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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF NEVADA**

10 SECURITIES AND EXCHANGE COMMISSION,

11 Plaintiff,

12 v.

13 MATTHEW WADE BEASLEY et. al.

14 Defendants,

15 THE JUDD IRREVOCABLE TRUST et. al,

16 Relief Defendants.
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Case No. 2:22-cv-0612-CDS-EJY

**NON-PARTY KAMILLE DEAN'S REPLY
IN SUPPORT OF OBJECTION, REQUEST
FOR DE NOVO REVIEW, AND APPEAL
FROM MAGISTRATE'S 12-29-22 ORDER
(DKT. 417) [LOCAL RULE IB3-1]**

ORAL ARGUMENT REQUESTED

TIME: TBD
DATE: TBD
PLACE: Courtroom 6B

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1 Non-Party Kamille Dean submits the Reply in Support of her Objection, Request for De Novo
2 Review, and Appeal of Magistrate's 12-29-22 Attorney's Fees Order (Dkt. 417).

3 **A. The Court Lacks Jurisdiction to Proceed in this Matter**

4 **1. The case is moot and there is no case or controversy**

5 The Receiver claims Ms. Dean's Objections are non-responsive to the attorney's fees award, and that
6 her Objections to jurisdiction in a turnover proceeding should be stricken. (Receiver 1-27-23 Reply, pp. 5-
7 6). However, as a fundamental foundation of constitutional law, a Court must inquire whether a case is
8 moot, if a case or controversy exists, and if the Court has jurisdiction to grant relief. *Arizonans for Off. Eng.*
9 *v. Arizona*, 520 U.S. 43, 66, 67 (1997) ("To qualify as a case fit for federal-court adjudication, "an actual
10 controversy must be extant at all stages of review, not merely at the time the complaint is filed." *Preiser v.*
11 *Newkirk*, 422 U.S. 395, 401, 95 S.Ct. 2330, 2334, 45 L.Ed.2d 272 (1975) (quoting *Steffel v. Thompson*, 415
12 U.S. 452, 459, n. 10, 94 S.Ct. 1209, 1216, n. 10, 39 L.Ed.2d 505 (1974)) (internal quotation marks
13 omitted)."). In contravention to the Receiver's baseless arguments, mootness deprives this Court of subject-
14 matter jurisdiction, and the Court has an independent duty to raise mootness which the parties may not
15 waive. *Demery v. Arpaio*, 378 F.3d 1020, 1025 (9th Cir. 2004) ("we have an independent duty to consider
16 *sua sponte* whether a case is moot, *Dittman v. California*, 191 F.3d 1020, 1025 (9th Cir.1999),").

17 This case is moot. The Receiver violated 28 U.S.C. section 754 and never filed the July 28, 2022,
18 Order in Arizona which deprives this Court of jurisdiction. There is no statutory, contractual, willful
19 contempt, or common fund basis to award attorney's fees in a turnover proceeding, and there is no basis for
20 sanctions. *See* pp. 6-8 *infra*. There is no relief this Court can grant regarding a Turnover Order of property
21 Ms. Dean does not have. *Rosenfeld v. United States*, 859 F.2d 717, 720 (9th Cir. 1988) (must have a
22 prevailing party on a final judgment to make an award of attorney's fees). Ms. Dean delivered all funds in
23 her possession on November 18, 2022, and the Receiver's failure to inform this Court demonstrates a lack
24 of candor and the mootness of this proceeding. *United States v. Juv. Male*, 564 U.S. 932, 938 (2011) (where
25 matter cannot recur and no likelihood of future transactions of the same kind exist the matter is moot);
26 *DeFunis v. Odegaard*, 416 U.S. 312, 316 (1974) (per curiam) (where complained of conduct cannot reoccur
27 there is no Article III authority to decide the moot case on its merits). The Receiver's effort to ignore the
28 mootness of this case does not make the problem go away. *Alps Prop. & Cas. Ins. Co. v. Levine L. Grp.,*
Inc., 2022 WL 17812867, at *2 (D. Nev. Dec. 19, 2022) ("the district court must first inquire whether there
is an actual case or controversy within its jurisdiction.' *Principal Life Ins. Co. v. Robinson*, 394 F.3d 665,
669 (9th Cir. 2005) (citing *Am. States Ins. Co. v. Kearns*, 15 F.3d 142, 143 (9th Cir. 1994))").

The Receiver has engaged in *ad hominem* attacks while never addressing mootness or absence of a

1 case or controversy. *See* p. 9 *infra*. *West v. Secretary of the Department of Transportation*, 206 F.3d 920,
 2 925 n. 4 (9th Cir.2000) (“The central question of all mootness problems is whether changes in the
 3 circumstances that prevailed at the beginning of the litigation have forestalled any occasion for meaningful
 4 relief,” (*quoting* 13A C. Wright & A Miller: Federal Practice and Procedure § 3533.3 at 268 (1984)) There
 5 is no means by which Ms. Dean could repeat the actions of which the Receiver has complained, and there is
 6 no substantive relief the Court can grant. *Cantrell v. City of Long Beach*, 241 F.3d 674, 678 (9th Cir. 2001)
 7 (“A case becomes moot whenever it ‘los[es] its character as a present, live controversy of the kind that must
 8 exist if we are to avoid advisory opinions on abstract propositions of law.’ *Hall v. Beals*, 396 U.S. 45, 48,
 9 90 S.Ct. 200, 24 L.Ed.2d 214 (1969).”). There is no basis to award sanctions. (*See* pp. 6-9 *infra*.)
 Attorney’s fees cannot be awarded in a property turnover matter, and this case is moot.

