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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 SEVENTEENTH MOTION  
FOR APPROVAL TO CONSUMMATE  
SETTLEMENT WITH CHRISTOPHER  
TAYLOR AND ENERGIZING  
CONCEPTS**

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

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 Seventeenth Motion for Approval to Consummate Settlement. 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> The Order authorizes and empowers the Receiver to, among other things, investigate, prosecute, and compromise actions to recover Receivership Property.<sup>2</sup> On May 24, 2019, the Court granted the Receiver leave to commence litigation against designated categories of persons.<sup>3</sup>

2. The Court has granted fifteen prior motions by the Receiver seeking approval to consummate settlements. The Receiver’s sixteenth motion for approval of settlement agreements is pending.<sup>4</sup>

3. The Receiver has entered into one additional settlement agreement involving a matter currently in litigation (“Settlement Agreement”). This agreement resolves the Receiver’s lawsuit against Christopher Taylor and his company, Energizing Concepts, which lawsuit is set for trial beginning January 9, 2023. The trial was to be a joint trial, involving the Receiver’s claims against Taylor and co-defendant Curtis Snow. If this settlement is approved by the Court, the trial will continue only against Snow.

4. The settlement with Taylor will bring an additional \$73,000 into the Receivership Estate. The Settlement Agreement (a) was negotiated at arm’s length and in good faith by the Receiver and the defendant, (b) will reduce the expense of the upcoming trial, (c) will result in

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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. 1232, filed November 15, 2022.

the collection of significant funds for the benefit of the Receivership Estate, and (d) has taken into account issues related to the collection of a judgment.

5. Based on the above factors, the Receiver has determined that the Settlement Agreement with Christopher Taylor and his company, Energizing Concepts, is in the best interest of the Receivership Estate.<sup>5</sup> The Settlement Agreement has been approved by counsel for the United States.

6. The Receiver filed suit against Taylor and Energizing Concepts on October 25, 2019. The Receiver alleged that Taylor received \$355,651.89 directly from IAS and RaPower and \$137,148.29 from the sale of stock that IAS granted to Energizing Concepts and Taylor sold. Taylor asserts that the proceeds from the stock sales did not go to him, but were paid over to Johnson and IAS.

7. The Receiver believes that the evidence he would present at trial against Taylor is strong. The Receiver believes that findings previously made by the Court and exhibits already stipulated to by defendants would result in the trial focusing on affirmative defenses by Taylor, where he would have to prove his good faith and lack of knowledge of the fraud and show that IAS and RaPower received value reasonably equivalent to the amounts they paid to Taylor. While the Receiver expects he would have prevailed at trial, he is concerned he would face difficulty in collecting on the judgment. He previously reviewed sworn financial statements from Taylor disclosing that Taylor had limited assets that might be available to satisfy any

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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).

judgment. In light of the frequency of appeals having been filed by insiders at RaPower, the Receiver also has some concern that Taylor would appeal a judgment, further delaying finality in this matter and increasing the expenses for the Receivership. This settlement will resolve concerns about collectability of the settlement amount and the finality of the resolution.

8. In light of these considerations, the Receiver negotiated a settlement agreement with Taylor pursuant to which Taylor will pay \$73,000 to the Receivership Estate. Taylor will pay \$25,000 by January 5, 2023, monthly payments of \$300 for two years, and a final balloon payment of \$42,800 in January 2025.

9. If the settlement is approved by the Court, the Receiver will dismiss the pending lawsuit against Taylor and Energizing Concepts—but continue with the trial against Snow, which will begin on January 9, 2023.

### **CONCLUSION**

The Receiver moves the Court to approve, and authorize the Receiver to finalize, the Settlement Agreement.

DATED this 3<sup>rd</sup> day of January 2023.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Jeffery A. Balls

Jonathan O. Hafen

Jeffery A. Balls

*Attorneys for R. Wayne Klein, Receiver*

**CERTIFICATE OF SERVICE**

I hereby certify that the above **RECEIVER'S SEVENTEENTH MOTION FOR APPROVAL TO CONSUMMATE SETTLEMENT** was filed with the Court on this 3<sup>rd</sup> day of January, 2023 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, Utah 84095

R. Gregory Shepard  
4933 South Murray Boulevard, Apartment U28  
Salt Lake City, Utah 84123-2641

/s/ Wendy V. Tuckett