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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

SECURITIES AND EXCHANGE ) Case No.: 5:12-CV-03237 EJD  
COMMISSION, )  
Plaintiff, ) **ORDER PARTIALLY GRANTING**  
v. ) **INTERIM FEE APPLICATIONS**  
SMALL BUSINESS CAPITAL CORP. et al., ) [Docket Item Nos. 134, 135, 136]  
Defendants. )

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The Securities and Exchange Commission (“S.E.C.”) has brought this lawsuit alleging violations of the antifraud provisions of federal securities law. Complaint 1, (“Compl.”), Docket Item No. 1. Receiver Thomas Seaman and the law firm of Allen Matkins, Leck, Gamble, Mallory & Natsis, LLP seek interim payment of fees and expenses for services performed between June 1, 2012 through September 30, 2012 in connection with the receivership of Small Business Capital Corp. and related companies.

## **I. Background**

### **A. The Filing of this Action**

This civil action was filed on June 21, 2012 by the S.E.C. against Defendants Mark Feathers (“Feathers”), Small Business Capital Corporation (“SB Capital”), Investors Prime Fund, LLC (“IPF”), and SBC Portfolio Fund, LCC (“SBCPF”). Compl. 1. Defendant Feathers is the

1 founder, CEO, and director of SB Capital which manages IPF and SBCPF. Id. at 3–4. The  
2 Complaint filed by the S.E.C. alleges that the Defendants Feathers and SB Capital engaged in a  
3 “Ponzi-like scheme” where returns to investors were “partially funded with money from new  
4 investors.” Id. at 1.

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6 **B. The Appointment of the Receiver**

7 Receiver Thomas A. Seaman (“the Receiver”) was appointed as temporary receiver of the  
8 defendant companies and their subsidiaries and affiliates on June 26, 2012. Order Appointing  
9 Temporary Receiver 5, (“Temp. Receiver Order”), Docket Item No. 16. After appointing him as  
10 permanent receiver on July 10, 2012, the Court granted him “full power over all funds, assets,  
11 collateral, premises” as equity receiver of the defendant companies SB Capital, IPF, and SBCPF.  
12 Order Appointing Permanent Receiver 5 (“Perm. Receiver App’t Order”), Docket Item No. 34.

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14 **C. The Appointment of Counsel to the Receiver**

15 The Receiver was authorized to employ the law firm of Allen Matkins, Leck, Gamble,  
16 Mallory & Natsis, LLP as his general counsel on July 10, 2012. See Approval of Allen Matkins as  
17 General Counsel 2, (“Allen Matkins Approval”), Docket Item No. 36. The law firm has extensive  
18 experience assisting court appointed receivers while the S.E.C. investigates companies that  
19 engaged in fraudulent activity. See Receiver’s Application to Employ Allen Matkins as General  
20 Counsel 5–6.

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22 **II. Fee Applications**

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24 **A. The Receiver**

25 The Receiver submitted his first interim fee application on December 6, 2012. Receiver’s  
26 First Interim Fee Application, (“Receiver Application”), Docket Item No. 134. In that application,  
27 the Receiver averred that he had incurred \$241,927 in fees from June 1, 2012 through September  
28 30, 2012. Id. at 1. The Receiver requests that the Court withhold 10% of the fees and immediately

1 approve dispersal of the remaining fees from the receivership estate, \$217,734.30 in total. Id. at 1,  
2 7. The Receiver is not requesting compensation for any expenses incurred during this period. Id. at  
3 1. The Receiver's request reflects compensation for 1,072.7 hours of work during this period at a  
4 blended hourly rate of \$226 per hour. Id.

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6 **B. Allen Matkins**

7 The Receiver's counsel, Allen Matkins, avers that it has incurred \$135,864.40 in fees and  
8 \$5,740.70 in expenses. First Interim Fee Application of Allen Matkins, Leck Gamble, Mallory &  
9 Natis LLP 1, ("First Application AM"), Docket Item No. 135. This total reflects a blended hourly  
10 rate of \$454.10 (299.19 hours total). See id. Allen Matkins requests that the Court authorize the  
11 receivership estate to pay 90% of the request, or \$122,277.96 immediately, and withhold the  
12 remaining 10%. Id. Allen Matkins also requests approval of 100% of its expenses totaling  
13 \$5,740.70. Id. Allen Matkins has reduced its request for fees by 10%, and in addition to that  
14 reduction, has written off \$24,987.15 in "professional time" and \$816.65 in costs. Id. at 1, 6.

