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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  <b>RENEWED MOTION TO COMPEL DEFENDANTS NELDON JOHNSON, RAPOWER-3, LLC, INTERNATIONAL AUTOMATED SYSTEMS, INC., AND LTB1, LLC TO ANSWER PLAINTIFF'S FIRST INTERROGATORIES</b>  Judge David Nuffer Magistrate Judge Brooke C. Wells
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Pursuant to Fed. R. Civ. P. 33 and 37(a)(3)(B)(iii), and ECF Doc. 115, the United States respectfully renews and modifies its motions for an order compelling Defendants Neldon

Johnson, RaPower-3, LLC, International Automated Systems, Inc., and LTB1, LLC

(“Defendants”) to answer interrogatories served by the United States on April 8, 2016.<sup>1</sup>

On July 14, 2016, after the United States filed its motions to compel, Defendants provided some answers and many objections to the United States’ first set of interrogatories.<sup>2</sup>

One of Defendants’ primary objections was that the interrogatories sought purportedly “proprietary” information before the protective order issue was resolved.<sup>3</sup>

On November 29, 2016, this Court entered a protective order.<sup>4</sup> The Court also denied, without prejudice, the United States’ motions to compel Defendants to respond to its interrogatories. The Court also gave “Defendants forty-five (45) days from the date of this order [so, until January 13, 2017] to comply with their discovery obligations now that there is certainty with the protective order provisions.”<sup>5</sup> But to date, the United States has not received supplemental responses to certain interrogatories from any Defendant.

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<sup>1</sup> ECF Docs. 55-57, 59 & 117 at 2.

<sup>2</sup> Excerpts from Pl. Ex. 413, Johnson Resp. to U.S. 1st Interrogs. (Jul. 14, 2016); Excerpts from Pl. Ex. 414, Def. RaPower-3, LLC Resps. to U.S. 1st Set of Interrogs. (Jul. 14, 2016); Excerpts from Pl. Ex. 415, Def. IAS, Inc. Resps. to U.S. 1st Interrogs. (Jul. 14, 2016); Excerpts from Pl. Ex. 416, Def. LTB1’s Resps. to U.S. 1st Interrogs. (Jul. 14, 2016). All references to these exhibits in this motion refer to the excerpts filed with it.

<sup>3</sup> *See generally* Pl. Exs. 413-16; ECF Doc. 64 at 3-4.

<sup>4</sup> ECF Doc. 116.

<sup>5</sup> ECF Doc. 117 at 2.

Mindful of the Court’s instruction to refile this motion only if “necessary,”<sup>6</sup> the United States now moves to compel Defendants to answer specific interrogatories, the answers to which are known only to Defendants. The interrogatories subject to this motion to compel are Interrogatory Nos. 14 through 17, 19, and 22 to RaPower-3;<sup>7</sup> Interrogatory Nos. 10 through 13, 15, and 18 to IAS and LTB;<sup>8</sup> and Interrogatory Nos. 10 through 13 and 18 to Neldon Johnson<sup>9</sup>. These interrogatories have different numbers but identical content, and each Defendant’s objections are identical, or nearly identical. All of these interrogatories are directly relevant to the United States’ claims and Defendants’ defenses in this case.<sup>10</sup> Defendants’ objections to these interrogatories are meritless.

Defendants previously refused to answer these interrogatories without a protective order covering allegedly proprietary information. Defendants even promised, in the text of their objections, that “[proprietary] information . . . will be disclosed at the time of a proper protective

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<sup>6</sup> *Id.* (emphasis in original).

<sup>7</sup> Pl. Ex. 414.

<sup>8</sup> Pl. Exs. 415 & 416.

<sup>9</sup> Pl. Ex. 413.

<sup>10</sup> *Compare, e.g.*, ECF Doc. 2 ¶¶ 31, 33-34, 45-55, 67, 76(e) and ECF Doc. 90, Defs’ Mot. to Bifurcate, at 3-4 *with* Pl. Ex. 414, Resp. to Interrog. Nos. 14-15 *and with* Pl. Ex. 413, Resp. to Interrog. Nos. 10-11; *compare* ECF Doc. 2 ¶¶ 35, 74-75, 157-158 *with* Pl. Ex. 414, Resp. to Interrog. Nos. 16-17 *and with* Pl. Ex. 413, Resp. to Interrog. Nos. 12-13; *compare* ECF Doc. 2 at Prayer for Relief ¶ (b) *with* Pl. Ex. 414, Resp. to Interrog. No. 19 *and with* Pl. Ex. 415, Resp. to Interrog. No. 15; *compare* ECF Doc. 2 ¶¶ 42-44, 76, 157-159 *and* ECF Doc. 22, Sixth Defense, *with* Pl. Ex. 414, Resp. to Interrog. No. 22 *and with* Pl. Ex. 413, Resp. to Interrog. No. 18.

order.”<sup>11</sup> Entry of the protective order mooted Defendants’ objections. Yet, four months after the protective order was entered, they have not answered these interrogatories.

