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

UNITED STATES OF AMERICA,

Plaintiff,

v.

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

Defendants.

**RECEIVER'S TWELFTH QUARTERLY
STATUS REPORT**

*For the period July 1, 2021 to September 30,
2021*

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

District Judge David Nuffer

R. Wayne Klein, the Court-Appointed Receiver (the “Receiver”) of RaPower-3, LLC (“RaPower”), International Automated Systems, Inc. (“IAS”), and LTB1, LLC (“LTB1”), as well as 13 subsidiaries and affiliates (collectively, the “Receivership Entities”), and the assets of Neldon Johnson (“Johnson”) and R. Gregory Shepard (“Shepard”) (collectively “Receivership Defendants”), hereby submits this Twelfth Quarterly Status Report (“Report”) for the period from July 1, 2021 to September 30, 2021 (“Reporting Period”).

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I. INTRODUCTION AND BACKGROUND

The Receivership Estate was created on October 31, 2018 with entry of the Court’s *Receivership Order* (“Order”),¹ which, among other things, appointed the Receiver and continued a previously entered asset freeze.² A May 3, 2019 order expanded the Receivership Estate to include 13 additional affiliated entities (“Affiliated Entities”).³

Significant developments during the Reporting Period include recovering four real properties turned over to the Receivership Estate pursuant to Court order; negotiating additional settlements and collecting settlement amounts, responding to an intervention motion, and responding to pending appeals.

II. ASSET RECOVERY, SETTLEMENTS

A. Turnover of Four Additional Properties. On August 5, 2021, the Court granted the Receiver’s motion for turnover of real property and ordered Glenda Johnson to turn over four real properties that were titled in her name.⁴ Glenda Johnson complied with the order and signed deeds prepared by the Receiver. The deeds have been recorded in the Receiver’s name. The Receiver’s progress in selling each of these properties is discussed in the next Part.

B. Turnover of Brokerage Account Proceeds. The Receiver’s forensic accountants discovered funds that had been transferred—pre-Receivership—into a brokerage account held in the name of XSun Energy. The existence of the account had not been disclosed by Neldon or

¹[Docket no. 490](#). A *Corrected Receivership Order* (“CRO”), which corrected formatting errors, was entered the following day. [Docket no. 491](#), filed November 1, 2018.

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

³[Docket no. 636](#), filed May 3, 2019. The Court overruled objections to this order. [Docket no. 718](#), filed July 8, 2019. Defendants appealed this order, which appeal was dismissed.

⁴*Klein v. Glenda Johnson*, 2:19-cv-625, docket no. 41, filed August 5, 2021.

Glenda Johnson. Upon demand by the Receiver, Wells Fargo Advisors turned over to the Receiver the \$562.89 balance in the account. The Receiver expects to receive the account records soon and will analyze them to determine whether transfers into or out of those accounts will lead to other recoveries.

C. Settlements. The Receiver's tenth motion to approve settlements, filed on June 30, 2021, was approved by the Court early in the Reporting Period.⁵ The Receiver filed an eleventh motion to approve settlements on August 11, 2021,⁶ which was approved the next day.⁷ The eight settlements included in the approved Eleventh Motion will bring in \$312,643.93 when all required payments have been received. During the quarter, the Receiver received \$253,396.88 on these and previous settlement agreements.

III. REAL PROPERTIES, DISPOSITION OF OTHER ASSETS

A. Turnover of Four Properties. On June 30, 2021, the Receiver filed a motion seeking turnover of four real properties titled in the name of Glenda Johnson.⁸ The Court granted the motion, requiring Glenda Johnson to turn over to the Receiver the four properties.⁹ Glenda Johnson signed deeds for these properties and delivered them to the Receiver. The deeds were recorded. These properties have been appraised and are being marketed.

B. Status of Receivership Properties. Eight real properties currently are held by the Receivership Estate. The sale of one property closed during the prior quarter. An offer has been received on one of the eight properties still held by the Receiver. The buyer of three properties

⁵Docket no. 1136, filed July 6, 2021.

