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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 RESPONSE TO
OBJECTIONS TO MEMORANDUM
DECISION AND ORDER INCLUDING
AFFILIATES AND SUBSIDIARIES IN
RECEIVERSHIP ESTATE**

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

District Judge David Nuffer

R. Wayne Klein, the Court-Appointed Receiver (the “Receiver”), hereby submits this Response to Objections to Memorandum Decision and Order on Receiver’s Motion to Include Affiliates and Subsidiaries in Receivership.¹

¹ Nelson Snuffer filed three separate objections to the Order: (1) on behalf of XSun Energy, LLC ([Docket No. 664](#)); (2) on behalf of Solco I, LLC ([Docket No. 665](#)); and (3) on Solstice Enterprises, Inc., Black Night Enterprises, Inc., Starlite Holdings, Inc., and N.P. Johnson Family Limited Partnership ([Docket No. 675](#)). This response constitutes the Receiver’s response to all three objections.

INTRODUCTION AND BACKGROUND

On May 3, 2019, the Court issued a Memorandum Decision and Order on Receiver's Motion to Include Affiliates and Subsidiaries ("Order").² The Order was issued after the Receiver's Motion to Include Affiliates and Subsidiaries (the "Motion") was fully briefed,³ with various interested parties filing oppositions to the Motion.

The Order extended the Receivership to the Affiliated Entities.⁴ In the Order, the Court found:

- "The whole purpose of RaPower, IAS, and LBT1 (collectively, the "Receivership Entities") was to perpetrate a fraud to enable funding for Neldon Johnson. The same is true for other entities Johnson created, controls, and owns (either directly or indirectly), including Solco, XSun, Solstice, 13 Cobblestone, LTB O&M, DCL16BLT, DCL-16A, NPJFLP, U-Check, Black Night, and Starlight. Johnson has commingled funds between these entities, used their accounts to pay personal expenses, and transferred Receivership Property to and through them in an attempt to avoid creditors."⁵
- "Each of the Affiliated Entities is a subsidiary or affiliated entity of Receivership Defendants and has close associations with the Receivership Entities. In many cases, the Affiliated Entities and Receivership Entities have common officers, directors, members, and managers. Their corporate purposes are similar. And there have been numerous and substantial financial transactions between them."⁶
- "In many instances, the Affiliated Entities' only assets are tied to the Receivership Defendants. In each instance, the assets appear to have been transferred to the Affiliated Entities for the purpose of defrauding creditors. To prevent further dissipation of Receivership Property, it is necessary to put the Affiliated Entities under the Receiver's control."⁷

At the end of the Order, the Court expressly required "[a]ny person who may have an objection to the [Order], whether in whole or in part, must file such objection in this case within 21 days of

² [Docket No. 636](#).

³ *Id.* at fn. 2.

⁴ Affiliated Entities has the meaning given in the Order.

⁵ [Docket No. 636](#), Factual Basis at ¶ 2.

⁶ *Id.* at ¶ 3.

⁷ *Id.* at ¶ 5.

receiving actual notice of this [Order] or else such objection shall be considered waived.”⁸

Nelson Snuffer Dahle & Poulsen (“Nelson Snuffer”) then filed three objections (each an “Objection,” collectively the “Objections”) purportedly on behalf of various Affiliated Entities. Notably, none of the Objections attaches any evidence to controvert evidence submitted by the Receiver or to refute the Court’s findings in the Order. Instead, Nelson Snuffer makes the same due process arguments this Court has rejected numerous times before. As shown in the Receiver’s Reply in Support of the Motion to Include Affiliates and Subsidiaries in the Receivership Estate,⁹ these due process arguments proceed from a fundamental misunderstanding of what due process requires. By expressly allowing objections by any person receiving actual notice of the Order, the Court is affording the Affiliated Entities due process. This is on top of the initial predeprivation due process the Affiliated Entities received when notice was given that the entities might 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.¹⁰

At this point, Nelson Snuffer has filed four separate briefs either opposing the Receiver’s Motion or objecting to the Court’s Order. None of these briefs offers any contrary evidence to the Receiver’s Motion or the Court’s findings. Accordingly, the Objections should be overruled.

⁸ *Id.*, Order at ¶ 13.

⁹ [Docket No. 602](#), filed March 29, 2019.

¹⁰ See [Docket No. 636](#) at fn. 10.

