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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 NINETEENTH
MOTION FOR APPROVAL TO
CONSUMMATE SETTLEMENT WITH
CHAPTER 7 TRUSTEE AND MOTION TO
PARTIALLY LIFT ASSET FREEZE ORDER

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

District Judge David Nuffer
Magistrate Judge Paul Kohler

R. Wayne Klein, the court-appointed receiver (the "Receiver") of the Receivership Entities and the assets of Neldon Johnson and R. Gregory Shepard, hereby submits this nineteenth motion for approval to consummate settlement and moves for a partial lift of the asset freeze on bank accounts of Randale Johnson. 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 The Order authorizes and empowers the Receiver to, among

¹Docket No. 490. A Corrected Order was filed the next day on November 1, 2018. See Docket No. 491.

other things, investigate, prosecute, and compromise actions to recover Receivership Property.²

On May 24, 2019, the court granted the Receiver leave to commence litigation against designated categories of persons.³

2. The court has granted eighteen prior motions by the Receiver seeking approval to consummate settlements.

3. The Receiver has entered into an additional settlement agreement ("Settlement Agreement") with Philip G. Jones, the Chapter 7 Trustee of the Bankruptcy Estate of Randale Johnson ("Bankruptcy Estate").

4. The Receiver originally filed suit against Randale Johnson on July 26, 2019. On March 16, 2023, the court awarded the Receiver a judgment of \$200,000.00 against Randale Johnson and ruled that another \$464,467.80 in transfers to Randale Johnson were "actually fraudulent," but allowing Randale Johnson to demonstrate at trial that he took the transfers in good faith and the Receivership Entities received reasonably equivalent value for the transfers. The Receiver dismissed additional claims against Randale Johnson for wages and reimbursements he received. Trial on the remaining claims was set to begin September 15, 2023.

5. On August 16, 2023, Randale Johnson filed a Chapter 7 bankruptcy petition ("Petition"),⁴ preventing the scheduled trial from going forward. The Petition identifies \$27,366.00 in assets, \$22,000.00 of which is a travel trailer that is subject to a lien. The Petition lists \$438,049.00 in liabilities. These include a \$23,810.00 secured claim for the travel trailer,

²*Id.* at ¶ 59.

³Docket No. 673, filed May 24, 2019.

⁴Case no. 23-23489 (Bankr. Utah).

\$138,577.00 in mortgage debt,⁵ and \$200,000.00 owed to the Receivership Estate.⁶ The Petition discloses that Randale Johnson has interests in bank accounts and notes they are subject to an asset freeze order in this action.

6. To resolve uncertainty about which estate has rights to the funds in Randale Johnson's bank accounts and to obtain undisputed rights to pursue the Fraudulent Transfer Claim, the Receiver negotiated a settlement agreement with the Bankruptcy Estate. The Settlement Agreement (a) was negotiated at arm's length and in good faith by the Receiver and the Bankruptcy Estate, (b) will avoid the need for the Receiver to expend time filing a proof of claim or litigating disputes with the Bankruptcy Estate over ownership of funds in seven bank accounts that are the subject of this Court's asset freeze order, (c) will result in the collection of moderate funds for the benefit of the Receivership Estate and (d) gives the Receiver sole rights to seek recovery of property transferred by Randale Johnson.

7. If approved by the Court, this agreement will: (a) allocate approximately \$8,500.00 in bank accounts of Randale Johnson to the Receivership, with the approximately \$12,894.00 remaining going to the Bankruptcy Estate, (b) give the Receivership all rights to Randale Johnson's family trust and his interest in Receivership Entities, and (c) give the Receiver sole authority to pursue claims relating to Randale Johnson's 2021 transfer of his interest in real property to his former wife ("Fraudulent Transfer Claim").

⁵The mortgage debt is for the home that was jointly owned by Randale Johnson and his former wife, Becky Johnson. Randale Johnson transferred his interest in the home to Becky Johnson in 2021—after the Receiver sued Randale Johnson. Title to the home is in the name of Becky Johnson.

