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**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION**

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UNITED STATES OF AMERICA,

Plaintiff,

v.

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

Defendants.

**RECEIVER'S SECOND QUARTERLY  
STATUS REPORT**

*For the period January 1, 2019 to March  
31, 2019*

Civil No. 2:15-cv-00828-DN

District Judge David Nuffer

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R. Wayne Klein, the Court-Appointed Receiver (the "Receiver") of RaPower-3, LLC ("RaPower"), International Automated Systems, Inc. ("IAS"), and LTB1, LLC ("LTB1") (collectively, the "Receivership Entities"), as well as certain of their subsidiaries and affiliates ("Related Entities") and the assets of Neldon Johnson ("Johnson") and R. Gregory Shepard ("Shepard") (collectively "Receivership Defendants"), hereby submits this Second Quarterly

Status Report (“Report”) for the period from January 1, 2018 to March 31, 2019 (“Reporting Period”).

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## I. INTRODUCTION AND BACKGROUND

The Receivership Estate was created on October 31, 2018 with entry of the Court's *Receivership Order* ("Order"),<sup>1</sup> which, among other things, appointed the Receiver and continued a previously-entered asset freeze.<sup>2</sup> Other significant court filings preceding the Order were the United States' *Complaint for Permanent Injunction and Other Equitable Relief*,<sup>3</sup> *Order Dismissing the [Bankruptcy] Case*,<sup>4</sup> *Amended and Restated Judgment*,<sup>5</sup> and *Findings of Fact and Conclusions of Law*.<sup>6</sup> The Receivership Defendants subsequently filed two *Notices of Appeal*.<sup>7</sup>

The Receiver's efforts during the quarter have focused on taking control of and marketing assets, obtaining financial and business records, conducting forensic accounting, investigating relationships between affiliated entities, analyzing the reasons for payments by Receivership Defendants, and litigation matters.

## II. TAKING CONTROL OF ASSETS, MARKETING ASSETS

A. Aircraft. The Order identifies two aircraft as part of the Receivership Estate: a Mooney Model M20C and a Cessna Model 172. The Receiver has engaged an aircraft broker in California to appraise and sell the Mooney aircraft. After persistent demands by the Receiver,

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<sup>1</sup> [Docket No. 490](#). A *Corrected Receivership Order*, which corrected formatting errors, was entered the following day. [Docket No. 491](#), filed Nov. 1, 2018.

<sup>2</sup> *Memorandum Decision and Order Freezing Assets and to Appoint a Receiver*, [Docket No. 444](#), filed Aug. 22, 2018.

<sup>3</sup> [Docket No. 2](#), filed Nov. 23, 2015.

<sup>4</sup> [Docket No. 443](#), filed Aug. 22, 2018.

<sup>5</sup> [Docket No. 507](#), filed Nov. 13, 2018. This order replaced *Judgment in a Civil Case*, Docket No. 468, filed Oct. 4, 2018.

<sup>6</sup> [Docket No. 467](#), filed Oct. 4, 2018.

<sup>7</sup> [Docket No. 445](#), filed Aug. 27, 2018 and [Docket No. 472](#), filed Oct. 10, 2018. The Court has permitted Johnson and Shepard to represent the Receivership Entities for purposes of the appeal despite the otherwise applicable removal of all officers, directors, managers, and attorneys of the Receivership Entities. [Order](#) at ¶¶ 9-10. See the discussion in Part III, below.

Neldon Johnson delivered various log books for the Mooney aircraft in January. The Receiver forwarded those log books to the aircraft broker.

Based on records the Receiver obtained from the Federal Aviation Administration (“FAA”) and the purchaser of the Cessna and based on discussions with the Spanish Fork Airport manager, the Receiver has confirmed the accuracy of vague statements by Johnson that the Cessna was involved in a runway collision and the value was paid by an insurance company. The insurance company sold the damaged aircraft to a salvage buyer. Based on this information, the Receiver authorized the FAA to transfer ownership of the aircraft to the salvage buyer. The Receiver still has not received any records from Johnson identifying the payments received from the insurance company.

The Receiver has located the Cessna Model 414—a twin engine aircraft owned by U-Check, Inc., a company owned by Neldon Johnson. That company and that aircraft are not part of the Receivership Estate, but the Receiver has filed a motion seeking to expand the Receivership Estate to include U-Check, Inc. If the Court grants that motion, that aircraft will become property of the Receivership Estate. That aircraft is located at the municipal airport in Delta, Utah. According to information obtained by the aircraft broker, this aircraft was purchased by Johnson approximately 15 years ago and it has not been flown since. The plane lacks an airworthiness certificate and is in a neglected, derelict condition.<sup>8</sup>

B. Equipment. The attorneys for Mr. Johnson identified equipment owned by the Receivership Entities. According to Johnson’s attorneys, RaPower owns five pieces of equipment and machinery, none of which have any value because of age and their working

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<sup>8</sup> One research source found by the Receiver ([www.flightaware.com](http://www.flightaware.com)) indicates a flight plan for a plane with this tail registration number was flown from California to Nevada in 2015. However, the filed flight plan indicated a different aircraft type than this one, so the reliability of this information is unknown.

condition. The attorneys report that IAS is the title owner of two trucks (model years 1985 and 1993) and five trailers. The value of these vehicles and trailers is unknown, but likely to be minimal. The attorneys reported that additional equipment at the RaPower shop<sup>9</sup> is owned by Solstice Enterprises, Inc., but did not identify the equipment.

