

Denver C. Snuffer, Jr. (#3032) [denversnuffer@gmail.com](mailto:denversnuffer@gmail.com)  
Steven R. Paul (#7423) [spaul@nsdplaw.com](mailto:spaul@nsdplaw.com)  
Daniel B. Garriott (#9444) [dbgariott@msn.com](mailto:dbgariott@msn.com)  
**NELSON, SNUFFER, DAHLE & POULSEN**  
10885 South State Street  
Sandy, Utah 84070  
Telephone: (801) 576-1400  
Facsimile: (801) 576-1960

*Attorneys for Defendant Matthew Shepard*

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

<p>R. WAYNE KLEIN, as Receiver,  Plaintiff,  vs.  MATTHEW SHEPARD, an individual,  Defendant.</p>	<p><b>ANSWER, JURY DEMAND AND COUNTERCLAIM</b></p> <p>Case No. 2:19-cv-00533-DBP</p> <p><b>JURY REQUESTED</b></p>
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Defendant Matthew Shepard hereby responds and answers Plaintiff's Complaint, dated July 26, 2019, as follows:

**FIRST DEFENSE**

The Complaint should be dismissed in whole or in part for failure to state a claim against this Defendant upon which relief can be granted.

**SECOND DEFENSE**

Defendant Matthew Shepard hereby responds to each of the numbered paragraphs of the Complaint as follows:

1. Denied. Defendant was not a party to the matter referenced, therefore, the allegations and conclusions and conclusions of paragraph 1 of the Complaint are not of any preclusive effect and are denied.
2. Admit.
3. Admit.
4. Defendant admits this court has jurisdiction over the allegations of Plaintiff's Complaint, but denies that the Complaint states a cause of action against him upon which relief can be granted.
5. Defendant admits that venue is proper in the Central Division to consider the allegations of Plaintiff's Complaint, but denies that the Complaint states a cause of action against him upon which relief can be granted.

#### **FACTUAL ALLEGATIONS**

6. Denied. Defendant was not a party to the matter referenced, therefore, the allegations and conclusions of paragraph 6 of the Complaint are not of any preclusive effect and are denied.
7. Defendant is without sufficient knowledge, information or belief as to the truth of the allegations and conclusions of paragraph 7 of the Complaint and, therefore, denies the same.
8. Denied. The solar energy technology worked in the past and has been independently shown to generate solar process heat and electricity.
9. Denied. Defendant was not a party to the matter referenced, therefore, the allegations and conclusions of paragraph 9 of the Complaint are not of any preclusive effect and are denied.

10. Defendant is without sufficient knowledge, information or belief as to the truth of the allegations and conclusions of paragraph 10 of the Complaint and, therefore, denies the same.
11. Denied. Defendant was not a party to the matter referenced, therefore, the allegations and conclusions of paragraph 11 of the Complaint are not of any preclusive effect and are denied.
12. Denied. Defendant was not a party to the matter referenced, therefore, the allegations and conclusions of paragraph 12 of the Complaint are not of any preclusive effect and are denied.
13. Denied. Defendant was not a party to the matter referenced, therefore, the allegations and conclusions of paragraph 13 of the Complaint are not of any preclusive effect and are denied.
14. Denied. Defendant was not a party to the matter referenced, therefore, the allegations and conclusions of paragraph 14 of the Complaint are not of any preclusive effect and are denied.
15. Denied. Defendant was not a party to the matter referenced, therefore, the allegations and conclusions of paragraph 15 of the Complaint are not of any preclusive effect and are denied.
16. Defendant is without sufficient knowledge, information or belief as to the truth of the allegations and conclusions of paragraph 16 of the Complaint and, therefore, denies the same.

17. Defendant is without sufficient knowledge, information or belief as to the truth of the allegations and conclusions of paragraph 17 of the Complaint and, therefore, denies the same.
18. Defendant is without sufficient knowledge, information or belief as to the truth of the allegations and conclusions of paragraph 18 of the Complaint and, therefore, denies the same.
19. Defendant is without sufficient knowledge, information or belief as to the truth of the allegations and conclusions of paragraph 19 of the Complaint and, therefore, denies the same.
20. Defendant is without sufficient knowledge, information or belief as to the truth of the allegations and conclusions of paragraph 20 of the Complaint and, therefore, denies the same.
21. Defendant is without sufficient knowledge, information or belief as to the truth of the allegations and conclusions of paragraph 21 of the Complaint and, therefore, denies the same.
22. Defendant admits he had some knowledge of the operations of the Receivership Entities but was in no ways an insider into those businesses. Defendant admits he sold a small number of solar lenses and had a small “down line” of people who he introduced to the RaPower solar technology. Defendant admits he owned a 1% interest in Shepard Global and that he is the son of Greg Shepard. As to the remaining allegations and conclusions of paragraph 22, Defendant denies the same.
23. Denied.

