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International Automated Systems, Inc.,  
LTB1, and Neldon Johnson*

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

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

Defendants.

**DEFENDANTS' SUPPLEMENTAL  
PRIVILEGE LOG**

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

Judge David Nuffer  
Magistrate Judge Brooke C. Wells

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Defendants by and through counsel undersigned, and pursuant to this Court's Order hereby submit the attached privilege log. Notably, the original law was not produced by Defendants. Instead it was issued by Todd Anderson. At the April 13, 2017 hearing the Court ordered that the log be supplemented, and revised so that the Court could determine whether privilege should in fact apply.

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**Plaintiff  
Exhibit**

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Accordingly, this submission is offered in compliance with this instruction. The actual log is attached hereto as Exhibit 1.

DATED and SIGNED May 3, 2017.

**HEIDEMAN & ASSOCIATES**

/s/ Justin D. Heideman

JUSTIN D. HEIDEMAN

*Attorney for Defendants*

## **EXHIBIT 1**

	A	B	C	D	E	F	G	H	I
1	Group Number	Bates Range	Description	Communication From	Communication To		Already Provided?	Privileged	Reason for Privilege
2	1	Anderson 000001-23	Subpoena Served upon Todd Anderson on August 12, 2016	United States	Todd Anderson	Subpoena requesting documents	Y	N	
3	2	Anderson 000024-26	Subpoena Served upon Todd Anderson on January 11, 2017	United States	Todd Anderson	Subpoena requesting testimony at deposition	Y	N	
4	3	Anderson 000027-52	Response to Subpoena to Produce Documents and Claim of Privilege -- Documents Produced to United States	N/A	N/A	N/A	N/A	N/A	N/A
5		Anderson 000033-36	Exhibit A - Fax from IRS dated February 26, 2013	United States	Todd Anderson	Screen Print of RaPower-3 web page, replicating Anderson letter.	Y	N	
6		Anderson 000037-38	Exhibit B - Letter to IRS dated June 11, 2013	Todd Anderson	United States	Scope, intent, and effect of letter	Y	N	
7		Anderson 000039-41	Exhibit C - Cease and Desist Letter dated June 30, 2013	Tate Bennett Esq.	Ra Power 3; Neldon Johnson		Y	N	

	A	B	C	D	E	F	G	H	I
8		Anderson 000042-47	Exhibit D - File including document "Re Potential tax advantages"	Todd Anderson	"Potential RaPower-3 Customer"	Anderson Letter	Y	N	Privilege Waived by publication to third parties
9		Anderson 000048-52	Exhibit E - Draft letter "Re: Potential tax advantages"	Todd Anderson	"Potential RaPower-3 Customer"	Anderson Letter, exact copy, earlier date.	Y	N	Privilege Waived by publication to third parties
10	4	Anderson 000053-241	Documents Referenced in Response to Subpoena, but that were not provided based on claim of privilege	N/A	N/A	N/A	N/A	N/A	N/A
11		54-57	Privilege Log ALC Reference 371 -- Invoice 371 to Neldon and Glenda Johnson for legal fees and costs.	Todd Anderson	Neldon & Glenda Johnson	Invoice for legal services provided to Neldon and Glenda in their personal capacities (unrelated to tax issues)	N	Y	Document contains a summary of services provided from attorney to client following the client's seeking legal advice.

	A	B	C	D	E	F	G	H	I
12		58-60	Privilege Log ALC Reference 424 -- Invoice 424 to Neldon and Glenda Johnson for legal fees and costs.	Todd Anderson	Neldon & Glenda Johnson	Invoice for legal services provided to Neldon and Glenda in their personal capacities (unrelated to tax issues)	N	Y	Document contains a summary of services provided from attorney to client following the client's seeking legal advice.
13		61-63	Privilege Log ALC Reference 389 -- Invoice 389 to Neldon and Glenda Johnson for legal fees and costs.	Todd Anderson	Neldon & Glenda Johnson	Invoice for legal services provided to Neldon and Glenda in their personal capacities (unrelated to tax issues)	N	Y	Document contains a summary of services provided from attorney to client following the client's seeking legal advice.

	A	B	C	D	E	F	G	H	I
14		64-66	Privilege Log ALC Reference 499 -- Invoice 499 to Neldon and Glenda Johnson for legal fees and costs.	Todd Anderson	Neldon & Glenda Johnson	Invoice for legal services provided to Neldon and Glenda in their personal capacities (unrelated to tax issues)	N	Y	Document contains a summary of services provided from attorney to client following the client's seeking legal advice.
15		67-69	Privilege Log ALC Reference 463 -- Invoice 463 to Neldon and Glenda Johnson for legal fees and costs.	Todd Anderson	Neldon & Glenda Johnson	Invoice for legal services provided to Neldon and Glenda in their personal capacities (unrelated to tax issues)	N	Y	Document contains a summary of services provided from attorney to client following the client's seeking legal advice.

