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

R. WAYNE KLEIN, as Receiver,

Plaintiff,

v.

SNELL & WILMER, LLP, a limited liability
partnership,

Defendant.

COMPLAINT

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

Civil No. 2:19-cv-00853-DN

Judge David Nuffer

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

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 (“Solco I”); 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.

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 Snell & Wilmer, LLP (“S&W”).

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 Johnson and his family.⁵ S&W received, directly or indirectly, over \$160,000 from Receivership Entities. The transfers to S&W 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 S&W.

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, S&W is a limited liability partnership with its principal place of business in Phoenix, Arizona.

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.

⁷ Corrected Receivership Order, which corrected formatting errors, was entered the next day, [Docket No. 491](#) at 3, 34; 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.

8. The purported solar energy 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.”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

¹⁰ FFCL at 49.

¹¹ *Id.* at 14.

¹² *Id.* at 15.

¹³ *Id.*

¹⁴ *Id.* at 55–56.

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.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

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.

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'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 S&W for Johnson's 2011 Bankruptcy

19. Neldon Johnson filed for Chapter 7 bankruptcy in his personal capacity in or around January 2011.

20. Johnson retained S&W to represent him in his personal bankruptcy proceedings. Between January 2011 and October 2014, when the bankruptcy case was terminated, S&W

received a total of \$134,379.94 for its work on the bankruptcy proceedings.

21. S&W's billing records confirm that Johnson, in his individual capacity, was S&W's client in the bankruptcy proceedings.

22. Amounts totaling at least \$60,684.68 of the \$134,379.94 paid to S&W for its representation of Johnson in his personal bankruptcy proceedings originated from and can be traced to the accounts of Receivership Entities.

23. The transfers to S&W for Neldon Johnson's personal bankruptcy that the Receiver seeks to avoid in this lawsuit came from Glenda Johnson, the wife of Johnson. She was the primary bookkeeper for many of the Receivership Entities, received mail on behalf of the Receivership Entities, made filings with government agencies identifying herself as an authorized agent of Receivership Entities, and had unfettered access to entity bank accounts and records. She was the primary signer of checks issued on behalf of RaPower, IAS, Cobblestone, and others. Glenda Johnson frequently issued checks to herself—on behalf of the Receivership Entities—that she deposited in her personal bank accounts. These transfers were made in an attempt to avoid creditors and to enrich herself and her family at the expense of lens purchasers, creditors, and the United States Government. Glenda Johnson did not receive these transfers from the Receivership Entities in good faith or for reasonably equivalent value, and, to the extent she can be considered an initial transferee, such transfers are avoidable.

24. The following table identifies the amounts and Receivership Entity account from which funds were transferred to Glenda Johnson, often on the same day or only a few days before she used the same funds to make transfers to S&W:

Source of Funds Transferred to Glenda	Amount of Funds Transferred to Glenda	Date Funds Were Transferred to Glenda
RaPower	\$224,492.00	11/2011–3/2012
RaPower	\$25,600.00	3/30/12
RaPower	\$4,480.00	6/11/12
RaPower	\$23,000.00	7/27/12
RaPower	\$1,557.55	8/16/12
RaPower	\$2,042.12	10/2/12
XSun	\$4,113.90	10/12/12
RaPower and XSun	\$4,000.00	3/22/13
RaPower	\$3,624.30	6/27/13
RaPower	\$2,495.85	7/29/13
RaPower	\$7,039.50	8/15–8/23/13
XSun	\$4,314.70	12/10/13
	Total \$306,759.92	

25. The transfers that S&W received from Glenda Johnson's bank account for work related to Neldon Johnson's personal bankruptcy that can be traced to monies Glenda received from the Receivership Entities include the following payments:

Amount of Funds Transferred to S & W by Glenda Johnson	Date Funds Were Transferred to S & W
\$5,245.64	3/13/12
\$25,687.89	4/3/12
\$5,107.40	6/14/12
\$6,553.00	8/2/12
\$1,425.75	8/24/12
\$2,692.00	10/5/12
\$1,001.00	10/23/12
\$3,377.00	3/27/13
\$1,265.00	7/5/13
\$220.00	8/6/13
\$4,720.00	9/6/13
\$3,290.00	12/18/13
Total \$60,684.68	

26. Based on S&W's billing records and upon information and belief, the \$60,684.68 paid to S&W during this time that can be traced to the bank accounts of Receivership Entities was exclusively for S&W's work on behalf of Neldon Johnson and for Neldon Johnson's personal benefit.

