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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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R. WAYNE KLEIN, as Receiver,  
  
Plaintiff,

v.

JUSTIN D. HEIDEMAN, LLC, DBA  
HEIDEMAN & ASSOCIATES, a Utah  
limited liability company,

Defendant.

**MEMORANDUM DECISION  
AND ORDER DENYING  
MOTION TO DISMISS**

Case No. 2:19-cv-00854-DN-PK

District Judge David Nuffer

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Plaintiff R. Wayne Klein was appointed as receiver in *United States v. RaPower-3, LLC, et al.*, No. 2:15-cv-00828-DN-EJF (D. Utah), over RaPower-3, LLC (“RaPower”), International Automated Systems Inc. (“IAS”), LTB1 LLC, their subsidiaries and affiliates, and the assets of Neldon Johnson and R. Gregory Shepard.<sup>1</sup> Plaintiff subsequently initiated this case to recover funds that are alleged to have been fraudulently transferred to Defendant Justin D. Heideman, LLC from RaPower and IAS.<sup>2</sup>

Defendant seeks dismissal of Plaintiff’s Complaint under FED. R. CIV. P. 12(b)(6) for failure to state a claim upon which relief can be granted.<sup>3</sup> Defendant’s Motion to Dismiss challenges the sufficiency of the Complaint by disputing the Complaint’s allegations, asserting facts that go beyond the Complaint’s allegations, and arguing for inferences from the facts which

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<sup>1</sup> Corrected Receivership Order (“*RaPower-3* Receivership Order”), [ECF no. 491](#) in No. 2:15-cv-00828-DN-EJF (D. Utah), filed Nov. 1, 2018.

<sup>2</sup> Complaint, [docket no. 2](#), filed Oct. 31, 2019.

<sup>3</sup> Motion to Dismiss, [docket no. 6](#), filed Dec. 12, 2019.

are favorable to Defendant.<sup>4</sup> These types of challenges are not appropriate under the standard of review for Rule 12(b)(6).

When reviewing a complaint on a Rule 12(b)(6) motion to dismiss, factual allegations are accepted as true and reasonable inferences are drawn in a light most favorable to the plaintiff.<sup>5</sup> Each cause of action must be supported by sufficient, well-pleaded facts to be plausible on its face.<sup>6</sup> And dismissal is appropriate only when the complaint, standing alone, is legally insufficient to state a claim on which relief can be granted.<sup>7</sup>

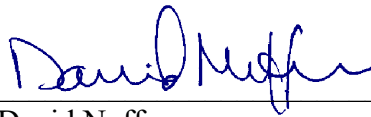
Applying this standard of review to Plaintiff's Complaint, there are sufficient, well-pleaded facts for Plaintiff's avoidance of fraudulent transfers and unjust enrichment claims to be plausible on their face. The Complaint is legally sufficient to state a claim on which relief can be granted.

#### ORDER

THEREFORE, IT IS HEREBY ORDERED that Defendant's Motion to Dismiss<sup>8</sup> is DENIED.

Signed February 24, 2020.

BY THE COURT



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David Nuffer  
United States District Judge

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<sup>4</sup> *Id.*

<sup>5</sup> *GFF Corp. v. Associated Wholesale Grocers, Inc.*, 130 F.3d 1381, 1384 (10th Cir. 1997).

<sup>6</sup> *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

<sup>7</sup> FED. R. CIV. P. 12(b)(6); *Sutton v. Utah State Sch. for the Deaf & Blind*, 173 F.3d 1226, 1236 (10th Cir. 1999).

<sup>8</sup> Motion to Dismiss, [docket no. 6](#), filed Dec. 12, 2019.