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**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAPOWER-3, LLC; INTERNATIONAL
AUTOMATED SYSTEMS, INC.; LTB1,
LLC; R. GREGORY SHEPARD; NELDON
JOHNSON; and ROGER FREEBORN,

Defendants.

**RECEIVER’S MOTION FOR
ATTORNEYS’ FEES AND NON-
TAXABLE EXPENSES**

Civil No. 2:15-cv-00828-DN

The Honorable David Nuffer

Pursuant to Rule 54(d)(2) of the *Federal Rules of Civil Procedure* and DUCivR 54-2 of this Court’s local rules of civil procedure, Court-Appointed Receiver R. Wayne Klein (“Receiver”), hereby submits this Motion for Attorneys’ Fees and Non-taxable Expenses (“Motion”). The Receiver requests that the Court award him the attorneys’ fees and non-taxable expenses incurred in the amount of \$5,110.40. The Receiver further requests that the Court award his fees incurred in the amount of \$1,050.00. The Receiver requests the total amount of \$6,160.40

in attorney's fees and costs and the Receiver's fees.

BACKGROUND

1. On February 19, 2019, the Receiver filed his Motion for Order to Show Cause Why Pacific Stock Transfer Company ("PSTC") Should Not Be Held in Civil Contempt of Court for Violating the Corrected Receivership Order ("OSC Motion").¹ In the OSC Motion, the Receiver asked the Court for an attorneys' fees and costs award for bringing the OSC Motion.

2. On March 5, 2019, the Court issued an order taking the OSC Motion under advisement, setting the service and briefing deadlines, and scheduling a hearing on the OSC Motion for April 26, 2019.²

3. The OSC Motion and the March 5, 2019 order were served on PSTC on March 8, 2019.³

4. No response to the OSC Motion was filed by PSTC.

5. PSTC did not attend the April 26, 2019 hearing on the OSC Motion.

6. At the hearing the Court found that PSTC was in violation of the Corrected Receivership Order, imposed a deferred \$2,000 a day fine on PSTC until compliance, and awarded attorneys' fees and costs in bringing the OSC Motion.⁴

ARGUMENT

Rule 54(d)(2) of the *Federal Rules of Civil Procedure* requires that a motion for attorneys' fees "must: . . . specify the judgment and the statute, rule, or other grounds entitling

¹ [Docket No. 576](#).

² [Docket No. 588](#).

³ [Docket No. 595](#).

⁴ Minute Order, Docket No. 619. The \$2,000 a day fine does not begin until 10 days after the entry of the contempt order.

the movant to the award”; “state the amount sought or provide a fair estimate of it”; and “disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made.” In addition, DUCivR 54-2(f) requires that a motion for attorneys’ fees “must (i) state the basis for the award; (ii) specify the amount claimed; and (iii) be accompanied by an affidavit of counsel setting forth the scope of the effort, the number of hours expended, the hourly rates claimed, and any other pertinent supporting information that justifies the award.”

I. Basis for the Attorneys’ Fees Award

As shown above, the basis for the attorneys’ fees and costs award is the Court’s April 26, 2019 minute order finding PSTC in violation and contempt of the Corrected Receivership Order, imposing a deferred \$2,000 a day fine on PSTC until compliance, and awarding attorneys’ fees and costs in bringing the OSC Motion.⁵ It is clear that the Court has the authority to award attorneys’ fees and costs as a sanction for civil contempt.⁶ Further, the Court has authority to award receiver’s fees as a sanction for civil contempt.⁷ The Court also has equitable authority to compensate the receivership estate for the reasonable value of the additional fees expended to bringing the OSC Motion.⁸

⁵ *Id.*

⁶ [In re Skinner](#), 90 B.R. 470, 479 (D. Utah 1988) (“sanctions for a civil contempt may include attorney’s fees and costs”); see also [Hutto v. Finney](#), 437 U.S. 678 n.14 (1978) (“Of course, fees can also be awarded as part of a civil contempt penalty.”).

⁷ See [Fed. Trade Comm’n v. Productive Mktg., Inc.](#), 136 F. Supp. 2d 1096, 1112 (C.D. Cal. 2001) (awarding receiver’s fees as a sanction for civil contempt to “compensate the complainant for losses sustained as a result of the contumacious behavior.”) (citations omitted); [United Mine Workers of Am. v. Bagwell](#), 512 U.S. 821, 838, 114 S.Ct. 2552, 129 L.Ed.2d 642 (1994) (courts have “longstanding authority ... to enter broad compensatory awards for all contempt through civil proceedings.”).

⁸ [In re Indian Motorcycle Mfg., Inc., No. CIVA 95CV00777 REBCB, 2008 WL 163005, at *2 \(D. Colo. Jan. 15, 2008\)](#) (awarding receiver fees because “[i]t would not be equitable for respondents to burden the receivership estate without compensating the receiver for the reasonable value of the additional costs and fees” for “filing and prosecution of this motion.”).

