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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' OPPOSITION TO
SHEPARD'S MOTION TO LIFT
ASSET FREEZE AS TO CERTAIN
ASSETS**

Judge David Nuffer
Magistrate Judge Evelyn J. Furse

The United States proved at trial that R. Gregory Shepard's ill-gotten gains from the unlawful solar energy scheme amounted to more than \$700,000.¹ Because of Defendants' attempts to place their assets out of reach of the forthcoming disgorgement order, on June 22, 2018, the United States filed its second motion to freeze Defendants' assets and appoint a receiver.² On August 22, 2018, the Court granted that motion ("the Order").³ The Court froze Defendants' assets and stated that it would appoint a receiver after further proceedings. Among other things, the Order established that "[t]he assets of Receivership Defendant[] . . . R. Gregory Shepard shall be frozen but [he] shall be allowed to withdraw on a monthly basis, monies for basic living expenses based on the IRS national standards."⁴ The sums that may be withdrawn are \$1,806 for housing and utilities;⁵ \$1,202 for food, clothing, and other expenses;⁶ \$114 in out of pocket health costs;⁷ and \$497 for transportation.⁸ The maximum that may be withdrawn is the

¹ [ECF No. 444 at 8](#).

² [ECF No. 414](#).

³ [ECF No. 444](#).

⁴ [ECF No. 444](#) at 28.

⁵ See Utah – Local Standards: Housing & Utilities, available at <https://www.irs.gov/businesses/small-businesses-self-employed/utah-local-standards-housing-and-utilities> (last accessed Oct. 2, 2018) (\$1,806.00 is the standard for a two-person household in Salt Lake County).

⁶ See National Standards: Food, Clothing and Other Items, available at <https://www.irs.gov/businesses/small-businesses-self-employed/national-standards-food-clothing-and-other-items> (last accessed Oct. 2, 2018) (\$1,202.00 is the standard for a two-person household).

⁷ See National Standards: Out-of-Pocket Health Care, available at <https://www.irs.gov/businesses/small-businesses-self-employed/national-standards-out-of-pocket-health-care> (last accessed Oct. 2, 2018) (\$114.00 is the standard for a person 65 years and older).

⁸ See Local Standards: Transportation, available at <https://www.irs.gov/businesses/small-businesses-self-employed/local-standards-transportation> (last accessed Oct. 2, 2018) (ownership costs for one car are \$497).

total of these numbers: \$3,619.⁹ All of these allowances presume a two-person household of R. Gregory Shepard and his wife, Diana Shepard. When a receiver is appointed, Shepard may apply to the receiver for money to cover these expenditures and must account to the receiver for amounts actually spent.¹⁰

This Court has not yet appointed a receiver. On September 28, 2018, Shepard filed a motion asking this Court to lift the asset freeze with respect to certain assets: a monthly payment of \$1,000 from Bigger, Faster, Stronger and an Allianz annuity that pays \$431 per month.¹¹ He also identified an unnamed annuity that the payor has not yet frozen, which continues to pay him \$480 per month.¹² These payments total \$1,911 per month. Without far more information about Shepard's financial condition, this Court should deny the motion without prejudice until he can supply information and supporting documents that provide a full financial picture for him and his wife.

I. Shepard has not provided enough information to lift the freeze in any respect at this time.

Shepard did not provide a complete accounting of his finances, under penalty of perjury, so this Court cannot make an informed decision on his motion. Without a complete accounting, the motion should be denied. Shepard may have other assets or income streams that he is using or could use for his living expenses. For example, the motion states that he has "limited sources

⁹ [ECF No. 444 at 28](#).

¹⁰ [ECF No. 444 at 28](#).

¹¹ [ECF No. 462](#); [ECF No. 462-1](#) ¶¶ 2-3, 9.

¹² Compare [ECF No. 462-1](#) ¶¶ 2-3, 9 with *id.* ¶ 6.

of income,”¹³ but he does not identify them. He does not affirm that the income sources in his declaration are the *only* income sources he has.

Further, the motion does not identify any assets that Shepard owns, directly or indirectly. Perhaps most important, the motion does not identify the money Shepard has made over the years through the RaPower-3 scam – more than \$700,000¹⁴ – or explain what he did with those funds. The motion does not address whether money already in Shepard’s bank accounts could pay his living expenses, or are paying his living expenses despite the asset freeze. For example, he appears to have access to his Social Security payment and an annuity payment of \$480 despite the freeze. The motion does not address the fact that in March 2017, while this lawsuit (and its potential disgorgement award against him) was pending, R. Gregory Shepard transferred his property right in his house to a trust in his wife’s name.¹⁵ At the same time, property records suggest he refinanced his house to take out a substantial amount of equity.¹⁶ The motion does not state what he did with these funds.

This Court has already found that Shepard’s statements – even those made under oath – cannot be trusted. Shepard was a key promoter in “a massive fraud” on lens customers, “a hoax funded by the American taxpayer through defendants’ deceptive advocacy of abuse of the tax

¹³ [ECF No. 462 at 1](#).

¹⁴ *See* T. 1596:9-1598:21.

