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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 **CIVIL CONTEMPT ORDER RE: NELDON JOHNSON, GLENDA JOHNSON, LAGRAND JOHNSON, AND RANDALE JOHNSON** District Judge David Nuffer

After the United States filed its initial Motion for Order to Show Cause[1] and hearings on April 26, May 3, and May 28, 2019, this Court entered an order holding Neldon Johnson, Glenda Johnson, LaGrand Johnson, and Randale Johnson ("the Johnsons") in civil contempt for violating the Corrected Receivership Order ("CRO") in this matter (the "Contempt Order").[2] The CRO requires Defendant Neldon Johnson, and others working with him like Glenda, LaGrand, and Randale Johnson, to provide documents and information to, and cooperate with, the Receiver. Neldon Johnson must also turn over all of his assets to the Receiver. Glenda, LaGrand, and Randale Johnson must turn over to the Receiver any Receivership Property in their possession, custody, or control. The Contempt Order detailed the Johnsons' failures to comply with the CRO as of June 25, 2019, and made painstaking efforts to compel their obedience with remedies short of coercive incarceration.[3]

On August 21, 2019, the United States moved for additional civil contempt sanctions, arguing that the Johnsons continued to defy their obligations to provide documents and information to the Receiver.[4] On December 30, 2019, the Court ordered the United States, in conjunction with the Receiver, to file a status report regarding the issues raised in the August 21 motion for additional sanctions, including an update on "assets, documents, and information that have been provided" by the Johnsons since the motion became ripe.[5] The United States reported

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[1] ECF No. 559.

[2] ECF No. 701; ECF No. 491.

[3] ECF No. 701.

[4] ECF No. 754.

[5] ECF No. 828.

the status of the Johnsons' production of documents and information, and also identified additional material contumacious conduct by the Johnsons since the Court last held them in contempt.[6] On January 23 and February 25, 2020, the Court held evidentiary hearings on the motion for additional sanctions and the supplemental information in the status report.[7] Based on the motion for additional sanctions, the arguments of the parties, prior submissions to the Court, the evidence presented at prior hearings on April 26, May 3, and May 28, 2019, and evidence presented on January 23 and February 25, 2020, the United States' motion is GRANTED as set forth below and the following findings are entered.

I. Findings of Fact

1. In June 2019, this Court held each of the Johnsons in civil contempt for their continued defiance of the CRO,[8] "stunning contempt" in the case of Neldon Johnson.[9] But the Court indicated the importance of having the receivership go forward. Therefore, the Court identified certain specific failures by the Johnsons and ordered a procedure intended to help them fix those failures, come into compliance with this Court's orders, and purge their contempt.[10] As

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[6] ECF No. 836.

[7] *See* ECF No. 850 (minute entry for proceedings on January 23, 2020); ECF No. 858 (identifying the issues to be heard on Feb. 25, 2020); ECF No. 862 (United States' statement of issues for Feb. 25 hearing, with appendix at ECF No. 862-1): ECF No. 860 (Neldon Johnson's response to the United States' statement of issues); ECF No. 861 (Glenda, LaGrand, and Randale Johnsons' response to the United States' statement of issues); ECF No. 863 (minute entry for proceedings on Feb. 25); ECF No. 864 (exhibit and witness list for contempt hearings from April 26, 2019 through Feb. 25, 2020).

[8] *See generally* ECF No. 701.

[9] May 28, 2019 Tr. part 2, 28:23-29:2.

[10] This opinion and order presumes the reader's familiarity that procedure, laid out in ECF No. 701; May 28, 2019 Tr. part 2, 28:23-29:10.

of July 2019, the Court, the United States, and the Receiver had all carefully explained to the Johnsons how to meet their obligations.[11]

2. But the clear and convincing evidence[12] shows that the Johnsons spurned the Court's invitation to purge their contempt and come into compliance. Instead, they actively discarded and intentionally withheld responsive documents and information from the Receiver. They failed to produce responsive documents that remained in their possession or control and failed to adequately identify documents no longer in their possession, but which they possessed or controlled in the past. And each of the Johnsons has attempted to take, or has taken control over, or otherwise interfered with, Receivership Property. This behavior demonstrates their overt contempt for this Court and its orders.

3. None of the Johnsons are credible.[13]

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[11] *E.g.*, ECF No. 701, ECF No. 705-1; ECF No. 733-1.

[12] *F.T.C. v. Kuykendall*, 371 F.3d 745, 756 (10th Cir. 2004).

[13] Feb. 25, 2020 Tr. 98:4-99:11, 107:19-108:2.

A. The Johnsons defied their obligations to disclose documents and information imposed by the Corrected Receivership Order, the Affiliates Order, and the Contempt Order.

1. Neldon, Glenda, LaGrand, and Randale Johnson discarded or improperly withheld responsive documents in their possession.

4. As of February 25, 2020, Neldon Johnson, Glenda Johnson, LaGrand Johnson, and Randale Johnson have refused to comply with ¶ 24 of the Corrected Receivership Order and the Contempt Order.[14] That provision requires them to turn over to the Receiver

> forthwith all paper and electronic information of, or relating to, the Receivership Defendants or Receivership Property; such information shall include, but is not limited to: books, records, documents, accounts, stock certificates, intellectual property records, evidence of intellectual property rights, computer and electronic records, and all other instruments and papers."[15]

5. The "Affiliates Order," entered on May 3, 2019, made 13 additional entities ("Affiliated Entities") part of the Receivership Estate and imposed the requirements of the CRO – including ¶ 24 – on the Johnsons with respect to the Affiliated Entities.[16] The Johnsons do not dispute that they had notice of both the CRO and the Affiliates Order.[17]

6. Since the date of the CRO, this Court has entered numerous additional orders requiring the Johnsons to comply with this provision of the CRO by May 17, 2019, July 8, 2019 (extended for Neldon Johnson until August 2, 2019), and December 5 & 6, 2019.[18]

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[14] Feb. 25, 2020 Tr. 106:22-107:2.

[15] ECF No. 444 at 20-21; ECF No. 491 ¶¶ 14-17, 24.

[16] ECF No. 636.

[17] 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. Feb. 25, 2020 Tr. 106:22-108:2.

[18] *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. Feb. 25, 2020 Tr.107:2-107:7.

a. Neldon Johnson and Glenda Johnson discarded documents responsive to the Corrected Receivership Order, Affiliates Order, and Contempt Order.

7. On January 23, 2020, Neldon and Glenda Johnson each testified that, to his and her knowledge, no documents responsive to the CRO or Affiliates Order had been destroyed or discarded since October 31, 2018.[19] On February 25, 2020, Neldon Johnson testified that he had produced to the Receiver all responsive documents he had found.[20] He recommitted to his sworn statement, in his August 2, 2019 declaration, that all responsive documents in his possession had been turned over.[21] He denied having discovered, since August 2, 2019, additional responsive documents in his possession.[22] He testified that if he had found a responsive document in his possession, he would have turned it over to his attorney.[23]

8. But that is not what happened. The evidence at the February 25, 2020, hearing revealed that, on September 2, 2019, Neldon Johnson and Glenda Johnson affirmatively acted to conceal and destroy documents directly responsive to the CRO, the Affiliates Order, and the Contempt Order.[24] Neldon Johnson and Glenda Johnson went to the Oasis, Utah waste transfer station in a vehicle loaded with documents, including original financial records of IAS, original IAS board meeting minutes, Neldon Johnson's personal financial records, and original financial

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[19] Jan. 23, 2020 Tr. 170:7-15, 221:3-10, 222:14-21.

