

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

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 v.
15 ASCEND CAPVENTURES INC., et al.,
16 Defendants.

Case No. 2:24-CV-07660-SPG-JPR

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
AMENDED FIRST INTERIM
APPLICATION FOR PAYMENT OF
FEES OF RECEIVER, STEPHEN J.
DONELL, AND HIS
PROFESSIONALS**

[Declaration of Stephen J. Donell;
Declaration of Joshua A. del Castillo;
Declaration of Brian J. Landau;
Declaration of Alan R. Rosenberg;
Declaration of Frances A. Smith; and
[Proposed] Order submitted concurrently
herewith]

Date: April 23, 2025
Time: 1:30 p.m.
Ctrm: 5C
Judge Hon. Sherilyn Peace Garnett

24 ///

25 ///

26 ///

27 ///

28 ///

TABLE OF CONTENTS

		<u>Page</u>
1		
2		
3	I. PRELIMINARY STATEMENT	5
4	II. PROCEDURAL AND FACTUAL BACKGROUND.....	6
5	A. Procedural History	6
6	B. Factual Background	8
7	III. ARGUMENT	11
8	A. Receivership Fees and Expenses	11
9	B. The Requested Fees Are Reasonable.....	12
10	C. The Applicants Are Highly Experienced Practitioners And Their Hourly Rates Are Appropriate	14
11	D. The Application Has Been Submitted To The FTC For Review And Comment, Without Opposition.....	14
12	E. The Receiver Should Be Authorized To Pay All Approved Fees From Cash On-Hand.....	16
13		
14	IV. CONCLUSION	16
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES

Page(s)

Cases

<i>CFPB v. Pension Funding, LLC</i> , Case No. SACV 15-1329-JLS (JCGx), 2016 U.S. Dist. LEXIS 187607 (C.D. Cal. July 7, 2016)	16
<i>Drilling & Expl. Corp. v. Webster</i> , 69 F.2d 416 (9th Cir. 1934).....	11
<i>Finn v. Childs Co.</i> , 181 F.2d 431 (2d Cir. 1950).....	15
<i>Gaskill v. Gordon</i> , 27 F.3d 248, 25 (7th Cir. 1994).....	11
<i>In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.</i> , 109 F.3d 602 (9th Cir. 1997).....	13
<i>In re Mansfield Tire & Rubber Co.</i> , 19 B.R. 125 (Bankr. N.D. Ohio 1981)	16
<i>In re Pacific Enters. Secs. Litig.</i> , 47 F.3d 373 (9th Cir. 1995).....	13
<i>In re Phila. & Reading Coal & Iron Co.</i> , 61 F. Supp. 120 (E.D. Pa. 1945)	15
<i>In re Rose Way, Inc.</i> , Case No. 89-1273-C H, 1990 Bankr. LEXIS 3028 (Bankr. S.D. Iowa Mar. 1, 1990).....	16
<i>Quilling v. Trade Partners, Inc.</i> , 572 F.3d 293 (6th Cir. 2009).....	12
<i>San Vicente Med. Partners, Ltd. v. Orr (In re San Vicente Med. Partners, Ltd.)</i> , 962 F.2d 1402 (9th Cir. 1992).....	12
<i>SEC v. Byers</i> , 590 F.Supp.2d 637 (S.D.N.Y. 2008).....	11
<i>SEC v. Elliott</i> , 953 F.2d 1560 (11th Cir. 1992).....	11, 12
<i>SEC v. Fifth Ave. Coach Lines, Inc.</i> , 364 F. Supp. 1220 (S.D.N.Y. 1973).....	12, 15
<i>Sw. Media, Inc. v. Rau</i> , 708 F.2d 419 (9th Cir. 1983).....	13

