

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Case No. 3:22-cv-0487-TJC-MCR

MICHAEL RANDO, et al.,

Defendants.

**RECEIVER MARIA M. YIP'S REPLY IN SUPPORT OF
RECEIVER'S FIRST APPLICATION FOR FEES**

Receiver Maria M. Yip (“Receiver”), by and through her undersigned counsel, and pursuant to this Court’s Order (Doc. 78), submits the following reply in further support of her First Application for Fees (Doc. 67) and in response to Defendants’ Opposition (Docs. 73 and 74). On May 3, 2022, this Court a Temporary Restraining Order which included the appointment of Maria M. Yip as Temporary Receiver over the corporate defendants named in this case. (“TRO”)(Doc. 12) In the TRO, the Court stated that the Receiver and her personnel were “entitled to reasonable compensation for the performance of duties pursuant” to the TRO. Para. XX of TRO. Based on the Receiver’s motion and this reply, the Receiver believes that her request for fees is reasonable given her efforts to meet her duties as set forth in the TRO.

I. The Receiver is an Agent of the Court and Her Interim Report to the Court is Based on the Requirements of the TRO

As stated by the Defendants in their opposition, the Receiver is an agent of the Court. As such, the Receiver only has the powers allowed by the Court which in this case are set forth in the TRO. *See* Para. XIV of TRO. One of those duties is to “suspend business operations of the Receivership Entities if in the judgment of the Receiver such operations cannot be continued legally and profitably.” Para. XIV(T). This duty requires that the Receiver investigate and make determinations regarding the underlying business and conduct so that she can report the same to the Court. Despite the Defendants’ contentions, the Receiver’s duties are beyond just marshaling and protecting assets. The Receiver takes seriously her fiduciary responsibilities and has done her best to fulfill the twenty-three enumerated duties in this Court’s TRO. Defendants stress the idea that the Receiver is a neutral agent of the Court, but neutral does not mean without opinion based upon investigation and analysis. The Receiver has not acted as an investigator or agent for the FTC in carrying out these duties, but rather the Receiver and her team have acted as an agent of this Court as directed in the TRO.

Defendants object to the time spent by the Receiver and her team in creating the Interim Report claiming that the Report details tasks outside her authority and “exceed her primary obligation to marshal and preserve assets.” Opposition at 3. Paragraph XIV(W) of the TRO sets forth the Court’s requirements for the Receiver’s Report which includes a description of the steps taken by the Receiver

to implement the terms of the Order. The Receiver's Interim Report details her efforts and those of her team to implement the terms of the TRO including the extensive duties the Court assigned to the Receiver. The Receiver and her team should be compensated for these comprehensive efforts.

II. Legal Fees Related to Randos' Assertion of Fifth Amendment

Pursuant to Paragraph XIV(E) of the TRO, the Receiver was ordered to "obtain, conserve, hold, manage, and prevent the loss of all Documents of the Receivership Entities, and perform all acts necessary or advisable to preserve such Documents" including preserving "all Documents of the Receivership Entities that are accessible via electronic means." To that end, Defendants were to "fully cooperate with and assist the Receiver in taking and maintaining possession, custody, or control of the Assets and Documents of the Receivership Entities" including "all communications occurring via electronic mail . . ." TRO at Para. XV.

After her appointment, the Receiver attempted to identify the various business relationships between the Receivership Entities and third-party vendors which required email access and a password. It quickly became apparent that the Randos used their personal gmail addresses as the contact and/or user name for access to many of these third-party vendors and regularly conducted business through these gmail accounts. After efforts to work with defense counsel to voluntarily provide access to these accounts failed, the Receiver had no option but to seek the Court's assistance in having the Defendants comply with their obligations under the TRO. On May 26th, the Court ordered the Defendants to

provide shared access to the accounts no later than June 1st and historic documents and a forensic image of the accounts by June 8th. (Doc. 35) On June 1st, the Defendants notified the Receiver that they were asserting their Fifth Amendment rights and refused to provide access to these email accounts. The Receiver filed a Motion for Order to Show Cause on June 6th. That same day the Court ordered the Defendants to show cause as to why they had failed to comply with the Court's order. The issue was briefed and is still pending before the Court.

