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12 KRISTA FREITAG

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

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16 SECURITIES AND EXCHANGE
COMMISSION,
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Plaintiff,
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v.
19 GINA CHAMPION-CAIN and ANI
20 DEVELOPMENT, LLC,
21
Defendants,
22 AMERICAN NATIONAL
INVESTMENTS, INC.,
23
Relief Defendant.

Case No. 3:19-cv-01628-LAB-AHG
Ctm: 14A
Judge Hon. Larry Alan Burns

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR APPROVAL OF
SETTLEMENT WITH ILLA
DESIGNS, LLC, JOHN ERIC
CHURILLA, AND NICOLE
LORRAINE CHURILLA**

Date: April 10, 2023
Time: 11:30 a.m.
Courtroom: 14A
Judge: Hon. Larry Alan Burns

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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 for Approval of Settlement with Illa Designs, LLC, John Eric Churilla
6 and Nicole Lorraine Churilla ("Motion").

7 **I. INTRODUCTION**

8 The Receiver has reached a settlement of her action against Illa Designs, LLC,
9 John Eric Churilla and Nicole Lorraine Churilla (collectively "Churilla Parties") that
10 will generate between \$235,000 and \$265,000 for the receivership estate, depending
11 on when the Churilla Parties sell their property located in Austin, Texas and make
12 the required settlement payment from escrow. If the Churilla Parties do not sell the
13 property, or otherwise make their final payment by April 30, 2024, the Receiver may
14 file a Stipulated Judgment for \$300,000 plus post-judgment interest and may use all
15 legal means to enforce collection of the Stipulated Judgment.

16 **II. BACKGROUND FACTS**

17 On or about June 9, 2019, American National Investments, Inc. ("ANI")
18 loaned Illa Designs \$200,000 ("Loan"). This loan, which was to be used for Illa
19 Design's business of developing and selling a product called the "Dash Wagon", was
20 memorialized by a "Secured Convertible Promissory Note" ("Promissory Note") in
21 favor of ANI. Under the Note, Illa Designs promised to pay interest on the
22 outstanding principal amount of the Promissory Note from July 9, 2019 until
23 payment or conversion in full, at a fixed rate of ten percent (10%) per annum.
24 Absent conversion or full payment of the Promissory Note, all outstanding principal
25 and accrued and unpaid interest on the Promissory Note, plus all fees, costs and
26 expenses due under the Promissory Note, would become fully due and payable on
27 July 8, 2022. Section 9 of the Promissory Note states that Illa Designs shall pay ANI
28 all reasonable attorneys' fees and court costs incurred by ANI in enforcing and

1 collecting the Promissory Note. Declaration of Krista Freitag filed herewith.
2 ("Freitag Decl."), ¶ 2.

3 The performance of Illa Design's obligations under the Promissory Note is
4 secured by a Security Agreement dated July 9, 2019 between Illa Designs and ANI.
5 The Security Agreement grants ANI a continuing security interest in any and all
6 assets of Illa Designs. ANI perfected its security interest in the Collateral by filing a
7 UCC Financing Statement ("UCC Filing") with the Texas Secretary of State on
8 July 9, 2019. Freitag Decl., ¶ 3.

9 In connection with the Loan to Illa Designs, its owners, John Eric Churilla and
10 Nicole Lorraine Churilla (together, the "Churillas"), executed a "Personal Guarantee
11 of \$200,000 Loan" ("Guaranty") on July 9, 2019. Under the Guaranty, the Churillas
12 jointly and severally guaranteed prompt and full payment of all amounts due under
13 the Promissory Note. Section 17 of the Guaranty states the Churillas shall pay on
14 demand by ANI all costs and expenses, including without limitation, all reasonable
15 attorneys' fees incurred by ANI in connection with the enforcement and/or collection
16 of the Guaranty. Freitag Decl., ¶ 4.

