
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 8:18-cv-01987-JLS-KES

Date: June 6, 2019

Title: Federal Trade Commission v. Impetus Enterprise, Inc., 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 SECOND INTERIM APPLICATION FOR PAYMENT OF FEES AND REIMBURSEMENT OF EXPENSES (Doc. 90), AND (2) GRANTING RECEIVER’S COUNSEL’S SECOND INTERIM APPLICATION FOR PAYMENT OF FEES AND REIMBURSEMENT OF EXPENSES (Doc. 91)

Before the Court are two Interim Applications filed by Receiver Krista Freitag and Allen Matkins Leck Gamble Mallory & Natsis LLP (“Allen Matkins”), her general counsel, respectively. (Freitag App., Doc. 90; Allen Matkins App., Doc. 91.) The Court finds this matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78; C.D. Cal. R. 7-15. Accordingly, the hearing on these Applications scheduled for June 7, 2019, at 10:30 a.m., is removed from the calendar. For the reasons provided below, the Court GRANTS both Applications.

Freitag and Allen Matkins now seek approval of fees incurred from January 1, 2019 through March 31, 2019 (the “Second Application Period”). (Freitag App. at 1; Allen Matkins App. at 1.) The instant Applications pertain to undertakings described in the Third Interim Report.¹ (Third Interim Report, Doc. 87.) The Court’s prior Order addressed in detail the factual background of this case and the legal standard governing

¹ The *Second* Application Period covers work described in the *Third* Interim Report because the First Report and Recommendations and Second Interim Report both pertain to work undertaken in the First Application Period, November 13, 2018 through December 31, 2018. (*See* First Report and Recs., Doc. 27; Second Interim Report, Doc. 44.)

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fee applications for a receivership. (*See* Order re First Fee App., Doc. 89 at 1-5.)
Accordingly, the Court proceeds directly to its discussion of the instant Applications.

A. Freitag’s Second Interim Application

Freitag’s Application, which covers the period from January 1, 2019 through March 31, 2019, seeks interim approval of \$15,731.55.00 in fees and \$3,778.68 in expenses. (Freitag App. at 2.) Freitag seeks an order from the Court authorizing payment, on an interim basis, for 80% of her fees—\$12,585.24—and 100% of her expenses. (*Id.*) The 20% holdback would be recoverable at the conclusion of the receivership. (*Id.*)

According to her Application, the Receiver’s work during the application period falls into the following six broad categories: (1) general receivership (11.5 hours), (2) asset investigation and recovery (0.3 hours), (3) reporting (11.8 hours), (4) operations and asset sales (33.2 hours), (5) customer correspondence and claims (3.8 hours), and (6) forensic accounting (20.6 hours). (*Id.* at 3.) At a general level, Freitag asserts that “[t]he fees for the Second Application Period materially decreased” in comparison to the First Application period, and fees “are expected to continue to be limited going forward.” (*Id.* at 4.)

The Receiver’s general receivership duties focused on “gaining access to books, records and accounts for the numerous Defendant entities, dba’s and related entities” as well as continued follow-up with other vendors and institutions. (*Id.* at 5.) The Receiver’s total fees relating to general receivership duties equal \$2,472.75. (*Id.*) The Receiver’s work in relation to the second category, asset investigation and recovery, totals \$76.95 and mainly involved research on potential real property assets. (*Id.*)

The third category of work relates to reporting. (*Id.*) For the Second Application Period, this work related to preparing and filing the Second Interim Report. (*Id.*) Total fees arising from this category of work amount to \$2,487.60. (*Id.*)

The fourth and largest category of work relates to operations and asset sales. (*Id.*) According to her Application, “the Receiver’s time in this category includes work to

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monitor mail, secure funds, review records produced and manage general operational matters.” (*Id.*) Total fees relating to this category equal \$6,466.95. (*Id.*)

The Receiver’s fifth category of work relates to customer correspondence and claims. Work in this category was minimal and total fees relating to this category amount to \$886.50. (*Id.* at 6.)

The sixth and final category of work relates to forensic accounting. (*Id.*) To determine if the scope of the Defendants’ enterprise could be assessed from certain accounting and financial records secured by the Receiver, she attempted to “complete a comprehensive reconciliation of data” from Quickbooks accounts over which she had obtained administrative control. (*Id.*) The attempt, however, proved fruitless, as “it quickly became clear the accounting data in the Quickbooks accounts is incomplete” and would not enable the receiver to determine the scope of the enterprise. (*Id.*) The total fees arising from this category of work are \$3,340.80. (*Id.*)

In support of these categorized fee requests, Freitag submits a four-page chart detailing each time entries and billing rates per each task undertaken for which she seeks to recover fees. (Ex. A to Freitag App. at 12-15.) Review of this chart reveals that four different individuals performed work in aid of the receivership at hourly rates ranging from \$121.50 to \$292.50. (*Id.*) These rates accord with the rates submitted in Freitag’s Statement of Qualifications and Rates and reflect 10% discounts on Freitag’s team’s regular billing rates.² (Freitag App. at 8; Ex A to Statement of Qualifications and Rates, Doc. 74-1 at 8, 13.)

