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

3 UNITED STATES OF AMERICA, )  
 4 )  
 5 Plaintiff, )  
 6 )  
 7 vs. ) Civil No.  
 8 RAPOWER-3, LLC, INTERNATIONAL )2:15-cv-00828-DN-EJF  
 9 AUTOMATED SYSTEMS, INC., LTB1, )  
 10 LLC, R. GREGORY SHEPARD, )  
 11 NELDON JOHNSON, and ROGER )  
 12 FREEBORN, )  
 13 )  
 14 Defendants. )

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15 ORAL DEPOSITION OF  
 16 JOHN HOWELL  
 17 AUGUST 23, 2017

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18 ORAL DEPOSITION of JOHN HOWELL, produced  
 19 as a witness at the instance of the Plaintiff, and  
 20 duly sworn, was taken in the above-styled and  
 21 numbered cause on the 23rd of August, 2017, from  
 22 8:37 a.m. to 6:13 p.m., before Karen L. Shelton,  
 23 RDR/CRR/CSR in and for the State of Texas, reported  
 24 by machine shorthand at the offices of Internal  
 25 Revenue Service, 4309 Old Jacksboro Highway, Wichita  
 Falls, Texas, pursuant to the Federal Rules of Civil  
 Procedure and any provisions stated on the record or  
 attached hereto.

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1 A P P E A R A N C E S  
 2  
 3 FOR THE PLAINTIFF:  
 4 MS. ERIN HEALY GALLAGHER  
 5 MS. ERIN R. HINES (telephonically)  
 6 TRIAL ATTORNEYS, TAX DIVISION  
 7 U.S. DEPARTMENT OF JUSTICE  
 8 P.O. Box 7238  
 9 Ben Franklin Station  
 10 Washington, D.C. 20044  
 11 (202) 353-2452  
 12 erin.healygallagher@usdoj.gov  
 13 erin.r.hines@usdoj.gov  
 14  
 15 FOR THE DEPONENT:  
 16 MR. JOHN R. TEAKELL  
 17 LAW OFFICE OF JOHN R. TEAKELL  
 18 2911 Turtle Creek Boulevard  
 19 Suite 300  
 20 Dallas, Texas 75219  
 21 (214) 523-9076  
 22 jteakell@teakelllaw.com  
 23  
 24 FOR THE DEFENDANTS RAPOWER-3, LLC, INTERNATIONAL  
 25 AUTOMATED SYSTEMS, INC., LTB1, LLC, and NELDON  
 JOHNSON:  
 MR. STEVEN R. PAUL (telephonically)  
 NELSON, SNUFFER, DAHLE & POULSEN, P.C.  
 10885 South State Street  
 Sandy, Utah 84070  
 (801) 576-1400  
 spaul@nsdplaw.com

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1 PROCEEDINGS  
 2 MS. HEALY GALLAGHER: We are on the record  
 3 in the case of United States versus RaPower3,  
 4 et al., on August 23rd at approximately 8:37 Central  
 5 Time. My name is Erin Healy Gallagher of the  
 6 United States Department of Justice's tax division  
 7 appearing on behalf of the United States.  
 8 Counsel, would you please make your  
 9 appearances.  
 10 MR. TEAKELL: John Teakell for Mr. John  
 11 Howell.  
 12 MR. PAUL: Steven Paul by telephone for  
 13 the RaPower3 defendants.  
 14 MS. HEALY GALLAGHER: Erin Hines and  
 15 Christopher Moran, who also represent the  
 16 United States, are not presently on the line. And  
 17 Donald Reay, who currently still represents R.  
 18 Gregory Shepard and Roger Freeborn, is also not  
 19 present.  
 20 All right. This deposition will be  
 21 governed by the Federal Rules of Civil Procedure.  
 22 All of the exhibits that we use today will be sent  
 23 with the court reporter to be made part of this  
 24 proceeding, and any other stipulations will be  
 25 addressed as the need arises.

