

JOHN W. HUBER, United States Attorney (#7226)
JOHN K. MANGUM, Assistant United States Attorney (#2072)
111 South Main Street, Suite 1800
Salt Lake City, Utah 84111
Telephone: (801) 524-5682
Email: john.mangum@usdoj.gov

ERIN HEALY GALLAGHER, *pro hac vice*
DC Bar No. 985670, erin.healygallagher@usdoj.gov
ERIN R. HINES, *pro hac vice*
FL Bar No. 44175, erin.r.hines@usdoj.gov
Trial Attorneys, Tax Division
U.S. Department of Justice
P.O. Box 7238
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 353-2452

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>UNITED STATES' REPLY ON ITS MOTION FOR ADDITIONAL SANCTIONS DUE TO CONTINUED CONTEMPT OF NELDON JOHNSON, GLENDA JOHNSON, LAGRAN JOHNSON, AND RANDALE JOHNSON</p> <p>Judge David Nuffer Magistrate Judge Evelyn J. Furse</p>
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On August 21, 2019, the United States moved for additional sanctions against Neldon, Glenda, LaGrand, and Randale Johnson,¹ due to their continuing contempt of this Court's lawful orders, including the Corrected Receivership Order ("CRO")² and the order holding the Johnsons in civil contempt ("Contempt Order")³. The Johnsons opposed the motion, claiming that they have satisfied their obligations.⁴ The United States replies to their specific arguments herein. For the reasons stated in the United States' motion⁵ and because the Johnsons' counterarguments are unavailing, the Court should grant the United States' motion and impose the additional coercive civil sanctions requested in the motion.

I. The Receiver agrees with the United States' motion and the relief it seeks.

Contrary to the Johnsons' assertions,⁶ the United States is authorized to enforce the CRO through civil contempt proceedings.⁷ Because the United States and the Receiver worked together to respond to the Johnsons' draft compliance declarations,⁸ and his work has been hampered and delayed by the Johnsons' ongoing defiance of the CRO and Contempt Order, we

¹ ECF No. 754.

² ECF No. 701; ECF No. 491.

³ ECF No. 701.

⁴ ECF No. 760, Defendant Neldon Johnson's Response to the United State[s'] Motion for Additional Sanctions; ECF No. 765, Opposition to United States' Motion for Additional Sanctions by Glenda, LaGrand, and Randale Johnson.

⁵ We incorporate by reference the facts and law in the motion, and will not repeat them here.

⁶ ECF No. 760 at 3, ECF No. 765 at 1, 4-5.

⁷ ECF No. 491 ¶ 93 ("If any persons subject to this Order fail to comply with the terms herein, the Receiver or counsel for the United States is permitted to initiate contempt proceedings.")

⁸ See ECF No. 701 at 26-29; ECF No. 705-1; ECF No. 720; ECF No. 733-1.

did not anticipate any confusion about his position on the motion.⁹ In the interest of clarity, however, the Receiver has authorized the United States to report that he fully agrees with the motion and that he, too, seeks the additional civil sanctions requested in the motion.

II. The Johnsons continue to defy this Court's orders.

The United States, the Receiver, and this Court have spent a great deal of time, resources, paper, and ink explaining to the Johnsons the precise reasons that they failed to comply with the CRO and the Contempt Order and the required actions to come into compliance. Yet the Johnsons either ignore their ongoing failures identified by the United States' motion for additional sanctions, or continue to maintain the same positions in their oppositions to the motion for additional sanctions that this Court rejected when it found them in civil contempt.

A. Neldon Johnson is defying the CRO the Contempt Order.

Neldon Johnson (again) objects to providing the financial statement required by paragraph 25(g) of the CRO and (again) attempts to shift his burden of compliance onto others.¹⁰ He adds a defense that he is "unable to recall" information about his financial life.¹¹ This Court has already found that he "feigns confusion" about his legal obligations,¹² yet he remembers things crisply when it suits him.¹³ Further, his assertion of faulty memory is no excuse to avoid

⁹ See ECF No. 760 at 3; ECF No. 765 at 1, 4-5.

¹⁰ ECF No. 760 at 4-5.

