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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 TENTH, ELEVENTH, AND TWELFTH INTERIM FEE APPLICATIONS;**
[ECF Nos. 1091, 1096, 1126]
- (2) GRANTING ALLEN MATKINS’ TENTH, ELEVENTH, AND TWELFTH INTERIM FEE APPLICATIONS;**
[ECF Nos. 1092, 1097, 1127]
- (3) GRANTING DUFFY’S FOURTH AND FIFTH INTERIM FEE APPLICATIONS;**
[ECF Nos. 1098, 1128]
- (4) VACATING HEARING DATES**

I. INTRODUCTION

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

- 1. Tenth Interim Application for Approval and Payment of Fees and Costs

1 to Thomas C. Hebrank, as Receiver (“Receiver’s Tenth Interim Fee
2 Application”), (ECF No. 1091);

3 2. Eleventh Interim Application for Approval and Payment of Fees and
4 Costs to Thomas C. Hebrank, as Receiver (“Receiver’s Eleventh Interim
5 Fee Application”), (ECF No. 1096);

6 3. Twelfth Interim Application for Approval and Payment of Fees and Costs
7 to Thomas C. Hebrank, as Receiver (“Receiver’s Twelfth Interim Fee
8 Application”), (ECF No. 1126);

9 4. Tenth Interim Fee Application of Allen Matkins Leck Gamble Mallory &
10 Natsis LLP, Counsel to Receiver (“Allen Matkins’s Tenth Interim Fee
11 Application”), (ECF No. 1092);

12 5. Eleventh Interim Fee Application of Allen Matkins Leck Gamble Mallory
13 & Natsis LLP, Counsel to Receiver (“Allen Matkins’s Eleventh Interim
14 Fee Application”), (ECF No. 1097);

15 6. Twelfth Interim Fee Application of Allen Matkins Leck Gamble Mallory
16 & Natsis LLP, Counsel to Receiver (“Allen Matkins’s Twelfth Interim
17 Fee Application”), (ECF No. 1127);

18 7. Fourth Interim Application for Approval and Payment of Fees and Costs
19 to Duffy Kruspodin & Company, LLP, as Tax Accountants for Receiver
20 (“Duffy’s Fourth Interim Fee Application”), (ECF No. 1098); and

21 8. Fifth Interim Application for Approval and Payment of Fees and Costs
22 to Duffy Kruspodin & Company, LLP, as Tax Accountants for Receiver
23 (“Duffy’s Fifth Interim Fee Application”), (ECF No. 1128).

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

28

1 **II. BACKGROUND**

2 **A. Receiver**

3 In his Tenth, Eleventh, and Twelfth Interim Fee Applications, the Receiver
4 asserts he has incurred a total of \$302,559.75 in fees for work done in the following
5 categories:

6

7 Category	10th App.	11th App.	12th App.	Total
8 General Receivership	\$6,682.50	\$13,785.75	\$7,796.25	\$28,264.50
9 Asset Investigation & Recovery	\$0.00	\$0.00	\$0.00	\$0.00
10 Reporting	\$26,894.25	\$13,443.75	\$10,095.75	\$50,433.75
11 Operations & Asset 12 Sales	\$29,909.25	\$92,823.75	\$86,341.50	\$209,074.50
13 Claims & 14 Distributions	\$0.00	\$0.00	\$0.00	\$0.00
15 Legal Matters & 16 Pending Litigation	\$10,935.00	\$3,852.00	\$0.00	\$14,787.00
Total	\$74,421.00	\$123,905.25	\$104,233.50	\$302,559.75

17 (ECF No. 1091, at 1–4; ECF No. 1096, at 1–4; ECF No. 1126, at 2–4.)

