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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 FIFTEENTH 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 Fifteenth 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 fourteen prior motions by the Receiver seeking approval to consummate settlements.

3. Through mediation, the Receiver has conditionally agreed to settle his lawsuit against Heideman & Associates (“H&A”). The settlement is conditioned on approval by the Court.

4. H&A had served as counsel for Receivership Defendants. The Receiver sued H&A in October 2019 (2:19-cv-854). Therein the Receiver alleged that the Receivership Defendants paid H&A \$128,798.36 for H&A to render legal services to certain Lens Purchasers residing in Oregon. Having been hired by Receivership Defendants to represent the Oregon Lens Purchasers H&A endeavored to defend these Purchasers in the Oregon Tax Court. The Receiver’s action sought to recover the entirety of the fees paid to H&A regarding the work they performed on behalf of the Oregon Lens Purchasers, which amount was \$128,798.36.

5. H&A has vigorously defended itself against the Receiver’s claims; fact and expert discovery has been conducted, and numerous motions have been filed and resolved. In denying cross motions for summary judgment, the Court identified issues left to be resolved at trial and set a jury trial for August 22, 2022. Given the mutually denied motions, it is apparent that the Parties

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

² Docket No. 673, filed May 24, 2019.

have significant disagreements regarding the application of the law to the facts existing in this case.

6. Given the Parties' respective positions, it is apparent that the costs to continue to litigate the resolution of these issues, when combined with amounts already spent in litigation, would likely exceed the amounts in dispute, let alone any potential recovery.

7. At the conclusion of what can only be described as a lengthy (multi-day), intense, and difficult mediation, the Receiver and H&A achieved the proposed settlement, and executed a settlement agreement ("Agreement") memorializing the terms of that agreement on March 29, 2022.

8. Per the terms of the Agreement, H&A will pay the Receivership \$75,000 in semi-annual payments over three years, with the last payment due October 1, 2024. The first payment of \$12,500 has already been received.

9. As part of the Agreement, the Parties agree to release all claims against each other and stipulate to dismissal of the pending lawsuit. The Agreement is subject to approval by the Court. The United States has indicated that it will not object to the settlement.

10. The Agreement (a) was negotiated at arm's length and in good faith by the Receiver and H&A, (b) will avoid the expense, delay, and inherent risks of further litigation efforts, (c) will result in the collection of funds thereby benefitting the Receivership Estate, and (d) will prevent the further dissipation of estate funds which would otherwise be necessary to litigate this factual situation.

11. Based on the stated factors, the Receiver believes, and recommends approval of this Agreement, as being in the best interest of the Receivership Estate.³

12. Similarly, H&A believes the settlement to be in the best interest of the estate. H&A has openly stated that if H&A lost at trial, it would absolutely appeal such a ruling, thereby incurring even more expenses and costs.

CONCLUSION

The Receiver moves the Court to approve the proposed settlement agreement with Heideman & Associates.

DATED this 13th day of April 2022.

MANNING CURTIS BRADSHAW
& BEDNAR PLLC

/s/ David C. Castleberry

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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)).

CERTIFICATE OF SERVICE

I hereby certify that the above **RECEIVER'S FIFTEENTH MOTION FOR APPROVAL TO CONSUMMATE SETTLEMENTS** was filed with the Court on this 13th day of April 2022 and served via ECF on all parties who have requested notice in this case.

/s/ David C. Castleberry