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**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION**

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UNITED STATES OF AMERICA,

Plaintiff,

v.

RAPOWER-3, LLC; INTERNATIONAL  
AUTOMATED SYSTEMS, INC.; LTBI,  
LLC; R. GREGORY SHEPARD; NELDON  
JOHNSON; and ROGER FREEBORN,

Defendants.

**RECEIVER’S MOTION FOR ORDER  
CANCELING SHARES OF  
INTERNATIONAL AUTOMATED  
SYSTEMS, INC.**

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

District Judge David Nuffer

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R. Wayne Klein, the Court-Appointed Receiver (the “Receiver”), hereby submits this Motion for an Order Canceling Shares of International Automated Systems, Inc.

**ARGUMENT**

**I. Recommendation that IAS be Dissolved and the Securities be Canceled.**

The Corrected Receivership Order (“Order”) directed the Receiver to “investigate the publicly-traded status of International Automated Systems, Inc. (“IAS”) and provide a

recommendation to the Court on whether IAS should remain a publicly traded company or should otherwise be liquidated and dissolved.”<sup>1</sup> The Receiver was directed to file a report that “describe[s] in detail his findings and recommendations.”<sup>2</sup> The Court directed: “If the Receiver determines that [IAS has] no operations unrelated to the solar energy scheme, then the Receiver shall propose a liquidation plan rather than sell the shell entity and its ‘public company’ status.”<sup>3</sup>

The Order separately established a priority system for distributing assets of the Receivership Estate.<sup>4</sup> Under this priority system, claims of shareholders of IAS would be entitled to share in recoveries only to the extent that the Receiver has previously paid \$50,025,480 to the United States Treasury and other priority claimants.<sup>5</sup>

The Receiver filed his *Receiver’s Accounting, Recommendation on Publicly-Traded Status of International Automated Systems, and Liquidation Plan* (“Report and Recommendation”) on December 31, 2018.<sup>6</sup> In the Report and Recommendation the Receiver:

1. Described Neldon Johnson’s (“Johnson”) ownership of a controlling share of IAS stock, explaining that the most recent annual report filed by IAS with the SEC disclosed that Johnson had 76% of the voting control of the company and his two sons together had an additional 10% voting control;<sup>7</sup>

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<sup>1</sup> [Docket No. 491](#), filed on November 1, 2018, at ¶ 85.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at ¶ 85(f).

<sup>4</sup> *Id.* at ¶¶ 88-91.

<sup>5</sup> *Id.* at 89 (d) and (e).

<sup>6</sup> [Docket No. 552](#).

<sup>7</sup> *Id.* at 17. Johnson now disputes the accuracy of his sworn information contained in that annual report, averring that in 2011 he transferred his shares and warrants to the N.P. Johnson Family Limited Partnerships, which transferred those shares and warrants in 2012 to Black Night Enterprises and Starlite Holdings. In his deposition, Johnson testified that he knowingly misrepresented himself as the owner of those shares because he felt shareholders might be concerned to discover that the company president owned no shares in IAS and that shares previously issued to him were owned by companies based in Nevis. *See* fn. 32, *infra*.

2. Disclosed that IAS had filed no quarterly or annual reports subsequent to its June 30, 2016 annual report. The company had been delinquent in filing its quarterly and annual reports at least 39 times since 1996;<sup>8</sup>

3. Reported that the trading price and volume of IAS stock has varied greatly, ranging from a high of \$57 per share in 1996 to less than \$0.01. The Receiver noted that despite the public availability of this Court's *Amended Judgment*<sup>9</sup> and its *Findings of Fact and Conclusions of Law*,<sup>10</sup> and the Receiver's filing of Form 8-K "Current Report," disclosing the Court's *Memorandum Decision and Order Freezing Assets*<sup>11</sup> and the *Receivership Order*, the stock retained value and continued trading;<sup>12</sup>

4. Reported his findings that while IAS had been telling shareholders and the public markets for years that IAS was developing a variety of products, the only active product development in which the company was engaged was the solar lens system. Moreover, the company disclosed that it had never had a product that generated revenue, never generated a profit,<sup>13</sup> and had no market share for any of its products.<sup>14</sup> The company's independent auditors indicated the company may be "unable to continue as a going concern;"<sup>15</sup> and

5. Provided rationales for his recommendation.<sup>16</sup>

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<sup>8</sup> *Id.* at 18.

