

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 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.

**REPLY IN SUPPORT OF MOTION  
FOR ORDER DIRECTING  
TURNOVER AND TRANSFER OF  
REAL PROPERTIES TITLED IN THE  
NAME OF GLENDA JOHNSON AND  
FUNDS IN ACCOUNTS  
CONTROLLED BY GLENDA  
JOHNSON**

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

District Judge David Nuffer

---

R. Wayne Klein, the Court-Appointed Receiver<sup>1</sup> hereby submits this Reply in Support of his Motion for Order Directing Turnover and Transfer of Real Properties Titled in the Name of Glenda Johnson and Funds in Accounts Controlled by Glenda Johnson.

---

<sup>1</sup> Defined terms have the meaning given in the Motion.

## **INTRODUCTION**

Glenda Johnson does not dispute the material facts in the Motion. She does not cite to the record or show that the materials cited do not establish the presence or absence of a genuine dispute or claim that the facts in the Motion are disputed or immaterial as required under Rule 56(c) and this Court's local rules.<sup>2</sup> Therefore, the Court may deem the material facts in the Motion undisputed.<sup>3</sup>

Instead of disputing the facts in the Motion, Glenda Johnson asserts that the Receiver's claims should be pursued in plenary proceedings, objects to the material cited in the Motion as hearsay, and points to a handwritten "contract" executed by her husband—the primary promoter of the fraudulent scheme—entitling her to \$35,000,000.00 in fraudulent funds in an attempt to create a factual dispute. Each of these arguments fail. First, it is well within the Court's authority to order Glenda Johnson to turn over Receivership property in a summary proceeding. Second, the hearsay objections to the cited material in the Motion are improper and should be rejected. And third, the so-called contract between Solstice and Glenda Johnson only serves to bolster the Court's previous findings that Neldon Johnson used the Receivership Entities to enrich himself and his family at the expense of lens purchasers, creditors, and the United States Government. Accordingly, the Court should grant the Motion and order Glenda Johnson to turn over the property she acquired with ill-gotten funds.

## **RESPONSE TO STATEMENT OF ADDITIONAL MATERIAL FACTS**

1. On January 18, 2013, Solstice entered into a contract with Glenda Johnson to

---

<sup>2</sup> See Fed. R. Civ. P. 56(c)(1); DUCivR 56-1(c)(3).

<sup>3</sup> Fed. R. Civ. P. 56(e)(2).

purchase 200 solar towers at the price of \$175,000 each.

**Response:** Disputed and immaterial. The Receiver does not dispute that Glenda Johnson attached a handwritten document purporting to be a contract. The alleged contract, however, is illegal, unenforceable, and in furtherance of the massive tax fraud.<sup>4</sup> Further, Glenda Johnson makes no showing that she provided any consideration to Solstice for amounts in the alleged contract. Indeed, there is no plausible explanation for Glenda Johnson receiving \$175,000.00 per solar tower for 200 towers for a total of \$35,000,000.00 (not including the cost of construction) except that Neldon and Glenda Johnson used the fraudulent scheme for their personal enrichment.<sup>5</sup> There is also no showing of consideration provided by Solstice to RaPower for the right to a significant share of RaPower proceeds. RaPower is also not a party to the alleged contract and therefore this document could not have given Solstice a share of RaPower proceeds. The alleged contract is immaterial because many of the transfers at issue in the Motion took place before January 18, 2013 and many transfers to Glenda Johnson came from non-RaPower or Solstice bank accounts.

Moreover, the Court should refuse to consider the reputed contract because the document itself is further evidence of contemptuous conduct by Glenda Johnson. The reputed contract that is attached to her declaration is indisputably a company record of Solstice and is a document that was required to be turned over to the Receiver pursuant to the Corrected Receivership Order and Order Including Affiliates and Subsidiaries in the Receivership.<sup>6</sup> The disclosure of this

---

<sup>4</sup> See e.g., Findings of Fact and Conclusions of Law, [Docket No. 467](#), filed October 4, 2018.

<sup>5</sup> *Id.*

<sup>6</sup> [Docket No. 636](#), filed May 3, 2019.

document, attached to the October 11, 2019 declaration of Glenda Johnson, is the first time the existence of this document has been admitted and the first time a copy was produced to the Receiver.<sup>7</sup>

2. The contract provided that Solstice is entitled to 81.3% of gross proceeds from RaPower, LLC.

**Response:** See Response to Fact 1, above.

3. Pursuant to the contract, the parties agreed that RaPower could pay its obligation directly to Glenda Johnson, but Solstice would receive credit for those payments.

**Response:** See Response to Fact 1, above.

4. Payments were to be made when money was available.

**Response:** See Response to Fact 1, above.

5. Funds transferred or paid to her in the transactions involved in this motion for summary judgment were owed to her, earned by her, and her property. Accordingly, she was entitled to use them as she saw fit.

**Response:** See Response to Fact 1, above. Glenda Johnson has testified that she does not consider the property purchased with the funds transferred or paid to her involved in this Motion to be her property.<sup>8</sup>

---

<sup>7</sup> The terms of the purported contract were identified by Neldon Johnson in his May 2, 2019 deposition, but the document was not among the boxes of documents produced to the Receiver in May 2019 and the Receiver believes he has never been provided a copy of this document previously.

