

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 0:17-60907-CIV-MORENO/SELTZER**

FEDERAL TRADE COMMISSION, *et al.*,

Plaintiffs,

v.

JEREMY LEE MARCUS, *et al.*,

Defendants.

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

Jonathan E. Perlman, Esq., as Receiver (the "Receiver") for the Receivership Entities,¹ files his Fourth Motion for Award of Professional Fees and Reimbursement of Expenses (the "Fourth Application") seeking approval to pay professional fees and costs incurred for the 5-month period of October 1, 2018 through February 28, 2019.

I. INTRODUCTION

1. The Receiver and his professionals have to date identified approximately \$35 million in assets belonging to the Receivership. During the time period of this fee application, the Receiver recovered \$1,597,493 and the Receivership bank accounts currently have a balance of \$12,684,803. To date, the Receiver has recovered monies totaling \$17,964,930.17.

¹ Receivership Entities are Financial Freedom National, Inc. f/k/a Institute for Financial Freedom, Inc. and Marine Career Institute Sea Frontiers, Inc. d/b/a 321 Loans, Instahelp America, Inc., Helping America Group, United Financial Support, Breeze Financial Solutions, 321Financial Education, Credit Health Plan, Credit Specialists of America, American Advocacy Alliance, and Associated Administrative Services, 321Loans, Inc., f/k/a 321 Loans, Inc. d/b/a 321Financial, Inc., Instahelp America, Inc. f/k/a Helping America Team, Inc. d/b/a Helping America Group, Breeze Financial Solutions, Inc. d/b/a Credit Health Plan and Credit Maximizing Program, US Legal Club, LLC, Active Debt Solutions, LLC f/k/a Active Debt Solutions, Inc. d/b/a Guardian Legal Center, Guardian LG, LLC d/b/a Guardian Legal Group, American Credit Security, LLC f/k/a America Credit Shield, LLC, Paralegal Support Group LLC f/k/a Paralegal Support LLC, Associated Administrative Services, LLC d/b/a Jobfax, Cockburn & Associate LLC, JLMJP Pompano, LLC, Halfpay International, LLC, Halfpay NV, LLC, HP Properties Group, Inc., HP Media, Inc., Omni Management Partners, LLC, Nantucket Cove of Illinois, LLC, Discount Marketing USA, S.A., Viking Management Services, LLC, White Light Media LLC, Blue42, LLC, National Arms, LLC, and 110 Gloucester St., LLC, and their divisions, subsidiaries, affiliates, predecessors, successors, and assigns. [ECF Nos. 21, 102, 222, 286].

2. Based upon the work and efforts of the Receiver and his professionals during the Fourth Application time period, the Receiver anticipates recovering substantial additional funds in the near future.²

3. Lastly, the Receiver expects to shortly present to the Court for approval a proposal to engage counsel to handle certain litigation claims on a contingency fee basis. The Receiver believes that such an arrangement will be in the best interests of the Receivership Estate, as it will insulate the Receivership from risk of loss should such actions be unsuccessful, eliminate the attorneys' fee expense for such actions, while enabling the Receivership to potentially achieve significant additional recoveries for the benefit of victims.³

4. As discussed below, the Receiver, in this application, seeks approval to pay his counsel, Genovese Joblove & Battista, P.A. ("GJB") \$427,918.75 in fees and \$17,754.07 in reimbursement of costs for services rendered during the five-month period from October 1, 2018 through and including February 28, 2019 (the "Application Period"); his forensic accountants, KapilaMukamal ("KM") \$28,687.38 in fees and \$417.69 in costs for the Application Period; and his Kentucky counsel, McBrayer, McGinnis, Leslie & Kirkland PLLC ("MMLK") \$53,857.20 in fees and \$0.00 in costs for the Application Period. Prior to filing the Fourth Application, the Receiver provided Plaintiffs with the supporting documents for the fees and costs sought herein. The Receiver will provide the supporting documentation to the Court upon request.

