

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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CIVIL MINUTES - GENERAL

CASE NO.: CV 14-07249 SJO (FFMx) DATE: August 23, 2016

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 EIGHTH INTERIM FEE APPLICATION [Docket No. 190]; GRANTING RECEIVER'S COUNSEL'S EIGHTH INTERIM FEE APPLICATION [Docket No. 191]; GRANTING RECEIVER'S TAX ACCOUNTANT'S SECOND INTERIM FEE APPLICATION [Docket No. 192]**

These matters are before the Court on (1) the Eighth Interim Fee Application of Receiver, William Hoffman of Trigild, Inc. ("Receiver"), for Payment of Fees and Reimbursement of Expenses ("Receiver Application"); (2) the Eighth 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"); and (3) the Second Interim Fee Application of Duffy, Kruspodin & Company, LLP, Tax Accountant to the Receiver ("Tax Accountant"), for Payment of Fees and Reimbursement of Expenses ("Tax Accountant Application") (together, "Applications"), all three of which were filed on November 28, 2016. On December 5, 2016, 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 December 27, 2016. 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.)

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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 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); and his Ninth Report and Recommendations ("Ninth R&R") on October 25, 2016, (ECF No. 186). In each of the Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth 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.)

II. DISCUSSION

Receiver and Counsel request that the Court approve, on an interim basis, payment of fees and expenses incurred between July 1, 2016 and September 30, 2016 ("Eighth Application Period"), while Special Counsel requests that the Court approve, on an interim basis, fees and expenses incurred between October 1, 2015 and August 31, 2016 ("Tax Accountant Application Period"). (See Receiver Appl. 1, ECF No. 190; Counsel Appl. 1, ECF No. 191; Tax Accountant Appl. 1, ECF

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No. 192.) The Court reads the Applications in conjunction with the Ninth R&R, which describes in detail the Receiver's activities during the Eighth Application Period. (See *generally* Ninth 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 \$217,041.00 in fees for a total of 1,489.50 hours worked and payment on an interim basis of 80% of that amount, or \$173,632.80. (See Receiver Appl. 2; see *generally* Receiver Appl., Ex. A.) Receiver additionally requests interim approval and full payment in the amount of \$6,731.11 for expenses incurred during the Eighth Application Period. (See Receiver Appl. 1.) The work performed is broken down into the following categories:

<b>Category</b>	<b>Hours</b>	<b>Amount</b>
Business Operations	124.7	\$17,958.00
Investor Communications	11.8	\$1,415.00
Third Party Recoveries	496.6	\$113,035.00
Accounting/Auditing	66.5	\$8,290.00
Status Report	5.9	\$2,010.00
Forensic Accounting	749.7	\$62,745.00
Tax Issues	8.2	\$2,717.50
Claim Against CNB	26.1	\$8,870.50
<b>Total</b>	<b>1,489.50</b>	<b>\$217,041.00</b>

(Receiver Appl. 2.)

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

<b>Category</b>	<b>Amount</b>
Computer Equipment/Software	\$450.00
Miscellaneous	\$210.10
Office Supplies	\$302.15
Online Research	\$3.00
Photocopying/Printing	\$2,587.06
Postage/Overnight Expenses	\$3,097.40
Storage of Boxed Files	\$81.40
<b>Total</b>	<b>\$6,731.11</b>

(Receiver Appl. 8.)

The Court has reviewed the Receiver's requests and find that the fees and expenses incurred during the Eighth Application Period are reasonable under the circumstances, particularly given the continued forensic accounting work done to support the clawback claims (which resulted in the recovery of \$6,535,251.00 during the Eighth Application Period alone) and the services required to pursue potentially complex claims against City National Bank ("CNB"). (See *generally* Receiver Appl.) Accordingly, the Court **GRANTS** Receiver's Application.

C. Counsel Application

Receiver's Counsel requests interim approval of \$116,666.10 in fees for a total of 252.90 hours worked and payment on an interim basis of 80% of that amount, or \$93,332.88. (See Counsel Appl. 1-2; see *generally* Counsel Appl., Ex. A.) Counsel additionally requests interim approval and full payment in the amount of \$19,738.45 for expenses incurred. (See Counsel Appl. 1.) The work performed by Counsel is broken down into the following categories:

