

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No.: 17-cv-20848-GAYLES

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**WORLD PATENT MARKETING, INC.,
et al.,**

Defendants.

**RECEIVER'S FIRST MOTION FOR AWARD OF
PROFESSIONAL FEES AND REIMBURSEMENT OF EXPENSES**

Jonathan E. Perlman, Esq., the court-appointed Receiver (the "Receiver") of World Patent Marketing, Inc. ("WPI") and DESA Industries, Inc. d/b/a World Patent Marketing ("DESA," and collectively with WPI, "WPM" or the "Receivership Entities" or "Corporate Defendants"), by and through undersigned counsel, files his First Motion for Award of Professional Fees and Reimbursement of Expenses (the "Application").

I. INTRODUCTION

1. On March 6, 2017, the U.S. Federal Trade Commission ("FTC") commenced this action by filing a complaint for permanent injunction (the "Complaint") and a motion for a temporary restraining order and other equitable relief alleging that Scott Cooper, individually and as an owner and officer of the Corporate Defendants, through the Corporate Defendants, violated and were likely to violate Sections 5(a) of the FTC Act, 15 U.S.C. § 45(a). [ECF No. 1].

2. On March 7, 2017, this Court entered an Ex Parte Temporary Restraining Order with Asset Freeze ("TRO") against the Defendants. [ECF No. 11]. In addition, this Court appointed Jonathan E. Perlman, Esq. as temporary receiver over the Receivership Entities. [*Id.*].

After an initial show cause hearing on April 6, 2017, the Court continued the hearing until April 20, 2017. At the continued hearing, the Court ordered the parties to submit findings of fact and conclusions of law by May 4, 2017. Pending resolution of the Preliminary Injunction hearing, this Court extended the TRO through August 16, 2017. [ECF Nos. 64, 91, 96 & 100].

3. On August 16, the Court entered a Preliminary Injunction and appointed Mr. Perlman as the permanent Receiver [ECF No. 105] (the “Preliminary Injunction”).

4. Under the express terms of the Preliminary Injunction, the Receiver and his professionals are entitled to reasonable compensation and reimbursement of out-of-pocket expenses from Receivership assets. [ECF No. 11 at Section XIX].

5. Further, pursuant to the Preliminary Injunction Order, the Receiver shall file with the Court, and serve on the parties, periodic motions for the payment of such compensation. Accordingly, the Receiver submits this Application for the Court’s consideration.

6. The Receiver, a shareholder with the Genovese Joblove & Battista, P.A. law firm (“GJB”), retained GJB as his lead counsel. The Receiver also retained the professional services of Mitchell L. Marinello, Esq. and his law firm of Novack Macey, LLP (“NM”) to assist the Receiver in executing the Temporary Restraining Order in Illinois, and performing legal work in that jurisdiction. The Receiver also retained Soneet R. Kapila and his accounting firm, KapilaMukamal, LLP (collectively “KM”), as his tax and forensic accountants.

7. To preserve assets for the benefit of consumers, all fees sought in this Application have been billed at reduced agreed upon hourly rates. [ECF No. 7 at Exhibit 1]. All GJB timekeepers are billed at 10-20% below their regular hourly billing rate. In addition, the Receiver is billed at \$425 per hour, representing a 14.1% reduction from his normal hourly rate. The Receiver and GJB further agreed to bear any costs they have incurred for faxes and Westlaw research to further conserve the Receivership’s assets. Moreover, the Receiver and GJB have

agreed to charge a reduced price per page for photocopies and printing. NM and KM have agreed to provide similar discounts.

8. Additionally, the amounts set forth herein reflect the write-off of over \$30,000 in time actually spent by the Receiver and GJB that they have agreed to forego in order to benefit consumers given the limited assets in the Receivership Estate.

9. Likewise, GJB and the Receiver do not seek reimbursement for the immense amount of time GJB's in-house IT professionals have spent assisting the Receiver on this matter. Nor do they seek compensation for the hundreds of hours that GJB Project Manager Laise Lowachee has spent to date responding to phone calls, letters and e-mails from consumers.

10. In total, the Receiver seeks approval of \$456,696.12 in fees and \$9,713.49 in expenses for the work he and his professionals at GJB, NM, and KM performed through August 31, 2017. However, as discussed below, the Receiver and his professionals only seek approval to pay 50% of the approved fees at this time, with the remainder to be held back until such time as the Receiver and this Court deem appropriate.

