

CASE NOS. 18-4150 and 18-4119

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

RAPOWER-3, LLC, INTERNATIONAL AUTOMATED SYSTEMS, INC.,
LTB1, LLC, R. GREGORY SHEPARD, NELDON JOHNSON,

Defendants – Appellants.

On Appeal from the United States District Court
For the District of Utah, Central Division
The Honorable Judge David Nuffer
D.C. No. 2:15-cv-00828-DN

APPELLANTS' APPENDIX VOL. I

CERTIFICATE OF DIGITAL SUBMISSION

I hereby certify that in each appendices volume: 1) all required privacy redactions have been made; 2) the ECF submission is an exact copy of any hard copies that were filed (if any); and 3) the digital submission has been scanned for viruses with the most recent version of a commercial virus scanning program, Windows Defender, and according to the program are free from viruses. I further certify that the information on this form is true and correct to the best of my ability and belief formed after a reasonable inquiry.

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that each volume of Appellant's complies with 10th Cir. R. 25.5 and all privacy redactions required have been made. The

undersigned counsel certifies that paper copies submitted are or will be exact copies of the electronic version.

/s/ Denver C. Snuffer, Jr.

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**US District Court Electronic Case Filing System
District of Utah (Central)
CIVIL DOCKET FOR CASE #: 2:15-cv-00828-DN-EJF**

USA v. RaPower-3 et al
Assigned to: Judge David Nuffer
Referred to: Magistrate Judge Evelyn J. Furse
Case in other court: Tenth, 18-04119
Tenth, 18-04150
Cause: 26:7402(a) IRS: Jurisdiction of District Courts

Date Filed: 11/23/2015
Date Terminated: 10/04/2018
Jury Demand: Defendant
Nature of Suit: 870 Taxes
Jurisdiction: U.S. Government Plaintiff

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Date Filed	#	Docket Text
11/23/2015	1	Case has been indexed and assigned to Judge David Nuffer. Plaintiff USA is directed to E-File the <u>complaint and cover sheet</u> (found under Complaints and Other Initiating Documents) by the end of the business day. Filing Fee waived (USA) NOTE: The court will not have jurisdiction until the opening document is electronically filed and the filing fee paid in the CM/ECF system. Civil Summons may be issued electronically. Prepare the summons using the courts PDF version and email it to utdecf_clerk@utd.uscourts.gov for issuance. (eat) (Entered: 11/23/2015)
11/23/2015	2	COMPLAINT for Permanent Injunction & Other Equitable Relief against All Defendants No Filing Fee, filed by USA. (Attachments: # 1 Civil Cover Sheet) Assigned to Judge David Nuffer (Mangum, John) Modified to correct docket text on 11/23/2015 (eat). (Entered: 11/23/2015)
11/23/2015	3	MOTION for Admission Pro Hac Vice of Erin Healy Gallagher (no registration fee required) filed by Plaintiff USA. (Attachments: # 1 Exhibit A & B - PHV Applic & ECF Registration, # 2 Text of Proposed Order na)(Mangum, John) (Entered: 11/23/2015)

11/23/2015	4	MOTION for Admission Pro Hac Vice of Erin R. Hines (no registration fee required) filed by Plaintiff USA. (Attachments: # 1 Exhibit A - PHV Application, # 2 Text of Proposed Order na)(Mangum, John) (Entered: 11/23/2015)
11/23/2015	5	MOTION for Admission Pro Hac Vice of Christopher R. Moran (no registration fee required) filed by Plaintiff USA. (Attachments: # 1 Exhibit A & B - PHV Application & ECF Registration, # 2 Text of Proposed Order na)(Mangum, John) (Entered: 11/23/2015)
11/23/2015	6	**RESTRICTED DOCUMENT** Summons Issued Electronically as to International Automated Systems. Instructions to Counsel: 1. Click on the document number. 2. If you are prompted for an ECF login, enter your 'Attorney' login to CM/ECF. 3. Print the issued summons for service. (mms) (Entered: 11/23/2015)
11/23/2015	7	**RESTRICTED DOCUMENT** Summons Issued Electronically as to RaPower-3. Instructions to Counsel: 1. Click on the document number. 2. If you are prompted for an ECF login, enter your 'Attorney' login to CM/ECF. 3. Print the issued summons for service. (mms) (Entered: 11/23/2015)
11/23/2015	8	**RESTRICTED DOCUMENT** Summons Issued Electronically as to Roger Freeborn. Instructions to Counsel: 1. Click on the document number. 2. If you are prompted for an ECF login, enter your 'Attorney' login to CM/ECF. 3. Print the issued summons for service. (mms) (Entered: 11/23/2015)
11/23/2015	9	**RESTRICTED DOCUMENT** Summons Issued Electronically as to Neldon Johnson. Instructions to Counsel: 1. Click on the document number. 2. If you are prompted for an ECF login, enter your 'Attorney' login to CM/ECF. 3. Print the issued summons for service. (mms) (Entered: 11/23/2015)
11/23/2015	10	**RESTRICTED DOCUMENT** Summons Issued Electronically as to R. Gregory Shepard. Instructions to Counsel: 1. Click on the document number. 2. If you are prompted for an ECF login, enter your 'Attorney' login to CM/ECF. 3. Print the issued summons for service. (mms) (Entered: 11/23/2015)
11/23/2015	11	DOCKET TEXT ORDER granting 3 Motion for Admission Pro Hac Vice of Erin Healy Gallagher ; granting 4 Motion for Admission Pro Hac Vice of Erin R. Hines ; granting 5 Motion for Admission Pro Hac Vice of Christopher R. Moran : all for USA. <i>Attorneys admitted Pro Hac Vice may download a copy of the District of Utahs local rules from the courts web site at http://www.utd.uscourts.gov</i> So ordered by Judge David Nuffer on 11/23/15 (docket text only - no attached document) (alt) (Entered: 11/23/2015)
11/23/2015	12	**RESTRICTED DOCUMENT** Summons Issued Electronically as to LTB1. Instructions to Counsel: 1. Click on the document number. 2. If you are prompted for an ECF login, enter your 'Attorney' login to CM/ECF. 3. Print the issued summons for service. (eat) (Entered: 11/23/2015)
11/24/2015	13	DOCKET TEXT ORDER REFERRING CASE to Magistrate Judge Brooke C. Wells

		under 28:636 (b)(1)(A), Magistrate to hear and determine all non-dispositive pretrial matters. So ordered by Judge David Nuffer on 11/24/15 (docket text only - no attached document) (alt) (Entered: 11/24/2015)
12/31/2015	14	**RESTRICTED DOCUMENT** SUMMONS Returned Executed by USA as to R. Gregory Shepard served on 12/3/2015, answer due 12/24/2015. (Attachments: # 1 Summons)(Hines, Erin) (Entered: 12/31/2015)
12/31/2015	15	**RESTRICTED DOCUMENT** SUMMONS Returned Executed by USA as to Roger Freeborn served on 12/4/2015, answer due 12/28/2015. (Attachments: # 1 Summons)(Hines, Erin) (Entered: 12/31/2015)
12/31/2015	16	**RESTRICTED DOCUMENT** SUMMONS Returned Executed by USA as to Neldon Johnson served on 12/9/2015, answer due 12/30/2015. (Attachments: # 1 Summons)(Hines, Erin) (Entered: 12/31/2015)
12/31/2015	17	**RESTRICTED DOCUMENT** SUMMONS Returned Executed by USA as to RaPower-3 served on 12/9/2015, answer due 12/30/2015. (Attachments: # 1 Summons) (Hines, Erin) (Entered: 12/31/2015)
12/31/2015	18	**RESTRICTED DOCUMENT** SUMMONS Returned Executed by USA as to International Automated Systems served on 12/4/2015, answer due 12/28/2015. (Attachments: # 1 Summons)(Hines, Erin) (Entered: 12/31/2015)
12/31/2015	19	**RESTRICTED DOCUMENT** SUMMONS Returned Executed by USA as to LTBI served on 12/5/2015, answer due 12/28/2015. (Attachments: # 1 Summons)(Hines, Erin) (Entered: 12/31/2015)
01/18/2016	20	NOTICE of Appearance by Donald S. Reay on behalf of Roger Freeborn (Reay, Donald) (Entered: 01/18/2016)
01/18/2016	21	NOTICE of Appearance by Donald S. Reay on behalf of R. Gregory Shepard (Reay, Donald) (Entered: 01/18/2016)
01/21/2016	22	ANSWER to Complaint filed by International Automated Systems, Neldon Johnson, LTBI, RaPower-3. Attorney Samuel Alba added to party International Automated Systems(pty:dft), Attorney Samuel Alba added to party Neldon Johnson(pty:dft), Attorney Samuel Alba added to party LTBI(pty:dft), Attorney Samuel Alba added to party RaPower-3(pty:dft)(Alba, Samuel) (Entered: 01/21/2016)
01/25/2016	23	RE-FILED AS 26 ANSWER - ANSWER to Complaint filed by Roger Freeborn (Reay, Donald) Modified on 1/29/2016: added re-filing info (alt) (Entered: 01/25/2016)
01/25/2016	24	DEMAND for Trial by Jury by Defendants International Automated Systems, Neldon Johnson, LTBI, RaPower-3. (Alba, Samuel) (Entered: 01/25/2016)
01/26/2016	25	NOTICE FROM THE COURT re: Initial Scheduling The court's IPT Clerk will now set the case for the Initial Pretrial Scheduling Conference (asb) (Entered: 01/26/2016)
01/26/2016	26	ANSWER to Complaint filed by Roger Freeborn, R. Gregory Shepard.(Reay, Donald) (Entered: 01/26/2016)
02/04/2016	27	<u>NOTICE OF INITIAL PRETRIAL CONFERENCE:</u> (Notice generated by IPT Clerk) The Attorneys Planning Meeting Report and Proposed Scheduling Order forms, available on the court web site at http://www.utd.uscourts.gov/documents/formpage.html , should be prepared 21 days before the Initial Pretrial Conference hearing date. <u>NOTICE TO COUNSEL,</u> The Court <i>may</i> enter a scheduling order and vacate the

		<p>hearing if counsel</p> <p>(a) file a stipulated Attorneys Planning Meeting Report; and</p> <p>(b) e-mail a Proposed Scheduling Order to ipt@utd.uscourts.gov 21 days before the scheduled hearing. See instructions at http://www.utd.uscourts.gov/documents/ipt.html</p> <p>If counsel or the parties would like to participate by phone they must contact the IPT Clerk at least two days in advance at ipt@utd.uscourts.gov to make arrangements.</p> <p>Initial Pretrial Conference set for 3/9/2016 at 10:00 AM in Rm 7.400 before Magistrate Judge Evelyn J. Furse. (jds) (Entered: 02/04/2016)</p>
02/09/2016	28	MOTION to Continue the March 9, 2016 Hearing and Memorandum in Support filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Attachments: # 1 Text of Proposed Order Order Granting Motion to Continue the March 9, 2016 Hearing) Motions referred to Brooke C. Wells.(Alba, Samuel) (Entered: 02/09/2016)
02/09/2016	29	NOTICE of Appearance by James S. Judd on behalf of International Automated Systems, Neldon Johnson, LTB1, RaPower-3 (Judd, James) (Entered: 02/09/2016)
02/11/2016	30	ORDER granting 28 Motion to Continue the March 9, 2016. Hearing is reset to April 13, 2016 at 10:00 am. Signed by Magistrate Judge Evelyn J. Furse on 2/10/2016. (jds) Modified time on 2/11/2016 (jds). (Entered: 02/11/2016)
02/11/2016		Reset Hearings: Initial Pretrial Conference reset for 4/13/2016 at 10:00 AM in Rm 8.400 before Magistrate Judge Evelyn J. Furse. (jds) (Entered: 02/11/2016)
02/22/2016	31	MOTION to Strike and Memorandum in Support <i>re Jury Demand</i> filed by Plaintiff USA. Motions referred to Brooke C. Wells.(Moran, Christopher) Modified on 5/2/2016: removed unnecessary text (alt) (Entered: 02/22/2016)
03/04/2016	32	MEMORANDUM in Opposition re 31 MOTION to Strike and Memorandum in Support <i>of Motion to Strike Jury Demand</i> filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Alba, Samuel) (Entered: 03/04/2016)
03/14/2016		Reset Hearings: Initial Pretrial Conference reset for 4/20/2016 at 10:00 AM in Rm 8.400 before Magistrate Judge Evelyn J. Furse. (jds) (Entered: 03/14/2016)
03/18/2016	33	REPLY to Response to Motion re 31 MOTION to Strike and Memorandum in Support <i>of Motion to Strike Jury Demand</i> filed by Plaintiff USA. (Attachments: # 1 Supplement Unpublished Opinion, USA v. Hansen, 05cv0921-L (SD Cal.))(Moran, Christopher) (Entered: 03/18/2016)
03/21/2016	34	NOTICE OF HEARING ON MOTION re: 31 MOTION to Strike and Memorandum in Support <i>of Motion to Strike Jury Demand</i> : (Notice generated by chambers) Motion Hearing set for 4/27/2016 at 10:00 AM in Rm 7.400 before Magistrate Judge Brooke C. Wells. (mjw) (Entered: 03/21/2016)
03/25/2016	35	REPORT OF ATTORNEY PLANNING MEETING. (Hines, Erin) (Entered: 03/25/2016)
04/05/2016	36	NOTICE of Appearance by Rodney R. Parker on behalf of International Automated Systems, Neldon Johnson, LTB1, RaPower-3 (Parker, Rodney) (Entered: 04/05/2016)
04/06/2016	37	SCHEDULING ORDER: Initial Pretrial Conference vacated. Amended Pleadings due by 11/4/2016. Joinder of Parties due by 11/4/2016. Expert Discovery due by 10/6/2017. Motions due by 11/10/2017. Final Pretrial Conference set for 4/2/2018 at 02:30 PM in Rm 3.100 before Judge David Nuffer. 10 Day Jury Trial set for 4/16/2018 at 08:30 AM in

		Rm 3:100 before Judge David Nuffer. Signed by Magistrate Judge Evelyn J. Purse on 4/5/16 (alt) (Entered: 04/06/2016)
04/06/2016	38	NOTICE of Appearance by Richard A. Van Wagoner on behalf of International Automated Systems, Neldon Johnson, LTB1, RaPower-3 (Van Wagoner, Richard) (Entered: 04/06/2016)
04/11/2016	39	MOTION for Protective Order and Memorandum in Support <i>Relief re DUCivR26-2</i> filed by Plaintiff USA. Motions referred to Brooke C. Wells.(Hines, Erin) Modified on 9/20/2016: corrected text (alt) (Entered: 04/11/2016)
04/22/2016	40	DOCKET TEXT ORDER - The court orders the parties to follow the Short Form Discovery Motion procedure as outlined in the attached document in this case for all discovery disputes arising after this date. Signed by Judge David Nuffer on 4/22/2016. (jds) (Entered: 04/22/2016)
04/25/2016	41	MEMORANDUM in Opposition re 39 MOTION for Protective Order and Memorandum in Support <i>Motion for Relief from Standard Protective Order and DUCivR26-2</i> filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Parker, Rodney) (Entered: 04/25/2016)
04/27/2016	42	Minute Order. Proceedings held before Magistrate Judge Brooke C. Wells. Motion Hearing held on 4/27/2016 re 31 MOTION to Strike and Memorandum in Support of <i>Motion to Strike Jury Demand</i> filed by USA. Court heard from cnsl. Court took under advisement 31 Motion to Strike. Order to issue. Attorney for Plaintiff: Christopher R. Moran, Erin R. Hines, Attorney for Defendant James S. Judd, Rodney R. Parker, Donald S. Reay. Court Reporter: electronic.(Time Start: 10:00, Time End: 11:00, Room 7.4.) (mlp) (Entered: 04/29/2016)
05/02/2016	43	MEMORANDUM DECISION AND ORDER granting 31 Motion to Strike Jury Demand. Signed by Magistrate Judge Brooke C. Wells on 5/2/16 (alt) (Entered: 05/02/2016)
05/09/2016	44	REPLY to Response to Motion re 39 MOTION for Protective Order and Memorandum in Support <i>Motion for Relief from Standard Protective Order and DUCivR26-2</i> filed by Plaintiff USA. (Hines, Erin) (Entered: 05/09/2016)
05/13/2016	45	REQUEST for Oral Argument re 39 MOTION for Protective Order and Memorandum in Support <i>Motion for Relief from Standard Protective Order and DUCivR26-2</i> filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Judd, James) (Entered: 05/13/2016)
05/18/2016	46	SUBSTITUTION OF COUNSEL Justin D. Heideman replacing Rodney R. Parker; Richard A. Van Wagoner; Samuel Alba and James S. Judd as counsel on behalf of International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Heideman, Justin) (Entered: 05/18/2016)
05/27/2016	47	CERTIFICATE OF SERVICE by Roger Freeborn, R. Gregory Shepard <i>Responses to Plaintiff's First Interrogatories to Defendants</i> (Reay, Donald) (Entered: 05/27/2016)
05/27/2016	48	CERTIFICATE OF SERVICE by International Automated Systems, Neldon Johnson, LTB1, RaPower-3 <i>Responses to Plaintiff's First Interrogatories to Defendant LTB1</i> (Heideman, Justin) (Entered: 05/27/2016)
05/27/2016	49	CERTIFICATE OF SERVICE by International Automated Systems, Neldon Johnson, LTB1, RaPower-3 <i>Responses to Plaintiff's First Interrogatories to Defendant International Automated Systems, Inc.</i> (Heideman, Justin) (Entered: 05/27/2016)

06/13/2016	50	NOTICE OF HEARING ON MOTION re: 39 MOTION for Protective Order and Memorandum in Support <i>Motion for Relief from Standard Protective Order and DUCivR26-2</i> : (Notice generated by chambers) Motion Hearing set for 7/27/2016 at 02:00 PM in Rm 7.400 before Magistrate Judge Brooke C. Wells. (mjw) (Entered: 06/13/2016)
06/17/2016	51	CERTIFICATE OF SERVICE by Roger Freeborn, R. Gregory Shepard <i>Responses to Plaintiff's First RPD and Supplemental Responses to Plaintiff's First Interrogatories to Defendants</i> (Reay, Donald) (Entered: 06/17/2016)
06/20/2016	52	NOTICE OF FILING of Certificate of Service <i>Defendant's Production of Documents</i> filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Heideman, Justin) (Entered: 06/20/2016)
06/21/2016	53	MOTION to Compel RaPower-3, LLC to respond to Plaintiff's First Interrogatories and Memorandum in Support , MOTION to Expedite resolution of motion (in accordance with Short Form Discovery Motion Procedure) and Memorandum in Support filed by Plaintiff USA. (Attachments: # 1 Exhibit A, # 2 Text of Proposed Order) Motions referred to Brooke C. Wells.(Moran, Christopher) (Entered: 06/21/2016)
06/21/2016	54	NOTICE OF FILING of Certificate of Service of <i>Defendant RaPower-3 Responses to First Set of Interrogatories</i> filed by Defendant RaPower-3. (Heideman, Justin) (Entered: 06/21/2016)
06/22/2016	55	MOTION to Compel LTB1 to Sign and Supplement its Responses to Plaintiff's First Interrogatories and Memorandum in Support , MOTION to Expedite resolution of motion (in accordance with Short Form Discovery Motion Procedure) and Memorandum in Support filed by Plaintiff USA. (Attachments: # 1 Exhibit USA's First Interrogatories to LTB1, LLC, # 2 Exhibit LTB1's response to USA's First Interrogatories, # 3 Exhibit 2016 0602 USA Letter to Justin Heideman) Motions referred to Brooke C. Wells.(Moran, Christopher) (Entered: 06/22/2016)
06/22/2016	56	MOTION to Compel IAS to sign and supplement its responses to USA's first interrogatories and Memorandum in Support , MOTION to Expedite resolution of motion (in accordance with Short Form Discovery Motion Procedure) and Memorandum in Support filed by Plaintiff USA. (Attachments: # 1 Exhibit USA's First Interrogatories to IAS, # 2 Exhibit IAS' Responses to USA's First Interrogatories, # 3 Exhibit 2016 0602 USA Letter to Justin Heideman, # 4 Text of Proposed Order) Motions referred to Brooke C. Wells.(Moran, Christopher) (Entered: 06/22/2016)
06/22/2016	57	MOTION to Compel Neldon Johnson to Sign and Supplement response to USA's First Interrogatories and Memorandum in Support , MOTION to Expedite resolution of motion (in accordance with Short Form Discovery Motion Procedure) and Memorandum in Support filed by Plaintiff USA. (Attachments: # 1 Exhibit USA's First Interrogatories to Neldon Johnson, # 2 Exhibit Neldon Johnson's responses to USA's First Interrogatories, # 3 Exhibit 2016 0602 USA Letter to Justin Heideman, # 4 Text of Proposed Order) Motions referred to Brooke C. Wells.(Moran, Christopher) (Entered: 06/22/2016)
06/23/2016	58	RE-FILED AS 59 AMENDED MOTION - Supplemental MOTION to Amend/Correct 53 MOTION to Compel RaPower-3, LLC to respond to Plaintiff's First Interrogatories and Memorandum in Support MOTION to Expedite resolution of motion (in accordance with Short Form Discovery Motion Procedure) and Memorandum in Support and Memorandum in Support filed by Plaintiff USA. (Attachments: # 1 Exhibit RaPower-3's responses to USA's first interrogatories, # 2 Exhibit 2016 0602 USA Letter to Justin Heideman) Motions referred to Brooke C. Wells.(Moran, Christopher) Modified on 6/27/2016: added re-filing info (alt) (Entered: 06/23/2016)

06/27/2016	59	Amended MOTION to Compel RaPower-3, LLC to respond to Plaintiff's First Interrogatories and Memorandum in Support filed by Plaintiff USA. (Attachments: # 1 Exhibit RaPower-3's responses to USA's first interrogatories, # 2 Exhibit 2016 0602 USA Letter to Justin Heideman) Motions referred to Brooke C. Wells.(Moran, Christopher) (Entered: 06/27/2016)
06/27/2016		Modification of Docket re 58 Supplemental MOTION to Amend/Correct 53 MOTION to Compel RaPower-3, LLC to respond to Plaintiff's First Interrogatories. Error: Document was filed incorrectly as a Motion to Amend. Correction: Motion has been correctly re-filed as 59 Amended Motion to Compel. (alt) (Entered: 06/27/2016)
06/27/2016	60	ORDER setting briefing on 55 Motion to Compel, 56 Motion to Compel, 57 Motion to Compel, 59 Amended Motion to Compel: Oppositions due 7/7/16; Replies due 7/12/16. Parties are to notify court of the resolution of any issues on or before 7/15/16. Signed by Magistrate Judge Brooke C. Wells on 6/27/16 (alt) (Entered: 06/27/2016)
07/05/2016	61	STIPULATION to Extend Time to Answer Requests for Discovery by International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Heideman, Justin) (Entered: 07/05/2016)
07/11/2016	62	MOTION to Quash Subpoena filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. Motions referred to Brooke C. Wells.(Heideman, Justin) (Entered: 07/11/2016)
07/14/2016	63	NOTICE OF FILING filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Heideman, Justin) (Entered: 07/14/2016)
07/14/2016	64	MEMORANDUM in Opposition re 59 Amended MOTION to Compel RaPower-3 to Respond to First Interrogatories filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Heideman, Justin) (Entered: 07/14/2016)
07/15/2016	65	MOTION to Quash <i>Subpoenas</i> filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. Motions referred to Brooke C. Wells.(Heideman, Justin) (Entered: 07/15/2016)
07/19/2016	66	REPLY to Response to Motion re 57 MOTION to Compel Neldon Johnson to Sign and Supplement Response to First Interrogatories MOTION to Expedite filed by Plaintiff USA. (Attachments: # 1 Exhibit Neldon Johnson's Signed, Supplemental Responses to the United States' First Interrogatories)(Moran, Christopher) (Entered: 07/19/2016)
07/19/2016	67	REPLY to Response to Motion re 55 MOTION to Compel LTB1 to Sign and Supplement Responses to First Interrogatories MOTION to Expedite filed by Plaintiff USA. (Attachments: # 1 Exhibit LTB's Signed, Supplemental Responses to the United States' First Interrogatories)(Moran, Christopher) (Entered: 07/19/2016)
07/19/2016	68	REPLY to Response to Motion re 56 MOTION to Compel IAS to Sign and Supplement Responses to First Interrogatories MOTION to Expedite filed by Plaintiff USA. (Attachments: # 1 Exhibit IAS's Signed, Supplemental Responses to the United States' First Interrogatories)(Moran, Christopher) (Entered: 07/19/2016)
07/19/2016	69	REPLY to Response to Motion re 59 Amended MOTION to Compel RaPower-3 to Respond to First Interrogatories, 53 MOTION to Compel RaPower-3 to Respond to First Interrogatories MOTION to Expedite filed by Plaintiff USA. (Attachments: # 1 Exhibit RaPower-3's Signed, Supplemental Responses to the United States' First Interrogatories) (Moran, Christopher) (Entered: 07/19/2016)
07/21/2016	70	MOTION to Quash Subpoena filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. Motions referred to Brooke C. Wells.(Heideman, Justin) (Entered: 07/21/2016)

07/25/2016	71	MEMORANDUM in Opposition re 62 MOTION to Quash Subpoena filed by Plaintiff USA. (Attachments: # 1 Exhibit Emails re: Notice of Intent to Subpoena, # 2 Exhibit Subpoena)(Hines, Erin) (Entered: 07/25/2016)
07/27/2016	72	Minute Order. Proceedings held before Magistrate Judge Brooke C. Wells. Motion Hearing held on 7/27/2016 re 39 MOTION for Protective Order and Memorandum in Support <i>Motion for Relief from Standard Protective Order and DUCivR26-2</i> filed by USA. Court heard from parties and took under advisement 39 Motion for Protective Order. Both parties have until Wednesday, August 3, 2016 to submit cases found that support their position. Attorney for Plaintiff: Erin Healy Gallagher, Christopher R. Moran, Attorney for Defendant Justin D. Heideman, Donald S. Reay. Court Reporter: electronic.(Time Start: 2:00, Time End: 2:45, Room 7.4.) (mlp) (Entered: 07/28/2016)
08/01/2016	73	MEMORANDUM in Opposition re 65 MOTION to Quash <i>Subpoenas</i> filed by Plaintiff USA. (Attachments: # 1 Exhibit A, emails regarding notice of subpoenas, # 2 Exhibit B, subpoena to Bank of American Fork)(Gallagher, Erin) (Entered: 08/01/2016)
08/02/2016	74	NOTICE of filing a corrected exhibit by USA re 71 Memorandum in Opposition to Motion (Attachments: # 1 Exhibit A, emails regarding notice of subpoenas) (Gallagher, Erin) (Entered: 08/02/2016)
08/03/2016	75	NOTICE OF FILING filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Heideman, Justin) (Entered: 08/03/2016)
08/03/2016	76	NOTICE of SUPPLEMENTAL AUTHORITY by USA re 39 MOTION for Protective Order and Memorandum in Support <i>Motion for Relief from Standard Protective Order and DUCivR26-2</i> , 72 Order on Motion for Protective Order, Motion Hearing,,,, (Hines, Erin) (Entered: 08/03/2016)
08/05/2016	77	MEMORANDUM in Opposition re 70 MOTION to Quash Subpoena filed by Plaintiff USA. (Attachments: # 1 Exhibit A, emails regarding notice of subpoenas, # 2 Exhibit B, subpoena to Wells Fargo Bank, N.A.)(Gallagher, Erin) (Entered: 08/05/2016)
08/08/2016	78	REPLY to Response to Motion re 62 MOTION to Quash Subpoena filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Heideman, Justin) (Entered: 08/08/2016)
08/08/2016	79	NOTICE of Appearance by Justin D. Heideman on behalf of International Automated Systems, Neldon Johnson, LTB1, RaPower-3 (Heideman, Justin) (Entered: 08/08/2016)
08/08/2016	80	NOTICE of Appearance by Justin D. Heideman on behalf of International Automated Systems, Neldon Johnson, LTB1, RaPower-3 (Heideman, Justin) (Entered: 08/08/2016)
08/15/2016	81	MEMORANDUM in Support re 65 MOTION to Quash <i>Subpoenas</i> filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Heideman, Justin) (Entered: 08/15/2016)
08/19/2016	82	RESPONSE to Motion re 70 MOTION to Quash Subpoena filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Heideman, Justin) (Entered: 08/19/2016)
08/19/2016	83	MOTION to Quash Production of Information and Subpoenas filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. Motions referred to Brooke C. Wells.(Heideman, Justin) (Entered: 08/19/2016)
08/19/2016	84	MOTION to Quash Subpoenas filed by Defendants International Automated Systems,

		Neldon Johnson, LTB1, RaPower-3. Motions referred to Brooke C. Wells.(Heideman, Justin) (Entered: 08/19/2016)
09/02/2016	85	MEMORANDUM in Opposition re 83 MOTION to Quash Production of Information and Subpoenas filed by Plaintiff USA. (Attachments: # 1 Exhibit Exhibit List, # 2 Exhibit A Excerpts from the Deposition of Frank F. Lunn, # 3 Exhibit B Excerpts from the Deposition of Brian Zeleznik, # 4 Exhibit C Excerpts from the Deposition of Lynette L. Williams, # 5 Exhibit D Excerpts from the Deposition of Preston F. Olsen, # 6 Exhibit E Pl. U.S.s Notice of Intent to Subpoena Docs. dated March 14, 2016, # 7 Exhibit F Pl. U.S.s Notice of Intent to Subpoena Docs dated April 29, 2016, # 8 Exhibit G Letter from Erin Healy Gallagher to Paul Jones dated August 16, 2016, # 9 Exhibit H Email correspondence from Gregory Shepard produced by a third-party, # 10 Exhibit I Excerpts from Gregory Shepards Response to United States First, # 11 Exhibit J Email correspondence from Gregory Shepard produced by a third-party, # 12 Exhibit K Excerpts from the Deposition of Robert Rowbotham, # 13 Exhibit L Flyer for Solar Energy Celebration, # 14 Exhibit M Email correspondence from Gregory Shepard produced by a third-party, # 15 Exhibit N Excerpt from email correspondence from Gregory Shepard produced by, # 16 Exhibit O Email correspondence from Gregory Shepard produced by a third-party, # 17 Exhibit 4 Printout of www.rapower3.com: RaPower3 Technology dated March, # 18 Exhibit 16 New Solar Breakthrough May Compete with Gas downloaded from, # 19 Exhibit 17 IAUS Technical Overview downloaded from prior version of, # 20 Exhibit 21 Printout of www.rapower3.com: Site Tours dated March 2, 2015, # 21 Exhibit 35 Subpoena to Frank Lunn dated March 21, 2016, # 22 Exhibit 42 RaPower3 Member Office printout from Frank F. Lunn dated, # 23 Exhibit 114 Email correspondence from Gregory Shepard produced by a third-party, # 24 Exhibit 118 Subpoena to Lynette L. Williams dated May 6, 2016, # 25 Exhibit 154 Email correspondence produced by Preston F. Olsen)(Gallagher, Erin) (Entered: 09/02/2016)
09/02/2016	86	MEMORANDUM in Opposition re 84 MOTION to Quash Subpoenas filed by Plaintiff USA. (Attachments: # 1 Exhibit Exhibit List, # 2 Exhibit A Email correspondence from Gregory Shepard produced by a third-party, # 3 Exhibit B Email correspondence from Gregory Shepard produced by a third-party, # 4 Exhibit C Excerpts from the Deposition of Frank F. Lunn, # 5 Exhibit D Excerpts from the Deposition of Brian Zeleznik, # 6 Exhibit E Excerpts from the Deposition of Lynette L. Williams, # 7 Exhibit F Excerpts from the Deposition of Preston F. Olsen, # 8 Exhibit G Email correspondence from Gregory Shepard produced by a third-party, # 9 Exhibit H Pl. U.S.s Notice of Intent to Subpoena Docs. dated July 21, 2016, # 10 Exhibit I Email correspondence from Gregory Shepard produced by a third-party, # 11 Exhibit J Excerpts from Gregory Shepards Response to United States First, # 12 Exhibit K Email correspondence from Gregory Shepard produced by a third-party, # 13 Exhibit L Excerpts from the Deposition of Robert Rowbotham, # 14 Exhibit M Flyer for Solar Energy Celebration, # 15 Exhibit N Email correspondence from Gregory Shepard produced by a third-party, # 16 Exhibit O Excerpt from email correspondence from Gregory Shepard produced by, # 17 Exhibit P Email correspondence from Gregory Shepard produced by a third-party, # 18 Exhibit 4 Printout of www.rapower3.com: RaPower3 Technology dated March, # 19 Exhibit 16 New Solar Breakthrough May Compete with Gas downloaded from, # 20 Exhibit 17 IAUS Technical Overview downloaded from prior version of, # 21 Exhibit 21 Printout of www.rapower3.com: Site Tours dated March 2, 2015, # 22 Exhibit 42 RaPower3 Member Office printout from Frank F. Lunn dated, # 23 Exhibit 114 Email correspondence from Gregory Shepard produced by a third-party, # 24 Exhibit 154 Email correspondence produced by Preston F. Olsen)(Gallagher, Erin) (Entered: 09/02/2016)
09/16/2016	87	MOTION to Quash Subpoena filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Attachments: # 1 Exhibit Subpoena to Kenneth Birrell) Motions referred to Brooke C. Wells.(Heideman, Justin) (Entered: 09/16/2016)

09/16/2016	88	REPLY to Response to Motion re 83 MOTION to Quash Production of Information and Subpoenas filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Heideman, Justin) (Entered: 09/16/2016)
09/16/2016	89	REPLY to Response to Motion re 84 MOTION to Quash Subpoenas filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Heideman, Justin) (Entered: 09/16/2016)
09/16/2016	90	MOTION to Bifurcate and Memorandum in Support filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. Motions referred to Brooke C. Wells.(Heideman, Justin) (Entered: 09/16/2016)
09/19/2016	91	Motions No Longer Referred: 90 MOTION to Bifurcate and Memorandum in Support (jcw) (Entered: 09/19/2016)
09/20/2016	92	MEMORANDUM DECISION AND ORDER granting 39 Motion for Relief from Standard Protective Order. Case is stayed for 45 days to allow the parties to negotiate a new protective order. Signed by Magistrate Judge Brooke C. Wells on 9/20/16 (alt) (Entered: 09/20/2016)
10/03/2016	93	MOTION for Leave to File Excess Pages and Memorandum in Support <i>re Motion to Bifurcate</i> filed by Plaintiff USA. (Attachments: # 1 Text of Proposed Order) Motions referred to Brooke C. Wells.(Gallagher, Erin) (Entered: 10/03/2016)
10/03/2016	94	MOTION to Bifurcate and Memorandum in Support filed by Defendants Roger Freeborn, R. Gregory Shepard. Motions referred to Brooke C. Wells.(Reay, Donald) (Entered: 10/03/2016)
10/03/2016	95	MEMORANDUM in Opposition re 94 MOTION to Bifurcate, 90 MOTION to Bifurcate filed by Plaintiff USA. (Attachments: # 1 Exhibit Exhibit List, # 2 Exhibit A - Email correspondence from Gregory Shepard produced by a third-party customer dated July 19, 2012, # 3 Exhibit B - Printout of www.rapower3.com: Start Your Own RaPower3 [sic] Business dated March 2, 2015, # 4 Exhibit C - Printout of www.rapower3.com: Start Your Own RaPower3 [sic] Business dated May 1, 2014, # 5 Exhibit Email correspondence from Gregory Shepard produced by a third-party customer dated February 19, 2016, # 6 Exhibit E - United States First Requests for the Production of Documents to Defendant Neldon Johnson, # 7 Exhibit F - Excerpts from the Deposition of Frank F. Lunn, # 8 Exhibit 10 - Letter from Gregory Shepard dated March 20, 2015, from IRS files, # 9 Exhibit 19 - Printout of www.rapower3.com: Your BIG and Quick Payout dated March 2, 2015, # 10 Exhibit 25 - Printout of www.rapower3.com: Satisfying the IRS Depreciation Conditions dated March 2, 2015, # 11 Exhibit 26 - Printout of www.rapower3.com: RaPower3 [sic] Basics dated March 2, 2015, # 12 Exhibit 32 - Email correspondence from Gregory Shepard produced by a third-party customer dated November 11, 2013, # 13 Exhibit 34 - Printout of www.rapower3.com: Your BIG and Quick Payout dated May 1, 2014, # 14 Exhibit 35 - Subpoena for the production of documents to Frank F. Lunn, # 15 Exhibit 89 - Email correspondence from Gregory Shepard produced by a third-party customer dated January 17, 2014)(Gallagher, Erin) (Entered: 10/03/2016)
10/04/2016	96	Motions No Longer Referred: 90 MOTION to Bifurcate, 94 MOTION to Bifurcate and Memorandum in Support , 93 MOTION for Leave to File Excess Pages <i>re Motion to Bifurcate</i> (jcw) (Entered: 10/04/2016)
10/04/2016	97	DOCKET TEXT ORDER granting 93 Motion for Leave to File Excess Pages. The United States may file a brief in opposition to the motion for bifurcation of 24 total pages. Signed by Judge David Nuffer on 10/4/2016. (jcw) (Entered: 10/04/2016)
10/07/2016	98	Joint MOTION for Continued Discovery During Stay filed by Plaintiff USA.

		(Attachments: # 1 Joint Stipulation Regarding Continued Discovery During 45 Day Stay, # 2 Text of Proposed Order Approving Joint Stipulation) Motions referred to Brooke C. Wells.(Gallagher, Erin) Modified on 10/7/2016: corrected text (alt) (Entered: 10/07/2016)
10/07/2016	99	ORDER granting 98 Stipulated Motion for Continued Discovery During Stay. Signed by Magistrate Judge Brooke C. Wells on 10/7/16 (alt) (Entered: 10/07/2016)
10/17/2016	100	REPLY to Response to Motion re 90 MOTION to Bifurcate filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Heideman, Justin) (Entered: 10/17/2016)
10/18/2016	101	REPLY to Response to Motion re 94 MOTION to Bifurcate <i>and Joinder</i> filed by Defendants Roger Freeborn, R. Gregory Shepard. (Reay, Donald) (Entered: 10/18/2016)
10/20/2016	102	STATUS REPORT <i>Regarding Protective Order</i> by USA. (Moran, Christopher) (Entered: 10/20/2016)
10/21/2016	103	ERRATA to 100 Reply Memorandum/Reply to Response to Motion filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3 . (Heideman, Justin) (Entered: 10/21/2016)
10/24/2016	104	ORDER: on or by 11/3/16, the parties are to file a new stipulated protective order and a status report regarding the pending motions. Signed by Magistrate Judge Brooke C. Wells on 10/24/16 (alt) (Entered: 10/24/2016)
11/03/2016	105	STATUS REPORT by USA. (Gallagher, Erin) (Entered: 11/03/2016)
11/03/2016	106	NOTICE OF FILING of United States' Proposed Protective Order filed by Plaintiff USA. (Gallagher, Erin) (Entered: 11/03/2016)
11/03/2016	107	*ENTRY ERROR* - Disregard, Incorrect Document Attached. NOTICE OF FILING of Proposed Stipulated Protective Order filed by Defendants Roger Freeborn, International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Heideman, Justin) Modified by striking entry and adding error text on 11/3/2016 (eat). (Entered: 11/03/2016)
11/03/2016	108	STATUS REPORT by Roger Freeborn, International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Heideman, Justin) (Entered: 11/03/2016)
11/03/2016	109	Modification of Docket: Error: counsel uploaded the wrong document. Correction: docket entry stricken and error message added re 107 Notice of Filing. (eat) (Entered: 11/03/2016)
11/03/2016	110	NOTICE OF FILING of Proposed Joint Stipulated Protective Order filed by Defendants Roger Freeborn, International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Heideman, Justin) (Entered: 11/03/2016)
11/04/2016	111	MOTION for Extension of Time to file a motion to amend complaint and join parties and Memorandum in Support filed by Plaintiff USA. (Attachments: # 1 Exhibit A, "Defendant Neldon Johnson's Production of Documents") Motions referred to Brooke C. Wells.(Gallagher, Erin) (Entered: 11/04/2016)
11/04/2016	112	Joint MOTION for Extension of Time to Complete Discovery and Memorandum in Support filed by Defendants Roger Freeborn, International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Attachments: # 1 Text of Proposed Order) Motions referred to Brooke C. Wells.(Reay, Donald) (Entered: 11/04/2016)
11/18/2016	113	MEMORANDUM in Opposition re 112 Joint MOTION for Extension of Time to Complete Discovery and Memorandum in Support filed by Plaintiff USA. (Gallagher,

		Erin) (Entered: 11/18/2016)
11/22/2016	114	REQUEST to Submit for Decision re 111 MOTION for Extension of Time to file a motion to amend complaint and join parties and Memorandum in Support filed by Plaintiff USA. (Moran, Christopher) (Entered: 11/22/2016)
11/29/2016	115	DOCKET TEXT ORDER - The court orders the parties to follow the Short Form Discovery Motion procedure as outlined in the attached document in this case for all discovery disputes arising after this date. So ordered by Magistrate Judge Brooke C. Wells on 11/29/16 (docket text order only - no order attached) (alt) (Entered: 11/29/2016)
11/29/2016	116	PROTECTIVE ORDER. Signed by Magistrate Judge Brooke C. Wells on 11/29/16 (alt) (Entered: 11/29/2016)
11/29/2016	117	ORDER denying without prejudice 55 Motion to Compel; denying without prejudice 56 Motion to Compel; denying without prejudice 57 Motion to Compel; denying without prejudice 59 Motion to Compel; denying without prejudice 62 Motion to Quash; denying without prejudice 65 Motion to Quash; denying without prejudice 70 Motion to Quash; denying without prejudice 83 Motion to Quash; denying without prejudice 84 Motion to Quash; denying without prejudice 87 Motion to Quash; denying without prejudice 111 Motion for Extension of Time; granting in part and deeming moot in part 112 Motion for Extension of Time to Complete Discovery. Signed by Magistrate Judge Brooke C. Wells on 11/29/16 (alt) (Entered: 11/29/2016)
01/04/2017	118	REQUEST to Submit for Decision re 90 MOTION to Bifurcate filed by Defendants International Automated Systems, Neldon Johnson, LTBI, RaPower-3. (Heideman, Justin) (Entered: 01/04/2017)
01/12/2017	119	CERTIFICATE OF SERVICE by R. Gregory Shepard <i>Supplemental Responses to US First Request for Production</i> (Reay, Donald) (Entered: 01/12/2017)
01/12/2017	120	CERTIFICATE OF SERVICE by R. Gregory Shepard <i>Response to the USA's Second Request for Production of Documents</i> (Reay, Donald) (Entered: 01/12/2017)
01/13/2017	121	CERTIFICATE OF SERVICE by International Automated Systems, Neldon Johnson, LTBI, RaPower-3 <i>Supplemental Responses to USA's Request for Production of Documents</i> (Heideman, Justin) (Entered: 01/13/2017)
01/31/2017	122	REQUEST to Submit for Decision re 90 MOTION to Bifurcate filed by Defendants International Automated Systems, Neldon Johnson, LTBI, RaPower-3. (Heideman, Justin) (Entered: 01/31/2017)
02/02/2017	123	NOTICE of Appearance by Byron G. Martin on behalf of Todd Anderson (Martin, Byron) (Entered: 02/02/2017)
02/02/2017	124	MOTION to Expedite Handling of Short Form Discovery Motion to Quash Subpoena , MOTION to Quash Subpoena filed by Movant Todd Anderson. (Attachments: # 1 Exhibit 1 - Subpoena to Todd Anderson, # 2 Exhibit 2 - Heideman E-mail, # 3 Text of Proposed Order) Motions referred to Brooke C. Wells.(Martin, Byron) (Entered: 02/02/2017)
02/02/2017	125	NOTICE of Appearance by Stuart H. Schultz on behalf of Todd Anderson (Schultz, Stuart) (Entered: 02/02/2017)
02/07/2017	126	MEMORANDUM in Opposition re 124 MOTION to Expedite Handling of Short Form Discovery Motion to Quash Subpoena MOTION to Quash Subpoena filed by Plaintiff USA. (Attachments: # 1 Exhibit 353, United States' correspondence of 12/1/2016, # 2 Exhibit 1, RaPower-3 website)(Moran, Christopher) (Entered: 02/07/2017)

02/14/2017	127	MOTION to Quash Subpoena to Todd Anderson and Memorandum in Support filed by Defendants International Automated Systems, Neldon Johnson, LTBI, RaPower-3. Motions referred to Brooke C. Wells.(Heideman, Justin) (Entered: 02/14/2017)
02/15/2017	128	REQUEST to Submit for Decision re 124 MOTION to Expedite Handling of Short Form Discovery Motion to Quash Subpoena MOTION to Quash Subpoena filed by Movant Todd Anderson. (Martin, Byron) (Entered: 02/15/2017)
02/16/2017	129	MEMORANDUM in Opposition re 127 MOTION to Quash Subpoena to Todd Anderson and Memorandum in Support filed by Plaintiff USA. (Attachments: # 1 Exhibit No. 378, Notice of Todd Anderson's Deposition)(Moran, Christopher) (Entered: 02/16/2017)
02/21/2017	130	CERTIFICATE OF SERVICE by International Automated Systems, Neldon Johnson, LTBI, RaPower-3 <i>Responses to the US's Second Request for Production of Documents</i> (Heideman, Justin) (Entered: 02/21/2017)
02/21/2017	131	CERTIFICATE OF SERVICE by International Automated Systems, Neldon Johnson, LTBI, RaPower-3 <i>Responses to the US's Second Interrogatories to International Automated Systems, Neldon Johnson, LTBI, and RaPower-3</i> (Heideman, Justin) (Entered: 02/21/2017)
02/28/2017	132	ORDER denying 124 Motion to Quash Subpoena; denying 127 Motion to Quash Subpoena. Signed by Magistrate Judge Brooke C. Wells on 2/28/17 (alt) (Entered: 02/28/2017)
03/09/2017	133	Expedited MOTION for Leave to File Motions to Compel Deposition Testimony Under Seal and Memorandum in Support filed by Plaintiff USA. (Attachments: # 1 Text of Proposed Order) Motions referred to Brooke C. Wells.(Moran, Christopher) Modified on 3/10/2017 added Expedited text (las). (Entered: 03/09/2017)
03/10/2017	134	Amended MOTION for Leave to File Motions to Compel Deposition Testimony Under Seal and Memorandum in Support , MOTION to Expedite resolution of motion (in accordance with Short Form Discovery Motion Procedure) and Memorandum in Support filed by Plaintiff USA. (Attachments: # 1 Text of Proposed Order) Motions referred to Brooke C. Wells.(Moran, Christopher) (Entered: 03/10/2017)
03/15/2017	135	ORDER granting 134 Motion for Leave to File Motions to Compel Deposition Testimony Under Seal. Signed by Magistrate Judge Brooke C. Wells on 3/15/17 (alt) (Entered: 03/15/2017)
03/22/2017	136	NOTICE OF CONVENTIONAL FILING of Motion to Compel Deposition Testimony of Cody Buck, Ken Oveson, and David Mantyla filed by Plaintiff USA (Moran, Christopher) (Entered: 03/22/2017)
03/23/2017	137	*SEALED DOCUMENT* SEALED MOTION to Compel Deposition Testimony of Cody Buck, Ken Oveson, and David Mantyla and Memorandum in Support filed by Plaintiff USA (Attachments: # 1 Exhibit Index, # 2 Exhibit 87, # 3 Exhibit 136, # 4 Exhibit 214, # 5 Exhibit 221, # 6 Exhibit 244, # 7 Exhibit 372, # 8 Exhibit 373, # 9 Exhibit 374, # 10 Exhibit 376, # 11 Exhibit 377, # 12 Exhibit 381, # 13 Exhibit 383, # 14 Exhibit 384, # 15 Exhibit 385, # 16 Exhibit 386) Motion referred to Brooke C. Wells (alt) Modified on 7/19/2017 by unterming the motion. (lnp). Modified on 10/20/2017; Changed event type and Unsealed per 233 Order (jds). (Entered: 03/23/2017)
03/24/2017	138	MOTION to Compel Todd Anderson to Produce Documents and Memorandum in Support , MOTION to Expedite resolution of motion (in accordance with Short Form Discovery Motion Procedure) and Memorandum in Support filed by Plaintiff USA. (Attachments: # 1 Text of Proposed Order) Motions referred to Brooke C. Wells.(Moran, Christopher) Modified on 3/24/2017: corrected text (alt) (Entered: 03/24/2017)