10 **2. The Receiver’s violation of section 754 deprives the Court of jurisdiction**

11 The Receiver has refused to address the fact he never filed in Arizona the July 28, 2022, Amended
 12 Order (Dkt. 207) which the Receiver claims was his so-called Reappointment. (Dean 12-15-22 Dec, Dkt.
 13 395). *Terry v. Walker*, 369 F. Supp. 2d 818, 820 (W.D. Va. 2005) (Reappointment Order under section 754
 14 must be filed in the foreign district within 10-days). If the Amendment constitutes a Reappointment under
 15 section 28 U.S.C. section 754, which it is not, it must be filed in the jurisdiction where the assets exist, and
 16 the Receiver has never filed the July 28, 2022, Amendment in Arizona. *Terry v. June*, 2003 WL 22125300,
 17 at *3 (W.D. Va. Sept. 12, 2003) (when the receiver is reappointed, the Receiver must file "copies of the
 18 complaint and order of reappointment in the United States District Court for the Eastern District of
 19 Michigan" where the property in question was located). While the Receiver filed the original June 3, 2022,
 20 Order two (2) months late on August 5, 2022, Ms. Dean had already relied on the absence of jurisdiction
 21 and late filing does not solve the Receiver’s problem. *Terry v. Walker*, 369 F. Supp. 2d 818, 820 (W.D. Va.
 22 2005) (failure to file within 10-days in foreign jurisdiction deprives court of jurisdiction under section 754,
 23 and receiver must seek reappointment to file new order within 10-days). There is no jurisdiction in this
 24 Court to proceed with an award of attorney’s fees or a Turnover Order because not only was the original
 25 June 3, 2022, Order Appointing Receiver (Dkt. 88) not filed in Arizona within 10-days as mandated by
 26 section 754, but also the Amendment which the Receiver claims was a Reappointment was never filed in
 27 Arizona within 10-days of July 28, 2022. *S.E.C v. Vision Comm., Inc.*, 74 F.3d 287, 290-91 (D.C. Cir.
 28 1996) (Receiver must file Order of Reappointment in foreign jurisdiction within 10-days of Reappointment).

The Receiver never addressed whether an Amendment can constitute a Reappointment, which it
 cannot. He has ignored his failure to file the Amendment in Arizona. *SEC v. Heartland Group, Inc.*, 2003
 WL 21000363, at *5 (N.D. Ill. May 2, 2003) (Receiver must file Reappointment order in district where

1 assets are located within 10-days of reappointment). Before the Court can rule on the attorney's fees
 2 motion, it is obligated to inquire into its own jurisdiction, and the Court lacks jurisdiction in this case. *Galt*
 3 *G/Sv. Hapag-Lloyd A.G.*, 60 F.3d 1370, 1373 (9th Cir. 1995) ("We first inquire whether the district court
 4 correctly exercised subject matter jurisdiction over Safeway."). The Receiver's failure to file the initial June
 5 3, 2022, Order within 10-days, and the failure to ever file the July 28, 2022, Order in Arizona deprives this
 6 Court of jurisdiction. *S.E.C. v. Vision Commc'ns, Inc.*, 74 F.3d 287,290 (D.C. Cir. 1996) (failure to file
 Notice of Receiver's appointment in foreign district deprives court of jurisdiction over the assets).

7 **3. Ms. Dean's August 15, 2022, Motion to Quash was well taken**

8 Ms. Dean's August 1, 2022, Motion to Quash (Dkt. 257) and Objection to Jurisdiction (Dkt. 258)
 9 were valid and exposed the Receiver's failure to comply with 28 U.S.C. section 754. On August 1, 2022,
 10 the Receiver filed a Motion for OSC re Contempt and Turnover Order against Ms. Dean seeking the
 11 \$201,060 she held in her Arizona Trust Account. (Dkt. 210). On August 15, 2022, Ms. Dean filed a Motion
 12 to Quash the Receiver's 8-1-22 Motion and Objection to Jurisdiction because the Receiver failed to file the
 13 June 3, 2022, Order appointing Receiver in Arizona within 10-days of appointment as mandated by section
 14 754 (Dkt. 257 & 258). On August 29, 2022, the Receiver filed an Opposition (Dkt. 275) stating he had filed
 15 the Notice of his Appointment in Arizona on August 5, 2022, which was two months late. He claimed he
 had obtained an Amendment to the Receivership Order on July 28, 2022 (Dkt. 297).

16 The Receiver's August 29, 2022, Opposition (Dkt. 275) claimed the July 28, 2022, Amendment was
 17 somehow a Reappointment starting the 10-day clock under section 754 anew. For the first time the
 18 Receiver served the July 28, 2022, Amendment on Ms. Dean and claimed it was a Reappointment long after
 19 he had filed the August 1, 2022, OSC re Contempt. (Dkt. 210). However, the Receiver concealed he had
 20 not filed the July 28, 2022, Amendment in Arizona in any manner and that his failure to file the July 28,
 21 2022, Amendment was a violation of section 754 which precluded the Receiver from exercising jurisdiction
 22 over Ms. Dean and her Trust Account. *S.E.C v. Vision Comm., Inc.*, 74 F.3d 287, 290-91 (D.C. Cir. 1996)
 (Receiver must file Order of Reappointment in foreign jurisdiction within 10-days of Reappointment).

