

Jonathan O. Hafen (6096) (jhafen@parrbrown.com)
Jeffery A. Balls (12437) (jballs@parrbrown.com)
Michael S. Lehr (16496) (mlehr@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 SECOND MOTION FOR
APPROVAL TO CONSUMMATE
SETTLEMENTS**

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 Second 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 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 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.³

3. On September 12, 2019, the Receiver filed his first *Motion for Approval to Consummate Settlements*,⁴ which the Court has approved.⁵

4. Since filing the first settlement motion, and based on demand made, the Receiver has entered into twelve (12) settlement agreements and releases (“Settlement Agreements”) with certain parties. Together, these settlement agreements will bring \$1,360,309.00 into the Receivership Estate. One of these settlement agreements also assigns to the Receiver the right to seek recovery of an additional \$825,000.00 that had been transferred to other parties. Each of these Settlement Agreements (a) has been negotiated at arm’s length and in good faith by the Receiver

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

² *Id.* at ¶ 59.

³ [Docket No. 673](#), filed May 24, 2019.

⁴ [Docket No. 766](#), filed September 12, 2019.

⁵ [Docket No. 799](#), filed November 19, 2019.

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

6. 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. Peter Gregg. On September 16, 2019, the Receiver entered into a Settlement Agreement with Peter Gregg (“Gregg”), a person who received \$7,344.50 in commissions from RaPower. Under the Settlement Agreement, Gregg paid \$6,500.00 in settlement. The Settlement Agreement provides for a release of further claims by the Receiver and by Gregg.

b. Pri-Med, LLC. In response to a demand made by the Receiver, Pri-Med, LLC, of Boston, Massachusetts repaid the \$5,490.00 in registration fees for a medical conference attended by LaGrand Johnson, which registration fee was paid by IAS. Payment was received on September 16, 2019. Because the payment was made in response to the Receiver’s demand, there was no settlement agreement signed. If the Court approves this motion, this matter will be closed.

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 WL 12860498, at *10 \(D. Utah Dec. 23, 2015\)](#) (quoting [SEC v. Capital Consultants, LLC, No. Civ. 00-1290-KI, 2002 WL 31470399 \(D. Ore. March 8, 2002\)](#)).

c. Sandra Virkus. On September 19, 2019, the Receiver entered into a Settlement Agreement with Sandra Virkus in settlement of the Receiver's claim that Virkus received \$10,500.00 in improper commission payments from RaPower. Based on a review of a verified affidavit of her financial condition, the Receiver agreed to settle for a single payment of \$2,000.00, which has been paid. Virkus' affidavit of financial condition showed that both she and her husband are retired, family income is primarily from Social Security payments, her husband is currently in the midst of bankruptcy proceedings, and the home in which they live is owned by their children.

d. Bryan Sorenson. The Receiver made a demand on Bryan Sorenson for the return of accounting fees paid to him by IAS. The Receiver alleged that Sorenson wrote a letter for IAS that was intended to assist in IAS's marketing efforts, which was unrelated to the accounting services he provided to IAS. Sorenson provided invoices showing that he was paid less than \$500.00 for the marketing letter. The Receiver asserted that all payments to Sorenson should be returned. After extensive negotiations and exchanges of additional information, the Receiver and Sorenson agreed on a settlement amount of \$7,500.00. This amount has been paid and mutual releases are provided.

e. Evan Ayres. On October 8, 2019, the Receiver entered into a Settlement Agreement with Evan Ayres in settlement of the Receiver's claim that Ayres received \$10,460.25 in improper commission payments from RaPower. Based on a review of a statement of his financial condition, the Receiver agreed to settle for \$4,000.00. Ayres' affidavit of financial condition showed that he is unemployed and has minimal savings.

Ayres will be granted six months to sell assets from which to pay \$2,000.00 and until October 31, 2020 to pay the remaining \$2,000.

f. Bryan Brittain. The Receiver found that RaPower had made \$33,466.46 in commission payments to Leo Brittain, the father of Bryan Brittain. The Receiver discovered that Leo had died, leaving the net proceeds of his estate to his three children. The Receiver made demand on the three children for the amount paid to Leo Brittain. In response, the beneficiaries provided information to the Receiver regarding the size of Leo Brittain's estate. In light of the information provided, the Receiver proposed a settlement of \$6,000.00 per beneficiary. Bryan Brittain accepted the Receiver's offer and signed a settlement agreement on October 15, 2019. Bryan Brittain will pay \$6,000 to the Receiver by November 30, 2019. The remaining two beneficiaries rejected the settlement offer and the Receiver filed suit against them on October 30, 2019.

g. Carolyn Young. On October 10, 2019, the Receiver entered into a Settlement Agreement with Carolyn Young to resolve the Receiver's demand for the return of \$17,039.40 in commissions she received from RaPower. Under the Settlement Agreement, Young will repay \$17,000.00 in four payments over one year. Young has already paid the first two installments totaling \$8,750.00.

