

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

SAM IKKURTY A/K/A SREENIVAS I RAO,
RAVISHANKAR AVADHANAM,
AND JAFIA LLC

Defendants,

IKKURTY CAPITAL, LLC D/B/A ROSE CITY
INCOME FUND, ROSE CITY INCOME FUND
II LP, AND SENECA VENTURES, LLC

Relief Defendants.

Civil Action No.: 22-cv-02465

Honorable Mary M. Roland

Magistrate Judge Jeffrey
Cummings

**DEFENDANT AVADHANAM'S FIRST REQUEST FOR PAYMENT OF REASONABLE
LEGAL FEES AND MEMORANDUM IN SUPPORT**

Defendant Ravishankar Avadhanam ("Avadhanam"), by his undersigned counsel, respectfully files this motion to seek reimbursement of reasonable attorney fees pursuant to his rights of advancement and indemnification. Avadhanam's assets have been frozen pursuant to this Court's order. Avadhanam requires funds to pay for his attorneys in connection with this matter. Avadhanam has a right to advancement and indemnification of such fees pursuant to his employment with Jafia LLC and under the agreements by investors in Rose City Fund I, Rose City Fund II and Seneca Ventures, LLC. Thus, it is appropriate for this Court to allow the payment of such reasonable fees to Avadhanam from Defendant Jafia LLC and Relief Defendants Rose City Income Fund I, Rose City Income Fund II, and Seneca Ventures. We

respectfully request an order from this Court granting such relief. In support of this motion, Avadhanam states as follows:

FACTUAL BACKGROUND

Ravi Avadhanam grew up in India. His background primarily is in information technology; he has over 20 years' experience working in IT sales and consulting. His experience includes responsibilities such as liaising with development managers, recruiting and training employees, and engaging in technology sales and customer outreach. Born in India, Avadhanam eventually worked and raised his family in Singapore until 2014, when he made the difficult decision to leave his family in Singapore and take an IT consulting job in the United States. After a few years, Avadhanam moved his family here so that his children could avoid forced conscription into the Singapore military. Avadhanam now lives with his family in a modest home in Aurora with two children in college.

In early 2020, co-defendant Sam Ikkurty reached out to Avadhanam via LinkedIn, first seeking Avadhanam as an investor and eventually as an employee of Ikkurty's company, Jafia LLC. Avadhanam believed in the promise of cryptocurrency as an investment opportunity and he and several family members invested in Rose City Fund I. Avadhanam also eventually agreed to work as a W-2 employee for Jafia LLC. At Ikkurty's direction, Avadhanam attended conferences and manned a booth that advertised Ikkurty's investment strategy. Avadhanam then followed up with conference attendees and other prospective investors, often providing pre-prepared information from Ikkurty. Often, when a prospective or current investor would ask questions, Avadhanam would obtain the answer from Ikkurty and pass along a response. Avadhanam also was responsible for collecting know-your-customer information from prospective investors and passing that information along to third-party fund administrators. In short, Avadhanam was

tasked with administrative duties while Ikkurty made all financial and investment decisions. As an employee, Avadhanam continued to invest in Jafia funds and even took out a large personal loan which is still outstanding to invest more money.

Avadhanam was paid a salary but also was guaranteed that he would have legal representation if any problems arose – both from Jafia LLC and from the funds. Rose City Fund I, Rose City Fund II and Seneca Ventures each agreed to provide indemnification for legal expenses to Jafia LLC and its employees, including Avadhanam, for legal expenses incurred as a result of work performed. Rose City Fund I’s subscription agreement provides a broad right to indemnification for the General Partner (Jafia LLC) as well as “each other person... who... is controlled by” Jafia, which includes its employee Avadhanam.¹ The PPM for Rose City Fund I similarly discloses this indemnification right and makes clear the right includes advancement “to any Indemnified Party reasonable attorneys’ fees and other costs and expenses incurred in connection with the defense of any action or proceeding that arises out of such conduct.”² Any

