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 13 KRISTA L. FREITAG

14 UNITED STATES DISTRICT COURT
 15 SOUTHERN DISTRICT OF CALIFORNIA

17 SECURITIES AND EXCHANGE
 COMMISSION,

18 Plaintiff,

19 v.

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

22 Defendants,

23 AMERICAN NATIONAL
 24 INVESTMENTS, INC.,

25 Relief Defendant.

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

**TWELFTH INTERIM FEE
 APPLICATION OF ALLEN
 MATKINS LECK GAMBLE
 MALLORY & NATSIS LLP,
 GENERAL COUNSEL TO THE
 RECEIVER, KRISTA L. FREITAG,
 FOR PAYMENT OF FEES AND
 REIMBURSEMENT OF EXPENSES**

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

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1 Allen Matkins Leck Gamble Mallory & Natsis LLP (“Allen Matkins”),
2 general counsel to Krista L. Freitag (the “Receiver”), the Court-appointed receiver
3 for ANI Development, LLC, American National Investments, Inc. (“ANI”), and
4 their respective subsidiaries and affiliates (the “Receivership Entities”), hereby
5 submits this Eleventh Interim Application for Payment of Fees and Reimbursement
6 of Expenses (the “Application”). This Application covers the six-month period
7 from July 1, 2023 through December 31, 2023 (the “Application Period”), and seeks
8 approval of \$326,147.40 in fees and \$13,539.69 in expenses, and an order
9 authorizing the Receiver to pay, on an interim basis, 80% of the fees incurred
10 (\$260,917.92) and 100% of the expenses incurred (\$13,539.69).

11 **I. INTRODUCTION.**

12 This equity receivership involves a large, complex, and wide-ranging group
13 of enterprises and assets associated with the Ponzi scheme that is the subject of the
14 Complaint filed by the Securities and Exchange Commission (“Commission”). The
15 Receiver was appointed on September 3, 2019. Dkt. 6.

16 The ordering appointing the Receiver confers broad duties, responsibilities,
17 and powers upon the Receiver, which are designed to allow her to secure, preserve,
18 and protect the assets of the Receivership Entities, conduct a forensic accounting
19 and analysis of the Receivership Entities’ financial transactions, investigate and
20 recover sums transferred to third parties, review and analyze investor and creditor
21 claims, and maximize the amount ultimately available for distribution to investors
22 and creditors. *Id.* The Receiver determined that experienced and qualified counsel
23 was critical to the performance of her duties and obligations under the Appointment
24 Order due to the size and complexity of the receivership estate. Accordingly, the
25 Receiver engaged Allen Matkins to assist with legal issues facing the receivership
26 estate.

27 This Application should be read in conjunction with the Receiver’s
28 Fourteenth and Fifteenth Interim Reports and Recommendations, filed on March 10,

1 2023 and May 25, 2023 (Dkt. 966, 1002), which describe in detail the Receiver’s
 2 activities during the six-month Application Period.

3 This Application seeks approval of \$326,147.40 in fees for a total of 519.40
 4 hours worked, and payment on an interim basis of 80% of that amount, or
 5 \$260,917.92. Allen Matkins has agreed to discount its standard hourly rates by 10%
 6 for this case. The work performed is described task-by-task in **Exhibit A**¹ and is
 7 broken down into the following categories:

8 Category	Hours	Amount
9 General Receivership	3.00	\$2,227.50
10 Asset Investigation & Recovery	17.70	\$9,740.25
11 Reporting	3.80	\$2,821.50
12 Claims & Distributions	59.50	\$42,822.90
13 Third Party Recoveries	3.30	\$2,450.25
14 Employment/Professional Fees	2.70	\$2,004.75
15 General Clawback Claims & Settlements	162.70	\$102,227.85
16 Claims Against Kim Peterson et al.	266.70	\$161,852.40
17 Total Fees	519.40	\$326,147.40

18
 19 Allen Matkins’ work has allowed the Receiver to preserve and protect the
 20 substantial value of receivership estate assets. Because the firm has worked
 21 diligently and efficiently to assist the Receiver in carrying out her Court-ordered
 22 duties, it should be compensated on an interim basis for its work.

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 27 ¹ While Allen Matkins has made efforts to ensure that its billing entries are
 28 consistent across categories, certain activities lend themselves to more than one
 category, or may be difficult to categorize. In any event, **Exhibit A** reflects the
 actual time spent by Allen Matkins personnel, and contains accurate descriptions
 of the services rendered.

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

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

3 1. General Receivership.

