

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JS-6

**CIVIL MINUTES - GENERAL**

Case No.	CV 03-3799 PSG (RNBx)	Date	May 22, 2008
Title	RRLH, Inc. v. Barto, et al.		

Present:	The Honorable Philip S. Gutierrez, United States District Judge
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Wendy K. Hernandez	Not Present	n/a
Deputy Clerk	Court Reporter	Tape No.

Attorneys Present for Plaintiff(s):

Attorneys Present for Defendant(s):

Not Present

Not Present

**Proceedings: (In Chambers) Order on Plaintiff's Application for Attorney's Fees**

Before this Court is Plaintiff's Application for Attorney's Fees. The Court finds the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; Local R. 7-15.

**I. BACKGROUND**

On March 18, 2008, the Court issued an order finding Defendants in contempt of court for violation of a previous court order. The Court allowed Plaintiff to file an application for its attorney's fees. Plaintiff has done so and requests attorney's fees of \$29,730.00.

**II. LEGAL STANDARD**

"It has long been understood that '[c]ertain implied powers must necessarily result to our Courts of justice from the nature of their institution,' powers 'which cannot be dispensed with in a Court, because they are necessary to the exercise of all others.' ... For this reason, 'Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates.' ... These powers are 'governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.'" *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991) (citations omitted).

"In addition, it is firmly established that '[t]he power to punish for contempts is inherent in all courts.' ... This power reaches conduct both before the court and that beyond the court's

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confines, for “[t]he underlying concern that gave rise to the contempt power was not ... merely the disruption of court proceedings. Rather, it was disobedience to the orders of the Judiciary, regardless of whether such disobedience interfered with the conduct of trial.” *Chambers*, 501 U.S. at 44 (citations omitted).

“Indeed, “[t]here are ample grounds for recognizing ... that in narrowly defined circumstances federal courts have inherent powers to assess attorney’s fees against counsel,” ... even though the so-called ‘American Rule’ prohibits fee shifting in most cases. ... [T]hese exceptions fall into three categories. The first, known as the ‘common fund exception,’ derives not from a court’s power to control litigants, but from its historic equity jurisdiction, ... and allows a court to award attorney’s fees to a party whose litigation efforts directly benefit others. ... Second, a court may assess attorney’s fees as a sanction for the ‘willful disobedience of a court order.’ ... Thus, a court’s discretion to determine “[t]he degree of punishment for contempt” permits the court to impose as part of the fine attorney’s fees representing the entire cost of the litigation. ... Third, ... a court may assess attorney’s fees when a party has ‘acted in bad faith, vexatiously, wantonly, or for oppressive reasons.’” *Id.* at 45-46 (citations omitted).

The Ninth Circuit has also explained that “[t]he most common utilization of inherent powers is a contempt sanction levied to protect the due and orderly administration of justice and maintain the authority and dignity of the court. ... When a losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons, ... sanctions under the court’s inherent powers may take the form of attorney’s fees.” *Primus Automotive Financial Services, Inc. v. Batarse*, 115 F.3d 644, 648 (9th Cir. 1997) (internal quotation marks, alterations, and citations omitted). “Before awarding sanctions under its inherent powers, however, the court must make an explicit finding that counsel’s conduct constituted or was tantamount to bad faith.” *Id.* (internal quotation marks and citation omitted). “Such a finding is especially critical when the court uses its inherent powers to engage in fee-shifting.” *Id.* (citations omitted).

“A finding of bad faith is warranted where an attorney knowingly or recklessly raises a frivolous argument, or argues a meritorious claim for the purpose of harassing an opponent. ... A party also demonstrates bad faith by delaying or disrupting the litigation or hampering enforcement of a court order.” *Id.* at 649 (internal quotation marks and citations omitted). “The bad faith requirement sets a high threshold.” *Id.*

In light of the courts’ wide power to issue sanctions for contempt, the Supreme Court has also warned that such power should be exercised with caution. A court must “exercise caution in invoking its inherent power, and it must comply with the mandates of due process, both in

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determining that the requisite bad faith exists and in assessing fees.” *Chambers*, 501 U.S. at 43-44. Other courts have found that one factor to consider in granting attorney’s fees awards is the sanctioned party’s financial condition. *See Martin v. Automobili Lamborghini Exclusive, Inc.*, 307 F.3d 1332, 1337 (11th Cir. 2002) (“Sanction orders must not involve amounts that are so large that they seem to fly in the face of common sense, given the financial circumstances of the party being sanctioned. ... [S]anctions must never be hollow gestures; their bite must be real. For a bite to be real, it has to be a sum that the person might actually pay. A sanction which a party clearly cannot pay does not vindicate the court’s authority because it neither punishes nor deters.”).

### III. DISCUSSION

Here, the Court’s March 18, 2008 order found that Defendants acted in bad faith in violating a previous Court order. Thus, the Court is justified in awarding attorney’s fees to Plaintiff for Defendants’ bad faith violation of the previous Court order.

Plaintiff has now submitted evidence indicating that it incurred \$29,730.00 in attorney’s fees in bringing its motion to hold Defendants in contempt. (Greene Decl., Exh. A.) However, in its initial contempt application, Plaintiff estimated that the attorney’s fees would amount to in excess of \$10,000.00. (Greene Decl., ¶ 11.) Plaintiff’s attorneys now explain that this initial estimate was based on the assumption that the contempt proceeding would be a simple matter and would resolve quickly. Because Defendants vigorously opposed the contempt application, additional work was required by Plaintiff’s attorneys.

In opposition to Plaintiff’s motion for fees, Defendants raise several arguments concerning the reasonableness of Plaintiff’s requested fee. However, the Court determines that Plaintiff’s attorney fee request is reasonable based on sufficient evidence presented by Plaintiff. Defendants also appear capable of paying Plaintiff’s requested fee. Thus, the Court orders Defendants to pay Plaintiff an attorney’s fee award of \$29,730.00.

### IV. CONCLUSION

For the foregoing reasons, the Court GRANTS Plaintiff’s application for attorney’s fees in the amount of \$29,730.00.