recover as much of their losses, including from Chicago Title Company and Chicago Title Insurance Company ("CTC"), as they can. Investors are free to settle their claims against CTC on their own accord and the Receiver has facilitated prior investors settlements. However, when CTC conditions the settlements on terms which are patently harmful to all other investors in the receivership estate, and are facially contrary to the law, the Receiver must object, as she has done in this particular case. A settlement that forecloses the Receiver's right to pursue CTC while imposing tens of millions of dollars of additional liability upon the receivership, as well as potentially impeding the Receiver's recovery from third parties, is not fair or equitable to the receivership estate as a whole, and favors CTC and settling investors at the expense of all other investors.

The Receiver and her counsel have spent considerable time over the past few months trying to reason with CTC and the Levin investor group,[1] however, CTC has simply stonewalled, refusing to consider changes to the agreements and adding parties to address fundamental flaws and illegalities inherent in the agreement. As such, after the Receiver considered the terms, analyzed the legal issues concerning the assignment/retention of claims, weighed the risks and benefits, met and

[1] The proposed settlements involving the Atherton and DH Claims investors were not even shown to the Receiver prior to the Motion being filed, so the Receiver had no opportunity to consider those settlements or meet and confer with the parties regarding the terms that affect the receivership estate.

conferred with CTC and the Levin investors (through their respective counsel), she made a reasoned determination that the terms imposed on the receivership unfairly favor the settling investors at the expense of the receivership estate as a whole, *i.e.* the non-settling investors. Specifically, CTC and the settling investors are asking the Court to bar the Receiver from pursuing valuable claims of the receivership estate against CTC, while the investors simultaneously assign claims to CTC and retain the same claims against the receivership estate. None of this makes sense.

The Receiver has suggested ways in which the proposed Levin settlement could be structured to avoid unfairly favoring the settling investors. These suggestions were flatly rejected, and instead CTC now comes to the Court as a non-party attempting to strong-arm the Receiver into a one-sided settlement which includes an injunction barring claims of the receivership estate against CTC.

The Motion is also procedurally improper for several reasons, including that CTC is not a party to this case and has not been granted leave to intervene to file the Motion. Moreover, the investor lawsuits being settled are pending before the San Diego Superior Court. There is absolutely no legal basis for this Court to intercede in pending state court cases and decide if the claims being settled and settlement terms meet the good faith settlement standard under California state law or otherwise.[2]

The Motion is also substantively improper. CTC has presented no legal basis for an injunction barring the Receiver from pursuing against CTC. Moreover, even if CTC had provided support for such an injunction, it would be required to post a bond to protect the receivership estate from potential harm as a result of the injunction. As discussed below, the potential financial harm to the receivership estate is substantial.

[2] As discussed below, the prior good faith settlement motion filed by CTC was for a settlement with the SIP Investors, who had not filed any action against CTC.

Importantly, there is no legal basis for this Court to enter an order dictating that the settling investors will have allowed claims against the receivership estate after they have fully and completely assigned and transferred their claims to recover the same losses to CTC. This violates basic law regarding assignments and defies all logic. Moreover, the investor claims being assigned to CTC, which include claims against Kim Peterson based on personal guarantees in favor of certain of the settling investors ("Peterson Guarantee Claims"), will almost certainly be used by CTC in ways that are detrimental to the receivership estate, including but not limited to diminishing and possibly offsetting the receivership estate's claims against CTC as well as the Receiver's claims against Kim Peterson and his affiliates. Accordingly, it is not just that the settling investors are seeking to assign and retain the same loss claims, but in doing so, they are causing direct harm to non-settling investor claimants.

There are alternative settlement terms and options that have been presented to CTC that would give CTC the "global peace" it wants. CTC has rejected these alternatives outright. As such, this Court should reject CTC's efforts to impose an injunction upon the Receiver as well as the other harmful settlement terms. For all these reasons, the Motion must be denied.

