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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

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

Defendants.

Civil No. 2:15-cv-00828 DN

**UNITED STATES' STATEMENT OF
ISSUES FOR FEBRUARY 25, 2020
CONTEMPT HEARING**

Judge David Nuffer

Pursuant to paragraph 5 of the Court's Order Re: Issues for Show-Cause Hearing, dated February 19, 2020, the United States submits the following statement on the status of the issues to be heard. The Receiver has authorized the United States to confirm that he agrees with the contents of this statement.

There do not appear to be many, if any, *facts* in dispute about actions taken or not taken by Neldon Johnson, Glenda Johnson, LaGrand Johnson, and Randale Johnson. But counsel for the parties could not reach agreement on joint language by the time required for filing. Accordingly, all of the issues identified by the Court in its February 19 order are noted below as "disputed." For context, the United States sets forth a brief summary of the facts related to each in this statement. We also provide the attached appendix with citations to the factual record to date, to preview the factual proffer we anticipate making at the hearing on February 25. It is our understanding that counsel for Neldon Johnson and counsel for Glenda, LaGrand, and Randale Johnson will file responses to this statement.

Because the facts are generally undisputed, the questions presented for the Court's decision on the following issues, are 1) whether the Johnsons' actions, or failures to take action, constitute civil contempt and 2) if so, what civil sanctions are appropriate to compel their compliance and remedy the harm caused to the Receivership by their long-standing defiance.

- a. **Neldon Johnson, Glenda Johnson, LaGrand Johnson, and Randale Johnson's failure to obtain documents held by third parties, or to provide a declaration identifying documents they once had access to, their location, and efforts made to obtain them (as required by paragraph 24 of the Corrected Receivership Order): DISPUTED.**

Neldon Johnson, Glenda Johnson, LaGrand Johnson, and Randale Johnson did not comply with ¶ 24 of the Corrected Receivership Order. Since the date of the CRO, this Court has entered additional orders that they comply by May 17, 2019, July 8, 2019 (extended for Neldon Johnson until August 2, 2019), and December 5 & 6, 2019 with this provision of the CRO (in addition to the CRO itself).¹ The Johnsons do not dispute that they had notice of both the CRO and the Affiliates Order.²

The Johnsons have not provided documents to the Receiver, both 1) documents within their own possession and 2) documents held by third parties. Further, each of the Johnsons have not provided a declaration identifying documents they once had access to, the location of those documents, and efforts made to obtain them.

i. Neldon Johnson

After the May 17, 2019 deadline for compliance, Neldon Johnson filed with the Court a partial copy of a handwritten January 18, 2013 contract that he signed on behalf of Solstice, by which Solstice was to pay Glenda Johnson \$35,000,000 for 200 towers to be constructed. Neldon Johnson had not previously produced this partial copy to the Receiver. He submitted the contract

¹ *E.g.*, ECF No. 634 (minute order); [ECF No. 636](#); [ECF No. 676](#); [ECF No. 701 at 25-29](#); [ECF No. 725](#); [ECF No. 803](#).

² Jan. 23, 2020 Tr. 60:21-64:5; 112:21-115:21; 176:25-180:14; [ECF No. 714](#), [ECF No. 715](#), [ECF No. 716](#); [ECF No. 738](#).

in support of his argument to the Court that “Glenda Johnson is owed a total of \$35,000,000, plus a 10% markup.”³

The Court separately ordered Neldon Johnson to file a document with the Court, no later than noon December 1, 2019, specifying the scope of the QuickBooks records referenced in his compliance declaration.⁴ He did not comply with that order.

Neldon Johnson provided no additional documents by the December 5, 2019 deadline set by the Court. The testimony the United States will present to the Court on February 25, 2020⁵ relates to this aspect of Neldon Johnson’s failure to comply with ¶ 24 of the CRO. The United States may call up to three witnesses to present this evidence: Neldon Johnson, Millard County Deputy Sheriff Brandon Loe, and Wayne Klein.

Neldon Johnson did not identify efforts he made to recover documents held by third parties.⁶

ii. Glenda Johnson

Glenda Johnson did not produce documents responsive to ¶ 24, as applicable to the Affiliated Entities, that were within her possession. On October 11, 2019, after the May 17, 2019 deadline for compliance, Glenda Johnson filed with the Court a three-page copy of the

³ ECF No. 684 ¶ 4.