<sup>8</sup> See Glenda Johnson Depo. 133:19-25; 138:12, attached hereto as Exhibit A.

## ARGUMENT

### **I. The Use of Summary Proceedings is Appropriate.**

Glenda Johnson objects to the Receiver's use of summary proceedings to recover the property titled in her name purchased with ill-gotten, fraudulent funds. She makes three arguments against the use of summary proceedings. First, she asserts that the Corrected Receivership Order does not give the Receiver the authority to file the Motion because the property the Receiver seeks "legally belongs to Glenda Johnson." Second, she attempts to distinguish her situation from two equitable disgorgement cases cited by the Receiver. And third, she claims that the Motion represents improper claim splitting. Glenda Johnson is wrong on all fronts. As shown below, the Corrected Receivership Order and the common law standards governing receiverships support the Receiver's use of summary proceedings, and the Receiver has not improperly split his claims against Glenda Johnson.

#### **a. Corrected Receivership Order Gives the Receiver the Authority to Recover Receivership Property Through the Motion.**

The Corrected Receivership Order expressly allows the Receiver to file motions seeking turnover and possession of Receivership Property. The Corrected Receivership Order defines Receivership Property as:

monies, accounts, trusts, funds, digital currencies, securities, credits, stocks, bonds, effects, goods, chattels, intangible property (including patents and other intellectual property), real property, lands, premises, leases, claims, rights, ownership interests in domestic or foreign entities, and other assets, together with rents, profits, dividends, receivables, interest, or other income attributable thereto, of whatever kind, *that the Receivership Defendants own, possess, have a beneficial interest in, or control directly or indirectly.*<sup>9</sup>

---

<sup>9</sup> [Docket No. 491](#), ¶ 13(a), filed November 1, 2018 (emphasis added).

Additionally, the Corrected Receivership Order instructs the Receiver to: (1) determine the nature of all property interests Receivership Defendants and affiliates own, possess, have a beneficial in, or control directly or indirectly;<sup>10</sup> (2) take custody, control, and possession of all Receivership Property *including to take possession of Receivership Property from third parties*;<sup>11</sup> (3) take such action necessary to prevent the dissipation or concealment of Receivership Property;<sup>12</sup> (4) take immediate possession of all real property of Receivership Defendants and to file a motion to take possession of real property which Receivership Defendants have a beneficial interest *even if titled in the name of another, such as a spouse*.<sup>13</sup>

In filing the Motion, the Receiver is doing nothing more than what the Corrected Receivership Order instructs him to do: take possession of Receivership Property from third parties and to file a motion to take possession of real property Receivership Defendants have an interest in, even if titled in the name of another. It is clear from the undisputed facts in the Motion that the property the Receiver seeks turnover of is Receivership Property. Indeed, the RaPower QuickBooks accounting records have entries for nearly all of the purchases in the Motion including purchases listed as “Purchase Company Condo,” “Purchase for Company House in Payson,” and “Commission Expense” for “Condo in California.”<sup>14</sup>

Glenda Johnson *does not dispute* this evidence or any of the facts set forth in the Motion. Glenda Johnson does dispute, however, the characterization of the property sought in the Motion as Receivership Property. She insists that the property is “not Receivership Property titled in

---

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*, ¶ 13(b) (emphasis added).

<sup>12</sup> *Id.*, ¶ 13(g).

<sup>13</sup> *Id.*, ¶ 20 (emphasis added).

<sup>14</sup> See Motion, [Docket No. 757](#), Exhibits 1-3, 2-2, 4-2, 6-1, 8-4, 9-3, 10-2.

Glenda Johnson's name, but legally belongs to Glenda Johnson."<sup>15</sup> Glenda Johnson is wrong. Not only does the undisputed evidence show that the property is Receivership Property, Glenda Johnson's own sworn testimony shows this as well. She has stated "I don't consider that I am the owner of the home. I know my name is on the title . . . . Just because my name is on the title doesn't mean that I own it."<sup>16</sup>

**b. The Court has Broad Powers and Wide Discretion to Determine Relief in Receiverships.**

Glenda Johnson does not—and cannot—dispute the authority the Court has to order relief against non-parties in receiverships.<sup>17</sup> Her lack of citation to any authority supporting her position that plenary proceedings must be used is telling. She makes no attempt to refute or distinguish any of the numerous cases cited in the Motion showing that summary proceedings are appropriate.

However, Glenda Johnson does point to two cases cited by the Receiver to support her position that plenary proceedings, not summary proceeding should be used here.<sup>18</sup> However, those cases *SEC v. Cavanagh*<sup>19</sup> and *SEC v. George*,<sup>20</sup> were merely cited for the straightforward proposition that a court may enter equitable relief against a person who was found not to participate in wrongdoing when the funds are ill-gotten.<sup>21</sup> The cases have nothing at all to do with the appropriateness of summary proceedings in a receivership. Moreover, Glenda Johnson

---

<sup>15</sup> Opposition to Motion, [Docket No. 784](#), at 22.

