

1 JOSHUA A. DEL CASTILLO (BAR NO. 239015)
E-Mail: jdelcastillo@allenmatkins.com
2 MATTHEW D. PHAM (BAR NO. 287704)
E-Mail: mpham@allenmatkins.com
3 ALPHAMORLAI L. KEBEH (BAR NO. 336798)
E-Mail: mkebeh@allenmatkins.com
4 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
5 865 South Figueroa Street, Suite 2800
Los Angeles, California 90017-2543
6 Phone: (213) 622-5555
Fax: (213) 620-8816

7 Attorneys for Receiver
8 STEPHEN J. DONELL

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11
12 FEDERAL TRADE COMMISSION,

13 Plaintiff,

14
15 v.

16 ASCEND CAPVENTURES INC., et al.,

17 Defendants.
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19
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Case No. 2:24-CV-07660-SPG-JPR

**EX PARTE APPLICATION OF
RECEIVER, STEPHEN J. DONELL,
FOR ORDER AUTHORIZING
REJECTION OF WAREHOUSE
LEASE AND ABANDONMENT OF
ASSOCIATED WAREHOUSE
INVENTORY**

[Declarations of Stephen J. Donell,
Joshua A. del Castillo, and Jennifer
Guillen; and [Proposed] Order submitted
concurrently herewith]

Judge Hon. Sherilyn Peace Garnett

1 **TO THIS HONORABLE COURT AND ALL INTERESTED PARTIES:**

2 **PLEASE TAKE NOTICE THAT** Stephen J. Donell (the "Receiver"), the
3 Court-appointed receiver for defendants Ascend Capventures Inc., Ascend Ecom
4 LLC, ACV, ACV Partners, Accelerated Ecommerce Ventures; Ascend Distribution
5 LLC (California), Ethix Capital, ACV Nexus, Ascend Ecommerce Inc., Ascend
6 Administration Inc., Ascend Ecom LLC, Ascend Distribution LLC (Texas), and
7 their collective dbas, subsidiaries, and affiliates, including Global Marketing
8 Development, Inc., Eaglemont Capital, Paradyme Capital Inc., and AC Ventures
9 Global Inc (collectively, the "Receivership Entities" or "Entities"), hereby submits
10 the instant *Ex Parte Application for Order Authorizing Rejection of Warehouse*
11 *Lease and Abandonment of Associated Warehouse Inventory* (the "Application") on
12 the grounds that one of the Receivership Entities is a party to a pre-receivership
13 lease for a storage and shipping warehouse used by the Receivership Entities in
14 connection with their operations, which lease the Entities have insufficient funds to
15 pay. Moreover, the warehouse contains inventory of certain goods believed to be
16 property of the Entities which the Receiver has determined, in his reasonable
17 business judgment, cannot be monetized for a net benefit to the receivership estate
18 (the "Estate"). Costs associated with the maintenance of the lease and the
19 preservation of the associated inventory continue to accrue, further escalating a
20 deficiency which the Estate presently has no means of satisfying. Finally, the
21 landlord for the warehouse has recently advised the Receiver that it has a current
22 tenant who has offered to lease the warehouse space if it can be made available by
23 March 1, 2025, but who may elect to leave the building in which the warehouse is
24 located entirely if the space cannot be made available. Each of these factors
25 militates in favor of rejecting the warehouse lease and abandoning any associated
26 inventory. Accordingly, and in order to minimize the Estate's exposure, the
27 Receiver believes it is appropriate at this time to reject the lease, as an executory
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1 contract, abandon the associated warehouse inventory, and return possession and
2 control of the warehouse to the landlord.

3 This Application is made following conference of counsel pursuant to Local
4 Rule 7-3, which took place on February 4 and 5, 2025. At that time, notice of this
5 Application has been provided to counsel for the plaintiff Federal Trade
6 Commission, and for defendants William Basta and Jeremy Leung, whose
7 respective contact information is as follows:

8 **Plaintiff's Counsel**

9 Jody Goodman, Esq. (jgoodman1@ftc.gov)
10 Elsie Kappler, Esq. (ekappler@ftc.gov)
11 Federal Trade Commission
12 600 Pennsylvania Ave., NW, CC-8528
13 Washington, D.C. 20580
14 (202) 326-3096

15 **Defendants' Counsel**

16 Karl S. Kronenberger, Esq. (karl@kr.law)
17 Liana Chen, Esq. (liana@kr.law)
18 Virginia Sanderson, Esq. (ginny@kr.law)
19 Jeffrey M. Rosenfeld (jeff@kr.law)
20 Kronenberger Rosenfeld, LLP
21 548 Market Street #85399
22 San Francisco, CA 94104-5401
23 (415) 955-1155

24 Based on discussions with counsel, the Receiver understands the parties do
25 not oppose to the Application. (See concurrently filed Declaration of Joshua A. del
26 Castillo ["del Castillo Decl."] at ¶ 2.)

