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15 **UNITED STATES DISTRICT COURT**  
 16 **CENTRAL DISTRICT OF CALIFORNIA**  
 17 **SOUTHERN DIVISION**

18 Consumer Financial Protection Bureau  
 19 and Maria T. Vullo, Acting  
 20 Superintendent of Financial Services of  
 21 the State of New York,

22 Plaintiffs,

23 v.

24 Pension Funding, LLC; Pension  
 25 Income, LLC; Steven Covey; Edwin  
 26 Lichtig; and Rex Hofelter,

27 Defendants.

28 Case No. 8:15-cv-1329

**RECEIVER'S NOTICE OF MOTION  
 AND MOTION FOR ORDER IN AID  
 OF RECEIVERSHIP;  
 MEMORANDUM OF POINTS AND  
 AUTHORITIES**

**INITIAL REPORT ON RECEIVER'S  
 ACTIVITIES**

Date: April 1, 2016  
 Time: 2:30 p.m.  
 Ctrm.: 10A  
 Judge: Hon. Josephine L. Staton

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on April 1, 2016, at 2:30 p.m.

3 courtroom 10A of the above-entitled Court, located at 411 West Fourth Street,  
4 Santa Ana, California 92701-4516, Krista L. Freitag ("Receiver"), the Court-  
5 appointed permanent receiver for Pension Funding, LLC, Pension Income, LLC, and  
6 their subsidiaries, affiliates, and successors-in-interest, including PGR, LLC  
7 (collectively, "Receivership Entities"), will and hereby does move the Court for an  
8 Order in Aid of Receivership ("Motion"). The Receiver also submits the brief initial  
9 report on her activities provided herein.

10 The Motion is made on the grounds that in order to discharge her duties as  
11 defined by this Court's Order Entering Stipulated Preliminary Injunction,  
12 Appointment of a Receiver, and Related Matters ("Preliminary Injunction Order"),  
13 the Receiver seeks certain relief regarding the administration of the receivership.  
14 Specifically, the Receiver requests an order addressing the following topics:

- 15 • Employment of Allen Matkins Leck Gamble Mallory & Natsis LLP  
16 ("Allen Matkins") as legal counsel;
- 17 • Relief from Local Rule requirements regarding filing a schedule of known  
18 creditors and providing notices to known creditors by mail;
- 19 • The schedule for filing interim reports and interim fee applications.

20 This Motion is based upon this Notice of Motion and Motion, the attached  
21 Memorandum of Points and Authorities, the documents and pleadings already on  
22 file in this action, and upon such further oral and documentary evidence as may be  
23 presented at the time of hearing.

24 Dated: March 1, 2016

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By:           /s/ Ted Fates          

TED FATES  
Attorneys for Receiver  
KRISTA L. FREITAG

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In accordance with the Stipulated Preliminary Injunction Order ("PI Order")  
4 and the law governing federal equity receiverships, the Receiver moved  
5 immediately to secure and investigate the assets of the Receivership Entities on  
6 January 8, 2016. Based on her investigation to date, the Receiver believes the  
7 following relief is necessary and appropriate to assist in the efficient and cost-  
8 effective administration of the Receivership Estate:

9 **Employment of Legal Counsel.** The Preliminary Injunction Order  
10 authorizes the Receiver to engage counsel. The Receiver is not an attorney and does  
11 not have attorneys on staff at her company, E3 Realty Advisors, Inc. Considering  
12 the complexity and urgency of the numerous legal issues facing the Receivership  
13 Entities upon her appointment, the Receiver immediately engaged the law firm of  
14 Allen Matkins to serve as her general receivership counsel. Nevertheless, the  
15 Receiver seeks Court approval of her engagement of Allen Matkins, which is very  
16 experienced in federal equity receivership matters and well qualified to assist her  
17 with this complex receivership and in other applicable areas of law, as necessary,  
18 including litigation, finance, corporate, and tax matters.

19 **Relief from Local Rule Requirements.** Local Rule 66-5 requires the  
20 Receiver to file a schedule of names, addresses, and amounts of claims of all known  
21 creditors. Local Rule 66-7 requires the Receiver to provide notices by mail to all  
22 known creditors of:

- 23 (a) Petitions for the payment of dividends to creditors;  
24 (b) Petitions for the confirmation of sales or real property and personal  
25 property;  
26 (c) Reports of the receiver;  
27 (d) Applications for instructions concerning administration of the estate;  
28 (e) Applications for discharge of the receiver; and

1 (f) Applications for fees and expenses of the receiver, attorney for the  
2 receiver and any other person appointed to aid the receiver.

3 The Receivership Entities' records indicate there are approximately 600  
4 pensioners, investors, and other potential creditors of the enterprise. Mailing hard  
5 copy notices to all such persons and entities of each of the above filings would  
6 likely cost the receivership estate tens of thousands of dollars over the course of the  
7 receivership.

8 Furthermore, it is not possible to provide an accurate schedule of all claim  
9 amounts at this time. The records of the companies are not in a condition that would  
10 allow the Receiver to determine and verify all claims. The forensic accounting  
11 required under the Preliminary Injunction Order will provide the foundation for  
12 determining claims. Considering the number of bank accounts used by the  
13 Receivership Entities and the high volume of transactions, the forensic accounting  
14 will take time to complete. Finally, pensioner and investor names and addresses  
15 should not be publicly filed as the majority of them appear to be individuals and  
16 their personal information should be protected absent a compelling need for  
17 disclosure.