<sup>16</sup> Glenda Johnson Depo., 133:19-25, attached hereto as [Exhibit A](#).

<sup>17</sup> See Motion, [Docket No. 757](#), at Section I(b).

<sup>18</sup> Opposition to Motion, [Docket No. 784](#), at 20-21.

<sup>19</sup> [155 F.3d 129](#).

<sup>20</sup> [426 F.3d 786](#).

<sup>21</sup> Motion, [Docket No. 757](#), at 30 fn. 133.

completely ignores a case cited by the Receiver *in the same footnote*.<sup>22</sup> In that case, *CFTC v. Hudgins*, the court found that a receiver was authorized to obtain an equitable lien on a non-party homeowner when the property was purchased with ill-gotten funds.<sup>23</sup>

Glenda Johnson also ignores the numerous cases cited by the Receiver—including decisions by this Court—finding that summary proceeding are appropriate against non-parties. For example, in *SEC v. Merrill Scott & Associates*, Judge Tena Campbell found that property titled in the name of non-parties purchased with ill-gotten funds from receivership defendants was receivership property that must be turned over and used for distribution.<sup>24</sup> Importantly, Judge Campbell made this finding against the non-party in a summary proceeding in the underlying receivership action, not a separate lawsuit.<sup>25</sup> Many other receivership courts have made similar findings through summary proceedings.<sup>26</sup> Accordingly, it is well established that summary proceedings are appropriate as part of the district court’s “broad powers and wide discretion to determine relief in equity receiverships.”<sup>27</sup>

**c. The Motion and Complaint are Not Impermissible Claim Splitting.**

Glenda Johnson also asserts that the Motion is improper because of the general rule against claim splitting. Claim splitting is an equitable doctrine subject to a number of

---

<sup>22</sup> *Id.*

<sup>23</sup> 620 F. Supp. 2d 790, 795 (E.D. Tex. 2009), *aff'd sub nom. Crawford v. Sillette*, 608 F.3d 275 (5th Cir. 2010).

<sup>24</sup> *SEC v. Merrill Scott & Assocs., Ltd.*, No. 2:02 CV 39, 2006 WL 3813300, at \*4 (D. Utah Dec. 26, 2006).

<sup>25</sup> *Id.*

<sup>26</sup> See e.g., *FTC v. Assail, Inc.*, 410 F.3d 256, 267 (5th Cir. 2005); *Hudgins*, 620 F. Supp. 2d 790 (E.D. Tex. 2009); *F.T.C. v. Johnson*, 567 F. App'x 512, 515 (9th Cir. 2014); *SEC v. Elliott*, 953 F.2d 1560, 1567 (11th Cir. 1992); *SEC v. Credit Bancorp, Ltd.*, 124 F. Supp. 2d 824, 828 (S.D.N.Y. 2000); ; *SEC v. Aquacell Batteries, Inc.*, No. 607CV-608-ORL-22DAB, 2008 WL 2915064 (M.D. Fla. July 24, 2008); *Glob. NAPS, Inc. v. Verizon New England, Inc.*, No. CV 02-12489-RWZ, 2015 WL 12781223, at \*2 (D. Mass. Mar. 10, 2015).

<sup>27</sup> *Broadbent v. Advantage Software, Inc.*, 415 F. App'x 73, 78 (10th Cir. 2011) (quoting *SEC v. Vescor Capital Corp.*, 599 F.3d 1189, 1194 (10th Cir.2010)).



exceptions.<sup>28</sup> Courts generally disfavor claim splitting because “[b]y spreading claims around in multiple lawsuits in other courts or before other judges, parties waste ‘scarce judicial resources’ and undermine ‘the efficient and comprehensive disposition of cases.’”<sup>29</sup> District courts are permitted to dismiss a suit, without prejudice, for claim splitting based “in significant measure on the ability of the district court to manage its own docket” and will be reversed only if a judgment is found to “exceed[] the bounds of the rationally available choices given the facts and the applicable law in the case at hand.”<sup>30</sup> “[T]he test for claim splitting is not whether there is finality of judgment, but whether the first suit, assuming it were final, would preclude the second suit.”<sup>31</sup> “For an action to be duplicative of another, so as to warrant its dismissal for that reason alone, the one must be materially on all fours with the other.”<sup>32</sup>

First, and to be clear, the Motion and the Receiver’s suit filed against Glenda Johnson do not seek recovery of the same property and, with the exception of one large transfer in June of 2018 after the close of trial,<sup>33</sup> does not seek recovery from the same transactions or transfers. As Glenda Johnson has pointed out, each individual transaction and transfer of funds is potentially “unique, separate and distinct” so a finding on one particular transaction does not necessarily

---

<sup>28</sup> [Am. Jur. 2d Actions § 99](#); [Restatement \(Second\) of Judgments § 26 \(1982\)](#); *see also Hartsel Springs Ranch of Colorado, Inc. v. Bluegreen Corp.*, 296 F.3d 982, 989 (10th Cir. 2002). The exceptions include when “the court in the first action has expressly reserved the plaintiff’s right to maintain the second action,” and when a judgment would be “plainly inconsistent with the fair and equitable implementation of a statutory or constitutional scheme, or it is the sense of the scheme that the plaintiff should be permitted to split his claim.” *See Restatement (Second) of Judgments § 26 (1982)*.

