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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.; LTB1,
LLC; R. GREGORY SHEPARD; NELDON
JOHNSON; and ROGER FREEBORN,

Defendants.

**FOURTEENTH INTERIM FEE
APPLICATION FOR RECEIVER AND
RECEIVER'S PROFESSIONALS FOR
SERVICES RENDERED FROM
JANUARY 1, 2022 THROUGH
MARCH 31, 2022**

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

District Judge David Nuffer
Magistrate Judge Daphne A. Oberg

In accordance with the Corrected Receivership Order (the “Receivership Order”),¹ R. Wayne Klein, the Court-Appointed Receiver (the “Receiver”) of RaPower-3, LLC (“RaPower”), International Automated Systems, Inc. (“IAS”), and LTB1, LLC (“LTB1”) and thirteen subsidiaries and affiliates (collectively, the “Receivership Entities”), and the assets of Neldon Johnson (“Johnson”) and R. Gregory Shepard (“Shepard”) (collectively “Receivership

¹ [Docket No. 491](#), filed Nov. 1, 2018.

Defendants”), hereby submits this fourteenth interim “Fee Application,” seeking approval by the Court of fees and expenses incurred by the Receiver and his staff at Klein and Associates, PLLC (“Klein and Associates”), the Receiver’s forensic accountants, Lone Peak Valuation Group (“Lone Peak”), the Receiver’s legal counsel, Parr Brown Gee & Loveless, P.C. (“Parr Brown”), and the Receiver’s conflict counsel, Manning Curtis Bradshaw & Bednar (“Manning Curtis”), for the period of January 1, 2022 through March 31, 2022 (the “Application Period”), and authorization to pay all authorized fees and expenses from unencumbered funds of the Receivership Estate.

In support hereof, the Receiver states as follows.

I. BACKGROUND

1. The United States commenced this case on November 23, 2015 against Defendants RaPower-3, IAS, LTB1, Johnson, Shepard, and Roger Freeborn.² The United States alleged, and the Court found, among other things, that Defendants operated a massive tax fraud.³

2. On October 31, 2018, the Court entered its *Receivership Order* (“Order”),⁴ which, among other things, appointed the Receiver and continued a previously entered asset freeze.⁵

3. Upon his appointment, and in accordance with the Receivership Order, the Receiver employed Parr Brown as his legal counsel and Lone Peak Valuation Group as his forensic accountants (“Retained Professionals”), and such retention was approved by the Court.⁶ The Court approved appointment of Manning Curtis as conflict counsel, to handle three instances of litigation

² *Complaint*, [Docket No. 2](#), filed Nov. 23, 2015.

³ *Amended and Restated Judgment*, [Docket No. 507](#), filed Nov. 13, 2018; *Findings of Fact and Conclusions of Law*, [Docket No. 467](#), filed Oct. 4, 2018.

⁴ [Docket No. 490](#). A *Corrected Receivership Order*, which corrected formatting errors, was entered the following day. [Docket No. 491](#), filed Nov. 1, 2018.

⁵ *Memorandum Decision and Order Freezing Assets and to Appoint a Receiver*, [Docket No. 444](#), filed Aug. 22, 2018.

⁶ [Docket No. 500](#), filed Nov. 6, 2018.

where Parr Brown has conflicts.⁷

4. During the present Application Period, the Receiver and his professionals have provided actual and necessary services for the benefit of the Receivership Estate which are set forth in greater detail below. The Receiver respectfully submits that the fees and expenses requested in the Fee Application are reasonable and should be approved.

5. The Receiver submitted the Fee Application to Plaintiff for review, comment, and objection prior to filing. The Plaintiff provided comments to the Receiver, and the Plaintiff has informed the Receiver that it has no objection to the fees and expenses as requested herein.

II. SERVICES PERFORMED

6. The actions of the Receiver and his retained professionals during the Application Period are summarized in the *Receiver's Fourteenth Quarterly Status Report* ("Fourteenth Status Report"), filed April 11, 2022.⁸ Below is a brief summary of actions described in the Fourteenth Status Report.

7. One property was sold and an offer received on a second property. The hazardous chemicals were removed and incinerated. Option payments were received on the three properties with a purchase option. Four additional settlements were reached and settlement payments continue to be received. An additional settlement with Heideman & Associates was finalized shortly after the end of the Reporting Period, thus ending a contentious, difficult litigation, and also concluding the last matter assigned to Manning Curtis as conflict counsel. The Court provided guidance on trial preparation in its denials of several summary judgment motions and the Receiver

⁷ [Docket No. 785](#), filed Oct. 11, 2019.

