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11 Attorneys for Receiver
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
27
28

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

**JOINT MOTION FOR APPROVAL
OF SETTLEMENT BETWEEN
RECEIVER AND CALPRIVATE
BANK**

Courtroom: 14A
Judge: Hon. Larry A. Burns

JOINT MOTION

Krista Freitag, the Court-appointed permanent receiver for Defendant ANI Development, LLC, Relief Defendant American National Investments, Inc., and their subsidiaries and affiliates ("Receiver"), and interested non-party CalPrivate Bank ("CalPrivate" and together, the "Parties"), by and through their respective counsel, hereby respectfully submit this Joint Motion for Approval of Settlement Between Receiver and CalPrivate Bank (the "Joint Motion").

The Receiver and CalPrivate bring this Joint Motion seeking approval of a settlement reached through settlement discussions mediated by Magistrate Judge Allison Goddard. The settlement was reached when both Parties accepted the terms of a detailed Mediator's Proposal made by Judge Goddard ("Settlement Agreement"). The Settlement Agreement, *i.e.* the detailed Mediator's Proposal accepted by the Parties, is attached hereto as Exhibit A.

The Settlement Agreement resolves the disputes between the Receiver and CalPrivate relating to (a) CalPrivate's appeal of this Court's orders approving the Global Settlement with Chicago Title Company ("CTC") and barring claims against CTC relating to the Ponzi scheme (including CalPrivate's claims against CTC pending in state court), and (b) CalPrivate's disputed claim of a security interest in the assets of ANI Development, LLC, including the \$11.3 million that was held by CTC at the outset of the receivership. The Settlement Agreement also includes an assignment by CalPrivate to the Receiver of all claims CalPrivate has against insider and fundraiser Kim Peterson and entities and trusts he controls ("Assigned Claims"). Significantly, the Assigned Claims include a claim against The Peterson Family Trust dated April 14, 1992 ("Peterson Trust") for breach of a guaranty executed by the Peterson Trust of the loan CalPrivate made to Peterson's entity, ANI License Fund, LLC.

If the Settlement Agreement is approved, CalPrivate will dismiss its pending appeal, withdraw its opposition to the Receiver's pending motion concerning

1 allowed claim amounts and distributions, and, as noted above, assign its claims
 2 against the Peterson Parties to the Receiver. In exchange, CalPrivate will receive
 3 the \$9,520,080.13 allocated to it under the Global Settlement with CTC (which
 4 amount the Receiver now holds), plus an additional \$500,000 from the receivership
 5 estate. The Receiver will also share the amount she collects from the Peterson
 6 Parties, whether through settlement or enforcement of a judgment, with CalPrivate
 7 as follows: CalPrivate will receive 30% of the first \$2.5 million of any gross
 8 proceeds recovered from the Peterson Parties and 40% of any additional gross
 9 proceeds recovered in excess of \$2.5 million, as provided in Section 7 of the
 10 Settlement Agreement. Under Section 11 of the Settlement Agreement, the
 11 settlement is not effective unless and until it is approved by the Court and the
 12 Receiver is expressly authorized to pursue the Assigned Claims.

13 The Settlement Agreement benefits the receivership estate by (a) eliminating
 14 the risk, cost and delay associated with CalPrivate's pending appeal of the CTC
 15 Global Settlement and associated Bar Order, (b) eliminating the risk, cost and delay
 16 associated with the pending dispute regarding CalPrivate's claim of a security
 17 interest (and prospective appeal if this Court were to deny CalPrivate's claim),¹ and
 18 (c) materially improving the receivership estate's ability to collect on an anticipated
 19 judgment against the Peterson Parties by obtaining a strong, direct claim for breach
 20 of guaranty against the Peterson Trust,² which the Receiver believes holds assets of
 21 substantial value.