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1 JOHN HOWELL,  
 2 having been first duly sworn, testified as follows:  
 3 EXAMINATION  
 4 BY MS. HEALY GALLAGHER:  
 5 Q. All right. Mr. Howell, good morning.  
 6 A. Good morning.  
 7 Q. Would you please say and spell your name  
 8 for the record.  
 9 A. John Howell, J-O-H-N H-O-W-E-L-L.  
 10 Q. And would you please give me the city and  
 11 state where you live.  
 12 A. Wichita Falls, Texas.  
 13 Q. Do you work in the same place?  
 14 A. Yes.  
 15 Q. All right. Mr. Howell, have you ever been  
 16 deposed before?  
 17 A. Yes, a number of years back.  
 18 Q. How many times?  
 19 A. Just once.  
 20 Q. Okay. All right. So you may have gone  
 21 over these ground rules then or you may have talked  
 22 to your attorney about them today, but I'd like to  
 23 just cover the ground rules for a deposition so that  
 24 we're on the same page.  
 25 So in this deposition I will ask you

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1 questions, and my questions and your answers will be  
 2 recorded by the court reporter here. So you're  
 3 doing a good job so far, but please speak loudly  
 4 enough for her to hear you and answer my questions  
 5 verbally. Do you understand?  
 6 A. Yes.  
 7 Q. The court reporter cannot record a nod or  
 8 shake of the head, and words like uh-huh or huh-uh  
 9 are not clear on the transcript that we will create,  
 10 so if either one of us does that, I'll just stop and  
 11 remind us and we'll carry on. Okay?  
 12 A. Yes.  
 13 Q. We have a tendency in casual conversation  
 14 to speak over one another; for example, to start  
 15 answering a question before it's finished being  
 16 asked. Again, so that we get a clear transcript,  
 17 I'll ask that you wait until I finish asking a  
 18 question before you start to answer. Will you do  
 19 that?  
 20 A. Yes.  
 21 Q. And when I do finish asking each question,  
 22 your task for today is to give full and complete  
 23 answers. Do you understand that obligation?  
 24 A. Yes.  
 25 Q. Now, my obligation is to ask

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1 understandable questions. So if you don't  
 2 understand a question for any reason, please let me  
 3 know and I'll do my best to clarify. Will you do  
 4 that?  
 5 A. Yes.  
 6 Q. All right. And occasionally another  
 7 attorney who's present may object to a question that  
 8 I ask. That objection is solely to make a note on  
 9 the record. Otherwise, you must answer the question  
 10 that I ask as if the objection was never made. Do  
 11 you understand that?  
 12 A. Yes.  
 13 Q. Sometimes it'll happen that you'll give an  
 14 answer as completely as you can but then later on in  
 15 the deposition you may remember additional  
 16 information or different information that may  
 17 clarify or amplify your previous answer.  
 18 When that occurs, if it occurs, please let  
 19 me know that there's something you would like to add  
 20 and we'll take care of it immediately. Will you do  
 21 that?  
 22 A. Yes.  
 23 Q. When you're answering a question, if you  
 24 think that there's a document or some documents that  
 25 may help you remember information that's relevant,

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1 please let me know and we'll see if we have the  
 2 document here. Okay?  
 3 A. Okay.  
 4 Q. I will try to remember to take a break  
 5 every 90 minutes or so, but if you need a break at  
 6 any time, please let me know. Okay?  
 7 A. Okay.  
 8 Q. If there is a question pending, however,  
 9 you need to answer the question before we take a  
 10 break.  
 11 A. Yes.  
 12 Q. And you're represented today by  
 13 Mr. Teakell. If you want to talk to your attorney  
 14 in the course of this deposition, that's fine. But  
 15 if there's a question pending or if you're in the  
 16 middle of an answer, you will need to finish it  
 17 before you speak to your attorney. Do you  
 18 understand?  
 19 A. Yes.  
 20 Q. All right. Because we're here to get as  
 21 accurate a record as we can of the facts of this  
 22 case as you remember them, I have to ask, is there  
 23 anything that would prevent you from understanding  
 24 and answering my questions today with the full  
 25 capacity of your recollection?

