

**UNITED STATES DISTRICT COURT  
FOR THE 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**

**MEMORANDUM OF LAW IN SUPPORT OF RECEIVER’S MOTION FOR  
DISTRIBUTION OF FUNDS AND WIND UP OF PROCEEDING**

Claire M. Schenk, the Receiver for Defendants Global Access Technical Support LLC (“GATS”), Global sMind LLC (“Global sMind”), and Helios Digital Media LLC (“Helios”) (collectively the “Receivership Defendants”), hereby submits the following Memorandum of Law in support of the Receiver’s Motion for Distribution of Funds and Wind Up of Proceeding (“the Memorandum”) relating to her appointment as Receiver on October 4, 2016 (“Receivership Order”) and her duties as required by the Court’s June 6, 2017 Order (“the Liquidation Order”) (collectively, “the Orders”). The Declaration of Receiver, Claire M. Schenk, is offered in support of this Memorandum (“Receiver Declaration”). *See* Receiver Declaration, Exhibit A.

**I. BACKGROUND OF THE RECEIVERSHIP**

**A. Initial Phase of the Proceeding**

Each of the Receivership Defendants formerly provided remote technical support services. Source Pundit, GATS, and Helios each operated out of the residence of Defendant Rajiv Chhatwal (“Chhatwal”). Chhatwal is the sole member of Helios and GATS and owns a significant percentage of Source Pundit and Global sMind. Defendants Rupinder Kaur (“Kaur”)

and Harinder Singh (“Singh”) own a significant percentage of Global sMind. GATS, d/b/a One Source Tech Support, began as a line of business within Source Pundit but operated separately from Source Pundit. While the Receivership Defendants all provided remote technical support services, Source Pundit focused upon recruiting and staffing.<sup>1</sup> Its major asset was its contracting relationship with a Japanese corporation engaged in a business requiring highly skilled temporary contractors, typically engineers.

On October 3, 2016, the United States Federal Trade Commission (the “FTC”) filed its Complaint against Chhatwal, Kaur, Neeraj Dubey (“Dubey”), the Receivership Defendants, Source Pundit, and VGlobal ITES Private Limited (“VGlobal”) (collectively, the “FTC Defendants”) in the United States District Court for the Eastern District of Missouri (the “Missouri District Court”), Case No. 4:16-CV-1556-HEA (the “FTC Case”). Complaint (Dkt. No. 1). In the Complaint and other papers filed by the FTC on October 3, 2016, the FTC alleged various unfair or deceptive acts or practices in violation of the FTC Act, 15 U.S.C. § 45(a). *Id.* The Court later granted leave to amend the Complaint to add DigiCare Desk LLC (“DigiCare”) and Singh as defendants. *See* First Amended Complaint at 4, 6 (Dkt. No. 69). As a result, the two additional defendants faced the same two counts of Deceptive Misrepresentations. *Id.* at 12-13.

Also, on October 3, 2016, the FTC moved for the entry of an order freezing the assets of the FTC Defendants, enjoining certain business activities, requiring sworn financial statements, prohibiting the destruction of documents, expediting discovery, and immediately appointing a receiver over the Receivership Defendants to avert the likelihood of consumer injury during the

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<sup>1</sup> As described below, while Source Pundit began as a Receivership Defendant, the Receiver’s duties as to Source Pundit were terminated with the agreement of the Court and the Receiver.

pendency of the action and to preserve the possibility of effective final relief. Memorandum in Support of Motion re Motion for Temporary Restraining Order filed by FTC (Dkt. No. 6).

The Court entered the requested relief by order entitled *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* (the “Order”) dated October 4, 2016. *See* Order (Dkt. No. 10). The Order directed the Receiver to (i) assume full control of the Receivership Defendants; (ii) take exclusive custody, control, and possession of all assets and documents of, or in the possession custody, or under the control of, the Receivership Defendants, wherever situated; (iii) take possession of and secure all areas of the business premises of the Receivership Defendants; (iv) conserve, hold, and manage all receivership assets, and perform all acts necessary or advisable to preserve the value of those assets, in order to prevent any irreparable loss, damage, or injury to consumers or to creditors of the Receivership Defendants; (v) enter into contracts and purchase insurance; (vi) prevent inequitable distribution of assets and determine, adjust, and protect the interests of consumers and creditors; and (vii) manage and administer the business of the Receivership Defendants, among other duties. *Id.* at 14-15.

