
**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

TRAVIS LYNN SHUMWAY, an individual residing in the state of Utah; CHAD L. SHUMWAY, an individual residing in the state of Utah; MOUNTAIN WEST MEDICAL SUPPLY, L.L.C., a Utah limited liability company; UNITED ENERGY WORKERS HEALTHCARE, CORP., an Ohio corporation; FOUR CORNERS HEALTH CARE CORP., a Utah corporation; and FOUR CORNERS HEALTHCARE INC., a Wyoming corporation;

Plaintiffs,

v.

JAMES LINN WRIGHT, an individual; AUDRA WRIGHT, as individual; GARY D. SLAVENS, as individual; JANE AND JOHN DOES 1-10; and DOE BUSINESS ENTITIES 1-10;

Defendants.

SPECIAL MASTER REPORT NO. 21

**REPORT AND RECOMMENDATION
ON PLAINTIFFS' MOTION FOR
ORDER OF CONTEMPT AGAINST
DEFENDANT GARY D. SLAVENS
AND AWARD OF ATTORNEY FEES
AND COSTS**

Case No.: 4:19-cv-00058-DN-PK

District Judge David Nuffer
Magistrate Judge Paul Kohler
Special Master Philip J. Favro

Pursuant to the Court's September 4, 2019 Order Appointing Special Master ("Special Master Appointment Order")¹ and the Court's March 5, 2020 Order Referring Defendant Slavens' Apparent Violation of the Court's Seizure and Preservation Order to Special Master Philip J. Favro ("Referral Order"),² the Special Master hereby provides the following REPORT

¹ Docket no. 65, filed September 4, 2019.

² Docket no. 202, filed March 5, 2020.

and RECOMMENDATION to the Court regarding Plaintiffs’ motion for an order of contempt against Defendant Gary D. Slavens (“Dr. Slavens”) and an award of attorney fees and costs.³

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I. INTRODUCTION AND SUMMARY OF THE ISSUES

1. On March 27, 2020, Plaintiffs Travis Lynn Shumway, Chad L. Shumway, Mountain West Medical Supply, L.L.C., United Energy Workers Healthcare, Corp., Four

³ Plaintiffs’ Motion for Order of Contempt Against Gary Slavens and Award of Attorney Fees and Costs (“Motion”), docket no. 211, filed March 27, 2020; Response to the Plaintiffs’ Motion for Order of Contempt Against Gary Slavens and Award of Attorney Fees and Costs (“Opposition”), docket no. 218, filed April 17, 2020; Plaintiffs’ Reply Memorandum in Support of Motion for Order of Contempt Against Gary Slavens and Award of Attorney Fees and Costs (“Reply”), docket no. 223, filed April 24, 2020.

Corners Health Care Corp., and Four Corners Healthcare Inc. (collectively “Plaintiffs”) moved the Court for an order of contempt and an award of attorney fees and costs against Dr. Slavens.⁴ Plaintiffs contend that Dr. Slavens failed to obey the Court’s August 26, 2019 Ex Parte Seizure Order and Evidence Preservation Order (“Seizure Order”).⁵

2. In their briefing, Plaintiffs argue that Dr. Slavens violated the evidence preservation order that is set forth in the Seizure Order when he purportedly “sold” his Apple iMac computer that was subject to the Seizure Order and which the Court had ordered to be preserved pursuant to that Order.⁶ According to Plaintiffs, Dr. Slavens’ so-called sale of his Apple iMac computer resulted in the March 6, 2020 Order to Show Cause hearing (“OSC Hearing”), along with a flurry of activity both before and after the OSC Hearing. Plaintiffs contend they are entitled to recover their attorney fees and costs relating to their efforts to prepare for and participate in the OSC Hearing, and to otherwise address the consequences arising from Dr. Slavens’ conduct. Plaintiffs maintain those costs include, but are not limited to, the time spent by the Court’s technical expert (Michael Gutierrez of Xact Data Discovery (“XDD”)) and the Special Master in connection with addressing these issues.

3. Dr. Slavens opposes Plaintiffs’ motion and advances multiple assertions to substantiate his opposition.⁷ Those assertions are crystalized around Dr. Slavens’ central argument: that he bears no fault for the harm Plaintiffs argue they have sustained. In support of his argument that the attorney fees and costs Plaintiffs have allegedly incurred are “not his fault,”

⁴ Motion, *supra* note 3.

⁵ Docket no. 32, filed August 26, 2019.

⁶ Motion, *supra* note 3, at 5-7.

⁷ Opposition, *supra* note 3.

Dr. Slavens points to the settlement in principle he reached with Plaintiffs on January 30, 2020.⁸ Citing his agreement in principle with Plaintiffs to resolve the case, Dr. Slavens essentially reasons that he had no further obligations in the above-captioned litigation. Dr. Slavens also argues that the Court had sufficient time to remove any information belonging to Plaintiffs from his Apple iMac computer over the previous six months and that it was unreasonable for the Court to expect him to return that computer again for additional erasure work by the Court's technical expert.

4. The Special Master has now reviewed and considered the parties' briefing, including their respective legal arguments and factual assertions. The Special Master has also reviewed the legal authority governing the disposition of the issues at hand and the transcript memorializing the testimony from Dr. Slavens and Mr. Gutierrez of XDD, along with the arguments from counsel and Dr. Slavens. Considering all of the foregoing and as set forth more particularly in the CONCLUSIONS OF LAW section of this REPORT, the Special Master RECOMMENDS that the Court not hold Dr. Slavens in contempt of Court for violating the Seizure Order. The Special Master finds the Seizure Order was and remains a valid and enforceable order of which Dr. Slavens had actual knowledge. Nevertheless, the Special Master finds there is no credible evidence that suggests Dr. Slavens disobeyed the Seizure Order. Instead, the credible evidence the Special Master received on the issues tends to establish that Dr. Slavens did nothing to violate the Seizure Order despite conflicting statements and testimony from Dr. Slavens which suggest he did violate the Seizure Order.

5. Nevertheless, the Special Master RECOMMENDS that the Court issue an award of reasonable attorney fees and costs in favor of Plaintiffs and against Dr. Slavens to compensate

⁸ *Id.* at 3.

Plaintiffs for the out-of-pocket expenses they have incurred in seeking to address Dr. Slavens' actions which directly resulted in the OSC Hearing.

