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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.; LTB1,  
LLC; R. GREGORY SHEPARD; NELDON  
JOHNSON; and ROGER FREEBORN,

Defendants.

**RECEIVER'S EX-PARTE  
DECLARATION OF NON-  
COMPLIANCE AGAINST NELSON  
SNUFFER DAHLE & POULSEN, PC**

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

District Judge David Nuffer

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Pursuant to paragraph 43 of the Corrected Receivership Order, R. Wayne Klein, the Court-Appointed Receiver (“Receiver”) hereby files this Declaration of Non-Compliance requesting the Court to enter, without additional process or demand, an order for turnover and writ of possession against Nelson Snuffer Dahle & Poulsen, PC (“Nelson Snuffer”), ordering the turnover and seizure of \$735,202.22 of Receivership Property currently located in Nelson Snuffer’s trust account.

I, R. Wayne Klein, declare as follows:

1. I make this declaration based upon my personal knowledge and the contents of

records I maintain in the ordinary course of business, which I believe to be true. I have personal knowledge of the statements and matters set forth herein and, if called to testify, would testify as follows:

2. On October 31, 2018, the Court extended the previously-entered asset freeze to 12 affiliates and subsidiaries of RaPower-3, LLC (“RaPower”), International Automated System, Inc. (“IAS”) and LTB1, LLC, including XSun Energy, LLC (“XSun”) and Solco I, LLC (“Solco”).<sup>1</sup>

3. The asset freeze restrained and enjoined anyone from “directly or indirectly transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating, or otherwise disposing of or withdrawing” property of the 12 affiliates and subsidiaries, including Solco and XSun.<sup>2</sup>

4. On November 16, 2018, Nelson Snuffer filed a motion to amend the Corrected Receivership Order to lift the asset freeze as to Solco and XSun.<sup>3</sup>

5. In that motion, Nelson Snuffer disclosed that it was holding \$735,202.22 of XSun funds in its trust account. Nelson Snuffer described these funds as non-refundable retainer funds.<sup>4</sup>

6. Nelson Snuffer argued in the motion to amend that the \$735,202.22 was “not part of the Receivership Property and cannot become part of the Receivership Property without a separate lawsuit brought against” XSun and Solco.<sup>5</sup>

7. On December 27, 2018, the Court denied Nelson Snuffer’s motion, rejecting its due process argument and finding that Nelson Snuffer, on behalf of Receivership Defendants, “failed

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<sup>1</sup> Corrected Receivership Order, [Docket No. 491](#), § A. The Corrected Receivership Order, filed on November 1, 2018, corrected formatting errors of the Receivership Order, [Docket No. 490](#), which was filed on October 31, 2018.

<sup>2</sup> [Docket No. 491](#), ¶¶ 4-8.

<sup>3</sup> [Docket No. 509](#).

<sup>4</sup> *Id.*, at 5.

<sup>5</sup> *Id.*, at 7.

to show that the so-called ‘nonrefundable’ retainer in the amount of \$735,202.22, which is currently in Nelson Snuffer Dahle & Poulsen’s trust account, is not property of the receivership estate, [therefore] the full balance of that retainer will remain subject to the Asset Freeze at this time.”<sup>6</sup>

8. On May 3, 2019, the Court issued the Memorandum Decision and Order Granting the Receiver’s Motion to Include Affiliates and Subsidiaries in the Receivership (“Affiliates Order”).<sup>7</sup>

9. The Affiliates Order extended the Receivership to the 12 affiliates and subsidiaries listed in the Corrected Receivership Order, including XSun and Solco, and one additional entity (the 13 affiliates and subsidiaries are collectively referred to as “Affiliated Entities”).<sup>8</sup>

10. The Affiliates Order found that “[t]he whole purpose of RaPower, IAS, and LBT1 was to perpetrate a fraud to enable funding for Neldon Johnson. The same is true for other entities Johnson created . . . including Solco, [and] XSun . . . . Johnson has commingled funds between these entities, used their accounts to pay personal expenses, and transferred Receivership Property to and through them in an attempt to avoid creditors.”<sup>9</sup>

11. The Affiliates Order ordered that “this court takes exclusive jurisdiction and possession of all assets, of whatever kind and wherever situated, of each of the Affiliated Entities.”<sup>10</sup>

12. The Affiliates Order dismissed “[t]he directors, officers, managers, employees,

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<sup>6</sup> [Docket No. 550](#).

<sup>7</sup> [Docket No. 636](#).

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

<sup>9</sup> *Id.*, Affiliates Order: Factual Basis, ¶ 2.