[20] Feb. 25, 2020 Tr. 21:5-22:3.

[21] R. Ex. 2120 (ECF No. 738) at 10, ¶ (c); Feb. 25, 2020 Tr. 22:4-23:17.

[22] Feb. 25, 2020 Tr. 23:18-25:4.

[23] Feb. 25, 2020 Tr. 23:18-25:4.

[24] Feb. 25, 2020 Tr. 109:1-11.

records of U-Check (an Affiliated Entity).[25] Once there, they took the documents out of the vehicle and put them in three or four large black trash bags. They threw the garbage bags into a dumpster, and drove away.

9. Their actions would not have come to the Court's attention if an off-duty Millard County Deputy Sheriff had not happened to be at the waste transfer station at the same time. He recognized Neldon and Glenda Johnson when they pulled up. He observed them acting suspiciously, and watched as they placed the documents in the trash bags and threw them in the dumpster. He took swift and appropriate action to recover the documents and, through the Millard County Attorney, ensure that they were delivered to the Receiver.[26]

10. The United States confronted Neldon Johnson with these original, responsive documents, and asked why he threw them away rather than delivering them to the Receiver. He gave rambling, contradictory, and muddled explanations that were irrational and not believable. The United States confronted Neldon Johnson with his January 23 testimony that he did not know of any responsive documents that had been discarded or destroyed. He did not deny having discarded or destroyed documents, or admit that he lied under oath on January 23. Instead, he testified that he felt the Receiver had all the required documents. Neldon Johnson judged for himself that it was permissible to throw the documents away, rather than produce them to the Receiver.[27]

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[25] Feb. 25, 2020 Tr. 25:7-46:19, 55:12-60:14, 67:3-75:22, 77:10-85:4.

[26] Feb. 25, 2020 Tr. 54:24-65:25.

[27] Feb. 25, 2020 Tr. 25:7-54:18, 99:22-101:20.

11. Neldon and Glenda Johnson's actions are extremely disturbing. Anyone subject to the types of orders that the Johnsons are under should have been extremely conscious about disposition of documents. The CRO was entered on November 1, 2018. The scope of documents to be produced under its terms was extremely broad. The United States filed its original motion for order to show cause in January 2019; the Court, the Receiver, and all of the parties have spent considerable time and effort to obtain a fulsome production of responsive documents from Neldon Johnson. This Court has never issued an order excusing Neldon Johnson from producing these discarded documents (or anything like them) to the Receiver. The Court is left to wonder what other responsive documents might be in a landfill, thrown out on a day when a Millard County Deputy Sheriff did not happen be at the waste transfer station at the same time as Neldon and Glenda Johnson.[28]

b. Neldon and Glenda Johnson improperly withheld a contract purportedly worth $35 million.

12. 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 solar towers to be constructed. Neldon Johnson had not previously produced this partial copy to the Receiver. 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."[29] On October 11, 2019, Glenda Johnson filed with the

[28] *See* Feb. 25, 2020 Tr. 99:22-103:6.

[29] ECF No. 684 ¶ 4. Feb. 25, 2020 Tr. 108:3-108:18.

Court a three-page copy of the handwritten Solstice contract.[30] 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.[31] These are significant failures to produce.[32]

13. It approaches the ridiculous to suppose that Neldon or Glenda Johnson could rely on an unverified, unattested $35 million handwritten agreement with unintelligible terms, with the document having been produced very late in this proceeding yet purportedly creating enforceable obligations or rights. The Solstice agreement is just not believable. This purported contract supports the conclusion that Neldon Johnson and Glenda Johnson are not credible.[33]

c. Glenda, LaGrand, and Randale Johnson improperly withheld documents showing their attempt to exercise control over Receivership Property in Texas.

14. 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 in exchange for more than $13,000.[34] The NPJFLP is one of the Affiliated Entities. Therefore, property titled in its name is Receivership Property. Paragraph 24 of the CRO and ¶ 9 of the Affiliates Order require all documents relating to its property be turned over

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[30] ECF No. 784-1, filed October 11, 2019. The Solstice contract was received in the January 23, 2020 hearing as Receiver Ex. 2154. Feb. 25, 2020 Tr. 98:21-98:25, 108:12-108:20.

[31] ECF No. 784-1. Feb. 25, 2020 Tr. 98:21-98:25, 108:12-108:20.

[32] Feb. 25, 2020 Tr. 108:3-108:20.

[33] Feb. 25, 2020 Tr. 98:19-99:2, 108:3-20.

[34] R. Ex. 2159; Feb. 25, 2020 Tr. 109:12-109:19.

to the Receiver "forthwith."[35] But Glenda Johnson assisted LaGrand and Randale Johnson in signing and returning to the pipeline company the signed documents purporting to grant an easement on behalf of the NPJFLP.[36] Neither Glenda, LaGrand, nor Randale Johnson delivered to the Receiver the documents memorializing the request or the signed documents purportedly granting the easement, as required by ¶ 24 of the CRO and ¶ 9 of the Affiliates Order.[37] These actions were in derogation of the Receiver's rights in the Texas real property.

d. LaGrand Johnson withheld additional responsive documents in his possession.

15. LaGrand Johnson did not produce emails and other documents responsive to ¶ 24 of the CRO and ¶ 9 of the Affiliates Order that were within his possession.[38] 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.[39] He did not provide the purportedly renewed corporate charter to the Receiver.[40]

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[35] ECF No. 636 ¶ 9; CRO ¶ 24.

[36] Feb. 25, 2020 Tr. 109:12-109:19.

[37] R. Ex. 2141. Feb. 25, 2020 Tr. 65:15-65:24, 109:12-109:19, 111:20 -111:24.

[38] Jan. 23, 2020 Tr. 111:6-112:20

[39] R. Ex. 2151. Feb. 25, 2020 Tr. 111:25 – 112:3.

[40] Jan. 23, 2020 Tr. 107:21-107:25.

16. Further, 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 purportedly reimbursed (or paid for) by Receivership Entities.[41]

e. The Johnsons failed to identify and recover documents held by third parties.

17. None of the Johnsons made efforts to recover responsive documents within their control, but held by third parties.[42]

f. For all documents they threw out, improperly withheld, or otherwise failed to obtain, the Johnsons also failed to adequately identify those documents.

18. If a person with notice of the CRO once had, but no longer has, control of the documents and records responsive to ¶ 24 of the Corrected Receivership Order, he or she "must provide information to the Receiver identifying the records, the persons in control of the records, and efforts undertaken to recover the records."[43] Each of the Johnsons failed to provide a declaration identifying documents they once had access to, the location of those documents, and efforts made to obtain them.[44]

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[41] Feb. 25, 2020 Tr. 128:16-130:11; Jan. 23, 2020 Tr. 71:24-72:25.

[42] ECF No. 803 ¶ 2; ECF No. 714, ECF No. 715, ECF No. 716; ECF No. 738; Feb. 25, 2020 Tr. 97:20-98:3, 109:1-11, 111:15-19, 112:4-23.

[43] ECF No. 491 ¶ 24; ECF No. 701 at 13 (If Neldon Johnson "does not possess and cannot obtain responsive documents that he once possessed for Receivership Defendants, the Affiliated Entities, or any other Receivership Property, the plain language of ¶ 24 of the CRO requires him to identify what documents existed, where they are, and what efforts he made to obtain them.").

