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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 ODYSSEY REINSURANCE
12 COMPANY, a Connecticut
13 corporation,
14 Plaintiff,
15 v.
16 RICHARD KEITH NAGBY, *et al.*,
17 Defendants.

Case No.: 3:16-cv-3038-BTM-WVG

**ORDER GRANTING IN PART,
DENYING IN PART PLAINTIFF'S
MOTION FOR ATTORNEY'S FEES
AND LITIGATION EXPENSES**

[ECF Nos. 295]

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19 Before the Court is Plaintiff Odyssey Reinsurance Company's ("Plaintiff")
20 motion for attorney's fees. (ECF No. 295.) By way of its instant motion, Plaintiff
21 seeks to quantify the Court's grant of attorney's fees and litigation expenses to
22 Plaintiff as a remedial sanction in the Order (the "Contempt Order") holding
23 Defendant Diane Dostalick (f/k/a Diane Nagby) ("Defendant") in civil contempt for
24 violations of the preliminary injunction entered October 4, 2017 (the "Preliminary
25 Injunction") and the temporary restraining order entered August 8, 2018 (the
26 "TRO"). (*Id.*; see also ECF Nos. 69, 172, 287.) In support of its motion, Plaintiff
27 provided an affidavit of its counsel attesting to the reasonableness of the requested
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1 fees and expenses, including the relevant timekeepers' rates, qualifications,
2 experience, and billing practices, as well as copies of the attorney's resumes, the
3 copies of relevant attorney's fees and expenses invoices submitted to Plaintiff for
4 payment, and a narrative summarizing the fees and expenses incurred by Plaintiff
5 in connection with its attempts to discover and remedy Defendant's contemptuous
6 conduct. (ECF No. 295-2.) In total, Plaintiff seeks to recover \$212,821.00 in
7 attorney's fees and \$23,163.00 in expenses as incurred in discovering and
8 prosecuting Defendant's contemptuous conduct.¹ (ECF Nos. 295, 315.) In her
9 response in opposition, Defendant concedes that "an award of fees is proper" but
10 argues that any such award must be "remedial and reasonable" and that Plaintiff
11 has improperly requested recovery of "unrelated or unnecessary fees and costs"
12 totaling \$116,519.30.² (ECF No. 314, at 2-3.)

13 "Civil contempt sanctions . . . are employed for two purposes: to coerce the
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16 ¹ In its reply in support of its instant motion Plaintiff reduced its initial request for
17 \$213,771.00 in attorney's fees and \$23,355.00 in expenses by \$950.00 and
18 \$192.00, respectively. (ECF No. 315, at 10; see *also* ECF No. 295.) The
19 withdrawn fees and expenses consist of \$192.00 in expenses for the service of
20 unrelated subpoenas on Defendant's accountant, John Scannell, and bookkeeper,
21 Suzanne Werden (ECF No. 295-2, at 16-17), \$290.00 in fees for the review of an
22 unrelated objection to a subpoena served on an expert witness retained by
23 Defendant in her divorce case, Barbara Hopper (*id.* at 34), and \$660.00 in fees for
24 drafting an opposition to Knight Insurance Co.'s attempts to intervene in this action
25 (*id.* at 99).

26 ² (See ECF No. 314, at 2 ("Plaintiff wrongfully seeks recovery of \$35,445.50 in fees
27 and \$3,235.00 in costs incurred in the ordinary course of litigation and discovery,
28 all of which are unrelated to the contempt proceedings. Furthermore, the
transcripts and court files demonstrate attorney time and expenses claimed are
unreasonably inflated or unnecessarily incurred by inefficient presentation of
evidence, and therefore an additional \$61,725.00 in fees and \$2,081.80
undesignated expert fees as 'costs' should be disallowed. Last, Plaintiff wrongfully
seeks recovery of expert fees in the amount of \$14,032.00.").