1		<u>Page(s)</u>
2	<i>U.S. Tr. v. Tamm (In re Hokulani Square, Inc.),</i>	
3	460 B.R. 763 (B.A.P. 9th Cir. 2011).....	13
4	<u>Treatises</u>	
5	2 Clark, Ralph Ewing, <i>A Treatise on the Law and Practice of Receivers</i>	
6	§ 637, p. 1052 (3d ed. Rev. 1992).....	11
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 Stephen J. Donell (the "Receiver"), the Court-appointed receiver in the above-
2 captioned action, along with his general receivership counsel, Allen Matkins Leck
3 Gamble Mallory & Natsis LLP ("Allen Matkins"), his forensic accounting firm, SL
4 Biggs, and local counsel Ross, Smith & Binford, PC (now, Ross & Smith, PC,
5 "RSB") and Markowitz Ringel Trusty & Hartog, P.A. ("MRTH", and together with
6 Allen Matkins, SL Biggs, and RSB, the "Professionals"), hereby jointly submit this
7 memorandum of points and authorities in support of their concurrently and jointly
8 submitted *Amended First Interim Application for the Payment of Fees* (the
9 "Application").

10 In addition to this memorandum and the exhibits appended to the Application,
11 the Application is supported by the concurrently filed declarations of Stephen J.
12 Donell (the "Donell Decl."); Joshua A. del Castillo ("del Castillo Decl."); Brian J.
13 Landau ("Landau Decl."); Alan R. Rosenberg ("Rosenberg Decl."); and Frances A.
14 Smith ("Smith Decl.").

15 **I. PRELIMINARY STATEMENT.**

16 The Application is an amended version of the first interim fee application
17 submitted in the above-captioned action and covers the fees incurred by the
18 Receiver and his Professionals (collectively, the "Applicants") during the period
19 from September 13, 2024 through October 31, 2024 (the "Application Period").

20 By way of the Application, the Applicants request not only the Court's
21 approval of their fees incurred during the Application Period but also the interim
22 payment of such fees, to be paid from the funds of the receivership estate
23 established in this action (the "Receivership Estate" or "Estate").

24 ///

25 ///

26 ///

27 ///

28 ///

1 The amounts of the Applicants' fees sought to be approved and paid under the
2 Application are as follows:

3

Applicant	Fees
Receiver	\$69,897.15
Allen Matkins	\$145,013.85
MRTTH	\$3,000.00
RSB	\$20,317.50
SL Biggs	\$70,337.00
	\$308,565.50

9

10 The Application sets forth the services rendered by the Applicants during the
11 Application Period, which serve as the bases for the payments requested therein, are
12 more particularly detailed in the Applicants' invoices attached as **Exhibits 1** through
13 **5** to the Application. These invoices contain the billing entries that describe the
14 specific tasks performed by the Receiver (and his staff) and his Professionals during
15 the Application Period.

16 As discussed below, the Receiver believes in his reasonable business
17 judgment that the fees incurred by the Applicants during the Application Period in
18 connection with the Receiver's pursuit of his duties under the Initial Appointment
19 Order (as the term is defined herein) are reasonable, appropriate, and have benefited
20 the Estate. Applicants accordingly respectfully request that the Court approve and
21 authorize the payment of the fees sought under the Application.

22 **II. PROCEDURAL AND FACTUAL BACKGROUND.**

23 A full recitation of the procedural history of the above-captioned action is
24 unnecessary for the purposes of the Application. That said, the procedural history
25 and facts relevant to the Application are as follows:

26 **A. Procedural History.**

27 On September 9, 2024, plaintiff the Federal Trade Commission (the "FTC")
28 filed a complaint against numerous entity and individual defendants, commencing

1 the above-captioned civil action. *See* ECF No. 1. The FTC's complaint alleged that
2 the defendants engaged in a fraudulent scheme to lure consumers into investing
3 large sums in purported e-commerce business opportunities, using false promises of
4 substantial passive income from online stores administered by the defendants. *See*
5 *id.* On the basis of their allegations, the FTC petitioned this Court for injunctive
6 relief, and for the appointment of a receiver to assume authority and control over the
7 entity defendants. *See* ECF Nos. 4, 5.

