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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

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12 SECURITIES AND EXCHANGE
COMMISSION,

13 Plaintiff,

14 v.

15 TUCO TRADING, LLC and
16 DOUGLAS G. FREDERICK,

17 Defendants.

Case No. 08-CV-00400 DMS (BLM)

**FIRST INTERIM APPLICATION FOR
APPROVAL AND PAYMENT OF
PROFESSIONAL FEES AND COSTS TO
ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP, AS
ATTORNEYS FOR RECEIVER**

Date: November 7, 2008

Time: 1:30 p.m.

Ctrm: 10

Judge: Hon. Dana M. Sabraw

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21 Allen Matkins Leck Gamble Mallory & Natsis LLP ("Allen Matkins"), general counsel for
22 Thomas F. Lennon ("Receiver"), the Court-appointed permanent receiver for Tuco Trading, LLC
23 ("Tuco"), submits its first interim application for approval and payment of fees and reimbursement
24 of expenses. This application covers fees and costs incurred during the period March 5 through
25 June 30, 2008 (the "Application Period").

26 Allen Matkins incurred \$172,499 in fees and \$1,734.18 in costs for this Application
27 Period, and seeks interim approval and payment on an interim basis of \$137,999.20 in fees and
28 \$1,734.18 in costs. Detailed descriptions of the services rendered are contained in Exhibit A

1 attached hereto. Exhibit B is a chart reflecting the hours and fees billed to each category of
2 services on a monthly basis during the Application Period. Exhibit C is a summary of the out-of-
3 pocket costs. During the Application Period, Allen Matkins spent 509.2 hours on behalf of the
4 Receiver at an overall blended billing rate of \$339 per hour. Because of the interim nature of this
5 fee application, Allen Matkins seeks payment of only 80% of approved fees and 100% of
6 approved costs at this time.

7 The Receiver provided his fee application and those of his professionals to the SEC prior
8 to filing. The SEC raised some concerns with a small portion of the fees, but agreed that the 20%
9 holdback on Allen Matkins' fee amount was significantly larger than the fees in question, and that
10 the holdback would allow its comments to be addressed in connection with the final fee
11 applications for the case. The SEC, as always, reserves its right to object to fees paid or held back
12 in connection with the final fee applications presented to the Court. The SEC does not object to
13 the payment at this time of the fees and costs requested.

14 **I. OVERVIEW**

15 A detailed description of the history and status of the case is contained in the First Interim
16 Fee Application of the Receiver. Further detail can also be found in the Receiver's First Interim
17 Report. The following is an overview of the Allen Matkins' role in the Receivership case.

18 **A. Allen Matkins' Employment**

19 The Receiver selected Allen Matkins as his general counsel because of the firm's extensive
20 experience and expertise in federal equity receiverships, as well as bankruptcy and litigation
21 matters. Allen Matkins has served as counsel to federal equity receivers in over 20 cases. Allen
22 Matkins has also represented a variety of parties in bankruptcy cases and has significant
23 substantive expertise in related areas such as corporate and securities law, real estate and other
24 types of transactions. Biographical information on each Allen Matkins attorney that has had
25 significant participation in the case is attached collectively as Exhibit D.

26 **B. Representation of the Receiver**

27 Allen Matkins attorneys have provided hands-on assistance to the Receiver in all stages of
28 the receivership. Among other tasks, Allen Matkins attorneys have (a) conducted interviews of

1 Mr. Frederick, Tuco's former employees, members and other creditors of Tuco, (b) assisted the
2 Receiver in gathering and reviewing documents, (c) communicated with members and other
3 creditors regarding the status of the case and their claims, (d) drafted various motions, applications
4 and other pleadings, including the Receiver's First Interim Report, detailing his activity through
5 the first approximately 75 days of the case, and (e) devoted substantial time to analyzing and
6 working to resolve outstanding issues with Tuco's broker-dealer GLB Trading, clearing broker
7 Penson Financial Services, members and creditors.

8 Tuco Trading was a day trading firm with many members, creditors, service providers,
9 lenders, affiliated persons and other complex relationships. The volume of shares traded through
10 its primary accounts was tremendous, all of which was done in automated format, using
11 sophisticated electronic trading platforms and tracking software. Immediately after the Receiver's
12 temporary appointment, all of this automated trading activity stopped when Penson terminated
13 clearing services to Tuco's main accounts. To further complicate things, the books and records of
14 the company were in very poor condition and many key documents were not kept by Tuco or
15 Frederick. Finally, with an Order to Show Cause re Preliminary Injunction pending, the Receiver
16 needed to be able to advise the Court regarding his preliminary findings in a very short period of
17 time.

