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**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION**

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<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff,</p> <p>v.</p> <p>RAPOWER-3, LLC; INTERNATIONAL AUTOMATED SYSTEMS, INC.; LTB1, LLC; R. GREGORY SHEPARD; NELDON JOHNSON; and ROGER FREEBORN,</p> <p>Defendants.</p>	<p><b>RECEIVER’S TENTH MOTION FOR APPROVAL TO CONSUMMATE SETTLEMENTS</b></p> <p>Civil No. 2:15-cv-00828-DN</p> <p>District Judge David Nuffer</p>
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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 Tenth 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 numerous 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. As a result of demands made and lawsuits filed by the Receiver and rulings by the Court, numerous defendants previously have reached settlement agreements with the Receiver. The Court has granted nine prior motions by the Receiver seeking approval to consummate settlements.<sup>4</sup>

4. Based on demands made, lawsuits filed, and judgments entered, the Receiver has entered into six (6) additional settlement agreements and releases (“Settlement Agreements”)

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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; Docket No. 1089, filed February 16, 2021; and Docket No. 1111, filed March 26, 2021.

with certain parties and one revised settlement agreement. Together, these settlement agreements will bring an additional \$146,001.45 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 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. Frank Lunn and Kahuna Builders, LLC. The Receiver signed an April 13, 2021 settlement agreement with Lunn and Kahuna Builders relating to commission payments by Receivership Entities to Lunn and Kahuna. The Receiver's analysis found payment of \$4,515.00 in improper payments to Lunn and \$50,137.50 in improper payments to Kahuna. During the litigation, Lunn demonstrated that Kahuna completely ceased operations in 2017, is without assets and has negative equity. Lunn has represented that

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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)).

none of the commission payments to Kahuna were delivered to or used by Lunn, but were expended as part of Kahuna's ordinary construction business. Under the agreement, Lunn has paid \$4,515.00 that he received in commissions and Kahuna has stipulated to the entry of a judgment against it in the amount of \$50,137.50. This judgment will be assigned to the United States, which can decide whether Kahuna has any assets or whether the judgment amount can be collected from Lunn. Lunn has agreed to cooperate with the Receiver's ongoing work, including his efforts to recover funds that Shepard lost in a prime bank scam involving the South African Reserve Bank. Lunn has paid the \$4,515.00 settlement amount. The Receiver will dismiss the action against Lunn and Kahuna after the judgment has been entered against Kahuna and upon approval of this settlement by the Court.

b. Mark Shepard. Mark Shepard, a son of Greg Shepard, received \$23,308.95 from Greg Shepard, one of Shepard's companies, and RaPower. As part of a May 21, 2021 settlement agreement, the Receiver agreed not to require the return of \$4,355.00 Mark Shepard received as gifts from Greg Shepard. Mark Shepard has agreed to pay \$18,935.95 to the Receivership Estate. Mark Shepard will make monthly payments to the Receiver as well as semi-annual lump sum payments of \$3,000 each, with the final payment due on April 30, 2021. Mark Shepard has also made admissions regarding his role in the RaPower tax fraud and securities fraud. Mark Shepard has made his first two payments required under the agreement. Upon approval of this settlement by the Court, the Receiver will dismiss the lawsuit against Mark Shepard.

c. James Walter Woodson, Sr. The Receiver sued Woodson, alleging he received \$29,633.50 in improper payments from the Receivership Entities. The Receiver filed a summary judgment motion against Woodson, which was still pending at the time the settlement agreement was signed on May 24, 2021. Under the settlement agreement, Woodson admitted violating the securities laws in connection with his solicitation of lens purchases by others and agreed to pay \$29,633.60 to the Receivership Estate. Woodson will make an initial payment of \$8,000 by June 30, 2021, followed by 30 monthly payments of \$721.12. The final payment will be due by December 31, 2023. The initial \$8,000 payment has been received. Upon approval by the Court, the Receiver will dismiss the lawsuit against Woodson.

d. Kirk B. Newman. The Receiver filed suit against Newman in 2019, seeking the recovery of \$12,828.90 in commission payments to Newman. The Court granted summary judgment to the Receiver for \$12,828.90, plus prejudgment interest. On May 28, 2021, Newman signed a settlement agreement in which he admitted violating the securities laws and agreed to repay the \$12,828.90. Newman will make an initial payment of \$3,000.00 by June 15, 2021, and 20 monthly payments beginning in July 2021 and ending on January 31, 2023. The initial payment has been received. Upon the Court's approval of this agreement, the Receiver will dismiss the lawsuit against Newman.

e. Melvin Thomas Day, Independent Financial Services, L.L.C. The Receiver sued Day and IFS asserting they received \$106,371.24 in improper payments from the Receivership Entities. The Court granted the Receiver's motion for summary judgment

against Day and IFS, but the judgment has not issued. As part of settlement negotiations, Day and IFS asserted that \$39,900.00 of the amount they received was a refund of solar lenses he had purchased. Day had not raised his issue in his opposition to the Receiver's motion for summary judgment, but the Receiver confirmed the purpose of this payment to Day. In a May 25, 2021, settlement agreement, Day and IFS admitted violating the securities laws and agreed to repay \$65,000.00 to the Receivership Estate. Day and IFS will make an initial payment of \$20,000 by June 7, 2021, and 33 monthly payments between June 2021 and January 2024. Day and IFS are jointly and severally liable for payment of this amount. Day has paid the initial down payment. Upon approval of this settlement by the Court, the Receiver will dismiss the lawsuit against Day and IFS.

f. Andrew Jacob Zeigler. The Receiver's lawsuit against Zeigler alleged Zeigler was paid \$15,839.45 in commissions. This lawsuit is in the litigation stage. In a settlement agreement dated June 14, 2021, Ziegler agreed to pay \$15,000 to the Receivership Estate by June 30, 2021, in full settlement of the litigation. Kinsey admitted that he sold unregistered securities without being licensed and that he did not disclose material information to the lens purchasers. Upon receipt of Zeigler's payment and approval by the Court, the Receiver will dismiss the pending litigation against Zeigler.

### **CONCLUSION**

The Receiver moves the Court to approve the Settlement Agreements described herein and authorize the Receiver to finalize these six (6) Settlement Agreements.

DATED this 30th day of June 2021.

**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 TENTH MOTION FOR APPROVAL TO CONSUMMATE SETTLEMENTS** was filed with the Court on this 30th day of June 2021 and served via ECF on all parties who have requested notice in this case. Copies were also sent by mail to:

Neldon Johnson  
Post Office Box 95332  
South Jordan, UT 84095

R. Gregory Shepard  
858 Clover Meadow Drive  
Murray, UT 84123

/s/ Wendy V. Tuckett