8 On September 13, 2024, the Court entered the *Order on Plaintiff's Ex Parte*
9 *Application For (1) Temporary Restraining Order and Order to Show Cause Why a*
10 *Preliminary Injunction Should Not Issue; (2) Waiver of Notice Requirement;*
11 *(3) Appointment of a Temporary Receiver, Freezing of Assets; and other Equitable*
12 *Relief* (the "Initial Appointment Order"). *See* ECF No. 30. Pursuant to the terms of
13 the Initial Appointment Order, and among other things, the Receiver was:
14 (1) vested with authority and control over the Receivership Entities (as that term is
15 defined in the Initial Appointment Order); (2) directed to marshal and collect
16 available assets of the Receivership Entities; (3) charged with undertaking an
17 analysis of the business and financial activities of the entities and producing an
18 accounting; and (4) authorized to designate non-parties as additional Receivership
19 Entities, subject to a notice process. (*Id.*) The Receiver's authority under the Initial
20 Appointment Order was extended by subsequent orders of this Court;¹ critically
21 including the Court's December 3, 2024 *Order Granting Stipulation for Court to*
22 *Enter Preliminary Injunction* (the "Preliminary Injunction") [ECF No. 82], which
23 reaffirmed the Receiver's duties and authority.

24 On February 24, 2025, the Court entered its *Order Denying, in Part, and*
25 *Granting, in Part, First Interim Application for Payment of Fees and*
26 *Reimbursement of Expenses of Receiver Stephen J. Donell and his Professionals*

27
28

¹ *See* ECF Nos. 42, 55, 70.

1 (the "Initial Fee Order") [ECF No. 89], pursuant to which the Court denied the
2 initial version of this Application, in part, without prejudice to its resubmission in
3 clarified and supplemented form. The Applicants take the Court's Initial Fee Order
4 seriously, and hope and believe that the Application in its present form successfully
5 addresses the issues previously raised by the Court.

6 On February 24, 2025, the Court also entered its *Order Granting Stipulation:*
7 *(1) Authorizing Turnover of Sales Proceeds by Granite Escrow and Settlement*
8 *Services; (2) Authorizing Receiver to Manage, Market, and Sell Residential Real*
9 *Properties; and (3) Releasing Defendants' Claims to Proceeds Held or Recovered*
10 *by Receiver* (the "Turnover Order") [ECF No. 92], pursuant to which the Court
11 authorized and directed certain assets determined by the Receiver to be assets of the
12 Estate to be turned over to the Receiver, free and clear of any claims by defendants
13 Basta or Leung. In accordance with the terms of the Turnover Order, approximately
14 \$400,000 in additional funds have been turned over to the Receiver, and the
15 Receiver is in the process of assuming authority over the real properties at issue in
16 the Turnover Order, which properties he presently believes have a net value to the
17 Estate of approximately \$1 million. (*See* Donell Decl. ¶ 9.) In total, the Receiver
18 has recovered more than \$800,000 in cash for the benefit of the Estate and its
19 creditors, not including the value of the two properties, for a total of approximately
20 \$1.8 million in value. (*Id.*)

21 **B. Factual Background.**

22 As reflected in the Application, the Receiver has, with the assistance of his
23 Professionals, diligently performed his duties as established in the Initial
24 Appointment Order and Preliminary Injunction, including to protect and preserve
25 the value of the Receivership Entities and their assets. Having supported and
26 facilitated the Receiver's efforts, the Applicants now request that the Court approve
27 their respective fees incurred during the Application Period and authorize the
28

1 payment of such fees from the funds of the Receivership Estate, which now has
2 funding sufficient to more than pay for the requested fees.

3 During the Application Period, and with substantial assistance from his
4 Professionals, the Receiver undertook efforts in four critical areas of relevance to his
5 duties under the Initial Appointment Order: (a) undertaking efforts to preserve the
6 *status quo* and prevent ongoing harm to allegedly injured Entity customers;
7 (b) developing an understanding of the business and financial activities of the
8 Receivership Entities (as defined in the Initial Appointment Order) in order to
9 determine whether they are operating a legitimate business enterprise that has value
10 as a going concern, including inspections and investigations of the Receivership
11 Entities' purported places of business; (c) preparing a preliminary accounting of the
12 funds raised and expended by the Receivership Entities and their principals and
13 agents, including identifying and assuming control over funds recoverable for the
14 benefit of the Estate and its creditors (including consumers allegedly defrauded by
15 the Receivership Entities); and (d) tracing and recovering funds apparently
16 unlawfully diverted from the Receivership Entities for the unilateral benefit of the
17 defendants, including but not limited to the purchase of real property assets in
18 multiple states, some of which have since been turned over to the Receiver.

