

Jonathan O. Hafen (6096) (jhafen@parrbrown.com)
Jeffery A. Balls (12437) (jballs@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

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 SEVENTH MOTION
FOR APPROVAL TO CONSUMMATE
SETTLEMENTS**

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

District Judge David Nuffer

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 Seventh Motion for Approval to Consummate Settlements. 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”).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, among other things, investigate, prosecute, and compromise actions to recover Receivership Property.²

2. Since his appointment, the Receiver has engaged in an investigation of Receivership Defendants and has discovered certain claims and causes of action. On May 24, 2019, the Court granted the Receiver leave to commence litigation against designated categories of persons, subject to the Requirement that the Receiver first consult with counsel for the United States regarding lawsuits to be filed.³

3. The Court has granted six prior motions by the Receiver seeking approval to consummate settlements.⁴

4. Based on demands made and lawsuits filed, the Receiver has entered into five (5) additional settlement agreements and releases (“Settlement Agreements”) with certain parties. Together, these settlement agreements will bring \$60,800.00 into the Receivership Estate. Each of these Settlement Agreements (a) has been negotiated at arm’s length and in good faith by the

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

²*Id.* at ¶ 59.

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

⁴[Docket No. 799](#), filed November 19, 2019; [Docket No. 832](#), filed January 8, 2020; [Docket No. 853](#), filed February 3, 2020; [Docket No. 896](#), filed March 30, 2020; [Docket No. 909](#), filed April 16, 2020; and [Docket No. 943](#), filed June 30, 2020.

Receiver and the respective parties, (b) will avoid the expense, delay and inherent risks of litigation, (c) will result in the collection of funds for the benefit of the Receivership Estate, and (d) where applicable, has taken into account issues related to the collection of any judgment that may be obtained.

5. Based on the above factors, the Receiver has determined that the Settlement Agreements are in the best interest of the Receivership Estate.⁵

6. The Settlement Agreements, subject to the present Motion, have been approved by counsel for the United States. The Settlement Agreements, which provide that they are subject to Court approval, are as follows:

a. Connie A. Kulacz. The Receiver sued Connie A. Kulacz, seeking recovery of \$19,320.00 in commissions she received. Kulacz provided financial information to the Receiver, including information showing she is over age 70, is retired, lives on Social Security, and owns no significant assets. The Receiver entered into a settlement agreement with Kulacz on September 9, 2020 pursuant to which Kulacz will be excused from repaying any of the amounts she received. In its place, Kulacz made numerous admissions, including that most of her commissions were received after the United States had filed its lawsuit, the solar lens leasing program constituted a security, she failed to make disclosures that were required in offering and selling securities, she is unaware of

⁵“In evaluating proposed settlements in equity receiverships . . . the Court should inquire whether the action to be taken is ‘in the best interest of the receivership.’” *SEC v. Am. Pension Servs., Inc.*, No. 214CV00309RJSDBP, 2015 WL 12860498, at *10 (D. Utah Dec. 23, 2015) (quoting *SEC v. Capital Consultants, LLC*, No. Civ. 00-1290-KI, 2002 WL 31470399 (D. Ore. March 8, 2002)).

any evidence that any of the solar lenses have produced electricity, and the solar lenses were never placed “in service.” With these admissions and based on her demonstrated inability to make any payments to the Receiver, the Receiver will dismiss the lawsuit against her if this settlement is approved by the Court.

b. Shane Luke, Alodel LLC. In September 2019, the Receiver sued Shane Luke and Alodel LLC, a company he controls, seeking recovery of \$16,649.10 in commissions he received. The Receiver entered into a settlement agreement with Luke and Alodel on November 30, 2020 pursuant to which Luke and Alodel will pay \$16,500.00 to the Receiver. Luke and Alodel will make five quarterly payments beginning February 1, 2021. If Luke and Alodel pay \$15,500.00 to the Receiver by February 1, 2021, the remaining \$1,000.00 will be forgiven.

c. Lynette Williams. The Receiver sued Williams in September 2019 alleging she received \$42,701.50 in commissions from the sales of solar lenses. Williams provided a sworn affidavit of financial matters showing that her consulting business is bringing in only a portion of the amount needed to cover her monthly living expenses, she owes significant debts to others, and is delinquent in payment of property taxes and other debts. However, Williams has significant equity in real property. The Receiver entered into a settlement agreement with Williams pursuant to which Williams will pay the Receiver \$30,000.00. The Receiver agreed to give Williams until March 31, 2021 to sell her home in order to raise funds to pay the settlement amount.

d. Gleaves Swearingen LLP. Gleaves Swearingen is an Oregon law firm that acted as local counsel on behalf of Heideman and Associates and Nelson Snuffer Dahle

& Poulsen, when Heideman and NSDP were representing lens purchasers in litigation against the Oregon Tax Court. The Receiver sued Gleaves on October 30, 2019, seeking recovery of \$21,419.03 in payments to Gleaves. The parties exchanged discovery and discussed the legal theories of each. Documents produced to the Receiver by Gleaves demonstrated that payments to Gleaves from Heideman were from Heideman's operating account, which would have materially increased the Receiver's burden of proof. The Receiver entered into a settlement agreement on December 4, 2020 pursuant to which Gleaves will pay \$7,500.00 to the Receiver by December 31, 2020. The settlement agreement is without admissions of liability by Gleaves. If the settlement is approved by the Court, the Receiver will dismiss the lawsuit against Gleaves.

e. Scott and Shauna Black. The Receiver sued Scott P. Black and Shauna Black on September 23, 2019, seeking the recovery of \$11,124.65 in commissions they received and another \$3,460.00 in loans and payments they received from Shepard Global. Shauna Black is the daughter of Receivership Defendant Greg Shepard. The Blacks asserted that \$100.00 of the funds they received from Shepard Global was reimbursement for out-of-pocket expenses for helping with a booth at the Millard County Fair and that a \$3,000.00 loan from Shepard Global had been repaid with in-kind work. The Blacks also provided financial information to the Receiver indicating that they lacked the financial ability to repay the entire amount of commissions they received. On December 14, 2020, the Receiver entered into a settlement agreement with the Blacks, whereby the Blacks agreed to pay the Receiver \$6,800.00 over two years, beginning February 1, 2021. The Blacks also made admissions, including: a) they assisted Greg Shepard in promoting the

RaPower solar scheme by setting up and helping with a booth at the 2015 Millard County Fair, b) they never observed the installed solar lenses power a turbine or generate electricity, c) the turbine they saw operating was powered by sources other than solar lenses, and d) the sold solar lens investment program was a security that they offered and sold to others, during which offers and sales they failed to disclose material information that was required to be disclosed during the offer and sale of securities.

CONCLUSION

The Receiver moves the Court to approve the Settlement Agreements described herein and authorize the Receiver to finalize these five (5) Settlement Agreements.

DATED this 15th day of December 2020.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Jeffery A. Balls

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 SEVENTH MOTION FOR APPROVAL TO CONSUMMATE SETTLEMENTS** was filed with the Court on this 15th day of December, 2020, and served via ECF on all parties who have requested notice in this case.

/s/ Wendy V. Tuckett