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1 A. No.  
 2 Q. Have you had anything alcoholic to drink  
 3 in the past eight hours?  
 4 A. No.  
 5 Q. Are you taking medications or drugs of any  
 6 kind that might interfere with your memory?  
 7 A. No.  
 8 Q. Is there any other reason you can think of  
 9 why you might not be able to answer my questions  
 10 fully and accurately today?  
 11 A. No.  
 12 Q. Mr. Howell, what e-mail addresses have you  
 13 used since 2010?  
 14 A. Rockingh@wf.net.  
 15 Q. Any others?  
 16 A. Not that I can recall.  
 17 Q. Do you use that for both business and  
 18 personal e-mails?  
 19 A. Yes.  
 20 Q. Mr. Howell, did you graduate from high  
 21 school?  
 22 A. Yes.  
 23 Q. In what year?  
 24 A. 1973.  
 25 Q. Did you have any formal education after

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1 1973?  
 2 A. Yes.  
 3 Q. What formal education did you have?  
 4 A. Some college at Midwestern State  
 5 University.  
 6 Q. You said some college. So do you have a  
 7 degree from Midwestern State?  
 8 A. No, I do not.  
 9 Q. When did you attend Midwestern State?  
 10 A. Let's see. It was probably 1986 to '87.  
 11 Awhile back.  
 12 Q. Sure. Any other times than from 1986 to  
 13 1987?  
 14 A. No.  
 15 Q. Since 1973 and other than your time at  
 16 Midwestern State, have you had any other formal  
 17 education?  
 18 A. I attended a number of tax classes that  
 19 were given by H&R Block.  
 20 Q. When did you take those classes?  
 21 A. Various years. Probably from '75  
 22 through '80, '81, '82.  
 23 Q. Okay. Other than time at Midwestern State  
 24 and tax classes from H&R Block, have you had any  
 25 other formal education since 1973?

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1 Q. So when you say you took the course  
 2 online, it sounds to me like, correct me if I'm  
 3 wrong, there were like -- there was like a video on  
 4 a particular topic and you could decide when you  
 5 wanted to watch that video. Is that right?  
 6 A. I believe most of them then -- this is --  
 7 we had a series of disks that we would put in the  
 8 computer and put in that disk for those particular  
 9 topics and read the information, take little exams.  
 10 And then depending on how well you did on the exams,  
 11 you go back over it.  
 12 Q. I was going to say, that online course in  
 13 2001 sounds pretty advanced. But CD-ROM sounds --  
 14 A. Yeah.  
 15 Q. -- more consistent.  
 16 A. To me anything on a computer is almost  
 17 online anymore. It's just --  
 18 Q. Sure. Okay. So then after you obtained  
 19 the EA designation, have you had that designation  
 20 consistently since 2001?  
 21 A. Yes.  
 22 Q. And you said that you have to do lots of  
 23 continuing education.  
 24 A. Correct.  
 25 Q. What are the continuing education

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1 requirements to maintain the EA status?  
 2 A. 72 hours every three years, at least 17  
 3 hours each year.  
 4 Q. At least how many hours?  
 5 A. 17. So usually I do 24 each year to get  
 6 all 72.  
 7 Q. Other than the continuing education  
 8 requirements, are there any other requirements in  
 9 order for you to maintain the EA designation?  
 10 A. File all your tax returns. That's  
 11 basically the requirements. Mostly it's your  
 12 continuing education, make sure you're current with  
 13 all tax filings.  
 14 Q. Since 2010 where do you get your 24 hours  
 15 of continuing education each year?  
 16 A. Different continuing ed companies, like  
 17 WebCE is one of them.  
 18 Q. Is there any requirement that any of the  
 19 training be live?  
 20 A. There's some what they consider classroom  
 21 training where you can do one specific topic. Until  
 22 you've completed that, you can't go on to the next  
 23 one. Then you take your final exam.  
 24 Q. Do you do any of your continuing education  
 25 live?

