

U.S. COURT OF APPEALS
FOR THE TENTH CIRCUIT
2019 MAY 17 AM 10:57

Neldon P. Johnson
2730 West 4000 South
Oasis, Utah
(801) 372-4838
Pro Se Plaintiff

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

UNITED STATES OF AMERICA

Plaintiff-Appellee,

vs.

NELDON PAUL JOHNSON,
Defendant-Appellant, and
INTERNATIONAL AUTOMATED SYSTEMS,
et. Al.

Defendants.

**RESPONSE TO ORDER ABOUT
JURISDICTION**

Case No. 19-4066

Appellant, Neldon P. Johnson, appears Pro Se, and submits this response to the court's May 1 Order as follows:

The lower court should have dismissed the case because there is no jurisdiction to hear the case, and therefore this Court should decide my appeal because it will bring an end to further proceedings against me. While it is correct that proceedings below have not concluded, they should have. The decision to deny my motion to dismiss is a final decision on that matter, and jurisdiction is always an issue that can be raised at any time, including for the first time on appeal. It brings an end to the case, and is a final order because it will terminate all further proceedings.

I have been the victim of a denial of Due Process and a denial of Equal Protection. When a lower court violates the Constitution it loses jurisdiction and the case should be dismissed. This is what has happened, and therefore I am appealing a final order allowing a continuation of a case when it ought to be terminated.

I have tried to bring cases to show that the lower court made serious mistakes in how it handled the case against me. For example, I sued a witness who provided untrue and biased testimony against me and my company. He was hired as an expert, but he did nothing to actually evaluate the products my company produced. Instead, he took no measurements and used nothing to calibrate the results of the lenses I sold, instead he just visited the site and jumped to the conclusion that since he wasn't given any measurements, and he didn't take any measurements, that the lenses could never work because there was no measurements from which to prove they would work. Yet he saw the lenses set a 2x4 on fire, and testified that it required 750° to do that. The sun can't produce temperatures at that level. But my lenses can concentrate solar energy and raise the temperatures to that by focusing sunlight rays. So he knew he was lying. And I sued him. A copy of the lawsuit is attached. But that suit was "stayed" because I am not allowed to have access to the courts like other US citizens. A copy of the complaint and removal to federal court is attached as Exhibit 1. That case has been stayed because of the receivership. Exhibit 2.

The proceeds from lens sales have all been returned. The purchasers received everything back and there is no profit, gain, enrichment or value that was

retained by me or any company involved. But the receivership continues to be conducted to collect a penalty against me, when there is nothing left to collect. This issue should be resolved because it will end the receivership.

The judge has made and continues to make negative assumptions against me because he is biased. He even announced he was making "adverse inferences" in a recent announcement. See Exhibit 3. I responded to that with an explanation that I never did anything to justify his adverse inferences. See Exhibit 4. Earlier I had filed an affidavit of bias against the judge. He never ruled on my motion. A copy is attached to this response as Exhibit 5. But despite not ruling on the motion, he has continued to proceed against me as if the question of his bias does not need to be resolved or even addressed.

The judge below has warned me about not producing, and cites Findings of Fact that I got punished in the decision against me because I failed to produce. That shows the bias of the Court, and not the truth. I never got any notice, any order or any complaint during this case about not providing banking information. The IRS never filed anything to get banking information from me, they went directly to the banks. During the trial they said they had over 32,000 pages of banking information they got from banks through subpoenas.

In 2012 the IRS raided my files and took everything involving IAS, RaPower, LTB, Solco, XSun, my family limited partnership, and every business entity I had any interest in. They took the files, electronic copies, hard drives, mobile phones, and everything

else and kept them. When they returned the property, it was disorganized, computers and phones did not work, and the files were disorganized. I never had time to reorganize the material once it was returned.

The IRS kept copies of everything. They have it now. And they also have over 32,000 pages of banking records. Some of those records only exist in the possession of the IRS. And the IRS has the federal government to support them. I have nothing. And I have no access to any funds to pay either a lawyer or an accountant. But I'm getting beat up, condemned, and threatened with "adverse inferences" because records in the IRS possession are wanted by the Receiver, and the Court only condemns me because the Receiver wants them.

Why has the IRS not been ordered by this lower court judge to produce anything?

Why has the IRS been allowed by this judge to do nothing with all the materials they have that might be of use to the Receiver?

The lower court and the receiver do not want to have access to information, but act as if they only want to treat me as a punching bag because they want to make sure I understand that court is biased against me.

The lower court made negative inferences and used those, not proof, to decide an outrageous and grossly inflated judgment against me. I NEVER collected anywhere near \$50 million from lens sales. The ridiculous decision has led to the Receiver trying to locate \$50 million because he believes the adverse inference-based decision the lower court made, which is untrue, unproven, and fails to show anything close to a "reasonable

approximation” the lower court should have required the IRS to prove. Instead of proving a case against me, the lower court used adverse inferences, or in other words outright bias, to make an unreasonable award.

I believe the lower court’s bias will not actually result in the Receiver getting the information he wants until that court requires the IRS to produce documents too. They have more than I have at this point. But the lower court has never made any adverse inferences against the IRS, even when they did not prove their case.

The Receiver is doing what the IRS should have done in gathering financial information and then during discovery disclosed the information before trial. The fact that the Receiver is sorting through trying to determine what money existed and from where is a bright and clear EVIDENCE that the IRS failed to do their job before trial and gather the accounting information and disclose it.

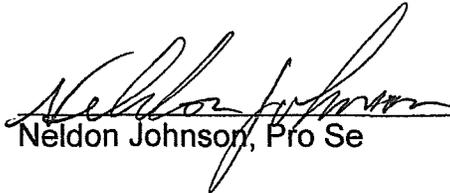
The whole purpose of appointing a Receiver when I had complied with everything asked of me was because the lower court is so set in adverse inferences, or bias, that the truth has no place in this case. I’m supposed to have everything I worked my life to achieve torn to pieces so I can’t pursue any appeal. I’m supposed to be intimidated into submission to the bias and unfairness of this process.

This appeal fits the requirements of the law, 28 USC §1291 and *New Mexico v. Trujillo*, 813 F3d 1308 (10th Cir. 2016) because this will “dispose of all claims by all parties.” *Trujillo*, p. 1316. This will “end the litigation on the merits and leave nothing

for the court to do..." *Cunningham v. Hamilton Cnty., Ohio*, 527 US 198, 204 (1999).

This appeal fits the requirement for finality. I should be allowed to appeal.

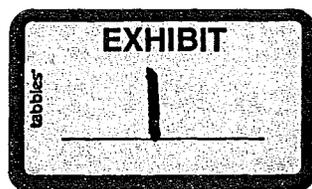
Dated this 15 day of May, 2019


Neldon Johnson, Pro Se

CERTIFICATE OF SERVICE

I certify a copy of the foregoing was sent to counsel for the United States through the Electronic Service by the Utah Court's e-filing program

/s/ Neldon Johnson, Pro, Se



STEWART GOLLAN (USB # 12524)
RICKS & GOLLAN, PLLC
75 East 400 South, # 300
Salt Lake City, Utah 84111
Telephone (801) 413-3406
Email: sgollanlaw@gmail.com
Attorneys for Thomas R. Mancini

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, CENTRAL DIVISION

NELDON PAUL JOHNSON,
Plaintiff,

DEFENDANT THOMAS MANCINI'S
NOTICE OF REMOVAL

vs.

Case No. 4:18-cv-00087-DN

THOMAS R. MANCINI,
Defendant.

Judge David Nuffer

(Pending at Case No. 180700041 in the
Fourth District Court, Millard County, Utah)

Defendant Thomas R. Mancini ("Mancini") hereby removes *Neldon Paul Johnson v. Thomas Mancini*, Civil 180700041, a Utah state court case pending in the Fourth District Court, Millard County, Utah, to this Court under 28 U.S.C. § 1441(a) and (b) and gives notice as required by 28 U.S.C. § 1446(a). The reasons and grounds for removal are based on diversity of the parties and are set forth below.

Factual Background

1. In *United States v. RaPower-3, LLC, et al.*, an action spanning three years and concluding in a twelve-day bench trial, United States District Judge David Nuffer ruled that Neldon Johnson (plaintiff in the state court action) ("Johnson"), Gregory Shepard, and various

entities controlled or owned by Johnson ran "a hoax funded by the American Taxpayer by defendants' abusive advocacy of tax laws."¹

2. Mancini was retained by the United States Department of Justice ("DOJ") and the Internal Revenue Service ("IRS") to serve as an expert on solar energy in a case brought against Johnson and various other defendants.²

3. Mancini offered expert consultation and testified during the twelve (12) day bench trial³.

4. On October 18, 2018, Johnson filed a defamation action against Mancini in the Fourth District Court for Millard County, State of Utah alleging that the testimony offered by Mancini in *United States v. RaPower-3, LLC, et al.*, was "false and defamatory." Johnson seeks "an award of damages by the Jury for the injury and damages" for harm allegedly caused to business interests the development of which involved "years of research and development, costing millions of dollars in investment to solve numerous design and manufacturing challenges."⁴

¹ Excerpts from Trial Transcript in *United States v. RaPower-3, LLC, et al.*, No. 2:15-cv-00828-DN-EJF (D. Utah) ("RaPower-3"), 2516:2-3, available in that case at ECF No. 429-1.