1 defendant into compliance with the court's order, and to compensate the
2 complainant for losses sustained." *Whittaker Corp. v. Execuair Corp.*, 953 F.2d
3 510, 517 (9th Cir. 1992) (citations omitted). Because attorney's fees and expenses
4 "frequently must be expended to bring a violation of an order to the court's
5 attention," trial courts have the discretion to award "fees and expenses . . . as a
6 remedial measure."³ *Perry v. O'Donnell*, 759 F.2d 702, 706 (9th Cir. 1985); see
7 *also id.* at 704 ("[C]ivil contempt need not be willful to justify a discretionary award
8 of fees and expenses as a remedial measure.").

9 The Ninth Circuit "requires a district court to calculate an award of attorneys'
10 fees by first calculating the 'lodestar.'" *Caudle v. Bristow Optical Co.*, 224 F.3d
11 1014, 1028 (9th Cir. 2000) (citations omitted). "The 'lodestar' is calculated by
12 multiplying the number of hours the prevailing party reasonably expended on the
13 litigation by a reasonable hourly rate." *Morales v. City of San Rafael*, 96 F.3d 359,
14 363 (9th Cir. 1996), opinion amended on denial of reh'g, 108 F.3d 981 (9th Cir.
15 1997) (internal quotations and citations omitted). "[H]ours that are excessive,
16 redundant, or otherwise unnecessary" should be excluded from the initial lodestar
17 calculation.⁴ *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983) ("Hours that are not
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20 ³ While Defendant argues that an award of fees and expenses as a remedial civil
21 contempt sanction should not include an award of expert witness fees, the cases
22 cited by Defendant, *W. Virginia Univ. Hosps., Inc. v. Casey*, 499 U.S. 83 (1991)
23 and *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291 (2006),
24 concerned statutory civil rights attorney's fees shifting provisions that did not
25 explicitly include litigation expenses or expert witness fees as recoverable
26 expenses and are therefore inapposite.

27 ⁴ "Because a reasonable attorney's fee would not include compensation for such
28 [excessive, redundant, or otherwise unnecessary] hours, the district court should
exclude them using one of two methods. First, the court may conduct an hour-by-
hour analysis of the fee request, and exclude those hours for which it would be
unreasonable to compensate the prevailing party. Second, when faced with a
massive fee application the district court has the authority to make across-the-

1 properly billed to one's client also are not properly billed to one's adversary”
2 (citations and emphasis omitted)); *but see Stetson v. Grissom*, 821 F.3d 1157,
3 1166 (9th Cir. 2016) “[T]he district court should take into account the reality that
4 some amount of duplicative work is inherent in the process of litigating over time.”
5 (internal quotations and citations omitted). The “reasonable hourly rate is the rate
6 prevailing in the community for similar work performed by attorneys of comparable
7 skill, experience, and reputation.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973,
8 979 (9th Cir. 2008) (internal quotations and citations omitted) (“[T]he relevant
9 community is the forum in which the district court sits.” (citations omitted)); *see also*
10 *id.* at 980 (“[A]ffidavits of the plaintiffs' attorneys and other attorneys regarding
11 prevailing fees in the community, and rate determinations in other cases are
12 satisfactory evidence of the prevailing market rate.” (internal quotations, citations,
13 and alterations omitted)). “After making [the lodestar] computation, the district
14 court then assesses whether it is necessary to adjust the presumptively reasonable
15 lodestar figure on the basis of the *Kerr* factors that are not already subsumed in
16 the initial lodestar calculation.”⁵ *Morales*, 96 F.3d at 363-64 (internal footnote and
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19 board percentage cuts either in the number of hours claimed or in the final lodestar
20 figure as a practical means of excluding non-compensable hours from a fee
21 application.” *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1203 (9th Cir. 2013)
22 (internal quotations, citations, and alterations omitted). Where the district court
23 uses the “percentage cut” method, it must “set forth a concise but clear explanation
24 of its reasons for choosing a given percentage reduction” if the reduction exceeds
25 10 percent of the total fees sought. *Id.* (internal quotations and citations omitted.)

