

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff/Non-Party,

v.

RAPOWER-3, LLC, ET AL.,

Defendants/Non-Parties.

Appeal No. 19-4089

On Appeal from
The United States District Court for the District of Utah
(Civil No. 2:15-cv-00828 - Judge David O. Nuffer)

MOTION FOR EXTENSION OF TIME TO FILE RESPONSE BRIEF

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Pursuant to Rule 27.6 of the Tenth Circuit Rules, Appellee R. Wayne Klein, Court-Appointed Receiver (“Appellee”), by and through his undersigned counsel, hereby move this Court for a 21-day extension, up to and including Wednesday, November 13, 2019, in which to file their response brief.

The grounds for this motion are as follows:

1. Appellee’s response brief is currently due on October 23, 2019.
2. Counsel for Appellants, Black Night Enterprises, Inc., N.P. Johnson Family L.P., Solco I, LLC, Solstice Enterprises, Inc., Starlight Holdings, Inc., and XSun Energy, LLC, has been contacted through counsel and has advised it does not oppose the 21-day extension requested herein.

3. Counsel for the United States, Plaintiff in the underlying action, has been contacted through counsel and has advised it does not oppose the 21-day extension requested herein.

4. Due to the following circumstances, it will not be possible for Appellee to file their reply brief on time:

- a. Appellee has numerous litigation demands in the underlying case. Under the discovery rule, Appellee has a one year period to file the majority of the actions seeking to recover receivership property. Appellee was appointed receiver on October 31, 2018. Thus, under the discovery rule, the deadline for filing a majority of the actions is October 31, 2019.

Appellee has filed many claw back lawsuits in the last month and will file many more before October 31. The lawsuits filed in approximately the last month in the United States District Court for the District of Utah include: *R. Wayne Klein v Jay D. Frandsen, et al.*, 2:19-cv-00660-EJF; *R. Wayne Klein v Scott P. Black, et al.*, 2:19-cv-00678-CMR; *R. Wayne Klein v Connie Kulacz*, 2:19-cv-00679-EJF; *R. Wayne Klein v Kelvin Smith*, 2:19-cv-00680-PMW; *R. Wayne Klein v Pamela Orgill*, 2:19-cv-00681-EJF; *R. Wayne Klein v Lyle Swenson*, 2:19-cv-00682-DBP; *R. Wayne Klein v Steven Chaston*, 2:19-cv-00683-EJF; *R. Wayne Klein v Ryan Davies*, 2:19-cv-00684-DBP; *R. Wayne Klein v Paul Brennan*, 2:19-cv-00687-BJS; *R. Wayne Klein v Shane Luke, et al.*, 2:19-cv-00688-EJF; *R. Wayne Klein v Dennis Stilson*, 2:19-cv-00689-CMR; *R. Wayne Klein v Melvin Thomas Day*, 2:19-cv-00692-HCN-CMR; *R. Wayne Klein v Paul Jones*, 2:19-cv-00693-EJF; *R. Wayne Klein v Kirk Newman*, 2:19-cv-00694-PMW; *R. Wayne Klein v Trudy Shepard*, 2:19-cv-00695-EJF; *R. Wayne Klein v Lynette Williams*, 2:19-cv-00696-BSJ; *R. Wayne Klein v Joel Bean*, 2:19-cv-00702-RJS-DBP; *R. Wayne Klein v Amber L. Bennett, et al.*, 2:19-cv-00703-EJF; *R. Wayne Klein v John W. Howell, et al.*, 2:19-cv-00705-CMR; *R. Wayne Klein v Mike Manley*, 2:19-cv-00715-CMR; *R. Wayne Klein v Mark Manley*, 2:19-cv-00716-RJS; *R. Wayne Klein v Carl Palmore*, 2:19-cv-

00718-CMR; *R. Wayne Klein v Janet Roe*, 2:19-cv-00719-BJS; *R. Wayne Klein v Raleigh Stewart*, 2:19-cv-00726-DBP; *R. Wayne Klein v Joseph Scraggs*, 2:19-cv-00727-DB; *R. Wayne Klein v Stacey Curtis Snow*, 2:19-cv-00757-TS; *R. Wayne Klein v Reinhold J. Finkes*, 2:19-cv-00761-BSJ; *R. Wayne Klein v Robert Lee DeLong*, 2:19-cv-00762-PMW; *R. Wayne Klein v Jeffrey Turner*, 2:19-cv-00767-CW; *R. Wayne Klein v Gracie Kerr, et al.*, 2:19-cv-00768-DBP; *R. Wayne Klein v Anthony Zeigler*, 2:19-cv-00769-CMR; *R. Wayne Klein v. Searcy*, 2:19-cv-00776-CMR; *R. Wayne Klein v. Hyatt*, 2:19-cv-00777-DB; *R. Wayne Klein v. Hampton*, 2:19-cv-00778-DB; *R. Wayne Klein v. Armand*, 2:19-cv-00779-TC; *R. Wayne Klein v. Welborn*, 2:19-cv-00780-EJF; and *R. Wayne Klein v. Hamblin et al.*, 2:19-cv-00783-DBP.

b. Appellee's investigation into Receivership Defendants and their affiliated entities was delayed and hindered by Defendants and other interested parties contemptuous behavior.¹ Thus, Appellee has been forced to complete a significant amount of work in a short time period.

c. As a result of the above-referenced workload Appellee would suffer extreme hardship if it the requested extension was not granted.

¹ See *Order of Contempt*, Civil No. 2:15-cv-00828 (D. Utah), [ECF 701](#).

5. Appellants moved for extensions to file its brief, and the Court granted an extensions. Appellee has not asked for any previous extensions.

For these reasons, Appellee respectfully request that the Court grant Appellee a 21-day extension to file his response brief, up to and including November 13, 2019.

DATED this 21st day of October 2019.

PARR BROWN GEE & LOVELESS
/s/ Jonathan O. Hafen
Jonathan O. Hafen
Jeffery A. Balls
Michael S. Lehr
Attorneys for the Receiver/Appellee

CERTIFICATE OF SERVICE

I, Margarita Gonzales, hereby certify that on the 21st day of October, 2019, the foregoing was filed with the Court using its authorized electronic case filing portal and a copy of the foregoing was served to the following counsel of record via separate email:

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