

Jonathan O. Hafen (6096) (jhafen@parrbrown.com)  
Joseph M.R. Covey (7492) (jcovey@parrbrown.com)  
Michael S. Lehr (16496) (mlehr@parrbrown.com)  
**PARR BROWN GEE & LOVELESS, P.C.**  
101 South 200 East, Suite 700  
Salt Lake City, Utah 84111  
Telephone: (801) 532-7840  
Facsimile: (801) 532-7750

*Attorneys for Court-Appointed Receiver Wayne Klein*

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

RAPOWER-3, LLC; INTERNATIONAL  
AUTOMATED SYSTEMS, INC.; LTBI,  
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

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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 \$20,013.52. The Receiver further requests that the Court award his fees (Receiver's fees) incurred in the amount of \$11,550.00. The Receiver requests the total amount of \$31,563.52 in attorneys' fees and costs and the Receiver's fees.

## **BACKGROUND**

1. On January 29, 2019, the Plaintiff filed a Motion for Order to Show Cause Why Neldon Johnson, R. Gregory Shepard, Glenda Johnson, LaGrand Johnson, and Randale Johnson (collectively, “Respondents”) Should Not Be Held in Civil Contempt of Court for Violating the Corrected Receivership Order (“OSC Motion”).<sup>1</sup>

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.<sup>2</sup>

3. The OSC Motion and the March 5, 2019 order were timely served on Respondents.<sup>3</sup>

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

5. A hearing on the OSC Motion was held over the course of three days, April 26, 2019; May 3, 2019; and May 28, 2019.

6. At the conclusion of the hearing the Court found that Respondents were in violation of the Corrected Receivership Order, made findings of contempt, imposed deadlines for statements and various other documents to be filed by Respondents, and awarded attorneys’ and receiver’s fees and costs to Plaintiff and to the Receiver.<sup>4</sup>

7. On June 25, 2019, the Court issued an Order of Contempt finding Respondents guilty of civil contempt of the Corrected Receivership Order.<sup>5</sup> The Court ordered that Respondents “are jointly and severally liable for the attorneys’ fees and costs incurred by both the United States

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<sup>1</sup> [Docket No. 559](#).

<sup>2</sup> [Docket No. 588](#).

<sup>3</sup> [Docket No. 594](#).

<sup>4</sup> Minute Order, Docket No. 685.

<sup>5</sup> [Docket No. 701](#).

and the Receiver to enforce the Corrected Receivership Order and for all litigation related to the Motion, including the Receiver's fees."<sup>6</sup>

### **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 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 May 28, 2019 minute order and the Court's June 25, 2019 Civil Contempt Order finding Respondents in violation and contempt of the Corrected Receivership Order, and awarding attorneys' fees and costs "to enforce the Corrected Receivership Order and for all litigation related to the Motion, including the Receiver's fees."<sup>7</sup> It is clear that the Court has the authority to award attorneys' fees and costs as a sanction for civil contempt.<sup>8</sup> Further, the Court has authority to award receiver's fees as a sanction for civil contempt.<sup>9</sup> The Court also has equitable authority to

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<sup>6</sup> *Id.* at Order ¶ 11.

<sup>7</sup> *Id.*

<sup>8</sup> *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.").

<sup>9</sup> 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.

compensate the receivership estate for the reasonable value of the additional fees expended in support of the OSC Motion.<sup>10</sup>

## **II. Amount Claimed**

The amount of reasonable attorneys' fees and costs expended to enforce the Corrected Receivership Order and for litigation related to the OSC Motion is \$20,013.52. The billable time spent on the OSC Motion is itemized in the Affidavit of Michael S. Lehr, attached hereto as Exhibit 1. The time billed includes drafting oppositions to multiple motions for protective orders, preparation and attendance at depositions that Neldon and Glenda Johnson failed to attend, preparation for and attendance at the April 26, 2019, May 3, 2019, and May 28, 2019 OCS hearings, communications with the Receiver, Plaintiff, and Defendants regarding the OSC hearing and filings, and drafting this Motion.<sup>11</sup>

In addition to expending attorneys' fees and costs to enforce the Corrected Receivership Order and for litigation related to the OSC Motion, the Receivership Estate incurred costs in the form of the Receiver's fees to enforce the Corrected Receivership Order and for litigation related to the OSC Motion. The Receiver spent 46.2 hours, costing the receivership estate \$11,550.00. The time the Receiver spent was reasonably necessary to to enforce the Corrected Receivership Order and for litigation related to the OSC Motion and to fulfill the Receiver's duty under the Corrected Receivership Order. An itemized accounting of the Receiver's time spent is attached

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[2552, 129 L.Ed.2d 642 \(1994\)](#) (Courts have "longstanding authority ... to enter broad compensatory awards for all contempt through civil proceedings.").

<sup>10</sup> [In re Indian Motorcycle Mfg., Inc., No. CIV 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.").

<sup>11</sup> [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).

as Exhibit 2 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.<sup>12</sup> “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.”<sup>13</sup> “The court determines reasonable hourly rates based on evidence of what the market commands for . . . analogous litigation and the prevailing market rate in the relevant community.”<sup>14</sup>

The time the Receiver and his attorneys spent to enforce the Corrected Receivership Order and for litigation related to the OSC Motion was reasonably necessary to prevail on the OSC Motion and to fulfill the Receiver’s duty under the Corrected Receivership Order. All of time spent was reasonably necessary to attain the contempt order that led to Respondents producing many records and will hopefully lead to Respondents producing the remainder of 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 reasonable<sup>15</sup> and the Court has already approved two quarterly fee motion at the rate requested in

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<sup>12</sup> [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)).

<sup>13</sup> *Id.* (internal citations and quotation marks omitted).

<sup>14</sup> *Id.*

<sup>15</sup> [Docket No. 491](#) at ¶ 72.

this Motion.<sup>16</sup> Finally, there are no special circumstances that would allow for a discount or adjustment in the fee amount.

**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 to enforce the Corrected Receivership Order and for all litigation related to the Motion, including the Receiver's fees.

DATED this 1st day of July, 2019.

**PARR BROWN GEE & LOVELESS**

/s/ Michael S. Lehr  
Jonathan O. Hafen  
Michael S. Lehr  
*Attorneys for Receiver*

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<sup>16</sup> [Docket No. 590](#), filed March 6, 2019.

**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 July 1st, 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:

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

*Pro se Defendant*

/s/ Michael S. Lehr