

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES COMMODITY
FUTURES TRADING COMMISSION,

Plaintiff,

V.

**SENEN POUSA, INVESTMENT
INTELLIGENCE CORPORATION,
DBA PROPHETMAX MANAGED FX,
JOEL FRIANT, MICHAEL DILLARD, and
ELEVATION GROUP, INC.,**

Defendants.

Civil Action No. A-12-CV-0862-DEA

ORDER GRANTING RECEIVER'S
MOTION FOR APPROVAL OF THIRTY-SIXTH FEE APPLICATION AND
EXPENSES

Before the Court is the Receiver’s Motion for Approval of the Thirty-Sixth Fee Application and Brief in Support (“Motion”), covering the one-month time period from October 1, 2024, through October 31, 2024.

The Motion seeks approval to pay his fees and associated expenses of \$46,889.68 in the following amounts:

1. Receiver's fees of \$9,551.88
2. Senior paralegal total expenses of \$8,412.00
3. Paralegal total expenses of \$8,048.00
4. Archipel (France) fees and expenses of €2917.50 (USD \$3,075.83)
5. Brahma (Morocco) fees of \$1,260.00
6. Kinstellar (Slovakia) fees of €13,297.45 (USD 13,849.37)
7. Donlin Recano & Co. Inc. (distribution agent) expenses \$2,692.60.

Having considered the Motion, the evidence presented, and arguments of counsel, if any, the Court finds the time spent, services performed, hourly rates charged, and expenses incurred by the Receiver were reasonable and necessary for the Receiver to perform his Court-ordered duties. The Court concludes the Motion should be, and is hereby, GRANTED.

It is therefore ORDERED that payment for interim fees and expenses listed above totaling \$46,889.68 for the Receiver's invoice and for services rendered to the ProphetMax Receivership Estate and IB Capital Receivership Estate during the Thirty-Sixth Fee Period is approved.

SIGNED this 25th day of November, 2024.



DAVID A. EZRA
SENIOR UNITED STATES DISTRICT JUDGE

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES COMMODITY
FUTURES TRADING COMMISSION,

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SENEN POUSA, INVESTMENT
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Defendants.

Civil Action No. A-12-CV-0862-DAE

**RECEIVER'S MOTION FOR APPROVAL OF THIRTY-SIXTH FEE APPLICATION,
STATUS UPDATE AND TO PAY EXPENSES AND BRIEF IN SUPPORT**

Guy M. Hohmann, the Court-appointed Receiver in the above-referenced ProphetMax Receivership matter and the ancillary IB Capital matter, files this Motion for Approval of Thirty-Sixth Fee Application, Status Update and to Pay Expenses and Brief in Support (the “Motion”) covering the one-month period from October 1, 2024, through October 31, 2024, (hereinafter “the Fee Period”).

The Receiver believes this Motion and brief in support demonstrate the Receiver's fees and expenses were reasonable and necessary when considering the time period covered by the application and the results achieved by the Receiver during the Fee Period. For the Court's convenience, the Receiver will convey details at a high level to avoid duplicate reporting.

LEGAL STANDARD

The Receiver has previously briefed the legal standards for evaluating the reasonableness and necessity of professional fees and expenses. The Court has consistently evaluated the Receiver's fee applications using the factors set forth by the Ninth Circuit in *Johnson v. Georgia*

Highway Express, Inc., 488 F.2d 714, 717-19(5th Cir.1974).¹ The Court in the Stanford Receivership observed that this particular receivership is essentially equivalent to a Chapter 7 bankruptcy. *See* Civ. Action No. 3;09-cv-072 4, Doc. 1093 at 39 ("Ultimately, this particular receivership is the essential equivalent of a Chapter 7 bankruptcy. While a different federal statutory scheme - one that is looser and more flexible than the Bankruptcy Code-is at work, the overall purposes and objectives of the Stanford receivership track the overall purposes and objectives present in the Bankruptcy Code and a Chapter 7 proceeding."). Therefore, the factors governing the analysis of requests for professional fees and expenses incurred in the bankruptcy context are also relevant to the Court's valuation of the Receiver's fee applications.

