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

<p>UNITED STATES OF AMERICA,</p> <p><i>Plaintiff,</i></p> <p>vs.</p> <p>RAPOWER-3, LLC, <i>et al,</i></p> <p><i>Defendants.</i></p>	<p style="text-align: center;">OBJECTION TO UNITED STATES' MOTION TO COMPEL TODD ANDERSON TO PRODUCE DOCUMENTS</p> <p>Case No. 2:15-CV-0828 DN</p> <p>Judge: Honorable David Nuffer Magistrate Judge Brooke Wells</p>
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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 to Plaintiff's Motion to Compel Todd Anderson to Produce Documents.

Plaintiff has requested production of 15 privileged documents.¹ Plaintiff has accused the Defendants of making false statements with scienter,² and seems to believe that these documents are likely to produce information pertinent to their accusation. In support of the Plaintiff's request, it has argued that the documents do not fall within the scope of privilege; and that the documents are inadequately described as to support a privilege claim.

Non-party, Todd Anderson ("Anderson") has requested that the Court deny the Plaintiff's motion entirely.³ Defendants join Anderson's request, and incorporate Anderson's arguments herein. However, Defendants additionally assert that (a) the requested documents fall under the scope of attorney-client privilege; (b) affirmatively state that Rule 502(a) does not apply; and (c) Defendants explicitly do not waive any privilege.

Plaintiff seeks these documents to establish scienter. Prerequisite to scienter, Plaintiff must (a) establish the scope of representations Defendants made to the public, and (b) prove actual falsity. The requested documents are irrelevant to these elements, and so they should not be produced. The documents are mostly items sent to the Defendants' attorney for an opinion. Other documents are invoices or correspondence regarding checks. As such, the requests should be denied.

Privilege is governed by the principles of the common law. Fed. R. Civ. P. 501. "The

¹ Previously identified as ALC Reference 470, and B-O. See Doc. 126-1, pp. 14-15; Doc. 138, p.2.

² Doc. 138, p.2.

³ See Doc. 144, p.1

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 (10thCir. 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.

Fed. R. Civ. P. 502 does not apply to the requested documents. The disclosure of the Anderson letter was not made in a federal proceeding. Even if it did apply, the description of invoices is sufficient to establish different subject matter, and the description of all documents, and the operative policies driving the doctrine of attorney-client privilege, are sufficient to establish that disclosure would be unnecessary and unfair.

In summary, the 15 documents Plaintiff seeks are privileged. Defendants explicitly do not waive the privilege to any conversations they had with Todd Anderson, either pertaining to the creation of these privileged documents or otherwise. Accordingly, Plaintiff’s motion should be denied in its entirety.

SIGNED and DATED this 4th day of April, 2017.

HEIDEMAN & ASSOCIATES

/s/ Justin D. Heideman

JUSTIN D. HEIDEMAN

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

CERTIFICATE OF SERVICE

On this 4th day of April, 2017, I hereby certify a true and correct copy of the forgoing **OBJECTION TO UNITED STATES' MOTION TO COMPEL TODD ANDERSON TO PRODUCE DOCUMENTS** was served on the following:

Party/Attorney	Method
<i>Former Attorneys for Defendants</i> James S. Judd Richard A. Van Wagoner Rodney R. Parker Samuel Alba Snow Christensen & Martineau 10 Exchange Place 11 th 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	Hand Delivery U.S. Mail, postage prepaid Overnight Mail Fax Transmission <u>X</u> Electronic Filing Notice
<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 <u>X</u> 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 <u>X</u> Electronic Filing Notice

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<i>Pro Hac Vice Attorney for Plaintiff</i> Erin R. Hines US Department Justice Central Civil Trial Section RM 8921 555 4 th 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 <u>X</u> Electronic Filing Notice
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/s/ Samantha Fowlks
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Legal Assistant