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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

**SECURITIES AND EXCHANGE
COMMISSION,**

Case No: **2:22-CV-00612-CDS-EJY**

Plaintiff,

vs.

MATTHEW WADE BEASLEY, et al.,

Defendants.

THE JUDD IRREVOCABLE TRUST, et al.,

Relief Defendants.

**AARON GRIGSBY, ESQ.’s OBJECTION TO MEMORANDUM OF FEES AND COSTS
PURSUANT TO COURT ORDERS ON RECEIVER’S MOTIONS**

COMES NOW, Aaron Grigsby, Esq. (“Grigsby”), through his attorney, Dean Y. Kajioka, Esq., of Kajioka & Associates, and hereby submits his Objection to Memorandum of Fees and Costs Pursuant to Court Orders on Receiver’s Motions.

This Objection is made and based upon the attached Memorandum of Points and Authorities,

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1 the exhibits hereto, the pleadings and papers on file, and any oral argument or evidence adduced at
2 the time of the hearing on this matter.

3 Dated this 22nd day of January, 2024.

4 **KAJIOKA & ASSOCIATES**

5 */s/ Dean Y. Kajioka, Esq.*

6 **DEAN Y. KAJIOKA, ESQ.**

7 Nevada Bar No. 5030

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10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **A. INTRODUCTION.**

12 With his Memorandum of Fees and Costs Pursuant to Court Orders on Receiver’s Motion
13 to Find Aaron Grigsby in Contempt for Failure to Comply with this Court’s Orders and Motion for
14 Order Directing the Turnover of Receivership Property from Aaron Grigsby (“Memorandum”),
15 Court-appointed Receiver Geoff Winkler (“The Receiver”) seeks the sum of \$146,586.45 in
16 attorney’s fees and costs from Aaron Grigsby, Esq. (“Grigsby”). The amount sought by The
17 Receiver appears to represent the sum total of all fees and costs incurred by his counsel, Greeburg
18 Traurig, LLP, from October 3, 2022 to present (*see* Exhibit 1 to Memorandum), and all fees and
19 costs incurred by The Receiver from August 3, 2022 to present (*see* Exhibit 2 to Memorandum).
20 The Receiver’s Memorandum of Fees and Costs should be denied for several reasons: 1) there is
21 no legal basis for an award of fees and costs for **all** fees and costs incurred in this matter; 2) the
22 Receiver’s Affidavits fail to comply with Local Rule 56-14, therefore precluding an award of fees
23 and costs; and 3) in the alternative, if fees and costs are to be awarded, they should not be awarded
24 for costs and fees incurred prior to the filing of the Motion to Compel.

25 **B. LEGAL ARGUMENT**

26 **A. FACTS/PROCEDURAL HISTORY**

1 The Receiver has filed its instant Memorandum following the Court's hearing and
2 December 28, 2023 Order Finding Aaron Grigsby, Esq. in Civil Contempt for Failing to Comply
3 with Court Orders, and Granting Motion Directing Aaron Grigsby to Turn Over Receivership
4 Assets to the Receiver (ECF 621). This Objection timely follows.

5
6 **B. LEGAL STANDARD FOR AWARDS OF FEES AND COSTS**

7 Federal courts "follow the American Rule with respect to attorney's fees, which normally
8 requires the parties to bear their own costs in the absence of statutory authorization." *Williams v.*
9 *State Indus. Ins. Sys.*, 672 F. Supp. 459, 463 (D. Nev. 1987). Courts may, however, award
10 attorneys' fees to the prevailing party if (1) a statute, rule, or contract authorizes an award or (2) the
11 court finds that the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive
12 reasons. *See Beaudry Motor Co. v. Abko Properties, Inc.*, 780 F.2d 751, 756 (9th Cir. 1986); *see*
13 *also U.S. Design & Constr. Corp. v. Int'l Bhd. of Elec. Workers*, 118 Nev. 458, 50 P.3d 170, 173
14 (Nev. 2002); *McCarran Intern. Airport v. Sisolak*, 122 Nev. 645, 137 P.3d 1110, 1129 (Nev.
15 2006). While it is true that Fed. R. Civ. P. 54(d)(2) and Local Rule 54-16 create procedures to
16 recover attorneys' fees, they do not create a *right* to recover attorneys' fees. *See MRO*
17 *Communications, Inc. v. Am. Tel. & Tel. Co.*, 197 F.3d 1276, 1280 (9th Cir. 1999). The Ninth
18 Circuit has confirmed that Fed. R. Civ. P. 54(d)(2) requirement that there be "an independent source
19 of authority for an award of attorneys' fees gives effect to the 'American Rule' that each party must
20 bear its own attorneys' fees in the absence of a rule, statute or contract authorizing such an
21 award." *Id.*, at 1281.

