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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff,</p> <p>vs.</p> <p>RAPOWER-3, LLC, INTERNATIONAL AUTOMATED SYSTEMS, INC., LTB1, LLC, R. GREGORY SHEPARD, NELDON JOHNSON, and ROGER FREEBORN,</p> <p>Defendants.</p>	<p>UNITED STATES' OBJECTIONS AND RESPONSES TO DEFENDANTS' FIRST DISCOVERY REQUESTS TO PLAINTIFF UNITED STATES</p> <p>Civil No. 2:15-cv-00828-DN-BCW</p> <p>Judge David Nuffer Magistrate Judge Evelyn J. Furse</p>
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Pursuant to Federal Rules of Civil Procedure 33 and 34, Plaintiff, the United States of America, answers Defendants RaPower-3, LLC, International Automated Systems, Inc., LTB1, LLC, and Neldon Johnson's First Discovery Requests to Plaintiff United States as follows.

**Definitions of Terms Used in This
Request**

1. The terms “you,” “yourself,” and “your” refers to the person or entity answering this discovery request, and to any of your employees or agents.

OBJECTION:

The United States objects to the definition of “you,” “yourself,” and “your” as overbroad, unduly burdensome, and disproportionate to the needs of this case in that it effectively encompasses every entity and individual that works for the United States government. Moreover, the United States objects to this definition as potentially seeking information not relevant to any claim or defense in this action, and disproportionate to the needs of this case to the extent it includes numerous IRS components and other government agencies with no involvement with this lawsuit. The United States also objects to this definition to the extent it includes components of the United States government in possession of information barred from disclosure by 26 U.S.C. § 6103.

2. The term “IRS” refers to the Internal Revenue Service.

OBJECTION:

The United States objects to the definition of “IRS” as overbroad, unduly burdensome, and disproportionate to the needs of this case in that it effectively encompasses numerous IRS components with no involvement with this lawsuit. The United States also objects to this definition to the extent it includes components of the IRS in possession of information barred from disclosure by 26 U.S.C. § 6103. For purposes of its responses to these discovery requests,

the United States has limited the definition of “IRS” to any component of the Internal Revenue Service assigned to this litigation.

INTERROGATORIES

1. Please identify all witnesses you intend to use at trial, including experts.

OBJECTION:

The United States objects to Interrogatory No. 1 as premature. The scheduling order in this case sets forth the schedule for pretrial disclosures, including the disclosure of expert witnesses and other trial witnesses.¹ The United States also objects to Interrogatory No. 1 because it calls for disclosing attorney work-product.

2. Please identify all evidence upon which any experts will or may rely upon in forming their opinion at trial.

OBJECTION:

The United States objects to Interrogatory No. 2 as premature. The scheduling order in this case sets forth the schedule for pretrial disclosures, including the disclosure of expert witnesses.² The United States’ expert witness disclosure will contain all of the information required by Fed. R. Civ. P. 26(a)(2)(B).

¹ ECF Doc. 37 ¶¶ 4(a), 7(a).

² *Id.* ¶ 4(a).

3. Please identify every fact which supports the allegations and claims in the Complaint.

OBJECTION:

The United States objects to Interrogatory No. 3 because it requests that the United States identify “every fact which supports the allegations and claims in the Complaint,” rendering it overly broad, unduly burdensome, and beyond the proper scope of discovery. Interrogatory No. 3 “indiscriminately sweep[s] an entire pleading” and seeks a lengthy and detailed narrative, which is improper under Fed. R. Civ. P. 33.³ Interrogatory No. 3 is not “proportional to the needs of th[is] case.”⁴

The United States also objects to Interrogatory No. 3 as overly broad, unduly burdensome, and oppressive because it fails to limit its scope to a time-period relevant to this case.

The United States objects to Interrogatory No. 3 to the extent it is duplicative and cumulative of one or more Interrogatories herein.

The United States objects to Interrogatory No. 3 because it calls for information that is either publicly available or is in Defendants’ own possession, custody, or control.

The United States also objects to providing information responsive to Interrogatory No. 3 that is protected by the attorney-client privilege, attorney work-product protection, and/or the deliberative process privilege.

³ See *Hilt v. SFC Inc.*, 170 F.R.D. 182, 188 (D. Kan. 1997).

⁴ See Fed. R. Civ. P. 26(b)(1).

4. Please identify every witness you may have spoken with or otherwise contacted or communicated with regarding any of the facts or circumstances in this case, including but not limited to third party witnesses, government employees, IRS employees and/or experts, whether or not retained.