18 While the Receiver incurred \$302,559.75 in fees, he now seeks only 80% of
19 those fees, i.e., \$242,047.80. (ECF No. 1091 at 1; ECF No. 1096 at 1; ECF No. 1126
20 at 1.) The Receiver’s Tenth Interim Fee Application covers the period October 1, 2014,
21 through December 31, 2014. (ECF No. 1091, at 1.) The Receiver’s Eleventh Interim
22 Fee Application covers the period January 1, 2015, through March 31, 2015. (ECF No.
23 1096, at 1.) The Receiver’s Twelfth Interim Fee Application covers the period April
24 1, 2015, through June 30, 2015. (ECF No. 1126, at 1.) The Receiver also seeks costs
25 in the total amount of \$3,663.67 (\$1,453.21 in Tenth Fee Application, ECF No. 1091,
26 at 1; \$1,265.64 in Eleventh Fee Application, ECF No. 1096 at 1; and \$944.82 in
27 Twelfth Fee Application, ECF No. 1126, at 1), which covers expenses for website
28 additions, copies, mailings, and postage (ECF No. 1091, Ex. C; ECF No. 1096, Ex. C;

1 ECF No. 1126, Ex. C).

2 **B. Allen Matkins**

3 In its Tenth, Eleventh, and Twelfth Interim Fee Applications, Allen Matkins
4 asserts it incurred \$261,619.20 in fees for work done in the following categories:

5

6 Category	10th App.	11th App.	12th App.	Total
7 General Receivership	\$31,977.90	\$24,833.25	\$2,150.10	\$58,961.25
8 Reporting	\$36,235.35	\$22,385.70	\$10,428.75	\$69,049.80
9 Operations & Asset Sales	\$25,128.45	\$27,802.80	\$15,097.05	\$68,028.30
10 Claims & Distributions	\$370.80	\$5,788.35	\$1,881.45	\$8,040.60
11 Third Party Recoveries	\$13,733.10	\$17,436.15	\$24,330.60	\$55,499.85
12 Employment/Fees	\$695.25	\$509.85	\$834.30	\$2,039.40
13 Total	\$108,140.85	\$98,756.10	\$54,722.25	\$261,619.20

14

15 (ECF No. 1092, at 1; ECF No. 1097, at 1; ECF No. 1127, at 1.)

16 While Allen Matkins incurred \$261,619.20, it now seeks only 80% of those fees,
17 i.e., \$209,295.36. (ECF No. 1092, at 1; ECF No. 1097 at 1; ECF No. 1127 at 1.) Allen
18 Matkins' Tenth, Eleventh, and Twelfth Interim Fee Applications cover the same period
19 noted above. (ECF No. 1092, at 1; ECF No. 1097 at 1; ECF No. 1127 at 1.) Allen
20 Matkins also seeks costs in the total amount of \$6,891.73 (\$4,459.49 in Tenth Fee
21 Application, ECF No. 1092, at 1; \$2,069.14 in Eleventh Fee Application, ECF No.
22 1097 at 1; and \$363.10 in Twelfth Fee Application, ECF No. 1127, at 1), which covers
23 expenses for document editing and copying, service fees, reprographics, PACER fees,
24 shipping, and postage (ECF No. 1092, Ex. A, at 21–22; ECF No. 1097, Ex. A, at
25 20–21; ECF No. 1127, Ex. A, at 14–15).

26 **C. Duffy**

27 In its Fourth and Fifth Interim Fee Applications, Duffy, the tax accounting firm
28 retained by the Receiver for work on behalf of Western and related entities, asserts it

1 incurred \$126,717.88 in fees for work done in the following categories:

2 Category	4th App.	5th App.	Total
3 General Engagement Services	\$6,497.55	\$11,503.80	\$18,001.35
4 Preparation of 2013 Income Tax	\$16,345.93	\$0.00	\$16,345.93
5 Returns			
6 IT Consulting	\$0.00	\$4,886.20	\$4,886.20
7 Preparation of 2014 Form 1096 and	\$0.00	\$87,484.40	\$87,484.40
8 1099 Informational Returns and			
9 2014 Income Tax Returns			
10 Total	\$22,843.48	\$98,756.10	\$126,717.88

11 (ECF No. 1098, at 1; ECF No. 1128, at 1.)

