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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,	Defendant.

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

**ORDER GRANTING:**

**(1) RECEIVER’S FINAL FEE  
APPLICATION;  
[ECF No. 1811]**

**(2) ALLEN MATKINS’ FINAL FEE  
APPLICATION; AND  
[ECF No. 1812]**

**(3) DUFFY KRUSPODIN, LLP’S  
FINAL FEE APPLICATION  
[ECF No. 1813]**

Before the Court are fee applications filed by the court-appointed receiver Thomas C. Hebrank (the “Receiver”), counsel to the Receiver, Allen Matkins Leck Gamble Mallory & Natsis LLP (“Allen Matkins”), and tax accountant to Receiver, Duffy, Kruspodin, LLP. ECF Nos. 1811, 1812, 1813. No oppositions have been filed. The Court finds these motions suitable for disposition without oral argument pursuant to Civil Local Rule 7.1 (d)(1) and VACATES the hearing on this matter.

1       **I. BACKGROUND**

2           **A. Receiver**

3           In the Final Fee Application, the Receiver asserts that he incurred \$30,659.85 in  
4 fees and \$100.29 in costs for the application period covering January 1, 2021 through  
5 May 31, 2021 (“Application Period”). ECF No. 1811 at 3. The breakdown of the fees  
6 amassed is as follows:

7 <b>Category</b>	<b>Total</b>
8           General Receivership	\$1,046.25
9           Asset Investigation & Recovery	\$0.00
10          Reporting	\$2,540.70
11          Operations & Asset Sales	\$27,029.90
12          Claims & Distributions	\$0.00
13          Legal Matters & Pending Litigation	\$0.00
14          Total	\$30,659.85

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16           *Id.* at 4-6. Receiver now seeks payment of 100% of fees incurred, amounting to  
17 \$30,659, and 100% of the costs, amounting to \$100.23, which account for postage and  
18 copies. ECF No. 1811-3, Ex. C.

19           In addition to the fees and costs incurred by Receiver in the Application Period,  
20 Receiver also seeks final approval of the fees and costs incurred in the thirty-four interim  
21 fee applications for work performed throughout the duration of this case. ECF No. 1811  
22 at 3.<sup>1</sup> The total amount across all thirty-four interim fee applications amounts to  
23 \$1,997,247.88 (\$1,966,257.99 of fees and \$30,989.39 of costs), which was previously  
24 paid to the Receiver. *Id.* Finally, Receiver seeks approval of and payment of the fees  
25 held back from the thirty-four interim fee applications and payments, in the total amount  
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28 <sup>1</sup> See ECF No. 1811 at 3, n.1 for the list of ECF references for all thirty-four fee applications submitted  
by Receiver.

1 of \$487,976.31, along with estimated fees and costs up to \$128,273.00 for the final work  
2 to conclude the Receivership. *Id.*

3 **B. Allen Matkins (Counsel for Receiver)**

4 In the Final Fee Application, Allen Matkins asserts that it incurred \$21,297.00 in  
5 fees and \$954.46 in costs during the Application Period. ECF No. 1812 at 4. The  
6 breakdown of the fees amassed is as follows:

7 <b>Category</b>	<b>Total</b>
8 General Receivership	\$931.50
9 Reporting	\$1,086.75
10 Operations & Asset Sales	\$14,274.75
11 Claims & Distributions	\$4,191.75
12 Employment/Fees	\$362.25
13 Total	\$21,297.00

14  
15 *Id.* at 7. Allen Matkins now seeks payment of 100% of the fees incurred,  
16 amounting to \$21,297.00, and 100% of the firm's \$954.64 in costs, which account for  
17 copies and messenger services. ECF No. 1812 at 8.

18 Allen Matkins also seeks final approval of the thirty-four interim fee applications  
19 submitted for work performed through the duration of this case, as well as payment of  
20 the total funds held back<sup>2</sup> over the course of those thirty-four interim applications. *Id.* at  
21 9. The total amount of fees incurred is \$1,857,531.90, of which \$385,627.70 was held  
22 back. *Id.* at 10. Finally, Allen Matkins seeks approval for the projected fees for  
23 remaining legal work from June 1, 2021 forward to the close of the Receivership. *Id.*  
24 The estimated amount is up to \$30,000. *Id.* at 10-11.

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27 <sup>2</sup> For Allen Matkins' second, third, and fourth interim fee applications, the interim payment approved  
28 by the Court was 70% of fees incurred and the holdback amount was 30% of fees incurred. ECF No.  
1812 at 9 & n.3.

