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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 MOTION FOR  
REAPPOINTMENT**

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

District Judge David Nuffer

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R. Wayne Klein, the Court-Appointed Receiver (the "Receiver"), respectfully requests that the Court enter the proposed Order attached hereto as **Exhibit A**, reappointing the Receiver. The purpose of this request is to allow the Receiver to timely file Notices of Receivership pursuant to 28 U.S.C. § 754 in numerous judicial districts where, since his appointment, he has discovered property of the Receivership Estate. In support hereof, the Receiver states as follows:

## I. BACKGROUND

1. On October 31, 2018, the Court issued a Receivership Order (“Receivership Order”) <sup>1</sup> appointing the Receiver to take control over the assets of Neldon P. Johnson (“Johnson”), Gregory Shepard, and Receivership Entities.<sup>2</sup>

2. The Court has directed and authorized the Receiver to do, among other things, the following:

- “[D]etermine the nature, location and value of all property interests of each of the Receivership Defendants . . . .”<sup>3</sup>
- “To take custody, control and possession of all Receivership Property and records . . . .”<sup>4</sup>
- “To bring legal actions based on law or equity in any state, federal or foreign court as the Receiver deems necessary or appropriate in discharging his duties as Receiver.”<sup>5</sup>
- “[T]o investigate, prosecute, defend, intervene in, or otherwise participate in . . . actions in any state, federal, or foreign court proceeding of any kind as may in his discretion, and after consultation with the United States, be advisable or proper to recover or conserve Receivership Property.”<sup>6</sup>

3. On or before November 9, 2018, and in accord with the Receivership Order and 28 U.S.C. § 754, the Receiver filed Notices of Receivership in two (2) federal judicial districts

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

<sup>2</sup> Collectively, unless stated otherwise, RaPower, IAS, LTB1, and all subsidiaries and affiliated entities are referred to herein as “Receivership Entities.” The subsidiaries and affiliated entities are: Solco I, LLC (“Solco”); XSun Energy, LLC (“XSun”); Cobblestone Centre, LC (“Cobblestone”); LTB O&M, LLC; U-Check, Inc.; DCL16BLT, Inc.; DCL-16A, Inc.; N.P. Johnson Family Limited Partnership (“NPJFLP”); Solstice Enterprises, Inc. (“Solstice”); Black Night Enterprises, Inc. (“Black Night”); Starlite Holdings, Inc. (“Starlite”); Shepard Energy; and Shepard Global, Inc.

<sup>3</sup> [Docket No. 491](#) at ¶ 13(a).

<sup>4</sup> *Id.* at ¶ 13(b).

<sup>5</sup> *Id.* at ¶ 13(l).

<sup>6</sup> *Id.* at ¶ 59. On May 24, 2019, the Court entered an *Order Granting Motion to Commence Legal Proceedings*, [Docket No. 673](#), authorizing the Receiver to begin filing certain categories of litigation.

based on his knowledge of the property of the Receivership Estate at the time of his appointment, as follows: (a) Central District of California; and (b) Northern District of Texas.<sup>7</sup>

4. As a result of his investigation of the estate, which is ongoing, the Receiver has determined that there exists property of the Receivership Estate in nineteen (19) additional federal judicial districts as follows: (a) Northern District of Florida; (b) Southern District of Florida; (c) Western District of Texas; (d) Eastern District of California; (e) Southern District of Ohio; (f) Eastern District of Wisconsin; (g) Western District of Washington; (h) Eastern District of Michigan; (i) Western District of Michigan; (j) Southern District of Mississippi; (k) Western District of Oklahoma; (l) Eastern District of Virginia; (m) Eastern District of Pennsylvania; (n) District of Arizona; (o) District of Oregon; (p) District of Minnesota; (q) Central District of Illinois; (r) Middle District of Alabama; and (s) District of Nevada (collectively, the “Additional Districts”).

5. Accordingly, reappointment of the Receiver is necessary to allow him to timely file Notices of Receivership in the Additional Districts pursuant to the Receivership Order and 28 U.S.C. § 754.