22 Just because the Receiver submits a Memorandum of Fees and Costs pursuant to Fed. R.
23 Civ. P. 54(d)(2) and Local Rule 54-16 does not mean that he is absolutely entitled to an award of
24 attorneys' fees without independent authorization from a rule, statute or contractual provision
25 authorizing such an award. The Receiver has failed to cite to a rule, statute or contractual provision
26 authorizing the fees and costs sought. The Receiver did not specifically argue or allege that Grigsby
27 acted in bad faith, vexatiously, wantonly or for oppressive reasons. The Order Finding Aaron
28 Grigsby in Civil Contempt also did not specifically provide a finding that he acted in bad faith,

1 vexatiously, wantonly or for oppressive reasons. In the absence of such a finding, the Receiver is
 2 not entitled to attorneys' fees and costs as a matter of right. In *Bank of Am., N.A. v. Treasures*
 3 *Landscape Maint. Ass'n*, 2017 U.S. Dist. LEXIS 113893 (D.Nev. July 21, 2017), the Court, citing
 4 the American Rule, specifically denied a Motion for Attorney's fees because the party seeking fees
 5 was the prevailing party.

6 Furthermore, the Memorandum of Costs and Fees seeks awards of fees and costs dating
 7 back to the inception of this case. There has been no finding that Grigsby acted in bad faith,
 8 vexatiously, wantonly or for oppressive reasons throughout the entirety of this action nor that every
 9 single act he took in this matter warranted such a finding. To the contrary, Grigsby acted in good
 10 faith in providing The Receiver with information and documentation in this action. Grigsby further
 11 acted in good faith in relying on Clark County District Court order issued by a District Court Judge
 12 regarding two (2) of the vehicles at issue in this action.

13 **C. THE RECEIVER FAILED TO COMPLY WITH LOCAL RULE 54-16**

14 Local Rule 54-16 regarding Motions for Attorney's Fees states:

15 **LR 54-14. MOTIONS FOR ATTORNEY'S FEES**

16 (a) Content of Motions. Unless the court orders otherwise, a motion for attorney's
 17 fees must include the following in addition to those matters required by Fed. R.
 18 Civ. P. 54(d)(2)(B):

- 19 (1) A reasonable itemization and description of the work performed;
- 20 (2) An itemization of all costs sought to be charged as part of the fee award
 and not otherwise taxable under LR 54-1 through 54-13;
- 21 (3) A brief summary of:
 - 22 (A) The results obtained and the amount involved;
 - 23 (B) The time and labor required;
 - 24 (C) The novelty and difficulty of the questions involved;
 - 25 (D) The skill requisite to perform the legal service properly;
 - 26 (E) The preclusion of other employment by the attorney due to
 - 27 acceptance of the case;
 - 28 (F) The customary fee;
 - (G) Whether the fee is fixed or contingent;
 - (H) The time limitations imposed by the client or the circumstances;
 - (I) The experience, reputation, and ability of the attorney(s);
 - (J) The undesirability of the case, if any;
 - (K) The nature and length of the professional relationship with the
 client;

- (L) Awards in similar cases; and
- (M) Any other information the court may request.

(b) Attorney Affidavit. Each motion must be accompanied by an affidavit from the attorney responsible for the billings in the case authenticating the information contained in the motion and confirming that the bill was reviewed and edited and that the fees and costs charged are reasonable.

(c) Failure to provide the information required by subsections (a) and (b) in a motion for attorney’s fees may be deemed a consent to the denial of the motion.

(d) Opposition. If no opposition is filed, the court may grant the motion after independent review of the record. If an opposition is filed, it must set forth the specific charges that are disputed and state with reasonable particularity the basis for the opposition. The opposition must include affidavits to support any contested fact.

(e) Hearing. If either party wishes to examine the affiant, the party must specifically make that request in writing. Absent such a request, the court may decide the motion on the papers or set the matter for evidentiary hearing.

Local Rule 54-14(b) specifically *requires* that the affidavit attached to a Motion “be accompanied by an affidavit from the *attorney* responsible for the billings in the case authenticating the information contained in the motion and confirming that the bill was reviewed and edited and that the fees and costs charged are reasonable.” (emphasis added).

Local Rule 54-14(c) provides that failure to comply with subsections (a) and (b) “may be deemed a consent to the denial of the motion.”

