

1  
2  
3 **UNITED STATES DISTRICT COURT**  
4 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
5

6 **SECURITIES AND EXCHANGE**  
7 **COMMISSION,**

8 **Plaintiff,**

9 **v.**

10 **BIC REAL ESTATE DEVELOPMENT**  
11 **CORPORATION and DANIEL R. NASE,**  
12 **individually and d/b/a BAKERSFIELD**  
13 **INVESTMENT CLUB,**

14 **Defendants,**

15 **BIC SOLO 401K TRUST and MARGARITA**  
16 **NASE,**

17 **Relief Defendants.**

**1:16-cv-00344-LJO-JLT**

**ORDER GRANTING FOURTH**  
**INTERIM APPLICATION FOR**  
**PAYMENT OF FEES AND**  
**REIMBURSEMENT OF EXPENSES OF**  
**RECEIVER AND HIS**  
**PROFESSIONALS (ECF No. 437)**

18 Before the Court is the unopposed Fourth Interim Application for Payment of Fees and  
19 Reimbursement of Expenses (the "Application") filed by David P. Stapleton (the "Receiver"), the court-  
20 appointed permanent receiver for Defendant BIC Real Estate Development Corporation and its  
21 subsidiaries and affiliates, including but not limited to, WM Petroleum; Target Oil & Gas Drilling, Inc.;  
22 Tier 1 Solar Power Company; Tier 1 Solar Power Company, LLC; and Home Sweet Holdings  
23 (collectively, the "Receivership Entities"), together with the Receiver's counsel of record, Allen Matkins  
24 Leck Gamble Mallory & Natsis, LLP ("Allen Matkins"), for services rendered for the period of January  
25 1, 2018 to June 30, 2018 ("Application Period"). ECF No. 437. In his Application, the Receiver requests  
approval of his fees and expenses (\$175,806.50 and \$1,823.90, respectively), and payment of 75% of his

1 fees (\$131,854.88) and 100% of his expenses (\$1,823.90). ECF No. 437 at 2. The Receiver also requests  
2 approval of Allen Matkins’s fees and expenses (\$128,318.95 and \$3,709.17, respectively), and payment  
3 of 75% of its fees (\$96,239.14), and 100% of its expenses (\$3,709.17). ECF No. 437-1 at 21-22.

4 Plaintiff Securities and Exchange Commission (“SEC”) responded to the Application indicating  
5 that they support the requested interim payments. ECF No. 438. There were no other responses or  
6 objections filed in response to the Receiver’s Application.

### 7 **I. STANDARD OF DECISION**

8 The determination of the amount to be awarded to a receiver and his professionals is in the  
9 district court’s sound discretion and should be “reasonable under the circumstances.” *In re Washington*  
10 *Public Power Supply Systems Sec. Litig.*, 19 F.3d 1291, 1296 (9th Cir. 1994); *see also In re San Vicente*  
11 *Medical Partners, Ltd.*, 962 F.2d 1402, 1409 (9th Cir. 1992) (trial court has discretion to determine  
12 reasonable compensation for receiver). The entitlement to reasonable compensation extends to the  
13 professionals employed by the receiver. *See Drilling & Expl. Corp. v. Webster*, 69 F.2d 416, 418 (9th  
14 Cir. 1934). “The receiver bears the burden to demonstrate to the court [any] entitlement to [the] payment  
15 of fees and costs in the amount requested.” *SEC v. Total Wealth Mgmt., Inc.*, No. 15-CV-226-BAS-  
16 DHB, 2016 WL 727073, at \*1 (S.D. Cal. Feb. 24, 2016) (citing 65 Am. Jur. 2d, Receivers § 228 (2d ed.  
17 Feb. 2016 update)). The amount of compensation to be awarded is firmly within the discretion of the  
18 district court, and generally is a charge upon the property or funds in receivership. *Gaskill v. Gordon*, 27  
19 F.3d 248, 253 (7th Cir. 1994).

