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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 INITIAL QUARTERLY
STATUS REPORT**

*For the period October 31, 2018 to
December 31, 2018*

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 ("Related Entities") and the assets of Neldon Johnson ("Johnson") and R. Gregory Shepard

(“Shepard”) (collectively “Receivership Defendants”), hereby submits this initial Quarterly Status Report (“Report”) for the period from October 31, 2018 to December 31, 2018.

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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 Other significant court filings preceding the Order were the United States' *Complaint for Permanent Injunction and Other Equitable Relief*,³ *Order Dismissing the [Bankruptcy] Case*,⁴ *Amended and Restated Judgment*,⁵ and *Findings of Fact and Conclusions of Law*.⁶

The Receivership Defendants have filed two *Notices of Appeal*.⁷

RECEIVER'S FINDINGS AND SUMMARY OF DEVELOPMENTS

I. SIGNIFICANT DEVELOPMENTS DURING THE QUARTER

The following significant developments occurred between entry of the Order and December 31, 2018:

A. Retained Professionals. The Receiver filed a *Motion for Order Authorizing Receiver to Employ Accountants*,⁸ and *Motion for Order Authorizing Receiver to Employ*

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

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

³ [Docket No. 2](#), filed Nov. 23, 2015.

⁴ [Docket No. 443](#), filed Aug. 22, 2018.

⁵ [Docket No. 507](#), filed Nov. 13, 2018. This order replaced *Judgment in a Civil Case*, Docket No. 468, filed Oct. 4, 2018.

⁶ [Docket No. 467](#), filed Oct. 4, 2018.

⁷ [Docket No. 445](#), filed Aug. 27, 2018 and [Docket No. 472](#), filed Oct. 10, 2018. The Court has permitted Johnson and Shepard to represent the Receivership Entities for purposes of the appeal despite the otherwise applicable removal of all officers, directors, managers, and attorneys of the Receivership Entities. [Order](#) at ¶¶ 9-10; *see also* Part III.C, below.

⁸ [Docket No. 496](#), filed Nov. 2, 2018.

*Attorneys.*⁹ The Court authorized the Receiver to employ Lone Peak Valuation Group to perform forensic accounting and investigative services and Parr Brown Gee & Loveless P.C. to act as counsel for the Receivership Estate.¹⁰

B. Tax Notifications. The Receiver obtained a new tax identification number for the Receivership Estate and submitted the required “Notice Concerning Fiduciary Relationship.”¹¹

C. Notice of Change of Address. The Receiver instructed the US Postal Service to redirect mail addressed to RaPower and IAS to the Receiver. The Receiver has since been receiving limited amounts of mail addressed to those entities.

D. Notice of Receivership Filed in Other Districts. Under 28 U.S.C. § 754, the Receiver’s authority over assets located in other judicial districts requires that he file a notice of receivership in the other districts. Accordingly, the Receiver filed a notice of receivership with the Central District of California¹² and the Northern District of Texas.¹³

E. Service of Order on Defendants, Affiliated Persons. The Order directs the Receiver to serve notice of his appointment to known officers, directors, and other agents of the Receivership Defendants.¹⁴ Counsel for the Receivership Defendants agreed to provide signed “Acknowledgement: Receipt of Receivership Order” for most of the officers, directors, and agents. The Receiver has obtained signed acknowledgements from the following:

Person	Date	Person	Date
Neldon Johnson	11/29/18	LaGrand Johnson	11/20/18

⁹ [Docket No. 497](#), filed Nov. 2, 2018.

¹⁰ *Interim Order Authorizing Receiver to Employ Accountants and Attorneys*, [Docket No. 500](#), filed Nov. 6, 2018. This order was subject to the filing of any objection by any party within seven days of the order. No objections were filed.

¹¹ IRS Form 56 is required to be submitted when new receiverships are created.

¹² Case 2:18-mc-00156, [Docket No. 1](#), filed Nov. 9, 2018.

¹³ Case 1:18-mc-00005-C, [Docket No. 1](#), filed Nov. 9, 2018.

¹⁴ [Order](#) at ¶ 49.

Randale Johnson	11/30/18		Glenda E. Johnson	11/29/18
J. David Nelson, Esq., agent for XSun Energy	11/29/18		Blain Phillips	12/3/18
Stacy Curtis Snow	12/3/18		Greg Shepard	11/29/18
Mark Shepard	11/30/18		Matthew Shepard	11/29/18
Diana Shepard	11/29/18		Roger Hamblin	12/4/18

The Receiver also mailed copies of the Order to persons who were listed on records of the Utah Division of Corporations as members or registered agents of Utah-registered entities having names similar to some of the Related Entities. The Receiver delivered a copy of the Order to Justin Horton, the construction manager for the solar towers (and grandson-in-law of Johnson).

F. Order Recorded on FAA Aircraft Registry. The Receiver filed a certified copy of the Order with the Federal Aviation Administration to serve as notice that the two aircraft identified in the Order were assets of the Receivership Estate. This recording prevents the transfer of title to the aircraft without the consent of the Receiver.

G. Order Recorded on County Real Estate Records. As described in the Initial Accounting Report, the Receiver recorded the Order on the property records for the 31 real properties listed in ¶ 20 of the Order. The Order was recorded in Millard, Utah, and Salt Lake Counties in Utah; San Bernardino and Los Angeles Counties in California, and Howard County in Texas.

H. Investigations of Real Property. The Receiver visited posted and notices of the Receivership at residences in Payson, Utah and West Mountain Utah, which are owned by Glenda Johnson. The Receiver visited the property owned by IAS near Yermo, California and the property titled in the name of Glenda Johnson in Santa Clarita, California. The Receiver obtained a title abstract on the two Texas properties titled in the name of the N. P. Johnson

Family Limited Partnership. The title abstract revealed that the \$117,000 loan on the Texas property was paid off on March 26, 2018.¹⁵

I. Release of Properties from Receivership Estate. In his investigation, the Receiver discovered that there are two Glenda Johnsons living in Delta, Utah. Four of the real properties listed in the Order as Receivership Estate assets belong to the H & G Johnson Trust, of which Glenda B. Johnson was a trustee. The Receiver determined that Glenda B. Johnson was unrelated to Neldon Johnson and that the four properties were not properly assets of the Receivership Estate. With the support of counsel for the United States, the Receiver filed a *Motion for Order Releasing Properties from Receivership Estate*,¹⁶ seeking release of these four properties. The Court granted the motion in *Order Authorizing Release of Receivership Properties*.¹⁷ The Receiver prepared a notice of the release and the release and court order were filed with the Millard County Recorder on December 31, 2018.

J. Bank Accounts Seized, Records Requested. As described in the Initial Accounting Report, the Receiver recovered \$1,732,834.63 from accounts at Bank of American Fork. Some of these funds were in accounts where Defendants dispute that the funds are Receivership Estate assets. Detailed information about financial transactions of the Receivership Estate and disputes over ownership of funds in various accounts is in Part IV, below.

The Receiver sent letters to ten depository institutions where the Receiver believed Receivership Defendants might have had accounts. Requests also were sent to two other financial firms, a broker-dealer and an insurance company. Nine of the ten depository institutions

¹⁵ The Receiver will investigate the source of funds used to pay off this loan. As noted in the [Initial Accounting Report](#) (p. 5), there is uncertainty regarding ownership of this property.

¹⁶ [Docket No. 536](#), filed Dec. 7, 2018.

¹⁷ [Docket No. 548](#), filed Dec. 26, 2018.

have responded.¹⁸ Four indicated no Receivership Defendants had accounts at the institution and five provided records.¹⁹ The broker-dealer has responded that no accounts were found and the insurance company turned over funds it had frozen.²⁰

It is likely that the forensic accountants' review of these bank records will identify other bank accounts into or from which funds were transferred. In that event, the Receiver will obtain and analyze those records. The process of reviewing all bank records and obtaining records for other bank accounts into which or from which funds were transferred will likely reveal whether any foreign bank accounts exist, giving confidence that all relevant bank accounts have been identified.

The monthly bank statements have been digitized and the data converted to a spreadsheet format. Additional data from the checks and deposited items will be manually added to the database and the accuracy of the digital conversion process will be verified.

K. Special Reports by the Receiver. The Receiver filed two special reports during the quarter. On December 14, 2018, the Receiver filed a *Receiver's Corrected Recommendation on Living Allowances for Defendants Johnson and Shepard*,²¹ explaining the Receiver's recommendation on the maximum amounts of Receivership assets that should be used to grant living allowances to Johnson and Shepard. Johnson separately filed a *Motion for Limited Relief from the Asset Freeze Order*,²² which the Court granted in part and directed the Receiver to

¹⁸ The Receiver intends to issue a subpoena to the credit union that failed to respond.

¹⁹ Some of the banks only reported having credit card accounts, not depository accounts. In at least one instance, the Receiver has found indications a depository account existed when the bank reported only credit card accounts and has requested that the bank confirm the accuracy of its prior answer.

²⁰ This occurred after the end of the quarter.

²¹ [Docket No. 543-1](#), filed Dec. 14, 2018. This replaced a November 30, 2018 recommendation that had a calculation error ([Docket No. 526](#)).

²² [Docket No. 530](#), filed Dec. 4, 2018.

return \$1,386 in social security proceeds to Johnson.²³ The Receiver sent payment of this amount to Johnson's counsel on December 27, 2018.

On December 31, 2018, the Receiver filed *Receiver's Accounting, Recommendation on Publicly-Traded Status of International Automated Systems, and Liquidation Plan* ("Initial Accounting Report").²⁴ The Initial Accounting Report described the assets the Receiver had been able to identify to that point, discussed the trading history of IAS and made a recommendation on its disposition, and outlined the Receiver's plans to liquidate the assets of the Receivership Estate.

L. Requests for Records from Attorneys, Tax Preparers, Others. The Receiver has sent letters to more than a dozen law firms and tax preparers who have performed work for Receivership Defendants or received funds from them. Some of the firms have responded promptly, some have requested additional time, and some have failed to respond. For the firms that have failed to respond, the Receiver may have to issue subpoenas to compel responses. The Receiver has sent numerous requests for information to Nelson Snuffer, current counsel for the Receivership Defendants. The adequacy and accuracy of responses to these requests are discussed in Part V, below.

The Receiver met with attorneys from Snell & Wilmer and Hale/Wood, firms that formerly represented one or more of the Receivership Defendants, informing them that they were no longer authorized to act on behalf any of the Receivership Entities. The Receiver has responded to inquiries from Donald Reay, former counsel for Shepard, inquiring about collecting fees owed to Reay.

²³ *Memorandum Decision and Order Granting and Denying in Part Neldon Johnson's motion for Limited Relief from Asset Freeze Order*, [Docket No. 549](#), Dec. 26, 2018.

²⁴ [Docket No. 552](#), filed Dec. 31, 2018.

