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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 SIXTH 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 Sixth 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. The Court has granted five prior motions by the Receiver seeking approval to consummate settlements.⁴

4. Based on demands made and lawsuits filed, the Receiver has entered into eleven (11) additional settlement agreements and releases (“Settlement Agreements”) with certain parties. Together, these settlement agreements will bring \$507,878.80 in cash and an additional \$50,000.00 judgment lien into the Receivership Estate. Each of these Settlement Agreements (a)

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. 799](#), filed November 19, 2019; [Docket No. 832](#), filed January 8, 2020; [Docket No. 853](#), filed February 3, 2020; [Docket No. 896](#), filed March 30, 2020; and [Docket No. 909](#), filed April 16, 2020.

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. Based on the above factors, the Receiver has determined that the Settlement Agreements are in the best interest of the Receivership Estate.⁵

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. Ryan D. Cook. The Receiver sued Ryan D. Cook, seeking recovery of \$10,556.70 in commissions he received. Cook provided financial information to the Receiver, including information regarding a significant loss of his work due to COVID-19. The Receiver entered into a settlement agreement with Cook on May 5, 2020 pursuant to which Cook will pay \$7,500.00 in settlement. Cook will make three semi-annual payments of \$2,500.00 each. Cook has made the first payment.

b. William C. Pack. Bill Pack had a long association with Neldon Johnson and Receivership Entities. A company owned by Pack had signed contracts with Boulder City, Nevada, to supply solar energy that was to be generated using IAS technology and hardware. Pack also oversaw Wisdom Farms Technology Development Group's 2018

⁵"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)).

efforts to construct a working turbine prototype. Pack had been a sales representative for IAS, with authority to sell IAS systems in many parts of the world. Ultimately, none of these endeavors produced deliverable solar energy or any successful business operations. The Receiver sued Pack in October 2019 alleging that Pack received \$29,105.00 in improper payments from Receivership Entities. Pack provided a sworn financial affidavit to the Receiver demonstrating that he is 79 years old, lives on social security payments, has no investments or retirement accounts, owns no real estate, and lives in a house whose rent is paid by his daughter. On May 7, 2020, the Receiver entered into a settlement agreement with Pack pursuant to which Pack will not be required to make any monetary payments to the Receiver. In lieu of financial payments, Pack: a) admitted that statements told to lens purchasers and others by Neldon Johnson were false, that Johnson failed to deliver any workable energy system, and that Pack is not aware of Johnson ever producing energy that was sold to third parties, b) represented that he opposed Johnson's removal of the turbine from the location where it was being constructed and that he did not participate in the marketing of the multilevel phase of the solar energy scheme, c) will terminate the company registrations for the two companies he used in his efforts to promote Johnson's solar energy projects, d) provided to the Receiver all records in his possession regarding IAS and Johnson's solar energy projects, and e) agreed to provide testimony under oath to the Receiver.

c. James Becker. The Receiver sued Becker in October 2019 alleging he received \$11,289.95 in commissions from the sales of solar lenses. Becker provided a sworn affidavit of financial matters and copies of tax returns showing that he is a school teacher,

his work hours have been reduced for medical reasons, his wife quit work to care for him and their special-needs child and that he has limited savings and limited equity in real estate. The Receiver and Becker entered into a settlement agreement on May 15, 2020 pursuant to which Becker will paid \$5,000.00 in settlement. Becker has paid this amount to the Receiver.

d. Edward Jordan. The Receiver filed a lawsuit against Edward Jordan and Amber Bennett, alleging they received \$10,899.00 in improper commissions. Jordan provided information that his commissions totaled only \$3,738.00 and that he was no longer associated with Amber Bennett. Pursuant to a May 20, 2020 settlement agreement, Jordan has paid \$3,500.00 to the Receiver.

e. Treddis Anderson. The Receiver sued Treddis Anderson in October 2019 based on his receipt of \$8,577.41 in commissions from RaPower. Anderson provided a sworn affidavit of financial matters showing a demonstrated inability to pay the full amount because his wife had to quit work due to cancer, another member of his immediate family became unemployed because of COVID-19, and he has limited savings and limited equity in real estate. The Receiver entered into a settlement agreement on May 21, 2019 pursuant to which Anderson will pay \$4,800.00 in monthly payments for a year. Anderson has made the first \$400.00 payment required by the agreement.