23 The Receiver's course of conduct was ineffective, and the failure to file the July 28, 2022,
 24 Amendment in Arizona was fatal to the Receiver's claims. *Terry v. June*, 2003 WL 22125300, at *3 (W.D.
 25 Va. Sept. 12, 2003) (when the receiver is reappointed, the Receiver must file "copies of the complaint and
 26 order of reappointment in the United States District Court for the Eastern District of Michigan" where the
 27 property in question was located). Ms. Dean's Motions were well taken and not subject to sanctions for any
 28 reason. The Receiver failed to file the June 3, 2022, Order appointing Receiver in Arizona within 10-days
 of his appointment, and the Receiver never filed the July 28, 2022, Amendment in Arizona thereby violating

1 section 754. The Receiver's gross negligence deprives this Court of jurisdiction to make an attorney's fees
 2 award. The Receiver's failures caused Ms. Dean to rely on the absence of the Receiver's compliance with
 3 section 754 which justified both her actions and her Motions. (See Dean 12-15-22 Dec., Dkt. 395). *Terry v.*
 4 *Walker*, 369 F. Supp. 2d 818, 820 (W.D. Va. 2005) (Reappointment Order under section 754 must be filed
 5 in the foreign district within 10-days).

6 **B. Attorney's Fees are Not Available in a Property Turnover Case**

7 **1. The Receiver may not ignore binding authority prohibiting attorney's fees**

8 Ms. Dean has cited ten (10) different cases from across the country all of which hold that attorney's
 9 fees are not available in a property Turnover Order proceeding.¹ Not only has the Receiver not responded to
 10 any one of these cases and their holdings, but also the Receiver has not cited a single case which permits the
 11 award of attorney's fees in property turnover proceedings. *McKinnon v. Kwong Wah Rest.*, 83 F.3d 498,
 12 504 (1st Cir. 1996) ("The record fully supports the district court's finding that the defendants were aware of
 13 the pending legal problem, but hoped that it 'would all go away.'"). Instead, the Receiver and Magistrate
 14 cite *Fed. Trade Comm'n v. Consumer Def. LLC*, 2019 WL 861385, at *3 (D. Nev. Feb. 22, 2019), for the
 15 proposition that the Court may award attorney's fees "to replenish the receivership estate following the filing
 16 of unnecessary motion." (Receiver 1-26-23 Reply Dkt. 443, p. 4, lines 11-15; Receiver 12-15-22
 17 Opposition Dkt. 391, p. 20, line 26, top. 21, line 2, Dkt. 391); (Magistrate 11-17-21 Order, p. 19, lines 19-
 18 21, Dkt. 368).

19 In Ms. Dean's January 12, 2023, Objection to the Magistrate's 12-29-22 Order, she pointed out the
 20 *Consumer Defense* case was a Discovery case for subpoenas and document production under Rule 37 of the

21 ¹ *In re Owners of Harvey Oil Ctr.*, 788 F.2d 275, 279 (5th Cir. 1986) (proceeding for turnover order does
 22 not support award of attorney's fees); *In re Promedco of Las Cruces, Inc.*, 2003 WL 21962443, at *16 (N.D.
 23 Tex. Aug. 12, 2003) (attorney's fees not permitted in Turnover Order proceeding); *In re U.S. Physicians*,
 24 2002 WL 31866247, at *2-3 (E.D. Pa. Dec. 20, 2002) (no attorney fees may be awarded in a turnover
 25 proceeding); *SEC v. Faulkner*, 2019 WL 918222, at *3 (N.D. Tex. Feb. 25, 2019) (attorney fees not
 26 available in a property turnover proceeding); *In re Gillespie*, 499 B.R. 726, 734 (Bankr. N.D. Cal. 2013),
 27 *rev'd and remanded on other grounds*, 516 B.R. 586 (B.A.P. 9th Cir. 2014) (attorney fees not available to
 28 prevailing party in action to compel turnover of collateral); *Clark v. F.D.I.C.*, 849 F. Supp. 2d 736,755 (S.D.
 Tex. 2011) ("FDIC [as Receiver] insists Plaintiffs cannot recover attorneys' fees [in a turnover case], and not
 just because their claim for wrongful foreclosure fails. Unless a statute or contract authorizes an award of
 such fees, the American Rule requires each party in federal litigation to pay its own fees."); *In re Deiss*, 166
 B.R. 92, 93 (Bankr. S.D. Tex. 1994) (attorney's fees not recoverable in a turnover proceeding); *In re*
Leverette, 118 B.R. 407 (Bankr. D.S.C. 1990) (turnover of property proceeding has no statutory, contract, or
 other basis for the award of attorney's fees); *Sonoma Cnty. Chevrolet, Inc. v. Hardesty*, 2015 WL 848195, at
 *6 (Ariz. Ct. App. Feb. 26, 2015) (attorney's fees may not be awarded in a property turnover proceeding);
Shine v. Moreau, 119 A. 3d 1, 5 (R.I. 20 15) (attorney fees are unavailable to a prevailing party in a property
 turnover proceeding).

1 Federal Rules of Civil Procedure which provide for statutory attorney’s fees. (Dean 1-12-23 Objection, pp.
 2 5-6 Dkt. 423). Ms. Dean raised this fact in her December 1, 2022 Objection to Magistrate’s Order (Dean
 3 12-1-22 Objection, pp. 17 -18 Dkt. 380). Neither the Receiver nor the Magistrate responded. *Shropshire v.*
 4 *Skilton Equip. Co. Inc.*, 2007 WL 4259608, at *2 (E.D. Ky. Nov. 30, 2007) (“It appears to me the principals
 5 involved have either refused to face these problems or have chosen to ignore them—perhaps thinking they
 6 will go away. Of course, they won’t go away and will get worse the longer the issue is not addressed.”).

