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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 ASSIGN ADDITIONAL JUDGMENTS TO PLAINTIFF, UNITED STATES 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 and others (collectively "Receivership Defendants"), hereby submits this Motion to Assign Additional Judgments to Plaintiff, United States. 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.¹ Pursuant to the Order, the Receiver was appointed, and all the

¹Docket No. 490. A Corrected Receivership Order ("CRO") was issued the following day. See Docket No. 491.

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. On May 24, 2019, the Court granted the Receiver leave to commence litigation and the Receiver subsequently filed over 80 lawsuits against persons who improperly received funds from Receivership Entities. Numerous judgments in favor of the Receiver have been obtained in that litigation, including default judgments, stipulated judgments, and summary judgments.

3. After consulting with the United States, the Receiver and the United States agree that amounts owed on these judgments can be collected most efficiently and cost-effectively by the United States. The Court has previously approved the assignment to the United States of seven summary judgments³ and the judgment against Matthew Shepard.⁴

4. Subsequent to the most recent assignment of a judgment, the Court entered judgment against Curtis Snow, based on the jury verdict.⁵ In addition, due to the success the United States has achieved in collecting on prior judgments, the United States has agreed to accept responsibility for collecting on nine additional judgments granted to the Receiver and two delinquent settlement agreements.

5. Therefore, the Receiver asks the Court to enter the proposed order, attached to this motion as Exhibit A, assigning to the United States certain judgments and settlement agreements obtained by the Receiver.

²*Id.* at ¶ 59.

³Docket no. 1214, filed May 31, 2022.

⁴Docket no. 1236, filed December 5, 2022.

⁵Case no. 2:19-cv-757, docket no. 99, filed January 11, 2023.

6. The United States supports this motion.

JUDGMENTS TO BE ASSIGNED

7. The judgments to be assigned to the United States pursuant to the instant motion are listed in the table below.

Name	Amount⁶	Judgment Date	Case No.	Type
Snow, Curtis	\$87,079.72	2/13/23	2:19-cv-757	Jury Verdict
Battle, Hinton	\$21,118.53	2/24/21	2:20-cv-010	Default Judgment
Bean, Joel	\$17,551.89	2/24/21	2:19-cv-702	Default Judgment
Clement, Jason	\$359,910.11	10/5/21	2:19-cv-792	Default Judgment
Frandsen, Jay D.	\$72,044.93	10/14/21	2:19-cv-660	Default Judgment
Hampton, Michael	\$10,890.88	2/24/21	2:19-cv-778	Default Judgment
K. Hawes Associates	\$28,409.19	9/25/20	2:19-cv-840	Default Judgment
Smith, Debbie	\$20,134.61	4/13/20	2:19-cv-728	Default Judgment
Stilson, Dennis	\$35,798.44	2/24/21	2:19-cv-689	Default Judgment

DELINQUENT SETTLEMENT AGREEMENTS TO BE ASSIGNED

8. The delinquent settlement agreements to be assigned to the United States are:

Name	Case No.	Amt. Owed	Amt. Unpaid	Comments
Bowers, Steven	2:19-cv-530	\$19,800.00	\$19,800.00	Lawsuit dismissed after settlement agreement.
Searcy, Richard	2:19-cv-776	\$56,000.00	\$50,000.00	\$6,000 paid.

9. The Receiver filed suit against Steven Bowers on July 26, 2019. Bowers entered into a settlement agreement with the Receiver on August 4, 2020, which was approved by the Court on February 16, 2021. Bowers has paid nothing toward his settlement obligations.

10. The Receiver filed suit against Richard Searcy on October 17, 2019. The Court granted summary judgment for \$56,000.25 plus \$7,901.41 in interest on June 22, 2019. On July 21, 2021, Searcy entered into a settlement agreement with the Receiver in which Searcy agreed

⁶The amounts listed here include any amounts of pre-judgment interest ordered by the Court.

to pay \$56,000.00 in monthly payments through February 2024. Searcy made an initial payment of \$4,500.00 and three \$500.00 monthly payments between August 2021 and February 2022, but has made no payments since February 2022.

ANALYSIS

A key mandate of the CRO to the Receiver is to "take custody, control, and possession of all Receivership Property."⁷ In pursuit of that mandate, the Receiver was empowered "to sue for *and collect*, recover, and take into possession from third parties all Receivership Property."⁸ The judgments to be assigned are property of the Receivership Estate. As such, the judgments are under the exclusive jurisdiction and possession of the Court.⁹

The CRO provides that the Receiver *may* transfer to others any Receivership Property (other than real estate) in the ordinary course of business, "after consultation with counsel for the United States" and "without further order of this Court."¹⁰ In so doing, the Receiver should act "in the manner the Receiver deems most beneficial to the receivership estate and with due regard for the realization of the true and proper value of such Receivership Property."¹¹ The CRO also provides that the receiver may seek "further order of this Court"¹² regarding Receivership Property and "take such other action as may be approved by this Court."¹³

For the reasons described in the Receiver's first motion to assign judgments to the United States,¹⁴ the Receiver believes assignment of these judgments to the United States represents the

⁷CRO ¶ 13(b).

⁸*Id.* (emphasis added).

⁹*Id.* ¶ 2.

¹⁰*Id.* ¶ 54.

¹¹*Id.*

¹²*Id.* ¶ 13(c).

¹³*Id.* ¶ 13(r).

¹⁴Docket no. 1200, filed Apr. 5, 2022.

best use of Receivership assets and will maximize the amounts that will be paid to the United States Treasury—who is the primary beneficiary of this Receivership. The United States supports this motion.

If assignment of these judgments is approved, the Receiver will report to the Court annually on the amount the United States has collected on these and previously assigned judgments. This will ensure that collections by the United States are credited to the second priority under the CRO. Upon approval, the Receiver will file a notice of assignment in each of the cases underlying the assigned judgments.

CONCLUSION

The Receiver moves the Court to approve the assignment of the judgments listed above to the United States. A proposed order is attached as Exhibit A.

DATED this 12th day of June 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 MOTION TO ASSIGN ADDITIONAL JUDGMENTS TO PLAINTIFF, UNITED STATES was filed with the Court on this 12th day of June, 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