⁴ ECF No. 803 ¶ 6.

⁵ ECF No. 858 ¶ 3.

⁶ ECF No. 803 ¶ 2.

handwritten Solstice contract identified above in subparagraph i.⁷ The three-page copy of the handwritten Solstice contract had not been produced to the Receiver, yet Glenda Johnson filed it to support her assertion that she is owed \$35 million by Solstice, and all amounts she has received from Receivership Entities are part payment of the \$35 million owed to her.⁸

Also, in October 2019, Glenda Johnson received documents from a pipeline company requesting that the N.P. Johnson Family Limited Partnership (“NPJFLP”) grant an easement over real property in Texas.⁹ Glenda Johnson did not deliver documents to the Receiver relating to this easement request or the documents signed by LaGrand and Randale Johnson granting the easement, as required by ¶ 24 of the CRO and ¶ 9 of the Affiliates Order.¹⁰ Instead, she assisted LaGrand and Randale Johnson in signing and returning the signed documents purporting to grant an easement on behalf of the NPJFLP.

On December 5, 2019, Glenda Johnson produced to the Receiver responsive documents that had not been produced before. These included documents showing contracts with and lens sales by XSun and Solco I.¹¹

Glenda Johnson made no efforts to identify or recover documents held by third parties, and did not disclose by December 5, 2019 what efforts she had made to recover documents.

⁷ ECF No. 784-1, filed October 11, 2019. The Solstice contract was marked in the January 23, 2020 hearing as Receiver Ex. 2154.

⁸ ECF No. 784-1.

⁹ Because of the Affiliates Order, entered May 3, 2019, the NPJFLP and its assets, including the real property in Texas, are Receivership Property.

¹⁰ R. Ex. 2141.

¹¹ R. Ex. 2155-2158.

iii. LaGrand Johnson

LaGrand Johnson did not produce emails and other documents responsive to ¶ 24, as applicable to the Affiliated Entities, that were within his possession. He did not deliver to the Receiver documents, described in subparagraph ii above, that he signed on October 31, 2019, granting an easement on the Texas property titled in the name of NPJFLP.¹²

On November 4, 2019, LaGrand Johnson renewed the corporate status of IAS. He received a document from the Utah Division of Corporations about renewing IAS's corporate status. He did not provide that document to the Receiver. Instead, he renewed the corporate charter himself, claiming to have authority to act for IAS.¹³

On December 5, 2019, LaGrand Johnson produced to the Receiver responsive documents that had not been produced before. These included a list of credit card charges apparently reimbursed (or paid for) by Receivership Entities.

LaGrand Johnson made almost no effort to identify or recover documents held by third parties, and did not disclose by December 5, 2019 what efforts he had made to recover documents.

iv. Randale Johnson

Randale Johnson did not produce documents responsive to ¶ 24, as applicable to the Affiliated Entities, that were within his possession. He did not deliver to the Receiver

¹² R. Ex. 2141.

¹³ R. Ex. 2151.

documents, described in subparagraph ii above, that he signed on October 31, 2019, granting an easement on the Texas property titled in the name of NPJFLP.¹⁴

Randale Johnson made no efforts to identify or recover documents held by third parties, and did not disclose by December 5, 2019 what efforts he had made to recover documents.

b. Neldon Johnson’s failure to provide a financial statement setting forth the identity, value, and location of all assets of each Receivership Defendant (as required by paragraph 25(g) of the Corrected Receivership Order): DISPUTED.

Neldon Johnson has not provided a financial statement setting forth the identity, value, and location of all assets of each Receivership Defendant (as required by paragraph 25(g) of the Corrected Receivership Order). In his August 2, 2019 declaration, Neldon Johnson claimed he was unable to provide such a financial statement, asserting that he was unaware of any financial statement for any Receivership Defendant, Receivership Entity, or Affiliated Entity and that he did not “have and [was] not aware of such information as would enable [him] to prepare or provide [such] a financial statement.”¹⁵

Neldon Johnson did attach to his declaration a document labeled “Assets at Delta, Utah Property.”¹⁶ This “asset” list identifies two categories of assets: “Property owned by Glenda” and “Property owned by Glenda and used for Receivership Defendant.” While the asset list does specifically identify certain vehicles, tools, and equipment, Neldon Johnson asserts that these assets all belong to Glenda Johnson.

¹⁴ R. Ex. 2141.

