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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 THIRTEENTH
QUARTERLY STATUS REPORT**

*For the period October 1, 2021 to December
31, 2021*

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

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"), as well as 13 subsidiaries and affiliates (collectively, the "Receivership Entities"), and the assets of Neldon Johnson ("Johnson") and R. Gregory Shepard ("Shepard") (collectively "Receivership Defendants"), hereby submits this Thirteenth Quarterly Status Report ("Report") for the period from October 1, 2021 to December 31, 2021 ("Reporting Period").

Table of Contents

I.	Introduction and Background.....	1
II.	Asset Recovery, Settlements	1
III.	Investigation	2
IV.	Real Property Sales.....	2
V.	Litigation	5
VI.	Intervention Motion.....	8
VII.	Financial Operations of the Receivership Estate.....	8
VIII.	Next Steps.....	10
IX.	Conclusion.....	10

I. INTRODUCTION AND BACKGROUND

The Receivership Estate was created on October 31, 2018 with entry of the Court's *Receivership Order* ("Order"),¹ which, among other things, appointed the Receiver and continued a previously entered asset freeze.² A May 3, 2019 order expanded the Receivership Estate to include 13 additional affiliated entities ("Affiliated Entities").³

Significant developments during the Reporting Period include selling two properties, successfully satisfying due diligence requirements for three properties subject to a purchase option, arranging for removal of the hazardous chemicals on one of the properties, moving litigation forward, filing an appeal brief, and collecting settlement amounts. The Receiver also learned that criminal contempt charges were filed against Neldon and Glenda Johnson in December.

II. ASSET RECOVERY, SETTLEMENTS

A. Settlements. The Receiver's twelfth motion to approve settlements, filed on October 12, 2021, was approved by the Court.⁴ The single settlement approved in that motion will bring in \$95,000.00 when all required payments have been received. During the quarter, the Receiver received \$82,360.45 on this and previous settlement agreements.

¹[Docket no. 490](#). A *Corrected Receivership Order* ("CRO"), which corrected formatting errors, was entered the following day. [Docket no. 491](#), filed November 1, 2018.

²*Memorandum Decision and Order Freezing Assets and to Appoint a Receiver*, [Docket no. 444](#), filed August 22, 2018.

³[Docket no. 636](#), filed May 3, 2019. The Court overruled objections to this order. [Docket no. 718](#), filed July 8, 2019. Defendants appealed this order, which appeal was dismissed.

⁴Docket no. 1168, filed October 13, 2021.

III. INVESTIGATION

The Receiver requested account records from four broker-dealers for brokerage accounts used by Receivership Entities and their counsel. One broker-dealer responded saying the firm did not hold any accounts. The other three firms did not respond. The Receiver intends to issue subpoenas to the broker-dealers compelling production of these records.

IV. REAL PROPERTY SALES

A. Status of Receivership Properties. Eight real properties were held by the Receivership Estate at the beginning of the Reporting Period. The sale of one property closed during the quarter; a second one sold at auction, but the sale has not yet closed. The three properties subject to a purchase option saw completion of the due diligence phase; option payments have begun. The remaining three properties are being actively marketed. The status of each property is discussed below:

1. Delta Home. One of the properties that Glenda Johnson turned over to the Receiver in August 2021 was a manufactured home on .82 acres in Delta, Utah. The property was appraised at \$186,000 and marketed at \$200,000. The Receiver recommended to the Court an offer of \$205,000. The Court approved the sale at auction.⁵ No other bidders prequalified to bid, so the auction was canceled and the sale closed to the stalking horse bidder. The sale netted \$185,553.25. Details about the sale are described in the notice of sale results.⁶

⁵Docket no. 1172, filed November 1, 2021.

⁶Docket no. 1182, filed December 27, 2021.

2. Ten-Acre Parcel, Delta, Utah. A second property recovered from Glenda Johnson is an undeveloped parcel with 10.04 acres near Delta, Utah. The property appraised at \$17,000. A buyer offered \$20,000 and the Receiver filed a motion seeking approval for a public sale, which the Court granted.⁷ Another bidder prequalified to bid and an auction was held on December 17, 2021. The final high bid was \$36,000. This sale will close after the end of the Reporting Period.

