

Jonathan O. Hafen (6096) (jhafen@parrbrown.com)
Jeffery A. Balls (12437) (jballs@parrbrown.com)
Michael S. Lehr (16496) (mlehr@parrbrown.com)
PARR BROWN GEE & LOVELESS, P.C.
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Telephone: (801) 532-7840

Attorneys for Court-Appointed Receiver R. Wayne Klein

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAPOWER-3, LLC; INTERNATIONAL
AUTOMATED SYSTEMS, INC.; LTB1,
LLC; R. GREGORY SHEPARD; NELDON
JOHNSON; and ROGER FREEBORN,

Defendants.

**OPPOSITION TO MOTION TO QUASH
SUBPOENA**

Civil No. 2:15-cv-00828-DN

District Judge David Nuffer

R. Wayne Klein, the Court-Appointed Receiver (the “Receiver”) hereby files this Opposition to Motion to Quash Subpoena.

INTRODUCTION

On August 6, 2020, the Court issued its *Memorandum Decision and Order Invalidating Liens and Directing the Receiver to Conduct Additional Investigation* (“Lien Order”).¹ In the Lien Order the Court held that:

¹ [Docket No. 984](#).

- “Roger Hamblin violated the [Corrected Receivership Order (“CRO”)], after being aware of the CRO, by purchasing Anstram Energy, which purported to own the liens against the 15 Millard County properties, the Payson Property, and the Texas Property and **refusing to release the liens after the Court ordered the liens to be released.**”²
- “Roger Hamblin violated the CRO, after being aware of the CRO, by filing a **collusive lawsuit** against Glenda Johnson in which he **falsely claimed** to have provided labor and materials in the amount of \$30 million and claimed that some of this labor and materials were provided after the entry of the Asset Freeze.”³
- “Hamblin’s \$10.00 purchase of Anstram Energy—and the resulting claim to \$42 million in property liens—was not an arm’s-length transaction.”⁴
- “The lawsuit filed by Hamblin against Glenda Johnson—and Glenda Johnson’s statement of agreement with the allegations and lack of defenses—**were coordinated actions taken to hinder the Receivership** and are not effective in creating or granting any rights for Hamblin in properties titled in the name of Glenda Johnson.”⁵
- “In light of the lawsuit that Hamblin filed against Glenda Johnson and his willingness to provide a declaration to support Glenda Johnson’s claim of impossibility, it is not credible that Glenda Johnson sincerely attempted to obtain a release of the liens.”⁶

Due to Mr. Hamblin’s numerous violations of the CRO including filing a collusive lawsuit and making false claims, the Court directed the Receiver to take Mr. Hamblin’s deposition as part of a “further investigation relating to the creation of Anstram Energy, circumstances relating to the granting of liens to Anstram, transfer of Anstram to Roger Hamblin . . . conduct of Olsen and Hamblin, and any other apparent efforts to interfere with the Receiver’s work in this case.”⁷

On August 14, 2020, in compliance with the Lien Order, counsel for the Receiver drafted

² *Id.* ¶ 59 (emphasis added).

³ *Id.* ¶ 60 (emphasis added, footnote omitted).

⁴ *Id.* ¶ 61.

⁵ *Id.* ¶ 62 (emphasis added).

⁶ *Id.* ¶ 63.

⁷ *Id.*, Order ¶ 3.

and signed a subpoena requiring Mr. Hamblin to appear for a deposition in St. George, just a few miles from his home.⁸ Mr. Hamblin was personally served the subpoena on August 21, 2020.⁹ On August 27, 2020, Mr. Hamblin filed the motion to quash the subpoena asserting that the Receiver should not be allowed to take his deposition as required by the subpoena.¹⁰

ARGUMENT

Fed. R. Civ. P. 45(3) provides “[o]n timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.”

“A motion to quash a subpoena is left to the sound discretion of the trial court.”¹¹ Mr. Hamblin asserts that he was not given a reasonable time to comply and the deposition subjects him to undue burden. As shown below, Mr. Hamblin’s motion is not well taken and should be denied.