¹⁵ ECF 738, filed August 2, 2019.

¹⁶ ECF 738-2, filed August 2, 2019. An identical document is at ECF 738-3.

In his January 23, 2020 deposition, Neldon Johnson disclosed the existence of four or five storage units that had not previously been disclosed.¹⁷

Through the Receiver's work – rather than through a disclosure by Neldon Johnson – the Receiver discovered that Neldon Johnson funneled more than \$2 million from IAS to Robert Johnson during trial in this matter. Then *after* the asset freeze was entered, Neldon Johnson directed Robert Johnson to give him \$500,000 of the \$2.3 million from IAS. Neldon Johnson delivered that \$500,000 to Wisdom Farms to create a turbine prototype. Because IAS money was used to create this equipment, it is Receivership Property. Neldon Johnson had input on the creation of the turbine prototype created by Wisdom Farms after entry of the CRO. Neldon Johnson took possession of the prototype on August 13, 2019 and maintains possession of the prototype (which is now located on property owned by Glenda Johnson in Payson, Utah). Neldon Johnson did not disclose information about the creation or location of the prototype before his January 23, 2020, deposition.

c. Neldon Johnson's failure to provide an accounting with documentation regarding all expenditures of more than \$1,000 (as required by paragraph 26 (introductory text) and 26(g) of the Corrected Receivership Order): DISPUTED.

Neldon Johnson did not provide an accounting with complete documentation regarding all expenditures of more than \$1,000 (as required by paragraph 26 (introductory text) and 26(g) of the Corrected Receivership Order) covering the period from January 1, 2005, to the present. Neldon Johnson's August 2, 2019, declaration included a 48-page exhibit purporting to identify

¹⁷ The Receiver does not know if these storage units are the same as the three containers identified in ECF 738-2, which, in any event, he identified as belonging to Glenda Johnson.

all expenditures greater than \$1,000 subsequent to June 26, 2012.¹⁸ The exhibit lists the date, check number, and amount of each expenditure, but only identifies a limited number of recipients of those funds. The exhibit provides only occasional explanations as to the purposes of the payments. No other documentation of those transactions was provided.

d. Neldon Johnson's failure to fully disclose all vehicles titled in the names of Receivership Defendants, or purchased with Receivership Defendants' funds (as required by paragraph 25(g) of the Corrected Receivership Order): DISPUTED.

Until December 13, 2019, Neldon Johnson failed to fully disclose all vehicles titled in the names of Receivership Defendants, or purchased with Receivership Defendants' funds (as required by paragraph 25(g) of the Corrected Receivership Order). The Receiver obtained information about such vehicles through his own research into DMV records. Counsel for Neldon Johnson cooperated fully with the Receiver on December 13, 2019 in identifying vehicles in the possession of Neldon or Glenda Johnson or listed on DMV records as belonging to Neldon Johnson. Neldon Johnson's counsel also identified to the Receiver vehicles (previously unknown to the Receiver), purportedly belong to Glenda Johnson. Receiver's Exhibit 2162 is the result of this collaborative effort.

At his January 23, 2020 deposition, Neldon Johnson testified that despite DMV records showing that he owns 18 of these vehicles, he does not own those vehicles. He testified that all those vehicles belong to Glenda Johnson and that he had transferred ownership of those vehicles to Glenda Johnson. Glenda Johnson claims ownership of an additional 18 vehicles that appear to

¹⁸ ECF 738-25, filed August 2, 2019.

be titled in her name. At her January 23, 2020, deposition, she testified that each of these vehicles, with one possible exception, were purchased with Receivership funds.¹⁹

Neldon Johnson failed to disclose the disposition of seven vehicles that DMV records show as titled in his name, but which he claims he no longer possesses.

e. Neldon Johnson and Glenda Johnson’s failure to turn over to the Receiver any of the vehicles mentioned in subparagraph 5.d, supra (as required by paragraphs 16 and 17 of the Corrected Receivership Order): DISPUTED.

Neldon Johnson and Glenda Johnson have not turned over to the Receiver any of the vehicles mentioned in paragraph d., supra (as required by paragraphs 16 and 17 of the Corrected Receivership Order).

f. Neldon Johnson’s failure to account for all funds received by the Receivership Defendants related to conduct alleged in the Complaint (as required by paragraph 26 (introductory text) and 26(f) of the Corrected Receivership Order): DISPUTED.

