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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 NINTH SPECIAL REPORT
ON STATUS OF SETTLEMENTS
AND LITIGATION

As of February 15, 2022

Civil No. 2:15-cv-00828-DN-PK
District Judge David Nuffer

R. Wayne Klein, the Court-Appointed Receiver (the "Receiver") of RaPower-3, LLC ("RaPower"), its subsidiaries and affiliates ("Receivership Entities"), and the assets of Neldon Johnson and R. Gregory Shepard, hereby submits this Ninth Special Report on Status of Settlements and Litigation ("Report"), from November 16, 2022 to February 15, 2023.

I. OVERVIEW

The Receivership Estate was created on October 31, 2018 with entry of the Court's *Receivership Order* ("Order").¹ Thirteen affiliated entities were added on May 3, 2019.² Also in

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

²[Docket No. 636](#), filed May 3, 2019.

May 2019, the Court authorized the Receiver to commence legal proceedings.³ This Report summarizes the progress to date of settlements and ongoing litigation.

The most significant changes since the prior Litigation Status Report are:

1. The Receiver's lawsuit against Curtis Snow was successfully tried to a jury;
2. The Court approved settlement agreements with Christopher Taylor and Richard Jameson;
3. The Receiver responded to additional discovery requests by Nelson Snuffer;
4. All five lawsuits still pending have been returned to Judge Nuffer.

II. SETTLEMENTS

A. Approved Settlements. The Receiver has filed 17 motions for approval of settlement agreements, all of which have been approved. The statuses of these settlements are:

Settlement Agreements Paid in Full as of February 15, 2023	
73 settlement agreements have been paid in full and dismissed or judgments entered.	

Settlement Agreements Paid in Full Since November 16, 2022			
Name	Case No.	Case Status	Payment Status
Newman, Kirk	2:19-cv-694	Judgment	Paid in full
Bell Energy	2:19-cv-804	Dismissed	Paid in full

Settlement Agreements With Installment Payments Being Made				
Name	Case No.	Case Status	Prior	Current
Aulds, Robert	2:19-cv-00192-DN-PK	Dismissed	61%	71%
Black, Scott	2:19-cv-00678-DN-PK	Dismissed	56%	75%
Day, Thomas	2:19-cv-00692-DN-PK	Dismissed	66%	69%
Heideman & Assoc.	2:19-cv-00854-DN-PK	Dismissed	33%	33%
Kinsey, Ed	2:19-cv-00729-DN-PK	Dismissed	26%	33%
Newman, Ina	2:18-cv-00623-DN-PK	Dismissed	56%	62%

³Docket No. 673, filed May 24, 2019.

Shepard, Mark	2:19-cv-00803-DN-PK	Dismissed	68%	85%
Taylor, Christopher	2:19-cv-00816-DN-PK	Judgment	0%	34%
Woodson, James	2:19-cv-00794-DN-PK	Judgment	66%	66%

B. Delinquent Settlements. Four defendants are delinquent in their settlement agreement obligations:

Name	Case No.	Amt. Owed	Amt. Paid	Comments
Abdullah, Fareed	None	\$5,991.50	\$991.50	Settlement before lawsuit.
Bowers, Steven	2:18-cv-00530	\$19,800.00	\$0.00	Receiver to file suit.
Jameson, Richard	2:19-cv-00822	\$16,000.00	\$0.00	Deceased; to seek executor
Searcy, Richard	2:19-cv-00776	\$56,000.00	\$6,000.00	Delinquent: 11% paid

III. ASSIGNMENTS OF SUMMARY JUDGMENTS

On December 5, 2022, the Court approved the Receiver's motion to assign the Matthew Shepard judgment to the United States.⁴ The Receiver expects to file a motion to assign the Curtis Snow judgment to the United States after the appeal deadline has passed.

IV. DEFAULT JUDGMENTS TO COLLECT

The Court has granted default judgments in the cases listed in the next table. The Receiver is coordinating with counsel for the United States in commencing collection on these judgments, which includes garnishment efforts.

Name	Case No.	Judgment Date	Judgment Amount	Pre-Judgment Interest
Battle, Hinton	2:20-cv-00010	2/24/21	\$18,657.30	\$2,461.23
Bean, Joel	2:19-cv-00702	2/24/21	\$16,018.10	\$1,533.79
Clement, Jason ⁵	2:19-cv-00792	10/5/21	\$303,950.00	\$55,960.11
Frandsen, Jay D. ⁶	2:19-cv-00660	10/14/21	\$52,000.00	\$20,044.93
Hampton, Michael	2:19-cv-00778	2/24/21	\$9,499.75	\$1,391.13
K. Hawes Associates	2:19-cv-00840	9/25/20	\$25,512.00	\$2,897.19

⁴Docket no. 1236, filed December 5, 2022.

⁵Clement was a co-defendant in a case with Edward Kinsey, Suncore, and Edde Enterprises. The other defendants entered into a settlement agreement that was approved by the Court (which is listed above).

⁶The litigation against a co-defendant, Larry T. Hutchings, has been dismissed.

Smith, Debbie	2:19-cv-00728	4/13/20	\$18,469.80	\$1,664.81
Stilson, Dennis	2:19-cv-00689	2/24/21	\$32,471.25	\$3,327.19

V. GARNISHMENTS

Magistrate Judge Kohler concluded hearings on the following garnishment objections.

