

Jonathan O. Hafen (6096) (jhafen@parrbrown.com)  
Joseph M.R. Covey (7492) (jcovey@parrbrown.com)  
Michael S. Lehr (16496) (mlehr@parrbrown.com)

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

101 South 200 East, Suite 700  
Salt Lake City, Utah 84111  
Telephone: (801) 532-7840  
Facsimile: (801) 532-7750

*Attorneys for Court-Appointed Receiver Wayne Klein*

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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 MOTION FOR LEAVE  
TO COMMENCE LEGAL  
PROCEEDINGS**

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

The Honorable David Nuffer

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R. Wayne Klein, the Court-Appointed Receiver (the "Receiver") of RaPower-3, LLC ("RaPower-3"), 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 submits this Motion for Leave to Commence Legal Proceedings. In support hereof, the Receiver states as follows:

## **BACKGROUND AND ANALYSIS**

1. On October 31, 2018, the Receivership Estate was created with the entry of the Receivership Order (the “Order”).<sup>1</sup> Pursuant to the Order, the Receiver was appointed, and all of the Receivership Defendants’ assets were placed in the Receiver’s control.

2. The Order authorizes and empowers the Receiver to, among other things, do the following:

- I. The Receiver shall assume and control the operation of the Entity Receivership Defendants and shall pursue and preserve all their claims.<sup>2</sup>
- II. To bring legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging his duties as Receiver. In determining which legal actions are likely to be cost effective, the Receiver may consult with counsel for the United States in making decisions on which actions to pursue.<sup>3</sup>
- III. Subject to the requirement that leave of this Court is required to commence or resume litigation, the Receiver is authorized, empowered, and directed to investigate, prosecute, defend, intervene in, or otherwise participate in, compromise, and adjust actions in any state, federal, or foreign court proceeding of any kind as may in his discretion, and after consultation with counsel for the United States, be advisable or proper to recover or conserve Receivership Property.<sup>4</sup>
- IV. Subject to his obligation to expend receivership funds in a reasonable and cost-effective manner, the Receiver is authorized, empowered, and directed to investigate the manner in which the financial and business affairs of the Receivership Defendants were conducted and, after obtaining leave of this Court, to institute such actions and legal proceedings for the benefit, and on behalf, of the receivership estates as the Receiver deems necessary and appropriate. The Receiver may seek, among other legal and equitable relief, the imposition of constructive trusts, disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission, restitution, collection of debts, and such other relief from this Court as may be necessary to enforce this Order.

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<sup>1</sup> [Docket No. 490](#). A Corrected Order was filed the next day on November 1, 2018. See [Docket No. 491](#).

<sup>2</sup> [Docket No 491](#) at ¶ 12.

<sup>3</sup> *Id.* at ¶ 13(I).

<sup>4</sup> *Id.* at ¶ 59.

Where appropriate, the Receiver should provide prior notice to counsel for the United States before commencing investigations or actions.<sup>5</sup>

3. Since his appointment, the Receiver has engaged in an investigation of Receivership Defendants,<sup>6</sup> and has discovered certain claims and causes of action. Those causes of action fall into the following general categories:

- I. Law firms who were paid for legal work that did not result in reasonably equivalent value for the Receivership Entities (including any persons later made Receivership Entities);
- II. Persons, including family members and other insiders, who received monies or assets from Receivership Defendants and/or Receivership Entities (including any persons later made Receivership Entities), including property transfers for little or no consideration;
- III. Law firms and others who are holding funds belonging to Receivership Entities (including any persons later made Receivership Entities);
- IV. Credit card issuers who were paid using Receivership Entity funds (or funds from any entity subsequently made a Receivership Entity) for charges made for the personal benefit of individuals or entities that are not Receivership Entities; Charitable organizations receiving donations from Receivership Entities (including persons later made Receivership Entities);
- V. Salespersons who were paid commissions for promoting the tax scheme or soliciting purchasers of lenses;
- VI. Officers and directors of Receivership Entities (including entities later made Receivership Entities);
- VII. Recipients of stock, warrants, or other securities of IAS issued by or transferred from IAS or any of its officers and directors;
- VIII. Diana Shepard and her trust;

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<sup>5</sup> *Id.* at ¶ 60.

<sup>6</sup> See *Recommendation of Living Allowances*, [Docket No. 526](#), filed November 30, 2018; *Report and Recommendation on Status of International Automated Systems, and Liquidation Plan*, [Docket No. 552](#), filed December 31, 2018; *Receiver's Initial Quarterly Status Report*, [Docket No. 557](#), filed January 28, 2019; *Report and Recommendation on Inclusion of Affiliates/Subsidiaries in Receivership Estate*, [Docket No. 581](#), filed February 25, 2019; *Receiver's Second Quarterly Status Report*, [Docket No. 608](#), filed April 15, 2019.

