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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 FOURTH 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 Fourth 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 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

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

²*Id.* at ¶ 59.

³Docket No. 673, filed May 24, 2019.

⁴Docket No. 766, filed September 12, 2019.

⁵Docket No. 799, filed November 19, 2019.

⁶Docket No. 814, filed December 10, 2019.

⁷Docket No. 832, filed January 8, 2020.

⁸Docket No. 827, filed December 30, 2020.

⁹Docket No. 853, filed February 3, 2020.

6. Based on demand made, the Receiver has entered into twelve (12) additional settlement agreements and releases (“Settlement Agreements”) with certain parties. Together, these settlement agreements will bring \$213,160.68 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.

7. Based on the above factors, the Receiver has determined that the Settlement Agreements are in the best interest of the Receivership Estate.¹⁰

8. 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. Kristi Turner and Brent Brittain. On January 6, 2020, the Receiver entered into a Settlement Agreement with Turner and Brittain in settlement of the Receiver’s claim that Turner and Brittain received some of the proceeds from \$33,466.46 in improper commission payments from RaPower to their father, Leo Brittain. When Leo Brittain died, his assets passed to his wife. Mrs. Brittain subsequently died, and her estate was probated and the net assets were distributed to her three children. The Receiver reviewed records of the probated estate and determined the likely amount of net

¹⁰“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 \(D. Ore. March 8, 2002\)](#)).

proceeds distributed to the adult children upon completion of the probate. Leo Bryan Brittain, one of the beneficiaries, previously settled with the Receiver, paying \$6,000. The Receiver subsequently filed suit against the two remaining beneficiaries, Kristi Turner and Brent Brittain. The Receiver has agreed to settle with the remaining children for \$7,500 each, with the higher settlement amount reflecting additional costs the Receiver incurred in having to file suit and serve the complaints on these two defendants. The full \$15,000 in this settlement has been paid.

b. Citibank. The Receiver entered into a Settlement Agreement with Citibank, N.A. on February 18, 2020, in settlement of the Receiver's claim that Receivership Entities paid Citibank \$104,770.79 for purchases on a credit card issued to Glenda Johnson. After the Receiver filed suit, Citibank provided information showing that at least \$49,790.11 in expenses were likely for business purposes. Based on this information, the Receiver agreed to settle for a lump sum payment of \$50,000. Payment is due March 9, 2020.

c. Rodney Hyatt. On February 12, 2020, the Receiver entered into a Settlement Agreement with Hyatt in settlement of the Receiver's claim that Hyatt received \$20,163.50 in improper payments. The settlement with Hyatt is one of six settlements agreed to by the Receiver as part of a group that were all represented by the same law firm. The Receiver agreed to a discounted settlement amount of \$17,138.98 with Hyatt based on his participation in the group settlement and his written acknowledgement that the Receiver would prevail in the litigation against him. Hyatt will pay his settlement amount by March 31, 2020.

d. Mark Sikich. On February 12, 2020, the Receiver entered into a Settlement Agreement with Sikich in settlement of the Receiver's claim that Sikich received \$31,533.25 in improper payments. The settlement with Sikich is one of six settlements agreed to by the Receiver as part of a group that were all represented by the same law firm. The Receiver agreed to a discounted settlement amount of \$26,803.26 with Sikich based on his participation in the group settlement and his written acknowledgement that the Receiver would prevail in the litigation against him. Sikich has paid his settlement amount.

e. Thad Brumfield. On February 12, 2020, the Receiver entered into a Settlement Agreement with Brumfield in settlement of the Receiver's claim that Brumfield received \$16,311.84 in improper payments. The settlement with Brumfield is one of six settlements agreed to by the Receiver as part of a group that were all represented by the same law firm. The Receiver agreed to a discounted settlement amount of \$13,865.06 with Brumfield based on his participation in the group settlement and his written acknowledgement that the Receiver would prevail in the litigation against him. Brumfield will pay his settlement amount by March 31, 2020.

