

**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.	)	

**ECKERT SEAMANS' FINAL APPLICATION  
FOR ALLOWANCE OF COMPENSATION AND EXPENSE  
REIMBURSEMENT AS COUNSEL TO THE RECEIVER**

Eckert Seamans Cherin and Mellott, LLC ("ESCM"), counsel for the Receiver of the estates of Kiddar Herndon Station LLC, 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 Final Application for Allowance of

Compensation and Expense Reimbursement as Counsel to the Receiver (the “**Final 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, ESCM seeks approval as follows:

- (a) compensation in the amount of \$73,574.25, and reimbursement of expenses in the amount of \$293.39 for the period of April 1, 2020, through October 31, 2020; and
- (b) approval on a final basis of the interim orders approving prior fee applications entered on November 22, 2019 (Dkt. No. 111); February 7, 2020 (Dkt. No. 131), and May 18, 2020 (Dkt. No. 146).

In support of this Final Application, ESCM 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, the Court appointed the undersigned as successor to the Receiver.

4. On November 9, 2018, this Court entered an order authorizing the employment of LeClairRyan, PLLC as counsel to the Receiver (the “**Employment Order**”). Effective August 15, 2019, LeClairRyan began winding down operations and the Receiver retained ESCM.

5. The terms of ESCM’s employment are as follows: ESCM charges legal fees on an hourly basis at its attorneys’ hourly rates, which are set in accordance with the attorneys’ seniority

and experience. Attached hereto as Exhibit B is the hourly rate schedule for ESCM in this case. ESCM 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 July 22, 2020, the Receiver filed his most recent Quarterly Status Report [Docket No. 148] 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 that Status Report herein.

7. Simultaneous with this Final Application, the Receiver is filing his Motion to (i) Approve Final Accounting; (ii) Approve Final Fee Applications; (iii) Determine Restitution; (iv) Approve Remnant Sale; and (v) Terminate Receivership, which Motion contains a Final Accounting of all funds received and disbursed throughout the life of the receivership.

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

#### Relief Requested

9. By this Fee Application, ESCM is seeking (a) final approval of compensation in the amount of \$73,574.25 for professional services rendered to the Receiver and reimbursement of \$293.39 for out-of-pocket expenses incurred for the Receiver's benefit from and including April 1, 2020, through and including October 31, 2020; and (b) final approval of all compensation and reimbursement of expenses that it has received in this case on an interim basis (as described above). Attached hereto as Exhibit C is ESCM's invoice for services rendered and expenses incurred during the applicable period.

#### Summary of Services Rendered During Application Period

10. The total amount of compensation requested for the applicable period is based on the hourly rates agreed to be charged by the attorneys and paralegals who performed legal services for the Receiver in this matter.

11. In the course of representing the Receiver during the applicable period, ESCM has provided various services, which may be summarized as follows:

A. Asset Analysis and Recovery: Total Hours 5.4 Total \$1,310.63

Description – Continue to investigate assets of the Receivership Defendants’ estates; analyze various information from financial advisors regarding asset analysis; review and analyze real property records and lien documentation.

Necessity and Benefit to the Estate - ESCM’s services were necessary to assist the Receiver in analyzing potential assets that serve as a basis for distribution for the benefit of creditors.

B. Asset Disposition: Total Hours 96.3 Total \$28,741.13

Description – Continue to investigate and analyze various personal property; negotiation of sale contracts, negotiation with interested parties and potential buyers, and scheduling and pursuing closing of transactions.

Necessity and Benefit to the Estate - ESCM’s services were necessary to assist the Receiver and the Estate in the preservation and liquidation of assets to maximize the value to the Estate.

C. Case Administration: Total Hours 80.00 Total \$26,188.13

Description – Research, analysis, conferences, document review and preparation, correspondence, and court appearances on case administrative matters including, but not limited to: filing and service of pleadings, Receiver’s communications and strategy regarding case, review docket filings, various hearing preparation, internal organizational meetings, communication with counsel for various constituents including Receivership Defendants, investors, Relief Defendants, and government agencies.

Necessity and Benefit to the Estate - ESCM’s services were necessary to assist the Receiver in the complex and ordinary issues pertaining to the ongoing maintenance of this case.

D. Claims Administration and Objections: Total Hours 55.10 Total \$17,090.63

Description – Communications with victims, creditors and counsel; review/analysis of various claims, preparation of objections, research, negotiate, file recommended plan of distribution; prepare for and attend hearing to approve plan; correspondence with Court and various counsel, and execute initial distribution.

