

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No.	8:19-cv-01174-SVW-KES	Date	February 21, 2024
Title	<i>Securities and Exchange Commission v. Richard Vu Nguyen et al.</i>		

Present: The Honorable STEPHEN V. WILSON, U.S. DISTRICT JUDGE

Paul M. Cruz

N/A

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

N/A

N/A

**Proceedings:** ORDER GRANTING IN PART RECEIVER’S APPLICATION FOR FEES AND COSTS [169] AND MOOTING THE RECEIVER’S MOTION TO DISTRIBUTE FUNDS ON HAND [171]

**I. Introduction**

Before the Court is an application for fees and by Receiver Jeffrey E. Brandlin (“Receiver”). For the foregoing reasons, the application is GRANTED IN PART.

**II. Factual and Procedural Background**

In June 2019, the Securities and Exchange Commission (“SEC”) filed a civil complaint against NTV Financial Group, Inc. (“NTV”) and its principal, Richard Vu Nguyen (“Nguyen”). Second Appl. for Att’y’s Fees 1, ECF No. 169 (“Second Appl.”); *see also* Compl., ECF No. 1. SEC named Mai Do (“Do”), Nguyen’s then-fiancé and now-wife, as a relief defendant because she had received funds from NTV. Second Appl. 1. Specifically, SEC alleged that Nguyen and NTV “target[ed] primarily Vietnamese speaking individuals living in California and elsewhere, to lure them into investing into, among other things, two fraudulent investments: a purported fund that traded stocks and options, and the chance to have Nguyen personally manage a client’s brokerage accounts.” Compl. ¶ 4, ECF No. 1.

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No.	8:19-cv-01174-SVW-KES	Date	February 21, 2024
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On June 24, 2019, the Court granted SEC's motion for a temporary restraining order and, upon SEC's recommendation, appointed Receiver as a temporary receiver over NTV, its subsidiaries and affiliates, and all bank or brokerage accounts into which the Defendants' investors' or clients' money flowed. Recommendation by Pl. SEC, ECF No. 4; Order, ECF No. 21. Following his appointment, "Receiver and his counsel immediately took control of NTV's business premises by changing the locks, redirecting the mail, taking an inventory of the personal property at the location, reviewing the information for leads on assets, and packing up the documents, computers, and other records that remained at the location." Second Appl. 2. Receiver then collected all deposited funds from NTV and Nguyen's bank accounts and liquidated all brokerage accounts to collect their funds and to minimize further losses. *Id.* This process resulted in the collection of \$457,460.00. *Id.* Defendants stipulated to the entry of a preliminary injunction and to Receiver's appointment as permanent receiver. *Id.*; see also Stipulation for Prelim. Inj., ECF No. 24.

Using paper records, Receiver manually compiled a list of potential investors so that they could be notified of his appointment. *Id.* at 3. This process was made more difficult by the lack of digital records and by Nguyen's refusal to cooperate. *Id.* Receiver then mailed potential investors a letter in both English and Vietnamese to notify them of his appointment and to provide them a link to a website with current information about the case. *Id.*

Despite a Court order mandating cooperation, Nguyen provided incomplete or false information to Receiver. *Id.* at 4. Using escrow files and bank records obtained via subpoena, Receiver was able to deduce that funds belonging to NTV were used to purchase multiple pieces of real property, luxury cars, and jewelry. *Id.* Receiver further discovered that Nguyen was attempting to sell one these real properties. *Id.* Nguyen's counsel was informed that any sale of this property would be a violation of the Court's order but declined to take the house off the market. *Id.* SEC was forced to move for an expanded freeze order on an expedited basis; Receiver helped prepare this filing and submitted a declaration in support of it. *Id.* Nguyen opposed the motion. *Id.* at 5. At its initial hearing, the Court granted the motion on a temporary

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No.	8:19-cv-01174-SVW-KES	Date	February 21, 2024
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basis and continued the matter for a final hearing in order to give Mr. Nguyen additional time to obtain and review documentation. *Id.* The parties eventually stipulated to an expanded asset freeze order. *Id.*

