

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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**DOCKETING STATEMENT**

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Case Name: UNITED STATES v. RAPOWER-3, LLC, et al.

Appeal No.: 19-4089

Court/Agency Appealing From: District of Utah, Central Division

Court/Agency Docket No.: 2:15-cv-00828-DN District Judge: David Nuffer

Party or Parties Filing Notice of Appeal/Petition: Black Night Enterprises, Inc., N.P.  
Johnson Family L.P., Solco I, LLC, Solstice Enterprises, Inc., Starlight Holdings, Inc.,  
and XSun Energy, LLC

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**I. TIMELINESS OF APPEAL OR PETITION FOR REVIEW**

**A. APPEAL FROM DISTRICT COURT**

1. Date notice of appeal filed: **June 24, 2019**

- a. Was a motion filed for an extension of time to file the notice of appeal? If so, give the filing date of the motion, the date of any order disposing of the motion, and the deadline for filing notice of appeal: **No.**
- b. Is the United States or an officer or an agency of the United States a party to this appeal? **Yes.**

2. Authority fixing time limit for filing notice of appeal:

Fed. R. App. 4 (a)(1)(A) _____	Fed. R. App. 4(a)(6) _____
Fed. R. App. 4 (a)(1)(B) <u> X </u>	Fed. R. App. 4(b)(1) _____
Fed. R. App. 4 (a)(2) _____	Fed. R. App. 4(b)(3) _____
Fed. R. App. 4 (a)(3) _____	Fed. R. App. 4(b)(4) _____
Fed. R. App. 4 (a)(4) _____	Fed. R. App. 4(c) _____
Fed. R. App. 4 (a)(5) _____	

Other: \_\_\_\_\_

3. Date final judgment or order to be reviewed was **entered** on the district court docket: **May 3, 2019 (ECF Doc. No. 636)**  
**July 8, 2019 (ECF Doc. No. 719).**

4. Does the judgment or order to be reviewed dispose of **all** claims by and against **all** parties? *See* Fed. R. Civ. P. 54(b). **NO.**

**(If your answer to Question 4 above is no, please answer the following questions in this section.)**

- a. If not, did district court direct entry of judgment in accordance with Fed. R. Civ. P. 54(b)? When was this done?  
**NO.**
- b. If the judgment or order is not a final disposition, is it appealable under 28 U.S.C. § 1292(a)? **NO.**
- c. If none of the above applies, what is the **specific** statutory basis for determining that the judgment or order is appealable? **28 U.S. Code § 1345 and Rule 4, Fed. R. Civ. Pro., the trial court lacks jurisdiction over these appellants.**

5. Tolling Motions. *See* Fed. R. App. P. 4(a)(4)(A); 4(b)(3)(A).

- a. Give the filing date of any motion that tolls the time to appeal pursuant to Fed. R. App. P. 4(a)(4)(A) or 4(b)(3)(A): n/a

b. Has an order been entered by the district court disposing of any such motion, and, if so, when?\_n/a

6. Cross Appeals. [Not a cross appeal.]

a. If this is a cross appeal, what relief do you seek beyond preserving the judgment below? *See United Fire & Cas. Co. v. Boulder Plaza Residential, LLC*, 633 F.3d 951, 958 (10th Cir. 2011)(addressing jurisdictional validity of conditional cross appeals).

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b. If you do not seek relief beyond an alternative basis for affirmance, what is the jurisdictional basis for your appeal? *See Breakthrough Mgt. Group, Inc. v. Chukchansi Gold Casino and Resort*, 629 F.3d 1173, 1196-98 and n. 18 (10th Cir. 2010)(discussing protective or conditional cross appeals).

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**B. REVIEW OF AGENCY ORDER** (To be completed only in connection with petitions for review or applications for enforcement filed directly with the court of appeals.)

