

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 20-CIV-21964-CMA**

SECURITIES AND EXCHANGE
COMMISSION,
Plaintiff,

v.

TCA FUND MANAGEMENT GROUP CORP.,
et al.,
Defendants.

**RECEIVER, JONATHAN E. PERLMAN’S, MOTION FOR APPROVAL OF NEW IT
VENDORS AND TRANSITION COSTS**

COMES NOW, Jonathan E. Perlman, Esq., Court-Appointed Receiver (“Receiver”) of the Receivership Entities,¹ by and through undersigned counsel hereby files this Motion for Approval of New IT Vendors and Transition Costs (“Motion”) and accordingly states as follows:

1. On May 11, 2020, the Securities and Exchange Commission (“SEC”) filed its Complaint for Injunctive Relief against TCA Fund Management Group, Corp., TCA Global Credit Fund GP, LTD., (“Receivership Defendants”), and TCA Global Credit Fund, LP, TCA Global Credit Fund, LTD., and TCA Global Credit Master Fund, LP (“Relief Defendants”) (collectively, “Defendants”). [ECF No. 1].

2. The SEC also filed an Expedited Motion for Appointment of Receiver. [ECF No. 3].

3. On the same day, the Court granted the motion and appointed Jonathan E. Perlman, Esq., of the law firm Genovese Joblove & Battista, P.A. (“GJB”), as permanent Receiver over the

¹ All terms not specifically defined herein have the meaning ascribed to them in the SEC’s Motion for Appointment of Receiver [ECF No. 3] and the Court’s Appointment Order [ECF No. 5], and the Court’s First Expansion Order [ECF No. 16].

Receivership Entities [ECF No. 5] (“Appointment Order”).

4. Pursuant to the Appointment Order, the Receiver is empowered to, among other things, “use Receivership Property for the benefit of the Receivership Estates, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging the Receiver’s duties” and “engage and employ persons in Receiver’s discretion to assist Receiver in carrying out Receiver’s duties and responsibilities...” *Id.* at § II ¶¶ 5.E & F.

5. Prior to the Receiver’s appointment, TCA Fund Management Group Corp. (“FMGC”) entered into several contractual agreements with certain independent contractors to provide management and consulting services to support the ongoing business operations of FMGC.

6. The Receiver sought and was approved to maintain the former FMGC relationship with IronOak Defense, Inc. who currently provides all the information and technology solutions and services for the Receivership Entities and provides the employees with helpdesk support services and to pay for those services from Receivership funds. [ECF Nos. 41 & 42].

7. IronOak’s services continued to be necessary while the Receiver located a new provider able to carry on the existing services for the Receivership and the ongoing operations.

8. To that end, the Receiver has secured an agreement with e-Forensics, Inc. (“EFI”) to provide ongoing information and technology services to support the ongoing operations of the Receivership Entities.

9. EFI has agreed to a monthly cost of \$1,500 which is an overall savings of nearly \$3,000 a month from IronOak’s services. The proposed Maintenance Agreement with EFI is attached as Exhibit A.

10. The transition of IT services is expected to cost approximately \$6,500 and take

approximately two weeks. IronOak submitted a proposed invoice (attached as Exhibit B) for \$2,500 to complete the task, and the estimated costs for EFI is \$4,000 (*see* Exhibit A).

WHEREFORE, Receiver, Jonathan E. Perlman, by and through his undersigned counsel respectfully requests that this Honorable Court grant the Motion and (1) approve the proposed agreement with EFI; (2) authorize the Receiver to pay all future invoices from EFI in the ordinary course of business from the Receivership funds; and (3) authorize the payment of the transition costs to IronOak and EFI. A proposed order for the Court's consideration is attached as Exhibit C.

S.D. Fla. L.R. 7.1(A)(3) CERTIFICATE OF CONFERENCE

I, Irina Sadovnic, Esq., hereby certify that counsel for the Receiver conferred with counsel for the SEC on October 2, 2020, via email regarding the requested relief and they authorized the Receiver to represent that the SEC does not oppose the relief sought.