03/24/2017	139	MOTION for Leave to File Movants' Response to United States Motion to Compel , MOTION to Seal re 137 SEALED MOTION to Compel Deposition Testimony of Cody Buck, Ken Oveson, and David Mantyla filed by Movants Cody Buck, David Mantyla, Ken Oveson. Motions referred to Brooke C. Wells.(Benson, Eric) (Entered: 03/24/2017)
03/28/2017	140	MOTION to Compel deposition testimony of Kenneth Birrell and Memorandum in Support filed by Plaintiff USA. (Attachments: # 1 Exhibit 231, # 2 Exhibit 370, # 3 Exhibit 409, # 4 Exhibit 410, # 5 Exhibit 411 excerpt, # 6 Exhibit 412 excerpt) Motions referred to Brooke C. Wells.(Gallagher, Erin) (Entered: 03/28/2017)
03/28/2017	141	ORDER granting 139 Motion to File Response to Motion to Compel Under Seal. Signed by Magistrate Judge Brooke C. Wells on 3/28/17 (alt) (Entered: 03/28/2017)
03/28/2017	142	Defendant's RESPONSE To United States' Request to Enter Onto Land For Inspection filed by International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Heideman, Justin) (Entered: 03/28/2017)
03/29/2017	143	MOTION to Compel Defendants Neldon Johnson, RaPower-3, LLC, International Automated Systems, Inc., and LTB1, LLC to answer certain interrogatories and Memorandum in Support filed by Plaintiff USA. (Attachments: # 1 Exhibit excerpts from Pl. Ex. 413 Neldon Johnson's Resp. to US 1st Interrogs., # 2 Exhibit excerpts from Pl. Ex. 414, Def. RaPower-3's Resp. to US 1st Set of Interrogs., # 3 Exhibit excerpts from Pl. Ex. 415, IAS's Resp. to US 1st Interrogs., # 4 Exhibit excerpts from Pl. Ex. 416, LTB1's Resp. to US 1st Interrogs.) Motions referred to Brooke C. Wells.(Gallagher, Erin) (Entered: 03/29/2017)
03/29/2017	144	MEMORANDUM in Opposition re 138 MOTION to Compel Todd Anderson to Produce Documents MOTION to Expedite resolution of motion filed by Movant Todd Anderson. (Attachments: # 1 Text of Proposed Order Order Denying United States' Motion to Compel Todd Anderson to Produce Documents)(Martin, Byron) (Entered: 03/29/2017)
03/30/2017	145	ORDER OF RECUSAL. Magistrate Judge Brooke C. Wells recused. Magistrate Referral reassigned to Magistrate Judge Evelyn J. Furse under 28:636(b)(1)(A) to hear and determine all nondispositive pretrial matters. Motions referred to Evelyn J. Furse. Case number is now 2:15cv00828 DN-EJF. Signed by Magistrate Judge Brooke C. Wells on 3/30/17 (alt) (Entered: 03/30/2017)
03/31/2017	146	RESPONSE to Motion re 140 MOTION to Compel deposition testimony of Kenneth Birrell and Memorandum in Support filed by Movant Kenneth Birrell. (Attachments: # 1 Text of Proposed Order) Attorney Christopher S. Hill added to party Kenneth Birrell(pty:mov)(Hill, Christopher) (Entered: 03/31/2017)
04/03/2017	147	RESPONSE to Motion re 137 SEALED MOTION to Compel Deposition Testimony of Cody Buck, Ken Oveson, and David Mantyla filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Heideman, Justin) (Entered: 04/03/2017)
04/03/2017	148	RESPONSE to Motion re 137 SEALED MOTION to Compel Deposition Testimony of Cody Buck, Ken Oveson, and David Mantyla <i>Short Form Response</i> filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Heideman, Justin) (Entered: 04/03/2017)
04/04/2017	149	NOTICE OF HEARING ON MOTION re: 143 MOTION to Compel Defendants Neldon Johnson, RaPower-3, LLC, International Automated Systems, Inc., and LTB1, LLC to answer certain interrogatories and Memorandum in Support , 138 MOTION to Compel Todd Anderson to Produce Documents MOTION to Expedite resolution of motion, 137 SEALED MOTION to Compel Deposition Testimony of Cody Buck, Ken Oveson, and David Mantyla, 140 MOTION to Compel deposition testimony of Kenneth

		Birrell and Memorandum in Support : (Notice generated by EJF Chambers) Motion Hearing set for 4/7/2017 at 02:00 PM in Rm 7.400 before Magistrate Judge Evelyn J. Furse. (lnp) (Entered: 04/04/2017)
04/04/2017	150	RESPONSE to Motion re 138 MOTION to Compel Todd Anderson to Produce Documents MOTION to Expedite resolution of motion filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Heideman, Justin) (Entered: 04/04/2017)
04/04/2017	151	RESPONSE to Motion re 140 MOTION to Compel deposition testimony of Kenneth Birrell and Memorandum in Support filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Heideman, Justin) (Entered: 04/04/2017)
04/05/2017	152	AMENDED NOTICE OF HEARING ON MOTIONS re: 143 MOTION to Compel Defendants Neldon Johnson, RaPower-3, LLC, International Automated Systems, Inc., and LTB1, LLC to answer certain interrogatories and Memorandum in Support , 138 MOTION to Compel Todd Anderson to Produce Documents MOTION to Expedite resolution of motion, 137 SEALED MOTION to Compel Deposition Testimony of Cody Buck, Ken Oveson, and David Mantyla, 140 MOTION to Compel deposition testimony of Kenneth Birrell and Memorandum in Support : (Notice generated by EJF Chambers) Motion Hearing reset for 4/12/2017 at 02:00 PM in Rm 7.400 before Magistrate Judge Evelyn J. Furse. PLEASE NOTE THE DATE CHANGE. THIS HEARING WILL BE IN PERSON. (lnp) (Entered: 04/05/2017)
04/12/2017	153	RESPONSE to Motion re 143 MOTION to Compel Defendants Neldon Johnson, RaPower-3, LLC, International Automated Systems, Inc., and LTB1, LLC to answer certain interrogatories and Memorandum in Support filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Heideman, Justin) (Entered: 04/12/2017)
04/12/2017	154	Minute Entry for proceedings held before Magistrate Judge Evelyn J. Furse: Motion Hearing held on 4/12/2017 re 140 MOTION to Compel deposition testimony of Kenneth Birrell and Memorandum in Support filed by USA, 143 MOTION to Compel Defendants Neldon Johnson, RaPower-3, LLC, International Automated Systems, Inc., and LTB1, LLC to answer certain interrogatories and Memorandum in Support filed by USA. Court hears argument from counsel and GRANTS IN PART 143 MOTION to Compel Defendants Neldon Johnson, RaPower-3, LLC, International Automated Systems, Inc., and LTB1, LLC. Court instructs Defendant to supplement responses within 21 days. Responses due by 5/3/2017. Court instructs Plaintiff's counsel to prepare and submit a proposed order. Court GRANTS IN PART 140 MOTION to Compel deposition testimony of Kenneth Birrell. Court orders depositions be taken on defendants on limited issue of assertion of right to counsel. The Court instructs the parties to meet and confer further. Court instructs Plaintiff's counsel to prepare and submit a proposed order. Court SEALS the remainder of the hearing from 6:48:09 PM - 8:12:16 PM. Attorney for Plaintiff: Erin Healy Gallagher, Attorney for Defendant: Justin D. Heideman, Christopher Hill, Donald S. Reay. Court Reporter: Electronic.(Time Start: 2:06:22, Time End: 6:48:09, Room 7.400.)(lnp) (Entered: 04/13/2017)
04/21/2017	156	ORDER granting in part and denying in part 143 Motion to Compel Defendants Neldon Johnson, RaPower-3, LLC, International Automated Systems, Inc., and LTB1, LLC to answer certain interrogatories. Signed by Magistrate Judge Evelyn J. Furse on 4/21/2017. (jwt) (Entered: 04/21/2017)
04/21/2017	157	RESPONSE OBJECTIONS re Proposed Order to 140 MOTION to Compel deposition testimony of Kenneth Birrell filed by International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Attachments: # 1 Text of Proposed Order)(Heideman, Justin)

		Modified on 4/25/2017: corrected entry text and linked to underlying motion to match actual filing (alt) (Entered: 04/21/2017)
04/21/2017	158	ORDER denying 90 Motion to Bifurcate; denying 94 Motion to Bifurcate. Signed by Judge David Nuffer on 4/21/2017. (jds) (Entered: 04/21/2017)
04/24/2017	159	Plaintiff's RESPONSE re 157 Objection re Proposed Order to 140 MOTION to Compel deposition testimony of Kenneth Birrell filed by USA. (Attachments: # 1 Text of Proposed Order re motion to compel deposition testimony of Kenneth Birrell)(Gallagher, Erin) Modified on 4/25/2017: corrected entry text to match actual filing and added link to underlying motion (alt) (Entered: 04/24/2017)
04/24/2017	160	ORDER granting in part 140 Motion to Compel Deposition Testimony of Kenneth Birrell. Signed by Magistrate Judge Evelyn J. Furse on 4/24/2017. (jds) (Entered: 04/24/2017)
04/24/2017	161	ORDER re 138 MOTION to Compel Todd Anderson to Produce Documents. The United States motion to compel Mr. Anderson to produce certain documents is DENIED WITHOUT PREJUDICE. Signed by Magistrate Judge Evelyn J. Furse on 4/24/2017. (jds) (Entered: 04/24/2017)
04/25/2017		Modification of Docket re 157 Response (NOT to motion), 159 Response (NOT to motion). Error: Document 157 is not a Response but an <u>Objection</u> to the proposed order related to 140 Motion.. Correction: Although the type of filing cannot be changed, the entry text will be corrected to show that it is an "Objection" and it will be linked to the underlying 140 Motion so that it shows on the docket report for that motion. Entry 159 , which is a Response to the Objection, will have its text corrected and a link created to 140 Motion so that it also appears on the motion report for that motion. (alt) (Entered: 04/25/2017)
05/05/2017	162	RESPONSE re 160 Order on Motion to Compel, filed by USA. (Attachments: # 1 Exhibit 1, # 2 Exhibit 23, # 3 Exhibit 231, # 4 Exhibit 283, # 5 Exhibit 353, # 6 Exhibit 370, # 7 Exhibit 411, # 8 Exhibit 412, # 9 Exhibit 449, # 10 Exhibit 450, # 11 Exhibit 451, # 12 Exhibit 452)(Gallagher, Erin) (Entered: 05/05/2017)
05/18/2017	163	MOTION to Compel Todd Anderson to produce documents and Memorandum in Support <i>renewed</i> filed by Plaintiff USA. (Attachments: # 1 Exhibit 1, # 2 Exhibit 23, # 3 Exhibit 283, # 4 Exhibit 353, # 5 Exhibit 411, # 6 Exhibit 412, # 7 Exhibit 449, # 8 Exhibit 450, # 9 Exhibit 451, # 10 Exhibit 452, # 11 Exhibit 454) Motions referred to Evelyn J. Furse.(Gallagher, Erin) (Entered: 05/18/2017)
05/19/2017	164	MOTION to Withdraw as Attorney and Memorandum in Support filed by Defendants International Automated Systems, Neldon Johnson, LTBI, RaPower-3. (Attachments: # 1 Exhibit Scheduling Order, # 2 Text of Proposed Order) Motions referred to Evelyn J. Furse.(Heideman, Justin) (Entered: 05/19/2017)
05/22/2017	165	MOTION for Extension of Time Respond to United States' Renewed Motion to Compel Production of Documents and Memorandum in Support filed by Movant Todd Anderson. (Attachments: # 1 Text of Proposed Order) Motions referred to Evelyn J. Furse.(Martin, Byron) (Entered: 05/22/2017)
05/22/2017	166	NOTICE of Appearance by Denver C. Snuffer, Jr on behalf of International Automated Systems, Neldon Johnson, LTBI, RaPower-3 (Snuffer, Denver) (Entered: 05/22/2017)
05/22/2017	167	NOTICE of Appearance by Daniel B. Garriott on behalf of International Automated Systems, Neldon Johnson, LTBI, RaPower-3 (Garriott, Daniel) (Entered: 05/22/2017)
05/22/2017	168	ORDER granting 164 Motion to Withdraw as Attorney. Attorney Justin D. Heideman withdrawn from case for International Automated Systems, Neldon Johnson, LTBI,

		RaPower-3. Signed by Magistrate Judge Evelyn J. Furse on 5/22/17 (alt) (Entered: 05/22/2017)
05/22/2017	169	NOTICE of Appearance by Steven R. Paul on behalf of International Automated Systems, Neldon Johnson, LTB1, RaPower-3 (Paul, Steven) (Entered: 05/22/2017)
05/22/2017	170	MOTION for Protective Order and Memorandum in Support filed by Plaintiff USA. (Attachments: # 1 Exhibit 455, # 2 Exhibit 456, # 3 Exhibit 457) Motions referred to Evelyn J. Furse.(Gallagher, Erin) (Entered: 05/22/2017)
05/23/2017	171	NOTICE OF HEARING ON MOTION re: 170 MOTION for Protective Order and Memorandum in Support : (Notice generated by EJF Chambers) Motion Hearing set for 6/15/2017 at 09:00 AM in Rm 8.400 before Magistrate Judge Evelyn J. Furse. OPPOSITION DUE 6/13/2017. (lnp) (Entered: 05/23/2017)
05/23/2017	172	ORDER granting 165 Motion for Extension of Time. Signed by Magistrate Judge Evelyn J. Furse on 5/23/17 (alt) (Entered: 05/23/2017)
05/26/2017	173	Defendant's MOTION to Strike and Memorandum in Support <i>under Rule 12(f)</i> filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. Motions referred to Evelyn J. Furse.(Snuffer, Denver) (Entered: 05/26/2017)
05/30/2017	174	Motions No Longer Referred: 173 Defendant's MOTION to Strike and Memorandum in Support <i>under Rule 12(f)</i> (jcw) (Entered: 05/30/2017)
05/30/2017	175	MEMORANDUM in Opposition re 163 MOTION to Compel Todd Anderson to produce documents and Memorandum in Support <i>renewed</i> filed by Movant Todd Anderson. (Martin, Byron) (Entered: 05/30/2017)
05/31/2017	176	MEMORANDUM in Opposition re 163 MOTION to Compel Todd Anderson to produce documents and Memorandum in Support <i>renewed</i> filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Garriott, Daniel) (Entered: 05/31/2017)
05/31/2017	177	MOTION to Quash Subpoena to IRS and Memorandum in Support filed by Plaintiff USA. (Attachments: # 1 Exhibit 488 - Notice of Intent to Subpoena and Subpoena Duces Tecum to IRS, # 2 Exhibit 453 - United States' Objections and Responses to Defendants' First Requests to Plaintiff United States, # 3 Exhibit 457 - United States' Supplemental Objections and Responses to Defendants' First Discovery Requests to Plaintiff United States, # 4 Exhibit 189 - Email correspondence produced by a third-party, # 5 Text of Proposed Order) Motions referred to Evelyn J. Furse.(Hines, Erin) (Entered: 05/31/2017)
06/01/2017	178	MOTION for Extension of Time to Complete Discovery and Memorandum in Support , MOTION to Expedite order on motion to take discovery out of time and Memorandum in Support filed by Plaintiff USA. (Attachments: # 1 Exhibit 457, # 2 Exhibit 484, # 3 Exhibit 485, # 4 Exhibit 486, # 5 Exhibit 487) Motions referred to Evelyn J. Furse. (Gallagher, Erin) (Entered: 06/01/2017)
06/01/2017	179	NOTICE OF HEARING ON MOTION re: 177 MOTION to Quash Subpoena to IRS and Memorandum in Support : (Notice generated by EJF Chambers) Motion Hearing set for 6/15/2017 at 09:00 AM in Rm 8.400 before Magistrate Judge Evelyn J. Furse. OPPOSITION DUE 6/13/2017. (lnp) (Entered: 06/01/2017)
06/05/2017	180	MEMORANDUM in Opposition re 170 MOTION for Protective Order and Memorandum in Support filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Paul, Steven) (Entered: 06/05/2017)
06/05/2017	181	NOTICE OF HEARING ON MOTIONS re: 178 MOTION for Extension of Time to Complete Discovery and Memorandum in Support MOTION to Expedite order on

		motion to take discovery out of time and Memorandum in Support , 163 MOTION to Compel Todd Anderson to produce documents and Memorandum in Support <i>renewed</i> : (Notice generated by EJF Chambers) Motion Hearing set for 6/15/2017 at 09:00 AM in Rm 8.400 before Magistrate Judge Evelyn J. Furse. (lnp) (Entered: 06/05/2017)
06/07/2017	182	MOTION to Continue Hearing on United States' Renewed Motion to Compel Todd Anderson to Produce Documents filed by Movant Todd Anderson. Motions referred to Evelyn J. Furse.(Martin, Byron) (Entered: 06/07/2017)
06/07/2017	183	MOTION to Continue Hearing on United States' Renewed Motion to Compel Todd Anderson to Produce Documents filed by Movant Todd Anderson. (Attachments: # 1 Text of Proposed Order Proposed Order) Motions referred to Evelyn J. Furse.(Martin, Byron) (Entered: 06/07/2017)
06/08/2017	184	MEMORANDUM in Opposition re 173 Defendant's MOTION to Strike and Memorandum in Support <i>under Rule 12(f)</i> filed by Plaintiff USA. (Attachments: # 1 Exhibit 10, # 2 Exhibit 504, # 3 Exhibit 505)(Gallagher, Erin) (Entered: 06/08/2017)
06/08/2017	185	RESPONSE to Motion re 183 MOTION to Continue Hearing on United States' Renewed Motion to Compel Todd Anderson to Produce Documents filed by Plaintiff USA. (Gallagher, Erin) (Entered: 06/08/2017)
06/08/2017	186	RESPONSE to Motion re 173 Defendant's MOTION to Strike and Memorandum in Support <i>under Rule 12(f) and Joinder to Motion</i> filed by Defendants Roger Freeborn, R. Gregory Shepard. (Reay, Donald) (Entered: 06/08/2017)
06/08/2017	187	RESPONSE to Motion re 173 Defendant's MOTION to Strike and Memorandum in Support <i>under Rule 12(f) and Joinder to Motion</i> filed by Defendants Roger Freeborn, R. Gregory Shepard. (Reay, Donald) (Entered: 06/08/2017)
06/08/2017	188	RESPONSE to Motion re 173 Defendant's MOTION to Strike and Memorandum in Support <i>under Rule 12(f) and Joinder to Motion</i> filed by Defendants Roger Freeborn, R. Gregory Shepard. (Reay, Donald) (Entered: 06/08/2017)
06/08/2017	189	DOCKET TEXT ORDER re 183 MOTION to Continue Hearing on United States' Renewed Motion to Compel Todd Anderson to Produce Documents filed by Todd Anderson, 182 MOTION to Continue Hearing on United States' Renewed Motion to Compel Todd Anderson to Produce Documents filed by Todd Anderson. Opposition Due 6/9/17. Signed by Magistrate Judge Evelyn J. Furse on 6/8/17. (brm) (Entered: 06/08/2017)
06/08/2017	190	RESPONSE to Motion re 183 MOTION to Continue Hearing on United States' Renewed Motion to Compel Todd Anderson to Produce Documents , 182 MOTION to Continue Hearing on United States' Renewed Motion to Compel Todd Anderson to Produce Documents <i>AND "NON-OPPOSITION" THERETO</i> filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Paul, Steven) (Entered: 06/08/2017)
06/09/2017	191	REPLY to Response to Motion re 183 MOTION to Continue Hearing on United States' Renewed Motion to Compel Todd Anderson to Produce Documents filed by Movant Todd Anderson. (Martin, Byron) (Entered: 06/09/2017)
06/09/2017	192	DOCKET TEXT ORDER granting 182 Motion to Continue; granting 183 Motion to Continue. Signed by Magistrate Judge Evelyn J. Furse on 6/9/2017. No attached document. (lnp) (Entered: 06/09/2017)
06/09/2017	193	NOTICE OF HEARING ON MOTION re: 163 MOTION to Compel Todd Anderson to produce documents and Memorandum in Support <i>renewed</i> : (Notice generated by EJF

		Chambers) Motion Hearing set for 6/23/2017 at 04:00 PM in Rm 8.400 before Magistrate Judge Evelyn J. Furse. (lnp) (Entered: 06/09/2017)
06/13/2017	194	NOTICE of Withdrawal of Subpoena to IRS by International Automated Systems, Neldon Johnson, LTb1, RaPower-3 re 177 MOTION to Quash Subpoena to IRS and Memorandum in Support (Paul, Steven) (Entered: 06/13/2017)
06/14/2017		NOTICE VACATING 177 Motion to Quash hearing set for 6/15/2017 at 9:00 AM before Judge Evelyn J. Furse (Notice generated by EJJ Chambers). Motion has been withdrawn. (lnp) (Entered: 06/14/2017)
06/15/2017	195	Minute Entry for proceedings held before Magistrate Judge Evelyn J. Furse: Motion Hearing held on 6/15/2017 re 170 MOTION for Protective Order and Memorandum in Support filed by USA, 178 MOTION for Extension of Time to Complete Discovery and Memorandum in Support MOTION to Expedite order on motion to take discovery out of time and Memorandum in Support filed by USA. Court hears argument from counsel and GRANTS 170 MOTION for Protective Order and GRANTS 178 MOTION for Extension of Time to Complete Discovery. Counsel makes a stipulated oral motion for extension of time to extend the scheduling order dates. Court GRANTS the oral motion and instructs plaintiff's counsel to prepare and submit a proposed order. Attorney for Plaintiff: Erin Hines, Christopher Moran, Attorney for Defendant: Denver C. Snuffer, Jr., Steven R. Paul, Donald S. Reay. Court Reporter: Electronic.(Time Start: 9:01:46, Time End: 10:02:11, Room 8.400.)(lnp) (Entered: 06/15/2017)
06/16/2017	196	ORDER granting 170 Motion for Protective Order: Defendants shall not depose any representative of the USDOJ Tax Division. Signed by Magistrate Judge Evelyn J. Furse on 6/15/17 (alt) (Entered: 06/16/2017)
06/16/2017	197	ORDER granting 178 Motion for Extension of Time to Take Certain Discovery Out of Time. Signed by Magistrate Judge Evelyn J. Furse on 6/15/17 (alt) (Entered: 06/16/2017)
06/23/2017	198	REPLY to Response to Motion re 173 Defendant's MOTION to Strike and Memorandum in Support <i>under Rule 12(f)</i> filed by Defendants International Automated Systems, Neldon Johnson, LTb1, RaPower-3. (Garriott, Daniel) (Entered: 06/23/2017)
06/23/2017	199	REPLY to Response to Motion re 173 Defendant's MOTION to Strike and Memorandum in Support <i>under Rule 12(f)</i> JOINDER filed by Defendants Roger Freeborn, R. Gregory Shepard. (Reay, Donald) (Entered: 06/23/2017)
06/23/2017	200	Minute Order. Proceedings held before Magistrate Judge Evelyn J. Furse: Motion Hearing held on 6/23/2017 re 163 MOTION to Compel Todd Anderson to produce documents and Memorandum in Support <i>renewed</i> filed by USA. Court hears argument from counsel and GRANTS 163 and GRANTS 140 MOTION to Compel Todd Anderson to produce documents and GRANTS MOTION to Compel deposition testimony of Kenneth Birrell. Court instructs counsel to prepare and submit proposed orders. Attorney for Plaintiff: Erin Healy Gallagher, Attorney for Defendant Steven R. Paul. Attorney for Movant: Byron Martin for Movant Todd Anderson. Attorney for Movant: Christopher S. Hill for Movant Kenneth Birrell. Court Reporter: Electronic.(Time Start: 4:04:05, Time End: 4:25:19, Room 8.400.)(lnp) (Entered: 06/23/2017)
06/26/2017	201	REQUEST to Submit for Decision re 173 Defendant's MOTION to Strike and Memorandum in Support <i>under Rule 12(f)</i> filed by Defendants International Automated Systems, Neldon Johnson, LTb1, RaPower-3. (Paul, Steven) (Entered: 06/26/2017)
06/27/2017	202	MEMORANDUM DECISION AND ORDER denying 173 12(f) Motion to Strike. Signed by Judge David Nuffer on 6/27/17 (alt) (Entered: 06/27/2017)
06/29/2017	203	ORDER granting 140 Motion to Compel Deposition Testimony of Kenneth Birrell.

Signed by Magistrate Judge Evelyn J. Furse on 6/29/17 (alt) (Entered: 06/29/2017)

07/03/2017	204	OBJECTIONS to <i>United States' Proposed Order</i> to 163 MOTION to Compel Todd Anderson to produce documents and Memorandum in Support <i>renewed to United States' Proposed Order</i> filed by Todd Anderson. (Attachments: # 1 Text of Proposed Order, # 2 Text of Proposed Order)(Martin, Byron) (Entered: 07/03/2017)
07/06/2017	205	AMENDED SCHEDULING ORDER following 6/15/2017 hearing: Discovery due by 11/3/2017. Motions due by 11/17/2017. Final Pretrial Conference set for 4/2/2018 at 02:30 PM in Rm 3.100 before Judge David Nuffer. 10 Day Bench Trial set for 4/16/2018 at 08:00 AM in Rm 3.100 before Judge David Nuffer. Signed by Magistrate Judge Evelyn J. Furse on 7/6/2017. (jds) (Entered: 07/06/2017)
07/06/2017	206	ORDER granting 163 Motion to Compel Todd Anderson to Produce Certain Documents. Signed by Magistrate Judge Evelyn J. Furse on 7/6/17 (alt) (Entered: 07/06/2017)
07/07/2017	207	NOTICE of Todd Anderson's Response to Subpeona for Records by International Automated Systems, Neldon Johnson, LTB1, RaPower-3 re 206 Order on Motion to Compel (Paul, Steven) (Entered: 07/07/2017)
07/18/2017	208	REQUEST to Submit for Decision re 136 Notice of Conventional Filing filed by Plaintiff USA. (Moran, Christopher) (Entered: 07/18/2017)
07/21/2017	209	ORDER SEALED granting 137 Sealed Motion to compel deposition testimony of Certified Public Accountants (CPAs) Cody Buck, Ken Oveson, and David Mantyla. Signed by Magistrate Judge Evelyn J. Furse on 7/19/2017. (Attachments: # 1 Mailing Certificate) (jds) Modified on 10/20/2017; Unsealed per 233 Order (jds). (Entered: 07/21/2017)
08/17/2017	210	MOTION to Compel production of documents and Memorandum in Support , MOTION to Expedite and Memorandum in Support filed by Plaintiff USA. (Attachments: # 1 Exhibit 568, # 2 Exhibit 569, # 3 Exhibit 570, # 4 Exhibit 571, # 5 Exhibit 572, # 6 Exhibit 573 (excerpts), # 7 Exhibit 574 (excerpts), # 8 Exhibit 575 (excerpts), # 9 Exhibit 576 (excerpts), # 10 Exhibit 577) Motions referred to Evelyn J. Furse.(Gallagher, Erin) (Entered: 08/17/2017)
08/17/2017	211	MOTION to Withdraw as Attorney and Memorandum in Support <i>for Defendants Freeborn and Shepard</i> filed by Defendants Roger Freeborn, R. Gregory Shepard. (Attachments: # 1 Text of Proposed Order on Motion to Withdraw) Motions referred to Evelyn J. Furse.(Reay, Donald) (Entered: 08/17/2017)
08/18/2017	212	NOTICE OF HEARING ON MOTION re: 210 MOTION to Compel production of documents and Memorandum in Support MOTION to Expedite and Memorandum in Support : (Notice generated by EJP Chambers) Motion Hearing set for 8/25/2017 at 10:30 AM in Rm 7.400 before Magistrate Judge Evelyn J. Furse. (lnp) (Entered: 08/18/2017)
08/21/2017	213	MOTION for Extension of Time to Complete Discovery and Memorandum in Support , MOTION to Expedite order on motion to depose Jessica Anderson out of time and Memorandum in Support filed by Plaintiff USA. (Attachments: # 1 Exhibit 23, # 2 Exhibit 480, # 3 Exhibit 570, # 4 Exhibit 571, # 5 Exhibit 572, # 6 Exhibit 574, # 7 Exhibit 575, # 8 Exhibit 576, # 9 Exhibit 578, # 10 Exhibit 579, # 11 Exhibit 580, # 12 Exhibit 581, # 13 Exhibit 582) Motions referred to Evelyn J. Furse.(Gallagher, Erin) (Entered: 08/21/2017)
08/22/2017	214	AMENDED NOTICE OF HEARING ON MOTIONS re: 210 MOTION to Compel production of documents and Memorandum in Support MOTION to Expedite and Memorandum in Support , 213 MOTION for Extension of Time to Complete Discovery

		and Memorandum in Support MOTION to Expedite order on motion to depose Jessica Anderson out of time and Memorandum in Support , 211 MOTION to Withdraw as Attorney and Memorandum in Support for Defendants Freeborn and Shepard : (Notice generated by EJF Chambers) Motion Hearing set for 8/29/2017 at 02:00 PM in Rm 7.400 before Magistrate Judge Evelyn J. Furse. PLEASE NOTE THE DATE AND TIME CHANGE AND THE ADDITION OF MOTIONS 211 AND 213 . (Inp) (Entered: 08/22/2017)
08/24/2017		NOTICE VACATING HEARING ON MOTION RE: 211 MOTION to Withdraw as Attorney and Memorandum in Support for Defendants Freeborn and Shepard set for 8/29/2017 at 2:00 PM before Judge Evelyn J. Furse (Notice generated by EJF Chambers) (Inp) (Entered: 08/24/2017)
08/25/2017	215	MEMORANDUM in Opposition re 213 MOTION for Extension of Time to Complete Discovery and Memorandum in Support MOTION to Expedite order on motion to depose Jessica Anderson out of time and Memorandum in Support filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Attachments: # 1 Exhibit Anderson Letter)(Paul, Steven) (Entered: 08/25/2017)
08/29/2017	217	Minute Entry for proceedings held before Magistrate Judge Evelyn J. Furse: Motion Hearing held on 8/29/2017 re 210 MOTION to Compel production of documents and Memorandum in Support MOTION to Expedite and Memorandum in Support filed by USA, 213 MOTION for Extension of Time to Complete Discovery and Memorandum in Support MOTION to Expedite order on motion to depose Jessica Anderson out of time and Memorandum in Support filed by USA. Court hears argument from counsel and GRANTS 210 MOTION to Compel production of documents and GRANTS 213 MOTION for Extension of Time to Complete Discovery. Court instructs Government counsel to prepare and submit proposed orders for the two motions. Attorney for Plaintiff: Erin Healy Gallagher, Christopher Moran, Attorney for Defendant: Steven R. Paul. Court Reporter: Electronic.(Time Start: 2:05:44, Time End: 3:55:16, Room 7.400.) (Inp) (Entered: 08/31/2017)
08/30/2017	216	ORDER granting 211 Motion to Withdraw as Attorney. Attorney Donald S. Reay withdrawn from case for R. Gregory Shepard and Roger Freeborn. Signed by Magistrate Judge Evelyn J. Furse on 8/29/17 (alt) (Entered: 08/30/2017)
09/13/2017	218	ORDER granting 210 Motion to Compel Production of Documents. Signed by Magistrate Judge Evelyn J. Furse on 9/12/17 (alt) (Entered: 09/13/2017)
09/13/2017	219	ORDER granting 213 Motion for Extension of Time to Complete Discovery/Depose Jessica Anderson Out of Time. Signed by Magistrate Judge Evelyn J. Furse on 9/12/17 (alt) (Entered: 09/13/2017)
09/15/2017	220	DESIGNATION OF EXPERTS Kurt O. Hawes, JD, MBA and Certificate of Service of Expert Report of Kurt O. Hawes filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3.(Paul, Steven) (Entered: 09/15/2017)
09/15/2017	221	DESIGNATION OF EXPERTS Neldon P. Johnson and Certificate of Service of Expert Report of Neldon P. Johnson filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3.(Paul, Steven) (Entered: 09/15/2017)
09/27/2017	222	NOTICE of Appearance by Steven R. Paul on behalf of Roger Freeborn, R. Gregory Shepard (Paul, Steven) (Entered: 09/27/2017)
09/27/2017	223	NOTICE of Appearance by Daniel B. Garriott on behalf of Roger Freeborn, R. Gregory Shepard (Garriott, Daniel) (Entered: 09/27/2017)
09/27/2017	224	NOTICE of Appearance by Denver C. Snuffer, Jr on behalf of Roger Freeborn, R.

		Gregory Shepard (Snuffer, Denver) (Entered: 09/27/2017)
09/28/2017	225	DESIGNATION OF EXPERTS Richard Jameson <i>and Certificate of Service of Expert Report</i> filed by Defendants Roger Freeborn, R. Gregory Shepard.(Paul, Steven) (Entered: 09/28/2017)
10/11/2017	226	MOTION for Sanctions and Memorandum in Support , MOTION to Expedite order on motion for sanctions and Memorandum in Support filed by Plaintiff USA. Motions referred to Evelyn J. Furse.(Gallagher, Erin) (Entered: 10/11/2017)
10/11/2017	227	NOTICE OF HEARING ON MOTION re: 226 MOTION for Sanctions and Memorandum in Support MOTION to Expedite order on motion for sanctions and Memorandum in Support : (Notice generated by EJF Chambers) Motion Hearing set for 10/23/2017 at 03:30 PM in Rm 7.100 before Magistrate Judge Evelyn J. Furse. (Inp) (Entered: 10/11/2017)
10/12/2017	228	MOTION to Unseal Document 137 SEALED MOTION to Compel Deposition Testimony of Cody Buck, Ken Oveson, and David Mantyla filed by USA and Memorandum in Support <i>and Doc. No. 209 (Court's Order)</i> filed by Plaintiff USA. (Attachments: # 1 Exhibit Pl. Ex. 660, Letter of 8/16/2017 to Defendants' counsel, # 2 Exhibit Pl. Ex. 661, Letter of 9/7/2017 to Eric Benson, # 3 Exhibit Pl. Ex. 662, Letter of 9/15/2017 from Eric Benson, to counsel for the United States, # 4 Exhibit PL. Ex. 663, Email Correspondence between Eric Benson and Christopher Moran) Motions referred to Evelyn J. Furse.(Moran, Christopher) (Entered: 10/12/2017)
10/18/2017	229	MOTION for Extension of Time to Complete Discovery and Memorandum in Support filed by Plaintiff USA. (Attachments: # 1 Exhibit 664, # 2 Exhibit 665, # 3 Exhibit 666, # 4 Exhibit 667) Motions referred to Evelyn J. Furse.(Gallagher, Erin) (Entered: 10/18/2017)
10/19/2017	230	DOCKET TEXT ORDER Any opposition to United States' Motion to Depose Richard Jameson Out of Time 229 shall be filed by 9:00am Monday, October 23, 2017. No attached document. Signed by Magistrate Judge Evelyn J. Furse on 10/19/2017. (nas) (Entered: 10/19/2017)
10/20/2017	231	RESPONSE to Motion re 226 MOTION for Sanctions and Memorandum in Support MOTION to Expedite order on motion for sanctions and Memorandum in Support filed by Defendants Roger Freeborn, International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Paul, Steven) (Entered: 10/20/2017)
10/20/2017	232	MEMORANDUM in Opposition re 229 MOTION for Extension of Time to Complete Discovery and Memorandum in Support filed by Defendants Roger Freeborn, International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Attachments: # 1 Exhibit Cover Page of Jameson Deposition, # 2 Exhibit Excerpt from Jameson Expert Report, # 3 Exhibit Jameson Deposition Word Index Excerpt)(Paul, Steven) (Entered: 10/20/2017)
10/20/2017	233	ORDER granting 228 Motion to Unseal Document 209 Order on Sealed Motion and 137 SEALED MOTION to Compel Deposition Testimony of Cody Buck, Ken Oveson, and David Mantyla. Signed by Magistrate Judge Evelyn J. Furse on 10/20/2017. (jds) (Entered: 10/20/2017)
10/20/2017		NOTICE of Unsealing Documents 137 Motion to Compel and 209 Order granting the Motion to Compel per 233 ORDER. (jds) (Entered: 10/20/2017)
10/23/2017	234	Minute Order. Proceedings held before Magistrate Judge Evelyn J. Furse: Motion Hearing held on 10/23/2017 re 226 MOTION for Sanctions and Memorandum in Support MOTION to Expedite order on motion for sanctions and Memorandum in Support filed

		by USA, 229 MOTION for Extension of Time to Complete Discovery and Memorandum in Support filed by USA. Court hears argument from counsel. Plaintiff's counsel submits exhibits. Court seals a portion of the exhibits presented. After hearing argument from counsel, the Court TAKES UNDER ADVISEMENT 226 Motion for Sanctions/ 226 Motion to Expedite and also TAKES UNDER ADVISEMENT 229 Motion for Extension of Time to Complete Discovery. Court to issue written orders. Attorney for Plaintiff: Erin Healy Gallagher, Attorney for Defendant Steven R. Paul. Court Reporter: Electronic. (Time Start: 3:37:15, Time End: 5:10:59, Room 7.100.) (lnp) (Entered: 10/23/2017)
10/25/2017	235	ORDER GRANTING 226 Expedited Motion for Sanctions. Signed by Magistrate Judge Evelyn J. Furse on 10/25/2017. (nas) (Entered: 10/25/2017)
10/25/2017	236	ORDER GRANTING 229 Motion to Depose Richard Jameson Out of Time. Signed by Magistrate Judge Evelyn J. Furse on 10/25/2017. (nas) (Entered: 10/25/2017)
10/26/2017		Modification of Docket re 209 Order on Sealed Motion. Correction: Document has been unsealed per 233 Order. (alt) (Entered: 10/26/2017)
11/01/2017	237	CERTIFICATE OF SERVICE by Roger Freeborn, International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard re 235 Order on Motion for Sanctions, Order on Motion to Expedite (Paul, Steven) (Entered: 11/01/2017)
11/01/2017	238	OBJECTION TO MAGISTRATE JUDGE DECISION to District Court by International Automated Systems, Neldon Johnson, LTB1, RaPower-3 re 235 Order on Motion for Sanctions, Order on Motion to Expedite (Paul, Steven) (Entered: 11/01/2017)
11/01/2017	239	MOTION to Stay re 235 Order on Motion for Sanctions, Order on Motion to Expedite and Memorandum in Support filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. Motions referred to Evelyn J. Furse.(Paul, Steven) (Entered: 11/01/2017)
11/01/2017	240	AFFIDAVIT/DECLARATION of Neldon Johnson in Support re 239 MOTION to Stay re 235 Order on Motion for Sanctions, Order on Motion to Expedite and Memorandum in Support filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Attachments: # 1 Exhibit Email Threat of Lawsuit)(Paul, Steven) (Entered: 11/01/2017)
11/02/2017	241	DOCKET TEXT ORDER GRANTING 239 Motion to Stay. Enforcement of the Order Granting Plaintiff's Expedited Motion for Sanctions 235 is stayed pending review of Defendants' Objection to the Order 238 by Judge Nuffer. Signed by Magistrate Judge Evelyn J. Furse on 11/2/2017. (nas) (Entered: 11/02/2017)
11/02/2017	242	**SEALED EXHIBITS** re 234 Motion Hearing held on 10/23/2017 re 226 MOTION for Sanctions. (Attachments: # 1 Plaintiff's Exhibit 613 , # 2 Plaintiff's Exhibits 668 , # 3 Plaintiff's Exhibits 669)(lnp) (Entered: 11/02/2017)
11/02/2017	243	EXHIBIT 181 filed by USA re 234 Motion Hearing held on 10/23/2017 re 226 MOTION for Sanctions.(lnp) (Entered: 11/02/2017)
11/02/2017	244	EXHIBIT 659 filed by USA re 242 Sealed Document and 234 Motion Hearing held on 10/23/2017 re 226 MOTION for Sanctions.(lnp) (Entered: 11/02/2017)
11/02/2017	245	EXHIBIT 668 filed by USA re 242 Sealed Document and 234 Motion Hearing held on 10/23/2017 re 226 MOTION for Sanctions. (lnp) (Entered: 11/02/2017)
11/02/2017	246	EXHIBIT 669 filed by USA re 242 Sealed Document and 234 Motion Hearing held on 10/23/2017 re 226 MOTION for Sanctions. (lnp) (Entered: 11/02/2017)
11/14/2017	247	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Hearing for Sanctions and

Extension of Time to Complete Discovery held on October 23, 2017 before Judge Evelyn J. Furse. Court Reporter/Transcriber Karen Murakami, Telephone number 801-328-4800.

NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 business days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. To redact additional information a Motion to Redact must be filed. The policy and forms are located on the court's website at www.utd.uscourts.gov. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.

Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/5/2017. Redacted Transcript Deadline set for 12/15/2017. Release of Transcript Restriction set for 2/12/2018. (las) Modified on 2/12/2018 by removing restricted text (las). (Entered: 11/14/2017)

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MOTION in Limine and Memorandum in Support to Exclude "Expert" Testimony of Kurt Hawes and Richard Jameson filed by Plaintiff USA. (Attachments: # [1](#) Exhibit Pl. Ex. 1, # [2](#) Exhibit Pl. Ex. 20, # [3](#) Exhibit Pl. Ex. 24, # [4](#) Exhibit Pl. Ex. 25, # [5](#) Exhibit Pl. Ex. 40, # [6](#) Exhibit Pl. Ex. 78, # [7](#) Exhibit Pl. Ex. 112, # [8](#) Exhibit Pl. Ex. 163, # [9](#) Exhibit Pl. Ex. 214, # [10](#) Exhibit Pl. Ex. 216, # [11](#) Exhibit Pl. Ex. 244, # [12](#) Exhibit Pl. Ex. 282, # [13](#) Exhibit Pl. Ex. 492, # [14](#) Exhibit Pl. Ex. 518, # [15](#) Exhibit Pl. Ex. 520, # [16](#) Exhibit Pl. Ex. 625, # [17](#) Exhibit Pl. Ex. 631, # [18](#) Exhibit Pl. Ex. 632, # [19](#) Exhibit Pl. Ex. 637, # [20](#) Exhibit Pl. Ex. 638, # [21](#) Exhibit Pl. Ex. 639, # [22](#) Exhibit Pl. Ex. 640, # [23](#) Exhibit Pl. Ex. 641, # [24](#) Exhibit Pl. Ex. 651 (Part 1), Kurt Hawes' Expert Report, # [25](#) Exhibit Pl. Ex. 651 (Part 2), Kurt Hawes' Expert Report, # [26](#) Exhibit Pl. Ex. 659, Richard Jameson's Expert Report, # [27](#) Exhibit Pl. Ex. 666, Deposition of Richard Jameson, # [28](#) Exhibit Pl. Ex. 670, # [29](#) Exhibit Pl. Ex. 671, # [30](#) Exhibit Pl. Ex. 672, Deposition of Kurt Hawes, # [31](#) Exhibit Pl. Ex. 673, Deposition of LTB1, LLC, # [32](#) Exhibit Pl. Ex. 674, # [33](#) Text of Proposed Order)(Moran, Christopher) (Entered: 11/17/2017)

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MOTION in Limine and Memorandum in Support to Exclude "Expert" Testimony of Neldon Johnson filed by Plaintiff USA. (Attachments: # [1](#) Exhibit Pl. Ex. 1, # [2](#) Exhibit Pl. Ex. 24, # [3](#) Exhibit Pl. Ex. 25, # [4](#) Exhibit Pl. Ex. 40, # [5](#) Exhibit Pl. Ex. 214, # [6](#) Exhibit Pl. Ex. 216, # [7](#) Exhibit Pl. Ex. 492, # [8](#) Exhibit Pl. Ex. 507, # [9](#) Exhibit Pl. Ex. 520, # [10](#) Exhibit Pl. Ex. 579, Deposition of Neldon Johnson, volume 1, # [11](#) Exhibit Pl. Ex. 643, Neldon Johnson's Expert Report, # [12](#) Exhibit Pl. Ex. 646, # [13](#) Exhibit Pl. Ex. 647, # [14](#) Exhibit Pl. Ex. 648, # [15](#) Exhibit Pl. Ex. 649, # [16](#) Exhibit Pl. Ex. 650, # [17](#) Exhibit Pl. Ex. 673, # [18](#) Exhibit Pl. Ex. 674, # [19](#) Exhibit Pl. Ex. 681, Deposition of Neldon Johnson, volume 2, # [20](#) Text of Proposed Order)(Hines, Erin) (Entered: 11/17/2017)

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MOTION for Partial Summary Judgment and Memorandum in Support filed by Plaintiff USA. (Attachments: # [1](#) Text of Proposed Order)(Gallagher, Erin) Modified on 11/20/2017: corrected motion relief (alt) (Entered: 11/17/2017)

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MOTION to Appoint Receiver and Memorandum in Support to Freeze Assets of Defendants Neldon Johnson, RaPower-3, and International Automated Systems filed by Plaintiff USA. (Attachments: # [1](#) Exhibit Pl. Ex. 1, # [2](#) Exhibit Pl. Ex. 2, # [3](#) Exhibit Pl. Ex. 24, # [4](#) Exhibit Pl. Ex. 25, # [5](#) Exhibit Pl. Ex. 32, # [6](#) Exhibit Pl. Ex. 40, # [7](#) Exhibit Pl. Ex. 93, # [8](#) Exhibit Pl. Ex. 125, # [9](#) Exhibit Pl. Ex. 214, # [10](#) Exhibit Pl. Ex. 216, # [11](#) Exhibit Pl. Ex. 246, # [12](#) Exhibit Pl. Ex. 279, # [13](#) Exhibit Pl. Ex. 294, # [14](#) Exhibit Pl. Ex. 492, # [15](#) Exhibit Pl. Ex. 496, # [16](#) Exhibit Pl. Ex. 511, # [17](#) Exhibit Pl. Ex. 520, # [18](#)

		Exhibit Pl. Ex. 531, # 19 Exhibit Pl. Ex. 532, # 20 Exhibit Pl. Ex. 579, # 21 Exhibit Pl. Ex. 581, # 22 Exhibit Pl. Ex. 646, # 23 Exhibit Pl. Ex. 647, # 24 Exhibit Pl. Ex. 648, # 25 Exhibit Pl. Ex. 649, # 26 Exhibit Pl. Ex. 650, # 27 Exhibit Pl. Ex. 666, # 28 Exhibit Pl. Ex. 673, # 29 Exhibit Pl. Ex. 674, # 30 Exhibit Pl. Ex. 677, # 31 Exhibit Pl. Ex. 681, # 32 Exhibit Pl. Ex. 682, # 33 Exhibit Pl. Ex. 683, # 34 Exhibit Pl. Ex. 684, # 35 Text of Proposed Order) Motions referred to Evelyn J. Furse.(Hines, Erin) Modified on 11/20/2017: corrected text (alt) (Entered: 11/17/2017)
11/17/2017	253	Defendant's MOTION in Limine and Memorandum in Support to <i>Strike Expert Report and Exclude Testimony of Thomas Mancini</i> filed by Defendants International Automated Systems, Neldon Johnson, RaPower-3. (Attachments: # 1 Exhibit Expert Report of Thomas Mancini, # 2 Exhibit Deposition of Thomas Mancini)(Snuffer, Denver) Modified on 11/20/2017: corrected text (alt) (Entered: 11/17/2017)
11/17/2017	254	APPENDIX to 251 MOTION for Summary Judgment and Memorandum in Support <i>partial</i> filed by Plaintiff USA <i>vol. 1</i> . (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 8A, # 4 Exhibit 16, # 5 Exhibit 17, # 6 Exhibit 19, # 7 Exhibit 20, # 8 Exhibit 24, # 9 Exhibit 25, # 10 Exhibit 32, # 11 Exhibit 34, # 12 Exhibit 40, # 13 Exhibit 43, # 14 Exhibit 48, # 15 Exhibit 49, # 16 Exhibit 54, # 17 Exhibit 61, # 18 Exhibit 70, # 19 Exhibit 72, # 20 Exhibit 77, # 21 Exhibit 80, # 22 Exhibit 85, # 23 Exhibit 88, # 24 Exhibit 91, # 25 Exhibit 93, # 26 Exhibit 94, # 27 Exhibit 95, # 28 Exhibit 109, # 29 Exhibit 112, # 30 Exhibit 114, # 31 Exhibit 119, # 32 Exhibit 121, # 33 Exhibit 125, # 34 Exhibit 141, # 35 Exhibit 157, # 36 Exhibit 158, # 37 Exhibit 159, # 38 Exhibit 174, # 39 Exhibit 181, # 40 Exhibit 185, # 41 Exhibit 186, # 42 Exhibit 188, # 43 Exhibit 189, # 44 Exhibit 204, # 45 Exhibit 207, # 46 Exhibit 213, # 47 Exhibit 214, # 48 Exhibit 216, # 49 Exhibit 217, # 50 Exhibit 218)(Gallagher, Erin) (Entered: 11/17/2017)
11/17/2017	255	APPENDIX to 251 MOTION for Summary Judgment and Memorandum in Support <i>partial</i> filed by Plaintiff USA <i>vol. 2</i> . (Attachments: # 1 Exhibit 220, # 2 Exhibit 237, # 3 Exhibit 246, # 4 Exhibit 249, # 5 Exhibit 260, # 6 Exhibit 267, # 7 Exhibit 270, # 8 Exhibit 279, # 9 Exhibit 282, # 10 Exhibit 292, # 11 Exhibit 294, # 12 Exhibit 297, # 13 Exhibit 323, # 14 Exhibit 340, # 15 Exhibit 341, # 16 Exhibit 348, # 17 Exhibit 352, # 18 Exhibit 383, # 19 Exhibit 412, # 20 Exhibit 419, # 21 Exhibit 420, # 22 Exhibit 424, # 23 Exhibit 425, # 24 Exhibit 426, # 25 Exhibit 439, # 26 Exhibit 441, # 27 Exhibit 459, # 28 Exhibit 460, # 29 Exhibit 462, # 30 Exhibit 463, # 31 Exhibit 464, # 32 Exhibit 465, # 33 Exhibit 468, # 34 Exhibit 469, # 35 Exhibit 470, # 36 Exhibit 471, # 37 Exhibit 473, # 38 Exhibit 474, # 39 Exhibit 481, # 40 Exhibit 490, # 41 Exhibit 491, # 42 Exhibit 492, # 43 Exhibit 493, # 44 Exhibit 496, # 45 Exhibit 497, # 46 Exhibit 498, # 47 Exhibit 499, # 48 Exhibit 500, # 49 Exhibit 501, # 50 Exhibit 502)(Gallagher, Erin) (Entered: 11/17/2017)
11/17/2017	256	APPENDIX to 251 MOTION for Summary Judgment and Memorandum in Support <i>partial</i> filed by Plaintiff USA <i>vol. 3</i> . (Attachments: # 1 Exhibit 503, # 2 Exhibit 504, # 3 Exhibit 509, # 4 Exhibit 511, # 5 Exhibit 512, # 6 Exhibit 520, # 7 Exhibit 531, # 8 Exhibit 532, # 9 Exhibit 533, # 10 Exhibit 535, # 11 Exhibit 539, # 12 Exhibit 557, # 13 Exhibit 558, # 14 Exhibit 579, # 15 Exhibit 581, # 16 Exhibit 666, # 17 Exhibit 673, # 18 Exhibit 674, # 19 Exhibit 676, # 20 Exhibit 677, # 21 Exhibit 678, # 22 Exhibit 679, # 23 Exhibit 680, # 24 Exhibit 681, # 25 Exhibit 682, # 26 Exhibit 683, # 27 Exhibit 685, # 28 Exhibit 686, # 29 Exhibit 687, # 30 Exhibit 688, # 31 Exhibit 689, # 32 Exhibit 690, # 33 Exhibit 693, # 34 Exhibit 694, # 35 Exhibit 695, # 36 Exhibit 696, # 37 Exhibit 697) (Gallagher, Erin) (Entered: 11/17/2017)
11/17/2017	257	Defendant's MOTION to Dismiss and Memorandum in Support filed by Defendants International Automated Systems, Neldon Johnson, RaPower-3. (Attachments: # 1 Affidavit Declaration of Paul W. Jones (With Exhibits))(Snuffer, Denver) (Entered: 11/17/2017)