The Receiver requested information from the stock transfer agent for IAS, but the company failed to respond to the Receiver's letter. A subpoena was issued and the company provided information after the end of the quarter. Similarly, a request was made for documents from Roger Hamblin, a close associate of Johnson. He failed to respond so a subpoena was issued.

M. Communications with Lens Purchasers. As required by the Order,²⁵ the Receiver returned funds sent to RaPower as payment for lenses purchased. One lens purchaser sent \$16,500 on November 16, 2018 to RaPower's address in Oasis. The mail was forwarded to the Receiver. The Receiver returned the payment to the purchaser, along with a copy of the Court's *Findings of Fact and Conclusions of Law*.

The Receiver has had telephone and email communications with many lens purchasers. The purchasers relate unhappy stories about the impacts on them of their decisions to purchase lenses and claim deductions or credits on their tax returns. The receiver explained to the lens purchasers his role and that his duties do not include any role relating to the claims being asserted against them by the IRS. The Receiver explained to the purchasers that the Order assigns them a third priority against recoveries by the Receiver but that the Receiver believes it is extremely unlikely sufficient assets will be recovered to satisfy the first two distribution priorities. He told the purchasers that as a consequence, they should not expect to participate in any recoveries by the Receiver. Nevertheless, the Receiver is maintaining a list containing contact information for purchasers who have contacted him so that he can send them information about any claims process that is created.

²⁵ [Order](#) at ¶ 37.

The Receiver has posted information on his website that lens purchasers may find useful. The website posting includes links to key court rulings in this case. The address for the receivership website is: www.kleinutah.com/index.php/receiverships/rapower-3.

At the request of counsel for Johnson and Shepard, the Receiver posted additional information on the Receivership website, to facilitate Johnson and Shepard's compliance with orders from the Court to provide certain notices to lens purchasers and others.

N. Removal of RaPower, Other Websites. With permission from the Receiver, Matt Shepard removed the websites of RaPower and IAS around November 20, 2018.

O. Communications with Potential Claimants. The Order provides that claims by persons other than lens purchasers will be assigned fifth priority, payable only after \$50 million is paid to the higher-priority claimants. The Receiver has responded to potential creditors by providing a copy of the Order and notifying them that any debts owed to them by Receivership Entities are unlikely to be paid.²⁶

P. Public Disclosure of Current Information on the Status of IAS. As described in the Initial Accounting Report, the Receiver filed public disclosures with the U.S. Securities and Exchange Commission alerting the SEC, public markets, and potential shareholders that IAS was put into receivership and identifying various orders of this Court relating to the company such as the asset freeze order and the *Findings of Fact and Conclusions of Law*.

Q. Interview Foreman. In a visit to Delta, the Receiver spoke with the foreman responsible for construction of solar towers, obtaining some limited information about recent operations and his employment relationship.

²⁶ [Order](#) at ¶ 89(e).

R. Investigative Research. The Receiver read the transcripts of the United States' depositions of Johnson in order to learn more about how RaPower and IAS operated, to identify assets of the Receivership Estate, to understand the roles of the various entities, and to prepare for the Receiver's planned deposition of Johnson. The Receiver read the Court's *Findings of Fact and Conclusions of Law*. He researched public records of the corporations, limited liability companies, and partnerships to identify the officers, directors, owners, managers, and members and created charts reflecting the ownership of the entities and the interrelationships between them.

S. Analysis of RaPower Compliance with Securities Laws. The Court has already found that the solar tax program promoted by RaPower and IAS was a tax fraud. After analysis of the manner in which RaPower operated and solicited purchasers, the Receiver has determined that the marketing and sales plan used by RaPower constituted the offer and sale of investment contract securities. In a seminal case, the U.S. Supreme Court ruled that an investment of money in a common enterprise with an expectation of profits to come from the efforts of others constituted a security.²⁷ All of the key elements showing the existence of an investment contract were identified in the Court's *Findings of Fact and Conclusions of Law*: i) customers purchased lenses, ii) which would be maintained by an affiliated company (generally LTB, LLC), iii) customers did not install, operate or maintain their lenses, and iv) profits anticipated to be derived from operation of the lenses would be sent to the lens purchasers as profits.²⁸

Because the lens sale/maintenance program constituted the offer and sale of securities, the investment contract securities were required to be registered. In addition, those selling the

²⁷ [SEC v. W.J. Howey Co.](#), 328 U.S. 293 (1946).

²⁸ See [Findings of Fact and Conclusions of Law](#) at ¶¶ 124-126, 129, 150, 335-351.

securities were required to be licensed²⁹ and accurate and complete disclosures were required to be given to investors (lens purchasers). This investment contract program was not registered with the Utah Division of Securities and neither Johnson nor Shepard was licensed to sell securities. In light of the Court's *Findings of Fact and Conclusions of Law* (and the Receiver's investigation to date) complete and accurate disclosures were not given to investors—or the market at large. These apparent violations ordinarily would create significant liability for the Receivership Entities and Johnson and Shepard from governmental enforcement actions by state agencies and lawsuits by investors. In light of the litigation stay, such actions cannot be brought without first obtaining relief from the litigation stay. However, actions under the securities laws could be brought against non-Receivership Defendants.

II. ASSET RECOVERY AND DISPOSITION

A. Assets Identified in the Initial Accounting Report. The Initial Accounting Report provided an accounting for seven categories of assets the Receiver had identified. The Receiver incorporates the information from his Initial Accounting Report into this Report rather than repeating the information. The Receiver has learned the following additional information regarding assets that is not reflected in the Initial Accounting Report:

1. Equipment. The Receiver remains perplexed by inconsistent information from Defendants regarding equipment that might belong to the Receivership Estate. During a visit to tower sites, the Receiver identified a significant number of trucks, tractors, boom lifts, and semi-truck trailers.³⁰ The Receiver's expectation that the companies would own significant equipment is consistent with a finding from the *Findings of Fact and Conclusions of Law*, where

²⁹ This would include sellers at all levels of the RaPower multilevel marketing plan.

³⁰ [Initial Accounting Report](#) at 9.

a June 2014 email from Shepard described significant construction activity planned: “Twenty-five construction workers will be employed to install twenty towers a day or close to two megawatts a day.”³¹

Despite this expectation, no Receivership Defendant identified equipment or vehicles as assets. Johnson’s compliance verification claimed he personally owned only two trucks.³² That is conceptually consistent with Johnson’s claim in his 2011 personal bankruptcy that he only owned a few vehicles.³³ If RaPower’s bankruptcy petition is to be believed, RaPower did not own any “inventory, furniture, fixtures, equipment, machinery, vehicles, or other assets.”³⁴ If IAS’s 2016 “Annual Report” is to be believed, it owned no assets other than land.³⁵ Like the two bankruptcy petitions, the IAS annual report was signed by Johnson under penalty of perjury. Thus, there are three sworn statements that RaPower, IAS, and Johnson owned no assets other than two trucks.

In response to inquiries by the Receiver, Nelson Snuffer sent a December 28, 2018 letter to the Receiver identifying equipment and machinery used by Receivership Defendants and naming the owners of the equipment as follows:

Equipment	Owner	Purch. Date	Purch. Amt.	Status	Value
Metal sheet cutter	RaPower	5/14/13	\$22,328	Non-working	\$0.00
Bench brake press	RaPower	5/14/13		Never worked	\$0.00
Laser cutter	RaPower	5/14/13		Never worked	\$0.00
Pipe bender	RaPower	5/29/13	\$36,945	Old and well worn	\$0.00
Man lift	RaPower	7/18/13	\$20,000	Old and well worn	Unknown

³¹ [Findings of Fact and Conclusions of Law](#) at ¶ 343.

³² Johnson Declaration, Dec. 3, 2018 ([Docket No. 528](#)) at Exhibit 1.

³³ [Initial Accounting Report](#) at n. 28.

³⁴ *Id.* at 9.

³⁵ *Id.*

Unidentified equip. ³⁶	IAS		Unstated	Unknown	<\$528.00
1990 Trailer (Gr. D.)	IAS	11/25/02	Unstated	Each is “either broken, damaged, stolen, or non-functional”	Unknown
2001 Utility trailer	IAS	4/30/04	Unstated		Unknown
1989 Horse trailer ³⁷	IAS	6/24/04	Unstated		Unknown
1972 Utility trailer	IAS	8/22/07	Unstated		Unknown
2002 Trailer	IAS	7/15/16	Unstated		Unknown
1985 Digger Derrick	IAS	11/8/12	\$4,653		<\$500.00
1993 Ford Truck	IAS	5/18/15	Unstated	Unstated	Unknown
“Various pieces” ³⁸	Solstice		Unstated		Unknown

If Nelson Snuffer is to be believed, the equipment listed in this table (other than the Solstice equipment) are Receivership Assets and at least two of the prior sworn statements were false.

2. IAS Stock. Counsel for Receivership Defendants informed the Receiver that the 2016 annual report of IAS contained false information when it reported the following:
 - a. “Neldon Johnson, the Company’s President, and two of his sons, Randle Johnson and LaGrand Johnson, control approximately 85% of the voting rights of the company.”
 - b. Neldon Johnson has 92,300,000 “Securities Underlying Unexercised Options.”
 - c. Johnson beneficially owns 94,305,020 shares of IAS, which includes warrants to purchase 93,300,000 shares.

³⁶ Steven Paul explained that in 2016, IAS owned \$528 (book value) in computers and equipment, but “it is impossible to currently identify the equipment or to adequately determine a value for the equipment.” Letter from Steven Paul to Receiver, Dec. 28, 2018 at 3.

³⁷ The ownership of a horse trailer makes the Receiver question whether this and other assets were used for the personal benefit of Johnson, not IAS, and whether IAS paid licensing, taxes, and maintenance expenses. None of the Receivership Defendants have admitted owning horses.

³⁸ Mr. Paul’s description of equipment owned by Solstice was limited to: “Solstice is the owner of various pieces of equipment located at the warehouse with unknown value.” Letter from Steven Paul, Dec. 28, 2018 at 7.

d. In addition to the 94.3 million shares beneficially owned by Johnson, there is another “2,000,000 shares of Series 1 Class A Preferred Stock held by Neldon Johnson.”³⁹

e. “Mr. Neldon Johnson has approximately 76% . . . of the voting control of the Company when the voting power of the shares of preferred stock, common stock and vested options are considered together.”

Instead, Steven Paul stated that Johnson transferred 10 million shares and 100 million warrants to the N. P. Johnson Family Limited Partnership (“NPJFLP”) in 2004.⁴⁰ Mr. Paul’s letter does not explicitly state whether Johnson is the current owner of any shares separate from the shares and the warrants he transferred.

Mr. Paul’s statement that Johnson’s shares and warrants were transferred to the NPJFLP reveals only part of the story of Johnson’s control over those shares. Seven years later, in 2011—and a week before Johnson filed a petition for personal bankruptcy—Johnson sold his interest in the NPJFLP to his associate, Roger Hamblin. The following year, the NPJFLP transferred its shares and warrants to Nevis-based Black Night Enterprises and Starlight Enterprises.

