

1 DAVID R. ZARO (BAR NO. 124334)  
 2 MARK R. HARTNEY (BAR NO. 136824)  
 3 MATTHEW D. PHAM (BAR NO. 287704)  
 4 ALLEN MATKINS LECK GAMBLE  
 5 MALLORY & NATSIS LLP  
 6 865 South Figueroa Street, Suite 2800  
 Los Angeles, California 90017-2543  
 Phone: (213) 622-5555  
 Fax: (213) 620-8816  
 E-Mail: dzaro@allenmatkins.com  
 mhartney@allenmatkins.com  
 mpham@allenmatkins.com

7 EDWARD G. FATES (BAR NO. 227809)  
 8 ALLEN MATKINS LECK GAMBLE  
 9 MALLORY & NATSIS LLP  
 One America Plaza  
 600 West Broadway, 27th Floor  
 San Diego, California 92101-0903  
 Phone: (619) 233-1155  
 Fax: (619) 233-1158  
 E-Mail: tfates@allenmatkins.com

12 Attorneys for Receiver  
 13 KRISTA L. FREITAG

14 UNITED STATES DISTRICT COURT  
 15 SOUTHERN DISTRICT OF CALIFORNIA

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

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

**TWELFTH INTERIM FEE  
 APPLICATION OF KRISTA L.  
 FREITAG, COURT-APPOINTED  
 RECEIVER, FOR PAYMENT OF  
 FEES AND REIMBURSEMENT OF  
 EXPENSES**

Date: April 29, 2024  
 Time: 11:30 a.m.  
 Courtroom: 14A  
 Judge: Hon. Larry Alan Burns

**TABLE OF CONTENTS**

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

**Page**

I. INTRODUCTION .....4

II. SUMMARY OF TASKS PERFORMED AND COSTS INCURRED .....7

    A. Categories and Descriptions of Work .....7

        1. General Receivership .....7

        2. Reporting .....7

        3. Operations and Asset Sales .....8

        4. Claims and Distributions .....8

        5. Third-Party Recoveries .....9

        6. Employment/Fees .....10

        7. Summary of Expenses Requested for Reimbursement .....10

III. STANDARDIZED FUND ACCOUNTING REPORT .....11

IV. THE FEES AND COSTS ARE REASONABLE AND SHOULD BE ALLOWED .....11

V. CONCLUSION .....12

**TABLE OF AUTHORITIES**

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

<b><u>Cases</u></b>	<b><u>Page(s)</u></b>
<i>Gaskill v. Gordon</i> , 27 F.3d 248 (7th Cir. 1994).....	11
<i>In re Imperial 400 Nat’l, Inc.</i> , 432 F.2d 232 (3d Cir. 1970).....	11
<i>SEC v. Elliot</i> , 953 F.2d 1560 (11th Cir. 1992).....	11
<i>SEC v. W.L. Moody &amp; Co., Bankers (Unincorporated)</i> , 374 F. Supp. 465 (S.D. Tex. 1974) .....	11
<i>United States v. Code Prods. Corp.</i> , 362 F. 2d 669 (3d Cir. 1966).....	11

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 hereby submits this Twelfth interim application for approval and payment of fees  
5 and reimbursement of expenses (“Application”). This Application covers the six-  
6 month period from July 1, 2023 through December 31, 2023 (“Twelfth Application  
7 Period”) and seeks interim approval of \$70,086.10 in fees and \$7,388.38 in  
8 expenses, and an order authorizing payment, on an interim basis, of 80% of the fees  
9 incurred (\$56,068.88) and 100% of expenses incurred.

10 It should be noted that in estimating the total recovery of investors with  
11 allowed claims at between 90% and 95% of their MIMO net losses (as she has in  
12 prior motions filed with the Court), the Receiver took into account the accrued and  
13 anticipated administrative expenses of the receivership, including the fees and costs  
14 of the Receiver and her counsel, approval of which is sought herein and in the  
15 concurrently-filed fee application of Allen Matkins.

