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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, NELDON JOHNSON, and ROGER FREEBORN,</p> <p>Defendants.</p>	<p>Civil No. 2:15-cv-00828 DN</p> <p><b>UNITED STATES' OPPOSITION TO JOHNSON'S MOTION FOR LIMITED RELIEF FROM ASSET FREEZE ORDER</b></p> <p>Judge David Nuffer Magistrate Judge Evelyn J. Furse</p>
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The United States proved at trial that Neldon Johnson's ill-gotten gains from the unlawful solar energy scheme amounted to more than \$50 million.<sup>1</sup> Because of Defendants' attempts to place their assets out of reach of the forthcoming disgorgement order, on June 22, 2018, the United States filed its second motion to freeze Johnson's assets and appoint a receiver.<sup>2</sup> Johnson opposed the motion.<sup>3</sup> On August 22, 2018, the Court granted that motion ("the Order") and, among other things, froze Johnson's assets.<sup>4</sup> After hearing from all parties,<sup>5</sup> on November 8, 2018, the Court appointed a receiver and continued the asset freeze.<sup>6</sup>

Now Johnson seeks to lift the asset freeze with respect to a bank account at Bank of American Fork ending in -9233. He claims that the only funds in it when the receiver collected the funds, \$4,358.18, were payments from Social Security.<sup>7</sup> He asks that the receiver return to him the \$4,358.18 in purported payments from Social Security. He also asks that the Court release the bank account from the asset freeze because, he claims, the only deposits into that account are his Social Security payments. But Johnson is not entitled to the full relief he seeks, because he has not shown that all \$4,358.18 is traceable to Social Security payments and he has

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<sup>1</sup> ECF No. 467 at 125-128.

<sup>2</sup> ECF No. 414.

<sup>3</sup> ECF No. 423.

<sup>4</sup> ECF No. 444.

<sup>5</sup> ECF No. 456, Notice of Filing of United States' Proposed Receivers and Proposed Receivership Order; ECF No. 461, Defendants' Objection to Plaintiff's Proposed Receivership Order.

<sup>6</sup> ECF No. 491.

<sup>7</sup> ECF No. 530; ECF No. 531.

not provided adequate assurance that the only future deposits in the account will be from Social Security.

**I. Social Security income benefits are not subject to the asset freeze.**

We do not dispute that Social Security income benefits are exempt from things like the asset freeze in this case.<sup>8</sup> Johnson has resisted disclosing his financial information to the United States. Had he disclosed this issue in the two rounds of briefing regarding the asset freeze and the order appointing the receiver, the parties could have exempted the payments from the freeze in the first instance.

**II. Johnson failed to prove that all \$4,358.18 is traceable to Social Security payments.**

Social Security payments deposited in a bank account “retain their exempt status if they are readily traceable. The burden, however, is on the beneficiary to prove which funds in the account are traceable to [S]ocial [S]ecurity . . . .”<sup>9</sup> Johnson has not met that burden with respect to the full amount he asks this Court to release from the asset freeze. He claims that the \$4,358.18 frozen by Court order is all money from Social Security.<sup>10</sup> But he offers no credible evidence to support that claim. The partial bank statement submitted in support of his motion shows only a single deposit of \$1,386.00 made on August 22, 2018. He does not show other line items or bank statements to show that the remaining \$2,972.18 is traceable to other deposits from

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<sup>8</sup> 42 U.S.C. § 407(a) (Social Security payments shall not be “subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.”)

<sup>9</sup> *Sheriff v. Accelerated Receivables Solutions*, No. 05-CV-279-B, 2008 WL 11401780, at \*4 (D. Wyo. Nov. 14, 2008).

<sup>10</sup> ECF No. 531 ¶ 7.

Social Security. Meanwhile, past bank statements show that Johnson has used this same account to receive funds other than Social Security.<sup>11</sup>

Johnson's declaration is the sole support for his claim that all \$4,358.18 is traceable to Social Security payments. But Johnson has no credibility,<sup>12</sup> and has lied before when it was in his financial interest to do so. Johnson promoted "a hoax funded by the American taxpayer through defendants' deceptive advocacy of abuse of the tax laws," demonstrating "purposeful dishonesty" when he shopped for tax opinions that he liked and "concealed facts from the few professionals who told [him his] efforts might have some merit."<sup>13</sup> He methodically avoided solar energy system interconnection testing to conceal "the ultimate fraudulent reality of [his purported solar energy] system and its business."<sup>14</sup> He knew there was "no factual support for a stable project but represented to the contrary."<sup>15</sup> So this Court should not simply accept his assertion that Social Security is the source of all funds in the account. Johnson has not met his burden of showing that the asset freeze should be lifted for the \$4,358.18 that he claims. At this time, the asset freeze should be lifted only with respect to the Social Security payment dated August 22, as shown on the Bank of American Fork statement, in the amount of \$1,386.00. The remaining funds should remain frozen and in the receiver's possession.

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<sup>11</sup> Pl. Ex. 936, true and correct copies of Johnson's account statements, at 1 ("Regular Deposit" of \$8,282.58 made on April 7, 2015) & 2 ("Regular Deposit of \$1,000 made on April 18, 2016).

<sup>12</sup> ECF Doc. No. 467 at 1, 51-53, 81.

<sup>13</sup> [ECF No. 429-1](#), excerpts from June 22, 2018 trial transcript, at T. 2515:5-9, 2516:2-4, 2517:18-2518:2.

<sup>14</sup> T. 2521:21-25.

<sup>15</sup> T. 2521:21-25.

**III. If the Court releases the account from the asset freeze, Social Security should be the only allowed depositor.**

Johnson may receive future Social Security payments outside the asset freeze, and allowing him access to those funds is appropriate. But Johnson's past commingling of funds in the account and lack of credibility caution against giving him totally unfettered access to any bank account outside of the receiver's control. To prevent illicit transactions, this Court should include in its order that the only deposits to the bank account shall be Johnson's Social Security payments. The threat of contempt enforcement is a more powerful deterrent than just the *post hoc* monitoring Johnson proposes. Nonetheless, Johnson should be ordered to provide monthly statements to the receiver showing that no other deposits have been made.

**IV. Conclusion**

Johnson has not met his burden to show that all \$4,358.18 should be released from the asset freeze. This Court should order that the receiver pay Johnson \$1,386.00 in funds already collected from Bank of American Fork. The receiver should retain \$2,972.18 because Johnson has not met his burden to show that those funds are traceable to Social Security payments. This Court should order that the only permissible deposits to Johnson's account ending in -9233 are deposits from Social Security; so long as that is true, the account may be released from the asset freeze. Further, this Court should order Johnson to deliver to the receiver a monthly bank statement for the account ending in -9233 no later than the 7th day of the following month.

Dated: December 18, 2018

Respectfully submitted,

*/s/ Erin Healy Gallagher*

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