## **II. ARGUMENT**

### **A. Personal Jurisdiction Over Defendants in Receivership Actions is Based on 28 U.S.C. § 754**

Section 754 of title 28 of the United States Code governs the rights of receivers appointed by a federal court and states:

A receiver appointed in any civil action or proceeding involving property, real, personal or mixed, situated in different districts shall, upon giving bond as required by the court, be vested with complete jurisdiction and control of all such

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<sup>7</sup> See *Receiver's Initial Quarterly Status Report*, [Docket No. 557](#) at 2, filed on January 28, 2019.

property with the right to take possession thereof.

He shall have capacity to sue in any district without ancillary appointment, and may be sued with respect thereto as provided in Section 959 of this title.

Such receiver shall, within ten days after the entry of his order of appointment, file copies of the complaint and such order of appointment in the district court for each district in which property is located. The failure to file such copies in any district shall divest the receiver of jurisdiction and control over all such property in that district.<sup>8</sup>

It is well established that when a “Notice of Receivership” (which includes copies of a receivership order and a complaint) is filed in accordance with § 754, personal jurisdiction exists over defendants who reside in the districts where the Notice of Receivership is filed.<sup>9</sup> Where personal jurisdiction is based on § 754, the “minimum contacts” test of *International Shoe Co. v. Washington*,<sup>10</sup> does not apply.<sup>11</sup>

Due process is satisfied through the application of § 754 as long as exercise of jurisdiction “is not so extremely inconvenient or unfair that it outweighs the congressionally articulated policy of allowing personal jurisdiction.”<sup>12</sup> The burden is on the defendant to prove that due process is not satisfied,<sup>13</sup> and in the Tenth Circuit, the following five factors are considered: (1) the extent of the defendant’s contacts with the place where the action was filed; (2) the inconvenience to the defendant of having to

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<sup>8</sup> [28 U.S.C. § 754](#).

<sup>9</sup> See [Klein v. Cornelius](#), 786 F.3d 1310, 1318 (10th Cir. 2015); [SEC v. Am. Capital Invs., Inc.](#), 98 F.3d 1133, 1144 (9th Cir. 1996); [Haile v. Henderson National Bank](#), 657 F.2d 816, 823 (6th Cir. 1981) (holding that district court could exercise personal jurisdiction over defendants who resided elsewhere as long as the proper documents under § 754 were filed in the district where the defendants were located.)

<sup>10</sup> [326 U.S. 310 \(1945\)](#).

<sup>11</sup> [Cornelius](#), 786 F.3d at 1318.

<sup>12</sup> [Terry v. Walker](#), 369 F. Supp. 2d 818, 821 (W.D. Va. 2005).

<sup>13</sup> See [Peay v. Bellsouth Medical Assistance Plan](#), 205 F.3d 1206, 1212 (10th Cir. 2000); see also [Cornelius](#), 786 F.3d at 1318.

defend in a jurisdiction other than that of his residence or place of business; (3) judicial economy; (4) the probable situs of the discovery proceedings and the extent to which the discovery proceedings will take place outside the state of the defendant's residence or place of business; and (5) the nature of the regulated activity in question and the extent of the impact that the defendant's activities have beyond the borders of his state or residence or business.<sup>14</sup> “[I]t is only in highly unusual cases that inconvenience will rise to a level of constitutional concern.”<sup>15</sup> Based on this standard, judges in this district have found that due process has been satisfied in numerous receivership cases before it.<sup>16</sup>

Accordingly, compliance with § 754 is important in litigation related to recovery of property of a receivership estate. Because receivers reasonably cannot know the locations of all receivership property or where all possible defendants reside at the time of appointment or within ten days thereafter, courts allow for the reappointment of a receiver to allow sufficient time to file the notices required under § 754.<sup>17</sup>

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<sup>14</sup> *Id.* at 1212-13.

<sup>15</sup> *Id.* at 1213.

