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12 Attorneys for Plaintiff
13 KRISTA FREITAG, Receiver

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF SAN DIEGO

16
17 KRISTA FREITAG, Court-appointed
permanent receiver for ANI
18 Development, LLC, American National
Investments, Inc., and their subsidiaries
19 and affiliates,

20 Plaintiff,

21 vs.

22 CHICAGO TITLE COMPANY, a
California corporation; and CHICAGO
23 TITLE INSURANCE COMPANY, a
Florida corporation,

24 Defendants.
25

Case No. _____

COMPLAINT FOR

**(1) AIDING AND ABETTING
FRAUD,
(2) NEGLIGENCE,
(3) BREACH OF FIDUCIARY DUTY,
(4) AIDING AND ABETTING
BREACH OF FIDUCIARY DUTY,
(5) BREACH OF CONTRACT,
(6) FRAUDULENT TRANSFER;**

DEMAND FOR JURY TRIAL

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1 Plaintiff Krista Freitag (the “Receiver”), the Court-appointed permanent
2 receiver for ANI Development, LLC (“ANI Development”), American National
3 Investments, Inc. (“ANI”), and their subsidiaries and affiliates (collectively, with
4 ANI Development and ANI, the “Receivership Entities” or “Entities”), hereby
5 brings the following Complaint against the above-captioned defendants and, on
6 behalf of the Receivership Entities, alleges as follows:

7 **JURISDICTION AND VENUE**

8 1. Jurisdiction and venue are appropriate in this Court because the parties
9 to this action conduct business in the County of San Diego and the events that are
10 the subject of this complaint occurred in the County of San Diego.

11 **PARTIES**

12 2. Krista Freitag is the duly appointed permanent receiver for the
13 Receivership Entities, having been appointed pursuant to that order titled
14 *Preliminary Injunction Order and Order (1) Freezing Assets; (2) Requiring*
15 *Accountings; (3) Prohibiting the Destruction of Documents; and (4) Appointing a*
16 *Permanent Receiver* (the “Appointment Order”) entered by the United States
17 District Court for the Southern District of California (the “District Court”) on
18 September 3, 2019, in the action captioned as *SEC v. Champion-Cain, et al.* and
19 bearing Case No. 3:19-cv-01628-LAB-AHG (the “SEC Action”), which remains
20 pending in the District Court.

21 3. Among other things, the Appointment Order directs the Receiver to, for
22 the benefit of creditors of and investors in the Receivership Entities, recover and
23 marshal any and all assets owned, leased, occupied, or controlled by the
24 Receivership Entities or otherwise purchased with assets of the Entities
25 (collectively, the “Receivership Assets”), over which the Receiver enjoys exclusive
26 authority and control, and the Appointment Order further authorizes the Receiver to
27 pursue all claims and causes of action of the Receivership Entities against third
28 parties. The causes of action alleged in this action are Receivership Assets, are

1 brought on behalf of the Receivership Entities, and fall within those relevant
2 provisions of the Appointment Order. On December 13, 2021, in the SEC Action,
3 the District Court entered the order titled *Order Conditionally Granting Renewed*
4 *Motion for Authority to Pursue Claims Against Chicago Title [Dkt. 703]*,
5 specifically authorizing the Receiver to pursue the Receivership Entities' claims
6 against Chicago Title, including, without limitation, claims to recover consequential
7 and punitive damages.

8 4. Chicago Title Company (“CTC”) is a California corporation with its
9 principal place of business in Los Angeles, California.

10 5. Chicago Title Insurance Company (“CTIC”) is a Florida corporation
11 doing business in California, with its principal place of business in Jacksonville,
12 Florida.

13 6. CTC and CTIC are collectively referred to herein as “Chicago Title” or
14 “Defendants.” Chicago Title is one of the largest escrow firms in the country and is
15 a subsidiary of Fidelity National Financial, Inc., a publicly traded, Fortune 500
16 corporation. The acts and omissions of Chicago Title and its officers and employees
17 alleged herein occurred in the County of San Diego.

18 7. The Chicago Title officers and employees who participated in the
19 scheme described herein (including, without limitation: (a) escrow officer Della
20 DuCharme (“DuCharme”); (b) escrow officer Betty Elixman (“Elixman”);
21 (c) escrow officer Joanna Reynolds (“Reynolds”); and (d) vice president Thomas
22 Schwiebert (“Schwiebert”)) were the agents of both CTC and CTIC. Both CTC and
23 CTIC provided ostensible authority to these individuals to act on behalf of both
24 CTC and CTIC, and these individuals were regularly identified as being agents,
25 officers, or employees of both CTC and CTIC.

26 8. CTC and CTIC were and are the agents, servants, employees,
27 representatives, members, parent companies, subsidiaries, owners, instrumentalities,
28 or alter egos of each other and, in doing the acts and omissions alleged herein, were

1 and are acting within the scope of their respective authority as agents, servants,
2 employees, representatives, members, parent companies, subsidiaries, owners,
3 instrumentalities, or alter egos with each other's permission, consent, or ratification.
4 Any allegation referring to CTC or CTIC individually also refers to each of them,
5 jointly and severally.

6 9. CTC and CTIC operate as one combined indistinguishable entity. CTC
7 and CTIC share multiple officers and employees and are consistently held out to the
8 public as being simply "Chicago Title." CTC and CTIC are under common
9 ownership, use the same website on the internet (<https://www.ctic.com/>), and share
10 marketing materials that do not distinguish between the two entities. In connection
11 with the acts and omissions alleged herein, CTC and CTIC operated in a
12 consolidated manner whereby a member of the general public dealing with either
13 would be unable to ascertain which specific entity he, she, or it was doing business.
14 Recognizing the corporate separateness between CTC and CTIC would sanction
15 fraud and render injustice on the Receivership Entities.

16 **GENERAL ALLEGATIONS**

17 **I. Cain's Purported Loan Program.**

18 10. Throughout the pendency of the scheme described herein, Gina
19 Champion-Cain ("Cain") was the managing member of ANI Development, the chief
20 executive officer of ANI, and a manager or officer of each of the other Receivership
21 Entities. In those capacities, Cain exercised total control over the Receivership
22 Entities.

23 11. Beginning in or around 2011, Cain, with the full knowledge and
24 substantial assistance of Chicago Title (as more fully described herein), personally
25 or through the Receivership Entities, solicited and raised money from investors by
26 claiming to offer them an investment opportunity, whereby investors would
27 (a) provide funds to be used as loans to third parties, such as restaurant owners,
28

1 seeking to acquire California liquor licenses and (b) in exchange, receive a return on
2 and of those funds (the “Loan Program”).

3 12. Under California law, to acquire a liquor license, an applicant is
4 required to submit a liquor-license application to the California Department of
5 Alcoholic Beverage Control (the “ABC”) and also deposit consideration into an
6 escrow account in the amount of the liquor license’s purchase price, pending the
7 ABC’s review and approval of the application.

8 13. In soliciting investors for the Loan Program, Cain represented that
9 liquor licenses cost hundreds of thousands of dollars and the application process
10 lasted up to a year. She further represented that some applicants purportedly had
11 difficulty funding the required escrow, lacking the financial ability to set aside a
12 large sum of their cash in an escrow account for a lengthy period of time. Cain
13 presented this purported challenging scenario for liquor license applicants as an
14 investment opportunity, in which investors would fund, through ANI Development,
15 liquor license applicant escrows with short-term, high-interest loans. In reality, no
16 loans were made to any liquor-license applicants. Instead, after investors deposited
17 their money, the vast majority of which went directly into a Chicago Title account
18 controlled by Cain, that money was diverted, without investors’ knowledge or
19 authorization, for other purposes, including to fund Cain’s lavish lifestyle, support
20 her other business ventures, and pay earlier investors.

21 14. While the Loan Program evolved over time, Cain generally operated
22 the Loan Program as described in paragraphs 15 through 21 below.

23 15. Cain provided investors with lists of purported liquor-license applicants
24 seeking funding for their escrows, from which investors selected the liquor-license
25 applications that they wished to fund.

26 16. Cain represented to investors that for each liquor-license application
27 funded through the Loan Program, an investor’s money would be deposited into a
28 separate, individual escrow account tied to that specific liquor-license application

1 and could only be used to fund that application’s escrow. Cain further represented to
2 investors that these escrow accounts would be maintained by Chicago Title and that
3 Chicago Title was prohibited from disbursing the escrowed money to anyone other
4 than the applicable investor and from using the money for any other purpose.

5 17. In many cases, Cain caused ANI Development to enter into contracts
6 with the investors, such as promissory notes (the “Promissory Notes”), which
7 outlined how investors would be repaid on their investment. A typical Promissory
8 Note identified the applicable investor, referenced an escrow account at Chicago
9 Title, listed the liquor-license application being funded by the investor, and
10 specified the principal and interest to be paid to the investor, with interest to be paid
11 no later than 364 days from the receipt of the investor’s funds. Under the terms of a
12 Promissory Note, ANI Development and Cain personally guaranteed the repayment
13 of principal and interest due to the investor.

14 18. In those Promissory Notes between ANI Development and the
15 investors, Cain caused ANI Development to represent to investors that the lending
16 program money was “double escrowed” through an escrow account at Chicago
17 Title. In many instances, Cain provided wire instructions to investors directing
18 payments to an account titled “Chicago Title Company”.

