

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
AVENTINE RENEWABLE ENERGY)	Case No. 09-11214 (KG)
HOLDINGS, INC, a Delaware Corporation, et. al.)	
)	(Jointly Administered)
Debtors. ¹)	
)	Hearing Date: June 22, 2010 at 3:00 p.m.
)	Objection Date: June 15, 2010 at 4:00 p.m.

**MOTION TO COMPEL PAYMENT
OF IMPROPERLY WITHHELD FUNDS**

COMES NOW, United States Debt Recovery I, LLC (“USDR”), by and through its undersigned counsel, and moves to Compel Payment of Improperly Withheld Funds (the “Motion”) in connection with the below described transactions. In support of this Motion, USDR respectfully states and avers as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction to hear this motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue in this matter is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

BACKGROUND

2. On April 7, 2009 (the “Petition Date”), Aventine Renewable Energy Holdings, Inc. and six affiliates filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Code”).

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtors’ federal tax identification number, are: Aventine Renewable Energy Holdings, Inc. (9368), Aventine Renewable Energy, Inc. (8352), Aventine Renewable Energy - Aurora West, LLC (9285), Aventine Renewable Energy - Mt. Vernon, LLC (8144), Aventine Power, LLC (9343), and Nebraska Energy, L.L.C. (1872). The corporate headquarters address for all of the Debtors is 120 North Parkway Drive, Pekin, Illinois 61554.

3. On April 9, 2009, this Court entered an order directing Joint Administration of these bankruptcy proceedings under case number 09-11214 (KG). The Debtors continue to manage their business as Debtors in possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

4. On April 23, 2009, the United States Trustee for the District of Delaware appointed an official committee of unsecured creditors (the "Committee"). No trustee or examiner has been appointed in these cases.

5. On February 24, 2010, this Court entered an order confirming Debtors' First Amended Joint Plan of Reorganization (the "Plan") [D.I. 814].

6. USDR is a privately owned firm that specializes in the purchasing of Chapter 11 Bankruptcy claims. In the above captioned cases, USDR purchased certain allowed individual priority wage claims (the "Wage Claims") that were filed pursuant to Bankruptcy Code section 507(a)(4).

7. The Wage Claims were sold and transferred (the "Sale") by the original owners (the "Employees") to USDR pursuant to Bankruptcy Rule 3001(E)(2). USDR paid the purchase price (the "Sale Proceeds") of the Sale directly to the Employees. The total amount of the Wage Claims sold to USDR was \$107,805.93 (the "Wage Claim Value"). See Wage Claim and Sale Documentation attached hereto as Exhibit A.

8. Pursuant to the Plan, the Wage Claims were categorized as Class 1 claims.

9. The Plan provides that allowed Class 1 claims shall receive: "(A) Cash equal to the amount of such Allowed Other Priority Claim or (B) such less favorable treatment as to which such Debtors or Reorganized Debtors and the holder of such Allowed Other Priority Claim have agreed upon in writing." USDR did not agree to any less favorable treatment.

10. On or about March 30, 2010, the Debtors remitted a check to USDR in the amount of \$68,605.98 (the "Net Amount"). The Net Amount reflected the Wage Claim Value minus \$39,199.95 (the "Tax Portion"), which the Debtors withheld for tax purposes.

RELIEF REQUESTED

11. Pursuant to Bankruptcy Code section 105(a) and 507(a)(4), USDR respectfully requests that the Court compel Debtors to remit to USDR the Tax Portion of the Wage Claims.

ARGUMENT

12. Directly contravening the full cash payment requirement, the Debtors improperly withheld the Tax Portion from the distribution made to USDR. The Tax Portion was, upon information and belief, remitted to one or more taxing authorities by the Debtors to satisfy tax obligations of the Employees. However, the Debtors did not pay any portion of the Wage Claims to any of the Employees - it paid USDR as the purchaser of the Wage Claims. As a result, the Employees and USDR are subject to inaccurate, unjustified and simply incorrect tax liabilities.

13. Although the withholding provisions of the Internal Revenue Code² require a corporate Debtor to withhold taxes from wage claim payments made to former employees, the Internal Revenue Code does not address taxing obligations applicable when the payments are made to a successor in interest, such as USDR in this case. Furthermore, it does not appear that either the Bankruptcy Code or any published or readily available court opinions address this specific issue. *See generally Otte v. United States, et al.*, 419 U.S. 43 (1974) (recognizing the taxing obligation as it relates to employee disbursements).

