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

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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

**UNITED STATES' OBJECTIONS AND  
COUNTER-DESIGNATIONS TO  
DEFENDANTS' FED. R. CIV. P.  
26(a)(3)(A)(ii) DISCLOSURE OF  
DEPOSITION COUNTER-  
DESIGNATIONS**

Judge David Nuffer  
Magistrate Judge Evelyn J. Furse

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On February 23, 2018, Defendants filed their Pretrial Disclosures pursuant to Fed. R. Civ. P. 26(a)(3)(A)(ii).<sup>1</sup> In their filing, Defendants objected to the use of all depositions in lieu of live testimony and specifically identified excerpts from depositions testimony as their counter-designations.<sup>2</sup> To date, Defendants have not filed their counter-designations on the Court's prescribed form.<sup>3</sup> Pursuant to Fed. R. Civ. 26(a)(3)(B), the United States submits its Objections and Counter-Designations to Defendants' counter-designations.

Deposition of Robert Aulds, taken March 14, 2017:

168:10 - 169:18, Objection, Not relevant, Fed. R. Evid. 401, 402

172:14 - 19, Objection, Not relevant, Fed. R. Evid. 401, 402

173:1 - 11, Objection, Calls for a legal conclusion, Fed. R. Evid. 602, 701

173:17 - 23, Objection, Calls for a legal conclusion, Fed. R. Evid. 602, 701

174:22 - 175:4, Objection, Calls for a legal conclusion, Fed. R. Evid. 602, 701

175:8 - 9, Objection, Hearsay, Fed. R. Evid. 801(c), 802

176:13 - 17, Objection, Hearsay, Fed. R. Evid. 801(c), 802

176:23 - 117:12, Objection, Hearsay, Fed. R. Evid. 801(c), 802

177:13 - 20, Objection, Speculative, Fed. R. Evid. 403, 602, 611(a)

178:8 - 16, Objection, Argumentative, Fed R. Evid. 611(a); Not relevant, Fed. R. Evid.

401, 402

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<sup>1</sup> ECF Doc. No. 294, at 3.

<sup>2</sup> ECF Doc. No. 294, at 3-7.

<sup>3</sup> ECF Doc. No. 288, at 2.

179:8 - 13, Objection, Argumentative, Fed. R. Evid. 611(a)  
180:6 - 181:2, Objection, Not relevant, Fed. R. Evid. 401, 402  
181:3 - 12, Objection, Calls for a legal conclusion, Fed. R. Evid. 602, 701  
181:9 - 12, Objection, Not relevant, Fed. R. Evid. 401, 402  
181:13 - 17, Objection, Speculative, Fed. R. Evid. 403, 602, 611(a)  
182:1 - 7, Objection, Speculative, Fed. R. Evid. 403, 602, 611(a)  
183:6 - 14, Objection, Misstates prior testimony, Fed. R. Evid. 403, 611(a)  
183:22 - 185:8, Objection, Not relevant, Fed. R. Evid. 401, 402  
187:15 - 188:2, Objection, Lack of foundation, Fed. R. Evid. 602, 611(a)  
188:7 - 10, Objection, Not relevant, Fed. R. Evid. 401, 402  
188:25 - 189:3, Objection, Not relevant, Fed. R. Evid. 401, 402  
189:8 - 16, Objection, Not relevant, Fed. R. Evid. 401, 402  
190:2 - 11, Objection, Calls for a legal conclusion, Fed. R. Evid. 602, 701  
190:15 - 19, Objection, Calls for a legal conclusion, Fed. R. Evid. 602, 701  
191:4 - 10, Objection, Not relevant, Fed. R. Evid. 401, 402  
192:6 - 13, Objection, Compound, Fed. R. Evid. 611(a)

Deposition of Peter Gregg, taken November 16, 2016:

168:2 - 10, Objection, Leading, Fed. R. Evid. 611(c)  
169:14 - 23, Objection, Leading, Fed. R. Evid. 611(c); Argumentative, Fed. R. Evid.  
611(a)  
169:24 - 170:3, Objection, Leading, Fed. R. Evid. 611(c); Argumentative, Fed. R. Evid.

611(a); Not relevant, Fed. R. Evid. 401, 402

170:4 - 13, Objection, Leading, Fed. R. Evid. 611(c); Argumentative, Fed. R. Evid.

611(a); Not relevant, Fed. R. Evid. 401, 402

170:14 - 22, Objection, Leading, Fed. R. Evid. 611(c); Argumentative, Fed. R. Evid.