27 Dated: February 6, 2025

28 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
JOSHUA A. DEL CASTILLO
MATTHEW D. PHAM
ALPHAMORLAI L. KEBEH

By: /s/ Joshua A. del Castillo
JOSHUA A. DEL CASTILLO
Attorneys for Receiver
STEPHEN J. DONELL

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 By this Application, the Receiver requests an order authorizing him to:
4 (1) deem as rejected an unexpired, pre-receivership lease agreement for a Texas
5 storage and shipping warehouse; and (2) deem as abandoned the Receivership
6 Entities' interest in any remaining inventory located within the warehouse. Upon his
7 thorough investigation and based on his reasonable business judgment, the Receiver
8 has determined that neither the lease nor the inventory provides any meaningful
9 value to the Estate. Specifically, costs associated with the maintenance of the lease
10 and warehouse inventory – which the Estate does not have the means to satisfy –
11 continue to accrue, at a rate of more than \$11,150.00 per month, inclusive of rent
12 and other expenses. In addition, after a detailed examination of prospective auction
13 or other liquidation efforts, the Receiver has determined that the cost of selling the
14 warehouse inventory (inclusive of maintaining the warehouse lease for a period
15 sufficient to market and sell the inventory, along with the costs of advertising and
16 sale) would exceed the likely value of the inventory in an auction setting. In other
17 words, the inventory appears to represent a net liability to the Estate and should be
18 abandoned. Finally, a representative of the landlord has recently contacted the
19 Receiver to advise that another tenant in the building has asked to lease the
20 warehouse space should it be made available by March 1, 2025, but that it expects
21 vacate the building entirely at the end of its lease term if the space cannot be rented by
22 that date.

23 For the foregoing reasons, the Receiver believes action is required on an
24 exigent basis in order to minimize the Estate's exposure to the mounting and
25 unsatisfied expenses associated with the warehouse lease and inventory. The
26 Receiver accordingly respectfully requests that this Court enter an order authorizing
27 him to deem the warehouse lease rejected, as an executory contract, and to deem the
28 Entities' interest in any inventory remaining at the warehouse abandoned.

1 **II. RELEVANT FACTUAL BACKGROUND.**

2 The Court and all interested parties are invited to review the following
3 materials for a more detailed summary of the relevant facts underlying the request
4 for relief presented in this Application:

- 5 • *Order on Plaintiff's Ex Parte Application for (1) Temporary*
6 *Restraining Order and Order to Show Cause why a Preliminary*
7 *Injunction Should not Issue; (2) Waiver of Notice Requirement;*
8 *(3) Appointment of a Temporary Receiver, Freezing Assets; and Other*
9 *Equitable Relief (the "Initial Appointment Order")* [ECF No. 30],
10 entered on September 13, 2024;
- 11 • *Initial Report and Recommendations of Receiver, Stephen J. Donell*
12 *(the "Initial Report")* [ECF No. 34], filed on September 23, 2024;
- 13 • *Supplement to Initial Report and Recommendations of Receiver,*
14 *Stephen J. Donell* [ECF No. 60], filed October 18, 2024;
- 15 • *First Interim Report and Petition for Instructions of Receiver, Stephen*
16 *J. Donell (the "First Interim Report")* [ECF No. 77], filed
17 November 13, 2024; and
- 18 • *Supplement to First Interim Report and Petition for Instructions of*
19 *Receiver, Stephen J. Donell (the "Supplemental Report")* [ECF No. 80],
20 filed November 19, 2024.

