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5 RECEIVER  
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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION**  
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11 FEDERAL TRADE COMMISSION,  
12 Plaintiff,  
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14 vs.

15 RINCON MANAGEMENT  
SERVICES, LLC, a California limited  
liability company, et al.,  
16 Defendants.  
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Case No. ED CV 11-01623 VAP (SPx)

**Hon. VIRGINIA A. PHILLIPS**

**NOTICE OF MOTION AND  
MOTION FOR ORDER  
APPROVING AND AWARDED  
ACCOUNTANT FEES AND  
EXPENSES; MEMORANDUM OF  
LAW AND DECLARATIONS OF  
JAMES F. SCHULTZ AND  
RICHARD WEISSMAN IN  
SUPPORT THEREOF**

**HEARING DATE: \*\*\*\*, 2016  
TIME: 2:00 P.M.  
COURTROOM: 2**

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25 **TO THE HONORABLE VIRGINIA A. PHILLIPS, DISTRICT COURT**  
26 **JUDGE, INTERESTED PARTIES AND COUNSEL OF RECORD:**  
27 NOTICE IS HEREBY GIVEN THAT, ON\*\*\*\*, 2016, at 2:00 PM, in  
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1 Courtroom 2, of the above entitled Court, located at 3470 Twelfth Street, Riverside,  
2 CA, the Receiver herein, Richard Weissman ("Receiver"), will move the Court for an  
3 Order approving and awarding the accountant's fees and expenses incurred by the  
4 Receiver's forensic accountant, James F. Schultz, CPA ("Schultz") during period of  
5 October 1, 2014 through February 29, 2016 ("Accountant Fee Term") ("Accountant  
6 Fee Motion").

7 The Accountant Fee Motion is made on the grounds


8 1. Schultz rendered services for the benefit of the Receivership during the  
9 Accountant Fee Term, and incurred fees and expenses in the amount of \$16,650.00,  
10 to complete the Receivership's obligations to file tax returns relating to its  
11 administrative control of the Receivership Assets.

12 2. The Receiver requests the Court to approve and award to Schultz his  
13 fees and expenses, in the sum of \$16,650.00, and to enter an order authorizing the  
14 Receiver's payment thereof.

15 The Accountant Fee Motion is based on this Notice of Motion, the Attached  
16 Memorandum of Points and Authorities, the Declaration of Richard Weissman and  
17 Exhibits submitted in support thereof, the Declaration of James F. Schultz, and the  
18 Receiver's Fifth Report and Fourth Account filed concurrently herewith; and the  
19 pleadings and other orders on file in this action, and upon such further oral and  
20 documentary evidence as may be presented in connection with the hearing on this  
21 Motion.

22 DATED: March 9, 2016

Respectfully submitted,

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25 Richard Weissman  
26 Receiver  
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2 **MEMORANDUM OF POINTS AND AUTHORITIES**

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4 **I. PRELIMINARY STATEMENT**

5 1. Plaintiff Federal Trade Commission ("FTC") filed this action to obtain  
6 preliminary and permanent injunctive relief, and to enjoin and restrain continuing  
7 violations of the Federal Fair Debt Collection Practices Act, 15 U.S.C. §1692, et seq.  
8 ("FDCPA") and Section 5 (a) of the Federal Trade Commission Act, 15 U.S.C.  
9 §45(a) ("FTC Act") (Doc. 1) by the named Defendants, Jason R. Begley ("Begley")  
10 and Wayne W. Lunsford ("Lunsford") (collectively, "the Individual Defendants")  
11 and the named entity defendants ("Original Entity Defendants"), and their successors,  
12 assigns and affiliates conducting any debt collection businesses. The Receiver  
13 initially retained James F. Schultz ("Schultz"), and his firm, Frost, Ruttenberg, and  
14 Rothblatt, P. C., Certified Public Accountants ("FRR") ("Accountants"), to provide  
15 forensic and other accounting services to benefit the Receivership.

16 2. The accounting services rendered individually by Schultz between  
17 October 1, 2014 through February 29, 2016 ("Accountant Fee Term") are described  
18 fully in the Declaration of James F. Schultz, submitted herewith in support of this  
19 Motion and described in his billing statements under Exhibit A.

