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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.

**FIRST INTERIM FEE APPLICATION
FOR RECEIVER AND RECEIVER'S
PROFESSIONALS FOR SERVICES
RENDERED FROM OCTOBER 31,
2018 THROUGH DECEMBER 31, 2018**

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

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 (“RaPower”), International Automated Systems, Inc. (“IAS”), and LTB1, LLC (“LTB1”) (collectively, the

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

“Receivership Entities”), as well as certain of their subsidiaries and affiliates (“Related Entities”) and the assets of Neldon Johnson (“Johnson”) and R. Gregory Shepard (“Shepard”) (collectively “Receivership Defendants”), hereby submits this first 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”), and the Receiver’s legal counsel, Parr Brown Gee & Loveless, P.C. (“Parr Brown”), for the period of October 31, 2018 through December 31, 2018 (the “Application Period”), and authorization to pay all authorized fees and expenses from unencumbered funds of the Receivership Estate. This Fee Application was provided to counsel for the United States (“Plaintiff”) for review, comment and objection prior to filing. The Receiver understands that there is no objection by the United States to relief sought herein.

In support hereof, the Receiver states as follows.

I. BACKGROUND

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

2. Defendants have filed two *Notices of Appeal*.⁴

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. 445](#), filed Aug. 27, 2018 and [Docket No. 472](#), filed Oct. 10, 2018.

3. On October 31, 2018, the Court entered its *Receivership Order* (“Order”),⁵ which, among other things, appointed the Receiver and continued a previously-entered asset freeze.⁶

4. 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, and such retention was approved by the Court.⁷

5. 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.

6. As noted above, the Receiver submitted the Fee Application to Plaintiff for review, comment and objection prior to filing. The Plaintiff has informed the Receiver that it has no objection to the fees and expenses as requested herein.

⁵ [Docket No. 490](#). A *Corrected Receivership Order*, which corrected formatting errors, was entered the following day. [Docket No. 491](#), filed Nov. 1, 2018.

⁶ *Memorandum Decision and Order Freezing Assets and to Appoint a Receiver*, [Docket No. 444](#), filed Aug. 22, 2018.

⁷ [Docket No. 500](#), filed Nov. 6, 2018.

II. SERVICES PERFORMED

7. To date, the Receiver has filed two special reports with the Court: *Receiver's Corrected Recommendation on Living Allowances for Defendants Johnson and Shepard*⁸ and *Receiver's Accounting, Recommendation on Publicly-Traded Status of International Automated Systems, and Liquidation Plan* ("Initial Accounting Report").⁹

8. The Receiver filed his *Initial Quarterly Status Report*, which reports on developments for the period of October 31, 2018 through December 31, 2018 (the "First Status Report").¹⁰ The First Status Report provides a comprehensive description of the services performed by the Receiver and his professionals during the Application Period and are incorporated herein by reference.

9. In general, however, during the Application Period, the Receiver and his professionals primarily focused on the following:

A. Seizing Receivership Bank Accounts, Obtaining Bank Records: The Receiver located bank accounts of the Receivership Entities and seized \$1.7 million in those accounts. Those funds were deposited into a Receivership bank account. Requests for records were sent to all financial institutions suspected of having or having had bank accounts for Receivership Entities. Most of these records have been received and are being analyzed by Lone Peak, the forensic accountants. Funds owed to Defendants by third parties have been recovered.

⁸ [Docket No. 543-1](#), filed Dec. 14, 2018. This replaced a November 30, 2018 recommendation that had a calculation error ([Docket No. 526](#)).

⁹ [Docket No. 552](#), filed Dec. 31, 2018.

¹⁰ [Docket No. 557](#), filed Jan 28, 2019.

B. Receivership Administration: Attending to organizational issues related to creation of the Receivership Estate, including: 1) obtaining a tax identification number to ensure the Receivership Estate is authorized as a Qualified Settlement Fund, 2) submitting required notices to the IRS relating to creation of the receivership estate, 3) notifying postal authorities to direct Receivership Entity mail to the Receiver.

C. Serving Notice of the Receivership: Giving notice of the Receivership to government agencies, parties, and other persons against whom the Receiver might assert claims or request information including: 1) officers, directors, members, managers and suspected employees of subsidiaries and affiliates, 2) district courts in California and Texas, 3) county recorder offices in Utah County, Utah, Millard County, Utah, San Bernardino County, California, Los Angeles County, California, and Howard County, Texas, 4) the Federal Aviation Administration, 5) airport managers, fixed based operators, and aircraft mechanics, 6) occupants of real estate listed in the Receivership Order, and 7) filing a special report (Form 8-K) with the Securities and Exchange Commission to disclose current information about IAS being placed into receivership.

