

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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UNITED STATES OF AMERICA,

Plaintiff,

v.

SOLCO I, LLC, et al.,

Defendants/Appellants,

and

RAPOWER-3, LLC, et al.,

Defendants.

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R. WAYNE KLEIN,

Receiver/Appellee.

Appeal No. 19-4089

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On Appeal from

The United States District Court for the District of Utah  
(Civil No. 2:15-cv-00828 - Judge David O. Nuffer)

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**APPELLEE'S SUPPLEMENTAL APPENDIX, VOLUME 2**

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**INDEX**

Doc. 687	Receiver’s Response to Objections to Memorandum Decision and Order Including Affiliates and Subsidiaries in Receivership Estate (May 6, 2019).....	284
Doc. 687-1	Transcript of Neldon Johnson Deposition (Excerpt).....	294
Doc. 701	Civil Contempt Order.....	299

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**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION**

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UNITED STATES OF AMERICA,

Plaintiff,

v.

RAPOWER-3, LLC; INTERNATIONAL  
AUTOMATED SYSTEMS, INC.; LTB1,  
LLC; R. GREGORY SHEPARD; NELDON  
JOHNSON; and ROGER FREEBORN,

Defendants.

**RECEIVER'S RESPONSE TO  
OBJECTIONS TO MEMORANDUM  
DECISION AND ORDER INCLUDING  
AFFILIATES AND SUBSIDIARIES IN  
RECEIVERSHIP ESTATE**

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

District Judge David Nuffer

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R. Wayne Klein, the Court-Appointed Receiver (the "Receiver"), hereby submits this Response to Objections to Memorandum Decision and Order on Receiver's Motion to Include Affiliates and Subsidiaries in Receivership.<sup>1</sup>

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<sup>1</sup> Nelson Snuffer filed three separate objections to the Order: (1) on behalf of XSun Energy, LLC ([Docket No. 664](#)); (2) on behalf of Solco I, LLC ([Docket No. 665](#)); and (3) on Solstice Enterprises, Inc., Black Night Enterprises, Inc., Starlite Holdings, Inc., and N.P. Johnson Family Limited Partnership ([Docket No. 675](#)). This response constitutes the Receiver's response to all three objections.

## INTRODUCTION AND BACKGROUND

On May 3, 2019, the Court issued a Memorandum Decision and Order on Receiver's Motion to Include Affiliates and Subsidiaries ("Order").<sup>2</sup> The Order was issued after the Receiver's Motion to Include Affiliates and Subsidiaries (the "Motion") was fully briefed,<sup>3</sup> with various interested parties filing oppositions to the Motion.

The Order extended the Receivership to the Affiliated Entities.<sup>4</sup> In the Order, the Court found:

- "The whole purpose of RaPower, IAS, and LBT1 (collectively, the "Receivership Entities") was to perpetrate a fraud to enable funding for Neldon Johnson. The same is true for other entities Johnson created, controls, and owns (either directly or indirectly), including Solco, XSun, Solstice,13 Cobblestone, LTB O&M, DCL16BLT, DCL-16A, NPJFLP, U-Check, Black Night, and Starlight. Johnson has commingled funds between these entities, used their accounts to pay personal expenses, and transferred Receivership Property to and through them in an attempt to avoid creditors."<sup>5</sup>
- "Each of the Affiliated Entities is a subsidiary or affiliated entity of Receivership Defendants and has close associations with the Receivership Entities. In many cases, the Affiliated Entities and Receivership Entities have common officers, directors, members, and managers. Their corporate purposes are similar. And there have been numerous and substantial financial transactions between them."<sup>6</sup>
- "In many instances, the Affiliated Entities' only assets are tied to the Receivership Defendants. In each instance, the assets appear to have been transferred to the Affiliated Entities for the purpose of defrauding creditors. To prevent further dissipation of Receivership Property, it is necessary to put the Affiliated Entities under the Receiver's control."<sup>7</sup>

At the end of the Order, the Court expressly required "[a]ny person who may have an objection to the [Order], whether in whole or in part, must file such objection in this case within 21 days of

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<sup>2</sup> [Docket No. 636](#).

<sup>3</sup> *Id.* at fn. 2.

<sup>4</sup> Affiliated Entities has the meaning given in the Order.

<sup>5</sup> [Docket No. 636](#), Factual Basis at ¶ 2.

<sup>6</sup> *Id.* at ¶ 3.

<sup>7</sup> *Id.* at ¶ 5.

receiving actual notice of this [Order] or else such objection shall be considered waived.”<sup>8</sup>

Nelson Snuffer Dahle & Poulsen (“Nelson Snuffer”) then filed three objections (each an “Objection,” collectively the “Objections”) purportedly on behalf of various Affiliated Entities. Notably, none of the Objections attaches any evidence to controvert evidence submitted by the Receiver or to refute the Court’s findings in the Order. Instead, Nelson Snuffer makes the same due process arguments this Court has rejected numerous times before. As shown in the Receiver’s Reply in Support of the Motion to Include Affiliates and Subsidiaries in the Receivership Estate,<sup>9</sup> these due process arguments proceed from a fundamental misunderstanding of what due process requires. By expressly allowing objections by any person receiving actual notice of the Order, the Court is affording the Affiliated Entities due process. This is on top of the initial predeprivation due process the Affiliated Entities received when notice was given that the entities might be included in the Receivership Estate and an opportunity to be heard by opposing the Receiver’s Motion. Due process does not require the Receiver to bring separate lawsuits to expand the Receivership Estate.<sup>10</sup>

At this point, Nelson Snuffer has filed four separate briefs either opposing the Receiver’s Motion or objecting to the Court’s Order. None of these briefs offers any contrary evidence to the Receiver’s Motion or the Court’s findings. Accordingly, the Objections should be overruled.

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<sup>8</sup> *Id.*, Order at ¶ 13.

<sup>9</sup> [Docket No. 602](#), filed March 29, 2019.

<sup>10</sup> *See* [Docket No. 636](#) at fn. 10.

## ARGUMENT

### **I. Due Process has Been Satisfied.**

All the Affiliated Entities received both actual notice and an opportunity to be heard before the Affiliated Entities were included in the Receivership Estate. This satisfies the requirements of due process. The Court expressly found that that “[e]ach of the Affiliated Entities has received timely and sufficient notice of the Motion and been afforded an adequate opportunity to be heard with respect to it.”<sup>11</sup> Moreover, the Court found that despite filing responses opposing the Motion to Include the Affiliated Entities, Nelson Snuffer did “not raise[] a genuine dispute as to any material fact set forth in support of the Motion.”<sup>12</sup>

Now, Nelson Snuffer has filed three objections that each contain a nearly word-for-word recitation of the same arguments made in the earlier opposition to the Receivers Motion.<sup>13</sup> As shown above, the Court already found that due process was satisfied and no genuine dispute as to any material fact was raised in the oppositions.<sup>14</sup> Nothing in the Objections challenges the Court’s finding and or raises any new issue of fact or law. On this basis alone the Court should overrule the Objections.<sup>15</sup>

“[A]s a general rule, due process requires that a person be given notice and an opportunity

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<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.*

<sup>13</sup> Compare [Docket No. 596](#) at 2-7 with [Docket No. 665](#) at 3-8, [Docket No. 675](#) at 2-7, and [Docket No. 664](#) at 3-8. All three objections are a near word-for-for copy and paste of parts of Nelson Snuffer’s opposition to the Receivers Motion to include ([Docket No. 596](#)). As far as the Receiver can tell, each Objection contains about 2 new paragraphs, none of which contain any genuine dispute as to any material fact.

<sup>14</sup> [Docket No. 636](#) at 3.

<sup>15</sup> The Receiver hereby incorporates the due process section his Reply in Support of his Motion to Affiliates and Subsidiaries, [Docket No. 602](#) at 4-6.

for a hearing before being deprived of a property interest.”<sup>16</sup> In terms of notice, “[a]ctual notice is not necessary . . . . Instead, notice satisfies due process where it either 1) is in itself reasonably certain to inform those affected or 2) where conditions do not reasonably permit such notice, the form chosen is not substantially less likely to bring home notice than other of the feasible and customary substitutes.”<sup>17</sup> Here, there is no question that the Affiliated Entities and Defendants received notice of the Motion and the Order. Indeed, Solstice, Solco, XSun, Glenda Johnson, and Neldon Johnson filed oppositions to the Motion. Further, Nelson Snuffer—who received a copy of the Motion and the Order through the Court’s CM/ECF system—represents LeGrand and Randale Johnson<sup>18</sup> so to the extent notice that they serve (or served) as owners, board members, executives, or agents of any of the Affiliated Entities, those entities also received notice of the Motion and the Order.<sup>19</sup>

“The Due Process Clause requires provision of a hearing ‘at a meaningful time.’”<sup>20</sup> A predeprivation hearing is, classically, sufficient to satisfy due process.<sup>21</sup> Prior to the entry of the Order, the Affiliated Entities were all provided an opportunity to be heard in opposing the Motion. At that point, the Affiliated Entities had been presented with the substantial evidence obtained by

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<sup>16</sup> [United States v. 51 Pieces of Real Prop. Roswell, N.M.](#), 17 F.3d 1306, 1314 (10th Cir. 1994) (citing [Fuentes v. Shevin](#), 407 U.S. 67, 81–82 (1972)).

<sup>17</sup> [Snider Int’l Corp. v. Town of Forest Heights, Md.](#), 739 F.3d 140, 146 (4th Cir. 2014) (citations and internal quotation marks omitted).

<sup>18</sup> See [Docket No. 621](#).

<sup>19</sup> Indeed, the Corrected Receivership Order itself put each of the Affiliated Entities (with the exception of UCheck) on notice in November 2018 that the Receivership Estate might be expanded to include them. [Docket No. 491](#) at ¶ 6.