² See *United States v. RaPower-3, LLC, et al.*, No. 2:15-cv-00828-DN-EJF (D. Utah); State Complaint ¶ 11 (Alleging that "Defendant Mancini has testified under oath that the Plaintiffs' lenses produced heat in excess of 754°, but then fraudulently claimed that the Plaintiffs Fresnel lenses could not ever be used to produce electricity"); State Complaint ¶ 12 (Alleging that "Defendant Mancini was motivated, in part, to make the false and defamatory statements against Plaintiff because he was being compensated by the IRS to offer his false statements to support litigation against Plaintiff. ")

³ See Minute Entry (Doc. # *United States v. RaPower-3, LLC, et al.*, No. 2:15-cv-00828-DN-EJF (D. Utah); State Complaint ¶ 12 (Alleging that "Defendant Mancini has published and republished these false statements from the time he was hired to attack Plaintiff as a consultant by the IRS..."); State Complaint ¶ 12 (Alleging that Mancini "was being compensated by the IRS to offer his false statement to support litigation against Plaintiff.")

⁴ State Complaint (attached hereto and marked as Exhibit A) ¶ 6 (Alleging that "The patented Fresnel lenses took years of research and development, years of research and development,

5. Mancini was served with the state court complaint on October 21, 2018.⁵
6. Johnson is a citizen and resident of Millard County, Utah.⁶
7. Mancini is a citizen of Bernalillo County, New Mexico.⁷

Grounds for Removal

Removal is appropriate because: (1) the parties to the state action are diverse as required under 42 U.S.C. § 1332(a)(1), Johnson is a citizen of Utah⁸ and Mancini is a citizen of New Mexico⁹, and (2) the amount in controversy requirement under 42 U.S.C. § 1332(a) is satisfied. Although the Complaint in the state court action seeks unspecified monetary damages, the facts alleged and the relief requested in the state complaint state that Johnson is seeking "an award of damages by the Jury for the injury and damages" suffered to his business interests which involved "years of research and development, costing millions of dollars in investment to solve numerous design and manufacturing challenges."¹⁰ and which therefore exceeds \$75,000.00.

costing millions of dollars in investment to solve numerous design and manufacturing challenges."); State Complaint ¶ 16 (Alleging " Defendant Mancini was motivated, in part, to make the false and defamatory statements against Plaintiff because he was being compensated by the IRS to offer his false statements to support litigation against Plaintiff."; State Complaint P. 4 (Seeking "an award of damages by the Jury for the injury and damages to Plaintiff."

⁵ See Docket *Neldon Paul Johnson v. Thomas Mancini*, Civil 180700041, Fourth District Court, Millard County, State of Utah (attached hereto and marked as Exhibit B).

⁶ State Complaint ¶ 1 (Plaintiff, Neldon P. Johnson . . . is an individual residing in Millard County. . .")

⁷ See Declaration of Thomas R. Mancini, Doc. # 3, filed on even date herewith.

⁸ State Complaint ¶ 1 (Plaintiff, Neldon P. Johnson . . . is an individual residing in Millard County. . .")

⁹ See Declaration of Thomas R. Mancini, Doc. # 3, filed on even date herewith.

¹⁰ State Complaint ¶ 6 (Alleging that "The patented Fresnel lenses took years of research and development, years of research and development, costing millions of dollars in investment to solve numerous design and manufacturing challenges."); State Complaint ¶ 16 (Alleging " Defendant Mancini was motivated, in part, to make the false and defamatory statements against Plaintiff because he was being compensated by the IRS to offer his false statements to support

Accordingly, the state court case is a proceeding that can be removed to this Court.

Procedural Posture

The state court case which Mancini is hereby seeking to remove has been stayed pursuant to a Notice of Stay filed by the Court-Appointed Receiver in the matter *United States of America v. RaPower-3 LLC, et al.*, Case No. 2:15-cv-00828-DN which is pending in the United States District Court for the District of Utah. The Receiver provided notice that "actions of any nature involving . . . any of the Receivership Defendants" are stayed pursuant to the November 1, 2018 Corrected Receivership Order issued by Judge Nuffer in that matter. However, Mancini and his counsel seek to protect Mancini's right to remove the state action in the event that said stay may be determined to not be controlling in the state court action or not wholly controlling. Should this Court determine that a Notice of Removal is not appropriate at this time, Mancini requests that it be held and stayed until such time as the stay is lifted and this Notice of Removal ripens. Mancini further requests that upon the lifting of said stay removal be granted without further filing or motion to the court.¹¹

DATED, November 19, 2018.

/s/ Stewart Gollan

Stewart Gollan
Ricks & Gollan, PLLC
Attorney for Thomas R. Mancini

litigation against Plaintiff'; State Complaint P. 4 (Seeking "an award of damages by the Jury for the injury and damages to Plaintiff.")

¹¹ 42 U.S.C. § 1446(b)(3) ("Except as provided in subsection (c), if the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.")

CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing to be transmitted to the following via mail
in the United States Postal Service, postage pre-paid:

Neldon Paul Johnson
2730 West 4000 South
Oasis, UT 84624

on the 5th day of November 2018.

/s/ Stewart Gollan

Stewart Gollan
Attorney for Defendant Thomas R. Mancini

EXHIBIT A
State Complaint

FILED

OCT 17 2018

4TH DISTRICT
STATE OF UTAH
MILLARD COUNTY

JS

Neldon P. Johnson
2730 West 4000 South
Oasis, Utah 84624
(801) 372-4838
Pro Se Plaintiff

IN THE FOURTH DISTRICT COURT
FOR MILLARD COUNTY, UTAH

NELDON PAUL JOHNSON,

COMPLAINT

Plaintiff,

vs.

Jury Demanded

THOMAS R. MANCINI, an individual,

180700041

Defendant.

Plaintiff, Neldon P. Johnson, Pro Se Plaintiff, complains of Defendant as follows:

JURISDICTION AND VENUE

1. Plaintiff, Neldon P. Johnson (APlaintiff@), is an individual residing in Millard County who has suffered injury as a result of the Defendant's acting to defame, defraud and injure him.
2. Defendant, Thomas R. Mancini (AMancini@), is an individual who acted came to Utah with the intent to injure Plaintiff and succeeded in causing Plaintiff injury by his publication of false and fraudulent statements.
3. This Court has jurisdiction in this matter because the events complained of and the injuries suffered happened in the State of Utah. Venue is proper with this Court in that the cause of action arose in Utah and the Defendant has caused injury to Plaintiff in Millard County, Utah.

GENERAL ALLEGATIONS

4. Plaintiff incorporates by reference the allegations contained in the prior paragraphs 1 through 3 as though set forth herein.

5. Plaintiff was sued by the DOJ on behalf of the IRS for alleged tax violations involving the sale of patented Fresnel lenses to the public.

6. The patented Fresnel lenses took years of research and development, costing millions of dollars of investment, to solve numerous design and manufacturing challenges.

7. The Plaintiff, prior to selling any of the patented Fresnel lens, engaged legal counsel in both Millard County and Salt Lake City to obtain advice on how to properly sell the lenses to the public.

8. The patented lenses concentrate solar heat and achieves temperatures in excess of 1,500° Fahrenheit.

9. Plaintiff was advised by multiple law firms and certified public accounting firms, and acted in reliance upon that advice and counsel.

10. The Fresnel lenses were sold to the public using sales documents prepared by attorneys which were designed to allow purchasers to potentially qualify for tax benefits.

11. Defendant Mancini has testified under oath that the Plaintiff's lenses produced heat in excess of 754°, but then fraudulently claimed that the Plaintiff's Fresnel lenses could not ever be used to produce electricity.

12. Defendant Mancini has published and republished these false statements from the time he was hired to attack Plaintiff as a consultant by the IRS, and continues to make false and fraudulent statements against Plaintiff through the present, including disseminating these false statements to the Deseret News and other news media with the intent to have their publication of the false statements known widely.

13. Because it is a scientific fact that any form of heat can be used to produce electricity, therefore the Defendant knew or should have known that his statements concerning the Fresnel lenses purported inability to ever be used to produce electricity were false.

14. Defendant knowing that the statements about Plaintiff's Fresnel lenses were false, used, repeated, published, and widely disseminated the false and fraudulent claim that the Plaintiff's Fresnel lenses could not ever be used to produce electricity.