[44] Feb. 25, 2020 Tr. 106:22-108:3, 111:15-112:23.

19. The United States and the Receiver showed Neldon Johnson how to meet this obligation.[45] But he did not do so. In his August 2019 declaration, Neldon Johnson states that documents exist that are responsive to ¶ 24 of the CRO. He did not produce all such documents as required, and he failed to "provide information to the Receiver identifying the [missing] records, the persons in control of the records, and efforts undertaken to recover the records."[46]

20. Similarly, the declarations filed by Glenda, LaGrand, and Randale Johnson have the same critical deficiencies identified in the Contempt Order[47] and in the redline versions suggested by the United States and the Receiver.[48] Glenda, LaGrand, and Randale Johnson failed to account for all documents they once saw or had access to, as required by ¶ 24, for all Receivership Entities, including the Affiliated Entities.[49] In spite of the foregoing facts about the documents they failed to produce, they continued to claim that they have turned over all documents relevant to ¶ 24 without identifying those documents with specificity[50] and they continued to attempt to shift their burden of compliance on to Neldon Johnson.[51] Further,

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[45] ECF No. 733-1 at 1-2, 5-13, 15.

[46] ECF No. 491 ¶ 24; *Compare* ECF No. 701 at 12 ("First, Johnson's assertion that he has delivered all documents to the Receiver is an [improper] attempt to shift the burden to the Receiver to identify the documents that Johnson has not delivered.") *with* ECF No. 738 at 3 ¶ 6 ("These documents that I found are some, but not all, of the corporate documents of the Affiliate Entities . . . ."); *Compare* ECF No. 701 at 12 ("Johnson's assertion that third parties have documents does not . . . satisfy his burden under the Corrected Receivership Order.") *with* ECF No. 738 at 9-11 & Ex. K.

[47] ECF No. 701 at 19-23.

[48] ECF No. 714 (Final Declaration of Glenda Johnson); ECF No. 715 (Final Declaration of LaGrand Johnson); ECF No. 716 (Final Declaration of Randale Johnson).

[49] *Compare* ECF No. 705-1 at 1, 5, 10, 11-12 *with* ECF No. 714, ECF No. 715, ECF No. 716.

[50] *Compare* ECF No. 705-1 at 13 *with* ECF No. 714, ECF No. 715, ECF No. 716.

[51] *Compare* ECF No. 705-1 at 13 *with* ECF No. 714, ECF No. 715, ECF No. 716.

LaGrand Johnson did not recover "financial documents" or explain where they are as required by ¶ 24.[52]

2. Neldon Johnson failed to provide a detailed financial accounting.

21. As this Court has already summarized in the Contempt Order, the CRO required Neldon Johnson to file with the Court and serve upon the Receiver and counsel for the United States a sworn statement and accounting, with complete documentation, covering the period from January 1, 2005, to the present" on a number of topics.[53] In June 2019, this Court held Neldon Johnson in contempt for his failure to provide the "thorough and detailed financial roadmap it requires for a broad scope of assets and transactions, including the Affiliated Entities—not just assets held in Johnson's name and transactions to or from him directly."[54] The Court rejected Neldon Johnson's statements that "he either does not possess any property or that he has turned over all property to the Receiver" because such facile statements "do not acknowledge that Johnson's accounting obligation extends not just to property officially titled in his name (which he has attempted to avoid), but to a far greater expanse of assets" including "real property, personal property (tangible and intangible), . . . cash held by any number of people and entities, including the Affiliated Entities," and "[a]ny transfers [that] were made at Johnson's direction and for his benefit."[55] The Court also rejected Neldon Johnson's attempts to shift the burden of his

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[52] *Compare* ECF No. 705-1 at 12 *with* ECF No. 714, ECF No. 715, ECF No. 716.

[53] ECF No. 491 ¶ 26; ECF No. 701 at 14.

[54] ECF No. 701 at 14.

[55] ECF No. 701 at 14-15.

compliance on to third parties or the Receiver.[56] The Court ordered a specific procedure intended to secure his compliance.[57]

22. But in spite of the Court's clear instructions and the gaps in his draft declaration identified by the United States and the Receiver,[58] Neldon Johnson's final declaration filed on August 2, 2019, contains the kinds of conclusory and burden-shifting assertions that originally landed him in civil contempt.

23. For example, he failed to provide a financial statement setting forth the identity, value, and location of all assets of each Receivership Defendant (as required by ¶ 25(g) of the Corrected Receivership Order and reiterated in the Contempt 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."[59]

24. This assertion is simply not credible. The evidence has shown, time and again, that Neldon Johnson controls the entities and behavior of people who received transfers of money and property from the solar energy scheme. This control, along with information demonstrably known to Neldon Johnson, could be used to create a financial statement.[60]

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[56] *E.g.*, ECF No. 701 at 16-17.

[57] ECF No. 701 at 26-27.

[58] *E.g.*, ECF No. 733-1 at 26.

[59] ECF 738, filed August 2, 2019. Feb. 25, 2020 Tr. 112:24-113:10..

[60] Feb. 25, 2020 Tr. 112:24-113.10.

25. Evidence presented regarding the Wisdom Farms turbine situation illustrates Neldon Johnson's knowledge of and control over certain Receivership assets, his failure to disclose them, and the impact his failure has on the Receivership. Through the Receiver's work – rather than through a disclosure by Neldon Johnson – the Receiver discovered that Neldon Johnson funneled more than $2.3 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. Neldon Johnson had input on creating it. Along with Glenda Johnson and Randale Johnson, Neldon Johnson took possession of it on August 13, 2019.[61] It is now stored on property titled to Glenda Johnson in Payson, Utah, but Neldon Johnson purports to retain possession of the prototype.[62] Because IAS money was used to create this equipment, it is Receivership Property – and an asset that should have been identified in response to the CRO. Neldon Johnson did not disclose information about the creation or location of the prototype before his January 23, 2020, deposition.[63]

26. Similarly, Neldon Johnson's failure to fully disclose, before December 13, 2019, all 36 vehicles titled in the names of Receivership Defendants, or purchased with Receivership Defendants' funds (as required by ¶ 25(g) of the Corrected Receivership Order and reiterated in

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[61] Jan. 23, 2020 Tr. 31:17- 35:3, 153:8-156:19, 215:8-219:18.

[62] Feb. 25, 2020 Tr. 113:15-114:5.

[63] Feb. 25, 2020 Tr. 113:15-114:5. It follows that, to the extent documents were generated in the course of this transaction and work, Neldon Johnson should have produced those documents to the Receiver under ¶ 24 of the CRO.

the Contempt Order) illustrates the shell game at work within the Johnson family.[64] As an initial matter, the Receiver obtained information about such vehicles through his own research into DMV records and not through disclosure by Neldon Johnson. 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.[65]

27. The evidence regarding titling, possession, and control of the vehicles shows that Neldon Johnson uses nominees, often family members, who replace him in positions of ownership of assets. 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.[66] He testified that all those vehicles belong to Glenda Johnson and that he had transferred ownership of those vehicles to Glenda Johnson.[67] Glenda Johnson claims ownership of an additional 18 vehicles that appear to be titled in her name. Yet at her January 23, 2020, deposition, she testified that each of these vehicles, with one possible exception, were purchased with Receivership funds.[68] Nonetheless, Neldon Johnson maintains complete control of these vehicles, as the Court has found before.

