

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA

v.

KENNETH J. HENRY AND
HILL COUNTRY FARMS, INC.

NO. 3:12-CV-4737-P

**UNITED STATES OF AMERICA'S EMERGENCY
MOTION FOR TURNOVER ORDER**

Respectfully submitted,

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Defendant Hill Country Farms, Inc. (HCF) and its owner, Kenneth Henry, are currently indebted to the United States in the amount of \$1,493,604.86 for grotesque and prolonged labor violations committed against disabled workers at a turkey processing plant operated by HCF. In this case, for the benefit of those disabled workers, the United States garnished HCF's interest in a pending lawsuit. Henry and others, however, created an elaborate subterfuge to circumvent the United States' collection efforts and the previous orders of this Court, and as a result, Frieda Johnson is set to pay the Estate of Thurman Johnson \$600,000, which rightfully belongs to HCF, on or before September 15, 2015.

Specifically, through a Confidential Settlement and Disbursement Agreement (Confidential Agreement) signed on July 21, 2013 (shortly after Henry's spouse and daughter were served with the first writs of garnishment in this case), Henry and HCF attempted to divert their interest in the pending lawsuit, *HCF v. J&J and Frieda Johnson*, Cause No. 12-06-6372, 35th Judicial District, Mills County, Texas (Mills County Lawsuit), to Henry's daughter, Robin Aaberg, and the children of Henry's now-deceased business partner, Thurman Johnson. (Pl.'s
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App. at 1-5.) A Mediated Settlement Agreement (Settlement Agreement) settling that lawsuit was signed on May 12, 2015, whereby Frieda Johnson is to pay the Estate of Thurman Johnson \$600,000 no later than September 15, 2015. (*Id.* at 7-10.)

The Estate of Thurman Johnson serves as nothing more than HCF's nominee in the Mills County Lawsuit, and the actions of Henry; Thurman Johnson's sole beneficiary, Jane Anne Moreland f/k/a Jane Anne Steen Johnson (Moreland); and others acting in concert with them amount to nothing more than a sham-to-perpetrate-a-fraud against the United States and the disabled men they abused for so long. Because the settlement funds rightfully belong to HCF, the United States requests that Frieda Johnson be ordered to turnover the \$600,000 to the United States pursuant to 28 U.S.C. §§ 1651, 3013, 3202(a), and 3205(c)(6) and (7). The United States is requesting emergency relief because the funds at issue will be released by September 15 without judicial intervention.

BACKGROUND

I. HCF d/b/a Henry's Turkey Services is a company, owned and operated by Henry and Thurman Johnson, which, for years, committed horrific labor violations against numerous disabled men at its turkey processing plant in Iowa.

HCF d/b/a Henry's Turkey Services is a for-profit corporation located in Goldthwaite, Texas. (Pl.'s App. at 20.) In the mid-1960s, HCF, at that time owned and operated by Thurman Johnson, began working with disabled men living in Texas, and Kenneth Henry owned Henry's Turkey Services, Inc. (*Id.*) In 1972, Henry and Johnson merged their companies to form HCF d/b/a Henry's Turkey Services. (*Id.*) Henry has been a 50% owner and vice president or president of the merged company from the date of incorporation until the present. (*Id.*) HCF

was caretaker for their disabled workers and housed them in a converted school house in Atlissa, Iowa, known as the “bunkhouse.” (*Id.* at 20-22.) Henry was actively involved in the business in Iowa, including handling the financial operations, hiring workers, and scheduling work. (*Id.*) After an extended illness, Thurman Johnson passed away in 2008, and his sole beneficiary is his widow, Jane Anne Moreland. (*Id.* at 2, 22, 45.) Moreland was HCF’s co-owner and corporate treasurer from at least November 16, 2006, through February 7, 2009. (*Id.* at 22-23.) She performed the company’s duties relating to the disabled men’s social security benefits. (*Id.*) As their caretaker, HCF received the disabled men’s social security payments, and would then reimburse itself from those payments for the men’s room and board. (*Id.*)

