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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>MOTION TO AMEND TERMS OF JUDGMENT</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 Judgment¹ entered in this case. The language used in the Judgment does not reflect the language used in the Order of Disgorgement entered by the Court. The Judgment should be amended and corrected to conform to the Order of Disgorgement. At present the Judgment does not limit each Defendants' joint and several obligations as described in the

¹ [ECF 468](#), Judgment.

Findings of Fact and Conclusions of Law and Permanent Injunction. The Judgment does not include the clarification, and uses language that could be read to make each Defendant jointly and severally liable for the full amount of the \$50,025,480 judgment that the Findings enter only as against Defendant Neldon Johnson. The language of the Judgment should be amended to reflect the correct Order intended by the Court.

I. Argument

Grounds warranting a motion to alter or amend the judgment pursuant to [Rule 59\(e\)](#) include “the need to correct clear error or prevent manifest injustice.”² Paragraph 24 of the Order and Injunction portion of the Findings of Fact and Conclusions of Law, provides that:

“Judgment shall be entered in favor of the United States and against Neldon Johnson, International Automated Systems, Inc., RaPower-3, LLC, and R. Gregory Shepard, jointly and severally, in the amount of \$50,025,480 as equitable monetary relief, **up to and including the amount of gross receipts each received from the solar energy scheme as follows:**

- a. Neldon Johnson: \$50,025,480;**
- b. International Automated Systems, Inc.; \$5,438,089;**
- c. RaPower-3, LLC: \$25,874,066; and**
- d. R. Gregory Shepard: \$702,001.”** (See [ECF 467](#), p. 144, emphasis added.)

This Order makes clear that each Defendant has responsibility only up to the amount listed as the gross receipts attributed to them as what they received from the solar energy sales.

The Judgment ([ECF 468](#)), provides, however: “that final judgment is entered in favor of Plaintiff United States of America and against Defendants RaPower-3 LLC, International Automated Systems Inc., R. Gregory Shepard, and Neldon Johnson, jointly and severally, in the

² *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)).

amount of \$50,025,480, with post judgment interest at the legal rate.” There is no limitation, qualification, explanation, nor any differentiation in the amounts each Defendant owes. As the Judgment currently provides, each Defendant is jointly and severally liable for the full \$50 million amount, not up to the amount they received from the solar energy sales as is clarified in the Findings of Fact and Conclusions of Law and Permanent Injunction. The Judgment should be amended to reflect the actual intended Order by the Court. Language should be added to the Judgment to clearly differentiate the amount each Defendant is actually jointly and severally liable for, as is done in the Findings and Conclusions.

Conclusion

For the reasons stated above, Defendants request that the Judgment be amended to reflect the actual order of the Court upon which it is based. That language of the Judgment should be as follows:

Judgment shall be entered in favor of the United States and against Neldon Johnson, International Automated Systems, Inc., RaPower-3, LLC, and R. Gregory Shepard, jointly and severally, in the amount of \$50,025,480 as equitable monetary relief, up to and including the amount of gross receipts each received from the solar energy scheme as follows:

- a. Neldon Johnson: \$50,025,480;
- b. International Automated Systems, Inc.; \$5,438,089;
- c. RaPower-3, LLC: \$25,874,066; and
- d. R. Gregory Shepard: \$702,001.”

Dated this 15th day of October, 2018.

NELSON SNUFFER DAHLE & POULSEN

/s/ Denver C. Snuffer, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **MOTION TO AMEND TERMS OF JUDGMENT** was sent to counsel for the United States in the manner described below.

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