11/20/2017	258	Motions No Longer Referred: 252 MOTION to Appoint Receiver and Memorandum in Support <i>To Freeze Assets of Defendants Neldon Johnson, RaPower-3, LLC, and International Automated Systems, Inc.</i> District Judge to handle the Motion. (lnp) (Entered: 11/20/2017)
11/22/2017	259	MOTION for Extension of Time to File Response/Reply as to 252 MOTION to Appoint Receiver <i>to Freeze Assets of Dfts Neldon Johnson, RaPower-3, and International Automated Systems</i> , 251 MOTION for Partial Summary Judgment, 249 MOTION in Limine <i>to Exclude "Expert" Testimony of Kurt Hawes and Richard Jameson</i> , 250 MOTION in Limine <i>to Exclude "Expert" Testimony of Neldon Johnson</i> and Memorandum in Support filed by Defendants Roger Freeborn, International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Attachments: # 1 Exhibit Notice of Filing Doc. 249, # 2 Exhibit Notice of Filing Doc. 250, # 3 Exhibit Notice of Filing Doc. 251, 254,255,256, # 4 Exhibit Notice of Filing Doc. 252) Motions referred to Evelyn J. Furse.(Paul, Steven) (Entered: 11/22/2017)
11/27/2017	260	MEMORANDUM in Opposition re 259 MOTION for Extension of Time to File Response/Reply as to 252 MOTION to Appoint Receiver <i>to Freeze Assets of Dfts Neldon Johnson, RaPower-3, and International Automated Systems</i> , 251 MOTION for Partial Summary Judgment, 249 MOTION filed by Plaintiff USA. (Attachments: # 1 Exhibit 698)(Gallagher, Erin) (Entered: 11/27/2017)
11/27/2017	261	ORDER granting in part and denying in part 259 Motion for Extension of Time to File Response/Reply re 252 MOTION to Appoint Receiver <i>to Freeze Assets of Dfts Neldon Johnson, RaPower-3, and International Automated Systems</i>, 253 Defendant's MOTION in Limine <i>to Strike Expert Report and Exclude Testimony of Thomas Mancini</i>, 250 MOTION in Limine <i>to Exclude "Expert" Testimony of Neldon Johnson</i>, 257 Defendant's MOTION to Dismiss, 249 MOTION in Limine <i>to Exclude "Expert" Testimony of Kurt Hawes and Richard Jameson</i>, 251 MOTION for Partial Summary Judgment: Responses due by 12/17/2017; Replies due by 1/12/2018. Signed by Judge David Nuffer on 11/27/17 (alt) (Entered: 11/27/2017)
12/15/2017	262	MEMORANDUM in Opposition re 257 Defendant's MOTION to Dismiss filed by Plaintiff USA. (Gallagher, Erin) (Entered: 12/15/2017)
12/15/2017	263	MEMORANDUM in Opposition re 253 Defendant's MOTION in Limine <i>to Strike Expert Report and Exclude Testimony of Thomas Mancini</i> filed by Plaintiff USA. (Attachments: # 1 Exhibit Pl. Ex. 15, # 2 Exhibit Pl. Ex. 699, # 3 Exhibit Pl. Ex. 700, # 4 Exhibit Defs. Ex. 1005, # 5 Exhibit Defs. Ex. 1006)(Gallagher, Erin) (Entered: 12/15/2017)
12/17/2017	264	Defendant's RESPONSE to Motion re 249 MOTION in Limine <i>to Exclude "Expert" Testimony of Kurt Hawes and Richard Jameson</i> filed by Defendants Roger Freeborn, International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Snuffer, Denver) (Entered: 12/17/2017)
12/17/2017	265	Defendant's MEMORANDUM in Opposition re 251 MOTION for Partial Summary Judgment filed by Defendants Roger Freeborn, International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Attachments: # 1 Exhibit List of N. Johnson Patents, # 2 Exhibit Excerpts from Dep. of Thomas R. Mancini, # 3 Exhibit Excerpts from Dep. of RaPower3, # 4 Exhibit Excerpts from Dep. Todd F. Anderson, # 5 Exhibit Anderson Letter, # 6 Exhibit Excerpts from Dep. Jessica Anderson, # 7 Exhibit Excerpts from Dep. of Kenneth W. Birrell, # 8 Exhibit Excerpts from Dep. IAS Inc., # 9 Exhibit Plaintiff's Exhibit 466, # 10 Exhibit Plaintiff's Exhibit 363)(Snuffer, Denver) (Entered: 12/17/2017)
12/17/2017	266	Defendant's AFFIDAVIT/DECLARATION of Neldon Johnson in Opposition re 251 MOTION for Partial Summary Judgment filed by Defendants Roger Freeborn,

		International Automated Systems, Neldon Johnson, LTBI, RaPower-3, R. Gregory Shepard. (Snuffer, Denver) (Entered: 12/17/2017)
12/17/2017	267	NOTICE of Death of Roger Freeborn by Roger Freeborn (Snuffer, Denver) (Entered: 12/17/2017)
12/17/2017	268	Defendant's MEMORANDUM in Opposition re 252 MOTION to Appoint Receiver to Freeze Assets of Dfts Neldon Johnson, RaPower-3, and International Automated Systems filed by Defendants Roger Freeborn, International Automated Systems, Neldon Johnson, LTBI, RaPower-3, R. Gregory Shepard. (Attachments: # 1 Exhibit 2013 Dept. of Energy Renewable Energy Data Book)(Snuffer, Denver) (Entered: 12/17/2017)
12/17/2017	269	Defendant's MEMORANDUM in Opposition re 250 MOTION in Limine to Exclude "Expert" Testimony of Neldon Johnson filed by Defendants Roger Freeborn, International Automated Systems, Neldon Johnson, LTBI, RaPower-3, R. Gregory Shepard. (Attachments: # 1 Exhibit List of Patents of N. Johnson)(Snuffer, Denver) (Entered: 12/17/2017)
01/08/2018	270	Motions No Longer Referred: 252 MOTION to Appoint Receiver to Freeze Assets of Dfts Neldon Johnson, RaPower-3, and International Automated Systems (ms) (Entered: 01/08/2018)
01/12/2018	271	Plaintiff's REPLY to Response to Motion re 249 MOTION in Limine to Exclude "Expert" Testimony of Kurt Hawes and Richard Jameson filed by Plaintiff USA. (Moran, Christopher) (Entered: 01/12/2018)
01/12/2018	272	Defendant's REPLY to Response to Motion re 253 Defendant's MOTION in Limine to Strike Expert Report and Exclude Testimony of Thomas Mancini filed by Defendants Roger Freeborn, International Automated Systems, Neldon Johnson, LTBI, RaPower-3, R. Gregory Shepard. (Attachments: # 1 Exhibit Expert Witness [Dr. Tom Mancini] Statement of Work)(Snuffer, Denver) (Entered: 01/12/2018)
01/12/2018	273	Defendant's REPLY to Response to Motion re 257 Defendant's MOTION to Dismiss filed by Defendants Roger Freeborn, International Automated Systems, Neldon Johnson, LTBI, RaPower-3, R. Gregory Shepard. (Snuffer, Denver) Modified on 1/12/2018: removed unnecessary text (alt) (Entered: 01/12/2018)
01/12/2018	274	Plaintiff's REPLY to Response to Motion re 250 MOTION in Limine to Exclude "Expert" Testimony of Neldon Johnson filed by Plaintiff USA. (Hines, Erin) (Entered: 01/12/2018)
01/12/2018	275	NOTICE OF FILING of Exhibit List re 250 MOTION in Limine to Exclude "Expert" Testimony of Neldon Johnson filed by Plaintiff USA. (Hines, Erin) (Entered: 01/12/2018)
01/12/2018	276	NOTICE OF FILING of of Exhibit List re 249 MOTION in Limine to Exclude "Expert" Testimony of Kurt Hawes and Richard Jameson filed by Plaintiff USA. (Moran, Christopher) (Entered: 01/12/2018)
01/12/2018	277	REPLY to Response to Motion re 251 MOTION for Partial Summary Judgment filed by Plaintiff USA. (Attachments: # 1 Exhibit Exhibit List, # 2 Exhibit Pl. Ex. 23A, # 3 Exhibit Pl. Ex. 355, # 4 Exhibit Pl. Ex. 358, # 5 Exhibit Pl. Ex. 361, # 6 Exhibit Pl. Ex. 362, # 7 Exhibit Pl. Ex. 364, # 8 Exhibit Pl. Ex. 479, # 9 Exhibit Pl. Ex. 548, # 10 Exhibit Pl. Ex. 580, # 11 Exhibit Pl. Ex. 703, # 12 Exhibit Pl. Ex. 704)(Gallagher, Erin) (Entered: 01/12/2018)
01/12/2018	278	Plaintiff's REPLY to Response to Motion re 252 MOTION to Appoint Receiver to Freeze Assets of Dfts Neldon Johnson, RaPower-3, and International Automated Systems filed by Plaintiff USA. (Hines, Erin) (Entered: 01/12/2018)
01/12/2018	279	RESPONSE re 265 Memorandum in Opposition to Motion, re Evidentiary Objections

		filed by USA. (Attachments: # 1 Exhibit Pl. Ex. 701, United States' Notice of Witness Depositions (including Frank Lunn), # 2 Exhibit Pl. Ex. 702, United States' Notice of Witness Depositions (including Robert Aulds))(Gallagher, Erin) Modified on 1/12/2018: corrected text (alt) (Entered: 01/12/2018)
01/22/2018		Deadlines/Hearings terminated. Past-due deadlines terminated to make the hearing/deadlines report up-to-date. (asb) (Entered: 01/22/2018)
01/22/2018	280	DOCKET TEXT ORDER denying 253 Defendant's Motion in Limine. For the reasons set forth in Plaintiffs Opposition 263 , Defendants motion is DENIED. Counsel for Plaintiff is directed to prepare and submit a proposed Order denying the Motion. Signed by Judge David Nuffer on 01/22/2018. No attached document. (ms) (Entered: 01/22/2018)
01/22/2018	281	DOCKET TEXT ORDER denying 257 Defendant's Motion to Dismiss. For the reasons set forth in Plaintiffs Memorandum in Opposition 260 , Defendants motion is DENIED. Counsel for Plaintiff is directed to prepare and submit a proposed Order. The proposed Order should contain detailed reasoning and citations of legal authority. Signed by Judge David Nuffer on 01/22/2018. No attached document. (ms) (Entered: 01/22/2018)
01/22/2018	282	DOCKET TEXT ORDER deferring ruling on 249 Motion in Limine; deferring ruling on 250 Motion in Limine. Plaintiff's Motions in Limine will be reserved until trial. The experts should prepare to testify. Signed by Judge David Nuffer on 01/22/2018. No attached document. (ms) (Entered: 01/22/2018)
01/24/2018	283	MEMORANDUM DECISION AND ORDER overruling objection and affirming Magistrate Judge's 235 Order on 226 Motion for Sanctions. Signed by Judge David Nuffer on 1/24/18 (alt) (Entered: 01/24/2018)
01/25/2018	284	AMENDED SCHEDULING ORDER: Final Pretrial Conference set for 3/19/2018 at 09:00 AM in Rm 3.100 before Judge David Nuffer. 10 Day Bench Trial set to begin 4/2/2018 at 08:00 AM in Rm 3.100 before Judge David Nuffer. Dates of 10 Day Bench Trial: April 2, 3, 4, 5, 19, 20, 23, 24; May 9; and June 4. Signed by Judge David Nuffer on 01/25/2018. (ms) (Entered: 01/25/2018)
01/26/2018		Set/Reset Hearings: Final Pretrial Conference set for 3/19/2018 at 09:00 AM in Rm 3.100 before Judge David Nuffer. 10-Day Bench Trial set for 4/2/2018 4/3/2018 4/4/2018 4/5/2018 4/19/2018 04/20/2018 4/23/2018 4/24/2018 5/9/2018 6/4/2018 at 08:00 AM in Rm 3.100 before Judge David Nuffer. (asb) (Entered: 01/26/2018)
01/31/2018	285	OBJECTIONS to 281 Order on Motion to Dismiss, filed by Neldon Johnson, LTBI, RaPower-3, R. Gregory Shepard. (Attachments: # 1 Text of Proposed Order)(Paul, Steven) (Entered: 01/31/2018)
01/31/2018	286	OBJECTIONS to 280 Order on Motion in Limine, filed by International Automated Systems, Neldon Johnson, LTBI, RaPower-3, R. Gregory Shepard. (Attachments: # 1 Text of Proposed Order)(Paul, Steven) (Entered: 01/31/2018)
02/05/2018	287	AMENDED SCHEDULING ORDER: Final Pretrial Conference set for 3/19/2018 at 09:00 AM in Rm 3.100 before Judge David Nuffer. 10 Day Bench Trial set to begin 4/2/2018 at 08:00 AM in Rm 3.100 before Judge David Nuffer. Dates of 10 Day Bench Trial: April 2, 3, 4, 5, 19, 20, 23, 24, 25, 26; and if necessary May 9; and June 4. Signed by Judge David Nuffer on 02/05/2018. (ms) (Entered: 02/05/2018)
02/07/2018	288	TRIAL ORDER with instructions to counsel: Final Pretrial Conference set for 3/19/2018 at 09:00 AM in Rm 3.100 before Judge David Nuffer. 10-Day Bench Trial set to begin

02/09/2018	289	MOTION in Limine to Reinstate Trial by Jury and Memorandum in Support filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Paul, Steven) Modified on 3/7/2018: corrected motion relief (alt) (Entered: 02/09/2018)
02/13/2018	290	MOTION for Attorney Fees and Memorandum in Support <i>re Motions to Compel</i> filed by Plaintiff USA. (Attachments: # 1 Exhibit Pl. Ex. 382, USA Notice of Oveson, Buck, Mantyla Depositions, # 2 Exhibit Pl. Ex. 712, Itemized Expenses, # 3 Text of Proposed Order) Motions referred to Evelyn J. Furse.(Moran, Christopher) Modified on 2/27/2018: removed excess text (alt) (Entered: 02/13/2018)
02/20/2018	291	DOCKET TEXT ORDER taking under advisement 289 Motion in Limine. Response to Defendants' Motion in Limine shall be due on or before February 26, 2018. Signed by Judge David Nuffer on 02/20/2018. Docket Text Only. No attached document. (ms) (Entered: 02/20/2018)
02/20/2018	292	MOTION for Leave to File Excess Pages and Memorandum in Support filed by Plaintiff USA. (Attachments: # 1 Text of Proposed Order) Motions referred to Evelyn J. Furse. (Gallagher, Erin) (Entered: 02/20/2018)
02/20/2018	293	ORDER granting 292 Motion for Leave to File Excess Pages. Signed by Magistrate Judge Evelyn J. Furse on 2/20/2018. (blh) (Entered: 02/20/2018)
02/23/2018	294	Proposed Exhibit List <i>Defendants' Pretrial Disclosures</i> by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard.. (Garriott, Daniel) (Entered: 02/23/2018)
02/23/2018	295	OBJECTIONS filed by International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Garriott, Daniel) (Entered: 02/23/2018)
02/23/2018	296	OBJECTIONS filed by International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Garriott, Daniel) (Entered: 02/23/2018)
02/26/2018	297	NOTICE OF FILING of United States' Deposition Designations for Robert Aulds filed by Plaintiff USA. (Attachments: # 1 Exhibit Pl. Ex. 687, United States' Deposition Designations for Robert Aulds)(Moran, Christopher) (Entered: 02/26/2018)
02/26/2018	298	NOTICE OF FILING of United States' Deposition Designations for Roger Freeborn filed by Plaintiff USA. (Attachments: # 1 Exhibit Pl. Ex. 688 United States' Deposition Designations for Roger Freeborn)(Moran, Christopher) (Entered: 02/26/2018)
02/26/2018	299	NOTICE OF FILING of United States' Deposition Designations for Peter Gregg filed by Plaintiff USA. (Attachments: # 1 Exhibit Pl. Ex. 689, United States' Deposition Designations for Peter Gregg)(Moran, Christopher) (Entered: 02/26/2018)
02/26/2018	300	NOTICE OF FILING of United States' Deposition Designations of Roger Halvorsen filed by Plaintiff USA. (Attachments: # 1 Exhibit Pl. Ex. 690, United States' Deposition Designations of Roger Halvorsen)(Moran, Christopher) (Entered: 02/26/2018)
02/26/2018	301	NOTICE OF FILING of United States' Deposition Designations of John Howell filed by Plaintiff USA. (Attachments: # 1 Exhibit Pl. Ex. 683, United States' Deposition Designations of John Howell)(Moran, Christopher) (Entered: 02/26/2018)
02/26/2018	302	NOTICE OF FILING of United States' Deposition Designations for Neldon Johnson filed by Plaintiff USA. (Attachments: # 1 Exhibit Pl. Ex. 579, United States' Deposition Designations of Neldon Johnson (VOL. I), # 2 Exhibit Pl. Ex. 581, United States'

		Deposition of International Automated Systems (Neldon Johnson, designee), # 3 Exhibit Pl. Ex. 673, United States' Deposition Designations of LTB1, LLC (Neldon Johnson, designee), # 4 Exhibit Pl. Ex. 681, United States' Deposition Designations of Neldon Johnson (VOL. II), # 5 Exhibit Pl. Ex. 682, United States' Deposition Designations of RaPower-3, LLC (Neldon Johnson, designee))(Moran, Christopher) (Entered: 02/26/2018)
02/26/2018	303	NOTICE OF FILING of United States' Deposition Designations for Frank Lunn filed by Plaintiff USA. (Attachments: # 1 Exhibit Pl. Ex. 693, United States' Deposition Designations for Frank Lunn)(Moran, Christopher) (Entered: 02/26/2018)
02/26/2018	304	NOTICE OF FILING of United States' Deposition Designations for PacifiCorp filed by Plaintiff USA. (Attachments: # 1 Exhibit Pl. Ex. 713, United States' Deposition Designations for PacifiCorp)(Moran, Christopher) (Entered: 02/26/2018)
02/26/2018	305	NOTICE OF FILING of United States' Deposition Designations for Mike Penn filed by Plaintiff USA. (Attachments: # 1 Exhibit Pl. Ex. 448, Deposition Designations for Mike Penn)(Moran, Christopher) (Entered: 02/26/2018)
02/26/2018	306	NOTICE OF FILING of United States' Deposition Designations for R. Gregory Shepard filed by Plaintiff USA. (Attachments: # 1 Exhibit Pl. Ex. 685, United States' Deposition Designations for R. Gregory Shepard)(Moran, Christopher) (Entered: 02/26/2018)
02/26/2018	307	NOTICE OF FILING of United States' Deposition Designations for Brian Zeleznik filed by Plaintiff USA. (Attachments: # 1 Exhibit Pl. Ex. 697, United States' Deposition Designations for Brian Zeleznik)(Moran, Christopher) (Entered: 02/26/2018)
02/26/2018	308	MOTION for Leave to File pretrial disclosures nunc pro tunc and Memorandum in Support <i>unopposed</i> filed by Plaintiff USA. (Attachments: # 1 Text of Proposed Order) Motions referred to Evelyn J. Furse.(Gallagher, Erin) (Entered: 02/26/2018)
02/26/2018	309	MEMORANDUM in Opposition re 289 MOTION in Limine and Memorandum in Support <i>to Reinstate Trial by Jury</i> filed by Plaintiff USA. (Attachments: # 1 Exhibit Exhibit List, # 2 Exhibit 777)(Gallagher, Erin) (Entered: 02/26/2018)
02/27/2018	310	WRITTEN ORDER following 280 Docket Text Order of 1/22/18 denying 253 Motion in Limine. Signed by Judge David Nuffer on 2/27/18 (alt) (Entered: 02/27/2018)
02/27/2018	311	WRITTEN ORDER following 281 Docket Text Order of 1/22/18 denying 257 Motion to Dismiss. Signed by Judge David Nuffer on 2/27/18 (alt) (Entered: 02/27/2018)
02/27/2018	312	ORDER granting 308 Motion for Leave to File Pretrial Disclosures Nunc Pro Tunc. Signed by Magistrate Judge Evelyn J. Furse on 2/27/18 (alt) (Entered: 02/27/2018)
02/27/2018	313	MEMORANDUM in Opposition re 290 MOTION for Attorney Fees <i>re Motions to Compel</i> filed by Respondent Heideman & Associates. (Attachments: # 1 Exhibit Exhibit 1_Birrell, Kenneth W. mini, # 2 Exhibit Exhibit 2-Buck, Cody Michael-mini, # 3 Exhibit Exhibit 3_Oveson, Kenneth Wayne -mini, # 4 Exhibit Exhibit 4_Mantyla, David - mini) (Heideman, Justin) (Entered: 02/27/2018)
02/28/2018	314	Proposed Witness List by USA. (Hines, Erin) (Entered: 02/28/2018)
02/28/2018	315	Proposed Exhibit List by Plaintiff USA.. (Hines, Erin) (Entered: 02/28/2018)
02/28/2018	316	NOTICE OF FILING of Pretrial Disclosure <i>re: Deposition Designations</i> filed by Plaintiff USA. (Hines, Erin) (Entered: 02/28/2018)
03/01/2018	317	OBJECTIONS to 290 MOTION for Attorney Fees <i>re Motions to Compel</i> filed by Roger Freeborn, International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Snuffer, Denver) (Entered: 03/01/2018)

03/02/2018	318	MEMORANDUM DECISION AND ORDER denying 251 Motion for Partial Summary Judgment; denying without prejudice 252 Motion to Appoint Receiver. Signed by Judge David Nuffer on 3/2/18 (alt) (Entered: 03/02/2018)
03/05/2018	319	Defendant's MOTION in Limine and Memorandum in Support <i>Excluding Testimony Regarding Damages Relating to Disgorgement of Funds</i> filed by Defendants Roger Freeborn, International Automated Systems, Neldon Johnson, LTb1, RaPower-3, R. Gregory Shepard. (Snuffer, Denver) (Entered: 03/05/2018)
03/05/2018	320	ERRATA to 319 Defendant's MOTION in Limine and Memorandum in Support <i>Excluding Testimony Regarding Damages Relating to Disgorgement of Funds</i> filed by Defendants Roger Freeborn, International Automated Systems, Neldon Johnson, LTb1, RaPower-3, R. Gregory Shepard . (Attachments: # 1 Exhibit Plaintiff's Exhibit 752, # 2 Exhibit Plaintiff's Exhibit 734, # 3 Exhibit Plaintiff's Exhibit 750)(Snuffer, Denver) (Entered: 03/05/2018)
03/07/2018	321	<u>AMENDED NOTICE OF HEARING:</u> Final Pretrial Conference reset for Monday, 3/19/2018 at 08:30 AM in Rm 3.100 before Judge David Nuffer. (time change only) (asb) (Entered: 03/07/2018)
03/07/2018		NOTICE OF ERROR/CORRECTION re 289 MOTION to Reinstate Trial by Jury. Error: Filer selected wrong motion relief - motion is not seeking 'In Limine' relief. Correction: The motion relief has been corrected to "Miscellaneous Relief" and entry text corrected. (alt) (Entered: 03/07/2018)
03/07/2018	322	MEMORANDUM DECISION AND ORDER denying 289 Motion to Reinstate Trial by Jury. Signed by Judge David Nuffer on 3/7/18 (alt) (Entered: 03/07/2018)
03/08/2018	323	DOCKET TEXT ORDER taking under advisement 319 Motion in Limine. Response is due Monday, March 12, 2018. Signed by Judge David Nuffer on 3/8/2018. Docket text only. No attached document. (ms) (Entered: 03/08/2018)
03/08/2018	324	Docket Text Order - The briefing on the demand for jury trial has revealed a wide range of possibilities for measurement and proof of a disgorgement amount. If the Motion in Limine 319 is not granted, the parties must submit briefs on or before noon March 26, 2018 on those issues. Specifically, the parties must provide legal authority for (1) measuring disgorgement by the amount of (a) taxes avoided by investors in Defendant RaPower; (b) gross profit of RaPower; (c) net profit of RaPower; (d) income of individual defendants from RaPower; or any other measure, and (2) who, in the event net profit is a proper measure, bears the burden of proof on expenses RaPower incurred in its business. Docket text only. No attachment. Signed by Judge David Nuffer on 3/8/2018. (ms) (Entered: 03/08/2018)
03/08/2018	325	Defendant's MOTION Rule 60(a) Oversight, Request to File Reply to Doc. 309 (Plaintiff's Opposition to Reinstate Jury re 322 Order on Motion for Miscellaneous Relief, Memorandum Decision and Memorandum in Support filed by Defendants Roger Freeborn, International Automated Systems, Neldon Johnson, LTb1, RaPower-3, R. Gregory Shepard. Motions referred to Evelyn J. Furse.(Snuffer, Denver) (Entered: 03/08/2018)
03/08/2018	326	Defendant's REPLY to Response to Motion re 289 MOTION to Reinstate Trial by Jury filed by Defendants Roger Freeborn, International Automated Systems, Neldon Johnson, LTb1, RaPower-3, R. Gregory Shepard. (Snuffer, Denver) (Entered: 03/08/2018)
03/09/2018	327	NOTICE OF FILING of United States' Objections and Counter-Designations to Defendants' Deposition Counter-Designations re 294 Exhibit List(Proposed) filed by

		Plaintiff USA. (Hines, Erin) (Entered: 03/09/2018)
03/09/2018	328	OBJECTIONS to 294 Exhibit List(Proposed) filed by USA. (Attachments: # 1 Exhibit 411 excerpts, # 2 Exhibit 449, # 3 Exhibit 450, # 4 Exhibit 451, # 5 Exhibit 452, # 6 Exhibit 453 excerpts, # 7 Exhibit 644 excerpts, # 8 Exhibit 789 excerpts)(Gallagher, Erin) (Entered: 03/09/2018)
03/09/2018	329	Redacted OBJECTIONS to 296 Objections filed by USA. (Attachments: # 1 Exhibit Pl. Ex. 742-A, # 2 Exhibit Pl. Ex. 742-B, # 3 Exhibit Pl. Ex. 782, # 4 Exhibit Pl. Ex. 783, # 5 Exhibit Pl. Ex. 784, # 6 Exhibit Pl. Ex. 785, # 7 Exhibit Pl. Ex. 786, # 8 Exhibit Pl. Ex. 787, # 9 Exhibit Pl. Ex. 788)(Moran, Christopher) Modified on 3/9/2018: added "Redacted" to text (alt) (Entered: 03/09/2018)
03/09/2018	330	MOTION for Leave to File Sealed Document re 329 Objections, filed by Plaintiff USA. Motions referred to Evelyn J. Furse.(Moran, Christopher) (Entered: 03/09/2018)
03/09/2018	331	**SEALED DOCUMENT** SEALED EXHIBITS 742-A and 742-B TO 329 Objections, filed by Plaintiff USA NOTE: Filer is instructed to serve the sealed document on all other parties.. (Attachments: # 1 Exhibit Pl. Ex. 742-A, # 2 Exhibit Pl. Ex. 742-B)(Moran, Christopher) Modified on 3/14/2018: updated text (alt) (Entered: 03/09/2018)
03/12/2018	332	MEMORANDUM in Opposition re 319 Defendant's MOTION in Limine <i>Excluding Testimony Regarding Damages Relating to Disgorgement of Funds</i> filed by Plaintiff USA. (Attachments: # 1 Exhibit Pl. Ex. 666-A, # 2 Exhibit Pl. Ex. 683-A, # 3 Supplement (unpublished case, SEC v. Razmilovic, Case No. CV-04-2276 (E.D. NY), Doc. No. 194)(Moran, Christopher) (Entered: 03/12/2018)
03/12/2018	333	DOCKET TEXT ORDER GRANTING 330 Motion for Leave to File Sealed Document. Signed by Magistrate Judge Evelyn J. Furse on 3/12/2018. No attached document. (nas) (Entered: 03/12/2018)
03/12/2018	334	Proposed Findings of Fact by USA. (Gallagher, Erin) (Entered: 03/12/2018)
03/12/2018	335	Proposed Findings of Fact by Roger Freeborn, International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Paul, Steven) (Entered: 03/12/2018)
03/13/2018	336	MEMORANDUM DECISION and ORDER granting 325 Motion Defendants' Rule 60(a) Request for Relief Based on Oversight and confirming Order Denying Trial by Jury. The 10-day bench trial will begin April 2nd as previously scheduled. Signed by Judge David Nuffer on 3/13/2018. (blh) (Entered: 03/13/2018)
03/13/2018	337	Defendant's REPLY to Response to Motion re 319 Defendant's MOTION in Limine <i>Excluding Testimony Regarding Damages Relating to Disgorgement of Funds</i> filed by Defendants Roger Freeborn, International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Attachments: # 1 Exhibit Plaintiff's Initial Rule 26 Disclosures)(Snuffer, Denver) (Entered: 03/13/2018)
03/14/2018	338	MEMORANDUM DECISION AND ORDER denying 319 Motion in Limine Excluding Testimony Regarding Damages Relating to Disgorgement of Funds. Parties to submit briefs on measurement and proof of a disgorgement amount on or before noon, 3/26/18. Signed by Judge David Nuffer on 3/14/18 (alt) (Entered: 03/14/2018)
03/15/2018	339	Defendant's MOTION for Leave to Appeal DEFENDANTS' MOTION TO CERTIFY AND AMEND THE ORDER DENYING DEFENDANTS MOTION TO REINSTATE TRIAL BY JURY and Memorandum in Support filed by Defendants Roger Freeborn, International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. Motions referred to Evelyn J. Furse.(Snuffer, Denver) (Entered: 03/15/2018)

03/15/2018	340	DOCKET TEXT ORDER denying 339 Motion for Leave to Appeal. There is no "substantial ground for difference of opinion." Further, due to the proximity of trial, "an immediate appeal " would clearly not "materially advance the ultimate termination of the litigation." It would delay this case even more. Also, defendants failed to articulate a reason why the Memorandum and Decision Order Denying Motion to Reinstate Jury Trial 322 and Memorandum Decision and Order Granting Defendants Rule 60(a) Request 336 qualifies for immediate appeal under the collateral order doctrine, specifically why this issue would be effectively unreviewable on appeal from a final judgment. An Order Denying Motion to Reinstate Jury Trial can be adequately reviewed on appeal from a final judgment. Signed by Judge David Nuffer on 3/15/2018. Docket text only. No attached document. (ms) (Entered: 03/15/2018)
03/16/2018	341	NOTICE of Appearance by Joshua D. Egan on behalf of International Automated Systems, Neldon Johnson, LTB1, RaPower-3 (Egan, Joshua) (Entered: 03/16/2018)
03/19/2018	342	Minute Entry for proceedings held before Judge David Nuffer: Final Pretrial Conference held on 3/19/2018, Counsel present for parties. Discussion heard on preparations for trial. Court ordered Terri Eppich, to be available for a 3 hour deposition, Lemar Roulhac to be available for a 4 hour deposition. Court overruled the defendants objections to plaintiffs 12 fact witnesses. Deposition designations due 3/26/2018. Government to file a motion re: sealing exhibits by 3/20/2018, response to due 3/23/2018 - limited to 3 pages. Mr. Snuffer to file motion re: depositions by noon, 3/21/2018, limited to 5 pages. No response necessary, unless ordered by the court. Defendant Freeborn, deceased, is dismissed as a party. Mr. Snuffer requested a site visit during trial. Court made no decision on the request. Trial will begin each day at 8:30 a.m., with the first week to end around 4:00 p.m Status Conference set for 3/29/2018 at 01:30 PM in Rm 3.100 before Judge David Nuffer. Court adjourned.. Attorney for Plaintiff: Erin Healy Gallagher, Erin Hines, Christopher Moran, Attorney for Defendant: Denver Snuffer, Steven Paul, Daniel Garriott. Court Reporter: Becky Janke. (Time Start: 8:28, Time End: 10:05, Room 3.100.)(asb) (Entered: 03/19/2018)
03/19/2018	343	MOTION Modify Trial Subpoena and Memorandum in Support filed by Movant Todd Anderson. (Attachments: # 1 Exhibit A - Declaration of Todd Anderson) Motions referred to Evelyn J. Furse.(Martin, Byron) (Entered: 03/19/2018)
03/19/2018	344	DOCKET TEXT ORDER taking under advisement 343 Motion Modify Trial Subpoena. The parties may submit a response to this Motion by Thursday, March 22, 2018. Signed by Judge David Nuffer on 03/19/18. Docket text only. No attached document. (ms) (Entered: 03/19/2018)
03/20/2018	345	MOTION to Unseal Document 331 Sealed Document, filed by USA, 246 Exhibits filed by USA, 245 Exhibits filed by USA and Memorandum in Support filed by Plaintiff USA. (Attachments: # 1 Text of Proposed Order) Motions referred to Evelyn J. Furse. (Gallagher, Erin) (Entered: 03/20/2018)
03/20/2018		Set Hearings: 10-Day Bench Trial set for 4/2/2018, 4/3/2018, 4/4/2018, 4/5/2018, 4/19/2018, 4/20/2018, 4/23/2018, 4/24/2018, 4/25/2018, 4/26/2018, 5/9/2018, 6/4/2018 at 08:30 AM in Rm 3.100 before Judge David Nuffer. (time change from 8:00 a.m. to 8:30 a.m.)(asb) (Entered: 03/20/2018)
03/21/2018	346	Motions No Longer Referred: 345 MOTION to Unseal Document 331 Sealed Document, filed by USA, 246 Exhibits filed by USA, 245 Exhibits filed by USA and Memorandum

		In Support , 249 MOTION in Limine to Exclude "Expert" Testimony of Kurt Hawes and Richard Jameson, 343 MOTION Modify Trial Subpoena and Memorandum in Support , 290 MOTION for Attorney Fees re Motions to Compel, 250 MOTION in Limine to Exclude "Expert" Testimony of Neldon Johnson (asb) (Entered: 03/21/2018)
03/21/2018	347	Memorandum to Exclude Deposition Testimony in Lieu of Live Witnesses BRIEF re 342 Pretrial Conference - Final,,,,,, Set Hearings,,,,, filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Garriott, Daniel) (Entered: 03/21/2018)
03/22/2018	348	MEMORANDUM in Opposition re 343 MOTION Modify Trial Subpoena and Memorandum in Support re: <i>Todd and Jessica Anderson Trial Subpoenas</i> filed by Plaintiff USA. (Hines, Erin) (Entered: 03/22/2018)
03/23/2018	349	Defendant's RESPONSE to Motion re 343 MOTION Modify Trial Subpoena and Memorandum in Support filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Paul, Steven) (Entered: 03/23/2018)
03/26/2018	350	DOCKET TEXT ORDER DENYING 343 Motion to Modify Trial Subpoena. The Parties are directed to notify the Andersons of a date certain for their testimony. The Andersons may have the option of not testifying on the same day. Docket Text Only. No attached document. Signed by Judge David Nuffer on 03/26/2018.(ms) (Entered: 03/26/2018)
03/26/2018	351	Disgorgement Issues BRIEF filed by Plaintiff USA. (Attachments: # 1 Exhibit Exhibit List, # 2 Exhibit 25, # 3 Exhibit 38, # 4 Exhibit 40, # 5 Exhibit 128, # 6 Exhibit 208, # 7 Exhibit 325, # 8 Exhibit 355, # 9 Exhibit 356, # 10 Exhibit 463, # 11 Exhibit 490, # 12 Exhibit 495, # 13 Exhibit 496, # 14 Exhibit 497, # 15 Exhibit 507, # 16 Exhibit 531, # 17 Exhibit 540, # 18 Exhibit 646, # 19 Exhibit 647, # 20 Exhibit 648, # 21 Exhibit 649, # 22 Exhibit 650, # 23 Exhibit 743, # 24 Exhibit 744, # 25 Exhibit 745, # 26 Exhibit 748, # 27 Exhibit 752)(Gallagher, Erin) (Entered: 03/26/2018)
03/26/2018	352	Defendant's MEMORANDUM re 338 Order on Motion in Limine,, Memorandum Decision, <i>MEMORANDUM REGARDING PROPER BASIS FOR DISGORGEMENT AND PARTIES RESPECTIVE BURDENS</i> filed by International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Snuffer, Denver) (Entered: 03/26/2018)
03/26/2018	353	REPLY to Response to Motion re 343 MOTION Modify Trial Subpoena and Memorandum in Support filed by Movant Todd Anderson. (Martin, Byron) (Entered: 03/26/2018)
03/26/2018	354	DOCKET TEXT ORDER. Taking under advisement - 347 Defendants' Memorandum to Exclude the Use of Deposition Testimony in Lieu of Live Witnesses at Trial. The Government is Ordered to respond no later than Thursday, March 29, 2018, at noon. Specifically, the response should detail the basis under the rules for permitting the deposition designation of PacifiCorp in lieu of live testimony. No attached document. Docket text only. Signed by Judge David Nuffer on 03/26/2018. (ms) (Entered: 03/26/2018)
03/27/2018	355	DOCKET TEXT ORDER - Consistent with the strong presumption in favor of public access to judicial records 345 Motion to Unseal Exhibits is GRANTED. Signed by Judge David Nuffer on 03/27/2018. Docket Text Only. No attached document. (ms) (Entered: 03/27/2018)
03/28/2018	356	<u>NOTICE VACATING STATUS CONFERENCE HEARING</u> set for Thursday, March 29, 2018 at 1:30 p.m. before Judge David Nuffer (asb) (Entered: 03/28/2018)
03/29/2018	357	use of PacifiCorp deposition in lieu of live testimony BRIEF re 354 Order,, filed by

		<p>Plaintiff USA. (Attachments: # 1 Exhibit 193 Deposition subpoena to PacificCorp, # 2 Exhibit 713A Deposition of PacificCorp, # 3 Exhibit 794 Notice of PacificCorp deposition, # 4 Exhibit 795 Declaration of PacificCorp)(Gallagher, Erin) (Entered: 03/29/2018)</p>
03/29/2018	358	<p>DOCKET TEXT ORDER DENYING Defendants' request to exclude the use of deposition testimony in lieu of live witnesses at trial 347 . Pursuant to Rule 32(a)(3) the United States may use deposition testimony in lieu of live witnesses at trial for International Automated Systems, Inc.; Neldon Johnson; LTB1, LLC; RaPower-3, LLC; and R. Gregory Shepard. Based on the United States' Response 357 PacificCorp deposition testimony is permitted by Rule 32(a)(4)(B). Defendants do not dispute the United States' other deposition designations are permitted under the Rule. Defendants' counsel's request that he is entitled to cross-examine any of the Defendants with leading questions is also DENIED. Fed. R. Evid. 611(c). Docket text only. No attachment. Signed by Judge David Nuffer on 03/29/2018. (ms) (Entered: 03/29/2018)</p>
03/29/2018	359	<p>DOCKET TEXT ORDER - Pursuant to the Memorandum Decision and Order 338 the Parties submitted briefs on the issue of disgorgement 351 352 . The Parties' briefing and supporting documentation have been carefully reviewed. This Order finds: -A party is not unjustly enriched if the gains he acquired flow from any legitimate business activity. -A claimant bears the burden of showing the disgorgement amount is a reasonable approximation of defendants unjust enrichment. -Unjust enrichment may be shown by gross receipts or increase in net assets. -A defendant is free to introduce evidence showing that unjust enrichment is something less than the amount put in evidence by plaintiff. Defendant has the burden of proving entitlement to a credit or deduction for business expenses, which may include refunds to customers. -However, defendant is not entitled to a credit for costs or expenses incurred in an attempt to defraud the claimant. -Tax credits or depreciation deductions by defendants' customers might be a measure of disgorgement, but are not a required measure of disgorgement. -Individuals may be held personally liable for an entity's debt, if the individuals' unjust enrichment was directly derived from using the entity as a conduit for fraud. -Defendants may, when appropriate by transmission of funds from one to another, be jointly and severally liable for disgorgement. Docket text only. No attached document. Signed by Judge David Nuffer on 03/29/2018. (ms) (Entered: 03/29/2018)</p>
03/30/2018	360	<p>ORDER Ruling on Objections to Pretrial Deposition Designations. Signed by Judge David Nuffer on 3/30/18 (alt) (Entered: 03/30/2018)</p>
03/30/2018	361	<p>DOCKET TEXT ORDER - The following rulings on objections to pretrial deposition designations are hereby incorporated into 360 as follows: 1) Deposition of PacificCorp taken November 15, 2016 - 62:17 20, Objection, Not relevant, Fed. R. Evid. 401, 402 - Overruled 2) Deposition of Peter Gregg taken November 16, 2016 -170:4 13, Objection, Leading, Fed. R. Evid. 611(c); Argumentative, Fed. R. Evid. 611(a); Not relevant, Fed. R. Evid. 401, 402 - Overruled 3) Deposition of Robert Aulds taken March 14, 2017 - 168:10 169:18, Objection, Not relevant, Fed. R. Evid. 401, 402 - Overruled 4) Deposition of John Howell taken August 23, 2017 - a. 126 133, Objection. Argumentative; lack of foundation; lack of personal knowledge; calls for speculation - Overruled</p>

		Docket Text Only. No attachment. Signed by Judge David Nuffer on 03/30/2018. (ms) (Entered: 03/30/2018)
03/30/2018	362	MOTION in Limine and Memorandum in Support <i>to Limit the Testimony of Lemar Roulhac at Trial</i> filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Garriott, Daniel) (Entered: 03/30/2018)
03/30/2018	363	DOCKET TEXT ORDER taking under advisement 362 Motion in Limine. A three page response may be submitted up through Monday, April 2, 2018 at 6:00 p.m. Docket text only. No attached document. Signed by Judge David Nuffer on 03/30/2018. (ms) (Entered: 03/30/2018)
04/01/2018	364	Defendant's MOTION in Limine and Memorandum in Support <i>MOTION IN LIMINE TO STRIKE PLAINTIFF'S SUMMARY EXHIBIT 752 (JOANNA PEREZ)</i> filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Attachments: # 1 Exhibit Deposition of J. Perez)(Snuffer, Denver) (Entered: 04/01/2018)
04/01/2018	365	Defendant's MOTION in Limine and Memorandum in Support <i>DEFENDANTS' MOTION IN LIMINE TO STRIKE PLAINTIFF'S SUMMARY EXHIBIT 734, 735, 736, 737, 738, 739, 740, 741, 742(A), 742(B), AND 750 (AMANDA REINKEN)</i> filed by Defendants International Automated Systems, Neldon Johnson, RaPower-3, R. Gregory Shepard. (Attachments: # 1 Exhibit Deposition of A. Reinken)(Snuffer, Denver) (Entered: 04/01/2018)
04/02/2018	366	MEMORANDUM in Opposition re 362 MOTION in Limine and Memorandum in Support <i>to Limit the Testimony of Lemar Roulhac at Trial</i> filed by Plaintiff USA. (Attachments: # 1 Exhibit 791, Lamar Roulhac CV, # 2 Exhibit Email chain between counsel ending in email dated March 27, 2018, # 3 Exhibit Email chain between counsel ending in email dated March 29, 2018, # 4 Exhibit United States' Witness List)(Hines, Erin) (Entered: 04/02/2018)
04/02/2018	367	PRETRIAL ORDER . Signed by Judge David Nuffer on 4/2/18 (alt) (Entered: 04/02/2018)
04/02/2018	368	MEMORANDUM in Opposition re 364 Defendant's MOTION in Limine and Memorandum in Support <i>MOTION IN LIMINE TO STRIKE PLAINTIFF'S SUMMARY EXHIBIT 752 (JOANNA PEREZ)</i> filed by Plaintiff USA. (Attachments: # 1 Exhibit 752) (Gallagher, Erin) (Entered: 04/02/2018)
04/02/2018	369	Defendant's MEMORANDUM <i>DEFENDANTS' MEMORANDUM REGARDING PLAINTIFF'S BURDEN UNDER 26 USC §§ 6700 AND 7408</i> filed by Roger Freeborn, International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Snuffer, Denver) (Entered: 04/02/2018)
04/02/2018	370	MEMORANDUM in Opposition re 365 Defendant's MOTION in Limine and Memorandum in Support <i>DEFENDANTS' MOTION IN LIMINE TO STRIKE PLAINTIFF'S SUMMARY EXHIBIT 734, 735, 736, 737, 738, 739, 740, 741, 742(A), 742(B), AND 750 (AMANDA REINKEN)</i> filed by Plaintiff USA. (Attachments: # 1 Exhibit 734, Combined Gross Receipts, # 2 Exhibit 735, RaPower-3's Gross Receipts, # 3 Exhibit 736, R. Gregory Shepard's Gross Receipts, # 4 Exhibit 737, Neldon Johnson's Gross Receipts, # 5 Exhibit 738, IAS's Gross Receipts, # 6 Exhibit 739, SOLCO I, LLC's Gross Receipts, # 7 Exhibit 740, XSun Energy, LLC's Gross Receipts, # 8 Exhibit 741, Cobblestone Centre, LLC's Gross Receipts, # 9 Exhibit Summary of October 2017 Spreadsheet of Lens Transactions, # 10 Exhibit Summary of February 2018 Spreadsheet of Lens Transactions, # 11 Exhibit Defendants' Supplemented Production of Documents) (Hines, Erin) (Entered: 04/02/2018)

04/02/2018

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Minute Entry for proceedings held before Judge David Nuffer: Bench Trial held on 4/2/2018.

Counsel present for parties. Mr. Johnson, defendant, stated that he is pro se. Ms. Healy Gallagher responded that this is the first that they have heard of Mr. Johnson proceeding pro se. Discussion heard. Based on the record, court made findings on the record that Mr. Johnson is represented by Mr. Snuffer and his associates. Mr. Johnson maintains he would like to proceed pro se.

Court has reviewed the pretrial order and will have it entered today. Court has reviewed a portion of the deposition designations in preparation of trial.

Mr. Moran requested the admission of exhibits and provided a spreadsheet, with an approximation of 400 exhibits. Court instructed Mr. Moran to provide the lists to both the court and defendants counsel. Court will address after the lunch hour.

Ms. Hines addressed the bank records exhibits and provided exhibit numbers. Court will review.

Ms. Healy Gallagher addressed the outstanding motions in limine. Court has not yet had time to review the motions. Government would either file oppositions or argue, as the court directs. Court instructed responses by 6:00 p.m. today.

Mr. Snuffer addressed the court on his concern re: preponderance of evidence to be clarified. Court instructed Mr. Snuffer to file a motion by 6:00 p.m. today. Response by 6:00 p.m. Tuesday.

Mr. Snuffer then addressed the court on his concern with threshold questions. Court instructed Mr. Snuffer that this is untimely and should have been filed months prior to today.