Under 11 U.S.C. § 330(a)(3), in examining a request for fees and expenses to be awarded to an examiner, trustee under chapter 11, or other professional in the context of a bankruptcy, a court considers, in addition to the amounts involved and results obtained, "the nature, the extent, and the value of such services, taking into account all relevant factors, including (A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary

¹ Under *Johnson*, courts consider the following factors in determining whether the time spent, services performed, expenses incurred, and hourly rates charged are reasonable and necessary: (1) the time and labor required for the litigation; (2) the novelty and complication of the issues; (3) the skill required to properly litigate the issues;(4) whether the attorney was precluded from other employment by the acceptance of this case; (5) the attorney's customary fee; (6) whether the fee is fixed or contingent; (7) whether the client or the circumstances-imposed time limitations; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorney; (10) the "undesirability" of the case; (11) the nature and length of the attorney-client relationship; and (12) awards in similar cases. *Id.* at 717-19. In applying these factors, "the district court must explain the findings and the reasons upon which the award is based. However, it is not required to address fully each of the 12 factors." *Curtis v. Bill Hanna Ford, Inc.*, 822 F.2d 549, 552 (5th Cir. 1987) (citation omitted); *see also SEC v. W.L. Moody & Co., Bankers (Unincorporated)*, 374 F. Supp. 465,480 (S.D. Tex. 1974), *aff'd*, *SEC v. W.L. Moody & Co.*, 519 F.2d 1087 (5th Cir. 1975); *SEC v. Mega. fund Corp.*, No. 3:05-CV-1328-L, 2008 WL 2839998, at *2 (N.D. Tex. July 24, 2008); *SEC v. Ninth Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973).

to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under [11 U.S.C. § 330(a)(3)]; (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under [11 U.S.C. § 330(a)(3)]." 11 U.S.C. § 330(a)(3).

A. RECEIVER'S ACTIVITIES FOR THIS FEE PERIOD

1. Second Interim Distribution – In Process

On July 25, 2024, this Court's Order on the Receiver's Motion for Approval of Second Interim Distribution Plan & Procedures became final.²

As previously reported, the Second Interim Distribution is underway. In August of 2024, Approved Investor Claimants began to receive their checks or wires. The distribution checks are issued and mailed by this Court's approved distribution agent Donlin Recano & Co. Inc. ("DRC") and the wire transfers were and continue to be sent to Investor Claimant(s) by the Receiver's senior paralegal with oversight from the Receiver.^{3,4}

As to an update, the challenges remain the same as previously reported. Although, there are several challenges that are increasing. The main increase stems from questions regarding Investor Claimant(s) approved claim amount. They do not remember as part of the fraud the co-

² [Dkt. # 320, 321].

³ [Dkt. #'s 268, 262 and 321].

⁴ Once the Second Interim Distribution payments are made, the investors will have received approximately 82% (eighty-two percent) of the Investor Claimants' losses.

conspirators returned forty-percent (40%) of their initial investment amounts.⁵ There continue to be slow response times from the Investor Claimant(s), which is one of the reasons the distribution progress continues to be on-going.

As previously reported, the factors driving the decreased communication time: (1) Investor Claimant(s) responded immediately and upon requesting follow-up information, Investor Claimant(s) are slow to respond to additional information or confirmation requests; (2) Investor Claimant(s) are ageing and communication via email has become more difficult; (3) the majority of the emails the Receiver has on file for the Investor Claimant(s) are on popular email service providers i.e. Yahoo and Google etc. The Investor Claimant(s) receive numerous emails and the Receiver's emails are overlooked and/or lost in their vast inbox; (4) Investor Claimant(s) participating in previous distributions i.e. the ING Bank Settlement or First Interim Distribution and are requesting evidence of receiving their distributions (wire dates, copies of their cashed checks, etc.); 5) the latest category includes Investor Claimants that received their Second Interim Distribution and do not recall receiving it; 6) the Receiver's paralegals are continuing to send emails to several investors at a time or individually to continually communicate news of the Second Interim Distribution.⁶

Based on the Receiver's previous ING Settlement and First Interim Distribution, the Receiver estimates the distribution process will continue for approximately three (3) months.

⁵ The paralegals research all prior records including the Investor Claimant's original claim documentation, the records the Receiver received from the Australian Liquidator as well as records provided by ING Bank. It is a time-consuming process; the Receiver expects the inquiries to continue based on this increasing trend.

