

Jonathan O. Hafen (6096) (jhafen@parrbrown.com)

Jeffery A. Balls (12437) (jballs@parrbrown.com)

Cynthia D. Love (14703) (clove@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

Attorneys for Court-Appointed Receiver Wayne Klein

**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 FOURTH SPECIAL
REPORT ON STATUS OF LITIGATION**

As of November 15, 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”), its subsidiaries and affiliates (“Receivership Entities”), and the assets of Neldon Johnson and R. Gregory Shepard, hereby submits this Fourth Special Report on Status of Litigation (“Report”), as of November 15, 2021.

I. OVERVIEW

The Receivership Estate was created on October 31, 2018 with entry of the Court’s *Receivership Order* (“Order”).¹ Thirteen affiliated entities were added on May 3, 2019.²

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

²[Docket No. 636](#), filed May 3, 2019.

Subsequent to the Court granting the Receiver's motion to commence legal proceedings,³ the Receiver has filed over a hundred lawsuits against family members, insiders, law firms, credit card issuers, commission recipients, and others. In addition, the Receiver has made demand on others for returns of amounts improperly paid out by Receivership Entities and has settled approximately 30 of these cases without the necessity of initiating litigation.

This Report summarizes the progress to date of the litigation and settlements. The most significant changes since the prior Litigation Status Report are: a) additional summary judgment and default judgment orders were entered, b) additional settlement agreements were negotiated by the Receiver and approved by the Court, and c) the 17 pending, unresolved cases have been reduced by four.

II. SETTLEMENTS

A. Approved Settlements. The Receiver has filed 12 motions for approval of settlement agreements, all of which have been approved. The approved settlements (which are not in default) involve the defendants listed in the tables below:

Settlement Agreements Paid in Full as of August 16, 2021			
Name	Case No.	Case Status	Payment Status
Amidan, Matthew	Settlement without litigation	None	Paid in full
Anderson, Kelvin	2:19-cv-00798-DN-PK	Dismissed	Paid in full
Anderson, Treddis	2:19-cv-00795-DN-PK	Dismissed	Paid in full
Atwood, Steven	Settlement without litigation	None	Paid in full
Ayres, Evan	2:21-cv-00110-DN-PK	Dismissed	Paid in full
Becker, James	2:19-cv-00787-DN-PK	Dismissed	Paid in full
Blackburn, Richard	Settlement without litigation	None	Paid in full
Borden, Michael	2:19-cv-00788-DN-PK	Dismissed	Paid in full
Boyack, Wallace	Settlement without litigation	None	Paid in full

³Docket No. 673, filed May 24, 2019.

Brittain, Bryan	Settlement without litigation	None	Paid in full
Brittain, Kristi & Dw.	2:19-cv-00845-DN-PK	Dismissed	Paid in full
Brumfield, Thad	Settlement without litigation	None	Paid in full
Capital One	Settlement without litigation	None	Paid in full
Chaston, Steven	2:19-cv-684-DN-PK	Dismissed	Paid in full
Church of Jesus Chr.	Settlement without litigation	None	Paid in full
Citibank	2:19-cv-00834-DN-PK	Dismissed	Paid in full
Coates, Thomas	2:19-cv-00789-DN-PK	Dismissed	Paid in full
Cook, Ryan	2:19-cv-00790-DN-PK	Dismissed	Paid in full
Couch, Jimmy	2:19-cv-00802-DN-PK	Dismissed	Paid in full
Delong, Robert	2:19-cv-00762-DN-PK	Dismissed	Paid in full
Discover Card	2:19-cv-00837-DN-PK	Dismissed	Paid in full
Gilmore, Mary	Settlement without litigation	None	Paid in full
Gleaves Swearingen	2:19-cv-00841-DN-PK	Dismissed	Paid in full
Gregg, Peter	Settlement without litigation	None	Paid in full
Griffin Painting	2:19-cv-00844-DN-PK	Dismissed	Paid in full
Hale & Wood	Settlement without litigation	None	Paid in full
Hamilton, Monty	2:19-cv-00823-DN-PK	Dismissed	Paid in full
Hyatt, Rodney	2:19-cv-00777-DN-PK	Dismissed	Paid in full
Johnson, Robert	Settlement without litigation	None	Paid in full
Jones, Paul	2:19-cv-00693-DN-PK	To dismiss	Paid in full
Jordan, Edward	2:19-cv-00703-DN-PK	Jordan dism.	Paid in full
Jordan, Mickey	Settlement without litigation	None	Paid in full
JP Morgan Chase Bk.	2:19-cv-00838-DN-PK	Dismissed	Paid in full
Kontos, Nicholas	2:20-cv-00802-DN-PK	Judgment	Paid in full
Kulacz, Connie	2:19-cv-00679-DN-PK	Dismissed	Paid in full
Lawyer, Kristin	Settlement without litigation	None	Paid in full
Lewis, Natalyn	2:19-cv-00801-DN-PK	Dismissed	Paid in full
Lunn, Frank (Kahuna)	2:19-cv-00835-DN-PK	Dismissed	Paid in full
Mahler, Mike	2:19-cv-00715-DN-PK	Dismissed	Paid in full
Manley, Mark	2:19-cv-00716-DN-PK	Judgment	Paid in full
McGan, James	Settlement without litigation	None	Paid in full
North, Michael	Settlement without litigation	None	Paid in full
Orgill, Pamela	2:19-cv-00681-DN-PK	Dismissed	Paid in full
Orth, Matthew	Settlement without litigation	None	Paid in full
Orth, Richard	Settlement without litigation	None	Paid in full
Pack, Bill	2:19-cv-00815-DN-PK	Dismissed	None required

