Neldon P. Johnson
2730 West 4000 South
Oasis, Utah
Pro Se Plaintiff

IN THE FOURTH DISTRICT COURT
FOR MILLARD COUNTY, UTAH

NELDON PAUL JOHNSON,

Plaintiff,

vs.

INTERNAL REVENUE SERVICE, US DEPARTMENT OF JUSTICE, agencies of the United States, and DAVID NUFFER, an individual,

Defendants.

MOTION FOR PRELIMINARY INJUNCTION

Civil No. 180700040

Plaintiff, Neldon P. Johnson, Pro Se Plaintiff, requests the Court issue a Preliminary Injunction against Defendants as follows:

MAINTAINING THE STATUS QUO

1. Plaintiff, Neldon P. Johnson ("Plaintiff"), is an individual whose constitutional rights have been abridged by the Defendants acting in concert with one another to deprive him of his rights and to injure him.

2. Plaintiff has filed a Complaint against the Defendant, Internal Revenue Service ("IRS"), Defendant, United States Department of Justice ("DOJ"), and Defendant David Nuffer ("Nuffer") to vindicate Plaintiff's rights.

3. Plaintiff was sued by the DOJ on behalf of the IRS for alleged tax violations involving the sale of patented Fresnel lenses to the public.

4. The patented Fresnel lenses took years of research and development, costing millions of dollars of investment, to solve numerous design and manufacturing challenges.

5. The resulting patented Fresnel lens was designed to be placed in an 18 foot wide array, which would cost in excess of a half-million dollars to produce using traditional manufacturing methods.

6. The patented lenses concentrate solar heat and achieves temperatures in excess of 1,500° Fahrenheit.

7. To house the Fresnel lenses in an array, to align that array with the sun, and to track the movement of the sun with the array took additional years of research and development to solve environmental issues such as the wind and seasonal locations of the sun.

8. The Fresnel lenses were sold to the public using sales documents prepared by attorneys which were designed to allow purchasers to potentially qualify for tax benefits.

9. The Defendants have acted in concert with one another to wrongly impair the rights of the Plaintiff and to abridge the Plaintiff's rights to Due Process and Equal Protection, as more fully set forth below.

10. The government has consistently identified and acknowledged Fresnel lenses as solar equipment, and in the case brought against Plaintiff the government admitted the product sold was a Fresnel lens.

11. Other taxpayers have received tax benefits from purchases of Fresnel lenses because they are solar equipment.

12. The Fresnel lenses sold by Plaintiff's company RaPower3 are legal and can be sold legally.

13. The government claims the only defect with Plaintiff's marketing efforts was to include mention of possible tax benefits, and not the sale of lenses itself.

14. The government failed to provide any proof at any time, including during trial of the case against Plaintiff, that showed there was any purchaser who based his decision to purchase the patented Fresnel lens offered by Plaintiff's company RaPower3 on potential tax benefits.

15. Although testimony was to the contrary, the Defendants conspired to produce a significant risk of tens-of-millions of dollars in judgment against Plaintiff based on the complete absence of proof that any purchase was based on tax benefits and therefore objectionable.

16. Defendants have reached the Orwellian decision that the absence of any proof is proof that all the purchases are based on promised tax benefits because, since all the witnesses testified to the contrary, they are not credible.

17. Defendants were and are motivated by personal animus against the Plaintiff and have conspired to deprive the Plaintiff of his rights for no reason other than this bias against him.

18. Plaintiff has spent hundreds of thousands of dollars in costs and attorney fees in defending the claims brought against him by Defendants DOJ and IRS.

19. The court of equity in this case has repeatedly tried to resolve legal issues where legal remedies are available. Therefore, the court of equity loses jurisdiction where legal remedies are available. Without jurisdiction the court procedures are void.

20. The court of equity brought by the government is completely without jurisdiction where legal issues are at issue. Thus, the court has denied Plaintiff the right to a trial by jury on those issues. Because those issues are material to the government's case the court loses jurisdiction and therefore the court's power to adjudicate the case does not exist. Thus the court is left without jurisdiction and therefore all proceedings are void.