HCF received over \$500,000 annually in 2006, 2007, and 2008 from West Liberty Foods for work performed by the disabled workers. (*Id.* at 23.) During this period, the men worked on the processing line, and HCF transported them from the bunkhouse to the processing plant at 4:45 a.m. each day. (*Id.* at 24.) For their efforts, HCF would calculate the workers’ pay based on HCF’s claimed costs of “in kind Room and Board” and “in kind Care.” (*Id.* at 24-25.) Total wages reported for each disabled worker included the in-kind room-and-board and in-kind care as well as \$65.00 per month, which is the maximum cash wage a worker could receive that would not reduce the amount of his social security benefits. (*Id.*) While the company’s charges for in-kind room-and-board and in-kind care increased annually, the workers’ cash wages never varied. (*Id.*)

As a related matter, the Iowa Department of Workforce Development Division of Labor investigated the living conditions at the bunkhouse and issued a Final Agency Decision on

March 8, 2011, against Henry and Moreland d/b/a Henry's Turkey Services for violations of Iowa state law. (*Id.* at 39-58.) That decision made numerous findings of fact regarding the treatment of the disabled workers, noting that when state and federal law enforcement officials presented themselves at the bunkhouse on February 7, 2009, they found behind locked doors "37 plus years of secrets, neglect, and deplorable actions." (*Id.* at 41.) Although the list of offenses is exceptionally long, the decision notes that investigating agents found in the bunkhouse, among other things, serious fire hazards, urine soaked mattresses, cockroaches, mouse droppings, various other unsanitary conditions, and two mentally-disabled diabetic men responsible for their own insulin injections. (*Id.* at 45-47.)

II. On July 20, 2011, the United States obtained a \$1.7 million judgment against HCF and Henry for failing to pay proper overtime and minimum wages to the disabled workers.

Through this case, the United States is enforcing an approximately \$1.7 million judgment entered on July 20, 2011, for the benefit of the disabled workers. (*Id.* at 11.) During the investigation that led to the current case, the United States Department of Labor calculated the amount of overtime and minimum wages that HCF failed to pay the disabled workers. (*Id.* at 27, 38.) Over a three-year period, the amount owed the workers was \$880,777.17. (*Id.*) Pursuant to 29 U.S.C. § 216(b), the defendants are also liable for an equal amount in liquidated damages. *See* 29 U.S.C. § 216(b). A judgment was, accordingly, rendered on July 20, 2011, in the United States District Court for the Southern District of Iowa against HCF and Henry in the amount of \$1,761,554.34. *See Hilda L. Solis, Sec'y of Labor, United States Dep't of Labor v. Hill Country Farms, Inc. d/b/a Henry's Turkey Services and Kenneth Henry, individually*, Case No. 3:09-CV-

0162 (S.D. Iowa July 20, 2011) (Pl.'s App. at 11.).

III. Henry and HCF have made every effort to thwart the United States' attempts to collect this judgment.

Shortly after entry of judgment, the United States Attorney's Office for the Northern District of Texas received the judgment to enforce the debt. (Pl.'s App. at 112-115.) Despite having significant resources, Henry and HCF have refused to pay the money they owe the workers. (*Id.*) Through the Treasury Offset Program, previous garnishment actions, and other involuntary enforcement mechanisms, however, the United States has collected \$272,297.22, and Henry's and HCF's current debt balance is \$1,493,604.86, as of August 21, 2015. (*Id.* at 12-16.)

On November 9, 2011, the United States sent Henry and HCF letters, through their attorney, David Scieszinski, demanding payment for the full amount of the outstanding judgment and requesting that they complete a financial statement. (*Id.* at 100-103.) Instead of responding, Henry transferred property in Proctor, Texas, valued at approximately \$325,000.00, to his daughter, Robin Aaberg, on November 30, 2011. (*Id.* at 69-72, 113.)

The United States sent more demand letters on December 13, 2011, and May 16, 2012, without receiving a response, and on September 4, 2012, the United States sent a subpoena for Henry to appear at a debtor exam scheduled for September 26, 2012. (*Id.* at 104-111.) Henry, and his spouse, Gay Henry, appeared at the debtor's exam on September 26, 2012. (*Id.* at 112-115.) At the debtor exam, Henry provided a financial statement showing he had a net worth of \$2,994,100.00 in 2009; \$3,005,000.000 in 2010; and \$1,606,400.00 in 2011. (*Id.* at 76-93.) He refused, however, to voluntarily surrender assets or enter into any payment arrangement with the United States. (*Id.* at 112-115.)