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28 ⁵ “The twelve *Kerr* factors bearing on the reasonableness are: (1) the time and
labor required, (2) the novelty and difficulty of the questions involved, (3) the skill
requisite to perform the legal service properly, (4) the preclusion of other
employment by the attorney due to acceptance of the case, (5) the customary fee,
(6) whether the fee is fixed or contingent, (7) time limitations imposed by the client
or the circumstances, (8) the amount involved and the results obtained, (9) the
experience, reputation, and ability of the attorneys, (10) the ‘undesirability’ of the

1 citations omitted); see also *Perry*, 759 F.2d at 706 (“Ordinarily, the failure to follow
2 the *Kerr* guidelines constitutes an abuse of discretion.” (citations omitted)).

3 Plaintiff is represented by Kirby & McGuinn, P.C., and its attorneys Dean T.
4 Kirby, Jr. and Kimberley V. Deede, with the assistance of paralegals Constantina
5 “Tina” Wright and Jacquelyn Wilson. (See ECF No. 295-2.) Mr. Kirby, who has
6 “practiced law for almost forty years” in the fields of bankruptcy and creditor rights
7 and is “certified as a specialist in the field of creditor rights by the American Board
8 of Certification,” seeks an hourly rate of \$440. (*Id.* at 3, 135-36.) Ms. Deede, who
9 has practiced law in California since 2011 and appears to have focused on
10 bankruptcy and creditor rights since joining Kirby & McGuinn in 2014, seeks an
11 hourly rate of \$350. (*Id.* at 3, 137-38.) Ms. Wright and Ms. Wilson, each of whom
12 claim hourly rates of \$125, have seventeen and ten years of experience as certified
13 paralegals, respectively. (*Id.* at 3.) Notably, Defendant has not challenged the
14 hourly rates claimed by Plaintiff’s counsel and has failed to introduce any evidence
15 in support of her opposition, let alone any evidence that demonstrates the
16 aforementioned hourly rates claimed are unreasonable in San Diego, California for
17 similar work performed by attorneys of comparable skill, experience, and
18 reputation. See *Camacho*, 523 F.3d at 980 (“The party opposing the fee
19 application has a burden of rebuttal that requires submission of evidence to the
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22 case, (11) the nature and length of the professional relationship with the client, and
23 (12) awards in similar cases.” *Morales*, 96 F.3d at 363 n.8 (citing *Kerr v. Screen*
24 *Guild Extras, Inc.*, 526 F.2d 67, 70 (9th Cir.1975), abrogated on other grounds by
25 *City of Burlington v. Dague*, 505 U.S. 557 (1992)). “Among the subsumed factors
26 presumably taken into account in either the reasonable hours component or the
27 reasonable rate component of the lodestar calculation are: (1) the novelty and
28 quality of representation, (2) the special skill and experience of counsel, (3) the
quality of representation, (4) the results obtained, and (5) the contingent nature of
the fee agreement.” *Id.* at 364 n.9 (internal quotations, citations, and alterations
omitted)).

1 district court challenging the accuracy and reasonableness of the facts asserted
2 by the prevailing party in its submitted affidavits.” (internal quotations, citations,
3 and alterations omitted)).

