

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

SECURITIES AND EXCHANGE	)	
COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 1:18-cv-01262
	)	
TODD ELLIOTT HITT, KIDDAR	)	
CAPITAL LLC, and KIDDAR GROUP	)	
HOLDINGS, INC.,	)	
	)	
Defendants,	)	
	)	
and	)	
	)	
KIDDAR HERNDON STATION LLC,	)	
KIDDAR HOMEBUILDING FUND I,	)	
LLC, MELBOURNE RETREAT LLC,	)	
KIDDAR MASS AVE LLC, KIDDAR	)	
RIDGEVIEW LLC, ESA EMERSON	)	
LLC, ESA HIGHWOOD LLC, and	)	
KIDDAR AQ LLC a/k/a KIDDAR	)	
AQUICORE LLC,	)	
	)	
Relief Defendants.	)	
	)	

**PROTIVITI’S FINAL  
APPLICATION FOR ALLOWANCE OF COMPENSATION  
AND EXPENSE REIMBURSEMENT AS FINANCIAL ADVISOR TO THE RECEIVER**

Protiviti Inc. (“**Protiviti**”), financial advisor for Christopher L. Perkins (the “**Receiver**”) of the estates of Kiddar Capital LLC, Kiddar Group Holdings, Inc., Kiddar Homebuilding Fund I LLC, Melbourne Retreat LLC, Kiddar Mass Ave LLC, Kiddar Ridgeview LLC, ESA Emerson LLC, ESA Highwood LLC, and Kiddar AQ LLC, also known as Kiddar Aquicore LLC (the

**“Receivership Defendants”**), submits this Fifth Interim Application for Allowance of Compensation and Expense Reimbursement as Financial Advisor to the Receiver (the **“Application”**) in accordance with the “Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission” (the **“Billing Instructions”**). In this Application, Protiviti seeks approval of:

(a) compensation in the amount of \$23,190.00 for the period of April 1, 2020 through September 30, 2020 (the **“Application Period”**); and

(b) approval on a final basis of the Orders approving prior fee applications on an interim basis on February 22, 2019 (Dkt. No. 73); May 24, 2019 (Dkt. No. 94); November 22, 2019 (Dkt. No. 112); February 7, 2020 (Dkt. No. 132); and May 18, 2020 (Dkt. No. 147).

In support of this Application, Protiviti respectfully represents the following:

#### **Jurisdiction and Venue**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 959.

#### **Background**

2. On October 5, 2018 (the **“Filing Date”**), the Securities and Exchange Commission (**“SEC”**) commenced a civil case (the **“Civil Case”**) by filing a complaint against the Receivership Defendants, among others, for violations of federal securities laws.

3. By Order dated October 12, 2018, this Court appointed the Receiver in this Civil Case (the **“Receivership Order”**). By Order dated December 13, 2019, this Court appointed the undersigned as substitute Receiver.

4. On November 9, 2018, this Court entered an order authorizing the employment of Protiviti as financial advisor to the Receiver (the **“Employment Order”**).

5. The terms of Protiviti's employment are as follows: Protiviti charges financial and accounting consulting fees on an hourly basis at its professionals' hourly rates, which are set in accordance with the professionals' seniority and experience. Attached hereto as Exhibit 2 is the hourly rate schedule for Protiviti in this case. Protiviti also charges for its actual out-of-pocket expenses incurred such as copying, long distance telephone, travel, overnight mail, telecopies, computer research and other disbursements.

#### Case Status

6. On April 24, 2020 the Receiver filed his most recent Quarterly Status Report [Docket No. 141 detailing, among other things, the amount of cash on hand, accrued expenses, funds received and disbursed, the status of creditor claims, and the value of Receivership assets. The Receiver incorporates the Final Status Report herein.

7. The SEC's Standardized Fund Accounting Report (the "SFAR") is attached hereto as Exhibit 1.

#### Relief Requested

8. By this Fee Application, Protiviti is seeking approval of compensation for the Application Period in the amount of \$23,190.00 for professional services rendered to the Receiver from and including April 1, 2020 through and including September 30, 2020. Attached hereto as Exhibit 3 are Protiviti's invoices for services rendered and expenses incurred during the Application Period.

**Summary of Services Rendered During Application Period**

9. The total amount of compensation requested by Protiviti for the Application Period is based on the discounted hourly rates agreed to be charged by the professionals who performed financial advisory services for the Receiver in this matter.

10. In the course of representing the Receiver during the Application Period, Protiviti has provided various services. Attached hereto as Exhibit 2 and 4 are schedules of the services rendered by task category during Q1-20, respectively, each of which is described below:

A. Asset Analysis & Recovery: Hours: 6.1 Fees: \$1,447.50

Protiviti assisted in the review and accounting of personal property liquidations including jewelry and limited partnership interests.