7 The Receiver’s citation to discovery cases is improper. The Receiver’s claim that his Motion to
 8 Compel a property Turnover Order was the same as a Motion to Compel discovery was baseless because
 9 Discovery proceedings under Rule 37 of the Federal Rules of Civil Procedure utilize statutory authority to
 10 award attorney’s fees which does not apply in a Turnover proceeding with a non-party such as Ms. Dean.
 11 Yet, the Receiver ignored this criticism as if pretending it didn’t exist would make it go away.

12 **2. The Consumer Defense case does not support the Receiver**

13 An examination of the “Motion to Compel” in the *Consumer Defense* case shows it was for a
 14 Discovery matter, and the Receiver’s use of the term “Motion to Compel” in a property turnover case is
 15 baseless. Ms. Dean criticized the Receiver’s fast and loose reference to the phrase “Motion to Compel” as if
 16 a Discovery Motion to Compel was the same as a Motion to Compel turnover of property, which it is not.
 17 (Dean 01-12-23 Objection, p. 5, lines 10-13) (“The Magistrate and Receiver have played fast and loose with
 18 the phrase "Motion to Compel" to cite cases granting attorney's fees in discovery cases.

19 The *Consumer Defense* Court stated it dealt with a Discovery matter where the Court refused to find
 20 any bad faith and refused to award any attorney’s fees. The Court stated:

21 “Before the court is defendant Jonathan Hanley’s Motion to Quash Subpoenas (ECF No.
 22 154). Also before the court is defendant Jonathan Hanley’s Motion to Compel Production of Records
 23 from the Receiver (ECF No. 159). The court has considered the motions, plaintiff’s Opposition to
 24 the Motion to Quash Subpoenas (ECF Nos. 163), the Receiver’s Opposition to the Motion to Compel
 25 (ECF No. 166), and Hanley’s Reply to the Receiver’s Opposition (ECF No. 173).” *Id.* at * 1.

26 The Court ruled that Hanley may obtain discovery under Rule 37 of the Federal Rules of Civil Procedure.
 27 The Court warned that he could not seek discovery for an improper purpose. The Court stated:

28 “Hanley may obtain discovery authorized by the Federal Rules of Civil Procedure. He may not,
 however, serve discovery requests on parties or non-parties “for any improper purpose, such as to
 harass, cause unnecessary delay, or needlessly increase the cost of litigation” nor may he serve
 discovery that is “unreasonable nor unduly burdensome or expensive, considering the needs of the
 case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake
 in the action.” Fed. R. Civ. P 26(g)(B).” *Id.* at * 3.

The Court did not impose sanctions or attorney’s fees on Hanley. Rather, the Court warned that abuse of
 the discovery process would result in attorney’s fees and sanctions. The Court made no finding of bad faith,

1 violation of rules, or fraudulent misconduct essential to the use of inherent powers to impose sanctions.
 2 *Chambers v. NASCO, Inc.*, 501 U.S. 32, 46 (1991) (actions constituting a fraud or actions that cause "the
 3 very temple of justice [to be] defiled" are also necessary to support a bad faith finding to impose sanctions).

4 In Ms. Dean's case, she did not violate any of the Federal Rules of Civil Procedure. She did not
 5 issue a subpoena or bring a Discovery Motion as in the *Consumer Defense* case. The Receiver has never
 6 shown there has been any violation of any rule or statute governing proceedings before this Court, and the
 7 Receiver has never brought a motion for sanctions against Ms. Dean or made any showing of bad faith
 8 which would justify an award of sanctions.² *Lu v. United States*, 921 F.3d 850, 858 (9th Cir. 2019) (party
 9 must show fraudulent misconduct amounting to bad faith to impose sanctions under Court's inherent powers
 and trace each item of attorney's fees to the particular item of bad faith to show damages).

10 **C. The Receiver Never Requested and the Magistrate Did Not Impose Sanctions**

11 **1. The Receiver's untimely request for Sanctions is without merit**

12 In the middle of the Receiver's January 26, 2023, Brief, with no notice or supporting declaration, the
 13 Receiver for the first time in this proceeding has made a request for sanctions which states:

14 "In filing the instant Objection, which presents no new facts, fails to identify any clear error
 15 committed by the Court, and does not address controlling, intervening law, and instead merely
 16 'repeats arguments,' Ms. Dean has further wasted Receivership Assets by way of the attorneys' fees
 incurred in connection with this response. That being the case, an additional award of attorneys' fees
 17 incurred by the Receiver in responding to the Objection is an appropriate sanction and warranted
 18 under LR 59- 1(b)." (Receiver 01-26-23 Reply, p. 11, line 17-22).

19 However, Local Rule 59-1 deals with Motions for Reconsideration, and the Receiver acts as if this
 20 *de novo* review under Rule 72 is a Motion for Reconsideration, which it is not.³ *United States v. Silverman*,

21 ² In *Lee v. Gates*, 2005 WL 67087, at *2 (C.D. Cal. Jan. 10, 2005), the Court stated:

22 "[D]ue process requires that courts provide notice and opportunity to be heard before imposing any
 23 kind of sanctions.' *In re Ames Dept. Stores, Inc.*, 76 F.3d 66, 70 (2d Cir.1996) (emphasis in original). The
 24 Third Circuit has interpreted the notice requirement to mean 'specific' notice of the sanctioning authority
 being considered and the conduct alleged to be sanctionable. *See Zuk v. Eastern Pa. Psychiatric Inst. of the*
Med. College of Pa., 103 F.3d 294, 298 (3d Cir.1996); *Jones v. Pittsburgh Nat'l Corp.*, 899 F.2d 1350, 1357
 (3d Cir.1990). The purpose of particularized notice is to put counsel 'on notice as to the particular factors
 that he must address if he is to avoid sanctions.'"

