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

<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 style="text-align: center;">Civil No. 2:15-cv-00828-DN-EJF</p> <p>DEFENDANTS’ RESPONSE TO UNITED STATES’ MOTION FOR STATUS CONFERENCE OR IN THE ALTERNATIVE REQUEST TO SUBMIT FOR DECISION [Doc. 438]</p> <p style="text-align: center;">Judge David Nuffer Magistrate Judge Evelyn J. Furse</p>
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Defendants, International Automated Systems, Inc., LTB1, LLC, R. Gregory Shepard,
and Neldon Johnson, hereby respond to United States Motion for Status Conference or in the
Alternative Request to Submit for Decision [\[Doc. 438\]](#) as follows:

Defendants note that the bankruptcy case, *In Re RaPower-3*, remains as an active matter.
Although a Motion to Withdraw the Reference, and a Motion to Dismiss the Bankruptcy are

pending before the Bankruptcy Court, those motions have yet to be decided by the bankruptcy judge.

Hearing on the motions in bankruptcy is set for September 4, 2018. While Defendants do not object to a hearing in this Court on the matters presented by Plaintiff, it is premature to do so until either the Motion to Withdraw the Reference has been decided and *In Re RaPower-3* has been moved to this Court or the bankruptcy case has been dismissed by the Bankruptcy Court. Defendants have not opposed either motion. There is no intent to unnecessarily delay. Procedure, however, must be followed.

Defendants have attempted for several weeks to obtain an agreement with the United States to dismiss the bankruptcy case. The United States has refused to consent to the dismissal of the bankruptcy without RaPower-3's admission (albeit a false one) that the bankruptcy filing was done in bad faith. Defendants could not do so. Notwithstanding, they have proposed several options to allow the appointment of a receiver, freeze the Defendants' assets, and dismiss the bankruptcy. The United States has taken an unreasonable position and refused to negotiate a resolution. Therefore, it is incumbent upon all parties and the Court to have the matters heard – as soon as it is procedurally proper to do so.

Defendants further object to the United States' attempt to label RaPower-3's bankruptcy as in bad faith. As Defendants have maintained since it was filed, the purpose of filing the bankruptcy was to protect the appellate rights of each of the Defendants. It has become more apparent since the bankruptcy was filed that Plaintiff's purpose was to limit both the ability to appeal through a receiver who would make all decisions affecting all defendants, including whether to pay the costs of an appeal, and to impose limitations on the subject matter of any appeal.

Defendants' current changes to the court's version of the proposed order granting the motion to freeze assets and appoint a receivership demonstrates the impasse. A copy with the redlines and comments of the United States will be separately emailed to the Court as a Word document. Defendants would request an opportunity to be heard on the form of this Order before it is entered.

Defendants agree that each of the four motions identified by the United States are ripe for review, but request that they be given an opportunity to be heard on each of them. Defendants suggest the clerk of the court contact counsel and set an agreeable date for a hearing on the motions and hold a status conference on the pending issues in both this court and the bankruptcy court.

Dated this 17th day of August, 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' RESPONSE TO UNITED STATES' MOTION FOR STATUS CONFERENCE OR IN THE ALTERNATIVE REQUEST TO SUBMIT FOR DECISION** was sent to counsel for the United States in the manner described below.

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/s/ Denver C. Snuffer, Jr.
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