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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

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

Defendants.

**ORDER RULING ON OBJECTIONS
TO PRETRIAL DEPOSITION
DESIGNATIONS**

Case No. 2:15-cv-00828-DN

District Judge David Nuffer

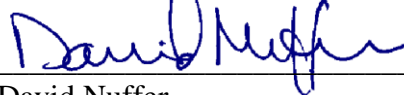
The parties served designations for deposition testimony to be presented at trial. The parties filed with the court their objections to the deposition designations and responses thereto. Based on the submissions, and for good cause appearing:

IT IS HEREBY ORDERED that the objections are overruled or sustained as indicated in the attached forms.

IT IS FURTHER ORDERED that, in preparing the deposition testimony for presentation at trial, all objections in the depositions and any responses of counsel thereto should be removed and not presented.

Signed March 30, 2018.

BY THE COURT:



David Nuffer

United States District Judge

<p><i>Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828</i> <i>Deposition of Mike Penn taken March 13, 2017</i></p>				
<p>Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)</p>	<p>Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)</p>	<p>Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE</p>	<p>Exhibits</p>	<p>Ruling</p>
<p>PLAINTIFF DESIGNATIONS</p>	<p>DEFENDANT -DESIGNATIONS</p>			
<p>5: 1 P R O C E E D I N G S 2 (Witness cautioned and sworn) 3 MIKE PENN, 4 called as a witness after first being duly cautioned and 5 sworn to testify to the truth, the whole truth, and 6 nothing but the truth, testified on his oath as follows: 7 EXAMINATION 8 BY MS. HINES: 9 Q. So I introduced myself to you just a few moments 10 ago. 11 A. Right. 12 Q. But my name is Erin R. Hines. I'm with the 13 United States Department of Justice, Tax Division. I'm 14 representing the United States in this case along with 15 my colleague and I'll have her introduce herself here in 16 a minute. Actually why don't we do that now? Go ahead. 17 MS. HEALY-GALLAGHER: Okay. Erin 18 Healy-Gallagher. I am also here for the United States.</p>	<p>48: 19 Q. As I understand it, you never talked to anyone 20 from RaPower3 about what it would entail to purchase 21 solar lenses and qualify for a tax deduction or credit; 22 is that true? 23 A. I never talked to anyone from Ra3.</p>	<p>Defendants object to the designation of substantially all of the deposition in Plaintiff’s designation. The deposition was not designated at the time of noticing or taking the deposition to be a trial deposition or to preserve the specific testimony. See Defendants’ objections [Doc. 295 and Doc. 347].</p> <p>5:1-6:4. Objection, not relevant, FRE 401-402.</p>		<p>Overruled</p> <p>Overruled</p>

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<p>19 Chris Moran, who also represents the United States, is 20 not present for this deposition. 21 A. Okay. 22 MS. HINES: Mr. Austin? 23 MR. AUSTIN: Christian Austin for the 24 Defendants. 25 MS. HINES: And let's go ahead and make a 6: 1 note for the record that Donald Ray who represents 2 Defendants, Gregory Shepard and Roger Freeborn, is not 3 here today. 4 A. Okay.</p>				
<p>7:20 Q. Okay. All right. Since we are here to get an 21 accurate as record as possible I'm going to have to ask 22 you is there anything that you can think of today that 23 would keep from you answering my questions or inhibit 24 your memory or ability to answer my questions? 25 A. No. I'll answer to my best of my ability on 8: 1 memory, yes. 2 Q. Okay. Are you on any medications that may affect 3 your memory?</p>	<p>49: 4 Q. Yeah. As I understand it you never really did 5 any research or otherwise got your mind around what 6 exactly you would have to do in order to qualify for tax 7 credits or deductions based upon your purchase of solar 8 lenses? 9 A. Well, I did review it on the internet and was 10 aware of the website and things they had on there. And 11 I did not make the purchase after reviewing until it</p>	<p>7:20-8:12. Objection, not relevant, FRE 401-402.</p>		<p>Overruled</p>

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<p>4 A. No. 5 Q. Okay. In the last twelve hours have you had 6 anything alcoholic to drink? 7 A. No. 8 Q. Are you feeling sick or unwell at all today? 9 A. No. Just a little nervous. 10 Q. All right. Are you currently under care for any 11 kind of illness? 12 A. No.</p>	<p>12 stated when I made my purchase was the day before it was 13 out for that year. 14 Q. So -- 15 A. In other words, I researched what was in the 16 internet about RaPower. 17 Q. So you knew it was a purchase of solar lenses on 18 your -- on your part; is that right? 19 A. Well, yes. I was buying solar lenses -- 20 Q. Okay. 21 A. -- or leasing them. I can't remember how they 22 determined it. 23 Q. I mean, as you sit here today you can't remember 24 whether you were leasing them from RaPower3 or buying 25 them from RaPowe3? 50: 1 A. No. They were purchased. 50: 2 Q. And you signed a -- like, a purchase agreement or 3 something like that? 4 A. Well, you just -- you just okayed it on the 5 internet is what you did. Is you -- I purchased the two 6 different types and then I got this receipt the next</p>			

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	<p>7 day. 8 Q. But is it your testimony that you never -- you 9 never signed any kind of a purchase agreement? 10 A. I never signed a purchase agreement. 11 Q. Did you ever -- I mean, in connection with these 12 purchases that are memorialized by the two exhibits you 13 just referenced -- 14 A. Uh-huh. 15 Q. -- was there any agreement that was executed or 16 agreed to by you? 17 A. I don't remember one. 18 Q. Do you have any reason to think that you didn't 19 sign something either -- whether it was presented to you 20 by RaPower3 or by your CPA? 21 A. I never signed anything. 22 Q. So the only -- as you sit here today your memory 23 is you just clicked on a purchase button and you got 24 this e-mail in response; is that right? 25 A. Right.</p>			

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	<p>51: 1 Q. And there were no disclosures or no agreement or 2 nothing else that went along with that? 3 A. I don't remember any. 4 Q. You didn't pay anything at the time that you made 5 -- as you understand it -- this purchase; is that right? 6 A. That's correct. 7 Q. And you don't know how much you were supposed to 8 pay because you never -- you don't remember ever even 9 seeing an agreement? 10 A. No. Now, I had -- there was an amount that I do 11 not recall. There was an amount I was supposed to have 12 in within a certain period of time. 13 Q. How did you know how much that amount was? 14 A. It did not come from Mr. Howell. It would have 15 had to come from the website. 16 Q. So your memory is -- or at least your -- your 17 best reconstruction of events is that there was an 18 amount stated that you would have to pay up front and</p>			

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	<p>19 they sold you these -- 20 A. No. It was not upfront because I remember I was 21 told -- I was told by Mr. Howell to push the button and 22 read it. But I did read it and then it told me to pay 23 that I would owe so much after purchasing these. 24 Q. Okay. So you understood -- 25 A. There was no money that needed to change hands at 52: 1 that time. 2 Q. In order to finalize the purchase? 3 A. Correct.</p>			
<p>9: 9 Q. All right. Let's see. All right. Mr. Penn, 10 will you state your name and your current address? 11 A. Yes, it's Mike Wayne Penn. The address is 2208 12 Berkley Drive here in Wichita Falls Texas 76308. 13 Q. Okay. And how long have you lived at that 14 address? 15 A. Seven years I think. It's close. Maybe -- gosh, 16 I wish -- eight years -- seven or eight years. I can't</p>	<p>52:14 Q. I guess what I am trying to get at is this was 15 something you did, you looked at it, you clicked accept 16 to your recollection and then - - 17 A. Yes. 52: 18 Q. -- didn't think a lot about it after that; is 19 that fair? 20 A. That's -- that's fair enough. I did not -- I had 21 intended to make payments according to my deal and I was 22 just really financial unable to at that time because I</p>			

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<p>17 remember for sure. We need my wife to answer that one. 18 Q. All right. And where did you live before -- 19 A. Yeah, 1800 Victory.</p>	<p>23 was still missing too much work.</p>			
<p>9:24 Q. (By Ms. Hines) Where did you live before? 25 A. Okay. At 1800 Victory Avenue in Wichita Falls, 10: 1 Texas. 2 Q. Okay. How long did you live there? 3 A. I owned a home for 20 years. I moved out of the 4 area in two-thousand -- no, I'm sorry. Let me rephrase 5 that. 1994, '95 and '96. I still owned the home but I 6 did not live in this area in those years. 7 Q. Okay. Mr. Penn, what is your current age? 8 A. 58. 9 Q. So what is your current occupation? 10 A. I work for MW Penn Well Service. I'm the sole 11 member of -- a sole member LLC and that's my occupation. 12 I run and operate an oil well service rig.</p>	<p>54: 19 Q. And you weren't trying to defraud anybody by 20 limiting your personal liability, were you? 21 A. No. No, not at all.</p>	<p>54:19 - 21, Objection, Not Relevant, Fed. R. Evid. 401, 402</p>		<p>Sustained</p>

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<p>13 Q. Okay. And what exactly do you do when you 14 operate an oil service rig? 15 A. I actually run the machine. And we clean out old 16 oil wells and repair mechanical problems inside wells -- 17 or well failures, you know, open bore failures so -- 18 Q. How long have you been doing that? 19 A. I started when I was 18 years old and did it -- I 20 probably only had about six years from 1990 to '96 that 21 I was not involved in the oil well servicing business. 22 Q. Okay. So do you have any education after high 23 school? 24 A. No. 25 Q. Okay. When you happen graduate from high school? 11: 1 A. 1977. 2 Q. And do you have any kind of employment training 3 or any kind of continuing education? 4 A. No. 5 Q. And what was it that you were doing during that</p>				

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<p>6 time period in the nineties when you weren't working? 7 A. Actually there was another time period I thought 8 of. It would have been from -- from '98 to 2002. I 9 worked for Carz Auto Sales. And then the other time I 10 was entrepreneuring (sic) out in Santa Fe, New Mexico, 11 from '94 to '96 and lived there. And that's when I was 12 not occupying 1800 Victory. 13 Q. And what did you do out in - - 14 A. Well, we had a -- let's see -- just a tourist 15 business. We were renting out motorcycles. We had a 16 bunch of Harley Davidson's. Yeah, so myself and a 17 partner put that together and rode motorcycles for two 18 years. 19 Q. And what did you do at the auto sales? 20 A. Sales. I was in sales. 21 Q. All right. Okay. Mr. Penn, is there a time 22 period where you came to learn about RaPower3? 23 A. Yes.</p>				

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<p>24 Q. Okay. Tell me about that. How did you learn 25 about RaPower3? 12: 1 A. Well, the first time I was approached by my tax 2 preparer, John Howell Tax Services here in Wichita 3 Falls. And he mentioned it to me in passing while 4 preparing my taxes. And that's the first time I heard 5 about it. 6 Q. Do you remember about what year that was? 7 A. I would say 2010 would be the first time. 8 October probably of 2010 because I usually have to do an 9 extension. 10 Q. Okay. So that would have been during a 11 conversation with respect to your personal tax return? 12 A. Yes. 13 Q. Okay. And what were the circumstances 14 surrounding that conversation? 15 A. Well, he mentioned the units that you could 16 purchase. And then he had a program where he had it on</p>				

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<p>17 his computer where he could just punch it in and you 18 could see how it reflected on your taxes, the purchase 19 of these units, the RaPower. 20 Q. So what were these units? 21 A. I -- I didn't pay a lot of attention that first 22 year or two. I just was not entered. 23 Q. Okay. So when did you pay attention? 24 A. The -- well, it gets kind of personal right here. 25 I had cancer in 2012. And I missed a lot of work. And 13: I all of a sudden I wasn't going to be able to pay my 2 taxes. And John Howell had this -- of course, you know 3 how your tax preparer and you become close and kind of 4 friends, you know. And he said, Mike, you really need 5 to do this. And he plugged it in and showed me how much 6 I could save on taxes. 7 Q. So how did that process work? Did he ask you for 8 information that he put into the computer program?</p>				

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<p>9 A. Well, he had all my financial information 10 exactly. So he showed me how it would reflect on my 11 personal income taxes that year. 12 Q. And what's your understanding of what the -- this 13 RaPower3 program would do for your taxes? 14 A. Well, it would just bring your fax liability way 15 down from -- from what I would have to pay. 16 Q. Okay. 17 A. And like I said, I was afraid of my own situation 18 at that time with the taxes. 19 Q. Did he explain how it all worked? 20 A. Not really. Honestly, John never talked about 21 the business very much, you know. And, of course, I did 22 look it up on my own on the internet at that time. And 23 I was -- frankly was not very impressed with the 24 business at all, you know, 'cause I've -- in the oil 25 business we see a lot of tax-type situations with</p>				

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<p>14: 1 drillers and promotions and stuff like that. I've been 2 doing that my whole life. So I had no interest -- 3 that's why I had no interest until I came into a 4 personal bind and then fear got me. 5 Q. So what time period did you say that was? 6 A. That was -- that would have started -- I had 7 surgery in October of '12 right before -- we probably 8 went ahead and filed my taxes. And then -- I know we 9 did 'cause I've never filed late. And so we would have 10 -- and had that surgery maybe four or five days before 11 taxes. I can't remember the exact date. Taxes were due 12 October the 15th. I think I had that surgery on the 13 9th, 10th, or 11th. And my son's birthday is right in 14 there so I know it was within that three-day time 15 period. I don't know when exactly I had that surgery. 16 Q. So at that time period then, October of 2012,</p>				

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<p>17 what all did you do to look into the RaPower3 program? 18 A. I didn't. I didn't. He -- he presented it to me 19 and I just -- i just kind of put it on the back of my 20 mind. I wasn't really interested. And then you'll note 21 on my purchase, I mean, it actually happened on December 22 the 31st or the 30th -- the 30th 'cause that was my last 23 day to be able to do it. And so I just woke up that 24 night and punched the button the midnight deadline or 25 whatever it was to get them on that tax year. 15: 1 Q. So between October and December of 20 -- 2 A. I didn't do any research on that. I was fighting 3 my own battles. 4 Q. Did you speak to anyone at the company? 5 A. Huh-huh, never. 6 Q. Okay. Did you subsequently do any research on 7 the company? 8 A. I never even logged in once I bought these 9 things.</p>				

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<p>10 Q. Did you -- after you purchased in December of 11 2012 did you talk to anyone at the company? 12 A. No. 13 Q. Okay. 14 A. And there's another thing. I never paid for them 15 either. 16 Q. Okay. So explain that process. How did you go 17 online and purchase something and then not pay for it? 18 A. I was supposed to send a check in or something. 19 I can't remember the time period. I'm just trying to 20 remember right now. I was supposed to make a payment 21 and I just did not make it and never did. 22 Q. Did anything happen? 23 A. Nothing. I never got a letter from anybody.</p>				
<p>18:23 Q. (By Ms. Hines) Okay. So earlier I think you 24 were talking about you were getting nervous. And I was 25 going to ask you, what -- what was making you nervous? 19: 1 A. Well, the main thing was I should have been</p>	<p>59: 22 Q. And in terms of becoming aware of what's 23 available to be deducted, do you rely on your CPA, do 24 you rely on friends you talk to, do you rely on your own 25 basic research? Tell me how you do that.</p>			

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<p>2 billed or I never received any billing in the mail at 3 all on these purchases and that was something I didn't 4 like. And at that time I just -- as I stated earlier I 5 was never comfortable with my tax preparer showing me 6 this as an investment. It just -- it was treated more 7 like a tax situation than an investment and I just was 8 never comfortable with that. And, therefore, you know, 9 I did it under my circumstances. I made that decision 10 at the last minute, not feeling right about it at that 11 time. And -- but then again, I did it again that next 12 fall when it was tax season was due. 13 Q. So what -- what particular things stuck out at 14 you that made you uncomfortable? 15 A. Well, at that time if you looked it up on the 16 internet it was just -- you know, it looked like a 17 couple of guys with a -- it didn't look like a</p>	<p>60: 1 A. Normally it's pretty much well my own research. 2 You know, I do -- I take care of my finances and then I 3 normally return turn in all my business expenses and 4 everything that -- I -- I pretty well have done all my 5 own. 6 Q. Okay. 7 A. And then my tax preparer will -- will take that 8 into my returns.</p>			

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<p>18 revenue-generating investment to me. I mean, and -- and 19 that's just my observation. It looked like very 20 simplistic. You know, there was nothing detailed about 21 their -- their work. And another thing that made me -- 22 it always was presented to me as a tax incentive versus 23 an investment and that made me nervous 'cause I had seen 24 that in the oil industry. 25 Q. Was there ever any discussion about what kind of 20: 1 revenue you might receive from this investment? 2 A. I don't remember a revenue. There had to be 3 though. I mean, let me think a minute. I wish I 4 wouldn't have thrown that paperwork away. I don't -- I 5 don't -- you know, I just never bought it with revenue 6 in mind to be honest. I mean, that's just the way it 7 was. I was looking at it from a tax viewpoint. 8 Q. Did you ever receive any kind of revenue? 9 A. No.</p>				

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<p>10 Q. Okay. So you have been talking about this as a 11 -- two guys on the website. Do you know what website or 12 who those people were? 13 A. No. I just remember going to the RaPower -- 14 Ra3Power, yeah, you know. And the -- I would go there 15 and it -- it was real simplistic, their investment was, 16 you know, as far as -- it looked like, you know, just 17 very -- their solar panels looked like almost made out 18 of plastic and things like that. It just didn't look 19 right to me as far as putting my money there to invest 20 in.</p>				
<p>20:23 Q. You've also referred to I think the program as an 24 it. Can you just give me a basic understanding of how 25 that program worked? What was your understanding? 21: 1 A. It was a tax credit situation with some type of 2 solar deal. Supposedly it was written up in the -- in 3 the US Tax Codes that this solar electricity qualified</p>	<p>71: 19 Q. Okay. So if I -- if I am understanding you 20 correctly when you entered into this agreement to 21 purchase -- what exactly did you think you were 22 purchasing?</p>			

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<p>4 for certain tax credits. And that's -- that's where the 5 tax credit came from was that. And then it broke into a 6 dividend situation after so many years. And I'm not 7 very good to help you there. I just don't remember the 8 investment side of the deal. 9 Q. But -- so when you have been talking about the 10 deal or, you know, what you were going to put your money 11 in -- 12 A. Right. 13 Q. -- what exactly did you think you were buying or 14 putting your money in? 15 A. Well, what you are supposed to be buying at this 16 time is into a solar panel company. That was my basis 17 of what I thought this was. And I was investing in 18 these solar panels. 19 Q. Do you believe you were actually buying, like, 20 shares of the company or were you buying particular 21 parts? 22 A. No, I think it was into a particular part the</p>				

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<p>23 best I remember. And that was how your deduction was, 24 through that part that you owned. 25 Q. And so how did you come to learn or -- who was it 22: 1 that explained the program to you? 2 A. John Howell was my tax preparer. I didn't pay a 3 lot of -- I just -- he did the -- he always showed it to 4 me from a tax credit viewpoint. And that's just the way 5 I looked at it at that time because you've got to 6 understand that I didn't like the idea when I was 7 presented it two years prior to that. I was not 8 interested. 9 Q. And two years prior was also with Mr. Howell? 10 A. Yes. 11 Q. He was the one -- 12 A. Yes. Yes. 13 Q. -- who told you about it? 14 A. Yes. 15 Q. Okay. All right. So did you have discussions 16 with anyone other than Mr. Howell?</p>				

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<p>17 A. No. 18 Q. Were these discussions in Mr. Howell's office? 19 A. Yes. 20 Q. Was there ever anyone else present? 21 A. No. No. He just you sat there with him at his 22 desk. 23 Q. Did Mr. Howell ever give you any marketing 24 materials for RaPower3? 25 A. No. 23: 1 Q. Never gave you any documents or forms to look at? 2 A. I received some. That's what I was looking for, 3 some documents that I had. But he did not give those to 4 me. They had to have come in the mail because I never 5 received any documentation from him. 6 Q. Do you know who would have sent those to you? 7 A. No. I would have assumed it came from the 8 company in Utah. 9 Q. Did you ever contact the company? 10 A. No.</p>				

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<p>11 Q. And you're talking about the company meaning 12 RaPower3, right? 13 A. Yes. Yes. 14 Q. Okay. Did you ever attend or participate in any 15 webinars? 16 A. No. 17 Q. Any conference calls? 18 A. No. 19 Q. Did you ever -- oh, I think you said you reviewed 20 websites, right? 21 A. Yes. 22 Q. And what were those websites again? 23 A. It was the RaPower3 exactly. 24 Q. Any other websites? 25 A. No. 24: 1 Q. Were there ever any meetings that you attended? 2 A. No. 3 Q. Are you still part of RaPower3? 4 A. Well, what happened -- do you want to move 5 into -- 6 Q. Yeah, go ahead. 7 A. -- when I got out of this? 8 Q. Yeah.</p>				

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<p>9 A. As I told you I was uneasy with this investment 10 from the beginning or this purchase or tax credits, 11 however you want to look at it, and when I was called in 12 by the local IRS to discuss this, I was very frank and 13 open with him and told him, you know, I didn't -- I 14 hadn't sent them a penny 'cause I didn't believe in 15 what we were doing, you know. And I was really kind of 16 thankful that I was there at that point because I had 17 not been -- I hadn't been pleased with my own personal 18 decision. I felt like I had been caught up in 19 something I didn't need to be a part of. I just didn't 20 believe -- believe that -- from a taxpayer's viewpoint I 21 just didn't like the whole thing and I was not 22 comfortable with that. 23 And so I told him exactly the way I felt. And we 24 had a good discussion, probably a little over an hour</p>				

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<p>25 here in these offices. And then he told me that he had 25: 1 a certain way that the IRS would look at this and then I 2 collected all the taxes that would have had to have been 3 paid without these credits, I took those taxes upon 4 myself to go ahead and get rid of those taxes 'cause 5 it's hard to fight for something you didn't believe in 6 and I just didn't believe in what I had purchased so 7 that's just kind of what I did. 8 So I went ahead and when I met with the IRS I 9 told him -- and I told him I had not made any payments, 10 never gotten any kind of a bill in the mail or anything 11 for any monies, so -- and he told me thank goodness 12 because, you know, a lot of people had spent money and 13 they're probably going to be in the same position I was 14 in. And so -- so we cleared it up that day and I got my 15 tax bill that day.</p>				
<p>28:10 Q. (By Ms. Hines) Mr. Penn, I'm going to hand you</p>	<p>71: 25 A. I was purchasing -- well, it's stated here. The</p>		<p>387</p>	

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<p>11 what has been marked as 387. 12 A. Okay. 13 Q. Okay. Can you tell me what this is? 14 A. Yeah, this would have been an e-mail receipt I 15 would have gotten from my purchase. And that was an 16 internet -- I do remember how I did the purchase. It 17 was a -- you just pushed a button on how many units you 18 wanted to buy on their website. That's how the purchase 19 was made. 20 Q. Okay. So how did you know how many units you 21 wanted to purchase? 22 A. I was told -- John Howell had worked that out 23 with me on my taxes and he told me approximately how 24 many units I needed to buy. And you did it in two 25 separate forms. I think this one says twelve and I 29: 1 think you'll have another form that shows six 2 additional. And this other form looks a little 3 different because I -- at that time I guess I was</p>	<p>72: 1 twelve units and then the six units, that's what I was 2 purchasing. 3 Q. (By Mr. Austin) Of what? 4 A. Of the product for sale at that time was the 5 lenses. 6 Q. Okay. So you understood that you were purchasing 7 these lenses? 8 A. Uh-huh. 9 Q. Is that true? 10 A. Yes. 11 Q. And there's an amount that's reflected on your 12 tax returns as the depreciable amount? 13 A. Yes. 14 Q. Do you have a recollection of that? 15 A. Right. We've reviewed that earlier today.</p>			

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<p>4 already a member after purchasing the first one.</p>				
<p>29: 7 (Deposition Exhibit 388 marked for 8 identification) 9 Q. (By Ms. Hines) I'm going to go ahead and hand 10 you -- 11 A. Yes. Yes. 12 Q. -- 388 because I think that's what you are 13 pointing at. 14 A. Right, that is what I am pointing at. Right. 15 Q. So what is 388? 16 A. That's an additional six units purchased. 29:25 Q. (By Ms. Hines) So you bought six and twelve in 30: 1 two separate purchases? 2 A. Two separate purchases, yes. The best of my 3 memory I did the twelve purchase first. And yeah, you 4 can even see the time difference on the receipts. 5 Because it had something to do with I needed to be a 6 member and he wanted to do the twelve on -- to get in. 7 And then he wanted me to purchase the six additional.</p>	<p>72: 23 Q. Do you have any idea where that number came from 24 then? Did you just make it up when you filled out your 25 tax returns? 73: 1 A. No. My -- the -- John Howell who handled all the 2 tax lenses -- the RaPower units for me is the one who 3 handled all that. 73: 4 Q. So I mean, for example, if I look at your -- Page 5 17 of 45 on your 2012 taxes -- 6 A. Right. 7 Q. -- Form 4562, there's -- there's two amounts that 8 are being depreciated, one is the thermal solar lens and 9 -- and one is thermal lens; do you see that? 10 A. Let's see. On Page 17? 11 Q. Yeah. 12 A. Yes, I see it. 13 Q. So the Box B says the cost of the product; do you 14 see that? 15 A. Uh-huh. Yes. 16 Q. Did you understand that to be the amount that you 17 agreed to pay for the lenses?</p>		<p>388 387</p>	

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<p>8 It had to do with my taxes so -- 9 Q. And you're -- 10 A. Yes. 11 Q. -- saying he -- 12 A. As in John Howell, tax preparer. 13 Q. Okay. So did he explain to you why you needed to 14 have two separate purchases? 15 A. Oh, I know he did because I would have had an 16 understanding of why to do that, but I can't remember. 17 It had something to do with -- I could go back and trap 18 some from an earlier year. I think that's what it -- I 19 -- it allowed me to get some tax credit for my earlier 20 year. In other words, it worked its way back. And 21 that's why he wanted me to do the twelve and then the 22 six. It had to do with prior year taxes. 23 Q. Okay. And did Mr. Howell go through the details 24 of how this allowed you to access prior years taxes? 25 A. Yes, he -- he did. I didn't do it just</p>	<p>18 A. It was set up where there's some way you weren't 19 that much out of pocket. 20 Q. Up front, right? 21 A. Right.</p>			

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<p>31: 1 completely blind. He would have gave me details. 2 Q. And do you recall what he told you in terms of -- 3 A. No. 4 Q. -- how this worked? 5 A. No. 6 Q. On 387 -- 7 A. Uh-huh. 8 Q. -- 387, looks like -- the third paragraph down 9 talks about logging into the member office. 10 A. Yes. 11 Q. I think earlier you may have testified that you 12 never went on the website. Is this the website you were 13 referring to? 14 A. Yes.</p>				
<p>32: 8 Q. So how did you know where to make your purchase 9 like to go on the website and click a button; how did 10 you learn -- 11 A. John Howell showed me that. In fact, he was a 12 member to where he could allow me to go in under his 13 membership. 14 Q. As in like underneath him or he was a sponsor?</p>	<p>75: 11 Q. Okay. So if I understand correctly you don't 12 know whether or not you were obligated to pay this 13 \$35,700? 14 A. I do not. 15 Q. And as you sit here today you don't know? 16 A. Right. 17 Q. You don't even know if you have a contract? 18 A. No.</p>			

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<p>15 A. A sponsor I would call him, yes.</p>	<p>19 Q. You don't think -- you don't even think you did, 20 right? 21 A. I don't think I did. 22 Q. In fact, you didn't pay anything, not even the 23 amount you were supposed to pay? 24 A. Right. 25 Q. Okay. And so when the IRS calls you in and 76: 1 you're nervous, right? 2 A. Yeah, I was nervous about this from day one. 3 Q. Because -- because you didn't know, for example, 4 that you -- whether or not you were obligated to pay the 5 amount of money that you were claiming as the capital 6 cost of the -- of the thermal lenses, right? 7 A. When they -- when I got the call -- from the very 8 beginning when I got the call I -- I had already in my 9 mind did not like this before I ever agreed to ever 10 purchase any of this and so as soon as I got the call I 11 remember telling -- I used those exact words -- you</p>			

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	<p>12 know, I don't believe in this, you know, we need to 13 talk, I need to come see you. I was that direct with 14 the IRS representative. 15 Q. Yeah, I mean, you -- you felt like you had been 16 caught doing something maybe you shouldn't have? 17 A. I -- I -- I did not like what I - - I did not like 18 my own personal decision, correct. 19 Q. Because you thought maybe you had done something 20 that you shouldn't have done? 21 A. I didn't believe in the -- in what I had done, 22 that's correct.</p>			
<p>33:22 Q. There is -- let's go back to 387, the line right 23 before the purchase details -- 24 A. Uh-huh. 25 Q. -- says when referring new members they'll need 34: 1 your username which is spudderman. 2 A. Uh-huh. 3 Q. Is spudderman you? 4 A. Well, that's me because that's the type of oil</p>	<p>77: 1 Q. Did you think they were improper at the time that 2 you took them? 3 A. I guess I'd have to answer yes 'cause I didn't 4 feel good about it from the beginning. And then under 5 -- I had already said no for two years prior. And -- 6 and -- and so then I went in and my personal 7 circumstances I was in a time of fear. You know, I was</p>		<p>387 388</p>	

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<p>5 field machinery I run is referred to as a spudder. 6 Q. Okay. Did you choose that username? 7 A. I did. I'm ashamed to say. 8 Q. Did you ever refer any new members to RaPower? 9 A. No. No, that was not my deal so -- I wasn't 10 interested in that. 11 Q. Okay. So 387 and 388, these are documents you 12 produced today, right? 13 A. Yes. 14 Q. Okay. And they are from RaPower3 administration 15 at that e-mail address, admin@RaPower3.net? 16 A. That's correct. 17 Q. And you understand that to be from RaPower3? 18 A. Yes. 19 Q. Okay. And then the 2linerig5s@aol.com? 20 A. That's still my current e-mail address. 21 Q. Okay. Do you recall the -- what year your tax 22 liability was reduced with respect to these purchases, 23 your twelve and six?</p>	<p>8 in -- it was my own -- which I've already stated today</p>			

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<p>24 A. Actually, I -- well, of course, it was for the 25 year '12. And I really would say that it went back to 35: 1 '11 for some -- I really think it went back to '11 with 2 some credits of some sort. Let me think about this a 3 minute. I'm gonna say, yes, it went back to '11 and 4 it's '12. '11 and '12 for sure. And then we carried it 5 on into '13 too because it involved three years, '11, 6 '12 and 113. I remember that when I went over that with 7 the IRS. It was a three-year span.</p>				
<p>35:10 Q. (By Ms. Hines) Okay. So this is 389. 11 A. Uh-huh. 12 Q. Mr. Penn, do you recognize this document? 13 A. Yes. 14 Q. Okay. What is this? 15 A. This would be my wife and I's tax return from 16 '11. 17 Q. Okay. From 2011? 18 A. Yes, ma'am. 19 Q. Okay. And if you turn to -- and if you look on</p>	<p>77: 15 Q. And so when the IRS inquired about it, you didn't 16 go see a lawyer like a tax attorney and ask for a review 17 of the deduction, correct? 18 A. That's correct. 19 Q. You didn't go back to Mr. Howell and ask him to 20 go over it again with you so that you could be sure that 21 what you had done was appropriate, right? 22 A. That's correct. 23 Q. You didn't talk to anybody except the IRS agent</p>		<p>389</p>	

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<p>20 the top right-hand corner there are page numbers? 21 A. Yes. 22 Q. And if you turn to page -- Page 4 of 24, and you 23 can see the date on that. What is the date? 24 A. Shows 10/11/12. 25 Q. Okay. So that would have been when you filed 36: 1 your 2011 tax return? 2 A. Correct. 3 Q. The first time? 4 A. Yes. 5 Q. Okay. And I think on Page 3 you see a 6 third-party designee the name of - - at the bottom is 7 right before the signature line. 8 A. Yes, Mr. Howell. 9 Q. Okay. And so he would have been your tax 10 preparer? 11 A. Correct.</p>	<p>24 about this, right? 25 A. That's right.</p>			
<p>36:14 Q. (By Ms. Hines) All right. I'm also going to 15 hand you a copy of Exhibit 390. Do you recognize 390? 16 Page 2 might help. 17 A. Yeah. Yes. Amended form. 18 Q. And you can feel free to look at the document</p>	<p>78: 5 Q. Kind of rolled over; is that fair? 6 A. That -- that was something that I have thought 7 about. And the reason I say that is I -- in my mind it 8 wasn't worth fighting for for me because I couldn't</p>		<p>390 389</p>	

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<p>19 before I ask you questions. Let me know when you have 20 finished. 21 A. We're still on 2011, right? 22 Q. Yes. 23 A. Yeah, I think I'm familiar with all of this. 24 Q. Okay. So do you -- Exhibit 390, you said you're 25 familiar with. Have you had a chance to review 389? 37: 1 A. Yeah. Let me review a little more please. 2 Q. Sure. 3 A. Okay. Yeah, I'm familiar now. This is where we 4 went back, yeah. 5 Q. Okay. I'm sorry. You were pointing at Exhibit 6 390, and what do you mean when you say this is when you 7 went back? 8 A. This is where it shows the credits that we 9 purchased on this -- on this 390. 10 Q. Okay. 11 A. 'Cause it goes back and shows the -- you see it 12 in on the second page. You see the amount refunded to 13 you on Line Number 21. So this would have been our</p>	<p>9 stand the thought -- I just didn't want to fight for it. 10 I guess if you want to use the word rollover I guess 11 that would be just fine.</p>			

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<p>14 amended after I purchased the RaPower3. 15 Q. Okay. 16 A. Took me a minute to familiarize myself. 17 Q. Now, did Mr. Howell go through these tax returns 18 with you after you purchased your RaPower3 units? 19 A. He did. He did, yes. 20 Q. Did he explain the changes between the original 21 2011 return, which is Exhibit 389 and the amended on 22 390. 23 A. Yes, he showed me how the tax credits work. 24 Q. And so what did he tell you, how did they work? 25 A. Well, it went back to a program where you had a 38: 1 tax credit from a solar power investment is the way I 2 was -- presented to me. In other words, it was a 3 program to get tax credit for solar power. 4 Q. Okay. But did he show where on your return that 5 made a difference to your taxes? 6 A. He would have. And I say he would have because I</p>				

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7 don't recall exactly him pointing it out to me.				
38:10 Q. (By Ms. Hines) Okay. I want to hand you Exhibit 11 391. 12 A. Okay. 13 Q. Take a minute or two and look at that and make 14 sure you get familiar with it. 15 A. I'm familiar with this one too. 16 Q. Okay. And what is Exhibit 391? 17 A. This would have been my returns of 2012. 18 Q. And on Page 4 of 47, that's using the faxed page 19 numbers -- 20 A. Numbers -- 21 Q. -- in the top right-hand corner. 22 A. Yes. 23 Q. There's a date. 24 A. It's 10/11/13 -- 2013. 10/11/2013. 25 Q. Okay. So that would have been about the time 39: 1 this was submitted to the IRS? 2 A. Correct. Correct. 3 Q. And the paid preparer? 4 A. John Howell. 5 Q. So on Page 8 of 47 --	88: 5 Q. I gather because you -- for lack of a better term 6 -- disavowed this purchase you don't consider yourself 7 the owner of any solar lenses at this point? 8 A. That's true. 9 Q. And you don't believe that you have any current 10 contracts or agreements with RaPower3; is that true? 11 A. That's true.		391	

<p style="text-align: center;"><i>Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828</i> <i>Deposition of Mike Penn taken March 13, 2017</i></p>				
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<p>6 A. Yes, I'm on Page 8. 7 Q. -- this Form 3468 regarding investment credits -- 8 A. Uh-huh. 9 Q. -- do you recall if Mr. Howell talked about this 10 form or discussed it with you? 11 A. Of course, looking at it I know what it is. It's 12 from my, you know, investment in that you can read on 13 Page 9 what it refers to is my investment in the units 14 of RaPower3 reflected in 12B. 15 Q. And -- 16 A. I -- I know he would have pointed this out to me. 17 But he would usually point it out to me on the screen 18 and we'd sit together and he'd show me -- on the 19 computer screen, he'd go through things and we'd go 20 through pretty quick and didn't spend a lot of time on 21 it. And -- and that's where I knew I was getting the 22 credits. 23 Q. Okay. So on that Line 12B on Page 9 of 47 in 24 Exhibit 391 on the left-hand side there is a number, a</p>				

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<p>25 \$63,000 number there; do you see that? 40: 1 A. Yes. 2 Q. What is that number; do you know? 3 A. I remember that when you purchased them you only 4 paid so much money, but it gave you a credit for -- it's 5 almost like a down payment situation and you had a 6 credit on these units. In other words, you'd have a lot 7 more value in your units than you actually paid for 8 them -- 9 Q. Okay. 10 A. -- through whatever -- however it was set up 11 accounting-wise. I mean, that's just not my deal, you 12 know, to understand that. 13 Q. So who told you that, that that was how it 14 worked? 15 A. Mr. Howell. 16 Q. Okay. Did Mr. Howell explain how he arrived at 17 \$63,000? 18 A. I wouldn't -- I just wouldn't recall how it's set 19 up.</p>				

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<p>20 Q. But you didn't pay \$63,000? 21 A. I didn't pay attention and no, I did not pay -- I 22 never paid -- I never paid a dollar to RaPower3. 23 Q. On Page 17 of 47 -- 24 A. Uh-huh. 25 Q. -- this is the Form 4562 regarding depreciation 41: 1 and amortization. Look at Line 6, these thermal solar 2 lenses and thermal lenses. 3 A. Uh-huh. right. 4 Q. Do you know what that entry is for? 5 A. That was part of the RaPower3 program. 6 Q. Okay. And did Mr. Howell go over this form with 7 you? 8 A. No. 9 Q. Okay. Do you know why these were included on 10 your tax return for 2012? 11 A. It would have been because of my purchase on the 12 internet of the RaPower3, correct. 13 Q. Did Mr. Howell explain anything? I know you 14 talked a lot about tax credits. But did he explain</p>				

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<p>15 anything about other types of tax deductions to you? 16 A. Well, I just, you know, basically been running a 17 small business my whole life so I'm aware of your normal 18 fuel expenses and depreciation on -- you know, when I'd 19 buy a truck or, you know, however -- however we would 20 depreciate mileage. In other words, what I would call 21 your standard business deductions, I was familiar with 22 those. I was not familiar with something like this, an 23 investment credit. 24 Q. Did Mr. Howell explain that there was 25 depreciation associated with the RaPower? 42: 1 A. Yes. Yes, I knew there was. Right. 2 Q. Okay. What did he tell you? 3 A. I -- I just don't recall. I mean, I don't so -- 4 Q. But you recall that if you purchased a unit there 5 was some kind of an associated depreciation.</p>				
<p>42: 8 A. Yes.</p>			<p>391</p>	

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<p>9 Q. Do you know where those particular line items, 10 Line 6 there, would have shown up on your return 11 elsewhere? 12 A. No. 13 Q. Okay. 14 A. That was on Page 17 of 45, right? 15 Q. Of 47. 16 A. Yeah. Okay. Yeah. 17 Q. Can you turn to Page 33 of 47? 18 A. Yes, I'm there. 19 Q. Okay. And Page 33 of 47, Schedule C, profit or 20 loss from business with respect to MW Penn Well Service, 21 LLC. 22 A. Uh-huh. 23 Q. That's -- you're sole proprietor? 24 A. Yes. 25 Q. Okay. So that Line 13, there's a depreciation 43: 1 expense. 2 A. Yes. 3 Q. For 54,198? 4 A. Right. 5 Q. Do you know if that number included the</p>				

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<p>6 depreciation from the solar lenses? 7 A. Yes. 8 Q. It did? 9 A. Because I would not have had that much 10 depreciation in a normal -- it had to have. 11 Q. What would a normal amount of depreciation be? 12 A. Well, I know that we ran all my vehicles on 13 mileage versus capital cost or how you'd refer to that. 14 I ran all my vehicles on mileage. And I had purchased a 15 rig in 2005, which would have been depreciated out by -- 16 I don't think he carried it that long. You know, I 17 wouldn't know. I'd have to look. In other words, 18 there's no way I had 55, 56,000 - - 54,000 and change on 19 depreciation. I do know that. 20 Q. Okay. Put that one aside. 21 A. Okay.</p>				
<p>43:24 Q. (By Ms. Hines) Hand you 392. Okay. Take a look 25 at it and let me know when you have -- 44: 1 A. Okay. I'm ready.</p>			392	

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<p>2 Q. Okay. So what is Exhibit 392?</p> <p>3 A. It's our -- my wife and I's 2013 tax returns.</p> <p>4 Q. Okay. And then on Page 4 of 30, there's a date.</p> <p>5 A. Yes, it's 10/10 of 2014.</p> <p>6 Q. Okay. So it would have been prepared on or about</p> <p>7 that date and submitted to the IRS?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And there's a paid preparer listed?</p> <p>10 A. Yes, Howell Tax Service.</p> <p>11 Q. Okay. So who is Howell Tax Service?</p> <p>12 A. John Howell.</p> <p>13 Q. Turn to Page 8 of 30 for me. And this is the</p> <p>14 Form 3800 regarding the general business credits?</p> <p>15 A. Uh-huh.</p> <p>16 Q. I think on Line 34 of that form, which is</p> <p>17 actually on Page 9, you had a carryforward?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And it's 12,991?</p> <p>20 A. Uh-huh.</p> <p>21 Q. What's your understanding of what that</p>				

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<p>22 carryforward was? 23 A. That would have been from my -- my purchase of 24 RaPower3 units. 25 Q. Okay. So the tax credits? 45: 1 A. Yes, tax credits. 2 Q. That hadn't been used? 3 A. That's right. 4 Q. Okay. And if you turn to Page 22 of 30 for me. 5 A. I've got it. 6 Q. So this is your Schedule C for MW Penn Well 7 Service, LLC? 8 A. Uh-huh. 9 Q. And Line 13, the depreciation is \$7,780? 10 A. (Indicates) 11 Q. Is that amount a more typical amount of 12 depreciation? 13 A. Oh, a lot more than the -- yes, than the other 14 one, right. 15 Q. Okay. So the 2011, 2012 and 2013 tax returns are 16 the only tax returns that you are aware of that had 17 items related to RaPower3 units? 18 A. Yes. 19 Q. Okay. And so in 2011 and 2013 there you</p>				

