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Attorneys for Court-Appointed Receiver Wayne Klein

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

R. WAYNE KLEIN, as Receiver,

Plaintiff,

v.

GLEAVES SWEARINGEN, LLP an Oregon
limited liability company.

Defendant.

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 Gleaves Swearingen, LLP (“Gleaves Swearingen” or “Defendant”).

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, Defendant received \$21,419.03 from Receivership Entities. These transfers to Defendant were in furtherance of the massive tax fraud and without any legally recognized value for the transferred money. The Receiver seeks to recover, for the benefit of the Receivership Estate, the amounts improperly transferred to Defendant.

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. Gleaves Swearingen is an Oregon limited liability company that provides legal services, with its principal place of business in Eugene, Oregon.

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

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.

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.

5. 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

6. 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

7. 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.

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

9. 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

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 FFCL at 49.

10. 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.

11. 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

12. 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.

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

14. 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

15. The Court held that the "whole purpose of . . . the 'Receivership Entities' . . . was to perpetrate 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

⁹ *Id.* at 14.

¹⁰ *Id.* at 15.

¹¹ *Id.*

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.

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

16. At all relevant times hereto, Receivership Entities were insolvent:

a. IAS’ audited financial statements show that IAS never made any sales of any products, has not generated a profit since its 1986 inception, and has 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.

¹⁴ *Id.* at 4-5 citing FFCL and *Receiver’s Report and Recommendation on Inclusion of Affiliates and Subsidiaries in Receivership Estate*, Civil Enforcement Case, [Docket No. 581](#).

Upon information and belief, Cobblestone had no source of net revenues from third parties.

Defendant's Involvement with Receivership Entities and Amounts Transferred to Defendant

17. Because the solar lens technology of Receivership Defendants never worked, solar lens purchasers claiming tax credits and depreciation did not actually qualify for depreciation deductions and/or the solar energy tax credits.

18. The Oregon Tax Commission disallowed lens purchasers from claiming depreciation deductions and solar energy tax credits.

19. Defendant represented lens purchasers appealing these disallowances before the Oregon Tax Commission.

20. Defendant received \$21,419.03 from Receivership Entities for its work defending lens purchasers who received assessments by the Oregon Tax Commission.

21. Defendant did not provide anything of a reasonably equivalent value to Receivership Entities for the payments.

22. The benefit of Defendant's legal services in the Oregon Tax Court litigation flowed to the lens purchaser taxpayers challenging the ruling of the Oregon Tax Commission, but Defendant's fee was paid by Receivership Entities.

23. Receivership Entities used two law firms as conduits for the transfers to Defendant.

24. The law firm Heideman & Associates ("Heideman") transferred \$14,337.03 of the \$21,419.03 to Defendant on behalf of Receivership Entities.

25. The law firm Nelson, Snuffer, Dahle & Poulsen, P.C. ("Nelson Snuffer") transferred \$7,082.00 to Defendant on behalf Receivership Entities.

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)

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

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

28. The Receivership Entities, under the control of Neldon Johnson, paid the transfers to Defendant through Nelson Snuffer and Heideman.

29. The Receivership Entities, under the control of Neldon Johnson, used these law firms as a conduit for the transfers in furtherance of the fraud scheme.

30. At all relevant times hereto, each Receivership Entity that made payments to Defendant had at least one creditor.

31. At all relevant times hereto, each Receivership Entity that made payments to Defendant was insolvent.

32. The transfers were paid and any obligations to Defendant were incurred with actual intent to hinder, delay or defraud a creditor of the Receivership Entities.

33. Defendant did not provide reasonably equivalent value to any Receivership Entity.

34. 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 Defendant.

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)

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

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

37. The Receivership Entities, under the control of Neldon Johnson, paid the transfers to Defendant through Nelson Snuffer and Heideman.

38. The Receivership Entities, under the control of Neldon Johnson, used these law firms as a conduit for the transfers in furtherance of the fraud scheme.

39. At all relevant times hereto, each Receivership Entity making transfers to Defendant had at least one creditor.

40. The transfers were paid or the obligations to Defendant were incurred by the Receivership Entities without receiving a reasonably equivalent value in exchange for the transfers or obligations.

41. 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.

42. 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 Defendant.

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)

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

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

45. The Receivership Entities, under the control of Neldon Johnson, paid the transfers to Defendant through Nelson Snuffer and Heideman.

46. The Receivership Entities, under the control of Neldon Johnson, used these law firms as a conduit for the transfers in furtherance of the fraud scheme.

47. Each Receivership Entity had at least one creditor at the time that the transfers were made or the obligation to Defendant was incurred.

48. The transfers were paid or the obligation to Defendant was incurred by the Receivership Entities without the Receivership Entities receiving a reasonably equivalent value in exchange for the transfers or obligation.

49. The Receivership Entities were each insolvent at the time the transfers were paid or the obligation was incurred, or became insolvent as a result of the transfers or the obligation incurred.

50. 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 Defendant.

FOURTH CLAIM FOR RELIEF

(Unjust Enrichment)

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

52. The transfers to Defendant were comprised of property of Receivership Entities and were made by Receivership Entities in furtherance of the fraud scheme.

53. The transfers to Defendant conferred a benefit upon Defendant.

54. Defendant knowingly benefitted from the transfers.

55. Allowing Defendant to retain the transfers would unjustly enrich it and would be inequitable.

56. Absent return of the transfers, the Receivership Estate will be damaged by Defendant's unjust enrichment and may have no adequate remedy at law.

57. Defendant must disgorge the amount of the transfers.

PRAYER FOR RELIEF

WHEREFORE, the Receiver prays for Judgment against Gleaves Swearingen:

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 \$21,419.03.

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 \$21,419.03.

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 \$21,419.03.

D. Pursuant to the Receiver's Fourth Claim for Relief, judgment permitting Plaintiff's recovery of the value of the: (1) transfers in the total amount of \$21,419.03; (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.

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

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

DATED this 30th day of October, 2019.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Jeffery A. Balls
Jonathan O. Hafen
Jeffery A. Balls
Michael Lehr
Attorneys for R. Wayne Klein, Receiver