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

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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

**UNITED STATES' MOTION FOR  
STATUS CONFERENCE OR IN THE  
ALTERNATIVE REQUEST TO  
SUBMIT FOR DECISION**

Judge David Nuffer  
Magistrate Judge Evelyn J. Furse

For the following reasons, the United States respectfully requests a status conference in this matter (“Injunction Case”). A parallel request has been filed in *United States Department of Justice, Tax Division v. RaPower-3, LLC*, 2:18-cv-00608-DN (“Bankruptcy Case in District Court”). Numerous motions, many triggered by RaPower-3’s bad-faith bankruptcy filing, are ripe in this matter, the Bankruptcy Case in District Court, and *In re RaPower-3, LLC*, 18-bk-24865 (“Bankruptcy Case in Bankruptcy Court”). Resolution of these motions will speed the resolution of the Injunction Case and the bankruptcy matter as a whole. The United States respectfully submits that hearing from all counsel, in both this Injunction Case and the bankruptcy matters, will assist this Court to decide the motions and resolve this case.

The motions ripe for decision, and their procedural posture, are:

1. Injunction Case, [ECF No. 429](#): United States’ motion to vacate, in part, the July 5 Order, served on July 13, 2018. We asked that this Court set a new schedule for the United States to submit the draft opinion and order and for Defendants to object, and then to promptly enter the final opinion and order in this case. As this Court has already noted, this motion was filed out of the United States’ mistaken belief that this Court had ordered a stay of all proceedings in the Injunction Case due to RaPower-3’s bankruptcy filing.<sup>1</sup> The Court had not ordered a stay, but did order that briefing on the United States’ motion continue.<sup>2</sup> On July 18, 2018, RaPower-3 opposed the motion.<sup>3</sup>

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<sup>1</sup> Injunction Case, [ECF No. 430](#).

<sup>2</sup> Injunction Case, [ECF No. 430](#).

<sup>3</sup> Injunction Case, [ECF No. 434](#).

Remaining Defendants' objection to the United States' motion, served on July 18, 2018, largely rests on RaPower-3's objection.<sup>4</sup> We replied on July 20, 2018.<sup>5</sup> Then on August 10, 2018, and August 16, 2018, RaPower-3 conceded that entry of the final opinion and order in this case is appropriate.<sup>6</sup> This motion is ripe for decision, and should be granted.

2. Bankruptcy Case in District Court, [ECF No. 2](#): United States' motion to withdraw the reference, served on July 27, 2018. We ask that this Court withdraw the reference for *In re RaPower-3, LLC*. In its response, served on August 15, 2018, RaPower-3 agreed that this Court should withdraw the reference.<sup>7</sup> There is no need for the United States to reply. This motion is ripe for decision, and should be granted.

3. Bankruptcy Case in Bankruptcy Court, [ECF Bankr. No. 13](#): United States' motion to dismiss RaPower-3's bankruptcy petition, or in the alternative to convert it to Chapter 7, or in the alternative to appoint a Chapter 11 trustee, served on July 27, 2018.

Because the United States and RaPower-3 agree that the motion to withdraw the reference should be granted, this Court and not the Bankruptcy Court should decide the motion to dismiss or for alternative relief. RaPower-3 served its response on August 10, 2018, disavowing bad faith in filing its petition but agreeing that the

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<sup>4</sup> Injunction Case, [ECF No. 435](#).

<sup>5</sup> Injunction Case, [ECF No. 437](#).

<sup>6</sup> Bankruptcy Case in Bankruptcy Court, [ECF Bankr. No. 30](#) at 2 (RaPower-3 "does not object to entry of final orders by Judge Nuffer in the [Injunction Case]."); *accord* Bankruptcy Case in District Court, [ECF No. 4](#) at 2 (RaPower-3 "does not object to entry of final orders by this Court in the [Injunction Case].").

<sup>7</sup> Bankruptcy Case in District Court, [ECF No. 4](#) at 4 ("[T]he Debtor agrees that this Court should withdraw the reference.")

petition should be dismissed.<sup>8</sup> We replied on August 17, 2018, noting that dismissal with prejudice and adverse findings is appropriate.<sup>9</sup> This motion is ripe for decision, and should be granted. Granting the motion and dismissing the petition would moot the United States' motion for partial stay,<sup>10</sup> the US Trustee's motion for appointment of Chapter 11 trustee,<sup>11</sup> and RaPower-3's motion to continue the § 341 meeting of creditors<sup>12</sup>.

4. Injunction Case, [ECF No. 414](#): United States' second motion to freeze Defendants' assets and appoint a receiver, served on June 22, 2018. Defendants (except for RaPower-3, because it had filed for bankruptcy) responded on July 2, 2018.<sup>13</sup> The Court did not request a reply.<sup>14</sup> If this Court dismisses RaPower-3's bankruptcy petition, there will be no impediment to issuing the draft order the Court circulated on July 13, 2018. Although the parties have discussed Defendants' draft language, the United States objects to the changes Defendants have proposed, including but not limited to their proposed changes to the factual findings, proposed changes to prevent the receiver from collecting assets that are not officially titled in Defendants' names, and proposed changes allowing receivership assets to pay the costs of appeal with the

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<sup>8</sup> Bankruptcy Case in Bankruptcy Court, ECF Bankr. No. 30.

<sup>9</sup> Bankruptcy Case in Bankruptcy Court, ECF Bankr. No. 42.

<sup>10</sup> Bankruptcy Case in Bankruptcy Court, ECF Bankr. No. 18.

<sup>11</sup> Bankruptcy Case in Bankruptcy Court, ECF Bankr. No. 24.

<sup>12</sup> Bankruptcy Case in Bankruptcy Court, ECF Bankr. No. 28.

<sup>13</sup> Injunction Case, [ECF No. 423](#).

<sup>14</sup> *See* Injunction Case, ECF No. 417.

receiver's permission. If the Court is considering entering Defendants' alternative language, the United States requests the opportunity to reply on this motion. If not, this motion is ripe for decision and the order circulated on July 13, 2018 should be entered.

RaPower-3's bad-faith bankruptcy filing has caused more than enough delay. A status conference to break the logjam created by that filing will expedite resolution of the Injunction Case and the bankruptcy matter.

If the Court determines that a status conference is not necessary, under DUCivR 7-3, we request that these motions be submitted for decision. No hearing, other than this request for a status conference, has been requested on the motions listed herein.

Dated: August 17, 2018

Respectfully submitted,

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**ATTORNEYS FOR THE  
UNITED STATES**

**CERTIFICATE OF SERVICE**

I hereby certify that on August 17, 2018 the foregoing UNITED STATES' MOTION FOR STATUS CONFERENCE OR IN THE ALTERNATIVE REQUEST TO SUBMIT FOR DECISION and its supporting documents were electronically filed with the Clerk of the Court through the CM/ECF system, which sent notice of the electronic filing to all counsel of record.

/s/ Erin Healy Gallagher  
ERIN HEALY GALLAGHER  
Trial Attorney