

FOR PUBLICATION

FILED & ENTERED

MAY 07 2024

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY bolte DEPUTY CLERK

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION**

In re:

Eagan Avenatti, LLP,

Debtor(s).

Case No.: 8:19-bk-13560-SC

CHAPTER 7

Adv No: 8:20-ap-01059-SC

Adv. No: 8:20-ap-01060-SC

Adv. No: 8:20-ap-01150-SC

**ORDER RE REQUEST FOR FEES AND
COSTS PER COURT'S DECEMBER 26,
2023 ORDER RE PLAINTIFF TRUSTEE'S
MOTION FOR ISSUANCE OF AN ORDER
TO SHOW CAUSE RE CONTEMPT FOR
VIOLATION OF THIS COURT'S AUGUST 1,
2023 ORDER**

Richard A. Marshack, Chapter 7 Trustee,

Plaintiff(s),

v.

Eisenhower Carlson, PLLC,

Defendant(s).

Date: April 9, 2024

Time: 11:00 AM

Courtroom: 5C

Richard A. Marshack, Chapter 7 Trustee,
Plaintiff(s),
v.
Gallo Builders, Inc.,
Defendant(s).

Richard A. Marshack, Chapter 7 Trustee,
Plaintiff(s),
v.
Honda Aircraft Company, LLC,
Defendant(s).

For the reasons set forth below, the Court hereby awards \$37,599.00 in attorney's fees and costs against the United States of America and in favor of the Chapter 7 Trustee, Richard Marshack¹.

I. Procedural Background Relevant to this Matter

On May 23, 2023, the United States of America (the "United States" or the "Government") filed its Motion to Quash Subpoena for Deposition Testimony of Retired IRS Special Agent Remoun Karlous, and for a Protective Order ("Motion to Quash") [Dk. 69]. In connection with determining the Motion to Quash, the Court required Plaintiff Chapter 7 Trustee Richard Marshack (the "Trustee") to submit proposed deposition questions for Agent Karlous and on June 21, 2023, the Trustee filed a list of forty-one (plus subparts) proposed questions (the "Deposition Questions") [Dk. 90]. The Court, after reviewing all related pleadings, and considering the arguments on the record, entered an order denying the Motion to Quash and ordered Agent Karlous to appear for

¹ The Court awards a single amount in connection with three identical contempt matters filed in *Marshack v. Eisenhower Carlson, PLLC*, Adv. No. 8:20-01059, *Marshack v. Gallo Builders, Inc.*, Adv. No. 8:20-01060, and *Marshack v. Honda Aircraft Company LLC*, Adv. No. 8:20-01150. Throughout these proceedings, the Court held, with the parties' consent, consolidated hearings. During the hearings, the parties referenced the pleadings filed in *Marshack v. Eisenhower Carlson, PLLC*, Adv. No. 8:20-01059 for reference only, and therefore the docket references within this order reference the pleadings filed within the *Eisenhower* docket. While identical pleadings were filed in each adversary, the docket numbers differ relative to each adversary. A copy of this order will be entered in each adversary.

1 a deposition on August 1, 2023 [Dk. 122] (“August 1, 2023 Order”). The August 1, 2023
2 Order is twelve pages in length, consisting of sixty-nine numbered paragraphs which
3 contained specific orders individually addressing each of the forty-one Deposition
4 Questions and Agent Karlous’ obligations to respond thereto. These individual orders
5 required Agent Karlous to provide full responses to Questions 1-3, 6-8, 13, 15-21, 22(a)-
6 (e), 23-26, 28-32, 33(a)-(b), 34, 35(a)-(c), 36-41, permitted limited objections based
7 upon certain asserted privileges, if applicable, to questions 4, 5, 9-11, 14 and 27, and
8 excused the obligation to respond to questions 12, 22(f), 33(c) and 35(d).

9 Following the initial deposition where the Trustee’s counsel encountered
10 significant disruption of the deposition by counsel for the United States, on October 5,
11 2023, Trustee filed a Motion for an Issuance of an Order to Show Cause re Contempt
12 Against the Internal Revenue Service, Retired Special Agent Remoun Karlous,
13 Assistant United States Attorney Najah Shariff, and Assistant United States Attorney
14 Brett Sagel for Violation of this Court’s August 1, 2023 Order (“Contempt Motion”) [Dk.
15 137]. The Contempt Motion was supported by the Declaration of John Reitman, filed
16 October 5, 2023 [Dk. 138], which attached a transcript of Agent Karlous’ September 14,
17 2023 deposition. On December 12, 2023, the Court conducted a hearing on the
18 Contempt Motion. At that hearing, Trustee pointed out that in contravention of this
19 Court’s August 1, 2023 Order, Agent Karlous declined to answer twenty-five of the forty-
20 one questions, and provided incomplete responses to the remaining questions to which
21 responses were required. A transcript of the December 12, 2023 hearing can be found
22 on the docket as Dk. 173.

