

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
vs.) Case 2:15-cv-00828-DN-EJP
)
RAPOWER-3, LLC, INTERNATIONAL,) Judge DAVID NUFFER
AUTOMATED SYSTEMS, INC., LTBl,)
LLC, R. GREGORY SHEPARD,)
NELDON JOHNSON, and ROGER)
FREEBORN,)
)
Defendants.)
_____)

30(b)(6) DEPOSITION OF RAPOWER-3, LLC (NELDON JOHNSON)

JUNE 30, 2017

SALT LAKE CITY, UTAH



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<p>1 Deposition of NELDON JOHNSON, produced 2 as a witness at the request of Plaintiff, 3 taken on June 30, 2017, at 8:57 a.m., at the 4 Law Offices of The U.S. Attorney, before 5 Amanda Richards, certified shorthand reporter 6 in and for the State of Utah, pursuant to 7 Notice. 8 9 APPEARANCES OF COUNSEL: 10 FOR PLAINTIFF: 11 Erin Healy Gallagher 12 Erin R. Hines 13 U.S. Department of Justice 14 P.O. Box 7238 15 Ben Franklin Station 16 Washington, D.C. 20044 17 202.353.2452 18 Erin.healy.gallagher@usdoj.gov 19 Erin.r.hines@usdoj.gov 20 21 FOR DEFENDANT NELDON JOHNSON: 22 Denver C. Snuffer, Jr. 23 Steven Paul 24 Nelson Snuffer Dahle & Poulsen 25 10885 South State Street Sandy, Utah 84070 801.576.1400 Denversnuffer@gmail.com ALSO PRESENT: Glenda Johnson *****</p>	<p>1 NELDON JOHNSON, WITNESS 2 I N D E X PAGE 3 Examination by Ms. Gallagher 5 4 Reporter's Certificate 201 5 Witness Certificate 202 6 7 EXHIBITS MARKED FOR IDENTIFICATION 8 EXHIBIT DESCRIPTION PAGE 9 Exhibit 541 Handwritten notes 50 10 Exhibit 542 Money Transferred And Expenses For IAS 83 11 Exhibit 543 Money Transferred And Expenses For IAS 84 12 Exhibit 544 Document entitled Power To The People 96 13 Exhibit 545 RaPower-3 LLC Customer Transactions 97 14 Exhibit 546 Placed-in-service letters to Greg Shepard 110 15 Exhibit 547 Overview of the "Placed in Service" Letter 115 16 Exhibit 548 Web page entitled Renewable Energy Systems 125 17 Exhibit 549 Email from Greg Shepard to Undisclosed 132 18 Recipients dated 10/21/11 19 Exhibit 550 Email from Greg Shepard to Undisclosed 132 20 Recipients dated 1/12/12 21 Exhibit 551 Disruptive Energy Technologies CPA 171 22 Information 23 Exhibit 552 RaPower3 correspondence to Genevieve 173 24 Traub dated 3/11/15 25 Exhibit 553 Email from Greg Shepard to (blank) 179 Subject: IRS Audit Info</p>
4	5
<p>1 SALT LAKE CITY, UTAH, FRIDAY, JUNE 30, 2017, 8:57 A.M. 2 ***** 3 NELDON JOHNSON, 4 called as a witness herein, having been first duly sworn, 5 was examined and testified as follows: 6 MS. GALLAGHER: We're on the record. We are on the 7 record in the case of United States vs. RaPower3, et al., on 8 June 30th, 2017, at just about 9:00 a.m. My name is Erin 9 Healy Gallagher of the U.S. Department of Justice in the Tax 10 Division appearing on behalf of United States. 11 Counsel, please state their appearances. 12 MR. SNUFFER: Denver Snuffer here on behalf of the 13 Defendants RaPower, LTB, IAS and Neldon Johnson. And with 14 me from my office is Mr. Steve Paul. 15 MS. HINES: Erin Hines on behalf of the United States. 16 MS. GALLAGHER: And not present today are Don Reay who 17 represents R. Gregory Shepard and Roger Freeborn, and Chris 18 Moran who represents the United States. Also today we have 19 in the room Mrs. Glenda Johnson. 20 MR. SNUFFER: Yeah. 21 MS. GALLAGHER: All right. This deposition will be 22 governed by the Federal Rules of Civil Procedure and the 23 local rules of the District of Utah. All exhibits that we 24 use today will be marked and kept here until they go with 25 the court reporter at the end of the week. Any other</p>	<p>1 stipulations we'll address as the need arises. 2 EXAMINATION 3 Q. (BY MS. GALLAGHER) All right, Mr. Johnson. 4 A. Yes. I would like to -- 5 Q. Wait a second, please. 6 A. Oh. Sorry. 7 Q. This deposition today is the deposition of 8 Defendant RaPower3; is that your understanding, sir? 9 A. I thought it was LTB. 10 MR. SNUFFER: No. LTB is tomorrow. 