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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 THIRD MOTION TO  
TRANSFER RELATED CASES  
PURSUANT TO DUCivR 83-2(g)**

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

District Judge David Nuffer

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**MOTION, RELIEF SOUGHT, AND SPECIFIC GROUNDS**

R. Wayne Klein, the Court-Appointed Receiver (the "Receiver") of RaPower-3, LLC ("RaPower"), International Automated Systems, Inc. ("IAS"), and LTB1, LLC ("LTB1") (collectively "Receivership Entities"), as well as certain affiliated subsidiaries and entities, and the assets of Neldon Johnson ("Johnson") and R. Gregory Shepard ("Shepard") (collectively "Receivership Defendants"), hereby moves the Court, pursuant to Rule 83-2(g) of the local rules of the District of Utah, to reassign the following related cases, each pending in the United States

District Court of the District of Utah, to the judge assigned to this case (which is the lowest-numbered case) so they can be heard by the same judge:

*R. Wayne Klein v Jay D. Frandsen, et al., 2:19-cv-00660-EJF*

*R. Wayne Klein v Scott P. Black, et al., 2:19-cv-00678-CMR*

*R. Wayne Klein v Connie Kulacz, 2:19-cv-00679-EJF*

*R. Wayne Klein v Kelvin Smith, 2:19-cv-00680-PMW*

*R. Wayne Klein v Pamela Orgill, 2:19-cv-00681-EJF*

*R. Wayne Klein v Lyle Swenson, 2:19-cv-00682-DBP*

*R. Wayne Klein v Steven Chaston, 2:19-cv-00683-EJF*

*R. Wayne Klein v Ryan Davies, 2:19-cv-00684-DBP*

*R. Wayne Klein v Paul Brennan, 2:19-cv-00687-BJS*

*R. Wayne Klein v Shane Luke, et al., 2:19-cv-00688-EJF*

*R. Wayne Klein v Dennis Stilson, 2:19-cv-00689-CMR*

*R. Wayne Klein v Melvin Thomas Day, 2:19-cv-00692-HCN-CMR*

*R. Wayne Klein v Paul Jones, 2:19-cv-00693-EJF*

*R. Wayne Klein v Kirk Newman, 2:19-cv-00694-PMW*

*R. Wayne Klein v Trudy Shepard, 2:19-cv-00695-EJF*

*R. Wayne Klein v Lynette Williams, 2:19-cv-00696-BSJ*

*R. Wayne Klein v Joel Bean, 2:19-cv-00702-RJS-DBP*

*R. Wayne Klein v Amber L. Bennett, et al., 2:19-cv-00703-EJF*

*R. Wayne Klein v John W. Howell, et al., 2:19-cv-00705-CMR*

*R. Wayne Klein v Mike Manley, 2:19-cv-00715-CMR*

*R. Wayne Klein v Mark Manley*, 2:19-cv-00716-RJS  
*R. Wayne Klein v Carl Palmore*, 2:19-cv-00718-CMR  
*R. Wayne Klein v Janet Roe*, 2:19-cv-00719-BJS  
*R. Wayne Klein v Raleigh Stewart*, 2:19-cv-00726-DBP  
*R. Wayne Klein v Joseph Scraggs*, 2:19-cv-00727-DB  
*R. Wayne Klein v Stacey Curtis Snow*, 2:19-cv-00757-TS  
*R. Wayne Klein v Reinhold J. Finkes*, 2:19-cv-00761-BSJ  
*R. Wayne Klein v Robert Lee DeLong*, 2:19-cv-00762-PMW  
*R. Wayne Klein v Jeffrey Turner*, 2:19-cv-00767-CW  
*R. Wayne Klein v Gracie Kerr, et al.*, 2:19-cv-00768-DBP  
*R. Wayne Klein v Anthony Zeigler*, 2:19-cv-00769-CMR  
*R. Wayne Klein v. Searcy*, 2:19-cv-00776-CMR;  
*R. Wayne Klein v. Hyatt*, 2:19-cv-00777-DB;  
*R. Wayne Klein v. Hampton*, 2:19-cv-00778-DB;  
*R. Wayne Klein v. Armand*, 2:19-cv-00779-TC;  
*R. Wayne Klein v. Welborn*, 2:19-cv-00780-EJF;  
*R. Wayne Klein v. Hamblin et al.*, 2:19-cv-00783-DBP  
*R. Wayne Klein v. Ardell*, 2:19-cv-00786-RJS  
*R. Wayne Klein v. Becker*, 2:19-cv-00787-CW  
*R. Wayne Klein v. Borden*, 2:19-cv-00788-TC  
*R. Wayne Klein v. Coates*, 2:19-cv-00789-HCN  
*R. Wayne Klein v. Cook*, 2:19-cv-00790-JNP