Due to the lack of cooperation, the United States filed an Application for Writs of Garnishment in this case on November 20, 2012, seeking to garnish Henry's and/or HCF's property interests held by First National Bank, Mills County State Bank, Rusty Roberson, and Southwestern Farms & Cattle Co., Inc. (Dkt. 2.) The Court ordered the issuance of the writs on April 16, 2013. (Dkt.7-10.) Robin Aaberg was served with the writs on July 13, 2013, and Gay Henry was served on July 18, 2013. (Dkt. 22-23.) On February 19, 2014, the Court entered the Final Order of Garnishment resolving all issues pending in that garnishment matter.

Upon discovering the existence of the Mills County Lawsuit, the United States filed a Supplemental Application for Writs of Garnishment on October 3, 2014, seeking to garnish HCF's property held by Frieda Johnson, Johnson and Johnson Egg Farm, Inc. (J&J Egg Farm), and McKethan Espinoza, PLLC, which is the law firm of Stephen McKethan – HCF's lawyer in the lawsuit. (Dkt. 31.) The Court ordered the issuance of the writs on March 11, 2015, which were subsequently served on all relevant parties. (Dkt. 32, 36-37.) On May 12, 2015 – the same day McKethan signed the Settlement Agreement discussed below, Bethany Espinoza filed an answer on behalf of McKethan Espinoza, PLLC, stating that it did not have any property belonging to HCF and did not anticipate owing HCF anything in the future. (Dkt. 34.) On May 27, 2015, Frieda Johnson, individually and on behalf of J&J Egg Farm, filed an answer stating that she did not have any property belonging to HCF and did not anticipate owing HCF anything in the future. (Dkt. 35.) A final order has not yet been entered with regard to this garnishment.

IV. To resolve a land dispute, HCF sued J&J Egg Farm and Frieda Johnson in the Mills County Lawsuit; however, once the United States served the initial garnishment action, Henry and Moreland colluded to divert HCF's interest in the lawsuit to their children.

On June 8, 2012, HCF, through its attorney Stephen McKethan, filed the Mills County Lawsuit alleging that it owned a 50% interest in J&J Egg Farm, which owned approximately 551 acres in Mills County. (Pl.'s App. at 59-64.) The petition stated that Thurman Johnson and Henry Johnson formed J&J Egg Farm in 1969, and Thurman Johnson transferred his interest in J&J Egg Farm to HCF when HCF was formed. (*Id.* at 60-61.) The petition also stated that “[w]hile there was no documentation to evidence such transaction, all owners of J & J Egg Farm and Hill Country were aware of the transfer and operated under such circumstances.” (*Id.*) The petition further stated that Henry became aware in 2000 that Thurman Johnson's transfer of his interest in J&J Egg Farm to HCF was not properly documented, so he began to resolve the issue. (*Id.*) This issue was resolved on or about February 22, 2005, when Thurman Johnson, “by and through his attorney-in fact, Jane Anne Steen Johnson [a/k/a Jane Anne Moreland], completed the original transfer of all of his shared and ownership interest in J & J Egg Farm to Hill Country through a Stock Assignment.” (*Id.*) A copy of the Stock Assignment was attached as Exhibit A to the petition. (*Id.* at 64.) The petition also stated that Thurman Johnson died in 2008, and Henry and Moreland each own 50% of HCF. (*Id.* at 61.)

On July 21, 2013 – shortly after Henry's spouse and daughter were served with the United States' writs of garnishment previously mentioned, Henry, Moreland, and Mina Martin, the Executrix of the Estate of Thurman Johnson as well as Thurman Johnson's daughter, executed the Confidential Agreement. (*Id.* at 1-5.) The Confidential Agreement establishes that: (1) HCF

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owned the interest in J&J Egg Farm that is the subject of the Mills County Lawsuit; (2) Henry and Thurman Johnson each formerly owned a 50% interest in HCF; (3) Thurman Johnson owned a 50% interest in J&J Egg Farm that he transferred to HCF; and (4) HCF owes Henry \$150,412.50 and Moreland \$94,522.00. (*Id.*) The Confidential Agreement further states that the Estate of Thurman Johnson will pursue the Mills County Lawsuit and any funds received from the litigation shall be disbursed as follows: (1) \$150,412.50 to Robin Aaberg, Henry's daughter; (2) \$94,522.00 to Moreland; (3) 50% of the remaining funds to Robin Aaberg; and (4) the other 50% of the remaining funds to Thurman Johnson's daughters, Mina Martin, Ruth Ann Bowland, and Della McCoy, in equal shares. (*Id.*)

