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Sent: Monday, June 10, 2019 3:11 PM
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Subject: Proposed opinion and order in United States v. RaPower-3, LLC, et al., Civ. No. 15-828 on United States' motion for order to show cause
Attachments: 2019 06 10 proposed order of contempt re receivership order.DOCX

Dear Judge Nuffer and all,

Please see the attached draft proposed opinion and order on the United States' motion for order to show cause. I note that, due to my error when ordering the transcript from May 28, pinpoint citations for that portion of the hearing are not yet in the footnotes. They will be included in the final version.

Respectfully submitted,

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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

**ORDER IN RE: CIVIL CONTEMPT OF
NELDON JOHNSON, R. GREGORY
SHEPARD, GLENDA JOHNSON,
LAGRAND JOHNSON, AND
RANDALE JOHNSON**

District Judge David Nuffer

Plaintiff United States of America filed a Motion for Order to Show Cause Why Neldon Johnson, R. Gregory Shepard, Glenda Johnson, LaGrand Johnson, and Randale Johnson Should Not Be Held in Civil Contempt of Court (the “Motion”).¹ Based on the Motion, and the parties’ oral arguments, testimony, and admissions at the hearings on April 26, May 3, and May 28, 2019, the following findings are entered.

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.² To ensure compliance with the disgorgement order, on August 22, 2018, the Court took “exclusive jurisdiction and possession of [Defendants’] assets, of whatever kind and wherever situated,” and

¹ ECF No. 559.

² ECF No. 467 at 125-129, 139.

ordered that such assets were frozen.³ After hearing from all parties,⁴ on October 4, 2018, the Court entered its Findings of Fact and Conclusions of Law, and Permanent Injunction.⁵ After hearing from all parties,⁶ on October 31, 2018, the Court appointed a Receiver and continued the asset freeze in the Corrected Receivership Order.⁷

The Corrected Receivership Order requires 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 have known of the Corrected Receivership Order since at least November 30, 2018. They failed to comply with it until after the United States filed its motion for order to show cause and the Court held two hearings on the matter. Still, some Respondents remain defiant. Their stubborn refusal to comply with the Order has made the receivership “significantly more difficult than usual” for the experienced Receiver in this matter.⁸ Respondents defied 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. All are guilty of civil contempt.

³ ECF Doc. No. 444 at 26.

⁴ ECF No. 463; ECF No. 452.

⁵ ECF No. 467.

⁶ ECF No. 456; ECF No. 461.

⁷ ECF No. 490; ECF No. 491.

⁸ 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 and procedural posture

A. The terms of the Corrected Receivership Order are clear.

The Corrected Receivership Order is clearly written and understandable at about a fifth-grade level of reading comprehension.⁹ The 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.

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.”¹⁰ Therefore, it ordered Neldon Johnson, Shepard, persons with certain positions with IAS and RaPower-3, and anyone acting with them (who also had notice of the Corrected Receivership Order) to 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.”¹¹ If a person once had, but no longer has, control of the documents and

⁹ May 3 Tr. 172:13-173:25.

¹⁰ ECF No. 444 at 20-21; ECF No. 467; ECF No. 491 at 2 (introduction).

¹¹ ECF No. 444 at 20-21; ECF No. 491 ¶¶ 14-17, 24.

records responsive to paragraph 24 of the Corrected Receivership Order, he or she “must provide information to the Receiver identifying the records, the persons in control of the records, and efforts undertaken to recover the records.”¹²

The Court also ordered Neldon Johnson, 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.¹³

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.¹⁴ 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.¹⁵

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

¹² ECF No. 491 ¶ 24.

¹³ ECF No. 491 ¶¶ 16-17.

¹⁴ ECF No. 491 ¶¶ 25-26.

¹⁵ ECF No. 491 ¶ 26.

truthfully to all requests for information and documents from the Receiver.”¹⁶ 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.”¹⁷ All persons with notice of the Receivership Order also have a duty not to interfere with the Receiver’s performance of his duties.¹⁸

As of November 30, 2018, all Respondents acknowledged receiving a copy of the Corrected Receivership Order – more than six months ago.¹⁹

B. As of April 26, 2019, Respondents failed to comply with the Corrected Receivership Order.

The Receiver detailed Respondents’ failures to comply with their affirmative obligations and their duty of cooperation in his Accounting, Recommendation on Publicly Traded Status of International Automated Systems, and Liquidation Plan²⁰ and Initial Quarterly Status Report.²¹ These reports should have given a very clear signal to Respondents that their noncompliance was a serious matter.

¹⁶ ECF No. 491 ¶ 23.

¹⁷ ECF No. 491 ¶ 28.

¹⁸ ECF No. 491 ¶ 35.

¹⁹ See ECF No. 557 § I.E.

²⁰ ECF No. 552.

²¹ ECF No. 557.

Soon after the Receiver filed these reports, on January 29, 2019, the United States moved for an order to show cause. This motion, too, made it very clear that Respondents were noncompliant and that there would be consequences for their noncompliance. Yet no Respondent actually responded to the motion in writing, on the docket.²²

The Court ordered an evidentiary hearing on April 26, 2019.²³ At the evidentiary hearing on April 26, all Respondents were either represented by counsel or were present *pro se*. As of that date, the United States showed by clear and convincing evidence that Respondents had failed to comply with the Corrected Receivership Order.

