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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.

**SECOND INTERIM FEE  
APPLICATION FOR RECEIVER AND  
RECEIVER'S PROFESSIONALS FOR  
SERVICES RENDERED FROM  
JANUARY 1, 2019 THROUGH  
MARCH 31, 2019**

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”) (collectively, the “Receivership Entities”), as well as certain of their subsidiaries and affiliates (“Related Entities”) and the assets of Neldon Johnson (“Johnson”) and R. Gregory Shepard (“Shepard”) (collectively

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

“Receivership Defendants”), hereby submits this second 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”), and the Receiver’s legal counsel, Parr Brown Gee & Loveless, P.C. (“Parr Brown”), for the period of January 1, 2019 through March 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.<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. Defendants filed two *Notices of Appeal* relating to the original judgment<sup>4</sup> and a *Notice of Appeal* of the Court’s denial of an April motion to dismiss filed by Neldon Johnson.<sup>5</sup>

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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. 445](#), filed Aug. 27, 2018 and [Docket No. 472](#), filed Oct. 10, 2018.

<sup>5</sup> 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 Receiver and Case*, [[Docket No. 617](#)]. The Court’s denial order, entered April 29, 2019, is at [Docket No. 624](#). The case number assigned to this appeal by the Tenth Circuit is 19-4066.

3. On October 31, 2018, the Court entered its *Receivership Order* (“Order”),<sup>6</sup> which, among other things, appointed the Receiver and continued a previously-entered asset freeze.<sup>7</sup>

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.<sup>8</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.

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<sup>6</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>7</sup> *Memorandum Decision and Order Freezing Assets and to Appoint a Receiver*, [Docket No. 444](#), filed Aug. 22, 2018.

<sup>8</sup> [Docket No. 500](#), filed Nov. 6, 2018.

## II. SERVICES PERFORMED

7. The actions of the Receiver and his retained professionals during the Application Period are summarized in the *Receiver's Second Quarterly Status Report* ("Second Status Report"), filed April 15, 2019.<sup>9</sup> Below is a brief summary of actions described in the Second Status Report.

8. The Receiver has endeavored to take control of assets and begin marketing those assets. To that end, the Receiver filed motions to appoint expert appraisers for certain properties.<sup>10</sup> He has listed for sale the six properties owned by IAS and obtained appraisals of those properties. After the end of the Application Period, the Receiver received an offer for the San Bernardino property.<sup>11</sup>

9. Most of the bank records have been obtained and are in the process of being analyzed. Substantial and helpful information has been revealed by Lone Peak's forensic reconstruction. During the Application Period, the Receiver issued subpoenas to various persons and entities including Wells Fargo Bank, Cyprus Credit Union, and Glenda Johnson. The Receiver obtained some stock trading records from Pacific Stock Transfer Company and also from Nelson Snuffer Dahle & Poulsen ("NSDP"), but those productions were inadequate and additional records are being sought. The Receiver requested billing records from NSDP, but the firm refused, filing

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<sup>9</sup> [Docket No. 608](#). The Receiver hereby incorporates the description of services in the Second Status Report into this Fee Application.

<sup>10</sup> [Docket No. 598](#), [599](#), filed March 21, 2019. The Court granted these motions. See [Docket No. 607](#), filed April 9, 2019.

<sup>11</sup> See *Motion for (1) Public Sale of Property Free and Clean of Interests, (2) Method and Form of Publication Notice, and (3) Public Auction Procedures*, [Docket No. 610](#), filed April 18, 2019.

a motion for protective order.<sup>12</sup> The Receiver opposed NSDP's motion.<sup>13</sup> The Court denied that motion<sup>14</sup> and NSDP provided many billing records to the Receiver on April 3, 2019, shortly after the end of the Application Period.