As described in the First and Second Interim Receivership Reports, Preliminary Injunctions were entered and the Receivership appointment was made permanent as to Receivership Defendants Global sMind (October 28, 2016) and Receivership Defendants GATS, Helios, and Source Pundit (November 15, 2016). *See* Preliminary Injunction as to Global sMind LLC at 13 (Dkt. No. 45); Stipulated Preliminary Injunction as to Defendants Rajiv Chhatwal, et al. (Dkt. No. 50). Source Pundit was subsequently removed from the Receivership on December 15, 2016 when Judge Autrey granted the Stipulation to Modify the Preliminary Injunction as to Source Pundit LLC. Stipulation as to Source Pundit (Dkt. No. 66). The Stipulation also

discharged the Receiver of her responsibilities relating to the receivership over Source Pundit and lifted the asset freeze, enabling Source Pundit to use assets for “actual, ordinary, and necessary business expenses.” *Id.* at 2-3.

**B. Resolution of the Proceeding**

Since the Second Interim Receivership Report, on June 1, 2017, the FTC filed a *Joint Motion for Settlement – Entry of Stipulated Orders for Permanent Injunction and Final Judgment*. Joint Motion for Settlement (Dkt. No. 98). On June 1 and June 30, 2017, the FTC also moved for Entry of Clerk’s Default against Global sMind and Foreign Defendants Dubey and VGlobal (“Default Defendants”), respectively. Motion for Entry of Default (Dkt. Nos. 100, 104). The Clerk entered default as to Global sMind on June 7, 2017 and default as to Dubey and VGlobal on July 6, 2017. Clerk’s Entry of Default (Dkt. Nos. 103, 105). The Court subsequently entered a Permanent Injunction and Default Judgment in the amount of \$5,150,506 as to the Default Defendants. Default Judgment (Dkt. No. 108).

As to Chhatwal, GATS, Source Pundit, Helios, and DigiCare (the “Stipulating Defendants”), on June 6, 2017, the Court entered the Liquidation Order, which included a Permanent Injunction and Final Judgment.<sup>2</sup> Liquidation Order (Dkt. No. 102). As a result, the Stipulating Defendants are permanently restrained and enjoined from various activities involving Tech Support Products and Services and are prohibited from related deceptive misrepresentations. A Judgment in the amount of \$5,150,506 was entered in favor of the FTC and against the Stipulating Defendants. Following various asset transfers to the existing

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<sup>2</sup> The Court also entered a Permanent Injunction and Final Judgment as to individual defendants Kaur and Singh in the amount of \$800,375. This Judgment also is to be suspended upon completion of various obligations of Kaur and Singh. Stipulated Order as to Kaur and Singh (Dkt. No. 101). Kaur and Singh are not subject to the Liquidation Order.

Receivership estate and subject to the obligations and requirements of the Liquidation Order, the remainder of the Judgment (which is not satisfied by the assets to be liquidated by the Receiver) is to be suspended.

More specifically, to suspend the Judgment, the Liquidation Order required the Stipulating Defendants to undertake the following activities: 1) within fourteen days of entry of the Liquidation Order, convey, assign and/or transfer all “legal and equitable interests and rights” in various specified assets to the Receivership estate; and 2) cooperate with the Receiver to sell and convey title to the real property located at 559 Graeser Road, St. Louis, Missouri 63141 (“the property”). The work pertaining to liquidation of the account assets has now been completed, and the Receiver’s obligations under both the Receivership Order and Liquidation Order are satisfied. Since the work of the Receivership has been completed, the Receiver now submits her Final Report along with her request for fees.

## **II. THE RECEIVER’S LIQUIDATION ACTIVITY**

Pursuant to the Liquidation Order, the Receiver completed the following activities as directed by the Court:

### **A. Liquidation of the Personal Property**

Under the Liquidation Order, subject to the direction of the Receiver, Stipulating Defendants were required, within fourteen days of entry of the Liquidation Order, to convey, assign and/or transfer various assets to the Receivership estate. Pursuant to Section IV. F of the Liquidation Order, the Receiver was directed to accomplish the liquidation of the assets specified in Section III. B-F of the Liquidation Order.

A summary of the relevant assets, required to be liquidated under Section III. B-F is set out below. The Receiver’s summary ties each asset to the relevant Stipulating Defendant, lists

the total amount of funds recovered to date in connection with each asset, and describes the status of the Receiver's liquidation activity.

