

Healy Gallagher, Erin (TAX)

From: wklein@kleinutah.com
Sent: Monday, January 28, 2019 10:35 AM
To: glendaejohnson@hotmail.com
Cc: 'Steven Paul'; 'Mike Lehr'; Healy Gallagher, Erin (TAX); Hines, Erin R. (TAX)
Subject: Attached Notices, Subpoenas
Attachments: Deposition NeldonJohnsonNoticeIntent Jan1419.pdf; Deposition NeldonJohnsonSubpoena Jan1719.pdf; Deposition GlendaJohnsonNoticeIntent Jan1419.pdf; Deposition GlendaJohnsonSubpoena Jan1719.pdf

Mr. & Mrs. Johnson:

In November 2018, Steven Paul provided me with your email address. Attached are copies of the notices of intent to issue subpoenas and subpoenas requiring the production of documents and appearance for testimony. I have also mailed copies of these notices and subpoenas to:

- 2730 W 4000 South, Oasis, UT 84624 (the address identified by Mr. Johnson in his handwritten letter to me in November (containing a list of aircraft and vehicles he owns or controls)
- 11404 S 5825 West, West Mountain, UT, 84651
- 1045 S. 1700 West, #132, Payson, UT 84651.

Moreover, I have instructed the process server to post copies of these notices on the doors of the locations where you are believed to reside.

Even if the process servers do not succeed in personally serving you with copies of these notices before the deadlines to produce documents (February 8, 2019) and to appear at depositions (February 19 for Neldon Johnson and February 20 for Glenda Johnson), I still expect you to produce the required documents and to appear to be questioned. Failure to comply with the subpoenas can be enforced through the Court's contempt powers. The question for the Court in deciding whether to hold persons in contempt is whether the person had notice of the subpoenas. It is not necessary that the persons be personally served, only that they had notice of the subpoenas. I believe the Court will find that you have notice of the subpoenas based on communications from Steven Paul, this email, the notices I have mailed, and the notices to be posted at your residences. I believe that your efforts to avoid service will also demonstrate to the Court that you have notice of the subpoenas.

I encourage you to comply with the subpoenas. If you intend to not produce the documents or to not appear at the depositions, I encourage you to file a motion to quash the subpoenas rather than just not appear. Unless the Court quashes the subpoenas or excuses your compliance with the subpoenas, I will seek sanctions from the Court if you fail to comply.

Wayne Klein,
Receiver

Wayne Klein
KLEIN & ASSOCIATES, PLLC
PO Box 1836
Salt Lake City, UT 84110

801-824-9616 (cell)



wklein@kleinutah.com

Attention: The information in this email is confidential and may be a legally-protected document intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution, or duplication of this document is strictly prohibited. If you have received this document in error, please notify me and destroy the document.



Virus-free. www.avg.com

Jonathan O. Hafen (6096) (jhafen@parrbrown.com)
Joseph M.R. Covey (7492) (jcovey@parrbrown.com)
Cynthia D. Love (14703) (clove@parrbrown.com)
Michael S. Lehr (16496) (mlehr@parrbrown.com)

PARR BROWN GEE & LOVELESS, P.C.

101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Telephone: (801) 532-7840
Facsimile: (801) 532 7750

Attorneys for Court-Appointed Receiver Wayne Klein

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

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

Defendants.

**NOTICE OF INTENT TO SERVE
SUBPOENA TO GLENDA JOHNSON**

Civil No. 2:15-cv-00828-DN

The Honorable David Nuffer

Pursuant to Rule 45(a)(4) of the *Federal Rules of Civil Procedure*, Wayne Klein, the Court-Appointed Receiver (the “Receiver”) of RaPower-3, LLC, International Automated Systems, Inc., and LTB1, LLC (collectively “RaPower-3”), as well as certain subsidiaries and entities affiliated with RaPower-3 and the assets of Neldon Johnson (“Johnson”) and R. Gregory Shepard (“Shepard”), hereby gives notice of his intent to serve a Subpoena for the production of documents upon the Glenda Johnson. A copy of the foregoing subpoena is attached hereto as Exhibit A.

DATED this 14th day of January, 2019.

PARR BROWN GEE & LOVELESS

/s/ Michael S. Lehr

Jonathan O. Hafen

Joseph M.R. Covey

Cynthia Love

Michael S. Lehr

Attorneys for Receiver

IT IS HEREBY CERTIFIED that service of the above **NOTICE OF INTENT TO SERVE SUBPOENA TO GLENDA JOHNSON** was electronically filed with the Clerk of the Court through the CM/ECF system on January 14th, 2019, which sent notice of the electronic filing to all counsel of record.

/s/ Michael S. Lehr

Jonathan O. Hafen (6096) (jhafen@parrbrown.com)
Joseph M.R. Covey (7492) (jcovey@parrbrown.com)
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RAPOWER-3, LLC; INTERNATIONAL
AUTOMATED SYSTEMS, INC.; LTB1,
LLC; R. GREGORY SHEPARD; NELDON
JOHNSON; and ROGER FREEBORN,

Defendants.

