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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 ELEVENTH 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 Eleventh 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 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.³

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 ten prior motions by the Receiver seeking approval to consummate settlements.⁴

4. Based on demands made, lawsuits filed, and judgments entered, the Receiver has entered into eight (8) additional settlement agreements and releases (“Settlement Agreements”) with certain parties. Together, these settlement agreements will bring an additional \$312,643.93

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

²*Id.* at ¶ 59.

³Docket No. 673, filed May 24, 2019.

⁴Docket 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; Docket No. 1111, filed March 26, 2021; and Docket No. 1136, filed July 6, 2021.

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.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. Ed Kinsey, SunCore Energy, and Edde Enterprises. The Receiver sued Kinsey, SunCore, Edde, and Jason Clement in October 2019 alleging they received \$419,315.50 in commission payments. Clement received over \$300,000 of the commission payments. The Receiver has obtained a default certificate against Clement and intends to seek default judgment. Of the \$115,365.50 paid to Kinsey, SunCore, and Edde, Kinsey demonstrated they were reimbursements of expenses he paid to others and that some of the funds he received were paid over to Clement. In a settlement agreement dated June 15, 2021, Kinsey, SunCore, and Edde Enterprises agreed to return \$75,000. Kinsey will

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).

make monthly payments of \$1,300, with a balloon payment of \$33,400 due on February 28, 2024. Kinsey also made admissions as part of the settlement. The Receiver will dismiss the action against Kinsey, SunCore, and Edde after approval by the Court and after receipt of several settlement payments that demonstrate their intent to make the required payments.

b. Mark Manley. The Receiver sued Manley, alleging he received \$15,635.55 in improper commission payments. The Court granted summary judgment to the Receiver. Manley signed a July 16, 2021 settlement agreement in which he agreed to pay \$15,000 in satisfaction of the judgment. Manley made admissions as part of his settlement agreement. The amount due under the settlement has been paid. Upon approval of this settlement by the Court, the Receiver will file a satisfaction of judgment in this matter.

c. Dallas Plater. The Court granted summary judgment to the Receiver against Plater for \$15,807.00 in improper commissions, along with prejudgment interest. Plater signed a settlement agreement on July 16, 2021 agreeing to return \$15,000 to the Receiver. Plater made admissions as part of the settlement. Plater has paid the settlement amount. Upon approval by the Court of the settlement, the Receiver will file a satisfaction of judgment in this matter.

d. Nicholas C. Kontos. The Receiver alleged Kontos received \$35,332.18 in improper commission payments from RaPower and the Court granted summary judgment against Kontos. In a July 20, 2021 settlement agreement, Kontos agreed to return the full \$35,332.18 to the Receiver. In return for payment of the full amount, the Receiver agreed to allow Kontos to submit a claim for recovery of his lens purchases in the event

the first two distribution priorities described in the Corrected Receivership Order are satisfied in full and the Court approves a claims process for lens purchasers.⁶ Kontos has paid the full \$35,332.18 to the Receiver and made admissions in the settlement agreement. Upon approval by the Court of the settlement, the Receiver will file a satisfaction of judgment in this matter.

e. Richard Neil Searcy. The Court granted summary judgment against Searcy in the amount of \$56,000.25 plus prejudgment interest. In a settlement agreement dated July 21, 2021, Searcy agreed to return \$56,000 to the Receivership by February 6, 2024. Searcy will make an initial payment of \$5,000 and monthly payments in graduated amounts beginning at \$500 per month and ending with \$2,330.50 per month. Searcy made admissions as part of the settlement. This settlement was a direct result of settlement discussions facilitated by the Tenth Circuit mediator on July 20, 2021 and by an appeal deadline of July 22, 2021 for Searcy. Upon approval by the Court and the receipt of all payments owed under the settlement agreement, the Receiver will file a satisfaction of judgment in this matter.

f. Paul Jones. As a result of efforts by the Tenth Circuit mediator, the Receiver reached a settlement agreement with Jones on July 22, 2021. Jones had filed an appeal of the summary judgment the Court had granted against him in the amount of \$65,311.75, plus prejudgment interest. Under the settlement agreement, Jones will pay \$65,311.75 by August 23, 2021 and will dismiss his pending appeal. Jones made admissions as part of the settlement. Upon approval of this settlement by the Court and the receipt of all

⁶Any such claim would need to satisfy all requirements of claims described in ¶ 89(c) of the CRO.

payments owed under the settlement agreement, the Receiver will file a satisfaction of judgment in this matter. The parties will also dismiss the appeal.

g. Lindy Welborn. The Receiver sued Welborn in October 2019, alleging he received \$41,677.48 in improper commissions. The Court granted summary judgment in that amount, plus prejudgment interest. In the face of an appeal deadline and with the assistance of the Tenth Circuit mediator, Welborn agreed to a settlement with the Receiver. Pursuant to the July 22, 2021 settlement agreement, Welborn will pay \$40,000 to the Receivership. This amount will be paid by August 23, 2021. Welborn also made admissions. Upon receipt of this payment and approval of this settlement by the Court, the Receiver will file a satisfaction of judgment in this matter.

h. Donald Reay. The Receiver sued Reay and his law firm, Reay Law, PLLP, in October 2019 seeking the recovery of \$31,658.33 that Receivership Entities paid to Reay to represent two Receivership Defendants: Gregory Shepard and Roger Freeborn. The Receiver alleged that the legal work performed by Reay benefitted Shepard and Freeborn, not RaPower. Reay has strongly contested the Receiver's lawsuit and has asserted a number of defenses which will require additional litigation. A discovery motion, addressing privilege issues relating to communications between Reay and his clients, is currently pending. In light of the modest amount of the amount being sought and the difficult legal issues requiring resolution, the Receiver and Reay agreed to a July 26, 2021 settlement. Under the settlement, Reay will pay \$11,000 to the Receivership within 60 days of the Court's approval of the settlement and the litigation will be dismissed. The settlement agreement acknowledges that Reay is still owed approximately \$40,000

by Shepard and Freeborn. The releases under the agreement provide that Reay may still seek recovery of that amount from Shepard and Freeborn, but not against Receivership Assets.

CONCLUSION

The Receiver moves the Court to approve the Settlement Agreements described herein and authorize the Receiver to finalize these eight (8) Settlement Agreements.

DATED this 11th day of August 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 ELEVENTH MOTION FOR APPROVAL TO CONSUMMATE SETTLEMENTS** was filed with the Court on this 11th day of August 2021 and served via ECF on all parties who have requested notice in this case. Copies were also sent by mail to:

Neldon Johnson
PO Box 95332
South Jordan, UT 84095

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

/s/ Wendy V. Tuckett