

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA)	2018 SEP 20 AM 10:37
)	
)	Crim. No. 1:16-cr-068 WES
v.)	Civil No. 1:15-cv-191-WES
)	
PATRICK CHURCHVILLE)	

**MOTION TO MODIFY THE RESTRAINING ORDER
TO RELEASE ASSETS FOR THE DEFENSE OF
THE RELATED CRIMINAL CASE**

COMES PATRICK CHURCHVILLE (“Churchville”), Movant/Defendant herein, appearing *pro se*, and respectfully moves this Court for an Order to release and reimburse Churchville for payment of attorneys’ fees and costs in this criminal case, from the untainted assets seized by the SEC in May 2015. In support of this motion, he would show as follows:

I. PRELIMINARY STATEMENT

As a preliminary matter, Churchville respectfully requests that the Court be mindful that “a *pro se* complaint should be given liberal construction, we mean that if the essence of an allegation is discernible ... then the district court should construe the complaint in a way that permits the layperson’s claim to be considered within the proper legal framework.” See *Butterworth v. United States*, 775 F.3d 459 (1st Cir., 2015) (noting that *pro se* pleadings are held to less stringent standards than formal pleadings drafted by lawyers; *Estelle v. Gamble*, 429 U.S. 97 (1976) (same); and *Haines v. Kerner*, 404 U.S. 519 (1972) (same)).

II. RELEVANT BACKGROUND

On or about May 7, 2015, the Securities and Exchange Commission (“SEC”) commenced a civil enforcement action (the “Enforcement Action”) against Churchville and the Receivership

Entities. The SEC sought equitable relief, including injunctions against future violations of the securities laws, injunctions against the issuance, purchase, offer or sale of any securities, orders freezing all assets, disgorgement, prejudgment interest, civil monetary penalties and the appointment of a receiver.

On June 2, 2015, the Court issued an Order Imposing Preliminary Injunction, Freezing Assets and for Other Equitable Relief [Hon. William E. Smith, Chief U. S. District Judge]. See CvDoc.13¹. As such, all of Churchville's assets were frozen. Pursuant to the Fifth and Sixth Amendment of the United States Constitution, Churchville seeks access to his untainted assets so that he can properly defend himself in his criminal case with the attorney of his choice. To the extent that any payments are made by the Receivership Estate, the Receiver will personally approve any such payments and the Receiver has implemented procedures and internal controls to ensure that all transactions are authorized by the Appointing Order and are necessary for the preservation of the Receivership Estate. *Id.*

On July 5, 2016, the United States filed an Information and Plea Agreement in this matter. See Doc. 1². The Information charged petitioner with five counts of wire fraud, 18 U.S.C. § 1343, and one count of tax evasion, 26 U.S.C. § 7201. *Id.*

1

"CvDoc." refers to the Docket Report in *Securities and Exchange Commission v. Churchville*, (No. 1:15-cv-00191-WES-LDA) in the District of Rhode Island, Providence Division, which is immediately followed by the Docket Entry Number.

2

"Doc." refers to the Docket Report in *Churchville v. United States*, (No. 1:16-cr-00068-WES-LDA-1), in the District of Rhode Island, Providence Division, which is immediately followed by the Docket Entry Number.

Churchville's untainted frozen assets that he seeks to utilize for defense costs include items purchased before 2010, or which are clearly not included in either the SEC complaint or any Criminal charges. In particular, the proceeds of: (1) a residential condominium in 6 Whitney Court, Unit 10, Narragansett, Rhode Island worth approximately \$276,738.10; (2) HCR Value Fund in which Churchville owns 1.25% of the outstanding partnership interests in Series B of the HCR Value Fund, LP, with holding totaling, \$714,226.09; and (3) Point Judith County Club refund of \$6,000. Because these properties were purchased before the commencement of Churchville's alleged criminal conduct, they clearly are not the proceeds of any fraud and are untainted. The approximate total value of these untainted assets is \$990,870.19. See **Exhibit-1** – Receiver's Fourth Interim Fee Application for specific Fee description attached hereto.

III. ARGUMENT

A. Churchville Moves for Release of Funds for Legal Fees

Churchville respectfully requests that this Court release the following assets:

1. Reimbursement of \$100,000.00 paid to Anthony M. Traini and Michael J. Lepizzera in June 2016 for plea negotiation, which was paid by loan;
2. Interest on loan of approximately \$1,570 to date; and
3. All future legal fees and Forensic auditor fees with appeal.

Because he does not have any unrestrained funds available to pay his legal fees in his criminal case, Churchville must be afforded access to his untainted assets in order to retain counsel of choice in this criminal action. Without such funds, counsel cannot be hired to represent Churchville.

