

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
SOUTHERN DIVISION

In re SANCTUARY BELIZE LITIGATION

No: 18-cv-3309-PJM

REPLY IN SUPPORT OF RECEIVER'S (I) MOTION FOR ORDER APPROVING AND AUTHORIZING PAYMENT OF RECEIVER'S AND PROFESSIONALS' FEES AND COSTS FROM FEBRUARY 1, 2023 THROUGH JUNE 30, 2023 (DOC. 1456); AND (II) MOTION FOR ORDER DETERMINING THAT FUNDS TURNED OVER BY ATLANTIC INTERNATIONAL BANK LIMITED MAY BE USED BY RECEIVER FOR ALL RECEIVERSHIP PURPOSES (DOC. 1457)

This Reply is filed by Marc-Philip Ferzan of Ankura Consulting Group, LLC (“Receiver”) in support of the Receiver’s Fee Motion and AIBL Motion¹ and in response to the Federal Trade Commission’s (“FTC”) Opposition to Receiver’s Motions for Access to Certain Settlement Funds, DE 1457, and to Pay Professional Fees, DE 1456 (“Opposition”) (Doc. 1459).

I. INTRODUCTION

The Receiver, with the aid of his professionals, has diligently discharged his duties in accordance with the Court’s orders in what is an extraordinarily complicated case. The largest expenses of the estate have stemmed from managing more than 18,000 acres of populated real estate in a developing country, addressing and resolving difficult real property issues facing more than 2,800 consumers as a result of the Defendants’ fraud and deficient accounting records, and carrying out the foundational components of consumer redress pursuant to a complex redress plan which the Receiver has successfully streamlined through the June 2023 Redress Order.

The Receiver’s Fee Motion seeks the approval and payment of fees and costs for February 1, 2023 through June 30, 2023. With one exception addressed below, the FTC does not object to a single line item of fees or costs incurred by the Receiver or his counsel, and has never objected to any fees or costs throughout the receivership. There is no showing that any of the fees and costs incurred in this time period (or any prior period) were unreasonable. Further, there are sufficient funds to pay the fees and costs requested, even without access to the AIBL Funds. There is no basis to deny the payment of estate professionals when there is no substantive objection demonstrating unreasonableness and there are sufficient funds for payment.

¹ Terms used but not defined herein are as defined in the Receiver’s (I) Motion for Order Approving and Authorizing Payment of Receiver’s and Professionals’ Fees and Costs from February 1, 2023 through June 20, 2023 (“Fee Motion”) (Doc. 1456); and (II) Motion for Order Determining that Funds Turned Over by Atlantic International Bank Limited May be Used by Receiver for All Receivership Purposes (“AIBL Motion”) (Doc. 1457).

The Receiver's AIBL Motion seeks authorization to use the AIBL Funds only as needed once all other available funds in the receivership estate have been expended. Contrary to the FTC's contentions, this relief is supported by the terms of the AIBL Order which expressly provides that the AIBL Funds are Receivership Assets, a defined term in the AIBL Order itself, and permits AIBL Funds to be spent on estate expenditures with Court approval. The Receiver is seeking authorization now because the estate will face a liquidity issue in the coming months without access to these funds. Before even considering professional fees and costs, absent AIBL Funds, the Receiver will be unable to continue operation and maintenance of the Belize real estate assets for the time necessary to implement the next phase of consumer redress under the June 2023 Redress Order. Despite apparently recognizing that the failure to fund these costs would have an immediate and potentially fatal effect on the estate and potential consumer recoveries, the Opposition does not address what happens if the estate runs out of money.

II. SUMMARY OF RELEVANT FACTUAL BACKGROUND

A. Sanctuary Belize is a Uniquely Complex Case

Defendants' scheme left the FTC and Receiver with an extraordinarily complicated and messy situation involving more than \$100 million in losses, substantial undeveloped real estate in Belize, incomplete records, and hundreds of understandably desperate lot purchasers—many of whom have uncertain (and sometimes conflicting) claims and rights. FTC Redress Plan Motion, Doc. 1117, at 2.

As the FTC recognized in its Redress Plan Motion, Sanctuary Belize presents a complex case for redress implementation. Following the unfortunate passing of the leaders of the REA receivership team, the FTC contacted Marc Ferzan to urge that he become the successor receiver. The FTC advised that it was confronted with a challenging situation to find a successor receiver with the expertise, experience and resources to step into this complicated case. Declaration of Marc Ferzan, ¶3. Since his appointment, the Receivership Team has executed on a myriad of

responsibilities in duly performing the Court's orders, chief among them being overseeing operations and maintenance for the more than 18,000 acre Belize development areas, initiation and implementation of a consumer redress program, preparations for the marketing and sale of Belize land assets, and continued consumer outreach and communications. *See id.*, ¶¶4-5, 11-22.

The FTC proposed a redress plan prior to the successor Receiver's appointment, acknowledging itself that the plan was "complex". Doc. 1117, at 7. Pursuant to the Court's August 2022 Redress Order (Doc. 1373), the Receiver set about implementing the claims application process called for under the plan. As detailed further in the Receiver's declaration, the claims application process required significant work both because of the magnitude and nature of the underlying fraud scheme, as well as the complex requirements of the plan. Ferzan Decl., ¶¶12-16. For example, the Receivership Team had to conduct an in-depth analysis of corporate, financial and transactional records in order to pre-populate claim applications, aid consumers in the application process, and make eligibility determinations pursuant to Redress Plan requirements. *Id.* The Receivership Team also coordinated thousands of consumer communications by phone and email. *Id.* These efforts resulted in robust consumer participation, and the front-loaded approach to data gathering allowed the Receivership Team to collect the necessary information to support redress implementation going forward. *Id.*

In addition to the complexity surrounding the implementation of the redress plan, this case has been rife with legal impediments. The Defendants have undertaken appellate and other challenges in the wake of the Supreme Court's decision in *AMG Capital Management* that continue to this day. The Receiver's lead counsel, Barnes & Thornburg, has not only worked to address these matters, including assisting the FTC to obtain a highly favorable Fourth Circuit opinion affirming in all manners the orders which established and maintained the receivership

(see Doc. 1377), but also has advised on numerous issues including compliance with the redress plan and a host of consumer matters, coordinated with Belizean counsel in successfully obtaining various orders in Belize recognizing this Court's receivership orders, obtained Court orders approving the marketing and sale of millions of dollars in real and personal property assets initiated by the original receiver, efficiently pursued litigation resulting in an estate recovery of another \$350,000 and has participated in numerous hearings as well as out of court conferences with the FTC and others. *See* Declaration of Gary Caris, ¶¶7-8.

