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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
NINTH INTERIM FEE
APPLICATION;**

[ECF No. 961]

**(2) GRANTING ALLEN MATKINS’
NINTH INTERIM FEE
APPLICATION;**

[ECF No. 962]

(3) VACATING HEARING DATE

I. INTRODUCTION

Before the Court are three fee applications by the court-appointed receiver Thomas C. Hebrank (the “Receiver”):

1. Ninth Interim Application for Approval and Payment of Fees and Costs to Thomas C. Hebrank, as Receiver (“Receiver’s Ninth Interim Fee Application”), (ECF No. 961); and
2. Ninth Interim Fee Application of Allen Matkins Leck Gamble Mallory & Natsis LLP, Counsel to Receiver (“Allen Matkins’s Ninth Interim Fee

Application”), (ECF No. 962).

Neither the Plaintiff Securities and Exchange Commission (the “SEC”) nor Defendants have filed any response to the three fee applications with the Court. The Court finds these motions suitable for disposition without oral argument pursuant to Civil Local Rule 7.1(d)(1).

II. BACKGROUND

A. Receiver

In his Ninth Interim Fee Application, the Receiver asserts he has incurred a total of \$43,805.25 in fees for work done in the following categories:

Category	9th App.
General Receivership	\$11,756.25
Asset Investigation & Recovery	\$0.00
Reporting	\$1,386.00
Operations & Asset Sales	\$30,663.00
Claims & Distributions	\$0.00
Legal Matters & Pending Litigation	\$0.00
Total	\$43,805.25

(ECF No. 961, at 1–3.)

While the Receiver incurred \$43,805.25 in fees, he now seeks only 80% of those fees, i.e., \$35,044.20. (*Id.* at 1.) The Receiver’s Ninth Interim Fee Application covers the period July 1, 2014, through September 30, 2014. (*Id.*) The Receiver also seeks costs in the total amount of \$632.05, (*id.* at 3–4), which covers expenses for website additions, copies, and postage. (ECF No. 961, Ex. C.)

B. Allen Matkins

In its Ninth Interim Fee Application, Allen Matkins asserts it incurred \$86,642.55 in fees for work done in the following categories:

Category	9th App.
General Receivership	\$42,576.30

1	Asset Investigation	\$1,638.90
2	Reporting	\$3,059.10
3	Operations & Asset Sales	\$11,725.65
4	Claims & Distributions	\$3,615.30
5	Third Party Recoveries	\$20,133.90
6	Pending Litigation	\$445.50
7	Employment/Fees	\$3,893.40
8	Total	\$47,171.70

9 (ECF No. 962, at 1.)

10 While Allen Matkins incurred \$86,642.55, it now seeks only 80% of those fees,
 11 i.e., \$69,314.04. (*Id.*) Allen Matkins' Ninth Interim Fee Application covers the same
 12 period noted above. (*Id.*) Allen Matkins also seeks costs in the total amount of
 13 \$1,141.22, which covers expenses for document editing and copying, service fees,
 14 reprographics, PACER fees, shipping, and postage. (*Id.* at 6; ECF No. 962, Ex. A.)

15 III. LEGAL STANDARD

16 “[I]f a receiver reasonably and diligently discharges his duties, he is entitled to
 17 fair compensation for his efforts.” *Sec. and Exch. Comm’n v. Elliott*, 953 F.2d 1560,
 18 1577 (11th Cir. 1992). “The court appointing [a] receiver has full power to fix the
 19 compensation of such receiver and the compensation of the receiver’s attorney or
 20 attorneys.” *Drilling & Exploration Corp. v. Webster*, 69 F.2d 416, 418 (9th Cir. 1934).
 21 A receiver’s fees must be reasonable. *See In re San Vicente Med. Partners Ltd.*, 962
 22 F.2d 1402, 1409 (9th Cir. 1992).

23 As set forth in the Court’s prior fee orders, (*see, e.g.*, ECF No. 640), the Court
 24 will assess the reasonableness of the requested fees using the factors enumerated in
 25 *Sec. and Exch. Comm’n v. Fifth Avenue Coach Lines*, 364 F. Supp. 1220, 1222
 26 (S.D.N.Y. 1973), and *In re Alpha Telecom, Inc.*, 2006 WL 3085616, at *2–3 (D. Or. Oct.
 27 27, 2006). Those factors include: (1) the complexity of the receiver’s tasks; (2) the fair
 28 value of the receiver’s time, labor, and skill measured by conservative business
 standards; (3) the quality of the work performed, including the results obtained and the

1 benefit to the receivership estate; (4) the burden the receivership estate may safely be
2 able to bear; and (5) the Commission's opposition or acquiescence. *See* 364 F. Supp.
3 at 1222; 2006 WL 3085616, at *2–3.

4 IV. DISCUSSION

5 A. Complexity of Tasks

6 The Court finds that the tasks performed by the Receiver were moderately
7 complex. The Receiver undertook the following tasks:

- 8 • participating in meetings and conferences with the SEC's counsel and his
9 own counsel;
- 10 • handling administrative issues, including reviewing mail, email, and other
11 correspondence to Receivership Entities;
- 12 • administering the bank accounts of Receivership Entities;
- 13 • reviewing and approving expenditures;
- 14 • maintaining and updating the Receiver's website with case information
15 and documents;
- 16 • managing and overseeing the GPs' operations and real property;
- 17 • managing and overseeing Western's operations;
- 18 • performing accounting functions of Receivership Entities, including
19 paying expenses, clearing checks, and ACH entries;
- 20 • managing and overseeing tax reporting for Receivership Entities; and
- 21 • managing and overseeing GP operational bills, loan payments, and cash
22 management, including preparing operational bills, analyzing GP loan
23 balances, projecting GP cash needs, initiating property tax appeals on GP
24 properties, and conducting investor votes for GPs with expired terms.

