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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 MOTION TO SHOW
CAUSE WHY PACIFIC STOCK
TRANSFER COMPANY SHOULD
NOT BE HELD IN CIVIL CONTEMPT
OF COURT FOR VIOLATING THE
CORRECTED RECEIVERSHIP
ORDER**

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

District Judge David Nuffer

R. Wayne Klein, the Court-Appointed Receiver (“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”) hereby submits this Motion to Show Cause Why Pacific Stock Transfer Company Should Not Be Held in Civil Contempt of Court for Violating the Corrected Receivership Order.

INTRODUCTION

Despite multiple attempts by the Receiver recover IAS records from transfer agent Pacific Stock Transfer Company (“PST”)—including an initial letter, a subpoena, and a final demand letter—PST has refused to comply with this Court’s Corrected Receivership Order (“Order”).¹ Therefore, to fulfil his duties under the Order, the Receiver feels an obligation to file this Motion to Show Cause against PST.

The Order gives the Receiver “all powers, authorities, rights, and privileges” of the Receivership Entities, including IAS.² All previous directors, officers, managers, employees, or other agents of IAS have been dismissed and any authority they may have had is suspended.³ The Order directs the Receiver to assume and control the operations of IAS and to take custody control, and possession of all IAS property and records.⁴

The Order contained a specific mandate to the Receiver to “investigate the publicly-traded status of IAS’ and to “provide a recommendation to the Court on whether IAS should remain a publicly traded company or should otherwise be liquidated and dissolved.”⁵ The Order also directed the Receiver to provide a summary of the trading of IAS stock since November 2015⁶ and a summary of stock owned by Johnson, Shepard, family members, and affiliated entities.⁷

As transfer agent of IAS, PST is obligated to turn over IAS records to the Receiver and to

¹ [Docket No. 491](#), filed November 1, 2018.

² [Docket No. 491](#), at ¶ 11.

³ [Id.](#) at ¶ 9.

⁴ [Id.](#) at ¶¶ 12, 13(b).

⁵ [Id.](#) at ¶ 85.

⁶ [Id.](#) at ¶ 85(c).

⁷ [Id.](#) at ¶ 85(d).

promptly answer, under oath, all questions the Receiver puts to it. The Order provides:

The Receivership Defendants and . . . *transfer agents* . . . of the Entity Receivership Defendants . . . ***are hereby ordered and directed to preserve and turn over to the Receiver forthwith*** all paper and electronic information of, ***or relating to, the Receivership Defendants or Receivership Property***; such information shall include, but is not limited to: books, records, documents, accounts, ***stock certificates***, intellectual property records, evidence of intellectual property rights, computer and electronic records, and all other instruments and papers.⁸

. . .

Johnson and Shepard as well as all past and present officers, directors, ***agents*** . . . ***of the Entity Receivership Defendants*** . . . ***shall promptly answer under oath to the Receiver 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.⁹

PST is not in compliance with these provisions of the Order. Because IAS and its officers have refused to deliver the company's business records to the Receiver, including the stock transfer ledgers, the Receiver needs the information from PST to accomplish the purposes of the Receivership and to provide information requested by the Court. The Receiver therefore requests that the Court issue an order to show cause to PST, directing it to show why it should not be held in contempt for failing to comply with the Order and other appropriate relief until PST fully complies with the Order.

⁸ *Id.* at ¶ 24 (emphasis added).

⁹ *Id.* at ¶ 28 (emphasis added).

ARGUMENT

For the Court to find PST in civil contempt the Receiver has the initial burden of proving, by clear and convincing evidence, that (1) the Order is valid, (2) that PST had knowledge of the Order, and (3) that PST disobeyed the Order.¹⁰ Once the Receiver makes his showing the burden shifts to PST to show either that it complied with the Order or that it could not comply with the Order.¹¹ Although PST's disobedience of the Order need not be "willful" to constitute civil contempt,¹² PST's actions show that it has knowingly and deliberately failed to obey the Order.