II. Amount Claimed

The amount of reasonable attorneys' fees and costs expended bringing the OSC Motion is \$5,110.40. The billable time spent on the OSC Motion is itemized in the Declaration of Michael S. Lehr, attached hereto as Exhibit A. The time billed includes drafting and revisions to the OSC Motion, reviewing communications with PSTC, reviewing documents from PSTC, preparation and attendance at the April 26, 2019 OCS hearing,⁹ drafting the proposed order, and drafting this Motion.¹⁰

In addition to expending attorneys' fees and costs to bring the OSC Motion, the Receivership Estate incurred costs in the form of the Receiver's fees in bringing the OSC Motion. The Receiver spent 4.1 hours bringing the OSC Motion costing the receivership estate \$1,050.00. The time the Receiver spent was reasonably necessary to prevail on the OSC Motion and to fulfill the Receiver's duties under the Corrected Receivership Order. An itemized accounting of the Receiver's time spent is attached as Exhibit B to this Motion.

a. Reasonableness of Hours Expended and the Hourly Rate

The Tenth Circuit applies the Lodestar test to calculate an award of attorney fees.¹¹ "The lodestar . . . is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate, which produces a presumptively reasonable fee that may in rare circumstances be adjusted to account for the presence of special circumstances."¹² "The court

⁹ Because the OCS Motion was one of two motions the Court considered at the April 26, 2019 hearing, the Receiver is only asking for a portion of his attorneys' time spend at the hearing.

¹⁰ [Case v. Unified Sch. Dist. No. 233, Johnson Cty., Kan., 157 F.3d 1243, 1254 \(10th Cir. 1998\)](#) ("An award of reasonable attorneys' fees may include compensation for work performed in preparing and presenting the fee application.") (citations omitted).

¹¹ [Perkumpulan Inv'r Crisis Ctr. Dressel WBG v. Sherer](#), 2015 WL 2238402, at *2 (D. Utah May 12, 2015) (citing [Anchondo v. Anderson, Crenshaw & Assoc., L.L.C., 616 F.3d 1098, 1102 \(10th Cir.2010\)](#)).

¹² *Id.* (internal citations and quotation marks omitted).

determines reasonable hourly rates based on evidence of what the market commands for . . . analogous litigation and the prevailing market rate in the relevant community.”¹³

The time the Receiver and his attorneys spent bringing the OSC Motion was reasonably necessary to prevail on the OSC Motion and to fulfill the Receiver’s duty under the Corrected Receivership Order. The hours spent were related to 1) drafting the OSC Motion; 2) providing notice to PSTC of the OSC Motion and the Court’s orders; 3) preparing for and participating in the April 26, 2019 and May 3, 2019 hearings; and 4) drafting the proposed order and this Motion. All of the time spent was reasonably necessary to obtain the contempt order that will hopefully lead to PSTC producing the records and information required under the Corrected Receivership Order.

The hourly rate is reasonable for three primary reasons: 1) the rates are reasonable based on the legal fees charged in the Wasatch Front area of Utah; 2) the attorneys’ fees amount reflects a 10% discount from the normal rate charged by Parr Brown Gee & Loveless; and 3) the Corrected Receivership Order requires that the Receiver’s attorneys and the Receiver’s fees be reasonable¹⁴ and the Court has already approved a quarterly fee motion at the rate requested in this Motion.¹⁵

Finally, there are no special circumstances that would allow for a discount or adjustment in the fee amount. PSTC is a sophisticated corporate entity and the Receiver and his attorneys spent a reasonable amount of hours at a reasonable hourly rate.

¹³ *Id.*

¹⁴ [Docket No. 491](#) at ¶ 72.

¹⁵ [Docket No. 590](#), filed March 6, 2019.

CONCLUSION

For the reasons set forth herein, the Receiver requests that the Court grant this Motion and award reasonable attorneys' fees and costs, and the reasonable receiver's fees in bringing the OSC Motion.

DATED this 8th day of May, 2019.

PARR BROWN GEE & LOVELESS

/s/ Michael S. Lehr

Jonathan O. Hafen

Michael S. Lehr

Attorneys for Receiver

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **RECEIVER'S MOTION FOR ATTORNEYS' FEES AND NON-TAXABLE EXPENSES** was electronically filed with the Clerk of the Court through the CM/ECF system on May 8th, 2019, which sent notice of the electronic filing to all counsel of record.

IT IS FURTHER CERTIFIED that, on the same date, by U.S. Mail, first-class, postage pre-paid, I caused to be served the same documents upon the following persons:

Neldon Johnson
2730 W 4000 South,
Oasis, UT 84624

R. Gregory Shepard
858 Clover Meadow Dr.
Murray, Utah 84123

Pro se Defendants

Pacific Stock Transfer Company
6725 Via Austi Parkway, Suite 300
Las Vegas, NV 89119

Respondent

/s/ Michael S. Lehr