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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 TO SHOW CAUSE RE:
DUFFY’S NINTH INTERIM FEE
APPLICATION**

[ECF No. 1655]

Before the Court is a fee application filed by tax accountants for the Receiver, Duffy, Kruspodin, LLP (“Duffy”). ECF No. 1655. In the Ninth Interim Application, Duffy asserts that it incurred \$219,567.06 in fees for work in preparing the 2017 federal and state tax returns for the General Partnerships (“GPs”) listed in Schedule 1 to the Preliminary Injunction Order entered on March 13, 2013. ECF No. 1655 at 1. This work included general engagement services, IT consulting, and preparation of Form 1096 and 1099 returns and income tax returns. *Id.* at 2-6. Duffy bills 1,155.6 hours of work at an average hourly rate of \$190.00. Duffy also asserts that it spent \$14,080.33 in costs, which were expended on electronic filing fees, specialized tax software, and mailing expenses. *Id.* at 7.

“[I]f a receiver reasonably and diligently discharges his duties, he is entitled to fair

1 compensation for his efforts.” *Sec. & Exch. Comm’n v. Elliott*, 953 F.2d 1560, 1577
2 (11th Cir. 1992). “The court appointing [a] receiver has full power to fix the
3 compensation of such receiver and the compensation of the receiver’s attorney or
4 attorneys.” *Drilling & Exploration Corp. v. Webster*, 69 F.2d 416, 418 (9th Cir. 1934).
5 A receiver’s fees must be reasonable. *See In re San Vicente Med. Partners Ltd.*, 962 F.2d
6 1402, 1409 (9th Cir. 1992).

7 As set forth in the Court’s prior fee orders, *see, e.g.*, ECF No. 1167, the Court will
8 assess the reasonableness of the requested fees using the factors enumerated in *Sec. &*
9 *Exch. Comm’n v. Fifth Avenue Coach Lines*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973)
10 and *In re Alpha Telcom, Inc.*, 2006 WL 3085616, at *2–3 (D. Or. Oct. 27, 2006). Those
11 factors include: (1) the complexity of the receiver’s tasks; (2) the fair value of the
12 receiver’s time, labor, and skill measured by conservative business standards; (3) the
13 quality of the work performed, including the results obtained and the benefit to the
14 receivership estate; (4) the burden the receivership estate may safely be able to bear; and
15 (5) the Commission’s opposition or acquiescence. *See Fifth Avenue Coach Lines*, 364 F.
16 Supp. at 1222; *Alpha Telecom*, 2006 WL 3085616, at *2–3.

17 Duffy seeks compensation for 195.7 hours for general engagement services. ECF
18 No. 1655 at 3. While this was similar time spent in the Seventh Interim Application,
19 ECF No. 1523 at 3, the Court notes that this is a substantially higher than hours billed for
20 general engagement services in previous applications, *see e.g.*, ECF No. 1098 at 2.

21 Duffy also bills 947.70 hours for preparation of 2017 returns. ECF No. 1655 at 6.
22 Duffy asserts that as this was the final filing for GP related tax returns, the work
23 completed during this period was substantial. But beyond this assertion, Duffy has not
24 specifically shown why these returns took so many more hours than returns in the past.
25 For example, the 2014 returns took 597.7 hours of labor. ECF No. 1128 at 5.
26 Moreover, Duffy does not provide any way for the Court or parties to independently
27 review the reasonableness of the time spent on these returns. Exhibit B to Duffy’s
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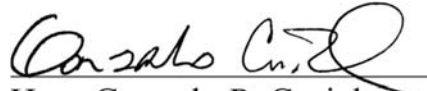
1 Application is a chart of each employee's hours spent and rate, but does not breakdown
2 how that time was spent. Exhibit C does provide a breakdown of the time spent for
3 general engagement services, but there is no such breakdown for the \$169,739.55 in fees
4 for preparation of returns. Such a breakdown is necessary in light of the fact that the fees
5 that Duffy seeks now are much larger than previous requests, and the Court is unable to
6 ascertain the reasonableness of these fees. For example, the Court cannot verify that
7 Livia Benjamin's 320 hours of work is reasonable. ECF No. 1655, Ex. B.

8 The Court will also note the substantial increases in hourly rates. In 2016, Thane
9 F. Kelton, CPA, the partner on the engagement, billed an hourly rate of \$375. ECF No.
10 1560 at 4. He now bills \$450 per hour. ECF No. 1655 at 8. Livia Benjamin, CPA, the
11 manager on the engagement, was billed at an hourly rate of \$225 in 2016, but is now
12 billed at an hourly rate of \$280. From 2017 to 2018, Andy Nguyen's rate increased from
13 \$145 per hour to \$190 per hour. ECF No. 1655 Ex. B at 210. The remaining
14 administrative staff that worked on the engagement were billed at a rate of \$70 in 2016,
15 but now are billed at up to more than twice that amount. Duffy has not articulated the
16 reasons for these substantial increases, and/or explained that the rates are customary in
17 this geographic area.

18 Duffy is therefore directed to supplement its Application, by September 26, 2018,
19 with any further information to address the Court's concerns and assist the Court in
20 determining assessing the reasonableness of Duffy's time and fees.

21 **IT IS SO ORDERED.**

22 Dated: September 19, 2018

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