<sup>20</sup> [Columbian Fin. Corp. v. Stork](#), 811 F.3d 390, 401 (10th Cir. 2016) (quoting [Cleveland Bd. Of Educ. V. Loudermill](#), 470 U.S. 532, 534 (1985)); see also [Mathews v. Eldridge](#), 429 U.S. 319, 333 (1976) (“The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.”).

<sup>21</sup> See, e.g., [Mackey v. Montrym](#), 443 U.S. 1, 18 (1979) (upholding a state statute allowing prehearing suspension of a driver’s license against challengers requesting a predeprivation hearing).

the Receiver justifying expansion of the Receivership Estate.<sup>22</sup> The Affiliated Entities had every opportunity to present contrary evidence in their opposition. Their decision not to do so does not negate the fact that they had an opportunity to be heard in a meaningful manner.

Perhaps in response to Nelson Snuffer's repeated—yet unsubstantiated—claims of due process violations, the Court allowed “[a]ny person who may have an objection to [the Order], whether in whole or in part, [to] file such objection in this case within 21 days of receiving actual notice of this [Order],” thereby providing an additional opportunity to be heard to any person receiving actual notice.<sup>23</sup> Instead of using this additional opportunity to raise any genuine dispute as to any material facts the Receiver set forth in his Motion or raise any objection to the Court's findings in the Order, Nelson Snuffer chose to repeat the same failed due process arguments it has raised before.

## **II. Nelson Snuffer Lacks Authority to Object on Behalf of Affiliated Entities.**

The Objections should also be overruled because Nelson Snuffer lacks authority to make these filings on behalf of any of the Affiliated Entities. When the Court entered the Order making the Affiliated Entities part of the Receivership Estate, “the directors, officers, managers . . . attorneys, and other agents of the Affiliated Entities [were thereby] dismissed” and any “[s]uch persons shall have no authority with respect to the Affiliated Entities' operations or assets, except to the extent as may hereafter by expressly granted by the Receiver or the court.”<sup>24</sup> The Order also

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<sup>22</sup> See Report and Recommendation on Inclusion of Affiliates and Subsidiaries in Receivership Estate, [Docket No. 581](#).

<sup>23</sup> By allowing objections within 21 days of the filing of the Order, the Court provided another meaningful opportunity to be heard, which satisfies due process. See [Columbian Fin. Corp., 811 F.3d at 401](#) (finding that a delayed postdeprivation hearing did not violate a clearly established constitutional due process right.)

<sup>24</sup> [Docket No. 636](#).

gave the Receiver “all powers, authorities, rights, and privileges heretofore possessed by the owners, members, shareholders, officers, directors, managers, and general and limited partners . . . under applicable state and federal law, by the governing charters, bylaws, articles, or agreements in addition to all powers and authority of a receiver at equity.”<sup>25</sup> Nelson Snuffer cannot represent these Affiliated Entities unless expressly granted permission by the Receiver or the Court. Neither the Receiver nor the Court have granted Nelson Snuffer the authority to represent any Affiliated Entity. Accordingly, Nelson Snuffer lacks the authority to file objections on behalf of any Affiliated Entity.<sup>26</sup>

**III. The Objections Fail to Provide Evidence Supporting any Claim Regarding Control of Foreign Entities.**

Nelson Snuffer briefly raises an objection in the filing purportedly made on behalf of Solstice, Black Night, Starlite,<sup>27</sup> and the N.P. Johnson Family Limited Partnership.<sup>28</sup> There, Nelson Snuffer claims that “none of [Solstice, Black Night or Starlite] were or are under the control or ownership of Neldon P. Johnson.”<sup>29</sup> Nelson Snuffer, however, does not support this claim with any evidence. The Receiver on the other hand, has found—and continues to find—extensive connections to Neldon Johnson and control by Neldon Johnson in these entities.<sup>30</sup>

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<sup>25</sup> *Id.* at Order, ¶ 6.

<sup>26</sup> Nelson Snuffer represents others who have made affirmative appearances in this matter, such as Glenda, LaGrand, and Randale Johnson. Presumably, Nelson Snuffer would have had standing to object on their behalf, but no objections were filed by them.

<sup>27</sup> Although, “Starlite” is commonly spelled “Starlight” by the parties in this matter, the Receiver’s information shows that the correct spelling of the entity’s name is “Starlite.”

<sup>28</sup> [Docket No. 675](#) at 2.

<sup>29</sup> *Id.*

<sup>30</sup> [Docket No. 636](#), Factual Basis, ¶ 2. Indeed, both Neldon Johnson’s and Glenda Johnson’s recent deposition testimony has shown that Neldon Johnson either controls or controlled Solstice. *See* Neldon Johnson Depo. 112:18-113:1. Attached hereto as [Exhibit 1](#). “Q. Who decided the terms of that agreement between RaPower and Solstice? A. I did. Q. And did you sign both sides of that agreement? A. I did. Q. And so that was structured that way at your direction; correct? A. That’s correct.”; *see also* Glenda Johnson Depo. 126:14-25.

Moreover, even assuming Neldon Johnson did not exercise day-to-day control over these entities, the Objection does not refute the Court’s finding that the entire purpose of Solstice, Black Night, and Starlite “was to perpetrate a fraud to enable funding for Neldon Johnson” or that these entities had “close associations with Receivership Entities” and “numerous and substantial financial transactions between them.”<sup>31</sup> Without actual evidence that calls into question the Court’s or the Receiver’s findings, the Objection should be overruled.

Finally, by citing the fact that Solstice, Black Night and Starlite are foreign entities organized in another country, Nelson Snuffer seems to be suggesting that any information or evidence as to the ownership of these entities is somehow unreachable. What Nelson Snuffer fails to point out, however, is that their clients, LaGrand and Randale Johnson, are either owners or managers of Solstice, Black Night and Starlite and therefore should have control of the corporate records of the entities. LaGrand and Randale Johnson, however, have failed to provide information showing who truly runs Black Night and Starlite and their counsel should not now be allowed to object to the Order on the grounds that the Receiver has not adequately demonstrated these entities were controlled by Neldon Johnson.<sup>32</sup>

### **CONCLUSION**

For the foregoing reasons, the Court should overrule the Objections to the Order.

DATED this 6th day of June, 2019.

**PARR BROWN GEE & LOVELESS, P.C.**

*/s/ Michael S. Lehr*

Jonathan O. Hafen

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<sup>31</sup> See Order, *supra* notes 5-7.

<sup>32</sup> The Receiver has not received any foreign assets or documents from these companies as required under the Corrected Receivership Order. See [Docket No. 491](#) at ¶ 30.

Michael S. Lehr  
*Attorneys for R. Wayne Klein, Receiver*

**CERTIFICATE OF SERVICE**

I hereby certify that the above **RECEIVER'S RESPONSE TO OBJECTIONS TO MEMORANDUM DECISION AND ORDER INCLUDING AFFILIATES AND SUBSIDIARIES IN RECEIVERSHIP ESTATE** was filed with the Court on this 6th day of June, 2019, and served via ECF on all parties who have requested notice in this case.

I also certify that, on June 6th, by U.S. Mail, first-class, postage pre-paid, I caused to be served the same documents upon the following persons:

R. Gregory Shepard  
858 Clover Meadow Dr.  
Murray, Utah 84123

*Pro se Defendant*

/s/ Michael S. Lehr

UNITED STATES OF AMERICA

VS

RAPOWER-3, LLC.

NELDON JOHNSON

May 02, 2019



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May 02, 2019

Neldon Johnson

1 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
2 CENTRAL DIVISION

3	UNITED STATES OF AMERICA,	)	No. 2:15-cv-00828-DN
4		)	
5	Plaintiff,	)	Deposition of
6		)	
7	v.	)	NELDON JOHNSON
8		)	
9	RAPOWER-3, LLC; INTERNATIONAL	)	
10	AUTOMATED SYSTEMS, INC.;	)	
11	LTB1, LLC; R. GREGORY SHEPARD;	)	
12	NELDON JOHNSON; and	)	
13	ROGER FREEBORN,	)	
14		)	
15	Defendants.	)	



11 \* \* \*

12 May 2, 2019

13 9:08 a.m. to 5:22 p.m.

14  
15 Parr Brown Gee & Loveless  
16 101 South 200 East, Suite 700  
17 Salt Lake City, Utah 84111

