

JOHN W. HUBER, United States Attorney (#7226)
JOHN K. MANGUM, Assistant United States Attorney (#2072)
111 South Main Street, Suite 1800
Salt Lake City, Utah 84111
Telephone: (801) 524-5682
Email: john.mangum@usdoj.gov

ERIN HEALY GALLAGHER, *pro hac vice*
DC Bar No. 985670, erin.healygallagher@usdoj.gov
ERIN R. HINES, *pro hac vice*
FL Bar No. 44175, erin.r.hines@usdoj.gov
CHRISTOPHER R. MORAN, *pro hac vice*
NY Bar No. 5033832, christopher.r.moran@usdoj.gov
Trial Attorneys, Tax Division
U.S. Department of Justice
P.O. Box 7238
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 353-2452

Attorneys for Creditor, United States Department of Justice, Tax Division

UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH

In re: RAPOWER-3, LLC, Debtor	Bankr. No. 18-bk-24865 Chapter 11 Hon. Kevin R. Anderson
CREDITOR UNITED STATES DEPARTMENT OF JUSTICE, TAX DIVISION'S MOTION TO DISMISS BANKRUPTCY PETITION, OR IN THE ALTERNATIVE, CONVERT TO CHAPTER 7, OR APPOINT CHAPTER 11 TRUSTEE	

Debtor RaPower-3, LLC, (“RaPower-3”) exists for no reason other than to commit fraud by hawking its solar lenses that do nothing more than induce customers to claim tax benefits to which they are not entitled. After Chief Judge David Nuffer of the United States District Court for the District of Utah, decisively found that RaPower-3 was part of a massive fraud, and its principals looted the corporate shell, RaPower-3 ran to the bankruptcy court to hide from orders recently issued, or soon to be issued.¹ Since RaPower-3 filed its bankruptcy petition in bad faith, Creditor the United States Department of Justice, Tax Division, respectfully moves to dismiss the case, for cause, pursuant to [11 U.S.C. § 1112\(b\)\(1\)](#). In the event that the Court denies this motion to dismiss, we move to convert the case to Chapter 7, or to appoint a Chapter 11 Trustee to pursue liquidation. The Court should not permit RaPower-3 to linger on life support in bankruptcy.

I. Facts and Procedural Posture

This bankruptcy case is inextricably intertwined with the litigation in *United States v. RaPower-3, LLC*, 2:15-cv-00828-DN-EJF (D. Utah).² For more than ten years, Defendants Neldon Johnson,³ RaPower-3, LLC, International Automated Systems, Inc. (“IAS”), LTB1, LLC (“LTB”), and R. Gregory Shepard promoted an abusive tax scheme centered on purported solar energy technology featuring so-called “solar lenses” to customers across the United States. The solar lenses were only the gloss on what Defendants were actually selling: unlawful tax

¹ See [11 U.S.C. § 1104](#).

² This motion presumes familiarity with the facts in Judge Nuffer’s ruling from the bench on June 22, 2018. Gov. Ex. BK0001, Tr. 2514:9-2526:4.

³ Neldon Johnson is the same person who has been signing documents for RaPower-3. *E.g.*, ECF Bankr. No. 1.

deductions and credits. Defendants raked in more than \$50 million dollars from the solar energy scheme at the expense of the United States Treasury.

Judge Nuffer presided over the bench trial in this case over 12 days in April and June 2018.⁴ Judge Nuffer took testimony from at least 24 witnesses, both live and via deposition designation, including 11 RaPower-3 customers. He received more than 650 exhibits in evidence, including many of the illusory transaction documents RaPower-3 supplied customers.⁵ Judge Nuffer addressed numerous motions involving the parties' legal arguments on topics including the propriety of disgorgement⁶ and the appropriate equitable relief to ensure that the defendants in the District Court matter, including RaPower-3, do not dissipate assets⁷.

