

JOHN W. HUBER, United States Attorney (#7226)  
JOHN K. MANGUM, Assistant United States Attorney (#2072)  
111 South Main Street, Ste. 1800  
Salt Lake City, Utah 84111  
Telephone: (801) 524-5682  
Email: john.mangum@usdoj.gov

ERIN HEALY GALLAGHER, *pro hac vice*  
DC Bar No. 985670, erin.healygallagher@usdoj.gov  
ERIN R. HINES, *pro hac vice*  
FL Bar No. 44175, erin.r.hines@usdoj.gov  
CHRISTOPHER R. MORAN, *pro hac vice*  
NY Bar No. 5033832, christopher.r.moran@usdoj.gov  
Trial Attorneys, Tax Division  
U.S. Department of Justice  
P.O. Box 7238  
Ben Franklin Station  
Washington, D.C. 20044  
Telephone: (202) 353-2452

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

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

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

Defendants.

Civil No. 2:15-cv-00828 DN

**UNITED STATES' MOTION FOR  
ORDER TO SHOW CAUSE WHY  
R. GREGORY SHEPARD SHOULD  
NOT BE HELD IN  
CIVIL CONTEMPT OF COURT**

Chief Judge David Nuffer  
Magistrate Judge Evelyn J. Furse

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The United States moves the Court to enter an order to show cause why defendant R. Gregory Shepard should not be held in civil contempt for willfully violating this Court's asset freeze order. On September 27, 2018, with full knowledge of the Court's order freezing his assets, Shepard liquidated more than \$27,000 from an annuity contract with AXA Equitable Retirement Service Solutions.

### **I. Facts**

Shepard co-promoted a solar energy tax scheme that this Court termed a "massive fraud."<sup>1</sup> He unlawfully derived over \$700,000 from his participation in the scheme.<sup>2</sup> On August 22, 2018, the Court took "exclusive jurisdiction and possession of [all defendants'] assets, of whatever kind and wherever situated," and ordered that such assets were frozen as "Receivership Property."<sup>3</sup> The Court ordered that "all persons and entities with direct or indirect control over any Receivership Property, other than the Receiver, are hereby restrained and enjoined from directly or indirectly transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating, or otherwise disposing of or withdrawing such Receivership Property [including] Receivership Property that is on deposit with financial institutions such as banks, brokerage firms and mutual funds, shares of stock, and any patents or other intangible property."<sup>4</sup> The Court ordered the defendants to "direct each of the financial or brokerage institutions, debtors, and bailees, or any other person or entity holding [their assets] **to hold or retain within their**

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<sup>1</sup> Tr. 2515:5-11, [ECF Doc. No. 429-1](#).

<sup>2</sup> [ECF Doc. No. 444](#), Memorandum Decision and Order Freezing Assets to Appoint Receiver, p. 8.

<sup>3</sup> [ECF Doc. No. 444](#), p. 26.

<sup>4</sup> [ECF Doc. No. 444](#), p. 26.

**control and prohibit the withdrawal**, removal, transfer, or other disposal of any such assets, funds, or other properties.”<sup>5</sup> On August 27, 2018, Shepard appealed the Asset Freeze Order to the Tenth Circuit Court of Appeals.<sup>6</sup> On September 6, 2018, Shepard moved the Court for stay of the Asset Freeze Order, pending appeal.<sup>7</sup> On September 14, 2018, Shepard moved the Court to alter or amend the Asset Freeze Order.<sup>8</sup> On September 28, 2018, Shepard signed a declaration in support of his motion to lift the Asset Freeze Order as to certain assets,<sup>9</sup> and attached a letter from Allianz to himself dated September 20, 2018, which included a copy of the Order. Shepard is and has been aware of the Asset Freeze Order.

Since September 10, 2007, up to, and including the date the Court entered the Asset Freeze Order, Shepard owned an annuity contract with AXA Equitable Retirement Service Solutions (“AXA”), contract # xxxxx6110.<sup>10</sup> On September 27, 2018, over a month after the Court ordered his assets frozen, Shepard surrendered the annuity contract to AXA, which caused AXA to pay him \$27,126.05, and to terminate the annuity.<sup>11</sup> When Shepard surrendered the annuity contract and received \$27,126.05 from AXA, he knowingly violated the Asset Freeze Order by withdrawing assets that were subject to Court control. We do not know what Shepard did with the money.

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<sup>5</sup> [ECF Doc. No. 444](#), p. 27 (emphasis added).

<sup>6</sup> [ECF Doc. No. 445](#).

<sup>7</sup> [ECF Doc. No. 448](#).

<sup>8</sup> [ECF Doc. No. 451](#).

<sup>9</sup> [ECF Doc. No. 462-1](#).

<sup>10</sup> Pl. Ex. 927, attached.

<sup>11</sup> Pl. Ex. 927, listing “Payee Information” as R. Gregory Shepard, 858 W Clover Meadow Dr, Salt Lake City, UT 84123).

## II. Analysis

When seeking an order to show cause, the moving party has the initial burden of proving, by clear and convincing evidence, (1) that a valid court order existed; (2) that the defendant had knowledge of the order, and (3) that the defendant disobeyed the order.<sup>12</sup> Once the moving party makes its showing, the burden shifts to the non-moving party to show either that he had complied with the order or that he could not comply with it.<sup>13</sup>

### A. The Asset Freeze Order is valid.

[Fed. R. Civ. P. 65\(d\)](#) determines whether a court order is valid in this context.<sup>14</sup> Rule 65(d) requires injunction orders to (1) state the reasons why it issued; (2) state the terms of the injunction specifically; and (3) describe the act or acts restrained or required in reasonable terms.