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1 A. Yes.  
 2 Q. And what sort -- what topics do you do  
 3 your continuing education in?  
 4 A. Various. Corporations, partnerships, sole  
 5 proprietorships, rentals, ethics, sale of business  
 6 assets, just -- just go down the list and see what I  
 7 think I need a refresher course on and that's the  
 8 one I choose.  
 9 Q. Do you keep records of the continuing  
 10 education classes you've taken since you got your  
 11 designation?  
 12 A. I've tried to. I tried to save the  
 13 certificates and any courses that I printed out, the  
 14 tests that I did with them. Sure I've missed some  
 15 without keeping them. Just, you know, you get in a  
 16 hurry, but I try to.  
 17 Q. Okay. Mr. Howell, so we're here today in  
 18 the context of the United States lawsuit against  
 19 RaPower3 and other folks. And you mentioned  
 20 RaPower3 as one of the network marketing companies  
 21 that you're involved in.  
 22 When did you first hear about RaPower3?  
 23 A. Believe 2010.  
 24 Q. How did you first hear about it?  
 25 A. One of my tax clients had went to a

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1 seminar given by RaPower3 that she had went to and  
 2 they had talked about the network marketing of the  
 3 solar systems as well as the tax benefits. And she  
 4 asked me if I knew anything about it, and I said no.  
 5 Q. Who was that?  
 6 A. Just one of my tax clients.  
 7 Q. What's her name?  
 8 A. She might not want that disclosed.  
 9 Q. Well, you're under oath today, Mr. Howell,  
 10 so what's her name, please?  
 11 A. Mrs. Roe.  
 12 Q. R-O-E?  
 13 A. R-O-E.  
 14 Q. First name Janet?  
 15 A. Yes.  
 16 Q. You said that was in about 2010?  
 17 A. I believe it was 2010 because she asked me  
 18 a number of times before I even looked at any  
 19 information about them.  
 20 Q. Well, that's my next question. So what  
 21 did you do next after Ms. Roe came to you with the  
 22 first information about RaPower3?  
 23 A. It was probably in 2011 before I even --  
 24 before I even looked at it. Then I looked at  
 25 their -- I believe it was somewhere in that time

