Sanjay Bhandari (SBN 181920)
sbhandari@mcnamarallp.com
Edward Chang (SBN 268204)
echang@mcnamarallp.com
McNamara Smith LLP
655 West Broadway, Suite 1600
San Diego, California 92101
Telephone: 619-269-0400
Facsimile: 619-269-0401

Attorneys for Court-appointed Receiver, Thomas W. McNamara

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

AMERICAN FINANCIAL BENEFITS CENTER, a corporation, also d/b/a AFB and AF STUDENT SERVICES; AMERITECH FINANCIAL, a corporation; FINANCIAL EDUCATION BENEFITS CENTER, a corporation; and BRANDON DEMOND FRERE, individually and as an officer of AMERICAN FINANCIAL BENEFITS CENTER, AMERITECH FINANCIAL, and FINANCIAL EDUCATION BENEFITS CENTER,

Defendants.

Case No. 4:18-cv-00806-SBA

DECLARATION OF THOMAS W. MCNAMARA IN SUPPORT OF APPLICATION OF RECEIVER FOR ORDER APPROVING FEES AND EXPENSES OF THE RECEIVER AND HIS PROFESSIONALS

JUDGE: Mag. Judge Jacqueline Scott Corley
CTRM.: 15th Floor, Ctrm. F
DATE: March 28, 2019
TIME: 9:00 a.m.

I, Thomas W. McNamara, hereby declare as follows:

1. I am the Court-appointed Receiver in this matter. I have personal knowledge of the facts set forth in this declaration except where, as noted, those facts have been obtained by staff acting at my direction. If called as a witness, I could and would competently testify to the facts stated herein.

2. By this First Interim Fee Application, I seek approval for the payment of fees and expenses from November 29, 2018 through January 15, 2019 as detailed below.

Receivership Activities

3. Receivership activities during the period covered by this Application have been reported in detail in the Receiver's Preliminary Report filed December 21, 2018 (ECF No. 204). Since that time, we have continued to investigate, pursue, and collect receivership estate assets. Pursuant to the Court's Order (ECF No. 203), we completed payroll for pre-receivership regular pay. We also secured Defendants' vehicles and will begin to market them. We have also begun the process of transferring the Corporate Defendants' business records into storage and vacating the Rohnert Park and El Dorado Hills locations.

Receivership Bank Account

4. Attached as Exhibit 1 is a Receipts and Disbursements Summary for the receivership bank account for the period November 29, 2018 through January 31, 2019. During this time period, receipts were $758,990.00 ($355,106.64 funds transferred from Corporate Defendants' accounts, $223,482.50 returned from a law firm trust account, $31,500 returned by Defendant Brandon Frere's friends and family after a contempt hearing, and $148,900.86 from Defendant Frere to partially fund pre-receivership payroll). Disbursements were $183,044.07, the largest component of which was pre-receivership payroll in accordance with the Court's Order (ECF No. 203) ($172,898.86). The receivership bank account has a current balance of $575,945.93.[1]

[1] As reflected in our Preliminary Report, the Corporate Defendants were large operations which brought in more than $70 million from consumers. However, there was relatively little in the Corporate Defendants' bank accounts at the time of appointment. As this Court is aware, Defendant Frere withdrew $400,000 the day of my appointment and he was also in the habit of keeping very little funds in the Corporate Defendants' accounts, while at the same time

Fees and Expenses of the Receiver and Staff

5. The total fees for my time as Receiver and my professional staff during this period are $107,473.50 as set forth in the invoice from Regulatory Resolutions which is attached as Exhibit 2. That invoice includes services provided by the following personnel:

a. Receiver. My fees as Receiver total $72,000.00 which reflects a total of 192 hours at $375 per hour (a large discount from my standard rate of $595 per hour). During this period, I coordinated and reviewed activities of the receivership team, including many functions for which I did not bill.

