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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

**DEFENDANTS' RESPONSE TO
PLAINTIFF'S MOTION FOR
SANCTIONS (DOC. 226)**

Judge David Nuffer
Magistrate Judge Evelyn J. Furse

Defendants oppose the government's motion for sanctions (Doc. 226) on the grounds that Defendants have provided all the information that is available to them, subject only to limitations of proportionality and relevance.

In its order granting the government's motion to compel (Doc. 218), Defendants were required to provide five (5) categories of documents, or explain the efforts that were undertaken to locate the documents. Defendants have done so.

Defendants timely explained the inability to produce a list of IAS shareholders because no such list exists, given that IAS is publically traded and shares certificates are not issued, nor is a ledger of shareholders kept as there are too many and the list is constantly changing as people buy and sell shares (trade) over the counter.

Defendants also explained the comment made by Mr. Johnson in his deposition that he believed his tax counsel had received a letter from the IRS exonerating him from certain tax decisions. The government is not challenging those responses.

The other three categories of documents took more time to locate relevant information for a response. However, defendants believe they have satisfied the court's order to produced documents or explain why they cannot be produced.

1. The computer program or data extracted from it, that (among other things) purportedly tracks solar lens customer names and sales, serial numbers of lenses, and the location of any customer's lens.

Defendants provided this information by producing a 190-page document containing the names of all lens purchasers and the serial number of each lens. Defendants have already explained to the government that RaPower-3 does not track the location of individual lenses. All lenses are located at the facility warehouse or are being installed on solar array towers in Delta, Utah.

2. All RaPower-3 solar lens purchase agreements with customers since 2010.

Defendants explained that after diligent search for those documents and understanding the extensive and time consuming effort that would be required to produce a copy of all customer solar lens purchase agreements, no documents would be produced, and an objection was made to the production of all solar lens purchase agreements as disproportionate to the needs of this case. RaPower 3, LLC has already produced all versions of any existing solar lens purchase agreements, and therefore the content of the agreements is known and in the possession of the

government. In addition, Defendants have produced the names of all customers. Producing the hundreds of multi-part solar lens purchase agreements for all customers would be unduly burdensome, extremely expensive and time consuming, and would serve no substantive purpose. Defendants estimate that it would take at least three full weeks for a person working full time just downloading and copying purchase agreements to meet the discovery request for an answer that would not provide any additional information than has already been answered by furnishing names and sample copies of all versions of the agreements. Under the new discovery rules requiring discovery be proportional to the needs of the case, Defendants object that the production of thousands of individual contracts, each involving many pages, is disproportionate to the needs of this case.

3. The solar lens purchase contract between SOLCO 1 and a “company back East” with a down-payment of \$1 million.

Defendants produced the Escrow Agreement (in redacted form) between SOLCO 1 and the company “back East”. The agreement has expired. It is no longer in force. The Escrow Agreement proves there was once such an agreement with funds escrowed for the transaction, and proves the existence of a relationship between SOLCO1 and a serious buyer. Defendants believe the production of the Escrow Agreement satisfies the court’s order. Any remaining contracts or evidence relating to SOLCO1 is not relevant to the present proceedings. Defendants object to any further discovery on the SOLCO matter as beyond the scope of Rule 26. The parties to the SOLCO Purchase Agreement are not parties in this matter and there is no allegation of tax implications of the expired SOLCO transaction. Therefore Defendants object to providing any additional information about the expired SOLCO transaction.

Based on the foregoing, Defendants believe they have satisfied the intent of the court's prior order and there is no need for further discovery on these matters and certainly no need or justification for any sanctions.

Dated this 20th day of October, 2017.

NELSON SNUFFER DAHLE & POULSEN

/s/ Steven R. Paul
Denver C. Snuffer, Jr.
Steven R. Paul
Daniel B. Garriott
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR SANCTIONS (DOC. 226)** was sent to counsel for the United States in the manner described below.

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/s/ Steven R. Paul
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