C. Real Property. No real property is owned by RaPower, LTB 1, or Neldon Johnson. IAS is the title owner of six properties and Greg Shepard is living in a home titled in the name of his wife's trust. Additional information on these properties is provided below:

1. Millard County, Utah Undeveloped Properties. Of the five properties IAS owns in Millard County, four are undeveloped, with no buildings or other structures. These total 560 acres. The fifth property is described in the next paragraph. The Receiver has engaged a broker to list all five properties for sale. The Receiver engaged an appraiser to value the five properties and filed a motion seeking court approval of the appointment of the appraiser.<sup>10</sup> The Court approved the appointment of the appraiser on April 9, 2019.<sup>11</sup> The Receiver will wait for the appraisal report before identifying a listing price for the properties, but the listing broker warns that similar properties are selling for as low as \$100 an acre because there is no power, water, or sewer to the properties. The listing broker indicated that the presence of water rights would substantially increase the value of the land. The broker found a well located adjacent to one of these properties, but that well is on land titled in the name of Glenda Johnson. The Receiver will investigate the circumstances surrounding Glenda Johnson's ownership of the property containing the well.

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<sup>9</sup> The "shop/warehouse" is titled in the name of Glenda Johnson.

<sup>10</sup> [Docket No. 598](#), filed Mar. 31, 2019.

<sup>11</sup> [Docket No. 607](#).

2. Millard County, Utah Tower Site. One of the five Millard County properties, consisting of 75.4 acres, contains solar towers. The Millard County Assessor has assessed these properties at \$1,948 per acre. The Receiver suspects the assessed valuation assumed that the solar towers were part of a commercial energy generating operation. In light of the solar energy scheme being revealed as a fraud, the Receiver believes the assessed valuation is unjustified. The Receiver expects to use the forthcoming appraisal to seek a lower tax valuation. The presence of the solar towers is unlikely to increase the value of the land. Additionally, this property is littered with substantial trash and abandoned equipment. Preliminary indications are that paying to remove the solar towers would cost more than any increase it would create in the value of the land, so the Receiver currently does not intend to have the solar trees removed. He will continue considering whether the solar trees might have value for their metal scrap—after considering the cost of de-constructing the solar trees and separating non-recyclable parts. The Receiver expects this property will be sold as is.

3. San Bernardino, CA Vacant Land. IAS owns a 6.2-acre plot of undeveloped desert land in San Bernardino County, California. The land abuts the I-15 freeway about five miles north of Newberry Springs, CA. Access to the land is currently blocked by a bridge rebuilding project. The Receiver obtained the assistance of a broker to sell the land and filed a motion seeking Court approval to employ an appraiser to appraise the property.<sup>12</sup> The Court approved the appointment of the appraiser on April 9, 2019.<sup>13</sup> The broker's minimum commission is \$2,000 and he expects the property to be valued at \$5,000 or less. The Receiver declined to pay \$1,000 to have a surveyor mark

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<sup>12</sup> [Docket No. 599](#), filed Mar. 21, 2019.

<sup>13</sup> [Docket No. 607](#).

the property boundaries. The Receiver fears that this property will have little or no equity in light of the costs of appraisals, real estate commissions, publication of notice, and the fees for preparing motions for Court approval of sales. After consideration, the Receiver believes the most efficient method for the sale of this property is by public auction and will file a motion for Court approval shortly.

4. Shepard Home. Defendant Shepard lives in a home in Salt Lake City that he transferred to his wife via quitclaim deed in 1998. His wife, Diana C. Shepard, transferred the property into a revocable trust (created that year) that she controlled. On March 1, 2017, the Diana C. Shepard Revocable Trust conveyed the property back to Gregory Shepard and Diana Shepard. At that time, the Shepards borrowed funds from a lender (Guaranteed Rate, Inc.), using the home as collateral.<sup>14</sup> Three days later, the Shepards conveyed the title to the property back to the Diana C. Shepard Revocable Trust. The Receiver believes the 2017 transfer of Gregory Shepard's interest in this home was a fraudulent transfer and that all (or at least) half of the home is a receivership asset. The Receiver has notified Defendant Shepard that the Receiver intends to seek possession of the home.<sup>15</sup>

5. Glenda Johnson Properties. Eighteen of the properties listed in the Order are titled in the name of Glenda Johnson;<sup>16</sup> three of these were transferred to Mrs.