- IX. Former employees of IAS who were accused of having embezzled funds;
- X. Affiliates and subsidiaries of Receivership Defendants which are not made Receivership Entities, but which received monies or assets from Receivership Entities for little or no consideration;
- XI. Attorneys, insiders, and others who are discovered to have taken an active role in assisting the scheme; and
- XII. Insurance companies, to the extent that insurance policies are identified.

4. Pursuant to the express terms of the Receivership Order, the Receiver has authority to bring claims and causes of actions such as those noted above, but he is required to obtain leave of Court prior to instituting such claims or causes of action. Accordingly, the Receiver requests that the Court enter the proposed order attached hereto as Exhibit A, authorizing him to commence the above-described proceedings for the benefit and on behalf of the Receivership Estate.

5. It is in the best interest of the Receivership Estate for the Receiver to seek leave to pursue these categories of claims rather than to identify each lawsuit individually because i) it is premature for the Receiver to be able to identify each likely defendant, ii) it would be burdensome for the Receiver and the Court to file a motion before each lawsuit,<sup>7</sup> and iii) the Receiver will obtain the concurrence of the United States before filing each individual lawsuit.

6. The Receiver represents that commencing actions as described herein is appropriate and necessary for the purpose of collecting and maximizing the assets of the Receivership Estate, and that he has and will continue to take actions on behalf of the Receivership Estate in a reasonable and cost-effective manner. Furthermore, commencing and litigating the claims and causes of action, to the extent necessary, is in the best interests of the Receivership Estate.

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<sup>7</sup> Identifying each defendant individually by motion before each lawsuit might also result in transfers of assets by defendants who had advance notice of the lawsuits.

7. The Receiver has discussed his intent to bring the types of action noted above with counsel for the United States. The United States has no objection to the relief the Receiver requests.

8. Based on the Receiver's investigation, he believes all of the lawsuits filed pursuant to his duties under the Order will be filed in the United States District Court for the District of Utah.

9. The Local Civil Rules for the United States District Court for the District of Utah ("Local Rules") allow for cases to be assigned to a particular judge if the chief judge finds "that the assignment or reassignment is necessary for the efficient administration of justice."<sup>8</sup>

10. The Local Rules also allow related cases pending before different judges to be transferred based on certain factors such as whether the cases arise from the same or a closely related transaction or event, and whether the cases call for a determination of the same or substantially related questions of law and fact.<sup>9</sup> The transfer of cases may be addressed by motion or sua sponte by the court.<sup>10</sup>

11. Rather than have each case assigned to different judges using the random assignment process, the Receiver and the United States agree that it is in the best interest of the Receivership Estate and for the efficient administration of justice for Judge Nuffer to preside over the cases brought by the Receiver under the Order.

12. Having a single judge preside over the actions brought by the Receiver under the Order will 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

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<sup>8</sup> See DUCivR 83-2(a)(2).

<sup>9</sup> DUCivR 83-2(g).

<sup>10</sup> *Id.*

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. Judge Nuffer is already familiar with 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. Having these ancillary cases assigned to the Receivership Court will improve the Receivership Court's ability to evaluate the performance of the Receiver and the propriety of fee applications.

13. If Judge Nuffer does not preside over each case brought by the Receiver, the Receiver and the United States believe that it is in the best interest of the Receivership Estate and efficient administration of justice for a single judge to preside over the actions brought by the Receiver under the Order for the three reasons identified in the previous paragraph.

### **CONCLUSION**

For the reasons set forth herein, the Receiver requests that the Court enter the proposed order attached hereto as Exhibit A, and grant the Receiver leave to commence claims and causes of action of the type described herein.

DATED this 30th day of April, 2019.

**PARR BROWN GEE & LOVELESS**

/s/ Michael S. Lehr  
Jonathan O. Hafen  
Michael S. Lehr  
*Attorneys for Receiver*

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the above **RECEIVER'S MOTION FOR LEAVE TO COMMENCE LEGAL PROCEEDINGS** was electronically filed with the Clerk of the Court through the CM/ECF system on April 30, 2019, which sent notice of the electronic filing to all counsel of record.

IT IS FURTHER CERTIFIED that, May 1<sup>st</sup>, 2019, by U.S. Mail, first-class, postage pre-paid, I caused to be served the same documents upon the following persons:

Neldon Johnson  
2730 W 4000 South,  
Oasis, UT 84624

R. Gregory Shepard  
858 Clover Meadow Dr.  
Murray, Utah 84123

*Pro se Defendants*

/s/ Michael S. Lehr