19 19. Cain also provided investors with form escrow agreements between
20 ANI Development and Chicago Title (the “Form Escrows”), which were
21 purportedly executed by Cain, on behalf of ANI Development, and by an escrow
22 officer at Chicago Title. A Form Escrow provided that (a) an investor’s money
23 would be used to fund a specific liquor-license applicant’s underlying transfer (i.e.,
24 purchase) of a liquor license, (b) the investor’s money would be held in an escrow
25 account for this purpose at Chicago Title, (c) Chicago Title would submit to the
26 ABC the required Form 226 for the applicable liquor-license application, confirming
27 that Chicago Title was holding funds in escrow for the applicant, and (d) at the
28 conclusion of the liquor-license transfer to the applicant, Chicago Title would return

1 the investor’s money to the investor, along with the agreed-upon return (i.e.,
2 interest). Each Form Escrow provided to an investor identified the applicable liquor-
3 license applicant being funded by that investor, as well as the license number of the
4 license to be transferred to the applicant.

5 20. In addition, the Form Escrow stated that ANI Development and
6 Chicago Title “understand that this is a limited escrow only and is being opened for
7 the benefit of” a specified liquor-license applicant “who is applying for approval of
8 a transfer to Applicant of a license issued by the California Department of Alcoholic
9 Beverage Control.” The Form Escrow further stated that the escrowed funds would
10 be placed “into an interest-bearing account” and would only be released upon
11 written instructions by ANI Development, and in that event, could only be
12 transferred to an account maintained by the applicable investor.

13 21. Cain represented to investors that upon the ABC’s purported approval
14 of the liquor-license application, the applicant was obligated to wire funds equal to
15 the amount of the loan, plus the agreed-upon interest, to Chicago Title, and ANI
16 Development was then supposed to provide instructions to Chicago Title to release
17 back to the investor the full amount of the investor’s money, along with the amount
18 equal to the interest charged by the investor.

19 22. Based on the representations made by Cain and the reputation of
20 Chicago Title, investors reasonably believed the Loan Program was legitimate and
21 funded their investments accordingly.

22 23. Pursuant to the Appointment Order, the Receiver conducted a forensic
23 accounting of the sources and uses of funds for the Receivership Entities. Pursuant
24 to her forensic accounting, the Receiver believes that Cain raised, through the Loan
25 Program, approximately \$390 million from approximately 435 unique investors.¹

26

27

28 ¹ The total investor funds raised reflected herein and number of unique investors will differ from
the final amounts ultimately determined through the claims process.

1 **II. The Fraudulent Nature of the Loan Program.**

2 24. The Loan Program was a fraud. To perpetrate the fraud on investors,
3 Cain, with the assistance of Chicago Title, personally and through the Receivership
4 Entities, made several materially false and misleading statements to investors and
5 failed to disclose material information to them concerning the Loan Program.

6 25. Cain provided investors with lists of purported liquor-license applicants
7 seeking funding for their escrows. Those lists were fabricated, and the applicants
8 appearing on those lists had not sought or taken loans in connection with the Loan
9 Program.

10 26. Cain provided investors with Form Escrows that purportedly governed
11 how investors' escrowed money would be handled, disbursed, and used. A
12 substantial number of the Form Escrows provided to investors were forgeries, on
13 which Cain had forged the signature of the Chicago Title escrow officer, while other
14 Form Escrows were actually signed by Chicago Title escrow officers who knew that
15 Cain was perpetrating a fraud on investors. The Form Escrows were phony,
16 fraudulent agreements between ANI Development and Chicago Title that Cain
17 presented to investors.

18 27. The Form Escrows did not govern the investors' escrowed money.
19 Rather, the escrow money was governed by a different set of escrow agreements that
20 Cain had caused ANI Development to enter into with CTC (the "ANI Escrow
21 Agreements"). Cain never disclosed the existence of the ANI Escrow Agreements to
22 investors.

23 28. Cain, on behalf of ANI Development, and CTC entered into a new ANI
24 Escrow Agreement every year, and the terms of each ANI Escrow Agreement are
25 substantially identical. Under the ANI Escrow Agreements, (a) a single escrow
26 account (the "ANI Escrow Account") was established for an escrow governed by the
27 ANI Escrow Agreements, (b) ANI Development was identified as the principal
28 party to that escrow, who desired to deposit certain funds into that escrow, (c) CTC

1 was identified as the escrow holder, who agreed to hold funds deposited by
2 ANI Development in the ANI Escrow Account and disburse all or part of those
3 deposited funds in accordance with ANI Development’s instructions, and (d) CTC
4 would receive a base escrow fee when the funds were initially deposited in the ANI
5 Escrow Account and additional escrow fees whenever a disbursement was made out
6 of the ANI Escrow Account. The ANI Escrow Agreements gave Cain complete
7 discretion and control over the ANI Escrow Account, the funds deposited into that
8 account, and the use of those funds. Cain never disclosed anything about the ANI
9 Escrow Account to investors.

10 29. While Cain, personally and through documents such as the Promissory
11 Notes and Form Escrows, had represented to investors that their money would be
12 deposited into a separate escrow account tied to the liquor-license application that
13 the investor was funding, the reality was all investors’ money was deposited into a
14 single account—the ANI Escrow Account, which was governed by the ANI Escrow
15 Agreements. Chicago Title had knowledge of and was in possession of both escrow
16 forms as well as the ANI offering materials but did not disclose these facts to
17 investors.

18 30. Cain, personally and through documents such as the Promissory Notes
19 and Form Escrows, represented to investors that their escrowed funds would be used
20 exclusively to fund the escrows for liquor-license applications and could not be
21 disbursed to Cain or third parties or used for any other purpose. In reality, Cain, with
22 the direct assistance of CTC, had unfettered access to and control over the escrowed
23 funds, and used that access to, among other things, fund her lavish lifestyle, support
24 her unrelated business ventures, and pay back to earlier investors their principal and
25 interest. While investors had lost in excess of \$180 million at the time of the
26 Appointment Order, just \$11 million remained in the ANI Escrow Account
27 maintained by Chicago Title at the time the account was frozen.

28

1 31. In certain email communications with investors, Cain impersonated
2 DuCharme, Elixman, or Reynolds by sending emails from email addresses ending
3 with the domain name “@chicagotitleescrows.com” (e.g.,
4 betty.elixman@chicagotitleescrows.com), leading investors to believe that such
5 emails originated from a Chicago title employee. However, DuCharme’s,
6 Elixman’s, and Reynolds’s actual email addresses at Chicago Title ended with the
7 domain name “@ctt.com” (e.g., betty.elixman@ctt.com). Investors believed that
8 such emails originated from a Chicago Title employee.

9 32. On July 22, 2020, Cain pleaded guilty to committing three federal
10 crimes, including conspiracy to commit securities fraud. Her plea agreement
11 indicates that her “co-conspirators” included Chicago Title and its escrow officers.
12 The plea agreement states that an escrow officer “knowingly sign[ed] more than 20
13 Purported Escrow Agreements in order to convince investors that the escrow
14 accounts were governed by the Purported Escrow Agreements when, in fact, the
15 escrow accounts were administered pursuant to other agreements that did not
16 provide the same protections over investor funds.” The plea agreement also recites
17 that Cain requested that “others lie to auditors working on behalf of investors.
18 Among other things, these auditors were attempting to confirm the investors’”
19 escrow balances and activity.

20 **III. Chicago Title’s National Reputation Enabled the Fraudulent Scheme to**
21 **Operate.**

22 33. Through its website, Chicago Title has represented to the public that:
23 (a) it acts as the impartial “stakeholder” or depository, in a fiduciary capacity, for all
24 documents and monies required to complete a transaction per the written
25 instructions of the principals to the transaction; and (b) its more than 150 years of
26 experience coupled with the highest insurance reserves in the industry assure parties
27 of the greatest level of protection available.

28

1 34. As an escrow company, Chicago Title acts as a fiduciary with regard to
2 the parties to the escrow transaction, including, but not limited to, the principal
3 contracting parties (in this instance, ANI Development), as well as to those third
4 parties making deposits into a Chicago Title escrow account.

5 35. Based on Chicago Title’s reputation and its promised security of funds
6 held in escrow, ANI Development and the investors solicited by Cain relied on and
7 trusted Chicago Title to safeguard the funds deposited into the escrow account that it
8 managed.

9 36. Chicago Title’s participation legitimized the Loan Program in the eyes
10 of the investors. Cain’s fraudulent scheme would not have succeeded without
11 Chicago Title’s name and active involvement. Every solicitation to an investor to
12 invest in the Loan Program highlighted the fact that the investor’s money would be
13 secure in a Chicago Title escrow account and be releasable solely to the investor,
14 rendering the risk to the investor essentially nil. Investors relied on that
15 representation—and Chicago Title’s years-long track record of accepting and
16 disbursing monies related to the Loan Program—when deciding to invest or
17 continue investing in the Loan Program, believing that their money would be
18 deposited in safe, secure escrow accounts with a fiduciary that had an established
19 business reputation and a solid financial foundation.

20 **IV. Through Its Agents, Chicago Title Knew of and Participated in the**
21 **Fraudulent Scheme.**

22 37. Over the course of Cain’s fraudulent scheme, Chicago Title, through
23 certain of its officers and employees, knew of the fraudulent nature of the Loan
24 Program and participated in the scheme.