<sup>9</sup> *Amended and Restated Judgment*, [Docket No. 507](#), filed Nov. 13, 2018.

<sup>10</sup> [Docket No. 467](#), filed Oct. 4, 2018.

<sup>11</sup> [Docket No. 444](#), filed Aug. 22, 2018.

<sup>12</sup> [Report and Recommendation](#) at 20. The Report and Recommendation also noted that IAS's transfer agent, Pacific Stock Transfer Company had refused to provide information requested by the Receiver, necessitating issuance of a subpoena. *Id.* at 17, n. 49.

<sup>13</sup> Indeed, the company had a \$40.1 million accumulated deficit as of June 30, 2016.

<sup>14</sup> [Report and Recommendation](#) at 21.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 21-23.

The Receiver subsequently reported additional findings from his investigation, including: i) the discovery that IAS had issued over nine million shares to the law firm Nelson Snuffer Dahle & Poulsen, that the law firm could sell in order to pay legal fees incurred by the firm and ii) that the SEC obtained injunctions against Johnson and family members in 2005 based on allegations the Johnson family members manipulated the price of IAS shares in the course of selling shares they owned.<sup>17</sup> The Receiver has also learned that IAS was sanctioned twice by the Utah Division of Securities for selling unregistered securities and for a denied application for exemption.<sup>18</sup>

The findings, descriptions, recommendations, rationales, and other relevant parts of the Report and Recommendation and Receiver's Second Quarterly Status Report are hereby incorporated into this motion by reference.

As a consequence of the findings detailed in the Report and Recommendation and the Receiver's Second Quarterly Status Report, the Receiver now files this Motion seeking an order declaring the equity shares (including common and preferred stock) and warrants to be canceled without any compensation to the holders of those shares and warrants.

## **II. Background Explanation on the Process for Cancellation of Shares of Publicly Traded Companies.**

The Court charged the Receiver with recommending whether IAS should cease being a publicly traded company.<sup>19</sup> This reflects a recognition that the Court's finding that the company was engaged in fraud does not automatically answer the question whether IAS shares should

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<sup>17</sup> Receiver's Second Quarterly Status Report, [Docket No. 608](#) at 9, filed Apr. 15, 2019.

<sup>18</sup> *In the Matter of International Automated Systems, Inc.*, Findings of Fact, Conclusions of Law and Order, Case No. SD-88-100, Jan. 31, 1989 (Utah Division of Securities); *In the Matter of the Application for or Notice of Exemption from Registration of International Automated Systems, Inc.*, Findings of Fact, Conclusions of Law and Order, Case No. EN-01120-21, Nov. 20, 1991 (Utah Division of Securities).

<sup>19</sup> [Order](#) at ¶ 85.

continue to trade. The Securities and Exchange Commission recognizes that there are scenarios where “a company is no longer in business, [but] there may still be active trading in its stock.”<sup>20</sup> This reflects a policy that there are situations in which the SEC “does not want to forbid transactions between willing buyers and sellers, including those holding shares in defunct companies.”<sup>21</sup> The Receiver notes, however, that this policy assumes that the *willing* buyers and sellers have adequate current information about the company and its prospects.

There are three primary avenues to terminate the trading of securities of over the counter (OTC) companies: SEC deregistration, a decision by FINRA<sup>22</sup> to cancel shares in the event of a company’s liquidation, dissolution or bankruptcy, or implementation of a court order. The Receiver first submitted information to the SEC, on March 22, 2019, requesting that the SEC suspend, deregister or revoke the registration of IAS securities under Section 12 of the Securities Exchange Act. The Receiver’s submission included analysis of the reasons IAS shares should be deregistered and copies of documents supporting the Receiver’s recommendation. On May 9, 2019, the SEC responded that because IAS was not a “reporting company”—a company that meets thresholds of size and number of shareholders—the SEC would not take action to deregister these securities. The SEC referred the Receiver to FINRA to take the necessary action.