11 THE WITNESS: Okay. 12 MR. SNUFFER: RaPower is today. 13 Q. (BY MS. GALLAGHER) So I'm handing you what's been 14 marked Plaintiff's Exhibit 487 which is the United States 15 Notice of Deposition of Defendant RaPower3, LLC. 16 Mr. Johnson, you're here today to represent RaPower3; 17 correct? 18 A. That's correct. 19 Q. Pursuant to this Notice; yes? 20 A. Yes. 21 Q. As we go through the day today, if at any time you 22 answer questions from any source other than your own 23 personal knowledge, will you let me know? 24 A. Yes. 25 Q. Okay. All right. We've covered the ground rules</p>

<p style="text-align: right;">30</p> <p>1 cooled by the heat exchange of the heat transfer into the 2 water.</p> <p>3 At that point the temperature became 4 exceedingly -- exceeded the temperature that the oil was -- 5 was designed to handle, and at that point in time the 6 pressure on the oil became a temperature high enough to 7 damage some of the joints. And as soon as the oil hit a 8 flashpoint with air and hit a -- the flashpoint temperature 9 of the oil was 750 degrees, and so it was above the 10 flashpoint of the oil.</p> <p>11 And as soon as the oil broke through the joints 12 there at the -- where the power plant was connected to the 13 oilfields -- or for the -- I mean the solar fields, the air 14 caught the oil on fire and created a fire which consumed the 15 power plant, basically. It ruined the generator and the 16 piping and bent and damaged the heat exchangers.</p> <p>17 Q. When did that happen? 18 A. I don't know exactly, but it was sometime in -- 19 after 2010. You could still see the remains of the damage 20 caused by the fire in the container where the power plant 21 was housed.</p> <p>22 Q. Sounds like a pretty traumatic fire. 23 A. I was in the back part of that, actually, and I 24 couldn't get out and so they cut a hole -- they had to get 25 my plasma cutter and cut a door on the backside of that to</p>	<p style="text-align: right;">31</p> <p>1 get me out.</p> <p>2 Q. Did it happen -- 3 A. Yeah.</p> <p>4 Q. Was the fire before or after the raids in 2012? 5 A. That I don't know.</p> <p>6 Q. If you don't know, that's fine. 7 A. I don't remember. We ended up using -- we had 8 about ten fire extinguishers down there, and it didn't even 9 touch it. It was incredible. I had several where I was at 10 trying to get -- get out.</p> <p>11 Q. Mr. Johnson, looking back at Plaintiff's Exhibit 12 524 page, Ra3-16208 -- 13 A. Okay.</p> <p>14 Q. -- when, if ever, has any entity sold the lenses 15 that are pictured here? 16 A. There's been no entity that's sold those. They've 17 never been sold.</p> <p>18 Q. And looking back at Plaintiff's Exhibit 8A, page 19 Greg_P&R-574, looking at the lens pictured on this page, 20 when, if ever, has any entity sold a lens pictured on this 21 page? 22 A. I don't -- I don't recall whether they sold those 23 or not. They may have sold those as part of a deal and then 24 later transferred into new lenses when those were damaged. 25 Those got damaged.</p>
<p style="text-align: right;">32</p> <p>1 Q. Any idea when the sales of such lenses may have 2 occurred? 3 A. It would have been in 2007. Some -- someplace 4 like that.</p> <p>5 Q. And then you said anyone who may have purchased 6 these rectangular lenses were transferred to the triangular 7 lenses? 8 A. Yes. They were exchanged for the newer lenses. 9 Those have -- those that got damaged.</p> <p>10 Q. Is there any documentation for that exchange? 11 A. I'm not positive whether there is or isn't. If 12 there is, it would have been in the records of IAS, but I'm 13 not positive.</p> <p>14 Q. Let's talk about RaPower3. 15 A. Okay.</p> <p>16 Q. Mr. Johnson, you are the manager of RaPower3; 17 correct? 