II. DISCUSSION

A. The Motion is Procedurally Improper

The Motion is not properly before the Court. CTC is not a party to this case, nor has it moved to intervene in the case for any purpose. Moreover, the settlements at issue are of cases pending in San Diego Superior Court before Judge Styn. The Receivership Entities are not parties to the lawsuits being settled. CTC's motion for a good faith settlement determination must be brought in state court before Judge Styn, who is currently presiding over the claims being settled. Cal. Civ. Code § 887.6(a) ("Any party ***to an action in which it is alleged*** that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to a hearing on

the issue of the good faith of a settlement . . . .) (emphasis added); *Nutrition Now, Inc. v. Superior Court*, 105 Cal. App. 4th 209, 212-213 (2003) ("A good faith determination may be made in the tort action in which the settlement is reached (§ 877.6, subd. (a)) or in a subsequently filed indemnity action."); *Bob Parrett Construction, Inc. v. Superior Court*, 140 Cal. App. 4th 1180, 1187 (2006). Obviously, none of the lawsuits that is the subject of CTC's Motion is before this Court. In fact, CTC has no standing to file its Motion as it is not a party to this action.

Because the settling investors have filed cases against CTC in San Diego Superior Court, any determination regarding the good faith of a settlement of those cases must be made by Judge Styn (or also could be made in a subsequent indemnity action if one were later filed against CTC). There is no legal basis and it would make no sense for this Court to usurp the state court's authority over settlements of actions pending before it. The fact that this Court previously approved an unopposed good faith settlement motion involving the SIP Investors (represented by attorney William Caldarelli) does not change this Motion which concerns three pending state court lawsuits. The SIP Investors never filed an action against CTC.

CTC argues this Court might stay the investor cases being settled, and therefore Judge Styn would not be able to rule on a good faith settlement motion. This is simply more nonsense and game-playing by CTC. First, on February 24, 2021, CTC obtained a hearing date of April 2, 2021 for its demurrers in the investor actions before Judge Styn. Yet, CTC's good faith settlement motion was not filed in this Court until March 4, 2021, and the issue regarding a potential stay of investor cases is not set to be heard in this action until April 12, 2021 (the continued hearing date for the Receiver's motion for authority to sue CTC). Therefore, CTC could have filed its good faith settlement motion with Judge Styn for the hearing date that had already been scheduled – April 2, 2021 – and the motion would have been heard well before this Court considers CTC's request to stay the investor cases. Instead,

CTC is simply forum shopping and asking this Court to usurp the state court's authority over cases pending before it.

Second, even if a stay of investor cases were to be issued by this Court after the hearing on April 12, 2021, which there would be no legal basis for, and Judge Styn had not yet ruled on a good faith settlement motion for cases pending before him, the stay order could easily be fashioned to allow Judge Styn to decide those motions.

B. There is No Basis for CTC's Requested Injunction

CTC seeks to impose an injunction barring certain claims of the Receiver against CTC. CTC does not even attempt to support its request for an injunction with any legal analysis or discussion of the appropriate injunction factors. Instead, CTC declares that it is "entitled to an order that any claims brought by the Receiver against CTC or CTIC shall exclude damages arising from these plaintiffs' losses." Motion, p. 2. For this reason alone, the Motion must be denied. There is simply no basis to enjoin or bar any claims of the receivership estate against CTC over the Receiver's objection. As repeatedly stated in filings with the Court, the receivership estate has claims against CTC which are independent of those filed by investors. The settling investors have reached a settlement with CTC on their own accord and without consulting the Receiver (as they have the right to do), but CTC, which is not a party to this case, has no right to dictate the terms of the receivership claims and distribution process or unilaterally impose terms that are detrimental to the receivership estate and the non-settling investors.

