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*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.

**NOTICE OF INTENT TO SERVE  
SUBPOENA TO PACIFIC STOCK  
TRANSFER COMPANY**

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

The Honorable David Nuffer

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Pursuant to Rule 45(a)(4) of the *Federal Rules of Civil Procedure*, Wayne Klein, the Court-Appointed Receiver (the “Receiver”) of RaPower-3, LLC, International Automated Systems, Inc., and LTB1, LLC (collectively “RaPower-3”), as well as certain subsidiaries and entities affiliated with RaPower-3 and the assets of Neldon Johnson (“Johnson”) and R. Gregory Shepard (“Shepard”), hereby gives notice of his intent to serve a Subpoena for the production of documents upon the Pacific Stock Transfer Company. A copy of the foregoing subpoena is

attached hereto as Exhibit A.

DATED this 10th day of December, 2018.

**PARR BROWN GEE & LOVELESS**

/s/ Michael S. Lehr  
Jonathan O. Hafen  
Joseph M.R. Covey  
Cynthia Love  
Michael S. Lehr  
*Attorneys for Receiver*

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the above **NOTICE OF INTENT TO SERVE SUBPOENA TO PACIFIC STOCK TRANSFER COMPANY** was electronically filed with the Clerk of the Court through the CM/ECF system on December 10, 2018, which sent notice of the electronic filing to all counsel of record.

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

# **EXHIBIT “A”**

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**SUBPOENA TO PACIFIC STOCK  
TRANSFER COMPANY**

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

The Honorable David Nuffer

---

TO: Pacific Stock Transfer Company  
6725 Via Austi Parkway, Suite 300  
Las Vegas, NV 89119

YOU ARE HEREBY COMMANDED to produce documents and things, including without limitation electronically-stored information, described in Exhibit A attached hereto that are in your possession, custody, and control and to mail or otherwise deliver the copies to Michael Lehr, Parr Brown Gee & Loveless, P.C., 101 S. 200 E., Suite 700, Salt Lake City, Utah

84111, mlehr@parrbrown.com, on or before January 4, 2019. The text of *Federal Rules of Civil Procedure* 45(d), (e), and (g), along with DUCiv 37-1 are attached hereto as Exhibit B.

DATED this \_\_\_ day of December, 2018.

**PARR BROWN GEE & LOVELESS**

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Jonathan O. Hafen  
Joseph M.R. Covey  
Cynthia Love  
Michael S. Lehr  
*Attorneys for Receiver*

**EXHIBIT A**

**Definitions**

As used below, the following terms have these definitions:

A. The term “YOU,” “YOUR,” “YOURS” shall mean and refer to Pacific Stock Transfer Company including without limitation its agents, employees, consultants, officers, managers, and attorneys, and any other person, entity, or representative acting for or on its behalf.

B. The term “IAUS” shall mean and refer to Receivership Defendant International Automated System, Inc., in the above-captioned lawsuit, including without limitation any person or entity acting as its agent or representative.

C. The terms “DOCUMENT” and “DOCUMENTS” shall mean and refer to anything that may be considered a document or tangible thing within the meaning of Rule 34 of the *Federal Rules of Civil Procedure*. This definition includes, but is not limited to, any and all writings, recordings, photographs, and other records, including originals and duplicates. To illustrate, “documents” include, but are not limited to, memoranda, communications, letters, written materials, reports, records, personal calendars and diaries, minutes, contracts, memoranda or electronic recordings of telephonic or personal communications, tape recordings, films, prints, negatives, stenographic notes, maps, drawings, plans, schematics, blueprints, sketches, email communications, documents evidencing payment, intraoffice and interoffice memoranda, memoranda for file, computer-stored data, and computer printouts.

The terms “DOCUMENT” and “DOCUMENTS” shall also include all non-identical copies (whether different from the originals because of any alterations, notes, comments, or other material contained therein or attached thereto or otherwise) and drafts of all written, printed, recorded, or graphic matter of every kind and description, together with any attachment thereto or enclosure therewith.

D. The term “COMMUNICATIONS” shall mean any oral or written, formal or informal, at any time or place and under any circumstances whatsoever, by which information of any nature was transmitted or transferred, including, without limitation, the giving or exchanging of information by speech, gestures, documents, or any other means, or any request for information by any such means.

E. “AND” and “OR” shall have both conjunctive and disjunctive meanings.

F. “RELATE” and “RELATED” shall mean—in whole or in part—constituting, containing, discussing, describing, analyzing, identifying, evidence, referring to, or stating.

**Documents Requested**

1. Any and all agreements between you and IAUS, including but not limited to, any Transfer Agency Agreement.
2. All documents and communications between you and IAUS related to any Transfer Agency Agreement or trading.
3. Any and all documents identifying or otherwise indicating other entities that have served as transfer agents for IAUS, including but not limited to, any documents containing the dates that each transfer agent provided services to IAUS and contact information for the transfer agents.
4. Any and all documents identifying current market makers for IAUS stock, including but not limited to, any documents containing contact information for the market makers.
5. Any and all documents identifying any broker-dealers who have served as market makers for IAUS since November 1, 2015, including but not limited to, any documents containing contact information for the broker-dealers.
6. Any and all documents that refer or relate to the number of current shareholders of IAUS and the number of shares outstanding as of October 31, 2018.
7. Any and all documents that refer or relate to the IAUS stock ownership of Receivership Defendants and family members of Receivership Defendants (hereafter "Persons")  
The Persons covered by this request are:
  - a. Neldon P. Johnson
  - b. Glenda Johnson
  - c. LaGrand Johnson
  - d. Randale Johnson
  - e. Justin Horton
  - f. Gregory Shepard
  - g. Diane Shepard
  - h. Matthew Shepard
  - i. Mark Shepard



