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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 JOINDER IN UNITED STATES' OPPOSITION TO MOTION TO LIFT ASSET FREEZE AS TO SOLCO I AND XSUN ENERGY

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”), through counsel, hereby joins in the opposition of the United States to Defendants’ *Motion to Lift Asset Freeze Order as to Solco I*

and XSun Energy (“Motion”).¹

I. JOINDER IN OPPOSITION BY THE UNITED STATES

The Receiver agrees with and joins the opposition filed by the United States.² The Receiver also confirms information in the opposition of the United States that he has deposited into the Receivership bank account \$224,093.73 from the account of XSun Energy, LLC (“XSun”) at Bank of American Fork and \$265.11 from the account of Solco I, LLC (“Solco I”) at the same bank. The Receiver will ensure that these funds are retained in the Receivership bank account and not distributed while disputes over the ownership and control of these funds is unresolved.

II. INVESTIGATION BY THE RECEIVER

A lift of the freeze on the assets of Solco I and XSun would be premature at this stage of the Receiver’s investigation. The Receivership Order directs the Receiver to conduct sufficient investigation to enable him to make a recommendation to the Court whether the subsidiaries and affiliates identified in the Receivership Order should be permanently included in the Receivership Estate.³ Although, the Receiver has commenced gathering information necessary to conduct that investigation and make a recommendation, he currently lacks the information necessary to draw any conclusions.

First, Defendants have not provided the Receiver with any bank records for Solco I or XSun. The Receiver has requested records from banks where he believes bank accounts were held, but has not yet received those records and does not know if he has correctly identified all banks where Solco I and XSun have maintained bank accounts.

¹ Docket No. 509.

² Docket No. 523.

³ Docket No. 491 at ¶¶ 5-6.

Next, the Receiver notes that Defendants' Motion indicates that Solco and XSun were engaged in the business of "sell[ing] Fresnel solar lenses" and were the entities that sought and received legal opinions regarding the availability of tax advantages for purchasers of solar lenses.⁴ In the Findings of Fact and Conclusions of Law, the Court described the legal opinions that Solco I and XSun sought from the law firm Kirton & McConkie that were posted on RaPower-3's website⁵ and apparently used to promote sales of solar lenses by RaPower-3. Solco and XSun also made sales of solar lenses in their names.⁶ Given that Solco I and XSun appear to have assisted in the sales of solar lenses by RaPower-3 and others, the Receiver believes it is premature to conclude that Solco I and XSun were unrelated to the fraudulent tax scheme run by the Receivership Defendants.

Moreover, while Defendants' assert that Solco I and XSun "sold and collected their own sales revenue and kept those funds apart from any of the Defendants," that assertion is not supported by declarations or documents and the Receiver does not yet have the necessary documents to verify its accuracy. And, even if the statement is accurate, it may not result in the Receiver recommending that Solco I and XSun be released from the Receivership Estate because the Court's Findings of Fact and Conclusions of Law reveal a picture of coordinated marketing efforts for this tax fraud.

III. RETAINER AMOUNT RECEIVED BY NELSON SNUFFER

Finally, although Defendants state that Solco I and XSun collected their own sales revenue, that does not answer the question of the source of "non-refundable" funds in the Nelson, Snuffer, Dahle & Poulson retainer account. Even assuming Solco I and XSun had

⁴ Motion at 4.

⁵ Docket No. 467 at ¶¶ 389-406.

⁶ Motion at 5.

independent sources of revenue from sales of solar lenses and that their activities were such that their permanent inclusion in the Receivership Estate is not warranted, there is a disconnect in Defendants' argument. The Motion reveals that Nelson Snuffer is holding over \$700,000 which it received from XSun. The Motion does not, however, state whether the \$700,000 in retainer funds derived from XSun's independent sales of lenses. Therefore, the Receiver does not know if XSun had lens sales of more than \$700,000 or whether funds were transferred from RaPower-3 or International Automated Systems into XSun to make the payment to Nelson Snuffer. Until the source of the funds paid to Nelson Snuffer can be traced using third-party bank records, there is a risk that the retainer funds at Nelson Snuffer originated with a Receivership Entity.

IV. CONCLUSION

The Receiver believes that release of Solco I and XSun is premature because he lacks the documents and has not had sufficient time to conduct the investigation and make a recommendation requested by the Court. Moreover, the Receiver lacks the documents necessary to know whether the retainer funds being held by Nelson Snuffer derived from Receivership assets that are the subject of the asset freeze. Accordingly, those funds should be turned over to the Receiver to hold, or—at minimum—be treated as subject to the asset freeze until an investigation can be conducted.

Defendants are invited to assist the Receiver in answering these questions by supplying him with copies of financial records relating to these transactions.

DATED this 30th day of November, 2018.

PARR BROWN GEE & LOVELESS

/s/ Jonathan O. Hafen
Jonathan O. Hafen
Joseph M.R. Covey
Cynthia Love

Michael S. Lehr
Attorneys for the Receiver

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **RECEIVER'S JOINDER IN UNITED STATES' OPPOSITION TO MOTION TO LIFT ASSET FREEZE AS TO SOLCO I AND XSUN ENERGY** was filed with the Court on this 30th day of November, 2018, and served via ECF on all parties who have requested notice in this case.

/s/ Michael S. Lehr