1           **C.     Duffy, Kuspodin, LLP (Tax Accountant for Receiver)**

2           In the Final Fee Application, Duffy, Kuspodin asserts that it incurred \$8,666.30 in  
3 fees during the Application Period. ECF No. 1813 at 2-3. During the Application  
4 Period, Duffy prepared 2019 and 2020 Income Tax Returns for Western and prepared  
5 2019 and 2020 Income Tax Returns for the WFP Receivership. *Id.* at 3.<sup>3</sup>

6           Duffy also seeks final approval of its eleven prior interim fee applications. *Id.* at 2.  
7 The total amount incurred by Duffy during the Receivership across the interim fee  
8 applications and the final fee application is \$910,926.87 in fees and \$71,693.30 in  
9 expenses. *Id.* Finally, Duffy seeks approval of the estimated fees and costs it will incur  
10 for the remaining tax work as the Receiver concludes the Receivership, which they  
11 project is up to \$19,250. *Id.*

12           **D.     LEGAL STANDARD**

13           “[I]f a receiver reasonably and diligently discharges his duties, he is entitled to  
14 compensation.” *Sec. & Exch. Comm’n v. Elliott*, 953 F.2d 1560, 1577 (11th Cir. 1992).  
15 “The court appointing [a] receiver has full power to fix the compensation of such  
16 receiver and the compensation of the receiver’s attorney or attorneys.” *Drilling &*  
17 *Exploration Corp. v. Webster*, 69 F.2d 416, 418 (9th Cir. 1934). A receiver’s fees must  
18 be reasonable. *See In re San Vicente Med. Partners Ltd.*, 962 F.2d 1402, 1409 (9th Cir.  
19 1992). And the court which appoints a receiver has a duty to “protect his right to be paid  
20 for his services, to be reimbursed for his proper costs and expenses.” *Elliot*, F.2d at  
21 1576. The court, sitting in equity may draw those fees and expenses from the sale of  
22 properties related to the Receivership. *Id.* In other words, it is proper to pay the Receiver  
23 appropriate compensation, and those funds may be deducted from the total value of the  
24 Receivership.

25           As set forth in the Court’s prior fee orders, *see, e.g.*, ECF No. 1810, the Court will  
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28 <sup>3</sup> For a more detailed accounting of the tasks involved in preparing these tax returns, *see* ECF No. 1813  
at 3-6.

1 assess the reasonableness of the requested fees using the factors enumerated in *Sec. &*  
2 *Exch. Comm'n v. Fifth Avenue Coach Lines*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973)  
3 and *In re Alpha Telecom, Inc.*, 2006 WL 3085616, at \*2–3 (D. Or. Oct. 27, 2006). Those  
4 factors include: (1) the complexity of the receiver’s tasks; (2) the fair value of the  
5 receiver’s time, labor, and skill measured by conservative business standards; (3) the  
6 quality of the work performed, including the results obtained and the benefit to the  
7 receivership estate; (4) the burden the receivership estate may safely be able to bear; and  
8 (5) the Commission’s opposition or acquiescence. *See Fifth Avenue Coach Lines*, 364 F.  
9 Supp. at 1222; *Alpha Telecom*, 2006 WL 3085616, at \*2–3.

## 10 **II. DISCUSSION**

### 11 **A. Complexity of Tasks**

#### 12 **1. Receiver**

13 The Court finds that the tasks performed by the Receiver during the Application  
14 Period were moderately complex. The Receiver undertook the following tasks during  
15 the relevant period:

- 16 - handling general administrative matters, including reviewing mail, email, and  
17 other correspondence directed at the Receivership Entities;
- 18 - administering the bank accounts of the Receivership Entities;
- 19 - reviewing and approving expenditures;
- 20 - maintaining and updating the Receiver’s website with case information,  
documents, and filing inquiries;
- 21 - preparing Receiver’s Thirty-Fourth Interim Report (ECF No. 1805);
- 22 - managing and overseeing the GPs’ operations and real properties;
- 23 - managing and overseeing Western’s operations;
- 24 - performing the accounting functions of the Receivership Entities;
- 25 - managing and overseeing tax reporting for Receivership Entities;
- 26 - managing and overseeing GP operational bills, loan payments, and cash  
27 management;
- 28 - obtaining listing agreements and marketing properties for sale with brokers;
- analyzing, negotiating, and accepting purchase offers;
- conducting investor votes;

- 1 - closing property sales;
- 2 - sending monthly case update reports to investors listing major legal filings,  
3 property sales activity, court rulings, tax, and other information;
- 4 - listing and responding to sales activity on the various properties; and
- 5 - producing pending sales and finalizing the closing of various properties.

