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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.

**FOURTH INTERIM FEE
APPLICATION FOR RECEIVER AND
RECEIVER'S PROFESSIONALS FOR
SERVICES RENDERED FROM JULY
1, 2019 THROUGH SEPTEMBER 30,
2019**

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

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

Defendants”), hereby submits this fourth 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 July 1, 2019 through September 30, 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.² The United States alleged, and the Court found, among other things, that Defendants operated a massive tax fraud.³

2. Defendants filed two *Notices of Appeal* relating to the original judgment⁴ a *Notice of Appeal* of the Court’s denial of an April motion to dismiss filed by Neldon Johnson,⁵ and a

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

⁵ 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 Tenth Circuit dismissed these appeals [No. 19-4066].

Notice of Appeal of the Court's order including subsidiaries and affiliates in the Receivership Estate.⁶

3. On October 31, 2018, the Court entered its *Receivership Order* ("Order"),⁷ which, among other things, appointed the Receiver and continued a previously-entered asset freeze.⁸

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.⁹

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 agrees with the relief sought in this Fee Application.

⁶ [Docket No. 698](#), filed on June 24, 2019. USCA Case Number 19-4089.

⁷ [Docket No. 490](#). A *Corrected Receivership Order*, which corrected formatting errors, was entered the following day. [Docket No. 491](#), filed Nov. 1, 2018.

⁸ *Memorandum Decision and Order Freezing Assets and to Appoint a Receiver*, [Docket No. 444](#), filed Aug. 22, 2018.

⁹ [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 Fourth Quarterly Status Report* ("Fourth Status Report"), filed November 5, 2019.¹⁰ Below is a brief summary of actions described in the Fourth Status Report.

8. Following the Court's order canceling the shares of IAS,¹¹ the Receiver notified FINRA of the order and secured a halt to trading of the shares.

9. The Receiver has pursued recovery of assets that belong to the Receivership Estate, including:

a. Filing a motion seeking an order requiring Glenda Johnson to turn over 14 real properties held in her name that were purchased with Receivership funds and \$1.4 million in two bank accounts she controls, which money came from Receivership Entities;

b. Obtained a list of all vehicles titled in the name of Receivership Entities and Neldon Johnson and demanded a turnover of those vehicles.

c. Filing a notice of default in anticipation of foreclosing on property that secures a promissory note to Receivership Entities by a former board member of IAS.

10. All six real properties that were owned by IAS were sold during the Reporting Period. Real property located in Texas that is titled in the name of the N. P. Johnson Family Limited Partnership is now under the control of the Receiver and has been listed for sale. The Receiver successfully appealed the tax assessment valuation for the tower site property in Millard

¹⁰ [Docket No. 794](#).

¹¹ Docket No. 719, filed Jul. 8, 2019.

County, thereby substantially reducing the amount of property taxes that will be owed for 2019. He has consulted with the purchaser of the tower site on the wrongful lien filed by Glenda Johnson on that property after the sale.

11. The two aircraft and a trailer owned by Receivership Defendants were sold.

12. Working with counsel for the United States, the Receiver provided comments on the draft compliance declarations provided by Neldon Johnson, Glenda Johnson, Randale Johnson, and LaGrand Johnson, identifying additional records that should have been reviewed and additional information that should have been provided to the Receiver. The Receiver worked closely with the United States in its motion for additional sanctions against these persons for their continued contempt.

13. Significant additional investigation and analysis was conducted during the Fee Application Period relating to stock grants to and sales by Nelson Snuffer; engineering work performed by Wisdom Farms after the Receiver was appointed (using IAS funds); Neldon Johnson's actual control over the Texas property; the nature and extent of legal work and the beneficiaries of legal work performed by Nelson Snuffer and other law firms; Nelson Snuffer's role in diverting IAS funds for the purchase of real estate that was titled in the name of Glenda Johnson; the nature and extent of personal credit card charges that were paid by Receivership Entities; the type and coverage of insurance coverage obtained by Receivership Entities; the actual delivery destination of over \$40,000 worth of furniture purchased by Receivership Entities; and the source of funding for Nelson Snuffer's legal work on the appeal, opposing motions by the Receiver, and defending Neldon Johnson's family members in the contempt proceedings.

