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

R. WAYNE KLEIN, as Receiver,

Plaintiff,

v.

GARY PETERSON, an individual; and
PEREGRINE CONSULTING &
ACCOUNTING, LLC, a Utah limited liability
company.

Defendants.

COMPLAINT

**(Ancillary to Case No. 2:15-cv-00828)
(General Order 19-003)**

Civil No. _____

Judge David Nuffer

R. Wayne Klein, the Court-Appointed Receiver of RaPower-3, LLC ("RaPower"), International Automated Systems Inc. ("IAS"), LTB1 LLC ("LTB1") their subsidiaries and affiliates,¹ and the assets of Neldon Johnson ("Johnson") and R. Gregory Shepard ("Shepard"),² (the "Receiver" or "Plaintiff") in the case styled as *United States v. RaPower-3, LLC, et al.*,

¹ Collectively, unless stated otherwise, RaPower, IAS, LTB1, and all subsidiaries and affiliated entities are referred to herein as "Receivership Entities." The subsidiaries and affiliated entities are: Solco I, LLC ("Solco"); XSun Energy, LLC ("XSun"); Cobblestone Centre, LC ("Cobblestone"); LTB O&M, LLC; U-Check, Inc.; DCL16BLT, Inc.; DCL-16A, Inc.; N.P. Johnson Family Limited Partnership ("NPJFLP"); Solstice Enterprises, Inc. ("Solstice"); Black Night Enterprises, Inc. ("Black Night"); Starlite Holdings, Inc. ("Starlite"); Shepard Energy; and Shepard Global, Inc.

² Collectively, RaPower, IAS, LTB1, Shepard, and Johnson are referred to herein as "Receivership Defendants."

Case No. 2:15-cv-00828 (D. Utah) (Nuffer, J.) (the “Civil Enforcement Case”), hereby files this Complaint against Gary Peterson (“Peterson” or “Gary Peterson”), as an individual, and Peregrine Consulting & Accounting, LLC (“Peregrine Consulting”), as a Utah limited liability company (collectively, “Defendants”).

STATEMENT OF THE CASE

1. Receivership Defendants were operated as an abusive tax fraud.³ The United States alleged, and the Court found, among other things, that the Receivership Defendants operated a massive tax fraud.⁴ Under this fraudulent scheme, Peterson and Peregrine Consulting received, directly or indirectly, \$88,155.50 from Receivership Entities. These transfers to Peterson and Peregrine Consulting were in furtherance of the massive tax fraud and without any legally recognized value for the transferred money. Further, Peterson, who served as an accountant to IAS and RaPower, breached his fiduciary duty to the companies by knowingly participating in the fraudulent scheme. The Receiver seeks to recover, for the benefit of the Receivership Estate, the amounts improperly transferred to Peterson and Peregrine Consulting and the amounts the companies were damaged by Peterson’s breach.

³ See *Findings of Fact and Conclusions of Law*, Civil Enforcement Case, [Docket No. 467](#), at 1 (“FFCL”), filed Oct. 4, 2018.

⁴ *Amended and Restated Judgment*, Civil Enforcement Case, [Docket No. 507](#), filed Nov. 13, 2018; see also FFCL. The Receivership Defendants have filed notices of appeal, which are pending.

PARTIES, JURISDICTION AND VENUE

2. Pursuant to a Receivership Order entered on October 31, 2018 in the Civil Enforcement Case (the “Receivership Order”),⁵ Plaintiff is the duly-appointed Receiver for Receivership Entities.⁶

3. Upon information and belief, Gary Peterson is a resident of or is domiciled in the State of Utah.

4. Peregrine Consulting is a Utah limited liability company with its principal place of business in Davis County, Utah.

5. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1367 and 28 U.S.C. § 754.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 754 and 28 U.S.C. § 1391(b).

FACTS
The Abusive Tax Scheme

7. As the Court found in the Civil Enforcement Case: “For more than ten years, the Receivership Defendants promoted an abusive tax scheme centered on purported solar energy technology featuring ‘solar lenses’ to customers across the United States. But the solar lenses were only the cover story for what the Receivership Defendants were really selling: unlawful tax deductions and credits.”⁷

⁵ Civil Enforcement Case, [Docket No. 490](#). A Corrected Receivership Order, which corrected formatting errors, was entered the next day, [Docket No. 491](#).

