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20 Attorneys for Receiver
21 KRISTA FREITAG

22 UNITED STATES DISTRICT COURT
23 SOUTHERN DISTRICT OF CALIFORNIA

24 SECURITIES AND EXCHANGE
25 COMMISSION,

26 Plaintiff,

27 v.

28 GINA CHAMPION-CAIN and ANI
DEVELOPMENT, LLC,

Defendants,

AMERICAN NATIONAL
INVESTMENTS, INC.,

Relief Defendant.

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

**DECLARATION OF KRISTA L.
FREITAG IN SUPPORT OF
RECEIVER'S MOTION FOR
APPROVAL OF SETTLEMENT OF
PENDING LITIGATION IN
FLORIDA**

Date: January 18, 2022
Time: 11:30 a.m.
Courtroom: 14A
Judge: Hon. Larry Alan Burns

DECLARATION OF KRISTA L. FREITAG

I, Krista L. Freitag, declare:

1. I am the Court-appointed permanent receiver (the "Receiver") for Defendant ANI Development, LLC, Relief Defendant American National Investments, Inc., and their subsidiaries and affiliates ("Receivership Entities"). I make this declaration in support of the of my Motion for Approval of Settlement of Pending Litigation in Florida ("Motion"). I have personal knowledge of the facts stated herein, and if called upon to do so, I could and would personally and competently testify to them.

2. In 2013, one of the entities that is now in receivership, Westlink Development Company, LLC ("Westlink"), along with other co-plaintiffs, filed an action in Florida state court for Pinellas County against SunTrust Bank ("SunTrust Action"). The SunTrust Action arises from a multi-million dollar fraud orchestrated by John Condo (separate from the alleged Ponzi Scheme in this action).

3. Among others, the plaintiffs originally made the following primary allegations. Mr. Condo tricked developers who needed financing, including Westlink, into making \$300,000 "refundable deposits" to Mr. Condo's SunTrust accounts, held in the name of corporate entities. The deposit was supposed to give Westlink access to financing from Mr. Condo's investment group. Mr. Condo claimed that the deposit would be held to cover his expenses and would be refunded if the financing did not close through no fault of Westlink. In reality, Mr. Condo had no ability to provide the promised funding, and he stole the deposits.

4. Mr. Condo later was indicted by federal prosecutors for fraud and pled guilty. The claims in the SunTrust Action include that SunTrust aided and abetted Mr. Condo in perpetrating the scheme.

5. The plaintiffs originally engaged a Florida attorney, Jack Kiefner, to represent them. Westlink later engaged Noonan Lance Boyer & Banach LLP ("Noonan Lance") in San Diego to act as co-counsel to Mr. Kiefner for Westlink

1 only. The plaintiffs later changed counsel and hired the law firm of Genovese,
2 Joblove & Batista P.A. ("GJB") to represent them. Noonan Lance acted as co-
3 counsel for Westlink only.

4 6. Prior to the receivership, Westlink agreed with the other plaintiffs to
5 advance the legal fees and costs owed to Mr. Kiefner, and subsequently to GJB, such
6 that Westlink was paying all of legal fees and costs for counsel in Florida, as well as
7 the fees of Noonan Lance. Certain plaintiffs settled their claims and dropped out of
8 the SunTrust Action, leaving Westlink and two other plaintiffs, American Ethanol
9 California, Inc., ("American Ethanol") and Snowy Pine, LLC ("Snowy Pine").

10 7. Shortly after my appointment, I, through my counsel, contacted Noonan
11 Lance and GJB about the SunTrust Action. I also contacted American Ethanol and
12 Snowy Pine to discuss their intentions regarding the case and their ability to
13 contribute to the legal fees and costs. Both stated they do not have the financial
14 ability to contribute to the legal fees or costs.

15 8. I, through my counsel, then negotiated a proposed contingent fee
16 arrangement with GJB to handle the SunTrust Action moving forward. GJB agreed
17 to handle the case for a 33.3% contingent fee, provided that Westlink reimburses
18 GJB for all out-of-pocket litigation costs.