By: /s/ Irina R. Sadovnic
Irina R. Sadovnic, Esq., FBN 124502
Isadovnic@gjb-law.com
GENOVESE JOBLOVE & BATTISTA, P.A.
Attorneys for Jonathan E. Perlman, Receiver
100 Southeast 2nd Street, Suite 4400
Miami, Florida 33131
Telephone: (305) 349-2300
Facsimile: (305) 349-2310

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served via CM/ECF Notification and/or U.S. Mail to all parties and notification of such filing to all CM/ECF participants in this case on the 2nd day of October, 2020.

By: /s/ Irina R. Sadovnic
Irina R. Sadovnic, Esq.

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September 5, 2020

Jonathan E. Perlman, Esq.
Receiver
100 SE 2nd Street suite 4400
Miami, Florida 33131

RE: TCA IT Vendor Migration & Monthly Support

Dear Mr. Perlman:

Thank you for the opportunity to provide you with a proposal for professional services. This proposal outlines the scope of the assignment and the costs associated with our services.

This agreement is made September 5, 2020, between Jonathan E. Perlman, Esq. Receiver with its office located at 100 SE 2nd Street suite 4400 Miami, Florida 33131 (hereinafter referred to as "Client"), and e-Forensics Incorporated (hereinafter referred to as "EFI"), a computer forensics and electronic discovery service company, with its office located at 2000 S. Dixie Highway, Suite 206, Miami, Florida 33133.

WHEREAS, EFI agrees to put forth its best effort to supply Client with the professional services to perform the following scope of work (hereinafter "Services"), and Client agrees to utilize EFI for such purposes:

Vendor Transition

- Knowledge transfer (review setup and configurations with IOD (current vendor) of covered systems, e.g., firewalls, Office365, Axcient, Global Relay)
- For Client dedicated (one client) managed services, transfer to e-Forensics: change contact information, e-mail addresses, billing and credentials.
- For Client shared (multi-client) managed services, e-Forensics will use its account or provision a new one, and transfer IOD's Client account.

Assumptions:

- Contract termination process and fees are settled between Receiver and IOD
- IOD is engaged by Receiver to assist in transition

Licensing (all costs passed through)



Assumptions:

- All software and services subscriptions will remain active with assigned licenses

Maintenance & Support Agreement

- General systems maintenance (e.g. patch and anti-malware updates); see Exhibit A
- Block hours can be used on ANY services including out of scope labor items such as consulting, new systems installation and configurations
- Service Level Agreement (“SLA”) coverage; see Exhibit B
- SLA rates outside normal business hours; see Standard Services section

Be available to provide expert/fact witness testimony either in a deposition, hearing or trial.

NOW, THEREFORE, the parties agree as follows:

1. SOLE AGREEMENT

This Forensic Service Agreement (hereinafter “Agreement”) shall supersede all prior agreements and understandings between the parties with respect to the subject hereof. Additional agreements and documents between the parties, such as proposals from EFI, written acceptances by the Client, or purchase orders may be attached as addenda to this Agreement. This Agreement may not be changed or terminated verbally by or on behalf of either party.

2. TERM OF AGREEMENT

Either party may terminate this Agreement by giving to the other party at least thirty (30) days prior written notice without incurring any additional charges. Our final statement will include expenses for whatever actions we find necessary to ensure an orderly transition of the matter.

If terminated prior to mid-month of the monthly cycle, 50% of block hours will be refundable.

3. STANDARD SERVICES

EFI shall perform the Services according to the following rate structure:



Standard hourly rate: \$175/hr

SLA with respect to coverage outside of normal business hours with a few exceptions:

On-site service calls are 2-hour minimums and remote support is billed in 15 min increments with a 30-minute minimum.

Weekday Hourly: \$175/hour Monday-Friday 9AM- 6 PM;

Weekday Afterhours Hourly: \$200/hour Monday-Friday 6 PM – 9 AM;

Weekend Hourly: \$225/hour Saturday-Sunday 9AM- 6 PM;

Weekend Afterhours & Holidays Hourly: \$300/hour Sat-Sun 6 PM – 9 AM;

Month to month agreement, and monthly block hours are prepaid;

Unused block hours do not roll into future months;

If terminated prior to mid-month, 50% of block hours is refundable;

\$175/hr: Travel time (during normal business hours (9AM to 6PM) is billed at the full rate, while travel outside of business hours is billed at half rate)

\$395/hr: Expert/Fact Witness Testimony/deposition (four hour daily minimum)

All expenses incurred performing the Service will be submitted for payment at actual cost.