22
 23 ¹ In terms of potential delay, if the Court were to deny CalPrivate's claim of a
 24 security interest, an appeal by CalPrivate (and motion for stay pending appeal)
 25 could potentially delay distribution of the \$11.3 million held by the Receiver in
 26 which CalPrivate claims to have a security interest. On the other hand, if
 27 CalPrivate's disputed claim is resolved, then once the Court approves the
 28 Receiver's proposed Distribution Plan, the Receiver anticipates distributing the
 majority of funds currently held in the receivership estate, including the
 \$11.3 million,

² As noted above, the Peterson Trust, an irrevocable trust established in 1992,
 guaranteed the loan issued by CalPrivate Bank to one of Peterson's entities, ANI
 License Fund. CalPrivate sued the Peterson Trust in state court to enforce the

1 Although the Peterson Trust is already a defendant in the Receiver's existing
 2 action against the Peterson Parties, the Peterson Trust received only a relatively
 3 small amount from the Ponzi scheme, meaning the Receiver's ability to recover from
 4 the Peterson Trust without the Assigned Claims would likely be much more costly
 5 to pursue. In other words, the Receiver believes her existing claims against the
 6 Peterson Parties, including her fraudulent transfer or "clawback" claim, are very
 7 strong (as are the Assigned Claims), but the Assigned Claims will materially
 8 enhance her ability to fully collect on a judgment.

9 The Parties participated in a Settlement Conference with Judge Goddard on
 10 January 13, 2023, which was followed by further mediated settlement discussions
 11 over the last few weeks. Ultimately, Judge Goddard issued a detailed Mediator's
 12 Proposal laying out all of the settlement terms, which both sides accepted. The
 13 Receiver believes the Settlement Agreement is in the best interests of the
 14 receivership estate and that the benefits of the settlement, both in terms of
 15 (a) eliminating risk, cost and delay associated with the pending disputes, and
 16 (b) enhancing the receivership estate's prospective recovery from the Peterson
 17 Parties, are likely to materially outweigh the amounts the estate will pay under the
 18 settlement. Declaration of Krista Freitag filed herewith, ¶ 2.

19 **THEREFORE, IT IS HEREBY STIPULATED, AGREED, AND**
 20 **REQUESTED**, by and between the Parties, that

21 1. The Settlement Agreement, in the form of the Mediator's Proposal
 22 attached hereto as Exhibit A and accepted by both Parties, be approved by the
 23 Court; and

24 _____
 25 guaranty, which action remains pending with the other related cases before Judge
 26 Kenneth Medel. Upon approval of this settlement, CalPrivate will dismiss its
 27 action against the Peterson Trust and the Receiver will seek leave to amend her
 28 existing action in this Court against the Peterson Parties to add the Assigned
 Claims. Case No. 21-cv-01620-LAB-AHG. Even after the Settlement
 Agreement is approved and the settlement payment is made, over \$10 million
 will be owed under the CalPrivate loan documents and the guaranty signed by
 the Peterson Trust.

2. The Receiver be authorized to pursue the Assigned Claims.

The undersigned have read and hereby agree to comply with and be bound by all of the terms and provisions of the foregoing Joint Motion. This Joint Motion may be signed by the parties in multiple counterparts, all of which shall be taken together as a single document, and facsimile and electronic signatures shall be effective as originals.

SO STIPULATED.

Dated: February 24, 2023

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: s/Edward G. Fates

DAVID R. ZARO
EDWARD G. FATES
MATTHEW D. PHAM
Attorneys for Receiver
KRISTA FREITAG

Dated: February 24, 2023

O'MELVENY & MYERS LLP

By: s/Michael G. Yoder

MICHAEL G. YODER
Attorneys for Claimant and Third
Party Objector
CALPRIVATE BANK

SIGNATURE CERTIFICATION

In accordance with Section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures Manual, the filer hereby attests that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

Dated: February 24, 2023

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: s/Edward G. Fates

EDWARD G. FATES
Attorneys for Receiver
KRISTA FREITAG

EXHIBIT INDEX

| EXHIBIT NO. | DESCRIPTION | PAGE NO. |
|--------------------|--|-----------------|
| Exhibit A | Settlement Agreement, <i>i.e.</i> the detailed Mediator's Proposal | 7 |

EXHIBIT A

EXHIBIT A

From: CASDdb_eFile Goddard <efile_Goddard@casd.uscourts.gov>
Sent: Wednesday, February 15, 2023 3:22 PM
To: Fates, Ted; Yoder, Michael
Cc: CASDdb_eFile Goddard
Subject: Mediator's Proposal re SEC v. Champion-Cain et al., Case No. 19cv1628 (for settlement between CalPrivate Bank and Receiver)
Attachments: AHG Mediators Proposal (Redline Comparison draft to final).docx