1. Date petition for review was filed: \_\_\_\_\_

2. Date of the order to be reviewed: \_\_\_\_\_

3. Specify the statute or other authority granting the court of appeals jurisdiction to review the order: \_\_\_\_\_

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4. Specify the time limit for filing the petition (cite specific statutory section or other authority): \_\_\_\_\_

**C. APPEAL OF TAX COURT DECISION**

1. Date notice of appeal was filed: \_\_\_\_\_  
(If notice was filed by mail, attach proof of postmark.)
2. Time limit for filing notice of appeal: \_\_\_\_\_
3. Date of entry of decision appealed: \_\_\_\_\_
4. Was a timely motion to vacate or revise a decision made under the Tax Court's Rules of Practice, and if so, when? *See* Fed. R. App. P. 13(a) \_\_\_\_\_

**II. LIST ALL RELATED OR PRIOR RELATED APPEALS IN THIS COURT WITH APPROPRIATE CITATION(S). If none, please so state.**

18-4119  
18-4150  
19-4066

**III. GIVE A BRIEF DESCRIPTION OF THE NATURE OF THE UNDERLYING CASE AND RESULT BELOW.**

This issue underlying this appeal is the trial court's decision to expand the court-appointed Receiver's authority to thirteen (13) business entities that are not parties to the underlying case. Therefore, the trial court lacks jurisdiction to issue the Affiliates Order appealed from here.

In a unilateral move, the trial court asserted jurisdiction against thirteen (13) separately formed and existing legal entities based on the recommendation of the Receiver that the "Affiliated Entities"<sup>1</sup> participated in an alleged fraudulent tax scheme.

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<sup>1</sup> "Affiliated Entities" includes those defined by the Court in its Memorandum and Decision (ECF 636) as Solco I, LLC, XSun Energy, LLC, Cobblestone Centre, LC, LTB O&M, LLC, U-Check, Inc., DCL16BLT, Inc., DCL-16A, Inc., N.P. Johnson Family Limited Partnership, Solstice Enterprises, Inc., Black Night Enterprises, Inc., Starlight Holdings, Inc., Shepard Energy and Shepard Global, Inc.

The trial court's order ignores the requirements of federal court jurisdiction, 28 U.C.A. § 1345, and the requirements of Rule 4, Federal Rules of Civil Procedure. Before the trial court can take action against the Affiliated Entities, those entities should have been made parties to the dispute and given the opportunity to defend themselves on the merits of any claim asserted against them. The Affiliated Entities are entitled to the due process rights of notice and an opportunity to be heard before rights and privileges are taken from them.

The trial court's order, ECF 636, strips appellants and the other Affiliated Entities from their ability to defend against the claims which Defendants were accused of, in particular, promoting an unlawful tax scheme under 26 U.S.C. 6700. "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified."<sup>2</sup> In this case, none of the Affiliated Entities were notified of the allegations against them and none were heard on the motion to include them into the receivership estate. None received notice under Rule 4, Fed R Civ Pro. that their rights were about to be forfeit. None of them were permitted to present a plenary defense, nor to conduct discovery as part of preparing a defense. None of them were permitted to call and examine witnesses, nor to cross examine witnesses against them. Nor were any of them permitted to hire and use expert witnesses.

It is equally fundamental that the right to notice and an opportunity to be heard "must be granted at a meaningful time and in a meaningful manner."<sup>3</sup> The trial court's order ignores the Affiliated Entities' fundamental rights of due process, skips any claim or finding of alter ego or opportunity to defend against that claim, and leaps to the conclusion that these unnamed parties are equally liable for the judgment entered against the named Defendants. Such a leap violates the rights of appellants and the other Affiliated Entities to due process.

The trial court issued a Memorandum Decision and Order on Receiver's Motion to Include Affiliates and Subsidiaries in Receivership ("Affiliates Order") on May 3, 2019<sup>4</sup>. That Order concluded that the Affiliated Entities were "subsidiaries and affiliates" of the receivership defendants without any specific findings or evidence. The trial court simply relied on the receiver's recommendation. See Doc. 636, page 2. Under the Affiliates Order, the court took the following actions:

1. Took exclusive jurisdiction and possession of all assets of each of the Affiliated Entities; See ECF 636, page 6.

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<sup>2</sup> *Fuentes v. Shevin*, 407 U.S. 67, 81.

<sup>3</sup> *Id.* (citing *Armstrong v. Manzo*, 380 U.S. 545, 552).

<sup>4</sup> Docket No. 636 ("Affiliates Order") May 3, 2019.