23 On December 26, 2023, the Court, after reviewing and considering all relevant
24 pleadings and arguments made on the record, entered an Order re Plaintiff Trustee’s
25 Motion for Issuance of an Order to Show Cause re Contempt for Violation of this Court’s
26 August 1 2023 Order (“Contempt Order”) [Dk. 171], finding that the United States acted
27 in contempt of the Court’s August 1 2023 Order and instructed the Trustee to file and
28

1 serve on the United States its request for fees and costs.²

2 Pursuant to the Contempt Order, the Trustee filed his Request for Fees and
3 Costs on January 19, 2024 (“Request for Fees”) [Dk. 179]. The United States filed an
4 Opposition to the Request for Fees on February 9, 2024 [Dk. 188]. The Trustee filed a
5 Reply on February 23, 2024 [Dk. 202] as well as a Supplemental Declaration in
6 Connection with the Request for Fees on March 6, 2024 [Dk. 207]. The Court held a
7 hearing on the Request for Fees on March 12, 2024, heard arguments from both
8 parties, and continued the hearing to April 9, 2024, at 11:00 a.m. Throughout the
9 several hearings, including on April 9, 2024, the Government conceded that it knowingly
10 and willfully violated the order of this Court.³

11 It should also be noted that the Contempt Order is now on appeal⁴; however, the
12 United States decided to continue its briefing on the Contempt Order with its objections
13 to the amount of fees and costs to be assessed. *See, e.g.,* United States’ Opposition to
14 Trustee’s Request for Fees and Costs per Court’s December 26, 2023 Order Re
15 Contempt of this Court’s August 1, 2023 Order, filed February 9, 2024, [Dk. 188]. This
16 additional briefing is considered by the Court as a request for reconsideration of the
17 Contempt Order and as such the Court amplifies and supplements the record for
18

19 ² In issuing this order, the Court was mindful of the relevant standards as recently articulated by the Ninth
20 Circuit in *Am. Unites for Kids v. Rousseau*, 985 F.3d 1075, 1090 (9th Cir. 2021): “When acting under its
21 inherent authority to impose a sanction, as opposed to applying a rule or statute, a district court must find
22 either: (1) a willful violation of a court order; or (2) bad faith. *See Evon*, 688 F.3d at 1035. As the Supreme
23 Court has explained, a sanction may be awarded either for willful disobedience of a court order or when a
24 party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons. *See Roadway Exp., Inc. v.*
Piper, 447 U.S. 752, 766, 100 S. Ct. 2455, 65 L. Ed. 2d 488 (1980); *Fink v. Gomez*, 239 F.3d 989, 991
(9th Cir. 2001).” *Am. Unites for Kids v. Rousseau*, 985 F.3d 1075, 1090 (9th Cir. 2021). This Court has
previously found, and the Government has conceded, that the Government willfully disobeyed this Court’s
August 1, 2023 Order.

25 ³ *See, e.g.,* Transcript of the December 12, 2023 Hearing, Dk. 173, pg. 42:2-6: “Ms. Westfahl-Kong:
26 Thank you, your Honor. I do just want to begin by apologizing to the Court on behalf of the U.S. Attorney’s
27 Office for, you know, the mistakes and missteps that absolutely occurred in connection with the first
deposition.” The Government’s counsel again acknowledges, as late as April 9, 2024, that the
Government’s counsel’s decision at the deposition in question to violate this Court’s order was intentional
and it was the result of the collective decision of the Tax Division, that “it was the wrong decision and that
they are working to correct that.” *See*, Transcript, April 9, 2024 hearing, at 12:10:31 p.m.

28 ⁴ The Government did not wait for this Court to determine the amount of fees and costs to be awarded to
file its appeal notice. *See*, Notice of Appeal filed January 9, 2024 [Dk. 174].

1 appeal, with respect to its contempt determination. The implied motion for
2 reconsideration is denied.

3 **II. Prefatory Statement**

4 As noted herein, the Government intentionally and willfully refused to obey this
5 Court's August 1 Order. Further, despite acknowledging the "mistakes and missteps"⁵ it
6 made, the Government failed to voluntarily offer to reimburse the Estate, even for the
7 costs expended in connection with the deposition transcript, as described in the
8 following excerpt from the April 9, 2024, hearing, at 11:39:28 a.m:

9 THE COURT: Can I ask you a question?
10

11 ALLISON WESTFAHL KONG ("AK") (Assistant United States Attorney, Chief of
12 Ethics and Post-Conviction Review): Of course.

13 THE COURT: Have you ever offered to actually compensate the Landau firm for
14 the \$1,921.35? Have you even reached out and said "we'd be more than happy
to pay you for that?"

15 AK: Um, Your Honor, we did have -

16 THE COURT: It's a question. It's a yes or-

17 AK: So no.
18

19 THE COURT: - no question. You've never even reached out and said to them
20 "we'd be happy to pay that \$1,921.35 that you had to put out of pocket?"

21 AK: No, but, can I add a little nuance?

22 THE COURT: Of course.

23 AK: Okay, um, there are some difficult, kind of, budgetary issues within the
24 department. Lots of approvals. Whether the judgment fund will get involved, so I
think, um, there are logistical barriers, but I -

25 THE COURT: So, let me ask you this. Did you ever call them and say, "I know
26 there are lots of barriers dealing with the federal government, but we will try to
27 see if we can acquire funds to take, to, reimburse you?" Have you ever done
28 that?

