

Jonathan O. Hafen (6096) (jhafen@parrbrown.com)
Jeffery A. Balls (12437) (jballs@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 FOURTEENTH MOTION
FOR APPROVAL TO CONSUMMATE
SETTLEMENTS AND NOTICE
OF PAYMENT PENDING
APPEAL RESULTS**

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 Fourteenth 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 On May 24, 2019, the Court granted the Receiver leave to commence litigation against designated categories of persons.²

2. The Court has granted thirteen prior motions by the Receiver seeking approval to consummate settlements.

3. As a result of judgments previously entered by the Court, two defendants have entered into settlement agreements and releases (“Settlement Agreements”) with the Receiver. The Receiver also notifies the Court of a conditional collection of a judgment in a third case. Together, these settlement agreements and the conditional collection will bring an additional \$117,765.76 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 collection efforts, and (c) will result in the collection of funds for the benefit of the Receivership Estate.

4. Based on the above factors, the Receiver has determined that the Settlement Agreements are in the best interest of the Receivership Estate.³

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

²Docket No. 673, filed May 24, 2019.

³“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).

5. 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 summarized as follows:

a. Thomas Mooney. The Receiver filed suit against Thomas Michael Mooney, Jr. in September 2019 seeking the return of \$15,425.85 in commissions paid to him relating to the sale of solar lenses. Mooney failed to file an answer after being served and the Court entered a default judgment against him for the amount sought plus \$1,715.86 in prejudgment interest. After the Receiver obtained writs of garnishment from the Court, Mooney agreed to pay the judgment amount to avoid garnishment of his accounts. He and the Receiver signed a March 9, 2022 settlement agreement pursuant to which Mooney will pay the amount of the commissions he received, the pre-judgment interest, and the small amount of post-judgment interest that has accrued. This totals \$17,176.16. Mooney has paid \$12,176.16 and the remaining \$5,000.00 will be paid by March 28, 2022. Upon payment of the full amount and approval of this settlement by the Court, the Receiver will file a satisfaction of the judgment against Mr. Mooney.

b. Amber Bennett. The Court granted the Receiver summary judgment against Amber Bennett on May 13, 2021 in the amount of \$8,210.63, comprising \$7,161.00 she received in commissions and \$1,049.63 in prejudgment interest. Ms. Bennett appealed this judgment and is one of seven defendants whose appeals have been consolidated and which are set for oral argument on May 19, 2022. After the Receiver obtained writs of garnishment against bank accounts of Amber Bennett, Ms. Bennett agreed to pay \$8,214.48, representing the amount of the judgment and \$3.85 in post-judgment interest.

This amount has been paid to the Receiver. The Receiver has filed a satisfaction of judgment and Ms. Bennett has moved to dismiss her appeal.

c. Trudy (Shepherd) Sajec. On April 15, 2021, the Court granted summary judgment against Ms. Sajec in the amount of \$72,123.14 plus \$20,198.48 in prejudgment interest. Ms. Sajec appealed the judgment separately from other commission recipients and her appeal has not been consolidated. The Tenth Circuit will decide her appeal on the briefing, without oral argument. In lieu of the Receiver garnishing her bank and brokerage accounts, Ms. Sajec has paid the Receiver \$92,375.12, representing the judgment amount and \$53.50 in post-judgment interest. Ms. Sajec has not agreed to a release of claims against the Receivership Estate and is pursuing her appeal. If she prevails on appeal, she will claim a refund of the amounts she has paid. The Receiver intends to retain these funds in the Receivership Estate bank account pending a ruling on her appeal.

CONCLUSION

The Receiver moves the Court to approve the Settlement Agreements described herein and authorize the Receiver to hold funds paid by Sajec until the Tenth Circuit rules on her appeal.

DATED this 22nd day of March 2022.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Jeffery A. Balls

Jonathan O. Hafen

Jeffery A. Balls

Attorneys for R. Wayne Klein, Receiver

CERTIFICATE OF SERVICE

I hereby certify that the above **RECEIVER'S FOURTEENTH MOTION FOR APPROVAL TO CONSUMMATE SETTLEMENTS AND NOTICE OF PAYMENT PENDING APPEAL RESULTS** was filed with the Court on this 22nd day of March 2022 and served via ECF on all parties who have requested notice in this case.

Notice was also mailed by U.S. Mail to the following Receivership Defendants:

Neldon Johnson
Post Office Box 95332
South Jordan, Utah 84095

R. Gregory Shepard
10672 Winter Haven Court
South Jordan, Utah 84123

/s/ Wendy W. Tuckett