18 Accordingly, the Receiver requests relief from the Local Rule requirements to  
19 file a schedule of known creditors (Local Rule 66-5) and provide mail notices to all  
20 known creditors (Local Rule 66-7). The Receivership Entities' records include  
21 e-mail addresses for virtually all pensioners and investors, so the Receiver can  
22 quickly and efficiently provide electronic notices. Additionally, information for  
23 investors about the receivership (including this Motion) is posted on the Receiver's  
24 webpage for the receivership: [www.ethreadvisors.com](http://www.ethreadvisors.com) (use the CFPB Case Docs  
25 tab and click on the name of the case). Furthermore, with contact information  
26 provided in the Receivership Entities' records, physical letters and emails have  
27 already been mailed to all known pensioners and investors (some investors are  
28 notified through a third-party administrator) informing them of the Receiver's

1 appointment and directing them to the Receiver's website for more information and  
2 updates. The website maintained by the Defendants prior to the Receiver's  
3 appointment (www.pensionincomellc.com) was taken down and those who try to  
4 access the website are directed to the Receiver's webpage for this receivership. The  
5 www.uspensionfunding.com site was taken down prior to the Receiver's  
6 appointment in June 2015.

7 **Interim Reports and Fee Applications.** The Receiver believes filing interim  
8 reports and fee applications on a quarterly basis strikes the appropriate balance  
9 between keeping the Court and interested parties regularly informed of her activities  
10 and conserving receivership estate resources. Accordingly, the Receiver  
11 recommends that interim reports and fee applications covering each calendar quarter  
12 be filed during the month following the end of each calendar quarter. The first  
13 interim report and interim fee applications of the Receiver and Allen Matkins would  
14 therefore be filed in April 2016 covering the period from January 8 through  
15 March 31, 2016.

16 **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

17 On August 20, 2015, the Consumer Financial Protection Bureau ("Bureau")  
18 and Anthony J. Albanese, Acting Superintendent of Financial Services of the State  
19 of New York ("Superintendent"), filed their Complaint against Defendants Pension  
20 Funding, LLC, Pension Income, LLC, Steven Covey, Edwin Lichtig, and Rex  
21 Hofelter. The Complaint alleges that Defendants violated the Consumer Financial  
22 Protection Act of 2010 and New York state law by making "pension advances" to  
23 pensioners while (a) failing to disclose the transactions were loans, (b) failing to  
24 disclose or misrepresenting the interest rate associated with the loans, (c) making  
25 various other misrepresentations about the terms and/or benefits of the loans to  
26 pensioners, (d) charging interest rates to pensioners located in New York that  
27 exceeded the maximum rate allowed by New York law, and (e) engaging in the  
28 business of money transmitting without a money transmitter license.

1 On October 7, 2015, the Bureau and Superintendent moved for a preliminary  
2 injunction, appointment of a receiver, and other equitable relief ("PI Motion"). With  
3 the exception of Steven Covey,<sup>1</sup> Defendants answered the Complaint on October 23,  
4 2015. Defendants then opposed the PI Motion on October 30, 2015. At the hearing  
5 on the PI Motion held on December 18, 2015, the parties informed the Court that  
6 they had agreed upon a stipulation regarding preliminary injunction. Dkt. No. 56.  
7 The Joint Stipulation Requesting Entry of Stipulated Preliminary Injunction,  
8 Appointment of a Receiver, and Related Orders was filed on December 21, 2015.  
9 Dkt. No. 57. On January 8, 2015, the Court entered the PI Order, including the  
10 appointment of the Receiver. Dkt. No. 61.

11 **A. The PI Order**

12 The PI Order confers broad duties and responsibilities on the Receiver, which  
13 are summarized as follows:

- 14 A. "to have access to collect and take custody, control, possession, and  
15 charge of all funds, assets" and other property of the Receivership  
16 Entities, "with full power to sue, foreclose, marshal, sell, liquidate,  
17 collect, receive, and take into possession all such property;"
- 18 B. "to have control of, and to be added along with Thomas Hebrank of  
19 E3 Advisors as the sole authorized signatories for all accounts of" the  
20 Receivership Entities;
- 21 C. to conduct such investigation and discovery as may be necessary to  
22 locate and account for all of the funds, assets" and other property of the  
23 Receivership Entities "and to engage and employ attorneys,
- 24
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26 <sup>1</sup> Mr. Covey has not answered the Complaint or otherwise appeared in the action.  
27 His default was entered by the clerk on December 23, 2015. Dkt. No. 59. On  
28 January 22, 2016, the Bureau and Superintendent filed an application for default  
judgment against Mr. Covey. Dkt. No. 65. Accordingly, all references to actions  
taken by "Defendants" are to Pension Funding, LLC, Pension Income, LLC,  
Edwin Lichtig, and Rex Hofelter.



