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LTB1, R. Gregory Shepard and Neldon Johnson

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, and NELDON JOHNSON,</p> <p>Defendants.</p>	<p>Civil No. 2:15-cv-00828-DN-EJF</p> <p>NELSON, SNUFFER, DAHLE & POULSEN, P.C.’S NOTICE AND/OR MOTION TO WITHDRAW AS COUNSEL</p> <p>Judge David Nuffer</p>
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Pursuant to [Rule DUCivR 83-1.4\(c\)](#), Denver C. Snuffer, Jr., Steven R. Paul, Daniel B. Garriott, Joshua D. Egan, and the law firm of Nelson, Snuffer, Dahle & Poulsen, P.C. (“NSDP”), counsel for Defendants Rapower-3, LLC, International Automated Systems, Inc., LTB1, LLC, and Neldon Johnson (“Defendants”) and for Solco I, LLC, XSun Energy LLC, Cobblestone Centre, LC, LTB O&M, LLC, U-Check, Inc., DCL16BLT, Inc., DCL-16A, Inc., N.P. Johnson Family Limited Partnership, Solstice Enterprises, Inc., Black Night Enterprises, Inc., Starlight

Holdings, Inc., Shepard Energy, and Shepard Global, Inc. (“Affiliated Entities”)¹ gives notice of withdrawal as counsel or, in the alternative, move for withdrawal as counsel for Defendants.

NSDP provides, as reason for its withdrawal, as follows:

1. On May 26, 2020, NSDP filed, on behalf of Defendants, a motion with this Court pursuant to Rule 60 to set aside the Judgment against Defendants (See ECF 931).
2. On June 8, 2020, counsel for Plaintiff served on NSDP a demand for the withdrawal of the Rule 60 Motion, threatening to file a motion for sanctions under Rule 11 if the motion is not withdrawn.
3. Because of the threat from Plaintiff’s counsel to pursue sanctions if the Rule 60 Motion is not withdrawn, a conflict of interest has arisen between the interests of NSDP (to avoid dealing with Rule 11) and Defendants (to have their Rule 60 Motion heard).

NSDP brought the conflict of interest to the attention of Defendants. Defendants stated to NSDP that they were disinclined to withdraw the Rule 60 Motion and want it to be heard by the Court.

4. In addition, NSDP has not been paid for its services since the retainer in trust was frozen, and has been working without compensation from the Defendants in these proceedings. At the present time, Defendants have an outstanding balance for attorney’s fees and costs owed to NSDP in excess of \$702,172.21, and we no longer have the financial ability to continue as counsel for Defendants in this matter without compensation.

¹ Defendants were permitted to have trial counsel represent them in pursuant to ¶10 of ECF 491, which states, in relevant part: “Neither Johnson nor Shepard, nor anyone acting on their behalf, shall make any court filings or submissions to other government entities on behalf of the Entity Receivership Defendants **other than in this case** or in the pending appeal of an order in this case.” (Emphasis added.)

NSDP seeks the withdrawal only as to the immediate proceedings, but intends to remain as counsel for Glenda Johnson, Randale Johnson and LaGrand Johnson in the contempt proceedings and as counsel for Greg Shepard.

As indicated, NSDP has explained the conflict of interest to Defendants and explained its intention to withdraw as counsel for Defendants as relates to the Rule 60 Motion and Defendants do not opposed the motion to withdraw.

Pursuant to [DUCivR 83-1.4\(c\)](#), NSDP requests leave to withdraw as counsel for Defendants in this matter, and states as follows:

1. Neldon Johnson is a party and is represented by Edwin Wall. In addition, NSDP expects to continue to represent him, and the other Defendants only in the appeals pending before the 10th Circuit Court of Appeals and any further petitions relating to those appeals.²
2. The last known address and phone number for Defendants RaPower-3, LLC, International Automated Systems, Inc., LTB1, LLC, and Neldon Johnson is 11404 South 5825 West, Payson, Utah, 84651-3622. (801) 372-4838.
3. The last known address and phone number for Defendant R. Gregory Shepard is 858 W. Clover Meadow Drive, Murray, Utah, 84123. (801) 699-2284.
4. If this motion is granted, the clients will be informed that they must file a notice of appearance within twenty-one (21) days after entry of the order, unless otherwise ordered by the court.

² Counsel are evaluating the effect of the US Supreme Court decision in *Liu v. SEC*, Case No. 18-1501 decided on June 22, 2020, on this case. The requirements and limits on calculating disgorgement damages appear to have been clarified by the US Supreme Court and make the calculation of damages in this case improper. Accordingly, counsel are evaluating the issue of a Petition for Rehearing in the 10th Circuit and enlarging the scope of the Rule 60 motion to include the recent authority from the US Supreme Court.

5. The clients have been informed that, pursuant to [DUCivR 83-1.3](#), no corporation, association, partnership, limited liability company or other artificial entity may appear pro se, but must be represented by an attorney who is admitted to practice in this court.
6. We also certify that this motion was sent to our clients and to all parties.
7. A proposed form of Order accompanies this Motion.
8. All clients have been kept apprised of all court proceedings and deadlines and have been given regular status updates of the case, including deadlines or requirements under any existing court orders.
9. A copy of [DUCivR 83-1.4](#) is being provided to the client together with this motion.

Therefore, based on the foregoing, counsel for Defendants' notifies and/or requests leave to withdraw from further representation of Defendants in these proceedings.

DATED this 26th day of June, 2020.

