

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

In re:

Prodigy Investment Holdings, Inc.,¹

Reorganized Debtor.

Chapter 11

Case No. 23-11120 (BLS)

Ref. Docket No. 1219

**FEE EXAMINER'S FINAL REPORT REGARDING
SECOND QUARTERLY FEE APPLICATION OF LOWENSTEIN SANDLER 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 Application of Lowenstein Sandler LLP as Counsel to the Official Committee of Unsecured Creditors for Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred for the Period of November 1, 2023 through January 31, 2024* (the “Second Quarterly Fee Application”) [Docket No. 1219] filed by Lowenstein Sandler 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,

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.



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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 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. Rucki Fee Review also reviewed for a reasonable effort to comply with the *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases Effective as of November 1, 2013* (the “Attorney Large Case Guidelines”).

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 \$1,666,935.00 as actual, reasonable and necessary fees and for expense reimbursement of \$13,897.39.
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 \$41,377.00 in fees relating to the Firm's fee applications and the fee applications of other committee professionals on a cumulative basis (all but \$3,760.00 of which relate to the Firm's fee applications). This includes \$25,983.00 not previously considered by the Bankruptcy Court on an interim basis and amounts to approximately 1.4% of the Firm's total cumulative fees through the end of the second quarterly fee period. Subject to the agreed reductions set forth herein (which includes all \$688.50 of the fees considered administrative in nature below and \$103.50 of the other miscellaneous reductions set forth below), Rucki Fee Review considers these fees reasonable, necessary and appropriate.

5. Rucki Fee Review considers the staffing breakdown during the second quarterly fee period (percentage of hours billed by partners, counsel, associates and paraprofessionals respectively) to be appropriate. The Firm's blended hourly rate was \$923.92 during the second quarterly fee period, which is situated between a counsel and junior partner at the Firm's current standard hourly rates. This is decreased slightly from \$931.67 during the first quarterly fee period despite the fact that the Firm's rates were subject to an annual periodic adjustment at the beginning of January, which increased rates Rucki Fee Review considers reasonable. Moreover, the billing rates of the Firm's counsel and certain partners

are less than that of associates at many firms with comparable chapter 11 experience, allowing for a heavier utilization of counsel and partners.

6. Further to the Firm's staffing, Rucki Fee Review notes that the Firm utilized 34² professionals or paraprofessionals to perform its work during the second quarterly fee period (which compares to 26 during the first quarterly fee period), 17³ of whom billed fewer than 15 hours during the second quarterly fee period (with five of those billing under 15 hours paraprofessionals). 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. After review, however, Rucki Fee Review considers the utilization of these persons to be appropriate other than to request a waiver of the 0.2 hours/\$66.00 in fees billed by one paraprofessional, which the Firm agreed to in compromise of Rucki Fee Review's request.
7. Rucki Fee Review notes that it is customary in cases before the Bankruptcy Court for a "reasonable effort" to comply with the Attorney Large Case Guidelines to include preparation of a budget and staffing plan for each applicable law firm agreed to by the client (debtor or committee). Here, the Firm did prepare a prospective staffing plan for the second quarterly fee period and the staffing levels utilized by the Firm complied with the staffing plan exclusive of *de minimis* timekeepers, which is a factor Rucki Fee Review considers in evaluating the staffing and total fees on this matter. Like the first quarterly fee period, the Firm did not attach a budget to the Second Quarterly Fee Application, but instead stated "Lowenstein Sandler's fees are consistent with the terms and amounts set forth in the Final

² The number stated in the Second Quarterly Fee Application (26) excludes paraprofessionals and law clerks.

³ The number stated in the Second Quarterly Fee Application (11) excludes paraprofessionals and law clerks.

Order (I) Authorizing The Debtors To Use Cash Collateral, (II) Granting Adequate Protection, (III) Modifying The Automatic Stay, And (IV) Granting Related Relief and related budget approved by the Court at Docket No. 422.” The publicly filed version of the budget attached thereto does not contain a line item for UCC professionals, or the Firm specifically, and the second quarterly fee period extended beyond the 13-week budget period attached thereto in any event. During the prior quarterly fee period, however, Rucki Fee Review was provided with budget detail that extended through January 2024 showing the Firm was under budget by approximately 65.3%, which also is a factor Rucki Fee Review considers in evaluating the Firm’s staffing and fees in this matter. Subject to the agreed reductions set forth herein, Rucki Fee Review considers the Firm’s work to be well-coordinated within the Firm and with its fellow professionals. The 34 professionals and paraprofessionals included not only bankruptcy personnel, but a number of corporate, tax, and litigation specialists of varying seniorities in connection with the committee’s investigation, and settlement, of certain prospective litigation matters and the review of sale documents and other pleadings.

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 certain 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. After conferral with the Firm, the Firm has agreed to a reduction of \$7,000.00 on account of these entries in compromise of Rucki Fee Review’s request. 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 \$688.50 on account of these fees in compromise of Rucki Fee Review’s request.
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 \$9,822.00 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.

12. Rucki Fee Review has identified a number of entries where the various subentries did not total the time stated for the entry. In some cases, these underbilled; in other cases, they overbilled. In the aggregate, these entries amounted to a slight underbilling, so no reduction is necessary on account of these entries.
13. Local Rule 2016-2(d)(ix) requires that non-working travel be billed at no more than half-rate or half-time. Rucki Fee Review identified certain travel entries that inadvertently were billed at full rate and full time, and the Firm agreed to a fee reduction of \$3,387.50 to reduce these entries to half-time or less in compromise of Rucki Fee Review's request.
14. The Office of the United States Trustee takes the position that law clerks not yet admitted to the bar should charge a billable rate lower than attorneys who have been admitted to the bar of one or more states (or foreign jurisdictions) in the same class. The Firm's billable rates of \$545.00 (November and December) and \$600.00 (January) per hour for one attorney, who billed 48.1 hours during the second quarterly fee period, did not comply with this policy. Rucki Fee Review requested a reduction of \$2,187.00 for the second quarterly

fee period on account of these fees, and the Firm agreed to this reduction in compromise of Rucki Fee Review's request.

15. 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 \$4,889.00 on account of these entries in compromise of Rucki Fee Review's request.

16. With respect to the Firm's expense reimbursement request, Rucki Fee Review considers 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 \$13,897.39 sought in the Second Quarterly Fee Application.

17. After accounting for the agreed fee reductions of \$28,040.00 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

18. Rucki Fee Review recommends the approval of the Second Quarterly Fee Application in the amount of \$1,638,895.00 with respect to fees and the reimbursement of expenses in the amount of \$13,897.39, 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