20 “An award of interim fees is appropriate ‘where both the magnitude and the protracted nature of  
21 a case impose economic hardships on professionals rendering services to the estate.’” *SEC v. Small Bus.*  
22 *Capital Corp.*, No. 5:12-CV-03237-EJD, 2013 WL 2146605, at \*2 (N.D. Cal. May 15, 2013) (citation  
23 omitted). In determining the reasonableness of the fees and costs requested, the court should consider  
24 the “economy of administration, the burden that the estate may safely be able to bear, the amount of time  
25 required, although not necessarily expended, and the overall value of the services to the estate.” *In re*  
*Imperial ‘400’ Nat’l, Inc.*, 432 F.2d 232, 237 (3d Cir. 1970). However, courts will “[f]requently . . .  
withhold a portion of the requested interim fees because ‘until the case is concluded the court may not

1 be able to accurately determine the “reasonable” value of the services for which the allowance of interim  
2 compensation is sought.” *Small Bus. Capital Corp.*, 2013 WL 2146605, at \*2 (citation omitted).  
3 Finally, in a securities receivership, “[o]pposition or acquiescence by the SEC to the fee application will  
4 be given great weight.” *SEC v. Fifth Ave. Coach Lines*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973).

## 5 **II. DISCUSSION**

### 6 **A. Receiver’s Requested Fees**

7 During the Application Period, the Receiver and his staff identified and recovered Receivership  
8 assets, managed accounting and financial matters, managed properties belonging to the Receivership,  
9 operated and administered assets, communicated with counsel and other necessary parties, managed the  
10 case before the Court, and took steps to dispose of assets. The Receiver and his staff also developed and  
11 proposed recommendations to the Court regarding the allowance and denial, amounts, and prioritization  
12 of claims of the investors and other creditors of the Entities, continued money-in/money-out accounting,  
13 among other tasks. The Receiver had significant success in all these endeavors. The Receiver and his  
14 staff spent approximately 991 hours working on behalf of the Receivership Entities, at a weighted  
15 average hourly billing rate of \$177.40. ECF No. 437-1 at 7, 8-13.

16 All fees and expenses incurred during the Application period are documented and presented in  
17 detailed time records, which allowed the Court to evaluate the tasks performed, hours expended, and  
18 total fees incurred. ECF No. 437-1, Ex. A. The Receiver has applied a discount to all time spent on this  
19 matter, and has endeavored to use his staff efficiently to complete the necessary tasks. ECF No. 437-1 at  
20 7.

21 The requested amount is reasonable given the budget range approved by this Court for part of the  
22 Application Period. ECF Nos. 342, 346.<sup>1</sup> The SEC’s support for the Receiver’s request also heavily

---

23 <sup>1</sup> The last budget approved by the Court was contained in the Receiver’s Fifth Interim Report for the period from January 1,  
24 2018 through March 31, 2018. *See* ECF Nos. 342 at 8; 346 at 2. The Receiver and his professionals here request approval and  
25 partial payment of fees and costs for the period from January 1, 2018 through June 30, 2018. The Receiver’s Sixth Interim  
Report did not seek approval of a budget for April 1, 2018 through June 30, 2018. *See* ECF No. 421. Nevertheless, the Court  
approves the fees and expenses requested herein because they are reasonable and necessary, and, moreover, the Receiver’s  
requested fees and expenses for the three-month period actually remain within the estimated budget range for the three-month  
period, and Allen Matkins’s fees and expenses are only slightly outside of the three-month budget. The fact that the Receiver  
and his professionals did not just meet a budget that proportionally doubled to account for the doubled time period, but in fact  
stretched the original three-month budget to almost provide for six months of work, speaks to the eminent reasonableness of  
the requested fees. While the Court applauds the Receiver and his professionals’ efficiency, the Court reminds the parties to  
submit estimated budgets for any period where payment of fees and expenses will be sought.