**SUBPOENA TO GLENDA JOHNSON
FOR THE PRODUCTION OF
DOCUMENTS**

Civil No. 2:15-cv-00828-DN

The Honorable David Nuffer

TO: Glenda Johnson
2730 W. 4000 S.
Oasis, UT 84624

YOU ARE HEREBY COMMANDED to produce documents and things, including without limitation electronically-stored information, described in Exhibit A attached hereto that are in your possession, custody, and control and to mail or otherwise deliver the copies to Michael Lehr, Parr Brown Gee & Loveless, P.C., 101 S. 200 E., Suite 700, Salt Lake City, Utah 84111,

mlehr@parrbrown.com, on or before February 8, 2019. The text of *Federal Rules of Civil Procedure* 45(d), (e), and (g), along with DUCiv 37-1 are attached hereto as Exhibit B.

DATED this ___ day of January, 2019.

PARR BROWN GEE & LOVELESS

Jonathan O. Hafen
Joseph M.R. Covey
Cynthia Love
Michael S. Lehr
Attorneys for Receiver

EXHIBIT A

Definitions

A. The terms “you,” “your,” “yours” shall mean and refer to Glenda Johnson including without limitation any agents, employees, consultants, officers, managers, and attorneys, and any other person, entity, or representative acting for or on her behalf.

B. “Receivership Entities” shall mean and refer to RaPower-3, LLC, International Automated Systems, Inc. (“IAS”), and LTB1, LLC.

C. “Subsidiaries and Affiliates” shall mean and refer to Solco I, LLC, XSun Energy, LLC, Cobblestone Centre, LC, DCL-16A, Inc., DCL16BLT, Inc., LTB O&M, LLC, N.P. Johnson Family Limited Partnership, Shepard Entergy, Shepard Global, Inc., Solstice Enterprises, Black Night Enterprises, and Starlight Enterprises.

D. “Related Entities” shall mean and refer to LTB, U-Check, Inc., U-Check #1, DCL-16, Inc.

E. “Aircraft” includes all aircraft owned or controlled by Neldon Johnson, to include aircraft with FAA tail numbers N9400V, N12213, and N31BS.

F. “Documents” or “records” shall mean and refer to anything that may be considered a document or tangible thing within the meaning of Rule 34 of the *Federal Rules of Civil Procedure*, including but not limited to paper or electronic documents.

G. “And” and “or” shall have both conjunctive and disjunctive meanings.

H. “Relate” and “related” shall mean—in whole or in part—constituting, containing, discussing, describing, analyzing, identifying, evidence, referring to, or stating.

Documents Requested

1. Documents evidencing your role as an officer, director, member, manager, owner, employee, registered agent, or similar role (whether paid or unpaid) for:
 - a. Any of the Receivership Entities;
 - b. Any of the Subsidiaries and Affiliates;
 - c. Any of the Related Entities.
2. Documents showing the type and extent of your current or previous ownership of any of the Receivership Entities, Subsidiaries and Affiliates, and Related Entities.
3. To the extent not provided in the response to the previous request, records showing all your stock ownership in IAS, including:

- a. The dates of each acquisition of stock, warrants, options or other types of securities (“securities”);
 - b. The amount of securities obtained on each date;
 - c. The type of securities obtained on each date;
 - d. The amount you paid for the securities you obtained on each date;
 - e. The source of funds for the purchase;
 - f. The dates of each sale of securities;
 - g. The amounts of securities sold on each date;
 - h. The type of securities sold on each date;
 - i. The amount you received for the securities you sold; and
 - j. Where the proceeds from the sale were deposited.
4. Corporate or company resolutions or correspondence from the entities (to you or to others) authorizing you to act on behalf of any Receivership Entities, Subsidiaries and Affiliates, or Related Entities in opening bank accounts, signing checks, or signing or submitting tax, regulatory, or licensing forms.
 5. All minutes and corporate resolutions of Receivership Entities, Subsidiaries and Affiliates, and Related Entities.
 6. All records from banks or other financial institutions showing you were authorized to sign checks or have online access to accounts at any financial institution holding accounts for Receivership Entities, Subsidiaries and Affiliates, and Related Entities.
 7. All documents in your control or possession from Receivership Entities, Subsidiaries and Affiliates, or Related Entities showing any participation in governance or activities of these entities by Roger Hamblin.
 8. Records showing all payments by any Receivership Entities, Subsidiaries and Affiliates, or Related Entities to Roger Hamblin since January 1, 2000.
 9. Payroll records for all of the Receivership Entities, Subsidiaries and Affiliates, and Related Entities.
 10. All stock ledgers, stockholder lists, and stock transfer books of IAS.
 11. Copies of all credit card statements where some or all of the payment to the credit card issuer came from one of the Receivership Entities, Subsidiaries and Affiliates, or Related Entities.