1. Respondents failed to comply with their affirmative obligations.

All Respondents failed to both turn over books and records to the Receiver, and Neldon Johnson failed to deliver assets to the Receiver. Neldon and Glenda Johnson had, or controlled, financial and other records and assets for themselves, IAS, RaPower-3, and other entities Neldon Johnson created.²⁴ LaGrand and Randale Johnson had, or controlled, financial and other records for IAS and other entities subject to the asset freeze.²⁵ Shepard had, or controlled, financial and other records for himself and his entities.²⁶ None of the Respondents delivered the records to the Receiver or, if they no longer had such records, provided an adequate declaration explaining

²² See [ECF No. 573](#) ¶¶ 2-3; [ECF No. 588](#) ¶¶ 2, 4. [ECF No. 606](#) ¶¶ 3, 5.

²³ [ECF No. 619](#).

²⁴ [ECF No. 557](#) § V.C.1, 3(a), (g)-(m); [ECF No. 467](#) at 128.

²⁵ [ECF No. 557](#) § V.C.3(c)-(f).

²⁶ [ECF No. 557](#) § V.C.2.

where the records were and what efforts they had taken to retrieve the records.²⁷ Similarly, Johnson failed to deliver assets to the Receiver.²⁸

Neldon Johnson and Shepard failed to file the sworn financial disclosure that was due on December 31, 2018.²⁹ Although they may have provided some of the required information with earlier submissions, neither Neldon Johnson nor Shepard disclosed the details critical for the Receiver to identify and collect assets that should be used to satisfy the disgorgement order.³⁰

Moreover, neither Neldon Johnson nor Shepard 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.”³¹

2. Respondents 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.”³² Respondents also failed in their duty to cooperate

²⁷ ECF No. 557 § V.C.1-3.

²⁸ 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.

²⁹ ECF No. 557 § V.C.1(f), 2(e).

³⁰ ECF No. 557 § V.C.1(f), 2(e).

³¹ *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.

³² ECF No. 491 ¶ 23.

and assist the Receiver, and in their 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.³³

Neldon and Glenda Johnson failed to cooperate with the Receiver when they (initially) agreed 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.³⁴ 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 evaded service of those subpoenas,³⁵ made meritless objections to the subpoenas, failed to produce any documents in response to the subpoenas, and failed to appear at their scheduled depositions.³⁶ They instructed their attorneys “to stop doing any work related to the receivership,”³⁷ but showed no inclination to do work required by the Corrected Receivership Order themselves.

³³ ECF No. 491 ¶ 28; ECF No. 557 § V.

³⁴ ECF No. 557 § V.C.1(k), 3(a)-(b), 6(f).

³⁵ Pl. Ex. 937, Email from Wayne Klein to Neldon and Glenda Johnson dated January 28, 2019.

³⁶ *E.g.*, ECF No. 565; ECF No. 568; ECF No. 574; ECF No. 575; ECF No. 577; ECF No. 591; ECF No. 593

³⁷ Pl. Ex. 938, Letter from Steven Paul to Wayne Klein dated January 24, 2019.

These actions went beyond a failure to cooperate with the Receiver; they interfered with the Receiver's performance of his duties.³⁸

At the April 26 hearing, the Court ordered that Respondents produce documents and/or declarations about documents by April 29, 2019; that Neldon and Glenda Johnson be deposed by May 2, 2019.³⁹ The Court set a second evidentiary hearing on May 3, 2019.⁴⁰

C. As of May 3, 2019, Respondents failed to comply with the Corrected Receivership Order.

At the hearing on May 3, all Respondents were represented by counsel or were present *pro se*. The evidence showed that Respondents made some efforts to comply with the Corrected Receivership Order and this Court's April 26 Order. R. Gregory Shepard, and Randale, LaGrand, and Glenda Johnson produced documents. All Respondents filed declarations.⁴¹ Neldon Johnson and Glenda Johnson were deposed as ordered.

But the United States showed, by clear and convincing evidence, that all Respondents remained non-compliant. Respondents had not produced all required documents and their declarations failed to meet their obligations under the Corrected Receivership Order.

Accordingly, the Court entered two additional orders to compel compliance with the Corrected Receivership Order by May 21 and set a third evidentiary hearing for May 28.⁴²

³⁸ See [ECF No. 491](#) ¶ 35.

³⁹ ECF No. 619; Apr. 26 Tr. 102:13-112:6.

⁴⁰ ECF No. 619; Apr. 26 Tr. 102:13-112:6.

⁴¹ [ECF No. 620](#) (Shepard); [ECF No. 621](#) (Randale Johnson); [ECF No. 622](#) (LaGrand Johnson); [ECF No. 623](#) (Glenda Johnson); [ECF No. 625](#) (Neldon Johnson).

⁴² ECF No. 634; [ECF No. 676](#).

After the May 3 hearing, this Court found Neldon Johnson indigent and appointed counsel for him.⁴³

D. As of May 28, 2019, the Johnsons failed to comply with the Corrected Receivership Order.

At the May 28 hearing, all Respondents were represented by counsel or were present *pro se*. The evidence showed that R. Gregory Shepard had complied with the Corrected Receivership Order by May 23, 2019. The United States proved, by clear and convincing evidence, that Neldon Johnson, Glenda Johnson, Randale Johnson, and LaGrand Johnson remained non-compliant with the Corrected Receivership Order.

