

Denver C. Snuffer, Jr. (#3032) [denversnuffer@gmail.com](mailto:denversnuffer@gmail.com)

Steven R. Paul (#7423) [spaul@nsdplaw.com](mailto:spaul@nsdplaw.com)

Daniel B. Garriott (#9444) [dbgarrriott@msn.com](mailto:dbgarrriott@msn.com)

Joshua D. Egan (15593) [Joshua.egan@me.com](mailto:Joshua.egan@me.com)

**NELSON, SNUFFER, DAHLE & POULSEN**

10885 South State Street

Sandy, Utah 84070

Telephone: (801) 576-1400

Facsimile: (801) 576-1960

*Attorneys for Defendants*

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' PRETRIAL DISCLOSURES**

Judge David Nuffer

Magistrate Judge Evelyn J. Furse

Defendants, by and through counsel, submit the following pretrial disclosures pursuant to  
Fed. R. Civ. P. 26(a)(3).

## **WITNESSES**

Defendants intend to call the following witnesses at the time of trial, scheduled to begin before this Court on April 2, 2018:

### **A. WILL CALL AS WITNESSES:**

1. Neldon P. Johnson
2. Gregory Shepard
3. Paul Jones
4. Rick Jameson
5. Kurt Hawes

### **B. MAY CALL AS WITNESSES:**

1. Glenda Johnson
2. Matt Shepard
3. LeGrand Johnson
4. Randall Johnson
5. Kenneth Birrell
6. Todd Anderson
7. Jessica Anderson
8. Any witness identified in Plaintiff's Initial Disclosures or Plaintiff's designation of trial witnesses.
9. Any witness identified in Defendants' Initial Disclosures or any amendment thereto.

## **EXHIBITS**

Defendants intend to rely on the following documents or exhibits at the time of trial, scheduled to begin on April 2, 2108.

1. All documents obtained from Plaintiff in discovery, including but not limited to those documents identified on United States' Fed. R. Civ. P. 26(a)(3)(A)(iii) Exhibit List, dated February 9, 2018.
2. All documents used or relied on by Plaintiff's expert, Thomas R. Mancini, as disclosed in his expert report or any supplementation thereto.
3. Any document identified in Defendants' pretrial disclosures, any document produced by Defendants in discovery and/or any document used, identified or referred to in any

deposition, pleading, hearing or correspondence by either Plaintiff's or Defendants' counsel.

4. Defendant specifies the individual exhibits listed on the attached schedule of exhibits and the following specific categories of document which have previously been provided to counsel or will be provided to counsel before trial.
5. Defendants have objected to the use of all depositions in lieu of live testimony.<sup>1</sup> Without waiving this objection, Defendants counter-designate the following excerpts from the following depositions in response to Plaintiff's disclosures:

Deposition of Robert Aulds, taken March 14, 2017:

168: 10-170: 5

171: 16-173: 8

173:10-21

173: 24-175: 2

175: 8-177: 18

177: 21-178: 1

178: 8-11

178:13-179: 9

179: 12-181: 6

181: 9-15

181: 18-182: 2

182: 6-183: 10

183: 12-187: 24

---

<sup>1</sup> See Defendants' Objection to Plaintiff's Trial Exhibits and Use of Depositions in Lieu of Live Testimony.

188: 1-10

188: 13-190: 8

190: 11-17

190: 20-192: 12

192: 14-23

Deposition of Roger Halverson, taken October 18, 2016

10: 17-11: 7

68: 22-69: 16

77: 4-10

81: 24-82-7

Deposition of Peter Gregg, taken November 16, 2016:

167: 13-18

168: 2-5

168: 10-16

169: 3-13

169: 14-18

169: 23-170: 9

170: 14-19

170: 22-25

Deposition of PacifiCorp, taken November 15, 2016:

14: 5-24

57: 6-24

58: 8-12

60: 13- 61: 21

62: 4-10

62: 17-20

65: 18-23

66: 17-24

119: 4-21

122: 4-23

128: 18-23

132: 9-19

186: 2-16

187: 11-21

Deposition of John Howell, taken August 23, 2017

33:19 – 34:12

35 – 36

39:2-16

49:11 – 51:2

59:7-25

62:6 – 63:8

76:24 -77:17

81:24 – 82:8

84:7 – 85:13

87:16 – 88:18

89:8 – 91:5

95:3 -11

96:22 – 98:6

105:19 – 106:19

107:10 – 108:1

133:8-13

152:16-24

156:6-13

157:4-10

157:21 – 19

183:2-6

190:15 - 193:21

194:6-18

202:6-11

209:24 – 210:12

212:20 – 213:14

217:16 – 218:3

219:5-25

223:23- 225:18

235:10 – 236:9

236:23 – 238:1

238:11-20

239:1 – 244:24

Deposition of Mike Penn, taken March 13, 2017:

48: 19-23

49: 4- 50: 1

52: 18-23

54: 19-21

59: 22- 60: 8

71: 19-21

71: 25- 72: 15

72: 23- 73: 3

75: 11- 76: 22

77: 1-8

77: 15-25

78: 5-11

88: 5-11

Brian Zeleznik, August 2, 2016

88:1-18

139:9-17

140:5 – 141:14

146:25 – 147:7

148:15 – 149:1

162:15 – 164:4

214:25 – 215:14

Dated this 23rd day of February, 2018.

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' PRETRIAL DISCLOSURES** was sent to counsel for the United States in the manner described below.

Erin Healy Gallagher  
Erin R. Hines  
Christopher R. Moran  
US Dept. of Justice  
P.O. Box 7238  
Ben Franklin Station  
Washington, DC 20044  
*Attorneys for USA*

Sent via:  
 Mail  
 Hand Delivery  
 Email: [erin.healygallagher@usdoj.gov](mailto:erin.healygallagher@usdoj.gov)  
[erin.r.hines@usdoj.gov](mailto:erin.r.hines@usdoj.gov)  
[christopher.r.moran@usdoj.gov](mailto:christopher.r.moran@usdoj.gov)  
 Electronic Service via Utah Court's e-filing program

/s/ Denver C. Snuffer, Jr.  
*Attorneys for Defendants*

# UNITED STATES DISTRICT COURT

Central Division

DISTRICT OF

Utah

UNITED STATES OF AMERICA,

## EXHIBIT AND WITNESS LIST

V.

RAPOWER-3, LLC, ET AL

Case Number: 2:15-cv-00828-DN-EJF

PRESIDING JUDGE David Nuffer					PLAINTIFF'S ATTORNEY Erin Healy-Gallagher	DEFENDANT'S ATTORNEY Denver Snuffer
TRIAL DATE (S) April 2-5, 19, 20, 23-26, May 9, June 4					COURT REPORTER	COURTROOM DEPUTY
PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS* AND WITNESSES	
	3				Bates #US2858-59 IAUS Solar webpage	
	15				Bates #US1796-1797 RaPower webpage re: Technology	
	18				Bates #US1749-1761 Kirton McConkie Memorandum re: taxes	
	22				Bates #HBM1-5 Tax advice Hansen, Barnett & Maxwell, CPAs	
	31				Bates #US1532-1535 Greg Shepherd email	
	33				Bates #US1120-1122 IRS Audit Appeal Basics	
	143				Bates #Olsen_P&E2352-2355 Greg Shepherd email	
	150				Bates #Olsen_P&E1362-1365 Matt Shepherd email	
	160				Bates #Olsen_P&E407-413 Bolander CPA appeal for Olson to IRS	
	185				Bates #Halverson_Roger 65, 68-69, Letter to Patty Lambrecht	
	188				Bates #Halverson_Roger-66, Check to Patty Lambrecht	
	190				Bates #Halverson_Roger67 \$440.22 Check on 7/5/11 to Lambert	
	210				Bates #Gregg-P&R-1180-1181, Email from R. Freeborn	
	211				Bates #Gregg-P&R-1593, Email from R. Freeborn	
	224				Bates #Gregg-P&R-2753-2754, Email G. Shepard Re: Solar Plant Diagram	
	225				Bates #Gregg-P&R-1746-1751. Email from G. Shepard Re Audit/Appeal letter	
	231				Bates #Gregg-P&R-3220-3224, Email from G. Shepard Re Audit-McConkie letter	
	236				Bates #Gregg-P&R-3238, Email from G. Shepard Re Success	
	241				Bates #Gregg-P&R-2704, Email from G. Shepard Re Ra3 tax info-working with CPA	
	248				Bates #Gregg-P&R-1997, Email from R. Freeborn Re IRS clarification	
	250				Bates #Gregg-P&R-1348, Email from G. Shepard Re Ra3 new info	
	255				Bates #Gregg-P&R-3192-3211, Email from Shepard Re Audit/Appeal-Bonus info	

