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1 **COHEN-JOHNSON, LLC**
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6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

8 ENERKON SOLAR INTERNATIONAL, INC., Case No.:
9 a Nevada corporation,

10 Plaintiff,

11 v.

12 JOHN V. CAPPELLO, an individual;
13 STUDEBAKER DISTRIBUTION CORP., a
14 revoked Wyoming corporation; CATHY D.
15 COLLINS., as trustee of STUDEBAKER
16 DISTRIBUTION CORP and individually;
17 VASTHI AVILA, an individual;
18 STREAMWORX, LLC, a Wyoming revoked
19 limited liability company; JONATHAN
20 BAKER, as trustee of STREAMWORX, LLC
21 and individually; EXCELSIOR
22 CONSULTANTS, INC., a revoked Wyoming
23 corporation; JEFF GREENEY, as trustee of
24 EXCELSIOR CONSULTANTS, INC. and
25 individually; SEA FRIENDS
26 INCORPORATED, a New York non-profit
27 corporation; MICHAEL STUDER, an
28 individual; JOHN BAUSCHKA, an individual;
DOE INDIVIDUALS 1 through 5, inclusive;
and ROE BUSINESS ENTITIES 6 through 10,
inclusive;

Defendants.

COMPLAINT

Plaintiff, by and through its counsel of record, H. Stan Johnson, Esq. of Cohen-Johnson,

1 LLC, hereby files this Complaint and alleges as follows:

2 **THE PARTIES**

3 1. Plaintiff, Enerkon Solar International, Inc. (“ENKS”) is a corporation maintained
4 under the provisions of NRS 78, *et seq.* and is publicly traded on the over-the-counter
5 marketplace or the “OTC Pink Markets” also known as the “Pink Open Market.”

6
7 2. Defendant, John V. Cappello, is the former Chief Executive Officer of ENKS
8 (which was previously known as Castle Holdings Corp, OTC Stock Symbol: CHOD), and was
9 removed as an officer in 2018. That on about February 2018, Cappello transferred his shares of
10 ENKS to Benjamin Ballout consisting of 32,225,000 Restricted Common Shares in addition to
11 510,000 Shares of Preferred Class A and 100,000 shares of Preferred Class B. Ballout thereby
12 became Chairman of the Company as its largest stockholder.

13
14 3. Defendant Studebaker Distribution Corp. is a corporation formed under the laws of
15 the State of Wyoming, whose charter has been revoked. Cathy D. Collins is the former president
16 of the corporation and purportedly holds 4,750,000 Unrestricted Class 4(a)(2) Shares of ENKS as
17 of October 1, 2018, either in her individual capacity or that as trustee for the defunct corporation.
18 Purportedly these shares were obtained through a convertible note which allowed the shares to
19 vest based upon a loan provided to ENKS.

20
21 4. Defendant Vasthi Avila purportedly holds 4,678,000 Unrestricted Class 4(a)(2)
22 Shares of ENKS as of October 1, 2018. Purportedly these shares were obtained through a
23 convertible note which allowed the shares to vest based upon a loan provided to ENKS.

24
25 5. Defendant Excelsior Consultants, Inc. is a corporation formed under the laws of
26 the State of Wyoming, whose charter has been revoked. Jeff Greeney is the former president of
27 the corporation and purportedly holds 1,000,000 Restricted Class 4(a)(2) Shares of ENKS as of
28 November 1, 2018, either in his individual capacity or that as trustee for the defunct corporation.

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1 Purportedly these shares were obtained through professional services which were rendered by the
2 corporation or Greeney.

3 6. Defendant Streamworx, LLC is a limited liability company formed under the laws
4 of the State of Wyoming, whose charter has been revoked. Jonathan Baker is the former
5 managing member of the limited liability company and purportedly holds 4,000,000 Restricted
6 Class 4(a)(2) Shares of ENKS as of November 2, 2018, either in his individual capacity or that as
7 trustee for the defunct corporation. Purportedly these shares were obtained through professional
8 services which were rendered by the limited liability company or Baker.

9
10 7. Defendant, Sea Friends Incorporated is a non-profit company formed under the
11 law of the State of New York whose President is Michael Studer. Purportedly, Sea Friends is the
12 owner of 1,000,000 Unrestricted Class 4(a)(2) Shares of ENKS. Michael Struder is the former
13 Secretary, Treasurer and Chief Financial Officer of ENKS and was removed as an officer of the
14 ENKS in 2018.

15
16 8. Lucious Glenn is purportedly the owner of 1,000,000 Unrestricted Class 4(a)(2)
17 Shares of ENKS as of June 26, 2019, which were issued on that date by Michael Studer after he
18 was removed as a Secretary of ENKS.