4. PROFESSIONAL FEES

Based on the information at hand, EFI estimates the following:

- a) Vendor transition: No less than \$2,450 and not to exceed \$4,000
- b) Monthly Maintenance: \$1,500 per month (10 prepaid block hours at \$150/hr which do not rollover). Labor in excess of 10 hours is billed at the Standard hourly rate.

5. RETAINER & PAYMENT

It is EFI's policy to obtain a retainer prior to commencing any assignment. For this assignment, a retainer of \$5,500 (Vendor transition and first month's block hours) is required prior to commencing services. If for any reason the assignment is terminated before the retainer is depleted, any unused portion will be returned.



CLIENT IS RESPONSIBLE FOR ALL COSTS.

All invoices generated after the initial retainer invoice are due and payable within fifteen (15) days of the date of the invoice. Notice of disputes related to fees must be received by us within sixty (60) days after the service is rendered or the date on which you pay an invoice, whichever is later; otherwise, you waive your right to dispute the fee thereafter. A re-connect fee may be charged to you if EFI suspends the services due to your nonpayment.

EFI reserves the right, but not the obligation, to suspend part or all the services without prior notice to you if any portion of undisputed fees are not timely received by EFI.

Fees that remain unpaid for more than fifteen (15) days after the date on the invoice will be subject to interest on the unpaid amount(s) until and including the date payment is received, at the lower of either 1.5% per month or the maximum allowable rate of interest permitted by applicable law.

If either party terminates this Agreement, all amounts payable to EFI and all amounts accrued shall immediately be due and payable.

6. CONFIDENTIAL INFORMATION

Unless otherwise required by law, Client and EFI each expressly undertake to retain in confidence and to require their respective employees and contractors to retain in confidence all information, materials and know-how exchanged in connection with this Agreement and identified as being proprietary, privileged, and/or confidential or which, by the nature of the particular disclosure, ought in good faith to be treated as Client proprietary, privileged, and/or confidential (hereinafter "Confidential Information").

EFI and Client each further agree that they will make no use of such Confidential Information except as consistent with the terms and purpose of this Agreement or with the specific prior written consent of the other party.

Notwithstanding the foregoing, each party may disclose Confidential Information on a "need to know" basis to its respective legal counsel, accountants, and financial advisors.

Client understands that if EFI encounters evidence of a violation of state or federal law, EFI may be legally required to report the evidence to law enforcement or other appropriate entities (i.e. prosecutor, judge, etc.). In the event that this engagement is to provide services in a criminal defense, EFI will provide the information to the criminal defense attorney; the information will not be reported to law enforcement by EFI unless it is of a nature that would require the defense attorney to disclose it. Child Pornography is illegal to possess and will be immediately reported to law enforcement.

7. WORK PRODUCT



All work products developed by EFI specifically for the Client in connection with the Services shall be deemed to be the property of Client. Client acknowledges and agrees that to the extent EFI uses generalized or pre-existing work products (e.g., surveys or computer programs) in the course of performing the Services, EFI shall retain all ownership and title in and to all such work products.

8. ACKNOWLEDGEMENT OF EXISTING CONDITIONS & CLIENT'S BACKUP RESPONSIBILITY

Prior to rendering Services, Client must back up all files and data stored on any media referenced in the scope of the engagement.

Client acknowledges that the equipment, data, media or other electronic devices (hereinafter "Digital Artifacts") targeted for inspection may be damaged prior to EFI receipt, and Client further acknowledges that the efforts of EFI and/or its suppliers to complete the Services may result in the destruction of or further damage to the Digital Artifacts. EFI for itself and its suppliers will not assume responsibility for additional damage that may occur to the Client's Digital Artifacts during EFI's efforts to complete the Services.

