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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

Securities and Exchange Commission,  
Plaintiff,  
v.  
Ruderman, *et al.*,  
Defendants.

Case No. CV 09-02974 ODW (JCx)  
  
Order **GRANTING** Petitions For  
Approval of Settlements and  
Attorneys' Fees [137, 139] [Filed  
08/11/11]

**I. INTRODUCTION**

Pending before the Court are Receiver David Ray's (the "Receiver") concurrently-  
filed Notices of Petition and Petitions for: (1) Instructions and an Order Approving  
Settlement with Prabhakar Guniganti ("Guniganti") and Approving Compensation of the  
Receiver's Special Litigation Counsel; and (2) Instructions and an Order Approving  
Settlements with (a) the Gabriel Kaplan Revocable Trust (the "Kaplan Trust") and  
Gabriel Kaplan ("Kaplan") as Trustee for the Gabriel Kaplan Revocable Trust; (b) Bosk  
Djordjevic ("Djordjevic"), and (c) Ryan Wald ("Wald"), and Approving Compensation  
of the Receiver's Special Litigation Counsel. (Dkt. Nos. 137, 139). Plaintiff, Securities  
and Exchange Commission (the "SEC"), filed a Statement of Non-Opposition to

1 Receiver's Petitions for Approval of Specified Settlements and Compensation of Special  
2 Litigation Counsel. (Dkt. No. 142.) Having considered the papers filed in support of the  
3 instant Petition, the Court deems the matter appropriate for decision without oral  
4 argument. Fed. R. Civ. P. 78; L.R. 7-15. The Court finds the Receiver has met his  
5 burden of demonstrating the proposed settlements fall within the range of reasonableness  
6 and were negotiated in good faith. Accordingly, the Court **GRANTS** the Receiver's  
7 Petitions for Settlements with Prabhakar Guniganti, the Gabriel Kaplan Revocable Trust  
8 and Gabriel Kaplan as Trustee for the Gabriel Kaplan Revocable Trust; Bosko  
9 Djordjevic, and Ryan Wald. The Court also finds the Receiver has met his burden of  
10 demonstrating that the proposed attorneys' fees and costs are reasonable. Accordingly,  
11 the Court **GRANTS** the Receiver's Petitions for attorneys' fees and costs in the  
12 above-referenced matters.

## 13 **II. BACKGROUND**

14 On April 28, 2009, the Securities and Exchange Commission filed a Complaint  
15 against Bradley Ruderman; Ruderman Capital Management, LLC ("RCM"); Ruderman  
16 Capital Partners, LLC ("RCP"); and Ruderman Capital Partners A, LLC ("RCP-A").  
17 (Dkt. No. 1.) The SEC alleged that Ruderman engaged in a scheme to defraud investors  
18 by offering investment materials through RCM to secure investments in the hedge funds  
19 RCM and RCP-A, which allegedly would never have been repaid. (*Id.*)

20 On May 7, 2009, the Court entered a permanent injunction and appointed David  
21 L. Ray as receiver of RCM, RCP and RCP-A, (Dkt. No. 31), based on the SEC's request  
22 and Defendants' consent, (Dkt. No. 25). Thereafter, on August 31, 2009, the Court  
23 entered default as to Defendants RCM, RCP, and RCP-A for failure to obtain counsel.  
24 (Dkt. No. 59.) Additionally, on motion of the Receiver and stipulation of bankruptcy  
25 trustee for RCP, the Court (1) terminated the duties of the Receiver as to RCP and (2)  
26 required advance approval of acts falling outside of Section IV ¶ C of the May 7, 2009  
27 Injunction. (Dkt. No. 31.) Section IV ¶ C permitted investigation and discovery to  
28 account for all assets of Defendants. (Dkt. No. 59.) The Court also permitted the  
Receiver to retain attorneys for purposes of Section IV ¶ C. (*Id.*)

1 On September 9, 2009, the Court entered an Order modifying the Receiver's duties  
2 so as to be consistent with the Receiver's stipulation with the Trustee. (Dkt. No. 62.) As  
3 a result, the Receivership Estate currently consists of RCM and RCP-A only. (*Id.*)  
4 Subsequently, on September 2, 2010, the Court entered an Order permitting the Receiver  
5 to retain legal counsel to investigate and pursue all viable claims and avoidance actions  
6 of the Receivership Estate, but required the Receiver to obtain additional approval on the  
7 terms and conditions for which counsel was to be retained. (Dkt. No. 105 at 2.)