15. Defendant knew or should have known that the claim that Plaintiff's Fresnel lenses could not ever be used to produce electricity was false, and knew that by repeating the falsehood it would injure Plaintiff, and Defendant Mancini intended to injure Plaintiff by repeating this false and unsupported false statement.

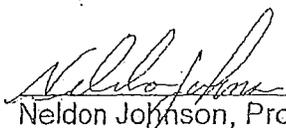
16. Defendant Mancini was motivated, in part, to make the false and defamatory statements against Plaintiff because he was being compensated by the IRS to offer his false statements to support litigation against Plaintiff.

17. Defendant Mancini succeeded in deliberately damaging Plaintiff using these false and fraudulent claims to injure Plaintiff.

WHEREFORE, Plaintiff asks this Court to grant relief to Plaintiff as follows:

1. For a Jury trial to determine the Defendant acted fraudulently to Plaintiff's injury.
2. For an award of damages by the Jury for the injury and damages to Plaintiff.
3. For court costs and expenses in bringing this claim to Court.
4. For such other relief as the Jury finds appropriate in this matter.

Dated this 17 day of October, 2018



Neldon Johnson, Pro Se



Jonathan O. Hafen (6096) (jhafen@parrbrown.com)
Joseph M.R. Covey (7492) (jcovey@parrbrown.com)
Cynthia D. Love (14703) (clove@parrbrown.com)
Michael S. Lehr (16496) (mlehr@parrbrown.com)
PARR BROWN GEE & LOVELESS, P.C.
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Telephone: (801) 532-7840
Facsimile: (801) 532 7750

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

NELDON PAUL JOHNSON,

Plaintiff,

v.

THOMAS R. MANCINI,

Defendant.

NOTICE OF STAY

Civil No. 4:18-cv-00087-DN

Judge David Nuffer

Wayne Klein, the Court-Appointed Receiver in the matter *United States of America v. RaPower-3 LLC, et al.*, Case No. 2:15-cv-00828-DN, pending in the United States District Court for the District of Utah, hereby gives notice that “actions of any nature involving . . . any of the Receivership Defendants” are stayed pursuant to the November 1, 2018 Corrected Receivership Order (the “Order”) issued by Judge Nuffer. A copy of the Order is attached hereto as Exhibit A. Neldon Johnson, plaintiff in the above captioned case, is a defendant in *United States of America v. RaPower-3 LLC, et al.* and has been defined as a Receivership Defendant under the Order. See Order ¶ 2. The Order further states that all Ancillary Proceedings, such as this one, “are stayed in

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **NOTICE OF STAY** was electronically filed with the Clerk of the Court through the CM/ECF system on January 9, 2019, which sent notice of the electronic filing to all counsel of record and by hard copy of the same being delivered via U.S. Mail, postage prepaid, to the following:

- **Stewart W. Gollan**
sgollanlaw@gmail.com

Via U.S. Mail

Neldon Paul Johnson
2730 W 4000 S
Oasis, UT 84624

/s/ Michael S. Lehr

IN THE 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.	CORRECTED RECEIVERSHIP ORDER Civil No. 2:15-cv-00828-DN District Judge David Nuffer
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- i. Shepard Global, Inc.;
- j. Solstice Enterprises;
- k. Black Night Enterprises; and
- l. Starlight Enterprises.

3. Until otherwise ordered, Wayne Klein is appointed to serve without bond as receiver (the “Receiver”) for the estate of the Receivership Defendants and any subsidiaries or affiliated entities, and he has standing to prosecute claims under the Uniform Voidable Transactions Act.⁴

A. Asset freeze.

4. The asset freeze included in the Memorandum Decision (“Asset Freeze”) is hereby continued, which states:

Except as otherwise provided herein, all assets of the Receivership Defendants are frozen until further order of this Court (“Receivership Property”). Accordingly, all persons and entities with direct or indirect control over any Receivership Property, other than the Receiver, are hereby restrained and enjoined from directly or indirectly transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating, or otherwise disposing of or withdrawing such Receivership Property. This freeze shall include, but not be limited to, Receivership Property that is on deposit with financial institutions such as banks, brokerage firms and mutual funds, shares of stock, and any patents or other intangible property.⁵

5. The Asset Freeze is extended to include the subsidiaries and affiliated entities of the Receivership Defendants for the purpose of permitting the Receiver to investigate the assets, property, property rights, and interests of the subsidiaries and affiliated entities (“Extended Asset Freeze”). The Receiver is authorized, directed, and empowered to investigate all subsidiaries and

⁴ UTAH CODE § 25-6-101, et seq.

⁵ Memorandum Decision, *supra* note 1, ¶ 3.

on whether the subsidiaries and affiliated entities or specific property of those entities should be included in the receivership estate.

8. The Asset Freeze extends to any subsidiaries or affiliated entities of the Receivership Defendants, their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service, or otherwise, and each of them shall hold and retain within their control and otherwise prevent any withdrawal, transfer, pledge, encumbrance, assignment, dissipation, concealment, or other disposal of assets, funds, or other properties (including money, real or personal property, securities, choses in action, or property of any kind whatsoever) of the Receivership Defendants. This applies to assets held by Receivership Defendants or under their control, at any time after inception of this action, whether such assets were or are held in the name of any Receivership Defendant or for their direct or indirect beneficial interest wherever situated. The Receivership Defendants shall direct each of the financial or brokerage institutions, debtors, and bailees, or any other person or entity holding such assets, funds, or other properties of any Receivership Defendant to hold or retain within their control and prohibit the withdrawal, removal, transfer, or other disposal of any such assets, funds, or other properties.

B. Termination of authority and removal of officers and directors.

9. The directors, officers, managers, employees, trustees, investment advisors, accountants, attorneys, and other agents of RaPower-3 LLC, IAS, and LTB1 LLC (collectively, the “Entity Receivership Defendants”)⁷ are hereby dismissed, and the powers of any general

⁷ If the Receiver determines after his investigation that the Receivership should be extended to include any of the subsidiaries or affiliated entities, and the Court agrees, then this provision (and all provisions involving the Entity Receivership Defendants) shall extend to the additional subsidiaries and affiliated entities that are subsequently made part of the receivership. This shall be deemed to occur on the date the Court agrees with the Receiver’s recommendation even if an amended order has not yet been issued.

13. Subject to specific provisions in this Order, the Receiver shall have the following general powers and duties:

a. To use reasonable efforts to determine the nature, location and value of all property interests of each of the Receivership Defendants, including Johnson and Shepard. These property interests include, but are not limited to: monies, accounts, trusts, funds, digital currencies, securities, credits, stocks, bonds, effects, goods, chattels, intangible property (including patents and other intellectual property), real property, lands, premises, leases, claims, rights, ownership interests in domestic or foreign entities, and other assets, together with rents, profits, dividends, receivables, interest, or other income attributable thereto, of whatever kind, that the Receivership Defendants own, possess, have a beneficial interest in, or control directly or indirectly (“Receivership Property”).

b. To take custody, control, and possession of all Receivership Property and records relevant thereto from the Receivership Defendants; to sue for and collect, recover, receive, and take into possession from third parties all Receivership Property and records relevant thereto.

c. To manage, control, operate, and maintain the Receivership Property and hold in his possession, custody, and control all Receivership Property, pending further order of this Court.

d. Except as otherwise provided in this Order, to use Receivership Property for the benefit of the receivership, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging his duties as Receiver.

k. To seek information from governments and entities outside the United States pursuant to mutual legal assistance treaties or other agreements to which the United States or an instrumentality of the United States is a party.

l. To bring legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging his duties as Receiver. In determining which legal actions are likely to be cost effective, the Receiver may consult with counsel for the United States in making decisions on which actions to pursue.

m. To pursue, resist, defend, and settle all suits, actions, claims, and demands which may now be pending or which may be brought by or asserted against the receivership estate. In determining which suits, actions, claims and demands to pursue, resist, defend, or settle, the Receiver may consult with counsel for the United States in making decisions on such suits, actions, claims, and demands.

n. To assume all legal privileges, including attorney-client and accountant-client privileges, belonging to the Receivership Defendant entities, and determine in his discretion whether and when to assert or, on motion, to waive such privileges.

o. To compromise accounts receivable and other contractual claims of the Receivership Defendants and to abandon non-real-estate Receivership Property deemed by the Receiver to be of inconsequential value or benefit to the receivership estate on terms and in the manner the Receiver deems necessary or appropriate in the Receiver's business judgment.

p. To seek the assistance of the U.S. Marshals Service or from any other federal, state, county, or civil law enforcement offices or constables of any jurisdiction.

property over to the Receiver; provided, however, that Receivership Defendants may retain copies at their own expense.

