

Jonathan O. Hafen (6096) (jhafen@parrbrown.com)
Joseph M.R. Covey (7492) (jcovey@parrbrown.com)
Michael S. Lehr (16496) (mlehr@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.

**[Proposed] ORDER IN RE: CIVIL
CONTEMPT OF PACIFIC STOCK
TRANSFER COMPANY**

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

District Judge David Nuffer

Court-appointed Receiver R. Wayne Klein (“Receiver”) filed a Motion for Order to Show Cause Why Pacific Stock Transfer Company (“PSTC”) Should Not Be Held in Civil Contempt of Court for Violating the Corrected Receivership Order (“Motion”).¹ Based on the Motion and a hearing on the Motion on April 26, 2019, the following findings are entered.

1. On October 31, 2019, the Receivership Order (“Order”) was entered appointing the

¹ [Docket No. 576](#), filed February 19, 2019.

Receiver over RaPower-3, LLC (“RaPower”), International Automated Systems (“IAS”), and LTB1, LLC (“LTB1”), and the assets of Neldon Johnson (“Johnson”) and R. Gregory Shepard (“Shepard”).²

2. Among other things, the Order provides:

a. “The directors, officers, managers, employees, trustees, investment advisors, accountants, attorneys, and other agents of RaPower-3, IAS, and LTB1 (collectively, the “Entity Receivership Defendants”) 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 Entity Receivership Defendants’ operations or assets, except to the extent as may hereafter be expressly granted by the Receiver.”³

b. “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 Entity Receivership Defendants 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, and all powers conferred upon a receiver by the provisions of 28 U.S.C. §§ 754, 959, 1692, and Fed. R. Civ. P. 66, and this Court.”⁴

c. “The Receivership Defendants . . . transfer agents . . . of the Entity Receivership Defendants, as well as those acting in their place, are hereby ordered and directed to preserve and turn over to the Receiver forthwith all paper and electronic

² [Docket No. 490](#). The next day the Court issued the Corrected Receivership Order, [Docket No. 491](#), filed November 1, 2019, to correct the formatting of the October 31, 2019 Receivership Order. Other than the formatting, the orders are substantially the same.

³ [Docket No. 491](#) at ¶ 9.

⁴ *Id.* at ¶ 11.

information of, or relating to, the Receivership Defendants or Receivership Property; such information shall include, but is not limited to: books, records, documents, accounts, stock certificates, intellectual property records, evidence of intellectual property rights, computer and electronic records, and all other instruments and papers. If these documents and records are no longer within their control, they must provide information to the Receiver identifying the records, the persons in control of the records, and efforts undertaken to recover the records.”⁵

d. “Johnson and Shepard, as well as . . . agents . . . of the Entity Receivership Defendants, and other appropriate persons or entities, including the family members of Johnson and Shepard, shall promptly answer under oath to the Receiver all questions which the Receiver may put to them and produce all documents as required by the Receiver regarding the business of the Receivership Defendants or any other matter relevant to the operation or administration of the receivership or collection of funds due to the Receivership Defendants.”⁶

3. On November 12, 2018, the Receiver sent a letter to PSTC seeking various documents, records, and information related to PSTC role as transfer agent to IAS.⁷ A copy of the Order was enclosed with the letter.⁸

4. PSTC did not respond to the November 12, 2018 letter.⁹

5. On December 14, 2018, the Receiver issued a subpoena (“Subpoena”) to PSTC

⁵ *Id.* at ¶ 24.

⁶ *Id.* at ¶ 28.

⁷ [Docket No. 576-1](#), filed February 19, 2019.

