



ORDERED in the Southern District of Florida on October 10, 2023.

Peter D. Russin

Peter D. Russin, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
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In re:

Vital Pharmaceuticals, Inc., *et al.*,
Debtors.

Case No. 22-17842-PDR

Chapter 11

Vital Pharmaceuticals, Inc., *et al.*,
Plaintiffs,
v.

Adv. No. 23-ap-1051-PDR

John H. Owoc and Megan E. Owoc,
Defendants.

**MEMORANDUM OPINION AND ORDER GRANTING, IN PART, VITAL
PHARMACEUTICALS' MOTION FOR ATTORNEY'S FEES IN
CONNECTION WITH CONTEMPT ORDERS**

John H. Owoc repeatedly disregarded this Court's orders to (among other things) refrain from posting to certain social media accounts and to turn over the

passwords to those social media accounts to Vital Pharmaceuticals, twice resulting in him being held in contempt. Vital now seeks to recover the fees it incurred securing Mr. Owoc's compliance with this Court's orders. Mr. Owoc has objected to Vital's fee request, alleging Vital is seeking a windfall because the hourly rates for its counsel (Latham & Watkins)—which range from \$550 to \$1,360—"do not comport with the prevailing market rate that courts in this district have found appropriate and approved."

Civil contempt sanctions, however, do not require the use of the lodestar method. Instead, the Court's focus is on awarding fees that were reasonably and necessarily incurred by Vital in procuring compliance with this Court's orders. As part of that inquiry, the Court concludes the hourly rates charged by Vital's counsel are reasonable under the circumstances. The Court does conclude, however, that 10 hours spent preparing Vital's attorney's fees motion was unnecessary. Accordingly, for the reasons stated below, the Court will award Vital \$63,517.10 in attorney's fees as a sanction to compensate it for the damage caused by Mr. Owoc's repeated disregard of this Court's orders.

I. Background

Plaintiff, Vital Pharmaceuticals, produces performance energy drinks. Its leading product is Bang energy drink, which (based on retail sales and market share data) is one of the top selling energy drinks in the United States. To market its products, Vital employed a strong and consistent social media presence using the

following Twitter, Instagram, and TikTok accounts (referred to by the parties as the “CEO Accounts”):

- an Instagram account with the handle @bangenergy.ceo (“CEO Instagram Account”);
- a TikTok account with the handle @bangenergy.ceo (“CEO TikTok Account”); and
- a Twitter account with the handle @BangEnergyCEO (“CEO Twitter Account”).¹

After filing for bankruptcy, Vital sued Defendants, Jack and Megan Owoc, seeking a declaration that it owned the CEO Accounts.² At the time, Vital was attempting to sell its assets in this chapter 11 case, and it was fearful the Owocs might post content to the CEO Accounts that could harm (intentionally or not) Vital’s business.³ Two days into this adversary, Vital and the Owocs stipulated to entry of a 45-day temporary restraining order (“TRO”).⁴ Under the stipulated TRO, the Owocs agreed to:

- Turn over passwords to the CEO Accounts by March 16, 2023;
- Within 9 business hours of any request by Vital, post to the CEO Accounts content requested by Vital; and
- Refrain from posting any content or making any posts to or from the CEO Accounts.⁵

¹ Adv. Doc. 61 at 2 – 3.

² Adv. Doc. 1.

³ Adv. Doc. 2, ¶¶ 18 – 22 & 30 – 33.

⁴ Adv. Docs. 9 & 10.

⁵ Adv. Doc. 10, ¶¶ 2 – 6.

