

Jonathan O. Hafen (6096) ([jhafen@parrbrown.com](mailto:jhafen@parrbrown.com))  
Jeffery A. Balls (12437) ([mballs@parrbrown.com](mailto:mballs@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*

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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 FOURTH MOTION  
TO ASSIGN JUDGMENTS TO  
PLAINTIFF, UNITED STATES

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

District Judge David Nuffer

R. Wayne Klein, the court-appointed Receiver (the "Receiver") of RaPower-3, LLC and others (collectively "Receivership Defendants"), hereby submits this Fourth Motion to Assign Judgments to Plaintiff, United States. In support hereof, the Receiver states as follows:

BACKGROUND

1. On October 31, 2018, the Receivership Estate was created with the entry of the Receivership Order.<sup>1</sup> Pursuant to the Order, the Receiver was appointed, and all the Receivership Defendants' assets were placed in the Receiver's control. The Order authorizes and

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<sup>1</sup>Docket No. 490. A Corrected Receivership Order ("CRO") was issued the following day. See Docket No. 491.

empowers the Receiver to, among other things, investigate, prosecute, and compromise actions to recover Receivership Property.<sup>2</sup>

2. On May 24, 2019, the court granted the Receiver leave to commence litigation and the Receiver subsequently filed over 80 lawsuits against persons who improperly received funds from Receivership Entities. Numerous judgments in favor of the Receiver have been obtained in that litigation, including default judgments, stipulated judgments, summary judgments, and trial judgments.

3. After consulting with the United States, the Receiver and the United States agree that amounts owed on most of these judgments can be collected most efficiently and cost-effectively by the United States. The court has previously approved the assignment to the United States of seven summary judgments,<sup>3</sup> the judgment against Matthew Shepard,<sup>4</sup> and ten judgments (trial judgments and default judgments) and two delinquent settlement agreements.<sup>5</sup>

4. On August 7, 2023, the Tenth Circuit affirmed six judgments this court previously entered against defendants. Due to the moderate success the United States has achieved in collecting on prior judgments, the United States has agreed to accept responsibility for collecting on five of these six additional judgments granted to the Receiver and affirmed by the Tenth Circuit.

5. One of the judgments affirmed on appeal is not being assigned to the United States at this time. The judgment against Roger Hamblin and his company, Digital Wave Energy, is in

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<sup>2</sup>*Id.* at ¶ 59.

<sup>3</sup>Docket no. 1214, filed May 31, 2022.

<sup>4</sup>Docket no. 1236, filed December 5, 2022.

<sup>5</sup>Docket no. 1252, filed June 28, 2023.

the amount of \$481,100.64, along with \$85,318.56 in pre-judgment interest.<sup>6</sup> Mr. Hamblin died in January 2022. The Receiver will investigate whether a personal representative should be appointed for Mr. Hamblin's estate, what assets Digital Wave Energy possesses, and what transfers have occurred since the Receiver's lawsuit was filed.

6. Therefore, the Receiver asks the court to enter the proposed order, attached to this motion as Exhibit A, assigning to the United States certain judgments granted to the Receiver.

7. The United States supports this motion.

#### JUDGMENTS TO BE ASSIGNED

8. The judgments to be assigned to the United States pursuant to the instant motion are listed in the table below.

Name	Case No.	Judgment Amount	Pre-Judgment Interest	Amounts Recovered in Garnishments
Armand, Jean	2:19-cv-00779	\$13,760.15	\$2,107.36	\$1,061.93
Finkes, Reinhold	2:19-cv-00761	\$61,905.40	\$8,556.51	\$201.30
Hadderton, Carey	2:19-cv-00704	\$87,522.67	\$12,061.34	\$0.00
Howell, John	2:19-cv-00705	\$307,832.87	\$39,542.42	\$52,933.67
Roe, Janet	2:19-cv-00719	\$47,313.34	\$6,520.17	\$0.00

9. In its collection efforts the United States will give the judgment debtors credit for amounts the Receiver previously recovered in garnishment actions.

#### ANALYSIS

A key mandate of the CRO to the Receiver is to "take custody, control, and possession of all Receivership Property."<sup>7</sup> In pursuit of that mandate, the Receiver was empowered "to sue for

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<sup>6</sup>Case no. 2:19-cv-783 (D. Utah).

<sup>7</sup>CRO ¶ 13(b).

*and collect*, recover, and take into possession from third parties all Receivership Property."<sup>8</sup> The judgments to be assigned are property of the Receivership Estate. As such, the judgments are under the exclusive jurisdiction and possession of the court.<sup>9</sup>

The CRO provides that the Receiver *may* transfer to others any Receivership Property (other than real estate) in the ordinary course of business, "after consultation with counsel for the United States" and "without further order of this Court."<sup>10</sup> In so doing, the Receiver should act "in the manner the Receiver deems most beneficial to the receivership estate and with due regard for the realization of the true and proper value of such Receivership Property."<sup>11</sup> The CRO also provides that the receiver may seek "further order of this Court"<sup>12</sup> regarding Receivership Property and "take such other action as may be approved by this Court."<sup>13</sup>

For the reasons described in the Receiver's first motion to assign judgments to the United States,<sup>14</sup> the Receiver believes assignment of these judgments to the United States represents the best use of Receivership assets and will maximize the amounts that will be paid to the United States Treasury—who is the primary beneficiary of this Receivership. The United States supports this motion.

If assignment of these judgments is approved, the Receiver will report to the court annually on the amount the United States has collected on these and previously assigned judgments. This will ensure that collections by the United States are credited to the second

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<sup>8</sup>*Id.* (emphasis added).

<sup>9</sup>*Id.* ¶ 2.

<sup>10</sup>*Id.* ¶ 54.

<sup>11</sup>*Id.*

<sup>12</sup>*Id.* ¶ 13(c).

<sup>13</sup>*Id.* ¶ 13(r).

<sup>14</sup>Docket no. 1200, filed Apr. 5, 2022.

priority under the CRO. Upon approval, the Receiver will file a notice of assignment in each of the cases underlying the assigned judgments.

CONCLUSION

The Receiver moves the court to approve the assignment of the judgments listed above to the United States. A proposed order is attached as Exhibit A.

DATED this 7th day of November, 2023.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Jeffery A. Balls

Jonathan O. Hafen

Jeffery A. Balls

*Attorneys for R. Wayne Klein, Receiver*

CERTIFICATE OF SERVICE

I hereby certify that the above **RECEIVER'S FOURTH MOTION TO ASSIGN JUDGMENTS TO PLAINTIFF, UNITED STATES** was filed with the court on this 7th day of November, 2023 and served via ECF on all parties who have requested notice in this case. A copy was also sent by mail to:<sup>15</sup>

Neldon Johnson  
Post Office Box 95332  
South Jordan, Utah 84095

/s/ Wendy V. Tuckett

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<sup>15</sup>Mr. Greg Shepard passed away in late August. The Receiver has ceased sending mailings to Mr. Shepard.