

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

STATE OF OHIO,
Ohio Development Services Agency,
successor to the Ohio
Department of Development
77 S. High Street, 29th Floor
Columbus, OH 43215

Plaintiff,

v.

WILLARD & KELSEY SOLAR GROUP, LLC
1775 Progress Drive
Perrysburg, OH 43551

and

WILLARD & KELSEY SOLAR GROUP, LLC
c/o Matthew Cox, as agent for Service of Process
88 East Broad Street
Columbus, OH 43215

and

JAMES M. APPOLD
520 Riverside Drive
Rossford, OH 43460

and

MICHAEL J. CICAk
29897 St. Andrews Road
Perrysburg, OH 43551

and

JAMES E. HEIDNER
811 W. Wooster Street
Bowling Green, OH 43402

and

Case No.

Commercial Court

Judge:

COMPLAINT

GARY T. FAYKOSH
436 South Ridge Drive
Perrysburg, OH 43551

and

E-Z PAK
c/o James M. Appold
312 Rader Road
McComb, OH 45858

and

DEFENDANTS JOHN DOE
Names Unknown
Addresses Unknown

Defendants.

Plaintiff STATE OF OHIO, DEVELOPMENT SERVICES AGENCY, successor to the Ohio Department of Development, by and through the Ohio Attorney General, for its Complaint against Defendants WILLARD & KELSEY SOLAR GROUP, LLC, JAMES M. APPOLD, MICHAEL J. CIIKAK, JAMES E. HEIDNER, GARY T. FAYKOSH, E-Z PAK and Defendants JOHN DOE, names unknown, states as follows:

The Parties, General Allegations and Venue

1. Plaintiff State of Ohio, Development Services Agency (“DSA”), is a state agency that provides funding under R.C. §§ 166.01 - 166.35 and other state statutes to fund projects to enhance the Ohio business environment. DSA is a state agency that is the successor to the Ohio Department of Development (“DoD”). DSA is headquartered in Franklin County, Ohio.
2. Defendant Willard & Kelsey Solar Group, LLC (“WKS”), is a limited liability company organized under the laws of the State of Ohio, with its principal place of business located in Perrysburg, Ohio, in Wood County, Ohio.
3. Defendant WKS entered into the transactions that are the subject of this complaint in Franklin County, Ohio.
4. Defendant James M. Appold (“Appold”) was a member/shareholder of WKS and the former President and principal shareholder of Consolidated Biscuit Company. Defendant Appold resides in Wood County, Ohio. He is also the owner or otherwise directly related to E-Z Pak, a business organization whose address and principal place of business are unknown.

5. Defendant James Heidner (“Heidner”) was a member/shareholder of WKS at all times relevant to the allegations of this complaint, and was the developer of certain intellectual property that was critical to the project to be funded by the DoD loan proceeds. Heidner currently resides in Wood County, Ohio.
6. Defendant Gary T. Faykosh (“Faykosh”) was a member/shareholder of WKS at times relevant to the allegations of this complaint and was the developer of certain intellectual property that was critical to the project to be funded by the ODSA proceeds. Faykosh currently resides in Wood County, Ohio and he is member/shareholder of Equinox Advanced Technologies, LLC, operating in Sandusky County, Ohio.
7. Defendant Michael Cicak (“Cicak”) was a member/shareholder of WKS at times relevant to the allegations of this complaint, and was a principal negotiator of the transactions at issue herein. Cicak is a past officer of Glasstech, Inc. and Spring Grove Trading Co., LLC.
8. Defendant E-Z Pak, aka E-Z Pack, is a business entity of unknown organization, owned and/or controlled by Defendant Appold. Defendant E-Z Pak formerly operated at 4100 Meyer Lane, in McComb, Ohio 45858, but its operations at that location are, upon information and belief, discontinued and closed. Defendant E-Z Pak and Consolidated Biscuit Company received disbursements of WKS funds during times relevant to the allegations of this complaint.
9. Defendants John Doe are individuals and/or business entities that obtained possession of assets material to the corporate formation of WKS and/or essential to the operations of WKS as a limited liability company, including intellectual and real property, but whose identity and/or form of business organization are not known to the Plaintiff at the present time.
10. Venue is proper in Hamilton County, Ohio. On or about February 14, 2013, Defendant WKS entered into an Agreed Judgment Entry, a copy of which is attached hereto as Exhibit A, in which WKS agreed and consented, *inter alia*, to venue in Hamilton County, Ohio in return for an agreement by Plaintiff to forbear from commencing a civil action against WKS at that time.
11. In early to mid-2007, regional representatives of DoD were contacted by Defendant Cicak and James Mitchell, the deceased former President of WKS, who inquired about the availability of state tax credits and other available state development loan money that might be available to fund the development of a new process to manufacture solar panels.
12. These discussions and later applications led to a preliminary application for a state tax credit, an application for assistance filed with DoD, and an application for assistance with the Ohio Air Quality Development Authority.