11. With respect to the Receiver and GJB alone, they seek approval of \$412,821.50 in fees for 1,242 hours of services during the period commencing March 8, 2017 through August, 31, 2017, and expenses of \$8,462.39. Thus they seek approval of total fees and costs of \$421,283.89.¹

12. The Receiver proposes to pay at this time only 50% of the fees for which approval is sought, i.e., \$206,410.75, and 100% of their out of pocket costs, i.e., \$8,462.39, with the resulting holdback of \$206,410.75 to be paid when the Receiver and the Court deem it prudent to make further payment.

¹ The Receiver and his professionals maintain detailed time records that are kept contemporaneously with the services performed. The Receiver will provide these detailed time records to the Court for review *in camera* should the Court wish to review them. These records have been provided to the FTC and Defendants.

13. As noted above, Soneet R. Kapila and his firm, KM, have assisted the Receiver in his forensic accounting investigation. As part of their forensic investigation, KM has analyzed the flow of funds using available bank records, accounting records, and merchant account records by preparing preliminary bank reconstructions. The bank reconstructions will be utilized to quantify the amount of consumer losses and to identify potential assets of the Receivership Estate. Additionally, KM is currently analyzing the tax returns, QuickBooks accounting records, and financial statements for the Receivership Entities in connection with the forensic accounting investigation.

14. The Receiver seeks approval of KM's invoices for \$27,776.81 in fees for 107.9 hours of services during the period commencing March 8, 2017 through August, 31, 2017, and expenses in the sum of \$878.28 (totaling \$28,655.09).

15. As is the case for the Receiver and GJB, the Receiver proposes to pay only 50% of KM's fees at this time, i.e., \$13,888.41, and to pay KM all of its out of pocket costs, i.e., \$878.28. KM's resulting holdback amount of \$13,888.41 will not be paid until such time as the Receiver and the Court deem it prudent to make further payment.

16. As noted above, the Receiver also retained the professional services of Mitchell Marinello, Esq. and the NM law firm to assist the Receiver in executing the Temporary Restraining Order upon Defendants' operations in Chicago, Illinois.

17. The Receiver seeks approval of \$16,097.81 in fees for 29.6 hours of services during the period commencing March 8, 2017 through August, 31, 2017, and expenses of \$372.82 (totaling \$16,641.65). As with the other professionals, the Receiver proposes to pay only 50% of NM's fees at this time, i.e., \$8,048.91, and all of its out of pocket costs, i.e., \$372.82, leaving a holdback amount of \$8,048.91 to be paid at such time as the Receiver and this Court deem appropriate.

18. The Receiver is responsible for administering the Receivership Entities pursuant to the Court's Orders and overseeing the work of the professionals and staff working on the Receivership. Since his appointment, the Receiver has taken control of Defendants' offices located in Chicago, Illinois, Miami, Florida, and Miami, Gardens, Florida. The Receiver has also taken control of the Defendants' telephone and computer networks. The Receiver has investigated the Defendants' businesses, interviewed employees and reviewed tens of thousands of documents. The Receiver and his professionals also prepared and filed a First Interim Report. [ECF No. 46]. A detailed account of the work done by the Receiver and his professionals during the initial access period, as well as the Receiver's preliminary findings, is contained in the Receiver's First Interim Report filed on April 5, 2017. [*Id.*].

19. Since filing the Receiver's First Interim Report, the Receiver and GJB have continued to perform their duties as required under the TRO and PI, including marshalling of additional assets, reviewing documents through the Google Suite, answering calls and emails from consumers, enforcing the asset freeze, handling litigation issues (here and in other cases where Receivership Entities are a party), taking asset depositions, interviewing employees, consumers, and witnesses, serving the PI and requests for information on financial institutions and transferees, and reviewing financial disclosures.

20. In particular, the Receiver and his professionals secured the offices and records of the Receivership Entities and conducted a review and investigation of the affairs of the Receivership Entities, its principals and various related entities. The Receiver has interviewed employees of the Receivership Entities as well as the principals. The Receiver and his professionals have coordinated the freeze of the Receivership Entities' bank accounts with the FTC and subsequently closed out the accounts and transferred the funds to newly established Receivership Estate accounts. The Receiver established identical websites at

www.worldpatentmarketingreceivership.com and www.wpmreceivership.com containing relevant information and pleadings for the benefit of the consumers. Consumers and other interested parties are able to contact the Receiver using the e-mail link on the website or by calling the hotline number established for consumer inquiries. The Receiver's staff has fielded over 1,000 consumer inquiries and has, to the extent possible, been formulating a plan to address consumer complaints. The Receiver's efforts are more fully set forth in section IIA below.

21. No prior applications for compensation have been filed and no compensation has previously been paid to the Receiver or his professionals.