Palmore, Carl	2:19-cv-00718-DN-PK	Dismissed	Paid in full
Pionk, Herbert	Settlement without litigation	None	Paid in full
Pionk, Sadie	Settlement without litigation	None	Paid in full
Plater, Dallas	2:19-cv-00792-DN-PK	Judgment	Paid in full
Pri-Med	Settlement without litigation	None	Paid in full
Rowbotham, Robert	2:20-cv-00193-DN	Dismissed	Paid in full ⁴
Sikich, Mark	Settlement without litigation	None	Paid in full
Snell & Wilmer	Settlement without litigation	None	Paid in full
Sorenson, Bryan	Settlement without litigation	None	Paid in full
Swenson, Lyle	2:19-cv-00682-DN-PK	Dismissed	Paid in full
Tiffin Commun. Fdn.	Settlement without litigation	None	Paid in full
Virkus, Sandra	Settlement without litigation	None	Paid in full
Williams, Lynette	2:19-cv-00696-DN-PK	Dismissed	Paid in full
Young, Carolyn	Settlement without litigation	None	Paid in full
Zeigler, Andrew	2:19-cv-00769-DN-PK	Dismissed	Paid in full
Zeleznik, Brian	Settlement without litigation	None	Paid in full

Settlement Agreements Paid in Full Since August 16, 2021

Name	Case No.	Case Status	Payment Status
Carranza, Mark	Settlement without litigation	None	Paid in full
Neven, Lance	Settlement without litigation	None	Paid in full
Reay, Donald	2:19-cv-00856-DN-PK	Dismissed	Paid in full
Welborn, Lindy	2:19-cv-00780-DN-PK	Satisf. of Judg.	Paid in full

Settlement Agreements With Installment Payments Being Made

Name	Case No.	Case Status	Prior	Current
Aulds, Robert	2:19-cv-00192-DN-PK	Dismissed	24%	32%
Bell Energy	2:19-cv-00804-DN-PK	Dismissed	43%	43%
Black, Scott	2:19-cv-00678-DN-PK	Dismissed	20%	29%
Day, Thomas	2:19-cv-00692-DN-PK	Dismissed	33%	39%
Kinsey, Ed	2:19-cv-00729-DN-PK	To dismiss	0%	7%
Newman, Kirk	2:19-cv-00694-DN-PK	Judgment	31%	43%
Shepard, Mark	2:19-cv-00803-DN-PK	Dismissed	19%	22%
Smith, Kelvin	2:19-cv-00680-DN-PK	Dismissed	34%	41%
Woodson, James	2:19-cv-00794-DN-PK	Judgment	29%	37%

⁴Initial settlement amount paid in full. An additional \$5,000 has been paid against a stipulated judgment.

