

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Chapter 11

Prodigy Investment Holdings, Inc.,¹

Case No. 23-11120 (BLS)

Reorganized Debtor.

Ref. Docket No. 1214

**FEE EXAMINER'S FINAL REPORT
REGARDING SECOND QUARTERLY FEE APPLICATION OF KPMG LLP**

Rucki Fee Review, LLC ("Rucki Fee Review"), the fee examiner appointed in the above-captioned chapter 11 cases and acting in its capacity as such (the "Fee Examiner"), hereby submits its final report (this "Final Report") regarding the *Second Interim Fee Application of KPMG LLP* (the "Second Quarterly Fee Application") [Docket No. 1214] filed by KPMG LLP (the "Firm").

BACKGROUND

1. In performance of its fee and expense review procedures and in preparation of its initial report provided to the Firm (the "Initial Report") and this Final Report designed to quantify and present factual data relevant to the requested fees, disbursements and expenses contained in the Second Quarterly Fee Application consistent with its appointment order, Rucki Fee Review reviewed the monthly fee applications filed for the period set forth in the Second Quarterly Fee Application, including each of the billing and expense entries listed in the exhibits to such monthly fee applications, for compliance with section 330 of

¹ The Reorganized Debtor in this chapter 11 case, along with the last four digits of the Reorganized Debtor's federal tax identification number, is: Prodigy Investments Holdings, Inc. (9565). The location of the Reorganized Debtor's service address is: 3350 Virginia St., 2nd Floor, Miami, FL 33133.



the Bankruptcy Code, Bankruptcy Rule 2016 and Local Rule 2016-2, as well as the *U.S. Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330—Appendix A* and the Firm's retention order.

2. Rucki Fee Review did not prepare informal memos related to the fee applications of the Firm, but instead included its issues and questions in its Initial Report provided to the Firm. Rucki Fee Review thereafter conferred with the Firm regarding the Initial Report, and following such conferral includes its recommendations in this Final Report.

DISCUSSION

3. For the compensation period of November 1, 2023 through January 31, 2024, as set forth in the Second Quarterly Fee Application, the Firm seeks interim bankruptcy court approval in the amount of \$1,030,608.00 as actual, reasonable and necessary fees and for expense reimbursement of \$1,164.77.
4. Although it examines the matter on a case-by-case basis based on the facts and circumstances of each case and each applicant's role within a case (such as whether a firm is responsible for coordinating filing and scheduling of and hearing on multiple professionals' fee applications) regardless of whether any given threshold is exceeded such that fees below its presumptive threshold may be unreasonable and fees above its presumptive threshold may be reasonable, Rucki Fee Review generally does not consider time spent on fee issues to be presumptively unreasonable where less than 7% of total time has been charged for preparing fee applications and addressing fee issues. It applies these guidelines on a cumulative basis. Through the conclusion of the second quarterly fee period the Firm has charged approximately \$64,398.50 in fees relating to the Firm's fee

applications on a cumulative basis (after accounting for \$27,653.00 of previously agreed reductions on account of fee-related fees). This amounts to approximately 2.34% of the Firm's total cumulative fees through the end of the second quarterly fee period (again after accounting for the previously agreed reductions on account of fee-related work) and includes approximately \$39,934.00 in fees not previously considered by the Bankruptcy Court on an interim basis. Notwithstanding that these fees are below the 7% threshold for being presumptively unreasonable, Rucki Fee Review still requested a reduction of \$2,470.00 on account of these fees, which the Firm agreed to in compromise of Rucki Fee Review's request. Additionally, \$5,686.00 of the other agreed reductions set forth herein also relate to this fee-related work.

