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12 KRISTA FREITAG

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15
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
Ctm: 14A
Judge Hon. Larry Alan Burns

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
RECEIVER'S MOTION FOR
APPROVAL OF SETTLEMENT
WITH CON & COOP BEACH
RENTALS, LLC**

Date: August 9, 2021
Time: 11:30 a.m.
Courtroom: 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 ("Receivership Entities"),
4 submits this Memorandum of Points and Authorities in Support of her concurrently-
5 filed Motion for Approval of Settlement Agreement with Con & Coop Beach
6 Rentals, LLC ("Motion").

7 **I. BACKGROUND FACTS**

8 On August 28, 2019, the Securities and Exchange Commission ("SEC") filed
9 this action against Defendants Gina Champion-Cain and ANI Development, LLC,
10 and Relief Defendant American National Investments, Inc. The SEC and Champion-
11 Cain simultaneously stipulated to the entry of preliminary injunction and the
12 appointment of Krista L. Freitag as receiver for ANI Development, LLC, American
13 National Investments, Inc., and their subsidiaries and affiliates ("Receivership
14 Entities"). The preliminary injunction and receivership order was entered on
15 September 3, 2019 ("Receivership Order"). Declaration of Krista Freitag filed
16 concurrently herewith ("Freitag Decl."), ¶ 2.

17 Prior to entry of the Receivership Order, James and Suzanne Lance made
18 certain real estate investments with and loans to certain Receivership Entities. In
19 total, the Lances transferred \$437,000, some of which went to escrow for the
20 purchase of real property and some of which went to the Receivership Entities.
21 Specifically, \$200,000 of the Lances' funds was allocated to the purchase of the
22 property located at 809 San Rafael Place, San Diego, California, which is a vacation
23 rental property. In exchange, the Lances obtained a 50% tenant-in-common
24 ownership interest in the property, which they initially took as husband and wife, and
25 then transferred by Quitclaim Deed to an entity they owned, Con & Coop Beach
26 Rentals, LLC ("CCBR"). Freitag Decl. ¶ 3.

27 The other \$237,000 transferred by the Lances was allocated to a promissory
28 note in favor of CCBR and an option for CCBR to acquire a 50% ownership interest

1 in the property located at 812 San Rafael Place, San Diego, California. CCBR had
2 not exercised the option as of the date the Receivership Order was entered. CCBR
3 then exercised the option after entry of the Receivership Order, but it is disputed
4 whether such exercise was proper or had any effect due to the freeze on title to all
5 receivership real properties contained in the Receivership Order. Freitag Decl. ¶ 4.

6 CCBR, by and through James Lance, has asserted claims against the
7 receivership estate relating to its interest in the 809 San Rafael Place property, as
8 well as the promissory note/option regarding the 812 San Rafael Place property (the
9 "CCBR Claims"). The Receiver has disputed the CCBR Claims. In the meantime,
10 the Parties agreed that 809 San Rafael Place and 812 San Rafael Place would be sold
11 by the Receiver, with approval from the Court, and that \$635,000 in net sale
12 proceeds ("Net Sale Proceeds Reserve") would be set aside by the Receiver and not
13 distributed or otherwise used until such time as the CCBR Claims have been
14 resolved, either by settlement or Court order. The properties were then sold by the
15 Receiver with Court approval. Freitag Decl. ¶ 5.

16 **A. The Settlement Terms**

17 The Receiver and CCBR have negotiated and now desire to resolve all
18 disputes and disagreements between them relating to the CCBR Claims. The key
19 terms are as follows:¹

20 Under the proposed Settlement Agreement and Mutual Release, ("Settlement
21 Agreement"), a copy of which is attached to the Freitag Decl. as Exhibit A, the
22 Receiver shall pay from the receivership estate the sum of \$150,000 to CCBR in full
23 satisfaction of all claims, interests, and rights regarding the property located at 809
24 San Rafael Place. Payment to CCBR will be made within seven (7) business days of
25 entry of the order approving this Motion. CCBR shall also have an allowed
26

27 ¹ The terms of the Settlement Agreement are summarized herein for ease of
28 reference only. In the event of a conflict between the summary provided herein
and the terms of the Settlement Agreement, the Settlement Agreement controls
and governs. Freitag Decl., Exs. A and B.

1 unsecured creditor claim against the receivership estate in the amount of \$237,000
 2 ("CCBR Allowed Claim"). The CCBR Allowed Claim shall be subject to whatever
 3 orders regarding priority, treatment, and/or distribution rights are entered by the
 4 Court regarding unsecured creditor claims. CCBR reserves the right to dispute the
 5 priority, treatment and/or rights to distributions from the receivership estate that may
 6 be proposed by the Receiver or other interested parties, but forever waives and
 7 releases any and all rights to dispute the amount of the CCBR Allowed Claim or its
 8 status as an unsecured creditor claim. Freitag Decl. ¶ 6.

9 Subsequent to the approval and payment to CCBR, the Net Sale Proceeds
 10 Reserve shall be released and there shall no longer be any restriction on the use or
 11 distribution of such funds, other than as provided in the Receivership Order and
 12 subsequent orders of the Court applicable to the use and/or distribution of
 13 receivership estate funds generally. Freitag Decl. ¶ 7.