25 (ECF No. 961, at 2–3.)

26 The Court finds that the tasks performed by Allen Matkins during its respective
27 application period to be somewhat complex. Allen Matkins undertook the following
28 tasks:

- 1 • reviewing and responding to GP briefs and letters regarding the Court's
- 2 July 22, 2014 order, (ECF No. 629);
- 3 • reviewing and responding to investor emails and preparing the Receiver's
- 4 response to the GP briefs;
- 5 • reviewing and advising the Receiver regarding the SEC's and Defendants'
- 6 response to the GPs' briefs;
- 7 • preparing for and attending the July 18, 2014 hearing;
- 8 • responding to Defendants' Motion for Modification of Preliminary
- 9 Injunction, (ECF No. 661), including assisting the Receiver in preparing
- 10 his opposition and explaining investor confusion;
- 11 • reviewing and advising the Receiver regarding motions, orders, and status
- 12 reports in the appeals from this case;
- 13 • reviewing and advising the Receiver regarding Defendants' Motion for
- 14 Certification for Appeal by Permission, (ECF No. 643);
- 15 • reviewing and advising the Receiver regarding Defendants' Motion to
- 16 Modify Scheduling Order, (ECF No. 639);
- 17 • reviewing and advising the Receiver regarding Investor Gregory M.
- 18 Post's Motion to Intervene, (ECF No. 618);
- 19 • reviewing and advising the Receiver regarding subpoenas and discovery
- 20 requests issued by the SEC, Defendants, and third parties;
- 21 • communicating with Defendants' counsel regarding the scope of
- 22 discovery requests and deposition dates;
- 23 • investigating payments made by Western to improve the Carroll Canyon
- 24 property;
- 25 • assisting the Receiver in drafting the Receiver's Ninth Interim Report;
- 26 • making repeated attempts to gain access to Western's server, including
- 27 communicating with Defendants' counsel;
- 28 • advising the Receiver regarding letters and operational bills sent to

1 investors, an easement demanded by the city of Fernley, NV, problems
2 regarding the Partnership Administrator's performance, leases on the
3 Stead property, preparing amendments to GP agreements, and an offer to
4 purchase property owned by Silver State Partners;

- 5 • assisting the Receiver in communications with investors, creditors, and
6 their counsel;
- 7 • responding to a notice of levy issued by the IRS;
- 8 • assisting the Receiver in LinMar lawsuits;
- 9 • assisting the Receiver in responding to Defendants' objections to fee
10 applications; and
- 11 • assisting Duffy Kruspodin & Company LLP with preparing their third fee
12 application.

13 (ECF No. 962, at 2–6.)

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

16 **B. Fair Value of Time, Labor, and Skill**

17 The Receiver billed his time at \$247.50 per hour and the time of those working
18 for him at \$180.00 per hour. (ECF No. 961, at 1–3.) Allen Matkins billed its time at
19 \$337.50– \$648.00 per hour, with much of the work being billed at \$463.50. (ECF No.
20 962, Ex. A.) These rates reflect a ten percent discount from the Receiver's and Allen
21 Matkins' ordinary rates. (ECF No. 961, at 1; ECF No. 962, at 1.)

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

26 **C. Quality of Work Performed**

27 The Court finds the quality of work performed by the Receiver and his counsel
28 to be above average. The Receiver and his professionals continue to keep the

1 Receivership Entities afloat, which—for Western—is a challenging task given that its
 2 main source of income (i.e., selling GP interests) has ceased since implementation of
 3 the action. Without assistance from Defendants, the Receiver and his professionals
 4 have ultimately been able to meet Western’s many obligations, including payments on
 5 the loans secured by GP properties. This benefits the entire receivership estate.
 6 Moreover, the Receiver and his counsel have complied with the Court’s orders and
 7 have made every effort to protect investors’ interests in the GP properties during the
 8 pendency of this litigation.

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, (*see* ECF No. 961, at 5) the Court finds the
 15 receivership estate has sufficient ability to bear the instant fee requests.

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

17 The Receiver indicates that the SEC does not oppose any of the fee applications.
 18 (ECF No. 961, at 5; ECF No. 962, at 8.)

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

22 Applicant	23 Fees Allowed	24 % of Fees Incurred¹	25 Costs Allowed	26 % of Costs Incurred
Receiver	\$35,044.20	80%	\$632.05	100%
Allen Matkins	\$69,314.04	80%	\$1,141.22	100%

27 _____
 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.

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V. CONCLUSION AND ORDER

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

1. The Receiver's Ninth Interim Fee Application, (ECF No. 961), is **GRANTED**;
2. Allen Matkins' Ninth Interim Fee Application, (ECF No. 962), is **GRANTED**;
3. The awarded fees shall be paid from Western's assets above and beyond cash necessary to make payments on loans secured by GP properties; and
4. The hearing set for March 6, 2015, is **VACATED**.

DATED: March 4, 2015


HON. GONZALO P. CURIEL
United States District Judge