21 **A. The Warehouse Lease And The Receiver's Initial Inspection.**

22 As reflected in the Receiver's Initial Report and First Interim Report, shortly
23 after his appointment, the Receiver was informed that the Receivership Entities may
24 have been or were conducting business at the a warehouse located at 910-904
25 Avenue N., Grand Prairie, TX 75050 (the "Warehouse"). (*See* concurrently filed
26 Declaration of Stephen J. Donell ("Donell Decl.") ¶ 2.) Upon learning of the
27 Warehouse, the Receiver promptly arranged to visit the Warehouse, in person, in
28 order to determine what, if any, Receivership Entity operations were conducted out

1 of the Warehouse and what, if any Receivership Entity inventory might be located at
2 or stored at the Warehouse, along with the potential monetary value of that
3 inventory. (*Id.*) During the visit, the Receiver observed significant disorganization
4 of inventory within the Warehouse, with goods stacked indiscriminately and no
5 discernible method for distinguishing inventory belonging to the Receivership
6 Entities (the "Receivership Inventory") from inventory apparently belonging to
7 other, non-receivership entities. (*Id.* at ¶ 3.) The lack of organized storage or
8 tracking records rendered it impossible for the Receiver to determine ownership or
9 assess the value of the inventory on-site. (*Id.*)

10 During the Receiver's site visit, he was able to speak with and interview
11 Nikita Loktev, an employee of Walzon, LLC ("Walzon"), who appeared to run the
12 day-to-day operations of the Warehouse, and who confirmed to the Receiver that
13 certain shipping operations of the Receivership Entities had been carried out through
14 the Warehouse, but also that Walzon or other non-receivership entities were using
15 the Warehouse for their own operations. (*Id.* at ¶ 4.) Initially, Mr. Loktev claimed
16 that he could distinguish the Receivership Inventory; however, he subsequently
17 conceded to the Receiver that distinguishing such inventory from other clients'
18 property would be nearly impossible, if not entirely so. (*Id.*) At the time, the
19 inventory appeared to consist primarily of low-value household items. (*Id.*)

20 Weeks after his visit to the Warehouse, the Receiver was provided with a
21 copy of what appeared to be an active lease agreement (the "Lease") between Dallas
22 NLM TT, LLC (the "Landlord") and the Receivership Entity Ascend Distribution,
23 LLC. (*Id.* at ¶ 5, Ex. A.) The Lease provides that Ascend Distribution, LLC will
24 make monthly rental payments in the amount of \$11,150.00, through June 30, 2025.
25 (*Id.*) The Estate does not have funding sufficient to make these payments, and
26 unsatisfied Lease payments continue to accrue. (*Id.*)

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1 **B. The Receiver's Subsequent Communications With Walzon**
2 **Management And Additional Warehouse Inspection.**

3 Following his on-site inspection, the Receiver directly communicated with
4 Walzon to address the status of the Receivership Inventory and ensure compliance
5 with the Court's Initial Appointment Order. (*Id.* at ¶ 6.) On September 18, 2024,
6 the Receiver sent a formal letter to Walzon reiterating the requirement to preserve
7 all inventory and records related to the Receivership Entities. (*Id.*) The Receiver
8 also requested a detailed inventory list to evaluate the Estate's interest in the
9 Warehouse inventory. (*Id.*)

10 While Walzon acknowledged these directives, it failed to produce the
11 requested comprehensive inventory list, allegedly due to a lack of accurate records,
12 effectively confirming the Receiver's initial conclusion that an accurate accounting
13 of Receivership Inventory is not practicable. (*Id.*) To mitigate disruptions to third-
14 party clients unrelated to the receivership, the Receiver initially permitted Walzon to
15 resume operations for non-Receivership Entity-related business, subject to the
16 restrictions imposed by the Initial Appointment Order. (*Id.* at ¶ 7.) The Receiver
17 was later informed by Walzon, in October 2024, that Walzon had vacated the
18 Warehouse and had abandoned in the Warehouse any inventory it determined (on a
19 basis never explained to the Receiver) to be Receivership Inventory. (*Id.*)

20 Given Walzon's consistent inability to provide the Receiver with an accurate
21 list identifying the Receivership Inventory, the Receiver ultimately requested that
22 his Texas local counsel conduct a follow-up visit to the Warehouse to determine the
23 nature and quantity of any purported Receivership Inventory remaining at the
24 Warehouse, and to arrange to restore access and control of the Warehouse to the
25 Landlord, which has been demanding payment for rent and utilities from the
26 receivership which the Estate lacks funding to make, even if the Warehouse
27 contained valuable inventory. (*Id.* at ¶ 8.)

