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IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

vs.

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

Defendants.

**NELDON JOHNSON'S RESPONSE
TO UNITED STATES' FIRST
INTERROGATORIES**

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

Judge David Nuffer

Magistrate Judge Brooke C. Wells

Defendant, Neldon Johnson, by and through counsel of record, Justin D. Heideman of the law firm Heideman & Associates, and provides the most complete responses given the time provided, and will be supplemented accordingly, to the following Interrogatories pursuant to Rule 33 of the Federal Rules of Civil Procedure.

INTERROGATORIES

1. Identify all entities in which you have an ownership interest, including the name of the

Exhibit

D

entity, the ownership percentage, the address of the entity and the business in which the entity is engaged.

RESPONSE: In addition to the objections set forth above and incorporated herein by reference, Defendant objects to Interrogatory No. 1 on the grounds that it is vague, confusing, compound, ambiguous, facially overbroad, unduly burdensome. Defendant further objects to Interrogatory No. 2 (or parts thereof) because it is not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to Interrogatory No. 1 because Plaintiff exceeds the number of Interrogatories allowed by rule, including all discrete subparts. In particular, Defendant objects because Interrogatory No. 1 contains information that is of a propriety nature and will be disclosed at the time of a proper protective order or valid non-disclosure agreement between the parties. Defendant will provide all information subject to a protective order.

2. Identify all debts that you owe any person or entity for any activity related to a Lens, System or Component and any debts owed to you by any person or entity for any activity related to a Lens, System or Component. Include the dates of origination, terms of repayment, interest rate and amount currently owed.

RESPONSE: In addition to the objections set forth above and incorporated herein by reference, Defendant objects to Interrogatory No. 2 on the grounds that it is vague, confusing, compound, ambiguous, facially overbroad, unduly burdensome. Defendant further objects to Interrogatory No. 2 (or parts thereof) because it is not reasonably calculated to lead to the

discovery of admissible evidence. Defendant also objects to Interrogatory No. 2 because Plaintiff exceeds the number of Interrogatories allowed by rule, including all discrete subparts. In particular, Defendant objects because Interrogatory No. 2 contains information that is of a propriety nature and will be disclosed at the time of a proper protective order or valid non-disclosure agreement between the parties.

3. Identify which customers have visited any System, Component or Lens and which customers have not visited any System, Component or Lens.

RESPONSE: In addition to the objections set forth above and incorporated herein by reference, Defendant objects to Interrogatory No. 3 on the grounds that it is vague, confusing, compound, ambiguous, facially overbroad, unduly burdensome. Defendant further objects to Interrogatory No. 3 (or parts thereof) because it is not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to Interrogatory No. 3 because Plaintiff exceeds the number of Interrogatories allowed by rule, including all discrete subparts. Without waiving these or the foregoing objections, Defendant responds as follows: Defendant keeps no record of who may or may not have visited any System, Component or Lens and which customers have not visited any System, Component or Lens. Furthermore, Defendant fails to remember any customers that may have visited any System Component and lens.

4. Identify by name, address, telephone number, and email address, any person or entity that hosts a website you have owned or operated since January 1, 2005.

RESPONSE: In addition to the objections set forth above and incorporated herein by

reference, Defendant objects to Interrogatory No. 4 on the grounds that it is vague, confusing, compound, ambiguous, facially overbroad, unduly burdensome. Defendant further objects to Interrogatory No. 4 (or parts thereof) because it is not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to Interrogatory No. 4 because Plaintiff exceeds the number of Interrogatories allowed by rule, including all discrete subparts. Without waiving these or the foregoing objections, Defendant responds as follows: Defendant has not owned or operated since January 2, 2005.

5. Identify all websites (whether public or private), by URL address, web host and person(s) responsible for maintaining the website, that promote any System, Lens, or Component or any business activity involving a System, Lens, or Component, regardless of whether you maintain the website or it is owned or maintained on your behalf.

RESPONSE: In addition to the objections set forth above and incorporated herein by reference, Defendant objects to Interrogatory No. 5 on the grounds that it is vague, confusing, compound, ambiguous, facially overbroad, unduly burdensome. Defendant further objects to Interrogatory No. 5 (or parts thereof) because it is not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to Interrogatory No. 5 because Plaintiff exceeds the number of Interrogatories allowed by rule, including all discrete subparts. Without waiving these or the foregoing objections, Defendant responds as follows: Rapower3.com and hosted by wix.com, Iaus.boards.net is hosted by Proboards.com, and Greg Shepard is responsible for maintaining these websites.