On June 22, 2018, immediately after closing arguments at trial, Judge Nuffer made partial findings of fact from the bench, concluding that RaPower-3, LLC (and all other defendants) engaged in a "massive fraud" for which they would be enjoined and disgorgement would be ordered.⁸ Judge Nuffer also issued an interim order of injunction requiring that, no later than June 29, Defendants 1) post a notice on their websites that this Court found tax information

⁴ See Minute Entries for Trial, *United States v. RaPower-3, et al.*, 2:15-cv-00828-DN-EJF, ECF Nos. 372, 374, 378, 380, 386, 388, 391-93, 396, 409, 415.

⁵ Bench Trial Witness and Exhibit Lists, *United States v. RaPower-3, et al.*, 2:15-cv-00828-DN-EJF, [ECF No. 416](#).

⁶ *United States v. RaPower-3, et al.*, 2:15-cv-00828-DN-EJF, [ECF No. 351](#), [ECF No. 352](#), ECF No. 359.

⁷ *United States v. RaPower-3, et al.*, 2:15-cv-00828-DN-EJF, [ECF No. 414](#), [ECF No. 423](#).

⁸ Gov. Ex. BK0001, Tr. 2515:5-11.

Defendants provided was false and 2) remove tax information from their websites.⁹ Judge Nuffer indicated that broader relief will issue with his final opinion and order.¹⁰

Because of Defendants' attempts to place their assets out of reach of the forthcoming disgorgement order, on June 22, the United States filed its second motion to freeze Defendants' assets and appoint a receiver.¹¹ Judge Nuffer ordered Defendants to respond no later than July 2, 2018, by 9:00 a.m.¹²

On Friday, June 29, Defendant RaPower-3, LLC filed for bankruptcy.¹³ The Deseret News quoted RaPower-3's lead trial attorney on July 3, 2018, describing the purpose of RaPower-3's bankruptcy filing: to delay enforcement of Judge Nuffer's imminent orders affecting its assets so that RaPower-3 could retain control of its assets.¹⁴ Simply the "threat" of

⁹ *United States v. RaPower-3, et al.*, 2:15-cv-00828-DN-EJF, [ECF No. 413](#).

¹⁰ *United States v. RaPower-3, et al.*, 2:15-cv-00828-DN-EJF, [ECF No. 413 at 1](#).

¹¹ *United States v. RaPower-3, et al.*, 2:15-cv-00828-DN-EJF, [ECF No. 414](#).

¹² *United States v. RaPower-3, et al.*, 2:15-cv-00828-DN-EJF, [ECF No. 417](#).

¹³ ECF Bankr. No. 1. Nonetheless, nearly all activities in the District Court litigation, including those that have an impact on RaPower-3, will continue because they are largely excepted from the automatic stay under [26 U.S.C. § 362\(b\)\(4\)](#). See *United States v. RaPower-3, et al.*, 2:15-cv-00828-DN-EJF, [ECF No. 429](#). The United States' motion on that topic is ripe for Judge Nuffer's decision. See *United States v. RaPower-3, et al.*, 2:15-cv-00828-DN-EJF, [ECF No. 437](#).

¹⁴ Gov. Ex. BK0002, Amy Joi O'Donoghue, *Companies in Utah solar fraud case filing for bankruptcy*, Deseret News, July 3, 2018, available online at <https://www.deseretnews.com/article/900023656/companies-in-utah-solar-fraud-case-file-for-bankruptcy.html> (The bankruptcy filing "'will delay [Judge Nuffer's forthcoming order on the United States' motion to freeze assets and appoint a receiver with respect to RaPower-3] but ultimately not prevent it. . . . The receiver issue would be delayed and moved over to the bankruptcy court for resolution or for the debtor to remain in possession of the estate.'")

