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

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 TO
SHOW CAUSE WHY NELDON
JOHNSON, R. GREGORY SHEPARD,
GLENDA JOHNSON, LAGRAN
JOHNSON, AND RANDALE JOHNSON
SHOULD NOT BE HELD IN CIVIL
CONTEMPT OF COURT FOR
VIOLATING THE CORRECTED
RECEIVERSHIP ORDER**

Judge David Nuffer
Magistrate Judge Evelyn J. Furse

This Court enjoined Defendants from promoting their abusive solar energy scheme and ordered that they disgorge their ill-gotten gains from the unlawful solar energy scheme (more than \$50 million).¹ To ensure compliance with the disgorgement order, this Court ordered an asset freeze and appointed a Receiver.² The Corrected Receivership Order obligates Defendants Neldon Johnson and R. Gregory Shepard, and others working with them like Glenda, LaGrand, and Randale Johnson (collectively, “Respondents”), to provide information to and/or cooperate with the Receiver. Johnson and Shepard must also turn over assets to the Receiver. Respondents know of the Corrected Receivership Order, but they have failed to comply with it. Their stubborn refusal to comply with the Order is making the receivership “significantly more difficult than usual” for the very experienced Receiver in this matter.³ Respondents defy the Corrected Receivership Order in an attempt to avoid full enforcement of the disgorgement order against them, their families, and other insiders to the abusive solar energy scheme. Accordingly, the United States asks that this Court enter an order to show cause why Respondents should not be held in civil contempt and subjected to coercive sanctions until they fully comply with the Order.

¹ ECF No. 467 at 125-129, 139.

² ECF No. 444; ECF No. 491.

³ See ECF No. 552, Receiver’s Accounting, Recommendation on Publicly-Traded Status of International Automated Systems, and Liquidation Plan § III (introduction); ECF No. 557, Receiver’s Initial Quarterly Status Report, Conclusion.

I. Facts

On August 22, 2018, the Court took “exclusive jurisdiction and possession of [Defendants’] assets, of whatever kind and wherever situated,” and ordered that such assets were frozen as “Receivership Property.”⁴ After hearing from all parties,⁵ on October 4, 2018, the Court entered its Findings of Fact and Conclusions of Law, and Permanent Injunction.⁶ After hearing from all parties,⁷ on October 31, 2018, the Court appointed a Receiver and continued the asset freeze in the Corrected Receivership Order.⁸ Respondents received a copy of the Corrected Receivership Order.⁹

The Corrected Receivership Order imposes a series of affirmative obligations upon Defendants and others with notice of the Order: to turn over to the Receiver records, information and assets. It also imposes a duty of cooperation upon Defendants and their family members and other insiders who receive a copy of the Order. But, as described in detail in the Receiver’s Accounting, Recommendation on Publicly Traded Status of International Automated Systems, and Liquidation Plan¹⁰ and the Receiver’s Initial Quarterly Status Report,¹¹ both of which are incorporated by reference, Respondents have failed to comply with the Corrected Receivership

⁴ ECF Doc. No. 444 at 26.

⁵ ECF No. 463; ECF No. 452.

⁶ ECF No. 467.

⁷ ECF No. 456; ECF No. 461.

⁸ ECF No. 490; ECF No. 491.

⁹ ECF No. 557 § I.E.

¹⁰ ECF No. 552.

¹¹ ECF No. 557.

Order. For example, Neldon Johnson used multiple subsidiaries and affiliates, including those in which Glenda, LaGrand, and Randale Johnson are involved, to transfer funds and assets, which “makes the Receiver’s work much more difficult. [The Receiver will have to engage in] substantial effort to trace each transfer and determine whether the transfer is voidable.”¹² But “widespread stonewalling by [Neldon] Johnson and others is hindering the Receiver’s work.”¹³ The Johnsons have failed to provide the necessary documents, information, and cooperation with the Receiver that will reveal Neldon Johnson’s financial machinations to make it appear as though he has no or few assets.¹⁴ What information Respondents have provided is often inconsistent with other information they provided, creating greater confusion.¹⁵ Shepard has failed to provide the necessary documents, information, and cooperation with the Receiver that will reveal the tax scheme money he directed to his family members.¹⁶

II. Analysis

When seeking an order to adjudicate civil contempt, the moving party has the initial burden of proving, by clear and convincing evidence, (1) that a valid court order existed; (2) that the person bound by the order had knowledge of it, and (3) that the person bound by the order

¹² ECF No. 552 § III.A.