13. On or about March 9, 2009, WKS borrowed five million dollars (\$5,000,000) from DoD (the “DoD Loan”) evidenced by the execution of a loan agreement with DoD pursuant to Revised Code § 166.21(D) (the “DoD Loan Agreement”). A true and correct copy of the DoD Loan Agreement is attached hereto as Exhibit B.
14. In furtherance of the DoD Loan, WKS executed a promissory note dated March 9, 2009, and delivered the same to DoD (the “DoD Note”). A true and correct copy of the DoD Note is attached hereto as Exhibit C. James Mitchell signed the DoD Loan Agreement on behalf of WKS.
15. James Mitchell was authorized to sign the DoD Loan Agreement and DoD Note on behalf of WKS.
16. The purpose of the DoD Loan was to assist in the purchase of necessary machinery and equipment for WKS.
17. WKS entered into a security agreement with DoD on March 9, 2009, to secure repayment of the DoD Loan and the DoD Note (hereinafter, the “Security Agreement”). A true and correct copy of the Security Agreement is attached hereto as Exhibit D. The parties amended the Security Agreement on January, 25 2010. A true and correct copy of the amendment to the Security Agreement is attached hereto as Exhibit E.
18. Pursuant to the DoD Loan Agreement, WKS received the sum of \$5,000,000 from DoD. Through June of 2013, representatives of WKS continued to represent that the company had a good faith intention to repay the DoD Loan and had valid business prospects. After June of 2013, and without notice to Plaintiff, WKS ceased all business operations.
19. Defendant WKS breached the terms of the DoD Loan Agreement and failed to pay the installments due as agreed under the terms of the DoD Loan Agreement and the DoD Note to either DoD or its successor, DSA. As a result of the breach, the full amount of the DoD Loan and the DoD Note is due and payable immediately. Accordingly, WKS owes the remaining principal and interest to DSA, as successor to DoD, plus reasonable attorneys’ fees, costs, expenses, late fees and interest, as provided in the DoD Loan Agreement and the DoD Note.

Count I - Breach of Contract

20. Plaintiff renews and restates all of the allegations set forth in paragraphs 1 through 19 above and incorporates the same as if they were fully rewritten herein.
21. By virtue of the failure by WKS to pay the payments due as agreed under the terms of the DoD Loan Agreement and DoD Note, WKS is in default of both.
22. The default by WKS on the DoD Loan and DoD Note constitute a breach of contract for which WKS is liable to DoD for all balances due thereunder.

23. By virtue of the default by WKS on the DoD and DoD Note, WKS is liable to Plaintiff in the amount of \$6,395,205.47 as of February 14, 2013 with interest thereon at the contract rate of at ten percent (10%) from and after that date.

Count II – Additional Breach of Contract; Attorneys’ Fees and Late Fees

24. Plaintiff renews and restates all of the allegations set forth in paragraphs 1 through 23 above and incorporates the same as if they were fully rewritten herein.
25. Article VI, Section 6.4 of the DoD Loan Agreement provides that WKS shall reimburse the reasonable attorneys’ fees and expenses of Plaintiff in collecting a default upon the DoD Loan and such amount shall earn interest at the same rate as loan advances made to WKS.
26. The DoD Note provides that WKS owes five percent (5%) as a late fee for each payment due and not timely paid.
27. As a result of the default by WKS on the DoD Loan Agreement and the DoD Note, Plaintiff is entitled to attorneys’ fees, costs, expenses, late fees and interest in accordance with the terms of the DoD Loan Agreement and DoD Note.