12 Duffy seeks the entirety of the \$126,717.88 in fees that it incurred (ECF No.
13 1098, at 1; ECF No. 1128 at 1.) Duffy also seeks costs in the total amount of
14 \$14,895.24 (ECF No. 1128, at 1), which covers service fees, software costs, and
15 postage (ECF No. 1127, Ex. D.)

16 **III. LEGAL STANDARD**

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

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

1 the receiver's time, labor, and skill measured by conservative business standards; (3)
2 the quality of the work performed, including the results obtained and the benefit to the
3 receivership estate; (4) the burden the receivership estate may safely be able to bear;
4 and (5) the Commission's opposition or acquiescence. *See* 364 F. Supp. at 1222; 2006
5 WL 3085616, at *2–3.

6 IV. DISCUSSION

7 A. Complexity of Tasks

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

- 10 • participating in meetings and conferences with the SEC's counsel and
11 legal counsel;
- 12 • handling administrative issues, including reviewing mail, email, and other
13 correspondence to Receivership Entities;
- 14 • administering the bank accounts of Receivership Entities;
- 15 • reviewing and approving expenditures;
- 16 • maintaining and updating the Receiver's website with case information
17 and documents;
- 18 • responding to investor inquiries and misinformation put out by certain
19 investors;
- 20 • preparing reports on the financial condition of each of the GPs and
21 purchase offers received for various properties;
- 22 • managing and overseeing the GPs' operations and real property;
- 23 • managing and overseeing Western's operations;
- 24 • performing accounting functions of Receivership Entities, including
25 paying expenses, clearing checks, and ACH entries;
- 26 • managing and overseeing tax reporting for Receivership Entities;
- 27 • managing and overseeing GP operational bills, loan payments, and cash
28 management;

- 1 • conducting investor votes and analysis relating to purchase offers
2 received;
- 3 • oppositions and filings related to the operation of the receivership; and
- 4 • preparing for and attending depositions related to Defendants' subpoenas
5 of the Receiver.

6 (ECF No. 1091, at 1–4; ECF No. 1096, at 1–4; ECF No. 1126, at 2–4.)

7 The Court finds that the tasks performed by Allen Matkins during its respective
8 application period to be somewhat complex. Allen Matkins undertook the following
9 tasks:

- 10 • reviewing pleadings and investor correspondence relating to the GPs and
11 the receivership;
- 12 • responding to Defendants' discovery requests;
- 13 • responding to Defendants' motion to remove the Receiver and disqualify
14 Allen Matkins;
- 15 • reviewing and advising the Receiver regarding various motions, briefs,
16 orders, and status reports filed in the case and in the Defendants' pending
17 appeals;
- 18 • reviewing and advising the Receiver regarding various orders entered in
19 this case;
- 20 • assisting the Receiver in drafting report on the financial condition of each
21 GP;
- 22 • assisting the Receiver in preparing the Tenth and Eleventh Interim
23 Reports (ECF Nos. 1000, 1065);
- 24 • gaining access to Western server from Defendants;
- 25 • assisting the Receiver with legal issues relating to the ongoing operations
26 of Western and the GPs;
- 27 • assisting the Receiver in communications with investors, creditors, and
28 their counsel;

- 1 • analyzing legal issues regarding three pending collection actions; and
- 2 • preparing the Receiver's Eighth, Ninth, and Tenth Interim Fee
- 3 Applications and Duffy's Third Interim Fee Application.

4 (ECF No. 1092, at 2-7; ECF No. 1097, at 2-7; ECF No. 1127, at 2-6.)