II. APPLICATION

5. On May 8, 2017, the Federal Trade Commission ("FTC") and the Office of the Attorney General, State of Florida, Department of Legal Affairs ("Florida AG") (collectively, the

² For a more detailed account of the efforts of the Receiver and his professionals during the Fourth Application period, please see the Receiver's Fourth Interim Report being concurrently filed.

³ The Fourth Application does not include attorney time for work performed in analyzing and developing these litigation claims. This application does include time from KM in assisting the Receiver on these claims.

“Plaintiffs”), commenced this action by filing a complaint for permanent injunction and other relief (the “Complaint”) and a motion for a temporary restraining order and other equitable relief against Jeremy Lee Marcus, Craig Davis Smith, Yisbet Segrea (collectively, the “Individual Defendants”), the named corporate defendants and the Relief Defendants, (the Individual Defendants, named corporate defendants and Relief Defendants may be referred to herein collectively as the “Defendants”). Plaintiffs alleged that the Individual and corporate defendants violated Sections 5(a), of the FTC Act, 15 U.S.C. § 45(a), the FTC’s Telemarketing Sales Rule “TSR”), 16 C.F.R. Part 310 and the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), Chapter 501, Part II, Florida Statutes (2016), Fla. Stat. § 501.201 et seq. and the Telemarketing Act, 15 U.S.C. §§ 6101-6108. [ECF No. 1, “Compl.”].

6. On May 9, 2017, this Court granted the Plaintiffs’ application for a temporary restraining order with asset freeze against Defendants and entered an Order freezing assets belonging to any of the Individual Defendants and corporate defendants (the “TRO”) [ECF. No. 13]. In connection with the TRO, the Court appointed Jonathan E. Perlman as temporary receiver over the Receivership Defendants identified in the Complaint. [*Id.*].

7. On May 17, 2017, the Court entered the Preliminary Injunction (the “PI”) [ECF No.21] which appointed Jonathan E. Perlman as permanent receiver, and directed him to assume full control of the Receivership Entities and their affiliates, subsidiaries, divisions, and sales operations. The PI further directed the Receiver to 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. Under the PI, the Receiver shall have “full power to divert mail and to sue for, collect, receive, take in possession, hold, and manage all assets and documents of the Receivership Defendants and other persons or entities whose

interests are now held by or under the direction, possession, custody, or control of the Receivership Defendants.” The PI further vests the Receiver with the power to institute actions to preserve or recover the assets of the Receivership Defendants.

8. The Receiver’s appointment commenced on May 9, 2017. The Receiver, a shareholder with GJB, retained GJB as his lead counsel. The Receiver also retained KM to provide accounting, forensic accounting, and tax-related services in this matter. In addition, the Receiver retained MMLK to provide him with legal services and advice in Kentucky associated with the Kingdom Coal loan.

9. Under the express terms of the PI, the Receiver and all personnel hired by the Receiver, as herein authorized, including counsel to the Receiver and accountants, are entitled to “reasonable compensation for the performance of duties undertaken pursuant to the Orders and for the cost of actual out-of-pocket expenses incurred from the assets now held by or in the possession or control of, or which may be received by the Defendants.” [ECF No. 21 at Section F].

10. Further, pursuant to the PI, the Receiver shall file with the Court, and serve on the parties, periodic motions for the payment of such compensation. To date, the Receiver submitted three applications for payment of professional fees and reimbursement of costs which were approved by this Court. [ECF No. 211, 291, 294 and 322].

11. To preserve assets for consumers, GJB and KM have been billed at a reduced agreed upon rate. 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 19% reduction from his normal hourly rate. As an additional benefit to the Receivership Estate, the Receiver and GJB are not requesting reimbursement for the work by certain members of the Receiver’s team

employed by GJB who regularly provide critical functions in IT, internal accounting, and consumer relations.

12. In addition, in order to avoid the expense of another party acting as closing title agent, GJB has acted as closing title agent on various real property sales which customarily provide for certain fees to be paid to the closing agent.⁴ GJB has agreed to transfer all closing title agent fees, totaling \$7,323.70 during this fee application period, to the Receivership to be applied towards the professional fees incurred.

