
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

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

Date: March 27, 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 EIGHTH INTERIM APPLICATION FOR PAYMENT OF FEES AND REIMBURSEMENT OF EXPENSES; AND (2) GRANTING GENERAL COUNSEL’S EIGHTH INTERIM APPLICATION FOR PAYMENT OF FEES AND REIMBURSEMENT OF EXPENSES (Docs. 168, 169)

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. 168; Matkins App., Doc. 169.) 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 March 30, 2018, at 2:30 p.m. is VACATED. 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 EIGHTH INTERIM APPLICATION

Freitag’s Application, which covers the period from October 1, 2017, through December 31, 2017, seeks interim approval of \$14,354.10 in fees and \$845.17 in expenses. (Freitag App. at 1.) Freitag seeks an order from the Court authorizing

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payment on an interim basis of 80 percent—or \$11,483.28—of her fees, and 100 percent of her expenses. (*Id.*) 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 (2 percent of requested fees), (2) asset investigation and recovery (4 percent of requested fees), (3) reporting (10 percent of requested fees), (4) operations & asset sales (46 percent of requested fees), (5) claims & distributions (37 percent of requested fees), and (6) employment/fees (2 percent of requested fees). (*Id.* at 3.) Freitag’s fee request represents an approximately 46 percent decrease from the Seventh Application period.

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,” with a particular focus on the latter two tasks during the Eighth Application Period. (*Id.* at 4.) The Receiver asserts that her work in this category is “largely non-recurring” and will likely “reflect minimal time on a go-forward basis.” (*Id.*) The Receiver’s total fees for this category amount to \$221.85. (*Id.*) Second, the Receiver’s asset investigation and recovery work related to Pensioner research and collection efforts. (*Id.*) Total fees for this category equal \$637.20. (*Id.*) Third, the Receiver’s reporting work, totaling \$1,423.80, focused on preparing the Seventh Interim Report. (*Id.*)

The Receiver’s largest category was operations and asset sales. This work consisted of “monthly Pensioner payment collections, analysis of pensioner accounts, and other operational matters.” (*Id.* at 4–5.) Overall, the Receiver describes her work in this category as “consistent” and “crucially important.” (*Id.* at 5.) Total fees for operations and asset sales amounted to \$6,535.80. (*Id.*)

The Receiver’s work in claims and distributions accounted for \$5,296.50 in fees, a 44 percent decrease for this category from the previous period. (*Id.* at 6.) The Receiver’s work during the Eighth Application Period involved responding to inquiries from Pensioners, Investors, agents, and others regarding the status of their investments or debts. (*Id.* at 5.) Although the Receiver anticipates that inquiries will continue, she notes that “they did decrease materially as the Receivership progressed beyond the first interim

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distribution.” (*Id.*) The Receiver also continued to confer with Pensioners on monthly payment matters. (*Id.* at 6.) However, the Receiver notes that going forward, she anticipates that fees in this category “will increase in the first quarter of 2018” because she will be proceeding with an interim distribution of \$440,000 to claimants. (*Id.* at 6.)

The last category, employment and fees, covers the Receiver’s time spent preparing the Seventh Interim fee request. (*Id.* at 6.) Total fees in this category amounted to \$238.95. (*Id.*)

In support of her application, Freitag submits a seven-page chart detailing the hours billed and her expenses. A review of this chart shows that six practitioners with billing rates ranging from \$112.50 to \$265.50 performed work during this fee period. (Receiver’s Timesheets, Ex. A to Freitag App., Doc. 168.) 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. at 2, Doc. 57-2.) 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 \$845.17. (Freitag App. at 6.) The majority of these expenses relate to website updates for the second half of 2017 and postage expenses for collections, Pensioner, and Investor communications. (*Id.*; *see also* Receiver’s Timesheets at 17.)

