

1 DAVID R. ZARO (BAR NO. 124334)  
TED FATES (BAR NO. 227809)  
2 ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
3 865 South Figueroa Street, Suite 2800  
Los Angeles, CA 90017-2543  
4 Phone: (213) 622-5555  
Fax: (213) 620-8816  
5 E-Mail: dzaro@allenmatkins.com  
tfates@allenmatkins.com

6 Attorneys for Court-appointed Receiver  
7 KRISTA L. FREITAG

8  
9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 SOUTHERN DIVISION

12 FEDERAL TRADE COMMISSION,

13 Plaintiff,

14 v.

15 AMERICAN HOME SERVICING  
16 CENTER, LLC,

17 CAPITAL HOME ADVOCACY  
18 CENTER, LLC,

19 NATIONAL ADVOCACY CENTER,  
20 LLC,

21 JAIME ABERTO, a/k/a James Aburto  
and Jamie Aburto, individually, as an  
officer of American Home Servicing  
Center, LLC and National Advocacy  
Center, LLC, and d/b/a A.H.S.C,  
22 American Home Servicing Center, Local  
23 Page, NAC, National Servicing Center,  
NSC Processing, and Secured  
24 Processing,

25 MARCUS FIERRO, JR., individually, as  
a member of American Home Servicing  
Center, LLC and National Advocacy  
Center, LLC, and d/b/a A.H.S.C. and  
26 American Home Servicing Center,  
27

Case No. SACV 18-00597-JLS-KESx

**NOTICE OF MOTION AND MOTION  
TO CONCLUDE RECEIVERSHIP  
AND FOR ORDER: (1) APPROVING  
FINAL ACCOUNTING AND  
REPORT; (2) APPROVING  
DISPOSITION/TRANSFER OF  
BOOKS AND RECORDS; AND  
(3) DISCHARGING RECEIVER;  
RECEIVER'S FINAL ACCOUNTING  
AND REPORT**

Date: December 14, 2018  
Time: 2:30 p.m.  
Ctrm.: 10A  
Judge: Hon. Josephine L. Staton

1 EVE CHRISTINE RODRIGUEZ, a/k/a  
Elizabeth Davis, Elizabeth Powers,  
2 Christina Rodriguez, Christine  
Rodriguez, and Elizabeth Rodriguez,  
3 individually, as a manager of American  
Home Servicing Center, LLC, a member  
4 of Capital Home Advocacy Center, and  
d/b/a National Advocacy Group,

5 And SERGIO LORENZO  
6 RODRIGUEZ, a/k/a Sergio Lawrence,  
individually, as a manager of American  
7 Home Servicing Center, LLC, a member  
of Capital Home Advocacy Center, and  
8 d/b/a National Advocacy Group,

9 Defendants.

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1           **TO THE HONORABLE JOSEPHINE L. STATON, JUDGE OF THE**  
2 **UNITED STATES DISTRICT COURT, AND ALL INTERESTED PARTIES:**

3           **PLEASE TAKE NOTICE** that on December 14, 2018, at 2:30 p.m. in  
4 Courtroom 10 of the above-entitled Court, located at 411 West 4th Street, Room  
5 1053 Santa Ana, CA 92701-4516, Krista L. Freitag ("Receiver"), the Court-  
6 appointed permanent receiver for American Home Servicing Center, LLC  
7 ("American Home"), Capital Home Advocacy Center ("Capital Home"), National  
8 Advocacy Center, LLC ("National Advocacy"), and their subsidiaries and affiliates  
9 (collectively the "Receivership Entities" or individually, a "Receivership Entity"),  
10 will and hereby does move the Court to conclude the receivership and for an order,  
11 (1) approving the final accounting and report; (2) approving disposition/transfer of  
12 books and records; and (3) discharging the Receiver ("Motion"). The Motion and  
13 relevant pleadings are available at the Receiver's website,  
14 <http://www.ethreadvisors.com/ftc-case-docs/ftc-capital-home/>.

