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**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

<p>R. WAYNE KLEIN, as Receiver,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>ROBERT LEE DELONG JR, an individual,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">COMPLAINT</p> <p style="text-align: center;">(Ancillary to Case No. 2:15-cv-00828)</p> <p>Civil No. _____</p> <p>Judge _____</p>
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R. Wayne Klein, the Court-Appointed Receiver of RaPower-3, LLC (“RaPower”), International Automated Systems Inc. (“IAS”), LTB1 LLC (“LTB1”), their subsidiaries and affiliates,¹ and the assets of Neldon Johnson (“Johnson”) and R. Gregory Shepard (“Shepard”),² (the “Receiver” or “Plaintiff”) in the case styled as *United States v. RaPower-3, LLC, et al.*,

¹ Collectively, unless stated otherwise, RaPower, IAS, LTB1, and all subsidiaries and affiliated entities are referred to herein as “Receivership Entities.” The subsidiaries and affiliated entities are: Solco I, LLC (“Solco”); XSun Energy, LLC (“XSun”); Cobblestone Centre, LC (“Cobblestone”); LTB O&M, LLC; U-Check, Inc.; DCL16BLT, Inc.; DCL-16A, Inc.; N.P. Johnson Family Limited Partnership (“NPJFLP”); Solstice Enterprises, Inc. (“Solstice”); Black Night Enterprises, Inc. (“Black Night”); Starlite Holdings, Inc. (“Starlite”); Shepard Energy; and Shepard Global, Inc (“Shepard Global”).

² Collectively, RaPower, IAS, LTB1, Shepard, and Johnson are referred to herein as “Receivership Defendants.”

Case No. 2:15-cv-00828 (D. Utah) (Nuffer, J.) (the “Civil Enforcement Case”), hereby files this Complaint against Robert Lee Delong Jr. (“Delong”).

STATEMENT OF THE CASE

1. Receivership Defendants were operated as an abusive tax fraud.³ The United States alleged, and the Court found, among other things, that the Receivership Defendants operated a massive tax fraud.⁴ The whole purpose of the Receivership Entities was to enable funding for Neldon Johnson and his family.⁵ Delong received \$15,880.15 in commissions from the Receivership Entities. The transfers to Delong were without any legally recognized value. The Receiver seeks to recover, for the benefit of the Receivership Estate, the amounts improperly transferred to Delong.

PARTIES, JURISDICTION AND VENUE

2. Pursuant to a Receivership Order entered on October 31, 2018 in the Civil Enforcement Case (the “Receivership Order”),⁶ Plaintiff is the duly-appointed Receiver for Receivership Entities.⁷

3. Upon information and belief, Defendant Delong is a resident of or is domiciled in the State of Ohio.

³ See *Findings of Fact and Conclusions of Law*, Civil Enforcement Case, [Docket No. 467](#), at 1 (“FFCL”), filed Oct. 4, 2018.

⁴ *Amended and Restated Judgment*, Civil Enforcement Case, [Docket No. 507](#), filed Nov. 13, 2018; see also FFCL. The Receivership Defendants have filed notices of appeal, which are pending.

⁵ FFCL at 128.

⁶ Civil Enforcement Case, [Docket No. 490](#). A Corrected Receivership Order, which corrected formatting errors, was entered the next day, [Docket No. 491](#).

⁷ Civil Enforcement Case, [Docket No. 636](#). The assets of 12 of these affiliates had been frozen by the initial Receivership Order.

4. Subject matter jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1367, 754.

5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 754, 1391(b).

FACTS
The Abusive Tax Scheme

6. As the Court found in the Civil Enforcement Case: “For more than ten years, the Receivership Defendants promoted an abusive tax scheme centered on purported solar energy technology featuring ‘solar lenses’ to customers across the United States. But the solar lenses were only the cover story for what the Receivership Defendants were really selling: unlawful tax deductions and credits.”⁸

7. Receivership Defendants sold solar lenses emphasizing their purported tax benefits. Customers were told that they could “zero out” their federal income tax liability by buying enough solar lenses and claiming both a depreciation deduction and solar energy tax credit for the lenses.