⁶ Civil Enforcement Case, [Docket No. 636](#). The assets of 12 of these affiliates had been frozen by the initial Receivership Order.

⁷ *Memorandum Decision and Order on Receiver’s Motion to Include Affiliates and Subsidiaries in Receivership*, Civil Enforcement Case, [Docket No. 636](#) at 4, quoting FFCL at 1.

8. Receivership Defendants sold solar lenses emphasizing their purported tax benefits. Customers were told that they could “zero out” their federal income tax liability by buying enough solar lenses and claiming both a depreciation deduction and solar energy tax credit for the lenses.

9. The purported solar energy solar technology and solar lenses, however, did not work and could not generate energy.

10. Specifically, the Court found that the “purported solar energy technology is not now, has never been, and never will be a commercial grade solar energy system that converts sunlight into electrical power or other useful energy” and “[t]he solar lenses do not, either on their own or in conjunction with other components, use solar energy to generate marketable electricity.”⁸

11. Notwithstanding the fact the solar lenses and technology never worked, Receivership Defendants continued to sell solar lenses to customers emphasizing that customers would qualify for depreciation deductions and/or the solar energy tax credit.

12. Between 45,205 and 49,415 solar lenses were sold to customers.⁹ Receivership Defendants’ own transaction documents and testimony at trial showed that the gross receipts received by Receivership Defendants were at least \$32,796,196 and possibly much more.¹⁰

13. These lens sales constituted a massive tax fraud.¹¹ None of these solar lenses ever met the necessary elements to qualify for depreciation deductions or the solar energy tax credit.

⁸ FFCL at 49.

⁹ *Id.* at 14.

¹⁰ *Id.* at 15.

¹¹ *Id.*

14. Indeed, “[h]undreds, if not thousands” of customer lenses were not even removed from the shipping pallets.¹²

15. Based on these facts and others, the Receivership Defendants were enjoined from promoting their abusive solar energy scheme, were ordered to disgorge their gross receipts, and were required to turn over their assets and business operations to the Receiver.¹³

16. The Court held that the “whole purpose of . . . the Receivership Entities . . . was to perpetuate a fraud to enable funding for Neldon Johnson. The same is true for other entities Johnson created, controls, and owns . . . including [Johnson-controlled affiliates]. Johnson has commingled funds between these entities, used their accounts to pay personal expenses, and transferred Receivership Property to and through them in an attempt to avoid creditors.”¹⁴

Peterson’s Involvement with Receivership Defendants

17. Peterson is a Certified Public Accountant who served as the accountant for IAS and RaPower.

18. Neldon Johnson listed Peterson as the sole accountant for IAS and RaPower in a sworn declaration filed in the Civil Enforcement Action.

19. According to Neldon Johnson, Peterson is in possession of tax returns and other financial documents of RaPower and IAS.

¹² *Id.* at 55-56.

¹³ *Memorandum Decision and Order on Receiver’s Motion to Include Affiliates and Subsidiaries in Receivership*, Civil Enforcement Case, [Docket No. 636](#) at 4, citing *Memorandum Decision and Order Freezing Assets and to Appoint a Receiver*, Civil Enforcement Case, [Docket No. 444](#), filed August 22, 2018.

¹⁴ *Id.* citing FFCL and *Receiver’s Report and Recommendation on Inclusion of Affiliates and Subsidiaries in Receivership Estate*, Civil Enforcement Case, [Docket No. 581](#).

20. During court proceedings that have taken place since the appointment of the Receiver, Peterson was mentioned frequently as a person who had possession of IAS and RaPower records.

21. Both Neldon Johnson and the Receiver requested Peterson turnover the financial documents of RaPower and IAS to the Receiver.

22. Despite promising to turn over documents, Peterson has not provided any documents to the Receiver.

23. Part of Peterson's responsibility as accountant for IAS was to assist in preparing IAS' annual reports.

24. The annual reports Peterson assisted in preparing contained material misrepresentations and omissions including:

a. Misrepresenting the stock ownership by insiders. The 2016 annual report falsely reports that Neldon Johnson owns 76% of outstanding shares when those shares were held by foreign corporations;

b. Not disclosing the fact that the intellectual property rights which underlay the supposed solar generation program were owned by foreign entities;

c. Not disclosing Neldon Johnson's 2011 personal bankruptcy;

d. Not disclosing the SEC's 2004 and 2005 injunctions against Johnson and family members.