15           **Procedural Requirements:** If you oppose this Motion, you are required to  
16 file your written opposition with the Office of the Clerk, United States District Court,  
17 411 West 4th Street, Room 1053 Santa Ana, CA 92701-4516, and serve the same on  
18 the undersigned not later than 21 calendar days prior to the hearing.

19           **IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION** by the  
20 above date, the Court may grant the requested relief without further notice. This  
21 Motion is made following the conference of counsel pursuant to L.R. 7-3.

22 Dated: October 5, 2018

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

23 By:           /s/ Edward Fates  
24 EDWARD G. FATES  
25 Attorneys for Court-appointed  
Receiver KRISTA L. FREITAG  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Krista Freitag, the Court-appointed Receiver herein, respectfully submits this  
3 Memorandum of Points and Authorities in Support of her motion to conclude the  
4 receivership and: (1) approving the final accounting and report; (2) approving  
5 disposition/transfer of books and records; and (3) discharging the Receiver  
6 ("Motion").

7 The Receiver has completed managing, monetizing recoverable assets of the  
8 receivership estate, has determined no significant recovery of additional assets is  
9 likely and has a plan to transfer access to records in possession of the Receiver, as  
10 appropriate. As such, the Receiver is prepared to close the receivership estate.

11 Unfortunately, the assets of the Receivership Entities had very little value such  
12 that there are insufficient funds to pay approved administrative expenses of the  
13 receivership and no funds available to make distributions to consumers, former  
14 employees, or other creditors. The Receiver has recovered a total of \$22,819. For  
15 the time period of April 13, 2018 to May 31, 2018, the Receiver's fees and costs,  
16 including forensic imaging costs, amount to \$66,726.36. Fees and costs for the  
17 Receiver's counsel during the same time period amount to \$34,241.55. A small  
18 portion of these fees and costs were paid *pro rata* from funds recovered by the  
19 Receiver pursuant to the Court's order approving the First Interim Fee Applications.  
20 Dkt. No. 123. A total of \$22,130 was paid pursuant to the order, leaving \$689 cash  
21 on hand in the receivership estate at this point. The Receiver and her counsel have  
22 not sought approval of further fees incurred since May 31, 2018 due to the lack of  
23 available funds to pay the amounts in their First Interim Fee Applications.

24 The relief sought herein will allow the Receiver to take the remaining steps  
25 necessary to conclude the receivership, which, because the underlying litigation is  
26 still ongoing, includes transferring access for National Advocacy and Capital Home  
27 records to the FTC and Capital Home records to Defendants Sergio Rodriguez and  
28 Eve Christine Rodriguez (if not already completed).

1           **I. RECEIVER'S FINAL ACCOUNTING AND REPORT**

2           **A. Background and Business Assessment**

3           On April 13, 2018, this Court entered the Ex Parte Temporary Restraining  
4 Order with Asset Freeze, Appointment of Temporary Receiver, Limited Expedited  
5 Discovery, and Order to Show Cause Why Preliminary Injunction Should Not Issue  
6 (the "TRO"), appointing Krista L. Freitag ("Receiver") as temporary receiver for  
7 American Home Servicing Center, LLC ("American Home"), Capital Home  
8 Advocacy Center ("Capital Home"), National Advocacy Center, LLC ("National  
9 Advocacy"), and their subsidiaries and affiliates (collectively the "Receivership  
10 Entities" or individually, a "Receivership Entity") with full powers of an equity  
11 receiver.

12           On April 27, 2018, this Court entered the Preliminary Injunction with Asset  
13 Freeze, Appointment of Receiver, Limited Expedited Discovery, and Other Equitable  
14 Relief, as to American Home, Capital Home, National Advocacy, and Marcus Fierro,  
15 (the "First PI Order"). The First PI Order makes the Receiver's appointment for the  
16 Receivership Entities permanent. On June 12, 2018, this Court entered the  
17 Preliminary Injunction with Asset Freeze, Limited Expedited Discovery, and Other  
18 Equitable Relief, as to Defendants Eve Christine Rodriguez and Sergio Lorenzo  
19 Rodriguez (the "Second PI Order").

