

IN THE UNITED STATES DISTRICT COURTS. DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE GREENVILLE TN  
GREENVILLE DIVISION

2011 OCT 19 P 1:54

FILED

KVAR ENERGY SAVINGS, INC., a Florida  
Corporation, STEVEN B. FISH, an individual,

Plaintiffs,

v.

ALLEN JOHNSTON, an individual.

Defendant.

Civil Action No.

2:11-MC-10

**PLAINTIFFS' MOTION TO COMPEL THE DEPOSITION OF  
RULE 45 SUBPOENA RECIPIENT ALLEN JOHNSTON**

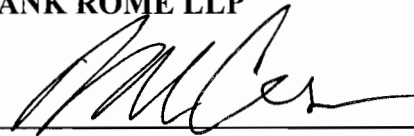
Pursuant to Rules 37 and 45 of the Federal Rules of Civil Procedure, plaintiffs KVAR Energy Savings, Inc. and Steven B. Fish (collectively, "KVAR") respectfully move the Court to compel the deposition of the defendant, Allen Johnston. On October 12, 2011, Mr. Johnston accepted service of a subpoena to testify at a deposition scheduled for October 25, 2011 in a matter pending before the United States District Court for the District of Delaware, *Tri-State Energy Solutions, LLP et al. v. KVAR Energy Savings, Inc. et al.*, Civil Action No. 1:08-cv-209 (the "Delaware Litigation"). A true and complete copy of the subpoena and Mr. Johnston's acceptance of service are attached as Exhibits "D" and "E" to the accompanying Certification of William R. Cruse. The presiding judge in the Delaware Litigation has ordered that Mr. Johnston's deposition must take place by October 31, 2011. (D.I. No. 188). As set forth in detail in the accompanying Memorandum of Law and Declaration of William R. Cruse, Mr. Johnston later reneged on his agreement to testify on that date and has failed to cooperate with KVAR in

rescheduling his deposition for a mutually agreeable time before the October 31, 2011 deadline.

WHEREFORE, KVAR respectfully requests that this Court enter an Order in the form attached hereto as Exhibit "A" which compels Mr. Johnston to appear for deposition on Tuesday, October 25, 2011 at 3:00 p.m. at the Double Tree Hotel, 211 Mockingbird Lane, Johnson City, TN 37604, pursuant to the subpoena he received on October 12, 2011.

Respectfully submitted,

**BLANK ROME LLP**



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WILLIAM R. CRUSE

*(pro hac vice application to be submitted)*

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*Steven B. Fish*

Dated: October 18, 2011