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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 MOTION TO INCLUDE
AFFILIATES AND SUBSIDIARIES IN
THE RECEIVERSHIP ESTATE**

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

District Judge David Nuffer

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 and the assets of Neldon Johnson (“Johnson”) and R. Gregory Shepard (“Shepard”) (collectively “Receivership Defendants” or “Defendants”), hereby submits this Motion to Include Affiliates and Subsidiaries in the Receivership Estate.

ARGUMENT

I. The Receiver Recommends the Receivership Estate be Expanded to Include Affiliated Entities and Subsidiaries.

The Corrected Receivership Order (“Order”) directed the Receiver to “investigate all subsidiaries and affiliates of the Receivership Defendants to determine whether the assets, property, property rights, or interests of the subsidiaries and affiliated entities derive from the abusive solar energy scheme at issue in this case or from an unrelated business activity.”¹ The Receiver was directed to file a “report and recommendation . . . as to whether the receivership should be extended to any of the investigated subsidiaries and affiliated entities”² or to entities other than the identified affiliates.³

The Receiver filed his Report and Recommendation on Inclusion of Affiliates and Subsidiaries in Receivership Estate (“Report and Recommendation”) on February 25, 2019.⁴ In the Report and Recommendation the Receiver:

1. Described the effects of the Defendants’ failures to cooperate with his investigation;
2. Detailed each affiliated entity and subsidiary, including company organization, ownership and management, business operations, and financial activities;
3. Recommended that adverse inferences be drawn due to Defendants’ noncooperation;
4. Recommended that the 12 affiliated entities identified in the Order and one additional entity be included in the Receivership Estate;

¹ [Docket No. 491](#), filed on November 1, 2018, at ¶ 5.

² *Id.* at ¶ 6.

³ *Id.* at ¶ 5.

⁴ [Docket No. 581](#).

5. Provided rationales for his recommendation; and
6. Detailed transactions made by the affiliates and subsidiaries.

The findings, descriptions, recommendations, rationales, and any other relevant parts of the Report and Recommendation are hereby incorporated into this Motion by reference.

As a consequence of the findings detailed in the Report and Recommendation, the Receiver now files this Motion to add 13 entities to the Receivership Estate permanently. These entities are Solco I, LLC; XSun Energy, LLC (“XSun”); Cobblestone Centre, LC; DCL-16A, Inc.; DCL16BLT, Inc.; LTB O&M, LLC; N.P. Johnson Family Limited Partnership (“NPJFLP”); Shepard Energy; Shepard Global, Inc.; Solstice Enterprises, Inc.; Black Night Enterprises, Inc. (“Black Night”); Starlite Holdings, Inc. (“Starlite”); and U-Check, Inc. (“U-Check”) (collectively “Affiliated Entities”).

Although U-Check was not identified in the Order as subsidiary or affiliated entity, the Order anticipates that the Receiver may recommend entities other than those expressly identified for inclusion in the Receivership Estate.⁵ Moreover, courts have recognized that receivership estates may be expanded to include additional entities when appropriate.⁶

II. Rationales for Recommendation to Include the Affiliated Entities Permanently.

There are six primary reasons why the Receiver seeks to add the Affiliated Entities to the Receivership Estate. First, in many cases, the Affiliated Entities have close associations with the original Receivership Entities. They have common officers, directors, members, and managers.

⁵ *Id.* at 5

⁶ See *SEC v. Wolfson, et al.*, No. 2:03-cv-0914, [Docket No. 268](#) (Order Expanding Receivership, March 17, 2004) (D. Utah).