8. The purported solar energy technology and solar lenses, however, did not work and could not generate energy.

9. Specifically, the Court found that the “purported solar energy technology is not now, has never been, and never will be a commercial grade solar energy system that converts sunlight into electrical power or other useful energy” and “[t]he solar lenses do not, either on

⁸ *Memorandum Decision and Order on Receiver’s Motion to Include Affiliates and Subsidiaries in Receivership*, Civil Enforcement Case, Docket No. 636 at 4, quoting FFCL at 1.

their own on in conjunction with other components, use solar energy to generate marketable electricity.”⁹

10. Notwithstanding the fact the solar lenses and technology never worked, Receivership Defendants continued to sell solar lenses to customers emphasizing that customers would qualify for depreciation deductions and/or the solar energy tax credit.

11. Between 45,205 and 49,415 solar lenses were sold to customers.¹⁰ Receivership Defendants’ own transaction documents and testimony at trial showed that the gross receipts received by Receivership Defendants were at least \$32,796,196 and possibly much more.¹¹

12. These lens sales constituted a massive tax fraud.¹² None of these solar lenses ever met the necessary elements to qualify for depreciation deductions or the solar energy tax credit.

13. Indeed, “[h]undreds, if not thousands” of customer lenses were not even removed from the shipping pallets.¹³

14. Based on these facts and others, the Receivership Defendants were enjoined from promoting their abusive solar energy scheme, were ordered to disgorge their gross receipts, and were required to turn over their assets and business operations to the Receiver.¹⁴

15. The Court held that the “whole purpose of . . . the Receivership Entities . . . was to perpetuate a fraud to enable funding for Neldon Johnson. The same is true for other entities

⁹ FFCL at 49.

¹⁰ *Id.* at 14.

¹¹ *Id.* at 15.

¹² *Id.*

¹³ *Id.* at 55-56.

¹⁴ *Memorandum Decision and Order on Receiver’s Motion to Include Affiliates and Subsidiaries in Receivership*, Civil Enforcement Case, [Docket No. 636](#) at 4, citing *Memorandum Decision and Order Freezing Assets and to Appoint a Receiver*, Civil Enforcement Case, [Docket No. 444](#), filed August 22, 2018.

Johnson created, controls, and owns Johnson has commingled funds between these entities, used their accounts to pay personal expenses, and transferred Receivership Property to and through them in an attempt to avoid creditors.”¹⁵

The Sale of Solar Lenses Was Structured as an Investment Contract

16. Agreements that involve an investment of money in a common enterprise with an expectation of profit from the efforts of others constitute “investment contracts.”¹⁶

17. The structure and manner in which solar lenses were sold constitute investment contracts. The investment contract characteristics of the solar lens purchase program include:

- a. Johnson claimed to have invented solar energy technology, which involves solar thermal lenses placed in arrays on towers;¹⁷
- b. To make money from this purported technology, Johnson sold a component of the technology: the solar lenses;
- c. Through a multi-level marketing model (using affiliated entity RaPower), lenses were sold to hundreds of investors across the nation;
- d. IAS or RaPower agreed to build solar towers and install the customers’ lenses at a site determined by IAS or RaPower;
- e. When customers purchased lenses, the customers also signed an operations and maintenance agreement with LTB1, with LTB1 agreeing to operate and maintain the customers’ lenses to produce revenue;

¹⁵ *Id.* citing FFCL and *Receiver’s Report and Recommendation on Inclusion of Affiliates and Subsidiaries in Receivership Estate*, Civil Enforcement Case, [Docket No. 581](#).

¹⁶ See *SEC v. Howey*, 328 U.S. 293 (1946).