27. The value of S&W's legal services for Neldon Johnson's personal bankruptcy was provided to Neldon Johnson, not the Receivership Entities.

Amounts Transferred to S&W for RaPower's 2018 Bankruptcy

28. The court in the Civil Enforcement Case issued a ruling from the bench on June 22, 2018 finding that the Receivership Defendants, including RaPower, were operating as a massive tax fraud. This ruling was later more fully set forth in the court's October 4, 2018 Findings of Fact and Conclusions of Law, which is summarized above.

29. On June 25, 2018, three days after the court's bench ruling, \$168,000 was transferred from Receivership Entity Solco I to the trust account of the law firm Nelson, Snuffer, Dahle & Poulsen, P.C. ("NSDP").

30. On June 29, 2018, NSDP transferred \$100,000 of the \$168,000 placed in its trust account to S&W for S&W to undertake representation of RaPower in bankruptcy proceedings, and, upon information and belief, NSDP did not exercise any dominion or control over the \$100,000 transferred to S&W.

31. On the same day, S&W filed a Chapter 11 bankruptcy petition on behalf of RaPower. The purpose of the bankruptcy petition was to deprive the court in the Civil Enforcement Case of jurisdiction, and thus, the ability to take further enforcement action against RaPower consistent with its bench ruling.

32. On August 22, 2018, after RaPower moved for voluntary dismissal of the bankruptcy petition, the district court overseeing RaPower's bankruptcy petition withdrew the bankruptcy reference and dismissed the RaPower bankruptcy, ruling it was "clearly" filed in bad

faith.¹⁹

33. The court based its bad faith ruling on the “timing of the [bankruptcy] filing which has prevented entry of final orders including a receivership order,” as well as the court’s “deep familiarity with the facts of [the Civil Enforcement Case]” and review of the filings.²⁰

34. On September 5, 2018, S&W filed a fee application for its work on the bankruptcy, requesting \$61,597 in attorneys’ fees. S&W also purports to have imposed an attorney’s lien on these funds pursuant to Utah statute.

35. On November 5, 2018, the bankruptcy court denied S&W’s fee application in its entirety. After S&W requested clarification of the bankruptcy court’s denial, the court issued an Amended and Restated Order finding that “[c]ounsel cannot be expected to be compensated for services that were rendered in bad faith and which could not have benefitted the debtor’s estate.”²¹

36. The bankruptcy court subsequently ordered S&W to deposit the \$100,000 retainer balance of \$97,430 into the court’s registry until the Receiver determines the appropriate disposition for the funds.²²

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)

37. The Receiver re-alleges and incorporates herein by reference each of the

¹⁹ See Order Dismissing the Case, Bankr. No. 18-bk-24865, Case No. 2:18-cv-00608-DN, Docket No. 443, filed August 22, 2018.

²⁰ *Id.* at 2.

²¹ See Amended and Restated Order Denying Application for Compensation and Reimbursement of Expenses, 2:18-cv-00608-DN, Docket No. 19 at 1, filed Nov. 6, 2018.

²² See *id.*

preceding allegations as if set forth completely herein.

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

39. At all relevant times hereto, each Receivership Entity that made payments to S&W or Glenda Johnson had at least one creditor.

40. At all relevant times hereto, each Receivership Entity that made payments to S&W or Glenda Johnson was insolvent.

41. S&W received transfers between 2012 and 2014 for Neldon Johnson's personal bankruptcy from Glenda Johnson that can be traced to the Receivership Entities in the amount of at least \$60,684.68.

