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IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF UTAH, CENTRAL DIVISION

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff,</p> <p>vs.</p> <p>RAPOWER-3, LLC, INTERNATIONAL AUTOMATED SYSTEMS, INC., LTB1, LLC, R. GREGORY SHEPARD, and NELDON JOHNSON,</p> <p>Defendants.</p>	<p>Civil No. 2:15-cv-00828-DN-EJF</p> <p><b>RESPONSE TO RECEIVER'S DECLARATION - ECF DOC. 1018</b></p> <p>Judge David Nuffer</p>
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COMES NOW Randale Johnson and responds to the Wayne Klein's ("Receiver's") declaration filed with the court on October 5, 2020 as ECF 1018, relating to compliance by Randale Johnson with the Court's Order [ECF 1006], Order on Motion to Produce, LaGrand and Randale Johnson's Production of Records.

In his declaration, the Receiver states at paragraph 4:

The Receiver is not aware of any material deficiencies in LaGrand Johnson's compliance with the Records Order. However, there are material deficiencies in the response of Randale Johnson. He belatedly disclosed five new bank accounts that were

not identified in his declaration. At least three, and likely four currently have account balances and there is no indication that he has notified the financial institutions that they need to freeze those accounts.

Randale Johnson does not agree with the Receiver's assessment of his cooperation and compliance. On September 15, 2020, this Court entered an Order explaining that the \$200,000 payment to Randale Johnson on October 5, 2018 is subject to the asset freeze entered in this case and that Mr. Johnson was to deliver the Court's Order to those banks "necessary to effect the freeze on their accounts." Therefore, the only accounts that are subject to the asset freeze order are accounts that received some portion of the \$200,000 received by Mr. Johnson.

The Order [1006] provides:

4. The payment of \$200,000 to Randale Johnson, made on October 5, 2018, is subject to the Asset Freeze entered in this case.

a. Therefore, Randale Johnson's bank and retirement accounts are subject to the Asset Freeze, for amounts therein up to \$200,000 total.

b. If the balances in these accounts are greater than \$200,000 in the aggregate, Randale Johnson may request that the Receiver authorize a financial institution holding those accounts to release from the freeze amounts that exceed \$200,000. The Receiver is empowered to authorize such a release.

5. No later than seven days from the date of this order, LaGrand Johnson and Randale Johnson shall file a declaration, under penalty of perjury, that they have delivered this order to all financial institutions necessary to effect the freeze on their accounts.

a. They shall include in the declaration the balance in each account as of February 25, 2020.

b. They shall attach account records showing the account balances as of February 25, 2020, and documents showing any withdrawals or transfers from any of those accounts on or after February 25, 2020.

In his declaration of September 22, 2020 [ECF 1014], Randale Johnson provided the banking information relating to the accounts that were made subject to the freeze order by the Court's Order, ECF 1006. He also acknowledged that he gave a copy of the Court's Order to those institutions and provided the other information required by the Order.

The subsequent obligation in paragraph 6 of the Court's Order required Randale Johnson to "deliver to the Receiver all statements – going back to January 1, 2010 – from any bank, investment, and retirement account they own (or owned), have (or had) signature authority over, or exercise (or exercised) other authority". This is a different universe of documents than those required to be disclosed in the September 22 declaration. The later disclosure covers all accounts over which Mr. Johnson had authority. This he did by letter and thumb drive on October 2.

Two of the accounts (Zions 8227 and 9791) are Mr. Johnson's ex-wife's accounts. They have been divorced for over 5 ½ years and were separated before the divorce for at least two or three years. Randale Johnson's name continues to be authorized on the accounts, so he felt an obligation to disclose them. However, he does not use either account. Also, the two accounts had nominal balances in February of 2020.

The HSA wasn't open in June of 2018. It was transferred by Mountain America to Health Equity, as can be seen in the monthly statements, because Mountain America sold its HSA division to Health Equity. The last deposit into the HSA account was in 2017. There is no reason to freeze Mr. Johnson's family's health savings account in the middle of a pandemic.

The America First account is a personal loan that Mr. Johnson took out in June 2020 to live on while he transitions into new consulting jobs. It had nothing to do with the \$200k payment and was not in existence in February 2020.

The Chase account, like all the above, had no deposits from the \$200k. It had at most \$1600 in the beginning and only had a balance of about \$130.00 in February, 2020.

The Johnsons are taking the Court's orders very seriously and do not want the Receiver or the Court to believe otherwise. Mr. Klein alerted counsel of his concerns, but because of the short

time between when the thumb-drive materials were delivered to him and when his report was due, there was very little time to address his concerns prior to him filing his report.

DATED this 8<sup>th</sup> day of October, 2020.

NELSON SNUFFER DAHLE & POULSEN

/s/ Steven R. Paul

Denver C. Snuffer, Jr.

Steven R. Paul

Attorneys for Randale Johnson

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was filed using the court's CM/ECF filing system and that system sent notice of filing to all counsel and parties of record.

In addition, the foregoing was mailed or emailed as indicated to the following who are not registered with CM/ECF.

Greg Shepard [greg@rapower3.com](mailto:greg@rapower3.com)

/s/ Steven R. Paul

*Attorneys for Randale Johnson*