

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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CIVIL MINUTES - GENERAL

CASE NO.: CV 14-07249 SJO (FFMx) DATE: February 28, 2017

TITLE: Securities and Exchange Commission v. Nationwide Automated Systems, Inc., et al.

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PRESENT: THE HONORABLE S. JAMES OTERO, UNITED STATES DISTRICT JUDGE

Victor Paul Cruz Not Present
Courtroom Clerk Court Reporter

COUNSEL PRESENT FOR PLAINTIFF: COUNSEL PRESENT FOR DEFENDANTS:

Not Present Not Present

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PROCEEDINGS (in chambers): ORDER GRANTING RECEIVER'S NINTH INTERIM FEE APPLICATION [Docket No. 206]; GRANTING RECEIVER'S COUNSEL'S NINTH INTERIM FEE APPLICATION [Docket No. 207]

These matters are before the Court on (1) the Ninth Interim Fee Application of Receiver, William Hoffman of Trigild, Inc. ("Receiver") for Payment of Fees and Reimbursement of Expense ("Receiver Application"); and (2) the Ninth Interim Fee Application of Allen Matkins Leck Gamble Mallory & Natsis LLP ("Counsel"), General Counsel to the Receiver, for Payment of Fees and Reimbursement of Expenses ("Counsel Application") (collectively, "Applications"), both of which were filed on February 23, 2017. The Court found these matters suitable for disposition without oral argument and vacated the hearings set for March 27, 2017. See Fed. R. Civ. P. 78. For the following reasons, the Court **GRANTS** the Applications.

I. FACTUAL BACKGROUND

On September 9, 2014, the SEC filed a civil Complaint against defendants Nationwide Automated Systems, Inc. ("NASI"), Joel Gillis ("Gillis"), and Edward Wishner ("Wisher") (collectively, "Defendants") alleging that Defendants committed various acts of fraud through a Ponzi scheme involving the sale and leaseback of fictitious automated teller machines ("ATMs"). (See Compl., ECF No. 3.) The Court appointed Receiver on a temporary basis on September 30, 2014 and on a permanent basis on October 29, 2014 ("Appointment Order") after the SEC moved for a temporary restraining order against Defendants on September 17, 2014. (Order Granting Pl.'s Ex Parte Appl. for TRO, ECF No. 14; Prelim. Inj. and Orders, ECF No. 42; Pl.'s Ex Parte Appl. For TRO, ECF No. 6.)

The Appointment Order confers upon Receiver broad duties, responsibilities, and powers, which are designed to permit him to secure, preserve, and protect the assets of NASI, Relief Defendants Oasis Studio Rentals, LLC, Oasis Studio Rentals #2, LLC, Oasis Studio Rentals #3, LLC ("Relief Defendants"), and their subsidiaries and affiliates (collectively, "Receivership Entities"). (See Appointment Order.) The Appointment Order also authorizes Receiver to investigate and recover

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sums transferred to third parties, conduct a forensic accounting and analysis of the Receivership Entities' financial transactions, review and analyze investor claims, and maximize the amount ultimately available for distribution to investors. (*See id.*) The Appointment Order permits Receiver to engage professionals to assist him in the performance of such duties. (*See id.*)

On November 6, 2014, Receiver filed his First Interim Report and Recommendations (Receiver's First Report and Recommendations ("First R&R"), ECF No. 44), and on November 18, 2014, the Court approved and adopted the First R&R. (Order Approving Receiver's First Report and Recommendations, ECF No. 47.) On January 30, 2015, Receiver filed his Second Interim Report and Recommendations ("Second R&R"), detailing the status of Receiver's efforts and recommending that (1) NASI's ATM operations be preserved until the ATM business could be marketed and sold; (2) clawback claims be pursued by the receivership estate; and (3) that the Court approve procedures for the administration of claims at the appropriate time (Second Report and Recommendations 10, ECF No. 60.) The Court approved and adopted the Second R&R on April 21, 2015. (Order Approving Receiver's Second Report and Recommendations, ECF. No. 72.)

