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9 Tax Accountants for Receiver
10 Thomas C. Hebrank

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 vs.

17 PACIFIC WEST CAPITAL GROUP,
18 INC.; ANDREW B CALHOUN IV;
19 PWCG TRUST; BRENDA CHRISTINE
20 BARRY; BAK WEST, INC.; ANDREW
21 B CALHOUN JR.; ERIC
22 CHRISTOPHER CANNON; CENTURY
23 POINT, LLC; MICHAEL WAYNE
24 DOTTA; and CALEB AUSTIN MOODY
25 (dba SKY STONE),

26 Defendants,

Case No. 2:15-cv-02563-DDP-FFM

**FIRST INTERIM APPLICATION
FOR APPROVAL AND PAYMENT
OF FEES TO DUFFY, KRUSPODIN,
LLP, AS TAX ACCOUNTANTS FOR
RECEIVER**

Date: May 18, 2020
Time: 10:00 a.m.
Ctmm: 9C
Judge: Hon. Dean D. Pregerson

27 Duffy, Kruspodin, LLP ("Duffy"), tax accountants for Thomas C. Hebrank
28 ("Receiver"), the Court-appointed receiver for PWCG Trust, hereby submits this
first interim application for approval and payment of professional fees for work in
preparing the 2018 federal and state tax returns for PWCG and related research and
consultation. This Application covers the period from May 29, 2019 through
December 31, 2019 ("Application Period").

1 Duffy incurred \$34,824.15 in fees for this Application Period and seeks
2 interim approval and payment of these fees. Detailed descriptions of the services
3 are contained in Exhibit A attached hereto. Exhibit B is a summary of Duffy staff
4 total hours and corresponding rates. During the Application Period, Duffy spent
5 109.8 hours on behalf of the Receiver at an overall blended billing rate of \$317.16
6 per hour. Duffy has discounted all fees by ten percent (10%) from regular hourly
7 billing rates.

8 I. FEE APPLICATION

9 Duffy's work during the Application Period focused on preparation of 2018
10 Income Tax Returns for PWCG Trust and associated research and consultation with
11 receiver and attorneys.

12 A. PWCG Trust 2018 Income Tax Returns

13 Time in this category was spent preparing the income tax returns as follows:

- 14 a) processing the initial receipt of the PWCG Trust books and
15 records;
- 16 b) formatting and organizing the files with the current year data;
- 17 c) verifying cash receipts and disbursements for the year and
18 scanning detail for reporting accuracy and consistency;
- 19 d) extensive evaluation and calculations in conjunction with
20 attorneys on value of trust assets;
- 21 e) extensive research and meetings regarding reporting of
22 specialized entity for Federal and State agencies, as well as
23 discussion of proper reporting at each stage of decision making
24 based on court proceedings;
- 25 f) reviewing input sheets of information entered into Lacerte;
- 26 g) partner level review of the above areas, as well as, overall review
27 of tax return forms and input;
- 28

- h) partner level verification of reporting accuracy, formatting, and adherence to current federal and state tax laws;
- i) finalizing of tax return and accompanying letters and schedules;
- j) printing tax return copies for the receivership entity and for government filing;
- k) electronic filing of the 2018 return to Receiver for signature.

| | Hours | Fees | Average Hourly Rate |
|-------|-------|-------------|---------------------|
| TOTAL | 109.8 | \$34,824.15 | \$317.16 |

II. THE REQUESTED FEES ARE REASONABLE AND SHOULD BE ALLOWED

In considering interim requests for payment of fees in federal receivership matters, the following factors have been considered by other Courts: (1) the complexity of the tasks performed; (2) the fair value of the time, labor, and skill measured by conservative business standards; (3) the quality of work performed, including the results obtained and the benefit to the receivership estate; (4) the burden the receivership estate may safely be able to bear; and (5) the Securities and Exchange Commission's opposition or acquiescence. *See SEC v. Schooler*, S.D. Cal., Case No. 12-cv-02164-GPC-JMA (March 7, 2013), Dkt. 169.