II. REFERRAL OF THE OSC TO THE SPECIAL MASTER

6. On March 3, 2020, the Court issued an Order to Show Cause ("OSC") to address Dr. Slavens' apparent violation of the Seizure Order.⁹ Under the OSC, the Court indicated that the Special Master would receive evidence at the OSC Hearing regarding Dr. Slavens' actions that gave rise to the OSC. Those actions included, among other things, Dr. Slavens' so-called sale of his Apple iMac computer that was subject to the Seizure Order and which the Court had ordered to be preserved pursuant to the Seizure Order.

7. On March 5, 2020, the Court issued the Referral Order, which formally authorized the Special Master to handle the OSC Hearing and which charged the Special Master with issuing "a report and recommendation" regarding the disposition of the issues raised at the OSC Hearing.¹⁰ In the Referral Order, the Court explained that it was appropriate to refer the OSC to the Special Master for a report and recommendation given that the issues surrounding the OSC arose in connection with the Special Master's duties pursuant to the Special Master Appointment Order.

8. The Special Master Appointment Order authorizes the Special Master to "locate and isolate all misappropriated trade secret information" found on Dr. Slavens' electronic devices, accounts, and paper records that were seized pursuant to the Seizure Order.¹¹ In addition, the Special Master must "facilitate the return of unrelated property and data" to Dr.

⁹ Docket no. 199, filed March 3, 2020.

¹⁰ Referral Order, *supra* note 2.

¹¹ Special Master Appointment Order, *supra* note 1, at 1.

Slavens and do so “with all reasonable diligence and take all appropriate measures to perform the assigned duties fairly and efficiently.”¹²

III. FINDINGS OF FACT

9. The Special Master makes the following findings of fact that support the Special Master’s conclusions of law and the ensuing RECOMMENDATIONS memorialized in this REPORT.

A. The Seizure Order and the Evidence Preservation Order

10. On August 26, 2019, the Court issued *ex parte* the Seizure Order.¹³ Initially filed under seal, the Seizure Order directed law enforcement to respectively seize, among other things, electronic devices, email and cloud accounts, and paper records from Dr. Slavens and Defendants James Linn Wright and Audra Wright (the “Wrights”) that include trade secret information belonging to Plaintiffs.¹⁴

11. Included among the Seizure Order’s provisions is an evidence preservation order.¹⁵ That evidence preservation order unequivocally mandates that Defendants—including Dr. Slavens—preserve, maintain, and safeguard all evidence relevant to Plaintiffs’ claims and allegations in their complaint:

The court also specifically ORDERS Defendants to preserve all of their files (including any files in their possession, custody, or control) relating to the allegations in Plaintiffs’ Complaint filed with the court, specifically including any emails, paper files and records, electronic files and records, and specifically to not copy, modify, delete, or disseminate any such files or records, during the entire pendency of this matter.

¹² *Id.* at 2.

¹³ Seizure Order, *supra* note 5.

¹⁴ *Id.* at 22-28.

¹⁵ *Id.* at 37.

IT IS FURTHER ORDERED that Defendants shall preserve evidence relating to the allegations and issues set forth in Plaintiffs' Complaint and otherwise as described above.¹⁶

12. The Seizure Order also provided for the appointment of Mr. Gutierrez of XDD to serve as a technical expert in connection with the seizure of Defendants' property. The purpose of Mr. Gutierrez's appointment was to "aid the efficient execution of and minimize the burden of the seizure."¹⁷

13. On August 26, 2019, the Court filed two supplemental seizure orders to address various issues relating to the seizure of Defendants' property.¹⁸ The respective supplemental seizure orders did not modify the evidence preservation order in the Seizure Order.

B. The Seizure of Dr. Slavens' Apple iMac Computer and Service of the Seizure Order on Dr. Slavens

14. On August 27, 2019, federal law enforcement officials effectuated the seizure of Defendants' property including, but not limited to, the Apple iMac computer belonging to Dr. Slavens.¹⁹ Mr. Gutierrez identified the Apple iMac computer as "E015C_GarySlavens" on an Excel spreadsheet he generated to document the devices, accounts, and papers seized from Defendants (hereinafter "iMac Computer").²⁰

15. In connection with the seizure of Dr. Slavens' property including the iMac Computer, federal law enforcement officials served Dr. Slavens on August 27, 2019 with a copy of the Seizure Order.²¹ The Seizure Order, while lengthy at 42 pages, provided a clearly

¹⁶ *Id.* (emphasis added and footnotes omitted).

¹⁷ *Id.* at 31-32.

¹⁸ Docket no. 36 and docket no. 37, filed August 26, 2019.

¹⁹ Digital Forensic Examination Report ("Gutierrez Report"), docket no. 226, lodged under seal May 4, 2020, at 1.

²⁰ *Id.* at Exhibit A, docket no. 226-1, lodged under seal May 4, 2020.

²¹ Process Receipt and Return, docket no. 49, filed August 28, 2019.

delineated evidence preservation order that specifically applied to Defendants, including Dr. Slavens.

16. After federal law enforcement officials seized Dr. Slavens' iMac Computer, Mr. Gutierrez made "a complete, bit-for-bit forensic copy of the storage media" found on the computer hard drive and then returned the iMac Computer to Dr. Slavens on September 4, 2019.²²

C. The Court Orders Dr. Slavens to Return the iMac Computer to Mr. Gutierrez on September 30, 2019

17. On September 30, 2019, the Court ordered Dr. Slavens to return the iMac Computer to Mr. Gutierrez.²³ The purpose for the Court's order was to ensure that Mr. Gutierrez remove from the iMac Computer all electronic information that preliminarily received hits from Plaintiffs' search terms.²⁴ The Court also ordered Mr. Gutierrez to preserve all such electronic data pending the Special Master's review of Dr. Slavens' seized property.²⁵ The Court further ordered that "[t]he electronic files removed from Dr. Slaven's [sic] electronic devices which the Special Master determines are not trade secrets, patient information, or Plaintiffs' proprietary business information shall be returned to Dr. Slavens on separate media."²⁶

18. Pursuant to the Court's September 30, 2019 Order, Dr. Slavens delivered the iMac Computer to Mr. Gutierrez on October 1, 2019.²⁷ On October 10, 2019, Mr. Gutierrez returned the iMac Computer to Dr. Slavens.²⁸

²² Gutierrez Report, *supra* note 19, at 1, 4-5.

²³ Minute Order, [docket no. 136](#), entered October 1, 2019.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Gutierrez Report, *supra* note 19, at 5.

