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Defendant, Pro Se

FILED
U.S. DISTRICT COURT

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DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

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

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>RAPOWER-3, LLC, INTERNATIONAL AUTOMATED SYSTEMS, INC., LTB1, LLC, R. GREGORY SHEPARD, NELDON JOHNSON, and ROGER FREEBORN,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">Civil No. 2:15-cv-00828-DN-EJF</p> <p style="text-align: center;">NELDON JOHNSON'S PRO SE MOTION TO RECUSE HONORABLE JUDGE DAVID NUFFER</p> <p style="text-align: center;">Judge David Nuffer Magistrate Judge Evelyn J. Furse</p>
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Pursuant to 28 U.S.C. § 455(a), Neldon Johnson, appearing pro se, hereby moves this Court for the recusal of Honorable Judge David Nuffer as provided in 28 U.S.C. § 455(a) or alternatively 28 U.S.C. § 144.

Section 455(a) provides: "Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

Section 144 provides: "Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding."

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Judge Nuffer is now a Defendant in two separate lawsuits which Neldon Johnson has filed. He therefore has a personal bias that prevents him from being impartial in this case and for which he should be recused.

BACKGROUND

1. On September 20, 2018 Neldon Paul Johnson filed a Complaint in this Court against the Internal Revenue Service, U.S. Department of Justice, and Honorable Judge David Nuffer. Case No. 4:18 cv 00062 TS (hereinafter the “Federal Court matter”).

2. The IRS and US DOJ were both served on October 3, 2018.

3. Although attempts have been made, service has not been complete for David Nuffer in the Federal Court matter.

4. On October 16, 2018 a separate Complaint was filed in the Fourth District Court for the State of Utah in Fillmore, Utah against the Internal Revenue Service, U.S. Department of Justice, and Honorable Judge David Nuffer. Case No. 180700040 (hereinafter the “State Court matter”).

5. The US DOJ was served on October 23, 2018.

6. Service has not yet been completed for the IRS or David Nuffer in the State Court matter.

ARGUMENT

Both 28 U.S.C. § 255 and 144 provide basis for the recusal of Judge Nuffer. Under Section 255(a), a judge should disqualify himself in any proceeding in which his

damages as if I had been paid \$1050 for each lens that was sold. It is apparent that Judge Nuffer intended to punish me.

8. The excess "disgorgement" award is a penalty intended to punish me, not an equitable award, and therefore it was improper to deprive me of the right to a trial by jury.

9. The power to tax is the power to destroy and Judge Nuffer's "disgorgement" award is intended to destroy me financially and to prevent me from continuing doing any business activity of any kind, despite the fact that similar businesses offering similar services have been given tax code support to encourage development of alternative energy.

10. Judge Nuffer refused to allow any evidence of other solar energy projects that are supported by tax incentives that do not and never have produced economically viable solar based electricity.

11. Every solar project in the United States is dependent upon tax incentives to exist.

12. My projects are no different, although mine show greater economic promise than others, such as the Ivanpah project in California that has received billions of dollars in tax-incentives to support its inefficient solar power component.

13. My projects are intended to achieve economic viability before they begin electrical generation, rather than to leap into inefficient production before solutions to economic costs, including manufacturing efficiencies, have been fully addressed.

14. My project has been singled out by Judge Nuffer for unfair and unequal treatment under the law, because he bears personal bias against me.

15. The only component sold to the public was a patented Fresnel Lens that is unique and required years of research and development, with no comparable efficient and economically-priced Fresnel Lens available anywhere in the world.

16. Judge Nuffer dismissed the technical achievement as a “thin piece of plastic” when it required millions of dollars in investment to achieve a technical break-through previously unattainable. (TR page 1842, line 1- to page 1843 line 7/also page 1850 lines 13-18.)

17. Judge Nuffer’s dismissive treatment of my patented Fresnel Lens ignored that it worked, successfully producing significant concentrated solar heat that is useable in producing energy.

18. Judge Nuffer’s dismissive treatment of my patented Fresnel Lens ignored that there is no comparable sized lens available anywhere in the world (TR page 1863 lines 3-8), and would not be possible to produce without my patent—even if it were attempted it would require more than half-a-million dollars to produce a single 24 foot Fresnel lens and I was able to sell them for \$3,500.

19. Judge Nuffer’s dismissive treatment of my patented Fresnel Lens was contrary to the proof and contrary to common sense when he ignored that the willing public in an arm’s length transaction accepted the price of \$3,500 as an appropriate fair market price.