B. Delinquent Settlements. The defendants who are delinquent in their settlement agreement obligations are:

a. Abdullah, Fareed. He has paid \$991.50 of the \$5,991.50 owed pursuant to a settlement reached before any lawsuit was filed. The Receiver is evaluating whether to initiate litigation;

b. Luke, Shane. Case No. 2:19-cv-00688-DN-PK. Luke has resumed making payments. He has paid \$10,000 toward the \$16,500 he agreed to pay, making his payments 61% complete. He is in contact with the Receiver about paying the remaining amounts owed.

c. Bowers, Steven. Case No. 2:19-cv-00530-DN-PK. In exchange for a promise to pay an additional \$2,500, the Receiver granted an extension until April 13, 2021 to make the settlement payment. Bowers has failed to make any payment toward the \$19,800 he owes. The Receiver will initiate an action against Bowers for breach of the settlement agreement.

d. Searcy, Richard. Searcy made his initial down payment in August, but has made none of the required monthly payments since that time. He contacted the Receiver in October 2021, requesting a lower settlement amount based on financial hardship. The Receiver reviewed a hardship affidavit Searcy provided and requested documentation from Searcy about certain aspects of his hardship claims. Searcy has not provided those documents nor made any payments since August. The Receiver expects to initiate an action against Searcy for breach of the settlement agreement.

III. SUMMARY JUDGMENTS TO COLLECT

The table below lists summary judgments granted by the Court, where there are no settlements or appeals.⁵ The Receiver recently contracted with a private investigative firm to conduct asset searches for all judgment defendants. The Receiver will coordinate with counsel for the United States in commencing collection on these judgments:

Defendant	Case No.	Judgment Date	Judgment Amount	Pre-Judgment Interest
Brennan, Paul	2:19-cv-00687	4/19/21	\$95,591.76	\$14,862.55
Kerr, Gracie & Kevin	2:19-cv-00768	4/19/21	\$40,944.70	\$5,771.52
King, Steven Lynn	2:19-cv-00706	11/9/21	\$22,108.05	\$3,909.79
Payne, Linda	2:19-cv-00791	6/22/21	\$32,737.50	\$8,283.04
Scraggs, Joseph	2:19-cv-00727	4/15/21	\$9,852.75	\$1,338.89
Stewart, Raleigh	2:19-cv-00726	11/9/21	\$11,579.53	\$2,135.08
Turner, Jeffrey	2:19-cv-00767	4/16/21	\$13,020.00	\$3,208.63

IV. DEFAULT JUDGMENTS TO COLLECT

The Court has granted default judgments in the cases in the table below. The Receiver will coordinate with counsel for the United States in commencing collection on these judgments.

Name	Case No.	Judgment Date	Judgment Amount	Pre-Judgment Interest
Battle, Hinton	2:20-cv-00010	2/24/21	\$18,657.30	\$2,461.23
Bean, Joel	2:19-cv-00702	2/24/21	\$16,018.10	\$1,533.79
Clement, Jason ⁶	2:19-cv00792	10/5/21	\$303,950.00	\$55,960.11
Frandsen, Jay D. ⁷	2:19-cv-00660	10/14/21	\$52,000.00	\$20,044.93
Hampton, Michael	2:19-cv-00778	2/24/21	\$9,499.75	\$1,391.13
K. Hawes Associates	2:19-cv-00840	9/25/20	\$25,512.00	\$2,897.19
Mooney, Thomas	2:19-cv-00717	9/16/20	\$15,425.85	\$1,715.86
Smith, Debbie	2:19-cv-00728	4/13/20	\$18,469.80	\$1,664.81
Stilson, Dennis	2:19-cv-00689	2/24/21	\$32,471.25	\$3,327.19
Tilden, Robert	2:19-cv-00793	2/23/21	\$43,775.40	\$9,948.41

⁵The appeal period has not yet run for the judgments against King and Stewart.

⁶Clement was a co-defendant in a case with Edward Kinsey, Suncore, and Edde Enterprises. The other defendants have entered into a settlement agreement that was approved by the Court (which is listed above).

⁷This lawsuit continues against a co-defendant, Larry T. Hutchings.

V. APPEALS

As of November 15, 2021, appeals relating to the return of sales commission have been filed in the cases listed below. Seven of these appeals, other than that of Trudy Shepherd, were consolidated for briefing.