<b>Defendant</b>	<b>Asset</b>	<b>Funds Received</b>	<b>Status</b>
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	\$106,600.00	Final residual sum of \$2,100 received from R. Chhatwal during this reporting period (included within funds received).
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.

During the current reporting period, Chhatwal provided the final residual payment due from the Indus Ind Bank Account pursuant to the Liquidation Order. With the receipt of these funds, all accounts subject to the Liquidation Order have been liquidated and closed. No further interest or dividends or interest will be paid upon the accounts subject to Section III. B-F of the Liquidation Order.

Pursuant to Section III. F of the Liquidation Order, which pertains to Wells Fargo Securities account ending in 9595, the Receiver was directed to set aside a reserve for payment of Chhatwal's estimated personal tax liability on the distribution amounts resulting from the liquidation of this account. Under the Liquidation Order, with the approval of the Receiver, Chhatwal was allowed the opportunity to utilize funds as were necessary to pay his tax liability, if any, so long as he provided the documentation required by the Receiver and filed his tax returns by April 17, 2018. Based upon the information recently provided by Chhatwal, the Receiver determined that this matter may be closed without the establishment of a reserve. *See* Receiver Declaration, Exhibit A.

**B. Liquidation of the Real Estate**

The chart set out above also reflects the recovery of funds as the result of the sale of the real property. Following receipt of the Court's Order approving the Receiver's Motion Approving and Confirming the Sale of 559 Graeser Road, the Receiver accomplished the sale of the property and conveyance of title to the property within the deadline established by the Court, *i.e.*, 180 days after entry of the Liquidation Order. 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); Order Approving and Confirming Sale of 559 Graeser Road and Approving Sale Procedures (Dkt. No. 119).

Under the Liquidation Order, with the approval of the Receiver, Chhatwal was allowed the opportunity to utilize funds as were necessary to pay his tax liability, if any, so long as he provided the documentation required by the Receiver and filed his tax returns by April 17, 2018. *See* Liquidation Order, Section III. G. Based upon the information recently provided by Chhatwal, the Receiver determined that this matter may be closed without the establishment of a reserve. *See* Receiver Declaration, Exhibit A.

### III. OPERATIONS OF THE RECEIVERSHIP

#### A. General Operations

The overall function of the Receiver as set out in the Receivership Order is to administer and manage the business affairs and assets of the Receivership Defendants, act as the managing member or partner of the Receivership Defendants, marshal and safeguard all of the assets of the Receivership Entities, and take such actions as are necessary to protect consumers and creditors. In furtherance of these objectives and following her appointment, the Receiver acted promptly to secure known assets, business records obtainable from the known business locations of the Receivership Defendants, and other Receivership property. *See* First and Second Interim Status Reports of Receiver (Dkt. Nos. 58, 84). The Receiver's duties as to each of the Receivership Entities are now concluded. Receivership activity occurring since the filing of the Fourth Interim Status Report is set out below. *See* Receiver Declaration, Exhibit A.

#### B. GATS, Helios and Global sMind

As described in the First Interim Report, GATS, Helios, and Global sMind were each engaged in prohibited activity which was not continued by the Receiver. Since the filing of the Receiver's Fourth Interim Status Report, Receivership activity pertinent to these entities has largely involved oversight of cash account assets and the resolution of tax and accounting issues.



1. *Financial Accounts*

As of April 30, 2018, accounts controlled by the Receiver held a total cash position of \$859,343.66 (GATS, \$856,115.03 and Global sMind, LLC, \$3,228.63). All known bank accounts belonging to the Receivership Defendants were consolidated into bank accounts at East West Bank. Funds obtained from pursuant to the Liquidation Order have been deposited in the GATS account at East West Bank. *See* Receiver Declaration, Exhibit A-3.

2. *FTC Reporting Requirements*

Pursuant to FTC reporting requirements, the Receiver previously estimated that monies in the total approximate amount of \$635,788.10 would be remitted to the FTC as redress for injured consumers. *See* Fourth Interim Status Report (Dkt. No. 121). The Receiver now estimates that the final sum to be paid to the FTC will be \$771,367.83 under the Liquidation Order and \$63,080.19 under the Receivership Order with a total sum to be returned to the FTC in the approximate amount of \$834,448.02. The funds to be returned to the FTC exceed the earlier estimate since actual expenses incurred are less than the reported estimate. *See* Receiver Declaration, Exhibits A-1 and A-2.