25 ³ In *In re Examination of Kayak Kauai*, 2004 WL 1199170, at *1 (D. Haw. Apr. 19, 2004), the Court stated:

26 "If a party to the proceedings objects to the magistrate judge's findings or recommendations, the
 27 district court must review *de novo* those portions to which objection is made. *See United States v. Raddatz*,
 447 U.S. 667, 673, 100 S.Ct. 2406, 65 L.Ed.2d 424 (1980); Fed.R.Civ.P. 72(b). The district court may
 28 accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate
 judge. *Raddatz*, 447 U.S. at 673-74.

"*De novo* review means the district court must consider the matter anew, as if it had not been heard
 before and as if no decision previously had been rendered. *See Ness v. Commissioner*, 954 F.2d 1495, 1497

1 861 F.2d 571, 576 (9th Cir.1988) (in an appeals of a Magistrate’s dispositive ruling the court should
 2 consider the matter anew, the same as if it had not been heard before, and no decision was previously
 3 rendered). The Receiver has pretended this case is not moot requiring Ms. Dean to point out the
 4 constitutional mandates of mootness, and it is the Receiver who has pretended he complied with 28 U.S.C.
 5 section 754, when he never did so which required Ms. Dean to point out the Congressional mandates of the
 6 lack of jurisdiction in this case. It defies rationality for the Receiver to claim Ms. Dean should be
 7 sanctioned because she repeats some of her arguments when the Receiver has engaged in repeated failures
 8 to observe constitutional mandates. *United States v. Quinney*, 238 F. App’x 150, 154 (6th Cir. 2007) (*de*
 9 *novo* review requires a re-examination of matters before the Magistrate and the Magistrate’s rulings). (*See*
 10 pp.10-12 *infra*. where Ms. Dean discusses the Magistrate’s dispositive ruling in this case and the
 requirement for *de novo* review).

11 **2. Ms. Dean has not engaged in any sanctionable misconduct**

12 Prior to the request contained in the Receiver’s January 26, 2023, Brief the Receiver had not
 13 requested and the Magistrate did not impose sanctions. Ms. Dean has not engaged in sanctionable conduct,
 14 and there has been no finding of a statutory violation or bad faith, vexation, wantonness, or oppression. The
 Receivers’ claim that Ms. Dean has acted frivolously is incorrect and not a basis for sanctions.⁴

15 In *Zambrano v. City of Tustin*, 885 F.2d 1473, 1476–77 (9th Cir. 1989), the Court held there must be
 16 a statutory basis, violation of rules, or inherent power basis to sanction a party. The Court stated:

17 “In determining the validity of any judicial sanction, we must first consider the underlying authority
 18 for the court’s action. ‘For a sanction to be validly imposed, the conduct in question must be
 sanctionable under the authority relied on.’ *Cunningham v. County of Los Angeles*, 869 F.2d 427,
 436 (9th Cir.1989) (*quoting McCabe v. Arave*, 827 F.2d 634, 639 (9th Cir.1987)).” *Id.* at 1476.

19 The Court found that sanctions may only be based on a violation of a rule, statute, or where the party’s
 20 conduct offends the inherent powers of the Court. An inherent powers sanction

21 “must be exercised with restraint and discretion.” *Roadway Express*, 447 U.S. at 764, 100 S.Ct. at

22 (9th Cir.1992). The district court must arrive at its own independent conclusion about those portions to
 23 which objections are made, but a *de novo* hearing is not required. *United States v. Remsing*, 874 F.2d 614,
 617–18 (9th Cir.1989).

24
 25 ⁴ In *LVRC Holdings, LLC v. Brekka*, 2010 WL 11632864, at *1 (D. Nev. Feb. 8, 2010), the Court stated:
 26 “The courts’ inherent power is to be used with restraint and discretion, but is particularly appropriate where
 27 the conduct at issue is not covered by one of the other sanctioning provisions such as when a party has acted
 28 in bad faith, vexatiously, wantonly, or for oppressive reasons. [*Chambers v. NASCO, Inc.*, 501 U.S. 32, 44-
 46, 50 (1991)] [¶] Again, though Defendants may view Plaintiff’s actions in a negative light, considering
 the entire record, the Court cannot find that Plaintiff acted in bad faith, vexatiously, wantonly, or for
 oppressive reasons.”

1 2463. To insure that restraint is properly exercised, we have routinely insisted upon a finding of bad
2 faith before sanctions may be imposed under the court's inherent power. *Id.* at 765–66, 100 S.Ct. at
3 2463–64.15. *See also McCabe*, 827 F.2d at 640 (“court would have to make a finding of bad faith”);
4 *United States v. Stoneberger*, 805 F.2d 1391, 1393 (9th Cir.1986); *In re Itel Securities Litigation*,
5 791 F.2d 672, 675 (9th Cir.1986), *cert. denied sub nom Bader v. Itel Corp.*, 479 U.S. 1033, 107 S.Ct.
6 880, 93 L.Ed.2d 834 (1987) (*quoting Toombs*, 777 F.2d at 471). A specific finding of bad faith by
7 the trial judge or magistrate must accompany the sanction order in all such cases. *Stoneberger*, 805
8 F.2d at 1393.” *Id.* at 1478.