⁵ Transcript of the December 12, 2023 Hearing, Dk. 173, pg. 42:2-6.

1 AK: I don't believe so. If I could just confirm with Ms. Tanner.

2 THE COURT: So, if I hadn't raised it now, you hadn't already done it? Am I right?

3 AK: That's correct.

4 Transcript, April 9, 2024 hearing, at 11:39:28 a.m.⁶

5 This Court has carefully reviewed the pleadings and oral argument history
6 involving this matter, and has paid particularly careful consideration to the matters
7 surrounding the issuance of the Contempt Order, the hearing held on December 12,
8 2023, where representatives of the Government acknowledged the Government's willful
9 violation of the Court's Order⁷, the arguments by the Government that this Court has no
10 real power over the Government to enforce its own orders in general and the August 1
11 Order in particular, and that no assessment of fees or costs could be made by the Court
12 to compensate for the losses of the Bankruptcy Estate and the Chapter 7 Trustee's
13 counsel because of the Government's improper actions.

14 This decision is fairly simple. As routinely upheld by both the Ninth Circuit and
15 the United States Supreme Court, this Court finds that 11 U.S.C. Section 105(a)
16 provides the Court with inherent authority to hold a party in contempt for violating its
17 orders. This decision, combined with the Court's earlier findings, restates that by clear
18 and convincing evidence, the Government willfully violated this Court's August 1 Order.

19 The Government concedes that it can be held in contempt for violating orders,
20 but argues that because of the doctrine of sovereign immunity it cannot be required to
21 compensate an injured party, in this case, the Bankruptcy Estate and/or the attorneys
22

23
24 ⁶ Further, at the conclusion of the April 9, 2024 hearing, the Court informed the parties that it would delay
25 issuance of its order by two weeks to provide them the opportunity to reach a consensual resolution to the
26 matter. On April 24, 2024, the Government filed a Status Report Following Continued Fee Hearing
wherein the Government stated the "parties had good faith discussion but have been unable to reach an
agreement." [See, Dk. 221].

27 ⁷ The continuing argument that the Government's position at the initial deposition was a misunderstanding
28 of the law is disheartening since the Government counsel whose conduct gave rise to this situation was
present throughout the proceedings when the Court made clear, orally and in its written order, that the
Government's objections were overruled.

1 for the Chapter 7 Trustee of the Bankruptcy Estate, for such harm. To that end, the
2 Government tells the Court, and every federal court, whether Article I or Article III, that
3 no true remedy exists to address the actions of the Government for violating orders of
4 the Court, even when significant harm is directly caused by the Government.

5 This Court disagrees. Unsupported by any statute or case law, the Government
6 asserts that the doctrine of sovereign immunity does not permit this Court to enforce its
7 own orders and compensate with monetary awards, making the wronged party whole.⁸
8 However, this Court relies on 11 U.S.C. Section 106 as clearly waiving the
9 Government's sovereign immunity as it relates to Section 105 of the Bankruptcy Code.⁹
10 Notably, Section 106 also removes the right of sovereign immunity from many other
11 sections of the Bankruptcy Code, as well.

12 This decision takes the final step of awarding the Trustee and its counsel fees
13 and costs to be paid by the Government, in the amounts set forth below.

14 **III. Contempt Powers of this Bankruptcy Court**

15 There is no serious question that a violation of a Court's order is punishable by
16 contempt. *Kvassay v. Kvassay (In re Kvassay)*, 2016 Bankr. LEXIS 3654, *17; *see also*
17 *Spallone v. United States*, 493 U.S. 265, 276 ("[C]ourts have inherent power to enforce
18 compliance with their lawful orders through contempt.") (cleaned up); *Solow v. Kalikow*
19 *(In re Kalikow)*, 602 F.3d 82, 96 (2d Cir. 2010) ("The statutory contempt powers given to
20 a bankruptcy court under § 105(a) complement the inherent powers of a federal court to
21 enforce its own orders.").

22 Where a party violates a court order, such as the discharge injunction, civil
23 contempt sanctions serve "to coerce the contemnor into future compliance with the
24

25 ⁸ In this case, absent restitution, this Chapter 7 Estate will suffer actual losses from the costs associated
26 with this matter, to the detriment of the Estate's creditors. Further, the counsels for the Estate will suffer
27 significant losses, which makes their important job of recovering assets for the benefit of the Estate's
creditors that much harder and more expensive, again to the detriment of the Estate.

28 ⁹ As explained below, in 1994, Congress addressed an earlier Supreme Court decision (*United States v. Nordic Vill. Inc.*, 503 U.S. 30 (1992)) to include the elimination of sovereign immunity with respect to a number of Bankruptcy Code provisions, including Section 105.