12. Documents showing any property settlement, cash payments, or other assets you transferred or received as a result of your divorce from your previous spouse.
13. Documents showing any real estate, cash, or other assets you have received from any inheritance you have received.
14. Any pre-marital agreement between you and Neldon Johnson regarding any asset.
15. Documents identifying all financial accounts (including bank accounts, credit card accounts, and brokerage accounts) maintained in your own name, or over which you exercised signature authority or any kind of control, since January 1, 2000, but over which Neldon Johnson was not a joint account owner and had no authority to make withdrawals or transfers from the accounts or charges to the accounts.
16. Documents showing all real estate (including timeshare interests) you owned in your name at the time of your marriage to Neldon Johnson.
17. Documents showing all real estate (including timeshare interests) of which you became the owner after your marriage to Neldon Johnson. This should include copies of:
 - a. The deeds transferring title to you;
 - b. The agreements to purchase each property;
 - c. Closing or settlement statements by the title company preparing closing on the transactions;
 - d. Financial institution account statements for the accounts from which funds were used to pay all or part of the purchase price for the property;
 - e. Mortgage or other loan documents for any loans on any property.
18. Documents showing all real estate (including timeshare interests) held in your name that you sold or transferred after your marriage to Neldon Johnson. This should include copies of:
 - a. The deeds by which you transferred title;
 - b. The agreements to sell each property;
 - c. Closing or settlement statements by the title company preparing closing on the transactions;
 - d. Financial institution account statements for the accounts into which proceeds from the sale were deposited;
 - e. Mortgage or other loan documents for any financing you provided or any liens you retained on any property you sold.

19. Documents showing the bank account from which property taxes have been paid on all properties you have owned since 2000.
20. Documents showing the bank account from which utilities have been paid on all properties you have owned since 2000.
21. Documents showing all social security income you have received since the time of your marriage to Neldon Johnson.
22. Documents showing all non-Social Security pension or retirement income you have received following your marriage to Neldon Johnson.
23. Documents showing all payments you received as an employee or agent of any of the Receivership Entities, Subsidiaries and Affiliates, or Related Entities. This should include copies of IRS Forms W-2, 1099, or similar records.
24. Documents showing all payments you received from any of the Receivership Entities, Subsidiaries and Affiliates, or Related Entities other than as an employee. This should include copies of any IRS Forms 1099 relating to these payments.
25. Documents showing all income from any source subsequent to your marriage to Neldon Johnson other than Social Security, retirement/pension, or payments from any of the Receivership Entities, Subsidiaries and Affiliates, or Related Entities.
26. Documents showing all payments (and the reasons for the payments) from any of the Receivership Entities, Subsidiaries and Affiliates, or Related Entities to:
 - a. Neldon Johnson;
 - b. Randale Johnson;
 - c. LaGrand Johnson;
 - d. N.P. Johnson Family Limited Partnership;
 - e. Roger Hamblin;
 - f. Blain Phillips;
 - g. Stacy Curtis Snow;
 - h. Any other person related, at any time, by blood or marriage to Neldon Johnson; and
 - i. Any other person related, at any time, by blood or marriage to you.
27. Documents showing the amount, purpose, and source of all payments from you to the law firm Nelson, Snuffer, Dahle & Poulson since the time of your marriage to Neldon Johnson.

28. Documents showing the amount, purpose, and source of all payments from you to any other law firms since the time of your marriage to Neldon Johnson.
29. Documents you have received from the law firm Snell & Wilmer.
30. Documents relating to Aircraft including logbooks, invoices for repairs to aircraft, insurance premiums paid, insurance settlements received, filings with the Federal Aviation Administration, taxes, licensing fees, or similar actions.
31. Documents showing all charitable contributions made by any of the Receivership Entities, Subsidiaries and Affiliates, or Related Entities. This should include contributions made by any of these entities on your behalf or for the benefit of Neldon Johnson.
32. Documents relating to any ownership interest you have in any real property used or maintained by any of the Receivership Entities, Subsidiaries and Affiliates, or Related Entities, including any agreements between you and these entities relating to use of the real property.
33. Documents relating to any ownership interest you have in solar towers erected or maintained by any of the Receivership Entities, Subsidiaries and Affiliates, or Related Entities, including any agreements between you and these entities relating to use of these towers.
34. Documents showing your ownership of any vehicles, equipment, or other assets that have been used by any of the Receivership Entities, Subsidiaries and Affiliates, or Related Entities.

Exhibit B: Federal Rule of Civil Procedure 45(d),(e), and (g)

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney’s fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

District of Utah Local Rule 37-1

(a) Discovery Disputes.

(1) The parties must make reasonable efforts without court assistance to resolve a dispute arising under Fed. R. Civ. P. 26-37 and 45. At a minimum, those efforts must include a prompt written communication sent to the opposing party:

(A) identifying the discovery disclosure/request(s) at issue, the responses thereto, and specifying why those responses/objections are inadequate, and;

(B) requesting to meet and confer, either in person or by telephone, with alternative dates and times to do so.

(2) If the parties cannot resolve the dispute, and they wish to have the Court mediate the dispute in accordance with Fed. R. Civ. P. 16(b)(3)(v), the parties (either individually or jointly) may contact chambers and request a discovery dispute conference.

(3) If the parties wish for the court to resolve the matter by order, the parties (either individually or jointly) must file a Short Form Discovery Motion, which should not exceed 500 words exclusive of caption and signature block.

(4) The Short Form Discovery Motion must include a certification that the parties made reasonable efforts to reach agreement on the disputed matters and recite the date, time, and place of such consultation and the names of all participating parties or attorneys. The filing party should include a copy of the offending discovery request/response (if it exists) as an exhibit to the Short Form Motion. Each party should also e-mail chambers a proposed order setting forth the relief requested in a word processing format.