Defendants argue that the Receiver's team was "researching legal issues to wage unnecessary disputes with Defendants' counsel", a task that is "contrary to the Temporary Receiver's duty as a neutral officer of the Court." To the contrary, the Receiver, in respect to her efforts to obtain access to these email accounts, was acting in furtherance of her duties assigned by the Court in the TRO. Gaining access to Receivership Entity documents and information is critical and necessary to her role, and given the Defendants' refusal to abide by the Court's order, it was proper for the Receiver to seek the Court's intervention on this issue.

III. Correspondence with FTC and Attendance at Depositions Conducted and Defended by the FTC

Defendants object to the Receiver being compensated for correspondence between the Receiver and her professionals and the FTC in which defense counsel was not involved. Indeed, the Receiver and her team have had communications with FTC counsel. Similarly, Receiver's counsel has had numerous communications with defense counsel wherein FTC counsel was not included.

Pursuant to the TRO, the Receiver is to allow both Plaintiff and Defendants reasonable access to the premises and to documents. Para. XIV(Q) and (R). Further, the Receiver is ordered to “cooperate with reasonable requests for information or assistance from government agencies.” Para. XIV(S). Again, the tasks billed are in keeping with the Court-ordered duties assigned to the Receiver.

Defendants’ contention that the Receiver should not attend depositions conducted or defended by the FTC is likewise inaccurate and not appropriate. The only depositions attended by the Receiver were those she noticed pursuant to the TRO’s provision for expedited discovery. These depositions were of the Randos and were related to the financial affidavits they submitted on behalf of the Receivership Entities. Receivers routinely attend the depositions of the Defendants in a case, particularly as the testimony might relate to the financial assets of the Receivership Entities.

IV. Use and Usefulness of Website

Defendants suggest that the website set up by the Receiver does not assist the Court or benefit the Receivership Estate. This assessment could not be further from the truth. The Receivership Entities did business with thousands of consumers, many of whom, since the date this case was filed, have had questions related to the case. The website has provided a central location for those consumers and other creditors to review the current pleadings in the case, the status of the matter, and register so that the Receiver would have information regarding those potential claimants and their experiences with the Receivership Entities. The

ability for consumers to provide this information via the website has significantly reduced the labor-intensive efforts by the Receiver and her team in fielding telephone calls and emails from consumers.

V. Defendants' Proposal for Reopening Business

Defendants state that the Receiver has not responded to the Defendants' proposal to reopen part of the business of the Receivership Entities under her supervision. This is not accurate. In response to the proposal, the Receiver suggested to defense counsel that the business, corporate coaching/business scaling, should be restarted under a different name or corporate entity. After that was suggested, Defendants did not respond. However, recently, the Receiver negotiated the Assignment of the lease for Prosperity Training Technologies' office space to John Rando to conduct a coaching and business scaling business. In doing so, the Receiver has reduced the ongoing expenses of and future claims against the Receivership Estate. Additionally, this created the opportunity for the individual defendants to be employed in the coaching/scaling business which may reduce or negate the need for future living expenses to be taken from assets frozen by the Court.

VI. Travel Expenses

At the request of the FTC, Ms. Yip submitted a proposal to be considered for appointment as Receiver in this case. In that proposal, which was attached to the FTC's *Ex Parte* Recommendation for Temporary Receiver (Doc. 8-1), Ms. Yip proposed significant reductions in hourly rates for both herself and her proposed

professionals. She also proposed billing travel time at half of that billing rate and charging for travel and meals at “cost”. Given no indication in the appointment order to the contrary, the Receiver and her professionals billed pursuant to that proposal.

VII. Conclusion

Based on the Receiver’s motion and the foregoing, the Receiver respectfully requests that the Court grant her motion for the payment of fees and costs associated with the services provided by her and her team of professionals.

Respectfully submitted,

/s/ Katherine C. Donlon

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 15, 2022, a true and correct copy of the foregoing was electronically filed by using the CM/ECF System, which will serve a copy on all counsel of record.

/s/ Katherine C. Donlon

Attorney