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15 UNITED STATES DISTRICT COURT
16 DISTRICT OF OREGON
17 PORTLAND DIVISION

18 FEDERAL TRADE COMMISSION,

19 Plaintiff,

20 vs.

21 MERCHANT PROCESSING, INC.;
22 VEQUITY FINANCIAL GROUP, INC.;
DIRECT MERCHANT PROCESSING, INC.;
23 PPI SERVICES, INC.; AARON LEE RIAN;
24 KARLEY MCCARTHY, AKA KARLY
SPEELMAN,

25 Defendants.
26

Case No. CV 07-0533-BR

MEMORANDUM IN SUPPORT OF MOTION
FOR ORDER CLOSING CASE AND
DISCHARGING THE RECEIVER EFFECTIVE
UPON COMPLETION OF THE FINAL
CLOSING TASKS AND FOR OTHER
RELATED RELIEF

[Motion, Memorandum, Declaration of Michael
A. Grassmueck, and Proposed Order, Filed
Concurrently Herewith]

1 Michael A. Grassmueck (the "Receiver"), the duly appointed receiver in this case,
2 hereby moves this Court (the "Motion") for order closing the receivership and discharging the
3 Receiver and for other related relief effective upon the completion of the final closing tasks, as
4 set forth below.

5 I.

6 INTRODUCTION

7 By this Motion, the Receiver requests that the Court authorize the closing of the
8 receivership estate (the "Receivership Estate") and the discharge of the Receiver, effective upon
9 the following: (i) the transfer of all remaining Receivership Estate funds to the FTC, after
10 payment of all administrative expenses and professionals fees and costs; (ii) the Court's
11 confirmation that the FTC may retain the \$607,879.82 in Receivership Estate funds previously
12 transferred to the FTC on account of creditor and employee claims; (iii) the destruction of the
13 Receivership Estate records; and (iv) the filing of the Receiver's declaration confirming
14 completion of (i) and (iii) above, along with the Receiver's final accounting for the Receivership
15 Estate, (collectively, the "Final Closing Tasks"). The Receiver estimates that he will complete
16 the Final Closing Tasks in approximately 60 days after entry of an order granting this Motion.

17 This Motion constitutes the Receiver's final report for this receivership case, as set
18 forth in Section IV of the Stipulated Final Judgment and Order for Permanent Injunction and
19 Other Equitable Relief, et al., entered on May 6, 2008 ("Final Judgment and Order"). With this
20 Motion constituting the final report, the Receiver has complied with the provisions of Section IV
21 of the Final Judgment and Order.

22 The Receiver also seeks approval to pay the administrative expenses incurred by
23 the Receiver and his professionals' fees and expenses, as set forth in the statements which are
24 attached as Exhibits to the Motion ("Final Statements"), filed concurrently herewith. The Final
25 Statements reflect the final invoices of the Receiver and his professionals, and additionally for
26 the Receiver and his counsel, estimated reserves for fees and costs in closing the receivership.

1 Pursuant to Section XVI of the Receiver Order, if no objections are filed within 14 days of the
2 date of this Motion, the Receiver is authorized to pay the Final Statements on an interim basis.
3 The Receiver also seeks approval of all previously submitted fees and costs of the Receiver and
4 his professionals, on a final basis, as set forth in each of the Notices of Statements of Receiver
5 and Professionals previously filed in this case (including the Final Statements).

6 Except for the Final Closing Tasks, the Receiver has fulfilled all his duties under
7 the Stipulated Preliminary Injunction and Order for Other Equitable Relief ("Receiver Order"),
8 entered on April 30, 2007. The Receiver has, among other things, completed the investigation
9 and general accounting, the claims administration process, and the liquidation of all Receivership
10 Estate assets. In addition, the Receiver has, with the Court's and the FTC's approval, transferred
11 certain Receivership Estate funds to the FTC for distribution to merchants. With all of the
12 foregoing tasks completed, the Receiver is ready to close this case and request a discharge of the
13 Receiver, effective upon completion of the Final Closing Tasks. The discharge releases the
14 Receiver of all duties under the Receiver Order. Pursuant to the discharge, it also releases the
15 Receiver from any and all claims and liabilities associated with the receivership, the
16 Receivership Defendants, and the individual defendants named in this action.