9. APPEARANCES

Client agrees that in the event EFI is required to appear before an official tribunal in connection with or as a result of the work performed pursuant to this agreement, Client will compensate EFI for all time spent in preparation for the appearance and the appearance itself at EFI then current hourly billing rates.

10. OWNERSHIP OR RIGHT OF POSSESSION

Client warrants to EFI that it is the owner of, and/or has the right to be in possession of, all Digital Artifacts furnished to EFI; that Client has permission and/or rights to enter and acquire/capture any and all Digital Artifacts from premises where computer evidence may be located; that Client hereby grants permission and/or rights to EFI to enter and acquire/capture any and all Digital Artifacts from premises; and that Client will defend, at its expense, indemnify, and hold EFI and its suppliers harmless against any damages or expenses that may occur (including reasonable attorneys' fees), and pay any cost, damages, or attorneys' fees awarded against EFI resulting from Client's breach of this section.

11. LIABILITY OF EFI AND ITS PERSONNEL

EFI agrees to hold Client harmless from any and all injury to persons or damage to the property of Client or of any employee of Client which arises out of EFI's negligent performance under this Agreement, provided that client expressly agrees that EFI shall not be liable to Client for any act or omission of EFI which is the cause of loss or injury to Client or any third party.



Notwithstanding any other provision of this Agreement to the contrary, the EFI's total liability to Client arising out of this Agreement and/or the termination hereof for any losses, claims, costs or damages arising out of any cause whatsoever, whether at law, in equity or otherwise, shall in no event exceed the total amount actually paid by the Client to EFI in respect of Services performed hereunder. IN NO EVENT SHALL EFI BE LIABLE TO CLIENT FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, REVENUES OR GOODWILL, HOWEVER, CAUSED, WHETHER FOR BREACH OF CONTRACT, NEGLIGENCE, ERRORS OR OMISSIONS, OR OTHERWISE, AND WHETHER OR NOT EFI HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. THIS LIMITATION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

12. CONTROLLING LAW AND ARBITRATION

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Any controversy or claim arising out of or relating to this Agreement shall be resolved by binding arbitration under the commercial arbitration rules of the American Arbitration Association. In the event legal action or arbitration is commenced by either party in connection with this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs, including expert witness' costs, expended by the prevailing party in connection with such action.

13. NOTICES

Any and all notices, invoices, requests, demands, and communications provided for by this Agreement shall be in writing and shall be effective when delivered in person, sent by facsimile with confirmation, sent via email with confirmation, or upon receipt via U.S. Mail postage prepaid, with return receipt requested.

14. GENERAL PROVISIONS

A. This agreement does not constitute EFI an agent, partner, or legal representative of Client for any purpose whatsoever; it being understood between the parties hereto that EFI is to act as an independent contractor and is not authorized to make any contract, agreement, warranty, or representation on behalf of the Client.

B. Failure of either party to act or exercise its rights under this agreement upon the breach of any other terms hereof by the other party shall not be construed as a waiver of such a breach or prevent said party from thereafter enforcing strict compliance with any or all of their terms thereof.

C. This Agreement contains the entire Agreement between the parties with the exception only of those addenda, which are an integral part of this Agreement. Any representations, promises or

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conditions not incorporated herein or in the attached addenda shall not be binding upon the respective assigns and successors of Client and EFI. It may not be modified or amended except in writing.

D. EFI is an equal opportunity employer and fully supports the letter, spirit and intent of Title VII of the 1964 Civil Rights Act and Executive Order 11246 calling for viable, affirmative action programs.

E. EFI agrees that it will not assign this Agreement without the prior written consent of Client, which consent will not be unreasonably withheld.

F. EFI agrees that, in connection with the performance of its obligations hereunder, it will comply with and observe all laws, rules and regulations applicable to it and, further, it will not make or offer to make any payments to, or confer or offer to confer any benefit upon any employee, agent or fiduciary of any third party (including without limitation, any government agency or instrumentality thereof) with the intent to influence the conduct of such employee, agent or fiduciary in relation to the business or affairs of such third party without the knowledge and consent of such third party. The parties expressly agree that the Client shall not request, and EFI shall not perform, any work involving any unlawful, immoral, or unethical activity. EFI may cancel the work immediately upon notification of any such activity and shall not be liable for consequences in connection therewith.