25 38. In announcing Cain’s guilty plea, the U.S. Department of Justice
26 announced that she had “conspired with employees of her own company and the
27 local branch of a national title company [i.e., Chicago Title] to both commit the
28 fraud and cover it up.”

1 39. At a minimum, the following Chicago Title officers and employees
2 were knowing and active participants in Cain’s fraudulent scheme: (a) escrow
3 officer Della DuCharme, (b) escrow officer Betty Elixman, (c) escrow officer
4 Joanna Reynolds, and (d) vice president Thomas Schwiebert. While acting in their
5 capacities as escrow agents or officers at Chicago Title, these individuals were
6 simultaneously working as part of Cain’s fraudulent scheme.

7 40. Chicago Title, through its officers and employees, knew that Cain was
8 representing to investors that their funds would be deposited into escrow accounts
9 managed by Chicago Title and governed by the Form Escrows, and it knew that
10 those representations were false. Chicago Title, through its officers and employees,
11 knew that, in fact, (a) Chicago Title was not opening or maintaining separate and
12 individual escrows that were each tied to a specific liquor-license application and
13 (b) investors’ money was instead being deposited into the ANI Escrow Account, an
14 account over which Chicago Title allowed Cain to have full discretionary control,
15 none of which was disclosed to investors. Cain and Chicago Title’s escrow officers
16 routinely referred to the ANI Escrow Account as “our little escrow holding
17 account.” For example,

18 a. On December 7, 2011, Cain emailed Reynolds, stating, “Can I
19 still use our little Escrow we had together for the Lamont St. Grill so I can
20 have investors wire me money in and you can then take your fees and wire me
21 the remaining balance?”

22 b. On February 13, 2012, Cain emailed Reynolds, stating “I do
23 have money being wired to our little ‘escrow’ acct this week can we just
24 keep it open and I can pay you to have funds wired in and out of it?” Making
25 clear that the account in question was not truly an escrow, Cain placed the
26 word “escrow” in quotation marks. Reynolds apparently saw no problem with
27 this, responding, “Sure we can keep the holding funds escrow open,” and to
28 which Cain replied, “YAY!! Thanks!!!”

1 c. On July 29, 2014, Cain emailed Reynolds, stating “Hey
2 woman ok, so I have a bunch of money coming in this week and next to
3 our little Escrow Holding account I need \$200,000 wired again today
4 please I may be wiring money into the account myself as well . . . up to
5 \$600,000 we are rocking and rolling and this fund control process has
6 been so effective for running our projects!!!! You guys ROCK!” Making clear
7 that the ANI Escrow Account had nothing to do with actual liquor-license
8 transactions, Cain added, “Oh, and I have exciting projects on the horizon that
9 I will be having you ladies do Title and Escrow on . . . real commercial
10 deals yay!”

11 d. On November 20, 2014, Cain emailed DuCharme, stating, “Hey
12 beautiful lady we have some change sitting in our little escrow holding
13 acct may we get a wire sent today if possible?!?”

14 e. On June 1, 2016, Cain emailed Elixman, stating “We have a
15 bunch of wires coming into our little escrow holding account this week and
16 early next week, just fyi.”

17 f. On August 16, 2016, Cain emailed Elixman and DuCharme,
18 stating, “[W]e will have a bunch of incoming wires to the little Escrow
19 Holding Acct . . . yay! One of which is \$100k from Fiona Williams. Then the
20 usual suspects: ABC Funding Strategies, Kim Funding, HAV Global Marco
21 all coming in too”

22 g. On February 9, 2017, Cain emailed DuCharme, referencing “our
23 little master escrow holding account.”

24 h. On April 29, 2017, Cain emailed DuCharme and Elixman,
25 stating, “Betty and Della . . . Chris [Torres] will be wiring you \$400,000 . . .
26 into our little escrow holding account on Monday morning.” She the
27 instructed the Chicago Title officers to “send that escrow receipt and the other
28

1 two receipts from Friday’s wires (Kim Funding and ABC Funding) on
2 Monday.”

3 i. On May 30, 2018, Cain emailed the “DuCharme Unit” at
4 Chicago Title, stating, “This week expect to arrive in our little escrow holding
5 account . . . Banc of Cal credit line wiring more in, ABC Funding Strategies
6 and Kim Funding.”

7 41. Chicago Title, through its officers and employees, also understood that
8 the “little escrow holding account” (i.e., the ANI Escrow Account) was being used
9 to funnel monies related to Cain’s fraudulent scheme. For example:

10 a. on February 13, 2014, Cain received an email from Kim Peterson
11 with the subject line “wire,” advising Cain to expect a \$100,000 wire to “hit
12 in the morning.” Cain forwarded the email to DuCharme and Reynolds with
13 the note “fyi” but changed the email’s subject line to “ABC,” so that the
14 Chicago Title escrow officers would understand the money was intended for
15 the Loan Program. The Chicago Title escrow officers knew that Cain was
16 engaged in a massive fraud and did not disclose any of this to investors.

17 b. On April 29, 2015, Reynolds emailed Cain, stating, “You are
18 going to be short approx. \$890,000.00 to pay [investors]. Please confirm I am
19 to transfer these funds from *our* funds escrow.” (Emphasis added.) On April
20 30, 2015, three transfers totaling \$890,000 were made directly from the ANI
21 Escrow Account to three other CTC escrows being used to facilitate the
22 refinance of three other real property assets held in the name of other
23 Receivership Entities.

24 42. Chicago Title, through its officers and employees, knew that Cain was
25 using fake Chicago Title email addresses with the domain name
26 “@chicagotitleescrows.com” to impersonate Chicago Title escrow officers in her
27 communications with investors. For example, in April 2015, Cain actually sent
28 Reynolds an email containing the fake “joanne.reynolds@chicagotitleescrows.com”

1 email address, but Reynold did not object to Cain’s impersonation of her, instead
2 replying “Thanks!”

3 43. Cain repeatedly told DuCharme and Elixman in writing that she was
4 using fake Chicago Title email addresses to impersonate them. For example,

5 a. In February 2017, Cain, in an email titled “for your eyes only,”
6 told DuCharme that Cain was impersonating Chicago Title using a fake
7 Chicago Title email address “so folks wouldn’t hound you ladies all the damn
8 time.”

9 b. In September 2017, Cain wrote to DuCharme and again
10 explained that “what I do is send documents from you and or the Boopsters
11 from a ‘fake’ email address (I just type it in) so these morons don’t pester or
12 bug you.”

13 44. Despite knowing that Cain was sending emails using fake email
14 addresses designed to look like they were being sent from legitimate Chicago Title
15 email accounts, neither DuCharme, Elixman, Reynolds, nor anyone else at Chicago
16 Title did anything to stop this deceitful conduct or to notify the innocent investors
17 who were the recipients of the false communications.

18 45. In early 2017, a potential bank lender for an investor was performing
19 due diligence for a loan and received from the investor 30 Form Escrows that he had
20 received from Cain. The bank representative noticed that the Form Escrows
21 identified a “Wendy Reynolds” as the Chicago Title escrow officer signing the
22 agreements. The reality was that the signature for “Wendy Reynolds” had been
23 forged by Cain and that there was no Wendy Reynolds at Chicago Title.

24 46. When the bank called Chicago Title requesting to verify Wendy
25 Reynolds’s signatures, the bank was told that nobody named Wendy Reynolds
26 worked at Chicago Title. Cain attempted to explain this discrepancy by claiming
27 that Wendy Reynolds was an outside independent contractor hired by DuCharme
28 and that, to aid things along, Cain could obtain substitute Form Escrows signed by a

1 current Chicago Title escrow officer. The bank considered proceeding with the loan
2 based on newly signed documentation, but it required that an officer of Chicago
3 Title sign an incumbency certificate certifying that the escrow officer had full
4 authority to sign the new Form Escrows on behalf of Chicago Title.

5 47. The bank's inquiry had set off a panic among Cain, DuCharme, and
6 Schwiebert, in which they concocted and executed a scheme to have DuCharme re-
7 sign the Form Escrows that had been purportedly signed by Wendy Reynolds and to
8 have Schwiebert, the Vice President of Commercial and Industrial Sales at Chicago
9 Title, sign off on the substitution pursuant to his role as vice president.

10 48. In a series of emails on February 9 and 10, 2017, titled "for your eyes
11 only," Cain detailed exactly what cover-up tasks DuCharme needed to perform for
12 Cain's benefit. Among other things, DuCharme was to sign 30 Form Escrows,
13 certify that she had signed these escrow agreements relating to separate liquor-
14 license applications, and have her signatures notarized. After explaining that the
15 bank's lawyer would need to confirm with DuCharme by phone, Cain instructed
16 DuCharme that "All you are going to answer is that yes, you signed these
17 documents . . . and then cut him off."

