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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' FIRST REQUESTS FOR THE PRODUCTION OF DOCUMENTS TO DEFENDANT LTB1, LLC</p> <p>Civil No. 2:15-cv-00828-DN-BCW</p> <p>Judge David Nuffer Magistrate Judge Brooke C. Wells</p>
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Plaintiff United States of America, pursuant to Fed. R. Civ. P. 34, directs that Defendant LTB1, LLC produce for inspection and copying the documents and electronically stored information identified below at the Office of the United States Attorney, 185 South State Street #300, Salt Lake City, UT 84101 no later than 30 days from the date of this request.

Alternatively, the documents may be produced by e-mailing copies to erin.r.hines@usdoj.gov or by using regular mail and sending them to Erin R. Hines, Trial Attorney, U.S. Department of Justice, P.O. Box 7238, Washington, D.C. 20044, no later than 30 days from the date of this request. If overnight mail is selected, please send the documents to undersigned counsel at Erin R. Hines, Trial Attorney, U.S. Department of Justice, 555 4th Street, N.W., Suite 8921, Washington, D.C. 20001.

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.
2. “Shepard” refers to Defendant R. Gregory Shepard, and to any of his employees or agents, unless otherwise stated.
3. “Johnson” refers to Defendant Neldon Johnson, and to any of his employees or agents, unless otherwise stated.
4. “Freeborn” refers to Defendant Roger Freeborn, and to any of his employees or agents, unless otherwise stated.
5. “RaPower-3” refers to Defendant RaPower-3, LLC, and to any of its employees or agents, unless otherwise stated.
6. “IAS” refers to Defendant International Automated Systems, Inc., and to any of its employees or agents, unless otherwise stated.
7. “LTB” refers to Defendant LTB1, LLC, and to any of its employees or agents, unless otherwise stated.
8. The term “IRS” refers to the Internal Revenue Service.

9. The term “Lens” means any equipment that any Defendant refers to as a “solar thermal lens,” “solar lens,” “Fresnel lens,” and/or “lens” in public statements like the statements made in: (1) the March 2, 2015 version of the “Frequently Asked Questions” site on www.rapower3.com, a copy of which is labeled with Bates numbers US001716 through US001721 and attached as Pl.’s Ex. 1; and (2) the March 3, 2015 version of the “Solar Panels” site on www.iaus.com, a copy of which is labeled with Bates numbers US002856 through US002857 and attached as Pl.’s Ex. 2.
10. The term “System” refers to any technical, scientific, or engineering system that uses or purports to use a Lens in any way, including the purported “solar power technology” described in Pl.’s Ex. 2; the March 3, 2015 version of the “SOLAR” site on www.iaus.com, a copy of which is labeled with Bates numbers US002858 through US002859 and attached as Pl.’s Ex. 3; and the “combined technologies” referred to in Pl.’s Ex. 1.
11. The term “Component” refers to any piece of equipment in a System that is not a Lens.
12. The term “Customer” refers to any person or entity who has paid money for a Lens.
13. The term “Sponsor” means the “sponsor” that RaPower-3 refers to in Pl.’s Ex. 1.
14. The term “Distributor” means any person or entity, other than a Sponsor, who sells any product or service related to any System, Lens, and/or Component.
15. Unless otherwise specified, this Request covers documents created or used on or since January 1, 2005 through the present date.

16. The term “document” or “documents” as used herein refers to “any designated documents or electronically stored information--including writings, drawings, graphs, charts, surveys, deeds, photographs, sound recordings, images, e-mails, text messages, and other data or data compilations--stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form.” Fed. R. Civ. P. 34(a)(1)(A). Electronically stored information shall be produced in its native form so as to include metadata.

Specific Requests

1. All of your corporate books and records, including your articles of incorporation, minutes of all meetings of your shareholders and board of directors, corporate resolutions, stock ledger, and all public corporate filings that you have made with any federal, state, or local governmental entity.

RESPONSE:

2. All documents sufficient to show your relationship (for example: shareholder, officer, director, employee, contractor, partner, contractual arrangements, etc.), if any, with every other Defendant, including any agreement(s) between you and any other Defendant regarding activity related to any System, Lens, or Component, including any agreement between IAS and RaPower-3 which “give[s] RaPower[-]3 the right to sell [IAS] lenses.” (*See* Pl.’s Ex. 1 at US001716.)