8 **A. The Guniganti Action and Proposed Settlement**

9 On November 3, 2010, the Court denied the Receiver's Motion to employ  
10 Saltzburg Ray & Weissman LLP ("SRW") as special litigation counsel on a contingency  
11 basis to pursue claims against Guniganti to avoid and recover certain disbursements from  
12 RCP-A. (Dkt. No. 118.) On November 9, 2010, the Receiver filed an action against  
13 Guniganti on behalf of RCP-A, *Ray v. Guniganti*, CV 10-08537 (the "Guniganti Action").  
14 On December 22, 2010, the Court approved the appointment of Levene, Neale, Bender,  
15 Yoo & Brill L.L.P. (the "Levene Firm") to pursue this action. (Dkt. No. 122.)

16 Guniganti was a long-time investor with Ruderman. At issue in the Guniganti  
17 Action were two wire transfers of \$1,000,000, each of which Ruderman made to  
18 Guniganti during the fall of 2006 in RCP-A's name. (Mot. at 7.) At that time, Guniganti  
19 had not invested money in RCP-A. (*Id.*) The Receiver argued that these two wire  
20 transfers were made pursuant to a *Ponzi* scheme orchestrated by Ruderman. (*Id.*)

21 Guniganti answered the Receiver's complaint and filed a counterclaim against the  
22 Receiver. (*Id.* at 8.) Written discovery was taken by both sides, and the parties took  
23 Ruderman's deposition in a Texas federal prison. (*Id.*) Prior to mediation, the parties  
24 reached the settlement agreement currently before the Court. (*Id.*) The proposed  
25 settlement calls for Guniganti to make a payment to the Receiver that will range from  
26 \$175,000 to \$179,000, depending on how quickly Guniganti makes the payment. (Mot.  
27 at 4-5.) If Guniganti has not made the payment by October 15, 2011, it is proposed that  
28 the Receiver may enter a stipulated judgment in favor of the receiver in the amount of  
\$250,000. (Mot. at 5.)



1 Local Rule 66-8 states, “[e]xcept as otherwise ordered by the Court, a receiver  
2 shall administer the estate as nearly as possible in accordance with the practice in the  
3 administration of estates in bankruptcy.” Accordingly, bankruptcy procedure informs the  
4 Court’s approval of the proposed settlements. Federal Rule of Bankruptcy Procedure  
5 9019 governs compromises and settlements reached in bankruptcy court. It provides,  
6 “[o]n motion by the trustee and after notice and a hearing, the court may approve a  
7 compromise or settlement.” In examining a proposed settlement, the Court must evaluate  
8 four factors:

- 9
- 10 (a) [t]he probability of success in the litigation;
  - 11 (b) the difficulties, if any, to be encountered in the matter of  
12 collection;
  - 13 (c) the complexity of the litigation, as well as the expense, and the  
14 expense, inconvenience and delay necessarily attending it; [and]
  - 15 (d) the paramount interest of creditors, giving proper deference to  
16 their reasonable views [regarding the proposed compromise].

17 *United States v. Edwards*, 595 F.3d 1004, 1012 (9th Cir. 2010) (quoting *In re A&C*  
18 *Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986)).

