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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 MOTION FOR
APPROVAL TO CONSUMMATE
SETTLEMENTS OR, IN THE
ALTERNATIVE, TO AUTHORIZE
RECEIVER TO APPROVE
SETTLEMENTS WITHOUT COURT
REVIEW**

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 Motion for Approval to Consummate Settlements or, in the Alternative, to Authorize Receiver to Approve Settlements Without Court Review. 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.

2. The Order authorizes and empowers the Receiver to, among other things, do the following:

- a. The Receiver shall assume and control the operation of the Entity Receivership Defendants and shall pursue and preserve all their claims.²
- b. To bring legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging his duties as Receiver. In determining which legal actions are likely to be cost effective, the Receiver may consult with counsel for the United States in making decisions on which actions to pursue.³
- c. Subject to the requirement that leave of this Court is required to commence or resume litigation, the Receiver is authorized, empowered, and directed to investigate, prosecute, defend, intervene in, or otherwise participate in, compromise, and adjust actions in any state, federal, or foreign court proceeding of any kind as may in his discretion, and after consultation with counsel for the United States, be advisable or proper to recover or conserve Receivership Property.⁴
- d. Subject to his obligation to expend receivership funds in a reasonable and cost-effective manner, the Receiver is authorized, empowered, and directed to investigate the manner in which the financial and business affairs of the Receivership Defendants were conducted and, after obtaining leave of this Court, to institute such actions and legal proceedings for the benefit, and on behalf, of the receivership estates as the Receiver deems necessary and appropriate. The Receiver may seek, among other legal and equitable relief, the imposition of constructive trusts, disgorgement of profits, asset turnover,

¹ [Docket No. 490](#). A Corrected Order was filed the next day on November 1, 2018. See [Docket No. 491](#).

² [Docket No 491](#) at ¶ 12.

³ *Id.* at ¶ 13(I).

⁴ *Id.* at ¶ 59.

avoidance of fraudulent transfers, rescission, restitution, collection of debts, and such other relief from this Court as may be necessary to enforce this Order. Where appropriate, the Receiver should provide prior notice to counsel for the United States before commencing investigations or actions.⁵

3. Since his appointment, the Receiver has engaged in an investigation of Receivership Defendants and has discovered certain 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.⁶

4. After consultation with counsel for the United States, the Receiver has made demand on numerous persons who received funds from Receivership Defendants, demanding a return of funds improperly paid. The Receiver has also begun filing lawsuits against persons who failed to return funds demanded by the Receiver.

5. Based on demand made, the Receiver has entered into thirteen (13) settlement agreements and releases ("Settlement Agreements") with certain parties. Together, these settlement agreements will bring \$271,048.20 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 litigation, (c) will result in the collection of funds for the benefit of the Receivership Estate, and (d) where applicable, has taken into account issues related to the collection of any judgment that may be obtained.

⁵ *Id.* at ¶ 60.

⁶ [Docket No. 673](#), filed May 24, 2019.

6. Based on the above factors, the Receiver has determined that the Settlement Agreements are in the best interest of the Receivership Estate.⁷

7. 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 as follows:

a. Carranza. On August 30, 2019, the Receiver entered into a Settlement Agreement with Mark Anthony Carranza (“Carranza”), a person who received \$18,743.05 in commissions from RaPower. Under the Settlement Agreement, Carranza will pay \$17,400.00 in settlement, but based on financial hardship the settlement amount will be paid in installments. Carranza has paid an initial \$3,000.00 payment and will make monthly payments of \$600.00 beginning September 30, 2019 and August 31, 2021. The Settlement Agreement provides for a release of further claims by the Receiver and by Carranza.

b. Gilmore. On August 19, 2019, the Receiver entered into a Settlement Agreement with Brent C. Gilmore, Marcy E. Gilmore, GA Financial Resources, and Gilmore Enterprises, Inc. (“Gilmore”) in settlement of the Receiver’s claim that Gilmore received \$10,846.50 in improper commission payments from RaPower. The Receiver agreed to settle with Gilmore for a single payment of \$10,000.00, which has been paid. The Settlement Agreement provides for mutual releases.

c. Jordan. In response to a demand made by the Receiver, Mickey Jordan repaid the \$11,455.00 in commissions he was paid by RaPower. Payment was received on

⁷ “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 \(D. Ore. March 8, 2002\)](#)).

