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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

MANAGEMENT SOLUTIONS, INC., a
Texas corporation; WENDELL JACOBSON,
an individual; and ALLEN R. JACOBSON, an
individual,

Defendants.

**RECEIVER'S MOTION FOR AN ORDER
ESTABLISHING MONTHLY FEE AND
EXPENSE REIMBURSEMENT
PROCEDURES**

Civil Action No. 2:11-cv-01165

Judge Bruce S. Jenkins

Gil A. Miller (the “Receiver”), as Receiver for Defendants Management Solutions, Inc., Wendell A. Jacobsen, Allen R. Jacobsen, and related individuals and entities, by and through counsel, hereby submits this Motion for an Order Establishing Monthly Fee and Expense Reimbursement Procedures. Pursuant to said Motion, the Receiver requests modification of the prior Orders of this Court, as it relates to compensation.

1. On December 15, 2011, this Court entered the Order Appointing Receiver, Freezing Assets and Other Relief (CM/ECF No. 4), appointing John A. Beckstead (now the “Former Receiver,”) as the receiver for Defendants Management Solutions, Inc., Wendell A. Jacobsen, Allen R. Jacobsen, and related individuals and related entities. *See also* Amended Order (CM/ECF No. 15), collectively, the “Appointment Order”. On April 15, 2014, Gil A. Miller (the “Receiver”) was substituted for the Former Receiver. (CM/ECF No. 1813). The Appointment Order anticipated that the Receiver would be required to engage professionals to assist him in carrying out the duties and responsibilities described in the Appointment Order . (CM/ECF No. 4 at ¶ 60.)

2. By Order dated December 22, 2011, the Court authorized the Former Receiver to engage Wisan, Smith, Racker & Prescott LLP (“WSRP”) as his accountants. (CM/ECF No. 21). On March 12, 2014 this court authorized accountants Rocky Mountain Advisory (“RMA”) to be engaged as forensic accountants for the Former Receiver. (CM/ECF No. 1640).¹

3. Section XIV of the Appointment Order provides that the Receiver and his professionals are entitled to reasonable compensation and expense reimbursement from the receivership estate, and that such compensation and reimbursement must be approved by the

¹ RMA were engaged as a lower cost alternative to accounting firm Deloitte, particularly in so far as the most complex elements of the forensic accounting were complete.

Court (Appointment Order at ¶ 60). Section XIV (*Id.* at ¶¶ 61 – 64) provides the requirements for making application for such compensation and reimbursement, including prior submission and approval of the Securities and Exchange Commission (SEC).

PROPOSED MONTHLY INTERIM COMPENSATION AND REIMBURSEMENT

4. By this Motion, the Receiver requests approval to amend the Appointment Order so that he can pay monthly interim compensation and reimbursement of expenses incurred by the Receiver, WSRP and RMA.² While the Receiver’s proposed procedures differ somewhat from the procedures outlined in Section XIV of the Appointment Order, the Receiver believes that monthly interim compensation and reimbursement of expenses incurred by these professionals is fair and reasonable, is in line with procedures adopted in similar receivership cases, and will enable the Court, the SEC, and all other parties in interest to effectively monitor fees and expenses as they are incurred in this case. The differences between the Receiver’s proposed procedures, and those outlined in the Appointment Order, are detailed below. The Receiver has informed the SEC of the differences between the Receiver’s proposed procedures and the Appointment Order, and the SEC has raised no objection.

5. The Receiver proposes that monthly payment of compensation and reimbursement of the Receiver, WSRP and RMA (hereinafter the “Professionals”) be made pursuant to the following procedures:

- a. Each Professional shall serve a fee request (the “Request”) on the SEC, counsel for the Receiver, and counsel for any other party who files a notice specifically

² The Receiver intends to submit a further motion extending this procedure to all retained professionals, once their Eight Fee Application has been approved, depending on this Motion’s approval and based on the Court’s and the Retained Professionals input on the procedure.

seeking copies of such Requests (collectively, the “Notice Parties”). The Request shall be a detailed statement of services rendered and expenses incurred by each Professional for the month. Each Request shall be, consistent with the Court’s previous treatment of invoices in this matter, made available to the public in the Clerk’s office (with an unfiled courtesy copy made available to the Court). Each Request shall be served upon counsel for the SEC and counsel for the Receiver at least ten (10) days prior to filing a Request with the Court.

b. In addition to service via ECF, each Professional must serve a copy of its Request on the Notice Parties by e-mail as provided below.

c. The Request shall relate to services rendered and expenses incurred during the prior month, shall seek payment of monthly compensation in an amount equal to eighty percent (80%) of the total fees sought and one hundred percent (100%) of the expenses incurred during the prior month, and shall indicate the amount requested, the total time expended, the names of the Professionals who performed the services, and the hourly billing rate for each Professional. The Request shall be accompanied by a detailed listing of the time expended by the Professionals who performed the services and the costs incurred during the month.