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1 The Receiver's local Texas counsel visited the Warehouse on or around
2 January 6, 2025, and was able to access parts of the Warehouse that had been
3 inaccessible during the Receiver's initial visit. (*Id.* at ¶ 9.) During this additional
4 visit, and in addition to confirming the presence of inventory with apparently *de*
5 *minimis* value (including the toiletries and other items discussed in the Receiver's
6 First Interim Report), the Receiver's local counsel was able to identify potentially
7 valuable inventory, including numerous Starlink mobile internet kits and children's
8 electronic vehicles, none of which had been visible or accessible during the
9 Receiver's initial visit to the Warehouse. (*Id.*)

10 **C. The Receiver's Sale Analysis.**

11 Given that certain newly discovered and apparent Receivership Inventory
12 appeared to be of higher sale value than the previously identified Receivership
13 Inventory, the Receiver immediately undertook efforts to determine whether and
14 how such inventory might be monetized for the benefit of the Estate. (*Id.* at ¶ 10.)
15 After soliciting recommendations for auctioneers and sale administrators, the
16 Receiver determined to use Texas auctioneer Rosen Systems (the "Auctioneer") for
17 any prospective sale of the Receivership Inventory, including the newly discovered
18 inventory. (*Id.*) In connection with that effort, the Receiver arranged for Auctioneer
19 personnel to visit the Warehouse and review the visible inventory, along with
20 detailed videos and photographs taken during the Receiver's local Texas counsel's
21 recent visit to the Warehouse. (*Id.*) Unfortunately, based on the tasks and
22 anticipated costs reported to the Receiver by the Auctioneer in connection with the
23 prospective sale of the Receivership Inventory, the Receiver determined, in his
24 reasonable business judgment, that a prospective sale or auction of the Receivership
25 Inventory was unlikely to result in a net monetary benefit to the Estate, after
26 accounting for, among other things: (1) the costs of continued Lease payments to
27 house the inventory during the sale process; (2) utilities for the same period; (3) the
28 expense of marketing, unpacking, and presenting the Receivership Inventory for

1 sale; and (4) the Auctioneer's fee. (*Id.*) Accordingly, the Receiver has reluctantly
2 concluded that the costs of selling the Receivership Inventory outweigh the likely
3 monetary benefit, and accordingly that all Receivership Inventory located at the
4 Warehouse should be abandoned. (*Id.*)

5 **D. The Landlord's Recent Inquiry.**

6 On February 3, 2025, a representative of the Landlord contacted Receiver's
7 counsel to advise that another tenant in the building in which the Warehouse is
8 located had offered to lease the Warehouse space if it could be made available by
9 March 1, 2025, but that it had also advised that – should the Warehouse space not be
10 promptly made available – it intended to vacate the building entirely at the end of its
11 lease term. (*See del Castillo Decl.* ¶ 3; Declaration of Jennifer Guillen ["Guillen
12 Decl."] ¶ 2.) The Landlord's interest in administering the Warehouse is somewhat
13 attenuated from the consumer protection goals of the receivership; however the
14 Landlord is nonetheless an interested party which presently believes its rights in
15 property (the Warehouse) to be affected by the pendency of the receivership.
16 (Guillen Decl. ¶ 3.) While the Receiver does not entirely agree with the Landlord
17 on all points, he is sensitive to the Landlord's concerns, and certainly wants to return
18 possession of the Warehouse to the Landlord as promptly as possible, in accordance
19 with whatever orders this Court may enter on this Application.

20 **III. ARGUMENT**

21 **A. The Court Is Empowered To Authorize The Rejection Of The**
22 **Lease And Abandonment Of The Receivership Inventory.**

23 It is axiomatic that federal district courts presiding over equity receiverships
24 have broad power and wide discretion in the supervision of such receiverships, to
25 facilitate the orderly and efficient administration of the receivership assets. *See,*
26 *e.g., SEC v. Hardy*, 803 F.3d 1034, 1037-38 (9th Cir. 1986). This power and
27 discretion includes the authority to "make rules which are practicable as well as
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1 equitable." *Id.* at 1039 (quoting *First Empire Bank-New York v. FDIC*, 572 F.2d
2 1361, 1368 (9th Cir. 1978)).

3 In addition, Local Civil Rule 66-8 of this Court applies bankruptcy principles
4 (including but not limited to equitable principles) to the administration of
5 receivership estates, providing, in pertinent part:

6 Except as otherwise ordered by the Court, a receiver shall
7 administer the estate as nearly as possible in accordance
8 with the practice in the administration of estates in
9 bankruptcy.