- 1 accountants, and other persons to assist in such investigation and  
2 discovery;"
- 3 D. "to take such action as is necessary and appropriate to preserve and take  
4 control of and to prevent the dissipation, concealment, or disposition of  
5 any funds, assets" and other property of the Receivership Entities;
- 6 E. "to make an accounting, as soon as practicable, to this Court and the  
7 Plaintiffs of the assets and financial condition of" the Receivership  
8 Entities "and to file the accounting with the Court and deliver copies  
9 thereof to all parties;"
- 10 F. "to make an accounting, as soon as practicable, to this Court and the  
11 Plaintiffs of the status of each completed transaction related to  
12 Defendants' pension-advance products and to propose a methodology,  
13 subject to the Court's approval, for determining how to unwind or  
14 otherwise resolve any such transaction;"
- 15 G. "to make such payments and disbursements from the funds and assets  
16 taken into custody, control, and possession or thereafter received by  
17 her, and to incur, or authorize the making of such agreements as may be  
18 necessary and advisable in discharging the receiver's duties;"
- 19 H. "to employ attorneys, accountants, and others to investigate, advise,  
20 and where appropriate, to institute, pursue, and prosecute all claims and  
21 causes of action of whatever kind and nature which may now or  
22 hereafter exist, including in state or federal courts, or in foreign  
23 jurisdictions, as a result of the activities of present or past employees or  
24 agents of Pension Funding, LLC, and Pension Income, LLC;"
- 25 I. "to have access to and monitor all mail, electronic mail, and telephones  
26 of, as well as any other form of communication used by, Pension  
27 Funding, LLC, and Pension Income, LLC, in order to review such  
28 communications which the receiver considers relevant to the business

1 of Pension Funding, LLC, and Pension Income, LLC, and discharging  
2 the receiver's duties, and to make appropriate notification to the United  
3 States Postal Service to forward delivery of any mail addressed to" the  
4 Receivership Entities;

5 J. "to operate and control the content of information posted on any  
6 Pension Funding, LLC, and Pension Income, LLC, Internet websites;"

7 K. "to seek discovery from parties and non-parties without regard to the  
8 timing limitations set forth in Federal Rules of Civil Procedure  
9 26(d)(1); and"

10 L. "to exercise all of the lawful powers of Pension Funding, LLC, and  
11 Pension Income, LLC, and their officers, directors, employees,  
12 representatives, or persons who exercise similar powers and perform  
13 similar duties."

14 Dkt. No. 61, Section III.

15 The PI Order, among other things, also includes provisions (a) requiring  
16 Defendants to give access and control of all property of the Receivership Entities to  
17 the Receiver, (b) prohibiting officers, employees, and other agents from taking any  
18 action on behalf of the Receivership Entities, (c) restraining and enjoining legal  
19 actions against the Receivership Entities and interference with the Receiver's  
20 performance of her duties, and (d) requiring that the fees and costs of the Receiver  
21 and her professionals be paid by Pension Funding, LLC, Pension Income, LLC,  
22 Edwin Lichtig, and Rex Hofelter. *Id.* at Sections IV-VIII.

23 **III. BRIEF INITIAL REPORT ON RECEIVER'S ACTIVITIES TO**  
24 **IMPLEMENT PRELIMINARY INJUNCTION ORDER**

25 Upon her appointment, the Receiver immediately took steps to implement the  
26 terms and provisions of the PI Order, including (a) taking control of all accounts of  
27 the Receivership Entities, (b) imaging and preserving all electronic data of the  
28 Receivership Entities, (c) securing and taking possession of all hard copy records

1 and documents of the Receivership Entities, and (d) investigating, issuing  
2 subpoenas, and gathering records as to the assets and potential claims of the  
3 Receivership Entities.

4 The Receiver has also assumed control of the operations of the Receivership  
5 Entities, including the servicing of the loans and collection of monthly payments  
6 due from pensioners. The Receiver also sent approximately 406 letters to  
7 pensioners and investors,<sup>2</sup> as reflected in the books and records of the Receivership  
8 Entities, to inform them of the case and her appointment as receiver, and direct them  
9 to the Receiver's website for information and updates. The Receiver has ceased  
10 distributions or payments to the investors. The Receiver set up a case specific  
11 telephone number and email address; the Receiver and her staff have been  
12 responding to numerous inquiries from pensioners and investors.

13 The Receiver is also gathering records necessary to conduct her forensic  
14 accounting, as required by the PI Order, and anticipates filing a forensic accounting  
15 report and recommendation for resolving the outstanding issues with the pension-  
16 advance transactions. Pursuant to the relief requested herein regarding the schedule  
17 for reports, the Receiver intends to file a more comprehensive interim report in  
18 April 2016 covering her activities and preliminary findings from the date of her  
19 appointment on January 8, 2016 through March 31, 2016. The interim report in  
20 April 2016 will contain information regarding assets recovered in the transition.  
21 Thereafter, reports will be filed quarterly.

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26 <sup>2</sup> This number does not include approximately 80 investors for whom a third-party  
27 administrator, IRA Services, is the contact. IRA Services received the Receiver's  
28 letter on behalf of those 80 investors and advised the Receiver they forwarded a  
copy to them. However, the Receiver has email addresses for the majority of  
these 80 investors and is accumulating those she doesn't have, and therefore will  
be able to send electronic notices to them directly (or through IRA Services, if  
necessary).

1 **IV. RELIEF REQUESTED**

2 Considering the number of pensioners and investors, the amounts at stake for  
3 them, and the important legal issues facing the Receivership Entities, the Receiver  
4 seeks an order in aid of receivership: (a) approving the employment of Allen  
5 Matkins as her general receivership counsel; (b) granting relief from Local Rule  
6 requirements regarding filing a schedule of known creditors and providing notices  
7 by mail to known creditors; and (c) approving the schedule for filing interim reports  
8 and interim fee applications. The Receiver submits that such relief will assist in the  
9 efficient and effective administration of the Receivership Estate, thereby conserving  
10 receivership estate resources for the benefit of investors.