22. The Receiver has provided this Application and discussed it with counsel for the FTC and Defendants. The FTC has no objection to the relief sought. Defendants have not yet reached a position on the Application, but state that they will continue to confer with the Receiver and are considering the relief sought.

II. MEMORANDUM OF LAW

This Court has broad power to appoint a receiver and to award the receiver fees for his services and for expenses incurred by the receiver in the performance of his duties. *See Donovan v. Robbins*, 588 F. Supp. 1268, 1273 (N.D. Ill. 1984) (“[T]he receiver diligently and successfully discharged the responsibilities placed upon him by the Court and is entitled to reasonable compensation for his efforts.”); *see also Securities & Exchange Commission v. Elliott*, 953 F.2d 1560, 1577 (11th Cir. 1992) (holding that receiver is entitled to compensation for faithful performance of his duties).

In determining attorneys' fees, a court must: (1) determine the nature and extent of the services rendered; (2) determine the value of those services; and (3) consider the factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), *abrogated on other grounds*, *Blanchard v. Bergeron*, 489 U.S. 87, 109 S.Ct. 939, 103 L.Ed.2d 67 (1989). In

Johnson, the court set forth twelve factors a court should consider in determining reasonableness of an attorneys' fees award in a particular case. They are as follows: (1) the time and labor required; (2) the novelty and difficulty of the questions presented; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee for similar work in the community; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or by the circumstances; (8) the amount involved and results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. 488 F.2d at 717-19. The Eleventh Circuit adopted these *Johnson* factors in *Norman v. Housing Authority of City of Montgomery*, 836 F.2d 1292, 1298-99 (11th Cir. 1988).

A. APPLICATION OF THE JOHNSON FACTORS

1. The Time and Labor Required

The Receiver and his team initially focused on identifying, marshalling, and preserving the assets of the Receivership Estate, as well as learning and evaluating the Receivership Entities' businesses to determine the best course to maximize the return to the Receivership Estate.

The Receiver's team secured the Corporate Defendants' known offices located at: (i) 2940 North Lincoln Avenue, 2nd Floor, Chicago, Illinois 60657; (ii) 150 Southeast Second Avenue, Suites 401 & 402, Miami, FL 33131; and (iii) 99 NW 183rd Street, Suite 131, Miami Gardens, FL 33169.

The Receiver and his professionals have followed up on all asset freeze letters issued by the FTC and served the asset freeze order on additional financial institutions and third parties identified in the investigation of the Receivership Entities. The Receiver has opened fiduciary

bank accounts and processed the funds belonging to the Receivership Entities by transferring the funds to the respective accounts.

The Receivership Entities kept virtually all of their corporate records in the “cloud” through Google Mail and Google Docs. The Receiver and members of his team have spent many days culling through the documents located within the Google Suite. The documents were approximately 1.5 million e-mails and several hundred thousand documents. Additionally, the Receiver’s team has spent many days reviewing and analyzing the information found within the corporate offices and locating property belonging to consumers and contained within the Corporate Defendants’ known offices.

The Receiver’s team has gathered and analyzed voluminous investigative materials and electronic records. Those records include documents: (1) reflecting the misconduct described in the FTC’s Complaint and the Receiver’s First Interim Report, (2) identifying financial records of bank accounts and credit card processing accounts, (3) describing Defendants’ business enterprise, (4) providing leads to additional assets, (5) researching and handling immediate issues related to pending litigation involving the Receivership Entities and (6) establishing the Receiver’s right to bring those assets and companies within the Receivership.

While the Receiver and his professionals always work with a cost/benefit equation in mind as to each task, in the general context of litigation and, more specifically, in the administration of receiverships, the Receiver must sometimes pursue work that does not immediately present a quick benefit. However, the Receiver and his professionals know that they are spending consumers’ money and are thus determined to pursue only those tasks that are essential to completing the tasks assigned by the Court and that maximize consumer recovery.

Because the early days of a receivership are filled with time-sensitive tasks -- quickly identifying and securing assets, gathering and processing information necessary to learn the

Defendants' business -- initial fee applications often seek reimbursement of more fees and expenses than later applications. The same is true of this Application. The Receiver's work during this billing period has established a level of stability that will allow the Receiver to continue work at a pace that requires fewer hours and fewer members of his team. The tasks performed by the Receiver and his professionals during the initial phase of the Receivership are extensively set forth in the First Interim Report.