17. The Receivership Defendants, as well as their agents, servants, employees, attorneys, any persons acting for or on behalf of the Receivership Defendants, and any persons receiving notice of this Order by personal service, electronic transmission, or otherwise, having possession of the property, business, books, records, accounts, or assets of the Receivership Defendants, are hereby ordered to deliver the same to the Receiver or his agents or employees.

E. Access to and control over real and personal property.

18. The Receiver is authorized, as the Receiver deems necessary or appropriate in the Receiver's business judgment, to take immediate possession of all personal property of the Receivership Defendants, wherever located, including but not limited to: electronically-stored information, computers, laptops, hard drives, external storage drives, and any other such memory, media or electronic storage devices, books, papers, data processing records, evidence of indebtedness, bank records and accounts, savings records and accounts, brokerage records and accounts, certificates of deposit, stocks, bonds, debentures, and other securities and investments, contracts, mortgages, furniture, office supplies, solar thermal lenses, machinery and equipment, tools, fixtures, metal, plastic, and other building materials.

19. The Receiver is authorized to take immediate possession of all vehicles and aircraft of the Receivership Defendants, wherever located, including but not limited to all ownership and leasehold interests and fixtures, including the following specific aircrafts:

- a. Cessna, Model 172M, a 1973 fixed wing single-engine with serial number 17261885 and tail number 12213, believed to be located at the Spanish Fork-Springville airport in Utah County, Utah; and

c. Millard County, Utah assessor's parcel number 4806-B, with the following

legal description:

THE EAST ONE-HALF OF SECTION 29, TOWNSHIP 17 SOUTH, RANGE 9 WEST, SALT LAKE
BASE AND MERIDIAN.

d. Millard County, Utah assessor's parcel number DO-3151, with the

following legal description:

BEGINNING WEST 997.12 FEET FROM THE NORTHEAST CORNER OF LOT 1, SECTION 4, TOWNSHIP
16 SOUTH, RANGE 7 WEST, SALT LAKE BASE AND MERIDIAN; THENCE WEST 332.38 FEET, MORE OR
LESS, TO THE WEST BOUNDARY OF SAID LOT 1; THENCE SOUTH 1315.8 FEET; THENCE EAST 332.38
FEET; THENCE NORTH 1315.8 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM (THE SOUTH 2.4 FEET) ALL RIGHTS OF WAY, STOCK TRAILS, DITCHES AND
CANALS, GRAVEL PITS AND GRAVEL BEDS.

e. Millard County, Utah assessor's parcel number DO-3276-1-1, commonly

known as 4350 W. 5000 N., Delta, UT 84624, with the following legal description:

Beginning 960 feet East of the Southwest corner of the Southwest quarter of the Northeast quarter
of Section 17, Township 16 South, Range 7 West, Salt Lake Base and Meridian, thence West 146
feet; thence North 911 Feet; thence East 368.991 feet; thence South 11 feet; thence South 16° 46'
West 773 feet; thence South 159,862 feet more or less to the point of beginning.

f. Millard County, Utah assessor's parcel number DO-3396, with the

following legal description:

Beginning at the Southeast corner of the Southwest Quarter of the
Northeast Quarter of Section 32, Township 16 South, Range 7 West,
Salt Lake Base and Meridian; Thence West 600 feet along the South
boundary of the said Southwest Quarter of the Northeast Quarter of
Section 32; Thence North 29° 23.3' East 998.5 feet; Thence East
110.0 feet to the East boundary of the said Southwest Quarter of
the Northeast Quarter of Section 32, Thence South 210.0 feet, more
or less to the Northeast corner of the Southwest Quarter of the
Southeast Quarter of the Northeast Quarter of said Section 32;
Thence East 14.0 feet more or less, Thence South 135.0 feet; Thence
East 170.0 feet; Thence North 135.0 feet; Thence East 276.0 feet;
Thence South 135.0 feet; Thence West 100.0 feet; Thence South 165.0
feet; Thence East 170 feet; Thence North 300.0 feet; Thence East
130 feet; Thence South 660.0 feet to the Southeast corner of the

k. Millard County, Utah assessor's parcel number DO-SS-136 & 137, with the following legal description:

LOTS 136, 137 AND 138 SHERWOOD SHORES, A SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF, AS RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

l. Millard County, Utah assessor's parcel number HD-3511, with the following legal description:

SECTION 16, TOWNSHIP 16 SOUTH, RANGE 8 WEST, SALT LAKE BASE AND MERIDIAN,
LESS: BEGINNING AT THE SOUTHWEST CORNER OF SECTION 16, THENCE NORTH 1320 FEET; THENCE EAST 1320 FEET; THENCE SOUTH 1320 FEET; THENCE WEST 1320 FEET TO THE POINT OF BEGINNING.
SUBJECT TO A 30 FOOT EASEMENT AROUND THE PERIMETER OF SAID PROPERTY.(HD-3511)

m. Millard County, Utah assessor's parcel number HD-3511-1, with the following legal description:

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 16, TOWNSHIP 16 SOUTH, RANGE 8 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 1320 FEET; THENCE EAST 1320 FEET; THENCE SOUTH 1320 FEET; THENCE WEST 1320 FEET TO THE POINT OF BEGINNING.(HD-3511-1)

n. Millard County, Utah assessor's parcel number HD-4497-1, with the following legal description:

Beginning 18 rods South and 3 rods East of the Northwest Corner of the Southwest Quarter of Section 33, Township 17 South, Range 7 West, Salt Lake Base and Meridian; thence South 145 feet; thence East 15 rods, thence North 145 feet; thence West 15 rods to the point of beginning.

EXCEPTING THEREFROM that portion lying within the boundaries of the State Road right of way.

o. Millard County, Utah assessor's parcel number HD-4606-2, with the following legal description:

THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 17 SOUTH, RANGE 8 WEST, SALT LAKE BASE AND MERIDIAN. LESS: BEGINNING AT THE SOUTHEAST CORNER OF SECTION 2, TOWNSHIP 17 SOUTH, RANGE 8 WEST, SALT LAKE BASE AND MERIDIAN, THENCE SOUTH 89°51'00" WEST 544.50 FEET ALONG THE SOUTH BOUNDARY OF SECTION 2, THENCE NORTH 600 FEET PARALLELING THE EAST BOUNDARY OF THE SOUTHEAST QUARTER OF SECTION 2; THENCE NORTH 89°51'00" EAST 544.50 FEET PARALLELING THE SOUTH BOUNDARY TO THE EAST BOUNDARY OF SECTION 2; THENCE SOUTH 600 FEET ALONG THE EAST BOUNDARY OF SECTION 2, TO THE POINT OF BEGINNING. EXCEPTING THEREFROM ALL RIGHTS OF WAY, STOCK TRAILS, DITCHES AND CANALS, GRAVEL PITS AND GRAVEL BEDS, TOGETHER WITH WATER RIGHT NO. 68-2388, APP. CLAIM NO. A57256, SUBJECT TO A RIGHT OF WAY FOR A COUNTY ROAD, AND INCIDENTAL PURPOSES AS NOW EXISTS.

u. Millard County, Utah assessor's parcel number HD-4657, with the

following legal description:

THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 17 SOUTH, RANGE 8 WEST, SALT LAKE BASE AND MERIDIAN.

EXCEPTING THEREFROM ALL RIGHTS OF WAY, STOCK TRAILS, DITCHES AND CANALS, GRAVEL PITS AND GRAVEL BEDS.

EXCEPTING THEREFROM ALL OIL, GAS AND/OR OTHER MINERALS IN, ON OR UNDER SAID LAND, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS FOR THE PURPOSE OF EXPLORING AND/OR REMOVING THE SAME.

v. Millard County, Utah assessor's parcel number HD-4658, with the

following legal description:

BEGINNING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 17 SOUTH, RANGE 8 WEST, SALT LAKE BASE AND MERIDIAN, THENCE NORTH 0°48'32" EAST 234.51 FEET ALONG THE SECTION LINE; THENCE NORTH 78°41'15" EAST 680 FEET; THENCE SOUTH 03°07'08" WEST 378.38 FEET TO THE SOUTH BOUNDARY OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER; THENCE NORTH 89°07'23" WEST 649.59 FEET ALONG SAID SOUTH BOUNDARY TO THE POINT OF BEGINNING. (HD-4658)

w. Millard County, Utah assessor's parcel number HD-4658-1, with the

following legal description:

THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 17 SOUTH, RANGE 8 WEST, SALT LAKE BASE AND MERIDIAN.

EXCEPTING THEREFROM ALL OIL, GAS AND/OR OTHER MINERALS IN, ON OR UNDER SAID LAND, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS FOR THE PURPOSE OF EXPLORING AND/OR REMOVING THE SAME.

