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12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA

14  
15 SECURITIES AND EXCHANGE  
COMMISSION,

16 Plaintiff,

17 v.

18 PACIFIC WEST CAPITAL GROUP,  
19 INC.; ANDREW B CALHOUN IV;  
PWC TRUST; BRENDA CHRISTINE  
20 BARRY; BAK WEST, INC.; ANDREW B  
CALHOUN JR.; ERIC CHRISTOPHER  
21 CANNON; CENTURY POINT, LLC;  
MICHAEL WAYNE DOTTA; and  
22 CALEB AUSTIN MOODY (dba SKY  
STONE),

23 Defendants.  
24

Case No. 2:15-cv-02563-FMO (FFMx)

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

Date: April 19, 2018  
Time: 10:00 a.m.  
Ctrm.: 6D  
Judge: Hon. Fernando M. Olguin

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

2           **PLEASE TAKE NOTICE** that on April 19, 2018, at 10:00 a.m. in  
3 Courtroom 6D of the above-entitled Court, located at 350 W. 1st Street, 6th Floor,  
4 Los Angeles, California 90012, Thomas Hebrank ("Receiver"), the Court-appointed  
5 receiver for the PWCG Trust, will and hereby does move the Court for an Order in  
6 Aid of Receivership ("Motion").

7           The Motion is made on the grounds that in order to discharge his duties as  
8 defined by this Court's Judgment Against Defendant PWCG Trust ("Appointment  
9 Order"), the Receiver seeks certain relief regarding the administration of the estate of  
10 PWCG Trust. Specifically, the Receiver requests an order addressing the following  
11 topics:

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

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

21           **Procedural Requirements:** If you oppose this Motion, you are required to  
22 file your written opposition with the Office of the Clerk, United States District Court,  
23 350 W. 1st Street, Suite 4311, Los Angeles, California 90012-4565, and serve the  
24 same on the undersigned not later than 21 days prior to the hearing.

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

4  
5 Dated: March 13, 2018

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

6  
7 By:           /s/ Edward Fates          

8 EDWARD G. FATES  
9 Attorneys for Receiver  
10 THOMAS HEBRANK  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In accordance with the Judgment Against Defendant PWCG Trust  
4 ("Appointment Order") and the law governing federal equity receiverships, the  
5 Receiver moved immediately to secure and investigate the assets of PWCG Trust on  
6 February 16, 2018. Based on his 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 **Relief from Local Rule Requirements.** Local Rule 66-5 requires the  
10 Receiver to file a schedule of names, addresses, and amounts of claims of all known  
11 creditors. Local Rule 66-7 requires the Receiver to provide notices by mail to all  
12 known creditors of:

- 13 (a) Petitions for the payment of dividends to creditors;
- 14 (b) Petitions for the confirmation of sales or real property and personal  
15 property;
- 16 (c) Reports of the receiver;
- 17 (d) Applications for instructions concerning administration of the estate;
- 18 (e) Applications for discharge of the receiver; and
- 19 (f) Applications for fees and expenses of the receiver, attorney for the  
20 receiver and any other person appointed to aid the receiver.

21 PWCG Trust's records indicate there are approximately 2,000 investors and  
22 other potential creditors. Mailing hard copy notices to all such persons and entities  
23 of each of the above filings would likely cost the Receivership Estate tens of  
24 thousands of dollars over the course of the receivership.

25 Furthermore, it is not possible to provide an accurate schedule of all claim  
26 amounts at this time. The records of PWCG Trust must be reviewed and analyzed  
27 before the amounts of investor and creditor claims can be properly determined and  
28 verified. Considering the high volume of investor transactions, this work will take

1 time to complete. At the appropriate time, the Receiver will file a motion requesting  
2 Court approval of a claims process to efficiently administer investor and creditor  
3 claims and, to the extent there are disputed claims, a mechanism for resolving  
4 disputed claims. Finally, investor names and addresses should not be publicly filed  
5 as the majority of them appear to be individuals and their personal information  
6 should be protected, absent a compelling need for disclosure.