The Order restraining Churchville's funds was entered by Chief Judge Smith, at the

direction of this Court. As such, this Court may release a portion of those assets from the restraining Order, which are not tainted.

To the extent that any payments are made by the Receivership Estate, the Receiver will personally approve any such payments and the Receiver has implemented procedures and internal controls to ensure that all transactions are authorized by the Appointing Order and are necessary for the preservation of the Receivership Estate.

B. The Legal Standard

See *Luis v. United States*, 136 S. Ct. 1083 (2016) (holding that a defendant “has a Sixth Amendment right to use her own ‘innocent’ property to pay a reasonable fee for the assistance of counsel.”); see also, *SEC v. Duclaud Gonzalez De Castilla*, 170 F.Supp.2d 427, 430 (SDNY 2001) (modifying restraining order to permit the payment of legal fees and disbursements); *SEC v. International Loan Network, Inc.*, 770 F.Supp. 678, 680 (DDC1991) (mentioning that it had granted a modification of the asset freeze to permit defendants to retain counsel on their behalf).

The Supreme Court's ruling in *Luis* was issued on March 30, 2016 - Four Months Prior to Churchville's plea. Churchville was entitled to his untainted assets from that point forward for criminal defense costs. By continuing to withhold the untainted assets during this critical time of this case, Churchville's was unable to sufficiently defend himself in a complex financial case. This is a clear violation of the Sixth Amendment and the Supreme Court's ruling. In addition, this is not a retroactive application of *Luis*, as Churchville's case was still active at the time of the ruling, and is still active today as restitution has still not been finalized.

The Sixth Amendment right to counsel grants a defendant “a fair opportunity to secure counsel of his own choice,” *Powell v. Alabama*, 287 U. S. 45, 53, that he “can afford to hire,”

Caplin & Drysdale, Chartered v. United States, 491 U. S. 617, 624. The Supreme Court has consistently referred to the right to counsel of choice as “fundamental.”

A court may order an asset freeze to effectuate the purposes of the federal securities laws and to ensure that wrongdoers do not profit from their unlawful conduct. See *SEC v. Manor Nursing*, 458 F.2d 1082, 1103 (2d Cir. 1972); *SEC v. Drexel Burnham Lambert, Inc.*, 837 F. Supp. 587,613 (S.D.N.Y. 1993). Such relief is important because, if Defendants are able to dissipate or conceal their assets during the litigation, a final judgment ordering disgorgement or civil monetary penalties may be rendered meaningless. See *SEC v. Lauer*, 52 F.3d 667, 699 (7th Cir. 1995)(affirming preliminary injunction “designed to freeze the defendants’ assets with a view to eventual disbursement to the ultimate victim of the fraud”).

It is undisputed that the purpose of freezing assets in this case was to preserve the “status quo” and prevent those assets from being dissipated or diverted during the pendency of the case.

Given the necessarily close working relationship between lawyer and client, the need for confidence, and the critical importance of trust, neither is it surprising that the Court has held that the Sixth Amendment grants a defendant “a fair opportunity to secure counsel of his own choice.” See *Powell v. Alabama*, 287 U.S. 45, 68–69 (1932). As such, Churchville possesses a Fifth and Sixth Amendment right to utilize his assets, which are not the proceeds of alleged wrongful conduct, for the payment of attorneys’ fees in this criminal case.

In *United States v. Coates*, 1994 WL 455558 (SDNY 1994), Coates, the defendant in a civil suit, who was also a defendant in a parallel criminal action, moved to modify the personal asset freeze entered as part of a temporary restraining order in order to gain access to funds for the payment of attorney fees in his criminal case. *Id.* at * 1. The court concluded that the restraint of

the defendant's untainted assets in the civil case would violate his due process rights and his rights to counsel of his choice in the criminal case, and that he must therefore be afforded an opportunity to demonstrate that the assets were not traceable to the alleged fraud and should therefore be released. *Id.* at *3.

In reaching its decision in the context of a civil proceeding, the court noted that it was the companion criminal case that "dictate (d) that the court pay particular attention to the defendant's Fifth and Sixth Amendment rights." *Id.* at 3. The court adopted the reasoning in *United States v. Monsanto*, 924 F.2d 1186, 1203 (2d Cir.)(Monsanto IV), cert. denied, 112 S. Ct. 382 (1991), stating that although the Second Circuit decision addressed the propriety of an asset freeze in the context of a criminal forfeiture, the civil context before her was equally compelling because "an order freezing Coates' personal assets may hinder his ability to obtain counsel of choice in the related criminal case." *Id.*