16 **I. INTRODUCTION**

17 This equity receivership involves a large, complex, and wide-ranging group  
18 of enterprises and assets which are the subject of the Complaint filed by the United  
19 States Securities and Exchange Commission (“Commission”). Defendants agreed to  
20 the appointment of a permanent receiver by way of a Joint Motion and Stipulated  
21 Request filed concurrently with the Complaint (Dkt. 2). On September 3, 2019, the  
22 Court (the Hon. Marilyn Huff) granted the Joint Motion and entered the  
23 Appointment Order (Dkt. 6.).

24 The Appointment Order confers broad duties, responsibilities, and powers on  
25 the Receiver designed to allow her to collect and take custody, control, possession,  
26 and charge of all the assets of Receivership Entities, to investigate and, where  
27 appropriate, to institute, pursue, and prosecute all claims and causes of action, and to  
28 make an accounting, as soon as practicable, of the Receivership Entities’ financial

1 condition. The Appointment Order also authorizes the Receiver to “employ  
2 attorneys, accountants, appraisers and others” to assist her in the performance of her  
3 duties. Dkt. No. 6, Section X(F). The Receiver promptly determined that her  
4 experienced staff at E3 Realty Advisors, Inc. dba E3 Advisors (“E3”), as well as  
5 experienced, qualified counsel was critical due to the size and complexity of the  
6 receivership estate. Accordingly, the Receiver has used her team at E3 to assist in  
7 carrying out receivership duties and engaged Allen Matkins Leck Gamble  
8 Mallory & Natsis LLP (“Allen Matkins”) as her general counsel for the  
9 receivership.

10 On November 22, 2019, the Court approved the Receiver’s proposal to file  
11 reports and fee applications on a quarterly basis. Dkt. 126. This fee application  
12 covers two quarters and should be read in conjunction with the Receiver’s  
13 Seventeenth Interim Report (“Seventeenth Report”) and Eighteenth Interim Report  
14 (“Eighteenth Report”), filed on December 5, 2023 and February 28, 2024  
15 respectively, which describe in detail the Receiver’s and her counsel’s activities  
16 during the six-month period covered in this Twelfth Application Period. Dkt. Nos.  
17 1014 and 1015. So as to avoid a significant amount of repetition, references are  
18 sometimes made to relevant portions of the Seventeenth and Eighteenth Reports in  
19 the below descriptions of the Receiver’s work.

20 This Application seeks interim approval of \$70,086.10 in fees for a total of  
21 306.9 hours worked, and payment on an interim basis of 80% of that amount, or  
22 \$56,068.88. The work performed is described task-by-task on Exhibit A and is  
23 broken down into the following categories:

24  
25  
26  
27  
28

1	General Receivership (002)	\$16,631.85
2	Asset Investigation & Recovery (003)	\$0.00
3	Reporting (004)	\$6,674.40
4	Operations & Asset Sales (005)	\$12,697.45
5	Claims & Distributions (006)	\$4,363.05
6	Third Party Recoveries (007)	\$29,026.35
7	Pending Litigation (008)	\$0.00
8	Employment/Fees (009)	\$693.00
9	Forensic Accounting (010)	\$0.00
10	<b>Total Fees</b>	<b>\$70,086.10</b>

11

12 During the Twelfth Application Period, a significant amount of time was

13 spent (a) participating in a settlement conference, a deposition, and performing work

14 necessary to pursue, protect and collect third-party and clawback recoveries from

15 persons and entities who received profits from the Receivership Entities,

16 (b) attending to tax work and authority requests for restitution analysis, (c) finalizing

17 execution of \$43 million of distributions resulting from the Court's various orders

18 associated with settlement approvals and the Receiver's Claims and Distribution

19 Plan (Dkt. No. 958), (d) generally administering the estate, and (e) advising the

20 Court on the status of the Receiver's activities.

21 In this instance, as has been well documented, a substantial amount of time

22 was required of the Receiver, her staff and her professionals to protect and monetize

23 the net asset value in the receivership estate. Through the last two quarters of 2023,

24 the Receiver made notable and substantial progress in discharging her duties.