4 Based upon a review of the evidence submitted by the parties, the Court’s
5 familiarity with the rates charged in the San Diego legal community, and recent
6 prior attorney’s fees awards in this district, the Court concludes that the hourly
7 rates claimed by Plaintiff’s counsel (and paralegals) are in line with the customary
8 rates prevailing in the San Diego legal community for similar work performed by
9 attorneys (and paralegals) of comparable skill, experience, and reputation.⁶ See,
10 e.g., *Lewis v. Cty. of San Diego*, 2017 WL 6326972, at *13 (S.D. Cal. Dec. 11,
11 2017) (“In this District, \$90 to \$210 per hour is generally reasonable for paralegal
12 work”); *Chamberlin v. Charat*, 2017 WL 3783773, at *2 (S.D. Cal. Aug. 31,
13 2017) (hourly rates ranging between \$250 and \$500 for work performed by
14 associates and partners reasonable in debt-collection action); *Nuvasive, Inc. v.*
15 *Madsen Med., Inc.*, 2016 WL 5118325, at *4 (S.D. Cal. 2016) (\$500 hourly rate for
16 attorney with over ten years’ experience reasonable in breach of contract action);
17 *Nguyen v. HOVG, LLC*, 2015 WL 5476254, at *3 (S.D. Cal. 2015) (\$450, \$350,
18 and \$125 were reasonable hourly rates for FDCPA-related litigation by senior
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21 ⁶ While not relied upon in reaching its conclusion as to the reasonableness of the
22 hourly rates claimed in this matter, the Court notes that the rates claimed by
23 Plaintiff’s counsel are in line with those surveyed in San Diego in the United States
24 Consumer Law Attorney Fee Survey Report 2017–2018, by Ronald L. Burdge (the
25 “USCLAFS Report”), available at [https://www.nclc.org/images/pdf/litigation/tools/
26 report-atty-fee-survey.pdf](https://www.nclc.org/images/pdf/litigation/tools/report-atty-fee-survey.pdf). (See USCLAFS Report, at 253 (“California, San Diego
27 . . . Average Paralegal Rate for All Paralegals [\$]147[;] Average Attorney Rate for
28 All Attorneys [\$]452[;] 25% Median Attorney Rate for All Attorneys [\$]331[;] Median
29 Attorney Rate for All Attorneys [\$]475[;] 75% Median Attorney Rate for All
30 Attorneys [\$]544[;] 95% Median Attorney Rate for All Attorneys [\$]700[;] . . .
31 [Median Rate for] Attorneys Handling Credit Rights Cases [\$]400[;] . . . [Median
32 Rate for] Attorneys Handling Other Cases [\$]400.”).)

1 partner, senior associate, and paralegal, respectively).

2 Having reviewed the hours billed by Plaintiff's counsel for which recovery is
3 presently sought (ECF No. 295-2, at 12-125), the Court finds that some of the work
4 completed was excessive, redundant, or otherwise unnecessary to discovering
5 and litigating Defendant's contemptuous conduct. The Court therefore excludes
6 from its award of attorney's fees the following hours billed:

Date	Description	Time Keeper	Time Billed	Rate	Amount Billed
11/23/18	Communicate (other outside counsel) Analysis/Strategy Respond to Inquiry from Counsel for Knight	DTK	0.20	\$440/hr	\$88
11/07/18	Appear for/attend Attend Hearings on Order to Show Causes and Ex Partes	KVD	2.60 hr	\$350/hr	\$910
11/28/18	Appear for/attend Trial and Hearing Attendance Attend Evidentiary Hearing	KVD	2.00 hr	\$350/hr	\$700
12/19/18	Appear for/attend Attend Evidentiary Hearing. Remaining Portion	KVD	8.00 hr	\$350/hr	\$2,800 ⁷

7 No hearing was held in this matter on December 19, 2018. Rather, a contempt-related evidentiary hearing was held on December 20, 2019, for which Mr. Kirby billed eight hours at an hourly rate of \$440. (See ECF No. 295-2, at 91.) Even assuming the December 19, 2018 entry was a scrivener's error, Mr. Kirby attests that his "firm does not charge for multiple timekeepers when more than one attorney attends a hearing, client conference, or interoffice." (*Id.* at 3.) Since counsel would not charge their own client for such fees, they are inappropriate to levy against Defendant. See *Hensley*, 461 U.S. at 434.

Date	Description	Time Keeper	Time Billed	Rate	Amount Billed
01/14/19	Plan and prepare for Expert Witness Review Goshong [sic] CV and Prepare Supplemental Witness List	KVD	0.10	\$350/hr	\$35
01/21/19	Research Research Case Law and Treatise on Cryptocurrency Expert Admission	KVD	2.00	\$350/hr	\$700
01/27/19	Draft/Revise Expert Witnesses Edit and Revise Cryptocurrency Expert Outline	KVD	1.00	\$350/hr	\$350
01/28/19	Plan and prepare for Review Documents for Preparation as a Witness in Contempt Motion Hearing	TW	2.00	\$125/hr	\$250
01/29/19	Appear for/attend First Day Contempt Hearing	DTK	1.50	\$440/hr	\$660 ⁸
01/29/19	Appear for/attend Appear for Hearing on Contempt Motion	TW	4.50	\$125/hr	\$562.50
01/30/19	Draft/Revise Continue Opposition to Knight Motion to Intervene – Additional Legal Research on Jurisdiction Issue	DTK	3.00	\$440/hr	\$1,320