<p style="text-align: right;">Page 93</p> <p>1 a bit.</p> <p>2 MS. HEALY GALLAGHER: Excuse me.</p> <p>3 MR. TEAKELL: No, let's go off the record.</p> <p>4 MS. HEALY GALLAGHER: No, sir. This is my</p> <p>5 deposition. We're staying on.</p> <p>6 MR. TEAKELL: I'm going to go off the</p> <p>7 record, or I'll just go ahead and put it on the</p> <p>8 record here then.</p> <p>9 MS. HEALY GALLAGHER: If you feel like you</p> <p>10 need to make a record, please do so.</p> <p>11 MR. TEAKELL: Where are you going with</p> <p>12 this as to what -- first of all, he's answered the</p> <p>13 question several different ways.</p> <p>14 MS. HEALY GALLAGHER: Sir, that's a</p> <p>15 completely inappropriate speaking objection.</p> <p>16 MR. TEAKELL: Secondly, where are we going</p> <p>17 with this? Do we want to go off the record?</p> <p>18 MS. HEALY GALLAGHER: No.</p> <p>19 MR. TEAKELL: Where are we going with this</p> <p>20 as to whether or not he thinks it's a scam or not?</p> <p>21 What relevance is it going forward? And perhaps</p> <p>22 I've given you a lot of leeway with this, but what</p> <p>23 relevance is this with where you're going with your</p> <p>24 questions --</p> <p>25 MS. HEALY GALLAGHER: Number one --</p>	<p style="text-align: right;">Page 95</p> <p>1 testimony.</p> <p>2 BY MS. HEALY GALLAGHER:</p> <p>3 Q. And you have prepared hundreds of tax</p> <p>4 returns claiming tax benefits related to RaPower3.</p> <p>5 A. Yes.</p> <p>6 Q. Yes? And it sounds like you'll continue</p> <p>7 to do that. Correct?</p> <p>8 A. Until it can be shown in tax court that</p> <p>9 this is not a viable business.</p> <p>10 Q. "This" being RaPower3?</p> <p>11 A. RaPower3.</p> <p>12 Q. So what, if any, concern do you have about</p> <p>13 this litigation, this injunction suit against</p> <p>14 RaPower3 and other defendants?</p> <p>15 MR. PAUL: I'm going to object to the</p> <p>16 foundation, argumentative.</p> <p>17 MR. TEAKELL: It's too broad of a</p> <p>18 question.</p> <p>19 A. Be more specific.</p> <p>20 BY MS. HEALY GALLAGHER:</p> <p>21 Q. We'll start with this. When did you first</p> <p>22 hear about this litigation?</p> <p>23 A. Probably when I received a summons.</p> <p>24 Q. Was that for the production of documents?</p> <p>25 A. No, it was for this particular one. The</p>
<p style="text-align: right;">Page 94</p> <p>1 MR. TEAKELL: -- whether he thinks it's a</p> <p>2 scam or not?</p> <p>3 MS. HEALY GALLAGHER: -- that is a</p> <p>4 completely inappropriate speaking objection. Number</p> <p>5 two --</p> <p>6 MR. TEAKELL: Well, we're on the record</p> <p>7 because you don't want to go off the record.</p> <p>8 MS. HEALY GALLAGHER: -- relevance is</p> <p>9 broadly construed. Mr. Howell has prepared hundreds</p> <p>10 of returns claiming tax benefits with respect to</p> <p>11 RaPower3. So I'm going to get my answer. Thank you</p> <p>12 for your objection.</p> <p>13 Please read back my question.</p> <p>14 THE REPORTER: "Question: But you're</p> <p>15 content to continue to prepare tax returns?"</p> <p>16 A. Yes.</p> <p>17 MR. PAUL: I'm going to object. I want to</p> <p>18 assert an objection as to it's been asked and</p> <p>19 answered, it's argumentative, and foundation.</p> <p>20 MR. TEAKELL: Yeah, same objections.</p> <p>21 BY MS. HEALY GALLAGHER:</p> <p>22 Q. Mr. Howell, you've just said you're not</p> <p>23 sure whether RaPower3 is a scam or not.</p> <p>24 MR. PAUL: I'm going to object to that too</p> <p>25 because that completely misstates the prior</p>	<p style="text-align: right;">Page 96</p> <p>1 actual production of documents was from IRS wanting</p> <p>2 copies of tax returns. This particular one, to the</p> <p>3 best of my knowledge, was when I received a summons</p> <p>4 to do a deposition.</p> <p>5 Q. Well, I'll ask you this. Are you aware,</p> <p>6 Mr. Howell, that the United States has sued RaPower3</p> <p>7 and other defendants in fact seeking to shut down</p> <p>8 what the United States alleges is an abusive tax</p> <p>9 scheme?</p> <p>10 A. What I thought this was.</p> <p>11 Q. So you are aware of that litigation?</p> <p>12 A. Alleged.</p> <p>13 Q. You're aware of the litigation?</p> <p>14 A. Yes.</p> <p>15 Q. Yes. And you are aware that the</p> <p>16 United States alleges that RaPower3 is involved in</p> <p>17 an abusive tax scheme, correct?</p> <p>18 A. Alleges, yes.</p> <p>19 Q. You understand that is the allegation,</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. So as an enrolled agent, are you</p> <p>23 concerned in any way about this litigation --</p> <p>24 MR. TEAKELL: Same objection as before.</p> <p>25 BY MS. HEALY GALLAGHER:</p>

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1 Q. And one of the things I'm trying to  
 2 understand, Mr. Howell, is how you know yours even  
 3 exist.  
 4 A. How do I know my specific ones exist?  
 5 Q. Yes.  
 6 A. I don't really know because I never really  
 7 asked them which ones were specifically mine.  
 8 Q. As an enrolled agent, sir, does that cause  
 9 you any concern about whether this is an abusive tax  
 10 scam?  
 11 A. Not particularly. I mean, they're still  
 12 in the works. They haven't finalized anything.  
 13 They're still working.  
 14 Q. When you visited in 2014 or 2015, did you  
 15 ask Mr. Shepard, hey, how can I find out which ones  
 16 of these things are mine?  
 17 A. No.  
 18 Q. Why not?  
 19 A. Because they didn't know I was coming. I  
 20 just had a brief conversation with him, is there  
 21 going to be anybody at the plant that can show me  
 22 around, take me -- take me where -- anyplace, and he  
 23 said let me find out.  
 24 Q. So if you wanted to know which systems  
 25 were yours, who would you ask?