2. Made the Affiliated Entities part of the existing receivership estate to be administered by the court-appointed receiver, Wayne Klein; Id.
3. Froze the assets of the Affiliated Entities and made them subject to the Corrected Receivership Order, ECF 491; Id. at 7.
4. Dismissed all directors, officers, managers, employees, trustees, investment advisors, accountants, attorneys and other agents of the Affiliated Entities; Id.
5. Terminated the authority of any person holding or claiming any position to act by or on behalf of any of the Affiliated Entities; Id.
6. Gave the receiver absolute power over the Affiliated Entities; Id.
7. Ordered all people associated with the Affiliated Entities to cooperate with and assist the receiver; Id.
8. Ordered “all persons” to turn over property and records of the Affiliated Entities to the receiver; Id. at 8.
9. Granted power and authority to the receiver to transfer assets of foreign-based entities to the United States and to liquidate or abandon all foreign entities created by any Defendant; Id. and,
10. Directed any person who may have an objection to the Affiliates Order to file such objection with the court within 21 days of receiving actual notice of the Affiliates Order. Id.

Appellants timely objected to the Affiliates Order.<sup>5</sup> However, no decision on the timely objections was forthcoming until July 8, 2019, when the trial court issued its Memorandum Decision and Order Overruling Objections Regarding Inclusion of Affiliates and Subsidiaries.<sup>6</sup> The July 8, 2019 Ruling was based on “adverse inferences” made against the named Defendants, which bears no relationship to whether due process rights belonging to these parties have been violated.

This appeal was timely filed on June 24, 2019.<sup>7</sup>

**IV. IDENTIFY TO THE BEST OF YOUR ABILITY AT THIS STAGE OF THE PROCEEDINGS, THE ISSUES TO BE RAISED IN THIS APPEAL.**

- A. Whether the district court erred in ordering the joinder of the Affiliated Entities to the proceedings below, and particularly to the receivership estate, without appropriate due process.**
- B. Whether the district court erred in ordering the specific relief provided for in the Affiliates Order against the Affiliated Entities without appropriate due process.**

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<sup>5</sup> Docket No. 664, Docket No. 665, Docket No. 675.

<sup>6</sup> Docket No. 718.

<sup>7</sup> Docket No. 698.

- C. **Whether the district court erred in ordering the appointment of a receiver over the assets and business activities of the Affiliated Entities without those entities being made parties to the underlying case.**

V. **ADDITIONAL INFORMATION IN CRIMINAL APPEALS.**

- A. Does this appeal involve review under 18 U.S.C. § 3742(a) or (b) of the sentence imposed? **NO.**
- B. If the answer to A (immediately above) is yes, does the defendant also challenge the judgment of conviction? \_\_\_\_\_
- C. Describe the sentence imposed. \_\_\_\_\_  
\_\_\_\_\_
- D. Was the sentence imposed after a plea of guilty? \_\_\_\_\_
- E. If the answer to D (immediately above) is yes, did the plea agreement include a waiver of appeal and/or collateral challenges?  
\_\_\_\_\_
- F. Is defendant on probation or at liberty pending appeal? \_\_\_\_\_
- G. If the defendant is incarcerated, what is the anticipated release date if the judgment of conviction is fully executed?  
\_\_\_\_\_
- H. Does this appeal involve the November 1, 2014 retroactive amendments to §§ 2D1.1 and 2D1.11 of the U.S. Sentencing Commission's Guidelines Manual, which reduced offense levels for certain drug trafficking offenses?  
\_\_\_\_\_

**NOTE:** In the event expedited review is requested and a motion to that effect is filed, the defendant shall consider whether a transcript of any portion of the trial court proceedings is necessary for the

appeal. Necessary transcripts must be ordered by completing and delivering the transcript order form to the Clerk of the district court with a copy filed in the court of appeals.

**VI. ATTORNEY FILING DOCKETING STATEMENT:**

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*Attorneys for Appellants*

**PLEASE IDENTIFY ON WHOSE BEHALF THE DOCKETING STATEMENT IS FILED:**

A.  Appellants: Black Night Enterprises, Inc., N.P. Johnson Family L.P., Solco I, LLC, Solstice Enterprises, Inc., Starlight Holdings, Inc., and XSun Energy, LLC

Petitioner

Cross-Appellant

**B. PLEASE IDENTIFY WHETHER THE FILING COUNSEL IS**

Retained Attorney

Court-Appointed

Employed by a government entity

(please specify \_\_\_\_\_)



Employed by the Office of the Federal Public Defender.