⁸ The contempt hearing held on January 29, 2019 was scheduled to begin at 10:30 a.m. and concluded at 4:10 p.m. (See ECF Nos. 205, 229.) Nevertheless, Mr. Kirby billed eight hours for his attendance at the January 29 hearing. (See ECF No. 295-2, at 99; see *also* ECF No. 315, at 6 (“The entry does not specifically refer to preparation on the day of the hearing or to travel to and and [sic] from the Court.”).) The Court has reduced this billing by one-and-a-half hours to account for this unexplained discrepancy while allowing for reasonable travel time to and from the courthouse.

Date	Description	Time Keeper	Time Billed	Rate	Amount Billed
01/30/19	Appear for/attend Appear for Continued Hearing on Contempt Motion	TW	3.00	\$125/hr	\$375
04/01/19	Review/Analyze Review Chris Groshong Outline and Revise	KVD	1.00	\$350/hr	\$350
05/14/19	Plan and prepare for Expert Outline Review and Prep. Meet with Chris Groshong for Final Review	KVD	1.70	\$350/hr	\$595
05/15/19	Review/analyze Review Objection to Use of Expert. Prepare Oral Argument in Response.	KVD	2.00	\$350/hr	\$700
05/19/19	Plan and prepare for Draft Direct of Tina Wright for Chain of Custody Testimony as to Citibank Records	KVD	0.30	\$350/hr	\$105
05/20/19	Appear for/attend Attend Continued Contempt Hearing	KVD	6.00	\$350/hr	\$2,100
05/20/19	Appear for/attend Trial and Hearing Attendance – Attend Hearing on Order to Show Cause re: Diane Nagby	TW	2.00	\$125/hr	\$250
05/21/19	Appear for/attend Trial and Hearing Attendance – Attend hearing on Order to Show Cause re: Diane Nagby	TW	4.00	\$125/hr	\$500
05/22/19	Communicate (other external) Phone Call with Groshong	KVD	0.50	\$350/hr	\$175
Total Fees Reduction:					\$13,525.50

1 The aforementioned excluded hours include work spent on matters that were
2 irrelevant to the contempt proceedings, including work related to a third-party's
3 attempts to intervene in this action. They also include redundant billing for
4 appearances at hearings, which Mr. Kirby attested are not appropriately billed to
5 Plaintiff under counsel's billing policies. (See ECF No. 295-2, at 3.) They also
6 include hours related to preparing the testimony of Mr. Chris Groshong, who was
7 retained by Plaintiff to serve as an expert in the area of cryptocurrency but was not
8 admitted as an expert in this matter. While the Court considers the time spent by
9 counsel consulting with Mr. Groshong regarding the nature of cryptocurrency and
10 its relation to Defendant's contemptuous conduct to be reasonable, his testimony
11 was held by the Court not to be admissible and the Court finds counsel's hours
12 spent preparing for such testimony therefore not compensable. Except as set forth
13 above, the Court finds the other attorney's fees hours requested to be reasonable.
14 (See ECF No. 295-2, at 12-125.) Indeed, contrary to Defendant's arguments, all
15 such remaining hours were related to investigating, exposing, halting, or
16 minimizing the damage of Defendant's contempt rather than "ordinary litigation and
17 discovery expenses," as they were necessitated by Defendant's (and/or her
18 agents) attempts to transfer, conceal, dissipate, or squander assets and failure to
19 provide documents for Plaintiff's review in violation of the Preliminary Injunction
20 and TRO, rather than the prosecution of Plaintiff's underlying claims under
21 California's Uniform Fraudulent Transfer Act (the "UFTA").⁹ And while Defendant

