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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. SACV 15-1329-JLS (JCGx)

Date: October 19, 2016

Title: Consumer Financial Protection Bureau et al. v. Pension Funding, LLC et al.

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Present: **Honorable JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE**

Terry Guerrero  
Deputy Clerk

N/A  
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF:      ATTORNEYS PRESENT FOR DEFENDANT:

Not Present

Not Present

**PROCEEDINGS: (IN CHAMBERS) ORDER (1) GRANTING RECEIVER’S SECOND INTERIM APPLICATION FOR PAYMENT OF FEES AND REIMBURSEMENT OF EXPENSES (Doc. 108), AND (2) GRANTING GENERAL COUNSEL’S SECOND INTERIM APPLICATION FOR PAYMENT OF FEES AND REIMBURSEMENT OF EXPENSES (Doc. 109)**

Before the Court are two Second Interim Applications filed by Krista Freitag, the court-appointed receiver, and Allen Matkins, her general counsel. (Freitag App., Doc. 108; Allen Matkins App., Doc. 109.) The Court finds this matter appropriate for disposition without oral argument. *See* Fed. R. Civ. P. 78(b); C.D. Cal. R. 7-15. Accordingly, the hearing on these applications scheduled for October 21, 2016 at 2:30 p.m. is VACATED. For the reasons provided below, the Court GRANTS both Applications.

**I. BACKGROUND**

On August 20, 2015, CFPB brought an enforcement action against Defendants Pension Funding, LLC, Pension Income, LLC, Steven Covey, Edwin Lichtig, and Rex Hofelter. (Compl., Doc. 1.) The Complaint alleged violations of the Consumer Financial Protection Act and various New York regulations stemming from Defendants’ purported involvement with and sale of so-called “pension advances,” defined as “lump- sum

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payments that consumers could receive in return for agreeing to redirect all or part of their pension payments, over eight years, to repay the funds.” (*Id.* ¶ 1.)

On January 7, 2016, pursuant to a stipulation between CFPB and all of the Defendants except Covey (Stipulation, Doc. 57), the Court entered a preliminary injunction enjoining certain conduct by Defendants (PI, Doc. 61.) In relevant part, the injunction appointed Freitag, of E3 Advisors, as the “receiver of Pension Funding, LLC and Pension Income, LLC[.]” (*Id.* at 3.) In her role as receiver, Freitag was permitted to “employ attorneys, accountants, and others to investigate, advise, and where appropriate, to institute, pursue, and prosecute all claims and causes of action of whatever kind and nature which may now or hereafter exist[.]” (*Id.* at 6.) Subsequently, on March 1, 2016, Freitag filed a motion in aid of receivership. (Mot., Doc. 71.) In that motion, Freitag sought to retain Allen Matkins as legal counsel. (*Id.* at 1.) Additionally, Freitag requested the Court’s approval, consistent with Local Rule 66-6.1, to file interim fee applications on a quarterly basis. (*Id.* at 14-15.) On April 13, 2016, the Court granted Freitag’s motion subject only to the limitation that the Court would defer, rather than waive, Local Rule 66-5’s requirement that Freitag file a list of Defendants’ creditors. (Order, Doc. 86.)

On April 29, 2016, Freitag filed her First Interim Report (“FIR”), which covered activities occurring between January 8, 2016 and March 31, 2016. (FIR, Doc. 87.) According to the FIR, “[o]n or about January 8, 2016 . . . the Receiver took control of the Receivership Entities, their books and records, bank accounts and assets.” (*Id.* at 1.) As of March 31, 2016, according to the FIR, “the Receiver has secured and recovered \$1.17 million in cash and a \$1.1 million participating interest in a commercial real estate loan.” (*Id.*) Additionally, “the Receiver promptly assumed responsibility of all service operations and collections,” and initiated the early stages of a forensic accounting, as directed in the Court’s Preliminary Injunction. (*Id.* at 2.)

