
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 8:15-cv-01329-JLS-JCG

Date: May 02, 2019

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

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

Terry Guerrero/Rolls Royce Paschal
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 FINAL APPLICATION FOR PAYMENT OF FEES AND REIMBURSEMENT OF EXPENSES (Doc. 203); AND (2) GRANTING GENERAL COUNSEL’S FINAL APPLICATION FOR PAYMENT OF FEES AND REIMBURSEMENT OF EXPENSES (Doc. 204)

Before the Court are two Final Fee Applications, one filed by Krista Freitag, the court-appointed Receiver, and one filed by Allen Matkins Leck Gamble Mallory & Natsis LLP (“Allen Matkins”), the Receiver’s general counsel. (Freitag App., Doc. 203; Allen Matkins App., Doc. 204.) Allen Matkins also noticed a hearing on the Applications. (Doc. 205.) The Court finds these matters appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. R. 7-15. Accordingly, the hearing on these Applications scheduled for **May 3, 2019, at 10:30 a.m., is removed from the calendar.** For the reasons provided below, the Court GRANTS both Applications.

Freitag’s Application, which covers the period from October 1, 2018, through December 31, 2018, seeks approval of \$9,315.45 in fees and \$548.22 in expenses. (Freitag App. at 4.) Freitag seeks an order from the Court authorizing final payment of (1) \$9,315.45 in fees and \$548.22 in expenses for this application period, (2) \$91,358.30 in fees held back from previous application periods, and (3) up to \$28,500 in projected fees and costs necessary to conclude the receivership. (*Id.*)

Allen Matkins’s Application, which also covers the period from October 1, 2018 through December 31, 2018, seeks approval of \$5,560.65 in fees and \$188.80 in

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expenses. (Allen Matkins App. at 2.) Like Freitag, Allen Matkins also requests an order authorizing payment of (1) such fees and expenses, (2) \$69,963.75 in fees previously-withheld pending final approval, and (3) up to \$12,000 for remaining legal work to conclude the receivership. (*Id.*)

The Court’s prior Orders have addressed in detail the factual background of this case and the legal standard governing fee applications for a receivership. (*See* Docs. 95, 115, 129, 137, 150, 157, 167.) Accordingly, the Court proceeds directly to its discussion of the instant Applications. The Court first respectively addresses each Application’s request for fees incurred during this application period before jointly discussing disbursement of previously-withheld fees and approval of future fee incurrence.

I. RECEIVER’S FINAL FEE APPLICATION

The Receiver’s work during this application period totals 70.3 hours and falls into the following five broad categories: (1) general receivership, (2) reporting, (3) operations and asset sales, (4) claims and distributions, and (5) employment/fees. (*Id.* at 6.)

First, the Receiver’s general receivership duties involved “general matters, income tax matters, agency requests, and website updates” associated with the Receivership Entities. (*Id.* at 8.) In this application period, such work “primarily reflects attention to receivership wrap-up, and income tax matters.” (*Id.*) The Receiver’s total fees for this category are \$2,976.75. (*Id.*)

Second, the Receiver’s reporting work, totaling \$526.50, focused on preparing the Eleventh Interim Report. (*Id.*; *see* Eleventh Interim Report, Doc. 194.)

Third, the Receivers work pertaining to operations and asset sales consisted of “collection of monthly payments and payoff settlements from Pensioners, analysis of Pensioner accounts, minimal power of attorney (POA) account clean-up, and other operational matters.” (*Id.*) Total fees for operations and asset sales amounted to \$2,853.45. (*Id.*)

The Receiver’s work related to claims and distributions totaled \$2,427.75 in fees. (*Id.* at 9.) Such work involved “respond[ing] to direct inquiries from Pensioners, Investors, agents and others regarding the Investors’ investments and the Pensioners’

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accounts (including payment status, payoff settlements and monthly payment collection).” (*Id.*) The Receiver continued to use appropriate template responses, posted answers to Frequently Asked Questions, and associates who bill at lesser rates as the first line of correspondence. (*Id.*)

The last category, employment and fees, covers the Receiver’s time spent preparing the Eleventh Interim Fee Application. (*Id.*) Total fees in this category amounted to \$531.00. (*Id.*)

In support of her application, Freitag submits a chart detailing the hours billed and her expenses. (Receiver’s Timesheets, Ex. A to Freitag App. at 14-18.) A review of this chart shows that three practitioners with billing rates ranging from \$112.50 to \$265.50 performed work during this fee period. These rates are consistent with the rates proposed by Freitag in her application to serve as Receiver and reflect a 10% discount on Freitag’s regular billing rate. (E3 Receiver Credentials, Ex. A to Stip., Doc. 57-2 at 2.) Accordingly, this chart appears consistent with Freitag’s representation that she “anticipate[s] a blended hourly billing rate of less than \$225[.]” (*Id.*)

Separately, Freitag seeks to recover expenses totaling \$548.22. (Freitag App. at 9.) “The majority of the expenses incurred relate to website updates and postage expenses associated with collections, general Investor, and general Pensioner communications. (*Id.*; *see also* Receiver’s Timesheets at 18.)

Based on the Application and the evidence submitted in support thereof, the Court concludes that Freitag’s Application is reasonable, and the Court ORDERS payment of Freitag’s receivership fees for this application period, \$9,315.45, and \$548.22 in expenses.

