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IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF UTAH

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>RAPOWER-3, LLC, INTERNATIONAL AUTOMATED SYSTEMS, INC., LTB1, LLC, R. GREGORY SHEPARD, NELDON JOHNSON, and ROGER FREEBORN,</p> <p style="text-align: center;">Defendants.</p>	<p><b>UNITED STATES’ OBJECTIONS AND RESPONSES TO DEFENDANTS’ FIRST DISCOVERY REQUESTS TO PLAINTIFF UNITED STATES</b></p> <p>Civil No. 2:15-cv-00828-DN-BCW</p> <p>Judge David Nuffer Magistrate Judge Evelyn J. Furse</p>
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Pursuant to Federal Rules of Civil Procedure 33 and 34, Plaintiff, the United States of America, answers Defendants RaPower-3, LLC, International Automated Systems, Inc., LTB1, LLC, and Neldon Johnson’s First Discovery Requests to Plaintiff United States as follows.



**Definitions of Terms Used in This  
Request**

1. The terms “you,” “yourself,” and “your” refers to the person or entity answering this discovery request, and to any of your employees or agents.

**OBJECTION:**

The United States objects to the definition of “you,” “yourself,” and “your” as overbroad, unduly burdensome, and disproportionate to the needs of this case in that it effectively encompasses every entity and individual that works for the United States government. Moreover, the United States objects to this definition as potentially seeking information not relevant to any claim or defense in this action, and disproportionate to the needs of this case to the extent it includes numerous IRS components and other government agencies with no involvement with this lawsuit. The United States also objects to this definition to the extent it includes components of the United States government in possession of information barred from disclosure by 26 U.S.C. § 6103.

2. The term “IRS” refers to the Internal Revenue Service.

**OBJECTION:**

The United States objects to the definition of “IRS” as overbroad, unduly burdensome, and disproportionate to the needs of this case in that it effectively encompasses numerous IRS components with no involvement with this lawsuit. The United States also objects to this definition to the extent it includes components of the IRS in possession of information barred from disclosure by 26 U.S.C. § 6103. For purposes of its responses to these discovery requests,

the United States has limited the definition of “IRS” to any component of the Internal Revenue Service assigned to this litigation.

### INTERROGATORIES

1. Please identify all witnesses you intend to use at trial, including experts.

#### OBJECTION:

The United States objects to Interrogatory No. 1 as premature. The scheduling order in this case sets forth the schedule for pretrial disclosures, including the disclosure of expert witnesses and other trial witnesses.<sup>1</sup> The United States also objects to Interrogatory No. 1 because it calls for disclosing attorney work-product.

2. Please identify all evidence upon which any experts will or may rely upon in forming their opinion at trial.

#### OBJECTION:

The United States objects to Interrogatory No. 2 as premature. The scheduling order in this case sets forth the schedule for pretrial disclosures, including the disclosure of expert witnesses.<sup>2</sup> The United States’ expert witness disclosure will contain all of the information required by Fed. R. Civ. P. 26(a)(2)(B).

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<sup>1</sup> ECF Doc. 37 ¶¶ 4(a), 7(a).

<sup>2</sup> *Id.* ¶ 4(a).

The United States objects to Interrogatory No. 8 because it seeks non-public information regarding the tax returns and tax return information of parties and unknown non-parties to this case. The United States objects to providing such information responsive to Interrogatory No. 8 that is protected against disclosure by 26 U.S.C. § 6103 and/or § 6110(c).

The United States also objects to providing information responsive to Interrogatory No. 8 that is protected by the attorney-client privilege, attorney work-product protection, and/or the deliberative process privilege.

### **REQUEST FOR PRODUCTION OF DOCUMENTS**

**Request No 1: Any and all documents that evidence, relate to, or refer to the claims in this case whether or not obtained by third-parties, governmental employees, or otherwise.**

#### **OBJECTION AND RESPONSE:**

The United States objects to Request No. 1 because it seeks “[a]ny and all documents that evidence, relate to, or refer to” the United States claims, regardless of the source of those documents, rendering Request No. 1 vague, ambiguous, overly broad, unduly burdensome, and beyond the proper scope of discovery. Request No. 1 does not “describe with reasonable particularity each item or category of items to be inspected.”<sup>14</sup> Instead, it indiscriminately seeks to sweep the entire case.<sup>15</sup>

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<sup>14</sup> See Fed. R. Civ. P. 34(b)(1)(A); *Regan-Touhy v. Walgreen Co.*, 526 F.3d 641, 649-50 (10th Cir. 2008).