B. The Receiver Successfully Implemented Efficiency Measures

Coupled with being an extraordinarily complex case, the FTC also recognized it is not possible to completely right the wrongs Defendants perpetrated, explaining “there is no plan that will come anywhere close to compensating lot purchasers fully Defendants’ massive real estate deception means unmet obligations to lot purchasers that vastly exceed any amount that the FTC and Receiver have recovered, or plausibly might recover.” Doc. 1117 at 4. Despite this, the FTC sought out appointment of the Receiver because utilizing the services of a skilled team of professionals to lead operational and redress efforts was the best chance to maximize value.

The Receiver has worked to perform the duties called for by orders of the Court efficiently and diligently. *See* Ferzan Decl., ¶¶20-21. For example, the Receiver has reduced operation and maintenance expenses in Belize, *e.g.* by reducing staffing and implementing spending controls. *Id.*, ¶8. Staffing reductions alone resulted in cost savings of approximately \$335,000 on an annualized basis. *Id.* The Receiver has also worked to accelerate and streamline the consumer redress program. *Id.*, ¶¶23-25. Between November 2022 and February 2023, the Receiver and counsel engaged with the FTC on a frequent basis to discuss the Receiver’s concerns with the existing redress approach and seek guidance on whether the FTC would support recommendations for changes that could be constructed within the spirit of the redress

plan, while simplifying administration and reducing costs, providing consumers with realistic and practical choices, and prioritizing efforts to market and sell the Belize land assets. *Id.*

After the Fourth Circuit issued its opinion, and following submission of the Receiver's March 2023 Report (Doc. 1412), which outlined the Receiver's recommendations, as well as an April 2023 status conference, the Court directed Receiver's counsel to submit a proposed order authorizing the next phase of consumer redress based on the Receiver's recommendations. In its Response in Support of the Receiver's Proposed Order, the FTC advised that with "relatively minor revisions" – which the Receiver incorporated – the FTC "fully support[ed] the Receiver's Proposed Order and urge[d] the Court to enter it as soon as possible." Doc. 1433.

C. The Redress Program is Poised to Move Forward

With the June 2023 Redress Order (Doc. 1446) in hand, the Receiver has now made disbursements in connection with the Court-ordered \$10 million redress payment allocation, completed the request for information (RFI) process called for under the Order, and is primed to move forward with the survey and request for proposal (RFP) and sale process. Ferzan Decl., ¶26. But work remains to get the contemplated redress program across the finish line. *Id.*, ¶27. For example, in order to effectuate a sale, the Receiver will need to consummate consumer lot choices following completion of the survey and engage in additional marketing and due diligence efforts relating to the Belize land assets. *Id.* The Receiver will also need to continue operating and maintaining the Belize land during the sales process. *Id.*

III. THE RECEIVER AND HIS PROFESSIONALS ARE ENTITLED TO PAYMENT OF THEIR REASONABLE FEES

A. The Fees Sought are Reasonable and There is No Objection to the Contrary

The Opposition cites *SEC v. Merrill* for the rule that awarding fees is entrusted to the discretion of the Court. Oppn., at 4 (quoting *SEC v. Merrill*, 18-cv-2844 RBD, 2019 WL

4916164, *2 (D. Md. Oct. 4, 2019)). Importantly, the baseline for the Court’s exercise of its discretion is reasonableness. As explained in *Merrill*, “[a] receiver appointed by a court who reasonably and diligently discharges his duties is entitled to be fairly compensated for services rendered and expenses incurred. The entitlement to reasonable compensation extends to the professionals employed by the receiver.” *Id.* (internal quotation omitted).

Consistent with the foregoing, no fewer than eight orders in this case provide that the Receiver and professionals, including counsel, “are entitled to reasonable compensation” and the cost of actual out-of-pocket expenses incurred by them. *See* Doc. 607, §IV; Doc. 688, §IX; Doc. 788, § III; Doc. 789, §VIII; Doc. 819, §V; Doc. 820, §X; Doc. 1112, §IX; Doc. 1194, §IX. These orders further provide the Receiver “shall” file “periodic requests *for the payment of such reasonable compensation.*” *Id.* (emphasis added).

As directed, on twelve prior occasions, the Receiver and his predecessor filed periodic requests for payment throughout the case, all of which the Court has approved in full. *See* Docs. 430, 567, 748, 970, 1094, 1285, 1337, 1345, 1348, 1370, 1381, 1427. The FTC has never objected to any of the fees of the Receiver, the predecessor receiver or their counsel. Even now, the FTC does not contend that any of the time incurred, rates charged or time records presented by the Receiver or his professionals for which compensation is sought in the Fee Motion is unreasonable in any manner. The FTC also does not challenge the necessity or quality of the work performed.

The only objection is that fees incurred for preparing a motion for fee approval are not compensable as a matter of law. *Oppn.*, at 8 n.3. There is authority to the contrary. *See FTC v. AI Janitorial Supply Corp.*, No. 17-cv-7790, 2020 WL 887386, at *6 (N.D. Ill. Feb. 24, 2020) (referring to cases awarding up to 3%-5% of the total fee application amount for “drafting fee

petitions” and explaining in “deciding how much to award, courts ask whether the amount is excessive, redundant, or otherwise unnecessary, the same factors they apply when considering any other request for attorney’s fees.”). Moreover, if the rule was that such time cannot be compensated, in fairness, it would need to be established with professionals at the outset. For example, in contrast to the FTC, the SEC has billing instructions providing that receivers cannot bill for time spent preparing fee motions (but, to be sure, they can bill for time spent defending fee motions so as to deter meritless objections). *See SEC v. Ahmed*, No. 3:15cv675 (JBA), 2020 WL 7360157, at *5 (D. Conn. Dec. 14, 2020). For the almost five years this case has been pending and the last eleven fee motions, the FTC has not objected to fees incurred for preparing fee motions. In the experience of Receiver’s counsel, it likewise has not been the FTC’s practice to ask that such time not be charged and courts throughout the United States approve the payment of such fees in FTC actions. *See Caris Decl.*, ¶¶5-6. The Receiver submits that approval of reasonable compensation for time spent preparing fee motions should continue to be the rule in this case. Here, there is no objection to the reasonableness of the amount sought for this task.

As set out in the Fee Motion and the Report filed with it, among other things, the Receiver worked diligently during the relevant time to complete a comprehensive consumer claims process, to prepare to disburse the initial redress payment in connection with more than 1,200 Sanctuary Belize lots, to oversee necessary operations and maintenance, and to prepare for the marketing of the Belize real estate assets. *See Doc. 1456-3*. During the relevant time period, counsel pursued settlement of litigation brought on behalf of the estate that resulted in recovery of \$350,000, advised with respect to redress recommendations and the order for the next phase of implementation, prepared a motion for certain claims determinations and participated in multiple

conferences with the FTC. *See* Doc. 1456-5. The fees sought in the Fee Motion are reasonable, and there being no objection to the contrary, the Fee Motion should be granted in its entirety.

