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**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.

**RECEIVER'S RESPONSE TO
NELDON JOHNSON'S OBJECTION
TO DEPOSITION AND NOTICE OF
FIFTH AMENDMENT CLAIM**

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

District Judge David Nuffer

R. Wayne Klein, the Court-Appointed Receiver ("Receiver") of RaPower-3, LLC, International Automated Systems, Inc., and LTB1, LLC (collectively "Receivership Entities"), as well as certain subsidiaries and affiliated entities ("Affiliated Entities") and the assets of Neldon Johnson ("Johnson") and R. Gregory Shepard ("Shepard") hereby submits this Response to Neldon Johnson's Objection to Deposition and Notice of Fifth Amendment Claim.

RESPONSE TO OBJECTION

On Friday February 15, 2019, Johnson filed an Objection to Deposition and Notice of Fifth Amendment Claim (“Objection”),¹ stating that he has “no obligation to testify” and that he “will not appear” for his deposition on Tuesday, February 19th.² Because the Objection reflects a misunderstanding of the Fifth Amendment right against self-incrimination and the Receiver’s role, the Receiver feels obligated to correct Johnson’s misunderstanding:

1. Johnson states that he has a “right to not testify”, “will not appear”, and “refuse[s] to testify” at his deposition based on the Fifth Amendment privilege against self-incrimination. The Fifth Amendment, however, does not allow for such a blanket assertion of privilege. Johnson must attend his deposition and assert his privilege to each question asked of him.³ The proper procedure is for Johnson “to attend the deposition and to be sworn under oath. Then [Johnson] should answer the questions he or she can and invoke the privilege when answers to questions tend to incriminate. Such a procedure allows the court to review specific questions to which the privilege was asserted.”⁴

2. Johnson’s Objection also states “the receiver’s filings with the court make it likely that the receiver intends to pursue securities claims.”⁵ The Receiver has no power to pursue any criminal charges of any type against Johnson or any other person.

¹ [Docket No. 574](#), filed February, 15 2019.

² [Id.](#)

³ See [S.E.C. v. Thomas](#), 116 F.R.D. 230, 234 (D. Utah 1987) (“a witness may not assert the privilege by refusing to appear for a deposition at all, nor may a blanket fifth amendment privilege be invoked prior to the propounding of any questions.”) (citation omitted); see also [United States v. Nunez](#), 668 F.2d 1116, 1120 (10th Cir. 1981) (“[i]t is clear that a witness's Fifth Amendment privilege does not exonerate him from giving testimony merely because he declares that his answers would tend to be incriminating.”) (citing [Hoffman v. United States](#), 341 U.S. 479, 486 (1951)).

⁴ [Thomas](#), 116 F.R.D. at 234, n.7.

⁵ [Docket No. 574](#).

3. Finally, although Johnson does not directly reference any documents or records in the Objection, the constitutional privilege against self-incrimination does not apply to business records of the Receivership Entities, Affiliated Entities, or any other documents sought in the document subpoena served upon Johnson.⁶

Because Johnson has not asserted a valid objection to his deposition, the Receiver will be proceeding with Johnson's deposition on Tuesday, February 19, 2019 at 9:00 AM, as scheduled. Under Rule 45 of the *Federal Rules of Civil Procedure*, Johnson is required to attend. If he chooses not to show up, the Receiver will make note of that on the record.

DATED this 18th day of February, 2019

PARR BROWN GEE & LOVELESS

/s/ Michael S. Lehr
Jonathan O. Hafen
Michael S. Lehr
Attorneys for Receiver

⁶ [*Bellis v. United States*](#), 417 U.S. 85, 88 (1974).

CERTIFICATE OF SERVICE

I hereby certify that the above **RECEIVER'S RESPONSE TO NELDON JOHNSON'S OBJECTION TO DEPOSITION AND NOTICE OF FIFTH AMENDMENT CLAIM** was filed with the Court on this 18th day of February, 2019, and served via ECF on all parties who have requested notice in this case.

/s/ Michael S. Lehr
