

Jonathan O. Hafen (6096) (jhafen@parrbrown.com)

Jeffery A. Balls (12437) (jballs@parrbrown.com)

Cynthia D. Love (14703) (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

**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 THIRTEENTH
MOTION FOR APPROVAL TO
CONSUMMATE SETTLEMENT**

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 Thirteenth 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”).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 twelve 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 \$50,000 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

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.

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 Jacqueline S. Freeborn and the Estate of Roger A. Freeborn is in the best interest of the Receivership Estate.⁴ The Settlement Agreement has been approved by counsel for the United States.

6. Roger Freeborn was originally a defendant in the enforcement action initiated by the U.S. Department of Justice but was dismissed when he died before trial. The Receiver sued his estate and Jacqueline Freeborn, his wife, in October 2019 alleging that the couple received \$300,795.85 in improper payments from the Receivership Entities. This includes \$12,451.10 paid to Jacqueline Freeborn and \$288,344.75 paid to Roger Freeborn between 2010 and 2018.

7. The Receiver's lawsuit against the Freeborns involves difficult factual and legal issues. The payments to Jacqueline Freeborn were not disputed. The payments to Roger Freeborn, however, created challenges for the Receiver. Through his forensic analysis, the Receiver was not able to establish that all the payments from RaPower went into their joint bank account. The deposits from RaPower represented approximately 35% of total deposits into the joint bank account. The Receiver could establish that the joint account was used to make approximately \$135,000 in mortgage payments on the Freeborn home and asserted he was entitled to recover 35% of the mortgage payments. Other payments from the joint account did

⁴"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).

not result in the purchase of assets. A further complication was that as a result of Roger Freeborn's death, his widow would be entitled to claim priority over the Receiver for certain assets of Roger Freeborn's estate.

8. In light of this, the Receiver negotiated a settlement agreement with Freeborn pursuant to which Freeborn will pay \$50,000 to the Receivership Estate by January 31, 2022. This payment came from proceeds of the sale of the home jointly owned by the Freeborns. The amount has been paid.

9. If the settlement is approved by the Court, the Receiver will dismiss the pending lawsuit against the Freeborns.

CONCLUSION

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

DATED this 27th day of January 2022.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Jeffery A. Balls

Jonathan O. Hafen

Jeffery A. Balls

Cynthia Love

Attorneys for R. Wayne Klein, Receiver