17 On August 28, 2019, the Securities and Exchange Commission
18 ("Commission") filed a Complaint in the United States District Court for the
19 Southern District of California ("District Court") against Defendants Gina
20 Champion-Cain ("Champion-Cain") and ANI Development, Inc., and Relief
21 Defendant ANI. Concurrently with filing the Complaint, the Commission and
22 Champion-Cain filed a Joint Motion and Stipulated Request by All Parties for a
23 Preliminary Injunction Order and Orders (1) Freezing Assets; (2) Requiring
24 Accountings; (3) Prohibiting the Destruction of Documents; and (4) Appointing a
25 Permanent Receiver ("Joint Motion").

26 On September 3, 2019, the District Court granted the Joint Motion and entered
27 its Order; Granting the Parties Joint Motion and Stipulated Request by all Parties for
28 a Preliminary Injunction Order and Order (1) Freezing Assets; (2) Requiring

1 Accountings; (3) Prohibiting the Destruction of Documents; and (4) Appointing a
2 Permanent Receiver, including appointment of the Receiver on a permanent basis.

3 On July 8, 2022, all outstanding principal and accrued and unpaid interest
4 under the Promissory Note, plus all fees, costs and expenses due under the
5 Promissory Note, became due and payable. Neither Illa Designs, nor the Churillas,
6 timely paid any outstanding amounts due under the Promissory Note. Freitag
7 Decl., ¶ 5.

8 After a member of the Receiver's staff had contacted Mr. Churilla and made
9 several attempts to agree on payment terms, on December 16, 2022, the Receiver,
10 through her counsel, sent a Notice of Default to Illa Designs concerning its failure to
11 pay outstanding amounts due under the Promissory Note. The Receiver's counsel
12 concurrently sent a Notice of Default to the Churillas concerning their failure to pay
13 all outstanding amounts due under the Promissory Note, as required by the Guaranty.
14 Freitag Decl., ¶ 6.

15 On January 13, 2023, the Receiver, again through counsel, filed a Complaint
16 in this Court against Illa Designs and the Churillas seeking to enforce the terms of
17 the Promissory Note and Guaranty and collect all amounts due thereunder ("Loan
18 Enforcement Action"). Freitag Decl., ¶ 7.

19 Subject to Court approval, the Receiver, Illa Designs and the Churillas have
20 entered into a Settlement Agreement, pursuant to which the Churillas will repay the
21 loan and the Receiver will dismiss the Loan Enforcement Action. A true and correct
22 of the Settlement Agreement is attached to the Freitag Decl. as Exhibit A.

23 **A. The Settlement Terms**

24 The Churilla Parties have executed a Stipulated Judgment, which is in favor of
25 the Receiver in the amount of \$300,000, plus post-judgment interest. The Stipulated
26 Judgment is to be held by the Receiver and not filed with the Court or enforced for as
27 long as the Churilla Parties timely make all required payments described below.

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1 The Churilla Parties shall make monthly payments of \$1,000, due on the first
2 of each month, starting with the month following Court Approval. Such monthly
3 payments shall continue until the Churillas close the sale of their real property
4 located at 6002 Rain Creek Parkway, Austin, Texas ("Property"), at which time, the
5 following amount shall be paid to the Receiver directly from escrow for the sale of
6 the Property:

- 7 • \$235,000 if the sale closes on or before May 15, 2023;
- 8 • \$250,000 if the sale closes after April 30, 2023 and on or before
9 October 31, 2023; or
- 10 • \$265,000 if the sale closes after October 31, 2023 and on or
11 before April 30, 2024.

12 The monthly payments made by the Churillas up until the closing of the sale
13 shall be credited to the amount due at closing. If a sale of the Property has not closed
14 by April 30, 2024, then the Churilla Parties shall nonetheless pay \$265,000 to the
15 Receiver no later than April 30, 2024.

16 If all payments are timely made as required herein, then the remainder owed
17 under the Stipulated Judgment shall be fully forgiven, shall no longer be owed by the
18 Churilla Parties, and the Receiver shall then destroy the Stipulated Judgment. If any
19 required payment is not timely made, then the Receiver, in her sole discretion, may
20 file the Stipulated Judgment with the Court and once entered by the Court, enforce it
21 against the Churilla Parties by all legally available means to collect and recover the
22 remaining amount due on the Stipulated Judgment (after credit is given for payments
23 made by the Churilla Parties).

