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

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<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, NELDON JOHNSON, and ROGER FREEBORN,</p> <p>Defendants.</p>	<p>Civil No. 2:15-cv-00828 DN</p> <p><b>UNITED STATES' OPPOSITION TO NELDON JOHNSON'S MOTION TO CONTINUE CONTEMPT HEARING</b></p> <p>Judge David Nuffer</p>
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In yet another attempt to delay these proceedings, Neldon Johnson filed a motion to continue the contempt hearings set for January 23 and 24, 2020.<sup>1</sup> He claims that a conflict prevents him from appearing before this Court to answer the well-founded allegations by the United States and the Receiver that he is flouting the Corrected Receivership Order, the Contempt Order, and other lawful orders of this Court.<sup>2</sup> That purported conflict: a subpoena signed by Paul Jones for Johnson's testimony in a Tax Court trial, *Preston Olsen v. Commissioner*, T.C. Docket No. 26469-14, 21247-16 (Lauber, J.). The subpoena is dated December 19, 2019, two weeks after this Court set the current hearing dates on the contempt motion.<sup>3</sup>

Both names, Paul Jones and Preston Olsen, may sound familiar to the Court. Jones is an attorney who represented a number of third-party witnesses, mainly RaPower-3 customers, in this case.<sup>4</sup> Defendants identified him as a trial witness.<sup>5</sup> The Tax Court trial will adjudicate Preston Olsen's tax liabilities during certain years that he claimed tax benefits from his purchase of so-called "lenses" from RaPower-3, LLC. Olsen, a licensed attorney practicing in Salt Lake City, testified during trial in this matter.<sup>6</sup>

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<sup>1</sup> [ECF No. 837](#).

<sup>2</sup> *See* [ECF No. 836](#).

<sup>3</sup> [ECF No. 811](#).

<sup>4</sup> T. 371:15-21.

<sup>5</sup> [ECF No. 408](#) at 2.

<sup>6</sup> T. 1059:17-1198:25.

The Tax Court trial begins on January 21, 2020. Olsen, as the petitioner, will present his evidence first. Jones has authorized counsel for the United States to state the following: Jones plans to call Johnson as his second witness. He does not anticipate that Johnson's testimony will extend past January 22.

If Johnson wishes to obey the injunction in this case, it is likely that his testimony at Tax Court will be short. This Court enjoined him from making false statements in the context of continuing to organize or promote the solar energy scheme, including:

- That a purchaser of a solar lens is in a "trade or business" of "leasing out" the solar lens, or is in any other "trade or business" with respect to a solar lens;
- That a purchaser of a solar lens may lawfully claim on a federal tax return a depreciation deduction related to a solar lens;
- That a purchaser of a solar lens may lawfully claim on a federal tax return any other business expense deduction related to a solar lens; or
- That a purchaser of a solar lens may lawfully claim on a federal tax return a solar energy credit related to a solar lens.<sup>7</sup>

This Court has already concluded that organizing, or assisting in organizing, the solar energy scheme included Johnson "paying for customers' representation in Tax Court" and Shepard "provid[ing] arguments and materials for customers to submit to the IRS."<sup>8</sup> Testifying in a Tax Court trial in an effort to support a RaPower-3 customer's false deductions and credits

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<sup>7</sup> ECF No. 467 at 136 of 144, ¶ 2.

<sup>8</sup> ECF No. 467 at 91-92 of 144.

arising from buying lenses in Johnson's scheme falls into the same ambit of an action to further "organize" and promote the solar energy scheme.

More specifically, this Court also enjoined Johnson from "[m]aking arguments or submitting documents or other materials to the IRS or to the United States Tax Court that claim or support the claim that federal tax benefits are available to a taxpayer as a result of using, purchasing, or otherwise acquiring a solar lens and/or any solar energy system or component."<sup>9</sup>

The United States' status report shows that Neldon Johnson (along with Glenda, LaGrand, and Randale Johnson) continues to defy this Court's orders. It also lists *instances of material contempt that occurred after the United States filed its motion for additional sanctions*.<sup>10</sup> Continuing the hearings beyond January 23 and 24 would deny the United States and the Receiver the ability to halt and remedy new and ongoing instances of contempt.

For these reasons, there is no need to continue the critically important contempt hearings on January 23 and 24 in this matter. But the United States and the Receiver would suffer substantial harm if they are continued. Neldon Johnson and his family members have defied this Court's orders for too long to allow them to continue to delay. It is time for them to answer for their contempt. Neldon Johnson can participate fully in the contempt proceedings, and testify in Tax Court, as scheduled. Accordingly, this Court should deny his motion to continue the contempt hearings on January 23 and 24, 2020.

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<sup>9</sup> ECF No. 467 at 138 of 144, ¶ 9.

<sup>10</sup> ECF No. 836 at 12-13.

The Receiver has authorized the United States to say that he joins in this opposition.

Dated: January 16, 2020

Respectfully submitted,

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**ATTORNEYS FOR THE  
UNITED STATES**

**CERTIFICATE OF SERVICE**

I hereby certify that on January 16, 2020, the foregoing UNITED STATES' OPPOSITION TO NELDON JOHNSON'S MOTION TO CONTINUE CONTEMPT HEARING was electronically filed with the Clerk of the Court through the CM/ECF system, which sent notice of the electronic filing to all counsel of record.

I also certify that, on the same date and consistent with his written consent, I served the same documents by email upon:

R. Gregory Shepard  
greg@rapower3.com.

*Defendant and respondent pro se*

/s/ Erin Healy Gallagher  
ERIN HEALY GALLAGHER  
Trial Attorney