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

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UNITED STATES OF AMERICA,	)	
	)	DEFENDANT NELDON JOHNSON’S
Plaintiff,	)	RESPONSE TO THE UNITED STATE’S
	)	MOTION FOR ADDITIONAL SANCTIONS
v.	)	
	)	Case No. 2:15-CV-828-DN
NELDON JOHNSON,	)	
	)	Hon. David Nuffer
Defendant.	)	Magistrate Judge Evelyn J. Furse

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The defendant, Neldon Johnson, by and through counsel, Edwin S. Wall, responds to the *United States’ Motion for Additional Sanctions Due to Continued Contempt of Neldon Johnson, Glenda Johnson, LaGrand Johnson and Randale Johnson* (“*Motion for Additional Sanctions,*” Doc. 754).

On May 28, 2019, the Court held a hearing and found Mr. Johnson in civil contempt of court. (*Min. Entry*, Doc. 685). Mr. Johnson was not detained at that time. Rather, he was afforded time to provide the Court with a declaration with the assistance of counsel to comply with the Court’s *Corrected Receivership Order*. *Id.* The Court entered it’s *Order of Contempt* on June 25, 2019, for violating the *Corrected Receivership Order*. (*Order of Contempt*, Doc. 701); *see also*, *Corrected Receivership Order*, (Doc. 491). The *Order of Contempt* requires Mr. Johnson submit a declaration that complies with paragraph 26 of the *Corrected Receivership*

*Order*. On August 2, 2019, Neldon Johnson filed his *Declaration*, based on the records and documents available to him with the assistance of counsel, setting forth in as much detail what he recalled relating to the information sought by the Court in the *Corrected Receivership Order*. (Doc. 738). The United States asserts Mr. Johnson's *Declaration* is insufficient and seeks "coercive incarceration" until he complies, in addition to various remedial sanctions.

These proceedings concern the Receiver locating and collecting assets and money obtained by RaPower-3, LLC ("RaPower"), International Automated Systems, Inc. ("IAS"), LTB1, LLC ("LTB1), R. Gregory Shephard ("Shephard") and Neldon Johnson. The proceedings are now expanded to include what have been termed *Affiliated Entities*. The corporate records are poorly organized, limited, and in many respects non-existent. As a consequence, piecing together the plethora of financial transactions depends on what Neldon Johnson and others can remember. The issue is whether Mr. Johnson is unable to recall or refusing to disclose the relevant information needed for the Receiver to locate and collect the assets and money.

The United States asserts in its *Motion for Additional Sacntions* Mr. Johnson is being 'defiant' and refusing to disclose the relevant information. As such, the government asks the court to enter coercive orders, including incarceration, to compel disclosure. Mr. Johnson is not being uncooperative nor refusing to disclose relevant information. Quite simply, he is unable to recall the requested information.

Mr. Johnson states, with assistance in preparing his *Declaration*, he was reminded of information and materials he had previously forgotten or failed to correctly recall when preparing

his prior declarations.<sup>1</sup> When Mr. Johnson was deposed he related on numerous occasions he was unable to recall or relate requested information, yet when presented with documents he is able to refresh his recollection and speak to them. He is 74 years old. There are numerous transactions in this matter, and Mr. Johnson is unable to recall and relate the relevant information regarding the purpose of the transaction, who the transaction was with or where the funds went. Although he does not recall numerous transactions, he does recall others. Coercive incarceration is appropriate when someone intentionally refuses to comply with the court's orders. However, in this case coercive incarceration is not justified because of Mr. Johnson's inability to recall and relate the desired information.

The United States, in its *Motion for Additional Sanctions*, seeks additional sanctions that are not punitive instead of coercive. Significantly, the Receiver has not joined the United States *Motion for Additional Sanctions* and does not seek further sanctions.

The first additional sanction requested by the United States is Mr. Johnson certify the payment of attorneys' fees for contempt came from non-Receiver's assets. *Motion for Additional Sanctions*, pg. 15. Mr. Johnson has been *pro se* in this matter, which he stated on record on April 2, 2018. *See, Minute Entry*, (Doc. 372). Present counsel is court appointed under the CJA Act, and not compensated through the Receiver. This first requested sanction is inapplicable to Mr. Johnson.