1 court's order or to compensate the complainant for losses resulting from the
2 contemnor's past noncompliance." *New York State Nat. Org. for Women v. Terry*, 886
3 F.2d 1339, 1352 (2d Cir. 1989) (citing *United States v. United Mine Workers of Am.*, 330
4 U.S. 258, 303 (1947)). Bankruptcy courts may appropriately use their civil contempt
5 power under § 105(a) to order monetary relief in the form of actual damages, including
6 attorney's fees, costs, and in certain instances damages based on emotional distress
7 and punitive damages for violation of the discharge injunction. *Besette v. Avco Fin.*
8 *Servs.*, 230 F.3d 439, 445 (1st Cir. 2000) (collecting cases); 11 U.S.C. § 105(a) ("The
9 court may issue any order, process, or judgment that is necessary or appropriate to
10 carry out the provisions of this title."); *see also Hansbrough v. Birdsell (In re Hercules*
11 *Enters., Inc.)*, 387 F.3d 1024, 1027 (9th Cir. 2004) ("[I]t is well established that a
12 bankruptcy court is authorized to exercise civil contempt power . . ."); *Caldwell v.*
13 *Unified Capital Corp. (In re Rainbow Magazine)*, 77 F. 3d 278, 284 (9th Cir. 1996) (a
14 bankruptcy court has the same inherent contempt powers as a district court); Federal
15 Rule of Bankruptcy Procedure 9020 ("Rule 9014 governs a motion for an order of
16 contempt made by the United States trustee or a party in interest.").

17 As explained by the Ninth Circuit, a court has power to adjudge in civil contempt
18 any person who willfully disobeys a specific and definite order requiring him to do or to
19 refrain from doing an act. A person fails to act as ordered by the court when he fails to
20 take all the reasonable steps within his power to ensure compliance with the court's
21 order. *Shuffler v. Heritage Bank*, 720 F.2d 1141, 1146-47 (9th Cir. 1983) (internal
22 citations, quotation marks, and punctuation omitted). Accordingly, a bankruptcy court
23 may hold a party in contempt when that party fails to take all reasonable steps within its
24 power to comply with a specific and definite order of the bankruptcy court.

25 A bankruptcy court may also impose coercive and/or compensatory sanctions on
26 a party who is in contempt of a court order, including but not limited to monetary awards
27 to compensate for damages incurred as a result of the contempt, monetary fines to
28 coerce compliance, and incarceration until the contempt is purged. *See, e.g., In re Yan*

1 *Sui*, 2022 Bankr. LEXIS 3709, at *15-*16 (Bankr. C.D. Cal. 2022) ("Bankruptcy courts
2 have civil . . . contempt powers. . . . Contempt sanctions are considered civil if their
3 purpose is to coerce a recalcitrant party into compliance with an order or to compensate
4 a party for losses resulting from the noncompliance."); *Peterson v. Highland Music, Inc.*,
5 1997 U.S. Dist. LEXIS 23181, at *19 (C.D. Cal. 1997) ("Court[s] ha[ve] broad discretion
6 to fashion an appropriate civil contempt remedy. . . . Civil contempt sanctions available
7 to the Court include incarceration, fines to coerce compliance and to compensate for
8 damages, and awards of attorneys' fees and other costs") (internal citations and
9 quotation marks omitted).

10 "It is firmly established that '[t]he power to punish for contempts is inherent in all
11 courts.'" *Sui v. Marshack*, 2015 U.S. Dist. LEXIS 192017, at *5-6 (C.D. Cal. 2015) (citing
12 *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44, (1991)) (cleaned up).

13 The Ninth Circuit Court of Appeals has cited to its own *Price v. Lehtinen (In re*
14 *Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009) to support the determination that the
15 inherent authority of bankruptcy courts allows the courts to impose sanctions and
16 provide compensation for improper litigation tactics. *Yan Sui v. Marshack (In re Yan*
17 *Sui)*, 713 F. App'x 642, 642 (9th Cir. 2018). Also, the Bankruptcy Appellate Panel has
18 held that a bankruptcy court is authorized under § 105(a) to hold a party in civil
19 contempt and impose compensatory or coercive sanctions. *Knupfer v. Lindblade (In re*
20 *Dyer)*, 322 F.3d 1178, 1189-90; *Renwick v. Bennett (In re Bennett)*, 298 F.3d 1059,
21 1069 (9th Cir. 2002); *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 506-07 (9th Cir.
22 2002); *Nash v. Clark Cty. Dist. Atty's. Office (In re Nash)*, 464 B.R. 874, 880 (B.A.P. 9th
23 Cir. 2012). To find a party in civil contempt, the movant must prove "by clear and
24 convincing evidence that the contemnor[] violated a specific and definite order of the
25 court." *In re Dyer*, 322 F.3d at 1190-91. The bankruptcy court must also find that the
26 contemnor "had sufficient notice of [the order's] terms and the fact that he would be
27 sanctioned if he did not comply." *Hansbrough v. Birdsell (In re Hercules Enters., Inc.)*,
28 387 F.3d 1024, 1028 (9th Cir. 2004). Whether the contemnor violated a court order is

not based on subjective beliefs or intent in complying with the order, "but whether in fact [the] conduct complied with the order at issue." *In re Dyer*, 322 F.3d at 1191 (internal citation omitted); *Yan Sui v. Marshack (In re Sui)*, 2016 Bankr. LEXIS 2219, at *8-9 (B.A.P. 9th Cir. 2016).