19 9. John Bauschka is purportedly the owner of 100,000 Unrestricted Class 4(a)(2)
20 Shares of ENKS as of May 8, 2019, which were issued on that date by Michael Studer after he
21 was removed as a Secretary of ENKS.

22
23 10. The true names and capacities, whether individual, corporate, associate, or
24 otherwise of defendants herein designated as DOE INDIVIDUALS 1 through 5 and ROE
25 BUSINESS ENTITIES 6 through 10 are unknown to Plaintiff at this time, who therefore sues said
26 defendants by such fictitious names. Specifically, Plaintiff is informed and believes that some of
27 the defendants named as DOE INDIVIDUALS and ROE BUSINESS ENTITIES are responsible
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1 for the actions complained of and described more fully herein. Plaintiff will seek leave to amend
2 this Complaint to allege their true names and capacities as they are ascertained.

3 11. That the Defendants through the efforts of Cappello and Studer received the
4 benefit of their shares without consideration, a fair exchange, authority or complying with the
5 necessary provisions of the Securities Exchange Act of 1934.

6
7 **JURISDICTION AND VENUE**

8 12. Venue is proper in this United States District Court, in and for the State of Nevada,
9 County of Clark, as the Plaintiff is a Nevada corporation, and the Defendants are former officers
10 and purported shareholders of Plaintiff.

11 13. This Court has personal jurisdiction over the parties in accordance with 15 U.S.C.
12 § 78aa to enforce the liability of the Securities Exchange Act of 1934.

13
14 **FIRST CLAIM OF RELIEF**

15 **(Violation of 15 U.S.C. § 78o – Failure to Register as “Underwriter” Voiding
16 Transfers of ENKS Shares)**

17 14. Plaintiff realleges and incorporates by reference all preceding paragraphs of this
18 Complaint.

19 15. In accordance with the Securities Exchange Act of 1934, Cappello and Studer were
20 required to register the seller and purchaser of any convertible note or party which purportedly
21 provided consideration in the form of services.

22 16. Furthermore, even assuming that Glenn and Bauschka received valid shares
23 through a purported purchase, that transaction would also be void for the failure to register, but
24 also because Studer did not have authority to issue any shares following his removal as an officer
25 of ENKS.

26
27 17. These transactions are therefore void, and the stock certificates should be cancelled
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1 or void ab initio.

2 18. As a direct and proximate result of the Defendants' wrongful conduct, the Plaintiffs
3 have been damaged in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00), and
4 to be determined at trial.

5 19. As a direct and proximate result of the Defendants' wrongful conduct, the Plaintiff
6 is entitled to an award of punitive damages, in the amount to be determined at the time of trial.

7 20. As a direct and proximate result of the Defendants' wrongful conduct, the Plaintiff
8 has been required to retain the services of attorneys to prosecute this action and, therefore, they
9 are entitled to an award of reasonable attorneys' fees and costs incurred therein.

10 **SECOND CLAIM OF RELIEF**

11 **(Violation of 15 U.S.C. § 78j – Manipulative and Deceptive Devices)**

12 21. Plaintiff realleges and incorporates by reference all preceding paragraphs of this
13 Complaint.
14

15 22. Defendants by engaging in these activities to transfer without consideration these
16 described stocks to themselves, their related entities and amongst themselves engaged in a scheme
17 of manipulation and fraud by representing at the times of the issuance of shares that the shares
18 were lawfully obtained by the benefitting party on the date of issuance, that consideration was
19 received, or a fair exchange of services would be obtained in the future and that ENKS would
20 favorably benefit.
21

22 23. These representations were not true, and Defendants knew or should have
23 reasonably known that such acts were improper and would damage Plaintiff by the lose of the
24 stocks, dilution and other adverse consequences.

25 24. Plaintiff has on fact been damaged by these acts of manipulation.

26 25. More specifically, Studer knew at the time he issued the Shares to Glenn and
27
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1 Bauschka that he did not have authority as the claimed “secretary” as he had been removed from
2 being an officer of ENKS in 2018 – over a year before those shares were issued.

3 26. As a direct and proximate result of the Defendants' wrongful conduct, the Plaintiffs
4 have been damaged in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00), and
5 to be determined at trial.

6 27. As a direct and proximate result of the Defendants' wrongful conduct, the Plaintiff
7 is entitled to an award of punitive damages, in the amount to be determined at the time of trial.

8 28. As a direct and proximate result of the Defendants' wrongful conduct, the Plaintiff
9 has been required to retain the services of attorneys to prosecute this action and, therefore, they
10 are entitled to an award of reasonable attorneys' fees and costs incurred therein.

11
12 **THIRD CLAIM OF RELIEF**

13 **(Breach of Fiduciary Duty – As Against Cappello and Studer)**

14 29. Plaintiff realleges and incorporates by reference all preceding paragraphs of this
15 Complaint.