LESS: BEGINNING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 17 SOUTH, RANGE 8 WEST, SALT LAKE BASE AND MERIDIAN, THENCE NORTH 0°48'32" EAST 234.51 FEET ALONG THE SECTION LINE; THENCE NORTH 78°41'15" EAST 680 FEET; THENCE SOUTH 03°07'08" WEST 378.38 FEET TO THE SOUTH BOUNDARY OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER; THENCE NORTH 89°07'23" WEST 649.59 FEET ALONG SAID SOUTH BOUNDARY TO THE POINT OF BEGINNING.

x. Millard County, Utah assessor's parcel number MA-2662-B, with the

following legal description:

THE SOUTHEAST QUARTER AND THE NORTH HALF OF THE SOUTHWEST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 27, TOWNSHIP 15 SOUTH, RANGE 8 WEST, SALT LAKE BASE AND MERIDIAN. (MA-2662-B)

EXCEPTING THEREFROM: THAT PORTION WITHIN THE BOUNDARY OF THE MILLARD COUNTY ROAD RIGHT-OF-WAY.

cc. Howard County, Texas assigned property id number R000046408, with the following legal description:

Acres 18.380, SC 36 BK 32 1N 009.01 ACQ 031306 BLK/TRACT 32 1N 18.38 ACRES

dd. Howard County, Texas assigned property id number R000046407, with the following legal description:

Acres 608.680, SC 36 BK 32 1N 009 ACQ 031306 BLK/TRACT 32 1N 608.68 ACRES

ee. Salt Lake County, Utah property with the address of 858 W. Clover Meadow Drive, Salt Lake City, UT 84123, with the following legal description:

LOT 112, MISTY MEADOWS SUBDIVISION NO. 2, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDED IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF SALT LAKE, STATE OF UTAH.

21. Upon receiving actual notice of this Order by personal service, electronic service, or otherwise, all persons other than law enforcement officials acting within the course and scope of their official duties, are prohibited (without the express written permission of the Receiver) from: (a) entering such premises; (b) removing anything from such premises; or (c) destroying, concealing or erasing anything on such premises.

22. To execute the express and implied terms of this Order, the Receiver is authorized to change locks to the premises described above. The Receiver shall have exclusive control of the keys. The Receiver is also authorized to implement surveillance or other security measures to ensure that the terms of this Order are enforced. The Receivership Defendants, or any other person acting or purporting to act on their behalf, are ordered not to change the locks in any manner, nor to have duplicate keys made, nor shall they have keys to these properties in their possession during the term of the receivership. The Receivership Defendants shall not otherwise

claims of all known creditors of the Receivership Defendants; (d) the existence of and information about all insurance policies owned by, issued to, or obtained by any of the Receivership Defendants or for which a Receivership Defendant is the beneficiary; (e) the password for all computers, electronic devices, software programs, online financial accounts, websites, social media accounts, cloud storage, servers, and any other book or record or account of the Receivership Defendants that is accessible by password; (f) the status of any pending litigation to which any of the Receivership Defendants are involved, other than this instant case, including the names of the parties, the names of attorneys who have represented the Receivership Defendants, and the location of any records relating to the litigation which records are not under the control of Receivership Defendants; and (g) a financial statement setting forth the identity, value, and location of all assets of each Receivership Defendant, including assets held outside the territory of the United States.

26. Within 60 days of the entry of this Order, the Receivership Defendants shall file with the Court and serve upon the Receiver and counsel for the United States a sworn statement and accounting, with complete documentation, covering the period from January 1, 2005, to the present:

a. Of all Receivership Property, wherever located, held by or in the name of the Receivership Defendants, or in which any of them, directly or indirectly, has or had any beneficial interest, or over which any of them maintained or maintains or exercised or exercises control, including, but not limited to: (i) all securities, investments, funds, digital currencies, real estate, vehicles, aircraft, watercraft, recreational vehicles, jewelry and other assets, stating the location of each; (ii) all patents and other intellectual property, including documents of the grants of intellectual property, all documents used in

e. Of all assets received by any of the Receivership Defendants from any person or entity, including the value, location, and disposition of any assets so received.

f. Of all funds received by the Receivership Defendants, and each of them, in any way related, directly or indirectly, to the conduct alleged in the United States' Complaint in this case. The submission must clearly identify, among other things, all purchases of solar lenses or alternative energy systems or other products sold by Receivership Defendants, the dates and amounts of the purchases, and the current location of funds received from the sales.

g. Of all expenditures exceeding \$1,000 made by any of them, including those made on their behalf by any person or entity.

h. Of all transfers of assets by them, including a description or identification of: (i) the assets; (ii) the transferees of the assets; (iii) the date of the transfers; (iv) the amount or value of the assets transferred; (v) a description of any goods or services received in exchange for the assets, including the value of any goods or services received; and, (vi) to the best of their knowledge, the current location of the assets.

27. Within 30 days of the entry of this Order, the Receivership Defendants shall provide to the Receiver and counsel for the United States copies of the Receivership Defendants' federal income tax returns for the fiscal or calendar years beginning with January 1, 2010, with all relevant and necessary underlying documentation.

28. Johnson and Shepard, as well as all past and present officers, directors, agents, attorneys, managers, shareholders, employees, accountants, debtors, creditors, managers, and general and limited partners of the Entity Receivership Defendants, and other appropriate persons or entities, including the family members of Johnson and Shepard, shall promptly

actual notice of this Order by personal service or otherwise, are hereby enjoined from taking any action, directly or indirectly, which may result in the encumbrance or dissipation of foreign Receivership Property, or in the hindrance of the repatriation required by this Order, including but not limited to:

a. Sending any statement, letter, fax, e-mail, or wire transmission, or telephoning or engaging in any act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a “duress” event has occurred under the terms of foreign trust agreement, until such time that all Receivership Property has been fully repatriated in accordance with this Order; and

b. Notifying any trustee, trust protector, or other agent of any foreign company, trust, or similar entity of either the existence of this Order, or of the fact that repatriation is required pursuant to court order, until such time that all Receivership Property has been fully repatriated in accordance with this Order.

33. In the Receiver’s sole discretion, after consultation with counsel for the United States, the Receiver may take such steps as are necessary or appropriate to repatriate to the territory of the United States, all Receivership Property that is located outside the territory of the United States and to prevent any transfer, disposition, or dissipation whatsoever of any Receivership Property located outside the United States.

34. Within 30 days of the date of this Order, the Receivership Defendants shall file with the Court and serve on the Receiver and counsel for the United States a sworn statement: (a) certifying their compliance with the repatriating provisions of this Order; (b) describing actions they have taken to repatriate assets to territory of the United States; (c) describing any

agreement, or other agreement executed by any Receivership Defendant or which otherwise affects any Receivership Property.

d. Interfere with or harass the Receiver or interfere in any manner with the exclusive jurisdiction of this Court over the receivership estate.

36. All banks, brokerage firms, financial institutions, and other persons or entities which have possession, custody, or control of any assets or funds held by, or in the name of, or for the benefit of, directly or indirectly, the Receivership Defendants that receive actual notice of this Order by personal service, electronic transmission, or otherwise shall:

a. Not liquidate, transfer, sell, convey or otherwise transfer any assets, securities, funds, or accounts in the name of or for the benefit of the Receivership Defendants except upon written instructions from the Receiver.

b. Not exercise any form of setoff, alleged setoff, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court.

c. Deny Receivership Defendants access to any safe deposit box without the written consent of the Receiver.

d. Within five business days of receipt of notice of this Order, file with the Court and serve on the Receiver and counsel for the United States a certified statement setting forth, with respect to each such account or other asset, a balance in the account or description of the assets as of the close of business on the date of receipt of the notice.

e. Cooperate expeditiously in providing information and transferring funds, assets, and accounts to the Receiver or at the direction of the Receiver.

contents of their files relating to those representations. Any claim of attorney-client or accountant-client privilege shall be made on motion and include a privilege log specifically identifying each document or item withheld from production and provide sufficient foundational information to allow an individualized assessment as to the applicability of the claimed privilege. The privilege log should include a document's date of creation, author, title or caption, addressee, recipients, and general nature or purpose for creation.

42. The Receiver shall promptly notify the Court and counsel for the United States of any failure or apparent failure of any person or entity to comply in any way with the terms of this Order, the Preservation Order,¹⁰ the Memorandum Decision,¹¹ or the FFCL.¹²

43. In the event any person fails to deliver or transfer any Receivership Property or otherwise fails to comply with any provision of Section H of this Order, the Receiver may file ex parte an "Affidavit of Non-Compliance" regarding the failure, provided, however, if such an affidavit is directed to a Receivership Defendant, such Receivership Defendant shall be entitled to ten days' notice thereof (unless shortened by an order of this Court) and an opportunity to be heard. Except as set forth above, upon the filing of the affidavit, the Court may authorize, without additional process or demand, writs of possession or sequestration or other equitable writs requested by the Receiver. The writs shall authorize and direct the United States Marshal or any federal or state law enforcement officer to seize the Receivership Property, document, or other thing, and to deliver it to the Receiver.

