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

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 CORRECTED
RECOMMENDATION ON LIVING
ALLOWANCES FOR DEFENDANTS
JOHNSON AND SHEPARD**

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

District Judge David Nuffer

R. Wayne Klein, the Court-Appointed Receiver (the "Receiver") of RaPower-3, LLC, International Automated Systems, Inc., and LTB1, LLC (collectively "RaPower-3"), as well as certain subsidiaries and entities affiliated with RaPower-3 and the assets of Neldon Johnson ("Johnson") and R. Gregory Shepard ("Shepard"), hereby submits his recommendation to the Court regarding any living expense allowance for Johnson and Shepard ("Recommendation").

I. PROCEDURAL HISTORY

Following lengthy litigation that culminated in a trial and subsequent judgment,¹ the Court issued its “Receivership Order” on October 31, 2018 appointing Receiver to take control of the Receivership Entities.² Paragraph 78 of the Receivership Order directed the Receiver to “investigate the monthly income and living expenses of Johnson and Shepard and make a recommendation to the Court regarding whether any monthly living expenses should be paid out of the Receivership Property to Johnson or Shepard.”

This Recommendation summarizes information the Receiver has been able to gather and provides a conditional recommendation to the Court on whether living expenses should be allowed for Johnson and Shepard.

II. INVESTIGATION CONDUCTED

The Receivership Order directed the Receiver’s investigation to take into account: i) whether Johnson or Shepard have any non-Receivership Property or access to assets or property from sources other than Receivership Property, ii) whether the Receivership bank accounts have sufficient funds to pay living expenses, and iii) whether Johnson and Shepard are in substantial, good faith compliance with orders of the Court.³

1. Information Requested by Receiver. The Receiver’s first request for information from Johnson and Shepard (through counsel) on November 5, 2018 sought information regarding aircraft, vehicles, real property, and bank accounts of Receivership Defendants. A partial response was received on November 27, 2018. This response provided lists of aircraft, vehicles, and recent bank accounts of the Receivership Defendants.

¹ Docket No’s 468 (Judgment) and 507 (Amended and Restated Judgment). See Findings of Fact and Conclusions of Law (Docket No. 467) for a history of the litigation in this matter.

² Docket No 490.

³ *Id.* at ¶ 78.

The Receiver sent a second request for information on November 14, 2018 that specifically addressed the issue of living allowances. This letter requested that defendants provide: i) a proposed budget identifying the amount each defendant needs and the intended expenditures, ii) identify any assets that would be the subject of any of these expenses, ii) identify other persons who would be beneficiaries of each category of proposed expenditure, iv) identify any Receivership Assets the defendant proposed to use, v) identify all non-Receivership assets and income sources (to include retirement accounts), and iv) provide information regarding income and assets of any other persons who would be beneficiaries of living allowances defendants were requesting. This letter requested the delivery of responsive information by November 23, 2018. As of November 29, 2018, the Receiver has received no response or information responsive to the November 14, 2018 letter.

2. Information Obtained by the Receiver. Notwithstanding the lack of response to the November 14, 2018 letter, the Receiver has been able to obtain some information regarding the income and expenses of defendants from other sources. During the course of hearings on contempt by Shepard,⁴ information regarding income of Shepard and members of his household was obtained as well as information on certain types of expenditures by Shepard. In addition, the Receiver obtained information regarding income and expenditures by Johnson that were contained in his 2011 bankruptcy petition.⁵

3. Missing Information. The Receiver's recommendation, described below, is made without the benefit of having information regarding: i) social security payments being made to Neldon Johnson, ii) recent and planned sales of stock in the publicly-held International

⁴ See Docket No. 505.

⁵ Case No. 11-20679 (Bankr. D. Utah).