5. As memorialized through the Firm's retention order, the Firm and the debtors previously agreed to a maximum fixed fee for in-scope audit procedures of \$2.4 million to perform the services relating to integrated audit and quarterly review procedures, with the remaining \$1.7 million of this maximum fixed fee that was not paid prepetition to be billed based on hours incurred at 50% of standard rates.² Similarly with respect to audit services, the Firm also is authorized to perform out-of-scope audit services not subject to this limitation, arising from complications caused by these chapter 11 cases and the prospective departure of debtor accounting personnel. Finally, the Firm is authorized to provide tax advisory services related to the debtors' chapter 11 cases and necessarily must perform and be compensated for retention application and fee application related work as appropriate. On a cumulative post-petition basis the Firm has charged \$1,555,430.00 for in-scope audit

² The Firm and the debtors also have agreed to the Debtors have agreed to an additional fixed fee of \$35,000, payable upon completion, for each instance that the Firm is required to provide consent to include or incorporate by reference its reports on the consolidated financial statements in a filing under the Securities Act of 1933 or an exempt offering.

services in its fee applications (which becomes \$1,551,324.00 after subtracting reductions of in-scope audit services during the first quarterly fee period totaling \$4,470.00 but adding recharacterized fees of \$364.00).

6. To fulfill these various responsibilities and as is typical for audit and tax advisory services performed by peer firms, this work required the Firm to utilize, *inter alia*, a number of specialists, personnel with different skillsets, and personnel at varying levels of seniority, resulting in the usage of 60 persons across all functions during the second quarterly fee period, which compares to 74 during the first quarterly fee period. Of these persons, 35 billed fewer than 15.0 hours during the second quarterly fee period. With respect to in-scope audit services billed at a 50% discount to standard hourly rates, the blended hourly rate for such services was \$357.05 during the second quarterly fee period. This compares to \$365.56 during the first quarterly fee period and is situated between an audit senior associate and audit manager, the Firm's second and third-lowest of six general personnel tiers. With respect to all other work, the blended hourly rate was \$759.26 during the second quarterly fee period. This compares to \$697.74 during the first quarterly fee period and is equivalent to a senior manager for out-of-scope audit services and a senior associate for advisory services. Subject to the agreed reductions set forth herein, Rucki Fee Review does not consider the Firm's staffing to be objectionable during the second quarterly fee period. Rucki Fee Review gives additional scrutiny to time entries of those billing fewer than 15 hours in a quarter to address if the utilization of such particular persons was necessary for the case, but subject to the agreed reductions set forth herein recognizes that it is common for firms performing audit and advisory services to consult specialists and other senior personnel for a small amount of time each in a given fee period.

7. Rucki Fee Review specifically reviewed the Firm's out-of-scope audit services billed during the second quarterly fee period and believes they are properly billed as out-of-scope charges.
8. Local Rule 2016-2 provides in section (d) that all fee applications shall include complete and detailed activity descriptions; each activity description shall include the type of activity, each activity description shall include the participants to the activity; each activity description shall include the subject matter and shall be sufficiently detailed to allow the bankruptcy court to determine whether all the time, or any portion thereof, is actual, reasonable, and necessary and shall include a time allotment billed in tenths of an hour and not be "lumped" with other entries. Notwithstanding the Local Rule, and consistent with the practice of certain of the Bankruptcy Court's Judges, Rucki Fee Review does not object to "lumping" where a single timekeeper bills less than 0.5 hours during an entire day in the aggregate (not multiple lumped 0.5 entries).
9. Rucki Fee Review identified a *de minimis* number of entries that it considers lumped or otherwise not fully compliant with the Local Rules for reasons such as not identifying the counterparties to e-mail discussions, which is not an uncommon practice. No reduction is recommended on account of these entries. For its remaining future fee applications, as with all other firms, Rucki Fee Review has requested the Firm minimize the number of entries that employ phrasing such as "attention to" and "coordinate" which sometimes are vague as to what work was performed (*i.e.*, drafting, reviewing, conferencing, etc.). Rucki Fee Review further requested that preparation time be separately billed from other activity, such as attending calls or hearings, and that the work done to prepare be specified wherever preparation time exceeds 2.0 hours in the aggregate for a given hearing or other event.

Likewise, Rucki Fee Review requested the Firm ensure all e-mail correspondence and conferences identify the counterparties to the same and made certain other requests as to future entries.

