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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 SECURITIES AND EXCHANGE  
12 COMMISSION,  
13  
14 v.  
15 LOUIS V. SCHOOLER and FIRST  
16 FINANCIAL PLANNING  
17 CORPORATION dba Western Financial  
18 Planning Corporation,  
19  
20 Defendant.

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

**ORDER GRANTING  
(1) RECEIVER’S THIRTY-FIRST  
INTERIM FEE APPLICATION; AND  
[ECF No. 1772]**

**(2) ALLEN MATKINS’ THIRTY-  
FIRST INTERIM FEE  
APPLICATION  
[ECF No. 1773]**

19 Before the Court are fee applications filed by the court-appointed receiver Thomas  
20 C. Hebrank (the “Receiver”) and counsel to the Receiver, Allen Matkins Leck Gamble  
21 Mallory & Natsis LLP (“Allen Matkins”). ECF Nos. 1772, 1773. No oppositions have  
22 been filed. The Court finds these motions suitable for disposition without oral argument  
23 pursuant to Civil Local Rule 7.1 (d)(1).  
24

25 **I. BACKGROUND**

26 **A. Receiver**

27 In the Thirty-First Fee Application, the Receiver asserts that he incurred  
28 \$14,373.00 in fees and \$75.30 in costs for the application period covering January 1,

1 2020 through March 31, 2020 (“Application Period”). ECF No. 1772 at 2. The  
2 breakdown of the fees amassed is as follows:

3 <b>Category</b>	<b>Total</b>
4 General Receivership	\$321.75
5 Asset Investigation & Recovery	\$0.00
6 Reporting	\$1,046.25
7 Operations & Asset Sales	\$13,005.00
8 Claims & Distributions	\$0.00
9 Legal Matters & Pending Litigation	\$0.00
10 Total	\$14,373.00

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12 *Id.* at 3–4. Receiver now seeks payment of 80% of fees incurred, amounting to  
13 \$11,498.40, and 100% of the costs, which account for postage and copies. ECF No.  
14 1772-3, Ex. C.

15 **B. Allen Matkins**

16 In the Thirty-First Interim Fee Application, Allen Matkins asserts that it incurred  
17 \$7,110.00 in fees and \$18.00 in costs during the Application Period. ECF No. 1773 at 2.  
18 The breakdown of the fees amassed is as follows:

19 <b>Category</b>	<b>Total</b>
20 General Receivership	\$103.50
21 Reporting	\$1,345.50
22 Operations & Asset Sales	\$4,470.75
23 Claims & Distributions	\$569.25
24 Employment/Fees	\$621.00
25 Total	\$7,110.00

26  
27 *Id.* Allen Matkins now seeks payment of 80% of the fees incurred, amounting to  
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1 \$5,688.00 and 100% of the costs, which were incurred for messenger service fees. ECF  
2 No. 1773-1, Ex. A.

3 **C. LEGAL STANDARD**

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

11 As set forth in the Court’s prior fee orders, *see, e.g.*, ECF No. 1764, the Court will  
12 assess the reasonableness of the requested fees using the factors enumerated in *Sec. &*  
13 *Exch. Comm’n v. Fifth Avenue Coach Lines*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973)  
14 and *In re Alpha Telcom, Inc.*, 2006 WL 3085616, at \*2–3 (D. Or. Oct. 27, 2006). Those  
15 factors include: (1) the complexity of the receiver’s tasks; (2) the fair value of the  
16 receiver’s time, labor, and skill measured by conservative business standards; (3) the  
17 quality of the work performed, including the results obtained and the benefit to the  
18 receivership estate; (4) the burden the receivership estate may safely be able to bear; and  
19 (5) the Commission’s opposition or acquiescence. *See Fifth Avenue Coach Lines*, 364 F.  
20 Supp. at 1222; *Alpha Telecom*, 2006 WL 3085616, at \*2–3.