*R. Wayne Klein v. Payne, et al.*, 2:19-cv-00791-PMW

*R. Wayne Klein v. Platter*, 2:19-cv-00792-CMR

*R. Wayne Klein v. Tilden*, 2:19-cv-00793-DB

*R. Wayne Klein v. Woodson*, 2:19-cv-00794-CMR

*R. Wayne Klein v. Anderson*, 2:19-cv-00795-EJF

The Receiver has previously filed two motions for transfer of related cases.<sup>1</sup> Nelson Snuffer Dahle & Poulsen (“Nelson Snuffer”) opposed both motions on behalf of defendants it represents in various ancillary actions.<sup>2</sup> The Receiver replied in support of both transfer motions responding to the oppositions.<sup>3</sup> The Court granted both motions and has reassigned the ancillary actions to Judge Nuffer.<sup>4</sup> The Receiver hereby incorporates by reference the arguments and reasons set forth in the first and second transfer motions and the Receiver’s replies in support.

### **ARGUMENT**

In granting the Receiver’s transfer motions the Court stated “granting the requested transfers is appropriate for the reasons given by the Receiver, including primarily the common questions of law and fact involved in determining the fraudulent transfer claims in each of the above cases, as well as the interests in judicial efficiency and consistent outcomes.”<sup>5</sup> Moreover,

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<sup>1</sup> *Motion to Reassign Related Cases Pursuant to DUCivR 83-2(g)*, [Docket No. 736](#), filed July 31, 2019; *Second Motion to Reassign Related Cases Pursuant to DUCivR 83-2(g)*, [Docket No. 763](#), filed September 10, 2019.

<sup>2</sup> *Memorandum in Opposition to Motion to Transfer Related Cases Pursuant to DUCivR 83-2(g)*, [Docket No. 745](#), filed August 8, 2019; *Memorandum in Opposition to Second Motion to Transfer Related Cases Pursuant to DUCivR 83-2(g)*, [Docket No. 771](#), filed September 23, 2019.

<sup>3</sup> *Receiver’s Reply in Support of Motion to Transfer Related Cases Pursuant to DUCivR 83-2(g)*, [Docket No. 753](#), filed August 21, 2019; *Receiver’s Reply in Support of his Second Motion to Transfer Related Cases Pursuant to DUCivR 83-2(g)*, [Docket No. 782](#), filed October 7, 2019.

<sup>4</sup> *Order Granting Receiver’s Motion to Transfer Related Cases Pursuant to DUCivR 83-2(g)*, [Docket No. 787](#), filed October 17, 2019; *Order Granting Receiver’s Second Motion to Transfer Related Cases Pursuant to DUCivR 83-2(g)*, [Docket No. 788](#), filed October 17, 2019.

<sup>5</sup> *Id.*

in the order transferring *R. Wayne Klein v. LaGrand Johnson*, No. 2:19-cv-00534 to Judge Nuffer, Judge Tena Campbell found:

When a case arises from the same event and involves the same issues of law and fact as another case, the court may transfer the case before it so that the cases are heard by the same judge. *See* DUCivR 83-2(g). The court concludes transfer is necessary here, because this action is ancillary to the original suit in which Mr. Klein was appointed as Receiver.<sup>6</sup>

The same findings are appropriate here. In each of the above referenced cases the Rule 83-2(g) factors weigh heavily in favor of transferring the matters to Judge Nuffer. All of the cases involve a fraudulent tax scheme by the Receivership Defendants and the subsequent fraudulent transfer of Receivership assets. Under Utah's Voidable Transactions Act, the Receiver's proof is essentially the same in all of the cases: prove that the transferor acted with "actual intent" to defraud,<sup>7</sup> or that the transferor did not receive reasonably equivalent value and that the transferor was insolvent, such that the transfer is voidable.<sup>8</sup>

Many of the relevant factors—or "badges of fraud"—that will be used to determine whether the transfers were made with "actual intent" will be the same in each case and for each transfer such as if "before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;" if "the debtor removed or concealed assets;" whether "the transfer or obligation was to an insider;" or if "the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred[.]"<sup>9</sup>

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<sup>6</sup> *R. Wayne Klein v. LaGrand Johnson*, No. 2:19-cv-00534, [Docket No. 16](#), filed October 2, 2019.