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<sup>14</sup> This loan is being serviced by JPMorgan Chase Bank, N.A. In March 2019, the loan servicer turned over to the Receiver a mortgage payment that had been made on the home. Defendant Shepard provided information showing that the mortgage payment derived solely from funds of Diana Shepard and living allowance funds of Gregory Shepard so the Receiver returned the funds to JP Morgan Chase and authorized JP Morgan Chase to retain future mortgage payments received from Diana Shepard.

<sup>15</sup> The Shepards are separately involved in litigation with the IRS in United States Tax Court regarding tax liabilities owned by the Shepards. The Receiver has filed a motion asking the Court to lift the litigation stay to allow the Shepards and the IRS to consummate a settlement agreement. [Docket No. 604](#), filed April 5, 2019. That settlement agreement will provide that the IRS's claim for the Shepard home is subordinated to the Receiver's claims to the home.

<sup>16</sup> [Order ¶¶ 20 \(a\) – \(e\), \(j\) – \(p\), \(s\), \(v\), \(x\) – \(aa\)](#).

Johnson by quitclaim deed from Neldon Johnson. The Receiver is attempting to obtain information showing the source of funds used by Mrs. Johnson in acquiring these properties. If he learns that the properties were transferred to her for no consideration or that funds used to purchase these properties came from Receivership Entities, the Receiver expects to seek to recover these properties from her.

6. N.P. Johnson Family Limited Partnership Properties. Two of the properties listed in the Order are titled in the name of the N.P. Johnson Family Limited Partnership (“NPJFLP”).<sup>17</sup> While NPJFLP signed documents in October 2012 ostensibly transferring this property to two foreign entities, title was never transferred to the foreign entities on county land records. In addition, Neldon Johnson has continued to exercise actual control over this property and sign documents as the representative of NPJFLP, the title owner. The Receiver filed a motion seeking to expand the Receivership Estate to include NPJFLP.<sup>18</sup> If the motion is granted by the Court, these two properties will become part of the Receivership Estate.<sup>19</sup>

### **III. FINANCIAL AND BUSINESS RECORDS, FORENSIC ACCOUNTING**

A. Obtaining Bank Records. Counsel for the United States provided substantial bank records to the Receiver. These records are an important component of the financial analysis and forensic accounting being performed by the Receiver and by the Lone Peak Valuation, the forensic accountants for the Receiver. However, these financial records are incomplete. In most

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<sup>17</sup> [Order ¶¶ 20 \(cc\), \(dd\)](#).

<sup>18</sup> *Receiver’s Motion to Include Affiliates and Subsidiaries in the Receivership Estate*, [Docket No. 582](#), filed Mar. 1, 2019.

<sup>19</sup> The motion is being opposed by Neldon Johnson, Glenda Johnson, and attorneys purporting to represent several of the affiliated entities.

cases, these bank records only cover transactions up to 2015. Thus, the Receiver lacked banking information from the three-year period before appointment of the Receiver.

To fill this void, the Receiver requested copies of bank records from all financial institutions where Defendants were believed to hold bank accounts or credit card accounts. All the financial institutions except Wells Fargo have provided the requested records (or responded that there are no responsive records).<sup>20</sup> In the case of Wells Fargo, the bank ignored an initial request, then responded to a second request inaccurately stating that the records were in the process of being gathered. In the end, the subpoena production unit of Wells Fargo responded that because the Receiver was the owner of the account, the Receiver needed to obtain the requested records from the local branch. The Receiver's attempt to obtain records from the local branch, however, proved impractical. A subpoena has been issued and the Receiver hopes to receive the records in May. This frustrating process has delayed completion of the financial and forensic analysis.<sup>21</sup>

B. Business Accounting Records. While the Receiver can reconstruct most financial transactions through analysis of bank records, the bank records alone do not indicate the purposes of the transactions. The internal records of the company that contain check registers, accounting software entries, invoices, correspondence, compensation records, and similar business records are needed to identify the sources and recipients of payments, understand the purposes of each payment, determine the solvency of the paying entities, and evaluate the legitimacy of the transactions. Defendants have provided none of these records to the Receiver.

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<sup>20</sup> In the instance of Cyprus Credit Union, the Receiver had to issue a subpoena in order to obtain the records. Cyprus Credit Union provided the requested records on February 1, 2019. After additional prodding, Cyprus Credit Union delivered to the Receiver the \$627.81 balance in accounts it was holding for Defendant Shepard.

<sup>21</sup> This delay also could have been avoided had the Receivership Defendants provided bank and business records to the Receiver as required by the Order.