Judge Nuffer authorizing an asset freeze and receiver sent RaPower-3 running to the bankruptcy court.¹⁵

Thirteen of the 20 largest unsecured creditors identified by RaPower-3 are its customers, as are more than 340 of its 360 creditors.¹⁶ Any claims against RaPower-3 by these customer-creditors almost certainly arise from the fraud perpetrated upon them by all defendants in the District Court litigation: Johnson, RaPower-3, IAS, LTB1, and Shepard.¹⁷ Four of the 20 largest unsecured creditors (and all but three of the rest of RaPower-3's creditors¹⁸) are people or entities intimately involved with the District Court proceeding: Paul Jones the attorney who is representing RaPower-3 customers in Tax Court and as third-party witnesses in the District Court proceedings, at Neldon Johnson's expense; Kurt Hawes and Richard Jameson, so-called experts originally proffered by defendants but who were never called to testify; and Donald Reay, the attorney Neldon Johnson paid to represent Shepard in the District Court litigation.¹⁹

¹⁵ Gov. Ex. BK0002, at 2 (“‘The receiver power can virtually be unlimited,’ Snuffer said. ‘We don’t know if the judge would seriously consider doing that, but what we have is the threat.’”)

¹⁶ Compare ECF Bankr. No. 6, List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders, at 2 (June 29, 2018) and the creditor's mailing matrix for this case, with customer names and addresses in Pl. Ex. 749, a native Excel file with data extracted from RaPower-3's customer database (on file with Judge Nuffer's Chambers). Frank Lunn, identified as the second largest unsecured creditor, was a trial witness by deposition designation. See *United States v. RaPower-3, et al.*, 2:15-cv-00828-DN-EJF, [ECF No. 303](#); [ECF No. 303-1](#).

¹⁷ See Gov. Ex. BK0001, Tr. 2515:5-2526:4.

¹⁸ David E. Leta and Jeff D. Tuttle, of Snell & Wilmer, and Plaskolite, LLC, were not involved in the District Court litigation.

¹⁹ *United States v. RaPower-3, et al.*, 2:15-cv-00828-DN-EJF, [ECF No. 21](#) (Reay); [ECF No. 256-37 at 1](#) (Jones); Gov. Ex. BK0003, Defendants' Amended Witness List for Trial, at 1-2 (Hawes, Jameson). The remaining three creditors are the United States Department of Justice, Tax Division; Gary Peterson, purportedly RaPower-3's accountant; and Glenda Johnson, who as Neldon Johnson's wife is an insider and should not be on the list in any event. ECF Bankr. No. 6 at 2 (Glenda Johnson, Peterson).

II. RaPower-3 filed the instant bankruptcy petition in bad faith, and dismissal serves the best interests of the creditors and the estate.

Section 1112(b)(1) of the Bankruptcy Code provides that the Court “shall convert a case under [chapter 11] to a case under chapter 7 or dismiss [the Chapter 11 case], whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment ... of a trustee or an examiner is in the best interests of creditors and the estate.” “Bad faith” is not included in § 1112(b)’s non-exhaustive list of grounds for dismissal or conversion, but courts have uniformly held that bankruptcy cases may be dismissed or converted when a debtor engages in bad faith.²⁰ The “bad faith” analysis “consider[s] any factors which indicate that a petition was filed to abuse the purposes of the Bankruptcy Code, or to delay or frustrate the legitimate efforts of creditors to enforce their rights.”²¹ Tenth Circuit courts find the following factors indicative of bad faith:²² (1) whether the debtor’s pre-petition conduct has been improper; (2) whether the debtor has few significant assets; (3) whether the debtor and one creditor have proceeded to a standstill in a prior forum, and the debtor has lost; (4) whether the filing of the petition effectively allows the debtor to evade court orders; (5) whether there is a

²⁰ *In re Winslow*, 949 F.2d 401 (10th Cir. 1991).

²¹ *Id.*

²² *In re George Love Farming, LC*, 366 B.R. 170, 178 (Bankr. D. Utah 2007). Courts also consider (1) whether there are only a few unsecured creditors; (2) whether the debtor’s property has been posted for foreclosure, and the debtor has been unsuccessful in defending against the foreclosure in state court; and (3) whether the debtor has no ongoing business or employees. Those factors are not addressed in this motion. See also *In re Nursery Land Dev., Inc.*, 91 F.3d 1414, 1416 (10th Cir. 1996) (cited in *George Love Farming*). In *Nursery Land Dev.*, the Tenth Circuit evaluated “bad faith” in the context of an appeal of imposition of sanctions for a bad faith filing of a Chapter 11 bankruptcy petition, citing *In re Laguna Assocs. Ltd. P’ship*, 30 F.3d 734, 737–38 (6th Cir. 1994), as amended on denial of reh’g and reh’g en banc (1994).

lack of possibility for reorganization. The Court considers the totality of the circumstances in the analysis.²³

A. RaPower-3's pre-petition conduct was not only improper, it was a fraudulent conduit for its co-defendants to enrich themselves.

