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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

**REQUEST TO SUBMIT FOR
DECISION**

Judge David Nuffer
Magistrate Judge Evelyn J. Furse

Pursuant to DUCivR 7-3, plaintiff, the United States, respectfully requests that the Court render a decision on its pending Motion to Compel Deposition Testimony of Cody Buck, Ken Oveson, and David Mantyla.¹ In support of this request, the United States states:

1. On March 23, 2017, the United States filed its Motion to Compel Deposition Testimony of Cody Buck, Ken Oveson, and David Mantyla (“motion”).² The motion requested that the Court compel three witnesses to answer the questions posed to them by the United States in their depositions. The three witnesses had declined to answer the United States’ substantive questions based on several defendants’³ objections that the United States’ questions invaded the “tax advice” privilege in 26 U.S.C. § 7525.⁴
2. The United States sought expedited treatment of the motion in accordance with the Court’s Short Form Discovery Order.⁵
3. The United States served all parties and counsel for Cody Buck, Ken Oveson, and David Mantyla with the motion via Fedex at the time it was filed.⁶
4. Any opposition to the motion was due on March 29, 2017.⁷

¹ ECF Doc. No. 137 (filed under seal).

² *Id.*

³ Defendants Neldon Johnson, International Automated Systems, RaPower-3, LLC and LTB-1, LLC objected to the United States’ questions. Defendants R. Gregory Shepard and Roger Freeborn did not object.

⁴ ECF Doc. No. 137.

⁵ ECF Doc. Nos. 136 & 137.

⁶ *Id.*

⁷ DUCivR 37-1(a)(6).

5. On April 3, 2017, defendants filed their opposition.⁸
6. Cody Buck, Ken Oveson, and David Mantyla moved the Court for an order allowing them to file their response to the United States' motion under seal,⁹ which the Court granted,¹⁰ but the docket does not reflect that their response was ever entered.
7. Pursuant to the Court's Short Form Discovery Procedure, the United States was not permitted to file a reply brief.
8. On April 12, 2017, the Court held a hearing on the motion and the parties made their oral arguments. The Court took the matter under advisement.¹¹
9. To date, the Court has not rendered a decision on the motion.
10. The time for discovery has ended, but if the motion is granted, the Court has given the United States permission to take the depositions of Cody Buck, Ken Oveson, and David Mantyla out of time, but no later than October 6, 2017.¹²
11. The depositions of these three witnesses will require coordinating schedules with a number of attorneys and witnesses, and travel for plaintiff's counsel from Washington, DC to Salt Lake City. If the motion is granted, the parties will need to

⁸ ECF Doc. Nos. 147 & 148. Defendants actually filed two documents in opposition: one complied with the Short Form Discovery Procedure (ECF Doc. No. 148) and the other did not (ECF Doc. No. 147). This Court should consider only the properly filed Short Form opposition at ECF Doc. No. 148.

⁹ ECF Doc. No. 139.

¹⁰ ECF Doc. No. 141.

¹¹ ECF Doc. No. 149.

¹² ECF Doc. No. 197, ¶ 3.

begin making scheduling arrangements as soon as possible in order to meet the court-ordered October 6, 2017 deadline and the amended case management deadlines.¹³

Dated: July 18, 2017

Respectfully submitted,

/s/ Christopher R. Moran
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**ATTORNEYS FOR THE
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¹³ ECF Doc. No. 205.

CERTIFICATE OF SERVICE

I hereby certify that on July 18, 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/ Christopher R. Moran
CHRISTOPHER R. MORAN
Trial Attorney