ARGUMENT

I. Due Process has Been Satisfied.

All the Affiliated Entities received both actual notice and an opportunity to be heard before the Affiliated Entities were included in the Receivership Estate. This satisfies the requirements of due process. The Court expressly found that that “[e]ach of the Affiliated Entities has received timely and sufficient notice of the Motion and been afforded an adequate opportunity to be heard with respect to it.”¹¹ Moreover, the Court found that despite filing responses opposing the Motion to Include the Affiliated Entities, Nelson Snuffer did “not raise[] a genuine dispute as to any material fact set forth in support of the Motion.”¹²

Now, Nelson Snuffer has filed three objections that each contain a nearly word-for-word recitation of the same arguments made in the earlier opposition to the Receivers Motion.¹³ As shown above, the Court already found that due process was satisfied and no genuine dispute as to any material fact was raised in the oppositions.¹⁴ Nothing in the Objections challenges the Court’s finding and or raises any new issue of fact or law. On this basis alone the Court should overrule the Objections.¹⁵

“[A]s a general rule, due process requires that a person be given notice and an opportunity

¹¹ *Id.* at 3.

¹² *Id.*

¹³ Compare [Docket No. 596](#) at 2-7 with [Docket No. 665](#) at 3-8, [Docket No. 675](#) at 2-7, and [Docket No. 664](#) at 3-8. All three objections are a near word-for-for copy and paste of parts of Nelson Snuffer’s opposition to the Receivers Motion to include ([Docket No. 596](#)). As far as the Receiver can tell, each Objection contains about 2 new paragraphs, none of which contain any genuine dispute as to any material fact.

¹⁴ [Docket No. 636](#) at 3.

¹⁵ The Receiver hereby incorporates the due process section his Reply in Support of his Motion to Affiliates and Subsidiaries, [Docket No. 602](#) at 4-6.

for a hearing before being deprived of a property interest.”¹⁶ In terms of notice, “[a]ctual notice is not necessary 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.”¹⁷ Here, there is no question that the Affiliated Entities and Defendants received notice of the Motion and the Order. Indeed, Solstice, Solco, XSun, Glenda Johnson, and Neldon Johnson filed oppositions to the Motion. Further, Nelson Snuffer—who received a copy of the Motion and the Order through the Court’s CM/ECF system—represents LeGrand and Randale Johnson¹⁸ so to the extent notice that they serve (or served) as owners, board members, executives, or agents of any of the Affiliated Entities, those entities also received notice of the Motion and the Order.¹⁹

“The Due Process Clause requires provision of a hearing ‘at a meaningful time.’”²⁰ A predeprivation hearing is, classically, sufficient to satisfy due process.²¹ Prior to the entry of the Order, the Affiliated Entities were all provided an opportunity to be heard in opposing the Motion. At that point, the Affiliated Entities had been presented with the substantial evidence obtained by

¹⁶ [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)).

¹⁷ [Snider Int’l Corp. v. Town of Forest Heights, Md.](#), 739 F.3d 140, 146 (4th Cir. 2014) (citations and internal quotation marks omitted).

¹⁸ See [Docket No. 621](#).

¹⁹ Indeed, the Corrected Receivership Order itself put each of the Affiliated Entities (with the exception of UCheck) on notice in November 2018 that the Receivership Estate might be expanded to include them. [Docket No. 491](#) at ¶ 6.

²⁰ [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.”).

²¹ 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).

the Receiver justifying expansion of the Receivership Estate.²² 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.

Perhaps in response to Nelson Snuffer's repeated—yet unsubstantiated—claims of due process violations, the Court allowed “[a]ny person who may have an objection to [the Order], whether in whole or in part, [to] file such objection in this case within 21 days of receiving actual notice of this [Order],” thereby providing an additional opportunity to be heard to any person receiving actual notice.²³ Instead of using this additional opportunity to raise any genuine dispute as to any material facts the Receiver set forth in his Motion or raise any objection to the Court's findings in the Order, Nelson Snuffer chose to repeat the same failed due process arguments it has raised before.

II. Nelson Snuffer Lacks Authority to Object on Behalf of Affiliated Entities.

The Objections should also be overruled because Nelson Snuffer lacks authority to make these filings on behalf of any of the Affiliated Entities. When the Court entered the Order making the Affiliated Entities part of the Receivership Estate, “the directors, officers, managers . . . attorneys, and other agents of the Affiliated Entities [were thereby] dismissed” and any “[s]uch persons shall have no authority with respect to the Affiliated Entities' operations or assets, except to the extent as may hereafter be expressly granted by the Receiver or the court.”²⁴ The Order also

²² See Report and Recommendation on Inclusion of Affiliates and Subsidiaries in Receivership Estate, [Docket No. 581](#).

