

Denver C. Snuffer, Jr. (#3032) [denversnuffer@gmail.com](mailto:denversnuffer@gmail.com)

Steven R. Paul (#7423) [spaul@nsdplaw.com](mailto:spaul@nsdplaw.com)

Daniel B. Garriott (#9444) [dbgarrriott@msn.com](mailto:dbgarrriott@msn.com)

Joshua D. Egan (15593) [Joshua.egan@me.com](mailto:Joshua.egan@me.com)

**NELSON, SNUFFER, DAHLE & POULSEN**

10885 South State Street

Sandy, Utah 84070

Telephone: (801) 576-1400

Facsimile: (801) 576-1960

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

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

<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>Civil No. 2:15-cv-00828-DN-EJF</p> <p><b>DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR PROTECTIVE ORDER REGARDING DEFENDANTS' RULE 30(b)(6) DEPOSITION NOTICE</b></p> <p>Judge David Nuffer Magistrate Judge Evelyn J. Furse</p>
---	--

Defendants Rapower-3, LLC, International Automated Systems, Inc., and Neldon Johnson, (hereinafter "Defendants") hereby oppose Plaintiff's Motion for Protective Order [Doc. 170] relating to the Notice of 30(b)(6) Party Deposition.

Prior counsel, Justin Heideman, prepared and issued the deposition notice to obtain testimony from plaintiff's authorized representative in this case. The goal of the notice of deposition is to obtain testimony from the party in this case, not of counsel. Counsel for the United States has interpreted the notice of deposition in a manner that would violate the attorney

client privilege and attorney work product limitations. However, the interpretation is improperly adopted to make the notice objectionable. The government should interpret the notice of deposition in a manner consistent with the Rules of Civil Procedure. Accordingly, it should designate a person or persons who are knowledgeable and able to testify about information known or reasonably available to the organization. See FRCP 30(b)(6). Defendant's obligation in the deposition notice is to name "as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination." The Rule requires that "The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify." *Id.*

In its discovery responses, Plaintiff asserted that the title or designation of the party involved in this litigation is not simply the "IRS" as broadly defined, but "any component of the Internal Revenue Service assigned to this litigation." (See Discovery Responses provided on May 15, 2017). The notice of deposition was issued on May 17, 2017, before the government's responses were received and reviewed by Mr. Heideman. Therefore, the notice of deposition under 30(b)(6) was intended to target someone/anyone with relevant knowledge. The notice should be construed so as to have Plaintiff provide a witness to testify to define and defend the Plaintiff's case.

Defendants should be allowed to conduct discovery of the party initiating suit against them and seek to understand the motivation, facts, circumstances and information upon which

Plaintiff relied in making the decision to initiate the present action. What was/is the basis? What was/is the violation they claim?

Defendants ask the court to construe the notice of deposition pursuant to Rule 30(b)(6) in such a way as to give it effect, rather than construing the notice so as to invade privilege, which was not intended. The intended purpose of the deposition is not to inquire into the thoughts and impressions of trial counsel or discover trial preparation materials or work product. The inquiry is, by rule, limited to “information known or reasonably available to the organization” which should be reflected as the government agency that is the Plaintiff in this case.

The Motion for Protective Order to avoid the notice of deposition should be denied and the deposition allowed to proceed with the understanding that Defendants cannot invade the attorney-client privilege or attorney work product doctrines, which was never intended. In addition, if the government and the court would like a better description of the topics of inquiry, Defendants can do so prior to the deposition.

DATED this 5<sup>th</sup> day of June, 2017.

NELSON, SNUFFER, DAHLE & POULSEN, P.C.

/s/Denver C. Snuffer, Jr.  
*Attorneys for Defendants RAPower-3, LLC,  
International Automated Systems, Inc., LTBI, and  
Neldon Johnson*

**CERTIFICATE OF SERVICE**

On this 5<sup>th</sup> day of June, 2017, I hereby certify that a true and correct copy of the foregoing **DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR PROTECTIVE ORDER REGARDING DEFENDANTS' RULE 30(b)(6) DEPOSITION NOTICE** was served on the following by the method identified:

Party/Attorney	Method
Donald S. Reay Reay Law PLLC 43 W. 9000 S., Ste. B Sandy, Utah 84070 Tel. (801) 999-8529	<input type="checkbox"/> Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email: <a href="mailto:donald@reaylaw.com">donald@reaylaw.com</a> <input type="checkbox"/> Electronic Filing Notice
John K. Mangum US Attorney's Office (UT) Tel. (801) 325-3216	<input type="checkbox"/> Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email: <a href="mailto:john.mangum@usdoj.gov">john.mangum@usdoj.gov</a> <input type="checkbox"/> Electronic Filing Notice
Erin Healy Gallagher Christopher R. Moran US Department of Justice (TAX) P.O. Box 7238 Washington, DC 20044 Tel. (202) 353-2452	<input type="checkbox"/> Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email: <a href="mailto:erin.healygallagher@usdoj.gov">erin.healygallagher@usdoj.gov</a> <a href="mailto:christopher.r.moran@usdoj.gov">christopher.r.moran@usdoj.gov</a> <input type="checkbox"/> Electronic Filing Notice
Erin R. Hines US Department of Justice Central Civil Trial Section RM 8921 555 4 <sup>th</sup> St NW Washington, DC 20001 Tel. (202) 514-6619	<input type="checkbox"/> Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email: <a href="mailto:erin.r.hines@usdoj.gov">erin.r.hines@usdoj.gov</a> <input type="checkbox"/> Electronic Filing Notice

/s/ Steven R. Paul  
Attorneys for Defendants