20           Pursuant to the TRO, PI Orders and law governing federal equity receivers, the  
21 Receiver was charged with, among other things, assuming control over the  
22 Receivership Entities and their assets ("Receivership Assets").

23           Promptly upon her appointment, the Receiver served banking institutions and  
24 successfully obtained possession of and secured the following two physical locations  
25 associated with the operations of Capital Home and National Advocacy:<sup>1</sup>

- 26           1.     1809 East Dyer Road, Suite 301, Santa Ana, CA 92705, and

27 \_\_\_\_\_  
28 <sup>1</sup> No known operational locations of American Home were located.

1           2.     15991 Red Hill Avenue, Suite 204, Tustin, CA 92780 (including the  
2                   333 City Blvd. West, 17<sup>th</sup> Floor, Orange, CA 92868 virtual office  
3                   location where it appears mail was directed and received).

4           The bank accounts listed in the TRO and additional accounts identified  
5 through an investigation of documents and information found at the locations where  
6 the Receivership Entities conducted business were frozen. Based on the Receiver's  
7 investigation of documents and computer records, the Receiver was able to identify  
8 and take control of approximately \$5,230 in National Advocacy cash and \$3,712 in  
9 Capital Home cash.

10           With regard to each of the foregoing locations, the Receiver took physical  
11 control, changed the locks, served/notified landlords, served/notified vendors and  
12 otherwise worked to ensure no entry into the premises. The Receiver's staff also  
13 redirected and monitored mail for eight (8) known current or prior operations  
14 addresses.

15           Upon entry to the Capital Home office premises, the Receiver, her staff and  
16 her counsel met with and interviewed the 13 employees, consultants, and others who  
17 were present, including defendant Eve Christine Rodriguez. The Receiver took  
18 control over computers and electronic devices located at the office premises, as well  
19 as any off-site electronic records. Pursuant to the TRO, the Receiver granted access  
20 to certain computer drives to the FTC and also retained the services of SETEC  
21 Investigations to image the computers located at the office premises which images  
22 were not otherwise taken by the FTC. This work involved imaging the hard drives  
23 from each of the computers in order to preserve all e-mails, documents, and  
24 accounting information maintained on the devices.

25           Regarding National Advocacy, after locating and securing the office premises  
26 on the afternoon of Friday, April 20, 2018, the Receiver met SETEC to retrieve all  
27 hard drives and the server from the premises for safeguarding and for imaging if  
28 sufficient resources became available to do so. It is important to note that the



1 employees of National Advocacy appear to have intentionally left the premises and  
2 abandoned the business shortly before the Receiver arrived at the office on April 20,  
3 2018, so no employee interviews occurred.

4 Numerous documents and records (including electronic forms thereof) were  
5 secured in the office premises and/or were otherwise secured. Said physical records  
6 from both office premises were securely transferred to the possession of the Federal  
7 Trade Commission and access thereto granted to defendants Eve Christine Rodriguez  
8 and Sergio Rodriguez. Access to electronic customer relations management records  
9 of Capital Home were also provide to the FTC and defendants Eve Christine  
10 Rodriguez and Sergio Rodriguez.

11 Based on records obtained through the Capital Home customer relations  
12 management ("CRM") software, it appeared that the Capital Home Senior  
13 Processors' (employed as of April 16, 2018) files included approximately 125 active  
14 consumer accounts. The Receiver sent communications to the known Capital Home  
15 consumers and lenders, directing them to communicate directly with one another  
16 and/or referring consumers to free mortgage counseling resources available through  
17 HUD. And although its CRM software company and other vendors (discovered  
18 Friday, April 20, 2018) were served with the TRO, the Receiver has been unable to  
19 recover any consumer account information for National Advocacy because such  
20 information is maintained at a third-party vendor under Jaime Aburto's name.

21 From records obtained at Capital Home, it was clear that Defendants Capital  
22 Home, Christine Rodriguez and Sergio Rodriguez required consumers to make  
23 payments to them before consumers' loan modification applications were submitted  
24 to their lenders and well before loan modifications were granted (if at all) by the  
25 lenders. Accordingly, and with no financial resources or legal source of operating  
26 income available to fund any level of operations (including payment of rent, utilities,  
27 past-due payroll/current payroll, etc.), the Receiver determined the business could  
28

1 not be operated at all, let alone operated lawfully and profitably. Therefore, the  
2 Receiver did not retain any of the Capital Home employees and ceased operations.