Neldon Johnson failed to account for all funds received by the Receivership Defendants related to conduct alleged in the Complaint (as required by paragraph 26 (introductory text) and 26(f) of the Corrected Receivership Order). In his August 2, 2019 declaration, he excused his failure to provide that accounting by stating that QuickBooks records on Glenda Johnson’s computer “are the primary record that reflects the purchases of solar lenses, commissions, . . . all purchases and sales, and all related banking transactions”²⁰ He further asserted that “Glenda

¹⁹ For the “possible exception,” the Receiver previously obtained documents from the dealer from whom the 2014 Chrysler Town and County was leased showing that Receivership funds were used for the lease down payment and found that subsequent lease payments were paid by Receivership Entities. Neldon Johnson confirmed this in his August 2, 2019 declaration. ECF 738 at p. 17 (¶ (6)(c)).

²⁰ ECF 738, filed August 2, 2019 at 23.

Johnson created and maintained those records and is th[e] only person I am aware of that can provide any further explanation as to any matters in those records.”²¹

The Receiver had the contents of the laptop of Glenda Johnson imaged and the contents downloaded onto a flash drive on May 23, 2019. Copies of that flash drive were delivered to counsel for both Glenda Johnson and Neldon Johnson on or around May 23, 2019 – more than two months before Neldon Johnson submitted his August 2, 2019 declaration.

The January 23, 2020 deposition of Randale Johnson revealed that Randale Johnson paid \$361,000 to Neldon Johnson between January 9, 2007 and February 5, 2008.²² Randale Johnson paid an additional \$460,000 to IAS between February 26, 2007 and September 8, 2010.²³ These funds derived from IAS stock that Randale Johnson sold. Neldon Johnson provided no accounting for the receipt of these funds, although documents about these payments were in the possession of his son, Randale Johnson, and were delivered to the Receiver on December 5, 2019.

LaGrand Johnson testified in his deposition that he paid \$1,144,000 to IAS between August 17, 2006 and October 5, 2010.²⁴ This money represented proceeds from IAS stock that LaGrand Johnson sold. Neldon Johnson provided no accounting for the receipt of these funds, although documents about these payments were in possession of his son, LaGrand Johnson, and the documents were delivered to the Receiver on April 29, 2019.

²¹ *Id.*

²² Jan. 32, 2020 Tr. 39:5-41:2.

²³ A summary of these payments is at R. Ex. 2145. Jan. 32, 2020 Tr. 43:6-44:12.

²⁴ Jan. 32, 2020 Tr. 90:2-91:14; R. Ex. 2152.

The Receiver's analysis of documents among the 31 boxes delivered to the Receiver in May 2019, documents from Pacific Stock Transfer Company, and other documents obtained by the Receiver, shows that Neldon Johnson received at least \$479,000 from proceeds of stock sales between 2007 and 2009, in addition to the \$361,000 in payments from Randale Johnson.

Neldon Johnson provided no information to the Receiver about the proceeds he earned from his personal sales of stock, proceeds paid to him from Randale Johnson's sale of stock, or amounts paid to IAS from sales of stock by Randale Johnson or LaGrand Johnson. Nor has he identified those as sources of funds for himself and IAS. The Receiver is left to speculate whether the proceeds paid directly to Neldon Johnson might have been used to purchase assets that have not been turned over to the Receiver or are deposited in bank accounts that have not been identified to the Receiver.²⁵

g. Neldon Johnson, Glenda Johnson, LaGrand Johnson, and Randale Johnson's failure to pay attorney fees and costs to the government and the Receiver (as required by the civil contempt order and related orders): DISPUTED.

Neldon Johnson, Glenda Johnson, LaGrand Johnson, and Randale Johnson failed to pay attorney's fees and costs to the government and the Receiver (as required by the civil contempt order and related orders). None of the Johnsons have paid any amounts awarded to the United States and the Receiver as a result of contempt findings. The depositions taken on January 23, 2020 revealed that non-Receivership funds are available for payment of the fees award. LaGrand Johnson testified that he earns funds from practicing medicine.²⁶

²⁵ This is of special concern in light of the multiple companies created in the country of Nevis.

²⁶ Jan. 32, 2020 Tr. 69:3-70:16.

h. Identifying any other allegedly contumacious actions or inactions addressed in the motion for additional sanctions or the status report, and their disputed or undisputed character.

i. Neldon Johnson: DISPUTED.