7 Accordingly, the Receiver requests relief from the Local Rule requirements to  
8 file a schedule of known creditors (Local Rule 66-5) and provide mail notices to all  
9 known creditors (Local Rule 66-7). The Receiver has established a webpage on his  
10 company's website that is dedicated to this receivership. He has mailed and emailed  
11 a letter to all investors advising them of his appointment as Receiver and directing  
12 them to the receivership webpage for additional information and updates about the  
13 case. Investors can subscribe to receive direct email updates via the webpage. The  
14 Receiver will post all of the motions, petitions, reports, and applications listed under  
15 Local Rule 66-7 (as well as other Court documents relevant to investors) on the  
16 webpage so investors can easily access and review them. Accordingly, the Receiver  
17 submits that notice to investors via the webpage, including emails to investors who  
18 subscribe to receive them, is reasonable and sufficient to apprise investors of  
19 developments in the case and will conserve limited receivership estate resources for  
20 their benefit.

21 **Employment of Legal Counsel.** The Appointment Order authorizes the  
22 Receiver to engage counsel. The Receiver is not an attorney and does not have  
23 attorneys on staff at his company, E3 Advisors, Inc. Considering the complexity  
24 and urgency of the numerous legal issues facing PWCG Trust, upon his  
25 appointment, the Receiver immediately engaged the law firm of Allen Matkins to  
26 serve as his general receivership counsel. Nevertheless, the Receiver seeks Court  
27 approval of his engagement of Allen Matkins, which is very experienced in federal  
28 equity receivership matters and well qualified to assist him with this complex

1 receivership and in other applicable areas of law, as necessary, including litigation,  
2 finance, corporate, and tax matters.

3       **Interim Reports and Fee Applications.** The Receiver believes filing interim  
4 reports and fee applications on a quarterly basis strikes the appropriate balance  
5 between keeping the Court and interested parties regularly informed of his activities  
6 and conserving receivership estate resources. Accordingly, the Receiver  
7 recommends that interim reports and fee applications be filed on a quarterly basis.  
8 The first interim report and interim fee applications of the Receiver and Allen  
9 Matkins would therefore be filed approximately 45 days following the conclusion of  
10 each quarter. This will allow for reports to be prepared and, in the case of fee  
11 applications, allow for adequate time for the Receiver to prepare fee applications  
12 and for the SEC to review the applications in advance of the Receiver's filing in  
13 May 2018, covering the period from February 16 through March 31, 2018.

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

15       On April 7, 2015, the Securities and Exchange Commission ("SEC") filed its  
16 complaint to protect investors who invested in life settlements marketed and sold by  
17 defendants Pacific West Capital Group, Inc. ("Pacific West Capital") and Andrew B  
18 Calhoun IV ("Calhoun"), in part through sales agent defendants Brenda Barry, Eric  
19 Cannon, Andrew B Calhoun Jr., and Caleb Moody. The Complaint alleges that  
20 Defendants raised almost \$100 million from investors, and Defendants Calhoun and  
21 Pacific West Capital used a portion of those proceeds to fund the purchase by  
22 Defendant PWCG Trust of life insurance policies, and to fund premium reserves  
23 held by PWCG Trust.

24       In April 2017, the SEC and PWCG Trust participated in mediation ordered by  
25 the Court. On January 31, 2018, the Trustee of PWCG Trust executed the Consent  
26 of Defendant PWCG Trust, which completely resolved the SEC's claims against  
27 PWCG Trust and agreed to the appointment of a permanent receiver over PWCG  
28 Trust. On February 12, 2018, the SEC and PWCG Trust jointly moved *ex parte* for



1 the appointment of a receiver and the Court entered its Judgment as to Defendant  
2 PWCG Trust, including appointing of a permanent receiver, on February 16, 2018.  
3 Dkt. Nos. 142, 143, and 145.