6. Identify all social media accounts, by username and any other information required to

access such account (including, but not limited to, Facebook, Twitter, Instagram, Snapchat, Tumblr, YouTube, Periscope, Pinterest, Google Plus, Flipboard, LinkedIn etc.) and email addresses you controlled or operated since January 1, 2005.

RESPONSE: In addition to the objections set forth above and incorporated herein by reference, Defendant objects to Interrogatory No. 6 on the grounds that it is vague, confusing, compound, ambiguous, facially overbroad, unduly burdensome. Defendant further objects to Interrogatory No. 6 (or parts thereof) because it is not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to Interrogatory No. 6 because Plaintiff exceeds the number of Interrogatories allowed by rule, including all discrete subparts. Without waiving these or the foregoing objections, Defendant responds as follows: Defendant has no social media accounts as described above in Interrogatory No. 6

7. Identify any training or education you have received in the field of federal income taxes and energy tax credits, including the preparation of federal tax returns

RESPONSE: In addition to the objections set forth above and incorporated herein by reference, Defendant objects to Interrogatory No. 7 on the grounds that it is vague, confusing, compound, ambiguous, facially overbroad, unduly burdensome. Defendant further objects to Interrogatory No. 7 (or parts thereof) because it is not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to Interrogatory No. 7 because Plaintiff exceeds the number of Interrogatories allowed by rule, including all discrete subparts. Without waiving these or the foregoing objections, Defendant responds as follows: Defendant has no

training or education in the areas requested in Interrogatory No. 7.

8. Identify any electricity grid access agreements, interconnection agreement, or any other agreement in which you obtained the right to provide electricity to any entity. Your response should include the names of the entity or person you entered into the agreement with, the date and the terms of the agreement.

RESPONSE: In addition to the objections set forth above and incorporated herein by reference, Defendant objects to Interrogatory No. 8 on the grounds that it is vague, confusing, compound, ambiguous, facially overbroad, unduly burdensome. Defendant further objects to Interrogatory No. 8 (or parts thereof) because it is not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to Interrogatory No. 8 because Plaintiff exceeds the number of Interrogatories allowed by rule, including all discrete subparts. Without waiving these or the foregoing objections, Defendant responds as follows: Defendant never entered into any agreements with the entities described in Interrogatory No. 8.

9. Identify what efforts, if any, you made to make any application to the United States Department of the Treasury under Section 1603 of the American Recovery & Reinvestment Act of 2009 with respect to any Lens, System or Component. Your response should include the date of any application and date of response from the Government.

RESPONSE: In addition to the objections set forth above and incorporated herein by reference, Defendant objects to Interrogatory No. 5 on the grounds that it is vague, confusing, compound, ambiguous, facially overbroad, unduly burdensome. Defendant further objects to Interrogatory No. 5 (or parts thereof) because it is not reasonably calculated to lead to the

discovery of admissible evidence. Defendant also objects to Interrogatory No. 5 because Plaintiff exceeds the number of Interrogatories allowed by rule, including all discrete subparts. Without waiving these or the foregoing objections, Defendant responds as follows: Defendant did not make any applications described in Interrogatory request No. 9.

10. Identify the product (i.e., electricity, heat, hot water, cooling, desalinization, solar process heat or any other product) that the Lens, Systems, and Components are intended to produce, either in the past, currently, or in the future. To the extent that any product has been produced or is being produced, identify when it was produced, in what form, in what measurable amount and the revenues received for such product.

RESPONSE: In addition to the objections set forth above and incorporated herein by reference, Defendant objects to Interrogatory No. 10 on the grounds that it is vague, confusing, compound, ambiguous, facially overbroad, unduly burdensome. Defendant further objects to Interrogatory No. 10 (or parts thereof) because it is not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to Interrogatory No. 10 because Plaintiff exceeds the number of Interrogatories allowed by rule, including all discrete subparts. In particular, Defendant objects because Interrogatory No. 10 contains information that is of a propriety nature and will therefore be provided upon the signing of a valid non-disclosure agreement between the parties.

11. Identify what, and how many Lenses, Systems and Components have been placed in service, as defined in 26 U.S.C. § 48(a)(1) and Treas. Reg. § 1.46-3(d). Your response should

include the dates any Lens, System or Component was placed in service.

