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

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>RAPOWER-3, LLC, INTERNATIONAL AUTOMATED SYSTEMS, INC., LTBI, LLC, R. GREGORY SHEPARD, NELDON JOHNSON, and ROGER FREEBORN,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">Civil No. 2:15-cv-00828 DN</p> <p style="text-align: center;">UNITED STATES’ OPPOSITION TO DEFENDANTS’ MOTION TO CONTINUE</p> <p style="text-align: center;">Judge David Nuffer Magistrate Judge Evelyn J. Furse</p>
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On June 15, 2018, Defendants filed a motion for continuance of the remaining trial based on Defendant R. Gregory Shepard's urgent medical procedure scheduled for June 21, 2018, and possibly into the following week.¹ While understanding that Defendant R. Gregory Shepard may not be available for the duration of the scheduled trial session of June 21, 2018 through June 29, 2018, the United States objects to Defendants' motion. Trial can and should proceed with the rest of Defendants' case-in-chief during the scheduled trial dates for the following reasons:

1) Defendant R. Gregory Shepard is not required to be present for any part of the proceeding that does not involve his testimony and he does not have a right to interrupt the trial.² There is no reason that Shepard's co-defendants (Neldon Johnson and his associated entities) cannot put on their evidence in Shepard's absence, and possibly permit the Court to rule on the United States' requested relief with respect to these defendants.

2) Defendant R. Gregory Shepard has already testified at length including almost one full day of questioning by his own attorney,³ and it is unclear what additional testimony he will provide that is not cumulative or otherwise repetitive.⁴

¹ ECF Doc. No. 403.

² See, e.g., *Taylor v. United States*, 414 U.S. 17, 19-20 (1973) (noting that in the criminal context, there is no doubt that the governmental prerogative to proceed with a trial may not be defeated by conduct of the accused that prevents the trial from going forward) (quotation and citation omitted); see also *Rogers v. Andrus Transp. Servs.*, 502 F.3d 1147, 1151 (10th Cir. 2007) (party's "attendance at trial was not essential").

³ Pl. Ex. 685 (Shepard Deposition Designations); Trial Tr. p. 1581-1753 (April 23 – 24, 2018).

⁴ Fed. R. Evid. 403; 611(a); see also, *United States v. Davis*, 40 F.3d 1069, 1076 (10th Cir. 1994) ("Evidence is cumulative if repetitive, and if the small increment of probability it adds may not warrant the time spent in introducing it.") (internal quotation omitted); *Bragg v. Foretravel, Inc.*, 652 F.2d 39, 40 (10th Cir. 1981) (holding that trial court properly exercised its discretion in order to prevent repetitive questioning and needless consumption of judicial time) (citing Fed. R. Evid. 611(a); *United States v. Marler*, 614 F.2d 47 (5th Cir. 1980)). Defendants can submit a proffer of the anticipated testimony of R. Gregory Shepard during their case-in-chief to assist in the determination of whether additional trial time may be needed for any evidence he will offer that is not cumulative.

3) Defendant R. Gregory Shepard and his son, Matthew Shepard who may also be impacted by the scheduled medical procedure, are not scheduled to testify until later in Defendants' case-in-chief.⁵ Defendants' remaining witnesses have been informed about the scheduled trial dates and presumably have made themselves available, as has the United States' trial team, which is travelling from Washington, DC to Salt Lake City, Utah. As such, the Court can and should hold trial on the dates scheduled even if additional time is needed for Defendant R. Gregory Shepard to provide testimony that is otherwise not cumulative. Additionally, given that the current trial session is scheduled for June 21, 2018 through June 29, 2018, it is possible that at the very least, Matthew Shepard should be able to testify during the second week of trial, if not both he and his father.

4) Finally, given the difficulties in scheduling sufficient trial dates thus far, granting Defendants' motion will allow Defendants to continue promoting their abusive solar energy scheme, which will prejudice the United States.

For these reasons, the United States requests that the Court deny Defendants' motion and hold trial as scheduled on June 21, 2018 through June 29, 2018.

⁵ Pl. Ex. 912 (attached).

Dated: June 15, 2018

Respectfully submitted,

/s/ Christopher R. Moran

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***ATTORNEYS FOR THE
UNITED STATES***

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2018, the foregoing document, along with its exhibits, 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
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Trial Attorney