18  
19  
20 \* \* \*

21 Letitia L. Meredith  
22 Registered Professional Reporter  
23 Certified Shorthand Reporter CA  
24  
25

Letitia L. Meredith, RPR  
DepomaxMerit Litigation Services

May 02, 2019

Neldon Johnson

2	<p>1 A P P E A R A N C E S</p> <p>2 For Court-Appointed Receiver R. Wayne Klein:</p> <p>3 Michael S. Lehr</p> <p>4 PARR BROWN GEE &amp; LOVELESS</p> <p>5 101 South 200 East, Suite 700</p> <p>6 Salt Lake City, Utah 84111</p> <p>7 For the Receivership:</p> <p>8 R. Wayne Klein</p> <p>9 KLEIN &amp; ASSOCIATES</p> <p>10 P.O. Box 1836</p> <p>11 Salt Lake City, Utah 84110</p> <p>12 For United States Department of Justice:</p> <p>13 Erin Healy-Gallagher</p> <p>14 UNITED STATES DEPARTMENT OF JUSTICE</p> <p>15 TAX DIVISION</p> <p>16 555 4th Street NW, Suite 8921</p> <p>17 Washington DC 20001</p> <p>18 Also present: Glenda Johnson</p> <p>19 * * * *</p> <p>20 I N D E X</p> <p>21 EXAMINATION PAGE</p> <p>22 By Mr. Klein 6</p> <p>23 By Ms. Healy-Gallagher 218</p> <p>24 By Mr. Klein 246</p> <p>25</p>	4	<p>1 I N D E X (Continued)</p> <p>2 EXHIBITS PAGE</p> <p>3 2066 United States Bankruptcy Court,</p> <p>4 Voluntary Petition, January 20, 2011 79</p> <p>5 2067 United States Bankruptcy Court,</p> <p>6 Statement of Financial Affairs</p> <p>7 February 3, 2011 79</p> <p>8 2068 Assignment of Warrant Agreement 198</p> <p>9 2069 Permanent Easement and Right of Way</p> <p>10 Agreements 127</p> <p>11 2071 Findings of Fact, Conclusions of Law,</p> <p>12 Order 146</p> <p>13 2072 Trust Deed Note, Phillips 152</p> <p>14 2074 Bank Statement, Bank of American Fork</p> <p>15 April 28, 2017, Account No. -4687, AIS 154</p> <p>16 2075 Deed of Trust, Recorded June 4, 1999 159</p> <p>17 2076 Assignment of Deed of Trust, Assignment</p> <p>18 of Assignment of Rents; and Assignment of</p> <p>19 Financing Statement, Recorded 7/11/2011 162</p> <p>20 2077 Full and Final Release of Trust Deed and</p> <p>21 Trust Deed Note Obligations</p> <p>22 and Claim of Lien 169</p> <p>23 2078 Settlement Agreement, March 20, 2013 172</p> <p>24 2079 Agreement, December 8, 2004 174</p> <p>25 2080 FAA Record, Mooney Aircraft,</p> <p>Tail No. N9400V 212</p> <p>2081 FAA Registry, N31BS, Cessna 414 217</p> <p>2083 Photocopy of Checks, Lyle F., Helen O. 29</p> <p>2084 USPTO Printout, Assignee</p> <p>N.P. Johnson Family Limited 59</p>
3	<p>1 I N D E X (Continued)</p> <p>2 EXHIBITS PAGE</p> <p>3 2017 Spreadsheet, Real Property owned by</p> <p>4 Glenda Johnson 104</p> <p>5 2023 Partnership Asset Purchase Agreement</p> <p>6 October 23, 2012 82</p> <p>7 2024 Partnership Asset Purchase Agreement,</p> <p>8 October 23, 2012, Johnson Family Limited</p> <p>9 Partnership and Starlite Holdings 93</p> <p>10 2051 Notice of Intent to Serve Subpoena</p> <p>11 and Subpoena 8</p> <p>12 2052 Spreadsheet, N. Johnson Patents Granted 35</p> <p>13 2053 Spreadsheet, N. Johnson Patent</p> <p>14 Applications, Publication Numbers 37</p> <p>15 2054 USPTO Printout, Assignor N. Johnson 39</p> <p>16 2055 Annual Report, IAS, 6/30/16, SEC Form 10-K 43</p> <p>17 2056 USPTO Printout, Assignee, IAS 47</p> <p>18 2057 Spreadsheet, Patents assigned to IAS 50</p> <p>19 2058 Agreement between N. Johnson and IAS</p> <p>20 May 14, 2004 56</p> <p>21 2059 Exhibit C, Warrant Agreement, 10/13/04 58</p> <p>22 2060 Spreadsheet, Patents and Patent</p> <p>23 Applications Assigned to IAS, NPJFLP 60</p> <p>24 2061 USPTO Printout, Assignee, Black Night 66</p> <p>25 2063 USPTO Printout, Assignee, Starlite 70</p> <p>2064 Partnership Interest Sale and Transfer</p> <p>Agreement, January 14, 2011 71</p> <p>2065 Share Transfer and Consent Agreement</p> <p>January 14, 2011 76</p>	5	<p>1 I N D E X (Continued)</p> <p>2 EXHIBITS PAGE</p> <p>3 2085 Minutes of the Meeting of Board of</p> <p>4 Directors of IAS, June 24, 2003 114</p> <p>5 2086 Court Filing, 215-cv-828, Document 625-1</p> <p>6 Pages 55 through 57 116</p> <p>7 2087A Utah Business Search, DCL-16A, Inc.,</p> <p>8 Registered November 2, 2004 208</p> <p>9 2087B Utah Business Search, DCL-16A, Inc.,</p> <p>10 Registered November 19, 2008 208</p> <p>11 2088 Letter from Receiver 246</p> <p>12 647 Photocopy of Check, January 27, 2012, IAS</p> <p>13 to N.P. Johnson Family Limited Partnership 140</p> <p>14 649 Photocopy of Check, Cobblestone Centre</p> <p>15 to Howard County Tax Office, 08/25/15 125</p>

Letitia L. Meredith, RPR  
DepomaxMerit Litigation Services

May 02, 2019

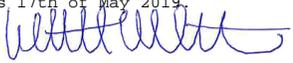
Neldon Johnson

110	<p>1 <b>Q. What assets?</b></p> <p>2 A. I don't remember all of the assets, but</p> <p>3 whatever I did, I sold them and I put the money into</p> <p>4 here.</p> <p>5 <b>Q. That includes stock in IAS?</b></p> <p>6 A. It includes stock. It includes stock in</p> <p>7 probably other companies. I do not know. All I'm</p> <p>8 saying is the money that came into IAS is my money.</p> <p>9 It didn't come from any other place.</p> <p>10 All of the money that came in is there plus</p> <p>11 my wages of \$15 million, so I've got probably</p> <p>12 \$25 million in IAS already, and I paid it in -- the</p> <p>13 last time I paid money in was in 2010.</p> <p>14 <b>Q. Now, I believe --</b></p> <p>15 A. I think --</p> <p>16 <b>Q. -- you just said all the money in IAS came</b></p> <p>17 <b>from you? Is that what you said?</b></p> <p>18 A. Well, I'd say 80 percent anyway.</p> <p>19 <b>Q. Because I think we read in the annual</b></p> <p>20 <b>report that you sold some stock to RaPower for two or</b></p> <p>21 <b>three million dollars. We also have --</b></p> <p>22 A. That's after the 2010, but that's -- okay.</p> <p>23 So you take two or three million dollars off that,</p> <p>24 but I'm just saying that most of the money that's in</p> <p>25 IAS come from me.</p>	112	<p>1 <b>twenty million dollars infused into the company from</b></p> <p>2 <b>you?</b></p> <p>3 A. Yeah, that's the only place IAS ever got</p> <p>4 any money. They haven't got it anyplace else.</p> <p>5 <b>Q. So going back then, what you're talking</b></p> <p>6 <b>about, so why then do all the transactions run</b></p> <p>7 <b>through Glenda?</b></p> <p>8 A. That's not IAS's transactions. Those are</p> <p>9 RaPower's transactions. This has nothing to do with</p> <p>10 IAS.</p> <p>11 <b>Q. Okay. Why are the RaPower transactions</b></p> <p>12 <b>going through Glenda?</b></p> <p>13 A. Because she has a contract with Solstice</p> <p>14 and Solstice has a contract that says any money that</p> <p>15 comes into RaPower belongs to -- 81.3 percent of the</p> <p>16 money that comes into RaPower belongs to Solstice,</p> <p>17 and Solstice is a foreign company.</p> <p>18 <b>Q. Who decided the terms of that agreement</b></p> <p>19 <b>between RaPower and Solstice?</b></p> <p>20 A. I did.</p> <p>21 <b>Q. And did you sign both sides of that</b></p> <p>22 <b>agreement?</b></p> <p>23 A. I did.</p> <p>24 <b>Q. And so that was structured that way at your</b></p> <p>25 <b>direction; correct?</b></p>
111	<p>1 <b>Q. Where would I find records showing monies</b></p> <p>2 <b>that you put into IAS?</b></p> <p>3 A. That document right there, but there should</p> <p>4 be documents in the annual reports. Every year --</p> <p>5 every annual report every year has money that they</p> <p>6 recognize from at least 1990 probably all the way up</p> <p>7 to today.</p> <p>8 <b>Q. Okay. What I'm looking for is not what</b></p> <p>9 <b>somebody just says in the annual report. I'm trying</b></p> <p>10 <b>to understand what records are showing money was</b></p> <p>11 <b>actually deposited, not just someone said it was</b></p> <p>12 <b>deposited, but was actually deposited.</b></p> <p>13 A. It shows it being deposited in the annual</p> <p>14 reports.</p> <p>15 <b>Q. Well, the annual report is simply somebody</b></p> <p>16 <b>saying that it happened. Am I going to find in the</b></p> <p>17 <b>bank records that money is deposited into the bank</b></p> <p>18 <b>accounts of IAS and it came from you?</b></p> <p>19 A. Of course, yeah, yeah.</p> <p>20 <b>Q. Would you provide those bank records to me?</b></p> <p>21 A. Yeah, yeah, with the authorization you gave</p> <p>22 me, I'll go up to find where those are at, and I'll</p> <p>23 go to the accountants and find them.</p> <p>24 <b>Q. So you're saying that if I look through the</b></p> <p>25 <b>bank statements of IAS, I will find fifteen or</b></p>	113	<p>1 A. That's correct.</p> <p>2 <b>Q. And so was it at your direction that the</b></p> <p>3 <b>decision was made to run things through Glenda so</b></p> <p>4 <b>that she would have ownership of the towers?</b></p> <p>5 A. No, because she wanted to get some of the</p> <p>6 money back out of the companies. She said, "We're</p> <p>7 the only ones that are at risk here. I would like to</p> <p>8 get some money coming back in to us."</p> <p>9 We probably spent last year \$30,000 on</p> <p>10 this, maybe 50,000 the year before. You'll never</p> <p>11 find any more money than that. You structure and</p> <p>12 structure, and you'll see maybe since 2000 and --</p> <p>13 2000 and today maybe \$750,000 that I've actually</p> <p>14 spent in myself.</p> <p>15 Everything else I've done, every money I've</p> <p>16 ever had has gone into this company, and she says,</p> <p>17 "I'm tired of this," and she says, "We should be able</p> <p>18 to get some money back." Yes. And so we structured</p> <p>19 a deal where they owe her -- RaPower or Solstice owes</p> <p>20 her 35 million dollars.</p> <p>21 <b>Q. Was the net effect of that that when</b></p> <p>22 <b>RaPower sold lenses and money came in from the</b></p> <p>23 <b>lenses, then that money ends up in the pockets of</b></p> <p>24 <b>Glenda Johnson?</b></p> <p>25 A. Part of it does, not all of it, but part of</p>

