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

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff,</p> <p>vs.</p> <p>RAPOWER-3, LLC, INTERNATIONAL AUTOMATED SYSTEMS, INC., LTB1, LLC, R. GREGORY SHEPARD, NELDON JOHNSON, and ROGER FREEBORN,</p> <p>Defendants.</p>	<p>Civil No. 2:15-cv-00828 DN</p> <p><b>STATUS REPORT ON UNITED STATES' MOTION FOR ADDITIONAL CONTEMPT SANCTIONS</b></p> <p>Judge David Nuffer</p>
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After the United States filed a Motion for Order to Show Cause<sup>1</sup> and hearings on April 26, May 3, and May 28, 2019, this Court entered an order holding Neldon Johnson, Glenda Johnson, LaGrand Johnson, and Randale Johnson in civil contempt for violating the Corrected Receivership Order (“CRO,” entered on November 1, 2018) in this matter.<sup>2</sup> The CRO requires Defendant Neldon Johnson, and others working with him like Glenda, LaGrand, and Randale Johnson (collectively, “the Johnsons”), to provide documents and information to, and cooperate with, the Receiver. Johnson must also turn over assets to the Receiver. But even after the order holding them in civil contempt (“Contempt Order,” entered on June 25, 2019)<sup>3</sup>, and this Court’s painstaking efforts to compel their compliance with remedies short of coercive incarceration, they are *still* defying the CRO and the Contempt Order. Therefore, on August 21, 2019, the United States filed a motion seeking additional coercive and remedial sanctions for their failure to comply.<sup>4</sup> The Receiver agreed with the motion and with the relief we sought.<sup>5</sup> That motion was ripe for decision on September 25, 2019.<sup>6</sup>

The Court has set hearings on January 23 and 24, 2020, to gather evidence about the Johnsons’ ongoing contempt and address the issues raised in the United States’ motion. The

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<sup>1</sup> ECF No. 559.

<sup>2</sup> ECF No. 701; ECF No. 491.

<sup>3</sup> ECF No. 701.

<sup>4</sup> ECF No. 754.

<sup>5</sup> ECF No. 772 at 2-3.

<sup>6</sup> ECF No. 772.

Court also ordered the United States, in conjunction with the Receiver, to file a status report regarding the issues raised in the August 21 motion for additional sanctions, including an update on “assets, documents, and information that have been provided” by the Johnsons since the motion became ripe.<sup>7</sup>

As the following status report previews, the Johnsons continue to flout the CRO, the Contempt Order, and other lawful orders of this Court. They have also engaged in additional material contumacious conduct since the Court last held them in contempt. At the hearing, the United States and the Receiver will offer proof of the Johnsons’ actions and inactions since these contempt proceedings began in January 2019 – indeed, since we filed the motion for additional contempt sanctions in August 2019 – that shows their ongoing disregard for this Court and its lawful orders. This evidence will show the need for this Court to order civil contempt sanctions that 1) finally obtain the Johnsons’ (partial and very belated) compliance through coercive measures and 2) eliminate, as much as possible, the adverse effects of the Johnsons’ defiance upon the Receivership and the United States. The Receiver has authorized the United States to state that he concurs with the contents of this status report.

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<sup>7</sup> ECF No. 828.

**I. Assets, Documents, and Information Provided by the Johnsons**

**A. November 25, 2019 Order Re: Evidentiary Hearing**

The Court ordered delivery of documents and information in preparation for the evidentiary hearing on the United States' motion for additional contempt sanctions.<sup>8</sup> The status of compliance with that order by Neldon Johnson, Glenda Johnson, LaGrand Johnson, and Randale Johnson is as follows:

**1. Delivery of Document Boxes Held at Nelson Snuffer**

The Court ordered delivery of 13 boxes of documents to the Receiver.<sup>9</sup> Nelson Snuffer filed a motion to retain those records<sup>10</sup> which the Receiver opposed. The Court denied the motion, ordering that the boxes of documents be delivered to the Receiver by January 10, 2020.<sup>11</sup> Nelson Snuffer timely delivered these boxes to the Receiver.