B. There is No Basis to Stop Paying the Receiver and His Professionals

Without contesting the reasonableness of the fees sought, the FTC nevertheless objects to payment “in light of the estate’s assets.” *Oppn.*, at 8. As an initial point, there are sufficient non-AIBL funds to pay the fees and costs requested in the Fee Motion. *See* Doc. 1457-2, ¶4 & n.1. The cases cited in the Opposition with respect to considering the estate’s ability to pay are inapposite in this respect.² *SEC v. Stinson* is similarly off point. There, the estate had insufficient assets to pay the outstanding balance of the professionals’ fees (some of which had been previously paid). 2015 WL 115495, *2 (E.D. Pa. Jan. 8, 2015). The Court ordered that half of the remaining funds pay professionals and half be distributed to consumers, reasoning that “victims must receive at least some distribution in order for the receivership to have served its purpose.” *Id.* at *3. Here, by contrast, there are sufficient funds to pay the requested fees without exhausting the estate and there has already been a substantial interim consumer distribution.

While the Opposition frames its request as a “holdback,” the relief sought is not typical of a holdback. In cases where a holdback is provided, generally fees are approved and a substantial percentage of the approved fees are paid immediately, while the remainder is held back pending a final application. Here, by contrast, the FTC is asking the Court to defer considering the Fee Motion despite not objecting to the reasonableness of the fees. *Oppn.*, at 9. Essentially, this is a request that the Receiver and his professionals work for free starting retroactively from February

² The reference to REA’s first fee motion in the case is likewise irrelevant. *Oppn.*, at 9. The Court approved the fees sought in that motion in full. The fees were allowed to be paid as funds became available because this was at the beginning of the case such that there were numerous assets immediately available to be monetized. Here, the FTC wants the Court to defer approving the Fee Motion, despite there being available non-AIBL funds.

1, 2023 until some undetermined point in the future, if they are paid at all, thereby shifting the entirety of the risk to the Receiver and his professionals. There is no support for this result under the law or the facts of this receivership. The FTC itself acknowledged in its Redress Plan Motion that “in this complex matter, it is also necessary to minimize the risk that the Receiver will not be compensated for important work over a potentially significant period.” Doc. 1117 at 10. The proposed deferral would accomplish the opposite.

The Opposition points to cases noting that receivers should not receive a “windfall” and that the “fat” should be trimmed from fees. There is no windfall sought here and the FTC has never complained to the Court that there is any fat in the Receiver’s fees or those of his professionals. Moreover, both the Receiver and its lead counsel agreed to significantly reduced rates in this matter. *See* Caris Decl., ¶¶2-4; Ferzan Decl., ¶3. The FTC never proposed a deferral or holdback in addition to the rate reduction. *Id.* It was the Receiver’s and counsel’s expectation that they would be paid all of their approved fees and costs based on the periodic fee motions. *Id.* This is consistent with the orders cited above addressing the Receiver’s and professionals’ entitlement to reasonable compensation, none of which includes language providing for a deferral or holdback.

The decision in *SEC v. Byers*, No. 08-cv-7104(DC), 2014 WL 7336454 (S.D.N.Y. Dec. 23, 2014) is illustrative. There, the Court imposed percentage holdbacks on certain professionals and subsequently denied some of the fees requested. But this was driven in large part by the unreasonableness of the fees, including that the rates were not discounted. *See id.* at *7 (noting the “extraordinarily high billing rates and apparent penchant for running the meter” of one the applicants and as to another, noting “there was no public service discount” on the rate charged). Particularly, one applicant had incurred fees of more than \$9.4 million in a 14-month period. *Id.*

at *8. Additionally, the Court had previously expressed concern as to the reasonableness of some of the fee awards being sought. *Id.* at *1. By comparison, in that case, a successor receiver and his counsel were later awarded fees including portions previously held back, with the Court noting that they “could not be expected to have worked for free” and were appropriately awarded their reasonable compensation despite the “relatively low return to the investor-victims”. *SEC v. Byers*, No. 08-cv-7104(DC), 2018 WL 11425555, at *3 (S.D.N.Y. Apr. 19, 2018).

Here, no objection has been brought as to the economy of the Receiver’s administration. Even more, the benefit the Receiver has imparted to the receivership estate is not limited to the outcome of the sale of the Belize real property as the Opposition suggests. *See Byers*, 2018 WL 7336454 at *6 (“While the results obtained by a receiver are clearly important, the benefits to a receivership estate may take more subtle forms than a bare increase in monetary value.”); *SEC v. Elliott*, 953 F.2d 1560, 1577 (11th Cir. 1992) (“Even though a receiver may not have increased, or prevented a decrease in, the value of the collateral, if a receiver reasonably and diligently discharges his duties, he is entitled to compensation.”). It is fair and appropriate that the Receiver be compensated for preserving assets as required by Court orders (*see, e.g.*, Doc. 559) and taking the steps necessary to implement the redress plan and administer the receivership.

IV. THE AIBL ORDER PROVIDES THAT THE RECEIVER CAN USE AND SPEND AIBL FUNDS BY OBTAINING A SUBSEQUENT COURT ORDER

In order to fund the estate’s ongoing efforts, access to the AIBL Funds will be necessary. The AIBL Order expressly states that the \$23 million in AIBL Funds are Receivership Assets. §IV.A. The AIBL Order further states the Receiver “will have the same powers, rights and duties with respect to the AIBL Assets that become Receivership Assets as it has with respect to other Assets it holds as an equity receiver pursuant to other orders of this Court in this matter.” §V. However, the Receiver is not permitted to use or spend the AIBL Funds without a further order

of the Court. The phrase “any future expenditures from this amount will be subject to the further order by this Court” must be afforded meaning and plainly modifies the prohibition on the Receiver’s use or spending of the AIBL Funds pursuant to the AIBL Order. The Opposition incorrectly argues that “expenditures” must refer to consumer redress. Oppn., at 7. As evidenced by the AIBL Order which the FTC drafted, as well as all of the other judgments drafted by the FTC in this case, when the FTC refers to consumer redress, it does not use the term “expenditures.” Rather, it uses the term “consumer redress” or “equitable relief.” That Section IV of the AIBL Order has nothing to do with consumer redress is apparent from the plain language of the Order itself. Section III.B of the AIBL Order expressly refers to the use of the settlement funds for equitable relief, including consumer redress, and further provides that Section III.B is expressly subject to the limitations set forth in Section IV.A of the Order. The only reasonable reading of “expenditures” is that it refers to receivership expenses.

