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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</p> <p>MOTION TO COMPEL NELDON JOHNSON TO SIGN AND SUPPLEMENT HIS RESPONSES TO PLAINTIFF'S FIRST INTERROGATORIES</p> <p>Judge David Nuffer Magistrate Judge Brooke C. Wells</p>
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The United States respectfully moves the Court for an order compelling Neldon Johnson (Johnson) to (1) sign his responses to the United States' first interrogatories; and (2) supplement his responses to conform with Fed. R. Civ. P. 33.

The United States propounded its first interrogatories to Johnson on April 8, 2016. (Exhibit A.) Pursuant to agreement of the parties, Johnson's responses were due on May 27, 2016. Johnson's attorney, Mr. Justin Heideman, provided a response on May 27, 2016. (Exhibit B.) On June 2, 2016, the United States sent Mr. Heideman a letter requesting that Johnson supplement his responses addressing the following deficiencies (Exhibit C):

1. Johnson did not sign the responses under oath. Fed. R. Civ. P. 33(b)(3).
2. Some responses were incomplete, non-responsive and appeared to be in draft form. *See, i.e.*, Interrogatory No. 1 (draft form), 14 (non-responsive and incomplete), 15 (non-responsive and incomplete).
3. Johnson improperly refrained from answering the interrogatories until the Court enters a protective order or the parties sign a non-disclosure agreement. *See* Interrogatory Nos. 10, 11 & 18.

The parties agreed that until the Court resolved the pending dispute regarding a protective order (Doc. Nos. 39, 41, 44 & 50), the defendants could refrain from producing information they believed would be subject to any applicable protective order. 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, Fed. R. Civ. P. 26).

The United States' interrogatories sought information from defendants relating to their sale of solar lenses, systems, and components including the product they purport to produce (No. 10), when these items were placed in service (No. 11),

and the source of tax advice defendants received (No. 18). Johnson previously admitted that he, directly or indirectly, sells solar lenses to customers through a multi-level marketing model and that RaPower-3 provides tax letters prepared by Anderson Law Center and Kirton & McConkie to customers. (Doc. No. 22, ¶¶ 24, 36, 42). Johnson refused to answer the interrogatories until a protective order is in place despite the fact defendants already share the information with customers and publish it on their websites. The information is not “sensitive” or “competitive” business or technical information, and has not been treated as confidential. Refusing to respond in reliance on the claim that this information will be protected is disingenuous at best.

CERTIFICATION IN ACCORDANCE WITH FED. R. CIV. P. 37(a)(1) & COURT’S SHORT FORM DISCOVERY MOTION PROCEDURE (Doc. No. 40.):

The United States made reasonable efforts to resolve this dispute, including:

- 1) On June 2, 2016, counsel for the United States sent Mr. Heideman a letter noting several deficiencies in the response and requesting that Mr. Heideman meet and confer on the matter; and
- 2) On June 14, 2016, at approximately 1:00pm (Eastern Daylight Time) and 11:00pm (Mountain Daylight Time) counsel for the United States (Erin R. Hines & Christopher R. Moran) spoke with Mr. Heideman via telephone about several pending discovery matters, including Johnson’s deficient responses. Mr. Heideman agreed to provide a supplement no later than June 17, 2016. To date, the United States has not received a supplemental response.

Dated: June 22, 2016

/s/ Christopher R. Moran
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**ATTORNEYS FOR THE
UNITED STATES**

CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2016, The foregoing document was electronically filed with the Clerk of the Court through the CM/ECF system, which sent notice of the electronic filing to the following:

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