

**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, ET. AL.,)	
)	
Defendants.)	
)	
)	
UNITED STATES OF AMERICA,)	
)	
v.)	Criminal No. 1:19-cr-43
)	
TODD ELLIOTT HITT,)	
)	
Defendant.)	
)	

MEMORANDUM IN SUPPORT OF MOTION TO (I) APPROVE FINAL FEE APPLICATIONS, (II) APPROVE FINAL DISTRIBUTIONS, AND (III) DETERMINE CRIMINAL RESTITUTION

Christopher L. Perkins, the court-appointed Receiver/Special Master in the above-captioned proceedings (“**Movant**”), pursuant to this Court’s October 15, 2018 and February 23, 2019 Orders, respectfully submits the following Memorandum in Support of his Motion To (i) Approve Final Fee Applications, (II) Approve Final Distributions, and (iii) Determine Criminal Restitution (“**Motion**”).

Background

1. On October 5, 2018, the Securities and Exchange Commission (“**SEC**”) commenced the civil case by filing a Complaint for securities fraud against Hitt individually, and

against Kiddar Capital LLC (“**Kiddar Capital**”) and Kiddar Group Holdings, Inc. (“**Kiddar Holdings**”), as corporate defendants, for violations of federal securities laws. Among the entities named as Relief Defendants were, Kiddar Homebuilding Fund I, LLC (“**Homebuilding Fund**”), Melbourne Retreat LLC (“**Melbourne**”), Kiddar Mass Ave LLC (“**Mass Ave**”), Kiddar Ridgeview LLC (“**Ridgeview**”), ESA Emerson LLC (“**Emerson**”), ESA Highwood LLC (“**Highwood**”), and Kiddar AQ, LLC a/k/a Kiddar Aquicore LLC (“**Aquicore**”).

2. By Order dated October 12, 2018, this Court appointed Bruce H. Matson as Receiver in the civil case (the “**Receivership Order**”) establishing the estates of the various Defendants and Receivership Defendants (“**Receivership Estates**”) and vesting the Receiver with certain general powers and duties. By Order dated December 13, 2019, the Movant was appointed Receiver to succeed Mr. Matson.

3. The Receivership Order provides, in pertinent part, at the conclusion of the receivership, the Receiver shall file a final accounting and final application for compensation and expense reimbursement. Receivership Order, paragraph 33 (Civil Docket No. 21)

4. On October 4, 2018, the United States commenced a criminal case by filing a Complaint for securities fraud against Hitt.

5. On February 13, 2019, Hitt entered into a Plea Agreement with the United States wherein he acknowledged, among other things, restitution to the victims of his crimes was mandatory pursuant to applicable criminal statutes. (Criminal Docket No. 24).

6. By Order that same day, this Court appointed the Receiver as Special Master in the criminal case (“**Special Master Order**”). The Special Master Order directs the Special Master to recommend findings to the Court on the following issues: (a) which entities and individuals are

properly considered “victims”; (b) the proper amount of restitution owed to each such victim; and (c) an appropriate payments schedule. (Criminal Docket No. 28).

7. By Order dated February 28, 2020, the Court granted the Receiver’s Motion For Approval of Supplemental Settlement, Distribution Plan, and Initial Distribution (“**Plan**”). (Civil Docket No. 136). A schedule of allowed and disallowed claims of Investor Victims¹ and Creditors (the “**Claims Schedule**”) is attached as Exhibit A to the Plan.

8. Among other things, the Plan provided for the payment of administrative (including tax) expenses, the transfer and liquidation of the remaining estate property, and approval of a scheme for disbursements to claimants.

9. The Receiver filed a Notice of Effective Date of the Plan dated March 16, 2020. In the months since the Effective Date, the Receiver made the Initial Distribution contemplated by the Plan to the Investor Victims; transferred or sold all remaining estate property; and prepared and filed tax returns on behalf of the applicable Defendants and Receivership Defendants, and paid all tax liabilities.²

¹ Capitalized terms not otherwise defined herein shall have the meaning given to them in the Plan.

² Through this Motion, the Receiver hereby notifies the Internal Revenue Service (IRS) and the State of Virginia (Virginia) that he has made his best efforts to file all appropriate and required tax filings to report the disposition of the assets of the Receivership in addition to any required filing requirements associated with the payment of the Receivership Claimants. The convoluted web of obfuscation and fraud implemented by Todd Hitt to confuse and defraud his investors, lenders and the taxing authorities has hampered the ability of the Receiver to determine with any absolute certainty any of the transactions reported on the income tax returns filed with the IRS or Virginia. The Receiver has, with the aid of his financial advisors and tax professionals made his most diligent efforts to compile all the available information and provide it to the taxing authorities. The Receiver hereby requests that the IRS and the Virginia notify the Receiver as soon as possible and, in no event later than the entry of the order affirming this motion, of any and all outstanding liabilities and/or any and all outstanding filing requirements. Having given notice to all parties and requesting that the IRS and Virginia inform the Receiver of any outstanding obligations, in the event that neither the IRS nor Virginia notify the Receiver and/or the court of any tax filing, payment and/or liabilities that remain outstanding, the Receiver hereby requests that the court, the IRS and the Virginia relieve the Receiver of any further filing, and/or payment obligations related to the Receivership. Further, that the entry of the order affirming this motion without objection by either IRS and/or Virginia shall act as an affirmative acceptance of the tax filings, payments and/or liabilities of the Receivership or the Receiver in full satisfaction of any and all obligations for tax filings, tax payments or tax liabilities of any nature, including but not limited to tax, interest or penalties pertaining to the administration of this Receivership.