20 **II. CURRENT ACCOUNTING SERVICES**

21 3. The Receiver, as an agent of the Court conducting any business, is  
22 subject to all Federal, State and local income taxes and the filing of income tax  
23 returns applicable to such a business to the extent it is conducted by an individual or  
24 corporation wholly controlled by the Receiver. (26 USC §6012 (B) (3); 28 USC  
25 §960) The Receiver is also required to file fiduciary income tax returns as a  
26 Qualified Settlement Fund following a Court's designation of the Receivership assets  
27 as a single trust fund for tax purposes. (IRC, Sec. 468(B))

28 4. Schultz incurred fees of \$16,650.00 for the final accounting and tax

1 preparation services rendered to the Receivership during the Accountant Fee Term.  
2 The services described in the Declaration of James F. Schultz, and Exhibit A, support  
3 the fees and expenses requested. The Schultz's Billing Statements for the Accountant  
4 Fee Term have been submitted to FTC counsel for review and they have stated they  
5 do not oppose the Court's approval and award of the petitioned accounting fees.

6 **III. AN ORDER APPROVING AND AWARDING PROFESSIONAL FEES**  
7 **IS PROPER HEREIN.**

8 5. "The Court appointing the receiver has the power to fix the  
9 compensation of such receiver and the compensation of the receiver's attorney or  
10 attorneys." *Drilling & Exploration Corp. v. Webster*, 69 F.2d 416, 418 (9<sup>th</sup> Cir.  
11 1934). The Receiver and professionals assisting the Receiver will be "reasonably,  
12 but not excessively" compensated for their efforts to benefit the receivership estate.  
13 *Alpha Telcom*, 03:01-CV-1283-PA, 2013 WL 840065 at \*\* 17. The Court should  
14 consider the "economy of administration, the burden that the estate may be able to  
15 bear, the amount of time required, although not necessarily expended, and the overall  
16 value of the services provided to the estate." *In re Imperial "400" Nat., Inc.*, 432  
17 F.2d 232, 238 (3<sup>rd</sup> Cir. 1970).

18 In this case, the services provided by Schultz were required to permit  
19 the Receiver to comply with his obligations under the Internal Revenue Code and  
20 California Franchise Tax Law, to prepare and file tax returns for all the remaining  
21 Receivership Entities for the tax years 2011 through 2013, as applicable, and for the  
22 Receivership's administration as a consolidated fund for the tax years 2014 and 2015.  
23 The Receiver submits Schultz's fees are fair and reasonable and have substantially  
24 benefitted the Receivership.

25 **IV. CONCLUSION**

26 The facts and the evidence submitted under the Declaration of James F.  
27 Schultz support this Motion. The Receiver requests the Court to enter its Order  
28 approving and awarding Schultz's fees and expenses, in the sum of \$16,650.00, and

1 authorizing the Receiver to pay such award from Receivership funds.

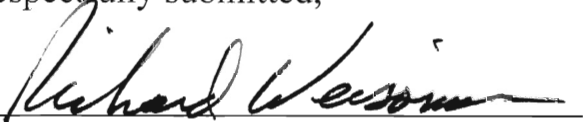
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3 DATED: March 9, 2016

Respectfully submitted,

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Richard Weissman

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1 **DECLARATION OF RICHARD WEISSMAN**

2 I, Richard Weissman, declare:

3 1. I am over the age of 18 years and competent to testify to the  
4 following facts of my own personal first-hand knowledge, except as to those  
5 facts of which I am informed by third parties, and as to those facts, I believe  
6 them to be true. This declaration is filed in support of the Court's approval  
7 and award fees of the Receiver's engaged accountant, James F. Schultz  
8 ("Schultz"), incurred during the interim accounting term of October 1, 2014  
9 through February 29, 2016, relating to accounting and tax preparation  
10 services reported and described in the Receiver's Fifth Report and Fourth  
11 Account ("Fifth Report"), filed concurrently with and in support of the  
12 Receiver's Notice of Motion and Motion for Order: (1) Approving  
13 Receiver's Fifth Report And Fourth Account; (2) Approving Closing  
14 Agreement With Internal Revenue Service; (3) Approving Settlement  
15 Agreement With The California Franchise Tax Board; (4) Ratifying And  
16 Confirming Sale Of Silver And Gold Coins; (5) Ratifying The Filing Of  
17 Qualified Settlement Funds Income Tax Returns (2014-2015) And Related  
18 Entities' Tax Returns; (6) Authorizing Destruction Of Computers And  
19 Records Of Defendants And Others; (7) Authorizing The Disbursement Of  
20 All Net Funds To Plaintiff In Trust For Consumer Victims; (8) Terminating  
21 The Receivership; (9) Discharging And Exonerating Receiver And Sureties  
22 From Liability; and, (10) For Further Instructions To The Receiver ("Report  
23 Motion").