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[64] The Court is addressing the turnover of these 36 vehicles through a separate process. ECF No. 877.

[65] Feb. 25, 2020 Tr. 114:15-120:14; R. Ex. 2162.

[66] Jan. 23, 2020 Tr. 219:19-220:1; Feb. 25 Tr. 120:22-121:7.

[67] Jan. 23, 2020 Tr. 220:2-221:2; Feb. 25 Tr. 120:22-121:7.

[68] Jan. 23, 2020 Tr. 167:18-168.5; Feb. 25, 2020 Tr. 120:22-121:7. For the "possible exception," the Receiver previously obtained documents from the dealer from whom the 2014 Chrysler Town and County was leased

(continued...)

28. Further, 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.[69]

29. Neldon Johnson also continued to defy the requirement that he account for "all expenditures exceeding $1,000 made by any [Receivership Defendant], including those made on their behalf by any person or entity" *with complete documentation* to support the accounting.[70] In his final declaration, Neldon Johnson included a 48-page exhibit purporting to identify all expenditures greater than $1,000 subsequent to June 26, 2012.[71] The exhibit lists the date, check number, and amount of each expenditure, but does not identify most of the recipients of those funds and only provides occasional explanations as to the purposes of the payments. No other documentation was provided. This failure impedes the work of the Receiver and the Receivership.[72]

30. Neldon Johnson also failed to account for "all funds received by the Receivership Defendants, and each of them, in any way related, directly or indirectly, to the conduct alleged in the United States' Complaint in this case."[73] The January 23, 2020 deposition of Randale Johnson revealed that Randale Johnson paid $361,000 to Neldon Johnson between January 9,

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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)).

[69] Feb. 25, 2020 Tr. 120:15-125:8.

[70] ECF No. 491 ¶¶ 26 (intro text) & 26(g) (emphasis added); ECF No. 701 at 17; ECF No. 738 at 23-24.

[71] ECF 738-25, filed August 2, 2019. Feb. 25, 2020 Tr. 114:6-114:14.

[72] Feb. 25, 2020 Tr. 114:6-114:14.

[73] ECF No. 491 ¶¶ 26 (intro text) & 26(f); ECF No. 701 at 17; ECF No. 738 at 22-23. Feb. 25, 2020 Tr. 125:12-127:8.

2007 and February 5, 2008.[74] Randale Johnson paid an additional $460,000 to IAS between February 26, 2007 and September 8, 2010.[75] 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 some of these documents were delivered to the Receiver on December 5, 2019.[76]

31. LaGrand Johnson testified in his deposition that he paid $1,144,000 to IAS between August 17, 2006 and October 5, 2010.[77] 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 some of the documents relating to those payments were delivered to the Receiver on April 29, 2019.[78]

32. 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.[79]

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[74] Jan. 32, 2020 Tr. 39:5-41:2. Feb. 25, 2020 Tr. 126:8-126:10.

[75] A summary of these payments is at R. Ex. 2145. Jan. 32, 2020 Tr. 43:6-44:12. Feb. 25, 2020 Tr. 126:10-126:12.

[76] Feb. 25, 2020 Tr. 126:13-126:15.

[77] Jan. 23, 2020 Tr. 90:2-91:14; R. Ex. 2152. Feb. 25, 2020 Tr. 126:16-126:18.

[78] Feb. 25, 2020 Tr. 126:18-126:20.

[79] Feb. 25, 2020 Tr. 126:21-127:1.

33. 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 payments as sources of funds for himself and IAS. This gap in information leaves open the question of 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.[80]

3. Neldon and Glenda Johnson failed to turn over assets.

34. The CRO requires Neldon Johnson to promptly turn over any assets belonging to any Receivership Defendant.[81] He did not.[82] The Court has addressed the turnover of 36 vehicles mentioned above through a separate process,[83] but reiterates that the Corrected Receivership Order obligates the Johnsons to deliver receivership assets to the Receiver without the Receiver having to make a demand for such delivery.[84]

35. As discussed above,[85] Neldon Johnson and Glenda Johnson took and retained possession of the turbine prototype created by Wisdom Farms. This is an asset of the Receivership Estate and has not been turned over to the Receiver as required by the CRO.

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[80] This is of special concern in light of the multiple companies created in the country of Nevis. Feb. 25, 2020 Tr. 127:2-127:8.

[81] ECF No. 491 ¶ 16-17.

[82] ECF No. 701 at 11-12.

[83] Feb. 25, 2020 Tr. 114:15-125:11. *See* Section I.A.2, above; ECF No. 893.

[84] *See* Feb. 25, 2020 Tr. 99:12-21.

[85] *See* Section I.A.2.

4. LaGrand and Randale Johnson failed to identify the source of funds for legal filings made by Affiliated Entities.

36. The CRO requires that "[a]ny filing or submission by any Receivership Defendant must contain a statement, made under penalty of perjury, identifying the source of the funds for the filing or submission in sufficient detail to show that the funds are not Receivership Property or otherwise derived from the solar energy scheme."[86]

37. The Affiliates Order[87] applied this requirement to affiliated entities. Six different affiliated entities have made filings in this case without identifying the sources of the funds used to prepare the filings. These include objections to the Affiliates Order by Solstice Enterprises, Black Night Enterprises, Starlight [sic] Holdings, NPJFLP, and Solco I[88] and the appeal of the Affiliates Order by Solco I, XSun Energy, NPJFLP, Solstice Enterprises, Black Night Enterprises, and Starlight [sic] Holdings.[89]

38. Randale and LaGrand Johnson were the majority owners and the decision makers for these six entities.[90] The attorneys at Nelson Snuffer consulted with LaGrand Johnson in determining whether to file the submissions on behalf of these six entities.[91] Despite Randale and

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[86] ECF No. 491 ¶ 10.

[87] ECF No. 636.

[88] ECF No. 665, 675.

[89] ECF No. 698.

[90] Jan. 23, 2020 Tr. 51:15-55:10, 97:20-103:5. Solstice states that it is the owner of XSun. *United States v. Solco I, et al.* Case No. 19-4089 (Appellee Brief, Nov. 13, 2019) at 1 (10th Circuit). As a result, decisions for XSun might have been made by Solstice. Randale Johnson testified that Glenda Johnson may have been a decision maker for Solstice Enterprises but there was no testimony from Glenda Johnson that she was an officer or owner and the Court is making no finding that she was a decision maker for these six entities or that she was responsible for compliance with ¶ 10 of the CRO.

[91] Jan. 23, 2020 Tr. 103:12-104:4.

LaGrand Johnson having been the majority owners of these entities and LaGrand Johnson having authorized the submissions, no court submissions by these entities disclosed the sources of funding for the preparation and filing of the submission. None of the submissions contained sufficient detail to show that the funds used to prepare the submissions did not derive from the solar energy scheme or Receivership Property as required by ¶ 10 of the CRO.[92]

B. The Johnsons attempted to take, have taken control over, or have otherwise interfered with, Receivership Property.

39. Some of the Johnsons' efforts to interfere with, or attempt to control, Receivership Property has already been described above, because it related to their failure to produce documents and information responsive to the CRO, Affiliates Order, and Contempt Order.

40. As described above in section I.A.2, Neldon, Glenda, and Randale Johnson took control over and possession of the turbine prototype built by Wisdom Farms. This was improper action to control receivership property, diminution of the value of Receivership Property by expending IAS funds to have a turbine prototype built, and interference with the work of the Receiver.