16 30. As officers of ENKS Capello and Studer had a duty to deal fairly with the
17 shareholders, officers and not engage in transaction which were unfair, disloyal or knowingly
18 engaging in violations of the law by intentionally violating Rule 10b-5 of the Securities Exchange
19 Act of 1934, 15 U.S.C. §78j and N.R.S. §90.570, all without notifying the Plaintiffs or obtaining
20 the Plaintiff's required consent.

21 31. As a direct and proximate result of the Defendants' wrongful conduct, the Plaintiffs
22 have been damaged in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00), and
23 to be determined at trial.

24 32. As a direct and proximate result of the Defendants' wrongful conduct, the Plaintiff
25 is entitled to an award of punitive damages, in the amount to be determined at the time of trial.
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1 33. As a direct and proximate result of the Defendants' wrongful conduct, the Plaintiff
2 has been required to retain the services of attorneys to prosecute this action and, therefore, they
3 are entitled to an award of reasonable attorneys' fees and costs incurred therein.

4 **FOURTH CLAIM OF RELIEF**

5 **(Accounting)**

6 34. Plaintiff realleges and incorporates by reference all preceding paragraphs of this
7 Complaint.
8

9 35. The Defendants have a duty under the Securities Act of 1933. Rule 10b-5 of the
10 Securities Exchange Act of 1934, 15 U.S.C. §78j, N.R.S. 90.570 or under common law to account
11 to their shareholders for all funds acquired for the purported sales of ENKS stock, services
12 received or tendered and to generally account and proof the consideration exchanged in these
13 several stock transactions. The Defendants have refused and continue to refuse to perform their
14 duties to account to the Plaintiff with respect to the funds raised by the false claims of
15 consideration, and which have inured to their own benefit.
16

17 36. Plaintiff is entitled to an order from this Court requiring that Defendants account
18 for the purportedly bargained for consideration exchanged.

19 37. As a direct and proximate result of the Defendants' wrongful conduct, the Plaintiff
20 has been required to retain the services of attorneys to prosecute this action and, therefore, they
21 are entitled to an award of reasonable attorneys' fees and costs incurred therein.
22

23 **FIFTH CLAIM OF RELIEF**

24 **(Declaratory Relief)**

25 38. Plaintiff realleges and incorporates by reference all preceding paragraphs of this
26 Complaint.
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1 39. The Plaintiffs brings this claim pursuant to the Declaratory Judgment Act, 28
2 U.S.C. 2201, *et seq.*, and Rule 57 of the Federal Rules of Civil Procedure.

3 40. A case of actual controversy exists within this Court's jurisdiction, providing this
4 Court with the right to declare the rights and other legal relations of any interested parties, which
5 shall have the force and effect of a final judgment or decree.

6 41. Based upon the acts and/or omissions of the Defendants, and each of them,
7 described hereinabove, the Plaintiffs are entitled to an order from this Court declaring that the
8 Defendants acted in violation of the Securities Act of 1933, 15 U.S.C. §78o, j and N.R.S. §90.570
9 and other applicable law, and all without the knowledge or consent of the Plaintiff.
10

11 **SIXTH CLAIM OF RELIEF**

12 **(Injunctive Relief)**

13 42. Plaintiff realleges and incorporates by reference all preceding paragraphs of this
14 Complaint.

15 43. Defendants should be prevented from transferring, issuing or further converting the
16 stocks of ENKS, as Plaintiff will suffer immediate and irreparable harm, for which there is no
17 adequate remedy at law.
18

19 44. The Plaintiff is entitled to an order from this Court enjoining the Defendants, and
20 each of them, from selling, transferring, exchanging, assigning or conveying any further shares of
21 stock or other assets of the Defendant.
22

23 WHEREFORE, the Plaintiff, prays for the following:

24 1. For an order declaring that the Defendants' actions constitute violations of the
25 Securities and Exchange Act of 1934, Securities Act of 1933, Rule 10b-5 of the Securities
26 Exchange Act of 1934, 15 U.S.C. §78j and N.R.S. §90.570 and other applicable law;

27 2. For an accounting from each of the Defendants demonstrated the purported
28

1 bargained for exchange;

2 3. For an order enjoining the Defendants, and each of them, from selling,
3 transferring, exchanging, assigning or conveying any further shares of stock or other assets of
4 ENKS;

5 4. For general and special damages in excess of Seventy-Five Thousand Dollars
6 (\$75,000.00), and to be determined at trial;

7 5. For punitive and exemplary damages against the Defendants in an amount to be
8 determined at trial;

9 6. For reasonable costs and attorneys' fees;

10 7. For such other relief as this Court may deem just and proper.

11 Dated this 14th of June 2021.

12 **COHEN-JOHNSON, LLC**

13 By: /s/ H. Stan Johnson
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18 *Attorneys for Plaintiff*

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