Letitia L. Meredith, RPR  
DepomaxMerit Litigation Services

May 02, 2019

Neldon Johnson

<p style="text-align: right;">250</p> <p>1 constitutional freedoms. I will sit in any court,                  2 any judge, anyplace you want, and they will threaten                  3 me with anything they want to threaten me with, and                  4 they can put me in jail.                  5 But I will not stand in this next life and                  6 look at my friends in the face and say, "What in the                  7 hell did I die for?" That is not one of the things                  8 that I will do.                  9 Now, if that's the choice that you're                  10 giving me, I will take going to jail, and I will die                  11 soon, and it won't matter. I am 74 years old, so it                  12 won't make that much difference, but that's not                  13 something I'm going to do.                  14 I believe there's a hereafter. I will face                  15 those men, and they will say, "What did you do with                  16 my life and how did you protect your liberties?" I                  17 will protect my liberties any way I can, and if it                  18 means giving up my life, I hope that I will be                  19 willing to do that, for your liberties as much as                  20 mine.                  21 Because if they take my liberties, they                  22 take yours and they take yours, and if they can do                  23 what they're doing to me, they can do it to you; and                  24 if you don't think they can, then just wait. But I                  25 will not give them up voluntarily, nor should you ask</p>	<p style="text-align: right;">252</p> <p>1 something I will ever do, nor will you ever see it,                  2 not for one dollar, not for ten dollars, not for                  3 \$10 million.                  4 And that's where I stand, and if you want                  5 to do anything different, you're not -- you're never                  6 going to scare me into doing something. You can take                  7 a .44 Magnum and put it right in my face and pull the                  8 god-damned trigger.                  9 MR. KLEIN: Anything else you want to state?                  10 NELDON JOHNSON: That's all I'm saying.                  11 MR. KLEIN: Then we will conclude this record                  12 and go off the record.                  13 NELDON JOHNSON: All right. Thank you.                  14 THE COURT REPORTER: Mr. Johnson, would you like                  15 a copy of this transcript?                  16 NELDON JOHNSON: Yes, I would.                  17 (Whereupon the taking of this deposition was                  18 concluded at 5:22 p.m.)                  19 * * *                  20 The reading copy was submitted to the witness                  21 at 2730 West 4000 South, Oasis, Utah 84624.                  22 (Whereupon the taking of this deposition was                  23 concluded at 5:22 p.m.)                  24 * * *                  25</p>
<p style="text-align: right;">251</p> <p>1 me to do that an as American citizen. I am ashamed                  2 of anybody who would do that.                  3 To think that my friends died for their                  4 country to protect this Constitution and see it                  5 ripped apart the way I'm looking at it is cateful and                  6 it will not maintain this country. Once the people                  7 recognize that there's no fair courts, this country                  8 will rip apart.                  9 There's only one thing that holds this                  10 country together, and that is the belief that the                  11 system is honest. Once that is broken, you'll never                  12 get that back, and if that's ever broken, this                  13 country will go into a faction and go into tribe                  14 units. That's only the way it will go.                  15 You will never put these people in any                  16 other position, and when you get through and find out                  17 that your judges are not honest and your prosecutors                  18 are not living up to the oath and covenant they've                  19 taken to protect and secure this Constitution. And                  20 when that gets out to the point where the people no                  21 longer can believe in it and have to coalesce                  22 together to get protection, this country is over.                  23 And I'm not going to be standing in one of                  24 the lines that says "I participated in destroying                  25 this greatest country that's ever been." That's not</p>	<p style="text-align: right;">253</p> <p style="text-align: center;">C E R T I F I C A T E</p> <p>1 STATE OF UTAH )                  2 )                  3 COUNTY OF UTAH )</p> <p>4 THIS IS TO CERTIFY that the foregoing                  5 deposition was taken before me, Letitia L. Meredith,                  6 Registered Professional Reporter and Notary Public                  7 for the State of Utah and Certified Shorthand                  8 Reporter for the State of California.                  9 That the said witness was by me, before                  10 examination, duly sworn to testify the truth, the                  11 whole truth, and nothing but the truth in said cause.                  12 That the testimony was reported by me in                  13 Stenotype, and thereafter transcribed by computer                  14 under my supervision, and that a full, true, and                  15 correct transcription is set forth in the foregoing                  16 pages.                  17 I further certify that I am not of kin or                  18 otherwise associated with any of the parties to                  19 said cause of action and that I am not interested in                  20 the event thereof.                  21 WITNESS MY HAND and official seal at                  22 Spanish Fork, Utah, this 17th of May 2019.                  23                   24 Letitia L. Meredith, CSR, RPR                  25</p>

Letitia L. Meredith, RPR  
 DepomaxMerit Litigation Services

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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UNITED STATES OF AMERICA,

Plaintiff,

v.

RAPOWER-3, LLC; INTERNATIONAL  
AUTOMATED SYSTEMS, INC.; LTB1,  
LLC, R. GREGORY SHEPARD; and  
NELDON JOHNSON,

Defendants.

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

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

District Judge David Nuffer

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Plaintiff United States of America filed a motion (the “Motion”)<sup>1</sup> to have Defendants R. Gregory Shepard and Neldon Johnson (“Johnson”), and nonparties Glenda Johnson, LaGrand Johnson, and Randale Johnson, held in civil contempt for violating the Corrected Receivership Order.<sup>2</sup> Based on the Motion, the arguments of the parties, and the evidence presented at hearings on April 26, May 3, and May 28, 2019, the Motion is GRANTED as set forth below and the following findings are entered.

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<sup>1</sup> United States’ Motion 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 for Violating the Corrected Receivership Order (“Motion”), [docket no. 559](#), filed January 29, 2019.

<sup>2</sup> Corrected Receivership Order, [docket no. 491](#), filed November 1, 2018.

## TABLE OF CONTENTS

Introduction.....	2
Findings of Fact .....	4
The terms of the Corrected Receivership Order are clear.....	4
The Corrected Receivership Order requires certain actions.....	4
The Corrected Receivership Order requires cooperation.....	5
Shepard, Johnson, and Respondents failed to comply as of April 26, 2019.....	6
Shepard, Johnson, and Respondents failed affirmative obligations.....	7
Shepard, Johnson, and Respondents failed to cooperate.....	8
Shepard, Johnson, and Respondents failed to comply as of May 3, 2019.....	10
Johnson and Respondents failed to comply as of May 28, 2019.....	10
Johnson failed to comply.....	11
Johnson failed to turn over assets.....	11
Johnson failed to produce responsive documents.....	12
Johnson failed to provide a detailed financial accounting.....	14
Glenda Johnson failed to comply.....	18
LaGrand Johnson failed to comply.....	19
Randle Johnson failed to comply.....	21
Conclusions of Law .....	23
Order .....	25

## INTRODUCTION

Defendants RaPower-3 LLC (“RaPower”), International Automated Systems Inc. (“IAS”), LTB1 LLC, Shepard, and Johnson (collectively, “Defendants”) were previously enjoined from promoting their abusive solar energy scheme and ordered to disgorge their ill-gotten gains.<sup>3</sup> To ensure compliance with the disgorgement order, the court took “exclusive jurisdiction and possession of [Defendants’] assets, of whatever kind and wherever situated,” and ordered that the assets were frozen.<sup>4</sup> After hearing from all parties,<sup>5</sup> a permanent injunction was entered on October 4, 2018.<sup>6</sup> Also after hearing from all parties,<sup>7</sup> an order was entered

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<sup>3</sup> See Findings of Fact and Conclusions of Law, at 125-129, 139, [docket no. 467](#), filed October 4, 2018.

<sup>4</sup> Memorandum Decision and Order Freezing Assets and to Appoint a Receiver (“Order Freezing Assets”), at 26, [docket no. 444](#), filed August 22, 2018.

<sup>5</sup> See E-mail Correspondence, [docket no. 463](#), lodged September 29, 2019; [Objection re: Findings of Fact and Conclusions of Law, docket no. 452](#), filed September 14, 2018.

<sup>6</sup> Findings of Fact and Conclusions of Law, *supra* note 3.

appointing a receiver (the “Receiver”) and continuing the asset freeze on October 31, 2018.<sup>8</sup> On November 1, 2018, a Corrected Receivership Order was entered.<sup>9</sup>

The Corrected Receivership Order requires Shepard and Johnson, as well as others working with them—including Glenda Johnson, LaGrand Johnson, and Randale Johnson (collectively, “Respondents”)—to provide information to, and cooperate with, the Receiver. It also requires Shepard and Johnson to turn over assets to the Receiver. Shepard, Johnson, and Respondents have known of the Corrected Receivership Order since at least November 30, 2018. They failed to comply with the Corrected Receivership Order until after the United States filed the Motion *and* two hearings were held on the Motion. Still, Johnson and Respondents remain defiant. Their stubborn refusal to comply with the Corrected Receivership Order has made the receivership “significantly more difficult than usual” for the experienced Receiver in this case.<sup>10</sup> Shepard, Johnson, and Respondents defied the Corrected Receivership Order in an attempt to avoid full enforcement of the disgorgement order against them, their families, and other insiders. Shepard, Johnson, and Respondents are each guilty of civil contempt.

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<sup>7</sup> Notice of Filing of United States’ Proposed Receivers and Proposed Receivership Order, docket no. 456, filed September 21, 2018; Defendants’ Objection to Plaintiff’s Proposed Receivership Order, docket no. 461, filed September 28, 2018.

<sup>8</sup> Receivership Order, docket no. 490, filed October 31, 2018; Corrected Receivership Order, *supra* note 2.