f. Capital One Bank. The Receiver's forensic accounting identified \$553,238.75 in payments by Receivership Entities to Capital One Bank on credit card accounts held in the name of Glenda Johnson, Neldon Johnson, IAS, RaPower, and other members of the Johnson family. Capital One cooperated in providing account statements and additional

information about the accounts. After further forensic analysis, the Receiver determined that approximately \$195,000.00 of these charges were for personal expenses that were not paid from personal funds of the Johnsons. A settlement agreement was reached pursuant to which Capital One will pay \$160,000.00 to the Receivership Estate and the Receiver will release all claims for amounts paid to Capital One by all Receivership Entities. The \$160,000.00 will be paid within 30 days after the Court approves the settlement.

g. Robert Rowbotham, MJM Holdings, BFS. The Receiver alleged that Robert Rowbotham and two companies he controlled (MJM Holdings Enterprises, L.C. (“MJM”) and Bigger Faster Stronger (“BFS”)) received \$220,077.31 in improper payments from Receivership Entities. In addition, Rowbotham and BFS owe \$337,392.56 to Greg Shepard pursuant to a buyout of Shepard’s interest in BFS. The Receiver filed a lawsuit against these defendants on March 23, 2020. Rowbotham cooperated in the Receiver’s investigation and provided extensive information showing the insolvency, lack of assets, and precarious financial condition of the defendants. The Receiver reviewed accounting records, credit card statements, tax returns, bank statements, contracts, and sworn affidavits of financial condition. These records show that BFS has negative equity of \$2.5 million, has incurred operating losses this year and in most recent years, and its revenue has been severely impacted by effects of the coronavirus shutdowns of schools. MJM’s sole asset of significant amount is a note owed to it by the insolvent BFS. Rowbotham owes enormous credit card debt, has little

equity in his home, receives no salary from BFS, lives on social security income, and invested most of his retirement savings into BFS.

Pursuant to a settlement agreement dated June 18, 2020, Rowbotham will pay \$10,000.00 by June 30, 2020 and BFS will pay \$12,000.00 in monthly payments over the next twelve months. The Receiver may direct BFS to make those monthly payments to Shepard, as part of the living allowance the Court is currently allowing to Shepard. BFS will consent to a judgment lien in the additional amount of \$50,000.00. If \$40,000.00 of this judgment lien is paid within three years of the date of the Agreement, the remaining \$10,000.00 will be waived. The Receiver agrees not to pursue collection of the judgment lien amount unless the financial condition of BFS improves significantly over its current condition. The Receiver may assign the judgment lien to the U.S. Treasury for collection. The settlement releases all claims the Receiver has against these defendants, including a release of the note owed to Greg Shepard.

h. Snell & Wilmer. In May 2019, the Receiver made a demand on the law firm Snell & Wilmer, seeking the return of \$160,584.68 that Snell & Wilmer received for legal services in filing two bankruptcy petitions. In 2011, Snell & Wilmer filed a personal bankruptcy petition for Neldon Johnson and was paid approximately \$134,000.00 by Glenda Johnson, from her personal bank account, to pay for the legal services that Snell & Wilmer was rendering for her husband, Neldon Johnson, and that impacted the scope of Neldon's bankruptcy discharge. Through forensic accounting, the Receiver concluded that at least \$60,584.68 of the funds that Glenda Johnson paid to Snell & Wilmer could be directly traced as having come from RaPower or an affiliate in

circumstances where the funds were the only possible source of Glenda Johnson's ability to pay Snell & Wilmer. In 2018, shortly after the RaPower trial concluded, Snell & Wilmer filed a bankruptcy petition for RaPower. The Court dismissed the petition, denied Snell & Wilmer's request for fees, and required that Snell & Wilmer deposit the unspent amount of the retainer (\$97,430.00) in the Court registry until possible claims by the Receiver were resolved.