(5) The parties must request expedited treatment as additional relief for the motion in CM/ECF to facilitate resolution of the dispute as soon as practicable. (After clicking the primary event, click Expedite.)

(6) The opposing party must file its response five business days after the filing of the Motion, unless otherwise ordered. Any opposition should not exceed 500 words exclusive of caption and signature block.

(7) To resolve the dispute, the court may:

(A) decide the issue on the basis of the Short Form Discovery Motion after hearing from the parties to the dispute, either in writing or at a hearing, consistent with DUCivR 7-1(f);

(B) set a hearing, telephonic or otherwise, upon receipt of the Motion without waiting for any Opposition; and/or

(C) request further briefing and set a briefing schedule.

(8) If any party to the dispute believes it needs extended briefing, it should request such briefing in the short form motion or at a hearing, if one takes place. This request should accompany, and not replace, the substantive argument.

(9) A party subpoenaing a non-party must include a copy of this rule with the subpoena. Any motion to quash, motion for a protective order, or motion to compel a subpoena will follow this procedure

(10) If disputes arise during a deposition that any party or witness believes can most efficiently be resolved by contacting the Court by phone, including disputes that give rise to a motion being made under Rule 30(d)(3), the parties to the deposition shall call the assigned judge and not wait to file a Short Form Discovery Motion.

(11) Any objection to a magistrate judge's order must be made according to Federal Rule of Civil Procedure 72(a), but must be made within fourteen (14) days of the magistrate judge's oral or written ruling, whichever comes first, and must request expedited treatment. DUCivR 72-3 continues to govern the handling of objections.

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Attorneys for Court-Appointed Receiver Wayne Klein

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JOHNSON; and ROGER FREEBORN,

Defendants.

**SUBPOENA TO GLENDA JOHNSON TO
TESTIFY AT A DEPOSITION**

Civil No. 2:15-cv-00828-DN

The Honorable David Nuffer

TO: Glenda Johnson
2730 W. 4000 S.
Oasis, UT 84624

YOU ARE HEREBY COMMANDED to appear at the place, date and time set forth below
to testify at a deposition in the above case:

Date: 2/20/2019

Time: 9:00 a.m.

Place: Parr Brown Gee & Loveless
101 South 200 East, Suite 700
Salt Lake City, UT 84111

The deposition will be taken upon oral examination before a certified court reporter or other person authorized by law to take depositions, will be recorded by videographic and/or stenographic means, and will continue until completed.

DATED this 17th day of January, 2019.

PARR BROWN GEE & LOVELESS

/s/ Michael S. Lehr
Jonathan O. Hafen
Joseph M.R. Covey
Cynthia Love
Michael S. Lehr
Attorneys for Receiver

Federal Rule of Civil Procedure 45(d),(e), and (g)

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(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

District of Utah Local Rule 37-1

(a) Discovery Disputes.

(1) The parties must make reasonable efforts without court assistance to resolve a dispute arising under Fed. R. Civ. P. 26-37 and 45. At a minimum, those efforts must include a prompt written communication sent to the opposing party:

(A) identifying the discovery disclosure/request(s) at issue, the responses thereto, and specifying why those responses/objections are inadequate, and;

(B) requesting to meet and confer, either in person or by telephone, with alternative dates and times to do so.

(2) If the parties cannot resolve the dispute, and they wish to have the Court mediate the dispute in accordance with Fed. R. Civ. P. 16(b)(3)(v), the parties (either individually or jointly) may contact chambers and request a discovery dispute conference.

(3) If the parties wish for the court to resolve the matter by order, the parties (either individually or jointly) must file a Short Form Discovery Motion, which should not exceed 500 words exclusive of caption and signature block.

(4) The Short Form Discovery Motion must include a certification that the parties made reasonable efforts to reach agreement on the disputed matters and recite the date, time, and place of such consultation and the names of all participating parties or attorneys. The filing party should include a copy of the offending discovery request/response (if it exists) as an exhibit to the Short Form Motion. Each party should also e-mail chambers a proposed order setting forth the relief requested in a word processing format.

(5) The parties must request expedited treatment as additional relief for the motion in CM/ECF to facilitate resolution of the dispute as soon as practicable. (After clicking the primary event, click Expedite.)

(6) The opposing party must file its response five business days after the filing of the Motion, unless otherwise ordered. Any opposition should not exceed 500 words exclusive of caption and signature block.

(7) To resolve the dispute, the court may:

(A) decide the issue on the basis of the Short Form Discovery Motion after hearing from the parties to the dispute, either in writing or at a hearing, consistent with DUCivR 7-1(f);

(B) set a hearing, telephonic or otherwise, upon receipt of the Motion without waiting for any Opposition; and/or

(C) request further briefing and set a briefing schedule.

(8) If any party to the dispute believes it needs extended briefing, it should request such briefing in the short form motion or at a hearing, if one takes place. This request should accompany, and not replace, the substantive argument.

(9) A party subpoenaing a non-party must include a copy of this rule with the subpoena. Any motion to quash, motion for a protective order, or motion to compel a subpoena will follow this procedure

(10) If disputes arise during a deposition that any party or witness believes can most efficiently be resolved by contacting the Court by phone, including disputes that give rise to a motion being made under Rule 30(d)(3), the parties to the deposition shall call the assigned judge and not wait to file a Short Form Discovery Motion.