17 In connection with the Final Closing Tasks, the Receiver specifically requests that
18 the Court approve the destruction of the Receivership Estate's records. The Receiver previously
19 filed a Notice of Intent to Destroy Documents ("Notice to Destroy"), for the destruction of
20 approximately 100 boxes of original documents of the Receivership Defendants. There was no
21 objection to the Notice to Destroy, and the original documents were destroyed. The Receiver
22 maintained copies of substantially all of the documents, and seeks authority to destroy these
23 copies. The Receiver believes that destruction of the Receivership Estate's records is
24 appropriate and prudent given that many of the documents contain financial information of
25 merchants and creditors. Destruction of these documents ensures that this information cannot
26 be compromised. Further, with the closing of the receivership, there will be no need for the

1 Receiver to maintain the documents, or incur storage fees and any administrative expenses
2 associated with maintaining them. The Receiver has confirmed with the FTC that they do not
3 object to the destruction of the documents.

4 To the extent that the documents constitute customer records ("Customer
5 Records"), as defined by the FTC, they shall be destroyed in the following manner: (a) paper
6 documents containing Customer Records shall be burned, pulverized, or shredded so that the
7 information cannot be read or reconstructed, and (b) electronic records of media containing
8 Customer Records shall be destroyed or erased so that the information cannot be read or
9 reconstructed.

10 II.

11 FACTS

12 A. The FTC Action

13 On April 11, 2007, the FTC commenced an action against MPI and the named
14 defendants (collectively, "Receivership Defendants") and other individual defendants in this
15 Court, for violations of the FTC Act. The FTC alleged in the action, among other things, that the
16 Receivership Defendants engaged in unfair or deceptive acts or practices in or affecting
17 commerce.

18 Through its investigation, the FTC determined that the Receivership Defendants'
19 representations, in connection with its solicitations for the credit card processing services, were
20 deceptive and misrepresentative in violation of Section 5(a) of the FTC Act, 15 USC § 45(a).
21 Following completion of its investigation and findings, the FTC filed this action against MPI and
22 the Receivership Defendants.

23 On April 11, 2007, along with its complaint, the FTC filed a motion for temporary
24 restraining order ("TRO") and for appointment of temporary receiver in this action. On April 11,
25 2007, the Court granted the request for TRO and for appointment of Michael A. Grassmueck (the
26 Receiver) as temporary receiver. On April 30, 2007, the Court entered the Stipulated

1 Preliminary Injunction and Order for Other Equitable Relief (previously defined as Receiver
2 Order), which provided for a preliminary injunction against the Receivership Defendants, and
3 made permanent the appointment of Michael A. Grassmueck as receiver. Pursuant to a Second
4 Stipulated Preliminary Injunction and Order for Other Equitable Relief, entered on November 2,
5 2007, Defendants Karely McCarthy, a.k.a Karly Speelman and PPI Services, Inc., were added as
6 defendants to this action.

7 B. Final Judgment

8 In May, 2008, the Court entered final judgments (the "Judgments") in this action
9 as to Receivership Defendants (including PPI Services, Inc.) , and individual defendants Aaron
10 Lee Rian and Karely McCarthy, aka Karly Speelman. The Judgments provided for the issuance
11 of a permanent injunction as against all Defendants.

12 C. The Sale of Receivership Assets

13 During the course of the receivership, the Receiver successfully sold assets of the
14 Receivership Estate including, but not limited to: (i) all of MPI's interest in approximately 2,000
15 enabled merchant relationships which were processing on the platform operated by Global
16 Payments Direct, Inc.; (ii) all of MPI's interest in enabled merchant relationships which were
17 processing on platforms operated by United and Merchants Choice; and (iii) certain office
18 furniture and equipment, and other related items. At this time, there are no assets in the
19 Receivership Estate aside from the Receivership Estate funds as described below.

20 D. The Tax Refunds

21 The Receiver has filed federal and state tax returns in this case for MPI for the
22 years 2001 to 2008. The Receiver has also spent significant time in pursuing a certain tax appeal
23 for MPI with the IRS, and was able to successfully negotiate with the IRS to obtain an abatement
24 on certain taxes and obtain significant tax refunds. The Receiver will also prepare and file final
25 tax returns in connection with the closing of this case.

26 E. The Claims Motion

1 On February 18, 2010, in connection with his duties as receiver, the Receiver filed
2 a motion for order to approve claims procedures and establishing a claims bar date ("Claims
3 Motion"). The Court approved the Claims Motion on March 2, 2010, including the claims bar
4 date of June 11, 2010 ("Claims Bar Date").

5 F. Merchants Claims Review and Allowance

6 As part of the claims process, the Receiver notified approximately 5,187
7 merchants and other possible creditors of the process for filing a proof of claim and for receiving
8 a distribution from the Receivership Estate. In response, the Receiver received 124 filed proofs
9 of claims ("First Merchant Claims"). Following the Receiver's and FTC's exhaustive and
10 diligent review, the Receiver determined that of the 124 First Merchant Claims filed, 106 should
11 be allowed in the amounts determined by the Receiver, and with those allowed amounts to be
12 paid (which totaled \$953,104.86). The balance of the First Merchant Claims were not allowed
13 and received no distribution.