4 **A. The Appointment Order**

5 The Appointment Order confers broad duties and responsibilities on the  
6 Receiver, which are summarized as follows:

- 7 A. to have access to and to collect and take custody, control, possession, and  
8 charge of all funds, assets" and other property of PWCG Trust, "with full  
9 power to sue, foreclose, marshal, collect, receive, and take into  
10 possession all such Assets;"
- 11 B. "to assume full control of Defendant PWCG Trust by removing . . . any  
12 director, officer, . . . or agent of any of Defendant PWCG Trust, and any  
13 named Defendant, from control of, management of, or participation in,  
14 the affairs of Defendant PWCG Trust;"
- 15 C. to have control of, and to be added as the sole authorized signatory for,  
16 all accounts of" PWCG Trust;
- 17 D. "to conduct such investigation and discovery as may be necessary to  
18 locate and account for all of the assets" and other property of or managed  
19 by PWCG Trust "and to engage and employ attorneys, accountants and  
20 other persons to assist in such investigation and discovery;"
- 21 E. "to take such action as is necessary and appropriate to preserve and take  
22 control of and to prevent the dissipation, concealment, or disposition of  
23 any Assets;"
- 24 F. "to choose, engage, and employ attorneys, accountants, appraisers, and  
25 other independent contractors and technical specialists, as the receiver  
26 deems advisable or necessary in the performance of duties and  
27 responsibilities under the authority granted by this Order;"
- 28

1 G. "to make an accounting, as soon as practicable, to this Court and the SEC  
2 of the assets and financial condition of Defendant PWCG Trust, and to  
3 file the accounting with the Court and deliver copies thereof to all  
4 parties;"

5 H. "to make such payments and disbursements from the Assets taken into  
6 custody, control, and possession or thereafter received by him or her, and  
7 to incur, or authorize the making of, such agreements as may be  
8 necessary and advisable in discharging his or her duties as permanent  
9 receiver;"

10 I. "to investigate and, where appropriate, to institute, pursue, and prosecute  
11 all claims and causes of action of whatever kind and nature that may now  
12 or hereafter exist as a result of the activities of present or past employees  
13 or agents of Defendant PWCG Trust;"

14 J. "to institute, compromise, adjust, appear in, intervene in, or become party  
15 to such actions or proceedings in state, federal, or foreign courts;" and

16 K. "to have access to and monitor all mail, electronic mail, and video phone  
17 of" PWCG Trust.

18 Dkt. No. 145, Section III.

19 The Appointment Order, among other things, also includes provisions  
20 (a) requiring PWCG Trust to give access and control of all property of or managed  
21 by PWCG Trust to the Receiver, (b) prohibiting officers, employees, and other  
22 agents from taking any action on behalf of PWCG Trust, (c) restraining and  
23 enjoining legal actions against PWCG Trust and interference with the Receiver's  
24 performance of his duties, and (d) requiring the fees and costs of the Receiver and  
25 his professionals be paid by PWCG Trust. *Id.* at Sections IV-VIII.

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1 findings, and recommendations for the continued administration of the receivership  
2 in April 2018.

3 **IV. RELIEF REQUESTED**

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

13 **V. LEGAL AUTHORITY**

14 **A. District Courts Have Broad Equitable Powers to Administer**  
15 **Receivership Matters**

16 "The power of a district court to impose a receivership or grant other forms of  
17 ancillary relief does not in the first instance depend on a statutory grant of power  
18 from the securities laws. Rather, the authority derives from the inherent power of a  
19 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369  
20 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly  
21 and efficient administration of the estate by the district court for the benefit of  
22 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment  
23 of a receiver is authorized by the broad equitable powers of the court, any  
24 distribution of assets must also be done equitably and fairly. See *SEC v. Elliot*,  
25 953 F.2d 1560, 1569 (11th Cir. 1992).