⁶Docket no. 1144, filed August 11, 2021.

⁷Docket no. 1145, filed August 12, 2021.

⁸*Klein v. Glenda Johnson*, 2:19-cv-625, docket no. 34, filed June 30, 2021.

⁹*Id.*, docket no. 41, filed August 5, 2021.

(through a purchase option) is finalizing the buyer's due diligence related to the purchase option. The buyer of the warehouse property defaulted on his agreement and the property is being marketed again. The remaining three properties, along with the warehouse property, are being actively marketed. The status of each property is discussed below:

1. Shepard Home, Murray, Utah. In December 2020, the Court ruled that half the equity in the home of Defendant Greg Shepard was a Receivership asset.¹⁰ After Mr. Shepard was unable to fulfil the terms of a settlement agreement designed to allow him to remain in the home, the Shepards vacated the residence and it was listed for sale. The property was appraised at \$595,000 and listed for sale at \$649,000. The Receiver accepted a preliminary offer of \$660,009 and the Court approved the sale of the property at auction.¹¹ At the auction, one additional bidder prequalified and participated in the auction. The high bid at the auction was \$700,000, by the original bidder. The sale closed on September 30, 2021. After satisfying an existing mortgage on the home and dividing the net proceeds with the Diana C. Shepard revocable trust, the Receivership netted \$215,179.43. Details about the sale and the allocation of sales proceeds are described in the notice of sale results, which was filed shortly after the end of the Reporting Period.¹²

2. Purchase Option on 1,000 Acres for Photovoltaic Solar Development. The Court approved an agreement to grant a purchase option for three parcels, containing 1,000 acres, to 8minute Energy. 8minute's obligation to consummate the purchase is

¹⁰Docket no. 1029, filed December 7, 2020.

¹¹Docket no. 1147, filed August 13, 2021.

¹²Docket no. 1162, filed October 2, 2021.

subject to a number of conditions. Progress was made during the Reporting Period toward satisfying the preconditions. On August 17, 2021, the option and purchase agreement was formally signed. A separate memorandum agreement was signed on September 7, 2021 and recorded with the Millard County Recorder, creating a public record of 8minute's option interest. 8minute has until December 17, 2021 to complete its due diligence and determine whether it will formally commence the option period and make the first year's option payment.

3. Home and .8 Acres in Millard County (Parcel No. HD-4497-1). One of the four properties that Glenda Johnson turned over to the Receiver in August 2021 consists of a home on eight tenths of an acre in Millard County, Utah. Glenda Johnson had been renting the home to a tenant. The tenants, who at one time had contacted the Court directly about buying the property, informed the Receiver they were no longer interested in buying the home and moved out in late September. The tenants paid September rent to the Receiver. An appraiser valued the home at \$186,000 and the Receiver listed the home for sale at \$200,000. On September 30, 2021, the Receiver preliminarily accepted an offer of \$205,000 for the property. Shortly after the end of the Reporting Period, the Receiver filed a motion seeking Court approval to sell this property at auction.¹³

4. Oasis Warehouse. The Court previously approved the sale of the warehouse in Oasis, Utah (near Delta).¹⁴ An auction was held and the bidding went from the \$300,000 amount of the stalking horse bid to \$420,000. The investors backing the bidder, however,

¹³Docket no. 1163, filed October 4, 2021.

¹⁴Docket no. 1119, filed April 26, 2021.

withdrew their support for the bid and the stalking horse bidder defaulted on his agreement to buy the warehouse. The backup bidder also declined to honor his backup offer. The stalking horse bidder forfeited his earnest money deposit, which has been paid to the Receiver. The listing broker obtained a subsequent expression of interest in the amount of \$300,000, but the buyer declined to make a formal offer. A potential lessee has inquired about leasing the property. After consultation with counsel for the United States, the Receiver has decided to continue marketing the property for sale, in lieu of leasing the property.

