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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 SIXTEENTH
QUARTERLY STATUS REPORT**

*For the period July 1, 2022 to September
30, 2022*

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

District Judge David Nuffer

R. Wayne Klein, the Court-Appointed Receiver (the “Receiver”) in this matter, hereby submits this Sixteenth Quarterly Status Report (“Report”) for the period from July 1, 2022 to September 30, 2022 (“Reporting Period”).

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

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.

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

Activity relating to the Receivership has slowed, leading to a focus on the small number of remaining litigation cases, collection of judgment amounts, and anticipated disposition of the final real properties. One property sale closed during the quarter and the final available property is scheduled for auction.

II. ASSET RECOVERY, SETTLEMENTS

A. Settlements. There were no new settlements during the quarter. The Receiver received \$25,736.70 in installment payments on previous settlement agreements, including full collection of one judgment that had been seriously delinquent.

B. Garnishments. Judge Kohler held hearings on three objections to garnishment orders granted to the Receiver. In the case of John Howell, Judge Kohler overruled Howell’s objections and ordered the financial institution to pay \$51,983.86 to the Receiver. This represents the bulk of the \$61,204.15 judgment against Howell. In a hearing on the objection of Robert Tilden, Judge Kohler ordered Tilden to provide copies of bank statements by September 29, 2022. The Receiver will review these in advance of the next hearing set for October 13, 2022.

Judge Kohler held multiple hearings to consider objections by Carey Hadderton. Hadderton provided several partial submissions of financial records, which Judge Kohler deemed inadequate to support the objection. Judge Kohler overruled the objection and ordered garnished

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. Defendants appealed this order, which appeal was dismissed.

funds paid to the Receiver. After the ruling, Hadderton's attorneys provided information to the Receiver that they had not submitted to Judge Kohler before his ruling, requesting that the Receiver not enforce the order. The Receiver is evaluating how to respond. This may result in Hadderton asking Judge Kohler to reconsider his ruling based on statutory grounds not argued by Hadderton at any of the hearings or in any submissions.

C. Assignment of Judgments. With approval of the Court,⁴ the Receiver executed an assignment agreement, assigning six judgments to the United States. The Receiver filed notices of assignment in each of the six cases where a judgment was assigned. The results of collections on assigned judgments will be described in the year-end report of the Receiver.

III. REAL PROPERTY SALES

A. Status of Receivership Properties. Five real properties were held by the Receivership Estate at the beginning of the Reporting Period, three of which are subject to a purchase option. The sale of one of the two remaining properties closed during the quarter and the Court approved the Receiver's motion to sell the second available property at auction. The status of each property is discussed below:

1. **Sold: Oasis Warehouse**. This property had been the subject of two prior failed offers. After lowering the listing price, the Receiver accepted an opening offer of \$215,000 and the Court approved a sale of the property at auction. At the August 4, 2022 auction, three bidders participated. The bid price rose from the \$215,000 stalking horse

⁴Docket no. 1214, filed May 31, 2022.

bid to the \$285,000 successful high bid. The Receiver filed a notice of sales results, showing net sales proceeds of \$268,822.90.⁵

2. **Offer Received, Auction Scheduled: Well Site Next to Original Tower Site.**

This 4.6-acre site, adjacent to the original solar tower site, was appraised at \$37,000. In light of the value of the ten acre-feet of water associated with the property, the Receiver listed the property and associated water rights for sale at \$100,000.⁶ The Receiver preliminarily accepted an offer of \$65,000 for the property. The Court approved the sale of the property at auction⁷ which is scheduled for October 17, 2022.

3. **Purchase Option: 1,000 Acres.** The Court previously authorized the Receiver to grant a purchase option for three parcels, containing 1,000 acres, to 8minute Energy for photovoltaic solar development.⁸ 8minute makes annual option payments to the Receiver. The purchase option expires in 2025.

B. **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.

IV. LITIGATION

A. **Active Litigation.** Ten lawsuits filed by the Receiver were pending at the beginning of the Reporting Period; eight remain:

1. **Resolved.** Two cases were resolved during the quarter. The Court granted summary judgment against Matthew Shepard and closed that case. The recovery action

⁵Docket no. 1225, filed August 23, 2022.