19 “The purpose of a compromise agreement is to allow the trustee and the creditors  
20 to avoid the expenses and burdens associated with litigating sharply contested and  
21 dubious claims.” *Id.* In general, compromises are favored in bankruptcy actions. *In re*  
22 *Stein*, 236 B.R. 34, 37 (D. Or. 1999). Accordingly, the Court generally gives deference  
23 to a trustee’s business judgment, *In re Pac. Gas and Elec. Co.*, 304 B.R. 395, 417 (Bankr.  
24 N.D. Cal. 2004), and will approve a compromise that falls within the “range of  
25 reasonableness.” The Second Circuit has defined “range of reasonableness” as follows:

26 [I]n any case there is a range of reasonableness with respect to a  
27 settlement - a range which recognizes the uncertainties of law and fact  
28 in any particular case and the concomitant risks and costs necessarily  
inherent in taking any litigation to completion - and the judge will not be  
reversed if the appellate court conclude[s] that the settlement lies within  
that range.

*Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972), *cert. den.*, 409 U.S. 1039 (1972).

Although the Court may not simply “rubber-stamp” the decision to enter into a  
settlement, it need not conduct an exhaustive investigation, hold a mini-trial on the merits  
of the claims sought to be compromised, or require that the settlement be the best that

1 could possibly be achieved. *In re Walsh Const., Inc.*, 669 F.2d 1325, 1328 (9th Cir.  
2 1982). Rather, the Court “need only find that the settlement was negotiated in good faith  
3 and is reasonable, fair and equitable.” *Pac. Gas*, 304 B.R. at 417.

#### 4 **IV. DISCUSSION**

5 Before turning to its examination of the settlements, the Court notes that the SEC  
6 filed a statement of non-opposition to the approval of all the proposed settlements and  
7 compensation of special litigation counsel. (Dkt. No. 142.)

##### 8 **A. The Guniganti Proposed Settlement**

9 The Court finds that the Receiver has met his burden in demonstrating each factor  
10 with respect to the Guniganti Settlement. As to the probability of success on the merits,  
11 the Court notes that there are several potential legal defenses that could preclude success  
12 on the merits, including statute of limitations defenses, a defense as to whether Guniganti  
13 was a “net gainer,” and whether RCP-A was solvent at the time the two wire transfers  
14 were made. (Mot. at 11-12.) Thus, as these potential defenses increase the uncertainty  
15 of the litigation, this factor weighs heavily in favor of the settlement. As to the difficulty  
16 of collection, if the Receiver were to prevail in this litigation with a large recovery,  
17 collection could be difficult. (Mot. at 12-13.) Thus, this factor weighs in favor of the  
18 settlement. As to the complexity, expense, inconvenience, and delay of litigation, the  
19 extensive discovery demonstrates this would likely continue to be a heavily contested  
20 matter as it moves toward mediation, the summary judgment phase, a potential jury trial,  
21 and possible lengthy appeals. (Mot. at 13.) Thus, this factor weighs in favor of the  
22 settlement. As to the paramount interest of creditors, at least two of four scenarios could  
23 result in the Receiver obtaining nothing. A third scenario exists where the judgment  
24 would be \$75,000 higher. The final scenario could involve a substantially higher  
25 judgment, with the concurrent risks of appeal and difficulty in collecting the judgment.  
26 (Mot. at 13.) Thus, this factor weighs in favor of the settlement. Overall, the Court finds  
27 the settlement reasonable, and therefore, approves it.

28 With respect to attorneys’ fees and costs, on December 22, 2010, the Court  
approved the Receiver’s retention of the Levene Firm on a contingency basis, whereby

1 Receiver's Counsel was entitled to a fee of thirty-three percent of recovery obtained  
2 through settlement up to sixty days before any trial. (Dkt. No. 122.) Pursuant to this  
3 agreement, the Receiver has requested authorization to pay the Levene Firm either  
4 \$57,750.00, \$58,410.00, or \$59,070.00, depending on when Guniganti makes the  
5 settlement payment. The Receiver has also requested, with substantiation, costs totaling  
6 \$9,265.55. (Mot., Exh. D). The Court finds these reasonable and in conformity with the  
7 Court's prior approval, and therefore, approves the fee award and costs.