RESPONSE:

3. Documents sufficient to show any employment or other agency relationship, for any activity relating to any System, Lens, and/or Component, between you and any person or entity not a Defendant, including Matthew Shepard, Randall Johnson and LaGrand Johnson.

RESPONSE:

4. Documents reflecting any communications between any defendant discussing any System, Lens or Component.

RESPONSE:

5. All IRS Forms you issued to any person or entity for any activity relating to any System, Lens, or Component, including Forms 1099 and W-2.

RESPONSE:

6. Your business and/or marketing plans for: (1) any activity related to a System, Lens, Component, or (2) any activity related to any product of any System, Lens, or Component.

RESPONSE:

7. All documents reflecting any research you conducted, or research conducted on your behalf, in the field of federal income taxes, including the preparation of federal tax returns.

RESPONSE:

8. All documents that support your, or any defendant's, statements about any System, Lens, or Component, including the statements made in the following:
- a. the March 2, 2015 versions of the following sites on www.rapower3.com:
 - i. "Frequently Asked Questions," attached as Pl.'s Ex. 1.
 - ii. "RaPower[-]3 Technology," a copy of which is labeled with Bates numbers US001742 through US001746 and attached as Pl.'s Ex. 4;
 - iii. "Opportunity Overview," a copy of which is labeled with Bates numbers US001798 through US001799 and attached as Pl.'s Ex. 5;
 - iv. "RaPower[-]3 News," a copy of which is labeled with Bates numbers US001814 through US001817 and attached as Pl.'s Ex. 6; and
 - b. the March 3, 2015 version of the following sites on www.iaus.com:
 - i. "SOLAR," attached as Pl.'s Ex. 3; and
 - ii. "Solar Panels," attached as Pl.'s Ex. 2,
 - iii. "News," a copy of which is labeled with Bates number US001572 and attached as Pl.'s Ex. 7;
 - c. "HISTORY of RAPOWER[-]3" by Shepard, a copy of which is labeled with Bates numbers US002870 through US002888 and attached as Pl.'s Ex. 8;
 - d. the April 7, 2014 letter from Shepard to "Department of the Treasury / Auditors and Appeals Officers," a copy of which is labeled with Bates numbers US002866 through US002869 and attached as Pl.'s Ex. 9;

- e. the March 20, 2015 letter from Shepard to “IRS Agents and Appeals Officers,” regarding “Audits of RaPower[-]3 Taxpayers,” a copy of which is labeled with Bates numbers US002672 through US002677 and attached as Pl.’s Ex. 10;
- f. the March 30, 2015 letter from Shepard to “IRS Agents and Appeals Officers,” regarding “Audits of RaPower[-]3 Taxpayers and the addendum below,” a copy of which is labeled with Bates number US002854 and attached as Pl.’s Ex. 11;
- g. the April 27, 2015 letter from Shepard to “IRS Agents and Appeals Officers,” regarding “Audits of RaPower[-]3 Taxpayers and the addendum below,” a copy of which is labeled with Bates number US002855 and attached as Pl.’s Ex. 12;
- h. the September 22, 2015 version of “Holy Grail of Solar Energy,” also called “Open Letter to IRS,” site on www.rapower3.com, a copy of which is labeled with Bates numbers US002846 through US002851 and attached as Pl.’s Ex. 13; and
- i. the December 2, 2015 version of “IAUS Response to Department of Justice’s Claims Against Its Technology” site on www.iaus.com, a copy of which is labeled with Bates numbers US002852 through US002853 and attached as Pl.’s Ex. 14.

RESPONSE:

9. All documents which support all patents used for or in any System, including all such patents identified on the March 2, 2015 version of the “Patents” site on www.rapower3.com, a copy of which is labeled with Bates numbers US001796 through US001797 and attached as Pl.’s Ex. 15.

RESPONSE:

10. All documents which support the statements made in the document titled “New Solar Breakthrough May Compete with Gas” from www.iaus.com, a copy of which is labeled with Bates numbers US001836 through US001850 and attached as Pl.’s Ex. 16.