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<sup>1</sup>The United States seems to want Mr. Johnson's declaration to be something more than what he can recall and relate, but rather seeks an affirmation of a forensic corporate reconstruction of all the transactions for all of the entities. Though ideally Mr. Johnson's *Declaration* would provide a detailed "road map" regarding all transactions, his memory does not achieve such detail. It may be worth considering a forensic corporate reconstruction to assist the Receiver and Court.

The second requested sanction is Mr. Johnson deliver boxes 15-27 to the Receiver, and file a declaration explaining where the documents have been for nine months. Mr. Johnson has informed the Receiver the boxes have been located in the business office of RaPower for the last nine months, until Mr. Johnson took them to the offices of NSDP. Mr. Johnson has no objection to the Receiver possessing the boxes. Mr. Snuffer states NSDP seeks to retain the boxes but will provide the Receiver full access to them, or allow them to be copied in their entirety, if desired. Previous discussions with the Receiver indicated there was no present need for the boxes to be delivered to his office.

The third requested sanction is that Mr. Johnson and his counsel identify the parameters used to identify the responsive documents within NSDP files. Mr. Johnson and his present counsel were given access to the files at NSDP and manually searched the files for relevant documents based on what appeared to be the materials sought by the Court's *Corrected Receivership Order*.

The fourth requested sanction is that Mr. Johnson include a financial statement of all material assets he has ever owned or controlled. Mr. Johnson does not have a financial statement and one could only be created based on his memory. There is no reason to expect his memory would be any more helpful in making a financial statement than it has been in the course of these proceedings. The United States' request that he provide a financial statement for every asset he has owned or controlled since childhood during his 74 years of life is overly broad and purely punitive.

The fifth requested sanction is Mr. Johnson obtain the bank log for access to the empty safety deposit box from November 23, 2015, to the present. It can be obtained if the bank still

has it. There is no reason to believe the bank would not provide the log to the Receiver if requested and Mr. Johnson has no objection to it being provided.

So far as the United States seeks coercive monetary sanctions, Mr. Johnson has been divested of all assets and funds, beyond a subsistence. The imposition of a sanction depriving Mr. Johnson of his subsistence would be punitive. *See, International Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821, 829, 114 S.Ct. 2552, 2558 (1994)(discussing coercive and punitive fines in the context of civil or criminal contempt proceedings).

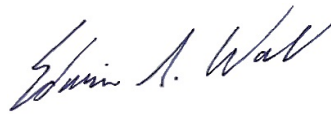
To the extent the United States seeks to have the court impose criminal contempts in this case, Mr. Johnson is entitled to a jury trial. *See, Black & White Taxicab & Transfer Co. v. Brown & Yellow Taxicab Transfer Co.*, 276 U.S. 581, 533, 48 S.Ct. 404 (1928); *see also, Bloom v. State of Ill.*, 391 U.S. 194, 198, 88 S.Ct. 1477, 1480-81 (1969). *See, Rule 42, Fed. R. Crim. P.*

### **CONCLUSION**

The Court should deny the United States' *Motion for Additional Sanctions* because, as explained, they do not constitute coercive sanctions. Rather, they seek additional information or actions to assist on behalf of the Receiver, who has not joined their motion. So far as the United States' seeks criminal contempts, the motion should be denied or Mr. Johnson afforded a public jury trial.

It remains for the Court to evaluate whether coercive incarceration stayed in the *Order of Contempt*. Mr. Johnson discloses in his *Declaration* the requested information, to the best of his memory, all the relevant information he knows which coercive incarceration cannot improve. Mr. Johnson should not be sent to jail as it will not improve his memory.

Respectfully submitted September 3, 2019.

A handwritten signature in cursive script that reads "Edwin S. Wall".

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Edwin S. Wall,  
Attorney for the Defendant

## CERTIFICATE OF SERVICE

I, Edwin S. Wall, hereby certify that on September 3, 2019, I served a copy of the attached, upon the counsel for the Plaintiff in this matter, by CM/ECF to all designated parties.

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