

**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 FOURTH 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 *Fourth 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. As required by the Liquidation Order, on August 7, 2017, the Receiver filed a Fee Application, within sixty days of the Liquidation Order, for compensation and expenses which were associated with liquidation of the assets specified in Section III. B-F of the Liquidation Order. See Liquidation Order, Section IV. F (Dkt. No. 111).

The Liquidation Order further directed the Receiver to complete, as necessary, the sale of the real property located at 559 Graeser Road, St. Louis, Missouri 63141 (“the property”) within 180 days of entry of the Liquidation Order. Within this same time period, the Receiver was further directed to prepare and file with the Court an application for compensation and expenses associated with the Receiver’s sale of the property. As described in further detail herein, the Receiver completed the sale of the property in the time allowed by the Court and now files this Application for the compensation and expenses associated with the sale of the property and with completion of the work pertaining to the liquidation of the account assets. The Application also seeks the recovery of funds for work related to the Receivership proceeding.

The Receiver requests that this Court (1) find that, for this Application, the total professional fees and costs incurred from the time period between August 1, 2017 and November 30, 2017, (the “Application Period”) are reasonable and appropriate; and (2) enter an Order authorizing the Receiver to make payments for certain professional fees and expenses.¹ 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 November 30, 2017, the total of funds held in bank accounts controlled by the Receiver was: \$920,298.13. A summary of the accounts 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

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

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 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 the property, 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, Third and Fourth Interim Status Reports which include activity through November 30, 2017. *See* (Dkt. Nos. 58, 84, 110, 121). Judge Autrey confirmed and approved the First, Second, Third, and Fourth Interim Status Reports. (Dkt. Nos. 60, 85, 112, 122).

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	Post transfer statement received, awaiting transfer of residual sum estimated to be approximately \$2,000.
Rajiv Chhatwal	SAP 401k Defined Benefit Plan managed by Vanguard, Plan Number 09061	\$53,452.02	Account at zero balance, no future deposits.
Rajiv Chhatwal	Wells Fargo SEP account ending in 7445	\$35,262.07	Accrued dividends of \$3.54 deposited on 10/2/17, no future deposits.
Rajiv Chhatwal	Wells Fargo SEP account ending in 9612	\$195,096.60	Accrued dividends of \$36.81 deposited on 10/2/17, no future deposits.
Rajiv Chhatwal	Wells Fargo Securities account ending in 9595	\$281,531.08	Accrued dividends of \$304.81 deposited on 10/2/17, no future deposits.
Rajiv Chhatwal	T. Rowe Price Roth IRA account ending in 1900	\$31,011.75	Account at zero balance, no future deposits.
Rajiv Chhatwal	Putnam Investments account ending in 4824	\$2,719.02	Account closed.
Rajiv Chhatwal	559 Graeser	\$142,502.62, (\$270,000 less expenses including payment of mortgage and commission)	Property sold, deed recorded in name of purchaser.

While most of this Liquidation activity was completed during the prior Application Period, the Receiver followed up with each of the institutional contacts for each asset to confirm that: the account was closed, it was at a zero balance, and no subsequent deposits of accrued interest or unpaid dividends would be paid into the account. This work is reflected in the final

column of the chart set out above along with the funds recovered within the current reporting period. Liquidation activity pertaining to the various accounts is completed except for the transfer of residual funds held in the IndusInd Bank Account in the approximate amount of \$2,000.

The chart set out above also reflects the recovery of funds as the result of the sale of the property. Prior to the sale and conveyance of title to the property, the Receiver obtained an appraisal from a well-credentialed independent appraiser and arranged for a survey as well as informational title reports pertaining to the property and the vacant land behind the property. The Receiver determined that each of these expenditures was reasonably necessary since as each expense was important to the sale process. The appraisal was needed to obtain an independent valuation of the property and to demonstrate to the Court and interested properties that the proposed sale was at a fair price. The informational title reports were obtained given the atypical nature of the sale (subject to a Court Order), the deed's history (the last deed in the chain of title to the property was a quitclaim deed), and potential easement and zoning issues (the property was part of a "flag lot" possessing a driveway shared with a vacant parcel of land in back of the property). The survey was obtained for similar reasons.

Armed with this information, the Receiver was able to be completely transparent with the potential purchasers for the property. As a result, the sale process was expedited, and the Receiver accomplished the sale at a price well in excess of the appraised value and within the time allowed to her by the Court. Motion for Leave for Entry of an Order Approving and Confirming the Sale of 559 Graeser Road and Approving Sale Procedures and Memorandum in Support (Dkt. Nos. 115-116) ("Motion in Support of the Sale" and "Memorandum in Support of the Sale"); Order Approving and Confirming Sale of 559 Graeser Road and Approving Sale

Procedures (Dkt. No. 119).

As described in the Receiver's Memorandum in Support of the Sale, the purchaser agreed to buy the property for \$270,000, an amount that is 122.5% of the \$220,000 appraised value of the property, \$220,000. Memorandum in Support of the Sale at 4 (Dkt. No. 116). Following the receipt of the Court Order approving and confirming the sale of the Property and approving the sale procedures, the Receiver turned her attention to the details of the closing process. Those details included obtaining a payoff letter from the mortgage company—Quicken Loans, resolving payments owed in connection with taxes and utilities, compiling information required to be provided by the seller, paying commissions due to the agent for the buyer and the seller, and reviewing and approving the deed and related documentation required by the title company. The sale of the property closed on November 17, 2017, well in advance of the deadline under the Liquidation Order—December 4, 2017. The title was conveyed to the purchaser and the deed was recorded.

As to the general operation of the Receivership Defendants, the Receiver, with the assistance of the Receivership professionals: (i) Accomplished the timely filing of a final tax return for Global sMind and provided K-1s to the investors; (ii) Continued to host and update a publicly available website for the benefit of consumers and all interested parties; (iii) Responded to inquiries of consumers seeking redress; (iv) Reviewed potential claims of creditors and the availability of funds for the satisfaction of same, following the return of Receivership funds to the FTC for redress to injured consumers; (v) Monitored the bank accounts controlled by the Receiver; and (iv) Complied with FTC reporting requirements by completing an updated survey on or about September 25, 2017. *See* Receiver's Fourth Interim Report at III. B. 2 at 11 (Dkt. No. 121).

II. REQUEST FOR FEES AND EXPENSES

The Receiver, her counsel, and her accountants diligently documented the transfer of the personal property assets described hereinabove to the Receiver's control, accomplished the timely sale of the property at a price in excess of the appraised value, kept the Court, the FTC and defrauded consumers informed as to the progress and status of this matter, prepared a final tax filing for Global sMind, provided K-1s to the investors, and monitored the bank accounts under the control of the Receiver.

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, as well as a finding that these legal and professional fees and costs are reasonable and appropriate. These amounts total \$63,593.93 in the aggregate (the "Total Award"). The Total Award is comprised of: (a) \$57,766.40 in legal fees and costs for Thompson Coburn, the Receiver's primary counsel; (b) \$3,606.03 in professional fees for Segue, the Receiver's bookkeeper; and (c) \$2,221.50 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 fourth application to the Court for compensation and reimbursement of expenses for services rendered on behalf of the Receiver. In support of the 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 as well as several invoices from the Receiver's professionals which were not previously submitted to the Court. 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. 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.

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.

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 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**:

