

WALLER LANSDEN DORTCH & DAVIS, LLP

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DWAYNE EDWARDS; TODD BARKER;
SENIOR SOLUTIONS OF SOCIAL CIRCLE,
LLC; OXTON PLACE OF DOUGLAS, LLC,
d/b/a OXTON REAL ESTATE OF DOUGLAS,
LLC; ROME ALF, LLC; SAVANNAH ALF,
LLC; GAINESVILLE ALF, LLC; WATERFORD
PLACE ALF, LLC; MONTGOMERY ALF, LLC;
COLUMBUS ALF, LLC; and OPELIKA ALF,
LLC,

Defendants,

-and-

OXTON SENIOR LIVING, LLC; MANOR
HOUSE SENIOR LIVING, LLC; SUSAN
EDWARDS, a/k/a SUSAN ROGERS; SHARON
NUNAMAKER, a/k/a SHARON HADDEN; and
SDH DESIGN, LLC,

Relief Defendants.

Case No. 2:17-cv-393-ES-SCM

**SUMMARY OF DEFRAIN AND
MILLION'S FINAL FEE
APPLICATION FOR COMPENSATION
FOR SERVICES RENDERED AND
REIMBURSEMENT OF COSTS AND
EXPENSES INCURRED FOR THE
PERIOD FROM APRIL 30, 2020
THROUGH JUNE 26, 2020**

Motion Day: July 20, 2020

Objection Deadline: July 6, 2020

Name of Applicant:

DeFrain and Million

Authorized to provide professional services to: Derek Pierce, as court-appointed receiver¹

Date of Retention: April 30, 2020²

Period for which compensation and reimbursement are sought April 30, 2020 through June 26, 2020

Amount of compensation sought as actual, reasonable, and necessary \$53,800.00

Amount of expense reimbursement sought as actual, reasonable, and necessary \$1,100.00

This is a final fee application.

DeFrain and Million was retained on a fixed fee schedule, accordingly a summary of fees and expenses by category, professionals, or otherwise is not included with this final fee application.

¹ The application to retain DeFrain and Million was filed on May 8, 2020 (Dkt. No. 397) and is still pending before this Court.

² See Footnote 1.
4848-1823-3281.2

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**DEFRAIN AND MILLION'S FINAL
FEE APPLICATION FOR
COMPENSATION FOR SERVICES
RENDERED AND REIMBURSEMENT
OF COSTS AND EXPENSES
INCURRED FOR THE PERIOD FROM
APRIL 30, 2020 THROUGH JUNE 26,
2020**

Motion Day: July 20, 2020

Objection Deadline: July 6, 2020

DeFrain and Million, tax accountants for the court-appointed receiver (the "*Receiver*") in the above-captioned civil action, by and through the Receiver's counsel, submits this final fee application (the "*Final Fee Application*") for compensation for services rendered and

reimbursement of costs and expenses, pursuant to paragraphs 62 through 65 of the *Order Appointing Receiver* (Dkt. No. 7) (the “**Receiver Order**”), for compensation for services rendered and reimbursement of costs and expenses incurred during the period from April 30, 2020 through June 26, 2020 (the “**Application Period**”) as tax accountants for the Receiver and, in support of this application, DeFrain and Million respectfully states as follows:

BACKGROUND

1. On January 20, 2017, the Securities and Exchange Commission (the “**SEC**”) filed the *Complaint* (Dkt. No. 1), commencing the above-captioned action.

2. On the same day, the SEC filed the *Plaintiff’s Motion for an Order to Show Cause, Temporary Restraining Order, Receiver, Asset Freeze, and Other Relief* (Dkt. No. 2).

3. Following a hearing on January 20, 2017, this Court entered the Receiver Order, pursuant to which the Receiver was appointed in this case.

4. As part of the Receiver’s duties and responsibilities under the Receiver Order, the Receiver was required to perform necessary tax and other accounting services for the Receivership Estate.

5. To that end, on May 8, 2020, the Receiver caused to be filed the *Receiver’s Application for Order Approving Employment of DeFrain & Million, Effective as of April 30, 2020* (Dkt. No. 397) (the “**Retention Application**”).

6. As of the date of this Final Fee Application, the Retention Application is pending before this Court, and no objections have been filed to the Retention Application.

