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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.; LTBI,
LLC; R. GREGORY SHEPARD; NELDON
JOHNSON; and ROGER FREEBORN,

Defendants.

**RECEIVER’S REPLY IN SUPPORT
OF ITS MOTION TO INCLUDE
AFFILIATES AND SUBSIDIARIES IN
THE RECEIVERSHIP ESTATE**

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

District Judge David Nuffer

The Receiver¹ hereby replies in support of his Motion to Include Affiliates and Subsidiaries in the Receivership Estate (the “Motion”).²

INTRODUCTION

The Receiver has requested the Court add 13 additional entities to the Receivership Estate

¹ Defined terms have the meaning given in the Motion.

² [Docket No. 582](#), filed on March 1, 2019.

permanently, including: Solco I, LLC (“Solco”); XSun; Cobblestone Centre, LC; DCL-16A, Inc.; DCL16BLT, Inc.; LTB O&M, LLC; NPJFLP; Shepard Energy; Shepard Global, Inc.; Solstice Enterprises, Inc.; Black Night; Starlite; and U-Check.

The Affiliated Entities should all be included in the Receivership Estate. They have close associations with the original Receivership Entities. Neldon Johnson testified that he controlled all the Affiliated Entities and that he could (and did) decide which of the multifarious Affiliated Entities was used to accomplish his objectives. Assets belonging to the Receivership Estate have been transferred to or are being held by the Affiliated Entities. In many instances, the only assets of the Affiliated Entities were acquired in fraudulent or voidable transfers and the Receiver is concerned that the assets will be lost, either consumed in attempts to prevent the Receiver from avoiding the transfers or dissipated by further transfers, if the Affiliated Entities are not brought into the Receivership Estate. This is particularly concerning because the foreign entities Black Night and Starlite appear to have been designed to put assets out of the reach of government agencies and United States courts. To the extent that Affiliated Entities are defunct and devoid of assets, including them in the Receivership Estate will prevent anyone from using them to commit further fraud.

Two objections were filed to the Motion. Neither is persuasive and, critically, neither attaches any evidence to controvert evidence submitted by the Receiver in support of his Report and Recommendation on Inclusion of Related Entities in Receivership Estate (the “Report”).³

Neldon Johnson filed a pro se opposition that largely relitigates the merits of the underlying

³ [Docket No. 581](#).

case (the “Neldon Opposition”).⁴ Johnson also appears to misunderstand the justification for including the Affiliated Entities. The Receiver is not seeking to expand the Receivership Estate as a sanction for noncompliance with the Receiver’s investigation. Instead, the Receiver seeks inclusion of the Affiliated Entities because (1) the limited, but compelling, evidence the Receiver has gathered justifies inclusion and (2) Defendants’ noncompliance with the Receiver’s investigation efforts merits a presumption in favor of the Receiver’s conclusions unless Defendants provide contrary evidence and an explanation for why it was not previously provided to the Receiver.⁵

The law firm Nelson Snuffer Dahle and Poulsen, P.C. also submitted a response purporting to oppose the Motion on behalf of Glenda Johnson, Solco, and/or XSun (the “Glenda Opposition”).⁶ At its core, the Glenda Opposition proceeds from a fundamental misunderstanding

⁴ [Docket No. 597](#) at 3–4.

⁵ This pattern of obstructive behavior has continued. For example, despite the Court’s decision denying Glenda Johnson’s motion for a protective order and ordering her deposition, [Docket No. 593](#), she did not appear at a properly-noticed deposition on March 20, 2019. The Receiver may pursue appropriate remedies in due course.

⁶ [Docket No. 596](#). It is not clear whether Nelson, Snuffer, Dahle & Poulsen, P.C. (“Nelson Snuffer”) represents Glenda Johnson, Solstice LLC, Solco, and XSun jointly, or only represent Glenda Johnson. *See id.* The attorney signature block indicates counsel only represents Glenda Johnson. However, the opening paragraph of the response indicates it was filed on behalf of all four. And counsel’s electronic filing with the Court represents it was on behalf only of Glenda Johnson, Solco, and XSun, and not Solstice. This ambiguity is concerning for multiple reasons.