A. Complexity of Tasks

Duffy's preparation of PWCG Trust tax returns are considered complex in nature. The complexity lies in the structure of the trust and the determination of proper filing for the 2018 tax year dependent on the highly unique circumstances in this court proceeding. Time spent on research and discussion with the other advisors involved was expended to establish proper filing in light of prior Court orders and an accurate reflection of value of trust assets. As a result, it was labor intensive to determine 2018 reporting as a basis for future filings.

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

2 There are various levels of staff that worked on the engagement, but mostly
3 highly experienced and skilled CPAs versed in tax research. For this fee
4 application, the 2019 rates were used for all staff levels. Thane F. Kelton, CPA, the
5 partner on the engagement, was billed at an hourly rate of \$475, Livia Benjamin,
6 CPA, the manager and tax researcher on the engagement, was billed at an hourly
7 rate of \$300, Alfonso Arias, CPA, Cameron Williams, CPA, Freda Fiedler, CPA,
8 and Stuart Josephs, CPA, the tax consultants on the engagement, were billed at an
9 hourly rate ranging from \$235 to \$450. The remaining administrative staff that
10 worked on the engagement were billed at a rate of \$80 to 100. These rates represent
11 typical rates in California for CPAs of similar experience and expertise for the 2019
12 year. All compensation based on billing rates was discounted by ten percent (10%).
13 The blended hourly rate for all services provided by Duffy during the Application
14 Period is \$317.16. A summary of Duffy staff that worked on the engagement is
15 included as Exhibit B.

16 **C. Quality of Work Performed**

17 Duffy has provided the client with quality tax preparation and ancillary
18 services, with a high level of professionalism and excellent customer service. Duffy
19 worked diligently to ensure it was prompt in its completion of all of the returns for
20 2018 and/or requests based on the Receivers requests.

21 **D. Commission's Opposition of Acquiescence**

22 Prior to filing, Duffy, through the Receiver's counsel, provided this fee
23 application to counsel for the Commission in substantially final form. Counsel for
24 the Commission advised that the Commission has no opposition to the fees
25 requested.

26 Accordingly, the five considerations identified by the Court for considering
27 interim fee applications all support interim approval and payment of the requested
28 fees and costs.

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III. CONCLUSION

Duffy has ensured that PWCG Trust has been able to fulfill their responsibilities to the federal and state governments with respect to their tax filings.

WHEREFORE, Duffy respectfully requests an order:

1. Approving payment of \$34,824.15 in fees incurred by Duffy during the Application Period, and authorizing payment of \$34,824.15 from receivership estate cash, as discussed above; and
2. Granting such other and further relief as is appropriate.

