

JUSTIN D. HEIDEMAN (USB No. 8897)  
CHRISTIAN D. AUSTIN (USB No. 9121)

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*Attorneys for RaPower-3, LLC, International Automated Systems, Inc., LTB1, and Neldon Johnson*

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

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

Defendants.

**DEFENDANTS' JOINT MOTION TO  
EXTEND TIME TO RESPOND TO UNITED  
STATES DISCOVERY REQUESTS**

Civil No. 2:15-cv-00828 DN

**Judge David Nuffer  
Magistrate Judge Brooke C. Wells**

DEFENDANTS' RaPower-3, LLC; International Automated Systems, LLC; LTB1, LLC; Neldon Johnson; Gregory Shepard; and Roger Freeborn, pursuant to Rule 6(b), Rule 33(b)(2) and Rule 34(b)(2)(A) of the Federal Rules of Civil Procedure, hereby jointly submit this **Motion to Extend Time to Respond to United States Discovery Requests** (hereinafter "**Motion**") as follows:

## REQUESTED RELIEF

Defendants' request the Court grant their various Motions to Quash<sup>1</sup> and deny the United States various Motions to Compel<sup>2</sup> pending the resolution of the protective order issue in this case and allow additional time for the Defendants' to produce responses to the United States discovery requests after the Court enters a protective order in this case.

## MEMORANDUM

On April 11, 2016, the United States filed a **Motion for Relief from Standard Protective Order and DUCIVR-26-2**<sup>3</sup> (hereinafter "**Motion for Relief**"). On September 20, 2016, this Court granted the United States' **Motion for Relief** from the application of the Standard Protective Order in this case.<sup>4</sup> The order granting such relief also stayed this case "for forty-five days to allow the parties to negotiate a new protective order."<sup>5</sup> Pursuant to a further Court order granting additional time, the parties filed their respective proposed protective orders with the Court on November 3, 2016.<sup>6</sup> The United States filed a **Status Report** on November 3,

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<sup>1</sup> ECF Docs. 62, 65, 70, 83, 84 and 87.

<sup>2</sup> ECF Docs. 53, 55-57 and 59.

<sup>3</sup> ECF Doc. 39.

<sup>4</sup> ECF Doc. 92.

<sup>5</sup> *Id.* at p. 6.

<sup>6</sup> ECF Doc. 104 (Court Order), ECF Doc. 106 (United States proposed protective order) and ECF Doc. 110 (Defendants' joint proposed protective order).

2016 which requests the Defendants be allowed only seven days to respond to the outstanding discovery.<sup>7</sup>

In this case, on or about April 8, 2016, the United States issued various **Requests for the Production of Documents and Interrogatories** (hereinafter “**Discovery**”) to the Defendants which were and are extensive and encompass thousands if not cumulatively tens of thousands of documents and e-mail. The Defendants responded by provided extensive documentation and responses and also lodged objections due to the outstanding protective order issue. The United States’ **Motion for Relief** was filed three days after the United States served their **Discovery** upon the Defendants. Since that time of the Defendants initial production, they have provided additional supplemental responses to the United States **Discovery** but were and are unable to adequately respond to the United States **Discovery** in this case due to the pending **Motion for Relief** from the protective order. Further, the Defendants’ were unable to adequately, protect, categorize and mark for protection the vast documentation without a finalized protective order that would provide the parameter of protection of the various document production that is and should be protected.

The parties were unable, despite their best efforts, to reach an agreement which would provide a reasonable timeline for production of the remaining discovery to be produced by the Defendants. On November 3, 2016, the Defendants sent the United States a request to extend the deadline to respond asserting that the seven days suggested by the United States in their proposed Status Report was insufficient time for the Defendants to categorize, mark and produce

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<sup>7</sup> ECF Doc. 105, p. 2-3.

such a vast amount of documentation.<sup>8</sup> The United States rejected the extension request and unilaterally filed their Status Report requesting the Court allow only seven days for the Defendants' responses and production.<sup>9</sup>

Defendants acknowledge that once a protective order is actually in place their objections as outlined in the Motion's to Quash, specifically ECF Docs. 62, 65, 70, 83, 84 and 87, are largely moot. Notwithstanding and until the Court resolves the protective order issue in this case, the Defendants' would request that the Court grant their Motions to Quash until the protections of a final protective order are available. Further, the Defendants jointly move this Court to deny the United States' motions to compel, specifically ECF Docs. 53, 55-57 and 59. Additionally, the Defendants jointly request the Court enter an order allowing the Defendants' an extension of not less than sixty (60) days' to respond to the discovery at issue in the above noted motions to quash and motions to compel, after the entry of the order by the Court addressing the pending protective order issues in this case. This time would allow the Defendants' to appropriately categorize and mark protected documents with either "PROTECTED INFORMATION" and/or "CONFIDENTIAL INFORMATION—ATTORNEY EYES ONLY."

RESPECTFULLY SUBMITTED this 4th day of November, 2016.

/s/ Donald S. Reay  
Donald S. Reay  
*Attorney for Roger Freeborn and  
Gregory Shepard*

**HEIDEMAN & ASSOCIATES**

/s/ Justin D. Heideman  
JUSTIN D. HEIDEMAN  
*Attorney for RAPower-3, LLC, International Automated  
Systems, Inc., LTBI, and Neldon Johnson*

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<sup>8</sup> See Exhibit "1" attached hereto, e-mail correspondence addressing issue of extension of time to respond.