10 In bankruptcy, a trustee may abandon property of the estate that is
11 burdensome or of inconsequential value to the estate. *See* 11 U.S.C. § 554(a).
12 Bankruptcy Code similarly empowers a trustee to assume or reject any executory
13 contract or unexpired lease that he or she determines not to represent a benefit to the
14 estate. 11 U.S.C. § 365(a). *See, e.g., In re James Wilson Assocs.*, 965 F.2d 160, 165
15 (7th Cir. 1992) ("A lease is, with regard to its unexpired portion, an executory
16 contract; and a trustee in bankruptcy ... is free to repudiate without liability the
17 debtor's executory contracts, expressly including any unexpired leases.").

18 Here, the Lease is an executory contract, given that it does not expire until
19 June 30, 2025, meaning it remains subject to future performance by the tenant
20 Receivership Entity. As in the bankruptcy context, the Receiver has determined that
21 the Lease does not represent a benefit to the Estate; indeed, it represents an ongoing
22 and increasing liability, given that unpaid rent and other expenses continue to accrue
23 and that the Estate has no means of satisfying such expenses, even if the continued
24 use of the Warehouse were of value to the receivership, which it is not. Moreover,
25 the Landlord has expressed an urgent interest in recovering possession and control
26 over the Warehouse, and the Receiver can see no purpose for failing to
27 accommodate its request, to the degree possible. Accordingly, the Receiver's
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1 request to reject the unexpired Lease falls squarely within the Court's authority, and
2 the Lease should be deemed rejected.¹

3 **B. The Receivership Inventory Does Not Represent A Net Value To**
4 **The Estate And Is Subject To Abandonment.**

5 In keeping with Local Civil Rule 66-8, in the receivership estate
6 administration context, courts are deferential to the business judgment of bankruptcy
7 trustees, receivers, and similar estate custodians. *See, e.g., Bennett v. Williams*, 892
8 F.2d 822, 824 (9th Cir. 1989) ("[W]e are deferential to the business management
9 decisions of a bankruptcy trustee."); *Southwestern Media, Inc. v. Rau*, 708 F.2d 419,
10 425 (9th Cir. 1983) ("The decision concerning the form of ... [estate administration]
11 ... rested with the business judgment of the trustee."); *In re Thinking Machines*
12 *Corp.*, 182 B.R. 365, 368 (D. Mass. 1995) ("The application of the business
13 judgment rule ... and the high degree of deference usually afforded purely economic
14 decisions of trustees, makes court refusal unlikely.") (rev'd on other grounds, *In re*
15 *Thinking Machines Corp.*, 67 F.3d 1021 (1st Cir. 1995)).

16 Similar deference should apply here to the Receiver's determination that the
17 sale or auction of the Receivership Inventory would not yield a net monetary benefit
18 to the Estate and, accordingly, that is should be abandoned. Put simply, the sale or
19 auction of the Receivership Inventory cannot be justified on a cost-benefit basis;
20 continuing to incur mounting liability on the Lease to store inventory that cannot be
21 monetized to benefit the Estate would be harmful to the very stakeholder interests
22 the Receiver was appointed to protect. Accordingly, the Receiver respectfully
23 requests that this Court enter an order authorizing him to deem the Entities' interest
24 in all Receivership Inventory located at the Warehouse to be abandoned.

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27 ¹ It is possible that the rejection of the Lease could establish Landlord as an
28 unsecured creditor of the Estate in some capacity. The question of Landlord's
entitlement to a claim against the Estate, and any prospective payment on such a
claim, is not presently before the Court and will not be decided unless and until
the Receiver proposes, and the Court approves, a claims process.

1 **IV. CONCLUSION**

2 Based on the foregoing, the Receiver respectfully requests an order
3 authorizing the Receiver to deem the Lease rejected and to deem any Receivership
4 Inventory remaining at the Warehouse abandoned.

5 Dated: February 6, 2025

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
JOSHUA A. DEL CASTILLO
MATTHEW D. PHAM
ALPHAMORLAI L. KEBEH

8 By: /s/ Joshua A. del Castillo

9 JOSHUA A. DEL CASTILLO
10 Attorneys for Receiver
11 STEPHEN J. DONELL
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