

JUSTIN D. HEIDEMAN (USB #8897)

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*Attorney for RAPower-3, LLC, International Automated Systems, Inc., LTB1, and Neldon Johnson*

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IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF UTAH

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

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

Defendants.

**NELDON JOHNSON'S RESPONSE  
TO UNITED STATES' FIRST  
INTERROGATORIES**

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

Judge David Nuffer  
Magistrate Judge Brooke C. Wells

Defendant, Neldon Johnson, by and through counsel of record, Justin D. Heideman of the law firm Heideman & Associates, and provides the most complete responses given the time provided, and will be supplemented accordingly, to the following Interrogatories pursuant to Rule 33 of the Federal Rules of Civil Procedure.

**INTERROGATORIES**

1. Identify all entities in which you have an ownership interest, including the name of the

discovery of admissible evidence. Defendant also objects to Interrogatory No. 5 because Plaintiff exceeds the number of Interrogatories allowed by rule, including all discrete subparts. Without waiving these or the foregoing objections, Defendant responds as follows: Defendant did not make any applications described in Interrogatory request No. 9.

10. Identify the product (i.e., electricity, heat, hot water, cooling, desalinization, solar process heat or any other product) that the Lens, Systems, and Components are intended to produce, either in the past, currently, or in the future. To the extent that any product has been produced or is being produced, identify when it was produced, in what form, in what measurable amount and the revenues received for such product.

**RESPONSE:** In addition to the objections set forth above and incorporated herein by reference, Defendant objects to Interrogatory No. 10 on the grounds that it is vague, confusing, compound, ambiguous, facially overbroad, unduly burdensome. Defendant further objects to Interrogatory No. 10 (or parts thereof) because it is not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to Interrogatory No. 10 because Plaintiff exceeds the number of Interrogatories allowed by rule, including all discrete subparts. In particular, Defendant objects because Interrogatory No. 10 contains information that is of a propriety nature and will therefore be provided upon the signing of a valid non-disclosure agreement between the parties.

11. Identify what, and how many Lenses, Systems and Components have been placed in service, as defined in 26 U.S.C. § 48(a)(1) and Treas. Reg. § 1.46-3(d). Your response should

include the dates any Lens, System or Component was placed in service.

**RESPONSE:** In addition to the objections set forth above and incorporated herein by reference, Defendant objects to Interrogatory No. 11 on the grounds that it is vague, confusing, compound, ambiguous, facially overbroad, unduly burdensome. Defendant further objects to Interrogatory No. 11 (or parts thereof) because it is not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to Interrogatory No. 11 because Plaintiff exceeds the number of Interrogatories allowed by rule, including all discrete subparts. In particular, Defendant objects because Interrogatory No. 11 contains information that is of a propriety nature and will therefore be provided upon the signing of a valid non-disclosure agreement between the parties.

12. Identify the costs you incurred to produce each lens, including the cost of procuring materials and manufacturing the final product that you sold to customers.

**RESPONSE:** In addition to the objections set forth above and incorporated herein by reference, Defendant objects to Interrogatory No. 12 on the grounds that it is vague, confusing, compound, ambiguous, facially overbroad, unduly burdensome. Defendant further objects to Interrogatory No. 12 (or parts thereof) because it is not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to Interrogatory No. 12 because Plaintiff exceeds the number of Interrogatories allowed by rule, including all discrete subparts. In particular, Defendant objects because Interrogatory No. 12 contains information that is of a propriety nature and will therefore be provided upon the signing of a valid non-disclosure agreement between the parties.

13. Identify how you determined the price each customer must pay per lens, to include the

amount of profit, amount of down payment, and the terms of repayment.

**RESPONSE:** In addition to the objections set forth above and incorporated herein by reference, Defendant objects to Interrogatory No. 13 on the grounds that it is vague, confusing, compound, ambiguous, facially overbroad, unduly burdensome. Defendant further objects to Interrogatory No. 13 (or parts thereof) because it is not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to Interrogatory No. 13 because Plaintiff exceeds the number of Interrogatories allowed by rule, including all discrete subparts. In particular, Defendant objects because Interrogatory No. 13 contains information that is of a propriety nature and will therefore be provided upon the signing of a valid non-disclosure agreement between the parties.

14. Describe how lenses are accounted for, including how you determine which lens(es) belong to which customer, recording when each lens was placed in service (as defined in 26 U.S.C. § 48(a)(1) and Treas. Reg. § 1.46-3(d)), whether or not each customer's down payment was paid, the outstanding principal remaining due for each lens, the revenue produced by each lens, and the amount of rental income due to each customer.