42. The transfers by the Receivership Entities to Glenda Johnson were made in an attempt to avoid creditors and to enrich herself and her family at the expense of lens purchasers, creditors, and the United States Government, and she did not receive these transfers from the Receivership Entities in good faith or for reasonably equivalent value, and, to the extent she can be considered an initial transferee, such transfers are avoidable

43. S&W received transfers of at least \$100,000 from the Receivership Entities in 2018.

44. S&W did not provide reasonably equivalent value to the Receivership Entities or to Glenda Johnson in exchange for the transfers that are at issue in this case.

45. S&W accepted the payments and maintains that it is entitled to receive these payments for services that were rendered in bad faith, as set forth above.

46. The transfers were paid and any obligations to S&W were incurred with actual

intent to hinder, delay or defraud a creditor of the Receivership Entities.

47. S&W did not provide reasonably equivalent value to any Receivership Entity or to Glenda Johnson.

48. 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 S&W.

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)

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

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

51. At all relevant times hereto, each Receivership Entity that made payments to S&W or Glenda Johnson had at least one creditor.

52. At all relevant times hereto, each Receivership Entity that made payments to S&W or Glenda Johnson was insolvent.

53. S&W received transfers between 2012 and 2014 for Neldon Johnson's personal bankruptcy from Glenda Johnson that can be traced to the Receivership Entities in the amount of at least \$60,684.68.

54. The transfers by the Receivership Entities to Glenda Johnson were made in an attempt to avoid creditors and to enrich herself and her family at the expense of lens purchasers, creditors, and the United States Government, and she did not receive these transfers from the Receivership Entities in good faith or for reasonably equivalent value, and, to the extent she can

be considered an initial transferee, such transfers are avoidable

55. S&W received transfers of at least \$100,000 from the Receivership Entities in 2018.

56. S&W did not provide reasonably equivalent value to the Receivership Entities or to Glenda Johnson in exchange for the transfers that are at issue in this case.

57. S&W accepted the payments and maintains that it is entitled to receive these payments for services that were rendered in bad faith, as set forth above.

58. The transfers were paid or the obligations to S&W were incurred by the Receivership Entities without receiving a reasonably equivalent value in exchange for the transfers or obligations, and S&W did not provide any reasonably equivalent value to the Receivership Entities or Glenda Johnson.

59. 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.

60. 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 S&W.

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)

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

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

63. At all relevant times hereto, each Receivership Entity that made payments to S&W or Glenda Johnson had at least one creditor.

64. At all relevant times hereto, each Receivership Entity that made payments to S&W or Glenda Johnson was insolvent.

65. S&W received transfers between 2012 and 2014 for Neldon Johnson's personal bankruptcy from Glenda Johnson that can be traced to the Receivership Entities in the amount of at least \$60,684.68.

66. The transfers by the Receivership Entities to Glenda Johnson were made in an attempt to avoid creditors and to enrich herself and her family at the expense of lens purchasers, creditors, and the United States Government, and she did not receive these transfers from the Receivership Entities in good faith or for reasonably equivalent value, and, to the extent she can be considered an initial transferee, such transfers are avoidable

67. S&W received transfers of at least \$100,000 from the Receivership Entities in 2018.

68. S&W did not provide reasonably equivalent value to the Receivership Entities or to Glenda Johnson in exchange for the transfers that are at issue in this case.

69. S&W accepted the payments and maintains that it is entitled to receive these payments for services that were rendered in bad faith, as set forth above.

70. 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.

71. 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 S&W.

FOURTH CLAIM FOR RELIEF
(Unjust Enrichment)

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

73. S&W received transfers between 2012 and 2014 totaling at least \$60,684.68 that can be traced to the Receivership Entities.

74. S&W received transfers of at least \$100,000 from the Receivership Entities in 2018.

75. The transfers to S&W were comprised of property that can be traced to the Receivership Entities and were made by Receivership Entities in furtherance of the fraud scheme.

76. The transfers to S&W conferred a benefit upon S&W.

77. S&W knowingly benefitted from the transfers.

78. Allowing S&W to retain the transfers would unjustly enrich it and would be inequitable.

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

80. S&W must disgorge the amount of the transfers.

PRAYER FOR RELIEF

WHEREFORE, the Receiver prays for Judgment against S&W 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 \$160,584.68.

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 \$160,584.68.

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 \$160,584.68.

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 \$128,701.36; (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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