5 As to the complexity of the tasks performed by the Receiver's accountant, Duffy,
6 the Court finds its tasks were moderately complex. Duffy undertook the following
7 activities:

- 8 • communicating with the Receiver about establishing the engagement and
- 9 agreeing upon procedures and reporting timelines;
- 10 • processing initial receipt of the receivership entities' books and records;
- 11 • formatting and organizing files with the current year data;
- 12 • verifying cash receipts and disbursements for the year and scanning detail
- 13 for reporting accuracy and consistency;
- 14 • reviewing the bank reconciliation to the bank statement
- 15 • checking balance sheet account balances for assets, loan receivables, and
- 16 loan payables for variances compared to prior year; when differences were
- 17 noted, detail of change in current year was reviewed to verify correct
- 18 application of accounting rules;
- 19 • verifying and reconciling "investment in" accounts to the related LLC
- 20 books for Western, which included single member LLCs;
- 21 • preparation of the 263A calculation with reconciling spreadsheets;
- 22 • reviewing input sheets of information entered into Lacerte;
- 23 • responding to Defendants' discovery requests;
- 24 • manager level review of the 263A calculation and spreadsheets;
- 25 • partner level review of the 263A calculation and spreadsheets;
- 26 • partner level verification of reporting accuracy, formatting, and adherence
- 27 to current federal and state partnership tax laws;
- 28 • electronic filing of the 2013 corporate returns;

- 1 • installing the 2014 ProSystem fx software on the Duffy server;
- 2 • troubleshooting issues with the various software update releases to
- 3 facilitate data proforma from 2013 and data stored from prior year that
- 4 needed to be updated due to changes to the software;
- 5 • working with ProSystem fx support regarding download of release
- 6 necessary to commence tax return preparation and necessary data transfer;
- 7 • providing client IT with software and perm key needed to install the
- 8 software on the Western server and run their data input for the 2014 tax
- 9 returns;
- 10 • calculating total Form 1099 costs to be reported based on the Western
- 11 report provided;
- 12 • verifying accounting fees in comparison to the Western records for 1099
- 13 reporting;
- 14 • input of the 2014 Form 1099 amounts and verifying other informational
- 15 data included on the form;
- 16 • reviewing 1099 recipients' names, addresses, and ID numbers;
- 17 • electronic filing of the 1099s for the receivership entities;
- 18 • assembly of the 1099 electronic document for the receiver and copies for
- 19 each of the recipients;
- 20 • reviewing the 2014 capital contributions recorded in the excel sheets and
- 21 ensuring ownership units were accurately reflected on the K-1s;
- 22 • verifying accuracy of partner names, addresses, ID numbers, and entity
- 23 types in ProSystem fx compared to the Western excels;
- 24 • reviewing transfers of interest and ensuring transfers were correctly
- 25 calculated and reported on the 2014 tax return and K-1s;
- 26 • manager level review of the above areas, as well as, overall review of tax
- 27 return forms and input;
- 28 • manager level verification of reporting accuracy, formatting, and

- 1 adherence to current federal and state corporate tax laws;
- 2 • manager level quality control check of information in ProSystem fx
- 3 compared to Western database that tracks all partner changes submitted
- 4 throughout the year;
- 5 • staff and manager communication as needed to answer return
- 6 discrepancies or additional information needed to complete the tax return;
- 7 • partner level review of the above areas, as well as, overall review of tax
- 8 return forms and input;
- 9 • finalizing of tax return and accompanying letters and schedules;
- 10 • printing tax return copies for each of the receivership entities and for
- 11 government filing, and the final K-1 packages;
- 12 • assembly and mailing of 8,197 K-1 packages to partners;
- 13 • electronic filing of the 2014 partnership returns;
- 14 • printing acceptance letters for the tax files to verify successful submittal
- 15 and receipt by government agencies; and
- 16 • various communications with the Receiver's staff to answer partner
- 17 requests for single K-1s or other questions regarding the 2014 tax returns
- 18 and receivership.

19 (ECF No. 1098, at 2–3; ECF No. 1128, at 2–5.)

