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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 EIGHTH MOTION FOR
APPROVAL TO CONSUMMATE
SETTLEMENTS**

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

District Judge David Nuffer

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 Eighth 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”).¹ 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.²

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.³

3. The Court has granted seven prior motions by the Receiver seeking approval to consummate settlements.⁴

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. Together, these settlement agreements will bring an estimated \$246,000.00 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 litigation, (c) will result in the collection of funds for the benefit of the Receivership Estate, and

¹ [Docket No. 490](#). A Corrected Order was filed the next day on November 1, 2018. See [Docket No. 491](#).

² *Id.* at ¶ 59.

³ [Docket No. 673](#), filed May 24, 2019.

⁴ [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; and [Docket No. 1059](#), filed January 4, 2021.

(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.⁵

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. Church of Jesus Christ of Latter-day Saints. The Court previously approved a settlement agreement between the Receiver and the Church of Jesus Christ of Latter-day Saints (“Church”) relating to contributions to the Church by Neldon, Glenda, and LaGrand Johnson.⁶ That settlement specifically excluded contributions by Randale Johnson and the Church signed tolling agreements while the Receiver completed his investigation into the sources of Randale Johnson’s income. The Receiver finally received records showing Randale Johnson’s sources of income and made demand on the Church for return of \$83,212.00 in contributions by Randale Johnson. On January 14, 2021, the Receiver entered into a settlement agreement with the Church pursuant to which the Church will pay to the Receiver the \$83,212.00. Payment to the Receiver is due two weeks after the Court has approved the settlement agreement.

⁵ “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 \(D. Ore. March 8, 2002\)](#)).

⁶ [Docket No. 853](#), filed February 3, 2020. That settlement brought \$405,855.99 into the Receivership Estate.

b. Steven Bowers. In July 2019 the Receiver sued Steven Bowers, seeking the recovery of \$17,300.00 that Greg Shepard had loaned to Bowers. On August 20, 2020, Bowers signed a settlement agreeing to repay the \$17,300.00 to the Receiver. That payment was due September 10, 2020. Bowers did not make the settlement payment when it was due, so the Receiver did not submit the settlement agreement for approval by the Court. Bowers has explained to the Receiver that he did not make the payment because he was told by someone affiliated with RaPower that the matter was still on appeal (when the appeal had already been decided). Bowers has now committed to paying the settlement amount by February 15, 2021, in connection with the Receiver's settlement relating to the Shepard home (discussed next). If the Court approves the settlement, the Receiver will dismiss the lawsuit pending against Bowers.

c. R. Gregory Shepard, Diana C. Shepard, and the Diana C. Shepard Revocable Trust. On December 7, 2020, the Court ruled that at the time the Receiver was appointed, Greg Shepard owned a one-half interest in his residence on Clover Meadow Lane in Salt Lake City.⁷ The Court directed Diana Shepard to deliver a warranty deed to the Receiver by December 17, 2020, granting the Receiver a half interest in the home and instructed the Receiver to sell the home, retaining half of the net sales proceeds. Greg Shepard informed the Receiver that he had a benefactor willing to pay the Receiver the cash value of the half interest in the home. The Receiver agreed to defer Diana Shepard's obligation to deliver a warranty deed while the Receiver and Greg Shepard discussed the terms of a possible settlement agreement that would deliver the requisite amount of cash

⁷ [Docket No. 1029](#), filed December 7, 2020.

to the Receivership Estate, while allowing the Shepards to retain their home. The Receiver learned that the benefactor is Steven Bowers and met with Bowers and Shepard to evaluate Bowers' ability and willingness to make the required payment to the Receiver, in lieu of selling the home.

On January 29, 2021, the Receiver entered into a settlement agreement signed by Greg Shepard, Diana Shepard, the Diana C. Shepard Revocable Trust, and Steven Bowers. Pursuant to the agreement, the Receiver will obtain two appraisals of the Shepard home. The parties will use the average of the two appraisals to agree on the net value of the home (after deducting presumed sales commissions and closing costs). The amount owed on the mortgage will then be deducted to determine the net equity in the home. Bowers will pay half of that "net equity" amount to the Receiver by March 31, 2021. In return, the Receiver will release any claims against Diana Shepard, the Diana C. Shepard Revocable Trust, and the Clover Meadow home. If Bowers fails to pay his settlement payment of \$17,300.00 by February 15, 2021 or the value of the half interest in net equity in the home by March 31, 2021, the Shepards will be in default of the agreement. If the event of default is Bower's failure to make his settlement payment by February 15, 2021, the Shepards promptly will deliver a warranty deed to the Receiver for a half interest in the home and cooperate in the marketing and sale of the property. They will vacate the home as soon as it is sold, but in no event later than May 20, 2021. If the event of default is the failure to pay half the equity by March 31, 2021, the Shepards will vacate the property within twenty days after March 31, 2021 and agree that the Receiver will receive 60% of the net equity in the home after it is sold.