²⁸ *Id.*

D. Discussion during January 31, 2020 Court Hearing regarding the Need for Dr. Slavens to Return the iMac Computer to Mr. Gutierrez

19. On January 31, 2020, the Court held a status conference by telephone to determine, among other things, the status of the parties' settlement negotiations. Dr. Slavens did not make an appearance at the status conference.²⁹ At the status conference, Plaintiffs indicated through their counsel of record, Gregory Hardman, that they had reached a settlement in principle with Dr. Slavens to resolve their claims against him.³⁰

20. At the January 31, 2020 status conference, the Special Master and Mr. Gutierrez indicated there were certain files reflecting Plaintiffs' trade secret information and protected patient information that the Court had ordered erased and which remained on certain of Dr. Slavens' computer devices, including the iMac Computer. In addition, the Special Master and Mr. Gutierrez represented that there were several electronic documents belonging to Dr. Slavens which received hits from Plaintiffs' search terms, but did not reflect any trade secret information, protected patient information, or proprietary information belonging to Plaintiffs. Accordingly, it was evident that Dr. Slavens would again be required to deliver, among other things, the iMac Computer to Mr. Gutierrez in order "to ensure (A) deletion of all relevant files, as ordered by the court, and (B) restoration to the devices of all files not ordered for deletion."³¹

E. Dr. Slavens' Apparent Sale of the iMac Computer and the Events Leading to the OSC Hearing

21. On February 10, 2020, Mr. Hardman contacted the Special Master and Mr. Gutierrez by email to inform them that Dr. Slavens would not execute the documentation finalizing Plaintiffs' settlement of claims against Dr. Slavens until Mr. Gutierrez had completed

²⁹ Minutes, [docket no. 193](#), filed January 31, 2020.

³⁰ *Id.*

³¹ *Id.*

his remediation work on Dr. Slavens' devices and accounts and returned to Dr. Slavens' possession, custody, or control all of his seized devices and accounts.³² Mr. Hardman specifically explained in his message—on which Dr. Slavens was copied—that Dr. Slavens:

*would like to coordinate the return of his computer devices and restoration of his accounts, following the erasure of documents and records as ordered by the court, with the special master and/or Xact Data **before signing the settlement documents with the Shumway Parties.***³³

22. In response to Mr. Hardman's February 10, 2020 message, the Special Master confirmed in an email that same day—on which Dr. Slavens was copied—that Mr. Gutierrez would coordinate directly with Dr. Slavens to obtain the iMac Computer and then return that computer to Dr. Slavens, along with his other devices and accounts, once Mr. Gutierrez completed the remediation work pursuant to the Court's January 31, 2020 order.³⁴ Mr. Gutierrez separately confirmed all of this by email on February 10, 2020 to the Court, the Special Master, counsel, and Dr. Slavens.³⁵

23. In response to a status update request email that Mr. Hardman sent to Mr. Gutierrez on February 21, 2020, Mr. Gutierrez advised Mr. Hardman by email on February 24, 2020 that he was nearing the completion of the remediation work on certain of Dr. Slavens' devices.³⁶ Mr. Gutierrez indicated in that message that he expected "to return those devices to Dr. Slavens and have him deliver his iMac" to Mr. Gutierrez by February 28, 2020. Mr.

³² Docket no. 197, filed March 3, 2020, at 6-7.

³³ *Id.* (emphasis added).

³⁴ *Id.* at 6.

³⁵ *Id.* at 4-5.

³⁶ *Id.* at 2-3.

Gutierrez anticipated that the remediation work he needed to complete on Dr. Slavens' iMac Computer would be "promptly" finalized.³⁷

24. In response to another status update request email that Mr. Hardman sent to Mr. Gutierrez on February 28, 2020, Mr. Gutierrez notified Mr. Hardman by email on March 2, 2020 that he "spoke with Dr. Slavens today about his iMac computer and [Dr. Slavens] indicated that he sold it and no longer has it."³⁸

25. In response to Mr. Gutierrez's March 2, 2020 message that Dr. Slavens sold his iMac Computer, the Special Master circulated an email to all counsel, Dr. Slavens, and the Court indicating that the Special Master had directed Mr. Gutierrez to provide all parties to the litigation with "a list of all files that the Court ordered erased from Dr. Slavens' iMac computer."³⁹ In his email, the Special Master also called the parties' attention to the evidence preservation order memorialized in the Seizure Order mandating that Defendants preserve all relevant evidence in their possession, custody, or control.⁴⁰ In a subsequent message on March 2, 2020, the Special Master advised the parties that the Court would schedule an OSC hearing for that same week to address issues relating to Dr. Slavens' potential violation of the Seizure Order by virtue of his apparent sale of the iMac Computer.⁴¹

26. In response to the Special Master's request for a report on the files the Court had ordered deleted from Dr. Slavens' iMac Computer, Mr. Gutierrez provided counsel, Dr. Slavens, the Special Master, and the Court on March 2, 2020 with a spreadsheet reflecting the total

³⁷ *Id.*

³⁸ *Id.* at 1.

³⁹ [Docket no. 206](#), lodged March 5, 2020, at 2.

⁴⁰ *Id.*

⁴¹ [Docket no. 230](#), lodged May 15, 2020, at 1.

number of files marked for deletion on the iMac Computer.⁴² The spreadsheet report from Mr. Gutierrez indicated that XDD had already deleted 3,292 documents from the iMac Computer and that another 2,087 documents still needed to be erased.⁴³ Based on research he subsequently conducted, the Special Master concluded that many of the aforementioned 2,087 documents reflected trade secret patient lists and protected patient information belonging to Plaintiffs.⁴⁴

27. On March 3, 2020, the Court notified the parties and counsel that it had set the OSC Hearing for March 6, 2020.⁴⁵

28. On March 3, 2020, Mr. Gutierrez advised the Special Master that Dr. Slavens left a voicemail message for Mr. Gutierrez that same day concerning the iMac Computer.⁴⁶ According to Mr. Gutierrez, Dr. Slavens' voicemail indicated that Dr. Slavens "spoke with the person who bought his iMac and the person is willing to sell it back to Dr. Slavens for \$800. He relayed that if Chad, Travis, and Greg Hardman want to pay the \$800 to buy it back, we could get it back and do what we need to with it."⁴⁷ In response, the Special Master spoke by phone with Mr. Gutierrez and asked that he provide the Special Master with an audio recording of the voicemail, together with a written transcription of the voicemail.

29. After receiving both an audio recording and a written transcription of Dr. Slavens' March 3, 2020 voicemail to Mr. Gutierrez, the Special Master circulated this information on

⁴² Docket no. 206 and docket no. 207, lodged March 5, 2020.