Government called Dr. Thomas Mancini. Witness sworn and testified. Ms. Healy Gallagher moved for the admission of Exhibit 754. Objection heard. Court received. Ms. Healy Gallagher moved for the admission of Exhibit 755. Objection heard. Court received. Ms. Healy Gallagher moved for the admission of Exhibit 757. No objection. Court received. Ms. Healy Gallagher moved for the admission of Exhibits 16 and 17. No objection. Court received. Ms. Healy Gallagher moved for the admission of Exhibit 559. No objection. Court received. Ms. Healy Gallagher moved for the admission of Exhibit 437. No objection. Court received. Ms. Healy Gallagher moved for the admission of Exhibit 562. No objection. Court received. Ms. Healy Gallagher moved for the admission of Exhibit 509, Video 12_4_00-4_23. No objection. Court received. Ms. Healy Gallagher moved for the admission of Exhibit 509, Video 12_4_38-5_15. No objection. Court received. Ms. Healy Gallagher moved for the admission of Exhibit 460. No objection. Ms. Healy Gallagher moved for the admission of Exhibit 509, Video 16_12_24-12_41. No objection. Court received. Ms. Healy Gallagher moved for the admission of Exhibit 509, Video 18_4_09-4_25. No objection. Court received. Mr. Snuffer moved for the admission of Exhibit 1500. Objection heard. Court instructed the exhibit needs more foundation. Mr. Snuffer moved to strike the testimony of Dr. Mancini. Court made findings on the record and denied the motion. Witness excused.

Mr. Snuffer requested a clarification on how depositions and live testimony will work. Court informed counsel on how it intends to proceed with depositions and live testimony. Court printed out the annotated exhibits during Dr. Mancinis testimony. Counsel given an opportunity to review, then mark for identification. Ms. Healy Gallagher marked them with their exhibit numbers.

Government exhibits with no objections discussed. Court received the identified exhibits.

Ms. Healy Gallagher requested the exhibits identified for the record. Court instructed counsel that the spreadsheet will be identified as a court demonstrative exhibit #1.

Ms. Healy Gallagher addressed the defendants amended witness list, specifically as to Mr. Peterson. Argument heard. Court took the matter under advisement. Mr. Snuffer to provide the court and government with proffer of testimony of Mr. Peterson, attaching exhibits he intends to use/rely by Wednesday, 4/4/2018 6:00 p.m.

Court adjourned.

		Attorney for Plaintiff: Denver Snuffer, Daniel Garriott, Steven Paul, Joshua Egan, Attorney for Defendant: Erin Healy Gallagher, Christopher Moran, Erin Hines. Court Reporter: Becky Janke, Kelly Hicken.(Time Start: 8:32, Time End: 4:10, Room 3.100.) (asb) Modified on 4/3/2018 to correct date of hearing (asb). (Entered: 04/03/2018)
04/03/2018	371	DOCKET TEXT ORDER denying 362 Defendants' Motion in Limine to Limit the Testimony of Lemar Roulhoc. Even if Mr. Roulhoc were an expert under Rule 702, traditional disclosure was not required because his services were necessitated by Defendants' failure to comply with discovery until a very late date as cited in 329 at p. 6. Furthermore, after the final pre-trial conference when his deposition was permitted, Plaintiff attempted to make Mr. Roulhoc available, but Defendants failed to act with reasonable diligence to make arrangements to depose him. His testimony of data extraction is not unfair to Defendants. Defendants have complete control over the evidence about which he will be testifying, reducing the possibility of any prejudice. Signed by Judge David Nuffer on 04/03/2018. Docket Text Only. No attached document. (ms) (Entered: 04/03/2018)
04/03/2018	373	DOCKET TEXT ORDER - Regarding Defendants' Amended Witness List, specifically as to Mr. Gary Peterson. Defendants are to provide the court and Plaintiff with proffer of testimony of Mr. Peterson, attaching exhibits he intends to use and list of everything he intends to rely on by Wednesday, 4/4/2018 6:00 p.m. Plaintiff may file a response by Friday, 4/6/2018 6:00 p.m. Docket text only. No attached document. Signed by Judge David Nuffer on 04/03/2018. (ms) (Entered: 04/03/2018)
04/03/2018	374	Minute Entry for proceedings held before Judge David Nuffer: Bench Trial held on 4/3/2018. Counsel present for parties. Government called Cody Buck. Witness sworn and testified. Mr. Moran moved for the admission of Exhibit 371. No objection. Court received. Mr. Moran moved for the admission of Exhibit 533. No objection. Court received. Mr. Moran moved for the admission of Exhibit 92. Mr. Paul allowed to voir dire the witness. No objection. Court received. Witness excused. Government called Ken Overson. Witness sworn and testified. Mr. Moran moved for the admission of Exhibit 372. No objection. Court received. Court addressed the issue with objections to deposition exhibits. Government will provide a spreadsheet and depositions to the court. Discussion heard on deposition designations. Ms. Healy Gallagher provided Plaintiffs Exhibit 829, affidavit of non-appearance of Samuel Otto and moved for the admission. Mr. Paul requested additional time to review the exhibit before responding to the proposed admission. Mr. Overson returned to complete testimony. Witness excused. Court addressed the service issue. Ms. Healy Gallagher stated that the service issue was in their proposed findings and conclusions (pages 88-90). Government called Kenneth Birrell. Witness sworn and testified. Witness excused for the day and instructed to return 4/4/2018, at the time indicated by government counsel. Court will resume 4/4/2018 at 8:30 a.m. Court adjourned. Attorney for Plaintiff: Denver Snuffer, Daniel Garriott, Steven Paul, Joshua Egan, Attorney for Defendant: Erin Healy Gallagher, Christopher Moran, Erin Hines. Court Reporter: Kelly Hicken, Becky Janke.(Time Start: 8:32, Time End: 4:03, Room 3.100.) (asb) (Entered: 04/03/2018)
04/03/2018	375	Burden of Proof BRIEF re 369 Memorandum (NOT to motion), filed by Plaintiff USA. (Gallagher, Erin) (Entered: 04/03/2018)
04/04/2018	376	DOCKET TEXT ORDER denying Defendants' 364 Motion in Limine to Strike Plaintiff's

		<p>Summary Exhibit 752 is DENIED for the following reasons: (1) The United States was not required to disclose the Excel spreadsheet Perez used to create her summary (Exhibit 752) because Defendants were given sufficient time to inspect the underlying documents, the tax returns (produced May 15, 2017, September 5, 2017, and September 15, 2017), and therefore, there is no reason to give the Defendants the benefit of Plaintiff's work product in preparing the spreadsheet. (2) These summaries qualify under Rule 1006. The admission of summaries under Rule 1006 is within the sound discretion of the court. (3) Exhibit 752 is not more prejudicial than probative and therefore does not violate Rule 403. Exhibit 752 adds substantial probative value, saves time and increases convenience by summarizing voluminous tax records. The Defendants may challenge Exhibit 752 on cross-examination. (4) Defendants failed to cite any case law to support their arguments of lack of relevance. (5) "Harm to the Treasury," depreciation expenses, and tax credits may be relevant to a proper measure of disgorgement. Signed by Judge David Nuffer on 04/04/2018. Docket text only. No attached document. (ms) (Entered: 04/04/2018)</p>
<p>04/04/2018</p>	<p>377</p>	<p>DOCKET TEXT ORDER - Defendants' 365 Motion in Limine to Strike Plaintiff's Summary Exhibits 734 - 741, 742(A), 742(B), and 750 ("Exhibits") is DENIED for the following reasons: (1) The United States was not required to disclose the Excel spreadsheet Reinken used to create her summaries in Exhibit 734 through 741 because Defendants were given sufficient time to inspect the underlying documents (the bank records) after they were produced March 30, 2017, and therefore, there is no reason to give the Defendants the benefit of Plaintiff's work product in preparing the spreadsheet. (2) The admission of these summaries which qualify under Rule 1006 is within the sound discretion of the court. (3) The Exhibits are far more probative than prejudicial and therefore do not violate Rule 403. The Exhibits add substantial probative value by summarizing voluminous bank records, saving time and increasing convenience. Defendants may challenge the Exhibits' on cross-examination. (4) Defendants failed to cite any case law to support their arguments. (5) Plaintiff indicates it no longer intends to offer Pl. Ex. 750. (6) The format conversion issue related to Exhibits 742A and 742B was caused by Defendants' form of production of their database in a non-native format. (7) The lack of information about amounts paid for lenses in Exhibits 742A and 742B is due to the non-production of that data from Defendants. (8) Defendants have been free to prepare their own summaries from the bank records and from their database. Signed by Judge David Nuffer on 04/04/2018. Docket text only. No attached document. (ms) (Entered: 04/04/2018)</p>
<p>04/04/2018</p>	<p>378</p>	<p>Minute Entry for proceedings held before Judge David Nuffer: Bench Trial held on 4/4/2018. Counsel present for parties. Government addressed the trade or other business, and placed in service. Government requested to brief the issue. Defendants response on the issues due Friday, 4/13/2018 1:00 p.m., not to exceed 20 pages. Government reply due 4/20/2018. authenticity issues of the affidavit of non-appearance of Samuel Otto. Mr. Snuffer accepted the authentication of the affidavit and exhibits. Exhibits authenticated, but not yet admitted for the record are 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, and 30. Mr. Snuffer addressed the issue as to their expert designation deadline of 9/15/2017, therefore, he would have been able to obtain a qualified expert. Government responded. Courts prior ruling still stands. Government called Todd Anderson. Witness sworn and testified. Ms. Healy Gallagher moved for the admission of Exhibit 480. Objection heard. Court received. Witness excused. Government called Jessica Anderson. Witness sworn and testified. Ms. Healy Gallagher moved for the admission of Exhibit 574. No objection. Court received. Ms. Healy Gallagher moved for the admission of Exhibit 575. No objection. Court received. Ms.</p>

	<p>Healy Gallagher moved for the admission of Exhibit 25A. Objection heard. Court received. Court requested that Exhibit 582 be admitted. No objections. Court received. Court requested that the defendants mark and admit Ms. Andersons timekeeping records. Discussion heard. Exhibit marked 1519. Court received. Witness excused. Mr. Birrell returned to complete testimony. Mr. Paul used Plaintiff Exhibit 360. The exhibit has not been identified nor provided by either plaintiff nor defendant for trial purposes. Discussion heard on Exhibit 360. Mr. Paul moved for the admission of Exhibit 360. Objection heard. Court did not receive. Court instructed counsel to provide a copy of Exhibit 360 for court records. Witness excused. Court will resume 4/5/2018 at 8:30 a.m. Court adjourned. Attorney for Plaintiff: Denver Snuffer, Daniel Garriott, Steven Paul, Joshua Egan, Attorney for Defendant: Erin Healy Gallagher, Christopher Moran, Erin Hines. Court Reporter: Kelly Hicken, Becky Janke.(Time Start: 8:31, Time End: 4:17, Room 3.100.) (asb) (Entered: 04/04/2018)</p>
<p>04/04/2018</p>	<p>379 Defendant's MEMORANDUM re 373 Order, <i>Gary Peterson's Proffer of Testimony and Documents Upon Which He Will Rely</i> filed by International Automated Systems, Neldon Johnson, LTBI, RaPower-3, R. Gregory Shepard. (Attachments: # 1 Exhibit IAS 10-K 2009, # 2 Exhibit IAS 10-K 2016, # 3 Exhibit IAS 10-K 2014, # 4 Exhibit IAS 10-K 2017, # 5 Exhibit IAS 10-K 2010)(Snuffer, Denver) (Entered: 04/04/2018)</p>
<p>04/05/2018</p>	<p>380 Minute Entry for proceedings held before Judge David Nuffer: Bench Trial held on 4/5/2018. Counsel present for parties. Government moved for the admission of the exhibits noted in Samuel Ottos affidavit, which are identified as 30,168, 169, 170, 171, 172, 173, 175. No objections. Court received. Government has a number of exhibits that need redaction. Once they are completed, will submit to the court. Government called Lamar Roulhac. Witness sworn and testified. Ms. Healy Gallagher moved for the admission to Exhibit 831. No objection. Court received. Ms. Healy Gallagher moved for the admission to Exhibit 749. Objection heard. Court received. Witness excused. Government called JoAnna Perez. Witness sworn and testified. Ms. Hines moved for the admission of Exhibits 123 and 752. No objection to Exhibit 123. Court received. Objection heard on Exhibit 752. Government responded. Court received Exhibit 752. Witness excused. Court addressed Exhibit 829 and if the government wanted it received. At this time, government does not request its admission. Court requested that Exhibit 347 be emailed. Court instructed government to review Exhibits 349, 464 and 535, which were identified in depositions. Government will review to see if they need to move for admission. The screenshots of RaPower-3 website, Governments Exhibit 832. Mr. Paul provided the court with a complete 2-page screenshot. Government does not object to marking the 2-pages as Exhibit 832A. Court received. Government called Amanda Reinken. Witness sworn and testified. Ms. Hines moved for the admission of Exhibits 714 thru 733. No objection. Court received. Ms. Hines moved for the admission of Exhibit 796. No objection. Court received. Ms. Hines moved for the admission of Exhibit 742A. No objection. Court received. Ms. Hines moved for the admission of Exhibit 742B. No objection. Court received. Ms. Hines moved for the admission of Exhibit 735. No objection. Court received. Ms. Hines moved for the admission of Exhibit 738. No objection. Court received. Ms. Hines moved for the admission of Exhibit 739. No objection. Court received. Ms. Hines moved for the admission of Exhibit 740. Objection heard. Court received. Ms. Hines moved for the admission of Exhibit 741. No objection. Court received. Court received. Ms. Hines moved for the admission of Exhibit 737. No objection. Court received. Court received. Ms. Hines moved for the admission of Exhibit 769. Objection heard. Court received.</p>

		<p>Witness excused. Argument heard on damages. Government called Robert Rowbotham. Witness sworn and testified. Mr. Moran moved for the admission of Exhibit 94. No objection. Court received. Mr. Moran moved for the admission of Exhibit 95. No objection. Court received. Mr. Moran moved for the admission of Exhibit 91. No objection. Court received. Mr. Moran moved for the admission of Exhibit 93. No objection. Court received. Government addressed Deposition Exhibits 349, 465, 535. Government laid foundation through argument. Mr. Snuffer would like time to review the exhibits before responding. Court will rule on the exhibits after Mr. Snuffer informs the court of their response. Court will resume with trial on Thursday, 4/19/2018 at 8:30 a.m. Court adjourned. Attorney for Plaintiff: Erin Healy Gallagher, Christopher Moran, Erin Hines, Attorney for Defendant: Denver Snuffer, Daniel Garriott, Steven Paul, Joshua Egan. Court Reporter: Kelly Hicken, Becky Janke.(Time Start: 8:32, Time End: 4:19, Room 3.100.)(asb) (Entered: 04/05/2018)</p>
<p>04/06/2018</p>	<p>381</p>	<p>RESPONSE re 379 Memorandum (NOT to motion),, <i>Defendants' proffer of Gary Peterson</i> filed by USA. (Attachments: # 1 Exhibit 449, IAS Supplemental Responses to US First Interrogatories, # 2 Exhibit 450, RaPower-3 Supplemental Responses to US First Interrogatories, # 3 Exhibit 451, Neldon Johnson Supplemental Responses to US First Interrogatories, # 4 Exhibit 452, LTB1 Supplemental Responses to US First Interrogatories, # 5 Exhibit 789, Defendants' Supplemented Production of Documents, # 6 Exhibit 833, Defendants' Joint Initial Disclosures)(Gallagher, Erin) (Entered: 04/06/2018)</p>
<p>04/10/2018</p>	<p>382</p>	<p>Docket Text Order - On March 30, 2018, Defendants amended their witness list to include Gary Peterson, the defendant companies' accountant. Pursuant to Rule 26(a), Defendants failed to timely disclose Gary Peterson. He is a witness whose necessity should have been known from the filing of the complaint, as his testimony bears on the issue of disgorgement. The court has broad discretion in determining whether a Rule 26(a) violation is justified or harmless. Mr. Peterson should not testify, in light of the four factors in <i>Woodworker's Supply, Inc. v. Principal Mut. Life Ins. Co.</i>, 170 F.3d 985, 993 (10th Cir. 1999): (1) Offering a new witness the Friday preceding a Monday trial start date undoubtedly was a surprise to Plaintiffs and his testimony would prejudice Plaintiffs as they relied on Defendants previous disclosures and discovery responses to prepare for trial. (2) Plaintiff has already prepared for trial based on Defendants disclosures and discovery responses. Had Defendants timely disclosed Mr. Peterson, Plaintiffs would have had time to adequately prepare for trial taking into account his testimony. Defendants are unable to cure this prejudice. (3) This is a 10-day bench trial spread across a 4-week time frame. This case in the midst of trial. The remaining six days of trial resume on April 19, 2018. At such a late date, adding another witness would disrupt trial. (4) Defendants did not include Mr. Peterson in their initial disclosures, nor did they supplement their initial disclosures, nor did they otherwise make Mr. Peterson or his testimony known to Plaintiff during the discovery process or in writing prior to March 30, 2018. Defendants witness Gary Peterson will not be permitted to testify. Docket text only. No attached document. Signed by Judge David Nuffer on 04/10/2018. (ms) (Entered: 04/10/2018)</p>
<p>04/11/2018</p>	<p>383</p>	<p><u>UPDATED BENCH TRIAL SCHEDULE:</u> Bench Trial set for Thursday, 4/19/2018 at 08:00 AM - 02:30 PM in Rm 3.100 before</p>

		<p>Judge David Nuffer.</p> <p>Bench Trial set for Friday, 4/20/2018 at 08:30 AM -04:00 PM in Rm 3.100 before Judge David Nuffer.</p> <p>Bench Trial set for Monday, 4/23/2018 at 08:00 AM - 02:00 PM in Rm 3.100 before Judge David Nuffer.</p> <p>Bench Trial set for Tuesday, 4/24/2018 at 08:00 AM - 02:30 PM in Rm 3.100 before Judge David Nuffer.</p> <p>Bench Trial set for Wednesday, 4/25/2018 at 08:30 AM - 04:00 PM in Rm 3.100 before Judge David Nuffer.</p> <p>Bench Trial set for Thursday, 4/26/2018 at 08:30 AM - 04:00 PM in Rm 3.100 before Judge David Nuffer.</p> <p>Bench Trial set for Monday, 5/14/2018 at 08:00 AM - 02:00 PM in Rm 3.100 before Judge David Nuffer.</p> <p>Bench Trial tentatively set for Tuesday, 5/15/2018 at 08:30 AM - 04:00 PM in Rm 3.100 before Judge David Nuffer. (5/15/2018 is for any additional argument necessary to complete the trial. Counsel are to pencil in the date) (asb) (Entered: 04/11/2018)</p>
04/13/2018	384	<p>MEMORANDUM <i>re "placed in service" and "used in trade or business"</i> filed by International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Attachments: # 1 Exhibit Trial Testimony Excerpts of Mr. Robert Rowbotham) (Snuffer, Denver) Modified on 5/31/2018: corrected text (alt) (Entered: 04/13/2018)</p>
04/18/2018	385	<p><u>UPDATED BENCH TRIAL SCHEDULE:</u></p> <p>Bench Trial set for Thursday, 4/19/2018 at 08:00 AM - 04:00 PM in Rm 3.100 before Judge David Nuffer.</p> <p>Bench Trial set for Friday, 4/20/2018 at 08:30 AM - 04:00 PM in Rm 3.100 before Judge David Nuffer.</p> <p>Bench Trial set for Monday, 4/23/2018 at 08:00 AM - 02:00 PM in Rm 3.100 before Judge David Nuffer.</p> <p>Bench Trial set for Tuesday, 4/24/2018 at 08:00 AM - 02:30 PM in Rm 3.100 before Judge David Nuffer.</p> <p>Bench Trial set for Wednesday, 4/25/2018 at 08:30 AM - 04:00 PM in Rm 3.100 before Judge David Nuffer.</p> <p>Bench Trial set for Thursday, 4/26/2018 at 08:30 AM - 04:00 PM in Rm 3.100 before Judge David Nuffer.</p> <p>Bench Trial set for Monday, 5/14/2018 at 08:00 AM - 02:00 PM in Rm 3.100 before Judge David Nuffer.</p> <p>Bench Trial set for Tuesday, 5/15/2018 at 08:30 AM - 04:00 PM in Rm 3.100 before Judge David Nuffer. (5/15/2018 is for any additional argument necessary to complete the</p>

		<p>trial. Counsel are to pencil in the date) (asb) (Entered: 04/18/2018)</p>
04/19/2018	386	<p>Minute Entry for proceedings held before Judge David Nuffer: Bench Trial held on 4/19/2018. Counsel present for parties. Court informed counsel that all depositions have now been read. Ms. Healy Gallagher provided additional exhibits, including redactions, to court and opposing counsel this morning. Ms. Healy Gallagher clarified for the record errors of minute entries: /4/2018 Exhibits 380 123 should be 132 and Exhibits 769 should be 796; 4/5/2018 Exhibit 669 moved into evidence and was admitted. ME does not note the admission. Court made the identified corrections. Government offered Exhibits 509 Video 12_4_00-4_23A, 509 Video 12_4_38-5_15A, 509 Video 12_4_38-5_15B, and 562A. Court received. The government list for deposition exhibits where no objections has been marked as Court Exhibit 2. Court will discuss Exhibits 349, 465, 535 at a break between testimony. Ms. Hines called Lynette Williams. Witness sworn and testified. Mr. Moran called Preston Olsen. Witness sworn and testified. Mr. Moran moved for the admission of Exhibit 134. Objection heard. Court received. Mr. Moran moved for the admission of Exhibit 135. No objection. Court received. Mr. Moran moved for the admission of Exhibit 141. Objection heard. Court received. Mr. Moran moved for the admission of Exhibit 147. No objection. Court received. Mr. Moran moved for the admission of Exhibit 158. Objection heard. Court received. Mr. Moran moved for the admission of Exhibit 142. Objection heard. Court received. Mr. Moran moved for the admission of Exhibits 127, 128, 129, and 130. Objections heard. Court received. Mr. Paul moved for the admission of Exhibit 1500. Objection heard. Court received. Witness excused. Court will resume with trial on Friday, 4/20/2018 at 8:30 a.m. Court adjourned. Attorney for Plaintiff: Erin Healy Gallagher, Christopher Moran, Erin Hines, Attorney for Defendant: Denver Snuffer, Daniel Garriott, Steven Paul, Joshua Egan. Court Reporter: Kelly Hicken, Becky Janke, Laura Robinson.(Time Start: 8:00, Time End: 3:35, Room 3.100.)(asb) (Entered: 04/19/2018)</p>
04/20/2018	387	<p>regarding "trade or business" and "placed in service" BRIEF re 384 Memorandum (NOT to motion), 378 Bench Trial - Held,,,,,,,,, filed by Plaintiff USA. (Attachments: # 1 Exhibit Pl. Ex. 534, placed in service letters, # 2 Exhibit Pl. Ex. 546, placed in service letters, # 3 Exhibit Pl. Ex. 547, overview of the placed in service letter, # 4 Exhibit Excerpts of Trial Transcript)(Gallagher, Erin) (Entered: 04/20/2018)</p>
04/20/2018	388	<p>Minute Entry for proceedings held before Judge David Nuffer: Bench Trial held on 4/20/2018. Counsel present for parties. Ms. Healy Gallagher addressed the exhibits that are similar to Exhibit 158. Ms. Healy Gallagher moved for the admission of deposition designation form Exhibits 197, 334, 483, 504, 526, 581, 530, 544, 545, 550, 554, 589, and 590, which were not identified in Court Exhibit 2. Court will review the exhibits and rule on the admission at a later time. Ms. Healy Gallagher moved to admit Exhibits 413, 414, 415, 416, 668. Mr. Snuffer responded if incomplete, then they object. However, if complete, then no objections. Court gave defense counsel the weekend to review the exhibits and formally respond on Monday, April 23, 2018. Ms. Healy Gallagher moved for the admission of Exhibit 790. No objection. Court received. Ms. Healy Gallagher moved to admit the deposition designations Exhibits 448, 579, 581,</p>

673, 681, 682, 683, 685, 687, 688, 689, 690, 693, 697, 713. Court received.

Court ruling on the following exhibits:

Exhibit 349 not received.

Court received Exhibit 465 for limited purpose of showing the use of unsigned documentation, but otherwise not received.

Court deferred ruling on Exhibit 535.

Ms. Hines called Richard Jameson. Witness sworn and testified. Ms. Hines moved to admit Exhibit 865. Objections heard. Court received. Ms. Hines moved to admit Exhibit 637. No objection. Court received. Witness excused for the day, subject to recall by Mr. Snuffer.

Mr. Moran called Matthew Shepard. Witness sworn and testified. Mr. Moran moved for the admission of Exhibit 438. No objection. Court received. Mr. Moran moved for the admission of Exhibit 424. No objection. Court received. Mr. Moran moved for the admission of Exhibit 426. No objection. Court received. Mr. Moran moved for the admission of Exhibit 417. No objection. Court received. Mr. Moran moved for the admission of Exhibit 427. No objection. Court received. Mr. Moran moved for the admission of Exhibit 428. No objection. Court received. Mr. Moran moved for the admission of Exhibit 441. No objection. Court received. Mr. Moran moved for the admission of Exhibit 547. No objection. Court received. Mr. Moran moved for the admission of Exhibit 351. No objection. Court received. Mr. Moran moved for the admission of Exhibit 679. No objection. Court received. Mr. Moran moved for the admission of Exhibit 680. No objection. Court received. Mr. Moran moved for the admission of Exhibit 433. No objection. Court received. Mr. Moran moved for the admission of Exhibit 417. No objection. Court received. Mr. Moran moved for the admission of Exhibit 434. No objection. Court received. Direct finished. Cross examination will begin Monday, April 23, 2018 at 8:00 a.m.

Court will email the exhibit lists for government to amend the descriptions of exhibits, adding dates and descriptions. Counsel to make no other edits. Court instructed counsel to email PDFs of exhibits the court has not yet received.

Discussion heard on witness schedule. Government to provide a list of exhibits to be used on upcoming witnesses to defendants counsel.

Mr. Snuffer addressed the deposition designations and upcoming testimony. Ms. Healy Gallagher responded.

Mr. Snuffer informed the court that he is not available on May 15, 2018 for any additional argument. Court inquired if counsels schedules allow for time the week of May 21, 2018 and May 29, 2018. Counsel responded. Counsel may have the week of May 29, 2018 available. Court instructed counsel to pencil in that week.

Court recessed until Monday, 4/23/2018 at 8:00 a.m.

Attorney for Plaintiff: Erin Healy Gallagher, Christopher Moran, Erin Hines, Attorney for Defendant: Denver Snuffer, Daniel Garriott, Steven Paul, Joshua Egan. Court Reporter: Kelly Hicken, Becky Janke, Laura Robinson.(Time Start: 8:33, Time End: 4:11, Room 3.100.)(asb) (Entered: 04/20/2018)

04/23/2018	389	DOCUMENTS LODGED consisting of 2018 April 20 Email from Erin Healy Gallagher re: Exhibits. Note: attached document lodged for reference purposes only; no response required unless specifically ordered by the court. (asb) (Entered: 04/23/2018)
04/23/2018	390	DOCUMENTS LODGED consisting of 2018 April 22 Email from Erin Healy Gallagher re: Exhibits.. Note: attached document lodged for reference purposes only; no response required unless specifically ordered by the court. (asb) (Entered: 04/23/2018)
04/23/2018	391	Minute Entry for proceedings held before Judge David Nuffer: Bench Trial held on 4/23/2018.

Counsel present for parties. Ms. Healy Gallagher stated that the government is not available to week of May 29, 2018. Mr. Snuffer is not available May 15, 2018. Mr. Snuffer is available May 21 and 25, 2018. Ms. Healy Gallagher will check their schedules.

Exhibits discussed. Mr. Snuffer had no objections to Exhibits 413, 414, 415, 416 and 668 (unredacted). Court received. The deposition designation list, Exhibits 448, 579, 581, 673, 681, 682, 683, 685, 687, 688, 689, 690, 693, 697, 713 were received on Friday, 4/20/2018 and received again today.

Mr. Snuffer had no objections to Exhibits 197, 334, 483 (without handwriting), 504, 526, 530, 544, 550, 554. Court received. Mr. Snuffer objected to 545, 589, 590. Court reserved ruling on 545, 589. 590.

Court received Exhibits 114A, 150A and 1500A, which are screenshots of video clips shown during trial testimony.

Court received the exhibits on Court Exhibit #2. The exhibit list will be updated to include those exhibits as received. Court will review the 4/22/2018 email from Ms. Healy Gallagher, paragraphs 2-4, that notes the court received exhibit, however, were not noted on the exhibit list. Court will review the transcripts and minute entries and make appropriate changes.

Mr. Matthew Shepard returned to complete testimony. Mr. Moran moved for the admission of Exhibit 903. No objection. Court received. Witness excused.

Court confirmed the exhibits in the 4/22/2018 email from Ms. Healy Gallagher were received. Identified exhibits are now shown as received on the exhibit list.

Mr. Moran called Gregory Shepard. Witness sworn and testified. Mr. Moran moved for the admission of Exhibits 435, 469, 553. No objection. Exhibit received. Mr. Paul moved for the admission of Exhibit 22. Objection heard. Court deferred ruling. Witness instructed to return Tuesday, 4/24/2018 at 8:00 a.m. to continue with testimony.

Court adjourned.

Attorney for Plaintiff: Erin Healy Gallagher, Christopher Moran, Erin Hines, Attorney for Defendant: Denver Snuffer, Daniel Garriott, Steven Paul, Joshua Egan. Court Reporter: Kelly Hicken, Becky Janke, Laura Robinson.(Time Start: 8:03, Time End: 2:46, Room 3.100.)(asb) (Entered: 04/23/2018)

04/24/2018

BENCH TRIAL UPDATED SCHEDULE:

Bench Trial set for 4/24/2018 at 08:00 AM - 03:15 PM in Rm 3.100 before Judge David Nuffer.

Bench Trial set for 4/25/2018 at 08:00 AM - 04:00 PM in Rm 3.100 before Judge David Nuffer.

Bench Trial set for 4/26/2018 at 08:00 AM - 04:00 PM in Rm 3.100 before Judge David Nuffer.

Bench Trial set for 5/14/2018 at 08:00 AM - 02:00 PM in Rm 3.100 before Judge David Nuffer.

Bench Trial set for 6/25/2018 at 08:00 AM - 04:00 PM in Rm 3.100 before Judge David Nuffer.

Bench Trial set for 6/26/2018 at 08:00 AM - 04:00 PM in Rm 3.100 before Judge David Nuffer.

Bench Trial set for 6/27/2018 at 08:00 AM - 04:00 PM in Rm 3.100 before Judge David Nuffer.

		<p>Bench Trial set for 6/28/2018 at 08:00 AM - 04:00 PM in Rm 3.100 before Judge David Nuffer.</p> <p>Bench Trial set for 6/29/2018 at 08:00 AM - 04:00 PM in Rm 3.100 before Judge David Nuffer. (asb) (Entered: 04/24/2018)</p>
04/24/2018	392	<p>Minute Entry for proceedings held before Judge David Nuffer: Bench Trial held on 4/24/2018.</p> <p>Counsel present for parties. Ms. Healy Gallagher stated that they have penciled in June 25-29, 2018. Ms. Healy Gallagher addressed Exhibits 589 and 590. Court will review the associated documents to rule on Exhibits 589 and 590. Discussion heard on Exhibit 545. Objection heard. Court received 545.</p> <p>Mr. Gregory Shepard returned to complete testimony. Mr. Paul moved for the admission of Exhibit 22. Court deferred ruling until the exhibit has been reviewed. Exhibit 22 discussed. Court received.</p> <p>Ms. Healy Gallagher addressed the outstanding motion in limine 249 . Court received 589 and 590.</p> <p>Ms. Healy Gallagher called Neldon Johnson. Witness sworn and testified. Mr. Snuffer had no objection to the use and admission of Exhibit 901. Court received. Ms. Healy Gallagher moved for the admission of Exhibits 780 and 781. Objection heard. Court received. Ms. Healy Gallagher moved for the admission of Exhibit 852. Objection heard. Court received.</p> <p>Court will resume Wednesday, 4/25/2018 at 8:00 a.m.</p> <p>Court adjourned.</p> <p>Attorney for Plaintiff: Erin Healy Gallagher, Christopher Moran, Erin Hines, Attorney for Defendant: Denver Snuffer, Daniel Garriott, Steven Paul, Joshua Egan. Court Reporter: Kelly Hicken, Becky Janke, Laura Robinson. (Time Start: 8:06, Time End: 3:06, Room 3.100.) (asb) (Entered: 04/24/2018)</p>
04/25/2018	393	<p>Minute Entry for proceedings held before Judge David Nuffer: Bench Trial held on 4/25/2018.</p> <p>Counsel present for parties. No preliminary matters to be discussed. Mr. Johnson returned to complete testimony. Government objects to the use of Exhibit 16A with Mr. Johnson for his lack of personal knowledge on technical details. Otherwise, no objection to use as to marketing. Court struck Mr. Johnsons testimony from 9:42:38 9:51:02. Court made findings on the record and will not allow Mr. Johnson to testify that he has engaged experts or procured the information outlined in these areas that incorporate expert reporting by reference. Mr. Johnson cannot leverage Exhibit 16A to be anything for than a marketing of white paper turned into expert testimony. Mr. Snuffer moved for the admission of Exhibit 513. Objection heard. Court received. Mr. Snuffer moved for the admission of Exhibit 536. No objection. Exhibit received. Ms. Healy Gallagher made several objections during testimony, which the court held.</p> <p>Court to resume Thursday, 4/26/2018 at 8:00 a.m. Court adjourned.</p> <p>Attorney for Plaintiff: Erin Healy Gallagher, Christopher Moran, Erin Hines, Attorney for Defendant: Denver Snuffer, Daniel Garriott, Steven Paul, Joshua Egan. Court Reporter: Kelly Hicken, Becky Janke, Laura Robinson. (Time Start: 8:14, Time End: 4:22, Room 3.100.) (asb) (Entered: 04/25/2018)</p>
04/26/2018	396	<p>Minute Order. Proceedings held before Judge David Nuffer: granting 249 Motion in Limine; granting 250 Motion in Limine; Bench Trial held on 4/26/2018.</p> <p>Counsel present for parties. Mr. Snuffer addressed the submitted Exhibits 1523, 1524, 1525 (unedited. Edited version is Exhibit 536) and 1526. Mr. Paul to email Exhibit 536. Ms. Healy Gallagher addressed the submitted Exhibits 904 and 905.</p> <p>Mr. Johnson returned to continue with testimony. Ms. Healy Gallagher made objections</p>

to testimony, which the court held for ruling. Court grants all reserved objections and motions to strike on the basis of foundation and Rule 702. Court made findings on the record regarding proposed defense experts. Mr. Johnsons testimony under Rule 702 is unacceptable. He claims qualifications and endorsements without any proof other than patents. Mr. Johnsons testimony will not help the trier of the fact to understand the evidence to determine a fact in issue, because he has shown that this testimony is not based on sufficient facts or data at least that are verifiable by the Court. Court grants all reserved objections and motions to strike on the basis of foundation and Rule 702. Mr. Johnson is nearly incapable of answering a question and when he does, he offers confusing nonresponsive disconnect answers. Court cannot accept that Mr. Johnson has qualifications necessary to testify as to anything that requires a basis under Rule 702 (see transcript for full findings and ruling). Court clarified for and made findings on the record ruling on Hawes, Jameson. Court granted motions in limine [249](#) to exclude expert testimony of Kurt Hawes and Richard Jameson and [250](#) to exclude expert testimony of Neldon Johnson. Mr. Johnson returned to complete testimony. Ms. Healy Gallagher made objections to testimony. Court granted the objections. Discussion heard on scheduling. Court would like to finish with Mr. Johnson in the governments case in chief. The CSOs report that they will be prepared to stay as last as necessary this evening. Ms. Healy Gallagher discussed Exhibits 904 and 905. Argument heard on the related government objections and motion to strike Mr. Johnsons testimony. Court did not strike the testimony from the record. Ms. Healy Gallagher moved for the admission of Exhibit 789. No objection. Court received. Mr. Johnson returned to continue with testimony. Ms. Healy Gallagher moved for the admission of Exhibit 907. Discussion heard. Court denied. Witness excused for the day. Plaintiff rests. Mr. Snuffer moved to dismiss the case under Rule 52(c). Argument heard. Ms. Healy Gallagher to submit her PowerPoint presentation to the court in native format. Court adjourned. Attorney for Plaintiff: Erin Healy Gallagher, Christopher Moran, Erin Hines, Attorney for Defendant Denver Snuffer, Daniel Garriott, Steven Paul, Joshua Egan. Court Reporter: Kelly Hicken, Becky Janke.(Time Start: 8:04, Time End: 7:50, Room 3.100.) (asb) (Entered: 05/03/2018)

04/27/2018

[394](#)

Defendant's MOTION to Dismiss *Pursuant to Rule 52(c)* filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Attachments: # [1](#) Argument)(Garriott, Daniel) (Entered: 04/27/2018)

04/27/2018

BENCH TRIAL UPDATED SCHEDULE:

Bench Trial set for 6/21/2018 at 08:00 AM - 04:00 PM in Rm 3.100 before Judge David Nuffer.

Bench Trial set for 6/22/2018 at 08:00 AM - 04:00 PM in Rm 3.100 before Judge David Nuffer.

Bench Trial set for 6/25/2018 at 08:00 AM - 04:00 PM in Rm 3.100 before Judge David Nuffer.

Bench Trial set for 6/26/2018 at 08:00 AM - 04:00 PM in Rm 3.100 before Judge David Nuffer.

Bench Trial set for 6/27/2018 at 08:00 AM - 04:00 PM in Rm 3.100 before Judge David

		Nuffer. Bench Trial set for 6/28/2018 at 08:00 AM - 04:00 PM in Rm 3.100 before Judge David Nuffer. Bench Trial set for 6/29/2018 at 08:00 AM - 04:00 PM in Rm 3.100 before Judge David Nuffer. (asb) (Entered: 04/27/2018)
04/27/2018	395	RESPONSE to Motion re 394 Defendant's MOTION to Dismiss <i>Pursuant to Rule 52(c) in Opposition</i> filed by Plaintiff USA. (Attachments: # 1 Argument Presentation)(Hines, Erin) (Entered: 04/27/2018)
05/29/2018	397	MOTION for Payment and Memorandum in Support <i>re costs of enforcing discovery orders</i> filed by Plaintiff USA. (Attachments: # 1 Exhibit Pl. Ex. 908, # 2 Text of Proposed Order) Motions referred to Evelyn J. Furse.(Gallagher, Erin) Modified on 6/7/2018: corrected motion relief (alt) (Entered: 05/29/2018)
05/30/2018	398	SEE 399 FOR CORRECT ORDER - DOCKET TEXT ORDER denying 394 Motion to Dismiss. After review of the documentation submitted by counsel and notes from the trial as well as portions of the transcripts the motion is denied subject to renewal as a 50b motion. Signed by Judge David Nuffer on 05/30/2018. Docket Text Only. No attached document. (ms) Modified on 5/31/2018: struck out text per chambers entry of corrected DTO (alt) (Entered: 05/30/2018)
05/31/2018	399	AMENDED DOCKET TEXT ORDER deferring ruling on 394 . This DTO corrects and amends 398 DTO. The Motion to Dismiss 394 is deferred. After review of the documentation submitted by counsel and notes from the trial as well as portions of the transcripts the court declines to render any judgment until the close of the evidence. Signed by Judge David Nuffer on 05/31/2018. Docket text only. No attached document.(ms) (Entered: 05/31/2018)
06/07/2018	400	ORDER granting 397 Motion for Payment of costs of enforcing discovery orders in the amount of \$16,195.26. Signed by Magistrate Judge Evelyn J. Furse on 6/7/18 (alt) (Entered: 06/07/2018)
06/12/2018	401	Defendant's MOTION for Judgment as a Matter of Law and Memorandum in Support <i>No Fraudulent Tax Scheme</i> filed by Defendants Roger Freeborn, International Automated Systems, Neldon Johnson, LTb1, RaPower-3, R. Gregory Shepard. (Snuffer, Denver) (Entered: 06/12/2018)
06/13/2018	402	DOCKET TEXT ORDER deferring ruling on 401 Motion for Judgment as a Matter of Law. After review of the documentation submitted by counsel and notes from the trial as well as portions of the transcripts the court declines to render any judgment until the close of the evidence. Signed by Judge David Nuffer on 06/13/2018. Docket text only. No attached document. (ms) (Entered: 06/13/2018)
06/15/2018	403	MOTION to Continue trial and Memorandum in Support <i>on the Basis of Litigant's Health</i> filed by Defendants International Automated Systems, Neldon Johnson, LTb1, RaPower-3, R. Gregory Shepard. Motions referred to Evelyn J. Furse.(Paul, Steven) (Entered: 06/15/2018)
06/15/2018	404	RESPONSE to Motion re 403 MOTION to Continue trial and Memorandum in Support <i>on the Basis of Litigant's Health</i> filed by Plaintiff USA. (Attachments: # 1 Exhibit Pl. Ex. 912, Email from Mr. Snuffer re. Witness Order)(Moran, Christopher) (Entered: 06/15/2018)
06/15/2018	405	REPLY to Response to Motion re 403 MOTION to Continue trial and Memorandum in

		Support on the Basis of <i>Living's Health</i> filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Paul, Steven) (Entered: 06/15/2018)
06/18/2018	406	EXHIBITS filed by International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard re 405 Reply Memorandum/Reply to Response to Motion,. (Snuffer, Denver) (Entered: 06/18/2018)
06/18/2018	407	MEMORANDUM DECISION AND ORDER denying 403 Motion to Continue Jury Trial. Signed by Judge David Nuffer on 6/18/18 (alt) (Entered: 06/18/2018)
06/20/2018	408	NOTICE OF FILING of Defendants' Anticipated Trial Schedule filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Paul, Steven) (Entered: 06/20/2018)
06/20/2018		<u>UPDATE BENCH TRIAL COURTROOM LOCATIONS:</u> Bench Trial set for 6/21/2018 thru 6/27/2018 at 08:00 AM in Rm 3.100 before Judge David Nuffer. Bench Trial set for 6/28/2018 thru 6/29/2018 at 08:00 AM in Rm 3.400 before Judge David Nuffer.(asb) (Entered: 06/20/2018)
06/21/2018	409	Minute Entry for proceedings held before Judge David Nuffer: Bench Trial held on 6/21/2018. Counsel present for parties. Mr. Snuffer addressed the court stating that the defense rests. After a brief discussion, counsel for the parties will return tomorrow, June 22 at 9:00 a.m. to begin closing arguments. Each side will have 1.5 hours for closings, with the Plaintiff having.5 for rebuttal. Defendant states exhibit 360 was admitted by the court. The court does not show exhibit 360 admitted, but will confirm later. Court is adjourned and will resume tomorrow, June 22 at 9:00 a.m. Attorney for Plaintiff: Erin Healy Gallagher, Christopher Moran, Erin Hines, Attorney for Defendant Denver Snuffer, Daniel Garriott, Steven Paul, Joshua Egan. Court Reporter: Laura Robinson.(mjm) (Entered: 06/21/2018)
06/21/2018	410	<u>UPDATED TRIAL SCHEDULE:</u> Bench Trial set for Friday, 6/22/2018 at 09:00 AM in Rm 3.100 before Judge David Nuffer. All other trial dates are vacated pursuant to the trial minute entry dated 6/21/2018. (asb) (Entered: 06/21/2018)
06/22/2018	411	NOTICE OF FILING of Defendants' Closing Argument filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Attachments: # 1 Exhibit Technical Explanation of the Revenue Provisions of the Reconciliation Act of 2010, as Amended, in Combination with the Patient Protection and Affordable Care Act)(Snuffer, Denver) (Entered: 06/22/2018)
06/22/2018	412	NOTICE OF FILING filed by Plaintiff USA. (Hines, Erin) (Entered: 06/22/2018)
06/22/2018	413	INTERIM ORDER for Partial Injunctive Relief After Trial. Defendants' Declaration of Compliance due on or before 6/29/18. Signed by Judge David Nuffer on 6/22/18 (alt) (Entered: 06/22/2018)
06/22/2018	414	Second MOTION to Appoint Receiver and Memorandum in Support and Freeze Defendants' Assets filed by Plaintiff USA. (Attachments: # 1 Exhibit Warranty Deed, # 2 Exhibit Deed of Trust, # 3 Exhibit Warranty Deed, # 4 Text of Proposed Order) Motions referred to Evelyn J. Furse.(Hines, Erin) (Entered: 06/22/2018)
06/22/2018	415	Minute Entry for proceedings held before Judge David Nuffer: Bench Trial completed on

		6/22/2018. Counsel present for parties. Closing arguments heard from both parties. Parties excused for lunch. Upon return, the court hears rebuttal from Plaintiff. The court issues the following ruling: docket entry 394 Defendant's MOTION to Dismiss Pursuant to Rule 52(c) filed by Defendants International Automated Systems, Neldon Johnson, LTBI, RaPower-3, R. Gregory Shepard is DENIED. Docket entry 401 Defendant's MOTION for Judgment as a Matter of Law and Memorandum in Support No Fraudulent Tax Scheme filed by Defendants Roger Freeborn, International Automated Systems, Neldon Johnson, LTBI, RaPower-3, R. Gregory Shepard is DENIED. The court made interim findings in favor of Plaintiff. Plaintiff will submit proposed findings and facts of law by 7/13/2018. Defendant will submit objections by 7/27/2018. Attorney for Plaintiff: Erin Healy Gallagher, Christopher Moran, Erin Hines, Attorney for Defendant Denver Snuffer, Daniel Garriott, Steven Paul, Joshua Egan. Court Reporter: Kelly Hicken.(mjm) (Entered: 06/22/2018)
06/22/2018	416	Bench Trial Witness and Exhibit Lists. (asb) (Entered: 06/25/2018)
06/27/2018	417	DOCKET TEXT ORDER taking under advisement 414 Motion to Appoint Receiver. Expedited response is necessary. Defendants may file a response to 414 Motion to Appoint Receiver on Monday, July 2, 2018, by 9:00 a.m. If the court determines a reply is necessary, one will be requested. Signed by Judge David Nuffer on 06/27/2018. Docket text only. No attached document. (ms) (Entered: 06/27/2018)
06/27/2018	418	Motions No Longer Referred: 414 Second MOTION to Appoint Receiver and Freeze Defendants' Assets. (nas) (Entered: 06/27/2018)
06/27/2018	419	PRESERVATION ORDER. Signed by Judge David Nuffer on 6/27/18 (alt) (Entered: 06/27/2018)
06/29/2018	420	NOTICE OF FILING of Defendants' Report and Certification filed by Defendants International Automated Systems, Neldon Johnson, LTBI, RaPower-3, R. Gregory Shepard. (Snuffer, Denver) (Entered: 06/29/2018)
06/29/2018	421	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Bench Trial held on June 22, 2018, before Judge David Nuffer. Court Reporter/Transcriber Kelly Brown Hicken CSR, RPR, RMR, Telephone number 801-524-7238. NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 business days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact <u>personal data identifiers</u> from the electronic transcript of the court proceeding. To redact additional information a Motion to Redact must be filed. The policy and forms are located on the court's website at www.utd.uscourts.gov. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/20/2018. Redacted Transcript Deadline set for 7/30/2018. Release of Transcript Restriction set for 9/27/2018 (alt) Modified by removing restricted text on 10/1/2018 (rgj). (Entered: 06/29/2018)
07/02/2018	423	Defendant's RESPONSE to Motion re 414 Second MOTION to Appoint Receiver and Memorandum in Support <i>and Freeze Defendants' Assets</i> filed by Defendants International Automated Systems, Neldon Johnson, LTBI, RaPower-3, R. Gregory Shepard. (Snuffer, Denver) (Entered: 07/02/2018)
07/02/2018	424	NOTICE of Filing of Bankruptcy of RaPower-3, by International Automated Systems,