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<p>20 testified there was a carryback and a carryforward of 21 unused credits? 22 A. Right. 23 Q. Did Mr. Howell explain how that worked to you? 24 A. He would have -- he would have -- he would have 25 showed me on a screen like I've told you. But as far as 46: 1 accounting details, I mean, that's just -- I would have 2 just trusted him to do what needed to be done with that. 3 Q. Did he -- when he recommended you purchase twelve 4 and then have a second purchase of six units, did he 5 explain how he arrived at those numbers in terms of 6 whether or not they were including these carryback and 7 carryforward? 8 A. That -- yes. Yes, I do remember that because 9 that's why he wanted two separate purchase. 10 Q. Okay. But you don't recall exactly why you 11 needed two separate purchases? 12 A. No.</p>				

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<p>46:23 Q. (By Ms. Hines) Mr. Penn, I think earlier you 24 were testifying about your situation as to why you got 25 involved in RaPower3 in the first place. 47: 1 A. Uh-huh. 2 Q. I think you testified that Mr. Howell said it 3 would help you. Can you explain what that -- what that 4 means, what you meant by that?</p>				
<p>47: 6 A. The -- well, it had to do with how much taxes I 7 owed at that time. And he would -- showed me how the 8 credits would benefit me on a tax basis. 9 Q. (By Ms. Hines) Okay. 10 A. On purchasing the units from RaPower3. 11 Q. And what was the benefit that you understood? 12 A. The simplest one was the reduction in taxes.</p>				
<p>48: 5 EXAMINATION 6 BY MR. AUSTIN:</p>				
<p>65: 6 Q. I mean, is it fair to say, you know, you didn't 7 feel comfortable because you didn't really understand</p>				

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<p>8 what it was exactly you were buying and how exactly it 9 qualified for credits or deductions? 10 A. Well, I mean, I have to be honest, I didn't -- I 11 think I understood in my viewpoint that I didn't like -- 12 I felt like it was purchased -- set up to purchase it 13 for a tax credit. And that's why - - and I stated I was 14 uncomfortable with it. See, I refused it for two years 15 before I purchased it. 16 Q. It seemed too good to be true to you? 17 A. That's -- that's one phrase that's used. It 18 didn't seem right is what I would say. 19 Q. If -- if you had complete and utter assurance and 20 confidence, a letter from the IRS that said you can do 21 this all day long everyday and reduce your tax 22 liability, would you -- would you do it?</p>				
<p>65:24 A. Well, I think -- and I'm -- the way I would view</p>				

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<p>25 an investment because I told you guys and I have seen it 66: 1 in the oil business before is you need to invest money 2 not for a tax deduction but for -- to make a profit. I 3 mean, that's -- I see it in the oil business all the 4 time so I mean, it's something I am familiar with. I 5 would purchase tax-wise for equipment that I need or if 6 I'm investing I would invest in the intent to make a 7 profit. 8 Q. (By Mr. Austin) And you weren't doing that in 9 this case; is that right? 10 A. No, I didn't. I didn't. 11 Q. I mean, you didn't understand the technology 12 necessarily; is that true? 13 A. Well, what I saw I didn't -- I didn't -- it 14 didn't look too technological to me. I mean, it was 15 very simple. Looked like two guys in a pickup and a 16 little machine and the solar panels didn't even look 17 right to me, didn't look like anything else I'd seen.</p>				

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<p>18 Q. You didn't think it was real, right?</p> <p>19 A. Yeah. Well, I know they were doing something. I</p> <p>20 don't doubt that. I mean, they had to be putting</p> <p>21 something together.</p> <p>22 Q. But you didn't think you were going to make money</p> <p>23 from this investment?</p> <p>24 A. I did not feel like I would be making any money.</p> <p>25 Q. I mean, as you're sitting here right now you're</p> <p>67: 1 calling it an investment, right? Is that what you</p> <p>2 thought you were doing, investing?</p> <p>3 A. I would have probably looked at it as an</p> <p>4 investment. I mean, yeah, but I was purchasing tax</p> <p>5 credits is what I felt like I was doing.</p>				
<p>68:12 Q. Okay. But in terms of -- and I asked you that</p> <p>13 just so I can understand whether or not you have any</p> <p>14 technical background or expertise that would cause you</p> <p>15 to, you know, question the technology at least as far as</p>				

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<p>16 you -- 17 A. I had no knowledge of electrical or solar power, 18 no school at all on any of that. 19 Q. Do you know what a fresnel lens is? 20 A. A what? 21 Q. A fresnel lens? 22 A. No. 23 Q. And do you know what a concentrator is? 24 A. I would assume that I could probably figure out 25 what it is, but I don't -- I don't -- to say that, no, 69: 1 but I could probably bring a good guess. 2 Q. Are you familiar with any solar technology? 3 A. No.</p>				
<p>74: 2 Q. And is that one of the reasons why it felt a 3 little hinky to you because you were -- in your case you 4 paid nothing? 5 A. Right. 6 Q. That you were paying very little up front and yet 7 you were able to claim the full depreciable amount of 8 the full purchase price?</p>				

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<p>9 A. Yes. Nothing about that's right.</p>				
<p>88:20 FURTHER EXAMINATION 21 BY MS. HINES:</p>				
<p>89:10 Q. I think you had also testified that you didn't 11 expect or see a profit from this endeavor. What was it 12 that made you think you would not expect to see a 13 profit? 14 A. Well, at the time -- I stated several times today 15 on the -- at that time on the internet when you looked 16 it all up it just did not seem like a business. I mean, 17 it was very simplistic. Very simplistic at that time 18 when I looked it up. You didn't see some giant array of 19 beautiful solar panels and stuff like that. So I just 20 -- I saw it more as a tax deal is the way I looked at it 21 versus an investment. 22 Q. And did you ever talk to Mr. Howell about 23 receiving any kind of profit? 24 A. I -- I didn't discuss that with him. 25 Q. Did he mention it?</p>				

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90: 1 A. Vaguely. I remember him talking a little bit 2 about profit, but it was always more about my tax 3 credits than anything else. Maybe I didn't show enough 4 interest in the profit side of it. I don't know. But 5 he did not discuss that with me very much at all.				
93:14 MS. HINES: Okay. Mr. Penn, we are going to 15 ask if you would read and sign your deposition. 16 A. Sure.				
94: 4 MS. HINES: Off the record.				
DEFENDANT COUNTER-DESIGNATIONS	PLAINTIFF COUNTER-DESIGNATIONS			

Instructions: One form should contain all designations for a witness. Plaintiff Designations (column 1) and Defendant Designations (column 2) will show the full deposition text that the party proposes to read in its case-in-chief. Completeness designations are proposed by the other party, under Fed. R. Civ. P. 32(a)(6), to be read with the designations. Counter-designations are read following the designations and completeness designations, similar to cross examination. This form should be provided in word processing format to the other party, who then will continue to fill in the form. The form is then returned to the proposing party for review, resolution of disputes, and further editing. The parties should confer and file a final version in PDF format using the event “Notice of Filing” and also submit a final word processing copy to the court at dj.nuffer@utd.uscourts.gov, for ruling.

All objections which the objecting party intends to pursue should be listed, whether made at the deposition, as with objections as to form, or made newly in this form, if the objection is of a type that was reserved.

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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PLAINTIFF DESIGNATIONS	DEFENDANT -DESIGNATIONS			
<p>6: 1 P R O C E E D I N G S 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</p>		<p>Defendants object to the designation of substantially all of the deposition in Plaintiff's designation. The deposition was not designated at the time of noticing or taking the deposition to be a trial deposition or to preserve the specific testimony. See Defendants' objections [Doc. 295 and Doc. 347].</p> <p>6:1-19. Objection, not relevant, FRE 401-402.</p>		<p>Overruled</p> <p>Overruled</p>

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17 Donald Reay, who currently still represents R. 18 Gregory Shepard and Roger Freeborn, is also not 19 present.				
7: 1 JOHN HOWELL, 2 having been first duly sworn, testified as follows: 3 E X A M I N A T I O N 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.				
10:20 Q. All right. Because we're here to get as 21 accurate a record as we can of the facts of this		10:20-11:24. Objection, not relevant, FRE 401-402.		Overruled

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<p>22 case as you remember them, I 23 have to ask, is there 24 anything that would prevent you 25 from understanding 26 and answering my questions 27 today with the full 28 capacity of your recollection? 29 11: 1 A. No. 30 2 Q. Have you had anything 31 alcoholic to drink 32 in the past eight hours? 33 11: 4 A. No. 34 5 Q. Are you taking medications or 35 drugs of any 36 kind that might interfere with your 37 memory? 38 7 A. No. 39 8 Q. Is there any other reason you 40 can think of 41 why you might not be able to 42 answer my questions 43 fully and accurately today? 44 11 A. No. 45 12 Q. Mr. Howell, what e-mail 46 addresses have you 47 used since 2010? 48 14 A. Rockingh@wf.net. 49 15 Q. Any others? 50 16 A. Not that I can recall.</p>				

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Plaintiff Designations – BLUE Defendant Completeness— PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness— PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>17 Q. Do you use that for both business and personal e-mails? 18 19 A. Yes. 20 Q. Mr. Howell, did you graduate from high school? 21 22 A. Yes. 23 Q. In what year? 24 A. 1973.</p>				
<p>18:16 Q. And you mentioned that you started with H&R Block part time in 1974, and your first job was acting as a courier? 19 A. Yeah, just picking up and delivering tax returns. 20 21 Q. Sure. When did you start working with tax returns? 22 23 A. I was probably doing some of that probably, oh, starting in '75 after the first tax classes, somewhere around there. 19: 1 Q. And when did you stop working for H&R Block? 2</p>				

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<p>3 A. 2000. I was working with some franchises 4 up until 2003, 2004. Been awhile back. 5 Q. Okay. Again, just for right now I'm 6 interested in kind of broad strokes. Can you take 7 me through the different job titles that you held 8 with H&R Block over the course of that time? 9 A. Let's see. Started out as a courier, then 10 a tax preparer, then a math checker, instructor, 11 then a theory checker and instructor. 12 And they have different levels of tax 13 preparers, and depending on your years of experience 14 on whether -- I don't know if they had official 15 titles back then. Now they do, but I'm not sure 16 what they -- they just called us a tax preparer at 17 that time. And then as your -- depending on your</p>				

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<p>18 years of experience, you would do the more complex 19 tax returns.</p>				
<p>21: 7 Q. So when you left H&R Block in 2003 or 8 2004, what did you do then? 9 A. I worked with my dad at his -- at our tax 10 office, Howell Tax Service. 11 Q. Since you started working at Howell Tax 12 Services, have you had any other jobs? 13 A. No. 14 Q. Have you earned income from any other 15 source than Howell Tax Services since you started 16 working there? 17 A. Yes. 18 Q. What are those sources? 19 A. Securities, insurance, network marketing 20 companies. 21 Q. Anything else? 22 A. Should -- I think that about covers it. 23 Q. When you say you have earned income from</p>				

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<p>24 securities, do you mean, for lack of a better word, 25 brokering securities? 22: 1 A. No. Setting up clients' IRAs, rollover 2 401(k)s into IRAs, doing annuities. 3 Q. Is that on a commission basis? 4 A. Yes. 5 Q. And with respect to your income from 6 insurance, is it similar to the securities? 7 A. Yes, sell life insurance policies. 8 Q. And you get a commission for that? 9 A. Correct. 10 Q. And how about the network marketing 11 component? What network marketing companies have 12 you been part of? 13 A. Well, my security license is through 14 Primerica, which is network marketing. 15 Q. Any others? 16 A. Ignite, which is stream energy. Cierra,</p>				

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<p>17 they were a network marketing company, marketed pain 18 patches and things like that. 19 Q. Any others? 20 A. I don't remember the name. One that did 21 vitamins and stuff. Shaklee. 22 Q. Could you spell that? 23 A. S-H-A-K-L-E-Y, I believe it is. They do a 24 lot of vitamins and stuff. 25 Q. And actually could you spell Cierra? 23: 1 A. C-I-E-R-R-A, Cierra. It's a network 2 marketing company. 3 Q. Any other network marketing companies? 4 A. RaPower. 5 Q. Any others? 6 A. Briefly with Melaleuca, just very briefly 7 with them. 8 Q. Melaleuca? 9 A. Melaleuca. I can't even pronounce -- 10 can't even spell that one. 11 Q. Okay. So we have Primerica, Ignite,</p>				

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<p>12 Cierra, Shaklee, RaPower, Melaleuca. Any other 13 network marketing companies? 14 A. Not that I can recall. 15 Q. And the only additional income you've 16 received since working for Howell Tax Services is 17 from securities, insurance, and network marketing? 18 A. Yes. 19 Q. Okay. Let's talk about Howell Tax 20 Services a little bit. What kind of entity is 21 Howell Tax Service? 22 A. S corp. 23 Q. Who owns it? 24 A. My mother since my father's passed away, 25 myself, and then some of my siblings. 24: 1 Q. Are you familiar with an entity called 2 Rocking H? 3 A. That's Rocking H Enterprises, Inc., dba 4 Howell Tax Service. 5 Q. Okay. So Rocking H Enterprises, Inc.,</p>				

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<p>6 does business as Howell Tax Services? 7 A. Yes. 8 Q. Does Rocking H do business under any other 9 name? 10 A. No. 11 Q. Who's the primary decision-maker for 12 Rocking H? 13 A. Probably myself. 14 Q. How long have you been in that role? 15 A. Since my father passed away in 2013. 16 Q. When you started working for Howell Tax 17 Services in 2003 or 2004, what was your role there? 18 A. Mainly tax preparation, consulting. We do 19 payrolls for some companies. We do bookkeeping for 20 companies. 21 Q. Are those the primary services that Howell 22 Tax Services provides? 23 A. Yes. 24 Q. And are those the primary services that</p>				

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<p>25 Howell Tax Services has provided since 2003 or 2004? 25: 1 A. Yes. 2 Q. Are there any other services that Howell 3 Tax Services has provided since 2003 or 2004? 4 A. I think that should cover it. 5 Q. When you started off working for Howell 6 Tax Services, about how many hours a week would you 7 say you worked for the company? 8 A. Forty. 9 Q. Has that been consistent to present day? 10 A. Yes. A little bit less now. 11 Q. Around when would you say you reduced your 12 schedule? 13 A. Let's see. My oldest granddaughter is -- 14 I'd say probably, oh, four or five years ago when we 15 started taking care of grandkids. So I go in late. 16 Q. About how many hours a week do you take 17 care of your grandkids?</p>				

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<p>18 A. Well, my wife takes care of them all the 19 time. I'm usually there till 9:00, 20 9:30, sometimes 21 10:00 before I get away. 22 Q. And then otherwise are you 23 filling your 24 workdays with Howell Tax 25 Services -- 26 A. Yes. 27 Q. -- tasks? Sorry. Let me 28 finish the 29 question. Otherwise, are you 30 filling your day with 31 1 Howell Tax Services tasks? 32 A. Between that and then if I need 33 to do any 34 securities or if somebody wants 35 some insurance or if 36 I attend a meeting with one of the 37 network marketing 38 companies, so -- 39 Q. Do your hours for Howell Tax 40 Services go 41 up during tax preparation times? 42 A. Yes. 43 Q. About how many hours a week 44 would you say 45 you work during tax prep 46 season?</p>				

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<p>11 A. 60, 70 hours. 12 Q. And for you, when -- when is tax prep 13 season? 14 A. Typically starts middle of January. 15 Starts slowing down about a little bit after 16 April 15, 16, 17. Then it'll pick back up typically 17 September, October tax -- September, October during 18 the end of tax time. 19 Q. So that's -- for September and October, 20 that's when folks are filing if they got an 21 extension, right? 22 A. Correct. 23 Q. Are you an employee of Rocking H? 24 A. Yes. 25 Q. Currently about how many other employees 27: 1 does Rocking H have? 2 A. Three. 3 Q. Who are they? 4 A. My brother, my daughter, and my mother.</p>				

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<p>5 Q. And what's your brother's name? 6 A. Daniel. 7 Q. Howell? 8 A. Howell. 9 Q. Your daughter's name? 10 A. Amber Bennett. 11 Q. And your mother's? 12 A. Jean Howell. 13 Q. Since 2010 has Rocking H had any other 14 employees? 15 A. 2010. My son-in-law, Joel Bean, off and 16 on. 17 Q. Is his last name B-E-A-N? 18 A. Bean, yes. Since 2010. I believe that's 19 all. 20 Q. And what about your father? To your 21 knowledge, was he an employee? 22 A. Yes. Ernest Howell. 23 Q. All right. So to the best of your 24 recollection, the employees that Rocking H has had 25 since 2010 are you, your father, Ernest Howell,</p>				

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<p>28: 1 Daniel Howell, Amber Bennett, Jean Howell, and off 2 and on Joel Bean. Correct? 3 A. Yes. 4 Q. Does Rocking H -- has Rocking H since 2010 5 used any contractors for accounting and tax prep 6 work? 7 A. My sister in Florida, Pam Garfinkle. 8 Q. Anyone else? 9 A. No. 10 Q. For Rocking H's employees and your sister, 11 Ms. Garfinkle, when they e-file tax returns, do 12 those tax returns say Howell Tax Service? 13 A. Yes.</p>				
<p>28:25 Q. Service. Okay. Does Howell Tax Service 29: 1 have a social media presence? 2 A. Yes. 3 Q. What forms of social media does Howell Tax 4 Service use? 5 A. Website. 6 Q. Does it have a Facebook page? 7 A. Yes.</p>				

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<p>30:13 Q. And what about the Howell Tax Service 14 Facebook page? 15 A. I usually do that. Sometimes my 16 son-in-law will post something to it. 17 Q. Who is it that started the Facebook page? 18 A. I probably did. 19 Q. Do you remember around when you started 20 it? 21 A. I really couldn't say.</p>				
<p>32:22 Q. Mr. Howell, if your son-in-law ever posted 23 something to the Howell Tax Service Facebook page 24 that you did not want to appear there, would you 25 take it off? 33: 1 A. Yes.</p>				
<p>33:16 Q. Do you -- present day are you continuing 17 to maintain the Howell Tax Service Facebook page? 18 A. Yes. 19 Q. Mr. Howell, do you have any formal</p>	<p>00033 19 Q. Mr. Howell, do you have any formal 20 designations, professional designations? 21 A. EA. 22 Q. And what is an EA?</p>			

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<p>20 designations, professional designations? 21 A. EA. 22 Q. And what is an EA? 23 A. Enrolled agent with the U.S. Treasury 24 Department of Internal Revenue Service.</p>	<p>23 A. Enrolled agent with the U.S. Treasury 24 Department of Internal Revenue Service. 25 Q. What does it take to obtain the 00034 1 designation EA? 2 A. A lot of -- a lot of studying and to pass 3 a extensive exam with the IRS and maintain lots of 4 continuing education classes. 5 Q. Okay. So for the study to become an EA, 6 are those the courses you took from H&R Block? 7 A. I believe to study for that I took some 8 online courses. Can't remember the company that did 9 it. It was a company that specializes in preparing 10 people for the enrolled agent's exam. They do -- 11 for a lot of different types of license, they do a 12 lot of these online courses.</p>			

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<p>35:18 Q. When did you take the exam? 19 A. 2001, I believe. 20 Q. Did you pass it? 21 A. Yes.</p>	<p>00035 1 Okay. So you took online courses to study 2 for the EA exam. Did you do any other -- other than 3 the online courses, did you do any other education 4 or preparation for the EA exam? 5 A. Reviews, tax books and stuff that we 6 maintain in the office, the different publications, 7 Publication 17, publications on corporate taxes, 8 partnership taxes and trusts, just a lot of tax 9 information because I know a lot of it's covered on 10 all four sections of the EA exam. 11 Q. What are the four sections of the EA exam? 12 A. I believe it's individual, partnership, 13 ethics, corporations and trusts. Not -- been a long 14 time since I took that test, but I do believe it's</p>			

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	<p>15 basically the individual taxes, partnership taxes, 16 corporate taxes, and ethics, I believe is how it's 17 structured. 18 Q. When did you take the exam? 19 A. 2001, I believe. 20 Q. Did you pass it? 21 A. Yes. 22 Q. On the first try? 23 A. Yes. With no -- I was teasing my sister 24 who failed the partnership part, and so she had to 25 retake it.</p>			
<p>36: 7 Q. So did you also obtain the designation in 8 2001? 9 A. Yes.</p>	<p>00036 1 Q. Is it a multi-day exam? 2 A. Yes. 3 Q. How many days? 4 A. Two days, to the best that I can recall. 5 It was in IRS headquarters in Dallas, I believe I 6 took it at. 7 Q. So did you also obtain the designation in 8 2001? 9 A. Yes.</p>			

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	<p>10 Q. For the online prep course you took, was 11 it -- tell me about that course. How long was it? 12 Was it multiple courses or one course? 13 A. Multiple courses. It just -- took it as 14 many days, many nights. I mean, you didn't really 15 have a time frame. You just studied this particular 16 topic until you were comfortable with it, and you 17 took a series of tests. 18 Q. Okay. So was it kind of like 19 self-directed, like you could decide what you wanted 20 to review on a particular night? 21 A. Yes. 22 Q. About how long did you prepare for the EA 23 exam before you took it? 24 A. Probably two years. There was a lot of 25 stuff on it.</p>			
<p>37:18 Q. Sure. Okay. So then after you obtained</p>				

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<p>19 the EA designation, have you had that designation 20 consistently since 2001? 21 A. Yes.</p>				
<p>39:17 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 40: 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.</p>	<p>00039 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</p>			

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	15 without keeping them. Just, you know, you get in a 16 hurry, but I try to.			
40:20 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 41: 1 frame I looked at their website, did a PDF of their 2 contracts, information that they had on their 3 website, looked at the tax law pertaining to energy 4 credits for solar, wind, geothermal, coal, nuclear, 5 whether the new or whether it was refurbished 6 equipment, the treasury regulations for it.				
43: 2 Q. You identified a couple of different				

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<p>3 things that you did to start investigating it. You 4 mentioned that you reviewed the website. Did you 5 mean the RaPower3 website? 6 A. Yes. 7 Q. Did you review any other websites? 8 A. IRS.gov looking up the tax laws associated 9 with solar energy, geothermal, wind, treasury 10 regulations. 11 Q. Okay. Any other websites that you recall? 12 A. No. 13 Q. You said that you reviewed contracts. 14 What contracts were those? 15 A. Their purchase agreements, operation 16 agreements. 17 Q. Did you get those contracts from the 18 RaPower3 website? 19 A. Yes.</p>				
<p>44:22 Q. In 2011 what, if any, research did you do 23 on International Automated Systems, Inc.?</p>				

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<p>24 A. 2011. I don't know if it was '11 or '12 I 25 looked up IAUS. I'm not sure what year. 45: 1 Q. Okay. Well, when you first -- what did 2 you look at whenever you did look up IAUS? 3 A. I looked at their website that they had 4 up. I guess they still have it up. I haven't 5 looked at it lately. 6 Q. Is that IAUS.com? 7 A. I believe so. 8 Q. In checking out IAS, did you do anything 9 else? 10 A. Not that I recall.</p>				
<p>45:11 Q. In 2011 what, if any, research did you do 12 on the company LTB, LLC? 13 A. I know I looked up something on them. I'm 14 not sure what year. It might have been '11. 15 Because they're mentioned in the contracts. 16 Q. Even if it wasn't in 2011, what, if any,</p>				

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<p>17 research have you done on LTB in 2011 or since that 18 date? 19 A. I think I just did a Google search or 20 something. Been awhile back. 21 Q. Do you recall if you found anything? 22 A. I'm sure I did. I think it showed who the 23 officers were. I don't recall a lot of information 24 on it. 25 Q. Do you remember who the officers were? 46: 1 A. I couldn't say for sure. 2 Q. Do you remember having found anything else 3 with respect to LTB, LLC? 4 A. Not that I recall. 5 Q. And just to close that loop on IAUS, at 6 any time since 2011 have you conducted any research 7 on IAUS other than reviewing its website? 8 A. I'm sure I have. I just don't really 9 recall, but I'm sure I've looked at something on</p>				

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<p>10 them, looked up their ticker symbol to see if there</p> <p>11 was a SEC filing. I think I looked at -- I'm not</p> <p>12 sure when it was.</p> <p>13 Q. Do you remember what, if any, information</p> <p>14 you found about IAS?</p> <p>15 A. It's been too long back. I don't really</p> <p>16 recall a lot of that.</p> <p>17 Q. Have you ever bought any shares of IAS?</p> <p>18 A. Yes.</p> <p>19 Q. How many shares do you own?</p> <p>20 A. 10,000. It's penny stock.</p> <p>21 Q. When did you buy that?</p> <p>22 A. 2012, I believe. I'm not sure.</p> <p>23 Q. Have you bought any stock since 2012?</p> <p>24 A. I think I've bought it a couple of times.</p> <p>25 Q. So have you ever sold it, sold any stock</p> <p>47: 1 in IAS?</p> <p>2 A. No.</p> <p>3 Q. So to your knowledge, as of today you own</p> <p>4 about 10,000 shares?</p>				

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<p>5 A. Yes.</p>				
<p>48: 3 Q. Are you familiar with the name Roger Freeborn? 4 Freeborn? 5 A. Yes. 6 Q. What do you know about Roger Freeborn? 7 A. We've talked together. 8 Q. When? 9 A. I can't give you exact times. I think I 10 met him at the RaPower convention in 2012, I think. 11 He was there. 12 Q. Did you have any communications with him 13 after the RaPower3 convention in 2012? 14 A. I'm sure I have.</p>				
<p>48:22 Q. And you're familiar with the name Greg Shepard? 24 A. Yes. 25 Q. You've met Mr. Shepard? 49: 1 A. Yes. 2 Q. When did you first meet in person? 3 A. At the convention. 4 Q. And you testified earlier that you may</p>	<p>00049 11 Q. Did you do any research on Mr. Shepard's 12 background? 13 A. Yes. 14 Q. What research did you do? 15 A. Google search. Everybody does Google 16 searches. And he was with Bigger, Faster, Stronger.</p>			

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<p>Plaintiff Designations – BLUE Defendant Completeness— PURPLE Defendant Counter-Designations – RED (at end)</p>	<p>Defendant Designations – RED Plaintiff Completeness— PURPLE Plaintiff Counter Designations – BLUE (at end)</p>	<p>Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE</p>	<p>Exhibits</p>	<p>Ruling</p>
<p>5 have spoken with him in 2011 but you're not sure. 6 Is the convention the first time you definitively 7 recall having -- 8 A. Yes. 9 Q. -- spoken with him? 10 A. Yes.</p>	<p>17 It's an organization a number of coaches, teachers 18 belong to. That's all I really remember looking at. 19 Q. In your research did you find out or did 20 you see any indication that Mr. Shepard had any sort 21 of experience or background in solar energy 22 technology? 23 A. No. 24 Q. In your research about Mr. Shepard, did 25 you find any indication he had experience or 00050 1 knowledge about federal income taxes? 2 A. No. 3 Q. With respect to Neldon Johnson and your 4 research on Mr. Johnson, did you see any indication 5 that he had any experience or background in federal 6 taxes? 7 A. No. 8 Q. In your research into Mr. Johnson, did you</p>			

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	<p>9 see any indication that he had any experience or</p> <p>10 background in solar energy technology?</p> <p>11 A. Yes, when he had done the patent on the</p> <p>12 solar lenses, and he had written a white paper on</p> <p>13 solar energy.</p> <p>14 Q. Okay. So with Mr. Johnson, you saw that</p> <p>15 he had a patent on solar lenses. Yes?</p> <p>16 A. Yes.</p> <p>17 Q. And you saw that he had written a white</p> <p>18 paper?</p> <p>19 A. Yes.</p> <p>20 Q. Did you see anything else to indicate that</p> <p>21 he had knowledge or experience with respect to solar</p> <p>22 energy technology?</p> <p>23 A. I believe I read an article where he was</p> <p>24 involved in a -- some solar energy with a city in</p> <p>25 California in developing something.</p> <p>00051</p>			

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	<p>1 Q. Did you ever ask Mr. Johnson or anyone 2 else what qualifications he had in any field related 3 to solar energy technology? 51: 3 to solar energy technology? 4 A. I never really talked to Mr. Johnson that 5 much. 6 Q. Did you ask anyone else about 7 Mr. Johnson's qualifications? 8 A. I don't believe so. 9 Q. How come? 10 A. I just didn't think about asking anybody 11 else.</p>			
<p>52:22 Q. Did you ever ask anyone about LTB, LLC's 23 experience or expertise with solar energy 24 technology? 25 A. I don't recall. 53: 1 Q. Why not? 2 A. I just don't recall if I ever did or not. 3 Long time ago. 4 Q. Sure. 5 A. Many conversations. What all the topics</p>				

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<p>6 were, I don't know. 7 Q. If you did not ask anyone about LTB, LLC's 8 background, experience, or expertise in solar energy 9 technology, do you have any explanation for why? 10 A. Really don't have an answer. 11 Q. Do you know who owns LTB, LLC? 12 A. I'd have to look it up again. I'm sure 13 it's probably Neldon Johnson or somebody associated 14 with him. 15 Q. And why do you think that? 16 A. Well, because he -- owner of the RaPower3, 17 the IAUS, so I would assume you try to keep control 18 of companies you're working with. 19 Q. Okay. So to your knowledge or what you 20 think sitting here today is that Neldon Johnson is 21 the owner of LTB, LLC? 22 A. Or part owner. I wouldn't say he's the 23 total owner. I mean --</p>				

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<p>24 Q. I'm just asking for your understanding.</p> <p>25 And also to your understanding, Mr. Johnson owns</p> <p>54: 1 some or all of RaPower3?</p> <p>2 A. Yes.</p> <p>3 Q. To your understanding, Mr. Johnson owns</p> <p>4 some or all of International Automated Systems?</p> <p>5 A. Yes.</p>				
<p>54: 6 Q. You mentioned, Mr. Howell, that Neldon</p> <p>7 Johnson had written a white paper on solar energy</p> <p>8 technology. Do you recall reading that white paper?</p> <p>9 A. Yes.</p> <p>10 Q. Where did you get it from?</p> <p>11 A. Off of their website.</p> <p>12 Q. Off the RaPower3.com website?</p> <p>13 A. Yes.</p> <p>14 Q. Did you understand the white paper?</p> <p>15 A. No. Lot of technical.</p>				
<p>56:11 Q. Well, then how about this. Walk me</p> <p>12 through how you think the solar lenses we're talking</p>				

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<p>13 about here, how they are supposed to convert energy 14 from the sun into a finished product. 15 A. The solar lenses that are on the towers 16 are then the -- with the rotation of the towers 17 focus energy to a heat concentrator which then goes 18 to the turbines. I'm not an engineer, so I really 19 don't know how it -- how it all works. 20 And so it's -- I've seen the towers. I've 21 seen how they can focus the rays sun into a focal 22 point. They actually set a piece of wood on fire. 23 So I do know that it -- that, and I've seen how 24 they're developing the concentrator to use in part 25 of their system. 57: 1 It's like how does a computer work. I 2 couldn't tell you that. All I know is I can use it.</p>				

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<p>3 Same way with that technology. I'm not an engineer, 4 but I -- I don't know all the terminology or 5 anything on how it all works. 6 Q. Have you ever seen a lens being used in 7 any system that generates electricity? 8 A. Did I actually go and see it? No. 9 Q. Have you ever heard that a lens was used 10 in any system that ended up generating electricity? 11 A. Yes. 12 Q. Where did you hear that from? 13 A. Probably RaPower. They have a house that 14 I believe they say is -- utilizes one of their 15 systems to do their energy. 16 Q. Have you ever heard of any lens being used 17 in any system to generate electricity for use 18 anywhere other than that house? 19 A. Not that I recall.</p>				

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<p>20 Q. When you say you heard of that from 21 RaPower, who at RaPower? 22 A. I believe it was Greg Shepard had sent out 23 some pictures of the -- of the house, the -- there 24 was -- I'm trying to remember what it all was. When 25 the cabling -- it's been awhile back since I looked 58: 1 at that, but I know they had a building where the 2 energy ran into the turbine. I don't remember all 3 of it, but they -- it's been a number -- a couple 4 years back that they had sent it out. Then it was 5 actually on their website too in addition to that. 6 Q. Did you ever ask to see any documentation 7 or other support that would show that any lens was 8 used in a system that produced electricity for that 9 house? 10 A. I don't recall ever asking for anything.</p>				

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<p>11 Q. Any particular reason you didn't ask for 12 that? 13 A. Didn't really think about it. 14 Q. To your knowledge, has anyone ever been 15 paid for the electricity that you heard was going to 16 that house? 17 A. Not that I know of.</p>				
<p>59: 7 Q. Before the break we were talking about 8 whether you had heard of or seen lenses in use as 9 part of the system to produce electricity. 10 Have you ever seen any lens be used as 11 part of a system that ultimately resulted in heat 12 being provided to a structure? 13 A. No. 14 Q. Have you ever seen any lens be used as 15 part of a system to cool a structure? 16 A. No. 17 Q. Have you ever seen a lens be used as part</p>	<p>00059 7 Q. Before the break we were talking about 8 whether you had heard of or seen lenses in use as 9 part of the system to produce electricity. 10 Have you ever seen any lens be used as 11 part of a system that ultimately resulted in heat 12 being provided to a structure? 13 A. No. 14 Q. Have you ever seen any lens be used as 15 part of a system to cool a structure? 16 A. No. 17 Q. Have you ever seen a lens be used as part</p>			

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<p>18 of a system that creates clean water? 19 A. No. 20 Q. Have you ever seen a lens be used as part 21 of a system that heats water? 22 A. I think they produced a YouTube that 23 showed that. I'm not positive, but I believe I saw 24 maybe a YouTube that they had put out that showed 25 that. 60: 1 Q. When you say a YouTube, do you mean a 2 video that you saw online? 3 A. Yes. 4 Q. And you think you've seen a video of a 5 lens being used in a system that produced hot water? 6 A. And it was heating the water. I just 7 briefly -- didn't look at the whole thing. It was 8 just a YouTube clip showing the water being heated. 9 I didn't look at all of it. It was just --</p>	<p>18 of a system that creates clean water? 19 A. No. 20 Q. Have you ever seen a lens be used as part 21 of a system that heats water? 22 A. I think they produced a YouTube that 23 showed that. I'm not positive, but I believe I saw 24 maybe a YouTube that they had put out that showed 25 that.</p>			

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<p>10 Q. So can you describe to me what you did see 11 in that video? 12 A. Just showed the -- I believe the water 13 being heated through a solar panel. 14 Q. A lens? 15 A. A solar panel. 16 Q. What do you mean when you say solar panel? 17 A. A lens, a solar panel. It's been awhile 18 back, so I don't recall exactly all of it in 19 context. 20 Q. How do you know -- was the -- were the 21 sun's rays going through the lens directly to water? 22 A. It was just like 15, 30 seconds, just a 23 little YouTube, and I don't exactly remember how 24 it -- something similar to that. But that's all. 25 Q. I'm just trying to understand what you 61: I saw.</p>				

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<p>2 A. It was just briefly that I saw it. It was 3 just IAUS or RaPower has a number of mini YouTube 4 videos that they've done over their technology, 5 their manufacturing process, their different 6 components and things. It was just a brief -- so I 7 don't really remember all of it. I might have seen 8 a series of them at one time. 9 Q. So, for example, I am familiar with a 10 video where a turbine is spinning and it looks like 11 steam is coming out of the nozzles. Is that what 12 you're thinking of? 13 A. I think I've seen one of those too. It's 14 just I've probably watched 40, 50 different ones at 15 different times, so -- 16 Q. Right. And what I'm trying to understand 17 is, so the video that you recall having seen of a</p>				

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<p>18 lens being used in a system to generate hot water, 19 is that the video of the turbines spinning with 20 steam coming out of it? 21 A. I believe it was different from that. 22 Q. Okay. So what did you actually see? 23 A. It was just very, very brief. And I 24 probably watched a number of different ones, so -- 25 Q. Right. And what I want to know is what 62: 1 you saw. So if you don't remember what you saw, 2 that's fine. 3 A. I really can't tell you exactly what it 4 was, you know. It's not like I kept playing it over 5 and over and over. No, I don't really recall. 6 Q. All right. So have you ever heard of any 7 lens being used in a system to generate heat for a 8 structure? 9 A. No.</p>	<p>00062 6 Q. All right. So have you ever heard of any 7 lens being used in a system to generate heat for a 8 structure? 9 A. No. 10 Q. Have you ever heard of any lens being used 11 in a system to cool a structure? 12 A. I think I've already answered that 13 question. No. 14 Q. Have you ever heard of any lens being used</p>			

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<p>10 Q. Have you ever heard of any lens being used</p> <p>11 in a system to cool a structure?</p> <p>12 A. I think I've already answered that</p> <p>13 question. No.</p> <p>14 Q. Have you ever heard of any lens being used</p> <p>15 in a system to create clean water?</p> <p>16 A. I'm thinking create the steam, then that</p> <p>17 would create the clean water, so --</p> <p>18 Q. So is the answer yes or no?</p> <p>19 A. Going back to the brief clip I saw, it's</p> <p>20 in theory that if you can heat the water, you can</p> <p>21 purify it.</p> <p>22 Q. Whose theory is that?</p> <p>23 A. I think it's general theory of science</p> <p>24 that if you can heat water, you can purify it</p> <p>25 through the steam itself that comes off. It's going</p> <p>63: 1 to be more pure and leave the residues down.</p>	<p>15 in a system to create clean water?</p> <p>16 A. I'm thinking create the steam, then that</p> <p>17 would create the clean water, so --</p> <p>18 Q. So is the answer yes or no?</p> <p>19 A. Going back to the brief clip I saw, it's</p> <p>20 in theory that if you can heat the water, you can</p> <p>21 purify it.</p> <p>22 Q. Whose theory is that?</p> <p>23 A. I think it's general theory of science</p> <p>24 that if you can heat water, you can purify it</p> <p>25 through the steam itself that comes off. It's going</p> <p>00063</p> <p>1 to be more pure and leave the residues down.</p> <p>2 Q. So did you hear from anyone at RaPower3,</p> <p>3 IAS, LTB that a lens was used in a system that</p> <p>4 created purified water?</p> <p>5 A. No.</p>			

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<p>2 Q. So did you hear from anyone at RaPower3, 3 IAS, LTB that a lens was used in a system that 4 created purified water? 5 A. No. 6 Q. Have you ever heard of a lens being used 7 in a system to heat water? 8 A. No.</p>	<p>6 Q. Have you ever heard of a lens being used 7 in a system to heat water? 8 A. No.</p>			
<p>63:16 Q. Well, let's do this. Let's say I'm 17 someone who's interested in hearing about RaPower3. 18 What would you tell me? 19 MR. TEAKELL: If you know. 20 A. Usually the first thing I tell them is to 21 check out the RaPower website and talk to them. But 22 if they're interested in the network marketing side, 23 I can tell them their commission structure is based 24 on the number of units that are sold on their 25 downline, which is typical of any network marketing 64: 1 company. 2 BY MS. HEALY GALLAGHER:</p>				

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<p>3 Q. Okay. And by downline do you mean, you 4 know, if you, for example, bring me in to RaPower3, 5 I'm in your downline? 6 A. Yes. 7 Q. And then anyone that I bring in to 8 RaPower3 would be in my downline -- 9 A. Yes. 10 Q. -- and in your downline. 11 A. Yes.</p>				
<p>67:13 Q. Mr. Howell, you have purchased units from 14 RaPower3, correct? 15 A. Yes. 16 Q. Have you ever been paid any rental income? 17 A. No. 18 Q. To your knowledge, has anyone ever been 19 paid rental income for their units? 20 A. Not that I recall. 21 Q. So to your knowledge no one has been paid 22 rental income? 23 A. Right, yes.</p>				

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<p>24 Q. Mr. Howell, you mentioned bonuses. What's</p> <p>25 your understanding of how someone gets a bonus?</p> <p>68: 1 A. When they purchase the solar lens, then</p> <p>2 each unit they were -- once IAU -- IAUS hit their</p> <p>3 targeted income goals, then they would pay out</p> <p>4 bonuses based on the number of units that you</p> <p>5 purchased.</p> <p>6 Q. Have you ever been paid a bonus?</p> <p>7 A. No.</p> <p>8 Q. To your knowledge has anyone else ever</p> <p>9 been paid a bonus?</p> <p>10 A. No.</p> <p>11 Q. Have you ever asked anyone why you have</p> <p>12 not received rental income?</p> <p>13 A. No.</p> <p>14 Q. Why not?</p> <p>15 A. Because I know why.</p> <p>16 Q. Why haven't you?</p> <p>17 A. Because they're still developing the solar</p>				

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<p>18 field, and then they've got to hit their targeted 19 goals. 20 Q. You bought into this in 2011, correct? 21 A. I believe so. 22 Q. Okay. It's 2017. 23 A. I understand. 24 Q. Where's that rental income, sir? 25 A. Mm-hmm. 69: 1 Q. Where is it? 2 A. It's piling up, supposedly. 3 Q. It's piling up, you say. What do you mean 4 by that? 5 A. I don't know where it's at. 6 Q. What do you mean by -- 7 A. And to -- 8 Q. Hang on. What do you mean by it's piling 9 up? 10 A. It's piling up for my grandkids to collect 11 on. That was just being funny. 12 Q. So has anyone ever told you that you will 13 be paid back rent for your units? 14 A. I don't believe so.</p>				

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<p>15 Q. So if you bought in in 2011 and now it's 16 2017, have you ever complained to anyone that you 17 haven't received rental income? 18 A. I imagine I have -- 19 Q. To whom? 20 A. -- asked Greg Shepard what the problem is, 21 why they're not in production, and just like 22 probably lots of other people have probably asked 23 him the same question. 24 Q. Have you ever asked anyone other than Greg 25 Shepard what the problem is? 70: 1 A. I think I've talked to Neldon one time a 2 number of years back. 3 Q. When did you talk to Neldon? 4 A. 2012, '13. It's been quite awhile back. 5 Q. What did Mr. Johnson say? 6 A. That they were having some development 7 problems with some of the components. 8 Q. Did that satisfy you?</p>				