Dated: April 13, 2020

By: 
THANE F. KELTON, CPA
DUFFY KRUSPODIN, LLP
Certified Public Accountants

EXHIBIT A

EXHIBIT A

PWCG Trust
Consultation and Return Preparation 2018

| Date | Last Name | Memo | Hours | Original Amount | Discounted Amount |
|------------|-----------|--|-------|-----------------|-------------------|
| 05/29/2019 | LM2 | Initial research for call with Tom | 1.10 | 330 | \$ 297.00 |
| 05/30/2019 | LM2 | Prep for call re potential QSF and call with Allen Matkins and Tom Hebrank | 2.20 | 660 | 594.00 |
| 05/30/2019 | TK1 | Prelim call with PWCG | 1.00 | 475 | 427.50 |
| 05/30/2019 | TK1 | Research related to QSF and entity type as well as review of Rev Proc 2009-14 | 1.10 | 522.5 | 470.25 |
| 06/25/2019 | LM2 | Discussed with Thane and scheduling of call | 0.30 | 90 | 81.00 |
| 06/26/2019 | LM2 | Research and call regarding QSF/insurance policies and lapsed treatment | 2.30 | 690 | 621.00 |
| | | Research treatment of insurance policy tax treatment Revenue Ruling 2009-14 and have phone | | | |
| 06/26/2019 | TK1 | conference with Tom, Ted, Livia and Kate re entity selection | 2.50 | 1187.5 | 1,068.75 |
| 08/08/2019 | LM2 | Emails with AI regarding tax treatment | 0.20 | 60 | 54.00 |
| 08/09/2019 | LM2 | Spoke with AI regarding insurance fund question | 0.60 | 180 | 162.00 |
| 08/09/2019 | AA2 | Research on insurance fund tax treatment | 4.00 | 1500 | 1,350.00 |
| | | Consultation; Limited and Follow-up Research; Intensive Analysis; and Advice, Including Multiple | | | |
| | | Discussions With, and Multiple Voice Mails To/From, A.V. Arias, CPA; Regarding Support for | | | |
| | | Claiming Ordinary Losses on Life Insurance Policy Abandonments; Determination of Basis for | | | |
| | | Premiums Paid; and No Waiver of Penalties for Failing to Obtain IRS Consent to Change | | | |
| 08/09/2019 | SJ2 | Incorrect Accounting Method | 0.80 | 300 | 270.00 |
| 08/10/2019 | LM2 | Email with AI regarding research | 0.30 | 90 | 81.00 |
| 08/10/2019 | AA2 | Tax research Re: treatment of basis in life insurance settlements by 3rd party investors | 5.00 | 1875 | 1,687.50 |
| | | Consultation; Limited and Follow-up Research; Intensive Analysis; and Advice, Including Multiple | | | |
| | | Discussions With, and Multiple Voice Mails To/From, A.V. Arias, CPA; Regarding Support for | | | |
| | | Claiming Ordinary Losses on Life Insurance Policy Abandonments; Determination of Basis for | | | |
| | | Premiums Paid; and No Waiver of Penalties for Failing to Obtain IRS Consent to Change | | | |
| 08/11/2019 | SJ2 | Incorrect Accounting Method | 0.80 | 300 | 270.00 |
| | | Consultation; Limited and Follow-up Research; Intensive Analysis; and Advice, Including Multiple | | | |
| | | Discussions With, and Multiple Voice Mails To/From, A.V. Arias, CPA; Regarding Support for | | | |
| | | Claiming Ordinary Losses on Life Insurance Policy Abandonments; Determination of Basis for | | | |
| | | Premiums Paid; and No Waiver of Penalties for Failing to Obtain IRS Consent to Change | | | |
| 08/12/2019 | SJ2 | Incorrect Accounting Method | 0.90 | 337.5 | 303.75 |
| 08/13/2019 | AA2 | Research Rev. Rule 2019-14 | 5.00 | 1875 | 1,687.50 |
| 08/13/2019 | AA2 | Finalization of resesarch and discussion with Livia | 1.00 | 375 | 337.50 |
| 08/13/2019 | LM2 | Email to Tom regarding life insurance basis and additional information | 0.40 | 120 | 108.00 |
| 08/14/2019 | LM2 | Emails with AI regarding life insurance funds | 0.20 | 60 | 54.00 |
| 08/14/2019 | AA2 | Additional issues regarding life insurance funds | 5.00 | 1875 | 1,687.50 |
| 08/19/2019 | LM2 | Status with Tom, Email to Bill | 0.30 | 90 | 81.00 |
| 08/20/2019 | LM2 | Email to Bill for financials | 0.20 | 60 | 54.00 |
| 08/20/2019 | AA2 | Basis issues, follow up research | 1.30 | 487.5 | 438.75 |
| 08/20/2019 | TK1 | Review memo regarding tax treatment of insurance policies held for investment | 0.50 | 237.5 | 213.75 |
