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

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff,</p> <p>vs.</p> <p>RAPOWER-3, LLC, INTERNATIONAL AUTOMATED SYSTEMS, INC., LTB1, LLC, R. GREGORY SHEPARD, and NELDON JOHNSON,</p> <p>Defendants.</p>	<p>Civil No. 2:15-cv-00828-DN-EJF</p> <p>OPPOSITION TO RECEIVER'S MOTION TO TRANSFER RELATED CASES PURSUANT TO DUCivR 83-2(g) (ECF 736)</p> <p>EVIDENTIARY HEARING REQUESTED</p> <p>Judge David Nuffer</p>
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COMES NOW Randale Johnson and LaGrand Johnson, and on behalf of other future defendants in actions filed by Receiver Wayne Klein, do hereby request an evidentiary hearing and objects to the Receiver's Motion to Transfer Related Cases. Judge Nuffer has already ruled that lawsuits filed by the receiver should be assigned to the same judge, to the extent possible. (See ECF 673, page 3). However, the lawsuits recently filed by the Receiver should not be transferred to Judge Nuffer and there is no justifiable reason under the rule why the cases should be consolidated with a single judge because of the wide diversity of factual allegations and ultimate proof that will be necessary on each of the claims.

DUCivR 83-2(g) governs the *transfer* of cases to a single judge (as opposed to consolidation) and provides as follows:

Whenever two or more related cases are pending before different judges of this court, any party to the later-filed case may file a motion and proposed order to transfer the case to the judge with the lower-numbered case. To determine whether the case should be transferred, the court may consider the following factors:

- (1) Whether the cases arise from the same or a closely related transaction or event;
- (2) Whether the cases involve substantially the same parties or property;
- (3) Whether the cases involve the same patent, trademark, or copyright;
- (4) Whether the cases call for a determination of the same or substantially related questions of law and fact;
- (5) Whether the cases would entail substantial duplication of labor or unnecessary court costs or delay if heard by different judges;
- (6) Whether there is risk of inconsistent verdicts or outcomes;
- (7) Whether the motion has been brought for an improper purpose; or
- (8) Other factors as provided by case law.

The motion to transfer shall be filed in the lower-numbered related case, and a notice of the motion shall be filed in the case in which transfer is sought. While the motion shall be decided by the judge assigned to the lower-numbered case, judges assigned to the cases will confer about the appropriateness of the requested transfer. The transfer of cases may also be addressed *sua sponte* by the court.

The Receiver's motion to transfer the cases to Judge Nuffer should be denied because Judge Nuffer has now moved to St. George, Utah, in the Southern Region of the Central District of Utah. Additionally, the cases the Receiver seeks to transfer do not qualify for transfer as they are not sufficiently related as contemplated by the local rule 83-2(g) and other parts of the rule are not met or sufficiently satisfied.

Each of the new lawsuits filed by the Receiver are unique as to parties and facts such that none of the cases should be transferred or consolidated. While the Receiver has filed the four cases identified in the motion, he has said he intends to file many more cases against a wide variety of parties and under very different fact situations. The only unifying circumstance in these cases is that they are somehow related to either International Automated Systems, Inc. or RaPower-3, LLC.

The Receiver's motion does not address a single fact of the separate cases that makes them "the same or a closely related transaction or event." Instead, he relies on conclusory statements that simply restate the elements of the rule. A review of the Complaints filed by the Receiver demonstrate that the cases are not related to any similar or closely related transactions or events but vary significantly in time, purpose and substance.

1. The Cases Sought to be Transferred do not Relate to the Same or Closely Related Transactions or Events.

We have prepared a table comparing the four lawsuits sought to be transferred by this motion. (See Exhibit 1 hereto). The cases are against brothers LaGrand Johnson and Randale Johnson, who are the sons of Defendant Neldon Johnson; Matthew Shepard, son of Defendant Greg Shepard; and Steven Bowers, a business associate of Matthew Shepard. The substance of each of the cases is to recover allegedly fraudulent transfers to each of the four defendants.

In the cases of LaGrand and Randale, the Receiver has identified hundreds of transactions totaling more than \$3,000,000 (See Exhibit 2 hereto containing 15 pages of transfers the Receiver is seeking to recover). The Receiver will have to show how **each** individual transaction falls within one of the 6 causes of action for which the Receiver claims gives him grounds to recover. That is literally thousands of elements of proof against these two individuals. Each is unique, separate and distinct. To allege that the transactions are the same or similar to the other cases or defendants is to ignore the Receiver's burdens of proof and persuasion.

The claim against Matthew Shepard is vastly different that the claims against the Johnsons. The proof behind the \$141,763.22 the Receiver claims were improperly received by Mr. Shepard will require vastly different proof than the claims against the Johnsons. The claims against Mr.

Bowers are even further removed from the same facts and circumstances of the Johnsons and are likewise distinct from the claims against Matthew Shepard.

All of the claims will involve unique timelines for discovery; unique detail for each transaction; unique considerations for the defendants' relationship to IAS and RaPower; unique defenses and unique counterclaims. For example, Mr. Bowers is involved in two or three transactions totaling \$17,300. The claims against him are wholly unrelated to the wages, commissions, reimbursements, benefits, and many other payments to the Johnsons and even the compensation paid to Matt Shepard for work he did on behalf of Shepard Global and IAS.

