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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 FIFTH SPECIAL
REPORT ON STATUS OF
LITIGATION**

As of February 25, 2022

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 Fifth Special Report on Status of Litigation ("Report"), as of February 25, 2022.

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) one additional settlement was approved, b) additional settlement payments have been received by the Receivership Estate, c) another district court ruling has been affirmed on appeal, and d) the 13 pending, unresolved cases have been reduced by one.

II. SETTLEMENTS

A. Approved Settlements. The Receiver has filed 13 motions for approval of settlement agreements, all of which have been approved. The statuses of these settlements are:

Settlement Agreements Paid in Full as of November 15, 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
Brittain, Bryan	Settlement without litigation	None	Paid in full
Brittain, Kristi & Dw.	2:19-cv-00845-DN-PK	Dismissed	Paid in full

³ Docket No. 673, filed May 24, 2019.

Brumfield, Thad	Settlement without litigation	None	Paid in full
Capital One	Settlement without litigation	None	Paid in full
Carranza, Mark	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
Neven, Lance	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
Reay, Donald	2:19-cv-00856-DN-PK	Dismissed	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
Welborn, Lindy	2:19-cv-00780-DN-PK	Satisf. of Judg.	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 November 15, 2021

Name	Case No.	Case Status	Payment Status
Freeborn, Jacqueline	2:19-cv-00843	Dismissed	Paid in full
Smith, Kelvin	2:19-cv-00680-DN-PK	Dismissed	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	32%	41%
Bell Energy	2:19-cv-00804-DN-PK	Dismissed	43%	72%
Black, Scott	2:19-cv-00678-DN-PK	Dismissed	29%	38%
Day, Thomas	2:19-cv-00692-DN-PK	Dismissed	39%	45%
Kinsey, Ed	2:19-cv-00729-DN-PK	To dismiss	7%	12%
Newman, Kirk	2:19-cv-00694-DN-PK	Judgment	43%	54%
Newman, Ina	2:18-cv-00623-DN-PK	Dismissed	26%	37%
Shepard, Mark	2:19-cv-00803-DN-PK	Dismissed	22%	42%
Woodson, James	2:19-cv-00794-DN-PK	Judgment	37%	46%

⁴ Initial settlement amount paid in full. An additional \$7,000 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.
- b. Luke, Shane. Case No. 2:19-cv-00688-DN-PK. Luke has resumed making payments. He has paid \$14,500 toward the \$16,500 he agreed to pay, making his payments 88% complete.
- c. Bowers, Steven. Case No. 2:19-cv-00530-DN-PK. Bowers has failed to make any payment toward the \$19,800 he agreed to pay. 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 2021 but delayed making his required monthly payments. He began making monthly payments in December 2021 but has not yet made up the deficit. He has requested a lower settlement amount based on financial hardship. The Receiver requested documentation from Searcy about certain aspects of his hardship claims. Searcy has not yet provided those documents. Searcy has paid 11% of the total settlement amount.

III. SUMMARY JUDGMENTS TO COLLECT

The table below lists summary judgments granted by the Court, where there are no settlements or appeals. The Receiver has obtained asset search reports from a private investigative firm and is coordinating 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 is coordinating 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 ⁵	2:19-cv00792	10/5/21	\$303,950.00	\$55,960.11
Frandsen, Jay D. ⁶	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 ⁷	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

V. APPEALS

As of February 15, 2022, appeals relating to the return of sales commission have been filed by the eight defendants listed below. Seven of these appeals, other than that of Trudy Shepherd, were consolidated for briefing and oral argument.

⁵ Clement 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).

⁶ This lawsuit remains against a co-defendant, Larry T. Hutchings.

⁷ Mooney called counsel for the Receiver on Feb. 24, 2022 with a promise to pay; his garnishment has been put on hold.