Receiver subsequently filed his Third Interim Report and Recommendations ("Third R&R") on May 27, 2015, (ECF No. 73); Fourth Interim Report and Recommendations ("Fourth R&R") on August 3, 2015, (ECF No. 80); Fifth Interim Report and Recommendations ("Fifth R&R") on November 5, 2015, (ECF No. 98); Sixth Interim Report and Recommendations ("Sixth R&R") on February 17, 2016, (ECF No. 114); Seventh Interim Report and Recommendations ("Seventh R&R") on May 5, 2016, (ECF No. 152); Eighth Interim Report and Recommendations ("Eighth R&R") on July 22, 2016, (ECF No. 173); Ninth Interim Report and Recommendations ("Ninth R&R") on October 25, 2016, (ECF No. 186); and Tenth Interim Report and Recommendations ("Tenth R&R") on January 25, 2017, (ECF No. 201). In each of the Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth R&Rs, Receiver detailed the actions taken during the respective quarter to secure, preserve, and protect the assets of the Receivership Entities. (*See* Third R&R; Fourth R&R; Fifth R&R; Sixth R&R; Seventh R&R; Eighth R&R; Ninth R&R; Tenth R&R.)

II. DISCUSSION

Receiver and Counsel request that the Court approve, on an interim basis, payment of fees and expenses incurred between October 1, 2016 and December 31, 2016 ("Ninth Application Period"), (*See* Receiver Appl. 1, ECF No. 206; Counsel Appl. 1, ECF No. 207.) The Court reads both Applications in conjunction with the Tenth R&R, which describes in detail the Receiver's activities during the Ninth Application Period. (*See generally* Tenth R&R.)

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A. Legal Standards

"As a general rule, the expenses and fees of a receivership are a charge upon the property administered." *Gaskill v. Gordon*, 27 F.3d 248, 251 (7th Cir. 1994). These expenses include the fees and expenses incurred by a receiver and professionals retained by a receiver to assist in the performance of the receiver's duties. Decisions regarding the timing and amount of an award of fees and costs to the Receiver and his Professionals are committed to the sound discretion of the Court. See *SEC v. Elliot*, 953 F.2d 1560, 1577 (11th Cir. 1992). In determining whether to permit fees, a court should consider "the time, labor and skill required, but not necessarily [] actually expended, in the proper performance of the duties imposed by the court upon the receivers, the fair value of such time, labor and skill measured by conservative business standards, the degree of activity, integrity and dispatch with which the work is conducted and the result obtained." *U.S. v. Code Prods. Corp.*, 362 F.2d 669, 673 (3d Cir. 1966) (quoting *Coskery v. Roberts & Mander Corp.*, 200 F.2d 150, 154 (3d Cir. 1952)). No single factor is determinative, and "a reasonable fee is based [upon] all circumstances surrounding the receivership." *SEC v. W.L. Moody & Co., Bankers (Unincorporated)*, 374 F. Supp. 465, 480 (S.D. Tex. 1974).

B. Receiver Application

Receiver requests interim approval of \$231,602.00 in fees for a total of 1,539.8 hours worked and payment on an interim basis of 80% of that amount, or \$185,281.60. (See Receiver Appl. 2; see generally Receiver Appl., Ex. A.) Receiver additionally requests interim approval and full payment in the amount of \$9,513.00 for expenses incurred during the Ninth Application Period. (See Receiver Appl. 1.) The work performed is broken down into the following categories:

Category	Hours	Amount
Business Operations	89.9	\$12,997.50
Investor Communications	6.1	\$952.50
Third Party Recoveries	622.6	\$121,217.00
Accounting/Auditing	65.9	\$9,705.00
Data Analysis	12.0	\$900.00
Status Report	7.1	\$2,485.00
Forensic Accounting	644.3	\$53,107.50
Tax Issues	12.8	\$2,885.00
Travel Time	2.0	\$350.00
Claim Against CNB	77.2	\$27,002.50
Total	1,539.80	\$231,602.00

(Receiver Appl. 2.)

The costs incurred by Receiver during the Ninth Application Period are as follows:

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Category	Amount
Computer Equipment/Software	\$450.00
Miscellaneous	\$91.85
Office Supplies	\$943.43
Online Research	\$89.88
Photocopying/Printing	\$5,660.69
Postage/Overnight Expenses	\$2,059.47
Storage of Boxed Files	\$197.79
Total	\$9,513.11

(Receiver Appl. 8.)

The Court has reviewed the Receiver's requests and find that the fees and expenses incurred during the Ninth Application Period are reasonable under the circumstances, particularly given the continued forensic accounting work required to support the clawback claims and the increased activity and recovery of clawback settlements with net winners—resulting in a significant amount of time spent reviewing documents and responses from the recipients to finalize settlement agreements. (Receiver Appl. 2-4.) Accordingly, the Court **GRANTS** Receiver's Application.