RE: *SEC v. Champion-Cain, et al.*, No. 19cv1628

Dear Counsel:

I am making the following Mediator's Proposal to resolve CalPrivate Bank's ("CalPrivate") Opposition to the Receiver's Motion re Claims [ECF No. 837] and CalPrivate Bank's pending appeal [ECF No. 942] of the Court's Order Overruling Objections to Global Settlement and Bar Orders [ECF No. 926] and Order Approving Global Settlement and Entering Chicago Title Bar Order [ECF No. 927]. I am attaching for your convenience a redline comparison of this proposal with the draft proposal I sent on February 10, 2023.

As a preliminary matter, I note the following:

This Proposal is not my evaluation of the merits of this dispute, and I expect there are terms in this proposal that neither side will like. It is my best shot at ascertaining the deal terms that will be acceptable as a compromise, albeit with some displeasure on one or both sides. This Proposal reflects our discussions, the information exchanged at our settlement conferences, and the practical realities of continued litigation.

This Proposal is "double blind." What that means is you will each tell me (via email by the deadline set forth below) confidentially Yes or No. If you say Yes, you will know if the other side said Yes, because the dispute will be settled per the below proposed amount and terms. If you say Yes, you will likewise know if the other side said No, because there will be no settlement. If you say No, you will not be told whether the other party said Yes or No.

If any party changes this Proposal, that is the equivalent of a No.

This Proposal is intended to fully and completely resolve and settle all claims and disputes that have been asserted, or could have been asserted, between interested non-party CalPrivate Bank ("CalPrivate") and Krista Freitag, as the court-appointed Receiver ("Receiver") in Case No. 19cv1628, related to that Receivership and Receiver's proposed distribution of funds from the Receivership estate.

The terms of the Settlement are as follows:

1. CalPrivate will transfer and assign unto Receiver, all of CalPrivate's right, title, and interest to any and all claims and causes of action asserted or which could have been asserted by CalPrivate against Kim Peterson ("Peterson"), whether in his personal capacity or in his capacity as trustee of the Peterson Family Trust dated April 14, 1992 ("Peterson Family Trust") or entities or trusts owned or controlled by Peterson, and any and all claims and causes of action asserted or which could have been asserted by CalPrivate against Peterson, the Peterson Family Trust, or entities or trusts owned or controlled by Peterson in that certain action styled as *CalPrivate Bank v. Kim H. Peterson Trustee of the Peterson Family Trust dated April 14, 1992*, San Diego Superior Court Case No. 37-2019-00058664-CU-BC-CTL (the "Peterson Trust Action") (collectively, the "Assigned Claims").
2. CalPrivate shall not pursue any other claims, causes of action, rights or remedies against Peterson, the Peterson Family Trust, or entities or trusts controlled by Peterson for so long as Receiver is pursuing claims against Peterson, the Peterson Family Trust, or entities or trusts controlled by Peterson in state or federal court, including, pursuing enforcement or collection on such claims or judgments or seeking Court approval of a settlement or full consummation thereof, unless such claims, causes of action, rights or remedies are unrelated to the ANI loan program or Ponzi scheme that is the subject of the Assigned Claims.
3. Receiver shall pay CalPrivate in cash the sum of Ten Million Twenty Thousand Eighty Dollars and Thirteen Cents (\$10,020,080.13) within five business days after the District Court's Order approving the Settlement. The \$10,020,080.13 sum represents the amount allocated to pay CalPrivate's MIMO net loss claim against the Receivership estate (\$9,520,080.13) in full under the Global Settlement with Chicago Title, plus an additional \$500,000.00. Receiver and CalPrivate understand that time is of the essence, and agree to cooperate fully in obtaining the District Court's approval of the Settlement.
4. Within three business days after the Settlement becomes effective, CalPrivate shall withdraw its Opposition to the Receiver's Motion re Claims [ECF No. 837] and accept that it has an allowed investor MIMO net loss claim in the receivership, with the same priority as other losing investors, in the amount of \$9,520,080.13.
5. Within three business days after the Settlement becomes effective, CalPrivate shall file a request for dismissal without prejudice of the Peterson Trust Action.
6. Within three business days after the Settlement becomes effective, CalPrivate shall file a Notice of Dismissal with prejudice of Case No. 23-55083 in the United States Court of Appeals for the Ninth Circuit.
7. Receiver shall pay CalPrivate thirty percent (30%) of the Gross Proceeds recovered from any judgment or award on or settlement of any claims against Peterson, the Peterson

