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

R. WAYNE KLEIN, as Receiver,

Plaintiff,

v.

JUSTIN D. HEIDEMAN LLC DBA
HEIDEMAN & ASSOCIATES, a Utah
limited liability company,

Defendant.

COMPLAINT

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

Civil No. 2:19-cv-00854-DN

Judge David Nuffer

R. Wayne Klein, the Court-Appointed Receiver of RaPower-3, LLC (“RaPower”),
International Automated Systems Inc. (“IAS”), LTB1 LLC, their subsidiaries and affiliates,¹ and

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

the assets of Neldon Johnson (“Johnson”) and R. Gregory Shepard,² (the “Receiver” or “Plaintiff”) in the case styled as *United States v. RaPower-3, LLC et al.*, Case No. 2:15-cv-00828 (D. Utah) (Nuffer, J.) (the “Civil Enforcement Case”), hereby files this Complaint against Justin D. Heideman LLC dba Heideman & Associates (“Heideman”).

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 The whole purpose of the Receivership Entities was to enable funding for Neldon Johnson and his family.⁵ Heideman received, directly or indirectly, nearly \$130,000 from Receivership Entities. The transfers to Heideman 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 and assets improperly transferred to Heideman.

PARTIES, JURISDICTION AND VENUE

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

² RaPower, IAS, LTB1, Shepard, and Johnson are collectively referred to herein as “Receivership Defendants.”

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 FFCL at 128.

⁶ Civil Enforcement Case, Docket No. 490. A Corrected Receivership Order, which corrected formatting errors, was entered the next day, Docket No. 491.

Receivership Entities and the assets of Johnson and Shepard,⁷ and has been specifically granted authority to pursue fraudulent transfer actions.⁸

3. Upon information and belief, Heideman is an LLC registered in Utah doing business as Heideman and Associates, with its principal place of business in Provo, Utah.

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

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.”⁹

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 technology and solar lenses, however, did not work

⁷ Civil Enforcement Case, Docket No. 636. The assets of 12 of these affiliates had been frozen by the initial Receivership Order.

⁸ Order Granting Motion to Commence Legal Proceedings, Docket No. 673.

⁹ 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.

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.”¹⁰

10. Notwithstanding that 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.¹¹ Receivership Defendants’ own transaction documents and testimony at trial showed that the gross receipts received by Receivership Defendants were at least \$32,796,196.00 and possibly much more.¹²

12. These lens sales constituted a massive tax fraud.¹³ 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.¹⁴

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

¹⁰ FFCL at 49.

¹¹ *Id.* at 14.

¹² *Id.* at 15.

¹³ *Id.*

¹⁴ *Id.* at 55–56.

were required to turn over their assets and business operations to the Receiver.¹⁵

15. The Court held that the “whole purpose of . . . the ‘Receivership Entities’ . . . was to perpetrate a fraud to enable funding for Johnson. The same is true for other entities Johnson created, controls, and owns 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.”¹⁶

16. In its Receivership Order, the Court, among other things, terminated the authority and control of managers of the Receivership Defendants, gave the Receiver the authority to manage the assets of the Receivership Defendants, directed the Receiver to recover assets belonging to the Receivership Defendants, and set forth a process for the creditors of the Receivership Defendants to receive distributions of proceeds from the liquidation of the receivership estate.¹⁷

17. Receivership Entity bank accounts were frequently used to make payments to Johnson’s family members and to pay his personal expenses.¹⁸

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

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

¹⁵ 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.

¹⁶ *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.

¹⁷ Corrected Receivership Order, Docket No. 491 at 42 – 46.

¹⁸ FFCL at 128.

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'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 Received by Heideman

19. Beginning in or around March 2016, RaPower and IAS hired Heideman as outside counsel for several different matters. One of those matters was representation of RaPower lens purchasers who had been audited by the Oregon Tax Commission and received adverse findings related to claimed depreciation deductions and solar tax credits.

20. RaPower and IAS paid Heideman to represent the lens purchasers in filing and

pursuing appeals before the Oregon Tax Court.

