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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.

**RECEIVER'S SECOND MOTION TO
TRANSFER RELATED CASES
PURSUANT TO DUCivR 83-2(g)**

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

District Judge David Nuffer

MOTION, RELIEF SOUGHT, AND SPECIFIC GROUNDS

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 moves the Court, pursuant to Rule 83-2(g) of the local rules of the District of Utah, to reassign the following related cases, each pending in the United States

District Court of the District of Utah, to the judge assigned to this case (which is the lowest-numbered case) so they can be heard by the same judge:

R. Wayne Klein v. Ina Marie Newman, No. 2:19-cv-00623-DBP

R. Wayne Klein v. Glenda E. Johnson, No. 2:19-cv-00625-RJS

The Receiver has previously filed a motion for transfer of related cases.¹ The motion has been fully briefed and, as of the date of this filing, no decision on that motion has been entered. Each ancillary action is currently assigned to a different judge.

STATEMENT OF FACTS

The above referenced cases, for which transfer is sought, are ancillary actions to this proceeding. On October 31, 2018, the Receivership Estate was created with the entry of the Receivership Order (the “Order”).² Pursuant to the Order, the Receiver was appointed, and all of the Receivership Defendants’ assets were placed in the Receiver’s control. The Order authorizes and empowers the Receiver to, *inter alia*, 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.³

Since his appointment, the Receiver investigated the Receivership Defendants and discovered certain claims and causes of action. Each of the lawsuits identified above are brought by the Court-appointed Receiver to recover monies from persons and entities who received monies or assets from Receivership Defendants or Receivership Entities. Rather than have each

¹ [Docket No. 736](#), filed July 31, 2019.

² [Docket No. 490](#). A Corrected Order was filed the next day on November 1, 2018. See [Docket No. 491](#).

³ [Docket No. 491](#) at 13(1).

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.

The Court has recognized that “[i]t is necessary for the efficient administration of justice that any lawsuit filed by the Receiver in the U.S. District Court for the District of Utah under the Corrected Receivership Order be assigned to the same judge, to the extent possible.”⁴

Accordingly, for each lawsuit the Receiver files the Court instructed the Receiver to “promptly file a motion and proposed order in this case in accordance with DUCivR 83-2(g).”⁵

ARGUMENT

Rule 83-2(g) of the Local Rules of the District of Utah provides that two or more related cases pending before different judges may be transferred to a single judge upon motion of any party to a later-filed cause.⁶ In determining whether a case should be transferred, the Court may consider a number of factors, including:

- (i) Whether the cases arise from the same or a closely related transaction or event;
- (ii) Whether the cases involve substantially the same parties or property;
- (iii) Whether the cases involve the same patent, trademark, or copyright;
- (iv) Whether the cases call for a determination of the same or substantially related questions of law and fact;
- (v) Whether the cases would entail substantial duplication of labor or unnecessary court costs or delay if heard by different judges; and

⁴ [Docket No. 673](#), Order at 3.

⁵ *Id.*

⁶ *See* DUCivR 83-2(g)

(vi) Whether there is risk of inconsistent verdicts or outcomes; and

(vii) Whether the motion has been brought for an improper purpose.⁷

Although Rule 83-2(g) provides that the motion shall be decided by the judge assigned to the lower-numbered case, the judges assigned to the cases are authorized to confer about the appropriateness of the requested transfer.⁸ The Rule further provides that the Court may transfer any case sua sponte.⁹

Here, the factors from Rule 83-2(g) weigh heavily in favor of transferring the matters to this Court, or at the very least, to a single judge. The current action and the ancillary cases arise out of a similar or closely related transaction or event. The cases involve a fraudulent tax scheme by the Receivership Defendants and the subsequent fraudulent transfer of Receivership assets. Under Utah's Voidable Transactions Act, the Receiver's proof is essentially the same in all of the cases: prove that the transferor acted with "actual intent" to defraud,¹⁰ or that the transferor did not receive reasonably equivalent value and that the transferor was insolvent, such that the transfer is voidable.¹¹

Many of the relevant factors—or "badges of fraud"—that will be used to determine whether the transfers were made with "actual intent" will be the same in each case and for each transfer such as if "before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;" if "the debtor removed or concealed assets;" whether "the transfer

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ See [Utah Code § 25-6-202\(a\)](#).

