

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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CIVIL MINUTES - GENERAL

CASE NO.: CV 14-07249 SJO (FFMx) DATE: February 12, 2018

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 TWELFTH INTERIM FEE APPLICATION [Docket No. 249]; GRANTING RECEIVER'S COUNSEL'S TWELFTH INTERIM FEE APPLICATION [Docket No. 250]

These matters are before the Court on (1) the Twelfth Interim Fee Application of Receiver, William Hoffman of Trigild, Inc. ("Receiver"), for Payment of Fees and Reimbursement of Expenses ("Receiver Application"); and (2) the Twelfth 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") (together, "Applications"), both filed on January 10, 2018. On January 11, 2018, Plaintiff Securities and Exchange Commission ("Plaintiff" or "the SEC") filed a Notice of Non-Opposition to the Applications. The Court found these matters suitable for disposition without oral argument and vacated the hearings set for February 12, 2018. 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").

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES - GENERAL

CASE NO.: CV 14-07249 SJO (FFMx)

DATE: February 12, 2018

(See Appointment Order.) The Appointment Order also authorizes Receiver to investigate and recover 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 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 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 Report and Recommendations ("Third R&R") on May 27, 2015, (ECF No. 73); his Fourth Report and Recommendations ("Fourth R&R") on August 3, 2015, (ECF No. 80); his Fifth Report and Recommendations ("Fifth R&R") on November 5, 2015, (ECF No. 98); his Sixth Report and Recommendations ("Sixth R&R") on February 17, 2016, (ECF No. 114); his Seventh Report and Recommendations ("Seventh R&R") on May 5, 2016, (ECF No. 152); his Eighth Report and Recommendations ("Eighth R&R") on July 22, 2016, (ECF No. 173); his Ninth Report and Recommendations ("Ninth R&R") on October 25, 2016, (ECF No. 186); his Tenth Report and Recommendations ("Tenth R&R") on January 25, 2017, (ECF No. 201); his Eleventh Report and Recommendations ("Eleventh R&R") on May 5, 2017, (EFC No. 217); his Twelfth Report and Recommendations ("Twelfth R&R") on August 8, 2017, (ECF No. 226); and his Thirteenth Report and Recommendations ("Thirteenth R&R") on November 28, 2017 (ECF No. 241). In each of the Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, and Thirteenth 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; Eleventh R&R; Twelfth R&R; Thirteenth R&R.)

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES - GENERAL

CASE NO.: CV 14-07249 SJO (FFMx)

DATE: February 12, 2018

II. DISCUSSION

Receiver and Counsel request that the Court approve, on an interim basis, payment of fees and expenses incurred between July 1, 2017 through September 30, 2017 ("Twelfth Application Period"). (See Receiver Appl. 1, ECF No. 249; Counsel Appl. 1, ECF No. 250.) The Court reads the Applications in conjunction with the Thirteenth R&R, which describes in detail the Receiver's activities during the Twelfth Application Period. (See *generally* Thirteenth R&R.)

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 \$167,927.25 in fees for a total of 1,005.3 hours worked and payment on an interim basis of 80% of that amount, or \$134,341.80. (See Receiver Appl. 2; see *generally* Receiver Appl., Ex. A.) Receiver additionally requests interim approval and full payment in the amount of \$6,439.58 for expenses incurred during the Twelfth Application Period. (See Receiver Appl. 1.) The work performed is broken down into the following categories:

Category	Hours	Amount
Business Operations	57.1	\$8,203.50
Investor Communications	12.1	\$1,237.50
Claims Admin. and Objections	1.7	\$ 595.00
Third Party Recoveries	373.0	\$106,110.00
Accounting/Auditing	88.6	\$11,136.25
Status Report	7.4	\$2,590.00
Forensic Accounting	451.4	\$33,855.00
Travel Time	4.0	\$700.00

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES - GENERAL

CASE NO.: CV 14-07249 SJO (FFMx)

DATE: February 12, 2018

Tax Issues	4.4	\$1,540.00
Claim Against CNB	5.6	\$1,960.00
Total	1,005.3	\$167,927.25

(Receiver Appl. 2.)

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

Category	Amount
Computer Equipment/Software	\$570.00
Miscellaneous	\$30.44
Office Supplies	\$49.54
Photocopying/Printing	\$1,237.19
Postage/Overnight Expenses	\$4,476.96
Storage of Boxed Files	\$75.89
Total	\$6,439.58

(Receiver Appl. 8.)