As discussed at length, above, the District Court already concluded that RaPower-3, along with its co-defendants, Neldon Johnson, Greg Shepard, and other entities, perpetrated a “massive fraud” against their customers and the American people.²⁴ Not only was RaPower-3's entire *raison d'être* fraudulent, RaPower-3 was the conduit of money from the fraudulent solar lens scheme to the main perpetrators: Neldon Johnson, his family, and Greg Shepard.

Unrebutted trial testimony showed that between its inception in 2009, and filing for bankruptcy in 2018, RaPower-3 received over \$25 million²⁵ in gross receipts from selling solar lenses through the multi-level marketing scheme. That \$25 million appears nowhere in RaPower-3's bankruptcy schedules and all available information suggests that it was transferred to RaPower-3's co-defendants during the scheme. Glenda Johnson, Neldon Johnson's wife, frequently wrote checks from RaPower-3's bank account to members of the Johnson family, for tens of thousands of dollars.²⁶ At Neldon Johnson's direction, RaPower-3 used money in its

²³ [George Love Farming](#), 366 B.R., at 179.

²⁴ Gov. Ex. BK0001, *United States v. RaPower-3, et al.*, 2:15-cv-00828-DN-EJF, Tr. 2515:5-9.

²⁵ Gov. Ex. BK0004 (Summary of RaPower-3's gross receipts offered by United States); Gov. Ex. BK0005 (Transcript of Summary Witness Amanda Reinken). In his preliminary findings, Judge Nuffer concluded that the gross receipts from the entire scheme, was over \$50 million. Gov. Ex. BK0001, *United States v. RaPower-3, et al.*, 2:15-cv-00828-DN-EJF, Tr. 2514:19-23.

²⁶ Gov. Ex. BK0006; Gov. Ex. BK0001, *United States v. RaPower-3, et al.*, 2:15-cv-00828-DN-EJF; BK0007, Trial Tr. 1812:13-1813:13.

bank account to purchase over \$3 million in IAS stock.²⁷ Per its own bankruptcy schedules, RaPower-3 transferred \$1.71 million to an “insider,” Cobblestone Centre.²⁸ Greg Shepard received at least \$669,701 from RaPower-3 for his efforts to promote the fraudulent solar lens scheme.²⁹ In other words, RaPower-3’s co-defendants lined their own pockets with the money RaPower-3 derived from selling solar lenses.

By February 2017, Neldon Johnson and his family had reduced RaPower-3’s cash holdings to \$1.2 million in Wells Fargo bank accounts.³⁰ The Wells Fargo bank accounts are now closed.³¹ Instead of \$1.2 million in cash, RaPower-3’s bankruptcy estate consists of \$40,530.77 in a checking account at Bank of American Fork, and \$1.25 million in IAS stock.³² In other words, over the last 16 months while RaPower-3 was embroiled in litigation with the United States, all but \$40,530.77 of RaPower-3’s liquid assets were converted to IAS stock. Now that disgorgement is certain, RaPower-3 seeks refuge in the bankruptcy court, offering little more to pay creditors than stock in one of its equally fraudulent co-defendants.

²⁷ Gov. Ex. BK0007, *United States v. RaPower-3, et al.*, 2:15-cv-00828-DN-EJF Trial Tr. 1812:1-12. IAS is RaPower-3’s co-defendant in the District Court case and Neldon Johnson and members of his family control approximately 80% of IAS’ stock. BK0008, Neldon Johnson Dep. (Vol. I): 36:1-37:5. Johnson is IAS’ President and CEO. Gov. Ex. BK0009 (IAS’ response to United States’ First Interrogatories); Gov. Ex. BK0010, p. 26 [IAS’ Form 10-K dated June 30, 2016.