Receiver discovered fourteen additional bank and brokerage accounts not reported by Nguyen and Do, which then became subject to the asset freeze order. *Id.* Early in the case, Do had deposited \$315,000.00 in cash obtained as part of the refinancing of a real property into one of those accounts. *Id.* Do had then used that money for various personal purposes. *Id.* SEC and Receiver then filed an ex parte application for an order to show cause as to why Nguyen and Do should not be held in contempt of court. Second Appl. 5; *see also* ECF No. 59. The Court ordered Nguyen and Do to file declarations about their bank and brokerage accounts. Second Appl. 5; *see also* ECF No. 67. Receiver subpoenaed financial institutions to continue tracking the funds Do obtained via the aforementioned refinancing. Second Appl. at 5–6.

Receiver moved to bring several properties, the fine jewelry, and the luxury cars bought using NVT funds into the receivership estate. *Id.* at \*6.; *see also* ECF No. 46. Receiver learned that the jewelry and cars had already been sold and the proceeds had already been spent; only the properties were brought into the receivership. Second Appl. 6.

Receiver obtained Court approval to retain brokers to sell the three real properties (an office condominium and the two residential properties in Santa Ana). *Id.*; *see also* ECF Nos. 90, 116. Net proceeds totaled \$311,359.00. Receiver also obtained Court permission to retain special litigation counsel to engage in litigation to recover funds inappropriately transferred by NTV. Second Appl. 6–7; *see also* ECF Nos. 118, 131. These efforts generated net recoveries worth \$469,412.64. Second Appl. 6–7.

In an order dated March 14, 2022, the Court allowed Receiver to recover \$221,206.25 in fees and \$1,142.81 in costs. *Id.* at 7; *see also* ECF Nos. 166, 168. In that same order, the Court allowed SWE to recover \$192,638.20 in fees and \$16,275.54 in costs. ECF Nos. 166, 168. The Court granted Receiver authority to pay 80% of fees and 100% of costs at that time, with the remaining 20% to be paid later. ECF

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No.	8:19-cv-01174-SVW-KES	Date	February 21, 2024
Title	<i>Securities and Exchange Commission v. Richard Vu Nguyen et al.</i>		

Nos. 166, 168.

In this application, Receiver seeks an additional \$117,019.00. That amount represents 274.80 hours expended. Second Appl., Ex. 1 (Brandlin Associates Detailed Fees). To arrive at this monetary amount, Receiver states that he has reduced his hourly rate by 22%; additionally, Receiver has voluntarily reduced his fees by \$15,000.00 “as a courtesy and to increase the amount available for investors.” Second Appl. 9. Applying both reductions is “a total discount off of [Receiver’s] normal rates of 31%.” *Id.* The Court has created the following table breaking down how these hours were allocated. Second Appl. 9–15.

Category	Hours
General Case Administration	4.9
Investor Presentation	31.65
Court Appearances	2.5
Forensic Accounting	74.85
Real Estate Evaluation	1.60
Collecting and Analyzing Investor Claims	39.70
Assisting with clawback litigation	16.20
Preparing Declaration Regarding Forensic Accounting (also to be used by SEC)	95.00

SWE seeks \$27,388.35 in fees and \$5,098.61 in costs. SWE states that it arrived at that number by reducing its fees “by \$5,000 as a courtesy and to increase the amount available for investors.” *Id.* That amount represents 84.80 hours expended. Second Appl., Ex. 3 (SWE Detailed Fees).

Category	Hours
Investor Presentation	15.50
Asset Analysis for Clawback Actions	6.80

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No. 8:19-cv-01174-SVW-KES Date February 21, 2024

Title *Securities and Exchange Commission v. Richard Vu Nguyen et al.*

Claims Motion + Administration	47.60
Preparation of Forensic Accounting Declaration	5.00

The claims process is now complete. Second Appl. at 8. After all claims were filed, net investment was estimated to be \$1,891,065.00. Receiver estimates his return to investors to be approximately 40.66% of their net investment. Receiver estimates that investors would only have received 23.66% of their net investment had he not been appointed, based on the assets held in NVT's bank and brokerage accounts. *Id.*

Receiver has provided the following summary of its administration of the estate through August 15, 2023.<sup>1</sup>

<b>Task</b>	<b>Change to Cash Balance</b>
Amount recovered from bank accounts and liquidation of investments	+ \$457,460.00
Amount realized from sale of the three real properties, net of expenses of sale	+ \$311,359.00
Clawback litigation net recoveries to date	+ \$469,412.64
Miscellaneous deposits	+ \$1,660.00
Less costs of the receivership, including professional fees and costs paid to date, locksmith fees, website hosting fees, postage, etc.	– \$355,188.00
Ending cash balance as of August 15, 2023	\$884,703.00

<sup>1</sup> The Court has modified the table slightly to increase readability.