9 Prior to imposing sanctions, a Court must provide the party notice and an opportunity to be heard.
10 *Lasar v. Ford Motor Co.*, 399 F.3d 1101, 1109–10 (9th Cir.2005). *See also Roadway Exp., Inc. v. Piper*,
11 447 U.S. 752, 767 (1980). The Court must give notice as to the potential sanctions, the particular alleged
12 misconduct, and “the particular disciplinary authority under which the court is planning to proceed.” *In re*
13 *DeVilleville*, 361 F.3d 539, 548 (9th Cir.2004); *Cole v. U.S. Dist. Ct. For Dist. of Idaho*, 366 F.3d 813, 822 (9th
14 Cir.2004); *see also Mendez v. County of San Bernardino*, 540 F.3d 1109, 1132 (9th Cir.2008) (“To the
15 extent the district court was focused on punishing [counsel] for his trial misbehavior, it was incumbent on
16 the court to give him fair notice of that personal exposure and obligation to appear in person.”). This
17 requirement ensures the attorney has an opportunity to prepare a defense and explain questionable conduct,
18 that the judge will consider the propriety and severity of the sanction in light of the attorney's explanation of
19 his or her conduct, and that “the facts supporting the sanction will appear in the record, facilitating appellate
20 review.” *Tom Growney Equip., Inc. v. Shelley Irr. Dev., Inc.*, 834 F.2d 833, 836 (9th Cir.1987).

21 In Ms. Dean’s case, the Receiver has never made any request for sanctions or showing Ms. Dean had
22 engaged in a violation of a statute, rule, or the Court’s inherent powers. *Goodyear Tire & Rubber Co. v.*
23 *Haeger*, 581 U.S. 101, 109-10 (2017) (exercise of court’s inherent powers to sanctions requires a showing
24 that the sanctioned party’s conduct amounted to bad faith); *Leon v. IDX Sys. Corp.*, 464 F.3d 951, 961 (9th
25 Cir. 2006) (before awarding sanctions pursuant to its inherent power, “the court must make an express
26 finding that the sanctioned party's behavior ‘constituted or was tantamount to bad faith.’”). There is no bad
27 faith or basis for the imposition of sanctions on Ms. Dean. The Magistrate imposed only attorney’s fees
28 which the Magistrate believed were recoverable in a Turnover Order proceeding, when they are not, and
never made any finding to support sanctions.

3. The sanction request in a Reply Brief lacks notice and any factual basis

29 Now, in a Reply Brief, without prior notice, the Receiver requests sanctions because Ms. Dean has
30 repeated some of her arguments and “Ms. Dean has further wasted Receivership Assets by way of the
31 attorneys’ fees.” (Receiver 01-26-23 Reply, p. 11, line 19-20). However, the claim is without merit and not
32 a basis for sanctions. *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101, 103–04 (2017) (“In this case,
33 we consider a federal court's inherent authority to sanction a litigant for bad-faith conduct by ordering it to

1 pay the other side's legal fees. We hold that such an order is limited to the fees the innocent party incurred
 2 solely because of the misconduct—or put another way, to the fees that party would not have incurred but for
 3 the bad faith.”) Ms. Dean has not engaged in sanctionable conduct. *Foy v. First National Bank of Elkhart*,
 4 868 F.2d 251, 258 (7th Cir.1989) (hair-trigger requests for sanctions by lawyers who do not recognize the
 5 difference between advocacy and sanctionable misconduct are themselves sanctionable).

6 In *Foster v. Wilson*, 504 F.3d 1046, 1052 (9th Cir. 2007), the Court stated:

7 “As this court has recognized, before sanctions may be imposed upon a party there must be
 8 “sufficient, advance notice of exactly which conduct was alleged to be sanctionable.” *In re DeVille*,
 9 361 F.3d 539, 549 (9th Cir.2004) (quoting *Fellheimer, Eichen & Braverman v. Charter Techs.*, 57
 10 F.3d 1215 (3d Cir.1995)). See also *Mackler Prods., Inc. v. Cohen*, 225 F.3d 136, 144 (2d Cir.2000)
 11 (“The purpose of particularized notice is to put counsel on notice as to the particular factors that he
 12 must address if he is to avoid sanctions.”) (internal quotation marks omitted).”

13 The Receiver never requested or showed a basis for sanctions against Ms. Dean, and the Magistrate
 14 made no finding of any basis for sanctions. Rather, this case involves an attorney’s fee award in a Turnover
 15 proceeding where attorney’s fees are not available. There is no bad faith or justification for the Receiver’s
 16 name calling, and the Receiver cannot cite to authority which would permit attorney’s fees in this case.

17 **4. The Receiver’s Ad Hominem attacks are unwarranted**

18 The Receiver states:

19 “One would be hard pressed to describe Ms. Dean's Objection, Request for De Novo Review
 20 and Appeal From Magistrate's 12-29-22 Order as anything but frivolous.”(Receiver 01-26-23
 21 Opposition, p. 2, lines 25-26).