On July 7, 2016, the Court granted Freitag and Matkins’ First Interim Fee Applications, which covered the period from January 8, 2016 to March 31, 2016. (Order, Doc. 95.) While the Court granted Freitag’s request for \$81,889.65 in fees and \$7,926.77 in expenses, the Court “caution[ed] Freitag to be vigilant in managing costs, especially in relation to the claims and distributions category.” (*Id.* at 4, 6.) The Court likewise approved Matkins request for \$36,163.35 in fees and \$2,057.79 in expenses. (*Id.* at 7-8.)

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**II. LEGAL STANDARD**

“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. Byers*, 590 F. Supp. 2d 637, 644 (S.D.N.Y. 2008). This entitlement to reasonable compensation extends to the professionals employed by the receiver. *See Drilling & Expl. Corp. v. Webster*, 69 F.2d 416, 418 (9th Cir. 1934). “The receiver bears the burden to demonstrate to the court [any] entitlement to [the] payment of fees and costs in the amount requested.” *SEC v. Total Wealth Mgmt., Inc.*, No. 15-CV-226-BAS-DHB, 2016 WL 727073, at \*1 (S.D. Cal Feb. 24, 2016) (citing 65 Am. Jur. 2d, Receivers § 228 (2d ed. Feb. 2016 update)). “The court appointing the receiver has full power to fix the compensation of [the] receiver and the compensation of [professionals employed by the receiver],” *Drilling & Expl. Corp.*, 69 F.2d at 418, and the court has considerable discretion in fashioning a fee award that is appropriate under the circumstances, *Gaskill v. Gordon*, 27 F.3d 248, 253 (7th Cir. 1994). Generally, receivers and any assisting professionals should charge a reduced rate to reflect the public interest involved in preserving funds held in a receivership estate. *Byers*, 590 F. Supp. 2d at 646-47.

“An award of interim fees is appropriate ‘where both the magnitude and the protracted nature of a case impose economic hardships on professionals rendering services to the estate.’” *SEC v. Small Bus. Capital Corp.*, No. 5:12-CV-03237 EJD, 2013 WL 2146605, at \*2 (N.D. Cal. May 15, 2013) (citation omitted). In determining the reasonableness of the fees and costs requested, the court should consider the “economy of administration, the burden that the estate may safely 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). However, courts will “[f]requently . . . withhold a portion of the requested interim fees because ‘until the case is concluded the court may not be able to accurately determine the “reasonable” value of the services for which the allowance of interim compensation is sought.’” *Small Bus. Capital Corp.*, 2013 WL 2146605, at \*2 (citation omitted).

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**III. DISCUSSION**

**A. Freitag’s Second Interim Application**

Freitag’s Second Application, which covers the period from April 1, 2016 through June 30, 2016, seeks interim approval of \$65,706.30 in fees and \$460.33 in expenses. (Freitag App. at 10.) Freitag seeks an order from the Court authorizing payment, on an interim basis, of 80 percent—or \$52,565.04—of her fees, and 100 percent of her expenses. (*Id.*) The twenty percent holdback would be recoverable at the conclusion of the receivership. (*Id.*)

According to her Application, the receiver’s work thus far falls into the following six broad categories: (1) general receivership (4.8 percent of requested fees), (2) asset investigation and recovery (0.6 percent of requested fees), (3) reporting (7.5 percent of requested fees), (4) operations and asset sales (13.1 percent of requested fees), (5) claims and distributions (18.4 percent of requested fees), and (6) forensic accounting (55.7 percent of requested fees).<sup>1</sup> (*Id.* at 3.) Overall, Freitag observes that, although the requested fees “are significant,” the Receiver has completed a majority of the necessary forensic accounting (other than the older Chase records) and has recovered \$2.1 million in cash and a \$1.1 million participating interest in a commercial real estate loan. (*Id.* at 3-5.)

Freitag provides a description of each category of work. The Receiver’s general receivership duties consist of “[1] work associated with the Receivership Entities’ income tax matters, [2] preparation for the April 13, 2016 hearing, [3] preparation of physical documents for storage, [4] transition of large bank balances to insured cash sweeps, [5] and website updates.” (*Id.* at 5.) Freitag characterizes these tasks as “non-recurring” and expects any further work to be “minimal.” (*Id.*) The Receiver’s fees related to general receivership duties amount to \$3,153.60. (*Id.*)

The receiver’s asset investigation and recovery work relates to investigating an “an additional and similar participating interest” discovered after the Receiver contacted

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<sup>1</sup> The total percentage exceeds one-hundred percent due to rounding.