18 49. Champion-Cain attached to her "for your eyes only" email a draft
19 "Certification," listing 30 separate liquor-license numbers and including
20 DuCharme's confirmation that she personally signed escrow agreements dated
21 February 3, 2017. Champion-Cain also included a Form Escrow, which provided
22 that the money deposited at the Chicago Title escrow account belonged exclusively
23 to the investor, not ANI Development, and that the deposited money could only be
24 returned to the investor. Each of the escrow agreements (a) recited that Chicago
25 Title and ANI Development were entering into the escrow agreement, (b) identified
26 Chicago Title as the escrow holder, (c) recited that the source of funds for the
27 escrow was from a bank account in the name of the investor, (d) identified a
28 different purported liquor-license applicant by name, (e) identified a different

1 purported price for each liquor license, and (f) required Chicago Title to complete
2 and submit a Form 226 to the ABC for the liquor-license applicant.

3 50. Taking an active role in Cain’s fraudulent scheme, DuCharme
4 responded, “I think it will all be fine . . . but notarizing my signature as an officer of
5 the company is not a small deal.” And then on February 13, 2017, DuCharme
6 personally signed 30 fraudulent Form Escrows.

7 51. In addition to DuCharme’s execution of the 30 Form Escrows, the bank
8 also needed an incumbency certificate executed by someone with authority at
9 Chicago Title, which gave assurance that DuCharme was a qualified officer of
10 Chicago Title authorized to execute the Form Escrows and direct the transfers of
11 escrowed funds (the “Incumbency Certificate”). Taking an active role in Cain’s
12 fraudulent scheme, Schwiebert executed the Incumbency Certificate. The
13 Incumbency Certificate was signed by DuCharme and witnessed and signed by
14 Schwiebert.

15 52. The Incumbency Certificate certified that DuCharme was “authorized
16 to execute Escrow Agreements for the purpose of requesting draws from [the bank]
17 pursuant to” a credit agreement between the investor and the bank, and that
18 DuCharme was “duly elected, qualified, and acting as members, managers and(or)
19 [sic] officers, as indicated, of [Chicago Title] and hold on the date hereof the offices
20 or titles set forth opposite their respective names, and [that] the signatures set
21 opposite each of their respective names are their genuine signatures[.]” The credit
22 agreement referenced in the Incumbency Certificate set forth the purported nature of
23 the Loan Program.

24 53. The Incumbency Certificate that Schwiebert executed was false and
25 misleading because Schwiebert knew that Chicago Title had not been operating the
26 Loan Program with Cain in the manner set forth in the Incumbency Certificate,
27 Form Escrows, and referenced loan documentation.

28

1 54. Simultaneous with the execution of the Incumbency Certificate,
2 DuCharme signed 24 phony Form Escrows.

3 55. Although the bank ultimately declined to provide funding to the
4 investor, this event demonstrates that by at least February 2017, DuCharme and
5 Schwiebert knew that (a) Cain was using a fake Chicago Title email address,
6 (b) Cain created fraudulent escrow agreements that were purportedly in support of
7 the Loan Program, (c) Cain was circulating documents purporting to be from
8 Chicago Title, signed by a non-existence Chicago Title employee, (d) Cain was
9 telling investors that their money could only be disbursed from Chicago Title
10 escrow accounts back to the investors, and (e) Chicago Title, in fact, allowed Cain,
11 through ANI Development, to take investors' money for any reason. Despite
12 knowing all of this, Chicago Title went along with the fraud, going so far as to
13 execute, with management's blessing, fraudulent escrow agreements.

14 56. On several occasions, investors had direct contact with Chicago Title,
15 through DuCharme and Elixman. From these contacts, Chicago Title, through its
16 officers and employees, made materially false and misleading statements to
17 investors or otherwise failed to disclose material information to them concerning the
18 Loan Program.

19 57. For example, one investor, Ovation Finance Holdings 2 LLC, states
20 that it spoke with DuCharme prior to ever funding any loans, and DuCharme
21 confirmed (falsely) that the investor was wiring into a specific escrow account that
22 was governed by an escrow agreement for which the investor was the beneficiary.
23 DuCharme signed correspondence and verbally confirmed (falsely) to the investor's
24 independent auditors that money tied to specific liquor-license escrows sat in
25 Chicago Title escrow accounts.

26 58. A separate investor, Banc of California, states that it spoke with
27 DuCharme via telephone, and DuCharme confirmed (falsely) the structure and
28 process of the escrows. In addition, the investor's relationship managers visited

1 DuCharme and Elixman at Chicago Title’s office, whereby they received
2 confirmation that Chicago Title was holding the investor’s funds from and discussed
3 the liquor-license escrows with DuCharme and Elixman.

4 59. Other investors had direct contact and/or correspondence with
5 DuCharme, Elixman, and/or Reynolds and were given assurances by them that the
6 investors’ monies were being used to fund specific liquor-license escrows and
7 would never leave Chicago Title’s escrow accounts unless they were being returned
8 directly to the investors.

9 60. On information and belief, DuCharme and Elixman had additional
10 contact with investors and signed letters sent by investors’ auditors confirming
11 (falsely) that investor funds were being held in escrow for purposes of the Loan
12 Program.

13 61. Chicago Title meticulously tracked the monies flowing in and out of
14 the ANI Escrow Account. For example, Chicago Title produced a “Final Closing
15 Statement” on December 31, 2012. The statement listed ANI Development as the
16 “Client” and DuCharme as the “Officer,” and under “Property,” it stated “None –
17 Holding Funds Escrow.” The statement was a ledger showing deposits from various
18 investors under a column labeled “Total Consideration,” followed by “Misc.
19 Disbursements”—all made to ANI or ANI Development—over the course of the
20 year. Finally, showing Chicago Title’s cut, the statement listed “Escrow Fees,”
21 which included a “Base Escrow Fee” of \$3,000, followed by an “Escrow Fee per
22 Disbursement” of \$500. Chicago Title prepared similar closing statements at the end
23 of each year, with the ledgers showing monies coming in from third-party depositors
24 and going directly out to among others, ANI Development, less Chicago Title’s
25 escrow fees.

26 62. Through this tracking, Chicago Title was aware that (a) there were
27 funds deposited into the ANI Escrow Account that came from third-party investors,
28 not ANI Development, the principal party to the escrow governed by the ANI

1 Escrow Agreements, and (b) Chicago Title frequently disbursed funds out of the
2 ANI Escrow Account to ANI Development or other entities, not to the third-party
3 investors who originally deposited the funds.

4 63. Despite being aware of the fraudulent nature of the Loan Program,
5 Chicago Title, through its officers and employees, facilitated Cain’s fraudulent
6 scheme by, among other things, (a) allowing investors to deposit their money into
7 the ANI Escrow Account that was managed by Chicago Title, (b) receiving and
8 accepting incoming wire transfers from investors with references to “ABC License
9 Loans” or similar notations or to specific purported liquor-license applicants or
10 liquor-license numbers, (c) including, on Cain’s instructions, liquor-license numbers
11 on outbound wire transfers to investors, (d) generating escrow receipts for investors,
12 which reflected Chicago Title’s receipt of investor funds, and (e) initiating wires
13 thus permitting Cain to take the investors’ money out of that account as if the
14 account was simply Cain’s personal checking account.

15 **V. Chicago Title’s Failure of Internal Controls.**

16 64. DuCharme’s, Elixman’s, and Reynolds’s roles and responsibilities as
17 escrow officers for Chicago Title—e.g., setting up escrows and ensuring that the
18 parties who deposited money into them could have confidence that their money was
19 being handled according to their instructions—were integral to their participation in
20 Cain’s fraudulent scheme. Their misconduct involved the misuse of Chicago Title’s
21 core product or service and undermined the essential purpose of placing funds in
22 escrow—i.e., to ensure the safety of the escrowed funds.

23 65. DuCharme’s, Elixman’s, and Reynolds’s misconduct was integral to
24 Cain’s fraudulent scheme both operationally and in lending support to Cain’s
25 misrepresentations to investors with regard to raising funds. Their misconduct was
26 reasonably related to the kinds of tasks that a Chicago Title employee would be
27 employed to perform. Their misconduct was also reasonably foreseeable in light of
28 Chicago Title’s business and those individuals’ job responsibilities. That a Chicago

1 Title escrow officer might participate in a fraudulent scheme using fake escrow
2 agreements and related documentation was a generally foreseeable risk inherent in
3 and incidental to Chicago Title’s escrow business.

4 66. DuCharme knew about, and did not object to, the facts that (a) Cain
5 was forging documents that were purportedly originated from Chicago Title,
6 (b) Cain was using fake email addresses that were seemingly associated with
7 Chicago Title and impersonating DuCharme and Elixman through those email
8 addresses, and (c) investors believed that their money was funding liquor-license
9 escrows when their money was actually being deposited into the ANI Escrow
10 Account, which Chicago Title allowed Cain to use for improper purposes.
11 Nonetheless, DuCharme was permitted to play a central role in Cain’s fraudulent
12 scheme year after year. Schwiebert signed the Incumbency Certificate, under which
13 Chicago Title, as an institution, vouched for DuCharme’s authority to sign dozens of
14 fake escrow agreements that would never be put to use by Chicago Title.

15 67. The Incumbency Certificate is direct evidence that Schwiebert—an
16 officer of Chicago Title—was aware of Cain’s fraudulent scheme. The fact that the
17 fraud was pervasive, brazen and occurred over many years is substantial
18 circumstantial evidence that upper management at Chicago Title would have been
19 aware of the misconduct, had Chicago Title employed the appropriate or legally
20 required internal controls.