RESPONSE:

11. All documents which support the statements made in the document titled “IAUS Technical Overview” from www.iaus.com, a copy of which is labeled with Bates numbers US001851 through US001890 and attached as Pl.’s Ex. 17.

RESPONSE:

12. All schematics, engineering or manufacturing drawings, or specifications for any System, Lens, or Component.

RESPONSE:

13. All documents relating to the expected or actual performance (whether in testing or in active operation) of any System, Lens, or Component, including data and documents for any testing that you have performed, or that you have had performed, on any System, Lens, or Component.

RESPONSE:

14. All documents showing the manufacturer of all Lenses or Components, the model number (if any) for such Lenses or Components, the price you paid for such Lenses or Components, and any warranties provided by the manufacturer for such Lenses or Components.

RESPONSE:

15. All documents showing that a third party validated the operation of any System, Lens, or Component.

RESPONSE:

16. All documents reflecting the curriculum vitae, résumé, or other credentials of all persons who performed scientific, engineering, or consulting work, whether paid or unpaid, on any System, Lens, or Component.

RESPONSE:

17. All documents reflecting communication between you and any person who performed scientific, engineering, or consulting work, whether paid or unpaid, on any System, Lens, or Component.

RESPONSE:

18. All documents relating to any permits, licenses, contracts, or similar documents that you, or anyone acting on your behalf, have applied for with any local, state, or federal government entity to operate any System, facility, business, or other activity involving a Lens including any documents in response to such applications (whether or not approved) from any local, state, or federal government entity granting permission to operate any System, facility, business or other activity involving a Lens. Include all applications, and any documents filed with any application, for any permit, license, or similar document that you, or anyone acting on your behalf, have requested to operate any System, facility, business, or other activity involving a Lens.

RESPONSE:

19. All documents you, or anyone acting on your behalf, filed with any utility or private company regarding any System, Lens, or Component, or any facility, business, or other activity involving a Lens.

RESPONSE:

20. All documents that identify the past, current, or expected future product of any System (for example: electricity, heat, cooling, hot water, or solar process heat). Include documents that quantify the past, current, or expected future volume of product and any contracts, inquiries, or solicitations for the purchase or other use of the end product, including power purchase agreements.

RESPONSE:

21. Documents sufficient to show all costs that you have, or any person or entity has, incurred or will incur to manufacture, build, test, or operate any System, Lens, or Component. Include all documents that show or explain the past or anticipated levelized energy cost of any System.

RESPONSE:

22. All documents relating to any Customer, including:
- a. the Customer's Distributor Application Form, Equipment Purchase Agreement, Operation and Maintenance Agreement, Bonus Referral Contract, and Placed-in-Service letter (as each document is identified in Pl.'s Ex. 1);
 - b. all documents reflecting negotiations regarding the price that the Customer paid for any Lens or any other term of any other contract between the Customer and any Defendant;
 - c. all documents reflecting the actual price paid by the Customer for any Lens and the documents that state or support the reasoning for such price;
 - d. all documents reflecting the Customer's history of payments to any Defendant (whether for a Lens or for any other reason);

- e. all documents reflecting the history of payments from any Defendant to the Customer (whether for Sponsoring another Customer to pay money for a Lens, for Lens rental, or for any other reason);
- f. all documents reflecting the financing or credit history for each Lens, including documents sufficient to show any collateral provided by the Customer and any collection activity taken if the Customer defaulted on any credit obligation to any Defendant;
- g. all documents reflecting the Customer's solicitation of any additional Customers, or potential Customers, to pay money for a Lens;
- h. all documents reflecting the Customer's communications with any Defendant;
- i. all documents that support the contention that the Customer used any Lens in a trade or business;
- j. all documents that support the contention that the Customer's Lens was "placed in service."