4 Allen Matkins' work in this category relates to the related criminal cases
5 against Gina Champion-Cain and Cris Torres, including communications with the
6 United States Attorney's Office and counsel for Gina Champion-Cain ("GCC")
7 regarding restitution issues. Allen Matkins also advised the Receiver regarding
8 inquiries about the receivership from the media, as well as questions from counsel
9 for the SEC concerning the issue of disgorgement from GCC. The reasonable and
10 necessary fees for Allen Matkins' work in this category total \$2,227.50.

11 2. Asset Investigation & Recovery.

12 The services in this category relate generally to efforts to identify, secure,
13 preserve, investigate and recover receivership assets. During the Application
14 Period, these services focused on analyzing and advising the Receiver on issues
15 regarding trademarks held by the Receivership Entities, as well as the preservation
16 of Google account data for discovery purposes. Paralegal time spent managing
17 documents received via subpoenas and other discovery requests, and producing
18 requested documents is also included in this category. The reasonable and
19 necessary fees for Allen Matkins' work in this category total \$9,740.25.

20 3. Reporting.

21 Allen Matkins' services in this category focus on assisting the Receiver in
22 preparing her Sixteenth and Seventeenth Interim Reports and Recommendations,
23 which were filed on September 21, 2023 and December 5, 2023, respectively. Dkt.
24 1004, 1014. The reports includes detailed summaries of the Receiver's activities,
25 funds recovered, real and personal property assets, property taxes, insurance, loans
26 and other investments, investigation of third party claims, pending litigation, and
27 other matters. The reports also detail the receipts and disbursements for the
28 receivership estate since the Receiver's appointment and provides her

1 recommendations for the continued administration of the receivership. The
2 reasonable and necessary fees for Allen Matkins’ work in this category total
3 \$2,821.50.

4 4. Claims & Distributions.

5 Services rendered in this category focus on disputed claims against the
6 receivership estate and distribution of receivership estate assets. Most of the work
7 relating to disputed claims focused on the appeal of the Court’s February 24, 2023
8 Order approving the Receiver’s recommendations regarding claim amounts,
9 resolving claim disputes, and approving the Receiver’s proposed Distribution Plan
10 (“Claims and Distribution Order”) filed by Kim Peterson, Kim Funding, LLC and
11 ABC Funding Strategies, LLC (“Peterson Parties”). In particular, Allen Matkins
12 assisted the Receiver in preparing an opposition to a motion by the Peterson Parties
13 to stay briefing in the appeal (as well as in the Peterson Parties’ appeal of the
14 Court’s orders approving the Global Settlement with Chicago Title and the order
15 barring their claims against Chicago Title). The motion to stay the briefing was
16 denied by the Ninth Circuit. The firm analyzed the opening brief filed by the
17 Peterson Parties and prepared the Receiver’s answering brief and supplemental
18 excerpts of record, which were filed on November 27, 2023.

19 Allen Matkins assisted with issues and inquiries relating to the interim
20 distribution to investors and creditors with allowed claims pursuant to the approved
21 Distribution Plan and Notice of Interim Distributions. The total amount distributed
22 as part of the interim distribution was \$21 million. This distribution brought the
23 total investor recovery up to 90.92% of MIMO net losses (with some investors
24 having received 100% or more of their MIMO net losses pursuant to Chicago Title
25 settlements).

26 Finally, the firm also assisted the Receiver with issues related to
27 disseminating information about the receivership to investors and creditors,
28 including information provided on the receivership website

1 (www.anireceivership.com). The reasonable and necessary fees for Allen Matkins’
2 work in this category total \$42,822.90.

3 5. Third Party Recoveries.

4 This portion of the Application pertains to work on claims against third
5 parties to recover amounts for the benefit of the receivership estate, but not
6 including Clawback Claims, which have their own category and are discussed
7 below. Allen Matkins assisted the Receiver with issues relating to Churilla
8 settlement, which was approved by the Court on April 18, 2023. Dkt. 993. The
9 settlement is expected to generate a recovery of \$265,000 for the receivership estate
10 once the Churillas complete a refinance of their property located in Texas, on which
11 the receivership estate has a recorded Deed of Trust. The reasonable and necessary
12 fees for Allen Matkins’ work in this category total \$2,450.25.

13 6. Employment/Professional Fees

14 Although fee applications are a necessary component of federal equity
15 receiverships, neither the Receiver nor her professionals charge for time spent
16 preparing their own detailed applications. Allen Matkins assisted in preparing the
17 Receiver’s Eleventh Interim Fee Applications (covering six months of work) and
18 with meet and confer communications with counsel for the Commission. The fee
19 applications were filed on October 31, 2023. The reasonable and necessary fees for
20 Allen Matkins’ work in this category total \$2,004.75.

21 7. General Clawback Claims & Settlements.