¹¹ ECF No. 760 at 2-3; *but see* May 38 Tr. part 2, at 29:22-25 (from counsel for Neldon Johnson: "[Q]uite frankly, I find that Mr. Johnson is a very gifted person. He's very bright.")

¹² ECF No. 701 at 11

¹³ See May 3 Tr. at 172:13-173:25, ECF No. 663, filed May 21, 2019.

additional coercive sanctions in this matter because he does not need to rely on his memory for certain aspects of compliance. The Court and the United States listed out by name, for example, the third parties identified to date as holding documents responsive to paragraph 24 of the CRO.¹⁴ Neldon Johnson's response to the motion does not address his obligation to obtain documents currently being held by third parties and provide them to the Receiver or, if he cannot provide them, explain what documents once existed, where they are, and what efforts he made to obtain them.¹⁵

Similarly, the United States illustrated the gaps in Neldon Johnson's final compliance declaration regarding the required accounting of expenditures over \$1,000 by using an example of a purported "[c]ompany vehicle" from Sahara Motors, purchased on December 26, 2016.¹⁶ After the United States filed its motion for additional sanctions, the Receiver obtained documents and information from the Utah Department of Motor Vehicles showing that Neldon Johnson or one of the Receivership Entities own or owned *more than 20* vehicles that were previously unidentified or that were falsely identified as being owned by Glenda Johnson.¹⁷ The Receiver

¹⁴ ECF No. 701 at 13; ECF No. 754 at 4-5.

¹⁵ Compare ECF No. 754 at 4-5 (citing the Contempt Order, ECF No. 701 at 12-13) with ECF No. 760.

¹⁶ ECF No. 754 at 7-8. The Receiver has subsequently learned from Sahara Motors that the \$47,951.17 payment by Cobblestone to Sahara Motors on December 27, 2016 was the full purchase price for a 2017 Dodge Durango that was titled in the name of Glenda Johnson. Declaration of Wayne Klein ("Klein Decl."), dated Sept. 29, 2019; Pl. Ex. 958, Email from Wayne Klein to Ed Wall regarding RaPower/Johnson Vehicles, dated August 29, 2019, at 1, 33. A separate \$5,623.00 was paid by RaPower to Sahara Motors on July 23, 2014 as down payment on the lease of a new Chrysler van, which was also titled in the name of Glenda Johnson. Klein Decl.; Pl. Ex. 958 at 1, 34.

¹⁷ Compare ECF No. ECF No. 738 at 17, ¶ 11(t)(i)(6) and ECF No. 738-2 with Pl. Ex. 958 at 1-31. "Vehicles" includes trailers, snowmobiles, ATVs, and watercraft.

delivered this information to counsel for Neldon Johnson before Neldon Johnson responded to the motion for additional sanctions.¹⁸ But Neldon Johnson did not update his declaration to include this missing information, did not address his failure to account for these vehicles in his response to the motion for additional sanctions, and did not deliver any of those vehicles to the Receiver.

Still further, Neldon Johnson remains in contempt of ¶ 16 of the CRO because he has not turned over assets belonging to any Receivership Defendant.¹⁹ He did not address this failure in his response to the United States' motion for additional sanctions,²⁰ even after, for example, the Receiver sent the Utah DMV information identified above.

B. Glenda, LaGrand, and Randale Johnson are defying the CRO the Contempt Order.

The United States identified the ways in which Glenda, LaGrand, and Randale Johnson failed to comply with this Court's orders.²¹ They claim that what they have done is good enough,²² in spite of the clear language in the Contempt Order of the steps required for them to purge their contempt.²³ They have not taken such steps, and therefore remain in contempt.²⁴

¹⁸ Pl. Ex. 958.

¹⁹ [ECF No. 754 at 8.](#)

²⁰ *See generally* [ECF No. 760.](#)

²¹ [ECF No. 754 at 8-9.](#)

²² *See generally* [ECF No. 765.](#)

²³ [ECF No. 701 at 18-23.](#)

²⁴ As described above, the Receiver has now discovered that the unexplained payment to Sahara Motors was to purchase a new SUV for Glenda Johnson and that in 2014, RaPower paid the lease down payment on her van. Glenda Johnson has not disclosed documents about this transaction, and has not turned over these assets to the

C. The Johnsons are defying the orders requiring them to pay attorney’s fees and costs to the United States and the Receiver for enforcing the CRO.