Finally, during the latter months of the Receivership, the Receiver and his professionals have begun investigating potential third party litigation claims and additional sources of recovery that may be made available to pay consumers. The Receiver and his professionals have also undertaken to analyze the complex financial relationship between the Receivership Entities and entities related to Scott J. Cooper, including the source and use of funds maintained abroad by Mr. Cooper. Since the entry of the Preliminary Injunction, the Receiver and his team have also worked to eliminate recurring liabilities of the Receivership Entities. By way of example, the Receiver and his professionals have worked to halt litigation against the Receivership Entities, negotiate releases of executory contracts, and otherwise resolve outstanding claims against the estate.

2. The Novelty and Difficulty of the Questions Presented

At the onset, the Receiver was faced with the arduous task of understanding the business of the Receivership Entities, taking control of the Receivership Entities' books and records, and locating and securing physical assets and accounts. Here, some of the Receiver's tasks have involved complex factual and legal questions. Indeed, by its very nature, a receivership is unique and complex.

3. The Skill Required to Perform the Legal Services Properly

The Receiver possesses the requisite skills to perform the services of receiver in this matter. The Receiver is an attorney with more than 25 years' experience. The Receiver regularly represents parties in complex litigation and has both brought and defended numerous actions under the Federal Trade Commission Act. The Receiver is AV rated by the Martindale Hubbell Attorney Directory. He currently serves as the court appointed Receiver over various entities that perpetrated a multi-million dollar Ponzi scheme in *SEC v. Creative Capital Consortium, LLC et al.*, Case No. 08-81565-CIV-HURLEY/HOPKINS.

4. The Preclusion of Other Employment by the Attorney due to Acceptance of the Case

Although this case has required an extensive investment of professional and paraprofessional time, it has not been necessary for the Receiver or his professionals to turn away other work due to this assignment.

5. The Customary Fee for Similar Work in the Community

The hourly rates charged by the attorneys providing work to the Receiver, as well as the Receiver's hourly rate, are well below the customary rates of the attorneys working on this case and below those charged by attorneys of comparable skills in the Southern District of Florida for similar work. The hourly rates charged have been deeply discounted for the benefit of the consumers.

6. Whether the Fee is Fixed or Contingent

The Receiver's and his professionals' compensation sought herein is comprised of fixed hourly rates subject to the final approval of this Court. The Court should consider that the Receiver and his professionals have assumed the risk of non-payment and delay in payment. At present, it is uncertain whether there will be sufficient funds available in this Receivership to make such payment and for this reason, the Receiver proposes a 50% holdback. The availability of sufficient funds in the future will be dependent on the Receiver and his professionals' success in identifying assets and bringing them back to the Receivership. These efforts will not only secure monies to fund the administration of the Receivership, but will also benefit consumers by bringing funds into the Receivership Estate that can be used for possible restitution at the conclusion of the case.

7. Time Limitations Imposed by the Client or by the Circumstances

The nature of this case has required careful time management by the professionals involved because of the need to resolve issues efficiently and economically. The speed required for quick identification of assets demanded that the Receiver task many members of his team to the case in the early weeks of the receivership. Consequently, the number of hours expended during the time covered by the initial fee application is often higher than those in subsequent applications, during which the receivership can take on a slower pace. As the case has progressed, the Receiver has tasked fewer members of his team to the case, and those engaged have spent fewer hours per billing period on the case.

8. The Amount Involved and Results Obtained

Thus far, the evidence gathered and analyzed points to over \$26 million dollars in gross receipts for the Receivership Entities from consumers. The Receiver has already conferred a substantial benefit to the Receivership Estate by managing and protecting the Receivership's

assets. As more fully described in the Receiver's First Interim Report and Section II herein, a significant portion of the Receiver's time during this billing period has been devoted to those tasks that relate to receivership assets and the limiting of receivership liabilities.

9. The Experience, Reputation and Ability of the Attorney

The principal attorneys on this case are experienced professionals and litigators in the Southern District of Florida. The Receiver has more than twenty-five years of experience in civil litigation and is well-respected in the legal community. He currently serves as Receiver in a case pending before Judge Daniel T. Hurley, *SEC v. Creative Capital Consortium, LLC et al.*, Case No. 08-81565-CIV-HURLEY/HOPKINS (S.D. Fl.). Judge Hurley has approved all of the Receiver's Fee Applications.

10. The Undesirability of the Case

This case is not undesirable; the Receiver and the professionals under his authority are privileged to be involved. Nonetheless, as mentioned above, they have taken on the matter under circumstances where full compensation for their time is uncertain.

11. Awards in Similar Cases

The Receiver believes the fees and costs submitted to the Court for consideration in this Application are similar to those awarded in other receivership cases in the Southern District of Florida.