611(a); Compound, Fed. R. Evid. 611(a)

170:23 - 171:1, Objection, Leading, Fed. R. Evid. 611(c)

Deposition of Roger Halverson, taken October 18, 2016:

77:4 - 10, Objection, Not relevant, Fed. R. Evid. 401, 402

69:17 - 24, Counter-Designation, Fed. R. Civ. P. 32(a)(6)

Deposition of John Howell, taken August 23, 2017:

87:16 - 88:18, Objection, Not relevant, Fed. R. Evid. 401, 402

87:24 - 88:8, Objection, Hearsay, Fed. R. Evid. 801(c), 802

89:8 - 91:5, Objection, Not relevant, Fed. R. Evid. 401, 402

89:23 - 91:5, Objection, Hearsay, Fed. R. Evid. 801(c), 802

96:22 - 98:6, Objection, Not relevant, Fed. R. Evid. 401, 402

97:16 - 21, Objection, Hearsay, Fed. R. Evid. 801(c), 802

105:19 - 106:19, Objection, Not relevant, Fed. R. Evid. 401, 402; Hearsay, Fed. R. Evid.

801(c), 802

107:10 - 108:1, Objection, Not relevant, Fed. R. Evid. 401, 402

133:8 - 13, Objection, Not relevant, Fed. R. Evid. 401, 402

192:2 - 8, Objection, Hearsay, Fed. R. Evid. 801(c), 802

192:24 - 193:21, Objection, Hearsay, Fed. R. Evid. 801(c), 802

223:23 - 225:18, Objection, Not relevant, Fed. R. Evid. 401, 402

235:10 - 236:9, Objection, Not relevant, Fed. R. Evid. 401, 402

237:10 - 18, Objection, Compound, Fed. R. Evid. 611(a)

237:20 - 238:3, Objection, Misstates prior testimony, Fed. R. Evid.403, 611(a)

238:17 - 24, Objection, Misstates prior testimony, Fed. R. Evid.403, 611(a)

239:24 - 240:5, Objection, Hearsay, Fed. R. Evid. 801(c), 802

240:6 - 12, Objection, Leading, Fed. R. Evid. 611(c); Not relevant, Fed. R. Evid. 401,  
402

240:14 - 241:1, Objection, Leading, Fed. R. Evid. 611(c); Compound, Fed. R. Evid.  
611(a)

241:9 - 18, Objection, Leading, Fed. R. Evid. 611(c); Compound, Fed. R. Evid.  
611(a)

242:21 - 25, Objection, Not relevant, Fed. R. Evid. 401, 402

51:3 - 11, Counter-Designation, Fed. R. Civ. P. 32(a)(6)

Deposition of PacifiCorp, taken November 15, 2016:

60:13 - 61:12, Objection, Not relevant, Fed. R. Evid. 401, 402

62:4 - 11, Objection, Leading, Fed. R. Evid. 611(c); Not relevant, Fed. R. Evid. 401, 402

62:17 - 20, Objection, Not relevant, Fed. R. Evid. 401, 402

132:9 - 19, Objection, Hypothetical, 703

186:2 - 16, Objection, Not relevant, Fed. R. Evid. 401, 402

119:22 - 25, Counter-Designation, Fed. R. Civ. P. 32(a)(6)

128:24 - 130:9, Counter-Designation, Fed. R. Civ. P. 32(a)(6)

130:12 - 17, Counter-Designation, Fed. R. Civ. P. 32(a)(6)

131:12 - 132:8, Counter-Designation, Fed. R. Civ. P. 32(a)(6)

132:20 - 133:17, Counter-Designation, Fed. R. Civ. P. 32(a)(6)

186:17 - 187:2, Counter-Designation, Fed. R. Civ. P. 32(a)(6)

Deposition of Mike Penn, taken March 13, 2017:

54:19 - 21, Objection, Not relevant, Fed. R. Evid. 401, 402

50:2 - 52:3, Counter-Designation, Fed. R. Civ. P. 32(a)(6)

52:14 - 17, Counter-Designation, Fed. R. Civ. P. 32(a)(6)

71:22, Counter-Designation, Fed. R. Civ. P. 32(a)(6)

73:4 - 21, Counter-Designation, Fed. R. Civ. P. 32(a)(6)

Deposition of Brian Zeleznik, taken August 2, 2016:

88:1 - 12, Objection, Not relevant, Fed. R. Evid. 401, 402

88:13 - 18, Objection, Hearsay, Fed. R. Evid. 801(c), 802

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Dated: March 9, 2018

Respectfully submitted,

/s/ Erin R. Hines

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 9, 2018, I served the foregoing document upon the following by email:

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