		Neldon Johnson, LTBI, RaPower-3, R. Gregory Shepard (Snuffer, Denver) Modified on 7/9/2018: added name of party who filed for bkrcy (alt) (Entered: 07/02/2018)
07/02/2018	425	MOTION for Extension of Time to comply with Doc. 419 and Memorandum in Support filed by Defendants International Automated Systems, Neldon Johnson, LTBI, R. Gregory Shepard. Motions referred to Evelyn J. Furse.(Paul, Steven) (Entered: 07/02/2018)
07/02/2018	426	NOTICE FROM THE COURT - Defendant RaPower-3 LLC, filed for bankruptcy in U.S. Bankruptcy Court for the District of Utah, Case No. 18-24865. (ms) (Entered: 07/02/2018)
07/02/2018	427	DOCKET TEXT ORDER granting in part and denying in part 425 Motion for Extension of Time. Defendants shall have until July 13, 2018 to comply with item c. of the 419 Preservation Order. Item c. requires Defendants to provide a descriptive list of the data, identify persons responsible for maintenance of the data, including all persons with access to the data. No extensions on any other part of the 419 Preservation Order are permitted. Signed by Judge David Nuffer on 07/02/2018. Docket text only. No attached document. (ms) (Entered: 07/02/2018)
07/02/2018		Case Stayed per 424 Notice of Filing of Bankruptcy (rks) (Entered: 07/05/2018)
07/10/2018	428	DOCKET TEXT ORDER denying 394 Motion to Dismiss ; denying 401 Motion for Judgment as a Matter of Law. Judge Nuffer denied both of these motions from the bench on 6/22/2015. See minute entry 415 . Signed by Judge David Nuffer on 07/10/2018. Docket text only. No attached document. (ms) (Entered: 07/10/2018)
07/13/2018	429	MOTION to Vacate Stay and Memorandum in Support filed by Plaintiff USA. (Attachments: # 1 Excerpts from June 22, 2018 trial transcript, # 2 Exhibit 917, RaPower-3, LLC's List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders, # 3 Text of Proposed Order)(Gallagher, Erin) Modified on 7/13/2018: corrected entry text (alt) (Entered: 07/13/2018)
07/13/2018	430	ORDER taking under advisement and for expedited briefing re 429 MOTION to Vacate Stay. Signed by Judge David Nuffer on 7/13/18 (alt) (Entered: 07/13/2018)
07/13/2018	431	MOTION for Extension of Time submission of draft opinion and order and Memorandum in Support filed by Plaintiff USA. (Attachments: # 1 Text of Proposed Order) Motions referred to Evelyn J. Furse.(Gallagher, Erin) (Entered: 07/13/2018)
07/13/2018	432	DOCKET TEXT ORDER granting 431 Motion for Extension of Time. The time for Plaintiff to submit a draft order and opinion as order on June 22, 2018, see minute entry 415 , will be extended to 14 days after an order is issued on 429 Motion to Vacate. Defendants will then have 14 days to submit their response to the draft. Docket text only. No attached document. Signed by Judge David Nuffer on 07/13/2018. (ms) (Entered: 07/13/2018)
07/18/2018	433	NOTICE of Appearance by Jeffrey D. Tuttle on behalf of RaPower-3 (Tuttle, Jeffrey) (Entered: 07/18/2018)
07/18/2018	434	MEMORANDUM in Opposition re 429 MOTION to Vacate Stay <i>and Reservation of Rights</i> filed by Defendant RaPower-3. (Tuttle, Jeffrey) (Entered: 07/18/2018)
07/18/2018	435	RESPONSE to Motion re 429 MOTION to Vacate Stay filed by Defendants International Automated Systems, Neldon Johnson, LTBI, R. Gregory Shepard. (Paul, Steven) (Entered: 07/18/2018)
07/19/2018	436	NOTICE of Appearance by David E. Leta on behalf of RaPower-3 (Leta, David) (Entered: 07/19/2018)

07/20/2018	437	REPLY to Response to Motion re 429 MOTION to Vacate Stay filed by Plaintiff USA. (Gallagher, Erin) (Entered: 07/20/2018)
08/17/2018	438	MOTION for Hearing re 429 MOTION to Vacate Stay, 414 Second MOTION to Appoint Receiver and Memorandum in Support <i>and Freeze Defendants' Assets</i> re status conference and Memorandum in Support <i>status conference requested, or in the alternative, request to submit for decision</i> filed by Plaintiff USA. Motions referred to Evelyn J. Furse.(Gallagher, Erin) (Entered: 08/17/2018)
08/17/2018	439	RESPONSE to Motion re 438 MOTION for Hearing re 429 MOTION to Vacate Stay, 414 Second MOTION to Appoint Receiver and Memorandum in Support <i>and Freeze Defendants' Assets</i> re status conference and Memorandum in Support <i>status conference requested, or filed by Defendants International Automated Systems, Neldon Johnson, LTBI, R. Gregory Shepard. (Garriott, Daniel) (Entered: 08/17/2018)</i>
08/20/2018	440	Motions No Longer Referred: 438 MOTION for Hearing re 429 MOTION to Vacate Stay, 414 Second MOTION to Appoint Receiver and Memorandum in Support.(nas) (Entered: 08/20/2018)
08/21/2018	441	DOCKET TEXT ORDER granting 429 Motion to Vacate Stay for the reasons stated in 429 and 437. Signed by Judge David Nuffer on 8/21/2018. No attached document. (asb) (Entered: 08/21/2018)
08/21/2018	442	DOCUMENTS LODGED consisting of 8/17/2018 3:32 p.m. email from Dan Garriott with redlined proposed stipulated order to freeze assets and appoint receiver. Note: attached document lodged for reference purposes only; no response required unless specifically ordered by the court. (Attachments: # 1 Text of Proposed Stipulated Order) (asb) (Entered: 08/21/2018)
08/22/2018	443	ORDER finding as moot 438 Motion for Hearing. Signed by Judge David Nuffer on 8/22/18 (alt) (Entered: 08/22/2018)
08/22/2018	444	MEMORANDUM DECISION AND ORDER granting 414 Motion to Appoint Receiver. The assets of Defendants RaPower-3, Neldon Johnson, International Automated Systems, and R. Gregory Shepard are frozen until further order of this Court. The USA shall provide within 30 days, the names of three possible receivers to the court. Signed by Judge David Nuffer on 8/22/18 (alt) (Entered: 08/22/2018)
08/27/2018	445	NOTICE OF INTERLOCUTORY APPEAL as to 444 Order on Motion to Appoint Receiver,, Memorandum Decision, filed by International Automated Systems, Neldon Johnson, LTBI, RaPower-3, R. Gregory Shepard. Appeals to the USCA for the 10th Circuit. Filing fee \$ 505, receipt number 1088-3089136. (Snuffer, Denver) (Entered: 08/27/2018)
08/27/2018	446	Transmission of Preliminary Record to USCA re 445 Notice of Appeal - Interlocutory (Attachments: # 1 Appendix) (alt) (Entered: 08/27/2018)
08/28/2018	447	USCA Case Number Case Appealed to Tenth Case Number 18-4119 for 445 Notice of Appeal - Interlocutory, filed by RaPower-3, R. Gregory Shepard, International Automated Systems, Neldon Johnson, LTBI. (jmr) (Entered: 08/28/2018)
09/06/2018	448	Defendant's MOTION to Stay re 444 Order on Motion to Appoint Receiver,, Memorandum Decision, and Memorandum in Support filed by Defendants International Automated Systems, Neldon Johnson, LTBI, RaPower-3, R. Gregory Shepard. Motions referred to Evelyn J. Furse.(Snuffer, Denver) (Entered: 09/06/2018)
09/07/2018	449	Motions No Longer Referred: 448 Defendant's MOTION to Stay re 444 Order on Motion to Appoint Receiver, Memorandum Decision, and Memorandum in Support (nas)

		(Entered: 09/07/2018)
09/10/2018	450	DOCUMENT LODGED consisting of correspondence from Key Bank to atty Erin Hines. Note: attached document lodged for reference purposes only; no response required unless specifically ordered by the court. (alt) (Entered: 09/11/2018)
09/14/2018	451	MOTION to Amend/Correct 428 Docket Text Order based on 6/22/18 Oral Ruling and Memorandum in Support filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Attachments: # 1 Exhibit Confirmation of Electrical Power Production, # 2 Exhibit Sterling Engine Power Production Data, # 3 Exhibit Resume of John Kraczek)(Snuffer, Denver) Modified on 9/17/2018: corrected motion relief/case has not been closed (alt) (Entered: 09/14/2018)
09/14/2018	452	Defendant's OBJECTIONS to 432 Order on Motion for Extension of Time, <i>RE: Response to Plaintiff's Draft Order and Opinion</i> filed by International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Snuffer, Denver) (Entered: 09/14/2018)
09/17/2018		Modification of Docket re 451 MOTION to Amend/Correct 428 Docket Text Order based on 6/22/18 Oral Ruling. Error: Wrong motion relief, "Reopen Case" was selected, however case has never been closed. Correction: Motion relief corrected to "Amend/Correct" and linked to order in question. (alt) (Entered: 09/17/2018)
09/17/2018	453	Please be advised the Record is complete for purposes of appeal for USCA case number 18-04119 re 445 Notice of Appeal - Interlocutory (alt) (Entered: 09/17/2018)
09/17/2018	454	DOCUMENT LODGED consisting of correspondence from JPMorgan Chase. Note: attached document lodged for reference purposes only; no response required unless specifically ordered by the court. (alt) (Entered: 09/17/2018)
09/20/2018	455	MEMORANDUM in Opposition re 448 Defendant's MOTION to Stay re 444 Order on Motion to Appoint Receiver,, Memorandum Decision, and Memorandum in Support filed by Plaintiff USA. (Attachments: # 1 Exhibit Pl. Ex. 329, July 2013 email string re Ra3 IRS Audits)(Gallagher, Erin) (Entered: 09/20/2018)
09/21/2018	456	NOTICE OF FILING of United States' Proposed Receivers and Proposed Receivership Order re 444 Order on Motion to Appoint Receiver,, Memorandum Decision, filed by Plaintiff USA. (Attachments: # 1 Exhibit Pl. Ex. 920, Wayne Klein Resume, # 2 Exhibit Pl. Ex. 921, Gil Miller Resume, # 3 Exhibit Pl. Ex. 922, Peggy Hunt Resume, # 4 Text of Proposed Order)(Gallagher, Erin) (Entered: 09/21/2018)
09/25/2018	457	REQUEST to Submit for Decision re 290 MOTION for Attorney Fees <i>re Motions to Compel</i> filed by Plaintiff USA. (Moran, Christopher) (Entered: 09/25/2018)
09/27/2018	458	REPLY to Response to Motion re 448 Defendant's MOTION to Stay re 444 Order on Motion to Appoint Receiver,, Memorandum Decision, and Memorandum in Support filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Attachments: # 1 Exhibit Expert Resumes)(Paul, Steven) (Entered: 09/27/2018)
09/27/2018	459	MOTION for Settlement and Memorandum in Support <i>re State Cases</i> filed by Defendants International Automated Systems, Neldon Johnson, RaPower-3. (Attachments: # 1 Exhibit Proposed Settlement Agreement, # 2 Exhibit Proposed Order, # 3 Exhibit Email from Plaintiff's Counsel)(Garriott, Daniel) Modified on 10/4/2018: corrected text (alt) (Entered: 09/27/2018)
09/28/2018	460	Plaintiff's MEMORANDUM in Opposition re 451 MOTION to Amend/Correct 428 Docket Text Order based on 6/22/18 Oral Ruling filed by Plaintiff USA. (Attachments: #

		<u>1</u> Affidavit Declaration of Dr. Thomas Mancini, # <u>2</u> Exhibit Pl. Ex. 932, website capture of www.rapower3.com)(Hines, Erin) (Entered: 09/28/2018)
09/28/2018	<u>461</u>	OBJECTIONS to <u>444</u> Order on Motion to Appoint Receiver,, Memorandum Decision, <i>Plaintiff's Proposed Receivership Order</i> filed by International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Snuffer, Denver) (Entered: 09/28/2018)
09/28/2018	<u>462</u>	MOTION lift asset freeze order as to certain assets and Memorandum in Support filed by Defendant R. Gregory Shepard. (Attachments: # <u>1</u> Affidavit Declaration of Greg Shepard) Motions referred to Evelyn J. Furse.(Paul, Steven) (Entered: 09/28/2018)
09/29/2018	<u>463</u>	DOCUMENTS LODGED consisting of Email from Plaintiff's counsel dated August 31, 2018, enclosing draft findings and conclusions. Note: attached document lodged for reference purposes only; no response required unless specifically ordered by the court. (Attachments: # <u>1</u> Text of Proposed Order Plaintiff's clean draft Findings and Conclusions, August 31, 2018, # <u>2</u> Text of Proposed Order Plaintiff's redline draft Findings and Conclusions, August 31, 2018) (DN) (Entered: 09/29/2018)
10/01/2018	464	Motions No Longer Referred: <u>462</u> MOTION lift asset freeze order as to certain assets and Memorandum in Support (nas) (Entered: 10/01/2018)
10/03/2018	<u>465</u>	OBJECTIONS to <u>458</u> Reply Memorandum/Reply to Response to Motion, <i>to "new evidence" submitted in Reply</i> filed by USA. (Gallagher, Erin) (Entered: 10/03/2018)
10/03/2018	<u>466</u>	MEMORANDUM in Opposition re <u>462</u> MOTION lift asset freeze order as to certain assets and Memorandum in Support filed by Plaintiff USA. (Attachments: # <u>1</u> Exhibit Pl. Ex. 924, April 12, 2017 "Full Reconveyance")(Gallagher, Erin) (Entered: 10/03/2018)
10/04/2018	<u>467</u>	FINDINGS OF FACT AND CONCLUSIONS OF LAW and PERMANENT INJUNCTION. Signed by Judge David Nuffer on 10/4/18 (alt) (Entered: 10/04/2018)
10/04/2018	<u>468</u>	JUDGMENT entered in favor of USA against International Automated Systems, RaPower-3, Neldon Johnson, R. Gregory Shepard, jointly and severally, in the amount of \$50,025,480, with post-judgment interest at the legal rate - CASE CLOSED. The Order and Injunction and Compliance Verifications set forth in the Findings of Fact and Conclusions of Law shall remain in effect and survive the closure of this action. Signed by Judge David Nuffer on 10/4/18 (alt) (Entered: 10/04/2018)
10/08/2018	<u>469</u>	NOTICE of Withdrawal of Motion [Doc. 462] by R. Gregory Shepard re <u>462</u> MOTION lift asset freeze order as to certain assets and Memorandum in Support (Paul, Steven) (Entered: 10/08/2018)
10/09/2018	<u>470</u>	REPLY to Response to Motion re <u>451</u> MOTION to Amend/Correct 428 Docket Text Order based on 6/22/18 Oral Ruling filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Attachments: # <u>1</u> Exhibit Engineers' Report)(Paul, Steven) (Entered: 10/09/2018)
10/09/2018	<u>471</u>	AFFIDAVIT/DECLARATION of John Kraczek in Support re <u>451</u> MOTION to Amend/Correct 428 Docket Text Order based on 6/22/18 Oral Ruling filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Attachments: # <u>1</u> Exhibit John Kraczek Resume, # <u>2</u> Exhibit Engineers Report) (Paul, Steven) (Entered: 10/09/2018)
10/10/2018	<u>472</u>	NOTICE OF APPEAL filed by Roger Freeborn, International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. Appeals to the USCA for the

		10th Circuit. Filing fee \$ 505, receipt number 1088-3120754. (Paul, Steven) (Entered: 10/10/2018)
10/10/2018	473	Transmission of Preliminary Record to USCA re 472 Notice of Appeal (Attachments: # 1 Appendix) (alt) (Entered: 10/10/2018)
10/16/2018	474	Defendant's MOTION to Amend/Correct 468 Judgment, and Memorandum in Support filed by Defendants International Automated Systems, Neldon Johnson, LTBI, RaPower-3, R. Gregory Shepard. Motions referred to Evelyn J. Furse.(Snuffer, Denver) (Entered: 10/16/2018)
10/17/2018	475	USCA Case Number Case Appealed to Tenth Case Number 18-4150 for 472 Notice of Appeal filed by Roger Freeborn, RaPower-3, R. Gregory Shepard, International Automated Systems, Neldon Johnson, LTBI. (jmr) (Entered: 10/17/2018)
10/17/2018	476	Motions No Longer Referred: 474 Defendant's MOTION to Amend/Correct 468 Judgment, and Memorandum in Support (nas) (Entered: 10/17/2018)
10/18/2018	477	BILL OF COSTS filed by USA. (Attachments: # 1 Memorandum of Costs, # 2 Verification of Costs: Declaration of Erin Healy Gallagher, # 3 Pl. Ex. 925)(Gallagher, Erin) (Entered: 10/18/2018)
10/23/2018	478	DOCKET TEXT ORDER re 452 Objection re: 467 Findings of Fact and Conclusions of Law ("Objection"), filed by Defendants. Defendants' 452 Objection is MOOT and therefore OVERRULED. Signed by Judge David Nuffer on 10/23/18. (elm) (Entered: 10/23/2018)
10/23/2018	479	ORDER denying 448 Motion to Stay enforcement of 444 Memorandum Decision. Signed by Judge David Nuffer on 10/23/18 (alt) (Entered: 10/23/2018)
10/23/2018	480	ORDER granting 290 Motion for Attorney Fees in the total amount of \$8,899.98. Signed by Judge David Nuffer on 10/23/18 (alt) Modified on 12/28/2018: this order no longer applies to Heideman & Associates per 551 Order (alt) (Entered: 10/23/2018)
10/23/2018	481	CLERK'S JUDGMENT FOR ATTORNEYS' FEES AND COSTS in favor of USA and against Heideman & Associates , International Automated Systems, LTBI, RaPower-3, Neldon Johnson, jointly and severally, in the total amount of \$8,899.98. Signed by ALT, Deputy Clerk (alt) Modified on 12/28/2018: this jgm no longer applies to Heideman & Associates per 551 Order (alt) (Entered: 10/23/2018)
10/24/2018	482	ORDER granting 459 Motion to Permit Settlement of State Cases. Signed by Judge David Nuffer on 10/24/18 (alt) (Entered: 10/24/2018)
10/25/2018	483	MOTION for Order to Show Cause and Memorandum in Support <i>why defendant R. Gregory Shepard should not be held in civil contempt</i> filed by Plaintiff USA. (Attachments: # 1 Exhibit Pl. Ex. 927- Affidavit of Certified Records, regarding attached Confirmation Notice of Shepard's Surrender of Annuity Contract, # 2 Text of Proposed Order) Motions referred to Evelyn J. Furse.(Moran, Christopher) (Entered: 10/25/2018)
10/25/2018	484	TRANSCRIPT REQUEST FORM filed by International Automated Systems, Neldon Johnson, LTBI, RaPower-3, R. Gregory Shepard re 472 Notice of Appeal (Paul, Steven) (Entered: 10/25/2018)
10/25/2018	485	<u>NOTICE OF HEARING ON MOTION</u> re: 483 MOTION for Order to Show Cause and Memorandum in Support <i>why defendant R. Gregory Shepard should not be held in civil contempt</i> :

		Motion Hearing set for Thursday, 11/8/2018 at 01:00 PM in Rm 7-300 before Judge David Nuffer. (asb) (Entered: 10/25/2018)
10/25/2018	486	Motions No Longer Referred: 483 MOTION for Order to Show Cause and Memorandum in Support <i>why defendant R. Gregory Shepard should not be held in civil contempt</i> (elm) (Entered: 10/25/2018)
10/25/2018	487	DOCKET TEXT ORDER taking under advisement 483 United States' Motion for Order to Show Cause Why R. Gregory Shepard Should Not Be Held in Civil Contempt of Court (the "Motion"). IT IS HEREBY ORDERED that any response to the 483 Motion shall be filed by no later than Friday, November 2, 2018. Signed by Judge David Nuffer on 10/25/18. No attached document. (elm) (Entered: 10/25/2018)
10/26/2018	488	RESPONSE to Motion re 474 Defendant's MOTION to Amend/Correct 468 Judgment, and Memorandum in Support filed by Plaintiff USA. (Gallagher, Erin) (Entered: 10/26/2018)
10/31/2018	489	Please be advised the Record is complete for purposes of appeal for USCA case number 18-4150 re 472 Notice of Appeal (alt) (Entered: 10/31/2018)
10/31/2018	490	RECEIVERSHIP ORDER overruling objections and appointing Wayne Klein as receiver for the estate of the Receivership Defendants and any subsidiaries or affiliated entities, with standing to prosecute claims under the Uniform Voidable Transactions Act. The Asset Freeze is continued. Signed by Judge David Nuffer on 10/31/18 (alt) (Entered: 10/31/2018)
11/01/2018	491	CORRECTED RECEIVERSHIP ORDER (corrects formatting problems in the 490 Receivership Order). Signed by Judge David Nuffer on 11/1/18 (alt) (Entered: 11/01/2018)
11/01/2018	492	DECLARATION of Neldon Johnson <i>re Compliance Verifications</i> filed by Neldon Johnson. (Paul, Steven) (Entered: 11/01/2018)
11/01/2018	493	DECLARATION of R. Gregory Shepard <i>re Compliance Verifications</i> filed by R. Gregory Shepard. (Paul, Steven) (Entered: 11/01/2018)
11/02/2018	494	RESPONSE to Motion re 483 MOTION for Order to Show Cause and Memorandum in Support <i>why defendant R. Gregory Shepard should not be held in civil contempt</i> filed by Defendant R. Gregory Shepard. (Attachments: # 1 Affidavit Declaration of Greg Shepard)(Paul, Steven) (Entered: 11/02/2018)
11/02/2018	495	Neldon Johnson's Pro Se MOTION to Recuse Honorable Judge David Nuffer filed by Defendant Neldon Johnson. Motions referred to Evelyn J. Furse.(mas) (Entered: 11/02/2018)
11/02/2018	496	MOTION to Appoint Counsel <i>Accounting Firm Lone Peak Valuation Group</i> filed by Receiver Wayne Klein. (Attachments: # 1 Text of Proposed Order) Motions referred to Evelyn J. Furse. Attorney Jonathan O. Hafen added to party Wayne Klein(pty:rc)(Hafen, Jonathan) (Entered: 11/02/2018)
11/02/2018	497	MOTION to Appoint Counsel <i>Parr Brown Gee & Loveless</i> filed by Receiver Wayne Klein. (Attachments: # 1 Text of Proposed Order) Motions referred to Evelyn J. Furse. (Hafen, Jonathan) (Entered: 11/02/2018)
11/05/2018	498	Motions No Longer Referred: 495 MOTION to Recuse, 496 MOTION to Appoint

		Counsel Accounting Firm Lone Peak Valuation Group, 497 MOTION to Appoint Counsel Parr Brown Gee & Loveless (nas) (Entered: 11/05/2018)
11/05/2018	499	ORDER denying 495 Motion for Recusal. Signed by Judge David Nuffer on 11/05/2018. (elm) (Entered: 11/05/2018)
11/06/2018	500	ORDER granting 496 Motion to Appoint Accounting Firm Lone Peak Valuation Group; granting 497 Motion to Appoint Counsel Parr Brown Gee & Loveless P.C. Signed by Judge David Nuffer on 11/6/18 (alt) (Entered: 11/06/2018)
11/08/2018	501	Costs Taxed in amount of \$ 49140.53 for Plaintiff against Defendants; signed by AWM, Chief Deputy Clerk on 11/7/2018 (alt) (Entered: 11/08/2018)
11/08/2018	502	Minute Order. Proceedings held before Judge David Nuffer: Counsel present for parties. Discussion heard on the government's motion finding Mr. Shepard in civil contempt, and procedures/remedies on the motion. Government requested a return of all money withdrawn within 7 days. Mr. Paul responded that all money has been spent. Mr. Klein requested a full accounting of the monies spent, including bank and AXA records. Court made findings on the record that the government has satisfied the burden of proof of civil contempt against Mr. Shepard. Court found Mr. Shepard guilty of civil contempt. Court ordered Mr. Shepard to pay \$27,126.05 to the receiver on or before 4:00 p.m. 11/30/2018. Mr. Shepard to provide a full accounting along with all exhibits by noon, 11/13/2018. Mr. Shepard to also provide information of all persons benefiting from the funds (names, addresses, phone numbers, SSN, email), along with a list of those living with Mr. Shepard. Court ordered that the U.S. is entitled to reasonable attorney fees and costs. Motion for attorney fees to be filed by 12/7/2018. granting 483 Motion for Order to Show Cause Follow-Up Show Cause Hearing set for Thursday, 11/15/2018 at 09:00 AM in Rm 7.300 before Judge David Nuffer. Government may appear by video conferencing. Government counsel to email the request to dj.nuffer@utd.uscourts.gov to make arrangements. Mr. and Mrs. Shepard must be present for the hearing on 11/15/2018. Motion Hearing held on 11/8/2018 re 483 MOTION for Order to Show Cause and Memorandum in Support <i>why defendant R. Gregory Shepard should not be held in civil contempt</i> filed by USA. Court adjourned. Written Order to follow oral order: Yes. Attorney for Plaintiff: Christopher Moran, Attorney for Defendant Steven Paul. Receiver: Wayne Klein. Court Reporter: Becky Janke.(Time Start: 1:05, Time End: 1:32, Room 7.300.) (asb) (Entered: 11/08/2018)
11/09/2018	503	MOTION for Rule 52(b), 59(e) and 60(b) Relief re 480 Order on Motion for Attorney Fees and Memorandum in Support filed by Respondent Heideman & Associates. Motions referred to Evelyn J. Furse.(Heideman, Justin) Modified on 11/9/2018: corrected relief text (alt) (Entered: 11/09/2018)
11/09/2018	504	Motions No Longer Referred: 503 MOTION Rule 52(b), 59(e) and 60(b) Relief from October 23, 2018 Order re 480 Order on Motion for Attorney Fees and Memorandum in Support (nas) (Entered: 11/09/2018)
11/09/2018	505	ORDER OF CONTEMPT as to R. Gregory Shepard following findings of 11/8/18 Show Cause Hearing. Signed by Judge David Nuffer on 11/9/18 (alt) (Entered: 11/09/2018)
11/13/2018	506	Redacted RESPONSE re 505 Contempt Order, filed by R. Gregory Shepard. (Attachments: # 1 Exhibit Accounting of Funds-redacted, # 2 Exhibit Accounting of Income-redacted)(Paul, Steven) (Entered: 11/13/2018)
11/13/2018	507	AMENDED AND RESTATED JUDGMENT in favor of USA and against International Automated Systems, RaPower-3, Neldon Johnson, R. Gregory Shepard, jointly and

		severally, in the amount of \$50,025,480.00 as equitable monetary relief, up to and including the amount of gross receipts each received from the solar energy scheme as follows, together with post-judgment interest at the legal rate: Neldon Johnson, \$50,025,480; International Automated Systems, \$5,438,089; RaPower-3, \$25,874,066; and R. Gregory Shepard, \$702,001. The Order and Injunction and Compliance Verifications set forth in the Findings of Fact and Conclusions of Law shall remain in effect and survive the closure of this action. Signed by Judge David Nuffer on 11/13/18 (alt) (Entered: 11/13/2018)
11/15/2018	508	Minute Entry Counsel present for parties. Court reviewed for the record the contempt order and associated deadlines entered by the court on 11/9/2018. Discussion heard on the accounting, filed by Mr. Paul on 11/13/2018. Government called Matthew Shepard. Witness sworn and testified. Government called Diana Shepard. Witness sworn or testified. Government called R. Gregory Shepard. Witness sworn and testified. Court ordered that Mr. Shepard produce documentation of disbursement of \$6k by 11/21/2018. Plaintiff and receiver to brief the joint and several issue and what funds from whom, and attorney fees claim due noon, 12/7/2018. Response noon, 12/13/2018. Further hearing 12/20/2018 at 9:00 a.m. to complete this hearing. Court adjourned. for proceedings held before Judge David Nuffer: Show Cause Hearing held on 11/15/2018, (Show Cause Hearing set for 12/20/2018 at 09:00 AM in Rm 7.300 before Judge David Nuffer.). Attorney for Plaintiff: Erin Healy Gallagher, Attorney for Defendant: Steven Paul. Receiver: Wayne Klein. Court Reporter: Kelly Hicken.(Time Start: 8:59, Time End: 12:00, Room 7.300.)(asb) (Entered: 11/15/2018)
11/16/2018	509	MOTION to lift asset freeze order as to Solco I, LLC and XSun Energy, LLC and Memorandum in Support filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. Motions referred to Evelyn J. Furse. (Paul, Steven) (Entered: 11/16/2018)
11/16/2018	510	DECLARATION of Neldon Johnson re 492 Declaration <i>AMENDED</i> filed by International Automated Systems, Neldon Johnson, LTB1, RaPower-3. (Garriott, Daniel) (Entered: 11/16/2018)
11/19/2018	511	Motions No Longer Referred: 509 MOTION to lift asset freeze order as to Solco I, LLC and XSun Energy, LLC and Memorandum in Support (jjm) (Entered: 11/19/2018)
11/20/2018	512	ERRATA to 509 MOTION to lift asset freeze order as to Solco I, LLC and XSun Energy, LLC and Memorandum in Support filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard . (Paul, Steven) (Entered: 11/20/2018)
11/21/2018	513	MEMORANDUM in Opposition re 503 MOTION for Rule 52(b), 59(e) and 60(b) Relief re 480 Order on Motion for Attorney Fees filed by Plaintiff USA. (Moran, Christopher) (Entered: 11/21/2018)
11/26/2018	514	DOCUMENT LODGED consisting of correspondence from JPMorgan Chase. Note: attached document lodged for reference purposes only; no response required unless specifically ordered by the court. (alt) (Entered: 11/26/2018)
11/27/2018	515	**RESTRICTED DOCUMENT** NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Show Cause Hearing held on November 15, 2018, before Judge David Nuffer, re 472 Notice of Appeal, 445 Notice of Appeal - Interlocutory. Court Reporter/Transcriber Kelly Brown Hicken CSR, RPR, RMR, Telephone number 801-521-7238.

		<p>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 business days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact <u>personal data identifiers</u> from the electronic transcript of the court proceeding. To redact additional information a Motion to Redact must be filed. The policy and forms are located on the court's website at www.utd.uscourts.gov. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/18/2018. Redacted Transcript Deadline set for 12/28/2018. Release of Transcript Restriction set for 2/25/2019 (alt) (Entered: 11/27/2018)</p>
11/28/2018	517	Defendant's REPLY to Response to Motion re 503 MOTION for Rule 52(b), 59(e) and 60(b) Relief re 480 Order on Motion for Attorney Fees filed by Respondent Heideman & Associates. (Heideman, Justin) (Entered: 11/28/2018)
11/29/2018	518	DOCUMENTS LODGED consisting of an e-mail from attorney Steven R. Paul. Note: attached document lodged for reference purposes only; no response required unless specifically ordered by the court. (elm) (Entered: 11/29/2018)
11/29/2018	519	DOCUMENTS LODGED consisting of an e-mail from attorney Erin Healy Gallagher. Note: attached document lodged for reference purposes only; no response required unless specifically ordered by the court. (elm) (Entered: 11/29/2018)
11/29/2018	520	DECLARATION of Neldon Johnson re 467 Findings of Fact & Conclusions of Law, Permanent Injunction (<i>Second Declaration of Compliance</i>) filed by International Automated Systems, Neldon Johnson, LTBI, RaPower-3. (Garriott, Daniel) (Entered: 11/29/2018)
11/29/2018	521	DECLARATION of R. Gregory Shepard (<i>Second Declaration of Compliance</i>) filed by R. Gregory Shepard. (Garriott, Daniel) (Entered: 11/29/2018)
11/29/2018	522	ORDER Vacating Hearing previously set for 9:00 a.m. on 12/20/18 and Limiting Briefs in re Civil Contempt. Signed by Judge David Nuffer on 11/29/18 (alt) (Entered: 11/29/2018)
11/30/2018	523	MEMORANDUM in Opposition re 509 MOTION to lift asset freeze order as to Solco I, LLC and XSun Energy, LLC and Memorandum in Support filed by Plaintiff USA. (Hines, Erin) (Entered: 11/30/2018)
11/30/2018	524	NOTICE of Appearance by Michael S. Lehr on behalf of Wayne Klein (Lehr, Michael) (Entered: 11/30/2018)
11/30/2018	525	MEMORANDUM in Opposition re 509 MOTION to lift asset freeze order as to Solco I, LLC and XSun Energy, LLC and Memorandum in Support filed by Receiver Wayne Klein. (Lehr, Michael) (Entered: 11/30/2018)
11/30/2018	526	Receiver's FINANCIAL REPORT <i>Recommendation of Living Allowances</i> filed by Receiver Wayne Klein. (Lehr, Michael) (Entered: 11/30/2018)
12/03/2018	527	DECLARATION of R. Gregory Shepard re 491 Order filed by R. Gregory Shepard. (Paul, Steven) (Entered: 12/03/2018)
12/03/2018	528	DECLARATION of Neldon P. Johnson re 491 Order filed by Neldon Johnson. (Paul, Steven) (Entered: 12/03/2018)

12/04/2018	529	ORDER denying 451 Rule 59(c) and Rule 52(b) Motion. Signed by Judge David Nuffer on 12/4/18. (dla) (Entered: 12/04/2018)
12/04/2018	530	MOTION for Limited Relief from Asset Freeze and Memorandum in Support filed by Defendant Neldon Johnson. (Attachments: # 1 Exhibit Email from W. Klein, # 2 Text of Proposed Order) Motions referred to Evelyn J. Furse.(Paul, Steven) Modified on 12/26/2018: corrected motion relief (alt) (Entered: 12/04/2018)
12/04/2018	531	AFFIDAVIT/DECLARATION of Neldon P. Johnson in Support re 530 MOTION and Memorandum in Support <i>for limited relief from asset freeze</i> filed by Defendant Neldon Johnson. (Paul, Steven) (Entered: 12/04/2018)
12/04/2018	532	Motions No Longer Referred: 530 MOTION and Memorandum in Support <i>for limited relief from asset freeze</i> (elm) (Entered: 12/04/2018)
12/05/2018	533	DOCKET TEXT ORDER taking under advisement 530 Defendant Neldon Johnson's Motion for Limited Relief from Asset Freeze Order (the "Motion"). Any response to the Motion shall be filed by no later than <u>Tuesday, December 18, 2018</u>, and any reply to the same shall be filed by no later than <u>12:00 p.m. on Friday, December 21, 2018</u>. Signed by Judge David Nuffer on December 5, 2018. No attached document. (elm) (Entered: 12/05/2018)
12/06/2018	534	MOTION for Attorney Fees and Memorandum in Support filed by Plaintiff USA. (Attachments: # 1 Declaration of Erin Healy Gallagher, # 2 Exhibit Pl. Ex. 935, United States' attorney's fees and costs, # 3 Text of Proposed Order) Motions referred to Evelyn J. Furse.(Gallagher, Erin) (Entered: 12/06/2018)
12/07/2018	535	Motions No Longer Referred: 534 MOTION for Attorney Fees and Memorandum in Support (nas) (Entered: 12/07/2018)
12/07/2018	536	MOTION for Order Releasing Properties from Receivership Estate filed by Receiver Wayne Klein. (Attachments: # 1 Exhibit, # 2 Text of Proposed Order) Motions referred to Evelyn J. Furse.(Lehr, Michael) (Entered: 12/07/2018)
12/10/2018	537	NOTICE of Intent to Serve Subpoena to Pacific Stock Transfer Company by Wayne Klein (Lehr, Michael) (Entered: 12/10/2018)
12/10/2018	538	Motions No Longer Referred: 536 MOTION for Order Releasing Properties from Receivership Estate (nas) (Entered: 12/10/2018)
12/11/2018	539	ORDER of USCA 10th Circuit as to 472 Notice of Appeal: abatement is lifted (alt) (Entered: 12/11/2018)
12/12/2018	540	Defendant's REPLY to Response to Motion re 509 MOTION to lift asset freeze order as to Solco I, LLC and XSun Energy, LLC and Memorandum in Support filed by Defendants International Automated Systems, Neldon Johnson, LTB1, RaPower-3, R. Gregory Shepard. (Snuffer, Denver) (Entered: 12/12/2018)
12/12/2018	541	NOTICE OF WITHDRAWAL OF COUNSEL of Christopher Robert Moran filed by Christopher R. Moran on behalf of USA (Moran, Christopher) (Entered: 12/12/2018)
12/13/2018	542	RESPONSE to Motion re 534 MOTION for Attorney Fees and Memorandum in Support filed by Defendant R. Gregory Shepard. (Paul, Steven) (Entered: 12/13/2018)
12/14/2018	543	ERRATA to 526 Receivers Financial Report filed by Receiver Wayne Klein . (Attachments: # 1 Exhibit)(Lehr, Michael) (Entered: 12/14/2018)
12/18/2018	544	MEMORANDUM in Opposition re 530 MOTION and Memorandum in Support <i>for limited relief from asset freeze</i> filed by Plaintiff USA. (Attachments: # 1 Exhibit Ex. 936, Bank statements for -9233)(Gallagher, Erin) (Entered: 12/18/2018)

12/21/2018	545	NOTICE of Intent to Serve Subpoena to Roger Hamblin by Wayne Klein (Lehr, Michael) (Entered: 12/21/2018)
12/26/2018	546	REQUEST to Submit for Decision re 536 MOTION for Order Releasing Properties from Receivership Estate filed by Receiver Wayne Klein. (Lehr, Michael) (Entered: 12/26/2018)
12/26/2018	547	ORDER granting 534 Motion for Attorney Fees: Defendant R. Gregory Shepard shall pay to the USA attorneys' fees and costs in the total amount of \$3,273.79 by no later than 2/1/19. Signed by Judge David Nuffer on 12/26/18 (alt) (Entered: 12/26/2018)
12/26/2018	548	ORDER granting 536 Motion to Release Certain Properties from the Receivership Estate. Signed by Judge David Nuffer on 12/26/18 (alt) (Entered: 12/26/2018)
12/26/2018	549	MEMORANDUM DECISION AND ORDER granting in part and denying in part 530 Motion for Limited Relief from Asset Freeze Order. Signed by Judge David Nuffer on 12/26/18 (alt) (Entered: 12/26/2018)
12/27/2018	550	ORDER denying 509 Motion without prejudice pending completion of Receivers investigation and report in accordance with the Corrected Receivership Order. Signed by Judge David Nuffer on December 27, 2018. (elm) (Entered: 12/27/2018)
12/28/2018	551	MEMORANDUM DECISION AND ORDER granting in part and denying in part 503 Motion for Relief from 480 Fee Order: the 480 Order and 481 Judgement for Atty Fees are amended to apply only to Defendants International Automated Systems, LTB1, RaPower-3, Neldon Johnson. Signed by Judge David Nuffer on 12/28/18 (alt) (Entered: 12/28/2018)
12/31/2018	552	Receiver's FINANCIAL REPORT <i>Recommendation on Status of International Automated Systems, and Liquidation Plan</i> filed by Receiver Wayne Klein. (Lehr, Michael) (Entered: 12/31/2018)
01/10/2019	553	NOTICE of Intent to Serve Subpoena To Church of Jesus Christ of Latter-Day Saints by Wayne Klein (Lehr, Michael) (Entered: 01/10/2019)
01/14/2019	554	NOTICE of Intent to Serve Subpoena to Glenda Johnson by Wayne Klein (Lehr, Michael) (Entered: 01/14/2019)
01/14/2019	555	NOTICE of Intent to Serve Subpoena to Neldon Johnson by Wayne Klein (Lehr, Michael) (Entered: 01/14/2019)
01/18/2019	556	NOTICE of Intent to Serve Subpoena to Cyprus Credit Union by Wayne Klein (Lehr, Michael) (Entered: 01/18/2019)

PACER Service Center			
Transaction Receipt			
01/18/2019 13:04:27			
PACER Login:	rd0292:2621182:0	Client Code:	Johnson
Description:	Docket Report	Search Criteria:	2:15-cv-00828-DN-EJF
Billable Pages:	30	Cost:	3.00

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAPOWER-3, LLC, INTERNATIONAL
AUTOMATED SYSTEMS, INC., et al.,

Defendants.

MEMORANDUM DECISION AND ORDER
GRANTING MOTION TO STRIKE JURY
DEMAND

Case No. 2:15-cv-828 DN

District Judge David Nuffer

Magistrate Judge Brooke Wells

Pending before the Court is the United States' Motion to Strike Jury Demand.¹ The court heard argument on Plaintiff's motion on April 27, 2016.² Having heard argument and after considering the parties' memoranda the court GRANTS the motion as set forth below.

The United States filed this action against Defendants seeking an injunction under [26 U.S.C. §§ 7402](#) and 7408 enjoining Defendants from "promoting the abusive solar energy scheme described in the United States' complaint and ordering that [Defendants] disgorge all gross receipts they received from any source as a result of [their scheme]."³ Plaintiff argues that because equitable remedies are sought there is no right to a jury trial.⁴ Defendants object citing to the Seventh Amendment right to a jury trial and arguing that penalties under [26 U.S.C. § 6700](#) of the Internal Revenue Code are not equitable remedies.

The Seventh Amendment right to a jury trial exists in "suits in which legal rights . . . [are] ascertained and determined, in contradistinction to those where equitable rights alone . . .

¹ [Docket no. 31](#).

² Docket no. 42.

³ Mtn. p. 2, [docket no. 31](#); Complaint ¶¶ 1 and 2, [docket no. 2](#).

⁴ Mtn p. 2.

[are] recognized, and equitable remedies . . . [are] administered.”⁵ The right to a jury trial may also apply to actions created by statute.⁶ Analysis of a right to jury trial entails two steps. First, an action is compared with those existing before the merger of the courts of law and equity. Then, the court examines whether the remedy sought is legal or equitable in nature.⁷ The second step is “more important than the first”⁸ and that is where the court focuses its analysis.

In addition, money damages are not necessarily “legal relief.”⁹ Damages may be equitable if restitutionary in nature, i.e. they restore the status quo and return the amounts rightfully belonging to another.¹⁰ For example, backpay liability from an employer under Title VII is usually restitutionary in nature.¹¹ “[A] monetary award ‘incidental to or intertwined with injunctive relief’ may be equitable.”¹²

Here, the sticking point is the possibility of penalties. At oral argument, Defense counsel represented that they would waive their right to a jury trial if the Government would stipulate to not seeking penalties. The Government declined to do so. The problem, however, is penalties are only a possibility and not a certainty in this case. As such, the court believes that based upon the Complaint and current state of the case, the Seventh Amendment right to a jury trial is not implicated. The relief sought here is equitable in nature. However, “[m]aintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with

⁵ *Granfinanciera v. Nordberg*, 492 U.S. 33, 41 (1989) (quoting *Parsons v. Bedford*, 3 Pet. 433, 4737 (1830)).

⁶ *Tull v. United States*, 481 U.S. 412, 417 (1987).

⁷ *Id.* 417-18.

⁸ *Granfinanciera*, 492 U.S. at 42.

⁹ *Chauffeurs, Teamsters and Helpers, Local 391 v. Terry*, 494 U.S. 558, 570 (1990).

¹⁰ *Tull*, 481 U.S. at 424.

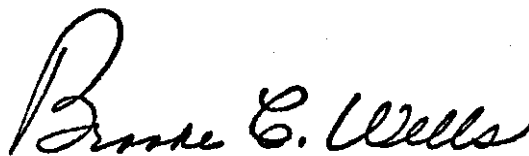
¹¹ *Terry*, 494 U.S. at 572

¹² *Id.* at 571 (quoting *Tull*, 481 U.S. at 424)).

the utmost care.”¹³ Based upon this timeless principle in our jurisprudence the court will allow Defendants to make a motion for a jury trial if penalties become part of this case.

Accordingly, Plaintiff’s motion is GRANTED.

DATED this 2 May 2016.

A handwritten signature in black ink that reads "Brooke C. Wells". The signature is written in a cursive style with a large initial 'B' and 'W'.

Brooke C. Wells
United States Magistrate Judge

¹³ *Dimick v. Schiedt*, 293 U.S. 474, 486 (1935).

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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RAPOWER-3, LLC, INTERNATIONAL
AUTOMATED SYSTEMS, INC., LTBI,
LLC, R. GREGORY SHEPARD,
NELDON JOHNSON, and ROGER
FREEBORN,

Defendants.

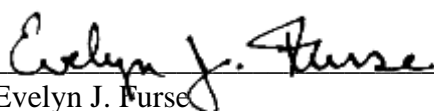
Civil No. 2:15-cv-00828-DN-EJF

**ORDER GRANTING UNITED
STATES' MOTION FOR
PROTECTIVE ORDER**

Judge David Nuffer
Magistrate Judge Evelyn J. Furse

Upon consideration of the United States' motion for protective order prohibiting Defendants from deposing the United States' trial counsel and related submissions, IT IS HEREBY ORDERED THAT the motion is GRANTED. Defendants shall not depose any representative of the United States Department of Justice, Tax Division.

DATED this 15th day of June, 2017.



Evelyn J. Furse
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RAPOWER-3, LLC, INTERNATIONAL
AUTOMATED SYSTEMS, INC., LTB1,
LLC, R. GREGORY SHEPARD, NELDON
JOHNSON, and ROGER FREEBORN,

Defendants.

**ORDER DENYING DEFENDANTS’
MOTION TO STRIKE THE EXPERT
REPORT OF THOMAS MANCINI AND
EXCLUDE TESTIMONY AT TRIAL**

Case No. 2:15-cv-00828 DN-EJF

District Judge David Nuffer

Magistrate Judge Evelyn J. Furse

At trial, the United States plans to offer expert witness opinion testimony, under [Fed. R. Evid. 702](#), from Dr. Thomas Mancini. The United States offers Dr. Mancini as an expert in solar energy technology. Defendants moved to exclude Dr. Mancini’s testimony, arguing that information about the nature and viability of Defendants’ purported solar energy technology is “irrelevant” and Dr. Mancini’s testimony is unreliable.¹

For the reasons stated in the United States’ brief in opposition,² Defendants’ Motion³ is DENIED and Dr. Mancini will be allowed to testify at trial under Fed. R. Evid. 702.

¹ Defendants’ Motion in Limine to Strike the Expert Report of Thomas Mancini and Exclude Testimony at Trial (“Defendants’ Motion”), [ECF No. 253](#).

² [ECF No. 263](#).

³ [ECF No. 253](#).

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I. The United States’ claims in this case.⁴

The United States seeks to enjoin Defendants from organizing, promoting, and selling the “solar energy scheme” that they have been promoting since or before 2010.⁵ As described in the complaint, the solar energy scheme purportedly offers a “disruptive and revolutionary” approach to capturing and using solar energy.⁶ The technology underlying the solar energy scheme, purportedly invented by Neldon Johnson, uses “solar lenses” on “solar towers.”⁷ Defendants make money by selling “lenses” to customers, which the customers purportedly lease to LTB, LLC.

⁴ The following information is drawn from the United States’ complaint, [ECF No. 2](#), and its motion for partial summary judgment, [ECF No. 251](#).

⁵ [ECF No. 2](#) and [ECF No. 35](#) ¶ 1(a).

⁶ [ECF No. 2](#) ¶ 16.

⁷ [ECF No. 2](#) ¶¶ 17, 22.

The government alleges that Defendants assure their customers that, by purchasing lenses, customers may claim a depreciation deduction and a solar energy tax credit. The underpinnings of Defendants' solar energy scheme, according to the United States, are their statements assuring their customers that:

- customers who buy and then purportedly lease the lenses to LTB are in a "trade or business" and have bought the lenses for the purpose of making a profit;⁸
- by virtue of their "trade or business," customers may deduct "business" expenses, consisting mostly of depreciation⁹ on the lenses, from their ordinary income like wages from their full-time jobs¹⁰; and
- customers may claim a solar energy tax credit to further reduce their tax liability.¹¹

The United States alleges that Defendants' statements are false or fraudulent as to material matters under the internal revenue laws.¹² It also alleges that Defendants knew or had reason to know that these statements were false or fraudulent when they made the statements while promoting the solar energy scheme.¹³ The United States further alleges that, to increase the tax benefits they promote to their customers, Defendants falsely inflate the value of the lenses to more than 200 percent of the correct value.¹⁴ According to the government, when Defendants tell customers this falsely inflated purchase price, Defendants make a gross valuation

⁸ *E.g.*, ECF No. 252-1, Pl. Ex. 1 at 2-3.

⁹ 26 U.S.C. § 162; 26 U.S.C. § 167; ECF No. 252-4, Pl. Ex. 25 at 1-2.

¹⁰ ECF No. 252-3, Pl. Ex. 24; ECF No. 252-6, Pl. Ex. 40 at 12; ECF No. 252-9, Pl. Ex. 214; ECF No. 252-10, Pl. Ex. 216; ECF No. 252-14, Pl. Ex. 492; ECF No. 252-29, Pl. Ex. 674.

¹¹ 26 U.S.C. § 48; ECF No. 252-4, Pl. Ex. 25 at 2.

¹² 26 U.S.C. § 6700(a)(2)(A); ECF No. 2, Counts VII-XI; ECF No. 251.

¹³ 26 U.S.C. § 6700(a)(2)(A); ECF No. 2, Counts VII-XI; ECF No. 251.

¹⁴ 26 U.S.C. § 6700(a)(2)(B), (b)(1); ECF No. 2, Counts VII-XI.

overstatement.¹⁵ The United States claims that Defendants have not stopped making these statements and will not stop without an order from this Court permanently enjoining Defendants under § 7408.¹⁶ The United States also seeks to enjoin Defendants under § 7402(a) because it claims an injunction (and other equitable relief including disgorgement) is appropriate for the enforcement of the internal revenue laws.¹⁷

II. Dr. Mancini's report and testimony.

A. Dr. Mancini's professional experience in concentrating solar power technology spans more than 35 years.

Dr. Mancini has more than 35 years of experience with solar thermal technology, which is the type of solar energy technology the Defendants promote. Dr. Mancini is a Fellow of the American Society of Mechanical Engineers.¹⁸ Throughout the course of Dr. Mancini's career, he has authored more than 70 peer-reviewed publications in the areas of solar power generation, passive solar cooling and active heating and cooling.¹⁹

Dr. Mancini earned his Ph.D. in Mechanical Engineering from Colorado State University in 1975.²⁰ For ten years thereafter, Dr. Mancini was a professor at New Mexico State University, where he taught courses on thermodynamics, heat transfer, fluid mechanics and solar energy.²¹

¹⁵ 26 U.S.C. § 6700(a)(2)(B); ECF No. 2, Counts VII-XI.

¹⁶ ECF No. 251 at 14-15, 36; *see* 26 U.S.C. §§ 6700, 7408; ECF No. 2, Counts VII-XI.