In *Monsanto IV*, the Second Circuit considered whether due process required a pre-trial hearing before assets could be restrained after the entry of an *ex parte* restraining order, but before trial. See *Monsanto IV*, 924 F. 2d at 1193. The Court weighed the competing interests of the government in preserving the availability of potentially forfeitable assets through trial and a defendant's "important liberty interest: the qualified right, under the Sixth Amendment, to counsel of choice." *Id.* As the Court recognized, a pre-trial asset freeze "severely affects that right by putting beyond the defendant's reach assets which are demonstrably necessary to obtain the legal counsel he desires. The temporary, non-final deprivation is, in that respect, effectively a permanent one." *Id.* The Court concluded that to continue an asset freeze through trial, the government must establish probable cause as to the commission of the charged offense and the forfeitability of the

specified assets, i.e., “probable cause to believe that the restrained assets represent the proceeds of that offense.” *Id.* at 1196-97.

In *Coates*, as dictated by *Monsanto*, the Court required an adversary hearing to determine whether the frozen assets sought to be released were traceable to the alleged fraud. See *Monsanto*, 924 F.2d at 1203; *S.E.C. v. Quinn*, 997 F.2d 287, 289 (7th Cir. 1993) (approving district court’s procedure of requiring the SEC to make a preliminary showing that assets can be traced to alleged fraud, followed by opportunity for defendant to demonstrate that he possesses assets untainted by the allegations).

The Second Circuit’s holding in *Monsanto* has been followed by United States Courts of Appeals in the D.C., Third, Fifth, Seventh, Eighth, and Ninth Circuits. See *United States V. E-Gold, Ltd.*, 521 F.3d 411, 419 (D.C. Cir. 2008) (citing cases).

Churchville seeks reimbursement and advancement of fees and expenses only in the criminal action against him. While he may not be advanced frozen funds traceable to the fraud he allegedly helped to perpetrate, there has been no showing that all of the funds currently restrained are traceable to the illegal activity. See *SEC v. FTC Capital Markets, Inc.*, 2010 WL 2652405 at 7 (SDNY 2010); *SEC v. McGinn*, 2012 WL 1142516 (NDNY 2012) (releasing untainted assets needed to retain counsel of choice).

Here, no such hearing is necessary, because undisputed evidence has established that the assets Churchville seeks were acquired either prior to his alleged commission of any misconduct or were not included in any criminal allegations. As the Receiver’s Report make clear, Churchville purchased a residential condominium in 2005 at 6 Whitney Court, Unit 10, Narragansett, Rhode Island, which is valued at approximately \$276,738.10, (2) HCR Value Fund in which Churchville

owns 1.25% of the outstanding partnership interests in Series B of the HCR Value Fund, LP, with holdings totaling, \$714,226.09 were not part of any criminal allegations , and (3) Point Judith County Club refund of \$6,000, were obtained prior to the commencement of the conduct alleged in the Indictment.

Accordingly, the Constitution and the law of this Circuit require that Churchville be permitted access to his untainted assets to defend against the criminal charges against him.

Churchville submits that the Fifth and Sixth Amendments, individually and in combination, require that the Court exempt from restraint and forfeiture those assets needed for (and ultimately expended on) his continuing legal defense. The funds would be invested in his defense for the best and most industrious investigators, experts, paralegals, and law clerks, to at least attempt to match the litigation support available to the United States Attorney's Office.

The restraint of substitute assets is effectively a limit on the amount of his own money a defendant can spend on his defense. There is no countervailing tool available to the Churchville to limit the government's expenditures in prosecuting him. The Fifth Amendment's guarantee of due process should insure that the government not gain such an unfair leverage in the courtroom. Further, Churchville has a Sixth Amendment right to have the attorney of his choice represent him.

CONCLUSION

For the above and foregoing reasons, Churchville respectfully requests that his Motion be, in all things granted and that the Court release Churchville's untainted assets to reimburse prior legal fees and expenses, and to pay for future Attorneys' Fees and Costs.

Respectfully submitted,

Signed on this 17th day of September, 2018.



PATRICK CHURCHVILLE
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FCI BERLIN
FEDERAL CORR. INSTITUTION
P.O. BOX 9000
BERLIN, NH 03570
Movant appearing *Pro Se*

CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2018, a true and correct copy of the above and Forgoing Motion to Modify the Restraining Order to Release Assets for the Defense of the Related Criminal Case has been served to the following Respondent's attorneys via U. S. Mail, postage prepaid to Marc J. Jones / Plaintiff Counsel at United States Securities and Exchange Commission, 33 Arch Street, Boston, MA 02110, and Stephen F. Del Sesto /Receiver, Pierce Atwood LLP at One Financial Plaza, 26th Floor, Providence, RI 02903.