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24 ⁹ Plaintiff initiated this action "seeking recovery of funds to which it claims an
25 interest as creditor, funds allegedly fraudulently transferred from Pacific Broker's
26 Insurance Services ('PBIS') to Defendant . . . and her former husband." (ECF No.
27 329-1, at 5 (citations omitted); see *also id.* at 6 ("The complaint alleges \$2,500,000
28 was fraudulently transferred from PBIS to [Defendant]." (citations omitted)); see
generally, ECF No. 24 (Plaintiff's operative second amended complaint).) On
October 4, 2017, the Court entered the Preliminary Injunction that, *inter alia*,
prohibited Defendant from transferring or commingling "any funds or property

1 objects to the number of hours expended by Plaintiff's counsel in drafting relevant
2 filings and preparing for relevant hearings, Defendant has provided no evidence in
3 support of her objections and the Court concludes that the hours spent on such
4 matters were not excessive in light of the convoluted nature of Defendant's
5 contemptuous conduct and her vehement defense thereof. Moreover, after
6 considering the *Kerr* factors, the Court concludes that no upward or downward
7 adjustment to the lodestar amount is warranted and that such amount constitutes
8 reasonable fees in this matter.

9 Further, having reviewed the litigation expenses billed by Plaintiff's counsel
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12 received in connection with the sale of PBIS to AmTrust" and required her to
13 "deposit in the registry of the Court . . . all funds already received in connection
14 with the sale of PBIS to AmTrust" as well as any funds subsequently received by
15 Defendant from AmTrust or its agents. (ECF No. 69.) On August 8, 2018, the
16 Court entered the TRO that, *inter alia*, prohibited Defendant from transferring funds
17 from any accounts associated with Caye International Bank or Rich Uncles, LLC
18 or any investment in real estate or cryptocurrency. (ECF No. 172.) The TRO
19 further compelled Defendant to provide Plaintiff's counsel with copies of documents
20 relating to Caye International Bank, Rich Uncles, LLC, and her investments in real
21 estate and cryptocurrency. (*Id.*) After a multiple-day evidentiary hearing, the Court
22 issued the Contempt Order on June 27, 2019, in which it held Defendant in
23 contempt of the Preliminary Injunction for: (i) failing to deposit into the Court's
24 registry at least \$176,263.13 in PBIS sales proceeds in her possession in October
25 2017; (ii) commingling and transferring PBIS sales proceeds between October
26 2017 and September 2018; and (iii) failing to deposit into the Court's registry at
27 least \$551,750 in PBIS sales proceeds in her possession in July 2019. (ECF No.
28 287, at 26.) Further, Defendant was held in contempt of the TRO for: (i)
transferring and disbursing funds held by Caye International Bank and Rich
Uncles, LLC in August and September 2018; and (ii) failing to provide Plaintiff's
counsel with documents as required by the TRO. (*Id.*) A thorough explanation of
Defendant's contemptuous conduct and the further investigation and litigation
necessitated thereby is provided in the Contempt Order, which serves as a helpful
companion in the Court's review of counsel for Plaintiff's billing invoices and
narrative summary. (*See generally*, ECF No. 287; *see also* ECF No. 295-2.)

1 for which recovery is presently sought (ECF No. 295-2, at 12-134), the Court finds
2 that some of the expenses sought were excessive or unnecessary to discovering
3 and litigating Defendant's contempt. The Court therefore excludes from its award
4 of litigation expenses the following expenses billed:

Date	Description	Amount Billed
01/22/19	Experts Retainer for Expert Witness	\$2,000
04/16/19	Expert Witness Fees	\$1,212.50 ¹⁰
07/08/19	Experts Expert testimony regardin[g] cryptocurrency	\$1,000
Total Expenses Reduction:		\$4,212.50

