Denver C. Snuffer, Jr. (#3032) denversnuffer@gmail.com
Steven R. Paul (#7423) spaul@nsdplaw.com
Daniel B. Garriott (#9444) dbgarriott@msn.com
NELSON, SNUFFER, DAHLE & POULSEN
10885 South State Street
Sandy, Utah 84070
Telephone: (801) 576-1400
Facsimile: (801) 576-1960

Attorneys for Glenda Johnson, LaGrand Johnson and Randale Johnson

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, and NELDON JOHNSON, Defendants.	Civil No. 2:15-cv-00828-DN-EJF **OPPOSITION TO THE UNITED STATES' MOTION FOR ADDITIONAL SANCTIONS (ECF 754)** **EVIDENTIARY HEARING REQUESTED** Judge David Nuffer

COMES NOW Glenda Johnson, Randale Johnson and LaGrand Johnson and respond to the United States' motion for additional sanctions alleging continued contempt of Neldon Johnson, Glenda Johnson, LaGrand Johnson and Randale Johnson (ECF 754).

The Motion was filed by the United States, and not by the Receiver. The Receiver has not joined in the Motion. The United States' Motion makes little sense to have been filed in this case when the Receiver has currently pending lawsuits against Randale Johnson (Civil No. 2:19-cv-00532CW), LaGrand Johnson (Civil No. 2:19-cv-00534) and Glenda Johnson (Civil No. 2:19-cv-

00625-RJS), in which any issue involving them (including documents needed from them for the Receiver's claims) can be addressed through motion practice and the normal channels of discovery. The United States' Motion appears to duplicate effort to seek information from these parties when the Receiver, if he really needs or wants this information, will require information in the cases filed by him.

At the Receiver's request, the Court entered an Order (ECF 673), which permits lawsuits to be filed against "family members and other insiders, who received monies or assets from Receivership Defendants" which resulted in the suits against Randale, LaGrand and Mrs. Johnson. The United States is bypassing the Receiver's effort in these other matters and should not be raising these issues when the Receiver is the real party in interest at this point.

The United States alleges ongoing contempt based on the following:

> The first draft of declarations filed by LaGrand and Randale Johnson did not meet their obligations (and Glenda Johnson failed to file a first draft declaration), as the response and redline of the United States and the Receiver showed. Glenda, LaGrand and Randale Johnson submitted final declarations with some critical deficiencies identified in our response and redline. They still fail to account for all documents they once saw or had access to, as required by ¶ 24, for all Receivership Entities, including the Affiliated Entities; they continue to claim they have turned over all documents relevant to ¶ 24 without identifying those documents with specificity; they still fail to account for every document in NSDP files that is responsive to their obligations under ¶ 24, and they continue to attempt to shift their burden of compliance on to Neldon Johnson. Further, LaGrand Johnson did not recover "financial documents" or explain where they are as required by ¶ 24.

See ECF 754 at page 9.

These parties deny there is any basis for a finding of further contempt against them as they have been fully cooperative with the Receiver and have complied with the Court's directive and the language of ¶ 24 of the Receivership Order. These parties continue to cooperate with the Receiver and provide all that is asked of them that is within their control and ability. Unlike the Receiver, the United States has taken the position that much more effort is required, which these

parties believe requires an unattainable level of disclosure identifying information that does not exist, or has little or no utility for the Receiver. The United States appears to be fishing for what information *might* exist, when these parties have already given what is *actually* in their possession or control, and have certified as much under oath. Counsel's personal belief that more information exists that has not been provided is not a sufficient basis for a finding of ongoing contempt.

The United States seeks the identification of "all documents [these parties] once saw or had access to". This demand and expectation exceeds both the language of ¶ 24 as well as its intent. ¶ 24 requires these parties to "preserve and turn over" information in their possession and for those "documents and records" no longer within their possession, they are required to "provide information to the Receiver identifying the records, the persons in control of the records, and efforts undertaken to recover the records." This they have done to the best of their understanding and belief.

As part of the United States expansive demands, they provided a matrix of documentary categories and asked for specific responses involving hundreds of categories of possible documents. The United States is apparently asking to have these parties identify documents and records theses parties have never had in their actual physical possession or control and/or that they did not actually review or have access to. When these parties interpret their obligation, they understand that "all documents [these parties] once saw" requires that they substantively reviewed and know something of the contents. Not merely records they may have had authority over or believed existed in a file or a box but never looked at, inspected, read or could describe. Records they never read, did not prepare, or know anything about, were kept in file cabinets and boxes, but what they were or how many they were is unknown to these parties.

These are the same documents and records that Glenda Johnson had access to and which were all delivered to the Receiver. The United States' matrix sets a level of demands on these parties to provide information that exceeds the requirement of ¶ 24. Glenda Johnson delivered boxes of documents to the Receiver, and that complied with her obligation under ¶ 24. Apparently, the United States seeks to have a response about every miscellaneous document, if these parties understand their burdensome request, over which these parties may have had some responsibility or oversight. However, to the best of their understanding, if they were to attempt to respond by filling in the matrix, it would occupy many pages restating that they do not know anything about the document, that it is not in their possession or control, and that, if any such document exists and has not been turned over to the Receiver, Neldon Johnson was likely the one who last had control and they have done nothing to recover the document as they do not have the power or authority to do so.

To the best of these parties' understanding, the declarations they filed with the Court complies with the Order and the Court's directive and identifies to the very best of their ability the information they have ever had in their possession and what documents and records they are aware of; who has those records (or where they may be); and what efforts have been undertaken to recover those records. They believe that is the extent of their obligation under ¶24 and, in cooperation with the Receiver, these parties have provided the information they have. So far as they understand, that has been satisfactory to the Receiver. As of this date, these parties and their counsel are not aware of a single inquiry from the Receiver asking for information that is within the ambit of knowledge of any of these parties that has been refused.

These parties note that the motion is made by the United States and not the Receiver. The Receiver has been in regular contact with these parties and with their counsel, and there are no

outstanding requests for information or documents we currently know of from the Receiver. Nothing in the red-line declarations the United States demanded appears to be helpful to the Receiver on a practical level to help him carry out his tasks.

These parties remain willing to cooperate with the Receiver to provide relevant and helpful information within their ability, but do not believe providing unhelpful responses to cumbersome and oppressive demands is required by the Order, is relevant to the Receiver's task, or is helpful. If the Court wants something more to be provided than has been submitted, we would ask the Court to consider the practical limits of the parties' abilities and the limited or nonexistent usefulness of lengthy details about documents these parties do not possess and have perhaps only seen in boxes or in file cabinets in passing.

We join in the concern expressed in the response of Edwin Wall on behalf of Neldon Johnson about the propriety of a jury in deciding facts involving contempt. See *Mine Workers v. Bagwell*, 512 U.S. 821 (1994).

DATED this 11th day of September, 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.

Greg Shepard greg@rapower3.com

/s/ Steven R. Paul
Attorneys for Glenda Johnson, LaGrand Johnson and Randale Johnson