B. Business Operations: Hours: 14.1 Fees: \$3,172.50

Protiviti performed tasks essential to preserve the Receivership Defendants' business records and remaining operations. Specifically, Protiviti prepared check runs for operating expenses and responded to ad hoc requests. See Exhibit 4.2 for detailed time entries.

C. Claims Admin & Objections: Hours: 25.6 Fees: \$5,955.00

Protiviti assisted the Receiver in the Initial Distribution to Investor Victims per the Plan; responding to Investor Victim and Creditor inquiries regarding claims; and preparing the Final Accounting. See Exhibit 4.3 for detailed time entries.

D. Tax Matters: Hours: 42.8 Fees: \$9,630.00

During the Application Period, Protiviti continued to ensure regulatory compliance of the Receivership Defendants. Specifically, Protiviti responded to former employees' inquiries, compiled necessary documentation from the entity's accounting records, and collaborated with Gorfine Schiller (Receiver's tax advisor) to establish reporting requirements. See Exhibit 4.4 for detailed time entries.

E. Quarterly Operating Reports: Hours: 13.1 Fees: \$2,985.00

During the Application Period, Protiviti prepared the Receivership's Quarterly Operating Report which describes the financial position, business operations & activities, and claims process undertaken by the Receivership. See Exhibit 4.5 for detailed time entries.

11. The fees sought by Protiviti are reasonable for the work it performed in the specialized area of insolvency and in practice before the United States District Court for the Eastern District of Virginia. Such fees are customary for receivership practice and are comparable in amount to services rendered by other professionals in the area. The fees sought herein are reasonable considering the nature and extent of the work, the time spent, and the value of the services.

12. The expenses incurred by Protiviti, as set forth herein, are reasonable and necessary charges for items such as photocopying, long distance telephone calls, facsimiles, delivery services and messenger services, and filing fees. Photocopy charges are assessed at fifteen cents (\$0.15) per page, which Protiviti believes to be at least comparable with the average charge in this area. No charge was incurred for the receipt of incoming facsimiles, and outgoing facsimiles were charged at the rate of fifty cents (\$0.50) per page, which Protiviti believes to be a reasonable charge for such an expense. Protiviti also incurred (a) delivery charges when such delivery was more economical or when prompt delivery was necessary in a given circumstance, and (b) outsource service charges for the copying and service (including postage) of certain pleadings when the circumstances warranted the use of such service.

13. Under the "lodestar" approach, the Court should consider the number of hours of service reasonably devoted to the case multiplied by the attorney's reasonable rates. Courts

frequently consider the specific “lodestar” factors enumerated in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974). These lodestar tests were adopted by the Fourth Circuit in Barber v. Kimbrells, Inc., 577 F.2d 216, 226 (4th Cir.), cert. denied, 439 U.S. 934 (1978), and in Anderson v. Morris, 658 F.2d 246, 249 (4th Cir. 1981), where the Fourth Circuit held that the District Court should employ the lodestar approach, and then adjust the fee on the basis of the remaining Johnson factors in the case. The following are the Johnson factors,<sup>1</sup> and a discussion of each factor, which Protiviti respectfully requests that the Court consider in determining the reasonableness of the amount of professional compensation requested in this Application:

- The time and labor required. Protiviti expended 106.7 hours of professional services on behalf of the Receiver during the Application Period. During this fifth and final period, the Receiver was involved in a variety of legal and other matters, which often required immediate response from legal professionals in order to preserve value to the estates. This period included ongoing efforts to identify, secure, and recover assets, claims solicitation and analysis, liquidation of assets, and other matters with which the Receiver required Protiviti’s assistance. The time and labor spent by Protiviti was reasonable and necessary to provide the Receiver with the quality and extent of services required to appropriately fulfill its obligations.
- The novelty and difficulty of the case. The issues addressed by Protiviti in connection with its services to the Receiver were often novel and complex and required the expertise of professionals with a specialized background in bankruptcy, restructuring, and litigation.
- The skills requisite to perform the services properly. The services performed by Protiviti’s professionals required the skills of trained receivership, creditors’ rights, and real estate professionals with an appreciation and understanding of complex fraud schemes and asset disposition.
- The preclusion of other employment. Although Protiviti’s services for the Receiver were often time-critical, this engagement did not preclude Protiviti from accepting other engagements. Nevertheless, a number of Protiviti professionals working on this matter were exclusively or substantially focused on this case, while other professionals

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<sup>1</sup> Johnson, 488 F.2d at 717-19; Barber, 577 F.2d at 226, n.28; Anderson, 658 F.2d at 248, n.2.

were utilized on a limited basis to minimize costs to the Receiver while meeting required deadlines.