11 **V. LEGAL AUTHORITY**

12 **A. District Courts Have Broad Equitable Powers to**  
13 **Administer Receivership Matters**

14 The power of a district court to impose a receivership or grant other forms of  
15 ancillary relief does not in the first instance depend on a statutory grant of power  
16 from the securities laws. Rather, the authority derives from the inherent power of a  
17 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369  
18 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly  
19 and efficient administration of the estate by the district court for the benefit of  
20 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment  
21 of a receiver is authorized by the broad equitable powers of the court, any  
22 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,  
23 953 F.2d 1560, 1569 (11th Cir. 1992).

24 District courts have the broad power of a court of equity to determine the  
25 appropriate action in the administration and supervision of an equity receivership.  
26 *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth  
27 Circuit explained:

28 A district court's power to supervise an equity receivership  
and to determine the appropriate action to be taken in the

1 administration of the receivership is extremely broad. The  
 2 district court has broad powers and wide discretion to  
 3 determine the appropriate relief in an equity receivership.  
 4 The basis for this broad deference to the district court's  
 5 supervisory role in equity receiverships arises out of the  
 6 fact that most receiverships involve multiple parties and  
 7 complex transactions. A district court's decision  
 8 concerning the supervision of an equitable receivership is  
 9 reviewed for abuse of discretion.

10 *Id.* (citations omitted); *see also CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107,  
 11 1115 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory  
 12 role, and 'we generally uphold reasonable procedures instituted by the district court  
 13 that serve th[e] purpose' of orderly and efficient administration of the receivership  
 14 for the benefit of creditors."). Accordingly, this Court has broad equitable powers  
 15 and discretion in formulating procedures, schedules and guidelines for  
 16 administration of the Receivership Estate.

17 **B. Electronic Noticing Procedures Satisfy the Requirements of**  
 18 **Due Process**

19 Although investors and creditors of the Receivership Entities are not parties to  
 20 the receivership case, they must be afforded adequate notice. *SEC v. TLC Invs. and*  
 21 *Trade Co.*, 147 F. Supp. 2d 1031, 1034-35 (C.D. Cal. 2001); *see also In re Gen. Am.*  
 22 *Life Ins. Co. Sales Practices Litig.*, 375 F.3d 800, 804 (8th Cir. 2004) (Addressing  
 23 the importance of notice in class actions, which employ a higher standard for the  
 24 adequacy of notice.). Naturally, the requirements of due process vary with the rights  
 25 at issue. *Matthews v. Eldridge*, 424 U.S. 319, 334 (1976) (Due process as a  
 26 "flexible" standard that "calls for such procedural protections as the particular  
 27 situation demands[.]"). While no specific standards exist regarding providing  
 28 notices to investors in this context, it is undisputed that adequate notice is required.

Notice is adequate, and meets due process requirements, where it is  
 reasonably calculated to apprise interested parties of the pendency of an action and

1 provide them an opportunity, if appropriate, to be heard. *Mullane v. Cent. Hanover*  
2 *Bank & Trust Co.*, 339 U.S. 306, 413 (1950).

3 Electronic mail notice has been properly permitted where it is reasonably  
4 calculated to apprise the recipients of the pendency of the action and provide them  
5 with the opportunity to be heard. *In re Int'l Telemedia Assocs., Inc.*, 245 B.R. 719,  
6 721 (Bankr. N.D. Ga. 2000) (Approving notice via electronic mail in heightened due  
7 process context of criminal proceeding.); *Yahoo!, Inc. v. Yahooautos.com and*  
8 *1865 Other Domain Names*, 2006 U.S. Dist. LEXIS 54902, \*10 (E.D. Va. August 8,  
9 2006) (Approving notice via electronic mail in context of in rem civil action).  
10 Furthermore, "communication by . . . electronic mail [has] become commonplace in  
11 our increasingly global society . . . [and] [t]he federal court's are not required to turn  
12 a blind eye to society's embracement of such technological advances."); *Telemedia*  
13 *Assocs., Inc.*, 245 B.R. at 721. Accordingly, it is proper for this Court to authorize  
14 service and notice via e-mail.

## 15 VI. TOPICS FOR ORDER IN AID OF RECEIVERSHIP

### 16 A. Employment of Allen Matkins

17 As discussed above, Section III.C. of the Preliminary Injunction Order  
18 authorizes, empowers, and directs the Receiver "to conduct such investigation and  
19 discovery as may be necessary to locate and account for all funds, assets... and  
20 other real or personal property" of the Receivership Entities, and "to engage and  
21 employ attorneys, accountants, and other persons to assist in such investigation and  
22 discovery . . ." Similarly, Section III.H. authorizes, empowers, and directs the  
23 Receiver "to employ attorneys, accountants, and others to investigate, advise, and  
24 where appropriate, to institute, pursue, and prosecute all claims and causes of  
25 action" of the Receivership Entities.