¹³ ECF No. 552 § III.A.

¹⁴ ECF No. 552 §§ I.A.3-7, I.C., III.A.-D; ECF No. 557 § V.C.1, 3-6.

¹⁵ ECF No. 557 § II.A.1-2., III.C.1(m).

¹⁶ ECF No. 552 §§ I.A.3(c), 7, III.C.3, 6; ECF No. 557 § V.C.2.

disobeyed it.¹⁷ Once the moving party makes its showing, the burden shifts to the responding party to show either that he complied with the order or that he could not comply with it.¹⁸

A. The Corrected Receivership Order is valid.

Fed. R. Civ. P. 65(d) determines whether a court order is valid in this context.¹⁹ 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. A plain reading of the Corrected Receivership Order shows that it meets all three requirements.

1. The Corrected Receivership Order requires Respondents to take certain action.

This Court has already found that Defendants made false or fraudulent statements in support of their solar energy tax scheme, that they may have dissipated assets, and that they were “reluctan[t] to cooperate in discovery regarding assets and [entity] ownership structure.”²⁰ Therefore, it ordered Neldon Johnson, Shepard, and anyone acting with them (who also had notice of the Corrected Receivership Order) to turn over to the Receiver “forthwith” all records relating to Receivership entities and Property.²¹ The Court also ordered Neldon Johnson,

¹⁷ *United States v. Ford*, 514 F.3d 1047, 1051 (10th Cir. 2008) (internal citations omitted).

¹⁸ *Id.*, citing *United States v. Rylander*, 460 U.S. 752, 757 (1983).

¹⁹ *Reliance Ins. Co. v. Mast Const. Co.*, 159 F.3d 1311, 1315-16 (10th Cir. 1998); *See e.g., S.E.C. v. Art Intellect, Inc.*, 2011 WL 5553647, at *9 (D. Utah 2011).

²⁰ ECF No. 444 at 20-21; ECF No. 467; ECF No. 491 at 2 (introduction).

²¹ ECF No. 444 at 20-21; ECF No. 491 ¶¶ 14-17, 24.

Shepard, and anyone acting with them (who also had notice of the Corrected Receivership Order) to turn over to the Receiver any assets belonging to the Receivership Defendants.²²

The Corrected Receivership Order also requires Neldon Johnson and Shepard to disclose to the Receiver, under penalty of perjury, detailed statements about their financial lives.²³ They were required to file and serve by December 31, 2018, a sworn statement and accounting of certain information and documentation from January 1, 2005, to the present, including: 1) all assets, including safe deposit boxes; 2) all assets they received from any person or entity; 3) all funds they received from the solar energy scheme; 4) all expenditures they made, for themselves or on behalf of another, of more than \$1,000; and 5) all asset transfers they made.²⁴

The Receivership Order also requires that “[a]ny filing or submission by any Receivership Defendant must contain a statement, made under penalty of perjury, identifying the source of the funds for the filing or submission in sufficient detail to show that the funds are not Receivership Property or otherwise derived from the solar energy scheme.”²⁵

2. The Corrected Receivership Order requires Respondents to cooperate with the Receiver.

The Corrected Receivership Order also requires Neldon Johnson and Shepard, and, where identified, their spouses, family members, and other insiders to “cooperate with and assist the Receiver in the performance of his duties and obligations” and to “respond promptly and

²² ECF No. 491 ¶¶ 16-17.

²³ ECF No. 491 ¶¶ 25-26.

²⁴ ECF No. 491 ¶ 26.

