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IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RAPOWER-3, LLC, INTERNATIONAL  
AUTOMATED SYSTEMS, INC., LTB1,  
LLC, R. GREGORY SHEPARD,  
NELDON JOHNSON, and ROGER  
FREEBORN,

Defendants.

**UNITED STATES'  
SUPPLEMENTAL OBJECTIONS  
AND RESPONSES TO  
DEFENDANTS' FIRST  
DISCOVERY REQUESTS TO  
PLAINTIFF UNITED STATES**

Civil No. 2:15-cv-00828-DN-BCW

Judge David Nuffer  
Magistrate Judge Evelyn J. Furse

Pursuant to Federal Rules of Civil Procedure 34, Plaintiff, the United States of America,  
supplements its answer to 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.

### **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.”<sup>1</sup> Instead, it indiscriminately seeks to sweep the entire case.<sup>2</sup>

Further, the United States objections to Request No. 1 because it is not “proportional to the needs of th[is] case.”<sup>3</sup> The parties addressed proportional discovery from the United States in the Attorneys’ Planning Meeting Report.<sup>4</sup> The United States objects to Request No. 1 because it

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

<sup>2</sup> 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.”).

<sup>3</sup> See Fed. R. Civ. P. 26(b)(1).

<sup>4</sup> ECF Doc. 35 ¶ 2(d).

exceeds the scope of the agreed procedure for, and limitations on, documents and information to be produced by the United States.<sup>5</sup>

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 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 is producing a portion of those tax returns with

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<sup>5</sup> *Id.*

these Supplemental Objections and Responses. They are marked with Bates numbers between US004274 and US045847. Due to our obligation to protect tax returns and return information under 26 U.S.C. § 6103, we require additional time to review additional tax returns prepared by John Howell and Richard Jameson. We will produce the tax returns that we may disclose to you on or before June 2, 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-002726

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\_001056

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-02420

KeyBank-000001 through KeyBank-02243

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-013635

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-009221

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.

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. 453 to Defendants.

The United States does not object to Request No. 1 to the extent that it seeks the video recorded on April 4, 2017, during the United States' visit to Defendants' locations in Millard County, Utah. That video is being produced along with these Supplemental Objections and Responses. Because counsel for Neldon Johnson, International Automated Systems, Inc., RaPower-3, LLC, and LTB1, LLC, designated the site visit as "CONFIDENTIAL INFORMATION – ATTORNEY'S EYES ONLY," that designation is marked on the discs containing the video. The United States reserves all rights under the Protective Order<sup>6</sup> to challenge that designation.

Except for the documents that the United States has produced, is producing with these Supplemental Objections and Responses, or states that it will produce in these Supplemental Objections and Responses, the United States objects to Request No. 1 and, to the extent

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<sup>6</sup> ECF Doc. 116.

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 15, 2017

/s/ Erin Healy Gallagher  
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**CERTIFICATE OF SERVICE**

I hereby certify that on, May 15, 2017, I delivered the foregoing via email and hard copy, including four discs of responsive documents, to:

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