Including, but not limited to, documents with information regarding:

- i. The number of shares (common and preferred), warrants, options, or other securities (“Securities”) of IAUS held by each Person on November 1, 2015;
- ii. The number and type of Securities transferred to each Person after November 1, 2015, including:
  - a. The date of the transfer,
  - b. The identity of the transferor,
  - c. How the transfer was accomplished (eg., private transfer of which the transfer agent was informed, open market purchase through a broker-dealer, issuance of new shares, etc.),
  - d. The price of the Securities or total amount of each transfer, and
  - e. How payment was made by the Person to the transferor.
- iii. The number of Securities sold or transferred by each Person after November 1, 2015, including:
  - a. The date of the transfer,
  - b. The identity of the transferee,
  - c. How the transfer was accomplished,
  - d. The price of the Securities or total amount of each transfer, and
  - e. How payment was made from the transferee to the Person.

8. Any and all documents related to monthly trading volume of IAUS for the period since November 1, 2015, including but not limited to, documents indicating the trading volume reflected by transactions involving Persons (i.e., the Johnson family).

9. Any and all documents related to Rule 144 sales by Persons, including but not limited to, legal opinions regarding the sales.

## **Exhibit B: Federal Rule of Civil Procedure 45(d),(e), and (g)**

### **(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) *Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney’s fees—on a party or attorney who fails to comply.

#### **(2) *Command to Produce Materials or Permit Inspection.***

**(A) *Appearance Not Required.*** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) *Objections.*** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.

#### **(3) *Quashing or Modifying a Subpoena.***

**(A) *When Required.*** On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person to comply beyond the geographical limits specified in Rule 45(c);

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) *When Permitted.*** To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information; or

**(ii)** disclosing an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party.

**(C) *Specifying Conditions as an Alternative.*** In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

### **(e) Duties in Responding to a Subpoena.**

**(1) *Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

**(A) *Documents.*** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) *Form for Producing Electronically Stored Information Not Specified.*** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) *Electronically Stored Information Produced in Only One Form.*** The person responding need not produce the same electronically stored information in more than one form.

**(D) *Inaccessible Electronically Stored Information.*** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

#### **(2) *Claiming Privilege or Protection.***

**(A) *Information Withheld.*** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) *Information Produced.*** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

### **(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

### **District of Utah Local Rule 37-1**

(a) Discovery Disputes.

(1) The parties must make reasonable efforts without court assistance to resolve a dispute arising under Fed. R. Civ. P. 26-37 and 45. At a minimum, those efforts must include a prompt written communication sent to the opposing party:

(A) identifying the discovery disclosure/request(s) at issue, the responses thereto, and specifying why those responses/objections are inadequate, and;

(B) requesting to meet and confer, either in person or by telephone, with alternative dates and times to do so.

(2) If the parties cannot resolve the dispute, and they wish to have the Court mediate the dispute in accordance with Fed. R. Civ. P. 16(b)(3)(v), the parties (either individually or jointly) may contact chambers and request a discovery dispute conference.

(3) If the parties wish for the court to resolve the matter by order, the parties (either individually or jointly) must file a Short Form Discovery Motion, which should not exceed 500 words exclusive of caption and signature block.

(4) The Short Form Discovery Motion must include a certification that the parties made reasonable efforts to reach agreement on the disputed matters and recite the date, time, and place of such consultation and the names of all participating parties or attorneys. The filing party should include a copy of the offending discovery request/response (if it exists) as an exhibit to the Short Form Motion. Each party should also e-mail chambers a proposed order setting forth the relief requested in a word processing format.

(5) The parties must request expedited treatment as additional relief for the motion in CM/ECF to facilitate resolution of the dispute as soon as practicable. (After clicking the primary event, click Expedite.)

(6) The opposing party must file its response five business days after the filing of the Motion, unless otherwise ordered. Any opposition should not exceed 500 words exclusive of caption and signature block.

(7) To resolve the dispute, the court may:

(A) decide the issue on the basis of the Short Form Discovery Motion after hearing from the parties to the dispute, either in writing or at a hearing, consistent with DUCivR 7-1(f);

(B) set a hearing, telephonic or otherwise, upon receipt of the Motion without waiting for any Opposition; and/or

(C) request further briefing and set a briefing schedule.

(8) If any party to the dispute believes it needs extended briefing, it should request such briefing in the short form motion or at a hearing, if one takes place. This request should accompany, and not replace, the substantive argument.

(9) A party subpoenaing a non-party must include a copy of this rule with the subpoena. Any motion to quash, motion for a protective order, or motion to compel a subpoena will follow this procedure

(10) If disputes arise during a deposition that any party or witness believes can most efficiently be resolved by contacting the Court by phone, including disputes that give rise to a motion being made under Rule 30(d)(3), the parties to the deposition shall call the assigned judge and not wait to file a Short Form Discovery Motion.

(11) Any objection to a magistrate judge's order must be made according to Federal Rule of Civil Procedure 72(a), but must be made within fourteen (14) days of the magistrate judge's oral or written ruling, whichever comes first, and must request expedited treatment. DUCivR 72-3 continues to govern the handling of objections.