25. These material misrepresentations and omissions were made by the company's directors in violation their fiduciary duty to act in good faith, with the care of an ordinarily prudent person, and in the best interests of the corporation. *See* Utah Code § 16-10a-840.

26. IAS' directors knew Neldon Johnson did not own 76% of IAS' outstanding shares, that foreign entities owned intellectual property rights underlying the supposed solar generation program, that Neldon Johnson filed for bankruptcy in 2005, and about the SEC injunctions.

27. Upon information and belief, at all relevant times Peterson also knew Neldon Johnson did not own 76% of the outstanding shares, that foreign entities owned intellectual property rights underlying the supposed solar generation program, that Neldon Johnson filed for bankruptcy in 2011, and about the SEC injunctions.

28. Moreover, as the accountant for RaPower and IAS, Peterson knew that Neldon Johnson and his family were using company funds improperly, including:

a. Glenda Johnson's use of IAS and RaPower funds to purchase over a dozen pieces of real property in her name.

b. Transfers of funds from IAS and RaPower bank accounts to personal bank accounts of Neldon Johnson's family members and affiliated entities for no consideration and in an attempt to hide company resources from creditors.

c. The issuance of IAS stock to various persons and entities for no consideration and as a means to provide funding to benefit Neldon Johnson and his family.

29. These transfers were a violation of Neldon Johnson's fiduciary duty to act in good faith, with the care of an ordinarily prudent person, and in the best interests of the corporation.

See Utah Code § 16-10a-840.

30. Despite Peterson's knowledge of the misuse of company funds of IAS and RaPower, he continued to serve as accountant to the companies, file tax returns, and knowingly participate in the fraudulent scheme.

31. Peterson failed to exercise reasonable care or act in good faith when performing accountant services for IAS and RaPower.

32. Moreover, Peterson knew that the Receivership Entities were insolvent. Specifically, he knew or should have known that:

a. IAS' audited financial statements showed that IAS had never made any sales of any products, had not generated a profit since its 1986 inception, and had an accumulated deficit of more than \$40 million;

b. RaPower's revenue came from the sale of solar lenses to customers and that RaPower had promised that those lens purchasers would receive more in revenue from electricity generated from those solar lenses than what purchasers had paid for the lenses. As a result, if those lenses never generated any revenue from the sales of electricity, RaPower would be liable to those lens purchasers for the amount the customers paid for the lenses and for bonuses promised by RaPower;

c. XSun Energy's revenue came either as a result of agreements with other Receivership Entities or from third parties where XSun had liabilities to those third parties at least as great as the amount of revenues it received. XSun never earned any revenues from operations, other than transfers from affiliated entities in connection with the promotion of the abusive tax shelter; and

d. The vast majority, if not all, of Cobblestone's revenue came from Receivership Entities and were in connection with promotion of the abusive tax shelter. Upon information and belief, Cobblestone had no source of net revenues from third parties.

Amounts Transferred to Peterson

33. Peterson, either personally or through Peregrine Consulting, received \$88,155.50 from Receivership Entities (the "Transfers").

34. Upon information and belief, the Transfers were paid to Peterson for accounting services.

35. The Transfers were made in furtherance of the fraudulent scheme.

36. Peterson knew the annual reports he worked on contained material omissions and misrepresentations, that Neldon Johnson and his family were using company funds for their personal benefit, and that Receivership Entities were insolvent.

37. Due to Peterson's knowledge of the activities of IAS and RaPower, he did not take the payments in good faith or in exchange for reasonably equivalent value.

FIRST CLAIM FOR RELIEF

(Avoidance of Fraudulent Transfers Under Utah Code Ann. §§ 25-6-5(1)(a) and 25-6-8 or Utah Code Ann. §§ 25-6-202(1)(a) and 25-6-303)

38. The Receiver re-alleges and incorporates herein by reference each of the preceding allegations as if set forth completely herein.

39. The Receivership Entities were engaged in an enterprise with all of the characteristics of a fraud scheme.

40. At all relevant times hereto, each Receivership Entity that made payments to Peterson and/or Peregrine Consulting had at least one creditor.

41. At all relevant times hereto, each Receivership Entity that made payments to Peterson and/or Peregrine Consulting was insolvent.

42. The Transfers were paid and any obligations to Peterson and Peregrine Consulting incurred with actual intent to hinder, delay or defraud a creditor of the Receivership Entities.

