

JOHN W. HUBER, United States Attorney (#7226)
JOHN K. MANGUM, Assistant United States Attorney (#2072)
111 South Main Street, Suite 1800
Salt Lake City, Utah 84111
Telephone: (801) 524-5682
Email: john.mangum@usdoj.gov

ERIN HEALY GALLAGHER, *pro hac vice*
DC Bar No. 985670, erin.healygallagher@usdoj.gov
ERIN R. HINES, *pro hac vice*
FL Bar No. 44175, erin.r.hines@usdoj.gov
Trial Attorneys, Tax Division
U.S. Department of Justice
P.O. Box 7238
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 353-2452

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, NELDON JOHNSON, and ROGER FREEBORN,</p> <p>Defendants.</p>	<p>Civil No. 2:15-cv-00828 DN-DAO</p> <p>UNITED STATES' MOTION TO EXTEND TIME</p> <p>Judge David Nuffer</p> <p>Magistrate Judge Daphne A. Oberg</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 two documents: 1) its opposition to the Rule 60 motion Neldon Johnson filed on August 3, 2020¹ and 2) its reply to Nelson Snuffer Dahle & Poulson’s brief in opposition² to the United States’ motion for Rule 11 sanctions.

Neldon Johnson’s *pro se* Rule 60 Motion

Neldon Johnson filed a *pro se*³ Rule 60 motion to set aside judgment based on purported new evidence, fraud on the court, and change in the law.⁴ The “new evidence” and “fraud on the court” arguments are similar, if not identical to, the arguments in the Rule 60 motion filed on May 26, 2020.⁵ The United States sought, and the Court granted, a motion to extend its time to respond to the May 26 Rule 60 motion until *after* the Court resolved anticipated Rule 11 proceedings.⁶ Rule 11 proceedings regarding the May 26 Rule 60 motion are underway.⁷ The

¹ [ECF No. 986](#).

² [ECF No. 990](#).

³ DUCivR 83-1.3(c) allows individuals to represent themselves *pro se*. But subsection (d) of that Rule limits that capacity when a party has already appeared through an attorney – as Neldon Johnson has here. *See* [ECF No. 976](#), order denying NSDP’s motion to withdraw as counsel for Defendants, including Neldon Johnson. For purposes of this motion to extend time, the United States is assuming that Neldon Johnson is *pro se* for the Rule 60 motion that he filed on August 3, 2020.

⁴ [ECF No. 986](#).

⁵ [ECF No. 931](#).

⁶ [ECF No. 936](#).

⁷ [ECF No. 964](#).

Rule 11 proceedings will likely resolve the substance of the “new evidence” and “fraud on the court” arguments.⁸

For these reasons, we respectfully request that the Court stay the deadline for the United States to respond to Neldon Johnson’s Rule 60 motion until *after* the Court resolves the pending Rule 11 proceedings. If the Court grants the Rule 11 motion, there will be no need for the United States to respond to most of Neldon Johnson’s Rule 60 motion. If the Court were to deny the United States’ Rule 11 motion, however, we would promptly respond to Neldon Johnson’s Rule 60 motion in the time the Court requires.

Although the certificate of service on the motion states that it was filed via CM/ECF, it appears that Neldon Johnson filed his Rule 60 motion in paper on August 3, 2020.⁹ The earliest the United States’ response to the motion could be due is today, August 17, 2020.¹⁰ But no prejudice will accrue to Neldon Johnson due to this requested extension. The Tenth Circuit recently affirmed the injunction, disgorgement order, and judgment in full.¹¹ It also denied a petition for rehearing sought for reasons similar, if not identical, to Neldon Johnson’s claimed “change in law” argument.¹²

⁸ *See id.*

⁹ ECF No. 986 at 1 (date stamp). The notice of electronic filing did not issue until August 7, 2020.

¹⁰ DUCivR 7-1(b)(3)(B).

¹¹ *United States v. RaPower-3, LLC*, 960 F.3d 1240 (10th Cir. 2020).

¹² Order denying motion for rehearing (July 17, 2020), attached hereto.

United States' Rule 11 motion

Nelson Snuffer Dahle & Poulson opposed the United States' motion for Rule 11 sanctions on August 10, 2020.¹³ Under the Local Rules, the United States' reply brief is due August 24, 2020.¹⁴ Due to the pandemic and other time-sensitive matters on undersigned counsel's docket, the United States respectfully requests an extension of time to file its reply until September 4, 2020. NSDP has consented to this requested extension.

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: August 17, 2020

Respectfully submitted,

/s/ Erin Healy Gallagher
ERIN HEALY GALLAGHER
DC Bar No. 985760
Email: erin.healygallagher@usdoj.gov
Telephone: (202) 353-2452
ERIN R. HINES
FL Bar No. 44175
Email: erin.r.hines@usdoj.gov
Telephone: (202) 514-6619
Trial Attorneys, Tax Division
U.S. Department of Justice
P.O. Box 7238
Ben Franklin Station
Washington, D.C. 20044
FAX: (202) 514-6770
**ATTORNEYS FOR THE
UNITED STATES**

¹³ ECF No. 990.

¹⁴ DUCivR 7-1(b)(3)(B).

CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2020, the foregoing UNITED STATES' MOTION TO EXTEND TIME 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, I served the same documents by first-class mail upon:

Neldon Johnson
11404 So. 5825 West
Payson, Utah 84651

/s/ Erin Healy Gallagher
ERIN HEALY GALLAGHER
Trial Attorney