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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

AMERICAN FINANCIAL BENEFITS
CENTER, a corporation, also d/b/a AFB and
AF STUDENT SERVICES; AMERITECH
FINANCIAL, a corporation; FINANCIAL
EDUCATION BENEFITS CENTER, a
corporation; and BRANDON DEMOND
FRÈRE, individually and as an officer of
AMERICAN FINANCIAL BENEFITS
CENTER, AMERITECH FINANCIAL, and
FINANCIAL EDUCATION BENEFITS
CENTER,

Defendants.

Case No. 4:18-cv-00806-SBA

**NOTICE OF APPLICATION AND FINAL
REPORT AND RECEIVER’S FINAL
REPORT AND APPLICATION FOR: (1)
DISCHARGE OF RECEIVER; AND (2)
APPROVAL OF FINAL FEE
APPLICATION**

JUDGE: Mag. Judge Jacqueline Scott Corley
CTRM.: 15th Floor, Ctrm. E
DATE: June 10, 2021
TIME: 9:00 a.m.

1 TO THE HONORABLE JACQUELINE SCOTT CORLEY, UNITED STATES
2 MAGISTRATE JUDGE, AND TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on June 10, 2021 at 9:00 a.m. in Courtroom E of the
4 United States District Court for the Northern District of California, located at 450 Golden Gate
5 Avenue, San Francisco, California, Thomas W. McNamara, as Court-appointed Receiver, will
6 present his Final Report and Application for Discharge and approval of his Final Fee Application
7 for the 17-month period of December 1, 2019 through April 30, 2021.

8 The Receiver submits the below final report for the Court's consideration, and hereby
9 applies for reimbursement of his fees and expenses, and those of his agents, in the amount of
10 \$50,529.35, and for discharge from his duties. This Application is made pursuant to Sections
11 VI(E) and XII of the Modified Preliminary Injunction Order and is based upon this Notice of
12 Application, the Declaration of Thomas W. McNamara, and upon such other pleadings, and oral
13 and documentary evidence as may be presented at or before the time of the hearing on the
14 Application.

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Dated: May 5, 2021

MCNAMARA SMITH LLP

By: /s/ Sanjay Bhandari
Sanjay Bhandari
*Attorneys for Court-appointed Receiver,
Thomas W. McNamara*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Thomas W. McNamara, as Receiver, by and through his undersigned counsel, hereby
3 submits his Final Report and files this Application for: (1) Discharge of Receiver and (2)
4 Approval of Final Fee Application, thereby seeking an Order from the Court discharging the
5 Receiver and approving the invoices for fees and expenses of the Receiver and his counsel for
6 the 17-month period of December 1, 2019 through April 30, 2021.

7 **INTRODUCTION**

8 In 2017, the FTC began investigating Defendants' student loan operations. Defendants
9 got wind of the investigation and filed a complaint for declaratory relief against the FTC in
10 August of 2017 (*Am. Fin. Benefits Ctr., et al. v. Fed. Trade Comm'n*, Case No. 4:17-cv-04817-
11 SBA (N.D. Cal.)); shortly thereafter, in February of 2018, the FTC filed the instant action against
12 Defendants American Financial Benefits Center (also d/b/a AFB and AF Student Services),
13 Ameritech Financial, Financial Education Benefits Center (collectively, the "Corporate
14 Defendants"), and Brandon Frere. The case was litigated for approximately nine months before
15 the Receiver was appointed on November 29, 2018 with this Court's entry of the Modified
16 Preliminary Injunction Order ("PI," ECF No. 187).

17 The Receiver was given a number of duties in the PI including:

- 18 • Taking custody and control of the Corporate Defendants' assets and documents,
19 PI § VI.B;
- 20 • Preserving the value of the Corporate Defendants' assets, PI § VI.C;
- 21 • Protecting the interests of consumers who transacted business with the Corporate
22 Defendants, PI § VI.J;
- 23 • Instituting or entering into litigation or arbitration to the extent necessary and
24 advisable to preserve or recover the Corporate Defendants' assets, PI § VI.L;
- 25 • Providing both the FTC and Defendants with access to the Corporate Defendants'
26 documents, PI § VI.Q; and
- 27 • Suspending the Corporate Defendants' business operations if, in the Receiver's
28 judgment, they could not continue lawfully and profitably, PI § VI.S.