20 The Court has reviewed the time sheets filed in support of the instant fee

21 applications and finds that, at this time, the tasks were necessary and not over-billed.

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

23 The Receiver billed his time at \$247.50 per hour and the time of those working

24 for him at \$180.00 per hour. (ECF No. 1091, at 1–4; ECF No. 1096, at 1–4; ECF No.

25 1126, at 2–4.) Allen Matkins billed its time at \$315.00– \$648.00 per hour, with much

26 of the work being billed at \$463.50. (ECF No. 1092, Ex. A; ECF No. 1097, Ex. A; ECF

27 No. 1127, Ex. A.) Duffy billed its time at \$146.37–\$199.92 per hour. (ECF No. 1098,

28 at 2–3; ECF No. 1128, at 2–5.)

1 These rates reflect a ten percent discount from the Receiver's, Allen Matkins', and
2 Duffy's ordinary rates. (ECF Nos. 1091, 1092, 1096, 1097, 1098, 1126, 1127, 1128,
3 at 2.)

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

8 **C. Quality of Work Performed**

9 The Court finds the quality of work performed by the Receiver and his counsel
10 to be above average. The Receiver and his professionals continue to keep the
11 Receivership Entities afloat, which—for Western—is a challenging task given that its
12 main source of income (i.e., selling GP interests) has ceased since implementation of
13 the action. Without assistance from Defendants, the Receiver and his professionals
14 have ultimately been able to meet Western's many obligations, including payments on
15 the loans secured by GP properties. This benefits the entire receivership estate.
16 Moreover, the Receiver and his counsel have complied with the Court's orders and
17 have made every effort to protect investors' interests in the GP properties during the
18 pendency of this litigation.

19 The Court finds the quality of work performed by Duffy to be satisfactory. The
20 Court has received no complaint that Duffy's tax preparation activities are deficient in
21 any way.

22 **D. Receivership Estate's Ability to Bear Burden of Fees**

23 Given the Receiver's assurance that approved fees and costs will be paid from
24 Western's assets above and beyond cash necessary to make payments on loans secured
25 by GP properties, the Receiver's acknowledgment that approved fees and costs may
26 have to be paid in installments as funds become available, and the Receiver's efforts
27 to collect on Western's receivables, the Court finds the receivership estate has
28 sufficient ability to bear the instant fee requests.

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

2 The Receiver indicates that the SEC does not oppose any of the fee applications.
3 (ECF No. 1091, at 5–6; ECF No. 1092, at 9; ECF No. 1096, at 5; ECF No. 1097, at 9;
4 ECF No. 1098, at 5; ECF No. 1126, at 5; ECF No. 1127, at 8; ECF No. 1128, at 8.)

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

8

Applicant	Fees Allowed	% of Fees Incurred¹	Costs Allowed	% of Costs Incurred
Receiver	\$242,047.80	80%	\$3,663.67	100%
Allen Matkins	\$209,295.36	80%	\$6,891.73	100%
Duffy	\$126,717.88	100%	\$14,895.24	100%

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13 **V. CONCLUSION AND ORDER**

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

- 16 1. The Receiver’s Tenth, Eleventh, and Twelfth Interim Fee Applications,
17 (ECF Nos. 1091, 1096, 1126), are **GRANTED**;
- 18 2. Allen Matkins’ Tenth, Eleventh, and Twelfth Interim Fee Applications,
19 (ECF Nos. 1092, 1097, 1127), are **GRANTED**;
- 20 3. Duffy’s Fourth and Fifth Interim Fee Applications, (ECF Nos. 1098,
21 1128), are **GRANTED**;
- 22 4. The awarded fees shall be paid from Western’s assets above and beyond
23 cash necessary to make payments on loans secured by GP properties; and
- 24 4. The hearings set for September 25, 2015; and October 30, 2015; are
25 **VACATED**.

26 **IT IS SO ORDERED.**

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.

1 DATED: September 15, 2015

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HON. GONZALO P. CURIEL
United States District Judge