²³ By allowing objections within 21 days of the filing of the Order, the Court provided another meaningful opportunity to be heard, which satisfies due process. See [Columbian Fin. Corp., 811 F.3d at 401](#) (finding that a delayed postdeprivation hearing did not violate a clearly established constitutional due process right.)

²⁴ [Docket No. 636](#).

gave the Receiver “all powers, authorities, rights, and privileges heretofore possessed by the owners, members, shareholders, officers, directors, managers, and general and limited partners . . . 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.”²⁵ Nelson Snuffer cannot represent these Affiliated Entities unless expressly granted permission by the Receiver or the Court. Neither the Receiver nor the Court have granted Nelson Snuffer the authority to represent any Affiliated Entity. Accordingly, Nelson Snuffer lacks the authority to file objections on behalf of any Affiliated Entity.²⁶

III. The Objections Fail to Provide Evidence Supporting any Claim Regarding Control of Foreign Entities.

Nelson Snuffer briefly raises an objection in the filing purportedly made on behalf of Solstice, Black Night, Starlite,²⁷ and the N.P. Johnson Family Limited Partnership.²⁸ There, Nelson Snuffer claims that “none of [Solstice, Black Night or Starlite] were or are under the control or ownership of Neldon P. Johnson.”²⁹ Nelson Snuffer, however, does not support this claim with any evidence. The Receiver on the other hand, has found—and continues to find—extensive connections to Neldon Johnson and control by Neldon Johnson in these entities.³⁰

²⁵ *Id.* at Order, ¶ 6.

²⁶ Nelson Snuffer represents others who have made affirmative appearances in this matter, such as Glenda, LaGrand, and Randale Johnson. Presumably, Nelson Snuffer would have had standing to object on their behalf, but no objections were filed by them.

²⁷ Although, “Starlite” is commonly spelled “Starlight” by the parties in this matter, the Receiver’s information shows that the correct spelling of the entity’s name is “Starlite.”

²⁸ [Docket No. 675](#) at 2.

²⁹ *Id.*

³⁰ [Docket No. 636](#), Factual Basis, ¶ 2. Indeed, both Neldon Johnson’s and Glenda Johnson’s recent deposition testimony has shown that Neldon Johnson either controls or controlled Solstice. *See* Neldon Johnson Depo. 112:18-113:1. Attached hereto as [Exhibit 1](#). “Q. Who decided the terms of that agreement between RaPower and Solstice? A. I did. Q. And did you sign both sides of that agreement? A. I did. Q. And so that was structured that way at your direction; correct? A. That’s correct.”; *see also* Glenda Johnson Depo. 126:14-25.

Moreover, even assuming Neldon Johnson did not exercise day-to-day control over these entities, the Objection does not refute the Court's finding that the entire purpose of Solstice, Black Night, and Starlite "was to perpetrate a fraud to enable funding for Neldon Johnson" or that these entities had "close associations with Receivership Entities" and "numerous and substantial financial transactions between them."³¹ Without actual evidence that calls into question the Court's or the Receiver's findings, the Objection should be overruled.

Finally, by citing the fact that Solstice, Black Night and Starlite are foreign entities organized in another country, Nelson Snuffer seems to be suggesting that any information or evidence as to the ownership of these entities is somehow unreachable. What Nelson Snuffer fails to point out, however, is that their clients, LaGrand and Randale Johnson, are either owners or managers of Solstice, Black Night and Starlite and therefore should have control of the corporate records of the entities. LaGrand and Randale Johnson, however, have failed to provide information showing who truly runs Black Night and Starlite and their counsel should not now be allowed to object to the Order on the grounds that the Receiver has not adequately demonstrated these entities were controlled by Neldon Johnson.³²

CONCLUSION

For the foregoing reasons, the Court should overrule the Objections to the Order.

DATED this 6th day of June, 2019.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Michael S. Lehr _____

Jonathan O. Hafen

³¹ See Order, *supra* notes 5-7.

³² The Receiver has not received any foreign assets or documents from these companies as required under the Corrected Receivership Order. See [Docket No. 491](#) at ¶ 30.

Michael S. Lehr
Attorneys for R. Wayne Klein, Receiver

CERTIFICATE OF SERVICE

I hereby certify that the above **RECEIVER'S RESPONSE TO OBJECTIONS TO MEMORANDUM DECISION AND ORDER INCLUDING AFFILIATES AND SUBSIDIARIES IN RECEIVERSHIP ESTATE** was filed with the Court on this 6th day of June, 2019, and served via ECF on all parties who have requested notice in this case.

I also certify that, on June 6th, by U.S. Mail, first-class, postage pre-paid, I caused to be served the same documents upon the following persons:

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

Pro se Defendant

/s/ Michael S. Lehr