1. Randale Johnson failed to comply with the Corrected Receivership Order.

Randale Johnson is a former officer of International Automated Systems.⁴⁴ Because of that position, paragraph 24 of the Corrected Receivership Order applies to him and requires him to promptly produce responsive documents about Receivership Defendants and Receivership Property.⁴⁵ Through his attorney, on April 15, 2019, Randale Johnson claimed that he had no documents to produce.⁴⁶ But after the April 26 hearing, Randale Johnson produced documents to the Receiver – with no explanation of why the documents were not produced promptly after he

⁴³ ECF No. 652; [ECF No. 655](#); *see also* [ECF No. 657](#); [ECF No. 660](#).

⁴⁴ Pl. Ex. 507 at 26.

⁴⁵ [ECF No. 491](#) ¶ 24.

⁴⁶ Pl. Ex. 941.

was served with the Corrected Receivership Order or why he denied having documents as of April 15.⁴⁷

Randale Johnson's production of documents is likely still incomplete. For example, the evidence showed that Receivership Defendants paid money to Randale Johnson, or directed that money be paid to him by other entities.⁴⁸ Documents reflecting such payments, and any reasons for such payments, clearly relate to Receivership Property.

Further, while these contempt proceedings were pending, this Court granted the Receiver's motion to extend the receivership to 13 entities affiliated with Defendants in the underlying litigation ("Affiliated Entities").⁴⁹ The Affiliated Entities include Cobblestone Centre, LC, the N.P. Johnson Family Limited Partnership, Solstice Enterprises, Inc., Black Night Enterprises, Inc., and Starlight (or Starlite) Holdings, Inc.⁵⁰ The reasons to include the Affiliated Entities in the receivership are stated in that Order (hereafter, the "Order Including Affiliated Entities") and will not be repeated here. One of the effects of the Order Including Affiliated Entities is that all Affiliated Entities are now Receivership Property.

The evidence showed that Randale Johnson had a position of authority and ownership with respect to one or more of the Affiliated Entities – and at the very least is a member of Neldon Johnson's family.⁵¹ Therefore, the Corrected Receivership Order and the Order Including

⁴⁷ May 3 Tr. 19:15-22:18.

⁴⁸ See Pl. Ex. 945 at 39-40; Apr. 26 Tr. 91:4-92:8.

⁴⁹ [ECF No. 636](#).

⁵⁰ [ECF No. 636 at 1-2](#).

⁵¹ *E.g.*, Pl. Ex. 946; Pl. Ex. 948

Affiliated Entities also require him to produce responsive documents for any Affiliated Entity, including any foreign Affiliated Entity.⁵²

If Randale Johnson no longer has control of the documents and records responsive to paragraph 24 of the Corrected Receivership Order or the Order Including Affiliated Entities, he “must provide information to the Receiver identifying the records, the persons in control of the records, and efforts undertaken to recover the records.”⁵³ The declaration⁵⁴ and information that Randale Johnson provided to date are inadequate.⁵⁵ He did not clearly identify the documents he once had but now claims not to possess. He did not identify where the documents went, or who has control of them now. And he identified no efforts that he made to recover the records. Randale Johnson offered no explanation for why, even after he was put on notice at the May 3 hearing that his long overdue and *de minimis* declaration was inadequate, he has not provided a compliant one.⁵⁶

2. LaGrand Johnson failed to comply with the Corrected Receivership Order.

LaGrand Johnson is a former officer of International Automated Systems.⁵⁷ Because of that position, paragraph 24 of the Corrected Receivership Order applies to him and requires him to promptly produce responsive documents about Receivership Defendants and Receivership

⁵² See [ECF No. 636 at 8 ¶ 9](#).

⁵³ [ECF No. 491 ¶ 24](#).

⁵⁴ [ECF No. 621](#).

⁵⁵ May 28 Tr.

⁵⁶ May 3 Tr. 19:15-22:18

⁵⁷ Pl. Ex. 507 at 26.

Property.⁵⁸ Through his attorney, on April 15, 2019, LaGrand Johnson provided a few pages of documents.⁵⁹ But after the April 26 hearing, LaGrand Johnson produced a “substantial” set of documents to the Receiver – with no explanation of why the documents were not produced promptly after he was served with the Corrected Receivership Order or produced with the April 15 email.⁶⁰

LaGrand Johnson’s production of documents is likely still incomplete. LaGrand Johnson was the CFO of IAS and had signature authority over its bank accounts and the bank accounts of at least some Affiliated Entities.⁶¹ The evidence also showed that Receivership Defendants paid money to LaGrand Johnson, or directed that money be paid to him by other entities.⁶² Banking records and any other documents reflecting payments to LaGrand Johnson, and any reasons for such payments, clearly relate to Receivership Property. And like Randale Johnson, the evidence showed that LaGrand Johnson had a position of authority and ownership with respect to one or more of the Affiliated Entities – and at the very least is a member of Neldon Johnson’s family.⁶³ Therefore, the Corrected Receivership Order and the Order Including Affiliated Entities also require him to produce responsive documents for any Affiliated Entity, including any foreign Affiliated Entity.⁶⁴

⁵⁸ ECF No. 491 ¶ 24.

⁵⁹ Pl. Ex. 941.

⁶⁰ May 3 Tr. 16:19-19:14, 22:15-18.

⁶¹ See, e.g., Pl. Ex. 834 at 2-3, 9-20, 45-51; Apr. 26 Tr. 55:6-24; May 3 Tr. 11:18-13:4.

⁶² See Pl. Ex. 945 at 39-40; Apr. 26 Tr. 91:4-92:8.