19 9. I then contacted American Ethanol and Snowy Pine to see if they would
20 agree that, (a) after payment of the proposed contingent fee, and (b) after
21 reimbursement to the receivership estate of all legal fees and costs previously paid to
22 Mr. Kiefner and GJB (including for the banking expert used) by Westlink
23 (\$570,374.73), plus all legal costs paid going forward, the remaining net recovery
24 from the SunTrust Action would be distributed to the three remaining plaintiffs
25 (Westlink, American Ethanol, and Snowy Pine). American Ethanol agreed to these
26 terms, but Snowy Pine would not. Accordingly, once the Court approved the
27 engagement, GJB withdrew from representing Snowy Pine.

28

1 10. In terms of the prospective recovery from the SunTrust Action,
2 Westlink and American Ethanol combined asserted direct damages of \$600,000 (the
3 combined amount they deposited with SunTrust that was then taken by Condo) and
4 approximately \$6.7 million in consequential damages and prejudgment interest. The
5 claim for direct damages (\$600,000), including prejudgment interest on that amount,
6 totals just over \$1 million.

7 11. On September 21, 2021, the Florida court referred the parties to non-
8 binding arbitration, which occurred on November 12, 2021. I am informed that the
9 arbitrator, using the incorrect legal standard (clear and convincing evidence instead
10 of preponderance of the evidence, as discussed below) ruled in favor of SunTrust and
11 awarded Westlink and American Ethanol no recovery. Pursuant to Florida Statute
12 44.103, Westlink and American Ethanol have twenty days from the entry of that
13 ruling to contest the arbitration award, or such an award becomes a final order
14 subject to entry by the Florida Circuit Court. I have also been informed that if
15 Westlink and American Ethanol were to object to the arbitration award, and not
16 prevail at trial, Westlink and American Ethanol would potentially be responsible for
17 an award of costs, including arbitration costs, court costs, reasonable attorney's fees,
18 and other reasonable costs such as investigation expenses and expenses for expert or
19 other testimony which were incurred after the arbitration hearing and continuing
20 through the trial, in favor of Suntrust.

21 12. The parties recently negotiated a settlement of the litigation, subject to
22 Court approval. Under the proposed settlement, SunTrust will pay \$100,000 to fully
23 settle the claims in the Florida litigation and the agreement includes broad mutual
24 releases of claims. A true and correct copy of the settlement agreement is attached
25 hereto as Exhibit A.

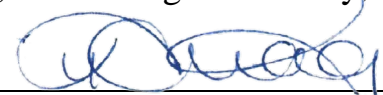
26 13. Counsel has advised that the primary challenge for Westlink in the
27 litigation has been establishing that SunTrust had the requisite actual knowledge of
28 Condo's wrongdoing to support the aiding and abetting causes of action. Although I

1 am informed that the arbitrator used the wrong standard of proof (clear and
2 convincing evidence instead of preponderance of the evidence) and that based on the
3 evidence, there is a reasonable chance a jury could find that SunTrust did have actual
4 knowledge, the direct damage amounts plus prejudgment interest is only about
5 \$1 million. I am advised that the likelihood of recovering the consequential damage
6 amounts is significantly lower than the direct damage amounts. Furthermore, the
7 adverse arbitration ruling also increases the risks of moving forward with the
8 litigation because, under the Florida fee shifting statute, Westlink could be ordered to
9 pay SunTrust's attorney fees for arbitration, pretrial and trial if a jury also delivers a
10 verdict in SunTrust's favor.

11 14. For these reasons, I believe the proposed settlement is in the best
12 interest of the estate. After the contingent fee is paid to GJB, the net settlement
13 proceeds will cover all post-receivership out-of-pocket costs of the litigation, and
14 result in a small additional net recovery for the receivership estate (approximately
15 \$10,000). The co-plaintiff in the case, American Ethanol, is also in support of the
16 settlement, although it will not recover anything under the settlement.

17 I declare under penalty of perjury under the laws of the United States of
18 America that the foregoing is true and correct.

