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11
 12 **UNITED STATES DISTRICT COURT**
 13 **CENTRAL DISTRICT OF CALIFORNIA**
 14

15 NATIONSTAR MORTGAGE LLC,
 16 Plaintiff,
 17 vs.
 18 PATRICK JOSEPH SORIA, an
 19 individual, et al.
 20 Defendants.

) CASE NO. 2:18-cv-3041-DSF-RAOx
 Hon. Dale S. Fischer

) **DEFENDANT’S REPLY TO**
) **PLAINTIFF’S AND RECEIVER’S**
) **OPPOSITIONS TO MOTION FOR**
) **RELEASE FROM CONTEMPT**
) **INCARCERATION**

) Judge: Hon. Dale S. Fischer
) Hearing Date: December 10, 2018
) Time: 1:30 p.m.
) Courtroom: 7D

1 Defendant Patrick Joseph Soria respectfully submits this reply memorandum
2 in support of his Motion for Release from Contempt Incarceration.

3 **I. INTRODUCTION**

4 Each of the opposition briefs submitted by Plaintiff Nationstar Mortgage LLC
5 (“Nationstar”) and the Permanent Receiver Robb Evans & Associates LLC (the
6 “Receiver”) fails to provide a legitimate reason as to why Mr. Soria may still be held
7 in contempt incarceration. Nationstar and Receiver fail to understand that the
8 Court’s Order re Patrick Soria’s Claim of Fifth Amendment Privilege issued on
9 August 27, 2018 (Dkt. No. 206) (“Fifth Amendment Order”) recognizes and
10 preserves Mr. Soria’s rights and privileges. Despite the order, they continue to seek
11 disclosures from Mr. Soria that he is explicitly excused from providing.

12 Nationstar and the Receiver’s oppositions focus in large part on Mr. Soria’s
13 failure to turn over all funds. The Fifth Amendment Order is very clear on this topic
14 and orders Mr. Soria to turn over documents or money in his “possession,” pursuant
15 to the Court’s Order Finding Defendants in Contempt (Dkt. No. 107) (“Contempt
16 Order”). “Possession” is found where Mr. Soria “owns, controls or has the right to
17 control any documents or money that he could arrange to have turned over. (Dkt.
18 No. 107, at p. 2.) Mr. Soria has stated that he has no additional funds to turn over.
19 Nationstar and the Receiver do not believe Mr. Soria, but that is not an appropriate
20 legal basis for indefinitely holding Mr. Soria in custody. The Receiver says it has
21 traced hundreds of thousands of dollars derived from allegedly illicit activities.
22 Why, then, has the Receiver not pursued and seized those amounts? The Receiver
23 desires to keep Mr. Soria incarcerated because he has not made extensive efforts to
24 obtain the return of those funds, but that is not a requirement under the Contempt
25 Order. Further compliance is factually impossible.

26 The Fifth Amendment Order was also clear that Mr. Soria is excused from
27 complying with all requirements that he “personally create a document that does not
28 already exist or tell the Receiver something...” (Dkt. No. 107, at p. 2.) The

1 limitation is that Mr. Soria may not “interfere with, attempt to interfere with,
2 obstruct, or attempt to instruct anyone else in that record.” Mr. Soria has complied
3 with everything that the Court ordered him to do. Therefore, he should be
4 immediately released from contempt incarceration.

5 **II. ARGUMENT**

6 **A. Mr. Soria Has Not Waived His Fifth Amendment Privilege.**

7 Nationstar argues at length that Mr. Soria waived his Fifth Amendment
8 Privilege, yet it admits the Court stated that Mr. Soria is personally allowed to claim
9 the Fifth Amendment privilege. (Dkt. No. 306, at 5:1-2.) Indeed, the Court’s Fifth
10 Amendment Order expressly preserves Mr. Soria’s Fifth Amendment Privilege and
11 excuses Mr. Soria from complying with requirements in the Contempt Order that
12 contravene that right.

13 Nationstar cites the Fifth Amendment Order and opines that neither Mr. Soria
14 nor anyone in charge of West H&A, Westwood, and HUCLTH has attempted to
15 acquire a third party to review various records and provide disclosures to the
16 Receiver. (Dkt. No. 306, at 5:4-8.) However, nothing in the Fifth Amendment
17 Order requires that Mr. Soria acquire a third party to conduct such a review. The
18 Fifth Amendment Order prevents Mr. Soria from interfering with, attempting to
19 interfere with, obstructing, or attempting to instruct anyone else in that regard. Mr.
20 Soria has provided all records in his possession and control; he has fully complied
21 with the order and has refrained from any of the prohibited acts.

22 Nationstar also attempts to circumvent the Fifth Amendment Privilege and the
23 Court’s order by arguing that Mr. Soria is not afforded protections under the Fifth
24 Amendment because he is the records custodian of the Receivership Defendants.
25 Again, the Court’s Fifth Amendment Order is clear, and Nationstar’s blatant
26 misapplication is not persuasive. Furthermore, the Receiver has assumed full control
27 of all business activities and assets of the Receivership Defendants and is fully
28 empowered to take all steps necessary to review such records, yet it has not taken the

1 necessary steps to do so. Mr. Soria’s liberty should not be further deprived because
2 of the Receiver’s inaction. Essentially, the Receiver seeks to punish Mr. Soria for
3 not engaging in discovery on the Receiver’s behalf.

