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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

LOUIS V. SCHOOLER and FIRST
FINANCIAL PLANNING
CORPORATION, dba Western
Financial Planning Corporation,

Defendants.

Case No. 3:12-cv-2164-GPC-JMA

ORDER:

**(1) GRANTING RECEIVER’S
SEVENTH FEE APPLICATION,
(ECF NO. 600);**

**(2) GRANTING ALLEN
MATKINS’ SEVENTH FEE
APPLICATION, (ECF NO. 601)**

INTRODUCTION

Presently before the Court in this SEC enforcement action are the following interim fee applications filed by the court-appointed receiver in this matter and his professionals:

1. Seventh Interim Application for Approval and Payment of Fees and Costs to Thomas C. Hebrank, as Receiver (“Receiver’s Seventh Fee Application”). (ECF No. 600.) Defendants have opposed the Receiver’s Seventh Fee Application, (ECF No. 633), and the Receiver has filed a

1 reply, (ECF No. 636).

- 2 2. Seventh Interim Fee Application of Allen Matkins Leck Gamble Mallory
3 & Natsis LLP, Counsel to Receiver (“Allen Matkins’ Seventh Fee
4 Application”). (ECF No. 601.) Defendants have opposed Allen Matkins’
5 Seventh Fee Application, (ECF No. 633), and the Receiver has filed a
6 reply, (ECF No. 636).

7 The SEC has indicated to the Receiver that it does not oppose any of the
8 foregoing applications. The Court has considered the foregoing applications and all
9 related briefing. The Court finds the foregoing applications suitable for disposition
10 without oral argument. See CivLR 7.1.d.1.

11 **BACKGROUND**

12 In his Seventh Fee Application, the Receiver asserts he has incurred a total of
13 \$54,433.35 in fees for work done in the following categories:

14 Category	7th App.
15 General Receivership	\$9,850.50
16 Asset Investigation & Recovery	\$0.00
17 Reporting	\$569.25
18 Operations & Asset Sales	\$43,345.35
19 Claims & Distributions	\$0.00
20 Legal Matters & Pending Litigation	\$668.25
21 Total	\$54,433.35

22 While the Receiver incurred \$54,433.35 in fees, he now seeks only 80% of those
23 fees, i.e., \$43,546.68. The Receiver’s Seventh Fee Application covers the period
24 January 1, 2014, through March 31, 2014. The Receiver reserves the right to seek any
25 un-awarded fees in his final fee application. The Receiver also seeks costs in the total
26 amount of \$532.32, which covers expenses for website additions, copies,
27 postage/mailing, and travel.

28 Allen Matkins asserts it incurred \$51,765.30 in fees for work done in the

1 following categories:

2 Category	7th App.
3 General Receivership	\$5,301.45
4 Asset Investigation	\$4,104.90
5 Reporting	\$4,722.30
6 Operations & Asset Sales	\$6,528.15
7 Claims & Distributions	\$1,425.60
8 Third Party Recoveries	\$24,856.20
9 Pending Litigation	\$2,153.70
10 Employment/Fees	\$2,673.00
Total	\$51,765.30

11 While Allen Matkins incurred \$51,765.30, it now seeks only 80% of those fees,
 12 i.e., \$41,412.24. Allen Matkins' Seventh Fee Application covers the same period noted
 13 above. Allen Matkins' reserves the right to seek any un-awarded fees in its final fee
 14 application. Allen Matkins also seeks costs in the total amount of \$506.47, which
 15 covers expenses for document editing and copying, service fees, reprographics,
 16 PACER fees, shipping, and postage.

17 DISCUSSION

18 **I. Legal Standard**

19 “[I]f a receiver reasonably and diligently discharges his duties, he is entitled to
 20 fair compensation for his efforts.” SEC v. Elliott, 953 F.2d 1560, 1577 (11th
 21 Cir.1992). “The court appointing [a] receiver has full power to fix the compensation
 22 of such receiver and the compensation of the receiver’s attorney or attorneys.” Drilling
 23 & Exploration Corp. v. Webster, 69 F.2d 416, 418 (9th Cir. 1934). A receiver’s fees
 24 must be reasonable. See In re San Vicente Med. Partners Ltd., 962 F.2d 1402, 1409
 25 (9th Cir. 1992).

26 As set forth in the Court’s prior fee orders, the Court will assess the
 27 reasonableness of the requested fees using the factors enumerated in SEC v. Fifth
 28 Avenue Coach Lines, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973), and In re Alpha

1 Telcom, Inc., 2006 WL 3085616, at *2-3 (D. Or. Oct. 27, 2006). Those factors include:
2 (1) the complexity of the receiver's tasks; (2) the fair value of the receiver's time, labor,
3 and skill measured by conservative business standards; (3) the quality of the work
4 performed, including the results obtained and the benefit to the receivership estate; (4)
5 the burden the receivership estate may safely be able to bear; and (5) the Commission's
6 opposition or acquiescence.