41. As described above in section I.A.1.c, Glenda Johnson, LaGrand Johnson, and Randale Johnson purported to grant an easement on property in Texas held in the name of NPJFLP. The granting of this purported easement interfered with the Receiver's efforts to take control over and manage Receivership Property.

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[92] 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. Feb. 25, 2020 Tr. 127:25-128:6.

42. Still further, 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.[93] Her admitted purpose in filing the lien was to hinder the Receivership.[94] 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.[95] 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.[96]

43. Glenda Johnson testified that the verbal, not written, agreement with Anstram Energy calls for that entity 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. There are no invoices for work performed or product to be delivered.[97] Glenda Johnson testified the assignment was intended to prevent the Receiver from taking real property that is titled in her name.[98]

44. 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

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[93] R. Ex. 2160.

[94] Jan. 23, 2020 Tr. 162:23-163:1.

[95] 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.

[96] Jan. 23, 2020 Tr. 156:25 – 157-8.

[97] Jan. 23, 2020 Tr. 157:9 – 157:24, 161:12 – 162:1, 164:20 – 165:1.

[98] Jan. 23, 2020 Tr. 162:18 – 163:14.

County, Texas County Clerk on January 14, 2020 against the Texas property in the amount of $10 million.[99]

45. The Court will address the merits of ownership of the Utah County and Millard County real properties in response to the motion for turnover already filed.[100] But even if she believed that her claim to ownership should prevail, Glenda Johnson's action to file these liens violates the Asset Freeze, the CRO, and the Affiliates Order. She intended to interfere with the Receivership through unilateral action rather than through allowable legal processes.

46. Additionally, 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. [101]

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[99] R. Exs. 2170, 2171. The Receiver first learned on Friday, February 21, 2020, that these additional liens had been filed. These liens are the subject of *Receiver's Ex-Parte Affidavit of Non-Compliance Against Glenda Johnson*, filed March 20, 2020, ECF No. 888. The remedy sought by the Receiver in that Affidavit of Non-Compliance will be addressed in that proceeding. Nonetheless, the Court makes findings here relating to the contempt occasioned by the filing of these liens.

[100] Feb. 25, 2020 Tr. 141:9-142:7; *see* ECF No. 757 (Receiver's pending turnover motion).

[101] R. Ex. 2143; Jan. 23, 2020 Tr. 35:4-37:10; Feb. 25, 2020 Tr. 127:21-127:24.

C. The Johnsons failed to pay attorney fees and costs to the United States and the Receiver.

47. The United States and the Receiver have incurred – and continue to incur – the Receiver's own fees and attorney's fees and costs to enforce the CRO. This Court ordered that the Johnsons are jointly and severally liable for those fees and costs,[102] and approved those fees and costs in the following amounts: $25,146.85 to the United States and $31,563.52 to the Receiver.[103] The Court ordered the Johnsons to deliver payment by certified check, from non-Receivership assets, no later than August 15, 2019.[104]

48. Neldon Johnson, Glenda Johnson, LaGrand Johnson, and Randale Johnson failed to pay attorney's fees and costs to the government and the Receiver.[105]

49. But testimony from 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.[106] LaGrand Johnson can pay the ordered attorneys' fees and costs to the United States and the Receiver from non-Receivership Property.

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[102] ECF No. 701 at 29.

[103] ECF No. 731, ECF No. 732.

[104] ECF No. 731, ECF No. 732.

[105] Feb. 25, 2020 Tr. 127:9-127:14.

[106] Jan. 32, 2020 Tr. 69:3-70:16.

II. The Court will impose additional civil sanctions to remedy the harm caused by the Johnsons' contumacy.

The United States and the Receiver have again shown, by clear and convincing evidence, that: (1) valid court orders existed; (2) the Johnsons, who were bound by orders, had knowledge of them; and (3) the Johnsons disobeyed the orders.[107]

This Court's "interest in ensuring a party's compliance with its orders is a great one."[108] "A court has the inherent authority to manage judicial proceedings and to regulate the conduct of those appearing before it."[109] Pursuant to that authority, a court may impose appropriate sanctions to discourage misconduct and protect the integrity of judicial proceedings.[110] "Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes; to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained."[111] In setting sanctions for either purpose, a court "must exercise 'the least possible power adequate to the end proposed.'"[112]

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[107] ECF No. 701 at 23; *United States v. Ford*, 514 F.3d 1047, 1051 (10th Cir. 2008); May 28, 2019 Tr. Part 2, at 66:4-16. Disobedience of an order need not be "willful" to constitute civil contempt. *See Bad Ass Coffee Co. v. Bad Ass Coffee Ltd*., 95 F. Supp. 2d 1252, 1256 (D. Utah 2000) (citing *Goluba v. Sch. Dist. of Ripon*, 45 F.3d 1035, 1037 (7th Cir. 1995)).

[108] *Ohlander v. Larson*, 114 F.3d 1531, 1541 (10th Cir. 1997); *see also Acosta v. Paragon Contractors Corp*., 884 F.3d 1225, 1238 (10th Cir. 2018) ("The district court has 'inherent power to enforce compliance with [its] lawful orders through civil contempt.'" (quoting *Shillitani v. United States*, 384 U.S. 364, 370 (1966)); *see also United States v. Bibbins*, 113 F. Supp. 2d 1194, 1202 (E.D. Tenn. 2000) ("In large measure, the American legal system is fundamentally dependent upon voluntary compliance with its judgments and procedures by all participants in the system . . . . The Court does not have a standing army to enforce its rules and orders.").

[109] *Chambers v. NASCO, Inc.*, 501 U.S. 32, 50-51 (1991); *Farmer v. Banco Popular of N. Am.*, 791 F.3d 1246, 1255-57 (10th Cir. 2015).

[110] *Chambers*, 501 U.S. at 50-51; *Farmer*, 791 F.3d at 1255-57.

[111] *United States v. United Mine Workers of Am.*, 330 U.S. 258, 303–04, (1947).

[112] *O'Connor v. Midwest Pipe Fabrications, Inc.*, 972 F.2d 1204, 1211 (10th Cir. 1992) (quoting *Spallone v. United States*, 493 U.S. 265, 280 (1990)).

Coercive sanctions seek to avoid the "harm threatened by continued contumacy," and therefore such sanctions may "remain [in place] only until the contemnor complies with the order."[113] Throughout these contempt proceedings, this Court refrained from ordering coercive fines or coercive incarceration for the Johnsons in the "great hope" that the compliance process it set forth would work.[114] But the Johnsons chose to exploit the Court's restraint and continue to delay and hinder the Receiver. They cannot hide behind the excuse that they may not have understood their obligations,[115] because the Court, and the United States and the Receiver painstakingly explained those obligations. As described above, however, the Johnsons have refused to comply. A coercive sanction like incarceration is available for the kind of continued defiance the Johnsons demonstrate.[116]

This Court warned that if it gave Neldon Johnson the time and resources his attorney requested, and his declaration was "still nonresponsive and insufficient," Neldon Johnson would be incarcerated.[117] Glenda, LaGrand, and Randale Johnson received a similar warning.[118] If ordered, the Johnsons would "hold[] the proverbial keys to the prison doors" because each of

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[113] *Acosta*, 884 F.3d at 1239.

[114] May 28, 2019 Tr. part 2, 70:14-18.

[115] ECF No. 701 at 24.

