

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

**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 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. Steven Bowers, No. 2:15-cv-00530-EJF

R. Wayne Klein v. Randale Johnson, No. 2:15-cv-00532-JNP

R. Wayne Klein v. Matthew Shepard, No. 2:15-cv-00533-DBP

R. Wayne Klein v. LaGrand T. Johnson, individually and as trustee of the Yotsuya Family Trust, No. 2:15-cv-00534-DBP

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”).¹ 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.²

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 case assigned to different judges using the random assignment process, the Receiver and the

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

² [Docket No. 491](#) at 13(1).

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.

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. See DUCivR 83-2(g). 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
- (vi) Whether there is risk of inconsistent verdicts or outcomes; and
- (vii) Whether the motion has been brought for an improper purpose.

Id.

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. *Id.* The Rule further provides that the Court may transfer any case sua sponte. *Id.*

In this instance, 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 newly filed 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. 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 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. 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.

Indeed, this Court previously found 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.”³ As such, this Court should transfer all cases to Judge Nuffer. In the alternative, the Receiver requests that a single judge be assigned to preside over these cases.

³ [Docket No. 673](#), filed May 24, 2019.

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 31st day of July, 2019.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Michael S. Lehr _____

Jonathan O. Hafen

Jeffery A. Balls

Michael Lehr

Attorneys for R. Wayne Klein, Receiver

CERTIFICATE OF SERVICE

I hereby certify that the above **RECEIVER'S MOTION TO TRANSFER RELATED CASES PURSUANT TO DUCivR 83-2(g)** was filed with the Court on this 31st day of July, 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 Defendant

/s/ Michael S. Lehr