I. The Order is Valid.

Federal Rule of Civil Procedure 65(d) determines whether a court order is valid in this context.¹³ Rule 65(d) requires that every injunction order (1) state the reasons why it is issued; (2) state its terms specifically; and (3) describe in reasonable detail the act or acts restrained or required. In our case, the Order clearly satisfies the requirements.

A. The Order States Reasons, Terms, and Details for the Requirements on PST.

The reasons the Order was issued were addressed at length in the Court's *Memorandum Decision and Order Freezing Assets and to Appoint a Receiver*¹⁴ and *Findings of Fact and Conclusions of Law*.¹⁵ These documents are expressly referenced throughout the Order.¹⁶

The Court found that IAS was part a massive fraud that operated for more than ten years

¹⁰ See [ClearOne Commc'ns, Inc. v. Bowers](#), 651 F.3d 1200, 1210 (10th Cir. 2011).

¹¹ *Id.*

¹² [Bad Ass Coffee Co. of Hawaii v. Bad Ass Coffee Ltd. P'ship](#), 95 F. Supp. 2d 1252, 1256 (D. Utah 2000) (citing [Goluba v. School District of Ripon](#), 45 F.3d 1035, 1037 (7th Cir.1995)).

¹³ [Reliance Ins. Co. v. Mast Const. Co.](#), 159 F.3d 1311, 1316 (10th Cir. 1998).

¹⁴ [Docket No. 444](#), filed August 22, 2018.

¹⁵ [Docket No. 467](#), filed October 4, 2018.

¹⁶ See e.g., [Docket No. 491](#), at 2.

and caused serious harm to the United States Treasury.¹⁷ Defendants, including IAS, were enjoined from promoting their abusive solar energy scheme and ordered to disgorge their gross receipts.¹⁸ The Court also found that Defendants made false or fraudulent statements in support of their tax scheme, that they may have dissipated assets, and that they were reluctant to cooperate during discovery regarding certain aspects of the IAS, RaPower-3, and LTB1.¹⁹ Therefore, the Court ordered Defendants and their agents—including specifically transfer agents—to “turn over to the Receiver forthwith” all records relating to Receivership Defendants, including IAS.²⁰ The Order requires PST—as transfer agent of IAS—to turn over all records relating to IAS.

The Order’s plain terms also require that agents of IAS, RaPower, and LTB1 promptly answer all questions which the Receiver puts to them and produce all documents regarding the business of the Defendants or any other matter relevant to the operation or administration of the receivership.²¹ This provision requires PST to promptly answer questions from the Receiver and produce documents relevant to the operation or administration of the receivership.

Finally, the Order restrains and enjoins “all persons receiving notice of this Order” from directly or indirectly taking any action or causing any action to be taken which would interfere with or prevent the Receiver from performing his duties, including obstructing or concealing records or information.²² As shown below, PST received notice of the Order, and therefore is enjoined from obstructing or concealing information from the Receiver.

¹⁷ [Docket No. 467](#).

¹⁸ [Docket No. 444](#).

¹⁹ [Docket No. 444](#), at 20-21; [Docket No. 467](#); [Docket No. 491](#), at 2.

²⁰ [Docket No. 491](#), at ¶ 24.

²¹ *Id.*, at ¶ 28.

²² *Id.*, at ¶ 35(b).

II. PST had Knowledge of the Order.

The second element of civil contempt is knowledge of the Order. In our case, PST certainly had knowledge of the Order. The Receiver sent a letter to PST with a copy of the Order.²³ The Receiver served a subpoena upon PST.²⁴ And when PST responded to the subpoena it acknowledged “PST is in receipt of a Receivership Order for the [RaPower] matter.”²⁵

III. PST Violated, and Continues to Violate, the Order.

PST’s conduct has resulted in multiple and continuing violations of the Order. On November 12, 2018, the Receiver sent a letter to PST explaining his role as Receiver, providing a copy of the Order, and requesting information and documents of IAS.²⁶ The information and documents requested included transfer agency agreements, the number of shares and shareholders outstanding, and stock ownership and sales by Defendants and family members.²⁷ This information clearly relates to the Receivership Defendants and constitutes books, records, documents and stock certificates.²⁸ Further, there is no doubt that this information concerns the business of IAS and is relevant to the operation and administration of the receivership.²⁹

PST failed to respond to the Receiver’s November 12th letter. Due to this failure, the Receiver subpoenaed PST for the documents, records, and stock certificates on December 14,

²³ Letter from Receiver to PST dated November 12, 2018, attached hereto as Exhibit 1.

