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Defendant, Pro Se

FILED
U.S. DISTRICT COURT
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DISTRICT OF UTAH
BY: _____
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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., LTB1,
LLC, R. GREGORY SHEPARD,
NELDON JOHNSON, and ROGER
FREEBORN,

Defendants.

Civil No. 2:15-cv-00828-DN-EJF

**NELDON JOHNSON'S OBJECTION TO
DEPOSITION AND NOTICE OF FIFTH
AMENDMENT CLAIM**

Judge David Nuffer
Magistrate Judge Evelyn J. Furse

Neldon Johnson, appearing pro se, hereby gives notice that he invokes his Fifth Amendment right to not testify in the deposition scheduled next week. This is based on the following:

I have been investigated for securities violations before, and although I have won all those claims against me, I know that the claim of a securities violation risks criminal prosecution.

I know that the government has tried to bring criminal charges against me before when in 2012 they served a search warrant and took all my records.

The receiver's first report filed with the court on January 28 says that:

The Court has already found that the solar tax program promoted by RaPower and IAS was a tax fraud. After analysis of the manner in which RaPower operated and solicited purchasers, the Receiver has determined that the marketing and sales plan used by RaPower constituted the offer and sale of investment contract securities. In a seminal case, the U.S. Supreme Court ruled that an investment of money in a common enterprise with an expectation of profits to come from the efforts of others constituted a security.²⁷ All of the key elements showing the existence of an investment contract were identified in the Court's Findings of Fact and Conclusions of Law: i) customers purchased lenses, ii) which would be maintained by an affiliated company (generally LTB, LLC), iii) customers did not install, operate or maintain their lenses, and iv) profits anticipated to be derived from operation of the lenses would be sent to the lens purchasers as profits.²⁸

Because the lens sale/maintenance program constituted the offer and sale of securities, the investment contract securities were required to be registered. In addition, those selling the securities were required to be licensed²⁹ and accurate and complete disclosures were required to be given to investors (lens purchasers). This investment contract program was not registered with the Utah Division of Securities and neither Johnson nor Shepard was licensed to sell securities. In light of the Court's Findings of Fact and Conclusions of Law (and the Receiver's investigation to date) complete and accurate disclosures were not given to investors—or the market at large. These apparent violations ordinarily would create significant liability for the Receivership Entities and Johnson and Shepard from governmental enforcement actions by state agencies and lawsuits by investors. In light of the litigation stay, such actions cannot be brought without first obtaining relief from the litigation stay. However, actions under the securities laws could be brought against non-Receivership Defendants.

Then the receiver filed a request for fees today in which the receiver again mentions the following:

The Receiver analyzed RaPower's marketing of lenses, concluding that the sale of lenses constituted investment contract securities. As a result of that analysis, the Receiver has evaluated liabilities that might be faced by Receivership Entities and also recoveries that the Receiver might obtain.

Both of the receiver's filings with the court make it likely that the receiver intends to pursue securities claims. I know from past experience that involves both civil and criminal risks and I am not willing to waive my right under the Fifth Amendment to protect myself.

Because I invoke the Fifth Amendment against self-incrimination and have no obligation to testify, I will not appear for my deposition set for February 19.

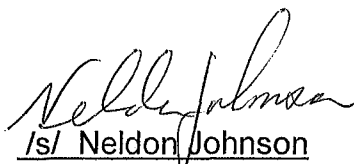
I also need legal representation, but the court has dismissed my counsel and requires me to be self-represented. The right to an attorney is part of the Constitutional rights given to me in the Sixth Amendment. And I have that right as part of Due Process. The US Supreme Court has determined that if I have been denied Due Process that the court loses jurisdiction in the decision, Griffin v. Griffin, 327 US 220. The receiver has taken all my assets and I have no ability to hire legal counsel. This denial of Due Process and loss of jurisdiction and the bias of Judge Nuffer all make it impossible for me to testify.

Judge Nuffer's bias is becoming publicly known, and even KSL has written an article about his misconduct. See, Jurors say Judge in Johnson case had bias against defense, KSL, a copy of which I am attaching to this objection.

CONCLUSION

Given the threats against me, I refuse to testify under the Fifth Amendment. The court has made it impossible for me to hire legal counsel, and the dismissal of my attorneys from the case has left me without any ability to protect myself against the threat of securities criminal prosecution. My rights under the Sixth Amendment are violated. My Due Process rights are being violated. While I think there is no merit to any claim, I have no obligation to testify and I'm not going to testify when I have the right to remain silent.

February 14, 2019.


/s/ Neldon Johnson
Pro Se Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **NELDON JOHNSON'S PRO SE OBJECTION TO DEPOSITION AND NOTICE OF FIFTH AMENDMENT CLAIM** was sent to counsel for the United States in the manner described below.

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Electronic Service via Utah Court's
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/s/ Neldon Johnson.
Pro Se Defendant