RESPONSE:

23. All documents relating to any Sponsor, including:
- a. any contract between the Sponsor and any Defendant;
 - b. all documents reflecting negotiations regarding the commission that the Sponsor would receive for any activity relating to a Lens, or any other term of any other contract between the Sponsor and any Defendant;
 - c. all documents reflecting the Sponsor's history of payments to any Defendant;
 - d. all documents reflecting the history of payments from any Defendant to the Sponsor;
 - e. all documents reflecting the Sponsor's solicitation of any Customer, or potential Customer, to pay money for a Lens, including all documents reflecting the Sponsor's "downline" (as that term is used in the March 2, 2015 version of the "Your Big and Quick Payout," site on www.rapower3.com, a copy of which is labeled with Bates numbers US001793 through US001795 and attached as Pl.'s Ex. 19);
 - f. all documents reflecting the Sponsor's communications with any Defendant; and
 - g. all documents that support the contention that the Sponsor was engaged in a trade or business related to any System, Lens, or Component.

RESPONSE:

24. All documents relating to any Distributor including:
- a. any contract between the Distributor and any Defendant;
 - b. all documents reflecting negotiations regarding the commission that the Distributor would receive for any activity relating to a Lens, or any other term of any other contract between the Distributor and any Defendant;
 - c. all documents reflecting the Distributor's history of payments to any Defendant;
 - d. all documents reflecting the history of payments from any Defendant to the Distributor;
 - e. all documents reflecting the Distributor's solicitation of any Customer, or potential Customer, to pay money for a Lens;
 - f. all documents reflecting the Distributor's communications with any Defendant;
and
 - g. all documents with facts that support the contention that the Distributor was engaged in a trade or business related to any System, Lens, and/or Component.

RESPONSE:

25. All documents that show how Lenses are accounted for, including:
- a. how many Lenses have been produced;
 - b. which Customer paid money for which Lens;
 - c. which Customer's Lenses have been installed in any System;
 - d. which Customer's Lenses, previously installed, have broken; and
 - e. which Customer's broken Lenses have been replaced, and with which replacement Lenses.

RESPONSE:

26. All documents reflecting statements any Defendant made to any other person or entity regarding the value of any Lens.

RESPONSE:

27. All documents that were intended to or actually did assist any Customer with calculating the number of Lenses to purchase in any given year, including all versions of the information shown on the May 1, 2014 version of the “Turn Your Tax Liabilities Into Assets” site on www.rapower3.com, a copy of which is labeled with Bates numbers US001667 through US001669, and attached as Pl.’s Ex. 20. Include all versions of the “Lens and Tax Benefit Calculator” shown on US001667, in native format.

RESPONSE:

28. Copies of documents sufficient to show the name, mailing address, email address, and telephone number of every person who has visited any System (whether as part of a group or private “Site Tour” like the ones described in the March 2, 2015 version of the “Site Tours” site on www.rapower3.com, a copy of which is labeled with Bates numbers US001722 through US001724 and attached as Pl.’s Ex. 21), and the date of each person’s visit.

RESPONSE:

29. All documents that reflect any statements that you, or any Defendant made to any accounting, tax, or legal professional about any System, Lens, or Component, to inform or support that professional's opinion or analysis of actual or potential federal tax consequences to a Customer upon paying money for a Lens, including the statements made to:

- a. Hansen, Barnett & Maxwell to support the information stated in the letter from Hansen, Barnett & Maxwell dated August 15, 2005, a copy of which is labeled with Bates numbers US002860 through US002864 and attached as Pl.'s Ex. 22;
- b. Anderson Law Center, P.C., to support the information stated in the letter from Anderson Law Center, P.C., to "Potential RaPower-3 Customer," regarding "Potential tax advantages," a copy of which is labeled with Bates numbers US001654 through US001658 and attached as Pl.'s Ex. 23; and
- c. Kirton McConkie to support the information in "Factual Background" in the memorandum from Kenneth W. Birrell dated October 31, 2012, regarding "Tax Issues Relating to Purchase of Solar Lenses," attached as Pl.'s Ex. 18;

RESPONSE:

30. All documents containing facts or law that support your, or any Defendant's statements regarding the actual or potential federal tax consequences for a Customer upon paying money for a Lens, including the statements:

- a. on the March 2, 2015 versions of the following sites on www.rapower3.com:
 - i. "Turn Your Tax Liabilities Into Assets," a copy of which is labeled with Bates numbers US001734 through US001735 and attached as Pl.'s Ex. 24;
 - ii. "Satisfying the IRS Depreciation Conditions," a copy of which is labeled with Bates numbers US001738 through US001739 and attached as Pl.'s Ex. 25;
 - iii. "RaPower[-]3 Basics," a copy of which is labeled with Bates numbers US001740 through US001741 and attached as Pl.'s Ex. 26;
 - iv. "Tax Information," a copy of which is labeled with Bates numbers US001747 through US001748 and attached as Pl.'s Ex. 27;
 - v. "Your Big and Quick Payout," a copy of which is labeled with Bates numbers US001793 through US001795 and attached as Pl.'s Ex. 19;
 - vi. "Opportunity Overview," attached as Pl.'s Ex. 5; and
- b. in the undated memorandum from Shepard entitled "Tax Benefits for Jim," a copy of which is labeled with Bates number US002865 and attached as Pl.'s Ex. 28;
- c. in the email from Shepard sent February 2, 2011, regarding "Ra3 Questions Answered," a copy of which is labeled with Bates number US001523 and attached as Pl.'s Ex. 29;

- d. in the email from Shepard sent February 2, 2011, regarding “Ra3 Active/Passive Status,” a copy of which is labeled with Bates number US001116 and attached as Pl.’s Ex. 30, including the two documents identified as attachments to Pl.’s Ex. 30: “Ra3 Active’Passive Rulesa.doc” and “Ra3 Active’Passive Rules.docx”;
- e. in the email from Shepard sent November 7, 2013, regarding “Ra3 Vital Tax Info,” a copy of which is labeled with Bates numbers US001532 through US001535 and attached as Pl.’s Ex. 31;
- f. in the email from Shepard sent November 11, 2013, regarding “Ra3 Audit/Appeal Great Info,” a copy of which is labeled with Bates number US001528 and attached as Pl.’s Ex. 32;
- g. on the May 1, 2014 version of “Turn Your Tax Liabilities Into Assets” on www.rapower3.com, attached as Pl.’s Ex. 20;
- h. in the undated memorandum “IRS AUDIT/APPEAL BASICS,” a copy of which is labeled with Bates numbers US001120 through US001122 and attached as Pl.’s Ex. 33;
- i. in the March 20, 2015 letter from Shepard to “IRS Agents and Appeals Officers,” regarding “Audits of RaPower[-]3 Taxpayers,” attached as Pl.’s Ex. 10;
- j. in the March 30, 2015 letter from Shepard to “IRS Agents and Appeals Officers,” regarding “Audits of RaPower[-]3 Taxpayers and the addendum below,” attached as Pl.’s Ex. 11;
- k. in the April 27, 2015 letter from Shepard to “IRS Agents and Appeals Officers,” regarding “Audits of RaPower[-]3 Taxpayers and the addendum below,” attached as Pl.’s Ex. 12;

- l. on the September 22, 2015 version of “Holy Grail of Solar Energy,” also called “Open Letter to IRS,” site on www.rapower3.com, attached as Pl.’s Ex. 13; and
- m. on the December 1, 2015 version of “IAUS Response to Department of Justice’s Claims Against Its Technology” site on www.iaus.com, attached as Pl.’s Ex. 14.

RESPONSE:

31. All documents reflecting correspondence from you, or any Defendant regarding the operation, or anticipated operation of any System, Component, or Lens to:

- a. any Defendant;
- b. any Customer;
- c. any potential Customer;
- d. any Sponsor;
- e. any Distributor;
- f. any employee or agent of the IRS; and
- g. any person who prepared a tax return for any Customer, represented a Customer

before the IRS or provided tax advice to any Customer, including:

- i. John Howell;
- ii. Lori Gailey;
- iii. Bryan Bolander;
- iv. Kenneth Alexander;
- v. Richard Jameson; and
- vi. Kenneth Riter.

