

Jonathan O. Hafen (6096) ([jhafen@parrbrown.com](mailto:jhafen@parrbrown.com))

Jeffery A. Balls (12437) ([jballs@parrbrown.com](mailto:jballs@parrbrown.com))

Cynthia D. Love (14703) ([clove@parrbrown.com](mailto:clove@parrbrown.com))

**PARR BROWN GEE & LOVELESS, P.C.**

101 South 200 East, Suite 700

Salt Lake City, Utah 84111

Telephone: (801) 532-7840

*Attorneys for Court-Appointed Receiver Wayne Klein*

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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 TWELFTH MOTION FOR  
APPROVAL TO CONSUMMATE  
SETTLEMENT**

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 ("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 Twelfth 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> 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.<sup>2</sup>

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.<sup>3</sup>

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 eleven prior motions by the Receiver seeking approval to consummate settlements.

4. The Receiver has entered into one additional settlement agreement and release of a matter currently in litigation (“Settlement Agreement”). This settlement agreement will bring an additional \$95,000 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 avoid the expense, delay and inherent risks of further litigation, (c) will result in the collection of funds for the

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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.

benefit of the Receivership Estate, and (d) 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 Agreement with Ina Newman, the former wife of Neldon Johnson, is in the best interest of the Receivership Estate.<sup>4</sup> The Settlement Agreement has been approved by counsel for the United States.

6. The Receiver sued Newman in September 2019 alleging that \$700,000 Newman received as part of her divorce settlement with Neldon Johnson was a fraudulent transfer. Newman was the recipient of \$50,000 in cash from IAS. The remaining \$650,000 the Receiver sought from Newman constituted an attempt to recover the value of a mortgage lien on property in Salem, Utah that was jointly owned by Newman and Neldon Johnson, which lien had been released by IAS as part of the divorce settlement.

7. The Receiver's lawsuit against Newman presents especially difficult factual and legal issues. Newman was the beneficiary, but not the transferee, of the majority of the disputed payments. Only some of the mortgage payments made in satisfaction of the lien were paid by IAS; most of the mortgage payments were made by W.E. Hamilton & Associates, a company that was given IAS stock, sold that IAS stock in its brokerage account, and made the mortgage payments on behalf of IAS. There are many factual disputes between Newman and the Receiver regarding the value of benefits IAS received from its lengthy use of the Salem property.

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<sup>4</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).

Newman asserted that real properties transferred by Neldon Johnson to IAS were themselves fraudulent transfers and that she should be given credit for the value of those transfers. Factual and legal complexities also exist relating to the heavily litigated divorce proceedings between Newman and Neldon Johnson and Neldon Johnson's bankruptcy filing. These complexities appeared to be factors in the Court's earlier denial of the Receiver's motion for summary judgment against Newman. The Receiver also faced difficulties in locating documents that were necessary for him to prove required elements of his case.

8. The Receiver determined that he had a high likelihood of recovering the \$50,000 in cash payments to Newman but a significant risk of receiving little or nothing on his claim for recovery of the lien release. Moreover, the litigation was expected to be difficult and expensive in light of the difficulties identified above.

9. In light of this, the Receiver negotiated a settlement agreement with Newman pursuant to which Newman will pay \$95,000 to the Receivership Estate. A down payment of \$25,000 has been paid. Monthly payments of \$2,333.33 will be paid through February 2024. The first monthly payment has been received. Upon approval of this settlement by the Court, the parties will file a stipulated notice of dismissal to dismiss this case without prejudice.

### **CONCLUSION**

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

DATED this 12th day of October 2021.

**PARR BROWN GEE & LOVELESS, P.C.**

*/s/ Jeffery A. Balls*

Jonathan O. Hafen

Jeffery A. Balls

Cynthia Love

*Attorneys for R. Wayne Klein, Receiver*

**CERTIFICATE OF SERVICE**

I hereby certify that the above **RECEIVER'S TWELFTH MOTION FOR APPROVAL TO CONSUMMATE SETTLEMENT** was filed with the Court on this 12th day of October 2021 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  
10672 Winter Haven Court  
South Jordan, Utah 84095

/s/ Wendy V. Tuckett