The Owocs violated the stipulated TRO three times: First, they failed to turn over the passwords by March 16. Second, they failed to timely post content requested by Vital. Third, when the Owocs finally posted the requested content, Mr. Owoc commented on the post in what could best be described as a rant.⁶

After a half-day trial, the Court entered an order holding Mr. Owoc in contempt on April 25, 2023.⁷ The Court's April 25 Contempt Order provided that Mr. Owoc could purge his contempt by:

- Deleting his harmful social media post by 5:00 p.m. on April 25; and
- Turning over the passwords to the CEO Accounts to Vital by 5:00 p.m. on April 25 so Vital could change the passwords.⁸

On April 25, the Owocs turned over passwords to the CEO Instagram and Twitter Accounts to Vital. But when Vital attempted to access them, it discovered they had been set up with two-factor authentication.⁹ Vital requested that the Owocs turn off the two-factor authentication or facilitate Vital's access to the CEO Instagram and Twitter Accounts, which they refused to do.¹⁰ As for the CEO TikTok Account, the Owocs told Vital they did not have the passwords, and they refused to

⁶ Adv. Doc. 61 at 4 – 5.

⁷ *Id.* at p. 15, ¶ 1.

⁸ *Id.* at p. 15, ¶¶ 2 – 4.

⁹ Adv. Doc. 75, p. 7, l. 24 – p. 12, l. 10.

¹⁰ *Id.*

provide the e-mail address and phone number associated with the account so it could be reset.

Vital raised this issue with the Court at a May 1, 2023 hearing. The Court again found Mr. Owoc in contempt and ruled that:

- The Owocs “must immediately turn over the passwords, including doing whatever is necessary for two-factor authentication, or whatever is required to do that”;¹¹ and
- Vital was entitled to attorney’s fees and costs.¹²

Following the May 1 hearing, Vital’s counsel had several calls with the Owocs’ counsel. It took several days to be able to change the passwords for the CEO Instagram and Twitter Accounts. After five requests for extension by the Owocs, and a subpoena to Byte Dance,¹³ Vital was able to access the CEO TikTok Account on June 12, 2023 and change the password.

Vital has now filed its Motion for Attorney’s Fees, asking the Court to award it \$74,799 in fees it incurred as a result of Mr. Owoc’s disregard of this Court’s orders (“Fee Motion”).¹⁴ In all, Vital’s counsel worked 66.3 hours.¹⁵ The hourly rates ranged

¹¹ *Id.* at p. 40, l. 16 – p. 42, l. 15.

¹² *Id.* at p. 45, l. 12 – p. 46, l. 5; *see also* Adv. Doc. 80, ¶ 2.

¹³ Adv. Docs. 83, 91, 93, 97, 99, 103, 111, 137, 140 & 159.

¹⁴ Adv. Doc. No. 178.

¹⁵ *Id.* at Exs. 3 – 6.

from \$550 to \$1,360, with a blended hourly rate of \$1,128.19.¹⁶ The Owocs object to Vital's fee request.¹⁷

II. Analysis

As the Eleventh Circuit explained nearly two decades ago in *National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Olympia Holding Corp.*, once a trial court has found a party in contempt, it has “broad discretion in fashioning a contempt sanction.”¹⁸ Civil contempt sanctions can be both coercive and compensatory in nature.¹⁹ To compensate injured parties, courts routinely award attorney's fees as a civil contempt sanction.²⁰

The Owocs do not dispute Vital is entitled to attorney's fees and costs. Rather, the Owocs contend that any fee award is subject to the lodestar method.²¹ “Simply stated, the lodestar formula is the product of the number of reasonable hours

¹⁶ *Id.* at 8.

¹⁷ Adv. Doc. 222.

¹⁸ 140 F. App'x 860, 864 (11th Cir. 2005) (“Once a district court finds a party in contempt, it has ‘broad discretion in fashioning a contempt sanction.’”) (quoting *Sizzler Family Steak Houses v. W. Sizzlin Steak House, Inc.*, 793 F.2d 1529, 1536 n. 8 (11th Cir.1986)).