| 08/21/2019 | AA2 | Accounting issues | 3.80 | 1425 | 1,282.50 |
| 08/22/2019 | LM2 | Meeting to prep memo/discuss research | 1.80 | 540 | 486.00 |
| 08/22/2019 | AA2 | Met with Livia & Thane, consultation, accounting analysis, QSF analysis | 3.00 | 1125 | 1,012.50 |
| | | Review information received from prior accountant and meet regarding research related to tax | | | |
| 08/22/2019 | TK1 | treatment of contracts | 1.00 | 475 | 427.50 |
| 08/23/2019 | LM2 | Emails to Bill and Tom regarding methods of acctg call | 0.50 | 150 | 135.00 |
| 08/26/2019 | AA2 | Prep for meeting and conf. call with Bill & Livia, issues | 3.30 | 1237.5 | 1,113.75 |
| 08/26/2019 | LM2 | Meeting and call with Bill | 2.40 | 720 | 648.00 |
| 08/27/2019 | LM2 | Email with AI and Bill | 0.80 | 240 | 216.00 |
| 08/27/2019 | AA2 | Further research after conversation with Bill | 1.00 | 375 | 337.50 |
| 08/28/2019 | LM2 | Email to Tom | 0.20 | 60 | 54.00 |
| 09/03/2019 | AA2 | Discussion with Livia regarding contracts | 0.50 | 187.5 | 168.75 |
| 09/03/2019 | LM2 | Additional info from Bill | 0.20 | 60 | 54.00 |
| 09/05/2019 | LM2 | Status with AI | 0.20 | 60 | 54.00 |
| 09/06/2019 | AA2 | Draft of memo | 1.30 | 487.5 | 438.75 |
| 09/08/2019 | LM2 | Emails with Tom regarding memo, basis and call with Bill | 0.40 | 120 | 108.00 |
| 09/09/2019 | LM2 | Call with Bill and Tom regarding 2018 transactions/basis calculations needed | 0.60 | 180 | 162.00 |
| 09/11/2019 | LM2 | Email to schedule call | 0.10 | 30 | 27.00 |
| 09/15/2019 | AA2 | Tax research §61,72,165, 446(c),468B, 677, 1221, 1234A, Rev. 2009-13,14 Portfolio 738-1 | 10.00 | 3750 | 3,375.00 |
| 09/16/2019 | AA2 | Research memo update based on further research | 1.50 | 562.5 | 506.25 |
| 09/17/2019 | AA2 | Conference call regarding returns | 2.00 | 750 | 675.00 |
| 09/17/2019 | FF1 | Discussion regarding trust treatment of life insurance policies | 0.50 | 117.5 | 105.75 |
| | | Call with Kate, discussions regarding capital vs ordinary treatment, discussion of structure and | | | |
| 09/17/2019 | LM2 | prior reporting. | 4.60 | 1380 | 1,242.00 |
| 09/18/2019 | LM2 | Discussed issues with Thane, call with Kate | 0.80 | 240 | 216.00 |
| | | Discussions with Livia and Freda about how to report the taxable income from life insurance that | | | |
| 09/18/2019 | CW1 | have been purchased by a third party. | 0.40 | 180 | 162.00 |
| | | Consultation; Review Attorney's Memo; Research; Analysis; Extended and Lengthy Discussion | | | |
| | | with A.V. Arias, CPA; and Advice Regarding Accounting Method Changes; Determination of | | | |
| 09/19/2019 | SJ2 | Capital Assets Versus Non-Capital Assets; and Treatment of Qualified Settlement Funds | 4.40 | 1650 | 1,485.00 |
| 09/19/2019 | AA2 | Tax research and memo | 6.00 | 2250 | 2,025.00 |
| 09/19/2019 | LM2 | Info to Kate | 0.40 | 120 | 108.00 |
| 09/20/2019 | LM2 | Email with information regarding filing and call with Kate and David Zaro | 1.70 | 510 | 459.00 |
| | | Email to Kate regarding basis of policies, emails with Bill and Tom regarding 2018 filing and | | | |
| 09/23/2019 | LM2 | what we need for basis | 0.80 | 240 | 216.00 |
| 09/26/2019 | LM2 | Basis spreadsheet, emails with Kate | 0.40 | 120 | 108.00 |
| 09/27/2019 | LM2 | 2018/2019 basis and net gain/loss calculations | 2.70 | 810 | 729.00 |
| 09/29/2019 | LM2 | Call with Kate (1 hr) and recalculation of basis and net gain/loss calculation | 4.20 | 1260 | 1,134.00 |
| 09/30/2019 | LM2 | 2018 return | 4.60 | 1380 | 1,242.00 |
| 10/01/2019 | AA2 | Discussion on 2018 reporting with Livia | 0.80 | 300 | 270.00 |
| 10/01/2019 | LM2 | 2018 return | 1.60 | 480 | 432.00 |
| 10/02/2019 | LM2 | 2019 active face value | 0.20 | 60 | 54.00 |
| 10/03/2019 | LM2 | Update to excel, resend to Tom and Kate | 0.50 | 150 | 135.00 |
| 10/08/2019 | LM2 | 2018 return, discussed penalties for filing trust or QSF or DOF | 0.50 | 150 | 135.00 |