¹⁷ 26 U.S.C. § 7402(a); ECF No. 2 at Counts I-VI.

¹⁸ ECF No. 253-1, Expert Report of Dr. Thomas Mancini ("Mancini Report") at 47. Citations to the Mancini Report will refer to the paragraph number where appropriate, or the ECF-banner page number.

¹⁹ Mancini Report at 47-50; ECF No. 263-2, Pl. Ex. 699, Declaration of Dr. Thomas Mancini ("Mancini Decl.") ¶ 26.

²⁰ Mancini Report at 46.

²¹ Mancini Report at 46.

While at New Mexico State University, Dr. Mancini did research on solar heating and cooling, and solar power systems.²²

From January 1986 to July 2011, Dr. Mancini worked at Sandia National Laboratories, in Albuquerque, New Mexico.²³ Sandia is a government laboratory which is funded through the United States Department of Energy and is operated by a private company.²⁴ Among other job titles, Dr. Mancini was the Concentrating Solar Power (CSP) Program Manager at Sandia.²⁵ In this capacity, Dr. Mancini was responsible for working with the US Department of Energy CSP Program and the National Renewable Energy Laboratory on expanding CSP into the renewable energy marketplace, a project with a budget of more than \$50 million.²⁶ Dr. Mancini was also Chair of the International Energy Agency's Solar Power and Chemical Energy Systems, which is an international group dedicated to developing and deploying CSP technology worldwide.²⁷ In the 1990s, he was the task leader for the Dish-Engine Development and Project Manager partnership between the Department of Energy and private industry to develop a commercial dish/Stirling power generator.²⁸

When Dr. Mancini was at Sandia National Laboratory, his work involved evaluating proposed solar energy technology created by private industry, and opining on whether it would

²² Mancini Report at 46.

²³ Mancini Report at 45-46; *see* ECF No. 253-2, Deposition of Dr. Thomas Mancini, Oct. 23, 2017, (“Mancini Dep.”) 36:19-38:1, 40:14-42:9.

²⁴ Mancini Dep. 19:12-22:4.

²⁵ Mancini Report at 45-46.

²⁶ Mancini Report at 45-46.

²⁷ Mancini Report at 45.

²⁸ Mancini Report at 45.

work, and if so, how to maximize its performance and minimize its costs.²⁹ Dr. Mancini and his teams followed a structured engineering methodology aimed at understanding the details of the proposed component or solar energy system design and assessing their potential performance and costs.³⁰ Specifically, a person or entity (an “industry client”) would bring to Sandia a design or a prototype.³¹ Then Dr. Mancini and his colleagues, following well-established engineering principles, would systematically collect from the industry client detailed documentation of the design and design analyses of the solar thermal system; analyze this information; and evaluate and assess the performance and commercial viability of the components and system proposed.³²

The information Dr. Mancini and the other Sandia engineers required from the industry client included information that would contribute to the actual, long-term performance and costs of operating a solar thermal system.³³ Such information included all engineering models and the assumptions that affect the accuracy of their results; detailed design drawings that demonstrate the application of engineering analysis to achieve performance results such as mechanical properties and thermal performance; and component and system test results that apply specifically to the conditions under which they are conducted and may differ under other operating conditions or in the transition of going from one condition to another.³⁴ It was not

²⁹ Mancini Decl. ¶ 5; Mancini Dep. 19:12-22:4.

³⁰ Mancini Decl. ¶ 7.

³¹ Mancini Dep. 19:12-21:24.

³² Mancini Decl. ¶¶ 7-9.

³³ Mancini Decl. ¶¶ 8-9.

³⁴ Mancini Decl. ¶ 9.

typical for Sandia teams to conduct testing at an industry client's facility but they often helped to design and observe tests performed at the industry client's sites.³⁵

Dr. Mancini and his colleagues used their knowledge, skills, and other expertise in the scientific and engineering principles that apply to all solar energy technology, including systems analysis, applied optics, thermodynamics, fluid mechanics, heat transfer, experimental methods, and applied mathematics to evaluate the performance and commercial viability of the systems before them.³⁶ The Sandia technical teams then developed a list of questions for the designer, including questions about what tests the designer had done and was planning to do.³⁷ They made recommendations to improve the design, including how to address cost concerns of solar energy technology in the interest of bringing electricity on to the national grid at a reasonable, competitive cost.³⁸

During his tenure at Sandia National Laboratories, the technical teams evaluated hundreds of solar thermal systems and components using this methodology.³⁹ Dr. Mancini himself was on the evaluation team for more than 100 solar thermal components and systems including solar concentrators, thermal receivers, various engines, and dish engine systems.⁴⁰ The process that Dr. Mancini and his teams used was generally accepted at Sandia.⁴¹ It was structured

³⁵ Mancini Decl. ¶ 10.

³⁶ Mancini Decl. ¶¶ 11-13; Mancini Dep. 19:12-21:24

³⁷ Mancini Dep. 19:12-21:24.

³⁸ Mancini Dep. 19:12-21:24, 24:22-25:22, 46:18-47:9.

³⁹ Mancini Decl. ¶ 15.

⁴⁰ Mancini Decl. ¶ 16.

⁴¹ Mancini Decl. ¶¶ 14-16.

and detailed, and was based on the application of scientific and engineering principles used throughout the solar energy technology industry.⁴²

Dr. Mancini has been consulting on solar energy projects since 2011 through his own business, TRMancini Solar Consulting.⁴³ He engages in work similar to what he did at Sandia, reviewing system and component designs for concentrating solar energy projects and advising clients on the likely performance and costs of their proposed technology.⁴⁴

B. Dr. Mancini's role in this case.

The United States retained Dr. Mancini:

- a) to explain the basic concepts involved in workable solar energy power generation technology;
- b) to evaluate and explain the "IAS Solar Dish Technology" at issue in this case, which includes any equipment installed on sites identified by the Defendants, any technological plans or schematics provided by the Defendants;
- c) to determine whether the IAS Solar Dish Technology is currently converting sunlight into energy; and
- d) to opine on whether the IAS Solar Dish Technology is commercially viable on any scale (or may become commercially viable on any scale) to convert sunlight into electrical power.⁴⁵

At Dr. Mancini's request, the United States asked Defendants for the kinds of information and documents that Dr. Mancini is accustomed to reviewing in the course of his career at Sandia and in his consulting practice: detailed design information and, because Defendants claim that their purported technology has produced electricity, data and analysis of

⁴² Mancini Decl. ¶ 14.

⁴³ Mancini Dep. 42:10-43:9.

⁴⁴ Mancini Dep. 42:10-45:16.

⁴⁵ [ECF No. 253](#) at 2; Mancini Report at 3.

its performance under operation.⁴⁶ But, according to Dr. Mancini’s report and testimony, Defendants did not produce such information or documents, either about the purported technology’s design or performance.⁴⁷ Neldon Johnson testified that he does not keep data or results from the testing he claims to have conducted on the IAS system and component parts, including the Fresnel lenses.⁴⁸ Johnson’s testimony reflects that he does not keep written records of the testing conditions⁴⁹ or any written records that would allow anyone to recreate, replicate or otherwise prove Johnson’s purported tests and resulting claims about the viability of his purported technology.⁵⁰

Dr. Mancini reviewed the documents Defendants produced in this case and information on www.rapower3.com, along with information and documents provided by third parties.⁵¹

Dr. Mancini reviewed patents Johnson has obtained.⁵²

Dr. Mancini attended two site visits to view Defendants’ purported solar energy technology, its components, and the places where Defendants manufacture and claim to use such components: the “Manufacturing Facility,” the “R&D Site,” and the “Construction Site,” all in

⁴⁶ Mancini Report ¶¶ 48-50.

⁴⁷ Mancini Report ¶¶ 48-50.

⁴⁸ [ECF No. 256-14](#), Pl. Ex. 579, Deposition of Neldon Johnson, vol. 1, June 28, 2017, 66:1-24; 69:4-10; 150:2-151:17; 152:13-153:4; 164:3-165:7; 186:20-188:19; [ECF No. 256-24](#), Pl. Ex. 681, Deposition of Neldon Johnson, vol. 2, Oct. 3, 2017, 93:22-23; 94:20-23; 102:16-18; 105:3-20; 107:2-12; 108:9-109:7; 111:4-11; 111:18-20; 112:3-5; 114:4-20; 116:14-117:11; 117:14-21; 118:5-10; 119:4-120:10; 122:11-15; 123:2-10; 123:23-124:4; 124:20-125:15; 125:21-127:3; 127:13-15; 129:11-16; 130:12-19; 146:19-25; 147:20-148:1; 151:7-10; 151:20-24; 159:13-19; 161:17-25; 167:8-13; 187:11-188:11.

⁴⁹ Johnson Dep., vol. 2, 143:12-18; 144:2-11; 146:12-25.

⁵⁰ Johnson Dep., vol. 2, 96:10-22; 104:17-23; 123:11-14;

⁵¹ Mancini Dep. 11:11-12:17, 96:15-21, 119:17-124:25, 138:14-140:6, 141:15-143:5, 152:1-8; *see also* Mancini Report ¶¶ 48-62 and at 51-55 (Appendix II).

⁵² Mancini Decl. ¶ 25; Mancini Report at 52; [ECF No. 263-1](#), Pl. Ex. 15.

Millard County, Utah.⁵³ He visually examined the various components of Defendants' purported technology for hours on each visit, which occurred on January 24, 2017 and April 4, 2017.⁵⁴

During both visits, Dr. Mancini heard from Neldon Johnson about Johnson's purported solar energy technology and its components as he conducted Dr. Mancini around the sites.⁵⁵ Before Dr. Mancini's first site visit, he prepared a list of questions he had about information he was missing, and he asked Johnson those questions while on-site.⁵⁶

According to Dr. Mancini, during both of his site visits, "the components of the IAS Solar Dish Technology were not operating, were not assembled as a system, and were not producing electrical power or heat using solar energy."⁵⁷ Dr. Mancini did not test any aspect of Defendants' purported solar energy technology.⁵⁸ Even if the purported system had been operating, Dr. Mancini's observations suggest that it would be unreasonable for a third party like him to conduct any testing upon it.⁵⁹

It appears from Dr. Mancini's report, testimony, and declaration, that Dr. Mancini assessed the facts he learned through his review of Defendants' documents and other third-party documents produced in this case, and his visual inspections of Defendants' purported solar

⁵³ Mancini Report ¶ 54.

⁵⁴ *E.g.*, Mancini Report ¶¶ 54, 75, 93-95, 100-115; Mancini Decl. ¶ 23. Dr. Mancini initially testified that the site visit with IRS occurred in January 2016, but remembered later in his deposition that it was actually January 2017. Mancini Dep. 107:14-108:17.

⁵⁵ Mancini Dep. 111:20-118:12; Johnson was not present on the tour of the Manufacturing Facility during the April 4 site visit. Mancini Decl. ¶¶ 21-23.

⁵⁶ Mancini Dep. 74:1-103:4; Defs. Ex. 1005; Mancini Decl. ¶ 24; *see also* Mancini Dep. 103:7-119:16; Defs. Ex. 1006.

⁵⁷ Mancini Report ¶ 42.

⁵⁸ *E.g.*, Mancini Dep. 68:15-21.

⁵⁹ Mancini Report ¶ 182; *e.g. id.* ¶¶ 154, 179-86, 190, 195; *see also* Mancini Dep. 84:20-86:4.

energy technology.⁶⁰ He analyzed these facts in light of his extensive knowledge of concentrating solar energy power systems, and the principles of science and engineering that make such systems work.⁶¹ Part of Dr. Mancini’s task was to opine on whether Defendants’ purported solar energy technology has the potential to produce electricity on a commercial scale. Therefore, Dr. Mancini used the limited technical information available from Defendants and his own observations on the site visits to “analyze[] the IAS Solar Dish Technology as if it were operating as a system.”⁶² Because Defendants did not produce the engineering data that Dr. Mancini would normally use for this type of analysis, he used the only information that was available and his own knowledge of scientific, technological, and engineering principles that apply to the components.⁶³ When he did so, he viewed facts in the light most favorable to Defendants.⁶⁴

After synthesizing the facts of this case through the lens of his extensive expertise,⁶⁵ Dr. Mancini arrived at his opinions in this case: 1) “[t]he IAS Solar Dish Technology is in the research Stage 1 of development. The ‘Technology’ comprises separate component parts that do not work together in an operational solar energy system. The IAS Solar Dish Technology does not produce electricity or other useable energy from the sun”⁶⁶ and 2) “[t]he IAS Solar Dish

⁶⁰ Mancini Dep. 119:17-124:25, 141:22-143:5, 152:1-8; *see generally* Mancini Report.

⁶¹ *See generally* Mancini Report.

⁶² Mancini Report ¶ 87.

⁶³ Mancini Report ¶ 55; *e.g., id.* ¶¶ 90-92; Mancini Dep. 120:5-127:6.

⁶⁴ *E.g.*, Mancini Report at 38, Table 5, “Transient Effects”; Mancini Dep. 125:14-127:6.

⁶⁵ Mancini Report ¶¶ 14-208.

⁶⁶ Mancini Report at 39, “Conclusion 1.”

Technology is not now nor will it ever be a commercial-grade dish solar system converting sunlight into electrical power or other useful energy”⁶⁷.

III. Standard of Review

Federal Rule of Evidence 702 addresses the standard for the admissibility of expert testimony.

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.⁶⁸

“Under the Rules the trial judge must ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable.”⁶⁹ The inquiry of scientific reliability is flexible and focuses on principles and methodology.⁷⁰ The Supreme Court has offered several non-exhaustive factors that a court may rely on for determining reliability such as, whether the testimony can be tested, has been peer reviewed, has a known or potential rate of error, and has attracted acceptance in the relevant scientific community.⁷¹

District courts are tasked with the responsibility of serving as the gatekeepers of expert evidence, and must therefore decide which experts may testify and present evidence.⁷² Courts are

⁶⁷ Mancini Report at 44, “Conclusion 2.”

⁶⁸ Fed. R. Evid. 702

⁶⁹ *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 589 (1993).

⁷⁰ *See Id.* at 595

⁷¹ *See Id.*

⁷² *See Id.* at 579.

given “broad latitude” in deciding “how to determine reliability” and in making the “ultimate reliability determination.”⁷³ The Federal Rules of Evidence, however, generally favor the admissibility of expert testimony.⁷⁴ Excluding expert testimony is the exception rather than the rule,⁷⁵ and often times the appropriate means of attacking shaky but admissible evidence is through vigorous cross-examination, and the presentation of contrary evidence.⁷⁶ “[T]he Federal Rules of Evidence favor the admissibility of expert testimony, and [courts’] role as gatekeeper is not intended to serve as a replacement for the adversary system.”⁷⁷

The inquiry into whether an expert’s testimony is reliable is not whether the expert has a general expertise in the relevant field, but whether the expert has sufficient specialized knowledge to assist jurors in deciding the particular issues before the court.⁷⁸

Expert testimony is subject to Federal Rule of Evidence 403. “The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”⁷⁹

⁷³ *Kuhmo Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 142 (1999), (citing *General Electric Co. v. Joiner*, 522 U.S. 135 (1997)).

⁷⁴ *See Daubert*, 509 U.S. at 588.

⁷⁵ *See* Fed. R. Evid. 702 Advisory Notes

⁷⁶ *See Daubert*, 509 U.S. at 596.

⁷⁷ *THOIP v. Walt Disney Co.*, 690 F. Supp. 2d 218, 230 (S.D.N.Y. 2010).

⁷⁸ *Kuhmo*, 526 U.S. at 156.

⁷⁹ Fed. R. Evid. 403

In determining whether expert testimony is admissible the first step is to determine whether the expert is qualified, and then if the expert is qualified determine whether the expert's opinion is reliable by assessing the underlying reasoning and methodology.⁸⁰

IV. Discussion

For the following reasons, Dr. Mancini and his proposed testimony meet all of the Federal Rule of Evidence 702 requirements.

A. Dr. Mancini has specialized knowledge, skills, experience, and training in the field of concentrating solar power.

For more than 35 years, Dr. Mancini's career has been devoted to the field of concentrating solar power, the precise kind of solar energy technology Johnson claims to have. He has exceptional training in, and knowledge of, the science and engineering concepts required in the field. He has extensive experience actually working with proposed solar energy technology to improve its viability as a commercial product. Dr. Mancini is highly qualified to testify on the topics for which the United States has disclosed him as an expert witness.

B. Dr. Mancini's testimony is reliable.

An expert's testimony must be reliable.⁸¹ For purposes of [Fed. R. Evid. 702](#), that means that the testimony must be based on sufficient facts or data; that the testimony is the product of reliable principles and methods; and that the expert has reliably applied the principles and methods to the facts of the case.⁸² An expert's testimony must be grounded "in the methods and procedures of science" and based on actual knowledge, not "subjective belief or unsupported

⁸⁰ *U.S. v. Nacchio*, 555 F.3d 1234, 1241 (10th Cir. 2009).

⁸¹ *Daubert v. Merrell Dow Pharma., Inc.*, 509 U.S. 579, 592 (1993); *iFreedom Direct Corp. v. First Tennessee Bank Nat. Ass'n*, No. 2:09-CV-205-DN, 2012 WL 3067597, at *1 (D. Utah July 27, 2012) (Nuffer, J.).

⁸² [Fed. R. Evid. 702\(b\)-\(d\)](#).

speculation.”⁸³ There are many factors that go into the evaluation of whether a proffered expert offers reliable testimony, including the degree of experience and education of an expert; whether the expert’s methodology has been generally accepted by the scientific community; whether the expert is “proposing to testify about matters growing naturally and directly out of research [he has] conducted independent of the litigation, or whether [he has] developed [his] opinions expressly for purposes of testifying.”⁸⁴ All reliability factors share the ultimate purpose of making certain that an expert’s opinion “employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field.”⁸⁵ The Court should generally focus on an expert’s methodology rather than the conclusions it generates.⁸⁶

Dr. Mancini’s practice, for more than 35 years at both Sandia National Laboratories and in his consulting work, was to receive data, drawings, test results, and other information from the proponent of a solar energy technology system about its design and operation. At times, Dr. Mancini made site visits to see the solar energy technology in construction or operation. Using all of this information, Dr. Mancini and his colleagues applied their understanding of the scientific and engineering principles that apply to such technology (such as systems analysis, applied optics, thermodynamics, fluid mechanics, heat transfer, experimental methods, and applied mathematics) to evaluate whether the proposed technology was viable or could be

⁸³ *Dodge v. Cotter Corp.*, 328 F.3d 1212, 1222 (10th Cir. 2003) (citing *Daubert*, 509 U.S. at 589-90); see also *Mitchell v. Gencorp Inc.*, 165 F.3d 778, 783 (10th Cir. 1999) (citing *Daubert*, 509 U.S. at 589-93).

⁸⁴ *Smith v. Terumo Cardiovascular Sys. Corp.*, No. 2:12-CV-00998-DN, 2017 WL 2985749, at *6 (D. Utah July 12, 2017) (Nuffer, J.); *Daubert*, 509 U.S. at 593-94; *Bitler v. A.O. Smith Corp.*, 400 F.3d 1227, 1233 (10th Cir. 2005); *In re Paoli R.R. Yard PCB Litigation*, 35 F.3d 717, 789-90 (3d Cir. 1994); *In re Cessna 208 Series Aircraft Products Liability Litigation*, 2009 WL 3756980, at *6-8 (D. Kan. Nov. 9, 2009); *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 150 (1999). See also *Bimbo Bakeries USA, Inc. v. Sycamore*, No. 2:13-CV-00749, 2017 WL 1377991, at *4-7, 13 (D. Utah Mar. 2, 2017) (Nuffer, J.).

⁸⁵ *Dodge*, 328 F.3d at 1222-23 (citing *Kumho Tire*, 526 U.S. at 152); see also *Daubert*, 509 U.S. at 593-94.

⁸⁶ *Daubert*, 509 U.S. at 595.

improved. This is a reliable method for evaluating the validity and viability of proposed solar energy technology.⁸⁷ Dr. Mancini wrote and presented, for peer review, his research and conclusions using this method.

Here, Dr. Mancini applied the same reliable principles and methodology he has used for more than 35 years to the available facts in this case. Dr. Mancini reviewed the documents Defendants produced, some of which contained technological information. Dr. Mancini attended two site visits, both hours-long, during which he was able to observe the actual purported technology itself, along with the machines that purportedly make certain components. During these site visits, Dr. Mancini heard from Neldon Johnson and asked him questions.

Dr. Mancini applied his broad and deep knowledge, skills, and experience in solar energy technology to the information he learned⁸⁸ – just like he did at Sandia and just like he does in his current consulting practice. This is consistent with the ordinary practice of a witness offering expert testimony under [Fed. R. Evid. 702](#).⁸⁹

⁸⁷ See [Bitler](#), 400 F.3d at 1235 (“Employing his experience and knowledge as a fire investigator, Boh observed the physical evidence at the scene of the accident and deduced the likely cause of the explosion. Although such a method is not susceptible to testing or peer review, it does constitute generally acceptable practice as a method for fire investigators to analyze the cause of fire accidents. Nothing in Rule 702 or *Daubert* requires more. We conclude that the trial court did not abuse its discretion in finding Boh’s personal experience, training, method of observation, and deductive reasoning sufficiently reliable to constitute ‘scientifically valid’ methodology.” (citation omitted)); [Corr v. Terex USA, LLC](#), No. CIV.A. 08-1285-MLB, 2011 WL 976718, at *4-6 (D. Kan. Mar. 17, 2011).

⁸⁸ E.g., Mancini Report ¶¶ 14-208.

⁸⁹ E.g., [Fed. R. Evid. 703](#) (“An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed.”); [Bimbo Bakeries](#), 2017 WL 1377991, at *13 (allowing testimony from a proffered expert who spoke to a former employee of one of the parties, “visited a Bimbo facility to observe production, asked current employees questions regarding the production processes, examined the finished bread, examined competing companies’ breads, considered the ingredients on the labels of all the breads, considered the feel and texture of the breads, and also tasted them”) (Nuffer, J.); *id.* at *7 (allowing expert opinion testimony critiquing the work of the opposing party’s expert because it was the result of reliable principles and methods: “Dr. Mishra adequately explains why he believes some of Christensen’s questions were improper. Dr. Mishra may therefore testify to perceived flaws in Dr. Christensen’s questions”).

The facts Dr. Mancini observed on his site visits and learned through reviewing documents from Defendants and others in this case are more than sufficient to support his two opinions⁹⁰: 1) that “[t]he IAS Solar Dish Technology is in the research Stage 1 of development. The ‘Technology’ comprises separate component parts that do not work together in an operational solar energy system. The IAS Solar Dish Technology does not produce electricity or other useable energy from the sun”⁹¹ and 2) that “[t]he IAS Solar Dish Technology is not now nor will it ever be a commercial-grade dish solar system converting sunlight into electrical power or other useful energy.”⁹²

Defendants’ arguments in support of their motion to exclude Dr. Mancini’s testimony are better addressed to the weight of Dr. Mancini’s testimony rather than its admissibility.⁹³ They claim that Dr. Mancini’s testimony should be excluded from evidence because 1) he did not personally test Defendants’ purported solar energy technology, and 2) he made certain estimates and assumptions the course of his report, to fill gaps left by Defendants’ failure to produce data, drawings, or other typical information that any serious solar energy technology enterprise would have readily provided.⁹⁴

⁹⁰ See generally Mancini Report ¶¶ 14-208.

⁹¹ Mancini Report at 39, “Conclusion 1.”

⁹² Mancini Report at 44, “Conclusion 2.”

⁹³ *Ramsey v. Culpepper*, 738 F.2d 1092, 1101 (10th Cir. 1984) (“Mr. Culpepper’s complaints about Dr. Simpson’s personal unfamiliarity with real estate values and the reliability of the figures underlying his opinion go to the weight of his testimony, not to its admissibility.”); *Corr*, 2011 WL 976718, at *4-6.

⁹⁴ ECF No. 253 at 4-9.

An expert witness is not required to test the materials at issue personally in order to provide admissible testimony about those materials under [Fed. R. Evid. 702](#).⁹⁵ This is particularly true when the testimony at issue goes to “known science” that is “not in dispute.”⁹⁶ The “known science” here, of the fundamental principles of science and engineering that apply to all solar energy technology systems, is not in dispute. Therefore, if Defendants have concerns about the thoroughness of Dr. Mancini’s investigation, they can easily express those through cross-examination and closing argument.⁹⁷

Further, the principles and methodology that Dr. Mancini has used throughout his career, and that he used here, do not require the evaluator of a proposed solar energy technology to test the proposed equipment himself. Dr. Mancini could simply observe the components of Defendants’ purported technology, note the information Defendants produced about them, and draw conclusions about this information in light of his 35 years of knowledge, experience, and education on the scientific and engineering principles that apply to all solar energy technology.

Next, Defendants attempt to exclude Dr. Mancini’s testimony because he used certain estimates in the course of preparing his report because he was missing basic data for Defendants’ purported solar energy technology. All facts suggest that this basic information does not exist because Defendants failed to produce such data, drawings, and other technical information.

⁹⁵ See [Fed. R. Evid. 703](#); [Bimbo Bakeries](#), 2017 WL 1377991, at *7; accord [Kechi Twp. v. Freightliner, LLC](#), 592 F. App’x 657, 669 (10th Cir. 2014) (“[a]n expert is [not] required to interview every potential source of information in order to pass the *Daubert* test”); [Corr](#), 2011 WL 976718, at *4-6.

⁹⁶ [Bitler](#), 400 F.3d at 1236 (“The core dispute—whether copper sulfide particles found on the valve seat in this case were sufficient to cause a leak—is one the district court could properly determine is a question for the jury. In light of this evidentiary dispute, the Bitlers need only establish by a preponderance of the evidence that copper sulfide particles caused the gas explosion in their basement. Had their experts conducted further tests on their water heater’s safety valve and established by observation that it did intermittently fail, they may have established causation to a near certainty. But such a high degree of certainty is not required.”).

⁹⁷ [Kechi Twp.](#), 592 F. App’x at 669.

Defendants also argue that Dr. Mancini's ultimate conclusions rest entirely on the reasonable estimates he made to fill gaps in Defendants' data.⁹⁸ But Dr. Mancini's opinions are well-supported by many other facts in the report that do not depend on those estimates. Defendants do not challenge the facts Dr. Mancini sets forth, that the purported solar energy technology was disassembled and did not work while Dr. Mancini was on site. Dr. Mancini had no data or other information from Defendants to show that it had ever been fully assembled or worked. So Dr. Mancini analyzed the efficiency of the purported system as if it were assembled and as if it did work. Dr. Mancini used his extensive experience and knowledge of the scientific and engineering principles applicable to solar energy technology to arrive at the estimates he provided, and he gave Defendants the benefit of the doubt in doing so. Dr. Mancini's optical and efficiency analyses are two illustrations of why he believes that Defendants' purported solar energy technology will never be a commercial-grade system that converts sunlight into electrical power or other useful energy. But Dr. Mancini offers many additional reasons, based on the facts of this case and his extensive training and experience, that he believes Defendants' purported solar energy technology will never be a commercial-grade system. It is permissible for an expert witness to offer alternative methods of analysis, this does not render his opinion testimony unreliable.⁹⁹ If Defendants wish to cross-examine Dr. Mancini about his estimates, they are free to do so at trial.¹⁰⁰

⁹⁸ ECF No. 253 at 6.

⁹⁹ *Bimbo Bakeries*, 2017 WL 1377991, at *11 (an expert may present alternative analyses to the factfinder).

¹⁰⁰ See *Martin v. Fleissner GmbH*, 741 F.2d 61, 64 (4th Cir. 1984) ("Although, as the defendant has noted, neither witness was an expert on crimpers, both were knowledgeable in the pertinent areas of engineering design and familiar with the processes used by a crimper. This lack of direct experience is not a sufficient basis to reject their testimony, but may affect the weight that testimony is given, a decision properly made by the jury." (footnote omitted)); *Ramsey*, 738 F.2d at 1101 ("Mr. Culpepper's complaints about Dr. Simpson's personal unfamiliarity with real estate values and the reliability of the figures underlying his opinion go to the weight of his testimony, not to its

C. Dr. Mancini’s specialized knowledge will help this Court understand the evidence and determine facts in issue.

Dr. Mancini’s testimony will give this Court reliable insight into the specialized scientific and technical knowledge required to understand solar energy technology, generally. Dr. Mancini will also explain how solar energy systems work, the kind of knowledge and experience that is required to create and maintain such systems, and the challenges that face any solar energy technology system to generate electricity or heat at a reasonable cost. Dr. Mancini’s evaluation of Defendants’ purported solar energy technology will assist the Court in understanding what Defendants’ purported solar energy technology is and does (or does not do); whether Defendants’ purported solar energy technology is currently converting sunlight into useable energy; and whether Defendants’ purported solar energy technology is or could be commercially viable on any scale to convert sunlight into electrical power.

Whether Defendants’ purported solar energy technology works as Defendants claim is a material matter and is directly at issue in this case.¹⁰¹ Dr. Mancini’s testimony will better equip this Court, with reliable evidence, to determine whether Defendants’ statements about that material matter were false or fraudulent, and whether Defendants knew, or had reason to know, that such statements were false or fraudulent.¹⁰² Dr. Mancini’s testimony will also shed light on the “correct valuation” for the lenses Defendants sold.¹⁰³ If the technology does not work as

admissibility.”); *see also Obieli v. Campbell Soup Co.*, 623 F.2d 668, 670 (10th Cir. 1980) (affirming judgment over argument that a new trial should be granted because doctors testified based on erroneous factual assumptions, when “[b]oth of these witnesses were fully examined, both on direct and extended cross-examination, on all matters, including the ones above referred to.”); *Cinema Pub*, 2017 WL 1066628, at *7-8.

¹⁰¹ *E.g.*, ECF No. 202 at 2.

¹⁰² *See* 26 U.S.C. § 6700(a)(2)(A).

¹⁰³ *See* 26 U.S.C. § 6700(b)(1)(A).

Defendants claim it does, the correct valuation of a lens may be far less than the \$3,000 or \$3,500 prices Defendants quoted to customers. Dr. Mancini will provide reliable evidence for this Court to weigh regarding whether Defendants made or furnished gross valuation overstatements when telling customers the purchase price for each lens.¹⁰⁴

V. Conclusion

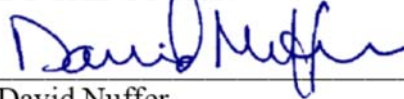
Dr. Mancini has extensive knowledge, skills, experience, training, and expertise in the field of concentrating solar power technology, developed over more than 35 years in that industry. He offers reliable testimony, based soundly on the facts and data in this case and using reliable principles and methods, that will assist this Court in understanding the specialized field of concentrating solar power technology and the state of Defendants' purported solar energy technology.

ORDER

IT IS HEREBY ORDERED that Defendants' Motion¹⁰⁵ is DENIED. Dr. Mancini's testimony is admissible under Fed. R. Evid. 702.

Dated February 27, 2018.

BY THE COURT:



David Nuffer
United States District Judge

¹⁰⁴ § 6700(a)(2)(B).

¹⁰⁵ [ECF No. 253](#).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RAPOWER-3, LLC, INTERNATIONAL
AUTOMATED SYSTEMS, INC., LTB1,
LLC, R. GREGORY SHEPARD, NELDON
JOHNSON, and ROGER FREEBORN,

Defendants.

**MEMORANDUM DECISION AND
ORDER DENYING DEFENDANTS'
MOTION TO REINSTATE
TRIAL BY JURY**

Case No. 2-15-cv-00828-DN

District Judge David Nuffer

On January 25, 2016, Defendants filed a Jury Demand.¹ In response, the United States filed a Motion to Strike Jury Demand.² Defendants responded in opposition.³ The United States replied.⁴ On April 27, 2016, Magistrate Judge Wells heard from counsel and took under advisement the Motion to Strike Jury Demand.⁵ On May 2, 2016, Magistrate Judge Wells granted the Motion to Strike Jury Demand stating that the relief the United States is seeking is “equitable in nature,” therefore the “Seventh Amendment right to a jury trial is not implicated.”⁶ However, Magistrate Judge Wells stated that “the court will allow Defendants to make a motion for a jury trial if penalties become part of this case.”⁷

¹ [Docket no. 24](#), filed January 25, 2016.

² [Docket no. 31](#), filed February 2, 2016.

³ [Docket no. 32](#), filed March 4, 2016.

⁴ [Docket no. 33](#), filed March 18, 2016.

⁵ Minute Order Motion Hearing, docket no. 42, filed April 27, 2016.

⁶ Memorandum Decision and Order Granting Motion to Strike Jury Demand, [docket no. 43, at 2](#), filed May 2, 2016.

⁷ *Id.* at 3.

Defendants moved to reinstate a trial by jury on February 9, 2018.⁸ The United States opposes this Motion.⁹ The parties' memoranda have been carefully reviewed. For the reasons set forth below, Defendants' Motion is DENIED.

TIMELINESS

The Motion is untimely. On April 6, 2016, a 10-day bench trial was set for April 16, 2018. The amended scheduling order filed on July 6, 2017 set the motions deadline as November 17, 2017.¹⁰ After input of counsel, on January 25, 2018, the schedule was amended only to split the dates of trial and move the first day of trial up two weeks to April 2, 2018.¹¹ Split trial dates, not in consecutive order, make a jury trial difficult.

Defendants' Motion relies heavily on *Kokesh v. S.E.C.*¹² to argue that Defendants are entitled to a trial by jury.¹³ *Kokesh* was decided in June 2017, over five months before the motions cut-off date. Defendants had ample time to file a timely motion. But Defendants did not file the Motion until February 9, 2018. The Motion was filed over two months after the motions cutoff date; two weeks after the amended scheduling order rescheduling and splitting the trial dates; and less than two months before trial begins on April 2nd. The untimeliness of the Motion by itself warrants denial; however, other arguments will be addressed.

⁸ Defendants' Motion to Reinstate Trial by Jury ("Motion"), docket no, 289, filed February 9, 2018.

⁹ United States' Brief in Opposition to Defendants' Motion to Reinstate Trial by Jury ("Opposition"), [docket no. 309](#), filed February 26, 2018.

¹⁰ [Docket no. 205](#), filed July 6, 2017.

¹¹ Docket no. 284, filed January 25, 2018, "Dates of 10 Day Bench Trial: April 2, 3, 4, 5, 19, 20, 23, 24; May 9; and June 4." The schedule was amended one additional time setting "Dates of 10 Day Bench Trial: April 2, 3, 4, 5, 19, 20, 23, 24, 25, 26; and if necessary May 9; and June 4," docket no. 287, filed February 5, 2018.

¹² *Kokesh v. S.E.C.*, 137 S.Ct. 1635 (2017).

¹³ Motion at 2-9.

DISGORGEMENT IS EQUITABLE AND NOT A SUBJECT FOR JURY DECISION

The United States requests “disgorgement, in the nature of restitution, of Defendants’ gross receipts from their fraudulent conduct.”¹⁴ Defendants argue that this type of disgorgement is a penalty and therefore Defendants are entitled to a jury.¹⁵ Contrary to Defendants’ argument, disgorgement is equitable and is not tried by a jury.

The test for determining whether a party has a right to a trial by jury is whether the “action involves rights and remedies of the sort traditionally enforced in action at law, rather than in action in equity or admiralty”¹⁶. The Ninth Circuit, in *Fifty-Six Hope Road Music, Ltd. v. A.V.E.L.A., Inc.*, stated “[a] claim for disgorgement of profits...is equitable, not legal.”¹⁷ “[T]he current law recognizes that actions for disgorgement of improper profits are equitable in nature.”¹⁸ Also, the Second Circuit found that “[a] historic equitable remedy was the grant of restitution ‘by which defendant is made to disgorge ill-gotten gains or to restore the status quo, or to accomplish both objectives.’”¹⁹ The Second Circuit held there is no right to jury trial in a case seeking “disgorgement of profits in an action brought by the SEC to enjoin violations of the securities laws [because]...the court is not awarding damages to which plaintiff is legally entitled but is exercising...discretion to prevent unjust enrichment.”²⁰ District courts hold bench trials

¹⁴ Opposition at 3.

¹⁵ Motion at 3.

¹⁶ *Securities and Exchange Commission v. Commonwealth*, 574 F.2d 90, 95 (2d Cir. 1978) (quoting *Pernell v. Southall Realty*, 94 S.Ct. 1723, 1729 (1974)).

¹⁷ *Fifty-Six Hope Road Music, Ltd. v. A.V.E.L.A., Inc.*, 778 F.3d 1059, 1075 (9th Cir. 2015).

¹⁸ *Id.*

¹⁹ *Securities and Exchange Commission v. Commonwealth*, 574 F.2d at 95 (2d Cir. 1978) (quoting 5 Federal Practice p 38.24(2) at 190.5 (1977)).

²⁰ *Id.*

where the government seeks injunctive relief pursuant to 26 U.S.C. §7408 and injunctive relief and disgorgement of profits pursuant to 26 U.S.C. §7402.²¹

The United States is seeking an order requiring all Defendants to disgorge “the gross receipts that they received from any source as a result of the solar energy scheme...”²² The United States contends that the disgorgement they are requesting will compensate the United States; “bring the parties back to their original starting point[;] and ensure that wrongdoers are not enriched by their ill-gotten gains...”²³ This classic disgorgement is an equitable remedy which does not entitle Defendants to a jury trial.

DISGORGEMENT IS INCIDENTAL TO INJUNCTIVE RELIEF

The Supreme Court has held that a monetary award may be an equitable remedy where (1) it is “restitutionary, such as in ‘action[s] for disgorgement of improper profits’” or (2) it is “incidental to or intertwined with injunctive relief.”²⁴ The relief that the United States is seeking meets both of these tests. “Restitution is limited to ‘restoring the status quo and ordering the return of that which rightfully belongs to the [victim].’”²⁵ As stated above, the United States seeks disgorgement in order “to compensate the U.S. Treasury for the millions of dollars it has lost due to Defendants’ unlawful conduct that resulted in their unjust enrichment.”²⁶ Secondly, even if disgorgement under 26 U.S.C. § 7402 were considered a legal remedy, a jury trial is not required

²¹ *United States v. Mesadieu*, 180 F. Supp.3d 1113 (M.D. Fla. 2016) (finding that disgorgement in the amount of defendant’s “ill-gotten gains” constitutes a “fair and equitable remedy,” but holds that the Government had not met its burden of proving the proper amount of unjust enrichment subject to disgorgement. *United States v. Lawrence*, 2016 WL 5390569, (S.D. Fla. 2016) (holding that the claim for disgorgement is an equitable one that seeks to divest defendant who was unjustly enriched by operating his business in an unlawful manner).

²² Complaint, [docket no. 2](#), filed November 23, 2015.

²³ Opposition at 9-10.

²⁴ *Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry*, 494 U.S. 558, 570 (1990) (quoting *Tull v. United States*, 481 U.S. 412, 424 (1987)).

²⁵ *Tull*, 481 U.S. at 424 (quoting *Porter v. Warner Holding Co.*, 416 U.S. 363, 375 (1946)).

²⁶ Opposition at 7.

if the monetary award is “incidental to or intertwined with injunctive relief.”²⁷ Here, “the primary relief the United States seeks is a civil injunction, an equitable remedy.”²⁸ The disgorgement sought here is incidental to injunctive relief and therefore, a jury trial is not required.

KOKESH DOES NOT APPLY

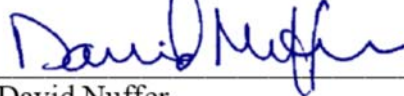
Kokesh v. SEC decided whether disgorgement is a penalty for the purpose of applying a statute of limitation. *Kokesh* is a statutory analysis of terms.²⁹ The Supreme Court does not state in *Kokesh* that its ruling determines that disgorgement is a penalty in all contexts. And, *Kokesh* certainly did not discuss or overrule the long standing precedent of categorizing disgorgement as an equitable remedy.

ORDER

IT IS HEREBY ORDERED that Defendants’ Motion to Reinstate Trial by Jury³⁰ is DENIED. A 10-day bench trial will begin April 2nd as previously scheduled.

Dated March 7, 2018.

BY THE COURT:



David Nuffer

United States District Judge

²⁷ *Tull*, 481 U.S. at 424.

²⁸ Opposition at 3.

²⁹ *Kokesh*, 137 S.Ct. at 1639 (“A 5–year statute of limitations applies to any “action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise.” 28 U.S.C. § 2462. This case presents the question whether § 2462 applies to claims for disgorgement imposed as a sanction for violating a federal securities law. The Court holds that it does. Disgorgement in the securities-enforcement context is a “penalty” within the meaning of § 2462, and so disgorgement actions must be commenced within five years of the date the claim accrues.”).

³⁰ Defendants’ Motion to Reinstate Trial by Jury (“Motion”), docket no, 289, filed February 9, 2018.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RAPOWER-3, LLC, INTERNATIONAL
AUTOMATED SYSTEMS, INC., LTB1,
LLC, R. GREGORY SHEPARD, NELDON
JOHNSON, and ROGER FREEBORN,

Defendants.

**MEMORANDUM DECISION AND
ORDER GRANTING DEFENDANTS'
RULE 60(a) REQUEST FOR RELIEF
BASED ON OVERSIGHT AND
CONFIRMING ORDER
DENYING TRIAL BY JURY**

Case No. 2-15-cv-00828-DN

District Judge David Nuffer

Defendants correctly claim the timing of the Memorandum Decision and Order Denying Defendants' Motion to Reinstate Trial by Jury ("Order")¹ was premature and request relief pursuant to DUCivR 7-1(b)(3)(B).² A shorter briefing period was not ordered; the Defendants' Motion to Reinstate Trial by Jury ("Motion"), [docket no. 289](#), filed February 9, 2018,³ was not a motion in limine to which no reply is permitted; and Defendants had until March 12, 2018, to file a reply to Plaintiff's Opposition to Defendants' Motion to Reinstate Trial by Jury, filed February 26, 2018.⁴ But the Order was issued March 7, 2018. Defendants have correctly stated that the

¹ [Docket No. 322](#), filed March 7, 2018.

² Defendants' Rule 60(a) Request for Relief Based on Oversight ("Request"), [docket no. 325, at 2](#), filed March 8, 2018.

³ Docket no, 289, filed February 9, 2018.

⁴ Request at 2.

Order⁵ was entered prematurely. This was the court's error. However, even after the arguments in Defendants' Reply⁶ are considered, the Order⁷ does not change for the reasons set forth below.

KOKESH IS INAPPLICABLE

Kokesh v. SEC is a statutory analysis of application of a statute of limitations and does not apply to determine right to trial by jury.⁸ *Kokesh* is not applicable.

TIMELINESS BARS THE MOTION TO REINSTATE TRIAL BY JURY

In the Reply, Defendants state that they did not learn of "Plaintiff's intention to assert penalties by way of excessive 'disgorgement,'" until Plaintiff filed its Motion to Freeze Assets on November 17, 2017.⁹ Defendants argue that the Motion to Reinstate Trial by Jury¹⁰ is not untimely, because it "was brought shortly after they learned of [Plaintiff's] new [disgorgement] theory."¹¹ This argument is unpersuasive for two reasons. First, the Plaintiff's Motion to Freeze Assets was filed November 17, 2017, and Defendants did not file the Motion to Reinstate Trial by Jury until 84 days later on February 9, 2018. Defendants waited almost three months to file the Motion to Reinstate Trial by Jury. Second, the Complaint filed nearly two and a half years ago states that Plaintiff seeks an order requiring "all Defendants disgorge to the United States the

⁵ [Docket no. 322](#), filed March 7, 2018.

⁶ Defendants' Reply Memorandum in Support of Motion to Reinstate Trial by Jury ("Reply"), [docket no. 326](#), filed March 8, 2018.

⁷ [Docket no. 322](#), filed March 7, 2018.

⁸ *Kokesh v. S.E.C.*, 137 S.Ct. 1639 (2017) ("A 5-year statute of limitations applies to any "action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise." 28 U.S.C. § 2462. This case presents the question whether § 2462 applies to claims for disgorgement imposed as a sanction for violating a federal securities law. The Court holds that it does. Disgorgement in the securities-enforcement context is a "penalty" within the meaning of § 2462, and so disgorgement actions must be commenced within five years of the date the claim accrues.").

⁹ Reply at 6, *see also* United States' Motion to Freeze the Assets of Defendants Neldon Johnson, Rapower-3, LLC, and International Automated Systems, Inc. and Appoint a Receiver, [docket no. 252](#), filed November 17, 2017.

¹⁰ Defendants' Motion to Reinstate Trial by Jury, docket no, 289, filed February 9, 2018.

¹¹ Reply at 6.

gross receipts that they received from any source as a result of the solar energy scheme...”¹²

Also, the Prayer for Relief requests “[t]hat this Court, under § 7402(a), enter an order requiring all Defendants to disgorge to the United States the gross receipts...”¹³ Defendants’ claim that they were not made aware of Plaintiff’s intention to seek disgorgement of gross receipts until November 17, 2017, is inaccurate because the Complaint filed on November 23, 2015, clearly states the intent of Plaintiff to seek disgorgement. And 84 days, the time between the Motion to Freeze Assets and the Motion to Reinstate Trial by Jury, is not a short and insignificant amount of time. The Motion to Reinstate Trial by Jury is untimely.

THERE IS NO RIGHT TO JURY TRIAL MAKING A BALANCING ANALYSIS IRRELEVANT

Defendants in the Reply assert that their “right to a trial by jury far outweighs” any prejudice to Plaintiff.¹⁴ A balancing analysis is irrelevant because Defendants have no right to trial by jury on the issue of disgorgement, for the reasons stated in the Order.

¹² Complaint for Permanent Injunction and Other Relief, [docket no. 2](#), at 3, ¶ 2.b., filed November 23, 2015.

¹³ *Id.* at 43, ¶ b.

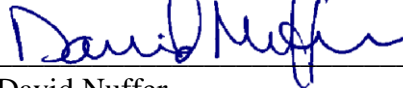
¹⁴ Reply at 9.

ORDER

IT IS HEREBY ORDERED that Defendants' Rule 60(a) Request for Relief Based on Oversight¹⁵ is GRANTED. But after considering the Reply Memorandum, the result does not change. The Motion to Reinstate Trial by Jury¹⁶ was DENIED by the Memorandum Decision and Order Denying Defendants' Motion to Reinstate Trial by Jury¹⁷ which is CONFIRMED. The 10-day bench trial will begin April 2nd as previously scheduled.

Dated March 13, 2018.

BY THE COURT:



David Nuffer
United States District Judge

¹⁵ [Docket no. 325, at 2](#), filed March 8, 2018.

¹⁶ Defendants' Motion to Reinstate Trial by Jury, docket no, 289, filed February 9, 2018.

¹⁷ [Docket No. 322](#), filed March 7, 2018.

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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff,</p> <p>vs.</p> <p>RAPOWER-3, LLC, INTERNATIONAL AUTOMATED SYSTEMS, INC., LTBI, LLC, R. GREGORY SHEPARD, NELDON JOHNSON, and ROGER FREEBORN,</p> <p>Defendants.</p>	<p>UNITED STATES’ INITIAL DISCLOSURES TO ALL DEFENDANTS</p> <p>Civil No. 2:15-cv-00828-DN-BCW</p> <p>Judge David Nuffer Magistrate Judge Brooke C. Wells</p>
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Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, the United States makes the following initial disclosures:

- A. The name and, if known, the address and telephone number of each individual likely to have discoverable information – along with the subjects of that information – that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment.**

1. **R. Gregory Shepard**, 858 Clover Meadow Dr., Murray, Utah 84123, 801-699-2284. R. Gregory Shepard is a defendant in this matter and likely has discoverable information regarding the claims and defenses in this case, including the structure and technology of the solar energy scheme (as described in the United States' complaint and hereinafter referred to as "the solar energy scheme"), statements made by defendants with respect to the solar energy scheme (including about the technology, structure, marketing, revenues, and tax implications), and information regarding the disgorgement claim, including the amount of gross receipts he has received from the solar energy scheme.
2. **Neldon Johnson**, 4035 South 4000 West, Deseret, Utah 84624. Neldon Johnson is a defendant in this matter and likely has discoverable information regarding the claims and defenses in this case, including the structure and technology of the solar energy scheme, statements made by defendants with respect to the solar energy scheme (including about the technology, structure, marketing, revenues, and tax implications), and information regarding the disgorgement claim, including the amount of gross receipts he has received from the solar energy scheme.
3. **Roger Freeborn**, 1145 NE Hill Way, Estacada, Oregon 97023 or P.O. Box 1616, Estacada, OR 97023. Roger Freeborn is a defendant in this matter and likely has discoverable information regarding the claims and defenses in this case, including the structure and technology of the solar energy scheme, statements made by defendants with respect to the solar energy scheme (including about the technology, structure, marketing, revenues, and tax implications), and information regarding the disgorgement claim, including the amount of gross receipts he has received from the solar energy scheme.
4. **Ra-Power3, LLC**. Ra-Power 3, LLC is a defendant in this matter and likely has discoverable information regarding the claims and defenses in this case, including the structure and technology of the solar energy scheme, statements made by defendants with respect to the solar energy scheme (including about the technology, structure, marketing, revenues, and tax implications), and information regarding the disgorgement claim, including the amount of gross receipts it has received from the solar energy scheme.
5. **International Automated Systems, Inc.** ("IAS"). IAS is a defendant in this matter and likely has discoverable information regarding the claims and defenses in this case, including the structure and technology of the solar energy scheme, statements made by defendants with respect to the solar energy scheme (including about the technology, structure, marketing, revenues, and tax implications), and information regarding the disgorgement claim, including the amount of gross receipts it has received from the solar energy scheme.

