
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

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

Date: November 08, 2018

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 TENTH INTERIM APPLICATION FOR PAYMENT OF FEES AND REIMBURSEMENT OF EXPENSES; AND (2) GRANTING GENERAL COUNSEL’S TENTH INTERIM APPLICATION FOR PAYMENT OF FEES AND REIMBURSEMENT OF EXPENSES (Docs. 188, 189)

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. 188; Matkins App., Doc. 189.) 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 November 9, 2018, at 10:30 a.m. is removed from the calendar. For the reasons provided below, the Court GRANTS both Applications.

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.

I. RECEIVER’S TENTH INTERIM APPLICATION

Freitag’s Application, which covers the period from April 1, 2018, through June 30, 2018, seeks interim approval of \$10,201.05 in fees and \$402.50 in expenses. (Freitag

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App. at 1.) Freitag seeks an order from the Court authorizing payment on an interim basis of 80 percent—or \$8,160.84—of her fees, and 100 percent of her expenses. (*Id.*) The 20 percent holdback would be recoverable at the conclusion of the receivership. (*Id.*)

The Receiver’s work during this application period falls into the following six broad categories: (1) general receivership (7 percent of requested fees), (2) asset investigation and recovery (10 percent of requested fees), (3) reporting (15 percent of requested fees), (4) operations and asset sales (43 percent of requested fees), (5) claims and distributions (18 percent of requested fees), and (6) employment/fees (7 percent of requested fees). (*Id.* at 3.)

As in the last fee period, the first three categories involve comparatively small expenses. First, the Receiver’s general receivership duties involved “income tax matters, agency requests, and website updates.” (*Id.* at 4.) The Receiver’s total fees for this category, \$695.25, are minimal and comport with the Receiver’s continued assessment that her work in this category is “largely non-recurring” and will likely “reflect minimal time on a go-forward basis.” (*Id.*) Second, total fees related to the Receiver’s asset investigation and recovery work related to Pensioner research and collection efforts amount to \$1,000.80. (*Id.*) Third, the Receiver’s reporting work, totaling \$1569.15, focused on preparing the Ninth Interim Report. (*Id.*)

The Receiver’s work in operations and asset sales accounted for \$4,370.85. Although this represents 43 percent of fees requested this fee period, this category of work decreased by approximately 44 percent from the Ninth Application Period. Her work in this category consisted primarily of “monthly Pensioner payment collections, analysis of pensioner accounts, . . . account clean-up and other operational matters.” (*Id.* at 4.) Overall, the Receiver describes her work in this category as “consistent” and “crucially important.” (*Id.* at 4-5.)

After a sharp increase in the previous fee period related to the preparation and execution of the second interim distribution payments to Investors, the Receiver’s work related to claims and distributions fell over 85 percent this fee period, totaling \$1,881.45 in fees. (*Id.* at 5.) This decrease was expected, as the Receiver had largely completed the distribution and used this fee period to complete some remaining work related to that distribution and respond to resulting inquiries from Pensioners and Investors regarding

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the status of their investments or debts. (*Id.* at 5.) The Receiver anticipates that inquiries will generally continue to decrease over time. (*Id.*) The Receiver continues 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 Ninth Interim Fee Application. (*Id.* at 6.) Total fees in this category amounted to \$683.55 and remain steady compared to the previous fee period. (*Id.*)

In support of her application, Freitag submits a chart detailing the hours billed and her expenses. (*See* Receiver’s Timesheets, Ex. A to Freitag App., Doc. 188 at 9-14.) A review of this chart shows that four 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 ten percent 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 \$402.50. (Freitag App. at 6.) The majority of these expenses relate to postage expenses associated with the second interim distribution payments, website updates and postage expenses associated with collections and Investor and Pensioner communications. (*Id.* at 6; *see also* Receiver’s Timesheets at 14.)

The Court finds that the requested fees are reasonable and adequately supported. 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 80 percent of Freitag’s receivership fees, \$8,160.84, and 100 percent of her requested expenses, \$402.50.