⁶The water rights previously were titled in the name of Glenda Johnson. The Receiver subsequently succeeded in transferring the water rights into the name of the Receiver.

⁷Docket no. 1228, filed September 6, 2022.

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

against Jeron Johnson had been on hold, based on his bankruptcy filing. He was granted a discharge, so the Receiver has dismissed the action against him.

2. On Hold. The Receiver's recovery case against Richard Jameson is on hold, pending the results of proceedings before the federal court of claims. The Receiver learned that Jameson has died and does not yet know the effect of his death on that proceeding.

3. Summary Judgment Motions. Summary judgment motions are pending in three cases (LaGrand Johnson, Randale Johnson, and Plaskolite). Although all these cases have been reassigned to other judges for trial, the Receiver believes trials will not be set for these cases until rulings are issued in the pending summary judgment motions. As noted below, the parties submitted supplemental briefing on the LaGrand Johnson and Randale Johnson cases.

4. Taylor/Snow Trial. These cases, consolidated for trial purposes, have been reassigned to Judge Barlow. Trial is set to begin January 9, 2023.

5. Nelson Snuffer. The case against Nelson Snuffer is set for trial beginning January 22, 2024 (Judge Campbell).

6. Glenda Johnson. Trial against Glenda Johnson is set to begin August 14, 2023 (Judge Barlow).

B. Appeals. Seven appeals by commission recipients remain pending. The appeal filed by Trudy (Shepherd) Sajec (#21-4064) is being pursued pro se.⁹ The Tenth Circuit is

⁹Trudy (Shepherd) Sajec is Glenda Johnson's daughter.

considering her appeal solely on the briefing, which has been completed. Ms. Sajec has paid the judgment amount, to avoid the Receiver's garnishment efforts.

Oral argument on the other six (combined) appeals was heard on May 19, 2022. These appellants are Janet Roe (#21-4065), Reinhold Finkes (#21-4090), Jean Armand (#21-4071), Roger Hamblin/Digital Wave Energy (#21-4075),¹⁰ John Howell/Rocking H (#21-4076), and Carey Hadderton (#21-4077). As noted in the next subsection, the parties submitted supplemental briefing on these appeals.

C. Supplemental Briefing Regarding Tenth Circuit Ruling on Good Faith. On August 22, 2022, the Tenth Circuit issued a decision on an appeal from an unrelated receivership. In *Georgelas v. Desert Hill Ventures, Inc.*,¹¹ the district court had granted a receiver summary judgment, requiring the return of salary payments made to a company and its owner for their assistance in administering what was later discovered to be a Ponzi scheme.¹² The Receiver had not disputed the transferees' good faith. Instead, the Receiver alleged that the salary payments were voidable transfers because the underlying activity promoted a Ponzi scheme. The Tenth Circuit reversed the grant of summary judgment, ruling that assistance to the Ponzi scheme might have been provided in good faith. Therefore, the appeals court said the defendants should be given an opportunity to show their good faith at trial, notwithstanding that the work assisted the Ponzi scheme.¹³

In connection with the instant Receivership, Nelson Snuffer filed a notice of supplemental authority with the Tenth Circuit (relating to the briefed and already-argued appeals

¹⁰Roger Hamblin died in January; Nelson Snuffer is proceeding with the appeal on behalf of Digital Wave Energy.

¹¹2:16-CV-00514-RJS & 2:16-CV-00522-RJS.

¹²The receiver also sought to recover the value of home remodeling, performed for the transferee's disabled spouse.

¹³45 F.4th 1193 (10th Cir. 2022)

of judgments against commission recipients), asserting that the *Georgelas* ruling means that RaPower's payment of commissions indicates that reasonably equivalent value may have been provided by salespersons and that the commission payments were not illegal contracts. Nelson Snuffer argued that the commission payments should be evaluated based on their value to RaPower and the good faith of the salespersons. The Receiver responded to the Tenth Circuit noting that in the *Georgelas* ruling the appeals panel explicitly stated it was not revisiting payment of commissions in fraud schemes and that the illegality of the commission contracts derived from violations of securities laws, not from the illegality of the underlying fraud scheme.