**2. Documents to be Delivered by Neldon, Glenda, LaGrand, and Randale Johnson**

The Court ordered Neldon, Glenda, LaGrand, and Randale Johnson to produce all documents identified in ¶ 24 of the Corrected Receivership Order claimed to be in possession of third parties (or to identify such documents, their location, and any specific efforts to obtain such documents) by no later than December 5, 2019.<sup>12</sup> To date, Neldon Johnson has not produced

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<sup>8</sup> ECF No. 803, filed November 25, 2019.

<sup>9</sup> ECF No. 803 ¶ 1.

<sup>10</sup> ECF No. 808, filed December 2, 2019.

<sup>11</sup> ECF No. 828, filed December 30, 2019.

<sup>12</sup> ECF No. 803 ¶¶ 2-3.

additional responsive documents. Although Neldon Johnson has produced some documents, they do not appear to include documents from third parties, particularly the third parties identified by the Court: Pacific Stock Transfer Co., Snell & Wilmer, Gary Peterson, Cadence Group, and Now CFO.<sup>13</sup>

Glenda Johnson delivered 478 pages of documents (some of which had not been produced before December 5, 2019, including copies of checks from customers who purchased lenses from Solco). LaGrand Johnson delivered 72 pages of documents (none of which had been produced before December 5, 2019). Randale Johnson delivered 4,244 pages of documents (in addition to some video files that did not have document numbers). None of the documents produced by Glenda, LaGrand, or Randale Johnson appear to be from third parties, particularly from the specific third parties identified by the Court.

Not only have they failed to produce responsive documents held by third parties, the Johnsons have also failed to provide the required information about responsive documents held by third parties, including specifically identifying those documents or their efforts to retrieve those documents from the third parties.

Notwithstanding that the primary obligation to retrieve documents from third parties and deliver them to the Receiver rests with the Johnsons, the United States and the Receiver have undertaken efforts to obtain these documents. Pacific Stock Transfer Company delivered to the Receiver a box of original documents which the company says constitutes all of its records

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<sup>13</sup> See ECF No. 803 ¶ 2.

relating to Receivership Entities. The Receiver believes PSTC has now delivered all the responsive documents in its control.

The United States communicated with and issued a subpoena to Gary Peterson, seeking delivery of accounting records in his possession. On January 13, 2019, Peterson delivered a thumb drive to the Receiver, containing documents relevant to the finances of IAS and RaPower-3. The United States plans to call Peterson to testify about efforts made by the Johnsons, or on their behalf, to obtain documents and information from him since October 31, 2018.

The United States also communicated with and requested records from Now CFO and Cadence Group. Now CFO produced a retainer letter, signed by LaGrand Johnson on behalf of IAS, and invoices for services rendered. Now CFO reported that it had performed work for IAS, but did not have documents related to the company in its possession. Both Now CFO and Cadence Group reported that no one has contacted them seeking documents or information about IAS since October 31, 2018. In the interest of saving time during the hearing on January 24, the United States plans to submit (as soon as possible) declarations from Now CFO and Cadence Group covering these topics rather than calling someone from those entities for live testimony.

### 3. **Neldon Johnson's Explanation of QuickBooks Records**

The Court ordered Neldon Johnson to “file a document which will specify the scope of the Quick Book records referenced in his [August 2, 2019] declaration,[] including the entities

whose financial records are found therein, and the timeframe covered by the records” by noon on December 1, 2019.<sup>14</sup> As of the time of filing, Neldon Johnson has not filed such document.

4. **“Meet and Confer” to Reconcile Vehicle Lists**

The Court ordered counsel for Neldon Johnson and counsel for the United States to meet and confer to reconcile the vehicle lists in Neldon Johnson’s August 2 declaration with the list attached to the United States’ reply brief, by no later than December 6, 2019.<sup>15</sup> With the consent of the United States, the Receiver took responsibility for reconciling discrepancies regarding the ownership of vehicles that might be Receivership Property. The Receiver and counsel for Neldon Johnson exchanged documents and conferred in an effort to reach a common understanding as to vehicles that are, or have been, in the control of Neldon Johnson. The Receiver and Johnson’s counsel made great progress in identifying vehicles under the control of Neldon Johnson at one time and the current location of vehicles still under his control. The Receiver prepared a summary listing the following four categories of vehicles:

a. No Dispute/Reconciled. The three aircraft once under Neldon Johnson’s control have all been accounted for and the Receiver took possession of the two remaining aircraft; there are no unresolved issues with vehicles in this category;

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<sup>14</sup> ECF No. 803 ¶ 6.