⁸ [Docket No. 1202](#), filed April 11, 2022.

filed motions for summary judgment against four additional defendants. The Tenth Circuit affirmed one appeal; a second appeal is fully briefed and awaiting a ruling; and the seven consolidated appeals relating to commission payments had oral argument set for May 19, 2022. At least two of the defendants in the consolidated appeals have been or will be dismissed.

III. BANK ACCOUNTS OF THE RECEIVERSHIP ESTATE

8. The Receivership Estate maintains a Receivership checking account and a savings account at Wells Fargo Bank. These accounts had a March 31, 2022 combined balance of \$544,986.40.

9. The Thirteenth Fee Application, covering work done during the fourth quarter of 2021, was filed on March 23, 2022.⁹ That application was approved on April 18, 2022.¹⁰

10. If the Court approves this Fee Application, the Receiver will pay the approved fees and expenses from the Receivership account. Given the amount requested, the Receivership account has sufficient funds to pay these fees and expenses.

IV. REQUEST FOR COURT APPROVAL OF FEES AND EXPENSES

11. The Receivership Order provides, in relevant part, that:

72. The Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement which shall be paid from the receivership estate upon approval of a filed motion for the payment of fees and expenses. The parties shall have 14 days to file a response to any such motion.

73. Unless otherwise ordered, within 45 days after the end of each calendar quarter, the Receiver and Retained Personnel shall apply by motion to the Court for compensation and expense reimbursement from the receivership estate (the “Quarterly Fee Motions”). At least 30 days prior to the filing of each Quarterly Fee Motion with the Court, the Receiver shall serve upon counsel for the United States a

⁹ [Docket no. 1197](#), filed March 23, 2022.

¹⁰ [Docket no. 1206](#), filed April 18, 2022.

complete copy of the proposed motion, together with all exhibits and relevant billing information.

74. All Quarterly Fee Motions will be interim and will be subject to cost benefit and final reviews at the close of the receivership. . . .¹¹

12. The Receiver now respectfully requests that the Court enter an Order approving on an interim basis and authorizing payment from the Receivership Estate of the reasonable compensation and expenses outlined herein for the Application Period of January 1, 2022 through March 31, 2022. The total fees and expenses requested for the Receiver and his Retained Professionals are \$139,397.12 which is summarized as follows:¹²

	RECEIVER AND KLEIN AND ASSOCIATES	PARR BROWN	MANNING CURTIS	LONE PEAK
Fees	\$32,525.00 (\$1,375.00) unbilled \$31,150.00	\$78,763.00	\$22,430.50	\$5,744.08
Expenses	\$0.00	\$1,197.40	\$112.14	\$0.00
TOTAL	\$31,150.00	\$78,945.40	\$22,542.64	\$5,744.08

13. The amounts requested by the Receiver includes a voluntary reduction by the Receiver, in an exercise of his billing judgments. The Receiver actually worked a total of 130.1 hours during the Application Period, which includes 5.5 hours of time which are not being billed, amounting to \$1,375.00 in fees in unbilled time. See **Exhibit A-1**.

13. Parr Brown's fees for the Application Period are categorized into four separate matter numbers: (a) Matter 1 – Administration of Receivership Estate; (b) Matter 2 – Asset

¹¹ [Receivership Order ¶¶ 72-74](#)

¹² See Exhibit A-1 (Receiver and Klein and Associates Summary of Fees); Exhibit A-2 (Parr Brown Summary of Fees); Exhibit A-3 (Manning Curtis Summary of Fees); Exhibit B-1 (Invoices for Services of Receiver and Klein and Associates); Exhibit B-2 (Invoices and Expenses for Services of Parr Brown); Exhibit B-3 (Invoices and Expenses for Manning Curtis) and Exhibit B-4 (Invoices and Expenses for Services of Lone Peak).

Analysis and Recovery; (c) Matter 3 – Appeal; (d) Matter 4 – Litigation. *See* **Exhibit A-2**. In this regard the following should be noted:

A. Matter 1 – Administration of Receivership Estate, which includes legal services rendered in assisting the Receiver with his administration of the Receivership Estate.

B. Matter 2 – Asset Analysis and Recovery, which includes legal services rendered to assist the Receiver with the evaluation and, when appropriate, recovery of property of the Receivership Estate, including advising the Receiver on issues related to the Receivership Estate’s interests in real property.