<sup>9</sup> *See supra* note 2.

<sup>10</sup> *See* Receiver’s Accounting, Recommendation on Publicly-Traded Status of International Automated Systems, and Liquidation Plan (“Accounting”), docket no. 552, filed December 31, 2018; Receiver’s Initial Quarterly Status Report (“Initial Report”), docket no. 557, filed January 28, 2019.

## FINDINGS OF FACT

### **The terms of the Corrected Receivership Order are clear.**

The Corrected Receivership Order is clearly written and easily understandable.<sup>11</sup> It imposes a series of affirmative obligations on Defendants and others: to turn over to the Receiver records, information, and assets. It also requires Defendants, their family members, and other insiders to cooperate with the Receiver.

### **The Corrected Receivership Order requires certain actions.**

The court has already found that Defendants made false and 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.”<sup>12</sup> Accordingly, Johnson, Shepard, persons with certain positions in RaPower and IAS, and anyone acting in concert with them (who had notice of the Corrected Receivership Order), were ordered 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.”<sup>13</sup>

If a person once had, but no longer has, control of the documents and records responsive to paragraph 24 of the Corrected Receivership Order, he or she “must provide information to the

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<sup>11</sup> May 3 Tr., *supra* note 11, at 172:13-173:25, [docket no. 663](#), filed May 21, 2019.

<sup>12</sup> [Order Freezing Assets](#), *supra* note 4, at 20-21; [Findings of Fact and Conclusions of Law](#), *supra* note 3; Corrected Receivership Order, *supra* note 2, at 2 (introduction).

<sup>13</sup> [Order Freezing Assets](#), *supra* note 4, at 20-21; Corrected Receivership Order, *supra* note 2, ¶¶ 14-17, 24.

Receiver identifying the records, the persons in control of the records, and efforts undertaken to recover the records.”<sup>14</sup>

Shepard, Johnson, and anyone acting with them (who had notice of the Corrected Receivership Order) were further ordered to turn over to the Receiver any assets belonging to the Receivership Defendants.<sup>15</sup>

The Corrected Receivership Order also requires Shepard and Johnson to disclose to the Receiver, under penalty of perjury, detailed statements about their financial lives.<sup>16</sup> 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.<sup>17</sup>

**The Corrected Receivership Order requires cooperation.**

The Corrected Receivership Order requires Shepard, Johnson, 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 truthfully to all requests for information and documents from the Receiver.”<sup>18</sup> 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

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<sup>14</sup> Corrected Receivership Order, *supra* note 2, ¶ 24.

<sup>15</sup> *Id.* ¶¶ 16-17.

<sup>16</sup> *Id.* ¶¶ 25-26.

<sup>17</sup> *Id.* ¶ 26.

<sup>18</sup> *Id.* ¶ 23.

or any other matter relevant to the operation or administration of the receivership or collection of funds due to the Receivership Defendants.”<sup>19</sup> All persons with notice of the Receivership Order also have a duty not to interfere with the Receiver’s performance of his duties.<sup>20</sup>

As of November 30, 2018, Shepard, Johnson, and Respondents acknowledged receiving a copy of the Corrected Receivership Order—more than six months ago.<sup>21</sup>

**Shepard, Johnson, and Respondents failed to comply as of April 26, 2019.**

The Receiver detailed Shepard’s, Johnson’s, and Respondents’ failures to comply with their affirmative obligations and duty of cooperation in his Accounting, Recommendation on Publicly Traded Status of International Automated Systems, and Liquidation Plan<sup>22</sup> and Initial Quarterly Status Report.<sup>23</sup> These reports should have given a very clear signal to Shepard, Johnson, and Respondents that their noncompliance was a serious matter.

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 Shepard, Johnson, and Respondents were noncompliant and that there would be consequences for their noncompliance. Yet, neither Shepard, Johnson, nor Respondents actually responded to the Motion in writing on the docket.<sup>24</sup>

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<sup>19</sup> *Id.* ¶ 28.

<sup>20</sup> *Id.* ¶ 35.

<sup>21</sup> See *Initial Report*, *supra* note 10, § I.E.

<sup>22</sup> *Accounting*, *supra* note 10.

<sup>23</sup> *Initial Report*, *supra* note 10.

<sup>24</sup> See *Request to Submit for Decision* ¶¶ 2-3, docket no. 573, filed February 15, 2019; *Order Taking Show-Cause Motions Under Advisement* ¶¶ 2, 4, docket no. 588, filed March 5, 2019; *Request to Submit for Decision* ¶¶ 3, 5, docket no. 606, filed April 8, 2019.

An evidentiary hearing was held April 26, 2019.<sup>25</sup> During that hearing, the United States showed by clear and convincing evidence that Shepard, Johnson, and Respondents had not complied with the Corrected Receivership Order.

**Shepard, Johnson, and Respondents failed affirmative obligations.**

Shepard, Johnson, and Respondents failed to turn over books and records to the Receiver, and Johnson failed to deliver assets to the Receiver. Johnson and Glenda Johnson had, or controlled, financial and other records and assets for themselves, IAS, RaPower, and other entities Johnson created.<sup>26</sup> LaGrand Johnson and Randale Johnson had, or controlled, financial and other records for IAS and other entities subject to the asset freeze.<sup>27</sup> Shepard had, or controlled, financial and other records for himself and his entities.<sup>28</sup> Neither Shepard, Johnson, nor Respondents delivered the records to the Receiver or, if they no longer had such records, provided an adequate declaration explaining where the records were and what efforts they had taken to retrieve the records.<sup>29</sup> Similarly, Johnson failed to deliver assets to the Receiver.<sup>30</sup>

Shepard and Johnson failed to file the sworn financial disclosure that was due on December 31, 2018.<sup>31</sup> Although they may have provided some of the required information with

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<sup>25</sup> Minute Order, docket no. 619, filed April 26, 2019.

<sup>26</sup> Initial Report, *supra* note 10, §§ V.C.1, 3(a), (g)-(m); Findings of Fact and Conclusions of Law, *supra* note 3, at 128.

<sup>27</sup> Initial Report, *supra* note 10, § V.C.3(c)-(f).

<sup>28</sup> *Id.* § V.C.2.

<sup>29</sup> *Id.* § V.C.1-3.

<sup>30</sup> *Id.* §§ V.C.1(e), (h)-(i), (l), 2(j); *see also id.* §§ II.A.3, V.C.3(g)-(m); Order Vacating Hearing and Limiting Briefs in re: Civil Contempt §§ 1.A.3, 5, 7, III, docket no. 522, filed November 29, 2018.

<sup>31</sup> Initial Report, *supra* note 10, §§ V.C.1(f), 2(e).

earlier submissions, neither Shepard nor Johnson disclosed the details critical for the Receiver to identify and collect assets that should be used to satisfy the disgorgement order.<sup>32</sup>

Moreover, neither Shepard nor Johnson 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.”<sup>33</sup>

**Shepard, Johnson, and Respondents failed to cooperate.**

Shepard’s, Johnson’s, and 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.”<sup>34</sup> Shepard, Johnson, and Respondents also failed in their duty to cooperate 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 to instruct their agents and insiders to adequately respond.<sup>35</sup>

Johnson 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

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<sup>32</sup> *Id.* §§ V.C.1(f), 2(e).

<sup>33</sup> *E.g.*, Defendant R. Gregory Shepard’s Response to Order to Show Cause, docket no. 494, filed November 2, 2018 (does not contain the required statement); Defendant Neldon Johnson’s Motion for Limited Relief from Asset Freeze, docket no. 530, filed December 4, 2018 (does not contain the required statement).

<sup>34</sup> Corrected Receivership Order, *supra* note 2, ¶ 23.

<sup>35</sup> *Id.* ¶ 28; Initial Report, *supra* note 10, § V.

in early January 2019, then unilaterally cancelled those depositions on the afternoon before they were set to begin.<sup>36</sup> Because of their failure to comply with the Corrected Receivership Order, the Receiver issued subpoenas for the production of documents and for depositions. Johnson and Glenda Johnson evaded service of those subpoenas,<sup>37</sup> made meritless objections to the subpoenas, failed to produce any documents in response to the subpoenas, and failed to appear at their scheduled depositions.<sup>38</sup> They instructed their attorneys “to stop doing any work related to the receivership,”<sup>39</sup> and showed no inclination to do work required by the Corrected Receivership Order themselves.

These actions went beyond a failure to cooperate with the Receiver; they interfered with the Receiver’s performance of his duties.<sup>40</sup>

At the April 26, 2019 hearing, Shepard, Johnson, and Respondents were ordered to produce documents, or declarations about documents, by April 29, 2019, and Johnson and Glenda Johnson were ordered to be deposed by May 2, 2019.<sup>41</sup> A second evidentiary hearing was set for May 3, 2019.<sup>42</sup>

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<sup>36</sup> Initial Report, *supra* note 10, §§ V.C.1(k), 3(a)-(b), 6(f).

<sup>37</sup> Pl. Ex. 937, E-mail from Wayne Klein to Neldon and Glenda Johnson, dated January 28, 2019.

<sup>38</sup> *E.g.*, Motion for Protective Order for Nonparty Glenda Johnson, docket no. 565, filed February 7, 2019; Neldon Johnson’s Pro Se Motion for Protective Order, docket no. 568, filed February 7, 2019; Neldon Johnson’s Objection to Deposition and Notice of Fifth Amendment Claim, docket no. 574, filed February 15, 2019; Receiver’s Response to Neldon Johnson’s Objection to Deposition and Notice of Fifth Amendment Claim, docket no. 575, filed February 18, 2019; Motion for Protective Order: Spousal Privilege, docket no. 577, filed February 19, 2019; Memorandum Decision and Order Denying the Johnsons’ Rule 26(c) Motions, docket no. 591, filed March 6, 2019; Memorandum Decision Denying Glenda Johnson’s Motion for Protective Order, docket no. 593, filed March 7, 2019.