	A	B	C	D	E	F	G	H	I
16		70-72	Privilege Log ALC Reference 372 -- Invoice 372 to Neldon and Glenda Johnson for legal fees and costs.	Todd Anderson	Neldon & Glenda Johnson	Invoice for legal services provided to Neldon and Glenda in their personal capacities (unrelated to tax issues)	N	Y	Document contains a summary of services provided from attorney to client following the client's seeking legal advice.
17		73-76	Privilege Log ALC Reference 470 -- Invoice 470 to RaPower 3 for legal fees and costs.	Todd Anderson	RaPower-3 c/o Neldon P. Johnson	Invoice for legal services provided to RaPower-3	N	Y	Document contains a summary of services provided from attorney to client following the client's seeking legal advice.
18		77-78	Privilege Log ALC Reference A -- Letter re Return Check No. 395 (Microsoft Word, modifiable file), dated approx., Jan 15, 2011	Todd Anderson	Glenda Johnson	Return of Retainer money (unrelated to tax issues)	N	Y	Document contains information arising out of the scope of representation of Glenda Johnson in her personal capacity.



	A	B	C	D	E	F	G	H	I
19		79-80	Privilege Log ALC Reference B -- Scan of email sent from Jessica Anderson to Todd F. Anderson dated June 11, 2011	Jessica Anderson Anderson Law Center, P.C.	Neldon Johnson (in his capacity as an officer of RaPower-3)	Investment Property/Income defined	N	Y	Document contains legal advice.
20		81-134	Privilege Log ALC Reference C -- Document entitled "Executive Summary"	International Automated Systems, Inc.	Unclear	Document is a summary of technology and information solely owned and controlled by IAS.	N	Y	Prepared with assistance from, and pursuant to, advice of corporate counsel.
21		135-141	Privilege Log ALC Reference D -- Document entitled "Patronage Dividends: A Primer"	Greg Shepard (in his capacity as RaPower-3 Chief Director of Operations)	Neldon Johnson (in his capacity as an officer of IAUS)	E-mail with attachment seeking advice of counsel.	N	Partially	Email seeks legal advice from Neldon's tax attorney. Attachment is published online and is not privileged.

	A	B	C	D	E	F	G	H	I
22		142-151	Privilege Log ALC Reference E -- Document entitled "Donald L Korb Chief Counsel for the Internal Revenue Service Preparks at the 2005 University of Southern California Tax Institute The Economic Substance Doctrine in the Current Tax Shelter Environment, Los Angeles, California on January 25, 2005"	Donald L. Korb Chief Counsel for the Internal Revenue Service Cca. 2005	Attendees of 2005 symposium on "The economic substance doctrine in the current tax shelter environment"	Transcript of Symposium speech with citations to legal authority.	N	N	
23		152-161	Privilege Log ALC Reference F -- Document entitled "What is the Purpose of a Federal Tax Credit for Renewable Energy"	National Association of Tax Professionals	Neldon Johnson	Document contains tax advice on specific questions presented to the NATP by Neldon Johnson.	N	Y	Client approached NATP for the purpose of requesting legal/tax advice.

	A	B	C	D	E	F	G	H	I
24		162-170	Privilege Log ALC Reference G -- Document entitled "Rapower 3 Equipment Purchase Agreement"	Todd Anderson	RaPower-3	Draft	N	Y	Prepared by counsel.
25		171-172	Privilege Log ALC Reference H -- Document entitled "Solar Purchase Referral Fee Contract"	Todd Anderson	RaPower-3	Draft	N	Y	Prepared by counsel.
26		173-181	Privilege Log ALC Reference I -- Document entitled "RaPower3 Operation and Maintenance" (Microsoft Word, modifiable file)	Todd Anderson	RaPower-3	Draft	N	Y	Prepared by counsel.

	A	B	C	D	E	F	G	H	I
27		182-185	Privilege Log ALC Reference J -- Pages from document entitled "RaPower3 Operation and Maintenance Agreement" -- including Microsoft Word attorney comments	Todd Anderson	RaPower-3	Draft	N	Y	Prepared by counsel.
28		186-188	Privilege Log ALC Reference K -- PDF (scanned) version of document entitled "RaPower3 Operation and Maintenance Agreement" -- pages appear out of order	Todd Anderson	RaPower-3	Draft	N	Y	Prepared by counsel.
29		189-208	Privilege Log ALC Reference L -- PDF (scanned) version of document entitled "RaPower3 Operation and Maintenance Agreement"	Todd Anderson	RaPower-3	Draft	N	Y	Prepared by counsel.

	A	B	C	D	E	F	G	H	I
30		209-210	Privilege Log ALC Reference M -- Attorney notes from client meeting (Microsoft Word, modifiable file)	Todd Anderson	RaPower-3		N	Y	Notes prepared by attorney following meeting with Client. Contains information arising out of scope of representation.
31		211-220	Privilege Log ALC Reference N -- Letter re: Response to Tax Questions Posed (Microsoft Word, modifiable file)	Todd Anderson	Neldon Johnson (in his capacity as an officer of RaPower- 3)		N	Y	Document reflects that client approached counsel seeking legal advice. Document renders said legal advice.
32		221-222	Privilege Log ALC Reference O -- Letter re: Tax and Legal information regarding RaPower-3 Equipment Purchase (Microsoft Word, modifiable file)	Jessica Anderson Anderson Law Center, P.C.	Prospective purchasers of Solar Lenses. Unclear whether document was ever shared with anyone, including Neldon.		N	Y	Prepared by counsel, following a request by RaPower-3 for legal advice.

