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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

<p>In re:</p> <p>AARON LEE ROWSELL,</p> <p style="text-align: center;">Debtor.</p>	<p style="text-align: center;">COMPLAINT FOR NON- DISCHARGEABILITY</p> <p style="text-align: center;">Bankruptcy No. 16-24669 (Chapter 7)</p> <p style="text-align: center;">Judge Joel T. Marker</p> <p style="text-align: center;">Adversary Proceeding No. _____</p>
<p>D. RAY STRONG AS RECEIVER FOR ISYS TECHNOLOGIES, INC., CODED INSTRUCTION SECURITY CORPORATION, and Xi3, INC.,</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>AARON LEE ROWSELL,</p> <p style="text-align: center;">Defendant.</p>	

Plaintiffs D. Ray Strong (“**Strong**”) as Receiver for ISYS TECHNOLOGIES, INC. (“**ISYS**”), CODED INSTRUCTION SECURITY CORPORATION (“**CISC**”), and Xi3, INC.

(“**Xi3**”) (collectively, “**Plaintiffs**”), through counsel, complain of defendant Aaron Lee Rowsell (“**Rowsell**” or the “**Debtor**”) as follows:

PARTIES AND JURISDICTION

1. D. Ray Strong is the court-appointed receiver of ISYS, CISC, and Xi3 (collectively, the “**Companies**”).
2. ISYS is a Nevada corporation that had its principal place of business in Salt Lake City, Utah.
3. CISC is a Nevada corporation that had its principal place of business in Salt Lake City, Utah.
4. Xi3 is a Nevada corporation that had its principal place of business in Salt Lake City, Utah.
5. Rowsell is the Debtor in the above-captioned chapter 7 case.
6. This Court has jurisdiction over the subject matter of this Complaint pursuant to 28 U.S.C. § 1334. Venue is proper under 28 U.S.C. § 157(b). This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(I) and 11 U.S.C. § 523.

GENERAL ALLEGATIONS

7. Plaintiffs incorporate all other paragraphs of this Complaint.
8. The Companies are collectively involved in the manufacturing and selling of computers and computer equipment.
9. Jason Sullivan (“**Sullivan**”) was the President and CEO of the Companies.
10. Rowsell was the Chief Operating Officer of the Companies and a shareholder of the Companies.

11. Rowsell and Sullivan each own 50% interests in Mountain West Land Development, LLC (“**Mountain West**”).

12. On or about April 8, 2015, the Third Judicial District Court for the District of Salt Lake County, Utah (the “**State Court**”) placed the Companies in receivership and appointed D. Ray Strong as the Receiver.

13. During the relevant times to this action, Rowsell and Sullivan were also close personal friends.

14. As officers of the Companies, Rowsell and Sullivan owed the Companies fiduciary duties.

15. While acting as COO, Rowsell participated in a scheme with Sullivan to damage the Companies, investors, and lenders. Rowsell and Sullivan are collectively referred to as the “**Officers.**”

16. The Officers failed to maintain adequate books and records for the Companies, failed to appoint independent directors, and failed to hire competent employees with requisite background to perform their job assignments.

17. The Officers misrepresented the financial condition of the Companies to creditors, shareholders, and potential investors. For example:

a. The Officers provided Troy Holland, Gary Rasmussen, and Robert Evans with grossly inaccurate projections for the Companies and misrepresented that Ernie Moody would be soon investing \$80,000,000 into the Companies.

b. The Officers misrepresented the Companies’ financial condition to Axiom and misrepresented to Axiom that Axiom would be in a first priority secured position with

respect to the Companies' assets when the Officers solicited and obtained a \$7,500,000 loan from Axiom.

c. The Officers misrepresented the Companies' financial condition to IHC when the Officers solicited and obtained a \$11,000,000 loan from IHC.

d. Upon information and belief, the Officers misrepresented to employees, investors, and creditors, a false business relationship with Intel whereby Intel Corporation would be transferring a \$600 million segment of its business to the Companies relating to its NUC product.

18. The Officers used the Companies' funds to pay for personal living expenses and extravagant life styles to the detriment of the Companies, shareholders, and creditors. For example,

a. The Officers caused the Companies to lease a 2014 Mercedes S550 Sedan for Sullivan's personal use at a cost of \$2,200 per month.

b. The Officers caused the Companies to compensate Sullivan's girlfriend and mother as "employees" of the Companies although neither of these individuals provided any services to the Companies.

c. The Officers caused the Companies to pay for vehicle expenses for Sullivan's girlfriend and mother and health benefits for Sullivan's mother.

d. The Officers caused CISC to incur net transfers to Mountain West totaling over \$1.1 million.

e. The Officers caused the Companies to pay personal and excessive credit card charges of Sullivan totaling over \$465,000 and Rowsell totaling over \$50,000.

19. The Officers caused the Company to incur expenses far in excess of the Company's assets and realistic revenue projections. For example, at the direction and control of the Officers, the Company leased office space in Salt Lake City for a monthly lease rate of \$66,000 and maintained a payroll in the monthly amount of \$160,000 per month while only generating gross revenue in the amount of less than \$200,000 per month in 2015.

20. The Officers caused the Company to enter into a contract with IHC to lease a lab that the Company rarely, if ever, used at a cost of up to \$2,000,000 per year.

21. The Officers caused the Company to purchase wireless tangible and intangible assets from CM Wireless, LLC, MWave Wireless, LLC, Wireless Automation Group, LLC, and Wideband Antennas, LLC (collectively, the "**CM Companies**") in exchange for \$18,000,000 worth of preferred stock in Xi3. The \$18,000,000 price was grossly in excess of the actual value of the assets purchased from the CM Companies. The inflated valuation of the assets and preferred status of the stock issued diluted and damaged the existing common shareholders.