On May 10, 2019, the Receiver submitted an “Issuer Company Related Action

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<sup>20</sup> *SEC Fast Answers: Defunct Company, Stock Continues to Trade*, <https://www.sec.gov/fast-answers/answersdfunctcohtm.html>, accessed May 16, 2019.

<sup>21</sup> *Id.*

<sup>22</sup> FINRA is the Financial Industry Regulatory Association, the self-regulatory organization to which the SEC has delegated authority to regulate many of the activities in the OTC market. <https://www.sec.gov/divisions/marketreg/mrotc.shtml>.

Notification” to FINRA requesting delisting of the stock.<sup>23</sup> On May 14, 2019, FINRA responded that the placing of IAS in Receivership, without more, was not sufficient for FINRA to delist the company’s shares. FINRA indicated that if IAS’s corporate status were to be dissolved or the company were to file a bankruptcy petition or implement a specific liquidation plan—with an identified liquidation payout to shareholders—FINRA would use its discretion to determine whether to delist the shares. The Receiver was told this process may take considerable time and any action taken is within the discretion of FINRA.

FINRA informed the Receiver that the sure way to obtain a delisting of the shares is to obtain an order from a U.S. District Court canceling the shares. FINRA also informed the Receiver that this method will also result in the quickest action on halting trading. This is the reason the Receiver now files this Motion.

### **III. Rationales for Recommendation to Cancel the Shares of IAS.**

There are eight primary reasons the Receiver asks the Court to cancel the shares of IAS:

1. No Basis for the Shares Having any Current Value. As of May 16, 2019, IAS shares were listed as having a value of \$0.04 per share. There is no rational basis for this—or any—valuation. The company has never earned operating revenue. The company has never had profits. The company has an accumulated deficit of more than \$40 million. External auditors issued a “going concern” audit report. Trading is not based on the value of the company’s assets or earnings.
2. Court-Ordered Criteria Satisfied: IAS Engages in No Legitimate Business Operations. The Order instructed that if IAS conducts no operations unrelated to the solar energy

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<sup>23</sup> This is the form designated by FINRA Rule 6490 for public companies to provide timely notice to FINRA of certain corporate actions. FINRA assists in disseminating this information to market participants to promote full disclosure and transparency.

scheme, the Receiver shall propose a liquidation plan. The Receiver determined that IAS does not engage in any business operations other than the solar scheme and proposed a liquidation plan.<sup>24</sup> Thus, the conditions identified by the Court have been satisfied.

3. IAS Has No Future Prospects for Business Operations, Shareholders Have No Role. The Court has already ruled that if IAS has no business operations other than promoting the solar energy scheme, it should be liquidated “rather than sell the shell entity and its ‘public company’ status.”<sup>25</sup> Moreover, the Receiver, who has exclusive control over the assets and operations of IAS, has determined that IAS will engage in no future business operations. In light of these factors, there are no prospects for the company to have any future operations, revenues, or profits. And, because the company is under the exclusive control of the Receiver, shareholders have no prospects of influencing company activities or controlling its management.

4. IAS Shares Can Have No Future Value. The Order requires that the assets of the Receivership Entities—including IAS—are to be used to satisfy the disgorgement mandate in the Order. Under the distribution priorities of the Order, any shareholders of IAS would be in fifth priority and would receive proceeds from Receivership Estate assets only after \$50 million was paid to the U.S. Treasury.<sup>26</sup> Based on the assets identified by the Receiver, there are no prospects of the Receivership Estate yielding over \$50 million in assets. This conclusion is consistent with statements by Johnson that there are not \$50 million in assets of the Receivership Entities. Accordingly, IAS shares have no possible future value to any shareholder.

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<sup>24</sup> Report and Recommendation, [Docket No. 552](#).

