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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' OBJECTION TO  
PLAINTIFF'S MOTION TO TAKE THE  
DEPOSITION OF JESSICA ANDERSON**

Judge David Nuffer

Magistrate Judge Evelyn J. Furse

Defendants Rapower-3, LLC, International Automated Systems, Inc., and Neldon Johnson ("Defendants"), by and through their counsel of record, object to Plaintiff's efforts to depose Jessica Anderson after the expiration of the deadlines to undertake fact discovery. The Court should deny Plaintiff's request because Plaintiff cannot demonstrate good cause for failing to timely depose Ms. Anderson.<sup>1</sup> The government has undertaken substantial discovery in this

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<sup>1</sup> See FRCP R 16(b)(4) ("A schedule may be modified only for good cause and with the judge's consent.").

case and has obtained hundreds of thousands of pages of documents. A cornerstone issue in this case is the “Anderson Letter,” a copy of which is attached hereto as Exhibit 1.

The government has been aware of the Anderson Letter since the inception of this litigation. The signature block on the Anderson Letter is Anderson Law Center. (See Exhibit 1). The government made the assumption that Anderson Law Center is Todd Anderson and moved forward with its discovery on that basis. It is not accurate that the government only learned in June, July or August of this year that Jessica Anderson may have had a larger role in the Anderson Letter than her husband and law partner, Todd Anderson.

A Privilege log disclosing Jessica Anderson’s involvement on behalf of Anderson Law Center was produced as early as **August 15, 2016** (Doc. 213-4). That document disclosed the “scan of email sent from Jessica Anderson to Todd F. Anderson” and further described the document as “email is addressed to Neldon Johnson but the email was sent from Jessica L. Anderson to Todd F. Anderson. The body of the email is believed to be identical or substantially similar to an email that was sent to Neldon Johnson on or about June 11, 2011.” Thus, the government was aware of Jessica Anderson’s involvement in the representation of Defendants since at least August of 2016. Plaintiff made the election to only pursue examination of Todd Anderson. It should not now get the chance to change its election after the fact.

On May 3, 2017, Defendants provided a Supplemental Privilege log at the direction of the court. In the supplemental privilege log counsel for Defendants provided additional detail regarding the claimed privilege and Jessica Anderson’s email. (Doc. 213-5, page 9). In that supplementation, the reference to item 19 adds that the communication originated from Jessica

Anderson, Anderson Law Center, P.C. (see, Column “D”) and, “Document contains legal advice” (see, Column “I”).

On July 7, 2017, Defendants’ produced the Anderson Law Center files in accordance to the government’s request and order (prepared by Plaintiff) and as described in the court’s order (Doc. 206). Given all of these disclosures, the government elected to depose only Todd Anderson. At no time has the government sought to depose Jessica Anderson or Anderson Law Center, PC.

On August 4, 2017, the government deposed Todd Anderson for over five (5) hours<sup>2</sup> and was able to ask him questions dealing with all aspects of the Anderson Letter and he testified extensively of his wife’s involvement in the meetings and legal services provided to Defendants. While there are questions Mr. Anderson could not answer due to his absence from some of the meetings, the government was able to inquire into all matters relating to the Anderson Letter that are relevant to the proceedings.

Given the documents and other discovery that has already been provided and the deposition of Todd Anderson on August 4, 2017, there is no basis to require the attendance of Jessica Anderson at a deposition.

The government has refused to cooperate with Defendants’ most recent discovery requests arguing those requests were issued too late. In response, Defendants argued the discovery requests were timely rephrasing of earlier discovery requests that were objected to by the Plaintiff. Regardless, the government has refused to allow Defendants to undertake discovery to accommodate prior poorly drafted requests. Plaintiff should not now be allowed a

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<sup>2</sup> The deposition transcript states time on record was 4 hours 14 minutes (Doc. 213-11), but with breaks and lunch, the deposition lasted well over 5 hours.

double standard for discovery. Its mistaken belief that Todd Anderson was the only person involved in the preparation or drafting of the Anderson Letter and advice to Defendants is attributable to its own interpretation of the discovery, not Defendants' representations.

If Plaintiff wants to re-open discovery to fix its misunderstanding of the author of the Anderson Letter and take new discovery, then discovery should be opened for Defendants as well.

DATED this 25<sup>th</sup> day of August, 2017.

NELSON, SNUFFER, DAHLE & POULSEN, P.C.

/s/ Steven R. Paul.  
*Attorneys for Defendants RAPower-3, LLC,  
International Automated Systems, Inc., LTBI, and  
Neldon Johnson*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 25th day of August, 2017, the foregoing document was 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/ Steven R. Paul.  
*Attorneys for Defendants RAPower-3, LLC,  
International Automated Systems, Inc., LTBI, and  
Neldon Johnson*