

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>MOTION FOR PRODUCTION OF BANK AND RETIREMENT ACCOUNT RECORDS OF LAGRAN JOHNSON AND RANDELE JOHNSON AND FOR ADDITIONAL RELIEF</p> <p>Judge David Nuffer</p>
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At a hearing on February 25, 2020, the Court made findings of contempt regarding actions of Neldon Johnson, Glenda Johnson, LaGrand Johnson, and Randale Johnson (collectively, the “Johnsons”). In addition to findings of contempt, the Court instructed the United States to file a motion for the production of bank account and retirement account records of LaGrand Johnson and Randale Johnson. Pursuant to the Court’s instructions, the United States hereby submits this Motion for the Production of Bank Account and Retirement Account Records of LaGrand Johnson and Randale Johnson and for Additional Relief (“Motion”). The Receiver has authorized the United States to state that he joins this Motion.

FACTS

1. On June 22, 2018, at the close of a 12-day bench trial in the above captioned matter, the Court issued partial findings of fact concluding that Defendants engaged in a “massive fraud” for which they would be enjoined and disgorgement would be ordered.¹

2. On August 22, 2018, the Court issued the Memorandum Decision and Order Freezing Assets and to Appoint a Receiver.² The order froze all Receivership Property and enjoined “all persons and entities with direct or indirect control over any Receivership Property . . . from directly or indirectly transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating, or otherwise disposing of or withdrawing such Receivership Property.”³

3. On October 31, 2018, through the Receivership Order, Wayne Klein (“Receiver”) was appointed as Receiver for RaPower-3, LLC (“RaPower”), International Automated Systems, Inc. (“IAS”), LTB1, LLC, and the assets of Neldon Johnson and Gregory Shepard.⁴ The

¹ Tr., Jun. 22, 2018, 2515:5 – 2515:11.

² [Docket No. 444](#).

³ *Id.*, Order ¶ 3.

⁴ Receivership Order, [Docket No. 490](#).

Receivership Order also extended the asset freeze to 12 entities affiliated with the defendants including, relevant to this motion, Cobblestone Centre, LC.⁵

4. On May 3, 2019, in the “Affiliates Order,” the Court expanded the Receivership to include 13 affiliated entities, including Cobblestone Centre and the 11 other entities whose assets were previously frozen.⁶

5. LaGrand Johnson and Randale Johnson received notice of the Corrected Receivership Order and the Affiliates Order.⁷

6. On June 25, 2019, the Court issued a Contempt Order that, among other things, held the Johnsons in civil contempt for violations of the Corrected Receivership Order.⁸

7. On August 21, 2019, the United States submitted a Motion for Sanctions Due to Continued Contempt, asking the Court for additional sanctions due to the Johnsons’ continued contempt of the Corrected Receivership Order.⁹

8. Each of the Johnsons responded to the Motion for Sanctions.¹⁰ The United States submitted a reply.¹¹

9. On January 23, 2020 the Court held an evidentiary hearing before Magistrate Judge Paul Kohler where the Johnsons answered questions under oath related to their conduct and compliance with the Corrected Receivership Order.¹²

⁵ *Id.* ¶¶ 2-5. On November 1, 2018, the Court issued the re-formatted Corrected Receivership Order. See [Docket No. 491](#).

⁶ Memorandum Decision and Order on Receiver’s Motion to Include Affiliates and Subsidiaries in the Receivership, [Docket No. 636](#).

⁷ Tr., Feb. 25, 2020, 106:22-107:9.

⁸ [Docket No. 701](#).

⁹ [Docket No. 754](#).

¹⁰ See Neldon Johnson’s Response to Motion for Sanctions, [Docket No. 760](#), filed September 3, 2019; Glenda Johnson, LaGrand Johnson, and Randale Johnsons’ Opposition to Motion for Sanctions, [Docket No. 765](#), filed September 11, 2019.

¹¹ [Docket No. 772](#), filed September 25, 2019.

¹² The evidentiary hearing was originally scheduled for December 12, 2019 but was continued due to scheduling conflicts. See [Docket No. 803](#), filed November 25, 2019.