II. COUNSEL’S FINAL FEE APPLICATION

The firm’s fees for this application period reflect 10.6 hours worked and fall into the following four general categories: (1) asset investigation, (2) reporting, (3) claims and distributions, (4) employment/fees. (*Id.* at 5.)

Asset investigation covers the firm’s work “protecting the receivership estate’s interests with respect to the pensioner contracts affected by bankruptcy cases,

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settlements, or default judgments.” (*Id.*) During this period, the firm continued “reviewing case dockets and key filings in the cases; communicati[ng] with counsel representing bankruptcy trustees; and [p]roviding updates to the Receiver and advising on recovery strategies.” (*Id.*) The Court finds the requested fees, \$2,916.90, fair and reasonable.

Counsel’s reporting work consisted of preparing the Eleventh Interim Report, which “contains a detailed description of the Receiver’s activities during the third quarter of 2018, including cash recovered, investor communications, and post-receivership receipts and disbursements. The report also includes the Receiver’s recommendations for the continued administration of the receivership estate.” (*Id.*; *see* Eleventh Interim Report.) Total expenses for this category amount to \$843.75. (*Id.*)

The firm’s work in the third category, claims and distributions, focused on responding to inquiries from Investors, Pensioners, and their counsel concerning their claims. (*Id.*) Counsel’s fees for this category total \$112.50. (*Id.*)

Work under the final fee category, employment/fees, consisted of preparing the Eleventh Interim Fee Applications. (*Id.* at 7.) Counsel’s total fees for this category amount to \$1,687.50. (*Id.* at 6.)

In support of this Application, the firm has submitted detailed billing records organized by the category of work performed. (Gen. Counsel Timesheets, Ex. A to Allen Matkins App. at 11-22.) These billing records indicate that two attorneys performed work on this case during the instant fee period with hourly billing rates of \$562.50 and \$351.50. (*See id.*) Additionally, the billing chart provides an itemized accounting of the \$88.14 in expenses for which the firm seeks reimbursement. (*Id.* at 13-14.) These expenses are primarily comprised of messenger fees and recording fees. (*See id.*; Allen Matkins App. at 7.)

The Court finds the fees and expenses described by the firm fair, reasonable and adequately supported. Accordingly, the Court ORDERS payment of the firm’s requested fees, \$5,560.65, and the firm’s expenses, \$188.80.

III. FINAL APPROVAL OF FEES AND COSTS

As noted above, in addition to fees incurred for during the most recent period,

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Freitag and Allen Matkins seek final approval of their total fees and costs, as well as disbursement of fees previously-withheld pending such approval. As described in this Order and prior Orders granting their fee applications, the Receiver and her counsel have worked diligently and efficiently to recover, preserve, and protect the assets at issue. Through such efforts the Receiver was able “to refund nearly \$700,000 of Pensioner lump-sum overpayments, and fund \$3.3 million of investor interim distribution payments. In total, the Receiver recovered a total of \$5.04 million, and [] has collected approximately \$1.4 million from pensioners since October of 2016, at which time (based on Pensioner bankruptcies and defaults at that time) she projected collectability of approximately \$1.3 million of net lump sum proceeds from Pensioners.” (Freitag App. at 6.) The Receiver anticipates that “Investors with allowed claims and who successfully negotiated the interim distribution will have recovered a grand total of \$13.8 million (nearly \$3.4 million from the receivership estate), on average, [representing] 57% of their approximately \$24.2 million in investments.” (*Id.* at 7.) The Court agrees with the Receiver’s assessment that

[t]his is a successful result considering (a) the relatively small amount of cash in company accounts at the time of the Receiver's appointment, (b) the lack of a complete accounting system used by Defendants, (c) the lack of Pensioner creditworthiness and thus, the extent to which the Pensioners who defaulted and/or filed bankruptcy, (d) the amount of funds used pre-receivership by Defendants for operations and/or net insider payments (over \$6 million), and (e) the insufficient amount of reserves collected in comparison to the number of pensioners who defaulted and/or filed bankruptcy.”

All told, the Receiver, assisted by counsel, has successfully completed her duties, consistently filed timely reports with the Court, and otherwise earned the compensation she requests. Accordingly, the Court APPROVES all fees awarded to date. Moreover, the Court AUTHORIZES up to \$28,500 in projected fees and costs to be incurred by Freitag to wrap up the receivership and up to \$12,000 for Allen Matkins to assist her with the same.

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IV. CONCLUSION

For the reasons stated above, the Court GRANTS both Freitag’s and Allen Matkins’s Applications. The Court ORDERS payment to Freitag of \$9,315.45 in fees and \$548.22 in costs for this period and \$91,358.30 in previously-withheld fees. The Court AUTHORIZES Freitag to incur up to \$28,500 in fees and costs to wrap up the receivership. The Court ORDERS payment to Allen Matkins of \$5,560.65 in fees and \$188.80 in costs for this period and \$69,963.61 in previously-withheld fees. The Court AUTHORIZES Allen Matkins to incur up to \$12,000 in fees and costs to assist the Receiver in wrapping up the receivership. The Court GRANTS final approval of all fees and costs awarded to date.

Initials of Preparer: tg/rrp