14 G. Secondary Merchants Claims Review Process and Allowance

15 After the initial notification process with regard to the Claims Bar Date, the
16 Receiver discovered that approximately 1,929 merchants ("Second Merchant Claims Group")
17 had not been notified of the claims process. Thereafter, on April 4, 2011, the Receiver mailed
18 proof of claim forms to the Second Merchant Claims Group, and provided an extended Claims
19 Bar Date of June 6, 2011 for these potential claimants. From this Second Merchant Claims
20 Group, the Receiver received an additional 23 proofs of claim ("Second Merchant Claims"),
21 which totaled \$58,514.78.

22 H. Terminal Lease Companies' Claims

23 In late 2010 through April 2011, the Receiver contacted the 7 companies that
24 leased terminal services to merchants for credit card processing for the Receivership Defendants
25 ("Terminal Lease Companies"). At the outset of the case, the Receiver advised the Terminal
26 Lease Companies to stop all collection efforts against merchant customers of the Receivership

1 Defendants.

2 The Receiver conferred with 5 of the 7 Terminal Lease Companies (two of the
3 companies could not be located). The Receiver negotiated with the Terminal Lease Companies
4 as to the amounts of their claims. Ultimately, the Terminal Lease Companies agreed to a
5 settlement in which they received a lump sum payment, waived all penalties, interest and
6 collection costs, and removed all negative credit reporting related to merchants who had engaged
7 in business transactions with the Terminal Lease Companies. They also agreed to cooperate in
8 making future corrections to merchants' credit histories if additional negative credit reporting is
9 discovered. The Terminal Lease Companies agreed to accept, as full and final payment, the
10 amount of \$760,065.05. The Receiver and the FTC approved payment of this sum to the
11 Terminal Lease Companies.

12 I. First Claims Motion

13 On June 23, 2011, the Receiver filed a motion ("First Claims Motion") for order
14 to (i) allow certain claims, (ii) authorize payment to certain Terminal Lease Companies, and (iii)
15 transfer Receivership Estate funds to Charles Lawson, as the FTC redress contractor ("FTC
16 Redress Contractor"). As part of the First Claims Motion, the Receiver sought approval of the
17 allowance and disallowance of claims, related to the First Merchant Claims, and for other relief.
18 The Court approved the First Claims Motion on June 24, 2011.

19 J. The First Creditor Allowed Claims

20 After approval of the First Claims Motion, the Receiver transferred the amount of
21 \$953,104.86 ("Estate Funds") to the FTC, so that the FTC may transfer such Estate Funds to the
22 FTC redress contractor for distribution on the allowed First Merchant Claims. However, after
23 transfer of such funds, the FTC and Receiver determined that 6 of the First Merchant Claims
24 were allowed creditor and employee claims ("Employee/Creditor Claims") totaling \$607,879.82
25 ("Employee/Creditor Proceeds"), which the FTC could not pay and thereby transfer to the FTC
26 Redress Contractor, pursuant to the FTC redress process.

1 Since the FTC could not pay the Employee/Creditor Claims through the FTC
2 redress process, the FTC requested that the Receiver pay the Employee/Creditor Claims using
3 funds held by the Receiver. Since the Receiver held sufficient funds to pay the
4 Employee/Creditor Claims, the Receiver made the distribution. The FTC continues to hold the
5 Employee/Creditor Proceeds, and has not returned those proceeds to the Receivership Estate.
6 The FTC and the Receiver have conferred and determined that the FTC should retain those
7 proceeds, since ultimately if those proceeds were returned to the Receivership Estate, they would
8 be subsequently transferred back to the FTC as part of the closing of this receivership.

9 The Receivership Estate requests confirmation from the Court that the FTC is
10 authorized to retain the amount of the Employee/Creditor Proceeds. These Proceeds even if
11 turned back over to the Receivership Estate would be ultimately returned to the FTC (after
12 payment of any administrative and professional fees).

13 K. Second Claims Motion

14 On October 4, 2011, the Receiver filed a second claims motion ("Second
15 Motion") to allow and disallow certain of the Second Merchant Claims in the amounts set forth
16 in the Second Motion, and transfer the appropriate amount of Receivership Estate funds to the
17 FTC, so that the FTC Redress Contractor could pay the allowed amounts of the Second Merchant
18 Claims. The Court approved the Second Motion on October 26, 2011.

