

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 Commodity Futures Trading Commission,

Case No.: 2:19-cv-01697-JAD-DJA

4 Plaintiff

**Order Granting Motion for Compensatory  
Fees and Expenses**

5 v.

6 David Gilbert Saffron a/k/a David Gilbert and  
Circle Society, Corp.,

[ECF No. 56]

7 Defendants  
8

9 “A court may wield its civil contempt powers for two separate and independent purposes:

10 (1) ‘to coerce the defendant into compliance with the court’s order’; and (2) ‘to compensate the  
11 complainant for losses sustained.’”<sup>1</sup> Because they are remedial, civil compensatory sanctions  
12 “typically take the form of unconditional monetary sanctions.”<sup>2</sup> “[W]here compensation is  
13 intended, a fine is imposed, payable to the complainant.”<sup>3</sup> The “fine must of course be based  
14 upon evidence of complainant’s actual loss, and [its] right, as a civil litigant, to the compensatory  
15 fine is dependent upon the outcome of the basic controversy.”<sup>4</sup>

16 I previously found that the CFTC had established, by clear and convincing evidence, that  
17 Saffron and Circle Society had violated several provisions of the injunctive-relief order and the  
18 CFTC was therefore entitled to relief in the form of coercive sanctions against each defendant.<sup>5</sup>  
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20 <sup>1</sup> *Shell Offshore, Inc. v. Greenpeace, Inc.*, 815 F.3d 623, 629 (9th Cir. 2016) (quoting *U.S. v.*  
*United Mine Workers of Am.*, 330 U.S. 258, 303–04 (1947)).

21 <sup>2</sup> *Id.*

22 <sup>3</sup> *Mine Workers*, 330 U.S. at 304.

23 <sup>4</sup> *Id.*

<sup>5</sup> ECF Nos. 48 (order granting motion for order to show cause), 51 (civil-contempt order). I imposed a daily compliance fine of \$1,000 on each defendant that was conditioned on their

1 I imposed a daily compliance fine of \$1,000 on each defendant, payable to the court, that was  
2 conditioned on their failure to comply with the with the terms and conditions of the civil-  
3 contempt order.<sup>6</sup> CFTC now moves for an order requiring defendants to pay the fees and  
4 expenses that it incurred addressing defendants' contemptuous conduct, totaling \$14,279.30.<sup>7</sup>  
5 The CFTC explains that it incurred these fees and costs when it prepared two show-cause  
6 motions and participated in three hearings, which all focused on drawing attention to and  
7 addressing the defendants' contemptuous conduct. The CFTC supports its motion with a  
8 declaration from its lead counsel, Danielle Karst, who explains that she and CFTC Investigator  
9 George Malas investigated whether defendants had violated the court's restraining and  
10 injunctive-relief orders, collected evidence of defendants' violations, and prepared for and  
11 participated in three court hearings.<sup>8</sup>

12 Karst declares that she spent 72 hours working on matters concerning the defendants'  
13 contempt, which she values at \$6,840.<sup>9</sup> She declares that Malas expended at least 24 hours  
14 working on those matters, which she values at \$1,937.28.<sup>10</sup> This includes the time that Karst and  
15 Malas took to travel from Washington, D.C. to Las Vegas, Nevada, for court hearings. Karst  
16 also declares that the CFTC incurred \$5,502.02 in costs for that travel, i.e., airfare, lodging,

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19 failure to comply with the with the terms and conditions of the civil-contempt order. ECF No.  
51 at 7.

20 <sup>6</sup> ECF No. 51 at 7.

21 <sup>7</sup> ECF No. 56.

<sup>8</sup> ECF No. 56-1 at ¶ 4.

22 <sup>9</sup> Karst arrives at this figure by first calculating that her hourly rate is \$95 based on her gross  
annual salary divided by 2087 yearly work hours. *Id.* at ¶ 5 & n.2.

23 <sup>10</sup> Karst calculates that Malas's hourly rate is \$80.72 using the same formula that she used to  
calculate her hourly rate. *Id.* at ¶ 6 & n.3.

1 government per diem, and transportation.<sup>11</sup> The CFTC includes a worksheet breaking down the  
2 various fees and expenses that it incurred addressing defendants' contempt.<sup>12</sup> I find that the  
3 amounts sought are reasonable and supported.

4 Based on this record, I find that the CFTC has demonstrated that sanctions in the form of  
5 an unconditional fine compensating the CFTC for the fees and expenses it incurred addressing  
6 defendants' contempt is warranted. Thus, I grant the CFTC's motion for this relief.

7 IT IS THEREFORE ORDERED that the CFTC's Motion for Fees and Expenses Caused  
8 by Defendants' Contempt [ECF No. 56] is **GRANTED**. The CFTC is awarded compensatory  
9 fees of \$8,777.28 and compensatory costs of \$5,502.02, for a total of \$14,279.30.

10 IT IS FURTHER ORDERED defendants, jointly or severally, must pay the foregoing  
11 compensatory fees and costs totaling \$14,279.30 to the CFTC by July 6, 2020.

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U.S. District Judge Jennifer A. Dorsey  
June 5, 2020

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23 <sup>11</sup> *Id.* at ¶ 7.

<sup>12</sup> *Id.* at 7.