RESPONSE: In addition to the objections set forth above and incorporated herein by reference, Defendant objects to Interrogatory No. 11 on the grounds that it is vague, confusing, compound, ambiguous, facially overbroad, unduly burdensome. Defendant further objects to Interrogatory No. 11 (or parts thereof) because it is not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to Interrogatory No. 11 because Plaintiff exceeds the number of Interrogatories allowed by rule, including all discrete subparts. In particular, Defendant objects because Interrogatory No. 11 contains information that is of a propriety nature and will therefore be provided upon the signing of a valid non-disclosure agreement between the parties.

12. Identify the costs you incurred to produce each lens, including the cost of procuring materials and manufacturing the final product that you sold to customers.

RESPONSE: In addition to the objections set forth above and incorporated herein by reference, Defendant objects to Interrogatory No. 12 on the grounds that it is vague, confusing, compound, ambiguous, facially overbroad, unduly burdensome. Defendant further objects to Interrogatory No. 12 (or parts thereof) because it is not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to Interrogatory No. 12 because Plaintiff exceeds the number of Interrogatories allowed by rule, including all discrete subparts. In particular, Defendant objects because Interrogatory No. 12 contains information that is of a propriety nature and will therefore be provided upon the signing of a valid non-disclosure agreement between the parties.

13. Identify how you determined the price each customer must pay per lens, to include the

amount of profit, amount of down payment, and the terms of repayment.

RESPONSE: In addition to the objections set forth above and incorporated herein by reference, Defendant objects to Interrogatory No. 13 on the grounds that it is vague, confusing, compound, ambiguous, facially overbroad, unduly burdensome. Defendant further objects to Interrogatory No. 13 (or parts thereof) because it is not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to Interrogatory No. 13 because Plaintiff exceeds the number of Interrogatories allowed by rule, including all discrete subparts. In particular, Defendant objects because Interrogatory No. 13 contains information that is of a propriety nature and will therefore be provided upon the signing of a valid non-disclosure agreement between the parties.

14. Describe how lenses are accounted for, including how you determine which lens(es) belong to which customer, recording when each lens was placed in service (as defined in 26 U.S.C. § 48(a)(1) and Treas. Reg. § 1.46-3(d)), whether or not each customer's down payment was paid, the outstanding principal remaining due for each lens, the revenue produced by each lens, and the amount of rental income due to each customer.

RESPONSE: In addition to the objections set forth above and incorporated herein by reference, Defendant objects to Interrogatory No. 14 on the grounds that it is vague, confusing, compound, ambiguous, facially overbroad, unduly burdensome. Defendant further objects to Interrogatory No. 14 (or parts thereof) because it is not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to Interrogatory No. 14 because Plaintiff exceeds the number of Interrogatories allowed by rule, including all discrete subparts.

Without waiving these or the foregoing objections, Defendant responds as follows: To the best of Defendants knowledge, serial numbers were tracked through invoices of lens purchases.

15. Identify by name, address and telephone number every domestic and foreign bank and/or financial institution in which you have an account or over which you have signatory authority or other such control, and provide the account number, and type of account. In addition, identify the record owner or title of each account.

RESPONSE: In addition to the objections set forth above and incorporated herein by reference, Defendant objects to Interrogatory No. 4 on the grounds that it is vague, confusing, compound, ambiguous, facially overbroad, unduly burdensome. Defendant further objects to Interrogatory No. 4 (or parts thereof) because it is not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to Interrogatory No. 4 because Plaintiff exceeds the number of Interrogatories allowed by rule, including all discrete subparts. Without waiving these or the foregoing objections, Defendant responds as follows: Defendant has accounts with Bank of American Fork and Wells Fargo. Specific account information will be provided through Defendants' production of documents.

16. Identify the gross income you have received in each year since 2005 from any source, by source, for any activity related to any System, Lens or other Component.

RESPONSE: In addition to the objections set forth above and incorporated herein by reference, Defendant objects to Interrogatory No. 13 on the grounds that it is vague, confusing, compound, ambiguous, facially overbroad, unduly burdensome. Defendant further objects to

Interrogatory No. 13 (or parts thereof) because it is not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to Interrogatory No. 13 because Plaintiff exceeds the number of Interrogatories allowed by rule, including all discrete subparts. In particular, Defendant objects because Interrogatory No. 13 contains information that is of a propriety nature and will therefore be provided upon the signing of a valid non-disclosure agreement between the parties.