b. Deputy Receiver. Andrew W. Robertson has been a key member of my receivership work for over 17 years. He has a background as a lawyer and a business operator. During this period, he assisted in implementing the immediate access and preparing the Receiver's Preliminary Report. His fees of $6,460.50 reflect 21.9 hours at the discounted rate of $295 per hour.

c. Accountant. Lisa Jones is a Certified Insolvency and Restructuring Advisor (CIRA) and Certified Fraud Examiner (CFE) with more than 20 years' experience in the insolvency and restructuring industry with a wide range of experience in forensic accounting, litigation support, and discovery. She performed a detailed analysis of Defendants' QuickBooks files and prepared the accountant's report. Her fees of $20,241.00 reflect 103.8 hours at $195 per hour.

d. Administration. Lindsay Ellen provided administrative support and oversaw payroll processing, totaling 6.2 hours at $95 an hour or $589.00. Matthew O'Connor also provided administrative support and assisted with document review, totaling 116.9 hours at a rate of $70 an hour or $8,183.00.

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transferring vast sums to his personal accounts. He transferred $10.2 million to himself since 2015, and is alleged to have $7 million in Andorra and Luxembourg.

6. The invoice from Regulatory Resolutions also includes expenses totaling $5,366.03, as detailed in Exhibit 2. The principal component of those expenses relate to travel to the Corporate Defendants' business premises in Rohnert Park and El Dorado Hills ($2,638.24) and accommodations ($1,282.08).

Fees and Expenses of the Receiver's Counsel

7. For this period, fees for counsel McNamara Smith LLP ("McNamara Smith"), are $206,920.50, detailed in Exhibit 3. The firm has been directly involved in all receivership activities and their services are more thoroughly described in the invoices in Exhibit 3.

8. The McNamara Smith attorneys have substantial experience with receivership issues, fraudulent transfers, clawbacks, and litigation revolving around regulatory receiverships. The attorneys' fees have been incurred primarily in implementing the immediate access, conducting an investigation of the operations of the Corporate Defendants, negotiating the return of Corporate Defendants' funds from a law firm, bringing a contempt motion, and preparing the Preliminary Report for the Court (ECF No. 204). In particular, Mr. Bhandari's fees of $29,000.00 reflect 58 hours at the rate of $500 per hour; Mr. Smith's fees of $13,216.50 reflect 26.7 hours at the rate of $495 per hour; Mr. Chang's fees of $60,515.00 reflect 172.90 hours at the rate of $350 per hour; Ms. Gordon's fees of $30,875.00 reflect 95 hours at the rate of $325 per hour; four attorneys were tasked with reviewing and summarizing more than 75 consumer calls (more than 100 hours of recordings) and Salesforce CRM records and expended 224.6 hours at $215 per hour for a total of $48,289.00; and paralegal Ms. Carroll's fees of $25,025.00 reflect 143 hours at the rate of $175 per hour.

9. The invoice from McNamara Smith also includes expenses of $8,623.70, as detailed in Exhibit 3. The primary component of those expenses relate to travel ($3,121.72), accommodations ($1,792.16), project management for the review of consumer call recordings ($1,770.00), and utilizing a Salesforce CRM expert ($700).

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Fees and Expenses of the Receiver's IT Consultant, Hadron Computer Forensics & Investigations

10. The fees for forensic IT consultant, Hadron Computer Forensics & Investigations ("Hadron") are $5,206.25 fees and $1,623.90 expenses, as detailed in Exhibit 4. Hadron assisted the receivership by downloading Corporate Defendants' data (i.e., email accounts and user created documents such as Word, Excel, and PowerPoint files) and providing it in a format that we could review and evaluate quickly.

11. I submit to the Court that the identified services provided by me, as Receiver, and by the other designated professionals, were necessary and appropriate and brought significant value to the receivership. I have monitored the efforts of the team and have reviewed and approved the invoices which are the subject of this First Interim Fee Application. I request that the Court approve immediate payment of these invoices.

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

Executed this 1st day of February, 2019, in San Diego, California.

/s/ THOMAS W. MCNAMARA
Thomas W. McNamara
Court-Appointed Receiver