1 weighs in favor of finding that the fee application is reasonable. *See SEC v. Total Wealth Mgmt., Inc.*,  
2 No. 15-CV-226-BAS-DHB, 2016 WL 7242080, at \*2 (S.D. Cal. Dec. 15, 2016); ECF No. 438.

3 In light of the complexity of the matter, the degree of responsibility involved, the business ability  
4 required, and the number of hours expended during the Application Period, the requested fee award is  
5 reasonable. Accordingly, the Court approves, on an interim basis, the Receiver's request for  
6 \$175,806.50 in fees and \$1,823.90 in expenses, and approves payment of 75% of his fees (\$131,854.88)  
7 and 100% of his expenses (\$1,823.90).

8 **B. Allen Matkins's Requested Fees**

9 During the Application Period, Allen Matkins spent approximately 242.4 hours working on  
10 behalf of the Receivership Entities, at a weighted average billing rate of \$529.37 per hour, for fees  
11 totaling \$128,318.85. ECF No. 437-1 at 8. In addition, Allen Matkins incurred \$3,709.17 in expenses.

12 *Id.* The firm performed a wide range of tasks assisting the Receiver during the relevant period, including  
13 assisting the Receiver with preparing submissions to this Court, analyzing and responding to motions in  
14 this action, assisting with the legal aspects of asset recovery and administration, corresponding with  
15 third-party creditors, and assisting with the sale and disposal of Receivership assets, among other tasks.  
16 *Id.* at 13-20.

17 Allen Matkins is a well-known firm with extensive experience in federal receiverships, and the  
18 firm's billing rates are comparable to the usual fees for similarly complex services in the community.  
19 Allen Matkins also applied an across-the-board discount of 10% to all attorney time billed to this matter.  
20 ECF No. 437-1 at 8. The detailed time records submitted indicate that the firm staffed the tasks  
21 performed appropriately and efficiently based on the expertise required. *Id.*, Ex. B. The firm's efforts  
22 have substantially benefited the Receivership Entities.

23 The requested amount is appropriate given the budget range for legal fees approved by this Court  
24 for the Application Period. ECF Nos. 342. As in the case of the Receiver's fee application, the Court  
25 ascribes great weight to the SEC's support for Allen Matkins's request for fees and reimbursement of  
expenses. ECF No. 438. Accordingly, the Court approves, on an interim basis, Allen Matkins's request  
for \$128,318.85 in fees incurred during the Application Period, and authorizes the payment, on an  
interim basis, of 75% of the fees incurred, in the amount of \$96,239.14. In addition, the firm's request

1 for reimbursement of expenses in the amount of \$3,709.17 is approved as reasonable.

2 **III. CONCLUSION AND ORDER**

3  
4 Having considered the Application, and all its supporting materials, the Court finds the requested  
5 fees and expenses are appropriate under the circumstances and will reasonably, but not excessively,  
6 compensate the Receiver and Allen Matkins for their efforts.

6 **IT IS HEREBY ORDERED AS FOLLOWS:**

7 1. Fees and expenses of the Receiver in the respective amounts of \$175,806.50 and  
8 \$1,823.90 are approved, and payment to the Receiver of 75% of his fees, or \$131,854.88, and  
9 reimbursement of 100% of his expenses, or \$1,823.90, is awarded on an interim basis; and

10 2. Fees and expenses of Allen Matkins in the respective amounts of \$128,318.85 and  
11 \$3,709.17, are approved, and payment to Allen Matkins of 75% of its fees, or \$96,239.14, and 100% of  
12 its expenses, or \$3,709.17, is awarded on an interim basis;

13 3. The Receiver is authorized to pay such sums out of the Receivership Entities' assets.

14 IT IS SO ORDERED.

15 Dated: November 7, 2019

16 /s/ Lawrence J. O'Neill  
UNITED STATES CHIEF DISTRICT JUDGE