19 III.

20 THE COURT MAY DISCHARGE THE RECEIVER AND CLOSE THE
21 RECEIVERSHIP EFFECTIVE UPON COMPLETION OF THE FINAL CLOSING TASKS,
22 AND ORDER OTHER EQUITABLE RELIEF

23 A. Approval to Conclude the Receivership

24 Federal district courts presiding over federal equity receiverships have broad
25 power and wide discretion in the supervision of receiverships. SEC v. Hardy, 803 F.2d 1034,
26 1037-38 (9th Cir. 1986). Their power and discretion includes the authority to "make rules which

1 are practicable as well as equitable." *Id.* at 1039 (quoting *First Empire Bank-New York v. FDIC*,
2 572 F.2d 1361, 1368 (9th Cir. 1978)).

3 The Receiver was highly successful in liquidating Receivership Estate assets,
4 resolving tax issues, obtaining refunds with the IRS, administering a complicated and exhaustive
5 claims process, and otherwise effectively administering this case. As there are no further tasks to
6 administer in this case, the Receiver requests he be discharged and the case be closed, effective
7 upon completion of the Final Closing Tasks. The Receiver further requests that the Court
8 approve all actions taken in conjunction with the Final Closing Tasks, so that the administration
9 of this receivership may be successfully concluded. The discharge releases the Receiver of (i) all
10 duties under the Receiver Order, and (ii) any and all claims and liabilities associated with the
11 receivership, the Receivership Defendants, and the individual defendants named in this action.

12 Following completion of the Final Closing Tasks, there will be no need for
13 continued administration of this receivership, and certainly no reason to pay further
14 administrative expenses. Accordingly, the Receiver requests that the Court use its discretion to
15 discharge the Receiver and close this case, effective upon the conclusion of the Final Closing
16 Tasks.

17 B. Destruction of Documents

18 As additional requested relief, in connection with the closing of the receivership
19 and the discharge of the Receiver, the Receiver further requests approval to destroy the
20 Receivership Estate records. The Receiver has determined that the documents have no value,
21 and that destruction of the documents is in the best interest of the merchants and creditors, whose
22 financial information may be contained in the documents. Accordingly, the Receiver requests
23 the Court approve destruction of the documents in compliance with all FTC destruction
24 guidelines. The Receiver has confirmed with the FTC that the documents may be destroyed.

25 C. Final Fee Statements

26 The Receiver also seeks interim approval of payment of the Receiver's and his

1 professionals' fees and expenses for the current periods and final approval of all fee statements
2 for this case. The present and final fee statements cover fees and expenses for the Receiver,
3 Allen Matkins Leck Gamble Mallory & Natsis LLP, and Farleigh Wada Witt, (collectively,
4 "Receiver and Receiver Counsel") for the period from May 2010 to December 2011. In addition,
5 Receiver's general accountant, Moss Adams, has submitted a statement for payment of fees for
6 the period from January 2010 through September 2011. The Receiver and Receiver Counsel
7 have also included as part of their respective statements reserves for estimated fees and expenses
8 for services which will be incurred after the filing of the Motion through the closing of the
9 receivership.

10 The final fee statements are attached to the Motion, filed concurrently herewith,
11 as follows:

- 12 Exhibit 1 – Michael A. Grassmueck, Receiver
- 13 Exhibit 2 – Allen Matkins Leck Gamble Mallory & Natsis LLP
- 14 Exhibit 3 – Farleigh Wada Witt
- 15 Exhibit 4 – Moss Adams

16 Pursuant to Section XVI of the Receiver Order, if no objections are filed within
17 14 days of the date of this Motion, the Receiver is authorized to pay the Final Statements on an
18 interim basis.

19 Finally, in addition to the interim payments, the Receiver seeks final approval of
20 all fee statements previously submitted by the Receiver and his professionals, as set forth in each
21 of the Notices of Statements of Receiver and Professionals filed in this case (including the Final
22 Statements). Approval of the statements on a final basis is appropriate here since there are no
23 further administrative tasks which need to be taken, the Receiver and his professionals have
24 effectively and efficiently administered the case to completion, and there were no objections
25 filed to any of the previously filed statements.

26

1 IV.

2 CONCLUSION

3 Based on the foregoing, the Receiver requests that this Court grant the Motion,
4 and for such other relief as the Court deems just and necessary.

5 Dated: December 9, 2011

6 ALLEN MATKINS LECK GAMBLE
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7
8 By: /s/ Yale K. Kim

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12 Dated: December 9, 2011

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