5. Ten Acre Undeveloped Land. This property, with tax parcel number DO-3151, is an undeveloped 10.04-acre parcel north of Delta. There are no water rights associated with the property. The property appraised for \$17,000. At the recommendation of the broker, the property is being offered for sale at \$20,000.

6. Five Acres with Uninhabitable Home. This five-acre property in the Sutherland area has an uninhabitable home on a corner of the property. The property has an appraised value of \$55,000 and is identified as tax parcel number DO-3276-1-1. The property is surrounded by land that is currently being farmed. Because water rights for domestic use, livestock use, and irrigation use are associated with the property, the land is well suited for growing agricultural crops. The water rights may have a value of \$30-\$40,000 apart from the value of the land. However, the water right associated with the property is currently in the name of The Stearns Investment Company, which had asserted the water right in 1937. The Stearns Investment Company, which was based in Colorado, appears to no longer be in business. It seems that when the property was

purchased in 2012, the water right chain of title was not updated at that time. The Receiver is holding back the listing of this property while he attempts to update the water rights records. The water rights might be sold separately from the property.

7. Well Site Next to Original Tower Site. Neldon Johnson had previously divided the original 80-acre tower site into a 75.6-acre site with the towers (which was titled in the name of IAS) and a 4.6-acre site with a well and ten acre-feet of water (which was titled in the name of Glenda Johnson). The appraiser valued the 4.6-acre site at \$37,000. However, in light of the value of the water, the Receiver has concurred with the broker's recommendation to list the property and associated water rights for sale at \$100,000. The water is severable from the property and it is possible the water will be sold separately from the land.

C. Pending Closing of Property Sales. The three properties that are awaiting closing are:

1. Purchase Option for 1,000 Acres in Millard County (Parcel No.'s HD-3511, HD-3511-1, MA-2662-B). During the quarter, 8minute Energy, the company planning to build a photovoltaic solar farm in Millard County, signed the formal option and purchase agreement on August 17, 2021. This triggers the buyer's 120-day due diligence period. By December 17, 2021, 8minute will either decline to exercise the option or must commit to the option agreement and pay the first year's option payment.

D. Update on Hazardous Materials. In August, the private hazardous waste disposal company engaged by the Receiver went to the site where the chemicals are stored and obtained samples from each container. When the testing of those samples is completed, the company will

remove and dispose of the chemicals. The Receivership will bear the cost of this testing and disposal.

E. List of Properties in the Receivership Estate. Attached as Exhibit 1 is a table showing the status of all real properties in the Receivership Estate.

IV. LITIGATION

A. Special Report on Status of Litigation. The Receiver filed a third special report on the status of litigation,¹⁵ summarizing the status of settlements, summary judgment motions, default applications, and ongoing litigation. The Receiver will continue filing similar reports every three months so long as significant litigation remains.

B. Summary Judgment Motions. During the Reporting Period, the Receiver filed two additional motions for summary judgment against commission recipients. These are listed in the table below. In both cases, defendants did not timely oppose the Receiver's motion so the Receiver will file notices to submit in the near future.

Defendant	Case No.	Motion Date	Principal Amount	Pre-Judgment Interest
King, Steven	2:19-cv-00706	9/1/21	\$22,108.05	\$3,694.77
Stewart, Raleigh	2:19-cv-00726	9/2/21	\$11,579.53	\$2,022.45
Totals			\$33,678.58	\$5,717.22

C. Active Recovery Litigation. There are 17 lawsuits filed by the Receiver that are still pending. Five of these are not actively being litigated. These are the two pending summary judgment motions, a default judgment entered shortly after the end of the Reporting Period, a settlement to be submitted for approval shortly, and a lawsuit subject to an automatic stay due to the defendant's bankruptcy filing. That leaves 12 recovery actions still in active litigation. Most

¹⁵Docket no. 1150, filed August 24, 2021.

of these are expected to involve significant additional litigation and may require trials.