<sup>39</sup> Pl. Ex. 938, Letter from Steven Paul to Wayne Klein, dated January 24, 2019.

<sup>40</sup> See Corrected Receivership Order, *supra* note 2, ¶ 35.

<sup>41</sup> Minute Order, *supra* note 25; Apr. 26 Tr., at 102:13-112:6, docket no. 640, filed May 7, 2019.

<sup>42</sup> See *supra* note 41.

**Shepard, Johnson, and Respondents failed to comply as of May 3, 2019.**

At the May 3, 2019 hearing, the evidence showed that Shepard, Johnson, and Respondents made some efforts to comply with the Corrected Receivership Order and the court's April 26, 2019 order. Shepard and Respondents produced documents. Shepard, Johnson, and Respondents all filed declarations.<sup>43</sup> And Johnson and Glenda Johnson were deposed as ordered.

But the United States also showed, by clear and convincing evidence, that Shepard, Johnson, and all Respondents remained noncompliant. Shepard, Johnson, and Respondents had not produced all required documents, and their declarations failed to meet their obligations under the Corrected Receivership Order. Accordingly, two additional orders were entered to compel compliance with the Corrected Receivership Order by May 21, 2019, and a third evidentiary hearing was set for May 28, 2019.<sup>44</sup>

After the May 3, 2019 hearing, Johnson was found to be indigent and counsel was appointed for him.<sup>45</sup>

**Johnson and Respondents failed to comply as of May 28, 2019.**

At the May 28, 2019 hearing, the evidence showed that Shepard had complied with the Corrected Receivership Order by May 23, 2019. But the United States also proved, by clear and

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<sup>43</sup> [Declaration of R. Gregory Shepard Relating to Compliance Verification](#), docket no. 620, filed April 29, 2019; [Declaration of Randale Johnson Relating to Compliance Verification](#), docket no. 621, filed April 29, 2019; [Declaration of LaGrand Johnson Relating to Compliance Verification](#), docket no. 622, filed April 29, 2019; [Declaration of Glenda Johnson Relating to Compliance Verification](#), docket no. 623, filed April 29, 2019; [Declaration of Neldon P. Johnson Relating to Compliance Verification](#), docket no. 625, filed April 29, 2019.

<sup>44</sup> Minute Order, docket no. 634, filed May 3, 2019; [Order Regarding the United States' Motion for Order to Show Cause](#), docket no. 676, filed May 24, 2019.

<sup>45</sup> Docket Text Order Finding Mr. Neldon Johnson Indigent, docket no. 652, filed May 16, 2019; [Entry of Appearance](#), docket no. 655, filed May 16, 2019; *see also* [Motion to Withdraw as Counsel of Record and for Standby Counsel Designation](#), docket no. 657, filed May 17, 2019; [Order Taking Under Advisement Motion to Withdraw as Counsel for Defendant Neldon Johnson](#), docket no. 660, filed May 18, 2019.

convincing evidence, that Johnson and Respondents remained noncompliant with the Corrected Receivership Order.

**Johnson failed to comply.**

Johnson's behavior during these proceedings showed that he has no respect for the court or its orders. Johnson disregards clear orders and feigns confusion about the legal obligations they impose on him.<sup>46</sup> He defied the Corrected Receivership Order and a document subpoena from the Receiver until at least April 29, 2019. He failed to appear for his deposition two times: once when he voluntarily agreed to be deposed, and again after the Receiver subpoenaed his appearance. His meritless excuses for his defiance were made at the eleventh hour.<sup>47</sup>

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 Respondents produced. But Johnson remains in open defiance of many aspects of the Corrected Receivership Order and other court orders.

*Johnson failed to turn over assets.*

The Corrected Receivership Order requires Johnson to turn over assets and Receivership Property to the Receiver. The evidence shows that Johnson has not done so. At minimum, he failed to deliver to the Receiver the log books for one of the two aircraft that are Receivership Property and failed to deliver millions of IAS shares, which IAS's stock transfer company shows to be his or within his control.<sup>48</sup> Johnson also failed to deliver any unissued shares of IAS

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<sup>46</sup> *E.g.* May 3 Tr., *supra* note 11, at 169:3-173:25, 175:5-178:5.

<sup>47</sup> *E.g.* Neldon Johnson's Pro Se Motion for Protective Order, *supra* note 38; Neldon Johnson's Objection to Deposition and Notice of Fifth Amendment Claim, *supra* note 38.

<sup>48</sup> *E.g.*, Apr. 26 Tr., *supra* note 41, at 43:10-14; May 28 Tr. Part 1, at 36:22-39:18, docket no. 694, filed June 12, 2019; Pl. Ex. 954; *see also* Receiver's Motion for Order Canceling Shares of International Automated Systems Inc., at 8-9, docket no. 682, filed May 27, 2019.

stock.<sup>49</sup> In the past, he issued IAS shares to himself and then sold them tens of thousands of dollars' worth at a time.<sup>50</sup> Because these issued and unissued shares remain in Johnson's hands—or in the hands of any member of his family—there is a significant risk that he will use the shares like his own personal ATM.<sup>51</sup> Johnson must obtain and deliver these assets to the Receiver.

*Johnson failed to produce responsive documents.*

With respect to books and records for the Receivership Defendants and Receivership Property, Johnson claims either that all books and records have been delivered to the Receiver, or that he does not have any responsive documents.<sup>52</sup> First, 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 Johnson has *not* delivered. The Corrected Receivership Order puts the burden of ensuring compliance on Johnson, not the Receiver. Further, the evidence shows that Johnson's sworn statement claiming to have delivered all documents to the Receiver is not true: Johnson first made the statement under oath, that he had no records, on April 29,<sup>53</sup> and then produced, through Glenda Johnson, more responsive documents and information on May 10 and May 17.<sup>54</sup>

Further, Johnson's assertion that third parties have documents does not to satisfy his burden under the Corrected Receivership Order. The evidence shows that Johnson could obtain

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<sup>49</sup> May 28 Tr. Part 1, *supra* note 48, at 44:15-46:5.

<sup>50</sup> *Id.* at 45:6-47:16; *see also* Receiver's Motion for Order Canceling Shares of International Automated Systems Inc., *supra* note 48, at 8-9.

<sup>51</sup> May 28 Tr. Part 1, *supra* note 48, at 45:6-47:16; *see also* Receiver's Motion for Order Canceling Shares of International Automated Systems Inc., *supra* note 48, at 8-9.

<sup>52</sup> Declaration of Neldon P. Johnson Relating to Compliance Verification, *supra* note 43; [Declaration of Neldon P. Johnson \("May Declaration"\)](#), docket no. 669, filed May 21, 2019.

<sup>53</sup> Declaration of Neldon P. Johnson Relating to Compliance Verification, *supra* note 43, ¶ 2.

<sup>54</sup> *E.g.*, May 3 Tr., *supra* note 11, at 22:19-24:2.

documents currently being held by third parties, like Pacific Stock Transfer Co., Snell & Wilmer, and Gary Peterson. The court used simple words to reiterate this duty during the May 3, 2019 hearing, when 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 the entities, and your personal records and produce them to the receiver and that you had no constraint against doing that. . . . [Y]ou were ordered to get those documents.<sup>55</sup>

But by the time of the May 28, 2019 hearing, Johnson offered no evidence that he had even attempted to retrieve responsive documents from third parties.

Evidence has shown, time and time again, that Johnson is the center around which IAS, RaPower, and the Affiliated Entities revolve.<sup>56</sup> Therefore, numerous obligations imposed by the Corrected Receivership Order (including paragraph 24) and by the Memorandum Decision and Order on Receiver's Motion to Include Affiliates and Subsidiaries in Receivership ("Affiliates Order")<sup>57</sup> require him to promptly produce responsive documents related to those entities.

If Johnson does not possess and cannot obtain responsive documents that he once possessed for Receivership Defendants, the Affiliated Entities, 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.<sup>58</sup> That *Johnson*

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<sup>55</sup> *Id.* at 172:17-21, 175:6-176:20.

<sup>56</sup> *E.g.*, Findings of Fact and Conclusions of Law, *supra* note 3, at 127-128; Memorandum Decision and Order on Receiver's Motion to Include Affiliates and Subsidiaries in Receivership ("Affiliates Order"), docket no. 636, filed May 3, 2019; May 28 Tr. Part 2, docket no. 692, at 64:18-65:14, filed June 12, 2019.

<sup>57</sup> See Affiliates Order, *supra* note 56, at 8 ¶ 9.

<sup>58</sup> *E.g.*, Apr. 26 Tr., *supra* note 41, at 38:18-39:20; May 28 Tr. Part 2, *supra* note 56, at 23:17-24:3.

(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.

*Johnson failed to provide a detailed financial accounting.*

Johnson is also in defiance of paragraph 26 of the Corrected Receivership Order. Paragraph 26 required that, by no later than December 31, 2018, 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 Johnson’s name and transactions to or from him directly. Johnson’s declarations<sup>59</sup> simply fail to meet the obligation that paragraph 26 imposes.

Paragraph 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.

Johnson stated that he either does not possess any property or that he has turned over all property to the Receiver.<sup>60</sup> These facile statements do not comply with the detailed requirements of

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<sup>59</sup> Declaration of Neldon P. Johnson Relating to Compliance Verification, *supra* note 43; [May Declaration](#), *supra* note 52.

<sup>60</sup> [May Declaration](#), *supra* note 52, ¶ 4(a).

paragraph 26(a). They do not acknowledge that Johnson's accounting obligation extends not just to property officially titled in his name (which he has attempted to avoid), but to a far greater expanse of assets. The evidence shows 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 Johnson's direction and for his benefit.<sup>61</sup>

Paragraph 26 requires him to account for all Receivership Property, but he has not done so.

Paragraph 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.