1 As described in greater detail below, and in line with his duties, the Receiver secured the
2 sites Defendants used for their business; prepared a preliminary report assessing whether the
3 business could continue to operate lawfully and profitably, ultimately concluding that it could
4 not; suspended consumer payments to Defendants; provided notice to consumers about the case
5 on an ongoing basis; liquidated receivership assets, including vehicles; sought (and succeeded in)
6 recovery of assets from Defendant Brandon Frere and his family members and associates,
7 including by the filing of a contempt motion against Frere; reviewed insurance coverage to
8 determine whether it would be available to the Corporate Defendants; and resolved employment-
9 related issues, including issues related to Defendants' employees' 401(k) plan.

10 On November 17, 2020, the Court entered a Stipulated Order for Permanent Injunction
11 and Monetary Judgment (ECF No. 244), resolving the underlying case in full. With the case
12 now resolved as to all Defendants, Mr. McNamara files this Application for Discharge on the
13 grounds that he has completed his duties as defined in the PI. The Application is based upon the
14 Final Report, the Declaration of Thomas W. McNamara, and the proposed Order filed
15 concurrently with this Application, and upon such other pleadings, and oral and documentary
16 evidence that may be presented at or before the time of the hearing on the Application.

17 **FINAL REPORT**

18 **I. Commencement of the Receivership**

19 **A. Contempt by Frere**

20 One relevant event occurred just prior to the Receiver's appointment on Thursday,
21 November 29, 2018. On that day, within three hours of the Court clerk alerting the parties'
22 counsel that a decision and order on the FTC's Motion for Preliminary Injunction was imminent,
23 Defendant Brandon Frere liquidated two of the Corporate Defendants' bank accounts. He
24 transferred \$400,000 from American Financial Benefits Center ("AFBC") and Financial
25 Education Benefits Center's ("FEBC") bank accounts to himself, his family, and one of his
26 attorneys. At the same time Frere was transferring funds for his benefit, he made no provision to
27 pay his employees their outstanding pre-receivership wages, which for two weeks of work
28 totaled roughly \$175,000. The Receiver became aware of these transfers shortly after his

1 appointment, on Friday, November 30, and he immediately reached out to Frere's counsel and
2 requested the funds be transferred back. After no action was taken, the Receiver spoke with both
3 counsel on Monday, December 3, 2018, and again requested the funds be returned.

4 On December 4, 2018 after the funds were not returned, the Receiver filed an *Ex Parte*
5 Application seeking compliance with the PI and Order to Show Cause why Frere should not be
6 held in contempt. *See* ECF No. 189. On December 7, the Court found that the Receiver's
7 motion was warranted, and that further briefing was needed. *See* ECF No. 194. Frere filed an
8 opposition on December 14 (ECF No. 199) and the Receiver replied on December 18 (ECF
9 No. 200). During this time Frere's attorneys did return the \$100,000 that they had received, but
10 not upon instruction from Frere. On December 13, Frere agreed to transfer funds back which the
11 Receiver committed would be used for pre-receivership payroll. Frere initially wired back only
12 \$83,945.87 (which was insufficient to cover all of payroll), and later sent an additional
13 \$64,955.00 to the Receiver, for a total of \$148,900.87.¹

14 The Receiver filed a stipulation and proposed order with the Court to fund pre-
15 receivership payroll, which the Court granted. ECF Nos. 201, 203. The Receiver paid regular
16 pay for normal works hours, excluding commissions, bonuses, car and cell phone allowances,
17 reimbursements, or any other forms of compensation to the employees on a pro-rata basis. The
18 Receiver ultimately paid \$172,898.86 in payroll and payroll taxes which was partially offset by
19 the amount Frere paid of \$148,900.87.