If Mr. Paul’s letter is to be credited, Johnson’s signatures under oath in the IAS 2016 annual report were false, along with any other post-2013 securities filings that contained similar statements about Johnson’s ownership and control of shares. In that event, the IAS filings are also false to the extent they fail to disclose that since 2011 Johnson has failed to control the shares held by the NPJFLP and that since 2012 the 10 million shares and 100 million warrants are owned by two foreign companies over which he ostensibly has no control.

³⁹ One million shares of this stock have voting rights of ten votes per share; the remaining million shares have voting rights of 100 votes per share.

⁴⁰ Letter from Steven Paul to Receiver, Dec. 28, 2018 at 1-2.

The Receiver suspects Johnson has continued to exercise de facto control over those shares and that the ruses involving transfers of shares and warrants to the NPJFLP, Hamblin, Black Night, and Starlight were designed to create the illusion that Johnson did not own these shares.⁴¹

Records provided by Pacific Stock Transfer, after the end of the quarter, reveal that over one million shares of IAS common stock are still registered in the name of Neldon Johnson. Another two million shares of preferred stock, with enhanced voting rights, are still in Johnson's name. This information is inconsistent with both the IAS Annual Report and Nelson Snuffer's assertion that all of Neldon Johnson's shares were transferred to foreign entities. The Receiver has not yet ascertained which of these versions is accurate.

3. Transfers of Real Estate. Since the time of the Initial Accounting Report, the Receiver has learned that the California condominium held in the name of Glenda Johnson was transferred to her by Neldon Johnson via quitclaim deed on April 22, 2015. This was more than two years after the criminal raid on Johnson's enterprises and seven months before the United States filed suit. This suggests the transfer is voidable.

The Receiver learned that Shepard transferred his interest in his home to a revocable trust controlled by his wife for no consideration. The Receiver believes that transfer is voidable.

B. Asset Disposition. During the quarter, the Receiver sought approval from the Court to release four real properties from the Receivership Estate⁴² that were owned by the H &

⁴¹ Indeed, one wonders about the extent to which investors would be willing to purchase shares of IAS on the open market—a company so dependent on the inventions of and management by Neldon Johnson—if the investors had been informed that Johnson owned no shares in the company and that 76% of the voting control over the company was controlled by two foreign companies in which Johnson had no interest. The Receiver believes these purported transfers were practices intended to deceive others. It is not yet clear whether the deception was directed at investors in IAS or potential creditors identified in Neldon Johnson's bankruptcy petition.

⁴² [Order](#) at ¶¶ 20 (f), (g), (h), and (i).

G Johnson Trust. Approval for the release was granted on December 26, 2018⁴³ and the release was recorded with the Millard County Recorder on December 31, 2018.⁴⁴

Apart from these four properties, the Receiver did not dispose of any other assets during the quarter, excepting cash expenditures discussed in Part IV, below. Up to this point in time, the not disposing of additional assets has been deliberate, driven by several factors. First, as to equipment, the Receiver has only now learned what equipment is owned by the Receivership Estate. And, now that the Receiver is being told that the equipment is old, mostly non-working, and has little value, there is less reason to make this a priority. In sum, the assets are unlikely to deteriorate further in value by waiting a few months.

Second, as to the aircraft, the log books are critical to determining the airworthiness of the plane and its value. On January 23, 2019, Nelson Snuffer delivered the log books and other aircraft-related documents for the Mooney aircraft to the Receiver. The Receiver has forwarded those log books and other documents to an aircraft broker the Receiver has contacted to assist him in selling the airplane. If the Cessna Model 172M was destroyed and insurance proceeds were paid, the log books would be of no value to the Receivership Estate. For the Cessna Model 414, the Receiver still has not been able to determine its location and condition; that aircraft is not currently an asset of the Receivership Estate.

Third, as to real estate, the only properties currently owned by the Receivership Estate are the six properties held in the name of IAS. None of these have structures (other than towers), so they are not at risk of loss or significant deterioration in value. Moreover, as noted in the Initial Accounting Report, counsel for Receivership Defendants has indicated an intent to propose a

⁴³ [Docket No. 548](#), Dec. 26, 2018.

⁴⁴ Millard County Recordation #00205163 (Book 652, Page 509).

settlement offer to the United States by which IAS would be released from the Receivership Estate. The Receiver has refrained from initiating action to market IAS-owned properties in the event the Receivership Defendants and the United States come to an agreement involving release of IAS (and its assets) from the Receivership Estate. If, however, no formalized settlement offer is proffered in the near future or settlement discussions are unproductive, the Receiver will cease forbearing marketing of these properties.

Finally, many of the IAS-owned properties are adjacent to or near properties owned by Glenda Johnson. The Receiver will evaluate whether the Receivership properties might be more valuable if they can be marketed together with properties currently in the name of Glenda Johnson.

For properties owned by Glenda Johnson, the NPJFLP, and the Diana C. Shepard Revocable Trust, the Receiver is evaluating whether to seek to have those properties made part of the Receivership Estate and if so, the best method to accomplish this.

III. LITIGATION STATUS

- A. Litigation Initiated. The Receiver initiated no litigation during the quarter.
- B. Contempt Proceedings. The Receiver participated in proceedings related to the United States' *Motion for Order to Show Cause* against R. Gregory Shepard,⁴⁵ making arguments to the Court at the November 8, 2018 hearing⁴⁶ and questioning witnesses at the November 15, 2018 evidentiary hearing.⁴⁷ Shepard was found in contempt⁴⁸ and on November 30, 2018 the Receiver deposited the \$27,126.05 that the Court ordered Shepard to repay.

⁴⁵ [Docket No. 483](#), filed Oct. 25, 2018.

⁴⁶ Docket No. 502 (hearing minutes), filed Dec. 8, 2018.

⁴⁷ In preparation for the hearings, the Receiver analyzed information in responses and documents provided by Shepard.

⁴⁸ *Order in Re: Civil Contempt of R. Gregory Shepard*, [Docket No. 505](#), filed Nov. 9, 2018.

Additional documents that Shepard was ordered to provide were also delivered to and reviewed by the Receiver.⁴⁹

C. Appeal. The Receivership Defendants have appealed the Court's *Judgment in a Civil Case*.⁵⁰ The appeal was permitted by the Order under certain conditions.⁵¹ At the request of both parties and the Tenth Circuit Mediation Office, the Receiver has participated in limited mediation discussions.

D. Notice of Stay. The Order stayed all litigation (except the appeal) against Receivership Defendants or affecting Receivership Estate assets⁵² and directed the Receiver to file a notice of stay in all currently pending litigation.⁵³ The Receiver has filed notices of stay in the following litigation:

1. Johnson v. Internal Revenue Service, et al.⁵⁴ The Receiver filed a notice of stay in this matter on November 13, 2018. Subsequently, the United States filed a motion to dismiss for lack of jurisdiction⁵⁵ and a memorandum in opposition to Johnson's motion for preliminary injunction.⁵⁶ The case has been reassigned to a judge outside the district.⁵⁷

⁴⁹ Shepard was also ordered to attorneys' fees and costs to the United States. *Order Granting Motion for Attorneys' Fees and Costs in Re: Civil Contempt*, [Docket No. 547](#), filed Dec. 26, 2018. This was not a payment due to the Receivership Estate, but the Receiver understands Shepard paid the amount due.

⁵⁰ [Docket No. 468](#), filed Oct. 4, 2018 (supplemented by the *Amended and Restated Judgment in a Civil Case*, [Docket No. 507](#), filed Nov. 13, 2018). The *Notice of Appeal* is [Docket No. 445](#), filed Aug. 27, 2018. The case numbers on appeal are Nos. 18-4119 and 18-4150.

⁵¹ [Order](#) at ¶ 10.

⁵² [Order](#) at ¶ 44.

⁵³ *Id.* at ¶ 45.

⁵⁴ Civil No. 4:18-cv-00062-TS, D. Utah.

⁵⁵ *Id.*, [Docket No. 15](#), filed Nov. 27, 2018.

⁵⁶ *Id.*, [Docket No. 16](#), filed Nov. 27, 2018.

⁵⁷ *Id.*, [Docket No. 18](#), filed Dec. 20, 2018.

2. Johnson v. Internal Revenue Service, et al.⁵⁸ The Receiver filed a notice of stay on November 13, 2018 in this second action by Johnson.⁵⁹ The United States subsequently filed an opposition to Johnson's previously-filed motion for preliminary injunction.⁶⁰ On December 10, 2018, Johnson filed a *Motion to Clarify*.⁶¹ This case also has been reassigned to a judge outside the district.⁶²

3. Johnson v. Mancini. Johnson had filed a lawsuit in the Utah Fourth District Court for Millard County, Utah against an expert engaged by the United States in the enforcement action against Receivership Defendants.⁶³ On November 19, 2018, Mancini removed the suit from the Fourth District Court of Utah to the federal District Court.⁶⁴ On January 9, 2019, after the end of the quarter, the Receiver filed a notice of stay with the federal court in the removed action.⁶⁵ This Court issued a notice that the case is stayed.⁶⁶

4. Tax Court Cases. Receivership Defendants had been paying attorney Paul W. Jones to represent Receivership Entities and customers in proceedings before the U.S. Tax Court. The Receiver met with Mr. Jones and explained that the Receivership Defendants would not be paying for any future work he performed for others and directing him to cease work on behalf of any Receivership Entities. Actions were taken in the following Tax Court cases:

⁵⁸ Civil No. 4:18-cv-00073-DB, D. Utah.

⁵⁹ *Id.*, [Docket No. 9](#), filed Nov. 13, 2018.

⁶⁰ *Id.*, [Docket No. 11](#), filed Nov. 29, 2018.

⁶¹ *Id.*, [Docket No. 13](#), filed Dec. 10, 2018.

⁶² *Id.* Docket No. 15, filed Dec. 20, 2018.

⁶³ Civil No. 180700041 (Fourth District Court).

⁶⁴ Case No. 4:18-cv-00087-DN, D. Utah. The removal notice acknowledged the litigation stay but indicated removal was sought to protect Mancini's right to remove the case.

⁶⁵ *Id.*, [Docket No. 14](#), filed January 9, 2019.

⁶⁶ *Id.* Docket No. 16, entered January 10, 2019.

a. *DCL16BLT, Inc. v. Commissioner of Internal Revenue*.⁶⁷ Jones filed a motion to withdraw from the case and notified the Tax Court of the litigation stay imposed by the Order.

b. *Shepard Global, Inc. v. Commissioner of Internal Revenue*.⁶⁸ Jones filed a motion to withdraw from the case and notified the Tax Court of the Order's litigation stay. On November 28, 2018, the Receiver filed a notice of stay with the Tax Court. On December 6, 2018, the court issued an order striking the scheduled April 15, 2019 trial date.

c. *International Automated Systems v. Commissioner of Internal Revenue*.⁶⁹ Jones filed a motion to withdraw from the case and notified the Tax Court of the Order's litigation stay.

d. *R. Gregory Shepard & Diana C. Shepard v. Commissioner of Internal Revenue*.⁷⁰ The Receiver participated in discussions with the IRS and United States regarding moving to lift the litigation stay in connection with a possible settlement. The Receiver understands that settlement discussions have not yet reached the point at which the Receiver will move to lift the stay.