<sup>29</sup> [Katz v. Gerardi](#), 655 F.3d 1212, 1217 (10th Cir. 2011) (quoting [Hartsel Springs Ranch of Colo., Inc. v. Bluegreen Corp.](#), 296 F.3d 982, 985 (10th Cir.2002)).

<sup>30</sup> [Katz](#), 655 F.3d at 1217 (quoting [Big Sky Network Canada, Ltd. v. Sichuan Provincial Gov’t](#), 533 F.3d 1183, 1186 (10th Cir.2008))

<sup>31</sup> [Katz](#), 655 F.3d at 1218.

<sup>32</sup> [Rosiere v. United States](#), 650 F. App’x 593, 595 (10th Cir. 2016) (citations and quotation marks omitted).

<sup>33</sup> *See* Motion, [Docket No. 757](#), Material Facts ¶ 12-15.

imply the same finding on a separate transaction.<sup>34</sup> For example, in the Motion the Receiver seeks recovery of 14 pieces of real property purchased in ten transactions, using funds transferred from Receivership Entities. In the complaint on the other hand, the Receiver seeks recovery of four additional pieces of real property purchased with funds from transfers separate from any involved in the Motion.

Not only do the Motion and the complaint seek different property, they are also brought under different theories of recovery. The Motion seeks equitable disgorgement of profits, asset turnover, and the imposition of constructive trusts. The complaint, however, seeks recovery under fraudulent transfer causes of action, and unjust enrichment. Accordingly, granting the Motion would not preclude a judgment in the complaint.

Next, the Receiver brought the Motion for turnover separate from the complaint filed against Glenda Johnson *to* conserve judicial resources, promote efficiency, and prevent dissipation of Receivership property. As shown in the Motion, summary proceedings are encouraged in receiverships *because* they are efficient and in the best interest of the receivership.<sup>35</sup> When, as here, the facts clearly establish that property held in the name of non-receivership defendant is receivership property, it is proper and in the best interest of the receivership estate to seek turnover in a summary proceeding.<sup>36</sup>

The fact that the Receiver seeks recovery of 14 properties in the Turnover Motion and four in the separate lawsuit reflects the availability, reliability, and conclusiveness of the

---

<sup>34</sup> See Glenda Johnson's Opposition to Receiver's Second Motion to Transfer Related Cases, [Docket No. 771](#), filed September 23, 2019. To be clear, the Receiver believes—and intends to prove—that certain categories of transfers to certain categories of people were necessarily made with intent to hinder, delay, or defraud creditors. However, the Receiver acknowledges that certain transfers may not fit into these categories.

<sup>35</sup> Motion, [Docket No. 757](#), at Section I(b).

<sup>36</sup> *Id.*

documents the Receiver has been able to recover to date. The primary reason the Receiver was forced to bring a separate lawsuit against Glenda Johnson was due to her contemptuous behavior, including the failure to turn over documents and provide information to the Receiver, in violation of the Corrected Receivership Order.<sup>37</sup> Indeed, her lack of cooperation is on-going and has prevented the Receiver from seeking recovery of all the Receivership Property she received in one proceeding.<sup>38</sup>

Her opposition filing itself demonstrates this continuing contempt. The purported Solstice contract attached to her declaration<sup>39</sup> indisputably is a corporate record that should have been turned over to the Receiver but was not produced until the time the opposition was filed.<sup>40</sup> Without complete information regarding Glenda Johnson's involvement in the fraudulent scheme and the transfers made to her, the filing of a lawsuit was necessary to ensure that she did not have any viable statute of limitation defense and to provide the Receiver more time to discover the necessary information.

Finally, it is improper for Glenda Johnson to seek aid from the equitable doctrine of claim splitting under the unclean hands doctrine. It is axiomatic that "equity will not in any manner aid a party whose conduct in relation to the litigation matter has been unlawful, unconscionable, or inequitable."<sup>41</sup> Glenda Johnson has been an active participant in the fraudulent scheme for over a decade, has been personally enriched by millions of dollars from the scheme, has failed to follow

---

<sup>37</sup> Order of Contempt, [Docket No. 701](#), filed June 25, 2019.

<sup>38</sup> Motion for Sanctions Due to Continued Contempt, [Docket No. 754](#), filed August 21, 2019.

<sup>39</sup> Exhibit attached to Declaration of Glenda Johnson, [Docket No. 784-1](#), filed October 11, 2019.

<sup>40</sup> This strongly suggests that she and Neldon Johnson still retain documents never delivered to the Receiver.