20 **B. Immediate Access and Preliminary Report**

21 On November 30, 2018, the day following the entry of the PI, the Receiver and his team
22 secured and took custody of Defendants' headquarters in Rohnert Park, California and arranged
23 for the second site, which was located roughly an hour and a half away in El Dorado Hills,
24 California, to be secured remotely. On the first day, the goals were to secure the facilities, secure
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27 ¹ This stipulated payment did not resolve the pending *Ex Parte* Application. The application was
28 ultimately dismissed without prejudice on September 18, 2019 after the action was stayed. *See*
ECF No. 229.

1 the IT and related cloud infrastructure and accounts, identify bank accounts, and suspend all
2 customer charges pending review.

3 The Receiver and his team spent the following three weeks analyzing the operations of
4 the Corporate Defendants, a process which included interviewing employees, reviewing paper
5 and electronic documents (including internal employee chats and emails), sampling customer call
6 recordings, speaking with customers, reviewing numerous customer records in Salesforce (the
7 extensive customer relationship management database or “CRM” used by Defendants),
8 conducting numerous Salesforce searches, and generating multiple Salesforce reports. After
9 thoroughly reviewing Defendants’ business practices, the Receiver filed his Preliminary Report
10 on December 21, 2018.

11 In his Preliminary Report, the Receiver concluded that Defendants’ business could not
12 operate legally and profitably going forward. Deceptive and illegal practices were ingrained in,
13 and were central to, the profitable operation of the business. In particular, the Receiver
14 determined that Defendants had a practice of encouraging consumers to unlawfully inflate their
15 family size numbers (which allowed Defendants to secure lower monthly payments for
16 consumers and ensure their continued patronage) and that Defendants misrepresented the
17 purpose and nature of the FEBC membership to get consumers to sign up for it.² The Receiver
18 concluded that while some of the illegal practices could, in theory, be removed through a
19 wholesale overhaul of the Sales Department and an aggressive, effective compliance program,
20 such an effort would be prohibitively expensive and would render the business unprofitable.
21 After reaching this conclusion, the Receiver suspended all operations.

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25 ² The FEBC membership was of little value to the customers, but provided Defendants with a
26 steady monthly income stream. The benefits that appear to have been included with FEBC
27 included third-party services such as LifeLock, roadside assistance, credit repair, and health
28 savings plans. Defendants only paid for those third-party services, however, if the clients
affirmatively signed up for them, and very few clients did. In fact, out of a universe of tens of
thousands of customers, only 80 clients ever actually signed up for LifeLock and only 53 signed
up for roadside assistance.

1 **C. Suspension of Payments and Notice to Consumers**

2 When the Receiver took over the operations of the Corporate Defendants, scheduled
3 customer payments were suspended. Some charges could be suspended easily, while others
4 required individual and manual suspension that was handled by a former employee and the
5 Receiver's team. The Receiver's team made contacting the approximately 250 consumers with
6 imminent annual recertification deadlines a priority, bringing in a team of three former
7 employees to telephone each of these consumers to urge them to contact their loan servicer
8 directly.

9 After the filing of the Receiver's Preliminary Report, the Receiver's team posted
10 information on all of Defendants' websites and on the Receiver's website advising clients to
11 contact their loan servicers directly. The Receiver has updated his website periodically to keep
12 consumers updated on the case progression, and has responded to numerous telephone and email
13 inquiries from consumers regarding their student loans.

14 **II. Asset Preservation and Recovery**

15 **A. Engagement of Liquidator and Vacation of Receivership Sites**

16 In January 2019, the Receiver vacated the premises leased by the Corporate Defendants,
17 which were returned to their respective landlords in February 2019. Prior to returning the
18 premises to the landlords the Receiver's team met with multiple liquidation companies. Most
19 determined that the cost to remove cubicles, old and broken furniture, and trash outweighed the
20 value of the other saleable assets by a significant amount. However, one company was interested
21 in the electronics and willing to dispose of the cubicles. For the receivership site located in El
22 Dorado Hills, the liquidator purchased the electronics and the original landlord offered to
23 purchase the cubicles and office furniture for \$1,500, to which the Receiver agreed. For the site
24 located in Rohnert Park, the liquidator purchased the office equipment and electronics and
25 removed significant amounts of office furniture (*i.e.*, cubicles) for a net return of \$1,000 to the
26 Receivership Estate. The Receiver identified a FitBit, Nintendo Switch and a television to be of
27 value, which were sold independently for a net total of \$490. Overall, the Receivership Estate
28 netted \$2,990 from the sale of these assets.