4 **B. Nationstar and the Receiver Request Action that Directly Contradicts**
5 **the Court’s Fifth Amendment Order.**

6 Each of Nationstar’s and the Receiver’s arguments necessarily fails because
7 each argument requires Mr. Soria to either “create a document that does not already
8 exist” or to “tell the Receiver something.”

9 1. Turnover of Funds

10 Mr. Soria has stated several times that there are no funds to turn over. The
11 Receiver argues that this defies logic and common sense, and states that it has traced
12 hundreds of thousands of dollars to Garson Silvers, Carlos Casuso, Zeons Inc., and
13 Brett Wolcott, among others. The Receiver asks why Mr. Soria did not take steps to
14 obtain the return of such monies, and Nationstar asks for an explanation of why the
15 rest of the funds have not been turned over or where they might be. They fail to
16 recognize, however, that the Court’s order expressly excuses Mr. Soria from
17 providing such testimonial evidence.

18 Nationstar states that Mr. Soria has yet to provide additional bank cards,
19 including a “Green Dot” credit union account, but openly admits that neither it nor
20 the Receiver has obtained the documents and assets seized by the Sheriff.

21 Nationstar argues that a simple disclosure regarding Mr. Soria’s mother’s
22 payment of legal retainer fees could provide him with his liberty. Again, Nationstar
23 fails to recognize that the Court’s Fifth Amendment Order excuses Mr. Soria from
24 exactly such a disclosure.

25 2. Categories 8 Through 11 of the Contempt Order

26 The Receiver spends the majority of its opposition discussing what it believes
27 to be the “key provisions” of the Contempt Order. Category 8 asks for a list of
28 business activities, which Mr. Soria is excused from creating and/or providing. Such

1 information can be obtained directly from the Law Offices of Joseph F. Hart, yet the
2 Receiver is intent on depriving Mr. Soria of his rights provided under the Fifth
3 Amendment and by this Court.

4 Category 9 asks for a detailed disclosure as to all payments. Again, the
5 Court's Fifth Amendment Order excuses Mr. Soria from creating a document or
6 telling the Receiver something.

7 Category 10, pertaining to the turnover of all funds, is discussed above.

8 Category 11 asks for a detailed disclosure as to all payments made by any
9 Receivership Defendant or for its benefit. Mr. Soria is excused from creating a list
10 or telling the Receiver something. However, the Receiver has seized control of the
11 Receivership Defendants, has access to Mr. Soria's CPA, and has been provided
12 with bank accounts and QuickBooks accounts and login information. The Receiver
13 represents that it has not been provided the QuickBooks accounting records or any
14 paper accounting records, but Mr. Soria provided the means to access the
15 QuickBooks accounts as well as the contact information for his CPA.

16 The Receiver repeatedly refers to the "Soria Contempt Memo" as incomplete
17 and a weak attempt to make disclosures without implicating Mr. Soria's Fifth
18 Amendment Privilege. The so-called memo was not a formal memorandum at all
19 but an email from undersigned counsel sent in good faith to show the Receiver that
20 efforts were being taken to comply with the Contempt Order. The information
21 provided was never presented as a complete representation, so the Receiver's
22 accusation that the memo is demonstrably incomplete completely misses the point.

23 Mr. Soria has complied with each item that he is able to comply with and to
24 the extent that he can comply while preserving his privileges and rights.

25 **C. Allegations Regarding the Wellworth Property.**

26 Nationstar and the Receiver allege that when they gained access to the
27 Wellworth Property, the property was "cleaned out" and all electronic records and
28 most paper records had been removed. Nationstar and the Receiver were apparently

1 aware of the Wellworth Property for months and had even surveilled the property.
2 Any delay in obtaining access to the property was not caused by Mr. Soria. Mr.
3 Soria has complied with the Contempt Order and provided access to all business
4 locations and electronic and paper records to the extent he is required pursuant to the
5 Fifth Amendment Order.

6 **D. Contempt Incarceration is Not a Means for the Receiver to Conduct**
7 **Discovery.**

8 The Receiver claims that Mr. Soria has not complied with each and every
9 requirement of the Contempt Order, yet the Receiver's Report acknowledged
10 compliance with some items and that Mr. Soria was excused from complying with
11 others. The Receiver further claims that Mr. Soria simply points to tens of thousands
12 of documents which have been turned over to the Receiver. It seems that the
13 Receiver has forgotten the intent of Mr. Soria's contempt incarceration, which was
14 instituted by the Court as a coercive sanction intending to force compliance, rather
15 than as a means of conducting discovery. The Receiver now seeks to punish Mr.
16 Soria and keep him indefinitely incarcerated because he is not performing discovery
17 on its behalf.

18 **III. CONCLUSION**

19 Based on the foregoing reasons, Defendant Patrick Joseph Soria asserts that he
20 has complied with all categories in the Contempt Order and pursuant to the Fifth
21 Amendment Order. Further compliance is factually impossible. Therefore, Mr.
22 Soria has purged his contempt and respectfully requests that he be immediately
23 released from contempt incarceration.

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1 Dated: November 26, 2018

Respectfully Submitted,

2 LEECH TISHMAN FUSCALDO & LAMPL

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By: /s/ Eric J. Wu
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