26 As discussed above, the Receiver is not an attorney and does not have  
27 attorneys on staff at her company. Considering the amounts at stake for pensioners  
28 and investors and the important legal issues facing the Receivership Entities, the

1 Receiver has determined that it is in the best interests of the receivership estate to  
2 engage experienced, well-qualified legal counsel to assist her in, among other  
3 things, (a) recovering, preserving, managing, and selling receivership assets (as  
4 applicable), (b) addressing legal issues related to operation of the Receivership  
5 Entities' businesses, including the servicing of loans, (c) providing legal advice  
6 related to the investigation of the Receivership Entities' financial activities,  
7 investments, loans, and potential causes of action against third parties, including  
8 issuing subpoenas, and evaluating the strengths and weaknesses of potential claims  
9 against third parties, (d) pursuing claims and causes of action, including, where  
10 appropriate, through litigation, (e) providing legal advice related to investor and  
11 creditor claims against the receivership estate; and (f) formulating and presenting to  
12 the Court a plan for administering investor and creditor claims and distributing  
13 receivership estate assets.

14 The Receiver selected Allen Matkins because the firm is well qualified to  
15 assist her with this complex receivership given its substantial experience and  
16 expertise in federal equity receiverships, litigation, finance, corporate, and tax  
17 matters. Allen Matkins has represented federal equity receivers appointed in  
18 numerous cases initiated by federal agencies, including, among others:

19 *SEC v. Nationwide Automated Systems, Inc., et al.*, U.S. District Court,  
20 Central District of California. Allen Matkins represents the Court-appointed  
21 receiver in the case, commenced in 2014, involving more than \$300 million raised  
22 from investors in connection with the sale of fictitious ATM machines.

23 *SEC v. World Capital Market, Inc., et al.*, U.S. District Court, Central District  
24 of California. Allen Matkins represents the Court-appointed receiver in the case,  
25 commenced in 2014, involving more than \$50 million raised from investors in  
26 connection with a fraudulent multi-level marketing scheme.

27 *SEC v. Louis V. Schooler, First Financial Planning Corp.*, U.S. District  
28 Court, Southern District of California. Allen Matkins represents the Court-



1 appointed receiver in the case, commenced in 2012, involving more than  
2 \$100 million raised from investors in connection with the sale of units of general  
3 partnerships that hold undeveloped land.

4 *SEC v. Small Business Capital Corp., et al.*, U.S. District Court, Northern  
5 District of California. Allen Matkins represents the Court-appointed receiver in the  
6 case, commenced in 2012, involving more than \$40 million raised from investors in  
7 connection with companies involved in making small business loans.

8 *SEC v. Sunwest Management, et al.*, U.S. District Court, District of Oregon.  
9 Allen Matkins represented the Court-appointed receiver in the case, commenced in  
10 2009, involving \$300 million raised from defrauded investors in connection with a  
11 senior living and real estate development company.

12 *SEC v. Medical Capital Holdings, Inc., et al.*, U.S. District Court, Central  
13 District of California. Allen Matkins represents the Court-appointed receiver in the  
14 case, commenced in 2009, involving approximately \$1.7 billion raised from  
15 defrauded investors in connection with a company primarily involved in factoring  
16 medical receivables.

17 The experience gained and expertise developed by Allen Matkins through its  
18 prior representations in federal equity receiverships will benefit the receivership  
19 estate and investors by both maximizing the recovery from receivership assets and  
20 significantly reducing the number of attorney hours required.

21 1. Allen Matkins' Attorneys

22 Allen Matkins' attorneys possess significant experience and skill in federal  
23 equity receiverships, litigation, finance, corporate, tax, and other areas of law  
24 relevant to this receivership. The majority of the receivership legal work, including  
25 preparing pleadings and appearances at Court hearings, will be performed by Ted  
26 Fates, Partner in the firm's Receivers, Lenders, and Special Creditor Remedies  
27 ("RLSCR") Practice Group. David Zaro, Chair of the RLSCR Practice Group, will  
28 provide limited supervision, as necessary, and associate Tim Hsu will assist. The



1 attorney biographies of Mr. Fates, Mr. Zaro, and Mr. Hsu are attached hereto as  
 2 Exhibit A.

3 Allen Matkins will staff each task as efficiently as possible, using junior  
 4 attorneys, paralegals, legal secretaries, word processors and other support staff as  
 5 much as possible to reduce attorney hours and minimize fees. The Receiver and  
 6 Allen Matkins will weigh the projected costs and likely benefits of all courses of  
 7 action before proceeding, and will keep the Court and the parties informed of their  
 8 activities (and the costs associated therewith) via quarterly reports and interim fee  
 9 applications. To the extent the Receiver believes it is necessary to initiate litigation  
 10 to recover assets or otherwise pursue claims against third parties, she will first file  
 11 an application seeking authority to take such action.

12 2. Compensation and Reimbursement of Expenses

13 The Receiver has negotiated a 10% discount with regard to Allen Matkins'  
 14 hourly rates. The hourly rates for the attorneys who will be involved on a regular  
 15 basis are as follows:

Attorney	Position	CA Bar Number	Hourly Billing Rate <sup>3</sup>
Ted Fates	Partner	227809	\$486.00
David Zaro	Partner	124334	\$670.50
Tim Hsu	Associate	279208	\$378.00

16  
 17  
 18  
 19  
 20 These rates are comparable or less than those charged by attorneys in  
 21 Southern California with similar levels of skill and experience, and are in line with  
 22 rates approved by courts in the Central District of California and Southern District  
 23 of California for attorneys representing receivers in complex receiverships.