Significant events in these litigations included:

1. Plaskolite Mediation. The Receiver and Plaskolite engaged in a mediation session on July 16, 2021. The efforts did not result in a resolution of the dispute. The Receiver expects to file a motion for summary judgment against Plaskolite.
2. Depositions of Insiders. On August 30 and 31, and September 1, the Receiver took the depositions of LaGrand Johnson, Randale Johnson, and Matthew Shepard. The Receiver believes that the information garnered during these depositions will enable him to file summary judgment motions in these matters.
3. Motions in the Heideman Litigation. In the Receiver's lawsuit against Justin Heideman and Heideman and Associates, September 27, 2021 was the deadline for dispositive motions and motions relating to experts. Numerous motions were filed that day by both sides. The Receiver filed motions to exclude the testimony of two of Heideman's proposed experts and to limit the testimony of a third expert. The Receiver also moved for partial summary judgment against Heideman. Heideman filed a motion for summary judgment against the Receiver and a motion to disqualify the Receiver's forensic accountants (which was also styled as a motion for summary judgment on the theory that disqualification of the Receiver's expert would render the Receiver unable to prove the necessary elements of his lawsuit against Heideman). The following day, Heideman filed a motion to strike the Receiver's motions, asserting they were filed after the 4:30 p.m. deadline for the prior day's motions. On September 30, the Court denied Heideman's motion to strike.

D. Expert Reports on Accounting Issues. The Receiver's forensic accountants have prepared expert reports for use in the Receiver's lawsuits against Heideman, Plaskolite, and Richard Jameson. These reports evaluated the solvency of RaPower and the consolidated entities. The Receiver submitted an additional rebuttal report from a separate expert regarding accounting rules governing recognition of revenue. Heideman and Jameson submitted expert reports asserting that the Receivership Entities were solvent.

E. Appeals. Ten appeals that have been filed are still pending. Nine of these were filed during the second quarter of 2021.

1. Neldon Johnson. Neldon Johnson appealed the Court's denial of his motion to set aside the judgment.¹⁶ Briefing on that appeal has been completed (#21-4015).

2. Glenda Johnson. On July 1, 2021, Glenda Johnson appealed the Court's order awarding attorneys' fees and costs for her third contempt finding, relating to her filings of property liens. Glenda Johnson has filed her opening brief and the Receiver has filed his opposition brief (#21-4080).

3. Commission Recipient Appeals. Eight commission recipients have appealed summary judgment orders entered against them. The appeal filed by Trudy Shepherd (#21-4064) is being pursued pro se.¹⁷ Briefing has been completed. Neither side has requested oral argument. For the other seven appeals, Nelson Snuffer represents the appellants. Tenth Circuit mediation of these appeals was held in July, but did not succeed in withdrawal of the appeals. These appellants are Janet Roe (#21-4065), Paul

¹⁶[Docket no. 1081](#), filed February 9, 2021.

¹⁷Trudy Shepherd is Glenda Johnson's daughter.

Jones (#21-4066), Jean Armand (#21-4071), Amber Bennett (#21-4072), Roger Hamblin (#21-4075), John Howell/Rocking H (#21-4076), and Carey Hadderton (#21-4077). The appellants' initial brief is due in early November.

V. INTERVENTION MOTION

On August 5, 2021, Preston Olsen filed a motion, styled as a class action, seeking to intervene in the Receivership case. In essence, Olsen seeks to have recoveries by the Receiver credited against tax obligations assessed against him and other lens purchasers.¹⁸ The United States filed a memorandum in opposition.¹⁹ At the direction of the Court, the Receiver also filed a memorandum regarding the proposed intervention.²⁰ Olsen filed his reply shortly after the end of the Reporting Period. The matter is awaiting a decision by the Court.