¹ “The Subscriber agrees to indemnify and hold harmless the Partnership, its General Partner, each of their affiliates, and each other person, if any, who controls, is controlled by, or is under common control with, any of the foregoing, within the meaning of Section 15 of the Securities Act, against any and all loss, liability, claim, damage and expense whatsoever (including all expenses reasonably incurred in investigating, preparing or defending against any claim whatsoever) arising out of or based upon (i) any false representation or warranty made by the Subscriber, or breach or failure by the Subscriber to comply with any covenant or agreement made by the Subscriber, in this Subscription Agreement or in any other document furnished by the Subscriber to any of the foregoing in connection with this transaction; or (ii) any action for securities law violations instituted by the Subscriber which is finally resolved by judgment against the Subscriber. The Subscriber also agrees to indemnify the Partnership, the General Partner and their affiliates and agents for any and all costs, fees and expenses (including legal fees and disbursements) in connection with any damages resulting from the Subscriber’s assertion of lack of proper authorization from the beneficial owner to enter into this Subscription Agreement or perform the obligations hereof.” Ex 1, Rose City Fund I Subscription Agreement at 51-52.

² “Indemnification. To the fullest extent permitted by law, the Fund shall indemnify and hold harmless the General Partner, each Affiliate and the legal representatives of any of them (an “Indemnified Party”), from and against any loss, cost or expense suffered or sustained by an Indemnified Party by reason of (i) any acts, omissions or alleged acts or omissions arising out of, or in connection with, the Fund, any investment made or held by the Fund or the Partnership Agreement, including, without limitation, any judgment, award, settlement, reasonable attorneys’ fees and other costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim, provided that such acts, omissions or alleged acts or omissions upon which such actual or threatened action, proceeding or claim are based were not made in bad faith or did not constitute fraud, willful misconduct or gross negligence by such Indemnified Party, or (ii) any acts or omissions, or alleged acts or omissions, of any broker or

party that receives advancement must agree to reimburse the Fund to the extent that it is later determined that he was not entitled to indemnification. *Id.* Rose City Fund II’s subscription agreement similarly provides indemnification for the General Partner (Jafia LLC) as well as its “employees.”³ The PPM for Rose City Fund II similarly discloses this indemnification right “to the fullest extent legally permissible under the laws of the State of Delaware” and makes clear the right includes advancement.⁴ Similarly, Seneca’s subscription agreement also provides the right to indemnification for its General Partner (Jafia LLC) and all of its employees.⁵

agent of any Indemnified Party, provided that such broker or agent was selected, engaged or retained by the Indemnified Party in accordance with the standard above. The Fund shall, in the sole discretion of the General Partner, advance to any Indemnified Party reasonable attorneys’ fees and other costs and expenses incurred in connection with the defense of any action or proceeding that arises out of such conduct. If such an advance is made by the Fund, the Indemnified Party shall agree to reimburse the Fund for such fees, costs and expenses to the extent that it shall be determined that it was not entitled to indemnification. The foregoing provisions will not be construed so as to provide for the indemnification of the General Partner or any Affiliate for any liability (including liability under Federal securities laws which, under certain circumstances, impose liability even on persons that act in good faith), to the extent (but only to the extent) that such indemnification would be in violation of applicable law, but will be construed so as to effectuate the foregoing provisions to the fullest extent permitted by law.” Ex 2, Rose City Fund I Private Placement Memorandum at 51-52.

³ “The Subscriber agrees to indemnify and hold harmless the Partnership, the General Partner, the Administrator and each of their respective directors, members, principals, managers, partners, shareholders, officers, employees, agents, affiliates and representatives from and against any and all actions, proceedings, claims, demands, losses, liabilities, damages, costs, fees and expenses (including legal fees and disbursements, taxes and penalties) that may result, directly or indirectly, from any: (i) inaccuracy in, misrepresentation or breach of any representation, warranty, condition, covenant or agreement set forth in this Agreement or in any other information or documentation provided by the Subscriber to the Partnership, or provided on its behalf, relating to the Partnership; or (ii) action or inaction of the Subscriber in connection with its obligations under this Agreement. This indemnification obligation shall survive the Subscriber’s death or disposition of its Interests.” Ex 3, Rose City Fund II Subscription Agreement at 51-52.