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<p>9 A. I actually saw the problem. I actually 10 was in their manufacturing plant in 2014 or '15 and 11 saw a lot of their heat concentrators that they had 12 produced but he was having to redesign because in 13 one of their field tests they didn't take the heat 14 that they had projected that they would and so he 15 was having to redesign the concentrator. And they 16 had a whole warehouse full of them already produced. 17 Q. I want to make sure I understand. So they 18 had already produced concentrators in large 19 quantities? 20 A. Yes. 21 Q. And only after that found out that it 22 didn't work the way they wanted it to? 23 A. On an -- they had done another heat test, 24 and apparently the sun's rays were getting hotter</p>				

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<p>25 than they had originally designed for. 71: 1 MS. HEALY GALLAGHER: So I'd like you to 2 read back the question, please. 3 THE REPORTER: "Question: I want to make 4 sure I understand. So they had already produced 5 concentrators in large quantities? 6 "Answer: Yes. 7 "Question: And only after that found out 8 that it didn't work the way they wanted it to?" 9 BY MS. HEALY GALLAGHER: 10 Q. Yes or no? 11 A. No. 12 Q. No. Okay. So what happened? 13 A. They redesigned the concentrator. 14 Q. Right. 15 A. Neldon redesigned the concentrator. 16 Q. And what I want to understand is, did he 17 redesign the concentrator before or after they had</p>				

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<p>18 produced many concentrators that did not work? 19 A. I believe it was after. 20 Q. Okay. So he -- they produced a number of 21 concentrators. Only then did they realize that 22 style of concentrator did not work? 23 A. To what I understand, yes. 24 Q. So then Mr. Johnson had to redesign the 25 concentrator? 72: 1 A. Yes. 2 Q. Did you ever ask him why they wasted the 3 time to produce all kinds of concentrators that 4 didn't work? 5 A. I've been in manufacturing a number of 6 years, and I have seen designs that supposedly work 7 and then didn't work and then they had to go back 8 and redo the design. And so it -- it's -- in the 9 manufacturing process, yes, it can happen.</p>				

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<p>10 Q. To your knowledge, did Mr. Johnson's 11 redesigned concentrator work? 12 A. I don't know. 13 Q. Have you ever asked? 14 A. No, I haven't. 15 Q. Why not? 16 A. I haven't ever talked to him in a number 17 of years. 18 Q. Have you asked anyone else whether the new 19 concentrator works? 20 A. I don't believe I have. 21 Q. Why not? 22 A. I wasn't thinking about that any 23 particular time. 24 Q. What I'm trying to understand, Mr. Howell, 25 if you're supposed to be getting rental income from 73: 1 a unit that is in operation and it continues to not 2 be in operation, I'd like to know why you are 3 content with these answers. 4 A. It -- the whole process is a complex</p>				

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<p>5 process that I don't begin to understand all of the 6 development and everything behind it. And Neldon 7 Johnson designs everything. He tests everything. 8 Now, if they had a -- spending millions of 9 dollars on engineering, then you would expect it to 10 be solved within a short period of time. But when 11 you have one person that does everything, they do 12 the design work, they do the testing of each of the 13 components of it to maintain cost levels down, then 14 in that environment it's going to take a lot longer 15 period of time. Then if you hire a bunch of 16 engineers, here's a problem, let's get it fixed, 17 then go. Why -- and that's their decision.</p>				
<p>75:20 Q. When did you start complaining to Greg 21 Shepard that your units were not generating rental</p>	<p>00076 24 Q. Do you know where he gets his information?</p>			

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<p>22 income? 23 A. Probably off and on various times. I 24 don't recall any really specific times or anything. 25 Might have a conversation and ask him what the 76: 1 progress was on the manufacturing and how things 2 were going, but I don't know if any -- and he really 3 says it's Neldon would be the one to talk to because 4 he has actually -- does the design work. He does 5 the -- Greg does the -- runs the day-to-day 6 operation, but it's up to Neldon to make sure that 7 all of the developments are done and everything. 8 And -- 9 Q. About how many times would you say you've 10 complained to Greg Shepard that you're not earning 11 any rental income? 12 A. Hard to say. 13 Q. More than ten? 14 A. Possibly.</p>	<p>25 A. Not -- not really, because I'm not there. 00077 1 I'm not on day-to-day conversations with him. 2 Q. Have you ever complained to anyone that 3 you've never gotten a bonus? 4 A. No. 5 Q. Why not? 6 A. Because of what the contract reads. 7 Q. What do you mean by that? 8 A. The contract reads that IAUS has to take 9 in so much income before their bonuses will be paid. 10 And so until they do that, there's no need 11 complaining. 12 Q. How do you know how much income IAUS has 13 taken in? 14 A. They have to file their SEC reports. 15 Q. Do you track their income via the SEC 16 reports?</p>			

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<p>15 Q. More than 20? 16 A. I don't know. I'm not sure of. 17 Q. And he refers you to Neldon Johnson when 18 you complain about that? 19 A. Well, he usually explains what stage that 20 they are in in their development of the solar field 21 or in the development of their -- of the circuit 22 boards or the different components in case there had 23 been a delay or something.</p>	<p>17 A. I haven't in the last few years.</p>			
<p>77:18 Q. Mr. Howell, it's your understanding, 19 correct, that there are certain federal income tax 20 benefits of buying units through RaPower3? 21 A. Yes. 22 Q. What are those? 23 A. The energy credit and the depreciation.</p>				
<p>78:13 Q. So we'll -- I'll keep my questions with 14 respect to visits to Utah with some connection to 15 RaPower3. So since 2010 how many visits have you</p>				

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<p>16 made to Utah in connection with RaPower3? 17 A. Two. 18 Q. Two. When were those? 19 A. 2012 and I believe 2015, '14 or '15. I'm 20 not sure exactly which year. 21 Q. All right. For the 2012 visit what did 22 you do? 23 A. That's when they had a convention. 24 Q. What did the convention involve? 25 A. We actually toured the manufacturing plant 79: 1 and we had a convention meeting where Greg Shepard 2 talked, Neldon Johnson talked. And then they had a 3 CPA there from Utah that talked too. 4 Q. During your visit in 2012, did you 5 actually see towers with lenses installed? 6 A. We did the -- went to their research and 7 development site.</p>				

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<p>8 Q. The meeting, was that in Salt Lake City?</p> <p>9 A. I believe it was, at the library at the</p> <p>10 beginning. It was two places we went to. Trying to</p> <p>11 remember where they were. Know one was at a</p> <p>12 library. Another one was at a -- I don't -- might</p> <p>13 have been the same area.</p> <p>14 Q. You said that Greg Shepard talked at the</p> <p>15 meeting. Do you remember what he talked about?</p> <p>16 A. Just about RaPower. I don't really</p> <p>17 remember all of the specifics or anything.</p> <p>18 Q. Do you remember what Neldon Johnson talked</p> <p>19 about?</p> <p>20 A. Basically the technology and the</p> <p>21 development of the technology.</p> <p>22 Q. Do you remember what the CPA talked about?</p> <p>23 A. He was talking about the tax benefits and</p>				

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<p>24 the tax law, the energy credits, the depreciation.</p> <p>25 Q. And you said you toured the manufacturing</p> <p>80: 1 plant in 2012?</p> <p>2 A. Yes.</p> <p>3 Q. And you toured the R&D site in 2012?</p> <p>4 A. Yes.</p> <p>5 Q. On the R&D site, that's where there are</p> <p>6 approximately 15 or 17 towers erected, correct?</p> <p>7 A. Somewhere in that neighborhood.</p> <p>8 Q. Right. Did you go anywhere else in 2012?</p> <p>9 A. No. Yeah, I take that back. Yes, we went</p> <p>10 to Neldon's house.</p> <p>11 Q. Why did you go to Neldon's house?</p> <p>12 A. We just went by there. No particular</p> <p>13 reason that I know of. That's just where the whole</p> <p>14 group of us went.</p> <p>15 Q. Do you remember seeing government</p> <p>16 officials --</p>				

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<p>17 A. Yes. 18 Q. -- with large weapons -- 19 A. Yes. 20 Q. -- on that 2012 visit? 21 A. Yes. 22 Q. Do you know what that was about? 23 A. They were doing a raid. 24 Q. On? 25 A. RaPower, Neldon Johnson, confiscating 81: 1 computers and everything. Yes. 2 Q. Did you ask anybody about that? 3 A. We did. We talked about it some. 4 Q. Who did you talk about it with? 5 A. Greg, Neldon. They were -- we were at 6 a -- we had stopped somewhere to -- they cooked 7 hamburgers and stuff, and so -- 8 Q. What did Neldon Johnson say about the 9 raid? 10 A. I don't really recall all of that. We 11 weren't given any specifics.</p>				

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<p>12 Q. You mean specifics? 13 A. I didn't look at any search warrants or 14 anything like that, so I didn't have the specifics. 15 Q. What did Greg Shepard say, if anything? 16 A. That's been awhile back. I'm not sure of 17 any exact things that they said. 18 Q. Do you remember generally? 19 A. Just said that the government raided 20 Neldon's house and the manufacturing plant, because 21 we had to go to the solar research and development 22 first before we could come back to the manufacturing 23 plant.</p>	<p>00081 24 Q. Did you ever come to learn that it was the 25 criminal side of the IRS that was involved in that 00082 1 raid? 2 A. Yes. 3 Q. When did you learn that? 4 A. I saw a -- I saw something online about 5 it. Don't remember all the details. It was a -- it 6 was from a -- there was a report made on it and then 7 they had -- it talked about it. Don't remember all 8 the details of it.</p>			

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	<p>00084</p> <p>7 Q. After you knew that CI had raided</p> <p>8 RaPower3, when you say you scaled back on the</p> <p>9 business you did with RaPower3, do you mean you</p> <p>10 bought fewer lenses or you prepared fewer tax</p> <p>11 returns involving RaPower3 or both?</p> <p>12 A. Probably both.</p> <p>13 Q. Why didn't you stop entirely?</p> <p>14 A. Let's see.</p> <p>15 Q. It's a long pause, Mr. Howell.</p> <p>16 A. Yeah, I'm trying to -- to try to think</p> <p>17 back to that -- that time frame and think what was</p> <p>18 going on then. I don't really recall any</p> <p>19 particulars on what we did in that 2013 reflecting</p> <p>20 for 2012 tax year.</p> <p>21 Q. No, that's not what I'm asking, sir. Why</p> <p>22 didn't you stop entirely?</p>			

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	<p>23 A. Not really sure why. It's -- I wasn't -- 24 I wasn't positive that -- even when that the 25 outcome, if they were going to shut them down, then 00085 1 there would be -- it would have been done rapidly 2 and then the program would have been shut off. 3 If -- and when we -- I talked with, I 4 believe, Greg probably if they had had any notices 5 to -- to stop selling of the lenses or remove their 6 website or if the government said that they could no 7 longer do the program. 8 Q. What did he say? 9 A. That from the information he had, they 10 were still in business. Their manufacturing process 11 was still going on. Neldon was still doing his 12 development of the different parts of it. That's to 13 the best of my recollection.</p>			

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	<p>00087</p> <p>16 Q. Did you ever have conversations with</p> <p>17 Mr. Aulds about whether RaPower3 was a scam?</p> <p>18 A. Yes, we have had some conversations.</p> <p>19 Q. When did you have those conversations?</p> <p>20 A. Don't recall any specific times.</p> <p>21 Q. Was it closer to 2012 or closer to present</p> <p>22 day?</p> <p>23 A. It could be closer to present day.</p> <p>24 Q. What have you told Mr. Aulds about whether</p> <p>25 RaPower3 is a scam?</p> <p>00088</p> <p>1 A. That I don't know if it is a scam. I</p> <p>2 mean, it -- they are a manufacturing, they have</p> <p>3 their manufacturing facility, they have employees,</p> <p>4 they have permits. And in typical scam environments</p>	<p>87:16 - 88:16, Objection, Not relevant, Fed. R. Evid. 401, 402</p> <p>87:24 - 88:8, Objection, Hearsay, Fed. R. Evid. 801(c), 802</p>		<p>Overruled</p> <p>Sustained</p>

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	<p>5 they don't go through a lot of the effort to put in 6 the money, resources to develop a actual 7 manufacturing plant, to purchase properties and have 8 employees to the extent that they do. 9 Q. But you don't know if it's a scam? 10 A. I don't think anybody knows if it is a 11 scam right now. I mean, it's - - some people say it 12 is, some people say it isn't. You know, there's 13 pros and cons to both of it. 14 As long as they're in operation and they 15 are working on putting in their solar field to 16 produce electricity, heat or cool buildings, purify 17 water, you can't really say it is a scam based on 18 their ongoing effort.</p> <p>00089 8 Q. Mr. Howell, you just said that you had</p>	<p>89:8 - 91:5, Objection, Not relevant, Fed. R. Evid. 401, 402</p>		<p>Overruled</p>

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	<p>9 conversations with Mr. Aulds about whether --</p> <p>10 A. He --</p> <p>11 Q. -- excuse me -- RaPower3 is a scam. I</p> <p>12 asked you what you told him. You said you didn't</p> <p>13 know whether it was a scam but there are pros and</p> <p>14 cons to both perspectives.</p> <p>15 I want to know what you think the</p> <p>16 indicators are that RaPower3 is a scam.</p> <p>17 A. I don't really think they are a scam in</p> <p>18 the context that you think of scams.</p> <p>19 Q. Sir, I'm using your words and Mr. Aulds'.</p> <p>20 MR. TEAKELL: Just let him go ahead and</p> <p>21 finish the question, or the answer.</p> <p>22 BY MS. HEALY GALLAGHER:</p> <p>23 Q. I'm using your words and Mr. Aulds' words.</p> <p>24 So I'm asking you to tell me what -- how can you say</p>	<p>89:23 - 91:5, Objection, Hearsay, Fed. R. Evid. 801(c), 802</p>		<p>Sustained</p>

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	<p>25 I don't know if it is? 00090</p> <p>1 A. I'll tell you what I told Bob. I said,</p> <p>2 typically if it's -- if they were going to scam us,</p> <p>3 why are they still in business? Why are they trying</p> <p>4 to develop their solar field? I mean, if they were</p> <p>5 going to scam us, why didn't they shut their doors,</p> <p>6 take their money and run? They are still a</p> <p>7 business. They are still paying employees. They</p> <p>8 are still paying property taxes. They are still</p> <p>9 working on this.</p> <p>10 So for somebody to say it's a scam, then I</p> <p>11 said, okay -- because that's what Bob says, well,</p> <p>12 are we being scammed. I said as long as they are in</p> <p>13 business, that they are building their solar field/ 14 and until they get it complete, and then if it</p>			

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	<p>15 doesn't work, they fold up their doors and they 16 skedooddle, then at that point possibility we were 17 scammed. 18 But they do not show the typical what you 19 would say is a scam business because they are still 20 doing a payroll, they're still producing parts, they 21 still have a project going on, and how -- and so for 22 this to be a scam, I don't see - - yeah, there's 23 questions that arise saying, well, is it a scam 24 because we haven't seen the rental income or we 25 haven't seen the bonus income. Then you got to 00091 1 refer back to your contracts. The contracts do 2 specify at what period of time they will pay the 3 rental, what period of time they will pay the bonus. 4 And until that particular time, you can't really say</p>			

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	<p>5 they're a scam.</p> <p>00095</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>00096</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> <p>00097</p> <p>1 Q. -- and what it means for whether RaPower3</p>	<p>96:22 - 98:6, Objection, Not relevant, Fed. R. Evid. 401, 402</p>		<p>Overruled</p>

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	<p>2 is involved in a tax scheme? 3 A. No. 4 Q. Why not? 5 A. I've answered that before. They are still 6 an ongoing enterprise. Their - - they have had -- 7 the IRS has audited many tax returns, and they have 8 yet to have a single one go through tax court where 9 it would deem that, look, this is not a viable 10 business. They are still working. They're still 11 manufacturing parts. They're still developing their 12 solar field. 13 So if it is a -- a scheme of some sort, 14 nobody has produced any concrete facts to support 15 that. It looks like there's a fishing net out there 16 trying to find facts to support that. I've been in 17 audits with auditors that agreed with it, then I've 18 been in audits with auditors that did not agree with</p>	<p>97:16 - 21, Objection, Hearsay, Fed. R. Evid. 801(c), 802</p>		<p>Overruled</p>

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	<p>19 it. And I've been with appeals officers that saw 20 the substance of it and that there could be 21 substance there and then others that did not. 22 So until there is a tax court case that 23 definitely goes one way or the other, then that will 24 be appealed, and until that goes -- I've read tax 25 court cases on other types of schemes or such that, 00098 1 yes, it was cut and dried, they salted the mines 2 before they sold them as these tax benefits, or this 3 where they were more cut and dried. This is still 4 an ongoing business entity. And so for somebody to 5 say it is a scam or it's a Ponzi scheme or it is a 6 pyramid, they have yet to prove it.</p>			
<p>98: 7 Q. So it sounds like, Mr. Howell, until a</p>				

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<p>8 court definitively rules that the RaPower3 program 9 is unlawful, you will continue to prepare tax 10 returns with RaPower3 tax benefits on them. 11 A. Probably. Because right now there's -- 12 the tax law's there. There's been other court cases 13 with similar technologies that have went in their 14 favor. There's been tax court cases that were 15 opposite. And so this is a complex issue that, you 16 know, if you want to go back to look at is it a 17 scam, then there's a lot of other industries you 18 could look at and say that they were scams. 19 But it's never -- there's no place, no 20 court has said, hey, this is, this isn't. The tax 21 law says, hey, you purchase solar equipment, you're 22 entitled to these solar energy credits. When you</p>				

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<p>23 take the depreciation, you have to reduce the 24 depreciation by half of the solar energy credit to 25 get your basis for your depreciation. And so it's 99: 1 not cut and dry. 2 If I thought that, okay, I can foresee 3 RaPower is going to shut down in 2018, hey, look, 4 we've got to stop doing this, they're going out of 5 business, and so we're not going to have any basis 6 to do any of this. But we don't know what the 7 future's going to hold. They might develop their -- 8 get their solar field up and running and produce 9 electricity and tie it into the grid. And then 10 where is all of these court cases going? I don't 11 see the future. Who can? 12 Now, if I thought that this was a scam 13 against the government, yes, I would tell them they</p>				

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<p>14 couldn't take it. Somebody says they -- they got a 15 racehorse and they have a business of racehorses, 16 I'm going to tell them, no, they don't, because of 17 the -- the tax court cases that there's been on 18 racehorses per se and how they have to be set up and 19 everything. Very few people can actually show that 20 as a business. 21 And the same with farming, same with any 22 business. You can say you have a farm, but until 23 your intent is to make money with that farm, and you 24 can take losses forever, in theory, but at some 25 point in time you've got to show your intent is to 100: 1 make money, how are you going to make money, where 2 is your revenue going to be generated from. And it 3 doesn't say revenue has to be this year or this year</p>				

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<p>4 or this year or this year or this year. There is no 5 specific in the tax law that says you must produce 6 this amount of income to be a viable business or at 7 this certain period of time. What is your intent? 8 Is the intent there to make it a viable business? 9 There's people that -- clients that do 10 RaPower that get commission checks that pay taxes on 11 their commission checks, so they are paying taxes on 12 the network marketing side of their business. And 13 so not -- and some people have purchased them just 14 for the future revenue of rental. I have a client 15 that purchased a number of units. He doesn't need 16 them for tax purposes. He was looking at the future 17 for rental. He was just changing his will to make 18 sure his kids could inherit that for future income.</p>				

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<p>19 So not everybody does RaPower is for the tax 20 benefits. Network marketing people want to get it 21 because of the income side of it. Other people look 22 at the rental income, the bonus income. 23 So it's -- so, yes, I will do tax returns 24 until somebody says, hey, this is totally illegal, 25 it's against this, you're defrauding the government 101: 1 and everything, because the tax law's there. We 2 cannot dispute the tax law.</p>				
<p>101:14 Q. That's right. So, Mr. Howell, if you 15 don't understand the technology, how do you have any 16 way of predicting any rental income coming to you?</p>				
<p>101:22 A. I expect to receive rental income. 23 Q. Why? 24 A. Because I believe that what they are 25 doing, they're getting closer each and every day to</p>				

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<p>102: 1 getting their solar field in production. 2 Q. Why do you believe that? 3 A. By the progress that they're making. 4 Q. Who's telling you about the progress? 5 A. Greg Shepard does, and then -- and then 6 people that have been on their tours that have given 7 information back to other people on what they saw. 8 Q. Are any of those people solar energy 9 technology engineers? 10 A. I don't know. I don't know them all.</p>				
<p>102:11 Q. Let's talk about your visit in 2014 or 12 2015. What did you do on that visit? 13 A. I just toured the manufacturing plant. It 14 was -- wasn't on any of their scheduled tours or 15 anything. So I was just going through Utah on my 16 way to Washington state, said I'll just drop by and</p>				

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<p>17 see if I can get a tour of their development field. 18 But the manager wasn't there when I got there. 19 I wasn't on a scheduled time. I didn't 20 tell them I was going to be there, that when I got 21 into town I called up Greg Shepard and said, hey, 22 look, I'm going to go out to the manufacturing 23 plant, is anybody there that can meet me and show me 24 around. And the manager or the person that was in 25 charge had already -- had already left to go to 103: 1 somewhere else. So I just toured the manufacturing 2 plant. Talked to some of the workers. 3 Q. This was just a self-guided tour? 4 A. Yes.</p>				
<p>103:22 Q. What, if any, differences did you notice 23 between your visit in 2012 and your visit in 2014 or 24 2015?</p>				

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<p>25 A. They'd upgraded the manufacturing 104: 1 facility. They'd blown in insulation into it. They 2 had -- they had rooms that had a number of 3 components in them that they had finished 4 manufacturing, and they had done quite a bit of work 5 to the manufacturing since 2012.</p>	<p>00105 19 Q. Okay. You can put that aside. Okay. You 20 mentioned that there were auditors for the IRS who 21 agreed with the tax treatment that was on someone's 22 tax return. Do you know who those auditors were? 23 A. I don't recall their names. I've dealt 24 with dozens of auditors. 25 Q. Do you remember for the taxpayers which 00106 1 taxpayer's name it was? 2 A. I've done audits for 70, 80 taxpayers. I 3 don't recall them all.</p>	<p>105:19 - 106:19, Objection, Not relevant, Fed. R. Evid. 401, 402; Hearsay, Fed. R. Evid. 801(c), 802</p>		<p>Overruled as to 105:19 to 106:12 and Sustained as to 106:13 to 106:19</p>

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	<p>4 Q. Do you recall which appeals officers</p> <p>5 agreed with the tax treatment for RaPower3?</p> <p>6 A. I've talked with appeals officers from</p> <p>7 different offices. I don't keep track of all their</p> <p>8 names or anything.</p> <p>9 Q. So you don't know?</p> <p>10 A. I'm not sure who they were. I'd just have</p> <p>11 to go back to my records to see if I could find</p> <p>12 them.</p> <p>13 Q. Do you remember which taxpayers were</p> <p>14 involved with these appeals officers who may have</p> <p>15 agreed with the tax treatment for RaPower3?</p> <p>16 A. No, because the -- even if the appeals</p> <p>17 officer agreed with it, they were told by</p> <p>18 Washington, D.C., that they must reject them all,</p> <p>19 whether they agreed with it or not.</p>			

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	<p>00107</p> <p>10 Q. And, Mr. Howell, as an enrolled agent, 11 does that raise any concern for you about the 12 validity of the tax treatment of RaPower3 on your 13 customers' tax returns? 14 A. No. 15 Q. Why not? 16 A. Because there's been too many court cases 17 where IRS was overturned where they deemed something 18 as not correct or not per the tax law and the courts 19 have actually overturned that and said, yes, we 20 agree with the -- with the individual and not the 21 service. 22 And, now, if IRS had 100 percent record 23 that anytime they said something was wrong the 24 courts upheld it, then, yes, there would be cause 25 for a concern. But tax law is too complex, too</p>	<p>107:10 – 108:1, Objection, Not relevant, Fed. R. Evid. 401, 402</p>		<p>Overruled</p>

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	00108 1 broad, and a lot of it's not precise in language.			
108: 2 Q. Have you ever heard of a company called 3 LTB1, LLC? 4 A. I vaguely recall LTB1 on something. I'm 5 not sure where it was at or anything. 6 Q. Do you have any context for it at all? 7 A. It was a -- I think it was a program that 8 they were developing, RaPower3 was developing. 9 That's -- I don't recall any details of it or 10 anything. I just remember seeing the name on 11 something. 12 Q. Have you ever heard of an entity called 13 LTB O&M? 14 A. No.				
109: 4 Q. Going back to something we talked about a 5 little bit earlier. Have you ever used the e-mail 6 address jhowell@howelltax.com?			587	

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<p>7 A. That was an old one. We haven't used that 8 in -- I don't remember how long ago that one was 9 used. Very, very seldom was that ever used. Never 10 sent anything through that one. It's just people 11 would mail -- it was on our website at one time. 12 Now that's all been changed. 13 Q. Okay. But at one time jhowell -- 14 A. Yeah. 15 Q. Sorry. Let me finish the question. At 16 least for a little while, jhowell@howelltax.com was 17 an e-mail address that you used? 18 A. Yes. Apparently there was two jhowells at 19 howelltax.com, some other Howell Tax Service up 20 north somewhere, and so our e-mails were -- so 21 forget it. I'd get theirs, they'd get mine, and I 22 dropped mine. 23 Q. Sounds reasonable. The phone number for</p>				

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<p>24 Howell Tax Service, what is that? 25 A. (940) 766-0981. 110: 1 Q. And the street address for Howell Tax 2 Service? 3 A. 4708 Kmart Drive, Suite B, Wichita Falls, 4 Texas. 5 (Exhibit 587 marked) 6 Q. Mr. Howell, you've been handed Plaintiff's 7 Exhibit 587. Please take a look through this and 8 let me know when you're done. 9 For the record, while you look, the Bates 10 numbers are Howell_John 2710 through 2742. 11 Mr. Howell, do you recognize the pages of 12 Plaintiff's Exhibit 587? 13 A. Yes. 14 Q. These are documents that you produced to 15 the United States? 16 A. Yes. 17 Q. All right. The first few pages through</p>				

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<p>18 Howell 2717 are invoices from RaPower3, correct? 19 A. Correct. 20 Q. These are invoices for -- well, we'll just 21 take a look real quick at Howell 2716. Are you on 22 that page? 23 A. Yes. 24 Q. All right. So this invoice has a purchase 25 date of December 31, 2011. Do you see that? 111: 1 A. Yes. 2 Q. And the units purchased is one, correct? 3 A. Correct. 4 Q. And the description is 600-watt solar 5 thermal lens. Did I read that correctly? 6 A. Correct. 7 Q. So here, Mr. Howell, it looks like the 8 only thing that's purchased is a lens. 9 A. On the invoice, yes. 10 Q. Do you have any understanding why the</p>				

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<p>11 invoice would say lens if something else were 12 included? 13 A. For the -- to make it simplified for 14 people to look at. 15 Q. And if you'd take a look, please, at down 16 payment, it says \$1,050. Do you see that? 17 A. Mm-hmm. 18 Q. Yes? 19 A. Yes, ma'am. 20 Q. Then it says full unit price, \$3,000. Do 21 you see that? 22 A. Yes. 23 Q. Do you have an understanding of why the 24 down payment is there? 25 A. That was how much you were going to be 112: 1 paying before the rental income actually paid on the 2 back end of the note. 3 Q. So would the down payment have to be paid 4 in full before any potential rental income could be 5 delivered to the owner?</p>				

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<p>6 A. Yes. 7 Q. All right. Then if we look below, we've 8 got a couple of entries under payment date. Do you 9 see that? 10 A. Yes. 11 Q. Both payments are made in 2012, correct? 12 A. Yes. 13 Q. For a total of \$1,050, right? 14 A. Correct. 15 Q. Mr. Howell, for the -- the pages marked 16 Howell_John 2710 through 2717, are these the only 17 invoices -- or I'm sorry. Do these invoices reflect 18 the only units that you purchased from RaPower3? 19 A. It looks like it. Let's see if there's 20 any might be missing. Might be some missing in '15. 21 Q. Okay. So I see in these invoices lenses 22 purchased in 2011, 2012, and 2013. 23 A. Mm-hmm. 24 Q. Yes?</p>				

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<p>25 A. Yes. 113: 1 Q. But you believe you bought additional 2 units -- 3 A. Yes. 4 Q. Sorry. Let me finish the question. You 5 believe you bought additional units in 2015? 6 A. Yes. 7 Q. Do you recall when in 2015? 8 A. No. I don't recall when it was. 9 Q. Do you know if it was closer to the 10 beginning of the year -- 11 A. Probably -- 12 Q. -- or to the end of the year? 13 A. Probably September, October. 14 Q. About how many units did you purchase in 15 2015? 16 A. Probably purchased just a couple. 17 Q. Have you purchased any more since 2015? 18 A. I think I purchased a couple in '16. I 19 know I haven't done any in '17.</p>				

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<p>20 Q. And from your testimony, then, do I</p> <p>21 correctly conclude that you did not purchase any in</p> <p>22 2014?</p> <p>23 A. I don't recall if I did that year or not.</p> <p>24 Q. Let's take a look, please, at the pages</p> <p>25 marked Howell_John 2732 through 2739.</p> <p>114: 1 A. Okay.</p> <p>2 Q. These pages are the RaPower3 equipment</p> <p>3 purchase agreement, correct?</p> <p>4 A. Correct.</p> <p>5 Q. Which is dated December 15, 2011, right?</p> <p>6 A. Correct.</p> <p>7 Q. Mr. Howell, I don't believe I saw any</p> <p>8 other equipment purchase agreements in your</p> <p>9 production of documents other than this</p> <p>10 December 2011.</p> <p>11 A. That would have all been duplicates of the</p> <p>12 very same thing, just different dates, but</p>				

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<p>13 everything would have been the same. 14 Q. Okay. That's just my question. The other 15 equipment purchase agreements that you signed -- let 16 me finish -- were essentially the same as this one 17 that we're looking at in Plaintiff's Exhibit 587? 18 A. Correct. And if you will read under the 19 paragraph, "Now, therefore, the parties here agree 20 as follow. System purchased. Seller hereby sells 21 to Purchaser and Purchaser hereby purchases from 22 Seller the Alternative Energy Systems. The number 23 of Alternative Energy Systems purchased by Purchaser 24 from Seller under this agreement shall be," and the 25 number. 115: 1 So they just call it the lens for 2 simplification on the invoice, but here's where it</p>				

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<p>3 says you are purchasing the system. 4 Q. And where, Mr. Howell, in this contract or 5 elsewhere is the term alternative energy system 6 defined? 7 A. I'm not positive if it is actually 8 defined. Says under paragraph 1 under Background, 9 "Seller is the licensee of certain proprietary 10 alternative energy technology, which" -- 11 Q. Can you slow down? The court reporter -- 12 A. Oh, I'm sorry. 13 Q. Just read it slowly if you're going to 14 read it. 15 A. "Seller is a licensee of certain 16 proprietary alternative energy technology, which 17 technology relates to solar energy collection and 18 which technology is utilized for the design and 19 fabrication of certain components which are</p>				

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<p>20 identified below and which are hereinafter 21 collectively referred to as the 'Alternative Energy 22 System.' 23 Q. Great. And it says that these items are 24 identified below. Where are they identified? 25 A. Don't know if they actually put down each 116: 1 of the individual items by themselves. They just 2 group it all together, related alternative energy 3 system and its components. So I guess I could have 4 made a request to give me a list of every component 5 I'm buying, nuts, bolts, wires, cables, but I 6 didn't. 7 Q. How did you know what you were buying? 8 A. My contract says I was buying the 9 alternative energy system. Didn't say just the lens 10 themselves.</p>				

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<p>11 Q. So how do you know what an alternative 12 energy system is? 13 A. I guess I can request them to break down 14 each and every component of that system so that I 15 can list it all, the wires, the cabling, the 16 framing, the tower, the everything. I just never 17 took the initiative to request a total breakdown of 18 everything in the system. 19 Like when I buy a computer, I don't say, 20 now, I want it broken down to how many of this is on 21 there, how many of this is on there and what makes 22 up the circuit board and I want to make sure all my 23 circuits are in my circuit board and -- 24 Q. Why didn't you ask for what you were 25 actually buying? 117: 1 A. I just never asked them to give me a list 2 of everything I was buying.</p>				

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<p>3 Q. Well, I guess that's my question. So you</p> <p>4 identified a bunch of things in what you -- in what</p> <p>5 an alternative energy system might include, but you</p> <p>6 don't know exactly what it includes, do you?</p> <p>7 A. Precisely, no.</p> <p>8 Q. But you're willing to pay \$1,050 down</p> <p>9 payment for each system?</p> <p>10 A. Mm-hmm.</p> <p>11 Q. Yes?</p> <p>12 A. I did, yes, I did.</p>				
<p>118: 9 Q. Let's take a look at Howell 2718</p> <p>10 through -- oh, excuse me real quick. Put that on</p> <p>11 pause.</p> <p>12 The last page of the equipment purchase</p> <p>13 agreement is on page Howell_John 2739. Mr. Howell,</p> <p>14 your name is typewritten on this page. Do you see</p> <p>15 that?</p> <p>16 A. Yes.</p> <p>17 Q. How did you sign this equipment purchase</p>		<p>118-125: Objection. Argumentative; lack of foundation; lack of personal knowledge; calls for speculation</p>	<p>587</p>	<p>Overruled</p>

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<p>18 agreement? 19 A. Digitally. 20 Q. So you went to a website? 21 A. (Witness nods head.) 22 Q. Yes? 23 A. Yes. 24 Q. Did you enter information into that 25 website? 119: 1 A. Yes. 2 Q. What information did you enter? 3 A. The basic equipment purchase, the invoice, 4 how many in -- how many units was being purchased, 5 and then acknowledge the equipment purchase 6 agreement as well as the operation and maintenance 7 agreement. 8 Q. Okay. But -- 9 A. And then put in your name and sign it as a 10 digital signature. 11 Q. Okay. So let me -- I just want to make 12 sure I understand. Let me slow down a little bit.</p>				

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<p>13 So what website did you go to in order to --</p> <p>14 A. RaPower3.</p> <p>15 Q. Okay. And then you gave the website your</p> <p>16 information, you gave it your name? Yes?</p> <p>17 A. Yes.</p> <p>18 Q. And your address?</p> <p>19 A. Yes.</p> <p>20 Q. And you put in the number of systems you</p> <p>21 wanted to purchase?</p> <p>22 A. Yes.</p> <p>23 Q. Then what happened?</p> <p>24 A. Then I pressed enter. Then this says</p> <p>25 about the contracts and everything. You accept the</p> <p>120: 1 contracts or equipment purchase agreement, the</p> <p>2 operation and maintenance agreement.</p> <p>3 Q. So at the time you put in your information</p> <p>4 and then you -- did you then see the equipment</p> <p>5 purchase agreement?</p> <p>6 A. I had already seen them. They had them on</p>				

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<p>7 their website for you to actually look at and to</p> <p>8 read so that you knew what they said.</p> <p>9 Q. Okay. So you had the opportunity to read</p> <p>10 the equipment purchase --</p> <p>11 A. Yes.</p> <p>12 Q. -- agreement?</p> <p>13 A. Yes.</p> <p>14 Q. And when you decided you wanted to sign</p> <p>15 the equipment purchase agreement, what did you have</p> <p>16 to do?</p> <p>17 A. Just acknowledge that I was -</p> <p>- put in my</p> <p>18 name that I accepted the purchase agreement.</p> <p>19 Q. Okay. Did -- so anyway, you digitally</p> <p>20 signed this equipment purchase agreement?</p> <p>21 A. Yes.</p> <p>22 Q. Yes. Okay.</p> <p>23 A. Yes.</p> <p>24 Q. All right. So let's take a look now at</p> <p>25 the operation and maintenance agreement, which is on</p>				

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<p>121: 1 pages Howell_John 2718 through 2731. And this, 2 Mr. Howell, is the operation and maintenance 3 agreement that you signed at the same time as the 4 equipment purchase agreement we just saw? 5 A. Yes. 6 Q. And to your knowledge, is the operation 7 and maintenance agreement we're looking at in 8 Plaintiff's Exhibit 587 basically the same as any 9 other operation and maintenance agreement you would 10 have signed with RaPower3? 11 A. Yes. 12 Q. Okay. So if we take a look at this 13 operation and maintenance agreement, the RaPower3 14 logo is in the upper left-hand side. Do you see 15 that? 16 A. Yes. 17 Q. But this agreement itself is between you</p>				

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<p>18 and LTB, LLC. Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And on the last page of the operation and</p> <p>21 maintenance agreement, we see your digital</p> <p>22 signature, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And then underneath it says "Seller by</p> <p>25 Neldon Johnson, RaPower3." Did I read that</p> <p>122: 1 correctly?</p> <p>2 A. Yes.</p> <p>3 Q. Did you ever wonder why a contract</p> <p>4 purportedly between you and LTB was signed by</p> <p>5 someone on behalf of RaPower3?</p> <p>6 A. If they're owners and they have the</p> <p>7 authorization to do so.</p> <p>8 Q. Did you ever wonder why?</p> <p>9 A. Well, I had actually looked up, like I</p> <p>10 said, LTB, LLC, and it showed Neldon Johnson as one</p> <p>11 of the owners.</p> <p>12 Q. So you didn't wonder why?</p>				

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<p>13 A. No. 14 Q. Okay. And we did talk a little bit about 15 your brief inquiry into LTB, LLC, earlier. Would it 16 surprise you to learn that LTB, LLC, has never 17 operated a solar energy power plant? 18 A. No. 19 Q. Does that raise any concern with you about 20 LTB's ability to effectively operate your solar 21 lenses? 22 A. Not necessarily. Everybody begins at some 23 point in time doing something, you know. Somebody 24 comes and wants to mow your grass. Well, how many 25 grass experience do you have? Have you mowed a 123: 1 thousand, a hundred, 20? No, you're the first one. 2 Okay. I'll give you a shot then, let's see what you 3 do. 4 Q. I'm sorry, Mr. Howell, are you 5 comparing --</p>				

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<p>6 A. I'm just showing that -- 7 Q. Excuse me. I'm asking you a question. 8 Are you comparing the expertise it takes to mow your 9 grass with the expertise it takes -- excuse me -- 10 with the expertise it takes to operate a solar 11 energy power plant? 12 A. No. Just an example that they -- they 13 have to begin somewhere. Somebody started the first 14 of that technology at some point in time without any 15 experience. Somewhere somebody did it in almost 16 every industry. They had to be the first because 17 that technology wasn't there. Nobody had ever done 18 it before for them to learn from. 19 Q. Mr. Howell, though, you said that you had 20 looked into concentrating solar power before, 21 however, correct? 22 A. I had -- 23 Q. Correct?</p>				

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<p>24 A. Yes. 25 Q. And so you know that there are companies 124: 1 who do operate concentrating solar energy power 2 plants, right? 3 A. Yes. 4 Q. Okay. So real quick, just to backtrack, 5 this operation and maintenance agreement, to your 6 understanding, what does this contract mean? 7 A. It means that LTB, LLC, is going to 8 maintain and operate the solar systems, if there's 9 damages, everything, that they replace them, they 10 take care of them, they maintain it. 11 Q. So essentially, Mr. Howell, correct me if 12 I'm wrong, but you purchased two systems from 13 RaPower3, correct? 14 A. Yes. 15 Q. And then you believe you leased them to 16 LTB, LLC, correct?</p>				

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<p>17 A. Correct. 18 Q. By virtue of this agreement? 19 A. Yes. 20 Q. And you're expecting your systems to 21 generate rental income for you, correct? 22 A. Yes. 23 Q. Because of LTB, LLC's operation of those 24 systems, correct? 25 A. Yes. 125: 1 Q. But it doesn't matter to you whether LTB 2 has ever operated any system successfully or not? 3 A. Somebody has to learn the game sometime. 4 Q. And you're willing to let them learn their 5 game on your dime? 6 A. Yes.</p>				
<p>125: 9 Q. Would it surprise you to learn that LTB 10 has never taken any action whatsoever? 11 A. It might. 12 Q. I'll represent to you that Neldon Johnson</p>		<p>125-126 : Objection. Argumentative; foundation; lack of personal knowledge; calls for speculation</p>		<p>Overruled</p>

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<p>13 testified approximately six weeks ago that LTB, LLC, 14 has never done anything. Does that raise any 15 concerns for you? 16 A. It could be they didn't have anything 17 to -- to take over at that particular time to do 18 something with. 19 MS. HEALY GALLAGHER: Object to the 20 responsiveness of the answer. 21 Would you read back my question, please. 22 THE REPORTER: "Question: I'll represent 23 to you that Neldon Johnson testified approximately 24 six weeks ago that LTB, LLC, has never done 25 anything. Does that raise any concerns for you?" 126: 1 A. Not necessarily. 2 BY MS. HEALY GALLAGHER: 3 Q. Does it raise any concern for you that 4 LTB, LLC, doesn't even have a bank account?</p>				

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<p>126: 6 A. Not necessarily. 7 BY MS. HEALY GALLAGHER: 8 Q. Why aren't you concerned about LTB not 9 having done anything? 10 A. Until the solar field is completed that 11 they are working on, then they don't turn it over to 12 LTB until that time, so -- 13 Q. Let's take a look, please, at paragraph 14 2.1 of the operation and maintenance agreement. The 15 title of the subparagraph is "Appointment," and it 16 says, "The Owner appoints the Operator and the 17 Operator accepts the appointment to perform the 18 following services subject to and in accordance with 19 the provisions of this Agreement, collectively, the 20 'Work.' 2.1.1, Routine O&M services; 2.1.2, 21 Additional services; and 2.1.3, Transition 22 services." 23 Did I read that correctly?</p>		<p>126-133: Objection. Argumentative; lack of foundation; lack of personal knowledge; calls for speculation</p>		

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<p>24 A. Yes. 25 Q. Mr. Howell, what are routine O&M services? 127: 1 A. Typically they check out the equipment to 2 see if it's working properly. 3 Q. How do you know that? 4 A. How do I know what O&M services is? Is 5 that the question? 6 Q. That's the question. 7 A. I've been in manufacturing before. We did 8 operation and maintenance services on equipment, 9 machinery, so I know what it is. 10 Q. How do you know what that means with 11 respect to solar energy systems? 12 A. It would go into the same thing, that they 13 would have to make sure that the equipment is 14 operating per the guidelines that have been 15 established for them too, and they check out the 16 equipment. 17 Q. Where --</p>				