<sup>7</sup> *See* [Utah Code § 25-6-202\(a\)](#).

<sup>8</sup> *Id.* § 25-6-202(b).

<sup>9</sup> *Id.* § 25-6-202(2)

A determination as to any of these factual questions will apply to nearly all of the transfers in all of the cases. For example, if the Receiver can show—as he expects to—that the Receivership Entities were insolvent at all relevant times when transfers were made, that finding would be common to each transfer and each case during the relevant time period. Also, a finding as to whether the transfers were made after suit had been threatened or filed and whether assets were removed or concealed would be common to all relevant transfers in the cases. As such, any findings as to “actual intent” or to the insolvency of any particular Receivership Entity will be common to each case.

Moreover, a determination as to a Receivership Entities’ solvency will be common to all the cases. And, because of the scope of the “massive fraud” by Receivership Entities, a finding as to whether reasonably equivalent value was received will also be common to each case and each transfer. Specifically, the Receiver intends to argue that the fraudulent scheme operators necessarily intended to incur, or believed or reasonably should have believed that they would incur debts beyond their ability to pay as they became due, and that no reasonably equivalent value can be given when transfers are made in furtherance of the fraudulent scheme.<sup>10</sup> A finding as to these issues will be common to each case.

Next, having a single judge preside over the actions brought by the Receiver will also create efficiencies by requiring only one court to consider issues that will be common to many actions expected to be filed by the Receiver, eliminate the risk of inconsistent rulings on legal issues that are expected to arise in multiple actions, and create efficiencies by having a single court be familiar with the complex facts involved in the case. This Court is already familiar with

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<sup>10</sup> See e.g., [\*In re Vaughan Co. Realtors\*, 500 B.R. 778, 789-92 \(Bankr. D.N.M. 2013\)](#).

the complex factual issues involved in this case and is responsible for overseeing the conduct and work of the Receiver, including approving applications for fees.

Judge Nuffer has presided over the underlying case since 2015, including a multiple week trial. He has authored numerous memorandum decisions and orders and other substantial documents, including the 144-page Finding of Fact and Conclusions of Law which makes extensive findings regarding the conduct of Receivership Defendants and the underlying fraud,<sup>11</sup> and a 28-page Memorandum Decision and Order Freezing Assets and Appointing a Receiver which granted the injunctive relief requested by the United States following trial.<sup>12</sup>

Case assignments to other judges would entail significant duplication of labor and unnecessary court costs for all parties as each judge gets up to speed on the relevant legal and factual situation. Finally, because the key issues in each case will apply across the spectrum of the cases, there is a risk of inconsistent verdicts if the cases are assigned to different judges. The same factual and legal questions that are common to each case are also the areas where the risk of inconsistent verdicts is greatest. These areas include: the Receiver's standing, statute of limitations defenses, actual fraud, insolvency, and the accuracy of and weight to be given to the findings of forensic accountants.

### **CONCLUSION**

Because the ancillary cases have so many common factual issues to this lawsuit, each should be transferred to this Court to ensure judicial economy and consistent outcomes. A proposed order transferring the cases is submitted concurrently herewith.

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<sup>11</sup> See [Docket No. 467](#), filed October 4, 2018.

<sup>12</sup> See [Docket No. 444](#), filed August 22, 2018.

DATED this 21st day of October, 2019.

**PARR BROWN GEE & LOVELESS, P.C.**

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

Jonathan O. Hafen

Jeffery A. Balls

Michael Lehr

*Attorneys for R. Wayne Klein, Receiver*



**CERTIFICATE OF SERVICE**

I hereby certify that the above **RECEIVER'S THIRD MOTION TO TRANSFER RELATED CASES PURSUANT TO DUCivR 83-2(g)** was filed with the Court on this 21st day of October, 2019, and served via ECF on all parties who have requested notice in this case.

I also certify 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 Defendants*

/s/ Michael S. Lehr