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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 COSTS**

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

The Honorable David Nuffer

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Pursuant to the Court's *Civil Contempt Order Re: Glenda Johnson, Roger Hamblin, and Preston Olsen* ("Contempt Order"),<sup>1</sup> Court-Appointed Receiver R. Wayne Klein ("Receiver"), hereby submits this Motion for Fees and Costs Relating to Contemptuous Conduct of Glenda Johnson, Roger Hamblin, and Preston Olsen. The Receiver requests that the Court award the Receivership Estate fees and costs incurred in the amount of \$69,518.54, which includes \$39,925.00 in fees by the Receiver, \$26,972.00 in fees by Receiver's counsel, and \$2,621.54 in

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<sup>1</sup> [Docket no. 1116](#), filed April 14, 2021.

costs.

### **BACKGROUND**

1. The Receiver's work related to the Contempt Order goes back to late 2019 when he was informed about liens filed by Glenda Johnson on Receivership Property.

2. Since that time, the Receiver and his counsel conducted extensive investigation and briefing related to Glenda Johnson's, Roger Hamblin's, and Preston Olsen's contempt.

3. Some of the major events related to the contempt include:

- a. An affidavit of non-compliance against Glenda Johnson regarding the liens;<sup>2</sup>
- b. Responding to declarations of Glenda Johnson related to the liens;<sup>3</sup>
- c. Depositions of Roger Hamblin and Preston Olsen and related filings;
- d. Investigation related to Glenda Johnson's state court lawsuits;
- e. Status report related to Glenda Johnson's non-compliance with orders requiring the release of the liens;<sup>4</sup>
- f. The Receiver's report and recommendation detailing the contemptuous conduct of Johnson, Hamblin, and Olsen;<sup>5</sup>
- g. The Receiver's motion for order to show cause;<sup>6</sup>
- h. Communication with Olsen and Hamblin related to report and motion;
- i. Drafting proposed orders related to the contemptuous conduct.<sup>7</sup>

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<sup>2</sup> [Docket no. 888](#), filed March 20, 2020.

<sup>3</sup> [Docket no. 929](#), filed May 20, 2020.

<sup>4</sup> [Docket no. 942](#), filed June 30, 2020.

<sup>5</sup> [Docket no. 1055](#), filed December 29, 2020.

<sup>6</sup> [Docket no. 1056](#), filed December 29, 2020.

<sup>7</sup> [Docket no. 1110](#), filed March 24, 2020.

4. In the Contempt Order, the Court ordered that “Glenda Johnson, Roger Hamblin, and Preston Olsen are jointly and severally liable to the Receiver for all costs and fees of the Receiver and his counsel relating to their contemptuous conduct, including, but not limited to, a) the OSC Motion and the accompanying Receiver’s Report, b) the Receiver’s prior motion to invalidate the liens, c) the depositions of Hamblin and Olsen and related investigation, and d) other court filings related to the misconduct described in this order.”<sup>8</sup>

5. Before the Contempt Order was entered, the Receiver entered into a settlement with Roger Hamblin and Preston Olsen related to the Receiver’s Report and Recommendation and the Order to Show Cause. In the settlement, Hamblin and Olsen each stipulated to a finding of contempt and agreed to pay the Receiver a certain amount in fees.<sup>9</sup> These amounts, totaling \$16,000.00 have been paid to the Receiver.

### **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.”

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<sup>8</sup> [Docket no. 1116](#) at 64.

<sup>9</sup> [Docket no. 1072](#), filed January 29, 2021.

## **I. Basis for the Attorneys' Fees Award**

As shown above, the basis for the attorneys' fees and costs award is the Court's April 14, 2021 Contempt Order.<sup>10</sup> It is clear that the Court has the authority to award attorneys' fees and costs as a sanction for civil contempt.<sup>11</sup> Further, the Court has authority to award receiver's fees as a sanction for civil contempt.<sup>12</sup> 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.<sup>13</sup>

## **II. Amount Claimed**

The amount of reasonable fees and costs relating to Glenda Johnson's, Roger Hamblin's, and Preston Olsen's contemptuous conduct is \$69,518.54. The billable time related to the contemptuous conduct is itemized in the Declaration of Wayne Klein, attached hereto as Exhibit A and the Declaration of Michael S. Lehr, attached hereto as Exhibit B. Mr. Klein's declaration also contains an itemization of costs.

### **a. Reasonableness of Hours Expended and the Hourly Rate**

The Tenth Circuit applies the Lodestar test to calculate an award of attorney fees.<sup>14</sup> "The lodestar . . . is the number of hours reasonably expended on the litigation multiplied by a

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<sup>10</sup> [Docket no. 1116](#) at 64.

<sup>11</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>12</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. 2552, 129 L.Ed.2d 642 (1994) (Courts have "longstanding authority ... to enter broad compensatory awards for all contempt through civil proceedings.").

<sup>13</sup> [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.").

<sup>14</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)).

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>15</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>16</sup>

The time the Receiver and his attorneys spent investigating, preparing reports, drafting briefs, and taking deposition testimony was reasonably necessary to fully inform the Court of Johnson’s, Hamblin’s, and Olsen’s contemptuous conduct which led to the entry of the Contempt Order.

The hourly rate is reasonable for two primary reasons: 1) the rates are reasonable based on the legal fees charged in the Wasatch Front area of Utah; and 2) the Corrected Receivership Order requires that fees of the Receiver and his attorneys be reasonable<sup>17</sup> and the Court has already approved numerous quarterly fee applications at the rates requested in this Motion.

Finally, there are no special circumstances that would allow for a discount or increases 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 related to Glenda Johnson’s, Roger Hamblin’s, and Preston Olsen’s contemptuous conduct.

DATED this 28th day of May, 2021.

**PARR BROWN GEE & LOVELESS**

/s/ Michael S. Lehr  
Jonathan O. Hafen

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<sup>15</sup> *Id.* (internal citations and quotation marks omitted).

<sup>16</sup> *Id.*

<sup>17</sup> [Docket No. 491](#) at ¶ 72.

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 COSTS** was electronically filed with the Clerk of the Court through the CM/ECF system on May 28, 2021, which sent notice of the electronic filing to all counsel of record.

*/s/ Michael S. Lehr* \_\_\_\_\_