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**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.

**AUTHENTICATION OF EXHIBITS
FOR RECEIVER'S 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

In its order dated March 2, 2020, the Court invited R. Wayne Klein, the court-appointed receiver ("Receiver"), to point to materials authenticating certain documents.¹ The documents for which the Court requested authentication fall into two categories: settlement statements from the closing of the properties (Ex. 1-9, Ex. 2-6, Ex. 3-2, Ex. 4-6, Ex. 5-3, Ex. 6-5, Ex. 7-3, Ex. 8-5, and Ex. 9-5) and checkbook registers (Ex. 1-7, Ex. 2-5, and Ex. 4-5). The Receiver hereby provides the following material to authenticate the foregoing exhibits.

¹[Dkt. No. 866](#).

Standard

The requirement of authentication under Rule 901 of the Federal Rules of Evidence “is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.”² The Motion was brought under Rule 56 of the Federal Rules of Civil Procedure. Under this standard, a party is not required to submit evidence “in a form that would be admissible at trial.”³ “Rather, only ‘the content or substance of the evidence must be admissible.’”⁴

Several courts have recognized that documents provided by the opposing party are “self-authenticating” and “constitute the admissions of a party opponent.”⁵ Other courts have noted that “it is disingenuous and wasteful to object to one’s own documents based upon personal knowledge or authentication.”⁶ Under rule 901, “[t]he appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances” can be sufficient to authenticate the documents.⁷

Settlement Statements

The settlement statements were provided to the Receiver by IAS on May 17, 2019.⁸ The settlement statements were included in a box labeled “Glenda E. Johnson’s Property’s [sic].”⁹ The Receiver provided a receipt to LaGrand and Randale Johnson acknowledging receipt of this

²Fed. R. Evid. 901(a).

³*Trevizo v. Adams*, 455 F.3d 1155, 1160 (10th Cir. 2006) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986)).

⁴*Prudential Ins. Co. of Am. v. Sagers*, No. 2:16-CV-01193-JNP, 2019 WL 6879755, at *1 (D. Utah July 16, 2019) (quoting *Brown v. Perez*, 835 F. 3d 1193, 1199 (10th Cir. 2006)).

⁵*See Vitamins Online, Inc. v. Heartwise, Inc.*, 2016 WL 538458 (citing *Anand v. BP W. Coast Prods. LLC*, 484 F. Supp 2d 1086, 1092 n. 11 (C.D. Cal. 2007)).

⁶*Id.* (citing *OFI Intern., Inc. v. Port Newark Refrigerated Warehouse*, 2015 WL 140134, at *3 (D.NJ 2015)).

⁷Fed. R. Evid. 901(b)(4).

⁸*See* Declaration of Receiver Wayne Klein, attached hereto as Exhibit 1.

⁹*Id.*

box.¹⁰ Exhibit 1-9, Exhibit 2-6, Exhibit 3-2, Exhibit 4-6, Exhibit 5-3, Exhibit 6-5, Exhibit 7-3, Exhibit 8-5, and Exhibit 9-5 are true and correct copies of the settlement statements produced by IAS.¹¹

The settlement statements contain distinctive characteristics that demonstrate the documents are what the Receiver claims. Each settlement statement is printed on the letterhead of a title company, including First America Title Company, LLC and United Title Services. Each settlement statement appears to be signed by Glenda Johnson. Importantly, the information contained in the settlement statements are corroborated by the other documents provided as exhibits in the Motion and which have been previously authenticated:

- Exhibit 1-9 shows cash from borrower in the amount of \$69,776.68. This amount matches the withdrawal amount of \$69,776.68 shown in Exhibit 1-6. The contract sales price of \$70,000.00 also matches the amounts shown on Exhibit 1, Exhibit 1-1, 1-2, 1-3, 1-4, and 1-5.¹²
- Exhibit 2-6 shows cash from borrower in the amount of \$210,174.15. This amount matches the amount shown on Exhibit 2-1.¹³
- Exhibit 3-2 shows cash from borrower in the amount of \$32,334.80. This amount matches the transfer amount of \$32,334.80 shown in Exhibit 3, and 3-1.¹⁴
- Exhibit 4-6 shows cash from borrower in the amount of \$162,693.33. This amount matches the withdrawal amount of \$162,693.33 shown on Exhibit 4-3. The contract

¹⁰*Id.*

¹¹*Id.*

¹²See [Dkt. No. 757](#), Exhibit 1.

¹³See [Dkt. No. 757](#), Exhibit 2.