The cases are so far removed from each other that it would be unwise and not beneficial to any party to have them all assigned to the same judge.

2. The Cases Sought to be Transferred do not Involve Substantially the Same Parties or Property.

In addition to the foregoing, it should be obvious that the parties are unique. Further, as the Receiver begins to file more cases the distance between the new defendants and the Receivership Defendants will continue to broaden. For example, the Receiver has recently sent demand letters to many who were paid commissions for selling solar lenses. Those people are so far removed from the original named defendants that their cases should not be transferred to the same judge, but should be treated just like any other case. Each case should stand on its own merits.

Would the court entertain assigning all personal injury cases to the same judge because they are all car crashes and involve insurance companies? No. There should be no perceived tactical advantage to the Receiver to have all of his cases in front of the same judge. Rather, if that is the case, the public might perceive the transfer to be a source of bias on part of the court to avoid

consideration of the unique qualities of the individual defendants' cases. Group justice is not justice at all.

3. The Cases Sought to be Transferred call for the Determination of Similar Questions of Law, but Widely Varying Factual Situations.

The four complaints at issue with this motion are cut-and-paste versions of the same complaint with slight customization of the amounts claimed and some variation for Mr. Bowers who is neither a relation nor an insider. As such, the Receiver is claiming that the legal issues will be the same in each of the claims. This is generally true. The Receiver is seeking to unwind transactions under Utah's fraudulent conveyance statutes. However, the factual underpinnings of each case remain unique to each transaction and to each defendant. As stated, each of the hundreds of transactions the Receiver is claiming to be fraudulent conveyances will need to be scrutinized to decide if there was equivalent value given or done with intent to hinder, delay or defraud. Just like the court would not transfer all the personal injury cases to a single judge, the fact that the Receiver is preparing to file tens or hundreds of collection cases as fraudulent conveyances should not justify the transfer all of the Receiver's cases to the same judge.

4. The Cases Sought to be Transferred Would not Entail Duplication of Labor or Unnecessary Court Costs or Delay.

If the Receiver's newly filed cases are left with the judge to whom they are originally assigned will not entail duplication of labor or unnecessary court costs or delay. In fact, the opposite is true. Because the cases sought to be transferred are each unique as to facts and circumstances, to consolidate the cases before one judge will run the risk that each case is not decided on its own merits but is lumped together with other cases that have larger issues or more money at stake. For example, the Receiver is seeking recovery of over \$2 Million against LaGrand

Johnson but is only seeking \$17,300 from Mr. Bowers. Both defendants are entitled to the same due process and consideration of their individual claims and defenses. Yet, if they were to be transferred to Judge Nuffer or any other judge, they may not get that due process as they will be lumped into a single process and be consumed in the Receiver's push for resolution.

5. The Cases Sought to be Transferred do not Risk the Potential of Inconsistent Verdicts or Outcomes.

If the cases are not transferred, there is very little risk of inconsistent outcomes. This is so because each case is based on individual facts and circumstances that have no bearing on the decisions or outcomes of any other case. The Receiver's lawsuits are mostly collection cases where he is claiming that transfers were made from the original Receivership Defendants that are allegedly voidable as fraudulent conveyances under the concept of lack of "reasonable equivalent value." Each claimed transfer is unique. Each Defendant is unique. The court or possibly separately appointed juries in each case will be faced with the decision of whether each claimed transfer alleged by the Receiver was a fraudulent conveyance. There are no common transfers among the new defendants. Therefore, there can be no inconsistent findings or outcomes because of the unique circumstances of each transfer and each defendant.

6. The Cases Should not be Transferred to Judge Nuffer.

The Receiver wants to transfer these cases to Judge Nuffer because he has been very sympathetic to the government's position in this case. However, Judge Nuffer now resides in Washington County and is currently assigned all civil and criminal cases in the Southern Region of the Central Division of the District of Utah. See Exhibit 3 attached hereto.

Because Judge Nuffer is now based in St. George, the new cases filed by the Receiver should not be assigned to him. Each defendant is entitled to have his case decided on the merits

and not based on the history of the case and how the court feels about IAS or RaPower. Even if Judge Nuffer were available to oversee the new lawsuits, it would be unfair to the new litigants to have their cases tainted by Judge Nuffer's views of the original Receivership Defendants and the Receivership Entities.

This Court should deny the motion to transfer the cases to the same judge and leave the cases as assigned. If the Court is persuaded that the cases would be better served under the same judge, the cases should not be assigned to Judge Nuffer as he is no longer based in Salt Lake City and his familiarity with the underlying case does not put him in any better situation to decide the collection cases filed by the Receiver versus any other sitting Magistrate or Judge.

DATED this 8th day of August, 2019.

NELSON SNUFFER DAHLE & POULSEN

/s/ Steven R. Paul
Denver C. Snuffer, Jr.
Daniel B. Garriott
Steven R. Paul

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed using the court's CM/ECF filing system and that system sent notice of filing to all counsel and parties of record.

In addition, the foregoing was mailed or emailed as indicated to the following who are not registered with CM/ECF.

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/s/ Steven R. Paul
Attorneys for Defendants