6. **LTB1, LLC (“LTB”)**. LTB is a defendant in this matter and likely has discoverable information regarding the claims and defenses in this case, including the structure and technology of the solar energy scheme, statements made by defendants with respect to the solar energy scheme (including about the technology, structure, marketing, revenues, and tax implications), and information regarding the disgorgement claim, including the amount of gross receipts it has received from the solar energy scheme.

7. **Customers of any Defendant**. The United States currently does not know the identities of all of defendants’ customers. The United States will disclose the names and contact information of the customers it may rely upon at a later date. Defendants’ customers likely have discoverable information regarding the solar energy scheme (including about the technology, structure, marketing, revenues, tax implications, and statements made by defendants regarding the solar energy scheme) and about the amount of money paid to any defendant and receipt of any money from any defendant. To date, the United States has identified the following customers it may rely upon. The contact information is updated to the best of the United States’ information and knowledge.
 - a. **Jean Armand**, P.O. Box 770848, Miami, FL 33177
 - b. **Nehemy Cher-Frere**, 5068 SW 139 Street, Hollywood, FL 33027
 - c. **Peter and Ranae Gregg**, 38490 Bickford St., Sandy, OR 97055, 503-637-6586
 - d. **Nicholas Kontos**, 8637 Franjo Rd., Cutter Bay, FL 33189 or 8932 SW 22nd Terrace, Cutler Bay, FL 33190-1290
 - e. **Yolette Mezadiou**, P.O. Box 371444, Miami, FL 33137
 - f. **Sam and Gloria Otto**, 2068 Summerwood Dr., Layton, UT 84040, 801-678-1196
 - g. **Bruce Shearer**, 6 Bowline Ct., Bellingham, WA, 98229, 360-757-4074
 - h. **Sterling Shearer**, 10515 Crest View Ln, Eagle River, AK 99577, 360-220-3575
 - i. **Mark and Catherine Sikich**, 8445 Jeffrey Ave. S., Cottage Grove, MN 55016

8. **Sponsors of any Customer**. The United States currently does not know the identities of all of defendants’ sponsors. The United States may rely on information from any individual who is identified as a “sponsor” through discovery in this case. Sponsors likely have discoverable information regarding the solar energy scheme (including about the technology, structure, marketing, revenues, tax implications, and statements made by defendants regarding the solar energy scheme) and about the amount of money paid to any defendant and receipt of any money from any defendant. To date, the United States has identified the following sponsor it may rely upon. The contact information is updated to the best of the United States’ information and knowledge.
 - a. **Paul Brennan**, address currently unknown but believed to be a resident of Utah, 435-632-8081

9. **Distributors of any Defendant.** The United States currently does not know the identities of all of defendants' distributors. The United States may rely on information from any individual who is identified as a distributor through discovery in this case. Distributors likely have discoverable information regarding the solar energy scheme (including about the technology, structure, marketing, revenues, tax implications, and statements made by defendants regarding the solar energy scheme) and about the amount of money paid to any defendant and receipt of any money from any defendant.
10. **Employees or agents of any Defendant.** The United States currently does not know the identities of all of defendants' employees or agents. The United States may rely on information from any individual who is identified as an employee or agent of the defendants. Employees or agents of any defendant are likely to have discoverable information about the structure, operation, maintenance, physical locations, and marketing of defendants' solar energy scheme,, statements made by defendants (including about the technology, structure, marketing, revenues, and tax implications), and about the disgorgement claim.
11. **Banks used by any Defendant for business or personal banking.** The United States currently does not know the identities of every bank used by any defendant for business or personal banking. The United States will disclose the name and contact information for any banks it may rely upon at a later date. Banks used by any defendant are likely to have discoverable information with respect to monies generated from the solar energy scheme which may relate to claims regarding the technology and structure of the solar energy scheme as well as the disgorgement claim.
12. **Matthew Shepard,** address currently unknown, 801-651-2183. Matthew Shepard appears to be employed by RaPower-3 and is likely to have discoverable information regarding the claims and defenses in this case, including the structure and technology of the solar energy scheme, statements made by defendants with respect to the solar energy scheme (including about the technology, structure, marketing, revenues, and tax implications), and information regarding the disgorgement claim, including the amount of gross receipts he or any defendant has received from the solar energy scheme.
13. **Other members of the Shepard family.** The United States has not currently identified any additional members of the Shepard family that it may rely upon in this case. The United States will disclose the name and contact information for any other members of the Shepard family it may rely upon at a later date. Other members of the Shepard family are likely to have discoverable information regarding the claims and defenses in this case, including the structure and technology of the solar energy scheme, statements made by defendants with respect to the solar energy scheme

(including about the technology, structure, marketing, revenues and tax implications), and information regarding the disgorgement claim, including the amount of gross receipts defendants have received from the solar energy scheme.

14. **Members of the Johnson family, e.g., Glenda, Randale, LaGrand, etc.** The United States has not currently identified any members of the Johnson family that it may rely upon in this case. The United States will disclose the name and contact information for members of the Johnson family it may rely upon at a later date. Members of the Johnson family are likely to have discoverable information regarding the claims and defenses in this case, including the structure and technology of the solar energy scheme, statements made by defendants with respect to the solar energy scheme (including about the technology, structure, marketing, revenues, and tax implications), and information regarding the disgorgement claim, including the amount of gross receipts defendants have received from the solar energy scheme.

15. **Advisors of Customers, to include attorneys, Certified Public Accountants (CPAs), or other tax preparers.** The United States currently does not know the identities of the advisors used by the defendants' customers. The United States may rely on information from any individual who is identified as a customer's advisor through discovery in this case. The United States anticipates that these advisors likely have discoverable information that will relate to the solar energy tax scheme, both with respect to claims as to statements made by the defendants and also potentially with respect to how customers claimed items relating to the solar energy scheme on their tax returns. To date, the United States has identified the following advisors used by customers that it may rely upon. The contact information is updated to the best of the United States' information and knowledge.
 - a. **Kenneth Alexander, Wizard Business Center**, 817 Abbiegail Drive, Tallahassee, FL 32303, 805-531,0001
 - b. **Bryan Bolander, VanTienderen, Carter & Bolander, P.C.**, 6802 South 1300 East, Salt Lake City 84121, 801-561-8685
 - c. **John Howell, Howell Tax Service**, 4708 K Mart Dr., Ste B, Wichita Falls, TX 76308, 940-766-0981
 - d. **Richard Jameson, Northstar Tax Services**, 784 S. River Road #348, St. George, UT 84790, 435-669-9225

16. **Advisors used by defendants, to include attorneys, CPAs, accountants, bookkeepers, or other advisors with respect to financial transactions or tax implications of the solar energy scheme.** The United States currently does not know the identities of all the advisors used by the defendants. The United States may rely on information from any individual who is identified as an advisor used by any defendant with respect to the solar energy scheme through discovery in this case. The United States anticipates that these advisors likely have discoverable information relating to defendants' affirmative defense of reliance on advice of professionals. The United States anticipates that these advisors will also likely have discoverable

information relating to the other claims and defenses in this case, including the structure and technology of the solar energy scheme, statements made by defendants to such advisor representing the structure, technology, marketing, revenues, or other aspect of the solar energy scheme, statements made by defendants to their customers, sponsors, distributors, or in marketing the solar energy scheme to the public, and information regarding the disgorgement claim including the financial records of defendants, revenues generated from the scheme by any defendant, and information relating to any defendant's books and records and tax returns.

17. **Millard County Officials**. The United States currently does not know the identities of Millard County officials that it may rely upon in this case. The United States anticipates that Millard County officials likely have discoverable information regarding defendants' operations in Millard County and defendants' compliance with applicable local laws and regulations with respect to the solar energy scheme and any necessary licenses and permits. The United States will disclose the names and contact information for any Millard County official it may rely upon at a later date.
18. **Utility Company Employees or Agents**. The United States currently does not know the identities of the utility company employees or agents that it may rely upon in this case. The United States anticipates that utility company employees or agents likely have discoverable information regarding defendants' operations in Utah, any end product produced by defendants' solar energy scheme (including electricity and/or heat), and defendants' connection to the grid, if any, with respect to defendants' solar energy scheme. The utility company employees or agents may also have discoverable information regarding applicable laws and regulations that may apply to defendants' solar energy scheme and any agreements, applications, or contracts defendants have for production. The United States will disclose the names and contact information for any utility company employees or agents it may rely upon at a later date.
19. **A representative of the Internal Revenue Service** may be needed to authenticate IRS records and documents regarding the claims and defenses in this case or may be needed as a summary witness to identify the extent that the defendants' conduct has harmed the Government.

B. A copy – or a description by category and location – of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.

1. Documents produced with these initial disclosures, US000001 through US004267.
2. Videos produced with these initial disclosures.

3. Federal income returns and related schedules (including IRS Forms 1040, 1040X, or applications for tentative refund, Forms 1045) for customers of any defendant for tax years in which a customer claimed any item on such return or form relating to the solar energy scheme. The United States does not believe it has identified all of defendants' customers
4. Statutory Notices of Deficiency for customers of any defendants which include adjustments relating to the solar energy scheme. The United States does not believe it has identified all of defendants' customers and may not have Statutory Notices of Deficiency for every customer because the IRS has not examined all of the defendants customers' tax returns on which customers claimed improper tax benefits relating to the solar energy scheme
5. Defendants' statements regarding the solar energy scheme (including statements about the technology, structure, and/or tax implications) that customers used to understate their tax liability or support their claims to tax benefits. Customers may have included such statements in correspondence to the IRS including in letters requesting review by IRS Appeals or responses to information document requests. To the extent not otherwise produced in Category 1, above, the United States may rely upon additional documents reflecting the defendants' statements, which will be produced at a later date.
6. Bank statements, canceled checks and other proof of payment to defendants for participation in the solar energy scheme. To the extent that the United States identifies these documents and may rely upon them, the United States will produce them.

C. A computation of each category of damages claimed by the disclosing party – who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered.

The United States seeks disgorgement of the proceeds that all defendants received for the gross receipts (the amount of which is to be determined by the Court) that they received from any source as a result of their conduct in furtherance of the abusive solar energy scheme described in the complaint, together with prejudgment interest thereon. The amount to be disgorged will be based on income information available to the IRS, income information in the possession of all defendants, and the financial records and accounts of all defendants and any

business or agent that any defendant used as a conduit to collect, transfer, or store any funds relating to the abusive solar energy scheme described in the complaint.

According to the information the United States has obtained to date from the IRS, Shepard earned more than \$170,000 from 2010 through 2013 due to activities related to promoting the scheme. Johnson claims to have earned nearly \$500,000 from activities related to the scheme in tax years 2012 and 2013 alone. Freeborn has made more than \$100,000 from 2011 through 2013 for his activities related to the abusive tax scheme. The United States believes that its information on disgorgement and gross receipts that each defendant received from the solar energy scheme is incomplete at this time and will be obtained from defendants and third parties during the pendency of this case. The United States expects the disgorgement calculation to increase as additional information is produced with respect to the gross receipts each defendant received relating to the abusive tax scheme.

D. For inspection and copying as under Rule 34, any insurance agreement under which and insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

Insurance agreements are not applicable to the United States' claims.

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[signature on following page]

Dated: April 22, 2016

CAROLINE D. CIRAOLO
Acting Assistant Attorney General
Tax Division

/s/ Erin R. Hines

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CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2016, the foregoing document was sent via email to the following and a copy was sent via FedEx with the accompanying documents to the following:

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RAPOWER-3, LLC, INTERNATIONAL
AUTOMATED SYSTEMS, INC., LTB1,
LLC, R. GREGORY SHEPARD, NELDON
JOHNSON, and ROGER FREEBORN,

Defendants.

**MEMORANDUM DECISION AND
ORDER DENYING DEFENDANTS’ [319]
MOTION IN LIMINE TO EXCLUDE
TESTIMONY REGARDING DAMAGES
RELATING TO DISGORGEMENT OF
FUNDS**

Case No. 2-15-cv-00828-DN

District Judge David Nuffer

Defendants have moved to exclude “Plaintiff’s proposed evidence regarding damages relating to disgorgement of funds” because “Plaintiff has failed to timely disclose any computation...of damages” and “to timely designate an expert” witness.¹ Plaintiff responded in opposition.² Defendants replied.³ For the reasons set forth below, Defendants’ Motion is DENIED.

Defendants seek, pursuant to Rule 26(a)(1)(iii), to prohibit the Plaintiff from introducing evidence of disgorgement because “Plaintiff failed to properly and timely disclose” “any documents or other evidentiary material on which any computation of damages or disgorgement

¹ Defendants’ Motion in Limine to Exclude Testimony Regarding Damages Relating to Disgorgement of Funds (“Motion”), [docket no. 319, at 1](#), 9, filed March 5, 2018.

² United States’ Memorandum in Opposition to Defendants’ Motion in Limine to Exclude Testimony Regarding Damages Relating to Disgorgement of Funds (“Opposition”), [docket no. 332](#), filed March 12, 2018.

³ The court will not consider Defendants’ Reply Memorandum in Support of Motion in Limine {Doc. 319} to Exclude Testimony Regarding Damages Relating to Disgorgement of Funds, [docket no. 337](#), filed March 13, 2018, because pursuant to the Trial Order Defendants are not entitled to a reply and Defendants’ Reply is longer than the three-page limit prescribed in the Trial Order, [docket no. 288](#), filed February 7, 2018.

is based.”⁴ Plaintiff responds that “Rule 26(a)(1) does not require disgorgement calculations to be disclosed, and [they] disclosed all information that supports [their] disgorgement calculations.”⁵ This is correct. “Disgorgement is not a damages remedy, and therefore ‘the disclosure required by Rule 26(a)(1)(A)(iii) is inapplicable.’”⁶ Furthermore, Plaintiff “timely disclosed the bank records and tax returns underlying [their disgorgement] calculations.”⁷

Defendants claim they would be prejudiced by Plaintiff’s ability to “put on evidence of damages or disgorgement that Plaintiff failed to properly and timely disclose.”⁸ Plaintiff responds “[i]t is nonsensical [for Defendants] to claim prejudice because [Plaintiff] did not disclose information [Defendants possess].”⁹ Defendants should know the total amount of lenses sold and how much money was derived from those sales. Defendants are “not prejudiced by the [Plaintiff’s] failure to disclose a precise calculation of disgorgement because [they are] in at least as good of a position, if not better, as the [Plaintiff] to calculate the ill-gotten gains [they] received.”¹⁰ Moreover, Defendants have repeatedly withheld information from Plaintiff regarding the basis for disgorgement, despite being ordered to do so.¹¹

⁴ Motion at 1-2.

⁵ Opposition at 2, ¶ I.

⁶ *United States v. Stinson*, 2016 WL 8488241, at *7 (M.D. Fla. 2016) (quoting *S.E.C. v. Razmilovic*, 2010 WL 2540762, at *2 (E.D.N.Y. 2010)).

⁷ Opposition at 3.

⁸ Motion at 2.

⁹ Opposition at 3.

¹⁰ *United States v. Stinson*, 2016 WL 8488241, at *7 (citations omitted).

¹¹ Magistrate Judge Furse determined that Defendants failed to comply with a court order requiring Defendants to produce the documents which are now the basis for Defendants’ prejudice claim in this Motion. Defendants claim Plaintiff did not disclose the documents Defendants did not produce. See Order Granting United States’ Expedited Motion for Sanctions Against Defendants, [docket no. 235](#), filed October 25, 2017; see also Order Granting United States’ Expedited Motion to Compel Defendants to Produce Documents, [docket no. 218](#), filed September 12, 2017 (Defendants shall produce the computer program that purportedly tracks customers and all solar lens purchase agreements with customers).

Defendants also complain that they have not had the opportunity to examine experts who must necessarily present disgorgement evidence.¹² Plaintiff asserts that “[n]o specialized expertise is required to perform the [disgorgement] calculations.”¹³ Plaintiff will present “evidence on disgorgement through summary witnesses who reviewed the same voluminous documents that [were] timely disclosed to Defendants, and who will be available for cross-examination.”¹⁴ These witnesses reviewed Defendants’ bank accounts and tax returns of Defendants’ customers and synthesized this information into Excel to “calculate Defendants’ gross receipts and estimate the harm to the Treasury.”¹⁵ Assuming sufficient foundation is laid and the testimony is not otherwise objectionable, a witness with “personal knowledge or perception acquired through review of records” may testify from her lay opinion testimony.¹⁶ In this situation, no expertise is required.

ORDER

IT IS HEREBY ORDERED that

- (1) Defendants’ Motion¹⁷ is DENIED.
- (2) The parties shall meet and confer and make an attempt to find a time for Defendants to depose JoAnna Perez and Amanda Reinken, only on the subject of the exhibits as

¹² Opposition at 7-9.

¹³ Opposition at 4, ¶ III.

¹⁴ *Id.* at 3; *see also* United States’ Memorandum in Opposition to Defendants’ “Objection to Plaintiff’s Pretrial Witness List and Request to Strike,” [docket no. 329, at 3](#), filed March 9, 2018.

¹⁵ Opposition at 3.

¹⁶ *United States v. Lemire*, 720 F.2d 1327, 1347 (D.C. Cir. 1983) (allowing non-expert testimony summarizing the documents in evidence already before the jury, about which he had personal knowledge from reviewing the transcripts and exhibits); *Qwest Corporation v. City of Santa Fe*, 2013 WL 12239494, at *1 (D.N.M. 2013) (citing *Burlington N. R.R. Co. v. State of Neb.*, 802 F.2d 994, 1004-05 (8th Cir. 1986)).

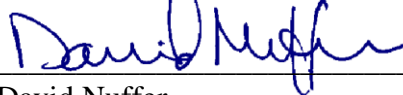
¹⁷ [Docket no. 319](#), filed March 5, 2018.

to which they will testify and their preparation of those exhibits. Neither deposition shall consume more than three hours.

- (3) The parties must submit briefs on or before noon March 26, 2018 on the measurement and proof of a disgorgement amount. Specifically, the parties must provide legal authority for (1) measuring disgorgement by the amount of (a) taxes avoided by investors in Defendant RaPower; (b) gross profit of RaPower; (c) net profit of RaPower; (d) income of individual defendants from RaPower; or any other measure, and (2) who, in the event net profit is a proper measure, bears the burden of proof on expenses RaPower incurred in its business.

Dated March 14, 2018.

BY THE COURT:



David Nuffer
United States District Judge

From: utd_enotice@utd.uscourts.gov <utd_enotice@utd.uscourts.gov>

To: ecf_notice@utd.uscourts.gov

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Date: Thursday, March 29, 2018 04:40 pm

Subject: Activity in Case 2:15-cv-00828-DN-EJF USA v. RaPower-3 et al Order

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The following transaction was entered on 3/29/2018 at 4:40 PM MDT and filed on 3/29/2018

Case Name: USA v. RaPower-3 et al

Case Number: [2:15-cv-00828-DN-EJF](#)

Filer:

Document Number: 359(No document attached)

Docket Text:

DOCKET TEXT ORDER - Pursuant to the Memorandum Decision and Order [338] the Parties submitted briefs on the issue of disgorgement [351] [352]. The Parties' briefing and supporting documentation have been carefully reviewed. This Order finds:

-A party is not unjustly enriched if the gains he acquired flow from any legitimate business activity.

-A claimant bears the burden of showing the disgorgement amount is a reasonable approximation of defendants unjust enrichment.

-Unjust enrichment may be shown by gross receipts or increase in net assets.

-A defendant is free to introduce evidence showing that unjust enrichment is something less than the amount put in evidence by plaintiff. Defendant has the burden of proving entitlement to a credit or deduction for business expenses, which may include refunds to customers.

-However, defendant is not entitled to a credit for costs or expenses incurred in an attempt to defraud the claimant.

-Tax credits or depreciation deductions by defendants' customers might be a measure of disgorgement, but are not a required measure of disgorgement.

-Individuals may be held personally liable for an entity's debt, if the individuals' unjust enrichment was directly derived from using the entity as a conduit for fraud.

-Defendants may, when appropriate by transmission of funds from one to another, be jointly and severally liable for disgorgement.

Docket text only. No attached document. Signed by Judge David Nuffer on 03/29/2018. (ms)

2:15-cv-00828-DN-EJF Notice has been electronically mailed to:

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Joshua D. Egan joshua.egan@me.com

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Christopher R. Moran christopher.r.moran@usdoj.gov

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Subject: Activity in Case 2:15-cv-00828-DN-EJF USA v. RaPower-3 et al Order on Motion in Limine

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US District Court Electronic Case Filing System

District of Utah

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The following transaction was entered on 4/4/2018 at 8:07 AM MDT and filed on 4/4/2018

Case Name: USA v. RaPower-3 et al

Case Number: [2:15-cv-00828-DN-EJF](#)

Filer:

Document Number: 376(No document attached)

Docket Text:

DOCKET TEXT ORDER denying Defendants' [364] Motion in Limine to Strike Plaintiff's Summary Exhibit 752 is DENIED for the following reasons: (1) The United States was not required to disclose the Excel spreadsheet Perez used to create her summary (Exhibit 752) because Defendants were given sufficient time to inspect the underlying documents, the tax returns (produced May 15, 2017, September 5, 2017, and September 15, 2017), and therefore, there is no reason to give the Defendants the benefit of Plaintiff's work product in preparing the spreadsheet. (2) These summaries qualify under Rule 1006. The admission of summaries under Rule 1006 is within the sound discretion of the court. (3) Exhibit 752 is not more prejudicial than probative and therefore does not violate Rule 403. Exhibit 752 adds substantial probative value, saves time and increases convenience by summarizing voluminous tax records. The Defendants may challenge Exhibit 752 on cross-examination. (4) Defendants failed to cite any case law to support their arguments of lack of relevance. (5) "Harm to the Treasury," depreciation expenses, and tax credits may be relevant to a proper measure of disgorgement. Signed by Judge David Nuffer on 04/04/2018. Docket text only. No attached document. (ms)

2:15-cv-00828-DN-EJF Notice has been electronically mailed to:

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Justin D. Heideman (Terminated) jheideman@heidlaw.com, lalvidrez@heidlaw.com, sstelmasek@heidlaw.com, wpoulsen@heidlaw.com

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Erin R. Hines erin.r.hines@usdoj.gov

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Christopher R. Moran christopher.r.moran@usdoj.gov

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Case Name: USA v. RaPower-3 et al

Case Number: [2:15-cv-00828-DN-EJF](#)

Filer:

Document Number: 377(No document attached)

Docket Text:

DOCKET TEXT ORDER - Defendants' [365] Motion in Limine to Strike Plaintiff's Summary Exhibits 734 - 741, 742(A), 742(B), and 750 ("Exhibits") is DENIED for the following reasons: (1) The United States was not required to disclose the Excel spreadsheet Reinken used to create her summaries in Exhibit 734 through 741 because Defendants were given sufficient time to inspect the underlying documents (the bank records) after they were produced March 30, 2017, and therefore, there is no reason to give the Defendants the benefit of Plaintiff's work product in preparing the spreadsheet. (2) The admission of these summaries which qualify under Rule 1006 is within the sound discretion of the court. (3) The Exhibits are far more probative than prejudicial and therefore do not violate Rule 403. The Exhibits add substantial probative value by summarizing voluminous bank records, saving time and increasing convenience. Defendants may challenge the Exhibits' on cross-examination. (4) Defendants failed to cite any case law to support their arguments. (5) Plaintiff indicates it no longer intends to offer PI. Ex. 750. (6) The format conversion issue related to Exhibits 742A and 742B was caused by Defendants' form of production of their database in a non-native format. (7) The lack of information about amounts paid for lenses in Exhibits 742A and 742B is due to the non-production of that data from Defendants. (8) Defendants have been free to prepare their own summaries from the bank records and from their database. Signed by Judge David Nuffer on 04/04/2018. Docket text only. No attached document. (ms)

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Joshua D. Egan joshua.egan@me.com

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Christopher R. Moran christopher.r.moran@usdoj.gov

2:15-cv-00828-DN-EJF Notice has been delivered by other means to:

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RAPOWER-3, LLC, INTERNATIONAL
AUTOMATED SYSTEMS, INC., LTBI,
LLC, R. GREGORY SHEPARD, NELDON
JOHNSON, and ROGER FREEBORN,

Defendants.

**MEMORANDUM DECISION AND
ORDER DENYING DEFENDANTS'
[403] MOTION TO CONTINUE TRIAL**

Case No. 2-15-cv-00828-DN

District Judge David Nuffer

Defendants moved to continue trial because Mr. R. Gregory Shepard, a named defendant, is ill, may have a heart procedure, and may be unable to attend trial.¹ Plaintiff responded in opposition.² Defendants replied.³ Defendants' Motion is made on a permissible basis.⁴ But it is denied.

The eleventh through eighteenth days of this bench trial are scheduled to resume June 21, 2018.⁵ This case, which is three years old, was originally set for ten days of trial.⁶ Plaintiff

¹ Defendants' Motion Request for a Continuance of Trial on the Basis of Litigant's Health ("Motion"), docket no 403, at 1, filed June 15, 2018.

² United States' Memorandum in Opposition to Defendants' Motion to Continue ("Opposition"), [docket no. 404](#), filed June 15, 2018.

³ Defendants' Response to the United States' Opposition to the Motion to Continue Trial on the Basis of Litigant's Health ("Reply") [docket no. 405](#), filed June 15, 2018.

⁴ "...we should observe that illness of a litigant severe enough to prevent him from appearing in court is always a legitimate ground for *asking* for a continuance." *Davis v. Operation Amigo, Inc.*, 378 F.2d 101, *103 (1967) (emphasis added).

⁵ See docket "Bench Trial Updated Schedule" filed April 27, 2018.

⁶ Scheduling Order, [docket no. 37](#), filed April 6, 2016.

has rested after presenting 16 witnesses, including Mr. Shepard.⁷ Plaintiffs examined witnesses for nearly thirty-two hours while Defendants cross-examined those witnesses for nearly twenty-three hours.⁸ Mr. Shepard testified for seven hours, nearly three of which were cross examination.⁹ Eleven depositions were designated and have been read.¹⁰ The designated portions of Mr. Shepard's deposition consisted of well over one hundred pages.¹¹

The Complaint¹² alleges eleven causes of action including Injunction under § 7402(a) and Injunction under § 7408. Plaintiff seeks to enjoin a fraudulent tax scheme and an order for disgorgement of profits.¹³ Evidence received to date indicates that Defendants' revenue from this scheme for the years 2009-2016 may exceed \$35,000,000¹⁴ and that tax benefits taken by Defendants' customers for the years 2013-2016 may exceed \$14,000,000. Defendants continue to market their product and encourage customers to take tax benefits. Just before trial, Defendants announced they would satisfy a debt by transfer of lenses to existing customers who could take tax benefits based on the market value of the lenses.¹⁵ Defendants will not cease activities and Plaintiff will not cease to be adverse without adjudication.

⁷ Minute Entries for proceedings held before Judge David Nuffer, [docket no. 372](#), filed April 2, 2018; [docket no. 374](#), filed April 3, 2018; docket no. 378, filed April 4, 2018; docket no. 380, filed April 5, 2018; docket no. 386, filed April 19, 2018; docket no. 388, filed April 20, 2018; docket no. 391, filed April 23, 2018; docket no. 392, filed April 24, 2018; docket no. 393, filed April 25, 2018; and docket no. 396, filed April 26, 2018.

⁸ Transcript of Proceedings April 2-5, April 19-20, and April 23-26, 2018.

⁹ Transcript of Proceedings, April 23, 2018, page 1580, line 18 to page 1624, line 19; and April 24, 2018, page 1636, line 24 to page 1752, line 5.

¹⁰ Docket nos. 297-307, filed February 26, 2018.

¹¹ [Docket no. 306](#), filed February 26, 2018.

¹² [Docket no. 2](#), filed November 23, 2015.

¹³ *Id.* at ¶¶ 2(b) and 198(b).

¹⁴ Exhibits 735, 736, 737, 738, 739, 740 and 741.

¹⁵ Exhibit 796.

Defendants seek to continue trial based on the assertion that “Mr. Shepard cannot attend trial at the time prescribed due [sic] his illness, nor can his treatment be delayed to accommodate trial.”¹⁶ In the Motion, Defendants state Mr. Shepard has some heart issues and is scheduled for diagnostic testing on June 22, 2018, the second day of resumed trial, to determine if a heart stent or open heart surgery is necessary.¹⁷ If a stent will repair Mr. Shepard’s heart damage, the procedure will be done that same day, June 22, 2018¹⁸ and if open heart surgery is necessary it will be scheduled “as soon as the doctor’s schedule will allow.”¹⁹ The motion and reply do not indicate that Mr. Shepard’s condition came on before or after the ten days of trial already completed, during which he did not appear ill at ease or impaired in any way as he attended and testified.

In *Fillippon v. Albion Vein Slate Co.*, the Supreme Court stated “that the orderly conduct of a trial...essential to the proper protection of the right to be heard, entitles the parties who attend for the purpose to be present in person or by counsel at all proceedings...”²⁰ But if a litigant is “ably represented at trial by counsel [then] ‘[t]here is no constitutional right of a litigant to be personally present during the trial of a civil proceeding’.”²¹ There is no dispute that defense counsel represents Mr. Shepard and counsel will be present at trial. Therefore, whatever rights Mr. Shepard may have to be present at trial are fully protected by the ability of defense counsel to be present and represent him at trial.

¹⁶ Motion at 2.

¹⁷ *Id.* at 1.

¹⁸ Reply at 2.

¹⁹ Motion at 1-2.

²⁰ *Fillippon v. Albion Vein Slate Co.*, 250 U.S. 76, *81 (1919).

²¹ *Kulas v. Flores*, 255 F.3d 780 (9th Cir. 2001) quoting *Faucher v. Lopez*, 411 F.2d 992, 996 (9th Cir.1969).

Mr. Shepard voluntarily absented himself from portions of the first ten days of trial.

During the first ten days of trial, Mr. Shepard never sat at counsel's table.

This trial was originally scheduled to last only ten days. During the first ten days of trial, it became apparent that the parties were going to need more time. Defendant has had ample opportunity to cross examine witnesses, including Mr. Shepard. Coordinating the calendars of the parties, counsel and the court was very difficult. After input of counsel, the additional seven days of trial were set for June 21, 22, 25-29, 2018.²² These dates were made available by cancelling other planned hearings and events. Plaintiff's counsel travels from Washington, D.C. No additional trial dates are available for the foreseeable future.

For the reasons set forth, Defendants' Motion²³ is DENIED.

ORDER

IT IS HEREBY ORDERED that

- (1) Defendants' Motion²⁴ is DENIED.
- (2) Trial will proceed as scheduled on June 21, 22 and 25-29.
- (3) On or before 5:00 pm June 19, 2018, Defendants must notify the court and the parties whether Mr. Shepard will testify on Thursday, June 21, 2018.
- (4) On or before Friday June 22, 2018, Defendants may designate additional portions of Mr. Shepard's deposition and Plaintiff shall respond to the designations on or before Tuesday June 26, 2018.

²² See docket "Bench Trial Updated Schedule," filed April 27, 2018.

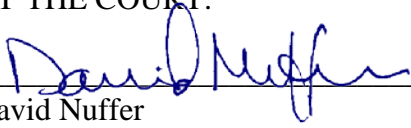
²³ [Docket no. 403](#), filed June 15, 2018.

²⁴ *Id.*

(5) On or before noon Wednesday June 20, 2018, Defendants shall file a trial schedule with anticipated witnesses and length of direct and re-direct examination, allowing 60% of the time for cross and re-cross examination, with completion of all witnesses by noon Thursday June 29, 2018.

Dated June 18, 2018.

BY THE COURT:



David Nuffer
United States District Judge

From: utd_enotice@utd.uscourts.gov <utd_enotice@utd.uscourts.gov>

To: ecf_notice@utd.uscourts.gov

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Date: Tuesday, April 03, 2018 08:10 am

Subject: Activity in Case 2:15-cv-00828-DN-EJF USA v. RaPower-3 et al Bench Trial - Begun

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Case Name: USA v. RaPower-3 et al

Case Number: [2:15-cv-00828-DN-EJF](#)

Filer:

Document Number: 372(No document attached)

Docket Text:

Minute Entry for proceedings held before Judge David Nuffer: Bench Trial held on 4/3/2018. Counsel present for parties. Mr. Johnson, defendant, stated that he is pro se. Ms. Healy Gallagher responded that this is the first that they have heard of Mr. Johnson proceeding pro se. Discussion heard. Based on the record, court made findings on the record that Mr. Johnson is represented by Mr. Snuffer and his associates. Mr. Johnson maintains he would like to proceed pro se.

Court has reviewed the pretrial order and will have it entered today. Court has reviewed a portion of the deposition designations in preparation of trial.

Mr. Moran requested the admission of exhibits and provided a spreadsheet, with an approximation of 400 exhibits. Court instructed Mr. Moran to provide the lists to both the court and defendants counsel. Court will address after the lunch hour.

Ms. Hines addressed the bank records exhibits and provided exhibit numbers. Court will review.

Ms. Healy Gallagher addressed the outstanding motions in limine. Court has not yet had time to review the motions. Government would either file oppositions or argue, as the court directs. Court instructed responses by 6:00 p.m. today.

Mr. Snuffer addressed the court on his concern re: preponderance of evidence to be clarified. Court instructed Mr. Snuffer to file a motion by 6:00 p.m. today. Response by 6:00 p.m. Tuesday.

Mr. Snuffer then addressed the court on his concern with threshold questions. Court instructed Mr. Snuffer that this is untimely and should have been filed months prior to today.

Government called Dr. Thomas Mancini. Witness sworn and testified. Ms. Healy Gallagher moved for the admission of Exhibit 754. Objection heard. Court received. Ms. Healy Gallagher moved for the admission of Exhibit 755. Objection heard. Court received. Ms. Healy Gallagher moved for the admission of Exhibit 757. No objection. Court received. Ms. Healy Gallagher moved for the admission of Exhibits 16 and 17. No objection. Court received. Ms. Healy Gallagher moved for the admission of Exhibit 559. No objection. Court received. Ms. Healy Gallagher moved for the admission of Exhibit 437. No objection. Court received. Ms. Healy Gallagher moved for the admission of Exhibit 562. No objection. Court received. Ms. Healy Gallagher moved for the admission of Exhibit 509, Video 12_4_00-4_23. No objection. Court received. Ms. Healy Gallagher moved for the admission of Exhibit 509,

Video 12_4_38-5_15. No objection. Court received. Ms. Healy Gallagher moved for the admission of Exhibit 460. No objection. Ms. Healy Gallagher moved for the admission of Exhibit 509, Video 16_12_24-12_41. No objection. Court received. Ms. Healy Gallagher moved for the admission of Exhibit 509, Video 18_4_09-4_25. No objection. Court received. Mr. Snuffer moved for the admission of Exhibit 1500. Objection heard. Court instructed the exhibit needs more foundation. Mr. Snuffer moved to strike the testimony of Dr. Mancini. Court made findings on the record and denied the motion. Witness excused. Mr. Snuffer requested a clarification on how depositions and live testimony will work. Court informed counsel on how it intends to proceed with depositions and live testimony. Court printed out the annotated exhibits during Dr. Mancinis testimony. Counsel given an opportunity to review, then mark for identification. Ms. Healy Gallagher marked them with their exhibit numbers. Government exhibits with no objections discussed. Court received the identified exhibits. Ms. Healy Gallagher requested the exhibits identified for the record. Court instructed counsel that the spreadsheet will be identified as a court demonstrative exhibit #1. Ms. Healy Gallagher addressed the defendants amended witness list, specifically as to Mr. Peterson. Argument heard. Court took the matter under advisement. Mr. Snuffer to provide the court and government with proffer of testimony of Mr. Peterson, attaching exhibits he intends to use/rely by Wednesday, 4/4/2018 6:00 p.m. Court adjourned. Attorney for Plaintiff: Denver Snuffer, Daniel Garriott, Steven Paul, Joshua Egan, Attorney for Defendant: Erin Healy Gallagher, Christopher Moran, Erin Hines. Court Reporter: Becky Janke, Kelly Hicken.(Time Start: 8:32, Time End: 4:10, Room 3.100.)(asb)

2:15-cv-00828-DN-EJF Notice has been electronically mailed to:

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Christopher R. Moran christopher.r.moran@usdoj.gov

2:15-cv-00828-DN-EJF Notice has been delivered by other means to:

Disgorgement: Neldon Johnson for XSun Energy, LLC

XSun Energy, LLC
 Gross Receipts 2011-2016

Grand Total: \$1,126,888

Years	Sum of Amount
2011	\$442,355.43
2012	\$660,462.57
2013	\$21,298.73
2014	\$1,170.10
2015	\$813.17
2016	\$788.18
Grand Total	\$1,126,888.18

Plaintiff
 Exhibit
 741

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Disgorgement: Neldon Johnson Summary

Where From	Amount
Solco I, LLC	\$3,434,992
Xsun Energy, LLC	\$1,126,888
Total	\$4,561,880

And Neldon Johnson should be jointly and severally liable for the disgorgement of RaPower-3, LLC and International Automated Systems:

Where From	Amount
Total From Above	\$4,561,880
RaPower-3, LLC	\$25,874,066
IAS	\$5,438,089
(Joint/Several RaPower-3 and IAS)	(\$3,077,839)
Total	\$32,796,196

195

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RAPOWER-3, LLC, INTERNATIONAL
AUTOMATED SYSTEMS, INC., LTB1,
LLC, R. GREGORY SHEPARD, NELDON
JOHNSON, and ROGER FREEBORN,

Defendants.

**INITIAL ORDER AND
INJUNCTION AFTER TRIAL**

Case No. 2:15-cv-00828 DN-EJF

District Judge David Nuffer

Magistrate Judge Evelyn J. Furse

This is an interim order for partial injunctive relief entered after trial, but before entry of a complete set of findings and conclusions which will support much broader relief.

Defendants Neldon Johnson, R. Gregory Shepard, and former defendant Roger Freeborn were each involved in the organization of, and participated in sales of interests in, the plan or arrangement, and the plan or arrangement that constitutes this fraudulent tax scheme.

Defendants made statements regarding allowability of tax deductions and credits from participation in the plan or arrangement; told prospective customers, and customers, about the structure of the transactions; and told them about Johnson's solar energy technology. They sold solar lenses by emphasizing the purported tax benefits but knew or had reason to know that their statements were false or fraudulent as to material matters, for the following reasons:

- a. Johnson's purported solar energy technology did not work, and would not work to generate commercially viable electricity or other energy;

- b. the only way a customer has “made money” from buying a lens is from the purported tax benefits;
- c. no customer has been paid rental income generated from the use of his lens to generate power bought by a third-party purchaser; and
- d. no customer has been paid a bonus;
- e. customers are not required to pay the full down payment, much less the full purchase price for a lens; and
- f. advice from independent professionals did not support Defendants claims about tax benefits.

Defendants knew, or had reason to know:

- a. that Johnson, and not the customers, controlled the customers’ purported “solar lens leasing businesses”;
- b. that the customers do not have special expertise or prior experience in the solar lens leasing business;
- c. that their customers were not in a “trade or business”;
- d. that the lenses were not “placed in service”;
- e. that the lenses were not held for production of income from the lenses;
- f. that that the full “purchase” price of the lenses was not at risk in the year a customer signed transaction documents;

- g. that their customers were not allowed to deduct their purported expenses related to the solar lenses against their active income or use the credit to reduce their tax liability on active income;
- h. that the IRS disallowed their customers' depreciation deductions and solar energy tax credits and that the customers were not entitled to depreciation deductions and solar energy tax credits;
- i. that the Oregon Tax Court rejected their customers' depreciation deductions and solar energy tax credits.

In connection with sales to customers, Defendants made gross valuation overstatements as to the value of the solar lenses.

Defendants knew, or had reason to know, that their statements were false or fraudulent. Their claims of reliance on legal advice fails. Their claimed reliance was not reasonable. The advice documents do not support the Defendants' position.

An injunction and other equitable relief are necessary and appropriate to enforce the internal revenue laws of the United States. At this early point, partial relief is ordered to prevent ongoing and significant fraud.

ORDER

IT IS HEREBY ORDERED that this notice be immediately placed on www.rapower3.com and www.rapower3.net and www.iaus.com and any other site controlled by Defendants which is used in relation to marketing of lenses:

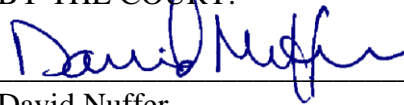
THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH in U.S. v. RaPower-3, LLC., et al., Case No., 2:15 cv 828, has determined that tax information provided by Neldon Johnson, RaPower-3, LLC, International Automated Systems (IAUS), XSun Energy, LLC, SOLCO I LLC, Greg Shepard, and others associated with

them regarding solar energy lenses is false. Tax information related to solar energy lenses must not appear on this site until further order of the court.

Defendants shall file a Declaration of Compliance, attesting that all tax related information has been removed from the websites and attaching copies of the web pages, on or before Friday June 29, 2018.

Dated June 22, 2018.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "David Nuffer", is written over a horizontal line.

David Nuffer
United States District Judge

1 head, but I can definitely research that and submit it.

2 THE COURT: Okay. All right. Thank you.

3 I appreciate counsel giving me the materials that
4 were sent to me over the noon hour. That's all my questions.

13:51:44 5 Thanks.

6 MS. HEALY-GALLAGHER: Thank you.

7 THE COURT: I want to thank counsel for their

8 responsiveness, their adaptation to the changes in schedule.

9 As the parties have both said today, many of the facts in this

13:51:59 10 case are not at issue. It's the effect of those facts that

11 are at issue, and I guess it's my job to define the effect of

12 those facts.

13 At the outset I'm denying Docket Number 394, the
14 motion to dismiss; and Docket 401, the motion for judgment as

13:52:18 15 a matter of law, both made under Rule 52(c).

16 The meaning of this case in a sentence is minimal

17 investment of money for outsized tax benefits. That's the

18 foundation of everything that runs through this case. The

19 defendants' enterprise is one of massive scope. The best

13:52:46 20 evidence that I have shows over \$50 million in revenue has

21 been received without any productive result except allowing

22 customers to take at least \$14 million in tax benefits from

23 the United States Treasury.

24 It appears that defendants may have sold as many as

13:53:05 25 50,000 in lenses, which at the usual market price of \$3500

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, CENTRAL DIVISION

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff,</p> <p>vs.</p> <p>RAPOWER-3, LLC, INTERNATIONAL AUTOMATED SYSTEMS, INC., LTB1, LLC, R. GREGORY SHEPARD, NELDON JOHNSON, and ROGER FREEBORN,</p> <p>Defendants.</p>	<p>MEMORANDUM DECISION AND ORDER FREEZING ASSETS AND TO APPOINT A RECEIVER</p> <p>Civil No. 2:15-cv-00828 DN EJF</p> <p>District Judge David Nuffer</p>
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This order GRANTS the United States’ second motion to freeze Defendants’ assets and appoint a receiver, [ECF Doc. No. 414](#), filed June 22, 2018.

On November 23, 2015, the United States filed its complaint against Defendants, seeking to enjoin Defendants from organizing, promoting, and selling the “solar energy scheme” that they have been promoting since on or before 2010.¹ The United States also seeks disgorgement of Defendants’ ill-gotten gains from the promotion of their abusive tax scheme.²

The United States previously moved for an order freezing the assets of Defendants Neldon Johnson, RaPower-3, and IAS’s assets and for an order appointing a receiver on

¹ [ECF Doc. No. 2](#) and [ECF Doc. No. 35](#) ¶ 1(a).

² [ECF Doc. No. 2](#) and [ECF Doc. No. 35](#) ¶ 1(a).

November 17, 2017.³ On March 2, 2018, the United States’ motion was denied without prejudice in part because the United States relied upon the facts set forth in its motion for partial summary judgment including the “disputed material facts as to Defendants’ knowledge at the time they made certain statements.”⁴ The Motion for Partial Summary Judgement was also denied in that same order.⁵ Trial is now completed. The Court made extensive findings on the record at the end of trial;⁶ intends to enter detailed Findings of Fact and Conclusions of Law including a disgorgement order; and has already entered an interim injunction based on summary findings⁷ and a preservation order.⁸ On the basis of the evidence adduced at trial, as laid out below, the United States’ motion is granted.

I. Statement of Facts	3
II. The injunctive relief requested by the United States – in the form of an asset freeze and appointment of a receiver – is necessary or appropriate to enforce the Internal Revenue Laws..	13
A. The United States has succeeded on the merits.	15
B. The United States will suffer irreparable injury if an order granting the asset freeze and appointing a receiver is not issued.	16
C. The balance of harm to the United States in not issuing the injunctive relief outweighs the harm to be caused to Defendants by issuing the requested relief.	18
D. An injunction will benefit, not disserve, the public interest.	19
E. A receiver is necessary or appropriate to effect the asset freeze.	20
III. Order	26

³ ECF Doc. No. 252. The United States did not include Shepard in its original motion to freeze defendants’ assets.

⁴ ECF Doc. No. 318, at 4.

⁵ *Id.*

⁶ ECF Doc. No. 409, filed June 21, 2018.

⁷ Initial Order and Injunction After Trial, ECF Doc. No. 413, filed June 22, 2018.

⁸ ECF Doc. No. 419, filed June 27, 2018.

I. Statement of Facts

1. Neldon Johnson is and has been the manager, and a direct and indirect owner of, RaPower-3, LLC, International Automated Systems, Inc. and LTB1, LLC (among other entities). He is the sole decision-maker for each entity.⁹

2. Johnson claims to have invented certain solar energy technology that involves solar thermal lenses placed in arrays on towers.¹⁰

3. In or around 2006 through 2008, Johnson directed IAS to erect, at most, 19 towers on “the R&D Site” near Delta, Utah, in Millard County.¹¹

4. Johnson also directed that IAS install solar lenses in those towers.¹²

5. To make money from this purported solar energy technology, Johnson decided to sell a component of the purported technology: the solar lenses.¹³

6. Johnson recognized that his strength was not in sales, so he directed that IAS use independent sales representatives to sell lenses.¹⁴

⁹ ECF Doc. No. 22 ¶ 12; Pl. Ex. 579, Deposition Designations for Neldon Johnson, vol. 1 (“Johnson Dep., vol. 1”), 36:1-39:12, 46:3-47:3; 52:20-57:1; 74:1-14; 77:4-87:12.

¹⁰ Johnson Dep., vol. 1, 87:16-91:1; 134:19-135:2; 139:23-144:19; Pl. Ex. 504; Pl. Ex. 509, Video 12_4_38-5_15; Pl. Ex. 509, Video 12_4_00-4-23.

¹¹ Pl. Ex. 581, Deposition Designations for International Automated Systems, Inc. (“IAS Dep.”), 162:1-165:9; 171:10-173:20; Pl. Ex. 532 at 6; Pl. Ex. 531.

¹² IAS Dep. 62:15-64:1.

¹³ Pl. Ex. 682, Deposition Designations for RaPower-3, LLC (“RaPower-3 Dep.”), Dep. 36:4-39:8.

¹⁴ IAS Dep. 145:21-146:9; Pl. Ex. 463; RaPower-3 Dep. 140:9-143:4; Pl. Ex. 504.

7. Johnson drafted some promotional materials to describe the arrangement, “IAUS Solar Unit Purchase Overview” and IAS “Solar Equipment Purchase.”¹⁵

8. Johnson showed IAS salespeople these descriptive materials about the structure of the transaction, the purported technology, and the federal tax benefits that Johnson said a customer could lawfully claim when he bought a lens from IAS.¹⁶

9. He told IAS’s initial salespeople what he understood the tax laws to mean.¹⁷

10. R. Gregory Shepard has been an IAS shareholder since the mid-1990s.¹⁸ He became one of IAS’s initial salespeople in or around September 2005, and began selling solar lenses.¹⁹

11. Shepard’s information about Johnson’s purported solar energy technology came from Johnson or members of Johnson’s family, and Shepard’s own observations on his site visits over the years.²⁰

12. Johnson told Shepard that a depreciation deduction and the solar energy tax credit are related to the sale of lenses.²¹

¹⁵ IAS Dep. 162:1-165:9; 171:10-173:20; Pl. Exs. 531 and 532.

¹⁶ IAS Dep. 162:1-165:9; 171:10-173:20; Pl. Exs. 531 and 532.

¹⁷ Johnson Dep. vol. 1, 240:18-241:10; 247:11-248:12; RaPower-3 Dep. 117:22-119:11; Pl. Ex. 473.

¹⁸ Pl. Ex. 685, Deposition Designations for R. Gregory Shepard (“Shepard Dep.”), 43:19-46:1.

¹⁹ Shepard Dep. 70:14-71:22; Pl. Ex. 463.

²⁰ Johnson Dep., vol. 1, 209:11-210:3, 211:16-215:23; Shepard Dep. 36:6-40:23, 46:2-57:5, 183:14-187:13; Pl. Ex. 8A; RaPower-3 Dep. 155:4-166:18; Pl. Ex. 267.

