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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

OTA FRANCHISE CORPORATION, a Nevada Corporation; NEWPORT EXCHANGE HOLDINGS, INC., a California corporation; NEH SERVICES, INC., a California corporation; EYAL SHACHAR, also known as Eyal Shahar, individually and as an officer of OTA Franchise Corporation, Newport Exchange Holdings, Inc., and NEH Services, Inc.; SAMUEL R. SEIDEN, individually and as an officer of OTA Franchise Corporation; and DARREN KIMOTO, individually,

Defendants.

Case No. 8:20-cv-00287-JVS (KESx)

NOTICE OF MONITOR'S SECOND INTERIM FEE APPLICATION FOR ORDER APPROVING FEES AND EXPENSES OF THE MONITOR AND HIS PROFESSIONALS

JUDGE: Hon. James V. Selna
CTRM: 10C
DATE: July 6, 2020
TIME: 1:30 p.m.

TO THE HONORABLE JAMES V. SELNA, UNITED STATES DISTRICT COURT JUDGE, AND TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 6, 2020 at 1:30 p.m. in Courtroom 10C of the United States District Court for the Central District of California, located at 411 West 4th Street, Santa Ana, California, Thomas W.

McNamara, as Court-appointed Monitor, will present his Second Interim Application for Order Approving Fees and Expenses of the Monitor and His Professionals for the period through May 24, 2020.[1]

Thomas W. McNamara was appointed Monitor of the Monitored Entities[2] by the Preliminary Injunction entered April 2, 2020 ("PI," ECF No. 130). The PI authorizes the Monitor to "choose, engage, and employ attorneys, investigators, and other independent contractors and technical specialists, as the Monitor deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order." PI, Section XIII.C, page 20.

The PI also provides that the "Monitor and all personnel hired by the Monitor as herein authorized, including counsel to the Monitor and accountants, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by, in the possession or control of, or which may be received by, the Monitored Entities or otherwise frozen pursuant to this Order. The Monitor shall file with the Court and serve on the parties periodic requests for the payment of such reasonable compensation, with the first such request filed no more than thirty (30) days after the date of entry of this Order." PI, Section XVII, page 22.

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[1] Due to the COVID-19 pandemic, the Court vacated oral arguments. However, any party may file a request for hearing by submitting a written request (no more than five pages) no later than 5:00 p.m. the day following the scheduled hearing (i.e., Tuesday, July 7, 2020 at 5:00 p.m.). *See* https://www.cacd.uscourts.gov/honorable-james-v-selna.

[2] "Monitored Entities" are defined as the Corporate Defendants (OTA Franchise Corporation (also doing business as Online Trading Academy), Newport Exchange Holdings, Inc. (also doing business as Online Trading Academy), NEH Services, Inc. (also doing business as Online Trading Academy), and each of their subsidiaries, affiliates, successors, and assigns), as well as any other entity that the Monitor determines is controlled or owned by any Corporate Defendant or Eyal Shachar and (1) conducted any business related to Defendants' advertising, marketing, distributing, promoting, or selling of trading or investing training programs, (2) commingled or pooled assets with any Corporate Defendant, or (3) otherwise participated in the transfer of assets stemming from the advertising, marketing, distributing, promoting, or selling of trading or investing training programs. *See* PI, Definitions, pages 5-7.

The Monitor now submits this Second Interim Fee Application for approval to pay the following fees and expenses for services during the period through May 24, 2020: $59,622.00 fees and $121.20 expenses of the Monitor and staff to be paid to TWM Receiverships, Inc. dba Regulatory Resolutions; $45,738.50 fees and $139.30 expenses of the Monitor's counsel, McNamara Smith LLP; and $3,025.00 fees of Alliance Turnaround Management, Inc., an accounting firm that the Monitor consulted during the review of OTA's business plan.

These requested fees and expenses, and the invoices regarding them, are detailed and reviewed in the Declaration of Thomas W. McNamara filed with this Application.

This Application is made pursuant to Sections XIII.C and XVII of the PI and is based upon this Notice of Application, the Declaration of Thomas W. McNamara, and upon such other pleadings and oral and documentary evidence as may be presented at or before the time of the hearing on the Application.

Dated: June 2, 2020

MCNAMARA SMITH LLP

By: /s/ Edward Chang
Edward Chang
Attorneys for Monitor, Thomas W. McNamara

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of June, 2020, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of the filing to all participants in the case who are registered CM/ECF users.

/s/ Edward Chang
Edward Chang
Attorney for Monitor,
Thomas W. McNamara