C. Business Transaction Records, Asset Transfers. Counsel for Defendants have delivered to the Receiver a limited number of records relating to certain business transactions of the Receivership Defendants. Most of the records that were delivered purport to show that assets one would expect to be in the Receivership Estate were transferred to others. For example, Defendants' counsel provided records showing patent transfers to NLJFLP, patent and real estate transfers to foreign entities, assignment of Neldon Johnson's royalty interests to family members, and license agreements between affiliates. The Defendants have not provided to the Receiver records showing property transfers from Neldon Johnson to Glenda Johnson, purchases and dispositions of equipment, records of the insurance settlement on the Cessna Model 172M, stock ledgers, and records of assets transferred to Solstice and other affiliates. In particular, none of the Defendants has provided the sworn statement of assets, credit cards, shareholdings, and asset transfers required by paragraph 26 of the Order.

D. Business Organization Records. In January, the Receiver made a specific request to Defendants' lawyers, Nelson Snuffer Dahle & Pouslen ("Nelson Snuffer") for copies of organizational documents that the law firm created at the request of or which were paid for by RaPower or IAS. The Receiver believes that these records should have been delivered to him automatically as a result of mandates in the Order. On February 20, 2019, the attorneys provided to the Receiver organizational records and some transactional agreements involving Cobblestone Partners, RLN Management, Solstice Enterprises, Solco I, LTB O&M, Theta Energy, Black Night, Starlite, and XSun Energy.<sup>22</sup>

E. Stock Trading Records.

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<sup>22</sup> This still did not constitute delivery of all company records. The Receiver has still not been able to obtain articles of incorporation and bylaws for Black Night and Starlite.

1. Stock Trading by Defendants, Family Members. The Receiver has still been unable to comply with his obligation to report to the Court on the stock holdings and prior stock trading by Defendants and their family members.<sup>23</sup> Defendants have failed to produce records disclosing their share ownership and trading histories. Randale and LaGrand Johnson, who were officers of IAS, also have failed to deliver IAS records to the Receiver. Pacific Stock Transfer Company (“PSTC”) ignored a request from the Receiver for trading records, necessitating the issuance of a subpoena. PSTC produced only a portion of records demanded, causing the Receiver to file a motion for an order to show cause.<sup>24</sup>

2. IAS Stock Given to, Sold by, Nelson Snuffer. As a result of a vague reference to “shares of IAS held in trust” in letters Nelson Snuffer sent to IAS external auditors in 2009 and 2010, the Receiver asked Nelson Snuffer for information about those shares. In response, Nelson Snuffer produced records showing that Nelson Snuffer received 9,088,000 shares of IAS stock between 2009 and 2012. Nelson Snuffer sold this stock as needed to pay for legal expenses of Nelson Snuffer and to fund payments by Nelson Snuffer to others.

Between January 2009 and July 2012, Nelson Snuffer sold 5,588,000 shares of this stock, receiving \$1,080,562.58 in proceeds. Out of this amount, Nelson Snuffer retained \$1,034,651.17 in payment for its legal services. Nelson Snuffer was a conduit to pay the remaining \$54,911.41 to law firms and other business performing services for IAS. Nelson Snuffer surrendered to the Receiver seven stock certificates, totaling 3.5 million shares, that were still in the name and possession of Nelson Snuffer. The Receiver

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<sup>23</sup> [Order](#) at ¶ 85.

<sup>24</sup> [Docket No. 576](#), filed Feb. 19, 2019. This matter is set for hearing on April 26, 2019.

has asked Nelson Snuffer for additional explanation regarding the recipients of some of these funds and the purposes of the payments.

F. Records Obtained from Others. Despite not yet receiving accounting records from Defendants, the Receiver has nonetheless begun the process of investigating payments by RaPower and IAS to others. The Receiver has analyzed schedules filed in the RaPower bankruptcy, court dockets, bank records for the period before 2015, and other sources and has requested information from law firms, equipment vendors, and other organizations who received funds from Defendants. In some instances, the Receiver has concluded that there are no grounds to seek recovery, in others he expects to seek recovery of some or all payments made.

#### IV. DEFENDANTS' NONCOMPLIANCE WITH SUBPOENAS, COURT ORDERS

A. Subpoenas to Neldon Johnson, Glenda Johnson. In January, the Receiver issued subpoenas to Neldon and Glenda Johnson seeking the production of documents and compelling their attendance at depositions set for February 19, 2019 (for Neldon Johnson) and February 20, 2019 (for Glenda Johnson).<sup>25</sup>

1. Neldon Johnson. Johnson filed a *pro se* "Motion for Protective Order," asserting that the Receiver's subpoena was too burdensome.<sup>26</sup> A week later, Johnson filed an "Objection to Deposition and Notice of Fifth Amendment Claim."<sup>27</sup> The Receiver responded, asserting that Johnson's objections were baseless and did not excuse his attendance at his deposition, and indicating an intent to proceed with his deposition on February 19, 2019.<sup>28</sup> Johnson did not appear at his deposition on February 19, 2019. On March 6, 2019, the Court issued a "Memorandum Decision and Order Denying the

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<sup>25</sup> [Docket No. 555](#) (Neldon Johnson), filed Jan. 14, 2019; [Docket No. 554](#) (Glenda Johnson), filed Jan. 14, 2019.