⁴³ *Id.*

⁴⁴ Docket no. 224, filed April 28, 2020 (hereinafter "OSC Hearing Transcript"), at 6:7-21.

⁴⁵ Docket no. 199, filed March 3, 2020.

⁴⁶ Docket no. 205, lodged March 5, 2020.

⁴⁷ Docket no. 233, lodged May 15, 2020.

March 4, 2020 to the parties, counsel, and the Court.⁴⁸ The written transcription of Dr. Slavens' voicemail is as follows:

“Hey Mike, this is Dr. Slavens. Hey, [um], *I talked to the person that I sold my computer to, [uh], he said I could buy it back from him* if you guys want that computer back. [Uh], *he wants to sell it back to me for eight hundred*, if you guys are willing, if, *if you want to tell him if Chad and Travis and Greg Hardman want to pay me eight hundred to buy it back I'll buy it back from him*. And you can have that Mac and do whatever you want with it and return it to me. [Um] give me a call if that's an option. Bye.”⁴⁹

30. On March 4, 2020, Dr. Slavens delivered the iMac Computer to Mr. Gutierrez.⁵⁰

That same day, the Special Master instructed Mr. Gutierrez to perform a forensic analysis on the iMac Computer to determine whether any documents the Court ordered deleted from the device had been opened, modified, destroyed, wiped, or otherwise accessed.

31. On March 5, 2020, the Court issued the Referral Order.⁵¹

F. The March 6, 2020 OSC Hearing

32. On March 6, 2020, the OSC Hearing transpired. During the hearing, Dr. Slavens offered testimony regarding the events surrounding his failure to initially provide the iMac Computer to Mr. Gutierrez on March 2, 2020 and then his subsequent delivery of the device to Mr. Gutierrez on March 4, 2020.⁵² Among other things, Dr. Slavens testified as part of his initial statement to the Court that:

⁴⁸ Docket no. 234, lodged May 15, 2020.

⁴⁹ *Id.* (emphasis added).

⁵⁰ Gutierrez Report, *supra* note 19, at 5.

⁵¹ Docket no. 202, filed March 5, 2020.

⁵² See generally OSC Hearing Transcript, *supra* note 44.

- Dr. Slavens would not finalize the settlement agreement with Plaintiffs until all of his computers and accounts were first returned to his possession, custody, or control.⁵³
- Dr. Slavens thought all of the documents on the iMac Computer belonging to Plaintiffs had already been removed from the device.⁵⁴
- Dr. Slavens told Mr. Gutierrez that he had sold the iMac Computer and that “if Greg Hardman wants my computer again, he's going to have to pay the 800 so I can go buy my computer back.”⁵⁵
- Dr. Slavens sold the iMac Computer to his sister, Beverly Redd, and that his sister subsequently returned the device to Dr. Slavens so he could deliver it to Mr. Gutierrez.⁵⁶

33. On the first segment of cross-examination from Mr. Hardman and in response to certain questions from Mr. Hardman and the Special Master, Dr. Slavens testified as follows:

- Dr. Slavens sold the iMac Computer to Ms. Redd on or about February 15 or 16, 2020.⁵⁷
- According to the terms of sale, Ms. Redd agreed to pay Dr. Slavens \$800 for the iMac Computer.⁵⁸

⁵³ *Id.* at 11:16-22.

⁵⁴ *Id.* at 12:15-16.

⁵⁵ *Id.* at 13:5-7.

⁵⁶ *Id.* at 13:8-15:18.

⁵⁷ *Id.* at 17:21, 18:15-16.

⁵⁸ *Id.* at 26:10-13.

- Dr. Slavens did not have a bill of sale, contract, or written communications memorializing the sale of the iMac Computer to Ms. Redd.⁵⁹
- Dr. Slavens does not recall the precise date he delivered the iMac Computer to Ms. Redd.⁶⁰
- Ms. Redd did not pay Dr. Slavens for the iMac Computer.⁶¹
- Dr. Slavens did not make any modifications to the documents on the iMac Computer before delivering the device to Ms. Redd.⁶²
- Only Dr. Slavens and Ms. Redd had access to the iMac Computer between the time Mr. Gutierrez returned the device to Dr. Slavens on October 10, 2020 and on March 4, 2020 when he again delivered the device to Mr. Gutierrez.⁶³
- The iMac Computer was either at his residence in Springville, Utah or at Ms. Redd's residence in Cedar Hills, Utah between the time Mr. Gutierrez returned the device to Dr. Slavens on October 10, 2020 and on March 4, 2020 when he again delivered the device to Mr. Gutierrez.⁶⁴
- Dr. Slavens did not understand why the Court had ordered him to again deliver the iMac Computer to Mr. Gutierrez.⁶⁵

⁵⁹ *Id.* at 17:22-18:8.

⁶⁰ *Id.* at 19:11-20:5.

⁶¹ *Id.* at 26:10-13.

⁶² *Id.* at 27:11-23.

⁶³ *Id.* at 28:24-29:3.

⁶⁴ *Id.* at 29:14-23.

⁶⁵ *Id.* at 32:6-21.

- Dr. Slavens had not read any of the reports the Special Master filed in the above-captioned litigation.⁶⁶

34. During the second segment of cross-examination from Mr. Hardman and in response to certain questions from Mr. Hardman and the Special Master, Dr. Slavens subsequently testified as follows:

- Dr. Slavens' residence is no longer in Springville, Utah; he now resides at the home of Ms. Redd in Cedar Hills, Utah.⁶⁷
- Dr. Slavens did not have access to the iMac Computer while living with Ms. Redd and he did not use the device during the week of March 2, 2020.⁶⁸
- Only Dr. Slavens and his wife lived with Ms. Redd in the Cedar Hills, Utah home.⁶⁹

35. After the examination of Dr. Slavens was completed, Mr. Gutierrez provided testimony regarding his analysis of Dr. Slavens' iMac Computer. In response to questioning from Mr. Hardman, Matthew Steward (counsel for the Wrights), and the Special Master, Mr. Gutierrez testified as follows:

- After a preliminary search and analysis, the documents the Court ordered for erasure found on the iMac Computer did not appear to have been opened, modified, destroyed, wiped, or otherwise accessed.⁷⁰

⁶⁶ *Id.* at 38:4-11.

⁶⁷ *Id.* at 46:13-47:8.

⁶⁸ *Id.* at 47:9-14.

⁶⁹ *Id.* at 48:3-11.

⁷⁰ *Id.* at 52:1-53:18, 72:14-25.