24 The Churillas will also grant the Receiver a Deed of Trust on the Property.
25 The Deed of Trust shall be executed by both of the Churillas, delivered to the
26 Receiver within five (5) business days of Court Approval, recorded by the Receiver
27 in the property records for Travis County, Texas, and serve as security for the
28 Churilla Parties' payment obligations under the Settlement Agreement and Stipulated

1 Judgment. In the event of a default by the Churilla Parties, including the failure of
2 the Churillas to make any of the required payments, the Receiver will have the right,
3 in her sole discretion, to immediately enforce the terms of the Deed of Trust,
4 including through foreclosure and exercise of all other legally available rights and
5 remedies to collect the full amount remaining due under the Settlement Agreement
6 and Stipulated Judgment. Once all required payments have been made in full, the
7 Receiver shall promptly deliver to the Churilla Parties an executed full release and
8 reconveyance of the Deed of Trust to be recorded by the Churilla Parties.

9 **III. DISCUSSION**

10 **A. Settlement Approval**

11 A federal equity receiver's power to compromise claims is subject to court
12 approval. As noted by the Ninth Circuit Court of Appeals in *SEC v. Hardy*, 803 F.2d
13 1034, 1037 (9th Cir. 1986), "[a] district court's power to supervise an equity
14 receivership and to determine the appropriate action to be taken in the administration
15 of the receivership is extremely broad." With regard to settlements entered into by a
16 federal equity receiver, the Court's supervisory role includes reviewing and
17 approving those settlements in light of federal court policy to promote settlements
18 before trial. *See* Fed. R. Civ. P. 16(c), Advisory Committee Notes.

19 Federal courts of equity may look to bankruptcy law for guidance in the
20 administration of receivership estates. *See SEC v. Capital Consultants, LLC*,
21 397 F.3d 733, 745 (9th Cir. 2005); *SEC v. Am. Capital Invs., Inc.*, 98 F.3d 1133,
22 1140 (9th Cir. 1996); *SEC v. Basic Energy & Affiliated Res.*, 273 F.3d 657, 665
23 (6th Cir. 2001). A bankruptcy court may approve a compromise of claims asserted
24 by or against the estate if the compromise is "fair and equitable." *Woodson v.*
25 *Fireman's Fund Ins. Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir. 1988). The
26 approval of a proposed compromise negotiated by a court appointed fiduciary "is an
27 exercise of discretion that should not be overturned except in cases of abuse leading
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1 to a result that is neither in the best interest of the estate nor fair and equitable for the
2 creditors." *In re MGS Mktg.*, 111 B.R. 264, 266-67 (B.A.P. 9th Cir. 1990).

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

- 5 a. The probability of success in litigation;
- 6 b. The difficulties, if any, to be encountered in the matter of collection;
- 7 c. The complexity of the litigation involved and the expense,
8 inconvenience, and delay necessarily attending; and
- 9 d. The paramount interest of the creditors and a proper deference to their
10 reasonable views in the premises.

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

12 Here, the Receiver believes the receivership estate's claims against the
13 Churillas Parties are very strong. The value of the existing collateral, however,
14 which the Receiver understands is essentially inventory belonging to Illa Designs, is
15 believed to be minimal. The proposed settlement provides for full repayment of the
16 principal balance of the loan, plus between \$35,000 and \$65,000 in interest and
17 attorney fees, depending on when the Churillas close the sale of the Property. The
18 Churillas are also required to make monthly payments of \$1,000 each until the sale
19 closing occurs, which amounts are to be applied to the total settlement payment. If
20 the Churillas do not sell the Property by April 30, 2024, then the Receiver has the
21 Stipulated Judgment and Deed of Trust on the Property to protect the receivership
22 estate and enable the Receiver to collect the full amount of the Stipulated Judgment
23 (\$300,000 plus post-judgment interest). Considering all the above, the Receiver
24 believes the settlement is fair and reasonable and puts the estate in a position to
25 secure a greater net recovery than it likely would through further pursuit of the
26 pending Loan Enforcement Action. Freitag Decl., ¶ 8.

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IV. CONCLUSION

For the foregoing reasons, the Receiver requests entry of the proposed order approving the Motion and the Settlement Agreement.

Dated: March 6, 2023

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By: s/Edward G. Fates

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