

JUSTIN D. HEIDEMAN (USB No. 8897)

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RAPOWER-3, LLC, INTERNATIONAL
AUTOMATED SYSTEMS, INC., et al.,

Defendants.

**MOTION TO QUASH
PRODUCTION OF
INFORMATION AND
SUBPOENAS**

Case No. 2:15-CV-0828 DN

Judge: Honorable David Nuffer

Defendants, RAPOWER-3, LLC; INTERNATIONAL AUTOMATED SYSTEMS, INC.; LTB1, LLC; and NELDON JOHNSON (collectively “Defendants”); by and through their attorney of record, Justin D. Heideman of the law firm of Heideman and Associates, and pursuant to DUCivR 7-1 and Fed. R. Civ. P. 45, request this Court quash or, in the alternative, modify the subpoenas referenced in Ms. Erin Gallagher’s August 16, 2016, letter to Paul W. Jones. Specifically, the information and subpoenas issued to:

1. Frank Lunn
2. Brian Zeleznik

3. Lynette Williams

4. Preston Olsen

ARGUMENT

I. THIS COURT SHOULD QUASH THE SUBPOENAS BECAUSE THE INFORMATION THE PRODUCING PARTIES ARE COMMANDED TO PRODUCE IS CONFIDENTIAL PURSUANT TO FED. R. CIV. P. 45(D)(3)(B).

A court may quash or modify a subpoena that requires the disclosure of trade secrets or confidential research, development, or commercial information. See *Innovative Therapies, Inc. v. Meents*, 302 F.R.D. 364, 380 (D. Md. 2014). Rule 45(d)(3)(b) of The Federal Rules of Civil Procedure states, “[t]o protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires: (i) disclosing a trade secret or other confidential research, development, or commercial information . . .” Fed. R. Civ. P. 45(d)(3)(b).

The 10th Circuit has defined a trade secret as “commercial information relating to business which is secret of value, and which the owner has treated confidentially.” See *R&D Business Sys. V. Xerox Corp.*, 152 F.R.D. 195, 197 (D. Colo. 1993). Furthermore, in making a determination on whether to quash or modify, “the court must balance the need for confidential information against the possible injury resulting from disclosure.” See *Fanjoy v. Calico Brands, Inc.*, 2006 U.S. Dist. LEXIS 55158 at 7. “If [the court finds] disclosure of confidential research is absolutely necessary to the litigation, then the subpoenaed party must comply but protection may be implemented to ameliorate potentially harmful effects.

Here, the documents requested contain highly sensitive, confidential, personal, and commercial information regarding the technology, costs, and business plan. Specifically, Plaintiff requests personal tax information and all responsive documents from the “Member Office” area on www.rapower3.com. This information is sensitive, commercial information that is not accessible by the public. This Court should note the technology is highly revolutionary and any information regarding clientele and other confidential commercial information could ruin the companies subject to this litigation if exposed. The more sensitive the information, the greater the potential damage. The harm Defendants would suffer if the trade secrets were disclosed far outweighs the benefits received from such information. If this Court, however, finds the information “absolutely necessary to the litigation,” the information should at least be subject to the protective order to protect the information from further dissemination. *Fanjoy*, 2006 U.S. Dist. LEXIS 55158 at 7; see also *Industries*, 665 F.2d 323.

Defendants requests that if this Court determines not to quash the Subpoena, that this Court at least modify the Subpoena to allow production of the requested documents following this Court’s ruling on standard protective order. Because the information requested involves highly confidential as well trade secret information, Defendants believe that modification of the Subpoena, in the very least, is reasonable given this Court has yet to rule on the protective order.

II. PURSUANT TO THE STANDARD PROTECTIVE ORDER, THIS COURT SHOULD PERMIT THE PRODUCING PARTIES ADDITIONAL TIME TO REVIEW AND DESIGNATE CONFIDENTIAL INFORMATION.

Even in the event this Court finds the costs and expenditures associated with the confidential, sensitive information are not protected by Rule 45(d)(3)(b), This Court should

permit the producing parties additional time to respond. Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, this Court has ordered the Standard Protective Order (“Protective Order”) which governs any designated record of information produced pursuant to required disclosures under any federal rule. Pursuant to the Protective Order, “Documents and things produced or furnished during the course of this action shall be designated as containing [Confidential Information] by placing on each page” Pursuant to this, if this Court denies quashing or modifying the Subpoenas, the producing parties should be granted additional time, or at least until this Court rules on the Protective Order, to review and properly designate the documents and information in Defendants’ possession.

CONCLUSION

For these reasons, Defendants request this Court quash or modify the Subpoena to allow production to occur after the hearing on the standard protective order and with enough time following such to provide accurate, complete responses.

DATED and SIGNED August 19, 2016.

HEIDEMAN & ASSOCIATES

/s/ Justin D. Heideman
JUSTIN D. HEIDEMAN
Attorney for Defendants

CERTIFICATE OF SERVICE

On this 19th day of August, 2016, I hereby certify a true and correct copy of the forgoing **MOTION TO QUASH PRODUCTION OF INFORMATION AND SUBPOENAS** was served on the following:

Party/Attorney	Method
<i>Former Attorneys for Defendants</i> James S. Judd Richard A. Van Wagoner Rodney R. Parker Samuel Alba Snow Christensen & Martineau 10 Exchange Place 11 th FL P.O. Box 45000 Salt Lake City, Utah 84145 Tele: (801) 521-9000 Email: jsj@scmlaw.com rvanwagoner@scmlaw.com rparker@scmlaw.com sa@scmlaw.com	Hand Delivery U.S. Mail, postage prepaid Overnight Mail Fax Transmission <input checked="" type="checkbox"/> Electronic Filing Notice
<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: donald@reaylaw.com	Hand Delivery U.S. Mail, postage prepaid Overnight Mail Fax Transmission <input checked="" type="checkbox"/> Electronic Filing Notice
<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	Hand Delivery U.S. Mail, postage prepaid Overnight Mail Fax Transmission <input checked="" type="checkbox"/> Electronic Filing Notice

Email: erin.healygallagher@usdoj.gov	
<i>Pro Hac Vice Attorney for Plaintiff</i> Erin R. Hines US Department Justice Central Civil Trial Section RM 8921 555 4 th St NW Washington, DC 20001 Tele: (202) 514-6619 Email: erin.r.hines@usdoj.gov	Hand Delivery U.S. Mail, postage prepaid Overnight Mail Fax Transmission <input checked="" type="checkbox"/> Electronic Filing Notice
<i>Attorney for Plaintiff</i> John K. Mangum US Attorney's Office (UT) Tele: (801) 325-3216 Email: john.mangum@usdoj.gov	Hand Delivery U.S. Mail, postage prepaid Overnight Mail Fax Transmission <input checked="" type="checkbox"/> Electronic Filing Notice
<i>Pro Hac Vice Attorney for Plaintiff</i> Christopher R. Moran US Department of Justice (TAX) Tax Division PO Box 7238 Washington, DC 20044 Tele: (202) 307-0234 Email: christopher.r.moran@usdoj.gov	Hand Delivery U.S. Mail, postage prepaid Overnight Mail Fax Transmission <input checked="" type="checkbox"/> Electronic Filing Notice

HEIDEMAN & ASSOCIATES

/s/ Suzanne Peterson

Suzanne Peterson, Legal Assistant