25 Among other accomplishments, during the Twelfth Application Period, representing

26 six months of activity (from July 1, 2023 through December 31, 2023), the Receiver

27 recovered \$43,576 primarily from clawback settlements, collected \$127,849 of

28 interest income resulting from the receivership estate's participation in an insured

1 cash sweep program, which not only earns interest but also fully protects the funds  
2 in FDIC-insured accounts and finalized the work necessary to complete the  
3 distribution of over \$43 million pursuant to the various Court orders regarding  
4 settlements, claims and distributions.

5 The largest category of work – Third-Party Recoveries – represents 41.42%  
6 of the fees incurred in the Twelfth Application Period. This category included  
7 preparing for and attending a deposition and a settlement conference as ordered by  
8 the Court, as well as preparing analysis, data and support for clawback claim  
9 litigation.

10 The Receiver has worked diligently to describe in detail the work performed  
11 by her and her team in the spreadsheet attached hereto as Exhibit A. The Receiver  
12 has worked diligently and efficiently on the urgent issues facing the receivership  
13 estate through the turbulent transition from a large, multi-operations, active  
14 enterprise to a Court-ordered receivership, with such efforts culminating in a  
15 recovery of 90.92% of investor MIMO net losses to date, and should be  
16 compensated on an interim basis for her work.

17 **II. SUMMARY OF TASKS PERFORMED AND COSTS INCURRED**

18 **A. Categories and Descriptions of Work**

19 1. General Receivership

20 The Receiver's work in the General Receivership category primarily focused  
21 on work associated with receivership entity tax returns, Google mail and other data  
22 preservation, and work associated with restitution analysis requests by the  
23 Commission. Other than tax work, these are largely non-recurring tasks. The  
24 reasonable and necessary fees for work in this category during the Twelfth  
25 Application Period total \$16,631.85 (64.30 hours).

26 2. Reporting

27 The Receiver's work in this category during the Twelfth Application Period  
28 focused on completing her Sixteenth and Seventeenth Interim Reports (Dkt. 1004,

1 1014). The Sixteenth and Seventeenth Interim Reports, filed on September 21, 2023  
2 and December 5, 2023, provided detailed descriptions of the Receiver's activities to  
3 implement the Appointment Order and carry-out her Court-ordered duties, including  
4 remaining business operations, recoveries, receipts and disbursements, distributions  
5 and investor communications. The reports also contain the Receiver's then current  
6 assessment of receivership assets and recommendations for the continued  
7 administration of the receivership estate. The reasonable and necessary fees for  
8 work in this category during the Twelfth Application Period total \$6,674.40  
9 (approximately 29.60 hours).

### 10 3. Operations and Asset Sales

11 The Receiver's time in this category primarily reflects the Receiver's time  
12 spent generally administering the estate, from winding down entities to efforts  
13 regarding a liquor license resolution, to assessing the monetization opportunity of  
14 various investments and other miscellaneous operational matters. The reasonable  
15 and necessary fees for work during the Twelfth Application Period in this category  
16 total \$12,697.45 (approximately 80.70 hours).

### 17 4. Claims and Distributions

18 During the Twelfth Application Period, in addition to ongoing  
19 communications with investors and creditors, the Receiver and her team completed  
20 the work necessary to finalize the distribution of more than \$43 million. The  
21 Receiver and her team's efforts resulted in only one check totaling \$270.37 not  
22 being negotiated by one trade creditor. The total amount distributed as part of the  
23 various approved settlements was approximately \$22 million and the approved  
24 interim distribution to claimants generally was \$21 million. These distributions  
25 brought the total investor recovery up to 90.92% of MIMO net losses (with some  
26 investors having received 100% or more of their MIMO net losses pursuant to  
27 Chicago Title settlements). Trade and tax creditors with allowed claims also  
28 realized 90.92% of their claims with the interim distribution.



1 The reasonable and necessary fees for work during the Twelfth Application  
2 Period in this category total \$4,363.05 (approximately 21.90 hours).

