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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' UNOPPOSED MOTION TO FILE PRETRIAL DISCLOSURES ON THE DOCKET <i>NUNC PRO TUNC</i></p> <p>Judge David Nuffer Magistrate Judge Evelyn J. Furse</p>
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On February 9, 2018, the United States served its [Fed. R. Civ. P. 26\(a\)\(3\)](#) pretrial disclosures on counsel for all Defendants: its witness list, exhibit list, and deposition designations.¹ Because of separate provisions in the Trial Order identifying times to provide these same documents to the Court,² counsel for the United States concluded that the February 9 disclosures should not also be filed on the docket. But upon review of Defendants' recent filings and [Fed. R. Civ. P. 26\(a\)\(3\)](#), undersigned counsel realized that the United States' disclosures should have been filed on the docket on February 9.

Counsel for Defendants do not oppose the relief requested in this motion. Because they were timely served with the United States' pretrial disclosures, Defendants have suffered no prejudice. And granting this motion would be consistent with this Court's "strong preference for resolving cases on the merits, rather than on procedural technicalities."³

For this good cause shown, the United States respectfully requests leave of court to file its [Fed. R. Civ. P. 26\(a\)\(3\)](#) pretrial disclosures on this Court's docket *nunc pro tunc*.

¹ *E.g.*, [ECF No. 296 at 2](#), noting that "[o]n February 9, 2018, Plaintiff served its "Fed. R. Civ. P. 26(a)(3)(A)(I) Witness List" on Defendants.

² [ECF No. 288](#) ¶¶ 3, 5 (the form of pretrial order requires an exhibit list and witness list from each party), 7(g), 8.

³ *Von Collenberg v. Silverado Academy, LLC*, No. 2:11-cv-574-DN-PMW, 2014 WL 345395, at *10 (Jan. 30, 2014) (Warner, M.J. on referral from Nuffer, J.).

Dated: February 26, 2018

Respectfully submitted,

/s/ Erin Healy Gallagher

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***ATTORNEYS FOR THE
UNITED STATES***

CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2018, 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/ Erin Healy Gallagher _____
ERIN HEALY GALLAGHER
Trial Attorney