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No.	8:19-cv-01174-SVW-KES	Date	February 21, 2024
Title	<i>Securities and Exchange Commission v. Richard Vu Nguyen et al.</i>		

**III. Legal Standard for an Award of Receiver's Fees**

“A receiver appointed by a court who reasonably and diligently discharges his duties is entitled to be fairly compensated for services rendered and expenses incurred.” *SEC v. Total Wealth Mgmt.*, No. 15-cv-226-BAS-DHB, 2016 U.S. Dist. LEXIS 173753, 2016 WL 7242080, at \*2 (S.D. Cal. Dec. 15, 2016) (quoting *SEC v. Byers*, 590 F. Supp. 2d 637, 644 (S.D.N.Y. 2008)). “[I]t is proper to pay the Receiver appropriate compensation, and those funds may be deducted from the total value of the Receivership.” *SEC v. Schooler*, No. 3:12-cv-2164-GPC-JMA, 2021 U.S. Dist. LEXIS 189329, 2021 WL 4480673, at \*5 (S.D. Cal. Sep. 30, 2021). “The entitlement to reasonable compensation extends to the professionals employed by the receiver.” *Total Wealth Mgmt.*, 2016 U.S. Dist. LEXIS 173753, 2016 WL 7242080, at \*2 (quoting *Drilling & Exploration Corp. v. Webster*, 69 F.2d 416, 418 (9th Cir. 1934)). “The amount of compensation to be awarded is firmly within the discretion of the district court, and generally is a charge upon the property or funds in receivership.” *Id.* (citing *Gaskill v. Gordon*, 27 F.3d 248, 251, 253 (7th Cir. 1994)).

“In determining the reasonableness of fees and costs requested, the court considers the time records presented, the quality of the work performed, the complexity of the problems faced, and the benefits to the receivership estate, and the agency’s position on the fee application will be given great weight.” *FTC v. Cardiff*, No. ED CV 18-2104-DMG (PLAx), 2020 U.S. Dist. LEXIS 221780, 2020 WL 6815100, at \*7 (C.D. Cal. Oct. 13, 2020) (citing *Total Wealth Mgmt.*, 2016 U.S. Dist. LEXIS 173753, 2016 WL 7242080, at \*1); *see also Schooler*, 2021 U.S. Dist. LEXIS 189329, 2021 WL 4480673, at \*5 (S.D. Cal. Sep. 30, 2021) (citing *SEC v. Fifth Avenue Coach Lines*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973)) (applying similar factors: (1) the complexity of the receiver’s tasks; (2) the fair value of the receiver’s time, labor, and skill measured by conservative business standards; (3) the quality of the work performed, including the results obtained and the benefit to the receivership estate; (4) the burden the receivership estate may safely be able to bear; and (5) the Commission’s opposition or acquiescence). “‘Results are always relevant’ in evaluating the reasonableness of a receiver’s fee.” *FTC v. Cardiff*, No. ED CV 18-2104-DMG (PLAx), 2021 U.S. Dist. LEXIS 27503, at \*6 (quoting *In re Alpha Telcom, Inc.*, No. CV 01-1283-PA,

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No.	8:19-cv-01174-SVW-KES	Date	February 21, 2024
Title	<i>Securities and Exchange Commission v. Richard Vu Nguyen et al.</i>		