Automated Systems, Inc. by Johnson or family members,⁶ iii) the extent of Johnson's use of Receivership Property,⁷ iv) retirement accounts defendants may have, v) separate sources of income to defendants,⁸ or vi) non-Receivership Assets owned or controlled by defendants.⁹

III. LIVING ALLOWANCE ANALYSIS

1. IRS Living Allowance Standards.¹⁰ The amounts in the table below reflect my understanding of the monthly living allowance for two persons.¹¹

Category	Explanation	Johnson	Shepard
Housing and utilities ¹²	Local standard	\$1,347.00	\$1,806.00
Food, clothing, other	National standard	\$1,202.00	\$1,202.00
Medical allowance ¹³	National standard	\$114.00	\$114.00
Transportation ¹⁴	Ownership cost (2)	\$0.00	\$994.00
Transportation	Operating cost (2)	\$412.00	\$412.00
Total		\$3,075.00	\$4,528.00
Income ¹⁵		\$5,072.50	\$2,616.90

⁶ Any such sales would be in violation of the Receivership Order. However, the Receiver has not yet been able to determine what stock sales have been made by defendants or whether defendants continue to receive funds from stock sales.

⁷ As noted above, the Receiver's November 14, 2018 letter requested information regarding defendants' use of Receivership Assets, but no response was provided. Moreover, paragraph 79 of the Receivership Order requires Johnson or Shepard to make application to the Receiver to use Receivership Property. No such application has been made to the Receiver.

⁸ This might include income as distributions from retirement accounts or contributions towards household expenses by family members living with defendants.

⁹ Since all assets of Johnson and Shepard are Receivership Assets, this category would include assets owned or controlled by spouses, trusts, and retirement custodians. For example, counsel for defendants has asserted that Johnson's wife had received an inheritance and used funds from that inheritance to purchase properties in her own name. Some of the real property placed in the Receivership Estate are titled in the name of Glenda Johnson. At least two of these were transferred to Glenda Johnson by Neldon Johnson. The Receiver intends to investigate the sources of funds used by Glenda Johnson for the real property titled in her name.

¹⁰ <https://www.irs.gov/businesses/small-businesses-self-employed/national-standards-food-clothing-and-other-items>.

¹¹ The Receiver's calculation assumes the household sizes are two, for Johnson and his wife and Shepard and his wife. The numbers in this table differ from the amounts in the Court's *Memorandum Decision and Order freezing Assets and to Appoint a Receiver*, Docket No. 444 because the Receiver's calculation is based on a two-person household.

¹² The Johnson housing allowance is based on local standards for Millard County. The Shepard housing allowance is based on his residence in Salt Lake County.

¹³ The Receiver could not determine whether the medical allowance is per person or per household. If it is per person, the amount in this line should be increased by \$114 each for Johnson and Shepard.

¹⁴ Based on information provided by Johnson, there are no debts on his two vehicles, so no ownership cost allowance is included for the Johnsons.

¹⁵ The Johnson income amount is taken from Johnson's 2011 bankruptcy petition. The Receiver does not know if the monthly income and expenses of the Johnsons has improved or deteriorated since that time. The Shepard income amount is taken from documents submitted by Shepard in the contempt proceedings. It reflects \$1,923.00 received

Difference¹⁶		\$1,997.50	(\$1,911.10)
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2. Receiver's Commentary. Assuming that the correct living allowance standards have been applied and that the income amounts are accurate, Johnson would need no receivership funds to meet his living expenses allowable under IRS standards. This result is reinforced if the Receiver's understanding is correct that the Johnsons are living in property owned by the Receivership Estate—for which they likely have not been paying rent.

Under the analysis reflected in this table, Shepard would need an additional \$1,911.10 monthly to have income sufficient to meet the IRS living allowance standards. However, there are a number of known and unknown factors that might influence a decision whether to direct the Receiver to begin paying \$1,911.10 monthly to Shepard. First, the Receiver does not know whether Shepard has retirement accounts from which he could withdraw \$1,911.10 monthly, making it unnecessary for the Receivership Estate to subsidize his and his wife's Social Security income. Second, there are other occupants of the Shepard home who apparently are not contributing toward the monthly housing and utility expenses. If the other six occupants of the home were to contribute \$2,000 monthly toward housing and utility expenses, no subsidy from the Receivership Estate would be required.