13. The Receiver and GJB have also agreed to bear any costs they have incurred for faxes and Westlaw research to further conserve the Receivership's assets. Further, the Receiver and GJB have agreed to charge a reduced price per page for photocopies and printing.

14. In addition, all forensic accounting and tax professionals are billed at 15% below their regular hourly billing rate.

15. The Receiver and GJB hereby submit for approval GJB's fees for \$427,918.75 for 1,993.90 hours of service during the Application Period, and expenses in the sum of \$17,754.07. Besides the aforementioned discounted hourly rates, GJB has voluntarily agreed to forego an additional \$102,364.25 in fees and certain expenses.

16. The Receiver also hereby submits for approval payment to KM for \$28,687.38 in fees for 95.9 hours of service during the Application Period, and expenses of \$417.69. This request for payment reflects a 15% reduction on KM's normal hourly rates and a 50% reduction on the rate of the Receiver's construction consultant, Karen Fugate.

⁴ At closing, GJB procured a premium payment that it shared with the company issuing title insurance.

17. The Receiver also hereby submits for approval payment to MMLK for \$53,857.20 in fees for 193.3 hours of service during the Application Period, and expenses of \$0.00. This request reflects a 20% voluntary reduction by MMLK on its fees.

III. WORK PERFORMED BY THE RECEIVER'S PROFESSIONALS

18. A detailed account of the initial work done by the Receiver and his professionals, as well as the Receiver's preliminary findings, is contained in the Receiver's First Interim Report filed on May 17, 2017. [ECF No. 19]. A detailed account of the work done by the Receiver and his professionals after the Receiver's First Interim Report is contained in the Receiver's Second Interim Report filed on October 14, 2017. [ECF No. 136]. A detailed account of the work done by the Receiver and his professionals after the Receiver's Second Interim Report is contained in the Receiver's Third Interim Report. [ECF No. 274]. Simultaneously herewith, the Receiver is filing his Fourth Interim Report, which provides a detailed account of the work done by the Receiver and his professionals since the filing of his Third Interim Report.

19. The Receiver believes that the investigatory work completed will result in significant recoveries going forward, including with respect to his liquidation of the large portfolio of assets, real property, personal property, litigation claims, and other assets acquired through his investigation.

IV. MEMORANDUM OF LAW

20. 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, 1272 (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. Supp. 1560 (11th Cir. 1992) (receiver is entitled to compensation for faithful performance of his duties).

21. 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. *Id.*, 488 F.2d at 717-719. The Eleventh Circuit adopted these *Johnson* factors in *Norman v. Housing Authority of City of Montgomery*, 836 F.2d 1292 (11th Cir. 1988).

A. APPLICATION OF THE JOHNSON FACTORS

1. The Time and Labor Required.

22. The Receiver and his team have focused on identifying, marshaling, and preserving and liquidating 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. Based upon the scope and complexity of the issues associated

with the Receiver discharging his obligations under the PI, this appointment has been extremely time intensive. A more comprehensive and detailed account of the Receiver's efforts is set forth in his Fourth Interim Report.

23. 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. In fact, much of the work done to date will likely lead to significant benefit to the estate and consumers down the road with significantly less professional fees. However, the Receiver and his professionals are determined to pursue only those tasks that are essential to completing the tasks assigned by the Court and to maximizing consumer recovery.

2. The Novelty and Difficulty of the Questions Presented.

24. By its very nature, a receivership is unique and complex. This case is no different. The Receiver in this case is regularly faced with novel and difficult legal questions and challenges in the administration of the estate. The Receivership estate is vast and complicated and requires the Receiver and his professionals to devote significant time and effort in addressing and resolving these questions and challenges.

3. The Skill Required to Perform the Legal Services Properly.

25. The Receiver possesses the requisite skills to perform the services of receiver in this matter. The Receiver is an attorney with 30 years of 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.

26. In addition, both GJB and KM possess the requisite skills to represent the Receiver. Both firms have significant experience in representing fiduciaries in complex cases.

27. MMLK also possesses the requisite skills to represent the Receiver. MMLK has significant experience in representing fiduciaries including previously representing a receiver of the same coal mine that the Receivership estate currently has an interest in.

