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**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION**

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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 MOTION TO  
DISCONTINUE LIVING  
ALLOWANCE TO GREGORY  
SHEPARD**

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

District Judge David Nuffer

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R. Wayne Klein, the Court-Appointed Receiver (the “Receiver”) of RaPower-3, LLC (“RaPower”), International Automated Systems, Inc. (“IAS”), and LTB1, LLC (“LTB1”) (collectively, the “Receivership Entities”), as well as certain of their subsidiaries and affiliates and the assets of Neldon Johnson (“Johnson”) and R. Gregory Shepard (“Shepard”) (collectively “Receivership Defendants” or “Defendants”), hereby submits this Motion to Discontinue Living Allowance to Gregory Shepard.

### **BACKGROUND FACTS**

1. On November 1, 2018, the Court entered the Corrected Receivership Order (“CRO”). The CRO directed that “the Receiver shall investigate the monthly income and living expenses of Johnson and Shepard and make a recommendation to the Court regarding whether any monthly living expenses should be paid out of the Receivership Property to Johnson or Shepard.”<sup>1</sup>

2. The CRO instructed the Receiver to “take into account whether Johnson or Shepard have any Non-Receivership Property or access to any assets or property from sources other than the Receivership Property or from assets that the Receiver decides to abandon or otherwise dispose of in the course of the receivership”<sup>2</sup>

3. The CRO did not indicate the rationale for paying living expenses to Johnson or Shepard.

4. On November 13, 2018, the Court entered *Amended and Restated Judgment in a Civil Case*, in which it entered judgment against Shepard in the amount of \$702,001.<sup>3</sup>

5. On November 30, 2018, the Receiver filed his Recommendation on Living Allowance for Johnson and Shepard.<sup>4</sup> Although the Receiver sent two separate information requests to Shepard in November 2018, Shepard did not respond and the Receiver based his initial recommendation on incomplete information.<sup>5</sup>

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<sup>1</sup> [Docket No. 491](#), ¶ 78.

<sup>2</sup> *Id.*

<sup>3</sup> Docket No. 507.

<sup>4</sup> [Docket No. 526](#).

<sup>5</sup> *Id.* at 2-4.

6. On May 6, 2019, the Court ordered Shepard to complete a summary of his financial circumstances including income, expenses, assets and liabilities.<sup>6</sup>

7. On May 10, 2019 and May 15, 2019, Shepard filed declarations regarding his financial situation.<sup>7</sup>

8. On May 24, 2019, the Receiver submitted an updated recommendation based on the newly received information.<sup>8</sup> After taking into account the relevant considerations as instructed by the Court, the Receiver recommended that \$830.00 be paid to Shepard monthly from the Receivership Estate.<sup>9</sup> This amount took into account payments of \$1,000 monthly that Shepard was receiving from Bigger Faster Stronger (“BFS”).

9. The living allowance recommended by the Receiver was based on IRS cost of living standards for two people in the Salt Lake City area.<sup>10</sup>

10. On May 24, 2019, the Court approved the Receiver’s recommendation and authorized the Receiver to pay Shepard \$830.00 monthly from the Receivership Estate.<sup>11</sup>

11. Since June 2019, the Receiver has paid Shepard at least \$830.00 monthly from the Receivership Estate. For four months when BFS did not make payments to Shepard, the Receiver paid Shepard \$1,830 per month. The Receivership Estate has paid \$15,620 to Shepard since June 2019. A summary of Receivership payments to Shepard is attached as Exhibit 1.

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<sup>6</sup> [Docket No. 637](#).

<sup>7</sup> See [Docket No. 648](#), [Docket No. 656](#).

<sup>8</sup> [Docket No. 679](#).

<sup>9</sup> *Id.*

<sup>10</sup> [Docket No. 526](#).

<sup>11</sup> [Docket No. 681](#).