⁶³ E.g., Pl. Ex. 946, Pl. Ex. 947, Pl. Ex. 948.

⁶⁴ See ECF No. 636 at 8 ¶ 9.

If LaGrand Johnson no longer has control of the documents and records responsive to paragraph 24 of the Corrected Receivership Order, he too “must provide information to the Receiver identifying the records, the persons in control of the records, and efforts undertaken to recover the records.”⁶⁵ The declaration⁶⁶ and information that LaGrand Johnson has provided to date are inadequate.⁶⁷ He did not clearly identify the documents he once had but now claims not to possess. With the exception of a reference to “the accountant for IAS, Inc., Gary Peterson,” LaGrand Johnson did not identify where the documents went, or who has control of them now.⁶⁸ And he identified no efforts that he made to recover the records, including from Gary Peterson. LaGrand Johnson offered no explanation for why, even after he was put on notice at the May 3 hearing that his long overdue and *de minimis* declaration was inadequate, he has not provided a compliant one.⁶⁹

3. Glenda Johnson failed to comply with the Corrected Receivership Order.

Glenda Johnson defied the Corrected Receivership Order and a document subpoena from the Receiver until, at the earliest, April 29, 2019. She failed to appear for her deposition three times: once, when she had voluntarily agreed to be deposed and two times after the Receiver subpoenaed her appearance. Her meritless excuses for her defiance were made at the 11th hour.⁷⁰

⁶⁵ [ECF No. 491](#) ¶ 24.

⁶⁶ [ECF No. 622](#).

⁶⁷ May 28 Tr.

⁶⁸ *See* [ECF No. 622](#).

⁶⁹ May 3 Tr. 16:19-19:14.

⁷⁰ *E.g.* [ECF No. 565](#); [ECF No. 577](#); [ECF No. 591](#), [ECF No. 593](#).

After the April 26 evidentiary hearing, Glenda Johnson may have realized the very serious consequences of continued defiance. Since that hearing, she appeared and testified at her deposition, as ordered. She began cooperating with the Receiver to collect information he requires from her – information that is particularly important because she was a conduit for large sums of money transferred out of IAS and RaPower-3 to Affiliated Entities and Johnson family members and insiders.⁷¹ Glenda Johnson produced numerous documents, including banking records and a computer with financial files. But she offered no valid explanation for why these documents were not produced promptly after she was served with the Corrected Receivership Order.

In certain important respects, Glenda Johnson has not yet fully complied with the Corrected Receivership Order and subsequent orders from this Court. As of May 28, she had not completed the production of her banking records.⁷² Her declaration,⁷³ pursuant to paragraph 24 of the Corrected Receivership Order, and other information she has provided the Receiver about documents she may once have are inadequate.⁷⁴ For example, the evidence was clear that Glenda Johnson once possessed certain RaPower-3 documents and other documents relating to Receivership Property – but she claimed that they are now in custody of Snell & Wilmer, the

⁷¹ *E.g.*, Pl. Ex. 942, Pl. Ex. 943, Pl. Ex. 945; R. Ex. 2007, R. Ex. 2009, R. Ex. 2010, R. Ex. 2100, R. Ex. 2101, R. Ex. 2102 and testimony related to all of these exhibits.

⁷² May 28 Tr.

⁷³ [ECF No. 623](#).

⁷⁴ May 28 Tr.

firm RaPower-3 used to file bankruptcy.⁷⁵ Glenda Johnson did not identify what efforts she made to recover the records from Snell & Wilmer. To the extent that Glenda Johnson has, or once had, any documents responsive to paragraph 24 of the Corrected Receivership Order for any of the Affiliated Entities, she must also produce them or explain their absence.⁷⁶

Further, Glenda Johnson has not yet delivered an “accounting of the cash withdrawals she made on or since August 22, 2018.”⁷⁷ This accounting must “include the amount of each withdrawal, the amount remaining from each withdrawal as of May 3, 2019, and the location of the money from each withdrawal.”⁷⁸

4. Neldon Johnson failed to comply with the Corrected Receivership Order.

Neldon Johnson’s behavior during these proceedings showed that he has no respect for this Court or its orders. He disregards clear Court orders and then feigns confusion about the legal obligations they impose upon him.⁷⁹ Neldon Johnson defied the Corrected Receivership Order and a document subpoena from the Receiver until, at the earliest, April 29, 2019. He failed to appear for her deposition two times: once, when he had voluntarily agreed to be deposed and

⁷⁵ See United States’ Opposition to Fee Application by Snell & Wilmer, L.L.P. (Docket No. 13, Sept. 19, 2018) and Order Denying Application for Compensation and Reimbursement of Expenses (Docket No. 17, Nov. 5, 2018) both in *In re RaPower-3, LLC*, Civil No. 2:18-cv-608-DN, Bankr. No. 18-bk-24865.

⁷⁶ See [ECF No. 636 at 8 ¶ 9](#).

⁷⁷ [ECF No. 676 ¶ 6](#) (citing the Memorandum Decision and Order Freezing Assets and to Appoint a Receiver, [ECF No. 444](#), August 22, 2018).

⁷⁸ [ECF No. 676 ¶ 6](#).