²⁵ ECF No. 491 ¶ 10.

truthfully to all requests for information and documents from the Receiver.”²⁶ All have the obligation to “promptly answer under oath . . . all questions which the Receiver may put to them and produce all documents as required by the Receiver regarding the business of the Receivership Defendants or any other matter relevant to the operation or administration of the receivership or collection of funds due to the Receivership Defendants.”²⁷ All persons with notice of the Receivership Order also have a duty not to interfere with the Receiver’s performance of his duties.²⁸

B. Respondents had knowledge of the Corrected Receivership Order.

Respondents each signed an acknowledgment of having received the Corrected Receivership Order no later than November 30, 2018.²⁹

C. Respondents violated, and continue to violate, the Corrected Receivership Order.

As the Receiver’s Initial Quarterly Status Report describes, all Respondents violated, and continue to violate, the Corrected Receivership Order. They have not met their affirmative obligations under the order and they have failed to cooperate with the Receiver.

1. Respondents have failed to comply with their affirmative obligations.

All Respondents have failed to both turn over books and records to the Receiver, and have failed to deliver assets to the Receiver. Neldon and Glenda Johnson have, or control,

²⁶ ECF No. 491 ¶ 23.

²⁷ ECF No. 491 ¶ 28.

²⁸ ECF No. 491 ¶ 35.

²⁹ ECF No. 557 § I.E.

financial and other records and assets for themselves, IAS, RaPower-3, and other entities Neldon Johnson created.³⁰ LaGrand and Randale Johnson have, or control, financial and other records for IAS and other entities subject to the asset freeze.³¹ Shepard has, or controls, financial and other records for himself and his entities.³² None of the Respondents have delivered the records to the Receiver.³³ What information the Johnsons have provided is often inconsistent with other information they provided, creating greater confusion.³⁴ Similarly, Johnson and Shepard failed to deliver assets to the Receiver.³⁵

Neldon Johnson and Shepard failed to file the sworn financial disclosure that was due on December 31, 2018.³⁶ Although some of the required information may have been provided with earlier submissions, neither Neldon Johnson nor Shepard have disclosed information critical to the Receiver's task of identifying and collecting assets that should be used to pay the disgorgement order. Specifically, they have not identified, for the period of January 1, 2005 to the present: 1) all assets they received from any person or entity; 3) all funds they received from the solar energy scheme; 4) all expenditures they made, for themselves or on behalf of another,

³⁰ [ECF No. 557](#) § V.C.1, 3(a), (g)-(m); [ECF No. 467](#) at 128.

³¹ [ECF No. 557](#) § V.C.3(c)-(f).

³² [ECF No. 557](#) § V.C.2.

³³ [ECF No. 557](#) § V.C.1-3.

³⁴ [ECF No. 557](#) § II.A.1-2., V.C.1(m).

³⁵ [ECF No. 557](#) § V.C.1(e), (h)-(i), (l), 2(j); *see also id.* § II.A.3, § V.C.3(g)-(m); [ECF No. 522](#) § I.A.3, 5, 7, III.

³⁶ [ECF No. 557](#) § V.C.1(f), 2(e).

of more than \$1,000; and 5) all asset transfers they made.³⁷ All of this information goes directly to identifying and recovering voidable fraudulent transfers.

Moreover, neither Neldon Johnson nor Shepard have complied with the requirement that “[a]ny filing or submission by any Receivership Defendant must contain a statement, made under penalty of perjury, identifying the source of the funds for the filing or submission in sufficient detail to show that the funds are not Receivership Property or otherwise derived from the solar energy scheme.”³⁸

2. All Respondents have failed to comply with their duty to cooperate with the Receiver.

Respondents’ failures to meet their affirmative obligations to deliver records and assets to the Receiver also show that they failed to “cooperate with and assist the Receiver in the performance of his duties and obligations.”³⁹ They also failed in that duty, and in the duty to “produce all documents as required by the Receiver regarding the business of the Receivership Defendants or any other matter relevant to the operation or administration of the receivership or collection of funds due to the Receivership Defendants” when they failed to respond to the Receiver’s requests for documents and information, and/or to instruct their agents and insiders to adequately respond.⁴⁰

³⁷ ECF No. 557 § V.C.1(f), 2(e).