A plethora of recent cases from this District have denied Motions for Attorney’s Fees based upon failure to comply with Local Rule 54-14(a) or (b). *See e.g. LeBsock v. GM*, 2023 U.S. Dist. LEXIS 192320 (D.Nev. October 26, 2023) (denying request for attorney’s fees based upon failure to provide information required by Local Rule 54-14); *705 Dean Martin, LLC v. Specialized Loan Servicing, LLC*, 2023 U.S. Dist. LEXIS 22082, *9 (D.Nev. February 9, 2023)(denying motion for fees because of failure to provide adequate affidavit and itemization of the requested fees pursuant to Local Rule 54-14); *Nat’l Specialty Pharm., LLC v. One Way Drug LLC*, 2022 U.S. Dist. LEXIS 103932, *8 (D.Nev. June 9, 2022)(motion denied because affidavit of counsel did not include

1 confirmation of the fees and costs charged); *Estate of Clough v. THI of Nev. at Las Vegas I*, 2017
2 U.S. Dist. LEXIS 130907, *6 (D.Nev. August 16, 2017)(motion denied because affidavit lacked
3 much of the content required by FRCP 54 and LR 54-14); *Anniversary Mining Claims, LLC v. Five*
4 *Star Trust dtd 5/27/2015*, 2021 U.S. Dist. LEXIS 159627, *9 (D.Nev. August 24, 2021)(motion
5 denied because affidavit failed Local Rule 54-14's requirements); *Pauluk v. Clark County Health*
6 *Dist.*, 2020 U.S. Dist. LEXIS 92757, *7 (D.Nev. May 27, 2020)(motion denied because affidavit
7 failed to include the information required by Local Rule 54-14(b) and (c)); *Branch Banking & Trust*
8 *Co. v. Jones/Windmill, LLC*, 2017 U.S. Dist. LEXIS 17835, *7 (D.Nev. February 7, 2017)(request
9 for attorney's fees denied for failure to comply with Local Rule 54-14(b)(3).

10 Two Declarations/Affidavits were submitted in support of the Memorandum: one by Kara
11 B. Hendricks, Esq. (Exhibit 1) and one by Receiver Geoff Winkler (Exhibit 2). Both of these
12 Declarations fail to comply with Local Rule 54-14(b) and should be deemed deficient.

13 First and foremost, Local Rule 54-14(b) requires an Affidavit from the "attorney"
14 responsible for the billings in the case. Receiver Geoff Winkler's Declaration fails to state that he
15 is an "attorney." He states simply, "I am over 21 years old and am a founding member and the
16 chief executive officer of American Fiduciary Services LLC ("American Fiduciary Services" or
17 "AFS"), which is based in Portland, Oregon. Nowhere in his Declaration does he claim to be an
18 attorney. His Bio on his website lists him as "Geoff Winkler, JD, MBA, CFE, CIRA." See
19 <https://americanfiduciaryservices.com/about-afs-1>. Missing from the designations behind
20 Receiver Winkler's name is an "Esq." As noted, his Declaration states that his business is "based
21 in Portland, Oregon," however a search of the Oregon State Bar website does not reveal that he is
22 a licensed attorney in the State of Oregon. Because there is no proof that Receiver is an attorney,
23 his Attorney Affidavit is deficient pursuant to Local Rule 54-14(b) and the Memorandum of Fees
24 and Costs, at least as to the Receiver's fees and costs, in the amount of \$11,998.00 in fees and
25 \$5,240.16 in costs should be denied.

26 Next, both Declarations fail to meet Local Rule 54-14(b)'s requirement that the Affidavit
27 "authenticate" the information contained in the motion.

28 Kara B. Hendricks, Esq.'s Declaration states:

1
2 “2. By virtue of my position with Greenburg Traurig, I am competent to testify to
3 the matters presented in this declaration, and I submit this declaration *in support of*
4 the Receiver’s Memorandum of Fees and Costs Pursuant to Court Orders on
5 Receiver’s Motion to Find Aaron Grigsby in Contempt for Failure to Comply With
6 This Court’s Orders (ECF No. 584) and Motion for Order Directing the Turnover
7 of Receivership Property From Aaron Grigsby (ECF No. 585) (the “Memorandum
8 of Fees”).”

9 (emphasis added).

10 The Receiver’s Declaration similarly states:

11 “2. I make this declaration *in support of* the Receiver’s Memorandum of Fees and
12 Costs Pursuant to Court Orders on Receiver’s Motion to Find Aaron Grigsby in
13 Contempt for Failure to Comply With This Court’s Orders (ECF No. 584) and
14 Motion for Order Directing the Turnover of Receivership Property From Aaron
15 Grigsby (ECF No. 585) (the “Memorandum of Fees”).”

16 (emphasis added).

17 (emphasis added).