²¹ Johnson Dep., vol. 1, 279:19-22; IAS Dep. 162:1-165:9; 194:6-20; Pl. Ex. 531.

13. Johnson created, owns, and controls at least three entities that sell or have sold solar lenses: SOLCO I,²² XSun Energy,²³ and RaPower-3, LLC.²⁴ SOLCO I and XSun Energy are not defendants in this action.

14. Johnson created RaPower-3 in 2010. He is its manager and the sole decision-maker for the company.²⁵

15. Once formed, RaPower-3, rather than IAS, sold solar lenses to individuals.²⁶

16. RaPower-3's only business activity is selling solar lenses through a multi-level marketing (otherwise known as "network marketing") approach to increase sales.²⁷

17. Selling lenses through RaPower-3 gave Johnson "much needed revenue" to continue his operations.²⁸

18. Johnson directed RaPower-3 to create a site online (<https://rapower3.net>) where a customer can access and sign a contract to buy lenses and sign other transaction documents that Johnson provides (described below).²⁹

²² Johnson Dep., vol. 1, 82:8-83:6; LTB1 Dep. 78:22-79:5; 79:12-80:9; IAS Dep. 38:10-40:6, 45:4-17.

²³ See generally Pl. Ex. 355; IAS Dep. 47:2-19; Johnson Dep., vol. 1 79:8-81:7.

²⁴ RaPower-3 Dep. 32:16-33:14, 44:4-14, 45:9-10.

²⁵ RaPower-3 Dep. 32:16-33:14.

²⁶ RaPower-3 Dep. 32:16-33:14; IAS Dep. 23:22-25:22; Pl. Ex. 462; Pl. Exs. 8A, 25, 91-95, 119, 121, 174, 181, 346, 462, 464, 473, 511, 512, 531-533, 555, 587, 613-615, 637-639, 760, 762; Rowbotham Testimony, Trial Tr. 910:24-927:7; Williams Testimony, Trial Tr. 982:3-983:23; 985:4-990:12; 991:6-994:15; Olsen Testimony, Trial Tr. 1060:11-25; 1070:11-1074:7; 1078:20-1081:23; Jameson Testimony, Trial Tr. 1221:15-22; 1224:13-1225:25; 1226:6-1228:10; 1237:8-16.

²⁷ RaPower-3 Dep. 32:16-33:14; 36:4-39:8.

²⁸ Pl. Ex. 8A at 9; Pl. Ex. 749.

²⁹ RaPower-3 Dep. 39:9-41:2; Pl. Ex. 511; Pl. Ex. 673, Deposition Designations for LTB1, LLC ("LTB1 Dep."), 39:6-25; Pl. Ex. 61.

19. Among other things, Shepard created the website www.rapower3.com³⁰ and moderates an online discussion board called “IAUS & RaPower[-]3 Forum.”³¹

20. Shepard gets paid for his work with RaPower-3 through his company, Shepard Global.³²

21. On the RaPower-3 website, Shepard describes the solar energy technology (including the solar lenses) and the transactions underpinning the solar energy scheme, promotes sales, and provides links to the website with the transaction documents.³³ Shepard also uses the IAUS and RaPower-3 Forum and emails to communicate with RaPower-3 members and prospective members.³⁴

22. Shepard also organizes groups of people to visit the R&D Site, the site where component parts of the purported solar technology system are manufactured (the “Manufacturing Facility”), and the site on a large field with a few semi-constructed component parts (the “Construction Site”).³⁵

³⁰ Shepard Dep. 25:22-26:8; Pl. Ex. 459; Pl. Exs. 1, 5, 19, 20-21, 24-25, 34, 352, 419, 674, 676, 678-80, 714-724, 796.

³¹ Shepard Dep. 286:5-24.

³² Jameson Testimony, Trial Tr. 1294:15-1301:3; M. Shepard Testimony, Trial Tr. 1412:18-1415:16.

³³ Pl. Ex. 688, Deposition Designations of Roger Freeborn (“Freeborn Dep.”), 23:2-24:14; Pl. Ex. 490; Pl. Ex 689, Deposition Designations for Peter Gregg (“Gregg Dep.”), 56:20-57:13.

³⁴ Shepard Dep. 286:5-289:13; Pl. Ex. 481.

³⁵ *E.g.*, Pl. Exs. 21, 419 at 1; Johnson Dep., vol. 1, 87:23-89:10; Pl. Ex. 509, Video 12_4_00-4_23.

23. Shepard directs customers to use tax return preparers who are part of the solar energy scheme, like John Howell in Wichita Falls, Texas; Kenneth Alexander in Florida; and Richard Jameson in St. George, Utah.³⁶

24. From 2009 through 2016, RaPower-3 had received at least \$25,874,066 from its role in the solar energy scheme.³⁷

25. From 2008 through 2016, IAS has received at least \$5,438,089 from its role in the solar energy scheme.³⁸

26. From 2011 through 2016, XSun Energy has received at least \$1,126,888 from its role in the solar energy scheme.³⁹

27. From 2010 through 2016, SOLCO I has received at least \$3,434,992 from its role in the solar energy scheme.⁴⁰

28. From 2005 through February 28, 2018, all lens-selling entities have received at least \$32,796,196.

29. Testimony at trial showed that the total sales price of lenses which appears to have been paid is at least \$50,025,480.⁴¹

³⁶ Pl. Exs. 242-245; Pl. Ex. 597; Gregg Dep. 121:14-25; Pl. Ex. 606; Pl. Ex. 334.

³⁷ Pl. Ex. 735; Reinken Testimony, Trial Tr. 863:18-866:18; 866:19-868:24; *see also*, Pl. Exs. 742B, 749.

³⁸ Pl. Ex. 738; Pl. Ex. 852, at 59; Buck Testimony, Trial Tr. 257:7-258:20; 271:9-272:12; 293:1-294:11; 312:5-15; Pl. Ex. 371; Pl. Ex. 507, at 20, 35; Johnson Testimony, Trial Tr. 1812:4-12.

³⁹ Pl. Ex 741; Johnson Dep., vol. 1, 79:8-81:7; 82:8-10; IAS Dep. 47:2-19; Pl. Exs. 208, 355, 356, 510, 743, at 11.

⁴⁰ Pl. Ex. 739; Reinken Testimony, Trial Tr. 863:18-866:18; 870:3-871:7; Johnson Dep., vol. 1, 82:8-85:2; IAS Dep. 38:10-40:6; 45:4-21; LTB1 Dep. 78:22-79:5; 79:12-80:9; 81:12-21; Pl. Exs. 38, 325, 495, 545. Reinken Testimony, Trial Tr. 863:18-866:18; 871:10-872:14.

⁴¹ Exhibit 749.

30. From 2008 through 2016, Shepard received \$702,001 from his role in the solar energy scheme.⁴²

31. While selling the solar lenses, Defendants told customers they could buy “lenses” and claim tax benefits.⁴³

32. While they sold solar lenses and organized efforts to sell solar lenses, Defendants told their customers that if they bought a solar lens and signed the transaction documents Defendants provide, their customers were in the “trade or business” of “leasing” solar lenses.⁴⁴

33. According to Defendants, because their customers are in the trade or business of leasing solar lenses, their customers are allowed to claim on their federal income tax returns a business tax deduction for depreciation on the solar lenses and a solar energy tax credit.⁴⁵

⁴² Pl. Exs. 411, 445; G. Shepard Testimony, Trial Tr. 1596:5-1598:21; Jameson Testimony, Trial Tr. 1296:19-1301:3.

⁴³ Oveson Testimony, Trial Tr. 377:21-378:3; Rowbotham Testimony, Trial Tr. 928:14-929:10; 957:17-19; Williams Testimony; Trial Tr. 1022:4-14; 1099:16-1102:15; Olsen Testimony, Trial Tr. 1089:21-1090:15; RaPower-3 Dep., 155:4-166:18; Shepard Dep. 250:13-251:13; Aulds Dep. 42:11-44:22; 54:15-55:14; 57:17-60:15; Freeborn Dep. 71:2-20; Gregg Dep. 127:19-128:8; 136:4-6, 10-14; 137:3-12; 147:5-148:10; 149:1-7; Lunn Dep. 164:12-171:1; Pl. Exs. 1, 30, 32, 43, 49, 93, 125, 214, 294, 348, 492, 496, 499, 501, 532.

⁴⁴ *E.g.*, Pl. Ex. 32. Occasionally, Shepard has claimed that customers have been “in the solar energy business.” Shepard Dep. 243:11-244:3; Pl. Ex. 43 at 1 (“AM I REALLY IN THE SOLAR ENERGY BUSINESS? Yes.”). But in recent years, Shepard has made it clear that “We should not consider ourselves in an ‘energy’ business. We are buying lenses and leasing them – THAT is our business – LEASING – NOT producing energy ...” Pl. Ex. 32.

⁴⁵ Pl. Ex. 1 at 2-3 (“Tax Question” Nos. 45). A collection of Johnson’s statements: IAS Dep. 162:1-165:9, 171:10-173:20; Pl. Ex. 531 at 3; *see also* Pl. Ex. 532 at 7-10. A collection of Shepard’s statements: Pl. Ex. 93 (as a result of purchasing a lens, “the investor gets his \$9,000 back in the form of a Tax Credit, plus the depreciation which adds extensive value over a six year period plus the income from power produced by the Solar Pod.”); Shepard Dep. 148:21-149:25; *e.g.*, Pl. Ex. 125 (letter from Shepard telling a customer that he is “qualif[ied] ... for the Internal Revenue Service solar energy tax credit” because RaPower-3 “put [their lenses] into service”).

34. Defendants told customers that IAS, RaPower-3, or LTB “placed in service” or “put into service” their solar lenses in the year that the customers purchased the lenses.⁴⁶

35. Starting in 2010, RaPower-3 sold lenses for a price of \$3,500 per lens.⁴⁷ Johnson determined the price that RaPower-3 would charge for the lenses.

36. Customers started purchasing lenses via the internet at rapower.net. On that site, a potential customer enters the number of lenses he wishes to purchase, and the website “figures” the amount the customer owes and the amount of the customer’s down payment.⁴⁸

37. The site also provides all transaction documents for customers to sign electronically: an Equipment Purchase Agreement, an Operations & Maintenance Agreement (“O&M”), and, at times in the past, a bonus contract.⁴⁹

38. Customers do not negotiate the price of a lens, or other terms of the transactions Defendants promote.⁵⁰

⁴⁶ Pl. Ex. 1 at 3 (“Tax Question” No. 7); Pl. Exs. 44, 57, 104-105, 123-125, 176, 185, 313, 588; *see also*, Pl. Ex. 472.

⁴⁷ Johnson Dep., vol. 1, 206:15-23; Pl. Ex. 687, Deposition Designations for Robert Aulds (“Aulds Dep.”) 141:3-13; 146:17-147:5.

⁴⁸ Aulds Dep. 141:3-13.

⁴⁹ RaPower-3 Dep. 39:18-41:2; Aulds Dep. 141:3-13.

⁵⁰ RaPower-3 Dep. 39:9-41:2; *e.g.*, Pl. Exs. 119, 181, 511; Aulds Dep. 141:3-13; 146:17-147:5; Gregg Dep. 55:19-56:13; Howell Dep. 39:17-40:4; 95:3-5; 134:14-135:22; Zeleznik Dep. 67:3-12; Pl. Ex. 693, Deposition Designations for Frank Lunn, IV (“Lunn Dep.”) 114:11-115:4.

39. Over the years, Defendants told customers about Johnson's purported solar energy technology and the progress being made by Defendants.⁵¹ Defendants emphasized progress being made despite their knowledge that the system was not up and running.⁵²

40. From the start, Defendants have told their customers that they can "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.⁵³

41. Defendants knew that when they made statements to customers and prospective customers about the tax benefits and their purported solar lens leasing "trade or business," that the only way a customer has ever "made money" from buying a lens is from the tax benefits; no customer has earned money from rental income or income from a bonus contract.⁵⁴

⁵¹ *E.g.*, Pl. Ex. 185 at 1; Johnson Dep., vol. 1, 173:11-177:16; Pl. Exs. 16 & 17. Johnson gave these white papers to Shepard. Johnson Dep., vol. 1, 185:15-23; Shepard Dep. 126:9-128:5. Shepard made them available to the public on rapower3.com. Freeborn Dep. 24:16-25:23; Pl. Exs. 441, 491; RaPower-3 Dep. 140:4-143:17; Pl. Ex. 504; Shepard Dep. 199:10-204:14; Pl. Ex. 471; Shepard Dep. 250:13-252:21; Pl. Ex. 72; Pl. Ex. 109 at 1-3; *see also* Freeborn Dep. 95:3-98:1; Pl. Ex. 425 at 1. Johnson dep., vol. 1, 211:16-215:23; Shepard Dep. 36:6-40:23, 183:14-187:13; Pl. Ex. 8A; Pl. Ex. 676; Gregg Dep. 57:18-59:12; Pl. Exs. 298-299; Pl. Ex. 26; 93; 216, 246, 270, 329, 348.

⁵² J. Anderson Testimony, Trial Tr. 617:25-618:9; Pl. Ex. 602; Ruling on Plaintiff's Motions in Limine, Trial Tr. 2107:2-9; Pl. Exs. 6; 292; 411, at 10-11; 412, at 9; 413, at 6; 414, at 10; 415, at 7; 416, at 7; 509, Video 12_4_38-5_15; 509, Video 18_4_09-4_25; 526; 901; Johnson Testimony, Trial Tr. 1990:13-16; Shepard Dep. 204:15-207:8.

⁵³ Johnson Dep., vol. 1, 247:11-248:12; Pl. Ex. 490 at 9-10; IAS Dep. 162:1-165:9; Pl. Ex. 531. According to Shepard, "the greater one's tax liability, the greater will be the depreciation benefit." Pl. Ex. 24 at 1; *see also*, Pl. Ex. 20 at 2; Lunn Dep. 188:18-189:20; Pl. Ex. 24, 43, 48, 70, 71, 85, 88, 109, 133, 142, 158, 181, 207, 214, 220, 325, 438, 474, 490, 496, 497, 501, 532, 597, 674, 718, 721, 722, 777.

⁵⁴ Shepard Dep. 92:17-94:13; Freeborn Dep. 82:16-85:7; Pl. Ex. 246. Freeborn testified that the income from commission on solar lens sales is also "functional." Freeborn Dep. 82:16-85:17; Pl. Ex. 246. But the multi-level marketing component of RaPower-3 is not connected to lens ownership. RaPower-3 Dep. 33:8-34:9. A distributor need not buy a lens in order to sell lenses for RaPower-3. *Id.*; Johnson Testimony, Trial Tr. 2242:8-2251:18.

42. LTB, which by contract was to operate and maintain the solar energy project and specifically the lenses, has never done anything; it has never had a bank account, any employees, or any revenue.⁵⁵

43. Defendants told customers to expect income from the “lease” of their lenses, but Defendants know that no customer has been paid for the use of his or her lenses.⁵⁶

44. Defendants’ customers have been audited by the IRS for claiming the tax benefits Defendants promote.⁵⁷

45. Based on the advice and information provided by attorneys or accountants they spoke with about the solar energy scheme, Defendants knew or had reason to know that the purported tax benefits were not permissible under the Internal Revenue Code.⁵⁸

46. Defendants also knew or had reason to know that the purported tax benefits from their solar energy scheme were not permissible under the Internal Revenue Code because others also disagreed with their assertions about tax benefits available from the solar lenses, including:

⁵⁵ LTB Dep. 10:10-11:1; 14:7-16:7; 18:2-9; 42:10-43:5; 69:6-74:21; 90:19-91:8; Pl. Ex. 464; Johnson Testimony, Trial Tr. 2246:7-2247:19

⁵⁶ Shepard Dep. 34:18-35:24; 67:1-12; 76:23-82:18; 93:17-94:13; Pl. Ex. 279 at 1; Pl. Ex. 602 at 1-2; Pl. Ex. 465; Johnson Dep., vol. 1. 230:4-11; Pl. Exs. 10, 19, 48, 49, 61, 70A, 142, 151, 159, 217, 246, 283, 341, 465, 724, 796; Rowbotham Testimony, Trial Tr. 933:19-935:15; Williams Testimony, Trial Tr. 1000:9-1001:7; Olsen Testimony, Trial Tr. 1074:8-1078:16; 1086:12-1087:6; Jameson Testimony, Trial Tr. 1238:3-24; 1241:6-11; 1241:17-1245:1; 1280:21-1282:20; 1310:18-1312:9; M. Shepard Testimony, Trial Tr. 1406:12-1407:2; 1574:21-1575:14; G. Shepard Testimony, Trial Tr. 1734:9-1738:23.

⁵⁷ *E.g.*, Pl. Ex. 683, Deposition Designations of John Howell (“Howell Dep.”), 211:11-213:14 (aware of 150 cases in Tax Court); Shepard Dep. 250:17-251:3.

⁵⁸ Pl. Exs. 23, 73, 135, 141, 185, 231, 370, 373, 374, 449, at 2; 450, at 4; 452, at 2; 477, 480, 547, 570, 574, 582; Freeborn Dep. 95:3-13; Dr. Mancini Testimony, Trial Tr. 75:4-15; 85:24-86:12; 90:5-94:7; 96:17-20; 105:9-107:6; Shepard Testimony, Trial Tr. 1692:25-1693:5; 1723:15-22; 1728:4-1729:25; 1730:18-1731:3; Buck Testimony, Trial Tr. 267:24-269:22; 270:3-271:4; Oveson Testimony, 331:11-23; 334:18-336:3; 341:20-342:25; 343:1-2, 6-8; 343:21-344:10; 344:21-346:19; 347:18-348:13; 352:24-355:21; 356:7-357:14; 358:13-361:2; Shepard Dep. 266:2-267:1; J. Anderson Testimony; Trial Tr. 613:12-618:9; 620:1-621:24; 622:19-623:20; 630:20-632:10; 632:17-633:1.

customers' or prospective customers' tax preparers/CPAs, the Internal Revenue Service, the Oregon Department of Revenue, the Oregon Tax Court Magistrate Division, and the Department of Justice.⁵⁹

47. When a customer notifies Shepard that they are under audit, Shepard typically directs the customer to Enrolled Agents John Howell or Richard Jameson to represent the customer before the IRS.⁶⁰ Howell and Jameson represent RaPower-3 customers using the same arguments that Defendants make.⁶¹

48. Shepard has also advocated for customers under audit before the IRS.⁶² He has given customers the arguments to make before the IRS and documents to submit while under audit.⁶³

49. Johnson is paying the attorneys' fees for all customers whose tax benefits have been disallowed on appeal by the IRS and who have filed petitions in Tax Court.⁶⁴

⁵⁹ *Id.*; see also, ECF Doc. No. 2; *Peter C. Gregg v. Department of Revenue*, 2014 WL 5112762 (Or. Tax. Magistrate Div. 2014); *Kevin M. Gregg v. Department of Revenue*, 2017 WL 5900999 (Or. Tax Magistrate Div. 2017); *Matthew D. Orth v. Department of Revenue*, 2017 WL 5904611 (Or. Tax Magistrate Div. 2017).

⁶⁰ Gregg Dep. 151:7-25; Pl. Exs. 333-34; Howell Dep. 183:11-184:8; 211:11-212:10; Pl. Ex 348.

⁶¹ See, e.g., Howell Dep. 221:16-223:18; Pl. Exs. 605, 608, 637.

⁶² Pl. Ex. 10.

⁶³ Pl. Ex. 49; Pl. Ex. 697, Deposition Designations for Brian Zeleznik ("Zeleznik Dep."), 184:18-185:17; 211:4-214:4 and compare, e.g., Pl. Ex. 81 (document written by Brian Zeleznik to the IRS in response to his audit) with Pl. Ex. 89 (email from Shepard to Zeleznik with a sample document to use with the IRS); see also, Pl. Ex. 163 at 1-2; Pl. Ex. 231; Pl. Ex. 340 (*id.* at 2 ("You can hand write notes or even copy the above [arguments] down by hand and read it word for word [to an auditor]. Just don't give [an auditor] this email.")).

⁶⁴ Johnson Dep., vol. 1, 282:19-284:10; IAS Dep. 229:16-230:23; Zeleznik Dep. 142:7-143:1; Jameson Testimony, Trial Tr. 1249:14-1250:1.

50. Defendants have caused serious harm to the United States Treasury as a result of their solar energy scheme.⁶⁵ Defendants' customers claimed at least \$14,207,517 of improper tax refunds as a result of Defendants' scheme for tax years 2013 through 2016.⁶⁶

51. To date, Johnson, Shepard, IAS and RaPower-3 continue to organize sales of solar lenses, and participate (directly and indirectly) in the sale of solar lenses.⁶⁷

52. They are not deterred from promoting the scheme, not by the IRS' disallowance of their audited customers' depreciation deductions and solar energy tax credits or by the complaint filed in this case or by the announced result in the case.⁶⁸

II. The injunctive relief requested by the United States – in the form of an asset freeze and appointment of a receiver – is necessary or appropriate to enforce the Internal Revenue Laws.

Under [26 U.S.C. § 7402](#), this Court has the authority to impose an asset freeze and appoint a receiver to take control of Defendants IAS and RaPower-3's assets and business operations..⁶⁹ Section 7402(a) encompasses a broad range of powers necessary to compel

⁶⁵ Pl. Ex. 750; Howell Dep. 186:3-190:23; 193:22-194:10; 194:19-200:20; Zeleznik Dep. 152:10-15, 152:22-159:5; Gregg Dep. 102:7-103:25; 104:24-105:4; 105:15-106:2; 112:7-124:9; Perez Testimony, Trial Tr. 828:5-829:7, 834:11-836:14; Olsen Testimony, Trial Tr. 1136:14-1137:18; 1139:8-1145:12; Williams Testimony, Trial Tr. 1022:18-1028:14; Jameson Testimony, Trial Tr. 1282:21-1289:11; 1289:15-1293:18; 1304:4-1306:8; 1307:2-1308:17.

⁶⁶ Pl. Ex. 750; Perez Testimony, Trial Tr. 828:5-829:7, 834:11-836:14.

⁶⁷ Johnson Dep., vol. 1, 240:2-17; 245:24-246:22; Pl. Exs. 424, 426, 539, 679, 731-33.

⁶⁸ Shepard Dep., 311:2-315:5; RaPower-3 Dep. 197:13-199:4; IAS Dep. 226:9-25; Jameson Testimony, Trial Tr. 1229:11-14; M. Shepard Testimony, Trial Tr. 1526:19-21

⁶⁹ Under [26 U.S.C. § 7402\(a\)](#), the district courts "shall have jurisdiction to make and issue in civil actions, writs and orders of injunction, [] orders appointing receivers, and such other orders and processes, and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws."

compliance with the tax laws.⁷⁰ Courts have exercised this broad authority under § 7402(a) in a variety of contexts, including ordering disgorgement of ill-gotten gains against a tax return preparer engaged in fraudulent return preparation,⁷¹ appointing receivers to assist in collection of federal tax liabilities or otherwise ensure compliance with the internal revenue laws,⁷² and freezing a defendant's assets.⁷³ The statute alone provides sufficient authority to issue an injunctive order freezing Defendants' assets.

Examination of the typical factors in imposing equitable relief before final adjudication is not necessary but demonstrates the propriety – and necessity – of this action. In the Tenth Circuit, a party seeking a preliminary injunction must show 1) that there exists a substantial likelihood that the movant will prevail on the merits; 2) that the movant will suffer irreparable injury unless the injunction issues; 3) that the threatened injury to the movant outweighs

⁷⁰ See *Brody v. United States*, 243 F.2d 378, 384 (1st Cir. 1957) (“It would be difficult to find language more clearly manifesting a congressional intention to provide the district courts with a full arsenal of powers to compel compliance with the internal revenue laws.”); *United States v. Kaun*, 633 F. Supp. 406, 409 (E.D. Wisc. 1986) (“By its very terms, this statutory provision authorizes the federal district courts to fashion appropriate, remedial relief designed to ensure compliance with both the spirit and the letter of the Internal Revenue laws – all without enumerating the many, particular methods by which these laws may be violated or their intent thwarted.”), *aff’d on other grounds*, 827 F.2d 1144 (7th Cir. 1987); see also *United States v. ITS Financial, LLC*, 592 Fed. Appx. 387, 397 n.6 (6th Cir. 2014).

⁷¹ *United States v. Stinson*, 239 F. Supp. 3d 1299, 1326 (M.D. Fla., March 6, 2017).

⁷² See, e.g., *United States v. Latney’s Funeral Home*, 41 F.Supp.3d 24, 27 (D.D.C. 2014) (receiver appointed under broad authority of section 7402(a) to oversee company’s finances, prevent company from pyramiding employment taxes, and ensuring that company timely filed tax returns); *United States v. Bartle*, 159 Fed. Appx. 723, 724-25 (7th Cir. 2005) (district court did not abuse its discretion in appointing a receiver when defendant owed more than \$1 million in delinquent taxes and engaged in a series of transactions to move assets and commingle funds in an attempt to thwart the government’s collection efforts); *Florida v. United States*, 285 F.2d 596, 602 (8th Cir. 1960) (“Though the precise limits of judicial discretion to appoint a receiver under Sections 7402(a) and 7403 of the 1954 [Internal Revenue] Code are not defined, where the record shows that a substantial tax liability probably exists, and that the Government’s collection of the tax may be jeopardized if a receiver is not appointed, the appointment will be made.”) (quoting Mertens, Law of Federal Income Taxation, Vol. 9, § 49.222, 1960 Cum. Supp. p. 41).

⁷³ *United States v. First National City Bank*, 379 U.S. 378 (1965).

whatever damage the proposed injunction may cause the opposing party; and 4) that the injunction would not be adverse to the public interest.⁷⁴ The Court finds that while 26 U.S.C. § 7402(a) provides explicit authority for the relief requested, the United States, as the moving party, also meets its burden under the preliminary injunction standard for the relief requested.⁷⁵

A. The United States has succeeded on the merits.

For injunctive relief to be warranted under § 7408, the United States must prove by a preponderance of the evidence that (1) Defendants organized an entity, plan, or arrangement; (2) Defendants made false or fraudulent statements concerning the tax benefits to be derived from the entity, plan or arrangement; (3) Defendants knew or had reason to know those statements were false or fraudulent; (4) the false or fraudulent statements pertained to a material matter; and (5) an injunction is necessary to prevent recurrence of this conduct. Alternatively, for injunctive relief to be warranted under § 7402, the United States must prove that an injunction is necessary *or* appropriate to enforce the internal revenue laws.⁷⁶ As the Court has found, the United States has proven that it is entitled to an injunction under 26 U.S.C. §§ 7402 and/or 7408. The evidence adduced at trial shows that Defendants organized the solar energy scheme;⁷⁷ that

⁷⁴ *In re Qwest Communications Intern., Inc. Securities Litigation*, 243 F.Supp.2d 1179, 1185 (D. Colo. 2003) (citing *Lundgrin v. Clayton*, 619 F.2d 61, 63 (10th Cir. 1980)); *see also*, Fed. R. Civ. P. 65.

⁷⁵ *Lundgrin*, 619 F.2d at 63.

⁷⁶ 26 U.S.C. § 7402(a) (emphasis added).

⁷⁷ *E.g.*, Pl. Ex. 2, Pl. Ex. 511; Pl. Ex. 579, Johnson Dep., vol. 1, 228:10-234:17; Pl. Ex. 682, RaPower-3 Dep., 39:9-41:2; *United States v. Raymond*, 228 F.3d 804, 811 (7th Cir. 2000) *overruled on other grounds by Hill v. Tangherlini*, 724 F.3d 965, 967 n. 1 (7th Cir. 2013); *see also United States v. Stover*, 650 F.3d 1099, 1107 (8th Cir. 2011) (The organizing, promoting, or selling element of § 6700 “should be defined broadly, and is satisfied simply by selling an illegal method by which to avoid paying taxes.” (quotations omitted).); *United States v. Benson*, 561 F.3d 718, 722 (7th Cir. 2009); *United States v. Alexander*, 2010 U.S. Dist. LEXIS 40108, at *13-14 (D.S.C. 2010) *United States v. United Energy Corp.*, No. C-85-3655-RFP (CW), 1987 WL 4787, at *8-9 (N.D. Cal. Feb. 25, 1987).

Defendants made false or fraudulent statements about the tax benefits to be obtained from purchasing a solar lens;⁷⁸ and that Defendants knew or had reason to know that their statements were false or fraudulent pertaining to a material matter,⁷⁹ namely the tax benefits of depreciation and solar energy tax credits. Further, Defendants have testified that they have no intention of ceasing their activity related to and sales of solar lenses. An injunction is necessary to prevent recurrence of Defendants' conduct.

Disgorgement is also necessary or appropriate to enforce the internal revenue laws. Defendants profited from their scheme in the millions of dollars through money from the United States Treasury that was funneled through their customers. Defendants should not be permitted to retain their ill-gotten gains. The United States has shown that a reasonable approximation of their proceeds is at least \$50,025,480. This Court has found that an injunction will issue and that disgorgement will be ordered. Thus, the United States has already succeeded on the merits.

B. The United States will suffer irreparable injury if an order granting the asset freeze and appointing a receiver is not issued.

The United States Treasury has already been greatly harmed by Defendants' scheme. Defendants continue to sell lenses to this day, and Defendants' customers continue to claim the tax benefits related to those lenses. If the injunctive relief requested is not granted, Defendants

⁷⁸ *E.g.*, Pl. Ex. 24, Pl. Ex. 32, Pl. Ex. 93, Pl. Ex. 125, Pl. Ex. 214, Pl. Ex. 294, Pl. Ex. 492, Pl. Ex. 496, Pl. Ex. 531, Pl. Ex. 532; *see United States v. Campbell*, 897 F.2d 1317, 1320 (5th Cir. 1990); *Benson*, 561 F.3d at 724; *United Energy Corp.*, 1987 WL 4787, *9.

⁷⁹ *E.g.*, Pl. Ex. 40 at 8, Pl. Ex. 279, Pl. Ex. 246, Pl. Ex. 531, Pl. Ex. 532 at 6; *Stover*, 650 F.3d at 1108-09; *United Energy Corp.*, 1987 WL 4787, *9; *United States v. Music Masters, Ltd.*, 621 F. Supp. 1046, 1055 (W.D.N.C. 1985); *Campbell*, 897 F.2d at 1320-22 (statements about material matters include those that directly address the tax benefits purportedly available to a participant in a tax scheme and those that concern factual matters that are relevant to the availability of tax benefits.); *United States v. Hartshorn*, 751 F.3d 1194, 1202 (10th Cir. 2014).

will have full unfettered access to the funds illicitly obtained to the detriment of the United States.⁸⁰ Defendants' entire scheme was geared to "zero-out" a customer's tax liability. Defendants requested customers make a down payment for their solar lenses of \$1,050 per lens. The customers paid this with a \$105 "upfront fee" and were asked to pay the remaining amount *after* they received their tax refunds.⁸¹ Defendants funded their entire scheme through funds that were "redirected" or diverted from the United States Treasury to their pockets though the money first went through the hands of their customers. The United States will not be able to recover all of the improper refunds paid to Defendants' customers. Defendants have been dissipating assets since they learned of the criminal investigation by the Internal Revenue Service no later than June of 2012⁸² and throughout the course of this litigation.⁸³ Defendants have moved assets into

⁸⁰ See *United States v. Stinson*, 239 F. Supp. 3d 1299, 1326 (M.D. Fla., March 6, 2017); *Manor Nursing Centers*, 458 F.2d at 1104 ("The effective enforcement of the federal securities law requires that the SEC be able to make violations unprofitable. The deterrent effect of a Commission enforcement action would be greatly undermined if securities law violators were not required to disgorge illicit profits.").

⁸¹ Pl. Ex. 511; Shepard Dep. 150:17-153:21, 154:9-156:17; Pl. Exs. 119, 147, 265, 267.

⁸² RaPower-3 Dep., vol. 197:13-199:6.

⁸³ Pl. Ex. 684, true and correct copies of bank statements of defendants Neldon Johnson, RaPower-3 and IAS showing some of the activity and transfers that have occurred during the pendency of this litigation; *see also*, Pl. Ex. 646, Pl. Ex. 647, Pl. Ex. 648, Pl. Ex. 649, Pl. Ex. 650; Johnson Dep., vol. 2, 202:17-220:16.

foreign jurisdictions⁸⁴ and both Johnson⁸⁵ and Shepard⁸⁶ have taken steps to frustrate the collection of a potential disgorgement award. Without the relief requested, Defendants will continue in their attempt to frustrate the collection of any disgorgement this Court may award and thus irreparably injure the United States.

C. The balance of harm to the United States in not issuing the injunctive relief outweighs the harm to be caused to Defendants by issuing the requested relief.

In evaluating this factor, courts look to whether the freeze itself will cause such disruption of defendants' *legitimate* business affairs that the assets would be destroyed.⁸⁷ Here, Defendants have no legitimate business. Defendants' solar energy scheme is an abusive tax scheme and not a legitimate business. Defendants do not operate the solar energy scheme – or

⁸⁴ Johnson Dep., vol. 2, 37:22 – 38:5; Neldon Johnson assigned the rights to six patents to Black Night Enterprises, Inc., #6 Solomon's Arcade, Main Street, Charleston, Saint Kitts and Nevis (see USPTO Patent Assignment Search, search by assignee name: "Black Night"). The assignments were executed between April 2013 and June 2015 and recorded on June 16, 2015. See USPTO assignment search for Neldon Johnson, <https://assignment.uspto.gov/patent/index.html#/patent/search/result?id=neldon%20johnson&type=patAssignorName>.

⁸⁵ For example, Neldon Johnson has transferred patents to Nevis and has ownership interests in multiple foreign entities, *supra*. Further, Neldon Johnson testified that if a "government agency caus[ed] problems," then certain assets would revert back to the foreign company. Trial Tr. 2175:4-16. Johnson has structured his affairs in a convoluted manner and in such a way as to obstruct the United States' discovery of ownership interests and assets. *E.g.*, [ECF Doc. No. 53](#), [ECF Doc. No. 55](#), [ECF Doc. No. 56](#), [ECF Doc. No. 57](#), [ECF Doc. No. 58](#), [ECF Doc. No. 59](#), [ECF Doc. No. 138](#), [ECF Doc. No. 140](#), [ECF Doc. No. 143](#), [ECF Doc. No. 160](#), [ECF Doc. No. 161](#), [ECF Doc. No. 203](#), [ECF Doc. No. 206](#), [ECF Doc. No. 209](#), [ECF Doc. No. 210](#), ECF Doc. No. 212, [ECF Doc. No. 213](#), [ECF Doc. No. 218](#), [ECF Doc. No. 219](#). Permitting Defendants more time to engage in their solar energy scheme and moving assets while the case has been submitted and decision and judgment is forthcoming will only cause further injury to the United States.

⁸⁶ In March 2017, during this litigation, R. Gregory Shepard transferred his property right in his personal residence to a trust in the name of his wife. Pl. Ex. 914, 915, 916 (attached); *see also*, U.C.A. § 78B-5-503(7); U.C.A. § 78B-5-512. Pl. Ex. 914, 915, and 916 are certified copies of documents filed with the Salt Lake County Recorder and are self-authenticating. *Fed. R. Evid.* 902(4).

⁸⁷ *SEC v. Prater*, 289 F. Supp. 2d 39, 54 (D. Conn. 2003) (citing *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1106 (2d Cir. 1972)) (emphasis added).

any of the entities involved in the solar energy scheme – in a businesslike manner. Defendants do not have any revenue or income aside from the sale of solar lenses. There is no harm to Defendants in prohibiting them from using ill-gotten gains to fund their technology experimentation and their personal expenses, including offshore arrangements that will be difficult to collect against. The United States however, and the taxpaying public, will continue to be harmed by the probable dissipation of Defendants’ assets. The United States has a compelling interest in enforcing the tax laws and ensuring that persons promoting abusive tax schemes do not profit from their unlawful behavior.⁸⁸ As such, the balance of harms weighs in favor of the United States and for relief to be granted.⁸⁹

D. An injunction will benefit, not disserve, the public interest.

The public interest is served by issuing the injunctive relief requested by the United States. The public has an interest in enforcement of the tax laws.⁹⁰ Taxpayers have an interest in being protected from suffering the results of other taxpayers improper tax benefits. Defendants’ activities do a disservice to the taxpaying public, undermining confidence in the fair administration of the internal revenue laws, and have cost the United States’ Treasury over \$14

⁸⁸ See *Bull v. United States*, 295 U.S. 247, 259 (1935) (Taxes are the life-blood of government and their prompt and certain availability an imperious need.).

⁸⁹ See *United States v. Buddhu*, 2009 WL 1346607, at *5 (D. Conn. 2009) (“While the [defendants] will be denied the right to earn a livelihood preparing income tax returns, the harm to them is substantially outweighed by the harm to which their clients are subjected by having fraudulent tax returns prepared in their names.”)

⁹⁰ *United States v. Anderson*, 2010 WL 1988100, at *3 (D.S.C. 2010); accord *HedgeLender*, 2011 WL 2686279, at *10 (E.D. Va. 2011) (Promoting an abusive tax shelter that caused millions of lost tax revenue “is a significant harm to society because it promotes noncompliance with federal tax laws and is a great cost to the public.”); As the Senate Report regarding the enactment of § 6700 observed, “[t]he widespread marketing and use of tax shelters undermines public confidence in the fairness of the tax system and in the effectiveness of existing enforcement provisions.” S. Rep. No. 97- 494, Vol I at 266.

million. Defendants should not be permitted to profit from their illicit activities. The public interest is also served in ensuring that Defendants do not dissipate assets that can be used to satisfy any disgorgement award this Court may order or otherwise compensate those harmed by Defendants' abusive tax scheme.⁹¹

E. A receiver is necessary or appropriate to effect the asset freeze.

This Court has explicit statutory authority to appoint a receiver pursuant to 26 U.S.C. § 7402(a) as may be necessary or appropriate for the enforcement of the internal revenue laws.⁹² Second, the appointment of a receiver is authorized by the inherent equitable power of a federal court.⁹³ The Court finds that the appointment of a receiver is necessary and appropriate in this case. Defendants' solar energy tax scheme involves false or fraudulent statements and the possible dissipation of assets.⁹⁴ Given Defendants' reluctance to cooperate in discovery regarding assets and ownership structure⁹⁵, a receiver is necessary to enforce the internal revenue

⁹¹ When the public interest is involved, "Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved." *United States v. First National City Bank*, 379 U.S. 378, 383 (1965) (quoting *Virginia R. Co. v. System Federation*, 300 U.S. 515, 552 (1937)).

⁹² 26 U.S.C. § 7402(a); *see also*, *United States v. Latney's Funeral Home*, 41 F.Supp.3d 24, 27 (D.D.C. 2014); *United States v. Bartle*, 159 Fed. Appx. 723, 724-25 (7th Cir. 2005); *Florida v. United States*, 285 F.2d 596, 602 (8th Cir. 1960).

⁹³ *See SEC v. Vescor Capital Corp.*, 599 F.3d 1189, 1193-94 (10th Cir. 2010) (the district court has broad powers and wide discretion to determine relief and supervise receiverships); *United States v. Bartle*, 159 F. App'x 723, 725 (7th Cir. 2005); *Consolidated Rail Corp. v. Fore River Railway Co.*, 861 F.2d 322, 326-27 (1st Cir. 1988) (court may exercise discretion to appoint receiver upon considering fraudulent conduct, relative risks of harm, inadequacy of legal remedies, chance of success on merits, likelihood of irreparable injury, etc.); *Matter of McGaughey*, 24 F.3d 904, 907 (7th Cir. 1994) (federal court has inherent power to appoint receiver to manager defendant's assets pending litigation); *National Partnership Investment Corp., v. National Housing Development Corp.*, 153 F.3d 1289, 1291 (11th Cir. 1998) (appointment of receiver in equity is an ancillary remedy); *see also* Fed. R. Civ. P. 66.

⁹⁴ *Matter of McGaughey*, 24 F.3d 904, 907 (7th Cir. 1994).

⁹⁵ ECF Doc. No. 218.

laws and determine and corral the assets Defendants have, regardless of their location. This is appropriate to ensure that any disgorgement that may awarded will not be rendered meaningless.

The United States shall provide, within 30 days, the names of three possible receivers as well as a proposed order detailing the powers and responsibilities that the United States proposes the Court vest within the receiver. The Court may appoint from that list or otherwise. The proposed order should include all powers conferred upon a receiver under the provisions of 28 U.S.C. §§ 754, 959 and 1692, Fed. R. Civ. P. 66 and any additional equitable powers that the United States requests.

Unless otherwise ordered by the Court,⁹⁶ the proposed order shall provide:

1. The Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the owners, members, shareholders, officers, directors, managers and general and limited partners of IAS under applicable state and federal law, by the governing charters, by-laws, articles and/or agreements in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of 28 U.S.C. §§ 754, 959 and 1692, Fed. R. Civ. P. 66 and this Court.

2. The Receiver shall have the following general powers and duties:

- a) To use reasonable efforts to determine the nature, location and value of all property interests of the Receivership Defendants, including, but not limited to, monies, accounts, trusts, funds, securities, credits, stocks, bonds, effects, goods, chattels, intangible property, real property, lands, premises, leases, claims, rights

⁹⁶ The parties may move for modification of these terms.

and other assets, together with all rents, profits, dividends, interest or other income attributable thereto, of whatever kind, which the Receivership Defendants own, possess, have a beneficial interest in, or control directly or indirectly (“Receivership Property”);

- b) To take custody, control and possession of all Receivership Property and records relevant thereto from the Receivership Defendants; to sue for and collect, recover, receive and take into possession from third parties all Receivership Property and records relevant thereto;
- c) To manage, control, operate and maintain the Receivership Property and hold in his/her possession, custody and control all Receivership Property, pending further Order of this Court;
- d) To use Receivership Property for the benefit of the Receivership, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging his/her duties as Receiver;
- e) To take any action which, prior to the entry of this Order, could have been taken by the officers, directors, partners, managers, members, shareholders, trustees and agents of the Receivership Defendants;
- f) To engage and employ persons in his/her discretion to assist him in carrying out his/her duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, or forensic experts;

- g) To take such action as necessary and appropriate for the preservation of Receivership Property or to prevent the dissipation or concealment of Receivership Property;
- h) The Receiver is authorized to issue subpoenas for documents and testimony consistent with the Federal Rules of Civil Procedure;
- i) To bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging his/her duties as Receiver;
- j) To pursue, resist and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against the Receivership Estates; and,
- k) To take such other action as may be approved by this Court.

3. The Receivership Defendants are directed to preserve and turn over to the Receiver forthwith all paper and electronic information of, and/or relating to, the Receivership Property; such information shall include but not be limited to books, records, documents, accounts and all other instruments and papers.

4. The Receivership Defendants and all persons receiving notice of this Order by personal service, facsimile or otherwise, are hereby restrained and enjoined from directly or indirectly taking any action or causing any action to be taken, without the express written agreement of the Receiver which would interfere with or prevent the Receiver from performing his/her duties.

5. The Receivership Defendants shall cooperate with and assist the Receiver in the performance of his/her duties.

6. The Receiver shall promptly notify the Court and counsel for the United States of any failure or apparent failure of any person or entity to comply in any way with the terms of this Order.

7. Until further Order of this Court, the Receiver shall not be required to post bond or give an undertaking of any type in connection with his/her fiduciary obligations in this matter.

8. The Receiver and his/her agents, acting within the scope of such agency (“Retained Personnel”) are entitled to rely on all outstanding rules of law and Orders of this Court and shall not be liable to anyone for their own good faith compliance with any order, rule, law, judgment, or decree. In no event shall the Receiver or Retained Personnel be liable to anyone for their good faith compliance with their duties and responsibilities as Receiver or Retained Personnel nor shall the Receiver or Retained Personnel be liable to anyone for actions taken or omitted by them except upon a finding by this Court that they acted or failed to act as a result of malfeasance, bad faith, gross negligence, or in reckless disregard of their duties.

9. This Court shall retain jurisdiction over any action filed against the Receiver or Retained Personnel based upon acts or omissions committed in their representative capacities.

10. Within 60 days from the entry of the order appointing the Receiver, the Receiver shall file and serve an accounting of the Receivership Estate, reflecting (to the best of the Receiver’s knowledge) the existence, value, and location of all Receivership Property, and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Receivership Estates. The Receiver shall also detail his/her efforts in

locating Receivership Property and what, if any, additional efforts need to be undertaken to provide a full accounting of each Receivership Estate to this Court.

11. The Receiver's fees shall be paid by the Receivership Defendants or from the Receivership Estates upon approval of the Court, with prior notice and opportunity for the United States to respond to any fee application.

12. The Receiver shall distribute the estate to:

- a. First Priority: The Internal Revenue Service, up to \$14,207,517. This payment shall be paid in full before any distributions to the Second Priority claims.
- b. Second Priority: The taxpayers who file claims with the Receiver with sufficient evidence of:
 - i. Their investment and all amounts received by payment or credit from Defendants including rental payments, bonus payments, salaries, distributions, and commissions and overrides or similar payments due to multilevel marketing; and
 - ii. The resolution of all the taxpayer's issues with the Internal Revenue Service.

Payments to claimants shall be made on a pro rata basis of the amount paid by the claimant to Defendants less all amounts received by the claimant from Defendants.

III. Order

IT IS HEREBY ORDERED that the United States' second motion⁹⁷ to freeze the assets of Defendants RaPower-3, LLC, Neldon Johnson, International Automated Systems, Inc. and R. Gregory Shepard and to appoint a receiver is GRANTED and IT IS HEREBY ORDERED THAT:

1. This Court hereby takes exclusive jurisdiction and possession of the assets, of whatever kind and wherever situated, of the following Defendants: RaPower-3, LLC, Neldon Johnson, International Automated Systems, Inc. and R. Gregory Shepard (collectively, the "Receivership Defendants").

2. The United States shall provide within 30 days, the names of three possible receivers, with information regarding their qualifications, along with a proposed order of the specific powers and responsibilities that the Court should grant to the receiver in this case.

3. Except as otherwise provided herein, all assets of the Receivership Defendants are frozen until further order of this Court ("Receivership Property"). Accordingly, all persons and entities with direct or indirect control over any Receivership Property, other than the Receiver, are hereby restrained and enjoined from directly or indirectly transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating, or otherwise disposing of or withdrawing such Receivership Property. This freeze shall include, but not be limited to Receivership Property that is on deposit with financial institutions such as banks, brokerage firms and mutual funds, shares of stock, and any patents or other intangible property.

⁹⁷ ECF Doc. No. 414, filed June 22, 2018.

4. The Receivership Defendants, their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service, or otherwise, and each of them, shall hold and retain within their control, and otherwise prevent any withdrawal, transfer, pledge, encumbrance, assignment, dissipation, concealment, or other disposal of any assets, funds, or other properties (including money, real or personal property, securities, choses in action or property of any kind whatsoever) of the Receivership Defendants. This applies to assets held by Receivership Defendants or under their control, at any time after inception of this action, whether such assets were or are held in the name of any Receivership Defendant or for their direct or indirect beneficial interest wherever situated. The Receivership Defendants shall direct each of the financial or brokerage institutions, debtors, and bailees, or any other person or entity holding such assets, funds, or other properties of any Receivership Defendant to hold or retain within their control and prohibit the withdrawal, removal, transfer, or other disposal of any such assets, funds, or other properties.

5. The trustees, directors, officers, managers, employees, investment advisors, accountants, attorneys and other agents of the Receivership Defendants are restrained except as they may act in the ordinary course of business and shall not exercise their powers or take action inconsistent with this order. They are notified that upon appointment of the Receiver they shall likely be dismissed. and have no authority with respect to the Receivership Defendants' operations or assets, except to the extent as may hereafter be expressly granted by the Receiver.

6. The Receivership Defendants are directed to preserve all paper and electronic information of, and/or relating to, the Receivership Property.

The assets of Receivership Defendants Neldon Johnson and R. Gregory Shepard shall be frozen but each Defendant shall be allowed to withdraw on a monthly basis, monies for basic living expenses based on the IRS national standards. Defendants must account for these funds on or before the 15th of each month following the expenditure in the form required by the Receiver.

The sums which may be withdrawn are:

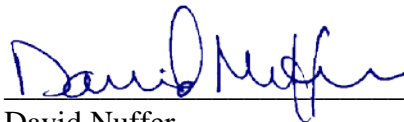
IRS National Standards	Neldon Johnson	R. Gregory Shepard
Housing & Utilities (Based on location)	\$1,347.00	\$1,806.00
Food, Clothing & Other Expenses	\$1,202.00	\$1,202.00
Out of pocket health costs	\$114.00	\$114.00
Transportation (National Standard)	\$497.00	\$497.00
Monthly Total	\$3,160.00	\$3,619.00

7. To the extent that any Receivership Defendant requests the use of Receivership Property, such application shall be made to the Court. After the appointment of a Receiver, requests for the use of funds shall be made to the Receiver and any party may dispute the Receiver's decision by filing a motion with this Court.

8. The appointment of a Receiver shall not, without further order, deprive any Defendant of the right to appeal orders in this case or otherwise defend this action through counsel (paid from sources other than Receivership Property) of Defendants' own choice.

Signed August 22, 2018.

BY THE COURT



David Nuffer
United States District Judge