Accounting

10. Attached hereto as Exhibit A is the Receiver's current Accounting. As reflected therein, the Receiver has distributed \$14,447,338.00 to Investor Victims pursuant to the Plan.

11. The Receivership has \$4,803,366, representing the cash on hand. There are outstanding professional fees and expenses totaling \$556,508 which are the subject of the following final fee applications ("**Final Fee Applications**")³:

- a. Eckert Seamans Cherin & Mellott, LLC (Dkt. No. 152);
- b. Protiviti, Inc. (Dkt. No. 153);
- c. Gorfine Schiller, and Gardyn, P.A. (Dkt. No. 154); and
- d. Bruce H. Matson, Receiver (Dkt. No. 155).

12. Upon approval and payment of the Final Fee Applications and Holdback (and the Reserve discussed below) the Receivership will hold approximately \$4,246,858. Pursuant to the Plan, the Receiver will distribute all of those funds *pro rata* to those Holders of Allowed Class 2 Claims ("**Final Distribution**"), which will result in total payments to Investor Victims of 82% and Creditors of 50% of their Allowed Claims, respectively

Determination of Criminal Restitution

13. Following payment of the Final Distribution, there will remain a shortfall to Allowed Investor Victims in the total amount of \$2,392,520 which, according to Article 5.03 of the Plan shall be the amount of Criminal Restitution owed by Todd E. Hitt.

³ In addition to the amounts due in the Final Fee Applications, the Receivership has accrued amounts due to professionals throughout the case pursuant to a 20% holdback ("**Holdback**") pursuant to the *Billing Instructions For Receivers In Civil Actions Commenced By The U.S. Securities And Exchange Commission*. The Movant requests authority to release these accrued funds. The total amount of funds representing the Holdback is \$154,077 (consisting of \$67,510 for LeClairRyan (to be paid to Lynn Tavenner, Trustee for the estate of LeClair Ryan); \$48,815 for Protiviti; and \$37,752 for Eckert Seamans).

14. After consultation with counsel for Todd Hitt, the United States Attorney, the United States Probation Office, and consideration of certain financial information contained in the Criminal Pre-Sentence Report, the Movant recommends that Mr. Hitt be ordered to pay the greater of \$500 per month or 25% of his disposable earnings after his release, as Criminal Restitution. The SEC takes no position with respect to the determination of Criminal Restitution. In addition, any agreement with respect to Criminal Restitution shall not impact the SEC's pending claims for disgorgement and prejudgment interest against Mr. Hitt, Kiddar Capital, Kiddar Holdings and the Relief Defendants, or the SEC's pending claim for a civil penalty against Mr. Hitt. Pursuant to the prior judgments entered by this Court, those claims will be resolved separately upon motion by the SEC. *See* Civil Docket Nos. 11-20.

15. Accordingly, at this time, the Receiver requests that the Court authorize the Receiver to:

- Pay the Holdback and all approved professional fees and expenses which are the subject of the Final Fee Applications;
- Establish a Reserve in the amount of approximately \$18,000⁴ to be used without further application to or approval of the Court, to pay fees and expenses that are anticipated to be incurred in "winding up" activities, including attorney and paralegal time and expenses expended in connection with the Final Distribution, as well as any future residual tax assessment; and
- Distribute the remaining cash on hand to Investor Victims and Creditors in accordance with the Plan.

⁴ To the extent the Reserve is not fully exhausted by the wind up activities, any balance will be paid toward the Criminal Restitution.

16. Upon the completion of the activities described in the preceding paragraph, the Receiver will file a Final Accounting and request that the Receivership be terminated and that the Receiver be discharged.

17. The SEC has reviewed and does not oppose the relief sought in this Motion. The SEC takes no position with respect to the accuracy of the Receiver's Accounting.

18. The Receiver is prepared to attend an in-person, virtual or telephonic hearing or conference with the Court to address questions or concerns that the Court or other interested parties may have.

NOTICE

19. The Movant will file an affidavit of service reflecting that he has provided notice of the Motion, Memorandum of Support, and Plan as follows:

- *Notice by Electronic Mail and Regular Mail.* The Receiver will serve this Motion on all known claimants and their counsel by electronic mail, and by regular mail (to the extent both addresses are known).
- *Notice by Publication.* The Receiver will also publish notice on his dedicated receivership website maintained by American Legal Claims.
- *Notice upon Inquiry.* Finally, the Receiver proposes to promptly provide a copy of this Motion to any claimant who makes a written request for such documents to the Receiver, the Receiver's legal counsel or the Receiver's electronic mail address: Kiddar@americanlegal.com, or physical addresses.

WHEREFORE, for the reasons stated herein, the Movant respectfully requests that the Court enter an Order substantially in the form attached as Exhibit B, approving the relief sought in this Motion, and granting such other relief as is appropriate.

Dated: December 4, 2020

CHRISTOPHER L. PERKINS,
RECEIVER/SPECIAL MASTER

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on the 4th 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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