<sup>41</sup> [Houston Oilers, Inc. v. Neely](#), 361 F.2d 36, 42 (10th Cir. 1966).

valid orders of this Court, and is currently in civil contempt of court for her actions in this Receivership.<sup>42</sup>

## II. Glenda Johnson's Hearsay Objections are Improper.

Glenda Johnson's blanket objections to each material fact presented by the Receiver are improper. Rule 56(c)(2) of the Federal Rules of Civil Procedure is clear that objections may be made "that the material cited to support or dispute a fact *cannot be presented in a form that would be admissible in evidence.*"<sup>43</sup> Glenda Johnson does not object that the material cited cannot be presented in a form that would be admissible. Instead, she objects that the material cited by the Receiver as currently attached to the Motion are not authenticated. This is improper.<sup>44</sup> Further, Federal Rule of Evidence 103(a)(1)(B) requires that unless "apparent from the context," the objection must "state[ ] the specific ground,"<sup>45</sup> or "in other words, explain why the proponent of the evidence will have no way of authenticating it at trial (*e.g.*, lack of a competent witness to testify about the document's creation)."<sup>46</sup> Glenda Johnson's objections uniformly fail this requirement.<sup>47</sup>

In a puzzling argument, Glenda Johnson claims that the materials the Receiver attached to the Motion are not in the record as required under Rule 56(c)(1)(A). The Advisory Committee

---

<sup>42</sup> Order of Contempt, [Docket No. 701](#), filed June 25, 2019.

<sup>43</sup> [Fed. R. Civ. P. 56\(c\)\(2\)](#) (emphasis added).

<sup>44</sup> The only appropriate basis on which to raise an evidentiary objection at the summary judgment phase is "that a fact *cannot* be presented in a form that *would be admissible* in evidence." [SEC v. Mahabub, No. 15-CV-2118-WJM-MLC, 2017 WL 6555039, at \\*2 \(D. Colo. Dec. 22, 2017\)](#) (emphasis in original); *see also* [Winskunas v. Birnbaum, 23 F.3d 1264, 1267-68 \(7th Cir.1994\)](#) (evidence need not be admissible in form—transcripts inadmissible at trial nevertheless may be considered for purposes of summary judgment—but must be so in content).

<sup>45</sup> [Fed. R. Evid. 103\(a\)\(1\)\(B\)](#).

<sup>46</sup> [Mahabub, 2017 WL 6555039, at \\*2](#).

<sup>47</sup> Moreover, the objections to authentication ring hollow when these are all documents to which Glenda Johnson was a party and many of them are documents she provided to the Receiver. She does not appear to dispute authenticity, only authentication.

Notes to Rule 56 explain that “[m]aterials that are not yet in the record — including materials referred to in an affidavit or declaration — must be placed in the record.”<sup>48</sup> By attaching the materials to the Motion, the Receiver placed them in the record. Glenda Johnson does not explain—and it is not clear—why materials attached to a summary judgment motion would not be in the record. Common sense and the purpose underlying Rule 56(c)(1)(A) support that attaching a document to a motion makes it part of the record.<sup>49</sup>

**a. The Materials Cited in the Motion are Admissible.**

Although Rule 56(c) of the Federal Rules of Civil Procedure clearly does not require that materials cited be in admissible form or authenticated to be considered on a motion for summary judgment and Glenda Johnson has set forth no basis for why the material could not be authenticated, the Receiver—out of an abundance of caution—sets forth basis for admission of the materials cited in the Motion.

- Bank Records:
  - “[B]ank records are particularly suitable for admission under Rule 803(6) in light of the fastidious nature of record keeping in financial institutions, which is often required by governmental regulation.”<sup>50</sup> The majority of the materials cited in the Motion are bank records. Bank records are admitted under Rule 803(6) if:
    - (A) the record was made at or near the time by--or from information transmitted by--someone with knowledge;
    - (B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;
    - (C) making the record was a regular practice of that activity;

---

<sup>48</sup> Fed. R. Civ. P. 56(c)(1)(A) advisory committee note to 2010 amendment.

<sup>49</sup> *RES-NV CHLY, LLC v. Rosenberg*, No. 2:13CV115DAK, 2014 WL 6610729, at \*1 (D. Utah Nov. 20, 2014) (documents placed in the record so that court can review the record and verify the information).

<sup>50</sup> *United States v. Johnson*, 971 F.2d 562, 571 (10th Cir. 1992).

- (D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and
  - (E) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.
- With this reply, the Receiver has attached business records declarations under section (D) from each of the financial institutions certifying that sections (A)-(C) are true.<sup>51</sup> Glenda Johnson has not shown a lack of trustworthiness under section (E).
- Recorded Deeds and Settlement Statements:
    - The materials cited by the Receiver include recorded deeds from each property and Settlement Statements. These materials are admissible under 803(14)-(15). The deeds are kept in a public office and authorized by statute<sup>52</sup> as required under 803(14) and the Settlement Statements are admissible as documents affecting an interest in property under 803(15).
  - QuickBooks Records, Checkbook Register:
    - QuickBooks: Glenda Johnson was bookkeeper of IAS and RaPower. She produced QuickBooks records to Receiver.<sup>53</sup> The Receiver is currently the custodian of the records for IAS and RaPower.<sup>54</sup> Based on the Receiver's status as official custodian of records, the QuickBooks records are admissible under Rule

---

<sup>51</sup> See Zions Bank Declaration, attached hereto as Exhibit B; Bank of American Fork Declaration, attached hereto as Exhibit C; Millard County Credit Union Declaration, attached hereto as Exhibit D; Wells Fargo Bank Declaration, attached hereto as Exhibit E.