24. Defendant is without sufficient knowledge, information or belief as to the truth of the allegations and conclusions of paragraph 24 of the Complaint and, therefore, denies the same.

25. Denied.

a. Denied.

b. Denied.

c. Denied.

d. Denied.

26. Defendant is without sufficient knowledge, information or belief as to the truth of the allegations and conclusions of paragraph 26 of the Complaint or the accuracy of Exhibit 1. Therefore, he denies the same.

27. Denied.

28. Defendant denies that IAS and RaPower were being operated as a fraudulent scheme at any time and further admits that at all times Defendant had a good-faith belief and expectation that the solar energy technology developed by IAS and its affiliates was firmly based in sound scientific principles and application; that he witnessed engineers from several different disciplines assess the solar lenses and associated components and comment on their design and utility. Defendant has personally seen the production of solar process heat from the solar lenses and towers and has seen the production of electricity from photovoltaic cells used in connection with the RaPower solar lenses.

29. Admit.

30. Denied.

**FIRST CLAIM FOR RELIEF**  
**(Avoidance of Fraudulent Transfers:**  
**UCA 25-6-5(1)(a) and 25-6-8 or UCA 25-6-202(1)(a) and 25-6-303)**

31. Defendant incorporates by reference his answers and responses to the foregoing paragraphs of Plaintiff's Complaint as if set forth here in their entirety.
32. Denied.
33. Denied.
34. Defendant is without sufficient knowledge, information or belief as to the truth of the allegations and conclusions of paragraph 34 of the Complaint and, therefore, denies the same.
35. Denied.
36. Defendant is without sufficient knowledge, information or belief as to the truth of the allegations and conclusions of paragraph 36 of the Complaint and, therefore, denies the same.
37. Denied.
38. Denied.

**SECOND CLAIM FOR RELIEF**  
**(Avoidance of Fraudulent Transfers:**  
**UCA 25-6-5(1)(b) and 25-6-8 or UCA 25-6-202(1)(b) and 25-6-303)**

39. Defendant incorporates by reference his answers and responses to the foregoing paragraphs of Plaintiff's Complaint as if set forth here in their entirety.
40. Denied.
41. Denied.

42. Defendant is without sufficient knowledge, information or belief as to the truth of the allegations and conclusions of paragraph 36 of the Complaint and, therefore, denies the same.

43. Denied.

44. Defendant is without sufficient knowledge, information or belief as to the truth of the allegations and conclusions of paragraph 44 of the Complaint and, therefore, denies the same.

45. Denied.

**THIRD CLAIM FOR RELIEF**  
**(Avoidance of Fraudulent Transfers:**  
**UCA 25-6-6(1) and 25-6-8 or UCA 25-6-203(1) and 25-6-303)**

46. Defendant incorporates by reference his answers and responses to the foregoing paragraphs of Plaintiff's Complaint as if set forth here in their entirety.

47. Denied.

48. Denied

49. Defendant is without sufficient knowledge, information or belief as to the truth of the allegations and conclusions of paragraph 49 of the Complaint and, therefore, denies the same.

50. Denied.

51. Defendant is without sufficient knowledge, information or belief as to the truth of the allegations and conclusions of paragraph 51 of the Complaint and, therefore, denies the same.

52. Denied.

**FOURTH CLAIM FOR RELIEF**  
**(Avoidance of Fraudulent Transfers:**  
**UCA 25-6-6(2) and 25-6-8 or UCA 25-6-203(2) and 25-6-303)**

53. Defendant incorporates by reference his answers and responses to the foregoing paragraphs of Plaintiff's Complaint as if set forth here in their entirety.

54. Denied.

55. Denied.

56. Defendant is without sufficient knowledge, information or belief as to the truth of the allegations and conclusions of paragraph 56 of the Complaint and, therefore, denies the same.

