

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,)
)
 Plaintiff,)
)
 v.)
)
 GLOBAL ACCESS TECHNICAL)
 SUPPORT LLC, *et al.*)
)
 Defendants.)

Case No. 4:16-cv-01556-HEA

**RECEIVER’S THIRD APPLICATION FOR ALLOWANCE AND
PAYMENT OF FEES AND EXPENSES INCURRED BY THE
RECEIVER, RETAINED COUNSEL, AND OTHER PROFESSIONALS**

Receiver Claire M. Schenk, in her capacity as receiver (“Receiver”) for Defendants Global Access Technical Support LLC (“GATS”), Global sMind LLC (“Global sMind”), and Helios Digital Media LLC (“Helios”) (collectively, the “Receivership Defendants”), files her *Third Application for Allowance and Payment of Expenses Incurred by the Receiver, Retained Counsel, and Other Professionals* (the “Application”). The Application is also filed pursuant to and as required by the June 6, 2017, Stipulated Order For Permanent Injunction and Final Judgment as to the Receivership Defendants, Rajiv Chhatwal, DigiCare Desk LLC, and Source Pundit LLC (“the Liquidation Order”). Under the Liquidation Order, the Receiver was directed to take control of various assets and to liquidate those assets so that the proceeds would become part of the existing Receivership estate. The Receiver was also directed to file a Fee Application within sixty days of the Liquidation Order. See Liquidation Order, Section IV. F.

The Receiver requests that this Court (1) find that, for this Application, the total professional fees and costs incurred from the time period between (check beginning dates of all

invoices) February 1, 2017 and July 31, 2017 (the “Application Period”) are reasonable and appropriate; and (2) enter an Order¹ authorizing the Receiver to make payments for certain professional services and expenses incurred during the Application Period. The Receiver submitted the Application to the United States Federal Trade Commission (the “FTC” or “Commission”) for review and approval prior to submission to the Court. The Commission has no objection to the Application. As of July 31, 2017, Receivership funds totalled \$828,532.14. A summary of Receivership funds may be found in **Exhibit A**.

The Receiver respectfully requests that the Court authorize the Receiver to pay reasonable fees and costs incurred by the following retained professionals: (a) Thompson Coburn LLP (“Thompson Coburn”), the Receiver’s counsel; (b) Segue Partners, LLC (“Segue”), the Receiver’s bookkeeper; and (c) CliftonLarsonAllen LLP (“CLA”), the Receiver’s accountant and tax preparer.

I. RETENTION OF RECEIVER, DISCLOSURE OF COMPENSATION, AND ACTIVITIES OF RECEIVER DURING APPLICATION PERIOD

On October 3, 2016, the FTC filed its Complaint and Memorandum in Support of Motion for Temporary Restraining Order. Complaint (Dkt. No. 1); Memorandum (Dkt. No. 6). On October 4, 2016, following a hearing, the Court granted the FTC’s motion and entered the Temporary Restraining Order with Asset Freeze, Appointment of a Receiver, Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue (“Order”). Order (Dkt. No. 10). The Receiver’s authority, duties, and obligations are set forth in the Order. The FTC’s motion and the Court’s appointment were based upon the Receiver’s proposal to the FTC (the “Proposal”). Memorandum by FTC (Dkt. No. 6, Exhibit 13). The Proposal set out the qualifications of the Receiver and the support to be received from Thompson Coburn as primary

¹ A proposed order is attached hereto as **Exhibit D**.

counsel to the Receiver. *Id.* Additionally, the Proposal fully disclosed the proposed compensation schedule and course of action contemplated by the Receiver. *Id.* Subsequently, Preliminary Injunctions were entered as to the Receivership Defendants, and the Receivership appointment was made permanent. Preliminary Injunctions (Dkt. Nos. 45, 50). Additionally, the Court also granted leave to amend the Complaint to add DigiCare Desk LLC (“DigiCare”) and Harinder Singh as defendants in the Complaint. *See* First Amended Complaint at 4, 6 (Dkt. No. 69). The two additional defendants face the same two counts of Deceptive Misrepresentations as stated in the original Complaint. *Id.* at 12-13.

Pursuant to the original Order, confirmed by the Preliminary Injunctions, the overall function of the Receiver is to: administer and manage the business affairs and assets of the Receivership Defendants, conserve, hold and manage all of the assets of the Receivership Defendants, and take such actions as are necessary to protect the interests of consumers and creditors who have transacted business with the Receivership Defendants. Order at 14-15 (Dkt. No. 10.) In furtherance of these objectives, the Order empowers the Receiver to “choose, engage, and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Receiver deems advisable and necessary in the performance of duties and responsibilities under the authority granted by this Order.” Order at 16 (Dkt. No. 10). The Order also empowers the Receiver to “[c]ontinue and conduct the business of the Receivership Defendants in such manner, to such extent, and for such duration as the Receiver may in good faith deem to be necessary or appropriate to operate the business profitably and lawfully.” *Id.*

Under the Liquidation Order, the Receiver was directed to take control of various assets, including financial and retirement accounts and real property at 559 Graeser Road in Creve Coeur, Missouri, and to liquidate those assets. The Liquidation Order directs that the cash

recovered by the Receiver is to become part of the existing Receivership estate.