¹⁹ *Id.*

²⁰ See, e.g., *LD Acquisition Co. 13 LLC v. Palmetto Bay Ctr., LLC*, 2021 WL 4976330, at *13 (S.D. Fla. Aug. 26, 2021) (“Courts routinely award attorneys' fees and costs as a sanction for civil contempt.”); *Inversiones Y Procesadora Tropical Inprotsa, S.A., v. Del Monte International GmbH*, 2020 WL 7016737, at *7 (S.D. Fla. July 16, 2020) (“When a movant is forced to seek contempt in order to affect compliance with a lawfully entered order, the movant is entitled to recover its reasonable attorney's fees and expenses cause by the contemnor defendant's contempt.”).

²¹ Adv. Doc. 222, ¶ 1.

expended and the reasonable hourly rate.”²² According to the Owocs, a “reasonable hourly rate is one that is adequate to attract competent counsel in the relevant legal market, but yet does not produce a windfall to that attorney.”²³ The Owocs contend that Vital seeks a windfall because the hourly rates for its counsel (Latham & Watkins)—which range from \$550 to \$1,360—“do not comport with the prevailing market rate that courts in this district have found appropriate and approved.”²⁴

None of the cases cited by the Owocs, however, involved a fee award as a contempt sanction. “Sanctions for civil contempt are not equivalent with typical payment of attorneys’ fees.”²⁵ In fact, the Eleventh Circuit has observed that “civil contempt sanctions do not require the use of the lodestar method.”²⁶ Rather than insist trial courts employ the lodestar method, the Eleventh Circuit instead “yield[s] to the broad discretion enjoyed by [trial] courts in fashioning sanctions for civil contempt.”²⁷

When awarding civil contempt sanctions, this Court’s focus should be on “only award[ing] those fees that were reasonably and necessarily incurred by the moving

²² *In re Ellingsworth Residential Cmty. Ass’n, Inc.*, 2022 WL 16635665, at *3 (Bankr. M.D. Fla. Sept. 22, 2022) (quoting *Utopia Provider Sys., Inc. v. Pro-Med Clinical Sys., LLC*, 2009 WL 10712806 at *2 (M.D. Fla. Jan. 21, 2009)).

²³ Adv. Doc. 222, ¶ 6 (quoting *Hermosilla v. Coca-Cola Co.*, 2011 WL 9364952, at *8 (S.D. Fla. July 15, 2011)).

²⁴ *Id.* at p. 1.

²⁵ *Nat’l Union Fire Ins. Co. of Pittsburgh, Pa. v. Olympia Holding Corp.*, 140 F. App’x 860, 864 n.1 (11th Cir. 2005).

²⁶ *Id.*

²⁷ *Id.*

party in procuring compliance with a court's order.”²⁸ In doing so, this Court should consider “the character and magnitude of the harm threatened by continued contumacy, the probable effectiveness of any suggested sanction in bringing about compliance, and the amount of the contemnor's financial resources and consequent seriousness of the burden to him.”²⁹

The harm posed by Mr. Owoc's disregard of this Court's orders was significant. Vital was attempting to sell its assets in this chapter 11 case, and it sought the TRO, which the Owocs agreed to, in order to prevent the Owocs from harming Vital's business. Those fears, as it turns out, were justified because Mr. Owoc, in violation of the TRO he stipulated to, posted a rant that (among other things) potentially questioned the integrity of the bankruptcy sale process.³⁰ So it was important for Vital to gain control of the CEO Accounts after the Court ordered the Owocs to turn the passwords over to Vital.

The actions Vital took—filing its original contempt motion; obtaining the April 25 Contempt Order; seeking compliance with the April 25 Contempt Order; and having Mr. Owoc held in contempt a second time—were necessary for Vital to secure the passwords to the CEO Accounts and prevent Mr. Owoc from continuing to violate the TRO he stipulated to. Indeed, it was those actions that led to Vital eventually

²⁸ See, e.g., *LD Acquisition Co. 13 LLC v. Palmetto Bay Ctr., LLC*, 2021 WL 4976330, at *13 (S.D. Fla. Aug. 26, 2021) (citing *Abbott Labs. V. Unlimited Beverages, Inc.*, 218 F.3d 1238, 1242 (11th Cir. 2000)).