Garnishee	Last Event	Date	Status
Hadderton, Cary	Court order	9/17/22	Court overruled objection, ordered payout of garnished funds. Receiver is evaluating whether garnished funds might be exempt.
Howell, John	Court order	9/12/22	Three financial institutions paid out a total of \$52,933.67 in garnished funds.

VI. APPEALS

As of February 15, 2023, appeals by the seven defendants listed below were still pending, all relating to the disgorgement of sales commissions. Six of these appeals, other than that of Trudy Shepherd, were consolidated for briefing and oral argument.

Appeals by Commission Recipients				
Name	Case No.	Appeal No.	Date of Appeal	Status
Armand, Jean	2:19-cv-00779	21-4071	5/27/21	Oral argument 5/19/22 ⁷
Finkes, Reinhold	2:19-cv-00761	21-4090	7/22/21	Oral argument 5/19/22 ⁸
Hadderton, Carey	2:19-cv-00704	21-4077	6/10/21	Oral argument 5/19/22
Hamblin, Roger ⁹	2:19-cv-00783	21-4075	6/4/21	Oral argument 5/19/22
Howell, John	2:19-cv-00705	21-4076	6/10/21	Oral argument 5/19/22
Roe, Janet	2:19-cv-00719	21-4065	5/13/21	Oral argument 5/19/22
Shepherd, Trudy	2:19-cv-00695	21-4064	5/7/21	Submitted on Briefs 8/5/21 ¹⁰

All appeals by Neldon Johnson and other insiders have been affirmed or dismissed.

⁷The Receiver has collected \$1,061.93 on this judgment via garnishment proceedings.

⁸The Receiver has collected \$201.30 on this judgment via garnishment proceedings.

⁹A filing with the Tenth Circuit indicates that Mr. Hamblin died in January 2022.

¹⁰Trudy Shepherd deposited the amount of the judgment with the Receiver, to avoid garnishment proceedings, but is continuing her appeal.

VII. RESOLVED AND DISMISSED LITIGATION

The Receiver will file notice of satisfaction of judgment for Kirk Newman, who paid his settlement amount in full.

The Receiver reached a settlement of his lawsuit against Christopher Taylor on January 2, 2023. The Court approved the settlement on January 4, 2023¹¹ and the Receiver dismissed his lawsuit against Taylor on January 17, 2023.

The Receiver's lawsuit against Curtis Snow was tried to a jury from January 9 to 11, 2023. On January 11, 2023, the jury returned a verdict in favor of the Receivership Estate in the amount of \$87,079.72.¹² Judgment was entered on February 13, 2023.¹³

VIII. ONGOING LITIGATION

The five lawsuits filed by the Receiver that are still pending fall into two categories: three cases where summary judgment motions are pending and two cases with upcoming trial dates.

Summary Judgment Motions Pending			
Name	Case No.	Type of Case	Status/Next Deadline
Johnson, LaGrand	2:19-cv-00534	Insider	Summary judgment briefing was completed 5/26/22. Case returned to Judge Nuffer; trial setting vacated, pending ruling on summary judgment motion. Parties filed supplemental briefing on effect of Tenth Circuit <i>Georgelas</i> ruling.

¹¹Docket no. 1241, filed January 4, 2023.

¹²Case no. 2:19-cv-757, docket no. 93, filed January 11, 2023.

¹³*Id.* Docket no. 99.

Johnson, Randale	2:19-cv-00532	Insider	Summary judgment briefing was completed 5/20/22. Case returned to Judge Nuffer; trial setting vacated, pending ruling on summary judgment motion. Parties filed supplemental briefing on effect of Tenth Circuit <i>Georgelas</i> ruling.
Plaskolite, LLC	2:19-cv-00832	Supplier	Briefing on cross motions for summary judgment was completed May 23, 2022. Case returned to Judge Nuffer; trial setting vacated.

Cases With Upcoming Trial Dates			
Name	Case No.	Type of Case	Status/Next Deadline
Nelson Snuffer	2:19-cv-00851	Legal services	Case returned to Judge Nuffer. Expert deadline is 11/8/23. Trial set for 7/8/24.
Johnson, Glenda	2:19-cv-00625	Insider	Case returned to Judge Nuffer. Expert deadline is 8/2/23. Trial set for 2/12/24.

IX. CONCLUSION

The Receiver certifies that the information in this Ninth Special Report on Status of litigation is accurate to the best of his knowledge.

/s/ Wayne Klein

Wayne Klein
Receiver

DATED this 1st day of March, 2023.

PARR BROWN GEE & LOVELESS

/s/ Jeffery A. Balls

Jonathan O. Hafen
Jeffery A. Balls
Attorneys for Receiver

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above RECEIVER'S NINTH SPECIAL REPORT ON STATUS OF LITIGATION was electronically filed with the Clerk of the Court through the CM/ECF system on March 1, 2023, which sent notice of the electronic filing to all counsel of record and sent by mail to the following:

Neldon P. Johnson
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South Jordan, Utah 84095

R. Gregory Shepard
4933 South Murray Boulevard, Apartment U28
Salt Lake City, Utah 84123-2641

/s/ Wendy V. Tuckett