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Attorney for Defendants

R. Gregory Shepard and Roger Freeborn

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAPOWER-3, LLC, INTERNATIONAL
AUTOMATED SYSTEMS, INC.,
LTB1,LLC, R. GREGORY SHEPARD,
NELDON JOHNSON, and ROGER
FREEBORN,

Defendants.

**FREEBORN'S FIRST
SUPPLEMENTAL RESPONSE TO
UNITED STATES' FIRST
INTERROGATORIES TO
ROGER FREEBORN**

Civil No. 2:15-cv-00828 DN

**Judge David Nuffer
Magistrate Judge Brooke C. Wells**

Defendant Roger Freeborn hereby supplements his responses to the United States' First Interrogatories to Roger Freeborn by adding the below supplemental answers in red to the numbered paragraphs of the requests as follows:

PRELIMINARY STATEMENT

1. Defendant's investigation into all facts and circumstances relating to this action is ongoing. These responses and objections are made without prejudice to, and are not a waiver of, Defendant's right to rely on other facts or documents at trial.

**Plaintiff
Exhibit**

00412

2. By making the accompanying responses and objections to Plaintiff's requests for documents and interrogatories, Defendant does not waive, and hereby expressly reserves, his right to assert any and all objections as to the admissibility of such responses into evidence in this action, or in any other proceedings, on any and all grounds including, but not limited to, competency, relevancy, materiality, and privilege. Further, Defendant makes the responses and objections herein without in any way implying that it considers the requests and interrogatory, and responses to the requests and interrogatory, to be relevant or material to the subject matter of this action.

3. Defendant will produce responsive documents only to the extent that such documents are in the possession, custody, or control of Defendant, as set forth in the Federal Rules of Civil Procedure. Defendant's possession, custody, or control does not include any constructive possession that may be conferred by Defendant's right or power to compel the production of documents or information from third parties or to request their production from other Defendants.

4. A response to an interrogatory which includes a document request stating that objections and/or indicating that documents will be produced shall not be deemed or construed that there are, in fact, responsive documents, that Defendant performed any of the acts described in the document request, interrogatory, or definitions and/or instructions applicable to the document request or interrogatory, or that Defendant acquiesces in the characterization of the conduct or activities contained in the document request, interrogatory, or definitions and/or instructions applicable to the document request or interrogatory.

5. Defendant expressly reserves the right to supplement, clarify, revise, or correct

any or all of the responses and objections herein, and to assert additional objections or privileges, in one or more subsequent supplemental response(s).

6. Defendant will make available for inspection at Defendant's attorneys' offices responsive documents if documents exist. Alternatively, Defendant will produce copies of the documents.

7. Publicly available documents including, but not limited to, newspaper clippings, court papers, and documents available on the Internet, will not be produced.

GENERAL OBJECTIONS

8. Defendant objects to each instruction, definition, document request, and interrogatory to the extent that it purports to impose any requirement or discovery obligation greater than or different from those under the Federal Rules of Civil Procedure and the applicable Rules and Orders of the Court.

9. Defendant objects to each document request and interrogatory that is overly broad, unduly burdensome, vague or not reasonably calculated to lead to the discovery of admissible evidence.

10. Defendant objects to each instruction, definition, document request, and interrogatory to the extent that it seeks documents protected from disclosure by the attorney-client privilege, deliberative process privilege, attorney work product doctrine, or any other applicable privilege. Should any such disclosure by Defendant occur, it is inadvertent and shall not constitute a waiver of any privilege.

11. Defendant objects to each instruction, definition, document request, and

interrogatory as overbroad and unduly burdensome to the extent it seeks documents or information that are readily or more accessible to Plaintiff from Plaintiff's own files, from documents or information in Plaintiff's possession, or from documents or information that Plaintiff previously produced to Defendant. Responding to such requests and interrogatory would be oppressive, unduly burdensome, and unnecessarily expensive, and the burden of responding to such requests and interrogatory is substantially the same or less for Plaintiff as for Defendant. This objection encompasses, but is not limited to, documents and answers to interrogatories previously produced by Defendant to Plaintiff in the course of Plaintiff's civil investigation in this case, all transcripts of depositions of employees and former employees of Defendant, all correspondence between the Plaintiff and Defendant, all other information provided by Defendant to Plaintiff, and all information produced by Plaintiff to Defendant in response to initial disclosures or discovery requests of Defendant. All such documents and information will not be produced.

12. Plaintiff's document requests and interrogatory call for the production of documents and information that were produced to the Defendant by other entities and that may contain confidential, proprietary, or trade secret information.