II. COUNSEL’S TENTH INTERIM APPLICATION

Matkins’ Application, which also covers the period from April 1, 2018 through June 30, 2018, seeks interim approval of \$30,197.70 in fees and \$407.10 in expenses. (Matkins App. at 1.) Like Freitag, Matkins requests an order authorizing interim

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payment of 80 percent—or \$24,158.16—of the firm’s fees and 100 percent of its expenses. (*Id.*) The firm’s fees fall into the following six categories of work: (1) asset investigation (18 percent), (2) reporting (13 percent), (3) claims and distributions (1 percent), (4) third party recoveries (62 percent), and (5) employment/fees (5 percent). (*Id.* at 2.)

Asset investigation covers the firm’s work representing the Receiver’s interests in 35 contracts where the Pensioner has entered bankruptcy and 11 contracts where the receivership entities have obtained default judgments or settlements. (*Id.* at 3.) During this period, Matkins continued monitoring the bankruptcy cases for status and payments to the Receivership Entities. (*Id.*) The firm’s work involved reviewing case dockets and key filings, preparing and filing necessary proofs of claim, communicating with counsel for the bankruptcy trustees, filing motions for approval of settlements, updating the Receiver on recovery strategies, and updating the log that tracks the status of bankruptcy cases. (*Id.*) In the last several Application periods, Matkins has written off time billed for “time-intensive” work by partner Yale Kim to reduce his effective hourly rate related to work in this category. (*Id.*) These write-offs were to satisfy the Court’s expectation that such time-intensive work would be done by an associate or at a lower rate (*Id.* (citing Order, Doc. 129 at 7).) Matkins notes, however, that the number of affected cases has dwindled to the point that related work is no longer “time-intensive”—only ten hours were spent in this category this fee period—and requests to bill Mr. Kim at his full rate. The Court finds the requested rates and total fees, amounting to \$5,541.75, fair and reasonable under the circumstances. (*Id.* at 3.)

Counsel’s reporting work consisted of preparing the Ninth Interim Report, which includes a detailed description of the Receiver’s activities during the first quarter of 2018. (*Id.* at 4.) Additionally, at the Court’s instruction, counsel prepared an estimated timeline

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to conclude the receivership and related application to seal. (*See* Docs. 175-179.) Total expenses for this category amount to \$4,069.80. (Matkins App. at 4.)

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 \$267.75. (*Id.*)

The fees for the third-party recoveries category total \$18,658.35. (*Id.* at 5.) This primarily covers the firm’s work on a defaulted pensioner collection action. (*Id.* at 4.) Matkins assisted with efforts to settle the action, but the pensioner would not agree to settle. Thus, the Receiver had to file a motion for summary judgment, which Matkins assisted in preparing. (*Id.*) On June 4, 2018, the Receiver and Matkins participated in a mediation with the pensioner, which led to ensuing settlement discussions and, ultimately, a settlement. (*Id.*) An associate performed more than half of the work in this category at a discounted rate of \$306.00. (*Id.* at 5.)

Work under the final fee category, “employment/fees,” consisted of preparing the Ninth Interim Fee Applications. (*Id.*) Counsel’s total fees for this category amount to \$1,660.05 and remain steady compared to the previous fee period. (*Id.*)

In support of this Application, Matkins has submitted detailed billing records organized by the category of work performed. (Gen. Counsel Timesheets, Ex. A to Matkins App., Doc. 189 at 9-27.) These billing records indicate that three attorneys performed work on this case during the instant fee period with hourly billing rates between \$306.00 and \$562.50. (*See id.* at 14, 25.) Additionally, the billing chart provides an itemized accounting of the \$407.10 in expenses for which the firm seeks reimbursement. (*Id.* at 12-14.) These expenses are primarily comprised of messenger fees, duplication costs and postage. (*See id.*; Matkins App. at 5.)

The Court finds the fees and expenses described by Matkins fair and reasonable and ORDERS immediate payment of 80 percent of the firm’s requested fees, which is \$24,158.16, and 100 percent of the firm’s expenses, \$407.10.

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III. CONCLUSION

For the reasons stated above, the Court GRANTS both Freitag’s and Matkins’ Applications. The Court ORDERS immediate payment of 80 percent—or \$8,160.84—of Freitag’s fees, and 100 percent of her expenses. Further, the Court ORDERS immediate payment of 80 percent—or \$24,158.16—of Matkins’ fees and 100 percent of the firm’s expenses. The 20 percent holdback of each applicant’s fees will be recoverable, with the Court’s approval, upon the conclusion of the receivership.

Initials of Preparer: tg