<sup>26</sup> [Docket No. 568](#), filed Feb. 7, 2019.

<sup>27</sup> [Docket No. 574](#), filed Feb. 15, 2019.

<sup>28</sup> [Docket No. 575](#), filed Feb. 18, 2019.

Johsons' Rule 26(c) Motions.”<sup>29</sup> The Court ordered the Johnsons to comply with the subpoenas no later than March 22, 2019.<sup>30</sup> Neldon Johnson provided none of the requested documents to the Receiver before the deadline (or since).

2. Glenda Johnson. Mrs. Johnson filed (through her counsel, Nelson Snuffer) a “Motion for Protective Order for Non-Party Glenda Johnson” containing the same objections as those expressed in Neldon Johnson’s motion.<sup>31</sup> On February 19, 2019—the afternoon before her scheduled deposition—Mrs. Johnson also filed a “Motion for Protective Order: Spousal Privilege.”<sup>32</sup> The Receiver’s counsel notified Nelson Snuffer that same day that assertion of the privilege did not excuse her attendance at her deposition. Mrs. Johnson did not appear at her deposition on February 20, 2019. The Receiver then filed an objection to Mrs. Johnson’s motion.<sup>33</sup> On March 6, 2019, the Court denied her motion for protective order and required that she produce documents required by the subpoena by March 22.<sup>34</sup> Mrs. Johnson provided no documents to the Receiver by the March 22 deadline (or since). The Court separately denied Mrs. Johnson’s motion for protective order based on spousal privilege and ordered her to appear for her deposition before March 22, 2019.<sup>35</sup> The Receiver set her deposition for March 20, 2019 but Mrs. Johnson did not appear.

B. United States Motion for Order to Show Cause. The United States filed a “Motion to Show Cause Why Neldon Johnson, R. Gregory Shepard, Glenda Johnson, LaGrand Johnson, and Randale Johnson Should Not Be Held in Civil Contempt of Court for Violating the

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<sup>29</sup> [Docket No 591](#), filed Mar. 6, 2019.

<sup>30</sup> *Id.* at 5.

<sup>31</sup> [Docket No. 565](#), filed Feb. 7, 2019.

<sup>32</sup> [Docket No. 577](#), filed Feb. 19, 2019.

<sup>33</sup> [Docket No. 587](#), filed Mar. 5, 2019.

<sup>34</sup> [Docket No. 591](#), filed Mar. 6, 2019.

<sup>35</sup> [Docket No. 593](#), filed Mar. 6, 2019.

Corrected Receivership Order.”<sup>36</sup> The Court set a briefing schedule requiring responses to be filed by March 29, 2019. No responses were filed by any of these persons. A hearing is set for April 26, 2019.

## V. LITIGATION MATTERS

A. Receiver’s Motion to Expand Receivership Estate. Pursuant to the Court’s directive in paragraphs 5 and 6 of the Order, the Receiver filed “Receiver’s Report and Recommendation on Inclusion of Affiliates and Subsidiaries in Receivership Estate,”<sup>37</sup> recommending that the Receivership Estate be expanded to include the twelve affiliated entities identified in the Order and one additional entity controlled by Neldon Johnson. The Receiver also filed a “Motion to Include Affiliates and Subsidiaries in the Receivership Estate.”<sup>38</sup> Objections to the Receiver’s motion were filed by Nelson Snuffer on behalf of XSun, Solco I, Solstice, and Glenda Johnson<sup>39</sup> and by Neldon Johnson, acting *pro se*.<sup>40</sup> The Receiver filed his reply on March 29, 2019,<sup>41</sup> making the issue now ripe for the Court’s review.

B. Nelson Snuffer Motion for Protective Order. As a result of the Receiver’s request for copies of billing records from Nelson Snuffer, the law firm filed a motion for a protective order.<sup>42</sup> The Receiver opposed the motion<sup>43</sup> and Nelson Snuffer did not file a reply. On March 6, 2019, the Court denied Nelson Snuffer’s motion on procedural and substantive grounds, ruling that the attorney-client privilege of RaPower and IAS belongs to the Receiver.<sup>44</sup> Nelson Snuffer delivered billing records on April 3, 2019. This will be discussed in the next status report.

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<sup>36</sup> [Docket No. 559](#), filed Jan. 29, 2019.