<sup>25</sup> [Order](#) at ¶ 85(f).

<sup>26</sup> [Order](#) at ¶ 89 (d), (e).

5. Public Information is Missing, Incorrect, and Misleading. The company's most recent annual report was dated June 30, 2016. The information in that report is outdated and material information has not been disclosed, including Johnson's 2011 personal bankruptcy,<sup>27</sup> the SEC's 2004 and 2005 injunctions against Johnson and family members,<sup>28</sup> the fact that the intellectual property rights which underlay the supposed solar generation program are owned by foreign entities,<sup>29</sup> the fact that courts have invalidated some of the IAS patents,<sup>30</sup> and this Court's ruling that IAS was operating a massive fraud.<sup>31</sup> Material information contained in the annual report is inaccurate. The section on stock ownership by insiders falsely reports that Johnson owns 76% of outstanding shares when those shares are currently held by foreign corporations.<sup>32</sup> No buying and selling of IAS shares should be occurring when the market (and potential new investors) lack this material information.

6. Cancelation is Necessary to Prevent Sale of Assets Belonging to the Receivership Estate. Among the company documents that Johnson delivered to the Receiver on May 10, 2019 was a sheet indicating that RaPower owns 11,762,039 shares of IAS. Those shares were not delivered to the Receiver and the Receiver does not know where those shares are. The Receiver does not know what shares Johnson and his family members still possess. The Receiver has so far been unable to determine what shares family members have sold since this suit began in 2015. Any

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<sup>27</sup> *In re Neldon P. Johnson*, Ch.7 Case No. 11-20679 (Bankr. D. Ut. 2011).

<sup>28</sup> *SEC v. Intl. Auto Sts, et al.*, [Docket No. 65](#), [66](#), Case No. 2:98-cv-687 (D. Ut. Jan. 13, 2005).

<sup>29</sup> Receiver's Second Quarterly Status Report, [Docket No. 608](#) at 8.

<sup>30</sup> *Id.* at 14.

<sup>31</sup> *See generally, Findings of Fact and Conclusions of Law*, [Docket No. 467](#).

<sup>32</sup> Neldon Johnson Dep. 193:19-196:22. "Q. So you do not own any shares or warrants in IAS? Is that what you're saying? A. That's true. Q. Is that because they were all transferred to Black Night and Starlight? A. That's correct. Q. Then should there have been a disclosure in here [the report] that you own no shares and that the 94.3 million shares and warrants are owned by foreign companies? A. Yes, there should have been. Q. Why was that not done? A. Because I'm – I didn't take care of it properly." The relevant portion of Johnson's deposition is attached hereto as [Exhibit 1](#).

shares owned (or controlled) by RaPower or Johnson are Receivership Estate assets. They should have been delivered to the Receiver. The Receiver fears that Johnson is holding and selling these shares and using those proceeds for his personal benefit.<sup>33</sup> So long as IAS shares are traded, Johnson and other insiders can sell shares they control without the Receiver's knowledge or consent—a result facilitated by Pacific Stock Transfer Company's ("PSTC") refusal to provide key information to the Receiver about sales by family members.<sup>34</sup>

7. Cancelation is Necessary to Prevent Manipulation of IAS Share Prices. The SEC lawsuit filed in 1998 and culminating in 2004 and 2005 injunctions indicated that Johnson was manipulating the price of IAS shares. He was accused of issuing false and misleading statements that caused the share prices to skyrocket to \$40 per share, only to have the price collapse when he failed to demonstrate that his supposed "digital wave modulation" invention worked.<sup>35</sup> In the interim, family members sold shares they owned. Suspected manipulation continues now, even after the appointment of the Receiver. One blogger has posted statements such as: "I truly believe that IAS will survive and thrive!" and "There has got to be some entity out there with \$55 million who would be willing to invest in a company that has at least a dozen potential billion dollar technologies."<sup>36</sup> Within the past two weeks, bloggers have stated that "there are several pathways . . . that can be taken that will ensure the survival of IAS," "I agree that things are be happening

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<sup>33</sup> Among the records delivered to the Receiver on May 17, 2019 are documents detailing the frequency of stock sales by Neldon Johnson; he netted \$42,906 in stock sales in September 2007, \$31,180 in August 2007, and \$81,161.55 in September 2006.