On October 2, 2013, McKethan, after filing the Mills County Lawsuit on behalf of HCF, filed an Original Petition in Intervention on behalf of the Estate of Thurman Johnson and began to pursue the litigation on behalf of the estate. (*Id.* at 65-68.) Curiously, the only explanation for the intervention was paragraph 11 of the petition, which stated that, contrary to HCF's previous representations, there was now a dispute about whether Thurman Johnson's transfer of his interest in J&J Egg Farm to HCF was valid. (*Id.* at 66.)

On May 12, 2015, a Settlement Agreement was reached in the Mills County Lawsuit whereby Frieda Johnson agreed to pay \$600,000 to the Estate of Thurman Johnson, no later than September 15, 2015. (*Id.* at 7-10.) Mina Martin signed the Settlement Agreement on behalf of the Estate of Thurman Johnson, and McKethan signed the Settlement Agreement, individually and "as agent and attorney-in-fact for Hill Country Farm, Inc." (*Id.* at 8.) Paragraph 5 of Exhibit A states that "HCF, Inc., will nonsuit its claims in this litigation with prejudice, and

acknowledges that it will receive no funds or property as a result of this litigation or settlement.”
(*Id.* at 9.)

Suspicious of the fact that the Settlement Agreement specifically released all of HCF’s claims in the Mills County Lawsuit without receiving payment, the United States sent a subpoena to McKethan on June 2, 2015. (*Id.* at 94-99.) In response to the subpoena, McKethan produced the Confidential Agreement. (*Id.* at 1-6.) The terms of the Confidential Agreement demonstrate that it is simply a blatant attempt to circumvent the United States’ collection efforts and further victimize the disabled workers. (*Id.*) The United States, therefore, requests that the Court order Frieda Johnson to turnover to the United States the \$600,000 she is scheduled to pay the Estate of Thurman Johnson pursuant to the Settlement Agreement.

ARGUMENT

Despite deliberate attempts to hide HCF’s interest in the Mills County Lawsuit, the Confidential Agreement and Stock Assignment clearly establish that HCF is the true owner of the \$600,000. (*Id.* at 1-6, 64.) HCF is indebted to the United States in the current amount of \$1,493,604.86, and writs of garnishment are pending against Frieda Johnson, J&J Egg Farm, and McKethan Espinoza, PLLC, all of whom have appeared in this case. (*Id.* at 12-17; Dkt. 31-35.) Pursuant to 28 U.S.C. §§ 1651, 3013, 3202(a), and 3205(c)(6) and (7), the United States, therefore, requests that the Court order Frieda Johnson and/or J&J Egg Farm to turnover to the United States the \$600,000 set forth in the Settlement Agreement.

I. Pursuant to 28 U.S.C. §§ 1651, 3013, 3202(a), and 3205(c)(6) and (7), the Court has the legal authority to order the turnover of the settlement proceeds to the United States.

The United States initiated this garnishment action pursuant to 28 U.S.C. § 3205 of the Federal Debt Collection Procedures Act (FDCPA). *See* 28 U.S.C. § 3205; Dkt. 2, 31. The FDCPA was enacted in 1990 as the mechanism through which the government collects debts owed it. *See* 28 U.S.C. § 3001-3308. Pursuant to § 3205(a) of the FDCPA, the Court may issue a writ of garnishment against property “in which the debtor has a substantial nonexempt interest and which is in the possession, custody, or control of a person other than the debtor, in order to satisfy the judgment against the debtor.” *See* 28 U.S.C. § 3205. After the garnishee is served, it must file an answer disclosing whether it holds any such property. *See id.* Under § 3205(c)(5), the parties may object to the answer and request a hearing. *See id.* In addition, if the garnishee fails to answer or withhold property, the United States may at any time petition the court under § 3205(c)(6) for a hearing and an order to withhold property. *See id.* After all pending orders are entered, the court enters a disposition order under § 3205(c)(7) directing the garnishee as to the disposition of the property at issue. *See id.* Under 28 U.S.C. § 3013, the Court “may at any time on its own initiative or the motion of any interested party . . . make an order denying, limiting, conditioning, regulating, extending, or modifying the use of any enforcement procedure under [the FDCPA].” *See* 28 U.S.C. § 3013.