<b>Category</b>	<b>Hours</b>	<b>Amount</b>
General Receivership	0.20	\$862.65
Asset Investigation	16.70	\$4,683.15
Reporting	3.80	\$1,215.00
Claims & Distributions	1.90	\$765.90
Third Party Recoveries	37.50	\$27,410.40
Employment/Fees	1.70	\$874.80
Barbara Adler Litigation	1.30	\$713.70
Gerald & Wilma Ehrens Litigation	0.90	\$494.10
Marvin & Laurie Tarnol Litigation	62.60	\$27,954.90
Berwyn Friedman Litigation	2.70	\$1,397.25
William Firestone Litigation	2.00	\$921.60
Jeffrey Firestone Litigation	0.60	\$329.40

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Howard Markowitz Litigation	7.90	\$3,343.05
Jill Markowitz Litigation	0.20	\$103.50
Jutta Richert Litigation	10.20	\$4,317.30
Julianne Legon Litigation	5.30	\$2,245.95
Ruth Legon Litigation	8.30	\$3,550.05
Monica Johnson Litigation	5.70	\$2,442.15
Thomas Thompson Litigation	12.80	\$5,684.40
Seymore Phillips Litigation	10.00	\$4,710.60
Lois Lerner Litigation	2.30	\$995.85
Stan Grobelny Litigation	12.60	\$4,915.80
Elliot Sklar Litigation	8.00	\$3,514.95
Carole Bolotin Litigation	3.00	\$1,282.50
Keller/Perillo/Fiji Rentals Litigation	9.70	\$5,257.35
Moskowitz Litigation	15.90	\$6,921.45
Mark Soffa Litigation	9.10	\$4,709.25
<b>Total</b>	<b>252.90</b>	<b>\$116,666.10</b>

(Counsel Appl. 2-3.)

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

<b>Category</b>	<b>Amount</b>
Legal Research/PACER fees	\$2,773.10
Messenger Fees (court messenger/FedEx)	\$1,695.72
Service of Process – Subpoenas	\$1,698.25
Service of Process – Clawback Actions	\$7,444.96
Duplication/Faxes/Postage	\$375.33
Court Filing Fees/Recorder Fees	\$5,299.00
Subpoena Document Production Costs	\$352.25
Conference Calls	\$99.84
<b>Total</b>	<b>\$19,738.45</b>

(Counsel Appl. 17.)

The Court has reviewed Counsel's fee and expense requests and finds that the fees and expenses incurred during the Eighth 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 take discovery of Oasis Studio Rentals and Fiji Rentals. (See Counsel Appl. 3-17.) As such, the Court **GRANTS** Counsel's Application.

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Receiver's Tax Accountant, Duffy Kruspodin & Company, LLP, requests interim approval of \$26,464.95 in fees on an interim basis of 80% of that amount, or \$21,171.96, for work performed between October 1, 2015 and August 31, 2016. (See Tax Accountant Appl. 1.) Tax Accountant has provided a timesheet describing how it spent 120.60 hours assisting on tax issues related to the receivership estate. In particular, Tax Accountant submits it spent (1) 50.40 hours gathering information for and preparing 2014 and 2015 income tax returns for the qualified settlement fund; (2) 44.20 hours gathering information for and preparing NASI's 2015 income tax return; (3) 15.10, 5.20, and 5.70 hours gathering information for and preparing 2014 and 2015 income tax returns for different Oasis entities. (Tax Accountant Appl. 3-5, Ex. A.) The Court finds the fees and expenses requested by Tax Accountant to be reasonable, and therefore **GRANTS** the Tax Accountant 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 Eighth Application Period are allowed and approved, on an interim basis, in the amounts of \$217,041.00 and \$6,731.11 respectively.
- (2) It is **ORDERED** that the Receiver William Hoffman is authorized and directed to pay himself \$173,632.80 in fees and \$6,731.11 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 Eighth Application Period are allowed and approved, on an interim basis, in the amounts of \$116,666.10 and \$19,738.45, respectively.
- (4) It is **ORDERED** that Receiver William Hoffman is authorized and directed to pay Allen Matkins Leck Gamble Mallory & Natsis LLP \$93,332.88 in fees and \$19,738.45 in costs, the amounts of which reflect an interim payment of 80% of the allowed fees and 100% of the allowed costs.
- (5) It is **ORDERED** that Duffy, Kruspodin & Company, LLP's fees incurred between October 1, 2015 and August 31, 2016 are allowed and approved, on an interim basis, in the amount of \$26,464.95.
- (6) It is **ORDERED** that Receiver William Hoffman is authorized and directed to pay Duffy, Kruspodin & Company, LLP \$21,171.96 in fees from assets of the receivership estate, which amount reflects an interim payment of 80% of the allowed fees.

IT IS SO ORDERED.