21 **II. DISCUSSION**

22 **A. Complexity of Tasks**

23 **1. Receiver**

24 The Court finds that the tasks performed by the Receiver during the Application  
25 Period were moderately complex. The Receiver undertook the following tasks during  
26 the relevant period:

- 27 - handling general administrative issues, including reviewing mail, email, and  
28 other correspondence directed at the Receivership Entities;

- administering the bank accounts of the Receivership Entities;
- reviewing and approving expenditures;
- maintaining and updating the Receiver's website with case information, documents, and filing inquiries;
- preparing Receiver's Thirtieth Interim Report (ECF No. 1757);
- managing and overseeing the GPs' operations and real properties;
- managing and overseeing Western's operations;
- performing the accounting functions of the Receivership Entities;
- managing and overseeing tax reporting for Receivership Entities;
- managing and overseeing GP operational bills, loan payments, and cash management;
- obtaining listing agreements and marketing properties for sale with brokers;
- analyzing, negotiating, and accepting purchase offers;
- conducting investor votes;
- closing property sales;
- sending monthly case update reports to investors listing major legal filings, property sales activity, court rulings, tax, and other information;
- listing and responding to sales activity on the various properties; and
- filing motions to sell properties;

ECF No. 1772 at 3–4.

## **2. Allen Matkins**

The Court finds that the tasks performed by Allen Matkins during the Application Period were somewhat complex. Counsel undertook the following tasks during this period:

- providing advice to the Receiver regarding a claim asserted by the Franchise Tax Board;
- preparing the Receiver's Thirtieth Interim Report (ECF No. 1757);
- sales of receivership properties including the Minden and Silver Springs properties via the Modified Orderly Sale Process;
- addressing unique issues with investor distributions, preparing monthly case updates to investors, and responding to several direct inquiries from investors or their counsel regarding distributions;
- assisting the Receiver in preparing his Thirtieth Interim Fee Application (ECF No. 1758).

1 ECF No. 1773 at 3.  
2

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

4 The Receiver billed his time at \$247.50 per hour and the time of those working for  
5 him at \$180.00 per hour, resulting in a blended rate of \$189.62 per hour during the  
6 Application Period. ECF No. 1772 at 3–4, 6. Allen Matkins billed its time at \$360.00 –  
7 \$517.50 per hour. ECF No. 1773-1, Ex. A.

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

11 **C. Quality of Work Performed**

12 The Court finds that the quality of work performed by the Receiver and Allen  
13 Matkins to be above average. The Receiver has, and continues to, competently operate  
14 the Receivership as evidenced by Receiver’s Thirty-First Interim Report, ECF No. 1762,  
15 while at the same time marshalling assets to support its continued financial integrity.  
16 These actions benefit all investors. The Receiver and his counsel have complied with  
17 the Court’s orders and have made every effort to protect investors’ interests in the GP  
18 properties during the pendency of this litigation.

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

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

25 The Receiver indicates that the receivership, as of March 31, 2020, held  
26 approximately \$3.6 million in cash. ECF No. 1772 at 6. The Court finds that the  
27 Receivership estate has sufficient ability to bear the instant fee requests.  
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1 **E. Commission’s Opposition or Acquiescence**

2 While the Commission does not expressly approve of the fee applications as  
3 reasonable, the Receiver represents that the Commission has expressed its non-  
4 opposition to the fee applications. ECF No. 1772 at 6. The Court will accept this  
5 representation.

6 **III. CONCLUSION**

7 Considering the above five factors taken together, and considering that “[i]nterim  
8 fees are generally allowed at less than the full amount,” *Alpha Telcom*, 2006 WL  
9 3085616, at \*2–3, the Court awards fees and costs as set forth in the following table:

10 Applicant	Fees Allowed	% of Fees Incurred <sup>1</sup>	Costs Allowed	% of Costs Requested
11 Receiver	\$11,498.40	80%	\$75.30	100%
12 Allen Matkins	\$5,688.00	80%	\$18.00	100%

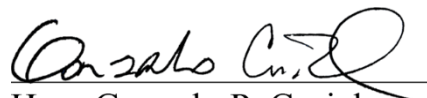
14 **IV. ORDER**

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

- 17 1. The Receiver’s Thirty-First Interim Fee Application, ECF No. 1772, is  
18 **GRANTED;**
- 19 2. Allen Matkins’ Thirty-First Interim Fee Application, ECF No. 1773, is  
20 **GRANTED.**

21 **IT IS SO ORDERED.**

22 Dated: August 21, 2020

23   
 24 Hon. Gonzalo P. Curiel  
 25 United States District Judge

26  
27  
28 <sup>1</sup> 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.