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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

**NELDON JOHNSON'S POSITION AS
TO UNITED STATES' STATEMENT
OF ISSUES FOR JANUARY 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 following is Neldon Johnson's position predicated on the United States' Statement regarding the status of the issues to be heard:

- a. **The United States asserts 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), which Neldon Johnson contests:**

The United States asserts 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 Affiliated Orders.

The Johnsons assert they have, to the best of their ability, provided documents to the Receiver, both 1) documents within their own possession and 2) documents held by third parties. Further, each of the Johnsons' assert they have provided a declaration identifying documents they once had access to, the location of those documents, and efforts made to obtain them. The United States dispute the Johnsons' assertions.

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.

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.² He submitted the contract 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 timely comply with that order.

Neldon Johnson provided no additional documents by the December 5, 2019 deadline set by the Court. The United States and the Receiver state that the testimony they 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 asserts he has, to the best of his ability, made efforts to recover documents held by third parties, which the United States disputes.⁶

² ECF 684-2, 684-3.

³ ECF No. 684 ¶ 4.

⁴ ECF No. 803 ¶ 6.

⁵ ECF No. 858 ¶ 3.

⁶ ECF No. 803 ¶ 2.

b. The United States asserts 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), which Neldon Johnson contests:

The United States contends 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 asserts he was unable to provide such a financial statement, and further asserts 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.”⁷

Neldon Johnson did attach to his declaration a document labeled “Assets at Delta, Utah Property.”⁸ 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.

In his January 23, 2020 deposition, Neldon Johnson disclosed the existence of four or five storage units that had not previously been disclosed.⁹

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

⁷ ECF 738, filed August 2, 2019.

⁸ ECF 738-2, filed August 2, 2019. An identical document is at ECF 738-3.

⁹ 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.

Johnson directed Robert Johnson to give him \$500,000 of the \$2 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. The United States asserts 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), which Neldon Johnson contests:

Neldon Johnson asserts he provided, to the best of his ability, 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 he asserts identify all expenditures greater than \$1,000 subsequent to June 26, 2012.¹⁰ The exhibit lists the date, check number, and amount of each expenditure, but only identifies a limited number of recipients of those funds, which represent those recipients he recalls to the best of his ability. The exhibit provides only occasional explanations as to the purposes of the payments. No other documentation of those transactions was provided.

¹⁰ ECF 738-25, filed August 2, 2019.

d. The United States asserts 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), which Neldon Johnson contests:

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 18 vehicles that appear to 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.¹¹

¹¹ 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)).

Neldon Johnson has been unable to recall, and therefore disclose, the disposition of seven vehicles that DMV records show as titled in his name, but which he claims he no longer possesses.

- e. The United States asserts 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), which Neldon Johnson contests:**

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). Neldon Johnson maintains those vehicles are available at the locations identified and known to him, should the receiver desire to obtain them.

- f. The United States asserts 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), which Neldon Johnson contests:**

The United States asserts 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, Neldon Johnson asserted the accounting is contained in 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”¹² He further

¹² ECF 738, filed August 2, 2019 at 23.

asserted that “Glenda 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.”¹³

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. Randale Johnson paid an additional \$460,000 to IAS between February 26, 2007 and September 8, 2010.¹⁴ These funds were 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, 2010.¹⁵ 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.

¹³ *Id.*

¹⁴ A summary of these payments is at R. Ex. 2145.

¹⁵ R. 2152.

The Receiver's analysis of documents among the 31 boxes delivered to the Receiver in May 2019, documents from Pacific Stock Transfer Company,¹⁶ 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.

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 claims they are 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.

g. The United States asserts 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), which Neldon Johnson contests:

The United States' assertion 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 the practice of

medicine. Neldon Johnson asserts he has no resources by which he can pay the amounts awarded by the Court.

h. The United States asserts other allegedly contumacious actions or inactions addressed in the motion for additional sanctions or the status report, and their disputed or undisputed character, which Neldon Johnson contests.

i. Neldon Johnson:

The United States asserts, 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. Sources of funding to pay legal filings, which Neldon Johnson contests:

The United States assert 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/ Edwin S. Wall

Edwin S. Wall

Attorney for Neldon Johnson

CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2020, the foregoing 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/ Edwin S. Wall
Edwin S. Wall
Attorney for Neldon Johnson