1 **B. Sale of Vehicles**

2 On June 14, 2019, the Court entered an order authorizing the Receiver to sell six vehicles
3 which were turned over by Defendant Brandon Frere: (1) 2014 Audi S7; (2) 2015 GMC Sierra
4 2500HD Denali; (3) 2012 Porsche Panamera Turbo S; (4) 2013 Porsche Cayenne Turbo; and two
5 off-road vehicles (5) 2015 Can-Am Maverick Turbo XDS; and (6) 2017 Can-Am Maverick X3
6 Max XRS Turbo R (collectively, the “Vehicles”). *See* ECF No. 228. All six vehicles were sold
7 at an auction conducted by RM Auctions on August 29-September 1, 2019. The vehicles’ net
8 proceeds were as follows:

9

Vehicle	Net Proceeds
2014 Audi S7	\$19,650.00
2015 GMC Sierra 2500HD Denali	\$33,600.00
2012 Porsche Panamera Turbo S	\$44,400.00
2013 Porsche Cayenne Turbo	\$32,250.00
2015 Can-Am Maverick Turbo XDS	\$8,850.00
2017 Can-Am Maverick X3 Max XRS Turbo R	\$12,000.00

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13 In total, the sale of the Vehicles netted the Receivership Estate \$150,750.

14 **III. Asset Recovery**

15 Although Defendants – particularly Brandon Frere – profited handsomely from the
16 Corporate Defendants’ enterprise, relatively little money remained in the Corporate Defendants’
17 bank accounts by the time the Receiver took over operations. The low balance was due in large
18 part to Frere’s withdrawals.

19 **A. Withdrawal of Assets by Brandon Frere**

20 Between February 7, 2018 (the date the FTC action was filed) and April 2018, Frere
21 transferred \$849,384 from an AFBC Bank of America account to an AFBC Redwood Credit
22 Union (“RCU”) account. After the FTC filed its reply brief in support of its Motion for
23 Preliminary Injunction, Frere transferred \$1,487,940 from FEBC and AFBC RCU accounts to
24 his personal account. When Judge Armstrong informed the parties via ECF No. 138 that the
25 FTC’s Motion for Preliminary Injunction would be resolved without oral argument, Frere
26 transferred a total of \$1,002,400 from the FEBC and AFBC RCU accounts to his personal
27 account. Between April and July, he transferred \$111,050 to Justin Frere and \$222,100 to Gloria
28 Frere from the FEBC and AFBC RCU accounts. Then, as discussed above, Frere transferred

1 \$400,000 from corporate accounts to multiple parties in November of 2018, just before the PI
2 was entered.

3 Although the Receiver was able to recover some of these funds through the filing of a
4 contempt motion (discussed above), Frere returned relatively little of the money he siphoned
5 from the Receivership Estate after the filing of the FTC's action. This is not conjecture, but the
6 unfortunate reality for the victims of Frere's fraud. As Frere himself admitted when pleading
7 guilty to criminal charges brought against him in conjunction with the scheme:

8 [I]n order to conceal the proceeds of his wire fraud scheme, in 2015, [Frere]
9 began transferring to overseas bank accounts that he controlled large sums of the
10 funds that he had received through the scheme. He continued this process in
11 August 2017, after he became involved in litigation with the Federal Trade
Commission ('FTC') and became concerned the FTC or a court might be able to
seize the proceeds of his fraud.

12 See "Sonoma County CEO Sentenced to Three and a Half Years in Prison on Charges Stemming
13 from Multi-Million-Dollar Student Loan Repayment Services Scam," *available at*
14 [https://www.justice.gov/usao-ndca/pr/sonoma-county-ceo-sentenced-three-and-half-years-](https://www.justice.gov/usao-ndca/pr/sonoma-county-ceo-sentenced-three-and-half-years-prison-charges-stemming-multi-million)
15 [prison-charges-stemming-multi-million](https://www.justice.gov/usao-ndca/pr/sonoma-county-ceo-sentenced-three-and-half-years-prison-charges-stemming-multi-million).