The Receiver believes that if Bowers makes the home equity payment by March 31, 2021, the Receivership will receive the same amount it would have received if the Receiver had taken possession of the home and sold it and that proceeds would be received near the time that the home sale would have closed. The Receiver further believes that if Bowers does not make the payment equivalent to half the home equity, the additional amount to be paid to the Receivership after sale will compensate the Receivership for the additional work of the Receiver and his counsel and added delay in selling the home.

d. Monty Hamilton. The Receiver sued Monty Hamilton in October 2019 for funds Hamilton received as commissions and for assisting Neldon Johnson. The lawsuit also sought to recover the proceeds of stock issued to W.E. Hamilton Associates, Inc. The Receiver believes Neldon Johnson had IAS issue one million shares of IAS stock to W.E. Hamilton Associates, Inc., which was sold to make mortgage payments owed by Neldon Johnson and his former wife. Monty Hamilton had been associated with IAS since 1995 serving in roles described as assistant to the chairman and head of marketing. In a settlement agreement dated February 3, 2021, Hamilton agreed to return the full \$8,936.30 he received in commissions and payments. Hamilton also made representations and admissions, including descriptions of the roles he played with IAS and other affiliated entities. In the settlement, Hamilton represented that none of the benefits of the one million shares issued to his company were for his benefit and he did not receive proceeds from the sale of that stock. Hamilton agreed to cooperate with and provide assistance to the Receiver in the Receiver's continuing investigation.

e. Mike Mahler. The Receiver alleged that Mahler received \$12,141.35 in improper commissions and demanded a return of the funds. When Mahler failed to return the funds, the Receiver filed suit on September 30, 2019. On February 9, 2021, Mahler signed a settlement agreement with the Receiver in which Mahler will pay the Receiver \$11,500.00 in settlement. An initial payment of \$1,500.00 will be paid by February 15, 2021, with monthly payments of \$1,000.00 from March through December. In the settlement agreement, Mahler acknowledges that the Receiver would likely prevail in the lawsuit against him.

CONCLUSION

The Receiver moves the Court to approve the Settlement Agreements described herein and authorize the Receiver to finalize these five (5) Settlement Agreements.

DATED this 12th day of February 2021.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Michael S. Lehr _____

Jonathan O. Hafen

Michael Lehr

Attorneys for R. Wayne Klein, Receiver

CERTIFICATE OF SERVICE

I hereby certify that the above **RECEIVER'S EIGHTH MOTION FOR APPROVAL TO CONSUMMATE SETTLEMENTS** was filed with the Court on this 12th day of February 2021 and served via ECF on all parties who have requested notice in this case.

/s/ Michael S. Lehr

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**ORDER GRANTING RECEIVER'S
EIGHTH MOTION FOR APPROVAL
TO CONSUMMATE SETTLEMENTS**

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

District Judge David Nuffer

R. Wayne Klein, the Court-Appointed Receiver (the "Receiver"), in the above-captioned case, filed the Eighth Motion for Approval to Consummate Settlements (the "Motion").¹ In the Motion, the Receiver seeks the approval of five (5) settlement agreements and releases ("Settlement Agreements") that will bring \$246,000.00 into the Receivership Estate. The United States has informed the Receiver that it consents to the relief requested. Based on the Motion, and

¹ Docket no. ____, filed February 12, 2021.

for good cause appearing,

IT IS HEREBY ORDERED that:

1. The Motion is GRANTED;
2. The Settlement Agreements are in the best interests of the Receivership; and
3. The Receiver is authorized to enter into the Settlement Agreements for the benefit

of the Receivership Estate.

Signed _____, 2021.

BY THE COURT:

David Nuffer
United States District Judge