August 12, 2019. Because the payment was made in response to the Receiver's demand, there was no settlement agreement signed. The Receiver sent a letter to Jordan confirming receipt of the funds and that the matter is closed.

d. Michael North. In response to a demand made by the Receiver, Michael C. North repaid the \$5,843.25 in commissions he was paid by RaPower. Payment was received on August 19, 2019. There is no settlement agreement; the Receiver sent a letter to North confirming receipt of the payment and confirming the matter is closed.

e. Matthew Orth. In response to a demand made by the Receiver, Matthew Orth repaid the \$4,725.00 in commissions he was paid by RaPower. Payment was received on August 21, 2019. There is no settlement agreement; the Receiver sent a letter to Orth confirming receipt of the payment and confirming the matter is closed.

f. Bret and Sadie Pionk. On August 23, 2019, the Receiver entered into a Settlement Agreement with Bret A. and Sadie R. Pionk ("B. Pionk") to resolve the Receiver's demand for the return of \$4,777.50 in commissions they received from RaPower. Under the Settlement Agreement, B. Pionk has paid \$1,000.00 and will pay an additional \$3,400.00 by September 30, 2019.

g. Herbert Pionk. On August 30, 2019, a Settlement Agreement was signed with Herbert Pionk ("H. Pionk") for the repayment of \$21,634.95 in commissions paid to him by RaPower. Pursuant to the terms of the Settlement Agreement, H. Pionk has paid \$19,000.00 to the Receiver in full settlement of the improper commissions he received.

h. Tiffin Community Foundation. A Settlement Agreement was signed with the Tiffin Community Foundation ("Tiffin") on August 22, 2019 to resolve the Receiver's

demand for the return of \$153,125.45 that was paid to Tiffin as commissions. Tiffin did not recommend sales of lenses. Instead, another person made the recommendations and directed RaPower to pay the commissions to Tiffin—intending the proceeds to be a charitable contribution to Tiffin. As part of the settlement, Tiffin has repaid the full \$153,125.45 to the Receiver.

i. Brian Zeleznik. In response to a demand made by the Receiver, Brian Zeleznik repaid the \$6,552.25 in commissions he was paid by RaPower. Payment was received on August 21, 2019. There is no settlement agreement; the Receiver sent a letter to Zeleznik confirming receipt of the payment and confirming the matter is closed.

j. James McGan. In response to a demand made by the Receiver, James McGan repaid the \$5,264.50 in commissions he received from RaPower. Payment was received on August 30, 2019. There is no settlement agreement. The Receiver sent a letter to McGan confirming receipt of the payment and that the matter is closed.

k. Fareed Abdullah. The receiver demanded repayment of \$5,991.50 in commissions that RaPower paid to Fareed Abdullah. In a settlement agreement dated September 6, 2019, Abdullah agreed to repay the entire amount over a two-year period. Abdullah made an initial payment of \$241.50 and will make 23 additional monthly payments in the amount of \$250.00, ending July 31, 2021.

l. Richard Orth. In response to a demand made by the Receiver, Richard Orth repaid the \$20,891.25 in commissions he received from RaPower. Payment was received on September 11, 2019. There is no settlement agreement. The Receiver has sent a letter to Orth confirming receipt of the payment and that the matter is closed.

m. Richard Blackburn. Pursuant to a settlement agreement dated September 2 2019, Richard Blackburn agreed to return the bulk of the amount he received from RaPower as commissions. Blackburn had received \$9,339.75 in commissions from RaPower. Based on the Receiver's review of a verified affidavit showing Blackburn's financial condition, the Receiver agreed to recommend settlement for a return of \$6,000.00. Blackburn made an initial payment of \$200.00 and will pay an additional \$200.00 monthly for 35 more months, ending in January 2022.

8. The Order directed that the Receiver was to obtain leave of the Court before commencing litigation.⁸ However, neither the Corrected Receivership Order nor the Order Granting Motion to Commence Legal Proceedings specified whether Settlement Agreements should be submitted to the Court for approval. To the extent the Court would like to review the terms of Settlement Agreements negotiated by the Receiver before the agreements are finalized, the Receiver will continue submitting motions for approval.⁹ In the alternative, the Court can authorize the Receiver to approve settlements without Court review.¹⁰

9. The United States has informed the Receiver that it consents to the relief requested in this motion.

CONCLUSION

The Receiver asks the Court to approve the Settlement Agreements described herein and authorize the Receiver to finalize these thirteen (13) Settlement Agreements. Alternatively, the

⁸ Order, [Docket No. 491](#) at ¶¶ 59-60.

⁹ If the Court wishes, the Receiver can submit the actual Settlement Agreements to the Court for in camera review or attach them as exhibits to future public filings.

¹⁰ As a third alternative, the Court could direct the Receiver to seek approval from counsel for the United States before finalizing Settlement Agreements.

Receiver asks the Court to authorize the Receiver to approve these and future Settlement Agreements without prior Court review.

DATED this 12th day of September, 2019.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Michael S. Lehr _____

Jonathan O. Hafen

Michael Lehr

Attorneys for R. Wayne Klein, Receiver

CERTIFICATE OF SERVICE

I hereby certify that the above **RECEIVER'S MOTION FOR APPROVAL TO CONSUMMATE SETTLEMENTS OR, IN THE ALTERNATIVE, TO AUTHORIZE RECEIVER TO APPROVE SETTLEMENTS WITHOUT COURT REVIEW** was filed with the Court on this 12th day of September, 2019, and served via ECF on all parties who have requested notice in this case.

I also certify that, on the same date, by U.S. Mail, first-class, postage pre-paid, I caused to be served the same documents upon the following persons:

R. Gregory Shepard
858 Clover Meadow Dr.
Murray, Utah 84123

Pro se Defendant

/s/ Michael S. Lehr