43. Due to Peterson's knowledge of the Receivership Entities fraudulent scheme, Peterson and/or Peregrine Consulting did not take the Transfers in good faith and did not provide reasonably equivalent value to any Receivership Entity.

44. Pursuant to Utah Code Ann. §§ 25-6-5(1)(a) and 25-6-8 or Utah Code Ann. §§ 25-6-202(1)(a) and 25-6-303, the Receiver may avoid and recover the Transfers paid to Peterson and Peregrine Consulting.

SECOND CLAIM FOR RELIEF

(Avoidance of Fraudulent Transfers Under Utah Code Ann. §§ 25-6-5(1)(b) and 25-6-8 or Utah Code Ann. §§ 25-6-202(1)(b) and 25-6-303)

45. The Receiver re-alleges and incorporates herein by reference each of the preceding allegations as if set forth completely herein.

46. The Receivership Entities were engaged in an enterprise that has all of the characteristics of a fraud scheme.

47. At all relevant times hereto, each Receivership Entity making the Transfers to Peterson and/or Peregrine Consulting had at least one creditor.

48. Due to Peterson's knowledge of the Receivership Entities fraudulent scheme, the Transfers were paid or the obligations to Peterson and/or Peregrine Consulting were incurred by

the Receivership Entities without receiving a reasonably equivalent value in exchange for the Transfers or obligations.

49. Peterson did not take the Transfers in good faith.

50. At the time the Transfers were paid, the Receivership Entities (a) were engaged or was about to be engaged in a business or transaction for which the remaining assets of the Receivership Entities were unreasonably small in relation to the business or transaction; or (b) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as such debts became due.

51. Pursuant to Utah Code Ann. §§ 25-6-5(1)(b) and 25-6-8 or Utah Code Ann. §§ 25-6-202(1)(b) and 25-6-303, the Receiver may avoid and recover the Transfers paid to Peterson and Peregrine Consulting.

THIRD CLAIM FOR RELIEF

(Avoidance of Fraudulent Transfers Under Utah Code Ann. §§ 25-6-6(1) and 25-6-8 or Utah Code Ann. §§ 25-6-203(1) and 25-6-303)

52. The Receiver re-alleges and incorporates herein by reference each of the preceding allegations as if set forth completely herein.

53. The Receivership Entities were engaged in a fraud scheme.

54. Each Receivership Entity had at least one creditor at the time that the Transfers were made.

55. The Transfers were paid or the obligation to Peterson and/or Peregrine Consulting were incurred by the Receivership Entities without the Receivership Entities receiving a reasonably equivalent value in exchange for the Transfers or obligation.

56. Peterson did not take the transfers in good faith.

57. The Receivership Entities were each insolvent at the time the Transfers were paid or the obligations were incurred, or became insolvent as a result of the Transfers or the obligation incurred.

58. Pursuant to Utah Code Ann. §§ 25-6-6(1) and 25-6-8 or Utah Code Ann. §§ 25-6-203(1) and 25-6-303, the Receiver may avoid and recover the transfers to Peterson and Peregrine Consulting.

FOURTH CLAIM FOR RELIEF
(Breach of Fiduciary Duty)

59. The Receiver re-alleges and incorporates herein by reference each of the preceding allegations as if set forth completely herein.

60. As an accountant for IAS and RaPower, Peterson owed the companies a fiduciary duty.

61. Peterson failed to act in good faith when performing accounting services for IAS and RaPower.

62. Peterson knew the IAS annual reports contained material misrepresentations and omissions.

63. Peterson knew Neldon Johnson and his family were misusing and transferring IAS and RaPower assets for their personal benefit and without consideration.

64. Peterson knew Neldon Johnson and other insiders were transferring IAS and RaPower funds to affiliated entities to hide assets from creditors.

65. Peterson failed to exercise reasonable care when serving as an accountant for IAS and RaPower.

66. Peterson prepared the accounting that formed the basis of the financial statements in the annual reports of IAS that contained material misrepresentations and omissions.

67. Peterson's retention of financial records of IAS and RaPower after entry of the Receivership Order breached his duties to the companies, which breach also constituted violations of the Court's Receivership Order.

68. Peterson's breach of fiduciary duty to IAS and RaPower damaged the companies.

69. His breach enabled Neldon Johnson and other insiders to perpetuate the fraudulent scheme and transfer assets from IAS and RaPower to Neldon Johnson, insiders, commission recipients and others.

