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

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>RAPOWER-3, LLC, INTERNATIONAL AUTOMATED SYSTEMS, INC., LTB1, LLC, R. GREGORY SHEPARD, NELDON JOHNSON, and ROGER FREEBORN,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">Civil No. 2:15-cv-00828 DN</p> <p style="text-align: center;"><b>UNITED STATES’ MOTION TO EXTEND TIME TO OPPOSE THE “RULE 60 MOTION TO SET ASIDE JUDGMENT AGAINST DEFENDANTS (NEWLY DISCOVERED EVIDENCE) (FRAUD ON THE COURT)”</b></p> <p style="text-align: center;">Judge David Nuffer</p>
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Pursuant to [Fed. R. Civ. P. 6\(b\)\(1\)\(A\)](#), the United States respectfully requests an extension of time to file its opposition to the Rule 60 motion filed on May 26, 2020.<sup>1</sup> Under the Local Rules, the United States' opposition brief is due tomorrow, June 9, 2020, or “within such time as allowed by the court.”<sup>2</sup>

The United States believes that the Rule 60 motion violates [Fed. R. Civ. P. 11](#) because it has no basis in fact or law, and violates prior orders of this Court. Accordingly, the United States has initiated the Rule 11 process. Today, June 8, 2020, the United States sent a letter to the signing attorneys explaining the motion's defects, providing relevant documents from the Tax Court litigation, and inviting them to withdraw the Rule 60 motion by noon, MDT, on June 11, 2020.<sup>3</sup> If the motion is not withdrawn, the United States plans to promptly serve a [Rule 11](#) motion<sup>4</sup> to begin the 21-day safe-harbor period.<sup>5</sup>

If the Rule 60 motion is withdrawn (either immediately or during the safe-harbor period), the goals of Rule 11 will have been met and there will be no need for the United States to respond or for this Court to decide that motion.<sup>6</sup> If it is not withdrawn, should we be required to

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<sup>1</sup> [ECF No. 931](#).

<sup>2</sup> [DUCivR 7-1\(b\)\(3\)\(B\)](#).

<sup>3</sup> The best practice to begin Rule 11 proceedings is an informal request to withdraw the motion, such as a letter or a phone call. [Fed. R. Civ. P. 11](#) advisory committee's note to 1993 amendments.

<sup>4</sup> “Ordinarily [a [Rule 11](#)] motion should be served promptly after the inappropriate paper is filed, and, if delayed too long, may be viewed as untimely.” [Fed. R. Civ. P. 11](#) advisory committee's note to 1993 amendments.

<sup>5</sup> [Fed. R. Civ. P. 11\(c\)\(2\)](#).

<sup>6</sup> See *Collins v. Daniels*, 916 F.3d 1302, 1322–23 (10th Cir. 2019) (“[T]he central purpose of Rule 11 is to deter baseless filings in district court and thus streamline the administration and procedure of the federal courts. Baseless

file a [Rule 11](#) motion, we believe that the Court will rule in favor of the United States. Therefore, again, there would be no need for the United States to respond to the Rule 60 motion or for the Court to take action upon it. If the Court were to deny the United States' [Rule 11](#) motion, however, we would promptly respond to the Rule 60 motion in the time the Court requires.

There is no prejudice that will accrue to the signing attorneys or the parties they purport to represent.<sup>7</sup> The Tenth Circuit recently affirmed the injunction, disgorgement order, and judgment in full,<sup>8</sup> and (as will be shown in further proceedings if needed) there is no factual or legal basis to vacate the orders or judgment. Further, the attorney whose signature appears on the Rule 60 motion consented to this requested extension.

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filing puts the machinery of justice in motion, burdening courts and individuals alike with needless expense and delay.”) (quotations, citations, and alterations omitted).

<sup>7</sup> On March 6, 2019, the Court granted the signing attorneys' motion to withdraw as counsel for the four defendants they now claim to represent (again) in the Rule 60 motion. *Compare* [ECF No. 592](#) with [ECF No. 931](#). Without leave of Court, they purport to represent those four defendants again. But it is not at all clear how the signing attorneys could have been authorized to act on behalf of Receivership Defendants like the entity defendants before this Court. Further, Neldon Johnson is represented by another attorney whose signature does not appear on the Rule 60 motion. *Compare* [ECF No. 652](#), [ECF No. 655](#) with [ECF No. 931](#). The order appointing counsel for Neldon Johnson, and counsel's subsequent notice of appearance, invoke a general (not a specific) appearance.

<sup>8</sup> [United States v. RaPower-3, LLC](#), No. 18-4119, — F.3d. —, 2020 WL 2844694 (10th Cir. 2020).

For this good cause shown, the United States respectfully requests that this Court enter the proposed order, submitted consistent with the Local Rules, granting the requested relief.

Dated: June 8, 2020

Respectfully submitted,

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