22. The Officers caused the Companies to provide preferential treatment to friends who loaned and/or invested in the Companies. For example, the Officers obtained a loan and/or investment from Steve Harmsen through the Harmsen Family Limited Partnership ("**HFLP**") in 2012. Mr. Harmsen was a close friend of Rowsell. The Officers caused the Companies to repay HFLP at least \$524,000 from 2013 through 2014. In February 2015, Mr. Harmsen demanded that the Companies execute a note backdated to April 2012 which provided for payment of \$994,000 to HFLP although HFLP was owed less than \$200,000 at the time and which provided for interest at the default rate of 90% per annum, compounding monthly. In addition, the documents in February purported to grant HFLP a security interest in the Companies' assets.

23. The Officers knowingly and intentionally caused the Companies to incur substantial obligations far in excess of the Companies' ability to repay the obligations. More specifically, the Officers caused the Companies to incur approximately \$28,000,000 in secured debt and \$10,000,000-\$21,000,000 in unsecured debt when the Companies were incurring substantial operating losses and when the Companies' assets were worth far less than the debt incurred.

24. Between 2008 and 2015, the Companies advanced to the Debtor, its related entities, or on its behalf, over \$1,600,000 (the "**Rowsell Payments**") consisting of the following:

- a. Salary/Compensation in the amount of \$385,455;
- b. Net transfers to Mountain West of \$1,179,284;
- c. Settlement of personal legal fees in the amount of \$10,000; and
- d. Estimated personal or excessive credit card charges of \$51,172.

25. The Rowsell Payments were not made for the benefit of the Companies

26. The Rowsell Payments were made for the personal benefit of the Debtor.

27. The financial information provided to the Companies' creditors and investors did not accurately reflect the liabilities and assets of the Companies.

28. At all times relevant hereto, the Debtor participated in and/or controlled the information shared by the Officers with the creditors and shareholders of the Companies.

29. The Debtor knew or should have known that the financial statements were materially misleading because they understated the amounts owed to the Companies' creditors and overstated the value of the Companies' assets and revenue generated from operations.

FIRST CAUSE OF ACTION
(11 U.S.C. § 523(A)(2)(A))

30. Plaintiffs incorporate all other paragraphs of this Complaint.

31. The Debtor obtained money, property or in the form of the Rowsell Payments from the Plaintiffs by false pretenses or false presentation.

32. The Debtor caused the Plaintiffs to make the Rowsell Payments.

33. The Debtor knew that the Plaintiffs would not benefit from the Rowsell Payments and that the Plaintiffs did not have the ability to repay the Rowsell Payments.

34. The Debtor knew or should have known that the Plaintiffs, its employees, creditors and shareholders were relying on the Debtor's misleading statements or on their ignorance of concealed information.

35. The Plaintiffs, its employees, creditors and shareholders were justified in relying on the Debtor's misrepresentations because the Debtor was an insider and fiduciary of the Plaintiffs.

36. As a result of the Debtor's misrepresentations, the Plaintiffs have sustained damages in an amount to be proven at trial.

37. Consequently, all of the Plaintiffs' damages, punitive and actual damages to be proven at trial, are excepted from the discharge under 11 U.S.C. § 523(a)(2)(A).

SECOND CAUSE OF ACTION
(11 U.S.C. § 523(A)(4))

38. Plaintiffs incorporate all other paragraphs of this Complaint.

39. As COO, the Debtor was a fiduciary of the Plaintiffs.

40. The Debtor's conduct described in above constituted a breach of his fiduciary duties, including the duty of loyalty and care.

41. The Debtor was entrusted with possession or control of the Plaintiffs' money and property.

42. The Debtor's caused the Rowsell Payments to be made, caused the Companies to solicit investors and creditors through the use of false and fraudulent misrepresentations, and used Company funds and assets to benefit friends and family with wrongful intent and/or disregard of his fiduciary duties to the Plaintiffs.

43. In addition receipt of the Rowsell Payments constituted embezzlement of funds belonging to the Plaintiffs and to which the Debtor was not entitled to retain.

44. As a result of the Debtor's conduct, the Plaintiffs have sustained damages in an amount to be proven at trial.

45. Consequently, all of the Plaintiffs' damages, punitive and actual damages to be proven at trial, should be excepted from the discharge under 11 U.S.C. § 523(a)(4) because they constitute a debt of the Debtor for defalcation while acting in a fiduciary capacity, embezzlement and or larceny.

THIRD CAUSE OF ACTION
(11 U.S.C. § 523(A)(6))

46. Plaintiffs incorporate all other paragraphs of this Complaint.

47. The Debtor intentionally acted to the detriment of the Plaintiff for his own benefit.

48. The Debtor knew or should have known that his conduct would harm the Plaintiffs.

49. The Debtor's conduct was willful and malicious.

50. In addition, the Debtor's conduct in causing the Rowsell Payments to be made constituted conversion.

51. As a result of the Debtor's conduct, the Plaintiffs have been injured in an amount to be proven at trial.

52. Consequently, all of the Plaintiffs' damages, including the Claims, punitive and actual damages to be proven at trial, should be excepted from the discharge under 11 U.S.C. § 523(a)(6).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court determine that the Plaintiff's damages, actual and punitive damages, are a debt of the Debtor excepted from the discharge under each of the causes of action pled above; and that Plaintiff shave such further relief as is just, including reasonable costs and attorneys' fees.

DATED: August 29, 2016

HOLLAND & HART LLP

/s/ Sherilyn A. Olsen

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Ellen E. Ostrow

Attorneys for Plaintiffs