

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Case No. 14-CV-0815-W-BCW
)	
BF LABS INC., et al.,)	
)	
Defendants.)	

**DEFENDANTS BF LABS INC., SONNY VLEISIDES, AND DARLA JO DRAKE'S
COUNSEL'S APPLICATION FOR APPROVAL OF PAYMENT OF PROFESSIONAL
FEES AND EXPENSES INCURRED BEFORE RECEIVERSHIP**

Polsinelli PC (“Polsinelli”), counsel for Defendants BF Labs Inc., Sonny Vleisides, and Darla Jo (“Jody”) Drake, hereby files this Application for Approval of Payment of Professional Fees and Expenses (“Application”) for the allowance of compensation for professional services rendered prior to the receivership. By this Application, counsel for Defendants seeks an Order approving, and providing authorization for, payment from receivership assets of the fees and expenses in the amount of \$155,691.80,¹ incurred by counsel before September 19, 2014, the day that Defendants were served with the Court’s *ex parte* Order.

Background

1. BF Labs Inc. initially retained Polsinelli PC in July 2012 to assist the company on general corporate and intellectual property issues.

¹ The relevant Polsinelli billing statements will be provided to this Court for *in camera* inspection upon judicial request. *See FSLIC v. Ferm*, 909 F.2d 372, 374-75 (9th Cir. 1990) (*in camera* review of attorney-fee statements, submitted to the court to enable reasonableness determination, preserves and protects any attorney-work-product or attorney-client-privileged information contained in statements).

2. In late 2013, Polsinelli PC began to provide legal counsel for litigation issues, including assessing and responding to third-party allegations, and negotiating with counsel for third parties.

3. In early January 2014, Polsinelli began representing BF Labs in its defense of a lawsuit filed in the District of Kansas captioned *Meissner v. BF Labs Inc.*, No. 2:13-cv-2617-RDR-KGS.

4. In early April 2014, Polsinelli began representing BF Labs in its defense of a putative class action lawsuit filed against BF Labs in the District of Kansas captioned *Alexander et al. v. BF Labs Inc.*, No. 2:14-cv-2159-KHV-JPO.

5. On September 19, 2014, in this case, the Defendants were served with the FTC's pleadings and the Court's *ex parte* Order that imposed a temporary restraining order, appointed a Temporary Receiver, and froze the Defendants' assets. (Doc. # 9).

6. On October 2, 2014, the Court entered a Stipulated Interim Order that reappointed the Temporary Receiver and maintained the asset freeze. (Doc. #54). The Stipulated Interim Order empowered the Temporary Receiver to manage all BF Labs assets. *Id.*

Summary of Professional Compensation and Reimbursement of Expenses Requested

7. Polsinelli seeks allowance of compensation for professional services performed before the Receivership's inception, from August 1, 2014 to September 18, 2014 in the amount of \$155,691.80.

8. The fees that Polsinelli seeks were charged in accordance with its billing rates and are consistent with, and typical of, other law firms that render comparable services within the region.

9. There is no agreement or understanding between Polsinelli and any other person or firm for the sharing of compensation to be received under this Application.

Summary of Services Rendered

10. The following is a summary of the professional services rendered by Polsinelli from August 1, 2014 to September 18, 2014:

- Defended BF Labs in the *Meissner* litigation. Polsinelli attorneys and professionals prepared for and attended hearings, drafted and negotiated orders with opposing counsel, prepared for mediation, interviewed custodians and collected relevant documents for BF Labs' discovery obligations, worked on Initial Disclosures, drafted responses to interrogatories and to requests for production of documents, drafted interrogatories and requests for production of documents, and analyzed case law and other authorities concerning complex and novel legal issues.
- Defended BF Labs in the *Alexander* litigation. Polsinelli attorneys and professionals prepared for mediation, interviewed custodians and collected relevant documents for BF Labs' discovery obligations, drafted responses to interrogatories and to requests for production of documents, drafted interrogatories and requests for production of documents, worked on issues relating to third-party subpoenas (including service), prepared documents for document production, attended meetings with clients, and analyzed case law and other authorities concerning complex and novel legal issues.
- Assisted BF Labs on general litigation matters.
- Assisted BF Labs on general corporate matters, including drafting agreements and contracts, assisting BF Labs with financial reporting and restructuring issues, and drafting policies.

- Assisted BF Labs on intellectual property issues.
- Assisted BF Labs in the Johnson County District Attorney investigation.
- Assisted BF Labs on employment matters.

11. The professional services rendered by Polsinelli in these matters concerned important and complex issues and, at times, novel ones. The professional services rendered by Polsinelli were necessary and appropriate to provide reasonable and adequate representation to BF Labs, and were in the best interest of BF Labs.

12. Counsel for the Defendants seeks payment of its fees and expenses from the receivership estate, because there is no other available source to compensate counsel for the above-referenced services, and the services were necessary for BF Labs.

13. At this time and for purposes of this Application only, and without prejudice to its ability to later apply for additional payments, Polsinelli is not requesting payment for services it has rendered following the Court's *ex parte* Order. But it is clear that provision for attorney's fees from frozen assets is "typically" permitted to "enable defendants to obtain representation in order to defend against the FTC's charges." *FTC v. QT, Inc.*, 467 F. Supp. 2d 863, 866 (N.D. Ill. 2006) (citing cases).

WHEREFORE, Counsel for Defendants BF Labs Inc., Sonny Vleisides, and Darla Jo ("Jody") Drake respectfully request the Court to enter its Order:

- A. authorizing the Temporary Receiver to pay counsel for Defendants BF Labs Inc., Sonny Vleisides, and Darla Jo ("Jody") Drake the sum of \$155,691.80 for services rendered prior to September 19, 2014, the date that Defendants were served with the Court's *ex parte* Order;

- B. providing that the Court's approval of this Application for compensation is without prejudice to Polsinelli PC's right to seek additional compensation for services performed and expenses incurred in the above-captioned case; and
- C. granting such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

/s/ James M. Humphrey

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Attorneys for Defendants BF Labs Inc.,
Sonny Vleisides, and Darla Drake.

CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

<p>Helen Wong Teresa N. Kosmidis Leah Frazier Federal Trade Commission 600 Pennsylvania Ave., N.W. Mail Stop CC-10232 Washington DC 20580 hwong@ftc.gov tkosmidis@ftc.gov lfrazier@ftc.gov</p> <p>Charles M. Thomas Assistant United States Attorney Charles Evans Whittaker Courthouse 400 East Ninth Street, Room 5510 Kansas City, MO 64106 charles.thomas@usdoj.gov</p> <p>Attorneys for Plaintiff</p>	<p>Bryant T. Lamer Kersten L. Holzhueter Andrea M. Chase Katie Jo Wheeler Spencer Fane Britt & Browne LLP 1000 Walnut Street, Suite 1400 Kansas City MO 64106 blamer@spencerfane.com kholzhueter@spencerfane.com achase@spencerfane.com kwheeler@spencerfane.com</p> <p>Attorneys for Receiver Eric L. Johnson</p>
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/s/ James M. Humphrey

Attorney for Defendants