**RESPONSE:** In addition to the objections set forth above and incorporated herein by reference, Defendant objects to Interrogatory No. 14 on the grounds that it is vague, confusing, compound, ambiguous, facially overbroad, unduly burdensome. Defendant further objects to Interrogatory No. 14 (or parts thereof) because it is not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to Interrogatory No. 14 because Plaintiff exceeds the number of Interrogatories allowed by rule, including all discrete subparts.

Interrogatory No. 13 (or parts thereof) because it is not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to Interrogatory No. 13 because Plaintiff exceeds the number of Interrogatories allowed by rule, including all discrete subparts. In particular, Defendant objects because Interrogatory No. 13 contains information that is of a propriety nature and will therefore be provided upon the signing of a valid non-disclosure agreement between the parties.

17. Identify each instance in which a customer complained that the customer was not receiving adequate rental income from their Lens or Lenses.

**RESPONSE:** In addition to the objections set forth above and incorporated herein by reference, Defendant objects to Interrogatory No. 17 on the grounds that it is vague, confusing, compound, ambiguous, facially overbroad, unduly burdensome. Defendant further objects to Interrogatory No. 17 (or parts thereof) because it is not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to Interrogatory No. 17 because Plaintiff exceeds the number of Interrogatories allowed by rule, including all discrete subparts. In particular, Defendant objects because Interrogatory No. 17 contains information that is of a propriety nature and will therefore be provided upon the signing of a valid non-disclosure agreement between the parties.

18. Identify all attorneys or other tax advisors you consulted or from whom you received tax advice regarding any Lens, System or Component, including the dates consulted, the dates any advice was received, and the form of the advice (*i.e.*, oral, email, memoranda, opinion letters,

other written correspondence, etc.).

**RESPONSE:** In addition to the objections set forth above and incorporated herein by reference, Defendant objects to Interrogatory No. 13 on the grounds that it is vague, confusing, compound, ambiguous, facially overbroad, unduly burdensome. Defendant further objects to Interrogatory No. 13 (or parts thereof) because it is not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to Interrogatory No. 13 because Plaintiff exceeds the number of Interrogatories allowed by rule, including all discrete subparts. In particular, Defendant objects because Interrogatory No. 13 contains information that is of a propriety nature and will therefore be provided upon the signing of a valid non-disclosure agreement between the parties.

**VERIFICATION OF RESPONSES**

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing responses to the UNITED STATES' FIRST INTERROGATORIES TO NELDON JOHNSON are true and correct.

EXECUTED this 11 day of July, 2016.

  
NELDON JOHNSON

DATED and SIGNED this 14<sup>th</sup> day of July, 2016

**HEIDEMAN & ASSOCIATES**

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

**CERTIFICATE OF SERVICE**

On this 14<sup>th</sup> day of July, 2016, I hereby certify a true and correct copy of the forgoing **DEFENDANT'S NELDON JOHNSON'S RESPONSE TO UNITED STATES' FIRST INTERROGATORIES** was served on the following:

Party/Attorney	Method
<p><i>Former Attorneys for Defendants</i>  James S. Judd  Richard A. Van Wagoner  Rodney R. Parker  Samuel Alba  Snow Christensen &amp; Martineau  10 Exchange Place 11<sup>th</sup> 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</p>	<p>Hand Delivery  U.S. Mail, postage prepaid  Overnight Mail  Fax Transmission  <input checked="" type="checkbox"/> Electronic Filing Notice and Email</p>
<p><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</p>	<p>Hand Delivery  U.S. Mail, postage prepaid  Overnight Mail  Fax Transmission  <input checked="" type="checkbox"/> Electronic Filing Notice and Email</p>
<p><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  Email: erin.healygallagher@usdoj.gov</p>	<p>Hand Delivery  U.S. Mail, postage prepaid  Overnight Mail  Fax Transmission  <input checked="" type="checkbox"/> Electronic Filing Notice and Email</p>

<i>Pro Hac Vice Attorney for Plaintiff</i> Erin R. Hines US Department Justice Central Civil Trial Section RM 8921 555 4 <sup>th</sup> 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 X Electronic Filing Notice and Email
<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 X Electronic Filing Notice and Email
<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 X Electronic Filing Notice and Email

**HEIDEMAN & ASSOCIATES**

/s/ Suzanne Peterson

Suzanne Peterson Legal Assistant