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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 d/b/a WESTERN
FINANCIAL PLANNING
CORPORATION,

Defendants.

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

ORDER GRANTING:

**(1) RECEIVER’S TWENTY-
SEVENTH INTERIM FEE
APPLICATION; AND**

[ECF No. 1731]

**(2) ALLEN MATKINS’ TWENTY-
SEVENTH INTERIM FEE
APPLICATION**

[ECF No. 1732]

Before the Court are fee applications filed by the court-appointed receiver Thomas C. Hebrank (the “Receiver”) and counsel to the Receiver, Allen Matkins Leck Gamble Mallory & Natsis LLP. ECF Nos. 1731, 1732. Plaintiff filed a statement of non-opposition. ECF No. 1740. The Court finds these motions suitable for disposition without oral argument pursuant to Civil Local Rule 7.1(d)(1).

I. BACKGROUND

1 **A. Receiver**

2 In the Twenty-Seventh Interim Fee Application, the Receiver asserts that he
3 incurred \$41,130.00 in fees and \$158.03 in costs for the application period covering
4 January 1, 2019 through March 31, 2019 (“Twenty-Seventh Application Period”). ECF
5 No. 1731 at 1. The breakdown of the fees amassed is as follows:

6 Category	Total
7 General Receivership	\$ 569.25
8 Asset Investigation & Recovery	\$0.00
9 Reporting	\$ 6,585.75
10 Operations & Asset Sales	\$33,311.25
11 Claims & Distributions	\$663.75
12 Legal Matters & Pending Litigation	\$0.00
13 Total	\$41,130.00

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15 *Id.* at 2–4. Receiver now seeks payment of 100% of fees incurred, amounting to
16 \$41,130.00, and 100% of the costs, which account for postage and copies. ECF No.
17 1731, Ex. C.

18 **B. Allen Matkins**

19 In the Twenty-Seventh Interim Fee Application, Allen Matkins asserts that it
20 incurred \$23,123.05 in fees and \$234.63 in costs during the Twenty-Sixth Application
21 Period. ECF No. 1732 at 2. The breakdown of the fees amassed is as follows:

22 Category	Total
23 General Receivership	\$4,864.50
24 Reporting	\$1,397.25
25 Operations & Asset Sales	\$8,680.55
26 Claims & Distributions	\$2,535.75
27 Third Party Recoveries	\$1,656.00

1	Employment/Fees	\$465.75
2	Total	\$19,599.80

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4 *Id.* Receiver now seeks payment of 100% of fees incurred, amounting to \$19,599.80, and
5 100% of the costs, which were incurred for shipping, messenger service fees, and
6 document searches. ECF No. 1732, Ex. A at 14–15.

7 8 **II. LEGAL STANDARD**

9 “[I]f a receiver reasonably and diligently discharges his duties, he is entitled to fair
10 compensation for his efforts.” *Sec. & Exch. Comm’n v. Elliott*, 953 F.2d 1560, 1577
11 (11th Cir. 1992). “The court appointing [a] receiver has full power to fix the
12 compensation of such receiver and the compensation of the receiver’s attorney or
13 attorneys.” *Drilling & Exploration Corp. v. Webster*, 69 F.2d 416, 418 (9th Cir. 1934).
14 A receiver’s fees must be reasonable. *See In re San Vicente Med. Partners Ltd.*, 962 F.2d
15 1402, 1409 (9th Cir. 1992).

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

26 **III. DISCUSSION**

27 **A. Complexity of Tasks**

28 **1. Receiver**

1 The Court finds that the tasks performed by the Receiver during the Twenty-
2 Seventh Application Period were moderately complex. The Receiver undertook the
3 following tasks during the relevant period:

- 4 - handling general administrative matters, including reviewing mail, email, and
5 other correspondence directed to the Receivership Entities;
- 6 - administering the bank accounts of the Receivership Entities;
- 7 - reviewing and approving expenditures;
- 8 - maintaining and updating the Receiver's website with case information,
9 documents, and filing inquiries;
- 10 - preparing Receiver's Twenty-Sixth interim report;
- 11 - managing and overseeing the GPs' operations and real properties;
- 12 - managing and overseeing Western's operations;
- 13 - performing accounting functions of the Receivership Entities;
- 14 - managing and overseeing tax reporting for Receivership Entities;
- 15 - managing and overseeing loan payments and overall cash management;
- 16 - obtaining listing agreements and marketing properties for sale with brokers;
- 17 - analyzing, negotiating, and accepting purchase offers;
- 18 - closing property sales
- 19 - sending monthly case update reports to investors listing major legal filings,
20 property sales activity, court rulings, tax, and other information;
- 21 - listing and responding to sales activity on the various properties; and
- 22 - filing motions to sell properties.