²⁴ Subpoena served on PST and Affidavit of Service, attached hereto as Exhibit 2.

²⁵ Letter from PST to Receiver dated January 2, 2019, attached hereto as Exhibit 3.

²⁶ See Exhibit 1.

²⁷ *Id.*

²⁸ [Docket No. 491](#), at ¶ 24.

²⁹ *Id.*, at ¶ 28.

2018.³⁰ On January 15, 2018, the Receiver received a partial response from PST.³¹ On January 18, 2019, the Receiver sent another letter to PST demanding the information that PST withheld. In his January 18th letter the Receiver made clear: he is the only person authorized to act on behalf of IAS, no subpoena should have been required because the Order directs PST provide the requested documents to the Receiver, the information PST is withholding is crucial to his ability to fulfill his duties prescribed in the Order, PST is in violation of the Order and if they do not comply he intends to file a motion for an order to show cause.³² The January 18th letter gave PST until February 4, 2019 to respond and produce the requested documents.³³ As of the date of this filing, PST has not responded or produced the requested documents.

The above conduct constitutes multiple and continuing violations of the Order. First, PST violated the Order when it did not respond to the Receiver's November 12th letter. Next, PST's partial response on January 15th violated the Order because it refused to provide all the requested documents to which the Receiver is entitled. Further, PST violated—and continues to violate—the Order by failing to respond or produce the requested records after the Receiver's January 18th letter demanding PST's full compliance. Finally, having received notice of the Order, PST is in violation because it is obstructing and concealing information from the Receiver.³⁴

³⁰ See Exhibit 2.

³¹ See Exhibit 3. Although the letter is dated January 2nd, the Receiver did not get PST's partial response until January 15th. See Email from PST to Receiver's Counsel dated January 15, 2019, attached hereto as Exhibit 4.

³² Letter from Receiver to PST dated January 18, 2019, attached hereto as Exhibit 5.

³³ *Id.*

³⁴ [Docket No. 491](#), at ¶ 35(b).

CONCLUSION

As shown above, the Order is valid, PST had knowledge of the Order, and PST has, and continues to violate, the clear terms of the Order. The burden now shifts to PST to show it is in compliance with the Order or could not comply with the Order.³⁵ If it is unable to make either showing, the Receiver asks the Court to impose a coercive fine of \$2,000 per day until PST is in compliance.³⁶ Further, the Receiver asks that the Court award attorney's fees and costs incurred in bringing this motion to enforce the Order. The Receivership Estate should not have to pay for PST's refusal to comply with the plain terms of the Order.

DATED this 19th day of February, 2019

PARR BROWN GEE & LOVELESS

/s/ Michael S. Lehr
Jonathan O. Hafen
Michael S. Lehr
Attorneys for Receiver

³⁵ *ClearOne Commc'ns, Inc.*, 651 F.3d at 1210.

³⁶ See *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).

CERTIFICATE OF SERVICE

I hereby certify that the above **RECEIVER'S MOTION TO SHOW CAUSE WHY PACIFIC STOCK TRANSFER COMPANY SHOULD NOT BE HELD IN CIVIL CONTEMPT OF COURT FOR VIOLATING THE CORRECTED RECEIVERSHIP ORDER** was filed with the Court on this 19th day of February, 2019, and served via ECF on all parties who have requested notice in this case and via email and United States Mail, first class postage prepaid, to the following non-CM/ECF participant:

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/s/ Michael S. Lehr
