UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(Eastern Division)

In re C.W. KELLER & ASSOCIATES, LLC, *et al.* Debtors,	Chapter 11 Case No. 23-11357-CJP (Jointly Administered)
KEITH LOWEY, in his capacity as Liquidating Trustee of the CW Keller Liquidating Trust, Plaintiff, v. INNOVATION REFUNDS LLC Defendant.	Adv. Proc. No. 25-_____-CJP

COMPLAINT TO AVOID AND PRESERVE LIEN

Plaintiff Keith Lowey (the "Trustee"), in his capacity as the duly appointed Liquidating Trustee of the CW Keller Liquidating Trust (the "Trust"), hereby files this Complaint (the "Complaint") against Innovation Refunds LLC to avoid and preserve for the estate a lien obtained by Defendant and respectfully alleges as follows:

Parties

1. The Trustee has a place of business at 124 Washington Street, Suite 101, Foxboro, Massachusetts 02035.

2. Defendant Innovation Refunds LLC ("Defendant") is a Delaware limited liability company with a business address at 4350 Westown Parkway, Suite 300, Des Moines, Iowa 50266.

Jurisdiction and Venue

3. This Court has jurisdiction over this adversary proceeding, which relates to the above-captioned pending case, pursuant to 28 U.S.C. §§ 157(b), 1334 and L.R., D. Mass. 201.

4. Venue is proper in this Court under 28 U.S.C. § 1409(a).

5. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

6. This Court has jurisdiction over the Defendant pursuant to Rule 7004(f) of the Federal Rules of Bankruptcy Procedure and by virtue of Defendant filing a proof of claim.

Facts

7. On August 24, 2023 (the "Petition Date"), C.W. Keller & Associates, LLC (a Massachusetts limited liability company) (the "Debtor") and C.W. Keller Holding Company, Inc. (a Massachusetts corporation) ("Holding," and together, the "Debtors") each filed a voluntary petition under chapter 11 of 11 U.S.C. § 101, *et seq.* ("Bankruptcy Code"), commencing the above-captioned bankruptcy case (the "Bankruptcy Case").

8. On January 5, 2024, the Debtors filed the Second Amended Chapter 11 Plan of Liquidation (the "Plan"), which provided for the creation of a Liquidating Trust for the purpose of liquidating and distributing the Debtors' assets.

9. On February 20, 2024, the Court entered an order confirming the Plan (the "Confirmation Order"). Pursuant to the Confirmation Order, the Court appointed the Trustee as trustee of the Liquidating Trust.

10. Section 5.15 of the Plan vests the Liquidating Trustee with all rights, powers and benefits afforded to a "trustee" under the Bankruptcy Code. Section 5.30 of the Plan confers on the Trustee the right to commence and prosecute Avoidance Actions (as defined in the Plan) pursuant to Sections 544, 547, 548, 550 and 551 of the Bankruptcy Code.

11. On or about July 31, 2023, the C.W. Keller & Associates, Inc. and Defendant executed that certain Master Services Agreement (the "MSA"), pursuant to which Defendant, agreed to provide certain referral services as part of the pursuit of employee retention tax credits ("ERC").

12. In exchange for such services, C.W. Keller & Associates, Inc. agreed to pay Defendant a contingent fee upon the occurrence of certain events (the "Contingent Fee").

13. Pursuant to Section 7 of the MSA, C.W. Keller & Associates, Inc. granted Defendant a lien in certain collateral to secure payment of the Contingent Fee, and permission to file one or more UCC-1 financing statements or other documents to perfect is security interest in such collateral.

14. Defendant, however, did not record a UCC-1 financing statement with the Secretary of the Commonwealth of Massachusetts until December 5, 2023—months after the Petition Date and in violation of the automatic stay, including 11

U.S.C. § 362(a)(4) and (5). A copy of Defendant's UCC-1 statement filed against the Debtor (the "Defendant's Financing Statement") is attached as **Exhibit A**.

COUNT I
DECLARATORY JUDGMENT

15. The Trustee repeats and realleges the allegations of the foregoing paragraphs with the same force and effect as though fully set forth herein.

16. A controversy exists concerning the perfection, validity, and amount of Defendant's lien.

17. The Trustee requests a declaration that the recording of Defendant's Financing Statement on December 5, 2023 violated the automatic stay and failed to perfect its security interest in any property of the Debtor for the estate, and that Defendant's Financing Statement is void.

COUNT II
AVOIDANCE AND PRESERVATION OF LIEN
11 U.S.C. §§ 544 and 551

18. The Trustee repeats and realleges the allegations of the foregoing paragraphs with the same force and effect as though fully set forth herein.

19. Section 544 of the Bankruptcy Code provides that a trustee shall have the right and power, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, to avoid any transfer of property of a debtor of any obligation incurred by the debtor that is avoidable by a judicial lien creditor.

20. Property of the Debtor was transferred to Defendant when the Defendant's Financing Statement was recorded with the Secretary of the Commonwealth.

