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

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UNITED STATES OF AMERICA,  
  
Plaintiff, Counterclaim Defendant  
  
v.  
  
RAPOWER-3, LLC, et al.,  
  
Defendant.

**SHORT FORM DISCOVERY  
MOTION TO QUASH SUBPOENA**

(Expedited Handling Requested)

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

Judge David Nuffer

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**RELIEF SOUGHT**

Todd Anderson, per DuCiv.R. 37-1(a)(9), moves the Court to quash the deposition subpoena issued to him by the United States (Ex. 1) on the grounds that the deposition questioning is precluded by Utah statute, the attorney-client privilege, and the Utah Rules of Professional Conduct. Anderson further seeks an expedited order that he need not appear at the February 17, 2017 deposition and need not supply information regarding his representation of

and communications with his former clients unless and until the United States, Ra-Power-3, LLC, and Neldon Johnson first brief their competing positions and until further order of the Court.

**CERTIFICATION OF GOOD FAITH ATTEMPT TO RESOLVE**

Counsel for Mr. Anderson certifies that he met and conferred with counsel for the United States on January 26, 2017 at 11:13 a.m. via telephone and that despite a good faith attempt the parties were unable to resolve this discovery dispute.

**ARGUMENT**

According to counsel for the United States, the purpose of the subpoena is to discover information relating to Mr. Anderson's representation of and communications with former clients, Ra-Power-3 and Neldon Johnson. The United States takes the view that any privilege has been waived, but current counsel for Ra-Power-3 and Neldon Johnson has instructed that Mr. Anderson should continue to maintain the privilege in the strictest fashion. (Ex. 2.)

**Federal Common Law** – Privilege is governed by the principles of the common law. Fed. R. Civ. P. 501. "The attorney-client privilege protects confidential communications by a client to an attorney made in order to obtain legal assistance from the attorney in his capacity as a legal advisor." *In re Grand Jury Proceedings*, 616 F.3d 1172, 1182 (10<sup>th</sup> Cir. 2010) (citation omitted). The attorney-client privilege is held by the client and the client has not given Mr. Anderson consent to disclose confidential and privileged information. Mr. Anderson certainly will not and cannot adopt the United States' position on waiver over his former clients' objection, absent court order.

**Rules of Professional Conduct** – Utah Rule of Professional Conduct 1.6(a) provides that “[a] lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent”. Further, Rule 1.9(c) provides that “[a] lawyer who has formerly represented a client . . . shall not thereafter reveal information relating to the representation except as these Rules would permit or require with respect to a client.” With that said, “[a] lawyer may reveal information relating to the representation of a client . . . to comply with other law or a court order.” No consent has been given here.

**Statute** – According to Utah Code Ann. §78B-1-137(2), “[a]n attorney cannot, without the consent of the client, be examined as to any communication made by the client to the attorney or any advice given regarding the communication in the course of the professional employment.” Ra-Power-3 and Mr. Johnson have not consented, and instead have instructed that Mr. Anderson maintain the privilege in the strictest fashion. (Ex. 2.)

Mr. Anderson requests the relief specified above.

DATED this 2nd day of February, 2017.

**STRONG & HANNI**

*/s/ Byron G. Martin*

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Stuart H. Schultz  
Byron G. Martin  
*Attorneys for Todd Anderson*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2nd day of February, 2017 a true and correct copy of the foregoing SHORT FORM DISCOVERY MOTION TO QUASH SUBPOENA 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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*/s/ Melissa Aguilar*

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