E. Settlement of Lawsuits Filed by Johnson Against Millard County. Johnson and Glenda Johnson, on behalf of themselves as well as IAS and RaPower, filed two lawsuits in the Fourth District Court in Millard County against Millard County and three county officials.⁷¹ The

⁶⁷ [U.S. Tax Court Docket No. 024118-17](#), originally filed Nov. 20, 2017.

⁶⁸ [U.S. Tax Court Docket No. 010566-18](#), filed May 30, 2018.

⁶⁹ [U.S. Tax Court Docket No. 024135-17](#), filed Nov. 20, 2017.

⁷⁰ [U.S. Tax Court Docket No. 002826-18](#).

⁷¹ *International Automated Systems, Inc., RaPower-3, LLC, Neldon Johnson, and Glenda Johnson v. Millard County, Richard Waddingham, Daron P. Smith, and Sheryl L. Dekker*, Case No. 140700016 (Fourth District Court of Utah) and *International Automated Systems, Inc., RaPower-3, LLC, Neldon Johnson, and Glenda Johnson v.*

2014 and 2015 lawsuits asserted claims of defamation, tortious interference, intentional infliction of emotional distress, false light, and violation of federal civil rights. On October 24, 2018, this Court issued its *Order Granting Defendants' Motion to Permit Settlement*.⁷² On December 24, 2018, the Receiver signed a "Release and Settlement Agreement" on behalf of RaPower and IAS, agreeing to the dismissal of the lawsuit.

F. Snell & Wilmer Fee Application. Snell & Wilmer was bankruptcy counsel for RaPower, filing Chapter 11 bankruptcy petition on June 29, 2018.⁷³ This Court entered an *Order Authorizing the Employment and Retention of Snell & Wilmer L.L.P.*⁷⁴ The Court subsequently denied the fee application of Snell & Wilmer⁷⁵ based on the Court's prior determination that the bankruptcy filing was in bad faith.⁷⁶ The Court has ordered the \$97,430 retainer balance being held by Snell & Wilmer deposited into the court's registry.⁷⁷ David Leta of Snell & Wilmer provided helpful information to the Receiver about the source of funds for the retainer his firm received. The Receiver instructed Snell & Wilmer to take no further actions on behalf of RaPower.

G. Defendants' Motion to Lift Asset Freeze as to XSun Energy and Solco I. Two weeks after the Order, Receivership Defendants filed a *Motion to Lift Asset Freeze Order as to*

Millard County, Richard Waddingham, Daron P. Smith, and Sheryl L. Dekker, Case No. 150700037 (Fourth District Court of Utah).

⁷² [Docket No. 482](#), filed Oct. 24, 2018. The Receivership Defendants' *Motion to Permit Settlement of State Cases* is [Docket No. 459](#), filed Sep. 27, 2018.

⁷³ In re: RaPower-3, LLC, Bankr. No. 18-24865, filed Jun. 29, 2018.

⁷⁴ The bankruptcy case also has a related district court case. *United States Department of Justice, Tax Division v. RaPower-3, LLC*, Case No. 2:18-cv-00608-DN (D. Utah). The order authorizing the employment of Snell & Wilmer is at [Docket No. 10](#), filed Sep. 4, 2018.

⁷⁵ *Amended and Restated Order Denying Application for Compensation and Reimbursement of Expenses*, Case No. 2:18-cv-00608, [Docket No. 19](#), filed Nov. 6, 2018.

⁷⁶ *Id.*, [Docket No. 6](#), filed Aug. 22, 2018.

⁷⁷ *Id.*, [Docket No. 19](#), filed Nov. 6, 2018.

Solco I and XSun Energy.⁷⁸ The motion disclosed the existence of funds being held in bank accounts of IAS and RaPower and approximately \$224,000 held in bank accounts of XSun and Solco.⁷⁹ The motion also revealed that Nelson Snuffer was holding a purportedly-nonrefundable retainer in the amount of \$735,202.22. The United States filed an opposition to the motion,⁸⁰ the Receiver filed a joinder to the United States' motion,⁸¹ and defendants filed a reply.⁸² The Court denied the motion without prejudice, pending completion of the report the Receiver is to prepare regarding inclusion of Related Entities in the Receivership Estate.⁸³

IV. FINANCIAL OPERATIONS OF THE RECEIVERSHIP ESTATE

A. Receipts and Disbursements. The table below shows the amount and source of funds brought into the Receivership Estate during the quarter:

Date	Amount	Source	Owner/Reason
11/29/18	\$1,353,811.57	Bank of Am. Fork	Bank balance: IAS
11/29/18	\$76,758.02	Bank of Am. Fork	Bank balance: RaPower
11/29/18	\$4,358.18	Bank of Am. Fork	Bank balance: Neldon Johnson
11/29/18	\$73,548.02	Bank of Am. Fork	Bank balances: Cobblestone Centre (2)
11/29/18	\$224,093.73	Bank of Am. Fork	Bank balance: XSun Energy
11/29/18	\$265.11	Bank of Am. Fork	Bank balance: Solco I
11/29/18	\$2,000.00	Better, Faster, Stronger	Installment payments due to Shepard
11/30/18	\$27,126.05	Nelson, Snuffer, Dahle	Payment to purge Shepard contempt
11/30/18	\$7.12	Wells Fargo Bank	Interest earned
12/31/18	\$220.77	Wells Fargo Bank	Interest earned
Total	\$1,762,188.57		

⁷⁸ [Docket No. 509](#), filed Nov. 16, 2016.

⁷⁹ This was the first indication the Receiver had of the existence of these funds. After learning that the bank accounts were at a different bank than identified in the motion, the Receiver took possession of these funds as well as funds held in accounts of Cobblestone Centre and Neldon Johnson.

⁸⁰ [Docket No. 523](#), filed Nov. 30, 2018.

⁸¹ [Docket No. 525](#), filed Nov. 30, 2018.

⁸² [Docket No. 540](#), filed Dec. 12, 2018.

⁸³ [Docket No. 550](#), filed Dec. 27, 2018. The Court also ordered that the funds in the retainer account remain subject to the asset freeze.

B. Additional Funds Currently Subject to Asset Freeze. The following table reflects additional amounts currently subject to the asset freeze that are being held by entities other than the Receivership Estate:

Amount	Location	Explanation
\$97,430.00	District Court Registry	Snell & Wilmer retainer
\$735,202.22	Nelson, Snuffer Trust Acct.	Retainer fees for appeal
\$832,632.22	Total	

C. Unresolved Issues Regarding Ownership of Funds. Certain funds being held by the Receiver are the subject of disputes over their ownership. These disputes involve:

1. Cobblestone Centre. This entity is subject to the asset freeze but is not currently in the Receivership Estate. The Receiver has a mandate to recommend to the Court whether this and other affiliates and subsidiaries should be made part of the Receivership Estate.⁸⁴ Until a decision is made regarding the ownership of these funds, the Receiver will ensure these funds are retained in the Receivership Estate.

2. Solco I and XSun Energy. Defendants have asserted that funds belonging to these entities are not properly assets of the Receivership Estate. As described in Part III.G, above, the Court has ordered these funds to remain in the Receivership Estate until a decision is made regarding whether the entities should be made part of the Receivership Estate.

3. Neldon Johnson. Johnson asserted that the full \$4,358.18 in his bank account constituted Social Security payments to him, exempt from the asset freeze. As noted in Part I.K, above, the Court ordered the release of \$1,386 to Johnson. That order appears to leave open the possibility that Johnson could renew his motion upon providing proof that the remainder of the funds in the account derived only from Social Security payments.

⁸⁴ [Order](#) at ¶¶ 5-6.

4. Snell & Wilmer Retainer. As discussed in Part III.F, above, Snell & Wilmer asserts it is owed most of this amount. Additionally, Snell & Wilmer has asserted that any retainer amounts not earned by Snell & Wilmer may be the property of Glenda Johnson.

5. Nelson, Snuffer Retainer. Counsel for Receivership Defendants assert that the \$735,202.22 they are holding in their firm's trust account are not assets of the Receivership Estate. As discussed in Part III.G, above, the Court ruled that those funds are presently subject to the asset freeze.

D. Expenditures by the Receivership Estate. The table below shows the expenditures by the Receivership Estate during the prior quarter:

Date	Amount	Recipient	Purpose
12/7/18	\$30.00	Zions Bank	Copies of bank records
12/11/18	\$27.00	Millard County C.U.	Copies of bank records
12/17/18	\$27.75	Bank of Am. Fork	Copies of bank records
12/27/18	\$23.00	Millard County Recorder	Real estate recording fee
12/27/18	\$1,386.00	Nelson, Snuffer, Dahle	N. Johnson SSI release
12/11/18	\$61.40	Harland Clarke	Admin: Check printing
12/28/18	\$163.05	M2 Compliance	Format IAS 10-K filing
Total	\$1,718.20		

The Receiver has advanced an additional \$1,142.85 in expenses for real estate recording fees, FAA recording fees, and administrative expenses. Reimbursement for these expenses will be sought as part of his fee application.

E. Bank Accounts. The Receiver maintains two receivership accounts at Wells Fargo, a checking account and a savings account. The balances of these two accounts as of December 31, 2018 were:

Account	Account Balance
Checking Account	\$27,407.85
Savings Account	\$1,733,062.52
TOTAL	\$1,760,470.37

V. **DEFENDANTS' COMPLIANCE WITH AFFIRMATIVE OBLIGATIONS AND DUTIES OF COOPERATION**

A. Actions Required of Defendants, Others. Johnson and Shepard, and others working with them, are obligated to provide identified information to and cooperate with the Receiver as a result of three different requirements. First, the Order identifies particular documents, information, and reports Johnson and Shepard are required to affirmatively provide the Receiver (and others). Second, Johnson and Shepard and others working with them, are required to cooperate with the work of the Receiver and respond to requests for information made by the Receiver. Third, as the Receiver is the sole authorized agent of RaPower, IAS, and LTB1, he is the sole owner of the records of those companies. As such, any person having records of those entities is obligated to turn over to the Receiver those records.

B. Specific Affirmative Duties Mandated by the Order. The Order imposes both affirmative cooperation obligations on Defendants (and others) and general mandates to cooperate with the Receiver. The table below briefly summarizes these obligations to give context in understanding the Receiver's discussion, below, of the instances in which he believes persons subject to the Order have not cooperated or failed to fulfil affirmative obligations.