First, no response could have been authorized on behalf of Solstice, Solco, or XSun. Both Solco and XSun are solely managed by Neldon Johnson. *See* Solco I, LLC Operating Agreement (the “Solco Operating Agreement”), attached as Exhibit 1, at § 8.11; Limited Liability Company Operating Agreement (the “XSun Operating Agreement”), attached as Exhibit 2, at 1. Both are solely owned by Solstice. Solstice was owned in equal thirds by Neldon Johnson, Randale Johnson, and LaGrand Johnson. A February 2014 shareholder agreement vested Neldon Johnson with exclusive control over Solstice. Neldon Johnson terminated this agreement on July 16, 2018, relegating his status to that of a one-third owner. *See* Shareholder Agreement, attached as Exhibit 3; Voting Trust Agreement, attached as Exhibit 4; Notice of Resignation, attached as Exhibit 5. Pursuant to the Order the Receiver is the owner of Neldon Johnson’s interest in Solstice and succeeded to his rights in Solstice, Solco, and XSun. The Receiver did not approve any decision to hire Nelson Snuffer and was not given any notice by Randale and LaGrand of a member meeting to consider whether the entities approved hiring Nelson Snuffer to file an opposition to the Motion.

If Nelson Snuffer was retained by Neldon Johnson to represent Solstice, Solco or XSun, the Response is procedurally deficient for not identifying the source of funding for the filing as required by ¶ 10 of the Order. *See* [Docket No. 491](#) ¶10. This is especially concerning because Nelson Snuffer has repeatedly made filings without certifying the source of funds.

of due process. The Court and Receiver are affording the Affiliated Entities due process by giving notice that they may be included in the Receivership Estate and an opportunity to be heard by opposing the Receiver's Motion. Due process does not require the Receiver to bring separate lawsuits to expand the Receivership Estate. Finally, to the extent the Glenda Opposition addresses the Receiver's justifications for expanding the estate, it concedes that the Affiliated Entities are closely tied to Neldon Johnson and Defendants and fails to offer any evidence disputing the documents and testimony collected by the Receiver, which justifies including the Affiliated Entities.

ARGUMENT

I. Including the Affiliated Entities in the Receivership Estate Complies With Due Process.

“[A]s a general rule, due process requires that a person be given notice and an opportunity for a hearing before being deprived of a property interest.”⁷ All the Affiliated Entities have received both actual notice and an opportunity to be heard before the Affiliated Entities will be included in the Receivership Estate. This satisfies the requirements of due process.

Due process requires that property owners receive notice. “Actual notice is not necessary .

Second, the Glenda Opposition itself demonstrates Glenda Johnson lacks authority to retain counsel on behalf of Solstice, Solco, or XSun. See [Glenda Opposition](#) at 12 (“Glenda Johnson is not an officer, director or controlling officer of any entity.”).

Third, if the Glenda Opposition was filed on behalf of XSun, Solco, and/or Solstice, the filing of an opposition by these parties constitutes submission to the Court's jurisdiction. This moots their purported objections on the basis of jurisdiction. See [id.](#) at 7, 8, 12.

Fourth, it is not clear that whoever is behind the Glenda Opposition has standing to make the arguments asserted throughout the filing. For example, the opposition objects to inclusion of the N.P. Johnson Family Limited Partnership. [Glenda Opposition](#) at 9. There is no evidence that inclusion of NPJFLP will harm any of the filers. Likewise, if the Glenda Opposition is filed only on Glenda Johnson's authority, she lacks standing to object to inclusion of Solstice, Solco, and XSun because she does not have any interest in any of the three entities.

⁷ [United States v. 51 Pieces of Real Prop. Roswell, N.M.](#), 17 F.3d 1306, 1314 (10th Cir. 1994) (citing [Fuentes v. Shevin](#), 407 U.S. 67, 81–82 (1972)).