Their corporate purposes are similar. There have been numerous and substantial financial transactions between many of the Affiliated Entities and IAS or RaPower, indicating common purposes and interdependence.⁷

Second, assets belonging to the Receivership Estate have been transferred to or are being held by the Affiliated Entities. In the case of XSun, \$1.498 million of funds belonging to RaPower were taken from a bank account of RaPower and deposited into a bank account of XSun.⁸ Patents owned by Neldon Johnson were transferred to NPJFLP, likely for no consideration.⁹ Ten million shares of IAS preferred stock and 100,000,000 warrants issued to Neldon Johnson were transferred to NPJFLP. Assets of NPJFLP were later transferred to foreign entities, Black Night and Starlite. Consideration for these transfers went to the owners of NPJFLP, not to NPJFLP itself—which appear to be fraudulent (voidable) transfers.¹⁰ A Cessna twin-engine airplane, which might have significant value, is held in the name of U-Check, which was owned and controlled by Neldon Johnson.¹¹

Third, in many instances, the only assets of the Affiliated Entities are their ownerships of patents, IAS shares, or bank account balances. In each of these instances, the Receiver believes these assets were transferred to these Affiliated Entities in fraudulent or voidable transfers. If the Affiliated Entities were not made part of the Receivership Estate and the Receiver brought successful avoidance actions, the Affiliated Entities would end up as empty shells with no assets. In the interim, the persons controlling the Affiliated Entities would be expected to use those assets

⁷ See [Docket No. 581](#), at §§ B, D.

⁸ *Id.*, at § B.2.d.

⁹ *Id.*, at § B.7.c.

¹⁰ *Id.*

¹¹ *Id.*, at § B.13.c.

to oppose the Receiver's efforts to recoup those fraudulent transfers. Instead, since the assets tied to RaPower are often the only assets of the Affiliated Entities, it makes more sense to put the entities themselves under the control of the Receiver so there can be no further dissipation of assets. If a third party has a claim for any of these assets, the third party can provide evidence to the Receiver of its claim to the asset and the Receiver can either recognize the claim and release part or all of the asset or the matter can be brought to the Court for resolution. In the interim, there would be no opportunity for further dissipation of the assets such as with XSun Energy funds in the Nelson Snuffer retainer account.

Fourth, the creation and use of the foreign entities Black Night and Starlite appear to have been designed to put assets out of the reach of government agencies and courts. Neldon Johnson testified at trial that contracts between the foreign entities and IAS provide that if IAS is declared insolvent or a government agency causes problems, "the contracts are relinquished back to the foreign company until those issues are resolved."¹²

Fifth, it is the case that many of these Affiliated Entities are defunct and devoid of assets. Bringing those Affiliated Entities into the Receivership Estate is not likely to result in any recovery of assets. However, in light of the quasi-public role the Receiver has in this case, the Receiver believes it will further public policy for him to take control of the Affiliated Entities to ensure that none of them is used by Defendants—or anyone else—to perpetuate what this Court has already declared as a massive fraud. By putting the Affiliated Entities in the Receivership Estate, the entities can be liquidated and dissolved rather than continue in existence and risk being used for improper purposes.

¹² *Id.*, at § E.1.

Finally, Neldon Johnson testified that, in fact, he controls all the Affiliated Entities and that he is able to (and does) decide which of the multifarious Affiliated Entities is used to accomplish his objectives.¹³ The Receiver believes Johnson's cited testimony accurately reflects both his attitude about the roles of the Affiliated Entities and the reality of the transactions that occurred within and between the Affiliated Entities.

CONCLUSION

For the foregoing reasons, the Court should grant the Motion and expand the Receivership Estate to include the Affiliated Entities. Adding the Affiliated Entities would help prevent the dissipation of assets, ensure that they are not used to perpetuate fraud, and keep them out of the control of Defendants who have demonstrated—and continue to demonstrate—their intent to work against the Receiver and his investigation, despite the Court's Order.

A proposed order is submitted herewith.

DATED this 1st day of March, 2019.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Michael S. Lehr _____

Jonathan O. Hafen

Michael Lehr

Attorneys for R. Wayne Klein, Receiver

¹³ *Id.*, at § E.2.

CERTIFICATE OF SERVICE

I hereby certify that the above **RECEIVER'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR PROTECTIVE ORDER** was filed with the Court on this 1st day of March, 2019, and served via ECF on all parties who have requested notice in this case.

/s/ Michael S. Lehr