16 These charges – which included wire fraud, money laundering, and criminal forfeiture –
17 were brought against Frere on October 1, 2019. See *United States v. Frere*, Case No. 3:19-CR-
18 00493-SI (N.D. Cal.). On December 20, 2019, Frere pleaded guilty; on July 24, 2020, he was
19 sentenced to 42 months in prison. A hearing on the restitution Frere owes to his victims was
20 originally set for October 16, 2020, but has since been continued to June 11, 2021.

21 **B. Assets Returned by Individuals**

22 The Receiver has been successful in repatriating Receivership Estate assets from a
23 number of individuals. At the time of the Preliminary Report's filing, Frere's parents, Gloria and
24 Andre Frere, had returned \$15,000 Frere sent to them, as had Frere's brother, Justin Frere
25 (\$7,500), and Cameron Henry, a former employee of Defendants (\$9,000). The Receiver also
26 obtained funds from Frere's attorneys (\$223,482.50).

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1 **C. Insurance Coverage**

2 The Receiver engaged insurance counsel to review the Corporate Defendants' insurance
3 policies and determine whether coverage could be secured to pay for independent counsel³
4 and/or, potentially, fund a settlement with the FTC on behalf of the Corporate Defendants. The
5 insurer resisted both requests, but did attend the settlement conference before Magistrate Judge
6 Beeler on May 6, 2019. *See* ECF No. 223. The case was stayed shortly after the settlement
7 conference, however, due to the pending criminal case against Frere (*see* ECF No. 226), and the
8 FTC case was resolved before the stay was lifted (ECF No. 243), rendering the issue moot.

9 **D. Clawback Actions Considered**

10 In conducting due diligence into the business operations, the Receiver came across a few
11 parties which he believed could be the subject of clawback actions. The Receiver carefully
12 considered whether or not pursuing clawback or other actions would be in the best interests of
13 the Receivership Estate.

14 1. Individual Transferees

15 On August 22, 2019, the Receiver sent a demand letter to Cameron Henry, who was
16 described by Frere as “a founding member and investor of American Financial Benefits Center,
17 AmeriTech Financial and the Financial Education Benefits Center...” Henry received roughly
18 \$970,000 in shareholder distributions and wages. Upon receiving this demand, Mr. Henry
19 provided the Receiver with a financial hardship application. After reviewing all documentation
20 provided, the Receiver determined that Henry did not have the means to repay the full amount to
21 the Receivership Estate. The Receiver was able to reach a settlement with Mr. Henry for a
22 partial repayment of the sums he received from the Corporate Defendants, a total of \$30,000.

23 2. Service Providers

24 Concern about the high percentage of clients enrolled in FEBC had raised red flags with
25 at least one vendor providing escrow services to AFBC. The Receiver served subpoenas on the
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27 ³ The insurer, having already provided the Corporate Defendants (through Frere) with counsel,
28 were resistant to providing the Corporate Defendants, now represented by the Receiver, with
their own, independent counsel.

1 escrow service providers used by AFBC. After reviewing the documents that the service
2 providers produced in response to the subpoenas, the Receiver determined that the evidence that
3 the providers were aware of the full extent of AFBC's misconduct was not strong enough to
4 justify the litigation risk of filing suit against any of the service providers.

5 **IV. Resolution of Employee 401(k) Plan**

6 The Corporate Defendants offered employees a retirement plan, namely, the American
7 Financial Benefit Center 401(k) Plan ("Plan"). ADP is the recordkeeper for the Plan and
8 maintains the participant information. The Receiver was made aware that certain former
9 employees had not requested distribution or rollover of their funds in the 401(k) plan. The
10 Receiver's team worked directly with ADP to identify and contact those participants regarding
11 their distribution options.

12 While most took distribution or rolled over their funds, a small number of participants
13 (six) have yet to take action. Having exhausted numerous time-consuming efforts to get the few
14 remaining participants to act, the Receiver recently executed an Automatic Rollover Services
15 Agreement with Millennium Trust Company wherein each remaining participant will have 45
16 days to process a termination distribution. The account balance of any participant who does not
17 process a termination distribution within the 45-day period, will automatically rollover to an
18 Individual Retirement Account, for the participant's benefit, with Millennium Trust Company.
19 After the expiration of the 45-day period, all participant accounts will have been distributed or
20 rolled out of the Plan, leaving the Plan with a \$0 balance.

