
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

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

Date: October 22, 2020

Title: Federal Trade Commission v. Impetus Enterprise, Inc. et al

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

Melissa Kunig
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
MOTION TO CONCLUDE RECEIVERSHIP (Doc. 136), AND
(2) APPROVING FINAL FEE APPLICATIONS BY
RECEIVER AND RECEIVER’S COUNSEL (Docs. 137, 138)**

Before the Court are three matters: (1) a Motion to Conclude the Receivership, filed by Kristina L. Freitag, Court-Appointed Receiver (“Freitag” or “Receiver”)¹ (Mot., Doc. 136), (2) a Fee Application filed by the Receiver (Freitag App., Doc. 137), and (3) a Fee Application filed by the Receiver’s counsel, Allen Matkins (Matkins App., Doc. 138.) The Motion and both Applications are unopposed.

The Court finds these matters appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78; C.D. Cal. R. 7-15. Accordingly, the hearing on the Motion and Applications scheduled for **October 23, 2020 at 10:30 a.m.**, is VACATED. For the reasons provided below, the Court GRANTS the Motion and both Applications.

I. FINAL FEE APPLICATIONS

Receiver and Receiver’s counsel, Matkins, have previously filed three applications for interim fees and costs, which this Court has approved. (*See* Docs. 89, 102, 122.) They now file their final fee Applications concurrently with the Receiver’s Motion to Conclude.

¹ Freitag was appointed Receiver for the following “Receivership Entities”: Impetus Enterprise, Inc. (“Impetus”) and Fig Tree & Co., LLC (“Fig Tree”), each of their subsidiaries, affiliates, successors and assigns, and any other entity that has conducted any business related to Defendants’ student debt relief enterprise, including but not limited to Capital Sun Investments, LLC (d/b/a Studora) or Premier Capital Investments, LLC, and Jimmy Calderon (when conducting activities in relation to any of the foregoing entities).

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Receiver's Final Fee Application seeks (1) payment of the 20% previously held back from Receiver's three interim fee applications, which amount totals \$16,660.35, (2) final approval of the Receiver's three interim fee applications and of the \$75,912.44 (\$66,641.40 of fees and \$9,271.04 of expenses) previously paid in connection with those applications, (3) payment of \$4,415.43 for unpaid fees and costs incurred during the period from July 1, 2019 through June 26, 2020 (the "Final Application Period") and (4) up to \$3,600 in projected fees and costs to complete the remaining tasks laid out in the Motion to Conclude, which are discussed further below. (Freitag App. at 4.) A task-by-task accounting of the work performed by Receiver and her staff in the Final Application Period is attached as Exhibit A to the Receiver's Application.

Matkins's Application requests (1) approval and payment of \$8,558.55 in fees and \$59.30 in costs incurred in the Final Application Period, (2) final approval of his firm's three interim fee applications and of the \$37,573.70 (\$35,749.44 of fees and \$1,824.26 of expenses) previously paid in connection with those applications; (3) approval and payment of fees held back from Matkins's three interim fee applications in the total amount of \$8,937.36; and (3) approval of estimated fees and costs of up to \$3,000 for remaining legal work to conclude the receivership per the Motion to Conclude. (Matkins App. at 2.) A billing statement showing attorney and staff hours and work performed during the Final Application Period is attached as Exhibit A to Matkins's Application.

Having reviewed the Applications, including detailed explanations of the work performed, supporting calculations, exhibits appended thereto, and finding the requested fees reasonable and appropriate for reasons substantially similar to those described in the Court's prior Orders (*see* Docs. 89, 102, 122), the Court APPROVES the Applications and ORDERS as follows:

- The Court ORDERS payment of Freitag's fees and costs for the Final Application Period in the amounts of \$3,950.55 and \$464.88, respectively;
- The Court ORDERS payment of Matkins's fees and costs for the Final Application Period in the amounts of \$8,558.55 and \$59.30, respectively;
- The Court ORDERS that Freitag's three interim fee applications (\$75,912.44 paid on an interim basis) are approved on a final basis;
- The Court ORDERS that Matkins's three interim fee applications (\$37,573.70 paid on an interim basis) are approved on a final basis;

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- The Court ORDERS payment of amounts previously held back from Freitag’s three interim fee applications in the amount of \$16,660.35 on a final basis;
- The Court ORDERS payment of amounts previously held back from Matkins’s three interim fee applications in the amount of \$8,937.36 on a final basis;
- The Court ORDERS that the Receiver is authorized to pay herself up to \$3,600 from assets of the receivership estate for fees and costs for work required to complete the tasks remaining to conclude the receivership;
- The Court ORDERS that the Receiver is authorized to pay Allen Matkins’s actual fees and costs up to \$3,000 for legal work required to conclude the receivership.

II. MOTION TO CONCLUDE

The Court has set forth the background facts of this now-closed matter and the scope of the Receiver’s duties in previous orders and need not detail them here. (*See, e.g.,* Docs. 89, 135.) As relevant to the present Motion, the Court issued a preliminary injunction, including an asset freeze, and charged Receiver with assuming control over the Receivership Entities and their assets, among other things. (*See* Doc. 38, 68.)

In her Motion to Conclude, the Receiver reports that she “has completed her management and monetization of recoverable assets of the receivership estate, [and] has determined no significant recovery of additional assets is likely.” (Mot. at 1.) The Receiver details the steps she took to carry out her duties, including her efforts to identify additional recoverable assets. (Mot. at 5–8.) For example, Receiver took control of the Receivership Entities’ office premises, determined that the business had no funds to operate legally, vacated the premises, and handed the space over to the landlord. (*Id.* at 6-7.) “The Receiver made significant efforts to identify other physical locations (numerous former and virtual addresses were discovered and contacts associated with same thus served), but the one other physical operating location discovered in the United States had been vacated by the time of discovery.” (*Id.*) Additionally, the Receiver shut down the Receivership Entities’ web presence and marketing. (*Id.* at 8.)

Receiver states that, despite diligent efforts, the nature of the total recovery was limited. A detailed accounting of the current balance is found in Receiver’s briefing. (*Id.* at 9–10.) To summarize, Receiver recovered a total of \$345,870.53, primarily from bank account balances and payment processor reserve balances. (*Id.* at 7.) After paying the interim fees of Receiver and her counsel, the final fees approved in this Order, and other

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expenses, the receivership estate’s cash balance will be approximately \$183,000.² (*Id.*) Given the limited nature of the recovery and the number of potential claimants, Receiver concludes that dispersing the funds to claimants is not feasible. Receiver has therefore agreed, at the FTC’s request, to transfer any remaining funds to the FTC subject to this Court’s approval. (*Id.* at 11.)

The Court, having considered Receiver’s Motion and having familiarity with the facts of this matter, GRANTS Receiver’s Motion to Conclude, approves the Receiver’s final accounting and report, and further rules as follows:

- The Court ORDERS Receiver to transfer funds remaining after payment of remaining fees to the FTC;
- The Court ORDERS the Receiver to transfer records in her possession that relate to the Receivership Entities to the IRS;
- Upon completion of the foregoing, the Court DISCHARGES Receiver of all receivership duties in connection with this matter (*see* Docs. 23, 38); and
- The Court retains exclusive jurisdiction over any matters arising out of Receiver’s work in this action, including acts undertaken to carry out this Order.

Initials of Preparer: mku

² The Court has approved Receiver’s request to pay herself and Matkins *actual* fees and costs incurred in carrying out the closing tasks in amounts up to \$3,600 and \$3,000 respectively. The total cash balance remaining on the receivership estate’s account will depend on those fees and costs.