

Civil No.: 140700016

Judge: James Brady

== FIRST AMENDED COMPLAINT ==

(Jury Trial Demanded)

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IN THE FOURTH JUDICIAL DISTRICT COURT,  
IN AND FOR MILLARD COUNTY, STATE OF UTAH

International Automated Systems, Inc., a Utah Corporation;  
RaPower-3, LLC, a Utah limited liability company;  
Neldon Johnson, an individual;  
and Glenda Johnson, an individual,

Plaintiffs,

vs.

Millard County, a political subdivision of the State of Utah;  
Richard Waddingham, Millard County Attorney;  
Daron P. Smith, Millard County Commissioner;  
Sheryl L. Dekker, Millard County Planning & Zoning Administrator  
and John Does III through X,

Defendants.

Come now Plaintiffs who complain of Defendants and for cause of  
action allege as follows:

Plaintiff International Automated Systems, Inc., hereinafter  
referred to as "IAS", is a Utah Corporation with principal  
offices in Utah County, State of Utah.

Plaintiff RaPower-3, LLC, hereinafter referred to as "RaPower",  
is a Utah limited liability company with principal offices in  
Utah County, State of Utah.

Plaintiff Neldon Johnson is an individual residing in Millard  
County, State of Utah.

Plaintiff Glenda Johnson is an individual residing in Millard  
County, State of Utah.

Defendant Millard County is a political subdivision of the State of Utah operating within the geographical confines of the State of Utah.

On information and belief, Defendant Richard Waddingham, hereinafter referred to as "Waddingham", is an individual residing in Millard County, State of Utah, and is or was at the time each of the acts and omissions alleged herein were committed and each of the causes of action alleged herein arose, the Millard County Attorney and an employee and agent of Millard County.

On information and belief, Defendant Daron P. Smith, hereinafter referred to as "Smith", previously identified as John Doe I, whose identity has now been ascertained, is an individual residing in Millard County, State of Utah, and is or was at the time each of the acts and omissions alleged herein were committed and each of the causes of action alleged herein arose, a Millard County Commissioner and an employee and agent of Millard County.

On information and belief, Defendant Sheryl L. Dekker, hereinafter referred to as "Dekker", previously identified as John Doe II, whose identity has now been ascertained, is an individual residing in Millard County, State of Utah, and is or was at the time each of the acts and omissions alleged herein were committed and each of the causes of action alleged herein arose, Millard County Planning & Zoning Administrator and an employee and agent of Millard County.

Plaintiffs timely gave notice as required by Utah Code Annotated §63G-7-401, et seq., to all the governmental entity defendants as required by the Governmental Immunity Act.

Venue is proper in as much each cause of action alleged herein arose in Millard County, State of Utah.

John Does III through X are individuals or entities whose identities and addresses are presently unknown who participated in and acted in concert with the other defendants in regard to the acts and omissions and the causes of action alleged herein, and Plaintiffs will seek to amend this Complaint to specifically name these Defendants when their identities have been ascertained.

Each of the Defendants was acting as the employee and agent of each of the other Defendants in regard to each of the acts, omissions, and causes of action alleged herein, and therefore are jointly and severally liable for each of the causes of action alleged herein.

One or more the Defendants, including at least Defendants Smith and Dekker, acted outside the scope of his or her respective employment and agency with Millard County in regard to certain of the acts or omissions complained of by Plaintiffs for each of the causes of action alleged below, and, therefore, each of those Defendants, including at least Defendants Smith and Dekker, are personally liable for the damages to Plaintiffs as alleged for each of the causes of action, and the claims of Plaintiffs as they relate to those certain acts or omissions, are not subject to the Governmental Immunity Act.

The claims of each of the Plaintiffs arise out of the same acts and omissions and involve common questions of fact and law, and, therefore, joinder of their claims is appropriate in this action.

== COUNT I ==  
' (Negligence) '

On or after June 27, 2012, Defendants negligently, and with reckless disregard for the potential for injury to the Plaintiffs, published false and defamatory statements and writings, including but not limited to, statements regarding the status of construction permits of one or more of the Plaintiffs, for a solar energy facility where one or more of the Plaintiffs, and entities they are associated with, conduct business.

The false and defamatory statements and writings, include without limitation defamatory statements that were published in an article published in the Deseret News on or about December 21, 2013 titled "Are Utah's solar projects just pie in the sky? Claims raise questions in Millard County, elsewhere"; defamatory statements that were made to the Oregon State Tax Commission and republished in a letter to Jesse J. Pershin & Samantha S. Darnell-Pershin in a letter dated October 29, 2013, authored by the Oregon Tax Commission; and, defamatory statements that were contained in a notice identified as a "second notice of violation sent to Johnson Oct, 22 demanding paperwork be submitted to county officials or he could face civil and criminal penalties." and republished by blogger #2065264 TEDennis.