III. CERTIFICATION

23. Pursuant to Local Rule 7.1.A.3, undersigned counsel hereby certifies that he conferred with counsel for Plaintiff FTC and Defendants. The FTC has no objection to the relief sought. Defendants have not yet reached a position on the Application, but state that they will continue to confer with the Receiver and are considering the relief sought.

WHEREFORE, the Receiver, Jonathan E. Perlman, Esq., respectfully requests that this Court enter an order granting this Motion for Award of Professional Fees and Reimbursement of Expenses, and, therefore, (i) approving the Receiver and Genovese Joblove & Battista, P.A.'s fees (\$412,821.50) and expenses (\$8,462.39), and authorizing payment to the firm of \$214,873.14, representing 50% of fees (\$206,410.75) and 100% of expenses (\$8,462.39) incurred during the Application Period; (ii) approving Kapila Mukamal, LLP's fees (\$27,776.81) and expenses (\$878.28), and authorizing payment to the firm of \$14,766.69, representing 50% of fees (\$13,888.41) and 100% of expenses (\$878.28) incurred during the Application Period; (iii) approving Novack Macey, LLP's fees (\$16,097.81) and expenses (\$372.82), and authorizing payment to the firm of \$8,421.72, representing 50% of fees (\$8,048.91) and 100% of expenses (\$372.82) incurred during the Application Period; and (iv) for such other relief as the Court may deem just and proper. A proposed form of order is attached hereto as Exhibit "A."

Dated: September 27, 2017
Miami, Florida

Respectfully submitted,

s/Jonathan E. Perlman

Jonathan E. Perlman, Esq.

Receiver

-and-

GENOVESE JOBLOVE & BATTISTA, P.A.

Attorneys for Jonathan E. Perlman, Esq.,

Court-appointed Receiver

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CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2017, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record and entities identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/Jonathan E. Perlman
Jonathan E. Perlman

SERVICE LIST

Federal Trade Commission v. Hispanic Global Way Corp., et al.
Case No. 14-22018-CIV-ALTONAGA/O'Sullivan
United States District Court, Southern District of Florida

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[10675-005 / 2776905 /v 2]

EXHIBIT "A"

[PROPOSED ORDER]

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No.: 17-cv-20848-GAYLES

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**WORLD PATENT MARKETING, INC.,
et al.,**

Defendants.

**ORDER GRANTING
RECEIVER'S FIRST MOTION FOR AWARD OF
PROFESSIONAL FEES AND REIMBURSEMENT OF EXPENSES**

THIS CAUSE is before the Court upon Jonathan E. Perlman, Esq.'s, the court-appointed Receiver (the "Receiver") of World Patent Marketing, Inc. ("WPI") and DESA Industries, Inc. d/b/a World Patent Marketing ("DESA," and collectively with WPI, "WPM" or the "Receivership Entities" or "Corporate Defendants"), First Motion for Award of Professional Fees and Reimbursement of Expenses [ECF No. ____] (the "First Fee Application"). Having reviewed the motion and the documents submitted in support, it is hereby **ORDERED** and **ADJUDGED** that:

1. The First Fee Application is **APPROVED**.
2. The Receiver and Genovese Joblove & Battista, P.A.'s ("GJB") fees of \$412,821.50 and expenses of \$8,462.39 are **APPROVED**. The Receiver is authorized to pay GJB \$214,873.14, representing 50% of the approved fees (\$206,410.75) and 100% of

expenses (\$8,462.39) earned through August 31, 2017. The remaining fees due to the Receiver and GJB of \$206,410.75, although approved, shall not be paid at this time.

3. Kapila Mukamal, LLP's ("KM") fees (\$27,776.81) and expenses (\$878.28) are **APPROVED**. The Receiver is authorized to pay KM \$14,766.69, representing 50% of fees (\$13,888.41) and 100% of expenses (\$878.28) earned through August 31, 2017. The remaining fees due to KM of \$13,888.41, although approved, shall not be paid at this time.
4. Novack Macey, LLP's ("NM") fees (\$16,097.81) and expenses (\$372.82) are **APPROVED**. The Receiver is authorized to pay NM \$8,421.73, representing 50% of fees (\$8,048.91) and 100% of expenses (\$372.82) earned through August 31, 2017. The remaining fees due to NM of \$8,048.91, although approved, shall not be paid at this time.
5. The Receiver may at his discretion seek authorization to pay the above holdbacks at such time(s) as he deems appropriate.

DONE and **ORDERED** in Chambers at Miami, Florida this ____ day October, 2017.

DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE

cc: All counsel of record