OBJECTION:

The United States objects to Interrogatory No. 4 because it requests that the United States identify “every witness” the United States “may have spoken with or otherwise contacted or communicated with regarding any of the facts or circumstances in this case,” rendering it vague, ambiguous, overly broad, unduly burdensome, and beyond the proper scope of discovery. The United States objects to the limitless scope of Interrogatory No. 4, as it seeks identification of “witness[es] . . . including but not limited to third party witnesses, government employees, IRS employees, and or/experts, whether or not retained.” Interrogatory No. 4 is not “proportional to the needs of th[is] case.”⁵

The United States also objects to Interrogatory No. 4 as overly broad, unduly burdensome, and oppressive because it fails to limit its scope to a time-period relevant to this case.

The United States objects to Interrogatory No. 4 to the extent it is duplicative and cumulative of one or more Interrogatories herein.

To the extent Interrogatory No. 4 seeks information regarding a prospective expert witness retained by the United States or other trial witness of any kind, the United States objects

⁵ See Fed. R. Civ. P. 26(b)(1).

to Interrogatory No. 4 as premature. The scheduling order in this case sets forth the schedule for pretrial disclosures, including the disclosure of expert witnesses and other trial witnesses.⁶

The United States objects to Interrogatory No. 4 because it calls for information that is in Defendants' own possession, custody, or control. To the extent Interrogatory No. 4 seeks non-public information regarding the tax returns and tax return information of parties and unknown non-parties to this case, the United States objects to providing such information responsive to Interrogatory No. 4 that is protected against disclosure by 26 U.S.C. § 6103 and/or § 6110(c).

The United States also objects to providing information responsive to Interrogatory No. 4 that is protected by the attorney-client privilege and/or attorney work-product protection.

5. Please identify any and all persons or entities you consulted or communicated with in any way related to your claims or allegations in the present case, including without limitation any communications related in any regard with the decision to file or prosecute the instant action or claims related thereto.

OBJECTION:

The United States objects to Interrogatory No. 5 because it requests that the United States identify "any and all persons or entities" the United States "consulted or communicated with in any way related to [its] claims or allegations in the present case, including without limitation any communications related in any regard with the decision to file or prosecute the instant action or claims related thereto" rendering it vague, ambiguous, overly broad, unduly burdensome, and

⁶ ECF Doc. 37 ¶¶ 4(a), 7(a).

beyond the proper scope of discovery. Interrogatory No. 5 is not “proportional to the needs of th[is] case.”⁷

The United States also objects to Interrogatory No. 5 as overly broad, unduly burdensome, and oppressive because it fails to limit its scope to a time-period relevant to this case.

The United States objects to Interrogatory No. 5 to the extent it is duplicative and cumulative of one or more Interrogatories herein.

The United States objects to Interrogatory No. 5 because it calls for information that is in Defendants’ own possession, custody, or control. To the extent Interrogatory No. 5 seeks non-public information regarding the tax returns and tax return information of parties and unknown non-parties to this case, the United States objects to providing such information responsive to Interrogatory No. 5 that is protected against disclosure by 26 U.S.C. § 6103 and/or § 6110(c).

The United States also objects to providing information responsive to Interrogatory No. 5 that is protected by the attorney-client privilege, attorney work-product protection, and/or the deliberative process privilege.

⁷ See Fed. R. Civ. P. 26(b)(1).

6. Please identify any and all witnesses of which you are aware who may have information of any kind related to the investigation, evaluation, or other analysis of the solar technology and/or any marketing related in any respect thereto including without limitation any persons or entities with which you have had any communication regarding the foregoing.

OBJECTION:

The United States objects to Interrogatory No. 6 because it requests that the United States identify “any and all witnesses of which” the United States is “aware who may have information of any kind related to the investigation, evaluation, or other analysis of the solar technology and/or any marketing related in any respect thereto including without limitation any persons or entities with which” the United States has “had any communication regarding the foregoing,” rendering it vague, ambiguous, confusing, overly broad, unduly burdensome, and beyond the proper scope of discovery. Interrogatory No. 6 is not “proportional to the needs of th[is] case.”⁸

The United States also objects to Interrogatory No. 6 as overly broad, unduly burdensome, and oppressive because it fails to limit its scope to a time-period relevant to this case.

The United States objects to Interrogatory No. 6 to the extent it is duplicative and cumulative of one or more Interrogatories herein.