<sup>37</sup> [Docket No. 581](#), filed Feb. 25, 2019.

<sup>38</sup> [Docket No. 582](#), filed Mar. 1, 2019.

<sup>39</sup> [Docket No. 596](#), filed Mar. 15, 2019.

<sup>40</sup> [Docket No. 597](#), filed Mar. 18, 2019.

<sup>41</sup> [Docket No. 602](#), filed Mar. 29, 2019.

<sup>42</sup> [Docket No. 562](#), filed Feb. 2, 2019.

<sup>43</sup> [Docket No. 570](#), filed Feb. 12, 2019.

<sup>44</sup> [Docket No. 589](#), filed Mar. 6, 2019.

C. Nelson Snuffer Withdrawal as Counsel. On February 1, 2019, Nelson Snuffer filed a motion to withdraw as counsel for all Defendants.<sup>45</sup> The Receiver did not oppose the motion, which the Court granted on March 6, 2019.<sup>46</sup> No new counsel has filed a notice of appearance. Despite the withdrawal, Nelson Snuffer still has made filings on behalf of related entities. As noted above, on March 15, 2019, Nelson Snuffer objected to the Receiver's motion to expand the Receivership Estate on behalf of affiliates XSun, Solco, and Solstice.<sup>47</sup> In addition, Nelson Snuffer continues to represent defendants in their appeal to the Tenth Circuit and contact the Receiver on behalf of Shepard.

D. Dismissal of Millard County Litigation. On October 24, 2018, before appointment of the Receiver, the Court granted a motion by Defendants to allow Defendants to dismiss lawsuits that IAS, Neldon Johnson, and Glenda Johnson had filed against Millard County and three county officials.<sup>48</sup> The Receiver signed a release and settlement agreement on behalf of IAS on December 24, 2018 and Neldon and Glenda Johnson executed the release and settlement agreement on January 28, 2019. Judge Howell, of the Fourth District Court of Utah, dismissed the Johnsons' lawsuits—with prejudice—on January 30, 2019.<sup>49</sup>

E. Appeal. Defendants filed two appeals of this Court's orders, which appeals have been consolidated.<sup>50</sup> Defendants filed their appeal brief on January 22, 2019. The United States filed its brief on March 27, 2019.

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<sup>45</sup> [Docket No. 563](#), filed Feb. 1, 2019.

<sup>46</sup> [Docket No. 592](#), filed Mar. 6, 2019.

<sup>47</sup> [Docket No. 596](#), filed Mar. 15, 2019. Nelson Snuffer also represents Glenda Johnson in that opposition.

<sup>48</sup> [Docket No. 482](#), filed Oct. 24, 2018.

<sup>49</sup> *IAS v. Millard County*, Civ. No's. 140700016, 150700037 (Order of Dismissal with Prejudice, Jan. 30, 2019) (4<sup>th</sup> Dist., Utah).

<sup>50</sup> Appeal No's. 18-4119, 18-4150.

F. Prior IAS Litigation. The Receiver has learned that IAS has been involved in litigation that does not appear to have been disclosed to shareholders or potential investors.<sup>51</sup>

This includes:

1. SEC Lawsuit. In 1998, the Securities and Exchange Commission filed a lawsuit against IAS and Neldon Johnson alleging manipulation of the price of IAS shares and sales of personal stock by Johnson and members of his family. Three of Johnson's children were named as relief defendants. All Defendants consented to judgments.<sup>52</sup>
2. IAS Litigation Involvement in Divorce Litigation. In 2004 and 2009, Neldon Johnson caused IAS to file suit against Ina Bodell (Johnson's former wife), Donnel Johnson (Johnson's son), and Brenda Smith (Johnson's daughter).<sup>53</sup> The lawsuits alleged that Johnson's former wife and two of his children misappropriated and damaged property of IAS and conspired to damage the business of IAS. Both lawsuits were dismissed.
3. Patent Litigation. In 2006, IAS filed two lawsuits against Microsoft, IBM, Lenovo, and others alleging infringement of patents granted to Johnson on fingerprint readers.<sup>54</sup> A 2008 decision by Judge Benson invalidated Johnson's patent claims.<sup>55</sup> IAS's appeal of this ruling was dismissed.<sup>56</sup> In a decision the following year, Judge Benson

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<sup>51</sup> These two actions were obliquely referenced in documents provided by Nelson Snuffer or filed with the Court by Nelson Snuffer in connection with requests for information by the Receiver.

<sup>52</sup> *SEC v. International Automated Systems, Inc. and Neldon Johnson*, Civ. No. 2:98-cv-687 (D. Utah).

<sup>53</sup> *International Automated Systems, Inc. and Neldon Johnson v. Ina Bodell, Donnel Johnson, and Brenda Smith*, Civ. No. 040926797, Third Dist. Ct., Utah (2004); *International Automated Systems, Inc. and Neldon Johnson v. Ina Bodell, Donnel Johnson, and Brenda Smith*, Civ. No. 090912428, Third Dist. Ct., Utah (2009).