AFFIRMATIVE OBLIGATIONS	
Duty	¶
Asset Freeze: All assets of the Receivership Defendants, including those of subsidiaries and affiliated entities, are frozen.	4-8
Termination of Officers : All officers, directors, managers, employees, accountants, attorneys, and other agents of IAS, RaPower, and LTB1 are dismissed and the powers of partners and managers are suspended.	9
Statement of Source of Funds: All of Defendants' attorneys' fees, expenses, and costs of litigation must be paid from non-receivership funds. All filings and submissions by Defendants "must contain a statement, made under penalty of perjury, identifying the source of the funds for the filing or submission."	10

Turnover of Records: Defendants, officers, directors, partners, agents, managers, employees, attorneys, accountants must preserve and turn over to the Receiver all records relating to Receivership entities and property.	14-15
Assets: The Receiver is to take immediate possession of all assets, including bank accounts, safe deposit boxes, aircraft, and vehicles. Any person possessing such assets shall turn them over to the Receiver.	15-17, 19
Books and Records: The Receiver is to take immediate possession of all books, records, and other documents. Any person with records of Defendants are to turn them over to the Receiver.	15-17
Real Property: The Receiver is to take immediate possession of all real property, including those in which Defendants have beneficial interests. This includes the 31 properties specifically identified in the Order.	20
Prohibition on Use of Real Estate: All persons receiving a copy of the Order are prohibited from entering into or using any of the 31 properties without express written permission from the Receiver.	21
Attorneys Transfer Agents, General Partners: Attorneys and transfer agents are under a specific duty to deliver to the Receiver all records relating to the Receivership Defendants.	24, 28, 41
Initial Sworn Statement: Defendants must provide sworn statements regarding: a) property, b) employees and agents, c) creditors, d) insurance, e) passwords, f) litigation status, and g) financial statements (including assets outside the U.S.).	25
Supplemental Sworn Statement: Defendants are to provide a sworn statement and accounting, with documentation of all: a) assets, b) safe deposit box and building locations, c) credit and bank cards, d) shareholders and securities transaction information, e) assets received, f) funds received, g) expenditures, and h) asset transfers.	26
Tax Returns: Defendants must provide copies of tax returns from 2010 to present.	27
Intellectual Property: Counsel must provide information relating to intellectual property rights granted or transferred	29
Repatriation of Assets: Defendants must repatriate to the U.S. all assets located outside the U.S. which Defendants control directly or indirectly, in whole or in part.	30
Records of Foreign Accounts: Defendants must provide records of all accounts and assets held in financial institutions outside the U.S.	31
Sworn Statement on Repatriation Efforts: Defendants must provide a sworn statement a) certifying compliance with repatriation requirements, b) describe actions taken to repatriate, c)	34

describe assets held outside the U.S., and d) explain why assets remaining outside the U.S. have not been repatriated.	
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The Order also contains general duties to cooperate with the Receiver. These are summarized in the table below:

DUTIES TO COOPERATE	
Duty	¶
Assistance: Defendants, their subsidiaries and affiliates, affiliated individuals, and family members must cooperate and assist the Receiver	23
Respond to Questions: Defendants, officers, directors, agents, attorneys, accountants, partners and family members shall promptly answer questions from the Receiver under oath and produce documents requested	28
Prohibition on Interference: Defendants—and all persons receiving notice of the Order—must refrain from interfering with the Receiver’s efforts to take control of the Receivership Property	35

C. Failures by Defendants, Family Members, Affiliates, and Attorneys to Provide Specified Information and to Cooperate. The discussion below describes the extent to which the Receiver asserts the Defendants and others have failed to meet their affirmative obligations and comply with their duties to cooperate with the work of the Receiver.

1. Neldon Johnson Failures. Neldon Johnson’s key failures are:

a. Johnson has provided no copies of bank account statements and associated checks and deposit items (as required by ¶¶15, 19 of the Order). November 16, 2018 was the first time the Receiver learned of the existence and location of bank accounts held by Receivership Entities;⁸⁵

⁸⁵ *Motion to Lift Stay*, [Docket No. 509](#), filed Nov. 16, 2018. Even this disclosure of the existence of bank accounts was erroneous. The motion said the bank accounts were held at Central Bank of Utah. The Receiver went to Central Bank and served the Order. Central Bank informed the Receiver that none of the Receivership Defendants held accounts at Central Bank. The Receiver notified Steven Paul that Central Bank held no accounts and asked where the bank accounts were held. Without responding to the Receiver, Defendants filed an *Errata*, indicating that the

- b. Failing to provide the Receiver any accounting records for IAS or RaPower, such as QuickBooks records (as required by ¶¶ 15, 19 of the Order);⁸⁶
- c. Johnson was president and CEO of IAS. He has not delivered to the Receiver copies of any records of IAS (as required by ¶ 16 of the Order);
- d. Failing to provide any records of construction, maintenance, or ownership of assets of IAS and RaPower;
- e. Failing to deliver any assets to the Receiver (as required by ¶¶ 15, 19 of the Order). He did not promptly identify the location of the Mooney aircraft. Only after the Receiver had located the aircraft and requested information about the aircraft did Johnson provide information about its keys and insurance status;
- f. Failing to file with the Court and provide to the Receiver the supplemental “sworn statement and accounting, with complete documentation” required by the Order to be delivered by December 31, 2018.⁸⁷ While some of the information required by this portion of the Order may have been provided in connection with prior compliance verifications,⁸⁸ information required by subparagraphs (c) through (h) have not been the subject of prior disclosures;⁸⁹

funds were at Bank of American Fork. ([Docket No. 512](#), filed Nov. 20, 2018). The Receiver served the Order on Bank of American Fork and obtained the funds on deposit there.

⁸⁶ The Receiver understands that Glenda Johnson kept the books of the Receivership Entities and the books of most of the affiliated entities using QuickBooks.

⁸⁷ [Order](#) at ¶ 26.

⁸⁸ The Order does not require Johnson and Shepard to affirmatively answer whether they have investments, digital currencies, watercraft, recreational vehicles and the like. *See* [Order](#) at ¶ 26(a). Accordingly, if Johnson and Shepard own no such assets, the Order does not appear to require them to affirmatively so state.

⁸⁹ Significantly, paragraph 26 (h) would require disclosure of information about Johnson’s transfers of real property to his wife.

g. Failing to provide the log books for the Mooney aircraft until January 23, 2019, despite specific requests by the Receiver for the records;⁹⁰

h. Johnson has identified two vehicles he owns but has not tendered those to the Receiver;⁹¹

i. Johnson has not told the Receiver the location of the equipment he first identified on December 28, 2018;⁹²

j. Failing to provide any information about post-asset freeze use of assets. This would include information about solar lens testing that was still taking place after the Receiver was appointed;⁹³

k. Agreeing to be deposed on January 8, then canceling the deposition the afternoon before it was to begin;⁹⁴

l. The Receiver has found indications Johnson owns, controls, or has access to at least one bank account into which funds may have been secreted. Johnson's failure to provide information about all bank accounts and to submit to a deposition has to date prevented the Receiver from obtaining information about this suspected account. The indicators that an undisclosed account has been used to secrete funds are that on January 18, 2011, Roger Hamblin wired \$74,000 to Johnson at a Bank of America account. Two

⁹⁰ As noted in the [Initial Accounting Report](#) and in Part II.B, above, the Receiver has identified an additional aircraft (Cessna Model 414) and asked Johnson for information about the aircraft. Johnson responded only that the aircraft was in some unidentified shop and that Johnson did not know who owned the aircraft.

⁹¹ The [Initial Accounting Report](#) described inconsistent prior statements by Johnson regarding ownership of these vehicles.

⁹² See Part II.A.1, above.

⁹³ See [Initial Accounting Report](#) at n. 39. Assuming the testing took place at one of the 31 properties identified in the Order, the testing would violate ¶ 21 of the Order.

⁹⁴ This action occurred after the end of the calendar quarter.

days later, Johnson filed a petition for personal bankruptcy which asserted he had only \$100 in bank account balances;

m. Providing the Receiver information that is inconsistent with prior information provided under oath. This includes: i) claiming on December 28, 2018 that information submitted, under oath, to the SEC (and to the markets and shareholders) regarding Johnson's ownership of shares of IAS had been false since 2011;⁹⁵ ii) providing different information about ownership of his two trucks than had been included in his bankruptcy petition;⁹⁶ iii) initially claiming he currently owns IAS stock of "variable" value but not identifying the number or type of shares he owned and later saying he has not owned any stock in IAS since 2004;⁹⁷ iv) initially admitting partial ownership of Solstice Enterprises and DCL-16A and later saying he did not, after all, own any interest in Solstice or DCL-16A;⁹⁸ initially claiming RaPower owned no equipment, then later providing a list of equipment owned by RaPower;⁹⁹ initially claiming IAS owned no equipment (by referencing the 2016 Annual Report) and later providing a list of equipment owned by IAS;¹⁰⁰ initially claiming that IAS owned four

⁹⁵ Letter from Steven Paul to Receiver, Dec. 28, 2018.

⁹⁶ See discussion in Part II.A.1, above.

⁹⁷ Compare Neldon Johnson Compliance Verification, [Docket No. 528](#), filed Dec. 3, 2018 with Letter from Steven Paul to Receiver, Dec. 28, 2018. In considering these comparisons, it should be remembered that the compliance verification was a sworn statement; the letter from Steven Paul was not. While the information in Paul's December 28, 2018 may be more current and reflect Paul's investigation, it is not a sworn statement by Johnson, leaving the reader to question which source should be given more weight.

⁹⁸ *Id.* Similarly, Johnson's amended compliance verification ([Docket No. 510](#), filed Nov. 16, 2018) states that his November 1, 2018 compliance verification was incorrect in listing himself as owning an interest in Black Night, Starlight, DCL-16A, the N. P. Johnson Family Limited Partnership, Solstice Enterprises, and Starlight Holdings.

⁹⁹ *Id.* The "corrected" information in the December 28, 2018 letter, if true, means that Johnson's sworn statements in his bankruptcy filings (that RaPower owned no equipment) were false.

¹⁰⁰ *Id.* In this case, Johnson might be positioning himself to assert that the reference to the IAS Annual Report was not false because the equipment had already been depreciated by 2016. Even if it were the case that the equipment had already been depreciated, that did not excuse Johnson from complying with the Order's mandate that he identify all assets (which would include equipment) owned by any Receivership Defendant. Moreover, Johnson's reference

properties and later admitting the accuracy of the Receiver's information that IAS is the title holder to six properties;¹⁰¹ initially claiming IAS had no creditors then later acknowledging that utilities for property owned by Glenda Johnson were in the name of IAS;¹⁰² claiming that Justin Horton (the construction manager) was an employee of Cobblestone Centre,¹⁰³ when Johnson had previously testified that towers were constructed by employees of IAS;¹⁰⁴

n. Failing to identify the "homes, furnishings, fixtures, and cars" that Johnson was using and who was the owner of those assets;¹⁰⁵

o. Only identifying equipment owned by RaPower and IAS after several requests by the Receiver and when finally identifying equipment, failing to disclose the location of that equipment and who has control over the equipment;¹⁰⁶

p. Failing to provide information regarding any stock sales by him, his family members, and RaPower, after November 2015;

q. Failing to provide information regarding the Cessna Model 414 aircraft, including its ownership and location;¹⁰⁷

to the IAS Annual Report leaves unanswered whether IAS owned any equipment in June 2016 that was subsequently sold or transferred or whether IAS acquired additional equipment after June 30, 2016. Paul's December 28, 2018 letter does not answer these questions.

