
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

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

Date: January 17, 2017

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

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
THIRD INTERIM APPLICATION FOR PAYMENT OF FEES
AND REIMBURSEMENT OF EXPENSES (Doc. 119) AND (2)
GRANTING GENERAL COUNSEL’S THIRD INTERIM
APPLICATION FOR PAYMENT OF FEES AND
REIMBURSEMENT OF EXPENSES (Doc. 120)**

Before the Court are two Interim Fee Applications filed by Krista Freitag, the court-appointed receiver, and Allen Matkins, her general counsel. (Freitag App., Doc. 119; Matkins App., Doc. 120.) The Court finds these matters 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 January 20, 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 (Stip., Doc. 59), 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 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. (First Interim Fee Applications 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.) On October 19, 2016, the Court granted Freitag and Matkins’ Second Interim Fee Applications. (Second Interim Fee Applications Order, Doc. 115.) Specifically, the Court approved a payment of \$65,706.30 in fees and \$460.33 in expenses to Freitag and \$30,655.35 in fees and \$600.06 in expenses to Matkins. (*Id.* at 4, 6.) And on December 14, 2016, the Court generally approved the Receiver’s report and recommendations on how to unwind the receivership assets. (Report and Recommendations, Doc. 125.)

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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 Third Interim Application

Freitag’s Application, which covers the period from July 1, 2016 through September 30, 2016, seeks interim approval of \$81,093.60 in fees and \$135.00 in expenses. (Freitag App. at 1.) Freitag seeks an order from the Court authorizing payment, on an interim basis, 80 percent—or \$64,874.88—of her fees, and 100 percent of her expenses. (*Id.* at 10.) The twenty percent holdback would be recoverable at the conclusion of the receivership. (*Id.*)

The Receiver’s work during the application period falls into the following six broad categories: (1) general receivership (1.5 percent of requested fees), (2) asset investigation and recovery (0.2 percent of requested fees), (3) reporting (17.7 percent of requested fees), (4) operations and asset sales (7.4 percent of requested fees), (5) claims and distributions (20.2 percent of requested fees), and (6) forensic accounting (53.1 percent of requested fees).¹ (*Id.* at 2.) During the application period, the Receiver completed the forensic accounting and prepared most of the forensic accounting report. While the total fees requested have increased by 23 percent when compared to the Second Application Period, the Receiver predicts that “the Receiver’s fees are expected to materially decrease” in future applications. (*Id.* at 3.)

The Receiver’s general receivership work focuses on “income tax matters, agency requests, and website updates.” (*Id.* at 5.) The Receiver’s total fees for this category equal \$1,201.05. (*Id.*) The Receiver’s asset investigation and recovery work, totaling \$140.40, involved “briefly research[ing] potential real property assets.” (*Id.*)

The Receiver’s third category of work—reporting—focused on preparing the Receiver’s Second Interim Report, the creditor list, and most of the Forensic Accounting Report. (*Id.* at 6.) The Receiver predicts her work in this category will continue but at a

¹ The sum of these percentages exceeds 100 percent due to rounding.

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“much lower” level as the Receiver has completed her Forensic Accounting Report. The Receiver’s fees for this category total \$14,331.15. (*Id.*)

The Receiver’s fourth category of fees, operations and assets, consists of analyzing Pensioner accounts and managing Pensioner collections. (*Id.*) The Receiver describes this work as “consistent . . . and crucially important.” (*Id.*) Total fees for this category amount to \$5,975.10. (*Id.*)

Pensioner’s fifth category of work, claims and distributions, involves responding to “voluminous direct inquires” from Pensioners and corresponding with Pensioners about their payment obligations. (*Id.* at 6-7.) While the Receiver tries to use template responses when possible to reduce costs, she believes that her fees in this category will remain constant. (*Id.* at 6.) Further, she contends that these expenses are necessary to avert misunderstandings and collection litigation. (*Id.* at 7.) Total fees for this category equal \$16,381.80. (*Id.*)

The final category of expenses—forensic accounting—represents a majority of the Receiver’s total fees. (*Id.*) During this application period, the Receiver reviewed all of the receivership entities’ Chase Bank records and synthesized all of the receivership entities’ records to present in the Receiver’s report and recommendation. (*Id.* at 7-8.) The Receiver’s total fees in this category amounted to \$43,064.10. (*Id.* at 8.)

To support her fee request, Freitag provides an eleven-page chart detailing each billing entry. A careful review of this chart reveals that four individuals performed work at hourly rates ranging from \$112.50 to \$265.50. (Timesheet, Exh. A, Doc. 119.) These rates are consistent with rates proposed by Freitag in her application to serve as receiver, and reflect a ten percent discount on Freitag’s regular billing rate. (Stip., Exh. A, “E3 Receiver Credentials,” at 2, Doc. 57-2.) Accordingly, this 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 \$135.00 for postage and copies. (Freitag App. at 8.) In support of the expense request, Freitag submits an itemized chart detailing each expense. (Itemized Expenses, Exh. A, Doc. 119.)