C. There is No Legal Basis for An Order Allowing the Settling Investors' Claims Against the Receivership Estate

Chicago Title has mislead the Court with regard to the terms of the subject settlements and the Receiver's objections to the terms of CTC seeks to impose on the receivership estate. The proposed settlements provide that the settling investors retain an estimated $16 million or more in claims against the receivership estate. Of

course, in order for an investor to have a valid claim against the receivership estate, the investor must have an uncompensated loss from the Ponzi scheme – that uncompensated loss is the basis for their claim.[3]

At the same time, the settling investors, "voluntarily assign to CTC in writing any and all claims, known or unknown, against any persons, natural or unnatural, that Plaintiff [the settling investor] could assert in connection with the Program [the Ponzi scheme] that is subject to the Receivership Action ("Assigned Claims")." Dkt. 607-3, Assignment Agreement, p. 17. The Assignment Agreement goes on to state: "Assignor hereby assigns, transfers, and conveys all right, title and interest to Assignee [CTC] in any Assigned Claims to Assignee…." And to make it perfectly clear as to absolute nature of the assignment, the Assignment Agreement provides that: "Assignee ***shall be the owner*** of such Assigned Claims for all purposes…." *Id.* at p. 18 (emphasis added).[4]

The case law and common sense provide some obvious guidance as to the impact of such a full, unqualified assignment of claims. It is clear that "an assignee stands in the assignor's shoes. Once a claim has been assigned, the assignee is the owner and has the right to sue on it….In fact, once the transfer has been made, the

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[3] CTC falsely states the Receiver required investors to release their claims against Gina Champion-Cain and ANI as part of the SIP Investor settlement with CTC in order to participate in the distribution of receivership assets. This makes no sense and is completely false. Indeed, each investor must have a valid claim against one or more of the entities in receivership (as determined through the receivership claims process) in order to share in distributions from the receivership estate. Investors who do not settle with CTC are not required to release their claims against ANI in order to share in receivership distributions, so there is no reason the Receiver would require investors who settle with CTC to do so. The comment the Receiver made with respect to the SIP Investor settlement with CTC was to include an acknowledgment that amounts investors received from CTC through settlements would count as prior recoveries for either a rising tide or pro rata distribution approach, depending on which is approved by the Court. Dkt. 357-3, p. 3 of 18.

[4] The Addendum to the Levin Settlement Agreement that CTC says is being signed does not change the settling investors' full and complete assignment of claims for their Ponzi scheme losses to CTC. In fact, it merely underscores the problem by expressly stating that the settling investors retain their claims for unpaid Ponzi scheme losses against the receivership estate, which are defined in the Addendum as their "Participation Claims." Dkt. 607-12.

assignor lacks standing to sue on the claim. [Citation]." *Searles Valley Minerals Operations Inc v. Ralph M. Parson Service Company*, 191 Cal.App.4th 1394, 1402 (2011); *California Bank and Trust v. Piedmont Operating Partnership*, 218 Cal.App.4th 1322, 1347-1348 (2013).

The Receiver has repeatedly explained to CTC and the settling investors that the Receiver does not object to the assignment, however, once the settling investors have divested themselves of their claims for losses by unequivocally assigning them to CTC, the settling investors have no right or standing to make a claim against the receivership estate. The language of the Assignment Agreement is clear, CTC is to be assigned all approximately $16 million worth of unpaid loss claims. Common sense and the case law confirm that the settling investors therefore have no right or standing to pursue the same $16 million in claims against the receivership estate.

CTC goes to great lengths to obfuscate the facts including proffering something it calls the "one satisfaction" rule. In doing so, CTC misstates the law and further bolsters the Receiver's arguments.