¹⁴See [Dkt. No. 757](#), Exhibit 3.

sales price of \$168,000.00 also matches the amounts shown on Exhibit 4, Exhibit 4-1, Exhibit 4-2, Exhibit 4-3, and Exhibit 4-4.¹⁵

- Exhibit 5-3 shows cash from borrower in the amount of \$20,269.07. This amount matches the transfer amount of \$20,269.07 shown on Exhibit 5.¹⁶
- Exhibit 6-5 shows cash from borrower in the amount of \$116,619.34. According to Glenda Johnson's cover sheet, two payments were made in the amount of \$75,413.91 and \$44,620.00. These amounts match the amounts shown on Exhibit 6, Exhibit 6-1, Exhibit 6-2, and Exhibit 6-3.¹⁷
- Exhibit 7-3 shows cash from borrower in the amount of \$312,893.32. This amount matches the wired amount of \$312,893.32 shown on Exhibit 7-2. The total consideration of \$315,000.00 on Exhibit 7-3 also matches the \$315,000.00 shown on Exhibit 7-1 and Exhibit 7-2.¹⁸
- Exhibit 8-5 shows cash from borrower in the amount of \$421,193.75. This amount matches the wired amount of \$421,193.75 shown on Exhibit 8-3.¹⁹
- Exhibit 9-5 is not cited in the Motion.

The settlement statements are sufficiently authenticated under Rule 901(b)(4) based upon the contents and internal patterns of matching other documents connected with the property purchases, including the amount of cash from the borrower and the purchase amount. The settlement statements were produced with a cover sheet that appears to contain the letterhead of

¹⁵See [Dkt. No. 757](#), Exhibit 4.

¹⁶See [Dkt. No. 757](#), Exhibit 5.

¹⁷See [Dkt. No. 757](#), Exhibit 6.

¹⁸See [Dkt. No. 757](#), Exhibit 7.

¹⁹See [Dkt. No. 757](#), Exhibit 8.

Glenda Johnson with her typed name at the bottom. The settlement statements also contain the apparent signature of Glenda Johnson. Even without this circumstantial evidence, which is sufficient under Rule 901(b)(4), the settlement statements can be authenticated at trial through the testimony of Glenda Johnson. The Receiver can call her to testify as to the authenticity of the settlement statements, which would satisfy the requirements under Rule 901(b)(1).

Check Registers

The check registers were provided to the Receiver by Glenda Johnson on May 2, 2019 during the deposition of Neldon Johnson.²⁰ The Receiver noted on the deposition record that Glenda Johnson delivered a total of eight check registers to him at that time.²¹ Exhibit 1-7, Exhibit 2-5, and Exhibit 4-5 are true and correct copies of pages from the check registers produced by Glenda Johnson.²²

The check registers contain distinctive characteristics that demonstrate the documents are what the Receiver claims. The amounts shown on the check registers also match the amounts shown on the other exhibits:

- Exhibit 1-7 shows a payment/withdrawal of \$69,776.68 on December 14. This amount matches the withdrawal amount of \$69,776.68 shown in Exhibit 1-6. Exhibit 1-7 also shows a deposit of \$70,000.00. This matches the amounts shown on Exhibit 1, Exhibit 1-1, 1-2, 1-3, 1-4, and 1-5.²³

²⁰See Declaration of Receiver Wayne Klein, attached hereto as Exhibit 1.

²¹*Id.*

²²*Id.*

²³See [Dkt. No. 757](#), Exhibit 1.

- Exhibit 2-5 shows a payment/withdrawal for \$210,174.15 on January 1. This amount matches the amount shown on Exhibit 2-1.²⁴
- Exhibit 4-5 shows a payment/withdrawal for \$162,693.33 on January 17. This amount matches the withdrawal amount of \$162,693.33 shown on Exhibit 4-3 and Exhibit 4-6. The deposit of \$168,000.00 also matches the amounts shown on Exhibit 4, Exhibit 4-1, Exhibit 4-2, Exhibit 4-3, Exhibit 4-4, and Exhibit 4-6.²⁵

The fact that the documents were produced by Defendant Glenda Johnson should be sufficient to authenticate the documents. Additionally, there is circumstantial evidence present in the documents to authenticate the check registers including the dollar amounts identified in the check registers matching the other documents connected with the property purchases. Even without the circumstantial evidence, the check registers can be authenticated at trial through the testimony of Glenda Johnson. The Receiver can call her to testify as to the authenticity of the check registers, which would satisfy the requirements under Rule 901(b)(1).

DATED this 16th day of March, 2020.

Parr Brown Gee & Loveless

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

²⁴See [Dkt. No. 757](#), Exhibit 2.

²⁵See [Dkt. No. 757](#), Exhibit 4.

CERTIFICATE OF SERVICE

I hereby certify that the above **AUTHENTICATION OF EXHIBITS FOR RECEIVER'S 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 16th day of March, 2020, and served via ECF on all parties who have requested notice in this case.

/s/ Jeffery A. Balls