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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, NELDON JOHNSON, and ROGER FREEBORN,</p> <p>Defendants.</p>	<p>Civil No. 2:15-cv-00828 DN</p> <p>UNITED STATES' RESPONSE TO TODD ANDERSON'S MOTION TO CONTINUE HEARING ON UNITED STATES' RENEWED MOTION TO COMPEL TODD ANDERSON TO PRODUCE DOCUMENTS</p> <p>Judge David Nuffer Magistrate Judge Evelyn J. Furse</p>
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This Court has scheduled a hearing on June 15, 2017, for four motions filed by the United States: the motion for a protective order barring Defendants from deposing the trial attorneys for the United States; the motion to quash Defendants' subpoena to the IRS; the motion to take

certain discovery out of time; and the renewed motion to compel Todd Anderson to produce certain documents.¹ Anderson moves to continue the hearing on the last motion because one of the two attorneys who have appeared on his behalf is unavailable.²

In the interest of resolving the outstanding issues in this case and completing fact discovery as expeditiously as possible, it is the United States' strong preference to have all motions addressed on June 15. Even if Mr. Martin is unavailable on June 15, Mr. Shultz's appearance on behalf of Anderson is still in effect. Further, even if Mr. Martin and one particular associate at Strong & Hanni may be unavailable on June 15, the firm employs approximately 60 other attorneys (at least four of whom are identified in the "professional liability" group) who may be able to take the hearing.³ This approach will effectively expedite resolution of the motion and will not prejudice Anderson. The motion at issue addresses documents that *Defendants* claim are privileged and have instructed Anderson not to produce to the United States. Counsel for Anderson has repeatedly acknowledged that, although he is acting to protect the privilege consistent with his professional obligations, "[u]ltimately, the attorney-client privilege belongs to RaPower, and Anderson will therefore defer to its position."⁴ Counsel for RaPower-3, LLC, will be present at the hearing and capable of advancing all arguments they deem necessary.

¹ ECF Docs. 171, 179, 181.

² ECF Doc. 183.

³ See Strong & Hanni, "Attorneys," available at <http://strongandhanni.com/attorneys/> (last accessed June 8, 2017); *id.* "Professional Liability," available at <http://strongandhanni.com/practice-areas/professional-liability/> (last accessed June 8, 2017).

⁴ ECF Doc. 175 at 3; *accord* ECF Doc. 161 ¶ 1 (ordering *counsel for RaPower-3*, not counsel for Anderson, to prepare a revised privilege log regarding documents in Anderson's possession); ECF Doc. 144 at 3.

If, however, this Court determines that the hearing on the renewed motion to compel Anderson to produce certain documents should be continued, the United States requests that the hearing be rescheduled for Friday, June 23, 2017 at or after 2:00 p.m. This will result in more efficient and less costly travel for attorneys for the United States to appear at two hearings, rather than one.

Dated: June 8, 2017

Respectfully submitted,

/s/ Erin Healy Gallagher
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UNITED STATES**

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2017, the foregoing document and its supporting exhibits were electronically filed with the Clerk of the Court through the CM/ECF system, which sent notice of the electronic filing to all counsel of record.

/s/ Erin Healy Gallagher
ERIN HEALY GALLAGHER