⁷⁹ *E.g.* May 3 Tr. 169:3-173:25, 175:5-178:5.

again after the Receiver subpoenaed his appearance. His meritless excuses for his defiance were made at the 11th hour.⁸⁰

Neldon Johnson sat for his deposition on May 2, 2019 and has complied with some aspects of the Corrected Receivership Order through the documents and information produced by Randale, LaGrand, and Glenda Johnson. But Neldon Johnson remains in open defiance of many aspects of the Corrected Receivership Order and other orders of this Court.

a. Neldon Johnson failed to turn over assets to the Receiver.

The Corrected Receivership Order requires Neldon Johnson to turn over assets and Receivership Property to the Receiver. The evidence shows that he has not. At minimum, Neldon Johnson failed to deliver to the Receiver the log books for one of the two aircraft that are Receivership Property and has failed to deliver millions of IAS shares that its stock transfer company shows are his or are within his control.⁸¹ He also failed to deliver any unissued shares of IAS stock.⁸² In the past, Neldon Johnson has issued IAS shares to himself and then sold them tens of thousands of dollars' worth at a time.⁸³ Because these issued and unissued shares remain in Neldon Johnson's hands – or in the hands of any member of the Johnson family – there is a significant risk that he will use the shares like his own personal ATM.⁸⁴ Neldon Johnson must obtain and deliver these assets to the Receiver.

⁸⁰ *E.g.* [ECF No. 568](#); [ECF No. 574](#).

⁸¹ May 28 Tr.; *see also* [ECF No. 682](#) (Receiver's Mot. for Order Cancelling Shares of IAS) at 8-9.

⁸² May 28 Tr.

⁸³ May 28 Tr.; *see also* [ECF No. 682](#) at 8-9.

⁸⁴ May 28 Tr. *see also* [ECF No. 682](#) at 8-9.

b. Neldon Johnson failed to produce responsive documents to the Receiver.

With respect to books and records for the Receivership Defendants and Receivership Property, Neldon Johnson claims either that all books and records have been delivered to the Receiver, or that he does not have any responsive documents.⁸⁵ First, Neldon Johnson's assertion that he has delivered all documents to the Receiver is an attempt to shift the burden to the Receiver to identify the documents that Neldon Johnson has *not* delivered. The Corrected Receivership Order puts the burden of ensuring compliance on Neldon Johnson, not the Receiver. Further, the evidence showed that Neldon Johnson's sworn statement claiming to have delivered all documents to the Receiver was not true: he first made the statement under oath, that he had no records, on April 29,⁸⁶ and then produced, through Glenda Johnson, more responsive documents and information on May 10 and May 17.⁸⁷

Further, his claim that third parties have documents fails to meet his burden under the Corrected Receivership Order. The evidence showed that he could obtain documents currently being held by third parties, like Pacific Stock Transfer, Snell & Wilmer, and Gary Peterson. This Court used simple words to reiterate this duty during the May 3 hearing, when Neldon Johnson protested that the Receiver could fetch them:

“Mr. Johnson, it's my view you have always been under the obligation to assemble documents from any of the entities, any of

⁸⁵ ECF No. 625; ECF No. 669.

⁸⁶ ECF No. 625 ¶ 2.

⁸⁷ May 28 Tr.

the entities, and your personal records and produce them to the receiver and that you had no constraint against doing that.”⁸⁸

Mr. Johnson, “you were ordered to get those documents.”⁸⁹

But by the time of the May 28 hearing, Neldon Johnson offered no evidence that he had even attempted to retrieve responsive documents held by third parties.

Evidence has shown, time and time again, that Neldon Johnson is the center around which IAS, RaPower-3, and the Affiliated Entities revolve.⁹⁰ Therefore, numerous obligations imposed by the Corrected Receivership Order (including paragraph 24) and the Order Including Affiliated Entities require him to promptly produce responsive documents related to those entities.⁹¹

If Neldon Johnson does not possess and cannot obtain responsive documents that he once possessed for Receivership Defendants, the Affiliated Entities, and/or any other Receivership Property, the plain language of paragraph 24 of the Corrected Receivership Order requires him to identify what documents existed, where they are, and what efforts he made to obtain them. This roadmap is important to help the Receiver understand the facts underlying the financial transactions that may be voidable to increase assets of the Receivership Estate.⁹² That *Neldon Johnson* (and not some other person) lay out this roadmap is critical so that he can be held accountable if it is later shown that he actually had such documents but failed to produce them.

⁸⁸ May 3 Tr. 172:17-21.

⁸⁹ May 3 Tr. 175:6-176:20.

⁹⁰ [ECF No. 467](#) at 127-128; [ECF No. 636](#); May 28 Tr.

⁹¹ *See* [ECF No. 636](#) at 8 ¶ 9.

⁹² *E.g.*, May 28 Tr.

c. Neldon Johnson failed to provide a detailed financial accounting.

Neldon Johnson is also in defiance of paragraph 26 of the Corrected Receivership Order. Paragraph 26 required that, no later than December 31, 2018, Neldon Johnson “file with the Court and serve upon the Receiver and counsel for the United States a sworn statement and accounting, with complete documentation, covering the period from January 1, 2005, to the present” on a number of topics. This aspect of the Corrected Receivership Order is clear about the thorough and detailed financial roadmap it requires for a broad scope of assets and transactions, *including the Affiliated Entities* – not just assets held in Neldon Johnson’s name and transactions to or from him directly. Neldon Johnson’s declarations⁹³ simply fail to meet the obligation that paragraph 26 imposes.

