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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><b>REPLY TO OPPOSITION TO NSDP MOTION TO RETAIN RECORDS</b></p> <p>Civil No. 2:15-cv-00828</p> <p>Judge David Nuffer</p>
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COMES NOW Nelson, Snuffer, Dahle & Poulsen (“NSDP”) and replies to the Opposition to retaining what is referred to as boxes 15-27 (ECF Doc. 817) in the Court’s Order ([ECF Doc. 803](#)) as follows:

**ARGUMENT**

**A. Clarity of Court’s Order.**

The Receiver correctly notes that the Order requires Neldon Johnson, and not NSDP, to deliver file boxes identified as Boxes 15-27 to the Receiver. The reason that the order is directed to Neldon Johnson is that Neldon Johnson’s declaration, upon which the Order is based, incorrectly identifies the boxes as file boxes originating in the offices of RaPower-3 and being the property of

and in the control of RaPower-3. The Receiver states that “Whether Neldon Johnson was accurate in stating that he delivered boxes 15-27 to Nelson Snuffer is irrelevant.” That is clearly incorrect. Neldon Johnson does not own or control boxes 15-27 which are working files of NSDP. The Order does not direct NSDP to do anything. An erroneous representation to the Court as to the origin and nature of these, i.e. an erroneous representation that they are the files of RaPower-3 and were delivered to NSDP, does not change the origin and nature of these files. NSDP does not seek, contrary to assertions of the Receiver, “. . . to create confusion as to what documents are sought by the Receiver and were ordered to be turned over by the Court’s order.” There is confusion, because there was a misrepresentation to the Court, obviously unintentional, but a misrepresentation nonetheless, as to the origin and ownership of the file boxes. That is the reason the order was directed to Neldon Johnson, because the file boxes were erroneously identified as files of RaPower-3 delivered to NSDP by Neldon Johnson.

The Receiver does not dispute that:

1. The Receiver has sued NSDP, Case No. 2:19-cv-00851, (“Receiver-NSDP Lawsuit”), and, in that lawsuit, claims that payments made to NSDP for legal services were “without any legally recognized value for the transferred money or IAS stock.” *Complaint* ¶ 1.
2. The Receiver has further claimed in the Receiver-NSDP Lawsuit that NSDP breached its fiduciary duty to Receivership Entities. *Complaint* ¶ 109.
3. The boxes of documents sought by the Receiver includes certain documents which were generated by NSDP in performing the services which the Receiver seeks to have determined to be “without any legally recognized value” for payment received from any Receivership Defendant or Receivership Entity.

4. The boxes of documents at issue were erroneously identified as being file documents which originated in offices of RaPower-3 and were delivered by Neldon Johnson to NSDP.

5. The boxes of documents at issue are, in fact, boxes of NSDP working files containing work product of NSDP and business records of NSDP and were never in the possession of RaPower-3.

6. The boxes of documents at issue have never been in the possession of any Receivership Defendant or any Receivership Entity.

7. The Receiver seeks the documents in the boxes solely in regard to his alleged claims against NSDP in the Receiver-NSDP Lawsuit.

8. Any information which is relevant to the asserted claims against NSDP, including any such information contained in the boxes of documents in question, can be appropriately sought in discovery requests in the Receiver-NSDP Lawsuit.

9. The order is directed to Neldon Johnson and not to NSDP.

10. Neldon Johnson does not own or control the files in question.

**B. The Files Sought by the Receiver Include Documents Necessary for NSDP's Defense in the Receiver-NSDP Lawsuit.**

The Receiver's complaint against NSDP in the Receiver-NSDP Lawsuit alleges in paragraph 1 that payments made to NSDP for legal services were "without any legally recognized value for the transferred money or IAS stock." Further, the Receiver's complaint alleges in paragraph 109 that NSDP has breached its fiduciary duty to Receivership Entities. The Receiver does not dispute NSDP's assertion that documents in the file boxes in question are necessary for NSDP's defense against the claims of the Receiver in the Receiver-NSDP Lawsuit. Certain of the services performed by NSDP, for which claims are asserted against NSDP, are documented by

certain records and documents contained in the boxes of working files which are at issue. Certain documents contained in the files are proof of the work performed and the legally recognized value of that work. They are essential to the defense that there was legally recognized value provided in exchange for the payment received by NSDP. They are also essential to NSDP's defense against the claim that NSDP breached fiduciary obligations to Receivership Entities.

The Receiver has the right to request, in the Receiver-NSDP Lawsuit, the inspection of these files under Rule 34(b) and to determine which documents, if any, in the files the Receiver deems to be supportive of the claims of the Receiver. Under Rule 34(b) the Receiver should bear the cost of copying. The original file documents should remain in the possession of the party that generated the documents.

The business records and legal files of NSDP are required for the defense to the Receiver's claims against it, and, if they are taken from NSDP, that will hinder, delay or prevent its defense of the Receiver's claims. It would be prejudicial to NSDP for NSDP to be required to turn over its original files to the Receiver. Accordingly, NSDP respectfully requests the Court grant this motion to retain its records and legal files and that the Receiver be required to comply with Rule 34 in his suit against NSDP. The Receiver has not asserted that he will be prejudiced in any way by having to follow normal discovery procedures in regard to the file boxes in question. Again, the order which the Receiver seeks to enforce is directed to Neldon Johnson, not to NSDP.

DATED this 23rd day of December, 2019.

NELSON SNUFFER DAHLE & POULSEN

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

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was filed using the court's CM/ECF filing system and that system sent notice of filing to all counsel and parties of record.

In addition, the foregoing was mailed or emailed as indicated to the following who are not registered with CM/ECF.

Greg Shepard [greg@rapower3.com](mailto:greg@rapower3.com)

/s/ Steven R. Paul