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

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

5. The Customary Fee for Similar Work in the Community.

29. The hourly rates charged by the attorneys and accountants providing work to the Receiver, as well as the Receiver's hourly rate, are below the customary rates of the attorneys working on this case and below those charged by attorneys or accountants with comparable skills in the jurisdiction where they practice for similar work. The hourly rates charged have been discounted by GJB and KM for the benefit of the consumers.

6. Whether the Fee is Fixed or Contingent.

30. The Receiver and his professionals' compensation in this matter is comprised of fixed discounted hourly rates subject to the final approval of this Court. The Court should consider that the Receiver, GJB, KM, and MMLK have assumed the risk of non-payment and delay in payment. At present, the Receiver expects that there will be sufficient funds available in this Receivership to make such payment. The Receiver continues his efforts to follow leads to

other Receivership assets. These efforts will not only secure funds 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.

31. The nature of this case has required careful time management by the professionals involved because of the need to resolve issues efficiently and economically. Based upon the size and breadth of the estate, this case does require an extensive investment of professional time. However, at this point, the Receiver has fewer task members on his team to handle the case.

8. The Amount Involved and Results Obtained.

32. The evidence thus far gathered and analyzed points to over \$85 million dollars in net revenues for the Receivership Entities and related entities. Thus far, the Receiver has conferred a substantial benefit to the Receivership Estate by managing and protecting the Receivership's assets. As more fully described in the Receiver's Second, Third and Fourth Interim Reports, 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. As a result of the efforts of the Receiver and his professionals, the Receiver has recovered, since his appointment, approximately \$17,964,930.17 in cash, a real-estate development in Illinois, a portfolio of real estate, personal property and various loans which he is managing and liquidating. In total, the Receiver has identified and/or secured assets worth approximately \$35,000,000, not including litigation claims against third parties which may result in tens of millions of dollars coming into the Receivership Estate.

9. The Experience, Reputation and Ability of the Professionals.

33. The principal attorneys on this case are experienced professionals and litigators in the Southern District of Florida. The Receiver has 30 years of experience in civil litigation and is well-respected in the legal community. He is currently serving 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.

34. KM has experienced accountants well known in this community for representing and providing accounting, forensic accounting, and tax-related services to fiduciaries and others for over 25 years. The principals of KM often serve as fiduciaries in cases similar to this case.

35. MMLK possesses the requisite skills to represent the Receiver. MMLK has significant experience in representing fiduciaries including previously representing a receiver of the same coal mine that the Receivership estate currently has an interest in.

10. The Undesirability of the Case

36. This case is not undesirable; the Receiver and the professionals under his authority are privileged to be involved.

11. Awards in Similar Cases

37. 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.

IV. CERTIFICATION

38. Pursuant to Local Rule 7.1.A.3, undersigned counsel hereby certifies that he conferred with counsel for Plaintiffs, the FTC and Florida AG and provided a draft of this Application and the supporting invoices prior to filing this Application. The FTC and State of

Florida have authorized the Receiver to state that they take no position on the Application and will not be filing any response thereto.

WHEREFORE, the Receiver, Jonathan E. Perlman, Esq., respectfully requests this Court to enter an order (i) granting this Motion for Award of Fees and Reimbursement of Expenses approving all fees and expenses; (ii) authorizing payment to GJB of fees and expenses incurred during the Application Period in the amount of \$445,672.82(\$427,918.75 in fees and \$17,754.07 in expenses); (iii) authorizing payment to KM of fees and expenses incurred during the Application Period in the amount of \$29,105.52 (\$28,687.38 in fees and \$417.69 in expenses); and (iv) authorizing payment to MMLK of fees and expenses incurred the Application Period in the amount of \$53,857.20 (\$53,857.20 fees and \$0.00 in expenses). A proposed form of order is attached.