20. The development of my patented Fresnel lens took 3 years of failed effort and \$3 million for a Canadian company (TR page 1864 lines 8-21), without success, and then another \$11 million (a total of \$14 million) before it was successfully accomplished (TR page 1867 lines 1-3).

20. Judge Nuffer was motivated by bias against me when he decided the “facts” in this case and he ought to remove himself from this case because of that bias.

ARGUMENT

Both 28 U.S.C. § 255 and 144 provide basis for the recusal of Judge Nuffer. Under Section 255(a), a judge should disqualify himself in any proceeding in which his impartiality might reasonably be questioned. It is reasonable to question the impartiality of a judge when he is charged with deciding issues when that same judge is at odds in another dispute with the Defendant. In this case, Judge Nuffer has, and will be deciding issues against me and my interests. I have alleged several causes of action against Judge Nuffer that may result in Judge Nuffer’s personal liability. Under these circumstances, it is reasonable to infer that Judge Nuffer would be unable to separate his potential personal liability from his judicial responsibilities, when one affects the other and both involve the same parties. It is Judge Nuffer’s obligation to disqualify himself when his ability to be impartial might reasonably be questioned. That is the case here.

Section 255(b)(4) requires disqualification of the judge where the judge holds “a financial interest in the subject matter in controversy” or has “any other interest that could be substantially affected by the outcome of the proceeding.” My ability to proceed with my lawsuits against Judge Nuffer is directly affected by the rulings Judge Nuffer may make in this case. Where Judge Nuffer has the ability to affect and control the Receiver who may be appointed in this case, he also has the ability to prevent me from pursuing my claims against Judge Nuffer by the orders, power, and limitations he gives to the Receiver. He also has limited my ability to pay attorney fees and made it impossible to pursue any lawsuits, including this

one, unless I do so pro se. There remain ambiguities in the Receivership Order that may make their way to Judge Nuffer for decision-making. Judge Nuffer has the ability to provide certain powers to the Receiver which may eliminate my ability to continue to pursue my claims against Judge Nuffer, the IRS, and the DOJ. Given the effect that would have on Judge Nuffer's potential liability or the insulation he could create for himself, it is reasonable to question the basis behind those sort of decisions. He therefore must disqualify himself pursuant to the statute.

Section 255(b)(5)(iii) provides another basis for Judge Nuffer's disqualification. That section requires disqualification if it is known by the judge that he has "an interest that could be substantially affected by the outcome of the proceeding." As explained above, Judge Nuffer's decisions in this case will directly affect the viability of and ability to prosecute Neldon Johnson's claims against him in the Federal and State cases he has filed. As Judge Nuffer can affect the other cases by his decisions in this case, he should be disqualified under this section.

Under Section 144, all that is required is that there be a personal bias or prejudice against the Defendant. Judge Nuffer has stated: "This case has a disturbing undertone. It's one thing to believe in the underdog, the innovator, the disruptor, but rejecting expertise on the basis of homespun untested wisdom on highly technical topics is very dangerous. If we allowed manufacturers to build projects or products without regard to safety standards of food manufacturers to produce food without sanitation or safety standards, we would place society at risk. But individual seem attracted to unconventional counter authority advocates, and they do so putting themselves [and] our institutions at risk." (TR 2524 ln24-25; 2525 ln 1-8.) Judge Nuffer has taken an extreme viewpoint, comparing me and my technology to the most extreme

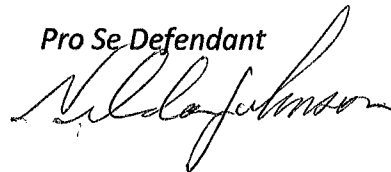
of dangerous situations. My inventions don't place the public in danger. There was no evidence of unsafe conditions at the sites. There, in fact, was no evidence presented of any potential physical harm to any person. But yet, Judge Nuffer compares my technology to circumstances that on the most fundamental level would be harmful to the general public. It is an unfair and obvious bias. His bias comes through in the unwarranted statements he made. Furthermore, because Judge Nuffer is a Defendant in other actions a logical bias is evident.

CONCLUSION

Given the multiple basis for disqualification, Judge Nuffer should recuse himself from this case.

/s/ Neldon Johnson

Pro Se Defendant

A handwritten signature in black ink, appearing to read "Neldon Johnson", written in a cursive style.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **NELDON JOHNSON'S PRO SE MOTION TO RECUSE HONORABLE JUDGE DAVID NUFFER** was sent to counsel for the United States in the manner described below.

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/s/ Neldon Johnson.
Pro Se Defendant