18 The Receiver and his professionals, including Allen Matkins, devoted substantial time
19 during the first few weeks of the case to learning how the business operated, understanding the
20 various relationships, analyzing the respective legal and contractual obligations, evaluating Tuco's
21 assets and liabilities, and taking preliminary steps to preserve such assets and minimize liabilities.
22 Upon entry of the Judgment and the Receiver's permanent appointment, Allen Matkins took
23 additional steps to preserve the value of the estate and minimizing expenses, including obtaining
24 the Order in Aid of Receivership, assisting the Receiver in terminating the office lease and the
25 former employees, and securing Court approval of the sale of the office equipment. Allen Matkins
26 also continued to assist the Receiver in investigating and working to resolve potential disputes
27 with GLB, Penson and other interested parties, and communicating with Tuco's members and
28 creditors. Allen Matkins also represented the Receiver in discussions with the SEC, Frederick and

1 creditor Lightspeed regarding the terms on which an interim distribution would be proposed to the
2 Court. The Receiver's Motion for Order Authorizing an Interim Distribution ("Interim
3 Distribution Motion") was filed on July 10, 2008.

4 **C. Efforts to Understand and Resolve Significant Disputes**

5 As noted above, Allen Matkins has assisted the Receiver in investigating and attempting to
6 resolve disputes with GLB and Penson. At stake in these complex disputes is more than
7 \$1.25 million in funds that the Receiver believes should be returned to the receivership estate. In
8 light of the amount at stake, the complexity of the issues, and the significant impact the outcome
9 could have on the final distribution to creditors, these disputes warranted in-depth investigation of
10 relevant facts and thorough research of relevant legal issues. This work has been and continues to
11 be performed by Allen Matkins. The firm has also assisted the Receiver in attempting to negotiate
12 settlements, including efforts to obtain relevant data and information, analysis of the same, and
13 making multiple offers to compromise. This work was commenced during the Application Period
14 and has continued through the present. The Receiver anticipates seeking relief from the Court
15 with respect to the dispute with GLB in the near future. Relief will also be sought with respect to
16 the dispute with Penson if a compromise can not be reached promptly.

17 **II. FEE APPLICATION**

18 Allen Matkins has recorded its time in the following categories:¹

- 19 A. Temporary Receivership
- 20 B. Permanent Receiver - General
- 21 C. Employment/Fees
- 22 D. Asset Investigation
- 23 E. Operating Expenses, Wind Down & Asset Sales
- 24 F. Creditor Claims & Distributions
- 25 G. Reporting

26
27 ¹ While every effort is made to be consistent and accurate in the allocation of activities to the
28 various categories, certain activities may lend themselves to more than one category, or may
simply be difficult to categorize. Nevertheless, Exhibit A reflects the actual time spent on any
given activity and an accurate description of the services provided.

1 **A. Temporary Receivership (002)**²

2 This category contains time spent by Allen Matkins assisting the Receiver during the first
3 two weeks of the case. As noted above, the Receiver and his professionals, including Allen
4 Matkins, devoted substantial time during this period to (a) interviewing and gathering information
5 from Tuco, Frederick and Tuco's former employees, (b) understanding the business and the
6 respective roles and relationships between Tuco and its broker-dealers, clearing broker, trading
7 software providers, lenders, members and other creditors, (c) protecting the assets of the company,
8 (d) reviewing records, and (e) preparing to advise the Court on the Receiver's initial findings in
9 connection with the Order to Show Cause re Preliminary Injunction.

10 Allen Matkins also appeared on behalf of the Receiver at the initial hearing on the SEC's
11 ex parte request for the TRO, as well as follow-up telephonic hearings on March 5, March 7 and
12 March 10, 2008.

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Name	Title	Rate	Hours	Fees
D. Osias	Bankruptcy Partner	\$600	23.7	\$14,220.00
D. Riley	Bankruptcy Partner	\$445	3.4	\$1,513.00
T. Fates	Bankruptcy Associate	\$305	59.6	\$18,178.00
TOTAL			86.7	\$33,911.00
Avg. Hourly Rate		\$391		

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18 **B. Permanent Receivership – General (003)**

19 This category contains time spent by Allen Matkins assisting the Receiver in his general
20 administrative duties after entry of the Judgment of Permanent Injunction entered on March 17,
21 2008. These services include (a) implementing the Judgment, (b) obtaining the production of
22 documents, electronic data and other information, (c) filing and recording the Judgment in the
23 foreign districts in which Tuco held property pursuant to 28 U.S.C. § 754, (d) communicating with
24 the SEC regarding the status of the case and certain accounting issues, (e) communicating with
25 original counsel for Frederick (the Keesal Young & Logan firm) regarding their withdrawal, and
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27 _____
28 ² This number reflects the internal billing sub-matter assigned to this category as reflected in Exhibit A.

