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

<p>SECURITIES AND EXCHANGE COMMISSION,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>ART INTELLECT, INC., a Utah corporation, d/b/a MASON HILL and VIRTUAL MG, PATRICK MERRILL BRODY, LAURA A. ROSER, and GREGORY D. WOOD,</p> <p style="text-align: right;">Defendants.</p>	<p><b>RECEIVER’S REPLY MEMORANDUM IN SUPPORT OF RECEIVER’S FIRST APPLICATION FOR PROFESSIONAL FEES AND EXPENSES FOR RECEIVER AND COUNSEL</b></p> <p>2:11-cv-00357 TC</p> <p>Judge Tena Campbell</p>
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R. Wayne Klein, the Court-Appointed Receiver (the “Receiver”) of Art Intellect, Inc. d/b/a Mason Hill and VirtualMG, by and through counsel of record, submits this reply memorandum in opposition to the Objection by Roser and in further support of his First Application for Professional Fees and Expenses for Receiver and Counsel (the “Application”), which was filed on August 16, 2011. (Doc. 104). On August 19, 2011, Defendants Patrick Brody and Laura A. Roser jointly filed an Objection to Receiver’s First Application for Fees and Expenses (the “Objection”). (Doc. 108). The Securities and Exchange Commission filed a

Memorandum in Support of the Receiver's First Application for Fees and Expenses (the "SEC Memorandum"), on August 31, 2011. (Doc. 114).

### **INTRODUCTION**

The Receiver was appointed by this Court in an order giving him broad powers and responsibilities, including: to determine the nature, location, and value of property of the defendants in the case, take actions necessary for the preservation of this property, and to engage other professionals to assist him in these and other appropriate efforts. (Doc. 5 at 4-5). As a result of the broad responsibilities this Court placed upon the receiver, the Receiver and other professionals he has hired have spent hundreds of hours attempting to identify assets and bring them within the receivership estate. The Receiver's efforts to identify property owned by the Receivership have been significantly hampered by the conduct of the Defendants, who have failed to comply with this Court's orders and have attempted to sell property that is appropriately part of the Receivership estate. (See, Doc 111 at 4-5; 36-37).

Defendants Brody and Roser object to the Receiver's Application for fees on the grounds that the Receiver has failed to provide adequate justification of the efforts he and others have taken, the Receiver has gone beyond what was required under the order establishing the receivership estate, and the Receiver's fees are disproportionate to the results he has been able to achieve to date.

For the reasons identified herein the Defendants' arguments lack merit and the Court should approve the application for fees.

## ARGUMENT

### **I. The Receiver has Provided Sufficient Detail both to this Court and to the Securities and Exchange Commission to Justify Payment of the Requested Fees.**

The Receiver filed a status report on July 28, 2011 detailing the extensive efforts he has undertaken to comply with this Court's order appointing him and establishing the receivership estate. (Doc. 90). Among other things the Receiver has: taken stock of the Mason Hill offices and business holdings; sold office furniture and personal property secured from the Mason Hill offices; established a line of communication with Mason Hill investors including creating a website which will act as a primary source of information to the investors; searched for, identified, and secured bank accounts that are part of the receivership estate established by this Court's order; seized and liquidated personal property properly belonging to the receivership estate; investigated apparent theft by a CFO chosen by Brody; terminated leases and obligations of the company, reconstructed the financial records of the company, responded to tax claims, employee claims and other claims against the company; and, identified real property owned by the Receivership defendants that may be sold. All of these efforts are within the scope of the Court's order establishing the receivership estate.

Defendants Roser and Brody have not cooperated with the Receiver in these efforts. Consequently, the receiver has been forced to expend more time and resources than would have been required with the full cooperation of the defendants. Indeed, the Defendants Brody and Roser have actively sought to frustrate the receiver's efforts to comply fully with this Court's order establishing and governing the receivership estate. As detailed in the SEC's motion seeking civil contempt sanctions against the Defendants (Doc. 111), Defendants Brody and Roser have not identified or surrendered assets under their control that are subject to this Court's prior

orders. Instead they have attempted to circumvent this Court's asset freeze order by hiding assets from the Receiver and by seeking to sell personal property through a classified listing.

Consequently the Receiver has been required to expend additional resources to attempt to locate assets that are properly part of the receivership estate.

The Receiver provided the SEC with detailed billing records that comply with the SEC's receivership billing regulations. After reviewing the submissions from the Receiver, the SEC expressed no objection to the expenses and has filed a motion in support of the Receiver's application. The SEC's judgment in such matters is given "great weight." *SEC v. Byers*, 590 F. Supp. 2d 637, 645 (S.D.N.Y. 2008). Here the SEC initially expressed no objection to the application for fees and after reviewing the Objection, the SEC continues to move this Court to approve the Receiver's fees. (Doc. 114 at 5-7).

