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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.

**SUPPLEMENTAL BRIEF RE [1126]  
MOTION FOR APPROVAL OF TENTH  
INTERIM FEE APPLICATION**

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

District Judge David Nuffer

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Pursuant to the Court’s request,<sup>1</sup> Court-Appointed Receiver R. Wayne Klein (the “Receiver”) hereby files this supplement briefing regarding the Receiver’s Motion for Approval of Tenth Interim Fee Application.<sup>2</sup> The Court seeks information from the Receiver on whether any of the fees and expenses for which the Receiver seeks approval in the Tenth Interim Fee Application<sup>3</sup> were already awarded in the Court’s Order Granting Receiver’s Motion for

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<sup>1</sup>Docket No. 1129, filed June 29, 2021.

<sup>2</sup>Docket No. 1126, filed June 4, 2021.

<sup>3</sup>*Id.*

Attorneys' Fees and Costs per [1116] Civil Contempt Order Re: Glenda Johnson, Roger Hamblin and Preston Olsen.<sup>4</sup>

There are fees and expenses in the Tenth Interim Fee Application for which the Receiver seeks approval to pay the Receiver and his retained professionals that the Court awarded in favor of the Receivership Estate to be paid by Glenda Johnson, Roger Hamblin and Preston Olsen as a result of their contempt. There is no risk of any double recovery or overlap in the Receiver's Tenth Fee Application. The Receiver deems all funds he recovers as assets of the Receivership Estate and those funds are deposited into the Receivership Estate bank account. That includes receipt of attorney fees that were ordered by the Court. Those funds are paid into the Receivership bank account—not paid directly to the Receiver or any of his professionals. The Receiver's quarterly status reports identify amounts the Receivership Estate has recovered from contempt orders and orders to pay attorney fees, and which are deposited into the Receivership bank account.

When the Receiver makes application for an award of fees for himself and his professionals, payment of those fees comes from the Receivership bank account. In other words, none of the attorney fees and costs awarded for contempt—or any other purpose—are paid directly to the awardee. Instead, all such recoveries are made part of the Receivership Estate and subject to the Court granting a separate fee application by the Receiver and his professionals. Indeed, the order granting fees and costs against contemnors Glenda Johnson, Roger Hamblin, and Preston Olsen [1116] specifically provided that those amounts were to be paid to the Receiver, not to his counsel. The Receiver deposited those funds in Receivership bank accounts

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<sup>4</sup>Docket No. 1128, filed June 22, 2021.

and will deposit any future recoveries in that account—which remains subject to oversight by the Court.

In the Receiver’s view, orders requiring contemnors to pay attorney fees and costs are orders directed at the contemnors, not orders approving payment of those amounts to Receiver’s professionals. Payment to the Receiver and his professionals occurs only after separate review and approval by the United States and this Court. The Receiver believes the practice of depositing all recoveries into the Receivership bank account not only avoids the risk of double recoveries but also obviates the need to perform calculations on which portions of a fee application should be removed because it would constitute a double recovery.

DATED this 6<sup>th</sup> day of July, 2021.

**PARR BROWN GEE & LOVELESS**

*/s/ Jeffery A. Balls*

Jonathan O. Hafen

Jeffery A. Balls

Michael S. Lehr

*Attorneys for Receiver*

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the foregoing was electronically filed with the Clerk of the Court through the CM/ECF system on July 6, 2021, which sent notice of the electronic filing to all counsel of record.

/s/ Wendy V. Tuckett