G. If any person or entity requests or subpoenas any information or materials relating to the assignment which is within our custody or control (or the custody or control of any of our agents or representatives), we will inform you of such request or subpoena. Should you require us to take any legal action to seek protection against disclosure of such information or materials, Client will either retain legal counsel to represent us or will indemnify us for all costs and expenses, including reasonable attorneys' fees and disbursements, resulting from such action.

H. In the event EFI is required to provide testimony arising from this engagement and taken by a third-party that is subject to payment responsibility by the third-party, the rates and terms of this agreement will apply. Any open balances over 60 days will be considered delinquent, and the Client is fully responsible for said amount.

This Agreement supersedes any and all agreements between both parties prior to the date first written above.


IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date indicated herein.

APPROVED AND ACCEPTED

E-Forensics, Inc.

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By: 
Jesus F. Peña

Date: _____9/5/2020_____

Jonathan E. Perlman, Esq.
Receiver

By: _____
Jonathan E. Perlman, Esq.

Date: _____



Exhibit A

One or more of the remaining services from prior vendor will be provided to Client:

- Network Management
- Firewall Management
- Cloud Server and Infrastructure Support
- Workstation Patch Management
- Virus and Malware Protection Licensing
- -Axcient (Synced tool) for Backups of Laptops and Servers
- -Global Relay (Exchange Email Archiving)
- -Netwrix (Monitoring Tool)
- -Proofpoint (Spam Filter)
- -Exclaimer Automated Signatures
- -Microsoft Office 365 (Exchange, Azure, Sharepoint, Office Products)
- -Highrise CRM (Client Contacts)
- -Adobe Cloud (Adobe Acrobat)
- -Datto Backupify (Office365 Backups)

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**Exhibit B****SLA Terms**

Call Severity	Plan
Service not available to all users	Remediation begins within two (2) hours after confirmed notification.
Significant business critical service outage to 50% or more users	Remediation begins within three (3) hours after confirmed notification.
Non-business critical service outage to 50% or more users	Remediation begins within seven (7) hours after confirmed notification.
Service degradation (business process can continue, one user impacted)	Remediation begins within forty-eight (48) after confirmed notification.



IRONOAK
DEFENSE

TCA transition to new MSP

Quote #220433 v1

Prepared For:

TCA Global Credit Master Fund

Irina Sadovnic
19950 West Country Club Drive Suite 101
Aventura, FL 33180

P:

E: isadovnic@gjb-law.com

Prepared By:

Headquarters

Kevin Vinitsky
8850 NW 13 Court #104
Miami, FL 33172

P: (305) 538-2600

E: kevin@ironoakdefense.com

Date Issued:

08.24.2020

Expires:

09.17.2020

Services	Price	Qty	Ext. Price
Service - T&M Coordinate and transfer accounts of existing services provided to TCA to the new IT service provider	\$125.00	20	\$2,500.00
Subtotal			\$2,500.00

IRON OAK
DEFENSE

Taxes, shipping, handling and other fees may apply. We reserve the right to cancel orders arising from pricing or other errors.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-CIV-21964-CMA

SECURITIES AND EXCHANGE
COMMISSION,

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v.

TCA FUND MANAGEMENT GROUP CORP.,
et al.,

Defendants.

**[PROPOSED] ORDER GRANTING RECEIVER, JONATHAN E. PERLMAN'S,
MOTION FOR APPROVAL OF NEW IT VENDORS AND TRANSITION COSTS**

THIS CAUSE, having come before the Court upon Jonathan E. Perlman, as Court-Appointed Receiver's ("Receiver") Motion for Approval of New IT Vendors and Transition Costs ("Motion") [ECF No. __]. The Court having considered the Motion and being duly advised in the premises, it is ORDERED AND ADJUDGED that:

The Motion is GRANTED. The Receiver is authorized to engage the services of the specified professional services entities described in the Motion at the stated monthly rates, and to pay the transition costs, from the Receivership Funds in the ordinary course of business.

DONE AND ORDERED, in chambers at Miami, Florida, this __ day of October, 2020.

CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF FLORIDA