<sup>52</sup> See generally Utah Code § 57-1-1 *et seq.*

<sup>53</sup> See Declaration of Receiver Wayne Klein, attached hereto as Exhibit F.

<sup>54</sup> *Id.*

803(6).<sup>55</sup> Presumably if these records lacked trustworthiness under Rule 803(6)(E), Glenda Johnson would have challenged these records on that basis. She did not and that challenge is waived.

- Checkbook Register: Glenda Johnson produced her checkbook registers to Receiver.<sup>56</sup> Based on the Receiver's review, the checkbook registers records are admissible under Rule 803(6). Presumably if these records lacked trustworthiness under Rule 803(6)(E), Glenda Johnson would have challenged these records on that basis. She did not and that challenge is waived.
- Glenda Johnson's Deposition Testimony:
  - Deposition testimony is admissible under a number of federal rules.<sup>57</sup> Glenda Johnson has provided no basis for why the content of the deposition cited in the Motion is inadmissible.

Below is a summary of the materials cited in the Receiver's Motion, Glenda Johnson's objections and the Receiver's response and citation to the Rule of Evidence governing the admissibility of the document.

<b>Motion Exhibit</b>	<b>Title</b>	<b>Source</b>	<b>G. Johnson Objection</b>	<b>Admissible Under</b>
1	RaPower-3 Account Statement, Dec. 2011	Zions Bank	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit B.</i>
1-1	Savings Withdrawal Slip, Dec. 14, 2011	Zions Bank	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit B.</i>
1-2	RaPower-3 Account Statement, Dec. 2011	Zions Bank	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit B.</i>

<sup>55</sup> *Id.* Granted, the Receiver is limited in his ability to authenticate company records that have been withheld from him improperly, but it is a violation of the Corrected Receivership Order and against public policy to reward Glenda Johnson for withholding those records by refusing to deem these company accounting records as authenticated.

<sup>56</sup> *Id.*

<sup>57</sup> *See* [Fed. R. Evid. 801\(d\)\(1\)-\(2\)](#); *see also* [Fed. R. Civ. P. 32](#).

1-3	QuickBooks Entry, Dec. 14, 2011	Glenda Johnson	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit F.</i>
1-4	Glenda Johnson Account Statement, Dec. 2011	Zions Bank	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit B.</i>
1-5	Glenda Johnson Checking Deposit Slip	Zions Bank	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit B.</i>
1-6	Glenda Johnson Checking Withdrawal Slip	Zions Bank	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit B.</i>
1-7	Glenda Johnson Checking Account Register	Glenda Johnson	Hearsay	Fed. R. Evid. 803(6).
1-8	Warranty Deed to HD-3511	Glenda Johnson	Hearsay	Fed. R. Evid. 803(14).
1-9	Buyer's Final Settlement Statement HD-3511	Glenda Johnson	Hearsay	Fed. R. Evid. 803(15).
2	RaPower-3 Account Statement, Jan 2012	Zions Bank	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit B.</i>
2-1	Glenda Johnson Account Statement, Jan. 2012	Zions Bank	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit B.</i>
2-2	QuickBooks Entry, Jan 18, 2012	Glenda Johnson	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit F.</i>
2-3	Glenda Johnson Checking Account Deposit Slip, Jan. 17, 2012	Zions Bank	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit B.</i>
2-4	Glenda Johnson Account Statement, Jan. 2012	Bank of American Fork	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit C.</i>
2-5	Glenda Johnson Checking Account Register	Glenda Johnson	Hearsay	Fed. R. Evid. 803(6).
2-6	Buyer's Final Settlement Statement DO-4568-1	Glenda Johnson	Hearsay	Fed. R. Evid. 803(15).
2-7	Warranty Deed DO-4568-1	Glenda Johnson	Hearsay	Fed. R. Evid. 803(14).
3	RaPower-3 Account Statement	Millard County CU	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit D.</i>
3-1	Glenda Johnson Account Statement, Nov. 2011	Millard County CU	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit D.</i>
3-2	Buyer's Final Settlement Statement MA-2662-B	Glenda Johnson	Hearsay	Fed. R. Evid. 803(15).
3-3	Warranty Deed MA-2662-B	Glenda Johnson	Hearsay	Fed. R. Evid. 803(14).
4	RaPower-3 Account Statement, Jan. 2013	Wells Fargo	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit E.</i>
4-1	RaPower-3 Withdrawal	Wells Fargo	Hearsay	Fed. R. Evid. 803(6).