<sup>54</sup> *International Automated Systems, Inc. v. IBM., et al.*, Civ No's. 2:06-cv-72; 2:06-cv-115 (D. Utah, 2006).

<sup>55</sup> *See International Automated Systems, Inc. v. Digital Persona., Inc.*, 275 Fed.Appx. 964 (Fed. Cir. 2008).

<sup>56</sup> *Id.*

noted that Johnson's patent applications for patents had been rejected by Japan and the European Patent Office.<sup>57</sup>

## **VI. FINANCIAL OPERATIONS OF THE RECEIVERSHIP ESTATE**

A. Receipts and Disbursements. The table below shows the amount and source of funds brought into the Receivership Estate during the quarter:

<b>Revenue into the Receivership Estate</b>	
<b>Source of Revenue</b>	<b>Amount In</b>
Seized funds	\$2,067.81
Funds owed Defendants	\$6,017.56
Bank Interest	\$630.42
<b>Total</b>	<b>\$8,715.79</b>

<b>Expenditures</b>	
<b>Type of Expenditure</b>	<b>Amount</b>
Real estate marketing	\$550.00
Return of seized funds	\$1,511.83
Litigation, discovery costs	\$322.09
Operating expenses	\$801.15
<b>Total</b>	<b>\$3,185.07</b>

Professional fees were also paid during the quarter: \$10,308.38 to Lone Peak Valuation Group for forensic accounting, \$30,989.47 to Parr Brown Gee & Loveless for legal fees, and \$50,006.85 to Klein & Associates for the Receiver and his staff.

B. Bank Account Balances. The following table shows the balance of funds in the Receivership bank accounts at Wells Fargo Bank as of March 31, 2019:

<b>Bank Account Balances</b>	
<b>Account</b>	<b>Amount</b>
Checking account	\$37,003.45
High yield savings	\$1,633,692.94
<b>Total</b>	<b>\$1,670,696.39</b>

<sup>57</sup> Civ. No. 2:06-cv-72 (Memorandum Decision and Order, Jan. 12, 2009) ([Docket No. 189](#)) (D. Utah).

C. Amounts Where Ownership of Funds is Disputed. Certain funds held by the Receiver or others are subject to dispute as to ownership. These are identified in the table below:

<b>Location of Funds</b>	<b>Amount</b>	<b>Explanation</b>
District Court Registry	\$97,430.00	Snell & Wilmer retainer
Nelson, Snuffer Trust Acct.	\$735,202.22	Retainer fees for appeal
Receivership Account	\$265.11	Affiliated entity: Solco I
Receivership Account	\$73,548.02	Affiliated entity: Cobblestone
Receivership Account	\$224,093.73	Affiliated entity: XSun Energy
<b>Total</b>	<b>\$1,130,539.08</b>	

For the Snell & Wilmer funds, the Receiver is awaiting Glenda Johnson's delivery of documents requested by subpoena and her deposition to enable him to identify the source of funds she used to pay the retainer amount to Snell & Wilmer. Alternatively, it is hoped that completion of the forensic accounting will reveal the source of funds. The Receiver believes that the funds held by Nelson Snuffer were transferred from RaPower to XSun Energy to Nelson Snuffer and provided documents to Nelson Snuffer showing those transfers. Accordingly, if the Court determines to expand the Receivership Estate to include XSun, the Receiver will demand the turnover of these funds. For the funds the Receiver is holding from affiliated entities, if the Court rules that Solco, Cobblestone, and XSun Energy should be included in the Receivership Estate, the ownership of these funds will no longer be in dispute.

## **VII. RECEIVER'S PLANS FOR MOVING FORWARD**

The Receiver's expected plans for moving forward to accomplish the objectives of the receivership are:

A. Resolution of Which Entities Should be in the Receivership Estate. When the Court rules whether the affiliated entities should be part of the Receivership Estate, the Receiver will implement the effects of the Court's ruling. If some or all of the affiliates are made part of the Receivership Estate, the Receiver will take control of the assets of those other entities. This

may include retaining control of funds in the Receiver's possession, recovering funds from Nelson Snuffer, taking control over an additional aircraft, and taking control over additional real estate.

B. Analysis of Glenda Johnson Transactions, Determination of Her Role. Glenda Johnson has failed to deliver documents required by the Corrected Receivership Order, obey subpoenas from the Receiver, and comply with a specific order from the Court requiring that she produce documents and appear to be deposed. When the information sought through these avenues is finally obtained, the Receiver expects to be able to determine whether real estate properties were transferred to her improperly and can be recovered, whether funds paid to Snell & Wilmer belong to the Receivership Estate, and whether the Receiver should seek recovery from her of other funds Defendants have paid to her. The Receiver expects that much of this information can be verified (or determined) from the results of the forensic accounting.