1 with new counsel for Frederick (the Sadis & Goldberg firm) regarding Frederick's appeal of the
2 Judgment, and (f) assisting the Receiver and his forensic accountant, William H. Ling ("Ling")
3 with various accounting and investigative issues.

Name	Title	Rate	Hours	Fees
D. Osias	Bankruptcy Partner	\$600	5.7	\$3,420.00
D. Riley	Bankruptcy Partner	\$445	.6	\$267.00
T. Fates	Bankruptcy Associate	\$305	47.6	\$14,518.00
J. Kaup	Litigation Paralegal	\$190	5.3	\$1,007.00
TOTAL			59.2	\$19,212.00
Avg. Hourly Rate		\$325		

10 **C. Employment/Fees (004)**

11 Time billed in this category relates to Allen Matkins' employment as counsel for the
12 Receiver, and initial preparation for the first interim fee applications of the Receiver, Allen
13 Matkins, Ling, and Investigative Technologies, LLC, information and technology consultant to the
14 Receiver.

Name	Title	Rate	Hours	Fees
D. Osias	Bankruptcy Partner	\$600	.1	\$60.00
D. Riley	Bankruptcy Partner	\$445	.3	\$133.50
T. Fates	Bankruptcy Associate	\$305	2.8	\$854.00
TOTAL			3.2	\$1,047.50
Avg. Hourly Rate		\$327		

21 **D. Asset Investigation (005)**

22 Services in this category include time spent during the Application Period investigating
23 assets, claims and potential disputes, and efforts to recover assets, and resolve claims and potential
24 disputes. In particular, Allen Matkins has assisted the Receiver in investigating deductions made
25 by GLB from commissions earned by Frederick, commissions that were earned by Frederick but
26 remain unpaid by GLB, unallocated NYFIX charges, and the claim by Frederick of a 10%
27 ownership interest in T3. The investigation into the legal fees and related costs GLB has deducted
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1 from commissions earned by Frederick has required considerable investigation and analysis by
2 Allen Matkins, there being substantial sums at issue and several regulatory proceedings unrelated
3 to this action to which the fees and costs pertain.

Name	Title	Rate	Hours	Fees
D. Osias	Bankruptcy Partner	\$600	3.2	\$1,920.00
T. Fates	Bankruptcy Associate	\$305	81.8	\$24,949.00
J. Kaup	Litigation Paralegal	\$190	.2	\$38.00
TOTAL			85.2	\$26,907.00
Avg. Hourly Rate		\$316		

9
10 **E. Operating Expenses, Wind Down & Asset Sales (006)**

11 Time billed in this category includes assistance with issues relating to the operating
12 expenses of the company, wind down of the business and sale of assets. It was initially proposed
13 by Frederick and contemplated by the Receiver that GLB would assume responsibility for the rent
14 due under the La Jolla lease and the payroll for the former employees for a 60 to 90 day period
15 beginning in April or May 2008. The goal was to save the receivership estate these expenses
16 while keeping the office open and the former employees available to assist with producing records
17 and accounting information, and reconciling outstanding trades and fees to the back office
18 accounting system. After the Receiver negotiated the terms and drafted an agreement, GLB
19 decided not to go through with the deal. Allen Matkins' time spent on this contemplated
20 agreement is included in this category.

21 At the time of the Receiver's appointment, trading activity had stopped. Market positions
22 held by numerous Tuco members remained open, however. These positions were ultimately
23 liquidated by the members that held them and the Receiver by issuing an instruction to GLB.
24 Allen Matkins assisted the Receiver in this process, including working with Tuco's former
25 employees to reconcile the liquidating orders and related fees to the back office accounting
26 system. Allen Matkins also assisted the Receiver in accommodating the request of one Tuco
27 member to transfer a stock position out of the Tuco accounts to another broker account in his
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1 name in exchange for a payment in the amount of the market value of the position at the time of
2 the transfer.

3 As noted in the Receiver's First Interim Report, Penson withheld \$300,000 when it closed
4 the Tuco accounts and transferred the balances to the Receiver. Penson has asserted the right to
5 offset from those balances losses suffered in connection with the liquidation of market positions.
6 The Receiver does not agree with Penson regarding the allocation of loss responsibility.
7 Separately, the Receiver has asserted the right to recover from Penson interest charges that were
8 collected by Penson from the Tuco accounts. The Receiver and Penson are engaged in settlement
9 discussions in an effort to resolve both of these issues. Allen Matkins time assisting the Receiver
10 in investigating and working to resolve these issues is included in this category.

11 Allen Matkins advised the Receiver regarding termination of the La Jolla office lease and
12 the former employees, and the removal of non-Tuco personal property located at the La Jolla
13 office space (i.e. desk and computer equipment used by Tuco members that conducted their
14 trading activity at the La Jolla office space). The firm assisted with obtaining Court approval of
15 the sale of the Tuco office equipment to Frederick for \$21,000. The sale was approved by order
16 entered on May 5, 2008.