Defendants failed to use reasonable care to ascertain whether the statements were false at the time they were published.

The statements made constitute a charge of conduct that is incompatible with the exercise of a lawful business, trade, profession or office.

As a proximate result of the negligence of Defendants and the false and defamatory statements published by Defendants, Plaintiffs have incurred severe damage to their personal and

business reputations, their business, and their business associations, for which proof will be offered at trial.

As a proximate result of the negligence of Defendants and the false and defamatory statements published by Defendants, Plaintiffs have incurred severe emotional distress and special and general damages in amounts for which proof will be offered at trial, and for which Plaintiffs are entitled to have judgment entered against Defendants, jointly and severally, for a sum for which proof is offered at trial, plus interest and costs, for the damages alleged herein.

The acts and omissions of Defendants were intentional, wanton and malicious and were committed with the intent to cause grave harm to Plaintiffs, or were committed with reckless disregard for the injuries that would be suffered by Plaintiffs, and Plaintiffs are therefore entitled to recover from the individual Defendants and to have judgment entered against the individual Defendants for punitive damages in amounts which are reasonable in the premises.

One or more the Defendants, including at least Defendants Smith and Dekker, acted outside the scope of his or her respective employment and agency with Millard County in regard to certain of the acts or omissions complained of by Plaintiffs, and, therefore, each of those Defendants, including at least Defendants Smith or Dekker, are personally liable for the damages to Plaintiffs as alleged herein and Plaintiffs are entitled to have judgment entered against those Defendants personally for the damages alleged above, and the claims of Plaintiffs as they relate to those certain acts or omissions, are not subject to the Governmental Immunity Act.

== COUNT II ==  
'(Defamation)'

Plaintiffs reallege and incorporate by reference each of the allegations of the preceding paragraphs.

On or after June 27, 2012, Defendants published false and defamatory statements and writings, including but not limited to, statements regarding the status of construction permits of one or more of the Plaintiffs, for a solar energy facility where one or more of the Plaintiffs, and entities they are associated with, conduct business, which statements and writings were known by said Defendants to be false or were made with reckless disregard to the truth, were made with malice, with the intent to cause grave harm to the Plaintiffs, were published to third persons, were capable of being understood and were understood by the third persons in a sense such as to be defamatory to Plaintiffs, and which have caused and continue to cause special, general and permanent damages to the Plaintiffs.

The false and defamatory statements and writings, include without limitation defamatory statements that were published in an article published in the Deseret News on or about December 21, 2013 titled "Are Utah's solar projects just pie in the sky? Claims raise questions in Millard County, elsewhere"; defamatory statements that were made to the Oregon State Tax Commission and republished in a letter to Jesse J. Pershin & Samantha S. Darnell-Pershin in a letter dated October 29, 2013, authored by the Oregon Tax Commission and, defamatory statements that were contained in a notice identified as a "second notice of violation ... sent to Johnson Oct, 22 demanding paperwork be submitted to county officials or he could face civil and criminal penalties." and republished by blogger #2065264 TEDennis.

Plaintiffs have incurred special damages, including lost income and lost business opportunities, due to the defamatory statements and writings, in an amount for which proof will be offered at trial, and will yet incur additional special damages in the future.

Plaintiffs have incurred irreparable harm to their respective reputations as a result of the defamatory statements and writings of said Defendants for which Plaintiffs should receive damages in an amount for which proof is offered at trial.

The statements and writings published were of such a nature to cause and were intended to cause irreparable damage to Plaintiffs' reputations for honesty and trustworthiness and therefore constitute libel and slander per se and therefore Plaintiffs are entitled to judgment against Defendants even absent a showing of actual special damages.

Plaintiffs are, therefore, entitled to have judgment entered against each of the Defendants for a sum for which proof is offered at trial, plus interest and costs, for damages due to the defamatory statements and writings of these Defendants.

The acts and omissions of Defendants were intentional, wanton and malicious and were committed with the intent to cause grave harm to Plaintiffs, or were committed with reckless disregard for the injuries that would be suffered by Plaintiffs, and Plaintiffs are therefore entitled to recover from the individual Defendants and to have judgment entered against the individual Defendants for punitive damages in amounts which are reasonable in the premises.

One or more the Defendants, including at least Defendants Smith and Dekker, acted outside the scope of his or her respective employment and agency with Millard County in regard to certain of the acts or omissions complained of by Plaintiffs, and, therefore, each of those Defendants, including at least Defendants Smith and Dekker, are personally liable for the

damages to Plaintiffs as alleged herein and Plaintiffs are entitled to have judgment entered against those Defendants personally for the damages alleged above, and the claims of Plaintiffs as they relate to those certain acts or omissions, are not subject to the Governmental Immunity Act.