24  
 25  
 26  
 27  
 28

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<sup>3</sup> Effective July 1st each year, Allen Matkins reviews and adjusts its hourly rates for attorneys and paralegals in light of their additional experience and expertise. The rates listed above, however, will not be adjusted until at least January 2017.

1           **B. Relief from Local Rule Requirements**

2           Local Rule 66-5 requires the Receiver to file a schedule of names, addresses,  
3 and amounts of claims of all known creditors. Local Rule 66-7 requires the  
4 Receiver to provide notices by mail to all known creditors of certain petitions,  
5 reports, and applications. Mailing notices to all pensioners, investors, and other  
6 creditors would cost the receivership estate thousands of dollars over the course of  
7 the receivership. Moreover, investor and creditor claim amounts are not known and  
8 the forensic accounting will need to be completed before investor claims can be  
9 properly determined. Given the number of bank accounts and high volume of  
10 transactions involved, the forensic accounting will take some time to complete.  
11 Finally, the investors' personal information, including their names and addresses,  
12 should not be filed publically absent a compelling need for disclosure. The majority  
13 of investors appear to be individuals.

14           Accordingly, the Receiver respectfully requests relief from the Local Rule  
15 requirements to file a schedule of known creditors and provide mail notices of  
16 certain motions. The Receivership Entities' records include e-mail addresses for  
17 virtually all pensioners and investors, so the Receiver can quickly and efficiently  
18 provide electronic notices. Moreover, pleadings, orders, and other information  
19 relevant to the receivership has been and will continue to be posted to the Receiver's  
20 website. A letter and email has already been sent to each pensioner and investor (as  
21 noted above, certain investors are notified through a third-party administrator, IRA  
22 services) directing them to the website for information and updates about the case.  
23 Electronic service of notice satisfies the requirements of due process and such  
24 service by electronic mail will allow the Receiver to notify investors promptly and  
25 at a fraction of the cost of sending notices by traditional mail.

26           **C. Interim Reports and Fee Applications**

27           Local Rule 66-6.1 provides that, within six months of appointment, and at  
28 least semi-annually, the Receiver must make reports to the Court. In addition,

1 pursuant to the terms of the Preliminary Injunction Order, the costs, fees and  
2 expenses of the Receiver and those of her professionals, including legal counsel,  
3 engaged by her to assist with the performance and carrying out of her duties, are to  
4 be paid by the Receivership Entities. These costs, fees and expenses incurred by the  
5 Receiver and her professionals are to be submitted by application setting forth in  
6 reasonable detail the nature of the services provided. Dkt. No. 61, Section VIII.

7 The Receiver believes that filing interim reports and interim fee applications  
8 on a quarterly basis strikes the appropriate balance between keeping the Court and  
9 interested parties regularly informed of her activities and conserving receivership  
10 estate resources. Thus, the Receiver recommends that interim reports and fee  
11 applications covering each calendar quarter be filed during the month following the  
12 end of the quarter. The Receiver's first interim report, as well as the first interim fee  
13 applications of the Receiver and Allen Matkins, would therefore be filed in April  
14 and will cover the period from January 8 through March 31, 2016.

15 **VII. CONCLUSION**

16 For the foregoing reasons, the Receiver respectfully requests an Order in Aid  
17 of Receivership as follows:

- 18 1. Authorizing the Receiver to employ Allen Matkins as her general  
19 receivership counsel;
- 20 2. Granting relief from the requirements in Local Rules 66-5 and 66-7 to  
21 file a schedule of known creditors and to provide mail notices to all known  
22 creditors;
- 23 3. Approving the Receiver's proposal to file interim reports and interim  
24 fee applications on a quarterly basis.

25 Dated: March 1, 2016

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

26 By:           /s/ Ted Fates          

27 TED FATES  
Attorneys for Receiver  
28 KRISTA L. FREITAG

# **EXHIBIT A**

# Allen Matkins



## **Ted G. Fates**

*Partner*  
San Diego Office

Phone: 619.235.1527  
Facsimile: 619.233.1158  
tfates@allenmatkins.com

### **Focus**

Receiverships, Lenders &  
Special Creditors Remedies  
Restructuring, Insolvency &  
Bankruptcy

### **Education**

J.D., Order of the Coif,  
University of San Diego  
School of Law, 2003

Editorial Board, *San Diego  
Law Review*

B.A., Emory University, 1999

Ted G. Fates is a partner at Allen Matkins who practices in the firm's Receiverships, Lenders and Special Creditors Remedies, Real Estate Finance, and Restructuring, Insolvency and Bankruptcy practice groups. He specializes in the areas of receivership, creditors' rights, bankruptcy and commercial litigation, including representation of creditors, receivers and trustees.

Ted represents lenders, real property owners, and other creditors in a wide variety of matters, including loan defaults and restructures, lease and other real property disputes, bankruptcy, receivership, and litigation matters.

Ted has extensive expertise regarding equity receiverships initiated by federal regulatory agencies. He has represented equity receivers appointed for various securities trading and investment firms, real estate and healthcare industry lenders, Internet-based investment programs and Ponzi schemes. Collectively, these entities raised more than \$2.5 billion from their participants. His clients also include state court receivers appointed to manage and/or sell real estate and other business assets.

