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*Attorneys for Non-Party Witness Kenneth Birrell*

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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,

v.

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-BCW

**[PROPOSED] ORDER ON UNITED  
STATES' MOTION TO COMPEL  
DEPOSITION TESTIMONY OF  
KENNETH BIRRELL**

Upon consideration of the United States' motion to compel the deposition testimony of Kenneth Birrell, the response thereto filed by Non-Party Witness Kenneth Birrell, and any and all other papers filed herein related to that motion,

IT IS HEREBY ORDERED THAT:

1. Objections made by counsel for Kenneth Birrell on the basis of attorney-client privilege between Mr. Birrell and Mr. Olson during the deposition of Kenneth Birrell on February 14, 2017, are sustained. No further inquiry into communications between Mr. Birrell and Mr. Olson is permitted.
2. Objections made by counsel for Neldon Johnson, RaPower-3, LLC, International Automated Systems, Inc., and LTB1, LLC, on the basis of attorney-client privilege during the deposition of Kenneth Birrell on February 14, 2017, as to information known to Mr. Birrell solely on the basis of communications with his former client, are sustained, except as specified below. No further inquiry into information known to Mr. Birrell solely on the basis of communications with his former client is permitted, except as specified below.
3. Objections made by counsel for Neldon Johnson, RaPower-3, LLC, International Automated Systems, Inc., and LTB1, LLC, on the basis of attorney-client privilege during the deposition of Kenneth Birrell on February 14, 2017, as to information contained in documents previously disclosed, are [sustained]/[overruled].
4. Only to the extent any objections have been overruled herein, the deposition of Kenneth Birrell shall resume at a date and time set by counsel for the United States, in consultation with the witness as to his availability;

5. Kenneth Birrell shall answer the questions he declined to answer at his deposition on February 14, 2017 only as to those questions for which objections have been overruled herein;

6. Kenneth Birrell shall also answer questions that arise out of his answers to the questions asked by counsel for the United States at his deposition on February 14, 2017;

7. The only time that shall be counted toward the 7-hour time limitation on Kenneth Birrell's deposition is that time during which he answered questions during his appearance on February 14, 2017, together with the time during which he was asked questions for which objections herein have been sustained;

8. Mr. Birrell shall be compensated for having to respond to this motion and reappear at a second deposition, equal to the value of attorneys' fees for the hours for which his counsel was required to incur in connection with this motion and a second deposition, such amounts to be payable by [Plaintiff]/[Defendants]; and

9. To the extent any objections have been overruled herein, the United States shall promptly notify this Court of the date and time established to resume Kenneth Birrell's deposition. The parties shall call the Court during the deposition if an issue related to this order arises and cannot be resolved among the parties.

DATED this \_\_\_\_\_ 2017.

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Brooke C. Wells  
United States Magistrate Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on this 31st day of March, 2017, a true and correct copy of the foregoing **ORDER DENYING UNITED STATES' MOTION TO COMPEL**

**DEPOSITION TESTIMONY** was served on the following by the method indicated

below:

John W. Huber, United States Attorney	<input type="checkbox"/> U.S. Mail, Postage Prepaid
John K. Mangum, Assistant United States Attorney	<input type="checkbox"/> Hand Delivered
111 South Main Street, Suite 1800	<input type="checkbox"/> Overnight Mail
Salt Lake City, UT, 84111-2176	<input type="checkbox"/> Facsimile
	<input checked="" type="checkbox"/> E-Filing

Erin Healy Gallagher, <i>pro hac vice</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid
Erin R. Hines, <i>pro hac vice</i>	<input type="checkbox"/> Hand Delivered
Christopher R. Moran	<input type="checkbox"/> Overnight Mail
Trial Attorneys, Tax Division	<input type="checkbox"/> Facsimile
U.S. Department of Justice	<input checked="" type="checkbox"/> E-Filing
P.O. Box 7238	
Ben Franklin Station	
Washington, D.C. 20044	

Donald S. Reay	<input type="checkbox"/> U.S. Mail, Postage Prepaid
REAY LAW, PLLC	<input type="checkbox"/> Hand Delivered
<a href="mailto:Donald@reaylaw.com">Donald@reaylaw.com</a>	<input type="checkbox"/> Overnight Mail
	<input type="checkbox"/> Facsimile
	<input checked="" type="checkbox"/> E-Filing

Stuart H. Schultz	<input type="checkbox"/> U.S. Mail, Postage Prepaid
Byron G. Martin	<input type="checkbox"/> Hand Delivered
STRONG & HANBNI	<input type="checkbox"/> Overnight Mail
102 South 200 East, Suite 800	<input type="checkbox"/> Facsimile
Salt Lake City, UT 84111	<input checked="" type="checkbox"/> E-Filing

/s/ Teena Sanders