== COUNT III ==

'(Tortious Interference)'

Plaintiffs reallege and incorporate by reference each of the allegations of the preceding paragraphs.

In publishing the defamatory statements and writings and engaging in related conduct as alleged above, Defendants intentionally and tortuously interfered with existing and prospective business and economic relationships and contracts of the Plaintiffs within the meaning of 'Keith v. Mountain Resorts Development, L.L.C.,' 2014 UT 32 and other statutes, rules of law and authority.

As a proximate result of the tortious interference of Defendants, Plaintiffs have incurred the damages alleged above, as well as additional special and general damages, in amounts for which proof will be offered at trial.

Plaintiffs are therefore entitled to judgment entered against Defendants for special and general damages, plus costs and interest, in amounts for which proof is offered at trial.

The acts and omissions of Defendants were intentional, wanton and malicious and were committed with the intent to cause grave harm to Plaintiffs, or were committed with reckless disregard for the injuries that would be suffered by Plaintiffs, and Plaintiffs are therefore entitled to recover from the individual Defendants and to have judgment entered against the Individual Defendants for punitive damages in amounts which are reasonable in the premises.

One or more the Defendants, including at least Defendants Smith and Dekker, acted outside the scope of his or her respective employment and agency with Millard County in regard to certain of the acts or omissions complained of by Plaintiffs, and, therefore, each of those Defendants, including at least Defendants Smith and Dekker, are personally liable for the damages to Plaintiffs as alleged above and Plaintiffs are entitled to have judgment entered against those Defendants personally for the damages alleged above, and the claims of Plaintiffs as they relate to those certain acts or omissions, are not subject to the Governmental Immunity Act.

== COUNT IV ==

'(Intentional Inflection of Emotional Distress)'

Plaintiffs reallege and incorporate by reference each of the allegations of the preceding paragraphs.

In publishing the defamatory statements and writings and engaging in related conduct as alleged above, Defendants acted with actual malice intentionally publishing the defamatory statements and writings about Claimants with the purpose and intention of inflicting emotional distress on Plaintiffs, or under circumstances where a reasonable person would have known that such would result, and Defendants actions were of such a nature as to be considered outrageous and intolerable in that they offend against the generally accepted standards or decency and morality.

As a proximate result of the intentional infliction of emotional distress by Defendants upon Plaintiffs, Plaintiffs have incurred the special and general damages stated above, and additional special and general damages for which proof will be offered at trial.

Plaintiffs are entitled to have judgment entered against the Defendants and each of them for the special and general damages incurred by Plaintiffs as stated above, plus interest and costs.

The acts and omissions of Defendants were intentional, wanton and malicious and were committed with the intent to cause grave harm to Plaintiffs, or were committed with reckless disregard for the injuries that would be suffered by Plaintiffs, and Plaintiffs are therefore entitled to recover from the individual Defendants and to have judgment entered against the individual Defendants for punitive damages in amounts which are reasonable in the premises.

One or more the Defendants, including at least Defendants Smith and Dekker, acted outside the scope of his or her respective employment and agency with Millard County in regard to certain of the acts or omissions complained of by Plaintiffs, and, therefore, each of those Defendants, including at least Defendant Dekker, is personally liable for the damages to Plaintiffs as alleged herein and Plaintiffs are entitled to have judgment entered against those Defendants personally for the damages alleged above, and the claims of Plaintiffs as they relate to those certain acts or omissions, are not subject to the Governmental Immunity Act.

'RULE 26(c) (3) TIER DESIGNATION'

On information and belief, Plaintiffs claim damages that are such as to qualify for Tier 3 under Rule 26(c) (3) of the Utah Rules of Civil Procedure.

== JURY DEMAND ==

Plaintiffs are entitled to trial by jury for each of the causes of action alleged herein and jury trial is hereby demanded.

== PRAYER FOR RELIEF ==

In consideration of the foregoing, each of the Plaintiffs prays for judgment against Defendants, and each of them, jointly and severally, as follows:

For special damages for which proof is offered at trial for each of the Plaintiffs.

For general damages for which proof is offered at trial for each of the Plaintiffs.

For punitive damages against the individual Defendants only in amounts which are reasonable in the premises for which proof is offered at trial.

For total damages against all Defendants as provided by Utah Code Annotated §630-7-604.

For prejudgment and post judgment interest and costs as provided by law.

For judgment that certain of the Defendants, including at least Defendants Daron P. Smith and Sheryl L. Dekker, were each acting outside the scope of his or her employment and agency with Defendant Millard County, and, therefore, are personally liable for the judgment entered.

DATED this 22nd day of October, 2014.

J. David Nelson  
Robert D. Dahle  
Attorneys for Plaintiff

Plaintiff's Addresses:

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