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IN THE UNITED STATES COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

PLAINTIFF,

v.

RAPOWER-3, LLC, INTERNATIONAL  
AUTOMATED SYSTEMS, INC.; LTBI,  
LLC; R. GREGORY SHEPARD; NELDON  
JOHNSON, and ROGER FREEBORN,

DEFENDANTS.

**DEFENDANTS RAPOWER-3, LLC,  
INTERNATIONAL AUTOMATED  
SYSTEMS, INC.; LTBI, LLC; AND  
NELDON JOHNSON'S  
MEMORANDUM IN OPPOSITION TO  
PLAINTIFF'S MOTION TO COMPEL  
AND SUPPLEMENTS THERETO**

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

Judge: David Nuffer

Defendants RAPower-3, LLC; International Automated Systems, Inc.; LTBI, LLC; and Neldon Johnson (the "Defendants"), by and through counsel undersigned from the law firm of Heideman and Associates, hereby submit this *Memorandum in Opposition to Plaintiff's Motion to Compel and Supplements Thereto*.

**INTRODUCTION**

On or about June 22, 2016, Plaintiff filed multiple motion's to compel the above-named

Defendants to respond to the United States' first interrogatories. Specifically, Plaintiff filed the following motions:

1. On June 21, 2016, Motion to Compel RaPower-3, LLC, to respond to Plaintiff's First Interrogatories.
2. On June 22, 2016, Motion to Compel LTB1, LLC, to Sign and Supplement its Responses to Plaintiff's First Interrogatories.
3. On June 22, 2016, Motion to Compel International Automated Systems to sign and supplement its responses to USA's first interrogatories.
4. On June 22, 2016, Motion to Compel Neldon Johnson to Sign and Supplement response to USA's First Interrogatories.
5. On June 27, 2016, Motion to Compel RaPower-3, LLC to respond to Plaintiff's First Interrogatories.
6. On June 27, 2016, a Supplemental Motion to Amend/Correct the Motion to Compel RaPower-3, LLC to respond to Plaintiff's First Interrogatories.

(collectively "Plaintiff's Motions")[See Docket].

In short, the basis for these motions are that the Defendants had not signed the responses under oath as required by Rule 33(b)(3) of the Federal Rules of Civil Procedure. Furthermore, Plaintiff's motions assert that the responses are incomplete and need to be supplemented despite the agreement the parties entered into that permits the Defendants to refrain from producing information they believed would be subject to any applicable protective order.

### **ARGUMENT**

Plaintiff's Motions should be denied because (1) Defendants have complied with the requests outlined in Plaintiff's Motions; and (2) Defendants have made a good faith effort to comply with the requested discovery given the time allotted and breadth of discovery sought.

At the outset, this Court should note the time frame in which Defendants were allotted to provide discovery responses. Defendants retained new counsel mid-litigation and were given a week to provide responses that required review of tens of thousands of documents. Understandably, in preparing responses, some easily curable mistakes were made and Defendants did not have the time to review the responses and provide verification.

Plaintiff's Motions center on the above. Specifically, the basis for Plaintiff's Motions is that Defendants failed to sign the interrogatories, pursuant to Rule 33(b)(3), and failed to provide complete, responsive answers. As of the time of this filing, Defendants have provided signed interrogatories pursuant to Rule 33(b)(3) of the Federal Rules of Civil Procedure and have ensured specific subparts of Plaintiff's requests are appropriately and completely answered.

Moreover, Defendants have provided sufficient responses given the breadth and sensitive information involved in this action, and the information that has not been provided has not prejudiced Plaintiff. The parties agreed that until the Court resolved the pending dispute regarding a protective order, the Defendants could refrain from producing information they believed would be subject to any applicable protective order. [Doc. Nos. 39, 41, 44 & 50]. Such information generally includes sensitive technical, business or competitive information or other information that a producing party "reasonably and in good faith believes would likely cause

harm.” [D. Utah Standard Protective Order; see also Fed. R. Civ. P. 26]. Defendants’ counsel has had multiple conversations with Plaintiff and has assured Plaintiff that pursuant to the parties’ agreement, Defendants will provide the requested information following the hearing on the standard protective order. The hearing is scheduled for July 27, 2016, less than two weeks from the filing of this memorandum. Plaintiff will suffer no harm or prejudice by not obtaining additional information at this juncture.

This Court should chiefly deny Plaintiff’s Motions because Defendants have cured the paramount issues with the interrogatories. Namely, Defendants have provided verification of the responses as well as curing any confusion with respect to answering subparts, and Plaintiff has not been prejudiced by Defendants responses or objections. Furthermore, given the little time Defendants’ new counsel had to provide responses, sanctioning Defendants would be inequitable and not in the best interests of Justice.

### **CONCLUSION**

For the foregoing reasons, Defendants request this Court deny Plaintiff’s Motions.

DATED and SIGNED this 14<sup>th</sup> day of July, 2016.

**HEIDEMAN & ASSOCIATES**

/s/ Justin D. Heideman

JUSTIN D. HEIDEMAN

*Attorney for Defendants RAPower-3, LLC;  
International Automated Systems, Inc.; LTBI, LLC;  
and Neldon Johnson*

**CERTIFICATE OF SERVICE**

On this 14<sup>th</sup> day of July, 2016, I hereby certify a true and correct copy of the forgoing **DEFENDANTS RAPOWER-3, LLC, INTERNATIONAL AUTOMATED SYSTEMS, INC.; LTBI, LLC; AND NELDON JOHNSON'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL AND SUPPLEMENTS THERETO** was served on the following:

Party/Attorney	Method
<p><i>Former Attorneys for Defendants</i>  James S. Judd  Richard A. Van Wagoner  Rodney R. Parker  Samuel Alba  Snow Christensen &amp; Martineau  10 Exchange Place 11<sup>th</sup> FL  P.O. Box 45000  Salt Lake City, Utah 84145  Tele: (801) 521-9000  Email: <a href="mailto:jsj@scmlaw.com">jsj@scmlaw.com</a>  <a href="mailto:rvanwagoner@scmlaw.com">rvanwagoner@scmlaw.com</a>  <a href="mailto:rparker@scmlaw.com">rparker@scmlaw.com</a>  <a href="mailto:sa@scmlaw.com">sa@scmlaw.com</a></p>	<p>Hand Delivery  U.S. Mail, postage prepaid  Overnight Mail  Fax Transmission  <input checked="" type="checkbox"/> Electronic Filing Notice</p>
<p><i>Attorney for Defendants</i>  R. Gregory Shepard  Roger Freeborn  Donald S. Reay  Reay Law PLLC  43 W 9000 S Ste B  Sandy, Utah 84070  Tele: (801) 999-8529  Email: <a href="mailto:donald@reaylaw.com">donald@reaylaw.com</a></p>	<p>Hand Delivery  U.S. Mail, postage prepaid  Overnight Mail  Fax Transmission  <input checked="" type="checkbox"/> Electronic Filing Notice</p>
<p><i>Pro Hac Vice Attorney for Plaintiff</i>  Erin Healy Gallagher  US Department of Justice (TAX)  Tax Division  P.O. Box 7238  Washington, DC 20044  Phone: (202) 353-2452  Email: <a href="mailto:erin.healygallagher@usdoj.gov">erin.healygallagher@usdoj.gov</a></p>	<p>Hand Delivery  U.S. Mail, postage prepaid  Overnight Mail  Fax Transmission  <input checked="" type="checkbox"/> Electronic Filing Notice</p>

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**HEIDEMAN & ASSOCIATES**

/s/ Suzanne Peterson

Suzanne Peterson, Legal Assistant