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the lead lender for the \$1.1 million participating interest in a commercial real estate loan. (*Id.* at 5-6.) Total fees arising from this category of work equal \$388.80. (*Id.* at 6.)

The Receiver's reporting tasks involved completing the Receiver's First Interim Report (Doc. 87) and verifying the contact information for the creditors. (*Id.*) The Receiver describes this work as necessarily ongoing. (*Id.*) Total fees arising from this category of work amount to \$4,919.85. (*Id.*)

With regard to the operations and asset sales category, the Receiver's duties focused on collecting pensioners' payments and analyzing pensioners' accounts related to bankruptcies and payment plan requests. (*Id.*) As this work is "crucially important" Freitag expects that this work will remain constant. (*Id.*) Total fees relating to this category currently amount to \$8,595.45. (*Id.*)

The fifth category of work relates to claims and distributions. (*Id.*) Due to the "hundreds of affected individuals," Freitag reports that the inquiries from pensioners, agents, and other stakeholders have been "voluminous" and are expected to continue. (*Id.*) To reduce the Receiver's costs of responding to these inquiries, she appointed an associate with a billing rate 40% lower to respond to inquiries in the first instance. (*Id.* at 5-6.) The total fees relating to this category amount to \$12,061.80. (*Id.* at 6.)

A majority of the Receiver's fees in this Application falls within the last category, forensic accounting. (*Id.*) Freitag asserts that this work is necessary because, although "some accounting software does exist, there are no comprehensive or detailed books and records of the Pensioner and Investor accounts/transactions." (*Id.* at 3.) The Receiver describes the forensic accounting as examining "over four years of monthly transactional activity for hundreds of contracts, [the] responsibility for which historically transitioned to/from several different individuals/entities over the course of those years." (*Id.*) The Receiver anticipates that this work will be completed by September 30, 2016 in preparation for a proposal to be submitted to the Court on how to address the pensioner and investor transactions at issue in this case. (*Id.* at 4.) The total fees arising from this category of work are \$36,586.80. (*Id.* at 7.)

To support her fee request, Freitag has provided a ten-page chart detailing each billing time entry for which she seeks to recover fees. (App., Ex. A, Doc. 108.) A close review of this chart reveals that four different individuals performed work in aid of the

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receivership at hourly rates ranging from \$112.50 to \$265.50. (*See id.*) These rates are consistent with the rates proposed by Freitag in her application to serve as receiver, and reflect a ten percent discount on Freitag’s regular billing rate. (Stipulation, Ex. A, “E3 Receiver Credentials,” at 2, Doc. 57-2.) Moreover, the chart appears consistent with Freitag’s prior assertion that she “anticipate[s] a blended hourly billing rate of less than \$225[.]” (*Id.*)

Separately, Freitag seeks to recover expenses total \$460.33. (Freitag App. at 8.) These expenses relate to the set-up and maintenance of the Receiver’s website, postage, copies, and supplies. (*Id.*) In support of the expense request, Freitag submits an itemized chart detailing each expense. (App., Exh. A, Doc. 108.)

Having carefully considered the Application and supporting records, the Court finds Freitag’s second Application to be reasonable. Accordingly, the Court ORDERS payment of 80 percent of Freitag’s receivership fees and 100 percent of her requested expenses.

**B. Allen Matkin’s Second Interim Application**

Allen Matkin’s Application, which also covers the period from April 1, 2016 through June 30, 2016, seeks interim approval of \$30,655.35 in fees and \$600.06 in expenses. (Allen Matkin App. at 1.) Like Freitag, Allen Matkin requests an order authorizing interim payment of 80 percent—or \$24,524.28—of his firm’s fees and 100 percent of its expenses. (*Id.*) The firm’s fees relate to the following six categories of work: (1) general receivership (12 hours), (2) asset investigation (35.30 total hours), (3) reporting (7.1 hours), (4) claims and distributions (1.7 hours), (5) pending litigation (1.4 hours), and (6) employment/fees (4.2 hours). (*Id.* at 2.)