22 However, the Receiver never identified what was frivolous in Ms. Dean's mootness Objection. Ms.
 23 Dean’s right to a *de novo* review of the Magistrate’s dispositive order to her as a non-party is by no means
 24 frivolous. The Receiver never addresses the lack of jurisdiction, his failure to file the July 28, 2022, Order
 25 in Arizona, or the prohibition of an attorney’s fees award in a property turnover case. Nevertheless, five (5)
 26 times in the Receiver's Brief the Receiver engaged in pejorative name-calling asserting that Ms. Dean was
 27 frivolous, which is not a basis for the award of sanctions under any circumstances. *Chambers v. NASCO*,
 28 *Inc.*, 501 U.S. 32, 45-46 (1991) (Court may invoke inherent powers to award fees only when it finds that a
 litigant has acted “in bad faith, vexatiously, wantonly, or for oppressive reasons.”).

Ms. Dean’s Objections are in no manner frivolous. 4 C.J.S. *Appeal and Error* § 617 (1993)
 (“Invectives are not argument, and have no place in legal discussion, but tend only to produce prejudice and
 discord.”). The Receiver’s *ad hominem* attacks are unsupported and contrary to the facts. *Glass Egg*
Digital Media v. Gameloft, Inc., 2020 WL 906714, at *7 (N.D. Cal. Feb. 25, 2020) (counsel’s written
 materials submitted to the court should be factual, state current law, and fairly represent the parties’
 positions without unfairly attacking the opposing party or opposing counsel). The Receiver’s failure to have

1 filed the July 28, 2022, Order in Arizona within 10-days deprives this Court of jurisdiction, and there is
 2 nothing frivolous in Ms. Dean showing this matter is moot. Hon. Warren E. Burger, *The Necessity for*
 3 *Civility*, 52 F.R.D. 211, 213 (1971) ("Yet all too often, overzealous advocates seem to think the zeal and
 4 effectiveness of a lawyer depends on how thoroughly he can disrupt the proceedings or how loud he can
 5 shout or how close he can come to insulting all those he encounters-including the judges.").

6 **D. This Proceeding Requires a De Novo Review of a Dispositive Magistrate Ruling**

7 **1. The property Turnover Order is a dispositive ruling reviewable de novo**

8 The Receiver claims:

9 "When presented with a valid objection under Rule 72 and LR I 3-1, the district judge is to
 10 review the magistrate's order under the "clearly erroneous or contrary to law" standard. 28 U.S.C. §
 11 636(b)(1)(A); LR I 3-1(a) ("A district judge may reconsider any pretrial matter referred to a
 12 magistrate judge in a civil or criminal case pursuant to LR I 1-3, where it has been shown that the
 13 magistrate judge's ruling is clearly erroneous or contrary to law.")" (Receiver 1-16-23, Reply, p. 7,
 14 lines 20-24).

15 However, this proceeding is an Objection and Request for *de novo* review from a dispositive ruling
 16 of the Magistrate where Ms. Dean is not a party to this proceeding and a Turnover Order is a dispositive
 17 Order. *Lenard v. Argento*, 1986 WL 4182, at *2 (N.D. Ill. Mar. 26, 1986) (turnover of property order
 18 directed to third party is a dispositive ruling within Rule 72 and 28 U.S.C. section 636). Ms. Dean is a third
 19 party and the Turnover Order is a final disposition of the matters regarding her pending before this Court
 20 where there was no Reference to the Magistrate and Ms. Dean never consented to the Magistrate.

21 The Receiver cites no authority for his naked claim that this is a non-dispositive matter. *Roeder v.*
 22 *Islamic Republic of Iran*, 195 F. Supp. 2d 140, 185 (D.D.C. 2002) (lawyer failed to provide "any supporting
 23 authority" and omitted important opposing authority). The Receiver's claim that the Magistrate's ruling is
 24 reviewable by the District Court based on a "clearly erroneous" standard failed to examine the nature of this
 25 proceeding and is an inexcusable example of the Receiver's failure to recognize clear authority against his
 26 position.⁵ *Loop AI Labs Inc. v. Gatti*, 2016 WL 1273914, at *1 (N.D. Cal. Feb. 5, 2016) ("The parties must

27 ⁵ In *Wachova Sec., LLC. v. Loop Corp.*, 2010 WL 1788402 (N.D. Ill. Mar. 29, 2010), the Court stated:
 28 "12. Referrals under 28 U.S.C. § 636(b)(3) are subject to Fed. R. Civ. P. 72, which declares
 magistrate judges' rulings on dispositive motions to be non-binding recommendations only. The FDCPA, by
 contrast, states that its provisions trump those of the Federal Rules of Civil Procedure where the two
 conflict. 28 U.S.C. § 3003(f). Thus, the magistrate judge in *Meux* may have been permitted to issue a final
 turnover order directly appealable to the Seventh Circuit, but nowhere does *Meux* discuss its applicability to
 cases referred under 28 U.S.C. § 636(b). Given that provision, which limits a magistrate judge's authority to
 duties 'not inconsistent with the Constitution and laws of the United States,' and given the interpretation of
 those limits in *King*, *Rajaratnam*, and *Alpern*, Banco suggests that *Meux* does not expand a magistrate's
 powers to enter final judgments in postjudgment proceedings conducted under state law. *Meux* does not
 discuss much less reconcile itself with § 636(b) or this litany of Seventh Circuit authority.

1 cite specific authority in support of their positions, and their arguments cannot rely on generalized principles
 2 regarding the Court's overall authority to control its docket.”). This proceeding is a *de novo* review of a
 3 Motion for Attorney’s fees ancillary to the request for a Turnover Order which cannot support attorney’s
 4 fees, and the Receiver has cited no authority for his position. *Croomes v. Stream Glob. Servs.-AZ, Inc.*,
 5 2012 WL 1247021, at *3 (D. Ariz. Apr. 13, 2012) (“A motion for attorneys' fees and expenses must ‘cite the
 6 applicable statutory or contractual authority upon which the movant seeks an award of attorneys' fees and
 related non-taxable expenses.”).