The Court has reviewed the Receiver's requests and find that the fees and expenses incurred during the Twelfth Application Period are reasonable under the circumstances, particularly given the continued forensic accounting work required to support the clawback claims, the substantial activity of clawback settlements with Net Winners, and the services required to investigate complex claims against City National Bank. (See *generally* Receiver Appl.) Receiver and his Counsel recovered \$1,829,724 pursuant to Clawback settlements in the Twelfth Application Period alone, achieving a total recovery of \$37,964,559.00 for 333 Net Winners. (Receiver Appl. 2.) Accordingly, the Court **GRANTS** Receiver's Application.

C. Counsel Application

Receiver's Counsel requests interim approval of \$182,921.40 in fees for a total of 423 hours worked and payment on an interim basis of 80% of that amount, or \$146,337.12. (See Counsel Appl. 1-2; see *generally* Counsel Appl., Ex. A.) Counsel additionally requests interim approval and full payment in the amount of \$26,608.39 for expenses incurred. (See Counsel Appl. 1.) The work performed by Counsel is broken down into the following categories:

Category	Hours	Amount
General Receivership	0.60	\$321.30
Asset Investigation	0.20	\$107.10
Reporting	3.00	\$1,606.50
Claims & Distributions	10.30	\$5,474.25
Third Party Recoveries	13.30	\$7,060.05

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES - GENERAL

CASE NO.: CV 14-07249 SJO (FFMx)

DATE: February 12, 2018

Employment/Fees	2.30	\$1,231.65
Gerald & Wilma Ehrens Litigation	2.10	\$1,181.25
Marvin & Laurie Tarnol Litigation	27.50	\$13,487.85
William Firestone Litigation	4.40	\$1,524.15
Jeffrey Firestone Litigation	1.20	\$675.00
Howard Markowitz Litigation	39.60	\$17,275.95
Julianne Legon Litigation	7.5	\$3,518.55
Carole Bolotin Litigation	53.70	\$22,533.30
Keller/Perillo/Fiji Rentals Litigation	32.70	\$15,565.05
Moskowitz Litigation	38.70	\$14,929.20
Mark Soffa Litigation	9.30	\$4,766.40
Senter Litigation	11.00	\$4,756.95
Shafaie Litigation	3.80	\$1,683.00
Green Litigation	29.40	\$10,845.00
Weiss Litigation	15.20	\$5,565.05
Scoffone Litigation	13.30	\$6,080.40
Sanchez Litigation	3.50	\$1,305.90
Lucas Litigation	5.90	\$2,422.80
Robbins Litigation	9.80	\$4,069.80
Fitzwilliams Litigation	32.20	\$13,572.90
Sullivan Litigation	16.70	\$6,671.70
De Borondy Litigation	4.40	\$2,035.35
O'Hare Litigation	12.20	\$4,192.20
Morris Litigation	1.80	\$777.60
Boardman Litigation	7.40	\$3,227.85
Thorrens Litigation	1.60	\$691.20
Henning Litigation	5.70	\$2,503.80
Leroux Litigation	2.70	\$1,259.55
Total	423.00	\$182,921.40

(Counsel Appl. 2-3.)

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

Category	Amount
Legal Research/PACER fees	\$668.80
Messenger Fees (court messenger/FedEx)	\$3,616.12
Service of Process – Subpoenas, Levies, Etc.	\$1,977.20
Expenses related to Clawback Actions	\$14,772.90
Duplication/Faxes/Postage	\$1,679.24
Court Filing Fees/Recorder Fees	\$5,720.49
Conference Calls	\$63.84

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

CASE NO.: CV 14-07249 SJO (FFMx)

DATE: February 12, 2018

Transportation/Parking/Mileage	\$87.00
Total	\$26,608.39

(Counsel Appl. 19-20.)

The Court has reviewed Counsel's fee and expense requests and finds that the fees and expenses incurred during the Twelfth Application Period are reasonable under the circumstances, given the use of litigation to settle the numerous clawback claims and to prepare complaints and related papers to commence new clawback actions, as well as the work required to execute third party recoveries. (See Counsel Appl. 3-17.) As such, the Court **GRANTS** Counsel's Application.

III. RULING

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

- (1) It is **ORDERED** that the Receiver William Hoffman's fees and costs for the Twelfth Application Period are allowed and approved, on an interim basis, in the amounts of \$167,927.25 and \$6,439.58 respectively.
- (2) It is **ORDERED** that the Receiver William Hoffman is authorized and directed to pay himself \$134,341.80 in fees and \$6,439.58 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 Twelfth Application Period are allowed and approved, on an interim basis, in the amounts of \$182,921.40 and \$26,608.39, respectively.
- (4) It is **ORDERED** that Receiver William Hoffman is authorized and directed to pay Allen Matkins Leck Gamble Mallory & Natsis LLP \$146,337.12 in fees and \$26,608.39 in costs, the amounts of which reflect an interim payment of 80% of the allowed fees and 100% of the allowed costs.

IT IS SO ORDERED.