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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

KEYBANC CAPITAL MARKETS, INC., an
Ohio corporation,

Plaintiff,

vs.

MICROGREEN POLYMERS, INC., a
Washington corporation,

Defendant.

NO. 14-cv-1213 MJP

DECLARATION OF DAVID LAWYER
IN SUPPORT OF MOTION FOR LEAVE
TO WITHDRAW AS ATTORNEYS FOR
DEFENDANT

Noted for May 8, 2015

DAVID LAWYER, under penalty of perjury, states and declares as follows:

1. I am the attorney of record for the Defendant herein. I am over 21 years of age and I'm otherwise competent to testify in court of law in the state of Washington. The facts testified to herein are personally known to me to be true.

2. After the civil action was first commenced, I was contacted by MicroGreen CEO Tom Malone, who was seeking representation for the company in defense of the claims asserted by KeyBanc Capital Markets Inc. For the first several months of my participation

1 in this action, Mr. Malone was the only representative of MicroGreen with whom I had any
2 direct communication.

3 3. Early in 2015, I was asked by a third-party witness to verify that Mr. Malone
4 was no longer employed at MicroGreen. I had not been contacted about any management
5 transition, but through Mr. Malone's email address, I made contact with the then-acting
6 CEO, Joanna Lohkamp. For the last several months, Ms. Lohkamp has been the only
7 representative of MicroGreen with whom I have had any direct communication.

8 4. From my conversations with Mr. Malone, and from my review of many
9 hundreds of pages of background documentation, I know that Defendant MicroGreen
10 Polymers, Inc. is a privately owned corporation headquartered in Arlington, Washington,
11 and that during its entire history, MicroGreen has subsidized its business operations through
12 private investment financing, because its business revenues have never been sufficient to
13 cover its operating costs.

14 5. In this lawsuit KeyBanc, a Cleveland Ohio-based investment bank, asserts a
15 disputed claim for a placement fee, pursuant to a March, 2011 agreement under which
16 KeyBanc would seek to assist MicroGreen in finding new private equity investment capital.

17 6. According to my conversations with Mr. Malone and Ms. Lohkamp, prior to
18 the commencement of this lawsuit, MicroGreen entered into an investment agreement with
19 the Grand Ronde Indian Tribe, which included both equity and cured debt financing. I had
20 no involvement in the negotiations leading up to that agreement, nor any knowledge of the
21 details of that investment. During the pendency of this action, neither I nor any other
22
23

1 attorney at this law firm had any involvement in or familiarity with the day-to-day business
2 operations of MicroGreen.


3 7. On Thursday, April 2, 2015, I received a voicemail message from
4 MicroGreen's testifying expert witness, asking if I knew about and could confirm
5 unspecified Dyer events that were to take place the following day. When I called back, the
6 expert explained that he had heard the company was about to lay off all of its employees and
7 closing its doors cause an unspecified creditor was "foreclosing" on all of the company's
8 assets. I did not receive any communications from anyone at MicroGreen.

9 8. On Monday, April 6, 2015, I was contacted by a reporter for the Everett
10 Herald, inquiring into the abrupt closure of MicroGreen on the previous Friday. Later that
11 day, the Everett Herald Business Journal ran an article about the closure. Attached hereto as
12 exhibit "A" and incorporated herein by this reference is a true and correct copy of the April
13 6, 2015 article in the Herald Business Journal.

14 9. I have since been informed that Ilihi, LLC, an Oregon LLC that is wholly
15 owned by the Grand Ronde Tribe foreclosed on all of MicroGreen's assets, and had taken
16 control of the company's facilities, in contemplation of marshaling the assets for liquidation.
17 As of Friday, April 3, 2015, MicroGreen had terminated its employees and had closed its
18 doors.

19 10. In a telephone conversation with Ms. Lohkamp, she informed me that she was
20 no longer the acting CEO for the company, and that co-founder Krishna Nadella was
21 navigating the administrative process of the company's closure. My efforts to reach Mr.
22 Nadella, however, have been unsuccessful. Calls to the company's office telephone number
23

24 MOTION FOR LEAVE TO WITHDRAW -
25 467805.1 | 364077 | 0001


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INSLEE, BEST, DOEZIE & RYDER, PS
Attorneys at Law
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P.O. Box 90016
Bellevue, WA 98009-9016
425.455.1234

1 go to a voicemail message stating that the company has closed its doors and is no longer
2 operating, and that the caller should call back later. Email communication to Mr. Nadella's
3 MicroGreen email address has been returned as undeliverable.

4 11. On April 22, 2015, I sent a letter, postage prepaid, to MicroGreen's corporate
5 address, to the attention of Mr. Nadella, explaining that I am filing this motion, and advising
6 Mr. Nadella that as an incorporated business entity, MicroGreen is required by law to be
7 represented by an attorney admitted to practice before this court, and that failure to obtain a
8 replacement attorney by the date the requested withdrawal is effective may result in entry of
9 default against MicroGreen as to any claims by KeyBanc.