Count III – Breach of Security Agreement; Replevin

28. Plaintiff renews and restates all of the allegations set forth in paragraphs 1 through 27 above and incorporates the same as if they were fully rewritten herein.
29. The Security Agreement and amended Security Agreement were duly perfected by filing of UCC Financing Statements with the office of the Ohio Secretary of State on March 5, 2009, and January 28, 2010, respectively (collectively, the “Security Agreements”).
30. By virtue of the perfected Security Agreements, Plaintiff State of Ohio has the first and best right to possession of the collateral described therein otherwise known as the equipment belonging to WKS.
31. As a result of the default by WKS on the DoD Loan Agreement and the DoD Note, Plaintiff is entitled, to a judgment in replevin, to take possession of the personal property secured by the Security Agreements and ownership of the collateral that is secured by the Security Agreements.

Count IV – Shareholder Liability

32. Plaintiff renews and restates all of the allegations set forth in paragraphs 1 through 31 above and incorporates the same as if they were fully rewritten herein.
33. Defendants Appold, Heidner, Faykosh and Cicak (collectively the “Individual Defendants”) exercised dominion and control over the operations of WKS in a manner that was so

complete that the limited liability company had no separate mind, will, or existence of its own.

34. Financial reports and records of WKS indicate that it failed to observe corporate formalities of a limited liability company, including regular board meetings and resolutions; lacked adequate capitalization; and failed to establish a functioning business operation. These failures were caused by the actions and/or conscious inaction of the Individual Defendants.
35. The control over the limited liability company by the Individual Defendants was exercised in such a manner that such conduct caused injury or unjust loss to the Plaintiff, and the Individual Defendants wrongly exercised control over WKS in such a manner as to commit fraudulent, illegal, unlawful or other unjust or inequitable acts.
36. WKS did not maintain checking accounts in 2007, an omission that indicates that the Individual Defendants did not intend to operate WKS as a separate and distinct limited liability company.
37. WKS has admitted in writing that prior to 2008, it did not have sufficient administrative personnel to have purchasing and accounting systems fully in place, an omission that indicates that the Individual Defendants did not intend to operate WKS as a separate and distinct limited liability company.
38. WKS did not maintain reliable or business-like records. This is further evidence that WKS was not operating as a legally proper separate and distinct limited liability company.
39. WKS did not obtain the required certifications of its manufacturing process and product so that the product could be sold to domestic or international markets. Such certifications were critical to the ability of WKS to market its product, and therefore were essential to ensure that WKS could fulfill its obligations under the DoD Loan Agreement and the DoD Note. Such certifications were also essential to fulfill the corporate purpose of WKS. The Individual Defendants failed to ensure that WKS obtained such certifications, thereby breaching the terms of the DoD Loan Agreement and DoD Note, and preventing WKS from operating as a properly, independently functioning limited liability company..
40. Defendant Appold treated the corporate assets of WKS as his own, thereby failing to respect the separate legal existence of WKS as a limited liability company.
41. Defendant Appold made a personal loan to WKS of approximately \$5,000,000 bearing an unconscionable interest rate of fifty percent (50%). Although, reportedly, this loan and the accumulated interest were later converted to equity, its existence and terms were inconsistent with the corporate form of a limited liability company and its shield of liability.
42. The Individual Defendants permitted a transfer of approximately \$1,800,000 of the proceeds from the DoD Loan from WKS to E-Z Pak and Consolidated Biscuit Company, both of

which were businesses owned or controlled by Defendant Appold. Upon information and belief, neither E-Z Pak nor Consolidated Biscuit Company had any relation to the solar manufacturing operations of WKS. This intermingling of funds is inconsistent with WKS being operated as a separate and distinct limited liability company.