The Asset Freeze Order adequately explains that it was issued because the defendants orchestrated a fraudulent tax scheme that diverted millions of dollars from the United States Treasury to themselves and had taken steps to frustrate collection of a disgorgement award.<sup>15</sup> The Asset Freeze Order makes clear that all defendants, including Shepard, were required to “direct each of [their] financial or brokerage institutions” to “to hold or retain within their control and prohibit the withdrawal ....of any such assets, funds, or other properties.”<sup>16</sup> The Asset

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<sup>12</sup> [United States v. Ford](#), 514 F.3d 1047, 1051 (10th Cir. 2008) (internal citations omitted).

<sup>13</sup> *Id.*, citing [United States v. Rylander](#), 460 U.S. 752, 757 (1983).

<sup>14</sup> [Reliance Ins. Co. v. Mast Const. Co.](#), 159 F.3d 1311, 1315 (10th Cir. 1998); *See e.g.*, [S.E.C. v. Art Intellect, Inc.](#), 2011 WL 5553647, at \*9 (D. Utah 2011).

<sup>15</sup> [ECF Doc. No. 444](#), pp. 17-18.

<sup>16</sup> [ECF Doc. No. 444](#), p. 27.

Freeze Order put defendants on notice that their financial accounts were frozen, and funds could not be withdrawn, absent leave of the Court.

**B. Shepard had knowledge of the Asset Freeze Order when he surrendered the annuity contract.**

Shepard appealed the Asset Freeze Order, he asked the Court to stay the Asset Freeze Order, he received notice of the Asset Freeze Order from Allianz, he asked the Court to alter or amend the Asset Freeze Order, and he applied for relief from the Asset Freeze Order. Shepard had actual knowledge of the Asset Freeze Order well before September 27, 2018, when he surrendered the annuity contract.

**C. Shepard violated the Asset Freeze Order.**

When Shepard, as owner of the annuity contract, surrendered the annuity contract, and received \$27,126.05 payment, he violated the provisions of the Asset Freeze Order that froze his assets, and prohibited the “withdrawal, removal, transfer, or other disposal of such assets, funds, or other properties.”<sup>17</sup> Moreover, Shepard disregarded the provisions in the Asset Freeze Order that permitted him to access Receivership Property by applying to the Court. If Shepard needed “use of Receivership Property,” he was required to make an application to the Court.<sup>18</sup> Shepard made such application,<sup>19</sup> but only *after* he surrendered the AXA annuity contract and received the proceeds. Shepard also deceived the Court in his application. Shepard’s motion and declaration do not disclose the \$27,126.05 he had recently received from the AXA annuity

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<sup>17</sup> [ECF Doc. No. 444](#), p. 27.

<sup>18</sup> [ECF Doc. No. 444](#), p. 28.

<sup>19</sup> [ECF Doc. No. 462](#).

contract, yet insist that he lacks adequate assets to provide for his family.<sup>20</sup> When the United States opposed his application for relief from the Asset Freeze Order, and argued that Shepard should provide a complete accounting of his finances signed under penalty of perjury,<sup>21</sup> Shepard promptly withdrew his application.<sup>22</sup>

The burden now shifts to Shepard to show that he is in compliance with the Asset Freeze Order, or to show that he could not comply with the Asset Freeze Order.<sup>23</sup>

**III. The Court should hold Shepard in contempt, admonish him, and order him to pay \$27,126.05 into the Court's registry.**

R. Gregory Shepard has no regard for this Court's orders. He violated the terms of the Asset Freeze Order, liquidated over \$27,000, and then told the Court that his family was impoverished. Shepard should be held in contempt of Court, admonished, and required to pay \$27,126.05 into the Court's registry, pending appointment of the receiver. Once the receiver is appointed, he or she should take control of the funds.

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<sup>20</sup> [ECF Doc. No. 462-1](#). Shepard disclosed two assets by name in hopes of getting them unfrozen: an Allianz pension plan, and monthly payments from his former business, Bigger, Faster, Stronger. In his declaration, made under penalty of perjury, [ECF Doc. No. 462-1](#), Shepard stated that he receives "\$480 per month from a life insurance annuity." If he was referring to the AXA annuity contract, Shepard failed to fully disclose the circumstances of the annuity, *i.e.*, that it had recently been liquidated and that he received over \$27,000.

<sup>21</sup> [ECF Doc. No. 466](#), p. 3.

<sup>22</sup> [ECF Doc. No. 469](#).

<sup>23</sup> *S.E.C. v. Bliss*, 2015 WL 4877332, at \*8 (D. Utah 2015) (citing *Ford*, 517 F.3d, at 1051).

Dated: October 25, 2018

Respectfully submitted,

/s/ Christopher R. Moran  
CHRISTOPHER R. MORAN  
New York Bar No. 5033832  
Email: christopher.r.moran@usdoj.gov  
Telephone: (202) 307-0834  
ERIN HEALY GALLAGHER  
DC Bar No. 985760  
Email: erin.healygallagher@usdoj.gov  
Telephone: (202) 353-2452  
ERIN R. HINES  
FL Bar No. 44175  
Email: erin.r.hines@usdoj.gov  
Telephone: (202) 514-6619  
Trial Attorneys, Tax Division  
U.S. Department of Justice  
P.O. Box 7238  
Ben Franklin Station  
Washington, D.C. 20044  
FAX: (202) 514-6770  
**ATTORNEYS FOR THE  
UNITED STATES**

**CERTIFICATE OF SERVICE**

I hereby certify that on October 25, 2018, the foregoing document and its exhibits were electronically filed with the Clerk of the Court through the CM/ECF system, which sent notice of the electronic filing to all counsel of record.

*/s/ Christopher R. Moran*  
CHRISTOPHER R. MORAN  
Trial Attorney