26 District courts have the broad power of a court of equity to determine the  
27 appropriate action in the administration and supervision of an equity receivership.  
28

1 See *SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth  
2 Circuit explained:

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

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

21 **B. Electronic Noticing Procedures Satisfy the Requirements**  
22 **of Due Process**

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

1 Notice is adequate, and meets due process requirements, where it is reasonably  
2 calculated to apprise interested parties of the pendency of an action and provide  
3 them an opportunity, if appropriate, to be heard. *Mullane v. Cent. Hanover Bank &*  
4 *Trust Co.*, 339 U.S. 306, 413 (1950).

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

17 **VI. TOPICS FOR ORDER IN AID OF RECEIVERSHIP**

18 **A. Relief from Local Rule Requirements**

19 Local Rule 66-5 requires the Receiver to file a schedule of names, addresses,  
20 and amounts of claims of all known creditors. Local Rule 66-7 requires the  
21 Receiver to provide notices by mail to all known creditors of certain petitions,  
22 reports, and applications. Mailing notices to all investors and other creditors would  
23 cost the receivership estate thousands of dollars over the course of the receivership.  
24 Moreover, investor and creditor claim amounts are not known and accounting  
25 analysis will need to be completed before investor claims can be properly  
26 determined. Given the high volume of transactions involved, this work will take  
27 time to complete. Finally, the investors' personal information, including their names  
28

1 and addresses, should not be filed publically, absent a compelling need for  
2 disclosure. The majority of investors appear to be individuals.

3 Accordingly, the Receiver respectfully requests relief from the Local Rule  
4 requirements to file a schedule of known creditors and provide mail notices of  
5 certain motions. All investors have been mailed a physical letter advising them of  
6 the Receiver's appointment, providing contact information for the Receiver's office  
7 (including a dedicated email address and telephone line), and directing investors to  
8 the receivership webpage for additional information and updates about the  
9 receivership. All motions, petitions, reports, and applications listed under Local  
10 Rule 66-7, as well as other information relevant to the receivership, will be posted to  
11 the receivership webpage when they are filed with the Court. A letter and email has  
12 already been sent to each investor directing them to the website for information and  
13 updates about the case. Investors can subscribe to receive direct email updates each  
14 time a new document is posted to the webpage.

15 Electronic service of notice satisfies the requirements of due process and is  
16 reasonable under these circumstances. Such service by the webpage and electronic  
17 mail will allow the Receiver to notify investors promptly and at a fraction of the cost  
18 of sending notices by traditional mail.

19 **B. Employment of Allen Matkins**

20 As discussed above, Section III.D. of the Appointment Order authorizes,  
21 empowers, and directs the Receiver "to conduct such investigation and discovery as  
22 may be necessary to locate and account for all assets of or managed by" PWCG  
23 Trust, and "to engage and employ attorneys, accountants, and other persons to assist  
24 in such investigation and discovery." Similarly, Section III.F. authorizes,  
25 empowers, and directs the Receiver "to choose, engage, and employ attorneys,  
26 accountants, appraisers, and other independent contractors and technical specialists  
27 as the receiver deems advisable or necessary in the performance of duties . . ." and  
28 Section III.I authorizes, empowers, and directs the Receiver "to investigate and,

1 where appropriate, to institute, pursue, and prosecute all claims and causes of  
2 action" of PWCG Trust.

3 As discussed above, the Receiver is not an attorney and does not have  
4 attorneys on staff at his company. Considering the amounts at stake for investors  
5 and the important legal issues facing PWCG Trust, the Receiver has determined that  
6 it is in the best interests of the receivership estate to engage experienced, well-  
7 qualified legal counsel to assist him in, among other things, (a) recovering,  
8 preserving, managing, and selling receivership assets (as applicable), (b) addressing  
9 legal issues related to the operation of PWCG Trust's businesses, (c) providing legal  
10 advice regarding the investigation of PWCG Trust's financial activities and potential  
11 causes of action against third parties, including issuing subpoenas and evaluating the  
12 strengths and weaknesses of potential claims against third parties, (d) pursuing  
13 claims and causes of action, including, where appropriate, through litigation,  
14 (e) providing legal advice related to investor and creditor claims against the  
15 receivership estate; and (f) formulating and presenting to the Court a plan for  
16 administering investor and creditor claims and distributing receivership estate assets.