In addition, the All Writs Act permits the Court to “issue all writs necessary or appropriate in aid of their responsive jurisdictions and agreeable to the usages and principles of law.” *See* 28 U.S.C. § 1651. Under 28 U.S.C. § 3202(a), the All Writs Act is specifically made applicable to

the enforcement remedies in the FDCPA. *See* 28 U.S.C. § 3202(a) (court may “issue other writs pursuant to section 1651 of title 28, United States Code, as necessary to support” FDCPA post-judgment remedies). The All Writs Act has also been routinely used to aid the government in collecting debts. *See, e.g., United States v. Yielding*, 657 F.3d 722, 727-28 (8th Cir. 2011) (All Writs Act may be used against defendant and those “in privity” with him to prevent dissipation and concealment of assets); *United States v. Friedman*, 143 F.3d 18, 19-20 (1st Cir. 1998) (pursuant to the All Writs Act, court restrained defendant from transferring assets prior to sentencing).

In this case, Frieda Johnson, J&J Egg Farm, and McKethan Espinoza filed answers stating that they do not hold and do not anticipate holding any property in the future belonging to HCF. (Dkt. 34-35.) At the time they filed their answer, they were presumably relying on paragraph 5 of Exhibit A of the Settlement Agreement, which states that HCF has no interest in the lawsuit that it filed and will release all claims with prejudice without receiving any of the settlement proceeds. (Pl.’s App. at 9.) As set forth below, however, HCF is the true owner of the settlement proceeds under state law nominee and sham-to-perpetrate-a-fraud theories, so the funds should be paid to the United States.

II. The Estate of Thurman Johnson is HCF’s nominee in the Mills County Lawsuit, so the settlement proceeds should be paid to the United States for application to HCF’s debt.

The \$600,000 in settlement proceeds should be paid to the United States because the Estate of Thurman Johnson is acting as nothing more than HCF’s nominee to shield the lawsuit proceeds from the United States. It is well-established that vesting formal title in a nominee will

not place the property out of the reach of a federal lien. *See Macklin v. United States*, 300 F.3d 814, 818 n.2 (7th Cir. 2002) (IRS proceeds “against an alter ego or nominee of a delinquent taxpayer for the purposes of satisfying the taxpayer’s obligations”); *United States v. Kitsos*, 770 F.Supp. 1230, 1236 (N.D. Ill. 1991) (individual’s dominion over assets purportedly transferred to church was grounds to disregard the church’s independent existence); *Faith Missionary Baptist Church v. Internal Revenue Serv. (In re Faith Missionary Baptist Church)*, 174 B.R. 454, 466-469 (Bankr. E.D. Tex. 1994) (although church held legal title to assets, assets belonged to individual as church was individual’s alter ego). A judgment creditor may levy upon property held in the name of someone other than the judgment debtor if the debtor engaged in a legal fiction by placing the title to the property in the hands of someone else while retaining the benefits of ownership. *See Dexia Credit Local v. Rogan*, No. 02C8288, 2008 WL 4543013, at *8 (N.D. Ill. Oct. 9, 2008) (unpublished) (citing *Richards v. United States (In re Richards)*, 231 B.R. 571, 578 (E.D. Pa. 1999)). In Texas, the legal fiction between an individual and an entity may be pierced if the entity “has been used as part of a basically unfair device to achieve an inequitable result.” *W. Horizontal Drilling, Inc. v. Jonnet Energy Corp.*, 11 F.3d 65, 67 (5th Cir. 1994) (quoting *Castleberry v. Branscum*, 721 S.W.2d 270, 271 (Tex. 1986), *superseded on other grounds* by former Bus. Corp. Act art. 2.21, re-codified at Tex. Bus. Orgs. Code § 21.223).