3 5. Third-Party Recoveries

4 During the Twelfth Application Period, the Receiver’s work in this category  
5 related primarily to a deposition and settlement conference (D’Agostino), a  
6 prospective mediation and discovery conference (Kim Peterson), two summary  
7 judgment clawback motions (D’Agostino/La Jolla Bridge and Kim Peterson), and  
8 various Ninth Circuit related filings (appeals filed by Kim Peterson and Ovation). A  
9 significant amount of the work in this category involved preparing analysis, data and  
10 support for the aforementioned clawback claim litigation/motions for summary  
11 judgment. During the Twelfth Application Period, the Receiver also continued to  
12 collect on various clawback settlements.

13 From inception of the receivership through December 31, 2023, the combined  
14 efforts of the Receiver, Allen Matkins and special counsel to recover on  
15 miscellaneous investments, loans, and other transfers have most notably generated  
16 the \$11.3 million of funds held by Chicago Title, \$347,040 from an Arkansas real  
17 estate investment, \$330,000 from the settlement with Dan and Barbara Champion,  
18 \$183,204 of legal retainers, \$495,888 from the sale of the Pullman Lofts interest,  
19 \$234,669 from the recovery of the Endeavor Bank CD plus \$271,963 of proceeds  
20 from the sale of Endeavor Bank stock, \$1,300,000 from the refinance of the Bandini  
21 Property, \$703,201 from the Williams Adams settlement, \$290,000 from the  
22 Randolph Houts settlement, \$216,667 from two non-clawback settlements and  
23 \$8,803,385 of clawback recoveries.

24 This is an extremely important category to the overall recovery of assets for  
25 the benefit of the estate’s investors and creditors, and involved the work necessary  
26 to advance third-party claims or clawback cases. The reasonable and necessary fees  
27 for work during the Twelfth Application Period in this category total \$29,026.35  
28 (approximately 99.40 hours).

1                   6.     Employment/Fees

2                   During the Twelfth Application Period, the billable time spent in this category  
 3 involved reviewing the Standard Fund Accounting Report for the Eleventh Interim  
 4 Fee Applications covering the first two quarters of 2023, which involved  
 5 reconciliation and logging of all claimants/investors paid during said reporting  
 6 period. The reasonable and necessary fees in this category total \$693.00 (only 2.2  
 7 hours billed).

8                   7.     Summary of Expenses Requested for Reimbursement

9                   The Receiver requests the Court approve reimbursement of \$7,388.38 in out-  
 10 of-pocket costs. The itemization of such expenses is attached hereto as Exhibit B  
 11 and is summarized below by category. The Receiver incurred expenses primarily  
 12 associated with wrapping up intellectual property matters and the final stages of  
 13 enforcement of a receivership estate clawback judgment in New York by local  
 14 counsel located in New York which resulted in a settlement. Additional expenses  
 15 incurred primarily relate to updating the project website for investor access to  
 16 information, expenses associated with the interim distribution and other  
 17 miscellaneous out-of-pocket expenses.

18                   The total reasonable and necessary costs incurred by the Receiver during the  
 19 Twelfth Application Period is \$7,388.38 and is broken out by category as follows:

<b>Category</b>	<b>Total</b>
Special Intellectual Property Counsel	\$5,560.00
Local Counsel – NY Judgment Enforcement	\$235.00
Website/Phone Maintenance/Updates	\$948.84
Duplication & Postage	\$468.28
Travel & Other	\$176.26
<b>TOTAL</b>	<b>\$7,388.38</b>

1 **III. STANDARDIZED FUND ACCOUNTING REPORT**

2 Attached hereto as Exhibit C is a Standardized Fund Accounting Report,  
3 which includes information on receipts and disbursements during the Twelfth  
4 Application Period.