PATRICK CHURCHVILLE

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SECURITIES AND EXCHANGE COMMISSION,)

Plaintiff,)

vs.)

Case No. 15-CV-00191-S-LDA

PATRICK CHURCHVILLE,)
CLEARPATH WEALTH MANAGEMENT, LLC,)

Defendants,)

and)

CLEARPATH MULTI-STRATEGY FUND I, L.P.,)
CLEARPATH MULTI-STRATEGY FUND II, L.P.,)
CLEARPATH MULTI-STRATEGY FUND III, L.P.,)
HCR VALUE FUND, L.P.,)

Relief Defendants.)

RECEIVER'S FOURTH INTERIM FEE APPLICATION

Now comes, Stephen F. Del Sesto, the Court-appointed Receiver for Defendants Patrick Churchville and ClearPath Wealth Management, LLC and Relief Defendants ClearPath Multi-Strategy Fund I, L.P., ClearPath Multi-Strategy Fund II, L.P., and ClearPath Multi-Strategy Fund III, L.P. (collectively "Receivership Entities") and hereby submits his Fourth Interim Fee Application. This Fee Application conforms to the "Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission" as required pursuant to Paragraph 59 of this Court's July 30, 2015 Order Appointing Receiver (Document No. 16). The billing invoices of Donoghue Barrett & Singal, P.C., the Receiver's prior law firm, and Sansiveri, Kimball & Co., LLP, the Receiver's financial advisor as approved by this Court's October 19, 2015 Order (Document No. 32), supporting this Fourth Interim Fee Application were previously provided to the Commission and this Court under separate cover.

EXHIBIT-1

1. Information About the Applicant and the Application

- a. The period of time covered by this Application is from July 1, 2016 through and including December 31, 2016.
- b. The Receiver was appointed on July 30, 2015.
- c. The Applicant has utilized the following professionals and paraprofessionals at the following rates:

Barret & Singal, P.C. (f/k/a Donoghue Barrett & Singal, P.C.)

- i. Stephen F. Del Sesto, Partner: \$350/hour
- ii. William M. Dolan III, Partner: \$350/hour
- iii. Nicholas L. Nybo, Associate: \$250/hour
- iv. Julie A. Zaccagnini, Paralegal: \$185/hour
- v. Deborah L. Medeiros, Paralegal: \$185/hour

Sansiveri, Kimball & Co., LLP

- i. Catherine M. Parente, CPA, Partner: \$275/hour
- ii. Kenji Greenberg, CPA: \$126/hour

- d. This Fee Application is the fourth interim application and, as such, there have been three previous fee applications. The Receiver's First Interim Fee Application which requested approval of fees, costs and expenses in the amount of \$79,522.29, which accrued from the commencement of the receivership proceeding through and including September 30, 2015, was approved by Order of this Court dated January 28, 2016 (Document No. 55). The Receiver was authorized to fully satisfy those fees, costs and expenses and has done so since the entry of the January 28, 2016 Order.

The Receiver's Second Interim Fee Application which requested approval of the Receiver's fees, costs and expenses in the amount of \$123,086.81, which accrued from October 1, 2015 through and including December 31, 2015, was approved by Order of this Court dated May 31, 2016 (Document No. 74). The Receiver was authorized to fully satisfy those fees, costs and expenses and has done so since the entry of the May 31, 2016 Order.

In addition, the May 31, 2016 Order also approved the fees incurred from Sansiveri, Kimball & Co., LLP, the Receiver's financial advisor, in the amount of \$10,077.30, which accrued from September 15, 2015 through and including December 31, 2015.

The Receiver was authorized to fully satisfy those fees and has done so since the entry of the May 31, 2016 Order.

The Receiver's Third Interim Fee Application which requested approval of the Receiver's fees, costs and expenses in the amount of \$202,765.27, which accrued from January 1, 2016 through and including June 30, 2016, was approved by Order of this Court dated December 9, 2016 (Document No. 93). The Receiver was authorized to fully satisfy those fees, costs and expenses and has done so since the entry of the December 9, 2016 Order.

In addition, the December 9, 2016 Order also approved the fees incurred from Sansiveri, Kimball & Co., LLP, in the amount of \$4,480.50, which accrued from January 1, 2016 through and including March 30, 2016. The Receiver was authorized to fully satisfy those fees and has done so since the entry of the December 9, 2016 Order.