The Court finds that all of the requested fees are reasonable and adequately supported. Based on the Application and the evidence submitted in support thereof, the

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Court concludes that Freitag’s initial Application is reasonable. Accordingly, the Court ORDERS payment of 80 percent of Freitag’s receivership fees and 100 percent of her requested expenses. Because the Receiver’s forensic accounting has now been “primarily completed,” the Court trusts that—as Freitag projects—future fee requests will “materially decrease.” (*Id.* at 3.)

B. Matkins’ Third Interim Application

Matkins’ Application, which covers the period from July 1, 2016 through September 30, 2016, seeks interim approval of \$59,112.45 in fees and \$3,820.26 in expenses. (Matkin App. at 1.) Like Freitag, Matkins requests an order authorizing interim payment of 80 percent—or \$47,289.96—of their fees and 100 percent of their expenses. (*Id.*) The firm’s fees relate to the following five categories of work: (1) general receivership (0.8 percent), (2) asset investigation (67 percent), (3) reporting (24.4 percent), (4) claims and distribution (4.5 percent), and (5) employment/fees (3.4 percent).² (*Id.* at 2.)

Matkins’ general receivership duties focused on issues related to a default judgment entered against Defendant Covey, corporate tax matters, and media coverage. (*Id.* at 3.) The total fees arising from this category of work amount to \$465.75. (*Id.*)

The vast majority of Matkins’ work focused on the second category, asset investigation. (*Id.*) This work focused on representing the Receiver’s interests in 35 bankruptcy cases, including reviewing case documents, inquiring about any pre-receivership collection efforts, filing proofs of claim, preparing other bankruptcy case filings, and updating the Receiver about developments in the bankruptcy cases. (*Id.* at 3-4.) These efforts required considerable time because the receivership entities had maintained no documentation of Pensioner bankruptcies, settlements, or default judgments. (*Id.* at 3.) This category also includes Matkins’ issuance of subpoenas on behalf of the Receiver and letters to defaulted Pensioners. (*Id.* at 4) As the majority of this work has now been completed, Matkins predicts this fee category will decrease

² The sum of these percentages exceeds 100 percent due to rounding.

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significantly in future fee applications. (*Id.*) Total fees for this category equal \$39,599.10. (*Id.*)

The third category of fees, reporting, relates to Matkins’ preparation of the Second Interim Report and assistance in developing the Receiver’s report and recommendations. (*Id.* at 4-5.) Matkins’ work in this category totals \$14,397.75. (*Id.* at 5.)

The fourth category of work, claims and distributions, involves responding to Pensioners’ questions, inquiries related to investments from IRA accounts, and claims asserted by Defendant Edwin Lichtig. (*Id.* at 5.) Total fees for this category amounted to \$2,631.60. (*Id.*) The last category, “employment/fees,” relates to Matkins’ work preparing the Second Interim Fee Applications. (*Id.* at 6.) Total fees for this category equal \$2,018.25. (*Id.*)

Additionally, Matkins seeks to recover \$3,820.26 in expenses. (*Id.*) The bulk of these costs relate to the production of documents in response to a subpoena. (*Id.*)

In support of its Application, Matkins submits detailed billing records, organized by the category of work performed, that document the time spent on this matter and for which the firm seeks to recover fees. (Timesheets, Exh. A, Doc. 120.) These billing records indicate that four attorneys performed work on this case during the application period, with hourly billing rates between \$409.50 and \$702.00. (*Id.* at 37.) Approximately half of the work on this matter during the application period was performed by Yale Kim, whose hourly rate is \$549. (*Id.* at 2, 37.) Additionally, the billing chart also provides an itemized accounting of each expense for which the firm seeks to recover. (Expenses, Exh. A, Doc. 120.)

While the Court finds Matkins’ fees and expenses fair and reasonable in light of the receivership entities’ lack of records and the need to represent the Receiver’s interests in 35 bankruptcies, the Court expects that—if Matkins’ asset investigation efforts or other time-intensive work continue—Matkins will delegate work to an associate with a lower hourly rate. With that caveat, the Court ORDERS immediate payment of 80 percent of Matkins’ requested fees and 100 percent of the firm’s expenses.

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IV. CONCLUSION

For the reasons stated above, the Court GRANTS both Freitag and Matkins' Applications. The Court ORDERS immediate payment of 80 percent—or \$64,874.88—of Freitag's fees, and 100 percent of her expenses. Additionally, the Court ORDERS immediate payment of 80 percent—or \$47,289.96—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