21. The value of Heideman's legal services in these matters was provided to the lens purchasers, not RaPower.

22. In providing such legal services to lens purchasers, Heideman sustained and prolonged the Receivership Defendants' fraudulent tax scheme.

23. Between April 2016 and August 2017, RaPower and IAS paid Heideman approximately \$514,395.24 in attorney fees and expenses. The payments Heideman received were as follows:

a. On April 13, 2016, a check payment in the amount of \$15,000 from the account of RaPower to Heideman.

b. On April 21, 2016, a check payment in the amount of \$520 from the account of RaPower to Heideman.

c. On June 6, 2016, a check payment in the amount of \$15,000 from the account of RaPower to Heideman.

d. On June 20, 2016, a check payment in the amount of \$15,000 from the account of RaPower to Heideman.

e. On August 2, 2016, a check payment in the amount of \$500 from the account of RaPower to Heideman.

f. On August 4, 2016, a check payment in the amount of \$41,409.46 from the account of RaPower to Heideman.

g. On September 8, 2016, a check payment in the amount of \$16,913.86 from the account of RaPower to Heideman.

h. On October 19, 2016, a check payment in the amount of \$36,045.76 from the account of RaPower to Heideman.

i. On November 10, 2016, a check payment in the amount of \$48,692.62 from the account of RaPower to Heideman.

j. On December 6, 2016, a check payment in the amount of \$7,853.55 from the account of RaPower to Heideman.

k. On December 6, 2016, a check payment in the amount of \$24,894.93 from the account of RaPower to Heideman.

l. On January 19, 2017, a check payment in the amount of \$45,310.51 from the account of RaPower to Heideman.

m. On February 22, 2017, a check payment in the amount of \$31,719.16 from the account of RaPower to Heideman.

n. On March 8, 2017, a check payment in the amount of \$37,208.25 from the account of RaPower to Heideman.

o. On April 18, 2017, a check payment in the amount of \$50,306.82 from the account of RaPower to Heideman.

p. On May 10, 2017, a check payment in the amount of \$62,101.75 from the account of RaPower to Heideman.

q. On August 1, 2017, a check payment in the amount of \$65,918.57 from the account of RaPower to Heideman.

24. Based on Heideman's billing records and based upon information and belief, of the \$514,395.24 in total funds transferred by Receivership Entities to Heideman during this time,

at least \$128,798.36 was exclusively associated with Heideman's work on behalf of Oregon lens purchasers, and Heideman, therefore, received at least \$128,798.36 in legal fees from the Receivership Entities for work that did not benefit the 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)

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

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

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

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

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

30. Heideman did not provide reasonably equivalent value to any Receivership Entity for the amounts the Receiver seeks to avoid.

31. 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 Heideman.

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)

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

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

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

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

36. The transfers were paid or the obligations to Heideman were incurred by the Receivership Entities without receiving a reasonably equivalent value in exchange for the transfers or obligations the Receiver seeks to avoid.

37. At the time the transfers were paid, the Receivership Entities (a) were engaged or were 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 they would incur, debts beyond their ability to pay as such debts became due.

38. 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 Heideman.

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)

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

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

41. Each Receivership Entity had at least one creditor at the time that the transfers were made or the obligation to Heideman were incurred.

42. The transfers were paid or the obligations to Heideman were incurred by the Receivership Entities without the Receivership Entities receiving a reasonably equivalent value in exchange for the transfers or obligations the Receiver seeks to avoid.

43. 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.

44. 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 Heideman.

FOURTH CLAIM FOR RELIEF

(Unjust Enrichment)

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

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

47. The transfers to Heideman conferred a benefit upon Heideman.

48. Heideman knowingly benefitted from the transfers.

49. Allowing Heideman to retain the transfers at issue in this lawsuit would unjustly enrich it and would be inequitable.

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

51. Heideman must disgorge the amount of the transfers.

PRAYER FOR RELIEF

WHEREFORE, the Receiver prays for Judgment against Heideman 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 \$128,798.36.

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 \$128,798.36.

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 \$128,798.36.

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 \$128,798.36; (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 31st day of October, 2019.

/s/ David C. Castleberry

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