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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

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

Defendants.

Civil No. 2:15-cv-00828 DN

**UNITED STATES' MOTION FOR
ENTRY OF ORDER FOR
ATTORNEYS' FEES AND COSTS
AFTER
CIVIL CONTEMPT ORDER RE: R.
GREGORY SHEPARD, NELDON
JOHNSON, GLENDA JOHNSON,
LAGRAND JOHNSON, AND
RANDALE JOHNSON**

District Judge David Nuffer

After the United States filed a Motion for Order to Show Cause Why Neldon Johnson, R. Gregory Shepard, Glenda Johnson, LaGrand Johnson, and Randale Johnson Should Not Be Held in Civil Contempt of Court (the “Motion”)¹ and hearings on April 26, May 3, and May 28, 2019, this Court entered an order holding Neldon Johnson, R. Gregory Shepard, Glenda Johnson, LaGrand Johnson, and Randale Johnson in civil contempt for violating the Corrected Receivership Order in this matter.² As part of its order, this Court held Neldon Johnson, R. Gregory Shepard, Glenda Johnson, LaGrand Johnson, and Randale Johnson “jointly and severally liable for the attorneys’ fees and costs incurred by both the United States and the Receiver to enforce the Corrected Receivership Order and for all litigation related to the Motion.”³ The Court also ordered that Neldon Johnson, R. Gregory Shepard, Glenda Johnson, LaGrand Johnson, and Randale Johnson “pay these fees and costs from non- Receivership assets.”⁴

An award of attorneys’ fees and costs is an appropriate civil sanction against a party in contempt of a court order.⁵ The United States’ attorneys’ fees and costs incurred to bring the Motion and enforce the Corrected Receivership Order are set forth in the attached Declaration of Erin Healy Gallagher. As that Declaration shows, the United States’ attorneys’ fees and costs for this matter are \$22,044.12 and \$3,102.73, respectively, for a total of \$25,146.85. This amount is

¹ ECF No. 559.

² ECF No. 701; ECF No. 491.

³ ECF No. 701 at 29.

⁴ ECF No. 701 at 29.

⁵ *Hutto v. Finney*, 437 U.S. 678, 689 n.14 (1978) (“Of course, fees can also be awarded as part of a civil contempt penalty.”); *Fish v. Kobach*, 294 F. Supp. 3d 1154, 1169 (D. Kan. 2018).

reasonable.⁶ The number of hours billed is reasonable for one attorney for the United States to work with the Receiver for more than six months to identify the five respondents' extensive and evolving compliance failures; to present those failures, in collaboration with the Receiver, in a clear and comprehensible manner; to appear at numerous proceedings, including three hearings on these matters; and to otherwise respond to the respondents' "stunning contempt" at issue.⁷ The billed rate is reasonable, as it is less than prevailing rates for similarly situated attorneys.⁸ There are no rare or special circumstances that suggest an adjustment of the fee to be awarded. Further, the costs of travel for counsel for the United States are reasonable and consistent with the ordinary travel costs between Washington, D.C., where she works, and Salt Lake City.

Therefore, the United States asks that this Court enter an order that Neldon Johnson, R. Gregory Shepard, Glenda Johnson, LaGrand Johnson, and Randale Johnson pay the United States \$25,146.85, in funds separate from property belonging to the Receiver or the receivership estate, by a date certain within 30 days of entry of the order granting this motion.

⁶ See *Perkumpulan Inv'r Crisis Ctr. Dressel WBG v. Sherer*, 2015 WL 2238402, at *2-6 (D. Utah May 12, 2015).

⁷ See May 28 Tr., part 2, at 29:1.

⁸ See *Perkumpulan Inv'r Crisis Ctr. Dressel WBG*, 2015 WL 2238402, at *3; e.g., ECF No. 642-1 at 2; ECF No. 497 ¶ 3 (noting hourly rates for Receiver's counsel range between \$198 and \$333) and ECF No. 500 (appointing Receiver's counsel).

Dated: July 1, 2019

Respectfully submitted,

/s/ Erin Healy Gallagher

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**ATTORNEYS FOR THE
UNITED STATES**

CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2019, the foregoing UNITED STATES' MOTION FOR ENTRY OF ORDER FOR ATTORNEYS' FEES AND COSTS AFTER CIVIL CONTEMPT ORDER RE: R. GREGORY SHEPARD, NELDON JOHNSON, GLENDA JOHNSON, LAGRAN JOHNSON, AND RANDALE JOHNSON, along with its supporting documents, was electronically filed with the Clerk of the Court through the CM/ECF system, which sent notice of the electronic filing to all counsel of record.

I also certify that, on the same date and consistent with his written consent, I served the same documents by email upon:

R. Gregory Shepard
greg@rapower3.com.

Defendant and respondent pro se

/s/ Erin Healy Gallagher
ERIN HEALY GALLAGHER
Trial Attorney