19 As reflected in the Receiver's *First Interim Report and Petition for*
20 *Instructions* (ECF No. 77-1) and *Second Interim Report and Petition for Instructions*
21 (ECF No. 88-1), the Receiver has been unable to confirm, in his reasonable business
22 judgment, that the Receivership Entities' e-commerce servicing business was
23 entirely or consistently legitimate, notwithstanding the fact that the Entities appear
24 to have occasionally provided at least limited e-commerce services to certain
25 consumers. In addition, the Receiver has preliminarily concluded that the
26 Receivership Entities likely cannot be operated (or sold) as a going concern.
27 Among the reasons underlying these preliminary conclusions are: (a) the
28 Receivership Entities' purported places of business did not contain any items or

1 records suggesting the existence of a properly administered commercial enterprise;
2 (b) the Receivership Entities maintained few, if any, records in a manner consistent
3 with the customs and practices of a commercial enterprise; (c) the Receivership
4 Entities diverted millions of dollars in funds raised from consumers for purposes
5 apparently unrelated to their e-commerce business, critically including to enable the
6 Receivership Entities' principals, or their affiliates, to purchase multi-million dollar
7 properties; and (d) notwithstanding the commencement of the instant receivership,
8 persons apparently employed by the Entities in the pre-receivership period have
9 consistently pursued efforts to solicit additional payments – allegedly on behalf of
10 the Entities – for services that the Receiver is confident would never be provided; in
11 other words, former Entity personnel appear to have engaged in a post-receivership
12 effort to defraud Entity consumers.

13 The Receiver is confident that the work he and his Professionals have
14 performed to date has been valuable to the Estate. Indeed, their collective efforts
15 have resulted in the identification and recovery of an estimated \$1.8 million in
16 monetary value for the benefit of the Estate and its creditors – recoveries that would
17 have been impossible or substantially more difficult or protracted had the Receiver
18 and his Professionals not undertaken the efforts described in the Application. These
19 efforts also paid non-monetary dividends, critically including a reduction in ongoing
20 consumer harm resulting from the Receiver's and his Professionals' diligent efforts
21 to close down unlawful post-receivership efforts to solicit Entity customers, suspend
22 ongoing billing operations to customers for services that were not provided, and
23 efforts to facilitate consumer contact with various online marketing platforms (e.g.,
24 Amazon, Wal-Mart, etc.), all of which involved affirmative work by the Receiver,
25 his counsel, and his forensic accountant. Given the amount and significance of the
26 work completed by the Applicants during the Application Period, the Receiver
27 respectfully submits that the fees incurred by the Applicants are reasonable and
28

1 appropriate, and should be approved and paid, in full, in the amounts indicated in
2 the Application.

3 **III. ARGUMENT.**

4 **A. Receivership Fees and Expenses.**

5 It is a fundamental principle of receivership law that the administrative and
6 professional fees and expenses of a receiver and his supporting professionals
7 constitute priority expenses for which compensation should be paid from the assets
8 of the receivership. As reflected in the leading treatise, *Clark on Receivers*:

9 The obligations and expense which the court creates in its
10 administration of the [receivership estate] are necessarily
11 burdens on the [estate] ... The appointing court pledges its
12 good faith that all duly authorized obligations incurred
13 during the receivership shall be paid.

14 2 Clark, Ralph Ewing, *A Treatise on the Law and Practice of Receivers* § 637,
15 p. 1052 (3d ed. Rev. 1992).

