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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' MOTION TO STAY
ORDER GRANTING UNITED STATES'
EXPEDITED MOTION FOR SANCTIONS
(Doc. 235)**

Judge David Nuffer
Magistrate Judge Evelyn J. Furse

Pursuant to [Fed. R. Civ. P. 72\(a\)](#) and [DUCivR72-3](#), Defendants move this court to stay enforcement of the recent Order Granting United States' Expedited Motion for Sanctions Against Neldon Johnson, International Automated Systems, Inc., RaPower-3, LLC, and/or LTB1, LLC ([Doc. 235](#)), issued on October 25, 2017, for the following reasons:

1. Defendants request a stay of enforcement of the Magistrate's Order pending review of the objection filed by Defendants by the assigned judge, Judge David Nuffer.

2. Defendants have requested expedited treatment of the Objection as required by governing rules [Fed. R. Civ. P. 72\(a\)](#) and [DUCivR37-1\(a\)](#).
3. The stay of enforcement of the Order is appropriate as the issues raised in the Objection are significant and there is no prejudice to Plaintiff for a short delay until the matter can be reviewed by Judge Nuffer.
4. The matters dealt with in the Objection include the following:
 - a. The potential for unlawful disclosure and use of private information relating to private individuals which could be used by the IRS to harass those people and coerce them to abandon legal tax treatment.
 - b. During the hearing on October 23, 2017, counsel for Plaintiff admitted that Plaintiff intends to and will use the data obtained from Defendants' records in enforcement actions against those individuals. Plaintiff claims that section 4(b) of the Protective Order ([Doc. 116](#)) authorized it to disseminate the names of people who have purchased solar lenses from RaPower-3, LLC to the IRS. Defendants should not be required to divulge private, protected information within its databases that will be used by the government in violation of those individual's rights to privacy and against unreasonable searches and seizures.
 - c. Presence of a videographer. In [¶ 9 of the Order](#), Judge Furse said that "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." At no time during the briefing of the motion or during oral argument did Plaintiff seek to include a videographer in the

discovery of computer evidence. Such an expense and intrusion are not warranted and is disproportionate to the discovery obligation by Defendants.

- d. The information does not advance any issue in this dispute. The names of the individuals have been previously provided. Obtaining wholesale access to the computer system of the Defendants to engage in an unfettered fishing expedition does not advance any issue or claim in this case.

Dated this 30th day of October, 2017.

NELSON SNUFFER DAHLE & POULSEN

/s/ Denver C. Snuffer, Jr.
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' MOTION TO STAY ORDER GRANTING UNITED STATES' EXPEDITED MOTION FOR SANCTIONS (Doc. 235)** 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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