Necessity and Benefit to the Estate - ESCM's services were necessary to advise the Receiver of his responsibilities and obligations concerning creditors' claims against the estates and to formulate and execute a plan of distribution.

E. Business Operations: Total Hours 1.0 Total \$243.75

Description – Coordination with tax advisor and various governmental authorities regarding required tax filings of various entities.

Necessity and Benefit to the Estate – ESCM's services were necessary to advise the Receiver regarding legal obligations of the various corporate entities to several state and federal regulatory bodies.

A chart showing the services rendered by ESCM by task category is included on the final page of Exhibit C.

12. The fees sought by ESCM are reasonable for the work it performed in the specialized area of receivership law and in practice before the United States District Court for the Eastern District of Virginia. Such fees are customary for this practice and are comparable in amount to services rendered by other attorneys 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.

13. The expenses incurred by ESCM, 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 ESCM 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 Counsel believes to be a reasonable charge for

such an expense. ESCM 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.

14. 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 Counsel 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. ESCM expended 237.8 hours of professional services on behalf of the Receiver during the applicable period. During this 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 analysis, liquidation of assets, negotiation and pursuit of settlements with investors, and other matters with which the Receiver required assistance. The time and labor spent by ESCM 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 ESCM 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.

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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.

- The skills requisite to perform the services properly. The services performed by ESCM 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 ESCM's services for the Receiver were often time-critical, this engagement did not preclude ESCM from accepting other engagements. Nevertheless, a number of professionals working on this matter were exclusively or substantially focused on this case, while other professionals were utilized on a limited basis to minimize costs to the Receiver while meeting required deadlines.
- The customary fee charged. ESCM seeks allowance of professional fees based on hourly rates that are consistent with rates charged by ESCM in matters similar to the magnitude and complexity present in this case. The hourly rates charged by ESCM are within the range of those customarily charged by other professionals having comparable skills and expertise in similar matters. ESCM applied a twenty-five percent (25%) discount per its agreement with the SEC.
- Whether the fee is fixed or contingent. ESCM'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 ESCM.
- The amount involved and the results obtained. ESCM provided critical timely assistance to the Receiver in this ongoing case. The fees are reasonable in light of the results obtained.
- The experience, reputation and ability of the professionals. ESCM is well qualified to provide professional services for the Receiver. ESCM has 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 ESCM is well-equipped and well-qualified to represent the Receiver as counsel, both the magnitude and time-sensitive nature of the case prevents ESCM from assisting the firm on other matters.
- The nature and length of the professional relationship with the client. ESCM's excellent reputation and significant experience practicing in the Eastern District of Virginia provide the Receiver with significant added value. Following the closure of LeClairRyan, the Receiver's original counsel, Christopher L. Perkins, became employed by ESCM, thus maintaining continuity of representation of the Receiver.

- Awards in similar cases. ESCM 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 hourly rates that are ESCM's customary and usual rates for its other clients for similar services. Further, the hourly rates charged by ESCM are within the range of those customarily charged by other professionals having comparable skills and expertise in similar matters.

14. ESCM 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 ESCM was involved to competently represent the Receiver.

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

#### Certification

16. ESCM certifies that it has read the Application.

17. ESCM 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 and comply with the Billing Instructions.

18. ESCM certifies that all fees contained in the Application are based on the rates listed in the fee schedules attached hereto and such fees are reasonable, necessary and commensurate with the skill and experience required for the activity performed.

19. ESCM certifies that they have 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).



20. ESCM certifies that in seeking reimbursement for a service which it 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), it requests reimbursement only for the amount billed to Counsel by the third-party vendor and paid by Counsel to such vendor.

Notice

21. 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.

22. 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, ESCM respectfully requests that the Court enter an order in a form substantially similar to that attached hereto as Exhibit E: (i) providing approval of compensation during the Application Period in the amount of \$73,574.25 for professional services rendered by ESCM to the Receiver and reimbursement of \$293.39 for out-of-pocket expenses incurred for the Receiver's benefit from and including April 1, 2020, through and including October 31, 2020; (ii) authorizing the Receiver to pay the professional fees and expenses requested herein; (iii) providing final approval of amounts approved by the Court by the First, Second, and Third Interim

Compensation Orders; and (iv) granting such other and further relief as the Court deems appropriate.

**ECKERT SEAMANS CHERIN AND  
MELLOTT, LLC**

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*/s/*

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**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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