	Slip, Jan. 16, 2013			<i>See Exhibit E.</i>
4-2	QuickBooks Entry, Jan 15, 2013	Glenda Johnson	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit F.</i>
4-3	Glenda Johnson Account Statement, Jan. 2013	Glenda Johnson	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit F.</i>
4-4	Cashier's Check to Glenda Johnson	Millard County CU	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit D.</i>
4-5	Glenda Johnson Checking Account Register	Glenda Johnson	Hearsay	Fed. R. Evid. 803(6).
4-6	Buyer's Settlement Statement HD-4606-2	Glenda Johnson	Hearsay	Fed. R. Evid. 803(15).
4-7	Warranty Deed and Water Rights HD-4606-2	Glenda Johnson	Hearsay	Fed. R. Evid. 803(14).
5	Glenda Johnson Account Statement, Feb. 2013	Millard County CU	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit D.</i>
5-1	Glenda Johnson Account Statement, Sept. 2013	Millard County CU	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit D.</i>
5-2	RaPower-3 Account Statement, Sept. 2012	Zions Bank	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit B.</i>
5-3	Buyer's Final Settlement Statement HD-4648	Glenda Johnson	Hearsay	Fed. R. Evid. 803(15).
5-4	Warranty Deed HD-4648	Glenda Johnson	Hearsay	Fed. R. Evid. 803(14).
6	Cashier's Check to Glenda Johnson, May 31, 2013	Glenda Johnson	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit F.</i>
6-1	QuickBooks Entry, May 31, 2013	Glenda Johnson		Fed. R. Evid. 803(6). <i>See Exhibit F.</i>
6-2	RaPower-3 Account Statement, May 2013	Wells Fargo	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit E.</i>
6-3	RaPower-3 Withdrawal Slip, May 31, 2013	Wells Fargo	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit E.</i>
6-4	Glenda Johnson Account Statement, May 2013	Millard County CU	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit D.</i>
6-5	Buyer's Final Settlement Statement 51-568-0132	Glenda Johnson	Hearsay	Fed. R. Evid. 803(15).
6-6	Warranty Deed 51-468-0132	Glenda Johnson	Hearsay	Fed. R. Evid. 803(14).
7	Cobblestone Check, Aug. 4, 2014	Wells Fargo	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit E.</i>
7-1	RaPower-3 Account Statement, Aug. 2014	Wells Fargo	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit E.</i>
7-2	Cobblestone Account Statement, Aug. 2014	Wells Fargo	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit E.</i>

7-3	Buyer's Final Settlement Statement DO-SS-136&137	Glenda Johnson	Hearsay	Fed. R. Evid. 803(15).
7-4	Warranty Deed DO-SS-136&137	Glenda Johnson	Hearsay	Fed. R. Evid. 803(14).
8	RaPower-3 Account Statement, Nov. 2014	Wells Fargo	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit E.</i>
8-1	RaPower-3 Account Withdrawal Slip, Nov. 21, 2014	Wells Fargo	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit E.</i>
8-2	Glenda Johnson Account Statement, Nov. 2014	Wells Fargo	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit E.</i>
8-3	Glenda Johnson Account Statement, Dec. 2014	Wells Fargo	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit E.</i>
8-4	QuickBooks Entries, Nov. 21, 2014	Glenda Johnson	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit F.</i>
8-5	Buyer's Settlement Statement 55-718-0006	Glenda Johnson	Hearsay	Fed. R. Evid. 803(15).
8-6	Special Warranty Deed 55-718-0006	Glenda Johnson	Hearsay	Fed. R. Evid. 803(14).
9	Cobblestone Check, Oct. 15, 2014	Wells Fargo	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit E.</i>
9-1	Cobblestone Account Statement, Oct. 2014	Wells Fargo	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit E.</i>
9-2	RaPower-3 Account Statement, Dec. 2014	Wells Fargo	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit E.</i>
9-3	QuickBooks Entry, Dec. 19, 2014	Glenda Johnson	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit F.</i>
9-4	Glenda Johnson Account Statement, Dec. 2014	Wells Fargo	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit E.</i>
9-5	Buyer's Final Settlement Statement	Glenda Johnson	Hearsay	Fed. R. Evid. 803(15).
9-6	Warranty Deed 4806-A, 4806-B, 4805	Glenda Johnson	Hearsay	Fed. R. Evid. 803(14).
10	RaPower-3 Account Statement March 2015	Wells Fargo	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit E.</i>
10-1	RaPower-3 Withdrawal Slip, March 23, 2015	Wells Fargo	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit E.</i>
10-2	QuickBooks Entry, March 27, 2015	Glenda Johnson	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit A.</i>
10-3	Glenda Johnson Account Statement, March 2015	Wells Fargo	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit E.</i>
10-4	Glenda Johnson Deposit Slip, March 23, 2015	Wells Fargo	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit E.</i>

10-5	Glenda Johnson Account Statement, Apr. 2015	Wells Fargo	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit E.</i>
10-6	Quitclaim and Grant Deed 2842-027-174	Glenda Johnson	Hearsay	Fed. R. Evid. 803(14).
11	RaPower-3 Account Statement, June 2018	Bank of American Fork	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit C.</i>
11-1	Cobblestone Account Statement, June 2018	Bank of American Fork	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit C.</i>
11-2	Glenda Johnson Account Statements, June 2018- May 2019	Bank of American Fork	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit C.</i>
11-3	Glenda Johnson Account Transaction List as of Apr. 27, 2019	Glenda Johnson	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit F.</i>
11-4	Glenda Johnson Account Statement, Aug. 1, 2019	Glenda Johnson	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit F.</i>
11-5	Glenda Johnson Account Statement, Aug. 1, 2019	Glenda Johnson	Hearsay	Fed. R. Evid. 803(6). <i>See Exhibit F.</i>
11-6	Glenda Johnson Deposition Transcript, May 1, 2019	Glenda Johnson	Hearsay	Fed. R. Evid. 801(d)(1)-(2); Fed. R. Civ. P. 32.