Separately, The Receiver seeks to recover expenses totaling \$3,778.68. (Freitag App. at 6-7.) The bulk of these fees relate to securing email accounts and related data storage accounts “to preserve and protect the available electronic records and data of the Receivership Entities.” (*Id.* at 6.) Some costs were also incurred for postage, office

² As further support for her rates, Freitag cites five cases in which other courts in the Central and Southern Districts have awarded Freitag fees at rates equal or greater to those she is charging in the instant matter. (Freitag App. at 9.)

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administration and website maintenance. (*Id.* at 7.) The Receiver submits an itemized chart detailing each expense. (Ex. A to Freitag App. at 16.)

Based on the Application and the evidence submitted in support thereof, the Court concludes that Freitag’s request for fees and costs is reasonable. Accordingly, the Court ORDERS payment of 80% of Freitag’s receivership fees— \$12,585.24—and 100% of her requested expenses.

B. Allen Matkins’s Second Interim Application

Allen Matkins’s Application, which also covers the period from January 1, 2019 through March 31, 2019, seeks interim approval of \$6,820.65 in fees and \$107.61 in expenses. (Allen Matkins App. at 2.) Like Freitag, Allen Matkins requests an order authorizing interim payment of 80%—\$5,456.52—of its fees and 100% of its expenses. (*Id.*) The firm’s fees relate to the following four categories of work: (1) general receivership (3.5 hours), (2) asset investigation and recovery (5.6 hours), (3) reporting (3.1 hours), and (4) claims and distribution (0.2 hours). (*Id.* at 3.)

For Allen Matkins, the work relating to general receivership duties focused on advising the Receiver regarding the ongoing litigation of this matter, responding to inquiries from state regulatory agencies, and addressing tax issues for the Receivership Entities. (*Id.* at 3.) The total fees arising from this category of work amount to \$1,968.75. (*Id.*)

The second and largest category of work relates to asset investigation and recovery. (*Id.* at 4.) Work in this category primarily relates to “assisting the Receiver in investigating assets of the Receivership Entities, including notifying third parties of the Preliminary Injunction Order, communicating with third parties and their legal counsel about preserving assets and data of the Receivership Entities,” as well as marshalling and

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providing to the Receiver assets, data, and accounts from the Receivership entities. (*Id.*) Fees in this category total \$2,995.65. (*Id.*)

In the third category, reporting, the firm’s work focused on preparing the Second Interim Report. (*Id.*) Fees in this category total \$1,743.75. (*Id.*)

The fourth category of work, which relates to claims and distributions, account for only 0.2 hours of billed time. (*Id.*) This time was spent responding to direct inquiries from consumers. (*Id.*) The fees in this category amount to \$112.50. (*Id.*)

Additionally, Allen Matkins seeks to recover \$107.61 in expenses. (*Id.* at 5.) These costs relate to document production, messenger fees, court filing fees, recorder fees, and Secretary of State fees. (*Id.*)

In support of its Application, Allen 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. (Ex. A to Allen Matkins App. at 10-20.) The billing chart also provides an itemized accounting of each expense for which the firm seeks to recover. (*Id.* at 11.) These billing records reflect that three attorneys have performed work on this case, with hourly billing rates between \$351.00 and \$742.50. (*Id.* at 15.) The bulk of the work on this matter has thus far been performed by Edward Fates, a partner whose hourly rate is \$562.50. (*Id.*) These rates accord with the rates submitted in Freitag’s Statement of Qualifications and Rates and reflect 10% discounts on these attorneys’ regular billing rates.³ (Allen Matkins App. at 8; at Ex. A to Statement of Qualifications and Rates at 8.)

Based on Allen Matkins’s Application and evidence submitted in support thereof, the Court concludes that the requested fees and expenses are reasonable. Accordingly, the Court ORDERS immediate payment of 80% of Allen Matkins’s requested fees—\$5,456.52—and 100% of the firm’s expenses.

³ Like Freitag, as further support for its rates, Allen Matkins cites five cases in which other courts in the Central and Southern Districts have awarded the firm fees at rates equal or greater to those it is charging in the instant matter. (Allen Matkins App. at 5-6.)

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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 immediate payment of 80%—\$12,585.24—of Freitag’s fees, and 100%—\$3,778.68—of her expenses. Additionally, the Court ORDERS immediate payment of 80%—\$5,456.52—of Allen Matkins’s fees and 100%—\$107.61—of the firm’s expenses. The 20% holdback of fees from each will be recoverable, with the Court’s approval, upon conclusion of the receivership.

Initials of Preparer: tg