3. Purchase Option on 1,000 Acres for Photovoltaic Solar Development. The Court previously approved an agreement to grant a purchase option for three parcels, containing 1,000 acres, to 8minute Energy.⁸ On December 15, 2021, 8minute waived any due diligence conditions and formally accepted the purchase option. This begins the four-year option period. The company made its lease payment for the portion of the fourth quarter after acceptance of the purchase option. The Receivership will now begin receiving regular option payments. Because the property was removed from public marketing, the Receiver paid the agreed-upon sales commission to the listing broker.

4. Oasis Warehouse. This property has been the subject of two failed offers. The listing broker reports continuing interest in the property, leading to optimism that the property will be sold.

5. Five Acres with Abandoned Home. This five-acre property in the Sutherland area has an abandoned home on a corner of the property. The property has an appraised value of \$55,000. The Receiver is attempting to get water rights for this property

⁷Docket no. 1178, filed November 16, 2021.

⁸Docket no. 1117, filed April 20, 2021.

recorded in the name of the Receiver, which will significantly increase its value. The Receiver is holding off marketing this property until his claim to the water rights is confirmed. When that is accomplished, the property will be publicly offered for sale. The Receiver expects significant interest in this property. The water rights might be sold separately from the property.

6. Well Site Next to Original Tower Site. Neldon Johnson had previously divided the original 80-acre tower site into a 75.6-acre site with the towers (which was titled in the name of IAS and sold previously) and a 4.6-acre site with a well and ten acre-feet of water (which was titled in the name of Glenda Johnson). The appraiser valued the 4.6-acre site at \$37,000. However, in light of the value of the water, the Receiver has concurred with the broker's recommendation to list the property and associated water rights for sale at \$100,000. The water is severable from the property and it is possible the water will be sold separately from the land.

B. Tax Liens on Properties. In the process of selling the 10-acre property (DO-3151), the Receiver learned that the Utah Tax Commission filed a lien notice against this property in February 2019. Tax liens likely have been filed against other properties turned over by Glenda Johnson. The liens relate to approximately \$3,000 in taxes owed by Neldon Johnson. In November 2021, the Receiver wrote to the Utah Tax Commission challenging the imposition of the tax liens since Neldon Johnson was not the title owner of the property. The Receiver requested the Tax Commission inform him whether the Tax Commission intends to assert a claim against proceeds from the sale. The Receiver has not yet received any response.

C. Update on Hazardous Materials. In August, the private hazardous waste disposal company engaged by the Receiver obtained samples from each container at the Millard County property where the chemicals are located. On October 15, 2021, the independent testing company issued its report confirming the contents as a highly concentrated toxic chemical. Due to the toxicity of the chemicals, the EPA will require incineration of the chemicals at a specially approved facility. In late October, the Receiver signed forms seeking EPA approval to repackage and transport the chemicals for incineration. A permit was granted on October 26, 2021. The chemicals are slated for removal and incineration in January. The Receiver has paid \$4,533.34 for the sampling and testing of the material and expects to pay approximately \$12,000 for the repackaging, transportation, and incineration of the chemicals.

At their request, the Receiver has provided significant information regarding the chemicals to the EPA.

D. List of Properties in the Receivership Estate. Attached as Exhibit 1 is a table showing the status of all real properties in the Receivership Estate.

V. LITIGATION

A. Special Report on Status of Litigation. The Receiver filed a fourth special report on the status of litigation,⁹ summarizing the status of settlements, summary judgment motions, default judgments, and ongoing litigation. The Receiver will continue filing similar reports every three months so long as significant litigation remains.

B. Active Recovery Litigation. There are 13 lawsuits filed by the Receiver still pending. The Receiver has filed summary judgment motions in four of these cases (Snow,

⁹Docket no. 1180, filed December 6, 2021.