<sup>34</sup> As of the filing of this Motion, PSTC has still not provided the Receiver the information he requested regarding sales by family members.

<sup>35</sup> Development of this invention has since been abandoned by IAS.

<sup>36</sup> <http://iaus.freeforums.net/thread/9/believe-ias-survive?page=1&scrollTo=49>. The Receiver does not know the identity of this blogger.

behind the scenes that will have IAUS surviving,” and “I still believe that IAS will ‘survive’ and then ‘thrive.’”<sup>37</sup> In light of the company’s admittedly terrible financial condition, the Court’s findings of fraud, and the Receiver’s exclusive control over the Receivership Entities, statements such as these have no basis in fact and serve no purpose other than to generate artificial demand for the shares and to prop up the share price. And, in fact, this artificial demand is being generated. On May 21, 2019 the Receiver received a call from a person inquiring about the stock because a friend had told him that the person who started IAS was a genius and that this person should buy IAS stock. The Receiver worries that this suspected manipulation is permitting Johnson and other insiders to continue to sell shares they own or control.

8. Preventing Fraud on New Investors. It is axiomatic that any sale that is consummated requires a buyer. The Receiver believes it should be more important to prevent new investors from purchasing IAS stock (that can never be a legitimate ownership interest in a company) than continuing to provide a market for existing shareholders to liquidate their shares. Existing shareholders can exit their positions only by finding someone who believes there is future potential in this stock. The Receiver controls the answer to that question and he already has answered that there is no future potential for shareholders of this company. New investors should not be induced to purchase a stock where the investors have no prospect for earning a return on the investment or having a say in what actions the company will take.<sup>38</sup>

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<sup>37</sup> <http://iaus.freeforums.net/thread/9/believe-ias-survive?page=9> .

<sup>38</sup> In light of the Court’s many rulings and orders over the past 11 months—including the appointment of the Receiver and the *Findings of Fact and Conclusions of Law*—existing shareholders have had ample time and information to consider the prudence of their investment in IAS stock. Accordingly, the Receiver believes that the Court should not view investment losses to existing shareholders as a reason not to grant this Motion. As shown above, IAS will not continue as a company and cancellation of IAS shares is necessary to prevent further harm.

**CONCLUSION**

For the foregoing reasons, the Court should grant the Motion and issue an order canceling the shares of IAS and declaring that they have no value. With such an order, FINRA will delist the shares of IAS. That action will protect innocent future investors and deny insiders a continuing opportunity to earn proceeds by selling their shares in the market. In the process, insiders will no longer have an incentive (or ability) to seek to manipulate IAS share prices and distort markets.

The United States has authorized the Receiver to state that the United States agrees with the relief being requested herein.

A proposed order is submitted herewith.

DATED this 27th day of May, 2019.

**PARR BROWN GEE & LOVELESS, P.C.**

*/s/ Michael S. Lehr* \_\_\_\_\_

Jonathan O. Hafen

Michael S. Lehr

*Attorneys for R. Wayne Klein, Receiver*

**CERTIFICATE OF SERVICE**

I hereby certify that the above **RECEIVER'S MOTION FOR ORDER CANCELING SHARES OF INTERNATIONAL AUTOMATED SYSTEMS, INC.** was filed with the Court on this 27th day of May, 2019, and served via ECF on all parties who have requested notice in this case.

I also certify that, on May 28th, by U.S. Mail, first-class, postage pre-paid, I caused to be served the same documents upon the following persons:

Neldon Johnson  
2730 W 4000 South  
Oasis, UT 84624

R. Gregory Shepard  
858 Clover Meadow Dr.  
Murray, Utah 84123

*Pro se Defendants*

Pacific Stock Transfer Company  
6725 Via Austi Parkway, Suite 300  
Las Vegas, NV 89119

/s/ Michael S. Lehr