D. Identifying and Locating Assets: Identifying assets believed to be in the Receivership Estate including: 1) inspecting real properties in Utah and California identified in the Receivership Order, 2) obtaining and analyzing historical transactional documents for real property listed in the Receivership Order, 3) locating aircraft owned by Receivership Defendants and additional aircraft that might belong in the Receivership Estate, 4) obtaining and identifying historical transactional documents relating to the aircraft, 5) seeking and obtaining Court approval to release real estate that should not be

part of the Receivership Estate, 6) determining the status of mortgage liens against the Texas real estate; 7) analyzing the granting of patents to Johnson and analyzing the transfers of patents and intellectual property to others by Johnson, and 8) analyzing the ownership and transfers of shares and warrants issued by IAS.

E. Investigation: The Receiver has requested (and reviewed) records or issued subpoenas for records and testimony from: 1) Neldon Johnson, 2) Glenda Johnson, 3) multiple attorneys who have represented Receivership Entities, 4) attorneys who may have been paid by Receivership Entities to represent other parties (such as lens purchasers), 5) accountants and tax preparers who have performed work for Receivership Defendants, 6) tax preparers who may have been paid by Receivership Entities to prepare tax returns for lens purchasers, 7) charitable organizations who received contributions from Receivership Defendants, 8) the transfer agent for IAS, 9) affiliates of Johnson who have participated in transferring assets of the Receivership Estate, 10) persons believed to have information about the creation of and transfers of assets to foreign entities, and 11) the United States (information relevant to operation of the Receivership Estate and recovery of assets).

F. Litigation and Legal Issues: The Receiver has participated in numerous legal issues, including: 1) participating in contempt proceedings brought by the United States against Shepard, 2) filing an objection to Receivership Defendants' motion to lift the asset freeze, 3) limited participation in mediation efforts relating to the appeal, 4) meeting with attorneys who represented RaPower in its bankruptcy petition relating to their seeking of fees for that work, 5) meetings, call, and correspondence with attorneys who have represented Receivership Defendants in the past, 6) filing notices of stay in litigation

involving Receivership Defendants that was pending, and 7) stipulating to the dismissal of litigation filed by Johnson against Millard County, Utah and several public officials.

G. Communications, Public Information: The Receiver has had multiple communications with lens purchasers regarding the effects of creation of the Receivership Estate, whether they will receive funds recovered by the Receiver, and the status of litigation. The Receiver created a website that contains information about the Receivership, posts key Court rulings, and provides information for lens purchasers. The websites of RaPower and IAS have been closed. The Receiver notified creditors who are owed money by Receivership Entities that they will not be paid by Receivership funds.

H. Analysis of Compliance with Securities Laws: The Receiver analyzed RaPower's marketing of lenses, concluding that the sale of lenses constituted investment contract securities. As a result of that analysis, the Receiver has evaluated liabilities that might be faced by Receivership Entities and also recoveries that the Receiver might obtain.

I. Report on Cooperation by Receivership Defendants: The Initial Status Report includes an extensive discussion of the Receiver's evaluation of the extent to which Receivership Defendants and others have failed to cooperate with the Receiver in his work.

III. BANK ACCOUNTS OF THE RECEIVERSHIP ESTATE

10. The Receivership Estate maintains a Receivership bank accounts. This account had a December 31, 2018 balance in the total amount of \$1,762,188.57.

11. If the Court approves this Fee Application, the Receiver would 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

12. 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 Receivers 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. . .

