

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **ED CV 18-2104-DMG (PLAx)**Date **October 13, 2020**Title ***Federal Trade Commission v Jason Cardiff, et al.***Page **1 of 3**Present: The Honorable **DOLLY M. GEE, UNITED STATES DISTRICT JUDGE****KANE TIEN**

Deputy Clerk

NOT REPORTED

Court Reporter

Attorneys Present for Appellant(s)
None PresentAttorneys Present for Appellee(s)
None Present

**Proceedings: IN CHAMBERS—ORDER RE RECEIVER’S FOURTH APPLICATION
FOR FEES AND EXPENSES [479]**

On September 2, 2020, the Receiver Robb Evans & Associates LLC filed its Fourth Application for Order Approving and Authorizing Payment of Receiver’s and Receiver’s Counsel’s Fees and Expenses for the period from October 1, 2019 through June 30, 2020. [Doc. # 479.] Defendants Jason Cardiff and Eunjung Cardiff, together with Interveor VPL Medical, Inc. (“VPL”), filed an opposition. [Doc. # 489.] Non-party Inter/Media Time Buying Corporation (“Inter/Media”) also filed an opposition. [Doc. # 488.] Inter/Media also filed a sur-reply to the Receiver’s reply. [Doc. ## 495, 497.]

For the reasons set forth below, the Court **GRANTS** the Receiver’s Application.

**I.
DISCUSSION**

The Court previously approved the Receiver’s fees in this action through September 30, 2019. [Doc. ## 223, 224, 307.] The Receiver now seeks \$64,651.36 for its own fees and costs and \$234,199.12 in fees and costs incurred by its attorney, Frandzel Robins Bloom & Csato, L.C. (“FRBC”), which the Receiver hired pursuant to the Court’s Preliminary Injunction at § XVI.G. [See Doc. # 59.] The total amount of payment sought is \$298,850.48. *See App.* at 8.

The Cardiffs and limited intervenor VPL oppose the fee request for the following reasons: (1) the Court lacks authority to appoint a Receiver under Section 13(b) of the Federal Trade Commission (“FTC”) Act; (2) there are no consumer losses for Plaintiff FTC to recover because the Cardiffs’ company lost money and therefore has no “ill-gotten gains”; (3) the Receiver failed to protect Jason Cardiff’s biggest asset, VPL’s contract to deliver masks to the Department of Health and Human Services (“HHS”); and (4) the Receiver and counsel FRBC should not be allowed to bill fees for work done on the receivership over VPL. *See Cardiffs’ Opp.* at 2-8.

The Cardiffs and VPL offer no reason why the Court should reconsider its prior conclusions that the Court has the authority to enter a broad Preliminary Injunction under Section

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13(b) and that VPL is “Receivership Property” under the Preliminary Injunction’s plain terms. *See* July 7, 2020 Order at 4-5 [Doc. #388.] In fact, the Court has already denied Jason Cardiff and VPL’s prior application to remove the Receivership over VPL, as well as rejected their arguments that the receiver is solely at fault for the failure of the HHS contract. *See* July 16, 2020 Order at 3-4 [Doc. # 403.] Similarly, the Court rejected the Cardiffs and VPL’s arguments regarding the effect of *SEC v. Liu*, 140 S.Ct. 1936 (2020), on the calculation of Plaintiff’s equitable damages. *See* July 7, 2020 Order at 6-9; September 9, 2020 Order at 1, 6 [Doc. # 485]. Without any showing of (a) a material difference in fact or law from those presented to the Court at the time of its earlier decisions; (b) the emergence of new material facts or a change of law occurring after the time of such decision; or (c) a manifest showing of a failure to consider material facts presented to the Court before such decision, the Court will not reconsider its earlier orders. *See* C.D. Cal. L.R. 7-18. Because the work pertaining to VPL is within the scope of the Receivership, the Court will not deny all of the Receiver’s fees incurred in relation to VPL, as the Cardiffs and VPL request.

As for Inter/Media’s opposition, it is not clear how Inter/Media can file such an opposition without having first filed a motion to intervene. As the FTC argued when Inter/Media moved to compel the Receiver to sell the Cardiffs’ residence, it is procedurally improper for a potential creditor to request distribution of assets from the Receivership Estate before judgment has been entered or a claims process created. *See* FTC Opp. at 8-12 [Doc. # 449]. Inter/Media did not argue why the Court should lift the stay of action in the Preliminary Injunction prohibiting “all investors, creditors...and other persons seeking to establish or enforce any claim, right, or interest against or on behalf of Defendants” from “[c]ommencing, prosecuting, or continuing a judicial, administrative, or other action or proceeding against the Receivership Entities.” Preliminary Injunction at 32 [Doc. # 59]. Inter/Media *also* failed to request leave from the Court to file a supplemental brief. *See* Initial Standing Order at 4 [Doc. # 319]. The Court therefore will not consider its arguments at this stage.

The Court thus turns to the reasonableness of the fees. “The court appointing the receiver has full power to fix the compensation of such receiver and the compensation of the receiver’s attorney or attorneys.” *Drilling & Expl. Corp. v. Webster*, 69 F.2d 416, 418 (9th Cir. 1934). In determining the reasonableness of fees and costs requested, the court considers the time records presented, the quality of the work performed, the complexity of the problems faced, and the benefits to the receivership estate, and the agency’s position on the fee application will be given great weight. *See Sec. & Exch. Comm’n v. Total Wealth Mgmt., Inc.*, No. CV 15-226-BAS (DHBx), 2016 WL 727073, at *1 (S.D. Cal. Feb. 24, 2016) (citing *Sec. & Exch. Comm’n v. Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973)).

The Court carefully reviewed the fee application and did not find evidence of block billing or other improper billing practices. The resume of the Receiver and its employees on this matter supports the reasonableness of their hourly rates. [Doc. # 31.] Although FRBC did not submit resumes or declarations regarding their experience, its attorneys’ and paralegal’s hourly rates are

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in line with prevailing market rates for partners, associates, and paralegals, and the firm's work thus far merits those rates. *See* App. at 108 [Doc. # 481-1] (describing shareholders' hourly rate as \$515 and \$500, partners' hourly rate as \$415 and \$435, associate rates as \$380 and 320, and paralegal rate as \$205). Given the lack of opposition by the FTC and the fact that neither the Cardiffs and VPL nor Inter/Media argue that any of the fees are not reasonable compensation for the duties performed or that the costs do not actually represent the costs incurred, the Court concludes that the fees and costs requested are reasonable. *See* Inter/Media Opp. at 2. The Court urges the Receiver to continue to exercise reasonable restraint in incurring attorneys' fees and sizeable expenses as these costs could easily swallow up what remains to be distributed to consumers in the Receivership Estate.

II.
CONCLUSION

For the foregoing reasons, the Court hereby **ORDERS** as follows:

1. The Receiver's Application is **GRANTED** in its entirety.
2. The Receiver's fees and expenses incurred during the Fourth Reporting Period in the total amount of \$64,651.36 (consisting of \$58,688.25 in fees and \$5,963.11 in costs) are approved.
3. The fees and costs of the Receiver's outside counsel, Frandzel Robins Bloom & Csato, L.C., incurred during the Fourth Reporting Period in the total amount of \$234,199.12 (consisting of \$231,879.00 in fees and \$2,320.12 in costs) are approved.
4. The Receiver is authorized to pay the approved fees, expenses, and costs from funds available in the Receivership Estate.

IT IS SO ORDERED.