Taylor, Heideman and Plaskolite). Two more are on hold because of bankruptcy filings and a defendant's death (Johnson and Hutchings). A seventh case (Jameson) is on hold with a pending agreement on a conditional settlement. For most of the remaining cases, the Receiver expects to file full or partial summary judgment motions in the near future. Significant events in these litigation matters during the Reporting Period include:

1. Plaskolite. The Receiver dismissed two of his causes of action (for constructive fraud), filed a motion for partial summary judgment (on claims of actual fraud), and opposed Plaskolite's motion for summary judgment. At a December hearing, Magistrate Kohler granted the Receiver's motion to compel discovery, requiring Plaskolite to provide information about knowledge Plaskolite received from its attorneys about the government's enforcement action against RaPower, before Plaskolite resumed selling plastic lenses to IAS and Cobblestone. Plaskolite has objected to the magistrate's ruling.¹⁰

2. Motions in the Heideman Litigation. The Court granted motions by the Receiver to exclude or limit testimony of three experts designated by Heideman.¹¹ Cross motions for summary judgment are pending in that case as well as a motion by Heideman to disqualify the Receiver's insolvency expert.

C. Criminal Contempt Charges Filed. The Receiver learned that on December 8, 2021, the U.S. Attorney for Utah indicted Neldon Johnson and Glenda Johnson on one count of criminal contempt for the disposal of documents ordered to be delivered to the Receiver. Glenda

¹⁰2:19-cv-832, docket no. 58, filed December 23, 2021.

¹¹As noted in the *Receiver's Fourth Special Report on Status of Litigation* (docket no. 1180), the Receiver's Twelfth Status Report incorrectly identified Justin Heideman as a defendant in this action. The defendant is Justin Heideman LLC, dba Heideman & Associates.

Johnson was indicted on four additional counts of criminal contempt for her actions in filing liens against real properties in the Receivership Estate.¹²

D. Appeals. Ten appeals were pending at the beginning of the Reporting Period. One was resolved during the quarter, leaving nine still pending—all of which are the responsibility of the Receiver.

1. Neldon Johnson. Neldon Johnson appealed the Court's denial of his motion to set aside the judgment.¹³ The Department of Justice defended this appeal. On December 2, 2021, the Tenth Circuit affirmed this Court's ruling. (#21-4015).

2. Glenda Johnson. On July 1, 2021, Glenda Johnson appealed the Court's order awarding attorneys' fees and costs for her third contempt finding, relating to her improper filings of property liens. Glenda Johnson's reply brief was filed in October, completing the briefing. The appeal is pending. (#21-4080).

3. Commission Recipient Appeals. Eight commission recipients have appealed summary judgment orders entered against them. The appeal filed by Trudy Shepherd (#21-4064) is being pursued pro se.¹⁴ Briefing has been completed. Neither side has requested oral argument. For the other seven appeals, Nelson Snuffer represents the appellants. These appellants are Janet Roe (#21-4065), Reinhold Finkes (#21-4090), Jean Armand (#21-4071), Amber Bennett (#21-4072), Roger Hamblin (#21-4075), John Howell/Rocking H (#21-4076), and Carey Hadderton (#21-4077). The appellants' initial

¹²2:21-cr-513.

¹³[Docket no. 1081](#), filed February 9, 2021.

¹⁴Trudy Shepherd is Glenda Johnson's daughter.

brief was filed in November, the Receiver filed his reply in early December, and the appellants’ reply brief is due on January 24, 2022.

VI. INTERVENTION MOTION

On August 5, 2021, Preston Olsen filed a motion, styled as a class action, seeking to intervene in the Receivership case. In essence, Olsen seeks to have recoveries by the Receiver credited against tax obligations assessed against him and other lens purchasers.¹⁵ The United States filed a memorandum in opposition.¹⁶ At the direction of the Court, the Receiver also filed a memorandum regarding the proposed intervention.¹⁷ Olsen filed his reply and a supplemental brief. Magistrate Judge Oberg heard oral argument on November 15, 2021. The matter is awaiting a ruling.

VII. FINANCIAL OPERATIONS OF THE RECEIVERSHIP ESTATE

A. Receipts and Disbursements. The tables below show the amounts and sources of funds brought into the Receivership Estate during the quarter and categories of expenditures:

Revenue into the Receivership Estate	
Source of Revenue	Amount In
Real estate: sale proceeds ¹⁸	\$185,553.23
Real estate: option payment	\$1,900.22
Real estate: rental income	\$540.00
Settlement payments	\$82,360.45
Refunds	\$232.77
Bank interest	\$7.71
Total	\$270,594.38

¹⁵Docket no. 1143, filed August 5, 2021.