⁴ “The Fund will, to the fullest extent legally permissible under the laws of the State of Delaware, indemnify and hold harmless the General Partner, its directors, members, partners, shareholders, officers, employees, agents and affiliates and any persons designated to wind up the affairs of the Fund pursuant to the Partnership Agreement (each, an “Indemnatee”) against any and all loss, liability and expense (including, without limitation, losses due to trade errors caused by such persons, judgments, fines, amounts paid or to be paid in settlement and reasonable attorney’s fees and expenses) incurred or suffered by the Indemnatee in connection with the good faith performance by the Indemnatee of his, her or its responsibilities to the Fund; provided, however, that an Indemnatee will not be indemnified for losses resulting from his, her or its gross negligence, willful misconduct or violation of applicable laws. Upon request, and to the extent legally permissible, the Fund will, in the discretion of the General Partner, advance amounts and/or pay expenses as incurred in connection with the Fund’s indemnification obligation; provided, however, that if it is later determined that such party was not entitled to indemnification, then such party will promptly reimburse the Fund for all advanced amounts.” Ex 4, Rose City Fund II Private Placement Memorandum at 36.

⁵ “The Subscriber agrees to indemnify and hold harmless the Partnership, the General Partner, the Administrator and each of their respective directors, members, principals, managers, partners, shareholders, officers, employees,

On May 10, 2022, the Commodities Futures Trading Commission (“CFTC”) filed a Complaint for Injunctive Relief, Civil Monetary Penalties and Other Equitable Relief against Sam Ikkurty a/k/a Sreenivas I Rao, Ravishankar Avadhanam, and Jafia LLC and Ikkurty Capital, LLC d/b/a Rose City Income Fund I, LP, Rose City Income Fund II, LP, and Seneca Ventures, LLC. Also on May 10, 2022, the CFTC moved for an ex parte statutory restraining order pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a), freezing Defendants’ assets (Dkt. 6) and for the appointment of a receiver to, inter alia, to take control of those assets. Dkt. 7. On May 11, 2022, the Court entered an order granting the requested statutory restraining order (Dkt. 17) and entered a separate order granting the appointment of James Kopecky as Temporary Receiver. Dkt. 18. On July 18, 2022, the Court entered a consent preliminary injunction, which the Defendants agreed to without admitting liability and without prejudice to their right to seek to modify or vacate the order at a later date. Dkt. 37. That same Order (the “Consent Order”) appointed the Temporary Receiver as Receiver over the Receivership Defendants and the Receivership Estate. *Id.*

Pursuant to the Consent Order (Dkt. 37), Avadhanam must seek leave of Court in order to seek any finances, including reimbursement of his legal expenses. Pursuant to the Receivership Order (Dkt. 18), the Receiver has been appointed as overseeing the funds and accounts of the Relief Defendants. The Consent Order also requires Avadhanam to “provide the Receiver with a full detailed accounting of all funds, records, and assets, including the assets inside and outside of the United States that are held by each Defendant and Relief Defendant, for their benefit, or

agents, affiliates and representatives from and against any and all actions, proceedings, claims, demands, losses, liabilities, damages, costs, fees and expenses (including legal fees and disbursements, taxes and penalties) that may result, directly or indirectly, from any: (i) inaccuracy in, misrepresentation or breach of any representation, warranty, condition, covenant or agreement set forth in this Agreement or in any other information or documentation provided by the Subscriber to the Partnership, or provided on its behalf, relating to the Partnership; or (ii) action or inaction of the Subscriber in connection with its obligations under this Agreement. This indemnification obligation shall survive the Subscriber’s death or disposition of its Interests.” Ex 5, Seneca Ventures Subscription Agreement at 10.

under their direct or indirect control” (Dkt. 18, p. 5). The Consent Order also provides that “Defendants shall cooperate with the CFTC and Receiver to the extent necessary to identify the location of any and all documents that establish an accounting of all funds received by Defendants and/or Relief Defendants from customers or other persons in connection with commodities in interstate commerce, commodity futures transactions, or purported commodity futures transactions into any accounts bearing their names and/or to which they are a signer.” Dkt. 37, p. 7-8.

