

UNITED STATES DISTRICT COURT

for the
District of Utah

UNITED STATES OF AMERICA

Plaintiff

v.

RAPOWER-3, LLC, et al.

Defendant

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

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Bank of American Fork
Attn: Randall Benson, Legal Dept., 380 N. 200 West, Ste. 101, Bountiful, UT 84010

(Name of person to whom this subpoena is directed)

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

See attachment. In lieu of producing responsive documents in-person at the place and time listed below, you may send documents to the undersigned by mail pursuant to the instructions in the attachment.

Place: U.S. Attorney's Office
185 South State Street, Ste. 300
Salt Lake City, UT 84111

Date and Time:

07/22/2016 9:00 am

☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 06/20/2016

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/Erin R. Hines

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

United States of America

, who issues or requests this subpoena, are:

Erin R. Hines, U.S. Dept. of Justice, P.O. Box 7238, Washington, D.C. 20044; Erin.R.Hines@usdoj.gov; (202) 514-6619

Notice to the person who issues or requests this subpoena

A notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Plaintiff
Exhibit

B

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

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(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.

ATTACHMENT A

United States v. RaPower-3, LLC, International Automated Systems, Inc., LTB1, LLC, R. Gregory Shepard, Neldon Johnson, and Roger Freeborn, Civil No. 2:15-cv-00828 (D. Utah)

I. Definitions and Instructions

1. “Document” or “documents” includes, but is not limited to, electronically-stored and transmitted information. The term “document” or “documents” includes writings, drawings, graphs, charts, surveys, deeds, photographs, sound recordings, images, e-mails, text messages, and other data or data compilations, stored in any medium. If electronically-stored information, such as an e-mail, is produced in response to this subpoena, please produce a printed copy of the information.
2. The terms “you,” “yourself,” and “your” refers to the person or entity responding to this subpoena, and to any of your employees or agents.
3. “Shepard” refers to Defendant R. Gregory Shepard, and to any of his employees or agents, unless otherwise stated.
4. “Johnson” refers to Defendant Neldon Johnson, and to any of his employees or agents, unless otherwise stated.
5. “Freeborn” refers to Defendant Roger Freeborn, and to any of his employees or agents, unless otherwise stated.
6. “RaPower-3” refers to Defendant RaPower-3, LLC, and to any of its employees, independent contractors, or agents, unless otherwise stated.
7. “IAS” refers to Defendant International Automated Systems, Inc., and to any of its employees, independent contractors or agents, unless otherwise stated.
8. “LTB” refers to Defendant LTB1, LLC, and to any of its employees or agents, unless otherwise stated.
9. If any documents are being withheld under claim of privilege, please provide a written list describing the documents and the reasons for which these documents will not be produced. See Fed. R. Civ. P. 45(e)(2).

10. You can comply with this subpoena by producing copies of the requested documents at the date, time, and location listed on the subpoena. You can also comply with this subpoena by mailing copies of the requested documents to the following address before July 20, 2016:

Erin R. Hines
U.S. Department of Justice, Tax Division
P.O. Box 7238
Washington, D.C. 20044

You can also comply with this subpoena by sending copies of the requested documents by July 20, 2016 by FedEx or other overnight delivery service to: Erin R. Hines, U.S. Department of Justice, Tax Division, 555 4th St. NW, Room 8921, Washington, D.C. 20001.

You can also comply with this subpoena by e-mailing copies to Erin.R.Hines@usdoj.gov and Christopher.R.Moran@usdoj.gov. The documents may also be produced in hard copy or produced on a disc or other readable medium, such as a thumb drive, in .PDF form.

11. If necessary to identify customers, the United States may be able to provide taxpayer identification numbers. Please contact Erin Hines at (202) 514-6619 or Chris Moran at (202) 307-0834.

II. Documents Requested

1. Copies of all documents and records, including electronically stored information, in the possession or subject to the control of Bank of American Fork, for the period January 1, 2005 to the present, including, but not limited to correspondence and notices, account statements, account opening and closing documents, signature cards, cancelled checks (front and back), wire transfers, deposit records, evidence of withdrawals, loan application, loan files and similar documents for all accounts held in the name of the following individuals/entities:
 - a. RaPower-3
 - b. IAS
 - c. LTB
 - d. R. Gregory Shepard
 - e. Neldon Johnson
 - f. Roger Freeborn
 - g. XSun Energy, LLC
 - h. SOLCO I, LLC
2. Copies of all documents and records, including electronically stored information, in the possession or subject to the control of Bank of American Fork, for the period January 1,

2005 to the present, including, but not limited to correspondence and notices, account statements, account opening and closing documents, signature cards, cancelled checks (front and back), wire transfers, deposit records, evidence of withdrawals, loan application, loan files and similar documents for all accounts in which the following individuals are signatories:

- a. R. Gregory Shepard 858 Clover Meadow Drive
 Murray UT, 84123
 - b. Neldon Johnson 4035 South 4000 West
 Deseret UT, 84624
 - c. Roger Freeborn 1145 NE Hill Way, Estacada, OR 92703
 PO Box 1616, Estacada, OR 92703
3. The United States is aware of the following Bank of American Fork accounts associated with the described individuals/entities:

<u>Name</u>	<u>Account Number</u>
IAS	■ 8011
Neldon Johnson	■ 9233

This list is provided for your convenience in locating accounts. Your response should not be limited to these accounts. Responsive documents include all accounts related to the entities and individuals described above.