57. Denied.

58. Denied.

59. Defendant is without sufficient knowledge, information or belief as to the truth of the allegations and conclusions of paragraph 59 of the Complaint and, therefore, denies the same.

60. Denied.

**FIFTH CLAIM FOR RELIEF**  
**(Breach of Fiduciary Duty)**

61. Defendant incorporates by reference his answers and responses to the foregoing paragraphs of Plaintiff's Complaint as if set forth here in their entirety.

62. Denied.

63. Denied.

64. Denied.



**SIXTH CLAIM FOR RELIEF  
(Unjust Enrichment)**

65. Defendant incorporates by reference his answers and responses to the foregoing paragraphs of Plaintiff's Complaint as if set forth here in their entirety.

66. Denied.

67. Denied.

68. Denied.

69. Denied.

70. Denied.

71. Denied.

**JURY DEMAND**

**Defendant hereby demands a trial by jury in this case on all claims so triable under the law.**

**THIRD DEFENSE – AFFIRMATIVE DEFENSES**

**First Affirmative Defense**

The Complaint should be dismissed in whole or in part based on the equitable doctrines of ratification, acquiescence, accord and satisfaction and/or acceptance of benefits.

**Second Affirmative Defense**

The Complaint should be dismissed in whole or in part based on a lack of ripeness.

**Third Affirmative Defense**

The Complaint should be dismissed in whole or in part based on the running of the applicable statute of limitations.

**Fourth Affirmative Defense**

The Complaint should be dismissed in whole or in part based on estoppel, claims against Defendant should be estopped, lack of standing, and any other appropriate equitable grounds.

**Fifth Affirmative Defense**

The Complaint should be dismissed in whole or in part based on Plaintiff's unclean hands, waiver, or other affirmative defense listed in Rule 8 of the Federal Rules of Civil Procedure.

**Sixth Affirmative Defense**

The Complaint should be dismissed in whole or in part based on Plaintiff's failure to mitigate damages, which he has an affirmative duty to do, and to the extent to which Plaintiff failed to do so, his claims are barred.

**Seventh Affirmative Defense**

The Complaint should be dismissed in whole or in part because the present action is without merit and was not brought or asserted in good faith.

**Eighth Affirmative Defense**

The Complaint should be dismissed in whole or in part based on the Statute of Frauds.

**Ninth Affirmative Defense**

The Complaint should be dismissed in whole or in part based on an accord and satisfaction.

**Tenth Affirmative Defense**

The Complaint should be dismissed in whole or in part based on offsets to which Defendant is entitled for funds paid to any Receivership Entity.

### **RESERVATION OF RIGHTS**

Facts may come to light supporting additional affirmative defenses. Accordingly, this Defendant reserves the right to raise such other affirmative defenses including, but not limited to, any matter considered an affirmative defense under Rule 8 of the Federal Rules of Civil Procedure.

**WHEREFORE**, having fully answered Plaintiff's Complaint, dated July 26, 2019, against him, Defendant Matthew Shepard respectfully requests the following:

1. That the Complaint be dismissed in its entirety;
2. That Defendant be awarded his costs and attorney's fees for defending against the claims made by Plaintiff in the Complaint;
3. For such other and further relief as the court deems appropriate.

### **COUNTERCLAIM**

Matthew Shepard does hereby claim against R. Wayne Klein as follows:

1. Matthew Shepard held shares of International Automated Systems, Inc. (hereafter "IAUS"), which is a publicly traded company.
2. Wayne Klein was appointed by the US District Court as receiver over the assets of the defendants in case no 2:15-cv-00828-DN.
3. Wayne Klein was at all times relevant hereto acting as agent of the Internal Revenue Service and/or The US Department of Justice and/or the US District Court.
4. Wayne Klein sought and obtained an order from the US District Court, for the Central District of Utah, cancelling all shares in IAUS. See **Exhibit 1** hereto (ECF Doc. 719).
5. Matthew Shepard, although an owner of IAUS stock was not a party to the Motion for Order Cancelling Shares in IAUS, (ECF Doc. 682) or the Order.

