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

UNITED STATES OF AMERICA,  Plaintiff,  vs.  RAPOWER-3, LLC, INTERNATIONAL AUTOMATED SYSTEMS, INC., LTB1, LLC, R. GREGORY SHEPARD, NELDON JOHNSON, and ROGER FREEBORN,  Defendants.	Civil No. 2:15-cv-00828-DN-EJF  <b>NON-PARTY TODD ANDERSON'S OBJECTION TO UNITED STATES' PROPOSED ORDER ON RENEWED MOTION TO COMPEL TODD ANDERSON TO PRODUCE DOCUMENTS</b>  Judge David Nuffer Magistrate Judge Evelyn J. Furse
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Non-party Todd Anderson hereby objects to the form of the United States' Proposed Order on its Renewed Motion to Compel Todd Anderson to Produce Documents [Doc. 163].

A hearing was held on the motion on June 23, 2017, and based on the agreement reached at the hearing, the motion was granted. The United States submitted a proposed order in the form attached hereto as Exhibit 1. However, the undersigned believes that the form of order attached hereto as Exhibit 2 should be entered.

The primary differences between the two orders are the following. First, Anderson's proposed order more clearly reflects the fact that the determination of waiver, if any, was a result

of RaPower's counsel's agreement at the hearing rather than as a result of prior events or an adjudication.

Secondly, the focus of the motion, hearing, and stipulation reached at the hearing centered on documents, whereas the United States' order extends beyond just documents and would apply to deposition testimony. Anderson's proposed order more clearly reflects a focus on documents, at least as it relates to Anderson.<sup>1</sup> As stated at the hearing, the undersigned believes an attorney should not disclose any confidential information of a former client without court order or written consent from the client.<sup>2</sup> Anderson does not yet have such written consent, nor does the undersigned believe that the Court expressly ruled at the hearing that Anderson must disclose confidential information in his deposition testimony.<sup>3</sup> The United States' motion was to compel documents, not deposition testimony. While there may or may not be an implied extension of the ruling to deposition testimony, caution is warranted in all matters dealing with attorneys and the duties of confidentiality owed to former clients. Hence Anderson's objection to the breadth of the United States' proposed order.

Finally, Anderson's proposed order more clearly reflects that the requested discovery is to be discovered from RaPower's counsel rather than from Anderson. While the United States

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<sup>1</sup> Insofar as non-document discovery described in the United States' order is directed at persons/entities other than Anderson, Anderson does not object and perhaps lacks standing to do so.

<sup>2</sup> At most, Anderson now has verbal consent from the former client's current attorney to disclose confidential documents, not written consent from the client itself to disclose confidences in deposition testimony. Though the latter might be implied in and authorized by the former, Anderson will resolve all doubts in favor of confidentiality.

<sup>3</sup> Anderson is under subpoena to testify at a deposition, which he will do, but he cannot disclose confidential or privileged information in that testimony without client consent or court order.

does state in its proposed order that the document production will come from “Defendants,”<sup>4</sup> it also states in another place that “[a]ll communications between any Defendant and Mr. Anderson on topics related to the Anderson letter and its contents are discoverable” without limiting the source of such discovery (which could include documents) as agreed at the hearing.

For these reasons, Anderson requests that the Court enter an order on the motion consistent with Anderson’s proposed form of order attached hereto as Exhibit 2.

DATED this 3<sup>rd</sup> day of July, 2017.

STRONG & HANNI

*Byron G. Martin*

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Byron G. Martin  
Attorney for Todd Anderson

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<sup>4</sup> For clarity of record, Anderson’s position is that he did not represent all the Defendants.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 3rd day of July, 2017 a true and correct copy of the foregoing  
**NON-PARTY TODD ANDERSON'S OBJECTION TO UNITED STATES' PROPOSED  
ORDER ON RENEWED MOTION TO COMPEL TODD ANDERSON TO PRODUCE  
DOCUMENTS** was served by the method indicated below, to the following:

Erin Healy Gallagher	(X)	Electronic Filing
Erin R. Hines	( )	U. S. Mail, Postage Prepaid
Christopher R. Moran	( )	Hand Delivered
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