<sup>9</sup> ECF Doc. 105, p. 2-3.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this document was electronically filed with the Clerk of the Court through the CM/ECF system, which sent notification of such filing to all attorneys to be noticed under this matter as follows:

**2:15-cv-00828-DN-BCW Notice has been electronically mailed to:**  
**Christopher R. Moran** christopher.r.moran@usdoj.gov, central.taxcivil@usdoj.gov  
**Donald S. Reay** donald@reaylaw.com, Donald@UtahLaw.pro  
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**Donald S. Reay** donald@reaylaw.com, donald@utahlaw.pro

DATED this 4th day of November, 2016.

/s/ Donald S. Reay  
Donald S. Reay

EXHIBIT “1”

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**From:** Healy Gallagher, Erin (TAX) <Erin.HealyGallagher@usdoj.gov>  
**Sent:** Thursday, November 3, 2016 12:32 PM  
**To:** Justin Heideman; Donald Reay  
**Cc:** Christian Austin; Travis Sorenson; Moran, Christopher R. (TAX)  
**Subject:** RE: US v. RaPower-3, et al.: protective order and status report filing

Counsel,

I appreciate your responses. My request to hear from you by 9am today was because of my schedule for today – that's when I would have had to hear from you with proposals/changes in order to turn a document around for filing today. I understand that your schedule didn't permit a response by that time. So it appears that we'll just have to file separate documents.

Thanks,

Erin Healy Gallagher  
Department of Justice - Tax Division  
PO Box 7238  
Washington DC 20044  
(o) 202 353 2452  
(f) 202 514 6770  
erin.healygallagher@usdoj.gov

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**From:** Justin Heideman [mailto:jheideman@heidlaw.com]  
**Sent:** Thursday, November 03, 2016 2:00 PM  
**To:** Donald Reay <donaald@reaylaw.com>; Healy Gallagher, Erin (TAX) <Erin.HealyGallagher@tax.USDOJ.gov>  
**Cc:** Christian Austin <caustin@heidlaw.com>; Travis Sorenson <tsorenson@heidlaw.com>; Moran, Christopher R. (TAX) <Christopher.R.Moran@tax.USDOJ.gov>  
**Subject:** RE: US v. RaPower-3, et al.: protective order and status report filing

Don:

Your timing like mine is behind the arbitrary deadline offered, and for that I also apologize but this is my first chance to address the issue. I like your solution and would approve your proposed language.

Justin D. Heideman | *Attorney at Law*



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**From:** Donald Reay [<mailto:donald@reaylaw.com>]  
**Sent:** Thursday, November 03, 2016 11:55 AM  
**To:** Healy Gallagher, Erin (TAX); Justin Heideman  
**Cc:** Christian Austin; Travis Sorenson; Moran, Christopher R. (TAX)  
**Subject:** RE: US v. RaPower-3, et al.: protective order and status report filing

Sorry for not responding by 9:00 am this morning. Regarding the attached Joint Status Report, I disagree with the proposed resolution of the Motions to Quash and Motions to Compel. I would rather have a joint order submitted that simply extends the deadlines for 28 days after the judge rules on the protective order issue. The language as proposes would require me to go read through all the motions to ensure what exactly would be granted in your motions to compel. I don't think we necessarily agree with all the requested relief nor do I agree the motions to quash are fully denied. I would rather see a stipulated order that simply withdraws the motions on both sides and grants an additional 28 days to respond once the protective order issue has been ruled upon by the judge.

Attached is my modification to the Joint Status Report. I have not drafted the proposed order but I will once I have your approval on the language of the Joint Status Report.

Respectfully,  
-Don

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DONALD REAY | ATTORNEY  
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**From:** Healy Gallagher, Erin (TAX) [<mailto:Erin.HealyGallagher@usdoj.gov>]  
**Sent:** Tuesday, November 1, 2016 6:38 AM  
**To:** [jheideman@heidlaw.com](mailto:jheideman@heidlaw.com); Donald Reay <[donald@reaylaw.com](mailto:donald@reaylaw.com)>



Cc: [caustin@heidlaw.com](mailto:caustin@heidlaw.com); [tsorenson@heidlaw.com](mailto:tsorenson@heidlaw.com); Moran, Christopher R. (TAX) <[Christopher.R.Moran@usdoj.gov](mailto:Christopher.R.Moran@usdoj.gov)>

Subject: US v. RaPower-3, et al.: protective order and status report filing

Counsel,

In light of the court's Order last week, I'm attaching a proposed joint status report regarding the protective order. A couple of things for your consideration:

I've noted in the status report that I expect we will each submit proposed orders because we have not reached agreement on key provisions. But I'm attaching to this email the most recent draft of the protective order that I sent around last week, in the event that we think we can move any further toward agreed terms. We're open to continuing the conversation.

With respect to the pending motions: I believe we are on the same page with respect to the motions to quash, but I understand we may disagree on my proposed resolution of the motions to compel (which is the same relief requested in the motions themselves). I believe we are correct under the law that the interrogatories should be answered without objection once the new protective order is entered, but I am willing to discuss a time for your responses that is longer than 7 days. Again, we're available for a conversation about this.

We'll need to hear from you by 9am Eastern on Thursday if you'd like to discuss.

Thank you,

Erin Healy Gallagher  
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(f) 202 514 6770  
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