C. Asset Sales. The Receiver will continue his efforts to sell the six real properties that are currently in the Receivership Estate and the aircraft belonging to Neldon Johnson. If additional real property and assets are brought into the Receivership Estate as a result of expansion of the Receivership Estate or litigation brought by the Receiver, the Receiver will market those assets.

D. Obtain Final Bank Records, Complete Forensic Accounting. When the final bank records are obtained from Wells Fargo Bank, the forensic accountants will be able to complete their analysis. This information will be used to prepare lawsuits to recover funds improperly paid out to others.

E. Seek Court Approval to Commence Litigation. The Receiver has discovered that RaPower and IAS paid several million dollars to law firms for legal services provided to other

persons. These companies paid enormous sums to Glenda Johnson and other members of Neldon Johnson's family. Gregory Shepard transferred his interest in his home to a trust in his wife's name. Neldon Johnson and Gregory Shepard have made charitable contributions that might be recoverable. Commissions were paid to RaPower salespersons, who perpetuated the tax fraud. The Receiver expects to file a motion soon seeking Court approval to commence litigation to recover funds and assets improperly transferred by Defendants.<sup>58</sup> The Receiver has consulted with counsel for the United States in determining the types of recovery actions he expects to initiate.

F. Stock Sales, Transfers. Pacific Stock Transfer Company also has failed to produce records required by a subpoena from the Receiver. When this information is obtained, the Receiver expects to be able to determine what sales and transfers of IAS stock have occurred. With this information, the Receiver expects to recover shares transferred to others and report to the Court on transfers and sales of stock subsequent to the filing of the 2015 suit by the United States.

G. Payments to the United States. When disputes over ownership of funds currently held by the Receiver are resolved and funds are recovered from Nelson Snuffer and Snell & Wilmer, the Receiver expects to make a significant initial payment of funds to the Department of Justice and the United States Treasury.<sup>59</sup>

H. Evaluation of Possible Claims Process. The Receiver will determine, by July 31, 2019, whether sufficient assets are likely to be recovered such that a claims process should be created and, if so, seek Court approval to conduct a claims process. At this point, in light of the low value of the land in Millard County and the amount of funds in seized bank accounts, the

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<sup>58</sup> See [Order](#), ¶ 59.

<sup>59</sup> [Order](#), ¶ 89 (a) and (b).

Receiver believes it is very unlikely there will be sufficient assets to satisfy the first two distribution priorities in full.

### **VIII. CONCLUSION**

The Receiver's ability to make decisions and take action is being slowed—but not thwarted—by his inability to obtain necessary records and testimony. Defendants have failed to deliver documents required by the Order and have refused to comply with subpoenas. Glenda Johnson has failed to comply with mandates of the Order, a subpoena, and a Court order specifically requiring her to appear to be deposed. Randale and LaGrand Johnson, former officers of IAS, have delivered no documents to the Receiver. Pacific Stock Transfer Company has refused to comply fully with a subpoena issued to it. Wells Fargo Bank has been slow in delivering copies of bank records. Nelson Snuffer refused to deliver documents requested by the Receiver and filed an unsuccessful motion for a protective order. Nelson Snuffer finally delivered billing records to the Receiver in early April, after the close of the Reporting Period. Justin Heideman has still not delivered records the Receiver requested in early February, but has promised to deliver them in April. The Receiver, along with counsel for the United States, has taken steps to compel delivery of these records.

The Receiver is getting a clearer picture of what assets need to be recovered and which persons are likely to be sued. He is gathering evidence to use in those lawsuits.

Assets are in the process of being marketed and the Receiver is preparing to be able to market other assets that might come into the Receivership Estate.

The Receiver certifies that the information in this Second Quarterly Status Report is accurate to the best of his knowledge.

  
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Wayne Klein  
Receiver

DATED this 15<sup>th</sup> day of April, 2019.

**PARR BROWN GEE & LOVELESS**

/s/ Jonathan O. Hafen  
Jonathan O. Hafen  
Joseph M.R. Covey  
Michael S. Lehr  
*Attorneys for Receiver*

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the above **RECEIVER'S SECOND QUARTERLY STATUS REPORT** was electronically filed with the Clerk of the Court through the CM/ECF system on April 15, 2019, which sent notice of the electronic filing to all counsel of record.

IT IS FURTHER CERTIFIED that, on the same date, by U.S. Mail, first-class, postage pre-paid, I caused to be served the same documents upon the following persons:

Neldon Johnson  
2730 W 4000 South,  
Oasis, UT 84624

R. Gregory Shepard  
858 Clover Meadow Dr.  
Murray, Utah 84123

*Pro se Defendants*

/s/ Michael S. Lehr