. . . Instead, notice satisfies due process where it either 1) is in itself reasonably certain to inform those affected or 2) where conditions to not reasonably permit such notice, the form chosen is not substantially less likely to bring home notice than other of the feasible and customary substitutes.”⁸

Neldon Johnson and the other Defendants have all received actual notice that the Affiliated Entities may be included in the Receivership Estate on numerous occasions, including in the Memorandum Decision and Order Freezing Assets and to Appoint a Receiver⁹ and in the Corrected Receivership Order.¹⁰ Critically, they also all received a copy of the Receiver’s Motion through the Court’s CM/ECF system. Solstice, Solco, and XSun also received actual notice that the Affiliated Entities may be included in the Receivership Estate—they must have, to have filed their opposition. In any event, each Affiliated Entity received actual notice through an agent who may act on its behalf. These agents include Neldon Johnson, Greg Shepard, David Nelson, Roger Hamblin, and Glenda Johnson.¹¹ As the knowledge of an artificial entity’s agent is imputed to the principal,¹² the Affiliated Entities all received actual notice.

“The Due Process Clause requires provision of a hearing ‘at a meaningful time.’”¹³ A

⁸ [Snider Int’l Corp. v. Town of Forest Heights, Md., 739 F.3d 140, 146 \(4th Cir. 2014\)](#) (citations and internal quotation marks omitted).

⁹ [Docket No. 444.](#)

¹⁰ [Docket No. 491.](#)

¹¹ At least one of these individuals is an agent for each of the 13 Affiliated Entities. *See* [Docket No. 581](#) § B. Nelson Snuffer—who represented Neldon Johnson and Greg Shepard at the time the Motion was filed—received notice through the CM/ECF system. David Nelson (of Nelson Snuffer), who received notice through the CM/ECF system, is the registered agent or trustee for many of the Affiliated Entities. *Id.* Roger Hamblin was emailed a copy of the Motion by Receiver’s counsel. *See* Email, attached as Exhibit 6. Glenda Johnson received notice through counsel.

¹² *See Restatement (Third) of Agency*, § 5.03 (2006) (agent’s knowledge of a material fact is imputed to the principal); [Lane v. Provo Rehab. & Nursing, 2018 UT App 10, ¶ 27, 414 P.3d 991.](#)

¹³ [Columbian Fin. Corp. v. Stork, 811 F.3d 390, 401 \(10th Cir. 2016\)](#) (quoting [Cleveland Bd. Of Educ. v. Loudermill, 470 U.S. 532, 534 \(1985\)](#)); *see also* [Mathews v. Eldridge, 429 U.S. 319, 333 \(1976\)](#) (“The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.”).

predeprivation hearing is, classically, sufficient to satisfy due process.¹⁴ Here, the Affiliated Entities were all provided predeprivation opportunity to be heard when they had an opportunity to oppose the Motion. At that point, the Affiliated Entities had been presented with the substantial evidence obtained by the Receiver justifying expansion of the Receivership Estate.¹⁵ The Affiliated Entities had every opportunity to present contrary evidence in their opposition. Their decision not to do so does not negate the fact that they had an opportunity to be heard in a meaningful manner.

The Glenda Opposition's due process argument regarding the right to a predeprivation hearing entirely misses the mark.¹⁶ It rehashes prior objections to the initial asset freeze. The issue before the Court is not the propriety of the asset freeze. It is whether or not these affiliates have assets that were proceeds from activities of the Receivership Defendants and, thus, should be included in the Receivership Estate. All relevant entities had an opportunity to address the Receiver's position on this, and an opportunity to be heard. The Affiliated Entities now have had an opportunity to object to inclusion of the Affiliated Entities in the Receivership Estate.

II. The Receiver has Justified Including the Affiliated Entities in the Receivership Estate.¹⁷

¹⁴ See, e.g., [Mackey v. Montrym](#), 443 U.S. 1, 18 (1979) (upholding a state statute allowing prehearing suspension of a driver's license against challengers requesting a predeprivation hearing).

¹⁵ See Report and Recommendation on Inclusion of Affiliates and Subsidiaries in Receivership Estate, [Docket No. 581](#).

¹⁶ See [Docket No. 596](#) at 2–6.