Prior to joining Allen Matkins, Ted clerked for the Honorable John E. Ryan (Ret.), U.S. Bankruptcy Court, Central District of California and Ninth Circuit Bankruptcy Appellate Panel.

## **MEMBERSHIPS**

- Federal Bar Association, San Diego Chapter, Past President (2010)
- American Bankruptcy Institute
- California Receivers Forum
- San Diego Bankruptcy Forum
- San Diego County Bar Association

## **ACCOLADES**

- Named among *The Daily Transcript's* Top Young Attorneys in San Diego, 2010

## EDUCATION

Ted graduated *magna cum laude* from the University of San Diego School of Law in 2003, where he served on the Editorial Board of the *San Diego Law Review* and was awarded membership to the Order of the Coif. He received his B.A. in political science from Emory University in 1999.

## BAR ADMISSIONS

- California

## COURT ADMISSIONS

- U.S. District Court, Northern District of California
- U.S. District Court, Southern District of California
- U.S. District Court, Eastern District of California
- U.S. District Court, Central District of California
- U.S. Court of Appeals for the Ninth Circuit

## REPRESENTATIVE MATTERS

- ***SEC v. Medical Capital Holdings, Inc., et al.*** Representation of equity receiver in SEC action arising out of accounts receivable factoring business that raised approximately \$1.7 billion from investors.
- ***In re NexPrise, Inc.*** Representation of lender in connection with section 363 sale of bankruptcy debtor's assets and dispute over amount and priority of lender's claim.
- ***SEC v. Tuco Trading, LLC, et al.*** Representation of equity receiver in SEC action arising out of day trading enterprise with approximately \$10 million held in investor trading accounts.
- ***SEC v. Lincoln Funds International, Inc., et al.*** Representation of equity receiver in SEC action arising out of biotech-oriented hedge fund that raised approximately \$25 million from investors.
- ***In re Blockbuster, Inc.*** Representation of landlord in connection with bankruptcy debtor's assumption and assignment of commercial real property lease to buyer of debtor's assets.

- ***SEC v. 12 Daily Pro, et al.*** Representation of equity receiver in SEC action arising out of Internet-based investment scheme that raised approximately \$550 million from investors located throughout the world.
- ***U.S. Bank v. Ralph Burni, et al.*** Representation of rents and profits receiver in connection with management and sale of shopping center property.
- ***SEC v. Learn Waterhouse, Inc., et al.*** Representation of equity receiver in SEC action arising out of investment scheme that raised approximately \$90 million from investors.

## PUBLICATIONS

2/6/2012 7th, 9th Circuit Cases To Affect Federal Equity Receiverships  
By Joshua A. del Castillo and Ted G. Fates in *Daily Journal*

6/1/2009 FDIC Resolution And Receivership Of Failed Banks: Pitfalls  
And Opportunities For Landlords And Real Estate Investors  
By Dana I. Schiffman and Ted G. Fates in *Real Estate Finance Journal*

1/27/2009 FDIC resolution and receivership of failed banks: Pitfalls for  
landlords  
By Dana I. Schiffman and Ted G. Fates

5/1/2007 Gearing up for Real Estate Bankruptcies  
By Ted G. Fates in *Real Estate Committee Newsletter for the American Bankruptcy  
Institute*

9/1/2005 Public Forum on Municipal Bankruptcy: An Assessment of  
Potential Impacts  
By Ted G. Fates in *Federal Bar Association Newsletter*, San Diego Chapter

4/1/2005 Judge Hargrove Introduces CARE Program to San Diego  
By Ted G. Fates in *Federal Bar Association Newsletter*, San Diego Chapter

# Allen Matkins



## David Zaro

Partner  
Los Angeles Office

Phone: 213.955.5518  
Facsimile: 213.620.8816  
dzaro@allenmatkins.com

### Focus

Bankruptcy and Creditors' Rights Litigation

### Education

J.D., University of California, Hastings College of the Law

B.A., Stanford University

### Bar Admissions

USDC, Central District of California  
USDC, Eastern District of California  
USDC, Northern District of California  
USDC, Southern District of California  
USDC, District of Arizona  
Supreme Court of the State of California  
US Court of Appeals, 9th Circuit

David is a partner in our Los Angeles office, where his practice focuses upon litigation with an emphasis upon creditors' rights, bankruptcy litigation, and state and federal receiverships. He is recognized for his handling of civil litigation through trial. In addition, David has resolved numerous matters through alternative dispute processes, including mediation and arbitration. David represents a wide range of clients including institutional lenders, developers, landlords, receivers, examiners, secured and unsecured creditors, and other business enterprises.

David has extensive experience as a bankruptcy lawyer as well as a trial lawyer in federal and state courts in California and several other jurisdictions. His experience in the field of insolvency, creditors' rights, and bankruptcy litigation includes out-of-court workouts and restructurings, federal and state court receiverships, and bankruptcy reorganization proceedings. David also advises commercial lenders and others regarding all aspects of commercial law with regard to workouts, collection actions, and transactional matters.

David's representative cases include the representation of Court Appointed Receivers in a \$90 million stock fraud action brought by the Securities and Exchange Commission and a \$130 million ponzi-like scheme involving a bankrupt operator of payphones; representation of lender in workout of mezzanine financing on a multi-building office park; defense of actions in bankruptcy by junior lienholder and debtor against lender on a industrial park; and structure lease termination and modifications for commercial and retail tenants both in and out of bankruptcy.