7. Notwithstanding the foregoing, in accordance with the terms of the retention proposed in the Retention Application, DeFrain and Million have prepared:

a. for 2017, amended federal tax returns and amended Georgia state tax returns for Oxtan Place of Gainesville, LLC, Oxtan Place of Green Island, LLC, Oxtan Place of Douglas Operations, LLC, Oxtan Village of Social Circle, LLC, Oxtan Village

Villas, LLC, Oxton Place of Rome, LLC, Oxton Court of Savannah, LLC, and Oxton Senior Living, LLC, resulting in **\$9,600** in fees;

b. for 2018: (i) federal tax returns and Georgia state tax returns for Gainesville ALF, LLC, Manor House of Gainesville, LLC, Columbus ALF, LLC, Manor House of Columbus, LLC, Montgomery ALF, LLC, Opelika ALF, LLC, Oxton Court of Opelika, LLC, Oxton Place of Douglas, LLC, Manor House of Douglas, LLC, Senior Solutions of Social Circle, LLC, Manor House of Social Circle, LLC, Rome ALF, LLC, Manor House of Rome, LLC, Savannah ALF, LLC, Manor House of Savannah, LLC, Waterford Place ALF, LLC, and Oxton Court of Waterford Place, LLC, resulting in **\$20,400** in fees; and (ii) Alabama state tax returns for Montgomery ALF, LLC, Opelika ALF, LLC, Oxton Court of Opelika, LLC, Waterford Place ALF, LLC, and Oxton Court of Waterford Place ALF, LLC, resulting in **\$1,000** in fees;

c. for 2019: (i) federal tax returns and Georgia state tax returns for Gainesville ALF, LLC, Columbus ALF, LLC, Montgomery ALF, LLC, Opelika ALF, LLC, Oxton Place of Douglas, LLC, Senior Solutions of Social Circle, LLC, Rome ALF, LLC, Savannah ALF, LLC, and Waterford Place ALF, LLC, resulting in **\$10,800** in fees; and (ii) Alabama state tax returns for Montgomery ALF, LLC, Opelika ALF, LLC, and Waterford Place ALF, LLC, resulting in **\$600** in fees; and

d. for 2020: (i) federal tax returns and Georgia state tax returns for Gainesville ALF, LLC, Columbus ALF, LLC, Montgomery ALF, LLC, Opelika ALF, LLC, Oxton Place of Douglas, LLC, Senior Solutions of Social Circle, LLC, Rome ALF, LLC, Savannah ALF, LLC, and Waterford Place ALF, LLC, resulting in **\$10,800** in fees; and (ii) Alabama state tax returns for Montgomery ALF, LLC, Opelika ALF, LLC, and Waterford Place ALF, LLC, resulting in **\$600** in fees.

8. In addition, each Alabama state tax return required a one hundred dollar (\$100) filing fee, resulting in expenses in the aggregate amount of \$1,100.

RELIEF SOUGHT

9. By this Final Fee Application, DeFrain and Million seeks entry of an order granting final approval of: (a) compensation in the amount of **\$53,800**; and reimbursement of expenses in the amount of **\$1,100.00**.

10. As set forth above, despite the Retention Application remaining pending before this Court, DeFrain and Million has performed tax accounting services on behalf of the Receiver and for the benefit of the Receivership Estate.

11. As set forth in the Retention Application, DeFrain and Million agreed to provide such services on a fixed fee schedule, in accordance with its ordinary and customary fees in effect on the date such services were rendered.

12. As of the date DeFrain and Million provided services to the Receiver, the fixed fee schedule was one thousand dollars (\$1,000) for each federal tax return prepared and two hundred dollars (\$200) for each state tax return prepared.

13. DeFrain and Million prepared forty-three (43) federal tax returns and fifty-four (54) state tax returns on behalf of the Receiver and for the benefit of the Receivership Estate.

14. In addition, DeFrain and Million paid \$1,100 in filing fees, in connection with the filing of the Alabama state tax returns.

15. DeFrain and Million's activities on behalf of the Receiver with respect to the Receivership Estate during the Application Period were substantial, beneficial, and necessary for the Receiver and the fulfillment of the Receiver's duties and obligations as receiver, and DeFrain and Million's activities were in the best interests of the Receivership Estate.

BASIS FOR RELIEF

16. As a general rule, the fees and expenses of a receivership are a charge upon the property administered by and through the receivership. *See, e.g., Gaskill v. Gordon*, 27 F.3d 248, 251 (7th Cir. 1994).

17. Decisions regarding the timing and amount of an award of fees and costs to a receiver and any professionals engaged by a receiver are committed to the sound discretion of the receivership court. *See Secs. & Exch. Commission v. Elliot*, 953 F.2d 1560, 1577 (11th Cir. 1992), *rev'd on other grounds*, 998 F.2d 922 (11th Cir. 1993).

18. In allowing fees, a court should consider "the time, labor and skill required, but not necessarily that actually expended, in the proper performance of the duties imposed by the

court upon the receiver[], 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.” *United States v. Code Prods. Corp.*, 362 F.2d 669, 673 (3d Cir. 1966) (internal quotations omitted).