<sup>16</sup> See [Klein v. Abdalbaki](#), No. 11-cv-00953, 2012 WL 2317357 (D. Utah June 18, 2012); [Klein v. Georges](#), No. 12-cv-00076, 2012 WL 5844962 (D. Utah Nov. 19, 2012); [Klein v. Cornelius](#), No. 11-cv-1159, 2012 WL 2261114 (D. Utah June 15, 2012); [Wing v. Apex Holding Co., LLC](#), No. 09-cv-00022, 2009 WL 2843343 (D. Utah Aug. 27, 2009); [Wing v. Storms](#), No. 02-cv127, 2004 WL 724448 (D. Utah Feb. 5, 2004).

<sup>17</sup> See e.g., [Miller v. Wulf](#), No. 1:12-CV-119 DN, 2012 WL 5718497, at \*1 (D. Utah Nov. 15, 2012) (The failure to file copies of the receivership complaint in any district “shall divest the receiver of jurisdiction and control over all property in that district. However, this technical deficiency may be remedied by reappointing the receiver, which restarts the ten-day period for the receiver’s compliance with § 754.”); [Klein v. Bruno](#), No. 2:12-CV-00058-BSJ, 2013 WL 6158752, at \*3 (D. Utah Nov. 25, 2013) (“Because a receiver could not know the locations of all receivership property or where all possible defendants resided at the time of the receiver's appointment, courts allow for the reappointment of a receiver to allow him sufficient time to file the notices required under [section 754](#).”); [S.E.C. v. Vision Comm., Inc.](#), 74 F.3d 287, 291 (D.C. Cir. 1996) (“the court may reappoint the receiver and start the ten-day clock of § 754 ticking once again.”); [Warfield v. Arpe](#), No. 3:05-cv-1457-R, 2007 WL 549467, \*12 (N.D. Tex. Feb. 22, 2007) (finding jurisdiction over defendants where receiver filed complaint and order within ten days of reappointment); [Terry v. June](#), 2003 WL 22125300, at \*4 (W.D. Va. Sept. 12, 2003) (“Courts having addressed the issue unanimously suggest that an order of reappointment will renew the ten-day filing deadline mandated by Section 754.”) (collecting cases).

**B. Reappointment Allows the Receiver to File Notices Within the Ten-Day Window Required by 28 U.S.C. § 754**

As noted, courts recognize that a receiver may be reappointed so that he or she can file the required documents under § 754 within ten days from such reappointment.<sup>18</sup>

Here, the Receiver has filed copies of the Complaint and the Receivership Order, or Notices of Receivership, in two judicial districts within the ten-day period following his appointment on October 31, 2018.<sup>19</sup> Since his appointment, the Receiver has engaged in an intense investigation of the assets of the Receivership Estate. As of this time, the Receiver has discovered additional property in the Additional Districts, including potential litigation claims against defendants located in the Additional Districts, which could not have been known to him within ten (10) days of his appointment.<sup>20</sup> Accordingly, the Receiver requests that the Court issue an Order reappointing him in this action so that he can file Notices of Receivership in the Additional Districts so as to maximize the scope and value of the Receivership Estate.<sup>21</sup>

**III. CONCLUSION**

For the foregoing reasons, the Receiver respectfully requests that the Court issue an Order of Reappointment in the form attached hereto as **Exhibit A**.

The United States has informed the Receiver that it does not object to the relief sought in this motion.

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<sup>18</sup> *Id.*

<sup>19</sup> *See* note 7, *supra*.

<sup>20</sup> In this case, Receivership Defendants waited more than six months before delivering corporate records to the Receiver and it was more than six months after the Receivership Estate that Neldon and Glenda Johnson submitted themselves for deposition. The Court has found them and other related persons in contempt for failing to provide documents required by the Receivership Order and for hindering the work of the Receiver. *Civil Contempt Order Re: R. Gregory Shepard, Neldon Johnson, Glenda Johnson, LaGrand Johnson, and Randale Johnson*, [Docket No. 701](#), filed June 25, 2019.

<sup>21</sup> The Receiver's investigation is ongoing and he reserves the right to request further reappointment in the future if he discovers additional assets located in other jurisdictions.

DATED this 5th day of September, 2019.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Michael S. Lehr

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Michael S. Lehr

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