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11 All of the disallowed expenses relate to Mr. Groshong's service as an expert
12 witness on behalf of Plaintiff. (See ECF No. 295-2, at 2 ("Expenses total
13 \$23,355.00 and include the fees of experts Brian Bergmark and Chris Groshong
14 The expenses requested in the Motion are reflected in the invoices themselves
15 with only one exception. The fees of expert witness Brian Bergmark, are billed to
16 Kirby & McGuinn and were paid directly by [Plaintiff].") Because Mr. Groshong
17 was not admitted as an expert in this matter, the Court declines to award Plaintiff
18 the expenses associated therewith. Nevertheless, as previously stated, the Court
19 considers the consultations between Plaintiff's counsel and Mr. Groshong
20 regarding the nature of cryptocurrency and its relation to Defendant's
21 contemptuous conduct to be reasonably necessary and a review of counsel's
22 billing records reflects four (4) hours spent by Mr. Groshong on such consultations.
23 (See *id.* at 98, 105.) Further, while Plaintiff has failed to provide Mr. Groshong's
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26 ¹⁰ Plaintiff requested reimbursement in the amount of \$1,812.50 in connection with
27 this entry. The Court has reduced such amount by \$1,212.50 to reflect its award
28 of \$600.00 in expenses related to Mr. Groshong's services as Plaintiff's
cryptocurrency consultant in this matter.

1 hourly rate for his services as a cryptocurrency consultant, the Court concludes
2 that a reasonable hourly rate for such services in the San Diego area would be
3 \$150.00 per hour.¹¹ Accordingly, the Court will award Plaintiff \$600.00 in expenses
4 (*i.e.*, four (4) hours at an hourly rate of \$150.00) in connection with Mr. Groshong’s
5 consulting services. The Court finds the other expenses requested to be
6 reasonable. (See ECF No. 295-2, at 12-134.) Further, while Defendant argues
7 that “the claimed expert fees would have been incurred even in the absence of the
8 contempt proceedings” because “Plaintiff would still be required to prove the
9 tracing of funds by expert examination and testimony” (ECF No. 314, at 8), the
10 Court disagrees that such a showing would have been necessary, at least to the
11 extent necessitated by Defendant’s contemptuous conduct, to Plaintiff’s successful
12 prosecution of its underlying claims. (See, *e.g.*, ECF No. 289 (granting summary
13 judgment to Plaintiff against Defendant on its claims under the UFTA).)

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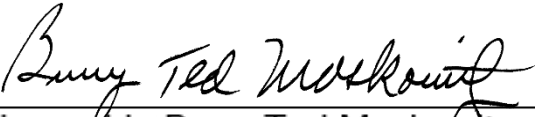
23 _____

24 ¹¹ The Court considers Mr. Groshong’s services as a cryptocurrency consultant in
25 this case to be comparable to those of an accountant. Notably, the Criminal Justice
26 Act Policies and Procedures for the Ninth Circuit provide that hourly rates between
27 \$150 and \$275 are presumptively reasonable for accountants. See Judicial
28 Council of the Ninth Circuit, Criminal Justice Act Policies and Procedures,
Appendix 2, revised July 11, 2018, available at: [https://www.ca9.uscourts.gov/cja/
Circuit%20CJA%20Policies.pdf](https://www.ca9.uscourts.gov/cja/Circuit%20CJA%20Policies.pdf)

1 Based upon the foregoing and due consideration, Plaintiff's motion for
2 attorney's fees and litigation expenses (ECF No. 295) is **GRANTED IN PART,**
3 **DENIED IN PART.** As a remedial sanction for Defendant's contemptuous conduct
4 as set forth in the Contempt Order (ECF No. 287), the Court awards Plaintiff
5 Odyssey Reinsurance Company its attorney's fees in the amount of \$199,295.50
6 and its expenses in the amount of \$18,950.50, for a total of \$218,246.00. The
7 Clerk shall enter judgment accordingly against Defendant Diane Dostalick (f/k/a
8 Diane Nagby) in the above amounts.

9 **IT IS SO ORDERED.**

10 Dated: December 27, 2019

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12 Honorable Barry Ted Moskowitz
13 United States District Judge
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