**PURSUANT TO PARAGRAPH 10 OF THE RECEIVERSHIP ORDER (ECF 491)  
NO RECEIVERSHIP FUNDS OR RECEIVERSHIP PROPERTY WAS USED IN  
THE PREPARATION OR FILING OF THIS DOCUMENT.**

/s/ Steven R. Paul

Signature

July 9, 2019.

Date

**NOTE:** A copy of the final judgment or order appealed from, any pertinent findings and conclusions, opinions, or orders, any tolling motion listed in Fed. R. App. P. 4(a)(4)(A) or 4(b)(3)(A) and the dispositive order(s), any motion for extension of time to file notice of appeal and the dispositive order **must be submitted with the Docketing Statement.**

The Docketing Statement must be filed with the Clerk via the court's Electronic Case Filing System (ECF). Instructions and information regarding ECF can be found on the court's website, [www.ca10.uscourts.gov](http://www.ca10.uscourts.gov).

**CERTIFICATE OF SERVICE**

I, Steven R. Paul hereby certify that on the 9<sup>th</sup> day of July, 2019, I served a copy of the foregoing **Docketing Statement**, to the following in manner indicated:

Clint A. Carpenter  
Erin Healy Gallagher  
US Dept. of Justice  
P.O. Box 7238  
Ben Franklin Station  
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Electronic Service via Court's e-filing program

/s/ Steven R. Paul  
10885 South State  
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# APPENDIX TO DOCKETING STATEMENT

- EXHIBIT 1            Memorandum Decision and Order on Receiver's Motion to  
                             Include Affiliates and Subsidiaries in Receivership  
                             (Docket No. ECF 636)
- EXHIBIT 2            Memorandum Decision and Order Overruling Objections  
                             Regarding Inclusion of Affiliates and Subsidiaries  
                             (Docket No. ECF 718)

# EXHIBIT 1

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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UNITED STATES OF AMERICA,

Plaintiff,

v.

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

Defendants.

**MEMORANDUM DECISION AND  
ORDER ON RECEIVER’S MOTION  
TO INCLUDE AFFILIATES AND  
SUBSIDIARIES IN RECEIVERSHIP**

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

District Judge David Nuffer

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R. Wayne Klein, the court-appointed receiver (“Receiver”),<sup>1</sup> filed a motion (the “Motion”)<sup>2</sup> to extend the receivership to thirteen entities affiliated with Defendants RaPower-3 LLC (“RaPower”), International Automated Systems Inc. (“IAS”), LTB1 LLC (“LTB1”), Neldon Johnson, and R. Gregory Shepard (collectively, the “Receivership Defendants”). Specifically, the Motion seeks to extend the receivership to the following (collectively, the “Affiliated Entities”):

1. Solco I, LLC (“Solco”);
2. XSun Energy, LLC (“XSun”);
3. Cobblestone Centre, LC (“Cobblestone”);

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<sup>1</sup> See Corrected Receivership Order, [docket no. 491](#), filed November 1, 2018.

<sup>2</sup> Receiver’s Motion to Include Affiliates and Subsidiaries in the Receivership Estate (“Motion”), [docket no. 582](#), filed March 1, 2019; see Non-Parties Solco I, XSun Energy and Glenda Johnson’s Notice of Intent to File Opposition to Receiver’s Motion to Include Affiliates and Subsidiaries in the Receivership Estate, [docket no. 586](#), filed March 4, 2019; Response to Receiver’s Report and Recommendation and Motion to Include Affiliates and Subsidiaries in the Receivership Estate (“Response”), [docket no. 596](#), filed March 15, 2019; Neldon Johnson’s Opposition to the Receiver’s Report and Motion, [docket no. 597](#), filed March 18, 2019; Receiver’s Reply in Support of Its Motion to Include Affiliates and Subsidiaries in the Receivership Estate (“Reply”), [docket no. 602](#), filed March 29, 2019.