Snell & Wilmer cooperated fully with the Receiver and provided significant information requested by the Receiver. Settlement negotiations occurred but were unsuccessful. The Receiver filed suit against Snell & Wilmer in October 2019 (through conflict counsel) to avoid and recover approximately \$160,000 under the Utah Fraudulent Transfer Act ("UFTA") and under the Utah Voidable Transactions Act ("UVTA"). Of this amount, \$97,430 was previously deposited by Snell & Wilmer into the Court's registry pursuant to a prior Court order that preserved Snell & Wilmer's claim to the funds. After the exchange of initial disclosures and during the exchanges of discovery requests, the parties engaged in a successful mediation. A settlement agreement was signed June 19, 2020 pursuant to which Snell & Wilmer will pay \$31,730.00 to the Receivership Estate and release any claim to the \$97,430.00 that Snell & Wilmer previously deposited into the registry of the Court. An additional \$840.00 that the Receiver owed to the mediator for mediation services will be applied to the settlement amount, making the total settlement amount \$130,000.00. A copy of the Settlement Agreement is attached to this motion as Exhibit A. Due to Snell & Wilmer's concern about the Receiver's standing to assert claims under the UFTA and UVTA, and grant full

releases to Snell & Wilmer, the agreement contains some special conditions relating to the payment, including the following:

The Receiver asserts that the Claims against Snell & Wilmer are assets of the Receivership Estate and that he has exclusive authority and standing to assert, recover and release (subject to Court approval) those Claims. Accordingly, this Agreement shall be binding upon all entities and persons who are, or might be, creditors of the Receivership Entities or who have, or might have, claims against the Receivership Estate. Any entity or person challenging the Receiver's exclusive authority and standing to assert, recover and release the Claims and enter into this Agreement, or who separately asserts, or wishes to assert, one or more of the Claims against Snell & Wilmer (collectively, a "Challenge"), must first raise the Challenge before the Court prior to or at any hearing on the Approval Motion and before entry of the Final Order.⁶

The Receiver agrees that if any other person brings claims against Snell & Wilmer for the matters resolved in the settlement agreement within two years after entry of the Final Order (as defined in the Settlement Agreement), the Receiver will defend against those claims and if the claims are successful, the Receiver will return to Snell & Wilmer and the Court registry the settlement amounts. The Receiver further agrees to propose language for the Final Order that (a) the notice of the Approval Motion was adequate, (b) the Claims are the assets of the Receivership Estate, and (c) the Receiver has the exclusive authority and standing to assert and release the Claims and enter into this Agreement. Snell & Wilmer has paid the \$31,730.00 that is to come from its own funds.

i. Discover Financial Services. The Receiver's forensic accounting identified \$342,524.56 in payments by Receivership Entities to Discover Card on credit card

⁶See paragraph 6 of the attached Agreement.

accounts held in the name of Glenda Johnson. Discover cooperated in providing account statements and additional information about the accounts. After further forensic analysis, the Receiver determined that approximately \$140,000.00 of these charges were for personal expenses that were not paid from personal funds of the Johnsons. A settlement agreement was reached pursuant to which Discover Financial Services will pay \$110,000.00 to the Receivership Estate and the Receiver will release all claims for amounts paid to Discover by all Receivership Entities. The \$110,000.00 will be paid by July 31, 2020.

j. Michael J. Borden, Sr. The Receiver filed suit against Borden, seeking the return of \$10,429.45 in commissions that RaPower paid Borden between 2011 and 2017. On June 23, 2020, the Receiver and Borden signed a settlement agreement pursuant to which Borden will return the full \$10,429.45. This amount will be paid by June 30, 2020. The Receiver will dismiss the lawsuit he filed against Borden and release claims against him.

k. Lyle Swenson. The Receiver made a demand on Swenson for the return of \$60,721.50 that RaPower paid to Swenson in commissions. When Swenson did not return the funds, the Receiver filed suit against Swenson in September 2019. Swenson engaged an attorney and the parties exchanged initial disclosures and discussed the validity of possible legal defenses that Swenson might assert. The Receiver and Swenson entered into a settlement agreement pursuant to which Swenson will pay \$54,649.35 to the Receivership by July 7, 2020.

CONCLUSION

The Receiver moves the Court to:

1. Approve the Settlement Agreements described herein and authorize the Receiver to finalize these eleven (11) Settlement Agreements;
2. Order the turnover to the Receiver of \$97,430.00 deposited into the Court's registry by Snell & Wilmer; and
3. Make special findings that notice of the Motion was adequate, the claims the Receiver has asserted against Snell & Wilmer are assets of the Receivership Estate, and the Receiver has the exclusive authority and standing to assert and release the claims against Snell & Wilmer and to enter into the settlement agreement with Snell & Wilmer.

DATED this 30th day of June, 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 SIXTH MOTION FOR APPROVAL TO CONSUMMATE SETTLEMENTS** was filed with the Court on this 30th day of June, 2020, and served via ECF on all parties who have requested notice in this case.

/s/ Wendy V. Tuckett
