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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RAPOWER-3, LLC, *et al*,

Defendants.

**RESPONSE MEMORANDUM
OPPOSING UNITED STATES'
MOTION TO COMPEL ANSWERS
TO INTERROGATORIES**

Case No. 2:15-CV-0828 DN

Judge: Honorable David Nuffer
Magistrate Judge Brooke Wells

COME NOW Defendants RaPower-3, International Automated Systems, Inc., LTB1, and Neldon Johnson ("Defendants") to hereby submit their *Response Memorandum Opposing United States' Motion to Compel Answers to Interrogatories*.

Plaintiff has attempted to compel Defendants to answer numerous interrogatories to which Defendants previously objected. With regard to the specific interrogatories in question, Defendants' original objections stand. Defendants made their objections in a timely manner. With

the exception of protective order provisions, the Court's November 29, 2016 order [DOC 116] did not rule on or vacate those objections.

F.R.C.P. applies to all interrogatories to which the Plaintiff has moved to compel answers. Under F.R.C.P. 33(a)(1), "a party may serve on any other party no more than 25 written interrogatories, including all discrete subparts." Plaintiff has exceeded 25 interrogatories. Defendants have already made a herculean effort to comply with Plaintiff's requests.¹ But Plaintiff is not entitled to unduly burden Defendants with excessive interrogatories. Therefore, Defendants should not be compelled to answer.

Defendants also restate their objections, which were made understandably and with particularity.

During the Plaintiff's site inspection, the Plaintiff observed that the lenses are capable of generating enough heat to light wood on fire. The site inspection also revealed that, when a volt meter was attached to the system, power output was observed.² Further, Plaintiff already has documents explaining what the system produces.³ As such, interrogatories requesting this information have been asked and answered. Presently, the documents are equally available to

¹ "Defendants produced more than 18,000 pages of documents in response to requests from the United States." ECF Doc 143, p.4.

² Defendants can provide video demonstrations of both upon request. However, at the site inspection, Plaintiffs were reluctant to watch the demonstrations and generally took the position that the demonstrations were not useful evidence.

³ See Pl. Ex. 370; Bates No. KM00277 (Explaining that the "solar lenses... focus the sun's energy, which energy is collected and transmitted to produce heated steam for power generation and other uses.")

both parties.

Questions about costs incurred, accounts, and how many lenses have been “placed in service” are irrelevant. This is not a tax prosecution case. The answers to these questions are not likely to yield any information relevant to the elements that the Plaintiff must prove. To wit: (1) whether the Defendants organized; (2) whether the Defendants made statements about tax benefits; (3) what those statements were; (4) whether any of those statements were false; (5) whether any of those statements were material; (6) if made, if false, and if material, whether Defendants knew or had reason to know the statements were false.⁴

Plaintiff further requested that Defendants disclose the nature of communications with counsel. Plaintiff seeks information that, although not proprietary information, is “information relating to the representation of a client”⁵ and is protected by attorney-client privilege and the tax advice privilege.⁶ Further, disclosure has occurred already, making the interrogatory unnecessary. To the extent that there are undisclosed communications with counsel, Defendants have not waived their privilege.

In summary, (1) Plaintiff is not entitled to unduly burden Defendants with excessive interrogatories; (2) Plaintiff already has the information it is requesting; (3) if Plaintiff doesn’t

⁴ 26 U.S.C. §6700.

⁵ Utah Rules of Professional Conduct 1.6

⁶ 26 U.S.C. §7525.

have the information, the information is irrelevant; and (4) some information is covered by attorney-client privilege. Therefore, the *United States' Motion to Compel Answers to Interrogatories* should be denied. In the alternative, Defendants request further briefing on this matter.

SIGNED and DATED this 12th 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 12th day of April, 2017, I hereby certify a true and correct copy of the forgoing **RESPONSE MEMORANDUM OPPOSING UNITED STATES' MOTION TO COMPEL ANSWERS TO INTERROGATORIES** was served on the following:

Party/Attorney	Method
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/s/ Samantha Fowlks
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