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<p>18 A. If something's broken, replace it.</p> <p>19 Q. Where, Mr. Howell, in this agreement are</p> <p>20 routine O&M services defined?</p> <p>21 A. As far as I know, they don't break it down</p> <p>22 exactly under all the details of routine operation</p> <p>23 and maintenance.</p> <p>24 Q. So how could you possibly know if LTB,</p> <p>25 LLC, was ever meeting its obligations under this</p> <p>128: 1 contract?</p> <p>2 A. As far as I know, they don't have anything</p> <p>3 under the contract yet because they have not taken</p> <p>4 over the solar field yet that is currently being</p> <p>5 still in the production stage.</p> <p>6 Q. Well, let's say they do someday take it</p> <p>7 over. How will you know whether LTB, LLC, is</p> <p>8 meeting its obligations to you under this contract?</p> <p>9 A. I can go out there and look at it.</p>				

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<p>10 Q. How will you know whether LTB, LLC, is</p> <p>11 actually performing whatever routine O&M services</p> <p>12 means?</p> <p>13 A. Request maintenance logs.</p> <p>14 Q. But, sir, like if you don't know what</p> <p>15 exactly they're supposed to be doing -- like, what</p> <p>16 have they agreed to here?</p> <p>17 A. When you look at typical O&M --</p> <p>18 Q. Sir, if you don't know, just say you don't</p> <p>19 know.</p> <p>20 A. Under typical operation and maintenance</p> <p>21 servicing, they usually give them a punch list of</p> <p>22 items that they would need to be checking out. So</p> <p>23 until they take over the solar field, then they</p> <p>24 might have that information at that time, say, okay,</p> <p>25 when we perform our operation and maintenance, this</p> <p>129: 1 is what we do on a daily, a weekly, a monthly</p>				

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<p>2 schedule. Until that time, they haven't taken over</p> <p>3 yet.</p> <p>4 Q. Have you ever seen such a punch list?</p> <p>5 A. I've seen similar.</p> <p>6 Q. No, no, no. For your solar energy</p> <p>7 systems, have you seen any punch list that would be</p> <p>8 the routine O&M services?</p> <p>9 A. No, I haven't. I haven't requested it</p> <p>10 either.</p> <p>11 Q. Do you know what additional services means</p> <p>12 in the course for this contract under paragraph</p> <p>13 2.1.2?</p> <p>14 A. No. And I've never asked for it.</p> <p>15 Q. What about transition services? Do you</p> <p>16 know what that means?</p> <p>17 A. Under this particular agreement, have I</p> <p>18 asked them what that -- how they define transition</p> <p>19 services? No, I haven't.</p>				

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<p>20 Q. Does this contract define transition</p> <p>21 services?</p> <p>22 A. Not that I'm aware of.</p> <p>23 Q. Does this contract define additional</p> <p>24 services?</p> <p>25 A. Not that I'm aware of.</p> <p>130: 1 Q. Under paragraph 2.3, Operation and</p> <p>2 Maintenance Services, there's a reference to the</p> <p>3 safety and operating guidelines provided by RaPower3</p> <p>4 to operator. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Have you ever seen the safety and</p> <p>7 operating guidelines identified here?</p> <p>8 A. No. And I've never asked for them.</p> <p>9 Q. Any reason why not?</p> <p>10 A. They're not in operation yet, so --</p> <p>11 Q. So here's what I'm --</p> <p>12 A. They could be developing those guidelines</p> <p>13 so that when they do take over the operation that</p>				

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<p>14 they're in place, and then they can -- then I can 15 request them. 16 Q. So here's what I'm trying to understand. 17 You purchased systems from RaPower3. Yes? 18 A. Yes. 19 Q. And then you lease them to LTB. 20 A. Yes. 21 Q. Where are they? 22 A. They're currently in production in the 23 production field -- 24 Q. Physically. 25 A. -- being put together. 131: 1 Q. No, sir. I'm sorry, sir. We missed each 2 other on that one. Physically where are they? 3 A. In the production field being put up on -- 4 on towers and such. 5 Q. Is that in Millard County, Utah? 6 A. I can't give you the exact location. I've 7 never been there.</p>				

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<p>8 Q. You don't know where your systems are?</p> <p>9 A. I haven't looked to see exactly --</p> <p>10 Q. Sir, excuse me. Not what I was looking</p> <p>11 for. Do you know where your systems are?</p> <p>12 A. Precisely, no.</p> <p>13 Q. Imprecisely?</p> <p>14 A. In Utah at their development site where</p> <p>15 they take people when they do their tours to show</p> <p>16 them the progress of it.</p> <p>17 Q. How do you know that your systems are in</p> <p>18 Utah at the development site?</p> <p>19 A. Well, I guess I can't really know until I</p> <p>20 go there and ask them which ones specifically are</p> <p>21 the ones I purchased.</p> <p>22 Q. Have you ever done that?</p> <p>23 A. No.</p> <p>24 Q. Why not?</p> <p>25 A. Because I haven't been in Utah in the last</p> <p>132: 1 year or two to take a tour for them to show me</p>				

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<p>2 exactly where that they are putting them up and 3 which ones are going to be mine. 4 Q. Sir, you bought systems in 2011. 5 A. Yes, I did. 6 Q. And you went to visit in 2012. 7 A. Yes. 8 Q. Why didn't you ask then? 9 A. They had not started the production field. 10 They were still finish doing research and 11 development, and they had not started work yet on 12 the production field where they were going to put up 13 the towers. 14 Q. So then to your understanding, Mr. Howell, 15 did the systems you purchased in 2011 even exist in 16 2012? 17 A. Yes. 18 Q. Where were they? 19 A. Part of it was in their warehouse with the 20 components that were being put together. 21 Q. Were they assembled?</p>				

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<p>22 A. Some was assembled. 23 Q. Yours? 24 A. I didn't go and ask them is this one mine, 25 is this one mine, is this one mine. 133: 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.</p>				
<p>133:14 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</p>	<p>00133 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.</p>	<p>133:14-137:18: Objection. Argumentative; foundation; lack of personal knowledge; calls for speculation 133:8 - 13, Objection, Not relevant, Fed. R. Evid. 401, 402</p>		<p>Overruled. Sustained</p>

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<p>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? 134: 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.</p>				

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<p>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 135: 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</p>				

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<p>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</p>				

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<p>25 the distributor application that you filled out, 136: 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.</p>				

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<p>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? 137: 1 A. Yes. 2 Q. And this contract, I believe this is the 3 bonus situation you were talking about earlier? 4 A. Yes. 5 Q. Yeah. Okay. So there's no signature for 6 the RaPower3 managing partner on your copy of this 7 contract. Do you see that? 8 A. Uh-huh. 9 Q. Yes? 10 A. Yes. 11 Q. Do you have a signed copy? 12 A. I believe I do. 13 Q. So, Mr. Howell, if this contract is</p>				

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<p>14 between you and RaPower3, how does RaPower3 have any 15 claim on paying money based on International 16 Automated Systems' gross revenue? 17 A. Based on the ownership of the RaPower3 and 18 the common ownership of AIUS.</p>				
<p>138: 1 (Exhibit 588 marked) 2 Q. Handing you, sir, what's been marked 3 Plaintiff's Exhibit 588. Please take a look at that 4 and let me know when you are done. 5 For the record, Plaintiff's 588 is marked 6 Howell_John 2681. 7 Do you recognize Plaintiff's Exhibit 588? 8 A. Yes. 9 Q. What is it? 10 A. It was the placed-in-service letter. 11 Q. And this is a true and accurate copy of a 12 letter that you produced to the United States? 13 A. I believe it was.</p>			588	

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<p>14 Q. So this is a letter from RaPower3 to you, 15 correct? 16 A. Yes. 17 Q. And the first line of the letter -- I'm 18 sorry. It's dated February 2, 2012, correct? 19 A. Yes. 20 Q. The first line of the letter says, "This 21 letter is regarding the alternative energy systems 22 that you purchased from RaPower3, LLC. RaPower3 put 23 into service your equipment on or before 24 December 31, 2011. This will qualify you for the 25 Internal Revenue Services solar energy tax credit." 139: 1 Did I read that correctly? 2 A. Yes. 3 Q. Mr. Howell, what's your understanding of 4 how RaPower3 put your equipment into service? 5 A. When the items are produced and available</p>				

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<p>6 for -- to be put into the system, then they are 7 eligible for the credit and so is the components 8 that make up the system. 9 Q. So, Mr. Howell, how did RaPower3 put into 10 service your equipment in 2011? 11 A. They had already produced a number of the 12 lenses, as you call them, and they were for sale to 13 people at that time and they were available to be 14 put together with other subcomponents at the time of 15 purchase. 16 Q. Mr. Howell, when you visited in 2012, 17 about how many towers did you see that had been 18 constructed? 19 A. I only went to the research and 20 development site. I didn't go to any production 21 sites. But we did see the lenses that were there. 22 We saw lenses that were framed up, cabling on the</p>				

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<p>23 lenses so that they were in the production state. 24 MS. HEALY GALLAGHER: Would you read back 25 my question, please. 140: 1 THE REPORTER: "Question: Mr. Howell, 2 when you visited in 2012, about how many towers did 3 you see that had been constructed?" 4 A. None, because I did not go to the 5 construction site. We went to the research and 6 development site. 7 BY MS. HEALY GALLAGHER: 8 Q. On any place you visited personally, I 9 don't care where you didn't go, where you visited 10 how many towers did you see? 11 A. 16, 17, 18. 12 Q. And when you drove by in 2014 or 2015, how 13 many towers did you see? 14 A. It was the same place that I went to, the 15 research and development.</p>				

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<p>16 Q. How many towers did you see?</p> <p>17 A. About the same.</p> <p>18 Q. Did you see any other towers?</p> <p>19 A. No.</p> <p>20 Q. I think one of the difficulties I'm having</p> <p>21 is that we're calling these things alternative</p> <p>22 energy systems and you're talking about these</p> <p>23 systems being put into a system and that means that</p> <p>24 they're placed in service. So I'm just trying to</p> <p>25 understand what we're talking about here, so we're</p> <p>141: I going to break this down slowly.</p> <p>2 You have testified that your understanding</p> <p>3 is that an alternative energy system is more than</p> <p>4 just a lens.</p> <p>5 A. Correct.</p> <p>6 Q. Correct. Okay. So for any alternative</p> <p>7 energy system, which is more than a lens, how was</p>				

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8 such a system put into service?				
<p>141:12 Q. On or before December 31, 2011.</p> <p>13 A. This goes back to what is a system.</p> <p>14 According to you, the system was just the lens,</p> <p>15 because we don't have a component breakdown.</p> <p>16 Q. Mr. Howell, I'm going to stop you there</p> <p>17 because I'm using your definition. I'll go with you</p> <p>18 on this.</p> <p>19 A. And I --</p> <p>20 Q. I'll go with you on this. Okay. A system</p> <p>21 is a lens plus. It's a lens plus.</p> <p>22 To your understanding, how was a lens plus</p> <p>23 that you bought in 2011 put into service in 2011?</p> <p>24 A. It was placed into service --</p>		<p>141:12-25: Objection. Argumentative; foundation; lack of personal knowledge; calls for speculation</p>		<p>Overruled</p>
<p>142: 3 A. Because when the lenses are produced and</p> <p>4 purchased, they are available for their intended use</p> <p>5 at that particular time.</p> <p>6 BY MS. HEALY GALLAGHER:</p>		<p>142-143 : Objection. Argumentative; lack of foundation; lack of personal knowledge; calls for speculation</p>		<p>Overruled</p>

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<p>7 Q. Okay. You just said -- I just want to 8 start at the beginning -- when a lens is produced 9 and purchased. Do you mean when a lens is 10 manufactured at Lucite? 11 A. And delivered to RaPower. 12 Q. Okay. And delivered to RaPower. So when 13 a lens has been produced by Lucite and is delivered 14 to RaPower, does that mean to you it has been put 15 into service? 16 A. According to what the code section says, 17 if it is available for its intended purpose, then it 18 is considered placed in service. Even the 19 components that are part of it are considered placed 20 in service also. That was through a tax court 21 ruling. 22 Q. Here's my question. When Lucite produces 23 plastic to RaPower3, it's in a rectangle. Right?</p>				

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<p>24 You know that, right? You saw the pallets --</p> <p>25 A. Yes.</p> <p>143: 1 Q. -- at the manufacturing plant. Those</p> <p>2 pallets are rectangles, are they not?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. So do you know what has to happen</p> <p>5 between the rectangle that arrives and the triangles</p> <p>6 that are framed out? Do you know?</p> <p>7 A. I didn't study it specifically, no, but</p> <p>8 we -- we saw a number of them that were in their</p> <p>9 frames, their cabling and everything, so they do</p> <p>10 produce it.</p> <p>11 Q. Mr. Howell, what I'm asking you is, how is</p> <p>12 a rectangular piece of plastic put into service as a</p> <p>13 lens?</p>				
<p>143:15 A. Not sure they are actually rectangular in</p> <p>16 formation. They're more pie shaped instead of a</p>		<p>143-146: Objection. Argumentative; lack of foundation; lack of personal knowledge; calls for speculation</p>		<p>Overruled</p>

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<p>17 actual rectangular -- 18 BY MS. HEALY GALLAGHER: 19 Q. Is that how you believe they arrive from 20 Lucite, in triangles? 21 A. I saw pallets of them that were in the -- 22 I didn't actually get out there and measure them and 23 everything, but they had pallets of them that were 24 there. Then they had some that were in the frames 25 with the cablings attached to them. 144: 1 Q. And I guess my question now, Mr. Howell, 2 is this. You've testified that a system is a lens 3 plus components. Yes? 4 A. Yes. 5 Q. So if you don't know what all the 6 components are of what makes a system, how can you 7 know whether a system has been completed such that 8 it could be put into service?</p>				

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<p>9 A. The entire system doesn't have 10 to be put 11 together. 12 Q. So -- okay. Let me stop you 13 there because 14 I think -- I think I've caught 15 where we're missing 16 each other here. 17 So what you purchased right 18 now, let's 19 call it a lens plus. Will you 20 agree with me on 21 that? 22 A. Okay. 23 Q. Okay. The lens plus, in order 24 for it to 25 generate electricity, needs to be 26 placed in a 27 greater system. Do you 28 understand that? 29 A. Yes. 30 Q. Connected with a turbine and 31 a generator. 32 Yes? 33 A. Yes. 34 Q. So is it your testimony that 35 the lens plus 36 need not be fully assembled 37 in order to be put into 38 service?</p>				

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<p>3 A. True. 4 Q. So -- so it's sufficient for Lucite to 5 have delivered the plastic of the lens to RaPower3 6 for a lens plus to have been placed in service? 7 A. When RaPower receives them, then they 8 start putting the frames and they put the components 9 on them. At what stage are the ones you actually 10 purchased at? Without you going there and saying is 11 this one mine that's got all of the cabling on it or 12 is mine out there on the table, because they are -- 13 they've had these already produced. They're already 14 putting components on them, and it says that once 15 they're available for their intended use, they are 16 available for their intended use. It doesn't say it 17 has to be a complete system as itself. It says that 18 the components still qualify also.</p>				

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<p>19 MS. HEALY GALLAGHER: Would you read back 20 my question, please. 21 THE REPORTER: "Question: So it's 22 sufficient for Lucite to have delivered the plastic 23 of the lens to RaPower3 for a lens plus to have been 24 placed in service?" 25 A. Possibility. Because once it's delivered, 146: 1 they -- 2 BY MS. HEALY GALLAGHER: 3 Q. Yes or no, sir? 4 A. I'll go with yes.</p>				
<p>146:15 Q. Mr. Howell, how many -- how do you decide 16 how many lenses to purchase in any given year? 17 A. I just pick -- see how many I want to 18 purchase. 19 Q. Based on what? 20 A. On what I think I can afford to get that 21 year. I don't use any precise formula or anything. 22 RaPower says you can calculate it based on this</p>		<p>148-149 : Objection. Argumentative; lack of foundation; lack of personal knowledge; calls for speculation</p>	<p>588 589 590</p>	<p>Overruled</p>

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<p>23 formula. 24 Q. What formula is that? 25 A. They say to take your tax liability and 147: 1 determine what your tax liability is to try to 2 reduce your tax liability and then you can purchase 3 between a certain number. I think it's take your 4 tax liability times .0007 and give you approximation 5 of how many units you would need if you want to 6 totally offset your tax liability or if you just 7 want to do part of it, all of it. 8 Q. Have you used the RaPower3 calculation to 9 help you decide how many lenses to purchase? 10 A. Not for myself. 11 Q. Have you used it to help other people 12 decide -- 13 A. If they ask. 14 Q. Let me finish the question. Have you used 15 the RaPower3 calculation to help other people decide</p>				

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<p>16 how many lenses to purchase? 17 A. If they asked, or I told them to go to the 18 RaPower website. It had the calculator on there for 19 them. 20 Q. So is the answer yes? 21 A. Yes. 22 Q. Very quickly back to Plaintiff's 23 Exhibit 588. The letter says that RaPower3 put your 24 equipment into service. Why RaPower3? 25 A. Because it hadn't been signed over to LTB 148: 1 yet. 2 Q. Sir, you leased your lenses to LTB. 3 A. Uh-huh. 4 Q. Yes? 5 A. Yes. 6 Q. So what does RaPower3 have to do with 7 lenses at this stage? 8 A. Common ownership. 9 Q. Okay. So in your mind it didn't matter 10 because Neldon Johnson was the owner of all these --</p>				

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<p>11 A. Common ownership. 12 Q. Excuse me. Let me finish the question. 13 A. Yes. 14 Q. In your mind it didn't matter because 15 Neldon Johnson was the owner of all of these 16 entities? 17 A. Yes. 18 Q. Mr. Howell, do you consider yourself to be 19 in a trade or business with respect to the solar 20 lenses that you've purchased from RaPower3? 21 A. Yes. 22 Q. What trade or business is that? 23 A. It will be the rental once the rental 24 starts coming in. 25 Q. Any other businesses? 149: 1 A. Well, the network marketing part of it 2 will receive commissions from downline purchases. 3 Q. What sort of tasks do you do, if any, to</p>				

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<p>4 further your business renting out solar lenses? 5 A. Nothing. 6 Q. Has anyone told you that you are in the 7 business of renting out solar lenses? 8 A. They do mention that. 9 Q. Who's "they"? 10 A. RaPower. 11 Q. Who at RaPower? 12 A. Greg Shepard. 13 Q. Why do you believe him? 14 A. Based on the contracts that you're 15 going -- that you are renting them to LTB. 16 Q. Which doesn't actually do anything. 17 A. Until they're in true operational, 18 functional, producing stage, it won't. 19 Q. So, Mr. Howell, who in your mind is 20 responsible for getting this to a functional state 21 such that it could be turned over to LTB?</p>				

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<p>22 A. It's the RaPower, Greg Shepard and his 23 team, Neldon Johnson. 24 Q. Anyone else, to your knowledge? 25 A. Not that I know of. Might have somebody 150: 1 else that's doing it. I don't know. 2 Q. Mr. Howell, in fact, you have recruited 3 people into your downline with RaPower3, correct? 4 A. Yes. 5 Q. Do you have an idea of how many people are 6 in the first step below you in your downline? 7 A. No. 8 Q. Is it more than five? 9 A. I'm sure it is. I don't keep track of 10 them. 11 Q. Is it more than 20? 12 A. Don't know. 13 Q. Do you know how many layers your downline 14 goes? 15 A. Maximum it can go is six.</p>				

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<p>16 Q. Mr. Howell, Rocking H is also a sponsor. 17 A. Yes. 18 Q. Right? Rocking H is in your downline, 19 correct? 20 A. Yes. 21 (Exhibit 589 and Exhibit 590 marked) 22 Q. Sir, you've been handed what's been marked 23 Plaintiff's Exhibit 589 and 590. Please take a look 24 at those and let me know when you're ready. 25 A. Okay. 151: 1 Q. Plaintiff's Exhibit 589 is marked 2 Ra3 5959. Do you recognize Plaintiff's Exhibit 589? 3 A. No. 4 Q. Do you recognize Exhibit -- Plaintiff's 5 Exhibit 590, which is Bates marked Ra3 5952 through 6 53? 7 A. No. 8 Q. Have you ever logged into your RaPower3 9 member office or back office?</p>				

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<p>10 A. Sometimes, yes. 11 Q. Are you familiar with how to view your 12 downline? 13 A. Yes. 14 Q. Does it look like this to you? 15 A. No. 16 Q. No? Well, let's take a look, please, at 17 the names on the first section of Plaintiff's 18 Exhibit 589. Wichita Falls Floor, Stanley Mahler, 19 Susan Lesage, Chris Crutcher, Darwin Webb. Do you 20 see those names? 21 A. Yes. 22 Q. Do you recognize those folks as being in 23 your downline? 24 A. Yes. 25 Q. Then if we take a look at Plaintiff's 152: 1 Exhibit 590, those same names appear in the first 2 section there. Do you see that? 3 A. Yes. 4 Q. So they're also in the downline for 5 Rocking H.</p>				

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<p>6 A. Yes. 7 Q. Mr. Howell, the dates on Plaintiff's 8 Exhibit 589 and 590 only go into about May 2012. Do 9 you see that? 10 A. Uh-huh. 11 Q. Yes? 12 A. Yes. 13 Q. Have you sold RaPower3 systems to more 14 people than appear on these exhibits since May 2012? 15 A. I'm sure I have.</p>				
<p>152:25 Q. Do you have -- have you developed any 153: 1 marketing materials for your RaPower3 business? 2 A. No. 3 Q. What kinds of things do you do to further 4 any business you have connected with RaPower3? 5 A. What do I do? Not a whole lot with 6 RaPower3 or some of my other network marketing. 7 Q. So when we were talking about Howell Tax</p>	<p>00152 16 Q. Mr. Howell, when you consider whatever 17 business you might be in with respect to RaPower3, 18 do you separate out the equipment rental business 19 from the network marketing business? 20 A. To me they're the same. They're just all 21 through the RaPower. 22 Q. Do you have a separate bank account for</p>			

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<p>8 Service, you could list off four or five core things 9 that Howell Tax Service does. 10 A. Yes. 11 Q. Accounting, bookkeeping, payroll, things 12 like that. 13 A. Yes. 14 Q. Do you have any -- anything that you can 15 identify that you do for your RaPower3 business? 16 A. Not particularly. I mean, do I maintain a 17 website for it? No, I don't do that. Do I put out 18 advertising for it? No, I do not do that. It's 19 just like my -- my Ignite business. I do maintain a 20 website for that, but other than that, I don't 21 really promote that business either particularly. 22 It's -- they just send me residual checks every 23 month, so -- I could actually do more with it, but 24 I'm busy as it is, so I don't really concentrate a</p>	<p>23 any business you have connected with RaPower3? 24 A. Yes.</p>			

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25 lot on any of the network marketing companies.				
154: 1 Q. Do you have an idea of how much money you 2 have made from RaPower3 since you joined? 3 A. Not exactly. Probably over the last five, 4 six years maybe 20,000. 5 Q. Do you put any income from RaPower3 on 6 Rocking H tax returns? 7 A. Yes, if they receive a commission check.				
154:11 Q. How many systems has Rocking H purchased 12 over time? 13 A. Maybe ten, twelve systems. 14 Q. Since 2011? 15 A. Since 2011. 16 (Exhibit 591 marked) 17 Q. Mr. Howell, you've been handed what's been 18 marked Plaintiff's Exhibit 591. Please take a look 19 at that and let me know when you're ready to answer 20 questions. 21 For the record, this is Bates numbered		154:16-156:7: Objection. lack of foundation; lack of personal knowledge; calls for speculation	591	Overruled

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<p>22 Howell_John 2989 through 2984 (sic).</p> <p>23 A. Okay.</p> <p>24 Q. Do you recognize Plaintiff's Exhibit 591?</p> <p>25 A. Vaguely. These were printed off off of an</p> <p>155: 1 e-mail that Greg Shepard had sent out.</p> <p>2 Q. So to your knowledge Plaintiff's</p> <p>3 Exhibit 591 came to you from Greg Shepard?</p> <p>4 A. Yes.</p> <p>5 Q. And for the record, Plaintiff's</p> <p>6 Exhibit 591 starts with a document called Series 1</p> <p>7 Solar Lenses?</p> <p>8 A. Yes.</p> <p>9 Q. And then is followed by a couple of</p> <p>10 different documents, all in the series, Series 1</p> <p>11 through 5, correct?</p> <p>12 A. Yes.</p> <p>13 Q. Does this appear to be a true and accurate</p> <p>14 copy of a document you produced to the</p> <p>15 United States?</p>				

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<p>16 A. I believe so. This is something I printed 17 off from an e-mail that I had received. 18 Q. What, if anything, did you do with 19 Plaintiff's Exhibit 591? 20 A. I'm not sure if I even read all of them or 21 not. I just probably just glanced at them, read 22 some of it. I'm not positive I read all of it or 23 not. 24 Q. Did you ever show this document to anybody 25 else? 156: 1 A. I might have. I'm not sure if I ever did. 2 Q. So a couple of these series documents have 3 dates at the top, August 28, 2012, through 4 September 8, 2012. Do you see that? 5 A. Yes. 6 Q. Is that approximately when you would have 7 received these documents?</p>				
156:14 (Exhibit 592 marked)	00156		592	

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<p>15 Q. Showing you what's been marked Plaintiff's</p> <p>16 Exhibit 592. Please take a look at that and then</p> <p>17 let me know when you are ready to answer questions.</p> <p>18 For the record, it's Bates numbered</p> <p>19 Howell_John 2793 through 2794.</p> <p>20 A. Okay.</p> <p>21 Q. Do you recognize Plaintiff's Exhibit 592?</p> <p>22 A. Yeah, I've seen it.</p> <p>23 Q. Is this a document that you created?</p> <p>24 A. No. This was from an e-mail from Greg</p> <p>25 Shepard.</p> <p>157: 1 Q. Okay. So you got Plaintiff's Exhibit 592</p> <p>2 from Greg Shepard?</p> <p>3 A. Yes.</p>	<p>6 Q. Is that approximately when you would have</p> <p>7 received these documents?</p> <p>8 A. I would think so. I'm not positive.</p> <p>9 Q. To your knowledge, did you use the</p> <p>10 information in Plaintiff's Exhibit 591 in the course</p> <p>11 of telling people about RaPower3 or preparing tax</p> <p>12 returns?</p> <p>13 A. Not that I really recall.</p>			
<p>157:12 Q. Actually before you take a look at</p> <p>13 Plaintiff's Exhibit 593, is Plaintiff's Exhibit 592</p> <p>14 a true and accurate copy of a document you produced</p> <p>15 to the United States?</p>	<p>00157</p> <p>4 Q. Did you ever use the information in</p> <p>5 Plaintiff's Exhibit 592 to tell people about</p> <p>6 RaPower3?</p> <p>7 A. Not that I'm aware of.</p>		<p>593</p> <p>592</p>	

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Plaintiff Designations – BLUE Defendant Completeness— PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness— PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>16 A. I would guess it is. 17 Q. Any reason to think it's not? 18 A. No. 19 Q. Okay. 20 A. I think it is.</p>	<p>8 Q. Did you ever use it in helping you prepare 9 tax returns related to RaPower3? 10 A. No.</p> <p>00157 21 Q. All right. Take a look at 593, please. 22 And let me know when you're ready. 593 is marked 23 Howell_John 2006 through 2007. 24 A. Okay. 25 Q. Do you recognize Plaintiff's Exhibit 593?</p> <p>00158 1 A. I believe so. 2 Q. What is it? 3 A. This is some information from IRS's small 4 business/self-employment section, requirements for 5 operating a business, where it goes on tax returns, 6 Schedule C, Schedule E. 7 Q. Sure. We'll talk about the content. 8 We'll talk about the content in a second. Is this a</p>			

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	<p>9 document that you prepared? 10 A. I think I had done it in response to an 11 audit or something. 12 Q. So the answer is yes, you -- 13 A. I would say yes. It looks familiar. 14 Q. Mr. Howell, you prepared Plaintiff's 15 Exhibit 593. Yes? 16 A. I believe so. 17 Q. Do you have an understanding for the 18 context that led you to prepare Plaintiff's 19 Exhibit 593? 20 A. It was probably during a tax audit that 21 had come up and using it on why -- why rental income 22 is on Schedule C sometimes versus Schedule E. 23 Q. Did you share Plaintiff's Exhibit 593 with 24 anybody? 25 A. I'm sure I did with IRS. 00159</p>			

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	<p>1 Q. Anyone other than the IRS?</p> <p>2 A. Not that I'm aware of because it was</p> <p>3 probably in a audit that I prepared it for.</p> <p>4 Q. Do you remember when you prepared it?</p> <p>5 A. No.</p> <p>6 Q. Is it closer to 2011 or closer to present</p> <p>7 day?</p> <p>8 A. Probably '13, '14, somewhere in that time</p> <p>9 frame, maybe '15, because we did a number of audits.</p> <p>10 Q. Let's take a look, please, at the first</p> <p>11 sentence. "The first thing to remember is that the</p> <p>12 individual purchased business use tangible personal</p> <p>13 property, the lenses, so they could be rented, for</p> <p>14 various reasons, and produce income for the</p> <p>15 businessperson."</p> <p>16 What are the various reasons the lenses</p> <p>17 could be rented?</p>			

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	<p>18 A. They could be rented out for somebody to 19 produce electricity, heat water, heat a building.</p>			
<p>161:25 Q. Here's my question. Just because a lens 162: 1 can concentrate light and burn something on the 2 ground in the desert, why do you think it means that 3 lens can produce electricity? 4 MR. PAUL: See, that's a different 5 question. You can answer that. 6 MR. TEAKELL: If you know. 7 A. I'm not -- I'm not a solar expert, so I 8 don't know.</p>				
<p>163:24 Q. Mr. Howell, how did you go about selling 25 RaPower3 systems to other people? 164: 1 A. If someone asked me about it, I told them. 2 They'd typically hear from it from somebody else, 3 then I would tell them how it worked in theory and 4 to go to the website and look at all the information</p>				

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<p>5 that was there, to print out the documents for their 6 own -- for their own use, the contracts that they 7 were signing and the operation and maintenance 8 agreements and everything. 9 Q. Did you ever seek people out to tell them 10 about it without them first having asked you? 11 A. Not particularly, because a lot of us are 12 in the same network marketings. We're through 13 Ignite or Cierra or different things, and so they 14 would hear it from somebody else. Janet talked to a 15 lot of people about it. 16 Q. So, Mr. Howell, in 2011 when you first 17 purchased lenses, you were preparing taxes also at 18 Howell Tax Service. 19 A. Yes. 20 Q. Did you ever suggest to any of your tax 21 preparation customers that they may want to purchase</p>				

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<p>22 lenses? 23 A. I probably did. 24 Q. How would you do that? 25 A. I'd usually tell them to look at the 165: 1 RaPower website, see if it's something that they 2 were interested in doing through the network 3 marketing or the tax savings, either one. And most 4 of them were already in network marketing, so they 5 knew the concept of how it worked. 6 Q. So even like if a customer didn't know 7 about RaPower3 and didn't know to ask you about it, 8 nonetheless, you might say to them, hey, there's 9 this thing you might want to check out? 10 A. Possibility. A lot of them I never 11 mentioned it to. 12 Q. Did people ever ask you about the tax 13 benefits? 14 A. I'm sure that they did.</p>				

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<p>15 Q. And what did you tell them? 16 A. I would tell them that the tax benefits 17 are there. It's in tax law. We don't create any 18 new laws. We just look at what the existing tax 19 laws are, and the law is there. 20 Q. Did you show customers what tax effect 21 buying lenses would have on their tax returns? 22 A. Probably. 23 Q. Did you do that before they bought lenses? 24 A. Probably, some. 25 Q. Did you tell people how much the lenses 166: 1 cost? 2 A. I always told them to go to the RaPower 3 website on that because I didn't look at it every 4 day to see if the prices were the same. They 5 usually were, but I told them, hey, you got to 6 purchase them through them, so check with them to</p>				

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<p>7 see what they're -- I said typically it's been 8 \$3,000 or \$3,500, but I can't give them the price 9 because I don't know it. 10 Q. Right. But the tax benefits of buying any 11 RaPower3 system are based on the price that the 12 customer pays for each lens, correct? 13 A. Yes. That's why I told them to always go 14 to RaPower because they set the price. 15 Q. Are you familiar with a man named Mike 16 Penn? 17 A. Mike Penn. 18 Q. One of your tax return customers? 19 A. Yes. I haven't talked to Mike in years. 20 Q. But he is one of your at least former -- 21 A. Yes. 22 Q. -- tax return preparation customers? 23 A. Yes.</p>				

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<p>24 Q. So he said that you called him into your 25 office because you wanted to illustrate the amount 167: 1 of tax savings that buying into RaPower3 would 2 provide him. 3 A. I don't recall that conversation. Because 4 he had a big tax bill. He was in oil and gas. 5 Q. Tell me about what you remember about 6 Mr. Penn's tax situation with his big tax bill. 7 A. All I know is that he did pay a 8 substantial amount of taxes because of the business 9 he was in. He made a lot of money. And I'm sure we 10 had a conversation on trying to reduce his tax bill. 11 I probably told him to, if he was interested, to 12 look at the RaPower, see if it's something he wanted 13 to do or not. I don't know if he ever did or not. 14 Q. Well, he said that you told him about how</p>				

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<p>15 many units he should buy. 16 A. I said based on your -- we went -- 17 probably went to the website and used that to 18 calculate based on his tax information, because they 19 had an online calculator. 20 Q. Is your interaction with Mr. Penn similar 21 to other interactions you had with your customers? 22 A. Some of them probably, yeah. 23 Q. You helped other people figure out how 24 many units they should buy? 25 A. Yeah, we usually used the RaPower 168: 1 calculator. 2 Q. Did you explain to folks about carrying 3 back unused credits? 4 A. Yes. They would ask how it would be used 5 because they could read that on the RaPower website. 6 That's where all of that information is -- is 7 listed. If they ask me about it, then I'd tell</p>				

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<p>8 them, yes, they could. 9 Q. So what would you tell them? 10 A. That if they had -- if they purchased more 11 systems than they could utilize in one year, 12 according to tax law, they could carry them back to 13 one preceding year. 14 Q. And that's something that you did for Mike 15 Penn? 16 A. I don't recall. I haven't done his in a 17 number of years, so I'm not sure. I might have. 18 Q. Do you recall having done that for other 19 customers? 20 A. I'm sure I did. 21 Q. About how many people would you say you've 22 talked to about RaPower3 in an effort to sell lenses 23 since 2011? 24 A. Fifteen, twenty people, because it's -- if 25 you do it through your network marketing, you want</p>				

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<p>169: 1 them to -- to do most of it for you, just like any 2 network marketing. You just -- you might have a 3 small team, but then that can grow quite a bit by 4 them telling other people. So you don't have to 5 show it to a lot of people. 6 Q. So do I understand you correctly that you 7 personally don't want to talk -- don't need to 8 necessarily talk to a whole ton of people because -- 9 that you want your downline to do that instead? 10 A. Yeah, that's all network marketing is 11 about.</p>				
<p>169:19 (Exhibit 595 marked) 20 Q. Showing you what's been marked Plaintiff's 21 Exhibit 595. Please take a look at that and let me 22 know when you're done. 23 A. Yeah, they took that down not too long 24 after it was put up, so it shouldn't have been on</p>			<p>595 596 242 243 245</p>	

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<p>25 there. 170: 1 Q. So, Mr. Howell, Plaintiff's Exhibit 595 is 2 a screenshot of the Howell Financial -- I'm sorry, 3 the Howell Tax Service Facebook page, correct? 4 A. Mm-hmm. 5 Q. Yes? 6 A. Yes. 7 Q. The date of the post that we're looking at 8 is December 26, 2011, correct? 9 A. Yes. 10 Q. And the post says, "Here is a great year 11 end tax planning to lower your 2011 and even a 12 refund of 2010 taxes. Go to www.RaPower3.com, 13 sponsor code rockinigh, need to have it completed by 14 12/29/11." Did I read that correctly? 15 A. Yes. 16 Q. And then we see the link to RaPower3.com, 17 correct? 18 A. Right.</p>				

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<p>19 Q. Did you author this post, Mr. Howell?</p> <p>20 A. I believe we did put it up. I think we</p> <p>21 took -- supposed to have taken it back down.</p> <p>22 MS. HEALY GALLAGHER: Object to</p> <p>23 responsiveness.</p> <p>24 Would you please read back my question.</p> <p>25 THE REPORTER: "Question: Did you author</p> <p>171: 1 this post, Mr. Howell?"</p> <p>2 A. Did I alter it?</p> <p>3 BY MS. HEALY GALLAGHER:</p> <p>4 Q. Author.</p> <p>5 A. Author it, yes.</p> <p>6 Q. And you posted it on Facebook?</p> <p>7 A. Yes.</p> <p>8 (Exhibit 596 marked)</p> <p>9 Q. Mr. Howell, Plaintiff's Exhibit 596 is</p> <p>10 another screenshot of the Howell Tax Service</p> <p>11 Facebook page, correct?</p> <p>12 A. Yes.</p> <p>13 Q. This post is dated December 31, 2011,</p>				

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<p>14 correct? 15 A. Yeah. Yeah, they're all posted. 16 Q. And it says, "You can still tax advantage 17 of year end tax deduction today at www.RaPower3.com, 18 sponsor code rockinhg." Did I read that correctly? 19 A. Yes. 20 Q. And then we see that there was a link to 21 the RaPower3 home page, correct? 22 A. Yes. 23 Q. Did you write this post? 24 A. I probably did. 25 Q. Any reason to believe you didn't? 172: 1 A. No. 2 Q. And you posted it to Facebook? 3 A. Yes. 4 Q. Handing you, sir, what's already been 5 marked Plaintiff's Exhibit 242. Please take a look 6 at that and let me know when you've read it. 7 A. Okay.</p>				

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<p>8 Q. Mr. Howell, do you recognize Plaintiff's 9 Exhibit 242? 10 A. Yes. 11 Q. What is it? 12 A. It was an e-mail from Greg Shepard. 13 Q. Did you receive this e-mail? 14 A. I believe so. 15 Q. So about halfway down the page Mr. Shepard 16 writes, "We do have new RaPower3 Team Member who is 17 licensed to do your taxes in all fifty states. So 18 this is another option. John Howell's info is 19 below." Did I read that correctly? 20 A. Yes. 21 Q. And actually let's take a look real quick. 22 The date on this e-mail is February 10, 2012, 23 correct? 24 A. Yes. 25 Q. Okay. Then under the heading "Tax 173: 1 Preparer Help," it says, "Here is my info if any</p>				

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<p>2 members need help with their tax return and your CPA 3 is overbooked. We have over 50 years in the tax 4 business. My father, sister, and myself are EA's, 5 enrolled agents with the U.S. Treasury Department. 6 We are licensed to do tax returns in any state." 7 Did I read that correctly? 8 A. Yes. 9 Q. And then underneath it says "John Howell, 10 Howell Financial and Tax Service," correct? 11 A. Yes. 12 Q. And then it has Howell Tax Service contact 13 information, right? 14 A. Yes. 15 Q. So did you write that section about your 16 information? 17 A. I believe so. 18 Q. And you sent it to Greg Shepard? 19 A. I believe so. 20 Q. So that he could share it with RaPower3</p>				

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<p>21 team members across the country?</p> <p>22 A. I believe so.</p> <p>23 Q. Showing you what's been marked Plaintiff's</p> <p>24 Exhibit 243. Please take a look at that and let me</p> <p>25 know when you're done.</p> <p>174: 1 A. Okay.</p> <p>2 Q. Plaintiff's Exhibit 243 is an e-mail from</p> <p>3 Greg Shepard, correct?</p> <p>4 A. Yes.</p> <p>5 Q. Dated Monday, February 20, 2012?</p> <p>6 A. Yes.</p> <p>7 Q. Did you receive this e-mail?</p> <p>8 A. I believe so.</p> <p>9 Q. Mr. Shepard says, "Here is an e-mail I</p> <p>10 just got from John Howell who can do your taxes.</p> <p>11 John is a RaPower3 team member as well." Do you see</p> <p>12 that?</p> <p>13 A. Yes.</p> <p>14 Q. Did you send Greg Shepard the information</p> <p>15 that he has below?</p> <p>16 A. Yes.</p>				

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<p>17 Q. And you expected Mr. Shepard would then</p> <p>18 share that information with other RaPower3 team</p> <p>19 members, right?</p> <p>20 A. Yeah, that were trying to do it on their</p> <p>21 own through TurboTax because that software had a</p> <p>22 glitch in it.</p> <p>23 Q. Showing you what's been marked Plaintiff's</p> <p>24 Exhibit 245. Please take a look at that and let me</p> <p>25 know when you're done.</p> <p>175: 1 A. An e-mail from --</p> <p>2 Q. Just let me know.</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Plaintiff's Exhibit 245 is an</p> <p>5 e-mail from Greg Shepard, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Dated May 4, 2012?</p> <p>8 A. Yes.</p> <p>9 Q. The middle paragraph of Mr. Shepard's</p> <p>10 e-mail says, "John Howell won our contest.</p>				

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<p>11 Congratulations, John. I will award him his 12 \$2,000 bonus contract at our national convention." 13 Did I read that correctly? 14 A. Yes. 15 Q. What contest was that? 16 A. It asked some tax questions or something, 17 and I was the one that correctly answered it. 18 Q. Could you say more about that? What 19 happened? Did Mr. Shepard -- 20 A. Yeah, he had -- he had put out a puzzle or 21 question about taxes or something, if I remember 22 correctly, and I'd answered it correctly. I think 23 there was several of them that he had put out.</p>				
<p>176: 9 (Exhibit 597 marked) 10 Q. Handing you what's been marked Plaintiff's 11 Exhibit 597. Please take a look at that and let me 12 know when you're done. 13 A. Okay.</p>			<p>597 501</p>	

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<p>14 Q. Plaintiff's Exhibit 597 is Bates marked</p> <p>15 Gregg_P&R 1355. Do you recognize Plaintiff's</p> <p>16 Exhibit 597?</p> <p>17 A. Not really, but I'm sure I might have</p> <p>18 received it, just an e-mail from Greg sent out to a</p> <p>19 lot of people.</p> <p>20 Q. And Greg Shepard, one of his e-mail</p> <p>21 addresses is</p> <p>greg@rapower3.com, right?</p> <p>22 A. Yes.</p> <p>23 Q. This e-mail is dated January</p> <p>24, 2013,</p> <p>24 correct?</p> <p>25 A. Yes.</p> <p>177: 1 Q. Towards the bottom of the page, second</p> <p>2 paragraph up, Mr. Shepard says,</p> <p>"We do have a great</p> <p>3 CPA in Bryan Bolander. Contact him at</p> <p>4 bryan@vcb-cpa.com or John Howell at rockingham@wf.net.</p> <p>5 Bryan is from Salt Lake City, Utah, and John is from</p>				