13. To the extent any of Plaintiff's document requests or its interrogatory seek documents or answers that include expert material, including but not limited to protected materials, Defendant objects to any such requests and interrogatory as premature and expressly reserves the right to supplement, clarify, revise, or correct any or all responses to such requests, and to assert additional objections or privileges, in one or more subsequent supplemental response(s) in accordance with the time period for exchanging expert reports set by the Court.

14. Defendant incorporates by reference every general objection set forth above into each specific response set forth below. A specific response may repeat a general objection for emphasis or some other reason. The failure to include any general objection in any specific response does not waive any general objection to that request. Moreover, Defendant does not waive its right to amend its responses.

OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS

15. Defendant objects to Definition No. 16 of the **United States First Interrogatories to Roger Freeborn** regarding "document" or "documents" to the extent that it purports to impose obligations greater than those set forth in the Federal Rules of Civil Procedure. Defendant further objects to Definition No. 16 to the extent that it calls for documents protected from disclosure by the attorney-client privilege, deliberative process privilege, attorney work product doctrine, or any other applicable privilege.

OBJECTIONS AND RESPONSES TO INTERROGATORIES

Specific Requests as Numbered

INTERROGATORIES

1. **REQUEST:** Identify all entities in which you have an ownership interest, including the name of the entity, the ownership percentage, the address of the entity and the business in which the entity is engaged.

OBJECTION: This Interrogatory request information that has no relevance to this matter. Without waiving any objection or privilege, Defendant Responds as follows:

RESPONSE: NONE

2. **REQUEST:** Identify all debts that you owe any person or entity for any activity related to a Lens, System or Component and any debts owed to you by any person or entity for any activity related to a Lens, System or Component. Include the dates of origination, terms of repayment, interest rate and amount currently owed.

OBJECTION: This Interrogatory request information that has no relevance to this matter. Without waiving any objection or privilege, Defendant Responds as follows:

RESPONSE: NONE

3. **REQUEST:** Identify which customers have visited any System, Component or Lens and which customers have not visited any System, Component or Lens.

OBJECTION: Defendant reiterates and restates each Objection from above, and adds that this Interrogatory requests information subject to privilege, including attorney work product. The answer to this Interrogatory request can be derived or ascertained from the business records of a Defendant in this case or from an examination or inspection of such records, the burden of deriving or ascertaining the answer to this discovery request is substantially the same for the party requesting the discovery as it is for the Defendant. Defendant requests the protective order matter be settled prior to allowing the Plaintiff any such access or information. Defendant reserves the right to supplement this (and every other) Response. Without waiving any privilege, Defendant responds as follows:

RESPONSE: I do not have any information related to customers that have visited nor do I know of any list or record.

4. **REQUEST:** Identify by name, address, telephone number, and email address, any person or entity that hosts a website you have owned or operated since January 1, 2005.

RESPONSE: I have not operated any website since 2005 except the Facebook page and Youtube page as indicated in request number 6 below. Facebook address: 1 Hacker Way, Menlo Park, CA. I cannot find the phone number but if you find it ask for is Mark Zuckerberg.

5. **REQUEST:** Identify all websites (whether public or private), by URL address, web host and person(s) responsible for maintaining the website, that promote any System, Lens, or Component or any business activity involving a System, Lens, or Component, regardless of whether you maintain the website or it is owned or maintained on your behalf.

RESPONSE: NONE

6. **REQUEST:** Identify all social media accounts, by username and any other information required to access such account (including, but not limited to, Facebook, Twitter, Instagram, Snapchat, Tumblr, YouTube, Periscope, Pinterest, Google Plus, Flipboard, LinkedIn etc.) and email addresses you controlled or operated since January 1, 2005.

OBJECTION: While the scope of discovery is broad, it is, however, limited by the legitimate interests of an opposing party and requires a balancing of the probative value of the information sought with the burden placed upon the Defendant. Defendant hereby objects to the Plaintiff's Discovery on the grounds that said Discovery is overbroad, vague, overly burdensome, requests irrelevant, immaterial or inadmissible information or information protected

by privilege, and/or contains multipart questions in violation of law, rule or regulation. Defendant reiterates and restates each Objection from above, and adds that this Interrogatory requests information subject to privilege, including attorney work product. Further, this Interrogatory invades the Defendant's right to privacy by asking for information required to access the requested accounts. Further, the information sought is not relevant to the subject matter of the pending action, or if so, does not outweigh the prejudice to Defendant's constitutional right to privacy. Defendant requests the protective order matter be settled prior to allowing the Plaintiff any such access or information. Defendant reserves the right to supplement this (and every other) Response. Without waiving any privilege, Defendant responds as follows:

RESPONSE: Website or social media:

<https://www.youtube.com/user/coachfreeb?feature=mhee>

<https://www.facebook.com/CoachFree>

<https://twitter.com/coachfreeb>

<https://www.linkedin.com/in/roger-freeborn-37106310>

<https://plus.google.com/114006512496882180585/about>

E-mail address: coachfreeb@aol.com

Coachfreeb63@gmail.com

Coachfreeb@rapower3.com

7. **REQUEST:** Identify any training or education you have received in the field of federal income taxes and energy tax credits, including the preparation of federal tax returns.