h. Steven Atwood. On October 17, 2019, Atwood signed a Settlement Agreement with the Receiver relating to the \$9,723.00 in commissions paid to him by RaPower. Pursuant to the terms of the Settlement Agreement, Atwood has paid \$7,500.00 to the Receiver in full settlement of the improper commissions he received and has agreed

to assist the Receiver in the Receiver's lawsuit against the person who solicited Atwood to purchase solar lenses, including voluntarily providing documents and testimony.

i. Lance Neven. On September 30, 2019, the Receiver entered into a Settlement Agreement with Lance Neven in settlement of the Receiver's claim that Neven received \$32,708.29 in improper commission payments from RaPower. Based on a review of a verified affidavit of his financial condition, the Receiver agreed to settle for a single payment of \$2,400.00, which will be paid in monthly payments of \$100.00 over a two-year period. Neven's affidavit of financial condition showed that he became unemployed earlier in 2019 and owns no real estate, retirement accounts, or significant savings.

j. Matthew Amidan. The Receiver's investigation revealed that RaPower paid \$6,762.00 in commissions to Greg Amidan, who died. After his death, RaPower paid an additional \$34,727.50 in commission to his son, Matthew Amidan. Matthew Amidan represented to the Receiver that a significant portion of these commission payments were used for medical and burial expenses for his father. A sworn affidavit describing Matthew Amidan's financial condition reveals he is a student who lacks sufficient income to pay ordinary living expenses and owes significant student debt. However, he acquired a partial interest in real estate from his father, along with a sibling. The Receiver entered into a settlement agreement with Matthew Amidan on November 4, 2019 pursuant to which Matthew Amidan will be given until February 15, 2020 to sell the partial interest in real estate that he owns and pay \$10,000 in settlement.

k. Wallace Boyack. A Settlement Agreement was signed with Wallace Boyack on November 29, 2019 to resolve the Receiver's demand for the return of funds IAS paid

to Boyack for legal services relating the divorce of Neldon Johnson. The Receiver initially demanded a return of approximately half of the legal fees IAS paid to Boyack. Subsequently, Boyack provided a significant number of invoices and other documents showing that the bulk of the legal services Boyack rendered relating to the divorce were paid with stock, not with cash. With this new information from Boyack and other sources, the Receiver was able to prove only \$3,986.56 in cash was paid by IAS to Boyack for legal services relating to Neldon Johnson's divorce. Under the settlement agreement, Boyack has agreed to pay \$3,500.00 in full settlement of the Receiver's claims. This amount was paid on December 9, 2019.

1. Robert L. Johnson. On June 15 and 20, 2018 (during the final week of trial), IAS sent \$2.3 million to Robert Johnson (who is no relation to Neldon Johnson). Robert Johnson understood that this money was repayment of previous loans he had made to Neldon Johnson and reimbursement of monies that U-Check, Inc. owed to Robert Johnson for grocery-related debts from twenty years ago. Robert Johnson used \$186,580.33 of the amount sent to him by IAS to repay a home equity loan he had obtained to loan money to IAS previously. Subsequently, at the request of Neldon Johnson, Robert Johnson sent \$300,000 to the law firm of Nelson Snuffer, to pay legal fees for services being provided to Receivership Defendants, \$500,000 to Wisdom Farms Technology Development Group, and \$25,000 to the International Centre for the Settlement of Investment Disputes ("ICSID").⁷

⁷ The ICSID is an affiliate of the World Bank in Washington, D.C.

Pursuant to a settlement agreement dated December 6, 2019, Robert Johnson will:

a) turn over to the Receiver the \$1,288,419.00 amount remaining from the \$2.3 million paid to him by IAS by December 18, 2019,⁸ b) assign to the Receiver all claims Robert Johnson would have to the \$825,000 Robert Johnson sent to Nelson Snuffer, Wisdom Farms, and the ICSID, c) provide the Receiver with copies of documents in his possession relating to these financial transactions, d) provide a sworn declaration describing his knowledge of these financial transactions and his history of dealings with Neldon Johnson and IAS, and e) cooperate with the Receiver's ongoing investigation, including submitting to a deposition⁹ and voluntarily testifying at any trial or hearing at the request of the Receiver.

CONCLUSION

The Receiver asks the Court to approve the Settlement Agreements described herein and authorize the Receiver to finalize these twelve (12) Settlement Agreements.

DATED this 10th day of December, 2019.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Michael S. Lehr

Jonathan O. Hafen

Michael Lehr

Attorneys for R. Wayne Klein, Receiver

⁸ This money is currently in a law firm trust account.

⁹ Because Robert Johnson's health is declining, the prompt deposition is designed to preserve his testimony in the event of his unavailability at trial. Receivership Defendants, Nelson Snuffer, Wisdom Farms, and the ICSID will be invited to participate in the deposition.

CERTIFICATE OF SERVICE

I hereby certify that the above **RECEIVER'S SECOND MOTION FOR APPROVAL TO CONSUMMATE SETTLEMENTS** was filed with the Court on this 10th day of December, 2019, and served via ECF on all parties who have requested notice in this case.

/s/ Michael S. Lehr