IV. The Government Has No Sovereign Immunity Privilege in This Instance

Through 11 U.S.C. §106 of the Bankruptcy Code, Congress has waived the sovereign immunity of governmental units with respect to various Bankruptcy Code provisions.¹⁰ Section 106 reads in pertinent part:

(a) Notwithstanding an assertion of sovereign immunity, sovereign immunity is abrogated as to a governmental unit to the extent set forth in this section with respect to the following:

(1) Sections 105, 106, 107, 108, 303, 346, 362, 363, 364, 365, 366, 502, 503, 505, 506, 510, 522, 523, 524, 525, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 722, 724, 726, 744, 749, 764, 901, 922, 926, 928, 929, 944, 1107, 1141, 1142, 1143, 1146, 1201, 1203, 1205, 1206, 1227, 1231, 1301, 1303, 1305, and 1327 of this title.

(2) The court may hear and determine any issue arising with respect to the application of such sections to governmental units.

(3) The court may issue against a governmental unit an order, process, or judgment under such sections or the Federal Rules of Bankruptcy Procedure, including an order or judgment awarding a money recovery, but not including an award of punitive damages. Such order or judgment for costs or fees under this title or the Federal Rules of Bankruptcy Procedure against any governmental unit shall be consistent with the provisions and limitations of section 2412(d)(2)(A) of title 28.

(4) The enforcement of any such order, process, or judgment against any governmental unit shall be consistent with appropriate nonbankruptcy law applicable to such governmental unit and, in the case of a money judgment against the United States, shall be paid as if it is a judgment rendered by a district court of the United States.

(5) Nothing in this section shall create any substantive claim for relief or cause of

¹⁰ See, e.g. Section 192 of the U.S. DOJ Civil Justice Manual, "4. Claims Under the Bankruptcy Rules. Section 106(a) provides a waiver of sovereign immunity for claims under both the Bankruptcy Code and under the Federal Rules of Bankruptcy Procedure."

1 action not otherwise existing under this title, the Federal Rules of Bankruptcy
2 Procedure, or nonbankruptcy law.

3 11 U.S.C. §106.

4 To that end, Section 105 of the Bankruptcy Code reads in pertinent part:

5 (a) The court may issue any order, process, or judgment that is necessary or
6 appropriate to carry out the provisions of this title. No provision of this title
7 providing for the raising of an issue by a party in interest shall be construed to
8 preclude the court from, sua sponte, taking any action or making any
determination necessary or appropriate to enforce or implement court orders
or rules, or to prevent an abuse of process.

9 11 U.S.C. § 105.

10 Section 105 has generated serious discussions by courts, including in various
11 U.S. Supreme Court cases, such as *Law v. Seigel*, 571 U.S. 415 (2014), where, in a
12 unanimous ruling, Justice Scalia noted that § 105(a) grants a bankruptcy court authority
13 to “issue any order, process, or judgment that is necessary or appropriate to carry out
14 the provisions of” the Bankruptcy Code, the court also has inherent power to sanction
15 abusive litigation practice, citing *Marrama v. Citizens Bank of Massachusetts*, 549 U.S.
16 365 (2007), but reminding everyone that a bankruptcy court may not contravene specific
17 statutory provisions. In the *Law v. Seigel* decision, the bankruptcy court ruling
18 contravened the homestead provisions of the bankruptcy code. In the case before the
19 Court today, there is no bankruptcy code provision that is being contravened by its
20 contempt determination and this outcome. The attempted and vague parsing of
21 Sections 105 and 106 by the Government, to find some exception to the complete
22 waiver of sovereign immunity as to Section 105, seems to this Court as wishful thinking.
23 The argument that sovereign immunity is not waived with respect to the established
24 inherent powers of the Court is troubling, at best.

25 **V. The Damages Incurred by the Government’s Contempt Actions**

26 The Court finds that an award of compensatory damages which the Trustee
27 would not have incurred but for the Government’s violation of the August 1 Order are
28

1 warranted. The Ninth Circuit has carefully explained the powers and process for
2 awarding compensatory or remedial sanctions as they arise in this instance, as follows:

3 The Supreme Court has explained that when strictly compensatory or remedial
4 sanctions are sought, civil procedures, rather than criminal-type procedures, may
5 be applied. See *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S.
6 821, 826-830, 114 S. Ct. 2552, 129 L. Ed. 2d 642 (1994). Thus, when only civil
7 procedures are used, the sanction may go no further than to redress the wronged
8 party "for losses sustained" and may not impose any additional consequence as
9 punishment for the sanctioned party's misbehavior. *Id.* at 829 (quoting *United*
10 *States v. Mine Workers*, 330 U.S. 258, 304, 67 S. Ct. 677, 91 L. Ed. 884 (1947)).
11 As clarified by the Supreme Court in *Goodyear*, when a sanction is imposed
12 under a court's inherent authority as a penalty or to punish someone, "a court
13 would need to provide procedural guarantees applicable in criminal cases, such
14 as a 'beyond a reasonable doubt' standard of proof." *Goodyear*, 137 S. Ct. at
15 1186.

16 *Am. Unites for Kids v. Rousseau*, 985 F.3d 1075, 1089 (9th Cir. 2021).

