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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

**DECLARATION OF NELDON JOHNSON
IN SUPPORT OF DEFENDANTS'
OBJECTION TO ORDER GRANTING
UNITED STATES' EXPEDITED MOTION
FOR SANCTIONS (Doc. 235)**

Judge David Nuffer
Magistrate Judge Evelyn J. Furse

Defendant Neldon Johnson declares and states, under penalty of perjury, the following:

1. I am a named defendant herein, over the age of 18, and declare and state the following in support of Defendants objection to the Order of this court granting Plaintiff's motion for sanctions. (Doc. 235).
2. I make this declaration based on my own personal knowledge and if called upon to testify as to these matters, would testify consistent to the statements made herein.

3. RaPower-3, LLC, maintains a database of individuals and entities that have purchased solar lenses from RaPower-3.
4. The database is meant to be a resource to the lens purchaser to track and confirm lens purchases and establish current contact information with RaPower-3.
5. Information included in the database includes fields for the following: name, address, telephone, email address.
6. Not every field is completed for every contact, generally, the information is entered by the purchaser, not RaPower-3.
7. Additional information that is included in the database is lens purchase information consisting of: date of purchase, number of lenses purchased, costs of lenses, and payment information. A notes section is available for comments added by RaPower-3 related to contact from purchasers and generally related to payment history or information.
8. Sensitive personal information is often kept in the notes section of the database, including credit card numbers, bank account numbers, social security numbers, birth dates or other personal information required to authenticate credit card use, and other private information that was given to RaPower-3 under an expectation of privacy.
9. RaPower-3 has not been authorized by its customers to produce for any third party the private information kept in the database.
10. After the Order was issued, I was personally contacted by a lens purchaser who has threatened RaPower-3 that if his information was made public to Plaintiff or to the IRS because of the court's order, he will sue RaPower-3 for violation of his privacy. Attached hereto is a copy of the email threat I received from the individual.

11. My concern as a fiduciary of this information is that the information in the RaPower-3 database is not used for inappropriate purposes outside of this litigation between Plaintiff and Defendants. To allow Plaintiff to share the information it gains in discovery with the IRS so that the IRS can harass RaPower-3 lens purchasers is alarming to me and creates an immediate potential for hostility between RaPower-3 and its customers. I believe disclosure without consent or permission from all those who provided their personal information in confidence with the expectation of privacy violates the civil rights of those individuals.
12. The database at issue is not located on any server, but is a cloud-based program. Therefore, it would not benefit Plaintiff to travel to Defendants' offices; rather the database can be accessed from any location over the internet.
13. If the information is protected from abuse by the government, I will allow the government access to the database. However, an appropriate remedy for violation of the protections imposed by the court should be severe enough to deter the government from the temptation to abuse the information thereby encouraging its compliance.
14. Furthermore, the information ordered to be obtained through the court's order does not advance any issue in this dispute. The names of the individuals in the RaPower-3 database, who have purchased lenses from RaPower3, have been provided to Plaintiff. See Exhibit 669 (under seal) submitted by Plaintiff at the October 23 hearing.
15. Only the names of solar lens purchases are nominally relevant, if relevant at all, to any issue in dispute. Obtaining wholesale access to the entire RaPower-3 customer provided database to allow the government to engage in an unfettered fishing expedition does not advance any issue or claim in Plaintiff's Complaint.

16. I hereby declare under criminal penalty of the State of Utah that the foregoing is true and correct.

Dated this 30th day of October, 2017.


Neldon Johnson

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DECLARATION OF NELDON JOHNSON IN SUPPORT OF DEFENDANTS' OPPOSITION TO MOTION TO DEPOSE RICHARD JAMESON OUT OF TIME** was sent to counsel for the United States in the manner described below.

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☒ **X** Electronic Service via Utah Court's e-filing program

/s/ Steven R. Paul
Attorneys for Defendants