[116] *United States v. Ford*, 514 F.3d at 1047, 1052. A coercive fine is unlikely to be effective to compel the Johnsons' compliance at this late date because 1) they failed to pay the attorney's fees and costs already ordered and 2) many (if not all) of their assets may be Receivership Property because of the money that flowed out of the solar energy scheme and into their pockets. *See United Mine Workers of Am.*, 330 U.S. at 304 (a court fixing a coercive fine must "consider the amount of [the contemnor's] financial resources and the consequent seriousness of the burden to that particular [contemnor].").

[117] May 28, 2019 Tr. part 2, 28:23-29:6; *see also* April 26, 2019 Tr. 108:13-21.

[118] May 28, 2019 Tr. part 2, 70:14-18 ("I am not going to order a fine right now. That's purposeful. I found the defendants and respondents in contempt. That's purposeful. I've not ordered incarceration of anyone because it's my great hope that this process will work."); ECF No. 701 at 25 ("Coercive sanctions like a monetary penalty and incarceration are available for continued defiance.").

them could "choose to end his [or her] incarceration [and purge his or her contempt] at any point in time, by simply complying" with the Court's orders.[119] As described above, Johnsons have not complied with this Court's orders, and instead have gone out of their way to defy them. Other contemnors who demonstrated similar a similar lack of effort have remained incarcerated for years.[120]

The Court has little hope that, even with the compelling circumstances of incarceration, the Johnsons would make the required effort to comply.[121] Even so, one option to coerce the Johnsons into compliance would be to order that they be incarcerated until such time as the Receiver could access their homes and offices to search for and retrieve any remaining assets and documents responsive to the CRO, the Affiliates Order, and any other order of this Court.[122] The Johnsons have routinely attempted to foist their compliance obligations on to the Receiver throughout these contempt proceedings.[123] This option would give them what they have been

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[119] *Ford*, 514 F.3d at 1053.

[120] *E.g.*, *Armstrong v. Guccione*, 470 F.3d 89, 112-13 (2d Cir. 2006); *Commodity Futures Trading Comm'n v. Armstrong*, 284 F.3d 404, 406–07 (2d Cir. 2002); *Chadwick v. Janecka*, 312 F.3d 597, 608 (3d Cir. 2002); *S.E.C. v. Art Intellect, Inc.*, No. 2:11-CV-357-TC, 2011 WL 5553647, at *11-12 (D. Utah Nov. 15, 2011); *United States v. Harris*, No. CRIM. 03-354 (JBS), 2008 WL 482347, at *4 (D.N.J. Feb. 20, 2008), aff'd, 582 F.3d 512 (3d Cir. 2009); *In re Birchall*, 381 B.R. 13, 16–17 (Bankr. D. Mass. 2008).

[121] Feb. 25 Tr. 137:11-15; *see United Mine Workers of Am.*, 330 U.S. at 304 (a court considering coercive incarceration must evaluate "the probable effectiveness of any suggested sanction in bringing about the result desired"); *but see supra* n. 120.

[122] *Mission Capital Works, Inc. v. SC Restaurants, Inc.*, 2008 WL 3850523, at *5-7 (W.D. Wash. Aug. 18, 2008) (ordering contemnors to provide a receiver access to their residences to inventory assets); *see also, e.g.*, *Commodity Futures Trading Comm'n v. Armstrong*, 284 F.3d at 404, 406–07 (noting that law enforcement authorities searched a defendant's home and offices, finding none of the assets subject to a contempt order); *S.E.C. v. Art Intellect, Inc.*, No. 2:11-CV-357-TC, 2011 WL 5553647, at *5–6 (D. Utah Nov. 15, 2011) (defendants agreed to allow receiver to conduct an inventory of their home to determine assets, some of which the receiver noted were missing); *Schmidt v. United States*, 2010 WL 3075599, at *4 (E.D. Cal. Mar. 16, 2010), report and recommendation adopted in part, rejected in part on other grounds 2010 WL 3034768 (E.D. Cal. July 28, 2010) (noting search and seizure of property pursuant to a receivership order).

[123] *E.g.*, ECF No. 701 at 12-23; *see generally* ECF No. 714; ECF No. 715; ECF No. 716; ECF No. 738.

asking for: the Receiver would, finally, do the work that they have resisted while the United States Bureau of Prisons prevents them from interfering with that work.

Yet, because of the amount of time that has passed between entry of the CRO and the present date, and the evidence that Neldon and Glenda Johnson discarded documents responsive to the CRO, the Affiliates Order, and the Contempt Order, the Court has little hope that the Receiver would find documents or information that would be materially helpful to him now. Such documents, for example, are likely already in a landfill. For this civil contempt matter, coercive incarceration may go beyond of the need to exercise the least possible power adequate to the end proposed: an appropriate civil response to the Johnsons' contempt.[124]

On the facts of this case, the appropriate civil response to the Johnsons' sustained and continued contumacy is to order remedial sanctions that will "compensate the [United States and the Receiver] for injuries resulting from the [Johnsons'] noncompliance."[125] Often, such remedial sanctions are monetary.[126] When remedial sanctions are monetary, the "amount of the compensatory sanction must be based upon the actual losses sustained as a result of the

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[124] *C.f. S.E.C. v. Bliss*, 2015 WL 4877332 (D. Utah Aug. 14, 2015) (Shelby, J.) (staying civil contempt remedies, and referring the matter to the United States Attorney's Office for the District of Utah for screening to consider 1) whether to prosecute a defendant who failed "to comply with court orders freezing his assets and appointing a receiver to locate, take control of, and preserve all of his assets" for criminal contempt and 2) whether to prosecute two defendants for perjury).

[125] *Acosta*,884 F.3d at 1225, 1239–40 (quotation and alteration omitted); *see also United Mine Workers of Am*., 330 U.S. 258 at 303–04, ; *Fish v. Kobach*, 294 F. Supp. 3d 1154, 1169 (D. Kan. 2018) ("Although the Court does not impose coercive sanctions at this time for Defendant's contempt, it finds that compensatory relief is in order to make Plaintiffs whole for their actual losses sustained during the lengthy period before Defendant purged the contempt.").

[126] *Acosta*, 884 F.3d at 1240-41.

contumacy."[127] A "a direct causal relationship must exist between the amount of damages and the violation of an [order]."[128]

Here, the nature of the Johnsons' contumacy does not lend itself to a *monetary* compensatory sanction. Their failure to produce documents and information, and its resulting consequences for the Receivership, is not the kind of contumacious conduct that can be remedied by simply awarding the United States and the Receiver fees and costs.[129] The evidence to date shows that the Johnsons do not have many, if any, assets that are not already Receivership Property. Ordering them to pay yet another amount from non-Receivership Property may be fruitless in light of the assets the Receiver has been able to identify from the limited information provided by the Johnsons.

Moreover, the goal of the Corrected Receivership Order was, in part, to ensure the Receiver had the documents and information about Receivership Defendants (and, later, the Affiliated Entities) he required to identify and marshal all Receivership Property. The Johnsons' "stubborn refusal to comply with the CRO has made the receivership significantly more difficult than usual for the experienced Receiver in this case."[130] It has prejudiced the United States by prejudicing the Receivership remedy this Court imposed because of Neldon Johnson's proven past defiance of the laws of the United States. That heightened difficulty also increases the cost

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[127] *Acosta*, 884 F.3d at 1240; *see also United Mine Workers of Am.*, 330 U.S. 258 at304.