Second, Defendants cannot support their remaining objections.<sup>12</sup> “The grounds for objecting to an interrogatory must be stated with specificity.”<sup>13</sup> Defendants offer only general, conclusory, boilerplate objections that are unsupported by facts or law.<sup>14</sup> Accordingly, all objections should be overruled and Defendants compelled to answer.

Defendants produced more than 18,000 pages of documents in response to requests from the United States. If the answers to these interrogatories can be determined by reviewing those documents, Defendants should be compelled to “specif[y] the records that must be reviewed, in

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<sup>11</sup> *E.g.*, Pl. Ex. 414, Resp. to Interrog. No. 14; *see also* ECF Doc. 64, Defs.’ Opp. to Mots. to Compel, at 4 (“Defendants’ counsel . . . has assured Plaintiff that pursuant to the parties’ agreement, Defendants will provide the requested information following the hearing on the standard protective order. The hearing is scheduled for July 27, 2016. . .”).

<sup>12</sup> *See Jensen v. W. Jordan City*, No. 2:12-CV-00736-DAK, 2015 WL 5254430, at \*1 (D. Utah Sept. 9, 2015) (Pead, M.J.).

<sup>13</sup> Fed. R. Civ. P. 33(b)(4); *accord Flying J Inc. v. TA Operating Corp.*, No. 1:06-CV-30 TC, 2007 WL 2220584, at \*2 (D. Utah Jul. 30, 2007) (enforcement later denied with respect to unavailable documents, 2008 WL 5449714 (D. Utah Dec. 31, 2008)) (Nuffer, M.J.).

<sup>14</sup> *E.g.*, Pl. Exs. 413-16; *Lowery v. Cty. of Riley*, No. 04-3101-JTM-DWB, 2009 WL 648928, at \*4 (D. Kan. Mar. 12, 2009); *Johnson v. Kraft Foods North America, Inc.*, 236 F.R.D. 535, 538-39 (D. Kan. 2006). Further, RaPower-3 did not timely respond or object to the United States’ first set of interrogatories (*see* ECF Doc. 53), therefore it has waived every objection it may have had. *See Kelatron v. Marlyn Nutraceuticals*, No. 1:12-CV-00124-DB-DBP, 2013 WL 4498722, at \*3 (D. Utah Aug. 21, 2013) (Pead, M.J.).

sufficient detail to enable [the United States] to locate and identify them as readily as [Defendants] could.”<sup>15</sup>

**CERTIFICATION IN ACCORDANCE WITH FED. R. CIV. P. 37(a)(1) &  
THE SHORT FORM DISCOVERY MOTION PROCEDURE (Doc. No. 115)**

The United States made reasonable efforts to reach agreement on the matters set forth in this motion, including:

- 1) Counsel for the United States believed that counsel for Defendants requested an extension to supplement their responses from January 13, 2017, until February 20, and agreed to that extension.
- 2) On February 22, counsel for the United States alerted counsel for Defendants that no responses had been served.
- 3) On March 1, 2017, Counsel for Defendants and counsel for the United States spoke on the phone regarding Defendants’ failure to supplement their responses to the interrogatories after entry of the protective order. Counsel for the United States agreed to another extension of time, until March 10, 2017, for service of Defendants’ supplemented responses.
- 4) Counsel for all parties agreed, during the March 1 telephone conference, that if Defendants did not supplement their responses by March 10, an additional attempt by the parties to meet and confer would not resolve this issue.

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<sup>15</sup> See Fed. R. Civ. P. 33(d)(1) and advisory committee’s note to then-subdivision (c) (1980 am.); *Daiflon, Inc. v. Allied Chem. Corp.*, 534 F.2d 221, 225-26 (10th Cir. 1976); *Kelatron*, 2013 WL 4498722, at \*2 (“Defendant’s responses are deficient because Defendant failed to specify, in any detail, which portions of its 7,000 business documents respond to Plaintiff’s interrogatories.”).

Dated: March 29, 2017

Respectfully submitted,

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***ATTORNEYS FOR THE  
UNITED STATES***

**CERTIFICATE OF SERVICE**

I hereby certify that on March 29, 2017, 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 all counsel of record pursuant to D. Utah CM/ECF and E-filing Administrative Procedures Manual ¶ II.H.

/s/ Erin Healy Gallagher  
ERIN HEALY GALLAGHER