

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>ORDER GRANTING UNITED STATES' EXPEDITED MOTION FOR SANCTIONS AGAINST NELDON JOHNSON, INTERNATIONAL AUTOMATED SYSTEMS, INC., RAPOWER-3, LLC, AND/OR LTB1, LLC</p> <p>Civil No. 2:15-cv-00828-DN-EJF</p> <p>Judge David Nuffer Magistrate Judge Evelyn J. Furse</p>
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Upon consideration of the United States' expedited motion for sanctions against Neldon Johnson, International Automated Systems, Inc., RaPower-3, LLC, and/or LTB1, LLC (ECF No. 226), the Court GRANTS the motion as follows:

1. Neldon Johnson, International Automated Systems, Inc., RaPower-3, LLC, and LTB1, LLC (collectively, "Defendants") failed to comply with the Court's September 13, 2017 Order (ECF No. 218) by failing to produce:
 - a. 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;
 - b. All RaPower-3 solar lens purchase agreements with customers since 2010;
 - c. The solar lens purchase contract between SOLCO I and a "company back East" with a down-payment of \$1 million.

2. After briefing and oral argument, the Court finds the following sanctions necessary to ensure compliance with the Order given Defendants' continued obstruction of discovery. Defendants' arguments about proportionality are too little, too late.
3. No later than five (5) business days from the date of this Order, counsel for Defendants shall meet and confer with counsel for the United States to plan for a visit from counsel for the United States and a computer forensic expert.
 - a. Counsel for Defendants shall report to counsel for the United States:
 - i. The location of the documents and information identified in ¶ 1;
 - ii. The approximate size of the database(s) identified in ¶ 1(a);
 - iii. Whether any data has been deleted from or altered in the database(s) identified in ¶ 1(a) since November 22, 2015;
 - iv. The quantity of electronic information or paper, or both, of the documents identified in ¶¶ 1(b) and 1(c); and
 - v. The name of a person who is knowledgeable about the computer program and database(s) identified in ¶ 1(a) and the documents identified in ¶¶ 1(b) and (c).
4. Counsel for the United States and a forensic computer expert of its choosing shall enter onto Defendants' property on a date and time agreed upon by the parties to review and/or copy the documents identified in ¶ 1.
5. Counsel for the United States and counsel for Defendants shall participate in good faith in planning for the visit identified in ¶ 4.

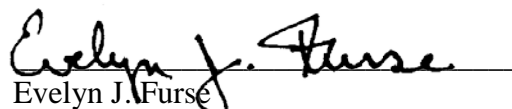
6. Defendants shall make the documents and information identified in ¶ 1 available to counsel for the United States and the forensic computer expert on the date and time agreed to.
7. Defendant shall also make the knowledgeable person identified in ¶ 3(a)(v) available to assist counsel for the United States and the forensic computer expert in copying the computer program(s) and database(s), in running reports to extract data from the database(s), and in locating and copying the other documents on the date and time agreed to.
8. Counsel for the United States may bring a non-lawyer to assist in obtaining the documents identified in ¶¶ 1(b) and 1(c). If the original documents cannot be copied on-site on the day of the visit, counsel for the United States may remove the uncopied original documents from Defendants' premises, copy or image the original documents off-site, and return the original documents to Defendants within seven (7) days.
9. Counsel for the United States may bring a videographer to record the proceedings during the visit identified in ¶ 4 to document Defendants' compliance with this Order.
10. The forensic expert, videographer, and non-lawyer referenced in ¶ 8 (if used) shall review the Protective Order entered in this case (ECF No. 116) and sign a disclosure indicating that they have reviewed the Protective Order and agree to abide by the terms.
11. The Court awards the United States its fees and costs in bringing this motion for sanctions (ECF No. 226) and for further enforcing this Court's Order.

- a. Defendants shall pay reasonable costs for the visit identified in ¶ 4, including the travel costs for one attorney for the United States and the fees for the forensic computer expert, the videographer, and copying or imaging the hard copy documents.
- b. No later than thirty (30) days after the visit identified in ¶ 4, the United States shall provide Defendants with a cost and fee memorandum detailing the reasonable fees and costs it has incurred in enforcing the Court's Order to Compel, including bringing the motion, making the visit, and copying the documents.
- c. The parties shall agree to costs and fees within thirty (30) days after provision of the memorandum.

12. The Court hereby **warns** Defendants that **continued failure to obey this Court's orders puts them in jeopardy of** being held in contempt of court and **orders** imposing other sanctions including **striking all or part of their Answer** (ECF No. 22) **and rendering a default judgment against them.** See Fed. R. Civ. P. (b)(2)(A)(iii), (vi).

13. Within five (5) business days of the date of this order, counsel for Defendants shall deliver a hard copy of this order to each Defendant and certify to the Court that they have done so.

DATED: October 25, 2017.


Evelyn J. Furse
United States Magistrate Judge