A nominee is someone who holds bare legal title to property for the benefit of another. *Scoville v. United States*, 250 F.3d 1198, 1202 (8th Cir. 2001); *see also Oxford Capital Corp. v. United States*, 211 F.3d 280, 284 (5th Cir. 2000). In considering whether the United States may seize property titled to a nominee, many courts consider the following factors: (1)

whether the debtor expended personal funds for the property; (2) whether the alleged nominee paid inadequate or no consideration; (3) whether the property was placed in the alleged nominee's name in anticipation of a lawsuit or other liability; (4) whether the debtor enjoys the benefits of, retains possession of, and exercises dominion and control over the property; (5) whether a family or other close relationship exists between the debtor and the alleged nominee; (6) whether conveyances between the debtor and alleged nominee were recorded; and (7) whether the alleged nominee interferes with the debtor's use of the property. *See, e.g., United States v. Harrison*, 366 B.R. 656, 665-66 (S.D. Tex. 2007); *Cody v. United States*, 348 F.Supp.2d 682, 694-95 (E.D. Va. 2004); *Holman v. United States*, 505 F.3d 1060, 1065 n.1 (10th Cir. 2007) (citing *Spotts v. United States*, 429 F.3d 248, 253 n.2 (6th Cir. 2005)); and *Dexia*, 2008 WL 4543013, at *8 (citing *Richards*, 231 B.R. at 579 and *United States v. Reed*, 168 F.Supp.2d 1266, 1268-69 (D. Utah 2001)). Not all of the factors are of equal weight, and they "should not be applied rigidly or mechanically, as no one factor is determinative." *Richards*, 231 B.R. at 579. However, one of the most significant factors for determining nominee status is whether the judgment debtor can control (either directly or indirectly) the asset at issue. *See id.* (citing *United States v. Kudasik*, 21 F.Supp.2d 501, 508) (W.D. Pa. 1998) (citing *Shades Ridge Holding Co., Inc. v. United States*, 888 F.2d 725, 728 (11th Cir. 1989)).

Based on these factors, the Estate of Thurman Johnson is pursuing the Mills County Lawsuit as HCF's nominee. First, McKethan is acting as the attorney for ***both HCF and the Estate of Thurman Johnson***, even though paragraph 11 of the estate's intervention petition states that there is a dispute between the two entities. (Pl.'s App. at 59-68.) Second, McKethan

signed the Settlement Agreement as HCF's agent and attorney-in-fact waiving any interest HCF has in the Mills County Lawsuit without receiving any payment. (*Id.* at 7-10.) Third, the Confidential Agreement was executed within a week after Henry's spouse and daughter were served with the United States' initial garnishment action. (*Id.* at 1-5, 73-75.) Fourth, instead of being administered in probate, all the settlement proceeds are funnelled to Henry's daughter, Moreland, and Moreland's children. (*Id.* at 1-5.) Not only are the funds being split among the children but they are also being used to repay debts that HCF owes Henry and Moreland individually. (*Id.*)

Fifth, the parties attempted to hide the Confidential Agreement. (*Id.* at 1-5.) The parties were obviously concerned that the Confidential Agreement would be discovered because paragraph 7 states that:

In the event that any party receives a request to disclose all or any part of the terms and provisions of this Agreement under the terms of a subpoena or order issued by a Court or by a Governmental Body, the parties agrees [sic] as follows:

- a. To notify the other parties immediately of the existence, terms, and circumstances surrounding such request;
- b. ***To consult with the other parties on the advisability of taking legal steps to resist or narrow such request;*** and
- c. If disclosure of such information is required to prevent the party from being held in contempt or subject to other penalty, ***to furnish only such portion of the terms and provisions as it is legally compelled to disclose*** and to exercise its best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to the disclosed third-party.

(*Id.* at 3.) (emphasis added.) Paragraph 12 of the agreement further states:

In the event that any party breaches the confidentiality of this Agreement, all parties acknowledge and agree that the other parties will incur certain damages and

costs that are not either easily or accurately ascertainable. Therefore, in the event of such a breach, the breaching party agrees to pay to the other parties, as liquidated damages the sum of \$100,000.00, each. ***The Parties agree that this amount is reasonable under the circumstances existing at the time of the execution of this Agreement.***

(*Id.* at 3-4.) (emphasis added.)

Sixth, all parties agree that Thurman Johnson transferred his interest in J&J Egg Farm to HCF years ago. (*Id.* at 1, 61, 64.) This is set forth in the Confidential Agreement as well as the Stock Agreement, which was signed by Moreland and attached as Exhibit A to HCF's original complaint in the lawsuit. (*Id.*) Thurman Johnson's interest was only resurrected in response to the United States' collection efforts and after Henry agreed to split the pot of money with Moreland and her children. (*Id.* at 1-5, 73-75.)