The Johnsons have not, to date, paid the ordered attorney’s fees and costs to the United States and the Receiver for enforcing the CRO.²⁵ Their payment is more than a month overdue.²⁶

III. The additional remedies we seek are civil and remedial, not criminal.

The Johnsons appear to believe that the additional sanctions we seek are in the nature of criminal contempt, but the authority they cite does not support that proposition. Instead, it is well-established that this Court’s “interest in ensuring a party’s compliance with its orders is a great one”²⁷ and the Court may do so through civil coercive sanctions like a monetary penalty and incarceration.²⁸ Such sanctions “remain [in place] only until the contemnor complies with the order.”²⁹

None of the Johnsons has provided a compelling argument for why this Court should not order the additional sanctions we request. The Court warned them of what would happen if they

Receiver. *E.g.*, [ECF No. 491](#) ¶¶ 16 & 24; Klein Decl.; Pl. Ex. 959, Email from Wayne Klein to Steven Paul and Denver Snuffer regarding Glenda Johnson, dated August 29, 2019, at 1-2.

²⁵ [ECF No. 701](#) at 29; [ECF No. 731](#), [ECF No. 732](#).

²⁶ [ECF No. 731](#), [ECF No. 732](#).

²⁷ *Ohlander v. Larson*, 114 F.3d 1531, 1541 (10th Cir. 1997); *see also Acosta v. Paragon Contractors Corp.*, 884 F.3d 1225, 1238 (10th Cir. 2018) (“The district court has ‘inherent power to enforce compliance with [its] lawful orders through civil contempt.’” (quoting *Shillitani v. United States*, 384 U.S. 364, 370 (1966)); *see also United States v. Bibbins*, 113 F. Supp. 2d 1194, 1202 (E.D. Tenn. 2000) (“In large measure, the American legal system is fundamentally dependent upon voluntary compliance with its judgments and procedures by all participants in the system The Court does not have a standing army to enforce its rules and orders.”).

²⁸ *United States v. Ford*, 514 F.3d 1047, 1052 (10th Cir. 2008).

²⁹ *Acosta*, 884 F.3d at 1239.

failed to comply and they chose not to comply.³⁰ Accordingly, the Court should order the Johnsons incarcerated until they submit declarations that comply with their obligations under the CRO and the Contempt Order and turn over assets purchased with receivership funds. The Johnsons would “hold[] the proverbial keys to the prison doors” because each of them could “choose to end his [or her] incarceration [and purge his or her contempt] at any point in time, by simply complying” with the Court’s orders.³¹

The Court should also order additional remedial sanctions in its “wide discretion to fashion an equitable remedy for civil contempt that is appropriate to the circumstances,”³² to “compensate the contemnor’s adversary for injuries resulting from the contemnor’s noncompliance.”³³ Often, such remedial sanctions are monetary.³⁴ But here, remedial sanctions are required to “recreate the past as it would have existed” absent the Johnsons’ defiance of this Court’s orders.³⁵ Therefore, this Court should enter an order that the universe of documents and information about these entities and transactions is closed for Neldon, Glenda, LaGrand, and

³⁰ May 28 Tr. part 2, 28:23-29:6; *id.*, 70:14-18 (“I am not going to order a fine right now. That’s purposeful. I found the defendants and respondents in contempt. That’s purposeful. I’ve not ordered incarceration of anyone because it’s my great hope that this process will work.”); [ECF No. 701 at 25](#) (“Coercive sanctions like a monetary penalty and incarceration are available for continued defiance.”); *see also* April 26 Tr. 108:13-21.

³¹ [Ford](#), 514 F.3d at 1053.

³² [United States v. City of Miami](#), 195 F.3d 1292, 1298 (11th Cir. 1999) (quotation and alteration omitted); *accord Ford*, 514 F.3d at 1051 (noting abuse of discretion standard).

³³ [Acosta](#), 884 F.3d at 1239-40 (quotation omitted).