¹¹ *Id.* § 25-6-202(b).

or obligation was to an insider;” or if “the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred[.]”¹²

A determination as to any of these factual questions will apply to nearly all of the transfers in all of the cases. For example, if the Receiver can show—as he expects to—that the Receivership Entities were insolvent at all relevant times when transfers were made, that finding would be common to each transfer and each case during the relevant time period. Also, a finding as to whether the transfers were made after suit had been threatened or filed and whether assets were removed or concealed would be common to all relevant transfers in the cases. As such, any findings as to “actual intent” or to the insolvency of any particular Receivership Entity will be common to each case.

Moreover, a determination as to a Receivership Entities’ solvency will be common to all the cases. And, because of the scope of the “massive fraud” by Receivership Entities, a finding as to whether reasonably equivalent value was received will also be common to each case and each transfer. Specifically, the Receiver intends to argue that the fraudulent scheme operators necessarily intended to incur, or believed or reasonably should have believed that they would incur debts beyond their ability to pay as they became due, and that no reasonably equivalent value can be given when transfers are made in furtherance of the fraudulent scheme.¹³ A finding as to these issues will be common to each case.

Next, having a single judge preside over the actions brought by the Receiver will also create efficiencies by requiring only one court to consider issues that will be common to many

¹² *Id.* § 25-6-202(2)

¹³ See e.g., [*In re Vaughan Co. Realtors*, 500 B.R. 778, 789-92 \(Bankr. D.N.M. 2013\)](#).

actions expected to be filed by the Receiver, eliminate the risk of inconsistent rulings on 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. This Court 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.

Judge Nuffer has presided over the underlying case since 2015, including a multiple week trial. He has authored numerous memorandum decisions and orders and other substantial documents, including the 144-page Finding of Fact and Conclusions of Law which makes extensive findings regarding the conduct of Receivership Defendants and the underlying fraud,¹⁴ and a 28-page Memorandum Decision and Order Freezing Assets and Appointing a Receiver which granted the injunctive relief requested by the United States following trial.¹⁵

Case assignments to other judges would entail significant duplication of labor and unnecessary court costs for all parties as each judge gets up to speed on the relevant legal and factual situation. At a minimum, if Judge Nuffer is not assigned to each case, a single judge should be assigned to prevent any additional duplication of labor or unnecessary court costs.

Finally, because the key issues in each case will apply across the spectrum of the cases, there is a risk of inconsistent verdicts if the cases are assigned to different judges. The same factual and legal questions that are common to each case are also the areas where the risk of inconsistent verdicts is greatest. These areas include: the Receiver's standing, statute of

¹⁴ See [Docket No. 467](#), filed October 4, 2018.

¹⁵ See [Docket No. 444](#), filed August 22, 2018.

limitations defenses, actual fraud, insolvency, and the accuracy of and weight to be given to the findings of forensic accountants.

Indeed, in three ancillary cases the receiver has previously filed, defendants have asserted counterclaims against the Receiver.¹⁶ Each counterclaim is identical and the Receiver has filed three separate 12(b)(1) motions to dismiss with nearly identical arguments.¹⁷ If these three cases—which are currently assigned to separate judges—are not reassigned to Judge Nuffer or a single judge, the risk of inconsistent verdicts is significant.

CONCLUSION

Because the ancillary cases have so many common factual issues to this lawsuit, each should be transferred to this Court to ensure judicial economy and consistent outcomes. A proposed order transferring the cases is submitted concurrently herewith.

DATED this 10th day of September, 2019.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Michael S. Lehr _____

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Attorneys for R. Wayne Klein, Receiver

¹⁶ *R. Wayne Klein v. LaGrand Johnson*, No. 2:19-cv-00534-TC, [Docket No. 6](#); *R. Wayne Klein v. Randale Johnson*, No. 2:19-cv-00532-JNP-PMW, [Docket No. 9](#); *R. Wayne Klein v. Matthew Shepard*, No. 2:19-cv-00533-HCN-CMR, [Docket No. 6](#).

¹⁷ *R. Wayne Klein v. LaGrand Johnson*, No. 2:19-cv-00534-TC, [Docket No. 13](#); *R. Wayne Klein v. Randale Johnson*, No. 2:19-cv-00532-JNP-PMW, [Docket No. 13](#); *R. Wayne Klein v. Matthew Shepard*, No. 2:19-cv-00533-HCN-CMR, [Docket No. 14](#).

CERTIFICATE OF SERVICE

I hereby certify that the above **RECEIVER'S SECOND MOTION TO TRANSFER RELATED CASES PURSUANT TO DUCivR 83-2(g)** was filed with the Court on this 10th day of September, 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:

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

Pro se Defendants

/s/ Michael S. Lehr