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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

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

Defendants.

**RECEIVER'S RESPONSE TO  
VERIFIED OBJECTION TO  
DECISION AND ORDER GRANTING  
TURNOVER MOTION**

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

District Judge David Nuffer

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R. Wayne Klein, the Court-Appointed Receiver (the "Receiver") of RaPower-3, LLC ("RaPower"), International Automated Systems, Inc. ("IAS"), and LTB1, LLC ("LTB1") (collectively, the "Receivership Entities"), as well as certain of their subsidiaries and affiliates and the assets of Neldon Johnson ("Johnson") and R. Gregory Shepard ("Shepard") (collectively "Receivership Defendants" or "Defendants"), hereby submits this Response to the Verified Objection to Decision and Order Granting Turnover Motion.

**I. Facts.**

On April 23, 2020, the Court entered a docket text order regarding three pending matters before the Court.<sup>1</sup> The Court indicated that "[t]he Receiver's counsel shall prepare a proposed order with detailed findings and conclusions (1) granting the [757] Motion for Turnover; (2) denying the [805] Motion to Strike; and (3) overruling the [890] Objection (for the reasons stated in the Receiver's memoranda, which shall be stated in the order)."<sup>2</sup> The Court ordered that the proposed order should be provided to opposing counsel on or before May 15, 2020 for review.<sup>3</sup> The Receiver's counsel provided the proposed order to counsel for Glenda Johnson on May 15, 2020. On May 22, 2020, Glenda Johnson filed an objection to the proposed order.<sup>4</sup>

**II. The Court's Conclusion that the Purported Contract Between Solstice and Glenda Johnson does not Create an Issue of Fact is Supported.**

Glenda Johnson makes only one objection to the form of the proposed order. Glenda Johnson objects to the language contained in Section E of the proposed order that addresses Glenda Johnson's attempt to create an issue of fact based upon a purported contract between Solstice and Glenda Johnson. Glenda Johnson objects that the language in the proposed order constitutes a finding of fact that could be used to argue collateral estoppel against Glenda Johnson in the pending lawsuit against Glenda Johnson. Glenda Johnson's objection is incorrect and ignores the nature of the summary proceeding. The conclusions of the Court set forth in Section E merely establish that the purported contract between Solstice and Glenda Johnson failed to create an issue of fact that precludes summary judgment in favor of the Receiver. The

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<sup>1</sup>Docket No. 916.

<sup>2</sup>*Id.*

<sup>3</sup>*Id.*

<sup>4</sup>Docket No. 930.

Court's conclusions, as set forth in the proposed order, are supported by the evidence accepted by the Court and oral findings made by the Court in this case. As such, no reasonable fact-finder could return a verdict for Glenda Johnson here.<sup>5</sup> The Proposed Order does not absolve the Receiver of needing to establish his claims against Glenda Johnson in the other lawsuit as it relates to four additional parcels of real property titled in the name of Glenda Johnson. The Receiver will be required to establish that those four properties were purchased with Receivership funds.

### **III. Glenda Johnson Was Afforded Due Process.**

The majority of Glenda Johnson's objection to the proposed order does not even address the substance or form of the proposed order. Rather, Glenda Johnson asserts the order should not be entered against her because she is entitled to a trial on the merits. Glenda Johnson's assertion that she did not receive due process because the issues were resolved through a summary proceeding, rather than a trial, are unsupported and are contrary to law. The use of summary proceedings against non-parties does not violate due process provided the requisite Constitutional protections are met. "For the claims of nonparties to property claimed by receivers, summary proceedings satisfy due process so long as there is adequate notice and opportunity to be heard."<sup>6</sup> In this instance, Glenda Johnson received adequate notice and availed herself of multiple opportunities to be heard. Indeed, she made three filings with the Court

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<sup>5</sup>[\*Prentice v. Univ. of Tulsa\*, 50 F. App'x 895, 896 \(10th Cir. 2002\)](#) (“[s]ummary judgment is appropriate if the evidence is such that no reasonable jury could return a verdict for the nonmoving party.”); [\*Pierson v. Bassett\*, 534 F. App'x 768, 771 \(10th Cir. 2013\)](#) (“As with any motion for summary judgment, ‘[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts[.]’”)

<sup>6</sup>[\*Topworth Int'l, Ltd.\*, 205 F.3d 1107, 1113 \(9th Cir. 1999\)](#); see also [\*F.T.C. v. Assail, Inc.\*, 410 F.3d 256, 267 \(5th Cir. 2005\)](#).

related to the Turnover Motion.<sup>7</sup> The fact that the Court does not agree with her claims does not indicate she was not heard. A trial on the merits is not required for due process.

Glenda Johnson's attempt to collaterally attack the underlying judgment is improper. As an initial matter, the proper vehicle to challenge the underlying ruling is through a Rule 60 motion, not through an objection to the form of the proposed order; Glenda Johnson is also not the proper party to bring such a motion.<sup>8</sup> Because Glenda Johnson's collateral attack is not proper, and the substance of the collateral attack has been raised in a separate Rule 60(b) motion, the Receiver will not address the substance of the collateral attack at this time.<sup>9</sup>

For these reasons, the Court should enter the order as originally submitted by the Receiver as it is consistent with the Court's reasoning supporting its ruling.

DATED this 29<sup>th</sup> day of May, 2020.

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

*/s/ Jeffery A. Balls*

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<sup>7</sup>See Docket No. 784, filed October 11, 2019; Docket No. 805, filed November 26, 2019; Docket No. 890, filed March 24, 2020.

<sup>8</sup>Some of the Receivership Defendants have filed a Rule 60(b) motion. See Docket No. 931, filed May 26, 2020. The Rule 60(b) motion, however, is procedurally improper because it was brought "more than a year after the entry of the judgment or order." Fed. R. Civ. P. 60(c)(1).

<sup>9</sup>The Receiver is concerned about the purported new CVP production model referenced on page 13 of the objection. These concerns include who owns it, who created it, and whether assets of the Receivership Estate were used to create the it after the asset freeze order was entered.

**CERTIFICATE OF SERVICE**

I hereby certify that the above **RECEIVER'S RESPONSE TO VERIFIED OBJECTION TO DECISION AND ORDER GRANTING TURNOVER MOTION** was filed with the Court on this 29<sup>th</sup> day of May, 2020, and served via ECF on all parties who have requested notice in this case.

*/s/ Jeffery A. Balls* \_\_\_\_\_