f. Kelvin Anderson. On February 19, 2020, the Receiver entered into a Settlement Agreement with Anderson in settlement of the Receiver's claim that Anderson received \$13,088.25 in improper payments. The settlement with Anderson is one of six settlements agreed to by the Receiver as part of a group that were all represented by the same law firm. The Receiver agreed to a discounted settlement amount of \$11,125.01 with Anderson based on his participation in the group settlement and his written

acknowledgement that the Receiver would prevail in the litigation against him. Anderson will pay his settlement amount by April 30, 2020.

g. Pamela Orgill. On February 19, 2020, the Receiver entered into a Settlement Agreement with Orgill in settlement of the Receiver's claim that Orgill received \$12,012.00 in improper payments. The settlement with Orgill is one of six settlements agreed to by the Receiver as part of a group that were all represented by the same law firm. The Receiver agreed to a discounted settlement amount of \$10,210.20 with Orgill based on her participation in the group settlement and her written acknowledgement that the Receiver would prevail in the litigation against her. Orgill will pay her settlement amount by March 31, 2020.

h. Spencer Griffin III, Spencer Griffin III Painting, LLC ("Griffin"). On February 19, 2020, the Receiver entered into a Settlement Agreement with Griffin in settlement of the Receiver's claim that Griffin received \$23,162.56 in improper payments. The settlement with Griffin is one of six settlements agreed to by the Receiver as part of a group that were all represented by the same law firm. The Receiver agreed to a discounted settlement amount of \$19,688.17 with Griffin based on their participation in the group settlement and their written acknowledgement that the Receiver would prevail in the litigation against them. Griffin will pay their settlement amount by April 30, 2020.

i. Carl D. Palmore. On February 28, 2020, the Receiver entered into a Settlement Agreement with Palmore in settlement of the Receiver's claim that Palmore received \$24,324.50 in improper payments. Based on Palmore's written acknowledgement that the Receiver would likely prevail in litigation against him and

Palmore's submission of a verified statement of his financial condition showing that he is retired, the Receiver agreed to a discounted settlement amount of \$20,000. Palmore will pay his settlement amount by March 9, 2020.

j. Jimmy Couch. On February 28, 2020, the Receiver entered into a Settlement Agreement with Couch in settlement of the Receiver's claim that Couch received \$9,160.00 in improper payments. Couch provided information showing that \$4,330.00 in payments to him were refunds of lens purchases, not commission, making the total amount of commissions received by Couch \$4,830.00. Under the Settlement Agreement, Couch has acknowledged that the Receiver would likely prevail in litigation against him and will repay the \$4,830.00 by March 15, 2020.

k. Robert L. Delong, Jr. On February 28, 2020, the Receiver entered into a Settlement Agreement with Delong in settlement of the Receiver's claim that Delong received \$15,880.15 in improper payments. Based on Delong's written acknowledgement that the Receiver would likely prevail in litigation against him, the Receiver agreed to a discounted settlement amount of \$15,000, with extended payment terms. Delong will pay \$3,000 by March 9, 2020 and an additional 12 monthly payments of \$1,000.

l. Natalyn Lewis and Lewis Initiatives ("Lewis"). On February 14, 2020, the Receiver entered into a Settlement Agreement with Lewis in settlement of the Receiver's claim that Lewis received \$10,054.80 in improper commission payments from RaPower. Pursuant to this Settlement Agreement, Lewis will pay \$9,500.00 in four quarterly

payments of \$2,375.00. Lewis has made the first payment. If this settlement is approved, the Receiver will dismiss the lawsuit against Lewis.

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 5th 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 FOURTH MOTION FOR APPROVAL TO CONSUMMATE SETTLEMENTS** was filed with the Court on this 5th day of March, 2020, and served via ECF on all parties who have requested notice in this case.

/s/ Jeffery A. Balls _____