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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

**UNITED STATES' EXPEDITED
MOTION TO UNSEAL MOTION TO
COMPEL DEPOSITION TESTIMONY
OF CODY BUCK, KEN OVESON, AND
DAVID MANTYLA (DOC. NO. 137)
AND COURT'S ORDER
(DOC. NO. 209)**

Judge David Nuffer
Magistrate Judge Evelyn Furse

The United States seeks expedited treatment of this Motion in accordance with the Court's Short Form Discovery Procedure.¹

The United States moves the Court to order the Clerk to unseal (1) the United States' Motion to Compel Deposition Testimony of Cody Buck, Ken Oveson, and David Mantyla; and (2) the Court's Order granting the Motion.²

The United States requested, and received, permission to file the Motion to Compel under seal because the factual support for the motion drew from documents that were designated PROTECTED INFORMATION under the protective order in this case.³ The United States filed its Motion under seal, including Exhibits 372, 373, 374, 376, 377 and 383, which had varying confidentiality designations affixed by either Mantyla McReynolds or Defendants Neldon Johnson, RaPower-3, LLC, International Automated Systems, Inc., and/or LTB1, LLC. The Court subsequently granted the United States' motion to compel.⁴

Since filing the motion to compel, the United States challenged the confidentiality designations for the documents filed in support of the motion (among other documents and information), noting that the documents do not constitute PROTECTED INFORMATION under the terms of the protective order.⁵ To maintain the designations they applied, each producing

¹ ECF No. 115.

² ECF No. 137 & ECF No. 209 (SEALED). Defendants did not file their opposition under seal. See ECF No. 147 & ECF No. 148.

³ ECF No. 133 & ECF No. 135.

⁴ ECF No. 209.

⁵ ECF No. 116, ¶ 8(b); Pl. Ex. 660 (United States' August 16, 2017 Letter to Denver Snuffer, et al.); Pl. Ex. 661 (United States' September 17, 2017 Letter to Eric Benson).

party was required to respond to the United States' challenge within 5 business days.⁶ Mantyla McReynolds promptly responded and agreed to withdraw its confidentiality designations.⁷ Defendants did not respond to the United States' challenge.⁸ Because Defendants failed to respond to the United States' challenge, the protective order stripped all challenged documents and information (including Pl. Ex. 383, the only "Ra3" document attached to the motion) of any designation as PROTECTED INFORMATION.

There is a strong presumption in favor of public access to judicial records.⁹ Since the materials underlying the United States' Motion and the Court's order are no longer confidential, these court documents should be made accessible to the public.

CERTIFICATION IN ACCORDANCE WITH FED. R. CIV. P. 37(a)(1) & THE SHORT FORM DISCOVERY MOTION PROCEDURE (Doc. No. 115)

The United States made reasonable efforts to resolve this dispute, including: On October 10, 2017, counsel for the United States sent defendants' counsel a copy of this motion, sought their views on the motion, and offered an opportunity to meet and confer if there was an objection. Counsel for the United States requested that defendants' counsel respond by 5pm, EDT on October 12, 2017. There has been no response as of the filing of this motion and it is assumed that defendants object to this Motion.

⁶ ECF No. 116 ¶ 8 (b) & (c).

⁷ Pl. Ex. 662 (Eric Benson's Letter of September 15, 2017 to the United States); Pl. Ex. 663 (Eric Benson's Email of September 21, 2017 to the United States).

⁸ ECF No. 116 ¶ 8 (b) & (c); Pl. Ex. 660.

⁹ *Mann v. Boatright*, 477 F.3d 1140, 1149 (10th Cir. 2007).

Dated: October 12, 2017

Respectfully submitted,

/s/ Christopher R. Moran
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***ATTORNEYS FOR THE
UNITED STATES***

CERTIFICATE OF SERVICE

I hereby certify that on October 12, 2017, the foregoing document was filed with the Clerk of the Court through the CM/ECF system, which sent notice of the electronic filing to all counsel of record.

/s/ Christopher R. Moran
CHRISTOPHER R. MORAN
Trial Attorney