Johnson provided a confusing and equivocal response to this requirement.<sup>62</sup> His response does not adequately respond to the Corrected Receivership Order.

Paragraph 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 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, 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.<sup>63</sup> This response does not meet Johnson's obligations under the Corrected Receivership Order.

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<sup>61</sup> May 3 Tr., *supra* note 11, at 32:3-33:24.

<sup>62</sup> [May Declaration](#), *supra* note 52, ¶ 4(b).

<sup>63</sup> *Id.* ¶ 4(c).

Paragraph 26(d) requires an accounting, for the Entity Receivership Defendants, of:

(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.

Johnson’s conclusory responses—that he has provided information to the Receiver already or he “defers” to information held by Pacific Stock Transfer Co.—are inadequate to comply with this provision of paragraph 26.<sup>64</sup> The Corrected Receivership Order does not permit Johnson to “defer” his reporting duties to third parties.

Paragraph 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.

Johnson claimed that he has not received significant assets since 2005.<sup>65</sup> This is another example of his failure to follow the instructions laid out in plain terms by paragraph 26 of the Corrected Receivership Order. Paragraph 26(e) requires him to report assets received by any of the Receivership Defendants—not just him personally. And the evidence shows that Johnson has received the benefit of (at least) assets purchased by his entities.<sup>66</sup> Paragraph 26(e) requires him to account for all such assets.

Paragraph 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,

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<sup>64</sup> *Id.* ¶ 4(d).

<sup>65</sup> *Id.* ¶ 4(e).

<sup>66</sup> *E.g.*, Apr. 26 Tr., *supra* note 41, at 73:6-77:17; Pl. Ex. 943; Pl. Ex. 945, at 16, 18, 21-22.

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, Johnson claimed either he has given the Receiver all records that show these funds or he has nothing to provide.<sup>67</sup> This is inadequate. Paragraph 26 requires details, not just for Johnson, but for all Receivership Defendants.

Paragraph 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.

Johnson claimed to have given the Receiver all information about these expenditures.<sup>68</sup> This response fails to meet his obligation under paragraph 26(g). Johnson must provide *an accounting* of these expenditures.

Paragraph 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.

Johnson claims not to have made any transfers since 2005, except transfers of shares in IAS stock.<sup>69</sup> The evidence shows that 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.<sup>70</sup> Paragraph 26(h) requires him to account for those transfers.

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<sup>67</sup> *May Declaration*, *supra* note 52, ¶ 4(f).

<sup>68</sup> *Id.* ¶ 4(g).

<sup>69</sup> *Id.* ¶ 4(h).

<sup>70</sup> *E.g.*, *May 3 Tr.*, *supra* note 11, at 32:3-33:24.

**Glenda Johnson failed to comply.**

Glenda Johnson defied the Corrected Receivership Order and a document subpoena from the Receiver until at least April 29, 2019. She failed to appear for her deposition three times: once when she had voluntarily agreed to be deposed, and then two times after the Receiver subpoenaed her appearance. Her meritless excuses for her defiance were made at the eleventh hour.<sup>71</sup>

After the April 26, 2019 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 to Affiliated Entities and Johnson’s family members and insiders.<sup>72</sup> 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 court orders. As of May 28, 2019, she had not completed the production of her banking records.<sup>73</sup> Her declaration<sup>74</sup> under paragraph 24 of the Corrected Receivership Order and other information she has provided the Receiver about

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<sup>71</sup> *E.g.* Motion for Protective Order for Nonparty Glenda Johnson, *supra* note 38; Motion for Protective Order: Spousal Privilege, *supra* note 38; Memorandum Decision and Order Denying the Johnsons’ Rule 26(c) Motions, *supra* note 38; Memorandum Decision Denying Glenda Johnson’s Motion for Protective Order, *supra* note 38.

<sup>72</sup> *E.g.*, Pl. Exs. 942, 943, 945; Def. Exs. 2007, 2009, 2010, 2100, 2101, 2102; *see also* testimony related to all of the foregoing exhibits.

<sup>73</sup> May 28 Tr. Part 1, *supra* note 48, at 24:18-27:14.

<sup>74</sup> Declaration of Glenda Johnson Relating to Compliance Verification, *supra* note 43.

documents she may once have are inadequate.<sup>75</sup> For example, the evidence is clear that Glenda Johnson once possessed certain RaPower documents and other documents relating to Receivership Property, but she claimed that they are now in custody of Snell & Wilmer, the firm RaPower used to file bankruptcy.<sup>76</sup> 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.<sup>77</sup>

Further, Glenda Johnson has not yet delivered an “accounting of the cash withdrawals she made on or since August 22, 2018.”<sup>78</sup> 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.”<sup>79</sup>

**LaGrand Johnson failed to comply.**

LaGrand Johnson is a former officer of IAS.<sup>80</sup> 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.<sup>81</sup> Through his attorney, on April 15, 2019, LaGrand Johnson provided a few pages of documents.<sup>82</sup> But after the

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<sup>75</sup> *See id.*

<sup>76</sup> *See* United States’ Opposition to Fee Application by Snell & Wilmer L.L.P., [dkt. no. 13](#), filed September 19, 2018 in No. 2:18-cv-00608-DN; Order Denying Application for Compensation and Reimbursement of Expenses, [dkt. no. 17](#), filed November 5, 2018 in No. 2:18-cv-00608-DN.

<sup>77</sup> *See Affiliates Order, supra* note 56, at 8 ¶ 9.

<sup>78</sup> [Order Regarding the United States’ Motion for Order to Show Cause, supra](#) note 44, ¶ 6 (citing Asset Freeze Order, *supra* note 4).

<sup>79</sup> *Id.* ¶ 6.

<sup>80</sup> Pl. Ex. 507, at 26.

<sup>81</sup> Corrected Receivership Order, *supra* note 2, ¶ 24.

<sup>82</sup> Pl. Ex. 941.

April 26, 2019 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, 2019 e-mail.<sup>83</sup>

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.<sup>84</sup> The evidence also shows that Receivership Defendants paid money to LaGrand Johnson, or directed that money be paid to him by other entities.<sup>85</sup> 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 shows 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 Johnson’s family.<sup>86</sup> Therefore, the Corrected Receivership Order and the Affiliates Order also require him to produce responsive documents for any Affiliated Entity, including any foreign Affiliated Entity.<sup>87</sup>

If LaGrand Johnson no longer has control of the documents and records responsive to paragraph 24 of the Corrected Receivership Order, he “must provide information to the Receiver identifying the records, the persons in control of the records, and efforts undertaken to recover the records.”<sup>88</sup> The declaration<sup>89</sup> and information that LaGrand Johnson has provided to date are

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<sup>83</sup> May 3 Tr., *supra* note 11, at 16:19-19:14, 22:15-18.

<sup>84</sup> *See, e.g.*, Pl. Ex. 834, at 2-3, 9-20, 45-51; Apr. 26 Tr., *supra* note 41, at 55:6-24; May 3 Tr., *supra* note 11, at 11:18-13:4.

<sup>85</sup> *See* Pl. Ex. 945, at 39-40; Apr. 26 Tr., *supra* note 41, at 91:4-92:8.

<sup>86</sup> *E.g.*, Pl. Exs. 946, 947, 948.

<sup>87</sup> *See Affiliates Order, supra* note 56, at 8 ¶ 9.

<sup>88</sup> Corrected Receivership Order, *supra* note 2, ¶ 24.

<sup>89</sup> Declaration of LaGrand Johnson Relating to Compliance Verification, *supra* note 43.

inadequate.<sup>90</sup> 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.<sup>91</sup> 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, 2019 hearing, his long overdue and de minimis declaration was inadequate, and he has not provided a compliant declaration.<sup>92</sup>

**Randale Johnson failed to comply.**

Randale Johnson is a former officer of IAS.<sup>93</sup> 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.<sup>94</sup> Through his attorney, on April 15, 2019, Randale Johnson claimed that he had no documents to produce.<sup>95</sup> But after the April 26, 2019 hearing, Randale Johnson produced 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 why he denied having documents as of April 15, 2019.<sup>96</sup>

Randale Johnson’s production of documents is likely still incomplete. For example, the evidence shows that Receivership Defendants paid money to Randale Johnson or directed that

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<sup>90</sup> May 28 Tr. Part 1, *supra* note 48, at 30:8-31:10.

<sup>91</sup> Declaration of LaGrand Johnson Relating to Compliance Verification, *supra* note 43.

<sup>92</sup> May 3 Tr., *supra* note 11, at 16:19-19:14.

<sup>93</sup> Pl. Ex. 507, at 26.

<sup>94</sup> Corrected Receivership Order, *supra* note 2, ¶ 24.

<sup>95</sup> Pl. Ex. 941.

<sup>96</sup> May 3 Tr., *supra* note 11, at 19:15-22:18.

money be paid to him by other entities.<sup>97</sup> Documents reflecting such payments, and any reasons for such payments, clearly relate to Receivership Property.

Further, while these contempt proceedings were pending, the Affiliates Order was entered extending the receivership to 13 entities affiliated with Defendants in the underlying litigation (“Affiliated Entities”).<sup>98</sup> 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.<sup>99</sup> The reasons to include the Affiliated Entities in the receivership are stated in the Affiliates Order and are not repeated here. One of the effects of the Affiliates Order is that all Affiliated Entities are now Receivership Property.

The evidence shows 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 Johnson’s family.<sup>100</sup> Therefore, the Corrected Receivership Order and the Affiliates Order also require him to produce responsive documents for any Affiliated Entity, including any foreign Affiliated Entity.<sup>101</sup>

If Randale Johnson no longer has control of the documents and records responsive to paragraph 24 of the Corrected Receivership Order or the Affiliates Order, he “must provide information to the Receiver identifying the records, the persons in control of the records, and efforts undertaken to recover the records.”<sup>102</sup> The declaration<sup>103</sup> and information that Randale

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<sup>97</sup> See Pl. Ex. 945, at 39-40; Apr. 26 Tr., *supra* note 41, at 91:4-92:8.

