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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.

**SEVENTH INTERIM FEE  
APPLICATION FOR RECEIVER AND  
RECEIVER'S PROFESSIONALS FOR  
SERVICES RENDERED FROM APRIL  
1, 2020 THROUGH JUNE 30, 2020**

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

District Judge David Nuffer

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In accordance with the Corrected Receivership Order (the “Receivership Order”),<sup>1</sup> 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

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<sup>1</sup> [Docket No. 491](#), filed Nov. 1, 2018.

Defendants”), hereby submits this seventh 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 April 1, 2020 through June 30, 2020 (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. The United States commenced this case on November 23, 2015 against Defendants RaPower-3, IAS, LTB1, Johnson, Shepard, and Roger Freeborn.<sup>2</sup> The United States alleged, and the Court found, among other things, that Defendants operated a massive tax fraud.<sup>3</sup>

2. On October 31, 2018, the Court entered its *Receivership Order* (“Order”),<sup>4</sup> which, among other things, appointed the Receiver and continued a previously-entered asset freeze.<sup>5</sup>

3. Upon his appointment, and in accordance with the Receivership Order, the Receiver

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<sup>2</sup> *Complaint*, [Docket No. 2](#), filed Nov. 23, 2015.

<sup>3</sup> *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.

<sup>4</sup> [Docket No. 490](#). A *Corrected Receivership Order*, which corrected formatting errors, was entered the following day. [Docket No. 491](#), filed Nov. 1, 2018.

<sup>5</sup> *Memorandum Decision and Order Freezing Assets and to Appoint a Receiver*, [Docket No. 444](#), filed Aug. 22, 2018.

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.<sup>6</sup> The Court approved appointment of Manning Curtis as conflict counsel, to handle three instances of litigation where Parr Brown has conflicts.<sup>7</sup>

4. The Tenth Circuit Court of Appeals issued rulings on both appeals during the Application Period, affirming the trial court judgment<sup>8</sup> and dismissing the challenge to the inclusion of affiliates in the Receivership Estate.<sup>9</sup>

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.

## **II. SERVICES PERFORMED**

7. The actions of the Receiver and his retained professionals during the Application Period are summarized in the *Receiver’s Seventh Quarterly Status Report* (“Seventh Status Report”), filed July 10, 2020.<sup>10</sup> Below is a brief summary of actions described in the Seventh Status Report.

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<sup>6</sup> [Docket No. 500](#), filed Nov. 6, 2018.

<sup>7</sup> [Docket No. 785](#), filed Oct. 11, 2019.

<sup>8</sup> [United States v. RaPower-3, LLC, 960 F.3d 1240 \(10<sup>th</sup> Cir. 2020\)](#) (petition for rehearing filed Jul. 13, 2020).

<sup>9</sup> [United States v. Solco I, LLC, 962 F.3d 1244 \(10<sup>th</sup> Cir. 2020\)](#).

<sup>10</sup> [Docket No. 961](#).

8. The Receiver conducted further investigation on property liens improperly filed by Glenda Johnson against multiple Receivership Properties, submitting additional information<sup>11</sup> in support of *Receiver's Ex-Parte Affidavit of Non-Compliance Against Glenda Johnson*.<sup>12</sup> Pursuant to Direction from the Court,<sup>13</sup> the Receiver submitted proposed findings of fact and conclusions of law and a proposed order and the Court entered an Order after the Reporting Period. These will be discussed in the next status report.

9. The Receiver reviewed and provided comments to the United States on the language of the proposed second contempt order, which was issued shortly after the end of the Application Period.<sup>14</sup>

10. On May 29, 2020, pursuant to Court order, the Receiver submitted proposed findings and a proposed order granting the Receiver's motion requiring Glenda Johnson to turn over 14 real properties titled in her name and \$1.4 million in two bank accounts she controls.<sup>15</sup>

11. The Receiver identified appraisers for the 14 properties and submitted a motion seeking Court approval of those appraisers,<sup>16</sup> which motion was granted shortly after the end of the Application Period.<sup>17</sup>

12. A report and recommendation on contempt by the Pacific Stock Transfer Company was filed on April 16, 2020.<sup>18</sup> The Court issued its order of contempt after the end of the

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<sup>11</sup> [Docket No. 923](#), filed May 13, 2020 (Notice of Non-Compliance); [Docket No. 929](#), filed May 20, 2020 (response to claim of impossibility); [Docket No. 942](#), filed June 30, 2020 (Report and Recommendation).

<sup>12</sup> [Docket No. 888](#), filed March 20, 2020.

<sup>13</sup> See Docket Text Order No. 967, filed July 14, 2020.

<sup>14</sup> [Docket No. 947](#), filed July 6, 2020.

<sup>15</sup> [Docket No. 932](#), filed May 29, 2020.

<sup>16</sup> [Docket No. 922](#), filed May 13, 2020.

