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6 *Geoff Winkler of American Fiduciary Services*

7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 SECURITIES AND EXCHANGE
COMMISSION,

11 Plaintiff,

12 v.

13 PROFIT CONNECT WEALTH SERVICES,
INC., JOY I. KOVAR, and BRENT CARSON
14 KOVAR,

15 Defendants.

Case No. 2:21-cv-01298-JAD-BNW

**MOTION FOR ORDER IN AID OF
RECEIVERSHIP AUTHORIZING
RECEIVER TO EMPLOY SPECIAL
LITIGATION COUNSEL AND PURSUE A
POTENTIAL CLAIM**

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19 In accordance with Local Rule 66-6 and this Court’s August 6, 2021, order (ECF No. 26)
20 (the “Receiver Order”) appointing Geoff Winkler of American Fiduciary Services, LLC, as the
21 permanent receiver of Profit Connect Wealth Services, Inc., and any subsidiaries and affiliates
22 (together, “Profit Connect”), the Receiver moves this Court for an order authorizing him to retain
23 and employ Levine Kellogg Lehman Schneider + Grossman LLP (“LKLSG”) as special litigation
24 counsel to investigate and, if appropriate, pursue claims on behalf of the Receiver against Bank of
25 America N.A. on a contingency fee basis. The Receiver is informed that the Securities &
26 Exchange Commission has no objection to the relief sought in this Motion.
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1 This Motion is based on the below memorandum of points and authorities, the declarations
2 of Jason Kellogg and Geoff Winkler and the exhibits thereto, all papers on file, and any argument
3 the Court may call and consider.

4
5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. RELEVANT BACKGROUND AND PROCEDURAL HISTORY**

7 The Securities and Exchange Commission initiated this action against Profit Connect, Joy
8 Kovar, and Brent Kovar on July 8, 2021, by the sealed, ex parte filing of a complaint and motion
9 for temporary restraining order seeking, among other things, the freezing of defendants' assets and
10 the appointment of a receiver over Profit Connect. The Court granted the ex parte temporary
11 restraining order, in part, by allowing the asset freeze to proceed but set the motion for a hearing
12 in order to provide defendants an opportunity to be heard on the temporary receivership request.

13 On July 23, 2021, the defendants stipulated to modify the temporary restraining order to
14 appoint the temporary receiver. On August 6, 2021, following another stipulation of the parties,
15 the Court converted the temporary restraining order to a preliminary injunction and appointed the
16 Receiver as the permanent receiver of Profit Connect. In its receivership order (ECF No. 26), Mr.
17 Winkler with "full power over all ... choses in action ... of Defendant Profit Connect ... such that
18 the receiver is immediately, authorized, empowered and directed ... to choose, engage, and employ
19 attorneys ... [and] to investigate and, where appropriate, to institute, pursue, and prosecute all
20 claims and causes of action of whatever kind and nature that may now or hereafter exist as a result
21 of the activities of present or past employees or agents of Defendants Profit Connect"

22 Pursuant to such direction and authority, the Receiver has conducted a preliminary
23 investigation into the conduct of Bank of America, N.A., issuing a third party subpoena to it for
24 the production of documents and reviewing Profit Connect's electronic data as it pertains to Bank
25 of America. Based on this review, the Receiver believes that Bank of America may be liable for
26 aiding and abetting Profit Connect's fraud and breaches of fiduciary duty.

27 LKLSG has a significant amount of experience pursuing these types of claims against
28 financial institutions on behalf of classes, court-appointed fiduciaries, and individuals claimants.

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1 Indeed, LKLSG possesses experience in federal equity receiverships, having served as receiver in
2 other SEC, Federal Trade Commission, and state regulatory matters, and as both general and
3 special litigation counsel for receivers. LKLSG is ranked by *Chambers and Partners* for Florida
4 law firms and has received a 4.8 rating from Martindale Hubbell. The Receiver anticipates that
5 lead counsel on this engagement will be Jeffrey C. Schneider and Jason Kellogg, whose
6 biographies are attached as Exhibit “A” to the Declaration of Jason Kellogg. A firm resume is
7 attached as Exhibit “B.” As set forth below, LKLSG has agreed to represent the Receiver on a
8 contingency fee basis to pay the costs of the investigation and prosecution of any claims against
9 Bank of America by the Receiver. The receivership estate will therefore not bear the risk of
10 prosecuting these claims.