²⁸ ECF Bankr. No. 11, p. 3, line 4.1.

²⁹ Gov. Ex. BK0011, p. 17; Gov. Ex. BK0012, *United States v. RaPower-3, et al.*, 2:15-cv-00828-DN-EJF, Trial Tr. 1296:19-1301:3.

³⁰ Gov. Ex. BK0013 (RaPower-3’s Wells Fargo Bank Statements for February 2017).

³¹ Bankr. ECF No. 11, pp. 10-11.

³² Bankr. ECF No. 11, pp. 13-16.

For all the reasons Judge Nuffer explained in the District Court case, RaPower-3's pre-petition conduct was improper, *and fraudulent*. It is an abuse of the bankruptcy laws for RaPower-3 to funnel money to the perpetrators of the tax scheme, and declare bankruptcy right after a federal district court judge makes clear that the scheme is over, and disgorgement of ill-gotten gains is imminent. This factor weighs heavily in favor of dismissing RaPower-3's bankruptcy petition

B. RaPower-3 has few assets.

Cases that “boil[] down to [one or] two major assets” suggest bad faith.³³ As explained above, RaPower-3's only assets are \$40,530.77 in a checking account at Bank of American Fork, and \$1.25 million in IAS stock. The \$40,530.77 in liquid assets is a pittance compared to the more than \$25 million in gross receipts that have flowed through RaPower-3 to the main perpetrators of the tax scheme. Further, the \$1.25 million in IAS stock will likely be worthless once the District Court enters its disgorgement order against IAS, and its principal Neldon Johnson, and places IAS in receivership.³⁴ As discussed above, the reason that RaPower-3 apparently has so few assets is because its co-defendants used it to enrich themselves through their fraudulent tax scheme. This factor also weighs heavily in favor of dismissing RaPower-3's bankruptcy petition for bad faith.

³³ *George Love Farming*, 366 B.R., at 182; see also *In re Nursery Land Dev., Inc.*, 91 F.3d, at 1416.

³⁴ In its closing argument, the United States suggested that the appropriate disgorgement figure for IAS \$5,438,089. See *United States v. RaPower-3, et al.*, 2:15-cv-00828-DN-EJF, [ECF No. 412](#).

C. RaPower-3 decisively lost in the District Court and its bankruptcy petition effectively allows the debtor, and others, to evade court orders.

Bad faith is indicated when the “debtor and one creditor have proceeded to a standstill in a prior forum, and the debtor has lost.”³⁵ Another related factor, is that the bankruptcy petition “effectively allows the debtor to evade court orders.”³⁶ Here, RaPower-3 is using its bankruptcy petition to obstruct the entry, and enforcement, of an adverse order in a prior forum.

RaPower-3 *decisively lost* in the District Court, and Judge Nuffer is poised to order RaPower-3, and its co-defendants, to disgorge tens of millions of dollars. At the time of RaPower-3’s bankruptcy petition, the parties were in the midst of litigating the terms of the Court’s final order entering an injunction and determining the precise amounts of disgorgement.³⁷ The District Court ordered that briefing on findings of fact and conclusions of law was to be complete by July 27, 2018,³⁸ after which Judge Nuffer would presumably issue a final order. RaPower-3, and its co-defendants, wasted no time in attempting to avail themselves of the benefits of the automatic stay and are using it to delay Judge Nuffer from entering a final order. In opposition to the United States’ motion to vacate the district court stay,³⁹ RaPower-3 argues that the automatic stay under [11 U.S.C. § 362](#) precludes the District Court from entering an

³⁵ *George Love Farming*, 366 B.R., at 178; see also *Laguna Assocs. Ltd. P’ship*, 147 B.R., at 715; *In re Dickson*, 2017 WL 5634598, at *3 (Bankr. E.D. Ky. 2017).

³⁶ *George Love Farming*, 366 B.R., at 178.