12. On June 2, 2020, the Tenth Circuit affirmed the Court's judgments and appointment of the Receiver<sup>12</sup> and on June 22, 2020, the appeals court dismissed the appeal challenging the expansion of the Receivership Estate to include certain affiliated entities.<sup>13</sup>

### **ARGUMENT**

The Receiver believes the monthly living allowance payments to Shepard should be discontinued because it is inequitable for Shepard to continue to receive money from the Receivership Estate. The Court found that Shepard received at least \$702,001.00 from Receivership entities for his role in the solar energy scheme and ordered those amounts disgorged.<sup>14</sup> Shepard was an active participant in the massive fraud and was found to have made frequent false and/or fraudulent statements in promotion of the solar energy scheme.<sup>15</sup> Shepard was "at the top" of the RaPower distributors and considered himself "Chief Director of Operations" of RaPower.<sup>16</sup> Shepard was not deterred from aggressively promoting the solar scheme by the IRS' disallowance of customer depreciation deductions and solar energy tax credits or by the complaint filed by the government in this case.<sup>17</sup> Instead, the only change in his behavior from the time the lawsuit was filed until the Court's post-trial findings was to fight harder.<sup>18</sup> Based on his behavior, Shepard should not continue to receive the benefit of monthly payments derived from his and other Receivership Defendants' fraudulent activity.

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<sup>12</sup> [United States v. RaPower-3, LLC](#), No's 18-4119 and 18-4150, --- F.3d ---, 2020 WL 2844694 (10<sup>th</sup> Cir. 2020).

<sup>13</sup> [United States v. Solco I, LLC](#), No. 19-4089, --- F.3d ---, 2020 WL 3407013 (10<sup>th</sup> Cir. 2020).

<sup>14</sup> [Docket No. 467](#) at 129, 139.

<sup>15</sup> See generally, *id.*

<sup>16</sup> *Id.* ¶ 53.

<sup>17</sup> *Id.* ¶ 115.

<sup>18</sup> *Id.* ¶ 116.

The Receiver is currently seeking the recovery of commission payments from dozens of distributors who were not as involved in RaPower's operations as Shepard.<sup>19</sup> Much of the \$702,001.00 paid to Shepard was in the form of commission payments.<sup>20</sup> It is inequitable for the Receiver to recover funds paid in furtherance of the scheme from distributors while at the same time paying out a monthly living allowance to a principal of the fraudulent scheme. This is especially true because the Receiver has only recovered a small fraction of the \$702,001.00 disgorgement amount from Shepard thus far.<sup>21</sup>

The Receiver recognizes that Shepard's financial situation is unfavorable and that Shepard was accustomed to receiving monthly amounts from RaPower before the Court entered its findings and judgment against Receivership Defendants. However, now that the Tenth Circuit has affirmed the Court's findings of fraud—which described Shepard's key roles in the fraud—the Receiver does not believe it is the role of the Receivership to ensure that Shepard has sufficient monthly funds to meet his family's obligations. Instead, the Receiver believes it is appropriate to now discontinue any payments to Shepard from Receivership assets. To the extent that Shepard needs assistance meeting his living expenses, he should seek that assistance from sources other than the Receivership Estate. Accordingly, the Receiver requests the Court enter an order discontinuing the monthly living allowance payments to Shepard.

A proposed order is attached.

DATED this 8th day of July, 2020.

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<sup>19</sup> Commission payments to distributors who sold solar lenses to customers were necessarily in furtherance of the solar scheme. See [Zazzali v. AFA Financial Group, LLC, 2012 WL 4903593, \\*1 \(Bankr.D.Del.2012\)](#); see also [Miller v. Taber, No. 1:12-CV-74-DN, 2014 WL 317938, at \\*2 \(D. Utah Jan. 29, 2014\)](#).

<sup>20</sup> See [Docket No. 648](#).

<sup>21</sup> There is a pending motion regarding Shepard's home at 858 Clover Meadow Drive, Murray, Utah. See [Docket No. 780](#). If the motion is granted it would likely bring a portion of the \$702,001.00 into the Receivership.

**PARR BROWN GEE & LOVELESS, P.C.**

*/s/ Michael S. Lehr* \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that the above **RECEIVER'S MOTION TO DISCONTINUE LIVING ALLOWANCE TO GREGORY SHEPARD** was filed with the Court on this 8<sup>th</sup> day of July, 2020, and served via ECF on all parties who have requested notice in this case.

*/s/ Michael S. Lehr*

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