	A	B	C	D	E	F	G	H	I
33		223-225	Privilege Log ALC Reference P -- Document entitled "Employment Agreement Employment of Neldon P. Johnson by Rapwer-3, LLC" (Microsoft Word, modifiable file)	Todd Anderson		Unsigned (undisclosed) draft of contract.	N	Y	Reflects legal advice regarding contents of contract. To the extent it can be compared with subsequently presented and/or executed draft of contract, legal advice may be inferred and document is therefore privileged.

	A	B	C	D	E	F	G	H	I
34		226-226	Privilege Log ALC Reference Q -- Document entitled "Employment Agreement Employment of Neldon P. Johnson by Rapwer-3, LLC" (PDF Version with attorney note/comment)	Todd Anderson	Neldon Johnson	Unsigned (undisclosed) draft of contract.	N	Y	Reflects legal advice regarding contents of contract. To the extent it can be compared with subsequently presented and/or executed draft of contract, legal advice may be inferred and document is therefore privileged. Also contains privileged comments from counsel.

	A	B	C	D	E	F	G	H	I
35		229-231	Privilege Log ALC Reference R -- Document entitled "Employment Agreement Employment of Neldon P. Johnson by Rapwer-3, LLC" (PDF version without attorney note/comment)	Todd Anderson	Neldon Johnson	Unsigned (undisclosed) draft of contract.	N	Y	Reflects legal advice regarding contents of contract. To the extent it can be compared with subsequently presented and/or executed draft of contract, legal advice may be inferred and document is therefore privileged. Also contains privileged comments from counsel.



	A	B	C	D	E	F	G	H	I
36		232-235	Privilege Log ALC Reference S -- Attorney notes	Todd Anderson	Internal memo	Notes made following communication with client.	N	Partially	Document reflects that client approached counsel seeking legal advice. Document reflects attorney thoughts and thought process regarding client communication .  Page 235 is a series of questions from an auditor, answered by counsel, and are likely not privileged.

	A	B	C	D	E	F	G	H	I
37		236-238	Privilege Log ALC Reference T -- Letter re: Response to Questions Posed to RaPower-3 LLC (Microsoft Word, modifiable file)	Todd Anderson	Cody Buck Mantyla Mcreynolds	Letter answering audit questions.	N	N	
38		239-241	Privilege Log ALC Reference U -- Letter re: Response to Questions Post to RaPower-3, LLC (PDF version)	Todd Anderson	Cody Buck Mantyla Mcreynolds	Letter answering audit questions.	N	N	

**CERTIFICATE OF SERVICE**

On May 3, 2017, I hereby certify a true and correct copy of the forgoing **DEFENDANT INTERNATIONAL AUTOMATED SYSTEMS, INC.'S, RESPONSE TO UNITED STATES' THIRD INTERROGATORIES** was served on the following:

<b>Party/Attorney</b>	<b>Method</b>
<i>Former Attorneys for Defendants</i> James S. Judd Richard A. Van Wagoner Rodney R. Parker Samuel Alba Snow Christensen & Martineau 10 Exchange Place 11 <sup>th</sup> 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	Hand Delivery U.S. Mail, postage prepaid Overnight Mail Fax Transmission <input checked="" type="checkbox"/> Electronic Filing Notice
<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	Hand Delivery U.S. Mail, postage prepaid Overnight Mail Fax Transmission <input checked="" type="checkbox"/> Electronic Filing Notice
<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	Hand Delivery U.S. Mail, postage prepaid Overnight Mail Fax Transmission <input checked="" type="checkbox"/> Electronic Filing Notice
<i>Pro Hac Vice Attorney for Plaintiff</i> Erin R. Hines US Department Justice	Hand Delivery

Central Civil Trial Section RM 8921 555 4 <sup>th</sup> St NW Washington, DC 20001 Tele: (202) 514-6619 Email: erin.r.hines@usdoj.gov	U.S. Mail, postage prepaid Overnight Mail Fax Transmission <u>X</u> Electronic Filing Notice
<i>Attorney for Plaintiff</i> John K. Mangum US Attorney's Office (UT) Tele: (801) 325-3216 Email: john.mangum@usdoj.gov	Hand Delivery U.S. Mail, postage prepaid Overnight Mail Fax Transmission <u>X</u> Electronic Filing Notice
<i>Pro Hac Vice Attorney for Plaintiff</i> Christopher R. Moran US Department of Justice (TAX) Tax Division PO Box 7238 Washington, DC 20044 Tele: (202) 307-0234 Email: christopher.r.moran@usdoj.gov	Hand Delivery U.S. Mail, postage prepaid Overnight Mail Fax Transmission <u>X</u> Electronic Filing Notice

**HEIDEMAN & ASSOCIATES**

/s/ Samantha Fowlks

SAMANTHA FOWLKS