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IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF UTAH, CENTRAL DIVISION

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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

**UNITED STATES' MOTION FOR  
ENTRY OF ORDER FOR COSTS OF  
ENFORCING DISCOVERY ORDERS**

Chief Judge David Nuffer  
Magistrate Judge Evelyn J. Furse

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On August 17, 2017, the United States filed a motion to compel Defendants to produce five categories of documents and information.<sup>1</sup> This Court granted the motion and ordered Defendants to produce all documents and information by September 28.<sup>2</sup> Defendants failed to produce three categories of documents and information by the September 28 deadline:

- The computer program, or data extracted from it, that (among other things) purportedly tracks solar lens customer names and sales, serial numbers of lenses, and the location of any customer's lens;
- All RaPower-3 solar lens purchase agreements with customers since 2010; and
- The solar lens purchase contract between SOLCO I and a "company back East" with a down-payment of \$1 million.<sup>3</sup>

On October 11, the United States filed a motion for sanctions under [Fed. R. Civ. P. 37\(b\)\(2\)\(A\)](#) and (C) against Defendants for their failure to produce.<sup>4</sup> After a hearing, this Court granted the United States' motion, finding that sanctions were "necessary to ensure compliance with [the order on the motion to compel] given Defendants' continued obstruction of discovery."<sup>5</sup> The October 25 Order required Defendants to, among other things, 1) allow the United States and its contractors to enter onto their property to obtain copies of the information and documents Defendants were ordered to produce and 2) pay the United States' costs for enforcing this Court's discovery orders, including the costs of the site visit.<sup>6</sup> These costs included

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<sup>1</sup> [ECF No. 210](#).

<sup>2</sup> [ECF No. 217](#). The Magistrate Judge's full order was entered on the docket on September 13, 2017. [ECF No. 218](#).

<sup>3</sup> [ECF No. 235](#) ¶ 1.

<sup>4</sup> [ECF No. 226](#).

<sup>5</sup> [ECF No. 235](#) ¶ 2.

<sup>6</sup> [ECF No. 235](#) ¶¶ 3-11.

“the travel costs for one attorney for the United States and the fees for the forensic computer expert, the videographer, and copying or imaging the hard copy documents.”<sup>7</sup>

Defendants objected to the Magistrate Judge’s October 25 Order.<sup>8</sup> This Court overruled their objection.<sup>9</sup> The Court concluded that the October 25 Order was “just and appropriate to correct Defendants’ failure to obey an order to produce relevant and responsive documents in their possession, custody, or control.”<sup>10</sup>

The site visit occurred on February 28, 2018. Consistent with the October 25 Order, the United States sent detailed information about its costs to Defendants 30 days later, on March 30, 2018.<sup>11</sup> The Court ordered the parties to “agree to costs and fees within thirty (30) days”<sup>12</sup> – so, no later than May 1. Defendants did not respond by May 1.<sup>13</sup> Counsel for the United States sent an email to counsel for Defendants on May 9, 2018, asking for a response.<sup>14</sup> To date, Defendants have not responded.

Therefore, the United States asks that this Court enter an order that Defendants pay \$16,195.26, as detailed in Plaintiff’s Exhibit 908, to the United States for its costs of enforcing this Court’s discovery orders.

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<sup>7</sup> ECF No. 235 ¶¶ 4, 11(a).

<sup>8</sup> ECF No. 238.

<sup>9</sup> ECF No. 283.

<sup>10</sup> ECF No. 283 at 7.

<sup>11</sup> ECF No. 235 ¶ 11(b); Pl. Ex. 908 at 1-7

<sup>12</sup> ECF No. 235 ¶ 11(c).

<sup>13</sup> See Pl. Ex. 908 at 8.

<sup>14</sup> Pl. Ex. 908 at 8.

**CERTIFICATION IN ACCORDANCE WITH FED. R. CIV. P. 37(a)(1) &  
THE SHORT FORM DISCOVERY MOTION PROCEDURE (Doc. No. 115)**

The United States' efforts to meet and confer with Defendants are described in the motion.

Dated: May 29, 2018

Respectfully submitted,

*/s/ Erin Healy Gallagher*

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***ATTORNEYS FOR THE  
UNITED STATES***

**CERTIFICATE OF SERVICE**

I hereby certify that on May 29, 2018, the foregoing document and its exhibit were electronically filed with the Clerk of the Court through the CM/ECF system, which sent notice of the electronic filing to all counsel of record.

*/s/ Erin Healy Gallagher*  
ERIN HEALY GALLAGHER  
Trial Attorney