43. Baked goods from one or more of the businesses referenced in paragraph 42 were stored at the WKS Project Facility. The storage of baked goods did not further the corporate purposes of WKS as a limited liability company in any respect as it had nothing to do with the manufacture of solar panels. The commingling of funds and facilities of WKS with funds and operations of other businesses owned and/or operated by Defendant Appold evidences a failure by the Individual Defendants to operate WKS as a separate legal limited liability company.
44. Regardless of whether Consolidated Biscuit Company or E-Z Pak paid WKS for use of the Project Facility, or for the storage of baked goods as alleged in paragraph 43, the co-mingling of funds and facilities of WKS with those under the control of the Individual Defendants and with funds of other businesses owned and/or operated by Defendant Appold, demonstrates that WKS was not operating as a separate and distinct limited liability company.
45. Based upon representations made by Defendant Cicak and others affiliated with WKS, Plaintiff DoD believed that WKS had or would have title, ownership, custody and control of the land located at 1775 Progress Drive in Perrysburg, Ohio, on which WKS is situated and which was identified as the project site in the DoD Loan Agreement (the "Project Site") and the building ("Project Facility") existing upon the Project Site for the manufacturing and production of the project that was to be funded by the DoD Loan proceeds (the "Project").
46. Prior to the adoption of an operating agreement for WKS, the Individual Defendants were future members of WKS who, at that time, published information making specific representations to prospective lenders (which included the State of Ohio) to encourage the funding for the Project. These representations were contained in a 32-page confidential proposal dated October 15, 2007 (the "Proposal"). The Proposal stated that the Project Site and the Project Facility would be owned by WKS.
47. Other documents submitted to DoD prior to the execution of the DoD Loan Agreement and DoD Note stated that the Project Site and the Project Facility were owned by WKS and this was not true. Financial documents of WKS submitted to DoD in support of the application for the DoD Loan identified the Project Site and Project Facility as assets of WKS and indicated that a loan had been obtained to pay for one hundred percent (100%) of the purchase cost of said assets.
48. The WKS financial statement of August 31, 2008, which was submitted to DoD in support of the application for the DoD Loan, stated that the loan amount for the purchase of the Project Site was \$7,480,000.

49. In fact, the Project Site and Project Facility were never owned by WKS. Records of Wood County, Ohio indicate that the Project Site, including all improvements thereon, is and has been owned by an entity known as Spring Grove Trading Company, having been purchased by Spring Grove Trading Company from Delafoil, Inc., on February 22, 2008, for \$7,000,000. A financial statement of 8-31-08 contains a page that lists real property to be purchased for \$700,000.00.
50. The deed to the Project Site on file with the Wood County lists Defendant Cicak as the agent of Spring Grove Trading Company. Upon information and belief, Defendants Appold and Cicak have been the owners of Spring Grove Trading Company at all times relevant to the allegations of this complaint.
51. In lieu of any contribution at the time of formation, Defendants Heidner and Faykosh agreed to transfer to WKS all inventions, ideas, reports and other creative works as well as all patents, trademarks, copyrights, trade secrets or concepts which they possessed or to which they owned rights, that related to the proprietary solar panel activity or processes of WKS.
52. Upon information and belief, some or all of the above-referenced intellectual property to be used by WKS was never transferred to WKS, but was instead placed into certain other companies that may include Willard Kelsey Solar Manufacturing Plant I, LLC, W & K Innovation, LLC, and Willard Kelsey Real Estate Holdings, LLC.
53. To the extent that and of the Individual Defendants were involved directly or indirectly with transfers of intellectual property essential to the Project to these or other entities, such transfers were fraudulent or unlawful as to DoD and its successor DSA, and were inconsistent with necessary and proper capitalization of WKS.
54. The promised transfer of intellectual and real property and capital contributions by Defendants Heidner and Faykosh were essential to the establishment of WKS as a limited liability company and to the success of WKS. The Individual Defendants knew, or should have known, that the failure to effectuate such transfers was inconsistent with the proper capitalization of WKS.
55. Plaintiff believed that the existence and capitalization of WKS as a limited liability company was proper and appropriate as represented by the Individual Defendants and others, and reasonably relied on such representations and belief to its detriment when it executed the DoD Loan Agreement and transferred the DoD Loan proceeds to WKS.
56. The corporate existence of WKS as a limited liability company should be disregarded as a result of the improper conduct of the Individual Defendants. Accordingly, the Individual Defendants are not entitled to the benefit of the corporate form of WKS as a limited liability company, also known as the corporate shield, and each is jointly and severally liable in

quasi-contract and in equity to repay the DoD Loan and the DoD Note, plus damages, attorneys' fees, costs, expenses, late fees and interest.