3 Furthermore, to minimize accruing expenses in light of minimal receivership  
4 estate resources, the Receiver and her staff worked quickly and diligently to box up  
5 and secure records, to monetize the minimal value in personal property, and to turn  
6 over the spaces to landlords.

7 **B. Asset Disposition and Recovery**

8 Other than the funds recovered as described herein and a few remaining items  
9 of personal property, no additional Receivership Entity funds or assets appear  
10 available for recovery. No real property has been identified and aside from the  
11 account balances referenced above, all other accounts identified in the TRO or  
12 otherwise discovered by the Receiver were either closed or had a zero balance.  
13 Regarding personal property, a few items remain to be sold in the next 15 days. The  
14 possible range of recovery from these items is expected to be \$100 to \$600.

15 It is important to note that in addition to the FTC's transmittal of notice of the  
16 asset freeze to the banks, the Receiver promptly notified each bank identified in the  
17 TRO as having an account associated with the Receivership Entities. In such notices,  
18 the Receiver demanded turnover of the account, immediate cancellation of any debit  
19 or credit cards, identification/freeze of any safe deposit box, account balance  
20 information, and account records. The total cash balances in accounts at takeover are  
21 reflected in the following table.

22

<b>BANK BALANCES AT TAKEOVER:</b>	
Capital Home	\$ 3,712
National Advocacy	\$ 5,230
<b>TOTAL<sup>2</sup></b>	<b>\$ 8,942</b>

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26  
27 <sup>2</sup> The entire balances in the Capital Home and National Advocacy Accounts were  
28 transferred to the Receivership Estate's Operating Account.

1           Regarding personal property, electronic inventories were taken, and the  
2 personal property consisted of CPUs, computer monitors, cubicles, and other  
3 miscellaneous office furniture (e.g., Ikea), fixtures and equipment, all of little resale  
4 value. With no money to pay rent, storage, or even to move out of nearly 9,000  
5 square feet of office space (it was estimated that a move would cost between \$10,000  
6 and \$15,000), the Receiver, through her staff, reached out to several professional,  
7 local auction companies and provided electronic inventories to them to determine an  
8 approximate value for the personal property. The auctioneers expressed that the  
9 market for general office equipment was very low and one commented that he would  
10 likely monetize the cubicles and file cabinets for scrap metal value. Ultimately, it  
11 was determined that the best approach would be to have the auction company  
12 purchase the vast majority of the personal property because they would necessarily  
13 take on the costs of moving the personal property. The best offer received was from  
14 one auction company that was willing to vacate the offices in exchange for paying  
15 the estate \$1,500; the Receiver was able to get a minimal additional amount. It is  
16 also important to note that removing the personal property swiftly from the office  
17 allowed the Receiver to negotiate with the landlord for a recovery of the \$6,295  
18 deposit on the Capital Home office lease, despite the fact the lease was terminated  
19 before the end of the lease term.

20           **C. Receiver Reporting and Communications**

21           At the beginning of the receivership, the Receiver established a dedicated web  
22 page, which has provided case information and updates for access by consumers,  
23 employees and lenders. The internet address for the webpage is  
24 <http://www.ethreadvisors.com/ftc-case-docs/ftc-capital-home/>. The Receiver also  
25 maintained a dedicated email address and telephone line for consumer inquiries. As  
26 previously mentioned, the Receiver was forced to cease operations and thus  
27 communicated with known consumers and lenders, directing them to communicate  
28 directly with one another and/or referring consumers to free mortgage counseling

1 resources available through HUD. This ongoing directive has occurred as applicable  
2 email, telephone or mail correspondence has been received. It is important to note  
3 that if any payments were received, all payments were returned to the payors.

