

JUSTIN D. HEIDEMAN (USB No. 8897)  
CHRISTIAN D. AUSTIN (USB No. 9121)

**HEIDEMAN & ASSOCIATES**

2696 North University Avenue, Suite 180

Provo, Utah 84604

Telephone: (801) 472-7742

Fax: (801) 374-1724

Email: jheideman@heidlaw.com

*Attorneys for RaPower-3, LLC, International Automated Systems, Inc., LTB1, and Neldon Johnson*

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

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UNITED STATES OF AMERICA,

*Plaintiff,*

vs.

RAPOWER-3, LLC, *et al*,

*Defendants.*

**SHORT FORM RESPONSE AND  
OBJECTION TO UNITED  
STATES' MOTION TO COMPEL  
DEPOSITION TESTIMONY OF  
CODY BUCK, KEN OVESON, AND  
DAVID MANTYLA**

Case No. 2:15-CV-0828 DN

Judge: Honorable David Nuffer  
Magistrate Judge Brooke Wells

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Defendants RaPower-3, LLC; International Automated Systems, LLC; LTB1, LLC; and Neldon Johnson, ("Defendants") by and through their counsel of record, Justin D. Heideman and Christian D. Austin, of the law firm Heideman & Associates, hereby submit their Objection and Short Form Response to the Plaintiff's Motion to Compel Deposition Testimony of Cody Buck, Ken Oveson, and David Mantyla. Pursuant to the Short Form Discovery Motion Procedure as set

out by this Court; ECF Doc. 115; Defendants object to the substance and form of Plaintiff's motion.

Although the Plaintiff claims to seek expedited treatment of the motion, Plaintiffs failed or neglected to designate their motion to compel as a "Short Form Discovery Motion" pursuant to ECF Doc. 115 ¶3. Further, the Plaintiff has raised substantial legal issues requiring briefing and resolution. No hearing has been scheduled, and as such Defendants hereby request extended briefing. As such, Defendants have drafted and herewith contemporaneously submit a full-length brief on the matters addressed in Plaintiff's Motion. Defendants therefore pray that this Court will consider the extended briefing.

Notwithstanding the foregoing, Defendants argument is that §7525 creates a privilege between Certified Public Accountants and their clients with respect to any matter upon which "Tax Advice" has been rendered. §7525 states as follows:

"With respect to tax advice, the same common law protections of confidentiality which apply between a taxpayer and an attorney shall also apply to a communication between a taxpayer and any federally authorized tax practitioner to the extent the communication would be considered a privileged communication if it were between a taxpayer and an attorney."

The Defendants validly asserted their privilege at the depositions of Buck et al. Moreover, as to the information Plaintiff sought during each deposition, (a) there has been no waiver; and (b) no exception applies.

Further, although cases from the Seventh Circuit may be persuasive, the Plaintiff misconstrues and misapplies case law, and fails to recognize the robust privilege doctrines at play

in Utah and the Tenth Circuit.

In summary, it would be proper for this Court to deny the Plaintiff's Motion to Compel.

SIGNED and DATED this 3rd day of April, 2017.

**HEIDEMAN & ASSOCIATES**

/s/ Justin D. Heideman

JUSTIN D. HEIDEMAN

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

**CERTIFICATE OF SERVICE**

On this 3<sup>rd</sup> day of April, 2017, I hereby certify a true and correct copy of the forgoing

**SHORT FORM RESPONSE AND OBJECTION TO UNITED STATES' MOTION TO COMPEL DEPOSITION TESTIMONY OF CODY BUCK, KEN OVESON, AND DAVID MANTYLA** was served on the following:

<b>Party/Attorney</b>	<b>Method</b>
<i>Former Attorneys for Defendants</i>	
James S. Judd	Hand Delivery
Richard A. Van Wagoner	U.S. Mail, postage prepaid
Rodney R. Parker	Overnight Mail
Samuel Alba	Fax Transmission
Snow Christensen & Martineau	<input checked="" type="checkbox"/> Electronic Filing Notice
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	
<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	Hand Delivery  U.S. Mail, postage prepaid  Overnight Mail  Fax Transmission  <input checked="" type="checkbox"/> Electronic Filing Notice
<i>Pro Hac Vice Attorney for Plaintiff</i>  Erin Healy Gallagher  US Department of Justice (TAX)  Tax Division  P.O. Box 7238	Hand Delivery  U.S. Mail, postage prepaid  Overnight Mail  Fax Transmission  <input checked="" type="checkbox"/> Electronic Filing Notice

<p>Washington, DC 20044</p> <p>Phone: (202) 353-2452</p> <p>Email: erin.healygallagher@usdoj.gov</p>	
<p><i>Pro Hac Vice Attorney for Plaintiff</i></p> <p>Erin R. Hines</p> <p>US Department Justice</p> <p>Central Civil Trial Section RM 8921</p> <p>555 4<sup>th</sup> St NW</p> <p>Washington, DC 20001</p> <p>Tele: (202) 514-6619</p> <p>Email: erin.r.hines@usdoj.gov</p>	<p>Hand Delivery</p> <p>U.S. Mail, postage prepaid</p> <p>Overnight Mail</p> <p>Fax Transmission</p> <p><input checked="" type="checkbox"/> Electronic Filing Notice</p>
<p><i>Attorney for Plaintiff</i></p> <p>John K. Mangum</p> <p>US Attorney's Office (UT)</p> <p>Tele: (801) 325-3216</p> <p>Email: john.mangum@usdoj.gov</p>	<p>Hand Delivery</p> <p>U.S. Mail, postage prepaid</p> <p>Overnight Mail</p> <p>Fax Transmission</p> <p><input checked="" type="checkbox"/> Electronic Filing Notice</p>

<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  <u>X</u> Electronic Filing Notice
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**HEIDEMAN & ASSOCIATES**

/s/ Samantha Fowlks  
Samantha Fowlks  
Legal Assistant