Seventh, this scheme was part of a larger attempt by Henry to shield all assets from seizure. (*Id.* at 69-72, 113.) Namely, in addition to HCF's interest in the Mills County Lawsuit, Henry transferred his property in Proctor, Texas, another non-exempt asset valued at approximately \$325,000.00, to his daughter, Robin Aaberg, less than a month after receiving a demand letter from the United States Attorney's Office. (*Id.*) The Confidential Agreement is, accordingly, nothing more than an elaborate scheme to shield assets and allow the estate to pursue the Mills County Lawsuit on behalf of HCF.

III. Even if it does not find that the Estate of Thurman Johnson is HCF's nominee, the Court may still order the funds turned over to the United States because the entire scheme is nothing more than a sham-to-perpetrate-a-fraud on the United States and the disabled workers.

Although similar to a nominee theory, the sham-to-perpetrate-a-fraud theory is a separate legal doctrine available to set aside a legal fiction and permit creditors to seize property. *See Castleberry*, 721 S.W.2d at 271-73. The nominee theory focuses on the debtor's relationship to the property. *See Scoville*, 250 F.3d at 1202. The sham theory, however, may be used any time when recognizing the separate legal existence of an entity would bring about an inequitable result. *Castleberry*, 721 S.W.2d at 271-73. To do so, a creditor does not need to prove actual fraud or an intent to defraud. *Id.* All that a creditor needs to establish is "that adherence to the fiction would promote injustice and lead to an inequitable result." *Id.* Because this is an equitable doctrine, Texas takes a flexible fact-specific approach focusing on the equity. *Id.*

For the reasons set forth in the previous section, the actions of Henry, Moreland, and those in concert with them in executing the Confidential Agreement amount to little more than an elaborate subterfuge to shield assets from seizure and further harm the disabled workers. (Pl.'s App. at 1-5.) After the United States served its initial garnishment action, Henry and Moreland quickly executed and made every attempt to hide the Confidential Agreement while the Estate of Thurman Johnson intervened and litigated the Mills County Lawsuit on HCF's behalf. (*Id.* at 1-5; 73-75.) McKethan represents both HCF and the Estate of Thurman Johnson, who would appear to have competing interests in the Mills County Lawsuit, and signed the Settlement Agreement as the agent for HCF waiving all of HCF's claims in the lawsuit without receiving a penny. (*Id.* at 59-68.) Of course, the money is really supposed to flow to Robin Aaberg to

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cover Henry's interest in HCF as well as repay a \$150,412.50 debt HCF owes him, and the rest to Moreland and her children for their cooperation. (*Id.* at 1-5.) Even if the Court does not find that the Estate of Thurman Johnson is HCF's nominee, it should still order the turnover of the funds to the United States due to the substantial injustice that would befall the disabled workers if Henry is allowed to benefit from his misconduct.

CONCLUSION

As set forth above, Frieda Johnson holds property belonging to HCF, and the Court has the authority to order her to turnover the property to the United States pursuant to 28 U.S.C. §§ 1651, 3013, 3202(a), and 3205(c)(6) and (7). The United States, accordingly, requests that the Court order Frieda Johnson to turnover the \$600,000 in settlement proceeds to the United States for application to the debt rendered in Case No. 3:09-CV-0162, United States District Court, Southern District of Iowa.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I certify that on August 26, 2015, I attempted to confer with Mark Threadgill, counsel for Frieda Johnson and J&J Egg Farm, via telephone conference regarding this motion. Although he returned my first call, I was out of the office, and he left a voicemail message. As of the filing of this motion, he has not returned my second call. I also certify that on August 26, 2015, I attempted to confer with Stephen McKethan, counsel for Kenneth Henry and HCF, regarding this motion. I left a message with his office, but as of the filing of this motion, he has not returned my call.

s/ Megan J. Fahey
Megan J. Fahey
Assistant United States Attorney

CERTIFICATE OF SERVICE

I certify that, on August 26, 2015, the United States' Emergency Motion for Turnover Order was sent by court-enabled electronic case filing to all parties who consented to receive service by electronic means and also by first class mail to the following:

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