4 As noted above, the Receiver has notified the lenders with known email  
5 contact information that Capital Home and National Advocacy are no longer  
6 operating and that they must communicate directly with their borrowers as to all  
7 issues relating to loans on which Capital Home and National Advocacy were  
8 working. Out of an abundance of caution, the Receiver is sending an additional  
9 correspondence to any known lenders repeating this same directive, and letting them  
10 know any/all Capital Home and National Advocacy mail will not be deliverable and  
11 will be returned to sender. The Receiver has also told consumers/borrowers that they  
12 must communicate with their lenders directly and has posted the same directive  
13 prominently on the receivership website. The Receiver is hopeful that these  
14 communications and notices will result in lenders and consumers/borrowers  
15 communicating with each other directly and lenders sending notices directly to  
16 consumers/borrowers. However, at the very least, lenders must provide notices to  
17 consumers/borrowers directly before they can commence a foreclosure. *See* 12  
18 U.S.C. § 3758 (requiring that notice of a foreclosure be sent by certified or registered  
19 mail to the owner of record of the property and all borrowers or "mortgagors" on  
20 mortgage debt).

21 **D. Receivership Accounting**

22 The following summary reflects the bank account balances in the receivership  
23 estate bank accounts as of October 4, 2018:

<b>RECEIVERSHIP ESTATE BANK BALANCES:</b>	
Receivership Estate Operating Account	\$ 690

1 The following is a summary of the cash activity in the receivership estate bank  
 2 accounts for the period from April 16, 2018 through October 4, 2018:

<b>RECEIVERSHIP ESTATE CASH ACTIVITY:</b>	
Pre-Receiver Operating Account Funds	\$ 8,942
Recovery – Petty Cash/Vending Cash	\$ 569
Recovery – Lease Security Deposit	\$ 6,295
Recovery – Utility Security Deposit	\$ 3,248
Recovery – Sergio Rodriguez Partial Return of Funds	\$ 1,576
Recovery – Personal Property Proceeds <sup>3</sup>	\$ 2,190
Forensic Computer Imaging Expense Paid	(\$ 13,257)
Receiver Fees & Expenses Paid	(\$ 5,822)
Receiver Counsel Fees & Expenses Paid	(\$ 3,051)
Cash Balance as of October 4, 2018	\$ 690

16 **II. CLOSING MATTERS**

17 **A. Payment of Outstanding Costs**

18 As noted above, the receivership estate currently holds \$690. The Receiver  
 19 also expects to recover an additional \$100 to \$600 for the few remaining items of  
 20 personal property. Since May 31, 2018, the Receiver has incurred additional costs  
 21 totaling \$1,603.61 for returning checks to consumers, renewing the email accounts  
 22 for Capital Home (because of the ongoing litigation) and updating the website that  
 23 provides information to consumers and other interested parties. Accordingly, the  
 24 Receiver respectfully requests authority to partially reimburse herself for these costs  
 25 with the \$690 remaining in the estate plus whatever small amount is recovered from  
 26 the few remaining items of personal property.

27 <sup>3</sup> This does not include the few remaining items of personal property expected to  
 28 produce an additional \$100 to \$600 recovery.

1 **B. Disposition/Transfer of Records**

2 As previously mentioned, all physical files obtained at the Capital Home and  
3 National Advocacy premises were turned over to the FTC and made available to  
4 defendants Eve Christine Rodriguez and Sergio Rodriguez. The aforementioned  
5 parties have also been provided access to the Capital Home CRM records.  
6 Possession of the hard drives obtained at the National Advocacy premises has been  
7 securely transferred to the FTC.

8 The FTC has access to email records for Capital Home and National Advocacy  
9 through the aforementioned hard drive data they possess. Control over the Capital  
10 Home email account, which was renewed by the Receiver for one year in September  
11 2018, will then be given to Defendant Sergio Rodriguez as the owner of Capital  
12 Home. With regard to National Advocacy emails, the Receiver did not gain  
13 administrative access over the account, which was in the name of Jamie Aburto.

