

Healy Gallagher, Erin (TAX)

From: Tuttle, Jeff <jtuttle@swlaw.com>
Sent: Thursday, August 09, 2018 1:38 PM
To: Healy Gallagher, Erin (TAX); Cameron, Vincent (USTP); Morgan, John T. (USTP); Leta, David
Cc: Hines, Erin R. (TAX); Moran, Christopher R. (TAX)
Subject: RE: RaPower, LLC - Bankruptcy Case No. 18-24865
Attachments: RaPower-3 - Order Dismissing Bankruptcy Case 4811-3339-5567_1.docx
Importance: High

All. Attached please find the revised proposed order. Please review and provide any comments or your authorization to file ASAP. The UST is hoping to have this signed by 3pm today.

Thanks –

Jeff Tuttle
801.257.1960

From: Tuttle, Jeff
Sent: Thursday, August 09, 2018 11:15 AM
To: 'Healy Gallagher, Erin (TAX)'; 'Cameron, Vincent (USTP)'; 'Morgan, John T. (USTP)'; Leta, David
Cc: 'Hines, Erin R. (TAX)'; 'Moran, Christopher R. (TAX)'
Subject: RE: RaPower, LLC - Bankruptcy Case No. 18-24865

After speaking with Judge Anderson's chambers to alert them that a proposed order may be forthcoming, I am adding language related to the pending motions. I will circulate an updated version of the proposed stipulated order shortly.

Thanks –

Jeff Tuttle
801.257.1960

From: Tuttle, Jeff
Sent: Thursday, August 09, 2018 11:01 AM
To: 'Healy Gallagher, Erin (TAX)'; Cameron, Vincent (USTP); Morgan, John T. (USTP); Leta, David
Cc: Hines, Erin R. (TAX); Moran, Christopher R. (TAX)
Subject: RE: RaPower, LLC - Bankruptcy Case No. 18-24865
Importance: High

Erin and Vince. My client has authorized us to agree to the unconditional dismissal of RaPower's bankruptcy case requested by the DOJ in its motion. My understanding based on the email below is that this is still agreeable to the DOJ, and, having spoken with Vince Cameron, I understand that the UST is on board with stipulating to the dismissal if the DOJ is.

I have prepared the attached order for your review and e-signature. Please review and provide comment or authorization to use your e-signature ASAP, so we can get this before Judge Anderson as soon as possible.

Thanks –



Jeff Tuttle
801.257.1960

From: Healy Gallagher, Erin (TAX) [mailto:Erin.HealyGallagher@usdoj.gov]
Sent: Thursday, August 09, 2018 6:06 AM
To: Cameron, Vincent (USTP); Morgan, John T. (USTP); Tuttle, Jeff; Leta, David
Cc: Hines, Erin R. (TAX); Moran, Christopher R. (TAX); Denver Snuffer; Steven Paul; Dan Garriott; Joshua Egan
Subject: Fwd: RaPower, LLC - Bankruptcy Case No. 18-24865
Importance: High

All,

First, my email address was incorrect on Mr. Tuttle's email below. So just now is the first I have heard of RaPower-3's proposal.

We do not agree to the stipulation Defendants have proposed and do not agree to any sort of "conditional dismissal" of the bankruptcy petition. RaPower-3 chose to initiate these proceedings and there are consequences to that choice, including the obligation to appear and answer questions at the noticed meeting of creditors.

We oppose any effort to postpone or reschedule the creditors meeting for a so-called "conditional dismissal." I do not see authority for a "conditional" dismissal of a bankruptcy petition. And it is unlikely that Judge Nuffer would agree to the condition: accepting Defendants' proposed language in the asset freeze/receiver order regarding appeal. There is no reason to postpone the creditors meeting for the delay that will result from this likely failed bid before the District Court.

Doors are closing for my flight now. Absent unconditional dismissal of RaPower-3's bankruptcy petition, I will be at the meeting of creditors today at 3pm.

Regards,
Erin

From: Moran, Christopher R. (TAX) <Christopher.R.Moran@tax.USDOJ.gov>
Date: August 9, 2018 at 7:15:32 AM EDT
To: Healy Gallagher, Erin (TAX) <Erin.HealyGallagher@tax.USDOJ.gov>
Subject: Fwd: RaPower, LLC - Bankruptcy Case No. 18-24865
Importance: High

From: Tuttle, Jeff <jtuttle@swlaw.com>

Date: August 8, 2018 at 9:18:12 PM EDT

To: 'erin.healygallagher@usdoj.com' <erin.healygallagher@usdoj.com>, Cameron, Vincent (USTP) <Vince.Cameron@UST.DOJ.GOV>, Moran, Christopher R. (TAX) <Christopher.R.Moran@tax.USDOJ.gov>, Morgan, John T. (USTP) <John.T.Morgan@UST.DOJ.GOV>

Cc: Leta, David <dleta@swlaw.com>, 'Steven Paul' <spaul@nsdplaw.com>, 'Dan' <dbgariott@msn.com>

Subject: RaPower, LLC - Bankruptcy Case No. 18-24865

Importance: High

All. I have spoken with Vince Cameron of the UST's office and informed him that the Debtor intends to file with the Court tomorrow a response to the DOJ's motion to dismiss and stipulate to the dismissal of the bankruptcy case conditioned upon Judge Nuffer's entry of a receivership order that preserves Debtor's rights to make its own decisions related to any appeals filed in the case. Vince (cc'd hereto) has suggested that such a dismissal would satisfy the UST's pending request for a chapter 11 trustee. In our response, we will clearly spell out that we are agreeing to Judge Nuffer's entry of the receivership order (and any other orders in that case) and, if our appeal rights are adequately preserved in the receivership order, the Debtor will stipulate to the immediate dismissal of the bankruptcy case. This will render moot the motion to withdraw the reference as there will no longer be a case to refer.

I have attempted to reach out to Ms. Gallagher and have made contact with Chris Moran, both of the Tax Division ("DOJ") and included on this email, to see if we could nail down a resolution to the above as part of a stipulated receivership order and obviate the need for further drain on the bankruptcy estate responding to these issues. Although the DOJ appears to remain open to discussion on these issues, in lieu of a stipulated receivership order in place between RP3 and the DOJ, we feel the estate can be best served by filing the response to the motions and preserving our appeal rights specifically through Judge Nuffer's forthcoming order(s).

As we are now conditionally stipulating to the dismissal of the bankruptcy case, we do not anticipate the 341 meeting going forward tomorrow. I will notify the 20 largest unsecured creditors via email.

Furthermore, we will stipulate to the requested stay of the bankruptcy proceedings until such time as Judge Nuffer enters his orders in the district court case with the exception of submitting orders and/or attending hearings related to our retention application in the bankruptcy case. As far as we are aware, the Debtor is in compliance with Judge Nuffer's injunction and is not currently making payments from its bank accounts to service any liabilities (i.e. Debtor's assets are sufficiently frozen pending resolution of this matter).

Please let us know if you have any questions or wish to discuss further. We would be willing to draft a proposed stipulation dismissing the case upon the condition described above if that is agreeable to the DOJ and the UST. Please let us know.

Best –

Jeff D. Tuttle

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