22 This portion of the Application pertains to work on clawback claims against
23 third parties and settlements to recover amounts for the benefit of the receivership
24 estate. Due to the confidential nature of the legal work on these matters and the
25 Receiver’s litigation strategy vis-à-vis third parties, the Receiver has filed a motion
26 concurrently herewith to file this portion of the Application under seal. The
27 reasonable and necessary fees for Allen Matkins’ work in this category total
28 \$102,227.85. To date, the Receiver has recovered more than \$8.8 million for the

1 receivership estate through the pursuit of clawback claims, which amount represents
 2 approximately 20% of the total distributions of \$43 million made by the Receiver to
 3 date.

4 8. Claims Against Kim Peterson.

5 This portion of the Application pertains to work on claims against Kim
 6 Peterson and his entities to recover amounts for the benefit of the receivership
 7 estate. Due to the confidential nature of the legal work on this matters and the
 8 Receiver’s litigation strategy vis-à-vis third parties, the Receiver has filed a motion
 9 concurrently herewith to file this portion of the Application under seal. The
 10 reasonable and necessary fees for Allen Matkins’ work in this category total
 11 \$161,852.40. Kim Peterson and his entities, collectively, are the largest net winner
 12 in the Ponzi scheme, having received approximately \$13 million in net profits from
 13 the scheme and its investors.

14 **A. Summary of Expenses Requested for Reimbursement.**

15 Allen Matkins requests that the Court approve reimbursement of \$13,539.69
 16 in out-of-pocket costs. The itemization of such expenses is summarized below by
 17 billing category.

Category	Total
Deposition/Court Transcript Fees	\$720.03
Messenger/FedEx Fees	\$225.72
Court/Filing Fees	\$620.62
Duplication	\$14.20
PACER	\$75.70
E-Discovery	\$11,883.42
Total	\$13,539.69

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1 **II. THE FEES AND COSTS ARE REASONABLE AND SHOULD BE**
2 **ALLOWED.**

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

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

25 As a preliminary matter, the Appointment Order confers on the Receiver
26 substantial duties and powers, including to conduct such investigation and discovery
27 as may be necessary to locate and account for all Receivership Assets, to take such
28 action as is necessary and appropriate to assume control over and preserve

1 Receivership Assets, and to employ attorneys and others to investigate and, where
2 appropriate, institute, pursue, and prosecute all claims and causes of action of
3 whatever kind and nature. *See* Appointment Order, Section X.

4 The Receiver promptly determined that experienced, qualified counsel was
5 necessary due to the size and complexity of the receivership estate and the Court
6 agreed, approving Allen Matkins' employment, initially on a provisional basis and
7 then on a non-provisional basis. Dkt. 126, 309. The Court also previously approved
8 the Receiver's proposal to file interim reports and fee applications on a quarterly
9 basis. Dkt. 126. As noted above, this interim application covers two quarters of
10 work.

11 Allen Matkins has submitted a detailed fee application which describes the
12 nature of the services rendered. *See* **Exhibit A**. Allen Matkins has endeavored to
13 staff matters as efficiently as possible while remaining cognizant of the complexity
14 of issues presented. As noted above, the request for fees is based on Allen Matkins'
15 customary billing rates charged for comparable services provided in other matters,
16 less a 10% discount. Moreover, Allen Matkins wrote off and did not charge for
17 3.70 hours of work (\$2,747.25 in fees).

18 The work performed by Allen Matkins was essential to carrying out the
19 Receiver's Court-ordered duties. The Receiver and Allen Matkins have worked
20 diligently since the Receiver's appointment to preserve and protect the assets of the
21 receivership estate, maximize the funds available for ultimate distribution to
22 victims, and carry out the Receiver's other duties pursuant to the Appointment
23 Order. Moreover, Allen Matkins seeks payment of only 80% of fees incurred on an
24 interim basis in recognition of the fact that its work in assisting the Receiver is
25 ongoing. Payment of the proposed 20% holdback will be sought at the conclusion
26 of the receivership. Allen Matkins' fees are fair and reasonable and should be
27 approved and paid on an interim basis.

28

1 **III. CONCLUSION.**

2 Allen Matkins therefore respectfully request that this Court enter an Order:

- 3 1. Approving Allen Matkins’ fees of \$326,147.40;
- 4 2. Authorizing and directing the Receiver to pay 80% of approved fees, or
- 5 \$260,917.92, from the assets of the Receivership Entities;
- 6 3. Approving Allen Matkins’ costs in the amount of \$13,539.69, and
- 7 authorizing and directing the Receiver to reimburse such costs in full; and
- 8 4. For such other and further relief as the Court deems appropriate.

9
10 Dated: March 22, 2024

ALLEN MATKINS LECK GAMBLE
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By: s/Edward G. Fates

DAVID R. ZARO
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