The Opposition suggests it would be redundant to require the Receiver to seek a Court order to spend the AIBL Funds on receivership expenses because the Receiver is already required to seek approval to pay its fees. Oppn., at 7. However, much of what the receivership estate must pay for does *not* require a Court order approving the expenditure, as for example paying the recurring wages of Sanctuary Belize employees. The AIBL Order, thus, requires Court approval for future use of the AIBL Funds for *any* purposes, including those which typically do not require a separate Court order.

It further bears noting that when the FTC wanted to keep funds it obtained through settlements, it did so. *See, e.g.*, Doc. 789 (providing the money may “be used for equitable relief, including consumer redress and any attendant expenses for the administration of redress fund.”); Doc. 668 (same); Doc. 788 (same); Doc. 789 (same); 820 (same). This is despite contemplating

that the Receiver would be distributing consumer redress. Oppn., at 6. The FTC could have chosen to hold the AIBL Funds but instead provided that they become Receivership Assets. Moreover, if the only permissible use of the AIBL Funds is distribution to consumers as the FTC now argues, then the FTC would have insisted that the *entire* \$23 million be distributed to consumers after the claims application process was completed, rather than only \$10 million. No purpose could be served by the Receiver continuing to hold \$13 million in AIBL Funds if it is unable to ask Court permission to utilize those funds for receivership expenses.

V. THE RECEIVER’S USE OF ASSETS IS NEVER “UNFETTERED”

The Opposition notes that if the Court grants the AIBL Motion, the Receiver should not have “unfettered” access to the funds. Oppn., at 7. This is not the request. The Receiver must continue to file fee motions to obtain Court approval before any funds, including AIBL Funds, are used to pay Receiver and professionals’ fees and costs. Further, the Receiver is seeking to use AIBL Funds as needed only after other funds of the estate are expended. Moreover, the Receiver is a fiduciary and an officer of the Court who has and will continue to use estate assets only as is necessary and appropriate. There is abundant transparency in this respect. In addition to filing invoices with its fee motions, the Receiver submits regular reports to the Court inclusive of financial information and posts those reports on the Receiver’s website, holds regular consumer forums, and circulates the estate’s bank statements, including to the FTC. *See* Ferzan Decl., ¶6.

Based on the average monthly operation and maintenance expenses for the Belize real property alone from February 2023 through June 2023, one additional year of operation and maintenance is estimated to cost at least approximately \$1,716,000 (not accounting for emergency events and/or other periodic and unforeseen circumstances). *See* Ferzan Decl., ¶9. Earmarking another \$2 million in fees and costs for the 12-month period from July 2023 through June 2024 as the Receiver executes the next phase of consumer redress hopefully leading to a

successful sale of some or all of the Belize real property, and factoring in the approximate \$1 million in non-AIBL Funds as of June 30, 2023, net of receivership fees and costs through June 2023, the Receiver would not be opposed to the Court setting an interim threshold on use of the AIBL Funds of \$2.7 million³, such that if it becomes necessary to exceed this amount, the Receiver would return to the Court to report on and seek further approval. *Id.* Use of the AIBL Funds will be necessary going forward in order for the Receiver to continue to discharge his responsibilities under the orders of the Court, including implementing consumer redress initiatives. Without the AIBL Funds, the estate will be unable to continue to operate. *Id.*, ¶28.

VI. THE FTC’S SUGGESTIONS TO RAISE CASH DO NOT SOLVE THE LIQUIDITY PROBLEM

The Opposition raises three proposals to increase the cash “at the Receiver’s disposal.” Oppn., at 10. None of the suggestions obviate the need for use of the AIBL Funds to cover estate expenses in the coming months.

A. THE AIBL INTEREST ALONE IS INSUFFICIENT

First, the FTC states it has no objection to the Receiver using the interest generated by the AIBL Funds. But, the Receiver’s use should not be limited to interest only, and the interest alone is insufficient to continue operations. The Opposition acknowledges that the failure to pay employees and other costs in Belize would “immediately affect the estate and potential consumer recoveries” (Oppn., at 9), but does not offer any answer for what the estate is to do if access to the AIBL Funds is denied.

B. IT WOULD BE INAPPROPRIATE TO REQUIRE A LOAN

Second, the Opposition suggests that the Receiver and/or its counsel can borrow the AIBL Funds and be unequivocally liable for repayment. This proposal does not result in any

³ That is, \$1.7 million in operation and maintenance costs, plus \$2 million, *less* the approximate \$1 million on hand as of June 2023, equals \$2.7 million.

additional cash for the receivership estate; it only serves to inequitably shift the risk of the sale process entirely to the Receiver and his professionals, and also potentially puts the Receiver and his professionals in a conflict position as debtors of the receivership estate. The proposal also is inconsistent with the orders and case law cited above providing for reasonable compensation.

C. THE RECEIVER HAS CONCERNS WITH CHARGING CONSUMERS

Third, the Opposition proposes to charge consumers who elect Option 1 to purchase a lot in the upcoming Survey \$500 per month, with \$3,000 prepaid at closing. This proposed fee was not included in the June 2023 Redress Order and consumers have not been provided with notice of it. Setting these procedural considerations aside, requiring these payments from consumers who may not receive the benefit of their purchase for many months (or potentially even years) when factoring in, among other things, the length of the contract closing process in Belize and the uncertainty of when (or if) a successor developer(s) will be identified, raises significant equitable concerns. Furthermore, it is unclear whether this proposal would result in a net benefit to the estate considering, for example, implementation and monitoring costs.⁴ Even if such a fee were imposed on consumers electing Option 1, the Receiver would still require authorization to access the AIBL Funds as it is not apparent how much revenue, if any, this could generate for the estate or when any such revenue would be received.

VII. THE RECEIVER HAS WORKED SUCCESSFULLY TO CUT COSTS

Finally, the Opposition states the FTC has been “working to assist” the Receiver to save money but mischaracterizes the Receiver as unreceptive. Oppn., at 12. As the Receiver has expressed to the FTC, he is open to collaborating with the FTC on realistic, cost-effective and practical approaches. The proposal made by the FTC, in this instance, raised questions.

⁴ The Receiver inquired about the FTC’s cost-benefit analysis and details of the proposal in August, but has not yet received the requested analysis.

As cited above, the FTC holds certain settlement money from Rod Kazazi (Doc. 789) in excess of \$250,000 that, unlike the AIBL Funds, are not receivership assets held by the estate. The FTC recently told the Receiver that it wanted to use those funds to hire an outside contractor to administer the survey required by the June 2023 Redress Order. The Receiver questioned the cost-effectiveness of the proposal, particularly considering that the Receiver is already well-positioned to administer the survey, and accounting for inefficient or redundant costs associated with vetting, orienting and integrating external service providers. The FTC responded that “cost considerations there are not really a need or concern for the Receiver” because “it is not the Receiver’s assets that will be used” and “even if the contractor is more expensive, it would benefit the estate because this won’t cost estate resources.”