[128] *Acosta*, 884 F.3d at 1240.

[129] *C.f. Fish*, 294 F. Supp. 3d at 1169-70.

[130] ECF No. 701 at 3 (quotation omitted).

of the Receivership which, in turn, decreases the amount that will be available to pay the United States Treasury.

The Johnsons' defiance goes to the heart of questions the Receiver needed to answer for suits to recover avoidable transfers: documents and information that go to the finances and control of entities and people that Neldon Johnson directed to execute and support the solar energy scheme (and who reaped the fraudulent proceeds of that scheme). It was critical for the Receiver to have the full roadmap to the financial and business transactions *quickly* so that he could meet a critical deadline: he had one year to file lawsuits to gather assets that rightfully belong in the receivership.[131] The Johnsons' refusal to comply with the CRO and related orders of this Court means that the Receiver had to make litigation decisions before the one-year tolling deadline without having all of the information he was due.

Therefore, one of the appropriate remedial sanctions in this matter is that the universe of documents and information about these entities and transactions is closed for Neldon, Glenda, LaGrand, and Randale Johnson. If they failed, by December 5, 2019, ~~May 17, 2019,~~ to produce or identify (with the specificity required by the CRO) documents or information required of them, they will not be allowed to use such document or information to support any claim or defense against the Receiver or the United States in future civil proceedings. This remedy fits the test for monetary remedial sanctions because it is based upon the "actual losses" sustained by the United States and the Receiver as a result of the Johnsons' contumacy.[132] And there is "a direct

[131] *See, e.g.*, *Klein v. Cornelius*, 786 F.3d 1310, 1321-22 (10th Cir. 2015) (regarding the one-year period after appointment in which a receiver may file an action to avoid a fraudulent transfer in which statute of limitations defenses are not available).

[132] *Acosta*, 884 F.3d at 1240; *see also United Mine Workers of Am.*, 330 U.S. 258 a t304.

causal relationship" between the harm the Johnsons caused by violating the CRO and the remedy of this evidentiary bar.[133] Other courts have imposed a similar remedial sanction against contemnors who, like the Johnsons, have failed to produce financial documents and information.[134]

This is not an extraordinary remedy, and it should come as no surprise to the Johnsons. In pre-trial discovery, when a party fails to produce documents or information after being ordered to do so, the Federal Rules of Civil Procedure warn that the party may face serious sanctions like this one. "If a party . . . fails to obey an order to provide or permit discovery" a court "may issue further just orders," including one that "treat[s] as contempt of court the failure to obey" an order to produce documents and information, and an order that "prohibit[s] the disobedient party from

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[133] *Acosta*, 884 F.3d at 1240.

[134] *SEC v. First Choice Mgmt. Servs.*, 2016 WL 318328, at *9 (N.D. Ind. Jan. 26, 2016) (as one contempt sanction for failure to produce financial records, ordering that a non-producing party would not be permitted to make a claim against a receiver); *Duffy v. v. Modern Waste Servs. Corp.*, 2013 WL 3759792, at *4-5 (E.D.N.Y. July 12, 2013) (when the purpose of a contempt order was that a party produce "the documentation needed for a complete audit," and the requesting party "necessarily had to rely only on the limited books and records" produced to conduct the audit, the court rejected the non-producing party's attempt to create a fact issue by asserting "flaws" in the audit); *see also U.S. Commodity Futures Trading Comm'n v. Lake Shore Asset Mgmt. Ltd.*, 2007 WL 4365365, at *8 (N.D. Ill. Dec. 10, 2007)) (concluding that "it would be fundamentally unfair for [a party in contempt of a receivership order requiring turnover of documents] to withhold its documents and then simultaneously try to use them for its own benefit" and therefore barring it "from introducing any documents required to be produced under the preliminary injunction or receivership orders"). The *Lake Shore* case characterized the evidentiary bar as a coercive sanction rather than a remedial sanction, and therefore allowed that if the party were to comply with the receivership order, it could then use the documents it produced. *Id.*, and *id.* n.10. Consistent with the facts and circumstances of this case, and the analogous evidentiary bar in Rule 37 discussed below, this Court will not follow *Lake Shore* in that respect. Here, the evidentiary bar is a remedial sanction and not a coercive sanction.

supporting or opposing designated claims or defenses, or from introducing designated matters in evidence."[135] Neldon Johnson was subject to just such an order before the trial in this case.[136]

Further, during these contempt proceedings, the Court cautioned the Johnsons about the consequences of failing to produce and disclose. At the hearing held May 3, 2019, the Court ordered production of documents and information required by the CRO no later than May 17, 2019.[137] On May 6, 2019, the Court warned the Johnsons that they "appear to have failed to participate in the receivership process in good faith and have withheld relevant information, data, records, and property. If this continues, then [the Johnsons] will incur unfavorable consequences, including the adoption of negative inferences and conclusions adverse to their positions."[138] "Failure to produce corporate, financial, and transactional records *requires* inferences and

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[135] Fed. R. Civ. P. 37(b)(2)(A); *Langley by Langley v. Union Elec. Co.*, 107 F.3d 510, 513-14 (7th Cir. 1997) (affirming district court's order barring *all evidence* regarding a furnace at issue in a negligence case after a party failed to produce it in response to a Rule 34 request for inspection); *Jankins v. TDC Mgmt. Corp.*, 21 F.3d 436, 444-45 (D.C. Cir. 1994) (affirming discovery sanction barring a party from presenting *any evidence* in opposition to or in support of claims on which they had failed to produce documents) *CGC Holding Co., LLC v. Hutchens*, No. 11-CV-01012-RBJ-KLM, 2016 WL 1238149, at *20 (D. Colo. Mar. 30, 2016) ("As a sanction for not obeying the Court's March, 2013 discovery Order and pursuant to Fed. R. Civ. P. 37(b)(2)(A)(ii), the Hutchens Defendants are precluded from using any of the Lapedus and Posner accounting records and any of the records ordered produced here to support their defenses in this action."); *Bluestein v. Cent. Wisconsin Anesthesiology, S.C.*, 296 F.R.D. 597, 602 (W.D. Wis. 2013) (barring a plaintiff from relying on documents, for summary judgment or trial, that she did not produce in response to discovery requests); *see also generally McNair v. D.C.*, 325 F.R.D. 20 (D.D.C. 2018); *see E.E.O.C. v. CRST Van Expedited, Inc.*, 679 F.3d 657, 692–93 (8th Cir. 2012) (approving, in dicta, the district court's order excluding undisclosed evidence from trial); *e360 Insight, Inc. v. Spamhaus Project*, 658 F.3d 637, 641-44 (7th Cir. 2011) (affirming district court's sanction for failure to disclose and produce information: striking sixteen newly disclosed witnesses and evidence of damage amounts above previously reported $11.7 million estimate).

[136] ECF No. 373; ECF No. 379; ECF No. 381; ECF No. 382.

[137] ECF No. 634 (Minute Order); May 3, 2019 Tr. 166:10-20 ("It's May of 2019. It's unbelievable that we're at this point. But honestly, I never had much faith that we would find many documents because I think that was Mr. Johnson's mode, was to operate [with] as little as possible. . . . I think we've seen obfuscation at every turn. And I'm very concerned about what I view as little effort and little results all the way through and I think some fairly good indications of bad faith."); ECF No. 676.