All of Avadhanam’s assets have been frozen. Avadhanam requests a release from the assets of Rose City Fund I, Rose City Fund II, Seneca LLC, and Jafia LLC for a payment of his outstanding attorney fees in an amount of \$155,239.50 as well as an order that such further reasonable attorney fees incurred in connection with this matter and the related government investigations will be advanced for work performed prior to a final order of liability is entered.

LEGAL STANDARD

This motion is made pursuant to this Court’s Consent Order (Dkt. 37), under which the restraints shall remain “in full force and effect until further order of this Court”. *Id.* at 13. This Court has discretion to modify that order as appropriate. A court with the authority to freeze personal assets temporarily “has the ‘corollary authority to release frozen personal assets, or lower the amount frozen.’” *SEC v. Dowdell*, 175 F. Supp. 2d 850, 854 (W.D. Va. 2001) (quoting *SEC v. Gonzalez de Castilla*, 170 F. Supp. 2d 427, 429 (S.D.N.Y. 2001)). Prior to a final order finding wrongdoing, courts in the Seventh Circuit routinely allow disbursements for reasonable living expenses and attorney fees. *See F.T.C. v. QT, Inc.*, 467 F. Supp. 2d 863, 866 (N.D. Ill. 2006); *FTC v. Think Achievement Corp.*, 312 F.3d 259, 262 (7th Cir. 2002); *F.T.C. v. Am. Tax Relief LLC*, 751 F. Supp. 2d 972, 987 (N.D. Ill. 2010).

ARGUMENT

A. The Court Should Authorize Payment of Avadhanam’s Reasonable Legal Fees.

In circumstances similar to this case, courts in the Seventh Circuit “have routinely made such allowances to permit some of the frozen assets to be used to pay the lawyers defending the [] suit.” *F.T.C. v. QT, Inc.*, 467 F. Supp. 2d 863, 866 (N.D. Ill. 2006) (citing *FTC v. Think Achievement Corp.*, 312 F.3d 259, 262 (7th Cir. 2002); *FTC v. Amy Travel Service, Inc.*, 875 F.2d 564, 570, 575–76 (7th Cir. 1989); *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1032 (7th Cir. 1988); *FTC v. Windermere Big Win Int’l*, 1999 WL 608715 at *6 (N.D. Ill. Aug. 5, 1999)). As the court in *QT Inc.* noted, until there is a final order finding that defendants have committed violations and frozen funds rightfully belonging to someone else, a provision for fees is “necessary to enable defendants to obtain representation in order to defend against the [government’s] charges.” *QT, Inc.*, 467 F. Supp. 2d at 866; *see FTC v. Think Achievement Corp.*, 312 F.3d 259, 262 (7th Cir. 2002) (noting that release of frozen assets to pay attorney fees is appropriate before a final order finding that frozen assets were subject to fraud). The “key [is] not the specific amount of fees paid, but the reasonableness of those fees under the circumstances.” *F.T.C. v. Am. Tax Relief LLC*, 751 F. Supp. 2d 972, 987 (N.D. Ill. 2010) (permitting payment of reasonable attorney fees and noting more fees would be appropriate where case is not “cut-and-dried”). The payment of such fees is appropriate until there is a final order, not merely a preliminary injunction, because a preliminary injunction is not a finding of fraud or CFTC violation. *Id.* at 989. A preliminary injunction may find that the CFTC “is likely to succeed on the merits of its claims, but that is not the same as saying that it has succeeded on the merits of its claims.” *Id.*

Indeed, it is appropriate to allow the release of funds from a receivership, even where assets are limited and the funds are allegedly from defrauded investors, prior to the entry of a judgment. *See S.E.C. v. Equitybuild, Inc. et al.*, 1:18CV05587 (Dkt. 51) (granting attorney fees for all activity up until defendants entered into consent judgment with SEC, despite objections by SEC that funds came from investors defendants later admitted were defrauded and despite objections that receivership assets were extremely limited). As the court in *Equitybuild* reasoned, “[a]fter all defendants should be entitled to legal representation for the defense in this case, at least through the entry of the [] judgment.” *Id.* at 8:1-5.

