

Denver C. Snuffer, Jr. (#3032) denversnuffer@gmail.com

Steven R. Paul (#7423) spaul@nsdplaw.com

Daniel B. Garriott (#9444) dbgarrriott@msn.com

Joshua D. Egan (15593) Joshua.d.egan@gmail.com

NELSON, SNUFFER, DAHLE & POULSEN

10885 South State Street

Sandy, Utah 84070

Telephone: (801) 576-1400

Facsimile: (801) 576-1960

*Attorneys for RAPower-3, LLC, International Automated Systems, Inc.,
LTB1, and Neldon Johnson*

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>DEFENDANT R. GREGORY SHEPARD'S RESPONSE TO ORDER TO SHOW CAUSE ECF Doc. 483</p> <p>Judge David Nuffer</p>
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Defendant R. Gregory Shepard, by and through his counsel of record, does hereby respond to Plaintiff, USA's, Motion for Order to Show Cause (ECF Doc. 483) as follows.

1. This matter was brought to Defendants' counsel's attention by email from Plaintiff's counsel on Tuesday, October 23, 2018. A telephone call that morning was the first time Defendants' counsel was aware that Greg Shepard had cashed in an annuity in the approximate amount of \$27,000 sometime near the end of September, 2018.

2. After the telephone conversation with Plaintiff's counsel, attorney Steven Paul called Greg Shepard and confirmed that Mr. Shepard had indeed cashed in a life insurance policy that had a cash value of approximately \$27,000.
3. Attorney Steven Paul returned a telephone call to Plaintiff's counsel on the same day, October 23, 2018, and acknowledged Mr. Shepard had indeed received payment of approximately \$27,000 and represented to Plaintiff's attorneys that Mr. Shepard used the money at a time of acute financial need and the funds had been spent in paying bills such as his mortgage, real estate taxes, car payments, utility bills and for other costs of daily living to prevent him and his family from becoming homeless.
4. In further consultation with Mr. Shepard, Mr. Shepard has the following explanation to offer to the Court:
 - a. Since the asset freeze order had been issued and enacted with his banks and his sources of income (See ECF Doc. No. 462) he became desperate as he was unable to pay his expenses and feared losing his home and his cars and not being able to care for his family or pay his daily living expenses. See Declaration of R. Gregory Shepard filed herewith ("Shepard Decl.") at ¶2.
 - b. With his sources of income frozen, Mr. Shepard was limited to the social security he and his wife received and returned to substitute teaching, earning just \$73 per day (after taxes), to try to pay for his nearly \$6,000 in monthly expenses. Shepard Decl. at ¶3.
 - c. Mr. Shepard owned a life insurance policy with AXA Equitable Retirement Services, which had a cash value of approximately \$27,000.00. AXA had not been notified of the asset freeze order. Shepard Decl. at ¶4.

- d. On approximately September 27, 2018, Mr. Shepard requested the distribution of the cash value of the AXA Equitable Retirement account, which was paid to him on or about October 1, 2018. Shepard Decl. at ¶5.
- e. During this time, Mr. Shepard was worried about his ability to pay his expenses of daily living, in particular his mortgage and utilities associated with his home, real property taxes and federal income taxes, to pay his car payments and pending credit card payments and to pay for meals and other costs of daily living. He used the \$27,000 toward payment of those expenses. Shepard Decl. at ¶6-7.
- f. Mr. Shepard is constantly worried about his health and his ability to provide for his wife and her aged mother who lives with them. He was afraid that if he did not pay the mortgage, utilities, taxes and other costs associated with the home, and something should happen to him, that his wife and aged mother-in-law would be destitute. Mr. Shepard, continues to have ongoing heart problems and his age, his neurological impairment¹ and other health problems he is facing affects his ability to provide for his family. He is worried about leaving his family in a bad situation. Shepard Decl. at ¶8-9.
- g. Mr. Shepard did not consult with this legal counsel about the propriety of using the \$27,000 received from AXA Equitable Retirement. But when confronted about the matter has not denied having taken and used the money. Shepard Decl. at ¶10.

¹ Mr. Shepard has the neurological disorder referred to as Charcot-Marie-Tooth Disease, which is similar to muscular dystrophy in that it affects the peripheral nerves outside the brain and spinal cord which supply the muscles and sensory organs in the limbs. Mr. Shepard suffers loss of muscle tissue in his extremities and neuropathy in his hands, arms and legs that make it increasingly difficult to function on a daily basis.

5. Mr. Shepard has now been instructed on the impropriety of using the money received from AXA Equitable Retirement and the need to follow proper procedure in dealing with his finances and the court's orders. Shepard Decl. at ¶11.
6. Mr. Shepard has been given a copy of the Government's motion for Order to Show Cause and understands the severity of the action he took. Shepard Decl. at ¶12.
7. Mr. Shepard does not have the ability to repay the money to the court, but is willing if possible to do what the Court now requires of him to make this right, while anxious to have the Court understand the direful circumstances he now confronts. Shepard Decl. at ¶13.

DATED this 2nd day of November, 2018.

NELSON SNUFFER DAHLE & POULSEN

/s/ Steven R. Paul
Denver C. Snuffer, Jr.
Steven R. Paul
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DEFENDANT R. GREGORY SHEPARD'S RESPONSE TO ORDER TO SHOW CAUSE ECF Doc. 483** was sent to counsel for the United States in the manner described below.

Erin Healy Gallagher
Erin R. Hines
Christopher R. Moran
US Dept. of Justice
P.O. Box 7238
Ben Franklin Station
Washington, DC 20044
Attorneys for USA

Sent via:
 Mail
 Hand Delivery
 Email: erin.healygallagher@usdoj.gov
erin.r.hines@usdoj.gov
christopher.r.moran@usdoj.gov
 Electronic Service via Court's
CM/ECF filing program

/s/ Steven R. Paul
Attorneys for Defendants