Appeals by Commission Recipients				
Name	Case No.	Appeal No.	Date of Appeal	Status
Armand, Jean	2:19-cv-00779	21-4071	5/27/21	Initial brief filed 11/4/21
Bennett, Amber	2:19-cv-00703	21-4072	6/10/21	Initial brief filed 11/4/21
Finkes, Reinhold	2:19-cv-00761	21-4090	7/22/21	Initial brief filed 11/4/21
Hadderton, Carey	2:19-cv-00704	21-4077	6/10/21	Initial brief filed 11/4/21
Hamblin, Roger	2:10-cv-00783	21-4075	6/4/21	Initial brief filed 11/4/21
Howell, John	2:19-cv-00705	21-4076	6/10/21	Initial brief filed 11/4/21
Roe, Janet	2:19-cv-00719	21-4065	5/13/21	Initial brief filed 11/4/21
Shepherd, Trudy	2:19-cv-00695	21-4064	5/7/21	Briefing complete

The statuses of appeals by Neldon Johnson and other insiders are described below:

Resolved Appeals by Insiders			
Appeal #	Subject of Appeal	Status	Date
18-4119	Injunction, disgorgement, receiver	District court affirmed	6/2/20
18-4150	Combined with 18-4119	District court affirmed	6/2/20
19-4066	Discovery order, motion to dismiss	Appeal dismissed	6/24/19
19-4089	Inclusion of affiliates in receivership	Appeal dismissed	6/22/20

Pending Appeals by Insiders			
Appeal #	Subject of Appeal	Status	Date
21-4015	Denial of motion to reconsider judgment	Briefing is complete	6/29/21
21-4080	Attorneys' fees: Glenda Johnson contempt	Briefing is complete	10/18/21

VI. DISMISSED LITIGATION

On an ongoing basis, as settlement agreements are approved and a pattern of payments is established, the Receiver dismisses the lawsuits underlying those settlements. The Receiver also dismissed lawsuits he filed against Korry Ardell and Ryan Davies, without pursuing further litigation or settlements.

VII. OTHER LITIGATION

The statuses of the 13 lawsuits filed by the Receiver that are still pending are described in the table below:

Name	Case No.	Type of Case	Status/Next Deadline
Hutchings, Larry T. (deceased)	2:19-cv-00660	Shepard debts	Receiver filed application in state court on 10/13/21 for appointment of personal representative for Hutchings. Hutching's heirs are opposing the petition. If granted, Receiver will amend complaint to add estate of Hutchings.
Freeborn, Jacqueline	2:19-cv-00843	Insider	Motion deadline is 1/3/22.
Heideman & Assoc. ⁸	2:19-cv-00854	Legal services	Cross motions for summary judgment and cross motions to exclude experts were filed 9/27/21.
Jameson, Richard	2:19-cv-00822	Expert	Motion deadline is 11/26/21.
Johnson, Glenda	2:19-cv-00625	Insider	Discovery deadline is 3/9/22.
Johnson, Jeron	2:19-cv-00799	Commissions	Automatic stay; Defendant filed for chapter 7 bankruptcy;
Johnson, LaGrand	2:19-cv-00534	Insider	Expert discovery ends 12/21/21.
Johnson, Randale	2:19-cv-00532	Insider	Expert discovery ends 12/21/21.
Nelson Snuffer	2:19-cv-00851	Legal services	Discovery deadline is 5/18/22.
Plaskolite, LLC	2:19-cv-00832	Supplier	Attorney deposition taken. In dispute over legal privilege. Discovery hearing set for 12/9/21.
Shepard, Matthew	2:19-cv-00533	Insider	Expert discovery ends 12/21/21.
Snow, Stacy Curtis	2:19-cv-00757	Insider	Summary judgment filed 11/9/21.
Taylor, Christopher	2:19-cv-00816	Insider	Summary judgment filed 11/9/21.

VIII. CONCLUSION

The Receiver certifies that the information in this Fourth Special Report on Status of Litigation is accurate to the best of his knowledge.

⁸The Receiver's most recent status report, docket no. 1173, filed November 1, 2021, incorrectly identified Justin Heideman as a defendant in this action. The defendant is actually Justin Heideman LLC, dba Heideman & Associates.

DATED this 6th day of December 2021.

/s/ Wayne Klein

Wayne Klein
Receiver

DATED this 6th day of December 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 FOURTH SPECIAL REPORT ON STATUS OF LITIGATION** was electronically filed with the Clerk of the Court through the CM/ECF system on December 6, 2021, which sent notice of the electronic filing to all counsel of record and by mail to the following.

Neldon P. Johnson
Post Office Box 95332
South Jordan, UT84095

R. Gregory Shepard
10672 Winter Haven Court
South Jordan, Utah 84095

/s/ Wendy V. Tuckett