FIFTH CLAIM FOR RELIEF
(Aiding and Abetting Breach of Fiduciary Duty)

70. The Receiver re-alleges and incorporates herein by reference each of the preceding allegations as if set forth completely herein.

71. As corporate officers and directors of IAS and RaPower, Neldon Johnson, LaGrand Johnson, and Randale Johnson owed IAS and RaPower a fiduciary duty.

72. Neldon Johnson, LaGrand Johnson, and Randale Johnson breached their fiduciary duty by:

a. Transferring funds from IAS and RaPower bank accounts to personal bank accounts of Neldon Johnson's family members and affiliated entities for no consideration and in an attempt to hide company resources from creditors;

b. Issuing IAS stock to various persons and entities for no consideration and as a means to provide funding for the benefit Neldon Johnson and his family;

c. Submitting IAS annual reports with material misrepresentations and omissions.

73. These breaches to IAS and RaPower damaged the companies.

74. The breaches enabled Neldon Johnson and other insiders to perpetuate the fraudulent scheme and transfer assets from IAS and RaPower to Neldon Johnson, insiders, commission recipients and others.

75. Peterson was a knowing participant in the breaches of Neldon Johnson, LaGrand Johnson, and Randale Johnson.

SIXTH CLAIM FOR RELIEF

(Unjust Enrichment)

76. The Receiver re-alleges and incorporates herein by reference each of the preceding allegations as if set forth completely herein.

77. The Transfers to Peterson and Peregrine Consulting were comprised of property of Receivership Entities and were made by Receivership Entities in furtherance of the fraud scheme.

78. The Transfers to Peterson and Peregrine Consulting conferred a benefit upon Peterson and/or Peregrine Consulting.

79. Peterson and/or Peregrine Consulting knowingly benefitted from the Transfers.

80. Allowing Peterson and/or Peregrine Consulting to retain the Transfers would unjustly enrich him and would be inequitable.

81. Absent return of the Transfers, the Receivership Estate will be damaged by Peterson and/or Peregrine Consulting's unjust enrichment and may have no adequate remedy at law.

82. Peterson and/or Peregrine Consulting must disgorge the amount of the Transfers.

PRAYER FOR RELIEF

WHEREFORE, the Receiver prays for Judgment against Peterson and Peregrine Consulting as follows:

A. Pursuant to the Receiver's First Claim for Relief, judgment avoiding the Transfers under Utah Code Ann. §§ 25-6-5(a)(1) and 25-6-8 or §§ 25-6-202(1)(a) and 25-6-303, and permitting Plaintiff's recovery of the value of the Transfers in an amount no less than \$88,155.50.

B. Pursuant to the Receiver's Second Claim for Relief, judgment avoiding the Transfers under Utah Code Ann. §§ 25-6-5(a)(2) and 25-6-8 or Utah Code Ann. §§ 25-6-202(1)(b) and 25-6-303, and permitting Plaintiff's recovery of the value of the Transfers in an amount no less than \$88,155.50.

C. Pursuant to the Receiver's Third Claim for Relief, judgment avoiding the Transfers under Utah Code Ann. §§ 25-6-6(1) and 25-6-8 or Utah Code Ann. §§ 25-6-203(1) and 25-6-303, and permitting Plaintiff's recovery of the value of the Transfers in an amount no less than \$88,155.50.

D. Pursuant to the Receiver's Fourth Claim for Relief, judgment permitting Plaintiff's recovery of the value of the amount in damages caused by Defendants' breach of fiduciary duty in an amount to be determined at trial.

E. Pursuant to the Receiver's Fifth Claim for Relief, judgment permitting Plaintiff's recovery of the value of the amount in damages caused by Defendants' aiding and abetting breach of fiduciary duty in an amount to be determined at trial.

F. Pursuant to the Receiver's Sixth Claim for Relief, judgment permitting Plaintiff's recovery of the value of: (1) Transfers in the total amount of \$88,155.50; (2) imposition a constructive trust for the benefit of the receivership estate on any and all Transfers; and (3) disgorgement of the value of the Transfers.

G. Judgment for pre-judgment interest, costs, and fees, including reasonable attorney's fees, as may be allowed by law.

H. For such other and further relief as the Court deems just and proper.

DATED this 29th day of October, 2019.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Jeffery A. Balls
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