¹⁰ *Supra* note 8.

¹¹ *Supra* note 1.

¹² *Supra* note 2.

Receivership Defendants against a third person or party, any applicable statute of limitation is tolled during the period in which the injunction against commencement of legal proceedings is in effect as to that cause of action.

48. Upon a determination by the Receiver that action should be taken in any of the Ancillary Proceedings, the Receiver shall seek a lift of stay of litigation from this Court prior to taking any action in the Ancillary Proceeding.

J. Notice to third parties.

49. The Receiver shall promptly give notice of his appointment to all known officers, directors, agents, employees, shareholders, creditors, debtors, managers, and general and limited partners of the Receivership Defendants as the Receiver deems necessary or advisable to effectuate the operation of the Receivership.

50. In furtherance of his responsibilities, the Receiver is authorized to communicate with and serve this Order upon any person, entity, or government office that he deems appropriate to inform of the status of this matter or the financial condition of the receivership estate. All government offices which maintain public files of securities interests in real and personal property shall, consistent with such office's applicable procedures, record this Order upon the request of the Receiver or counsel for the United States.

51. The Receiver is authorized to instruct the United States Postmaster to hold and reroute mail which is related, directly or indirectly, to the business, operations, or activities of any of the Receivership Defendants (the "Receiver's Mail"), including all mail addressed to, or for the benefit of, the Receivership Defendants. The Postmaster shall not comply with, and shall immediately report to the Receiver, any change of address or other instruction given by anyone other than the Receiver concerning the Receiver's Mail. The Receivership Defendants shall not open any of the Receiver's Mail and shall immediately turn over such mail, regardless of when

receivership estate and with due regard to the realization of the true and proper value or such real property.

56. Upon further order of this Court, in accordance with such procedures as may be required by this Court and additional authority, such as 28 U.S.C. §§ 2001 and 2002, the Receiver is authorized to sell and transfer clear title to all real property in the receivership estate.

57. The Receiver is authorized to take all actions to manage, maintain, and wind down business operations of the receivership estate, including making legally-required payments to the United States, creditors, employees, and agents of the receivership estate and communicating with vendors, investors, government and regulatory authorities, and others as appropriate.

58. The Receiver shall take all necessary steps to enable the Receivership Funds to obtain and maintain the status of a taxable "Settlement Fund," within the meaning of Section 468B of the Internal Revenue Code and or the regulations, when applicable, whether proposed, temporary, or final, or pronouncements thereunder, including the filing of the elections and statements contemplated by those provisions. The Receiver shall be designated the administrator of the Settlement Fund, pursuant to Treas. Reg. § 1.468B-2(k)(3)(i), and shall satisfy the administrative requirements imposed by Treas. Reg. § 1.468B-2, including, but not limited to: (a) obtaining a taxpayer identification number; (b) timely filing applicable federal, state, and local tax returns and paying taxes reported thereon; and (c) satisfying any information, reporting, or withholding requirements imposed on distributions from the Settlement Fund. The Receiver shall cause the Settlement Fund to pay taxes in a manner consistent with treatment of the Settlement Fund as a "Qualified Settlement Fund." The Receivership Defendants shall

62. The Receiver has a continuing duty to ensure there are no conflicts of interest between the Receiver, his Retained Personnel (as defined below), and the receivership estate.

M. Bankruptcy filing.

63. The Receiver may seek authorization from this Court to file voluntary petitions for relief under Title 11 of the United States Code (the “Bankruptcy Code”) for the Receivership Defendants. If a Receivership Entity is placed in bankruptcy proceedings, the Receiver may become, and may be empowered to operate the receivership estate as, a debtor in possession. In such a situation, the Receiver shall have all the powers and duties as provided a debtor in possession under the Bankruptcy Code to the exclusion of any other person or entity.

64. The Stay of Litigation provisions, in Section I of this Order, bar any person or entity other than the Receiver from placing any of the Receivership Defendants in bankruptcy proceedings.

65. The Receiver is placed on notice that RaPower-3’s most recent bankruptcy filing (D. Utah Case No. 2:18-cv-00608-DN) was dismissed as a bad faith filing, and that RaPower-3 is barred from filing a bankruptcy petition for 180 days following the dismissal of the petition in that case.¹³ To the extent that the Receiver determines a bankruptcy petition is appropriate with respect to RaPower-3, the Receiver shall not file a bankruptcy petition for RaPower-3 until after 180 days of the dismissal of the prior bankruptcy proceeding or if the United States has no objection and the Receiver receives permission from this Court.

N. Administration of the receivership estate.

66. Until further order of this Court, the Receiver shall not be required to post bond or give undertaking of any type in connection with his fiduciary obligations in this matter.

¹³ See D. Utah Case No. 2:18-cv-00608-DN, Judgment in a Civil Case, doc. no. 11, filed September 4, 2018; *id.*, Order Dismissing the Case, doc. no. 6, filed August 22, 2018.

considered to be acting solely in a “fiduciary capacity” with respect to the Receivership Property in accordance with § 107(n) of CERCLA¹⁶ and § 12-8-92(7) of HSRA.¹⁷

70. At the request of counsel for the United States, the Receiver shall provide counsel for the United States with any documentation or information requested that is reasonably related to the United States’ duties in connection with this section of the receivership estate or that may be necessary to meet its reporting requirements or that is otherwise necessary to further the mission of the United States Department of Justice. The Receiver may cooperate with other government agencies investigating the conduct described in the United States’ complaint in this case and share information he has learned or documents recovered through his work as Receiver.

71. The Receiver need not obtain Court approval prior to the disbursement of receivership funds for expenses in the ordinary course of the administration and operation of the receivership estate. Further, prior court approval is not required for payments of applicable federal, state, or local taxes.

72. The Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement which shall be paid from the receivership estate upon approval of a filed motion for the payment of fees and expenses. The parties shall have 14 days to file a response to any such motion.

73. Unless otherwise ordered, within 45 days after the end of each calendar quarter, the Receiver and Retained Personnel shall apply by motion to the Court for compensation and expense reimbursement from the receivership estate (the “Quarterly Fee Motions”). At least 30 days prior to the filing of each Quarterly Fee Motion with the Court, the Receiver shall serve

¹⁶ 42 U.S.C. § 9607(n).

¹⁷ GA. CODE § 12-8-92(7).

until the Court appoints a successor. The Receiver shall then follow such instructions as the Court may provide.

O. Living expenses for Johnson and Shepard; use of receivership assets.

78. Within 30 days of the entry of this Order, the Receiver shall investigate the monthly income and living expenses of Johnson and Shepard and make a recommendation to the Court regarding whether any monthly living expenses should be paid out of the Receivership Property to Johnson or Shepard. The Receiver shall take into account whether Johnson or Shepard have any Non-Receivership Property or access to any assets or property from sources other than the Receivership Property or from assets that the Receiver decides to abandon or otherwise dispose of in the course of the receivership. The Receiver shall not pay any monthly living expenses to Johnson or Shepard in any month where there is insufficient funds in the Receivership bank accounts to pay the living expenses or in any month where Johnson or Shepard is not in substantial, good faith compliance with orders of this Court.

79. Johnson or Shepard may make application to the Receiver to use Receivership Property. Such application should include an explanation of the reasons for the request. The Receiver may consult with counsel for the United States before deciding whether to grant or deny the application. If the Receiver grants the request, the Receiver may condition the granting of the request on a reduction in the amount of monthly living expenses to be paid to the Receivership Defendant and on a finding that the Receivership Defendant is in substantial, good faith compliance with orders of this Court.

80. If Johnson or Shepard disagree with a decision by the Receiver regarding applications to use Receivership Property or payment of monthly living expenses, they may file a motion with the Court requesting an order directing the Receiver to make payments or allow use of the Receivership Property.