⁶ As previously reported, Google and other major search engines flagged the Receivership emails as "unusual sending activity" and is not sending batched bcc emails.

2. Morocco – \$ 4.87 million

Since the last Status Report, there continue to be favorable developments in connection with the potential repatriation of the funds in Morocco. As previously reported, the Dutch Public Prosecutor’s Office (“DPPO”) recently advised they sent a Mutual Legal Assistance Treaty (“MLAT”) request to the Central Authority in the Netherlands who in turn will send the MLAT request to the Moroccan National Prosecutor’s Office (“MNPO”).

On October 22, 2024, the Receiver’s Moroccan counsel visited the Ministry of Justice in Rabat who informed them the file had already been forwarded to the investigating judge in Agadir, who was the authority who had ordered the freezing of the bank accounts.

No one in Rabat was able to tell her how long it would take for the investigating judge to respond. The Receiver’s Moroccan counsel planned to visit the investigating judge in Agadir in late-November to inquire about the status of their request for information.

It continues to be the Receiver’s understanding, once the freeze on the accounts have been lifted, legal counsel for the bank which is holding the accounts will provide the account holders (Emade Echade and Essadia and Rabiaa Moutaouakkil) with authorization letters which they will be required to sign.

Upon receipt of those signed letters, the bank, the Receiver’s Moroccan counsel and this Court’s approved Moroccan consultant will meet with the Moroccan Currency Exchange Office (“MCEO”) to seek approval to have the funds wired to the Receivership estate.⁷

3. COMMUNICATIONS WITH INVESTOR CLAIMANTS

The Second Interim Distribution communication with Investor Claimant(s) continues to be steady. The Investor Claimant(s) continued to be engaged in communications with the Receiver’s

⁷ [Dkt. # 304].

two paralegals. Although, the majority of the contact with the Investor Claimant(s) stems from emails and telephone communications. The primary categories of communications: (1) responding to the Receiver's request to validate their contact details & wire transfer details; (2) Investor Claimant(s) contacting the Receiver to inquire about the amount of their specific distribution; (3) paralegals email via secure ShareFile W-9 forms (U.S. tax laws require the Receiver to keep on file reflecting Investor Claimant(s) address changes); (4) providing additional documentation to financial institutions that will not release the Second Interim Distribution payments to ensure the payments are not fraudulent; (5) providing documentation to investors regarding proof of their claim amounts for previous and this most recent distribution.

B. PARALEGALS' ACTIVITIES FOR THIS FEE PERIOD

As previously reported, the paralegal's activities regarding Investor Communications were busy. The challenges with internet search engines and the Receivership's emails flagged as spam, the paralegals continue to email Investor Claimants one at a time or in extremely small batches via blind carbon copy (bcc) emails.⁸

These types of emails request the Investor Claimant(s) to reconfirm their mailing addresses and/or wire instructions, prior to sending distribution payments. Emailing much smaller groups and in some cases emailing Investor Claimant(s) individually is a time-consuming process. In other instances, the senior paralegal is telephoning Investor Claimant(s) she knows are elderly and no longer using email or computers. She is also the main point of contact for the DRC.

The paralegal also continues to communicate to Investor Claimant(s) regarding U.S. Investor Claimants governed by federal tax laws and the requirement to obtain a new W-9 form

⁸ The Hohmann Law Firm is in the process of upgrading their phone systems. Once the upgrade is complete, the senior paralegal will begin calling Investor Claimants that live in the U.S.

reflecting any changes of address.⁹ The senior paralegal continues with her regular monthly duties which includes updating the IB Capital ProphetMax bookkeeping spreadsheet and notebook to include all approved expenses paid by the Receiver as well as assisting with this Court's court documents.¹⁰

The paralegal continues his regular activities with updating and managing the Receivership's social media accounts.¹¹ During this Fee Period, the senior paralegal's hours were 70.1; her invoice totaled \$8,412.00. The paralegal's total hours were 100.6 and his invoice totaled \$8,048.00.¹²

C. RECEIVER'S COUNSELS' ACTIVITIES FOR THIS FEE PERIOD

I. Archipel (Paris, France)

The Archipel's firm most recent invoice is for the month of October; they include activities related to communications in assisting the Receiver with foreign recovery efforts in Morocco. The firm invoiced for continued activities relating to mainly email and telephone communications with the Receiver's Moroccan counsel, regarding a planned to visit the investigating judge in Agadir.