21 68. DuCharme, Elixman, Reynolds, and Schwiebert conducted their
22 fraudulent activities using Chicago Title’s offices, bank accounts, telephones,
23 computers, form escrow agreements and other documents, and, on some occasions,
24 its email system. As an institution, Chicago Title was reckless, if not willfully blind,
25 in preventing its officers and employees from using the instrumentalities of its
26 business to facilitate and engage in brazen acts of fraud.

27 69. Chicago Title permitted Cain’s fraudulent scheme to go on for years,
28 using internal systems that should have been subject to review and audit by Chicago

1 Title employees and consultants. The ongoing fraud created a permanent record of
2 escrow agreements, wire transfers, and electronic communications that could have
3 been detected and stopped the fraud if Chicago Title followed the basic anti-money-
4 laundering and “know-your-customer” procedures that any reasonable financial
5 institution would follow.

6 70. Over the course of the scheme, hundreds of millions of dollars flowed
7 into and out of the ANI Escrow Account. The most rudimentary of an internal audit
8 should have flagged those transactions and that escrow account as suspicious.

9 71. Chicago Title failed to perform reasonable audit and compliance
10 functions for the escrows originating out of its San Diego branch office. Even a
11 modest amount of oversight by Chicago Title would have revealed Chicago Title’s
12 active and daily participation in Cain’s fraudulent scheme.

13 72. Chicago Title had inadequate internal controls and compliance
14 programs to detect the fraud or it failed to competently execute those controls and
15 programs, or both. Indeed, Chicago Title was aware of the following facts from
16 2013 through 2019, yet failed to put a stop to the fraudulent scheme:

17 a. Chicago Title was operating and repeatedly renewing the
18 ANI Escrow Account, which served no purpose other than to perpetrate
19 Cain’s fraudulent scheme and exclusively enrich her.

20 b. Between 2015 and 2019, an investor, Kim Funding, and its
21 lenders initiated and completed more than 450 wires to Chicago Title totaling
22 more than \$280 million. Dozens of wires were in excess of one million
23 dollars each, and the wires came from at least seventeen different sources.
24 Other investors also deposited substantial additional funds into the
25 ANI Escrow Account.

26 c. Investors believed that they were depositing hundreds of millions
27 of dollars into these accounts to fund liquor-license escrows. Indeed, multiple
28 investors and their representatives contacted Chicago Title personnel

1 regarding its operation of the Loan Program with Cain and received false and
2 misleading responses from them.

3 d. Legitimately operating the Loan Program required Chicago Title
4 to submit a Form 226 to the ABC in connection with each liquor-license
5 escrow. Indeed, Chicago Title’s website boasted of its experience with “liquor
6 license transfer” escrows.

7 e. Chicago Title knew it was receiving money from investors for
8 liquor-license escrows and that each liquor-license escrow required Chicago
9 Title to submit a Form 226 to the ABC. Chicago Title signed Form Escrow
10 Agreements stating it would do so. Yet, Chicago Title never submitted a
11 Form 226 to the ABC in connection with the ANI Escrow Account.

12 f. Chicago Title was funneling hundreds of millions of dollars
13 through the ANI Escrow Account for Cain, without ever actually performing
14 an escrow transaction relating to a liquor-license escrow.

15 g. By no later than February 2017, Schwiebert, a Chicago Title vice
16 president, had been informed that escrow agreements for liquor-license forms
17 were being signed by a “Wendy Reynolds” on behalf of Chicago Title,
18 despite the fact that no employee by that name worked at Chicago Title.

19 73. Despite being aware of the foregoing facts and others outlined herein,
20 Chicago Title failed to properly investigate and stop the fraudulent activity. To the
21 contrary, Chicago Title actively facilitated and helped conceal the fraud, allowing it
22 to continue for multiple years, resulting in further harm to investors and others.

23 74. Chicago Title’s actions violated the California Escrow Law, California
24 Financial Code §§ 17000–17703. For instance, Chicago Title failed to abide by the
25 detailed recordkeeping and auditing requirements of Cal. Fin. Code §§ 17404,
26 17406, and 17406.1. In addition, the California Escrow Law makes it illegal for any
27 escrow company or its officers or employees to (a) “knowingly or recklessly . . .
28 direct, participate in, or aid or abet in a material way, any activity which constitutes

1 theft or fraud in connection with any escrow transaction,” or (b) “[k]nowingly or
2 recklessly make or cause to be made any misstatement or omission to state a
3 material fact, orally or in writing, in escrow books, accounts, files, reports, exhibits,
4 statements, or any other document pertaining to an escrow or escrow affairs.” Cal.
5 Fin. Code § 17414(a).

6 75. Over the course of Cain’s fraudulent scheme, Chicago Title failed to
7 provide proper acknowledgements, receipts, and disclosures to investors regarding
8 the true nature of the ANI Escrow Account or the fact that their money was being
9 wired out of the ANI Escrow Account by Cain for purposes other than as
10 represented. Chicago Title also failed to contact the sources of these wires to inquire
11 as to the purpose of the wires and the instructions for the use of the wired funds.

12 76. On its website, Chicago Title claims that “[o]ur agents act as a
13 disinterest (sic) third party who follows the instructions of the principals” In
14 making their decision to invest money as arranged by Cain, investors relied upon
15 Chicago Title’s involvement in the Loan Program to reasonably conclude that they
16 could entrust Chicago Title with their money, including, for some, their life-savings
17 and retirement funds. Indeed, Chicago Title’s reputation, strength, and expertise in
18 the escrow business was a key factor that led investors to fall victim to Cain’s
19 fraudulent scheme. Unfortunately, Chicago Title was an active participant in the
20 scheme through the actions and representations by, and omissions of, its officers and
21 employees, including, but not limited to, DuCharme, Elixman, Reynolds, and
22 Schwiebert.

23 **VI. Chicago Title and Its Agents Profited from the Fraudulent Scheme.**

24 77. Chicago Title made money from Cain’s fraudulent scheme.

25 78. Over the course of the scheme, hundreds of millions of dollars flowed
26 into and out of the ANI Escrow Account maintained by Chicago Title. Chicago Title
27 took a minimum fee of \$500 each time that Chicago Title, upon Cain’s instructions,
28 disbursed money out of the ANI Escrow Account. There were hundreds of such

1 transactions. In the end, Chicago Title collected a total of \$467,950 in escrow and
2 transaction fees for its participation in Cain’s fraudulent scheme.

3 79. Chicago Title further benefited from Cain’s misappropriation of
4 investors’ money by selling her escrow, title insurance, and other services in
5 connection with her unauthorized business ventures, from which Chicago Title
6 earned ample fees and commissions at each step. All of this commercial activity
7 increased profitability and likely led to compensation and bonus increases for the
8 escrow officers and various Chicago Title executives.

9 80. DuCharme, Elixman, and Schwiebert also personally profited directly
10 from Cain’s fraudulent scheme.

11 81. Over the course of the scheme, DuCharme, Elixman, and Schwiebert
12 received various gifts and perks from Cain. For example, Cain “wined and dined”
13 DuCharme, Elixman, and Schwiebert at restaurants owned by Cain, providing them,
14 as well as their respective families and friends, with free food and drink. Cain also
15 regularly provided DuCharme, Elixman, and Schwiebert, along with their respective
16 families and friends, with free tickets to dugout seats or to a luxury suite at San
17 Diego Padres baseball games, including free food and drink at those games.

18 82. In addition to receiving gifts and perks from Cain, DuCharme and
19 Elixman were also paid thousands of dollars in bribes from Cain over the course of
20 the scheme. For example,

21 a. On or about January 20, 2018, Cain wrote checks to DuCharme
22 and Elixman for \$13,000 and \$5,000, respectively. The checks were from
23 Cain’s personal checking account and stated “Gift” in the memos. DuCharme
24 and Elixman each cashed their respective check within a week.

25 b. On or about December 16, 2018, Cain wrote checks to
26 DuCharme and Elixman for \$10,000 and \$1,000, respectively. The checks
27 were again from Cain’s personal checking account and similarly stated “Gift”
28

1 in the memos. DuCharme and Elixman each cashed their respective check
2 within two weeks.

3 83. While Cain paid the bribes to DuCharme and Elixman with checks,
4 Schwiebert had told Cain “no checks.” As a result, over the course of the scheme,
5 Cain paid Schwiebert thousands of dollars in cash bribes.

6 84. In August 2019, Cain caused ANI to purchase a high-end home in the
7 Point Loma neighborhood of San Diego that had been specifically identified by a
8 broker friend of DuCharme and which Cain intended to make available to
9 DuCharme and her family at a discounted rental rate. Cain further intended that
10 DuCharme’s rent payments would be applied to a future purchase of the home by
11 DuCharme from ANI on terms favorable to DuCharme.

12 **VII. The Receivership Entities’ Injuries.**

13 85. By reason of Chicago Title’s unlawful actions, including its knowledge
14 and participation in Cain’s fraudulent scheme, the Receivership Entities have
15 suffered significant losses and injuries.

16 86. Due to the fraudulent scheme perpetrated on investors by Cain through
17 the Receivership Entities, with substantial assistance from Chicago Title, those
18 investors have, among other remedies, a right of rescission with respect to their
19 transactions entered into with the Receivership Entities in connection with that
20 scheme. The Receivership Entities have, in turn, suffered harm by being exposed to
21 and incurring liabilities owed to such investors on account of their respective claims
22 for rescission (but only if and to the extent that such investors have not otherwise
23 been made whole through a settlement of their claims against Chicago Title). The
24 extent and amount of these damages suffered by the Receivership Entities will be
25 proven at trial.