Receiver's Initial Accounting should describe in detail his findings and recommendations and include the following:

- a. A summary of IAS's reporting and disclosures obligations, whether by the SEC or any other federal, state, or local regulatory agency, and whether IAS is current in those obligations.
- b. An estimate of how long it will take the Receiver to conduct an investigation, gather the necessary information, and file any reports or other information required by the reporting and disclosure obligations referenced in Paragraph 85(a) of this Order.
- c. A summary of the trading of IAS stock from the initiation of this lawsuit on November 23, 2015, specifically outlining the trading conducted by Johnson, Shepard, their family members, and other insiders.
- d. A summary of the shares of stock currently owned by Johnson, Shepard, and their family members, whether directly or indirectly, including through spouses and the subsidiary and affiliated entities described in Paragraph 2 of this Order.
- e. A determination by the Receiver as to whether trading of IAS stock should be suspended. The Receiver is authorized to request the appropriate entity to suspend the trading of IAS stock prior to filing the Initial Accounting, and if the Receiver does so, the Receiver shall include the details of that request in the Initial Accounting.
- f. The Receiver's plan for the future of IAS, which may include continuing any operations of the business unrelated to the solar energy scheme or liquidating the business. If the Receiver determines that there are no operations unrelated to the solar

89. After payment of allowed costs of administering the receivership estate, the Receiver shall distribute proceeds from the liquidation of the receivership estate as follows:

a. **FIRST PRIORITY:** The United States Department of Justice, for its costs that will be awarded under 28 U.S.C. § 1920 and any other costs this Court may award. This payment shall be paid in full before any distributions to lower priority claims.

b. **SECOND PRIORITY:** To the United States, in the amount of \$14,207,517. This payment shall be made in full before any distributions to lower priority claims.

c. **THIRD PRIORITY:**

i. To a Receivership Defendants' customer who files a claim with the Receiver with sufficient evidence to show:

1. The customer's investment or payments to Receivership Defendants for "solar lenses," "alternative energy systems," or other products sold by Receivership Defendants;

2. All payments or credits from Receivership Defendants to the customer, including rental payments, bonus payments, salaries, distributions, commissions, and overrides or similar payments due to multilevel marketing;

3. A copy of any filed tax return on which the customer claimed a tax deduction or tax credit relating to Receivership Defendants' "solar lenses" or "alternative energy systems"; and

4. The resolution of all the customer's issues with the Internal Revenue Service regarding any tax deduction or tax credit relating to or arising from "solar lenses" or "alternative energy systems" or other

insufficient for the purpose of determining whether the customer is a Third Priority claimant and entitled to payment under this subsection. Before any funds to customers determined to be Third Priority claimants are paid, the Receiver shall file a report with the Court showing the list of customers who filed claims with the Receiver, the Receiver's determination as to whether those customers qualify as Third Priority claimants, and the proposed amount to be paid to each customer. The parties shall have 14 days to respond or object to the payments the Receiver intends to make. Payments to claimants shall be made on a pro rata basis of the amount paid by the claimant to Receivership Defendants less all amounts received by the claimant from Receivership Defendants.

d. **FOURTH PRIORITY:** To the extent that there are any remaining assets or funds in the receivership estate that can be liquidated or distributed, the remainder shall be paid to the United States until or unless the total payments to First, Second, Third, and Fourth Priority claimants reaches \$50,025,480.

e. **FIFTH PRIORITY:** The Receiver is authorized to solicit claims from other persons who may be owed money by any Receivership Defendant, including any customers who do not otherwise qualify as Third Priority claimants. To the extent that there are any remaining assets or funds in the receivership estate that can be liquidated or distributed after the payment of expenses of administering the receivership estate and the First through Fourth Priority claimants, the Receiver has discretion to determine which, if any, additional claims should be paid from the remainder. The Receiver is authorized to solicit claims from noncustomers, including utility providers, suppliers, contractors, service providers, and other similar persons and entities within the same nine months that

93. If any persons subject to this Order fail to comply with the terms herein, the Receiver or counsel for the United States is permitted to initiate contempt proceedings.

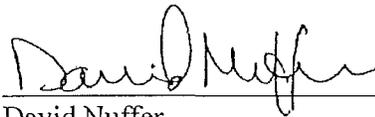
94. The Receiver and his Retained Personnel shall keep time records to support their fee applications. Time records must set forth in reasonable detail an appropriate narrative description of the services rendered along with the time spent on those services. The time records should be kept in a manner that enables the Receiver and his Retained Personnel to track time spent on specific litigation matters or other tasks related to the administering of the Receivership.

95. The Receiver shall retain all records relating to the Receivership for a period of not less than three years after the Receivership has been closed. The Receiver shall provide copies of any records, information, or documents to counsel for the United States if necessary for counsel's record-keeping obligations or other statutory and regulatory responsibilities and duties.

96. The Receiver is authorized to request a modification of this Order from this Court during the life of the receivership if the Receiver determines that a modification is necessary for the proper administration of the receivership estate.

Signed November 1, 2018.

BY THE COURT:



David Nuffer
United States District Judge



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA,
Plaintiff,

v.

RAPOWER-3, LLC; INTERNATIONAL
AUTOMATED SYSTEMS, INC.;
LTB1, LLC; R. GREGORY SHEPARD;
and NELDON JOHNSON,

Defendants.

**NOTICE RE: COMPLIANCE AND
ADVERSE INFERENCES**

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

District Judge David Nuffer

During the hearing on April 26, 2019, R. Wayne Klein, the court-appointed receiver (“Receiver”) in this case, explained that the receivership process consists of five stages. The first stage involves finding and gathering information and records about receivership defendants and their finances. The second stage involves investigating transactions that may be related to receivership assets. The third stage involves commencing legal proceedings to recover receivership assets. The fourth stage involves converting receivership assets to cash. And the fifth stage involves distributing receivership assets to intended beneficiaries.

Currently, the receivership in this case is in the first stage of this process involving finding, gathering, and analyzing information, data, and records before investigating transactions related to receivership assets and commencing legal proceedings. The deadline for commencing legal proceedings is approaching.

The filing of the United States’ motion to show cause against Defendants R. Gregory Shepard and Neldon Johnson and Respondents Glenda Johnson, LaGrand Johnson, and Randale

Johnson¹ provoked efforts to resolve the disclosure and production issues that are impeding the receivership process. Accordingly, at this point, even after the extensive April 26 and May 3, 2019 evidentiary hearings, the receivership is still in the first stage of the receivership process, and the issue of contempt remains open.

The recent production of documents and the admission that more documents are forthcoming have resulted in orders requiring additional productions.² While there has been no adjudication, Defendants and Respondents appear to have failed to participate in the receivership process in good faith and have withheld relevant information, data, records, and property. If this continues, then Defendants and Respondents will incur unfavorable consequences, including the adoption of negative inferences and conclusions adverse to their positions.

Defendants and Respondents are reminded that Defendants' lack of financial data at trial had severe consequences. As stated in the Findings of Fact and Conclusions of Law:

... Defendants bear the "risk of uncertainty in calculating net profit."
"Reasonable approximation' will suffice to establish the disgorgement liability of a conscious wrongdoer, when the evidence allows no greater precision, because the conscious wrongdoer bears the risk of uncertainty arising from the wrong. The allocation of risk of uncertainty to the wrongdoer yields the rule that 'when damages are at some unascertainable amount below an upper limit and when the uncertainty arises from the defendant's wrong, the upper limit will be taken as the proper amount.'" In other words, if "the true measure of unjust enrichment is an indeterminable amount not less than 50 and not more than 100, liability in disgorgement will be fixed at 100."

Defendants obstructed discovery about their gross receipts and other topics involving their finances. They did not produce relevant documents and information to the United States on these issues. . . .³

¹ United States' Motion to Show Cause Why Neldon Johnson, R. Gregory Shepard, Glenda Johnson, LaGrand Johnson, and Randale Johnson Should Not Be Held in Civil Contempt of Court for Violating the Receivership Order, docket no. 559, filed January 29, 2019.

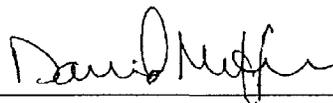
² Minute Entry, docket no. 634, filed May 3, 2019.

³ Findings of Fact and Conclusions of Law, at 125-126 (citations omitted), docket no. 467, filed October 4, 2018.

Failure to produce corporate, financial, and transactional records requires inferences and conclusions adverse to Defendants and Respondents. Failure to produce the computer that held the QuickBooks datafile, or to produce the QuickBooks datafile, will also result in adverse inferences and conclusions. Further, Defendants need to recognize that *failure to protect* material information—including data, processing data, and equipment, such as the computer—is spoliation and punishable by various sanctions, including adverse inferences, striking defenses, and barring claims.

Signed May 6, 2019.

BY THE COURT:



David Nuffer
United States District Judge



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DISTRICT OF UTAH

BY: _____
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Neldon P. Johnson
2730 West 4000 South
Oasis, Utah
(801) 372-4838
Pro Se Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RA-POWER3, LLC; INTENATIONAL
AUTOMATED SYSTEMS, INC; LTB1, LLC;
R. GREGORY SHEPARD; AND NELDON
JOHNSON,

Defendants.

**OBJECTION TO NOTICE
ABOUT COMPLIANCE AND
ADVERSE INFERENCES**

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

Defendant, Neldon P. Johnson, appears Pro Se, and submits this Objection to Notice About Compliance and Adverse Inferences as follows:

The Court warns me about not producing, and cites Findings of Fact that I got punished in the decision against me because I failed to produce. That shows the bias of the Court, and not the truth. I never got any notice, any order or any complaint during this case about not providing banking information. The IRS never filed anything to get banking information from me, they went directly to the banks. During the trial they said they had over 32,000 pages of banking information they got from banks through subpoenas.

