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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' BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO EXTEND TIME FOR RESPONDING TO MOTIONS FILED ON NOVEMBER 17, 2017</p> <p>Judge David Nuffer Magistrate Judge Evelyn J. Furse</p>
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On November 17, 2017, the United States filed a motion for summary judgment, a motion to freeze assets of certain Defendants and to appoint a receiver, and two motions to

exclude testimony by three purported expert witnesses proffered by Defendants.¹ On the same date, Defendants filed a motion to dismiss and a motion to exclude the United States' expert witness.² Under the standard briefing schedule set forth in the Local Rules, the dispositive motions will be ripe on December 29 and all other motions will be ripe on December 15.³ This briefing schedule allows adequate time for the Court to decide these motions, and for the parties to use those decisions to prepare for trial in April 2018.⁴

But on November 22, 2017, Defendants asked this Court to allow them until January 5, 2018 to respond to the United States' motions.⁵ Under Defendants' proposed schedule, the motions would not be ripe for decision until February 5, 2018. Because Defendants have not shown good cause to consume nearly six weeks of time for this Court and the parties to prepare for trial in April 2018,⁶ Defendants' motion should be denied.

Counsel for Defendants have known about the November 17 deadline and its consequences since at least June 2017. In June 2017, Defendants agreed to the dates established by the Amended Scheduling Order, including the November 17 deadline for dispositive motions and motions to exclude expert testimony.⁷ It was clear in June 2017 that the November 17 filing

¹ [ECF No. 249](#), [ECF No. 250](#), [ECF No. 251](#), [ECF No. 252](#).

² [ECF No. 253](#), [ECF No. 257](#).

³ DUCivR 7-2(b)(3).

⁴ See [ECF No. 205](#) ¶ 7.

⁵ [ECF No. 259](#).

⁶ See [ECF No. 205](#) ¶ 7.

⁷ See ECF No. 195 (noting that Magistrate Judge Furse granted the stipulated oral motion to extend time for scheduling order dates, and instructing counsel for the United States to prepare and submit a proposed order), Pl. Ex.

(continued...)

deadline and the Local Rules would require counsel for all parties to complete work on both dispositive motions and motions to exclude expert testimony during the holiday season.⁸

Not only could Defendants have anticipated working on these motions during the holiday season, counsel for Defendants reasonably should have anticipated the United States' motions to exclude Defendants' three purported expert witnesses. Each purported expert witness utterly fails to meet the standard of Fed. R. Evid. 702.⁹ Nonetheless, knowing the case management deadlines in this case and the briefing deadlines that they would face under the Local Rules, Defendants chose to disclose them.

Defendants' failure to plan adequate time for their four attorneys to address the United States' motions, knowing that they would be in briefing in and around the holiday season, is not good cause to extend the deadlines as Defendants request. But if this Court concludes that Defendants should be allowed additional time, Defendants have not shown good cause for the nearly six-week disruption of the Amended Scheduling Order that they propose. Instead, this Court should allow responses and replies to the motions filed on November 17 on the following schedule:

1. For dispositive motions¹⁰: briefs in opposition due December 22, 2017, and reply briefs due January 15, 2018.

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698 (email from counsel for the United States to Magistrate Judge Furse, noting the parties' agreement to the proposed amended scheduling order); [ECF No. 205](#).

⁸ See DUCivR 7-2(b)(3) (setting forth filing times for dispositive and nondispositive motions).

⁹ See [ECF No. 249](#), [ECF No. 250](#).

¹⁰ [ECF No. 251](#), [ECF No. 257](#).

2. For the motion to freeze assets and appoint a receiver¹¹: briefs in opposition due December 22, 2017, and reply briefs due January 15, 2018.
3. For all motions to exclude expert testimony¹²: briefs in opposition due January 15, 2018, and reply briefs due January 29, 2018.

The United States is prepared to meet the briefing schedule established by the Local Rules, as it has anticipated doing since June 2017. But should the Court decide to allow more time, the United States' proposed schedule will better allow the Court and the parties to prepare for trial than Defendants' proposed schedule.

¹¹ [ECF No. 252](#).

¹² [ECF No. 249](#), [ECF No. 250](#), [ECF No. 253](#).

Dated: November 27, 2017

Respectfully submitted,

/s/ Erin Healy Gallagher

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**ATTORNEYS FOR THE
UNITED STATES**

CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2017, the foregoing document and its exhibit were 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