11

12 **II. TERMS OF THE PROPOSED EMPLOYMENT**

13 LKLSG is willing to investigate and pursue the potential claims against Bank of America
14 on a contingency fee basis. If LKLSG obtains a recovery from Bank of America on account of
15 the Receiver’s claims through settlement, final judgment, or otherwise, then the Receiver, subject
16 to Court approval of the settlement, agrees to pay LKLSG up to 25% of the gross proceeds
17 actually recovered by the Receiver. If an appeal is taken from a final judgment entered in
18 connection with the Receiver’s claims and LKLSG prosecutes or defends the appeal, LKLSG
19 will be entitled, subject to Court approval to 33% of the gross proceeds of any recovery from
20 Bank of America. LKLSG will bear the expenses of their investigation and/or prosecution of
21 claims against Bank of America. A copy of its engagement letter with the specific terms is
22 attached to the Declaration of Jason Kellogg as Exhibit “C.”

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25 **III. LEGAL ARGUMENT**

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1 “The power of a district court to impose a receivership . . . derives from the inherent power
2 of a court of equity to fashion effective relief.”¹ “The primary purpose of equity receiverships is
3 to promote orderly and efficient administration of the Receivership Estate by the district court for
4 the benefit of creditors.”² “[T]he practice in administering an estate by a receiver . . . must accord
5 with the historical practice in federal courts or with a local rule.”³

6 As the Ninth Circuit explained:

7 A district court’s power to supervise an equity receivership and to
8 determine the appropriate action to be taken in the administration of
9 the receivership is extremely broad. The district court has broad
10 powers and wide discretion to determine the appropriate relief in an
11 equity receivership. The basis for this broad deference to the district
12 court’s supervisory role in equity receiverships arises out of the fact
13 that most receiverships involve multiple parties and complex
14 transactions.⁴

15 Based on this framework, the Ninth Circuit will “generally uphold reasonable procedures
16 instituted by the district court that serve this purpose.”⁵ Under this authority, the Court has the
17 inherent authority to permit the Receiver to employ counsel, and the Receivership Order entered
18 in this case supports that.

19 In accordance with his reasonable business judgment and authority under the Receivership
20 Order, the Receiver has determined that the assistance of LKLSG to investigate and, if appropriate,
21 to prepare and file a lawsuit against Bank of America is necessary to attempt to recover losses and
22 damages arising out of the wrongful conduct of the Kovars in their operation of Profit Connect.
23 The Receiver’s preliminary investigation has yielded facts that may support a claim against Bank
24 of America. LKLSG is willing to conduct a further investigation into Bank of America’s conduct

25 ¹ *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980).

26 ² *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986).

27 ³ Fed. R. Civ. P. 66.

28 ⁴ *SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005) (citations omitted); *see also*
CFTC v. Topworth Int’l, Ltd., 205 F.3d 1107, 1115 (9th Cir. 1999) (“This court affords ‘broad
deference’ to the court’s supervisory role, and ‘we generally uphold reasonable procedures
instituted by the district court that serve th[e] purpose of orderly and efficient administration of
the receivership for the benefit of creditors.’”).

⁵ *See Hardy*, 803 F.2d at 1038.

1 or failure to act and, if it determines that doing so is appropriate, to file a complaint against Bank
2 of America. The receivership estate will only benefit from LKLSG’s investigation and litigation
3 given that LKLSG will provide these services on a contingency fee basis and will pay for the costs
4 of the litigation. Given that he is tasked with maximizing the size of the receivership estate for the
5 benefit of the defrauded investors, the Receiver believes that this retention and potential pursuit of
6 litigation is a proper exercise of his business judgment that this Court can approve.