Third, it appears to the Receiver that the current living standards of the Shepards greatly exceeds the living standards contemplated by the IRS living allowance. The Shepards are making

monthly by Shepard and \$693.90 received monthly by Diana Shepard. It does not include: i) payments owed to Shepard by Bigger, Faster, Stronger, which are being paid to the Receiver, ii) payments from an entity called Alliance (about which the receiver lacks information), or iii) \$843.00 in monthly income from Social Security being paid to the mother of Diana Shepard, who lives in the Shepard home. In October 2018, Mr. Shepard received approximately \$195.00 from substitute teaching. That apparently-episodic income is not treated as income in this table.

¹⁶ The "Difference" amounts in the original *Recommendation* were calculated from the living allowance standards in the Court's *Memorandum Decision and Order Freezing Assets and to Appoint a Receiver* (Docket No. 444), rather than the living allowance amounts in the table above. The Receiver apologizes for this error.

lease payments on four vehicles—all 2016 or later model years.¹⁷ Their large home would be expected to have utility bills substantially higher than allowed under the IRS guidelines. They have substantial credit card and line of credit balances owed. The IRS guidelines do not have much cushion for payment of credit card balances owed. In sum, the Receiver doubts that the Shepards can continue their current living standards with the amount of living allowance permitted under the IRS guidelines. If they are not willing to reduce their expenses (or enhance their income by withdrawals from retirement accounts or contributions toward household expenses by other occupants of the home), subsidies by the Receivership Estate will only slow the pace at which they will become unable to meet their ongoing obligations. The Receiver does not recommend increasing the monthly subsidies to allow the Shepards to maintain their current standard of living.

IV. RELATED CONSIDERATIONS

1. Sufficiency of Receivership Funds. One of the related factors to be considered is whether there are sufficient assets in the Receivership Estate to subsidize living expenses. As of November 29, 2018, the Receivership Estate bank accounts have a balance of \$1,761,960.68. This includes \$224,358.84 from the bank accounts of Solco and XSun Energy, which are the subjects of a pending motion to lift the asset freeze.¹⁸

2. Good Faith Compliance with Orders. At present, defendants do not appear to be in full compliance with orders of the Court. Defendants have provided some information requested by the Receiver (as detailed above), but significant information requested by the Receiver has not yet been produced. Johnson has not made application to the Receiver to use

¹⁷ The monthly lease payments on these vehicles appear to be at least \$1,700.00.

¹⁸ This total includes the \$27,126.05 from Greg Shepard as reimbursement of cash value he withdrew from a life insurance policy. It does not include the \$735,202.22 “non-refundable” retainer amount being held by Nelson, Snuffer, Dahle & Poulsen, which also is the subject of the motion to lift stay.

Receivership property, if he is in fact residing in property that is part of the Receivership Estate.¹⁹ There are a number of other instances where the Receivership Order obligates the defendants to produce information or take action within thirty days of the Receivership Order. As that deadline corresponds with the date of this Recommendation, the Receiver does not yet know the extent of defendants' compliance with those requirements.

V. RECOMMENDATION

The Receiver recommends that Johnson not be given any living allowance from Receivership Estate funds. The Receiver recommends that he be authorized to pay up to \$1,911.10 monthly to Shepard conditioned upon: i) Shepard having disclosed to the Receiver information regarding his retirement accounts, ii) the Receiver determining that Shepard is unable to withdraw \$1,911.10 monthly retirement accounts to supplement his and his wife's Social Security income, and iii) the Receiver determining that Shepard has come into substantial, good faith compliance with orders of this Court.

DATED this 14th day of December, 2018.

/s/ Wayne Klein

WAYNE KLEIN, Receiver

¹⁹ Johnson appears to be living at 2730 W. 4000 South in Oasis, Utah. This property is at least temporarily part of the Receivership Estate. The property is titled in the name of Glenda Johnson. As noted above, the Receiver does not know the source of funds used for the purchase of this property in 2012.