¹⁷ The Glenda Opposition repeatedly characterizes the Receiver's Motion as being filed on behalf of the Plaintiff. E.g. [Docket No. 596](#) at 4, 6, 7, 8. This unfairly impugns the motive and integrity of the Receiver. The Receiver's Motion is directly a product of the Court's mandate to the Receiver to investigate affiliated entities and make a recommendation "as to whether the receivership should be extended to any of the investigated subsidiaries and affiliated entities or specific properties of those entities." Order ¶ 6. The Receiver's investigation was to "determine whether the assets, property, property rights, or interests of the subsidiaries and affiliated entities derive from the abusive solar energy scheme at issue in this case or from an unrelated business activity." Order. ¶ 5. In so investigating, and in filing the Motion, the Receiver is fulfilling a Court mandate, not acting as a front for Plaintiff.

As set forth in the Motion, there are six primary reasons to add the Affiliated Entities to the Receivership Estate. The oppositions do not adequately address any.

First, many of the Affiliated Entities have close associations with the original Receivership Entities. These associations are detailed in the Receiver's Report.¹⁸ The Glenda Opposition concedes that there were close associations between Neldon Johnson and Solco, Starlite, RaPower, IAS, XSun, and the family limited partnership.¹⁹ Accordingly, this factor strongly supports expanding the Receivership Estate to include these entities which may have shared purposes and interdependence with the Receivership Defendants.

Second, significant assets belonging to the Receivership Estate have been transferred to or are being held by the Affiliated Entities. Neither the Glenda Opposition nor the Neldon Opposition dispute that these transfers occurred or that Affiliated Entities hold assets belonging to the Receivership Estate. To avoid dissipation or expenditure of these assets, the Receivership Estate should be expanded to protect them.

The Court's prior decision to craft a narrower receivership is irrelevant. At the time, the Court did not have all the evidence that has since been gathered by the Receiver. The Receiver has now discovered that \$1.498 million belonging to RaPower was deposited into XSun's bank account, that a Cessna twin-engine airplane is held by U-Check yet benefits Neldon Johnson, that patents owned by Neldon Johnson were transferred to NPJFLP and possibly for no consideration, that significant ownership interests in IAS were transferred to NPJFLP, that NPJFLP's assets were later transferred to the foreign entities Black Night and Starlite, and that consideration for these

¹⁸ See [Docket No. 581](#), at §§ B, D.

¹⁹ [Docket No. 596](#) at 9–10.

transfers went to the owners of NPJFLP and not NPJFLP itself. In light of this new evidence, expanding the estate is appropriate.

Neither opposition addresses the fourth through sixth reasons to expand the Receivership Estate. Expansion is appropriate to prevent fraudulent dissipation of assets, to prevent assets from escaping to foreign entities, to prevent future fraud, and because Neldon Johnson exercised de facto control over the Affiliated Entities regardless of their official ownership structures.

III. Specific Entities and Funds Addressed in the Glenda Opposition Should Nonetheless Be Brought Into Receivership.

The Glenda Opposition opposes inclusion of several specific entities in the Receivership Estate, including Solco, XSun, and the N.P. Johnson Family Limited Partnership (NPJFLP), as well as funds deposited on retainer with Nelson Snuffer. It attaches no evidence in support of its claims and should be disregarded on that basis alone. In any event, these arguments fail on their merits.

First, the opposition's arguments regarding these specific entities largely repeat previously-rejected arguments regarding jurisdiction and due process. The Court should disregard these theories.

Second, the Glenda Opposition cherry-picks facts to paint a misleading financial picture regarding XSun and the legal services retainer. Though XSun may have had "more than \$650,000"²⁰ in its bank accounts, the only evidence in the record is that these funds were provided by RaPower and not by XSun's legitimate business operations. The Receiver's Report laid out in

²⁰ See Glenda Opposition, [Docket No. 596](#), at 8.

detail how \$1.498 million was moved from RaPower's bank account to XSun's account.²¹ At the time of the deposit, XSun's account balance was \$600.15.²² Though XSun did have revenue during 2012, the records available to the Receiver indicate that the remaining sums in XSun's bank account either came from or were commingled with tainted money provided by RaPower.

The Receiver also expects the evidence will prove the \$735,202.22 retainer held by Nelson Snuffer was funded by the tainted money XSun received from RaPower.²³ Neither Nelson Snuffer nor XSun has offered any alternative explanation for this money, and both have impeded the Receiver's attempts to investigate.

