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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' MOTION TO EXCEED PAGE LIMIT FOR ITS BRIEF IN OPPOSITION TO THE MOTION TO BIFURCATE (ECF DOC. 90)</p> <p>Judge David Nuffer Magistrate Judge Brooke C. Wells</p>
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On September 16, 2016, Defendants RaPower-3, LLC, International Automated Systems, Inc., LTB1, LLC, and Neldon Johnson moved to bifurcate trial on the “nature and viability of Defendants’ purported solar energy technology” from trial of the rest of the facts and the legal issues in this case.¹ The United States’ brief in opposition to the motion is due October 3, 2016.²

Pursuant to DUCivR 7-1(b)(2)(B) & (e), the United States respectfully requests leave of Court to exceed the Local Rules’ page limitation for its brief in opposition to the motion. DUCivR 7-1(b)(2)(B) permits an opposition brief to be 10 pages, “exclusive of any of the following items: face sheet, table of contents, concise introduction, statements of issues and facts, table of exhibits, and exhibits.” It follows that the 10-page limit applies to sections of a brief like the legal standard for the motion and the analysis of legal authorities bearing on the motion.

The United States’ brief in opposition contains a face sheet, concise introduction, and a statement of issues and facts that bear on the motion for bifurcation. These sections reach, approximately, through page 14 of the brief. Then the United States’ articulation of the legal standard for a motion to bifurcate and its analysis of the relevant facts and legal authorities begin at the top of page 15 and continue through page 24, covering ten pages. Typically, a brief structured in this manner would *not* require leave of court to file because the sections that count toward the 10-page limit do not exceed 10 pages.

¹ ECF Doc. 90.

² DUCivR 7-1(b)(3)(B); Fed. R. Civ. P. 6(d).

But because of the nature of this motion, the “statement of issues and facts” in the United States’ opposition brief includes not just the United States’ allegations and certain facts adduced in discovery to date, but also legal citations that bear on the United States’ claims in this case. All of this material is offered because it provides the Court necessary background information on why one trial, rather than two, would be more convenient, expeditious, and economical, and would avoid prejudice to the parties³ in this case. It shows that, contrary to Defendants’ assertion, there will be numerous issues to be tried in this case and they will not be resolved even if this Court were to determine that Defendants’ technology is “viable.” The United States’ explanation of some of these issues to be tried, while concise, is thorough in order to provide this Court the information it requires to decide the motion for bifurcation.

It follows from the foregoing that, under the plain terms of the Local Rules, the United States’ brief in opposition to the motion for bifurcation is in compliance with DUCivR 7-1(b)(2)(B). This motion to exceed its page limitation may not be necessary because, exclusive of the sections enumerated in the Rule, the brief does not exceed 10 pages. But, in an abundance of caution, due to the exceptional circumstances of this motion for bifurcation and for the good cause shown above, United States respectfully requests leave of Court to file a brief of 24 total pages in opposition to the motion.

³ See Fed. R. Civ. P. 42(b).

Dated: October 3, 2016

Respectfully submitted,

/s/ Erin Healy Gallagher

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***ATTORNEYS FOR THE
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CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2016, 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 the following:

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