4. LTB O&M, LLC;
5. U-Check, Inc.;
6. DCL16BLT, Inc.;
7. DCL-16A, Inc.;
8. N.P. Johnson Family Limited Partnership (“NPJFLP”);
9. Solstice Enterprises, Inc. (“Solstice”);
10. Black Night Enterprises, Inc. (“Black Night”);
11. Starlight Holdings, Inc. (“Starlight”);
12. Shepard Energy; and
13. Shepard Global, Inc.

The Motion is based, in large measure, on the Receiver’s Report and Recommendation on Inclusion of Affiliates and Subsidiaries in Receivership Estate (the “R&R”).<sup>3</sup> The R&R was required by Paragraph 5 of the Corrected Receivership Order. The assets of these entities were frozen by that same paragraph “for the purpose of permitting the Receiver to investigate the assets, property, property rights, and interests of the” Affiliated Entities “to determine whether the assets, property, property rights, or interests of the [Affiliated Entities] derive from the abusive solar energy scheme at issue in this case or from an unrelated business activity.”<sup>4</sup> In the R&R, “[t]he Receiver recommends that the 12 affiliated entities identified in the [Corrected Receivership] Order, as well as one additional entity, U-Check, Inc., be included in the Receivership Estate as Entity Receivership Defendants.”<sup>5</sup>

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<sup>3</sup> Docket no. 581 (“R&R”), filed February 25, 2019.

<sup>4</sup> Corrected Receivership Order, *supra* note 1, ¶ 5.

<sup>5</sup> R&R, *supra* note 3, at 28-29, ep 31-32.

Each of the Affiliated Entities has received timely and sufficient notice of the Motion and been afforded an adequate opportunity to be heard with respect to it.<sup>6</sup> Although Neldon Johnson and nonparties Glenda Johnson, XSun Energy, Solco, and Solstice filed responses opposing the Motion, they have not raised a genuine dispute as to any material fact set forth in support of the Motion.<sup>7</sup> No other response has been filed in opposition to the Motion.

It is generally recognized that district courts have broad powers and wide discretion to determine relief in a receivership.<sup>8</sup> “When a district court creates a receivership, its focus is to safeguard the assets, administer the property as suitable, and to assist the district court in achieving a final, equitable distribution of the assets if necessary.”<sup>9</sup> To accomplish the purpose of the receivership, courts frequently include all subsidiaries and affiliates of receivership defendants in the receivership, regardless of where they may be located.<sup>10</sup>

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<sup>6</sup> See Reply, *supra* note 1, at 4-6.

<sup>7</sup> See Response, *supra* note 2; Opposition, *supra* note 2. No other person, including R. Gregory Shepard, has filed anything in opposition to the Motion, and the time to do so has now expired.

<sup>8</sup> *S.E.C. v. Vescor Capital Corp.*, 599 F.3d 1189, 1194 (10th Cir. 2010).

<sup>9</sup> *Id.* (citation and internal quotation marks omitted).

<sup>10</sup> See, e.g., *SEC v. Nationwide Automated Sys., Inc.*, No. CV-14-07249-SJO, 2014 WL 12599624, \*5 (C.D. Cal. Nov. 10, 2014); *Orlowski v. Bates*, No. 2:11-cv-01396-JPM, 2014 WL 12771523, \*1 (W.D. Tenn. July 28, 2014); *FTC v. Money Now Funding, LLC*, No. CV-13-01583-PHX, 2014 WL 11515024, \*8 (D. Ariz. Apr. 28, 2014); *FTC v. Vacation Commc’ns Group, LLC*, No. 6:13-CV-789-ORL, 2013 WL 2468307, \*7 (M.D. Fla. June 6, 2013); *SEC v. Small Bus. Capital Corp.*, No. 5:12-CV-03237-EJD, 2012 WL 12862153, \*3 (N.D. Cal. June 26, 2012); *SEC v. Sunwest Mgmt., Inc.*, No. 09-6056-HO, 2009 WL 3245879, \*2 (D. Or. Oct. 2, 2009); *FTC v. Direct Connection Consulting, Inc.*, No. 1:08-CV-1739, 2008 WL 11336186, \*7 (N.D. Ga. May 14, 2008); *Commodity Futures Trading Comm’n v. Aurifex Commodities Research Co.*, No. 1:06-cv-166, 2007 WL 2481015, \*1 (W.D. Mich. 2007); *Commodity Futures Trading Comm’n v. Wall Street Underground, Inc.*, No. Civ.A.03-2193-CM, 2004 WL 957852, \*2 (D. Kan. Mar. 18, 2004); *FTC v. Sierra Pac. Mktg.*, No. CV-S-93-134-PMP, 1993 WL 78579, \*6 (D. Nev. Feb. 22, 1993).