14. The Receiver made demands on insiders, law firms, and salespersons for a return

of funds they received improperly from Receivership Entities. The Receiver negotiated settlement agreements with approximately 13 commission recipients and filed a motion seeking Court approval of those settlements. Additional settlement agreements were negotiated following the filing of that motion, which have since been presented to the Court for approval. Tolling agreements have been reached with about a dozen potential defendants, giving the potential defendants time to consult with counsel and giving the Receiver an opportunity to explore possible settlements with these persons.

15. In addition to the turnover motion and the initiation of foreclosure proceedings described above, counsel for the Receiver filed seven lawsuits against insiders or persons closely associated with insiders. Receiver's counsel filed an additional 25 lawsuits seeking recoveries from commission recipients. In connection with these lawsuits, counsel filed motions to have the cases transferred to this Court for further action, to promote consistency and efficiency. Notice of the litigation stay was served on the Utah Labor Commission, staying a harassment claim that had been pending against one of the Receivership Entities.

16. The Receiver filed motions to dismiss counterclaims filed by four insiders who accused the Receiver of acting *ultra vires* and asserting that he is personally responsible for losses these insiders suffered from the cancellation of their shares in IAS.

17. The Receiver sought reappointment as Receiver, to enable him to file notices of Receivership in additional districts where potential defendants are located. The Receiver also filed a motion seeking appointment of conflict counsel, to handle litigation for the Receiver where Parr Brown attorneys have a conflict of interest.

18. The Receiver managed financial operations of the Receivership Estate, including

receiving proceeds from settlements and property sales, paying ordinary operating expenses of the Receivership Estate, and paying living expenses to Greg Shepard.

III. BANK ACCOUNTS OF THE RECEIVERSHIP ESTATE

19. The Receivership Estate maintains a Receivership checking account and a savings account at Wells Fargo Bank. These accounts had a September 30, 2019 balance in the total amount of \$1,744,446.70.

20. 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

21. 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. . .

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¹² [Receivership Order ¶¶ 72-74](#)

22. 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, 2019 through September 30, 2019. The total fees and expenses requested for the Receiver and his Retained Professionals is \$233,504.74, which is summarized as follows:¹³

| | RECEIVER AND KLEIN AND ASSOCIATES | PARR BROWN | LONE PEAK |
|--------------|--|--|------------------|
| Fees | \$108,898.00 (\$ 4,950.00) unbilled <u>(\$15,000.00) waived</u> \$88,948.00 | \$98,207.00 <u>(\$9,820.70) voluntary</u> reduction \$88,386.30 | \$42,514.14 |
| Expenses | \$0.00 | \$13,656.30 | \$0.00 |
| TOTAL | \$88,948.00 | \$102,042.60 | \$42,514.14 |

23. 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 442.3 hours during the Application Period, which includes 19.8 hours of time which are not being billed, amounting to \$4,950.00 in fees in unbilled time. The Receiver is also waiving an additional \$15,000.00 in earned fees. *See* **Exhibit A-1**.

¹³ 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).

B. Parr Brown has voluntarily reduced its actual billed fees in the total amount of \$9,820.70. 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 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. 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 – Appeal, includes legal services rendered regarding appeal pending before the United States Court of Appeals for the Tenth Circuit, case no. 19-4089.

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

24. 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.

25. 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.

26. 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.

27. 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.

28. 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

29. 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.

30. A proposed Order is attached hereto.

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

DATED this 23rd day of December, 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 **FOURTH INTERIM FEE APPLICATION FOR RECEIVER AND RECEIVER'S PROFESSIONALS FOR SERVICES RENDERED FROM JULY 1, 2019 THROUGH SEPTEMBER 30, 2019** was filed with the Court on this 23rd day of December, 2019, and served via ECF on all parties who have requested notice in this case.

/s/ Michael S. Lehr