² USDR assumes, but is not certain, that the Debtors withheld the Tax Portion pursuant to 26 U.S.C. 3102(a) and 26 U.S.C. §3402(a), respectively the social security and income tax provisions.

14. Under the circumstances presented in this case, the withholdings made by the Debtors lead to an improper and unjustified result. The Employees will ultimately be taxed twice: once upon declaring the Sale Proceeds and again upon receiving a W-2 from Debtors reflecting the full amount of that Employee's particular Wage Claim. Moreover, USDR was effectively taxed on the entire Wage Claim Value despite distributing a significant portion of the Wage Claims to the Employees. Consequently, and to the detriment of the Employees and USDR, the taxing authorities will receive payments to which they are not entitled.

15. USDR contacted the Debtors to propose an efficient solution to these problems that would not burden the assets of the Debtors' Estate. In fact, the proposal would be "cash neutral" to the Debtors. Responding to the proposal, the Debtors' counsel informed USDR that "Aventine does not intend to make any changes in how the claims were distributed."

16. USDR's proposed solution, both to the Debtors before and now by the Motion, is as follows:

- Debtors amend (if reported in the 1st Quarter) or file (2nd Quarter) 941 reports and any other applicable report with the Wage Claims removed or omitted, thus resulting in a refund to Debtors for any 1st Quarter overpayment or a correct remittance for the 2nd Quarter.
- USDR takes responsibility for any and all taxes owed on the Wage Claims and agrees to report all 1099s to the Employees for the Sale Proceeds and notify the Employees that the distribution of the Sale Proceeds will be reported by USDR to the IRS, but will not be reported by the Debtors.
- Debtors remit the Tax Portion to USDR, issue a 1099 to USDR and report this distribution accordingly.

17. If the Debtors amend or file the appropriate reports and remit the Tax Portion to USDR, the Debtors' Estate is unaffected and the Employees and USDR will be subject to only the appropriate tax liabilities.

WHEREFORE, United States Debt Recovery I, LLC respectfully requests that the Court enter an Order, substantially in the form attached hereto, granting the Motion and such other and further relief as it deems just and proper.

Dated: May 26, 2010
Wilmington, DE

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EXHIBIT A

**2009 Projected Bonus/Profit Sharing
TARGET (based on projected 2008 earnings)**

Cost Center	Name	Gross Amount	Net Amount
	**Gray, John	10,950.00	7,046.32
	Abbott, Kurt N.	681.14	438.31
	Ault Jr., Gary L	658.48	423.73
	Carpenter Sr., Thor	652.66	419.99
	Dare, Gregory	2,975.54	1,914.75
	Davis, Kelley	2,231.77	1,436.15
	Denton, Charles A.	726.99	467.82
	Egli, Daniel K.	587.68	378.17
	Eubanks, Rebecca	1,381.74	889.14
	Graham, Holly	1,359.00	874.51
	Greenslate, Brian	2,301.75	1,481.17
	Hilst, Brian R.	596.53	383.87
	Hoyle, Daniel L	4,083.87	2,627.96
	Hyatt, Randy P.	576.66	371.07
	James, Darrilyn D	3,527.39	2,269.87
	Joseph, Sharon L	1,277.25	821.91
	Kelly, Carolyn	1,784.10	1,148.07
	Lockart, Eric	5,085.39	3,272.45
	Maloney, Scott A	2,990.03	1,924.09
	Maryashina, Oksana	795.31	511.78
	Michael, Darren	2,762.31	1,777.53
	Moore, Clinton R.	505.87	325.52
	Mount, Rodney D.	703.80	452.90
	Nelms, Barbara A	1,366.54	879.36
	Nelson, Lester	8,637.52	5,558.24
	Newman, Douglas	492.79	317.11
	Rinaldo, Patrick J.	543.47	349.73
	Selk, Michael J	2,867.27	1,845.07
	Sorrells, Timothy A.	655.68	421.93
	Spaulding, Dan	5,034.64	3,239.79
	Wolfer, Kevin, L.	662.50	426.31
	Subtotal	69,455.68	44,694.62
	NELLC		
	Barber, Kenneth	3,289.35	2,050.90
	Belitz, Brian	4,227.95	2,636.12
	Bendorf, Justin	3,300.55	2,057.89
	Carter, Lee	1,621.63	1,011.09
	Cline, Robert D	4,169.01	2,599.38
	Heiser, Adam	3,030.58	1,889.56
	Koehn, Scott	3,223.49	2,009.85
	Madden, Scott	3,056.52	1,905.74
	Pflaster, Seth	2,972.83	1,853.55
	Winsterman, William	3,249.57	2,026.11
	Shipps, Charlene	6,208.77	3,871.17
	Subtotal	38,350.25	23,911.36
	Total	107,805.93	68,605.98

