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

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

RAPOWER-3, LLC, INTERNATIONAL  
AUTOMATED SYSTEMS, INC., LTB1,  
LLC, R. GREGORY SHEPARD, and  
NELDON JOHNSON,

Defendants.

Civil No. 2:15-cv-00828 DN

**REQUEST TO SUBMIT FOR  
DECISION**

Judge David Nuffer  
Magistrate Judge Evelyn J. Furse

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Pursuant to DUCivR 7-3, plaintiff, the United States, respectfully requests that the Court render a decision on the pending Motion for Reasonable Expenses & Attorneys' Fees associated

with motion practice in several discovery disputes.<sup>1</sup> In support of this request, the United States submits the following:

1. On February 13, 2018, the United States filed its Motion for Reasonable Expenses & Attorneys' Fees Associated with Motions to Compel, asking the Court to order the defendants and/or their former attorneys of the law firm Heideman & Associates, to pay the United States' expenses for motion practice in certain discovery disputes:
  - a. Deposition testimony of Kenneth Birrell<sup>2</sup>;
  - b. Document production and deposition testimony from Todd Anderson<sup>3</sup>;  
and
  - c. Deposition testimony of Cody Buck, Ken Oveson, and David Mantyla (each associated with accounting firm Mantyla McReynolds).<sup>4</sup>

2. As the Court is aware, Birrell, Anderson, Buck, and Oveson testified at trial.

Their testimony demonstrated, and the Court found, that the defendants knew or

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<sup>1</sup> [ECF Doc. No. 290](#).

<sup>2</sup> See [ECF Doc. No. 140](#) (United States' Motion to Compel Deposition Testimony of Kenneth Birrell); [ECF Doc. No. 203](#) (Order Granting Motion to Compel Deposition Testimony of Kenneth Birrell).

<sup>3</sup> See [ECF Doc. No. 124](#) (Todd Anderson's Motion to Quash Deposition Subpoena); [ECF Doc. No. 127](#) (Defendants' Motion to Quash Todd Anderson's deposition subpoena); [ECF Doc. No. 138](#) (United States' Motion to Compel Todd Anderson to Produce Documents); [ECF Doc. No. 150](#) (Defendants' Objections to the United States' Motion to Compel Todd Anderson to Produce Documents); [ECF Doc. No. 163](#) (United States' Renewed Motion to Compel Todd Anderson to Produce Documents); [ECF Doc. No. 176](#) (Defendants' Opposition to United States' Renewed Motion to Compel Todd Anderson to Produce Documents); [ECF Doc. No. 206](#), Order Granting Motion to Compel Todd Anderson to Produce Documents.

<sup>4</sup> See [ECF Doc. No. 137](#) (United States' Motion to Compel Deposition Testimony of Cody Buck, Ken Oveson, and David Mantyla); [ECF Doc. No. 147](#) (Defendants' Response); [ECF Doc. No. 209](#), Order Granting Motion to Compel Deposition Testimony of Cody Buck, Ken Oveson, and David Mantyla (noting "[c]ounsel made blanket assertions of privilege that failed to demonstrate the basis for the assertion" and ordering Buck, Oveson, and Mantyla to answer all questions they declined to answer).

had reason to know that the purported tax benefits they promoted were not permissible under the Internal Revenue Code,<sup>5</sup> and that the defendants misrepresented these witnesses' professional opinions to customers.<sup>6</sup>

3. On February 27, 2018, Heideman & Associates filed its objection.<sup>7</sup> On March 1, 2018, the defendants filed their objection.<sup>8</sup> All parties have been heard on the motion for reasonable expenses and attorneys' fees.
4. No party requested a hearing on this matter.
5. The motion is ripe, and the United States requests that the Court enter the United States' proposed order granting the motion.

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<sup>5</sup> [ECF Doc. No. 444](#), ¶ 45.

<sup>6</sup> [ECF Doc. No. 429-1](#) (Excerpts from Trial Transcript, June 22, 2018, Court's Preliminary Findings of Fact and Conclusions of Law, p. 2517:18-2518:10).

<sup>7</sup> [ECF Doc. No. 313](#).

<sup>8</sup> [ECF Doc. No. 317](#).

Dated: September 25, 2018

Respectfully submitted,

/s/ Christopher R. Moran

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**ATTORNEYS FOR THE  
UNITED STATES**

**CERTIFICATE OF SERVICE**

I hereby certify that on September 25, 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/ Christopher R. Moran  
CHRISTOPHER R. MORAN  
Trial Attorney