Since money held by the FTC should go to consumer redress, the survey should proceed in the most cost-effective way possible so as to maximize the aggregate pool of money ultimately available for redress payments. Money is fungible and should, therefore, be used in the most efficient way possible, whether held by the FTC or the Receiver. There is no legitimate distinction between the use of settlement funds held by the FTC to fund expenses, to which the FTC agrees, and the use of the AIBL Funds to fund expenses, to which the FTC objects.

VIII. CONCLUSION

For all of the reasons set forth herein, in the supporting declarations, and the motions, the Receiver respectfully requests that the Court grant the Fee Motion and the AIBL Motion.

Dated: September 14, 2023

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UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
SOUTHERN DIVISION

In re SANCTUARY BELIZE LITIGATION

No: 18-cv-3309-PJM

DECLARATION OF MARC-PHILIP FERZAN IN SUPPORT OF REPLY IN SUPPORT OF RECEIVER’S (I) MOTION FOR ORDER APPROVING AND AUTHORIZING PAYMENT OF RECEIVER’S AND PROFESSIONALS’ FEES AND COSTS FROM FEBRUARY 1, 2023 THROUGH JUNE 30, 2023 (DOC. 1456); AND (II) MOTION FOR ORDER DETERMINING THAT FUNDS TURNED OVER BY ATLANTIC INTERNATIONAL BANK LIMITED MAY BE USED BY RECEIVER FOR ALL RECEIVERSHIP PURPOSES (DOC. 1457)

I, Marc-Philip Ferzan, declare:

1. I am a Senior Advisor with Ankura Consulting Group, LLC (“Ankura”) and serve as the Court-appointed successor Receiver (“Receiver”) in this action. My colleagues at Ankura assigned to support the receivership and I are collectively referred to in this declaration as the “Receivership Team.” I was appointed successor receiver on October 26, 2021 to replace Robb Evans & Associates LLC. As Receiver, I am one of the members of the Receivership Team primarily responsible for the supervision, management and administration of the receivership estate. I have personal knowledge of the matters set forth in this declaration, or I have gained knowledge of the matters set forth in this declaration through other members of the Receivership Team, or through my review of various books, documents, records and Court files pertaining to the receivership, as well as documents described in this declaration. Terms used but not defined herein are as defined in the Receiver’s (I) Motion for Order Approving and Authorizing Payment of Receiver’s and Professionals’ Fees and Costs from February 1, 2023 through June 20, 2023

(Doc. 1456); and (II) Motion for Order Determining that Funds Turned Over by Atlantic International Bank Limited May be Used by Receiver for All Receivership Purposes (Doc. 1457).

2. While the Receiver understands and shares the FTC's perspective that receivership estate assets should be preserved, the FTC has not presented feasible solutions to support the final steps of redress administration and the ongoing Court-ordered responsibilities in connection with the care of the Belize land assets as the Receivership Team continues to move towards the most accelerated wind down of the estate possible. The inherent complexities and unavoidable delays are unfortunate realities that this receivership has confronted (and adapted to in order to implement efficiencies and derive tangible cost savings).

I. APPOINTMENT OF SUCCESSOR RECEIVER

3. Following the unfortunate passing of the original leaders of the Robb Evans & Associates ("REA") Receivership Team, the FTC contacted me – knowing I had previously worked with the FTC on other complex matters – and shared that the FTC was confronted with a challenging situation to find a successor Receiver and supporting team of professionals who could step into this particularly complicated situation. The FTC urged me to submit a proposal to serve in the role of successor Receiver. Initially – because the approved hourly billing rates of REA were revealed to be half of those of the successor Receivership Team's existing commercial rates – I indicated that it would not be possible to pursue the matter. In response, the FTC asked me to reconsider – once again highlighting the unique challenges the FTC was confronting. Recognizing the critical importance of this matter to the FTC and the public, I agreed to seek approval from Ankura leadership to match REA's rate structure, with a one-time 5% rate increase beginning January 1, 2022, and submit a proposal for the FTC's consideration. Following interviews, the FTC ultimately selected me as its successor Receiver candidate for

Court approval and, on October 26, 2021, the Court appointed me to that role. Consistent with the receivership orders, at no time did the FTC indicate that it would ever seek to defer payment of or seek a holdback of any portion of the Receivership Team's allowed fees and costs during the pendency of the receivership. Ankura would not have accepted the engagement in such event, particularly given our agreement to bill at deep discounts. The Receivership Team and I immediately began efforts to get up-to-speed, understand the full scope and responsibilities of the receivership, and transition the matter from REA.

4. The significant cost drivers to this point in the receivership have been grounded in: (a) the ongoing operations and maintenance responsibilities across the Belize development areas to maintain assets and provide for the health and safety of local residents; and (b) the work that was done to realize the requirements of the prescriptive Claim Application process (and more broadly enable anticipated consumer redress next steps) pursuant to the requirements of the Redress Plan, the August 2022 Redress Order and the June 2023 Redress Order. Meeting the technical and definitional requirements of the Redress Plan was a costly endeavor – hampered by the chaotic state of the defendants' records that dated back more than a decade earlier, and necessitated by the Receivership Team's efforts to pre-populate more than 1,700 claim applications for over 2,800 claimants, develop consumer education materials, and establish various forms of customer support resources in furtherance of seeking 100% participation of all eligible consumers in accordance with FTC guidance.

5. As arduous as the implementation of the Claims Program requirements was, participation was robust across the identified population of individuals, companies, trusts, and other entities, and eligibility notification disputes regarding the Receiver's timely determinations were minimal. Moreover, as a result of the front-loaded claim application approach in

anticipation of the next steps of consumer redress, the Receivership Team collected the necessary range of data from consumers to facilitate future administration initiatives and also support the Belize land marketing and sales bidding process. The Receiver summarized administration highlights for the Court in a March 2023 progress report (“March 2023 Report”) in accordance with the requirements of the August 2022 Redress Order. Notably, the Receiver also made recommendations in the March 2023 Report that were intended to substantially streamline future administration costs resulting from the FTC’s original proposed Redress Plan, while enabling informed consumer choice and better addressing the inherent risks associated with the marketing and sale of the Belize land assets. Following an April 20, 2023 status conference, the Court ultimately empowered the Receiver’s recommendations, and related process steps were set forth in a June 2023 Redress Order concerning the next phase of consumer redress.