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<p>6 Wichita Falls, Texas. Both have RaPower3 clients 7 from all across the country." Did I read that 8 correctly? 9 A. Yes. 10 Q. And as of January 2013 did you have 11 RaPower3 tax preparation customers from all across 12 the country? 13 A. Yes. 14 Q. About how many customers from outside of 15 the Wichita Falls area do you have? 16 A. Is that all customers or just RaPower 17 customers? 18 Q. All first. 19 A. Well, I've got probably 50, 60. 20 Q. And of those 50 or 60, how many are 21 RaPower3 customers? 22 A. Probably 40 from various states. 23 Q. And let me ask you this. Since 20 --</p>				

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<p>24 since 2010 how many customers from outside of the 25 Wichita Falls area has Howell Tax Service had? 178: 1 A. Outside of the Wichita Falls area? 2 Probably -- do you want to include Dallas and 3 Houston, Oklahoma? Because we've had a number of 4 those for years and years. So it would -- hundred. 5 We might have them one year and then not again or -- 6 so it'll fluctuate. 7 Q. And since 2010 how many RaPower3 customers 8 have you had from outside the Wichita Falls area? 9 A. If you total all of them combined, 10 probably over a hundred. But might just do them one 11 year and then another do them again or I might do 12 them for two or three years, so -- 13 Q. And you're talking about tax preparation 14 customers?</p>				

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<p>15 A. Right, total, all totaled together. So we 16 might see them one year and that's the only time we 17 ever see them. 18 Q. So the number that you gave me of out 19 of -- outside of Wichita Falls area customers since 20 2010, you gave me about a hundred. 21 A. Yeah. It'll -- there -- it might -- 22 overall, because there might be a new one one year 23 and lose one or two one year, and so we -- 24 Q. I want to make sure I understand. So is 25 the total outside of Wichita Falls customers that 179: 1 you've had since 2010 200 people and 100 of those 2 are RaPower3 and 100 are non-RaPower3? 3 A. I've probably had several -- well, we've 4 always had out-of-town clients. We've had clients</p>				

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Plaintiff Designations – BLUE Defendant Completeness— PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness— PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>5 from California to New York. Some have moved to 6 other cities, other states, and we've maintained 7 them.</p> <p>8 And so how many are just RaPower3? Maybe 9 a hundred of the out-of-state ones. We might have 10 them one year, and then we might not ever hear from 11 them again. We might pick up a new one in '14, 12 might not ever hear from them. Might have one that 13 we've done them for '12, '13, '14 and '15. So it's 14 going to change year by year. A lot of them do it 15 on their TurboTax or online services or whatever.</p> <p>16 Once they see how we did their tax returns, they go 17 and do it on their own.</p> <p>18 Q. Then let me ask you this. What I'm 19 curious about, Mr. Howell, is how many customers 20 you've gotten through RaPower3.</p>				

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<p>21 A. A hundred. 22 Q. Is that since 2011? 23 A. Yeah, yeah, because it'll go up and down. 24 Like I say, you might get a new one, two or three 25 new ones one year and then lose four or five of 180: 1 them. 2 Q. Showing you what's been marked Plaintiff's 3 Exhibit 501. Please take a look at this and let me 4 know when you're ready to answer questions. 5 A. Okay. 6 Q. Have you ever seen Plaintiff's Exhibit 501 7 before? 8 A. No. 9 Q. Okay. That's fine, but I would like to 10 draw your attention to the first sentence -- I'm 11 sorry, first paragraph, last -- well, withdraw that. 12 Let's take a look at the first paragraph. 13 It says, "One of the truly great benefits of</p>				

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<p>14 attending the RaPower3 National Convention is</p> <p>15 getting to know fellow team members, linking up</p> <p>16 faces with names, and learning what techniques have</p> <p>17 proven successful for them.</p> <p>This year's most</p> <p>18 memorable line comes from Bob Aulds of Wichita</p> <p>19 Falls, Texas. This was Bob's first year in RaPower3</p> <p>20 and at the convention." Did I read that correctly?</p> <p>21 A. Yes.</p> <p>22 Q. And you know Mr. Aulds, right?</p> <p>23 A. Yes.</p> <p>24 Q. He's in your downline.</p> <p>25 A. Yes.</p> <p>181: 1 Q. Let's skip down to the paragraph that's</p> <p>2 directly above your contact information.</p> <p>3 A. Okay.</p> <p>4 Q. Second sentence of that paragraph says,</p> <p>5 "For all those questions that deal with numbers and</p>				

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<p>6 detailed benefits, Bob refers them to EA John Howell 7 and so can you. John has graciously agreed to field 8 these difficult number questions and to serve as a 9 third party validation on the RaPower3 program." 10 Did I read that correctly? 11 A. Yes. 12 Q. So, Mr. HOWELL, did you field specific 13 questions, either from people referred by Bob Aulds 14 or others? 15 A. I did, but I didn't know that this was put 16 out. That might be why so many called. 17 Q. How many people called and asked? 18 A. Don't know. 19 Q. More than ten? 20 A. Yeah. 21 Q. More than 20? 22 A. Yes. 23 Q. More than 50? 24 A. Probably. Because it seemed like it went</p>				

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<p>25 crazy one year. I didn't know they'd put that out. 182: 1 Q. And of course your contact information 2 appears below. 3 A. Yes. 4 Q. Right? When people called, did you speak 5 with them about the RaPower3 program? 6 A. Depends on -- sometimes yes, sometimes no. 7 I mean, if I was busy, I'd say no. I didn't have 8 time, I'd just say go -- just tell them to go to 9 look at the website. And didn't get -- if they have 10 a specific question that's easy to answer, okay, but 11 if it's something detailed or on their tax return, 12 then I didn't have time to answer just lots and lots 13 of questions. 14 Q. You said sometimes you would talk to them 15 and sometimes you wouldn't. So if you did talk to</p>				

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<p>16 them, did you tell them about RaPower3 and what it 17 could do? 18 A. Well, they had already been told by Bob or 19 somebody else about it, and they just wanted to know 20 about the -- if I could do the taxes or if they 21 could do their taxes or usually generic questions 22 about it. I said, yeah, we can do your tax return 23 if you're not comfortable doing it or you can do it 24 yourself or whoever you use now can do it. I said 25 just go to the RaPower3 website and it tells them 183: 1 the generic information is all right there.</p>				
<p>183:11 Q. Showing you what's been marked Plaintiff's 12 Exhibit 348. Please take a look at that and let me 13 know when you're done. 14 A. Okay. 15 Q. This is an e-mail from Greg Shepard, 16 correct?</p>	<p>00183 2 Q. Did you tell people about the tax benefits 3 associated with RaPower3? 4 A. If they asked specifically, I'd say, yeah, 5 you get the energy tax credits and/or depreciation,</p>		348	

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<p>17 A. Yes. 18 Q. Dated Saturday, November 9, 2013, right? 19 A. Yes. 20 Q. There's an attachment on the e-mail 21 entitled "IRS Business Activities (1).docx," 22 correct? 23 A. Yeah, right out of the IRS's publication. 24 Q. Okay. Take a look, please, right above 25 Mr. Shepard's signature. It says, "Thanks to John 184: 1 Howell, our astute tax preparer from Texas. He sent 2 me the attached business document that should help 3 you in your audit or appeal." Did I read that 4 correctly? 5 A. Yes. 6 Q. And, in fact, did you send Mr. Shepard the 7 attachment that appears on page Gregg_P&R 3344? 8 A. Yes.</p>	<p>6 depending on your tax situation.</p>			
<p>184:24 Q. Mr. Howell, when we were looking at the</p>			<p>598</p>	

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<p>25 RaPower3 invoices, you have to pay for the systems 185: 1 that you buy, right? 2 A. Yes. 3 Q. Who do you pay? 4 A. RaPower. 5 Q. And has that been true since 2011? 6 A. Yes. 7 Q. To present day? 8 A. Yes. 9 Q. Do you have any understanding of the 10 relationship between Greg Shepard and RaPower3? 11 A. He's their operations manager as far as I 12 know. Might be another title or something else, but 13 that's all I've ever known. 14 Q. Mr. Howell, we talked about folks from 15 around the country who may have contacted you to 16 prepare their tax returns through RaPower3. About 17 how many people in the Wichita Falls area came to 18 you for tax preparation because they were interested</p>				

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<p>19 in RaPower3? 20 A. I'd say 30. 21 Q. Since 2011? 22 A. Yeah, it'll go up and down, like I say. I 23 mean, you take everybody that was '11, '12, '13, 24 '14, '15, '16, there might have been 50 of them but 25 some of those keep coming. Others might do one time 186: 1 and then never see them again. So, hard to say how 2 many are exactly for RaPower. 3 (Exhibit 598 marked) 4 Q. Mr. Howell, you're being handed what's 5 been marked Plaintiff's Exhibit 598. Please take a 6 look at that. Plaintiff's Exhibit 598 is Bates 7 marked Howell_John 8285 through 307, 8307. 8 Please take a look at Plaintiff's 9 Exhibit 598 and let me know when you are ready. 10 A. Okay. 11 Q. Okay. Let's take a look, please, at --</p>				

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<p>12 well, first off, do you recognize Plaintiff's</p> <p>13 Exhibit 598?</p> <p>14 A. Yes.</p> <p>15 Q. What is it?</p> <p>16 A. It's a tax return for Charles and Tammy</p> <p>17 Knowing.</p> <p>18 Q. Knowing?</p> <p>19 A. Kowing.</p> <p>20 Q. Kowing. And the Kowings are in</p> <p>21 Burkburnett, Texas?</p> <p>22 A. Yes.</p> <p>23 Q. Have they been long-time customers of</p> <p>24 Howell Tax Service?</p> <p>25 A. Yes.</p> <p>187: 1 Q. When did they start coming to you for tax</p> <p>2 prep?</p> <p>3 A. Really don't recall exactly when.</p> <p>4 '12, '13, fourt -- no, it was about '12, '13, so a</p> <p>5 number of years. They were recommended by somebody</p> <p>6 else.</p> <p>7 Q. And this tax return is a 2014 tax return,</p>				

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<p>8 right? 9 A. Yes. 10 Q. If you'd take a look at the signature 11 lines on Howell_John 8290, the date says 12 September 19, 2016. Do you see that? 13 A. Yes. 14 Q. Is that the result of an auto-update field 15 for the date? 16 A. Most likely. 17 Q. So you would have prepared this 2014 tax 18 return sometime in 2015, right? 19 A. Yes. 20 Q. Okay. And just to close that loop, your 21 name is in the paid preparer's signature line, 22 right? 23 A. Yes. 24 Q. So you prepared this return? 25 A. Yes. 188: 1 Q. Take a look, please, at the last page of 2 Plaintiff's Exhibit 598. 3 A. Okay.</p>				

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<p>4 Q. Oh, actually real quick, does Plaintiff's</p> <p>5 Exhibit 598 appear to be a true and accurate copy of</p> <p>6 the Kowings' tax return for 2014?</p> <p>7 A. Yes.</p> <p>8 Q. Take a look, please, at the last page.</p> <p>9 It's a Form 4562 depreciation and amortization --</p> <p>10 A. Yes.</p> <p>11 Q. -- form, right? Take a look, please, at</p> <p>12 the box that says "Business or activity to which</p> <p>13 this form relates." Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. It says "Schedule C Alternate Energy</p> <p>16 Systems." Did I --</p> <p>17 A. Yes.</p> <p>18 Q. -- read that correctly? Yes?</p> <p>19 A. Yes.</p> <p>20 Q. Does that indicate a business related to</p> <p>21 RaPower3?</p> <p>22 A. Yes.</p> <p>23 Q. Then in the description of property, line</p>				

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<p>24 6A, it says 600-watt thermal solar lens, correct? 25 A. Yes. 189: 1 Q. And in your mind does that mean the 2 system? 3 A. The system. 4 Q. The alternative energy system? 5 A. Yes. 6 Q. The cost in line 6B is \$92,225, correct? 7 A. Mm-hmm. 8 Q. Yes? 9 A. Yes, it is. 10 Q. And you entered that number, correct? 11 A. Yes. 12 Q. Take a look, please, at the page marked 13 Howell_John 8292. 14 A. Okay. 15 Q. This is a Schedule C, correct? 16 A. Yes. 17 Q. The name of the proprietor is Charles 18 Kowing, right? 19 A. Correct. 20 Q. And then the principal business or</p>				

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<p>21 profession identified there is Alternate Energy 22 Systems, right? 23 A. Correct. 24 Q. And that is to indicate the -- a 25 connection to RaPower3? 190: 1 A. Yes. 2 Q. Mr. Howell, when you prepared Schedule Cs 3 for customers who had bought RaPower3 systems, was 4 it your typical practice to put Alternate Energy 5 Systems in line A -- 6 A. Yes. 7 Q. -- of Schedule C? 8 A. Yes, it was. 9 Q. The business name in line C is blank. Do 10 you see that? 11 A. Yes. 12 Q. Why is that blank? 13 A. They're using their own name. "If no 14 separate business name, leave blank." 15 Q. I see. Okay. All right. Line G asks, 16 "Did you materially participate in the operation of</p>				

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<p>17 this business during 2014?" Do you see that? 18 A. Yes. 19 Q. The box "Yes" is checked at the end of 20 that line. Do you see that? 21 A. Yes.</p>				
<p>190:22 Q. Who checked that box? 23 A. Probably -- I probably did.</p>	<p>00190 15 Q. I see. Okay. All right. Line G asks, 16 "Did you materially participate in the operation of 17 this business during 2014?" Do you see that? 18 A. Yes. 19 Q. The box "Yes" is checked at the end of 20 that line. Do you see that? 21 A. Yes. 22 Q. Who checked that box? 23 A. Probably -- I probably did. 24 Q. Why did you check that box? 25 A. Because they participated in the business. 00191 1 They're the sole proprietorship. Nobody else is</p>			

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	<p>2 involved in it other than themselves. They</p> <p>3 purchased lenses. We probably asked them if they</p> <p>4 had talked to anybody else about it or if they did</p> <p>5 any promotion for their business or whatever.</p> <p>6 Q. Other than purchasing lenses -- I'll</p> <p>7 withdraw that.</p> <p>8 Let's see. Did you keep track at all of</p> <p>9 asking your customers questions about their material</p> <p>10 participation in any business related to RaPower3?</p> <p>11 A. It would be in -- in the notes for their</p> <p>12 particular tax return. Usually it's given back to</p> <p>13 them in their customer file.</p> <p>14 Q. So you did keep track of asking people?</p> <p>15 A. Yeah, we would notate it, but it would be</p> <p>16 in with their workpapers and everything.</p> <p>17 Q. Did you keep the documentation showing</p>			

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	<p>18 that you had asked people about aspects of their 19 material participation in their business? 20 A. Probably not. 21 Q. Any reason why not? 22 A. We usually just had a information sheet 23 that we asked them some questions, and it stayed 24 with their -- their papers that we gave back to 25 them. We have enough papers in our office without 00192 1 adding more and more and more. 2 Q. Did any of your tax return preparation 3 customers ask you what it took to qualify as a 4 material participant in any business? 5 A. Probably some did. And I'd probably tell 6 them what the publication for businesses. Sometimes 7 I'd have a copy of it and give to them. Maybe it</p>	<p>192:2 - 8, Objection, Hearsay, Fed. R. Evid. 801(c), 802</p>		<p>Overruled</p>

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	<p>8 was Publication 535 or something like that.</p> <p>9 Q. So, Mr. Howell, did you make sure that</p> <p>10 your customers met material participation standards</p> <p>11 before you checked yes in Box G?</p> <p>12 A. We tried to. And with the information</p> <p>13 that was given to us, if they were operating their</p> <p>14 business, did they have a separate checking account.</p> <p>15 We normally had some questions that we asked them,</p> <p>16 and that would have been given back to them in their</p> <p>17 file.</p> <p>18 Q. Did you ask them how many hours they spent</p> <p>19 in furtherance of their business related to</p> <p>20 RaPower3?</p> <p>21 A. Typically in a sole proprietorship where</p> <p>22 it's only them, your time, hours aren't really as</p> <p>23 critical.</p> <p>24 Q. Did you ask?</p>	<p>192:24 - 193:21, Objection, Hearsay, Fed. R. Evid. 801(c), 802</p>		<p>Sustained as to 193:3 to 193:5</p>

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	<p>25 A. Typically we'd ask they did you spend some 00193 1 time doing your business, was it weekly, daily, 2 monthly. Some of them might have responded to one 3 of Greg's e-mails. Some of them said they talked to 4 people that they worked with, family members about 5 the benefits of it. 6 Q. Did you ever talk to any customers about 7 the difference between an investor in an activity 8 and someone who actually had a trade or business 9 with respect to that activity? 10 A. Typ -- if they asked about it. 11 Q. How would you explain that? 12 A. Well, an investor is like a person that 13 buys stocks, bonds, securities, but all they do is 14 they put in their money and then they are investing 15 in that particular thing.</p>			<p>and Overruled as to 192:24 to 193:2 and 193:6 to 193:21</p>

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	<p>16 And a person of 17 business is actually going 18 to promote their business. They're going to expect 19 income from their business, do advertising for their 20 business. So there's just different guidelines that 21 we use on whether they're just an investor or they are a business owner.</p>			
<p>193:22 Q. Take a look, please, at Box 32A. Box 32A 23 has an "X" checked next to the statement "All 24 investment is at risk." 25 A. Mm-hmm. 194: 1 Q. How did you know that all of the money 2 that the Kowings had put into RaPower3 was at risk? 3 A. Because if they don't pay for their units 4 or meet up to their obligation, RaPower can take 5 them all back. 6 Q. So to your understanding, because the 7 system was collateral, that meant that the</p>				

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8 Kowings' -- 9 A. Yes. 10 Q. -- money was all at risk?				
194:19 Q. Take a look, please, at the depreciation, 20 line 13. It says \$96,715. Do you see that? 21 A. Yes. 22 Q. You entered that number on the line for 23 depreciation, correct? 24 A. It'll be carried directly over from the 25 4562. 195: 1 Q. Can you show me where on the 4562? 2 A. At line 22. 3 Q. Okay. And we're on page Howell_John 8307. 4 A. Yes. 5 Q. And you entered the information on Form 6 4562, correct? 7 A. Yes. 8 Q. And then line 22 on Form 4562 carried over 9 to line 13 on the Schedule C. 10 A. Correct. 11 Q. Then line 31 on the Schedule C, does that	00194 6 Q. So to your understanding, because the 7 system was collateral, that meant that the 8 Kowings' -- 9 A. Yes. 10 Q. -- money was all at risk? 11 A. Yes, because they represented the systems 12 themselves. And if they default on it, then the 13 systems are taken back. Like put a down payment on 14 a car, you don't pay your monthly payments, they 15 take your car back. 16 Q. Was there any other risk to the Kowings if 17 they didn't make their payments on the lenses? 18 A. Not that I'm aware of.			

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<p>12 automatically appear on line 12 of the 1040? 13 A. Yes, it does. 14 Q. And, in fact, on page Howell_John 8289, 15 the first page of the 1040, we see that number on 16 line 12. 17 A. Correct. 18 Q. Let's take a look, please, at Form 3800, 19 which is at -- the page is marked 8295 through 8298. 20 Did you complete this Form 3800? 21 A. Yes. 22 Q. So where -- let's see. So then in part 3, 23 you checked that Box A that indicates this credit is 24 a general business credit from a non-passive 25 activity. 196: 1 A. Yes. 2 Q. Where, if at all, are the credits related 3 to any systems purchased for the Kowings on this 4 Form 3800?</p>				

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<p>5 A. It's a carryover from Form 3468. 6 Q. Which is on what page? 7 A. 8305, line 12B. 8 Q. Thank you. All right. So Form 3468 is 9 the form for the investment credit, correct? 10 A. Correct. 11 Q. And line 12B has \$108,500 entered into it, 12 correct? 13 A. Correct. 14 Q. You entered that number? 15 A. Correct. 16 Q. And then your tax preparation program does 17 the rest? 18 A. It calculates the proper percentage. 19 Q. Is that process consistent with how you 20 prepared people's RaPower3 tax returns? 21 A. Typically, yes.</p>				
<p>196:23 (Exhibit 599 marked) 24 Take a look, please, at what's been handed 25 to you marked Plaintiff's Exhibit 599, Bates numbers</p>			<p>599 23</p>	

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<p>197: 1 US046188 through 46232. 2 A. Okay. 3 Q. Are James and Jo Ann Woodson customers of 4 yours? 5 A. Yes. 6 Q. Well, let's just start with this. 7 Plaintiff's Exhibit 599 is a printout of a Form 1040 8 for James and Jo Ann Woodson, correct? 9 A. Yes. 10 Q. You prepared this return? 11 A. I believe so. 12 Q. Any reason to think you didn't? 13 A. It's just in a different format than we 14 typically do. 15 Q. Sure. But your name is in the 16 preparer's -- 17 A. Yes. 18 Q. -- box, correct? 19 A. Yes, it is. 20 Q. And your firm's EIN appears there as well? 21 A. Yes, it does. 22 Q. And your PTIN appears in that box as well. 23 A. Yes, it does.</p>				

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<p>24 Q. James and Jo Ann Woodson live in Powhatan, 25 Virginia. Do you see that? 198: 1 A. Yes. 2 Q. Did they come to you through RaPower3? 3 A. Yes. 4 Q. Take a look, please, at the page that's 5 marked 46217. This is the Wood -- or James 6 Woodson's Schedule C, correct? 7 A. Yes. 8 Q. I'm curious because the -- in line A the 9 principal business or profession is Solar Energy 10 here. Do you see that? 11 A. Yes. 12 Q. Was it your practice to -- I'm sorry. 13 Well, I'll ask the question. Was it your practice 14 to put Solar Energy down when there was a Schedule C 15 related to RaPower3? 16 A. No. He could have had a prior year which 17 he most likely did, and we would have typically put</p>				

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<p>18 it in to get the historical data from it and then 19 automatically transferred over to the 2013. So that 20 would have transferred over what he had had in a 21 previous year. 22 Q. Okay. So let me make sure I understand 23 and it's clear for the record here. So if James 24 Woodson had filed a 2012 Schedule C and the 2012 25 Schedule C had Solar Energy as the principal 199: 1 business or profession, that information would have 2 automatically populated for 2013? 3 A. Correct. 4 Q. Okay. Nonetheless, to your knowledge, 5 this Schedule C has to do with RaPower3? 6 A. Correct. 7 Q. Mr. Howell, when you first started 8 preparing returns with RaPower3, for RaPower3 9 customers, I should say, did you always separate out</p>				

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<p>10 RaPower3 as a separate Schedule C? 11 A. Typically we did. 12 Q. So like, for example, if someone already 13 had a Schedule C, would you create a second Schedule 14 C for RaPower3? 15 A. We tried to if it was in a -- most of the 16 time we tried to make it a separate Schedule C. 17 Q. So Mike Penn testified that you did not do 18 that with his return in the first instance. 19 A. Possibility we didn't. 20 Q. And it's possible that that happened with 21 other people as well? 22 A. It could have. It depends on how many 23 Schedule Cs they have. They have three or four or 24 five, you know, you're just getting so many 25 different ones in their tax return. And typically 200: 1 when IRS looks at them, they -- after your third</p>				

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<p>2 one, it's just going to group everything together</p> <p>3 anyways.</p> <p>4 But we tried to separate it out so we</p> <p>5 would know the depreciation assigned to RaPower3.</p> <p>6 If they had any income from it, we associated with</p> <p>7 that. Like on the Woodsons, he did have some</p> <p>8 commissions that were generated through his</p> <p>9 RaPower3, so they were put on his Schedule C. And</p> <p>10 his wife had a separate Schedule C.</p> <p>11 Q. Other tax return preparers at Howell Tax</p> <p>12 Service prepared tax returns with RaPower3</p> <p>13 customers, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Who were the people who prepared those</p> <p>16 returns?</p> <p>17 A. It was usually my brother, Daniel.</p> <p>18 Q. Anyone else?</p>				

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<p>19 A. My father and mother probably did some in 20 2011, 2012, possibly 2013.</p> <p>21 Q. Mr. Howell, are you familiar with</p> <p>22 something that we've been calling in this suit the</p> <p>23 Anderson letter?</p> <p>24 A. I believe that is what RaPower had posted</p> <p>25 on their website. There was two attorney letters.</p> <p>201: 1 Anderson letter I think was one, and another law</p> <p>2 firm had another one.</p> <p>3 Q. Kirton McConkie ring a bell?</p> <p>4 A. That one, then I think there was also a</p> <p>5 third one.</p> <p>6 Q. Okay. I'm going to show you what's</p> <p>7 previously been marked Plaintiff's Exhibit 23. Do</p> <p>8 you recognize Plaintiff's Exhibit 23 as the Anderson</p> <p>9 letter that was on the website?</p> <p>10 A. Yes.</p> <p>11 Q. Did you review the Anderson letter when</p> <p>12 you were -- at any time?</p>				

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<p>13 A. Yes. 14 Q. What, if anything, did you do with the 15 Anderson letter? 16 A. Probably looked at it, then I looked up 17 the different IRS code sections, IRC 48, the QPEP, 18 so -- and used that to do some research into what 19 they actually had in their -- in their letter. 20 Q. Would it surprise you to learn, 21 Mr. Howell, that Todd Anderson testified not long 22 ago that Plaintiff's Exhibit 23, the Anderson 23 letter, was a draft and not a finished product? 24 A. I'm not aware of any of that. 25 Q. Would it surprise you to learn that 202: 1 Mr. Anderson testified that Plaintiff's Exhibit 23 2 was an attempt to elicit more information from 3 RaPower3 because his firm did not feel like they had</p>				

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<p>4 enough facts to actually opine on the transaction? 5 A. I have no knowledge of any of that.</p>				
<p>208:14 You testified earlier, though, that you 15 did recall a memorandum from Kirton McConkie on 16 RaPower3's website, right? 17 A. Yes. 18 Q. Do you remember reading that memorandum? 19 A. I believe I did. 20 Q. Did you do anything with the information 21 in that memorandum? 22 A. I probably used it in tax audits or 23 something. 24 Q. Did you ever ask anyone -- well, let me 25 back up. 209: 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.</p>	<p>00202 6 Q. Does that cause you any concern as an 7 enrolled agent? Mr. Howell? 8 A. No, because I've done some of the -- I've 9 gotten -- looked at all of the information that they 10 have and did my own research into the different 11 regulations.</p>			

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<p>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.</p>				
<p>209:17 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.</p>				
<p>210:13 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?</p>	<p>00209 24 Q. Based on the first page, first couple 25 pages of Plaintiff's Exhibit 370, does this letter 00210 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</p>			

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<p>22 A. Most of them were Schedule Cs.</p> <p>23 Q. So sole proprietors?</p> <p>24 A. Yes.</p> <p>25 Q. If they were not sole proprietors, how</p> <p>211: 1 were they organized?</p> <p>2 A. I don't know if we have any partnerships</p> <p>3 that do it because most of them are sole</p> <p>4 proprietorships. Might have been an S corp., couple</p> <p>5 S corps, but 99.8 percent would have been sole</p> <p>6 proprietorships.</p>	<p>6 need to give you a different memorandum for that,</p> <p>7 but this particular one is for C corporations.</p> <p>8 So I don't know if they asked for one.</p> <p>9 That would be for sole proprietorships, LLCs,</p> <p>10 S corps, partnerships and such. So this just says,</p> <p>11 hey, this was designed, this was -- we wrote this</p> <p>12 for C corporations only.</p>			
<p>211:11 Q. We've spoken a few times, Mr. Howell,</p> <p>12 about audits and appeals with the IRS with respect</p> <p>13 to RaPower3 customers. When did you first learn</p> <p>14 that the IRS was auditing RaPower3 customers?</p> <p>15 A. 2013.</p> <p>16 Q. How did you learn about that?</p> <p>17 A. Clients saying they're being audited.</p> <p>18 Q. Your own clients?</p>				

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<p>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. 212: 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.</p>	<p>00212 20 Q. Okay. So of the approximately 50 people</p>			

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	<p>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 00213 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</p>			

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	<p>12 resolve on whether it's right or wrong, but that IRS</p> <p>13 is looking at them and that there's -- that I know</p> <p>14 of about 150 sitting in tax court.</p>			
<p>215:14 (Exhibit 601 marked)</p> <p>15 Q. Mr. Howell, handing you what's been marked</p> <p>16 Plaintiff's Exhibit 601 which is Bates marked</p> <p>17 BT_000285. Do you recognize Plaintiff's</p> <p>18 Exhibit 601?</p> <p>19 A. Yes.</p> <p>20 Q. What is it?</p> <p>21 A. It was an e-mail from Greg Shepard from</p> <p>22 (sic) William Coates.</p> <p>23 Q. And it's a chain of e-mails, right?</p> <p>24 A. Yes.</p> <p>25 Q. The topic of the e-mail is "Ra3 Audit,"</p> <p>216: 1 yes?</p> <p>2 A. Yes.</p> <p>3 Q. These e-mails are dated in June 2014. Do</p>			<p>601</p> <p>602</p>	

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<p>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</p>				

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<p>24 e-mail. 25 Q. The e-mail is from Greg Shepard, correct? 217: 1 A. Yes. 2 Q. Dated December 21, 2013, right? 3 A. Yes. 4 Q. And your e-mail address, rockingham@ -- 5 A. Yes. 6 Q. -- wf.net is in about the middle of the 7 address list, right? 8 A. Yes, it is. 9 Q. And in fact, you received this e-mail from 10 Mr. Shepard? 11 A. I believe so. 12 Q. Okay. Does Plaintiff's Exhibit 602 appear 13 to be a true and correct copy of the e-mail from 14 Mr. Shepard? 15 A. Yes.</p>				
<p>218: 5 (Exhibit 603 marked) 6 Q. Handing you, Mr. Howell, what's been 7 marked as Plaintiff's Exhibit 603. For the record,</p>	<p>00217 16 Q. Mr. Howell, in the course of representing 17 folks before the IRS, did you get any help or 18 assistance from Mr. Shepard?</p>		603	

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<p>8 it's Bates marked Howell_John 2611 through 2613. 9 Take a look at that, please, and let me know when 10 you are done. 11 A. Okay. 12 Q. Do you recognize Plaintiff's Exhibit 603? 13 A. I've seen it somewhere. It was probably 14 in just some general information I had put in when 15 IRS was requesting a bunch of documents from me. I 16 don't -- probably didn't ever use it in any 17 particular audits or anything. This was just some 18 general information on an e-mail that was sent out 19 to everybody.</p>	<p>19 A. No. 20 Q. Did you talk with him at all about the 21 status of the audits or how things were going? 22 A. I might have if there was particular ones 23 that had told him that they were being audited or 24 something. He might have asked about them and -- 25 Q. Did you use any information from 00218 1 Mr. Shepard to help you represent people before the 2 IRS? 3 A. Typically, no. I don't know of anything I 4 would use.</p>			
<p>218:25 Q. Where did you get Plaintiff's Exhibit 603? 219: 1 A. That came from an e-mail from Greg 2 Shepard. 3 Q. So -- 4 A. It was an attachment.</p>	<p>00219 5 Q. So you didn't write this? 6 A. No, no. 7 Q. Did you ever respond to an IDR in helping 8 a client with an audit? 9 A. Probably, a number of them.</p>		603	

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	<p>10 Q. Did you use the information in Plaintiff's</p> <p>11 Exhibit 603 to help you respond to that IDR?</p> <p>12 A. Not that I recall. Not typically</p> <p>13 something I would use.</p> <p>14 Q. Why do you say that?</p> <p>15 A. Because if it was something in there, it</p> <p>16 got put in there by accident. I typically don't</p> <p>17 print out stuff that Greg Shepard puts like this to</p> <p>18 use that. I usually put in my own document.</p> <p>19 Q. So if you were to respond to an IDR for a</p> <p>20 client, you would write the response?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. You wouldn't necessarily use what</p> <p>23 Greg Shepard --</p> <p>24 A. No.</p> <p>25 Q. -- wrote? Okay.</p>			
<p>220: 1 Nonetheless, does Plaintiff's Exhibit 603</p> <p>2 appear to be a true and accurate copy of a document</p>			603	

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3 you received from Greg Shepard? 4 A. Yes.				
221:16 (Exhibit 605 marked) 17 Q. Showing you, Mr. Howell, what's been 18 marked Plaintiff's Exhibit 605, Bates number 19 Howell_John 348 through 350. Take a look at that, 20 please, and let me know when you're done. 21 A. Okay. 22 Q. Do you recognize Plaintiff's Exhibit 605? 23 A. Yes. 24 Q. What is it? 25 A. It was a letter I had sent to Mr. Miller. 222: 1 Q. And Mr. Miller is at the IRS? 2 A. With the IRS, yes. 3 Q. The date at the top is July 17, 2013. Do 4 you see that? 5 A. Correct. 6 Q. Do you believe you sent this letter on or 7 about that date? 8 A. Yes.			605	

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<p>9 Q. And this letter is with respect to the</p> <p>10 Aulds' audit of their 1040 for 2010 and 2011,</p> <p>11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. That audit had to do at least in part with</p> <p>14 the tax benefits from RaPower3, correct?</p> <p>15 A. Yes.</p> <p>16 Q. All right. So on pages 1 and 2, you sort</p> <p>17 of -- you state in general terms what the -- what</p> <p>18 the objections are to the disallowance, right?</p> <p>19 A. Yes.</p> <p>20 Q. And then you say -- it's like the third to</p> <p>21 last paragraph -- "If the information contained in</p> <p>22 all correspondence is not enough support, the</p> <p>23 taxpayers can provide additional evidence and expert</p> <p>24 testimony from special witnesses upon appeal."</p> <p>25 What evidence and testimony was that?</p>				

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<p>223: 1 A. RaPower said that they had a special 2 witness that they would utilize in appeals if it was 3 necessary. 4 Q. Who was that? 5 A. I don't know who it was. 6 Q. Did you ask? 7 A. I'm sure I did. They might have given me 8 a name. I just -- I don't recall what it was or 9 anything. 10 Q. Okay. So that's the testimony. What's 11 the additional evidence? 12 A. Well, the additional evidence is going to 13 come from the expert testimony on that the RaPower 14 process does work, that the solar towers can produce 15 electricity. 16 Q. So your understanding was that the special 17 witness was going to talk about the technology? 18 A. Right.</p>	<p>00223 23 Q. Okay. So if RaPower3 had a special 24 witness that the technology worked, why were they 25 holding it back until appeals? 00224 1 A. Well, because the auditor's already</p>	<p>223:23 - 225:19, Objection, Not relevant, Fed. R. Evid. 401, 402</p>		<p>Overruled</p>

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	<p>2 determined that they were going to deny everything</p> <p>3 to begin with regardless of what we said.</p> <p>4 Q. So why wouldn't that special witness</p> <p>5 provide this testimony during the audit?</p> <p>6 A. Well, because the auditor had already been</p> <p>7 told to deny everything, so you're not going to</p> <p>8 change their mind.</p> <p>9 Q. So, Mr. Howell, RaPower3 told you that it</p> <p>10 had someone who could prove that the technology</p> <p>11 worked?</p> <p>12 A. Well, yes.</p> <p>13 Q. And you didn't want to get that in front</p> <p>14 of the IRS?</p> <p>15 A. Not in front of Mr. Miller because he had</p> <p>16 already made his determination. This was just to</p> <p>17 send it to appeals. He had already determined what</p> <p>18 he was going to do.</p>			

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	<p>19 Q. So when did you find -- 20 A. And this letter was sent to the -- for the 21 appeals. 22 Q. When did you find out about the existence 23 of this special witness? 24 A. I don't know exactly when or what time 25 frame. I'm sure -- 00225 1 Q. Well, it would have been before July 2013, 2 right? 3 A. Yes, yes, it probably -- it probably was. 4 Q. Now, Mr. Howell, the burden of proving 5 entitlement to a particular tax treatment is on the 6 taxpayer, isn't it? 7 A. Correct. 8 Q. Okay. So why wouldn't you put forth all 9 evidence, including that special witness? 10 A. When they've already determined the</p>			

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	<p>11 outcome of it, it had already been determined.</p> <p>12 Q. Have you asked about the special witness</p> <p>13 since?</p> <p>14 A. Not in particular. I do know they had a</p> <p>15 meeting with the IRS, RaPower, counsels with IRS,</p> <p>16 RaPower attorneys sometime early in this year and</p> <p>17 they talked to some expert witnesses at that time</p> <p>18 and that's when the IRS counsel said there would be</p> <p>19 no tax court hearings in 2017.</p>			
<p>226:11 (Exhibit 606 marked)</p> <p>12 Q. Mr. Howell, handing you what's been marked</p> <p>13 Plaintiff's Exhibit 606, Bates marked Riter_Kenneth</p> <p>14 1066. Please take a look at that and let me know</p> <p>15 when you're done.</p> <p>16 A. Okay.</p> <p>17 Q. Mr. Howell, do you recognize Plaintiff's</p> <p>18 Exhibit 606?</p> <p>19 A. I don't recall it. I'm sure it was sent</p>			606	

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<p>20 to me. I'm not sure if I read it or not. I get</p> <p>21 lots of e-mails, so I'm sure it was sent to me. I'm</p> <p>22 not sure if I read this particular one or not.</p> <p>23 Q. Okay. Well, we see at the top, the top</p> <p>24 e-mail is from Ken Riter --</p> <p>25 A. Yeah.</p> <p>227: 1 Q. -- to Christopher Moran, so that's not --</p> <p>2 A. And I didn't know -- probably saw --</p> <p>3 Q. You weren't part of that?</p> <p>4 A. -- who it was from, so I didn't know</p> <p>5 anything, didn't pay any attention to it.</p> <p>6 Q. But below that, right, we see an e-mail</p> <p>7 from Greg Shepard, greg@rapower3.com, right?</p> <p>8 A. Yeah.</p> <p>9 Q. Sent November 15, 2014, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And it's to you, John Howell.</p> <p>12 A. Yes.</p>				

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<p>13 Q. And then a few other people are cc'd</p> <p>14 underneath. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. The subject is "IRS Tactics Against Tax</p> <p>17 Preparers," right?</p> <p>18 A. Yes.</p> <p>19 Q. Does this look like a true and correct</p> <p>20 copy of an e-mail that you received?</p> <p>21 A. I'm sure it is.</p> <p>22 Q. Any reason to think it's not?</p> <p>23 A. No.</p> <p>24 Q. Mr. Howell, did you represent any</p> <p>25 taxpayers who were being audited by the State of</p> <p>228: 1 Oregon?</p> <p>2 A. I think there was one, I believe. Trying</p> <p>3 to remember what his name was. Starts with a P, I</p> <p>4 believe.</p> <p>5 Q. Do you recall Mr. Shepard doing any sort</p> <p>6 of coordination work with respect to the Oregon</p> <p>7 appeals?</p>				

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<p>8 A. He was finding somebody there in Oregon to 9 handle the Oregon case. 10 Q. Has there been any resolution of that 11 case? 12 A. Not that I know of. 13 Q. Did you do anything in that case besides 14 send letters or anything like that? 15 A. I think I just sent some letters. Since 16 the IRS is -- appeal is in tax court, the state's 17 all on hold, as far as I know. I haven't been in 18 contact with any of that lately.</p>				
<p>229:15 (Exhibit 608 marked) 16 Q. Let's take a look, please, at Plaintiff's 17 Exhibit 608, which is Bates numbered Howell_John 335 18 through 346. 19 A. Okay. 20 Q. Do you recognize Plaintiff's Exhibit 608? 21 A. Yes. 22 Q. What is it? 23 A. It's a letter I sent to the IRS, Gaylon</p>		<p>229:20-231:25: Objection. Argumentative; lack of foundation; lack of personal knowledge; calls for speculation</p>	<p>608 609</p>	<p>Overruled</p>

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<p>24 Berg, for the audit of Robert Aulds, Meria</p> <p>25 Gillespie-Aulds.</p> <p>230: 1 Q. The date at the top is February 26, 2016.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Do you think you sent this to the IRS on</p> <p>5 or about that date?</p> <p>6 A. Yes.</p> <p>7 Q. All right. So this is three years after</p> <p>8 the 2013 letter about an Aulds audit with respect to</p> <p>9 RaPower3, right?</p> <p>10 A. Mm-hmm.</p> <p>11 Q. Yes?</p> <p>12 A. Yes.</p> <p>13 Q. And Plaintiff's Exhibit 608 is also in</p> <p>14 response to an audit of RaPower3 tax benefits.</p> <p>15 A. Yes.</p> <p>16 Q. If you take a look, please, at page 345.</p> <p>17 A. Okay.</p> <p>18 Q. Once again, we see the offer that the</p>				

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<p>19 taxpayers can provide additional evidence and expert 20 testimony from special witnesses. Do you see that? 21 A. On 345? 22 Q. Third paragraph from the bottom. 23 A. Yes. 24 Q. Okay. So you've known about this special 25 witness for three years now. Why didn't you submit 231: 1 that special witness's information during this audit 2 process? 3 A. Well, because this was going to the -- for 4 the appeals. 5 Q. Why didn't you submit it -- 6 A. The audit -- 7 Q. -- in the first place? 8 A. The auditor has already determined the 9 outcome of them. 10 Q. Right. And the auditor asked for 11 information, right? 12 A. Based for the tax return, yes. 13 Q. Okay. So did you ever submit this special</p>				

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<p>14 witness's testimony to anyone at the IRS? 15 A. No, because they had already determined 16 that no matter what we said or did, their outcome 17 was it was going to be denied. So we said, okay, 18 we'll go to appeals then. That's what this was for. 19 Q. And if the IRS said, yes, we do want to 20 hear from this person, what would you do? 21 A. I'd have probably found out who they were 22 and a phone number to contact them. 23 Q. But you don't have that information today, 24 do you? 25 A. No, I do not. 232: 1 (Exhibit 609 marked) 2 Q. Take a look, please, at what's been marked 3 Plaintiff's Exhibit 609. 609 is Bates marked 4 Howell_John 1559 through 1565. 5 A. Okay.</p>				