17. Identify each instance in which a customer complained that the customer was not receiving adequate rental income from their Lens or Lenses.

RESPONSE: In addition to the objections set forth above and incorporated herein by reference, Defendant objects to Interrogatory No. 17 on the grounds that it is vague, confusing, compound, ambiguous, facially overbroad, unduly burdensome. Defendant further objects to Interrogatory No. 17 (or parts thereof) because it is not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to Interrogatory No. 17 because Plaintiff exceeds the number of Interrogatories allowed by rule, including all discrete subparts. In particular, Defendant objects because Interrogatory No. 17 contains information that is of a propriety nature and will therefore be provided upon the signing of a valid non-disclosure agreement between the parties.

18. Identify all attorneys or other tax advisors you consulted or from whom you received tax advice regarding any Lens, System or Component, including the dates consulted, the dates any advice was received, and the form of the advice (*i.e.*, oral, email, memoranda, opinion letters,


other written correspondence, etc.).

RESPONSE: In addition to the objections set forth above and incorporated herein by reference, Defendant objects to Interrogatory No. 13 on the grounds that it is vague, confusing, compound, ambiguous, facially overbroad, unduly burdensome. Defendant further objects to Interrogatory No. 13 (or parts thereof) because it is not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to Interrogatory No. 13 because Plaintiff exceeds the number of Interrogatories allowed by rule, including all discrete subparts. In particular, Defendant objects because Interrogatory No. 13 contains information that is of a propriety nature and will therefore be provided upon the signing of a valid non-disclosure agreement between the parties.

VERIFICATION OF RESPONSES

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing responses to the UNITED STATES' FIRST INTERROGATORIES TO NELDON JOHNSON are true and correct.

EXECUTED this 11 day of July, 2016.


NELDON JOHNSON

DATED and SIGNED this 14th day of July, 2016

HEIDEMAN & ASSOCIATES

/s/ Justin D. Heideman
JUSTIN D. HEIDEMAN
Attorney for Defendants

CERTIFICATE OF SERVICE

On this 14th day of July, 2016, I hereby certify a true and correct copy of the forgoing **DEFENDANT'S NELDON JOHNSON'S RESPONSE TO UNITED STATES' FIRST INTERROGATORIES** was served on the following:

Party/Attorney	Method
<p><i>Former Attorneys for Defendants</i> James S. Judd Richard A. Van Wagoner Rodney R. Parker Samuel Alba Snow Christensen & Martineau 10 Exchange Place 11th FL P.O. Box 45000 Salt Lake City, Utah 84145 Tele: (801) 521-9000 Email: jsj@scmlaw.com rvanwagoner@scmlaw.com rparker@scmlaw.com sa@scmlaw.com</p>	<p>Hand Delivery U.S. Mail, postage prepaid Overnight Mail Fax Transmission X Electronic Filing Notice and Email</p>
<p><i>Attorney for Defendants</i> R. Gregory Shepard Roger Freeborn Donald S. Reay Reay Law PLLC 43 W 9000 S Ste B Sandy, Utah 84070 Tele: (801) 999-8529 Email: donald@reaylaw.com</p>	<p>Hand Delivery U.S. Mail, postage prepaid Overnight Mail Fax Transmission X Electronic Filing Notice and Email</p>
<p><i>Pro Hac Vice Attorney for Plaintiff</i> Erin Healy Gallagher US Department of Justice (TAX) Tax Division P.O. Box 7238 Washington, DC 20044 Phone: (202) 353-2452 Email: erin.healygallagher@usdoj.gov</p>	<p>Hand Delivery U.S. Mail, postage prepaid Overnight Mail Fax Transmission X Electronic Filing Notice and Email</p>

<i>Pro Hac Vice Attorney for Plaintiff</i> Erin R. Hines US Department Justice Central Civil Trial Section RM 8921 555 4 th St NW Washington, DC 20001 Tele: (202) 514-6619 Email: erin.r.hines@usdoj.gov	Hand Delivery U.S. Mail, postage prepaid Overnight Mail Fax Transmission X Electronic Filing Notice and Email
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HEIDEMAN & ASSOCIATES

/s/ Suzanne Peterson

Suzanne Peterson Legal Assistant