OBJECTION: Defendant hereby objects to the Plaintiff's Discovery on the grounds that said Discovery is overbroad, vague, overly burdensome, requests irrelevant, immaterial or inadmissible information or information protected by privilege. Defendant reiterates and restates each Objection from above, and adds that this Interrogatory requests information subject to privilege, including attorney work product. Further, the incidents of education are so numerous that it is impossible to name them all; the main ones are related here. Defendant reserves the right to supplement this (and every other) Response. Without waiving any privilege, Defendant responds as follows:

RESPONSE: SELF-EDUCATED. Relied upon the letters from Anderson Law Center dated August 8, 2012, from Kirton McConkie dated October 31, 2012, and from Hansen, Barnett & Maxwell on August 15, 2005.

8. **REQUEST:** Identify any electricity grid access agreements, interconnection agreement, or any other agreement in which you obtained the right to provide electricity to any entity. Your response should include the names of the entity or person you entered into the agreement with, the date and the terms of the agreement.

OBJECTION: Defendant reiterates and restates each Objection from above, and adds that this Interrogatory requests information subject to privilege, including attorney work product. Further, interrogatories are not the proper procedure to procure documents. Defendant objects to the extent that it requests or requires Defendant to produce a document or tangible item. The

answer to this Interrogatory request can be derived or ascertained from the business records of a Defendant in this case or from an examination or inspection of such records, the burden of deriving or ascertaining the answer to this discovery request is substantially the same for the party requesting the discovery as it is for the Defendant. Defendant reserves the right to supplement this (and every other) Response. Without waiving any privilege, Defendant responds as follows:

RESPONSE: No, I have no knowledge of any agreement and have never had knowledge of such agreements.

9. **REQUEST:** Identify what efforts, if any, you made to make any application to the United States Department of the Treasury under Section 1603 of the American Recovery & Reinvestment Act of 2009 with respect to any Lens, System or Component. Your response should include the date of any application and date of response from the Government.

OBJECTION: Defendant reiterates and restates each Objection from above, and adds that this Interrogatory requests information subject to privilege, including attorney work product. Defendant reserves the right to supplement this (and every other) Response. Without waiving any privilege, Defendant responds as follows:

RESPONSE: NONE

10. **REQUEST:** Identify the product (i.e., electricity, heat, hot water, cooling, desalinization, solar process heat or any other product) that the Lens, Systems, and Components are intended to produce, either in the past, currently, or in the future. To the extent that any

product has been produced or is being produced, identify when it was produced, in what form, in what measurable amount and the revenues received for such product.

OBJECTION: Defendant reiterates and restates each Objection from above, and adds that this Interrogatory requests information subject to privilege, including attorney work product. Further, interrogatories are not the proper procedure to procure documents. Defendant objects to the extent that it requests or requires Defendant to produce a document or tangible item. The answer to this Interrogatory request can be derived or ascertained from the business records of a Defendant in this case or from an examination or inspection of such records, the burden of deriving or ascertaining the answer to this discovery request is substantially the same for the party requesting the discovery as it is for the Defendant. Defendant requests the protective order matter be settled prior to allowing the Plaintiff any such access or information. Defendant reserves the right to supplement this (and every other) Response. Without waiving any privilege, Defendant responds as follows:

RESPONSE: It is my understanding that the lenses produce heat which turns water to steam, which in turn moves a turbine that produces energy. Similar to a coal power plant but with solar power. I am unaware of the status of production, whether or in what form and measurements. I am unaware of the amount of revenues received from the production that the solar power creates.

11. **REQUEST:** Identify what, and how many Lenses, Systems and Components have been placed in service, as defined in 26 U.S.C. § 48(a)(1) and Treas. Reg. § 1.46-3(d). Your response should include the dates any Lens, System or Component was placed in service.

OBJECTION: Defendant reiterates and restates each Objection from above, and adds that this Interrogatory requests information subject to privilege, including attorney work product. The answer to this Interrogatory request can be derived or ascertained from the business records of a Defendant in this case or from an examination or inspection of such records, the burden of deriving or ascertaining the answer to this discovery request is substantially the same for the party requesting the discovery as it is for the Defendant. Defendant requests the protective order matter be settled prior to allowing the Plaintiff any such access or information. Defendant reserves the right to supplement this (and every other) Response. Without waiving any privilege, Defendant responds as follows:

RESPONSE: I am not aware of how many lenses, systems and components have been placed in service. I have no knowledge of specific dates.

