

**IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA**

RUSSELL GOELLER, individually, and
derivatively on behalf of Scantron Robotics
USA, Inc.

Civil Division

Plaintiff,

vs.

No. GD-13-021716

THOMAS WETTACH and JOSEPH LEIST,

Defendants.

COMPLAINT

Filed on behalf of PLAINTIFF,
RUSSELL GOELLER

COUNSEL OF RECORD FOR THIS PARTY:

David M. Manes, Esq.
PA ID # 314661
(412) 491-2109 Direct
david@lawkm.com

Michael L. Kraemer, Esq.
PA ID # 314204
(412) 639-9119 Direct
m@lawkm.com

KRAEMER, MANES & ASSOCIATES LLC
US Steel Tower
600 Grant St, Suite 660
Pittsburgh, PA 15219
(412) 637-0232 Fax

JURY TRIAL DEMANDED

**IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA**

RUSSELL GOELLER, individually, and
derivatively on behalf of Scantron Robotics
USA, Inc.

Civil Division

Plaintiff,

vs.

No. GD-13-021716

THOMAS WETTACH and JOSEPH LEIST,

Defendants.

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following papers, you must take action within TWENTY (20) days after the Complaint and Notice are served by entering a written appearance personally or by an attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any claims or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. If you do not have a lawyer, go to or telephone the office set forth below. This office can provide you with information about hiring a lawyer. IF YOU CANNOT AFFORD TO HIRE A LAWYER, this office may be able to provide you with information about agencies that may offer legal service to eligible persons at a reduced fee or no fee.

LAWYER REFERRAL SERVICE
The Allegheny County Bar Association
11th Floor Koppers Bldg.
436 Seventh Avenue, Pittsburgh, PA 15219
TELEPHONE: 412-261-5555

**IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA**

RUSSELL GOELLER, individually, and
derivatively on behalf of Scantron Robotics
USA, Inc.

Civil Division

Plaintiff,

vs.

No. GD-13-021716

THOMAS WETTACH and JOSEPH LEIST,

Defendants.

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, through his attorneys, files this Complaint, averring the following:

Overview of case

1. This action is a dispute between the minority shareholder Plaintiff and the Defendants who, together, control the majority of Scantron Robotics USA, Inc. As alleged in this Complaint, the Defendants engaged in a pattern of conduct designed to benefit themselves and harm the Plaintiff.

Parties

2. Plaintiff Russell Goeller is an individual resident of Allegheny County, Pennsylvania.
3. Defendant Thomas Wettach is an individual resident of Allegheny County, Pennsylvania.
4. Defendant Joseph Leist is an individual resident of Allegheny County, Pennsylvania.

Jurisdiction and Venue

5. This Court may exercise personal jurisdiction over all defendants.

6. Venue is appropriate in Allegheny County as virtually all of the facts and events giving rise to this action occurred in Allegheny County.

Common Facts

7. Mr. Goeller and the Defendants are the shareholders of Scantron Robotics USA, Inc (the “Corporation”).

8. Mr. Goeller and Defendant Wettach were the original shareholders of the Corporation after it was formed in March 2012.

9. Over the summer of 2013, Defendant Leist pressured Mr. Goeller to give up a certain number of his shares so that Defendants together gained a majority control of the Corporation.

10. Defendant Wettach agreed with Defendant Leist and also pressured Mr. Goeller to give up shares to Defendant Leist.

11. On October 6, 2013, Mr. Goeller, as President of the Corporation, sent a disciplinary memo (the “Memo”) to Defendant Leist. A copy of the Memo is attached as **Exhibit 1**.

12. The Memo cited several instances of Defendant Leist’s misconduct, including insubordination and unauthorized use of corporate funds.

13. Examples of Defendant Leist’s unauthorized charges include:

“[A] Wyoming meal purchase at a prime rib restaurant; a two hundred dollar Lot2 restaurant food bill in Omaha along with two happy cab fares for the same day; Al’s Oasis Gift shop; one KWICK-Fill Saturday Labor day weekend high test fuel purchase in Prospect Pa (your dad’s camp area) along with high-test gas purchases; a 7-11 purchase in Sewickley; a Brookstone purchase in Texas airport; several XM satellite radio payments; and several unknown AMAZON purchases.

14. When Defendant Leist was confronted with evidence of his misconduct, he secretly approached Defendant Wettach and conspired to remove Mr. Goeller from the Corporation’s management.

15. Rather than support Mr. Goeller in the appropriate discipline of Defendant Leist, Defendant Wettach supported Defendant Leist.

16. On or about October 12, 2013, Defendants, purporting to act on behalf of the Corporation, told Mr. Goeller that he was suspended as President of the Corporation.

17. As further described in this Complaint, the Defendants acted in a number of ways to harm Mr. Goeller and the Corporation.