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 and 100 percent of her requested expenses. Per the Court’s Order granting Freitag’s Seventh Interim Fee Application, Freitag has also indicated that the Receiver’s Ninth Interim Report will detail the estimated timeline for

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unwinding and resolving the transactions that are the subject of this case. (Freitag App. at 3.)

II. COUNSEL’S EIGHTH INTERIM APPLICATION

Matkins’ Application, which also covers the period from October 1, 2017 through December 31, 2017, seeks interim approval of \$13,362.30 in fees and \$206.53 in expenses. (Matkins App. at 1.) Like Freitag, Matkins requests an order authorizing interim payment of 80 percent—or \$10,689.84—of the firm’s fees and 100 percent of its expenses. (*Id.*) The firm’s fees fall into the following five categories of work: (1) asset investigation (43 percent), (2) reporting (7 percent), (3) claims and distributions (3 percent), (4) third party recoveries (35 percent), and (5) employment/fees (12 percent). (*Id.* at 2.) Matkins’ fee request represents a 41 percent decrease compared to the Seventh Application Period.

Asset investigation covers Matkins’ work representing the Receiver’s interests in thirty-five contracts where the Pensioner has entered bankruptcy and eleven 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, representing the receivership’s interests in bankruptcy proceedings, updating the Receiver on recovery strategies, and updating the log that tracks the status of bankruptcy cases. (*Id.*) Like in the last several Application periods, Matkins has written off 2.9 hours of time billed by partner Yale Kim for his work in this category. (*Id.*) This write-off converts Mr. Kim’s effective hourly rate to \$421.88. (*Id.* at 3–4.) Considering this write-off and the seventeen percent decline in the amount billed in this fee category as compared to the Seventh Interim Fee Application, the Court finds that the \$5,750.55 billed for asset investigation is fair and reasonable. (*Id.* at 3.)

The work performed under the second category, reporting, consisted of drafting the Seventh Interim Report, which includes a detailed description of the Receiver’s

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activities during that quarter. (*Id.* at 4.) Total expenses for this category amount to \$963.90. (*Id.*)

Matkins’ work in the third category, claims and distributions, focused on responding to inquiries from Investors, Pensioners, and their counsel concerning their claims; and advising and assisting the Receiver in preparing investor notices regarding distributions. (*Id.* at 4.) Matkins’ fees for this category total \$428.40. (*Id.*)

The fees for the fourth category, third party recoveries, total \$4,612.95. (*Id.* at 5.) This category covers Matkins’ work on two defaulted pensioner collection actions, which includes preparing and propounding written discovery requests and selecting a mediator. (*Id.* at 4–5.) An associate performed the majority of this work at a discounted rate of \$306.00. (*Id.* at 5.)

Matkins’ work under the final fee category, “employment/fees,” consisted of preparing the Seventh Interim Fee Applications. (*Id.*) Total fees for this category amount \$1,606.50. (*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. 169.) These billing records indicate that three attorneys performed work on this case during the Seventh Interim period with hourly billing rates between \$306.00 and \$562.50. (*See id.* at 10, 18.) An associate and two partners with billing rates of \$306, \$535.50, and \$562.50 performed the majority of the work. (*Id.* at 15–17, 20–22, 24.) Additionally, the billing chart provides an itemized accounting of the \$206.53 in expenses for which the firm seeks reimbursement. (*Id.* at 14–15.) These expenses are primarily comprised of messenger fees and the costs of Pacer document searches. (*See id.*)

The Court finds Matkins’ fees and expenses fair and reasonable—particularly in light of Matkins’ delegation of some work to an associate and the write-off of 2.9 hours—and ORDERS immediate payment of 80 percent of Matkins’ requested fees and 100 percent of the firm’s expenses.

III. CONCLUSION

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For the reasons stated above, the Court GRANTS both Freitag’s and Matkins’ Applications. The Court ORDERS immediate payment of 80 percent—or \$11,483.28—of Freitag’s fees, and 100 percent of her expenses. Further, the Court ORDERS immediate payment of 80 percent—or \$10,689.84—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