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<p>6 Q. Do you recognize Plaintiff's Exhibit 609? 7 A. Yes. 8 Q. What is it? 9 A. It's a statement of disputed issues from 10 an audit for appeals. 11 Q. And did you draft Plaintiff's Exhibit 609? 12 A. I believe I did. 13 Q. Did you send it to the IRS? 14 A. Yes, I did. 15 Q. Did you send it on or about the date at 16 the top of the page, July 20, 2016? 17 A. Yes. 18 Q. This audit and appeal, did this have to do 19 with tax benefits related to RaPower3? 20 A. Part of it, yes. 21 Q. What part of this did not have to do with 22 RaPower3? 23 A. The logbook, charitable contributions. 24 Q. So, Mr. Howell, if we take a look at the</p>				

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<p>25 last couple of lines on page 1559 that starts "The 233: 1 first thing to remember," do you see that? 2 A. Mm-hmm. 3 Q. Yes? 4 A. Yes. 5 Q. So starting from there through the rest of 6 the letter, that all has to do with RaPower3, 7 correct? 8 A. Yes. 9 Q. Mr. Howell, were you aware that in late 10 2016 RaPower3 stopped promoting depreciation as a 11 tax benefit related to buying one of its lenses? 12 A. I had heard that. 13 Q. What did you hear about it? 14 A. That they were adjusting their -- their 15 pricing for just the energy credit and not the 16 depreciation. 17 Q. Who did you hear it from? 18 A. I believe there was a e-mail or memo or</p>				

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<p>19 something that was sent out from Greg Shepard</p> <p>20 concerning it.</p> <p>21 Q. Did that decision have any impact on how</p> <p>22 you prepared RaPower3 customer returns for tax year</p> <p>23 2016?</p> <p>24 A. Because I asked them under what</p> <p>25 presumption are they saying not to take depreciation</p> <p>234: 1 on equipment that the taxpayer has purchased.</p> <p>2 Q. So the answer is no?</p> <p>3 A. No. So the answer is no.</p> <p>4 Q. So just to make it clear for the record,</p> <p>5 for RaPower3 customers who purchased lenses in 2016,</p> <p>6 when you prepared their tax return, you claimed</p> <p>7 depreciation for those lenses?</p> <p>8 A. Most of my clients, yes, we claimed</p> <p>9 depreciation because they had bought prior to any</p> <p>10 changes.</p> <p>11 Q. What if they bought after the changes?</p>				

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<p>12 A. I don't think I had any. 13 Q. Okay. So have any of your customers, to 14 your knowledge, bought lenses in 2017? 15 A. I am sure that they have. None of them 16 have told me specifically that they have. 17 Q. Do you plan to make any changes? Are you 18 going to claim depreciation for those customers? 19 A. If they're entitled to depreciation, yes. 20 Q. And will you make that decision based on 21 what RaPower3 says or based on your interpretation 22 of the law? 23 A. My interpretation.</p>	<p>00235 10 Q. Are there any answers to my questions that 11 you wish to change or amplify before I pass you as a 12 witness? 13 A. Make one thing clear. If I think 14 something is going to defraud the government or is a 15 actual tax scam or such, I'm not going to do it. If 16 it's cut and dried that this is definitely against</p>	<p>235:10 - 236:9, Objection, Not relevant, Fed. R. Evid. 401, 402</p>		<p>Overruled</p>

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	<p>17 the regulations, there's nothing to substantiate it, 18 then, no, we're not going to do that. 19 But tax law isn't precise. There's a lot 20 of gray area. There's a lot of exceptions to tax 21 law. And if it says, no, it comes down to you 22 cannot do this, then we don't do it. If it says if 23 you've got some gray area here, well, what is that 24 particular area. But if it's cut and dried, if tax 25 law was simple to where, yes, you can, no, you 00236 1 cannot, that there's nothing -- no leeway there, if 2 it says, no, you cannot, then we're not going to do 3 it. 4 Because, I mean, everybody files a tax 5 return or they should file a tax return and the 6 government has to live on the tax dollars that are</p>			

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	<p>7 collected. And so if it's cut and dried and it's 8 totally over here, no, you cannot do it, we're not 9 going to do it.</p> <p>00236 15 MR. PAUL: I have just a couple questions. 16 EXAMINATION 17 BY MR. PAUL: 18 Q. Okay. And, Mr. Howell, I'm going to 19 introduce myself briefly. I'm Steven Paul, P-A-U-L. 20 I'm the attorney for RaPower3 entities and 21 Mr. Johnson, and I just want to ask a couple of 22 questions. 23 In advising a tax client to take either 24 the solar tax credit or a depreciation relating to 25 RaPower3, did you analyze the facts of each client's 00237 1 needs individually at the time of preparing a tax</p>			

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	<p>2 return?</p> <p>3 A. Yes, based on</p> <p>4 information that they gave</p> <p>5 us and their overall tax return</p> <p>6 preparation.</p> <p>7 Q. And is it your practice</p> <p>8 to make a</p> <p>9 determination whether any tax</p> <p>10 treatment is</p> <p>11 appropriate on a case-by-case</p> <p>12 basis for any of your</p> <p>13 individual clients?</p> <p>14 A. Yes.</p> <p>15 Q. And did you perform</p> <p>16 your own analysis to</p> <p>17 confirm the application of the</p> <p>18 tax code to your</p> <p>19 clients and specifically</p> <p>20 related to Sections 48 and</p> <p>21 45 of the tax code and</p> <p>22 Sections 469 of the code</p> <p>23 relating to tax credits and</p> <p>24 depreciation?</p> <p>25 MS. HEALY</p> <p>26 GALLAGHER: Objection.</p> <p>27 Compound.</p> <p>28 You can answer.</p> <p>29 A. Yes.</p> <p>30 BY MR. PAUL:</p>	<p>237:10 - 18, Objection, Compound, Fed. R. Evid. 611(a)</p>		<p>Overruled</p>

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	<p>20 Q. Okay. So you performed your own analysis?</p> <p>21 You didn't rely on anybody from RaPower or any</p> <p>22 website related to RaPower to make a determination</p> <p>23 as to the application of tax code to your clients,</p> <p>24 correct?</p> <p>25 MS. HEALY GALLAGHER: Objection.</p> <p>00238</p> <p>1 A. Correct.</p> <p>2 MS. HEALY GALLAGHER: Misstates prior</p> <p>3 testimony.</p>	<p>237:20 - 238:3, Objection, Misstates prior testimony, Fed. R. Evid. 403, 611(a)</p>		<p>Overruled</p>
<p>238: 9 EXAMINATION</p> <p>10 BY MR. TEAKELL:</p>	<p>00238</p> <p>9 EXAMINATION</p> <p>10 BY MR. TEAKELL:</p> <p>11 Q. Mr. Howell, you were not a -- not</p> <p>12 affiliated with RaPower3 in any other way other than</p> <p>13 what you've testified about today, correct?</p> <p>14 A. Correct.</p> <p>15 Q. You're not an officer?</p> <p>16 A. No.</p>			

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	<p>17 Q. You're not affiliated 18 other than being a 19 tax service for the clients 20 about whom you've 21 testified? 22 A. Yes.</p> <p>00239</p> <p>1 Q. You are not -- you are 2 not a 3 decision-maker or 4 policymaker for the company, 5 correct, for RaPower? 6 A. No. 7 Q. You didn't establish 8 any kind of tax 9 policy for them, did you? 10 A. No. 11 Q. Now, you were -- you 12 testified about being 13 in Utah and seeing some of 14 the infrastructure there. 15 I'm not going to go over it in 16 detail, but my 17 question to you is, you 18 mentioned at some point 19 there was a CPA there that 20 you spoke with or you had 21 some contact with about 22 RaPower and clients and</p>	<p>238:17 - 24, Objection, Misstates prior testimony, Fed. R. Evid. 403, 611(a)</p>		<p>Overruled</p>

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	<p>14 energy credits, et cetera. Did I understand</p> <p>15 correctly?</p> <p>16 A. Yes.</p> <p>17 Q. And who was that CPA?</p> <p>18 A. Bolander, I believe his name is.</p> <p>19 Q. What was your understanding at that time</p> <p>20 as to his position with RaPower?</p> <p>21 A. He just prepared tax returns for</p> <p>22 individuals that were taking advantage of the</p> <p>23 RaPower3.</p> <p>24 Q. And in summary, what was the content of</p> <p>25 your discussion with him at that time?</p> <p>00240</p> <p>1 A. He said that he had researched, done his</p> <p>2 own research into the tax laws and everything and</p> <p>3 that he prepared his clients' tax returns based on</p> <p>4 that information. And he had apparently went</p>	<p>239:24 - 240:5, Objection, Hearsay, Fed. R. Evid. 801(c), 802</p>		<p>Sustained</p>

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	<p>5 through some audits with some of his clients. 6 Q. Now, in regard to the tax clients that 7 you've testified about today, is my understanding 8 correct that you are not making investment decisions 9 for them? 10 MS. HEALY GALLAGHER: Objection. Leading. 11 A. No, I make no investment decisions for 12 them. 13 BY MR. TEAKELL: 14 Q. You have -- am I correct in my 15 understanding that as a -- an accountant or tax 16 preparer, you do not have the duty to try to 17 investigate some information that they bring to you 18 such as their income, their -- what they've invested 19 in, things of that nature? 20 MS. HEALY GALLAGHER: Objection. Leading.</p>	<p>240:6 - 12, Objection, Leading, Fed. R. Evid. 611(c); Not relevant, Fed. R. Evid. 401, 402</p> <p>240:14 - 241:1, Objection, Leading, Fed. R. Evid. 611(c); Compound, Fed. R. Evid. 611(a)</p>		<p>Overruled</p> <p>Overruled</p>

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	<p>21 Compound.</p> <p>22 A. No, I don't. There's</p> <p>23 no duty for us to</p> <p>24 research their W-2 to make</p> <p>25 sure that they did work</p> <p>for that company, that their</p> <p>1099s are correct,</p> <p>unless they feel that they have</p> <p>an incorrect one,</p> <p>00241</p> <p>1 then we'll help them try to</p> <p>determine that.</p> <p>2 BY MR. TEAKELL:</p> <p>3 Q. Were you functioning -</p> <p>- and forgive me if</p> <p>4 I've asked this. Were you</p> <p>functioning as an</p> <p>5 investment adviser?</p> <p>6 A. No.</p> <p>7 Q. Anything close to that?</p> <p>8 A. No.</p> <p>9 Q. Now, there was</p> <p>nothing that was -- that</p> <p>10 put any duty or made it</p> <p>incumbent upon you or was</p> <p>11 there anything that made it</p> <p>incumbent upon you to</p> <p>12 try to do some sort of</p> <p>independent testing or study</p>	<p>241:9 - 18, Objection, Leading, Fed.</p> <p>R. Evid. 611(c); Compound, Fed. R.</p> <p>Evid. 611(a)</p>		<p>Overruled</p>

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	<p>13 regarding the information that 14 was given to you by 15 RaPower? 16 MS. HEALY GALLAGHER: Objection. 17 Compound. Leading. 18 A. Nothing that I thought I should hire my 19 own engineer to do my own study on it. 20 BY MR. TEAKELL: 21 Q. You relied on the information given to you 22 by -- well, you've already test -- strike that. 23 You've already testified about making a 24 trip and seeing what you saw there in Utah regarding 25 the company, what I'll refer to as infrastructure. And you've already testified about what info was 00242 1 given you at different points. 2 Did you -- was there any other area that 3 you relied upon from RaPower in addition to those 4 things?</p>			

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	<p>5 A. No.</p> <p>6 Q. Did you have any other pipeline or 7 information system other than what RaPower or its 8 representatives would tell you or give you?</p> <p>9 A. No.</p> <p>10 Q. About RaPower itself.</p> <p>11 A. Correct.</p> <p>12 Q. Now, you were shown just a little while 13 ago some letters. The Kirton McConkie letter and 14 the Anderson letter I think were two examples.</p> <p>15 At the time that you had -- well, let me 16 ask it this way. At any point prior to today, did 17 you understand that those letters as they were 18 written had been clarified or retracted to some 19 degree?</p> <p>20 A. No.</p> <p>21 Q. Did you learn anything else today in 22 regard to input from the company and/or other CPAs</p>	<p>242:21 - 25, Objection, Not relevant, Fed. R. Evid. 401, 402</p>		<p>Overruled</p>

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	<p>23 about the -- their position regarding energy credits</p> <p>24 and benefits that have been asked about today?</p> <p>25 A. No.</p> <p>00243</p> <p>1 Q. Now, you were asked at one point why</p> <p>2 didn't you stop entirely as far as tax benefits</p> <p>3 after -- I think it was in regard to the execution</p> <p>4 of the search warrant. Did I understand correctly</p> <p>5 or not? Did I understand that was a question asked</p> <p>6 to you, similar or something close to that?</p> <p>7 A. Yes.</p> <p>8 Q. Did you -- what was the reason or was</p> <p>9 there a reason that you didn't stop entirely?</p> <p>10 A. There's been other court cases to where</p> <p>11 the IRS had said or investigated somebody for a</p> <p>12 potential tax scheme or problem and then it was</p>			

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	<p>13 overturned in the tax courts saying, no, that's not 14 the case at all, so that -- and they totally 15 reversed what IRS was saying. 16 Q. Now, did you ever receive any confirmation 17 one way or the other as to what was happening with a 18 criminal investigation regarding RaPower or at least 19 the search warrant execution? 20 A. I never found out the results of that. I 21 just -- the only thing that I was told is that 22 computers and stuff still had never been returned to 23 RaPower. 24 Q. Do you have an estimation of the 25 percentage of returns for the RaPower related 00244 1 clients that were prepared -- that you prepared or 2 had a hand in preparing prior to the execution of 3 the search warrant?</p>			

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	<p>4 A. There was probably -- prior to the search 5 warrant, that was in 2012, I'd probably just done 6 maybe 15, 20. 7 Q. But was that -- was that or was that not 8 the point where you decreased your -- the returns 9 for those clients, or did it have an effect? 10 A. It didn't really have an effect at that 11 time, because it was in 2012. 12 Q. Now, the two times you testified about 13 going to RaPower and seeing whatever you saw there, 14 were those -- did I understand it to be correct that 15 those were the only two times that you had been 16 there? 17 A. Yes, that's correct. 18 Q. And -- excuse me? 19 A. That's correct. Only been there twice. 20 Q. And any other information you received has 21 been via what form?</p>			

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	<p>22 A. E-mails, YouTube 23 videos that they have 24 produced. Neldon Johnson has a radio program he does. I think I listened once to that.</p>			
<p>246: 4 Q. Now, you were asked more than once about 5 some documents that referenced additional 6 information, additional evidence, additional 7 testimony that you had put in correspondence 8 regarding audits. Do you remember that? 9 A. Yes. 10 Q. Now, my question is, what was -- I 11 understand you had a basis for making those 12 statements or that statement that was repeated 13 essentially in more than one document. And again, 14 what was that, or what was that? 15 A. RaPower, usually from Greg Shepard, said 16 they had a special witness that we could -- that</p>				

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<p>17 they would use in appeals if they needed to and we 18 would just need to contact them at that time if we 19 were going to have a appeals conference call and 20 that that person would be available. 21 Q. Was there anybody else from RaPower who 22 gave you that information, or did this come from 23 Shepard? 24 A. It just came from Greg Shepard. 25 Q. So the basis -- your basis of that 247: 1 statement was Shepard directly telling you that? 2 A. Yes.</p>				
<p>249:12 MS. HEALY GALLAGHER: All right. Then -- 13 all right. I will ask that Mr. Howell read and sign 14 his deposition. And Mr. Teakell will explain to you 15 what that means. We are off the record. Thank you 16 very much.</p>				

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DEFENDANT COUNTER- DESIGNATIONS	PLAINTIFF COUNTER- DESIGNATIONS			

Instructions: One form should contain all designations for a witness. Plaintiff Designations (column 1) and Defendant Designations (column 2) will show the full deposition text that the party proposes to read in its case-in-chief. Completeness designations are proposed by the other party, under Fed. R. Civ. P. 32(a)(6), to be read with the designations. Counter-designations are read following the designations and completeness designations, similar to cross examination. This form should be provided in word processing format to the other party, who then will continue to fill in the form. The form is then returned to the proposing party for review, resolution of disputes, and further editing. The parties should confer and file a final version in PDF format using the event “Notice of Filing” and also submit a final word processing copy to the court at dj.nuffer@utd.uscourts.gov, for ruling.

All objections which the objecting party intends to pursue should be listed, whether made at the deposition, as with objections as to form, or made newly in this form, if the objection is of a type that was reserved.

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-00828
Deposition of Peter Gregg taken November 16, 2016

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<p>18 MR. JONES: Paul Jones, counsel for Peter 19 Gregg. 20 MS. HEALY GALLAGHER: Erin Healy 21 Gallagher, also for the United States. 22 MR. MORAN: And, for the record, there is 23 no appearance by anyone representing RaPower-3, 24 Neldon Johnson, International Automated Systems, 25 LTB1 LLC, Roger Freeborn, or R. Gregory Shepard. 12: 1 Q. BY MR. MORAN: Mr. Gregg, before we get 2 started, can you please state and spell your name. 3 A. P-E-T-E-R, G-R-E-G-G. 4 Q. Do you use a middle initial or middle 5 name? 6 A. No, I have a middle -- Peter Christopher 7 Gregg, so... 8 Q. Okay. And can you please give your 9 address.</p>				

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10 A. 38490 Bickford Street, sandy, Oregon 11 97055.				
14:13 Today we're here to get your testimony and 14 your recollection about the facts of this case as 15 you understand them. So I just need to ask: Is 16 there anything that would preclude you from 17 truthfully answering questions today? 18 A. No. 19 Q. Are you taking any medications that 20 would -- 21 A. No. 22 Q. -- inhibit -- 23 A. Sorry. 24 Q. -- your ability to answer questions 25 truthfully? 15: 1 A. No. 2 Q. Have you had any alcohol to drink in the 3 last 12 hours? 4 A. No.	168: 10 A. Never. 11 Q. Okay. Would you have sold lenses to your 12 family and friends if you thought that they were a 13 sham and a fraud and a made- up product intended only 14 to defraud the government of tax revenue? 15 A. Never. I don't expect my family to go 16 through this process.	168:2 - 10, Objection, Leading, Fed. R. Evid. 611(c)		Overruled

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<p>5 Q. Okay. Are you feeling well today?</p> <p>6 A. I'm fine.</p> <p>7 Q. Good. Okay. Before we went on the</p> <p>8 record, you and your attorney, Mr. Jones, looked at</p> <p>9 several exhibits which have been premarked.</p> <p>10 Do you recall that?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. To speed things up today, what we</p> <p>13 are going to do is run through some questions about</p> <p>14 those documents and then we'll be done with them.</p> <p>15 A. Okay.</p> <p>16 Q. You've produced e-mails to the government,</p> <p>17 pursuant to the government subpoena; correct?</p> <p>18 A. I believe to her.</p> <p>19 Q. Well, to the government -- The government</p> <p>20 issued a subpoena?</p> <p>21 A. Yes. Yeah. Yes.</p> <p>22 Q. Can you tell me, how did you search for</p>				

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<p>23 the documents that you provided to the government? 24 A. I looked through all my e-mails and all 25 the documentation that I had. 16: 1 Q. That was responsive to the government 2 subpoena? 3 A. Correct. 4 Q. Okay. Where were these e-mails stored? 5 A. On a server -- I don't know. On a server. 6 Q. That you have access to? 7 A. I -- Not really. 8 Q. Well, when you responded to the government 9 subpoena -- 10 A. Correct. I asked somebody who had more 11 knowledge on how to pull all of them off, because 12 that would have been a -- I probably wouldn't have 13 given any. 14 Q. But the e-mails you produced are e-mails 15 that you received? 16 A. Yes.</p>				

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<p>17 Q. Okay. What e-mail addresses have you used 18 since becoming involved in RaPower-3? 19 A. I have three e-mail addresses. 20 Q. What are they? 21 A. Well, the BFS mail is now no longer -- no 22 longer going; PG bone say at Yahoo; and I started a 23 new one with -- so I could keep everything straight, 24 at Gmail, and that's just recent. 25 Q. Okay. You mentioned a BFS e-mail that's 17: 1 no longer in use? 2 A. In use at all, no. 3 Q. Is that e-mail address PGregg@bfsmail.com? 4 A. Was. 5 Q. But you used it? 6 A. Yes, I did use it. 7 Q. Okay. And some of the documents that you 8 produced -- 9 A. Most of them should be from that. 10 Q. Okay. And the PGBonzai@yahoo.com, that's</p>				

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<p>11 an e-mail address that you used -- that you used?</p> <p>12 A. That's my normal e-mail address, yeah.</p> <p>13 The other is my -- was a business e-mail address</p> <p>14 through BFS.</p> <p>15 Q. And that's -- Some of the documents you've</p> <p>16 produced, you used that e-mail address; is that</p> <p>17 correct?</p> <p>18 A. Which?</p> <p>19 Q. Some of the e-mails that you produced to</p> <p>20 the government.</p> <p>21 A. Through BFS, yes.</p> <p>22 Q. What about PGBonzai@yahoo.com?</p> <p>23 A. There was probably a couple, but they were</p> <p>24 probably -- I probably forwarded them to that</p> <p>25 account.</p> <p>18: 1 Q. And what's the Gmail address?</p> <p>2 A. Peter -- PGBonzai80@gmail, I think. I</p> <p>3 don't use it that often, so...</p>				

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<p>4 Q. When did you start using that e-mail address? 5 address? 6 A. After BFS mail stopped. 7 Q. Do you recall when BFS mail stopped working? 8 working? 9 A. Whenever I sent this. 10 Q. Sent what? 11 A. Sent all of this in. 12 Q. So would that be around April or May of 13 this year? 14 A. Sure. That sounds right. 15 Q. Okay. Whose e-mail address is 16 CoachFreeb@bfsmail.com? 17 A. Say that again. 18 Q. C-O-A-C-H-F-R-E-E-B. 19 A. Roger Freeborn. 20 Q. Thank you. Whose e-mail address is 21 Greg@bfsmail.com? 22 A. Greg Shepard. 23 Q. Whose e-mail address is Greg@rapower3.com? 24 A. Greg Shepard. 25 Q. And when you say Roger Freeborn and Greg</p>				

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<p>19: 1 Shepard, are you referring to the defendants in this 2 matter? 3 A. Yeah, I'm -- Yes, I'm assuming. 4 Q. Whose e-mail address is 5 RJameson08@gmail.com? 6 A. Rick Jameson. 7 Q. Who is Rick Jameson? 8 A. He is my tax adviser. 9 Q. Do you know where he operates out of? 10 A. He's in Saint George, Utah. 11 Q. Okay. The documents that you've looked at 12 earlier, which are marked as Exhibits 204 through 13 294, are for identification, as well as Exhibits 108 14 and 109, which were marked in a previous deposition. 15 Those are all e-mails that you produced? 16 A. To you, yes. 17 Q. That's correct? So when I see e-mail 18 addresses from the individuals we just discussed -- 19 Roger Freeborn, Greg Shepard, and Rick Jameson -- am</p>				

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<p>20 I to understand that you received or sent e-mails to 21 those individuals? 22 A. Yes. 23 Q. Okay. All right. I think we're done with 24 these. 25 MR. MORAN: Mr. Jones, we can make copies 20: 1 available to you at a break or something. 2 MR. JONES: Thank you. I'll just get them 3 after the deposition. 4 MR. MORAN: Okay. Fine.</p>				
<p>20:12 Q. Okay. So you spent most of your life in 13 the Portland, Oregon area? 14 A. Outside -- Yes. I don't consider myself 15 from Portland. 16 Q. Okay. Within the -- Within -- 17 A. Within the general area, yes. 18 Q. Okay. When did you graduate high school? 19 A. 1998. 20 Q. Where did you go to high school? 21 A. Estacada High School.</p>	<p>169: 3 Q. Has anyone from RaPower-3, or any of the 4 people related to that organization or in the 5 documents that we have reviewed today or any of the 6 documents that you've seen during your involvement 7 with RaPower-3 and in any of its related entities, 8 has anybody ever suggested to you that this is 9 merely a tax shelter and the technology's not</p>		<p>204 108 109</p>	

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<p>22 Q. Okay. What activities did you participate 23 in in high school? 24 A. Three-sport athlete, honor society. That 25 took up most of my time. 21: 1 (Mr. Austin enters the room.) 2 MR. MORAN: For the record, Mr. Austin has 3 joined us. 4 MR. AUSTIN: Sorry, guys. Go ahead. Is 5 there someone on the phone? 6 MR. MORAN: No, no one is on the phone. 7 Mr. Austin -- 8 MR. AUSTIN: Just for the court reporter's 9 record. 10 MR. MORAN: Would you like to put your 11 appearance on the record? 12 MR. AUSTIN: Yeah. Christian Austin for 13 RaPower-3. 14 Q. BY MR. MORAN: You mentioned you were a 15 three-sport athlete. What sports did you play?</p>	<p>10 authentic and there's no intent to ever hopefully 11 develop the technology to a point where it's 12 profitable? 13 A. No. 14 Q. Has anyone ever suggested to you that this 15 is primarily a multi-level marketing scheme or 16 something like that, whereby you get bonuses for 17 referring your friends and you don't really care 18 about the product? 19 MR. MORAN: Objection. Leading and 20 argumentative. 21 MR. AUSTIN: I am cross examining him, 22 again, for the record. 23 THE WITNESS: No.</p>	<p>169:14 - 23, Objection, Leading, Fed. R. Evid. 611(c); Argumentative, Fed. R. Evid. 611(a)</p>		<p>Overruled</p>

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<p>16 A. I played football, wrestled, and 17 participated in track. 18 Q. Okay. When you were playing sports, did 19 you come into contact with an individual named Roger 20 Freeborn? 21 A. He was my football coach. 22 Q. He was your football coach? 23 A. My senior year, yes. 24 Q. What did you do after high school? 25 A. Went to college. 22: 1 Q. Where did you go to college? 2 A. Oregon State. 3 Q. Okay. What did you study there? 4 A. Horticulture and history. 5 Q. Did you play any sports? 6 A. I played football. 7 Q. All four years? 8 A. I wrestled one year and played football 9 for four. 10 Q. Okay. When did you graduate from college? 11 A. 2003.</p>				

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<p>12 Q. Okay. What did you do after college?</p> <p>13 A. I work at a nursery, grow trees.</p> <p>14 Q. Growing trees. Anything else?</p> <p>15 A. I coach football.</p> <p>16 Q. Okay. Do you teach at all?</p> <p>17 A. I don't. Well, I wrestle -- I coach</p> <p>18 wrestling as well.</p> <p>19 Q. Okay. And where's the nursery that you</p> <p>20 work at?</p> <p>21 A. In Boring.</p> <p>22 Q. Okay. How far is that from where you</p> <p>23 live?</p> <p>24 A. Five miles.</p> <p>25 Q. Okay. How far is that from Estacada?</p> <p>23: 1 A. Estacada. It's about ten, ten or twelve.</p> <p>2 Q. So the general vicinity of where you grew</p> <p>3 up?</p> <p>4 A. Yes. Very similar, yes.</p> <p>5 Q. Okay. What are your parents' names?</p> <p>6 A. Kevin and Michael Gregg.</p>				

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<p>7 Q. Are they still alive? 8 A. Yep. 9 Q. Okay. What are their occupations? 10 A. My dad is retired; he was a journeyman 11 lineman. And my mom is a nurse. 12 Q. When you say "lineman," do you mean 13 somebody who works on the power lines? 14 A. Yes. 15 Q. Okay. And your mom's still active as a 16 nurse? 17 A. Yes. 18 Q. Okay. Are you married? 19 A. I am. 20 Q. What's your spouse's name? 21 A. Renae Gregg. 22 Q. How long you been married to Ms. Gregg? 23 A. Since 2010. 24 Q. What's her occupation? 25 A. She's a high school science teacher. 24: 1 Q. Does she coach at all? 2 A. She used to. She doesn't anymore.</p>				

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<p>3 Q. What did she coach? 4 A. Women's basketball, volleyball. 5 Q. When did she stop? 6 A. When we had our child. 7 Q. And you answered my next question. Do you 8 have any children? 9 A. One son, Isaac Gregg. 10 Q. Okay. When was he born? 11 A. Near 2010. 12 Q. Okay. So he's only six years old? 13 A. Yep. 14 Q. Okay. Who cares for Isaac? 15 A. He goes -- He's in school now. 16 Q. Okay. Before he was in school -- you say 17 he was born in 2010 -- 18 A. Renae, my wife. 19 MR. JONES: Let him finish the question. 20 THE WITNESS: I'm sorry. 21 MR. MORAN: So let me finish the question. 22 THE WITNESS: Right. Right, right, right. 23 Q. BY MR. MORAN: Did you have any child care 24 responsibilities?</p>				

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<p>25 A. Yes. 25: 1 Q. Okay. You mentioned that your occupation 2 is landscaping? 3 A. No. I'm a horticulturist. I grow plants 4 for landscapers. 5 Q. Understood. 6 A. We're a wholesale landscape nursery. 7 Q. So do you have a separate business 8 property? 9 A. Separate business property? 10 Q. Do you grow the plants out of your home? 11 A. I have -- Yes, and then I do have some -- 12 I do landscaping on the side, but my main occupation 13 is I grow plants for Iseli Nursery. 14 Q. Okay. And do you do that out of your 15 home? Do you grow the plants in your home? 16 A. I grow some and I buy some from the 17 nursery or other sources, other nurseries. It's a</p>				

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<p>18 very high-density nursery area; there's a lot of 19 people that have plants. 20 Q. Okay. I'm just trying to understand your 21 business, so just bear with me for a minute. 22 A. Sure. 23 Q. You're an -- You said you were a 24 nurseryman and you grow some plants in your house? 25 A. I enjoy growing plants. 26: 1 Q. And you grow some -- or you buy some from 2 Iseli Nursery? 3 A. For independent landscape jobs that I do 4 on the side. 5 Q. Okay. Are you an employee or an 6 independent contractor at Iseli Nursery? 7 A. No -- I'm an employee at Iseli Nursery. I 8 grow plants at the nursery, and then whatever I do 9 on my own time is what I do. 10 Q. Okay. So you're employed at Iseli?</p>				

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<p>11 A. Sure.</p> <p>12 Q. And they give you a paycheck?</p> <p>13 A. I'm a salaried employee, yes.</p> <p>14 Q. Okay. They give you a W-2 at the end of</p> <p>15 the year?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And then on the side, at home, it</p> <p>18 sounds like you grow some plants and you also sell</p> <p>19 those?</p> <p>20 A. I do.</p> <p>21 Q. Okay. That makes sense.</p> <p>22 About how many hours a week would you say</p> <p>23 you spend working at Iseli Nursery?</p> <p>24 A. Forty to 45, depending. In the</p> <p>25 summertime, we work nines, so...</p> <p>27: 1 Q. When you say "we work nines," what --</p> <p>2 A. Nine-hour days.</p> <p>3 Q. So does that mean you work about 45 hours</p> <p>4 a week?</p> <p>5 A. Yes.</p> <p>6 Q. And about how many hours a week would you</p>				

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<p>7 say you spend working on the plants that you're growing at your house? 8 growing at your house? 9 A. Not very -- A couple I have to water, so 10 during the summertime it would be a couple hours a 11 day -- or a couple hours a week, two or three. 12 Q. All right. 13 A. And then if I have a landscape job, then 14 whatever that entails. 15 Q. When you say "a landscape job," do you 16 mean your -- 17 A. Okay. People assume that you work in the 18 nursery business, that you go do landscape jobs; but 19 that's not always the case. However, I do that on 20 the side for people that I know. 21 Q. Okay. Can you just elaborate on what a 22 landscape job is? 23 A. Somebody who wants new plants in their 24 yard, so you rip out old plants and put in new</p>				

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<p>25 plants. 28: 1 Q. About how often in a year do you do those 2 kinds of jobs? 3 A. Three to four. 4 Q. Okay. And when you do a landscaping job, 5 about how many hours does that entail? 6 A. Depends on the job. 7 Q. Okay. When you're not working at Iseli 8 Nursery or caring for your own plants and working on 9 those few landscaping jobs during the year, what 10 else do you do? 11 A. Coach. 12 Q. Coach football? 13 A. And wrestling. 14 Q. And wrestling. About how many hours a 15 week do you spend doing that? 16 A. Less this year, but I'd say at least four 17 to five. 18 Q. Four to five hours a week? 19 A. Yeah, at least. 20 Q. During football season?</p>				

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<p>21 A. Well, if you're considering a game, then</p> <p>22 that's five hours right there -- so, I guess, more</p> <p>23 then, and then practices. We'll say ten to twelve,</p> <p>24 then, I guess.</p> <p>25 Q. All right. So let's back up a little bit.</p> <p>29: 1 How long have you been coaching football?</p> <p>2 A. Since 2004 or '05, somewhere around there.</p> <p>3 Q. Okay. So over ten years?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And when does football season run?</p> <p>6 A. Through the fall.</p> <p>7 Q. Does it begin in August?</p> <p>8 A. Mid August to -- we're still -- we're in</p> <p>9 the playoffs right now, so...</p> <p>10 Q. And during football season, about how long</p> <p>11 is each practice?</p> <p>12 A. Hour and a half-ish.</p> <p>13 Q. Okay. And you practice once a day?</p> <p>14 A. Once a day.</p> <p>15 Q. Monday through Friday?</p>				

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<p>16 A. Monday through Friday. 17 Q. Saturdays? 18 A. No. 19 Q. No Saturdays. Double sessions in August? 20 A. Oregon's -- it's getting not so much. So 21 a couple -- a couple of those days are doubles, but 22 not all of them; and then I would work, so I would 23 only hit one of them. 24 Q. Okay. Do you spend time working with 25 players, doing strength conditioning? 30: 1 A. I do. 2 Q. About how many hours a week would you say 3 you're doing that? 4 A. Depending on the scheduling, not very 5 many. One, if that. In the summertime, it was much 6 more; but during the season, not so much. 7 Q. What about reviewing tapes? 8 A. That's Sunday, coaches meeting. 9 Q. About how many hours?</p>				

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<p>10 A. At least two. 11 Q. Anything else you do for the football 12 team? 13 A. No. 14 Q. Any fund raisers? 15 A. Yes, a few, but they're pretty confined. 16 They're not a long-going thing, so... 17 Q. And you mentioned you're a wrestling 18 coach? 19 A. I'm a volunteer wrestling coach at Sandy 20 High School. 21 Q. Okay. When does wrestling season run? 22 A. It starts right about now and goes through 23 February. 24 Q. And one other question on football: Is it 25 at the varsity level? 31: 1 A. Yes. 2 Q. And the wrestling team you coach is at the 3 varsity level? 4 A. Yes.</p>				

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<p>5 Q. Okay. How many hours a week would you say</p> <p>6 you spend coaching the wrestling team?</p> <p>7 A. It's volunteer, so I try to go twice a</p> <p>8 week at least, for an hour or so, maybe two,</p> <p>9 depending on how soon I get there after work.</p> <p>10 Q. Attend any meets?</p> <p>11 A. A few, if they're not eight hours away.</p> <p>12 Q. So do you have to travel to the meets</p> <p>13 sometime?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. How many meets in a year?</p> <p>16 A. Five to six. Especially if they're home,</p> <p>17 it makes it easier.</p> <p>18 Q. Are those usually --</p> <p>Withdrawn.</p> <p>19 About how many hours would you say, on</p> <p>20 average, each meet takes?</p> <p>21 A. If it's a dual, then an hour and a half.</p>				

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<p>22 If it's a Saturday meet, then all day.</p> <p>23 Q. Okay. By "all day," do you mean about</p> <p>24 eight hours?</p> <p>25 A. That sounds reasonable.</p> <p>32: 1 Q. You sound like a pretty busy guy?</p> <p>2 A. Keep myself busy, yes.</p> <p>3 Q. So you're working 40 to 45 hours at the</p> <p>4 landscaping business -- at Iseli Nursery?</p> <p>5 A. Um-hum.</p> <p>6 Q. You spend a couple hours a day taking care</p> <p>7 of your plants?</p> <p>8 A. Not a day. A week.</p> <p>9 Q. A week. Okay. A couple hours a week</p> <p>10 taking care of your plants?</p> <p>11 A. Sure, in the summertime. In the</p> <p>12 wintertime, they're pretty -- they can do it, they</p> <p>13 can handle it. Well, it's raining, so...</p> <p>14 Q. Sounds like from about August till</p>				

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<p>15 February, you're spending a lot of time coaching?</p> <p>16 A. I do.</p> <p>17 Q. Okay. When you're not at work, taking</p> <p>18 care of the plants, doing landscaping jobs,</p> <p>19 coaching, do you have any child care</p> <p>20 responsibilities?</p> <p>21 A. I do watch my son, yes.</p> <p>22 Q. Okay. Nights, weekends, things like that?</p> <p>23 A. Yeah. When Renae needs to grade papers,</p> <p>24 yes.</p> <p>25 (Reporter request.)</p> <p>33: 1 THE WITNESS: When Renae needs to grade</p> <p>2 papers.</p> <p>3 Q. BY MR. MORAN: You said your son was born</p> <p>4 in 2010?</p> <p>5 A. Um-hum. Yes.</p> <p>6 Q. Okay. Did your wife continue teaching</p> <p>7 when he was a baby, or did she take some time off?</p> <p>8 A. She took time off.</p> <p>9 Q. About how long?</p>				

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<p>10 A. Five years, until he got into 11 kindergarten. 12 Q. Okay. So did she care for him between the 13 ages of zero and kindergarten? 14 A. Yes. 15 Q. Okay. You mentioned you had a BFS e-mail 16 account? 17 A. (Nods head.) 18 Q. I need a -- 19 A. Yes. 20 Q. What is BFS? 21 A. Bigger Faster Stronger. 22 Q. Okay. Were you an employee of Bigger 23 Faster Stronger? 24 A. I was an independent contractor. 25 Q. Let me just back up. What is Bigger 34: 1 Faster Stronger? 2 A. It's a strength and conditioning company 3 geared towards high-school athletes. 4 Q. Where is it based out of? 5 A. Salt Lake City, Utah. 6 Q. How did you come to learn about Bigger</p>				

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<p>7 Faster Stronger?</p> <p>8 A. I did it in high school. That was our</p> <p>9 strength and conditioning program in high school.</p> <p>10 Q. So when you were an athlete in high</p> <p>11 school --</p> <p>12 A. Yes.</p> <p>13 Q. -- did you participate in their</p> <p>14 conditioning program?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. How did you learn about it in high</p> <p>17 school?</p> <p>18 A. Roger Freeborn.</p> <p>19 Q. Do you know what Mr. Freeborn's</p> <p>20 involvement was with Bigger Faster Stronger was?</p> <p>21 A. He was an independent clinician, I</p> <p>22 believe, for them as well at that time.</p> <p>23 Q. So you participated in the Bigger Faster</p> <p>24 Stronger program in high school?</p> <p>25 A. Correct.</p> <p>35: 1 Q. Did you continue through college?</p>				

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<p>2 A. No. We had our own program at Oregon</p> <p>3 State.</p> <p>4 Q. When did you become a Bigger Faster</p> <p>5 Stronger contractor?</p> <p>6 A. After college.</p> <p>7 Q. Was that around the same time you became a</p> <p>8 football coach?</p> <p>9 A. Probably right around then.</p> <p>10 Q. Bigger Faster Stronger -- Is the Bigger</p> <p>11 Faster Stronger conditioning program used at the</p> <p>12 high school where you coach?</p> <p>13 A. Yeah, I try to implement it. Our head</p> <p>14 football coach doesn't implement it very well,</p> <p>15 but...</p> <p>16 Q. And from the time that you became an</p> <p>17 independent contractor for Bigger Faster Stronger,</p> <p>18 what exactly did you do?</p> <p>19 A. I did a few -- Well, I learned how to do</p> <p>20 clinician -- or clinics at high schools and tried to</p>				

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<p>21 sell equipment and -- that's about it, yeah. 22 Q. When did you stop working for Bigger 23 Faster Stronger? 24 A. I never really stopped. I just - - It was 25 -- I never really got going, per se. I never sold a 36: 1 whole bunch of equipment. I never did any 2 independent clinics of my own. 3 Q. So do you know when you stopped being an 4 independent contractor? 5 A. Probably -- After I sent all my e-mails to 6 you guys. 7 Q. So earlier this year? 8 A. Yeah. 9 Q. Were you ever -- Were you told that you 10 were no longer a Bigger Faster Stronger contractor? 11 A. I was -- I did. 12 Q. Who told you that? 13 A. Well, whoever the -- Bob Rowbotham. 14 (Reporter request.)</p>				

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<p>15 THE WITNESS: Bob Rowbotham, I believe. 16 Q. BY MR. MORAN: Did Mr. Rowbotham give you 17 a reason? 18 A. I believe he said that he didn't want to 19 be involved with the details of the RaPower thing. 20 Q. How is RaPower connected to Bigger Faster 21 Stronger? 22 A. Through Greg Shepard. 23 Q. Can you tell me what Mr. Shepard's 24 involvement was in? 25 A. Of who? Of what? 37: 1 Q. Well, I asked you how Bigger Faster 2 Stronger was related to RaPower, and you said Greg 3 Shepard. Can you tell me Mr. Shepard's involvement? 4 A. He was a president and CEO of Bigger 5 Faster Stronger.</p>				
<p>38:16 Q. We just talked about your activities at 17 Iseli Nursery, your -- your own side business,</p>	<p>169: 23 THE WITNESS: No. 24 Q. BY MR. AUSTIN: Did you consider your lens</p>	<p>169:14 - 23, Objection, Leading, Fed. R. Evid. 611(c); Argumentative, Fed. R. Evid. 611(a)</p>		<p>Overruled</p>