Appeals by Commission Recipients				
Name	Case No.	Appeal No.	Date of Appeal	Status
Armand, Jean	2:19-cv-00779	21-4071	5/27/21	Briefing completed 1/27/22
Bennett, Amber ⁸	2:19-cv-00703	21-4072	6/10/21	Briefing completed 1/27/22
Finkes, Reinhold	2:19-cv-00761	21-4090	7/22/21	Briefing completed 1/27/22
Hadderton, Carey	2:19-cv-00704	21-4077	6/10/21	Briefing completed 1/27/22
Hamblin, Roger ⁹	2:19-cv-00783	21-4075	6/4/21	Briefing completed 1/27/22
Howell, John	2:19-cv-00705	21-4076	6/10/21	Briefing completed 1/27/22
Roe, Janet	2:19-cv-00719	21-4065	5/13/21	Briefing completed 1/27/22
Shepherd, Trudy	2:19-cv-00695	21-4064	5/7/21	Briefing completed 8/5/21

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

Appeals by Insiders: Resolved			
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
21-4015	Denial of motion to reconsider judgment	District court affirmed	12/2/21

Appeals by Insiders: Pending			
Appeal #	Subject of Appeal	Status	Date
21-4080	Attorneys' fees: Glenda Johnson contempt	Briefing is complete ¹⁰	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. As noted above, the Receiver intends to dismiss the action pending against Ed Kinsey. The Receiver previously dismissed lawsuits he filed against Korry Ardell and Ryan Davies, without pursuing further litigation or settlements.

⁸ Bennett called counsel for the Receiver on February 24, 2022, promising to pay. Her garnishment proceedings have been put on hold. If she pays as promised, her appeal will be mooted.

⁹ A filing with the Tenth Circuit indicates that Mr. Hamblin died in January 2022.

¹⁰ On March 2, 2022, after the end of this reporting period, the Tenth Circuit affirmed the district court order.

VII. OTHER LITIGATION

The 12 lawsuits filed by the Receiver that are still pending fall into three categories: cases on hold for various reasons (3), cases where summary judgment motions are pending (4), and cases with upcoming trial dates (5). These cases are described in the tables below:

Litigation Matters on Hold			
Name	Case No.	Type of Case	Status/Next Deadline
Hutchings, Larry T. (deceased)	2:19-cv-00660	Shepard debts	Default obtained against defendant Frandsen. Case against Hutchings stayed, awaiting appointment of personal representative in state court.
Jameson, Richard	2:19-cv-00822	Expert	Case stayed pending results of IRS proceedings.
Johnson, Jeron	2:19-cv-00799	Commissions	Automatic stay; Defendant filed for chapter 7 bankruptcy;

Summary Judgment Motions Pending			
Name	Case No.	Type of Case	Status/Next Deadline
Johnson, LaGrand	2:19-cv-00534	Insider	Receiver filed summary judgment motion 2/24/22. Trial set for 8/22/22.
Johnson, Randale	2:19-cv-00532	Insider	Receiver filed summary judgment motion 2/24/22. Trial set for 7/26/22.
Plaskolite, LLC	2:19-cv-00832	Supplier	Plaskolite produced some of the required privileged documents. Cross motions for summary judgment are pending. Trial set for 9/13/22.
Shepard, Matthew	2:19-cv-00533	Insider	Receiver filed summary judgment motion 2/24/22. Trial set for 8/22/22.

Cases With Upcoming Trial Dates			
Name	Case No.	Type of Case	Status/Next Deadline
Heideman & Assoc.	2:19-cv-00854	Legal services	Heideman denied summary judgment; Receiver denied partial summary judgment. Trial set for 8/22/22. Mediation scheduled.
Johnson, Glenda	2:19-cv-00625	Insider	Expert deadline is 8/5/22. Trial set for 2/21/23
Nelson Snuffer	2:19-cv-00851	Legal services	Expert deadline is 11/7/22. Trial set for 7/11/23.

Snow, Stacy Curtis	2:19-cv-00757	Insider	Receiver denied summary judgment 2/25/22. Trial set for 4/25/22
Taylor, Christopher	2:19-cv-00816	Insider	Receiver denied summary judgment 2/25/22. Trial set for 4/25/22

VIII. CONCLUSION

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



Wayne Klein
Receiver

DATED this 8th day of March 2022.

PARR BROWN GEE & LOVELESS

/s/ Jeffery A. Balls
Jonathan O. Hafen
Jeffery A. Balls
Attorneys for Receiver

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **RECEIVER'S FIFTH SPECIAL REPORT ON STATUS OF LITIGATION** was electronically filed with the Clerk of the Court through the CM/ECF system on March 8, 2022, which sent notice of the electronic filing to all counsel of record and by mail to the following.

Neldon P. Johnson
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South Jordan, UT 84095

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

/s/ Wendy V. Tuckett