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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.

**THIRD INTERIM FEE APPLICATION
FOR RECEIVER AND RECEIVER'S
PROFESSIONALS FOR SERVICES
RENDERED FROM APRIL 1, 2019
THROUGH JUNE 30, 2019**

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”) and thirteen subsidiaries and affiliates (collectively, the “Receivership Entities”), and the assets of Neldon

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

Johnson (“Johnson”) and R. Gregory Shepard (“Shepard”) (collectively “Receivership Defendants”), hereby submits this third 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 April 1, 2019 through June 30, 2019 (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 filed two *Notices of Appeal* relating to the original judgment⁴ a *Notice of Appeal* of the Court’s denial of an April motion to dismiss filed by Neldon Johnson,⁵ and a

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. These appeals are pending.

⁵ Johnson’s pro se appeal was filed April 30, 2019. His Notice of Appeal is Docket No. 626. Johnson appealed the Court’s minute order dated April 26, 2019 (Docket No. 619) and the Court’s denial of Johnson’s *Motion to Dismiss*

Notice of Appeal of the Court's order including subsidiaries and affiliates in the Receivership Estate.⁶

3. On October 31, 2018, the Court entered its *Receivership Order* ("Order"),⁷ which, among other things, appointed the Receiver and continued a previously-entered asset freeze.⁸

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 ("Retained Professionals"), and such retention was approved by the Court.⁹

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. Plaintiff has informed the Receiver that it has no objection to the fees and expenses requested in the Fee Application.

Receiver and Case, [[Docket No. 617](#)]. The Court's denial order, entered April 29, 2019, is at Docket No. 624. The Tenth Circuit dismissed these appeals [No. 19-4066].

⁶ [Docket No. 698](#), filed on June 24, 2019. USCA Case Number 19-4089.

⁷ [Docket No. 490](#). A *Corrected Receivership Order*, which corrected formatting errors, was entered the following day. [Docket No. 491](#), filed Nov. 1, 2018.

⁸ *Memorandum Decision and Order Freezing Assets and to Appoint a Receiver*, [Docket No. 444](#), filed Aug. 22, 2018.

⁹ [Docket No. 500](#), filed Nov. 6, 2018.

II. SERVICES PERFORMED

7. The actions of the Receiver and his retained professionals during the Application Period are summarized in the *Receiver's Third Quarterly Status Report* ("Third Status Report"), filed July 18, 2019.¹⁰ Below is a brief summary of actions described in the Third Status Report.

8. The Receiver has obtained appraisals of the six properties owned by IAS and has marketed them for sale. Offers were received for four of those properties during the Reporting Period, with two of the offers received in late June. During the Reporting Period, the Receiver filed motions seeking approval to sell the properties at auction. The Court granted the motions and the auctions were held in July. The results of these two auctions will be reported in the next status report. Motions seeking approval to sell the additional three properties were filed in July and the results will be described in the next status report.

9. The Receiver obtained information showing that at least 17 of the 18 properties titled in the name of Glenda Johnson were purchased using Receivership Entity funds. Glenda Johnson has rejected the Receiver's demand for a turnover of those properties.

10. All of the bank records have been obtained and have been analyzed. The results of the forensic analysis are being used to identify improper payments of funds. The Receiver sent demand letters requesting the return of funds to numerous recipients. No recipients of funds have voluntarily agreed to return funds and the Receiver began filing lawsuits in July.

11. The Receiver has completed his analysis of law firm invoices showing the nature of services performed by law firms, whose bills were paid by Receivership Entities. The Receiver has demanded the return of certain amounts of funds paid to law firms. The law firms have rejected

¹⁰ [Docket No. 724](#).

the Receiver's demands and the Receiver expects to file suit.

12. The forensic accounting revealed substantial transfers made close to the time of the Court's bench ruling on June 22, 2018 and has demanded the return of those funds from persons who received those funds. Those demands have been rejected. The Receiver has, however, learned significant information about the transfers. The Receiver expects to pursue litigation.

13. The Receiver's investigation was substantially advanced during the Reporting Period with the delivery of 31 boxes of document from Receivership Defendants, the turnover of Glenda Johnson's laptop computer, delivery of additional documents from LaGrand, Randale, and Glenda Johnson, and the depositions of Neldon and Glenda Johnson.