If the Court believes that the Receiver's billing records should be subjected to additional scrutiny, the Receiver is willing to submit them to the Court for its review or to a third party who would be selected to review the Receiver's billings for reasonableness. However, the Receiver's billing records contain detail about legal strategies and communications with counsel which are attorney-client and work-product privileged. Further, in light of the Defendant's efforts to frustrate the Receiver, the Receiver objects to disclosing them to the Defendants.

The Defendants also argue that the fees are excessive because the best solution for the receivership is to just deliver properties to investors. The problem with this is that the company lost money each time it went to a closing. The business model was never viable, and the company operated as a Ponzi scheme with money from new investors used to close on properties

for prior investors. The business model violated the federal securities laws and produced returns to investors by deceiving them.

**II. The Receiver's Efforts have been Within the Scope of the Court's Order Establishing the Receivership.**

The Defendants next object to the scope of the Receiver's actions. In their mind, "a reasonable and prudent receiver would have limited his role up to this point to not much more than identifying the purchase transactions where the transactions had not closed" and allowing the Defendants to continue running their business.

Whatever the merits of the Defendants' suggestion, it is inconsistent with this Court's order establishing the receivership. In the Court's order dated April 18, 2011, the Court took exclusive jurisdiction of the assets of the Defendants, including Art Intellect, Inc. The Court then appointed the Receiver and charged him with assuming the control of the operation of the Defendant businesses, securing and preserving the assets of the receivership estate, and with pursuing and preserving any valid claims on behalf of the receivership estate. The Court granted the Receiver broad powers to accomplish its objectives, including the power to take possession of bank accounts of the defendants, to seize personal property from the defendants, to take possession of real property from the defendants and to list it for sale, to take physical possession of office space, to open the mail of the defendants, to make legally required payments to creditors of the receivership estate, and to investigate and prosecute additional possible claims.

In order to accomplish these goals, the Receiver hired accountants and other professionals to assist him in finding where the money invested with Mason Hill had gone. This was necessary to identify whether investor funds that are properly part of the receivership estate were diverted into assets that could be seized, to identify possible third parties from whom the

receiver could recover monies or assets, to determine whether Mason Hill operated a Ponzi scheme and/or effected any fraudulent transfers so the receiver could seek to recover the fraudulently transferred assets, to identify whether claims made against the receivership estate are valid, and to report to the Court on the status of the receivership estate. As such, hiring the forensic accountants was within the scope of the receiver's duties and was a reasonable step necessary to accomplish the goals of the receivership. This action was approved by the Court. (Doc. 17).

Other than their objection to the forensic accounting, the Defendants make no other objection to any specific step taken by the receiver. Therefore, the balance of their objection consists of their opinion that the receiver's efforts were not necessary. Again, whatever the merits of the Defendant's substantive views on the necessity of the receivership or of the receiver's specific actions, the Receiver is attempting to fulfill the order of this Court. An objection to actions that are required to conform to the Court's order is nothing more than an objection to the Court's order itself and provides no basis to deny the payment to the Receiver.

**III. The Receiver's Fees are Reasonable in Light of the Order Establishing the Receivership Estate.**

The Defendants' final objection is that the Receiver's fees exceed the value of the additional assets he has managed to bring within the receivership estate. This objection relies on a fallacious interpretation of the Court's order establishing the receivership and on an incomplete analysis of the value of the Receiver's efforts to date.

First, the Defendants' objection amounts to a claim that the Receiver's only goal should be to maximize the present value of the liquid assets within the estate. It is common for receiverships to expend significant resources in the early stages without significant early

recoveries. This is because much of the early effort is in identifying assets to be seized. When titular owners of property within the receivership estate are uncooperative, as is the case here, these early efforts to identify assets take even more time before yielding results. In short, given their lack of cooperation, the Defendants' objection amounts to a claim that since they have been largely successful in obstructing the Receiver's efforts, the Receiver should not be paid.

Moreover, the Defendants' Objection fails to explain why the fees should not be paid. Provided the Receiver's efforts have been within the scope of the Court's order and not unreasonable in light of the scope of the investigation required to identify, obtain, and preserve assets, the fees are appropriate under the Court's order, even if the cost of the efforts is greater than the financial benefits to the receivership estate that have been realized at this time.

### CONCLUSION

For the reasons explained herein and in the SEC's Memorandum In Support of the Receiver's First Application for Fees and Expenses, the Court should approve the Application.

Respectfully submitted this 2nd day of September 2011.

CLYDE SNOW & SESSIONS

/s/ Jennifer A. James

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**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the above was served via email on this 2nd day of August 2011 on the following:

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*Court-Appointed Receiver*

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