2006 U.S. Dist. LEXIS 79997, 2006 WL 3085616, at \*6 (D. Or. Oct. 27, 2006)).

“Courts are not to award receivers and their attorneys ‘extravagant fees,’ but only ‘moderate ones.’” *SEC v. Byers*, 590 F. Supp. 2d 637, 645 (S.D.N.Y. 2008) (quoting *In re New York Investors, Inc.*, 79 F.2d 182, 185 (2d Cir. 1935)). “Courts should take particular care to scrutinize fee applications ‘to avoid even the appearance of a windfall.’” *Id.* (quoting *SEC v. Goren*, 272 F. Supp. 2d 202, 206 (E.D.N.Y. 2003)). “This ‘rule of moderation makes particular sense’ where ‘victims are likely to recover only a fraction of their losses,’ if any.” *Cardiff*, 2021 U.S. Dist. LEXIS 27503, at \*7 (quoting *Byers*, 590 F. Supp. 2d at 645). “To reduce the burden on courts to comb through every fee application, courts ‘endorse percentage cuts as a practical means of trimming fat from a fee application.’” *Cardiff*, 2021 U.S. Dist. LEXIS 27503, at \*7 (quoting *SEC v. Small Bus. Capital Corp.*, No.CV 12-03237 EJD, 2013 U.S. Dist. LEXIS 116636, 2013 WL 4446780, at \*2 (N.D. Cal. Aug. 16, 2013)).

#### **IV. Discussion**

##### **A. Time Records Presented**

“Block billing is ‘the time-keeping method by which each lawyer and legal assistant enters the total daily time spent working on a case, rather than itemizing the time expended on specific tasks.’” *Hill Phx. Inc. v. Classic Refrigeration Socal Inc.*, No. SA CV 19-00695-DOC (JDEx), 2023 U.S. Dist. LEXIS 116272, 2023 WL 4291116, at \*10 (C.D. Cal. May 10, 2023) (quoting *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 945 (9th Cir. 2007)). “The Ninth Circuit has recognized district courts’ authority to reduce hours that are billed in block format if the party seeking fees fails to provide enough information to reveal whether the amount of time spent performing tasks was reasonable.” *Id.* (quoting *Welch*, 480 F.3d at 948). “Because block billing creates inherent ambiguities that prevent a trial court from evaluating the reasonableness of a fee request, courts in this circuit have repeatedly trimmed block-billed hours by between 10% and 30%.” *Id.* (collecting cases).

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No.	8:19-cv-01174-SVW-KES	Date	February 21, 2024
Title	<i>Securities and Exchange Commission v. Richard Vu Nguyen et al.</i>		

**1. Receiver**

For the convenience of the reader, the Court reproduces its chart breaking down the hours expended by the Receiver from Section II *supra*:

Category	Hours
General Case Administration	4.9
Investor Presentation	31.65
Court Appearances	2.5
Forensic Accounting	74.85
Real Estate Evaluation	1.60
Collecting and Analyzing Investor Claims	39.70
Assisting with clawback litigation	16.20
Preparing Declaration Regarding Forensic Accounting (also to be used by SEC)	95.00

Based on the Court's extensive experience, most of these hours expended are reasonable—with one exception. Receiver expended 95 hours preparing his declaration regarding forensic accounting; that number is twenty hours higher than the number spent actually conducting the forensic accounting. Receiver explains this process thusly:

Brandlin incurred \$49,400 in fees for 95 hours of work in connection with the calculation and allocation of the disgorgements by Richard Nguyen and Mai Do and his preparation of a declaration to support that. Because the SEC's efforts to resolve its claims against Richard Nguyen and Mai Do informally have been rebuffed, the Receiver understands that the SEC is in the process of preparing a motion to establish their liability and to fix their disgorgement and penalty amounts. Because the Receiver had reconstructed NTV's books records, rather than recreate the wheel, the SEC has utilized the Receiver's knowledge to assist it with its calculations. The time spent in this

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No.	8:19-cv-01174-SVW-KES	Date	February 21, 2024
Title	<i>Securities and Exchange Commission v. Richard Vu Nguyen et al.</i>		

category was to provide the required detailed backup for the figures in the Receiver's analysis and then to put these figures into the form of a declaration. Because of the number of accounts and the volume of transactions, providing the detail was not an easy effort but it is a necessary one in order to avoid providing a basis for objection by Richard Nguyen or Mai Do. The Receiver understands that this declaration is nearly complete and expects that it will be useful to the resolution of the claims in the underlying litigation by the SEC against Richard Nguyen and Mai Do.

