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

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| <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>UNITED STATES' STATUS REPORT REGARDING PROTECTIVE ORDER</p> <p>Judge David Nuffer Magistrate Judge Brooke C. Wells</p> |
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On September 20, 2016, this Court granted the United States' motion for relief from the application of the Standard Protective Order in this case. (ECF Doc. 92.) The order granting such relief also stayed this case "for forty-five days to allow the parties to negotiate a new protective order" and required the parties to file a status report on certain topics within thirty days. (*Id.* at 6.) Because the parties could not reach agreement on either the language of a proposed protective order or the language of this status report, the United States respectfully submits this status report in the time required by the September 20 order and requests that the Court schedule a telephonic status conference during the week of October 31, 2016.

The status of the parties' negotiations for a new protective order: The United States modified the language in the Standard Protective Order and emailed the new draft to all counsel for the Defendants on Wednesday, September 28, 2016. The changes to the Standard Protective Order were visible in Track Changes mode. Counsel for Defendants responded to the United States' proposed language on October 19, 2016, at approximately 3:00 p.m. EDT. While the parties agree on a majority of the language for a new protective order, there are certain topics that would benefit from additional discussion between the parties before they submit a proposed protective order. Since receiving defendants' proposed language on the protective order approximately 24 hours ago, counsel for the United States has been unable to discuss these matters with opposing counsel. Accordingly, the United States asks the Court to grant the parties until October 27, 2016 to submit a proposed protective order (or orders, if they cannot agree).

The status of pending motions: There are numerous motions pending before this Court. The Court's opinion and order granting the United States' motion for relief from the Standard Protective Order renders moot (1) Defendants' arguments in support of the motions to quash the

United States' third-party subpoenas and (2) many of Defendants' objections to the United States' interrogatories. Accordingly, the United States respectfully requests that this Court deny the motions to quash the United States' subpoenas, specifically ECF Docs. 62, 65, 70, 83, 84, and 87.

Some of the issues raised in the United States' motions to compel RaPower-3, LLC, International Automated Systems, Inc., LTB1, LLC, and Neldon Johnson to sign and supplement their responses to the United States' first interrogatories (ECF Docs. 53, 55, 56, 57, 58, and 59), will be resolved by entry of the new protective order. But other disputes about Defendants' objections and responses to the United States' interrogatories (and the related bases for the United States' motions to compel their responses) will not be resolved by its entry. The United States plans to confer with counsel for defendants to address the status of all Defendants' discovery responses in this case and identify a mutually agreeable date by which Defendants will make a full production of documents and information responsive to interrogatories to the United States. The United States will notify this Court promptly after the parties' agreed deadline if its motions to compel (ECF Docs. 53, 55, 56, 57, 58, and 59) require further action.

The last outstanding motion is Defendants' motion to bifurcate this case. (ECF Doc. Nos. 90, 94.) That motion will not be resolved by entry of the new protective order.

The United States requests that the Court schedule a telephonic status conference during the week of October 31, 2016.

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Dated: October 20, 2016

Respectfully submitted,

/s/ Christopher R. Moran
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***ATTORNEYS FOR THE
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CERTIFICATE OF SERVICE

I hereby certify that on October 20, 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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