5 **IV. THE FEES AND COSTS ARE REASONABLE AND SHOULD BE**  
6 **ALLOWED**

7 “As a general rule, the expenses and fees of a receivership are a charge upon  
8 the property administered.” *Gaskill v. Gordon*, 27 F.3d 248, 251 (7th Cir. 1994).  
9 These expenses include the fees and expenses of this Receiver and his professionals,  
10 including Allen Matkins. Decisions regarding the timing and amount of an award of  
11 fees and costs to me and his Professionals are committed to the sound discretion of  
12 the Court. *See SEC v. Elliot*, 953 F.2d 1560, 1577 (11th Cir. 1992) (rev’d in part on  
13 other grounds, 998 F.2d 922 (11th Cir. 1993)).

14 In allowing fees, a court should consider “the time, labor and skill required,  
15 but not necessarily that actually expended, in the proper performance of the duties  
16 imposed by the court upon the Receiver, the fair value of such time, labor and skill  
17 measured by conservative business standards, the degree of activity, integrity and  
18 dispatch with which the work is conducted and the result obtained.” *United States v.*  
19 *Code Prods. Corp.*, 362 F. 2d 669, 673 (3d Cir. 1966) (internal quotation marks  
20 omitted). In practical terms, receiver and professional compensation thus ultimately  
21 rests upon the result of an equitable, multi-factor balancing test involving the  
22 “economy of administration, the burden that the estate may be able to bear, the  
23 amount of time required, although not necessarily expended, and the overall value of  
24 the services to the estate.” *In re Imperial 400 Nat’l, Inc.*, 432 F.2d 232, 237 (3d Cir.  
25 1970). Regardless of how this balancing test is formulated, no single factor is  
26 determinative and “a reasonable fee is based [upon] all circumstances surrounding  
27 receivership.” *SEC v. W.L. Moody & Co., Bankers (Unincorporated)*, 374 F. Supp.  
28 465, 480 (S.D. Tex. 1974).

1 As a preliminary matter, the Appointment Order confers on the Receiver  
2 substantial duties and powers, including to conduct such investigation and discovery  
3 as is necessary to locate and account for all receivership assets, take such action as is  
4 necessary and appropriate to assume control over and preserve receivership assets,  
5 and employ attorneys and others to investigate and, where appropriate, institute,  
6 pursue, and prosecute all claims and causes of action of whatever kind and nature.  
7 *See* Appointment Order, Part X. The Court also approved the Receiver’s proposal  
8 to file interim reports and fee applications on a quarterly basis. Dkt. 126. As noted  
9 above, this interim application reflects two quarters of work.

10 The Receiver has submitted a detailed fee application which describes the  
11 nature of the services rendered, and the identity and billing rate of each individual  
12 performing each task. *See* Exhibit A. The Receiver endeavors to staff matters as  
13 efficiently as possible, while remaining cognizant of the complexity of issues  
14 presented. The request for fees is based on the Receiver’s customary billing rates  
15 charged for comparable services provided in other matters, less a 10% discount.

16 The work performed by the Receiver was critically essential to carrying out  
17 her Court-ordered duties and preserving and monetizing the net asset value of the  
18 assets in the receivership estate. The Receiver and Allen Matkins have worked  
19 diligently since the Receiver’s appointment to preserve and protect the assets of  
20 receivership estate. Moreover, the Receiver seeks payment of only 80% of fees  
21 incurred on an interim basis in recognition of the fact that her work is ongoing.  
22 Payment of the proposed 20% holdback will be sought at the conclusion of  
23 receivership. The Receiver’s fees are fair and reasonable and should be approved  
24 and paid on an interim basis.

25 **V. CONCLUSION**

26 The Receiver therefore respectfully requests this Court enter an Order:

- 27 1. Approving the Receiver’s fees, on an interim basis, for two quarters of  
28 work of \$70,086.10;

1           2.     Authorizing and directing the Receiver to pay 80% of approved fees, or  
2 \$56,068.88, from the assets of receivership estate;

3           3.     Approving the Receiver’s costs in the amount of \$7,388.38, and  
4 authorizing and directing reimbursement of such costs in full; and for such other and  
5 further relief as the Court deems appropriate.

6  
7 Dated: March 22, 2024

By:   
KRISTA L. FREITAG  
Court-appointed Receiver

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28