- Activity on the iMac Computer revealed that Dr. Slavens' Yahoo! email account, theslavens@yahoo.com, was accessed throughout the month of February 2020 and again on March 2-4, 2020.⁷¹
- Activity on the iMac Computer including "web history," "web downloads," and email activity revealed that Brock Slavens (who is one of Dr. Slavens' children) accessed the device to "periodically" perform "school work" during this same time period.⁷²

36. At the conclusion of Mr. Gutierrez's testimony, the Special Master indicated that the Court would consider a motion for contempt and for cost allocation against Dr. Slavens arising from his conduct that led to the OSC Hearing.⁷³ The Special Master also indicated that his initial inclination on the issues was twofold: that a finding of contempt against Dr. Slavens would not be appropriate, but that a cost allocation award against Dr. Slavens would be proper.⁷⁴ Messrs. Steward and Hardman, along with Dr. Slavens, then offered their respective arguments regarding how the Court should address these issues.⁷⁵

G. Post OSC Hearing Issues

37. At the conclusion of the OSC Hearing, the Special Master made arrangements with Mr. Gutierrez and Dr. Slavens to ensure Dr. Slavens could obtain possession, custody, or control of the remainder of his seized devices and accounts. Except for the iMac Computer, Mr.

⁷¹ *Id.* at 52:17-23, 55:1-11.

⁷² *Id.* at 55:13-18, 58:13-59:1.

⁷³ *Id.* at 75:21-76:2.

⁷⁴ *Id.* at 76:12-19.

⁷⁵ *Id.* at 77:1-80:22.

Gutierrez agreed to deliver all such seized property to Dr. Slavens after the hearing at XDD's facility, which is situated adjacent to the courthouse.⁷⁶

38. On March 16, 2020, Mr. Gutierrez sent by email to counsel, Dr. Slavens, the Special Master, and the Court a report reflecting his final analysis of the iMac Computer.⁷⁷ In his report, Mr. Gutierrez concluded that "all files remaining to be deleted were found in their expected locations on the computer, and no evidence was found to indicate that the files had been accessed or transmitted in any form."⁷⁸

39. On March 23, 2020, Mr. Hardman contacted Mr. Gutierrez by email to determine whether Mr. Gutierrez had returned to Dr. Slavens all of his seized devices and accounts.⁷⁹ Mr. Gutierrez subsequently advised the Special Master that Dr. Slavens had not followed through to pick up his devices upon the conclusion of the OSC Hearing. Nor had Dr. Slavens otherwise made any attempt to otherwise arrange for the delivery of his seized devices and accounts. In response to these issues, the Court issued an order on March 24, 2020 directing Mr. Gutierrez to deliver the remaining seized devices and accounts to Dr. Slavens on or before March 27, 2020. Mr. Gutierrez did so on March 27, 2020.⁸⁰

⁷⁶ *Id.* at 85:12-17, 89:18-21.

⁷⁷ [Docket no. 209](#) (Digital Forensic Examination Report ("iMac Report") attached as [docket no. 209-1](#)), lodged March 18, 2020.

⁷⁸ *Id.*

⁷⁹ [Docket no. 230-1](#), lodged May 15, 2020. (Due to apparent clerical error, this document was lodged as an attachment to [docket no. 230](#).)

⁸⁰ Order Re Return of Seized Property to Defendant Gary D. Slavens, [docket no. 210](#), filed March 24, 2020.

IV. CONCLUSIONS OF LAW

A. The Exercise of Inherent Powers

40. Federal courts have “inherent powers” to manage the cases with which they have been entrusted in order to appropriately dispense justice.⁸¹ As the U.S. Supreme Court has observed regarding the origin of a court’s inherent authority, “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.”⁸² Such authority is not derived from statutes or rules.⁸³ Instead, these inherent powers are “vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.”⁸⁴

41. A court’s inherent powers are wide-ranging and extensive.⁸⁵ They include, among other things, the authority “to coerce compliance with its orders, sanction behavior constituting fraud on the court, and vindicate its authority in the face of contumacious behavior.”⁸⁶ An order of contempt is generally considered civil if its ultimate focus is to ensure a contemnor satisfies “the court’s demands.”⁸⁷

⁸¹ *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. ---, 137 S.Ct. 1178, 1186 (2017) (“Federal courts possess certain ‘inherent powers,’ not conferred by rule or statute, ‘to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.’”) (citation omitted).

⁸² *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991).

⁸³ *Id.*

⁸⁴ *Id.* (citation omitted).

⁸⁵ See *EarthGrains Baking Cos., Inc. v. Sycamore Family Bakery, Inc.*, No. 2:09-cv-0523-DAK, 2018 WL 5776545 at *2 (D. Utah Nov. 2, 2018) (discussing the remedies a court may use to address contempt under its inherent authority).

⁸⁶ *ClearOne Communications, Inc. v. Chiang*, 670 F.Supp.2d 1248, 1281 (D. Utah 2009) (holding certain pro se defendants in contempt of court for violating the court’s permanent injunction and temporary restraining order in a trade secret lawsuit). See also Hon. James C. Francis IV (ret.) & Eric P. Mandel, *Limits on Limiting Inherent Authority: Rule 37(e) and the Power to Sanction*, 17 SEDONA CONF. J. 613, 647-48 (2016) (listing the range of misconduct courts may address through their inherent powers).

⁸⁷ *ClearOne Communications*, 670 F.Supp.2d at 1281 (explaining that a contempt order is generally “criminal if its purpose is to punish the contemnor, vindicate the court’s authority, or deter future misconduct.”) (citations omitted).

B. Use of Inherent Powers to Address Contempt and Other Bad Faith Conduct

42. To hold a party in civil contempt, a court must find that the moving party has satisfied the following three requirements: (1) the existence of a valid court order that “enjoined conduct in reasonable detail;” (2) the party to be enjoined “had actual knowledge of the order through personal service or otherwise and was subject to it;” and (3) that party disobeyed the order.⁸⁸

43. A finding of contempt should not be made lightly nor found casually. Indeed, courts have characterized the requirements the movant must satisfy as “a heavy burden.”⁸⁹ Courts have reinforced this notion by mandating that the above referenced requirements be established by clear and convincing evidence.⁹⁰ That burden, however, does not include a showing of willfulness or specific intent to defy or flout the court’s authority.⁹¹ Instead, the court “is justified in adjudging a person to be in civil contempt for failure to be reasonably diligent and energetic in attempting to accomplish what was ordered.”⁹²

44. To recover compensatory damages—*e.g.*, attorney fees and costs—from the contemnor in connection with a motion for civil contempt, the movant need only demonstrate those damages “by the lesser standard of a preponderance of the evidence.”⁹³

⁸⁸ *EarthGrains Baking*, 2018 WL 5776545 at *2. *See also Perez v. Paragon Contractors Corp.*, 340 F.Supp.3d 1194, 1215 (2018).