³⁷ See Gov. Ex. BK0001, *United States v. RaPower-3, et al.*, 2:15-cv-00828-DN-EJF, Trial Tr. 2526:5-14.

³⁸ *United States v. RaPower-3, et al.*, 2:15-cv-00828-DN-EJF, ECF No. 415.

³⁹ *United States v. RaPower-3, et al.*, 2:15-cv-00828-DN-EJF, [ECF No. 429](#). The United States moved to vacate the stay under the mistaken impression that the District Court case was stayed by virtue of a docket entry stating “Case stayed per 424 Notice of Filing of Bankruptcy”. The District Court clarified that the case is not stayed, but ordered briefing on whether the automatic stay precludes fixing the amount of disgorgement for all defendants.

order that fixes the amount of its disgorgement figure.⁴⁰ RaPower-3's co-defendants argue that they too are entitled to the benefits of the automatic stay.⁴¹ By filing for bankruptcy, debtor-RaPower-3, and its co-defendants, are attempting to evade entry of an order that will order them to disgorge tens of millions of dollars and permanently shut down their fraudulent tax scheme. As RaPower-3's lead attorney admitted in his statement to the Deseret News, the purpose of the bankruptcy was to delay or evade enforcement of Judge Nuffer's imminent orders.⁴² Evidence that a Chapter 11 bankruptcy petition was "purely for the purpose of delaying the creditor from enforcing its rights" is "the archetype of a bad faith filing."⁴³

RaPower-3 and its principals have always known that their scheme was fraudulent⁴⁴ and they are aware that the scheme is over. They simply do not want to turn over their ill-gotten gains and are trying to game the Bankruptcy Code to delay the inevitable. The specious timing of RaPower-3's bankruptcy petition suggests that the bankruptcy petition is nothing more than an

⁴⁰ *United States v. RaPower-3, et al.*, 2:15-cv-00828-DN-EJF, [ECF No. 434](#).

⁴¹ *United States v. RaPower-3, et al.*, 2:15-cv-00828-DN-EJF, [ECF No. 435](#) ("These Defendants are of the position that the automatic stay precludes this Court from proceeding to determine the merits of this case without leave from the United States Bankruptcy Court and this court should maintain a stay of the current case until relief of stay has been obtained.").

⁴² Gov. Ex. BK0002.

⁴³ *In re Courtesy Inns, Ltd., Inc.*, 40 F.3d 1084, 1085 (10th Cir. 1994) (overruled lower court on other grounds).

⁴⁴ Gov. Ex. BK0001, *United States v. RaPower-3, et al.*, 2:15-cv-00828-DN-EJF, Trial Tr. 2517:18-2518:2 "(Mr. Johnson and Mr. Shepard repeatedly received advice from tax professionals that the tax benefits they sought for customers were not available").

11th hour attempt to delay the United States' legitimate efforts to shut down the defendants' solar energy scheme and disgorge their gross receipts, a textbook example of bad faith.⁴⁵

D. RaPower-3 has no possibility of reorganization because its only function is to commit fraud.

RaPower-3's bad faith is exacerbated by the fact that it has no hope of reorganizing through a Chapter 11 Plan. To be confirmed, a Chapter 11 plan must be feasible, which means that it as a "reasonable prospect of success and is workable."⁴⁶ RaPower-3's sole business is selling solar lenses.⁴⁷ While the defendants were promoting their tax scheme, RaPower-3 sold its lenses for \$3,500, collected \$1,050 per lens,⁴⁸ and derived millions of dollars from the scheme. But RaPower-3's solar lenses are nearly worthless without the tax benefits that defendants are now prohibited from promoting. "If not for the tax credit, it is highly doubtful that any investor would pay 70 to 400 times the value of a piece of breakable plastic which has no energy production capability of its own. The lens is a small, low value almost disposable component[] of an unproven energy production system."⁴⁹ Since RaPower-3's solar lenses are nearly worthless, and the "enterprise is destined to fail by the lack of sound scientific, engineering, utility and

⁴⁵ See *In re Pacific Rim Investments, LLP*, 243 B.R. 768, 773 (D. Colo. 2000) ("a factual finding of bad faith is the result of the court's consideration of the totality of circumstances, including the timing of the filing of the bankruptcy petition, the debtor's honesty and candor and its ability to reorganize").