12. **REQUEST:** Describe how lenses are accounted for, including how you determine which lens(es) belong to which customer, recording when each lens was placed in service (as defined in 26 U.S.C. § 48(a)(1) and Treas. Reg. § 1.46-3(d)), whether or not each customer's down payment was paid, the outstanding principal remaining due for each lens, the revenue produced by each lens, and the amount of rental income due to each customer.

OBJECTION: Defendant reiterates and restates each Objection from above, and adds that this Interrogatory requests information subject to privilege, including attorney work product. The answer to this Interrogatory request can be derived or ascertained from the business records of a Defendant in this case or from an examination or inspection of such records, the burden of deriving or ascertaining the answer to this discovery request is substantially the same for the

party requesting the discovery as it is for the Defendant. Defendant requests the protective order matter be settled prior to allowing the Plaintiff any such access or information. Defendant reserves the right to supplement this (and every other) Response. Without waiving any privilege, Defendant responds as follows:

RESPONSE: I do not know nor have I kept records or seen any records as outlined in the request related to lenses placed in service, lenses accounted for, which if any customer had rights to what lenses. I have seen accounting in the past of down payments made towards lenses and commissions earned but I have no recollection of where those documents are or who would have them. I assume the company would have them.

13. **REQUEST:** Identify by name, address and telephone number every domestic and foreign bank and/or financial institution in which you have an account or over which you have signatory authority or other such control, and provide the account number, and type of account. In addition, identify the record owner or title of each account.

OBJECTION: While the scope of discovery is broad, it is, however, limited by the legitimate interests of an opposing party and requires a balancing of the probative value of the information sought with the burden placed upon the Defendant. Defendant hereby objects to the Plaintiff's Discovery on the grounds that said Discovery is overbroad, vague, overly burdensome, requests irrelevant, immaterial or inadmissible information or information protected by privilege, is unspecific as to time and/or contains multipart questions in violation of law, rule or regulation. Further, this Interrogatory invades the Defendant's right to privacy by asking for requested accounts. Further, the information sought is not relevant to the subject matter of the

pending action, or if so, does not outweigh the prejudice to Defendant's constitutional right to privacy. Defendant requests the protective order matter be settled prior to allowing the Plaintiff any such access or information. Defendant reserves the right to supplement this (and every other) Response. Without waiving any privilege, Defendant responds as follows:

RESPONSE: Key Bank. Checking & Saving; Number ending in #5554. I am the record owner.

14. **REQUEST:** Identify the gross income you have received in each year since 2005 from any source, by source, for any activity related to any System, Lens or other Component.

OBJECTION: This Interrogatory invades the Defendant's right to privacy by asking for said income. Information regarding tax returns, including income tax returns, W-2 and/or 1099 forms, is privileged under federal and state law. Further, the information sought is not relevant to the subject matter of the pending action, or if so, does not outweigh the prejudice to Defendant's constitutional right to privacy. Defendant requests the protective order matter be settled prior to allowing the Plaintiff any such access or information. Defendant reserves the right to supplement this (and every other) Response. Without waiving any privilege, Defendant responds as follows:

RESPONSE: I only have 2015 which was \$67,844.56. I received a 1099-Misc from Rapower-3, LLC. I am attempting to find my historic tax records and will supplement this response as soon as I can find the 1099-Misc from the companies.

15. **REQUEST:** Identify each instance in which a customer complained that the customer was not receiving adequate rental income from their Lens or Lenses.

RESPONSE: I have never heard anyone ever complain.

16. **REQUEST:** Identify all attorneys or other tax advisors you consulted or from whom you received tax advice regarding any Lens, System or Component, including the dates consulted, the dates any advice was received, and the form of the advice (*i.e.*, oral, email, memoranda, opinion letters, other written correspondence, etc.).

OBJECTION: Defendant reiterates and restates each Objection from above, and adds that this Interrogatory requests information subject to privilege, including attorney work product. Defendant requests the protective order matter be settled prior to allowing the Plaintiff any such access or information. Defendant reserves the right to supplement this (and every other) Response. Without waiving any privilege, Defendant responds as follows:

RESPONSE: Relied upon the letters from Anderson Law Center dated August 8, 2012, from Kirton McConkie dated October 31, 2012, and from Hansen, Barnett & Maxwell on August 15, 2005.

VERIFICATION

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that I have read the foregoing Responses, which are based on a diligent and reasonable effort by me to obtain information currently available. I reserve the right to make changes in or additions to any of these answers if it appears at any time that errors or omissions have been made or if more accurate or complete information becomes available. Subject to these limitations, these Responses are true to the best of my present knowledge, information, and belief.

Executed this 17th day of May 2016.

/s/ Roger Freeborn

Roger Freeborn, signed electronically by
Donald Reay with permission.