3. *Tax Returns and related filings*

At the end of the calendar year, Segue Capital (“Segue”) closed the books for GATS, Helios, and Global sMind. Segue prepared income statements for GATS and Helios based upon the information, which the Receiver was able to obtain from Chhatwal and the other defendants. These income statements will serve as a de facto Schedule C for these single member LLCs. The final tax filing for Global sMind was previously made by the Receiver’s accountants, CliftonLarsonAllen (“CLA”), and final K-1s were provided to its members. The Receiver did not prepare or file a return for Source Pundit since the Receivership was terminated on

December 15, 2016 and this entity was returned to the control of Chhatwal. *See* Receiver Declaration, Exhibit A.

4. *Website*

The Receiver established and continued to update a website ([www.gatsreceivership.com](http://www.gatsreceivership.com)) to provide relevant information to consumers, creditors, and other interested individuals. As of the date of this Report, access to such information is being provided through a link on the website of Thompson Coburn LLP (“Thompson Coburn”). To minimize the operating costs of the Receivership and conserve the Receivership estate, interested parties have been encouraged to access this publicly available source of information. This website will be updated with the final filings in this matter and remain available for review by injured consumers and other interested parties for 180 days following the termination of the Receivership. *See* Receiver Declaration, Exhibit A.

5. *Wind Up of Receivership Proceeding*

Consumers contacting the Receiver have been advised that when the litigation is concluded, available funds will be distributed to victims by the FTC. The FTC oversees both the process of recording consumer complaints and the distribution of funds to the victims of fraud. In similar situations, Courts have found that a constructive trust was created over the funds held in the receivership estate for the benefit of the injured consumers. Based upon this authority, the Receiver now recommends to the Court that all liquid assets remaining at the conclusion of the Receivership be distributed to the FTC for distribution to defrauded consumers and other proper purposes. *See e.g., FTC v. Crittenden*, 823 F. Supp. 699, 702–04 (C.D. Cal. 1993), *aff’d*, 19 F.3d 26 (9th Cir. 1994); *FTC v. Rainbow Enzymes, Inc.*, No. CIV-87-1522 PHX WPC, 1989 WL 53928, at \*1–2 (D. Ariz. Feb. 2, 1989).

Subject to the approval of the Court, the Receiver will not conduct a claims bar date process. Pre-Receivership claims of potential creditors will not be solicited or considered for payment by the Receiver. In keeping with the authority cited hereinabove, Receivership funds are held in constructive trust for redress to the injured consumers. A return of these funds to the FTC is supported by the fact that a Consent Judgment was entered in favor of the FTC and against the Stipulating Defendants in the amount of \$5,150,506. The Court also entered a Permanent Injunction and Final Judgment as to individual defendants Kaur and Singh in the amount of \$800,375. These Judgments were obtained by the FTC in keeping with its authority to obtain restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief. 15 U.S.C. § 45(a). *See* Complaint ¶ 1 (Dkt. No. 1); Amended Complaint ¶ 1 (Dkt. No. 69).

The Receiver additionally recommends that all remaining liquid assets recovered under the Liquidation Order, following the payment of outstanding fees and expenses and subject to approval of the Court, be distributed to the FTC in keeping with the requirements of the Liquidation Order. *See* Section IV. F. 3. In sum, the monies recovered in this proceeding fall far short of the Judgments obtained by the FTC in connection with the harm suffered by the defrauded consumers. Thus, the Receiver has not recommended the solicitation or consideration of potential claims of creditors. Rather, the Receiver requests authority to distribute all remaining liquid assets to the FTC for the benefit of defrauded consumers. *See* Receiver Declaration, Exhibit A.