C. Counsel Application

Receiver's Counsel requests interim approval of \$98,794.35 in fees for a total of 239.90 hours worked and payment on an interim basis of 80% of that amount, or \$79,035.48. (See Counsel Appl. 2; see *generally* Counsel Appl., Ex. A.) Counsel additionally requests interim approval and full payment in the amount of \$16,490.01 for expenses. (See Counsel Appl. 1.) The work performed by Counsel is broken down into the following categories:

Category	Hours	Amount
General Receivership	0.20	\$103.50
Asset Investigation	6.40	\$3,160.80
Reporting	1.80	\$931.50
Claims & Distributions	1.40	\$724.50
Third Party Recoveries	9.30	\$4,756.50
Employment/Fees	2.30	\$1,190.25
Barbara Adler Litigation	1.50	\$823.50
Gerald & Wilma Ehrens Litigation	1.30	\$713.70
Marvin & Laurie Tarnol Litigation	22.40	\$8,082.00
Jeffrey Firestone Litigation	0.80	\$439.20
Howard Markowitz Litigation	16.80	\$5,914.80
Jill Markowitz Litigation	22.40	\$9,432.00
Jutta Richert Litigation	0.20	\$103.50
Julianne Legon Litigation	1.20	\$429.30

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Ruth Legon Litigation	6.10	\$2,479.05
Monica Johnson Litigation	2.10	\$859.95
Thomas Thompson Litigation	10.30	\$4,293.45
Seymore Phillips Litigation	0.20	\$103.50
Lois Lerner Litigation	4.80	\$2,019.60
Stan Grobelny Litigation	11.20	\$4,705.20
Elliot Sklar Litigation	12.90	\$5,444.55
Carole Bolotin Litigation	11.40	\$4,276.80
Keller/Perillo/Fiji Rentals Litigation	4.90	\$2,071.35
Moskowitz Litigation	30.90	\$12,586.95
Mark Soffa Litigation	36.50	\$15,216.75
Senter Litigation	4.70	\$1,967.85
Shafaie Litigation	4.50	\$1,864.35
Stiles Litigation	3.90	\$1,618.65
Green Litigation	2.50	\$827.10
Weiss Litigation	2.50	\$827.10
Scoffone Litigation	2.50	\$827.10
Total	239.90	\$98,794.35

(Counsel Appl. 2-3.)

The costs incurred by Counsel during the Ninth Application Period are as follows:

Category	Amount
Legal Research/PACER fees	\$936.31
Messenger Fees (court messenger/FedEx)	\$2,901.46
Service of Process – Subpoenas	\$2,485.50
Service of Process – Clawback Actions	\$6,677.25
Duplication/Faxes/Postage	\$175.73
Court Filing Fees/Recorder Fees	\$2,502.55
Subpoena Document Production Costs	\$142.09
Courtcall Telephonic Court Appearances	\$430.00
Transportation/Parking/Mileage	\$239.12
Total	\$16,490.01

(Counsel Appl. 18.)

The Court has reviewed Counsel's fee and expense requests and finds that the fees and expenses incurred during the Ninth Application Period are reasonable under the circumstances, given the continued assistance with asset investigation and litigation to settle the numerous clawback claims. (Counsel Appl. 3.) As such, the Court **GRANTS** Counsel's Application.

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III. RULING

For the foregoing reasons, the Court **GRANTS** the Applications. The Court accordingly rules as follows:

- (1) It is **ORDERED** that the Receiver William Hoffman's fees and costs for the Ninth Application Period are allowed and approved, on an interim basis, in the amounts of \$231,602.00 and \$9,513.00, respectively.
- (2) It is **ORDERED** that the Receiver William Hoffman is authorized and directed to pay himself \$185,281.60 in fees and \$9,513.00 in costs from assets of the receivership estate, the amounts of which reflect an interim payment of 80% of the allowed fees and 100% of the allowed costs.
- (3) It is **ORDERED** that Allen Matkins Leck Gamble Mallory & Natsis LLP's fees and costs for the Ninth Application Period are allowed and approved, on an interim basis, in the amounts of \$98,794.35 and \$16,490.01, respectively.
- (4) It is **ORDERED** that Receiver William Hoffman is authorized and directed to pay Allen Matkins Leck Gamble Mallory & Natsis LLP \$79,035.48 in fees and \$16,490.01, the amounts of which reflect an interim payment of 80% of the allowed fees and 100% of the allowed costs.

IT IS SO ORDERED.