Total fees and expenses for their most recent most recent invoice in October are EUR €2,917.50 (USD \$3,075).¹³

⁹ The paralegals send a secure ShareFile link to receive all W-9 forms.

¹⁰ The IB Capital ProphetMax notebook includes all bank statements, invoices, court papers with corresponding orders and an Excel spreadsheet of account activity.

¹¹ <https://prophetmaxreceivership.com/> and <https://www.facebook.com/prophetmax.receivership>

¹² The Receiver's paralegal invoiced 100.6 hours at \$80.00 per hour which is a 20% discount from his normal hourly rate for a total of \$8,048.00. The senior paralegal invoiced 70.1 hours at \$120.00 per hour which is a 20% discount from her normal hourly rate for a total of \$8,421.00 [Dkt. #265].

¹³ XE: Convert EUR/USD (November 22, 2024).

Retrieved from

<https://www.xe.com/currencyconverter/convert/?Amount=2917.5&From=EUR&To=USD>

II. BRAHMA (Casablanca, Morocco)

The Brahma's firm activities for their most recent invoice were related to communications in assisting the Receiver with foreign recovery efforts in Morocco. Their activities included exchanges with the Receiver, their co-counsel in France and their meeting with the investigating judge in Agadir. Total fees and expenses for their most recent for October is \$1, 260.00.¹⁴

III. KINSELLAR (Bratislava, Slovakia)

The Receiver's Slovakian counsel submitted their most recent invoice spanning numerous months in 2024. Their time entries are all related to various activities pertaining to the repatriation of the funds from Slovakia to the U.S. Those funds are currently being distributed in the Second Interim Distribution. Total fees and expenses for their most recent and final is EUR €13,297.45 (USD \$13,849.37).¹⁵

D. ADMINISTRATIVE EXPENSES

During this fee period, The Hohmann Law Firm received two invoices from the DRC. They submitted their invoices for two matters. The first invoice related to the Second Interim Distribution in the amount of \$2,657.12. The second invoice was related to administrative expenses such as document storage and other administrative services which totaled \$35.48.

E. CONCLUSION AND PRAYER FOR RELIEF

The Receiver requests the Court approve his Thirty-Sixth Fee Application for his invoice which includes time expended by the Receiver for the one-month time period between October 1, 2024, through October 31, 2024, totaling \$9,551.88. Attached as Exhibit 1 to this Motion for

¹⁴ The Brahma firm invoices in USD.

¹⁵ XE: Convert EUR/USD (November 22, 2024).

Retrieved from

<https://www.xe.com/currencyconverter/convert/?Amount=13297.45&From=EUR&To=USD>

Approval of Thirty-Six Application and Brief in Support detailing all the Receiver's time entries, during the Fee Period.

The Receiver requests the Court enter the proposed Order filed with this motion to approve (1) the payment of interim expenses of \$16,460.00 for the invoices of his two paralegals. The total fees and expenses for this fee period are \$46,889.68 (inclusive of the Receiver's foreign counsel and administrative expense) for the Receivership Estate and IB Capital Receivership Estate during the Thirty-Sixth Fee Period, all of which were both reasonable and necessary for the Receiver to fulfill his Court-ordered duties.

Respectfully submitted,
GUY HOHMANN

By: /s/ Guy Hohmann
Guy Hohmann
State Bar No. 09813100
guyh@hohmannlaw.com
114 W.7th St. Suite 625
Austin, Texas 78701
(512) 551-9808

**RECEIVER FOR THE PROPHETMAX AND
IB CAPITAL RECEIVERSHIP ESTATES**

CERTIFICATE OF CONFERENCE

The Receiver conferred with Timothy Mulreany, counsel for the CFTC, who stated the CFTC does not take a position on the Motion nor the relief sought herein.