26 87. The Receivership Entities suffered further losses as a result of Chicago
27 Title permitting Cain to divert tens of millions of dollars from the ANI Escrow
28 Account to pay for Cain’s personal lavish lifestyle, her business ventures, and earlier

1 investors, all in contravention of ANI Development's agreements with investors and
2 contrary to the terms of the escrow agreements.

3 88. Due to the fraudulent scheme perpetrated on investors by Cain through
4 the Receivership Entities, with substantial assistance from Chicago Title, on
5 September 3, 2019, the Receivership Entities were placed in a federal equity
6 receivership by the District Court, under which (a) the Receivership Entities have
7 been enjoined from essentially conducting any business, (b) the receivership estate
8 of the Receivership Entities has incurred and paid significant administrative
9 expenses in connection with administering the estate, including no less than
10 \$2.1 million in the Receiver's compensation and reimbursable expenses and no less
11 than \$2.8 million in attorneys' fees and expenses for her counsel, and (c) the
12 receivership estate of the Receivership Entities will make distributions to investors
13 in and creditors of the Receivership Entities on account of their allowed claims
14 against the Receivership Entities. The extent and amount of these damages suffered
15 by the Receivership Entities will be proven at trial.

16 **FIRST CAUSE OF ACTION**

17 **(For Aiding and Abetting Fraud)**

18 **(Against All Defendants)**

19 89. The Receiver incorporates herein by reference, as though fully set forth
20 herein, the allegations contained in paragraphs 1 through 88 inclusive.

21 90. Cain, using the Receivership Entities, perpetrated a massive fraud upon
22 investors who invested in the Receivership Entities and the Receivership Entities
23 themselves in connection with the Loan Program.

24 91. Cain, personally or through the Receivership Entities which she
25 controlled, made false representations of material facts to and concealed material
26 facts from investors concerning the Loan Program, including, among other things,

- 27 a. Representing that the lists provided to an investor contained
28 liquor-license applicants seeking funding for their liquor-license escrows;

1 b. Representing that the investor’s money would be used
2 exclusively to fund liquor-license escrows and for no other purpose;

3 c. Representing that the investor’s money would be deposited into a
4 separate, individual escrow account tied to the specific liquor-license
5 application that the investor was funding;

6 d. Representing that the investor’s escrowed money could not be
7 disbursed to Cain or third parties and could only be returned to the investor;

8 e. Representing that the investor’s escrowed money would be
9 governed by the Form Escrow purportedly executed by ANI Development
10 and Chicago Title; and

11 f. Concealing the existence of the ANI Escrow Agreement and the
12 ANI Escrow Account and the facts that the investor’s money would be
13 deposited into the ANI Escrow Account and governed by the ANI Escrow
14 Agreement.

15 92. Cain knew that her representations of material facts to the investors
16 were false when she made them and that the material facts concealed from the
17 investors were not known by the investors, and Cain made her false representations
18 of material facts to and concealed material facts from the investors with the intent to
19 defraud or deceive them, specifically with the intent of inducing them to invest their
20 money into the Loan Program.

21 93. The investors did not know the truth of Cain’s false representations or
22 of the material facts concealed by Cain, and the investors would not have invested
23 their money into the Loan Program had the truth of the material facts been
24 disclosed.

25 94. The investors reasonably relied on Cain’s false representations and
26 concealment by entering into transactions with the Receivership Entities and
27 investing their money into the Loan Program, and the investors’ reliance was
28 reasonable in that earlier investors had purportedly received the repayment of their

1 principal and interest and that the investors' money was being purportedly held in an
2 escrow account managed by Chicago Title, a reputable escrow company. Cain's
3 false representations and concealment of material facts were a substantial factor in
4 causing harm to the investors and the Receivership Entities.

5 95. Due to the fraud perpetrated on investors by Cain through the
6 Receivership Entities, the Receivership Entities suffered significant damages and
7 investors have, among other remedies, a right of rescission with respect to their
8 transactions entered into with the Receivership Entities in connection with the fraud.

9 96. At all relevant times, Chicago Title knew of Cain's false
10 representations and concealment and knew that the false representations and
11 material facts concealed from the investors were not known to investors. Chicago
12 Title's knowledge can be established from, among other things,

13 a. Cain's email correspondence to DuCharme, Elixman, or
14 Reynolds regarding the use of "our little escrow holding account;"

15 b. Cain's email correspondence to DuCharme, Elixman, or
16 Reynolds regarding her use of the fake Chicago Title email addresses;

17 c. DuCharme's and Elixman's awareness of the existence of the
18 Form Escrows;

19 d. DuCharme's and Schwiebert's involvement in Cain's scheme to
20 conceal her forgery of the signature of "Wendy Reynolds" on the Form
21 Escrows, including DuCharme's re-execution of the Form Escrows and
22 Schwiebert's execution of the Incumbency Certificate;

23 e. DuCharme's, Elixman's and Reynolds's disbursement of
24 millions of dollars out of the ANI Escrow Account to other Receivership
25 Entity escrows facilitated by CTC, ANI Development and others, rather than
26 to the investors; and

27 f. DuCharme's, Elixman's, and Schwiebert's receipt of bribes,
28 gifts, and perks from Cain.

1 97. Chicago Title, through its agents acting within the scope of their
2 employment, actively participated in, provided substantial assistance to, and
3 encouraged the fraud perpetrated by Cain on the Receivership Entities and investors
4 by, among other things,

5 a. Chicago Title holding itself out to the public as a safe and secure
6 escrow company, having the highest insurance reserves in the industry and
7 assuring parties of the greatest level of protection available.

8 b. DuCharme making various false representations to investors
9 regarding the structure of the Loan Program;

10 c. Chicago Title executing the ANI Escrow Agreements with ANI
11 Development and maintaining the ANI Escrow Account;

12 d. DuCharme re-executing the Form Escrows and Schwiebert
13 executing the Incumbency Certificate in connection with Cain's scheme to
14 conceal her forgery of the signature of "Wendy Reynolds" on the Form
15 Escrows;

16 e. DuCharme and Elixman allowing third-party investors to deposit
17 funds into the ANI Escrow Account;

18 f. DuCharme and Elixman allowing incoming wire transfers into
19 the ANI Escrow Account from investors with references to "ABC License
20 Loans" or similar notations or to specific purported liquor-license applicants
21 or liquor-license numbers;

22 g. DuCharme and Elixman including, on Cain's instructions,
23 liquor-license numbers on outbound wire transfers to investors;

24 h. DuCharme and Elixman generating escrow receipts for investors,
25 which reflected Chicago Title's receipt of investor funds; and

26 i. Reynolds, DuCharme and Elixman permitting Cain to direct the
27 disbursement of investors' money out of the ANI Escrow Account, including
28

1 directly to other Receivership Entity escrows facilitated by CTC, ANI
2 Development and others.

3 98. Chicago Title is liable for DuCharme's and Elixman's misconduct
4 under the doctrine of respondeat superior because DuCharme's and Elixman's
5 misconduct was committed within the scope of their employment with Chicago
6 Title.

7 99. Chicago Title is also liable for DuCharme's and Elixman's misconduct
8 as the principal of agents who acted with actual or apparent authority for Chicago
9 Title, and which agents were employed in managerial capacities and acted within
10 the scope of their employment. Investors relied on and interacted with Chicago Title
11 and its employees, DuCharme and Elixman, believing that Chicago Title was a safe
12 and secure escrow company and that DuCharme and Elixman were duly authorized
13 escrow agents acting within the scope of their authority when they, among other
14 things, confirmed (falsely) to the investors and their representatives that investor
15 funds would be held in escrow accounts tied to funding specific liquor-license
16 applications.

17 100. To the extent DuCharme's and Elixman's actions exceeded the scope
18 of their authority, Chicago Title allowed investors to believe that DuCharme and
19 Elixman possessed the requisite authority by (a) holding DuCharme and Elixman
20 out as authorized escrow agents on Chicago Title's website, (b) permitting them to
21 process millions of dollars of wire transfers in and out of the ANI Escrow Account,
22 without apparent supervision, and (c) allowing them to facilitate a massive fraud
23 using the means and instrumentalities of the company, without employing basic
24 internal controls to detect and prevent such fraud.

25 101. As a direct and proximate result of Chicago Title's conduct described
26 herein, the Receivership Entities have suffered substantial harm, with Chicago
27 Title's aiding and abetting of Cain's fraud causing, among other things, the
28 Receivership Entities to (a) be placed into a receivership (where the receivership

1 estate continues to incur significant administrative expenses) (b) incur liabilities to
2 those investors who have not settled their claims against Chicago Title, on account
3 of their claim for rescission, and (c) incur losses of tens of millions of dollars in
4 wrong transfers of money to Cain personally and to her various real estate and other
5 investments and projects. The amount of harm directly and proximately caused by
6 Chicago Title's conduct will be proven at trial.

7 102. DuCharme and Elixman, and through them, Chicago Title, acted with
8 oppression, fraud, or malice in aiding and abetting Cain's fraud.