I. The Subpoena Gives Mr. Hamblin a Reasonable Time to Comply.

Mr. Hamblin was served on August 21, 2020, eleven days before this scheduled deposition on September 1, 2020. Mr. Hamblin appears to believe that “a reasonable time” requires service

⁸ The subpoena was sent to the process server on August 14, 2020. *See* Subpoena, attached hereto as Exhibit A. The Receiver does not know why the process server did not serve Mr. Hamblin until a week after the subpoena was in its procession.

⁹ [Docket No. 999-1](#).

¹⁰ [Docket No. 999](#).

¹¹ [Gulley v. Orr, 905 F.2d 1383, 1386 \(10th Cir.1990\)](#).

at least fourteen days before a deposition is scheduled.¹² Mr. Hamblin is wrong. Rule 45 does not define “reasonable time to comply” and there is no fourteen day requirement under Rule 45.¹³

Court’s routinely find that eleven days is a reasonable time to comply with subpoenas. For example, in *The Universal Church, Inc. v. Standard Constr. Co. of San Francisco, Inc.* the court held that “the fact that Defendants had 11 days’ notice of the deposition is not grounds for quashing the subpoena” and that “[s]ervice of subpoenas at least 10 days before the deposition or production is customary, but not mandatory.”¹⁴ Similarly, in *E. Maine Baptist Church v. Regions Bank*, the court found that eleven days was a reasonable time to respond to an extensive document subpoena and that Rule 45 did not require fourteen days to respond.¹⁵

Here, eleven days is reasonable. First, Mr. Hamblin does not explain why he is prejudiced by the timing of the subpoena. The subpoena does not require that Mr. Hamblin produce any documents or travel any significant distance to his deposition. Instead, it requires that he appear at a location just a few miles away from his home. Next, since the entry of the Lien Order on August 6, 2020, Mr. Hamblin has had notice that the Receiver would be taking his deposition. Mr. Hamblin has submitted declarations in this case and is represented by Nelson Snuffer Dahle & Poulsen (“NSDP”)¹⁶ counsel of record in this action who received notice of the Lien Order on the day it was entered. Since NSDP is counsel for Mr. Hamblin in a matter related to this case, NSDP would

¹³ Mr. Hamblin asserts that Rule 34(a) provides that he “must be allowed 14 days to respond.” See [Docket No. 999-1](#). Rule 34, however, is not the relevant rule in this case and, in any event, does not mention an allowance for 14 days to respond at all.

¹⁴ [No. 14-CV-04568-RS \(KAW\), 2015 WL 6167968, at *3 \(N.D. Cal. Oct. 21, 2015\)](#) (citing [Bonzani v. Shinseki, No. 2:11-CV-00007-EFB, 2014 WL 2521849, at *4 \(E.D. Cal. June 4, 2014\)](#)).

¹⁵ [No. 4:05CV962 CAS, 2007 WL 1445257, at *1, n. 1 \(E.D. Mo. May 10, 2007\)](#).

¹⁶ Steven Paul contacted counsel for the Receiver regarding Mr. Hamblin’s deposition earlier this week and Mr. Paul represents Mr. Hamblin in the Receiver’s ancillary action against Mr. Hamblin. See *Klein v. Hamblin, et al.*, case number 2:19-cv-783.

have had a duty to notify Mr. Hamblin of the court-ordered deposition promptly after the August 6 order was entered. Mr. Hamblin cannot claim surprise that he is required to sit for a deposition in early September when he had nearly four weeks advance notice.