16 Put another way, "[a]s a general rule, the expenses and fees of a receivership
17 are a charge upon the property administered[.]" and, where "a receiver reasonably
18 and diligently discharges his duties, he is entitled to compensation." *Gaskill v.*
19 *Gordon*, 27 F.3d 248, 25, 2531 (7th Cir. 1994); *see also SEC v. Byers*, 590
20 F.Supp.2d 637, 644 (S.D.N.Y. 2008) ("A receiver appointed by a court who
21 reasonably and diligently discharges his duties is entitled to be fairly compensated
22 for services rendered[.]"). The fees and expenses of a receivership include the fees
23 and expenses incurred by the receiver, in addition to those fees and expenses
24 incurred by the receiver's professionals in rendering services to the receiver. *See*
25 *Drilling & Expl. Corp. v. Webster*, 69 F.2d 416, 418 (9th Cir. 1934). Decisions
26 regarding the amount and timing of an award of receivership fees and expenses are
27 committed to the sound discretion of the district court. *See SEC v. Elliott*, 953 F.2d
28 1560, 1577 (11th Cir. 1992). While a district court has "broad powers and wide

1 discretion in crafting relief," including in "distributing receivership assets" (*Quilling*
2 *v. Trade Partners, Inc.*, 572 F.3d 293, 301 (6th Cir. 2009)), because of the nature of
3 the services provided by a receiver and his professionals, the benefit a receiver
4 confers upon a given estate cannot be determined solely on the basis of the increase
5 or decrease in value of property in the receiver's possession. *Elliott*, 953 F.2d at
6 1577 ("[I]t is sometimes difficult to ascertain what type of benefits a receiver has
7 bestowed ... Even though a receiver may not have increased, or prevented a
8 decrease in, the value of the collateral, if a receiver reasonably and diligently
9 discharges his duties, he is entitled to compensation.") (citations omitted).

10 Fortunately here, as reflected in his various submissions to the Court, the
11 Receiver has steadily increased the value of the Estate, from literally nothing on-
12 hand on the first day of the receivership to an estimated monetary value of
13 approximately \$1.8 million, to say nothing of the non-monetary value arising from
14 the Receiver's successful and ongoing efforts to prevent further harm to
15 stakeholders. Accordingly, the Applicants respectfully submit that their request for
16 approval and payment of their respective fees is appropriate, and for the reasons
17 discussed below, request that the Court exercise its discretion and approve and
18 authorize the interim payment of the requested fees from the funds of the
19 Receivership Estate.

20 **B. The Requested Fees Are Reasonable.**

21 The fees of a receiver and his professionals must be reasonable. *See San*
22 *Vicente Med. Partners, Ltd. v. Orr (In re San Vicente Med. Partners, Ltd.)*, 962 F.2d
23 1402, 1409 (9th Cir. 1992). In determining the reasonableness of the fees requested
24 in connection with a receivership, a court should consider the time records
25 presented, the quality of the work performed, the complexity of the problems faced,
26 and the benefit of the services rendered to the receivership estate. *See SEC v. Fifth*
27 *Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973). In a practical
28 sense, once it has determined that an applicant's services were reasonable, the court

1 simply multiplies the number of hours expended by the applicant's hourly rate. *Cf.*
2 *Sw. Media, Inc. v. Rau*, 708 F.2d 419, 427 (9th Cir. 1983) (Bankruptcy Act case),
3 *superseded in part by statute*, Bankruptcy Reform Act of 1978, Pub. L. No. 95-598,
4 92 Stat. 2549, *as recognized in U.S. Tr. v. Tamm (In re Hokulani Square, Inc.)*, 460
5 B.R. 763 (B.A.P. 9th Cir. 2011). Indeed, even when evaluating requested fees as
6 compared to recoveries, courts in common fund cases analogous to receiverships
7 have approved amounts reflecting between 20% and 33% of total recoveries as
8 consistent with standards of presumptive reasonableness. *See, e.g., In re*
9 *Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 109 F.3d
10 602, 607-09 (9th Cir. 1997); *In re Pacific Enters. Secs. Litig.*, 47 F.3d 373, 379 (9th
11 Cir. 1995).