14. Pacific Stock Transfer Company provided some additional documents during the Reporting Period but has still failed to deliver all the records requested by the Receiver. Some stock trading records were also among the boxes of records delivered by Defendants. Nelson Snuffer also delivered significant stock trading records requested by the Receiver. The Receiver is still analyzing records of stock sales by Neldon Johnson and by Nelson Snuffer (including records showing how those sales proceeds were expended).

15. The Court granted the Receiver's motion to include 13 affiliates and subsidiaries in the Receivership Estate. This has resulted in an additional aircraft and real property becoming Receivership Assets and the Receiver gaining the ability to recover more funds that were improperly paid out by affiliates, including over a million dollars transferred to Glenda Johnson's personal bank account.

16. The Court granted the Receiver's motion to commence litigation against certain described categories of persons who received funds improperly. The filing of lawsuits commenced

in July.

17. The Court granted the Receiver's motion to cancel the shares of IAS. In early July (after the close of the Reporting Period), FINRA halted trading of IAS shares.

18. Enormous effort was expended during the Reporting Period on preparation for, testifying at, and following up on hearings on the United States' motion seeking to hold Defendants and family members in contempt.

III. BANK ACCOUNTS OF THE RECEIVERSHIP ESTATE

19. The Receivership Estate maintains a Receivership checking account and a savings account at Wells Fargo Bank. These accounts had a June 30, 2019 balance in the total amount of \$1,419,623.80.

20. 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

21. 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

22. 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 April 1, 2019 through June 30, 2019. The total fees requested for the Receiver and his Retained Professionals is in the total amount of \$204,061.88, which is summarized as follows:¹²

	RECEIVER AND KLEIN AND ASSOCIATES	PARR BROWN	LONE PEAK
Fees	\$97,562.00 (\$ 6,775.00) unbilled <u>(\$10,000.00) waived</u> \$80,787.00	\$63,384.50 (\$6,338.45) voluntary reduction \$57,046.05	\$60,236.59
Expenses	\$0.00	\$2,312.74	\$3,679.50
TOTAL	\$80,787.00	\$59,358.79	\$63,916.07

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

A. The Receiver and the staff of Klein & Associates actually worked a total of 390.3 hours during the Application Period, which includes 27.1 hours of time which are

¹¹ [Receivership Order ¶¶ 72-74.](#)

¹² See Exhibit A-1 (Receiver and Klein and Associates Summary of Fees); 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 Parr Brown).

not being billed, amounting to \$6,775.00 in fees in unbilled time. The Receiver is also waiving an additional \$10,000.00 in earned fees. See **Exhibit A-1**.

B. Parr Brown has voluntarily reduced its actual billed fees in the total amount of \$6,338.45. 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 three separate matter numbers: (a) Matter 1 – Administration of Receivership Estate; (b) Matter 2 – Asset Analysis and Recovery; (c) Matter 4 – Litigation.¹³ 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.

C. Matter 4 – Litigation, includes legal services rendered filing and prosecuting claims to recover Receivership Property.

24. 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 an invoice

¹³ For internal purposes, Parr Brown has omitted Matter 3.

for the Receiver and his firm's work, 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, containing invoices itemizing Parr Brown's expenses.¹⁴

25. 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.

26. 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.

27. The Receiver and his Retained 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.

28. The Receiver and his Retained 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 Retained 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

29. 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

¹⁴ Lone Peak Valuation's billed expenses are listed in its invoice dated May 1, June 3, and July 1, 2019.

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.

30. 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 15th day of August, 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 **THIRD INTERIM FEE APPLICATION FOR RECEIVER AND RECEIVER'S PROFESSIONALS FOR SERVICES RENDERED FROM APRIL 1, 2019 THROUGH JUNE 30, 2019** was filed with the Court on this 15th day of August, 2019, and served via ECF on all parties who have requested notice in this case.

IT IS FURTHER CERTIFIED that, on the same date, by U.S. Mail, first-class, postage pre-paid, I caused to be served the same documents upon the following persons:

R. Gregory Shepard
858 Clover Meadow Dr.
Murray, Utah 84123

Pro se Defendant

/s/ Michael S. Lehr