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Attorneys for Defendants

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

**DEFENDANTS' OBJECTION TO PLAINTIFF'S
PROPOSED ORDER DENYING DEFENDANTS
MOTION DISMISS**

Judge David Nuffer

Magistrate Judge Evelyn J. Furse

Defendants, through undersigned counsel, hereby submit this objection to the form of Plaintiff's proposed "ORDER DENYING DEFENDANTS MOTION [SIC] DISMISS" pursuant to DUCivR. 54.1. Defendants also submit a proposed order in light of the objections raised below.

I. Relevant Facts

1. On January 22, 2018, the Court denied Defendant's Motion to Dismiss [Doc. No. 257], and directed Plaintiff to prepare and submit a proposed order.¹

2. The Court directed counsel for Plaintiff to include "detailed reasoning and citations of legal authority" in the proposed order.

3. On January 25, 2018, counsel for Plaintiff provided the Court and counsel for defendants a proposed form of order titled: "Order Denying Defendants' Motion [sic] Dismiss."

II. Defendants' Objection.

OBJECTION NO. 1: Defendants object to the entirety of Section I on the grounds that the inclusion of a summary of the United States' claims in this case is unnecessary to the order, and therefore is beyond the scope of the Court's directive in Docket Text Order 281.

OBJECTION NO. 2: Defendants object to the following language on page 4 of the order: "This case is, and has always been, a justiciable case" on the grounds that it exceeds the scope of the Court's directive in Docket Text Order 281.

OBJECTION NO. 3: Defendants object to the following language on page 5 of the order: "Both the law and the facts at issue show that the United States has standing to sue Defendants for the requested relief and that this case is ripe for decision by this Court" on the grounds that it is superfluous and redundant.

OBJECTION NO. 4: Defendants object to the following parenthetical text on page 7 of the proposed order: "(and has offered, on summary judgment)" because its inclusion is beyond the scope of the Court's drafting directive. Its inclusion implies that the Court relied on evidence offered in Plaintiff's pending and opposed motion for summary in its ruling concerning dismissal. On these grounds, this language is improper.

¹ Docket Text Order 281.

OBJECTION NO. 5: Defendants object to the following language on page 8 of the proposed order: “Carried to its logical conclusion, however, Defendants’ argument would eliminate §§ 7408 and 6700 from the Internal Revenue Code. But by enacting §§ 7408 and 6700, Congress directed that the United States may bring a suit like this one against an abusive tax shelter’s promoters, no matter the status of any customer’s tax liability” on the grounds that it exceeds the Court’s drafting directive. Defendants object that the logical conclusion of their argument would eliminate §§ 7408 and 6700 from the Internal Revenue Code or that “carried to its logical conclusion” is an accurate or correct analytical assertion. Additionally, Defendant’s object to the placement of their argument, and propose that it be moved to an earlier page position in the document. (See Defendants’ Proposed Order, submitted herewith).

OBJECTION NO. 6: Defendants object to the following parenthetical text on pages 9 and 10 of the proposed order:

“...(like Defendants’ personal enrichment from their widespread sales of solar lenses through an internet-based, commission-incentivized multi-level marketing arrangement and their assistance to customers in both preparing unlawful tax returns and defending them to the IRS and Tax Court)...”

Defendants object to the inclusion of this language on the grounds that it exceeds the Court’s drafting directive. More specifically, its inclusion is non-germane to the Court’s analysis. It is an attempt by counsel for Plaintiff to graft in its proposed order contested evidence submitted in its motion for summary judgment in an improper attempt to establish law of the case. Its inclusion at this stage is entirely improper.

III. Conclusion.

Defendants respectfully object to the proposed order in its current form and request that the proposed order filed herewith be considered in its place.

Dated this 31st day of January, 2018.

NELSON SNUFFER DAHLE & POULSEN

/s/ Denver C. Snuffer, Jr. _____.

Denver C. Snuffer, Jr.

Steven R. Paul

Daniel B. Garriott

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DEFENDANTS' OBJECTION TO PLAINTIFF'S PROPOSED ORDER DENYING DEFENDANTS MOTION DISMISS** was sent to counsel for the United States in the manner described below.

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/s/ Denver C. Snuffer, Jr.
Attorneys for Defendants