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16 **C. Summary of Fee Requests**

17 The chart below summarizes the fees requested by the Receiver and Allen Matkins:

Fee and Expenses Requests			
Applicant	Fees Requested	Expenses Requested	Total Requested
Receiver	\$217,734.30	N/A	\$217,734.30
Allen Matkins	\$122,277.96	\$5,740.70	\$128,018.66

1       **III. Discussion**

2       **A. Applicable Law**

3       The court appointing the Receiver is responsible for compensating the Receiver and his  
4       attorneys. See In re Alpha Telcom, Inc., 03:01-CV-1283-PA, 2013 WL 840065, at \*16 (D. Or.  
5       Mar. 6, 2013). The court may use its discretion to fashion a “fee award that is appropriate under the  
6       circumstances.” Id. at \*17. “The court appointing the receiver has the power to fix the  
7       compensation of such receiver and the compensation of the receiver’s attorney or attorneys.”  
8       Drilling & Exploration Corp. v. Webster, 69 F.2d 416, 418 (9th Cir. 1934). The Receiver and the  
9       attorneys assisting the Receiver will be “reasonably, but not excessively” compensated for their  
10       efforts to benefit the receivership estate. Alpha Telcom, 03:01-CV-1283-PA, 2013 WL 840065, at  
11       \*17. “[I]n receivership situations, lawyers should be awarded moderate fees and not extravagant  
12       ones.” S.E.C. v. Byers, 590 F. Supp. 2d 637, 648 (S.D.N.Y. 2008). The Receiver and any  
13       professionals assisting the Receiver should charge a reduced rate to reflect the public interest  
14       involved in preserving funds held in the receivership estate. See id. at 646-47. The Receiver and his  
15       counsel should be moderately compensated for their services because investors who were promised  
16       large returns on investments by the defendants may stand to recover “only a fraction of their  
17       losses.” See id. at 645.

18       An award of interim fees is appropriate “where both the magnitude and the protracted  
19       nature of a case impose economic hardships on professionals rendering services to the estate.”  
20       Alpha Telcom, 2013 WL 840065, at \*3. The court should also consider the “economy of  
21       administration, the burden that the estate may be able to bear, the amount of time required,  
22       although not necessarily expended, and the overall value of the services provided to the estate.” In  
23       re Imperial “‘400’” Nat., Inc., 432 F.2d 232, 238 (3rd Cir. 1970). Frequently courts will withhold a  
24       portion of the requested interim fees because “until the case is concluded the court may not be able  
25       to accurately determine the ‘reasonable’ value of the services for which the allowance of interim  
26       compensation is sought.” In re Alpha Telcom, Inc., CV 01-1283-PA, 2006 WL 3085616, at \*3 (D.  
27       Or. Oct. 27, 2006). The factors listed above, and others, may persuade the court to award the  
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1 entirety of the requested interim fees or some amount less than requested. See Byers, 590 F. Supp.  
2d at 648. Lastly, “courts have recognized that it is unrealistic to expect a trial judge to evaluate  
3 and rule on every entry in an application” and courts endorse “percentage cuts as a practical means  
4 of trimming fat from a fee application.” Id. (quoting N.Y. State Ass’n for Retarded Children, Inc.  
5 v. Carey, 711 F.2d 1136, 1146 (2nd Cir. 1983)).

6 The Court has consistently reminded the Receiver and the Receiver’s attorneys that it is  
7 concerned with the keeping the fees and costs down. Ultimately, the goal of the Receiver and the  
8 attorneys is to preserve the status quo among the receivership estate as best they can for the benefit  
9 of the investors. In awarding fees and costs, courts exercise their discretion carefully, recognizing  
10 the circumstances of the particular situation. With that in mind, the Court will apply the factors  
11 outlined above in making a determination about the award of fees and costs to the Receiver and  
12 Allen Matkins.

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14 **B. The Receiver**

15 The Receiver has made great efforts to reduce the operating costs of the defendant  
16 companies and in so doing has hired professionals to assist in the management of the receivership  
17 estate. See Receiver Application 4. During this period the Receiver and the professionals assisting  
18 him were engaged in reducing the cost of operating the receivership entities, managing assets,  
19 servicing loans, and “working towards resolution of non-performing and other impaired loans.” Id.  
20 at 1. Improving the bookkeeping activities was one of the primary goals of the Receiver. Id. at 6.  
21 He was able to develop a “Quickbooks model which is essentially a relational database designed to  
22 accumulate all cash receipts and disbursements,” improving on the receivership estate’s previous  
23 model, which the receiver described as “incomplete.” Id. at 6. Through his efforts, the Receiver has  
24 reduced the operating costs of the receivership estate by \$24,000 per month. Id. at 3.

25 In consideration of these efforts, the Court partially grants the Receiver’s request for fees.  
26 The Court grants 75% of the Receiver’s request for interim compensation and withholds the  
27 remainder for future determination of the reasonable value of the Receiver’s services. The Court  
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1 does not discount the efficacy and importance of the Receiver’s efforts to date, but it awards  
2 moderate fees in this instance because ensuring that the Receiver’s efforts benefit the investors and  
3 the receivership estate is this Court’s primary concern when awarding interim compensation in the  
4 early stages of this litigation.