(11) Any objection to a magistrate judge's order must be made according to Federal Rule of Civil Procedure 72(a), but must be made within fourteen (14) days of the magistrate judge's oral or written ruling, whichever comes first, and must request expedited treatment. DUCivR 72-3 continues to govern the handling of objections.

Jonathan O. Hafen (6096) (jhafen@parrbrown.com)
Joseph M.R. Covey (7492) (jcovey@parrbrown.com)
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101 South 200 East, Suite 700
Salt Lake City, Utah 84111
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Facsimile: (801) 532 7750

Attorneys for Court-Appointed Receiver Wayne Klein

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

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

Defendants.

**NOTICE OF INTENT TO SERVE
SUBPOENA TO NELDON JOHNSON**

Civil No. 2:15-cv-00828-DN

The Honorable David Nuffer

Pursuant to Rule 45(a)(4) of the *Federal Rules of Civil Procedure*, Wayne Klein, the Court-Appointed Receiver (the “Receiver”) of RaPower-3, LLC, International Automated Systems, Inc., and LTB1, LLC (collectively “RaPower-3”), as well as certain subsidiaries and entities affiliated with RaPower-3 and the assets of Neldon Johnson and R. Gregory Shepard (“Shepard”), hereby gives notice of his intent to serve a Subpoena for the production of documents upon the Neldon Johnson. A copy of the foregoing subpoena is attached hereto as Exhibit A.

DATED this 14th day of January, 2019.

PARR BROWN GEE & LOVELESS

/s/ Michael S. Lehr

Jonathan O. Hafen

Joseph M.R. Covey

Cynthia Love

Michael S. Lehr

Attorneys for Receiver

IT IS HEREBY CERTIFIED that service of the above **NOTICE OF INTENT TO SERVE SUBPOENA TO NELDON JOHNSON** was electronically filed with the Clerk of the Court through the CM/ECF system on January 14th, 2019, which sent notice of the electronic filing to all counsel of record.

/s/ Michael S. Lehr

Jonathan O. Hafen (6096) (jhafen@parrbrown.com)
Joseph M.R. Covey (7492) (jcovey@parrbrown.com)
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**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
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UNITED STATES OF AMERICA,

Plaintiff,

v.

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

Defendants.

**SUBPOENA TO NELDON JOHNSON
FOR THE PRODUCTION OF
DOCUMENTS**

Civil No. 2:15-cv-00828-DN

The Honorable David Nuffer

TO: Neldon Johnson
2730 W. 4000 S.
Oasis, UT 84624

YOU ARE HEREBY COMMANDED to produce documents and things, including without limitation electronically-stored information, described in Exhibit A attached hereto that are in your possession, custody, and control and to mail or otherwise deliver the copies to Michael Lehr, Parr Brown Gee & Loveless, P.C., 101 S. 200 E., Suite 700, Salt Lake City, Utah 84111,

mlehr@parrbrown.com, on or before February 8, 2019. The text of *Federal Rules of Civil Procedure* 45(d), (e), and (g), along with DUCiv 37-1 are attached hereto as Exhibit B.

DATED this ___ day of January, 2019.

PARR BROWN GEE & LOVELESS

Jonathan O. Hafen
Joseph M.R. Covey
Cynthia Love
Michael S. Lehr
Attorneys for Receiver

EXHIBIT A

Definitions

A. The terms “you,” “your,” “yours” shall mean and refer to Neldon Johnson including without limitation any agents, employees, consultants, officers, managers, and attorneys, and any other person, entity, or representative acting for or on his behalf.

B. “Receivership Entities” shall mean and refer to RaPower-3, LLC, International Automated Systems, Inc. (“IAS”), and LTB1, LLC.

C. “Subsidiaries and Affiliates” shall mean and refer to Solco I, LLC, XSun Energy, LLC, Cobblestone Centre, LC, DCL-16A, Inc., DCL16BLT, Inc., LTB O&M, LLC, N.P. Johnson Family Limited Partnership, Shepard Entergy, Shepard Global, Inc., Solstice Enterprises, Black Night Enterprises, and Starlight Enterprises.

D. “Related Entities” shall mean and refer to LTB, U-Check, Inc., U-Check #1, DCL-16, Inc.

E. “Aircraft” includes all aircraft owned or controlled by Neldon Johnson, to include aircraft with FAA tail numbers N9400V, N12213, and N31BS.

F. “Documents” or “records” shall mean and refer to anything that may be considered a document or tangible thing within the meaning of Rule 34 of the *Federal Rules of Civil Procedure*, including but not limited to paper or electronic documents.

G. “And” and “or” shall have both conjunctive and disjunctive meanings.

H. “Relate” and “related” shall mean—in whole or in part—constituting, containing, discussing, describing, analyzing, identifying, evidence, referring to, or stating.