⁴⁶ *In re Pikes Peak Water Co.*, 779 F.2d 1456, 1460 (10th Cir. 1985) (internal citations omitted); accord *In re Investment Company of The Southwest, Inc.*, 341 B.R. 298, 311 (B.A.P. 10th Cir. 2006); see also *In re Dahlstrom*, 963 F.2d 382 (10th Cir. 1992) (inability to effectuate substantial consummation of a confirmed plan").

⁴⁷ Gov. Ex. BK0014, RaPower-3 30(b)(6) Dep. 32:16-33:14, 36:4-39:8.

⁴⁸ Gov. Ex. BK0001, *United States v. RaPower-3, et al.*, 2:15-cv-00828-DN-EJF, Trial Tr. 2514:24-25; 2522:20-22.

⁴⁹ Gov. Ex. BK0001, *United States v. RaPower-3, et al.*, 2:15-cv-00828-DN-EJF, Trial Tr. 2523:7-12.

management expertise,”⁵⁰ RaPower-3 has no hope of effectively reorganizing. The Court should not permit RaPower-3 to linger on life support in Chapter 11 bankruptcy. The Court should dismiss the bankruptcy petition for filing in bad faith so that the District Court case can go forward with all defendants squarely before Judge Nuffer.

III. If the Court is not inclined to dismiss the, it should convert RaPower-3’s bankruptcy case to Chapter 7, or appoint a Chapter 11 Trustee.

For all the reasons discussed above, the United States contends that RaPower-3 filed its bankruptcy petition in bad faith, and the Court should dismiss it. However, if the Court is not inclined to dismiss, the United States requests that the Court convert this case to Chapter 7, or, alternatively, appoint a Chapter 11 Trustee to liquidate RaPower-3 in conjunction with whatever relief the District Court orders. The analysis and authority supporting the United States’ argument for dismissal applies equally to converting a case to Chapter 7, or appointing a Chapter 11 trustee.⁵¹ Under no circumstances should the Court permit RaPower-3 to continue operating as a debtor-in-possession. Permitting RaPower-3 to continue as a debtor in possession does nothing more than permit the sale of worthless solar lenses that do nothing but generate false tax benefits, delay the inevitable, waste whatever funds RaPower-3 still has, and diminish the potential recovery to creditors.

⁵⁰ Gov. Ex.BK0001, *United States v. RaPower-3, et al.*, 2:15-cv-00828-DN-EJF, Trial Tr. 2515:22-24.

⁵¹ 11 U.S.C. § 1112(b)(1) (“the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.”); *George Love Farming*, 366 B.R., at 178. In the event that the Court appoints a trustee under Chapter 7 or Chapter 11, the United States intends to request that the Trustee be the same person that is appointed receiver in the District Court case.

IV. Conclusion

After a federal district court judge called RaPower-3 what it is, *a fraud*, RaPower-3 ran to bankruptcy court seeking to delay justice. RaPower-3 filed its bankruptcy in bad faith, and it should be dismissed for all the reasons discussed above.

Dated: July 27, 2018

Respectfully submitted,

/s/ Erin Healy Gallagher
ERIN HEALY GALLAGHER
DC Bar No. 985760
Email: erin.healygallagher@usdoj.gov
Telephone: (202) 353-2452
ERIN R. HINES
FL Bar No. 44175
Email: erin.r.hines@usdoj.gov
Telephone: (202) 514-6619
CHRISTOPHER R. MORAN
New York Bar No. 5033832
Email: christopher.r.moran@usdoj.gov
Telephone: (202) 307-0834
Trial Attorneys, Tax Division
U.S. Department of Justice
P.O. Box 7238
Ben Franklin Station
Washington, D.C. 20044
FAX: (202) 514-6770
ATTORNEYS FOR CREDITOR
UNITED STATES DEPARTMENT OF
JUSTICE, TAX DIVISION