6. *Administrative Matters*

The Receiver has submitted four Interim Status Reports to the Court. Reports were filed by the Receiver on December 1, 2016, February 22, 2017, August 7, 2017, and November 30,

2017. *See* Dkt Nos. 58, 84, 110, 121. Each of these Reports was approved by the Court. *See* Dkt. Nos. 60, 85, 112, 122. Similarly, the Receiver has submitted Four Applications for the Allowance and Payment of Fees. Applications for payment were made on December 2, 2016, March 3, 2017, August 7, 2017 and December 4, 2017 (Dkt. Nos. 59, 86, 111, 123) and each of the Receiver's Applications for Fees and Expenses has been approved by the Court. *See* Dkt. Nos. 61, 89, 112, 124; *see also*, Stipulation to Modify Stipulated Preliminary Injunction as to Defendant Source Pundit LLC (Dkt. No. 62). The Receiver's Interim Status Reports and Fee Applications have apprised the Court as to her activities and provided detailed invoices regarding professional fees and expenses of the Receivership. The Receiver Declaration, Exhibit A, accompanying this Memorandum, provides the detail for the remaining unpaid fees and expenses since shortly before or after the submission of the Receiver's December 4, 2017 Fee Application. *See* Receiver Declaration, Exhibit A.

**IV. APPROVAL AND CONFIRMATION OF RECEIVERSHIP ACTIVITY AND  
AUTHORIZATION FOR PAYMENT OF REMAINING FEES AND EXPENSES  
AND OTHER RELIEF PERTAINING TO WIND UP OF THE ESTATE**

The Receiver's most recent activity, occurring since the filing of the Fourth Interim Status Report, is described hereinabove and in the Schenk Declaration, Exhibit A. The Receiver now requests approval of this final filing, which describes activities occurring since November 30, 2017. Additionally, the Receiver's Motion requests the Payment of Fees and Expenses in these final months and requests that a reserve be established for the Receiver's final wind up activity.

**A. Approval of Receiver's Final Report and Payment of Fees and Expenses**

In additional to approval of the Final Report, the Receiver requests that this Court approve this request for the allowance and payment of fees and expenses incurred by the

Receiver, counsel, and other professionals. The Receiver requests that this Court: find that the total professional fees and costs incurred from December 1, 2017 through April 30, 2018 are reasonable and appropriate; and enter an Order authorizing the Receiver to make payments for the professional services and expenses incurred during this time period. The Receiver submitted this request to the FTC for review and approval prior to submission to the Court. The Commission has no objection to the Application. *See* Receiver Declaration, Exhibits A-3, A-4 and A-5 for a summary of accounts controlled by the Receiver, a summary total of fees and expenses and the related detailed narrative and invoices.

Thus, the Receiver respectfully requests that the Court authorize the Receiver to pay reasonable fees and costs incurred by the following retained professionals in the total amount of \$19,944.75: (a) Thompson Coburn, \$18,918.99, the Receiver's primary counsel; (b) Segue, \$940.76, the Receiver's bookkeeper; and (c) CLA, \$85.00 the Receiver's accountant, tax preparer, forensics and valuation expert.

Beyond the fees and expenses requested herein above, the Receiver further requests that she be allowed to establish a post receivership reserve of \$12,500 ("the Reserve") to cover fees and expenses relating to: the finalization of the Receiver's report; coordination of this filing with the FTC; service and communications with potential creditors; provision of such other notices as required; and responses to taxing authorities and others as required. The Receiver requests that she be allowed to pay any and all post receivership fees and expenses in a self-executing manner, without further Court Order, upon the consent of the FTC. In addition, the Receiver, at the appropriate time and based upon the Receiver's determination that no further post-receivership fees and expenses remain outstanding, requests authority to transfer any receivership funds remaining in the Reserve to the FTC.

1. *Retention of Receiver and Disclosure of Compensation*

Pursuant to the authorities allowed to the Receiver and described hereinabove, and in keeping with 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 this Final Report describing the Receiver's most recent activity along with the Receiver's First Interim Status Report ("Status Report") which was filed on December 1, 2016. This report includes descriptions of proposals, fee arrangements, and retainer agreements for the service professionals providing support to the Receiver for the benefit of the Receivership estate. *See* Status Report (Dkt. No. 58).

The Receiver, her counsel, bookkeepers and accountants worked diligently during this reporting period liquidate and preserve all assets, to resolve tax and accounting matters, to keep consumers, the Court and the FTC informed as to a final resolution of this matter. Upon entry of the final Order, the Receiver will make payments to the retained professionals and distribute funds to the FTC. She will prepare such notices as may be required to the taxing authorities and others of the termination of the Receivership. The Receiver's website will remain available to provide notice to defrauded consumers for at least 180 days following the termination of the Receivership.