CTC misrepresents to the Court that the Receiver is relying upon something called the "one satisfaction" rule (a rule that Chicago Title has just made up). To support this claim, they primarily rely upon the case of *DKN Holdings LLC v. Faerber*, 61 Cal.4th 813 (2015). *DKN Holdings* has no bearing on the current facts and circumstances. That is, *DKN Holdings* arises out of a lease agreement between the lessor, DKN, and 3 individuals who agreed to be jointly and severally liable for all of the lease obligations. The lessees defaulted on the lease. For a variety of reasons, the lessor obtained a judgment against one of the 3 individuals and then separately sued another one of them. The Court in *DKN Holdings* simply found that the lessor, DKN, could make separate claims against each person (i.e., severally).

Chicago Title also fails to mention that DKN ***did not assign*** all of its rights to collect the contract damages under the lease to a third party and then seek to pursue those same claims itself. Perhaps because that would be absurd.

Chicago Title then cites a case focused upon issues of res judicata and estoppel to which perhaps suggest that it is not "claim splitting". *See Hatchitt v. United States*, 158 F.2d 754 (9th Cir. 1946). *Hatchitt* involved a plaintiff who pursued a lawsuit to judgement and then several years later brought another lawsuit seeking the same remedies on grounds not previously asserted in the original lawsuit. The Court ruled that the plaintiff could not bring a separate (second) lawsuit against the same party based upon new grounds that the plaintiff did not assert in its original lawsuit. *Id*. As such, the *Hatchitt* case concerns res judicata and estoppel. Chicago Title cites to a short phrase from a lengthy quote in the case to support its argument that Chicago Title can pursue Investor Claimants' claims against third parties (i.e. Kim Peterson), at the same time as the Investor Claimants pursue claims against the receivership. Of course, the case *Hatchitt* does not actually stand for that proposition.

In fact, *Hatchitt* supports the Receiver's argument that the settling investors have suffered a single loss amount, in this case, an estimated $16 million, which they can either assign in its entirety to CTC (and be left with no further interest in the claim) or keep and participate in the receivership claims process. They cannot have it both ways. As noted in *Hatchitt*, "'But the whole tendency of our decisions is to require a plaintiff to try his whole cause of action and his whole case at one time. He cannot even split up his claim (cases cited); and, a fortiori, he cannot divide the grounds of recovery.'" *Hatchitt*, 158 F.2d at 756.

This is all that the Receiver is saying to the settling parties; that they cannot seek to divide the settling investors' claims. Either the settling investors retain their claims or assign their claims. They cannot artificially divide their rights to recover by assigning loss claims to CTC while retaining claims for the same losses against the receivership estate.

D. The Rising Tide Does Not Mean the Settling Investors' Claims Against the Receivership Estate Are of No Consequence

CTC argues that because of the rising tide distribution method, the settling investors' claims against the receivership estate do not really matter, so the Court should just allow the assignments to CTC and allow the settling investors to retain their claims against the receivership estate. This is obviously not true. First, the settling investors would not be fighting to retain their claims for over $16 million against the receivership estate if they did not have value.

Second, while it is not possible to precisely predict how much money will ultimately be available to distribute from the receivership estate, as of December 31, 2020, the cash balance in the receivership estate was about $19.37 million. Dkt. 619. The receivership estate also has claims against CTC and other third parties, pending and prospective recoveries/settlements from/with third parties, clawback claims against profiting investors, aggregators, and other third parties, as well as real property and other assets that have not yet been sold. Through completion of these recoveries and/or prosecution of these lawsuits, the Receiver stands to recover millions of dollars more, which will be available for distribution.

While no one knows where all of the remaining settlements and/or litigation with CTC will leave the aggregate investor loss total or how much the receivership estate will be able to add the investors' recoveries, it is fair to say that investor claimants stand to recover significant sums. CTC's suggestion that the assignments are fiscally irrelevant is simply ludicrous. The settling investors' claims against the receivership estate are not "remote," the amount potentially available for distribution from the receivership estate is not immaterial, and it is factually inaccurate to state otherwise.