24 2. This action was brought on October 11, 2011 by Plaintiff, the Federal  
25 Trade Commission ("FTC"), against Defendants Jason R. Begley ("Begley") and  
26 Wayne W. Lunsford ("Lunsford") (collectively, "the Individual Defendants") and  
27 numerous entities ("Receivership Entities") named in the attached Memorandum of  
28 Points and Authorities in support of this Motion.

1           3.     The Receiver's Second Report and First Account were filed on or about  
2 May 7, 2012 ("Second Report") (Doc. 109-1); the Receiver's Third Report and  
3 Second Account were filed on December 10, 2013 ("Third Report") (Doc. 253-1);  
4 and the Fourth Report and Third Account were filed on March 23, 2015 (Doc. 331,  
5 332) (Fourth Report). Each Report describes Schultz's accounting services and  
6 actions. The Court has previously approved accounting and tax preparation fees of  
7 \$28,291.25 (Doc. 144) (Frost Ruttenberg & Rothblatt, PC. (FFR and Schultz);  
8 \$44,410.02 (FFR and Schultz) (Doc. 272); and apportioned fees and expenses of  
9 \$9,260.00 (FFR); and the individual fees of Schultz, in the amount of \$10,620 (Doc.  
10 352).

11           4.     This Motion seeks an order approving and awarding fees to Schultz for  
12 his services rendered during the period of October 1, 2014 through February 29,  
13 2016 ("Accountant Fee Term"), as described in Schultz's declaration and his billing  
14 statements, marked as Exhibit A, and made a part hereof.

15           5.     I requested Mr. Schultz to complete the fiduciary accounting relating to  
16 several Receivership Entities and to prepare fiduciary income tax returns on behalf of  
17 the Receivership Entities, as required by the Internal Revenue Code and California  
18 Revenue and Taxation Code, to meet and discharge the Receiver's legal obligations  
19 to prepare and file such income tax returns. The nature and scope of the services  
20 rendered by Schultz are set forth in his declaration herewith. Schultz rendered  
21 accounting and income tax preparation services for the benefit of the Receivership  
22 during the period of October 1, 2014 through February 29, 2016. He prepared, and I  
23 (as Receiver) have filed, approximately twenty-four (24) federal and California  
24 informational income tax returns for pre-receivership business operations, and the  
25 Receiver's subsequent full control of the Receivership Entities, including four (4)  
26 Qualified Settlement Fund Income Tax Returns, both federal and state. Tax returns  
27 were filed for the limited tax period of January 1, 2011 to October 11, 2011, relating  
28 to two (2) entities, and the short tax year of October 15 to December 31, 2011; and

1 for calendar tax years 2012 and 2013 relating to three (3) entities the Receiver  
2 controlled during these periods. Schultz prepared the Receiver's fiduciary  
3 consolidated Qualified Settlement Fund Income Tax Returns for 2014 and 2015,  
4 during which all of the controlled assets were consolidated into one trust fund,  
5 pursuant to the Court's 2014 Order and Internal Revenue Code, Sec. 468(B) (Doc.  
6 272).

7         6. Schultz's fees for the Accountant Fee Term are in an amount of \$16,650.  
8 I have reviewed the statements and approved the scope of work performed and the  
9 fees charged. I believe the fees and expenses are fair and reasonable for the complex  
10 tax issues involved and in light of the tax and accounting fees savings he  
11 accomplished for the benefit of the Receivership. I have submitted Schultz's billing  
12 statements (Exhibit A) to FTC counsel and have been informed there is no FTC  
13 objection to the fees and expenses requested.

14         I declare under penalty of perjury under the laws of the United States of  
15 America and the State of California that the foregoing is true and correct based upon  
16 my own personal firsthand knowledge, except as to those facts about which I am  
17 informed by third parties, and as to those facts, I believe them to be true.

18         Executed on March 9, 2016, at Los Angeles, California.

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21 Richard Weissman  
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1 **DECLARATION OF JAMES SCHULTZ**

2 I, James F. Schultz, declare:

3 1. I am over the age of eighteen years and competent to testify to the  
4 following facts of my own personal first-hand knowledge, except as to those facts of  
5 about which I have been informed by third persons, which I believe to be true and  
6 correct. I am a certified public accountant, licensed to practice in the states of Illinois  
7 and California, accredited in financial forensic analysis by the National Association  
8 of Certified Valuation Analysts (NAVCA) and the American Institute of Certified  
9 Public Accountants (AICPA), accredited as a Certified Valuation Analyst by  
10 NAVCA, and I am currently employed as a Principal by Cendrowski Advisors. I was  
11 engaged in 2011 by the court appointed Receiver, Richard Weissman, to provide  
12 accounting services necessary and appropriate to forensically analyze and reconstruct  
13 the business records of the named defendants and the overall Receivership entities  
14 identified in this action, and to provide the accounting services necessary and  
15 appropriate to prepare informational income tax returns for each of the Receivership  
16 Entities controlled by the Receiver, and to undertake such other accounting work as  
17 would be financially beneficial to the Receivership.