6. The Receiver has been and continues to be transparent with the stakeholders and the Court in this matter, and among other things, has consistently provided detailed quarterly reports summarizing the activities of the Receivership Team to meet the challenges and responsibilities of the estate (the one exception to the quarterly reporting timeline was to accommodate the submission of the March 2023 Report that was directed as part of the Court’s August 2022 Redress Order -- the most recent Receiver Report for the period ending June 30, 2023 re-established the quarterly reporting cycle). Moreover, the Receivership Team routinely shares material updates with the consumer population and maintains open lines of communication with individual consumers and other interested stakeholders to address questions and other relevant issues. The Receiver additionally circulates the estate’s bank statements (as appropriately redacted) to numerous recipients, including the FTC.

II. ONGOING OPERATION AND MAINTENANCE OF BELIZE DEVELOPMENT AREAS AND HEALTH AND SAFETY OF RESIDENTS

7. Due, in large part, to the ongoing legal challenges of defendants (including those associated with the Supreme Court's decision in *AMG Capital Management, LLC v. Federal Trade Commission*), this November will represent the fifth anniversary of the receivership. As set forth in the Court's prior orders, during the pendency of the receivership the Receiver has been required to, among other things, conserve, hold, manage, and prevent the loss of receivership assets. The local expenses associated with maintaining the Belize real estate assets in accordance with these Court-ordered requirements have been significant – exceeding \$9.5 million from the inception of the receivership through June 2023.

8. Recognizing the impact of these recurring expenses on the estate, the Receiver has taken a number of steps to reduce the financial burden. As described in prior reports, shortly after being appointed, the Receiver substantially reduced staffing in Belize by approximately 20%, reduced costly road maintenance expenses, limited the use of external local contractors, and tightened financial controls and procurement approval protocols, among other measures. Notably, the staffing reductions have resulted in cost savings of approximately \$335,000 on an annualized basis, and have proven to be sustainable.

9. Nevertheless, despite the Receiver's diligent efforts to limit expenses, ongoing monthly and periodic costs for local operations and maintenance remain substantial. From February 2023 through June 2023, associated costs averaged nearly \$143,000 per month, with payroll expenses exceeding \$70,000 per month to maintain a staff of approximately 100 employees that tend to and secure more than 18,000 acres and facilities in the Sanctuary Belize and Kanantik development areas. On an annualized basis, these costs amount to \$1.716 million (and do not account for emergency events and/or other periodic and unforeseen circumstances).

Although the Receiver continuously seeks to identify other opportunities for savings, further substantive staffing cuts are not contemplated by virtue of: (a) the current Court-ordered mandates; (b) health and safety considerations relative to full time and part time Sanctuary Belize residents; and (c) anticipated marketing-related initiatives as to the Belize land assets that are expected to be for sale in the near term.

10. Moreover, although the Receivership Team has already completed costly foundational consumer claim eligibility, lot and contractual reconciliation activities, and data gathering efforts to support financial calculations called for in the Redress Plan (including those associated with determining the foundational “Seller Deceptive Price” for each eligible lot), a number of critically important remaining consumer redress and land marketing initiatives remain, which are central to enabling further redress for victims after the years-long wait due to the protracted legal proceedings.

III. THE REDRESS PLAN AND CLAIM APPLICATION PROCESS

11. As the FTC recognized in its Motion in Support of the Redress Plan, the Plan is “complex” and “defendants’ scheme left the FTC and Receiver with an extraordinarily complicated and messy situation involving more than \$100 million in losses, substantial undeveloped real estate in Belize, incomplete records, and hundreds of understandably desperate lot purchasers -- many of whom have uncertain (and sometimes conflicting) claims and rights.” These sentiments were reaffirmed by the FTC more recently during an in-person meeting with the Receiver in January 2023, in which FTC leadership acknowledged that the Redress Plan is one of the most complex ever developed in the FTC’s history. Presumably in light of these realities, the FTC stated in its Redress Plan motion that while “[t]he FTC strives to ensure distributions as quickly as possible; . . . in this complex matter, it is also necessary to minimize the risk that the Receiver will not be compensated for important work over a potentially

significant period” and, as a result, the FTC included in the proposed Redress Plan a provision that “permits the Receiver to defer distributing 10% of receivership collections until the receivership closes.”

12. Approximately ten months after the successor Receiver’s appointment, the Court authorized the first 150 days of the Redress Plan (as described in Section II - Section III.A therein) by order dated August 18, 2022. As foreshadowed by the FTC, the Claim Application process was challenging, time-consuming and costly to administer.

13. In accordance with the terms of the Redress Plan, the Receivership Team undertook a series of steps to implement the activities required by the Court’s August 2022 Redress Order, including: (a) identifying consumers and validating historical contract and payment information; (b) distributing notices and hosting live information sessions; (c) launching a Claim Application Portal; (d) creating and distributing online Claim Applications with pre-populated consumer information; and (e) implementing Claim Application review protocols to meet the requirements of the Redress Plan. Although the Receiver leveraged available work product where possible in launching the Claim Application process, the prior receiver had not yet undertaken the preparatory steps to administer the Redress Plan in compliance with its detailed requirements or to develop the necessary infrastructure to accomplish the online Claim Application process and facilitate the consumer support envisioned by the Plan. These and other efforts (described below) were designed to satisfy the express mandates of the Redress Plan and to be responsive to the FTC’s guidance that the Receivership Team strive for 100% participation of eligible consumers.

14. As anticipated in a fraud scheme of this magnitude, the Receivership Team encountered many consumers who needed assistance in understanding the complex application

requirements derived from the Redress Plan, as well as how to use the technology platform to complete their online Claim Applications. In addition, a number of consumers faced difficulty obtaining and providing historical documentation associated with underlying land transactions, corresponding payments, and related contractual terms. To assist consumers, the Receivership Team conducted its own analysis of historical corporate and transactional records that were prepared or collected by the defendants and maintained in disparate electronic and physical files as the fraud scheme was ongoing. These efforts included conducting targeted searches across more than 50 gigabytes of electronic data of defendant company records, which were comprised of various transaction documents, subdivision maps, lot records and other materials, as well as email communications with consumers. The Receivership Team frequently encountered missing, inaccurate, or incomplete defendant company land, banking, payment, and transactional records that created reconciliation challenges.

15. In addition, the Receivership Team processed a significant number of Claim Applications involving particularly complicated scenarios, often requiring forensic information-gathering from various sources, including, for example, claims involving reconciliation of asserted ownership changes for lots with multiple owners, complex ownership structures (including those involving separate legal business entities, retirement accounts, and trusts), and divorces or deaths of named owners and co-owners. The Receivership Team was also required to conduct fact-finding to determine whether certain consumers were ineligible under the terms of the Redress Plan by virtue of having earned compensation from the defendants for help in selling lots and/or having made a representation that the Court found to be unlawful.