7
8 **IV. CONCLUSION**

9 Based on the foregoing, the Receiver requests entry of an order in the form attached as
10 Exhibit “D”:

- 11 (1) Granting the Motion in its entirety;
- 12 (2) Authorizing the Receiver to employ LKLSG and to investigate and prosecute
13 claims against Bank of America on behalf of the receivership estate; and
- 14 (3) Approving the terms of LKLSG’s engagement as set forth in Exhibit “C” to the
15 Declaration of Jason Kellogg; and
- 16 (3) Granting such other and further relief as the Court deems just and appropriate.

17
18 Dated: June 28, 2023

19 SMILEY WANG-EKVALL, LLP

20 By: /s/ Kyra E. Andrassy
21 Kyra E. Andrassy, Esq.
22 (Admitted *Pro Hac Vice*)
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23 Attorneys for Receiver
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EXHIBIT "D"

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**ORDER GRANTING MOTION FOR
ORDER IN AID OF RECEIVERSHIP
AUTHORIZING RECEIVER TO
EMPLOY SPECIAL LITIGATION
COUNSEL AND PURSUE A POTENTIAL
CLAIM**

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19 The Court having reviewed the *Motion for Order in Aid of Receivership Authorizing*
20 *Receiver to Employ Special Litigation Counsel and Pursue a Potential Claim* (the “Motion”) and
21 there being no opposition to the Motion and good cause appearing,

22 **IT IS ORDERED AS FOLLOWS:**

- 23 (1) The Motion is granted;
- 24 (2) The Receiver is authorized to employ Levine Kellogg Lehman Schneider +
25 Grossman LLP as special litigation counsel for the purposes set forth in the Motion, including to
26 pursue litigation if the Receiver deems it appropriate; and
- 27 (3) The terms of LKLSG’s employment as set forth in Exhibit “C” to the Declaration
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1 of Jason Kellogg are approved.

2 **IT IS SO ORDERED.**

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4 DATED: _____
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CERTIFICATE OF SERVICE

1 At the time of service, I was over 18 years of age and not a party to this action. I
2 am employed in the County of Orange, State of California. My business address is 3200
Park Center Drive, Suite 250, Costa Mesa, CA 92626.

3 On 6/28/2023, I served true copies of the following document(s) described as
4 **MOTION FOR ORDER IN AID OF RECEIVERSHIP AUTHORIZING RECEIVER TO EMPLOY SPECIAL LITIGATION
COUNSEL AND PURSUE A POTENTIAL CLAIM**

5 on the interested parties in this action as follows:

6 **SEE ATTACHED SERVICE LIST**

7
8 **(X) (BY COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”)).** Pursuant to Fed. R.
9 Civ. P. 5(b), the foregoing document will be served by the court via NEF and hyperlinked
10 to the document. On 6/28/23, I checked the CM/ECF docket for this case and determined
that the aforementioned person(s) are on the Electronic Mail Notice List to receive NEF
transmission at the email address(es) indicated.

11 **(X) (BY U.S. MAIL).** I enclosed the document(s) in a sealed envelope or package and
12 placed the envelope for collection and mailing, following our ordinary business practices.
I am readily familiar with the practice of Smiley Wang-Ekvall, LLP for collecting and
13 processing correspondence for mailing. On the same day that correspondence is placed
for collection and mailing, it is deposited in the ordinary course of business with the
14 United States Postal Service, in a sealed envelope with postage fully prepaid. I am a
resident or employed in the county where the mailing occurred. The envelope was
placed in the mail at Costa Mesa, California.

15 **() (BY E-MAIL).** By scanning the document(s) and then e-mailing the
16 resultant pdf to the e-mail address indicated above per agreement. Attached to
this declaration is a copy of the e-mail transmission.

17 **() (BY FACSIMILE).** I caused the above-referenced documents to be
18 transmitted to the noted addressee(s) at the fax number as stated. Attached to this
declaration is a "TX Confirmation Report" confirming the status of transmission.
19 Executed on _____, at Costa Mesa, California.

20 **() STATE** I declare under the penalty of perjury under the laws of the State of
21 California that the above is true and correct.

22 **(X) FEDERAL** I declare that I am employed in the office of a member of the bar
23 of this court at whose direction the service was made.

24
25 Executed on June 28, 2023, at Costa Mesa,
California;

/s/ Lynnette Garrett

Lynnette Garrett

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SERVICE LIST

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