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1 A. I imagine whoever the manager is at the  
 2 construction site.  
 3 Q. Do you have any idea how that person might  
 4 be able to figure out which one is yours?  
 5 A. I'm sure they have some kind of inventory  
 6 or identification records in process that would  
 7 identify which ones they were.  
 8 Q. Have you ever asked them whether they have  
 9 such a system?  
 10 A. Haven't been out there to do so.  
 11 Q. Have you ever asked them whether they have  
 12 a system to track which system is yours?  
 13 A. No.  
 14 Q. Mr. Howell, did you ever negotiate the  
 15 price of a lens? Excuse me. Did you ever negotiate  
 16 the price for a system?  
 17 A. No.  
 18 Q. Any reason why not?  
 19 A. Thought that the price was fair.  
 20 Q. Why did you think the price was fair?  
 21 A. Just in my mind. I'd never seen any solar  
 22 commercial lenses for sale. I knew that home  
 23 systems, you can pay a few thousand, several  
 24 thousand dollars for them. So, figured if it's part  
 25 of a commercial project, a few thousand for it could

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1 be a good price.  
 2 Q. Did you ever get any independent opinion  
 3 or appraisal of what the system was worth?  
 4 A. No.  
 5 Q. Did you ever do any sort of profit  
 6 analysis for buying the lens -- the system versus  
 7 not buying it?  
 8 A. Once they're in production, then, yes,  
 9 there will be substantial incomes that will be  
 10 generated.  
 11 Q. Did you ever write that analysis down, or  
 12 was this just in your head?  
 13 A. I'm sure I probably put it down somewhere.  
 14 Q. Have you ever done a business plan with  
 15 respect to your lens purchases?  
 16 A. No.  
 17 Q. Did you negotiate any terms of the  
 18 equipment purchase agreement?  
 19 A. No.  
 20 Q. Did you negotiate any terms of the  
 21 operation and maintenance agreement?  
 22 A. No.  
 23 Q. Take a look, please, at page marked  
 24 Howell\_John 2740 through 2741. Mr. Howell, this is  
 25 the distributor application that you filled out,

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1 correct?  
 2 A. Yes.  
 3 Q. So it looks here like, sir, if you take a  
 4 look at the e-mail address, you used that  
 5 jhowell@howelltax.com e-mail address, right?  
 6 A. That was -- yes, we did.  
 7 Q. And in step 2 we see that it's asking for  
 8 your sponsor information, and that sponsor is Janet  
 9 Roe, correct?  
 10 A. Correct.  
 11 Q. By completing this distributor  
 12 application, what, if anything, did that mean for  
 13 you and RaPower3?  
 14 A. You can earn commissions is what that  
 15 means.  
 16 Q. So basically by filling this out, you then  
 17 got permission to sell RaPower3 systems?  
 18 A. Right, like in any network marketing.  
 19 Q. And let's just take a look at the last  
 20 page, which is 2742. This is an alternative energy  
 21 system purchase referral fee contract, right?  
 22 A. Yes.  
 23 Q. And it appears to be made between RaPower3  
 24 and you. Do you see that in the top couple of  
 25 lines?