Count I
Breach of Fiduciary Duty
Goeller (individually and derivatively) v. Wettach and Leist

18. The above paragraphs are incorporated here by reference.

19. Mr. Goeller is a shareholder of the Corporation.

20. Defendants are Officers and/or Directors of the Corporation.

21. As Officers and/or Directors of the Corporation, the Defendants owe a fiduciary duty to the Corporation and its shareholders.

22. Mr. Goeller is authorized under Pennsylvania law to bring this action individually and derivatively on behalf of the Corporation.

23. Demanding that the Corporation's Board of Directors authorize litigation against the Defendants would be futile since the Defendants themselves control a majority of the shares and the Board of Directors of the Corporation.

24. Defendant Wettach breached the fiduciary duty he owed to the Corporation, its shareholders, and Directors in numerous ways, including but not limited to:

- a. Defendant Wettach made misrepresentations and failed to provide full disclosure regarding material issues to Mr. Goeller during the formation of the Corporation;

- b. Defendant Wettach used his position as an Officer, Director, and Attorney of the Corporation to cause the Corporation to enter into a self-dealing contract without adequately safeguarding the interests of the Corporation or its shareholders;
- c. Defendant Wettach acted improperly to benefit his own interests rather than the interests of the Corporation and its shareholders;
- d. Defendant Wettach's action to remove Mr. Goeller from his positions with the Corporation were done to harm Mr. Goeller rather than to further the business interests of the Corporation;
- e. Defendant Wettach acted to shelter Defendant Leist from oversight, investigation, and discipline by Mr. Goeller;
- f. Defendant Wettach failed to oversee the actions of Defendant Leist, and when presented with evidence of Defendant Leist's misconduct, Defendant Wettach conspired with Defendant Leist to remove Mr. Goeller from the management of the Corporation; and
- g. Defendant Wettach participated in, encouraged, or ratified the unlawful actions of Defendant Leist.

25. Defendant Leist breached the fiduciary duty he owed to the Corporation, its shareholders, and its Directors in numerous ways, including but not limited to:

- a. Defendant Leist unlawfully hacked into personal accounts owned by Mr. Goeller;
- b. Defendant Leist improperly used corporate funds for unauthorized meals and entertainment, then retaliated against Mr. Goeller when Mr. Goeller confronted Defendant Leist;

- c. Defendant Leist unlawfully accessed Mr. Goeller's corporate email account to broadcast a message to numerous recipients containing information that was false, misleading, damaging to Mr. Goeller, damaging to the Corporation, and not in the best interests of the Corporation;
- d. Defendant Leist acted improperly to benefit his own interests rather than the interests of the Corporation and its shareholders;
- e. Defendant Leist's action to remove Mr. Goeller from his positions with the Corporation were done to harm Mr. Goeller rather than to further the business interests of the Corporation; and
- f. Defendant Leist participated in, encouraged, or ratified the unlawful actions of Defendant Wettach.

26. Defendant Leist and Defendant Wettach breached the fiduciary duty they owed to the Corporation, its shareholders, and Directors by violating the inspection rights of minority shareholders..

27. Defendant Leist and Defendant Wettach breached the fiduciary duty they owed to the Corporation and Directors by the violation of inspection rights of corporate Directors. Corporate Directors, even if they are minority shareholders, have an unqualified right to inspect corporate books, records, and other documents, because they are fiduciaries of the corporation and need full access to information in making decisions on its behalf. Defendants unlawfully restricted Mr. Goeller's right to inspect corporate books, records, and other documents.

28. Defendant Leist and Defendant Wettach have breached their fiduciary duties owed to Mr. Goeller by engaging in a pattern of conduct designed to freeze out Mr. Goeller as a shareholder,

including unreasonable withholding of distributions. As a result of Defendants breaches of fiduciary duty, Mr. Goeller and the Corporation suffered significant damages.

Count II
Violation of Computer Fraud and Abuse Act (18 U.S.C. § 1030 et. seq.)
Goeller (individually) v. Leist

29. The above paragraphs are incorporated here by reference.

30. Defendant Leist violated the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 et seq., by intentionally accessing a computer used for interstate commerce or communication without authorization or by exceeding authorized access to such a computer and obtaining and/or altering information from such a protected computer.

31. The protected computers accessed by Defendant Leist without authorization and/or exceeding authorized access include, but are not limited to:

- a. Mr. Goeller's personal computer;
- b. the MSN computer system;
- c. the LinkedIn computer system;
- d. the Facebook computer system; and
- e. the Scantron Robotics USA, Inc. computer systems.