Documents Requested

1. Documents evidencing your role as an officer, director, member, manager, owner, employee, registered agent, or similar role for:
 - a. Any of the Receivership Entities;
 - b. Any of the Subsidiaries and Affiliates;
 - c. Any of the Related Entities.
2. Documents showing the type and extent of your current or previous ownership of any of the Receivership Entities, Subsidiaries and Affiliates, and Related Entities.
3. To the extent not provided in the response to the previous request, records showing all your stock ownership in IAS, including:

- a. The dates of each acquisition of stock, warrants, options or other types of securities (“securities”);
 - b. The amount of securities obtained on each date, including the exercise of warrants or options;
 - c. The type of securities obtained on each date;
 - d. The amount you paid for the securities you obtained on each date;
 - e. The source of funds for the purchase;
 - f. The dates of each sale of securities;
 - g. The amounts of securities sold on each date;
 - h. The type of securities sold on each date;
 - i. The amount you received for the securities you sold; and
 - j. Where the proceeds from the sale were deposited.
4. Corporate or company resolutions or correspondence from the entities (to you or to others) authorizing you to act on behalf of any Receivership Entities, Subsidiaries and Affiliates, or Related Entities in opening bank accounts, signing checks, or signing or submitting tax, regulatory, or licensing forms.
 5. All minutes and corporate resolutions of Receivership Entities, Subsidiaries and Affiliates, and Related Entities.
 6. All records from banks or other financial institutions showing you were authorized to sign checks or have online access to accounts at any financial institution holding accounts for Receivership Entities, Subsidiaries and Affiliates, and Related Entities.
 7. All documents in your control or possession from Receivership Entities, Subsidiaries and Affiliates, or Related Entities showing any participation in governance or activities of these entities by Roger Hamblin.
 8. Payroll records for all of the Receivership Entities, Subsidiaries and Affiliates, and Related Entities.
 9. All stock ledgers, stockholder lists, and stock transfer books of IAS.
 10. Documents showing all agreements with stock transfer agents, stock exchanges (including the NASDAQ Bulletin Board), and broker dealers (including market makers) relating to the listing, purchases, and sales of stock of IAS.
 11. Documents showing all accounts you have had, or over which you exercised signature authority or any kind of control, at financial institutions since 2000.

12. Documents showing all credit cards you have held, or over which you exercised signature authority or any kind of control, since 2000.
13. Documents showing all credit card accounts held by any of the Receivership Entities, Subsidiaries and Affiliates, or Related Entities since 2000.
14. Copies of all credit card statements where some or all of the payment to the credit card issuer came from one of the Receivership Entities, Subsidiaries and Affiliates, or Related Entities.
15. Documents showing any property settlement, cash payments, or other assets you transferred or received as a result of your divorce from your previous spouse.
16. Any pre-marital agreement between you and Glenda Johnson regarding any asset.
17. Documents showing all real estate (including timeshare interests) of which you became the owner, were owner of record, held a possessory interest, or held a beneficial interest through an entity after 2000. This should include copies of:
 - a. The deeds transferring title (or other interest) to you or an entity;
 - b. The agreements to purchase (or use) each property;
 - c. Closing or settlement statements by the title company preparing closing on the transactions;
 - d. Financial institution account statements for the accounts from which funds were used to pay all or part of the purchase price for (or other use of) the property;
 - e. Mortgage or other loan documents for any loans on any property;
 - f. Lease agreements for any property.
18. Documents showing all real estate (including timeshare interests) held in your name or for which you held a possessory interest or a beneficial interest through another entity that you sold or transferred after 2000. This should include copies of:
 - a. The deeds (or other documents) by which you transferred title or other interest;
 - b. The agreements to sell each property or transfer your interests in each property;
 - c. Closing or settlement statements by the title company preparing closing on the transactions;
 - d. Financial institution account statements for the accounts into which proceeds from the sale (or other agreement) were deposited;
 - e. Mortgage or other loan documents for any financing you provided or any liens you retained on any property you sold.

19. Documents showing the bank account from which property taxes have been paid on all properties you have owned or in which you have held a possessory or beneficial interest since 2000.
20. Documents showing the bank account from which utilities have been paid on all properties you have owned or in which you have held a possessory or beneficial interest since 2000.
21. Documents showing all social security income you have received since 2000.
22. Documents showing all non-Social Security pension or retirement income you have received since 2000.
23. Documents showing all payments you received as an employee or agent of any of the Receivership Entities, Subsidiaries and Affiliates, or Related Entities. This should include copies of IRS Forms W-2, 1099, or similar records.
24. Documents showing all payments you received from any of the Receivership Entities, Subsidiaries and Affiliates, or Related Entities other than as an employee. This should include copies of any IRS Forms 1099 relating to these payments.
25. Documents showing all income from any source subsequent to 2000 other than Social Security, retirement/pension, or payments from any of the Receivership Entities, Subsidiaries and Affiliates, or Related Entities. This should include income from rentals of real estate, solar lens ownership, or agricultural uses of real estate you have owned.
26. Documents showing all payments (and the reasons for the payments) from any of the Receivership Entities, Subsidiaries and Affiliates, or Related Entities to:
 - a. Glenda Johnson;
 - b. Randale Johnson;
 - c. LaGrand Johnson;
 - d. N.P. Johnson Family Limited Partnership;
 - e. Roger Hamblin;
 - f. Blain Phillips;
 - g. Stacy Curtis Snow;
 - h. Any other person related, at any time, by blood or marriage to you; and
 - i. Any other person related, at any time, by blood or marriage to Glenda Johnson.
27. Documents showing the amount, purpose, and source of all payments from you to the law firm Nelson, Snuffer, Dahle & Poulson since 2000.