10. At the January 23, 2020 evidentiary hearing, Randale Johnson testified that around October 2019 Glenda Johnson transferred \$200,000.00 to him.¹³

11. Bank records show that Glenda Johnson transferred \$200,000.00 to Randale Johnson on or about October 5, 2018.¹⁴

12. Randale Johnson went on to testify that he used the \$200,000.00 for living expenses and that he believed approximately \$50,000.00 remained of the \$200,000.00.¹⁵

13. Randale Johnson also testified that he has two bank accounts, a Mountain America Credit Union account and a Fidelity retirement account.¹⁶

14. At the January 23 evidentiary hearing, LaGrand Johnson testified that Glenda Johnson transferred \$200,000.00 to him.¹⁷

15. Bank records show that the transfer took place on or about October 5, 2018.¹⁸

16. LaGrand Johnson went on to testify that he placed a portion of the \$200,000.00 in a retirement account, that he used the funds to pay off credit card expenses, and that none of the \$200,000.00 remained.¹⁹

17. The amounts transferred to Randale Johnson and LaGrand Johnson on or about October 5, 2018 were transferred from a Bank of American Fork account (#1808), held in Glenda Johnson's name.²⁰ These funds can be traced as coming from Cobblestone Centre, as follows:

¹³ Tr., Jan. 23, 2020, 14:8 – 18.

¹⁴ See Oct. 24, 2018 account statement for Glenda Johnson checking account (#1808) at People's Intermountain Bank, a true and correct copy of which is attached as R. Ex. 2173, at 4..

¹⁵ Tr., Jan. 23, 2020, 14:3 – 15:18.

¹⁶ *Id.* 15:13 – 17.

¹⁷ *Id.* 70:17 – 20.

¹⁸ See R. Ex. 2173 at 4.

¹⁹ Tr., Jan. 23, 2020, 70:19 – 71:4.

²⁰ See R. Ex. 2173 at 1, 4.; see also Tr., May 3, 2019, 36:19-38:4, 60:24-66:24, 68:22-69:5; R. Ex. 2102.

- a. On June 22, 2018—the date of the Court’s bench ruling—Glenda Johnson transferred \$1,945,500.00 from the Cobblestone bank account to her personal savings account ending in #2790;²¹
- b. On October 2, 2018, Glenda Johnson’s #2790 savings account still had \$1,922,707.43 in the account;²²
- c. On October 5, 2018, Glenda Johnson transferred \$410,000.00 from her #2790 savings account to her #1808 checking account;²³
- d. On October 5, 2018, Glenda Johnson issued check #352 from her #1808 checking account to Randale Johnson in the amount of \$200,000.00;²⁴
- e. On October 5, 2018, Glenda Johnson issued check #353 from her #1808 checking account to LaGrand Johnson in the amount of \$200,000.00;²⁵
- f. Before the transfer of the \$410,000.00 from savings (#2790) to checking (#1808), the #1808 checking account had a balance of \$70,238.64, which was not sufficient to cover either of the checks to Randale and LaGrand Johnson.²⁶

18. At the hearing on February 25, 2020, the Court made findings from the bench holding the Johnsons in civil contempt. In response to a request by the United States that LaGrand Johnson and Randale Johnson produce account records, the Court instructed the United States to file this motion for the production of account records of LaGrand Johnson and Randale Johnson.

²¹ Excerpts from Pl. Ex. 945 (attached) at 46; Tr., Apr. 26, 2019, 97:25-98:7.

²² Account statement for Glenda Johnson savings account dated November 1, 2018 (#2790) at People’s Intermountain Bank, Bates # BankOfAmericanFork-003550, a true and correct copy of which is attached as R. Ex. 2172, at 1.

²³ *Id.*; R. Ex. 2173 at 1.

²⁴ R. Ex. 2173 at 4.

²⁵ *Id.* at 4.