32. Defendant Leist obtained and/or altered information in the protected computers that he was not entitled to obtain and/or alter in numerous ways, including, but not limited to:

- a. Defendant Leist secretly altered Mr. Goeller's personal (@msn.com) email account to forward all incoming emails to an address which was monitored by Defendant Leist;

- b. Defendant Leist continued to intercept incoming emails to Mr. Goeller's personal email account throughout the month of October, including personal, confidential, and privileged information intended to be seen by Mr. Goeller only;
- c. Defendant Leist unlawfully accessed Mr. Goeller's personal Facebook account and intercepted Mr. Goeller's private Facebook messages;
- d. Defendant Leist not only covertly read private information in Mr. Goeller's Facebook account, he also altered the account by broadcasting updates to Mr. Goeller's personal contacts as if they were posted by Mr. Goeller himself, deceiving all Mr. Goeller's contacts and misrepresenting the source of the messages;
- e. Defendant Leist changed the password on Mr. Goeller's Facebook account to prevent Mr. Goeller from logging in and correcting the false posts by Defendant Leist on Mr. Goeller's profile;
- f. Defendant Leist unlawfully accessed Mr. Goeller's personal LinkedIn account, intercepting messages and information that he was not authorized to access;
- g. Defendant Leist unlawfully accessed, edited, and deleted many of Mr. Goeller's personal digital files on Mr. Goeller's personal computer, including his personal notes and business records created prior to the formation of the Corporation; and
- h. Defendant Leist unlawfully accessed, edited, and deleted many of Mr. Goeller's personal digital files on Mr. Goeller's Scantron Robotics USA, Inc. computer, including his personal notes and business records created prior to the formation of the Corporation.

33. As a result of Defendant Leist obtaining and/or altering information from the protected computers without authorization and/or exceeding authorized access, Mr. Goeller suffered significant damages.

Count III
Violations of the Electronic Communications Protection Act (18 U.S.C. § 2511)
Goeller (individually) v. Leist

34. The above paragraphs are incorporated here by reference.

35. Defendant Leist has violated the Electronic Communication Protection Act, 18 U.S.C. § 2511, by:

- a. intentionally intercepting and/or endeavoring to intercept wire and/or electronic communication;
- b. intentionally disclosing and/or endeavoring to disclose the contents of wire and/or electronic communication with another person knowing or having reason to know that the information was obtained through interception of a wire and/or electronic communication in violation of the Electronic Communication Protection Act; and
- c. intentionally using and/or endeavoring to use the contents of wire and/or electronic communication knowing or having reason to know that the information was obtained through interception of a wire and/or electronic communication in violation of the Electronic Communication Protection Act.

36. Defendant Leist intentionally intercepted and/or endeavored to intercept wire and/or electronic communication by, but not limited to:

- a. secretly setting Mr. Goeller's personal (@msn.com) email account to forward all incoming emails to an address which was monitored by Defendant Leist;

- b. intercepting Mr. Goeller's private Facebook messages through unlawfully access to Mr. Goeller's personal Facebook account; and
- c. unlawfully accessing Mr. Goeller's personal LinkedIn account and intercepting messages and information that he was not authorized by Mr. Goeller to access.

37. Defendant Leist intentionally disclosed and/or endeavored to disclose the contents of wire and/or electronic communication with another person knowing or having reason to know that the information was obtained through interception of a wire and/or electronic communication in violation of the Electronic Communication Protection Act.

38. Defendant Leist intentionally used and/or endeavored to use the contents of wire and/or electronic communication knowing or having reason to know that the information was obtained through interception of a wire and/or electronic communication in violation of the Electronic Communication Protection Act.

39. As a result of Defendant Leist's actions, Mr. Goeller suffered significant damages.

Count IV
Violation of Pennsylvania Wiretapping and Electronic Surveillance Act
(18 PA. C.S.A. § 5703. et. seq.)
Goeller (individually) v. Leist

40. The above paragraphs are incorporated here by reference.

41. Defendant Leist has violated the Pennsylvania Wiretapping and Electronic Surveillance Control Act by:

- a. intentionally intercepting and/or endeavoring to intercept wire and/or electronic communication;
- b. intentionally disclosing and/or endeavoring to disclose the contents of wire and/or electronic communication with another person knowing or having reason to know

that the information was obtained through interception of a wire and/or electronic communication; and

- c. intentionally using and/or endeavoring to use the contents of wire and/or electronic communication knowing or having reason to know that the information was obtained through interception of a wire and/or electronic communication .

42. Defendant Leist intentionally intercepted and/or endeavored to intercept wire and/or electronic communication by, but not limited to:

- a. secretly setting Mr. Goeller's personal (@msn.com) email account to forward all incoming emails to an address which was monitored by Defendant Leist;
- b. intercepting Mr. Goeller's private Facebook messages through unlawfully access to Mr. Goeller's personal Facebook account; and
- c. unlawfully accessing Mr. Goeller's personal LinkedIn account and intercepting messages and information that he was not authorized by Mr. Goeller to access.

