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

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff,</p> <p>vs.</p> <p>RAPOWER-3, LLC, INTERNATIONAL AUTOMATED SYSTEMS, INC., LTB1, LLC, R. GREGORY SHEPARD, and NELDON JOHNSON,</p> <p>Defendants.</p>	<p>NSDP MOTION TO RETAIN RECORDS</p> <p>Civil No. 2:15-cv-00828</p> <p>Judge David Nuffer</p>
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COMES NOW Nelson, Snuffer, Dahle & Poulsen (“NSDP”) and moves this court for an order allowing it to retain what is referred to as boxes 15-27 in the Court’s recent Order ([ECF Doc. 803](#)) which requires the delivery of those boxes identified as 15-27 to the United States Attorney.

NSDP supports its motion as follows:

The Court’s Order RE: Evidentiary Hearing Set for December 13, 2019 (hereafter “Order 803”) is unclear as to the documents identified as “boxes 15-27” that it ordered produced to the United States. There are potentially two different groups of boxes that fit the description of “boxes 15-27” and one of those two group of boxes should be retained by NSDP. Based on this motion, NSDP claims the contents of boxes 15-27 generated by NSDP is attorney work product and

business records that belong to NSDP and is necessary for the defense of the lawsuit brought by the Receiver against NSDP in Case 2:19-cv-00851.

Paragraph (1) of Order 803 requires production of “boxes 15-27 referenced in his [Neldon Johnson’s] most recent declaration” and footnotes to [ECF Doc. 738](#). Document 738 is Neldon Johnson’s declaration and was prepared by Edwin Wall. In relevant part, the declaration refers to “27 boxes Neldon P. Johnson delivered to Nelson Snuffer for which an index of boxes and content is attached . . .” ([ECF 738](#) at ¶6(b) on pp. 9-10.)

In early May of 2019, Neldon Johnson delivered this group of boxes to NSDP, then, a few days later, that group of boxes was promptly retrieved by Neldon Johnson and delivered by him to Wayne Klein as Receiver. Those boxes were never inspected by NSDP during the short time they were in the possession of NSDP. The Receiver’s Report [ECF Doc. 724](#) at paragraph E, p. 3, states:

Also on May 9, 2017 [sic], Defendants delivered 16 boxes of records and a flash drive to the Receiver. An additional 15 boxes of records were delivered to the Receiver on May 17, 2019. The Receiver prepared a list of the contents of the 31 boxes and the flash drive, which he provided to counsel for Defendants and to the United States. The Receiver had an outside company image the contents of the first 16 boxes of documents. Images of those documents were delivered to counsel for Defendants as well as copies of the flash drive contents. The Receiver decided not to have the second batch of documents imaged because the information in those boxes appears less relevant to the Receiver’s work.

The Receiver’s August 15, 2019 billing records itemizes 1.5 hours on May 10th for work related to “16 boxes from Neldon Johnson” (ECF Doc. 746-2), and .5 hours on May 17th for work on “additional 15 boxes” (*Id.*), and on June 3rd .3 hours to “Meet with S. Paul, deliver flash drives; discuss contents of boxes 17-31. (Time not billed.)” *Id.* There is no question these boxes were in the possession of the receiver in May, and remain in his possession today. An Index of Boxes Delivered by Neldon Johnson 5/9/19 and 5/17/19 was prepared by the Receiver¹.

¹ A true and correct copy of the Index of Boxes prepared by the Receiver is attached hereto as Exhibit 1.

None of the boxes delivered to NSDP by Neldon Johnson are presently in the possession of NSDP. All of the Neldon Johnson boxes were delivered to the Receiver, as he has acknowledged. As part of the contempt proceedings, NSDP understands the Receiver offered to allow Edwin Wall to take 15 of the boxes the Receiver did not consider to be “relevant” for his work. In an evidentiary hearing the Receiver described his review of those boxes explaining the boxes contained mostly receipts and miscellaneous materials of no value to him.

[Order 803](#) also refers in footnote 3 to “Neldon Johnson’s Response to the United State’s [sic] Motion for Additional Sanctions” at [ECF 760](#). That document ([ECF 760](#)) describes the material to be produced as follows: “The second requested sanction is Mr. Johnson deliver boxes 15-27 to the Receiver, and file a declaration explaining where the documents have been for nine months. Mr. Johnson has informed the Receiver the boxes have been located in the business office of RaPower for the last nine months, *until Mr. Johnson took them to the offices of NSDP.*” ([ECF 760 at p. 4.](#)) (emphasis added). The boxes described by Mr. Johnson were unquestionably delivered to the Receiver in May of 2019.

The description of documents in both [ECF 738](#) and [ECF 760](#) appears to refer only to documents that Neldon Johnson “delivered to NSDP” and not the boxes of files that were prepared and kept by NSDP as attorney work product for legal services provided to Neldon Johnson, IAS or other associated entities.

The Exhibit L attached to [ECF 738](#) describes boxes currently located at NSDP which are not the same as the boxes delivered to NSDP by Neldon Johnson and later delivered to the Receiver, but are boxes of files containing the original work product of legal services provided by NSDP for Neldon Johnson, IAS or others affiliated with IAS. None of these file boxes were ever in the possession of Neldon Johnson, were not delivered by him to NSDP, were not in the

possession of RaPower at any time, and have been continually in the possession of NSDP as working files used by NSDP in representation of its clients in various legal matters over many years.

If [Order 803](#), is requiring the production of RaPower files which were once delivered to NSDP before being retrieved by Neldon Johnson and delivered to the Receiver, then the Receiver or Mr. Wall would need to deliver them to the US Attorney's Office as ordered, because they are not in the possession of NSDP. If, instead, it was intended that original work product files belonging to NSDP are the target of the Order, then NSDP objects and, as authorized by the Court in its Order 803, moves the Court to permit NSDP to retain the records in boxes 15-27 as necessary for its defense of the Receiver's claims.

The Receiver has sued NSDP in case No. 2:19-cv-00851 and in the Complaint alleges in paragraph 1 that payments made to NSDP for legal services were "without any legally recognized value for the transferred money or IAS stock." The business records and legal files of NSDP are required for the defense of the Receiver's claims against it, and, if they are taken from NSDP, that will hinder, delay or prevent its defense of the Receiver's claims.

Accordingly, NSDP respectfully requests the Court grant this motion to retain its records and legal files.

DATED this 2nd day of December, 2019.

NELSON SNUFFER DAHLE & POULSEN

/s/ Steven R. Paul
Denver C. Snuffer, Jr.
Daniel B. Garriott
Steven R. Paul

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed using the court's CM/ECF filing system and that system sent notice of filing to all counsel and parties of record.

In addition, the foregoing was mailed or emailed as indicated to the following who are not registered with CM/ECF.

Greg Shepard greg@rapower3.com

/s/ Steven R. Paul