

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-DAE

**RECEIVER'S MOTION FOR APPROVAL OF THIRTY-THIRD 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-Third Fee Application, Status Update and to Pay Expenses and Brief in Support (the “Motion”) covering the one-month period from July 1, 2024, through July 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 for the Receiver's Motion for Approval of Second Interim Distribution Plan & Procedures became final.²

The Second Interim Distribution is presently underway. Approved Investor Claimants are beginning to receive their checks and wires. Beginning August 12, 2024, distribution checks were issued and mailed by this Court's approved distribution agent Donlin Recano & Co. Inc. and the wire transfers were sent to investors by the Receiver's senior paralegal with oversight from the Receiver.³ This process is expected to continue for approximately 170 days.

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

² [Dkt. # 320, 321].

³ [Dkt. #'s 268, 262 and 321].

2. Morocco – \$ 4.87 million

Since the Receiver's July 31, 2024, Status Report, there has been very little change in activity to report.⁴ The Receiver is still awaiting a copy of documents which Banque Populaire the "Bank") has indicated it will prepare for signature by the account holders (Emade Echade, Essadia and Rabiaa Moutaouakkil).

As previously reported, this above step is crucial to move forward and the Receiver's Moroccan and French counsel are in a holding pattern until the Bank sends the letters. Once the Bank sends the letters to the account holders, the next crucial step will almost be complete.

During this Fee Period, the Receiver's French counsel requested a copy of the Mutual Legal Assistance Treaty from the Dutch Public Prosecutor's Office ("DPPO") that they will be sending to their counterparts in Morocco. It has not yet been received from the DPPO. Once it is received, my French and Moroccan counsel will be submitting it to the Moroccan Currency Exchange Office.

B. COMMUNICATIONS WITH INVESTOR CLAIMANTS

At the beginning of this Fee Period, the Investor Claimants continued to be engaged in communications with the Receiver's two paralegals. With the excitement of the upcoming Second Interim Distribution, the communications with Investor Claimants spiked immediately.⁵ The four primary categories of communications: (1) Contacting the Receiver to update their contact details & wire transfer details (2) Investor Claimants contacting the Receiver to inquire about the amount

⁴ [Dkt. # 324].

⁵ [Dkt. #101]. Through this Court's approved communication process, the Receiver makes announcements on the Receivership's social media accounts: Facebook site: www.facebook.com/prophetmax.receivership, website: www.prophetmaxreceivership.com as well as and via email to Investor Claimants' email addresses the Receiver has on file.

of their specific distribution (3) inquiries about the specific timing of the distribution (4) and a letter the Investor Claimants received from the US Department of Justice.⁶

C. PARALEGALS' ACTIVITIES FOR THIS FEE PERIOD

As previously outlined above, the paralegal's activities regarding Investor Communication were consistently busy. Their time was spent preparing for the Second Interim Distribution. This included sending several mass emails to the investors blind carbon copy (bcc) requesting they reconfirm their mailing addresses and/or wire instructions.

This is a time-consuming process, and numerous emails continue to arrive daily. Based on the Receiver's previous ING Settlement and First Interim Distribution, the distribution process will continue for approximately six (6) months.

The paralegal also spent time communicating to Investor Claimants regarding U.S. Investor Claimants governed by federal tax laws and IRS's requirement for new W-9 forms reelecting any changes of address.⁷ The senior paralegal continues regular monthly duties which included 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.⁸

The paralegal continues his regular activities with updating and managing the Receivership's social media accounts.⁹ During this Fee Period, the senior paralegal's hours were 65.5; her invoice totaled \$7,860.00. The paralegal's total hours were 94.3 and his invoice totaled \$7,544.00.¹⁰

⁶ Attached as Exhibit 2

⁷ The paralegals send a secure ShareFile link to receive all W-9 forms.

⁸ The IB Capital ProphetMax notebook includes all bank statements, invoices, court papers with corresponding orders and an Excel spreadsheet of account activity.

⁹ <https://prophetmaxreceivership.com/>; <https://www.facebook.com/prophetmax.receivership>

¹⁰ The Receiver's paralegal invoiced 94.3 hours at \$80.00 per hour which is a 20% discount from his normal hourly rate for a total of \$7,544.00. The senior paralegal invoiced 65.5 hours at \$120.00 per hour which is a 20% discount of her normal hourly rate for a total of \$7,860.00 [Dkt. #265].