As described above in paragraph b., Neldon Johnson retrieved \$500,000 that he had IAS pay to Robert Johnson and gave the money to Wisdom Farms. Neldon Johnson then took possession of the prototype.

ii. Glenda Johnson: DISPUTED.

On December 19, 2019, Glenda Johnson filed a “Notice of Lien” on real properties in Millard County, Utah that are titled in her name but are subject to the asset freeze under the CRO.²⁷ Her admitted purpose in filing the lien was to hinder the Receivership. She granted the lien to a Nevis-based company called Anstram Energy. The manager of Anstram Energy is Preston Olson, a Salt Lake City attorney.²⁸ The lien filing recites that Glenda Johnson assigned all of her contract rights and obligations involving the Millard County properties to Anstram. Glenda Johnson testified that she knows little information about Anstram Energy.²⁹

Glenda Johnson testified that the verbal, not written, agreement calls for Anstram Energy to provide \$30 million worth of energy products in the future. Glenda Johnson could not identify what those energy products were or Anstram Energy’s ability to perform on their oral agreement.

²⁷ R. Ex. 2160.

²⁸ Olson testified at trial in this matter and is the petitioner in a case pending before the U.S. Tax Court. Docket No. 26469-14 and 21247-16. *See* ECF 837, filed January 15, 2020; Jan. 23, 2020, Tr. 162:2 – 162:12.

²⁹ *Id.* 156:25 – 157-8.

There are no invoices for work performed or product to be delivered.³⁰ Glenda Johnson testified the assignment was intended to prevent the Receiver from taking real property that is titled in her name.³¹

Glenda Johnson filed a similar lien with the Utah County Recorder on December 19, 2019 against her Payson home in the amount of \$2 million and a lien with the Howard County, Texas County Clerk on January 14, 2020 against the Texas property in the amount of \$10 million.³²

As described above in paragraph b., Glenda Johnson has possession of the turbine prototype created by Wisdom Farms on her property in Payson, Utah.

As described above in paragraph a.ii., Glenda Johnson assisted LaGrand and Randale Johnson in their attempt to receive revenue by granting an easement, on behalf of the NPJFLP, over real property in Texas that is Receivership Property.

iii. LaGrand Johnson: DISPUTED.

As described above in paragraph a.iii., LaGrand Johnson attempted to receive revenue by granting an easement, on behalf of the NPJFLP, over real property in Texas that is Receivership Property.

As described above in paragraph a.iii, LaGrand Johnson renewed the corporate charter of IAS on November 4, 2019, after he had been removed as an officer of IAS.

³⁰ *Id.* 157:9 – 157:24, 161:12 – 162:1, 164:20 – 165:1.

³¹ Jan. 23, 2020 Tr. 162:18 – 163:14.

³² R. Exs. 2170, 2171. The Receiver realized on Friday, February 21, 2020, that these additional liens had been filed.

iv. Randale Johnson: DISPUTED.

As described above in paragraph a.iv., Randale Johnson attempted to receive revenue by granting an easement, on behalf of the NPJFLP, over real property in Texas that is Receivership Property.

Randale Johnson used Receivership assets to conduct unauthorized “testing” on IAS equipment on November 14, 2018 – after the CRO placed those assets in the Receiver’s sole control.

v. Sources of funding to pay legal filings: DISPUTED.

The Receivership Defendants have not complied with the CRO requirement to identify the source of funds for court filings and submissions. During questioning in their January 23, 2020, depositions, all four Johnsons expressed ignorance of the sources of funds for filings and submissions by Nelson Snuffer on their behalf since entry of the CRO.

Dated: February 24, 2020

Respectfully submitted,

/s/ Erin Healy Gallagher

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**ATTORNEYS FOR THE
UNITED STATES**

CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2020, the foregoing JOINT STATEMENT OF ISSUES FOR FEBRUARY 25, 2020, CONTEMPT HEARING was electronically filed with the Clerk of the Court through the CM/ECF system, which sent notice of the electronic filing to all counsel of record.

I also certify that, on the same date and consistent with his written consent, I served the same documents by email upon:

R. Gregory Shepard
greg@rapower3.com.

Defendant and respondent pro se

/s/ Erin Healy Gallagher
ERIN HEALY GALLAGHER
Trial Attorney