10. The Second Status Report recites the lack of cooperation by Defendants.<sup>15</sup> During the Application Period, they did not deliver business records in their possession. Instead, Defendants filed motions for protective order in response to the Receiver's requests.<sup>16</sup> Glenda Johnson also filed a motion for protective order in response to the Receiver's document requests.<sup>17</sup> Neldon Johnson failed to appear at his scheduled deposition on February 19, 2019, filing a motion for protective order and an objection.<sup>18</sup> Glenda Johnson failed to appear at two different depositions scheduled for her on February 20, 2019 and March 20, 2019.<sup>19</sup> She also filed a motion for protective order, claiming spousal privilege.<sup>20</sup> The Receiver opposed the motions for protective order.<sup>21</sup> The Court denied Defendants' and Glenda Johnson's motions.<sup>22</sup>

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<sup>12</sup> *Motion for Protective Order*, [Docket No. 562](#), filed February 1, 2019. *Pro Se Motion for Protective Order*, [Docket No. 568](#), filed February 7, 2019.

<sup>13</sup> *Receiver's Opposition to Motion for Protective Order*, [Docket No. 570](#), filed February 12, 2019.

<sup>14</sup> *Memorandum Decision and Order Denying 562 Motion for Protective Order Under Rule 26(c)*, [Docket No. 589](#), filed March 6, 2019.

<sup>15</sup> [Docket No. 608](#) at 10, filed April 15, 2019.

<sup>16</sup> *Motion for Protective Order*, [Docket No. 562](#), filed February 1, 2019.

<sup>17</sup> *Motion for Protective Order for Non-Party Glenda Johnson*, [Docket No. 565](#), filed February 7, 2019.

<sup>18</sup> *Pro Se Motion for Protective Order*, [Docket No. 568](#), filed February 7, 2019. *Objection to Deposition (5<sup>th</sup> Amendment Claim)*, [Docket No. 574](#), filed February 15, 2019.

<sup>19</sup> This last appearance was specifically required by the Court.

<sup>20</sup> [Docket No. 577](#), filed February 19, 2019.

<sup>21</sup> *Receiver's Opposition to Motion for Protective Order*, [Docket No. 570](#), filed February 12, 2019. *Receiver's Opposition to Motion for Protective Order for Non-Party Glenda Johnson*, [Docket No. 579](#), filed February 20, 2019. *Receiver's Opposition to Motion for Protective Order of Neldon Johnson*, [Docket No. 580](#), filed February 20, 2019. *Receiver's Opposition to Motion for Protective Order re Glenda Johnson Spousal Privilege*, [Docket No. 587](#), filed March 5, 2019.

<sup>22</sup> *Memorandum Decision and Order Denying 562 Motion for Protective Order Under Rule 26(c)*, [Docket No. 589](#), filed March 6, 2019. *Memorandum Decision and Order Denying 565 Motion for Protective Order and Denying 568 Motion for Protective Order*, [Docket No. 591](#), filed March 6, 2019. *Memorandum Decision Denying 577 Motion for Protective Order as to Glenda Johnson*, [Docket No. 593](#), filed March 7, 2019.

11. In late January, the United States filed a motion for an order to show cause against Neldon Johnson, Greg Shepard, Glenda Johnson, Randale Johnson, and LaGrand Johnson.<sup>23</sup> The Receiver filed a motion for an order to show cause against Pacific Stock Transfer Company.<sup>24</sup> Both motions were set for hearing beginning April 26, 2019, after the end of the Application Period.

12. The Receiver filed a report and recommendation on expanding the Receivership to include additional entities affiliated with Receivership Defendants and a motion seeking expansion of the Receivership Estate.<sup>25</sup> Neldon Johnson filed an opposition to the Receiver's motion to expand the Receivership Estate.<sup>26</sup> Glenda Johnson, Solco I, and XSun Energy also filed an opposition to the Receiver's motion.<sup>27</sup> The Receiver filed a reply in support of his motion<sup>28</sup> and the Court granted the motion on May 3, 2019, after the end of the Application Period.

13. Other litigation matters included NSDP's withdrawal as counsel for Defendants, dismissal of the litigation against Millard County filed by Neldon and Glenda Johnson, and a motion to lift the litigation stay to allow the IRS and Greg Shepard to settle a tax court case.<sup>29</sup>

14. The Second Status Report outlined the next steps the Receiver expected to take and much progress has been made in the second quarter on these goals. These will be discussed in the next status report.

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<sup>23</sup> [Docket No. 559](#), filed January 29, 2019.

<sup>24</sup> [Docket No. 576](#), filed February 19, 2019.