Count V - Breach of Fiduciary Duty

57. Plaintiff renews and restates all of the allegations set forth in paragraphs 1 through 56 above and incorporates the same as if they were fully rewritten herein.
58. The Individual Defendants had fiduciary obligations to manage the DoD Loan proceeds in the possession of WKS for the benefit of the Project and to provide security for the DoD Loan as agreed, pursuant to their obligations as members/shareholders of WKS and pursuant to the requirements of R.C. §§ 166.01 - 166.35.
59. The DoD Loan Agreement provided that no more than thirty-seven percent (37%) of the "Allowable Cost" expenses of the Project as defined by R.C. § 166.01 could be paid for out of the DoD Loan proceeds. The DoD Loan Agreement required that the remaining sixty-three percent (63%) of "Allowable Cost" expenses of the Project must be paid from new member contributions to WKS. The DoD Loan Agreement provided that WKS and its members would, at a minimum, contribute an additional \$8,000,000 in equity for the funding of the Project.
60. Upon information and belief, the required \$8,000,000 member contribution to pay for WKS' required sixty-three percent (63%) share of Project Allowable Costs was never made after the DoD loan was made. Conversely, after receipt of the DoD Loan proceeds WKS removed \$5,000,000 from member equity contributions to buy out a former member of WKS who sued to have his interest purchased.
61. Article II, Section 2.3(l) of the DoD Loan Agreement also provided that no portion of the DoD Loan proceeds would be used to pay any fee, kickback or consideration of any type to the members, officers, directors or employees of WKS, stating as follows:

All proceeds of the R & D Loan shall be used for the payment of Allowable Costs relating to Provision of the Project. No part of any such proceeds shall be knowingly paid to or retained by the Company or any officer, shareholder, director or employee of the Company as a fee, kick-back or consideration of any type. The Company has no identity of interest with any supplier, contractor, architect, subcontractor, laborer or materialman performing work or services or supplying materials in connection with the Provision of the Project.
62. The Individual Defendants knew that any use of the DoD Loan proceeds for any purpose other than payment of thirty-seven percent (37%) of the Allowable Costs of the Project, and specifically, that any payment of DoD Loan proceeds to any member, officer, director or

employee of WKS, would constitute a violation of the terms of the DoD Loan Agreement and R.C. Chapter 166.

63. On or about July 12, 2013, DSA completed an audit of the use by WKS of the DoD Loan proceeds (the "Audit"). The Audit revealed that approximately \$1,800,000 from the DoD Loan proceeds were transferred to Defendant E-Z Pak and Consolidated Biscuit Company and not properly accounted for by WKS records. Upon information and belief, the transfers to Defendant E-Z Pak and Consolidated Biscuit Company were for purposes other than those permitted by the DoD Loan Agreement.

64. The transfers by WKS to Defendant E-Z Pak (the "E-Z Pak Transfers") were made shortly after the DoD Loan proceeds were distributed to WKS, for invoices that were dated as follows:

(a)	3/31/07	\$ 4,035.68
(b)	4/30/07	\$ 8,415.16
(c)	5/31/07	\$ 71,383.81
(d)	6/30/07	\$ 21,401.79
(e)	7/31/07	\$113,250.91
(f)	8/31/07	\$ 14,369.66
(g)	9/30/07	\$ 39,802.24
(h)	10/31/07	\$ 47,879.92
(i)	11/30/07	\$145,928.30
(j)	12/31/07	\$ 43,856.63
(k)	1/31/08	\$253,898.58
(l)	2/28/08	\$ 49,423.25
(m)	3/31/08	\$ 81,695.95
(n)	4/30/08	\$317,981.29
(o)	5/31/08	\$133,204.43
(p)	6/30/08	\$ 52,289.93
(q)	7/31/08	\$ 13,661.18
(r)	8/31/08	\$ 754.59

65. Upon information and belief, Defendant Appold has owned and/or controlled Defendant E-Z Pak at all times relevant to the allegations of this complaint.

66. The transfers by WKS to Consolidated Biscuit Company (the "CBC Transfers") were made shortly after the DoD Loan proceeds were distributed to WKS, for invoices that were dated as follows:

(a)	12/31/08	\$266,412.32
(b)	12/31/08	\$157,710.62

67. Upon information and belief, Defendant Appold owned and/or controlled Consolidated Biscuit Company at the time when the CBC Transfers of DoD Loan proceeds were made by WKS.
68. During the pendency of the DoD Loan, the Individual Defendants received distributions from the DoD Loan proceeds and/or knew of transfers of DoD Loan proceeds directly or indirectly from WKS for uses that violated the terms of the DoD Loan Agreement and the requirements of R.C. Chapter 166, including payments of more than thirty-seven percent (37%) of Project “Acceptable Cost” expenses from the DoD Loan proceeds.
69. Specifically the Individual Defendants knew of the E-Z Pak Transfers and the CBC Transfers and allowed such transfers knowing that the DoD Loan Agreement and the requirements of R.C. Chapter 166 disallowed the use of DoD Loan proceeds for such transfers.
70. By personally receiving or consenting to direct or indirect distributions from the DoD Loan proceeds to members and by receiving or consenting to payment of more than thirty-seven percent (37%) of Acceptable Cost expenses of the Project, the Individual Defendants failed to properly manage WKS in furtherance of the stated goals of the Project and the DoD Loan, and the corporate purposes of WKS as a limited liability company. The agreed upon use of DoD Loan proceeds was to complete the Project, which would have facilitated repayment by WKS of the DoD Loan.
71. The Individual Defendants breached their fiduciary duty to Plaintiff by not managing WKS in such a manner as to ensure proper capitalization and completion of the Project including acquisition of the necessary certifications. As such the Individual Defendants to WKS are liable in damages to the Plaintiff for damages, including repayment of the Loan proceeds.
72. To allow or cause use of the DoD Loan proceeds for unauthorized or unlawful purposes constituted a breach of fiduciary duty owed by the Individual Defendants to WKS and to the Plaintiff. This also constitutes a further material breach of the DoD Loan Agreement. As such, the Individual Defendants are responsible jointly and severally for repayment of the DoD Loan and the DoD Note and are not entitled to member/shareholder immunity for the same.

Count VI – Fraudulent and Unlawful Transfers to E-Z Pak

73. Plaintiff renews and restates all of the allegations set forth in paragraphs 1 through 72 above and incorporates the same as if they were fully rewritten herein.
74. The E-Z Pak Transfers of DoD Loan proceeds from WKS to Defendant E-Z Pak were made by WKS and authorized by the Individual Defendants with actual intent to hinder and/or defraud Plaintiff. The E-Z Pak Transfers were made by WKS without receiving reasonably equivalent value in exchange from Defendant E-Z Pak, at a time when the assets of WKS

were unreasonably small in relation to the financial needs of the Project and WKS' business operations generally.

75. The transfer of DoD Loan proceeds from WKS to Defendant E-Z Pak constituted a fraudulent and unlawful transfer. Said transfer(s) were made with the intent to convert the DoD Loan proceeds for the benefit of insiders of WKS, including Defendant E-Z Pak and/or Defendant Appold.
76. The transfer(s) from WKS to Defendant E-Z Pak are void and Plaintiff is entitled to a lien against the assets of Defendants E-Z Pak and Defendant Appold, and to recover a judgment against Defendant E-Z Pak and Defendant Appold for the value of said transfers plus applicable interest, attorneys' fees and costs.

Count VII – Fraudulent and Unlawful Transfers to Consolidated Biscuit Company

77. Plaintiff renews and restates all of the allegations set forth in paragraphs 1 through 75 above and incorporates the same as if they were fully rewritten herein.
78. The CBC Transfers of DoD Loan proceeds from WKS to Consolidated Biscuit Company were made by WKS and authorized by the Individual Defendants with actual intent to hinder and/or defraud Plaintiff. The CBC Transfers were made by WKS without receiving reasonably equivalent value in exchange from Consolidated Biscuit Company, at a time when the assets of WKS were unreasonably small in relation to the financial needs of the Project and WKS' business operations generally.
79. The transfer of DoD Loan proceeds from WKS to Consolidated Biscuit Company constituted a fraudulent and unlawful transfer. Said transfer(s) were made with the intent to convert the DoD Loan proceeds for the benefit of insiders of WKS, including Defendant Appold.
80. The transfer(s) from WKS to Consolidated Biscuit Company are void and Plaintiff is entitled to a lien against the assets of Defendant Appold, and to recover a judgment against Defendant Appold for the value of said transfers plus applicable interest, attorneys' fees and costs.

Count VIII – Civil Aiding and Abetting

81. Plaintiff renews and restates all of the allegations set forth in paragraphs 1 through 79 above and incorporates the same as if they were fully rewritten herein.
82. The Individual Defendants had a duty to prevent unlawful transfers of DoD Loan proceeds to members of WKS or to other entities related to WKS or their members, or in violation of the thirty-seven percent (37%) limitation on payment of Project "Acceptable Cost" expenses as set forth in the terms of the DoD Loan Agreement.