| | | | | |
|----------------|---|-------|-----------|--------|
| 12/11/2019 LM2 | Call with Tom, Ted, Kate, Vanessa regarding filing of 2018 return as trust, adjusted return and | 1.70 | 510 | 459.00 |
| 12/11/2019 MR1 | finalized | 0.20 | 16 | 14.40 |
| 12/11/2019 CE1 | Assembly | 0.10 | 10 | 9.00 |
| 12/11/2019 CE1 | Assembly review | 0.10 | 10 | 9.00 |
| 12/12/2019 TK1 | Sent via SF | 0.90 | 427.5 | 384.75 |
| 12/13/2019 CE1 | Review, sign and final return | 0.10 | 10 | 9.00 |
| | Electronic filing | | | |
| | Total before discount | 109.8 | 38,693.50 | |

Total discounted invoice amount \$ 34,824.15

Summary by Employee:

| | | | |
|---------------------|-------|--------------|--------------|
| Arias, CPA (AA2) | 54.5 | \$ 20,437.50 | \$ 18,393.75 |
| Williams, CPA (CW1) | 0.4 | 180.00 | \$ 162.00 |
| Esparza (CE1) | 0.3 | 30.00 | \$ 27.00 |
| Fiedler (FF1) | 0.5 | 117.50 | \$ 105.75 |
| Benjamin, CPA (LM2) | 40.0 | 12,000.00 | \$ 10,800.00 |
| Ramirez (MR1) | 0.2 | 16.00 | \$ 14.40 |
| Josephs (SJ2) | 6.9 | 2,587.50 | \$ 2,328.75 |
| Kelton, CPA (TK1) | 7.0 | 3,325.00 | \$ 2,992.50 |
| | 109.8 | \$ 38,693.50 | \$ 34,824.15 |

EXHIBIT B

EXHIBIT B

| Rate Summary | Hours | Rate/hr | Original Amount | Discounted rate (10%) | Discounted Amount |
|---|--------------|---------|---------------------|--------------------------|----------------------|
| Alfonso Arias, CPA | 54.5 | 375.00 | 20,437.50 | 337.50 | 18,393.75 |
| Cameron Williams, CPA | 0.4 | 450.00 | 180.00 | 405.00 | 162.00 |
| Crystal Esparza | 0.3 | 100.00 | 30.00 | 90.00 | 27.00 |
| Freda Fiedler, CPA | 0.5 | 235.00 | 117.50 | 211.50 | 105.75 |
| Livia Benjamin, CPA | 40.0 | 300.00 | 12,000.00 | 270.00 | 10,800.00 |
| Melissa Ramirez | 0.2 | 80.00 | 16.00 | 72.00 | 14.40 |
| Stuart Josephs, CPA | 6.9 | 375.00 | 2,587.50 | 337.50 | 2,328.75 |
| Thane F. Kelton, CPA | 7.0 | 475.00 | 3,325.00 | 427.50 | 2,992.50 |
| | <u>109.8</u> | | <u>\$ 38,693.50</u> | | <u>\$ 34,824.15</u> |
| | | | | | |
| Average blended hourly rate | | | \$ 352.40 | | |
| Average blended hourly rate with 10% discount | | | | \$ | 317.16 |