¹⁰¹ *Id.* The two properties not identified in Johnson's December 3, 2018 compliance verification were ¶¶ 20(w), (bb).

¹⁰² *Id.* Steven Paul's letter also identified a liability RaPower owes to Solstice. On December 10, 2018, the Receiver asked for confirmation that none of the Receivership Defendants owe liabilities to Glenda Johnson for inventory or other assets stored at the warehouse listed in her name. Paul did not respond to this request.

¹⁰³ Letter from Steven Paul to Receiver, Dec. 28, 2018.

¹⁰⁴ Deposition of Neldon Johnson, Jun. 29, 2017 at 63:24 – 64:1.

¹⁰⁵ Letter from the Receiver to Steven Paul, Dec. 13, 2018.

¹⁰⁶ Letter from Receiver to Steven Paul, Dec. 13, 2018 responding to Steven Paul letter dated Dec. 7, 2018.

¹⁰⁷ *See* Letter from Receiver to Steven Paul, Dec. 13, 2018.

r. When providing information to the Receiver regarding Johnson's shares in IAS, ownership interests in other entities, RaPower equipment, IAS assets, employees and agents, creditors, insurance, passwords, financial statements, and foreign assets, failing to verify that information by a sworn statement as required by ¶ 25 of the Order;¹⁰⁸

s. Failing to ensure that filings and submissions by him and on his behalf included statements identifying the sources of funds used to make the filings and submissions (as required by ¶ 10 of the Order);¹⁰⁹

t. Failing to turn over to the Receiver papers and electronic documents of the Receivership Entities (as required by ¶ 14 of the Order). The only information the Receiver has received from Defendants has been in the Compliance Verifications or letters from counsel responding to requests by the Receiver;

u. No computers, laptops, hard drives, external storage drives, or other electronic storage devices or data processing records have been delivered to the Receiver (as required by ¶ 18 of the Order);

v. Johnson testified that RaPower purchased over \$3 million in stock in IAS.¹¹⁰ Johnson has delivered no stock owned by RaPower to the Receiver (as required by ¶ 18 of the Order);

w. Disclaiming any ability to control the foreign entities and assets owned by the foreign entities.

¹⁰⁸ This information was contained in a letter from Steven Paul to Receiver, Dec. 28, 2018.

¹⁰⁹ This includes: a) court filings by his attorneys, b) submissions to the Receiver by his attorneys, and c) compliance verifications signed by Johnson on Nov. 1, 2018, Nov. 16, 2018, Nov. 29, 2018, and Dec. 3, 2018.

¹¹⁰ Deposition of Neldon Johnson, Jun. 30, 2017 at 101:19 – 102:15. RaPower paid \$3,077,839 for the stock.

2. Shepard Failures. Shepard has provided more of the information required by the Order and information requested by the Receiver, but his responses have not been automatic or complete and he has failed to meet some of his affirmative obligations. Examples are:

a. Shepard violated the asset freeze and was held in contempt. That contempt has now been purged;¹¹¹

b. Failing to provide copies of bank statements for accounts Shepard has held at Cyprus Credit Union (as required by ¶¶ 15, 19 of the Order). Shepard has not turned over any amounts in the account or records of the account other than the first page of one account statement and two pages of a printout from an online record;¹¹²

c. Failing to provide the Receiver any accounting records, such as QuickBooks records, to the Receiver (as required by ¶¶ 15, 19 of the Order);¹¹³

d. Failing to turn over to the Receiver papers and electronic documents of the Receivership Entities (as required by ¶ 14 of the Order). The only information the Receiver has received from Defendants has been in the Compliance Verifications or letters from counsel responding to requests by the Receiver;

e. Failing to file with the Court and provide to the Receiver the supplemental “sworn statement and accounting, with complete documentation” required by the Order and due December 31, 2018.¹¹⁴ While some of the information required by this portion of

¹¹¹ See discussion in Part III.B, above.

¹¹² Nelson Snuffer provided one page from an account Shepard had at Cyprus showing a September 30, 2018 balance of \$586.96. Letter from Steven Paul to Receiver, Nov. 27, 2018. Because Cyprus Credit Union has not responded to the Receiver’s request for funds and documents, the Receiver does not know if this is the amount of funds Shepard had at Cyprus Credit Union when the Receiver was appointed.

¹¹³ The Receiver presumes that there are accounting records for Shepard Energy and Shepard Global.

¹¹⁴ [Order](#) at ¶ 26.

the Order may have been provided in connection with prior compliance verifications,¹¹⁵ information required by subparagraphs (c) through (h) have not been the subject of prior disclosures;¹¹⁶

f. It took several requests by the Receiver before Nelson Snuffer affirmed that Shepard did not own any retirement accounts and that the assets disclosed by Shepard were the only assets he owned;¹¹⁷

g. Shepard's sworn list of assets provided with his compliance verification¹¹⁸ failed to identify his ownership of 5,000 shares of IAS stock;¹¹⁹

h. Providing a list of passwords only after reminders from the Receiver that the Court's order to provide a list of passwords (as required by ¶ 25 of the Order) was not satisfied by saying the passwords would be provided upon request;

i. Failing to ensure that filings and submissions by him and on his behalf included statements identifying the sources of funds used to make the filings and submissions (as required by ¶ 10 of the Order);¹²⁰

j. Shepard's compliance verification identified his obligation on a \$305,756 mortgage on the home he lives in, but did not list the home as an asset.¹²¹

¹¹⁵ The Order does not require Johnson and Shepard to affirmatively answer whether they have investments, digital currencies, watercraft, recreational vehicles and the like. *See* [Order](#) at ¶ 26(a). Accordingly, if Johnson and Shepard own no such assets, the Order does not appear to require them to affirmatively so state.

¹¹⁶ Significantly, paragraph 26 (h) would require disclosure of information about Shepard's transfers of real property to his wife's trust.

¹¹⁷ *See* Letter from Receiver to Steven Paul, Dec. 13, 2018. The information was first requested by the Receiver on November 14, 2018.

¹¹⁸ [Docket No. 527](#), filed Dec. 3, 2018.

¹¹⁹ After the end of the quarter, Pacific Stock Transfer belatedly identified 5,000 shares of IAS stock held in Shepard's name.

¹²⁰ This includes: a) court filings by his attorneys, b) submissions to the Receiver by his attorneys, and c) compliance verifications signed by Shepard on Nov. 1, 2018, Nov. 29, 2018, and Dec. 3, 2018.

¹²¹ [Docket No. 527](#), filed Dec. 3, 2018.

3. Failures by Family Members.

a. In depositions given to the United States, Johnson indicated his wife, Glenda, kept most of the financial records of the Receivership Entities and affiliates. Glenda Johnson has acknowledged receipt of the Order but has not provided any documents to the Receiver (as required by ¶ 16 of the Order);

b. On December 3, 2018, the Receiver requested to take the depositions of Neldon Johnson and Glenda Johnson before the end of December.¹²² Steven Paul agreed to produce them voluntarily if the Receiver would agree to postpone the depositions until January 8 and 9, 2019. The afternoon before the depositions were to commence, Paul notified the Receiver his clients would not produce themselves to be deposed;

c. Randale Johnson was secretary and vice president of IAS. He has not delivered to the Receiver copies of any records of IAS (as required by ¶ 16 of the Order) despite acknowledging receipt of the Order;

d. LaGrand Johnson was chief financial officer of IAS. He has not delivered to the Receiver copies of any records of IAS (as required by ¶ 16 of the Order) despite acknowledging receipt of the Order;

e. LaGrand and Randale Johnson, individually and through their trusts, own 60% of the NLJFLP, which owns the two real properties in Texas. They have not transferred the Texas properties or their interests in the partnership to the Receiver despite acknowledging receipt of copies of the Order;¹²³

¹²² Email from Receiver to Steven Paul, Dec. 3, 2018.

¹²³ Because the N. P. Johnson Family Limited Partnership is currently only subject to the asset freeze and is not currently an asset of the Receivership Estate, the Johnson sons might not be in violation of the Order for this inaction. Defendants assert that the Texas properties are owned by Black Night and Starlight even though county property records show the family limited partnership as the owner. So long as the asset freeze remains, Black Night and Starlight cannot record themselves as owners of this property.

f. LaGrand and Randale Johnson, individually and through their trusts, own 60% of the shares of Black Night and Starlight, which own contract rights to the Texas properties and patents. They have not repatriated the patents or transferred their interests in these companies to the Receiver;¹²⁴

g. Glenda Johnson is the owner of 18 properties listed in the Order, including eight transferred to her by Neldon Johnson via quitclaim deeds. She has not provided any information to the Receiver regarding the amounts she paid for these properties or the sources of funds she used to purchase all 18 properties. She has not transferred to the Receiver any of the properties titled in her name;¹²⁵

h. The Order prohibits any person from entering any of the enumerated real properties without the express written permission of the Receiver.¹²⁶ The Receiver has not been asked permission to for anyone to enter any of the identified premises and has not granted written permission to do so;

i. Justin Horton, the grandson-in-law is living in one of the properties titled in the name of Glenda Johnson. No permission has been requested (under ¶ 21 of the Order) for this continued occupancy;

j. The Receiver believes that Johnson and his wife live in at least one of the properties owned by Glenda Johnson. No permission has been requested (under ¶ 21 of the Order) for this continued occupancy;

¹²⁴ Because Black Night and Starlight are currently only subject to the asset freeze and are not currently assets of the Receivership Estate, the Johnson sons might not be in violation of the Order for this inaction.

¹²⁵ Because the properties are in the name of Glenda Johnson, they are not currently part of the Receivership Estate, despite being subject to the Receiver's temporary control.

¹²⁶ [Order](#) at ¶ 20.

k. The property in Payson, Utah (§ 20(z)) may be a rental unit. The Receiver does not know who occupies this home. No permission has been requested (under § 21 of the Order) for this continued occupancy and no rental proceeds have been paid to the Receiver relating to this property;

l. The Receiver does not know if the California condo (§ 20(aa)) is being rented out to tenants or used as a vacation home by the Johnsons and their family. Glenda Johnson has provided the Receiver with little information about this property and no permission has been requested under § 21 for occupancy of this property. The Receiver lacks any information about usage of this property since the date of the asset freeze;

m. The Receiver does not know the identity of tenants of other homes owned by Glenda Johnson. No permission has been requested (under § 21 of the Order) for continued occupancy by any other persons for real properties listed in the Order.