14 **C. Discharge of Receiver**

15 The Receiver has taken all appropriate steps to preserve and recover value  
16 from the limited assets of the Receivership Entities. The Receivership Entities' assets  
17 were marshalled, protected, and monetized to the extent possible. Unfortunately, the  
18 value of such assets was so limited that the fees and costs of the Receiver and her  
19 professionals will go largely unpaid and no funds are available to distribute to  
20 consumers, former employees, or other creditors. As such, it is appropriate for the  
21 Receiver to ask the Court to enter an order discharging her.

22 **III. ARGUMENT**

23 **A. Broad Equitable Powers of the Court**

24 "The power of a district court to impose a receivership or grant other forms of  
25 ancillary relief does not in the first instance depend on a statutory grant of power  
26 from the securities laws. Rather, the authority derives from the inherent power of a  
27 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369  
28 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly

1 and efficient administration of the estate by the district court for the benefit of  
2 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). As the appointment  
3 of a receiver is authorized by the broad equitable powers of the Court, any  
4 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,  
5 953 F.2d 1560, 1569 (11th Cir. 1992).

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

10 A district court's power to supervise an equity receivership  
11 and to determine the appropriate action to be taken in the  
12 administration of the receivership is extremely broad. The  
13 district court has broad powers and wide discretion to  
14 determine the appropriate relief in an equity receivership.  
15 The basis for this broad deference to the district court's  
16 supervisory role in equity receiverships arises out of the  
17 fact that most receiverships involve multiple parties and  
18 complex transactions. A district court's decision  
19 concerning the supervision of an equitable receivership is  
20 reviewed for abuse of discretion.

21 *Id.* (citations omitted); *see also Commodities Futures Trading Comm'n. v. Topworth*  
22 *Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad deference'  
23 to the court's supervisory role, and 'we generally uphold reasonable procedures  
24 instituted by the district court that serve the[e] purpose' of orderly and efficient  
25 administration of the receivership for the benefit of creditors."). Accordingly, the  
26 Court has broad equitable powers and discretion in the administration of the  
27 receivership estate and disposition of receivership assets.

28 **B. Conclusion of Receivership and Discharge of Receiver**

Federal District Courts presiding over federal equity receiverships have broad  
power and wide discretion in the supervision of the same. *SEC v. Hardy*, 803 F.2d  
1034, 1037-38 (9th Cir. 1986). Their power and discretion includes the authority to  
"make rules which are practicable as well as equitable." *Id.* at 1039 (quoting *First*



1 *Empire Bank-New York v. FDIC*, 572 F.2d 1361, 1368 (9th Cir. 1978)). In this case,  
2 the Court's supervision of the receivership is guided by these same rules.

3 The Receiver has diligently carried out her Court-ordered duties, including  
4 assuming control of enterprises and their records (such records have or will be  
5 transferred as presented herein), marshalling and selling assets to the extent possible,  
6 and providing reports to the Court. As there is no further benefit to be gained from  
7 maintaining this receivership, with no ability to legally or profitably operate and with  
8 no resources to otherwise operate, the Receiver requests that she be discharged and  
9 the case be closed.

10 The Receiver, therefore, requests an order discharging and fully releasing her  
11 and her counsel of: (i) all duties under the TRO and PI Orders, and (ii) any and all  
12 claims and liabilities associated with the case and the Defendants. In addition, the  
13 Receiver asks the Court to approve and ratify all actions taken by the Receiver and  
14 her professionals in the performance of the Receiver's Court-ordered duties. The  
15 Receiver further requests the Court retain exclusive jurisdiction over any and all new  
16 actions or claims related to the receivership or work done by the Receiver and her  
17 professionals to carry out the Receiver's Court-ordered duties.

18 **IV. CONCLUSION**

19 For the foregoing reasons, the Receiver respectfully requests the Court grant  
20 the Motion and issue the proposed order discharging the Receiver submitted  
21 herewith.

22  
23 Dated: October 5, 2018

By:   
KRISTA L. FREITAG  
Receiver

24  
25 Dated: October 5, 2018

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By: /s/ Edward Fates  
EDWARD G. FATES  
Attorneys for Receiver  
KRISTA L. FREITAG