D. ADMINISTRATIVE EXPENSES

During this fee period, The Hohmann Law Firm received two invoices from the DRC. One invoice was related to the Second Interim Distribution in the amount of \$724.97. The other invoice related to administrative expenses such as document storage and other administrative services. Their invoice totaled \$189.12.

CONCLUSION AND PRAYER FOR RELIEF

The Receiver requests the Court approve his Thirty-Third Fee Application for his invoice which includes time expended by the Receiver for the one-month time period between July 1, 2024, through July 31, 2024, totaling \$8,366.16. Attached as Exhibit 1 to this Motion for Approval of Thirty-Third Fee Application and Brief in Support is the redacted invoice 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 \$14,240.00 for the invoices of his two paralegals. The total, fees and expenses for this fee period are \$24,684.25 for the Receivership Estate and IB Capital Receivership Estate during the Thirty-Third 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 Street
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

August 20, 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	1392
Issue Date	8/20/2024
Due Date	9/19/2024
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 7/3/2024 Conference with Ryn Hohmann regarding a Capillo Spot Forex (CSF) Investor that was instrumental in assisting the DPPO is included in First and Second Interim Distributions.	\$658.75	0.30	\$197.63
GMH-RCVR 7/5/2024 Conference with Ryn Hohmann regarding receipt of wire from the Slovakian Enforcement Officer and East West Bank Account for same.	\$658.75	0.10	\$65.88
GMH-RCVR 7/11/2024 Email to and from investor regarding email they received from the Department of Justice.	\$658.75	0.10	\$65.88
GMH-RCVR 7/17/2024 Review and revise Motion for Approval of Thirty-Second Fee Application, Status Update and to Pay Expenses and conference with Ryn Hohmann regarding same.	\$658.75	1.60	\$1,054.00
GMH-RCVR 7/18/2024 Prepare proposed Order on Thirty-Second Fee Application.	\$658.75	0.30	\$197.63
GMH-RCVR 7/19/2024 Review and revise Motion for Approval of Thirty-Second Fee Application.	\$658.75	0.50	\$329.38
GMH-RCVR 7/22/2024 Review and revise email to East West Bank regarding account information for Second Interim Distribution Account.	\$658.75	0.10	\$65.88
GMH-RCVR 7/23/2024 Review email from Jeanette Peevy regarding Second Interim Distribution Account and review of various account opening documents/agreements and execute same, email to my French counsel regarding [REDACTED].	\$658.75	1.10	\$724.63

Exhibit 1

Time Entries	Rate	Hours	Sub
GMH-RCVR 7/24/2024 Email from and to my French counsel regarding [REDACTED] [REDACTED]	\$658.75	0.20	\$131.75
GMH-RCVR 7/26/2024 Review of wire transfer information and review and revise proposed email to investors regarding the Second Interim Distribution	\$658.75	0.40	\$263.50
GMH-RCVR 7/29/2024 Review incoming email from my French counsel to the DPPO regarding MLAT request to the Moroccan authorities and obtaining a copy to present to the Moroccan Currency Exchange Office, conference with Ryn Hohmann regarding Second Interim Distribution timeline, review various investors posts on Facebook Receivership website, email from and to an investor regarding my inability to make a FICA withholding from his upcoming distribution and link to IRS website in connection with same, conference Ryn Hohmann regarding same and her recent phone conversation with her an investor and preparation of a status report, review and revise proposed email to investors that did not respond to earlier email announcing the Second Interim Distribution.	\$658.75	3.60	\$2,371.50
GMH-RCVR 7/30/2024 Review and revise status report, review notes and selected emails regarding my previous agreement to make a payments to a CSF victims and email to the DPPO regarding same.	\$658.75	3.20	\$2,108.00
GMH-RCVR 7/31/2024 Review of wire transfer information and review and revise proposed email to investors regarding the Second Interim Distribution, review of wire transfer information and conference Ryn Hohmann re same and oversee wire transfers.	\$658.75	1.20	\$790.50
Time Entries Total		12.70	\$8,366.16

Total (USD)	\$8,366.16
Paid	\$0.00
Balance	\$8,366.16

Terms & Conditions

Net 30

From: U.S. Department of Justice - VNS <fedemail@vns.usdoj.gov>
Sent: Thursday, July 11, 2024 11:31:57 AM
To: <[REDACTED]>
Subject: U.S. Department of Justice - VNS - Inmate Number 50749-509

DO NOT REPLY TO THIS EMAIL.