5 ECF No. 1811 at 3–4.

## 6 **2. Allen Matkins**

7 The Court finds that the tasks performed by Allen Matkins during the Application  
8 Period were moderately complex. Counsel undertook the following tasks during this  
9 period:

- 10 - preparing the Receiver’s Thirty-Fourth Interim Report (ECF No. 1799);
- 11 - sales of receivership properties including the Washoe III property, Western-  
12 Owned Dayton property, and 79-acre Minden property.
- 13 - addressing unique issues with investor distributions, preparing monthly case  
14 updates to investors, and responding to several direct inquiries from investors  
15 or their counsel regarding distributions;
- 16 - assisting with the initial work on the Receiver’s motion to make a final  
17 distribution and conclude the receivership (ECF No. 1815).
- 18 - assisting the Receiver in preparing his Thirty-Fourth Interim Fee Application  
19 and Final Fee Application (ECF Nos. 1805, 1811).

18 ECF No. 1812 at 7-8.

## 19 **3. Duffy Kuspodin**

20 The Court finds that the tasks performed by Duffy Kuspodin during the  
21 Application Period were moderately complex. Duffy undertook the following tasks  
22 during this period:

- 22 - preparing the 2019 and 2020 income tax returns for Western
- 23 - preparing the 2019 and 2020 income tax returns for WFP Receivership

24 ECF No. 1813 at 3-6.

## 25 **B. Fair Value of Time, Labor, and Skill**

26 The Receiver billed his time at \$337.50 per hour and the time of those working for  
27 him at \$297.00 per hour and \$265.50 per hour. ECF No. 1811 at 4-5. Allen Matkins  
28 billed its time at \$409.50 – \$517.50 per hour. ECF No. 1812-1. Duffy Kuspodin billed

1 its time at a rate of between \$70 and \$400 per hour, with an average hourly rate of  
2 \$187.98, and a blended hourly rate of \$218.85. ECF No. 1813 at 5, 7, 8.

3 The Court continues to find, as it has in previous fee orders, that the rates charged  
4 by the Receiver, Allen Matkins, and Duffy Kuspodin are comparable to rates charged in  
5 this geographic area and therefore represent a fair value of the time, labor, and skill  
6 provided.

### 7 **C. Quality of Work Performed**

8 The Court finds that the quality of work performed by the Receiver, Allen  
9 Matkins, and Duffy Kuspodin to be above average. The Receiver has, and continues to,  
10 competently operate the Receivership as evidenced by Receiver's Final Fee Application,  
11 ECF No. 1811, while at the same time marshalling assets to support its continued  
12 financial integrity. These actions benefit all investors. The Receiver and his counsel  
13 have complied with the Court's orders and have made every effort to protect investors'  
14 interests in the GP properties during the pendency of this litigation. The work completed  
15 by Allen Matkins and Duffy Kuspodin supported the Receiver's conducting of all tasks  
16 during the Application Period, and throughout the Receivership, as evidenced by the  
17 work described in their final fee applications, ECF Nos. 1812, 1813.

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

19 On August 30, 2016, the Court approved the Receiver's Modified Orderly Sale  
20 Process, ECF No. 1359, and the use of the One Pot approach to distribute Receivership  
21 assets, ECF No. 1304 at 31. These actions were taken for the dual purpose of increasing  
22 the value of the Receivership Estate by selling GP properties and lowering  
23 administrative costs. *Id.* at 30.

24 The Receiver indicates that the Receivership held approximately \$5.5 million in  
25 cash. ECF No. 1815-1 at 10. The Court therefore finds that the Receivership Estate has  
26 sufficient ability to bear the instant fee requests.

### 27 **E. Commission's Opposition or Acquiescence**

28 While the Commission does not expressly approve of the fee applications as

1 reasonable, the Receiver represents that counsel for the Commission has expressed its  
2 non-opposition to the fees and costs described in the fee applications. ECF No. 1811 at  
3 8. The Court will accept this representation.

4 **III. CONCLUSION**

5 Considering the above five factors taken together, the Court awards fees and costs  
6 as set forth in the following table:

7 Applicant	Fees Allowed	% of Fees Incurred	Costs Allowed	% of Costs Requested
8 Receiver	\$30,659.85	100%	\$100.23	100%
9 Allen Matkins	\$21,297.00	100%	\$954.46	100%
10 Duffy Kuspodin	\$8,666.30	100%	n/a	n/a

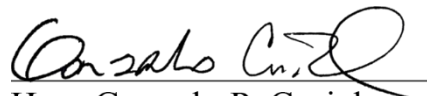
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13 **IV. ORDER**

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

- 16 1. The Receiver’s Thirty-Fourth Interim Fee Application, ECF No. 1811, is  
17 **GRANTED;**
- 18 2. Allen Matkins’ Thirty-Fourth Interim Fee Application, ECF No. 1812, is  
19 **GRANTED;**
- 20 3. Duffy Kuspodin’s Final Fee Application, ECF No. 1813, is **GRANTED;**
- 21 4. The Court further **VACATES** the hearing on this matter.

22 **IT IS SO ORDERED.**

23 Dated: September 30, 2021

24   
 25 Hon. Gonzalo P. Curiel  
 26 United States District Judge