³⁸ *E.g.*, ECF No. 494, Defendant R. Gregory Shepard’s Response To Order To Show Cause ECF Doc. 483 does not contain the required statement *and* ECF No. 530, Defendant Neldon Johnson’s Motion For Limited Relief From Asset Freeze Order (Doc. 444) does not contain the required statement.

³⁹ ECF No. 491 ¶ 23.

⁴⁰ ECF No. 491 ¶ 28; ECF No. 557 § V.

Moreover, Neldon and Glenda Johnson failed to cooperate with the Receiver when they (initially) claimed through counsel that they would voluntarily appear for an asset-identification deposition in early January, then unilaterally cancelled those depositions on the afternoon before they were set to begin.⁴¹ Because of their failure to comply with the Corrected Receivership Order, the Receiver issued subpoenas for the production of documents and for depositions. Neldon and Glenda Johnson appear to be evading service of those subpoenas.⁴² They have instructed their attorneys “to stop doing any work related to the receivership,”⁴³ but have shown little to no inclination to do work required by the Corrected Receivership Order themselves. These actions go beyond a failure to cooperate with the Receiver; they are interfering with the Receiver’s performance of his duties.⁴⁴

III. Conclusion

The Corrected Receivership Order is valid, all Respondents had knowledge of the Order, and all Respondents have violated, and continue to violate, the plain terms of the Order. The burden now shifts to Respondents to show that they are in compliance with the Order, or that they could not comply with the Order.⁴⁵ When they are unable to make either showing, we ask that the Court impose a coercive fine of \$1,000 per day, per Respondent, paid from non-

⁴¹ [ECF No. 557](#) § V.C.1(k), 3(a)-(b), 6(f).

⁴² Pl. Ex. 937, Email from Wayne Klein to Neldon and Glenda Johnson dated January 28, 2019.

⁴³ Pl. Ex. 938, Letter from Steven Paul to Wayne Klein dated January 24, 2019.

⁴⁴ See [ECF No. 491](#) ¶ 35.

⁴⁵ [S.E.C. v. Bliss](#), 2015 WL 4877332, at *8 (D. Utah 2015) (citing *Ford*, 517 F.3d at 1051).

Receivership Property to the Court, until they comply.⁴⁶ Respondents have had more than enough time to marshal documents, information, and/or assets within their control for delivery to the Receiver.⁴⁷ Therefore, after five business days of continued noncompliance and accompanying fines, we ask that the Court impose coercive incarceration until they comply.⁴⁸ Further, we ask that the Court award the United States its attorney's fees and costs (also from non-Receivership Property) incurred in bringing this motion to enforce the Corrected Receivership Order.

Dated: January 29, 2019

Respectfully submitted,

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⁴⁶ *Law v. Nat'l Collegiate Athletic Ass'n*, 134 F.3d 1438, 1443 (10th Cir. 1998) (“Courts have upheld as civil fines intended to coerce, as long as the offending party can avoid them by complying with the court’s order.” (citations omitted)); *see also United States v. Bayshore Associates, Inc.*, 934 F.2d 1391, 1400-01 (6th Cir. 1991) (a contempt fine was criminal, not civil, in nature when party in contempt could not avoid paying a contempt fine by complying with the court order).

⁴⁷ *See ECF No. 557* § I.E. All Respondents acknowledged receipt of the Corrected Receivership Order no later than November 30, 2018, 59 days ago.

⁴⁸ *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 828 (1994) (“The paradigmatic coercive, civil contempt sanction, as set forth in *Gompers*, involves confining a contemnor indefinitely until he complies with an affirmative command such as an order to pay alimony, or to surrender property ordered to be turned over to a receiver, or to make a conveyance. Imprisonment for a fixed term similarly is coercive when the contemnor is given the option of earlier release if he complies.” (citations and quotation omitted)); *Uphause v. Wyman*, 360 U.S. 72, 81 (1959) (ordering confinement until documents requested by subpoena are produced).

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