C. Matter 3 – Appeal, which includes legal services rendered regarding the appeals still pending before the United States Court of Appeals for the Tenth Circuit, Case Nos. 21-4064, 21-4065, 21-4071, 21-4072, 21-4075, 21-4076, 21-4077, and 21-4090.

C. Matter 4 – Litigation, which includes legal services rendered filing and prosecuting claims to recover Receivership Property.

14. The fees of Manning Curtis, appointed as conflict counsel for lawsuits against three law firms, are categorized into three separate matter numbers: (a) Matter 1 – Litigation against Snell & Wilmer (which has been resolved by settlement); (b) Matter 2 – Litigation against Heideman and Associates (which has a settlement pending approval); and (c) Matter 3 – Litigation against Donald Reay (which has been resolved by settlement). *See* **Exhibit A-3**.

15. This Fee Application is supported by the following documents. **Exhibit A** contains a summary of the fees incurred for the Receiver and his counsel, with **Exhibit A-1** containing a summary for the Receiver and Klein & Associates, **Exhibit A-2** containing a summary for Parr

Brown, and Exhibit A-3 containing a summary for Manning Curtis. Detailed invoices which describe the work performed by the Receiver, Parr Brown, Manning Curtis, and Lone Peak on a daily basis are attached hereto as Exhibit B, with Exhibit B-1 containing an invoice for the Receiver and his firm's work, Exhibit B-2 containing Parr Brown's invoices, Exhibit B-3 containing Manning Curtis's invoices, and Exhibit B-4 containing Lone Peak's invoices. Summaries of the expenses incurred are included in the invoices.

16. In compliance with ¶ 73 of the Receivership Order, the Fee Application, including the invoices in Exhibit B, were provided to Plaintiff and after review and comment, the United States has informed the Receiver it has no objection to the fees and expenses requested.

17. The Receiver and his professionals understand that the authorization and payment of fees and expenses is interim in nature. All fees and expenses allowed on an interim basis will be subject to final review at the close of the case and the discharge of the Receiver when the Receiver files a final accounting and final fee application.

18. The Receiver and his Retained Professionals each certify that they have read the Fee Application and that to the best of their knowledge, information, and belief formed after reasonable inquiry, the Fee Application and all fees and expenses therein are true and accurate.

19. The Receiver and his Retained Professionals affirm that the fees and expenses included herein were incurred in the best interests of the Receivership Estate and that neither the Receiver nor any of his Retained Professionals have entered into an any agreement, written or oral, express or implied, with any person or entity concerning the amount of compensation paid or to be paid from the Receivership Estate, or any sharing thereof.

V. CONCLUSION

20. The Receiver respectfully submits this Fee Application and requests that the Court enter an Order approving the actual and necessary fees and expenses incurred on behalf of and for the benefit of the Receivership Estate. For all the reasons stated, the Receiver submits that he and his Retained Professionals have provided a significant benefit to the Receivership Estate. There are sufficient funds in the Operating Account to pay the fees and expenses requested herein.

21. A proposed Order is attached hereto as **Exhibit C**.

The Receiver, Klein and Associates, Parr Brown, Manning Curtis, and Lone Peak verify under penalty of perjury that the foregoing is true and correct.

DATED this 13th day of May 2022.

RECEIVER

/s/ Wayne Klein (with permission)
WAYNE KLEIN, Receiver

PARR BROWN GEE & LOVELESS, P.C.

/s/ Jeffery A. Balls
Jonathan O. Hafen
Jeffery Balls
Cynthia Love
Attorneys for R. Wayne Klein, Receiver

MANNING CURTIS BRADSHAW & BEDNAR

/s/ David Castleberry (with permission)
David Castleberry
Conflict Attorneys for R. Wayne Klein, Receiver

LONE PEAK VALUATION GROUP

/s/ Jeffrey Pickett (with permission)
Jeffrey Pickett

CERTIFICATE OF SERVICE

I hereby certify that the above **FOURTEENTH INTERIM FEE APPLICATION FOR RECEIVER AND RECEIVER'S PROFESSIONALS FOR SERVICES RENDERED FROM JANUARY 1, 2022 THROUGH MARCH 31, 2022** was filed with the Court on this 13th day of May, 2022, and served via ECF on all parties who have requested notice in this case.

Notice was also mailed by U.S. Mail to the following Receivership Defendants:

Neldon Johnson
PO Box 95332
South Jordan, UT 84095

R. Gregory Shepard
10672 Winter Haven Court
South Jordan, UT 84123

/s/ Lori Stumpf