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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.

**FIFTH INTERIM FEE APPLICATION
FOR RECEIVER AND RECEIVER'S
PROFESSIONALS FOR SERVICES
RENDERED FROM OCTOBER 1, 2019
THROUGH DECEMBER 31, 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 Johnson (“Johnson”) and R. Gregory Shepard (“Shepard”) (collectively “Receivership”

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

Defendants”), hereby submits this fifth 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”), the Receiver’s legal counsel, Parr Brown Gee & Loveless, P.C. (“Parr Brown”), and the Receiver’s conflict counsel, Manning Curtis Bradshaw & Bednar (“Manning Curtis”), for the period of October 1, 2019 through December 31, 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. The Plaintiff has informed the Receiver that it has no objection to the fees and expenses as requested herein.

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. Manning Curtis was subsequently approved as conflict counsel for the Receiver.

II. SERVICES PERFORMED

7. The actions of the Receiver and his retained professionals during the Application Period are summarized in the *Receiver's Fifth Quarterly Status Report* ("Fifth Status Report"), filed January 30, 2020.¹⁰ Below is a brief summary of actions described in the Fifth Status Report.

8. Following the Court's order reappointing the Receiver,¹¹ the Receiver filed notice of his appointment in 24 additional judicial districts, giving him personal jurisdiction over defendants and assets in those jurisdictions. With this jurisdiction, the Receiver filed an additional 30 lawsuits seeking recovery of improper assets.

9. The Receiver has pursued recovery of assets that belong to the Receivership Estate, including:

- a. Filing an affidavit of non-compliance, seeking possession of \$735,202.22 held in the retainer account of the law firm Nelson, Snuffer, Dahle & Poulsen;
- b. Foreclosing on a lien on real estate owned by a former director of IAS; and
- c. Identifying 43 vehicles owned or controlled by Neldon and Glenda Johnson and requesting the turnover of those vehicles.

10. The receiver received funds for granting an easement on real property in Texas that is titled in the name of the N. P. Johnson Family Limited Partnership. The Receiver negotiated an agreement to sell the Texas property. He contracted for a survey of the property and sought court approval to appoint three appraisers for the property, in anticipation of filing a motion to sell the property. The Receiver investigated a \$30 million lien filed by Glenda Johnson in December 2019

¹⁰ [Docket No. 852](#).

¹¹ [Docket No. 783](#), filed Oct. 10, 2019.

against properties owned by Glenda Johnson.

11. The Receiver filed motions to have all lawsuits filed by the Receiver transferred to the Receivership Court; these motions were granted. The Court granted motions by the Receiver to dismiss counterclaims filed against the Receiver by various defendants. The Receiver responded to motions to stay filed by multiple defendants and a motion to dismiss by a law firm defendant. These motions are pending.

12. The Receiver filed an appeal brief, defending the Court's ruling expanding the Receivership Estate to include various affiliated entities.

13. Three motions were filed seeking approval of 28 settlement agreements negotiated by the Receiver, that will bring \$2.07 million into the Receivership Estate.

14. Together with the United States, the Receiver sought additional boxes of records in the possession of Nelson Snuffer and reviewed additional records obtained from Pacific Stock Transfer Company, Randale Johnson, Glenda Johnson, and LaGrand Johnson.¹² Progress was made in efforts to obtain records in the possession of third party professionals. Additional investigation and analysis revealed the extent of personal stock sales by Neldon Johnson, that IAS knew its solar system was not commercially viable, and that IAS issued large blocks of stock to LaGrand and Randale Johnson and others as compensation.

15. Enormous effort was expended assisting the United States gather evidence in support of its motion for additional contempt sanctions. Together with the United States, the Receiver discovered six instances of apparent additional contempt, most of which occurred after

¹² The Records from Glenda, Randale, and LaGrand Johnson were delivered on December 4, 2019 pursuant to Court order.

the United States filed its motion for additional contempt sanctions. The Receiver prepared exhibits and questions for January 2020 depositions of contempt respondents.

16. The Receiver managed financial operations of the Receivership Estate, including receiving proceeds from settlements, paying ordinary operating expenses of the Receivership Estate, and paying living expenses to Greg Shepard.

III. BANK ACCOUNTS OF THE RECEIVERSHIP ESTATE

17. The Receivership Estate maintains a Receivership checking account and a savings account at Wells Fargo Bank. These accounts had a December 31, 2019 unrestricted balance in the total amount of \$3,017,262.55.