July 11, 2024

U.S. Department of Justice
Federal Bureau of Prisons
SER - Pensacola FPC
110 Raby Avenue
P.O. Box 3933
Pensacola, FL 32516
Phone: (850) 457-1911
Fax: (850) 458-7275

[REDACTED]
RE: MICHAEL DION
Register Number: 50749-509
Docket Number: 21-CR-60103

Dear [REDACTED]:

You have requested to receive notifications regarding MICHAEL DION, an inmate incarcerated at this facility. Notifications concerning this inmate will be provided to you through the Victim Notification System (VNS). You may obtain current information about this matter on the Internet at <https://www.notify.usdoj.gov> or from the VNS Call Center at 1-866-DOJ-4YOU (1-866-365-4968) (TDD/TTY: 1-866-228-4619) (International: 1-502-213-2767). In addition, you may use the Call Center or Internet to update your contact information and/or change your decision about participation in the notification program.

You will need the following Victim Identification Number (VIN) '**6977208**' and Personal Identification Number (PIN) '**5347**' anytime you contact the Call Center and the first time you log on to VNS on the Internet. You are associated with multiple cases. You will need only this victim ID/PIN code to access all case information. If you are receiving notifications with multiple victim ID/PIN codes please contact the VNS Call Center. In addition, the first time you access the VNS Internet site you will be prompted to enter your last name (or business name) as currently contained in VNS. The name you should enter is Saloom.

This notice is to inform you that MICHAEL DION's release date has been changed. The inmate is now scheduled to be released on August 2, 2026. The inmate is not eligible for

parole.

You may cancel this notification at any time by calling the VNS toll-free number provided, or by submitting your cancellation request in writing to the Federal Bureau of Prisons (BOP). Also, if BOP staff initiate a notification and are unsuccessful in contacting you due to inaccurate contact information, your participation in the notification program may be canceled; therefore, it is essential that you continue to ensure your contact information in the VNS remains up-to-date. Finally, notification will terminate when the inmate has completed service of the sentence for the crime which resulted in the notification.

If at any time you have any questions or concerns regarding this program or the offender's status, please do not hesitate to contact me at the above address or you may telephone the VNS Call Center.

Sincerely,

E. Mamula
Unit Manager

If you do not want to receive email notifications from the Victim Notification System (VNS) please log into the VNS Web site at <https://www.notify.usdoj.gov>, select "My Information", remove your email address and click the "update" button. If you remove your email address, you will continue to receive letters from VNS except in those case which have large numbers of victims. To change your email address, select "My Information", provide a new address and click the "update" button.

If you do not want to receive any notifications in your case, select "Stop Receiving Notifications" and follow the instructions on the screen.

If you believe you have received this email in error, please contact the office listed at top of the email message.

Please note, if this is the first notification you have received from VNS you will need to wait 4-8 hours from receipt of this email before you can login to the VNS Internet site (<https://www.notify.usdoj.gov>). In addition, it will also be 4-8 hours before any documents which may have been uploaded to VNS as part of this notification are available under the "Downloads/Links" section on the Web page.

Please call the Victim Notification System (VNS) Help Desk at phone number 1-866-625-1631 for assistance and questions.

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-THIRD APPLICATION AND EXPENSES

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

The Motion seeks approval to pay his fees and associated expenses of \$24,684.25 in the following amounts:

1. Receiver's fees of \$8,366.16
2. Senior paralegal total expenses of \$7,860.00
3. Paralegal total expenses of \$7,544.00
4. Donlin Recano & Co. Inc. expenses \$914.09

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 \$24,684.25 for the Receiver's invoice and for services rendered to the ProphetMax Receivership Estate and IB Capital Receivership Estate during the Thirty-Third Fee Period is approved.

SIGNED this _____ day of _____, 2024.

DAVID A. EZRA
SENIOR UNITED STATES DISTRICT JUDGE