E. The Settling Investors' Assignment of Claims to CTC is Detrimental to the Receivership Estate

It is not just a matter of the assignments violating the law governing assignments – the assignments to CTC also have a negative effect on the receivership estate. Having the investors themselves pursue claims against third parties, including Kim Peterson, is very different from having investors assign those claims to CTC. First, the losing investors are not co-conspirators in the fraud like CTC, and therefore are not being sued by other investors, the receivership estate (assuming the Court grants the Receiver's motion for authority to sue CTC), and aggregators and feeder funds like Kim Peterson/Kim Funding/ABC Funding Strategies.

Second, if the Receiver reaches a settlement with Kim Peterson that maximizes the recovery available from Kim Peterson's assets, it would be reasonable for that settlement to include a bar of investor claims against Kim Peterson and for the Court to approve such a bar. This is because the losing investors with claims against Kim Peterson would benefit from the settlement through the distribution of funds recovered. CTC, as the assignee of guarantee claims obtained from investors, could very well try to interfere with such a settlement. CTC would obviously not get any monetary benefit from the Receiver's settlement with Kim Peterson (CTC clearly has no claim to share in distributions from the receivership estate). In this regard, CTC could and likely will try to use the Peterson Guarantee Claims acquired through investor settlements to interfere with a favorable settlement with Kim Peterson (which could otherwise provide a material recovery for the receivership estate) and as leverage against the receivership estate's claims against CTC.

Attorney William Adams ("Adams") is a clear example of how the receivership estate (and the non-settling investors) would be immediately harmed by the assignment of investor claims to CTC. The Receiver is in the process of

finalizing a settlement with Adams and his law firm. The settlement, once finalized, will require Court approval, as well as an order barring investor claims against Adams and his firm. Again, this is reasonable and supported by the law because the investors will recover from the Adams settlement through their claims in the receivership. If CTC obtains the investors' claims against Adams through an assignment, it could try to interfere with the settlement (burning up limited insurance coverage in the process) as leverage against the receivership estate (and the non-settling investors). This is because CTC has nothing to lose in doing so – unlike the investors, CTC will not recover anything from Adams' settlement with the receivership.

These potential outcomes are not remote hypotheticals. To the contrary, they are very likely to occur in the next few months. CTC will no doubt aggressively assert the Guarantee Claims against Kim Peterson in the pending state court litigation. The Receiver is already trying to resolve the receivership estate's claims against Adams and will very soon be trying to resolve the receivership estate's claims against Kim Peterson and his entities (and pursuing litigation against him if a settlement is not reached). Moreover, based on the Court's comments at the December 17, 2020 hearing, it is likely the Receiver will also soon be pursuing the receivership estate's claims against CTC. Therefore, the scenario in which CTC could and likely will try to use claims obtained from investors against the receivership estate (to the detriment of investors) is right around the corner. Accordingly, the settling investors' attempt to assign claims to CTC and simultaneously retain those same claims against the receivership estate not only violates the law on assignments, but also runs contrary to the fundamental objective of this receivership – to provide for a fair and equitable distribution of receivership estate assets to victims of the Ponzi scheme.

F. The Settling Investors Could Simply Release Their Claims Against Third Parties, Including Kim Peterson

CTC argues that the only way for it to obtain "global peace" is to take an assignment of the settling investors' claims against third parties, including Kim Peterson. This is obviously not true. As the Receiver has proposed, the settling investors could simply release their claims against third parties. CTC would then not have any risk of the settling investors suing third parties and having those third parties file cross-complaints against CTC.

Moreover, it is clear the Peterson Guarantee Claims are the investor claims CTC really wants and values. The settling investors in Levin who are assigning Peterson Guarantee Claims to CTC will receive 80% of their losses, while the settling investors who do not have Peterson Guarantee Claims will receive only 67% of their losses.[5] CTC intends to assert the Peterson Guarantee Claims against Kim Peterson in the pending state court action (*Kim Funding, LLC et al. v. Chicago Title*). Yet, CTC has made no effort to engage Kim Peterson as part of these mediations or settlements.