16. To further assist consumers through the Claim Application process, the Receivership Team designed and implemented a range of layered claimant support resources in

accordance with Redress Plan requirements. Written informational resources posted on the Receiver's website included guidance in the form of Frequently Asked Questions, a Claim Application Portal User Guide, and tailored instructions regarding various complex claim scenarios to enable consumers to follow the instructions and proceed on their own. In instances where more individualized support was necessary, communication channels were established so that consumers could obtain direct assistance from personnel knowledgeable of the details of Redress Plan definitions and guidelines. In these instances, consumers were able to contact the Receivership Team by email – through the Receiver's dedicated email address and "Contact Us" page – as well as by phone through the Claim Application Helpline, which was staffed by live customer support agents. From October 2022 through February 2023, the Receivership Team coordinated more than 30,000 incoming and outbound email communications and in excess of 3,000 phone communications.

17. As a result of these coordinated efforts, robust participation was made possible for victims, who were able to successfully submit Claim Applications and obtain lot-specific eligibility determinations with unique amount calculations. By the February 9, 2023 notification deadline, more than 2,840 eligibility notices were distributed to claimants and approximately 97% of applications were determined to be eligible by the Receivership Team. Only six consumers challenged their eligibility determinations through the filing of a Dispute Notice under the Redress Plan procedures. The Receivership Team denied five Dispute Notices on the basis that the eligibility determinations were consistent with the terms of the Redress Plan, and granted one Dispute Notice on the basis that the consumer provided additional information that was not previously included as part of the Claim Application process.

18. As noted above, as a result of the front-loaded approach to anticipate the next steps of consumer redress, the Receivership Team designed the Claim Application to collect the necessary data from consumers that would facilitate future administration initiatives and also support the Belize land marketing and sales bidding process. Through the Redress Plan-tailored applications, the Receivership Team collected details enabling the Receivership Team to: (a) reconcile lot records; (b) support lot election choices and pricing in accordance with the Redress Plan's "Seller Deceptive Price" calculations; and (c) facilitate due diligence for marketing and sale of the Belize land assets. Furthermore, the process was implemented so that consumers would only need to be subjected to one application process that would support as many of the steps of anticipated redress relief as possible.

IV. ADDITIONAL RECEIVERSHIP OBLIGATIONS

19. Beyond the responsibilities of overseeing the operations and maintenance of the real estate assets, and developing and implementing the Claim Application process, the Receivership Team has a multitude of other ongoing, daily responsibilities, which can often be challenging and time-intensive. Examples, which have been documented in the periodic reports of the Receiver, include addressing legal proceedings in multiple jurisdictions (including United States federal and state courts, and the Belize Supreme Court), validating Belize land records and tax obligations in multiple jurisdictions, and facilitating various forms of communications to keep the Court, the consumer population, and other stakeholders informed.

20. The Receivership Team has consistently met these and other requirements associated with managing the receivership estate, and has abided by all Court-ordered timetables. In recognition of the significant expenses associated with adhering to the requirements of the Court's orders and addressing ongoing challenges across multiple jurisdictions, the Receivership Team has consistently advocated for and effectively implemented cost-cutting measures,

including the following: (a) accelerating and streamlining Redress Plan requirements; (b) reducing staffing in Belize; (c) implementing controls to limit local management's procurement authority and evaluate required spending to optimize decision-making; (d) limiting the use of external contractors in favor of existing Belize staff; (e) utilizing on-site raw materials (including from the Sanctuary Belize quarry) to facilitate maintenance of facilities and roadways; and (f) seeking Court approval to reduce the required number of in-person Consumer Committee meetings, while keeping members (and the broader consumer population) appropriately informed.

21. The Receivership Team has also engaged with its banking vendor to take advantage of higher interest rates for liquid assets, while not impeding access to funds for anticipated redress initiatives.

22. As chronicled in the Receiver's periodic reports, although the expenses associated with carrying out the Receiver's duties have been substantial, they have been commensurate with the scope of the Receivership Team's vast responsibilities in this complex matter.

V. THE RECEIVER'S EFFORT TO STREAMLINE THE REDRESS PROGRAM

23. Even before the launch of the Claim Application program in October 2022, the Receivership Team sought the FTC's perspective in connection with making targeted changes to the proposed Redress Plan based on its experience, institutional knowledge, engagement with the consumer population, and concerns over administration costs and timelines.

24. Between November of 2022 and February of 2023, the Receiver and counsel engaged with the FTC on a frequent basis – including at a meeting that I attended in January 2023 at the FTC's offices in Washington, DC – to highlight relevant considerations, discuss the Receiver's concerns with the approach to redress, and seek guidance on whether the FTC would consider supporting Receiver recommendations for changes in approach that could be

constructed within the framework and spirit of the Redress Plan, while substantially simplifying administration and reducing costs, providing consumers with realistic and practical choices, and prioritizing efforts to market and sell the Belize land assets. As part of the ongoing engagement with the FTC, the Receiver provided categorical estimates of future administration requirements as envisioned in the Redress Plan and also outlined specific opportunities for modifications. Although the FTC initially expressed uncertainty about whether it would be feasible to make any changes to the Redress Plan, particularly in light of the extensive procedural history in its development and consideration thereof, the Receivership Team continued to urge the FTC's support of its proposals on the bases that they would better achieve the goals of the receivership and substantially streamline administration costs.

25. Following the engagement with the FTC through February 2023, the FTC indicated that it would not oppose the Receiver's recommendations. Subsequently, after the submission of the Receiver's March 2023 Report, which outlined the recommendations, as well as an April 20, 2023 status conference convened with the parties to facilitate the Court's consideration of the recommendations and next steps, the Court directed counsel for the Receiver to submit a proposed form of order incorporating the next phase of consumer redress in accordance with the Receiver's recommendations. In its May 5, 2023 Response in Support of the Receiver's Proposed Order, the FTC advised the Court that, with relatively minor revisions – which the Receiver subsequently incorporated – the FTC “fully support[ed] the Receiver's Proposed Order and urge[d] the Court to enter it as soon as possible.”

VI. RECEIVERSHIP ACCOMPLISHMENTS

26. At this point in time, among other things, the Receivership has completed the administration of the Claim Application program in accordance with the mandates of the approved components of the Redress Plan under the Court's August 2022 Redress Order, and

compiled the necessary data to make eligibility determinations and accomplish the next steps of consumer redress, as well as to facilitate the marketing and sale of the Belize land assets.

Moreover, under the Court's June 2023 Redress Order, the Receiver has made disbursements in connection with the \$10 million allocation for redress payments, completed the selection process and engaged an international real estate broker to assist in the marketing and sales efforts in connection with the Belize land assets, and completed the request for information (RFI) process with representative investors and developers to help shape an effective request for proposal (RFP) bidding process.