⁶The Petition fails to list as a liability the \$464,467.80 claim by the Receiver that was going to be tried in September. The other liabilities are mostly credit card debt.

8. The Receiver believes that because he had not yet executed on the \$200,000.00 judgment against Randale Johnson, the Petition caused the Fraudulent Transfer Claim to become an asset of the Bankruptcy Estate. Therefore, the Receiver agreed to purchase the Fraudulent Transfer Claim, along with all of Randale Johnson's interest in his family trust and in entities associated with Neldon Johnson, from the Bankruptcy Estate for \$7,000.00.⁷

9. Pursuant to a 2020 order from this Court,⁸ funds in seven Randale Johnson bank accounts were declared subject to the 2018 freeze order ("Freeze Order").⁹ These accounts had a July 31, 2023 combined balance of \$21,406.64. The Bankruptcy Estate asserted that because the accounts were still in the name of Randale Johnson they were Bankruptcy Estate assets, notwithstanding the Freeze Order. The Receiver persuaded the Bankruptcy Estate that the Receivership would be entitled to up to 80% of distributions from the Bankruptcy Estate, which would be approximately \$17,000.00 of the balances in Randale Johnson's bank accounts. Under the Settlement Agreement, \$7,000.00 of the funds in these accounts will be treated as the Receivership Estate's purchase of the Fraudulent Transfer Claim, Randale Johnson's trust, and Randale Johnson's interest in entities associated with Neldon Johnson. The approximately \$8,512.00 in the health equity account will be paid out to the Receiver and the balance of funds (approximately \$12,894.00) will be paid to the Bankruptcy Estate.

⁷This includes the right, as trust beneficiary, to obtain information from David Nelson (of Nelson Snuffer) relating to the trust and its assets.

⁸Docket no. 1006, filed September 15, 2020.

⁹Docket no. 444, filed August 22, 2018.

10. The Settlement Agreement also affirms the Receivership's right to seek a declaration that the \$200,000.00 judgment and the \$464,467.80 litigation claim against Randale Johnson brought in this Court are not dischargeable in bankruptcy.

11. The Settlement Agreement also gives the Receiver the right to any funds remaining in the Bankruptcy Estate, if the funds otherwise would be returned to Randale Johnson.

12. To fully implement the settlement, the Receiver also moves the Court to lift the August 22, 2018 Freeze Order¹⁰ as made applicable to funds in Randale Johnson's bank accounts by order dated September 15, 2020.¹¹ The Bankruptcy Estate is making a corresponding motion with the bankruptcy court for approval of this Settlement Agreement. If the agreement is approved by both courts, the financial institution holding the health savings account will be directed to disburse funds it is holding to the Receiver and the other financial institutions will be directed to disburse their funds to the Bankruptcy Estate.

13. Based on the above, the Receiver believes the Settlement Agreement with the Bankruptcy Estate is in the best interest of the Receivership Estate.¹² The terms of the settlement have been approved by counsel for the United States.

CONCLUSION

The Receiver moves the court to approve, and authorize the Receiver to finalize, the Settlement Agreement. The Receiver also moves the Court to partially lift the August 22, 2018

¹⁰Docket no. 444, filed August 22, 2018.

¹¹Docket no. 1006, filed September 15, 2020.

¹²"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).

Freeze Order to the extent that it applies to bank accounts of Randale Johnson. A proposed order is attached.

DATED this 27th day of October, 2023.

/s/ Jeffery A. Ball

Jonathan O. Hafen

Jeffery A. Ball

Attorneys for R. Wayne Klein, Receiver

CERTIFICATE OF SERVICE

I hereby certify that the above **RECEIVER'S NINETEENTH MOTION FOR APPROVAL TO CONSUMMATE SETTLEMENT** was filed with the court on this 27th day of October 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

/s/ Wendy V. Tuckett