12 Here, the Application describes the nature of the services that have been
13 rendered by the Applicants and, where appropriate, the identity and billing rate of
14 the individual performing each specific task. The Applicants have endeavored to
15 staff matters as efficiently as possible in light of the level of experience required and
16 the complexity of the issues presented. In general, the Application reflects either the
17 Applicants' customary billing rates and the rates charged for comparable services in
18 other matters, or rates including discounts and other reductions specific to the
19 instant receivership as an accommodation to the Estate, as identified in the
20 Application. By way of example, the Receiver and Allen Matkins have applied
21 across-the-board discounts of 10% to the hourly rates of all timekeepers in this
22 matter, in addition to applying additional discounts as deemed appropriate (indeed,
23 Allen Matkins has discounted its rates by nearly 36% for certain timekeepers, as
24 compared to its national rates, and applied additional write-offs to the fees requested
25 in the Application, as an accommodation to the Estate). *See, e.g., Donell Decl. at*
26 *¶ 4, del Castillo Decl. ¶ 3.* As a result of these and other accommodations, the
27 Applicants' requested fees total just 17% of the estimated monetary value recovered
28 by the Receiver to date.

1 The Receiver has reviewed the Application and, in his reasonable business
2 judgment, believes the fees requested by the Applicants to be fair and reasonable
3 and an accurate representation of the work performed. *See* Donell Decl. ¶ 9. The
4 Receiver likewise believes that the Receivership Estate has benefited from the
5 services identified in the Application. *Id.*

6 **C. The Applicants Are Highly Experienced Practitioners And Their**
7 **Hourly Rates Are Appropriate.**

8 In its Initial Fee Order, the Court noted that the original version of the
9 Application did not include any attestation regarding the Applicants' respective
10 expertise in the context of federal receivership matters, nor the propriety of their
11 respective hourly rates for a federal receivership. As reflected in the Application,
12 each of the Applicants is highly qualified, with years of experience in fiduciary
13 matters, including receiverships. (*See* Donell Decl. ¶ 5; del Castillo Decl. ¶¶ 2, 4;
14 Landau Decl. ¶¶ 2, 3; Rosenberg Decl. ¶¶ 2, 3; Smith Decl. ¶¶ 2, 3.) In addition,
15 each Applicant is familiar with the prevailing rates for similarly qualified
16 practitioners in their areas, and has determined that their rates are consistent with, or
17 below, rates charged by similarly qualified professionals on similar matters. (*See*
18 Donell Decl. ¶ 4; del Castillo Decl. ¶ 5; Landau Decl. ¶ 5; Rosenberg Decl. ¶ 4;
19 Smith Decl. ¶ 4.) By way of example, in addition to the significant discounts it has
20 applied to its fees in this matter, Allen Matkins' rates are, in some cases, nearly half
21 of those charged by competing firms in other federal receivership matters. (*See*,
22 *e.g.*, del Castillo Decl. ¶ 5, Ex. B) (among other things, reflecting competing firm
23 charging as much as \$930 per hour for associates and \$1,510 per hour for partners in
24 receivership representation).

25 **D. The Application Has Been Submitted To The FTC For Review And**
26 **Comment, Without Opposition.**

27 With respect to compensation requests made by a receiver in a federal
28 enforcement action, courts give great weight to the judgment and experience of the

1 government agency prosecuting the underlying action. As one court has noted in a
2 bankruptcy case in which the Securities and Exchange Commission (the "SEC")
3 participated, "it is proper to [keep] in mind that the [SEC] is about the only wholly
4 disinterested party in [this] proceeding and that . . . its experience has made it
5 thoroughly familiar with the general attitude of the Courts and the amounts of
6 allowances made in scores of comparable proceedings." *In re Phila. & Reading*
7 *Coal & Iron Co.*, 61 F. Supp. 120, 124 (E.D. Pa. 1945) (Bankruptcy Act case).
8 Indeed, the government agency's positions are not "mere casual conjectures, but are
9 recommendations based on closer study than a district judge could ordinarily give to
10 such matters." *Finn v. Childs Co.*, 181 F.2d 431, 438 (2d Cir. 1950) (citation
11 omitted) (internal quotation marks omitted) (Bankruptcy Act case). And such
12 "recommendations as to fees of the [government agency] may be the only solution
13 to the very undesirable subjectivity with variations according to the particular judge
14 under particular circumstances which has made the fixing of fees seem often to be
15 upon nothing more than an ipse dixit basis." *Id.* (citation omitted) (internal
16 quotation marks omitted). Thus, the government agency's position on a fee request
17 should be "given great weight." *Fifth Ave. Coach Lines*, 364 F. Supp. at 1222.