Second Appl. 13–14. As Receiver points out, this process was done to avoid “recreat[ing] the wheel.” It therefore makes little sense that summarizing the forensic accounting work already done took longer than the process of conducting that forensic accounting. The Court therefore awards only half of the fees requested for this work (i.e., \$24,700.00, which is half of the requested \$49,400.00).

Additionally, several entries on Receiver's bill are block billed. Consider, for example, the 7.50-hour entry billed on November 22, 2021: “Prepared initial draft of NTV Investor Presentation (12 page PowerPoint) (11/22/21). Preparation of various charts and schedules to include in the presentation. Discussions with Jeff Brandlin regarding initial draft.” Another example is the 4.60-hour entry billed on November 23, 2021: “Review dec of Maria Rodriguez re funds raised from investors, tracing deposits into various brokerage & bank accounts, tracing transfers between bank & brokerage accounts, identifying the nature of other receipts - Advisory fees, Merchant bankcard, construction, etc. Also traced the payments 7 transfers out of the bank accounts into brokerage accounts, used by D's for personal use, cash, non-investor related, credit card payments, West Coast Escrow and unknown. Also reviewed the amounts under capitalized in the brokerage accounts based on Investor deposits.” Second Appl., Ex. 1 (Brandlin Associates Detailed Fees). “Without specifying how much time was spent on each distinct task there is no way for the Court to determine whether the total time spent on these tasks combined was reasonable.” *Hill Phx. Inc.*, 2023 U.S. Dist. LEXIS 116272, 2023 WL 4291116, at \*12 (citing *Banas v. Volcano Corporation*, 47 F.Supp.3d 957, 968 (N.D. Cal., 2014)). To be clear, not all of Receiver's entries are block billed. But a sufficient number of the larger entries are block billed to give the Court pause. For this reason, the Court implements a 10% reduction across the board, which is on the lower end of the spectrum for

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. 8:19-cv-01174-SVW-KES Date February 21, 2024

Title *Securities and Exchange Commission v. Richard Vu Nguyen et al.*

such reductions.

Before making its reductions, the Court will disregard Receiver's \$15,000 discount. The Court therefore starts from a requested award of \$132,019.00 (\$117,019.00 + \$15,000). The Court then reduces Receiver's requested fees (\$132,019.00) by \$24,700.00 due to excessive time spent preparing the declaration regarding forensic accounting. This leaves Receiver with a lodestar of \$107,319.00, which the Court further reduces by 10% due to Receiver's block billing. This leaves Receiver with a lodestar of \$96,587.10.

**2. SWE**

For the convenience of the reader, the Court reproduces its chart breaking down the hours expended by SWE from Section II *supra*:

Category	Hours
Investor Presentation	15.50
Asset Analysis for Clawback Actions	6.80
Claims Motion + Administration	47.60
Preparation of Forensic Accounting Declaration	5.00

The Court finds the hours expended on these tasks to be reasonable; accordingly, no reduction is made based on that rationale.

SWE's billing records are mostly free of block billing; accordingly, no reduction is made based on that rationale.

**B. Complexity of the Problems Faced**

The Court analyzes the complexity of the problems faced by Receiver and SWE together; these

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	8:19-cv-01174-SVW-KES	Date	February 21, 2024
Title	<i>Securities and Exchange Commission v. Richard Vu Nguyen et al.</i>		

problems were legitimately complex. Receiver was forced to deal with incomplete and nondigitized records, forced to work against the efforts of Nguyen to prevent recovery of assets, forced to engage in litigation, and required to work across language barriers to secure maximum return to investors. The Court makes no reduction in award based on lack of complexity.

