

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE  
COMMISSION,  
  
Plaintiff,  
  
v.  
  
GINA CHAMPION-CAIN AND ANI  
DEVELOPMENT, LLC,  
  
Defendants.  
  
AMERICAN NATIONAL  
INVESTMENTS, INC,  
  
Relief Defendants

Case No.: 19-cv-1628-LAB-AHG

**ORDER:**

- 1) APPROVING FORM AND MANNER OF NOTICE, [Dkt. 879-1]; AND**
- 2) SETTING BRIEFING SCHEDULE AND HEARING DATE**

On September 1, 2022, Court-appointed Receiver Krista L. Freitag filed a motion for approval of settlement agreements with: (1) Merit Financial, Inc. and Ilan Awerbuch (the “Merit Parties”); and (2) Randolph C. Houts, the Law Offices of Randolph C. Houts, and Power Process Inc. (the “Houts Parties”). (Dkt. 879). The settlements are contingent on the entry of bar orders in favor of the Merit Parties and Houts Parties. (Dkt. 879-1 at 5–6). Due to the proposed bar orders, the motion will adjudicate the rights of non-parties, thereby raising due process concerns.

The Receiver’s motion includes a proposal for providing interested

1 non-parties adequate notice and an opportunity to be heard. (*Id.* at 10). The Court  
2 has reviewed the briefing and finds that the form and manner of the Receiver’s  
3 proposed notice comport with due process. Accordingly, the proposed notice is  
4 **APPROVED** and the Court sets the briefing and hearing schedule as follows.

## 5 **DISCUSSION**

### 6 **I. The Manner of Notice Satisfies Due Process**

7 Where a movant seeks relief affecting the rights of non-parties—as in any  
8 “proceeding which is to be accorded finality”—it must provide notice that is  
9 “reasonably calculated, under all the circumstances, to apprise interested parties  
10 of the pendency of the action.” *Mullane v. Central Hanover Bank & Trust Co.*, 339  
11 U.S. 306, 314 (1950). The Receiver proposes providing notice with the motion and  
12 supporting papers. (Dkt. 879-1 at 10). The Court has reviewed these materials and  
13 finds that they would provide interested non-parties with sufficient notice.

14 As for how to ensure that the notice reaches interested non-parties, the  
15 Receiver proposes serving counsel for non-parties known to be interested in the  
16 settlements with the motion and supporting papers. The Receiver also intends to  
17 post the motions and supporting papers on the longstanding receivership website  
18 and to email a link to the same materials to all known investor email addresses.  
19 These steps are reasonably calculated to reach potential claimants against either  
20 the Merit Parties or the Houts Parties.

### 21 **II. A 60-Day Schedule Will Provide Sufficient Opportunity to** 22 **Respond to the Motion**

23 Notice of a final proceeding “must [also] afford a reasonable time for those  
24 interested to make an appearance.” *Mullane*, 339 U.S. at 314. To address this  
25 concern, the Court finds *Zacarias v. Willis Group Holdings Public Co. Ltd.*, 2017  
26 WL 6442190 (N.D. Tex. 2017), instructive. The settlement agreement in *Zacarias*  
27 involved the return of \$120 million to the receivership estate and the entry of a bar  
28 order in favor of parties alleged to have aided and abetted the Ponzi scheme.

1 *Id.* at \*1–2. To provide ample time for numerous objectors to appear, the *Zacarias*  
2 court set the hearing three months after approving notice procedures. *Id.* at \*2.

3 The Ninth Circuit has not provided direct guidance concerning what notice is  
4 necessary to satisfy due process when a motion seeks to impose a bar order  
5 against non-parties. In the class action setting, however, the Ninth Circuit has held  
6 that notice sent 31 days prior to an objection deadline and 45 days prior to a  
7 hearing is sufficient to provide due process before terminating the claims of class  
8 members. *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993).

9 Here, the motion before the Court will generate a total of \$690,000 for the  
10 Receivership Estate from two settlement agreements. (Dkt. 879-1 at 4). Unlike in  
11 *Zacarias*, the proposed settlements and bar orders will not adversely affect  
12 non-parties: all non-parties with claims pending against the Merit Parties have  
13 joined the settlement and there are no claims pending against the Houts Parties.  
14 (*Id.* at 6). These circumstances are analogous to the class action setting and thus  
15 a similar timeline will satisfy due process here. Accordingly, the Court finds that a  
16 period of 60 days between this order and the hearing is sufficient to satisfy due  
17 process.

### 18 CONCLUSION

19 The Court sets the following schedule consistent with the requirements of  
20 due process:

- 21 1) The Receiver must provide notice in the manner she proposes,  
22 (Dkt. 879-1 at 10), no later than **September 9, 2022**. She must file an  
23 affidavit certifying that she has done so **by the same date**.
- 24 2) Any brief in opposition to the motion must be filed on or before  
25 **October 11, 2022**. Absent further order of the Court, such a brief must be  
26 no longer than 15 pages.
- 27 3) The Receiver and Merit Parties may file one joint reply brief in support of  
28 the motion on or before **November 1, 2022**. Absent further order of the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

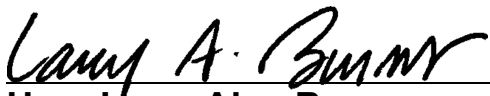
Court, that brief must be no longer than 10 pages.

4) The Receiver and Houts Parties may file one joint reply brief in support of the motion on or before **November 1, 2022**. Absent further order of the Court, that brief must be no longer than 10 pages.

5) The motion is set for a hearing on **November 15, 2022 at 11:30 a.m.**

**IT IS SO ORDERED.**

Dated: September 7, 2022



**Hon. Larry Alan Burns**  
United States District Judge