19. Ultimately, receiver and professional compensation rest upon the result of an equitable, multi-factor balancing test involving the “economy of administration, the burden that the estate may be able to bear, the amount of time required, although not necessarily expended, and the overall value of the services to the estate.” *In re Imperial 400 Nat’l, Inc.*, 432 F.2d 232, 237 (3d Cir. 1970).

20. In calculating the compensation for a receiver and its professionals, the Court must consider the fair value of the time, labor, and skill required, as measured by “conservative business standards,” the degree of activity and integrity with which the work was conducted, and the result obtained. *United States v. Larchwood Gardens, Inc.*, 404 F.2d 1108, 1110 (3d Cir. 1968).

21. The SEC’s agreement with or opposition to the receiver’s fee application is given “great weight” in determining whether the application is reasonable. *Secs. & Exch. Commission v. Fifth Ave. Coach Lines*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973).

(a). **Terms and Conditions of Compensation Sought.**

22. Subject to this court’s approval, DeFrain and Million seeks payment on a fixed fee basis, plus reimbursement of actual, necessary expenses incurred by DeFrain and Million during the Application Period.

23. DeFrain and Million is seeking compensation for services performed and reimbursement of actual and necessary out of pocket disbursements and charges during the

Application Period solely in connection with DeFrain and Million's services provided to the Receiver in this action.

24. The rates charged by DeFrain and Million in this case are the same rates charged by DeFrain and Million to its other clients.

25. There are no agreements or understandings between DeFrain and Million and any other person for the sharing of compensation to be received for services rendered to the Receiver during this case.

26. DeFrain and Million is and remains a disinterested party and does not hold any adverse relationship with the Receiver, the Receivership Entities, or the Receivership Estate.

27. DeFrain and Million submits the terms and conditions of its services are reasonable and commensurate with the value provided by DeFrain and Million's professionals.

(b). Services Rendered to the Receiver.

28. As set forth above, DeFrain and Million provided necessary tax accounting services to the Receiver, which were necessary for the Receiver to fulfill the Receiver's duties and obligations under the Receiver Order.

29. DeFrain and Million submits that the foregoing services were extensive, required numerous areas of expertise, and were of significant benefit to the Receiver and Receivership Estate.

(c). Calculation of Time and Fees.

30. As set forth above, this Final Fee Application covers the time period from April 30, 2020 through June 26, 2020.

31. During the Application Period, DeFrain and Million prepared forty-three (43) federal tax returns and fifty-four (54) state tax returns, resulting in professional fees in the

amount of \$53,800 and associated reasonable and necessary expenses in the amount of \$1,100.00, in connection with the filing of Alabama state tax returns.

32. DeFrain and Million seeks entry of an order granting final approval, and directing payment, without further order of this Court, at such times as the Receiver determines in his absolute discretion that funds are available, of (a) compensation in the amount of \$53,800 and (b) reimbursement of actual and necessary out of pocket disbursements and charges in the amount of \$1,100.00 incurred in the rendering of such professional services on behalf of the Receiver during the Application Period.

33. DeFrain and Million submits that the foregoing fees and expenses are reasonable, given consideration to the complexity of this receivership proceeding and the and the amount of time required to undertake the services provided the Receiver in this receivership proceeding.

(d). Results Obtained.

34. As set forth above, DeFrain and Million has undertaken significant work on behalf of the Receiver and Receivership Estate.

35. As a result of the work performed by DeFrain and Million, the Receiver was able to fulfill the Receiver's duties and obligations under the Receiver Order and applicable laws.

36. Given the complexity of the matters handled by DeFrain and Million on behalf of the Receiver and the expertise required for such matters, DeFrain and Million submits that the fixed fee compensation is reasonable.

37. All services for which compensation is requested and expenses for which reimbursement is requested are reasonable, necessary, and were performed for and on behalf of the Receiver during the Application Period.

38. All professional services for which compensation is requested in this Final Fee Application, and all reimbursement for expenses incurred, have been for services directly related to the Receiver, Receivership Entities, and Receivership Estate.

39. The fees and expenses incurred during the Application Period were incurred in the best interests of the Receivership Estate.

40. The Receiver has reviewed each of DeFrain and Million's invoices and believes the request is fair and reasonable, and that the Receivership Estate has benefited from the services provided by DeFrain and Million's professionals.

41. Given the results obtained, DeFrain and Million submits the fees and expenses sought in this Final Fee Application are reasonable and should be approved by this Court.

NOTICE

42. A copy of this Final Fee Application (including all exhibits) and notice of this Final Fee Application has been provided to: (a) the Receiver; (b) the SEC, (c) Dwayne Edwards; (d) Joseph Schramm, counsel for Todd Barker; and (f) all other parties in interest who have entered an appearance in this case and requested service of papers.