²⁹ *Matter of Trinity Indus., Inc.*, 876 F.2d 1485, 1493 – 94 (11th Cir. 1989) (citing *United States v. United Mine Workers of Am.*, 330 U.S. 258, 304 (1947))

³⁰ Adv. Doc. 28, Exs. E – G.

securing access to the CEO Accounts. Therefore, the Court concludes it is appropriate to award Vital the fees it incurred securing access to the CEO Accounts.

Although this Court is not bound by the lodestar method, it nonetheless considers the hourly rate charged by Vital's counsel. The Court concludes that, under the facts of this case, the hourly rates charged by Vital's counsel—\$550 to \$1,360—are reasonable.

It is important to keep in mind that Vital was a nationwide manufacturer and distributor of performance energy drinks, with more than \$6 billion in sales. So when it filed this bankruptcy case, Vital retained Latham & Watkins, a sophisticated national firm, as lead counsel for this exceedingly complex chapter 11 case. It also retained Latham & Watkins to prosecute this adversary proceeding.

While the Owocs try to paint this adversary proceeding as a “garden variety civil action,” nothing could be further from the truth. This adversary proceeding raised novel and complex issues regarding whether a debtor's social media accounts are property of the bankruptcy estate. Only one court—the Bankruptcy Court for the Southern District of Texas in *In re CTLI*—had considered that issue.³¹ This adversary is by no means “garden variety.”

While enforcement of this Court's TRO could more aptly be described as “garden variety,” describing it that way overlooks two important points. First, having first retained Latham & Watkins to prosecute this complex adversary proceeding, Vital could not have been expected to then change counsel midstream to enforce the

³¹ *In re CTLI, LLC*, 528 B.R. 359, 378 (Bankr. S.D. Tex. 2015).

TRO. Not only is that unrealistic, but it also would have been inefficient. Latham & Watkins lawyers sought and then later negotiated the consensual TRO. The firm was already familiar with the facts of this case and the terms of the TRO. Perhaps Vital could have found a law firm with lower hourly rates to enforce the TRO. But that firm would have had to spend more time becoming conversant in the facts of this adversary and the Owocs' noncompliance, reducing or eliminating any potential savings. Second, Mr. Owoc repeatedly violated this Court's orders, forcing Vital to seek to enforce them. He can now hardly complain about the lawyers Vital used to enforce the Court orders he deliberately chose to ignore. Thus, even though this Court is not obligated to employ the lodestar method, it concludes the hourly rates charged by Vital's lawyers were reasonably necessary to secure compliance with this Court's orders.

If this Court has any issue at all, it is with the hours worked. As a general matter, the Court concludes the work of Vital's lawyers—filing the original contempt motion; obtaining the April 25 Contempt Order; seeking to enforce the April 25 Contempt Order; and having Mr. Owoc held in contempt a second time—was reasonably necessary to secure compliance with the TRO. But Vital's fee motion reflects that Vital's counsel spent 22.1 hours in May 2023 working on a 10-page Fee Motion, which did not raise particularly complicated issues of law or fact. The Court concludes it should have taken no more than 10 hours to prepare Vital's Fee Motion.

III. Conclusion

Except for ten hours spent preparing Vital's Fee Motion, the attorney's fees Vital incurred were reasonably necessary to procure compliance with this Court's orders. Vital is therefore entitled to recover \$63,517.10 in attorney's fees from Mr. Owoc: the \$74,999.00 Vital sought less \$11,281.90 (10 hours x a blended hourly rate of \$1,128.19) for time spent on the Fee Motion.

Accordingly, it is

ORDERED:

1. Vital's Fee Motion is GRANTED.
2. Vital is entitled to recover \$63,517.10 in attorney's fees from Mr. Owoc as a sanction to compensate it for the damage caused by Mr. Owoc's repeated disregard of this Court's orders.

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Copies to:

All parties in interest.