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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 EXCEED PAGE LIMIT FOR ITS BRIEF IN OPPOSITION TO THE MOTION TO REINSTATE TRIAL BY JURY (ECF NO. 289)</p> <p>Judge David Nuffer Magistrate Judge Evelyn J. Furse</p>
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On February 9, 2018, Defendants moved to “reinstate trial by jury,” due to an opinion issued by the Supreme Court in early June 2017, *Kokesh v. SEC*, 137 S. Ct. 1635 (2017).¹ The United States’ brief in opposition to the motion is due February 26, 2018.²

Pursuant to DUCivR 7-1(b)(2)(C) & (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)(C) permits an opposition brief to be 10 pages.³ A party asking to file an opposition brief that exceeds 10 pages must provide reasons why the additional pages are needed, sufficient to show good cause and exceptional circumstances.⁴

The United States’ current draft of its brief in opposition to Defendants’ motion is 14 pages long.⁵ In its first 10 pages, the draft brief identifies the nature of the United States’ claims in this case, which are critical to whether there is any issue triable by a jury; describes the procedural history arising from Defendants’ jury demand in January 2016 and resulting order striking that demand; briefly summarizes the *Kokesh* decision; and explains why *Kokesh* did not create an issue triable jury in this case.⁶ On pages 11 through 14, the United States’ draft brief describes why (even if *Kokesh* had changed the law applicable to this case, which it did not) Defendants’ motion is untimely and identifies the prejudice that will accrue to the United States

¹ [ECF No. 289](#).

² ECF No. 291.

³ Certain features of a brief, like the face sheet, table of contents, concise introduction, and a signature block, are not included in the 10-page limit. DUCivR 7-1(b)(2)(C).

⁴ DUCivR 7-1(e).

⁵ This number excludes aspects of the draft that are also excluded from the 10-page limit in DUCivR 7-1(b)(2)(C).

⁶ Defendants’ motion also uses nearly 10 pages to discuss *Kokesh*. [ECF No. 289](#).

if Defendants' motion were to be granted.⁷ The United States' explanation of all of these issues, while concise, is thorough in order to provide this Court the information it requires to decide the motion.

Counsel for Defendants does not oppose the United States' request to file a 14-page opposition brief.

For this good cause shown, United States respectfully requests leave of Court to file a brief of 14 total pages in opposition to Defendants' motion.

Dated: February 20, 2018

Respectfully submitted,

/s/ Erin Healy Gallagher
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**ATTORNEYS FOR THE
UNITED STATES**

⁷ Defendants did not discuss these topics in their motion. See generally [ECF No. 289](#).

CERTIFICATE OF SERVICE

I hereby certify that on February 20, 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 _____
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Trial Attorney