Allen Matkin’s work relating to general receivership duties focused on “analyzing issues raised by the bankruptcy case of Defendant Edwin Lichtig,” such as “assisting the Receiver in reviewing key documents, analyzing issues raised by the bankruptcy, conferring with counsel for the plaintiffs, and developing a strategy to

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protect the receivership estate’s interests.” (*Id.* at 3) This bankruptcy petition was dismissed on April 20, 2016. (*Id.*)

The Allen Matkins’ asset investigation work centered on representing the Receiver in pensioners’ bankruptcy proceedings. (*Id.* at 4.) The General Counsel reviewed and analyzed the pensioners’ agreement to support proofs of claim, monitored developments in bankruptcy proceedings, and corresponded with the bankruptcy courts and trustees. (*Id.*) Much of this work is non-reoccurring because General Counsel developed a template that will be used in future bankruptcy proceedings. (*Id.*) Additional work in this category included following up on subpoena requests and investigating transfers from the receivership entities to Mr. Lichtig’s retirement accounts. (*Id.*) Fees in this category total \$17,694.00. (*Id.*)

The work Allen Matkins performed in the third category—reporting—largely involved preparing the Receiver’s First Interim Report, which includes a detailed description of the Receiver’s progress during the first quarter of 2016. (*Id.* at 4-5.) Total expenses in this category amount to \$3,450.60. (*Id.* at 5)

The next two categories—“claims and distributions” and “pending litigation”—involve the General Counsel’s work helping the Receiver draft Frequently Asked Questions for the Receiver’s website and addressing a suit the entities had filed prior to receivership. (*Id.*) Fees totaled \$826.20 for the communication work and \$680.40 for the pending litigation. (*Id.*)

The final category, “employment/fees,” includes the General Counsel work preparing the First Interim Fee Report. (*Id.*) Expenses in this category totaled \$2,041.20.

Separately, Allen Matkins seeks to recover \$600.06 in expenses. (*Id.* at 6.) The bulk of these costs relate to the issuance and service of subpoenas. (*Id.*)

In support of his Application, Allen Matkins submits detailed billing records, organized by work category, that document the time spent on this matter and for which the firm seeks to recover fees. (Preliminary Billing Form, Exh. A, Doc. 89.) These billing records reflect that four attorneys have performed work during this period, with hourly billing rates between \$486 and \$670.50. (*Id.* at 15, 25, 27, 28, 29, 32.) The bulk of the work on this matter continues to be performed by Edward Fates, a partner whose hourly rate is \$486. (*Id.*) These rates are consistent with the rates proposed in Freitag’s motion in

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aid of receivership, which were previously represented to be “comparable or less than those charged by attorneys in Southern California with similar levels of skill and experience[.]” (Mot. at 13.) Freitag previously submitted to the Court detailed biographies of each attorneys’ relevant experience in similar manners. (*Id.*, Ex. A, “Attorney Biographies,” Doc. 71.) Additionally, the billing chart also provides an itemized accounting of each expense for which the firm seeks to recover. (Preliminary Billing Form at 14-15.)

Based on Allen Matkin’s Application and the evidence in support thereof, the Court concludes that the requested fees and expenses are reasonable. Accordingly, the Court ORDERS immediate payment of 80 percent of Allen Matkin’s requested fees and 100 percent of the firm’s expenses.

**IV. CONCLUSION**

For the reasons stated above, the Court GRANTS both Freitag and Matkins’ Applications. The Court ORDERS immediate payment of 80 percent—or \$52,565.04—of Freitag’s fees, and 100 percent of her expenses. Additionally, the Court ORDERS immediate payment of 80 percent—or \$24,524.28—of Matkins’ fees and 100 percent of the firm’s expenses. The 20 percent holdback of each parties’ fees will be recoverable, with the Court’s approval, upon conclusion of the receivership.

Initials of Preparer: tg