⁸⁹ *Mint Solar, LLC v. Savage*, 2:18-CV-0569-TS, 2018 WL 4208078 at *1 (D. Utah Sept. 4, 2018).

⁹⁰ *See Perez*, 340 F.Supp.3d at 1215 (holding that movant established the three required elements by clear and convincing evidence).

⁹¹ *See John Zink Co. v. Zink*, 241 F.3d 1256, 1261-62 (10th Cir. 2001); *accord EarthGrains Baking*, 2018 WL 5776545 at *2.

⁹² *ClearOne Communications*, 670 F.Supp.2d at 1282 (citations omitted).

⁹³ *Id.*

45. If a court does not hold a party in contempt, that does not prevent the court from addressing the issues that gave rise to the contempt motion. Under its inherent powers, this Court may still sanction a party's bad faith conduct that delayed or otherwise disrupted the litigation.⁹⁴ Those sanctions include shifting attorney fees from the movant to the party whose obstinacy disrupted the litigation.⁹⁵

C. No Finding of Contempt Because there is No Credible Evidence Demonstrating Dr. Slavens Disobeyed the Seizure Order

46. Applying the aforementioned standards to the facts surrounding Dr. Slavens' purported sale of his iMac Computer that was and remains subject to the Seizure Order and which the Court had ordered to be preserved pursuant to that Order, the Special Master RECOMMENDS that an order of contempt not issue against Dr. Slavens because there is no credible evidence—much less clear and convincing evidence—demonstrating Dr. Slavens disobeyed the Seizure Order.

1. The Seizure Order is a Valid Court Order

47. Regarding the requirement of the existence of a valid order that enjoined conduct in reasonable detail, there can be no reasonable dispute that the Seizure Order satisfies this condition.

48. The Seizure Order provides a clear and unequivocal evidence preservation mandate that applies to all Defendants, including Dr. Slavens. The evidence preservation order is both sweeping in its scope and clear in its declaration about the general nature of evidence that Dr. Slavens must preserve. That evidence includes “all . . . files . . . relating to the allegations in Plaintiffs' Complaint” and clarifies that such “files” include email, paper documents, and

⁹⁴ *Chambers*, 501 U.S. at 46.

⁹⁵ *Id.*; *Goodyear Tire & Rubber Co.*, 137 S.Ct. at 1186.

electronic documents in Defendants’ “possession, custody, or control.”⁹⁶ The evidence preservation order concludes by enjoining Dr. Slavens from copying, modifying, deleting, or disseminating “any such files or records” for the balance of the litigation.⁹⁷

49. While Dr. Slavens does not appear to dispute the validity of the Seizure Order, Mr. Steward, who is counsel for the Wrights, argued at the OSC Hearing that he “genuinely and sincerely” believed Plaintiffs made “representations . . . to this court . . . [that] were false with respect to the steps they took to protect [their] alleged trade secret information.”⁹⁸ By accusing the Plaintiffs of making such false representations, the Wright Defendants have tacitly called into question the validity of the Seizure Order.

50. Such an argument—at this stage of the litigation and for purposes of this motion—is of no moment. Besides filing a counterclaim against Plaintiffs for wrongful seizure, the Wrights have made no formal effort to challenge the viability of the Seizure Order. As a result, the Seizure Order remains the law of this case and a viable order whose provisions—including the evidence preservation order—must be obeyed.

51. Nor is there any evidence to suggest that the representations from Plaintiffs or their counsel in connection with their efforts to obtain the Seizure Order were false, *i.e.*, they were made with fraudulent intent. While certain evidence could be construed to dispute Plaintiffs’ litigation position that they took reasonable efforts to maintain the confidentiality of their trade secrets, no formal findings have been made to that effect.⁹⁹ Should the Wrights wish to challenge Plaintiffs’ position on this issue, they will have an opportunity to do so during

⁹⁶ Seizure Order, *supra* note 5, at 37.

⁹⁷ *Id.*

⁹⁸ OSC Hearing Transcript, *supra* note 44, at 80:12-19.

⁹⁹ See Special Master Report No. 3, [docket no. 126](#), filed September 27, 2019, at 2, 16-17; Special Master Report No. 7, [docket no. 145](#), filed October 9, 2019, at 5-6.

dispositive motion practice or at trial. At this point, there is simply nothing to suggest that Plaintiffs or their counsel obtained the Seizure Order under false pretenses.

52. Plaintiffs have thus established by clear and convincing evidence the existence of a valid order that enjoined conduct in reasonable detail.

2. Dr. Slavens Had Actual Knowledge of the Seizure Order

53. The next requirement that Plaintiffs must satisfy is demonstrating that Dr. Slavens had actual knowledge of the Seizure Order. To show that Dr. Slavens had “actual knowledge” for purposes of this requirement, Plaintiffs need only demonstrate that the order in question was served on Dr. Slavens.¹⁰⁰ This is the case regardless of whether the party responsible for the offensive conduct was proceeding pro se or was represented by counsel. This is confirmed by *ClearOne Communications, Inc. v. Chiang*, in which the Honorable Tena Campell found several parties including two pro se defendants in contempt of court for violating a permanent injunction and temporary restraining order in a trade secret lawsuit.¹⁰¹ Judge Campbell held the pro se defendants “had proper notice” of the orders by virtue of them receiving service of the injunction and the TRO from the clerk of the court.¹⁰²

54. Just like the pro se defendants from *ClearOne Communications*, Dr. Slavens “had proper notice” of the Seizure Order by virtue of federal law enforcement officials personally serving him with that Order on August 27, 2019.¹⁰³ *ClearOne Communications* accordingly teaches that Dr. Slavens had actual knowledge of the Seizure Order.

¹⁰⁰ See *ClearOne Communications*, 670 F.Supp.2d at 1283.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Process Receipt and Return, *supra* note 21.

55. Accordingly, Plaintiffs have shown by clear and convincing evidence that Dr. Slavens had actual knowledge of the Seizure Order.

3. The Credible Evidence Does Not Establish that Dr. Slavens Disobeyed the Seizure Order

56. Unlike the previous two elements, Plaintiffs have not established by clear and convincing evidence that Dr. Slavens disobeyed the Seizure Order. Instead, the credible evidence presented to the Special Master in connection with the OSC Hearing establishes just the opposite: that Dr. Slavens did not disobey the Seizure Order, despite his conflicting statements and testimony that he sold the iMac Computer.