7 In *AAAG-California, LLC v. Kisana*, 553 F. Supp. 3d 1042 (D. Utah 2021), an auction house brought
 8 action against auto dealerships for breach of contract and conversion arising out of 43 vehicles sent to
 9 dealerships left unpaid. The District Court entered a preliminary injunction against the auction house
 10 prohibiting disposition of the vehicles and ordered the appointment of a receiver. 439 F. Supp. 3d 1265.
 11 The Receiver then moved for a turnover order directing the auction house to transfer to the Receiver the
 12 vehicles titled in the name of the wife of the dealership attorney to the receiver. The Magistrate issued an
 13 order treated as a report and recommendation granting receiver's motion. The Dealerships' attorney who
 14 was husband of transferee filed an objection. The District Court found that the Turnover Order was a
 15 dispositive Order under Rule 72(b) and therefore not only treated the Magistrate’s Order as a
 16 recommendation, but also conducted a *de novo* review of the Magistrate’s findings and Order.
Id. at 1046. The Court affirmed the Magistrate’s Order after a *de novo* review. *Id.* at 1047.

17 Ms. Dean is a third party where the Magistrate’s ruling is dispositive, and there are no further
 18 proceedings which can be taken regarding her. Her matter is completed, and the Magistrate’s ruling is
 19 dispositive. The Receiver’s baseless assertion that the standard of review is “clearly erroneous” when it is
 unquestionably a *de novo* review defies the clear legal authority.

20 **2. Ms. Dean never consented to the Magistrate**

21 Ms. Dean has Objected to the Magistrate’s rulings because there was no Reference to the Magistrate
 22 and she never consented to the Magistrate. (See Dkts. 380, 396, 423). On January 20, 2023, the Court sent
 23 to all parties in this action a Notice, Consent, and Reference of a Civil Action to a Magistrate Judge which
 24 Ms. Dean has not signed. (Dkt. 431). The Court apparently recognized that parties must consent to the
 25 Magistrate to have an effective ruling by a non-Article III Judge. *Hajek v. Burlington N. R.R. Co.*, 186 F.3d

26 "13. Based on the above authority, this Court's March 24 Order must be a Report and
 27 Recommendation to the District Court. Under binding Seventh Circuit law, if a magistrate judge
 28 issues a Report and Recommendation, the judge must also notify the parties that they must file any
 objections to that Order with the District Court within 14 days or further appeal is waived.
Provident Bank, 882 F.2d at 261."

1 1105, 1109 (9th Cir. 1999) (absent parties consent Magistrate’s dispositive rulings must be reviewed *de*
2 *novo* by Article III Judge), The Receiver may not pretend that the Magistrate can make rulings in this case
3 and ignore binding authority which requires a *de novo* review upon Ms. Dean’s Objection.

4 Unless the parties consent, a magistrate judge does not have statutory or constitutional authority to
5 decide dispositive matters. *Atkins v. Rios*, 2022 WL 16720414, at *4 (E.D. Cal. Nov. 4, 2022) ("Until the
6 district judge issues an Order concerning the Findings and Recommendations, they are not final."). The
7 Court must review “*de novo* any part of the magistrate judge's disposition that has been properly objected
8 to.” Fed. R. Civ. P. 72(b)(3); 28 U.S.C.A. § 636(b)(1) (“A judge of the court shall make a *de novo*
9 determination of those portions of the report or specified proposed findings or recommendations to which
10 objection is made.”) “The district judge may accept, reject, or modify the recommended disposition; receive
11 further evidence; or return the matter to the magistrate judge with instructions.” Fed. R. Civ. P. 72(b)(3).

12 Ms. Dean filed Objections to the rulings which require a *de novo* review. The Receiver’s claim the
13 standard of review is “clearly erroneous” is baseless. Ms. Dean is not a party, and the Magistrate’s
14 dispositive ruling as to her is reviewed *de novo* where this case is moot, the receiver failed to file in Arizona
15 within 10-days of June 3, 2022, and never filed the July 28, 2022, Order in Arizona. An attorney’s fees
16 order in not available in a property Turnover case, and nothing in Ms. Dean’s conduct warrants sanction.

17 **III.**

18 **CONCLUSION**

19 For the foregoing reasons, Non-Party Kamille Dean requests that her Objection, Request for De
20 Novo Review, and Appeal be granted.

21 DATED: February 2, 2023

KAMILLE DEAN



22 By: _____

23 Kamille Dean, Attorney in Pro Se

PROOF OF SERVICE

I, Maureen Jaroscak, am an attorney at law. I am over the age of 18 and not a party to the within action. My business address is 1440 Harbor Boulevard, Suite 900, Fullerton, CA 92835.

On February 2, 2023, I served the following document described as:

MS. DEAN'S REPLY IN SUPPORT OF OBJECTION, REQUEST FOR DE NOVO REVIEW, AND APPEAL FROM MATISTRATE'S 12-29-22 ORDER

on all interested parties in this action by serving a true copy through electronic service by gmail.com on the email addresses and parties indicated below. The machine indicated the electronic transmission was successfully completed as follows:

SEE ATTACHED SERVICE LIST:

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 2, 2023 , at Fullerton, California.

/s/ Maureen Jaroscak

Maureen Jaroscak

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