In 2012 the IRS raided my files and took everything involving IAS, RaPower, LTB, Solco, XSun, my family limited partnership, and every business entity I had any interest in. They took the files, electronic copies, hard drives, mobile phones, and everything else and kept them. When they returned the property, it was disorganized, computers and phones did not work, and the files were a mess. I never had time to reorganize the material once it was returned.

The IRS kept copies of everything. They have it now. And they also have over 32,000 pages of banking records. Some of those records only exist in the possession of the IRS. And the IRS has the federal government to support them. I have nothing. And I have no access to any funds to pay either a lawyer or an accountant. But I'm getting beat up, condemned, and threatened with "adverse inferences" because records in the IRS possession are wanted by the Receiver, and the Court only condemns me because the Receiver wants them.

Why has the IRS not been ordered to produce anything?

Why has the IRS been allowed to do nothing with all the materials they have that might be of use to the Receiver?

Does the Receiver and this court want to have access to information, or is this just making me a punching bag because you want to make sure I understand the Court is biased against me? I already understand that. I know you made negative inferences and used those, not proof, to decide an outrageous and grossly inflated judgment against me. I NEVER collected anywhere near \$50 million from lens sales. The ridiculous

decision has led to the Receiver trying to locate \$50 million because he believes the adverse inference-based decision this Court made, which is untrue, unproven, and fails to show anything close to a "reasonable approximation" that the Court should have required the IRS to prove. Instead of proving a case against me, the Court used adverse inferences, or in other words outright bias, to make an unreasonable award.

I believe I have done what I can, and I am continuing to do what I can, to comply. But I believe your bias will not actually result in the Receiver getting the information he wants until you require the IRS to produce documents too. They have more than I have at this point. Why not make adverse inferences against them? I know the answer: Because you are biased in their favor.

The Receiver is doing what the IRS should have done and disclosed before trial. The fact that the Receiver is sorting through trying to determine what money existed and from where, is a bright and clear EVIDENCE that the IRS failed to do their job before trial and gather the accounting information and disclose it.

Why would this Court allow this miscarriage of justice? I know the answer: Because the whole purpose of appointing a Receiver when I had complied with everything asked of me was because the Court is so set in adverse inferences, or bias, that the truth has no place in this case. I'm supposed to have everything I worked my life to achieve torn to pieces so I can't pursue an appeal. I'm supposed to be intimidated into submission to the bias and unfairness of this process. IF you want to hound me, then you can go right ahead and make more unfair and untrue adverse inferences. IF you

want to get the truth, then why don't you balance things up and require the IRS to produce what they have to the Receiver. I know you won't require the IRS to do anything, and you will continue to make adverse inferences because you are biased, it is easier, it puts 100 percent of the burden on me, it accomplishes nothing to get to the real numbers, and you don't want the truth that a \$50 million award against me to be exposed as the overstated and unreliable outcome that it is.

I have made a lot of negative conclusions, not inferences, because of how I have been treated by the IRS and the Court. I have to prove everything beyond any dispute. The IRS just has to make an allegation and the Court jumps to an adverse inference and it becomes the truth, according to your bias. If the IRS was held to the same standard as me, you would have thrown their case out of court. But with the aid of your bias (adverse inferences) they win without proving anything.

Dated this 9 day of May, 2019


Neldon Johnson, Pro Se

CERTIFICATE OF SERVICE

I certify a copy of the foregoing was sent to counsel for the United States through the Electronic Service by the Utah Court's e-filing program

/s/ Neldon Johnson, Pro, Se



Neldon P. Johnson
2730 West 4000 South
Oasis, Utah
(801) 372-4838
Pro Se Defendant

FILED
U.S. DISTRICT COURT
2019 FEB -11 2:18
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RAPOWER-3, LLC, INTERNATIONAL
AUTOMATED SYSTEMS, INC., LTB1,
LLC, R. GREGORY SHEPARD,
NELDON JOHNSON, and ROGER
FREEBORN,

Defendants.

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

**AMENDED AFFIDAVIT OF BIAS OF DAVID
NUFFER**

Judge David Nuffer
Magistrate Judge Evelyn J. Furse

Plaintiff, Neldon P. Johnson, appears Pro Se, and submits this Affidavit of bias by Judge David Nuffer as follows:

This Court entered a Corrected Receivership Order and dismissed my lawyers and therefore I am Pro Se in this case because of the court's prior order. The US Code section 28 USC 445 states that "Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Judge Nuffer's impartiality is in question in this matter because he has

shown extreme bias against Plaintiff Neldon Johnson in many things he has done, including, but not limited to, the items below.

When sued, David Nuffer failed to recuse himself from handling the case, instead transferred it to Federal Court, assumed jurisdiction over the case, and entered a stay.

When sued, David Nuffer failed to recuse himself from handling the case, instead ordering that I could not serve process on him, thereby illegally evading service of process.

When asked to unfreeze assets belonging to non-parties Solco I and XSun Energy, David Nuffer reversed the burden of proof and instead of requiring the government to prove there was property belonging to a Defendant, he said that Solco I and XSun had to prove their independently earned assets were not the property of a named Defendant.

Allowing evidence to be introduced by unqualified witnesses who did not even understand the language used in their exhibits. They were just puppets for the government's attorneys and offered nothing of substance. Yet he used their statements as if they were reliable and accurate.

Preventing any discovery of witnesses employed by the Department of Justice, Tax Division because it was "privileged" by then allowing paralegals employed by the Department of Justice, Tax Division to testify in the case.

Not requiring the government to disclose evidence, that put Neldon Johnson at the disadvantage of not being able to hire an expert accountant and expert economist to testify against the evidence that the government hid during discovery.

Preventing Neldon Johnson from testifying about the details of the inventions he patented because he was not "qualified" to testify about the very things he invented and developed and secured patents for from the US Patent Office.

Slandering the name, motives, and intention of Neldon Johnson when he spent many years performing research and development on technology that is now producing power, falsely claiming his products would never work.

Appointing a receiver to destroy the economic ability of Neldon Johnson to protect himself against illegal acts because his assets are frozen, thereby interfering with Neldon Johnson's ability to appeal.

Allowing the receiver to fire my attorneys, which requires me to appear Pro Se to file this and anything else in this matter.

Because the receiver fired my attorneys and taken over all my assets with David Nuffer's permission and authorization, the only legal representation I am allowed to receive is for the appeal. I cannot otherwise hire a lawyer (and I don't have any money to hire one anyway). This is so extreme and unfair it is biased and tyrannical.

The accompanying Opening Brief filed on behalf of the Appellants in the 10th Circuit Court of Appeals shows the numerous deliberately biased actions allowed by David Nuffer during a trial before David Nuffer, all of which are incorporated into this affidavit.

David Nuffer entered orders first in other cases and only later after entering orders did he recuse himself from the cases I brought against him, when he should have recused himself immediately and taken no step in the case. Only a biased judge would do what

he has done, and his later removal and replacement of himself is an admission that he should have done it immediately.

David Nuffer violated the Anti-Injunction Act by bringing state court cases into his federal court and enjoining/staying them, in violation of 28 U.S. Code Section 2283.

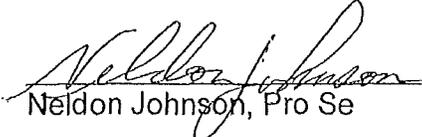
David Nuffer knows the government raided and took all accounting information in 2012 from all my companies. He knows the government has copies of all banking information from all my companies and used that information in exhibits during the trial of this case. He knows that the government has everything, and that the receiver can obtain all that information from the government. He knows that all my assets are frozen because he entered an order freezing my assets. Yet he is allowing the receiver to require me at great cost that I cannot afford or pay, to produce again what ought to be obtained from the government and without any cost to me.

I have been removed from all my companies by the order of David Nuffer, and yet he is allowing the receiver to demand I produce information from companies that I no longer own or control. This abuse requires me to incur costs I cannot pay.

David Nuffer should not be permitted to act as a judge in this case because he does not qualify under 28 USC Section 455.

Because there are ongoing issues to be resolved in this case, David Nuffer ought to be removed as judge to prevent his ongoing bias from denying me a fair and impartial treatment on each issue as it arises in this case.

Dated this 1 day of February, 2019.


Neidon Johnson, Pro Se

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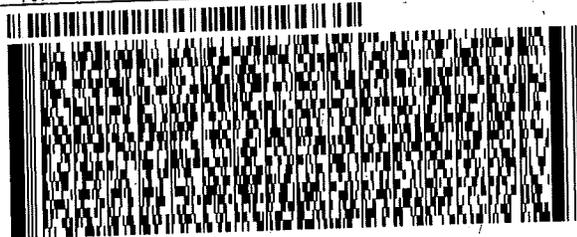
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