57. If Dr. Slavens' statements and testimony were credible, they would tend to demonstrate that he disobeyed the evidence preservation mandate from the Seizure Order by selling his computer to a third party. However, neither the statements that Dr. Slavens made to Mr. Gutierrez prior to the OSC Hearing, nor his testimony during the OSC Hearing are credible.

58. For example, Dr. Slavens represented in the voicemail message he left with Mr. Gutierrez that Dr. Slavens sold the iMac Computer to a "person."¹⁰⁴ While not disclosing the identity of this "person," Dr. Slavens repeatedly used male pronouns ("he") and male direct objects ("him") in the voicemail to characterize the individual to whom he purportedly sold the iMac Computer.¹⁰⁵

59. In contrast to his voicemail, Dr. Slavens testified during the OSC Hearing that he actually sold the iMac Computer to his sister, Ms. Redd.¹⁰⁶ Dr. Slavens also testified—at first—that his residence remained in Springville, Utah, that he consummated the sale of the iMac

¹⁰⁴ Docket no. 234, lodged May 15, 2020.

¹⁰⁵ *Id.*

¹⁰⁶ OSC Hearing Transcript, *supra* note 44, at 13:8-15:18.

Computer on February 15 or 16, 2020, and that Ms. Redd lived in Cedar Hills, Utah.¹⁰⁷ Upon further cross-examination, Dr. Slavens admitted that he no longer lived in Springville and that he now lived in the same residence with Ms. Redd in Cedar Hills.¹⁰⁸ Dr. Slavens also acknowledged that he never received compensation from Ms. Redd in consideration for supposedly selling her the iMac Computer.¹⁰⁹ Nor did Dr. Slavens execute a bill of sale or otherwise have any written documentation memorializing or otherwise reflecting this so-called transaction.¹¹⁰

60. In an attempt to bolster his position that he sold the iMac Computer to Ms. Redd, Dr. Slavens introduced at the OSC Hearing a written statement that Ms. Redd allegedly prepared.¹¹¹ However, the Special Master has concerns about the credibility of this so-called statement from Ms. Redd. As an initial matter, Ms. Redd was not present to be cross-examined on her statement and there was no showing that she was unavailable to offer testimony.¹¹² In addition, Dr. Slavens introduced Ms. Redd's statement to prove the truth of the matter asserted therein: that Dr. Slavens entered into an agreement to sell the iMac Computer to Ms. Redd. The Redd statement is therefore hearsay and without an applicable exception under the Federal Rules of Evidence.¹¹³ Finally, as set forth below, Ms. Redd's statement appears to be inconsistent both with Mr. Gutierrez's testimony and his forensic analysis of the iMac Computer.¹¹⁴ Accordingly,

¹⁰⁷ *Id.* at 17:21, 18:15-16, 29:14-23.

¹⁰⁸ *Id.* at 46:13-47:8.

¹⁰⁹ *Id.* at 26:10-13.

¹¹⁰ *Id.* at 17:22-18:8.

¹¹¹ *Id.* at 14:17-15:7, 17:10-12.

¹¹² *See* FED. R. EVID. 804(a).

¹¹³ *See generally* FED. R. EVID. 801, 803.

¹¹⁴ OSC Hearing Transcript, *supra* note 44, at 59:2-5.

the Special Master will not consider Ms. Redd's statement and RECOMMENDS that the Court not accept the statement in connection with its determination of this matter.

61. In any event, Dr. Slavens does not appear to have ever sold or otherwise relinquished the computer to a male "person," to his sister, or to anyone else. According to the testimony of Mr. Gutierrez, Dr. Slavens' email account was accessed—even after he purportedly sold it to his sister on February 15 or 16—throughout the balance of the month of February 2020 and into March 2020 until he finally turned the computer over to Mr. Gutierrez.¹¹⁵ Dr. Slavens has not provided any explanation for this apparent contradiction with his unequivocal denial that he used the computer in March 2020.¹¹⁶

62. That Dr. Slavens did not sell the iMac Computer to anyone, but that he continued to maintain possession of the device, is also indicated by regular computer activity from one of Dr. Slavens' children during the February 2020 and March 2020 timeframe. Mr. Gutierrez testified that web history, web downloads, and the use of the brockslavens24@gmail.com address suggested that Dr. Slavens' son, Brock Slavens, used the iMac Computer on a regular basis during this time.¹¹⁷ It is also noteworthy that Mr. Gutierrez found no evidence indicating that Ms. Redd used the iMac Computer after Dr. Slavens' alleged sale of the device to her.¹¹⁸

63. Last, but certainly not least, Mr. Gutierrez confirmed that none of the 2,087 files on the iMac Computer that the Court had ordered erased from the device were opened, copied, edited, wiped, or otherwise accessed.¹¹⁹

¹¹⁵ *Id.* at 52:17-23, 55:1-11.

¹¹⁶ *Id.*, at 47:9-14.

¹¹⁷ *Id.* at 55:13-18, 58:13-59:1.

¹¹⁸ *Id.* at 59:2-5.

¹¹⁹ *See* iMac Report, *supra* note 77.

64. Mr. Gutierrez's testimony is based on the forensic analysis that he conducted at the direction of the Special Master on the iMac Computer. Mr. Gutierrez's competence in computer forensics and credibility as the Court's appointed technical expert in this lawsuit, as well as in other litigation that has transpired before this Court, are well established.¹²⁰ None of the parties in this lawsuit have questioned Mr. Gutierrez's qualifications, competence, credibility, or his neutrality. Nor are there any circumstances of which the Special Master is aware that would call Mr. Gutierrez's qualifications or impartiality into question.

65. In the face of the uncontroverted evidence that Mr. Gutierrez has offered both in the form of his testimony and his forensic report on the iMac Computer, the Special Master rejects Dr. Slavens' contradictory statements and testimony that tend to suggest he violated the preservation order. In contrast, the Special Master accepts Mr. Gutierrez's testimony and the factual findings memorialized in his forensic report on the iMac Computer, all of which suggest the following: that Dr. Slavens did not sell the iMac Computer, that Dr. Slavens maintained possession of the device at all times, and that Dr. Slavens therefore did not violate the evidence preservation order from the Seizure Order.

66. Accordingly, the Plaintiffs have not shown by clear and convincing evidence that Dr. Slavens disobeyed the Seizure Order and the Special Master hereby RECOMMENDS that Plaintiffs' motion for contempt be denied.