## FACTUAL BASIS

The following facts are based on the evidence presented and existing record, including proof presented in hearings held April 26 and May 3, 2019.

1. For more than ten years, the Receivership Defendants promoted an abusive tax scheme centered on purported solar energy technology featuring “solar lenses” to customers across the United States. But the solar lenses were only the cover story for what the Receivership Defendants were really selling: unlawful tax deductions and credits. Their conduct, which is subject to penalty under the Internal Revenue Code, caused serious harm to the United States Treasury.<sup>11</sup> As a result, they have been enjoined from promoting their abusive solar energy scheme, ordered to disgorge their gross receipts, and required to turn over their assets and business operations to the Receiver.<sup>12</sup>

2. The whole purpose of RaPower, IAS, and LBT1 (collectively, the “Receivership Entities”) was to perpetrate a fraud to enable funding for Neldon Johnson. The same is true for other entities Johnson created, controls, and owns (either directly or indirectly), including Solco, XSun, Solstice,<sup>13</sup> Cobblestone, LTB O&M, DCL16BLT, DCL-16A, NPJFLP, U-Check, Black Night, and Starlight. Johnson has commingled funds between these entities, used their accounts to pay personal expenses, and transferred Receivership Property to and through them in an

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<sup>11</sup> Findings of Fact and Conclusions of Law, at 1, electronic page (“ep”) 6 (“FFCL”), [docket no. 467](#), filed October 4, 2018.

<sup>12</sup> See Memorandum Decision and Order Freezing Assets and to Appoint a Receiver, [docket no. 444](#), filed August 22, 2018.

<sup>13</sup> Solco, XSun, and Solstice have each made an affirmative appearance in this case. See Response, *supra* note 2, at 1.



attempt to avoid creditors.<sup>14</sup> (U-Check, which is not specifically named in the Corrected Receivership Order, is in possession of a Cessna twin-engine airplane, which may have significant value, and which Neldon Johnson owned and controls.)<sup>15</sup>

3. Each of the Affiliated Entities is a subsidiary or affiliated entity of Receivership Defendants<sup>16</sup> and has close associations with the Receivership Entities.<sup>17</sup> In many cases, the Affiliated Entities and Receivership Entities have common officers, directors, members, and managers. Their corporate purposes are similar. And there have been numerous and substantial financial transactions between them.<sup>18</sup>

4. The failure of the Receivership Defendants and Affiliated Entities to cooperate or provide records,<sup>19</sup> together with the evidence the Receiver has obtained from financial institutions, show that the Receivership Defendants and Affiliated Entities have engaged in transactions without objective economic justification or compliance with legal formalities, while concealing assets and withholding records from the Receiver.<sup>20</sup>

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<sup>14</sup> FFCL, *supra* note 11, at 128, ep 133; *id.* ¶¶ 17 n.26, 41, 284; R&R, *supra* note 3, §§ B.4-5, B.7, B.10-13, F.4-5, F.7, F.10-13; *id.* at 20, 36-37, ep 23, 39-40. The term “Receivership Property” has the same meaning in this Memorandum Decision and Order as it does in the Corrected Receivership Order.

<sup>15</sup> R&R, *supra* note 3, at 35, ep 38.

<sup>16</sup> See Corrected Receivership Order, *supra* note 1, ¶¶ 2, 5.

<sup>17</sup> R&R, *supra* note 3, at 35, ep 38.

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

<sup>19</sup> *Id.* at 1-3, ep 4-6; *see also* 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 Corrected Receivership Order, [docket no. 559](#), filed January 29, 2019; Receiver’s Accounting, Recommendation on Publicly-Traded Status of International Automated Systems, and Liquidation Plan, [docket no. 552](#), filed December 31, 2018; Receiver’s Initial Quarterly Status Report, [docket no. 557](#), filed January 28, 2019; Receiver’s Second Quarterly Status Report, [docket no. 608](#), filed April 15, 2019; and transcripts of proceedings April 26 and May 3, 2019.