23 ECF No. 1731 at 3-4.

24 **2. Allen Matkins**

25 The Court finds that the tasks performed by Allen Matkins during the Twenty-
26 Seventh Application Period were somewhat complex. Counsel undertook the following
27 tasks during this period:

- 28 - assisting the Receiver to communicate with the SEC regarding issues related to
the pending appeal of the final judgment against Louis Schooler;
- assisting in discussions with the SEC regarding the Receiver's accounting and
the revised calculation of the proposed disgorgement amount under the Final
Judgment;
- preparing the Receiver's Twenty-Sixth Interim Report;
- assisting the Receiver with legal issues relating to the ongoing operations of
Western and the GPs, including sales of receivership properties, easement and
condemnation issues, and issues relating to property taxes and assessments;

- 1 - advising the Receiver regarding legal issues pertaining to GP properties,
2 including assisting with addressing and removing liens, working on letters of
3 intent and purchase and sale agreements, and preparing notices to investors
4 regarding offers received for properties;
- 5 - assisting in addressing issues with investor distributions;
- 6 - assisting in preparing monthly case updates to investors and responding to
7 direct inquiries from investors;
- 8 - communicating with the post-judgment receiver and counsel for SEC regarding
9 the disposition of remaining funds held by the post-judgment receiver; and
- 10 - assisting the Receiver in preparing his Twenty-Sixth Interim Fee Application.

11 ECF No. 1732 at 3–6.

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

13 The Receiver billed his time at his customary billing rate, discounted by 10 percent
14 and the blended hourly rate for all services provided by the Receiver and those working
15 for him was \$193.19 per hour during the Twenty Seventh Application Period. ECF No.
16 1731 at 7. Allen Matkins billed its time at \$325.00 to \$517.50 per hour, with the majority
17 of work being billed at \$517.50 per hour. ECF No. 1732, Ex. A.

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

21 **C. Quality of Work Performed**

22 The Court finds that the quality of work performed by the Receiver and Allen
23 Matkins to be above average. The Receiver has, and continues to, competently operate
24 the Receivership as evidenced by Receiver’s Twenty-Seventh Status report, ECF No.
25 1718, while at the same time marshalling assets to support its continued financial
26 integrity. These actions benefit all investors. The Receiver and his counsel have
27 complied with the Court’s orders and have made every effort to protect investors’
28 interests in the GP properties during the pendency of this litigation.

D. Receivership Estate’s Ability to Bear Burden of Fees

1 On August 30, 2016, the Court approved the Receiver’s Modified Orderly Sale
 2 Process, ECF No. 1359, and the use of the One Pot approach to distribute receivership
 3 assets, ECF No. 1304 at 31. These actions were taken for the dual purpose of increasing
 4 the value of the receivership estate by selling GP properties and lowering administrative
 5 costs. *Id.* at 30.

6 Allen Matkins indicates that as of March 31, 2019, the receivership estate held
 7 approximately \$8.2 million in cash. ECF No. 1732 at 8. On June 17, 2019, the Court
 8 approved a second interim distribution to investors with allowed claims in the total
 9 amount of \$6 million. ECF No 1725. Therefore, the Court finds that the Receivership
 10 estate has sufficient ability to bear the instant fee requests.

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

12 While the Commission does not expressly approve of the fee applications as
 13 reasonable, the Receiver represents that the Commission has expressed its non-opposition
 14 to the fee application. ECF No. 1732 at 9. The Court will accept this representation.

15 **IV. CONCLUSION**

16 Considering the above five factors together, and considering that “[i]nterim fees
 17 are generally allowed at less than the full amount,” *Alpha Telecom*, 2006 WL 3085616, at
 18 *2–3, the Court awards fees and costs as set forth in the following table:

19 Applicant	Fees Allowed	% of Fees Incurred ¹	Costs Allowed	% of Costs Requested
20 Receiver	\$32,904.00	80	\$158.03	100
21 Allen Matkins	\$15,679.84	80	\$119.02	100

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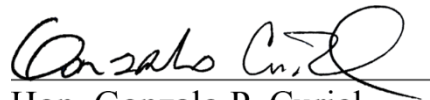
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 28 ¹ The Court includes the percentage of fees *incurred* rather than a percentage of the fees requested, given that the Receiver and Allen Matkins request only a percentage of their actual fees.

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

- 3 1. The Receiver's Twenty-Seventh Interim Fee Application, ECF No. 1731, is
4 **GRANTED**; and
5 2. Allen Matkins' Twenty-Seventh Interim Fee Application, ECF No. 1732, is
6 **GRANTED**.

7 **IT IS SO ORDERED.**

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9 Dated: November 12, 2019

10 
11 Hon. Gonzalo P. Curiel
12 United States District Judge
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