7 **II. Analysis**

8 In opposition to the Receiver's and Allen Matkins' Seventh Fee Applications,
9 Defendants argue the Receiver should be required to certify to the Court that payments
10 on loans secured by the GP properties are current before the Court approves any
11 portion of the Receiver's and Allen Matkins' instant fee requests. The Court has
12 previously considered and rejected this argument.

13 Defendants assert the holder of several junior promissory notes secured by GP
14 properties, Robb Schafer ("Schafer"), wrote to Schooler to report that Western had
15 missed several payments to Schafer. Defendants provide evidence demonstrating only
16 that Schafer reported to Schooler that the Receiver missed payments for December
17 2013, January 2014, and February 2014. (ECF No. 633-1.) The evidence submitted
18 by the Receiver, however, demonstrates that Schafer was either lying or that he
19 completely misunderstood that he had been paid for these months. The evidence shows
20 that Schafer not only received checks for these months, but that he also cashed these
21 checks. (ECF No. 636-1.)

22 Defendants also argue the Receiver's and Allen Matkins' instant fee requests are
23 unreasonable because: (1) "[t]here is not great complexity of problems faced, and the
24 benefit to the receivership estate is nonexistent"; (2) "the Receiver's continued
25 existence is highly detrimental"; and (3) "the Receiver's work 'merits an incomplete
26 grade.'"

27 **A. Complexity of Tasks**

28 The Court finds the tasks the Receiver performed during the Seventh Fee

1 Application period were moderately complex. The Receiver undertook the following
2 tasks:

- 3 • preparing interim reports to the Court;
- 4 • managing and overseeing the GPs' operations and real estate properties;
- 5 • managing and overseeing Western's business;
- 6 • performing accounting functions of the Receivership Entities, including
7 paying expenses, clearing checks, and ACH entries;
- 8 • managing and overseeing tax reporting for all Receivership Entities;
- 9 • managing and overseeing GP operational billings, loan payments, and
10 overall cash management;
- 11 • initiating property tax appeals on GP properties and conducting investor
12 votes for GPs that had expired;
- 13 • managing and overseeing litigation involving the Receivership Entities
14 pending at the time of the Receiver's appointment;
- 15 • preparing filings in response to opposition to the receivership;
- 16 • participating in meetings and conferences with the SEC and legal counsel;
- 17 • handling general administrative matters, including reviewing mail, emails,
18 and other correspondence;
- 19 • administering bank accounts; and
- 20 • maintaining and updating the Receiver's website with case information
21 and documents.

22 The Court finds the tasks that Allen Matkins performed during the Fifth and
23 Sixth Fee Application periods to be somewhat complex. Allen Matkins undertook the
24 following tasks:

- 25 • advising the Receiver on legal issues pertaining to the parties' cross-
26 appeals of the Court's August 16, 2013 Order, discovery, the parties'
27 cross-motions for partial summary judgment, the SEC's motion to defer
28 consideration of the parties' cross-motions for summary judgment, and

1 Defendants' request for reconsideration of the Court's order approving the
2 Receiver's Seventh Interim Report;

- 3 • assisting the Receiver in his investigation of the two tenants located on a
4 GP property (Stead property), including: obtaining documents from
5 Defendants, reviewing partnership and lease documents, analyzing issues
6 regarding tenant who failed to respond to the Receiver's communications,
7 and preparing a letter providing notice of termination of the tenant's lease;
- 8 • assisting the Receiver in gathering information about water-rights issues
9 affecting certain GP properties in Nevada and discussing the same with
10 the Cotton Driggs law firm in Las Vegas;
- 11 • assisting the Receiver in preparing his June 20, 2013 Valuation Report
12 and in preparing a response to Defendants' opposition to the Valuation
13 Report;
- 14 • assisting the Receiver in preparing interim reports to the Court;
- 15 • assisting the Receiver with operations and assets sales issues relating to:
16 letters and operational bills issued to investors, communications with
17 lenders on GP properties, property tax appeals, expiration of certain GP
18 terms and voting for the same, partnership administrator personnel issues,
19 communications from Defendants' counsel regarding mortgage payments
20 on GP properties, and broker listing agreement for certain Western land
21 parcels;
- 22 • communicating with investors and their counsel, both directly and via the
23 receivership website, regarding the receivership, claims, distributions, and
24 related issues;
- 25 • assisting the Receiver in pursuing claims against the LinMar Borrowers
26 on Western's behalf, including: gathering and reviewing documents and
27 preparing responses to written discovery requests from the LinMar
28 Borrowers, reviewing the LinMar Borrowers' responses to the Receiver's

