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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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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.

**ORDER RE: NOTICE OF NON-  
COMPLIANCE AGAINST GLENDA  
JOHNSON**

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

District Judge David Nuffer

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Based on the Notice of Non-Compliance (“Notice”)<sup>1</sup> filed by R. Wayne Klein, the Court-Appointed Receiver (“Receiver”), and for good cause appearing, the following findings are entered:

**BACKGROUND**

1. In the Order Re: Affidavit of Noncompliance Against Glenda Johnson (“Order”),<sup>2</sup> Glenda Johnson was ordered to take certain actions, including to release, within three days of the entry of the Order, three liens she had previously filed on properties in Millard County, Utah; Payson, Utah; and Howard County, Texas.<sup>3</sup> She was also advised that, if she failed to do so, “a

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<sup>1</sup> Docket no. 923, filed May 13, 2020; Declaration of Glenda Johnson in Response to Notice of Noncompliance (“Declaration”), docket no. 925, filed May 14, 2020; Receiver’s Response to Declaration of Glenda Johnson on Order Requiring Lien Releases (“Response”), docket no. 929, filed May 20, 2020.

<sup>2</sup> Docket no. 920, filed May 5, 2020.

<sup>3</sup> *Id.* at 6.

bench warrant shall be issued for her arrest and her incarceration shall continue until . . . the liens are released.”<sup>4</sup>

2. The Notice indicates that the liens were not released as ordered.<sup>5</sup>

3. Glenda Johnson has filed a declaration<sup>6</sup> stating that she has “complied to the best of [her] ability with the [Order].”<sup>7</sup> Regarding the liens, she says that, on the day the Order was entered, she “reached out to Preston Olsen one or two times” because “he signed the liens on behalf of Anstram Energy, LLC,” but that she “was unable to speak with Preston Olsen.”<sup>8</sup>

4. Glenda Johnson also states that she “knew that Preston Olsen was planning to sell his interest in Anstram Energy, LLC[,] to Roger Hamblin.” Accordingly, she “called Roger Hamblin on May 5th and explained that [she] was ordered to release the liens that had been recorded in Millard County and in Texas and he said he would not release the liens.”<sup>9</sup>

5. Additionally, she says that she “originally recorded the liens as an accommodation to Anstram Energy, LLC as it is an international company and [she] [is] local. [She] used [her] address for reference so that the county could reach [her] with any questions or concerns about the liens.”<sup>10</sup>

6. Glenda Johnson denies being “an owner of Anstram Energy, LLC” or “hav[ing] any management authority over Anstram Energy, LLC.”<sup>11</sup>

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<sup>4</sup> *Id.* at 7.

<sup>5</sup> Notice, *supra* note 1.

<sup>6</sup> Declaration, *supra* note 1.

<sup>7</sup> *Id.* ¶ 2.

<sup>8</sup> *Id.* ¶¶ 2.e, 2.f.

<sup>9</sup> *Id.* ¶¶ 2.g, 2.h.

<sup>10</sup> *Id.* ¶ 3.

<sup>11</sup> *Id.* ¶¶ 4-5.

7. She says that her “lawyers have reached out to Roger Hamblin to request that he release the liens as required by the Court’s Order” and attaches “a copy of the email sent from [her] lawyers to Roger Hamblin and his response refusing to release the liens.”<sup>12</sup>

### DISCUSSION

As the Receiver notes in his response, Glenda Johnson’s explanation is insufficient to establish present impossibility of compliance. “Present impossibility is a defense to a contempt proceeding and the alleged contemnor has the burden of production on this defense. However, to prevail on this inability defense, the contemnor must establish by facts (and not just assertions) that he or she has made *all reasonable and good faith efforts to comply with the order*.”<sup>13</sup>

The Receiver correctly characterizes Glenda Johnson’s declaration as “vague and incomplete.”<sup>14</sup> As the Receiver observes, she has not established “that Preston Olsen no longer has the authority to act on behalf of Anstram Energy”; “she has not even spoken with Olsen regarding removing the liens or the Order”; she has not indicated “how she attempted to contact him or why she believes he no longer has authority to act on behalf of Anstram Energy other than that she (somehow) knew Olsen was planning to sell his interest in the company”; she “has provided no evidence of a sale from Olsen to Hamblin, no declaration by Olsen, no declaration by Hamblin, and no real explanation as to why she filed the lien instead of [the Salt Lake City-based attorney] Olsen or another representative of Anstram Energy in the first place”; and the situation here is reminiscent of others “throughout this Receivership” in which “the Johnsons

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<sup>12</sup> *Id.* ¶ 6; *id.* at 4.

<sup>13</sup> *In re Aramark Sports & Entm't Servs., LLC*, 725 F. Supp. 2d 1309, 1316 (D. Utah 2010) (emphasis added and footnotes omitted).

<sup>14</sup> Response, *supra* note 1, at 4.

have repeatedly attempted to deflect responsibilities to third parties, while improperly claiming to have complied with the requirements of this Court's orders."<sup>15</sup>

Further, "there are persuasive reasons to believe the agreement [with Anstram Energy underlying the liens] is invalid, if it exists at all."<sup>16</sup> Not least of these is Glenda Johnson's testimony that the Millard County lien was based on a purported verbal agreement with Anstram Energy – a Nevis company about which she knew little to nothing – to provide \$30 million worth of "energy product," none of which had been provided at the time that particular mechanic's lien was filed.<sup>17</sup>

Based on the foregoing, in order for Glenda Johnson to establish her present inability to comply with the Order, by no later than June 10, 2020, she must file a declaration detailing (a) her history of dealings with Preston Olsen and Roger Hamblin; (b) any known history of Olsen and Hamblin with any of the Defendants or affiliated entities in this case; (c) all last known and historic contact information for Olsen and Hamblin, as well as:

(1) the conditions and terms under which the liens were originally granted and filed [(including the terms of any unwritten agreement, the rights and responsibilities of the parties to the agreement, and the identity of those persons who could assign or release the liens granted by Glenda Johnson on the various properties)]; 2) whether she has ever had authority to grant or release the liens, and if so, when and how that authority ceased; (3) why the oral agreement with Anstram and the liens granted to Anstram are valid in light of the lack of consideration and the unwritten nature of the agreements relating to real estate; (4) the basis for her claim that Olsen once had, but no longer has, authority to release the liens; (5) all the persons who have authority to release or assign the liens; (6) details of the efforts she has undertaken to seek release of the liens from persons having authority to act on behalf of Anstram; (7) why those with authority to release the liens, possibly including Hamblin, refuse to release the liens; and (8) that there is no possible way for her to release the liens absent the authorization from Hamblin.<sup>18</sup>

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<sup>15</sup> *Id.* at 3-4 (footnotes omitted).

<sup>16</sup> *Id.* at 4 (footnote omitted).

<sup>17</sup> January 23, 2020 Transcript at 155:21-165:1.

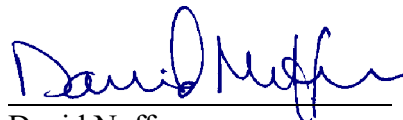
<sup>18</sup> Response, *supra* note 1, at 4-5 (footnote omitted).

**ORDER**

For the foregoing reasons, IT IS HEREBY ORDERED that by no later than June 10, 2020, Glenda Johnson must file a declaration setting forth the information described above.

Signed June 3, 2020.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "David Nuffer", written over a horizontal line.

David Nuffer  
United States District Judge