28. Documents showing the amount, purpose, and source of all payments from you to any other law firms since 2000.
29. Documents you have received from the law firm Snell & Wilmer.
30. Documents relating to Aircraft including invoices for repairs to aircraft, insurance premiums paid, insurance settlements received, filings with the Federal Aviation Administration, taxes, licensing fees, or similar actions.
31. Documents showing all charitable contributions made by any of the Receivership Entities, Subsidiaries and Affiliates, or Related Entities since 2000. This should include contributions made by any of these entities on your behalf or for the benefit of Glenda Johnson.
32. Documents showing all charitable contributions made by you, or on your behalf, since 2000.
33. Documents relating to any ownership interest you have in solar towers erected or maintained by any of the Receivership Entities, Subsidiaries and Affiliates, or Related Entities, including any agreements between you and these entities relating to use of these towers.
34. Documents showing who owns real property on which solar towers have been erected by Receivership Entities, Subsidiaries and Affiliates, or Related Entities.
35. Documents showing who owns the solar towers that have been erected by Receivership Entities, Subsidiaries and Affiliates, or Related Entities.
36. Documents relating to any ownership interest Glenda Johnson has in any real property used or maintained by any of the Receivership Entities, Subsidiaries and Affiliates, or Related Entities, including any agreements between Glenda Johnson and these entities relating to use of the real property.
37. Documents relating to any ownership interest held by Glenda Johnson in solar towers erected or maintained by any of the Receivership Entities, Subsidiaries and Affiliates, or Related Entities, including any agreements between these entities and Glenda Johnson relating to use of the towers.
38. Documents showing your ownership of any vehicles, equipment, or other assets that have been used by any of the Receivership Entities, Subsidiaries and Affiliates, or Related Entities.
39. Documents showing any vehicles, equipment, or other assets held in your name that have been used by any of the Receivership Entities, Subsidiaries and Affiliates, or Related Entities but which have been sold or transferred since 2010.
40. Documents showing all purchases of lenses by you from any of the Receivership Entities, Subsidiaries and Affiliates, or Related Entities.

41. Documents showing your ownership of any share of royalty agreements relating to any of the Receivership Entities, Subsidiaries and Affiliates, or Related Entities.
42. Documents showing all patents, patent applications, or other intellectual property currently owned by you.
43. Documents showing all revenue to you or any of the Receivership Entities, Subsidiaries and Affiliates, or Related Entities for licensing of patents or other intellectual property since 2000.
44. Copies of all appraisals or valuation reports of any patents, patent applications, or other intellectual property that was invented by you.
45. Documents showing all actions taken by Receivership Entities, Subsidiaries and Affiliates, or Related Entities alleging that others have infringed on patents, patent applications, or intellectual property invented by you.
46. Documents showing the receipt and disposition of all payments from Roger Hamblin to you since 2000.
47. Copies of the organizational and operating documents of Black Night Enterprises, Starlight Holdings and Solstice Enterprises. These should include documents by which the entities were incorporated, articles of incorporation or articles of organization (or similar type documents), bylaws, operating agreements, corporate resolutions, and stock ledger or equivalent document reflecting the owner(s) of these entities.
48. All original Aircraft log books.
49. Documents showing payments made by Receivership Entities, Subsidiaries and Affiliates, or Related Entities to any attorneys or law firms since 2000.
50. Documents showing payments made by Receivership Entities, Subsidiaries and Affiliates, or Related Entities to any accountants or tax preparers since 2000.

Exhibit B: Federal Rule of Civil Procedure 45(d),(e), and (g)

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney’s fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

District of Utah Local Rule 37-1

(a) Discovery Disputes.

(1) The parties must make reasonable efforts without court assistance to resolve a dispute arising under Fed. R. Civ. P. 26-37 and 45. At a minimum, those efforts must include a prompt written communication sent to the opposing party:

(A) identifying the discovery disclosure/request(s) at issue, the responses thereto, and specifying why those responses/objections are inadequate, and;

(B) requesting to meet and confer, either in person or by telephone, with alternative dates and times to do so.

(2) If the parties cannot resolve the dispute, and they wish to have the Court mediate the dispute in accordance with Fed. R. Civ. P. 16(b)(3)(v), the parties (either individually or jointly) may contact chambers and request a discovery dispute conference.

(3) If the parties wish for the court to resolve the matter by order, the parties (either individually or jointly) must file a Short Form Discovery Motion, which should not exceed 500 words exclusive of caption and signature block.

(4) The Short Form Discovery Motion must include a certification that the parties made reasonable efforts to reach agreement on the disputed matters and recite the date, time, and place of such consultation and the names of all participating parties or attorneys. The filing party should include a copy of the offending discovery request/response (if it exists) as an exhibit to the Short Form Motion. Each party should also e-mail chambers a proposed order setting forth the relief requested in a word processing format.

(5) The parties must request expedited treatment as additional relief for the motion in CM/ECF to facilitate resolution of the dispute as soon as practicable. (After clicking the primary event, click Expedite.)

(6) The opposing party must file its response five business days after the filing of the Motion, unless otherwise ordered. Any opposition should not exceed 500 words exclusive of caption and signature block.

