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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.

**FIFTEENTH INTERIM FEE  
APPLICATION FOR RECEIVER AND  
RECEIVER'S PROFESSIONALS FOR  
SERVICES RENDERED FROM APRIL 1,  
2022 THROUGH JUNE 30, 2022**

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

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

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<sup>1</sup>[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 April 1, 2022 through June 30, 2022 (the “Application Period”), and authorization to pay all authorized fees and expenses from unencumbered funds of the Receivership Estate.

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 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

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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.

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

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

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. 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 Fifteenth Quarterly Status Report* ("Fifteenth Status Report"), filed July 28, 2022.<sup>8</sup> Below is a brief summary of actions described in the Fifteenth Status Report.

7. One property was sold and an offer received on a second property. A significant litigation matter, against Heideman & Associates, was concluded. Summary judgment briefing was completed on four matters; on one of those matters (Matthew Shepard), the Court granted summary judgment for the Receiver just after the end of the Reporting Period. The Receiver made all preparations for the combined trial of the cases against Curtis Snow and Chris Taylor (which has been postponed). Discovery continued and a deposition was taken in other pending

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

<sup>8</sup>[Docket No. 1222](#), filed July 28, 2022.

litigation cases. Funds were recovered in settlement installment payments and garnishments. Assignment of certain judgments to the United States was approved and steps are being taken to effectuate those assignments. Oral argument was conducted on the appeals by commission recipients.

8. As this fee application demonstrates, there has been a notable slowdown in activity relating to the Receivership as the number of properties remaining to be sold is reduced and litigation matters are resolved.

### **III. BANK ACCOUNTS OF THE RECEIVERSHIP ESTATE**

9. The Receivership Estate maintains a Receivership checking account and a savings account at Wells Fargo Bank. These accounts had a June 30, 2022 combined balance of \$388,797.22.

10. The Fourteenth Fee Application, covering work done during the first quarter of 2022, was approved on May 13, 2022.<sup>9</sup> Payments of the fees incurred during the third and fourth quarters of 2021 were paid during the Reporting Period.

11. 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**

12. 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

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<sup>9</sup>Docket no. 1221, filed June 21, 2022.

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. . . .<sup>10</sup>

13. 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, 2022 through June 30, 2022. The total fees and expenses requested for the Receiver and his Retained Professionals are \$88,355.34, which are summarized in the table below:

	<b>RECEIVER AND KLEIN AND ASSOCIATES</b>	<b>PARR BROWN</b>	<b>MANNING CURTIS</b>	<b>LONE PEAK</b>
Fees	\$14,525.00	\$68,886.50	\$1,610.00	\$1,500.00
Expenses	\$0.00	\$1,833.84	\$0.00	\$0.00
<b>TOTAL</b>	\$14,525.00	\$70,720.34	\$1,610.00	\$1,500.00

14. A detailed description of the work by the Receiver is attached as **Exhibit A**.

15. 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. Detailed invoices showing Parr Brown’s work are attached as **Exhibit B**. Summaries of the expenses incurred are included in the invoices.

<sup>10</sup>[Receivership Order ¶¶ 72-74.](#)

16. 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, all of which have been resolved by settlement. Manning Curtis' detailed invoices are attached as **Exhibit C**.

17. Lone Peak Valuation Group's detailed invoices are attached as **Exhibit D**.

18. In compliance with ¶ 73 of the Receivership Order, the Fee Application, including the invoices in **Exhibits A - D**, 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.

19. 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.

20. The Receiver and his Retained Professionals each certify that they have read the Fee Application and that to 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.

21. 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**

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. A proposed Order is attached hereto as **Exhibit E**.

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 5<sup>th</sup> day of August 2022.

**RECEIVER**

/s/ Wayne Klein  
WAYNE KLEIN, Receiver

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

/s/ Jeffery A. Balls  
Jonathan O. Hafen  
Jeffery 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 **FIFTEENTH INTERIM FEE APPLICATION FOR RECEIVER AND RECEIVER'S PROFESSIONALS FOR SERVICES RENDERED FROM APRIL 1, 2022 THROUGH JUNE 30, 2022** was filed with the Court on this 5<sup>th</sup> day of August, 2022, 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, Utah 84095

R. Gregory Shepard  
10672 Winter Haven Court  
South Jordan, Utah 84095-2486

*/s/ Wendy V. Tuckett*