Subparagraph 26(a) requires an accounting of:

all Receivership Property, wherever located, held by or in the name of the Receivership Defendants, or in which any of them, directly or indirectly, has or had any beneficial interest, or over which any of them maintained or maintains or exercised or exercises control, including, but not limited to: (i) all securities, investments, funds, digital currencies, real estate, vehicles, aircraft, watercraft, recreational vehicles, jewelry and other assets, stating the location of each; (ii) all patents and other intellectual property, including documents of the grants of intellectual property, all documents used in support of the applications, all models or samples of products that are the subject of intellectual property grants, and any documents showing the assignment, sale, or licensing of any intellectual property; and (iii) any and all accounts, including all funds held in such accounts, with any bank, brokerage, or other financial institution, including the account statements from each bank, brokerage, or other financial institution.

⁹³ ECF No. 625, ECF No. 669.

Neldon Johnson stated that he either does not possess any property or that he has turned over all property to the Receiver.⁹⁴ These facile statements do not comply with the detailed requirements of paragraph 26(a). They do not acknowledge that Neldon Johnson's accounting obligation extends not just to property officially titled in his name (which he has attempted to avoid), but a far greater expanse of assets. The evidence showed that these assets include real property, personal property (tangible and intangible), and cash held by any number of people and entities, including the Affiliated Entities. Any transfers were made at Neldon Johnson's direction and for his benefit.⁹⁵ Paragraph 26 requires him to account for all Receivership Property, but he has not.

Subparagraph 26(b) requires an accounting of:

every safe deposit box, commercial mail box, business office, storage facility, or other building or facility belonging to, for the use or benefit of, controlled by, or titled in the name of any Receivership Defendant, or subject to access by any Receivership Defendant or other person subject to the Asset Freeze in Section A of this Order.

Neldon Johnson provided a confusing and equivocal response to this requirement.⁹⁶ His response does not adequately respond to the Corrected Receivership Order.

Subparagraph 26(c) requires an accounting of:

all credit, bank, charge, debit, stored-value, or other deferred payment card issued to or used by each Receivership Defendant including, but not limited to, the issuing institution, the card or account numbers, all persons or entities to which a card was issued

⁹⁴ ECF No. 669 ¶ 4(a).

⁹⁵ May 3 Tr. 32:3-33:24.

⁹⁶ ECF No. 669 ¶ 4(b).

or with authority to use a card, the balance of each account or card as of the most recent billing statement, and all statements for the last twelve months.

Once again, Neldon Johnson claimed to have provided all financial information to the Receiver, without making the detailed accounting – for each Receivership Defendant for which he has or had information – that paragraph 26 commands.⁹⁷ This response does not meet Neldon Johnson’s obligation under the Corrected Receivership Order.

Subparagraph 26(d) requires an accounting of:

for the Entity Receivership Defendants: (i) the names, contact information, and number of shares for all shareholders as of November 23, 2015, and all purchases and sales of stock, including common and preferred shares, since November 23, 2015, which information shall include identification of the buyers and sellers, the number of shares transferred, the dates of the transfers, and the value of the transfers; and (ii) the names and contact information for transfer agents, market makers, attorneys, and accountants who provided services to IAS relating to its status as an issuer or publicly-held company.

Neldon Johnson’s conclusory responses – that he has provided information to the Receiver already or he “defers” to information held by Pacific Stock Transfer – are inadequate to comply with this provision of paragraph 26.⁹⁸ The Corrected Receivership Order does not permit Neldon Johnson to “defer” his reporting duties to third parties.

Subparagraph 26(e) requires an accounting of:

all assets received by any of the Receivership Defendants from any person or entity, including the value, location, and disposition of any assets so received.

⁹⁷ ECF No. 669 ¶ 4(c).

⁹⁸ ECF No. 669 ¶ 4(d).

Neldon Johnson claimed that he has not received significant assets since 2005.⁹⁹ This is another example of his failure to follow the instructions laid out in plain terms by paragraph 26 of the Corrected Receivership Order. This subparagraph requires him to report assets received by any of the Receivership Defendants – not just him personally. And the evidence showed that Neldon Johnson has received the benefit of (at least) assets purchased by his entities.¹⁰⁰ This subparagraph requires him to account for all such assets.

Subparagraph 26(f) requires an accounting of:

all funds received by the Receivership Defendants, and each of them, in any way related, directly or indirectly, to the conduct alleged in the United States' Complaint in this case. The submission must clearly identify, among other things, all purchases of solar lenses or alternative energy systems or other products sold by Receivership Defendants, the dates and amounts of the purchases, and the current location of funds received from the sales.

Again, Neldon Johnson claimed either he has given the Receiver all records that show these funds or he has nothing to provide.¹⁰¹ This is inadequate. Paragraph 26 requires details, not just for Neldon Johnson but for all Receivership Defendants.

Subparagraph 26(g) requires an accounting of:

all expenditures exceeding \$1,000 made by any of them, including those made on their behalf by any person or entity.

⁹⁹ ECF No. 669 ¶ 4(e).

¹⁰⁰ *E.g.*, Apr. 26 Tr. 73:6-77:17; Pl. Ex. 943; Pl. Ex. 945 at 16, 18, 21-22.

¹⁰¹ ECF No. 669 ¶ 4(f).

Neldon Johnson claimed to have given the Receiver all information about these expenditures.¹⁰²

This response, too, fails to meet his obligation under this subparagraph. Neldon Johnson must provide *an accounting* of these expenditures.