9 103. Chicago Title acted with reckless disregard of the rights of the
10 Receivership Entities in continuing to employ DuCharme and Elixman for years
11 while they participated in Cain's fraudulent scheme. Moreover, Chicago Title
12 expressly or implicitly authorized or ratified their actions when Schwiebert signed
13 the Incumbency Certificate and witnessed DuCharme's execution of dozens of
14 phony Form Escrows.

15 104. Further, Chicago Title allowed DuCharme, Elixman, and Schwiebert to
16 act with substantial autonomy in connection with Cain's fraudulent scheme. As
17 such, DuCharme, Elixman, and Schwiebert were permitted to make ad hoc
18 formulation of Chicago Title policy making them managing agents of Chicago Title
19 for purposes of imposition of punitive damages under California Civil Code
20 § 3294(b).

21 105. Chicago Title's conduct as described herein was willful, wanton,
22 malicious, and fraudulent, such that it is liable for punitive damages under
23 California Civil Code § 3294.

24 **SECOND CAUSE OF ACTION**

25 **(For Negligence)**

26 **(Against All Defendants)**

27 106. The Receiver incorporates herein by reference, as though fully set forth
28 herein, the allegations contained in paragraphs 1 through 105, inclusive.

1 107. As Chicago Title managed the ANI Escrow Account as the escrow
2 holder and the Receivership Entities were the principal party to that escrow or
3 depository account, Chicago Title owed a duty of care to the Receivership Entities.

4 108. Chicago Title's duty of care to the Receivership Entities included,
5 among other things, a duty to exercise reasonable skill and ordinary diligence as the
6 escrow holder and a duty to monitor its business to ensure that its employees were
7 not using the instrumentalities of the company to carry out and aid and abet a
8 fraudulent scheme.

9 109. Chicago Title, through its agents acting within the scope of their
10 employment, breached its duty of care to the Receivership Entities by, among other
11 things,

12 a. Failing to detect or prevent DuCharme and Elixman from using
13 Chicago Title's instrumentalities to carry out Cain's fraudulent scheme;

14 b. Allowing third-party investors, who were not any of the
15 Receivership Entities or parties to the ANI Escrow Agreement, to deposit
16 funds totaling hundreds of millions of dollars into the ANI Escrow Account;
17 and

18 c. Allowing Cain, in her unfettered discretion, to transfer or cause
19 to transfer the funds escrowed in the ANI Escrow Account for any purpose,
20 with the knowledge that Cain was using the Receivership Entities and the
21 ANI Escrow Account to perpetrate a fraudulent scheme and to fund the
22 purchase and refinancing other assets.

23 110. Chicago Title is liable for DuCharme's and Elixman's misconduct
24 under the doctrine of respondeat superior because DuCharme's and Elixman's
25 misconduct was committed within the scope of their employment with Chicago
26 Title.

27 111. Chicago Title is also liable for DuCharme's and Elixman's misconduct
28 as the principal of agents who acted with actual or apparent authority for Chicago

1 Title, and which agents were employed in managerial capacities and acted within
2 the scope of their employment.

3 112. To the extent DuCharme's and Elixman's actions exceeded the scope
4 of their authority, Chicago Title allowed investors to believe that DuCharme and
5 Elixman possessed the requisite authority.

6 113. As a direct and proximate result of Chicago Title's conduct described
7 herein, the Receivership Entities have suffered substantial harm, with Chicago
8 Title's breaches of its duty of care causing, among other things, the Receivership
9 Entities to (a) be placed into a receivership (where the receivership estate continues
10 to incur significant administrative expenses), (b) incur liabilities to those investors
11 who have not settled their claims against Chicago Title, and (c) incur substantial
12 losses as a result of the diversion of funds from the ANI Escrow Account for the
13 benefit of Cain personally and in contravention of the interests of the Receivership
14 Entities and agreements with investors. The amount of harm directly and
15 proximately caused by Chicago Title's conduct will be proven at trial.

16 **THIRD CAUSE OF ACTION**

17 **(For Breach of Fiduciary Duty)**

18 **(Against Chicago Title Company)**

19 114. The Receiver incorporates herein by reference, as though fully set forth
20 herein, the allegations contained in paragraphs 1 through 113, inclusive.

21 115. ANI Development and CTC entered into and were parties to each of the
22 ANI Escrow Agreements, under which (a) the ANI Escrow Account was established
23 for an escrow governed by the ANI Escrow Agreements, (b) ANI Development was
24 the principal party to that escrow, and (c) CTC was the escrow holder.

25 116. As the escrow holder, CTC owed fiduciary duties to the principal
26 parties to the escrow, including to ANI Development. CTC's fiduciary duties
27 included, among other things, exercising reasonable skill and ordinary diligence and
28

1 refraining from acting against the interests of the principal parties in administering
2 the escrow.

3 117. CTC, through its agents acting within the scope of their employment,
4 breached its fiduciary duties to ANI Development by, among other things,

5 a. Allowing third-party investors, who were not ANI Development
6 or a party to the ANI Escrow Agreements, to deposit funds totaling hundreds
7 of millions of dollars into the ANI Escrow Account;

8 b. Allowing Cain, in her unfettered discretion, to transfer or cause
9 to transfer the funds escrowed in the ANI Escrow Account for any purpose,
10 with the knowledge that Cain was using ANI Development and the ANI
11 Escrow Account to perpetrate a fraudulent scheme; and

12 c. Following the instructions of Cain, thereby causing ANI
13 Development to breach its contracts with investors.

14 118. CTC is liable for DuCharme's and Elixman's misconduct under the
15 doctrine of respondeat superior because, as previously alleged, DuCharme's and
16 Elixman's misconduct was committed within the scope of their employment with
17 CTC.

18 119. CTC is also liable for DuCharme's and Elixman's misconduct as the
19 principal of agents who acted with actual or apparent authority for CTC, and which
20 agents were employed in managerial capacities and acted within the scope of their
21 employment.

22 120. To the extent DuCharme's and Elixman's actions exceeded the scope
23 of their authority, CTC allowed investors to believe that DuCharme and Elixman
24 possessed the requisite authority.

25 121. As a direct and proximate result of CTC's conduct described herein,
26 ANI Development has suffered substantial harm, with CTC's breaches of its
27 fiduciary duties causing, among other things, ANI Development to (a) be placed into
28 a receivership (where the receivership estate continues to incur significant

1 administrative expenses) (b) incur liabilities to those investors who have not settled
2 their claims against Chicago Title; and (c) incur substantial losses as a result of the
3 diversion of funds from the ANI Escrow Account for the benefit of Cain personally
4 and in contravention of the interests of ANI Development and agreements with
5 investors. The amount of harm directly and proximately caused by CTC's conduct
6 will be proven at trial.

7 122. DuCharme and Elixman, and through them, CTC, acted with
8 oppression, fraud, or malice in breaching CTC's fiduciary duties.

9 123. CTC acted with reckless disregard of the rights of ANI Development in
10 continuing to employ DuCharme and Elixman for years while they participated in
11 Cain's fraudulent scheme. Moreover, CTC expressly or implicitly authorized or
12 ratified their actions when Schwiebert signed the Incumbency Certificate and
13 witnessed DuCharme's execution of dozens of phony Form Escrows.

14 124. Further, CTC allowed DuCharme, Elixman, and Schwiebert to act with
15 substantial autonomy in connection with Cain's fraudulent scheme. As such,
16 DuCharme, Elixman, and Schwiebert were permitted to make ad hoc formulation of
17 CTC policy making them managing agents of CTC for purposes of imposition of
18 punitive damages under California Civil Code § 3294(b).

19 125. CTC's conduct as described herein was willful, wanton, malicious, and
20 fraudulent, such that it is liable for punitive damages under California Civil Code
21 § 3294.

22 **FOURTH CAUSE OF ACTION**

23 **(For Aiding and Abetting Breach of Fiduciary Duty)**

24 **(Against All Defendants)**

25 126. The Receiver incorporates herein by reference, as though fully set forth
26 herein, the allegations contained in paragraphs 1 through 125, inclusive.

27 127. At all relevant times, Cain was the managing member of ANI
28 Development, the chief executive officer of ANI, and an officer or manager of each

1 of the other Receivership Entities, and Cain controlled all of the Receivership
2 Entities. As such, Cain owed fiduciary duties of care, loyalty, and good faith to the
3 Receivership Entities. Cain’s fiduciary duties included, among other things,
4 discharging her actions in good faith, acting in the best interests of the Receivership
5 Entities, and putting the interests of the Receivership Entities before her own.

6 128. Cain breached her fiduciary duties to the Receivership Entities by,
7 among other things,

8 a. Causing the Receivership Entities to enter into contracts with
9 investors in connection with the Loan Program; and

10 b. Causing the Receivership Entities to otherwise perpetrate her
11 fraudulent scheme through the Loan Program.