14 The Receiver believes the Settlement Agreement, which is the product of
 15 extensive analysis and negotiations between the Receiver and CCBR, with assistance
 16 from their respective counsel, is a reasonable and fair compromise of the CCBR
 17 Claims and is in the best interests of the receivership estate and all claimants. The
 18 Receiver therefore requests that it be approved. Freitag Decl. ¶ 8.

19 **II. DISCUSSION**

20 **A. Settlement Approval**

21 A federal equity receiver's power to compromise claims is subject to court
 22 approval. As noted by the Ninth Circuit Court of Appeals in *SEC v. Hardy*, 803 F.2d
 23 1034, 1037 (9th Cir. 1986), "[a] district court's power to supervise an equity
 24 receivership and to determine the appropriate action to be taken in the administration
 25 of the receivership is extremely broad." With regard to settlements entered into by a
 26 federal equity receiver, the Court's supervisory role includes reviewing and
 27 approving those settlements in light of federal court policy to promote settlements
 28 before trial. *See* Fed. R. Civ. P. 16(c), Advisory Committee Notes.

1 Federal courts of equity may look to bankruptcy law for guidance in the
2 administration of receivership estates. *See SEC v. Capital Consultants, LLC*,
3 397 F.3d 733, 745 (9th Cir. 2005); *SEC v. Am. Capital Invs., Inc.*, 98 F.3d 1133,
4 1140 (9th Cir. 1996); *SEC v. Basic Energy & Affiliated Res.*, 273 F.3d 657, 665
5 (6th Cir. 2001). A bankruptcy court may approve a compromise of claims asserted
6 by or against the estate if the compromise is "fair and equitable." *Woodson v.*
7 *Fireman's Fund Ins. Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir. 1988). The
8 approval of a proposed compromise negotiated by a court appointed fiduciary "is an
9 exercise of discretion that should not be overturned except in cases of abuse leading
10 to a result that is neither in the best interest of the estate nor fair and equitable for the
11 creditors." *In re MGS Mktg.*, 111 B.R. 264, 266-67 (B.A.P. 9th Cir. 1990).

12 The Court has great latitude in approving compromises. In passing on the
13 proposed compromise, the Court should consider the following:

- 14 a. The probability of success in litigation;
- 15 b. The difficulties, if any, to be encountered in the matter of collection;
- 16 c. The complexity of the litigation involved and the expense,
17 inconvenience, and delay necessarily attending; and
- 18 d. The paramount interest of the creditors and a proper deference to their
19 reasonable views in the premises.

20 *In re Woodson*, 839 F.2d at 620.

21 Here, the Receiver has considered the legal issues relating to the CCBR
22 Claims. Considering that CCBR funded a total of \$437,000, \$200,000 of which was
23 allocated toward the purchase of 809 San Rafael Place and was a 50% owner on title
24 to the 809 San Rafael Place property, the Receiver believes CCBR would likely be
25 able to establish a 50% tenant-in-common ownership interest in the property. The
26 Receiver has done a preliminary analysis of the overall economic effect of the 809
27 San Rafael Place property on the Receivership Entities, including the purchase
28 price/down payment, rental revenue, mortgage expenses, operating expenses, tax

1 expenses, insurance expenses, etc., as well as the net proceeds from the sale of the
2 property in relation to the portfolio loan release prices assigned each asset originally
3 encumbered by the portfolio loan. Based on that analysis, the Receiver believes
4 \$150,000 is a reasonable and fair estimate of what CCBR would be entitled to as a
5 50% tenant-in-common owner, *i.e.* 50% of a modified net sale proceed calculation
6 after the Receivership Entities are credited for the net operating loss incurred in
7 connection with the property. Freitag Decl., ¶ 9.

8 Once the CCBR Claim as to 809 San Rafael Place is resolved, what remains is
9 the \$237,000 transferred to the Receivership Entities by the Lances and the
10 promissory note and option agreement issued in favor of CCBR relating to 812 San
11 Rafael Place. The Receiver has confirmed that the full \$237,000 was received
12 by/benefited the Receivership Entities, but, in light of the freeze on title provided in
13 the Receivership Order, does not believe CCBR would be able to establish a 50%
14 ownership interest in the 812 San Rafael Place property. Therefore, the Settlement
15 Agreement simply provides that CCBR will have an allowed general unsecured
16 creditor claim in the amount of \$237,000. Consistent with how the Receiver
17 proposes investor and other claims be calculated in the Receiver's pending motion for
18 approval of procedures for the administration of claims (Dkt. 681), no interest is
19 included in the proposed CCBR Allowed Claim. Accordingly, the Receiver not only
20 believes the Settlement Agreement is a reasonable and fair compromise of the CCBR
21 Claims and is in the best interests of the estate and all claimants, but it also frees up
22 \$485,000 of Receivership Estate funds (the balance of the Net Sale Proceeds Reserve
23 initially set aside for the resolution of this matter). Freitag Decl., ¶ 10.

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III. CONCLUSION

For the foregoing reasons, the Receiver requests entry of the proposed order approving the Motion and the Settlement Agreement.

Dated: June 17, 2021

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: s/Edward G. Fates

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