¹⁷ The characteristics described in this paragraph derive from FFCL.

f. LTB1 was to make quarterly payments to the lens purchasers, representing a portion of the revenues earned from the operation of the solar lenses;

g. A bonus incentive program paid commissions or referral fees to persons who persuaded others to purchase solar lenses;

h. Promotional materials and internet websites and online discussion boards described the lens purchase program.

18. Investment contracts are securities and, as such, their offer and sale must comply with applicable state and federal securities laws.

Misrepresentations and Omissions

19. Upon information and belief, promotional materials used, and statements made, by Defendant falsely stated:

a. The solar lenses were generating electricity;

b. Lens purchasers were in the “trade or business” of “leasing” solar lenses;

c. The purchase of solar lenses qualified the lens purchaser to take tax credits and tax deductions that were not, in fact, available.

20. Upon information and belief, promotional materials and solicitations by Defendant failed to inform purchasers of these investment contract securities that:

a. IAS, the owner of the solar lens technology, had never had revenue, had never had sales of any product, and was insolvent, having an accumulated deficit of over \$40 million;

b. Over 70% of the shares of IAS were owned by two foreign corporations based in Nevis;

c. Neldon Johnson, the inventor of the supposed solar technology, owned no shares of IAS;

d. The solar technology had never generated electricity that could be captured or sold to others;

e. There were no electrical lines connecting the solar towers constructed by IAS to transmission lines owned by power companies and IAS had no interconnection agreements with power companies by which the power companies would purchase electricity from IAS;

f. No lens purchasers were ever paid rental income generated from the use of his lens to generate power bought by a third-party purchaser;

g. Tax advice listed on the RaPower websites was obtained as a result of false information Johnson gave to the attorneys who wrote the tax opinions and IAS refused to remove letters from those attorneys when demanded by the attorneys;

h. Johnson had used over \$1 million of IAS and RaPower funds to buy more than a dozen real estate properties in the name of Glenda Johnson (the wife of Neldon Johnson), to buy vehicles titled in the name of Neldon Johnson, and to pay the amount of a divorce settlement to Johnson's former wife.

21. The misrepresentations and omissions detailed above are material to a reasonable investor.

Amounts Transferred to Defendant Delong

22. Delong acted as a salesperson for Receivership Entities and sold solar lenses for depreciation deductions or solar energy tax credits.

23. Delong received commissions from Receivership Entities for these sales from 2011 to 2018 in the amount of \$15,880.15 (the “Transfers”). A summary of the Transfers paid to Delong is attached hereto as Exhibit A.

24. Delong’s offer and sale of the solar lenses violated state and federal securities laws.

25. On information and belief, Delong did not take the Transfers in good faith and/or did not provide anything of a reasonably equivalent value to the Receivership Entities in exchange for the Transfers. Indeed, the sale of the solar lenses for depreciation deductions or solar energy tax credits only furthered the massive tax fraud and increased the amount fraudulently obtained.

26. At all times relevant hereto, Receivership Entities were insolvent or had assets that were unreasonably small in relation to transactions in which they were involved.

27. Delong has not repaid the Transfers to the Receiver.

FIRST CLAIM FOR RELIEF

(Avoidance of Fraudulent Transfers Under Utah Code Ann. §§ 25-6-5(1)(a) and 25-6-8 or Utah Code Ann. §§ 25-6-202(1)(a) and 25-6-303)

28. The Receiver re-alleges and incorporates herein by reference each of the preceding allegations as if set forth completely herein.

29. The Receivership Entities were engaged in an enterprise with all of the characteristics of a fraud scheme.

30. The Receivership Entities made the Transfers to Delong for commissions for sales made in furtherance of the fraud scheme.

31. At all relevant times hereto, the Receivership Entities had at least one creditor.

32. At all relevant times hereto, the Receivership Entities were insolvent.

33. The Transfers were paid to Delong with actual intent to hinder, delay or defraud a creditor of the Receivership Entities.

