

Jonathan O. Hafen (6096) (jhafen@parrbrown.com)  
Jeffery A. Balls (12437) (jballs@parrbrown.com)  
Michael S. Lehr (16496) (mlehr@parrbrown.com)  
**PARR BROWN GEE & LOVELESS, P.C.**  
101 South 200 East, Suite 700  
Salt Lake City, Utah 84111  
Telephone: (801) 532-7840  
Facsimile: (801) 532-7750

*Attorneys for Court-Appointed Receiver Wayne Klein*

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

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R. WAYNE KLEIN, as Receiver,

Plaintiff,

v.

ROBERT ROWBOTHAM, an individual;  
MJM HOLDINGS ENTERPRISES, L.C., a  
Utah limited liability company; BIGGER  
FASTER STRONGER, INC., a Utah  
corporation,

Defendants.

**COMPLAINT**

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

Civil No. \_\_\_\_\_

Judge David Nuffer

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

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<sup>1</sup>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; 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.; Starlight Holdings, Inc.; Shepard Energy; and Shepard Global, Inc.

<sup>2</sup>Collectively, RaPower, IAS, LTB1, Shepard, and Johnson are referred to herein as “Receivership Defendants.”

No. 2:15-cv-00828 (D. Utah) (Nuffer, J.) (the “Civil Enforcement Case”), hereby files this Complaint against Robert Rowbotham, MJM Holdings Enterprises, L.C., and Bigger Faster Stronger, Inc. (“Defendants”).

### **STATEMENT OF THE CASE**

1. Receivership Entities were operated as an abusive tax fraud.<sup>3</sup> The United States alleged, and the Court found, among other things, that the Receivership Defendants operated a massive tax fraud.<sup>4</sup> The whole purpose of the Receivership Entities was to enable funding for Neldon Johnson and his family.<sup>5</sup> Defendants received, directly or indirectly, more than \$220,077.23 from Receivership Defendants. The transfers to Defendants were in furtherance of the massive tax fraud or loans from Receivership Defendants 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 Defendants and amounts owed to Shepard.

### **PARTIES, JURISDICTION AND VENUE**

2. Pursuant to a Receivership Order entered on October 31, 2018 in the Civil Enforcement Case (the “Receivership Order”),<sup>6</sup> Plaintiff is the duly-appointed Receiver for Receivership Entities.<sup>7</sup>

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

<sup>4</sup>*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.

<sup>5</sup>FFCL at 128.

<sup>6</sup>Civil Enforcement Case, [Docket No. 490](#). A Corrected Receivership Order, which corrected formatting errors, was entered the next day, [Docket No. 491](#).

<sup>7</sup>Civil Enforcement Case, [Docket No. 636](#). The assets of 12 of these affiliates had been frozen by the initial Receivership Order.

3. Upon information and belief, Defendant Robert Rowbotham is a resident of or is domiciled in the State of Utah.

4. Upon information and belief, Defendant MJM Holdings Enterprises, L.C. is a Utah limited liability company.

5. Upon information and belief, Defendant Bigger Faster Stronger, Inc. is a Utah corporation.

6. Subject matter jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1367, 754.

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

## **FACTS**

### **The Abusive Tax Scheme**

8. 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.”<sup>8</sup>

9. 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.

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<sup>8</sup>*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.

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

11. 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.”<sup>9</sup>

12. 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.

13. Between 45,205 and 49,415 solar lenses were sold to customers.<sup>10</sup> 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.<sup>11</sup>

14. These lens sales constituted a massive tax fraud.<sup>12</sup> None of these solar lenses ever met the necessary elements to qualify for depreciation deductions or the solar energy tax credit.

15. Indeed, “[h]undreds, if not thousands” of customer lenses were not even removed from the shipping pallets.<sup>13</sup>

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<sup>9</sup>FFCL at 48.

<sup>10</sup>*Id.* at 14.

<sup>11</sup>*Id.* at 15.

<sup>12</sup>*Id.*

<sup>13</sup>*Id.* at 55-56.

16. 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.<sup>14</sup>

17. 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.”<sup>15</sup>

18. Receivership Defendant Greg Shepard was the self-proclaimed “Chief Director of Operations” for RaPower. His primary role was to promote the company and sell lenses.

19. Greg Shepard was paid for his work promoting RaPower and IAS through Shepard Global.

20. Greg Shepard’s promotion and sales focused on helping customers “zero out” their federal income tax. Indeed, Greg Shepard told customers how to complete their tax returns “properly” to claim the tax benefits purportedly associated with buying solar lenses.

21. Greg Shepard even advised customers under audit on how to respond to the IRS to defend disallowed and lens-related depreciation deductions and solar energy tax credits.

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<sup>14</sup>*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.

<sup>15</sup>*Id.* citing FFCL and *Receiver’s Report and Recommendation on Inclusion of Affiliates and Subsidiaries in Receivership Estate*, Civil Enforcement Case, [Docket No. 581](#).