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18 growing plants, a few landscaping jobs, coaching, 19 football and wrestling, Bigger Faster Stronger; and 20 you testified about the approximate number of hours 21 you spent on each. 22 Has that been true since 2009? 23 A. Yes.	25 leasing business a legitimate business? 170: 1 MR. MORAN: Objection. Leading and 2 argumentative. 3 THE WITNESS: Yes.	169:24 – 170:3, Objection, Leading, Fed. R. Evid. 611(c); Argumentative, Fed. R. Evid. 611(a); Not relevant, Fed. R. Evid. 401, 402		Overruled
38:24 Q. Okay. Thanks. Now, you also just 25 testified about an entity called RaPower-3, which is 39: 1 a defendant in this case. 2 Did there come a time when you became 3 involved with RaPower-3 and a solar lens leasing 4 activity? 5 A. You're asking me questions that you 6 already know the answers to. Are you -- 7 Q. You need to answer the question. 8 A. Yes. Okay. 9 Q. How did you learn about RaPower-3? 10 A. Through Greg Shepard and Roger Freeborn.	170: 1 MR. MORAN: Objection. Leading and 2 argumentative. 3 THE WITNESS: Yes. 4 Q. BY MR. AUSTIN: Did you just put on a 5 pretense of running a lens leasing business so that 6 you could fraudulently claim to the IRS or other 7 taxing authorities that you're entitled to a 8 depreciation credit? 9 A. No. 10 MR. MORAN: Objection. Leading and 11 argumentative. 12 THE WITNESS: No. I believe in paying 13 taxes. This country needs to run somehow.	169:24 - 170:3, Objection, Leading, Fed. R. Evid. 611(c); Argumentative, Fed. R. Evid. 611(a); Not relevant, Fed. R. Evid. 401, 402 170:4 - 13, Objection, Leading, Fed. R. Evid. 611(c); Argumentative, Fed. R. Evid. 611(a); Not relevant, Fed. R. Evid. 401, 402		Overruled

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<p>11 Q. Okay. What is RaPower-3? 12 A. It is a marketing branch of IAUS to sell 13 solar power lenses. 14 Q. And when you say IAUS, are you referring 15 to International Automated Systems? 16 A. Yes. 17 Q. Okay. Do you recall when you learned 18 about RaPower-3? 19 A. 2009-ish. 20 Q. And you said you were introduced to it by 21 Roger Freeborn and Greg Shepard? 22 A. Yes. 23 Q. Okay. When was the first time you met 24 Greg Shepard? 25 A. I can't recall exactly. 40: 1 Q. Do you think it was before 2009? 2 A. It was. 3 Q. Okay. Do you think it was when you were 4 in high school? 5 A. I'm trying to remember if he did a clinic</p>				

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<p>6 at our school. I'm pretty sure he did, but I'm not 7 positive. 8 Q. Okay. Do you remember the circumstances 9 where you first heard about RaPower-3? So I'm 10 asking: Where were you? What was going on? 11 A. I have no idea. 12 Q. But you think it was around 2009? 13 A. I do. 14 Q. Why do you think that you first heard 15 about it in 2009? 16 A. Why? Looking through e-mails, the old 17 e-mails, and it's somewhere around that time. 18 Q. Okay. When you say "looking through the 19 e-mails," are you referring to the exhibits -- 20 A. Correct. 21 Q. -- 204 through 294 that you looked at -- 22 A. Yes. 23 Q. -- at the beginning of this deposition?</p>				

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<p>24 A. Yes. 25 Q. Okay. Did you have a sponsor? 41: 1 A. Roger Freeborn. 2 Q. Mr. Freeborn was your sponsor at 3 RaPower-3? 4 A. Yes. 5 Q. Okay. What's your understanding of how 6 RaPower-3 International Automated Systems relate to 7 each other? 8 A. As I said before, I believe it's a 9 marketing branch of IAUS. 10 Q. Okay. And what do you mean by "marketing 11 branch"? 12 A. Let people know what it is. 13 Q. That -- Is it that RaPower-3 markets solar 14 lenses?</p>				
<p>41:17 THE WITNESS: That's my understanding. 18 Q. BY MR. MORAN: Okay. What did you 19 purchase from RaPower-3? 20 A. Lenses. 21 Q. What kind of lenses? 22 A. Acrylic, plastic lenses.</p>	<p>14 Q. BY MR. AUSTIN: Did anybody from RaPower-3 15 or any other entity related thereto ever tell you 16 that, even though you were technically bound to 17 repay the full purchase price of the lenses that you</p>	<p>170:14 - 22, Objection, Leading, Fed. R. Evid. 611(c); Argumentative, Fed. R. Evid. 611(a); Compound, Fed. R. Evid. 611(a)</p>		<p>Overruled</p>

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<p>23 Q. What's your understanding of what these 24 lenses would be used for? 25 A. To magnify the sun's rays to create heat, 42: 1 steam, and electricity. 2 Q. When you say "create steam, heat, and 3 electricity," what's the end product?</p>	<p>18 bought, they would never really expect to be repaid 19 because it was just a scheme to get a tax deduction? 20 MR. MORAN: Objection. Leading, 21 argumentative, and compound. 22 THE WITNESS: No.</p>			
<p>42: 6 A. Electricity. 7 Q. So it was your understanding that -- 8 A. Or steam. You could -- You could 9 evaporate water to create -- what is that -- clean 10 water, because you could -- you could use dirty 11 water and create clean water through that steam 12 process. 13 Q. BY MR. MORAN: And that - - that's using 14 the solar -- the solar lenses that you purchased 15 from RaPower-3? 16 A. I could do that, yes. 17 Q. Okay. Do you recall how much you paid for</p>	<p>22 THE WITNESS: No. 23 Q. BY MR. AUSTIN: And would you -- would you 24 have become involved if that was the case? 25 A. No. 171: 1 MR. MORAN: Objection. Leading.</p>	<p>170:14 - 22, Objection, Leading, Fed. R. Evid. 611(c); Argumentative, Fed. R. Evid. 611(a); Compound, Fed. R. Evid. 611(a) 170:23 - 171:1, Objection, Leading, Fed. R. Evid. 611(c)</p>		<p>Overruled</p> <p>Overruled</p>

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18 each lens? 19 A. About \$3,000. \$3,000. 20 Q. You think it was \$3,000? 21 A. I believe so, or -- I don't know. More 22 than that, maybe.				
43: 8 Q. BY MR. MORAN: Mr. Gregg, I've handed you 9 a document that's been marked for identification as 10 Exhibit 295. It is Bates labeled GREGG_P&R-000240. 11 As we discussed prior to the deposition, that's the 12 number that we labeled it with when we received your 13 documents. 14 You're looking at Exhibit 295. Can you 15 identify it? 16 A. It's a RaPower-3 invoice. 17 Q. Did you receive this invoice? 18 A. Yes. 19 Q. Okay. Earlier you testified you thought 20 that you'd paid about \$3,000 per lens. 21 Looking at Exhibit 245, does that refresh 22 your recollection?			295	

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<p>23 A. Looks like \$3,000 it is. 24 Q. In Exhibit 295, it looks like you 25 purchased two solar thermal lenses? 44: 1 A. Correct. 2 Q. And the full unit price was \$6,000? 3 A. Correct. 4 Q. So that works out to \$3,000 per lens, as 5 you testified? 6 A. Yes. 7 Q. There's a reference to a down payment of 8 \$2,040? 9 A. Yes. 10 Q. When I asked you how much you paid for the 11 lens, did you pay the full \$6,000?</p>				
<p>44:15 A. No, I paid the down payment. 16 Q. Okay. Do you recall if you've ever paid 17 the full unit price of \$6,000? 18 A. I have not, for the lenses that I have 19 purchased.</p>				
<p>44:20 Q. Okay. Why did you get involved in the</p>				

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<p>21 RaPower-3 program? 22 A. To make the world a better place. 23 Q. What do you mean by that? 24 A. We're, as a nation, dependent on coal and 25 oil, and I would like to see that stop. 45: 1 Q. How do you think RaPower-3 will achieve 2 that goal? 3 A. RaPower-3 will achieve that goal through 4 helping us become less oil- and coal-dependent. 5 Q. How will it do that? 6 A. There's energy that is needed in this 7 United States, and RaPower-3 will create that. 8 Q. How is it going to create the energy?</p>				
<p>45:14 A. Through solar. 15 Q. Solar what? 16 A. It can be solar electricity. It can be a 17 lot of different avenues. 18 Q. Okay. Did you expect to receive any</p>				

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<p>19 compensation from your participation in RaPower-3? 20 A. Yes. 21 Q. How did you expect that compensation to be 22 received? 23 A. Bonus money and through leasing my lenses. 24 Q. Let's talk about that. What's the bonus 25 contract? 46: 1 A. It is a percentage of the gross sales, I 2 believe. 3 Q. Gross sales of what? 4 A. IAUS. 5 Q. What does IAUS sell?</p>				
<p>46: 8 THE WITNESS: Solar lenses. 9 Q. BY MR. MORAN: Okay. So the bonus 10 contract is that you receive a percentage of IAUS's 11 gross sales of solar lenses? 12 A. As far as I understand. 13 Q. Okay. Have you received any portion of 14 that bonus contract? 15 A. I have not. 16 Q. Okay. And then you also said that you</p>				

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<p>17 expect to be -- you expected to be compensated from</p> <p>18 the sale of power from your lenses?</p> <p>19 A. No, from the -- well, leasing the lenses,</p> <p>20 which -- whatever they produce through that.</p> <p>21 Q. Who did you lease the lenses to?</p> <p>22 A. LB something. I don't remember offhand.</p> <p>23 Q. Is it LTB1 LLC?</p> <p>24 A. That sounds like it.</p> <p>25 Q. Have you ever received any lease payments</p> <p>47: 1 for your lenses?</p> <p>2 A. I have not.</p>				
<p>47: 5 Q. BY MR. MORAN: Mr. Gregg, I've handed you</p> <p>6 a copy of what's been marked for identification as</p> <p>7 Exhibit 296, which has been Bates labeled</p> <p>8 GREGG_P&R-000247.</p> <p>9 (Reporter request.)</p> <p>10 Q. BY MR. MORAN: Mr. Gregg, you're looking</p> <p>11 at a copy of Exhibit 296 -- what's been marked for</p>			296	

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<p>12 identification as Exhibit 296. What is it? 13 A. It's a team member compensation contract. 14 Q. Is this a document that you produced -- 15 A. Excuse me? 16 Q. Is it a document that you produced to the 17 United States? 18 A. Yes. 19 Q. And just previously you testified about 20 two ways that you expected to receive compensation 21 for your participation in RaPower-3? 22 A. Yes. 23 Q. Okay. Are those methods reflected in 24 Exhibit 296? 25 A. No. This is a commission- based contract. 48: 1 Q. And what's the commission-based contract? 2 A. To basically advertise for RaPower-3 and 3 see if you can get more people involved.</p>				

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<p>4 Q. Did you ever participate in that method? 5 A. I did. 6 Q. How did you do that? 7 A. Talked to people and told them about it. 8 Q. Who did you talk to? 9 A. Family members and friends. 10 Q. Did any of these individuals sign up for 11 RaPower-3 to buy power lenses? 12 A. Yes, they did. 13 Q. Who are those individuals? 14 A. Kevin and Michael Gregg and, I believe, 15 my sister Sarah. 16 Q. And Kevin and Michael Gregg are your 17 parents? 18 A. Correct. 19 Q. Okay. And the commission-based 20 compensation that you've just described, is that the 21 first method of compensation in Exhibit 296? 22 A. It looks like that. 23 Q. Okay. And a second method of compensation</p>				

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<p>24 in the second paragraph, is that referring to the 25 potential that you would receive revenues from the 49: 1 sale of power? 2 A. From the sale of power. 3 Q. Like you testified that you were -- that 4 you expected to receive revenue from leasing your 5 lenses? 6 A. Correct. Yes, I believe so. 7 Q. And this second method of compensation 8 refers to revenues generated from the sale of power? 9 A. I believe so. 10 Q. Are those two the same avenue of 11 compensation or no? 12 A. I don't believe so. One's the sale of 13 power and one's advertising it. 14 Q. So it sounds like there's four ways that 15 you could potentially receive income from RaPower-3. 16 You talked about the bonus? 17 A. (Nods head.)</p>				

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<p>18 Q. We just talked about commissions?</p> <p>19 A. Correct.</p> <p>20 Q. You mentioned --</p> <p>21 A. Leasing lenses.</p> <p>22 Q. -- leasing lenses?</p> <p>23 A. (Nods head.)</p> <p>24 Q. And then the fourth would be, I guess,</p> <p>25 what's referred to in Exhibit 296 as the second</p> <p>50: 1 method of compensation?</p>				
<p>50: 4 THE WITNESS: I don't understand what</p> <p>5 you're -- I mean, I understand it as three ways of</p> <p>6 making money.</p> <p>7 Q. BY MR. MORAN: Okay. So when did you --</p> <p>8 When do you expect to receive income from leasing</p> <p>9 your lenses?</p> <p>10 A. When they come online.</p> <p>11 Q. What do you mean by "come online"?</p> <p>12 A. When they start producing whatever we need</p> <p>13 to produce, either water or electricity or heat, to</p> <p>14 make a create a revenue.</p>				

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<p>15 Q. Okay. To your knowledge, have any 16 revenues been generated? 17 A. I have no idea. 18 Q. Have you received any revenues? 19 A. I have not received any revenues. 20 Q. Okay. And you recall being involved in 21 RaPower-3 and purchasing solar lenses in 2009? 22 A. Looks like my contract said 2010, so... 23 Q. So is it fair to say it's been at least 24 six years? 25 A. Correct.</p>				
<p>51: 2 Q. BY MR. MORAN: Mr. Gregg, you've been 3 given a copy of what's been marked for 4 identification as Exhibit 297 and labeled -- 5 THE REPORTER: 297. 6 Q. BY MR. MORAN: You've been given a copy of 7 what's been marked for identification as Exhibit 297</p>			297	

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<p>8 and which has been Bates labeled GREGG_P&R-000003.</p> <p>9 You previously testified a bonus -</p> <p>- about</p> <p>10 a bonus contract?</p> <p>11 A. I did.</p> <p>12 Q. Is this --</p> <p>13 A. This is it.</p> <p>14 Q. Okay. And at the bottom of Exhibit 297,</p> <p>15 there's a signature from Neldon Johnson?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know who Neldon Johnson is?</p> <p>18 A. I believe he owns IAUS.</p> <p>19 Q. Okay. Do you know if he does anything</p> <p>20 else with regards to the solar lenses?</p> <p>21 A. I believe -- Well, no, I don't know.</p> <p>22 Q. Okay. No more questions on that exhibit.</p> <p>23 In total, do you know how many lenses</p> <p>24 you've purchased?</p> <p>25 A. We'll probably see soon.</p> <p>52: 1 Q. Can you give me a ballpark estimate?</p>				

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2 A. Thirty-ish.				
52:11 Q. -- like to establish: You've bought about 12 30 lenses; is that it? 13 A. I believe so. 14 Q. Okay. Were there any other methods 15 through which you expected to benefit from having 16 purchased your solar lenses? 17 A. Any other methods that I would benefit? 18 Q. Any other benefits? 19 A. Not -- Not directly through the company, 20 no. 21 Q. What about indirectly through the company? 22 A. Indirectly through the company? No. 23 Q. Well, you said "not directly through the 24 company," and I'm asking: Did you expect to receive 25 any benefits that weren't directly from the company?				
53: 3 THE WITNESS: There's -- No.				
53:20 Q. You testified earlier that you paid \$3,000			295	

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<p>21 per lens but you only made a down payment of, I</p> <p>22 believe, about \$1,000 per lens. Do you recall that?</p> <p>23 A. Yes.</p> <p>24 Q. When do you expect to pay the remainder?</p> <p>25 A. When the leases go, it will help pay that</p> <p>54: 1 off.</p> <p>2 Q. What do you mean, "when the leases go"?</p> <p>3 A. When the lease on -- When the lenses</p> <p>4 create revenue, they will make money, and that will</p> <p>5 help pay that off, the rest of that off.</p> <p>6 Q. The rest of what off?</p> <p>7 A. The rest of the down payment - - or the</p> <p>8 rest of the remainder of the down -- well, whatever</p> <p>9 it is, the balance.</p> <p>10 Q. You mean the difference between --</p> <p>11 A. The balance of the down payment and the</p> <p>12 price of the lens.</p>				

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<p>13 Q. So if you could look back to Exhibit 295.</p> <p>14 When you say "the difference," you're</p> <p>15 referring to the difference between the down payment</p> <p>16 of \$2,040 and the full unit price of \$6,000?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. So is it fair to say that -</p> <p>- Do you</p> <p>19 think that you owe money to RaPower-3 for that</p> <p>20 difference?</p> <p>21 A. At some point, yes.</p> <p>22 Q. Do you know if there's a promissory note?</p> <p>23 A. I have no idea.</p> <p>24 Q. Do you consider yourself personally</p> <p>25 liable?</p>				
<p>55: 3 THE WITNESS: I can't answer that.</p> <p>4 Q. BY MR. MORAN: Okay. If it turns out that</p> <p>5 these lenses never produce any solar power of any</p> <p>6 kind, do you intend to pay that debt?</p>				

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55: 9 THE WITNESS: I don't know. 10 Q. BY MR. MORAN: What if RaPower-3 came to 11 you right now and said, "Pay off the remainder"? 12 What would you do?				
55:15 THE WITNESS: I would be in a -- I 16 couldn't pay it. 17 Q. BY MR. MORAN: Why not? 18 A. Because I don't have money lying around. 19 Q. Do you know how the \$3,000 price per lens 20 was calculated?				
55:22 THE WITNESS: I don't. 23 Q. BY MR. MORAN: Did you have any 24 opportunity to negotiate that pricing? 25 A. I did not. 56: 1 Q. Did you ever get an independent opinion or 2 appraisal on whether or not your lens was worth what 3 you were paying for it? 4 A. I did not. 5 Q. Do you know if there's a market where you				

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<p>6 could sell your lenses? 7 A. I'm sure there is not. It's pretty 8 specialized. 9 Q. Do you know if you can sell your lenses to 10 someone else if you wanted?</p>				
<p>56:13 THE WITNESS: No.</p>				
<p>56:20 Q. BY MR. MORAN: Mr. Gregg, I've given you a 21 copy of what's been marked for identification as 22 Exhibit 8A. 23 Do you recognize this document? 24 A. It looks like from the RaPower-3 website. 25 Q. Do you recall downloading it from the 57: 1 RaPower-3 website? 2 A. I've downloaded a lot of things. No. 3 Q. Is it fair to say that you got it in some 4 form from RaPower-3? 5 A. From the Internet, I imagine. So, yeah, 6 RaPower-3 put it on the Internet. 7 Q. On their website? 8 A. The website, yeah. 9 Q. It says it's by Greg Shepard? 10 A. Yes.</p>		<p>56:20-57:13; Objection, leading; hearsay; lack of personal knowledge; lack of foundation</p>	<p>8A</p>	<p>Overruled</p>

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<p>11 Q. Is it your understanding that Mr. Shepard 12 authored this document? 13 A. As far as I know. 14 MR. MORAN: Okay. No more questions on 15 that document.</p>				
<p>57:18 Q. BY MR. MORAN: Mr. Gregg, I'm handing you 19 a copy of what's been marked for identification as 20 Exhibit 298 and which has been labeled 21 GREGG_P&R-003382. 22 Do you recognize this document? 23 A. Looks like an e-mail. 24 Q. Who's the e-mail from? 25 A. Greg Shepard. 58: 1 Q. And did you receive this e-mail? 2 A. I'm sure I did. 3 Q. It's dated November 4th, 2013. 4 A. Okay. 5 Q. In the second paragraph, it says: "We are 6 planning on producing power today." 7 A. Okay.</p>			298	
<p>58:13 Q. BY MR. MORAN: Earlier you testified that</p>				

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14 you expected -- that you expected your solar lenses 15 to produce electricity or, I believe, desalinize 16 water; is that correct?				
58:19 THE WITNESS: I would like it to produce a 20 revenue source, whether it is desalinized water, 21 electricity, or heat. 22 Q. BY MR. MORAN: Great. And I think that 23 does fairly characterize your earlier testimony. 24 So, in the second paragraph, when it says, 25 "Confidential update: We are planning on producing 59: 1 power today," what does that statement mean to you?				
59: 4 THE WITNESS: It means that they're using 5 solar -- the solar lenses. 6 Q. BY MR. MORAN: Using the solar lenses to 7 do what? 8 A. Create whatever they want to create at 9 that time.				

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10 Q. Okay. Were you ever compensated for 11 producing that power? 12 A. No. No.				
59:16 Q. BY MR. MORAN: Mr. Gregg, you've been 17 given a copy for what's been marked for 18 identification as Exhibit 299 and which has been 19 labeled GREGG -- 20 I'm handing you a copy of what's been 21 marked for identification as Exhibit 299 and has 22 been labeled GREGG_P&R-000729. 23 Do you recognize this document? 24 A. Yes. 25 Q. What is it? 60: 1 A. It's an e-mail from Greg Shepard, talking 2 about IRS audits. 3 Q. You received this e-mail from Mr. Shepard? 4 A. I did. 5 Q. If you can go to the second page, at the 6 end of the first line it says: "Ten towers are		59:16-60:17; Objection, argumentative, leading; hearsay; lack of personal knowledge; lack of foundation	299	Overruled

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<p>7 efficiently following the sun and producing 8 electricity for demonstration purposes." 9 Do you see that? 10 A. Yes. 11 Q. What does that statement mean to you? 12 A. It means ten towers are up and running. 13 Q. What's the date on that e-mail? 14 A. September 4th, 2014. 15 Q. Let me just ask you this: If the towers 16 are producing electricity, why haven't you gotten 17 any income?</p>				
<p>60:20 THE WITNESS: I can't answer that 21 question. 22 Q. BY MR. MORAN: Would you expect to be 23 receiving income if the towers are producing 24 electricity?</p>				
<p>61: 1 THE WITNESS: It all depends. 2 Q. BY MR. MORAN: What does it depend on?</p>		<p>61:1-15; Objection, argumentative; leading; hearsay; lack of personal knowledge; lack of foundation</p>		<p>Overruled</p>

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<p>3 A. It depends on if the company recovers 4 costs on their outlay of materials, I would assume. 5 Q. So when you say, "if the company recovers 6 costs on the outlay of their materials," what does 7 that mean? 8 A. It takes materials to build things, and 9 manpower to do that. 10 Q. Okay. You think the company needs to 11 recover costs before they'll pay you? 12 A. That's usually how business works. 13 Q. So you think they're still recovering 14 their costs? 15 A. I don't know.</p>				
<p>61:21 Q. BY MR. MORAN: Mr. Gregg, I've handed you 22 a copy of what's been marked for identification as 23 Exhibit 300 and labeled GREGG_P&R-002353. 24 Do you recognize Exhibit 300?</p>		<p>61-63; Objection. Argumentative, leading; hearsay; lack of personal knowledge; lack of foundation; compound</p>	<p>300</p>	<p>Overruled</p>

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<p>25 A. Looks like an e-mail from Greg Shepard. 62: 1 Q. Did you receive this e-mail? 2 A. Yes. 3 Q. At the top of the e-mails, in purple 4 lettering, it says "responses" in bold. Do you see 5 that? 6 A. I do. 7 Q. Whose responses are in bold? 8 A. Greg Shepard. 9 Q. Okay. So am I to understand that when I 10 see text that's bold and purple, those are Greg 11 Shepard's words? 12 A. I believe so. 13 Q. Okay. And the first paragraph in purple 14 bold text, it says: "We should have a tower running 15 next Monday with new CSP technology, 15 towers 16 running two weeks after that." 17 Do you see that? 18 A. I do. 19 Q. What does that statement mean to you?</p>				

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<p>62:22 THE WITNESS: It means that they're 23 continually working on new technology. 24 Q. BY MR. MORAN: What's the date on that 25 e-mail? 63: 1 A. May 22nd, 2015.</p>				
<p>63: 5 Q. So Exhibit 300 occurs after Exhibit 299? 6 A. I understand that.</p>			<p>300 299</p>	
<p>63:13 Q. BY MR. MORAN: Exhibit 299 says: "Ten 14 towers are efficiently following the sun and 15 producing electricity for demonstration purposes." 16 Is that correct? 17 A. That's what you just read. 18 Q. So in Exhibit 299 it says they have ten 19 towers operating, and in Exhibit 300 it says a 20 tower?</p>		<p>63:13-65:10: Objection. Argumentative, leading; hearsay; lack of personal knowledge; lack of foundation; compound</p>	<p>299</p>	<p>Overruled</p>
<p>63:23 THE WITNESS: Well, like I said, the 24 technology was -- is evolving still, as we speak.</p>				

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<p>25 Q. BY MR. MORAN: Okay. In the first 64: 1 paragraph, in bold, it also says: "We're working on 2 a news release." Do you see that? 3 A. I do. 4 Q. Have you ever seen that news release? 5 A. Possibly. I don't know. 6 Q. Do you think you would have produced it to 7 us if you had seen it? 8 A. Oh, for sure, yes. 9 Q. In the third paragraph, in bold, it says: 10 "Neldon has said he won't penalize you because you 11 are being audited." 12 My first question is: Who is Neldon? 13 A. Neldon Johnson. 14 Q. Okay. And what does the term "penalize" 15 mean? 16 A. Because I've been audited, I did not -- I 17 haven't been able to continue to pay down-payments 18 on the lenses I have purchased.</p>				

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<p>19 Q. So because the IRS audited you, you</p> <p>20 stopped making payments to RaPower?</p> <p>21 A. No. The IRS and Oregon.</p> <p>22 Q. Okay. So the Internal Revenue Service and</p> <p>23 the State of Oregon audited you; and, therefore, you</p> <p>24 were unable to make payments to RaPower-3?</p> <p>25 A. Because I'm making payments to the State</p> <p>65: 1 of Oregon.</p> <p>2 Q. And what was it that Mr. Johnson wasn't</p> <p>3 going to penalize -- or what was it that he wasn't</p> <p>4 going to do because of this?</p> <p>5 A. It was -- My recollection is I would</p> <p>6 receive bonus monies.</p> <p>7 Q. You were going to continue to receiving</p> <p>8 bonus monies?</p> <p>9 A. No, not continue. I have not received</p> <p>10 any. I would get bonus monies when those came.</p>				

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<p>65:15 You said you stopped paying RaPower-3 16 because you were being audited; is that correct? 17 A. No. I said I stopped paying because I 18 needed to pay the State of Oregon to fight the 19 Oregon audit prior to. 20 Q. So you were unable to meet your 21 obligations to RaPower-3? 22 A. As of right now, yes. 23 Q. Okay. And Mr. Johnson has said you won't 24 be penalized; is that correct? 25 A. As far as I know.</p>				
<p>66: 4 Q. BY MR. MORAN: Mr. Gregg, I'm handing you 5 a copy of what's been marked for identification as 6 Exhibit 301 and labeled GREGG_P&R-004071. 7 What is Exhibit 301? 8 A. It's an e-mail from Greg Shepard. 9 Q. You received this e-mail? 10 A. I did. 11 Q. Okay. If you can look at the middle of</p>		<p>66-68; Objection. Argumentative, leading; hearsay; lack of personal knowledge; lack of foundation; compound; not relevant.</p>	<p>301</p>	<p>Overruled</p>

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<p>12 the page, there's an e-mail that appears to be from 13 Greg Shepard. 14 It says: "I think we can get done by at 15 least 2:00 p.m. Bring your camera, photo/video. 16 You will want to take advantage of photo ops with me 17 and Neldon. That should help your case." 18 A. Um-hum. 19 Q. Did I read that correctly? 20 A. You read it verbatim. 21 Q. From the context of this e-mail, it looks 22 like you visited -- 23 A. I have. 24 Q. What did you visit? 25 A. I visited the site in Milford -- or, no, 67: 1 excuse me -- Delta. 2 Q. And when you say "Delta," are you 3 referring to Delta, Utah? 4 A. Delta, Utah. 5 Q. Okay. How many times have you visited the 6 site in Delta, Utah? 7 A. One.</p>				

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<p>8 Q. And when was that? 9 A. After this -- After June 12th. I don't 10 know exactly. 11 Q. Sometime in June 2015? 12 A. I believe so. 13 Q. Okay. Did you take advantage of photo ops 14 with Mr. Shepard and Neldon Johnson? 15 A. I believe I did. 16 Q. Mr. Shepard says: "That should help your 17 case." What does that mean? 18 A. I'm assuming it's referring to the Oregon 19 case. 20 Q. Do you have any photos between -- taken of 21 you and Mr. Johnson and Mr. Shepard? 22 A. Not on me. 23 Q. Okay. Do you know if you produced them to 24 the United States? 25 A. Can I produce them to the United States? 68: 1 Q. Well, my first question is: Did you? 2 A. No.</p>				

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<p>3 Q. Okay. Can you tell me why a photo of you, 4 Neldon Johnson, and Greg Shepard will help your 5 case?</p>				
<p>68: 7 THE WITNESS: I'm looking at the business. 8 Q. BY MR. MORAN: What business is that? 9 A. My lens business. 10 Q. Did you see your lenses? 11 A. I did. I saw lenses; I don't know if they 12 were specifically mine. 13 Q. Okay. About how many lenses did you see?</p>				
<p>68:15 THE WITNESS: Thousands. 16 Q. BY MR. MORAN: Where were these lenses? 17 A. There were some in the warehouse, there 18 were some on towers. 19 Q. About how many -- How many towers did you 20 see? 21 A. Ten to 15. 22 Q. Okay. Do you know how many lenses are in 23 each tower?</p>				

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<p>24 A. I do not. 25 Q. Okay. So you don't know if your lenses 69: 1 were on towers or in the warehouse? 2 A. I do not. 3 Q. Okay. What happened at your site visit? 4 A. We went and looked at the manufacturing 5 plant and talked to engineers working for the 6 company and looked at the automation process for 7 making lens tower apparatuses. 8 Q. Can you describe how that works for me, in 9 your own words? 10 A. Bending some large pipe, welding different 11 pieces onto that pipe, so that the lenses are held 12 on to that circular unit. 13 Q. And where does the circular unit go? 14 A. I'm sure on the towers. 15 Q. Did you see the lenses -- or the towers 16 operating?</p>				

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<p>69:18 THE WITNESS: I couldn't tell. I'm -- I 19 couldn't tell if they were operating or not. 20 Q. BY MR. MORAN: Did you see them producing 21 electricity?</p>				
<p>69:23 THE WITNESS: You can't see electricity. 24 Q. BY MR. MORAN: Did you see them making 25 steam? 70: 1 A. No, I did not.</p>				
<p>70: 3 Q. BY MR. MORAN: Did you see them producing 4 heat? 5 A. No. 6 Q. Did you see anything to make you believe 7 they were generating electricity? 8 A. I can't answer that. 9 Q. Why not? 10 A. Why not? Again, because I don't -- I 11 don't know all the mechanics of the operation. 12 Q. Did anyone explain it to you? 13 A. It was explained, but that doesn't mean 14 it's -- I don't know.</p>				

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<p>15 Q. Who led the tour? 16 A. Greg led the tour, Greg Shepard. 17 Q. Who else was on the tour? 18 A. Neldon and, I believe, Matt Shepard, and 19 then a few other people I don't know. 20 Q. Were the other people customers of 21 RaPower-3, or were they employed, or were they there 22 on behalf of RaPower-3? 23 A. I have no idea their connection, honestly. 24 Q. About how many people? 25 A. Three more? Three or four? I'm not -- I 71: I don't know. 2 Q. Okay. And I think you may have touched on 3 this, but just so the record's clear: You never saw 4 your lenses?</p>				
<p>71: 6 THE WITNESS: No. I don't know if what my 7 lenses -- they were -- I don't know if they're 8 labeled or not.</p>		<p>71: Objection. Argumentative, leading; hearsay; lack of personal knowledge; lack of foundation; compound</p>		<p>Overruled</p>

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<p>9 Q. BY MR. MORAN: Do you know where they are?</p> <p>10 A. They're in a warehouse or they're on the</p> <p>11 towers.</p> <p>12 Q. How do you know that?</p> <p>13 A. How do I know that?</p> <p>14 Q. How do you know that your lenses are</p> <p>15 either on the towers or in the warehouse?</p> <p>16 A. Because that's where they're stored,</p> <p>17 that's where they're at.</p> <p>18 Q. How do you know that that's where they're</p> <p>19 stored or that's where they're at?</p>				
<p>71:22 THE WITNESS: That's what I know.</p> <p>23 Q. BY MR. MORAN: And my question is: How</p> <p>24 did you gain that knowledge?</p>				
<p>72: 2 THE WITNESS: That's where they're stored,</p> <p>3 is what I -- that's what I know.</p> <p>4 Q. BY MR. MORAN: And I understand that's</p> <p>5 what you know and that's your understanding.</p>		<p>71-72: Objection. Argumentative, leading; hearsay; lack of personal knowledge; lack of foundation; compound</p>		<p>Overruled</p>

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<p>6 A. Correct.</p> <p>7 Q. What I want to know is: Did you read that</p> <p>8 somewhere or did someone tell that to you?</p> <p>9 A. I'm not -- I don't recall.</p> <p>10 Q. Okay. Did you see anything referred to as</p> <p>11 molten salt?</p> <p>12 A. Did I see anything referred to as molten</p> <p>13 salt.</p> <p>14 Q. Yes.</p> <p>15 A. I have read a white paper on that.</p> <p>16 Q. During your tour, do you recall seeing</p> <p>17 anything --</p> <p>18 A. No, I do not.</p> <p>19 Q. -- that was referred to as molten salt?</p> <p>20 A. I do not.</p> <p>21 Q. Did you see any heat exchangers?</p> <p>22 A. I believe I did.</p> <p>23 Q. Can you describe what that was?</p> <p>24 A. A spherical chrome ball.</p> <p>25 Q. Was it operating in any way?</p>				

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<p>73: 1 A. Not that I was -- When I was looking at 2 it, no; that was probably just an example. 3 Q. Okay. Did you see any turbines? 4 A. Turbines? Bladeless turbines? No, I did 5 not.</p>				
<p>74: 9 Q. Who led the tour?</p>				
<p>74:12 THE WITNESS: Greg Shepard. 13 Q. BY MR. MORAN: Thanks. Did Neldon Johnson 14 speak at all during the tour? 15 A. He did. 16 Q. Do you recall what he said? 17 A. No. 18 Q. Did he describe the technology? 19 A. I'm sure he did. 20 Q. Have you ever been to a RaPower national 21 convention? 22 A. I have not. 23 Q. Okay. So the visit that you went on was 24 not a national convention? 25 A. No, it was a small version.</p>				

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<p>75: 4 Q. BY MR. MORAN: Mr. Gregg, you've been 5 given a copy of plaintiff's Exhibit 302, which is 6 labeled GREGG_P&R-001085. 7 Do you recognize Exhibit 302? 8 A. I do. 9 Q. What is it? 10 A. It's an e-mail from Greg Shepard after I 11 went on my visit to the site in Delta. 12 Q. And you received Exhibit 302 from 13 Mr. Shepard? 14 A. Yes. 15 Q. And on the bottom half of the first page, 16 it looks like there's an e-mail from you to 17 Mr. Shepard; is that correct? 18 A. Correct. 19 Q. Okay. And you ask a series of questions 20 in that e-mail? 21 A. I do. 22 Q. The first question you ask is: "How are 23 we dealing with the heat problem with CPV? Usually,</p>			302	

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<p>24 when a photovoltaic array is set up, it has an 25 optimum temperature range as well; however, we 76: I seldom have too much heat problem." 2 Did I read that correctly? 3 A. Yes, verbatim. 4 Q. What were you referring to there? 5 A. The heat exchanger, I think it was, was 6 the answer to the heat problem. And then CPV is 7 concentrated photovoltaic, and I wasn't -- I didn't 8 know all that much about that, other than that big 9 one down in California. I can't remember what it's 10 called. 11 Q. Is this -- You're referring to a problem 12 here. 13 Is this a problem you learned about when 14 you were -- 15 A. No. 16 Q. Let me finish the question. 17 A. Okay.</p>				

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<p>18 Q. Is this a problem you learned about during 19 your visit? 20 A. No. 21 Q. Okay. When did you learn about this 22 problem? 23 A. I've researched -- researched stuff and 24 just there -- it has been a problem with CPV with 25 heat, too much heat making it less efficient. 77: 1 Q. Did you ever get an answer to this 2 question? 3 A. I don't know if I did. I don't remember. 4 Q. Okay. In the second paragraph of your 5 e-mail, you say also: "I don't know if you ever 6 really answered my question of what we are going to 7 market or focus on." 8 Did I read that correctly? 9 A. Correct. 10 Q. My first question is: When you refer to 11 "he," who are you referring to?</p>				

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<p>12 A. Neldon Johnson. 13 Q. Okay. What was being marketed? 14 A. Lenses or whatever -- whatever revenue 15 source we can create. 16 Q. Okay. And you testified earlier about 17 potential revenue sources? 18 A. Yeah, so the heat exchanger could be one 19 of them. 20 Q. Okay. And did you ever get an answer to 21 this question? 22 A. I don't even remember if I called back; 23 so, no. 24 Q. In the third paragraph, you say: "What I 25 really want to know is: We have so many products. 78: 1 What are we going to focus on marketing to create 2 revenue?" 3 Did I read that correctly? 4 A. Correct. 5 Q. Is that a follow-up to the previous 6 question?</p>				

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<p>7 A. Yes. 8 Q. Kind of asking the same question in a 9 different way? 10 A. Yes. 11 Q. Okay. And when you say "focus on 12 marketing," are you referring -- what are you 13 referring to? 14 A. My role as a RaPower-3 member. 15 Q. Okay. And what is your role? 16 A. Marketing IAUS products, i.e. lenses. 17 Q. To sell lenses? 18 A. Sell lenses, creating revenue. 19 Q. And selling lenses brings in revenue to 20 you; correct? 21 A. Yes. It would be a commission. 22 Q. Okay. Does selling more lenses have 23 anything to do with your lease payments coming in? 24 A. No. 25 Q. Okay. Do you have any role in creating a</p>				

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<p>79: 1 product that would be marketable, other than lenses? 2 A. I have no role. 3 Q. Okay. In the fourth paragraph, it says: 4 "It seems to me the DVC alone could be marketed and 5 make us a chunk. So I'm wondering what else needs 6 to be done to get the ball rolling, and why are we 7 waiting? Or the smaller heat exchanger. I'm sure 8 all the new technology does not necessarily have to 9 come out all at once." 10 What are you referring to here? 11 A. DVC is -- I don't know the exact acronym, 12 what it's -- something voltaic controller. 13 Q. Is it the dynamic voltage controller? 14 A. Yes, I believe that's it. 15 Q. What is the dynamic voltage controller? 16 A. As far as I understand, it can regulate 17 electricity going in to -- I don't -- Actually, I</p>				

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<p>18 don't know exactly what it does. 19 Q. Have you seen it? 20 A. I have seen, yes, a little tiny piece of 21 plastic. 22 Q. The dynamic voltage controller is a piece 23 of plastic? 24 A. As far as I know. There's probably 25 internal components. 80: 1 Q. You've seen one? 2 A. I have, on the tour. 3 Q. Let me ask the question: When did you see 4 it? 5 A. On the tour. 6 Q. Okay. And who showed it to you? 7 A. Greg Shepard. 8 Q. And previously you testified about what -- 9 what's your understanding of what it is, and it 10 sounds like it's pretty limited; is that correct? 11 A. Very limited, yes. 12 Q. Okay. But what you do know of it, who 13 told you about it?</p>				

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<p>14 A. I believe I read on the -- online on the 15 products that are created, the IAUS website or the 16 RaPower-3 website. 17 Q. Okay. And in this e-mail, it sounds like 18 you're talking about you marketing the dynamic 19 voltage controller? 20 A. I'm -- No, not me personally, because I 21 don't know enough about it. 22 Q. Who would be marketing the dynamic voltage 23 controller? 24 A. Somebody in the company. 25 Q. Did you ever get an answer to this 81: 1 question? 2 A. Like I said, I don't remember even 3 calling, so... 4 Q. And you've -- you've referenced calling. 5 At the top of the e-mail, Mr. Shepard says: "Peter, 6 easier if you call me. Greg." 7 Did you ever call Mr. Shepard? 8 A. I don't remember calling.</p>				

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<p>9 Q. Okay. So you in Exhibit 302, you ask a</p> <p>10 series of questions.</p> <p>11 Is it unfair to characterize your</p> <p>12 testimony that you never got answers to these</p> <p>13 questions?</p> <p>14 A. I don't recall.</p> <p>15 Q. You don't recall ever getting an answer to</p> <p>16 the questions you raised in Exhibit 302?</p> <p>17 A. Correct.</p>				
<p>81:21 Q. BY MR. MORAN: Mr. Gregg, you've been</p> <p>22 handed a copy of what's been marked for</p> <p>23 identification as plaintiff's Exhibit 303 and</p> <p>24 labeled GREGG_P&R-002308.</p> <p>25 Do you recognize Exhibit 303?</p> <p>82: 1 A. Looks like an e-mail.</p> <p>2 Q. Is this an e-mail you received from Greg</p> <p>3 Shepard?</p> <p>4 A. I'm sure I did.</p> <p>5 Q. In Exhibit 303, there's a reference to</p> <p>6 some pictures that are attached and it's -- the</p>			303	

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<p>7 biomass burner is referred to. Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. And earlier you testified about the</p> <p>10 biomass burner. Do you recall that?</p> <p>11 A. I do.</p> <p>12 Q. And you described it for me?</p> <p>13 A. I did.</p> <p>14 Q. Are the pictures that are attached to</p> <p>15 Exhibit 303 the biomass burner?</p> <p>16 A. Not the one I saw.</p> <p>17 Q. Not the one you saw. Okay.</p> <p>18 Okay. If you could flip back to the last</p> <p>19 page, which is labeled GREGG_P&R-002312.</p> <p>20 Do you recognize that photo?</p> <p>21 A. I do.</p> <p>22 Q. What is it?</p> <p>23 A. It is a bladeless turbine.</p> <p>24 Q. Okay. And how do you know that that's a</p> <p>25 bladeless turbine?</p> <p>83: 1 A. That's what I know.</p> <p>2 Q. How did you gain that knowledge?</p> <p>3 A. Looking at the picture.</p>				

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<p>4 Q. Well, looking at this picture -- but,</p> <p>5 before I showed you this picture, you knew what a</p> <p>6 bladeless turbine is; correct?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. How did you gain that knowledge?</p> <p>9 A. Research on the IAUS website.</p> <p>10 Q. Okay. Did it ever come from the RaPower-3</p> <p>11 website as well?</p> <p>12 A. Could have. It could have, yes.</p> <p>13 Q. Okay. Have you seen bladeless turbines on</p> <p>14 your tour?</p> <p>15 A. We -- I can't -- I can't recall.</p>				
<p>83:17 Q. BY MR. MORAN: Mr. Gregg, you've been</p> <p>18 handed a copy of what's been marked for</p> <p>19 identification as plaintiff's Exhibit 304, which is</p> <p>20 labeled GREGG_P&R-001444.</p> <p>21 Do you recognize Exhibit 304?</p> <p>22 A. It's an e-mail from Greg Shepard.</p> <p>23 Q. And you received this e-mail?</p>			304	

