

**MANNING CURTIS BRADSHAW
& BEDNAR LLC**

David C. Castleberry [11531]

dcastleberry@mc2b.com

Christopher M. Glauser [12101]

cglouser@mc2b.com

136 East South Temple, Suite 1300

Salt Lake City, UT 84111

Telephone (801) 363-5678

Facsimile (801) 364-5678

*Attorneys for Plaintiff R. Wayne Klein, the
Court-Appointed Receiver of U.S. Ventures, LC,
Winsome Investment Trust, and the assets of Robert
J. Andres and Robert L. Holloway*

UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

R. WAYNE KLEIN, the Court-Appointed
Receiver of U.S. Ventures LC, Winsome
Investment Trust, and the assets of Robert J.
Andres and Robert L. Holloway,

Plaintiff,

vs.

WINGS OVER THE WORLD MINISTRIES
and TERRY L. HARPER,

Defendants.

**MOTION TO STRIKE DOCKET
ENTRIES 61-65 AND FOR SANCTIONS**

Case No. 2:12-cv-00023-DN

District Judge David Nuffer

Pursuant to the Magistrate Judge's October 9, 2013 Report and Recommendation (doc. 60), which was adopted by Judge Nuffer on October 25, 2013 (doc. 67), Plaintiff R. Wayne Klein, Court-Appointed Receiver of U.S. Ventures LC, Winsome Investment Trust, and the

assets of Robert J. Andres and Robert L. Holloway (“Plaintiff” or the “Receiver”) hereby submits this Motion to Strike Docket Entries 61-65 and for Sanctions.

BACKGROUND AND ARGUMENT

On October 9, 2013, the Court issued its Report and Recommendation addressing the Receiver's Motion to Strike numerous improper filings by Defendant Terry Harper. *See* Doc. 60. Mr. Harper objected to that Report and Recommendation (doc. 66),¹ however, that Objection was considered and rejected by Judge Nuffer, who adopted the Report and Recommendation in its entirety. *See* doc. 67. The Report and Recommendation further instructed Mr. Harper "that the continued filing of frivolous motions shall result in the imposition of sanctions." *Id.* at 6. Specifically, the Court ordered:

that any future motions filed by Defendant Harper that do not comply with the Court's rules and/or address issues that have been previously determined by this Court, be stricken and Defendant Harper be ordered to pay the Receiver's costs and fees incurred in responding to any such motion.

Id. at 7. Accordingly, the Court has granted the Receiver's Motion to Strike (doc. 44) Mr. Harper's frivolous filings that violate the Court's Rules and raise issues that the Court has already addressed. *See* Report and Recommendation (doc. 60) at 4-5.

Less than a week after the Court's warning in its Report and Recommendation, Mr. Harper made yet another frivolous filing that violates the Court's Rules and addresses the same matters decided by the Court long ago. *See* Mandatory [sic] Judicial Notice of Receiver's Failure

¹ Defendant's "Objection" was styled "Respondent's Constructive Notice of Objection and Oppositions to the Court's Striking of Respondent Filings Based on Respondnet [sic] 'Established' and 'Settled' Law Against 'Invalid/Void' Ruling Granting Plaintiff's Motions to Strike and Respondnet's [sic] Demand of Lawful Correction, Remedy and Relief as in 'Rectum Rogare [sic]'" (doc. 66). To the extent this filing is considered an objection to the Report and Recommendation, it has been denied and is moot in light of the Court's adoption of that Report. To the extent it is considered some other type of filing, it suffers from the same defects as Defendant's other frivolous filings and should be stricken.

to Meet a "Statute of Limitations" Requirement, and Notice of Compulsory Action Required by the Court (doc. 61). Mr. Harper later filed four additional improper and frivolous documents. *See* Memorandum of Law and Constructive Notice of Certification and Findings of Fact, Conclusions of Law Regarding "if" Real Party of Interest is Present (doc. 62); Mandatory [sic] Judicial Constructive Notice of Estoppel or Receiver's Claim of Respondent Alleged Admissions and Opposition of Alleged Claimed Admissions into the Record (doc. 63); Constructive Notice and Demand to Certify the Record Under Title 28 Section 754 of Receiver as to the Court's Jurisdiction or Dismiss Under (Coram Non Judice) (doc. 64); Constructive Notice and Affidavit Statement of Fraud on the Court and Notice of Forbearance of Suit (doc. 65). All of these filings suffer from the same defects for which the Court struck Mr. Harper's prior filings. Specifically, they fail to conform to the Court's formatting requirements, fail to identify the specific relief requested, and address issues such as jurisdiction and standing that the Court has already decided, among other deficiencies.

Accordingly, the Receiver requests that the Court strike Docket Entries 61-65 as set forth in the adopted Report and Recommendation. A proposed Order granting this Motion will be sent to chambers electronically.

CONCLUSION

For the foregoing reasons, the Receiver requests that Docket Entries 61-65 be stricken and that the Court enter all other sanctions it deems appropriate.²

² Such additional sanctions may include ordering Mr. Harper to pay the Receiver's attorney fees and costs incurred in responding to Mr. Harper's frivolous filings, as set forth in the Report and Recommendation that was issued before the filings at issue, and adopted by the Court after those filings. In any event, the Receiver will seek to recover his fees and costs incurred in responding to any further frivolous filings by Mr. Harper as set forth in the now-adopted Report and Recommendations. Additionally, Defendant's disregard for the Court's clear order that he refrain from making frivolous filings is striking, as all of the documents addressed in this Motion

DATED this 28th day of October, 2013.

**MANNING CURTIS BRADSHAW
& BEDNAR LLC**

/s/ Christopher M. Glauser

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address the exact same issues and contain the exact same violations of the Court's Rules on which the Court's prior decision was based. The Receiver suggests that the Court consider more serious sanctions in light of this willful conduct, including entry of a default judgment and/or holding Defendant in contempt.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **MOTION TO STRIKE DOCKET ENTRIES 61-66 AND FOR SACNTIONS** to be served in the method indicated below to the Defendant in this action this 28th day of October, 2013.

<input type="checkbox"/> HAND DELIVERY	Terry L. Harper
<input checked="" type="checkbox"/> U.S. MAIL	1450 Harbor Island Dr.
<input type="checkbox"/> OVERNIGHT MAIL	San Diego, CA 92101
<input type="checkbox"/> FAX TRANSMISSION	
<input type="checkbox"/> E-MAIL TRANSMISSION	
<input type="checkbox"/> USDC ECF NOTICE	

/s/ Christopher M. Glauser