(7) To resolve the dispute, the court may:

(A) decide the issue on the basis of the Short Form Discovery Motion after hearing from the parties to the dispute, either in writing or at a hearing, consistent with DUCivR 7-1(f);

(B) set a hearing, telephonic or otherwise, upon receipt of the Motion without waiting for any Opposition; and/or

(C) request further briefing and set a briefing schedule.

(8) If any party to the dispute believes it needs extended briefing, it should request such briefing in the short form motion or at a hearing, if one takes place. This request should accompany, and not replace, the substantive argument.

(9) A party subpoenaing a non-party must include a copy of this rule with the subpoena. Any motion to quash, motion for a protective order, or motion to compel a subpoena will follow this procedure

(10) If disputes arise during a deposition that any party or witness believes can most efficiently be resolved by contacting the Court by phone, including disputes that give rise to a motion being made under Rule 30(d)(3), the parties to the deposition shall call the assigned judge and not wait to file a Short Form Discovery Motion.

(11) Any objection to a magistrate judge's order must be made according to Federal Rule of Civil Procedure 72(a), but must be made within fourteen (14) days of the magistrate judge's oral or written ruling, whichever comes first, and must request expedited treatment. DUCivR 72-3 continues to govern the handling of objections.

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LLC; R. GREGORY SHEPARD; NELDON
JOHNSON; and ROGER FREEBORN,

Defendants.

**SUBPOENA TO NELDON JOHNSON TO
TESTIFY AT A DEPOSITION**

Civil No. 2:15-cv-00828-DN

The Honorable David Nuffer

TO: Neldon Johnson
2730 W. 4000 S.
Oasis, UT 84624

YOU ARE HEREBY COMMANDED to appear at the place, date and time set forth below
to testify at a deposition in the above case:

Date: 2/19/2019

Time: 9:00 a.m.

Place: Parr Brown Gee & Loveless
101 South 200 East, Suite 700
Salt Lake City, UT 84111

The deposition will be taken upon oral examination before a certified court reporter or other person authorized by law to take depositions, will be recorded by videographic and/or stenographic means, and will continue until completed.

DATED this 17th day of January, 2019.

PARR BROWN GEE & LOVELESS

/s/ Michael S. Lehr
Jonathan O. Hafen
Joseph M.R. Covey
Cynthia Love
Michael S. Lehr
Attorneys for Receiver

Federal Rule of Civil Procedure 45(d),(e), and (g)

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney’s fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

District of Utah Local Rule 37-1

(a) Discovery Disputes.

(1) The parties must make reasonable efforts without court assistance to resolve a dispute arising under Fed. R. Civ. P. 26-37 and 45. At a minimum, those efforts must include a prompt written communication sent to the opposing party:

(A) identifying the discovery disclosure/request(s) at issue, the responses(s) thereto, and specifying why those responses/objections are inadequate, and;

(B) requesting to meet and confer, either in person or by telephone, with alternative dates and times to do so.

(2) If the parties cannot resolve the dispute, and they wish to have the Court mediate the dispute in accordance with Fed. R. Civ. P. 16(b)(3)(v), the parties (either individually or jointly) may contact chambers and request a discovery dispute conference.

(3) If the parties wish for the court to resolve the matter by order, the parties (either individually or jointly) must file a Short Form Discovery Motion, which should not exceed 500 words exclusive of caption and signature block.

(4) The Short Form Discovery Motion must include a certification that the parties made reasonable efforts to reach agreement on the disputed matters and recite the date, time, and place of such consultation and the names of all participating parties or attorneys. The filing party should include a copy of the offending discovery request/response (if it exists) as an exhibit to the Short Form Motion. Each party should also e-mail chambers a proposed order setting forth the relief requested in a word processing format.

(5) The parties must request expedited treatment as additional relief for the motion in CM/ECF to facilitate resolution of the dispute as soon as practicable. (After clicking the primary event, click Expedite.)

(6) The opposing party must file its response five business days after the filing of the Motion, unless otherwise ordered. Any opposition should not exceed 500 words exclusive of caption and signature block.

(7) To resolve the dispute, the court may:

(A) decide the issue on the basis of the Short Form Discovery Motion after hearing from the parties to the dispute, either in writing or at a hearing, consistent with DUCivR 7-1(f);

(B) set a hearing, telephonic or otherwise, upon receipt of the Motion without waiting for any Opposition; and/or

(C) request further briefing and set a briefing schedule.

(8) If any party to the dispute believes it needs extended briefing, it should request such briefing in the short form motion or at a hearing, if one takes place. This request should accompany, and not replace, the substantive argument.

(9) A party subpoenaing a non-party must include a copy of this rule with the subpoena. Any motion to quash, motion for a protective order, or motion to compel a subpoena will follow this procedure

(10) If disputes arise during a deposition that any party or witness believes can most efficiently be resolved by contacting the Court by phone, including disputes that give rise to a motion being made under Rule 30(d)(3), the parties to the deposition shall call the assigned judge and not wait to file a Short Form Discovery Motion.

(11) Any objection to a magistrate judge's order must be made according to Federal Rule of Civil Procedure 72(a), but must be made within fourteen (14) days of the magistrate judge's oral or written ruling, whichever comes first, and must request expedited treatment. DUCivR 72-3 continues to govern the handling of objections.