18 2. This declaration is submitted in support of my fee application for the  
19 financial and tax preparation services rendered during the period of October 1, 2014  
20 through February 29, 2016 ("Accountant Fee Term"). True and correct copies of my  
21 billing statements for the Accountant Fee Term are submitted herewith, collectively  
22 marked as Exhibit A, and made a part hereof. I previously rendered accounting  
23 services to the Receivership during the periods of October 13, 2011 through March  
24 31, 2012, November 15, 2012 through September 30, 2013, and October 1, 2013  
25 through September 30, 2014.

26 3. The current services rendered include the preparation of twenty-four  
27 (24) federal and California income tax returns for the limited tax periods of January  
28 1, 2011 to October 11, 2011 relating to two (2) entities not previously addressed

1 (Rockwell Management Services, LLC and Debt Technologies Solutions, LLC), and  
2 relating to three (3) entities for the short tax period of October 15 to December 31,  
3 2011, namely, Heavy Hitters Investments, LLC ("HHI"), Portfolio Investment  
4 Financial, Inc. ("PIF"), and Portfolio Investment Group, LP ("PIG"). Federal and  
5 California income tax returns for HHI, PIF, and PIG also have been prepared for  
6 calendar tax years 2012 and 2013, resulting from the Receiver's control of these  
7 entities during these two (2) tax periods, and to reflect the Receivership's closure of  
8 their separate operations for federal income tax purposes. In light of the Closing  
9 Agreement with the Internal Revenue Service (IRS) and the Settlement Agreement  
10 with the California Franchise Tax Board (FTB) achieved by the Receiver  
11 subordinating the taxing agencies respective priority tax collection rights against the  
12 assets of the Receivership, no further entity income tax returns are required for the  
13 subject Receivership Entities. The federal income tax returns have been filed as final  
14 returns for the named entities to reflect the termination of each entity's business  
15 activities. California tax returns have not been filed as "final" because the respective  
16 entities have not been formally dissolved and wound up according to state law. The  
17 Receiver informs me formal dissolutions of each entity will not be undertaken by the  
18 Receiver.

19 4. Pursuant to the Court's Order entered in 2014, designating the remaining  
20 Receivership Assets as a Qualified Settlement Fund (QSF), pursuant to Internal  
21 Revenue Code, Sec. 468(B), the Receiver is holding such assets in constructive trust  
22 for the consumer victims in this case. In light of the QSF designation, the  
23 Receivership Assets constitute a single fund for income tax purposes for the tax years  
24 2014 through 2015. Federal and California QSF tax returns have been prepared for  
25 the years 2014 and 2015. There is no taxable income attributable to the Receiver's  
26 administrative operation of the QSF and Receivership Entities and therefore no taxes  
27 are due by the QSF for any tax year. The result is a significant capital retention for  
28 the benefit of the consumer victims. The 2015 returns have been prepared as "final

1 returns" in light of the Court's projected complete distribution of the QSF to the FTC  
2 in 2016.

3 5. The services rendered during the Accountant Fee Term include but are  
4 not limited to strategy discussions with the Receiver and my analyses and research  
5 regarding the most efficient and cost-effective manner to report and conclude the  
6 operational fiduciary accountings of the subject remaining entities and preparing  
7 their federal and state income tax returns. The QSF returns enable the Court to effect  
8 a full distribution of the Receivership Assets for the benefit of the affected  
9 consumers.

10 6. The Receiver has filed three (3) previous fee petitions for professional  
11 accounting services, aggregating to \$92,581.27 through September 30, 2014, which  
12 were approved by the Court in its orders entered on June 18, 2012 (Doc. 144)  
13 (\$28,291.25 - Frost Ruttenberg & Rothblatt, PC (FFR), and Schultz); on January 23,  
14 2014 (Doc. 272) (\$44, 410.02 - FFR and Schultz), and on May 27, 2015 (Doc. 354)  
15 (\$9,259.20 - FFR; \$10,620 - Schultz).