¹⁵ Pl. Exs. 914 ([ECF No. 414-1](#)), 915 ([ECF No. 414-2](#)), 916 ([ECF No. 414-3](#)); *see also* U.C.A. § 78B-5-503(7); U.C.A. § 78B-5-512.

¹⁶ *See* Pl. Ex. 915 ([ECF No. 414-2](#)) (securing a mortgage of \$315,000) *and* Pl. Ex. 924 “Full Reconveyance” dated April 12, 2017 (reflecting full payment of mortgage originated on March 15, 2002 for \$224,967).

laws.”¹⁷ Shepard, according to the Court, was purposefully dishonest and engaged in a “deliberate attempt to mislead the public” when, among other things, he “misrepresented” memoranda written by tax lawyers to customers.¹⁸ “Shepard was key in his literature in preventing any careful reading of the Kirton McConkie and Anderson opinions by his overstatement of their contents in letters, marketing materials and on the website. *He was repeatedly confronted with the truth but rejected it and continued to advocate the falsehoods about the project and its tax implications.*”¹⁹ Shepard has given this Court no reason to simply accept his word as true, especially when he omits important information like he has in this motion and declaration. There is no reason for this Court to unfreeze the BFS or Allianz payments when Shepard has not made a full accounting of his assets and income and signed such accounting under penalty of perjury.

II. The information Shepard did provide shows that the release he requests should be denied.

Even if Shepard provides a full accounting, the information he used to support his motion shows that this Court should not lift the asset freeze as he requests. As an initial matter, this Court should count Shepard’s Social Security payment of \$1,923 per month toward the total \$3,619 monthly living allowance the Order permits. The Social Security payment is intended to support the same expenses that the living allowance does: housing, food, clothing, transportation, etc. Further, the monthly living allowance established by the Order is based on a two-person

¹⁷ T. 2515:5-9, 2516:2-4.

¹⁸ T. 2517:18-2518:4.

¹⁹ T. 2519:2-7 (emphasis added).

household: R. Gregory Shepard and Diana Shepard. If Diana Shepard's expenses included in the amount of the living allowance permitted by the Order, her Social Security income²⁰ should be counted toward that amount, just like Shepard's.²¹

Therefore, even if this Court were inclined to grant Shepard's motion (which, for the reasons stated above, is not warranted without more information from Shepard), the motion should be granted only for the amount that makes up the difference between the Shepards' combined Social Security income and the total amount of the Order's monthly living allowance for them. For example, the total monthly living allowance is \$3,619. Subtracting only Shepard's Social Security income of \$1,923 from that amount leaves \$1,696 of the monthly living allowance to come out of receivership assets.²² In his motion, Shepard seeks free access to *more* than the \$1,696 difference between his Social Security income and the maximum monthly living allowance established by the order: \$1,911 in total monthly payments from BFS, Allianz, and the unnamed annuity.

Shepard claims expenses for more than just himself and his wife, however, and asks the Court to lift the freeze in part based on those expenses.²³ Specifically, he wants money to pay expenses for his 94-year-old mother-in-law and for Matthew Shepard's family of five, all of

²⁰ See [ECF No. 462-1](#) ¶ 6 (noting that Diana Shepard receives Social Security income, but not identifying the amount).

²¹ Alternatively, this Court could decide to reduce the monthly living allowance to account only for a one-person household of R. Gregory Shepard. In this scenario, only R. Gregory Shepard's Social Security income should count toward the monthly living allowance.

²² Including Diana Shepard's Social Security payment would reduce this remainder still further. We have not included that calculation here because Shepard did not state how much Diana Shepard's monthly Social Security payment is.

²³ [ECF No. 462-1](#) ¶¶ 5-6.

whom live with Shepard. Expenses for his mother-in-law may be warranted, but Shepard has provided no concrete information about what those actual expenses may be, or how the monthly living allowance might be adapted to include her. And costs related to Matthew Shepard – an enthusiastic co-promoter, along with Shepard, of the tax fraud at issue in this case²⁴ – and his family have no place in the analysis of whether certain of Shepard’s income sources should be unfrozen. Shepard has no legal obligation to pay for Matthew Shepard’s family expenses. Rather, Shepard owes more than \$700,000 in disgorgement from his years of fraud on the United States Treasury. This Court should not permit Shepard to continue to funnel money to Matthew Shepard at the expense of the United States.²⁵

III. Conclusion

For all of these reasons, this Court should deny Shepard’s motion without prejudice to his ability to file a new motion with sufficient information, submitted under penalty of perjury, for this Court to make an informed decision about whether to release certain assets from the freeze.

²⁴ *E.g.*, T. 1372:3-1399:18, 1467:12-1504:13.

²⁵ *See* T. 1598:23-1590:6, 1592:1-1595:12.

Dated: October 3, 2018

Respectfully submitted,

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**ATTORNEYS FOR THE
UNITED STATES**

CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2018 the foregoing UNITED STATES' OPPOSITION TO SHEPARD'S MOTION TO LIFT ASSET FREEZE AS TO CERTAIN ASSETS and its supporting documents were electronically filed with the Clerk of the Court through the CM/ECF system, which sent notice of the electronic filing to all counsel of record.

/s/ Erin Healy Gallagher

ERIN HEALY GALLAGHER

Trial Attorney