Subparagraph 26(h) requires an accounting of:

all transfers of assets by them, including a description or identification of: (i) the assets; (ii) the transferees of the assets; (iii) the date of the transfers; (iv) the amount or value of the assets transferred; (v) a description of any goods or services received in exchange for the assets, including the value of any goods or services received; and, (vi) to the best of their knowledge, the current location of the assets.

Neldon Johnson claims not to have made any transfers since 2005, except transfers of shares in IAS stock.¹⁰³ The evidence showed that Neldon Johnson directed transfers of assets that he was the beneficial owner of, even if he did not personally make the transfer or the item transferred was not titled or held in his name.¹⁰⁴ This subparagraph requires him to account for those transfers.

II. All Respondents are guilty of civil contempt.

The United States proved, by clear and convincing evidence, (1) that a valid court order existed; (2) that Respondents, who were bound by the order, had knowledge of it, and (3) that Respondents disobeyed it.¹⁰⁵ The first two elements of this test were never disputed.¹⁰⁶ The only

¹⁰² ECF No. 669 ¶ 4(g).

¹⁰³ ECF No. 669 ¶ 4(h).

¹⁰⁴ *E.g.*, May 3 Tr. 32:3-33:24.

¹⁰⁵ *United States v. Ford*, 514 F.3d 1047, 1051 (10th Cir. 2008) (internal citations omitted). May 28 Tr. Disobedience of an order need not be “willful” to constitute civil contempt. See *Bad Ass Coffee Co. of Hawaii v.*

(continued...)

disputed issue is whether Respondents disobeyed the Corrected Receivership Order.¹⁰⁷ The evidence detailed at the three evidentiary hearings and herein showed that all Respondents disobeyed the Corrected Receivership Order. Once the United States made this showing, the burden shifted to Respondents to show that they were in compliance with the Order, or that they could not comply with the Order.¹⁰⁸ They failed to make either showing.

The Johnsons have a cavalier attitude of indifference to the orders of the court and the requirements of the law.¹⁰⁹ It may be that Randale Johnson, LaGrand Johnson and Glenda Johnson did not understand their roles in the entities at issue, but they have legal obligations to the Court and the receivership. It is no excuse that they may have been unduly deferential to Neldon Johnson, or believed that he would handle this matter.¹¹⁰ This is not the time for any of the Johnsons to attempt to defer to a third party their duty to provide documents and information.¹¹¹

Respondents severely impaired the United States' efforts to effect the remedy this Court ordered in response to Defendants' unlawful conduct: the receivership.¹¹² Their deliberate

(...continued)

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)).

¹⁰⁶ May 28 Tr.

¹⁰⁷ May 28 Tr.

¹⁰⁸ *S.E.C. v. Bliss*, 2015 WL 4877332, at *8 (D. Utah 2015) (citing *Ford*, 517 F.3d at 1051).

¹⁰⁹ May 28 Tr.

¹¹⁰ May 28 Tr.

¹¹¹ May 28 Tr.

¹¹² May 28 Tr.

interference showed in the most stunning development during the time since the April 26 hearing: delivery to the Receiver of massive amounts of data. For example, computer files (including QuickBooks files) were apparently available to Respondents since at least November 2015. They would have been one obvious source of documents to comply with the Corrected Receivership Order, but somehow were not produced until after this Court's order during the April 26th hearing.¹¹³

The fact that IAS and other Receivership Entities were run informally with sloppy or inadequate records is no excuse for the Johnsons' failure to produce the records.¹¹⁴ The Johnsons must produce the records they have, or may retrieve from third parties. If the Johnsons no longer have the documents, and are unable obtain them, the Johnsons must provide the Receiver a roadmap to the documents that are, or once were, in their possession, custody, or control *and* describe their efforts to retrieve them.

All Respondents are guilty of civil contempt.¹¹⁵ The goal of a civil contempt proceeding is to compel compliance with a court order. Coercive sanctions like a monetary penalty and incarceration are available for continued defiance.¹¹⁶

¹¹³ May 28 Tr. This production of documents and information also clearly shows that Neldon Johnson, and the Defendant entities he controlled, also deliberately impaired the orderly conduct of discovery in the underlying litigation. The United States requested things like QuickBooks files but Johnson, IAS, and RaPower-3 failed to produce them. *See* [ECF No. 381](#); [ECF No. 382](#).

¹¹⁴ May 28 Tr.

¹¹⁵ May 28 Tr.

¹¹⁶ May 28 Tr.; *see Ford*, 514 F.3d at 1052-53; *Bliss*, 2015 WL 4877332, at *9.

III. Order

For the foregoing reasons, IT IS HEREBY ORDERED THAT:

1. All Respondents are guilty of civil contempt of the Corrected Receivership Order.
2. R. Gregory Shepard purged his contempt as of May 23, 2019.
3. Randale Johnson shall produce all documents required by paragraph 24 of the Corrected Receivership Order and paragraph 9 on page 8 of the Order Including Affiliated Entities on a rolling basis beginning June 21, 2019, and ending no later than July 8, 2019.
4. If he no longer possesses documents responsive to paragraph 24 of the Corrected Receivership Order or paragraph 9 on page 8 of the Order Including Affiliated Entities in his control, Randale Johnson shall submit a declaration that complies with paragraph 24 as follows:
 - a. No later than June 21, 2019, Randale Johnson shall email a word-processing version of his draft declaration to the Court, the Receiver and the United States, and shall file the draft on the docket in this case;
 - b. No later than June 28, 2019, the United States and the Receiver shall email a word-processing redline version of the draft declaration to the Court and counsel for Randale Johnson, and shall file the redline draft on the docket in this case;
 - c. No later than July 8, 2019, Randale Johnson shall email a word-processing version of his final declaration to the Court, and shall file his final declaration on the docket in this case.