<sup>10</sup> *Id.*, Affiliates Order, ¶ 1.

trustees, investment advisors, accountants, *attorneys*, and other agents of the Affiliated Entities.”<sup>11</sup>

13. The Affiliate Order gave the Receiver “all powers, authorities, rights, and privileges . . . of the Affiliated Entities.”<sup>12</sup>

14. The Affiliates Order required any past and present attorneys of the Affiliated Entities to cooperate with and assist the Receiver in the performance of his duties and obligations relating to the Affiliated Entities.<sup>13</sup>

15. Under the Affiliates Order “[a]ll persons having control, custody, or possession of *any property or records of Affiliated Entities are hereby ordered to turn such property or records over to the Receiver.*”<sup>14</sup>

16. In addition to the requirements stated in the Affiliates Order, the Corrected Receivership Order was also expressly incorporated by reference, so its provisions “apply to the Affiliated Entities, as they do to the Receivership Entities, to the extent necessary and appropriate to allow the Receiver to accomplish his duties under the Corrected Receivership Order.”<sup>15</sup>

17. The Corrected Receivership Order forbids any person from interfering with the Receiver’s efforts to take control or possession of Receivership Property including “creating or enforcing a lien upon any Receivership Property.”<sup>16</sup>

18. After the entry of the Affiliates Order and after the Court overruled Nelson Snuffer’s objection to the Affiliates Order,<sup>17</sup> the Receiver demanded the return of the funds in

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<sup>11</sup> *Id.*, Affiliates Order, ¶ 4 (emphasis added).

<sup>12</sup> *Id.*, Affiliates Order, ¶ 6.

<sup>13</sup> *Id.*, Affiliates Order, ¶ 8.

<sup>14</sup> *Id.*, Affiliates Order, ¶ 9 (emphasis added).

<sup>15</sup> *Id.*, Affiliates Order, ¶ 12.

<sup>16</sup> [Docket No. 491](#), ¶ 35(a).

<sup>17</sup> [Docket No. 718](#), filed July 8, 2019.

Nelson Snuffer's trust account.

19. Nelson Snuffer refused. Instead of turning over the XSun funds in its possession, Nelson Snuffer informed the Receiver that while the balance of the trust account remained \$735,202.22, Nelson Snuffer asserted an attorney's lien over the majority of the funds in the account. Nelson Snuffer claimed those funds had been "earned" since the funds were frozen on October 31, 2018.<sup>18</sup>

20. Nelson Snuffer's refusal to turn over the XSun funds in its trust account violates the Corrected Receivership Order and the Affiliates Order. The Affiliates Order requires the turnover of any property or records of Affiliated Entities to the Receiver, and the Corrected Receivership Order prohibits "interfering with or creating or enforcing a lien upon any Receivership Property."<sup>19</sup>

21. Further, Nelson Snuffer's alleged creation of an attorney's lien on the XSun funds violates the freeze order extended to XSun's assets on October 31, 2018, which prevents the "transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating, or otherwise disposing of" frozen funds.<sup>20</sup>

22. In an attempt to avoid filing this Declaration of Non-Compliance, the Receiver—personally and through counsel—has engaged in numerous discussions with Nelson Snuffer seeking a return of the XSun funds, including sending a copy of this non-compliance declaration

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<sup>18</sup> I believe that Nelson Snuffer's claim of entitlement to these funds is based on work it has performed pursuing the appeal on behalf of Receivership Defendants and also submitting other court filings on behalf of Receivership Defendants, Affiliates, Glenda Johnson, Randale Johnson, and LaGrand Johnson. However, because filings made by Nelson Snuffer have not identified the sources of funds used for court filings made by the firm, as required under paragraph 10 of the Corrected Receivership Order, I lack certainty as to the basis for Nelson Snuffer's claim of entitlement to those funds.

<sup>19</sup> See discussion at ¶¶ 15, 17, *supra*.

<sup>20</sup> See discussion at ¶ 3, *supra*.

to counsel for Nelson Snuffer before filing.

23. Nelson Snuffer has failed to provide a legitimate basis for its retention of the funds. Instead it has cited failed due process arguments,<sup>21</sup> the above-mentioned attorney's lien, pending appeals, and stated that the Receiver should seek the XSun funds in the separate lawsuit the Receiver has filed against Nelson Snuffer.

24. Despite the Receiver's insistence that the XSun funds must be turned over, Nelson Snuffer has refused. This refusal represents a direct interference preventing the Receiver from performing his duties under the Corrected Receivership Order and the Affiliates Order.

25. Accordingly, the Receiver hereby requests the Court enter an order for turnover and writ of possession against Nelson Snuffer ordering the turnover and seizure of \$735,202.22 of Receivership Property currently located in Nelson Snuffer's trust account. The Receiver requests that such order and writ of possession authorize and direct the United States Marshal or any federal or state law enforcement officer to seize the Receivership Property, and to deliver it to the Receiver.

26. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 4th day of December, 2019, at Salt Lake City, Utah.

A handwritten signature in blue ink that reads "Wayne Klein". The signature is written in a cursive style and is positioned above a horizontal line.

R. Wayne Klein, Receiver

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<sup>21</sup> See Docket No. 550 (stating Nelson Snuffer "has made this due-process argument on at least two prior occasions. On both occasions, it was rejected. It is rejected again today.")

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the above **RECEIVER'S EX-PARTE DECLARATION OF NON-COMPLIANCE AGAINST NELSON SNUFFER DAHLE & POULSEN, PC** was electronically filed with the Clerk of the Court through the CM/ECF system on December 4, 2019, which sent notice of the electronic filing to all counsel of record.

/s/ Michael S. Lehr