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12 KRISTA FREITAG

13 UNITED STATES DISTRICT COURT  
14 SOUTHERN DISTRICT OF CALIFORNIA

15  
16 SECURITIES AND EXCHANGE  
COMMISSION,

17 Plaintiff,

18 v.

19 GINA CHAMPION-CAIN and ANI  
20 DEVELOPMENT, LLC,

21 Defendants,

22 AMERICAN NATIONAL  
INVESTMENTS, INC.,

23 Relief Defendant.  
24  
25  
26

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

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION TO APPROVE PARTIAL  
SETTLEMENTS OF RELATED  
CLAWBACK ACTION AGAINST LA  
JOLLA BRIDGE, LLC**

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

1 Krista Freitag ("Receiver"), the Court-appointed permanent receiver for  
2 Defendant ANI Development, LLC, Relief Defendant American National  
3 Investments, Inc., and their subsidiaries and affiliates ("Receivership Entities"),  
4 submits this Memorandum of Points and Authorities in Support of her concurrently-  
5 filed Motion to Approve Partial Settlements of Related Clawback Action Against La  
6 Jolla Bridge, LLC ("Motion").

7 **I. BACKGROUND FACTS**

8 Since the completion of her forensic accounting in April 2021, the Receiver  
9 has been pursuing claims to recover payments of profits made by the Receivership  
10 Entities to investors in the Ponzi scheme ("Clawback Claims"). The Receiver  
11 specifically requested authority to pursue such claims, which had been granted by the  
12 Court on December 18, 2020. Dkt. 551. The Receiver has successfully settled more  
13 than 75 Clawback Claims, has received over \$7.2 million through those settlements,  
14 and has only filed 13 Clawback actions, all of which have been related to this action.  
15 Four of the Clawback actions have settled and two have motions for default  
16 judgments pending, leaving only seven active Clawback actions remaining to be  
17 resolved.

18 As part of her request for authority to pursue Clawback Claims, the Receiver  
19 sought authority to settle Clawback Claims within specified parameters and  
20 percentages. Dkt. 493-1. The Receiver noted, however, that there would likely be  
21 exceptions due to unique circumstances of certain profiting investors and the  
22 Receiver would seek Court approval of these exceptions that fall outside the pre-  
23 approved settlement parameters. *Id.*

24 This motion seeks approval of three partial settlements of the Receiver's  
25 Clawback action against La Jolla Bridge, LLC ("La Jolla Bridge") that fall outside  
26 the pre-approved settlement parameters. There were two iterations of La Jolla  
27 Bridge, both with the exact same name and both of which made investments in the  
28 Ponzi scheme through Kim Funding, LLC, an entity controlled by Kim Peterson.

1 The first La Jolla Bridge entity was formed in 2016 and dissolved in 2017 ("LJB  
2 No. 1"), and the second was formed in 2019 and dissolved in 2020 ("LJB No. 2").  
3 Subject to Court approval, the Receiver has settled the estate's claims against LJB  
4 No. 2 (including all of its former members) ("LJB No. 2 Settlement Agreement") and  
5 has separately settled the estate's claims against nine (9) of the 12 former members of  
6 LJB No. 1 – eight (8) in one settlement agreement ("LJB No. 1 Members Settlement  
7 Agreement") and one (1) in a separate settlement agreement ("Threefoot Settlement  
8 Agreement"). True and correct copies of the LJB No. 2 Settlement Agreement, the  
9 LJB No. 1 Members Settlement Agreement, and the Threefoot Settlement Agreement  
10 are attached as Exhibits A, B, and C to the Declaration of Krista Freitag filed  
11 concurrently herewith ("Freitag Decl."). Freitag Decl., ¶ 2.

12 **A. LJB No. 2 Settlement Agreement**

13 Although the two La Jolla Bridge entities together received just over  
14 \$625,263.68 in net profits from the Ponzi scheme, LJB No. 2 received only  
15 \$76,869.85 of that amount. LJB No. 2 was dissolved prior to the receivership, so the  
16 Receiver must pursue recovery from its former members, each of whom received a  
17 share of the net profits paid to LJB No. 2. There are 14 former members of LJB No.  
18 2 and each of them received less than \$15,000 in net profits (through LJB No. 2)  
19 from the Ponzi scheme. Therefore, the Clawback Claim against the members of LJB  
20 No. 2 presents unique cost/benefit challenges in terms of obtaining and enforcing a  
21 judgment against 14 separate parties, each for a relatively small amount. For this  
22 reason, the Receiver, subject to Court approval, agreed to a larger discount of the  
23 Clawback Claim than she would otherwise accept pursuant to the pre-approved  
24 settlement parameters. While the pre-approved amount for a post-litigation  
25 settlement would be \$65,339.37 (85% of \$76,869.85), the proposed settlement  
26 provides for a payment of \$50,000 (or 65%). Under the circumstances, the Receiver  
27 believes this settlement amount is fair and reasonable, and represents a greater net  
28 recovery than would likely be obtained through litigation and enforcement of a

1 judgment to collect relatively small amounts from 14 separate parties. Freitag Decl.  
2 ¶ 3.

