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

<p>NELDON PAUL JOHNSON, Plaintiff, vs. INTERNAL REVENUE SERVICE, US DEPARTMENT OF JUSTICE, agencies of the United States, and DAVID NUFFER, an individual, Defendants.</p>	<p>Civil No. 4:18-cv-00073-TS UNITED STATES’ NOTICE OF REMOVAL (Pending at Case No. 180700040 in the Fourth District Court, Millard County, Utah)</p>
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The United States hereby removes *Johnson v. IRS, et al.*, Civil No. 180700040, a Utah state court case, to this Court under [28 U.S.C. §§ 1442\(a\)\(1\)](#), and gives notice as required by [28 U.S.C. § 1446\(a\)](#). The reasons for removal are set forth below.

I. Background

After nearly three years of litigation and a 12-day bench trial, Judge David Nuffer concluded that Neldon Johnson and R. Gregory Shepard, and Johnson’s entities International

Automated Systems, Inc., RaPower-3, LLC, and LTB1, LLC, ran “a hoax funded by the American taxpayer by defendants’ abusive advocacy of the tax laws.”¹ The hoax is an abusive tax scheme that Johnson created. He claimed to have “revolutionary” solar energy technology. He sold so-called “solar lenses” to individuals (and directed others to sell the lenses) by telling customers that they could claim tax benefits from the purchase – a depreciation deduction and a solar energy credit.²

The Court found that Johnson and the other defendants “knew, or had reason to know, that their statements about the tax benefits purportedly related to buying solar lenses were false or fraudulent.”³ They “knew, or had reason to know, that their customers were not in a trade or business [with respect to the] solar lenses and, therefore, that their customers were not allowed the depreciation deduction or solar energy tax credit.”⁴ The Court also found that the defendants’ “purported solar energy technology does not produce electricity or other useable energy from the sun” and will never do so.⁵ Judge Nuffer issued a comprehensive injunction against Johnson and the other defendants, and ordered them to disgorge their gross receipts from the scheme. Johnson was ordered to disgorge more than \$50 million.⁶ To ensure enforcement of the disgorgement order, Judge Nuffer also ordered an asset freeze and will be appointing a receiver to collect

¹ Excerpts from Trial Transcript in *United States v. RaPower-3, LLC, et al.*, No. 2:15-cv-00828-DN-EJF (D. Utah) (“*RaPower-3*”), 2516:2-3, available in that case at [ECF No. 429-1](#).

² *E.g.*, *RaPower-3*, Findings of Fact and Conclusions of Law, [ECF No. 467 at 22](#).

³ *RaPower-3*, Findings of Fact and Conclusions of Law, [ECF No. 467 at 123](#).

⁴ *RaPower-3*, Findings of Fact and Conclusions of Law, [ECF No. 467 at 43](#).

⁵ *RaPower-3*, Findings of Fact and Conclusions of Law, [ECF No. 467 at 48](#).

⁶ *RaPower-3*, Findings of Fact and Conclusions of Law, [ECF No. 467 at 130-139](#).

defendants' assets and distribute the proceeds.⁷ Less than a week after Judge Nuffer issued findings from the bench and a preliminary injunction against him, and attempting to evade the orders that that Judge Nuffer would enter against him, Johnson's directed RaPower-3 to file a bad-faith bankruptcy petition.⁸ Judge Nuffer dismissed that petition with prejudice.⁹

Johnson, through his attorneys of record in *RaPower-3*, has appealed the injunction and other orders in that case.¹⁰

Now, Johnson acting *pro se*, has filed at least three frivolous lawsuits. The first is a federal suit against the IRS, the Department of Justice, and Judge Nuffer for allegedly violating his equal protection and due process rights for actions taken in the course of the litigation.¹¹ The second is *Johnson v. IRS, et al.*, filed on October 16, 2018, against the same defendants, being removed here.¹² The third is a Utah state court suit against Dr. Thomas Mancini, the United States' expert witness who evaluated the purported solar energy technology.¹³ The claims in all

⁷ *RaPower-3*, Memorandum Decision and Order Freezing Assets and to Appoint a Receiver, [ECF No. 444](#); Notice of Filing of United States' Proposed Receivers and Proposed Receivership Order, [ECF No. 456](#).