17 The Ninth Circuit's direction continues,

18 Federal courts possess certain 'inherent powers,' not conferred by rule or statute,
19 'to manage their own affairs so as to achieve the orderly and expeditious
20 disposition of cases.'" *Goodyear*, 137 S. Ct. at 1186 (quoting *Link v. Wabash R.*
21 *Co.*, 370 U.S. 626, 630-31, 82 S. Ct. 1386, 8 L. Ed. 2d 734 (1962)). "That
22 authority includes 'the ability to fashion an appropriate sanction for conduct which
23 abuses the judicial process.'" *Id.* (quoting *Chambers*, 501 U.S. at 44-45). This
24 power includes the ability to punish conduct before the court as well as actions
25 beyond the court's confines, regardless of whether that conduct interfered with
26 courtroom proceedings. See *Chambers*, 501 U.S. at 44; *F.J. Hanshaw*, 244 F.3d
27 at 1136; see also *Dobbins*, *supra* note 1, at 422 ("This power is often described
28 as 'supervisory' power over the parties and actors within the jurisdiction of a
particular court."). Also, "[t]he power of a court over members of its bar is at least
as great as its authority over litigants." *Roadway Exp., Inc. v. Piper*, 447 U.S.
752, 766, 100 S. Ct. 2455, 65 L. Ed. 2d 488 (1980).

29 *Am. Unites for Kids v. Rousseau*, 985 F.3d 1075, 1088 (9th Cir. 2021).

30 In issuing compensatory awards, this Court is also guided by, and mindful of, the
31 standards of review employed by reviewing courts.¹¹