43. This Final Fee Application (including all exhibits) has also been posted to the website maintained by the Receiver for this matter.

44. Given the relief sought in this Final Fee Application, DeFrain and Million submits that no other or further notice is necessary or required.

NO PRIOR REQUEST

45. No prior request for the relief sought in this Final Fee Application has been made to this or any other court.

46. DeFrain and Million has received no payment and no promises for payment from any source for services rendered or to be rendered in any capacity whatsoever in connection with DeFrain and Million's services to the Receiver.

CONCLUSION

47. Based upon the foregoing, DeFrain and Million respectfully requests that this court enter an order, substantially in the form attached to this Final Fee Application as **Exhibit A**, approving this Final Fee Application.

Dated: June 26, 2020

Respectfully submitted,

/s/ Blake D. Roth

Blake D. Roth
Ryan K. Cochran (admitted *pro hac vice*)
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Counsel for the Receiver

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DWAYNE EDWARDS; TODD BARKER;
SENIOR SOLUTIONS OF SOCIAL CIRCLE,
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d/b/a OXTON REAL ESTATE OF
DOUGLAS, LLC; ROME ALF, LLC;
SAVANNAH ALF, LLC; GAINESVILLE
ALF, LLC; WATERFORD PLACE ALF,
LLC; MONTGOMERY ALF, LLC;
COLUMBUS ALF, LLC; and OPELIKA ALF,
LLC,

Defendants,

-and-

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HOUSE SENIOR LIVING, LLC; SUSAN
EDWARDS, a/k/a SUSAN ROGERS;
SHARON NUNAMAKER, a/k/a SHARON
HADDEN; and SDH DESIGN, LLC,

Relief Defendants.

Case No. 2:17-cv-393-ES-SCM

DECLARATION OF SERVICE

I, the undersigned, declare that on this 26th day of June 2020, I caused a true and correct copy of the following documents to be filed with this court's CM/ECF system, and this court's

CM/ECF system electronically served all parties entitled to receive notice of the following documents:

1. *DeFrain and Million's Final Fee Application for Compensation for Services Rendered and Reimbursement of Costs and Expenses Incurred for the Period From April 30, 2020 Through June 26, 2020* and all exhibits attached thereto; and
2. this Declaration of Service.

In addition, I caused true and correct copies of the foregoing to be served by regular United States mail, postage prepaid, and electronic mail on the following parties:

Dwayne Edwards
411 Georgia Avenue
North Augusta, South Carolina 29841
beachcaremanagement@gmail.com

Joseph Schramm
FisherBroyles, LLP
100 Overlook Center, 2nd Floor
Princeton, NJ 08540
joseph.schramm@fisherbroyles.com
(for defendant Todd Barker)

Dated: June 26, 2020

/s/ Blake D. Roth
Blake D. Roth
Ryan K. Cochran (admitted *pro hac vice*)
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EXHIBIT A
PROPOSED ORDER

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SECURITIES AND EXCHANGE
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NUNAMAKER, a/k/a SHARON HADDEN; and
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Relief Defendants.

**ORDER APPROVING DEFRAIN AND MILLION'S FINAL FEE
APPLICATION FOR COMPENSATION FOR SERVICES RENDERED AND
REIMBURSEMENT OF COSTS AND EXPENSES INCURRED TO THE RECEIVER
FOR THE PERIOD FROM APRIL 30, 2020 THROUGH JUNE 26, 2020**

Upon consideration of *DeFrain and Million's Final Fee Application for Compensation for Services Rendered and Reimbursement of Costs and Expenses Incurred for the Period From April 30, 2020 Through June 26, 2020* (the "**Application**")¹ filed on behalf of DeFrain and

¹ Capitalized terms used in this order and not otherwise defined shall have the meanings ascribed to them in the Application.

Million (the “*Applicant*”); and upon consideration of all responses and objections to the Application; and upon finding that the relief requested in the Application should be granted, it is therefore

1. **ORDERED** that the Application is GRANTED; and it is further
2. **ORDERED** that the Applicant is awarded on a final basis compensation for the Application Period in the total amount of \$54,900, including compensation for necessary professional services rendered to the Receiver in the amount of \$53,800 and reimbursement for actual and necessary costs and expenses in the amount of \$1,100.00; and it is further
3. **ORDERED** that the Receiver is authorized to pay Applicant \$54,900 less all amounts previously paid in connection with the Interim Applications, without further order of this court at such times as the Receiver determines in his absolute discretion, that sufficient funds are available; and it is further
4. **ORDERED** that this court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this order.

Dated: _____, 2020 _____