83. The Individual Defendants breached their duty to Plaintiff to manage WKS in a manner consistent with the fulfillment of the Project and to ensure repayment of the DoD Loan and the DoD Note.
84. In combination and/or individually, the Individual Defendants performed tortious acts as outlined above and in violation of their duty to prevent unlawful transfers and in violation of their fiduciary duties to WKS and to Plaintiff.
85. The Individual Defendants knew that each other's conduct constituted a breach of fiduciary duties and gave substantial assistance and/or encouragement to each other to perform such breaches of duty that resulted in the failure of WKS to fulfill the terms of the DoD Loan Agreement and the DoD Note.
86. As a result of the foregoing actions and inaction, the Individual Defendants are liable to Plaintiff for civil aiding and abetting. Plaintiff is entitled to recover a judgment against the Individual Defendants jointly and severally for the value of said transfers and/or any injuries sustained plus applicable attorneys' fees, costs, expenses, late fees and interest.

Count IX – Civil Conspiracy

87. Plaintiff renews and restates all of the allegations set forth in paragraphs 1 through 85 above and incorporates the same as if they were fully rewritten herein.
88. By allowing or participating in the fraudulent, unlawful or wrongful transfers of WKS assets and the DoD Loan proceeds, the Individual Defendants participated in a malicious combination involving two or more persons which constituted a civil conspiracy, the result of which was the commission of a unlawful act by violation of R.C. §§ 166.01 - 166.35.
89. The malicious combination was established by a common understanding or design entered into by two or more persons to commit the unlawful act of utilizing funds other than as provided by R.C. Chapter 166 and in violation of the terms of the DoD Loan Agreement. The combination caused the Individual Defendants to injure the interests of the Plaintiff in a way not competent for one alone, and resulted in actual damages to Plaintiff.
90. As a result of the foregoing malicious combination, the Individual Defendants are jointly and severally liable to Plaintiff for their civil conspiracy. Plaintiff is entitled to recover a judgment against the Individual Defendants jointly and severally for the value of said transfers and/or any injury sustained plus applicable interest, attorneys' fees and costs. Plaintiff is entitled to recover a judgment against the Individual Defendants jointly and severally for damage suffered by the State of Ohio for failure to complete the Project and for failure to repay the DoD Loan and the DoD Note, and/or any injuries sustained plus applicable attorneys' fees, costs, expenses, late fees and interest.

WHEREFORE, the State of Ohio, Development Services Agency, successor to the Ohio Department of Development, through the Ohio Attorney General, demands judgment in its favor against the Defendants as follows:

- A. Judgment against WKS on the DoD Loan Agreement and DoD Note in the amount of \$6,395,205.47 with interest at ten percent (10%) from February 14, 2013 for breach of the DoD Loan Agreement and DoD Note;
- B. Judgment against the Defendants WKS, Appold, Cicak, Heidner and Faykosh, jointly and severally for the contractual late charges of five percent (5%) for each payment due, that being the entire DoD Loan and DoD Note balance in light of the breach of the DoD Loan Agreement and DoD Note and the entire unpaid balance having become due and payable;
- C. Judgment against the Defendants WKS, Appold, Cicak, Heidner and Faykosh, jointly and severally, for the costs of this action including attorneys' fees and expenses, together with interest as provided in the DoD Loan Agreement, DoD Note and Security Agreements;
- D. Judgment against Defendants WKS Appold, Heidner, Cicak, Faykosh and E-Z Pak, jointly and severally, in the amount of the wrongful transfers of funds that were not Allowable Costs of the Project, were made to directly or indirectly to members, officers, directors or employees of WKS or were greater than thirty-seven percent (37%) of the Allowable Cost expenses of the Project, together with interest;
- E. Judgment against Defendants Appold, Heidner, Cicak and Faykosh, jointly and severally, under shareholder liability for the damages sustained by Plaintiff for failing to establish and operate WKS as proper limited liability company;
- F. Judgment in replevin against Defendants WKS, Appold, Cicak, Heidner and Faykosh, for all personal property to which Plaintiff is entitled as a result of the default of the WKS Loan repayment pursuant to the Security Agreements; and
- G. Judgment against the Defendants for such other and further relief, including exemplary damages, as the Court deems to be just and proper at law or in equity.

Respectfully submitted,

MICHAEL DEWINE (0009181)
ATTORNEY GENERAL OF OHIO

/s/ Joseph W. Shea

Joseph W. Shea III (0002758)

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Development Services Agency*