Family Trust, and/or entities or trusts controlled by Peterson up to Two and One-Half Million Dollars (\$2,500,000.00), and forty percent (40%) of any Gross Proceeds in excess of Two and One-Half Million Dollars (\$2,500,000.00). Gross Proceeds shall be defined as the actual full amount collected of any settlement, award, and/or judgment before deduction of any attorney fees and/or costs incurred by Receiver. For example, if Receiver were to collect \$8 million in Gross Proceeds, CalPrivate would be paid \$2,950,000.00, which would be 30% of the first \$2.5 million (\$750,000.00), plus 40% of the remaining \$5,500,000.00 (\$2,200,000.00). If after the Settlement becomes effective and the Peterson Trust Action is dismissed, Receiver's efforts to pursue the Assigned Claims against Peterson or the Peterson Family Trust are stayed by any court for more than 90 days, the percentage of Gross Proceeds that will be payable to CalPrivate will be reduced, respectively, to twenty-five percent (25%) of the first Two and One-Half Million Dollars (\$2,500,000.00) collected, and thirty-five percent (35%) of any remaining amount collected. For the avoidance of doubt, any delay in Receiver obtaining leave to amend her federal court action against Peterson and the Peterson Family Trust to add the Assigned Claims shall not be considered a stay for purposes of this provision.

8. Receiver agrees that, as material inducement for CalPrivate's assignment of the Assigned Claims, Receiver will use reasonable efforts to promptly and diligently pursue the Assigned Claims.
9. CalPrivate represents and warrants that it has a good faith belief that the Assigned Claims are valid and enforceable, and that the statute of limitations has not expired on the Assigned Claims. Within five business days of acceptance of this proposal by both parties, CalPrivate shall provide a copy of its full litigation file for the Peterson Trust Action (with the exception of attorney-client privileged communications, which may be redacted) to counsel for Receiver. Receiver and her counsel shall have five business days from receipt to review the file and advise CalPrivate of any dispute regarding this representation and warranty, which is considered by all parties to be a material term of the Settlement. Any such dispute shall be submitted to the Honorable Allison H. Goddard for resolution, pursuant to Paragraph 11 below.
10. Except as otherwise set forth herein, Receiver and CalPrivate shall each be responsible for her or its own attorney fees and costs.
11. CalPrivate and Receiver shall consent to the jurisdiction of the Honorable Allison H. Goddard to enforce this Settlement and resolve any disputes arising from this Settlement.
12. If both CalPrivate and Receiver accept this proposal in writing, the proposal shall be deemed a firm and binding Settlement. The Parties shall submit the accepted proposal to the District Court in a Joint Motion seeking approval of this Settlement. This Settlement is not enforceable unless and until the District Court enters an Order approving it, and the Order must expressly grant Receiver authority to pursue the Assigned Claims against Peterson and the Peterson Family Trust. If the District Court grants Receiver authority to

pursue the Assigned Claims, Receiver understands that she must separately seek leave to amend her Complaint in that certain action styled *Freitag v. Peterson et al*, Case No. 3:21-cv-01620-LAB-AHG (the “Peterson Clawback Action”) if she chooses to pursue the Assigned Claims there. This Settlement shall remain effective regardless of whether Receiver is granted leave in the Peterson Clawback Action to pursue the Assigned Claims (meaning the Receiver must pursue the Assigned Claims in a separate federal case or in state court) and regardless of whether any court stays the Assigned Claims.

Deadline to respond: Both sides have until 4:00 pm PT on February 17, 2023, to email (to efile_goddard@casd.uscourts.gov) their Yes or No response to this Proposal.

Important Note: Please let me know ASAP if either side feels that I have failed to include one or more material terms, or if they have questions about the Proposal.



Allison H. Goddard (she/her/hers)
Magistrate Judge
Southern District of California
(619) 557-6162