18 Here, in order to ensure that the fees and expenses requested in the
19 Application are reasonable and appropriate, the Applicants submitted a draft of the
20 Application, along with their invoices, to the FTC for review prior to filing. The
21 FTC has confirmed that it does not oppose the Application and the Applicants
22 understand and believe that the FTC intends to submit a formal notice of non-
23 opposition in connection with the filing of the amended Application. The FTC is
24 likely in the best position to measure the fees and expenses requested in the instant
25 receivership against those incurred in other, similar proceedings and cases of similar
26 complexity, *see Phila. & Reading Coal & Iron Co.*, 61 F. Supp. at 124, and any
27 decision on its part not to object to the Application merits significant deference.

28

1 Accordingly, the Applicants respectfully request that the Court approve the fees
2 sought in the Application.

3 **E. The Receiver Should Be Authorized To Pay All Approved Fees**
4 **From Cash On-Hand.**

5 Where, as here, the fees requested are reasonable and "both the magnitude
6 and the protracted nature of a case impose economic hardships on professionals
7 rendering services to the estate," an interim award of fees is appropriate. *CFPB v.*
8 *Pension Funding, LLC*, Case No. SACV 15-1329-JLS (JCGx), 2016 U.S. Dist.
9 LEXIS 187607, at *4 (C.D. Cal. July 7, 2016). Indeed, interim payments are
10 necessary "to relieve counsel and others from the burden of financing lengthy and
11 complex . . . proceedings." *In re Rose Way, Inc.*, Case No. 89-1273-C H, 1990
12 Bankr. LEXIS 3028, at *9 (Bankr. S.D. Iowa Mar. 1, 1990) (citing *In re Mansfield*
13 *Tire & Rubber Co.*, 19 B.R. 125 (Bankr. N.D. Ohio 1981) (bankruptcy case)). Thus,
14 an interim payment of the Applicants' requested fees is appropriate.

15 Notably, and as compared to the circumstances at issue when the original
16 version of the Application was filed, the Receiver has recovered funds far in excess
17 of the amount necessary to pay the fees requested in the Application, and has
18 increased the estimated value of the Estate, for the benefit of its creditors, by over
19 \$1.5 million since the original version of the Application was filed. Accordingly,
20 the Receiver respectfully submits that the fees requested in the Application can, and
21 should, be paid from cash on-hand.

22 **IV. CONCLUSION.**

23 For the foregoing reasons, the Applicants respectfully request that this Court
24 enter an order:

- 25 1. Granting this Application in its entirety;
- 26 2. Approving the Receiver's fees incurred during the Application Period,
27 the respective amount of \$69,897.15;

28

1 3. Approving Allen Matkins' fees incurred during the Application Period,
2 in the amount of \$145,013.85;

3 4. Approving MRTH's fees incurred during the Application Period, in the
4 amount of \$3,000.00;

5 5. Approving RSB's fees incurred during the Application Period, in the
6 amounts of \$20,317.50;

7 6. Approving SL Biggs' fees incurred during the Application Period, in
8 the amount of \$70,337.00; and

9 Authorizing the Receiver to pay himself and his Professionals the above-
10 approved fees, in full, from the funds of the Estate.

11
12 Dated: March 13, 2025

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

15 By: /s/ Joshua A. del Castillo
16 JOSHUA A. DEL CASTILLO
17 Attorneys for Receiver
18 STEPHEN J. DONELL
19
20
21
22
23
24
25
26
27
28