43. Defendant Leist intentionally disclosed and/or endeavored to disclose the contents of wire and/or electronic communication with another person knowing or having reason to know that the information was obtained through interception of a wire and/or electronic communication.

44. Defendant Leist intentionally used and/or endeavored to use the contents of wire and/or electronic communication knowing or having reason to know that the information was obtained through interception of a wire and/or electronic communication.

45. As a result of Defendant Leist's actions, Mr. Goeller suffered significant damages.

Count IV
Identity Theft Under 18 Pa. C.S.A. § 4120
Goeller (individually) v. Leist

46. The above paragraphs are incorporated here by reference.

47. Defendant Leist unlawfully possessed and used Mr. Goeller's identifying information without Mr. Goeller's consent in numerous ways, including:

- a. Defendant Leist broadcasted updates on Mr. Goeller's Facebook account as though the updates were posted by Mr. Goeller;
- b. Defendant Leist sent messages through Mr. Goeller's LinkedIn account as though the messages were sent from Mr. Goeller; and
- c. Defendant Leist sent emails through Mr. Goeller's email accounts as though the emails were sent from Mr. Goeller.

48. Defendant Leist furthermore prevented Mr. Goeller from removing the Facebook posts falsely attributed to Mr. Goeller by changing the password on the account.

49. Defendant Leist's actions were carried out for the purpose to defame Mr. Goeller and other illegal purposes to be proven during discovery and at trial.

50. As a result of Defendant Leist's unlawful theft of Mr. Goeller's identity, Mr. Goeller suffered significant damages.

Count V
Defamation
Goeller (individually) v. Wettach and Leist

51. The above paragraphs are incorporated here by reference.

52. Defendants published defamatory statements about Mr. Goeller to third parties in multiple instances, including but not limited to:

- a. Defendants falsely alleged that Mr. Goeller has committed acts of business misconduct;

- b. Defendants falsely alleged that Mr. Goeller had been properly suspended from his position with the Corporation;
- c. Defendants falsely alleged that Mr. Goeller was prohibited from making contact with clients and customers with whom he had connections while working with the Corporation; and
- d. Defendants published other false statements as alleged further in this Complaint and as to be proved in discovery and at trial.

53. One or more of the instances of defamation by Defendants constitutes defamation per se;

54. As a result of the defamation by Defendant Wettach and Defendant Leist, Mr. Goeller suffered significant damages.

Count VI
Tortious Interference With Contract
Goeller (individually) v. Wettach and Leist

55. The above paragraphs are incorporated here by reference.

56. Defendants took steps to unlawfully interfere with Mr. Goeller's actual and prospective contractual relationships, including:

- a. Defendants seized Mr. Goeller's entire address book and contacted all of his business relations by email to allege that Mr. Goeller had been suspended from his position with the Corporation;
- b. In the above communication, Defendants further alleged that Mr. Goeller no longer represented the Corporation;
- c. In the above communication, Defendants further alleged that Mr. Goeller was not permitted to contact past, current, or potential clients of the Corporation; and

d. Defendants stated or implied to certain individuals that Mr. Goeller had committed acts of business misconduct.

57. The purpose of Defendants actions was to harm Mr. Goeller by preventing him from forming contractual relationships or harming his existing contractual relationships.

58. Defendants have no privilege or justification for their actions.

59. As a result of the defamation by Defendant Wettach and Defendant Leist, Mr. Goeller suffered significant damages.

Count VII
Civil Conspiracy
Goeller (individually) v. Wettach and Leist

60. The above paragraphs are incorporated here by reference.

61. Defendant Wettach and Defendant Leist conspired to unlawfully harm Mr. Goeller and the Corporation and to take other actions not in the Corporation's best interests.

62. Defendant Wettach and/or Defendant Leist took one or more affirmative steps in pursuance of the common purpose.

63. As a result of the conspiracy between Defendant Wettach and Defendant Leist, Mr. Goeller suffered significant damages.

Request for Relief

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against all defendants, jointly and severally, for the following:

- a. Actual damages in excess of arbitration limits;
- b. Additional liquidated and punitive damages;
- c. Plaintiffs' legal fees;

- d. Pre-judgment and continuing interest;
- e. Court costs; and
- f. Other such relief as the Court may deem just and proper.

Respectfully submitted,



David M. Manes, Esq.
PA ID # 314661
(412) 491-2109 Direct
david@lawkm.com

Michael L. Kraemer, Esq.
PA ID # 314204
(412) 639-9119 Direct
m@lawkm.com

KRAEMER, MANES & ASSOCIATES LLC
US Steel Tower
600 Grant St, Suite 660
Pittsburgh, PA 15219
(412) 637-0232 Fax

Verification

I, Russell Goeller, verify that the statements made in the foregoing filing are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

Date: _____

Russell Goeller