34. Pursuant to Utah Code Ann. §§ 25-6-5(1)(a) and 25-6-8 or Utah Code Ann. §§ 25-6-202(1)(a) and 25-6-303, the Receiver may avoid and recover the Transfers paid to Delong.

SECOND CLAIM FOR RELIEF

(Avoidance of Fraudulent Transfers Under Utah Code Ann. §§ 25-6-5(1)(b) and 25-6-8 or Utah Code Ann. §§ 25-6-202(1)(b) and 25-6-303)

35. The Receiver re-alleges and incorporates herein by reference each of the preceding allegations as if set forth completely herein.

36. The Receivership Entities were engaged in an enterprise with all of the characteristics of a fraud scheme.

37. The Receivership Entities made the Transfers to Delong for commissions for sales made in furtherance of the fraud scheme.

38. At all relevant times hereto, the Receivership Entities had at least one creditor.

39. The Transfers were paid by the Receivership Entities without receiving reasonably equivalent value in exchange for the Transfers.

40. At the time the Transfers were paid, the Receivership Entities (a) were engaged or were about to be engaged in a business or transaction for which their remaining assets were unreasonably small in relation to the business or transaction; or (b) intended to incur, or believed or reasonably should have believed that they would incur, debts beyond their ability to pay as such debts became due.

41. Pursuant to Utah Code Ann. §§ 25-6-5(1)(b) and 25-6-8 or Utah Code Ann. §§ 25-6-202(1)(b) and 25-6-303, the Receiver may avoid and recover the Transfers paid to Delong.

THIRD CLAIM FOR RELIEF

(Avoidance of Fraudulent Transfers Under Utah Code Ann. §§ 25-6-6(1) and 25-6-8 or Utah Code Ann. §§ 25-6-203(1) and 25-6-303)

42. The Receiver re-alleges and incorporates herein by reference each of the preceding allegations as if set forth completely herein.

43. The Receivership Entities were engaged in an enterprise with all of the characteristics of a fraud scheme.

44. The Receivership Entities made the Transfers to Delong for commissions for sales made in furtherance of the fraud scheme.

45. At all relevant times hereto, the Receivership Entities had at least one creditor.

46. The Transfers were paid to Delong without the Receivership Entities receiving a reasonably equivalent value in exchange for the Transfers.

47. The Receivership Entities were insolvent at the time the Transfers were paid or became insolvent as a result of the Transfers or the obligation incurred.

48. Pursuant to Utah Code Ann. §§ 25-6-6(1) and 25-6-8 or Utah Code Ann. §§ 25-6-203(1) and 25-6-303, the Receiver may avoid and recover the Transfers paid to Delong.

FOURTH CLAIM FOR RELIEF

(Unjust Enrichment)

49. The Receiver re-alleges and incorporates herein by reference each of the preceding allegations as if set forth completely herein.

50. The Transfers were comprised of property of Receivership Entities and were made by Receivership Entities in furtherance of the fraud scheme.

51. The Transfers conferred a benefit upon Delong.

52. Delong knowingly benefitted from the Transfers.

53. Allowing Delong to retain the Transfers would unjustly enrich him and would be inequitable.

54. Absent return of the Transfers, the Receivership Estate will be damaged by Delong's unjust enrichment and may have no adequate remedy at law.

55. Delong must disgorge the amount of the Transfers.

FIFTH CLAIM FOR RELIEF
(Fraud in the Offer and Sale of Securities)

56. The Receiver re-alleges and incorporates herein by reference each of the preceding allegations as if set forth completely herein.

57. Defendant, by engaging in the conduct described above, directly and indirectly, in the offer and sale of securities, obtained money or property by means of untrue statements of material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and engaged in transactions, practices, or courses of business which operate or would operate as a fraud or deceit upon the purchaser.