³⁴ *See Acosta*, 884 F.3d at 1240-41.

³⁵ *See City of Miami*, 195 F.3d at 1299; *see also McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 193 (1949) (“The measure of the court’s power in civil contempt proceedings is determined by the requirements of full remedial relief.”); [Acosta](#), 884 F.3d at 1240 (there must be a “direct causal relationship” between the violation of a court order and the remedial sanctions).

Randale Johnson. If they failed, by August 2, 2019, to produce or identify (with the specificity required by the CRO) documents or information required of them, they should not be allowed to use any such document or information to support any claim or defense against the Receiver or the United States in future proceedings. To be clear, the CRO requires the Johnsons to cooperate with the Receiver and deliver such additional documents and information that he may request going forward.³⁶ But the Johnsons should not be allowed to resist CRO disclosure requirements for the vast majority of the Receiver's one-year tolling period, and then use undisclosed documents or information to defend against the Receiver's claims (either already filed or forthcoming).

In addition, ordering the Johnsons to take the following corrective actions within 10 days would help the Receiver recover from the Johnsons' lengthy defiance:

- Require all Johnsons to certify that the payment of attorneys' fees for the contempt proceedings come from non-Receivership assets and identify the source of the funds used to make payment;
- Require Neldon Johnson to deliver to the Receiver boxes 15-27, and file a declaration explaining where these documents have been for the past nine months and why these documents were not provided timely;
- Require the Johnsons, and any attorney from NSDP who does represent or has represented them, to identify what search parameters were used to identify responsive documents (including emails) within NSDP files, both electronic and hard-copy;
- Require Neldon Johnson to include in his financial statement a list of all material assets he has ever owned or controlled (even if an asset was put into the name of Glenda, Randale, or LaGrand Johnson, or any other insider) and information about what happened to those assets;

³⁶ *E.g.*, [ECF No. 491](#) ¶ 23, 28; [ECF No. 701](#) at 5-6.

- Require Neldon Johnson to obtain from his bank a log of who accessed his purportedly empty safety deposit box, and when, from November 23, 2015 to the present date and deliver that log to the Receiver and the United States.

IV. Conclusion

The Johnsons have had more than ten months to marshal documents, information, and/or assets within their control for delivery to the Receiver.³⁷ They chose not to take the Court's final opportunity to comply with the CRO. The Court already rejected many of their arguments in opposition to the United States' motion for additional sanctions, and their other arguments carry no weight. Therefore, the Court should impose both coercive incarceration until they comply, and the additional remedial sanctions that both the Receiver and the United States request, to ensure their compliance and to remedy the harm caused to the Receivership and the United States.

³⁷ See [ECF No. 557](#) § I.E. All Respondents acknowledged receipt of the Corrected Receivership Order no later than November 30, 2018, 299 days ago.

Dated: September 25, 2019

Respectfully submitted,

/s/ Erin Healy Gallagher

ERIN HEALY GALLAGHER

DC Bar No. 985760

Email: erin.healygallagher@usdoj.gov

Telephone: (202) 353-2452

ERIN R. HINES

FL Bar No. 44175

Email: erin.r.hines@usdoj.gov

Telephone: (202) 514-6619

Trial Attorneys, Tax Division

U.S. Department of Justice

P.O. Box 7238

Ben Franklin Station

Washington, D.C. 20044

FAX: (202) 514-6770

**ATTORNEYS FOR THE
UNITED STATES**

CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2019, the foregoing UNITED STATES' REPLY ON ITS MOTION FOR ADDITIONAL SANCTIONS DUE TO CONTINUED CONTEMPT OF NELDON JOHNSON, GLENDA JOHNSON, LAGRAN JOHNSON, AND RANDALE JOHNSON was electronically filed with the Clerk of the Court through the CM/ECF system, which sent notice of the electronic filing to all counsel of record.

I also certify that, on the same date and consistent with his written consent, I served the same documents by email upon:

R. Gregory Shepard
greg@rapower3.com.

Defendant and respondent pro se

/s/ Erin Healy Gallagher
ERIN HEALY GALLAGHER
Trial Attorney