<sup>20</sup> R&R, *supra* note 3, at 37-48, ep 40-51.

5. In many instances, the Affiliated Entities' only assets are tied to the Receivership Defendants. In each instance, the assets appear to have been transferred to the Affiliated Entities for the purpose of defrauding creditors. To prevent further dissipation of Receivership Property, it is necessary to put the Affiliated Entities under the Receiver's control.<sup>21</sup>

6. Based on the Receiver's investigation of the Affiliated Entities, the Receiver has recommended that the receivership be extended to include each of the Affiliated Entities.<sup>22</sup>

7. To fulfil the purposes of the receivership, safeguard receivership assets, administer receivership property as suitable, and achieve a final and equitable distribution of receivership assets, it is necessary to extend the receivership to include the Affiliated Entities.<sup>23</sup>

8. Although many of the Affiliated Entities are now defunct and without assets, bringing them into the receivership estate is necessary to prevent their use to perpetuate further fraud in contravention of the receivership's purposes.<sup>24</sup>

### **ORDER**

THEREFORE, IT IS HEREBY ORDERED that:

1. This court takes exclusive jurisdiction and possession of all assets, of whatever kind and wherever situated, of each of the Affiliated Entities.

2. The Affiliated Entities are hereby made part of the existing receivership estate, which is being administered by court-appointed receiver Wayne Klein, in accordance with the Corrected Receivership Order.

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<sup>21</sup> *Id.* at 35-36, ep 38-39.

<sup>22</sup> *Id.* at 48-49, ep 51-52.

<sup>23</sup> See *Vescor*, 599 F.3d at 1194.

<sup>24</sup> R&R, *supra* note 3, at 36, ep 39.

3. The “Asset Freeze” set forth in the Corrected Receivership Order shall continue to include and apply to the Affiliated Entities.

4. The directors, officers, managers, employees, trustees, investment advisors, accountants, attorneys, and other agents of the Affiliated Entities are hereby dismissed, and the powers of any general partners, directors, or managers are hereby suspended. Such persons shall have no authority with respect to the Affiliated Entities’ operations or assets, except to the extent as may hereafter by expressly granted by the Receiver or the court.

5. No person holding or claiming any position of any sort with any of the Affiliated Entities shall possess any authority to act by or on behalf of any of the Affiliated Entities.

6. The Receiver shall have all powers, authorities, rights, and privileges heretofore possessed by the owners, members, shareholders, officers, directors, managers, and general and limited partners of the Affiliated Entities under applicable state and federal law, by the governing charters, bylaws, articles, or agreements in addition to all powers and authority of a receiver at equity.

7. In carrying out his responsibilities as receiver, the Receiver shall have all control over assets, books, records, and accounts of Affiliated Entities and all powers and rights granted to the Receiver in the Corrected Receivership Order.

8. The Receivership Defendants, their subsidiaries, any affiliated entities, any affiliated individuals (including spouses and other family members), and the past and present officers, directors, agents, managers, servants, employees, attorneys, accountants, general and limited partners, trustees, and any person acting for or on behalf of the Affiliated Entities, shall cooperate with and assist the Receiver in the performance of his duties and obligations relating to

the Affiliated Entities to the same extent as required in the Corrected Receivership Order with respect to the Receivership Defendants.

9. All 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 to the same extent as required by the Corrected Receivership Order with respect to Receivership Defendants.

10. As the holder of all ownership and management interests of the Affiliated Entities, the Receiver is granted power and authority to transfer all assets (including intellectual property and real estate) owned or controlled by foreign-based entities to the United States and to liquidate or abandon all foreign entities created by Receivership Defendants.

11. The stay of litigation set forth in the Corrected Receivership Order shall apply to the Affiliated Entities to the same extent as it does to the Receivership Entities.

12. All other provisions of the Corrected Receivership Order shall 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.

13. Any person who may have an objection to this Memorandum Decision and Order, whether in whole or in part, must file such objection in this case within 21 days of receiving actual notice of this Memorandum Decision and Order or else such objection shall be considered waived.

Signed May 3, 2019.

BY THE COURT:



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David Nuffer  
United States District Judge

# EXHIBIT 2

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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UNITED STATES OF AMERICA,

Plaintiff,

v.