10 12. I have not received compensation from MicroGreen for services that I have
11 rendered dating back to a date prior to January 1, 2015. MicroGreen appears to have no
12 ability to pay me for any future services, or to pay me for any of the as-yet uncompensated
13 services I have already rendered. I cannot reasonably be asked to provide a legal defense to
14 the Defendant for no compensation.

15 13. I do not have any practical ability to communicate with and to take direction
16 from an agent for MicroGreen. Issues of compensation aside, I have no ability to provide a
17 defense for MicroGreen in the absence of direction and instruction from the client.

18 14. I had no reason to suspect MicroGreen's abrupt closure until the telephone
19 call from the expert witness on April 2, 2015. It was not until my telephone conversation
20 with former acting CEO Joanna Lohkamp on April 7 or 8 that the rumor of the company's
21 closure was specifically confirmed. By then, less than 60 days remained before the
22

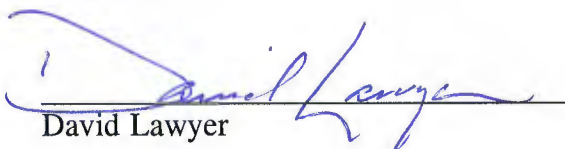
1 discovery cut off of May 22, 2015. For this reason, I did not bring this motion earlier in
2 time.

3 I declare under penalty of perjury that the foregoing is true and correct to the best of
4 my knowledge and belief.

5 DATE: April 23, 2015

6 PLACE: Bellevue, WA

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David Lawyer



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Arlington green-tech company MicroGreen shuts down

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By **Dan Catchpole**
Herald Writer
[@dcatchpole](#)

Published: Monday, April 6, 2015, 5:50 p.m.

ARLINGTON — After attracting more than \$40 million from outside investors, MicroGreen Polymers, a hot, up-and-coming clean-tech company, suddenly closed its doors Friday.

The company, which at one point employed more than 100 people, did not respond to voice mail messages and emails on Monday. But the main phone number is answered with a recorded message: "We have ceased operations and are closed until further notice."

Demand for MicroGreen's eco-friendly InCycle Cups — insulated disposable cups made from recycled materials — seemed to be booming.

The company, which was founded in 2002, was supplying the cups to several airlines. And it had raised \$17 million from investors in the past two years to pay for expansions to keep up with orders. Those backers included the Stillaguamish Tribe, the Confederated Tribes of the Grand Ronde in Oregon and trash and recycling giant Waste Management.

"Our investors expect big things from us — it's go-time," MicroGreen CEO Tom Malone said in a statement last year. "Production is running 24/7 on our existing lines, while we're also managing the construction site and training new employees."

The company had also gotten backing from members of Element 8, a Seattle-based group of angel investors. They do due diligence together but it is up to individual members to invest in a company, said Kristi Growdon, the group's executive director.

Representatives from MicroGreen gave Element 8 members an update in December.

Growdon, who was at the meeting, said the company at the time seemed to be OK.

Company executives were talking about expansion in January when Gov. Jay Inslee toured the facility in Jensen Business Park near Highway 9.

One reason for Inslee's visit was so MicroGreen execs could express support for expanding Highway 531 to make it easier for the company to ship larger volumes from their facility, said Jaime Smith, a spokeswoman for Inslee.

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Even an attorney representing MicroGreen in an ongoing lawsuit said he didn't know the company had closed until hearing about it secondhand Monday. The litigation was filed last year by an investment bank that alleges that the company owes it fees from investment money raised in recent years.

Dan Catchpole: 425-339-3454; dcatchpole@heraldnet.com; Twitter: @dcatchpole.

Story tags » • Environmental Issues • Arlington • Locally Based Company • Stillaguamish Tribe

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SmoothTrifrothMMBumParnieSid • 2 hours ago

" Less than a year after attracting \$17 million from outside investors, MicroGreen Polymers, a hot, up-and-coming clean-tech company, suddenly closed its doors last week."

Guess it wasn't as much a "hot, up-and-coming clean-tech company" as was thought, eh?

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SmallGovl • 9 hours ago

Well this is very sad news! If there is any golden lining in this bad news it would be that the democrat suppliers of big money, the non-tax paying tribes and unionized waste management thugs took a \$17 million hit!

Reply • Share



Sunny → SmallGovl • 2 hours ago

Managers aren't unionized. Tribes do pay taxes.

Duh.

Reply • Share



SmoothTrifrothMMBumParnieSid → Sunny • 2 hours ago

He (and the reporter) are referring to Waste Management, the garbage conglomerate which is definitely unionized.

Duh.

Reply • Share



Sunny → SmoothTrifrothMMBumParnieSid • 5 hours ago

Workers are unionized. Management is not. NLRB regs.

It was not the workers at Waste Management who made the decision to invest; it was management (who, given their history, would happily run a non-union company if they could).

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Ivar's wage increase strategy bears watching

BY JAMES MCCUSKER | POSTED 12:01 AM APRIL 3

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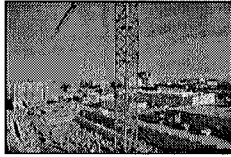


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