18 A. That's correct.</p> <p>19 Q. Does anyone else make decisions for RaPower3 other 20 than you? 21 A. No.</p> <p>22 Q. What does RaPower3 do? 23 A. It's a marketing company that markets solar energy 24 projects, and it can -- it can sell other products as well. 25 Q. Currently what product is RaPower3 selling?</p>	<p style="text-align: right;">33</p> <p>1 A. Just the solar lenses.</p> <p>2 Q. Has RaPower3 ever sold any other product? 3 A. No.</p> <p>4 Q. And these were the solar lenses that are on the 5 towers that we've been discussing throughout the depositions 6 this week; yes? 7 A. That's correct.</p> <p>8 Q. How does RaPower3 sell these lenses? 9 A. It's a multi-level marketing company.</p> <p>10 Q. Can you explain what your understanding of that 11 is. 12 A. Well, we have distributors that join and become 13 members of the RaPower multi-level marketing, and then 14 they're able then to sell the products.</p> <p>15 Q. What does someone have to do to become a 16 distributor? 17 A. They just have to sign up. There was no 18 requirements.</p> <p>19 Q. They just have to sign up to sell the lenses? 20 A. That's correct.</p> <p>21 Q. Do they have to buy one or more lenses before -- 22 A. No.</p> <p>23 Q. Let me finish the question, please. 24 A. I'm sorry.</p> <p>25 Q. Do they have to buy any lenses to become a member?</p>

<p style="text-align: right;">34</p> <p>1 A. I don't believe so.</p> <p>2 Q. Do they or don't they?</p> <p>3 A. I don't -- I have people that haven't done that</p> <p>4 that are members, so I -- I think that, yes, the answer is</p> <p>5 they can become members without purchasing any product.</p> <p>6 Q. Okay. So a person who wanted to sell a lens could</p> <p>7 sign up to be a distributor without buying any lenses, him</p> <p>8 or herself?</p> <p>9 A. That's correct.</p> <p>10 Q. Does RaPower3 issue any W-2s to employees?</p> <p>11 A. 1099 forms.</p> <p>12 Q. So does RaPower3 issue any W-2 forms to employees?</p> <p>13 A. I don't know what a W-2 form is.</p> <p>14 Q. To your knowledge, does RaPower3 have employees?</p> <p>15 A. No, they don't. No.</p> <p>16 Q. RaPower3 does not have employees?</p> <p>17 A. No, other than myself. And I'm not -- and I don't</p> <p>18 get paid, so I don't get any -- any forms.</p> <p>19 Q. All right. And you said that RaPower3 issues</p> <p>20 Forms 1099?</p> <p>21 A. That's correct. If I do a sale or someone else</p> <p>22 does a sale, then they'd be issued a 1099.</p> <p>23 Q. So am I correct, sir, that RaPower3 issues 1099s</p> <p>24 to people who sell RaPower3 lenses?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">35</p> <p>1 Q. What, if anything, does RaPower3 pay those people</p> <p>2 for?</p> <p>3 A. For a commission on a sale.</p> <p>4 Q. What is the commission structure for RaPower3</p> <p>5 distributors?</p> <p>6 A. For -- for the first product, and the way they</p> <p>7 market it is a 10 percent commission on the sale, and then</p> <p>8 there's a down line of 1 percent, a five-level down line of</p> <p>9 1 percent each. The next -- the next way that they market</p> <p>10 it is there's two down lines with a 7 percent commission on</p> <p>11 each down line.</p> <p>12 Q. What do you mean by that? How is that different?</p> <p>13 A. There's two different -- there's two different</p> <p>14 ways that we sell the product. We used to sell it with --</p> <p>15 with -- in the way that's been done up until last year.</p> <p>16 We've changed the marketing, and in changing the marketing,</p> <p>17 we also changed the way that the down lines get their</p> <p>18 commissions paid from a two -- from a five down line to a</p> <p>19 two down line.</p> <p>20 Q. Okay. So let me -- let's piece that out a little</p> <p>21 bit. First off, really quick, who's responsible for issuing</p> <p>22 the 1099s from RaPower3?</p> <p>23 A. I am the one who is responsible to make sure that</p> <p>24 that gets complete.</p> <p>25 Q. And who actually does it?</p>