To the extent Interrogatory No. 6 seeks information regarding a prospective expert witness retained by the United States or other trial witness of any kind, the United States objects

⁸ See Fed. R. Civ. P. 26(b)(1).

to Interrogatory No. 6 as premature. The scheduling order in this case sets forth the schedule for pretrial disclosures, including the disclosure of expert witnesses and other trial witnesses.⁹

The United States objects to Interrogatory No. 6 because it calls for information that is in Defendants' own possession, custody, or control. To the extent Interrogatory No. 6 seeks non-public information regarding the tax returns and tax return information of parties and unknown non-parties to this case, the United States objects to providing such information responsive to Interrogatory No. 6 that is protected against disclosure by 26 U.S.C. § 6103 and/or § 6110(c).

The United States also objects to providing information responsive to Interrogatory No. 6 that is protected by the attorney-client privilege and/or attorney work-product protection.

7. Describe in detail any and all facts upon which you rely to support any and all of the factual allegations in this case including without limitation any facts which support or undermine or contradict any of the legal claims you have made in this case or any of the legal theories upon which you rely for your claims.

OBJECTION:

The United States objects to Interrogatory No. 7 because it requests that the United States “[d]escribe in detail any and all facts” upon which the United States relies to “support any and all” of its factual allegations in this case “including without limitation” facts which “support or undermine or contradict” the United States’ legal claims or legal theories, rendering it vague, ambiguous, overly broad, unduly burdensome, and beyond the proper scope of discovery. Interrogatory No. 7 “indiscriminately sweep[s] an entire pleading” and seeks a lengthy and

⁹ ECF Doc. 37 ¶¶ 4(a), 7(a).

detailed narrative, which is improper under Fed. R. Civ. P. 33.¹⁰ Interrogatory No. 7 is not “proportional to the needs of th[is] case.”¹¹

The United States also objects to Interrogatory No. 7 as overly broad, unduly burdensome, and oppressive because it fails to limit its scope to a time-period relevant to this case.

The United States objects to Interrogatory No. 7 to the extent it is duplicative and cumulative of one or more Interrogatories herein.

The United States objects to Interrogatory No. 7 because it seeks non-public information regarding the tax returns and tax return information of parties and unknown non-parties to this case. The United States objects to providing such information responsive to Interrogatory No. 7 that is protected against disclosure by 26 U.S.C. § 6103 and/or § 6110(c).

The United States also objects to providing information responsive to Interrogatory No. 7 that is protected by the attorney-client privilege, attorney work-product protection, and/or the deliberative process privilege.

¹⁰ See *Hilt v. SFC Inc.*, 170 F.R.D. 182, 188 (D. Kan. 1997).

¹¹ See Fed. R. Civ. P. 26(b)(1).

8. Describe in detail any and all facts upon which you rely to support any and all of the factual allegations in this case including without limitation any facts which support or undermine or contradict any of the legal claims you have made in this case or any of the legal theories upon which you rely for your claims.

OBJECTION:

The United States objects to Interrogatory No. 8 because it requests that the United States “[d]escribe in detail any and all facts” upon which the United States relies to “support any and all” of its factual allegations in this case “including without limitation” facts which “support or undermine or contradict” the United States’ legal claims or legal theories, rendering it vague, ambiguous, overly broad, unduly burdensome, and beyond the proper scope of discovery. Interrogatory No. 8 “indiscriminately sweep[s] an entire pleading” and seeks a lengthy and detailed narrative, which is improper under Fed. R. Civ. P. 33.¹² Interrogatory No. 8 is not “proportional to the needs of th[is] case.”¹³

The United States also objects to Interrogatory No. 8 as overly broad, unduly burdensome, and oppressive because it fails to limit its scope to a time-period relevant to this case.

The United States objects to Interrogatory No. 8 because it is an exact duplicate of Interrogatory No. 7.

¹² See *Hilt*, 170 F.R.D. at 188.

¹³ See Fed. R. Civ. P. 26(b)(1).

The United States objects to Interrogatory No. 8 because it seeks non-public information regarding the tax returns and tax return information of parties and unknown non-parties to this case. The United States objects to providing such information responsive to Interrogatory No. 8 that is protected against disclosure by 26 U.S.C. § 6103 and/or § 6110(c).

The United States also objects to providing information responsive to Interrogatory No. 8 that is protected by the attorney-client privilege, attorney work-product protection, and/or the deliberative process privilege.

REQUEST FOR PRODUCTION OF DOCUMENTS

Request No 1: Any and all documents that evidence, relate to, or refer to the claims in this case whether or not obtained by third-parties, governmental employees, or otherwise.