### 8 **B. The Kaplan, Djordjevic, and Wald Proposed Settlements**

9 The Court finds that the Receiver has met his overall burden in demonstrating the  
10 reasonableness of the Kaplan, Djordjevic, and Wald settlements. As to the probability  
11 of success on the merits, the Court notes that there are several potential legal defenses  
12 that could preclude success on the merits in these claims, including the legality of the  
13 poker games, whether the Receivership Entities received reasonably equivalent value by  
14 virtue of their alter-ego relationship with Ruderman, whether RCP-A was solvent at the  
15 time of the transfers, and whether there are statute of limitations issues. (Mot. at 14-15).  
16 Thus, as these potential defenses increase the uncertainty of the litigation, this factor  
17 weighs heavily in favor of the settlement. As to the difficulty of collection, the Receiver  
18 is not aware of any issues that would impede collection, (Mot. at 15), and thus, this factor  
19 weighs against the settlements. As to the complexity, expense, inconvenience, and  
20 delay of litigation, the Kaplan Action is on a trial track, and depositions remain to be  
21 completed (including the out-of-state deposition of Ruderman). (*Id.*) In the event the  
22 Receiver prevails at trial, the possibility of lengthy appeals would exist. If an appeal is  
23 taken, the Receiver could suffer delay and expense in securing a final judgment, or  
24 alternatively, Kaplan, Djordjevic, and Wald could prevail. (*Id.*) Thus, this factor weighs  
25 in favor of the settlement. As to the paramount interest of creditors, the proposed  
26 settlements represent forty-five percent of the Receiver's maximum recovery against  
27 Kaplan, Djordjevic, and Wald. (*Id.*) These settlements would represent an immediate  
28 infusion of income into the Receivership Estate, and avoid the expenses and uncertainty

1 of litigation. (*Id.* at 15-16). Thus, this factor weighs in favor of the settlement. Overall,  
2 the Court finds the settlements reasonable, and therefore, approves each settlement.

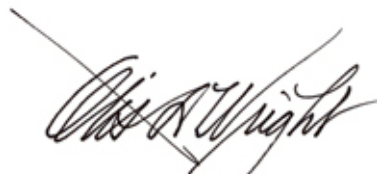
3 With respect to attorneys' fees and costs, on December 22, 2010, the Court  
4 approved the Receiver's retention of the Levene Firm on a contingency basis, whereby  
5 Receiver's Counsel was entitled to a fee of thirty-three percent of recovery obtained  
6 through settlement up to sixty days before any trial. (Dkt. No. 122). Pursuant to this  
7 Order, the Receiver has requested authorization to pay the Levene Firm the sum of  
8 \$54,841.05 (33% of the total recoveries of \$166,185.00 from these three matters). The  
9 Receiver has also requested, with substantiation, costs totaling \$2,417.62. (Mot., Exh.  
10 F.) The Court finds these reasonable and in conformity with the Court's prior approval,  
11 and therefore, approves the fee award and costs.

## 12 V. CONCLUSION

13 The Court holds that the Receiver has met his burden of demonstrating that the  
14 proposed settlements fall within the range of reasonableness and were negotiated in good  
15 faith. Accordingly, the Court **APPROVES** the Receiver's Applications for Settlements  
16 with Prabhakar Guniganti; the Gabriel Kaplan Revocable Trust and Gabriel Kaplan as  
17 Trustee for the Gabriel Kaplan Revocable Trust; Bosko Djordjevic; and Ryan Wald. As  
18 to the Guniganti Settlement, because the October 15, 2011 deadline has passed, the Court  
19 modifies this deadline and hereby resets it for January 15, 2012. The Court also finds that  
20 the Receiver has met his burden of demonstrating that the proposed attorneys' fees and  
21 costs are reasonable. Accordingly, the Court **APPROVES** the Receiver's Applications  
22 for attorneys' fees and costs in the above-referenced matters.

23 **IT IS SO ORDERED.**

24 November 21, 2011



26 \_\_\_\_\_  
27 HON. OTIS D. WRIGHT, II  
28 UNITED STATES DISTRICT JUDGE