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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.

**TWELFTH INTERIM FEE
APPLICATION FOR RECEIVER AND
RECEIVER'S PROFESSIONALS FOR
SERVICES RENDERED FROM JULY 1,
2021 THROUGH SEPTEMBER 30, 2021**

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 Defendants”), hereby submits this twelfth interim “Fee Application,” seeking approval by the

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

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 July 1, 2021 through September 30, 2021 (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. Plaintiff had no comments and indicated to the Receiver 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.² The United States alleged, and the Court found, among other things, that Defendants operated a massive tax fraud.³

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

3. 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

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

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

accountants (“Retained Professionals”), and such retention was approved by the Court.⁶ The Court approved appointment of Manning Curtis as conflict counsel, to handle three instances of litigation where Parr Brown has conflicts.⁷

4. 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.

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

II. SERVICES PERFORMED

6. The actions of the Receiver and his retained professionals during the Application Period are summarized in the *Receiver’s Twelfth Quarterly Status Report* (“Twelfth Status Report”), filed November 1, 2021.⁸ Below is a brief summary of actions described in the Twelfth Status Report.

7. In August, the Court granted the Receiver’s motion for turnover of four additional properties titled in the name of Glenda Johnson. During the quarter, the Receiver prepared deeds for the four additional properties, obtained and recorded the signed deeds, and began marketing efforts for those properties. The Receiver closed on the sale of the property recovered from Greg

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

⁷[Docket No. 785](#), filed Oct. 11, 2019.

⁸Docket No. 1173, filed November 1, 2021.

Shepard, held an auction for the warehouse property in Oasis (that failed to close and is being remarketed), and made progress towards satisfying due diligence requirements for the properties being evaluated for a purchase option by developers of photoelectric solar energy. Six settlement agreements were approved by the Court in early July as part of the Tenth Motion for Approval of Settlement Agreements⁹ and eight settlements were approved as part of the Eleventh Motion for Approval of Settlement Agreements.¹⁰ The Receiver filed summary judgment motions for two additional cases where the Receiver is seeking recovery of commissions paid. The Receiver filed a special status report on litigation, indicating that approximately 17 litigation cases remain pending.¹¹ Significant litigation efforts were undertaken during the quarter, including the taking of numerous depositions, the submission of expert reports, and multiple interim and dispositive motions in the Receiver's lawsuit against Heideman and Associates. At the request of the Court, the Receiver filed a brief responding to the motion to intervene filed by Preston Olsen. The Receiver filed an appeal brief in Glenda Johnson's appeal of the contempt order against her.

III. BANK ACCOUNTS OF THE RECEIVERSHIP ESTATE

8. The Receivership Estate maintains a Receivership checking account and a savings account at Wells Fargo Bank. These accounts had a September 30, 2021 balance in the total amount of \$887,236.17.

⁹[Docket no. 1136](#), filed July 6, 2021.

¹⁰Docket no. 1145, filed August 12, 2021.

¹¹Docket no. 1150, filed August 24, 2021.

9. The Eleventh Fee Application was filed on September 29, 2021, at the end of the third quarter.¹² That application was approved on October 25, 2021¹³ and fees were paid on October 29, 2021.

10. 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

11. 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. . . .¹⁴

12. 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 July 1, 2021 through

¹²Docket no. 1160, filed September 29, 2021.

¹³Docket no. 1169, filed October 25, 2021.

¹⁴[Receivership Order](#) ¶¶ 72-74.

September 30, 2021. The total fees and expenses requested for the Receiver and his Retained Professionals is \$174,449.92 which is summarized as follows:¹⁵

	RECEIVER AND KLEIN AND ASSOCIATES	PARR BROWN	MANNING CURTIS	LONE PEAK
Fees	\$44,400.00 (\$4,000.00) waived (\$3,200.00) unbilled \$37,200.00	\$67,975.00	\$35,129.00	\$30,722.41
Expenses	\$0.00	\$ 1,876.30	\$ 1,547.21	\$0.00
TOTAL	\$37,200.00	\$69,851.30	\$36,676.21	\$30,722.41

13. The amounts requested by the Receiver include a voluntary reduction by the Receiver, in an exercise of his billing judgments. The Receiver actually worked a total of 177.6 hours during the Application Period, which includes 12.8 hours of time which are not being billed and an additional \$4,000.00 being waived, amounting to \$7,200.00 in fees in unbilled and waived time. See **Exhibit A-1**.

14. 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.¹⁶ Parr Brown wrote off and did not bill for \$12,138.50 of work it performed. See **Exhibit A-2**. In this regard the following should be noted:

¹⁵See 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).

¹⁶Only matter numbers one, three, and four had billings during the quarter.

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 appeals pending before the United States Court of Appeals for the Tenth Circuit, Case Nos. 21-4064, 21-4080, 21-4065, 21-4071, 21-4072, 21-4076, 21-4075, 21-4077, and 21-4090.

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

15. 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 (which has been resolved by settlement); (b) Matter 2 – Litigation against Heideman and Associates; and (c) Matter 3 – Litigation against Donald Reay, which was resolved by a settlement agreement approved by the Court on August 12, 2021. See **Exhibit A-3**.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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

21. 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.

22. 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 16th day of December 2021.

RECEIVER

/s/ Wayne Klein
WAYNE KLEIN, Receiver

PARR BROWN GEE & LOVELESS, P.C

/s/ Jeffery A. Balls
Jonathan O. Hafen
Jeffery A. Balls
Cynthia Love
Attorneys for R. Wayne Klein, Receiver

MANNING CURTIS BRADSHAW & BEDNAR

/s/ David Castleberry

David Castleberry

Conflict Attorneys for R. Wayne Klein, Receiver

LONE PEAK VALUATION GROUP

/s/ Jeffrey Pickett

Jeffrey Pickett

CERTIFICATE OF SERVICE

I hereby certify that the above **TWELFTH INTERIM FEE APPLICATION FOR RECEIVER AND RECEIVER'S PROFESSIONALS FOR SERVICES RENDERED FROM JULY 1, 2021 THROUGH SEPTEMBER 30, 2021** was filed with the Court on this 16th day of December, 2021, and served via ECF on all parties who have requested notice in this case.

Notice was also mailed by U.S. Mail to the following Receivership Defendants:

Neldon Johnson
Post Office Box 95332
South Jordan, UT 84095

R. Gregory Shepard
10672 Winter Haven Court
South Jordan, UT 84123

/s/ Wendy V. Tuckett