Kim Peterson benefits greatly from settlements between CTC and investors holding Peterson Guarantee Claims because his liability on the guarantees is greatly reduced. If, as part of the settlements, the settling investors released their claims against third parties, including Kim Peterson (instead of assigning them to CTC), and Kim Peterson released his corresponding damage claims against CTC, then CTC would get the global peace it wants and the settlement would not unfairly benefit the settling investors at the expense of non-settling investors. In fact, rather than just getting a claim to use against Kim Peterson, CTC would instead be getting a release from him. In that case, no assignment would be necessary and the

[5] CTC fails to disclose that the DH Claims settlement only provides a 60% recovery, but instead simply says in a footnote that the DH Claims settlement *does not require a good faith settlement determination*. Dkt. 607-1, fn. 2.

Receiver would consent to a joint motion relating to the settlements. The Receiver and Kim Peterson, through their respective counsel, have discussed this alternative structure in concept and the Receiver believes there is a reasonable chance Kim Peterson would agree to it.

G. The Receiver Has Not Changed her Position Regarding Investor Claim Assignments

CTC falsely claims the Receiver has changed her position regarding investor assignments of claims. The first settlement CTC reached with investors (the SIP Investors) did not include an assignment of any investor claims. Dkt. 357-3. CTC later reached five relatively small settlements with investors, which also did not include assignments of any investor claims. Dkt. 512-2 through 512-6. CTC then reached two very small settlements with investors (totaling only $96,600), which its counsel told the Receiver's counsel were on the same terms as prior investor settlements. In fact, CTC had added an assignment provision without disclosing it. Dkt. 558-2 and 558-3. The Receiver and her counsel did not catch the short assignment paragraph CTC had added to these two small settlements.

Later, when discussing the assignment provision in the Levin settlement agreement, which the Receiver's counsel clearly explained was unacceptable, CTC's counsel never mentioned the short assignment paragraph in the two prior settlements. This is telling considering that CTC spends a considerable portion of its Motion trying to criticize the Receiver for changing her position. In fact, it was not until CTC filed the Motion that the Receiver and her counsel became aware of the assignment language CTC had silently added to the two small settlement agreements. The Receiver would not have agreed then (as she does not agree now) that settling investors can assign loss claims to CTC and retain claims for the same losses against the receivership estate. Accordingly, for the same reasons discussed herein, the Receiver intends to ask the Court to vacate the order on the joint motion related to the two prior settlements. Dkt. 566.

H. The Defective Assignments Cannot Be Cured By Later Adjusting Investor Claims in the Receivership

The fundamental defects with the assignment of investor loss claims to CTC cannot be cured by simply saying that settling investors' claims against the receivership estate will be reduced or adjusted at a later date if and when CTC has a monetary recovery on the assigned claims. As discussed above, the law does not allow for the assignments. Moreover, there are numerous ways in which the assigned claims, including the Peterson Guarantee Claims, could be resolved that do not necessarily involve a monetary recovery by CTC, including a settlement, offset/reduction in damages, or further assignment of claims. Any one of these outcomes will likely adversely impact the receivership estate by giving rise to additional claims against the receivership estate and potentially reducing or wiping out the receivership estate's prospective recovery from Kim Peterson and his entities.

The only appropriate way for the Receiver to protect the receivership estate is to reserve all of the Receiver's and the receivership estate's rights to pursue all of the claims against CTC. It would be wholly inequitable to simply say the settling investors might be determined to have claims against the receivership estate at a future date while simultaneously enjoining the receivership estate from ever pursuing valuable claims against CTC. At the very least, before doing so, the Court would need to require CTC to post a bond to protect the receivership estate from financial harm and determine the appropriate amount of the bond. Fed. R. Civ. Proc. 65(c).