Although Mr. Hamblin appears to claim that he does not have counsel to represent him at the deposition, the documents attached to his motion do not provide foundation for this claim. In Exhibit B, Mr. Hamblin indicates that NSDP attorney Steven Paul has a conflict of interest and that he needs new representation.¹⁷ Neither the motion nor any exhibits explain why Mr. Paul is conflicted and cannot represent Mr. Hamblin at his deposition. Mr. Hamblin also appears to claim that his new attorney is not available on September 1st for the deposition. But nothing in the motion or exhibits establishes that this attorney is actually unavailable or could not have been contacted before August 26.¹⁸ Moreover, since Mr. Hamblin has only indicated an intent to engage Mr. Farris, nothing in Mr. Hamblin's motion indicates that Mr. Farris has no conflict and would agree to represent Mr. Hamblin. Finally, even assuming that both NSDP and Mr. Hamblin's new attorney (if he agrees to represent Mr. Hamblin) are not available on September 1st, Mr. Hamblin cannot escape compliance with a valid subpoena merely because it is not convenient for his existing counsel or new counsel that he says he might want to engage.

II. The Subpoena Does Not Subject Mr. Hamblin to an Undue Burden.

Mr. Hamblin also asserts that appearing for his deposition would cause the undue burden of attorneys' fees, and mentions the "Virus" or Covid-19.¹⁹ In determining whether a subpoena subjects a witness to undue burden, courts balance "the interests served by demanding compliance

¹⁷ [Docket No. 999-2.](#)

¹⁸ Mr. Hamblin submits an obituary and states his "proposed attorney [sic] father just passed." But a review of the obituary shows that there is no direct conflict with September 1, 2020. [Docket No. 999-3.](#)

¹⁹ [Docket No. 999-4.](#)

with the subpoena against the interests furthered by quashing it; this process of weighing a subpoena's benefits and burdens calls upon the trial court to consider whether the information is necessary and whether it is available from any other source.”²⁰

As shown above, the Court has ordered the Receiver to further investigate Mr. Hamblin's violations of the CRO and the circumstances relating to Glenda Johnson's granting of liens to Anstram and the transfer of Anstram to Mr. Hamblin, including expressly requiring the Receiver to take Mr. Hamblin's deposition. Therefore, Mr. Hamblin's testimony is necessary and cannot be acquired from another source. This weighs heavily in favor of demanding compliance with the subpoena.

Regarding Covid-19 and Mr. Hamblin's health, the Receiver is willing to make reasonable accommodations to ensure that Mr. Hamblin and others participating in the deposition are safe and protected. The room where the deposition is to take place is large can easily accommodate at least six feet of social distancing at all times and masks will be worn throughout the deposition.²¹ Regarding Mr. Hamblin's concerns about his attorney, as shown above, it is not clear if NSDP or his new attorney are actually unavailable. And, while the Receiver understands that attorneys can be a financial burden, Mr. Hamblin's burden of hiring an attorney for a day does not outweigh the necessity of his testimony, especially when the Court has directed the Receiver to take Mr. Hamblin's deposition. Further, while Mr. Hamblin certainly has the right to hire an attorney to represent him at his deposition, there is no requirement that he be represented by counsel and courts do not excuse attendance based on a deponent's professed inability to pay for an attorney.²²

²⁰ [*Aristocrat Leisure Ltd. v. Deutsche Bank Tr. Co. Americas*, 262 F.R.D. 293, 300 \(S.D.N.Y. 2009\)](#).

²¹ These conditions were outlined to Mr. Hamblin's attorney Steven Paul earlier this week.

²² The Receiver represents to the Court that one of the issues to be addressed in the deposition is Hamblin's post-CRO funding of violative conduct by Neldon Johnson relating to development of a prototype turbine.

Accordingly, any burden to Mr. Hamblin does not outweigh the necessity of his testimony.

CONCLUSION

For the foregoing reasons, the Court should deny Mr. Hamblin's motion to quash the subpoena.

DATED this 28th day of August, 2020.

PARR BROWN GEE & LOVELESS

/s/ Michael S. Lehr
Jonathan O. Hafen
Jeffery A. Balls
Michael S. Lehr
Attorneys for Receiver

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **OPPOSITION TO MOTION TO QUASH SUBPOENA** was electronically filed with the Clerk of the Court through the CM/ECF system on August 28, 2020 which sent notice of the electronic filing to all counsel of record.

The foregoing filing was also served to Mr. Hamblin via email at 4rogham@gmail.com.

/s/ Michael S. Lehr