18. 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

19. 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. . .

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20. 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 1, 2019 through December 31, 2019. The total fees and expenses requested for the Receiver and his Retained Professionals is \$252,572.49, which is summarized as follows:¹⁴

	RECEIVER AND KLEIN AND ASSOCIATES	PARR BROWN	MANNING CURTIS	LONE PEAK
Fees	\$86,620.00 (\$8,300.00) unbilled <u>(\$10,000.00) waived</u> \$68,320.00	\$130,258.00 (\$13,025.80) voluntary reduction \$117,232.20	\$32,198.00 (\$2,500.00) voluntary reduction \$29,698.00	\$5,674.43
Expenses	\$0.00	\$27,114.26	\$4,202.80	\$330.80
TOTAL	\$68,320.00	\$144,346.46	\$33,900.80	\$6,005.23

21. 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 347.0 hours during the Application Period, which includes 33.2 hours of time which are not being billed, amounting to \$8,300.00 in fees in unbilled time. The Receiver is also waiving an additional \$10,000.00 in earned fees. See **Exhibit A-1**.

¹³ [Receivership Order ¶¶ 72-74](#).

¹⁴ See Exhibit A-1 (Receiver and Klein and Associates Summary of Fees); Exhibit A-2 (Parr Brown Summary of Fees); Exhibit A-3 (Manning Curtis Summary of Fees); Exhibit B-1 (Invoices for Services of Receiver and Klein and Associates); Exhibit B-2 (Invoices and Expenses for Services of Parr Brown); Exhibit B-3 (Invoices and Expenses for Manning Curtis) and Exhibit B-4 (Invoices and Expenses for Services of Lone Peak).

B. Parr Brown has voluntarily reduced its actual billed fees in the total amount of \$13,025.80. *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 3 – Appeal; (d) Matter 4 – Litigation. 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 3 – Appeal, includes legal services rendered regarding appeal pending before the United States Court of Appeals for the Tenth Circuit, case no. 19-4089.

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

22. Manning Curtis, appointed as conflict counsel for lawsuits against three law firms, has voluntarily reduced its actual billed fees in the total amount of \$2,500.00. *See* **Exhibit A-3**. Manning Curtis's fees for the Application Period are categorized into three separate matter numbers: (a) Matter 1 – Litigation against Snell & Wilmer; (b) Matter 2 – Litigation against Heideman and associates; and (c) Matter 3 – Litigation against Donald Reay.

23. This Fee Application is supported by the following documents. **Exhibit A** contains a summary of the fees incurred for the Receiver and his counsel, with Exhibit A-1 containing a summary for the Receiver and Klein & Associates, Exhibit A-2 containing a summary for Parr Brown, and Exhibit A-3 containing a summary for Manning Curtis. Detailed invoices which describe the work performed by the Receiver, Parr Brown, Manning Curtis, and Lone Peak on a daily basis are attached hereto as **Exhibit B**, with Exhibit B-1 containing an invoice for the Receiver and his firm's work, Exhibit B-2 containing Parr Brown's invoices, Exhibit B-3 containing Manning Curtis's invoices, and Exhibit B-4 containing Lone Peak's invoices. Summaries of the expenses incurred are included in the invoices.

24. In compliance with ¶ 73 of the Receivership Order, the Fee Application, including the invoices in **Exhibit B**, 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.

25. 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.

26. 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.

27. 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


28. 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 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.

29. A proposed Order is attached hereto as **Exhibit C**.

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

DATED this 3rd day of March, 2020.

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

MANNING CURTIS BRADSHAW & BEDNAR

/s/ David C. Castleberry (with permission)

David C. Castleberry
Conflict Attorneys for R. Wayne Klein, Receiver

LONE PEAK VALUATION GROUP



Jeff Pickett

CERTIFICATE OF SERVICE

I hereby certify that the above **FIFTH INTERIM FEE APPLICATION FOR RECEIVER AND RECEIVER'S PROFESSIONALS FOR SERVICES RENDERED FROM OCTOBER 1, 2019 THROUGH DECEMBER 31, 2019** was filed with the Court on this 3rd day of March, 2020, and served via ECF on all parties who have requested notice in this case.

/s/ Michael S. Lehr