5. LaGrand Johnson shall produce all documents required by paragraph 24 of the Corrected Receivership Order and paragraph 9 on page 8 of the Order Including Affiliated Entities on a rolling basis beginning June 21, 2019, and ending no later than July 8, 2019.

6. If he no longer possesses documents responsive to paragraph 24 of the Corrected Receivership Order or paragraph 9 on page 8 of the Order Including Affiliated Entities in his control, LaGrand Johnson shall submit a declaration that complies with paragraph 24 as follows:

a. No later than June 21, 2019, LaGrand Johnson shall email a word-processing version of his draft declaration to the Court, the Receiver and the United States, and shall file the draft on the docket in this case;

b. No later than June 28, 2019, the United States and the Receiver shall email a word-processing redline version of the draft declaration to the Court and counsel for LaGrand Johnson, and shall file the redline draft on the docket in this case;

c. No later than July 8, 2019, LaGrand Johnson shall email a word-processing version of his final declaration to the Court, and shall file his final declaration on the docket in this case.

7. Glenda Johnson shall produce all documents required by paragraph 24 of the Corrected Receivership Order and paragraph 9 on page 8 of the Order Including Affiliated Entities on a rolling basis beginning June 21, 2019, and ending no later than July 8, 2019.

8. If she no longer possesses documents responsive to paragraph 24 of the Corrected Receivership Order or paragraph 9 on page 8 of the Order Including Affiliated Entities in his control, Glenda Johnson shall submit a declaration that complies with paragraph 24 as follows:

- a. No later than June 21, 2019, Glenda Johnson shall email a word-processing version of her draft declaration to the Court, the Receiver and the United States, and shall file the draft on the docket in this case;
- b. No later than June 28, 2019, the United States and the Receiver shall email a word-processing redline version of the draft declaration to the Court and counsel for Glenda Johnson, and shall file the redline draft on the docket in this case;
- c. No later than July 8, 2019, Glenda Johnson shall email a word-processing version of her final declaration to the Court, and shall file her final declaration on the docket in this case.

9. No later than July 8, 2019, Glenda Johnson shall deliver to the Receiver an “accounting of the cash withdrawals she made on or since August 22, 2018” which must “include the amount of each withdrawal, the amount remaining from each withdrawal as of May 3, 2019, and the location of the money from each withdrawal.”¹¹⁷

10. Neldon Johnson shall deliver to the Receiver, no later than June 28, 2019:
 - a. the undelivered aircraft log book(s);

¹¹⁷ ECF No. 676 ¶ 6.

- b. all issued shares of International Automated Systems, Inc. that are Receivership Property or that are in his possession or control; and
- c. any unissued shares of International Automated Systems, Inc.

11. Neldon Johnson shall produce all documents required by paragraph 24 of the Corrected Receivership Order and paragraph 9 on page 8 of the Order Including Affiliated Entities on a rolling basis beginning June 21, 2019, and ending no later than July 8, 2019.

12. If he no longer possesses documents responsive to paragraph 24 of the Corrected Receivership Order or paragraph 9 on page 8 of the Order Including Affiliated Entities in his control, Neldon Johnson shall submit a declaration that complies with paragraph 24 as follows:

- a. No later than June 21, 2019, Neldon Johnson shall email a word-processing version of his draft declaration to the Court, the Receiver and the United States, and shall file the draft on the docket in this case;
- b. No later than June 28, 2019, the United States and the Receiver shall email a word-processing redline version of the draft declaration to the Court and counsel for Neldon Johnson, and shall file the redline draft on the docket in this case;
- c. No later than July 8, 2019, Neldon Johnson shall email a word-processing version of his final declaration to the Court, and shall file his final declaration on the docket in this case.

13. Neldon Johnson shall submit a declaration that complies with paragraph 26 of the Corrected Receivership Order as follows:

- a. No later than June 21, 2019, Neldon Johnson shall email a word-processing version of his draft declaration to the Court, the Receiver and the United States, and shall file the draft on the docket in this case;
- b. No later than June 28, 2019, the United States and the Receiver shall email a word-processing redline version of the draft declaration to the Court and counsel for Neldon Johnson, and shall file the redline draft on the docket in this case;
- c. No later than July 8, 2019, Neldon Johnson shall email a word-processing version of his final declaration to the Court, and shall file his final declaration on the docket in this case.

14. Neldon Johnson shall cooperate in every respect with his appointed counsel to comply with paragraphs 10 and 11 above, and to draft and finalize the declarations required by paragraphs 12 and 13 above.

15. If Neldon Johnson fails to cooperate with his counsel, as required by paragraph 14 above, his counsel shall report his failure to cooperate to the United States and the Receiver within 24 hours of such failure.

16. All Respondents are jointly and severally liable for the attorneys' fees and costs incurred by both the United States and the Receiver to enforce the Corrected Receivership Order and to litigate the United States' motion for order to show cause, including the Receiver's fees.

a. Respondents shall pay these fees and costs from non-Receivership assets.

b. The United States and the Receiver shall file motions for fees and costs no later than July 1, 2019.

Signed _____ 2019.

BY THE COURT:

David Nuffer
United States District Judge