19 Executed this 13th day of December 2021, at Los Angeles County, California.



KRISTA L. FREITAG

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EXHIBIT A

EXHIBIT A

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASES (the "Settlement Agreement") is made by and between American Ethanol California, Inc. ("American Ethanol") and Krista Freitag, solely in her capacity as the court-appointed Receiver for Westlink Development Company, LLC, ("Westlink") on the one hand and SunTrust Bank n/k/a Truist Bank ("SunTrust") on the other hand. Each of the foregoing may be hereinafter referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, disputes have arisen between the Parties, which disputes are the subject of a lawsuit pending before the Circuit Court of the Sixth Judicial Circuit in and for Pinellas County, Florida, styled *American Ethanol California, Inc., et al. v. SunTrust Bank*, Case No. 13-008139-CI, which was filed on or about August 21, 2013 (the "Lawsuit");

WHEREAS, American Ethanol and Westlink have asserted claims against SunTrust in the Lawsuit, and SunTrust has filed an answer and asserted defenses; and

WHEREAS, to avoid the further expenditure of time, effort and money, and without determining the validity or invalidity of the position of each of the Parties with respect to that dispute, each of the Parties desires fully and finally to compromise, settle, and resolve all claims and causes of action between them as set forth herein.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of these premises and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound hereby, covenant and agree as follows:

1. Required Approval.

In order for this Settlement Agreement to go into effect and be valid, the settlement must first be approved by the United States District Court for the Southern District of California, in the case styled *Securities and Exchange Commission v. Gina Champion-Cain, et al.*, bearing Case No. 3:19-cv-01628-H-BLM ("Receivership Court"). Westlink represents and warrants that it will promptly seek such approval of the Receivership Court. The date of the approval by the Receivership Court is the "Approval Date." Until such approval is obtained, the Parties will jointly seek to extend all dates and deadlines in the Lawsuit such that both Parties can, as much as possible, avoid further expenses associated with the Lawsuit pending approval of this Settlement Agreement by the Receivership Court. If the Settlement Agreement has not been approved by the Receivership Court twenty (20) days prior to the scheduled start of trial in the Lawsuit (as extended, if applicable), then the agreement will be void and of no effect, unless the Parties agree otherwise in writing.



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2. Settlement Payment.

The Parties agree to settle the Lawsuit and all other disputes between them that have arisen or may arise with respect to the Lawsuit for a payment by SunTrust to American Ethanol of Fifty Thousand Dollars (\$50,000.00) and a payment by SunTrust to Westlink of Fifty Thousand Dollars (\$50,000.00). Payment of both amounts shall be made within thirty (30) days of the Approval Date. Within fifteen (15) days of the execution of this Settlement Agreement, American Ethanol and Westlink agree to provide SunTrust with current form "wet signature" W-9s for American Ethanol, Westlink and their counsel as well as a Truist Direct Deposit Authorization Form. The Parties agree the settlement payments shall be made by ACH payment to the law firm of Genovese Joblove & Battista to the following account:

Bank Name: City National Bank of Florida
 Bank Address: 100 SE 2nd Street, Miami, FL 33131
 Bank Routing No. (ACH): 066004367
 Acct. Number: 30000330166
 Account Name: Genovese Joblove & Battista PA Trust Account
 Contact Name to Verify Account Information: Brooke Traina
 Contact Email to Verify Account Information: btraina@gjb.law
 Contact Phone Number to Verify Account Information: 813-439-3123

3. Releases.

3.1. In consideration of the agreement by SunTrust to make payment to them as outlined in paragraph 2 above and for other good and valid consideration, the receipt and sufficiency of which is hereby acknowledged, American Ethanol and Westlink, for themselves, their officers, managers, members, employees, attorneys, agents, owners, shareholders, representatives, successors, assigns and any other legal representatives, do hereby release, acquit and forever discharge SunTrust, and its current and former predecessors, successors, acquiring entities, acquired entities, assigns, parents, affiliates and subsidiaries and each of its current and former directors, officers, employees, attorneys, agents, and any other legal representatives, of and from any and all actions, causes of action, claims, rights, suits, proceedings, demands, relief, liabilities, controversies, damages, losses and expenses (including attorney's fees), whatsoever, in law or equity, which American Ethanol and Westlink either now have, had, or may hereafter claim to have against those persons or entities by reason of any matter, act, omission, cause or event that has occurred prior to the Approval Date and that relate to or arise out of the Lawsuit or related to any allegation alleged in any of the complaints filed in the Lawsuit. This release does not apply, however, to any claims that American Ethanol and Westlink may have under or arising out of this Settlement Agreement.