2. Case Status (Narrative)

a. Since the commencement of the receivership proceeding through the filing of this Application the Receiver has collected funds totaling \$5,060,894.53¹. As of the filing of this Fee Application the Receiver has \$4,120,785.67 on hand comprised of the following funds:

- i. \$903,356.60 in funds that were in the possession of the law firm of Lepizzera & Laprocina²;
- ii. \$35,523.57 in funds collected via the Receiver's closeout of bank accounts held by Defendants at Bank of America;
- iii. \$89,224.99 in NET sale proceed funds collected via the sale of the Parade Street, Providence, Rhode Island property owned by Macaw Investment Company, LLC ("Macaw")³;

¹ This total is inclusive of \$25,569.75 earned in interest as a result of the Estate funds being held in multiple interest bearing deposit accounts.

² The origin of these funds was more fully described in the Receiver's First Quarterly Status Report.

³ These funds are being held in escrow pending a determination of allocation among the Macaw Investment Company, LLC members, specifically, Defendant Churchville and Mr. Drew Churchville Carlin. Based upon the Receiver's review of the Macaw company documents and a discussion with Mr. Carlin, it is the Receiver's belief that Defendant Churchville is entitled to the entirety of the proceeds after satisfaction of Macaw's reasonable and appropriate business debts. The Receiver anticipates seeking instruction from this Court regarding these funds in the near future.

- iv. \$1,500 in funds collected via the sale of furnishings owned by Defendant Churchville which were located in the Doyle Avenue, Providence, Rhode Island property;
- v. \$129,559.74 in NET sale proceed funds collected via the sale of the Doyle Avenue, Unit 2, Providence, Rhode Island property owned by Macaw⁴;
- vi. \$714,226.09 in funds wired to the Receivership Estate in connection with and subject to this Court's Orders entered on or about November 4, 2015 (Document Nos. 40 and 41) regarding the HCR Value Fund, LP Amendment and Settlement with the Acrewood Parties and Capio Parties;
- vii. \$4,152.75 in funds wired into the Receivership Estate as a supplemental distribution in connection with and subject to this Court's Orders entered on or about November 4, 2015 (Document Nos. 40 and 41) regarding the HCR Value Fund, LP Amendment and Settlement with the Acrewood Parties and Capio Parties;
- viii. \$6,000.00 in funds collected from Point Judith Country Club which was due to be refunded to Defendant Churchville;
- ix. \$4,025.62 in funds collected via the Receiver's closeout of a bank account held by Defendant ClearPath Wealth Management, LLC at Commerce Bank;
- x. \$7,916.93 in NET sale proceeds from the public auction of Defendant Churchville's 1998 thirty-foot Doral powerboat;
- xi. \$180,613.00 in funds collected from Apex Fund Services (US) Inc. ("Apex") as full settlement payment under the Order Instituting Proceedings dated June 16, 2016 issued in the administrative proceeding initiated against Apex by the U.S. Securities and Exchange Commission;
- xii. \$278,363.25 in NET sale proceed funds from the Court approved sale of real property located at 121 Nayatt Road, Barrington, Rhode Island;

⁴ Similar to the funds identified in 2(a)(iii), these funds are being held in escrow pending a determination of allocation among the Macaw Investment Company, LLC members, specifically, Defendant Churchville and Mr. Drew Churchville Carlin. It is the Receiver's belief that Defendant Churchville is entitled to the entirety of the proceeds after satisfaction of Macaw's reasonable and appropriate business debts.

- xiii. \$276,783.10 in sale proceed funds from the Court approved sale of real property located at 6 Whitney Court, Unit 10, Narragansett, Rhode Island⁵;
- xiv. \$187,041.64 in funds wired to the Receivership Estate from Hastings Equity Fund II, L.P. (“Hastings II”) due ClearPath Multi-Strategy Fund I, L.P. as limited partner in Hastings II;
- xv. \$109,810.32 in funds wired to the Receivership Estate from Hastings II as a second distribution to ClearPath Multi-Strategy Fund I, L.P. as limited partner in Hastings II;
- xvi. \$16,298.27 in funds wired to the Receivership Estate from Hastings II as a final distribution to ClearPath Multi-Strategy Fund I, L.P. as limited partner in Hastings II;
- xvii. \$311,529.52 in funds wired to the Receivership Estate from Fox Chase Bank representing the close-out of the account held in the name of HCR Value Fund, LP Series A in connection with and subject to this Court’s Orders entered on or about November 4, 2015 (Document Nos. 40 and 41) regarding the HCR Value Fund, LP Amendment and Settlement with the Acrewood Parties and Capio Parties;
- xviii. \$772,869.91 in funds wired to the Receivership Estate from Capio Partners, LLC pursuant to this Court’s Order entered November 1, 2016 (Document No. 88) in connection with monies due ClearPath Multi-Strategy Fund II, ClearPath Multi-Strategy Fund III and Receivable Partners, LLC;
- xix. \$18.55 in funds received from the settlement of Wells Fargo Bank class action suit;
- xx. \$500,000.00 in funds received from Burns & Levinson, LLP and CRS Capstone Partners LLC as full and final satisfaction and settlement of all claims held by the Receiver pursuant to the terms of the Court-approved settlement;

⁵ This amount is inclusive of funds later disbursed to Seyfarth Shaw, LLP as attorneys for Wells Fargo Bank, N.A. in the amount of \$253,783.10 in accordance with the June 24, 2016 Joint Stipulation Between Wells Fargo Bank, N.A. and Receiver Regarding Sale of Real Property Located at 6 Whitney Court (Document No. 79).