21. The court of equity loses jurisdiction when remedy is one of law. The court has repeatedly threatened to grant the government the right to disgorge the defendant's property through a court of equity. In recent Supreme Court's decision *Kokesh v SEC* the court ruled that disgorgement is a penalty. Since by law a court of equity is not authorized to issue fines or penalties this procedure is outside this court's jurisdiction.

22. Therefore, I am asking this court to enjoin the court proceedings from taking any action which is not allowed or does not have jurisdiction to act and would attack a constitutional right.

23. This court of equity is trying to act where a legal remedy is available. In the ongoing case where a solar energy property is claimed by the defendant but is being

denied by the court a legal property right is at stake. The U.S congress has enacted a law allowing tax credits to be allowed pursuant to the statute. This right is given to property that meet certain requirements for using solar to create process heat or to make electricity. Whether or not a property qualifies is a legal question, therefore it must be resolved in a court of law. This also allows for a jury to decide that issue. That court case Judge Nuffer denied defendants right to a jury trial thus violating the constitution right to trial by jury. It also follows that a material statement would have to be one that involves the property right allowed by congress in the solar energy statute. In order for that statement to be fraudulent or misleading the statement would have to refer to a property right given by the statute and that statement would have to be untrue about having that property right.

24. Therefore, the court loses jurisdiction over this issue. Without being able to resolve this issue their case fails. I ask the court to be enjoined from using that preceding in making a finding of fact as it violates a constitutional protected right.

25. Therefore, I ask this court to void those procedures and enjoining them from further violations of my constitutional rights.

26. In the courts proceedings it has been proposed by Judge Nuffer that the government may use joint and severable liability to further harm the defendants. This threat has been made repeatedly and has made the court to act in appointing receiver ship. A new Supreme Court ruling has concluded that the courts can only disgorge

what the defendants have actually received. Therefore, joint and severable liability is now unconstitutional.

27. I will suffer irreparable injury if an injunction is not granted, including the loss of my constitutional rights, loss of all rights and ability to direct and control any business I am involved in, the loss of the ability to sell lenses or any other solar energy product, and the loss of significant ongoing damages.

28. All damages claimed to have been suffered by the United States came in the form of other individuals claiming deductions, credits, or depreciation on their own taxes. The government knows each of those individuals, and has audited them. The government will recover all income it may have potentially lost through the completion of those audits and penalties it may seek against those individuals. Therefore, the threatened injury to me far outweighs any potential damage to the Defendants whose claims of damage to themselves are false and never been proven through any expert witness testimony or actual analysis.

29. The injunction would not be adverse to the public interest as the public interest is best served by encouraging commerce, not disrupting, barring, or discouraging it. The public interest is further served by protecting individual constitutional rights. It injures all of US citizens when constitutional rights are violated for any citizen.

30. There is a likelihood of success on the merits for this action as it is clear that my constitutional rights have been violated, that judgments in law are threatened to

be made in courts of equity, and that the Nuffer court does not have proper jurisdiction to enter or enforce the judgments.

31. I ask the court to enjoin the Nuffer court from allowing that action to be taken because it would violate the constitution.

32. During the course of the Nuffer court the court's conclusion was that it was legal to sell the solar Fresnel lens, but it was illegal to sell those lens with reference to their being able to receive a tax credit. However again the issue is a legal issue and not an equitable issue. Therefore, where a legal remedy is available it is mandatory to use the legal remedy in deciding this issue. Here again the Nuffer court loses jurisdiction to decide this issue in this case. This would allow for a jury trial on that issue.

33. Therefore, we ask the court to void those proceedings for lack of jurisdiction because of constitutional violations or potential violations.

The foregoing is supported by the accompanying Verified Complaint, and I am entitled to have a Preliminary Injunction to preserve the status quo until I can have this matter tried before a jury on its merits.

I request a jury decide all matters in the Verified Complaint so that I have a jury of my peers decide between my rights and the ability of Defendants to abridge my rights.

The foregoing is true and correct to the best of my knowledge, information and belief and I attest to its accuracy under penalty of perjury.

DATED this 17 day of October, 2018.

NELDON JOHNSON, Pro Se

Neldon P. Johnson, Pro Se