261				Bates #Gregg-P&R-2036-2039, Email from Shepard Re Tour photos, transformer
262				Bates #Gregg-P&R-2454-2458, Email from Shepard Re Ra3 History and Taxes, photos
264				Bates #Gregg-P&R-2164-2165, Email from Shepard Re Important info - photos
271				Bates #Gregg-P&R-1404-1406, Email from Shepard Re Audit/Appeal - breaking news,
275				Bates #Gregg-P&R-1197-1201, Email from Shepard Re Photos - delta tour
276				Bates #Gregg-P&R-1080-1081, Email from Shepard Re Ra3 news-heat storage
278				Bates #Gregg-P&R-680-683, Email from Shepard Re RaPower3 Team memo #51
283				Bates #Gregg-P&R-1778-1783, Email from Shepard Re Paul Jones Letter - generic
284				Bates #Gregg-P&R-3075, Email from Shepard Re IRS update
287				Bates #Gregg-P&R-3020-3024, Email from Shepard Re IRS hazards of litigation, article
288				Bates #Gregg-P&R-1017-1022, Email from Shepard Re March 2014 Tour Guide photos
289				Bates #Gregg-P&R-960-963, Email from Shepard Re RaPower3 Team Memo #12
290				Bates #Gregg-P&R-1335, Email from Shepard Re audit update
293				Bates #Gregg-P&R-3225-3231, Email from Shepard Re IRS appeal info, photos, etc.
335				Bates #Gregg-P&R-1656-1658, Email from Shepard Re audit assistance
340				Bates #Gregg-P&R-1132-1141, Email from Shepard Re "audit ammunition"
355				Bates #KM00083-90, Email from Jason Clement Re: Accountant Packet, attachment
359				Bates #KM00050-53, Copy of Anderson letter dated 11/15/10
360				Bates #KM00054-56, Copy of Cloward Sorenson letter to IAS re tax credits
366				Bates #KM00212, 1/14/13 email from G. Johnson to K. Birrell
367				Bates #KM00213-226, 1/14/13 email from K. Birrell to Glenda Johnson
368				Bates #KM00227-259, 1/14/13 email and revised "form" versions of SOLCO I agr.
374				Bates #MM004327-4328, 8/25/13 email from Shepard Re solar priorities
376				Bates #MM004391-4394, Client billing from Mantyla McReynolds
377				Bates #MM004395-4409, Client billing from Mantyla McReynolds
405				Bates #Gregg_P&R-000983-986 1/23/14 email from Greg Shepard to various recipients
421				Bates #Shepard_Greg-03437-3441 Greg Shepard email
439				Bates #Shepard_Greg-03681-3682 Greg Shepard email
442				Bates #Shepard_Greg-00179-199 responses to Deseret News article
453				United States' Objections and Responses to Defendants' First Discovery Requests U.S.
488				Notice of Subpoena to United States
536				Bates #Ra3 001980-2012 Draft Power Purchase Agreement
542				Bates #Ra3 014137 RaPower3 Money Transferred and Expenses for IAS 8/11-10/11
543				Bates #Ra3 012657 RaPower3 Money Transferred and Expenses for IAS 5/12 - 5/12

576				Bates #Anderson 000153-160 Memo from the NATP
586				Bates #Howell_John-002450-2459 Various site photographs
607				John Howell letter to IRS dated 5/28/15
611				Bates #MM001542 RaPower3 Questionnaire
612				Bates#MM001554 Rights to Technology Amortization Schedule dated 6/30/10
621				Bates #Anderson 00163-173 RaPower3 Operation and Maintenance Agreement
631				Bates #US 001639-1640 Screen shot of rapower3.com/#tax-forms (5.1.2014)
643				Expert Report of Neldon Johnson
651				Expert Report of Kurt O. Hawes
				Expert Report of Richard Jameson
1008				Bates #TRMancini119-253 US DOE Renewable Energy Data Book
1050				Bates #TRMancini28-68 Contract for Services
1051				Bates #TRMancini68.0001-68.0006 Amendment to Contract for Services
1004				Bates #TRMancini16-19 Statement of Expert Services
1500				Video of site
1501				Video of site
1502				Video of site
1503				Video of site
1504				Video of site
1505				Video of site
1506				Video of site
1507				Video of site
1508				Video of site
1509				Video of site
1510				Bates #Johnson000398-417, Fresnel Lens Theoretical Analysis
1511				Bates #Johnson000418 Email from Bill Pack to Randy Johnson
1512				Bates #Johnson000419-420 Email from Mike Mazur to Randy Johnson
1513				Bates #Johnson000421-425 Email from Randy Johnson to Mike Mazur
1514				Bates #Johnson000426 Email from Randy Johnson to Mike Mazur Re solar site

\* Include a notation as to the location of any exhibit not held with the case file or not available because of size.