Courts have broad discretion in supervising an equitable distribution of assets to permit the payment of attorney fees. “Under established law, this Court has broad jurisdiction to modify order freezing the assets of defendants in order to authorize payment of reasonable attorneys’ fees and costs related to defendants’ defense of the action.” *Equitybuild, Inc. et al.*, 1:18CV05587 (Dkt. 51, Transcript at 5:9-12). As noted in *Gonzalez de Castilla*, “[w]hile the primary purpose of freezing assets is to facilitate compensation of defrauded investors in the event a violation is established at trial, the disadvantages and possible deleterious effect of a freeze must be weighed against the considerations indicating the need for such relief.” 170 F. Supp. 2d at 429 (internal quotation and citation omitted). Weighing these factors, the court found that “it [was] appropriate to modify the freeze as to both [defendants] to permit payment of” the “substantial . . . legal fees and disbursements” they had incurred to that point in the case. *Id.* at 430.

Attorneys’ fees are appropriately paid where, as here, the case is complex and attorneys’ fees are provided for in relevant contracts. For instance, in *Dowdell*, the court permitted the release of frozen assets to permit the defendant to pay for attorneys, noting that it was concerned

with “the fairness of the proceedings.” 175 F. Supp. 2d at 856. The court found that the defendant’s access to an attorney was necessary to secure a “fair result” because the court was presented with “a complex legal matter, and lawyers are essential to the presentation of issues related to it.” *Id.* Other courts have also carved out funds from asset freezes to pay for attorneys’ fees during the pendency of enforcement actions.

Delaware law, which controls the indemnity and advancement agreements of Rose City Fund II, consistently finds the importance of indemnification and the vital role it plays for employees and officers. It is not merely a benefit to the individual but serves a broad public policy goal. “Delaware has a strong public policy in favor of assuring key corporate personnel that the corporation will bear the risks resulting from performance of their duties on the grounds that such a policy best encourages responsible persons to occupy positions of business trust, so Delaware courts have read indemnification contracts to provide coverage when that is reasonable.” *Int’l Rail Partners LLC v. Am. Rail Partners, LLC*, No. CV 2020-0177-PAF, 2020 WL 6882105, at *8 (Del. Ch. Nov. 24, 2020). This policy is equally applicable in the context of a partnership and its employees. *See* 2 Del. Code § 17-108 (“Subject to such standards and restrictions, if any, as are set forth in its partnership agreement, a limited partnership may, and shall have the power to, indemnify and hold harmless any partner or other person from and against any and all claims and demands whatsoever.”); *Weil v. VEREIT Operating P’ship, L.P.*, No. CV 2017-0613-JTL, 2018 WL 834428, at *4-7 (Del. Ch. Feb. 13, 2018) (noting Delaware law “is broadly empowering and deferential to the contracting parties’ wishes regarding indemnification and advancement” in the context of a partnership agreement and ordering advancement of fees following same procedures as a corporation). “Indemnification and the subsidiary concept of advancement are intended to encourage persons to serve in a company,

secure in the knowledge that expenses incurred by them in upholding their honesty and integrity will be borne by the corporation they serve.” *Int’l Rail Partners*, 2020 WL 6882105, at *8.

This public policy requires that a company continue to advance the legal expenses of a former employee to whom advancement is due, even in circumstances far more extreme than found here – such as an individual who has been convicted of a crime but that decision is on appeal or if the individual pleads guilty to fraud but has not yet been sentenced. *See Sun-Times Media Grp., Inc. v. Black*, 954 A.2d 380, 391 (Del. Ch. 2008) (requiring advancement of legal expenses until final non-appealable order); *Bergonzi v. Rite Aid Corp.*, No. CIV.A. 20453-NC, 2003 WL 22407303, at *3 (Del. Ch. Oct. 20, 2003) (holding that a corporation must continue to advance legal fees to a defendant who had already pleaded guilty to “participation in a criminal conspiracy to defraud [the company] while serving as its chief financial officer” at least until the trial court actually entered his guilty plea as a sentence). Companies everywhere benefit when they are allowed to ensure prospective employees that those employees will be fully guaranteed a right to defend themselves against accusations of wrongdoing. “Rights to indemnification and advancement are deeply rooted in the public policy of Delaware corporate law in that they are viewed less as an individual benefit arising from a person’s employment and more as a desirable mechanism to manage risk in return for greater corporate benefits.” *Kaung v. Cole Nat. Corp.*, 884 A.2d 500, 509 (Del. 2005).