Name	Title	Rate	Hours	Fees
D. Osias	Bankruptcy Partner	\$600	19.6	\$11,760.00
D. Riley	Bankruptcy Partner	\$445	.5	\$222.50
J. Davidson	Corporate Partner	\$520	.3	\$156.00
T. Fates	Bankruptcy Associate	\$305	117.8	\$35,929.00
N. Unkovic	Corporate Associate	\$255	7.5	\$1,912.50
TOTAL			145.7	\$49,980.00
Avg. Hourly Rate		\$343		

24 **F. Creditor Claims & Distributions (007)**

25 This category includes time spent by Allen Matkins communicating directly with Tuco
26 members and creditors regarding, among other things, the amounts of their claims and the timing
27 of distributions. As noted in the First Interim Report, an interim distribution to members was
28 contemplated by the Receiver early in the case. At that time, however, the Receiver was unaware

1 of the large number of open positions remaining in the Tuco accounts. As noted above, these open
2 positions had to be liquidated and reconciled, a process that was completed in early May. In the
3 meantime, Tuco creditor Lightspeed raised the issue of priority of distribution between members
4 and other creditors. Allen Matkins assisted the Receiver in assessing whether, when and in what
5 form an interim distribution could be made, including in discussions with the SEC and Lightspeed
6 regarding the priority issue. The Interim Distribution Motion was filed on July 10, 2008, and
7 approved by order entered on July 24, 2008.

8 As noted in the Interim Distribution Motion, the Receiver and Allen Matkins have received
9 and responded to many inquiries from members and other creditors regarding when and in what
10 amount a withdrawal or interim distribution would be made. Several of Tuco's larger members
11 and creditors engaged counsel and contacted Allen Matkins with specific questions, concerns and
12 demands regarding the treatment of their claims, the assets of the receivership estate and other
13 specific issues discussed in the Receiver's First Interim Report. Allen Matkins has promptly
14 responded to each and every one of these inquiries.

15 Allen Matkins has also assisted the Receiver in drafting various emails and notices to
16 investors regarding the status of the case and certain actions taken by the Receiver. Finally, Allen
17 Matkins assisted the Receiver in analyzing amounts owed to certain creditors, and various trading
18 fees, charges and other issues pertaining to member account balances.

Name	Title	Rate	Hours	Fees
D. Osias	Bankruptcy Partner	\$600	4.0	\$2,400.00
T. Fates	Bankruptcy Associate	\$305	66.3	\$20,221.50
TOTAL			70.3	\$22,621.50
Avg. Hourly Rate		\$322		

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24 **G. Reporting (009)**

25 This category covers time spent preparing the Receiver's First Interim Report, detailing his
26 activity through the first approximately 75 days of the case, including notices, orders, and emails
27 to members related to the report. The 26-page report was filed on June 2, 2008, and approved by
28 order entered on July 17, 2008.

Name	Title	Rate	Hours	Fees
D. Osias	Bankruptcy Partner	\$600	2.9	\$1,740.00
T. Fates	Bankruptcy Associate	\$305	56.0	\$17,080.00
TOTAL			58.9	\$18,820.00
Avg. Hourly Rate		\$320		

H. Costs

Allen Matkins requests that the Court approve \$1,734.18 in costs. A summary of the categories of expenses is contained in Exhibit C. A detailed listing of each expense summarized at the end of each sub-matter in Exhibit A. Allen Matkins charges \$.19 per page for copies and \$1.00 per page on outgoing faxes. There is no charge for incoming faxes. The messenger category includes hand delivery charges and FedEx or other overnight services. Any travel reflects coach airfare and reasonable accommodations billed at cost.

III. THE REQUESTED FEES ARE REASONABLE AND SHOULD BE ALLOWED

A. Efficient Staffing – Customary Rates

Allen Matkins has worked diligently in representing the Receiver. As was necessary, Allen Matkins devoted significant resources at the early stages of the case in assisting the Receiver in gaining an understanding of Tuco's operations, responding to immediate issues relating to the cessation of trading activity, and preparing to advise the Court regarding the Receiver's preliminary findings. Allen Matkins has continued to assist the Receiver as he focuses on the administration of estate assets, resolution of disputes, making an interim distribution and developing a claims process and plan of distribution. Allen Matkins staffed each task as efficiently as possible, using a team of core attorneys and pulling in specialized expertise as necessary. Indeed, Allen Matkins' average hourly rate was \$339 during this Application Period.

Allen Matkins believes its request is fair and reasonable and that the fees and costs incurred were necessary to the administration of the receivership estate. Allen Matkins' request for compensation is based on its customary billing rates charged in similar matters. Allen Matkins' billing rates are comparable to those charged in the community on similarly complex matters.

