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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

**ORDER ON UNITED STATES'
EXPEDITED MOTION TO DEPOSE
JESSICA ANDERSON
OUT OF TIME**

Judge David Nuffer
Magistrate Judge Evelyn J. Furse

PENDING before the Court is the United States' expedited motion to take the deposition of Jessica Anderson out of time.¹ Defendants oppose the United States motion.² The Court will grant the United States' motion.

Whether the standard to take discovery out of time is "good cause," or "excusable neglect," I find that the United States has met its burden. During discovery, the only evidence of Jessica Anderson's involvement in this case was on a privilege log that defendants produced in resistance to the United States' attempts to get documents from Todd Anderson, Jessica Anderson's husband and law partner. Nothing else in the defendants' Fed. R. Civ. P. 26(a)(1) disclosures or other evidence would have given the United States an indication of the significant role she played in the Anderson Law Center's representation of the defendants in this case. That information was only available to the United States after the close of discovery during the depositions of Neldon Johnson and Todd Anderson. Therefore, I find that that the United States' motion was timely, given the circumstances.

Also relevant to my decision is the fact that the defendants are relying on advice of counsel as a defense in this case, including the Anderson letter, which was signed by the Anderson Law Center. I find that deposing Jessica Anderson will benefit all parties in aid of preparing this case for trial or potentially settling the case.

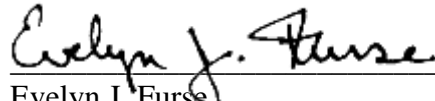
Accordingly, the United States' motion is GRANTED.

¹ ECF Doc. No. 213.

² ECF Doc. No. 215.

The Court ORDERS the United States to issue a Rule 45 Subpoena to Jessica Anderson requiring her to appear and give testimony. The deposition shall occur at a mutually agreeable date, time, and place, after the defendants' expert disclosure is due September 8, 2017, and before October 17, 2017, so that the parties can rely on Jessica Anderson's deposition in preparing dispositive motions or responses thereto. The parties shall call the Court during the deposition if an issue related to this order arises and cannot be resolved among the parties.³

DATED this 12th day of September, 2017.



Evelyn J. Furse
United States Magistrate Judge

³ Docket no. 115 ¶ 10.