¹¹

13. 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 31, 2018 through December 31, 2018. The total fees and out-of-pocket expenses requested for the Receiver and his professionals is in the total amount of \$95,304.70, which is summarized as follows:¹²

¹¹ [Receivership Order ¶¶ 72-74.](#)

¹² See Exhibit A-1 (Receiver and Klein and Associates Summary of Fees and Expenses); Exhibit A-2 (Parr Brown Summary of Fees); Exhibit B-1 (Invoices for Services of Receiver and Klein and Associates); Exhibit B-2 (Invoices for Services of Parr Brown); Exhibit C-2 (Invoices for Services of Lone Peak); Exhibit C-1 (Invoice of Out-of-Pocket Expenses for Receiver and Klein and Associates); Exhibit C-2 (Invoice of Out-of-Pocket Expenses for Parr Brown).

| | RECEIVER AND KLEIN AND ASSOCIATES | PARR BROWN | LONE PEAK |
|--------------|---|--|--|
| Fees | \$68,905.00 <u>(\$17,425.00) unbilled</u> \$52,855.00 | \$34,751.00 <u>(\$4,513.25) voluntary</u> reduction \$30,237.75 | \$11,453.75 <u>(\$1,145.37) voluntary</u> reduction \$10,308.38 |
| Expenses | \$1,151.85 | \$751.72 | \$0.00 |
| TOTAL | \$54,006.85 | \$30,989.47 | \$10,308.38 |

14. The amounts requested include voluntary reductions made by the respective professionals in an exercise of their billing judgment. Reductions are summarized as follows:

A. The Receiver and the staff of Klein & Associates actually worked a total of 281.9 hours during the Application Period and during the two months before the Receiver was appointed, which includes 64.2 hours of time which are not being billed, amounting to \$16,050.00 in fees in unbilled time. In addition, the Receiver billed his travel time at one-half his billing rate, representing an additional \$1,375.00 in discount for the Receivership Estate. See **Exhibit A-1**. The Receiver and Klein & Associates, thus have made total voluntary reductions in the amount of \$17,425.00.¹³

B. Parr Brown has voluntarily reduced its actual billed fees in the total amount of \$4,513.25. See **Exhibit A-2**. This reduction does not include the unbilled time of Mr. Hafen, which in many instances, has not been billed to oversee aspects of this case. Parr Brown's fees for the Application Period are categorized into two separate matter numbers: (a) Matter 1 – Administration of Receivership Estate; (b) Matter 2 – Asset Analysis and

¹³ In addition, the Receiver is not seeking reimbursement for mileage or travel expenses for his trips to Utah County, Millard County, and California in connection with this matter.

Recovery. In this regard the following should be noted:

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

B. Matter 2 – Asset Analysis and Recovery, 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.

15. This Fee Application is supported by the following documents. **Exhibit A** contains a summary of the fees incurred for each of the billing matters, with Exhibit A-1 containing a summary for the Receiver and Klein & Associates, and Exhibit A-2 containing a summary for Parr Brown. Detailed invoices which describe the work performed by the Receiver, Parr Brown, and Lone Peak on a daily basis are attached hereto as **Exhibit B**, with Exhibit B-1 containing the Receiver and his firm's invoices, Exhibit B-2 containing Parr Brown's invoices, and Exhibit B-3 containing Lone Peak's invoices. Summaries of the expenses incurred are attached as **Exhibit C**, with Exhibit C-1 containing the invoices itemizing the expenses of the Receiver and Klein & Associates, and Exhibit C-2 containing invoices itemizing Parr Brown's expenses.

16. In compliance with ¶ 73 of the Receivership Order, the Fee Application, including the invoices in **Exhibit B** and **Exhibit C**, 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 professionals each certify that they have read the Fee Application and that 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 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 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

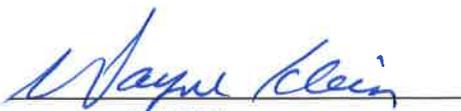
20. The Receiver respectfully submits this Fee Application and requests that the Court enter an Order approving the actual and necessary fees and expenses incurred on behalf of and for the benefit of the Receivership Estate. For all the reasons stated, the Receiver submits that he and his professionals 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 D.

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

DATED this 13th day of February, 2019.

RECEIVER


WAYNE KLEIN, Receiver

PARR BROWN GEE & LOVELESS, P.C.

/s/ Jonathan O. Hafen _____

Jonathan O. Hafen

Michael Lehr

Attorneys for R. Wayne Klein, Receiver

LONE PEAK VALUATION GROUP



James Wood

CERTIFICATE OF SERVICE

I hereby certify that the above **FIRST INTERIM FEE APPLICATION FOR RECEIVER AND RECEIVER'S PROFESSIONALS FOR SERVICES RENDERED FROM OCTOBER 31, 2018 THROUGH DECEMBER 31, 2018** was filed with the Court on this 13th day of February, 2019, and served via ECF on all parties who have requested notice in this case.

/s/ Michael S. Lehr