<sup>98</sup> Affiliates Order, *supra* note 56.

<sup>99</sup> *Id.* at 1-2.

<sup>100</sup> E.g., Pl. Exs. 946, 948.

<sup>101</sup> See Affiliates Order, *supra* note 56, at 8 ¶ 9.

<sup>102</sup> Corrected Receivership Order, *supra* note 2, ¶ 24.

<sup>103</sup> Declaration of Randale Johnson Relating to Compliance Verification, *supra* note 43.

Johnson provided to date are inadequate.<sup>104</sup> 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, 2019 hearing, his long overdue and de minimis declaration was inadequate, and he has not provided a compliant declaration.<sup>105</sup>

### CONCLUSIONS OF LAW

The United States has proved, by clear and convincing evidence, that: (1) a valid court order existed; (2) Shepard, Johnson, and Respondents, who were bound by the Corrected Receiver Order, had knowledge of it; and (3) Shepard, Johnson, and Respondents disobeyed it.<sup>106</sup> The first two elements of this test were never disputed.<sup>107</sup> The only disputed issue was whether Shepard, Johnson, and Respondents disobeyed the Corrected Receivership Order.<sup>108</sup> The evidence detailed at the three evidentiary hearings and herein shows that Shepard, Johnson, and Respondents disobeyed the Corrected Receivership Order. Once the United States made this showing, the burden shifted to Shepard, Johnson, and Respondents to show that they were in compliance with the Corrected Receiver Order or that they could not comply with that order.<sup>109</sup> They failed to make either showing.

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<sup>104</sup> May 28 Tr. Part 1, *supra* note 48, at 28:4-30:7.

<sup>105</sup> May 3 Tr., *supra* note 11, at 19:15-22:18.

<sup>106</sup> *United States v. Ford*, 514 F.3d 1047, 1051 (10th Cir. 2008); May 28 Tr. Part 2, docket no. 56, at 66:4-16. Disobedience of an order need not be “willful” to constitute civil contempt. See *Bad Ass Coffee Co. v. Bad Ass Coffee Ltd.*, 95 F. Supp. 2d 1252, 1256 (D. Utah 2000) (citing *Goluba v. Sch. Dist. of Ripon*, 45 F.3d 1035, 1037 (7th Cir. 1995)).

<sup>107</sup> May 28 Tr. Part 2, docket no. 56, at 66:4-16.

<sup>108</sup> *Id.* at 66:4-16.

<sup>109</sup> *S.E.C. v. Bliss*, 2015 WL 4877332, at \*8 (D. Utah 2015) (citing *Ford*, 517 F.3d at 1051).

Johnson and Respondents have a cavalier attitude of indifference to court orders and the requirements of the law.<sup>110</sup> It may be that Johnson and Respondents 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 Respondents may have been unduly deferential to Johnson or believed that he would handle this matter.<sup>111</sup> This is not the time for Johnson or Respondents to attempt to defer to a third party their duty to provide documents and information.<sup>112</sup>

Shepard, Johnson, and Respondents severely impaired the United States' efforts to effect the remedy this court ordered in response to Defendants' unlawful conduct: the receivership.<sup>113</sup> Their deliberate interference showed in the most stunning development during the time since the April 26, 2019 hearing: delivery to the Receiver of massive amounts of data. For example, computer files (including QuickBooks files) were apparently available to Johnson and Respondents since at least November 2015. These files would have been one obvious source of documents to comply with the Corrected Receivership Order, but somehow they were not produced until after the April 26, 2019 hearing.<sup>114</sup>

The fact that IAS and other Receivership Entities were run informally with sloppy or inadequate records is no excuse for Johnson and Respondents' failure to produce the records.<sup>115</sup> Johnson and Respondents must produce the records they have or may retrieve from third parties.

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<sup>110</sup> May 28 Tr. Part 2, [docket no. 56](#), at 64:5-23.

<sup>111</sup> *Id.* at 64:24-65:14.

<sup>112</sup> *Id.* at 64:24-65:14.

<sup>113</sup> *Id.* at 64:24-65:14.

<sup>114</sup> *Id.* at 65:15-66:3. This production of documents and information also clearly shows that Johnson and the Defendant entities he controlled deliberately impaired the orderly conduct of discovery in the underlying litigation. The United States requested things like QuickBooks files, but Johnson, IAS, and RaPower failed to produce them. See [United States' Opposition to Defendants' Proffer of Gary Peterson, docket no. 381, filed April 6, 2018](#); Docket Text Order, docket no. 382, filed April 10, 2018.

<sup>115</sup> May 28 Tr. Part 2, [docket no. 56](#), at 65:15-66:3.

If Johnson and Respondents no longer have the documents and are unable to obtain them, then Johnson and Respondents 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.

Shepard, Johnson, and Respondents are guilty of civil contempt.<sup>116</sup> 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.<sup>117</sup>

### ORDER

THEREFORE, IT IS HEREBY ORDERED that the Motion<sup>118</sup> is GRANTED on the terms set forth herein.

IT IS FURTHER HEREBY ORDERED as follows:

1. Shepard, Johnson, and Respondents are guilty of civil contempt of the Corrected Receivership Order.
2. Shepard purged his contempt as of May 23, 2019.
3. Johnson shall deliver to the Receiver, no later than June 28, 2019:
  - a. the undelivered aircraft logbook(s);
  - b. all issued shares of IAS that are Receivership Property or that are in his possession or control; and
  - c. any unissued shares of IAS.
4. Johnson shall produce all documents required by paragraph 24 of the Corrected Receivership Order and by paragraph 9, page 8, of the Affiliates Order on a rolling basis beginning June 21, 2019, and ending no later than July 8, 2019. If he no longer possesses or

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<sup>116</sup> *Id.* at 66:4-16.

<sup>117</sup> *See id.* at 70:13-18; *Ford*, 514 F.3d at 1052-53; *Bliss*, 2015 WL 4877332, at \*9.

<sup>118</sup> [Docket no. 559](#), filed January 29, 2019.

controls documents responsive to paragraph 24 of the Corrected Receivership Order or paragraph 9, page 8, of the Affiliates Order, then Johnson shall submit a declaration that complies with paragraph 24 as follows:

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

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

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

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

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

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

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

6. Johnson shall cooperate in every respect with his appointed counsel to comply with paragraphs 3 and 4 above, and to draft and finalize the declarations required by paragraphs 4 and 5 above. If Johnson fails to cooperate with his counsel, as required by this paragraph, then his counsel shall report his failure to cooperate to the United States and the Receiver within 24 hours of such failure.

7. Glenda Johnson shall produce all documents required by paragraph 24 of the Corrected Receivership Order and by paragraph 9, page 8, of the Affiliates Order on a rolling basis beginning June 21, 2019, and ending no later than July 8, 2019. If she no longer possesses or controls documents responsive to paragraph 24 of the Corrected Receivership Order or paragraph 9, page 8, of the Affiliates Order, then Glenda Johnson shall submit a declaration that complies with paragraph 24 as follows:

a. No later than June 21, 2019, Glenda Johnson shall e-mail a word-processing version of her draft declaration to the court, the Receiver, and the United States, and shall file a copy of the draft on the docket in this case;

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

c. No later than July 8, 2019, Glenda Johnson shall e-mail a word-processing version of her final declaration to the court, and shall file a copy of her final declaration on the docket in this case.

8. 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.”<sup>119</sup>

9. LaGrand Johnson shall produce all documents required by paragraph 24 of the Corrected Receivership Order and by paragraph 9, page 8, of the Affiliates Order on a rolling basis beginning June 21, 2019, and ending no later than July 8, 2019. If he no longer possesses or controls documents responsive to paragraph 24 of the Corrected Receivership Order or paragraph 9, page 8, of the Affiliates Order, then LaGrand Johnson shall submit a declaration that complies with paragraph 24 as follows:

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

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

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

10. Randle Johnson shall produce all documents required by paragraph 24 of the Corrected Receivership Order and by paragraph 9, page 8, of the Affiliates Order on a rolling basis beginning June 21, 2019, and ending no later than July 8, 2019. If he no longer possesses or controls documents responsive to paragraph 24 of the Corrected Receivership Order or

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<sup>119</sup> Order Regarding United States’ Motion for Order to Show Cause, *supra* note 78, ¶ 6.

paragraph 9, page 8, of the Affiliates Order, then Randale Johnson shall submit a declaration that complies with paragraph 24 as follows:

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

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

c. No later than July 8, 2019, Randale Johnson shall e-mail a word-processing version of his final declaration to the court, and shall file a copy of his final declaration on the docket in this case.

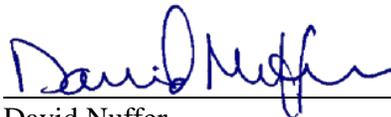
11. Shepard, Johnson, and Respondents are jointly and severally liable for the attorneys' fees and costs incurred by both the United States and the Receiver to enforce the Corrected Receivership Order and for all litigation related to the Motion, including the Receiver's fees.

a. Shepard, Johnson, and 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 June 25, 2019.

BY THE COURT:



David Nuffer  
United States District Judge

### **CERTIFICATE OF SERVICE**

I, Michael S. Lehr, hereby certify that on the 13th day of November, 2019, the foregoing was filed with the Court using its authorized electronic case filing portal and a copy of the foregoing was served to the following counsel of record via separate email:

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*Attorneys for Appellants*

I hereby certify that with respect to the following:

- (1) all required privacy redactions have been made per 10<sup>th</sup> Cir. R. 25.5:
- (2) if required to file additional hard copies, that the ECF submission is an exact copy of those documents.
- (3) the electronic submission was scanned for viruses with the most recent version of Webroot scanning program (up to date version), and is free of viruses.

Date: November 13, 2019

/s/ Michael S. Lehr