⁸ *See In re RaPower-3, LLC*, No. 18-24865 (Bankr. D. Utah): Order Dismissing Case (ECF No. 51); United States' motion to dismiss (ECF No. 13); United States' reply in support of its motion to dismiss (ECF No. 42).

⁹ *See In re RaPower-3, LLC*, No. 18-24865 (Bankr. D. Utah): United States' motion to withdraw the reference (ECF No. 15); Order Dismissing Case (ECF No. 51); United States' motion to dismiss (ECF No. 13); United States' reply in support of its motion to dismiss (ECF No. 42).

¹⁰ Ex. 926, *United States v. RaPower-3, LLC, et al.*, No. 18-4150, Appellants' Docketing Statement § IV at 4-5 (10th Cir. Oct. 24, 2018). For the sake of clarity and continuity with *RaPower-3*, we will number exhibits serially from the list started in that case.

¹¹ *Johnson v. IRS, et al.*, 4:18-cv-00062-TS (D. Utah), [ECF No. 1](#) (Stewart, J.).

¹² *Johnson v. IRS, et al.*, Civil No. 180700040, Doc. No. 1, Complaint (Fourth District Court for Millard County, Utah) (filed Oct. 16, 2018). A copy of the Complaint is attached as Ex. 928.

¹³ *Johnson v. Mancini*, Civil No. 180700041, Doc. No. 1, Complaint (Fourth District Court for Millard County, Utah) (filed Oct. 17, 2018). A copy of the Complaint against Dr. Mancini is attached as Ex. 929. *Compare* Ex. 929 with *RaPower-3*, Findings of Fact and Conclusions of Law, [ECF No. 467 at 47-51](#).

three cases – just as with his bad-faith bankruptcy filing – arise out of Johnson’s dissatisfaction with the proceedings and results in *RaPower-3* before Judge Nuffer.¹⁴ In the state cases, Johnson accuses all defendants of making false statements about his purported solar energy technology. In this removed case, Johnson accuses the IRS, the Department of Justice, and Judge Nuffer of having conspired to cause him harm. He seeks a jury trial and damages.

Pursuant to [28 U.S.C. § 1446\(a\)](#), a copy of all documents on the docket and all documents served on the United States attorney are attached.¹⁵

II. Grounds for Removal

Removal is appropriate because the state case is a civil action commenced in a State court against agencies of the United States (the IRS and the Department of Justice).¹⁶ Accordingly, the state court case is a proceeding that can be removed to this Court.

¹⁴ Compare Ex. 928 and Ex. 929 with *RaPower-3*, Findings of Fact and Conclusions of Law, [ECF No. 467](#) and with Ex. 926.

¹⁵ Exs. 928, 930-32.

¹⁶ See [28 U.S.C. § 1442\(a\)\(1\)](#) & (3) and (d)(1); *City of Cookeville, Tenn. v. Upper Cumberland Elec. Membership Corp.*, 484 F.3d 380, 389 (6th Cir. 2007) (“The text of § 1442(a)(1), is best read to mean that the three entities that can remove are (1) the United States; (2) any agency thereof; or (3) any officer of the United States or of any agency thereof, sued in an official or individual capacity for any act under color of such office.”); compare *RaPower-3*, Findings of Fact and Conclusions of Law, [ECF No. 467](#) with Ex. 928.

WHEREFORE, the United States removes *Johnson v. IRS, et al.*, Civil No. 180700040,
from state court to this Court.

Dated: October 31, 2018

Respectfully submitted,

/s/ Erin Healy Gallagher
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**ATTORNEY FOR THE
UNITED STATES**

CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2018, I electronically filed the foregoing NOTICE OF REMOVAL and its supporting documents with the Clerk of the Court through the CM/ECF system.

I hereby certify that on October 31, 2018, I served the foregoing NOTICE OF REMOVAL upon the following by U.S. Mail, first-class, postage prepaid:

Neldon Paul Johnson
2730 West 4000 South
Oasis, UT 84624
Plaintiff

The Honorable David Nuffer
United States District Court for the District of Utah
351 S W Temple, Room 10.220
Salt Lake City, UT 84101
Defendant

/s/ Erin Healy Gallagher _____
ERIN HEALY GALLAGHER
Trial Attorney