I. Alternative Settlement Terms Should Be Pursued

Although CTC has settled with numerous investors without requiring an assignment of claims, CTC now claims the Receiver's objection to the settling investors' assignment and retention of the same loss claims means no investor settlements can ever happen. This is obviously absurd. As discussed above, there

are various ways a settlement can be reached that provide "global peace" to CTC without imposing adverse terms on the Receiver, receivership estate and non-settling investors. Again, the settling investors could release their claims against third parties. These alternative terms will make these settlements fair and equitable to all investors and the receivership estate as a whole. As noted above, the Receiver does not object to the settling investors efforts to recover as much of their losses as they can from CTC, provided the settlements do not unfairly prejudice the receivership estate and the non-settling investors.

J. The Atherton Settlement is Not Signed

The settlement document relating to the Atherton investor group that is attached to the Declaration of Megan Donahue in Support of the Motion is a term sheet signed only by counsel for CTC and counsel for the Atherton investors. Dkt. 607-4. There is no final settlement agreement signed by the parties, signed assignment agreements showing which claims are being assigned to CTC, or any other signed documents. The term sheet itself states in Footnote 1 that is it not a final settlement agreement. *Id.* Moreover, neither the Atherton settlement term sheet nor the proposed DH Claims settlement agreement were even shown to the Receiver or her counsel before the Motion was filed. For that reason alone, the Court should deny the Motion and allow the Receiver sufficient time to analyze and consider the final signed Atherton settlement agreement (once it is provided), the terms pertaining to the receivership estate, and whether such terms are fair and equitable to the receivership estate and the non-settling investors.

K. Any Time Limit on Settlements Based on CTC's Threat of a Stay of Investor Actions is Entirely Artificial

CTC has argued that investors have a limited time to settle their claims and tried to strong-arm investors by threatening them with a stay. If CTC was acting in good faith to settle with investors, as it claims to be, it would not be threatening investors with a stay. Obviously CTC could withdraw its request for a stay and

simply address the claims against it, which the Receiver and the investors have proposed all be coordinated before the San Diego Superior Court and Judge Styn. Once the Receiver's complaint against CTC is on file, she intends to engage with CTC and the investor groups that have not settled their claims. The Receiver is hopeful the investor groups, the Receiver and CTC can agree on terms of a global mediation. Regardless, any time limits CTC tries to put on settlements based on its threat of a stay are self-created, artificial, and a further indication it is not acting in good faith.

L. Chicago Title Continues to Lie and Make False Accusations Directed at the Receiver

CTC now has an extensive track record of misrepresentations to the Court as part of its concerted and desperate attempts to attack the Receiver. A few recent examples include:

- At Page 18 of the Motion, CTC asserts that "every penny" of what has been recovered from sales of receivership assets "will go to pay the Receiver and her counsel's fees." This is completely false. The interim report CTC cites in fact states the exact opposite. They knowingly lie to the Court by saying only $900,000 would be recovered from receivership sales in the 4th quarter of 2020. The report actually says ***another $5.1 million had already been recovered*** as of when the report was filed on December 23, 2020, and another $900,000 was expected to be recovered before the end of the quarter (*i.e.* in the last 8 days of December). In fact, the net proceeds from sales or recovery of receivership assets in the 4th quarter and the first half of the first quarter of 2021 was ***approximately $6.2 million***. To date, the Receiver has closed on the sale of real property and leasehold interest assets exceeding an aggregate gross sale price of over $35 million. In connection with the Court-approved sale closings, the Receiver has

paid off a total of more than $22 million in secured debt through escrow, thereby eliminating those secured claims against the receivership estate and realizing net proceeds from sales of real property, leasehold interest and other miscellaneous receivership assets of ***nearly $13.5 million.***