21 The deadline to complete the receivership is May 17, 2021. The 45-day period after
22 which the Plan will terminate, and remaining participants rollover, will occur after the
23 receivership termination. As such, in the event the Receiver must execute federal or state returns
24 relating to the Plan and/or execute forms necessary for the distribution of funds from the Plan,
25 the Receiver is respectfully asking to retain the right to serve in this capacity after his discharge,
26 without seeking an Order from the Court approving the execution of such documents.

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1 **V. Receivership Accounting**

2 Attached as Exhibit A is a Receipts and Disbursements Summary for the receivership
3 period through April 30, 2021. It shows aggregate receipts of \$953,962.08, less disbursements
4 of \$671,551.61, for net cash as of this Final Report of \$282,410.47.

5 **APPLICATION FOR DISCHARGE AND**
6 **APPROVAL OF FINAL FEE APPLICATION**

7 This Application for Discharge is made on the grounds that the underlying case has now
8 been resolved as to all Defendants, and Mr. McNamara has completed his duties as defined in the
9 Modified Preliminary Injunction (ECF No. 187).

10 The Final Fee Application seeks approval to pay fees and expenses for services during
11 the 17-month period December 1, 2019 through April 30, 2021⁴ as follows: \$30,370.50 fees and
12 \$4,044.21 expenses to the Receiver and his staff payable to TWM Receiverships Inc., dba
13 Regulatory Resolutions; \$16,045.00 fees and \$69.64 expenses to Receiver's counsel McNamara
14 Smith LLP.

15 The Final Fee Application also seeks authorization to hold back \$10,000.00 as a reserve
16 for final administrative costs, *e.g.*, document and electronics storage costs, removal and
17 destruction of computer hard drives, and document destruction costs, which may be expended
18 without further order of the Court, and after 120 days any unexpended funds from that reserve
19 shall be disbursed to Plaintiff Federal Trade Commission. If the invoices in this Final Fee
20 Application are approved for payment in full, and the requested reserve of \$10,000.00 is
21 approved, net cash for immediate transfer to the FTC will be \$221,881.12.

22 The Final Fee Application is made pursuant to Section XII of the Modified Preliminary
23 Injunction, which provides that the Receiver and all personnel hired by the Receiver are entitled
24 to reasonable compensation and for the cost of actual out-of-pocket expenses to be paid from the
25 assets of the Corporate Defendants, based upon periodic requests to the Court for payment.

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27 ⁴ There is one time entry which predates December 1, 2019. This time entry totals 1.0 hour
28 (\$195) and was inadvertently not included in the Second Interim Fee Application (ECF No. 230).
The Receiver respectfully requests the Court's approval to pay this entry.

1 The Application for Discharge is based upon the Final Report, the Declaration of Thomas
2 W. McNamara, and the proposed Order filed simultaneously with this Application, the pleadings
3 in this matter, and such other oral and documentary evidence that may be presented at or before
4 the time of the hearing on the Application.

5 Dated: May 5, 2021

MCNAMARA SMITH LLP

6
7 By: /s/ Sanjay Bhandari
8 Sanjay Bhandari
9 *Attorneys for Court-Appointed Receiver,*
10 *Thomas W. McNamara*

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of May, 2021, the foregoing document, **NOTICE OF APPLICATION AND FINAL REPORT AND RECEIVER’S FINAL REPORT AND APPLICATION FOR: (1) DISCHARGE OF RECEIVER; AND (2) APPROVAL OF FINAL FEE APPLICATION**, was electronically transmitted to the Clerk’s Office using the CM/ECF System for filing, and for transmittal of a Notice of Electronic Filing to all counsel of record who are deemed to have consented to electronic service via the Court’s CM/ECF system.

/s/ Sanjay Bhandari
Sanjay Bhandari
Attorneys for the Court-Appointed Receiver,
Thomas W. McNamara