32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000
1001
1002
1003
1004
1005
1006
1007
1008
1009
1010
1011
1012
1013
1014
1015
1016
1017
1018
1019
1020
1021
1022
1023
1024
1025
1026
1027
1028
1029
1030
1031
1032
1033
1034
1035
1036
1037
1038
1039
1040
1041
1042
1043
1044
1045
1046
1047
1048
1049
1050
1051
1052
1053
1054
1055
1056
1057
1058
1059
1060
1061
1062
1063
1064
1065
1066
1067
1068
1069
1070
1071
1072
1073
1074
1075
1076
1077
1078
1079
1080
1081
1082
1083
1084
1085
1086
1087
1088
1089
1090
1091
1092
1093
1094
1095
1096
1097
1098
1099
1100
1101
1102
1103
1104
1105
1106
1107
1108
1109
1110
1111
1112
1113
1114
1115
1116
1117
1118
1119
1120
1121
1122
1123
1124
1125
1126
1127
1128
1129
1130
1131
1132
1133
1134
1135
1136
1137
1138
1139
1140
1141
1142
1143
1144
1145
1146
1147
1148
1149
1150
1151
1152
1153
1154
1155
1156
1157
1158
1159
1160
1161
1162
1163
1164
1165
1166
1167
1168
1169
1170
1171
1172
1173
1174
1175
1176
1177
1178
1179
1180
1181
1182
1183
1184
1185
1186
1187
1188
1189
1190
1191
1192
1193
1194
1195
1196
1197
1198
1199
1200
1201
1202
1203
1204
1205
1206
1207
1208
1209
1210
1211
1212
1213
1214
1215
1216
1217
1218
1219
1220
1221
1222
1223
1224
1225
1226
1227
1228
1229
1230
1231
1232
1233
1234
1235
1236
1237
1238
1239
1240
1241
1242
1243
1244
1245
1246
1247
1248
1249
1250
1251
1252
1253
1254
1255
1256
1257
1258
1259
1260
1261
1262
1263
1264
1265
1266
1267
1268
1269
1270
1271
1272
1273
1274
1275
1276
1277
1278
1279
1280
1281
1282
1283
1284
1285
1286
1287
1288
1289
1290
1291
1292
1293
1294
1295
1296
1297
1298
1299
1300
1301
1302
1303
1304
1305
1306
1307
1308
1309
1310
1311
1312
1313
1314
1315
1316
1317
1318
1319
1320
1321
1322
1323
1324
1325
1326
1327
1328
1329
1330
1331
1332
1333
1334
1335
1336
1337
1338
1339
1340
1341
1342
1343
1344
1345
1346
1347
1348
1349
1350
1351
1352
1353
1354
1355
1356
1357
1358
1359
1360
1361
1362
1363
1364
1365
1366
1367
1368
1369
1370
1371
1372
1373
1374
1375
1376
1377
1378
1379
1380
1381
1382
1383
1384
1385
1386
1387
1388
1389
1390
1391
1392
1393
1394
1395
1396
1397
1398
1399
1400
1401
1402
1403
1404
1405
1406
1407
1408
1409
1410
1411
1412
1413
1414
1415
1416
1417
1418
1419
1420
1421
1422
1423
1424
1425
1426
1427
1428
1429
1430
1431
1432
1433
1434
1435
1436
1437
1438
1439
1440
1441
1442
1443
1444
1445
1446
1447
1448
1449
1450
1451
1452
1453
1454
1455
1456
1457
1458
1459
1460
1461
1462
1463
1464
1465
1466
1467
1468
1469
1470
1471
1472
1473
1474
1475
1476
1477
1478
1479
1480
1481
1482
1483
1484
1485
1486
1487
1488
1489
1490
1491
1492
1493
1494
1495
1496
1497
1498
1499
1500
1501
1502
1503
1504
1505
1506
1507
1508
1509
1510
1511
1512
1513
1514
1515
1516
1517
1518
1519
1520
1521
1522
1523
1524
1525
1526
1527
1528
1529
1530
1531
1532
1533
1534
1535
1536
1537
1538
1539
1540
1541
1542
1543
1544
1545
1546
1547
1548
1549
1550
1551
1552
1553
1554
1555
1556
1557
1558
1559
1560
1561
1562
1563
1564
1565
1566
1567
1568
1569
1570
1571
1572
1573
1574
1575
1576
1577
1578
1579
1580
1581
1582
1583
1584
1585
1586
1587
1588
1589
1590
1591
1592
1593
1594
1595
1596
1597
1598
1599
1600
1601
1602
1603
1604
1605
1606
1607
1608
1609
1610
1611
1612
1613
1614
1615
1616
1617
1618
1619
1620
1621
1622
1623
1624
1625
1626
1627
1628
1629
1630
1631
1632
1633
1634
1635
1636
1637
1638
1639
1640
1641
1642
1643
1644
1645
1646
1647
1648
1649
1650
1651
1652
1653
1654
1655
1656
1657
1658
1659
1660
1661
1662
1663
1664
1665
1666
1667
1668
1669
1670
1671
1672
1673
1674
1675
1676
1677
1678
1679
1680
1681
1682
1683
1684
1685
1686
1687
1688
1689
1690
1691
1692
1693
1694
1695
1696
1697
1698
1699
1700
1701
1702
1703
1704
1705
1706
1707
1708
1709
1710
1711
1712
1713
1714
1715
1716
1717
1718
1719
1720
1721
1722
1723
1724
1725
1726
1727
1728
1729
1730
1731
1732
1733
1734
1735
1736
1737
1738
1739
1740
1741
1742
1743
1744
1745
1746
1747
1748
1749
1750
1751
1752
1753
1754
1755
1756
1757
1758
1759
1760
1761
1762
1763
1764
1765
1766
1767
1768
1769
1770
1771
1772
1773
1774
1775
1776
1777
1778
1779
1780
1781
1782
1783
1784
1785
1786
1787
1788
1789
1790
1791
1792
1793
1794
1795
1796
1797
1798
1799
1800
1801
1802
1803
1804
1805
1806
1807
1808
1809
1810
1811
1812
1813
1814
1815
1816
1817
1818
1819
1820
1821
1822
1823
1824
1825
1826
1827
1828
1829
1830
1831
1832
1833
1834
1835
1836
1837
1838
1839
1840
1841
1842
1843
1844
1845
1846
1847
1848
1849
1850
1851
1852
1853
1854
1855
1856
1857
1858
1859
1860
1861
1862
1863
1864
1865
1866
1867
1868
1869
1870
1871
1872
1873
1874
1875
1876
1877
1878
1879
1880
1881
1882
1883
1884
1885
1886
1887
1888
1889
1890
1891
1892
1893
1894
1895
1896
1897
1898
1899
1900
1901
1902
1903
1904
1905
1906
1907
1908
1909
1910
1911
1912
1913
1914
1915
1916
1917
1918
1919
1920
1921
1922
1923
1924
1925
1926
1927
1928
1929
1930
1931
1932
1933
1934
1935
1936
1937
1938
1939
1940
1941
1942
1943
1944
1945
1946
1947
1948
1949
1950
1951
1952
1953
1954
1955
1956
1957
1958
1959
1960
1961
1962
1963
1964
1965
1966
1967
1968
1969
1970
1971
1972
1973
1974
1975
1976
1977
1978
1979
1980
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
2022
2023
2024
2025
2026
2027
2028
2029
2030
2031
2032
2033
2034
2035
2036
2037
2038
2039
2040
2041

1 Finally, the Ninth Circuit has instructed that an application of the “but for” test is
2 the appropriate measure of civil contempt sanctions.

3 In *Goodyear*, the Supreme Court reversed a district court's sanction that required
4 the defendant to pay all the litigation costs incurred by the plaintiffs. The
5 Supreme Court explained that if that sanction was compensatory, **the district
6 court was required to draw a causal connection between the defendant's
7 bad faith discovery abuse and the fees awarded.** *Goodyear*, 137 S. Ct. at
8 1186. The Supreme Court remanded so that the trial court could determine how
9 much of the plaintiffs' litigation expenses would not have been incurred but for
10 the defendant's sanctionable conduct. *Id.* at 1190.

11 *Am. Unites for Kids v. Rousseau*, 985 F.3d 1075, 1092 (9th Cir. 2021) (emphasis
12 added).