- The customary fee charged. Protiviti seeks allowance of professional fees based on hourly rates that are consistent with rates charged by Protiviti in matters similar to the magnitude and complexity present in this case. The hourly rates charged by Protiviti are within the range of those customarily charged by other professionals having comparable skills and expertise in similar matters.
- Whether the fee is fixed or contingent. Protiviti's fees are charged according to the time spent on behalf of the Receiver and Applicant's prevailing hourly rates.
- Time limitations imposed by the client or the circumstances. Many of the matters that arose in connection with this case presented time-critical challenges for Protiviti.
- The amount involved and the results obtained. Protiviti provided critical timely assistance to the Receiver in this ongoing case. The fees in the amount of \$22,470 are reasonable in light of the results obtained.
- The experience, reputation and ability of the professionals. Protiviti is well qualified to provide professional services for the Receiver. Protiviti's professionals collectively have extensive experience in financial restructuring, interim and crisis management, regulatory compliance issues, complex business and commercial litigation and other matters relevant to this case.
- The "undesirability" of the case. While Protiviti is well-equipped and well-qualified to represent the Receiver as counsel, both the magnitude and time-sensitive nature of the case prevents Protiviti's professionals from assisting the firm on other matters.
- The nature and length of the professional relationship with the client. Following appointment of the Receiver, Protiviti was immediately engaged as financial advisor to the Receiver and has served in that capacity at that time. Both Protiviti's excellent reputation and significant experience practicing in the Eastern District of Virginia provide the Receiver with significant added value.
- Awards in similar cases. Protiviti believes the professional fees sought herein are consistent with fees charged by similarly skilled professionals for comparable services in other cases. The fees sought by this Application are based on discounted hourly rates that commensurate with or below rates charged to other clients. Further, the hourly rates charged by Protiviti are within the range of those customarily charged by other professionals having comparable skills and expertise in similar matters.

14. Protiviti believes that the services rendered to the Receiver and the out-of-pocket expenses incurred therewith were necessary and reasonable in view of the Receiver's obligations in this case and the scope and nature of the matters in which Protiviti was involved to competently represent the Receiver.

15. Upon information and belief, the rates charged by Protiviti are comparable to the fees charged by other professionals in similar cases. Protiviti believes that the fees requested herein clearly satisfy the Johnson factors as set forth above.

16. The SEC has reviewed and approved of the Application.

#### Certification

17. Protiviti certifies that it has read the Application.

18. Protiviti certifies, to the best of its knowledge, information, and belief formed after reasonable inquiry, the Application and all fees and expenses therein are true and accurate representations of the time incurred and the Application complies with the Billing Instructions.

19. Protiviti certifies that all fees contained in the Application are based on the rates listed in Protiviti's fee schedule attached hereto and such fees are reasonable, necessary and commensurate with the skill and experience required for the activity performed.

20. Protiviti certifies that it has not included in the amount for which reimbursement is sought the amortization of the cost of any investment, equipment, or capital outlay (except to the extent that any such amortization is included within the permitted allowable amounts set forth herein for photocopies and facsimile transmission).

21. Protiviti certifies that in seeking reimbursement for a service which Protiviti justifiably purchased or contracted for from a third party (such as copying, imaging, bulk mail,



messenger service, overnight courier, computerized research, or title and lien searches), Protiviti requests reimbursement only for the amount billed to Protiviti by the third-party vendor and paid by Protiviti to such vendor.

#### Notice

22. Notice of this Motion will be served upon: (a) the SEC; (b) counsel for the Defendants and the Receivership Defendants; (c) all parties filing a notice of appearance in this Civil Case, and (d) all parties receiving electronic notice in this Civil Case. In light of the foregoing and the nature of the relief requested herein, the Receiver submits that no other or further notice is required.

23. Pursuant to Local Rule 7(F)(1), the Receiver requests the Court waive any requirement for a separate memorandum of law. Pursuant to Local Rule 7(J), the Receiver requests the Court waive oral argument, as the Receiver believes this Motion is unopposed and hereby submits this Motion for ruling on this brief.

#### Conclusion

WHEREFORE, Protiviti respectfully requests that the Court enter an order in a form substantially similar to that attached hereto as Exhibit 5: (i) providing approval of compensation during the Application Period in the amount of \$23,190.00 for professional services rendered to the Receiver from and including April 1, 2020, through and including September 30, 2020; (ii) authorizing the Receiver to pay the professional fees and expenses requested herein; (iii) approving all prior fee applications on a final basis; and (iv) granting such other and further relief as the Court deems appropriate.



**CERTIFICATE OF SERVICE**

I hereby certify that on the 4<sup>th</sup> day of December 2020, a true and correct copy of the foregoing was filed with the Court through the Clerk's CM/ECF filing system and served on all persons receiving electronic notice in this case, and/or by first-class mail, postage prepaid, to all parties listed below:

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