- In its recent Reply Brief (Dkt. 606), at Page 3 – CTC says smaller investors "have been left out in the cold while banks and hedge funds throw their weight around in state court, forcing CTC to spend money that would be better put toward investor recovery." The hypocrisy of this statement is astonishing. The reason the interests of smaller investors have not been represented in the existing cases against CTC is because the Receiver's case against CTC has been delayed for over eight months at CTC's insistence.[6] CTC has done everything in its power, including making repeated misrepresentations to the Court, in order to defeat the interests of smaller investors and delay the filing of the Receiver's action. Indeed, in the same brief that it claims to be looking out for smaller investors, CTC continue to argue the interests of smaller investors should be further deferred if CTC is not granted an unprecedented stay of non-party investor litigation in state court. For CTC to suggest it is looking out for the interests of smaller investors is absurd. To be clear – CTC is a business that cares about one thing and one thing only: getting out from under its own fraud for as little money as possible.

[6] Again, just for clarification, the Receiver is not asserting claims belonging to any investors, but instead, through her action against CTC, is seeking to recover from CTC amounts the receivership estate is liable to investors for, as well as other damages suffered by the estate as a result of CTC's fraudulent conspiracy with Gina Champion-Cain.

- In the same brief (Dkt. 606), at Page 7-8, CTC says the investors' various state court lawsuits threaten the receivership estate because the investors are competing with the Receiver for dollars in CTC's pockets. First, no one believes CTC (which is part of the multi-billion dollar Fidelity National Title umbrella of companies and brands) does not have the resources to pay 100% of the damage claims against it, including punitive damage claims and treble damage claims. Second, if the investor actions really threatened the receivership estate or the Receiver's ability to provide for an equitable distribution, the Receiver would be requesting a stay of investor actions. She is not, and nor is anyone else except CTC.
- At the hearing on December 17, 2020, CTC's counsel, Steven Strauss, stated unequivocally "Clear Ninth Circuit authority, *SEC v. Wencke*, allows the Court to stay state court actions. And there's authority from other circuits as well, but you've got Ninth Circuit authority; Fifth Circuit *Isaiah*." However, the "clear Ninth Circuit authority" Mr. Strauss declared supports a stay – the *SEC v. Wencke* case – is barely mentioned (only once and in passing) in CTC's brief, which is its only pleading relating to the stay issue – no motion for stay having ever been filed by CTC or anyone else. Dkt. 606. No case called *Isaiah* is cited anywhere in CTC's brief.
- The evening before the hearing on December 17, 2020, CTC filed a "Supplemental Status Report" in violation of the Court's instruction that status reports were to be filed no later than December 1, 2020. Dkt. 544. In the Supplemental Status Report, CTC represented to the Court that its own "analysis reflects that there are in fact **only 35 remaining investors** who are unrepresented of out of the 349 unique identified by the Receiver." *Id.* at p. 3. This proved to be another

complete lie. After the hearing (in which CTC again misrepresented the number of unrepresented investors), CTC produced an accounting to the Receiver pursuant to an order issued by Judge Goddard. In the accounting, CTC admitted that, according to its own records, there were ***117 investors*** not currently involved in litigation or settlement discussions with CTC. CTC recently continued its lies about the number of losing investors not currently involved in litigation with CTC (excluding the *Allred* putative class), claiming the numbers are 41 investors with losses totaling $3.9 million. Dkt. 606, p. 4. In fact, the actual numbers (which the Receiver shared with CTC back in January 2021 pursuant to Judge Goddard's order) reflected 96 investors with losses totaling about $16 million. This time, CTC misrepresents the numbers primarily by falsely claiming investors whose money came into the Ponzi scheme via ABC Funding Strategies (a feeder fund represented by the same counsel as Kim Peterson) are represented by ABC Funding Strategies' counsel. This is like saying the investors who invested through Kim Funding are represented by Kim Peterson's counsel. Obviously that is absurd and CTC knows it.

III. CONCLUSION

For the reasons discussed above, the Motion, which seeks to impose an injunction barring claims of the receivership estate and other terms detrimental to the receivership estate and the non-settling investors, should be denied.

Dated: March 22, 2021

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