Separately, Judge Nielson issued orders on August 30, 2022, directing the parties to submit supplemental briefing addressing the impact of *Georgelas* on the pending motions for summary judgment involving LaGrand Johnson and Randale Johnson. Counsel for the Johnsons argued that the RaPower, IAS, and Cobblestone payments to the Johnsons for wages, reimbursement, and other compensation should be deemed reasonably equivalent value. The Receiver responded by distinguishing *Georgelas* from the two Johnson cases on two grounds: first, that the Receiver is not seeking recovery of wages through his summary judgment motions and second, that unlike the case with *Georgelas*, the Receiver has alleged and demonstrated a lack of good faith by the Johnsons.

D. Special Report on Status of Litigation. The Receiver filed a seventh special report on the status of litigation,¹⁴ 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.

¹⁴Docket no. 1226, filed August 24, 2022.

E. Criminal Contempt Charges. Trial on the criminal contempt charges against Neldon Johnson and Glenda Johnson was continued to November 28, 2022.¹⁵

V. 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	\$273,822.90
Settlement payments	\$25,736.70
Garnishments	\$0.00
Royalties, rebates	\$524.66
Bank interest	\$10.58
Total	\$300,094.84

Expenditures	
Type of Expenditure	Amount
Real estate: publication notice	\$250.80
Real estate: bid refunds	\$5,000.00
Real estate: utilities	\$301.97
Tax preparation, filing fee	\$3,991.46
Storage unit, bank fees	\$411.38
Total	\$9,955.61

The Receiver's fee application for work performed in the second quarter of 2022 was approved on August 29, 2022.¹⁶ Payments totaling \$88,355.34 were paid on September 1, 2022.¹⁷

B. Bank Account Balances. The following table shows the balances of funds in the Receivership bank accounts at Wells Fargo Bank as of September 30, 2022:

¹⁵2:21-cr-513 (D. Utah).

¹⁶Docket no. 1227, filed August 29, 2022.

¹⁷An additional \$1,015.00 was paid to Parr Brown during the quarter that was underpaid from the prior fee award.

Bank Account Balances	
Account	Amount
Checking account	\$32,562.70
High yield savings ¹⁸	\$557,003.41
Total	\$589,566.11

C. Tax Returns. The Receivership Estate's 2021 tax returns were filed on August 17 2022. Because the Receivership has significant loss carryovers, no taxes are due. The Receiver paid a \$100 tax filing fee with the Utah Tax Commission.

VI. NEXT STEPS

The significant next steps in the Receivership will be:

A. Sell Final Real Property. The Receiver will conduct an auction of the 4.6-acre Delta property parcel adjacent to the solar towers.

B. Ongoing Litigation. Litigation will continue in the 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. Collection on, Assignment of, Judgments. The Receiver will continue his efforts to collect on judgments already obtained and provide any assistance requested by the United States to collect on judgments assigned to it.

VII. CONCLUSION

Incremental progress, described above, continues to be made in accomplishing the objectives of the Receivership. Activities have slowed considerably as the number of tasks remaining is reduced.

¹⁸This amount includes \$100,000 that a turnover order directed be preserved pending resolution of the Receiver's separate lawsuit against Glenda Johnson.

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

/s/ Wayne Klein

Wayne Klein
Receiver

DATED this 4th day of October 2022.

PARR BROWN GEE & LOVELESS

/s/ Jeffery A. Balls

Jonathan O. Hafen
Jeffery A. Balls
Attorneys for Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the above **RECEIVER'S SIXTEENTH QUARTERLY STATUS REPORT** was electronically filed with the Clerk of the Court through the CM/ECF system on October 4, 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
Post Office Box 95332
South Jordan, Utah 84095

Pro se Defendants

/s/ Wendy V. Tuckett