/s/ Guy Hohmann
Guy Hohmann

CERTIFICATE OF SERVICE

November 22, 2024, I electronically submitted the foregoing document with the Clerk of the Court of the U.S. District Court, Western District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Guy Hohmann
Guy Hohmann



The Hohmann Law Firm

114 West 7th Street
 625 Norwood Tower
 Austin, Texas , 78701
 Guyh@hohmannlaw.com
 www.hohmannlaw.com
 O: (512) 551-9808

INVOICE

Number	1402
Issue Date	11/20/2024
Due Date	12/20/2024
Email	guyh@hohmannlaw.com

Bill To:

Guy Hohmann Receiver for ProphetMax and IB Capital

114 W. 7th Street
 625 Norwood Tower
 Austin, Texas 78701
 O: 512-495-1438

Time Entries

Time Entries	Rate	Hours	Sub
GMH-RCVR 10/1/2024 Email from and to the DPPO regarding MLAT request to their Moroccan counterpart, email from and to my French counsel regarding remaining steps in the repatriation process and estimated timeframe of same, email from investor regarding next distribution and respond to same, conference with Ryn Hohmann and Tyler Cunningham regarding status of Second Interim Distribution.	\$658.75	1.10	\$724.63
GMH-RCVR 10/2/2024 Conference with Ryn Hohmann regarding investor's approved claim amount and review of source document in connection with same.	\$658.75	0.40	\$263.50
GMH-RCVR 10/3/2024 Conference with Ryn Hohmann regarding her lengthy phone call with an investor regarding needed information for an accountant and for an elderly investor who lives in an assisted living home and a conference call she had with the individual that holds his power of attorney so that he better understands the IB Capital ProphetMax Estate distributions as it pertains to a upcoming meeting with a state investigator regarding the investors finances and distributions he previously received.	\$658.75	0.40	\$263.50
GMH-RCVR 10/10/2024 Review of previous correspondence with Banque Populaire and their legal counsel regarding steps necessary to repatriate Moroccan funds, review of the bank's website to determine if they have a US presence which would allow the court to exercise jurisdiction over it, email to my French counsel regarding all of the above and whether my Moroccan counsel was able to meet with the Moroccan authorities and conference with Ryn Hohmann regarding review of Washington DC registrar of companies, review of several nominal defendant cases with personal jurisdiction defenses.	\$658.75	5.20	\$3,425.50

Exhibit 1

Time Entries	Rate	Hours	Sub
GMH-RCVR 10/11/2024 Email from and to my French counsel regarding my Moroccan counsel's meeting with the Moroccan prosecutor's office regarding lifting the freeze on the Moroccan bank accounts, her recent conversation with the bank's counsel regarding no further need to domesticate judgements in Morocco and our consultant's upcoming meeting with the Moroccan Currency Exchange Office, Review and revise the Moroccan section of the 35th fee application. Telephone conference with distribution agent regarding investor that wants his funds paid to an entity that doesn't have an EIN, telephone conference with investor regarding same.	\$658.75	4.80	\$3,162.00
GMH-RCVR 10/15/2024 Travel to Regions Bank to close out the first Receivership Bank account opened at the beginning of the Receivership and obtain most recent statements, incoming emails from investors and proposed responses, conference with Ryn Hohmann and Tyler Cunningham regarding status of Second Interim Distribution.	\$658.75	1.80	\$1,185.75
GMH-RCVR 10/21/2024 Review and revise 35th fee application.	\$658.75	0.40	\$263.50
GMH-RCVR 10/31/2024 Conference with Ryn Hohmann regarding her lengthy phone call with an investor who forgot his claim information, conference with Ryn Hohmann and Tyler Cunningham regarding status of Second Interim Distribution.	\$658.75	0.40	\$263.50
Time Entries Total		14.50	\$9,551.88

Total (USD)	\$9,551.88
Paid	\$0.00
Balance	\$9,551.88

Terms & Conditions

Net 30

Exhibit 1

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Having considered the Motion, the evidence presented, and arguments of counsel, if any, the Court finds the time spent, services performed, hourly rates charged, and expenses incurred by the Receiver were reasonable and necessary for the Receiver to perform his Court-ordered duties. The Court concludes the Motion should be, and is hereby, GRANTED.

It is therefore ORDERED that payment for interim fees and expenses listed above totaling \$46,889.68 for the Receiver's invoice and for services rendered to the ProphetMax Receivership Estate and IB Capital Receivership Estate during the Thirty-Sixth Fee Period is approved.

SIGNED this _____ day of _____, 2024.

DAVID A. EZRA
SENIOR UNITED STATES DISTRICT JUDGE