13 The legal fees and expenses requested by the Trustee are mainly set out in the
14 Trustee's Request for Fees (Dk. 179), which the Court utilized during the April 9, 2024,
15 hearing in seeking final clarification of the efforts, time and expenses incurred by virtue
16 of the Government's willful violation of this Court's order. The record established by the
17 Trustee's counsel, both in the pleadings and during the April 9, 2024, hearing is quite
18 clear and need not be repeated here. However, it should be noted that the Court made
19 considerable efforts during oral argument to analyze the “but for” test, applying it to the
20 requested fees and costs requested. The Government only contested the time and
21 expenses asserted by the Trustee in limited areas, including personal delivery of
22 documents to the Court, the use of a conference room for a ZoomGov, and the 1.4-hour
23 commute to the conference room by Trustee's counsel.¹²

24

Nat. Beverage Distribs., 69 F.3d 337, 348 (9th Cir. 1995). We review de novo, however, any legal
25 analysis by the district court in imposing sanctions. *NRDC v. Winter*, 543 F.3d 1152, 1157 (9th Cir. 2008).
26 *Am. Unites for Kids v. Rousseau*, 985 F.3d 1075, 1087-1088 (9th Cir. 2021).

27 ¹² The only contest by the Government was whether the “market” fee rate of the law firm incurring time
28 expenditures should apply, or a statutory rate “cap” of \$244.62 per hour as provided in 28 U.S.C §2412.
That decision is guided by whether a special factor, such as the limited availability of qualified attorneys
for the proceedings involved, justifies a higher fee.” 28 U.S.C. § 2412(d)(2)(A). In other words, whether
the area of law of the practitioner is “specialized” or not. If not, and absent another special factor, the cap
is required. As explained further, the field of bankruptcy law is very specialized. It has its own court
system, its own Federal Rules of Bankruptcy Procedure, its own title of the United States Code (Title 11),
its own waiver of sovereign immunity (Section 106 of Title 11), its own Article I bankruptcy judges, there
exists multiple state bar organizations' recognition of bankruptcy law as a specialty (including Arizona,
California, Louisiana, North Carolina, South Carolina and Texas), as well as the American Bar

1 It is the determination of this Court, as specifically set out in serial fashion on the
2 record of April 9, 2024, and amplified by the Trustee's pleadings, that the time incurred
3 by the Trustee, that would not have otherwise been expended but for the Government's
4 violation of this Court's August 1, 2023 Order, is 69.5 hours of attorney and paralegal
5 time. Based on the Court's appreciation of the normal hourly rates routinely charged by
6 the bankruptcy Trustee's litigation counsel and paralegals (\$500.00 and \$125.00,
7 respectively) before the Court, the legal fees to be assessed against the Government
8 and in favor of the Landau Firm are \$32,250.00 (64.5 hours attorney time) and \$625.00
9 (5.0 hours paralegal time), for a total of \$32,875.00. The Court, reviewing the expenses,
10 awards expense reimbursement for the first deposition in the amount of \$1,900.00,
11 copying of pleadings are awarded in the amount of \$272.00, and a remote deposition
12 room expense is awarded in the amount of \$140.00, for a total expense reimbursement
13 award of \$2,412.00.

14 It is the decision of this Court that the Government shall reimburse the Trustee in
15 the total amount of \$37,599.00.

16 This is a single award, applicable to all three identical contempt matters filed in
17 *Marshack v. Eisenhower Carlson, PLLC*, Adv. No. 8:20-01059, *Marshack v. Gallo*
18 *Builders, Inc.*, Adv. No. 8:20-01060, and *Marshack v. Honda Aircraft Company LLC*,
19


20 _____
21 Association's. While there are some similarities, general law and trial practice differ significantly from
22 those activities in bankruptcy court. Bankruptcy cases are usually more involved with monetary and
23 economic issues and quite often involve numerous parties in interest in a single case. Bankruptcies within
24 our specialized courts involve specialized counsel familiar with legal and equitable financial claims,
25 security and banking law, and frequently include cases within cases (i.e., adversary proceedings). The
26 nomenclature and procedures are all very different from regular law practice. The plain trial lawyer also
27 needs to be a bankruptcy specialist. Consequently, there is a steep learning curve from the prospective of
28 a lawyer in the bankruptcy field. Accordingly, the Government's request that the statutory rate cap be
imposed is denied.

29 The Government's response to the requirement was that the Trustee's counsels might not be "certified"
30 as specialists. This Court takes judicial notice that the Trustee (as both a Chapter 7 and 11 trustee and an
31 attorney), and the employed counsels of the Trustee, are bankruptcy experts and specialists, and the
32 employment of the Trustee's counsel in this, and many other matters arising in the Avenatti firm
33 bankruptcy case, has been approved by this Court, with one of the standards being that the firm holds
34 expert credentials in the bankruptcy field and conducts itself accordingly, as witnessed by the Court over
35 the past several years of this case's existence.

1 Adv. No. 8:20-01150. A copy of this order shall be entered in all 3 cases. As noted
2 above in Footnote 1, the docket references herein refer to the pleadings filed in
3 *Marshack v. Eisenhower Carlson, PLLC*, Adv. No. 8:20-01059, which is the case
4 referenced throughout the pleadings and this Order, with the parties' consent.

5 **IT IS SO ORDERED.**
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

25 Date: May 7, 2024


26 Scott C. Clarkson
27 United States Bankruptcy Judge
28