<sup>17</sup> [Docket No. 963](#), filed July 13, 2020.

<sup>18</sup> [Docket No. 911](#), filed April 16, 2020.

Application Period.<sup>19</sup>

13. In recovery litigation he has filed, the Receiver produced documents in discovery and with initial disclosures. Documents received in discovery were reviewed.

14. The Receiver's fifth motion to approve settlements was approved. These settlements will bring \$298,000.00 into the Receivership Estate. A motion to approve a sixth groups of settlements was filed and approved, which settlements are expected to bring \$507,878.80 into the Receivership, along with a \$50,000.00 judgment. That motion was approved after the end of the Reporting Period.

15. After the Court ruled that 36 vehicles identified as belonging to Receivership Defendants or being on Receivership Property were Receivership Assets, the Receiver allowed Glenda Johnson to retain one vehicle, which had no net equity. Neldon Johnson delivered one vehicle to the Receiver and titles to 18 vehicles. The Receiver's agent has taken possession of approximately 10 of the vehicles to date and has located most of the remainder. The Receiver completed a bulk sale of the vehicles to a Delta automobile dealer. The Receiver identified three additional vehicles owned by Glenda Johnson and has requested that she deliver titles to those vehicles. The Receiver has obtained new titles for 15 of the vehicles and completed required documentation for an additional 14. He is seeking documentation from two prior owners for vehicle sales information to be able to request new titles.

16. During the Application Period, the Texas property was sold for net proceeds of \$481,004.42. The Elk Ridge, Utah property was repaired and improved and listed for sale. A preliminary offer has been accepted to sell the property for at least \$429,000.00. A motion to sell

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<sup>19</sup> [Docket No. 971](#), filed July 22, 2020.

the Elk Ridge home in a private sale was filed shortly after the end of the Application Period.

17. The Receiver continued reviewing documents that previously had been withheld from the Receiver, including thirteen 13 boxes of documents from the law firm Nelson Snuffer. The Receiver also obtained and reviewed technical documents from Wisdom Farms Technology about the turbine prototype that it built at the request of Neldon Johnson and documents from William Pack relating to the marketing of various iterations of solar generation systems Neldon Johnson claimed to have developed.

18. 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**

19. The Receivership Estate maintains a Receivership checking account and a savings account at Wells Fargo Bank. These accounts had a June 30, 2020 balance in the total amount of \$4,306,468.47.

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 Receiver 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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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, 2020 through June 30, 2020. The total fees and expenses requested for the Receiver and his Retained Professionals is \$157,173.69 which is summarized as follows:<sup>21</sup>

	<b>RECEIVER AND KLEIN AND ASSOCIATES</b>	<b>PARR BROWN</b>	<b>MANNING CURTIS<sup>22</sup></b>	<b>LONE PEAK</b>
Fees	\$63,585.00 (\$ 5,200.00) unbilled (\$5,000.00) waived \$53,383.00	\$67,265.00 (\$6,726.50) voluntary reduction \$60,538.50	\$37,469.50	\$4,182.75
Expenses	\$0.00	\$880.14	\$719.80	\$0.00
<b>TOTAL</b>	\$53,383.00	\$61,418.64	\$38,189.30	\$4,182.75

<sup>20</sup> [Receivership Order ¶¶ 72-74](#)

<sup>21</sup> 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).

<sup>22</sup> The vast majority of these expenses related to discovery, mediation, and settlement in the Receiver’s suit against Snell & Wilmer.

23. The amounts requested include voluntary reductions made by two of the 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 256.1 hours during the Application Period, which includes 20.8 hours of time which are not being billed, amounting to \$5,200.00 in fees in unbilled time. The Receiver is also waiving an additional \$5,000.00 in earned fees. *See* **Exhibit A-1**.

B. Parr Brown has voluntarily reduced its actual billed fees in the total amount of \$6,726.50. *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 four 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, which includes legal services rendered in assisting the Receiver with his administration of the Receivership Estate.

B. Matter 2 – Asset Analysis and Recovery, which 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, which includes legal services rendered regarding the



appeal pending before the United States Court of Appeals for the Tenth Circuit, Case No. 19-4089.

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

24. The fees of Manning Curtis, appointed as conflict counsel for lawsuits against three law firms, 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. *See* **Exhibit A-3**.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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

30. 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.

31. 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 21st day of September, 2020.

**RECEIVER**



WAYNE KLEIN, Receiver

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

*Jonathan O. Hafen*

Jonathan O. Hafen

Michael Lehr

*Attorneys for R. Wayne Klein, Receiver*

**MANNING CURTIS BRADSHAW & BEDNAR**

*/s/ David Castleberry (with permission)*

David Castleberry

*Conflict Attorneys for R. Wayne Klein, Receiver*

**LONE PEAK VALUATION GROUP**



Jeffrey Pickett