22. Greg Shepard knew, or had reason to know, that the statements he was making were false or fraudulent and that customers were not allowed the depreciation deduction or solar energy tax credit.<sup>16</sup>

23. For his role in the solar energy scheme, Greg Shepard received at least \$702,001.00 either directly or through Shepard Global.<sup>17</sup>

**Amounts Transferred to Defendants**

24. Defendant Robert Rowbotham received \$117,934.58 from RaPower and \$950.00 from Shepard. Defendant MJM Holdings Enterprises, L.C. received \$102,142.73 from RaPower. Defendant Bigger Faster Stronger, Inc. and Robert Rowbotham owe Shepard an unknown amount of money to buy out Shepard's interest in Bigger Faster Stronger, Inc. A document summarizing the \$220,077.31 in currently known transfers (this amount, together with the amount owed to buy out Shepard's interest in Bigger Faster Stronger, Inc. and MJM Holdings Enterprises, L.C. are referred to as the "Transfers") is attached hereto as Exhibit 1.

25. On information and belief, Defendants did not take the Transfers in good faith and/or did not transfer anything of a reasonably equivalent value for the Transfers.

26. The Transfers were in furtherance of the fraud scheme.

27. Defendants have not repaid the Transfers to the Receiver or the Receivership Defendants.

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<sup>16</sup>*Id.* at 43.

<sup>17</sup>*Id.* at 16.

28. Accordingly, Defendants owe the Receivership Entities \$220,077.31, plus the amounts owed for the buyout of Shepard's interest in Bigger Faster Stronger, Inc. and MJM Holdings Enterprises, L.C.

**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)*

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

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

31. The Receivership Defendants made the Transfers to Defendants in furtherance of the fraud scheme.

32. Each Receivership Defendant had at least one creditor at the time that the Transfers were made.

33. At all relevant times hereto, Receivership Defendants were insolvent.

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

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

**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)*

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

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

38. The Receivership Defendants paid the Transfers to Defendants in furtherance of the fraud scheme.

39. Each Receivership Defendant had at least one creditor at the time that the Transfers were made.

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

41. At the time the Transfers were paid, the Receivership Defendants (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 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 Defendants.



**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 Defendants were engaged in a fraud scheme.

45. The Receivership Defendants paid the Transfers to Defendants in furtherance of the fraud scheme.

46. Each Receivership Defendant had at least one creditor at the time that the Transfers were made or the obligation to Defendant was incurred.

47. The Transfers were paid or the obligation to Defendants was incurred by the Receivership Defendants without the Receivership Entities receiving a reasonably equivalent value in exchange for the Transfers or obligation.

48. The Receivership Defendants 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.

49. 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 Defendants.

**FOURTH CLAIM FOR RELIEF**

*(Unjust Enrichment)*

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

51. The Transfers were comprised of property of Receivership Defendants and were made by Receivership Defendants in furtherance of the fraud scheme.

52. The Transfers conferred a benefit upon Defendants.

53. Defendants knowingly benefitted from the Transfers.

54. Allowing Defendants to retain the Transfers would unjustly enrich them and would be inequitable.

55. Absent return of the Transfers, the Receivership Estate will be damaged by Defendants' unjust enrichment and may have no adequate remedy at law.

56. Defendants must disgorge the amount of the Transfers.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Receiver prays for Judgment against Defendants as follows:

A. Pursuant to the Receiver's First Claim for Relief, judgment against Defendants 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: (1) Transfers in the total amount of \$220,077.31, plus the amounts owed for the buyout of Shepard's interest in Bigger Faster Stronger, Inc. and MJM Holdings Enterprises, L.C.

B. Pursuant to the Receiver's Second Claim for Relief, judgment against Defendants 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: (1) Transfers in the total amount of \$220,077.31, plus the amounts owed for the buyout of Shepard's interest in Bigger Faster Stronger, Inc. and MJM Holdings Enterprises, L.C.

C. Pursuant to the Receiver's Third Claim for Relief, judgment against Defendants 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: (1) Transfers in the total amount of \$220,077.31, plus the amounts owed for the buyout of Shepard's interest in Bigger Faster Stronger, Inc. and MJM Holdings Enterprises, L.C.

D. Pursuant to the Receiver's Fourth Claim for Relief, judgment against Defendants permitting Plaintiff's recovery of the value of the: (1) Transfers in the total amount of \$220,077.31, plus the amounts owed for the buyout of Shepard's interest in Bigger Faster Stronger, Inc. and MJM Holdings Enterprises, L.C.; (2) imposition of 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 fees, as may be allowed by law.

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

DATED this 23<sup>rd</sup> day of March, 2020.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Jeffery A. Balls

Jonathan O. Hafen

Jeffery A. Ball

Michael S. Lehr

*Attorneys for R. Wayne Klein, Receiver*