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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)	
AVENTINE RENEWABLE ENERGY)	Case No. 09-11214 (KG)
HOLDINGS, INC , a Delaware Corporation, et. al.)	
)	(Jointly Administered)
Debtors. ¹)	
)	Hearing Date: June 22, 2010 at 3:00 p.m.
)	Objection Date: June 15, 2010 at 4:00 p.m.

**NOTICE OF MOTION TO COMPEL PAYMENT
OF IMPROPERLY WITHHELD FUNDS**

PLEASE TAKE NOTICE that on May 26, 2010, Counsel for United States Debt Recovery I, LLC (“USDR”) filed the *Motion to Compel Payment of Improperly Withheld Funds* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware, 19801 (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that any objections to the relief requested in the Motion must be made in writing, filed with the Bankruptcy Court, and served upon, so as to actually be received by each of the below designated counsel for USDR, on or before **June 15, 2010 at 4:00 p.m.** prevailing Eastern time.

PLEASE TAKE FURTHER NOTICE that if no objections are timely filed and served in accordance with the above procedure, the Court may enter an order approving the Motion without further notice or hearing. If an objection is properly and timely filed in accordance with the above procedure a hearing on the Motion will be held before the Honorable Kevin Gross at

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtors’ federal tax identification number, are: Aventine Renewable Energy Holdings, Inc. (9368), Aventine Renewable Energy, Inc. (8352), Aventine Renewable Energy - Aurora West, LLC (9285), Aventine Renewable Energy - Mt. Vernon, LLC (8144), Aventine Power, LLC (9343), and Nebraska Energy, L.L.C. (1872). The corporate headquarters address for all of the Debtors is 120 North Parkway Drive, Pekin, Illinois 61554.

the U.S. Bankruptcy Court, 824 North Market Street, 6th Floor, Courtroom #3, Wilmington, Delaware, 19801 on **June 22, 2010 at 3:00 P.M.** prevailing Eastern time.

Dated: May 26, 2010
Wilmington, DE

MCCARTER & ENGLISH, LLP

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Counsel for United States Debt Recovery I, LLC

PROPOSED FORM OF ORDER

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:) Chapter 11
)
AVENTINE RENEWABLE ENERGY) Case No. 09-11214 (KG)
HOLDINGS, INC, a Delaware Corporation, et. al.)
) (Jointly Administered)
Debtors.¹)
) **Related Docket No.** _____
)

**ORDER APPROVING THE MOTION TO COMPEL PAYMENT
OF IMPROPERLY WITHHELD FUNDS**

THIS MATTER having come before the Court on the motion of United States Debt Recovery I, LLC ("USDR"), to compel the Debtors' Aventine Renewable Energy Holdings, Inc. ("Debtor ") to Pay to USDR Improperly Withheld Funds; and the Court having reviewed the Motion, being advised in the premises, finding that notice was properly given and no objections received, that it has jurisdiction, and that good cause exists to grant the motion:

IT IS HEREBY ORDERED that USDR's motion is GRANTED; and

IT IS FURTHER ORDERED that Debtors pay USDR the improperly withheld funds in the amount of \$39,199.95, payment to be made within five (5) days of the date of this Order.

Date: _____

The Honorable Kevin Gross
United States Bankruptcy Judge

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtors' federal tax identification number, are: Aventine Renewable Energy Holdings, Inc. (9368), Aventine Renewable Energy, Inc. (8352), Aventine Renewable Energy - Aurora West, LLC (9285), Aventine Renewable Energy - Mt. Vernon, LLC (8144), Aventine Power, LLC (9343), and Nebraska Energy, L.L.C. (1872). The corporate headquarters address for all of the Debtors is 120 North Parkway Drive, Pekin, Illinois 61554.

CERTIFICATE OF SERVICE

I, William F. Taylor, Jr., hereby certify that on the 26th day of May, 2010, I caused a true and correct copy of the foregoing *Motion of United States Debt Recovery I, LLC to Compel Payment of Improperly Withheld Funds* to be served upon the attached service list, by U.S. Mail postage pre-paid, or in the manner so indicated.

/s/ William F. Taylor, Jr.
William F. Taylor, Jr. (#2936)

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