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

UNITED STATES OF AMERICA, Plaintiff, vs. RAPOWER-3, LLC, INTERNATIONAL AUTOMATED SYSTEMS, INC., LTB1, LLC, R. GREGORY SHEPARD, NELDON JOHNSON, and ROGER FREEBORN, Defendants.	Civil No. 2:15-cv-00828-DN-EJF DEFENDANTS INTERNATIONAL AUTOMATED SYSTEMS, INC, LTB1, LLC, GREGORY SHEPHERD AND NELDON JOHNSON'S OBJECTIONS TO UNITED STATES' MOTION TO VACATE, IN PART, THE JULY 5, 2018, ORDER Judge David Nuffer Magistrate Judge Evelyn J. Furse
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Defendants International Automated Systems, Inc., LTB1, LLC, R. Gregory Shepard, and Neldon Johnson¹, hereby provide their objections to United States Motion to Vacate, in Part, the July 5, 2018, Order. Responding Defendants join in the response of RaPower3, LLC. Additionally, responding Defendants provide the following:

¹ Because Defendant RaPower-3, LLC has filed a chapter 11 bankruptcy, its former counsel has not yet been approved to represent it in these or any other proceedings. The responding defendants rely upon RaPower-3, LLC's bankruptcy counsel to provide a response on its behalf.

Plaintiff seeks from this Court an Order that “(1) set(s) a new schedule for submission of the United States draft opinion and order and Defendants’ objections; and (2) upon receipt of the draft opinion and order and Defendants’ objections, promptly enter the final opinion and order in this matter including fixing the amount of disgorgement for which each Defendant is liable, to trigger the appeal clock and allow the United States to enforce the injunction with respect to all Defendants.” See [ECF 429](#), p. 11. These Defendants are of the position that the automatic stay precludes this Court from proceeding to determine the merits of this case without leave from the United States Bankruptcy Court and this court should maintain a stay of the current case until relief of stay has been obtained.

Once RaPower-3, LLC filed for bankruptcy protection, decisions affecting the debtor RaPower-3, LLC are squarely and solely within the jurisdiction of the bankruptcy court. Further, because the disgorgement relief and other equitable remedies sought by Plaintiff against the remaining Defendants is derivative of the claims against RaPower-3, LLC, this Court should wait until an order of relief from stay is issued by the bankruptcy court allowing Plaintiff to proceed herein.

I. Response to Introduction and Facts.

Defendants do not dispute the dates of the events reported but do object to the characterization of actions allegedly taken by Defendants in this action.

Plaintiff alleges that “[b]ecause of Defendants’ attempts to place their assets out of reach of the forthcoming disgorgement order, on June 22, the United States filed its second motion to freeze Defendants’ assets and appoint a receiver.” *Id.* at p. 2. Plaintiff has repeatedly called, and this Court confirmed, Defendants’ business a sham. This Court has gone so far as to state that the inventions do not and will not ever work. Nonetheless, Plaintiff alleges for support of its Motion to Freeze that Defendants have transferred 1 patent to a foreign entity since the filing of this lawsuit

in 2015. Others were transferred as part of the regular course of business long prior to the filing of this lawsuit by entities who are not parties to this action. The support for the purported exigency and emergency is that Defendants have transferred purportedly valueless patents for inventions that allegedly have not and never will work, to foreign entities prior to this lawsuit. That basis is insufficient and not credible.

This Court ordered that if Defendants wished to file a response to Plaintiff's Motion to Freeze and Appoint a Receiver, that it should be done by July 2, 2018. Plaintiff cites the date of RaPower-3, LLC's filing for bankruptcy as June 29, 2018, "the last business day before the deadlines for its response to the motion for asset freeze and receiver, and its required disclosure under the June 27 Preservation Order." Plaintiff ignores that while RaPower-3, LLC filed bankruptcy on that date, the remaining Defendants filed an opposition on July 2, 2018 ([ECF 423](#)) and as well as a timely Motion to Enlarge Time to Comply with Doc. 419. ([ECF 425](#)).

II. The Stay Should be Enforced Until the Bankruptcy Court Provides Relief From that Stay.

Defendants incorporate the arguments made by RaPower-3, LLC's bankruptcy counsel.

III. Claims Against the Remaining Defendants are Derivative of those Against RaPower-3, LLC.

Although not final, it is clear from the draft proposed Findings of Fact and Conclusions of Law supplied by the Court, that this Court intends to issue a disgorgement order against all Defendants in this case. This Court has also indicated that the liability would be "joint and several" as between RaPower-3, LLC and each separate Defendant, such that the sum of the entire disgorgement order would not exceed what is ultimately owed by RaPower-3, LLC. That has yet to be reduced to a liquidated number. The liquidation of RaPower-3, LLC's liability for disgorgement of any amount directly affects the responding Defendants. Responding Defendants should not be required to address independent of RaPower-3, LLC the amount that is primarily

derivative from the actions of RaPower-3. Nor can this Court make findings and conclusions as to the Responding Defendants in the absence of RaPower-3, LLC.

This Court has already issued orders preserving the status quo. There is no urgency to move forward without following proper procedural safeguards. The concerns of the government and the Court are adequately preserved for the time being by bankruptcy regulations and procedures and this court's post-trial orders. For that reason, the motion to vacate should be denied as to all defendants until such time as the government has sought and obtained relief of stay in the bankruptcy proceedings.

Dated this 18th day of July, 2018.

NELSON SNUFFER DAHLE & POULSEN

/s/ Denver C. Snuffer, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DEFENDANTS' OBJECTIONS UNITED STATES MOTION TO VACATE, IN PART, THE JULY 5, 2018, ORDER** was sent to counsel for the United States in the manner described below.

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/s/ Steven R. Paul.
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