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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **Western Division**

12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 vs.

16 PAUL HORTON SMITH, SR.;
17 NORTHSTAR COMMUNICATIONS,
LLC; PLANNING SERVICES, INC.;
18 AND EGATE, LLC,

19 Defendants.

Case No. 5:20-cv-01056-PA-SHK

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF SECURITIES AND
EXCHANGE COMMISSION'S
MOTION FOR ORDERS:
(1) AWARDING FEES AND
EXPENSES TO PERMANENT
RECEIVER; (2) DEPOSITING FUNDS
WITH THE CLERK OF THE
COURT; (3) RETURNING ITEMS TO
DEFENDANT; AND
(4) DISCHARGING PERMANENT
RECEIVER AND CONCLUDING
RECEIVERSHIP**

Date: November 2, 2020
Time: 1:30 p.m.
Ctrm: 9A
Judge: Honorable Percy Anderson

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1 **I. INTRODUCTION**

2 Plaintiff Securities and Exchange Commission (the “SEC”) moves for orders to
3 pay reasonable fees and expenses to the Permanent Receiver; deposit the remaining
4 receivership funds with the Clerk of the Court pursuant to Fed. R. Civ. P. 67; return
5 items to Defendant Paul Horton Smith, Sr. (“Smith”); and discharge the Permanent
6 Receiver, Krista L. Freitag and conclude the receivership pursuant to Fed. R. Civ. P.
7 66, effective without further order of the Court upon the Receiver’s filing of a
8 declaration that she has completed the tasks ordered to close the receivership The
9 SEC previously filed a Motion for Default Judgment Against Smith and his co-
10 defendants Northstar Communications, LLC (“Northstar”), Planning Services, Inc.
11 (“Planning Services”), and eGate, LLC (“eGate”) (collectively the “Defendants”).
12 (Dkt. No. 60.) The current motion seeks to conclude the receivership, consistent with
13 the resolution of the case against Defendants.

14 **II. BACKGROUND**

15 The SEC filed its Complaint on May 19, 2020 (Dkt. No. 1), and at the same
16 time applied for a temporary restraining order, appointment of a temporary receiver,
17 and related orders. (Dkt. No. 3.) On May 20, 2020, the Court issued a temporary
18 restraining order and related orders against Defendants, and appointed Krista L.
19 Freitag as temporary receiver of Northstar, Planning Services, and eGate. (Dkt. No.
20 14.) On June 4, 2020, the Court issued a preliminary injunction, and extended the
21 temporary receiver’s appointment for one week. (Dkt. No. 26.) On June 12, 2020,
22 the Court appointed Ms. Freitag as Permanent Receiver of Northstar, Planning
23 Services, and eGate, and explicitly delineated the functions that the Receiver was to
24 perform. (Dkt. No. 35.)

25 Upon her appointment as Temporary Receiver, Ms. Freitag took control of the
26 offices from which Defendants operated, the files therein, the Customer Relationship
27 Management (“CRM”) database with Wealthbox, website domain, and email host sites
28 of the entity Defendants. The Receiver also received mail addressed to the entities,

1 and collected \$6,392.05 in commissions from third parties payable to the entity
2 Defendants. Finally, the Receiver took custody of funds in various bank accounts
3 owned by the Defendants, which the Receiver is holding. (See Declaration of Krista L.
4 Freitag submitted herewith (“Freitag Dec.”), ¶¶ 2, 3, 6, 19, and Exhibit A.)

5 The Defendants defaulted, and the SEC has filed a Motion for Default
6 Judgment. (Dkt. No. 60.) The Motion for Default Judgment is set for hearing on
7 October 19, 2020.

8 **III. ARGUMENT**

9 **A. Compensation for the Receiver**

10 The Receiver has provided necessary services to the receivership estate,
11 consistent with the Court’s orders and the Receiver’s proposal. (See Dkt. No. 7,
12 Freitag Dec., *passim* and Exhibit A.) The Receiver took possession of the
13 Defendants’ offices and financial accounts, and undertook to prepare and provide an
14 initial report to the Court. (See Dkt. No. 23.) The Receiver provided a valuable
15 service to the Defendants’ clients by answering questions and assisting the
16 Defendants’ clients to transition their accounts to third parties pursuant to the Court’s
17 instructions, which involved responses to more than 200 emails and calls received
18 from investors and/or clients, to address questions, concerns, and issues raised by
19 investors and clients. (Freitag Dec., ¶¶ 6, 11.) The Receiver also collected
20 commissions paid to the entity Defendants. (*Id.*, ¶ 19.) In performing these duties,
21 the Receiver incurred fees of \$41,015.70, and expenses of \$2,158.15. (*Id.*, ¶ 17 and
22 Exhibits B and C.) The Receiver has prepared a report of the fees and expenses
23 consistent with the SEC’s Receivership Billing Instructions and at a 10% discount
24 from normal rates, as promised in the Receiver’s proposal for this appointment. (See
25 Dkt. No. 7; Freitag Dec., ¶ 17, Exhibit D.) The SEC has reviewed the fees and
26 expenses, and they appear reasonable and necessary to the efficient administration of
27 the receivership. The SEC supports payment of the fees and expenses from the assets
28 of the receivership estate.