12 129. At all times that Cain engaged in the conduct described herein, Chicago
13 Title knew of Cain’s fiduciary duties to the Receivership Entities and knew that
14 Cain was breaching her fiduciary duties by engaging in that conduct. Chicago
15 Title’s knowledge can be established from, among other things,

16 a. Cain’s email correspondence to DuCharme, Elixman, or
17 Reynolds regarding the use of “our little escrow holding account;”

18 b. Cain’s email correspondence to DuCharme, Elixman, or
19 Reynolds regarding her use of the fake Chicago Title email addresses;

20 c. DuCharme’s and Elixman’s awareness of the existence of the
21 Form Escrows;

22 d. DuCharme’s and Schwiebert’s involvement in Cain’s scheme to
23 conceal her forgery of the signature of “Wendy Reynolds” on the Form
24 Escrows, including DuCharme’s re-execution of the Form Escrows and
25 Schwiebert’s execution of the Incumbency Certificate;

26 e. DuCharme’s, Elixman’s and Reynolds’s disbursement of
27 millions of dollars out of the ANI Escrow Account to other Receivership
28

1 Entity escrows facilitated by CTC, ANI Development and others, rather than
2 to the investors; and

3 f. DuCharme’s, Elixman’s, and Schwiebert’s receipt of bribes,
4 gifts, and perks from Cain.

5 130. Chicago Title, through its agents acting within the scope of their
6 employment, actively participated in, provided substantial assistance to, and
7 encouraged Cain’s breaches of her fiduciary duties to the Receivership Entities by,
8 among other things,

9 a. DuCharme making various false representations to investors
10 regarding the structure of the Loan Program;

11 b. Chicago Title executing the ANI Escrow Agreements with ANI
12 Development and maintaining the ANI Escrow Account;

13 c. DuCharme re-executing the Form Escrows and Schwiebert
14 executing the Incumbency Certificate in connection with Cain’s scheme to
15 conceal her forgery of the signature of “Wendy Reynolds” on the Form
16 Escrows;

17 d. DuCharme and Elixman allowing third-party investors to deposit
18 funds into the ANI Escrow Account;

19 e. DuCharme and Elixman allowing incoming wire transfers into
20 the ANI Escrow Account from investors with references to “ABC License
21 Loans” or similar notations or to specific purported liquor-license applicants
22 or liquor-license numbers;

23 f. DuCharme and Elixman including, on Cain’s instructions,
24 liquor-license numbers on outbound wire transfers to investors;

25 g. DuCharme and Elixman generating escrow receipts for investors,
26 which reflected Chicago Title’s receipt of investor funds; and

27 h. DuCharme and Elixman permitting Cain to direct the
28 disbursement of investors’ money out of the ANI Escrow Account.

1 131. Chicago Title is liable for DuCharme's and Elixman's misconduct
2 under the doctrine of respondeat superior because DuCharme's and Elixman's
3 misconduct was committed within the scope of their employment with Chicago
4 Title.

5 132. Chicago Title is also liable for DuCharme's and Elixman's misconduct
6 as the principal of agents who acted with actual or apparent authority for Chicago
7 Title, and which agents were employed in managerial capacities and acted within
8 the scope of their employment.

9 133. To the extent DuCharme's and Elixman's actions exceeded the scope
10 of their authority, Chicago Title allowed investors to believe that DuCharme and
11 Elixman possessed the requisite authority.

12 134. As a direct, substantial, and proximate result of Chicago Title's conduct
13 described herein, the Receivership Entities have suffered substantial harm, with
14 Chicago Title's aiding and abetting of Cain's breaches of her fiduciary duties to the
15 Receivership Entities causing, among other things, the Receivership Entities to
16 (a) be placed into a receivership (where the receivership estate continues to incur
17 significant administrative expenses) (b) incur liabilities to those investors who have
18 not settled their claims against Chicago Title, and (c) incur substantial losses as a
19 result of the diversion of funds from the ANI Escrow Account for the benefit of
20 Cain personally and in contravention of the interests of the Receivership Entities and
21 agreements with investors. The amount of harm directly and proximately caused by
22 Chicago Title's conduct will be proven at trial.

23 135. DuCharme and Elixman, and through them, Chicago Title, acted with
24 oppression, fraud, or malice in aiding and abetting Cain's breaches of her fiduciary
25 duties.

26 136. Chicago Title acted with reckless disregard of the rights of ANI
27 Development in continuing to employ DuCharme and Elixman for years while they
28 participated in Cain's fraudulent scheme. Moreover, Chicago Title expressly or

1 implicitly authorized or ratified their actions when Schwiebert signed the
2 Incumbency Certificate and witnessed DuCharme's execution of dozens of phony
3 Form Escrows.

4 137. Further, Chicago Title allowed DuCharme, Elixman, and Schwiebert to
5 act with substantial autonomy in connection with Cain's fraudulent scheme. As
6 such, DuCharme, Elixman, and Schwiebert were permitted to make ad hoc
7 formulation of Chicago Title policy making them managing agents of Chicago Title
8 for purposes of imposition of punitive damages under California Civil Code
9 § 3294(b).

10 138. Chicago Title's conduct as described herein was willful, wanton,
11 malicious, and fraudulent, such that it is liable for punitive damages under
12 California Civil Code § 3294.

13 **FIFTH CAUSE OF ACTION**

14 **(For Breach of Contract)**

15 **(Against Chicago Title Company)**

16 139. The Receiver incorporates herein by reference, as though fully set forth
17 herein, the allegations contained in paragraphs 1 through 138, inclusive.

18 140. ANI Development and CTC entered into and were parties to each of the
19 ANI Escrow Agreements, under which, among other things, (a) the ANI Escrow
20 Account was established for an escrow governed by the ANI Escrow Agreements,
21 and (b) CTC agreed to hold funds deposited by ANI Development into the ANI
22 Escrow Account and disburse all or part of those deposited funds in accordance with
23 ANI Development's instructions. Each of the ANI Escrow Agreements represents a
24 binding, written contract between ANI Development and CTC.

25 141. At all times mentioned herein, ANI Development fully performed its
26 obligations and duties under the ANI Escrow Agreements, except for those
27 obligations and duties that may have been excused as a result of CTC's conduct.
28

1 142. The ANI Escrow Agreements allowed for only ANI Development to
2 deposit funds into the ANI Escrow Account and for only ANI Development to
3 instruct CTC as to how such funds would be disbursed (i.e., how much of the funds
4 would be disbursed, when CTC would make the disbursement, and to whom the
5 disbursement would be made). CTC breached the ANI Escrow Agreements by,
6 among other things,

7 a. DuCharme and Elixman allowing third-party investors, who
8 were not ANI Development or a party to the ANI Escrow Agreements, to
9 deposit funds totaling hundreds of millions of dollars into the ANI Escrow
10 Account; and

11 b. DuCharme and Elixman allowing Cain, in her unfettered
12 discretion, to transfer or cause to transfer the funds escrowed in the ANI
13 Escrow Account for any purpose, with the knowledge that Cain was using
14 ANI Development and the ANI Escrow Account to perpetrate a fraudulent
15 scheme.

16 143. CTC is liable for DuCharme's and Elixman's misconduct under the
17 doctrine of respondeat superior because DuCharme's and Elixman's misconduct
18 was committed within the scope of their employment with CTC.

19 144. CTC is also liable for DuCharme's and Elixman's misconduct as the
20 principal of agents who acted with actual or apparent authority for CTC, and which
21 agents were employed in managerial capacities and acted within the scope of their
22 employment.

23 145. To the extent DuCharme's and Elixman's actions exceeded the scope
24 of their authority, CTC allowed investors to believe that DuCharme and Elixman
25 possessed the requisite authority.

26 146. As a direct and proximate result of CTC's conduct described herein,
27 ANI Development has suffered substantial harm, with CTC's breaches of the
28 ANI Escrow Agreements causing, among other things, ANI Development to incur

1 liabilities to those investors who have not settled their claims against Chicago Title.
2 The amount of harm directly and proximately caused by CTC's conduct will be
3 proven at trial.

4 **SIXTH CAUSE OF ACTION**

5 **(For Avoidance and Recovery of Fraudulent Transfers Under**
6 **California Civil Code §§ 3439.04 and 3439.07)**

7 **(Against All Defendants)**

8 147. The Receiver incorporates herein by reference, as though fully set forth
9 herein, the allegations contained in paragraphs 1 through 146, inclusive.

10 148. The Receivership Entities, while under the control of Cain, transferred
11 money in the aggregate amount of \$467,950 to Chicago Title, purportedly as
12 payments on account of escrow or transaction fees charged by Chicago Title for
13 facilitating the deposits into and the disbursements out of the ANI Escrow Account.

14 149. On the basis of her investigation and analysis of the Receivership
15 Entities' business operations and financial affairs, the Receiver has concluded that
16 the Receivership Entities operated a Ponzi investment scheme and were insolvent, or
17 became insolvent, shortly after the subject payments were made to Chicago Title.

18 150. On information and belief, the Receivership Entities, while under the
19 control of Cain, fraudulently transferred money in the aggregate amount of
20 \$467,950 to Chicago Title, with the intent to hinder, delay, or defraud the Entities'
21 investors and creditors.

22 151. The deposits into and the disbursements out of the ANI Escrow
23 Account facilitated by Chicago Title were in furtherance of Cain's scheme to
24 defraud investors, of which Chicago Title had knowledge, and, as a result, Chicago
25 Title (a) did not receive the payments from the Receivership Entities in good faith
26 and (b) provided no value to the Receivership Entities in exchange for the payments
27 made to Chicago Title.

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DEMAND FOR JURY TRIAL

The Receiver hereby demands a trial by jury.

Dated: January 7, 2022

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
MARK R. HARTNEY
EDWARD G. FATES
MATTHEW D. PHAM

By: /s/ Mark R. Hartney

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