VII. REMAINING WORK FOR THE RECEIVERSHIP TEAM

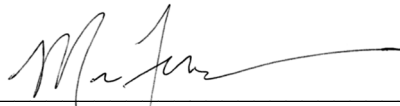
27. While the Receiver will continue to have ordinary operations and maintenance oversight responsibilities for the Belize land assets, as noted above much of the foundational work to inform the next phase of consumer redress pursuant to the June 2023 Redress Order has been completed. The significant steps that remain under the Order include: (a) administering the consumer survey; (b) accommodating and consummating consumer lot choices; (c) undertaking marketing and sales efforts in connection with the Belize land assets; and (d) disbursing subsequent redress payments to consumers following the marketing and sales process.

28. In order to meet the ongoing obligations and anticipated initiatives of the receivership estate, it is anticipated that use of the AIBL Funds will be necessary by the fourth quarter of 2023 so that the Receiver may to continue to discharge the orders of the Court, including implementing the next phase of consumer redress. Without access to the AIBL Funds, the estate will be unable to continue to operate.

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 14, 2023 in Haverford, Pennsylvania.



Marc-Philip Ferzan

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
SOUTHERN DIVISION

In re SANCTUARY BELIZE LITIGATION

No: 18-cv-3309-PJM

DECLARATION OF GARY OWEN CARIS IN SUPPORT OF REPLY IN SUPPORT OF RECEIVER’S (I) MOTION FOR ORDER APPROVING AND AUTHORIZING PAYMENT OF RECEIVER’S AND PROFESSIONALS’ FEES AND COSTS FROM FEBRUARY 1, 2023 THROUGH JUNE 30, 2023 (DOC. 1456); AND (II) MOTION FOR ORDER DETERMINING THAT FUNDS TURNED OVER BY ATLANTIC INTERNATIONAL BANK LIMITED MAY BE USED BY RECEIVER FOR ALL RECEIVERSHIP PURPOSES (DOC. 1457)

I, Gary Owen Caris, declare:

1. I am an attorney at law duly licensed to practice before all courts of the State of California and admitted *pro hac vice* before this Court in this matter. Since the inception of the receivership estate, I have been the attorney at Barnes & Thornburg LLP (“Barnes & Thornburg”) primarily responsible for representing the initial receiver, Robb Evans & Associates LLC (“REA”) on this matter and its lead counsel and subsequently, representing the successor receiver Marc-Philip Ferzan of Ankura Consulting Group, LLC (“Receiver”), although as of July 1, 2023 I have begun transitioning principal handling of this matter to my partner Allison Rego. I have personal knowledge of the matters set forth in this declaration and if I were called upon to testify as to these matters I could and would competently testify thereto.

2. Until now, at no time has the FTC requested a deferral in the consideration of receivership fees and costs or in the payment of allowed fees and costs or any type of holdback in payment of fees and costs, whether at the beginning of this receivership or at any time

thereafter, and whether for the predecessor receiver, REA, the current Receiver, or my law firm in this receivership matter. Furthermore, the FTC never requested any such deferral or holdback as to the receiver or its counsel in connection with the related prior receivership in the *FTC v. AmeriDebt et al.* matter, whether at the beginning of that receivership or at any point thereafter, which lasted over eight years, from April 2005 through December 2013.

3. I have been lead counsel for receivers in over 25 FTC enforcement actions spanning over 23 years, in Federal courts throughout the United States, including Maryland, California, Illinois, Nevada, Arizona, Utah, Texas and Florida. To the best of my recollection, the FTC never requested any type of deferral or holdback on fees and costs for the receiver or its counsel in any of these FTC cases, whether at the outset of the engagements or at any point during the pendency of the receiverships. Based on the language in the original appointment order (TRO) and all subsequent orders issued by the Court in the instant matter, and based on the fact the FTC never requested any type of deferral or holdback in any case I worked on in over 23 years, including the prior related receivership in the *AmeriDebt* case, my law firm and I had no expectation that a deferral or holdback would be sought by the FTC at any point in this case.

4. It is not reasonable to impose a deferral or holdback where Barnes & Thornburg agreed to handle what I knew would be a complex and long-running receivership at heavily discounted hourly rates, which rates have not increased throughout the term of the engagement and which rates we have agreed not to increase throughout the term of this engagement. My hourly rate in this matter is \$598 but my 2023 standard hourly rate is \$905, a discount of 33.9%. My partner, Allison Rego, has a 2023 standard hourly of \$750 but her hourly rate in this matter is \$520, a discount of 30.7%. I believe that it is unreasonable for professionals to wait for payment

for months or years and risk not being paid at all despite their agreement to deeply discount and freeze their standard rates throughout a long-running receivership matter.

5. The FTC has never objected to fees incurred in connection with preparing any fee motions in the instant receivership before now. Similarly, the FTC never objected to fees incurred in connection with preparing any fee motions in the related *AmeriDebt* receivership.

6. This too is consistent with my experience. To the best of my recollection as to the more than 25 FTC receivership matters that I have handled for receivers spanning over 23 years, throughout the United States, at no point, whether at the outset of an engagement or at any point during the pendency of the receivership, has the FTC ever contended that the receiver or its counsel should not be permitted to be awarded reasonable fees for the preparation of fee motions.

7. In this case, the Defendants have undertaken appellate and other challenges in the wake of the Supreme Court's decision in *AMG Capital Management* that continue to this day. Barnes & Thornburg has not only worked to address these matters, including assisting the FTC to obtain a strong Fourth Circuit opinion affirming in all manner the orders which established and maintained the receivership, but also has advised on numerous issues including compliance with the redress plan and a host of consumer matters, coordinated with Belizean counsel in successfully obtaining various orders in Belize recognizing this Court's receivership orders, obtained Court orders approving the marketing and sale of millions of dollars in real and personal property assets initiated by the original receiver, efficiently pursued litigation on behalf the estate, and participated in numerous hearings as well as out of court conferences with the FTC and others.

8. During the time period relevant to the present Fee Motion, counsel's services included pursuing settlement of litigation that resulted in recovery of \$350,000, advising with

respect to redress recommendations and the order for the next phase of redress implementation, preparing a motion for certain claims determinations and participating in multiple conferences with the FTC.

9. I have more than 43 years' experience as a business and commercial litigator and I also have extensive experience as a bankruptcy attorney representing creditors in Chapter 11 and Chapter 7 cases. For more than 23 years, I have also specialized in representing receivers in federal equity receiverships. I believe the rates and amounts incurred by the Receiver to Barnes & Thornburg for the services rendered during the period covered by the Fee Motion are extremely reasonable and appropriate based on the nature of the services rendered, the quality and amount of services provided, the complexity of the issues involved and other factors under the circumstances.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 14, 2023 at Solvang, California.


GARY OWEN CARIS