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**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION**

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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 THIRD MOTION FOR  
APPROVAL TO CONSUMMATE  
SETTLEMENTS**

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

District Judge David Nuffer

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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 Third 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”).<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

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

4. On December 10, 2019, the Receiver filed *Receiver’s Second Motion for Approval to Consummate Settlements*,<sup>6</sup> which is pending before the Court.

5. Based on demand made, the Receiver has entered into three (3) additional settlement agreements and releases (“Settlement Agreements”) with certain parties. Together, these settlement agreements will bring \$443,885.99 into the Receivership Estate. Each of these Settlement Agreements (a) has been negotiated at arm’s length and in good faith by the Receiver

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

<sup>2</sup> *Id.* at ¶ 59.

<sup>3</sup> [Docket No. 673](#), filed May 24, 2019.

<sup>4</sup> [Docket No. 766](#), filed September 12, 2019.

<sup>5</sup> [Docket No. 799](#), filed November 19, 2019.

<sup>6</sup> [Docket No. 814](#), filed December 10, 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.

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

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. Church of Jesus Christ of Latter-day Saints. On December 16, 2019, the Receiver entered into a Settlement Agreement with the Church of Jesus Christ of Latter-day Saints (“Church”), relating to the Receiver’s demand for the return of charitable contributions made to the Church by Neldon Johnson, Glenda Johnson, LaGrand Johnson, and Greg Shepard. Based on information provided by the Church, the Receiver determined that these four persons contributed \$405,855.99 to the Church during the ten-year period before the Court appointed the Receiver. Based on information the Receiver provided to the Church regarding the nature of the fraud and the roles of these four persons, the Church voluntarily agreed to return the \$405,855.99 in contributions. The amount will be paid within two weeks after the Court’s approval of this settlement. Separately, the Receiver and the Church are still evaluating whether contributions by a fifth person should be returned to the Receiver.

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<sup>7</sup> “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 \(D. Ore. March 8, 2002\)](#)).

b. Kristin Lawyer. On December 10, 2019, the Receiver entered into a Settlement Agreement with Kristin Lawyer in settlement of the Receiver's claim that Lawyer received \$5,865.00 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 \$3,000.00, which will be paid in monthly payments of \$250.00, beginning January 31, 2020 and ending December 31, 2020. Lawyer's affidavit of financial condition showed that she is unemployed, has limited income, and incurs expenses associated with caring for an ailing relative.

c. Thomas J. Coates. On December 12, 2019, the Receiver entered into a Settlement Agreement with Thomas J. Coates in settlement of the Receiver's claim that Coates received \$58,741.05 in improper commission payments from RaPower. Based on a review of a verified statement of his financial condition and 2018 tax return, the Receiver agreed to settle for \$35,000.00. Coates' affidavit of financial condition showed that he is retired, his only income is from a pension, and he has limited savings and limited equity in real property. The settlement amount will be paid by January 24, 2020.

### **CONCLUSION**

The Receiver asks the Court to approve the Settlement Agreements described herein and authorize the Receiver to finalize these three (3) Settlement Agreements.

DATED this 30th 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*

**CERTIFICATE OF SERVICE**

I hereby certify that the above **RECEIVER'S THIRD MOTION FOR APPROVAL TO CONSUMMATE SETTLEMENTS** was filed with the Court on this 30th day of December, 2019, and served via ECF on all parties who have requested notice in this case.

*/s/ Michael S. Lehr*

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