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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.

**RECEIVER’S NINTH MOTION FOR  
APPROVAL TO CONSUMMATE  
SETTLEMENTS**

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

District Judge David Nuffer

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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 Ninth 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”).<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

3. The Court has granted eight prior motions by the Receiver seeking approval to consummate settlements.<sup>4</sup>

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 and one revised settlement agreement. Together, these settlement agreements will bring an additional \$272,466.78 into the Receivership Estate. Each of these Settlement Agreements (a) has been negotiated at arm’s length and in good faith by the Receiver and the respective parties, (b) will avoid the expense, delay and inherent risks of further litigation, (c) will result in the collection of

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<sup>1</sup> Docket No. 490. A Corrected Order was filed the next day on November 1, 2018. *See* Docket No. 491.

<sup>2</sup> *Id.* at ¶ 59.

<sup>3</sup> Docket No. 673, filed May 24, 2019.

<sup>4</sup> 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; Docket No. 943, filed June 30, 2020; Docket No. 1059, filed January 4, 2021; and Docket No. 1089, filed February 16, 2021.

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.<sup>5</sup>

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. JP Morgan Chase Bank. The Receiver signed a March 18, 2021 settlement agreement with Chase Bank relating to payments by Receivership Entities to Chase Bank on credit card debts owed by Glenda Johnson. The Receiver's analysis found payment of \$446,952.98 to Chase Bank. Through discovery, the Receiver and Chase Bank expended significant effort attempting to identify the credit card charges that might have been for business purposes and which provided value to the Receivership Entities. Under the settlement agreement, Chase Bank will return to the Receivership Estate \$114,593.05. This amount is the product of a formula based on the percentage of purchases that the Receiver believes he could prove were for personal charges. Chase will pay this amount within 30 days of Court approval of the settlement. When this amount is paid, the Receiver will dismiss his pending litigation against Chase Bank.

b. Richard Bell, Bell Energy Holding, LLC. The Receiver sued Bell Energy Holding, LLC in 2019 seeking the recovery of \$35,493.48 paid to Bell Energy as

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<sup>5</sup> "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)).

commissions for its success in soliciting others to purchase solar lenses from RaPower. After discovery, the Receiver filed a motion for summary judgment, which the Court indicated it would grant. On March 17, 2021, before a summary judgment order was entered, Bell Energy and its principal, Richard Bell, signed a settlement agreement, agreeing to repay the full \$35,493.48 they received as commissions. Bell will pay \$15,493.48 by March 31, 2021, another \$10,000 by January 1, 2022, and the final \$10,000 by January 1, 2023. Bell Energy admitted receiving commissions for soliciting others and admitted the solar lens program was a security and was sold in violation of state and federal securities laws. The Receiver agreed to waive payment of pre-judgment interest that was expected to be awarded by the Court. Upon Court approval of this agreement and receipt of the first payment, the Receiver will dismiss the lawsuit against Bell.

c. Robert Aulds, Meria G. Aulds, M.D., P.A., and Wichita Falls Floor Care Center, LLC. In 2020, the Receiver sued Robert Aulds and two companies he controlled seeking recovery of \$69,294.96 in commissions. Aulds was a very prominent solicitor for RaPower. After discovery, the Receiver filed a motion for summary judgment, which the Court indicated it would grant. Before a summary judgment order was entered, Aulds and his companies signed a March 16, 2021 settlement agreement in which they agreed to return the full \$69,294.96 they received in commissions; \$10,000 will be paid by March 31, 2021 with \$1,694.14 paid monthly for three additional years. Aulds admitted that marketing materials for RaPower included statements that everyone makes money and that Aulds' "federal tax liability" was "zeroed out." Aulds admitted holding marketing meetings attended by as many as 20 people. Aulds admitted violating state and federal

securities laws. The Receiver agreed to waive pre-judgment interest that he expected would be awarded by the Court. Upon approval of this agreement and receipt of the first payment, the Receiver will dismiss the lawsuit against Aulds and his companies.

d. Steven Chaston. The Receiver sued Chaston seeking the recovery of \$9,229.00 as commissions for his success in soliciting others to purchase solar lenses. After discovery, the Receiver filed a motion for summary judgment, which the Court indicated it would grant. Before a summary judgment order was entered, Chaston signed a settlement agreement agreeing to repay the full \$9,229.00 he received in commissions. Payment will be made by April 30, 2021. Chaston admitted receiving commissions for soliciting others and admitted violating state and federal securities laws when marketing the solar lens program. The Receiver agreed to waive payment of pre-judgment interest that was expected to be awarded by the Court. Upon approval of this agreement and receipt of the first payment, the Receiver will dismiss the lawsuit against Chaston.

e. Kelvin Smith. The Receiver sued Smith in 2019, alleging Smith was paid \$42,854.96 in commissions for soliciting others to purchase solar lenses. After discovery, the Receiver filed a motion for summary judgment, which the Court indicated it would grant. Before a summary judgment order was entered, Smith signed a March 18, 2021 settlement agreement in which Smith agreed to pay the full \$42,856.25 he received as commissions. Smith will pay \$10,000.00 by March 31, 2021 and make monthly payments of \$938.75 through February 28, 2024. Smith admitted receiving commissions for soliciting others and admitted violating state and federal securities laws in selling the solar lens program. The Receiver agreed to waive payment of pre-judgment interest that was

expected to be awarded by the Court. Upon approval of this agreement and receipt of the first payment, the Receiver will dismiss the lawsuit against Smith.

f. Evan Ayres. On October 8, 2019, Ayres signed a previous settlement agreement with the Receiver, agreeing to pay \$4,000 by October 31, 2020 in settlement of the \$10,460.25 he received as commissions. At the time, Ayres provided information showing financial hardship as justification for the reduced settlement amount. Ayres failed to make any of the payments he promised in the settlement agreement, even after being reminded of the payment obligations. On February 24, 2021, the Receiver filed suit against Ayres, seeking a return of the full amount he was paid in commissions. After he was served with the summons and complaint, Ayres sought to reaffirm the prior settlement agreement, promising to pay the \$4,000 immediately. Ayres blamed the Receiver for not sending him invoices and claimed he (Ayres) did not know where to send the payments despite the settlement agreement specifically identifying how and when payments were to be made. Ayres further claimed his wife was just laid off from work due to COVID-19, so he would be unable to pay the full amount being sought. The Receiver agreed that if Ayres immediately paid \$6,000, the Receiver would dismiss the lawsuit. Ayres paid the \$6,000—a \$2,000 supplement over the payment requirement of the initial settlement agreement.

### **CONCLUSION**

The Receiver moves the Court to approve the Settlement Agreements described herein and authorize the Receiver to finalize these five (5) Settlement Agreements and the amended settlement agreement with Evan Ayres.

DATED this 22<sup>nd</sup> day of March 2021.

**PARR BROWN GEE & LOVELESS, P.C.**

*/s/ Jeffery A. Balls* \_\_\_\_\_

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*Attorneys for R. Wayne Klein, Receiver*

**CERTIFICATE OF SERVICE**

I hereby certify that the above **RECEIVER'S NINTH MOTION FOR APPROVAL TO CONSUMMATE SETTLEMENTS** was filed with the Court on this 22<sup>nd</sup> day of March 2021 and served via ECF on all parties who have requested notice in this case.

*/s/ Lori Stumpf*