NELSON SNUFFER DAHLE & POULSEN

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

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **NOTICE AND/OR MOTION TO WITHDRAW AS COUNSEL FOR DEFENDANTS** was sent to the following and in the manner described below.

Erin Healy Gallagher
Erin R. Hines
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
erin.r.hines@usdoj.gov
 Electronic Service via Utah Court's e-filing program

Wayne Klein, Receiver
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Salt Lake City, Utah 84110

Sent via:
 Mail
 Hand Delivery
 Email: wklein@kleinutah.com
 Electronic Service via Utah Court's e-filing program

Jonathan O. Hafen
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 Electronic Service via Utah Court's e-filing program

Neldon P. Johnson
International Automated Systems, Inc.
RaPower-3, LLC
LTB1, LLC
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Sent via:
 Email: glendaejohnson@hotmail.com
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R. Gregory Shepard
858 W. Clover Meadow Dr.
Murray, Utah 84123

Sent via:
 Email: greg@rapower3.com
 Mail

/s/ Steven R. Paul
Attorneys for Defendants

DUCivR 83-1.4 ATTORNEYS - WITHDRAWAL OR REMOVAL OF ATTORNEY

(a) Withdrawal Leaving a Party Without Representation .

(1) No attorney will be permitted to withdraw as attorney of record in any pending action, thereby leaving a party without representation, except upon submission of:

(A) A Motion to Withdraw as Counsel in the form prescribed by the court that includes (i) the last known contact information of the moving attorney's client(s), (ii) the reasons for withdrawal, (iii) notice that if the motion is granted and no Notice of Substitution of Counsel has been filed, the client must file a notice of appearance within twenty-one (21) days after entry of the order, unless otherwise ordered by the court, (iv) notice that pursuant to DUCivR 83-1.3, no corporation, association, partnership, limited liability company or other artificial entity may appear pro se, but must be represented by an attorney who is admitted to practice in this court, and (v) certification by the moving attorney that the motion was sent to the moving attorney's client and all parties; and (B) A proposed Order Granting Motion to Withdraw As Counsel in the form prescribed by the court stating that (i) unless a Notice of Substitution of Counsel has been filed, within twenty-one (21) days after entry of the order, or within the time otherwise required by the court, the unrepresented party shall file a notice of appearance, (ii) that no corporation, association, partnership, limited liability company or other artificial entity may appear pro se, but must be represented by an attorney who is admitted to practice in this court, and (iii) that a party who fails to file such a Notice of Substitution of Counsel or Notice of Appearance may be subject to sanction pursuant to Federal Rule of Civil Procedure 16(f)(1), including but not limited to dismissal or default judgment.

(2) No attorney of record will be permitted to withdraw after an action has been set for trial unless (i) the Motion to Withdraw as Counsel includes a certification signed by a substituting attorney indicating that such attorney has been advised of the trial date and will be prepared to proceed with trial; (ii) the application includes a certification signed by the moving attorney's client indicating that the party is prepared for trial as scheduled and is eligible pursuant to DUCivR 83-1.3 to appear pro se at trial; or (iii) good cause for withdrawal is shown, including without limitation, with respect to any scheduling order then in effect.

(3) Withdrawal may not be used to unduly prejudice the non-moving party by improperly delaying the litigation.

(b) Withdrawal With and Without the Client's Consent.

(1) With Client's Consent. Where the withdrawing attorney has obtained the written consent of the client, such consent must be submitted with the motion.

(2) Without Client's Consent. Where the moving attorney has not obtained the written consent of the client, the motion must contain (i) certification that the client has been served with a copy of the motion to withdraw, (ii) a description of the status of the case including the dates and times of any scheduled court proceedings, requirements under any existing court orders, and any possibility of sanctions; and, if appropriate, (iii) certification by the moving attorney that the

client cannot be located or, for any other reason, cannot be notified regarding the motion to withdraw.

(c) Procedure After Withdrawal.

(1) Upon entry of an order granting a motion to withdraw, the action shall be stayed until twenty-one (21) days after entry of the order, unless otherwise ordered by the court. The court may in its discretion shorten the twenty-one (21) day stay period.

(2) The court will enter the order and serve it on all parties and the withdrawing attorney's client at the address provided in the Motion for Withdrawal of Counsel, which order will specifically advise the parties of the terms of this rule.

(3) Within twenty-one (21) days after entry of the order, or within the time otherwise required by the court,

(i) any individual whose attorney has withdrawn shall file a notice of pro se appearance or new counsel shall file an appearance on that party's behalf. (ii) new counsel shall file an appearance on behalf of any corporation, association, partnership or other artificial entity whose attorney has withdrawn. Pursuant to DUCivR 83-1.3, no such entity may appear pro se, but must be represented by an attorney who is admitted to practice in this court.

(4) After expiration of the stay period, either party may request a scheduling conference or submit a proposed amended scheduling order.

(5) An unrepresented party who fails to appear within twenty-one (21) days after entry of the order, or within the time otherwise required by the court, may be subject to sanction pursuant to Federal Rule of Civil Procedure 16(f)(1), including but not limited to dismissal or default judgment.

(d) Substitution.

Whenever an attorney of record in a pending case will be replaced by another attorney who is an active member of this court, a Notice of Substitution of Counsel must be filed. The notice must (i) be signed by both attorneys; (ii) include the attorneys' bar numbers; (iii) identify the parties represented; (iv) be served on all parties; and, (v) verify that the attorney entering the case is aware of and will comply with all pending deadlines in the matter. Upon the filing of the notice, the withdrawing attorney will be terminated from the case, and the new attorney will be added as counsel of record.