6. Under the Order appointing the Receiver, Wayne Klein was granted authority to (1) determine “whether trading of IAS stock should be suspended”; and (2) propose a plan for the future of IAUS, which may include continuing operation of the business unrelated to the solar energy business or liquidating the business. See **Exhibit 2** hereto at p. 41 (paragraphs (e) and (f)).
7. The cancellation of shares in IAUS exceeded the scope of authority granted to Wayne Klein as the appointed Receiver over the Receivership Entities and/or the Receivership Defendants, was therefore ultra vires, and done with the intent to harm shareholders including Matthew Shepard.
8. Wayne Kline has a background in securities law and knows that a public trading company has inherent value solely by virtue of being publicly traded, and that IAUS stock therefore had value to its shareholders including Matthew Shepard.

**COUNT I  
INVERSE CONDEMNATION**

9. Matthew Shepard incorporates the foregoing paragraphs of this Counterclaim as if fully set forth here in their entirety.
10. The shares of IAS owned by Matthew Shepard were a protectable property interest legally held by Matthew Shepard and had value.
11. The cancellation of IAUS shares owned by Matthew Shepard was done under the power and authority of the US Government through its appointed Receiver, Wayne Klein.
12. The cancellation of IAUS shares owned by Matthew Shepard was a flagrant violation of his constitutional rights of which a reasonable person would have known because the shares were taken without any due process afforded to Matthew Shepard and the shares were taken without paying just compensation.

13. Wayne Klein injured Matthew Shepard by destroying the value of his ownership interest in IAUS, thereby injuring Matthew Shepard in an amount to be proven at trial.
14. Existing remedies do not redress Matthew Shepard's remedies because the judge in the receivership case granted the authority by order to take the IAUS shares without notice to Matthew Shepard or the opportunity to be heard.
15. No other relief exists to Matthew Shepard to contest the wrongful taking of his property, other than to sue for relief in this court.

**COUNT II**  
***BIVENS VIOLATION OF DUE PROCESS***

16. Matthew Shepard incorporates the foregoing paragraphs of this Counterclaim as if fully set forth here in their entirety.
17. At all times relevant hereto, Wayne Klein was acting under color of federal law as the duly appointed receiver over the Receivership Defendants and the Receivership Entities.
18. While acting under color of federal law, Wayne Klein deprived Matthew Shepard of a recognized property right, specifically the shares he owned in IAUS, when he petitioned for and obtained an order of the US District Court for the Central District of Utah cancelling all shares of IAUS stock.
19. The cancellation of IAUS shares exceeded the adjudicative functions for which Wayne Klein was appointed receiver and his conduct is therefore not immune from action by IAUS shareholders.
20. Matthew Shepard, and all similarly situated shareholders in IAUS, is entitled to an order enjoining Mr. Klein from taking action on the court's order cancelling shares and publishing the order or otherwise seeking to have the SEC or FINRA take action to cancel the shares or terminate the trading of IAUS shares in the open market.

21. Under *Bivens v. Six Unknown Agents*, 403 U.S. 388 (1971)), Matthew Shepard is entitled to have his rights protected by a direct claim against Wayne Klein.
22. Matthew Shepard is entitled to recover his damages caused by Wayne Klein's actions in cancelling shares in IAUS including, but not limited to, the fair value of his shares at the time Wayne Klein sought to have the shares cancelled.
23. Matthew Shepard is entitled to recover his attorney's fees if successful under 42 U.S.C.A. § 1988(b).

WHEREFORE, based on the foregoing, Matthew Shepard requests the entry of the following relief against Wayne Klein:

1. An award of damages for the wrongful taking of property without just compensation in an amount to be determined at trial;
2. An injunction against Wayne Klein or any person acting by, through or under him, from publishing or otherwise enforcing the Order Cancelling Shares (ECF Doc. 719) with the SEC or FINRA to limit or terminate the trading of IAUS shares in the open market;
3. An award of compensation against Wayne Klein for the lost value of his IAUS shares;
4. For an order awarding Matthew Shepard his attorney's fees and costs in prosecuting this matter;

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5. For such other and further relief as the court may find appropriate under the circumstances.

Dated this 19<sup>th</sup> day of August, 2019.

NELSON SNUFFER DAHLE & POULSEN

/s/ Steven R. Paul

Steven R. Paul

*Attorneys for Matthew Shepard*

**CERTIFICATE OF FILING**

I hereby certify that I filed the foregoing using the Court's CM/ECF approved electronic filing system, which served a copy via email on all parties and counsel of record.

/s/ Steven R. Paul

Steven R. Paul

*Attorneys for Matthew Shepard*