<sup>15</sup> ECF No. 803 ¶ 5.

b. Vehicles in Acknowledged Possession of Neldon Johnson. Neldon Johnson acknowledges possession of 18 vehicles that are titled in his name.<sup>16</sup> The Receiver requested on December 13, 2019 that Neldon Johnson indicate whether he is willing to turn over these vehicles to the Receiver. As of the time of this filing, Neldon Johnson has not responded;

c. Vehicles No Longer in Possession of Neldon Johnson. There are seven vehicles (including recreational vehicles and trailers) which Neldon Johnson says are no longer in his possession or control, several of which he asserts were sold or were in non-working condition and junked. The Receiver requested on December 13, 2019 that Neldon Johnson provide additional details about these vehicles, providing details about the dispositions such as when they were disposed, to whom they were sold or otherwise delivered, and what amounts he received from the dispositions.<sup>17</sup> As of the time of this filing, Neldon Johnson has not provided any of the requested information;

d. Vehicles Titled in Name of and in Possession of Glenda Johnson. Eighteen vehicles are titled in the name of Glenda Johnson. These include personal vehicles, trailers, motorcycles, cranes, boom trucks, front-end loaders, and a fire truck. One of the personal vehicles is based at the Sherwood Shores home in Delta, another is located at the home in Payson, and the remaining 16 are at the property in Abraham. The Receiver has traced the source

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<sup>16</sup> These include watercraft, an ATV, and trailers. One, a boat, is reputed to be located on a trailer belonging to Glenda Johnson.

<sup>17</sup> The Receiver acknowledges the possibility that Johnson will not have records of or recall the details of the dispositions so the Receiver indicated a willingness to have Johnson affirm that the recipients of these vehicles were not relatives or other insiders and estimate when the dispositions occurred.



of funds for the two personal vehicles at the homes in Delta as being paid directly with Receivership Estate funds and has requested the turnover of those vehicles by Glenda Johnson. She has not turned over either of those vehicles. On December 18, 2019, the Receiver sent a list of all 18 vehicles to counsel for Glenda Johnson requesting information about the dates the vehicles were purchased, the identity of the sellers of the vehicles, and the prices paid for those remaining vehicles. As of the time of this filing, Glenda Johnson has not provided any of this information to the Receiver.

**B. Declaration Regarding Source of Funds**

The Corrected Receivership Order requires that “[a]ny filing or submission by any Receivership Defendant . . . 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.”<sup>18</sup> As a general matter, neither the Receivership Defendants nor the Affiliated Entities<sup>19</sup> have complied with this provision of the Corrected Receivership Order.<sup>20</sup> For example, in the Notice of Appeal of the order including affiliates and subsidiaries in the Receivership, filed on June 24, 2019, Nelson Snuffer included a statement at the end of the notice that no receivership funds or property were used to prepare or file the document.<sup>21</sup> But that statement was not made under penalty of perjury

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<sup>18</sup> ECF No. 491 ¶ 10.

<sup>19</sup> See ECF No. 636.

<sup>20</sup> See, e.g., ECF No. 643, ECF No. 664, ECF No. 665, ECF No. 675.

<sup>21</sup> ECF No. 698 at 2.

and did not identify the source of the funds for the filing in sufficient detail to show that the funds were not Receivership Property or otherwise derived from the solar energy scheme.

On December 3, 2019, Nelson Snuffer filed a declaration signed by Neldon Johnson disclosing the source of the funds that Nelson Snuffer has used in filing appeals on behalf of Receivership Defendants and affiliated entities.<sup>22</sup> The declaration revealed that \$300,000 that Nelson Snuffer received from Robert Johnson was the source of the funding for appeals and that Nelson Snuffer has performed additional work for which payment remains outstanding.