<sup>15</sup> See *IBP, Inc. v. Mercantile Bank of Topeka*, 179 F.R.D. 316, 323 (D. Kan. 1998) (sustaining objection where improper request “asks for ‘[a]ny and all records, documents or things relied upon by IBP in support of its Complaint’” because the request “is overly broad and unduly burdensome on its face.”).

Further, the United States objections to Request No. 1 because it is not “proportional to the needs of th[is] case.”<sup>16</sup> The parties addressed proportional discovery from the United States in the Attorneys’ Planning Meeting Report.<sup>17</sup> The United States objects to Request No. 1 because it exceeds the scope of the agreed procedure for, and limitations on, documents and information to be produced by the United States.<sup>18</sup>

The United States further objects to Request No. 1 as overly broad, unduly burdensome, and oppressive because it fails to limit its scope to a time-period relevant to this case.

The United States objects to Request No. 1 to the extent it is a request for the production of documents that are publicly available; are in Defendants’ own possession, custody, or control; and/or have been produced by any Defendant.

The United States objects to Request No. 1 because it seeks non-public information regarding the tax returns and tax return information of parties and unknown non-parties to this case. The United States objects to providing such information responsive to Request No. 1 that is protected against disclosure by 26 U.S.C. § 6103 and/or § 6110(c).

The United States also objects to providing information responsive to Request No. 1 that is protected by the attorney-client privilege, attorney work-product protection, and/or the deliberative process privilege.

The United States has complied with Fed. R. Civ. P. 26(a)(1)(A) and has produced documents to Defendants throughout discovery. The United States does not object to Request

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<sup>16</sup> See Fed. R. Civ. P. 26(b)(1).

<sup>17</sup> ECF Doc. 35 ¶ 2(d).

<sup>18</sup> *Id.*

No. 1 to the extent that it seeks documents which the United States has already produced to Defendants, which are marked with Bates numbers US000001 through US004273.

The United States does not object to Request No. 1 to the extent that it seeks tax returns for a subset of Defendants' customers for tax years 2013 through 2015, which the United States may use to support its claims. The United States will produce those tax returns on or before May 15, 2017.

The United States does not object to Request No. 1 to the extent that it seeks documents that the United States has received through third-party subpoenas. Many such documents, with the following Bates labels, have already been produced to Defendants:

Alecia\_Y-00001 through Alecia\_Y-00143

Anderson\_Todd-00001 through Anderson\_Todd-00049

ANDERSON\_MATT000001 through ANDERSON\_MATT000432

Aulds\_R&M-00001 through Aulds\_R&M-00713

Ayres\_Evan000001 through Ayres\_Evan000020

BANKOFAMERICANFORK-00001 through BANKOFAMERICANFORK-02662

Battle\_Hinton-00001 through Battle\_Hinton-00225

Bell\_Richard-00001 through Bell\_Richard-00350

BOLANDER-BRYAN-000001 through BOLANDER-BRYAN-000826

Borden\_Mike-00001 through Borden\_Mike-00480

Brennan\_Paul-00001 through Brennan\_Paul-05598

Brumfield\_T&J-00001 through Brumfield\_T&J-00668

BT\_000001 through BT\_000310

CARTER-MARISSA-000001 through CARTER-MARISSA-001276

Chaston\_S&D-00001 through Chaston\_S&D-00036

Coates\_W&M-00001 through Coates\_W&M-00186

Cook\_R&G-00001 through Cook\_R&G-00036

Crawford\_J&D-00001 through Crawford\_J&D-00031

CYPRUS\_000001 through CYPRUS\_000982

Dalebout\_Jeff-00001 through Dalebout\_Jeff-00173

Everage\_J&L-00001 through Everage\_J&L-00219

FREEBORN-JENNIFER-00001 through FREEBORN-JENNIFER-00385

Gilmore\_E&M-00001 through Gilmore\_E&M-00280

Gregg\_P&R digital videos

Gregg\_P&R-000001 through Gregg\_P&R-005214

Griffin\_S&T-00001 through Griffin\_S&T-00895

Hadderton\_C&M-00001 through Hadderton\_C&M-00826

Halverson\_Roger-00001 through Halverson\_Roger-00341

Hamblin\_Chase-00001 through Hamblin\_Chase-00016

Hamblin\_R&C-00001 through Hamblin\_R&C-01532

Hart\_B&V-00001 through Hart\_B&V-00035

HB&M-00001 through HB&M-00006

Holmes\_F-000001 through Holmes\_F-000315

HOWELL\_JOHN-000001 through HOWELL\_JOHN-009681

Jameson 000001 through Jameson 023002

JP\_Morgan\_Chase-00001 through JP\_Morgan\_Chase-02306

KeyBank-000001 through KeyBank-000253

KM00001 through KM00322

Kontos\_N-00001 through Kontos\_N-00863

LUCITE0001 through LUCITE0981

Lunn\_F&L-00001 through Lunn\_F&L-00916

Lutzker\_M&S-00001 through Lutzker\_M&S-00151

Lyman\_G-00001 through Lyman\_G-00430

MANLEY\_MARK-000001 through MANLEY\_MARK-000004

Mayer\_R&B-00001 through Mayer\_R&B-00034

MCCU-000001 through MCCU-001523

MCGAN\_L-00001 through MCGAN\_L-01013

Minnon\_Ronald-00001 through Minnon\_Ronald-00022

MM000001 through MM004410

Negron\_Derek-00001 through Negron\_Derek-00080

NEUSE\_SHARON\_JAMES-000001 through NEUSE\_SHARON\_JAMES-000065

Neven\_L-00001

Olsen\_P&E-00001 through Olsen\_P&E-03537

Otto\_S&G-00001 through Otto\_S&G-00028

PAC00001 through PAC02425

Pears\_L&V-000001 through Pears\_L&V-0045011

Pershin\_J&S-00001 through Pershin\_J&S-00143



Pionk\_H&M-00001 through Pionk\_H&M-00027

PSK000001 through PSK000072

Riter\_Kenneth-00001 through Riter\_Kenneth-01424

Roehm\_Richard-00001 through Roehm\_Richard-00019

Rowbotham\_R-00001 through Rowbotham\_R-01275

Russell\_Gregory-00001 through Russell\_Gregory-00003

Scraggs\_Joe-00001 through Scraggs\_Joe-00089

Searcy\_R&K-00001 through Searcy\_R&K-00005

Shearer\_Bruce-00001 through Shearer\_Bruce-00112

Shearer\_Ster-00001 through Shearer\_Ster-00470

Sikich\_M&C-00001 through Sikich\_M&C-03736

Stevenson\_C&R-00001 through Stevenson\_C&R-00038

Sullivan\_L&C-00001 through Sullivan\_L&C-00005

TCF-000001 through TCF-000089

Tilden\_Robert-00001 through Tilden\_Robert-00019

Vega\_Christina-00001 through Vega\_Christina-00060

Welborn\_K&M-00001 through Welborn\_K&M-00229

WF-000001 through WF-011634

White\_Charles-00001 through White\_Charles-00185

Williams\_Lynette-00001 through Williams\_Lynette-00051

WOODWARD-JESSICA-00001 through WOODWARD-JESSICA-01215

Woodson\_J&J-00001 through Woodson\_J&J-02033

ZELEZ\_B&A000001 through ZELEZ\_B&A002231

ZELEZ\_JandC-000001 through ZELEZ\_JandC-001434

ZELEZ\_JULIE-000001 through ZELEZ\_JULIE-01057

Zions\_Bank-000001 through ZIONS\_BANK-009136

Please be sure to note any confidentiality designations for these documents which are either indicated on the documents themselves or were included in the United States' letters covering the production of these documents.

Additional documents responsive to third-party subpoenas have been produced and processed. Those documents, which are being produced along with these Objections and Responses, are:

BANKOFAMERICANFORK-002663 through BANKOFAMERICANFORK-002726

CYPRUS\_000983 through CYPRUS\_001056

JP\_MORGAN\_CHASE-02307 through JP\_MORGAN\_CHASE-02420

KeyBank-000254 through KEYBANK-002243<sup>19</sup>

WF-011635 through WF-013635

ZIONS\_BANK-009137 through ZIONS\_BANK-009221

The United States does not object to Request No. 1 to the extent that it seeks documents that the United States has marked for identification, to date, as Plaintiff's Exhibits. The United States has produced or otherwise made available Pl. Ex. 1 through Pl. Ex. 416 to Defendants.

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<sup>19</sup> We received KEYBANK-000254 through KEYBANK-002053 in response to our first subpoena to Key Bank. Those documents were inadvertently omitted from our production of March 30, 2017.

Except for the documents that the United States has produced, is producing with these Objections and Responses, or states that it will produce in this Response, the United States objects to Request No. 1 and, to the extent responsive documents exist in the United States' possession, custody, or control, they are being withheld. *See* Fed. R. Civ. P. 34(b)(2)(C).

Dated: May 1, 2017

/s/ Erin Healy Gallagher  
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**CERTIFICATE OF SERVICE**

I hereby certify that on, May 1, 2017, I delivered the foregoing via email and hard copy, including one disc of responsive documents, to:

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*/s/ Erin Healy Gallagher*  
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