David lectures on matters regarding creditors' rights, construction law, and other real property remedies. He previously served as the Chairman of the Construction Law Subsection of the Los Angeles County Bar Association and a member of the Steering Committee. David is also a member of the Financial Lawyer's Conference, American Bankruptcy Institute, and the Business Section of the American Bar Association.

### Representative Receiverships Cases:

- ***Federal Trade Commission v. MCS Programs, LLC, et al.*, U.S. District Court, Western District of Washington.** Represented the receiver in this Internet and telemarketing fraud involving a so-called debt reduction program and credit repair scheme, operating out of multiple locations. Receiver



marshaled assets and liquidated and returned funds to the FTC for distribution to victims.

- ***Federal Trade Commission v. Merchant Processing, Inc., et al., U.S. District Court, Oregon.*** Represented the receiver appointed at the request of the FTC in connection with a fraudulent scheme involving the sale of credit and debit card merchant account services and leasing related equipment. Successfully turned around the enterprise, marshaled assets, and operated and liquidated the enterprise returning substantial funds to the victims and FTC.
- ***U.S. Commodity Futures Trading Commission v. Safevest, LLC, et al., U.S. District Court, Central District of California.*** Represented the receiver appointed jointly by the CFTC and the SEC in an action involving an Internet and telemarketing fraud which raised in excess of \$25 million purportedly to purchase commodities and futures contracts. This was a ponzi scheme in which no trades were made.
- ***SEC v. Sunwest Management, U.S. District Court, Oregon.*** Represented the receiver appointed at the request of the SEC for an enterprise involving \$1.2 billion in assets and liabilities. The enterprise involved selling TIC and LLC interest in approximately 300 assisted living facilities.
- ***SEC v. Medical Capital Holding, U.S. District Court, Central District of California.*** Represented the receiver appointed at the request of the SEC with regard to ponzi-like scheme which raised over \$1 billion ostensibly to purchase medical receivables.
- ***SEC v. Global Online Direct, Inc., U.S. District Court, Northern District of Georgia.*** Represented the receiver appointed at the request of the SEC for a company raising over \$45 million through the sale of alleged unregistered securities.
- ***SEC v. Trabulse, et al., U.S. District Court, Northern District of California.*** Represented the receiver appointed at the request of the SEC for a hedge fund.
- ***SEC v. C. Wesley Rhodes, Jr. et al., U.S. District Court, Portland.*** Represented the receiver appointed at the request of the SEC for an investment advisor.
- ***SEC v. Credit First Fund, U.S. District Court, Central District of California.*** Represented the receiver appointed at the request of the SEC for the operator of distressed consumer debt portfolios.

# Allen Matkins



## Tim C. Hsu

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### Focus

Litigation

Financial Services

Residential & Multifamily

Real Estate Disputes

Environmental & Natural Resources

Receiverships, Lenders & Special Creditor Remedies

Restructuring, Insolvency & Bankruptcy

### Education

J.D., Loyola Law School, Los Angeles

B.S., University of Southern California

Tim C. Hsu is an associate in the firm's Los Angeles office, where he is a member of the firm's Restructuring, Insolvency and Bankruptcy Practice Group, the Environmental and Natural Resources Practice Group, as well as the Receiverships, Lenders and Special Creditor Remedies Practice Group. Tim's practice includes general commercial litigation, including lender and financial services litigation, environmental claims litigation brought under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and federal and state receivership matters. He has worked in all phases of state and federal litigation, from initial pleadings through discovery and trial, including defending subsequent appeals in state court proceedings. In addition to his litigation practice, Tim also has experience representing lenders in financial transactions, including secured credit transactions.

Prior to joining Allen Matkins, Tim served as a Judicial Extern for the Honorable Ernest M. Robles in the United States Bankruptcy Court, Central District of California. He has also served as a Judicial Extern for Magistrate Judge Oswald Parada in the United States District Court, Central District of California, where he reviewed and analyzed statutes, regulations, and case law addressing substantive and procedural issues arising in civil rights, habeas corpus, and Social Security Administration benefits appeals matters.

Tim is also a licensed Certified Public Accountant in California and has previously worked for a number of years as a senior financial statement auditor with PricewaterhouseCoopers, LLP, and was an assistant fund controller at the Capital Group Companies. He is fluent in Mandarin Chinese and conversational in Cantonese.

## EDUCATION

Tim received his J.D. from Loyola Law School Los Angeles and his B.S. in accounting from the University of Southern California, Leventhal School of Accounting.

## PUBLICATIONS

### *Legal Alerts*

6/23/2015 Mutual Water Companies: A Water Supply Option for Multifamily and Residential Developments

8/11/2014 The California Supreme Court Further Limits the Scope of CEQA Review for Voter-Sponsored Initiatives in Tuolumne Jobs & Small Business Alliance v. Superior Court

8/22/2013 EPA Endorses New ASTM Phase I Standard

4/16/2013 New California Court of Appeal Decision May Affect Administration of Foreclosure-Avoidance Actions

*Articles*

6/30/2015 Alternative water supply options for some development by Courtney A. Davis and Tim C. Hsu in Daily Journal

9/1/2013 California Foreclosure Proceedings: Recent court decisions may illustrate trends in foreclosure-avoidance actions

By Joshua A. del Castillo and Tim C. Hsu in Scotsman Guide Residential Edition