**C. Benefits to the Receivership Estate and the Estate's Ability to Bear the Fee**

Here, the Court analyzes the combined success of the Receiver and SWE. Receiver estimates his return to investors to be approximately 40.66% of their net investment. Second Appl. 8. Receiver estimates that investors would only have received 23.66% of their net investment had he not been appointed, based on the assets held in NVT's bank and brokerage accounts. Receiver thus secured investors an additional 17% return. Proportionally, that is an increase of 71.85% of the starting return value. The Court calculates the combined returns to investors, based on liquidation of real properties and clawback litigation, as worth \$780,771.64. However, to recover that amount, Receiver and SWE seek a combined award of fees and costs of \$580,768.76 (representing \$431,262.80 in fees and costs already awarded plus \$149,505.96 in fees and costs presently applied for). If the Court were to award this amount in full, that would leave investors with a net recovery of an additional \$200,002.88 because of Receiver's efforts. Put another way, the Court would be allowing 74.38% of additional funds recovered to be expended on fees and costs related to the reacquisition of those funds. While Receiver and his counsel are entitled to their compensation, "the court is not required to fix fees in total disregard of the fact that this receivership may produce a very lean harvest, that all interests involved may suffer heavily, and that the whole enterprise may not be a success." *SEC v. Capital Cove Bancorp LLC*, No. SACV 15-980-JLS (JCx), 2016 U.S. Dist. LEXIS 194834, at \*20 (C.D. Cal. June 29, 2016) (quoting *In re Alpha Telecomm.*, No. CV 01-1283-PA, 2006 U.S. Dist. LEXIS 79997, 2006 WL 3085616, at \*5) (internal quotations and alterations omitted).

"In fixing the amount of fees to be paid to the Receiver and his attorneys, an important consideration is the extent of the assets available to pay any such fees, and the extent to which the investors and creditors have benefitted (or not) as a result of the Receiver's endeavors." *In re Alpha Telcom, Inc.*,

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	8:19-cv-01174-SVW-KES	Date	February 21, 2024
Title	<i>Securities and Exchange Commission v. Richard Vu Nguyen et al.</i>		

2006 U.S. Dist. LEXIS 79997, 2006 WL 3085616, at \*13 (citing *Specialty Products Co. v. Universal Indus. Corp.*, 21 F. Supp. 92, 94 (M.D. Pa. 1937)). Here, the Receivership Estate is not particularly large. It presently possesses \$884,703.00. That amount is a remaining balance, but it overstates the funds available for allocation. So far, the Court has awarded \$221,206.25 in fees and \$1,142.81 in costs for Receiver and \$192,638.20 in fees and \$16,275.54 in costs for SWE. 80% of that award has been paid out so far; 20% must still be paid from the Receivership estate (an award of \$44,241.25 for Receiver and \$38,527.64 for SWE). Further awards will continue to eat into the Receivership Estate's assets, thereby reducing the ultimate recovery available to investors.

Given the limited nature of the funds in the Receivership Estate and the moderate success obtained by Receiver, a 30% reduction in fees is appropriate. A 30% reduction of Receiver's lodestar results in an award of \$67,610.97. Before reducing SWE's lodestar, the Court disregards SWE's included \$5,000.00 discount. Therefore, the Court starts from a lodestar of \$32,388.35 (\$27,388.35 + \$5,000.00). Reducing that amount by 30% results in an award of \$22,671.85.

**D. SEC's Position**

SEC has not expressed a position on whether or not the fees applied for are reasonable. Accordingly, this factor is neutral in the Court's analysis.

**V. Conclusion**

The Court has evaluated the fee applications for their reasonableness. Because Receiver expended excessive hours preparing a declaration related to its forensic accounting, the Court reduced Receiver's fees. The Court further reduced Receiver's fees because of instances of block billing in Receiver's billing records. The Court then reduced Receiver and SWE's fees by 30% to reflect the limited funds available in the Receivership Estate and the modest success secured by their efforts.

Initials of Preparer

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No.	8:19-cv-01174-SVW-KES	Date	February 21, 2024
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Title	<i>Securities and Exchange Commission v. Richard Vu Nguyen et al.</i>
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For the reasons expressed above, Receiver is awarded:

- \$67,610.97 in fees, and
- \$44,241.25 in held back fees from the Court's prior order.

SWE is awarded:

- \$22,671.85 in fees,
- \$5,098.61 in costs, and
- \$38,527.64 in held back fees from the Court's prior order.

Additionally, Receiver is ORDERED to move for a distribution of funds in the Receivership Estate reflecting deductions made for the amounts awarded in this order within fourteen days; Receiver's previous motion to that effect, ECF No. 171, is MOOTED by this order.

**IT IS SO ORDERED.**

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