

Jonathan O. Hafen (6096) (jhafen@parrbrown.com)
Joseph M.R. Covey (7492) (jcovey@parrbrown.com)
Cynthia D. Love (14703) (clove@parrbrown.com)
Michael S. Lehr (16496) (mlehr@parrbrown.com)
PARR BROWN GEE & LOVELESS, P.C.
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Telephone: (801) 532-7840
Facsimile: (801) 532 7750

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.

**NOTICE OF INTENT TO SERVE
SUBPOENA TO CYPRUS CREDIT
UNION**

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

The Honorable David Nuffer

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 Cyprus Credit Union, Inc. A copy of the foregoing subpoena is attached hereto as Exhibit A.

DATED this 18th day of January, 2019.

PARR BROWN GEE & LOVELESS

/s/ Michael S. Lehr

Jonathan O. Hafen

Joseph M.R. Covey

Cynthia Love

Michael S. Lehr

Attorneys for Receiver

IT IS HEREBY CERTIFIED that service of the above **NOTICE OF INTENT TO SERVE SUBPOENA TO CYPRUS CREDIT UNION** was electronically filed with the Clerk of the Court through the CM/ECF system on January 18th, 2019, which sent notice of the electronic filing to all counsel of record.

/s/ Michael S. Lehr _____

EXHIBIT “A”

Jonathan O. Hafen (6096) (jhafen@parrbrown.com)
Joseph M.R. Covey (7492) (jcovey@parrbrown.com)
Cynthia D. Love (14703) (clove@parrbrown.com)
Michael S. Lehr (16496) (mlehr@parrbrown.com)

PARR BROWN GEE & LOVELESS, P.C.

101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Telephone: (801) 532-7840
Facsimile: (801) 532 7750

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

Defendants.

**SUBPOENA TO CYPRUS CREDIT
UNION**

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

The Honorable David Nuffer

TO: Cyprus Credit Union, Inc.
3876 W. Center View Way
West Jordan, UT 84084

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 February 8, 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 ___th day of January, 2019.

PARR BROWN GEE & LOVELESS

/s/
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 the Cyprus Credit Union Inc., 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 “Receivership Entities” shall mean and refer to the entities listed in the table below:

Name	TIN	Address¹
RaPower-3, LLC	27-1522043	2730 W. 4000 South, Oasis, UT 84624
International Automated Systems, Inc.	87-0447580	2730 W. 4000 South, Oasis, UT 84624
LTB1, LLC	10-33631175	4035 S. 4000 West, Deseret, UT 84624
Assets of R. Gregory Shepard	Unknown	858 W. Clover Meadow Dr., Salt Lake City, UT 84123
Assets of Neldon Johnson	Unknown	2730 W. 4000 South, Oasis, UT 84624
Solco I, LLC	45-2798133	2730 W. 4000 South, Oasis, UT 84624
XSun Energy, LLC	45-1774432	2730 W. 4000 South, Oasis, UT 84624
Cobblestone Centre, LC	46-4030485	2730 W. 4000 South, Oasis, UT 84624
DCL-16A, Inc.	None	2730 W. 4000 South, Oasis, UT 84624
DCL16BLT, Inc.	27-1521997	2730 W. 4000 South, Oasis, UT 84624
LTB O&M, LLC	82-0854737	2730 W. 4000 South, Oasis, UT 84624
N.P. Johnson Family Limited Partnership	Unknown	2730 W. 4000 South, Oasis, UT 84624
Shepard Energy	None	858 W. Clover Meadow Dr., Salt Lake City, UT 84123
Shepard Global, Inc.	90-0899407	858 W. Clover Meadow Dr., Salt Lake City, UT 84123
Solstice Enterprises, Inc.	None	2730 W. 4000 South, Oasis, UT 84624
Black Night Enterprises	None	2730 W. 4000 South, Oasis, UT 84624
Starlight Enterprises	None	2730 W. 4000 South, Oasis, UT 84624

C. “Individual Defendants” shall mean and refer to Neldon Johnson,² and R. Gregory Shepard.³

D. 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*

¹ Most of these entities use multiple addresses or have addresses for registered agents that differ from the addresses listed.

² Address: 2730 W. 4000 South, Oasis, UT 84624.

³ Address: 858 W. Clover Meadow Dr., Salt Lake City, UT 84123.

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.

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. Bank statements for any of the Receivership Entities or Individual Defendants from January 1, 2012 to present.

2. Documents related to deposit tickets, deposited items, checks, and wire transfers for any of the Receivership Entities or Individual Defendants from January 1, 2012 to present.

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.