<p style="text-align: right;">36</p> <p>1 A. Glenda Johnson does it for me most of the time.</p> <p>2 Q. Okay. So RaPower3 was formed in 2010; correct?</p> <p>3 A. I believe so. I'm not positive, I guess.</p> <p>4 Q. Starting in 2010 -- well, I'll ask you this: You</p> <p>5 mentioned something about the system changed last year for</p> <p>6 paying commission.</p> <p>7 A. The way that we market the product, yes, it has</p> <p>8 changed.</p> <p>9 Q. Okay. Is the way that you pay -- withdrawn.</p> <p>10 At the same time that you changed the way you</p> <p>11 market the product, is that also the way you changed the way</p> <p>12 commission is paid?</p> <p>13 A. That's correct.</p> <p>14 Q. So from 2010 until that point last year, which</p> <p>15 commission structure was in operation?</p> <p>16 A. The one with the five, I think five levels.</p> <p>17 Q. Okay. Let's take the structure that had been in</p> <p>18 place from 2010 until last year. Let's start with that.</p> <p>19 A. Okay.</p> <p>20 Q. You just used a word down line.</p> <p>21 A. That's correct.</p> <p>22 Q. What does down line mean?</p> <p>23 A. It means how many people that are -- that you</p> <p>24 basically have sold, and then they -- they produce another</p> <p>25 line, and then they produce the other line, and you get a</p>	<p style="text-align: right;">37</p> <p>1 piece of each line that they -- they sell it on. So that's,</p> <p>2 from my understanding, that's the down lines of an MLM</p> <p>3 company.</p> <p>4 Q. Greg Shepard, Mr. Johnson, is a sales</p> <p>5 representative for RaPower3; correct?</p> <p>6 A. That's correct.</p> <p>7 Q. Okay. So let's say Greg Shepard is the first</p> <p>8 level on his down line --</p> <p>9 A. That's correct.</p> <p>10 Q. -- is that right? Okay. And then he makes a</p> <p>11 sale.</p> <p>12 A. And he would get 10 percent.</p> <p>13 Q. Okay. So let's say, for example, he made a sale</p> <p>14 to Robert Rowbotham.</p> <p>15 A. Correct.</p> <p>16 Q. Greg Shepard would get 10 percent of the sale to</p> <p>17 Robert Rowbotham?</p> <p>18 A. That's correct.</p> <p>19 Q. And when you say 10 percent of the sale, or when</p> <p>20 you say 10 percent of the sale, 10 percent of what?</p> <p>21 A. 10 percent of the gross of the -- of the money</p> <p>22 that is paid they will receive 10 percent as -- as</p> <p>23 production to pay off the loan continues, they will then</p> <p>24 continue to become -- to get 10 percent of the production.</p> <p>25 Q. Okay. So let's say a lens costs \$3,500.</p>

<p style="text-align: right;">38</p> <p>1 A. Okay.</p> <p>2 Q. And Robert Rowbotham buys one lens.</p> <p>3 A. That's correct.</p> <p>4 Q. But Robert Rowbotham pays a down payment of</p> <p>5 \$1,050.</p> <p>6 A. Correct.</p> <p>7 Q. And the remainder of the 1,000 -- I'm sorry. The</p> <p>8 remainder of the \$3500 is financed?</p> <p>9 A. Correct.</p> <p>10 Q. Would Greg Shepard receive 10 percent of \$1,500?</p> <p>11 A. Correct.</p> <p>12 Q. Then, as I think you just described, as payments</p> <p>13 on that lens are made over time to add up to \$3,500,</p> <p>14 Mr. Shepard would get 10 percent of each of those payments?</p> <p>15 A. That's correct.</p> <p>16 Q. Okay. So then let's say Robert Rowbotham makes a</p> <p>17 sale to Roger Freeborn.</p> <p>18 A. Okay.</p> <p>19 Q. Robert Rowbotham gets 10 percent of that sale;</p> <p>20 correct?</p> <p>21 A. That's correct.</p> <p>22 Q. And then Greg Shepard gets 1 percent of that sale?</p> <p>23 A. That's correct.