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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 FIFTH 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, International Automated Systems, Inc., and LTB1, LLC, as well as certain affiliated subsidiaries and entities, and the assets of Neldon Johnson and R. Gregory Shepard, hereby submits this Fifth 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

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

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 approved.⁵

4. On December 10, 2019, the Receiver filed *Receiver's Second Motion for Approval to Consummate Settlements*,⁶ which the Court approved.⁷

5. On December 30, 2019, the Receiver filed *Receiver's Third Motion for Approval to Consummate Settlements*,⁸ which the Court approved.⁹

6. On March 5, 2020, the Receiver filed *Receiver's Fourth Motion for Approval to Consummate Settlements*,¹⁰ which the Court approved.¹¹

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.

⁶[Docket No. 814](#), filed December 10, 2019.

⁷[Docket No. 832](#), filed January 8, 2020.

⁸[Docket No. 827](#), filed December 30, 2020.

⁹[Docket No. 853](#), filed February 3, 2020.

¹⁰[Docket No. 873](#), filed March 5, 2020.

¹¹[Docket No. 896](#), filed March 30, 2020.

7. Based on demand made, the Receiver has entered into two (2) additional settlement agreements and releases (“Settlement Agreements”) with certain parties. Together, these settlement agreements will bring \$298,000.00 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.

8. Based on the above factors, the Receiver has determined that the Settlement Agreements are in the best interest of the Receivership Estate.¹²

9. 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. Jeron Johnson. Jeron Johnson, a Florida resident, entered into a settlement agreement with the Receiver dated February 28, 2020. Jeron Johnson is not related to Neldon Johnson. The Receiver’s lawsuit against Jeron Johnson alleged he received \$16,566.50 in improper commissions from RaPower. Jeron Johnson provided a verified hardship affidavit and his 2018 tax return showing that he has household income of \$2,550 per month, minimal savings, and net operating loss carryover for businesses that he owns. Jeron Johnson acknowledged that the Receiver would likely prevail in litigation

¹²“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 \(D. Ore. March 8, 2002\)](#)).

against him. In light of Jeron Johnson's financial condition, the Receiver agreed to a settlement in which Jeron Johnson will pay \$3,000 in monthly payments over two years. If the settlement is approved, the Receiver will dismiss the lawsuit against Jeron Johnson.

b. Hale & Wood. Hale & Wood, a Utah law firm, entered into a settlement agreement with the Receiver dated March 26, 2020. The Receiver's claim against Hale & Wood alleged Hale & Wood received \$434,089.38 between April 2014 and June 2018 for legal services provided by Hale & Wood to lens purchasers. Hale & Wood agreed to pay \$295,000.00 following court approval of the settlement.

CONCLUSION

The Receiver asks the Court to approve the Settlement Agreements described herein and authorize the Receiver to finalize these two (2) Settlement Agreements.

DATED this 30th day of March, 2020.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Jeffery A. Balls

Jonathan O. Hafen

Jeffery A. Balls

Michael Lehr

Attorneys for R. Wayne Klein, Receiver

CERTIFICATE OF SERVICE

I hereby certify that the above **RECEIVER'S FIFTH MOTION FOR APPROVAL TO CONSUMMATE SETTLEMENTS** was filed with the Court on this 30th day of March, 2020, and served via ECF on all parties who have requested notice in this case.

/s/ Jeffery A. Balls