- xxi. \$260,000.00 in funds collected from Grassi & Co., CPAs, P.C. ("Grassi") as full settlement payment of the civil money penalty under the Order Instituting Proceedings dated November 21, 2016 issued in the administrative proceeding initiated against Grassi by the U.S. Securities and Exchange Commission;
- xxii. \$141,510.43 in funds collected from Grassi as full settlement payment of disgorgement and prejudgment interest under the Order Instituting Proceedings dated November 21, 2016 issued in the administrative proceeding initiated against Grassi by the U.S. Securities and Exchange Commission;
- xxiii. \$105,000.50 in funds wired into the Receivership Estate as supplemental quarterly distributions in connection with and subject to this Court's Order entered on November 1, 2016 (Document No. 88) in connection with monies due ClearPath Multi-Strategy Fund II, ClearPath Multi-Strategy Fund III and Receivable Partners, LLC; and
- xxiv. \$25,569.75 in interest earned as a result of the Receiver holding the above referenced funds in multiple interest bearing deposit accounts.

In terms of accrued administrative expenses, since the filing of the Receiver's Third Interim Fee Application the Receiver has incurred the following:

- i. \$13,776.00 incurred from The New York Times, 620 Eighth Avenue, New York, New York. This expense is related to the Receiver's publication of the Notice of Claims Bar Date and Procedures for Submitting Proofs of Claim, as approved by this Court, and pursuant to the terms of this Court's Order dated September 23, 2016 (Document No. 87);
- ii. \$260.00 incurred from Joseph Clark, Constable, -24 Homefield Avenue, Providence, Rhode Island. This expense is related to the service of several Subpoenas;
- iii. \$2,125.00 incurred from The Mediation Group, 235 Cypress Street, Suite 300, Brookline, Massachusetts. This expense is related to the Receiver's share for the cost of the mediation session conducted in connection with the

- Receiver's claims against Burns & Levinson, LLP and CRS Capstone Partners LLC;
- iv. \$11,787.00 incurred from Gentle Giant Storage, 125 Amaral Street, East Providence, Rhode Island. This expense is related to the monthly storage charges for items removed from the former ClearPath Wealth Management, LLC office previously located at Maple Avenue, Barrington, Rhode Island;
 - v. \$2,241.26 incurred from Relevant Discover-e, 128 Dorrance Street, Suite 450, Providence, Rhode Island. This expense is related to the reproduction and postage necessary to mail the Receiver's Motion for an Order Approving Distribution Procedures and Certain Other Related Relief (Document No. 117) and Notice of the Hearing on the Motion to all investors, creditors and other parties in interest; and
 - vi. \$137.00 incurred from various financial institutions holding Receivership Estate deposit accounts as a result of fees incurred in connection with incoming and outgoing wire transfers and statement fees.

As stated above, and as of the filing of this Application, the Receiver has funds on hand totaling \$4,120,785.67. Of these funds, the Receiver has identified encumbered funds totaling \$218,784.73 leaving \$3,902,000.94 of unencumbered funds. It is the Receiver's belief that in the future the encumbered funds will become fully unencumbered. Of course, the possibility exists for additional funds collected in the future by the Receiver to be encumbered.

- b. As set forth above, since the commencement of the Receivership proceeding the Receiver has collected funds totaling \$5,060,894.53. The Receiver has not made additional disbursements other than the amounts set forth in Paragraph 2(a) above and the disbursements previously approved by this Court as itemized in the Receiver's First Interim Fee Application, Second Interim Fee Application and Third Interim Fee Application.

At this time, the Receiver cannot estimate when the case is expected to close.

c. Claims Proceedings

- i. The Receiver provided a Notice of Claims Bar Date and Procedures for Submitting Proofs of Claim along with a Creditor Proof of Claim Form and an Investor Proof of Claim Form (collectively referred to as “Claim Documents”), all of which were approved by this Court’s September 23, 2016 Order Granting Motion to Establish a Claims Bar Date, Approve the Manner and Form of Notice of Claims Bar Date and Approve the Process for Submitting Claims (Document No. 87), to all creditors, investors and other parties in interest presently known to the Receiver. In an effort to reach both known and unknown Claimants, the Claim Documents (i) were provided via electronic mail to those Claimants the Receiver has an electronic mail address for; (ii) were sent via regular mail to all known Claimants; (iii) are published on the Receiver’s dedicated receivership website which is accessible to all parties; (iv) were published, as required by the September 23, 2016 Order, in the Providence Journal on two separate dates; and (v) were published, as required by this Court’s Text Order dated November 10, 2016, in The New York Times on November 17, 2016 and December 1, 2016.