Pursuant to these authorities, and in keeping with Section IV. F of the Liquidation Order and Section VII. G of the Order, the Receiver now files this Application for the Application Period, along with the requisite supporting documentation. Submission of this Application is also supported by the information stated in the Receiver's First, Second, and Third Interim Status Reports which include activity through July 31, 2017. *See* (Dkt. No. 58, 84 and 110). Judge Autrey confirmed and approved both the First and Second Interim Status Reports. (Dkt. Nos. 60, 85).

In line with the Liquidation Order, the Receiver liquidated the enumerated accounts and deposited the funds which she recovered into the existing GATS account at East West Bank. A summary report is provided hereinbelow:

Defendant	Asset	Funds Received	Status
DigiCare Desk LLC	Central Bank of St. Louis account ending in 0977	\$11,292.00	Account closed.
DigiCare Desk LLC	Busy Bank account ending in 8963	\$58.00	Account closed.
Rajiv Chhatwal	IndusInd Bank account ending in 2758	\$104,500.00	Awaiting statements; investigating future deposits.
Rajiv Chhatwal	SAP 401k Defined Benefit Plan managed by Vanguard, Plan Number 09061	\$53,452.02	Awaiting statements; investigating future deposits.
Rajiv Chhatwal	Wells Fargo SEP account ending in 7445	\$35,262.07	Awaiting statements; Awaiting future deposit of dividends in September 2017.
Rajiv Chhatwal	Wells Fargo SEP account ending in 9612	\$195,096.60	Awaiting statements; Awaiting future deposit in September 2017.
Rajiv Chhatwal	Wells Fargo Securities account ending in 9595	\$281,531.08	Awaiting statements; Awaiting future deposit in September 2017. Establish and

			resolve reserve for tax liability by April 17, 2018.
Rajiv Chhatwal	T. Rowe Price Roth IRA account ending in 1900	\$31,011.75	Awaiting statements; investigating future deposits.
Rajiv Chhatwal	Putnam Investments account ending in 4824	\$2,719.02	Account closed.

Regarding the sale of the property at 559 Graeser, the Receiver has done preliminary research as to the value, marketing, and potential sale of the property. The Receiver completed two site inspections and arrangements were made for an appraisal which is now in process. As required by the Liquidation Order, the Receiver obtained the Power of Attorney necessary for the sale from Chhatwal and is able to enter the property at her discretion. The Receiver is moving forward with the necessary acts to accomplish the sale as directed by the Court within 180 days of the Liquidation Order.

As to the general operation of the Receivership Defendants, the Receiver, with the assistance of the Receivership professionals:

(i) Closed the books of the Receivership Defendants, prepared income statements for GATS and Helios, and worked towards the timely filing of tax the return for Global sMind;

(ii) Continued to host and update a publicly available website for the benefit of consumers and all interested parties;

(iii) Monitored the bank accounts of the Receivership Defendants and the work of the Receiver's professionals; and

(iv) Complied with FTC reporting requirements. *See* Receiver's Third Interim Report at III. B. 2 (Dkt. No. 109).

II. REQUEST FOR FEES AND EXPENSES

The Receiver, her counsel, and her accountants worked diligently to liquidate and transfer all of the personal property assets described hereinabove, pursued the sale of the real estate in a timely manner, kept the FTC and defrauded consumers informed, and monitored the bank accounts and business affairs of the Receivership entities.

Thus, the Receiver respectfully requests an award for legal and other professional fees and the reimbursement of certain expenses incurred on behalf of the Receiver for services rendered during the Application Period, as well as a finding that these legal and professional fees and costs are reasonable and appropriate. These amounts total \$50,860.41 in the aggregate (the “Total Award”). The Total Award is comprised of: (a) \$49,092.66 in legal fees and costs for Thompson Coburn, the Receiver’s primary counsel; (b) \$1,216.75 in professional fees for Segue, the Receiver’s bookkeeper; and (c) \$551.00 in professional fees for CLA, the Receiver’s accountant and tax preparer.

Significantly, the Receiver and many of the professionals working with her performed services at deeply discounted rates. Importantly, the Receiver did not impose a fee for hosting a voluminous database of documents pertaining to the Receivership or for the costs associated with the integration of new documents into the Receiver’s document management system. Also, the informational website, created and updated by the Receiver’s firm, continues to be available to the public without cost to the Receivership Defendants. The Receiver’s website, which includes an informational notice to consumers seeking redress, serves as an economical and secure way of providing information to the consumers and creditors.² .