4. Failures by Subsidiaries and Affiliates.

a. The Order explicitly extended the asset freeze to assets of subsidiaries and affiliates.¹²⁷ The Court has ruled that the retainer provided to Nelson Snuffer—ostensibly paid to Nelson Snuffer by XSun Energy—is subject to the asset freeze.¹²⁸ The motion to lift the asset freeze against XSun and Solco indicated \$18,879.25 in fees have been billed by Nelson Snuffer, but not yet paid. The Receiver does not yet know the date the initial retainer was paid to Nelson Snuffer. Given the non-rounded amount in the retainer account, the Receiver suspects the initial balance was higher. Consequently, it is likely

¹²⁷ [Order](#) at § 5.

¹²⁸ [Docket No. 550](#), filed Dec. 27, 2018.

some amounts have been spent from that retainer account since it was established and perhaps after the date of the asset freeze;

b. The Order does not specify whether the removal of officers and managers applies to the subsidiaries and affiliates and whether their powers are suspended pending a determination of whether the affiliated entities should be made part of the Receivership Estate.¹²⁹ With this uncertainty in mind, it appears that someone authorized Nelson Snuffer to file the *Motion to Lift Asset Freeze Order as to Solco I and XSun Energy*.¹³⁰ If the Order was intended to prevent actions by these affiliated entities, that motion might be a violation of the Order.

5. Failures by General Partners, Associates, Transfer Agents.

a. The Receiver sent a November 20, 2018 letter to Johnson's associate, Roger Hamblin,¹³¹ requesting information about his dealings with the Receivership Entities. Hamblin acknowledged receipt of the letter but failed to respond (as required by ¶¶ 17, 24 of the Order). The Receiver issued a subpoena to Hamblin on December 21, 2018;

b. On November 12, 2018, the Receiver requested information from Pacific Stock Transfer Company, believed to be the transfer agent for IAS. The company failed to respond (as required by ¶¶ 24, 41 of the Order). The Receiver has issued a subpoena. On January 14, 2019 (after the close of the quarter), Pacific Stock Transfer delivered some records to the Receiver;

¹²⁹ [Order](#) at ¶ 9.

¹³⁰ [Docket No. 509](#), filed Nov. 16, 2018.

¹³¹ Hamblin is the general partner of the N.P. Johnson Family Limited Partnership, the owner of DCL-16A, and the direct or indirect owner of 40% interest in Black Night and Starlight.

6. Nelson Snuffer Cooperation Failures. At the request of Nelson Snuffer, my communications with Johnson and Shepard, as well as with Glenda Johnson, have been through Nelson Snuffer. Nelson Snuffer has been the conduit for providing information to the Receiver—and has provided substantive information—but the law firm’s cooperation has been incomplete and often contradictory. The key failures to cooperate by Nelson Snuffer are:¹³²

- a. When belatedly revealing the existence of bank accounts for Receivership Entities, identifying the incorrect bank that was holding the funds and not responding to the Receiver’s request for correct bank information;¹³³
- b. Initially refusing to provide information requested by the Receiver regarding payments from IAS and RaPower to Nelson Snuffer;¹³⁴
- c. Providing no records in its possession (as required by ¶¶ 17, 24 of the Order) except what has been specifically requested by the Receiver or what has been used in filings with the Court. In light of Nelson Snuffer having been counsel for IAS and RaPower since their inception, the Receiver expects the firm has many corporate records

¹³² In some instances, the Receiver does not know when the cooperation failures are the fault of Nelson Snuffer withholding information in its control and when it has been unable to obtain information from its clients. The Receiver does not believe there have been instances where Nelson Snuffer has attributed its cooperation failures to its clients. In all instances, the Receiver believes the law firm’s compliance failures should be attributable to its clients. Since the firm has independent duties to act in the best interests of its clients, any failures by the firm should be presumed to be on behalf of the clients.

¹³³ Email from Receiver to Steven Paul to Receiver, Nov. 19, 2018. Paul did subsequently file an errata with the Court.

¹³⁴ Even specific requests by the Receiver for information from counsel for Receivership Defendants have been met with refusals. On December 17, 2018, J. David Nelson refused to provide information about the dates, amounts, and sources of payments to the Nelson Snuffer law firm by Receivership Defendants and copies of engagement agreements. After being challenged by the Receiver, Nelson later relented and provided a summary of payments to Nelson Snuffer by RaPower and IAS and stated there are no written engagement agreements (Letter from J. David Nelson to Receiver, Dec. 26, 2018). Nelson continues to refuse to provide: i) copies of invoices for legal services performed by Nelson Snuffer, which were paid by IAS or RaPower and ii) information on payments received from persons other than IAS and RaPower for services that Nelson Snuffer provided to IAS and RaPower.

of IAS and RaPower that would not impinge on any duties the firm might owe to its other clients, Johnson and Shepard;

d. Not responding to the Receiver's request for identification of the owners of interests in the NPJFLP;¹³⁵

e. Failing to provide copies of the bank account statements for the accounts of XSun and Solco;¹³⁶

f. On December 3, 2018, the Receiver requested to take the depositions of Neldon Johnson and Glenda Johnson before the end of December.¹³⁷ Steven Paul agreed to produce them voluntarily if the Receiver would agree to postpone the depositions until January 8 and 9, 2019. The afternoon before the depositions were to commence, Paul notified the Receiver his clients would not produce themselves to be deposed;¹³⁸

g. Providing incorrect and inconsistent information to the Receiver about assets. This includes: i) providing a chart showing Glenda Johnson as the owner of properties listed in ¶¶ 20 (w) and (bb);¹³⁹ ii) listing the California condominium as owned

¹³⁵ Letter from Receiver to J. David Nelson, Dec. 18, 2018. Cf., letter from J. David Nelson to Receiver, Dec. 26, 2018.

¹³⁶ Email from Receiver to Steven Paul, Nov. 19, 2018.

¹³⁷ Email from Receiver to Steven Paul, Dec. 3, 2018.

¹³⁸ The Receiver filed notices of intent to serve subpoenas on Neldon Johnson ([Docket No. 555](#), filed Jan. 14, 2019) and Glenda Johnson ([Docket No. 554](#), filed Jan. 14, 2019) for the production of documents by February 8, 2019 and for depositions on February 19 and 20, 2019. The process servers have recently reported to the Receiver that Neldon and Glenda Johnson appear to be evading service. The Receiver notified Steven Paul that the Receiver presumes the Johnsons are aware of the subpoenas and that the Receiver expects their compliance. Letter from Receiver to Steven Paul, Jan. 24, 2019. Steven Paul responded that he is unable to provide assurances that his clients will provide the documents or appear for their depositions. Letter from Steven Paul to Receiver, Jan. 24, 2019.

¹³⁹ Letter from Steven Paul to Receiver, Dec. 7, 2018. This incorrect information was later corrected. Letter from Steven Paul to Receiver, Dec. 28, 2018.

by IAS in one location of a letter, then asserting (correctly) in another location of the same letter that the property was in the name of Glenda Johnson;¹⁴⁰

h. Failing to respond to requests by the Receiver for clarification of information about characteristics and ownership of certain real estate properties and information about the tenants of properties identified in the Order;¹⁴¹

i. Refusing to answer the Receiver's question of "who is in control of each foreign entity,"¹⁴² responding only that Defendants do not control any of the foreign entities;¹⁴³

j. Failing to provide insurance settlement information regarding the Cessna Model 172M destroyed in a collision at the Spanish Fork Airport (N12212);¹⁴⁴

k. Failing to "identify the location of the [Cessna Model 414] aircraft and Mr. Johnson's position regarding whether that aircraft is an asset of the Receivership Estate;"¹⁴⁵

l. Failing to respond to the Receiver's request for information on "the amount of consideration the [LaGrand Family Trust and the Randale Family Trust] paid for [their] interests" in the NPJFLP;¹⁴⁶

¹⁴⁰ Letter from Steven Paul to Receiver, Dec. 28, 2018.

¹⁴¹ Letter from Receiver to Steven Paul, Dec. 13, 2018. The request for identification of the tenants of properties was a renewal of requests made November 5, 2018 and November 28, 2018.

¹⁴² Letter from Receiver to Steven Paul, Dec. 10, 2018.

¹⁴³ Letter from Steven Paul to Receiver, Dec. 28, 2018.

¹⁴⁴ The Receiver requested this information in a letter to Steven Paul on November 28, 2018.

¹⁴⁵ Letter from Receiver to Steven Paul, Nov. 28, 2018. Paul responded only that the aircraft was in an unidentified shop and that Johnson was not sure who owned the aircraft, pledging to "continue to research this issue and get back to you." Letter from Steven Paul to Receiver, Dec. 7, 2018.

¹⁴⁶ Letter from Receiver to J. David Nelson, Nov. 26, 2018. In response, Nelson provided a copy of the limited partnership agreement. The section of that limited partnership agreement that describes the initial capital contributions of partners states "undetermined" for each limited and general partner. Letter from J. David Nelson to Receiver, Dec. 17, 2018, Ex. C.

m. When identifying pending litigation involving the Receivership Defendants,¹⁴⁷ filing to identify pending litigation in Alabama, *Tate v. RaPower-3*,¹⁴⁸

n. Not affirming in its court filings or submissions to the Receiver the source of funds being used to pay for the preparation of the filings and submissions.¹⁴⁹

D. Repatriation. In response to the Receiver's assertion that Johnson had taken no steps to repatriate foreign assets,¹⁵⁰ Steven Paul identified three foreign entities in which Johnson previously had held an interest: Solstice, Inc., Starlight Holdings International, Inc., and Black Night Enterprises, Inc.¹⁵¹ Paul asserted that Johnson has held no interest in Black Night or Starlight since their formation in March 2012.¹⁵² Black Night and Starlight are owned directly and indirectly by three persons: LaGrand Johnson, Randale Johnson, and Roger Hamblin. The Receiver requested information from Hamblin regarding his role in the operations of Black Night and Starlight but has not yet received a response to the subpoena. The Receiver hopes his planned (but delayed) deposition of Johnson will provide additional information about the role Johnson played with the foreign entities.

Counsel for Defendants has engaged in sophistry, arguing that because the three foreign entities had never existed as residents of the U.S., the entities could not be repatriated.¹⁵³ Counsel provided information that, in the Receiver's mind is contradictory. Counsel first said

¹⁴⁷ [Docket No. 528](#), filed Dec. 3, 2018.

¹⁴⁸ Invoices relating to the Alabama litigation indicate that Alabama counsel for RaPower and IAS was communicating with David Nelson of the Nelson Snuffer firm relating to the Alabama litigation.

¹⁴⁹ See [Order](#) at ¶ 10.

