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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.	Civil No. 2:15-cv-00828 DN MOTION TO STRIKE JURY DEMAND Judge David Nuffer
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The United States respectfully moves the Court for an order striking defendants
RaPower-3, LLC, International Automated Systems, Inc., LTB1, LLC, and Neldon Johnson's
Jury Demand because the relief sought in this case is equitable in nature. (See Doc. No. 24.)

ANALYSIS

The United States filed this action against RaPower-3, LLC, International Automated Systems, Inc., LTB1, LLC, and Neldon Johnson, R. Gregory Shepard, and Roger Freeborn, seeking an injunction pursuant to 26 U.S.C. §§ 7402 and 7408 enjoining the defendants from promoting the abusive solar energy scheme described in the United States' complaint¹ and ordering that the defendants disgorge all gross receipts that they received from any source as a result of the abusive solar energy scheme. (Doc. No. 2, ¶¶ 1.a and 2.b.)

The defendants are not entitled to a jury trial in this type of action. A right to a jury is limited to cases where legal issues rather than equitable issues are to be resolved. An issue is not triable by a jury if it is equitable in nature. United States v. Louisiana, 339 U.S. 699, 706 (1950). Injunctive relief is an equitable remedy. Weinberger v. Romero-Barcelo, 456 U.S. 305, 311 (1982); see also Burlington N. Santa Fe Ry. Co. v. A 50-Foot Wide Easement Consisting of 6.99 Acres more or less, 346 Fed. Appx. 297, 301 (10th Cir. 2009). Disgorgement is an equitable remedy. United States Securities and Exchange Commission v. Maxxon, Inc., 465 F.3d 1174, 1179 (10th Cir. 2006).

Even if the Court were to construe the United States' disgorgement claim as one for money damages, *which it is not*, an award of money damages may be considered an equitable rather than a legal remedy if (1) the damages are restitutionary, "such as in 'action[s] for disgorgement of improper profits'" or (2) the monetary award is "incidental to or intertwined with injunctive relief." Chauffeurs, Teamsters & Helpers, Local No. 391 v. Terry, 494 U.S. 558,

¹ The United States' complaint seeks an injunction enjoining the defendants from certain actions and to affirmatively take several actions related to the abusive solar energy scheme. These actions are incidental to enjoining the continued promotion of the abusive solar energy scheme.

570 (1990)) (citing Tull v. United States, 481 U.S. 412, 424 (1987)); accord Adams v. Cyprus Amax Minerals Co., 149 F.3d 1156, 1161 (10th Cir. 1998). The United States meets both exceptions set out by the Supreme Court in Terry. The United States seeks to disgorge the defendants' ill-gotten gains obtained from their promotion of a fraudulent tax scheme, and the potential disgorgement is intertwined with the United States' requested injunctive relief, that the defendants be enjoined from promoting their abusive tax scheme. Thus, even if the Court were to construe the disgorgement claim as one for money damages, the defendants are still not entitled to a jury trial.

CONCLUSION

Because the United States' complaint seeks only injunctive relief and disgorgement, both of which constitute equitable relief, the defendants are not entitled to a jury trial and their jury demand should be stricken.

WHEREFORE, the United States respectfully requests that the Court enter an order striking defendants RaPower-3, LLC, International Automated Systems, Inc., LTB1, LLC, and Neldon Johnson's Jury Demand.

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Dated: February 22, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2016. The foregoing document was electronically filed with the Clerk of the Court through the CM/ECF system, which sent notice of the electronic filing to the following:

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