1 “A receiver appointed by a court who reasonably and diligently discharges his
2 duties is entitled to be fairly compensated for services rendered and expenses
3 incurred.” *SEC v. Byers*, 590 F. Supp. 2d 637, 644 (S.D.N.Y. 2008); *SEC v. Total*
4 *Wealth Mgmt., Inc.*, Case No 15-cv-00226-BAS-RNB, 2018 WL 6326398, at *1
5 (S.D. Cal. Dec. 4, 2018). A receiver is “an officer of the court who manage[s] the
6 property [at issue] under the authority of the court” therefore the receiver’s expenses
7 incurred in this role are “chargeable upon the property.” *In re San Vicente Medical*
8 *Partners, Ltd.*, 962 F.2d 1402, 1409 (9th Cir. 1992). “The established practice for
9 compensating trustees and receivers in actions of this nature is that compensation
10 should come from the funds recovered.” *SEC v. Blatt*, 583 F.2d 1325, 1335 (5th Cir.
11 1978). The determination of the amount awarded to a receiver is in the district
12 court’s sound discretion. *In re Washington Public Power Supply Systems Sec. Litig.*,
13 19 F.3d 1291, 1296 (9th Cir.1994); *In re San Vicente Medical Partners, Ltd.*, 962
14 F.2d at 1409 (trial court has discretion to determine reasonable compensation for
15 receiver). In SEC receiverships, courts typically give weight to the opposition or
16 acquiescence of the SEC with regard to receivership fees. *See, e.g., SEC v. Fifth*
17 *Avenue Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973); *SEC v. Medical*
18 *Capital Holdings, Inc.*, No. SA CV-09-0818-DOC (RNBx), 2016 WL 9211652, at *1
19 (C.D. Cal. Oct. 14, 2016); *SEC v. BIC Real Estate Develop. Corp.*, Case No. 1:16-cv-
20 00344-LJO-JLT, 2019 WL 58622912 at *1 (E.D. Cal. Nov. 8, 2019).

21 The SEC has reviewed the fees and expenses incurred by the Receiver. The
22 Receiver’s work may be divided into three time frames: (1) initial appointment and
23 takeover (from May 20 to May 30, 2020); (2) routine administration (from June 1 to
24 June 10, 2020); and (3) administration per proposal to the Court (Dkt. No. 48) and
25 instructions from the Court (June 15 through September 4, 2020). The takeover
26 required a concentrated amount of work during a limited period, which is shown by the
27 Receiver’s billing records. (*See* Freitag Dec., Exhibit B.) The Receiver’s statement of
28 time incurred and work performed reflect the normal and reasonable fees incurred at

1 the outset of a receivership. About a quarter of the total time during the initial takeover
2 phase was incurred on the day of the takeover. During the second period, the Receiver
3 continued to work to secure and identify assets, respond to investors, and engage in
4 routine administration. During the third period and pursuant to a budget proposal
5 submitted to the Court (Dkt. No. 48), the Receiver assisted clients to transition
6 accounts and worked to wrap up the receivership consistent with the Court's direction
7 and the budget proposal. The Receiver responded to more than 200 emails and calls
8 from investors and/or clients of the Defendants to address questions, concerns and
9 issues raised by investors and clients. (Freitag Dec., ¶ 11.) For all of the work over
10 the three periods, the Receiver provided an itemized record of time spent and services
11 rendered, consistent with Local Rule 66-8.1. (Freitag Dec., ¶ 17, Exhibits B and C.)
12 The Receiver adhered to the SEC's Receivership Billing Instructions, provided a
13 Standardized Fund Accounting Report, and per her proposal discounted her normal
14 rates by 10%. (See Dkt. No. 7; Freitag Dec., ¶ 17 and Exhibit D.)

15 Under all the circumstances, the Receiver's fees appear reasonable and
16 necessary for the efficient administration of the receivership estate. Similarly, the
17 expenses incurred appear reasonable and necessary to the proper administration of the
18 receivership estate. For all the reasons stated, the SEC supports award of a fee of
19 \$41,015.70 to the Receiver, and expenses of \$2,158.15, to be paid out of the assets of
20 the receivership estate.

