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**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAPOWER-3, LLC; INTERNATIONAL
AUTOMATED SYSTEMS, INC.; LTB1,
LLC; R. GREGORY SHEPARD; NELDON
JOHNSON; and ROGER FREEBORN,

Defendants.

**RECEIVER’S REPLY ON
DECLARATION ON DEFICIENCIES
IN RANDALE JOHNSON’S
PRODUCTION OF FINANCIAL
RECORDS**

Civil No. 2:15-cv-00828-DN

District Judge David Nuffer

R. Wayne Klein, the Court-Appointed Receiver (the “Receiver”) of RaPower-3, LLC (“RaPower”), International Automated Systems, Inc. (“IAS”), and LTB1, LLC (“LTB1”) (collectively, the “Receivership Entities”), as well as certain of their subsidiaries and affiliates and the assets of Neldon Johnson (“Johnson”) and R. Gregory Shepard (“Shepard”) (collectively “Receivership Defendants” or “Defendants”), hereby submits this reply regarding Randale Johnson’s production of financial records and compliance with the requirement to notify financial institutions to freeze his bank and retirement accounts.

I. INTRODUCTION

On September 15, 2020, the Court entered an order requiring LaGrand Johnson and Randale Johnson to produce records relating to their accounts at financial institutions and directing the Receiver to report on their compliance (“Records Order”).¹ The Receiver filed a declaration (“Receiver Declaration”)² identifying deficiencies in Randale Johnson’s compliance (“Compliance Declaration”)³ with the Records Order. Randale Johnson filed a response (“Response”).⁴

The Receiver Declaration asserted that Randale Johnson’s production of records had two primary deficiencies. First, Randale Johnson was a signatory to five additional bank accounts that were not disclosed at the time his declaration was submitted. Second, it appeared that Randale Johnson had not notified the financial institutions holding these additional accounts that the account balances were to be frozen. Randale Johnson’s Response averred that early disclosure of those accounts and delivering the Records Order (including the asset freeze requirement) were unnecessary because none of those accounts held proceeds of Glenda Johnson’s October 5, 2018 payment of \$200,000 to Randale Johnson.⁵ The Receiver disagrees and continues to assert that Randale Johnson’s compliance with the Records Order was deficient.

¹ [Docket No. 1006](#), filed September 15, 2020. The Records Order granted the United States’ Motion for Production of Bank and Retirement Account Records of LaGrand Johnson and Randale Johnson. [Docket No. 876](#).

² *Receiver’s Declaration on LaGrand Johnson and Randale Johnson’s Production of Financial Records*, [Docket No. 1018](#), filed October 6, 2020.

³ [Docket No. 1014](#), filed September 22, 2020.

⁴ *Response to Receiver’s Declaration – ECF Doc. 1018*, [Docket No. 1020](#), filed October 8, 2020.

⁵ Response, [Docket No. 1020](#) at 2.

II. THE ASSET FREEZE ORDER APPLIES TO ALL BANK AND RETIREMENT ACCOUNTS OF RANDALE JOHNSON

This dispute centers on the meaning of paragraph 4(a) of the Records Order. It reads:

*Therefore, Randale Johnson's bank and retirement accounts are subject to the Asset Freeze, for amounts therein up to \$200,000 total.*⁶

Randale Johnson claims that his Compliance Declaration fully complied with the Records Order because he asserts that paragraph 4(a) only applies to “accounts that received some portion of the \$200,000.”⁷ In essence, his argument is that paragraph 4(a) of the Records Order should be interpreted as though it states:

Therefore, Randale Johnson's bank and retirement accounts that hold proceeds from the \$200,000 he received from Glenda Johnson on October 5, 2018 are subject to the Asset Freeze, for amounts therein up to \$200,000 total.

The Receiver, on the other hand, interprets the Records Order as it is written—with no language limiting the Asset Freeze to accounts that received a portion of the \$200,000.

There are three reasons Randale Johnson's proffered interpretation should be rejected. First, as shown above, the plain language of the order requires the identification and freezing of his bank and retirement accounts. There is no qualifying or limiting condition in that paragraph. Neither the language of paragraph 4(a) nor the context of other parts of the Records Order states or implies that only certain accounts needed to be identified and frozen.