⁸ *Id.*

⁹ [Docket No. 576](#).

commanding the production of documents that he previously requested in the November 12, 2018 letter.¹⁰

6. PSTC was personally served with the Subpoena on December 14, 2018.¹¹

7. On January 15, 2019, PSTC partially responded to the Subpoena while at the same time refusing to produce certain records unless “authorized by the shareholder or compelled by a court of competent jurisdiction.”¹²

8. In the partial response, PSTC stated it was in receipt of the Order.¹³

9. On January 18, 2019, the Receiver sent a letter regarding to PSTC’s partial response explaining he is the only person authorized to act for IAS, and that the Order requires PSTC to produce the documents requested in the November 12, 2018 letter and the Subpoena.¹⁴

10. PSTC did not respond to the Receiver’s January 18, 2019 letter.¹⁵

11. The Receiver filed the Motion on February 19, 2019.¹⁶

12. The Court took the Motion under advisement and ordered that PSTC be served a copy of the Motion by no later than Friday, March 15, 2019 and any response to the Motion be filed no later than March 29, 2019.¹⁷

13. PSTC was served a copy of the Motion and the order taking the Motion under advisement on March 8, 2019.¹⁸

¹⁰ [Docket No. 576-2](#).

¹¹ *Id.*

¹² [Docket No. 576-3](#). Although the letter is dated January 2, 2019, the Receiver did not receive PSTC partial response until January 15, 2019. *See* [Docket No. 576](#) at 7.

¹³ [Docket No. 576-3](#).

¹⁴ [Docket No. 576-5](#).

¹⁵ [Docket No. 576](#) at 7.

¹⁶ *Id.*

¹⁷ [Docket No. 588](#), filed March 5, 2019.

¹⁸ [Docket No. 595-1](#), filed on March 13, 2019.

14. PSTC did not file a response and did not attend the hearing on the Motion on April 26, 2019.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Motion is GRANTED.

IT IS FURTHER HEREBY ORDERED as follows:

1. PSTC shall provide the information requested by the Receiver including stock ownership and sales by:

- a. Glenda Johnson
- b. LaGrand Johnson
- c. Randale Johnson
- d. Justin Horton
- f. Diane Shepard
- h. Matthew Shepard
- i. Mark Shepard
- j. Roger Hamblin
- k. Black Night Enterprises
- l. Starlight Holding
- m. N.P. Johnson Family Limited Partnership.

2. As required under Paragraph 24 of the Order, PSTC shall turn over to the Receiver all paper and electronic information of, or relating to, IAS, RaPower, LTB1, Johnson, Shepard; such information shall include, but is not limited to: books, records, documents, accounts, stock certificates, intellectual property records, evidence of intellectual property rights,

computer and electronic records, and all other instruments and papers.¹⁹

3. PSTC shall produce the above records and information to the Receiver no later than ten days from the entry of this order.

4. If PSTC does not produce the above information to the Receiver by the end of the tenth day after the entry of this order, a coercive fine of \$2,000.00 per day shall be imposed upon PSTC until PSTC is in compliance with this Court's orders.²⁰

5. As required under the Order, PSTC shall also promptly answer under oath all questions which the Receiver may put to it and produce all documents as required by the Receiver regarding the business of the IAS, RaPower, LTB1, Johnson, or Shepard, or any other matter relevant to the operation or administration of the Receivership.²¹

6. The Receiver is entitled to reasonable attorneys' fees and costs, and reasonable receiver's fees expended on the Motion, which include reasonable attorneys' fees expended drafting the Motion, drafting the January 18, 2019 letter, a portion of the time spent participating in the show cause hearing on April 26, 2019, and fees from drafting the form of this order and the attorneys' fee motion.²²

7. PSTC's response to the Receiver's motion for attorneys' fees is due no later than fourteen days after the Receiver files his motion for attorneys' fees and costs.

8. PSTC may purge its contempt by complying with this order. If PSTC fails to

¹⁹ [Docket No. 491](#) at ¶ 24.

²⁰ [Law v. Nat'l Collegiate Athletic Ass'n](#), 134 F.3d 1438, 1443 (10th Cir. 1998) ("Courts have upheld as civil fines intended to coerce, as long as the offending party can avoid them by complying with the court's order.") (citations omitted).

²¹ [Docket No. 491](#) at ¶ 28.

²² [In re Skinner](#), 90 B.R. 470, 479 (D. Utah 1988) ("sanctions for a civil contempt may include attorney's fees and costs"); see also [Hutto v. Finney](#), 437 U.S. 678 n.14 (1978) ("Of course, fees can also be awarded as part of a civil contempt penalty.").

comply with this order, additional remedies may be imposed.

Signed _____, 2019.

BY THE COURT:

David Nuffer
United States District Judge