Respectfully submitted this 18thday of June 2019.

s/Jonathan E. Perlman
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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of June 2019, 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, 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

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**Federal Trade Commission v. Jeremy Lee Marcus, et al.
USDC, SD Fla., Case No. 17-60907-CIV-MORENO/SELTZER**

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 0:17-60907-CIV-MORENO/SELTZER

FEDERAL TRADE COMMISSION, *et al.*,

Plaintiffs,

v.

JEREMY LEE MARCUS, *et al.*,

Defendants.

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

THIS CAUSE came before the Court upon Jonathan E. Perlman, Esq.'s, the court-appointed Receiver (the "Receiver") for the Receivership Entities,¹ Fourth Motion for Award of Professional Fees and Reimbursement of Expenses [ECF No. ____] (the "Fourth Fee Application"), filed on **June 18, 2019**.

The Court has considered the Fourth Fee Application, the pertinent portions of the record, and being otherwise fully advised in the premises, it is

¹ Receivership Entities are Financial Freedom National, Inc. f/k/a Institute for Financial Freedom, Inc. and Marine Career Institute Sea Frontiers, Inc. d/b/a 321 Loans, Instahelp America, Inc., Helping America Group, United Financial Support, Breeze Financial Solutions, 321Financial Education, Credit Health Plan, Credit Specialists of America, American Advocacy Alliance, and Associated Administrative Services, 321Loans, Inc., f/k/a 321 Loans, Inc. d/b/a 321Financial, Inc., Instahelp America, Inc. f/k/a Helping America Team, Inc. d/b/a Helping America Group, Breeze Financial Solutions, Inc. d/b/a Credit Health Plan and Credit Maximizing Program, US Legal Club, LLC, Active Debt Solutions, LLC f/k/a Active Debt Solutions, Inc. d/b/a Guardian Legal Center, Guardian LG, LLC d/b/a Guardian Legal Group, American Credit Security, LLC f/k/a America Credit Shield, LLC, Paralegal Support Group LLC f/k/a Paralegal Support LLC, Associated Administrative Services, LLC d/b/a Jobfax, Cockburn & Associate LLC, JLMJP Pompano, LLC, Halfpay International, LLC, Halfpay NV, LLC, HP Properties Group, Inc., HP Media, Inc., Omni Management Partners, LLC, Nantucket Cove of Illinois, LLC, Discount Marketing USA, S.A., Viking Management Services, LLC, White Light Media LLC, Blue42, LLC, National Arms, LLC, and 110 Gloucester St., LLC, and their divisions, subsidiaries, affiliates, predecessors, successors, and assigns. [ECF Nos. 21, 102, 222, 286].

ADJUDGED that the motion is GRANTED. The Fourth Fee Application is **APPROVED**.

ADJUDGED that the Receiver and Genovese Joblove & Battista, P.A.'s fees of \$427,918.75 and expenses of \$17,754.07 are **APPROVED**. The Receiver is authorized to pay Genovese Joblove & Battista, P.A. the sum of \$445,672.82, representing 100% of the approved fees (\$427,918.75) and 100% of expenses (\$17,754.07) incurred during the Application Period of October 1, 2018 through February 28, 2019.

ADJUDGED that the Receiver is authorized to pay KapilaMukamal the sum of \$29,105.52, representing 100% of the approved fees (\$28,687.38) and 100% of expenses (\$417.69) incurred during the Application Period of October 1, 2018 through February 28, 2019.

ADJUDGED that the Receiver is authorized to pay McBrayer, McGinnis, Leslie & Kirkland PLLC \$53,857.20 in fees and \$ -0- in costs incurred during the Application Period of October 1, 2018 through February 28, 2019.

DONE and ORDERED in _____ at Miami, Florida this ____ day _____, 2019.

FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

cc: All counsel of record

Serres, Ellen

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Motion for Miscellaneous Relief

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U.S. District Court

Southern District of Florida

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Case Number: [0:17-cv-60907-FAM](#)

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Docket Text:

[Fourth MOTION for Award of Professional Fees and Reimbursement of Expenses by Jonathan E. Perlman. \(Attachments: # \(1\) Text of Proposed Order\)\(Perlman, Jonathan\)](#)

0:17-cv-60907-FAM Notice has been electronically mailed to:

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