21. Defendant's lien was not properly perfected and is avoidable pursuant to Section 544 of the Bankruptcy Code.

22. Section 551 of the Bankruptcy Code provides that any lien that is avoided is preserved for the benefit of the bankruptcy estate.

23. To the extent that Defendant's lien is avoided, the Trustee is entitled to preservation of the voided lien for the benefit of the bankruptcy estate.

COUNT III
AVOIDANCE AND RECOVERY OF PREFERENCE
11 U.S.C. §§ 547, 550 and 551

24. The Trustee repeats and realleges the allegations of the foregoing paragraphs with the same force and effect as though fully set forth herein.

25. The transfer of the security interest to Defendant pursuant to the MSA was a transfer of an interest of a Debtor in property made to or for the benefit of a creditor.

26. The transfer of the security interest to Defendant pursuant to the MSA was made on account of an antecedent debt owed by a Debtor before such Transfer was made.

27. The transfer of the security interest to Defendant pursuant to the MSA was made while the Debtors were insolvent.

28. The transfer of the security interest to Defendant pursuant to the MSA was made on or within ninety (90) days before the filing of the Debtors' bankruptcy petitions.

29. The transfer of the security interest to Defendant pursuant to the MSA, if not avoided, would enable the Defendant to receive more than it would receive if: (i) the Bankruptcy Case were a Chapter 7 case; (ii) the transfer had not been made; and (iii) the Defendant received payment of such debt to the extent allowable under the Bankruptcy Code.

30. The transfer of the security interest to Defendant pursuant to the MSA is voidable by the Trustee as a preference pursuant to 11 U.S.C. § 547, which the Trustee may avoid pursuant to 11 U.S.C. § § 550 and 551.

31. The Trustee is entitled a judgment against Defendant avoiding the transfer of the security interest to Defendant pursuant to the MSA pursuant to 11 U.S.C. § 547 and preserving it for the benefit of the Debtors' bankruptcy estates pursuant to 11 U.S.C. §551.

Prayer for Relief

WHEREFORE, the Trustee respectfully requests that this Court enter judgment in favor of the Trustee as follows:

1. Declaring that Defendant's recording of Defendant's Financing Statement failed to perfect a security interest in any property of the Debtor of the estate, and is void;

2. Determining that Defendant's Financing Statement and lien were not properly perfected and are avoidable, and ordering that each such transfer be avoided and the position preserved for the Trustee for the benefit of the estate pursuant to Sections 544 and 551 of the Bankruptcy Code;

3. Avoiding, setting aside and preserving for the benefit of the estate the transfer of the security interest pursuant to Sections 547, 550, and 551 of the Bankruptcy Code;

4. Awarding costs and legal fees; and

5. Granting the Trustee such other and further relief as is just and proper.

KEITH LOWEY, LIQUIDATING TRUSTEE

By his attorneys,

/s/ Joseph M. Downes III
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EXHIBIT A

UCC-1 Form

FILER INFORMATION

Full name: **ELIDAH WANJIRU**

Email Contact at Filer: **FULFILLMENT@MIDDESK.COM**

SEND ACKNOWLEDGEMENT TO

Contact name: **MIDDESK, INC.**

Mailing Address: **85 2ND STREET SUITE 710**

City, State Zip Country: **SAN FRANCISCO, CA 94105 USA**

DEBTOR INFORMATION

Org. Name: **C.W. KELLER & ASSOCIATES, LLC**

Mailing Address: **9 HALE SPRING RD**

City, State Zip Country: **PLAISTOW, NH 03865-2313 USA**

SECURED PARTY INFORMATION

Org. Name: **INNOVATION REFUNDS**

Mailing Address: **4350 WESTOWN PKWY 8 300**

City, State Zip Country: **WEST DES MOINES, IA 50266 USA**

TRANSACTION TYPE: STANDARD

CUSTOMER REFERENCE: C1024064

COLLATERAL

ALL RIGHT, TITLE, INTEREST, CLAIMS AND DEMANDS OF DEBTOR IN AND TO THE FOLLOWING PROPERTY: (A) ALL ERC CLAIMS (AS DEFINED BELOW); AND (B) ALL PROCEEDS AND COLLECTIONS WITH RESPECT TO ALL ERC CLAIMS (AS DEFINED BELOW) AND ALL RECORDS AND DATA RELATING THERETO. AS USED HEREIN, (I) "ERC CLAIMS" MEANS AND INCLUDES ANY AND ALL CLAIMS AND/OR REQUESTS FOR ERCS TO THE INTERNAL REVENUE SERVICE AND/OR ANY OTHER GOVERNMENTAL AND/OR QUASI-GOVERNMENTAL AUTHORITY; AND (II) "ERCS" MEANS EMPLOYEE RETENTION TAX CREDITS MADE AVAILABLE TO EMPLOYERS UNDER THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT (CARES ACT), AS MODIFIED.