OBJECTION AND RESPONSE:

The United States objects to Request No. 1 because it seeks “[a]ny and all documents that evidence, relate to, or refer to” the United States claims, regardless of the source of those documents, rendering Request No. 1 vague, ambiguous, overly broad, unduly burdensome, and beyond the proper scope of discovery. Request No. 1 does not “describe with reasonable particularity each item or category of items to be inspected.”¹⁴ Instead, it indiscriminately seeks to sweep the entire case.¹⁵

¹⁴ See Fed. R. Civ. P. 34(b)(1)(A); *Regan-Touhy v. Walgreen Co.*, 526 F.3d 641, 649-50 (10th Cir. 2008).

¹⁵ See *IBP, Inc. v. Mercantile Bank of Topeka*, 179 F.R.D. 316, 323 (D. Kan. 1998) (sustaining objection where improper request “asks for ‘[a]ny and all records, documents or things relied upon by IBP in support of its Complaint’” because the request “is overly broad and unduly burdensome on its face.”).

Further, the United States objects to Request No. 1 because it is not “proportional to the needs of th[is] case.”¹⁶ The parties addressed proportional discovery from the United States in the Attorneys’ Planning Meeting Report.¹⁷ The United States objects to Request No. 1 because it exceeds the scope of the agreed procedure for, and limitations on, documents and information to be produced by the United States.¹⁸

The United States further objects to Request No. 1 as overly broad, unduly burdensome, and oppressive because it fails to limit its scope to a time-period relevant to this case.

The United States objects to Request No. 1 to the extent it is a request for the production of documents that are publicly available; are in Defendants’ own possession, custody, or control; and/or have been produced by any Defendant.

The United States objects to Request No. 1 because it seeks non-public information regarding the tax returns and tax return information of parties and unknown non-parties to this case. The United States objects to providing such information responsive to Request No. 1 that is protected against disclosure by 26 U.S.C. § 6103 and/or § 6110(c).

The United States also objects to providing information responsive to Request No. 1 that is protected by the attorney-client privilege, attorney work-product protection, and/or the deliberative process privilege.

The United States has complied with Fed. R. Civ. P. 26(a)(1)(A) and has produced documents to Defendants throughout discovery. The United States does not object to Request

¹⁶ See Fed. R. Civ. P. 26(b)(1).

¹⁷ ECF Doc. 35 ¶ 2(d).

¹⁸ *Id.*

No. 1 to the extent that it seeks documents which the United States has already produced to Defendants, which are marked with Bates numbers US000001 through US004273.

The United States does not object to Request No. 1 to the extent that it seeks tax returns for a subset of Defendants' customers for tax years 2013 through 2015, which the United States may use to support its claims. The United States will produce those tax returns on or before May 15, 2017.

The United States does not object to Request No. 1 to the extent that it seeks documents that the United States has received through third-party subpoenas. Many such documents, with the following Bates labels, have already been produced to Defendants:

Alecia_Y-00001 through Alecia_Y-00143

Anderson_Todd-00001 through Anderson_Todd-00049

ANDERSON_MATT000001 through ANDERSON_MATT000432

Aulds_R&M-00001 through Aulds_R&M-00713

Ayres_Evan000001 through Ayres_Evan000020

BANKOFAMERICANFORK-00001 through BANKOFAMERICANFORK-02662

Battle_Hinton-00001 through Battle_Hinton-00225

Bell_Richard-00001 through Bell_Richard-00350

BOLANDER-BRYAN-000001 through BOLANDER-BRYAN-000826

Borden_Mike-00001 through Borden_Mike-00480

Brennan_Paul-00001 through Brennan_Paul-05598

Brumfield_T&J-00001 through Brumfield_T&J-00668

BT_000001 through BT_000310

CARTER-MARISSA-000001 through CARTER-MARISSA-001276

Chaston_S&D-00001 through Chaston_S&D-00036

Coates_W&M-00001 through Coates_W&M-00186

Cook_R&G-00001 through Cook_R&G-00036

Crawford_J&D-00001 through Crawford_J&D-00031

CYPRUS_000001 through CYPRUS_000982

Dalebout_Jeff-00001 through Dalebout_Jeff-00173

Everage_J&L-00001 through Everage_J&L-00219

FREEBORN-JENNIFER-00001 through FREEBORN-JENNIFER-00385

Gilmore_E&M-00001 through Gilmore_E&M-00280

Gregg_P&R digital videos

Gregg_P&R-000001 through Gregg_P&R-005214

Griffin_S&T-00001 through Griffin_S&T-00895

Hadderton_C&M-00001 through Hadderton_C&M-00826

Halverson_Roger-00001 through Halverson_Roger-00341

Hamblin_Chase-00001 through Hamblin_Chase-00016

Hamblin_R&C-00001 through Hamblin_R&C-01532

Hart_B&V-00001 through Hart_B&V-00035

HB&M-00001 through HB&M-00006

Holmes_F-000001 through Holmes_F-000315

HOWELL_JOHN-000001 through HOWELL_JOHN-009681

Jameson 000001 through Jameson 023002

JP_Morgan_Chase-00001 through JP_Morgan_Chase-02306

KeyBank-000001 through KeyBank-000253

KM00001 through KM00322

Kontos_N-00001 through Kontos_N-00863

LUCITE0001 through LUCITE0981

Lunn_F&L-00001 through Lunn_F&L-00916

Lutzker_M&S-00001 through Lutzker_M&S-00151

Lyman_G-00001 through Lyman_G-00430

MANLEY_MARK-000001 through MANLEY_MARK-000004

Mayer_R&B-00001 through Mayer_R&B-00034

MCCU-000001 through MCCU-001523

MCGAN_L-00001 through MCGAN_L-01013

Minnon_Ronald-00001 through Minnon_Ronald-00022

MM000001 through MM004410

Negron_Derek-00001 through Negron_Derek-00080

NEUSE_SHARON_JAMES-000001 through NEUSE_SHARON_JAMES-000065

Neven_L-00001

Olsen_P&E-00001 through Olsen_P&E-03537

Otto_S&G-00001 through Otto_S&G-00028

PAC00001 through PAC02425

Pears_L&V-000001 through Pears_L&V-0045011

Pershin_J&S-00001 through Pershin_J&S-00143

Pionk_H&M-00001 through Pionk_H&M-00027

PSK000001 through PSK000072

Riter_Kenneth-00001 through Riter_Kenneth-01424

Roehm_Richard-00001 through Roehm_Richard-00019

Rowbotham_R-00001 through Rowbotham_R-01275

Russell_Gregory-00001 through Russell_Gregory-00003

Scraggs_Joe-00001 through Scraggs_Joe-00089

Searcy_R&K-00001 through Searcy_R&K-00005

Shearer_Bruce-00001 through Shearer_Bruce-00112

Shearer_Ster-00001 through Shearer_Ster-00470

Sikich_M&C-00001 through Sikich_M&C-03736

Stevenson_C&R-00001 through Stevenson_C&R-00038

Sullivan_L&C-00001 through Sullivan_L&C-00005

TCF-000001 through TCF-000089

Tilden_Robert-00001 through Tilden_Robert-00019

Vega_Christina-00001 through Vega_Christina-00060

Welborn_K&M-00001 through Welborn_K&M-00229

WF-000001 through WF-011634

White_Charles-00001 through White_Charles-00185

Williams_Lynette-00001 through Williams_Lynette-00051

WOODWARD-JESSICA-00001 through WOODWARD-JESSICA-01215

Woodson_J&J-00001 through Woodson_J&J-02033

ZELEZ_B&A000001 through ZELEZ_B&A002231

ZELEZ_JandC-000001 through ZELEZ_JandC-001434

ZELEZ_JULIE-00001 through ZELEZ_JULIE-01057

Zions_Bank-00001 through ZIONS_BANK-009136

Please be sure to note any confidentiality designations for these documents which are either indicated on the documents themselves or were included in the United States' letters covering the production of these documents.

Additional documents responsive to third-party subpoenas have been produced and processed. Those documents, which are being produced along with these Objections and Responses, are:

BANKOFAMERICANFORK-002663 through BANKOFAMERICANFORK-002726

CYPRUS_000983 through CYPRUS_001056

JP_MORGAN_CHASE-02307 through JP_MORGAN_CHASE-02420

KeyBank-000254 through KEYBANK-002243¹⁹

WF-011635 through WF-013635

ZIONS_BANK-009137 through ZIONS_BANK-009221

The United States does not object to Request No. 1 to the extent that it seeks documents that the United States has marked for identification, to date, as Plaintiff's Exhibits. The United States has produced or otherwise made available Pl. Ex. 1 through Pl. Ex. 416 to Defendants.

¹⁹ We received KEYBANK-000254 through KEYBANK-002053 in response to our first subpoena to Key Bank. Those documents were inadvertently omitted from our production of March 30, 2017.

Except for the documents that the United States has produced, is producing with these Objections and Responses, or states that it will produce in this Response, the United States objects to Request No. 1 and, to the extent responsive documents exist in the United States' possession, custody, or control, they are being withheld. *See* Fed. R. Civ. P. 34(b)(2)(C).

Dated: May 1, 2017

/s/ Erin Healy Gallagher
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Attorneys for the United States

CERTIFICATE OF SERVICE

I hereby certify that on, May 1, 2017, I delivered the foregoing via email and hard copy, including one disc of responsive documents, to:

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