10. Administrative tasks that are generally not compensable by a non-chapter 11 client or are secretarial in nature are not compensable in chapter 11. Rucki Fee Review identified certain work it considered administrative in nature, and the Firm agreed to a fee reduction of \$4,808.00 on account of these fees in compromise of Rucki Fee Review's request, \$4,258.00 of which relate to work on fee applications or fee-related issues (and none of which relate to in-scope audit services).
11. Rucki Fee Review identified certain conferences, telephone calls or other matters that were billed inconsistently by the respective professionals, and/or conferences where the counterparty to the conversation did not bill an itemized charge for the discussion. Rucki Fee Review acknowledges that the latter can result from a professional intentionally or inadvertently not billing for a conference that actually occurred, or otherwise not being billed. After discussion with the Firm, the Firm has agreed to a reduction of \$2,813.50 on account of these entries, representing the full amount of the difference in the non-matching entries and no reduction for the entries without a corresponding entry, which Rucki Fee Review considers an appropriate compromise. Rucki Fee Review notes that all of these fees relate to in-scope audit services.
12. Rucki Fee Review has identified certain entries where the time in the narrative does not match the time stated for the entry. In some cases, these underbilled; in other cases, they overbilled. In the aggregate, Rucki Fee Review requested a reduction of \$1,529.00 on

account of these entries, which the Firm agreed to in compromise of Rucki Fee Review's request. Of these fees, \$262.50 relate to in-scope audit services.

13. In addition to those other matters referenced herein, Rucki Fee Review requested the Firm waive or reduce certain entries for miscellaneous reasons. After discussion with the Firm, the Firm has agreed to a reduction of \$3,738.00 on account of these entries in compromise of Rucki Fee Review's request. Of these fees, \$1,428.00 relate to fee applications and fee-related work, and none relate to in-scope audit services.

14. With respect to the Firm's expense reimbursement request, Rucki Fee Review notes that it generally considers the cost of meals in excess of the following guidelines, per person, to be unreasonable: \$25/breakfast, \$35/lunch and \$55/dinner, for Wilmington and all other U.S. locations, except for New York City and London, \$35/breakfast, \$55/lunch and \$70/dinner; for Washington DC, Chicago, Los Angeles and San Francisco, \$30/breakfast, \$45/lunch and \$65/dinner. With respect to hotel charges, Rucki Fee Review generally considers room charges (inclusive of taxes) in excess of the following rates to be excessive absent satisfactory explanation from an applicant of the justification for exceeding such charges: \$375/Wilmington; \$550/New York City; \$450/Boston and San Francisco; \$400/Washington, DC, Los Angeles, and London; \$325/Chicago, Miami, Philadelphia and Pittsburgh; \$300/Dallas and Houston; \$275/Baltimore and Denver; \$250 for all other U.S. locations.

15. Here, the meal and lodging charges for which reimbursement is sought in the Second Quarterly Fee Application comply with the foregoing limitations and Rucki Fee Review considers these charges and the balance of the Firm's expense reimbursement request to be

compliant with the Local Rules and to be reasonable, necessary and appropriate expenses for reimbursement in the full amount of \$1,164.77 sought in the Second Quarterly Fee Application.

16. After accounting for the agreed fee reductions of \$15,358.50 discussed herein, Rucki Fee Review considers the balance of fees and expenses sought in the Second Quarterly Fee Application to be reasonable, necessary and appropriate under the circumstances.

CONCLUSION

17. Rucki Fee Review recommends the approval of the Second Quarterly Fee Application in the amount of \$1,015,249.50 with respect to fees and the reimbursement of expenses in the amount of \$1,164.77, which amounts reflect the reductions agreed to with the Firm set forth herein on account of the Second Quarterly Fee Application.

Dated: April 26, 2024
Wilmington, Delaware

Respectfully submitted,

RUCKI FEE REVIEW, LLC
FEE EXAMINER

By: /s/ Justin H. Rucki

Justin H. Rucki

President of Rucki Fee Review, LLC