RESPONSE:

32. All documents reflecting correspondence from you, or any Defendant regarding any actual or potential federal tax consequences for a Customer upon paying money for a Lens to:

- a. any Defendant;
- b. any Customer;
- c. any potential Customer;
- d. any Sponsor;
- e. any Distributor;
- f. any employee or agent of the IRS; and
- g. any person who prepared a tax return for any Customer, represented a Customer

before the IRS or provided tax advice to any Customer, including:

- i. John Howell;
- ii. Lori Gailey;
- iii. Bryan Bolander;
- iv. Kenneth Alexander;
- v. Richard Jameson; and
- vi. Kenneth Riter.

RESPONSE:

33. All documents advertising or promoting the sale of any System, Lens, or other Component, including:

- a. all “RaPower[-]3 Team Memos”;
- b. all newsletters (whether paper or electronic) or updates to Customers, potential Customers, Sponsors, and/or Distributors;
- c. all books, videos, audio recordings, CDs or DVDS, publications, PowerPoint presentations, brochures, website printouts, pamphlets, flyers, press releases, published articles, scripts for video, radio, television, or Internet advertisements, agendas or other materials for promotional meetings, seminars, or conventions;
- d. all legal, accounting, or other professional opinions given to Customers or potential Customers, or such opinions used to draft any promotional material;
- e. all documents provided to any visitor to any System (whether as part of a group or private “Site Tour” like the ones described in Pl.’s Ex. 21); and
- f. all documents used to train any Sponsor, Distributor, or other person to sell any Lens, including but not limited to any training manuals or media such as presentations, videotapes, audiotapes, compact discs or webpages. Include documents sufficient to identify the instructor for any training or author of any training materials.

RESPONSE:

34. All content that reflects or refers to any System, Lens, Component, or federal tax consequence relating to paying money for a Lens on the following:

- a. any website (whether public or private) that you maintain, or is maintained on your behalf, for any personal or business use, including www.iaus.boards.net and the “IAUS & RaPower3 Forum,” hosted by ProBoards; and
- b. social media websites (including Facebook, Twitter, Instagram, Snapchat, Tumblr, YouTube, Pinterest, Google Plus, Periscope, Flipboard, etc.) that you maintain or that are maintained on your behalf for any personal or business use;

RESPONSE:

35. Documents reflecting all statements you made to any other person or entity (other than the attorney(s) representing you in this case) regarding this lawsuit or the United States’ claims against you or any other Defendant.

RESPONSE:

36. Your accounting books and records, including financial statements, check registers, disbursements journals, receipts journals, general ledger, and other workpapers used in the preparation of your tax return(s) or financial statement(s). If you use accounting software such as QuickBooks, include a copy of your database in native format.

RESPONSE:

37. Your tax returns and the tax returns for any entity in which you have an ownership interest. Include all schedules, forms, and other documents that support the tax returns.

RESPONSE:

38. All documents referring to or reflecting any payments to you from any person or entity for any work you performed, or work performed on your behalf, in furtherance of any activity related to a Lens.

RESPONSE:

39. All contracts, compensation agreements, split-fee arrangements, or other agreements related to the referral of any Customer for the preparation of any federal tax return or supporting document, between you and any accounting firm, Certified Public Accountant, or other tax return preparer, including:

- i. John Howell;
- ii. Lori Gailey;
- iii. Bryan Bolander;
- iv. Kenneth Alexander;
- v. Richard Jameson; and
- vi. Kenneth Riter.

RESPONSE:

40. All monthly account statements from any bank or other financial institution that you used for personal banking or to conduct any business activity, or which were titled in your name, or on which you had signature authority.

RESPONSE:

[remainder of page intentionally left blank]

Dated: April 8, 2016

CAROLINE D. CIRAOLO
Acting Assistant Attorney General
Tax Division

/s/ Erin R. Hines

ERIN R. HINES, pro hac vice
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Attorneys for the United States

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2016, I delivered the foregoing via email to:

SAMUEL ALBA
RODNEY R. PARKER
RICHARD A. VANWAGONER
JAMES S. JUDD
SNOW, CHRISTENSEN & MARTINEAU
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**ATTORNEYS FOR RAPOWER-3, LLC,
INTERNATIONAL AUTOMATED SYSTEMS, INC.,
LTB1, LLC, and NELDON JOHNSON**

/s/ Erin R. Hines
ERIN R. HINES, pro hac vice