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

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff,</p> <p>vs.</p> <p>RAPOWER-3, LLC, INTERNATIONAL AUTOMATED SYSTEMS, INC., LTB1, LLC, R. GREGORY SHEPARD, and NELDON JOHNSON,</p> <p>Defendants.</p>	<p>Civil No. 2:15-cv-00828-DN-EJF</p> <p>RESPONSE TO COURT'S NOTICE RE: COMPLIANCE AND ADVERSE INFERENCES (ECF. 638)</p> <p>Judge David Nuffer</p>
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COME NOW former counsel for the Defendants and, to correct the record, make the following Response to ECF. [638](#):

The Court has accurately quoted from the Findings of Fact (ECF [467](#)) it entered following trial, but in doing so has misstated the record of the case. There was never any request, order, motion or failure to produce financial information by Defendants apart from a single order entered as ECF 218. That had nothing to do with banking information or accounting records, as the Court's Notice (ECF [638](#)) implies.

Defendants did not refuse to supply financial information, nor were they ever found to have withheld financial information, or compelled to produce it. The only Order (ECF [235](#)) compelling

production of materials had nothing to do with bank and financial records, but the following specific information:

- a. 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;
- b. All RaPower-3 solar lens purchase agreements with customers since 2010;
- c. The solar lens purchase contract between SOLCO I and a "company back East" with a down-payment of \$1 million.

From ECF [218](#) the district court ordered Defendants produce:

1. 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;
2. All RaPower-3 solar lens purchase agreements with customers since 2010;
3. The solar lens purchase contract between SOLCO I and a "company back East" with a down-payment of \$1 million;
4. The list of IAS shareholders; and
5. Any letter or purported documentation that supports Mr. Johnson's belief that the IRS "exonerated" him by giving him any tax credit.

These were produced. The order does not involve financial records or receipts—the Plaintiff obtained those directly from banks using subpoenas.

We did not enter an appearance in this case until May 22, 2017. (ECF [166](#), [167](#)). Written discovery ended two months earlier (ECF [205](#)) and fact discovery ended 10 days after our initial appearance. (*Id.*) However, the Plaintiff had obtained all of the records of Neldon Johnson, IAS, NP Johnson Family Limited Partnership, U-Check, Solco I, LLC, XSun Energy, DCL16A, Inc., and RaPower, among many other entities, through a search warrant in 2012. (See Exhibit 1, an attachment describing items to be seized in Utah US District Court Case No. 2:12-MJ-181BCW) The IRS had access to these records since 2012. Additionally, the IRS obtained over 32,000 pages of banking records directly from the banks by subpoena. (ECF [467](#), ¶80.) While the Defendants have been burdened with demands to produce these records again, while having no resources from which to be able to comply, the government having essentially unlimited resources and possession of these records have provided nothing to the Receiver. The Court has not required the IRS to

produce anything to the Receiver, and the Receiver confirmed by phone with counsel that none of these records have been provided by the IRS to him.

This Court allowed the Plaintiff to conceal from discovery the financial evidence the Plaintiff was permitted to use at trial, resulting in a trial-by-ambush. However, that event happened without Defendants disobeying any order requiring the production of financial information or Plaintiff filing any motion to compel production of financial information which Plaintiff obtained directly from banks.

In the Findings of Fact written by Plaintiff's attorneys, there were gratuitous critical comments made in what Plaintiff's attorneys wrote and which the Court accepted uncritically, that are quoted in the Court's Notice (ECF [638](#)). They are indeed Findings by the Court. But they do not represent an accurate recounting of the events involved in the case. There is no Motion, no objection, no attempt to obtain anything that Plaintiff can point to other than what they asked to have produced (ECF [218](#), ECF [235](#)) which was fully produced to Plaintiff's satisfaction. Had they any complaint about insufficiency of that production, they were silent about it before trial and made no mention of it during trial. They added the language quoted from the Findings of Fact, which the Court adopted. But the harsh inferences made by the Court against Defendants were not based on any actual, deliberate failure during discovery.

Despite the foregoing, a copy of the Court's Notice was provided to the Defendants by the undersigned.

DATED this 9th day of May, 2019.

NELSON SNUFFER DAHLE & POULSEN

/s/ Denver C. Snuffer, Jr.
Denver C. Snuffer, Jr.
Steven R. Paul
Daniel B. Garriott