Second, the purpose of this portion of the Records Order was *not* to determine whether those funds must be turned over to the Receiver; the purpose was to identify all of Randale Johnson's bank and retirement accounts and preserve those assets pending a future ruling on ownership of those funds. It was not up to Randale Johnson to decide whether funds from Glenda

⁶ [Docket No. 1006](#).

⁷ [Docket No. 1020](#) at 2.

Johnson were deposited into those other Randale Johnson accounts—a status that he asserts was a precondition for disclosure. The requirement was for Randale Johnson to identify all bank and retirement accounts he controls so the Receiver can know what accounts exist, what records the Receiver might want to review, and what additional forensic accounting should be performed. His Compliance Declaration falsely claimed to have done all that was required of him.

Third, even if Randale Johnson's statement is correct that no funds from the \$200,000 payment from Glenda Johnson went into these undisclosed—and unfrozen—accounts, that does not mean funds in those accounts would be beyond the reach of the Receiver. Even if those accounts did not hold proceeds of Glenda Johnson's fraudulent transfers, these accounts may hold funds that Randale Johnson was able to retain because he paid other personal and living expenses from the Glenda Johnson transfers. In other words, money is fungible and Randale Johnson may have been able to preserve funds in his other accounts because he used converted Receivership funds to pay his living expenses.

In fact, it appears that this is precisely what Randale Johnson did. As the Receiver noted in his Receiver Declaration, of the \$200,000 that Glenda Johnson transferred to Randale Johnson on October 5, 2018 Randale Johnson spent more than \$193,000 by September 30, 2019—less than one year later. Much of these expended funds went into his Fidelity investment account, to pay taxes, and to make charitable contributions. By using funds delivered by Glenda Johnson for these and other living expenses, Randale Johnson was able to preserve funds in his other accounts. Funds in these accounts likely would have been expended but for the windfall from Glenda Johnson. The fact that he used the Glenda Johnson funds for living expenses—thereby preserving funds in his other accounts—means those other funds should be frozen pending a ruling on whether he needs

to pay those funds over to the Receiver.

III. RANDALE JOHNSON SHOULD BE ORDERED TO TAKE REMEDIAL STEPS TO ENSURE COMPLIANCE WITH THE RECORDS ORDER

The Receiver asks the Court to require Randale Johnson to take remedial steps to ensure compliance with the Records Order. This includes directing financial institutions to freeze the balances of two open accounts and delivering sufficient records to the Receiver to enable the Receiver to determine whether funds in two accounts belonging to Randale Johnson's former wife should be frozen. The Receiver asks the Court to declare that Randale Johnson failed to comply adequately with the Records Order and order Randale Johnson to:

1. Deliver to the Receiver, within 14 days, copies of account records for the Zions Bank #8227 and #9791 accounts for the period from October 2018 to present.⁸
2. Deliver the Records Order forthwith to Health Equity and America First Credit Union, with directions to those institutions to freeze account balances and prevent any further disbursements from the accounts.
3. Restore, within 14 days, the Health Equity and America First Credit Union accounts to the balances that existed on those accounts at the close of business on March 10, 2020, the date of the United States' motion for production of account records.
4. File a declaration with the Court, within 21 days, certifying compliance with these requirements.

DATED this 24th day of December 2020.

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⁸ While Randale Johnson states that these accounts belong to his former wife, he nonetheless remains a signatory on the accounts. That means he could have transferred funds into and out of these accounts and also means he will be able to obtain copies of account statements for the requested period.

/s/ Michael S. Lehr

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Attorneys for R. Wayne Klein, Receiver

CERTIFICATE OF SERVICE

I hereby certify that the above **RECEIVER'S REPLY ON DECLARATION ON DEFICIENCIES IN RANDALE JOHNSON'S PRODUCTION OF FINANCIAL RECORDS** was filed with the Court on this 24th day of December 2020, and served via ECF on all parties who have requested notice in this case.

/s/ Michael S. Lehr