<p style="text-align: right;">Page 209</p> <p>1 Did you have an understanding of the 2 author of the Kirton McConkie memorandum, who that 3 was? 4 A. I believe it was one of the attorneys 5 there in their law firm. 6 Q. Did you ever ask anyone where the author 7 of the memorandum got his facts that he stated in 8 the memo? 9 A. No. 10 Q. I'm going to hand you what's been marked 11 Plaintiff's Exhibit 370. And I would just like you 12 to read the first two pages. I mean, you can take a 13 look at the whole thing, but I'm going to ask you 14 questions about the first two pages. 15 Are you finished? 16 A. No. Okay. 17 Q. Mr. Howell, did you ever hear about Kirton 18 McConkie rescinding its memorandum? 19 A. No. 20 Q. No one ever mentioned that to you? 21 A. No. 22 Q. Not Greg Shepard, not the IRS? 23 A. No. 24 Q. Based on the first page, first couple 25 pages of Plaintiff's Exhibit 370, does this letter</p>	<p style="text-align: right;">Page 211</p> <p>1 were they organized? 2 A. I don't know if we have any partnerships 3 that do it because most of them are sole 4 proprietorships. Might have been an S corp., couple 5 S corps, but 99.8 percent would have been sole 6 proprietorships. 7 Q. Okay. So of the -- of the RaPower3 8 customers whose tax returns you have prepared since 9 2011, 99 percent are sole proprietorships? 10 A. Yes. 11 Q. We've spoken a few times, Mr. Howell, 12 about audits and appeals with the IRS with respect 13 to RaPower3 customers. When did you first learn 14 that the IRS was auditing RaPower3 customers? 15 A. 2013. 16 Q. How did you learn about that? 17 A. Clients saying they're being audited. 18 Q. Your own clients? 19 A. Some my own, some clients from other 20 areas. 21 Q. And when you say clients, do you mean that 22 they either were or became clients of yours or that 23 they were RaPower3 clients? 24 A. Some were just RaPower3 clients. I just 25 did the audit for them.</p>
<p style="text-align: right;">Page 210</p> <p>1 raise any concerns for you about the RaPower3 2 program? 3 A. No, because they were pointing out that, 4 hey, we wrote that specifically for C corporations. 5 If you want it for a different entity, then we'll 6 need to give you a different memorandum for that, 7 but this particular one is for C corporations. 8 So I don't know if they asked for one. 9 That would be for sole proprietorships, LLCs, 10 S corps, partnerships and such. So this just says, 11 hey, this was designed, this was -- we wrote this 12 for C corporations only. 13 Q. And to your knowledge, Mr. Howell, did you 14 prepare any tax returns with RaPower3 tax benefits 15 on C corp. tax returns? 16 A. I think some -- one we did, but he passed 17 away and so the corporation, I believe, was 18 dissolved. 19 Q. So then of your tax return preparation 20 customers who claimed tax benefits through RaPower3, 21 how were they organized? 22 A. Most of them were Schedule Cs. 23 Q. So sole proprietors? 24 A. Yes. 25 Q. If they were not sole proprietors, how</p>	<p style="text-align: right;">Page 212</p> <p>1 Q. About how many people have you represented 2 before the IRS whose RaPower3 tax benefits were 3 being examined? 4 A. I don't recall really how many. There was 5 quite a few in -- few in '13. I think most of them 6 were in '14. Could be 50. 7 Q. And is that just at the examination stage 8 or also on appeal you're talking about? 9 A. Yeah, all the ones that went through 10 examinations we did appeals on. 11 Q. Of those 50 people, about how many were 12 people whose returns you had prepared versus people 13 whose returns you had not prepared? 14 A. Probably 90 percent. 15 Q. 90 percent were what? 16 A. Of the -- were my clients. Some -- there 17 was a handful of them that were just -- either did 18 it their own self or couldn't get their tax preparer 19 to help them with their audit. 20 Q. Okay. So of the approximately 50 people 21 you represented before the IRS, either an audit or 22 appeal, 90 percent of those people had you prepare 23 their tax returns that were being examined? 24 A. Yes. 25 Q. Since the examinations started, have you</p>

