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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,  
17  
Plaintiff,  
18  
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 AGREEMENT WITH  
DANIEL AND BARBARA  
CHAMPION**  
Date: April 13, 2020  
Time: 11:15 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 for Approval of Settlement Agreement with Daniel and Barbara  
6 Champion ("Motion").

## 7 I. BACKGROUND FACTS

8 During her investigation and accounting pursuant to the Appointment Order  
9 (Dkt. 6) and subsequent orders of the Court, the Receiver discovered that the  
10 Receivership Entities, while under the control of Defendant Gina Champion-Cain,  
11 made certain transfers to or for the benefit of Ms. Champion-Cain's parents, Daniel  
12 and Barbara Champion ("Champions"). Specifically, in August 2018, American  
13 National Investments, Inc. loaned \$275,000 to the Champions, secured by a  
14 mortgage on their home in Ann Arbor, Michigan. The promissory note has no  
15 payments due for a period of 10 years, an interest rate of 4.25%, and all principal and  
16 interest due in August 2028. Declaration of Krista L. Freitag filed herewith ("Freitag  
17 Decl."), ¶ 2.

18 Additionally, in March 2018, Ms. Champion-Cain took \$80,000 from the  
19 Receivership Entities and transferred the funds (in two transfers) to her personal  
20 account. The same day the second transfer was made, Ms. Champion-Cain paid  
21 \$79,337.86 by check to a BMW dealer in Ann Arbor, Michigan for the purchase of a  
22 car for Mr. Champion. The memo line on the check states "Dan Champion's Car."  
23 Freitag Decl., ¶ 3.

24 The Receiver, through her counsel, contacted the Champions to recover the  
25 amounts transferred to them. The Champions then engaged counsel and the parties  
26 negotiated a settlement, subject to Court approval.

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1 approval of a proposed compromise negotiated by a court appointed fiduciary "is an  
2 exercise of discretion that should not be overturned except in cases of abuse leading  
3 to a result that is neither in the best interest of the estate nor fair and equitable for the  
4 creditors." *In re MGS Mktg.*, 111 B.R. 264, 266-67 (B.A.P. 9th Cir. 1990).

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

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

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

14 Here, the Receiver has weighed the likely costs and benefits of pursuing legal  
15 action against Daniel and Barbara Champion and enforcing a judgment against them.  
16 While the Receiver is confident she would prevail in such an action, obtaining and  
17 enforcing a judgment would involve considerable time and expense. Considering the  
18 amount at stake and the anticipated litigation costs, it is very unlikely the recovery  
19 from a judgment (net of the cost of litigation) would exceed what Daniel and Barbara  
20 Champion have agreed to pay pursuant to the Settlement Agreement. The Settlement  
21 Agreement generates a recovery of \$330,000 (approximately 93% of the funds  
22 transferred to the Champions) without litigation or further expense. Accordingly, the  
23 Receiver believes the Settlement Agreement is in the best interests of the  
24 receivership estate, and therefore asks that it be approved.

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**III. CONCLUSION**

For the foregoing reasons, the Receiver requests an order approving the Settlement Agreement.

Dated: February 5, 2020

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MALLORY & NATSIS LLP

By:           s/Edward G. Fates          

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