58. By reason of the foregoing, Defendant directly or indirectly violated Section 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)] and Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5];

59. By reason of the foregoing, Defendant directly or indirectly violated the Utah Uniform Securities Act, Utah Code Ann. §61-1-1.

SIXTH CLAIM FOR RELIEF

(Offer and Sale of Unregistered Securities)

60. The Receiver re-alleges and incorporates herein by reference each of the preceding allegations as if set forth completely herein.

61. Defendant, by engaging in the conduct described above, directly and indirectly, in the offer and sale of securities, offered to sell or sold securities.

62. No registration statement had been filed with the United States Securities and Exchange Commission or the Utah Division of Securities or has been in effect with respect to these securities.

63. By reason of the foregoing, Defendant directly or indirectly violated Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

64. By reason of the foregoing, Defendant directly or indirectly violated the Utah Uniform Securities Act, Utah Code Ann. §61-1-7.

SEVENTH CLAIM FOR RELIEF

(Offer and Sale of Securities by an Unregistered Broker-Dealer or Agent)

65. The Receiver re-alleges and incorporates herein by reference each of the preceding allegations as if set forth completely herein.

66. Defendant, by engaging in the conduct described above, directly and indirectly, induced or attempted to induce the purchase and sale of securities without being registered as a broker-dealer with the United States Securities and Exchange Commission or associated with a broker-dealer registered with the Commission.

67. By reason of the foregoing, Defendant directly or indirectly violated Section 15(a) of the Exchange Act [15 U.S.C. §78o(a)];

68. Defendant offered and sold securities without being licensed as a broker-dealer or agent with the Utah Division of Securities.

69. By reason of the foregoing, Defendant directly or indirectly violated the Utah Uniform Securities Act, Utah Code Ann. §61-1-3.

PRAYER FOR RELIEF

WHEREFORE, the Receiver prays for Judgment against Delong as follows:

A. Pursuant to the Receiver's First Claim for Relief, judgment against Delong avoiding the Transfers under Utah Code Ann. §§ 25-6-5(a)(1) and 25-6-8 or §§ 25-6-202(1)(a) and 25-6-303, and permitting Plaintiff's recovery of the value of the: (1) Transfers in the total amount of \$15,880.15.

B. Pursuant to the Receiver's Second Claim for Relief, judgment against Delong avoiding the Transfers under Utah Code Ann. §§ 25-6-5(a)(2) and 25-6-8 or Utah Code Ann. §§ 25-6-202(1)(b) and 25-6-303, and permitting Plaintiff's recovery of the value of the: (1) Transfers in the total amount of \$15,880.15.

C. Pursuant to the Receiver's Third Claim for Relief, judgment against Delong avoiding the Transfers under Utah Code Ann. §§ 25-6-6(1) and 25-6-8 or Utah Code Ann. §§ 25-6-203(1) and 25-6-303, and permitting Plaintiff's recovery of the value of the: (1) Transfers in the total amount of \$15,880.15.

D. Pursuant to the Receiver's Fourth Claim for Relief, judgment against Delong permitting Plaintiff's recovery of the value of the: (1) Transfers in the total amount of \$15,880.15; (2) imposition a constructive trust for the benefit of the receivership estate on any and all Transfers; and (3) disgorgement of the value of the Transfers.

E. Pursuant to the Receiver's Fifth through Seventh Claims for Relief, entry of an order: (1) declaring that Defendant violated federal and Utah securities laws, (2) declaring that the payment of commissions or referral fees to Defendant was unlawful and violated public policy, and (3) requiring Defendant to disgorge all commissions and referral fees received from any Receivership Defendant and pay prejudgment interest on such ill-gotten gains.

F. Judgment for pre-judgment interest, costs, and fees, including reasonable attorney's fees, as may be allowed by law.

G. For such other and further relief as the Court deems just and proper.

DATED this 16th day of October, 2019.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Jeffery A. Balls

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