3 **B. LJB No. 1 Members Settlement Agreement**

4 As with LJB No. 2, LJB No. 1 has been dissolved, so the Receiver must pursue  
5 the former members of the entity for the portions of the total net profits they  
6 received. Through special interrogatories issued through counsel in the La Jolla  
7 Bridge Clawback case, the Receiver obtained a breakdown showing how the total net  
8 profits paid to LJB No. 1 from the Ponzi scheme (\$548,393.83) were distributed to  
9 the former members of LJB No. 1. Unlike the distribution of profits to the former  
10 members of LJB No. 2, which was fairly even with no one member receiving more  
11 than \$15,000, the distribution amounts the former members of LJB No. 1 received  
12 varied quite widely. There are 12 former members of LJB No. 1; five of them  
13 received less than \$15,000, five of them received between \$15,000 and \$50,000, and  
14 two of them received more than \$50,000 (with one of those two having received  
15 more than \$240,000). Again, considering the cost/benefit challenges of obtaining  
16 and enforcing a judgment for relatively small amounts against a large number of  
17 parties, the Receiver, subject to Court approval, agreed to accept reduced settlement  
18 amounts from former members of LJB No. 1 who received smaller portions of the  
19 total net profits. Freitag Decl., ¶ 4.

20 Under the proposed LJB No. 1 Members Settlement Agreement, there are  
21 eight (8) settling former members, all of whom received less than \$50,000 in net  
22 profits. Those who received less than \$15,000 will pay 70% of the net profits they  
23 received, and those who received between \$15,000 and \$50,000 will pay 75% of the  
24 net profits they received. In the aggregate, the settling former members will pay  
25 \$111,178.70 to settle Clawback Claims against them collectively in the total amount  
26 of \$151,336.65. The Receiver believes this settlement amount is fair and reasonable,  
27 and represents a greater net recovery than would likely be obtained through litigation  
28

1 and enforcement of a judgment to collect relatively small amounts from eight (8)  
2 separate parties. Freitag Decl., ¶ 5.

3 This proposed settlement does not fully resolve the Clawback Claim as to LJB  
4 No. 1 and its former members. There are four (4) other former members who are not  
5 part of the proposed LJB No. 1 Members Settlement Agreement ; one (1) of whom  
6 (the former member with the second largest net profit amount) settled with the  
7 Receiver at the pre-approved settlement amount, one (1) of whom has settled subject  
8 to Court approval (as discussed below), and two of whom have not settled. The  
9 Receiver will continue to pursue the estate's Clawback Claim against LJB No. 1 and  
10 the two (2) former members who have not settled. Freitag Decl., ¶ 6.

### 11 C. Threefoot Settlement Agreement

12 As noted above, one (1) of the former members of LJB No. 1 has settled  
13 separately from the eight (8) former members in the LJB No. 1 Members Settlement  
14 Agreement, which settlement is subject to Court approval. The Threefoot Settlement  
15 Agreement falls outside of the pre-approved parameters and outside of the settlement  
16 percentages under the LJB No. 1 Members Settlement Agreement. This is because  
17 the former member involved, Henry K. Threefoot, is deceased. Based on  
18 information obtained from available public records, Mr. Threefoot died in  
19 December 2020 and lived in Louisiana. Considering that Mr. Threefoot is deceased  
20 and the receivership estate's claim (\$29,979.70) would have to first be reduced to  
21 judgment and then made against his estate in Louisiana probate court, the collection  
22 costs and challenges to securing a recovery on the claim are unique and support a  
23 larger settlement discount. The Receiver, therefore, has accepted an offer from  
24 Horacio Valeiras to pay \$15,000 on behalf of Mr. Threefoot's estate in full  
25 satisfaction of the claim. Freitag Decl., ¶ 7.

## 26 II. DISCUSSION

27 A federal equity receiver's power to compromise claims is subject to court  
28 approval. As noted by the Ninth Circuit Court of Appeals in *SEC v. Hardy*, 803 F.2d

1 1034, 1037 (9th Cir. 1986), "[a] district court's power to supervise an equity  
2 receivership and to determine the appropriate action to be taken in the administration  
3 of the receivership is extremely broad." With regard to settlements entered into by a  
4 federal equity receiver, the Court's supervisory role includes reviewing and  
5 approving those settlements in light of federal court policy to promote settlements  
6 before trial. *See* Fed. R. Civ. P. 16(c), Advisory Committee Notes.

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

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

- 20 a. The probability of success in litigation;
- 21 b. The difficulties, if any, to be encountered in the matter of collection;
- 22 c. The complexity of the litigation involved and the expense,  
23 inconvenience, and delay necessarily attending; and
- 24 d. The paramount interest of the creditors and a proper deference to their  
25 reasonable views in the premises.

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

27 Here, the Receiver believes the Clawback Claims are very strong, but also  
28 believes reduced settlements below what she would otherwise accept pursuant to the

1 pre-approved settlement parameters are appropriate because of the relatively small  
 2 amounts that would need to be collected from a large number of separate parties,  
 3 including the estate of one party who is deceased. The costs of enforcing a judgment  
 4 go up significantly when it must be enforced against numerous parties. Pursuing the  
 5 Clawback Claims against the 14 former members of LJB No. 2 and the nine (9)  
 6 settling former members of LJB No. 1 (including the estate of Mr. Threefoot) would  
 7 result in higher costs, reducing the net recovery for the estate. Under these  
 8 circumstances, the Receiver believes the proposed settlements at slightly lower  
 9 percentages (e.g., 50%, 65%, 70% and 75%, as noted above) than what would  
 10 otherwise be accepted for a post-litigation Clawback settlement (85%) are reasonable  
 11 and will produce a greater net recovery for the estate than continued litigation and  
 12 enforcement of judgments against the numerous parties involved. Freitag Decl., ¶ 8.

13 **III. CONCLUSION**

14 For the foregoing reasons, the Receiver requests entry of the proposed order  
 15 approving the Motion and the two Settlement Agreements.

16  
 17 Dated: September 7, 2022

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 MALLORY & NATSIS LLP

By:           s/Edward G. Fates

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