D. The Court Should Award Plaintiffs Their Reasonable Attorney Fees and Costs

67. While an order of contempt is not warranted against Dr. Slavens, that does not prevent the Court from addressing Dr. Slavens' conduct that gave rise to Plaintiffs' contempt

¹²⁰ See, e.g., *Solar Connect, LLC v. Endicott*, No.: 2:17-cv-1235, 2018 WL 2386066 (D. Utah Apr. 6, 2018); *Axis Steel Detailing, Inc. v. Prilex Detailing LLC*, No. 2:17-cv-00428-JNP, 2017 WL 8947964 (D. Utah June 28, 2017).

motion. The U.S. Supreme Court has repeatedly held that a court may invoke its inherent powers to award attorney fees in favor of an aggrieved party where the bad faith conduct of the offending party has disrupted the litigation.¹²¹ In its latest decision on this issue— *Goodyear Tire & Rubber Co. v. Haeger*, the Supreme Court confirmed this principle and framed the inquiry as a “but for” test: “[t]he complaining party [Plaintiffs] may recover ‘only the portion of [their] fees that [they] would not have paid but for’ [Dr. Slavens’] misconduct.”¹²²

68. The Special Master has set forth in detail in this REPORT the events that led to the OSC Hearing, all of which the Special Master concludes are the result of Dr. Slavens’ actions.

69. Dr. Slavens has argued in his opposition that he has no responsibility for the OSC Hearing or the surrounding events, asserting they are “not his fault.”¹²³ The Special Master finds such an argument to be without merit. To recap, Dr. Slavens first represented by phone to Mr. Gutierrez that he had sold the iMac Computer and then left Mr. Gutierrez a detailed voicemail indicating he had sold the device to a male “person.” Neither of these statements were truthful as Dr. Slavens himself confirmed during the OSC Hearing when he testified that he sold the computer to his sister, Ms. Redd. And yet, even that statement seems dubious at best given that: (1) Ms. Redd never paid Dr. Slavens for the iMac Computer; (2) there is no paperwork (not even an email) suggesting a transaction transpired between Ms. Redd and Dr. Slavens; (3) that Dr. Slavens appears to have regularly used the iMac Computer after he purportedly sold the device

¹²¹ *Chambers*, 501 U.S. at 45-46.

¹²² *Goodyear Tire & Rubber Co.* 137 S.Ct. at 1187 (citations omitted); *id.* at 1186 (“Federal courts possess certain ‘inherent powers,’ not conferred by rule or statute, ‘to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.’”) (citation omitted).

¹²³ Opposition, *supra* note 3, at 3.

to Ms. Redd and despite specifically testifying that he did not use the device, particularly in March 2020; and (4) the lack of any apparent computer activity by Ms. Redd.¹²⁴

70. In an attempt to bolster his “no fault” defense, Dr. Slavens testified during the OSC Hearing that he did not know either the “why” or the “what” surrounding the Court’s January 31, 2020 order that he return the iMac Computer to Mr. Gutierrez.¹²⁵ Such an argument cannot withstand scrutiny for a variety of reasons. First, Dr. Slavens voluntarily chose not to attend the January 31, 2020 telephone hearing. During that hearing, there was discussion in open court regarding the need for Dr. Slavens to return the computer again to Mr. Gutierrez for additional remediation work and it was clearly apparent why this step was necessary.¹²⁶ In any event, Dr. Slavens was served by email with the Court’s January 31, 2020 minute entry and was subsequently informed by Mr. Hardman regarding the need for additional remediation work on the iMac Computer.¹²⁷ Indeed, Dr. Slavens requested that all remediation work, among other things, be completed prior to finalizing the parties’ settlement.¹²⁸ That Dr. Slavens should express in testimony both surprise and ignorance about the additional Court-ordered remediation work is neither credible testimony, nor a defensible position. Dr. Slavens’ request that all such remediation work be completed before the settlement with Plaintiffs could be finalized also undermines his position that the case had in fact settled and that he had no further obligations relating to the litigation.¹²⁹

¹²⁴ See Section IV.C.3, *supra*.

¹²⁵ OSC Hearing Transcript, *supra* note 44, at 32:17-18.

¹²⁶ Minutes, *supra* note 29.

¹²⁷ See Section III.E, *supra*.

¹²⁸ *Id.*

¹²⁹ Opposition, *supra* note 3.

71. The “but for” test from *Goodyear Tire & Rubber* applies with equal force to Plaintiffs’ request for attorney fees and costs.¹³⁰ But for Dr. Slavens’ actions leading up to the OSC Hearing, the OSC Hearing would not have taken place. Plaintiffs would not have incurred attorney fees and costs to address the confusion arising from Dr. Slavens’ refusal to provide Mr. Gutierrez with the iMac Computer. Those attorney fees and costs necessarily include, among other items, the time the Special Master and Mr. Gutierrez spent—and for which Plaintiffs are responsible at this time—responding to Dr. Slavens’ actions.

72. Accordingly, the Special Master RECOMMENDS that the Court issue an award of reasonable attorney fees and costs in favor of Plaintiffs and against Dr. Slavens to compensate Plaintiffs for the out-of-pocket expenses they have directly incurred in seeking to address Dr. Slavens’ actions which resulted in the OSC Hearing.

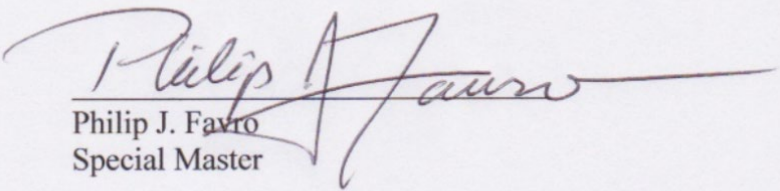
V. RECOMMENDATIONS

73. Pursuant to the Deferral Order and for the reasons set forth in this REPORT, the Special Master hereby RECOMMENDS the following to the Court regarding Plaintiffs’ motion for an order of contempt against Dr. Slavens and an award of attorney fees and costs:

- The Court DENY Plaintiffs’ motion for an order of contempt against Dr. Slavens; and
- The Court AWARD Plaintiffs their reasonable attorney fees and costs incurred as a direct result of Dr. Slavens’ actions that resulted in the OSC Hearing.

¹³⁰ *Goodyear Tire & Rubber Co.*, 137 S.Ct. at 1187.

SIGNED this 19th day of May, 2020.

BY THE SPECIAL MASTER:

Philip J. Favro
Special Master