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

Defendants.

**MEMORANDUM DECISION AND  
ORDER OVERRULING OBJECTIONS  
REGARDING INCLUSION OF  
AFFILIATES AND SUBSIDIARIES**

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

District Judge David Nuffer

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The Memorandum Decision and Order on Receiver’s Motion to Include Affiliates and Subsidiaries in Receivership (“Affiliates Order”) states that “[a]ny person who may have an objection to” the Affiliates Order, “whether in whole or in part, must file such objection in this case within 21 days of receiving actual notice of” the Affiliates Order “or else such objection shall be considered waived.”<sup>1</sup> Since then, XSun Energy LLC has filed a timely objection to the Affiliates Order;<sup>2</sup> Solco I LLC has filed a timely objection to the Affiliates Order;<sup>3</sup> and Solstice Enterprises Inc., Black Night Enterprises Inc., Starlite Holdings Inc., and N.P. Johnson Family Limited Partnership have filed a timely objection to the Affiliates Order.<sup>4</sup> All three objections

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<sup>1</sup> [Docket no. 636](#) (“Affiliates Order”), filed May 3, 2019.

<sup>2</sup> XSun Energy LLC’s Objection to Order on Memorandum and Decision and Order on Receiver’s Motion to Include Affiliates and Subsidiaries in Receivership, [docket no. 664](#), filed May 23, 2019; *see* Receiver’s Response to Objections to Memorandum Decision and Order Including Affiliates and Subsidiaries in Receivership Estate (“Response”), [docket no. 687](#), filed June 6, 2019.

<sup>3</sup> Solco I LLC’s Objection to Order on Memorandum and Decision and Order on Receiver’s Motion to Include Affiliates and Subsidiaries in Receivership, [docket no. 665](#), filed May 23, 2019; *see* Response, *supra* note 2.

<sup>4</sup> Solstice Enterprises Inc., Black Night Enterprises Inc., Starlight Holdings Inc., N.P. Johnson Family Limited Partnership’s Objection to Order on Memorandum and Decision and Order on Receiver’s Motion to Include Affiliates and Subsidiaries in Receivership, [docket no. 675](#), filed May 24, 2019; *see* Response, *supra* note 2; *see also*

(collectively, the “Objections”) are essentially identical and argue the same thing: that the Affiliates Order violates the objectors’ procedural due process rights.

XSun Energy LLC, Solco I LLC, and Solstice LLC previously made this same argument (nearly verbatim), and it was rejected.<sup>5</sup> For the same reasons as before, it is rejected again today.

It has already been established that each of the objectors “received timely and sufficient notice of the” Receiver’s Motion to Include Affiliates and Subsidiaries in the Receivership Estate<sup>6</sup> and was “afforded an adequate opportunity to be heard with respect to it.”<sup>7</sup> The Objections do not raise a genuine dispute regarding this issue or as to any other material fact stated in the Affiliates Order. As a result, the objectors were afforded due process prior to issuance of the Affiliates Order, and, by allowing them to raise further objections after that order was entered, they were afforded additional due process.

### ORDER

THEREFORE, IT IS HEREBY ORDERED that the Objections<sup>8</sup> are OVERRULED.

Signed July 8, 2019.

BY THE COURT:



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David Nuffer  
United States District Judge

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Solstice Enterprises Inc., Black Night Enterprises Inc., Starlight Holdings Inc., N.P. Johnson Family Limited Partnership’s Objection to Order on Memorandum Decision and Order on Receiver’s Motion to Include Affiliates and Subsidiaries in Receivership, [docket no. 666](#), filed May 23, 2019; Notice of Deficiency, [docket no. 667](#), filed May 23, 2019.

<sup>5</sup> Response to Receiver’s Report and Recommendation and Motion to Include Affiliates and Subsidiaries in the Receivership Estate, [docket no. 596](#), filed March 15, 2019; *see* Affiliates Order, *supra* note 1.

<sup>6</sup> [Docket no. 582](#), filed March 1, 2019.

<sup>7</sup> Affiliates Order, *supra* note 1, at 3.

<sup>8</sup> [Docket no. 664](#), filed May 23, 2019; [Docket no. 665](#), filed May 23, 2019; [Docket no. 675](#), filed May 24, 2019.