The Claims Bar Date was January 21, 2017.

- ii. As of the filing of this Application, the Receiver has received 132 Claims (121 Investor Claims, 1 Priority Claim and 10 General Creditor Claims). Both the Receiver and the Receiver’s financial advisor, Sansiveri, Kimball & Co., LLP, have reviewed the Claims received for content, accuracy, supporting documentation and compliance with the procedures for submitting Claims as approved by this Court.
- iii. As described in further detail in this Court’s July 1, 2018 Order Approving Distribution Procedures and Certain Other Related Relief (Document No. 118), the Receiver sought and received approval in connection with (1) procedures for the resolution of certain Claims reconciliation matters, including, but not

limited to, granting the Receiver authority to settle Claims asserted against the Receivership Entities, establishing a procedure for settling Claims filed against the Receivership Entities and establishing the method by which a Claimant may challenge the Receiver's Claim determination, after attempted settlement, to this Court; (2) the establishment of the priority of distributions to the holders of allowed Claims; (3) the establishment of the "rising tide" methodology for determining the distributions to be made on account of the allowed Claims held by Investors; and (4) the procedures for making distributions, including, but not limited to, the collection of necessary information to make distributions to holders of allowed Claims, and the establishment of the procedure for making distributions. The Receiver is preparing and will be filing (1) a Motion to Establish and Allow Class 3 Claims; and (2) Motion to Authorize First Interim Distribution to Class 3 Claims, Establish Record Dates and Set First Interim Distribution Date.

d. Description of the Assets in the Receivership Estate:

- i. Various home and office furnishings. Appraisal: Approximately \$3,000-\$5,000. At this time, the Receiver intends to dispose of the property through a public auction sale.

- e. Consistent with the Court's Order entered on September 26, 2017 (Document No. 113), the Receiver continues to investigate but is not in a position to report the liquidated or unliquidated claims that are available to the Receiver (or the likelihood of success thereof) relative to the JER Receivables, LLC and Receivable Partners, LLC matters. In addition, the Receiver is continuing his investigation and negotiation with PharmLogic, LLC; however, due to the possibility of litigation the Receiver is not in a position to report on the substance of the claims that he believes are available to the Receivership Estate (or the likelihood of success thereof). Pursuant to his September 30, 2015, Petition to Engage Financial Advisor and this Court's October 19, 2015, Order granting the Receiver's Petition (Document No. 32), the Receiver engaged a

financial advisor to assist the Receiver in the financial and accounting analyses required to understand the nature of the Receivership Entities' potential claims.

3. Current and Previous Billings

- a. The Receiver currently requests approval in the amount of \$89,364.29, comprised of both compensation for fees and reimbursable expenses incurred from July 1, 2016 through and including December 31, 2016. In connection with the Receiver's First, Second and Third Interim Fee Applications, the Receiver previously requested compensation in the amounts of \$79,522.29, \$123,086.81 and \$202,765.27, respectively. In addition, this Court previously approved the fees incurred from Sansiveri, Kimball & Co., LLP, the Receiver's financial advisor, in the amounts of \$10,077.30 and \$4,480.50, which accrued from September 15, 2015 through and including December 31, 2015 and from January 1, 2016 through and including March 30, 2016, respectively.

In addition to the Receiver's fees, costs and reimbursable expenses identified above, the Receiver is also requesting approval of the fees incurred from Sansiveri, Kimball & Co., LLP for the period of February 2017 through and including April 2017 totaling \$2,701.50.