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

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

26 *SEC v. World Capital Market, Inc., et al.*, U.S. District Court, Central District  
27 of California. Allen Matkins represents the Court-appointed receiver in the case,  
28



1 commenced in 2014, involving more than \$50 million raised from investors in  
2 connection with a fraudulent multi-level marketing scheme.

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

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

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

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

20 1. Allen Matkins' Attorneys

21 Allen Matkins' attorneys possess significant experience and skill in federal  
22 equity receiverships, litigation, finance, corporate, tax, and other areas of law  
23 relevant to this receivership. The majority of the receivership legal work will be  
24 performed by David Zaro, a partner and chair of the firm's Receivers, Lenders, and  
25 Special Creditor Remedies ("RLSCR") Practice Group; Ted Fates, a partner in the  
26 RLSCR Practice Group; and Tim Hsu, an associate in the RLSCR Practice Group.  
27 The attorney biographies of Mr. Zaro, Mr. Fates, and Mr. Hsu are attached hereto as  
28 Exhibit A.

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

10 2. Compensation and Reimbursement of Expenses

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

14 Attorney	15 Position	16 CA Bar Number	17 Hourly Billing Rate <sup>1</sup>
18 David Zaro	19 Partner	20 124334	21 \$715.50
22 Ted Fates	23 Partner	24 227809	25 \$535.50
26 Tim Hsu	27 Associate	28 279208	\$432.00

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

22 C. Interim Reports and Fee Applications

23 Local Rule 66-6.1 provides that, within six months of appointment, and at  
24 least semi-annually, the Receiver must make reports to the Court. In addition,  
25 pursuant to the terms of the Appointment Order, the costs, fees and expenses of the  
26

27 <sup>1</sup> Effective July 1 each year, Allen Matkins reviews and adjusts its hourly rates for  
28 attorneys and paralegals in light of their additional experience and expertise. For  
this matter, however, Allen Matkins has agreed not to adjust its rates until  
January 1, 2019.

1 Receiver and those of his professionals, including legal counsel, engaged by him to  
2 assist with the performance and carrying out of his duties, are to be paid by PWCG  
3 Trust. These costs, fees and expenses incurred by the Receiver and his professionals  
4 are to be submitted by application setting forth in reasonable detail the nature of the  
5 services provided. Dkt. No. 61, Section VIII.

6 The Receiver believes that filing interim reports and interim fee applications  
7 on a quarterly basis strikes the appropriate balance between keeping the Court and  
8 interested parties regularly informed of his activities and conserving receivership  
9 estate resources. Thus, the Receiver recommends that interim reports and fee  
10 applications covering each calendar quarter be filed shortly after the conclusion of  
11 the quarter. The Receiver's first interim report, as well as the first interim fee  
12 applications of the Receiver and Allen Matkins, would therefore be filed in  
13 May 2018 and will cover the period from the Receiver's appointment on  
14 February 16, 2018, through March 31, 2018.

15 **VII. CONCLUSION**

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

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

25 Dated: March 13, 2018

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

26 By:           /s/ Edward Fates          

27 EDWARD G. FATES  
Attorneys for Receiver  
28 THOMAS HEBRANK

# **EXHIBIT A**

# Allen Matkins



## **David R. Zaro**

*Partner*  
Los Angeles

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dzaro@allenmatkins.com

### **Industries**

Financial Services  
Construction

### **Services**

Litigation  
Restructuring, Insolvency &  
Bankruptcy  
Construction Law  
Receiverships, Lenders &  
Special Creditor Remedies

### **Education**

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

B.A., Stanford University

David R. Zaro 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. David represents a wide range of clients including banks and other 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 residential and commercial lenders and others regarding all aspects of commercial law with regard to commercial and residential mortgage litigation, bank regulatory disputes, and collection actions.