Third, the Glenda Opposition does not dispute the string of sham transactions regarding the NPJFLP. For example, Neldon Johnson transferred patents and shares and warrants of IAS into the partnership for no apparent consideration, thus diminishing his assets. NPJFLP also acquired two Texas real properties despite having no funds to pay for the properties. NPJFLP then transferred assets to Black Night and Starlite, with consideration going to Roger Hamblin, LaGrand Johnson, and Randale Johnson, and not to NPJFLP. But NPJFLP continued to act as if it owned certain transferred assets—for instance, by not recording deeds to Black Night and Starlite and by signing public records granting easements on the real property. All this evidence demonstrates that NPJFLP was used in Neldon Johnson's various frauds. It needs to be brought into the Receivership Estate to prevent further dissipation of assets.

Finally, the Glenda Opposition objects to the "inclusion of . . . Glenda Johnson" as "well beyond the asset freeze."²⁴ To be clear, the Motion does not seek to seize control of Glenda

²¹ [Docket No. 581](#) at 8–9 & 32.

²² *Id.*

²³ See [Docket No. 581](#) at 32 & n.169.

²⁴ [Docket No. 596](#) at 5.

Johnson's assets. It seeks inclusion of only the Affiliated Entities as set out in the Motion. If the Receiver discovers Glenda Johnson has assets belonging in the Receivership Estate, the Receiver will bring a separate action against Glenda to recover those assets.

IV. Discovery Issues Taint Defendants, Solco, XSun, and Glenda Johnson.

The Glenda Opposition attempts to justify Glenda Johnson, Solstice, Solco, XSun, and Nelson Snuffer's failure to fully and forthrightly provide information to the Receiver by seeking to shift the burden to the Receiver to (1) attempt to obtain records from the Department of Justice, (2) spend billable time reviewing all records from the Department of Justice to find relevant documents, and (3) describe all documents in the Receiver's possession.²⁵ The burden, however, is on these parties to comply with the Receiver's requests for information and documents.

The Order requires Receivership Defendants as well as others to provide records to the Receiver and file a report detailing Defendants' assets, expenditures, and transfers.²⁶ The burden is on these parties to cooperate with the Receiver. However, the Receivership Defendants and their employees and family members, and affiliated entities, have provided little information to the Receiver.²⁷ Claims that files were "disorganized" and that it would take "time" to "reorganize" files are no excuse. The Receiver was entitled to all files in these parties' possession. Their refusal to provide documents, or to only provide selected documents which support their story, has significantly impeded the Receiver and required additional expenditures of time and funds.²⁸

²⁵ [Docket No. 596](#) at 13–14.

²⁶ *See e.g.*, [Docket No. 491](#), ¶ 26.

²⁷ *See* Report, [Docket No. 581](#), § D.

²⁸ *See id.* Defendants repeatedly claim that they do not have documents or that "[e]verything that could be located within the scope of what has been requested has been produced". If true, they should provide a certification under oath to that effect which—as the Receiver has previously pointed out—is required under the Order. *See* [Docket No. 579](#) at 6; [Docket No. 580](#) at 6.

CONCLUSION

For the foregoing reasons, the Court should grant the Motion and expand the Receivership Estate to include the Affiliated Entities.

DATED this 29th day of March, 2019.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Michael S. Lehr _____

Jonathan O. Hafen

Michael Lehr

Attorneys for R. Wayne Klein, Receiver

CERTIFICATE OF SERVICE

I hereby certify that the above **RECEIVER'S REPLY IN SUPPORT OF ITS MOTION TO INCLUDE AFFILIATES AND SUBSIDIARIES IN THE RECEIVERSHIP ESTATE** was filed with the Court on this 29th day of March, 2019, and served via ECF on all parties who have requested notice in this case.

I also certify that, on the same date, by U.S. Mail, first-class, postage pre-paid, I caused to be served the same documents upon the following persons:

Neldon Johnson
2730 W 4000 South
Oasis, UT 84624

R. Gregory Shepard
858 Clover Meadow Dr.
Murray, Utah 84123

Pro se Defendants

/s/ Michael S. Lehr