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

NELDON PAUL JOHNSON,
Plaintiff,

DEFENDANT THOMAS MANCINI'S
NOTICE OF REMOVAL

vs.

Case No. 4:18-cv-00087-DN

THOMAS R. MANCINI,
Defendant.

Judge David Nuffer

(Pending at Case No. 180700041 in the
Fourth District Court, Millard County, Utah)

Defendant Thomas R. Mancini ("Mancini") hereby removes *Neldon Paul Johnson v. Thomas Mancini*, Civil 180700041, a Utah state court case pending in the Fourth District Court, Millard County, Utah, to this Court under 28 U.S.C. § 1441(a) and (b) and gives notice as required by 28 U.S.C. § 1446(a). The reasons and grounds for removal are based on diversity of the parties and are set forth below.

Factual Background

1. In *United States v. RaPower-3, LLC, et al.*, an action spanning three years and concluding in a twelve-day bench trial, United States District Judge David Nuffer ruled that Neldon Johnson (plaintiff in the state court action) ("Johnson"), Gregory Shepard, and various

entities controlled or owned by Johnson ran "a hoax funded by the American Taxpayer by defendants' abusive advocacy of tax laws."¹

2. Mancini was retained by the United States Department of Justice ("DOJ") and the Internal Revenue Service ("IRS") to serve as an expert on solar energy in a case brought against Johnson and various other defendants.²

3. Mancini offered expert consultation and testified during the twelve (12) day bench trial³.

4. On October 18, 2018, Johnson filed a defamation action against Mancini in the Fourth District Court for Millard County, State of Utah alleging that the testimony offered by Mancini in *United States v. RaPower-3, LLC, et al.*, was "false and defamatory." Johnson seeks "an award of damages by the Jury for the injury and damages" for harm allegedly caused to business interests the development of which involved "years of research and development, costing millions of dollars in investment to solve numerous design and manufacturing challenges."⁴

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 See *United States v. RaPower-3, LLC, et al.*, No. 2:15-cv-00828-DN-EJF (D. Utah); State Complaint ¶ 11 (Alleging that "Defendant Mancini has testified under oath that the Plaintiffs' lenses produced heat in excess of 754°, but then fraudulently claimed that the Plaintiffs Fresnel lenses could not ever be used to produce electricity"); State Complaint ¶ 12 (Alleging that "Defendant Mancini was motivated, in part, to make the false and defamatory statements against Plaintiff because he was being compensated by the IRS to offer his false statements to support litigation against Plaintiff. ")

³ See Minute Entry (Doc. # *United States v. RaPower-3, LLC, et al.*, No. 2:15-cv-00828-DN-EJF (D. Utah); State Complaint ¶ 12 (Alleging that "Defendant Mancini has published and republished these false statements from the time he was hired to attack Plaintiff as a consultant by the IRS..."); State Complaint ¶ 12 (Alleging that Mancini "was being compensated by the IRS to offer his false statement to support litigation against Plaintiff.")

⁴ State Complaint (attached hereto and marked as Exhibit A) ¶ 6 (Alleging that "The patented Fresnel lenses took years of research and development, years of research and development,

5. Mancini was served with the state court complaint on October 21, 2018.⁵
6. Johnson is a citizen and resident of Millard County, Utah.⁶
7. Mancini is a citizen of Bernalillo County, New Mexico.⁷

Grounds for Removal

Removal is appropriate because: (1) the parties to the state action are diverse as required under 42 U.S.C. § 1332(a)(1), Johnson is a citizen of Utah⁸ and Mancini is a citizen of New Mexico⁹, and (2) the amount in controversy requirement under 42 U.S.C. § 1332(a) is satisfied. Although the Complaint in the state court action seeks unspecified monetary damages, the facts alleged and the relief requested in the state complaint state that Johnson is seeking "an award of damages by the Jury for the injury and damages" suffered to his business interests which involved "years of research and development, costing millions of dollars in investment to solve numerous design and manufacturing challenges."¹⁰ and which therefore exceeds \$75,000.00.

costing millions of dollars in investment to solve numerous design and manufacturing challenges."); State Complaint ¶ 16 (Alleging " Defendant Mancini was motivated, in part, to make the false and defamatory statements against Plaintiff because he was being compensated by the IRS to offer his false statements to support litigation against Plaintiff."; State Complaint P. 4 (Seeking "an award of damages by the Jury for the injury and damages to Plaintiff."

⁵ See Docket *Neldon Paul Johnson v. Thomas Mancini*, Civil 180700041, Fourth District Court, Millard County, State of Utah (attached hereto and marked as Exhibit B).

⁶ State Complaint ¶ 1 (Plaintiff, Neldon P. Johnson . . . is an individual residing in Millard County. . .")

⁷ See Declaration of Thomas R. Mancini, Doc. # 3, filed on even date herewith.

⁸ State Complaint ¶ 1 (Plaintiff, Neldon P. Johnson . . . is an individual residing in Millard County. . .")

⁹ See Declaration of Thomas R. Mancini, Doc. # 3, filed on even date herewith.

¹⁰ State Complaint ¶ 6 (Alleging that "The patented Fresnel lenses took years of research and development, years of research and development, costing millions of dollars in investment to solve numerous design and manufacturing challenges."); State Complaint ¶ 16 (Alleging " Defendant Mancini was motivated, in part, to make the false and defamatory statements against Plaintiff because he was being compensated by the IRS to offer his false statements to support

Accordingly, the state court case is a proceeding that can be removed to this Court.

Procedural Posture

The state court case which Mancini is hereby seeking to remove has been stayed pursuant to a Notice of Stay filed by the Court-Appointed Receiver in the matter *United States of America v. RaPower-3 LLC, et al.*, Case No. 2:15-cv-00828-DN which is pending in the United States District Court for the District of Utah. The Receiver provided notice that “actions of any nature involving . . . any of the Receivership Defendants” are stayed pursuant to the November 1, 2018 Corrected Receivership Order issued by Judge Nuffer in that matter. However, Mancini and his counsel seek to protect Mancini's right to remove the state action in the event that said stay may be determined to not be controlling in the state court action or not wholly controlling. Should this Court determine that a Notice of Removal is not appropriate at this time, Mancini requests that it be held and stayed until such time as the stay is lifted and this Notice of Removal ripens. Mancini further requests that upon the lifting of said stay removal be granted without further filing or motion to the court.¹¹

DATED, November 19, 2018.

/s/ Stewart Gollan

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litigation against Plaintiff.'; State Complaint P. 4 (Seeking "an award of damages by the Jury for the injury and damages to Plaintiff.")

¹¹ 42 U.S.C. § 1446(b)(3) ("Except as provided in subsection (c), if the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.")

CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing to be transmitted to the following via mail
in the United States Postal Service, postage pre-paid:

Neldon Paul Johnson
2730 West 4000 South
Oasis, UT 84624

on the 5th day of November 2018.

/s/ Stewart Gollan

Stewart Gollan
Attorney for Defendant Thomas R. Mancini