Avadhanam should be allowed to rely on the agreements which provide for his entitlement to advancement of his legal fees in connection with this action. *Int’l Rail Partners LLC*, 2020 WL 6882105, at *8; *Weil*, 2018 WL 834428, at *4-7. Courts have applied this policy goal to support modification of asset freezes to allow for advancement of legal fees. For example, in *S.E.C. v. Illarramendi*, No. 3:11CV78 JBA, 2014 WL 545720, at *5 (D. Conn. Feb.

10, 2014), the court determined that defendants had a prima facie right to advancement of attorney fees despite an asset freeze based on an investment management agreement (“IMA”) with language indistinguishable from the LPAs here. First, the court noted that “[a]dvancement is determined as a matter of contractual right and is generally determined without regard to the merits of the underlying suit.” *Id.* at *17. Next, the court found that Delaware law, which governed the IMA at issue in *Illarramendi* just as it governs the Fund II LPA here, “favors indemnification and the advancement of attorney’s fees for public policy reasons.” *Id.* at *18. And finally, the court further found that Delaware allows limitations and onerous prerequisites to advancements, but “[w]here, as here, no conditions were placed upon advancement, no [] preconditions will be read into” the advancement provision. *Id.* at *29. *See also S.E.C. v. Stanford Int’l Bank, Ltd.*, No. 309-CV-298-N, 2009 WL 8707814, at *4 (N.D. Tex. Oct. 9, 2009) (granting carve out of legal expenses for individual employees who had indemnification agreements, noting that those individuals appropriately relied on the right to indemnification “to afford them a defense were they to be accused of wrongdoing in the course of duty.”); *United States v. Payment Processing Ctr., LLC.*, 439 F. Supp. 2d 435, 436 (E.D. Pa. 2006) (court allowing corporation to advance legal fees to individual corporate officers, despite all funds as part of receivership).

It is also important “[a]s a matter of fairness [that] individual defendants merit separate and independent legal counsel to defend themselves.” *Payment Processing*, 439 F. Supp. 2d at 436. Company counsel is often inadequate to represent the interests of the individual defendants, whose interests may vary from the company. *See, e.g., United States v. Stein*, 435 F. Supp. 2d 330, 349–53 (S.D.N.Y. 2006) (recognizing company defendant may avoid criminal prosecution by cooperating against its agents and refusing to pay its agents’ legal expenses, creating an

“obvious conflict of interest”). Without an order granting reasonable attorney fees, Avadhanam is unlikely to be able to obtain his own counsel and may have to rely on joint counsel with his employer.

This is a complex matter involving allegations concerning cryptocurrency. Pursuant to this Court’s orders, Avadhanam has been required to assist the CFTC and Receiver in helping to compile a detailed accounting and other information. Avadhanam was faced with an unexpected TRO, freeze on his personal assets, and a time sensitive decision about whether to proceed with a contested preliminary injunction hearing or consent to a preliminary injunction. Counsel needed to quickly review complex materials in order to gain a factual understanding of the matter. Avadhanam’s decision to consent to the preliminary injunction avoided significant attorney fees that would have been occurred. Counsel has already agreed to reduce their fees by approximately 20 percent and also attempted to work as judiciously as possible under the circumstances.

We therefore ask for the Court to enter an appropriate procedure for Avadhanam’s ongoing legal expenses to be reimbursed.

CONCLUSION

For the reasons set forth above, Avadhanam respectfully requests that the Court approve, (1) a payment of \$155,239.50⁶ of reasonable attorneys’ fees, and (2) an order for the future payment of reasonable attorney fees incurred prior to a final order from this Court.

⁶ Redacted copies of invoices for legal services rendered through July 31, 2022, are attached hereto as Exhibit 6.

Dated: September 2, 2022

Respectfully submitted,

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