d. Any objection to the payment of fees or reimbursement of expenses in a Request must be filed with the Court and served on the Notice Parties within ten (10) calendar days of the date the Request was filed with the Court (the “Objection Period”). If no objection to a Request is timely filed and served within the Objection Period, the Receiver shall be authorized to make payment as requested in that Request promptly

upon the expiration of the Objection Period. If an objection is timely filed and served, (i) the objection shall be considered at the hearing on the Interim Application (as defined below) for that period, and (ii) the Receiver is authorized to make payment as requested in the Request only of the appropriate amounts of fees and expenses that are not in dispute. No disputed amount may be paid until the objection is considered by the Court and an order is entered allowing the disputed fees and expenses.

e. Any objection to a Request must have a description of the specific subject matter and services in dispute and state the amount in dispute. It shall not be sufficient simply to object to all fees and expenses.

f. If there are no objections to any line item, then the fee that accompanies that line item shall be paid as set forth herein above.

g. Interim payments pursuant to these procedures will be made only if the Receiver determines, in his sole discretion, that sufficient funds are available to the Receiver to make payment. To the extent that the Receiver determines that there are funds available for interim payments for any month, but that such funds are insufficient to pay all Requests in accordance with these procedures, the Receiver may make interim payments in accordance with the procedures herein on a *pro rata* basis from funds that the Receiver determines, in his sole discretion, are available for distribution.

h. No portion of the funds paid to a Professional pursuant to the proposed monthly payment procedure will be deemed to have been allowed by the Court unless and until the Court enters an Order expressly allowing such fees and costs. Failure to

object to a Request under these procedures shall not limit or prejudice in any way a party's right to object to fees and expenses when submitted to the Court for allowance.

i. No later than August 31, 2014, each Professional who has filed a Request or is otherwise seeking interim compensation shall file with the Court and serve on the Notice Parties an interim fee application with a summary of the activities of the Professional for the period May 1, 2014, through July 31, 2011 (the "Second Fee Application").³ The Second Fee Application shall seek approval of one hundred percent (100%) of the requested interim compensation and reimbursement of expenses, including any compensation and reimbursement made pursuant to a Request during this period. This application process shall be repeated for each 90-day period thereafter. Each Fee Application shall be filed with the Court within thirty (30) days after the end of the quarter for which compensation is sought. Each Fee Application shall be served upon counsel for the SEC and counsel for the Receiver at least ten (10) days prior to filing the Fee Application with the Court.

j. If a Professional does not timely file a Fee Application for such preceding 90-day period, it shall not be permitted thereafter to file additional Requests until there has been a hearing on that Professional's Fee Application for the applicable 90-day period.

k. At the conclusion of this case, Professionals shall file an appropriate application seeking final allowance of all fees and expenses.

³ Both RMA and the Receiver have filed their First Fee Application for the period of March – April 2014, and April 15 – 30, 2014, respectively.

1. Each Request, any objection to a Request, and any response to an objection must be served by first class United States mail and e-mail on the following:

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6. The Receiver's proposed procedures for monthly interim compensation and reimbursement differ from the reimbursement procedures contained in Section XIV of the Appointment Order, in that they:

- a. provide for compensation and expense reimbursement from the estates on a monthly basis, whereas the Order provides for compensation only after the SEC and the Court's approval of each Invoice (which can and does take many months); and
- b. provide for a monthly hold back of 20% of the professional fees, to be paid out at the end of each quarter assuming there are no objections, whereas currently there is no set procedure for reconciling held-back amounts.

CONCLUSION

The Receiver believes that although the procedures proposed herein differ somewhat from the procedures contained in Section XIV of the Appointment Order, they are fair and reasonable and in the best interests of the estate and its creditors inasmuch as monthly Requests will enable the Court and all parties in interest to closely monitor the Professionals and the costs of administration. It is an appropriate step to make now that the Receivership has proven to be well managed and the Professionals have been cost-effective. Similar fee procedures have been approved in other matters in which the Receiver is currently serving as a Federal Court Equity Receiver or a Trustee in U.S. Bankruptcy Court matters. The Receiver has informed the SEC of this Motion and the proposed procedures, and the SEC has stated that it has no objection to the relief sought herein. The Receiver respectfully requests that the Court enter an order authorizing the Receiver to make monthly interim payments of fees and expenses pursuant to the procedures detailed above, and granting such other and further relief as the Court sees fit.

Dated this 19th day of June, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of June, 2014, I caused a true and correct copy of the foregoing to be served by CM/ECF upon the addressee(s) listed below:

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