

Jonathan O. Hafen (6096) (jhafen@parrbrown.com)
Jeffery A. Balls (12437) (jballs@parrbrown.com)
PARR BROWN GEE & LOVELESS, P.C.
101 South 200 East, Suite 700
Salt Lake City, Utah 84111-3105
Telephone: (801) 532-7840

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.

**SEVENTEENTH INTERIM FEE
APPLICATION FOR RECEIVER AND
RECEIVER'S PROFESSIONALS FOR
SERVICES RENDERED FROM
OCTOBER 1, 2022 THROUGH
DECEMBER 31, 2022**

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

District Judge David Nuffer

In accordance with the Corrected Receivership Order (the “Receivership Order”),¹ R. Wayne Klein, the Court-Appointed Receiver (the “Receiver”) of RaPower-3, LLC and related entities (“Receivership Defendants”), hereby submits this seventeenth 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”) and the Receiver’s legal counsel, Parr Brown Gee & Loveless, P.C. (“Parr Brown”), for the period of October 1, 2022 through

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

December 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

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.

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

³Amended 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.

⁵Memorandum 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.

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 Seventeenth Quarterly Status Report* ("Seventeenth Status Report"), filed January 17, 2023.⁷ That report indicates that the final available property was sold, two additional settlements were achieved, a seventh judgment was assigned to the United States, and preparations continued for remaining trials, including a trial in early January 2023 (which occurred), the results of which will be described in the next status report.

7. The number of tasks remaining for the Receivership is decreasing and the amount of time required to manage the Receivership was significantly reduced during the quarter. However, preparation for upcoming trials will require significant time by the Receiver and his counsel.

III. BANK ACCOUNTS OF THE RECEIVERSHIP ESTATE

8. The Receivership Estate maintains a Receivership checking account and a savings account at Wells Fargo Bank and a money market account at Wells Fargo Advisors. These accounts had a December 31, 2022 combined balance of \$707,299.22.

⁷Docket no. 1242, filed January 17, 2023.

9. The Sixteenth Fee Application, covering work done during the third quarter of 2022, was approved on November 28, 2022.⁸ These amounts were paid during the Reporting Period.

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 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. . . .⁹

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 October 1, 2022

⁸Docket no. 1235, filed November 28, 2022.

⁹[Receivership Order ¶¶ 72-74.](#)

through December 31, 2022. The total fees and expenses requested for the Receiver and his Retained Professionals are \$60,280.90, which are summarized in the table below:

	RECEIVER	PARR BROWN	LONE PEAK
Fees	\$10,650.00	\$47,295.50	\$0.00
Expenses	\$0.00	\$2,335.40	\$0.00
TOTAL	\$10,650.00	\$49,630.90	\$0.00

13. A detailed description of the work by the Receiver is at **Exhibit A**. The invoice reflects 7.5 hours of work by the Receiver that is not being billed, which is valued at \$1,875.00.

13. Detailed invoices showing Parr Brown's work are attached as **Exhibit B**. Summaries of the expenses incurred are included in the invoices.¹⁰

14. Lone Peak Valuation Group had no billable time during the quarter.

15. In compliance with ¶ 73 of the Receivership Order, the Fee Application, including the invoices in **Exhibits A & 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.

16. 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.

17. 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.

¹⁰The law firm Manning Curtis Bradshaw & Bednar was approved as conflicts counsel. All matters that were being handled by conflicts counsel have been resolved and no billable time was reported by Manning Curtis.

18. The Receiver and his Retained Professionals affirm that the fees and expenses included herein were incurred in the best interests of the Receivership Estate.

V. CONCLUSION

19. 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.

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

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

DATED this 21st day of February, 2023.

RECEIVER

/s/ Wayne Klein, Receiver
WAYNE KLEIN, Receiver

PARR BROWN GEE & LOVELESS, P.C.

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

CERTIFICATE OF SERVICE

I hereby certify that the above SEVENTEENTH INTERIM FEE APPLICATION FOR RECEIVER AND RECEIVER'S PROFESSIONALS FOR SERVICES RENDERED FROM OCTOBER 1, 2022 THROUGH DECEMBER 31, 2022 was filed with the Court on this 21st day of February, 2023, 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
Post Office Box 95332
South Jordan, Utah 84095

R. Gregory Shepard
4933 South Murray Boulevard Apartment U28
Salt Lake City, Utah 84123-2641

/s/ Wendy V. Tuckett