3.2. In consideration of the agreement by American Ethanol and Westlink to provide the release as outlined in paragraph 3.1 above and for other good and valid consideration, the receipt and sufficiency of which is hereby acknowledged, SunTrust, for itself, its officers, managers, members, employees, attorneys, agents, owners, shareholders, representatives, successors, assigns and any other legal representatives, does hereby release, acquit and forever discharge American Ethanol and Westlink, and their current and former predecessors,

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successors, acquiring entities, acquired entities, assigns, parents, affiliates and subsidiaries and each of their current and former directors, officers, employees, attorneys, agents, and any other legal representatives, of and from any and all actions, causes of action, claims, rights, suits, proceedings, demands, relief, liabilities, controversies, damages, losses and expenses (including attorney's fees), whatsoever, in law or equity, which SunTrust either now has, had, or may hereafter claim to have against those persons or entities by reason of any matter, act, omission, cause or event that has occurred prior to the Approval Date and that relate to or arise out of the Lawsuit or related to any defenses raised in any of the answers filed in the Lawsuit. This release does not apply, however, to any claims that SunTrust may have under or arising out of this Settlement Agreement.

4. Dismissal of Lawsuit.

Within ten (10) days of the Approval Date, American Ethanol and Westlink will file a Dismissal with Prejudice of the Lawsuit.

5. Authorship.

This Settlement Agreement was negotiated between the Parties at arm's length. Each Party had ample opportunity to consult with independent legal counsel. No Party will be entitled to have any language contained in this Settlement Agreement construed against any other Party based upon the identity of the drafter.

6. Compromise of Disputed Claim.

The Parties agree that this Settlement Agreement represents a compromise settlement of disputed claims and that nothing in this Settlement Agreement is intended to be, nor shall it be construed as, an admission of wrongdoing by any Party.

7. Authority to Enter into Agreement.

Each Party to this Agreement herein represents and warrants that: (a) the person executing this Agreement on its behalf is duly authorized to bind the Party purporting to be bound thereby; (b) all corporate or partnership formalities and approvals required to authorize the entry into and performance of this Agreement have been undertaken; and (c) the entry into and performance of this Agreement is not barred, prohibited or impaired by any law, rule, regulation, contract, judgment, order, or decree by which that Party is bound.

8. Governing Law.

This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Florida without giving effect to its conflict of laws rules.

American Ethanol-Settlement
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9. Entire Agreement.

This Settlement Agreement sets forth the entire agreement between the Parties regarding the subject matter hereof and supersedes any and all prior agreements, negotiations and understandings regarding such subject matter except as herein specifically set forth in this settlement. This Settlement Agreement shall not be altered or modified except by written consent of the Party or Parties against whom enforcement of the alteration or modification is sought.

10. Binding Effect.

This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors in interest, assigns, heirs, agents, attorneys, subsidiaries, parents, affiliates, acquiring entities, acquired entities and any other legal representatives.

11. Execution.

This Settlement Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this instrument to be executed on and as of the day and year written below.

AMERICAN ETHANOL CALIFORNIA, INC.

By: David B. Baskett

Print: David B. Baskett

Title: President

Date: 10 Dec 2021


**KRISTA FREITAG, SOLELY IN HER CAPACITY AS THE COURT-APPOINTED
RECEIVER FOR WESTLINK DEVELOPMENT COMPANY, LLC**

By: _____

Print: _____

Title: _____

Date: _____


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SUNTRUST BANK N/K/A TRUIST BANK

By: _____

Print: _____

Title: _____

Date: _____



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9. Entire Agreement.

This Settlement Agreement sets forth the entire agreement between the Parties regarding the subject matter hereof and supersedes any and all prior agreements, negotiations and understandings regarding such subject matter except as herein specifically set forth in this settlement. This Settlement Agreement shall not be altered or modified except by written consent of the Party or Parties against whom enforcement of the alteration or modification is sought.

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This Settlement Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this instrument to be executed on and as of the day and year written below.

AMERICAN ETHANOL CALIFORNIA, INC.

By: _____

Print: _____

Title: _____

Date: _____

**KRISTA FREITAG, SOLELY IN HER CAPACITY AS THE COURT-APPOINTED
RECEIVER FOR WESTLINK DEVELOPMENT COMPANY, LLC**

By:  _____

Print: Krista Freitag

Title: Court Appointed Receiver

Date: December 9, 2021

SUNTRUST BANK N/K/A TRUIST BANK

By: Joe P. Howle

Print: Joe P. Howle

Title: Senior Vice President

Date: 12/09/2021