VI. FINANCIAL OPERATIONS OF THE RECEIVERSHIP ESTATE

A. Receipts and Disbursements. The tables below show the amounts and sources of funds brought into the Receivership Estate during the quarter and categories of expenditures:

Revenue into the Receivership Estate	
Source of Revenue	Amount In
Real estate sale proceeds ²¹	\$222,179.43
Brokerage account turnover	\$562.89
Settlement payments	\$253,396.88
Bank interest ²²	\$12,499.43
Total	\$488,638.63

¹⁸Docket no. 1143, filed August 5, 2021.

¹⁹Docket no. 1152, filed September 17, 2021.

²⁰Docket no. 1153, filed September 17, 2021.

²¹Six thousand dollars of this amount was a bid deposit that was refunded.

²²In July, Wells Fargo Bank credited the Receiver with \$12,491.64 as a promotional interest rate.

Expenditures	
Type of Expenditure	Amount
Real estate: appraisal, publication	\$2,808.60
Real estate: repairs, utilities	\$2,524.70
Real estate: bid deposit return	\$6,000.00
Litigation: deposition transcripts	\$4,033.32
Bank fees	\$15.00
Total	\$15,381.62

The Receiver's fee application for work performed in the first quarter was approved in July.²³ Payments totaling \$210,021 were paid to the Receiver, his counsel, and the forensic accountants on July 14, 2021. The Receiver's fee application for work in the second quarter was filed on September 29, 2021.²⁴ These payments will be reflected in the next quarterly report.

B. Bank Account Balances. The following table shows the balance of funds in the Receivership bank accounts at Wells Fargo Bank as of September 30, 2021:

Bank Account Balances	
Account	Amount
Checking account	\$574,264.48
High yield savings ²⁵	\$312,971.69
Total	\$887,236.17

VII. NEXT STEPS

The significant next steps in the Receivership will be:

A. Sell Real Properties. There are eight properties still in the Receivership Estate. An offer has been accepted on one and three others are awaiting the results of due diligence by

²³Docket no. 1139, filed July 14, 2021.

²⁴Docket no. 1160, filed September 29, 2021.

²⁵This amount includes \$100,000 that the Turnover Order directed be preserved pending resolution of the Receiver's separate lawsuit against Glenda Johnson.

8minute Energy. The remaining four properties are being marketed and the Receiver hopes to receive offers on them in the coming months.

B. Ongoing Litigation. Litigation will continue in the 14 cases actively being litigated. Summary judgments have been filed in the King, Stewart, and Heideman cases and the Receiver expects to file summary judgment motions in additional cases. Settlement efforts have been explored in these cases and will continue to be considered when appropriate.

C. Appeals. The Receiver is defending nine of the appeals that have been filed; the tenth is being defended by the United States. One has been fully briefed and might not require oral argument. The remaining eight have been consolidated for appeal.

D. Collection on, Assignment of, Judgments. The Receiver continues to consult with counsel for the United States on the most efficient means of collecting on judgments that have been obtained. Different approaches may be used for different judgments.

VIII. CONCLUSION

Steady progress was made during the Reporting Period. More properties were sold and the remaining four properties titled in the name of Glenda Johnson were brought into the Receivership Estate. More settlement agreements were approved and significant amounts were collected on those settlements. Litigation and appeals will continue to require attention by the Receiver and his counsel.

New counsel was substituted for the United States near the end of the Reporting Period. The new counsel has devoted substantial time getting up to speed in this case and is consulting regularly with the Receiver.

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

/s/ Wayne Klein

Wayne Klein
Receiver

DATED this 1st day of November 2021.

PARR BROWN GEE & LOVELESS

/s/ Jeffery A. Balls

Jonathan O. Hafen
Jeffery A. Balls
Cynthia Love
Attorneys for Receiver

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **RECEIVER'S TWELVTH QUARTERLY STATUS REPORT** was electronically filed with the Clerk of the Court through the CM/ECF system on November 1, 2021, which sent notice of the electronic filing to all counsel of record. Copies were also mailed to the following:

R. Gregory Shepard
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South Jordan, Utah 84095

Neldon Johnson
PO Box 95332
South Jordan, UT 84095

Pro se Defendants

/s/ Wendy V. Tuckett _____