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 this final period, as well as a finding that these legal and professional fees and costs are reasonable and appropriate. These amounts total \$19,944.75 in the aggregate (the "Total Award"). The Total Award is comprised of: (a) \$18,918.99 in legal fees and costs for Thompson Coburn, the Receiver's primary counsel; (b) \$940.76 in professional fees for Segue,

the Receiver's bookkeeper; and (c) \$85.00 in professional fees for CLA, the Receiver's accountant, 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 large database of documents pertaining to the Receivership or for the informational website created and updated by the Receiver's firm. This website 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.<sup>3</sup> This request is the Receiver's fifth and final request for fees to the Court for compensation and reimbursement of expenses for services rendered on behalf of the Receiver.<sup>4</sup> See Receiver Declaration, Exhibit A which includes: **Exhibit A-3**: A summary of Receivership bank accounts; **Exhibit A-4**: Summaries of professional and paraprofessional time and rates; and **Exhibit A-5**: Individualized and detailed invoices of all services rendered, expenses, and disbursements for Thompson Coburn, Segue and CLA.

**Exhibit A-4** 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 A-5** contains individualized and detailed invoices of the daily services rendered and the hours expended by the various attorneys,

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<sup>3</sup> 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.

<sup>4</sup> As detailed above and in the Receiver Declaration, the Receiver has requested that a Reserve be established in the amount of \$12,500.

paralegals, and professionals employed on behalf of the Receiver in this case during the Application Period. This exhibit 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.

**B. Authority 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. *U.S. SEC. & Exch. Comm'n 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 (8<sup>th</sup> 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 (8<sup>th</sup> 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. Neiswonder, 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" (Order at 16 (Dkt. No. 10)); 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" (*id.*). 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. The Receiver requests that this Court enter the Order submitted herewith: (i) finding that the Total Award is reasonable and appropriate; (ii) authorizing an award of fees and costs in the amount of \$19,944.75; and (iii) directing the Receiver to make payments as follows based upon the authority submitted by the Receiver in support of this Application and allowing payment to be made from any one or more of the accounts listed on Exhibit A-3: (a) \$18,918.99 in legal fees and costs for Thompson Coburn; (b) \$940.76 in professional fees for Segue; and (c) \$85.00 for professional fees for CLA. The Receiver additionally requests that the Court's Order allow the Receiver to establish a Reserve in the amount of \$12,500, consistent with existing authority. *See Order, FTC v. Big Dog Solutions LLC*, No. 16-cv-6607 (N.D. Ill. July 18, 2017), ECF No. 105.

#### **V. DISCHARGE OF RECEIVER AND WIND UP OF ESTATE**

The Receiver has completed her duties under the Orders and now requests to be discharged and to have her bond exonerated. The Receiver estimates that there will be approximately \$834,448.02 in funds remaining for distribution to the FTC after payment of all administrative expenses of the estate. *See Receiver Declaration, Exhibits A-1 and A-2.* The Receiver further requests approval of the Court to dispose and destroy records gathered as a part of this proceeding unless such records are requested by the FTC, a law enforcement agency or another authorized party within thirty days after entry of the order approving the wind up on the estate, a time period the Receiver believes is reasonable under the circumstances.

The Relief sought in this motion will promote the orderly and prompt wind up of the receivership estate in an expeditious and cost-effective manner. The relief sought is herein is

customary and appropriate in closing a receivership estate. *See Order, FTC v. Neiswonger, et al*, No. 96-CV-2225 (E.D. Mo. Oct. 31, 2011), ECF No. 424. The Receiver will cause a copy of the Motion and Memorandum to be served on all parties to the action and on known potential claimants against the receivership estate to provide broad notice of the impending termination of the receivership and discharge of the Receiver. Consumers and other interested parties will receive constructive notice by the posting of the motion on the Receiver's website.

## VI. CONCLUSION

Based on the foregoing, the Receiver respectfully requests that the Court approve the Receiver's Final Report and Accounting and grant the other relief requested in the Receiver's Motion in connection with the Receiver's wind up of the receivership estate.

Respectfully Submitted,

THOMPSON COBURN LLP

May 9, 2018

By           /s/ Emilee L. Hargis            
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**CERTIFICATE OF SERVICE**

I hereby certify that on May 9, 2018, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system to all counsel of record. I further certify that I caused a copy of the Receiver's Motion and Memorandum to be served upon the individuals and entities listed below.

/s/ Emilee L. Hargis

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