- b. Pursuant to this Court's January 28, 2016, May 31, 2016 and December 9, 2016 Orders (Document Nos. 55, 74 and 93), compensation and expenses totaling \$79,522.29, \$123,086.81 and \$202,765.27 were previously awarded in connection with the Receiver's First, Second and Third Interim Fee Applications.

c. Total Hours and Amounts Billed by Donoghue Barrett & Singal, P.C.:

- | | | |
|------|---------------------------------|-----------------------------------|
| i. | Stephen F. Del Sesto, Partner: | 141.30 hours totaling \$48,755.00 |
| ii. | William M. Dolan III, Partner: | 28.30 hours totaling \$9,905.00 |
| iii. | Nicholas L. Nybo, Associate: | 51.40 hours totaling \$12,850.00 |
| iv. | Julie A. Zaccagnini, Paralegal: | 116.70 hours totaling \$12,654.00 |
| v. | Deborah L. Medeiros, Paralegal: | 5.30 hours totaling \$980.50 |

Total Hours and Amounts Billed by Sansiveri, Kimball & Co., LLC:

- i. Catherine Parente, CPA, Partner: 5.7 hours totaling \$1,567.50
- ii. Kenji Greenberg, CPA: 9.0 hours totaling \$1,134.00

4. Standardized Fund Accounting Report

As required by the “Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission”, the Standardized Fund Accounting Reports are attached hereto as “Exhibit A”⁶.

CERTIFICATION

The Certifying Professional has read the Application. To the best of the Applicant’s knowledge, information and belief formed after reasonable inquiry, the Application and all fees and expenses therein are true and accurate and comply with the Billing Instructions. All fees contained in the Application are based on the rates listed in the Applicant’s fee schedule and such fees are reasonable, necessary and commensurate with the skill and experience required for the activity performed. The Applicant has not included in the amount for which reimbursement is sought the amortization of the cost of any investment, equipment, or capital outlay (except to the extent that such amortization is included within the permitted allowable amounts set forth herein for photocopies and facsimile transmission). In seeking reimbursement for a service which the Applicant justifiably purchased or contracted for from a third party (such as copying, imaging, bulk mail, messenger service, overnight courier, computerized research, or title and lien searches), the Applicant requests reimbursement only for the amount billed to the Applicant by the third-party vendor and paid by the Applicant to such vendor. If such services are performed by the Receiver, the Receiver will certify that it is not making a profit on such reimbursable service.

In addition, the Applicant certifies that any and all charges incurred in connection with any potential litigation is likely to produce a net economic benefit to the Estate based on reviews of: (i) the legal theories upon which the action is based, including issues of standing; (ii) the likelihood

⁶ Exhibit A includes two Standardized Fund Accounting Reports for the reporting periods of September 1, 2016 through and including November 30, 2016 and December 1, 2016 through and including February 28, 2017.

of collection on any judgment which might be obtained; and (iii) alternative methods of seeking relief, such as retention of counsel on a contingency basis.

/s/ Stephen F. Del Sesto, Receiver

Stephen F. Del Sesto, Esq.
Certifying Professional and Applicant

/s/ Stephen F. Del Sesto, Receiver

Stephen F. Del Sesto, Esq. (Bar #6336)
Receiver for Patrick Churchville, ClearPath
Wealth Management, LLC, ClearPath Multi-
Strategy Fund I, L.P., ClearPath Multi-
Strategy Fund II, L.P., and ClearPath Multi-
Strategy Fund III, L.P. and not individually
Pierce Atwood, LLP
One Financial Plaza, 26th Floor
Providence, RI 02903
401-490-3415
sdelsesto@pierceatwood.com
July 31, 2018

PATRICK CHURCHVILLE
Register Number: 11354-070
FCI BERLIN
FEDERAL CORRECTIONAL INSTITUTION
P.O. BOX 9000
BERLIN, NH 03570

September __, 2018

U.S. District Court
District of Rhode Island
One Exchange Terrace
Federal Building and Courthouse
Providence, RI 02903

RE: *Patrick Churchville v. United States*
Crim. No. 1:16-cr-068 WES
Civil No. 1:15-cv-191-WES

To the Clerk of the Court:

Enclosed please find and accept for immediate filing in the U.S. District Court Movant's Motion to Modify the Restraining Order to Release Assets for the Defense of the Related Criminal Case. Please submit this motion to the Court.

Thank you for your assistance in the matter.

Sincerely,



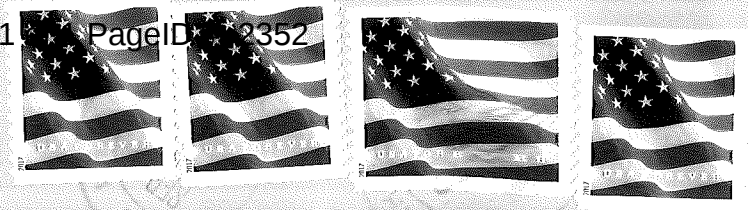
Patrick Churchville
Movant appearing *Pro Se*

2018 SEP 20 A 10:37

Encl. as noted

⇔11354-070⇔

Patrick Churchville
Federal Prison Camp - Berlin
P.O. Box 9000
Berlin, NH 03570
United States



⇔11354-070⇔

U.S. District Court R.I.
1 Exchange TER
Providence, RI 02903
United States