1 discovery requests, LinMar IV's proposed stipulation to allow an
2 amended answer, communicating with counsel for the LinMar Borrowers
3 in an effort to settle, preparing motions for partial summary judgment,
4 attending proceedings before the magistrate judge;

- 5 • assisting the Receiver in implementing the settlement with Sierra Pacific
6 Power, including obtaining confirmation that the condemnation order
7 transferring title was recorded;
- 8 • communicating with counsel for WFP securities regarding the pending
9 action with Endurance American Specialty Insurance Company and a
10 settlement of the case; and
- 11 • responding to Defendants' objections to previous fee applications.

12 The Court has reviewed the time sheets filed in support of the instant fee
13 applications and finds that, at this time, the tasks were necessary and not over-billed.

14 **B. Fair Value of Time, Labor, & Skill**

15 The Receiver billed his time at \$247.50 per hour and the time of those working
16 for him at \$157.50 - \$211.50 per hour. Allen Matkins billed its time at \$220.50 -
17 \$616.50 per hour, with most of the work being billed at \$445.50 per hour. These rates
18 reflect a ten percent discount from the Receiver's and Allen Matkins' ordinary rates.

19 The Court continues to find, as it has in previous fee orders, that the rates
20 charged by the Receiver and Allen Matkins are comparable to rates charged in this
21 geographic area and therefore represent a fair value of the time, labor, & skill provided.

22 **C. Quality of Work Performed**

23 The Court finds the quality of work performed by the Receiver and his counsel
24 to be above average. The Receiver and his professionals continue to keep the
25 Receivership Entities afloat, which—for Western—is a challenging task given that its
26 main source of income (i.e., selling GP interests) has ceased since implementation of
27 the action. Without assistance from Defendants, the Receiver and his professionals
28 have ultimately been able to meet Western's many obligations, including payments on

1 the loans secured by GP properties. The Receiver and his professionals have also
2 engaged in significant efforts to protect GP properties (e.g., by terminating the rent-free
3 lease on the Stead property and seeking decreases in property taxes). The Receiver and
4 his professionals have also engaged in significant efforts to collect money owed
5 through the prosecution of the Receiver's lawsuits against the LinMar Borrowers.
6 These efforts benefit the entire receivership estate. In short, the Receiver and his
7 counsel have complied with the Court's orders and have made significant efforts to
8 protect and run the receivership entities.

9 **D. Receivership Estate's Ability to Bear Burden of Fees**

10 Given the Receiver's assurance that approved fees and costs will be paid from
11 Western's assets above and beyond cash necessary to make payments on loans secured
12 by GP properties, the Receiver's acknowledgment that approved fees and costs may
13 have to be paid in installments as funds become available, and the Receiver's efforts
14 to collect on Western's receivables, the Court finds the receivership estate has
15 sufficient ability to bear the instant fee requests.

16 **E. Commission's Opposition or Acquiescence**

17 The Court accepts the Receiver's representations that the SEC does not oppose
18 any of the instant fee applications.

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1 Considering the above five factors together, and considering that “[i]nterim fees
 2 are generally allowed at less than the full amount,” Alpha Telcom, 2006 WL 3085616,
 3 at *2-3, the Court awards fees and costs as set forth in the following table:

Applicant	Fees Allowed	% of Fees Incurred¹	Costs Allowed	% of Costs Incurred
Receiver	\$43,546.68	80%	\$532.32	100 %
Allen Matkins	\$41,412.24	80 %	\$506.47	100 %

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 8 **CONCLUSION AND ORDER**

9 After a review of the parties’ submissions, the record in this matter, and the
 10 applicable law, and for the foregoing reasons, **IT IS HEREBY ORDERED** that:

- 11 1. The Receiver’s Seventh Fee Application, (ECF No. 600), is **GRANTED**;
 12 2. Allen Matkins’ Seventh Fee Application, (ECF No. 601), is **GRANTED**;
 13 3. The awarded fees shall be paid from Western’s assets above and beyond
 14 cash necessary to make payments on loans secured by GP properties; and
 15 4. The hearing on the instant applications, currently set for August 8, 2014,
 16 is **VACATED**.

17 DATED: August 7, 2014

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 19 HON. GONZALO P. CUriEL
 20 United States District Judge

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28 ¹ The Court includes the percentage of fees incurred rather than a percentage of the fees requested, given that the Receiver and Allen Matkins request only a percentage of their actual fees.