¹⁶Docket no. 1152, filed September 17, 2021.

¹⁷Docket no. 1153, filed September 17, 2021.

¹⁸Six thousand dollars of this amount was a bid deposit that was refunded.

Expenditures	
Type of Expenditure	Amount
Real estate: utilities, ins., repairs	\$1,551.39
Real estate: property taxes	\$10,782.71
Real estate: commissions, public.	\$10,860.20
Real estate: hazardous chemicals	\$4,533.54
Asset searches	\$24,875.00
Bank fees	\$15.00
Total	\$52,587.84

The Receiver's fee application for work performed during the second quarter was approved in October.¹⁹ Payments totaling \$143,432.86 were paid to the Receiver, his counsel, and the forensic accountants on October 29, 2021. The Receiver's fee application for work performed in the third quarter was filed on December 16, 2021.²⁰ These payments, if approved, will be reflected in the next quarterly report.

A third distribution, in the amount of \$500,000, was sent to the Department of Justice on December 20, 2021. A total of \$9,000,000 has been distributed to the Department of Justice to date.

B. Bank Account Balances. The following table shows the balances of funds in the Receivership bank accounts at Wells Fargo Bank as of December 31, 2021:

Bank Account Balances	
Account	Amount
Checking account	\$204,749.95
High yield savings ²¹	\$256,979.40
Total	\$461,729.35

¹⁹Docket no. 1169, filed October 25, 2021.

²⁰Docket no. 1181, filed December 16, 2021.

²¹This amount includes \$100,000 that the Turnover Order directed be preserved pending resolution of the Receiver's separate lawsuit against Glenda Johnson.

VIII. NEXT STEPS

The significant next steps in the Receivership will be:

A. Sell Real Properties. As of the end of the Reporting Period, there were seven properties in the Receivership Estate. One property has sold and is awaiting closing. Three properties are still being marketed. The remaining three properties are subject to an option purchase agreement and will remain in the Receivership Estate until the purchase option is exercised or terminated. The Receiver is obligated to continue paying property taxes on those properties and maintaining them (including disposing the hazardous chemicals found on one of the parcels).

B. Ongoing Litigation. Litigation will continue in the 11 cases actively being litigated. The Receiver also may be asked to provide information or documents relating to the criminal charges filed against Neldon and Glenda Johnson.

C. Appeals. The Receiver is awaiting ruling on the nine appeals still pending and will be prepared to participate in oral argument if set by the Tenth Circuit.

D. Collection on, Assignment of, Judgments. The Receiver paid a private investigation firm to conduct asset searches on defendants against whom judgments have already been obtained. The Receiver is consulting with counsel for the United States on the most efficient means of collecting on judgments that have been obtained and may initiate collection on some of the judgments himself.

IX. CONCLUSION

Progress continues to be made in accomplishing the objectives of the Receivership. Two more properties were sold. An appeal was resolved. Hazardous chemicals are in the process of

being disposed. Settlement payments are being received. Discovery deadlines are arriving in pending litigation and several summary judgment motions have been filed, with more to come. The most difficult litigation cases remain to be resolved through summary judgment motions or trial. The complicated and expensive process of collecting on judgments lies ahead.

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


Wayne Klein
Receiver

DATED this 2th day of January 2022.

PARR BROWN GEE & LOVELESS

/s/ Jonathan O. Hafen
Jonathan O. Hafen
Jeffery A. Balls
Cynthia Love
Attorneys for Receiver

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **RECEIVER'S THIRTEENTH QUARTERLY STATUS REPORT** was electronically filed with the Clerk of the Court through the CM/ECF system on January 26th, 2022, which sent notice of the electronic filing to all counsel of record. Copies were also mailed to the following:

R. Gregory Shepard
10672 Winter Haven Court
South Jordan, Utah 84095

Neldon Johnson
PO Box 95332
South Jordan, UT 84095

Pro se Defendants

/s/ Wendy V. Tuckett