²⁶ *Id.* at 1

ARGUMENT

Under the Corrected Receivership Order, the Receiver is to “determine the nature, location and value of all” Receivership Property, including “monies, accounts, trusts, funds, digital currencies, securities, credits, stocks, bonds . . . that the Receivership Defendants own, possess, have a beneficial interest in, or control directly or indirectly.”²⁷ The Receiver is also “authorized, empowered, and directed to investigate the manner in which the financial and business affairs of the Receivership Defendants were conducted and . . . to institute such actions and legal proceedings for the benefit, and on behalf, of the receivership estates as the Receiver deems necessary and appropriate.”²⁸ The Receiver shall “take custody, control, and possession of all Receivership Property . . . to sue for and collect, recover, receive, and take into possession from third parties all Receivership Property and records relevant thereto.”²⁹ Every person who receives notice of the Corrected Receivership Order must “preserve and turn over to the Receiver forthwith all paper and electronic information of, or relating to, the Receivership Defendants or Receivership Property,”³⁰ to “cooperate with and assist the Receiver in the performance of his duties and obligations[.], . . . [and to] respond promptly and truthfully to all requests for information and documents from the Receiver.”³¹

Under the Corrected Receivership Order and the Affiliates Order, Cobblestone Centre’s assets are Receivership Property. The Receiver is required to determine the nature, location, and value of those assets – including money that Cobblestone Centre controls or controlled, directly or indirectly, and money in which Cobblestone Centre has a beneficial interest. As the facts

²⁷ Receivership Order, [Docket No. 491](#), ¶ 13(a).

²⁸ *Id.* ¶ 60.

²⁹ *Id.* ¶ 13(b).

³⁰ *Id.* ¶ 24.

³¹ *Id.* ¶ 23.

above show, Cobblestone Centre was the source of funds for the \$200,000 payment to Randale Johnson and the \$200,000 payment to LaGrand Johnson. Glenda Johnson transferred this Receivership Property to them more than six weeks after this Court ordered the asset freeze and more than three months after this Court made findings of fraud. At the January 23 evidentiary hearing, LaGrand Johnson and Randale Johnson testified that they received the funds, used the funds to pay living and credit card expenses, and deposited the funds in various accounts, including retirement accounts.

For these reasons, the Receiver needs LaGrand Johnson's and Randale Johnson's bank and retirement account records to accomplish the duties and responsibilities set forth in the Corrected Receivership Order, including investigating and taking possession of Receivership Property that may still be in their possession. Further, based on bank records of IAS, RaPower, Glenda Johnson, and other Receivership Entities obtained by the Receiver, it is clear that LaGrand Johnson and Randale Johnson have been paid funds from Receivership Defendants—directly or indirectly—for many years.³² Because the money transferred to Randale and LaGrand Johnson is Receivership Property, paragraph 24 of the Corrected Receivership Order compelled them to produce to the Receiver such account records long ago. Therefore, the United States requests that the Court order LaGrand Johnson and Randale Johnson to produce all records of all of their bank accounts and retirement accounts, for January 1, 2010³³ to the present. Because deposits into each likely came from Receivership Property, we also ask that the Court order

³² See List of Transfers to LaGrand Johnson, Klein v. Johnson, 2:19-cv-534, [Docket No. 2-2](#), filed July 26, 2019; List of Transfers to Randale Johnson, Klein v. Johnson, 2:19-cv-532, [Docket No. 2-2](#), filed July 26, 2019.

³³ In the February 25 hearing, the United States and the Receiver asked that the responsive date be as of November 23, 2015. But because the Court determined that the fraud began at least as of 2010, ECF No. 467 at 8 ¶ 42, we ask that the responsive date be January 1, 2010.

LaGrand Johnson and Randale Johnson to produce documentation showing the sources and amounts of all deposits into their bank and retirement accounts.

The testimony from LaGrand Johnson and Randale Johnson shows the danger of further dissipation of Receivership Property, in violation of the Corrected Receivership Order, if LaGrand Johnson and Randale Johnson remain free to access these funds. Therefore, the United States requests that the Court declare that any amounts up to and including \$200,000 in bank accounts and, if needed to reach \$200,000, retirement accounts, of LaGrand Johnson and Randale Johnson as of February 25, 2020, are subject to the Asset Freeze in this matter. The United States requests that the freeze on these funds remain in place until the Receiver can conduct a full accounting of the source of the funds in those accounts and give a recommendation to the Court. A proposed order granting this relief will be submitted to the Court.

Dated: March 10, 2020

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 March 10, 2020, the foregoing MOTION FOR PRODUCTION OF BANK AND RETIREMENT ACCOUNT RECORDS OF LAGRAN JOHNSON AND RANDALE JOHNSON AND FOR ADDITIONAL RELIEF 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.

/s/ Erin Healy Gallagher
ERIN HEALY GALLAGHER
Trial Attorney