21 **B. Receivership Funds Should Be Deposited With The Court**

22 The SEC requests that the Court order the Receiver to deposit the funds held,
23 after fees and expenses, with the Clerk of the Court, as provided by Fed. R. Civ. P. 67
24 and Local Rule 67-1 through 67-3. The Court may then determine the appropriate
25 distribution of these assets.

26 In addition, pursuant to the Court's Order, the Receiver has been paid
27 commissions by third parties insurance companies. The SEC requests that the Court
28 direct that any future commissions should be deposited with the Clerk of the Court,

1 where they can be held pending determination of an appropriate distribution.

2 “[I]t is a recognized principle of law that the district court has broad powers
3 and wide discretion to determine the appropriate relief in an equity receivership.”

4 *SEC v. Lincoln Thrift Ass’n*, 577 F.2d 600, 606 (9th Cir. 1978). *See also SEC v.*
5 *Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986) (“[A] district court's power to supervise
6 an equity receivership and to determine the appropriate action to be taken in the
7 administration of the receivership is extremely broad.”). Moreover, Fed. R. Civ. P.
8 67 provides for the deposit of money with the Clerk of the Court.

9 Marshalling the receivership estate with the Clerk of the Court is within the
10 Court’s equitable powers to administer a receivership. Accordingly, the SEC
11 requests that the Court direct the Receiver to deposit the receivership assets, less any
12 approved fees and expenses, with the Clerk of the Court, and inform third party
13 insurance companies to deposit any further commissions with the Clerk of the Court.

14 **C. Remaining Items Should Be Turned Over To Defendant**

15 The Receiver currently holds the passwords for the Wealthbox Customer
16 Relationship Management database, and the entities’ website domain and email host
17 sites. (Freitag Dec., ¶ 13.) The Receiver also currently receives mail directed to the
18 entity Defendants. (*Id.*, ¶ 15.) Consistent with termination of the receivership, the
19 Receiver should be ordered to provide the passwords to Defendant Smith, and to have
20 all mail for the entity Defendants forwarded to Defendant Smith.

21 **D. The Receiver Should Be Discharged And Receivership Concluded**

22 After the Receiver concludes the proposed tasks, the Receiver will have
23 completed the duties assigned to her by the Court. Pursuant to Fed. R. Civ. P. 66, an
24 order discharging the Receiver and concluding the receivership is therefore
25 appropriate. The SEC requests that the Court enter an order discharging the Receiver
26 and concluding the receivership, which shall be effective without further order of the
27 Court upon the Receiver’s filing of a declaration that she has completed the tasks
28 ordered to close the receivership. Such an order will provide notice to the Court that

1 the Receiver has completed the tasks necessary to close the receivership, while
2 conserving judicial resources by avoiding additional motions practice involving the
3 receivership.

4 **IV. CONCLUSION**

5 The SEC respectfully requests that the Court grant the motion and issue the
6 requested orders.

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8 Dated: September 29, 2020

Respectfully submitted,

9
10 /s/ John B. Bulgozdy

11 John B. Bulgozdy

12 David S. Brown

13 Attorneys for Plaintiff

14 Securities and Exchange Commission
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PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is:

U.S. SECURITIES AND EXCHANGE COMMISSION,
444 S. Flower Street, Suite 900, Los Angeles, California 90071
Telephone No. (323) 965-3998; Facsimile No. (213) 443-1904.

On September 29, 2020, I caused to be served the document entitled **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF SECURITIES AND EXCHANGE COMMISSION’S MOTION FOR ORDERS: (1) AWARDING FEES AND EXPENSES TO PERMANENT RECEIVER; (2) DEPOSITING FUNDS WITH THE CLERK OF THE COURT; (3) RETURNING ITEMS TO DEFENDANT; AND (4) DISCHARGING PERMANENT RECEIVER AND CONCLUDING RECEIVERSHIP** on all the parties to this action addressed as stated on the attached service list:

OFFICE MAIL: By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency’s practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

PERSONAL DEPOSIT IN MAIL: By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

EXPRESS U.S. MAIL: Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with Express Mail postage paid.

HAND DELIVERY: I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

UNITED PARCEL SERVICE: By placing in sealed envelope(s) designated by United Parcel Service (“UPS”) with delivery fees paid or provided for, which I deposited in a facility regularly maintained by UPS or delivered to a UPS courier, at Los Angeles, California.

ELECTRONIC MAIL: By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

E-FILING: By causing the document to be electronically filed via the Court’s CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

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

Date: September 29, 2020

/s/ John B. Bulgozdy

John B. Bulgozdy

SEC v. Paul Horton Smith, Sr., et al.
United States District Court—Central District of California
Case No. 5:20-cv-01056-PA-SHK

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***Permanent Receiver for Defendants Northstar Communications, LLC,
Planning Services, Inc., and eGate, LLC***

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