

Denver C. Snuffer, Jr. (#3032) [denversnuffer@gmail.com](mailto:denversnuffer@gmail.com)  
Steven R. Paul (#7423) [spaul@nsdplaw.com](mailto:spaul@nsdplaw.com)  
Daniel B. Garriott (#9444) [dbgarrriott@msn.com](mailto:dbgarrriott@msn.com)  
Joshua D. Egan (#15593) [Joshua.d.egan@gmail.com](mailto:Joshua.d.egan@gmail.com)  
**NELSON, SNUFFER, DAHLE & POULSEN**  
10885 South State Street  
Sandy, Utah 84070  
Telephone: (801) 576-1400  
Facsimile: (801) 576-1960  
*Attorneys for Defendants*

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>Civil No. 2:15-cv-00828-DN-EJF</p> <p><b>DEFENDANTS’ RULE 59(e) AND RULE 52(b) MOTION</b></p> <p>Judge David Nuffer Magistrate Judge Evelyn J. Furse</p>
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Pursuant to [Rule 59\(e\)](#) of the Federal Rules of Procedure, Defendants collectively move to alter or amend the court’s current orders<sup>1</sup> and pending findings<sup>2</sup> on the basis of new evidence and the need to prevent manifest injustice. Defendants further request that this Court reopen the

<sup>1</sup> ECF Doc. #413 “Initial Order and Injunction after Trial” and ECF Doc. #444 “Memorandum Decision and Order Freezing Assets and to Appoint a Receiver”.

<sup>2</sup> Plaintiff submitted proposed Findings of Fact and Conclusions of Law on August 22, 2018; Defendants’ objections to Plaintiff’s proposed findings of fact and conclusions of law is or will be filed on September 14, 2018.

matter to take additional evidence of electrical power production which has occurred since the close of evidence pursuant to [Rule 52\(b\)](#) of the Federal Rules of Civil Procedure.

### **I. Argument**

Grounds warranting a motion to alter or amend the judgment pursuant to [Rule 59\(e\)](#) "include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice."<sup>3</sup> In this case, reopening the evidence is properly granted to prevent manifest injustice or review the Court's decision in light of availability of new evidence.<sup>4</sup>

On June 22, 2018, when this Court entered its preliminary findings of fact and conclusions of law on the record, the Court stated that Mr. Johnson's has not and will not create electricity. Trial Rec. 2521 ("And because power production is not possible with any designs to date power production has never taken place and there is no revenue. The field of towers creates the illusion of effort and success.") Since that date, however, the Johnson Fresnel lenses at issue in this case have been successfully used to generate independently measurable electricity. Using the Fresnel lenses mounted in one of the RaPower-3 solar collector arrays, and using a model "Colorado" Sterling Engine built by Infinia, Mr. Johnson the Fresnel lenses have been used to generate electricity.<sup>5</sup>

Johnny Krazcek, MET, a 30 year Senior Engineer and Technologist with extensive experience in mechanical manufacturing, automation, process and renewable energy engineering

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<sup>3</sup> *Alpenglow Botanicals, Ltd. Liab. Co. v. United States*, 894 F.3d 1187, 1203 (10th Cir. 2018) (citing *Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000)).

<sup>4</sup> *DiPasquale v. Milin* 303 F Supp 2d 430, 432 (S.D.N.Y. Feb. 3, 2004).

<sup>5</sup> Krazcek, Johnny, MET, Jorgensen, Jeffrey, EE PE, *Confirmation of Electrical Power Production Using Johnson Fresnel Lens in the Field Coupled to a Sterling Engine*, September 12, 2018, attached hereto as **Exhibit 1**.

projects, and Jeffrey Jorgensen, EE PE, a senior electrical engineer and a licensed professional engineer with over 40 years of experience in power generation and industrial electrical systems, have conducted a study at the Delta site to determine whether the Fresnel lens system can be used to generate enough solar process heat to generate electricity using a Sterling Engine system. The study used the Fresnel lenses mounted on the existing towers, which allows the lenses to be turned to face incoming sunlight. The “Colorado” Sterling engine was mounted on the targeted receiver holder and a parabolic reflector added as a collar around the head of the Sterling engine. The “Colorado” was then connected to its controller and the load was wired to an Onics 35 Ohm, 6 kW resistor to act as the load for the test. On September 5, 2018, from 1:58 pm through 4:13 pm, Kraczek and Jorgensen measured a steady production of electricity generated from the above described system.<sup>6</sup>

In light of the availability of this new evidence, amending or altering the trial court’s findings and conclusions is necessary to prevent manifest injustice.<sup>7</sup> Indeed, the entire basis for this Court’s findings of false or fraudulent statements was that solar energy equipment developed by Mr. Johnson would never create electricity. Because there is now demonstrable evidence to the contrary, successfully doing what the Department of Justice said and what this Court found could not be done, the evidence ought to be reopened.

Attached hereto as Exhibit 1 to this Motion is the engineers’ report in support of this newly available evidence. Furthermore, these are post-trial factual developments that vindicate Defendants’ representations and position that it was possible to produce electricity using the

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<sup>6</sup> Minute by minute readings of electricity generation, attached as **Exhibit 2**.

<sup>7</sup> *Id.* (Reconsideration is properly granted to correct clear error, prevent manifest injustice, or review court’s decision in light of availability of new evidence.)

Fresnel lenses sold by RaPower-3. Accordingly, this evidence was not available at the time of trial and therefore is properly considered by grant of this motion.<sup>8</sup>

**Conclusion**

For the reasons stated above, Defendants request that the June 22, 2018 Ruling<sup>9</sup> and any subsequent order, findings or judgment be altered and amended on the basis of the new evidence now available to avoid manifest injustice prior to any further order or injunction entering in this matter. Otherwise the Court will incorrectly determine as a fact what is now positively shown to be untrue regarding Defendants' Fresnel lenses.

Dated this 14<sup>th</sup> day of September, 2018.

NELSON SNUFFER DAHLE & POULSEN

/s/ Denver C. Snuffer, Jr.  
Denver C. Snuffer, Jr.  
Steven R. Paul  
Daniel B. Garriott  
Joshua D. Egan  
*Attorneys for Defendants*

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<sup>8</sup> *Servants of the Paraclete*, 204 F.3d at 1012. ("It is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing.")

<sup>9</sup> See prior footnotes 1 and 2.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **DEFENDANTS' 59(e) AND RULE 52(b) MOTION** was sent to counsel for the United States in the manner described below.

Erin Healy Gallagher  
Erin R. Hines  
Christopher R. Moran  
US Dept. of Justice  
P.O. Box 7238  
Ben Franklin Station  
Washington, DC 20044  
*Attorneys for USA*

Sent via:  
 Mail  
 Hand Delivery  
 Email: [erin.healygallagher@usdoj.gov](mailto:erin.healygallagher@usdoj.gov)  
[erin.r.hines@usdoj.gov](mailto:erin.r.hines@usdoj.gov)  
[christopher.r.moran@usdoj.gov](mailto:christopher.r.moran@usdoj.gov)  
 Electronic Service via Utah Court's e-filing program

/s/ Steven R. Paul  
*Attorneys for Defendants*