¹⁵⁰ Letter from Receiver to Steven Paul, Dec. 10, 2018.

¹⁵¹ Letter from Steven Paul to Receiver, Dec. 28, 2018.

¹⁵² *Id.*

¹⁵³ *Id.*

that none of the Receivership Defendants has “any interest in any foreign entity,¹⁵⁴ then went on to say that “[s]uch ownership interests as the Defendants have are present in the United States and have never moved off shore.”¹⁵⁵ Counsel also described the ownership interests as “minority interests.”¹⁵⁶ The Receiver does not know what ownership interests that Defendants have in the foreign entities Paul is referencing.¹⁵⁷ Beyond the apparent inconsistencies, Paul’s arguments focus on moving foreign entities to the U.S., not returning to the U.S. patents, other intellectual property, and real property ownership interests that were transferred to the foreign entities. It is the assets that the court ordered repatriated, not the entities.¹⁵⁸

Johnson has failed to certify his compliance with the repatriating provisions of the Order.¹⁵⁹ He has not described actions he has taken to repatriate assets.¹⁶⁰

The Receiver asked Steven Paul to “identify who is in control of each foreign entity,” explaining that “It is not enough to disclaim management . . . Johnson must identify who does have management control [and] identify all other owners of interest.”¹⁶¹ In response, Paul did exactly what the Receiver said was inadequate; he tried to divert attention from the question,

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* Paul said such minority interests have “no market value and are insufficient [in voting power] to bring the foreign entities voluntarily to the United States.” *Id.*

¹⁵⁷ Before stating that “Neldon Johnson, IAS, RaPower-3, nor LTB1 have any interest in any foreign entity,” he made the more qualified statement that “Neldon does not have any interest in either Black Night Enterprises, Inc. or Starlight Holdings International, Inc.” In the Receiver’s mind, the only way to reconcile the inconsistencies described above would be if Johnson did own a minority interest in Solstice. However, Paul did not disclose such an interest in his letter.

¹⁵⁸ All of these assets were at one time held by U.S. entities and were transferred to foreign entities.

¹⁵⁹ [Order](#) at ¶ 34. This should have included a certification that he complied with the injunctive provisions of ¶ 32.

¹⁶⁰ *Id.* Instead, Johnson stated he lacked management control necessary to have the assets repatriated. This response is disingenuous. It attempts to divert attention from the Order’s requirement that he describe the actions he has taken to repatriate assets—which in this instance appears to mean no effort was undertaken. Steven Paul subsequently made a legal argument that Johnson lacked the power to repatriate assets. Letter from Steven Paul to the Receiver, Dec. 28, 2018.

¹⁶¹ Letter from Receiver to Steven Paul, Dec. 10, 2018.

saying: “There is no entity controlled by any of the Defendants that gives them the right to move the entity to the United States.”¹⁶²

No assets have been delivered to the Receiver that have been located overseas or owned by foreign-incorporated entities as required by ¶ 30 of the Order. Counsel for Johnson asserts that Johnson has no control over the foreign-based entities or assets.

Defendants’ answers indirectly state there are no bank accounts or assets held at financial institutions outside the U.S.¹⁶³ The Receiver does not know if that is because the Receivership Defendants, subsidiaries, or affiliates have no foreign accounts or whether Johnson simply disclaims any control over entities having such accounts. There has been no affirmative statement either way.

VI. RECEIVER’S PLANS FOR MOVING FORWARD

Receiverships like this one ordinarily have five overlapping stages. The first stage is taking control of the Receivership Entities and assets held by the Defendants, creating the Receivership Estate, and providing necessary notices. The second stage consists of performing forensic accounting of the entities’ prior financial transactions and investigating asset transfers. The third stage involves recovering improperly transferred assets, which often includes litigation. The fourth stage is liquidation of the assets. When this is completed, the fifth stage is making distributions of funds recovered. This receivership is in the first stage, with work on the second stage having begun.

¹⁶² Letter from Steven Paul to Receiver, Dec. 28, 2018.

¹⁶³ In a discussion of assets held by the three identified foreign entities, Steven Paul states that “[t]he only assets owned by Starlight and Black Night are patents,” implying there are no foreign bank accounts. Similarly, Paul’s listing of Solstice assets omits any reference to foreign bank accounts. Letter from Steven Paul to Receiver, Dec. 28, 2018.

The Receiver's expected plans for moving forward to accomplish the objectives of the receivership are:

A. Control of Assets. Most of the necessary steps in this first stage have been accomplished. The known bank funds have been recovered. Notices have been filed to show the Receiver's authority over the assets. An inventory of assets has been prepared. Other assets have been identified as being possible assets of the Receivership Estate, but recovery of these assets will be accomplished as part of the third stage, after the forensic accounting has been completed.

B. Forensic Accounting/Investigation. When the financial data from banking transactions is inputted and analyzed, the Receiver will use this information and other information he has gathered to:

1. Identify other bank accounts into or from which funds have been transferred and obtain records from any other accounts which appear that they might be tied to or holding funds of Receivership Defendants;
2. Determine the sources of funds into the Receivership Entities and decide whether there are amounts owed by others to the Receivership Estate, other than by lens purchasers;
3. Identify the recipients of funds from Receivership Entities and investigate the reasons for those payments;
4. Take the depositions of Neldon Johnson and Glenda Johnson and others likely to have information needed by the Receiver;
5. Evaluate the accuracy of company records that he hopes to obtain from Defendants. These company records may identify prior transactions that are voidable and the existence and location of additional assets;

6. Investigate what other entities, if any, should be made part of the Receivership Estate and what assets belong to the Receivership Estate;

7. Investigate the validity and effect of prior transactions by Receivership Defendants, including Johnson's transfers of intellectual property, stock, and other assets to the NPJFLP, Johnson's sales of his interests in the NPJFLP to Roger Hamblin, NPJFLP's transfers of assets to Black Night and Starlight, Johnson's transfers of intellectual property directly to foreign entities, and Black Night and Starlight's interests in the Texas properties;

8. Investigate where the \$74,000 paid by Roger Hamblin to Johnson on January 18, 2011 was deposited and how the funds were spent;

9. Investigate the creation of the foreign entities, their operations, their owners, what assets they own, and who exercised control over the entities;

10. Investigate commissions paid to RaPower salespersons to determine whether those were improper payments for the sales of securities;

11. Determine the value of patents and other intellectual property owned by the Receivership Estate; and

12. Investigate prior sales of IAS stock by Defendants and other insiders and reporting to the Court his findings.

C. Asset Recovery. With information learned from the forensic accounting and investigation, the Receiver will seek to recover assets. This is expected to include:

1. Making a recommendation to the Court on whether other entities affiliated with the Defendants should be made part of the Receivership Estate;

2. Determining whether the funds held in the Court registry from Snell & Wilmer and retainer funds held by Nelson Snuffer are assets of the Receivership Estate and, if so, recover those funds;

3. Determining whether payments and transfers to insiders were voidable transfers and, if so, file suit to recover amounts paid improperly;

4. Determining whether the transfers of real property from Neldon Johnson to Glenda Johnson were for reasonably equivalent value and the sources and uses of funds from those sales;

5. Determining the sources of funds used by Glenda Johnson to purchase the real properties held in her name and, if the funds derived from Receivership Defendants, file suit to recover those properties for the Receivership Estate;

6. Recovering from Shepard the equity in his residence;

7. Determining whether attorneys and accountants were paid fees by Receivership Entities when the benefits of the work by the attorneys and accounts were for Johnson, Shepard, or persons other than the Receivership Entities and, if so, file suit to recover those payments;

8. Determining whether any attorneys for Receivership Defendants have taken an active and knowing role in fraudulent conduct by Receivership Defendants and, if so, filing suit to recover losses due to their assistance of the fraud;

9. Recovering charitable contributions made by Receivership Defendants;

10. Recovering improper commissions paid to salespersons of RaPower;

11. Determining by July 31, 2019 whether sufficient assets have been or are likely to be recovered such that a claims process should be created and, if so, seek Court approval to conduct a claims process;

D. Asset Liquidation. Activities in this stage are expected to include the following:

1. If deemed appropriate after further investigation, stop trading of the IAS stock and terminate its status as a publicly traded company;
2. Sell real property belonging to the Receivership Estate;
3. Sell or abandon aircraft, vehicles, and equipment belonging to the Receivership Estate;
4. Sell patents and other intellectual property of the Receivership Estate;
5. Terminate the corporate status of Receivership Entities not needed for the work of the Receiver;

E. Distributions. The Order already authorizes the Receiver to make distribution payments to the first and second priority recipients without further order from the Court. If additional monies are recovered beyond that, the Receiver will seek Court approval for further distributions.

F. Terminate the Receivership Estate. When all the assets of the Receivership Estate have been liquidated and funds distributed, the Receiver will seek Court approval to terminate the Receivership Estate.

CONCLUSION

The Receivership is at an early stage and much forensic accounting and investigation remains to be conducted. The Receiver's work is being severely hampered by the obstruction of Defendants, their counsel, and others associated with them: no records of Receivership Entities

have been delivered to the Receiver; requested depositions have been postponed, then canceled; associates have refused to respond to requests for information; and counsel for Defendants have been sparing in their responses to the Receiver. Specific and urgent requests, such as requests for aircraft log books and the location of aircraft, have gone unanswered or subject to lengthy delays.

More troubling and difficult is that the information Defendants and their counsel have provided to the Receiver has often been contradictory or outright contrary to documentary evidence and prior sworn statements. This increases the difficulty for the Receiver in conducting his investigation and in preparing for litigation. Additionally, there appear to have been multiple deliberate efforts to hide assets and engage in other sham transactions such as Johnson's sale of his interests in NPJFLP and DCL-16A to Roger Hamblin just prior to his bankruptcy and the hiding of proceeds from that sale, ostensible transfers of Johnson's stock to others, transfers involving the foreign entities, and hiding the location of and information about aircraft.¹⁶⁴

The Receiver will be able to complete his investigation and objectives despite these hurdles, but it will take more time and effort. The Receiver expects there will be additional assets and recoveries for the Receivership Estate when the investigation and forensic accounting are completed.

The Receiver hopes to, but is not confident he will, find sufficient assets to justify creating a claims process to distribute some recoveries to lens purchasers who believed fraudulent statements by Defendants.

¹⁶⁴ See [Initial Accounting Report](#), Part III.A, for additional instances of apparent hiding of assets.

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



Wayne Klein
Receiver

DATED this 28th day of January, 2019.

PARR BROWN GEE & LOVELESS

/s/ Jonathan O. Hafen
Jonathan O. Hafen
Joseph M.R. Covey
Cynthia Love
Michael S. Lehr
Attorneys for Receiver

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **RECEIVER'S INITIAL QUARTERLY STATUS REPORT** was filed with the Court on this 28th day of January, 2019, and served via ECF on all parties who have requested notice in this case.

/s/ Michael S. Lehr _____