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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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UNITED STATES OF AMERICA,

Plaintiff,

v.

RAPOWER-3, LLC, et al.,

Defendants.

**ORDER ON OBJECTIONS TO  
NOTICE RE: COMPLIANCE AND  
ADVERSE INFERENCES**

Case No. 2:15-cv-00828-DN

District Judge David Nuffer

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On May 6, 2019, a Notice re: Compliance and Adverse Inferences (“Notice”) was entered advising the defendants and respondents of the need to produce and protect certain information, records, and materials.<sup>1</sup> The Notice suggested that inferences might be drawn in the future from the defendants’ and respondents’ failure to produce documents and information required under the receivership order. In response, Defendant Neldon Johnson and the law firm of Nelson Snuffer Dahle & Poulsen (“NSDP”) filed objections to the Notice (respectively, “Johnson’s Objection” and “NSDP’s Objection”).<sup>2</sup>

Although NSDP is no longer counsel of record for any of the defendants in this case, all of the arguments in NSDP’s Objection are made in favor of the defendants and appear to suggest that NSDP’s withdrawal as counsel for the defendants was a withdrawal in form only.

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<sup>1</sup> [Docket no. 638](#), filed May 6, 2019.

<sup>2</sup> Response to Court’s Notice re: Compliance and Adverse Inferences (“NSDP’s Objection”), [docket no. 644](#), filed May 8, 2019; Objection to Notice About Compliance and Adverse Inferences (“Johnson’s Objection”), [docket no. 645](#), filed May 9, 2019.

In its objection, NSDP claims that the Notice “misstate[s] the record of the case,”<sup>3</sup> that “Defendants did not refuse to supply financial information” during the discovery process before trial,<sup>4</sup> and that the defendants did not “disobey[] any order requiring the production of financial information” either before or during trial.<sup>5</sup> These arguments miss the point.

The Notice compared the inferences that might be drawn in the future from the defendants’ and respondents’ failure to produce documents and information required under the receivership order, with the inferences that were drawn at trial as a result of the defendants’ failure to meet their burden of proof regarding accounting issues at trial. The adverse inferences drawn at trial were not a product of what transpired before trial. Nor were they a result of the defendants’ failure to comply with an order related to discovery. Rather, they were a result of the defendants’ failure to introduce evidence on important issues at trial. Accordingly, NSDP’s Objection is without merit and will be overruled.

Johnson’s Objection contains many of the same arguments as NSDP’s. In addition, it accuses the court of being biased, dishonest, abusive, ridiculous, unfair, unjust, and unreasonable.<sup>6</sup> Because “courts may strike . . . any redundant, immaterial, impertinent, or scandalous matter,”<sup>7</sup> Johnson’s Objection will be stricken on this basis.

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<sup>3</sup> NSDP’s Objection, *supra* note 2, at 1.

<sup>4</sup> *Id.* at 1-2.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> *See* Johnson’s Objection, *supra* note 2, at 1-4.

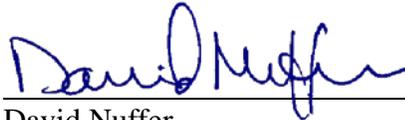
<sup>7</sup> *See* FED. R. CIV. P. 12(f).

**ORDER**

THEREFORE, IT IS HEREBY ORDERED that NSDP's Objection<sup>8</sup> is  
OVERRULED and Johnson's Objection<sup>9</sup> is STRICKEN.

Signed May 24, 2019.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "David Nuffer", is written over a horizontal line.

David Nuffer  
United States District Judge

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<sup>8</sup> Docket no. 644, filed May 8, 2019.

<sup>9</sup> Docket no. 645, filed May 9, 2019.