

Denver C. Snuffer, Jr. (#3032) [denversnuffer@gmail.com](mailto:denversnuffer@gmail.com)  
Steven R. Paul (#7423) [spaul@nsdplaw.com](mailto:spaul@nsdplaw.com)  
Daniel B. Garriott (#9444) [dbgarrriott@msn.com](mailto:dbgarrriott@msn.com)  
Joshua D. Egan (#15593) [Joshua.egan@me.com](mailto:Joshua.egan@me.com)  
**NELSON, SNUFFER, DAHLE & POULSEN**  
10885 South State Street  
Sandy, Utah 84070  
Telephone: (801) 576-1400  
Facsimile: (801) 576-1960  
*Attorneys for Defendants*

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-EJF</p> <p><b>DEFENDANTS' RESPONSE TO THE UNITED STATES' OPPOSITION TO MOTION TO CONTINUE TRIAL ON THE BASIS OF LITIGANT'S HEALTH</b></p> <p>Judge David Nuffer Magistrate Judge Evelyn J. Furse</p>
---	--

Defendants are entitled to put on a complete and thorough defense of the government's claims. Mr. Shepard is a named party and is entitled to be in attendance at trial. Furthermore, Mr. Shepard is an essential party – a majority of the government's exhibits and weight of its testimony and argument dealt with Mr. Shepard and the RaPower3.com website. He should not have to miss trial because of his health. It is not simply his attendance that is affected, but his ability to assist counsel and support the strategy and arguments presented in his favor.

Point 1: While Mr. Shepard may not be required to attend trial and trial could proceed if his absence is his own doing: a medical emergency is different. His doctor told him he has lost 50% of his heart's functioning capacity and the angiogram/stint procedure is on a critical schedule. If the damage can be repaired by a stint, it will be done on Friday, June 22<sup>nd</sup>. If a stint will not fix the problem, he will be scheduled for open heart surgery at the earliest available date. Mr. Shepard is not choosing to undergo a voluntary procedure but is dealing with heart failure. Mr. Shepard's presence is essential for Defendants' trial strategy. His participation is not simply his physical attendance at trial, but his participation in preparation, strategizing and counseling with his legal team.

Point 2: Mr. Shepard has testified only in Plaintiff's case. Defendants did not exceed the scope of direct examination and have not examined Mr. Shepard on all matters related to the defense of the government's claims. Mr. Shepard is entitled to participate in the defense of Plaintiff's claims against him.

Point 3: The order and availability of witnesses is part of the reason it is essential that Mr. Shepard is present for all trial dates and physically able to participate in the defense of Plaintiff's claims. There are issues raised by Plaintiff relating to several witnesses listed by Defendants – in particular Mr. Jameson, Mr. Haws and Mr. Jones. Timing and other issues relating to all of Defendants' witnesses is fluid and subject to change. All of the strategic decisions need the consideration and input from Mr. Shepard. It is very hard for him to dedicate his time and energy when his medical condition is foremost in his mind right now.

Point 4: We are confident the court can find dates that will accommodate the needs of the parties and travel plans from counsel. Mr. Shepard's medical condition is a legitimate concern that needs to be considered by the court.

Dated this 15<sup>th</sup> day of June, 2018.

NELSON SNUFFER DAHLE & POULSEN

/s/ Denver C. Snuffer, Jr.

Denver C. Snuffer, Jr.

Steven R. Paul

Daniel B. Garriott

Joshua D. Egan

*Attorneys for Defendants*

### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent to counsel for the United States in the manner described below.

Erin Healy Gallagher  
Erin R. Hines  
Christopher R. Moran  
US Dept. of Justice  
P.O. Box 7238  
Ben Franklin Station  
Washington, DC 20044  
*Attorneys for USA*

Sent via:

Mail

Hand Delivery

Email: [erin.healygallagher@usdoj.gov](mailto:erin.healygallagher@usdoj.gov)

[erin.r.hines@usdoj.gov](mailto:erin.r.hines@usdoj.gov)

[christopher.r.moran@usdoj.gov](mailto:christopher.r.moran@usdoj.gov)

Electronic Service via Utah Court's e-filing program

/s/ Denver C. Snuffer, Jr.

*Attorneys for Defendants*