<sup>25</sup> *Report and Recommendation on Inclusion of Affiliates/Subsidiaries in Receivership Estate*, [Docket No. 581](#), filed February 25, 2019. *Motion to Include Affiliates and Subsidiaries in the Receivership Estate*, [Docket No. 582](#), filed March 1, 2019.

<sup>26</sup> [Docket No. 597](#), filed March 18, 2019.

<sup>27</sup> [Docket No. 596](#), filed March 15, 2019.

<sup>28</sup> [Docket No. 602](#), filed March 29, 2019.

<sup>29</sup> [Docket No. 604](#), filed April 5, 2019. Although the motion was not filed during the Application Period, the majority of the time billed relating to the motion was before April 1<sup>st</sup>.

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

15. The Receivership Estate maintains a Receivership checking account and a savings account at Wells Fargo Bank. These accounts had a March 31, 2019 balance in the total amount of \$1,670,696.39.

16. 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**

17. 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. . .

<sup>30</sup>

18. 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

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<sup>30</sup> [Receivership Order ¶¶ 72-74.](#)

compensation and expenses outlined herein for the Application Period of January 1, 2019 through March 31, 2019. The total fees requested for the Receiver and his Retained Professionals is in the total amount of \$231,720.82, which is summarized as follows:<sup>31</sup>

	<b>RECEIVER AND KLEIN AND ASSOCIATES</b>	<b>PARR BROWN</b>	<b>LONE PEAK</b>
Fees	\$68,986.00 <u>(\$7,000.00) unbilled</u> \$61,986.00	\$50,525.00 <u>(\$5,052.50) voluntary</u> reduction \$45,472.5	\$118,484.24
Expenses	\$0.00	\$2,028.08	\$3,750.00
<b>TOTAL</b>	\$61,986.00	\$47,500.58	\$122,234.24

19. 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 276.1 hours during the Application Period, which includes 28.0 hours of time which are not being billed, amounting to \$7,000.00 in fees in unbilled time. *See* **Exhibit A-1**.

B. Parr Brown has voluntarily reduced its actual billed fees in the total amount of \$5,052.50. *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 three separate matter numbers:

<sup>31</sup> *See* Exhibit A-1 (Receiver and Klein and Associates Summary of Fees); Exhibit A-2 (Parr Brown Summary of Fees); Exhibit B-1 (Invoices for Services of Receiver and Klein and Associates); Exhibit B-2 (Invoices for Services of Parr Brown); Exhibit C-2 (Invoices for Services of Lone Peak); Exhibit C-1 (Invoice of Out-of-Pocket Expenses for Parr Brown).



(a) Matter 1 – Administration of Receivership Estate; (b) Matter 2 – Asset Analysis and Recovery; (c) Matter 3 – 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 – Litigation, including legal service rendered litigating ancillary actions to recover assets of the Receivership Estate.

20. This Fee Application is supported by the following documents. **Exhibit A** contains a summary of the fees incurred for each of the billing matters, with **Exhibit A-1** containing a summary for the Receiver and Klein & Associates and **Exhibit A-2** containing a summary for Parr Brown. Detailed invoices which describe the work performed by the Receiver, Parr Brown, 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, and **Exhibit B-3** containing Lone Peak’s invoices. Summaries of the expenses incurred are attached as **Exhibit C**, containing invoices itemizing Parr Brown’s expenses.<sup>32</sup>

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

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<sup>32</sup> Lone Peak Valuation had one billed expense. That expense is listed in its invoice dated April 1, 2019.

22. 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.

23. 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.

24. 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

25. 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.

26. A proposed Order is attached hereto as Exhibit D.

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

DATED this 15th day of May, 2019.

**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*

**LONE PEAK VALUATION GROUP**



James Wood

**CERTIFICATE OF SERVICE**

I hereby certify that the above **SECOND INTERIM FEE APPLICATION FOR RECEIVER AND RECEIVER'S PROFESSIONALS FOR SERVICES RENDERED FROM JANUARY 1, 2019 THROUGH MARCH 31, 2019** was filed with the Court on this 15th day of May, 2019, and served via ECF on all parties who have requested notice in this case.

I also certify that, on the same date, 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