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1 warned any of your tax prep customers who take  
 2 RaPower3 benefits that they might be audited?  
 3 A. Yes.  
 4 Q. What do you say to them?  
 5 A. I just tell them it's a chance you could  
 6 be audited by using the solar lenses.  
 7 Q. Do they ask you why?  
 8 A. Some do, some don't.  
 9 Q. What do you tell them?  
 10 A. Well, I just tell them that it's -- IRS is  
 11 looking at it, there's been no definite tax court  
 12 resolve on whether it's right or wrong, but that IRS  
 13 is looking at them and that there's -- that I know  
 14 of about 150 sitting in tax court.  
 15 Q. Do you tell them that they would have to  
 16 repay or they would have to actually pay the tax  
 17 that they would owe?  
 18 A. Yes.  
 19 Q. With interest?  
 20 A. Yes.  
 21 Q. Do you tell them that they may be tagged  
 22 with penalties?  
 23 A. Yes.  
 24 Q. Who, Mr. Howell, has paid you for the work  
 25 you've done for the 50 customers in audit and

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1 appeal?  
 2 A. Nobody.  
 3 Q. You have not been paid for that work?  
 4 A. No.  
 5 Q. Any reason why not?  
 6 A. I don't charge them for it. It's not  
 7 their fault. No, I take that back. There was one I  
 8 did. He was from out of town, the only one I ever  
 9 charged.  
 10 Q. Who was that?  
 11 A. I don't even remember his name. I'd have  
 12 to look it up. But most of them I didn't because  
 13 told them it's not your fault you're being audited  
 14 on that particular issue, so --  
 15 Q. Whose fault is it?  
 16 A. It would apparently go back to RaPowers.  
 17 But then there's been no definite decision on one  
 18 way or the other.  
 19 Q. Anyone's fault other than RaPower?  
 20 A. Each individual's responsible for their  
 21 own tax return, so it falls on the individuals also.  
 22 Q. Do you hold any responsibility if you  
 23 prepared their taxes?  
 24 A. If I prepared it, yes.  
 25 Q. Do you tell them that?

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1 A. Yes, I do.  
 2 Q. Have you offered to make anyone whole who  
 3 has to pay the IRS?  
 4 A. So far nobody's had to pay IRS.  
 5 Q. And if they do?  
 6 A. Then we'll talk about that when it  
 7 happens. Then we'll look at offering compromises  
 8 and everything else too at the same time.  
 9 Q. You think if the IRS has to litigate all  
 10 the way to tax court there's going to be the option  
 11 for offering compromise?  
 12 A. Don't know. I've seen some squirrely  
 13 things happen, so --  
 14 (Exhibit 601 marked)  
 15 Q. Mr. Howell, handing you what's been marked  
 16 Plaintiff's Exhibit 601 which is Bates marked  
 17 BT\_000285. Do you recognize Plaintiff's  
 18 Exhibit 601?  
 19 A. Yes.  
 20 Q. What is it?  
 21 A. It was an e-mail from Greg Shepard from  
 22 (sic) William Coates.  
 23 Q. And it's a chain of e-mails, right?  
 24 A. Yes.  
 25 Q. The topic of the e-mail is "Ra3 Audit,"

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1 yes?  
 2 A. Yes.  
 3 Q. These e-mails are dated in June 2014. Do  
 4 you think that's about when you received these  
 5 e-mails?  
 6 A. Yes.  
 7 Q. And I'll also note for the record you are  
 8 cc'd on these e-mails, correct?  
 9 A. Yes.  
 10 Q. And in fact, you got these?  
 11 A. Yes.  
 12 Q. Does Plaintiff's Exhibit 601 appear to be  
 13 a true and accurate copy of the e-mails between Greg  
 14 Shepard and Bill Coates?  
 15 A. Yes.  
 16 (Exhibit 602 marked)  
 17 Q. Handing you, Mr. Howell, what's been  
 18 marked as Plaintiff's Exhibit 602, Bates marked  
 19 Gregg\_P&R 2698 through 99. Please take a look at  
 20 that and let me know when you're done.  
 21 A. Okay.  
 22 Q. Do you recognize Plaintiff's Exhibit 602?  
 23 A. I believe I've seen it. It was a mass  
 24 e-mail.  
 25 Q. The e-mail is from Greg Shepard, correct?