This request is the Receiver’s third application to the Court for compensation and reimbursement of expenses for services rendered on behalf of the Receiver. In support of the

² Third-party vendors are often utilized by other receivers and attorneys for the functions described in this paragraph, and that utilization of vendors often results in substantial costs to the receivership entities.

efforts performed on behalf of the Receiver, the Receiver attached exhibits to her Application consisting of:

Exhibit A: A summary of Receivership bank accounts

Exhibit B: Summaries of professional and paraprofessional time and rates

Exhibit C: Individualized and detailed invoices of all services rendered, expenses, and disbursements for Thompson Coburn, Segue, and CLA

Exhibit D: Proposed order

Exhibit B contains an aggregate summary of all hours and fees of all professionals and paraprofessionals who provided services to the Receiver during the Application Period. The total amount represents the amount of time expended by each attorney, paralegal, and professional multiplied by the applicable discounted hourly rate. **Exhibit C** contains individualized and detailed invoices of the daily services rendered and the hours expended by the various attorneys, paralegals, and professionals employed on behalf of the Receiver in this case during the Application Period. **Exhibit C** is based on, among other information, the contemporaneous daily time records maintained by the Receiver's attorneys, paralegals, and professionals who rendered services in this case.³ The Receiver reviewed and approved these time records, and based on the complexity of the case, the Receiver respectfully submits that the requested compensation is reasonable.

III. MEMORANDUM OF LAW IN SUPPORT OF REQUEST

Under governing law pertaining to equity based receiverships in the Eighth Circuit, following a determination that services were rendered and costs expended in furtherance of the

³ Certain redactions to these records have been made because of the confidential nature of the information. For example, personal identifiers and confidential business information were redacted. The original, unredacted records are available at the request of the Court for an in camera review.

Receivership, the Court may award compensation for the presented fees and costs. When determining an award of attorneys' fees, the Court should use the lodestar method of multiplying the number of hours reasonably expended by the reasonable hourly rate. *SEC v. Petters*, No. 09-1750 ADM/JSM, 2009 WL 3379954, at *3 (D. Minn. Oct. 20, 2009) (citing *Fish v. St. Cloud State Univ.*, 295 F.3d 849, 851 (8th Cir. 2002)); *see also FTC v. Capital Acquisitions & Mgmt. Corp.*, No. 04 C 7781, 2005 WL 3676529 (N.D. Ill. Aug. 26, 2005) (internal citation omitted) ("Provided the application contains sufficient descriptive detail, the fee produced by the resulting lodestar calculation will, presumptively, be a reasonable one. Absent evidence to the contrary, the presumption of reasonableness should be respected and the fee generated by the lodestar calculation should be the fee awarded."). A reasonable hourly rate is the ordinary fee for similar work in the community. *Petters*, 2009 WL 3379954, at *3 (quoting *Avalon Cinema Corp. v. Thompson*, 689 F.2d 137, 140 (8th Cir. 1982)); *see also Fish*, 295 F.3d at 851 ("A reasonable hourly rate is usually the ordinary rate for similar work in the community where the case has been litigated.").

This Court has approved hourly rates for similar work in previous Receivership cases. *See* Memorandum and Order, *FTC v. Neiswonger, et al.*, No. 96-CV-2225 (E.D. Mo. Mar. 30, 2007), ECF No. 112; Memorandum and Order, *SEC v. Burton Douglas Morriss, et al.*, No. 12-CV-80 (E.D. Mo. Sept. 20, 2012), ECF No. 199. The Receiver respectfully suggests that for the reasons stated herein, because the Receiver and her counsel's rates were previously submitted to the Court prior to her appointment and based upon the background information regarding rates and qualifications set forth in the Proposals and the Interim Status Report, this request for fees for payment of the Receiver's attorneys and other professionals meets the criteria for this interim compensation.

In this case, the Court's Order directs and authorizes the Receiver to "[m]anage and administer the business of the Receivership Defendants until further order of this Court by performing all incidental acts that the Receiver deems to be advisable or necessary, which includes retaining, hiring, or dismissing any employees, independent contractors, or agents." Order at 15 (Dkt. No. 10). The Order allows the Receiver to: (i) "choose, engage, and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Receiver deems advisable and necessary in the performance of duties and responsibilities under the authority granted by this Order;" and (ii) "[m]ake payments and distributions from the receivership estate that are necessary and advisable for carrying out the directions of, or exercising the authority granted by, this Order." Order at 16 (Dkt. No. 10). The Court further authorized payment of the Receiver's counsel from the funds held by the Receivership and entitled the Receiver and all authorized personnel hired by the Receiver "to reasonable compensation for the performance of duties pursuant to [the] Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by, or in the possession or control of, or which may be received by the Receivership Defendants." Order at 22-23 (Dkt. No. 10).

The Receiver's attorneys, paralegals, accountants, and other professionals have incurred reasonable fees and costs consistent with the Court's orders, and payment is appropriate and warranted in consideration under applicable Eighth Circuit case law.

WHEREFORE, the Receiver respectfully requests that this Court enter the Order submitted herewith and marked as **Exhibit D**:

- (i) finding that the Total Award is reasonable and appropriate;
- (ii) authorizing an award of fees and costs in the amount of \$50,804.29; and
- (iii) directing the Receiver to make payments as follows based upon the authority

