

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 TWENTY-SECOND MOTION
FOR APPROVAL TO CONSUMMATE
SETTLEMENT: NELSON, SNUFFER,
DAHLE & POULSEN

Civil No. 2:15-cv-00828-DN

District Judge David Nuffer
Magistrate Judge Paul Kohler

R. Wayne Klein, the court-appointed receiver (the "Receiver") of the Receivership Entities and the assets of Neldon Johnson and R. Gregory Shepard, hereby submits this twenty-second motion for approval to consummate settlement with the law firm: Nelson, Snuffer, Dahle & Poulsen. 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 The Order authorizes and empowers the Receiver to, among

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

other things, investigate, prosecute, and compromise actions to recover Receivership Property.²

On May 24, 2019, the court granted the Receiver leave to commence litigation against designated categories of persons.³

2. The court has granted twenty-one prior motions by the Receiver seeking approval to consummate settlements.

3. The Receiver has entered into an additional settlement agreement ("Settlement Agreement") with the law firm Nelson, Snuffer, Dahle & Poulsen ("NSDP").

4. The Receiver originally filed suit against NSDP on October 31, 2019 alleging that NSDP had received \$2.2 million in improper payments from Receivership Entities and additional amounts as proceeds from 12 million shares of IAS stock that NSDP sold for IAS into the public markets. Most of the proceeds from the stock sales were returned to IAS, used to pay operating expenses of IAS, or used to pay NSDP legal fees.

5. The parties participated in an initial mediation in August 2023 which was unsuccessful. The parties engaged in a second mediation on May 7, 2025. No agreement was reached during the mediation and the parties continued preparing for trial. Fact and expert discovery have been completed. Both parties have filed motions for partial summary judgment, but the oppositions are not yet due. With continued assistance by the mediator, the parties reached agreement on May 28, 2025.

6. The Settlement Agreement (a) was negotiated at arm's length and in good faith by the Receiver and NSDP—and achieved through the mediation efforts of retired Judge William

² *Id.* at ¶ 59.

³ Docket No. 673, filed May 24, 2019.

Bohling, (b) will avoid the expense of the Receiver and his counsel conducting a trial of the Receiver's lawsuit, and (c) will result in the collection of significant funds for the benefit of the Receivership Estate.

7. If approved by the Court, this agreement will bring \$925,000.00 into the Receivership Estate. NSDP's insurer will pay \$825,000.00 of this amount and NSDP and its partners will pay \$100,000.00. Payment will be made within ten days after court approval of the settlement.

8. The Receiver reluctantly agreed to this settlement framework. The Receiver feels strongly that NSDP engaged in serious misconduct in taking large amounts from the Receivership Entities to pay for work it performed not only for IAS, but also for Neldon Johnson, his family members, and entities owned by Neldon Johnson that were integral to Johnson's tax fraud. In doing so, the Receiver believes that NSDP materially aided Johnson's tax fraud and engaged in injurious conflicts of interest. The Receiver believes NSDP materially aided the tax fraud further by selling over 12 million shares of IAS stock on behalf of IAS. The Receiver believes NSDP acted as an unregistered securities underwriter in effecting a public distribution of IAS shares. This conduct extended the tax fraud by providing several million dollars in additional funding for the scheme. In the process, the Receiver alleges that NSDP falsely stated to the SEC, securities broker-dealers, and transfer agents that the shares being sold were not newly issued shares but had been owned by NSDP and had been fully paid for during a holding period of at least six months. The Receiver further alleges that NSDP falsely represented (sometimes under oath) to these securities market professionals and regulators that none of the proceeds from the sales of shares would be returned to IAS, as the issuer of the

shares. The Receiver also asserts that when selling those shares, NSDP failed to disclose to the securities markets non-public information in its possession regarding the operations of IAS.⁴

9. While the Receiver was confident in his ability to prevail at trial, collection of a judgment was in doubt. The Receiver investigated the ownership of the office building in Sandy, from which NSDP had previously conducted its operations, and found it was owned by three senior partners, not by NSDP itself. The Receiver found that one of these senior partners had transferred his interests in the building—and in his personal residence—to his spouse and that a second partner had transferred his interests in the office building and his personal residence to a trust. These transfers predated the Receiver's lawsuit against the firm, which would complicate the Receiver's efforts to avoid the transfers. In the settlement agreement, NSDP affirmatively represents that the firm has insufficient assets to satisfy a judgment in the amount sought by the Receiver.⁵

10. If the Court approves the settlement, the Receiver will dismiss the lawsuit against NSDP with prejudice.

11. Counsel for the United States has informed the Receiver that it does not oppose the settlement terms.

12. Based on the above, the Receiver reluctantly believes the Settlement Agreement with NSDP is in the best interest of the Receivership Estate.⁶

⁴ NSDP took the position that its obligations to maintain client confidences overrode securities law requirements that persons in possession of material non-public information disclose that information to buyers or refrain from trading.

⁵ Notwithstanding this representation, the Receiver believes he would have been able to recover significant amounts from partners of the firm to the extent that the firm had made *profit distributions* to its partners after the initiation of the Receiver's lawsuit, instead of *salary payments*.

⁶ "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

CONCLUSION

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

A proposed order is attached.

DATED this 4th day of June, 2025.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Jeffery A. Balls

Jonathan O. Hafen

Jeffery A. Balls

Attorneys for R. Wayne Klein, Receiver

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 on this 4th day of June, 2025 a true and correct copy of the foregoing RECEIVER'S TWENTY-SECOND MOTION FOR APPROVAL TO CONSUMMATE SETTLEMENT was filed with the court and served via ECF on all parties who have requested notice in this case. A copy was also sent by mail to:

Neldon Johnson
1309 North 550 West
Pleasant Grove, Utah 84062
Pro se Defendant

/s/ Wendy V. Tuckett