### III. The Purported Contract Does Not Create a Factual Dispute.

Glenda Johnson’s declaration and the attached alleged contract stating that she is owed \$35,000,000.00 in fraudulent funds fails to create any factual issues preventing the Court from granting the Motion.

First, the alleged contract between Solstice and Glenda Johnson, or Solstice and RaPower is void and cannot be enforced. It is a well-settled principle of contract law that a court cannot enforce an illegal contract.<sup>58</sup> It is an “elementary principle” that one who has “participated in a violation of law cannot be permitted to assert in a court of justice any right founded upon or

<sup>58</sup> [Peterson v. Sunrider Corp.](#), 2002 UT 43, ¶ 39, 48 P.3d 918.

growing out of the illegal transaction.”<sup>59</sup> The alleged contract is in furtherance of the solar energy scheme and massive tax fraud. In fact, the alleged contract is further proof that the purpose of the fraudulent scheme was to personally enrich Neldon Johnson and his family. Indeed, there is no other plausible explanation for Glenda Johnson receiving \$175,000.00 each for the construction of 200 solar towers (not including the actual cost of construction).

Second, the purported contract highlights that the Johnsons were not only defrauding the U.S. Treasury, but also lens purchasers. The contract states that the “Towers include lenses and metal structure.” Based on this, it appears this contract conveyed to Glenda Johnson ownership of all lenses that were being used in the attempts to generate electricity. That means none of the lenses purchased by customers would be installed on solar towers and would not be available to earn revenue from sales of electricity—even if Neldon Johnson’s solar scheme worked. Thus, if any lenses were actually owned by customers, those lenses were destined to remain stored in the warehouse because all the lenses installed on solar trees are reputedly owned by Glenda Johnson.

Third, Glenda Johnson fails to show that she provided any consideration whatsoever for the purported \$35,000,000.00 owed to her. There is no evidence of a bargained for exchange and it is hard to imagine what consideration Glenda Johnson could provide Solstice or RaPower that would merit the payment of \$35,000,000.00 for the construction of solar towers—which she was not paying to construct.

Fourth, the alleged contract purports to give Solstice a significant percentage of RaPower’s revenue, yet RaPower is not a party to the alleged contract. Further, there is no showing what consideration Solstice provided to RaPower for the right to RaPower’s revenue.

---

<sup>59</sup> *Sender v. Simon*, 84 F.3d 1299, 1307 (10th Cir. 1996).

Fifth, the validity of the document is in question. The fact that the document was not delivered to the Receiver in conjunction with other company records produced in May 2019 means one of two things. The first possibility is that Neldon Johnson was telling the truth when he stated under oath (and in compliance declarations) that he had delivered all company documents under his control to the Receiver. If Neldon Johnson's sworn statements to that effect were accurate, this document is a forgery or was created after May 2019. The second possibility is that this document was created in 2013 but is among documents withheld from delivery to the Receiver in violation of the Corrected Receivership Order. Glenda Johnson does not tell us which of these two scenarios is accurate. If the first, the document should be disregarded as a forgery. If the second, Glenda Johnson should be precluded from relying on a document that is itself evidence of continuing contempt.

Finally, even assuming the alleged contract were enforceable (it is not), it does not create factual issues preventing summary judgment. For example, Glenda Johnson states that the alleged contract was entered into on January 18, 2013, yet many of the transactions in the Motion took place before that date. Glenda Johnson also states the alleged contract allows RaPower to pay her instead of Solstice. Many of the transfers to Glenda Johnson, however, were from Cobblestone bank accounts and not from RaPower.

### **CONCLUSION**

For the foregoing reasons and the reasons stated in the Motion, the Court should grant the Motion and order turnover of the property as set forth in the Motion.

DATED this 22<sup>nd</sup> day of November, 2019.

**PARR BROWN GEE & LOVELESS, P.C.**

*/s/ Michael S. Lehr* \_\_\_\_\_

Jonathan O. Hafen

Jeffery A. Balls

Michael Lehr

*Attorneys for R. Wayne Klein, Receiver*

**CERTIFICATE OF SERVICE**

I hereby certify that the above **REPLY IN SUPPORT OF MOTION FOR ORDER DIRECTING TURNOVER AND TRANSFER OF REAL PROPERTIES TITLED IN THE NAME OF GLENDA JOHNSON AND FUNDS IN ACCOUNTS CONTROLLED BY GLENDA JOHNSON** was filed with the Court on this 22<sup>nd</sup> day of November, 2019, and served via ECF on all parties who have requested notice in this case.

*/s/ Michael S. Lehr*

---