</p> <p>24 Q. Then if Roger Freeborn makes a sale to Brian</p> <p>25 Zeleznik, for example, now it's Roger Freeborn who gets the</p>	<p style="text-align: right;">39</p> <p>1 10 percent, Robert Rowbotham gets 1 percent, and Greg</p> <p>2 Shepard gets 1 percent?</p> <p>3 A. That's correct.</p> <p>4 Q. And the 1 percent is also calculated on money</p> <p>5 actually paid by the purchaser?</p> <p>6 A. That's correct.</p> <p>7 Q. Who established this commission structure?</p> <p>8 A. I did.</p> <p>9 Q. Since 2010 who has kept track of which people are</p> <p>10 owed which commission?</p> <p>11 A. My -- my wife, Glenda Johnson, does it for free.</p> <p>12 Q. Has she done so since 2010?</p> <p>13 A. She's done a good job, yes. Yeah. There's a --</p> <p>14 there's a real procedure that we don't get -- we don't have</p> <p>15 anybody touching that money like we did before and stealing</p> <p>16 it. So, yeah, she does a good job.</p> <p>17 Q. How does Mrs. Johnson keep track of the</p> <p>18 commissions?</p> <p>19 A. There's a computer program that does all of that.</p> <p>20 The -- when a sale comes in, it goes into the computer</p> <p>21 system, it gets transferred into our bookkeeping system,</p> <p>22 then she takes a photograph physically of all of the money</p> <p>23 that comes in and keeps a paper copy of all the transactions</p> <p>24 as well as electronic transactions.</p> <p>25 Q. When you say a sale -- when a sale comes in it</p>
<p style="text-align: right;">40</p> <p>1 goes into the computer program, how do sales come in?</p> <p>2 A. Usually through a computer program that's on the</p> <p>3 website.</p> <p>4 Q. Which website?</p> <p>5 A. I think it's Rapower.net or RaPower3.com. I</p> <p>6 don't -- I'm not sure which one.</p> <p>7 Q. Who is it that programmed Rapower.net to bring in</p> <p>8 sales?</p> <p>9 A. It was done at my direction and -- and most of</p> <p>10 the -- most of the layout of the program was done by me.</p> <p>11 Then I have people that will code -- code the program as I</p> <p>12 have directed them to do.</p> <p>13 Q. Who are those coders?</p> <p>14 A. The first one was Chris Taylor and the next one is</p> <p>15 Aaron Jones.</p> <p>16 Q. Anyone else?</p> <p>17 A. Not besides myself.</p> <p>18 Q. The equipment purchase agreement that RaPower3</p> <p>19 provides to customers is available online; correct?</p> <p>20 A. That's correct.</p> <p>21 Q. And you directed that that contract be made</p> <p>22 available online?</p> <p>23 A. That's correct.</p> <p>24 Q. Plaintiff's Exhibit 511, Mr. Johnson, which we</p> <p>25 looked at earlier, is an example of that equipment purchase</p>	<p style="text-align: right;">41</p> <p>1 agreement; right?</p> <p>2 A. That's correct, yes.</p> <p>3 Q. Did you get this -- we can go off the record.</p> <p>4 (Discussion held off the record.)</p> <p>5 Q. (BY MS. GALLAGHER) Mr. Johnson, where does</p> <p>6 RaPower3 store the contracts it has with any customer?</p> <p>7 A. In filing cabinets at our premise in, I believe in</p> <p>8 Delta, Utah.</p> <p>9 Q. Does RaPower3 have in those filing cabinets all of</p> <p>10 the contracts it has entered with customers since 2010?</p> <p>11 A. I believe it does.</p> <p>12 Q. Mr. Johnson, I'll represent to you that we</p> <p>13 received from your attorneys some equipment purchase</p> <p>14 agreements from RaPower3, but we have not received any that</p> <p>15 were signed in 2015 or 2016. Did RaPower3 contract with</p> <p>16 customers during 2015 and 2016?</p> <p>17 A. I'm sure they did.</p> <p>18 Q. How about in 2017?</p> <p>19 A. I'm sure they did, yes.</p> <p>20 Q. So we will likely follow up with your attorney</p> <p>21 after this deposition to see if we can figure out a way to</p> <p>22 get those.</p> <p>23 A. Okay.</p> <p>24 Q. Okay. So we talked about the first structure for</p> <p>25 commission through RaPower3, and you said that last year the</p>