5 A similar approach to awarding interim compensation was taken in S.E.C. v. Byers. See  
6 590 F. Supp. 2d at 646–48. In that case, the S.E.C. alleged that the defendants had “defrauded more  
7 than one thousand investors of approximately \$255 million,” and the court responded by  
8 appointing a receiver and law firm to manage the defendant companies allegedly violating federal  
9 securities laws. Id. at 639. When the law firm assisting the receiver first requested interim  
10 compensation, it received a fraction of what it requested because, in part, it was “simply too early  
11 to tell the extent to which its efforts will benefit the receivership estate.” Id. at 648. This Court may  
12 use Byers’s example because the Receiver and his counsel are compensated under the same  
13 analysis, which is subject to the Court’s broad discretion. See id. at 645 (quoting In re New York  
14 Investors, Inc., 79 F.2d 182, 185 (2nd Cir. 1935)) (“[R]eceivers and attorneys engaged in the  
15 administration of estates in the courts of the United States . . . should be awarded only moderate  
16 compensation”); In re Alpha Telcom, Inc., 2013 WL 840065, at \*16 (“The court appointing the  
17 receiver has full power to fix the compensation of such receiver and the compensation of the  
18 receiver’s attorney or attorneys.”).

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20 **C. Allen Matkins**

21 The Court also recognizes the services provided by Allen Matkins during the interim fee  
22 period. See First Application AM 3–6. The law firm assisted the Receiver in complying with the  
23 requirements of 28 U.S.C. § 754, which requires that notice of the appointments of the Receiver  
24 and counsel be given to the counties where the receivership estate holds properties and collateral  
25 funds. Id. at 3. The Receiver also requested Allen Matkins’ assistance in seizing assets for the  
26 receivership estate, working with the Small Business Administration on various legal issues,

1 investigating claims against third parties, servicing legacy loans, addressing loan defaults, and  
2 minimizing losses. Id. at 4.

3 Having reviewed Allen Matkins' application for fees and costs, the Court awards 66% of  
4 the requested fees and 100% of the request expenses for the interim period. The primary rationale  
5 for this determination is that the Court objects to Allen Matkins' charging a blended hourly rate of  
6 \$454.10. As general counsel to the Receiver, Allen Matkins must assist the Receiver in the  
7 fulfillment of his duties, one of which is to ensure that the receivership estate is able to compensate  
8 investors while the S.E.C. pursues civil charges against the defendants. See Receiver App't Order  
9 5–6 (“[S]uch receiver is immediately authorized, empowered and directed . . . to take such action  
10 as is necessary and appropriate to preserve and take control of and to prevent the dissipation,  
11 concealment, or disposition of any assets of or managed by SB Capital, IPF, and SPF, and their  
12 subsidiaries and affiliates.”); Allen Matkins Approval (“The Receiver is authorized to employ  
13 Allen Matkins as his general counsel.”). Given that the S.E.C. has alleged that the defendants have  
14 violated antifraud provisions of the federal securities laws, the Court has a strong interest in  
15 ensuring that the receivership estate is able to compensate investors until the case is resolved.  
16 Compl. 1. The high hourly rate of \$451.10 charged by Allen Matkins runs contrary to that  
17 objective; and as such, a reduction is proper.

18 This approach was taken in a similar case involving allegations of violations of federal  
19 securities laws in awarding fees to the receiver's attorneys. See Byers, 590 F. Supp. 2d at 646–48.  
20 In Byers, the law firm assisting the receiver requested a blended hourly rate of \$478. Id. The Byers  
21 court determined that the rate was “too high for a securities receivership case” and reduced the  
22 firm's blended hourly rate to just over \$300 for the interim period. Id. The court explained that the  
23 receiver's counsel should receive only a modest fee because the victims of the defendants' alleged  
24 fraudulent activities “are likely to recover only a fraction of their losses.” Id. at 645. The law firm  
25 assisting the receiver could not request its standard rates for legal services when the investors stand  
26 to lose so much if the S.E.C.'s allegations are affirmed. See id. Additionally, the depressed legal  
27 market at the time of the case made the firm's hourly rates appear even more unreasonable. See id.  
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1 at 647–48. Numerous law firms would have been willing to assist the receiver at a much lower  
2 hourly rate to avoid laying off attorneys or closing their doors for good. See id. at 647.

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4 **IV. Conclusion and Order**

5 For the foregoing reasons, the applications for interim fees and expenses (Docket Item Nos.  
6 134, 135, 136) are GRANTED IN PART. The fees and expenses shall be disbursed as follows:

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<b>Fee Distribution</b>				
<b>Applicant</b>	<b>Fees Allowed</b>	<b>% of Fee Request</b>	<b>Expenses Allowed</b>	<b>% of Expenses Request</b>
Receiver	\$163,300.73	75%	N/A	N/A
Allen Matkins	\$80,703.45	66%	\$5,740.70	100%

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14 **IT IS SO ORDERED.**

15 Dated: May 15, 2013



16  
17 EDWARD J. DAVILA  
18 United States District Judge  
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