David's representative cases include the representation of Court Appointed Receivers in a \$1.2 billion fraud action brought by the Securities and Exchange Commission in connection with the sale of TIC and other interests in 300 assisted living facilities; and a \$750 million ponzi-like scheme involving the purchase of medical related receivables and related lending transactions; 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 an industrial park; and structure lease termination and modifications for commercial and retail tenants both in and out of bankruptcy.

David has lectured on matters regarding residential and commercial mortgage litigation and workouts, creditors' rights, construction law, and other real property remedies.

## **MEMBERSHIPS**

- Financial Lawyers Conference
- American Bankruptcy Institute
- Turnaround Management Association

# Allen Matkins

## ACCOLADES

- Awarded Turnaround Management Association's Transaction of the Year- Large Turnaround Award (2011)

## EDUCATION

David received his B.A. from Stanford University and obtained his J.D. from the University of California, Hastings College of the Law.

## BAR ADMISSIONS

- State Bar of California

## COURT ADMISSIONS

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

## REPRESENTATIVE MATTERS

- **Residential and Commercial Bank.** Represented bank in achieving a favorable published decision by the Ninth Circuit in Chapter 12 bankruptcy case. The appeal involved an attempt by a debtor in bankruptcy, and self-described family farmer, to leverage a discharge of personal debt in a prior chapter 7 bankruptcy case into subsequent eligibility under chapter 12 of the Bankruptcy Code, which could have enabled her to avoid foreclosure or strip down the value of the bank's security in the subject property. The Ninth Circuit did not agree with the debtor. The debtor sought an *en banc* review of the Ninth Circuit's decision which was subsequently denied.
- **SEC Receiver.** Representing SEC Receiver in securities fraud case in connection with the raising of \$120 million via the EB-5 program for the development of two large real estate developments in Seattle and

## Allen Matkins

neighboring Everett. We are prosecuting claims to recover investor funds from third-party borrower.

- **Residential and Commercial Bank.** Represented a residential and commercial bank in defending several thousand lawsuits throughout California and managed local counsel in 20 other states. The lawsuits concern allegations of mortgage fraud, wrongful foreclosure, violations of TILA, RESPA, HOSPA, and other statutory and regulatory issues.
- **SEC Receiver.** Represented SEC Receiver in securities fraud case involving losses to investors of over \$40 million.
- **Residential and Commercial Lender.** Represented a residential and commercial lender in the workout and collection of a portfolio of commercial loans exceeding \$1 billion.
- **Residential and Commercial Lender.** Represented a residential and commercial lender as to the workout and collections of a portfolio of construction loans. Some loans involving completed projects as well as those in progress.

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**Industries**  
Financial Services

**Services**  
Restructuring, Insolvency & Bankruptcy  
Commercial Finance  
Real Estate Finance  
Receiverships, Lenders & Special Creditor Remedies

**Education**  
J.D., *magna cum laude*,  
University of San Diego  
School of Law, Order of the  
Coif  
B.A., Emory University

**Ted G. Fates**

*Partner*  
San Diego

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tfates@allenmatkins.com

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)
- National Association of Federal Equity Receivers
- California Receivers Forum
- San Diego Bankruptcy Forum
- San Diego County Bar Association

**ACCOLADES**

- Selected for inclusion in *The Best Lawyers in America* in the fields of Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law - Bankruptcy (2018)



## Allen Matkins

- Selected for inclusion in *Super Lawyers' San Diego Rising Stars* (2015 - 2016)
- Named among *The Daily Transcript's* Top Young Attorneys in San Diego, 2010

### EDUCATION

Ted graduated from the University of San Diego School of Law with his J.D., *magna cum laude*, 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.

## Allen Matkins

- ***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.

# Allen Matkins



## **Tim C. Hsu**

*Associate*  
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### **Industries**

Financial Services  
Residential & Multifamily  
Real Estate

### **Services**

Litigation  
Real Estate Disputes  
Environmental & Natural  
Resources  
Receiverships, Lenders &  
Special Creditor Remedies  
Restructuring, Insolvency &  
Bankruptcy

### **Education**

J.D., Loyola Law School  
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.