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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RAPOWER-3, LLC, INTERNATIONAL
AUTOMATED SYSTEMS, INC., LTB1,
LLC, R. GREGORY SHEPARD,
NELDON JOHNSON, and ROGER
FREEBORN,

Defendants.

Civil No. 2:15-cv-00828 DN

**REPLY TO NELDON JOHNSON'S
RESPONSE TO UNITED STATES'
MOTION TO COMPEL NELDON
JOHNSON TO SIGN AND
SUPPLEMENT HIS RESPONSES TO
PLAINTIFF'S FIRST
INTERROGATORIES**

Judge David Nuffer
Magistrate Judge Brooke C. Wells

On July 14, 2016, Neldon Johnson filed his response to the United States' Motion to Compel Johnson to sign and Supplement his Responses to Plaintiff's First Interrogatories. (Doc. No. 64.)

I. Johnson's objections are invalid, and therefore waived.

On July 14, 2016, Johnson provided a signed, supplemental response to the interrogatories directed to him, including several objections. (Exhibit D.) Johnson's supplemental response is inadequate for the reasons described below and Johnson should be compelled to supplement his responses.

- A. In response to each interrogatory, Johnson makes boilerplate objections that generally fail to specify the basis for the objection. A party resisting discovery must show specifically why the discovery request is objectionable. *Flying J Inc. v. TA Operating Corp.*, 2007 WL 2220584, at *2 (D. Utah 2007) (enforcement later denied with respect to unavailable documents, 2008 WL 5449714 (D. Utah Dec. 31, 2008)). Boilerplate objections are ineffective and result in waiver. *Cartel Asset Mgmt. v. Ocwen Fin. Corp.*, 2010 WL 502721, at *8 (D. Colo. 2010). Some of Johnson's objections do not even correspond with the interrogatory that is being answered. (Interrogatory Nos. 9, 15, 16, 18.) Johnson's objections should be stricken and a response compelled.
- B. Aside from the boilerplate objections, Johnson's primary objection to answering the interrogatories in full at this time is that the protective order issue is yet unsettled. The United States' objection to the Standard Protective Order is set for hearing on July 27, 2016. (Doc. Nos. 39 & 50.) While the Standard Protective Order remains in effect unless, and until, the Court rules on the United States' motion, Johnson's reliance on the Standard Protective Order is misplaced.

The Standard Protective Order covers proprietary technical, scientific, financial, business, health, or medical information. (DUCivR 26-2 Standard Protective Order, ¶ 2(a).) Parties are required to avoid designating any documents or information as protected information that is not entitled to such designation or which is generally available to the public.

(DUCivR 26-2 Standard Protective Order, ¶ 4(g)). The intent of the standard protective order is to avoid blanket designations. See DUCivR 26-2 Standard Protective Order, ¶ 4(g) (“The parties shall designate *only that part of a document or deposition* that is [confidential]” (emphasis added)).

The United States’ First Interrogatories seek information related to the product that Johnson and his co-defendants purportedly produce (Interrogatory No. 10) and quantity and dates that lenses were placed in service (Interrogatory No. 11), and the identity of attorneys and tax advisors that Johnson consulted (Interrogatory No. 18).

On information and belief, Johnson has led tours of the defendants’ facility in Delta, Utah where he has made statements regarding the defendants’ solar lens technology. Johnson now claims that such information is confidential and subject to the Standard Protective Order. Given his promotion of the product to the public, Johnson’s position is inconsistent with the Standard Protective Order.

Furthermore, Johnson claims reliance on an attorney as an affirmative defense, Doc. No. 22, Sixth Defense. Johnson’s co-defendant, RaPower-3 maintains letters from attorneys on its website concerning tax benefits purportedly available to customers (see <http://www.rapower3.com/#!tax-benefits/cwcj>), yet Johnson claims the information is

confidential. Again, Johnson's position is inconsistent with the terms of the Standard Protective Order and he should be required to provide a response.

The United States requests that Johnson be compelled to fully answer each of the United States interrogatories.

Dated: July 19, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on July 19, 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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