This declaration still does not “identify[ ] the source of the funds for the filing[s] or submission[s] in sufficient detail to show that the funds are not Receivership Property or otherwise derived from the solar energy scheme.” In fact, the funds Robert Johnson sent to Nelson Snuffer were paid to Robert Johnson by IAS during the trial, just days before the Court ruled that Receivership Defendants were committing a massive tax fraud.

## **II. Issues to be Heard on January 23 and 24, 2020.**

### **A. Sworn Testimony to be Obtained on January 23, 2020**

The United States, with the assistance of the Receiver, plans to take the sworn testimony of Neldon Johnson, Glenda Johnson, LaGrand Johnson, and Randale Johnson on January 23, 2020. The United States anticipates taking testimony regarding:

1. The Johnsons’ continued failures to comply with prior orders of the Court as outlined in the United States’ motion for additional sanctions;

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<sup>22</sup> ECF No. 810.

2. The identity of the sellers and the sources of funds used to purchase vehicles claimed by Neldon Johnson and Glenda Johnson as well as their location and information about the dispositions of any vehicles no longer in their possession or control;
3. Information on documents newly produced to the Receiver on December 5, 2019, including the location of those documents since October 31, 2018 and the reasons the documents were not produced previously; and
4. The sources of funding for legal work being performed by Nelson Snuffer for the Johnsons, Shepards, and defendants sued by the Receiver and reasons information on the sources of funding for court submissions have not been disclosed in the court submissions.

The United States also anticipates eliciting sworn testimony from each of the Johnsons regarding additional indications of contempt, which occurred or were discovered after the United States filed the motion for additional civil sanctions on August 21, 2019. These additional indications of contempt include:

1. Actions by one or more of the Johnsons to use solar equipment and Receivership Estate assets after the asset freeze and after the appointment of the Receiver;
2. On August 13, 2019, one or more of the Johnsons took and retained possession of a prototype machine, tools, and equipment constructed by Wisdom Farms Technology Development Group, LLC. To construct these

items, Wisdom Farms used IAS funds that Neldon Johnson funneled through Robert Johnson. The current location of this property is unknown to the Receiver and the United States;

3. On October 11, 2019, Glenda Johnson used a purported contract with Solstice in a court filing ([ECF No. 784-1](#)), when she had not previously produced the purported contract to the Receiver;
4. On October 31, 2019, LaGrand Johnson and Randale Johnson attempted to receive funds by signing documents granting an easement on real property in Texas, which is an asset of the Receivership Estate;
5. On or about November 4, 2019, LaGrand Johnson attempted to renew the corporate status of IAS, more than a year after he had been removed as an authorized agent of IAS;
6. As of December 18, 2019, Glenda Johnson granted an assignment of interests in real properties titled in her name, which properties are subject to the asset freeze, and filed, or facilitated a mechanic's lien being filed, against those properties on behalf of a Nevis entity.

**B. Evidentiary Hearing on January 24, 2020**

At the evidentiary hearing on January 24, 2020, the United States proposes that the Court address the following matters:

1. Hearing a summary of the sworn testimony obtained the prior day, with live testimony on key points as needed;

2. Hearing live testimony and receiving exhibits from three witnesses to a specific instance of an additional indication of contempt where the United States and the Receiver believe it is important that the testimony occur before the Court, so the Court can evaluate the credibility of the testimony as an aid in determining whether additional contempt has occurred and what sanctions, if any, to impose for the conduct; and
3. Hearing arguments by the parties as to whether contempt is continuing and, if so, what remedial and coercive remedies to impose.

Dated: January 15, 2020

Respectfully submitted,

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**ATTORNEYS FOR THE  
UNITED STATES**

**CERTIFICATE OF SERVICE**

I hereby certify that on January 15, 2020, the foregoing **STATUS REPORT ON UNITED STATES' MOTION FOR ADDITIONAL CONTEMPT SANCTIONS** 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