18 Neither of the Declarations submitted in support of the Motion comply with Local Rule 54-
19 14(b) because neither Declaration have specifically “authenticat[ed] the information contained in
20 the motion.” Submitting a Declaration “in support of a Motion” is not the same as authenticating
21 the information contained in the Motion which is the precise and specific language required by
22 Local Rule 54-14(b). For this reason, Grigsby objects to the Memorandum as defective.

23 Local Rule 54-14(b) also requires an affirmative statement in the Affidavit that “the bill
24 was reviewed and edited and that the fees and costs charged are reasonable.” While both
25 Declarations do contain assertions that the fees and costs charged were reasonable, neither
26 Declaration contain any affirmation whatsoever that the bills were “reviewed and edited.” These
27 are also material deficiencies in the Declarations which should result in the denial of the
28 Memorandum.

1 Based upon these multiple deficiencies of the Attorney Affidavits, the Memorandum of
2 Fees and Costs presented by the Receiver and his attorney should be denied pursuant to Local Rule
3 54-14(c).

4
5 **D. IN THE ALTERNATIVE, IF THE MEMORANDUM IS NOT DENIED**
6 **OUTRIGHT, FEES AND COSTS PRIOR TO FILING OF THE MOTION TO**
7 **COMPEL SHOULD NOT BE AWARDED.**

8 The Memorandum breaks down the \$146,586.45 that is sought into specific time periods:

- 9
- 10 1. The Receiver’s Initial Communications and Efforts with Mr. Grigsby;
 - 11 2. The Receiver’s Motion to Compel;
 - 12 3. The Receiver’s Efforts Following the Motion to Compel;
 - 13 4. The Receiver’s Motion for Order to Show Cause;
 - 14 5. The Receiver’s Efforts Following the Hearing on the Motion for Order to Show Cause;
 - 15 6. The Receiver’s Motion for Contempt and the Motion for Turnover; and
 - 16 7. Efforts Following the Hearing on the Motion for Contempt and the Motion for
17 Turnover, Including the Preparation of the Instant Memorandum of Fees.

18 The first category—for which the Receiver claims 49.1 hours were spent—should not be a
19 basis for an award of fees and costs. As noted above, there must be a legal basis for an award of
20 fees and costs—simply being a prevailing party is not enough—there must be a statutory basis or
21 the party against whom fees or sought must have acted in bad faith, vexatiously, wantonly or for
22 oppressive reasons. It is overreaching by the Receiver to seek attorney’s fees and costs from day
23 one of their involvement in the case. Fees and costs incurred prior to filing the Motion to Compel
24 and during the normal course of investigation in this matter are not justifiable and should not be
25 awarded.

26 **III. CONCLUSION**

27 Wherefore, for all of the reasons set forth herein, Aaron Grigsby, respectfully requests and
28 moves this Court for the following:

1. For an Order denying the Receiver’s Memorandum of Fees and Costs Pursuant to
Court Orders on Receiver’s Motion to Find Aaron Grigsby in Contempt for Failure to Comply with

1 this Court's Orders and Motion for Order Directing the Turnover of Receivership Property from
2 Aaron Grigsby in its entirety;

3 2. In the alternative, for an Order denying any and all fees and costs incurred prior to
4 filing of the Motion to Compel; and

5 3. For any further relief, this Court deems just and proper.

6 Dated this 22nd day of January, 2024.

7
8 **KAJIOKA & ASSOCIATES**

9 */s/ Dean Y. Kajioka, Esq.*

10 **DEAN Y. KAJIOKA, ESQ.**

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13 Las Vegas, Nevada 89117

14 *Attorneys for Aaron Grigsby, Esq.*

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CERTIFICATE OF SERVICE

I hereby certify that service of the ***OBJECTION TO RECEIVER'S MEMORANDUM OF FEES AND COSTS PURSUANT TO COURT ORDERS ON RECEIVER'S MOTION TO FIND AARON GRIGSBY IN CONTEMPT FOR FAILURE TO COMPLY WITH THIS COURT'S ORDERS AND MOTION FOR ORDER DIRECTING THE TURNOVER OF RECEIVERSHIP PROPERTY FROM AARON GRIGSBY*** was made on the 22nd day of January, 2024, was filed electronically via the Court's CM/ECF system. Notice of filing will be served on all parties by operation of the Court's CM/ECF system and parties may access this filing through the Court's CM/ECF system and by serving via e-mail or United States Mail to the following address and to all other persons or entities on the CM/ECF service list:

Kara B. Hendricks, Esq.
GREENBURG TRAUIG, LLP
10845 Griffith Peak Dr., Suite 600
Las Vegas, NV 89135
hicksja@glaw.com

Dated this 22nd day of January, 2024.

/s/ Jacqueline Kopka
An employee of Kajioka & Associates