[138] ECF No. 638 at 2.

conclusions adverse to Defendants and Respondents."[139] "*[F]ailure to protect* material information—including data, processing data, and equipment, . . . —is spoliation and punishable by various sanctions, including adverse inferences, striking defenses, and barring claims."[140] Further, the Court reminded the Johnsons that Defendants obstructed discovery about their financial affairs during discovery in this matter, and then were precluded from presenting such evidence at trial.[141]

To be clear, the CRO requires the Johnsons to cooperate with the Receiver and deliver such additional documents and information that he may request going forward.[142] It was in the interest of compelling the Johnsons' compliance that the Court issued a series of orders *after* May 17, 2019 requiring the Johnsons to supplement their disclosures and productions as of that date. But those subsequent orders did not excuse the Johnsons' defiance. The Johnsons will not be allowed to have resisted CRO disclosure requirements for the Receiver's one-year tolling period, and then use documents or information produced after December 5, 2019, ~~May 17, 2019,~~ to defend against the Receiver's claims.[143]

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[139] ECF No. 638 at 3 (emphasis added).

[140] ECF No. 638 at 3 (emphasis in original). Although the Court has not (yet) barred the Johnsons from raising claims or defenses in other litigation, the Court notes that their willfulness, bad faith, and fault in defying this Court's orders to date, including orders to produce documents and information, are a step down that path. *See Nat'l Hockey League v. Metro. Hockey Club, Inc.*, 427 U.S. 639, 639-40 (1976); *Klein v. Wings Over the World Ministries*, 2014 WL 1329546 (D. Utah Mar. 31, 2014) (Nuffer, J., adopting R&R to enter default judgment against a defendant due, in part, to blatant disregard of court orders including a failure to provide the receiver discovery responses despite a court order to do so), aff'd sub nom. *Klein v. Harper*, 777 F.3d 1144 (10th Cir. 2015); *Brigham Young Univ. v. Pfizer, Inc.*, 282 F.R.D. 566, 569-70 (D. Utah 2012) (Wells, M.J.).

[141] ECF No. 638 at 2.

[142] *E.g.*, ECF No. 491 ¶ 23, 28; ECF No. 701 at 5-6.

[143] After careful review of the procedural history in this matter and the applicable case law, December 5, 2019, ~~May 17, 2019~~ is the appropriate date to close the universe of documents that the Johnsons may use to support or defend

(continued...)

III. ORDER

For the reasons stated above, and on the record of all proceedings following the United States' motion for order to show cause, filed January 29, 2019, **IT IS HEREBY ORDERED THAT:**

1. The United States' motion for additional sanctions due to continued contempt of Neldon Johnson, Glenda Johnson, LaGrand Johnson, and Randale Johnson is **GRANTED**.
2. No later than three business days from the date of this Order:
    a. Counsel for Neldon Johnson shall deliver this Order to Neldon Johnson and shall file with this Court a declaration, signed under penalty of perjury, from Neldon Johnson certifying the date that he received a copy of this Order.
    b. Counsel for Glenda, LaGrand, and Randale Johnson shall deliver this Order to Glenda, LaGrand, and Randale Johnson and shall file with this Court declarations, signed under penalty of perjury, from Glenda, LaGrand, and Randale Johnson certifying the date that each received a copy of this Order.
3. Neldon Johnson, Glenda Johnson, LaGrand Johnson, and Randale Johnson are prohibited from using any document not produced in these proceedings or to the Receiver on or before December 5, 2019, ~~May 17, 2019,~~ to support or oppose any claim or defense raised in any civil matter, lawsuit, claim, or counterclaim involving the Receiver or the United States.

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civil claims in suits involving the Receiver or the United States. The Court and the United States have identified other possible cut-off dates, *see* ECF No. 803 ¶ 4 and Feb. 25 Tr. 134:21-135:15, but December 5, 2019, ~~May 17, 2019,~~ makes this remedial sanction both more effective and more likely to "deter those who might be tempted to such conduct in the absence of such a deterrent." *See Nat'l Hockey League*, 427 U.S. at 643.

4. Neldon Johnson is prohibited from using financial information not disclosed to the Receiver on or before December 5, 2019, ~~May 17, 2019,~~ to support or oppose any claim or defense raised in any civil matter, lawsuit, claim, or counterclaim involving the Receiver or the United States.

5. In any civil matter, lawsuit, claim, or counterclaim involving the Receiver or the United States, if

    a. any of the Johnsons ("Johnson Party") wishes to use any document or information to support or oppose any claim or defense, and

    b. the Receiver or the United States notifies the Johnson Party that the Receiver or the United States requires confirmation that the document or information was provided to the Receiver on or before December 5, 2019, ~~May 17, 2019~~, then;

    c. the Johnson Party shall have the burden of showing the date the document or information was produced to the Receiver; the medium in which it was produced; and who produced the document or information.

6. The provisions of ¶¶ 3 through 5 of this Order shall not apply to any criminal proceedings.

~~7. No later than five calendar days from the date of this Order, LaGrand Johnson shall:~~

~~a. deliver a report, made under penalty of perjury, to the Receiver and the United States containing details of all monies he has received on or since October 31, 2018. The report shall include:~~

~~i. information about the source of funds, including payor, amount, date(s) received, and reason for the payment;~~

~~ii. information about the financial institution account or other place those funds were deposited or stored (including brokerage accounts, safe deposit boxes, stored value cards, or other non-financial institution account), including the name of the financial institution or place, the account number, the name(s) of all title holder(s) to the account or other place;~~

~~iii. information about all assets he has purchased on or since October 31, 2018, with a value greater than $1,000, including the asset purchased, the amount of the purchase price, and the name, address, and telephone number of the seller;~~

~~iv. information about all deposits he has made to brokerage or other investment or retirement accounts, and~~

~~v. information about any investments he has made.~~

~~b.~~a. ~~file a verification with the Court that he has complied with the terms of this paragraph.~~

~~8.~~7. The provisions of ¶ 10 of the Corrected Receivership Order shall henceforth apply to Glenda, LaGrand, and Randale Johnson.

a. Any document filed with the Court in this case on behalf of Glenda, LaGrand, or Randale Johnson shall provide information required by the last sentence of ¶ 10 of the Corrected Receivership Order.

b. If Glenda, LaGrand, or Randale Johnson files a document without the statement required by this paragraph 8, the document is a nullity and will be deemed not filed. No party to this case is required to respond to such a document.

~~9.~~8. Any document filed with the Court in this case on behalf of any Affiliated Entity identified in the Affiliates Order:

a. shall contain the information required by the last sentence of ¶ 10 of the Corrected Receivership Order and a verified signature by the person or persons who authorized the filing of the document that the information in the filing is accurate.

b. If any Affiliated Entity files a document without the statement required by this paragraph 9, the document is a nullity and will be deemed not filed. No party to this case is required to respond to such a document.

~~10.~~9. If the Receiver or the United States determines, in good faith, that Neldon Johnson, Glenda Johnson, LaGrand Johnson, or Randale Johnson, or any other person acting on their behalf has violated the Corrected Receivership Order, the Affiliates Order, the Contempt Order, this Order, or any other Order of this Court, the Receiver or the United States shall file a notice of non-compliance with the Court. Upon the filing of a notice of non-compliance, the Court may, depending on the severity of the asserted non-compliance or its asserted consequences, issue a bench warrant for the person for incarceration until the Court holds a hearing on the matter.

Dated: _____

BY THE COURT

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