16 7. The fees charged for the described services for preparation of the  
17 subject twenty-four (24) income tax returns during the current Accountant Fee Term  
18 are in the sum of \$16,650.00. The aggregate of accounting and tax preparation fees  
19 the Court would be awarding is the sum of \$109,231.27. There should not be any  
20 further accounting services required by the Receivership, in light of the Receiver's  
21 tax collection enforcement subordination and settlement agreements with the IRS  
22 and FTB.

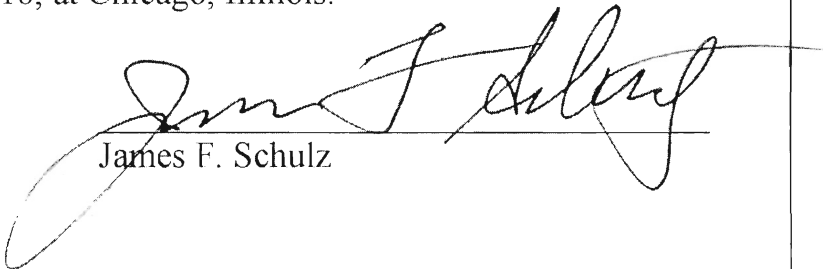
23 8. As part of my engagement by the Receiver, I agreed to a reduction in  
24 my normal hourly rate from \$360 per hour to \$300 per hour. I prepared the billing  
25 statements reflected under Exhibit A, stating the services rendered by date, time  
26 expended and a brief description. I request the Court's approval and award of  
27 professional accounting and tax preparation fees for the twenty-four (24) tax returns  
28 and other services, in the amount of \$16,650.00 for the Accountant Fee Term of

1 October 1, 2014 through February 29 2016.

2 I declare under penalty of perjury under the laws of the United States and state  
3 of Illinois that the foregoing is true and correct.

4 Executed on March 7, 2016, at Chicago, Illinois.

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James F. Schulz

Richard Weissman, Receiver  
 FTC v. Rincon Mangement Services LLC, et al.  
 February 21, 2016

Date	Description	Hours
4/19/14	Calls with Richard Weissman on tax return submission instructions; begin preparation of data for tax return of Debt Tech data	2.00
6/20/14	Research NOL carryback to ameliorate PIF income taxes due and minimize any interest charges; email receiver of \$1 million carryback availability	1.50
11/1/15	Review preliminary financial data for PIF tax returns; make journal entries to modify 2012 and 2013 financial data, including income and balance sheet entries/adjustments.	2.50
1/6/16	Highlight areas for PIF adjustments, pull out prior returns for 2010 for Heavy Hitters (HHI) and Portfolio Investment Group (PIG), and analyze 2011 general ledgers and previously created adjusting journal entries to review for computer input data in tax software programs for years 2011, 2012 and 2013, as needed; email to receiver on status and issues related to final returns and other accounting matters.	2.50
1/8/16	Begin preparation of 2011 tax return for PIF	2.50
1/9/16	Conclude 2011 tax return and start 2012 tax return for PIF	5.00
1/10/16	Conclude 2012 tax return and 2013 tax return for PIF	6.00
1/15/16	Begin preparation of 2011 tax return for PIG	2.50
1/16/16	Conclude 2011 tax return and start 2012 tax return for PIG	4.00
1/17/16	Conclude 2012 tax return and 2013 tax return for PIG, analyze impact on PIF	6.00
1/18/16	Prepare of 2011 tax return for HHI	2.50
1/19/16	Prepare 2012 tax return and 2013 tax returns for HHI	2.50
1/21/16	Analyze requirements for filing 1120 SF tax returns for federal purposes; send email to V. Badalyan on additional inforamtion to prepare 1120 SF forms; send email to receiver on status and process required for 1120 SF forms	2.00
1/26/16	Work on reconciling PIF numbers with overall receivership trust accounts	1.50
1/27/16	Continue working through five year analysis to tie out all numbers to proceed with 1120 SF forms	1.50
1/31/16	Revise 2013 PIF tax return to reflect modifications in prior receivership documents	2.00
2/13/16	Prepare income and balance sheet analysis fo 1120-SF IRS forms for 2014 and 2015	2.00
2/17/16	Download electronic IRS forms for basic 1120-SF forms for 2014 and 2015 and complete forms	2.00
2/18/16	Complete back up schedules and additional forms to attach to the basic 1120-SF forms for	

Exhibit A

2/19/16	2014 and 2015 Meet with Receiver to review final returns, sign and organize other attachments for all the tax returns	3.00
		<u>2.00</u>
	Total hours	<u>55.50</u>
	James Schultz - agreed upon hourly rate	<u>300.00</u>
	Total amount due this billing	<u><u>16,650.00</u></u>