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<p>24 A. Yes.</p> <p>25 Q. Okay. The top of that e-mail, and an</p> <p>84: 1 e-mail from Mr. Shepard, it says: "Solar only gives</p> <p>2 about 2,000 hours a year, but it doesn't matter; the</p> <p>3 rental fee is what matters, and that's \$150 a lens,</p> <p>4 regardless of the hours."</p> <p>5 What's your understanding of that</p> <p>6 statement?</p> <p>7 A. I probably asked a question.</p> <p>8 Q. You can take a minute to review the</p> <p>9 document and see if that refreshes your</p> <p>10 recollection.</p> <p>11 A. Okay. So what I understand is that 2,000</p> <p>12 hours are the daylight hours.</p> <p>13 Q. And why does that number matter to you?</p> <p>14 A. Well, you can't create solar heat without</p> <p>15 solar sun, the solar rays coming down.</p> <p>16 Q. So are you saying that, when the sun's not</p>				

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<p>17 out, you can't generate solar electricity?</p> <p>18 A. I'm saying you cannot create heat at that</p> <p>19 point, unless you have a reserve.</p> <p>20 Q. Okay. And what do you mean by "reserve"?</p> <p>21 A. Whether it's stored in some way.</p> <p>22 Q. Okay. Do you know -- Do you know if</p> <p>23 RaPower-3 or International Automated Systems have</p> <p>24 any way to reserve heat, electricity, steam, any</p> <p>25 other product that they generate from your solar</p> <p>85: 1 lenses?</p> <p>2 A. I do not.</p> <p>3 Q. Okay. In the second sentence, it says:</p> <p>4 "The rental fee is what matters, and that's 150 a</p> <p>5 lens, regardless of the hours."</p> <p>6 Do you know what rental fee Mr. Gregg is</p> <p>7 referring to -- or Mr. Shepard is referring to?</p> <p>8 A. It's the lease, the lease on the lens.</p>				

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<p>9 Q. And is that the lease that you've never 10 received any revenue from? 11 A. Correct.</p>				
<p>85:13 Do you have any past experience in the 14 solar energy business? 15 A. I do not. 16 Q. Okay. Do you have any training in solar 17 energy? 18 A. I don't. 19 Q. How about multi-level marketing? 20 A. I was a part of multi-level marketing 21 prior to. 22 Q. What organization was that with? 23 A. Pharmanex. 24 Q. Pharmanex? 25 A. Um-hum. 86: 1 Q. What does it sell? 2 A. Neutraceuticals. 3 Q. What are neutraceuticals? 4 A. Supplements. 5 Q. When did you participate in that? 6 A. Oh, two thousand -- I don't know. I don't</p>				

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<p>7 know. Prior to -- 8 Q. Prior to 2009, 2010? 9 A. Yes. 10 Q. Was it after you graduated college in 11 2002? 12 A. Sounds -- Sounds about right. 13 Q. Okay. Do you remember about how many 14 years you participated in Neutranex? 15 A. Pharmanex? A couple, maybe, actively. I 16 was -- 17 Q. Was it successful? 18 A. No. 19 Q. Did you earn any revenues from Pharmanex? 20 A. No. I mean, I may have got a few checks, 21 but they did not -- No. 22 Q. Since 2009, have you received any revenues 23 from Pharmanex? 24 A. No. 25 Q. And you testified earlier about your solar 87: 1 energy business? 2 A. Yes.</p>				

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<p>3 Q. Do you consider yourself to be in the 4 solar energy business? 5 A. I do. I'm leasing lenses, yes. 6 Q. Do you have any experience leasing 7 anything? 8 A. No, I don't. 9 Q. Did you develop a business plan for your 10 solar energy business? 11 A. Make money. 12 Q. Your plan is to make money? 13 A. (Nods head.) 14 Q. Did you write down your plan? 15 A. No, I didn't. 16 Q. What do you do in any given week in your 17 solar energy business? 18 A. I research quite a bit online. 19 Q. What do you research? 20 A. I look at different -- Phys.org is a 21 pretty good science site. 22 Q. Phys.org? 23 A. Physical -- yeah, P-H-Y-S-O-R-G. So I 24 guess it's "physical science dot org," and there are</p>				

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<p>25 a lot of science-related things. 88: 1 Q. Okay. About how many hours do you spend 2 doing that? 3 A. At least a couple. 4 Q. Two hours per week? 5 A. At least a couple. 6 Q. Okay. At most, how many? 7 A. Depends on if I get interested in 8 something. If I do, I'll research more. So, per 9 week, up to five hours a week, possibly more. 10 Q. Can you give me an average number? 11 A. I -- I don't know. 12 Q. Okay. Can you tell me how your online 13 research at Phys.org aids in your business? 14 A. Looking at competition, looking at other 15 people's technologies, so I have a background in 16 what I'm talking about. 17 Q. Anything else? 18 A. No. 19 Q. Thank you. Can you tell me how your</p>				

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<p>20 online research makes it any more probable that 21 you'll earn revenues at your business? 22 A. No. 23 Q. Are you aware of who the defendants are in 24 this case? 25 A. I think it was Greg Shepard and Roger 89: 1 Freeborn and Neldon Johnson, I believe. 2 Q. I'll represent to you that RaPower-3, 3 International Automated Systems, and LTB1 LLC are 4 also defendants in this case. I'm going to ask you 5 a series of questions about all those defendants 6 collectively. 7 A. Okay. 8 Q. What did any defendant tell you about your 9 business or how to operate it? 10 A. Tell me about my business or how to 11 operate it? 12 Q. So did they offer suggestions? Did they</p>				

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<p>13 offer strategies? Anything like that?</p> <p>14 A. Go out and tell people about it.</p> <p>15 Q. And who are you referring to?</p> <p>16 A. Roger and Greg.</p> <p>17 Q. Roger Freeborn and Greg Shepard?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. Did they give you marketing</p> <p>20 materials?</p> <p>21 A. I'm sure there was some marketing</p> <p>22 materials given.</p> <p>23 Q. And what did you do with those marketing</p> <p>24 materials?</p> <p>25 A. Read them. I didn't -- Like I said, I</p> <p>90: I didn't -- I didn't sell a whole bunch, but...</p> <p>2 Q. You mentioned you sold lenses to your</p> <p>3 parents and your sister?</p> <p>4 A. Um-hum.</p> <p>5 Q. Do you think you forwarded those materials</p> <p>6 on to either your parents or your sister?</p>				

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<p>7 A. Possibly, but I doubt it. My -- I just 8 talked to them. 9 Q. Okay. Do you have any oversight over any 10 of the defendants? 11 A. Oversight? 12 Q. In other words, as it relates to your 13 solar lens business, do you supervise any of the 14 defendants in this case? 15 A. No. 16 Q. What's the name of your business? 17 A. What's the name of my business? 18 Q. Yes. 19 A. I don't have a name per se. 20 Q. Did you file anything with any state to 21 establish a business? 22 A. No. 23 Q. Okay. Do you know what the term sole 24 proprietorship means? 25 A. Sole proprietorship? It sounds vaguely 91: 1 familiar, but no.</p>				

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<p>2 Q. Okay. So what I'm trying to understand is</p> <p>3 how your business is organized, and it sounds like</p> <p>4 it's just an activity you perform. Is that a fair</p> <p>5 characterization?</p> <p>6 A. An activity I perform? Similar to my</p> <p>7 landscape business, yeah, an activity I perform.</p> <p>8 Q. And you consider it to be a business?</p> <p>9 A. I -- I get taxed on it; so, yeah.</p> <p>10 Q. Okay. Does your solar business have a</p> <p>11 bank account?</p> <p>12 A. Yes.</p> <p>13 Q. Where is that bank account?</p> <p>14 A. OnPoint.</p> <p>15 Q. OnPoint? What's the name of that?</p> <p>16 A. OnPoint Community Credit Union.</p> <p>17 Q. And what's the name of the account, or</p> <p>18 what's the name of the --</p> <p>19 A. It's a business account.</p> <p>20 Q. But who's the account holder?</p> <p>21 A. Peter Gregg.</p>				

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<p>22 Q. Okay. Yourself individually? 23 A. Correct. 24 Q. Okay. Does your business have any office 25 space? 92: 1 A. No. 2 Q. Have you ever created business cards? 3 A. I have. 4 Q. You have business cards for your solar 5 lens business? 6 A. And my landscape business, yes. 7 Q. Are they two separate letter cards -- or 8 are they two separate business cards? 9 A. It's two-sided. 10 Q. It's two-sided? 11 A. I was being efficient. 12 Q. Did you -- Do you have copies of those 13 business cards? 14 A. I do not. 15 Q. You don't have them anymore? 16 A. I don't pack them with me, no. 17 Q. Do you have them at home?</p>				

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<p>18 A. I do have them, possibly, still. I'm not 19 for sure. I might have thrown them away. My wife's 20 been cleaning a lot lately. 21 Q. Okay. Did you distribute a lot of those 22 business cards? 23 A. I would say no, not a lot. 24 Q. When did you establish the bank account? 25 A. I'm not sure. 93: 1 Q. Why did you establish the bank account? 2 A. I don't know. To legitimize the business. 3 Q. Did anyone suggest to you that you create 4 that bank account? 5 A. I don't recall. 6 Q. Do you know if that was before or after 7 you were audited by either the State of Oregon or 8 the IRS? 9 A. Probably after. 10 Q. Okay. So you created the bank account 11 after you came under audit? 12 A. As far as I know.</p>				

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<p>13 Q. Okay. What kind of expenses does your 14 solar lens business have? 15 A. Traveling. Been down -- I've been down to 16 Utah. I've done a lot with audit actions. I'm 17 here, I'm not working. That's about it that I can 18 think of offhand. 19 Q. Okay. You mentioned traveling. Where do 20 you travel to? 21 A. I traveled to Utah in 2015. 22 Q. Okay. Have you done any other traveling? 23 A. I have not. 24 Q. And you mentioned audits; is that correct? 25 A. Um-hum. 94: 1 Q. Do you consider your audits to be a trade 2 or business expense? 3 A. Do I -- Say that again, clearer, please. 4 Q. Do you -- Do you consider expenses 5 associated with your audit to be a trade or business 6 expense?</p>				

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<p>7 A. Yes, because -- trade or business expense 8 because it's part of what's happening. 9 Q. And what's happening? 10 A. You're auditing us. 11 Q. Who's "us"? 12 A. RaPower-3 lens business owners. 13 Q. How did you come to understand that your 14 traveling and audit expenses were business expenses? 15 A. That's just off the top of my head.</p>				
<p>94:17 Q. BY MR. MORAN: Mr. Gregg, you've been 18 handed a copy of what's been marked for 19 identification as plaintiff's Exhibit 305, which is 20 labeled GREGG_P&R-002143. 21 Do you recognize Exhibit 305? 22 A. Yes. 23 Q. What is it? 24 A. It's an e-mail from Greg Shepard. 25 Q. You received this e-mail? 95: 1 A. I believe so.</p>			305	

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<p>2 Q. Is there any reason to believe you did not 3 receive this e-mail? 4 A. No, there's no reason to believe that I 5 didn't. 6 Q. Okay. The first paragraph of this e-mail, 7 it says: "Just a note to say all your expenses 8 associated with the audit are tax deductible." 9 Before I showed you this exhibit, you said 10 it was just off the top of your head that you came 11 to believe that expenses associated with your audit 12 are tax deductible.</p>				
<p>95:14 Q. BY MR. MORAN: Is that correct? 15 A. Correct. That's what I said. 16 Q. Okay. Seems like Greg Shepard told you 17 that expenses associated with your audit are tax 18 deductible?</p>				
<p>95:22 A. It looks like he wrote an e-mail about 23 that in 2014.</p>				

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<p>24 Q. Okay. In the third paragraph of that 25 e-mail, it also says: "Something very good happened 96: 1 today, I think. I just" -- "I just to get the info 2 confirmed. If true, it should help all of your 3 cases." 4 Did I read that correctly? 5 A. Looks like it. 6 Q. Do you know what Mr. Shepard is referring 7 to in that paragraph?</p>				
<p>96:10 THE WITNESS: I have no idea. 11 Q. BY MR. MORAN: Okay. You never learned 12 what the good thing was that happened? 13 A. I -- No.</p>				
<p>Annotation: 97:25 Q. Okay. Thanks. Have you received any 98: 1 income from your solar energy business?</p>				
<p>98: 4 THE WITNESS: Commissions from sales.</p>				

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<p>5 Q. BY MR. MORAN: Okay. And what were those 6 commissions from? 7 A. Sales. 8 Q. To who? 9 A. Of solar lenses to my mom and dad and my 10 sister. 11 Q. Okay. Any other revenue from the solar 12 energy business? 13 A. No. 14 Q. Have you ever participated in webinars or 15 conference calls as part of your solar energy 16 business? 17 A. I didn't, no.</p>				
<p>98:22 Q. BY MR. MORAN: Mr. Gregg, you've been 23 given a copy of what's been marked for 24 identification as plaintiff's Exhibit 307 and 25 labeled GREGG_P&R-000004. This is a somewhat 99: 1 voluminous document that goes through 2 GREGG_P&R-000031. 3 Do you recognize Exhibit 307?</p>			307	

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<p>4 A. Looks like my 2009 tax return. 5 Q. Okay. And you produced this document to 6 the United States? 7 A. I did. 8 Q. Pursuant to our subpoena? 9 A. Excuse me? 10 Q. Pursuant to our subpoena? 11 A. Correct. 12 Q. Okay. Mr. Gregg, I'm going to ask you to 13 go back to page 11. And when I say 11, I'm 14 referring -- 15 A. Bottom. 16 Q. -- to that bottom number that we talked 17 about. Are you there? 18 A. I am. 19 Q. Okay. This appears to be a schedule C, 20 profit or loss from business; is that correct? 21 A. Yes. 22 Q. The principal business or profession is 23 solar energy system? 24 A. Correct. 25 Q. Does this refer to your solar energy</p>				

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<p>100: 1 business? 2 A. Yes. 3 Q. And these are the solar lenses you 4 purchased from RaPower-3? 5 A. Correct. 6 Q. Okay. On the schedule C, I see no income, 7 and depreciation of \$3600. 8 A. Correct. 9 Q. Is that correct? 10 A. (Nods head.) 11 Q. Is that correct? 12 A. Correct. 13 Q. Okay. And if you could go back to page 14 GREGG_P&R-000013. 15 This is a form 3800, general business 16 credit; is that correct? 17 A. That's what it says at the top. 18 Q. Okay. This calculates a general business 19 credit of \$738; is that correct? 20 A. Yes. 21 Q. Is that general business credit related to 22 your solar energy system? 23 A. As far as I know.</p>				

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<p>24 Q. To your knowledge, do you have any other 25 activities that would qualify you for a general 101: 1 business credit? 2 A. Other than the landscape business 3 potentially; but, again, because I'm just looking at 4 this again, so I don't know. 5 Q. You don't know? 6 A. I don't. 7 Q. Okay. Go ahead. 8 A. Just for the record, these -- there's a 9 lot of paper going around with my social security 10 number, so... 11 Q. Yes. Before we file anything with the 12 court, the rules require us to redact them. 13 A. Okay. 14 Q. Now, earlier you testified about a 15 landscaping business that you have a few jobs a 16 year; correct? 17 A. Correct.</p>				

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<p>18 Q. And I'll direct your attention to 19 GREGG_P&R-000009. This is also a schedule C in your 20 name, and it indicates that you're an independent -- 21 or your principal business or profession is 22 independent contractor; is that correct? 23 A. Sure. 24 Q. Is that your landscaping business? 25 A. That could be BFS. I don't know -- 102: 1 Q. You don't know? 2 A. -- what that was referring to. Either BFS 3 or my landscaping business.</p>				
<p>102: 7 Q. BY MR. MORAN: Mr. Gregg, you've been 8 given a copy of plaintiff's Exhibit 308, which is 9 labeled GREGG_P&R-003954 and it runs through 10 GREGG_P&R-003998. 11 Do you recognize Exhibit 308? 12 A. Looks like a 2010 tax return.</p>			308	

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<p>13 Q. Okay. And whose tax return is that?</p> <p>14 A. My wife and I's joint return.</p> <p>15 Q. Okay. You produced this document to the</p> <p>16 United States?</p> <p>17 A. I did.</p> <p>18 Q. Mr. Gregg, I'll direct your attention to</p> <p>19 the page ending in 3962.</p> <p>20 On page 3962, this appears to be a</p> <p>21 schedule C, profit or loss from business, and it</p> <p>22 indicates that the principal business or profession</p> <p>23 is solar energy system?</p> <p>24 A. Correct.</p> <p>25 Q. Is this business your solar energy</p> <p>103: 1 business?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. The only expense I see here is</p> <p>4 \$21,960 of depreciation; is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And if you could look at the page</p> <p>7 ending in 3965.</p>				

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<p>8 This is a form 3800, general business 9 credit, and you claim a general business credit of 10 \$1697. If it helps, you can look also look at 11 page 3958, which is the second page of your tax 12 return. 13 A. Okay. I do see \$1697, net income tax. 14 Q. Look at line 53. Sorry, I'm on -- I 15 jumped around on you. I'm on the second page of 16 your tax return, which is labeled Exhibit 3958. 17 A. Yes. \$1697. 18 Q. My question to you is: What is that 19 general business credit related to? 20 A. Solar energy. 21 Q. Okay. And that was claimed on form 3800? 22 A. That's what it says. 23 Q. Okay. Who prepared your 2009 and 2010 tax 24 returns? 25 A. Me.</p>				

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<p>104: 1 Q. Okay. Did you have any assistance 2 preparing those returns? 3 A. No. TurboTax tried to help me, but I 4 don't think they did a very good job. 5 Q. Why don't you think they did a very good 6 job? 7 A. I got audited.</p>				
<p>104:13 Q. BY MR. MORAN: So you said you don't think 14 TurboTax did a very good job, because you got 15 audited; is that correct? 16 A. I did. 17 Q. Do you blame TurboTax for the fact that 18 you were audited? 19 A. I don't blame TurboTax for the fact that 20 I'm audited. There's probably other factors. 21 Q. What do you think those factors are? 22 A. I'm sure that -- I don't know. I don't 23 know what those factors are.</p>		<p>104-105: Objection. Argumentative, leading; hearsay; lack of personal knowledge; lack of foundation; compound</p>	<p>309</p>	<p>Overruled</p>

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Plaintiff Designations – BLUE Defendant Completeness— PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness— PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>24 Q. Mr. Gregg, can you flip back to the page 25 that ends in 3975. 105: 1 This is a form 3468 investment credit, and 2 on line 1 it says: "Name of lessor, RaPower-3 LLC." 3 Did I read that correctly? 4 A. You did. 5 Q. Okay. Why did you claim the investment 6 credit? 7 A. Again, TurboTax asks questions, and I 8 thought I was doing the right thing. 9 Q. Okay. Did you consider your solar lenses 10 to be an investment? 11 A. No. It's a business. 12 Q. But you claimed an investment; correct?</p>				
<p>105:15 THE WITNESS: I answered the questions 16 that they asked, and it led me astray. 17 Q. BY MR. MORAN: If you could flip back to 18 the page that ends in 3993.</p>				

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<p>19 This is a depreciation and amortization 20 report. Under the column asset description, it says 21 "depreciation, solar energy systems," and a cost of 22 \$21,000. 23 Did I read that correctly? 24 A. That's what it looks like. 25 Q. Okay. That's related to your solar 106: 1 lenses? 2 A. Correct.</p>				
<p>106: 6 Q. BY MR. MORAN: Mr. Gregg, you've been 7 handed a copy of what's been marked for 8 identification as plaintiff's Exhibit 309 and 9 labeled GREGG_P&R-004188 through GREGG_P&R-004190. 10 Do you recognize Exhibit 309? 11 A. It's an e-mail. 12 Q. Who's the e-mail from? 13 A. Greg Shepard. 14 Q. Did you receive this e-mail from 15 Mr. Shepard? 16 A. I did.</p>			309	

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<p>17 Q. I'd like to direct your attention to the 18 second page, ending in 4189. There's a paragraph 5. 19 Do you see that? 20 A. Um-hum. 21 Q. It says: "From Peter G. I have around 22 7000 in credits that I plan to carry forward. They 23 are already paid for. I plan to buy 26 systems 24 today for a carry-back, this year's tax credit, so 25 that I can maximize the bonus and utilize the 107: 1 sweetness of the 10 percent program." 2 Did I read that correctly? 3 A. You did.</p>				
<p>107: 7 Q. Do you know who Peter G. is? 8 A. It would be referring to me.</p>				
<p>107:18 Q. BY MR. MORAN: Mr. Gregg, you've been 19 handed a copy of what's been marked for</p>			310 309	

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<p>20 identification as plaintiff's Exhibit 310 and 21 labeled GREGG_P&R-000244. 22 Do you recognize this exhibit? 23 A. Yes. 24 Q. What is it? 25 A. It's an invoice. 108: 1 Q. And this appears to be an invoice in which 2 you purchased 26 solar -- 26 units? 3 A. Twenty-six, yes. 4 Q. Okay. And then Exhibit 309, when you 5 indicated that you planned to purchase 26 units, is 6 this what you were referencing? 7 A. Yes. 8 Q. Okay. And in the invoice at Exhibit 310, 9 it looks like you made a down payment of \$27,300; is 10 that correct? 11 A. That is the down payment. The amount paid 12 is \$8400. 13 Q. Okay. And that left an \$18,900 balance? 14 A. Correct.</p>				

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<p>15 Q. Okay. Do you know if you ever paid that 16 balance? 17 A. I'm not sure on that. 18 Q. Okay. Do you think it's paid off, or do 19 you think -- 20 A. Oh, it's not. It's not paid off. 21 Q. Okay. And that indicates a full unit 22 price of \$91,000? 23 A. That's what it says. 24 Q. Okay. Is that your understanding of what 25 the cost of the lenses is? 109: 1 A. Correct.</p>				
<p>109: 3 Q. BY MR. MORAN: Mr. Gregg, you've been 4 handed a copy of what's been marked as plaintiff's 5 Exhibit 311 and is labeled GREGG_P&R-000520. 6 Do you recognize Exhibit 311? 7 A. It's a check. 8 Q. Did you produce this exhibit to the United 9 States? 10 A. I did. 11 Q. Okay. And what was this check for?</p>			<p>309 310 311</p>	

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<p>12 A. Down -- Down payment on lenses.</p> <p>13 Q. Okay. In the memo line it says: "26</p> <p>14 systems at 10 percent."</p> <p>15 Did I read that correctly?</p> <p>16 A. That's what it looks like.</p> <p>17 Q. Okay. So if you refer back to</p> <p>18 Exhibit 310, there was a down payment of \$27,300?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. Am I to understand that 26 systems</p> <p>21 at 10 percent is actually 10 percent of the down</p> <p>22 payment?</p> <p>23 A. No.</p> <p>24 Q. Well, this check is for \$2730?</p> <p>25 A. Correct.</p> <p>110: 1 Q. Isn't that 10 percent of the down payment</p> <p>2 that's referenced in the invoice at Exhibit 309?</p> <p>3 A. Okay. Yes. Yes. I'm sorry.</p>				
<p>110: 7 Q. BY MR. MORAN: Mr. Gregg, you've been</p> <p>8 handed what's been marked for identification as</p> <p>9 plaintiff's Exhibit 312 and labeled as</p>			<p>309</p> <p>312</p>	

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<p>10 GREGG_P&R-000001. 11 Do you recognize plaintiff's Exhibit 312? 12 A. It's another bonus contract. 13 Q. For how many systems? 14 A. Twenty-six. 15 Q. Okay. And is this referencing the same 16 lens purchase -- 17 A. Correct. 18 Q. -- that we'd talked about -- 19 A. Yes. 20 Q. -- in the invoice at Exhibit 310? Is that 21 correct? 22 A. Yes.</p>				
<p>111: 1 Q. BY MR. MORAN: Mr. Gregg, you've been 2 handed a copy of what's been marked for 3 identification as plaintiff's Exhibit 313 and 4 labeled GREGG_P&R-000133. 5 Do you recognize exhibit -- or plaintiff's 6 Exhibit 313? 7 A. It looks like a letter from Greg Shepard. 8 Q. What's the date on that letter? 9 A. February 2nd, 2012.</p>			313	

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<p>10 Q. Do you recall what year you purchased the</p> <p>11 26 lenses that you've just testified about?</p> <p>12 A. Looks like 04/11.</p> <p>13 Q. So that's April 2011?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Exhibit 313 says:</p> <p>"This letter is</p> <p>16 regarding the alternative energy systems that you</p> <p>17 purchased from RaPower-3 LLC. RaPower-3 put into</p> <p>18 service your equipment on or before December 31st,</p> <p>19 2011. This will qualify you for the Internal</p> <p>20 Revenue Service's solar energy tax credit."</p> <p>21 Did I read that correctly?</p> <p>22 A. Yep.</p> <p>23 Q. Okay. Did you receive this letter from</p> <p>24 Greg Shepard?</p> <p>25 A. I did.</p> <p>112: 1 Q. Okay. Do you understand the signature at</p> <p>2 the bottom to be Greg Shepard's signature?</p> <p>3 A. I do.</p>				

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<p>112: 7 Q. BY MR. MORAN: Mr. Gregg, you've been 8 handed a copy of what's been marked for 9 identification as plaintiff's Exhibit 314, which is 10 labeled GREGG_P&R-004007, and that exhibit runs 11 through GREGG_P&R-004038. 12 Do you recognize plaintiff's Exhibit 314? 13 A. I do. 14 Q. What is it? 15 A. It's a TurboTax return for 2011 federal 16 tax. 17 Q. And whose tax return is it? 18 A. My wife and I's joint return. 19 Q. Okay. Who prepared this return? 20 A. I did. 21 Q. Mr. Gregg, I direct your attention to the 22 page ending in 4014. 23 A. Um-hum. 24 Q. Are you there? 25 A. I'm there. 113: 1 Q. Thanks. This appears to be a schedule C,</p>			<p>310 314</p>	

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<p>2 profit or loss from business. The principal 3 business or profession indicated in line A is solar 4 energy system. 5 A. (Nods head.) 6 Q. Is this schedule C for your solar energy 7 business? 8 A. It is. 9 Q. Okay. This schedule C indicates that you 10 received \$746 of income? 11 A. Yep. 12 Q. Is that income from commissions you 13 received from selling lenses to other people? 14 A. I believe so. 15 Q. Okay. And on line 13 you claimed \$77,926 16 of depreciation; is that correct? 17 A. That's what it looks like. 18 Q. Okay. And now if I could have you go back 19 to the page that ends in 4036. Are you there? 20 A. I don't -- 036? 21 Q. 4036. 22 A. Sorry. Yeah, it's back --</p>				

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<p>23 Q. A page near the end. 24 A. Yeah, I'm looking for it. 25 Q. It says solar energy systems -- and I'm in 114: 1 the second row: Solar energy systems, date in 2 service 12/01/11, cost of \$91,000? 3 A. That's what it says. 4 Q. Okay. \$91,000 was the total cost of the 5 lenses that was in the invoice at Exhibit 310; is 6 that correct? 7 A. Yes. 8 Q. Okay. So you prepared this return; right? 9 A. Yeah. 10 Q. Do you know how you determined that the 11 cost of your solar energy systems was \$91,000? 12 A. That's the total cost. That's what I put 13 in the -- whatever that -- they asked me questions 14 and I put what I thought was right. 15 Q. And "they" being TurboTax? 16 A. Yes. Yes.</p>				

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<p>17 Q. Okay. Do you think you would have looked</p> <p>18 at the invoice and the -- invoice or records you</p> <p>19 received from --</p> <p>20 A. Oh, I'm sure, yes.</p> <p>21 Q. Let me finish.</p> <p>22 A. Oh.</p> <p>23 Q. Do you think you would have looked at</p> <p>24 either the invoice or other records you received</p> <p>25 from RaPower-3 to put in the cost that you reported</p> <p>115: 1 on your tax return of the solar lenses?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. If you follow over on that line, it</p> <p>4 says "section 179, \$13,650."</p> <p>5 A. Okay.</p> <p>6 Q. Do you know what section 179 is?</p> <p>7 A. Nope.</p> <p>8 Q. Okay. Could I have you look back at the</p> <p>9 schedule C on page -- on the page that ends in 4014.</p> <p>10 A. Yes.</p> <p>11 Q. Look down on line 32A.</p>				

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12 A. 32A, yes. 13 Q. There's an X in the box that says "all 14 investment is at risk"? 15 A. Okay.				
20 Q. BY MR. MORAN: You prepared this tax 21 return? 22 A. Correct. 23 Q. When you put an X in the box for "all 24 investment is at risk," what did that mean to you?				
116: 2 THE WITNESS: I -- I don't know. 3 Q. BY MR. MORAN: Why did you check the box 4 at 32A? 5 A. I can't recall. 6 Q. Did you get guidance from anyone in 7 preparing your 2011 tax return? 8 A. No. 9 Q. Mr. Gregg, you made -- if you look at the 10 first page of your return, the page ending in 4009 11 -- \$46,422? 12 A. Yes.		116: Objection. Argumentative, leading; hearsay; lack of personal knowledge; lack of foundation; compound; question misstates the facts		Overruled

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<p>13 Q. Is that your earnings from your -- from 14 your job at Iseli Nursery? 15 A. I believe so. 16 Q. Okay. Was your wife working during that 17 time? 18 A. This is 2011? No, she was not. 19 Q. Okay. If you earned \$46,422 in 2011, is 20 it possible that you spent \$91,000 purchasing solar 21 lenses?</p>				
<p>117: 1 Q. If you made \$46,422 in 2011, is it 2 possible that you purchased \$91,000 of solar lenses?</p>				
<p>117: 5 THE WITNESS: Some of that is financed, 6 obviously. 7 Q. BY MR. MORAN: Who's it financed by? 8 A. I don't know. 9 Q. You don't know who financed your solar 10 lenses? 11 A. Me. I financed my solar lenses.</p>		<p>117: Objection. Argumentative, leading; hearsay; lack of personal knowledge; lack of foundation; compound</p>		<p>Overruled</p>

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<p>12 Q. Well, then, if you made \$46,422 in 2011, 13 my question to you was: How did you spend \$91,000 14 on solar lenses and you said it was financed? 15 So my question is: Who financed it? 16 A. I don't know how to answer your question. 17 Q. Who advanced the money? 18 A. I understand your question. I don't know 19 how to answer your question.</p>				
<p>117:23 Q. BY MR. MORAN: If you understand the 24 question, you need to answer it. 25 A. I do under -- I -- My understanding of the 118: 1 question is it's financed. 2 Q. And I'd like to know who financed it. 3 A. The LBT -- that's my understanding. 4 Q. Okay. And if I could direct your 5 attention back at page -- the page ending in 4009, 6 line 22.</p>				

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<p>7 Your total income for the year was 8 negative \$36,800; is that correct? 9 A. That's what it says.</p>				
<p>118:13 Q. BY MR. MORAN: Mr. Gregg, you've been 14 handed a copy of what's been marked for 15 identification as plaintiff's Exhibit 315, which is 16 labeled GREGG_P&R-004810, and that runs through 17 GREGG_P&R-004825. 18 Do you recognize plaintiff's Exhibit 315? 19 A. I do. 20 Q. What is it? 21 A. 2012 tax return for Peter and Renae Gregg. 22 Q. Who prepared this return? 23 A. I believe I was getting tax help with Rick 24 Jameson by this time. 25 Q. Have you gotten -- Has anyone else 119: 1 prepared your returns? 2 A. In this time frame? 3 Q. Yes. 4 A. No.</p>		<p>118: Objection. Leading; not relevant</p>	<p>315</p>	<p>Overruled</p>

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<p>5 Q. Okay. Previously, when you were looking</p> <p>6 at your 2011 tax return, we noted that your total</p> <p>7 income for 2011 was negative \$36,800?</p> <p>8 A. Correct.</p> <p>9 Q. I see on line 21 of the 2012 return,</p> <p>10 plaintiff's 315, a net operating loss of negative</p> <p>11 \$36,800; is that correct?</p> <p>12 A. I see the same thing.</p> <p>13 Q. And that's at line 21?</p> <p>14 A. (Nods head.)</p> <p>15 Q. And if you can flip back to the last page</p> <p>16 of Exhibit 315.</p> <p>17 There's a statement that refers to</p> <p>18 line 21, net operating loss carried forward, it</p> <p>19 says, from 2011 form 1040; is that correct?</p> <p>20 A. That's what this says.</p> <p>21 Q. Is it fair to say that you carried forward</p> <p>22 your loss on the 2011 return onto the 2012 return?</p> <p>23 A. Yes.</p>				

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<p>120: 7 Q. BY MR. MORAN: Mr. Gregg, you've been 8 given a copy of what's been marked for 9 identification as plaintiff's Exhibit 316 and which 10 is labeled GREGG_P&R-000157 through GREGG_P&R-00176 11 -- I'm sorry -- 177. 12 Do you recognize plaintiff's Exhibit 316? 13 A. It looks to be a 2013 federal tax return 14 for Peter and Renae Gregg. 15 Q. Who prepared this return? 16 A. Rick Jameson. 17 Q. If you could go back to the page ending in 18 164. 19 This is a schedule C for equipment rental 20 services; is that correct? 21 A. That's what it looks like. 22 Q. Is this your solar lens business? 23 A. Yes. 24 Q. Okay. Mr. Gregg, on this document, if you 25 look at the page ending 160, at line 21 there's a</p>		<p>120-122: Objection. Argumentative, leading; hearsay; lack of personal knowledge; lack of foundation; compound</p>	<p>316</p>	<p>Overruled</p>

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<p>121: 1 net operating loss again of \$33,895. Do you see 2 that? 3 A. Yep. 4 Q. Do you see what that -- Do you know what 5 that operating loss is from? 6 A. Probably depreciation. 7 Q. Depreciation of what? 8 A. Solar lenses. 9 Q. Okay. One other question: Why did you 10 stop preparing your own return? 11 A. Didn't work out, did it? 12 Q. What do you mean, "it didn't work out"? 13 A. I got audited. 14 Q. Okay. You said possibly the 2012 and 15 definitely the 2013 return -- 16 A. Yes. 17 Q. -- was prepared by Richard Jameson? 18 A. Yes. 19 Q. How did you learn about Richard Jameson? 20 A. I believe either Roger or Greg. 21 Q. Roger Freeborn and Greg Shepard? 22 A. Correct.</p>				

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23 Q. Okay. What did they tell you about 24 Mr. Jameson? 25 A. He was a good CPA. 122: 1 Q. Did they say why he was good?				
122: 3 THE WITNESS: No. They said he was a good 4 CPA.				
122: 5 Q. BY MR. MORAN: Okay. Did they tell you 6 anything about his familiarity with solar lenses? 7 A. No, not that I can recall.				
122: 9 Q. BY MR. MORAN: Mr. Gregg, you've been 10 handed a copy of what's been marked for 11 identification as plaintiff's Exhibit 317 and which 12 is labeled GREGG_P&R-000186, and that exhibit runs 13 through GREGG_P&R-000220. 14 Mr. Gregg, do you recognize plaintiff's 15 Exhibit 317? 16 A. It's a federal tax return for Peter and 17 Renae Gregg for 2014.			317	

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<p>18 Q. And you produced this document to the</p> <p>19 United States?</p> <p>20 A. I did.</p> <p>21 Q. Okay. If I could have you flip back to</p> <p>22 the page ending in 193.</p> <p>23 A. I'm there.</p> <p>24 Q. Are you there?</p> <p>25 A. (Nods head.)</p> <p>123: 1 Q. Okay. This is a schedule C for you, and</p> <p>2 it says equipment rental services, similar to your</p> <p>3 2013 return.</p> <p>4 What business does the equipment rental</p> <p>5 services refer to?</p> <p>6 A. Solar lenses.</p> <p>7 Q. Okay. I noticed the principal business</p> <p>8 switched between the 2012 and the 2013 return. Do</p> <p>9 you recall that?</p> <p>10 A. No, but you've looked at these documents</p> <p>11 much more than I have.</p> <p>12 Q. Well, I don't want to misquote, so let's</p> <p>13 check.</p>				

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<p>14 A. Yes, between 2012 and 2013. 15 Q. In 2012 it refers to solar power on the 16 schedule C? 17 A. Right. Yes. 18 Q. And then in 2013 and 2014, the business 19 switches to -- 20 A. Equipment rental. 21 Q. Did anything about the business, about the 22 solar lens business, change? 23 A. No. 24 Q. Okay. You just changed the name or you -- 25 Withdrawn. 124: 1 You changed the principal business or 2 profession? 3 A. Yes. 4 Q. Why did that happen? 5 A. Because I wasn't -- I wasn't stating what 6 I was doing adequately. 7 Q. So who came up with the term "equipment 8 rental services"? 9 A. I don't recall.</p>				
<p>125:24 Q. Okay. Mr. Gregg, I'm handing you copies</p>			<p>318 319</p>	

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Plaintiff Designations – BLUE Defendant Completeness— PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness— PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>25 of plaintiff's Exhibit 318, which is labeled 126: 1 GREGG_P&R-000134; plaintiff's Exhibit 319, which is 2 labeled GREGG_P&R-000185; and plaintiff's 3 Exhibit 320, which is labeled GREGG_P&R-000229. Is 4 that correct? 5 A. Yep. 6 Q. Can you tell me what Exhibits 318, 319, 7 and 320 are? 8 A. 1099s from RaPower-3. 9 Q. Did you receive these 1099s from 10 RaPower-3? 11 A. I did. 12 Q. And do these 1099s represent the income 13 that you received from your solar lens business? 14 A. Yes. 15 Q. Have you received any other income from 16 your solar lens business -- 17 A. No. 18 Q. -- that is not reflected in the 1099s? 19 A. No. Oh, I'm sorry.</p>			320	

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20 MR. MORAN: Okay. Thank you.				
126:23 Q. BY MR. MORAN: Mr. Gregg, you've been 24 handed a copy of what's been marked for 25 identification as plaintiff's Exhibit 321 and 127: 1 labeled GREGG_P&R-003191 and exhibit -- plaintiff's 2 Exhibit 322, which has been labeled 3 GREGG_P&R-004402. 4 Do you recognize plaintiff's Exhibit 321 5 and 322? 6 A. I do. 7 Q. What is it? 8 A. It's a letter from Greg Shepard. 9 Q. What does this letter -- What do these 10 letters say? 11 A. "Regarding the alternative energy systems 12 purchase from RaPower-3, we've put into service your 13 equipment December 31st, 2010, and the other 14 December 31st, 2012."			321 322	

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15 Q. Thank you. Just so the record's clear: 16 You received these letters from Greg Shepard? 17 A. Yes.				
127:20 Q. BY MR. MORAN: Mr. Gregg, you've been 21 handed a copy of what's been marked for 22 identification as plaintiff's Exhibit 323, which is 23 labeled GREGG_P&R-004557. 24 Do you recognize plaintiff's Exhibit 323? 25 A. Looks like an e-mail. 128: 1 Q. Who's the e-mail from? 2 A. Roger Freeborn. 3 Q. This looks like an e-mail chain. Is that 4 a fair characterization? 5 A. That looks -- Fair enough, yes. 6 Q. And I also see Peter Gregg and Roger 7 Freeborn on this? 8 A. Correct. 9 Q. Okay. If you could go to the e-mail dated 10 February 9th, 2010, from Roger Freeborn to you. 11 A. Yes.			321 322 323	

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<p>12 Q. Do you see that? 13 A. Yeah, I do. 14 Q. Okay. The first line says: "Give it a 15 couple days. I just got mine last Sat. You really 16 do not need the letter to figure the taxes. If you 17 do not get it this week, we'll get a hold of Greg 18 and get it to you. You only need it if you get 19 audited, and no one has been audited to date, 20 especially with someone with such a low tax 21 liability as yourself." 22 Did I read that correctly? 23 A. Yes. 24 Q. What's the letter that is being referred 25 to in this e-mail? 129: 1 A. I can't speculate on that, other than it 2 could be this -- It's got to be that letter. 3 Q. And when you say that -- 4 A. The placed-in-service letter. 5 Q. And when you say "the placed- in-service</p>				

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<p>6 letter," are you referring to, for example, the 7 Exhibits 321 -- 8 A. Correct. 9 Q. -- and 322? 10 A. Yes. 11 Q. Okay. And you've received similar letters 12 for other tax years; is that correct? 13 A. Yes. 14 Q. Okay. Mr. Freeborn said: "You only need 15 it if you get audited, and no one has been audited 16 to date." Is that correct? 17 A. That's what he said. 18 Q. Okay. Did there come a time when you were 19 audited? 20 A. Yes. 21 Q. Okay. Who is -- Who audited you? 22 A. The IRS. 23 Q. Anyone else? 24 A. The State of Oregon. 25 Q. Okay. Do you recall when you first 130: I learned -- Withdrawn. 2 Which audit occurred first?</p>				

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<p>3 A. I don't remember. 4 Q. Okay. Do you recall about when you first 5 learned that your tax returns were being audited? 6 A. It's been a very long process; so, no. 7 Q. Okay. Did any of the defendants in this 8 case, who we discussed earlier -- do you remember 9 who they are? 10 A. Yes. 11 Q. Okay. Did any of the defendants in this 12 case say anything to you about the potential of 13 having your tax returns examined? 14 A. Having them examined? 15 Q. Or audited? 16 A. No. 17 Q. Did they ever discuss paying for your 18 representation if your tax returns were examined or 19 audited? 20 A. After the fact, I believe I asked that</p>				

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<p>21 question, and I believe I would be getting help.</p> <p>22 Q. What did they tell you?</p> <p>23 A. Tax advice or representation, so...</p> <p>24 Q. Okay. And who is paying for that</p> <p>25 representation?</p> <p>131: 1 A. I have -- The business?</p> <p>2 Q. Which business.</p> <p>3 A. I don't know.</p> <p>4 Q. Let me ask you this: Are you paying for</p> <p>5 your representation?</p> <p>6 A. No, I'm not.</p> <p>7 Q. Who represented you during your exam?</p> <p>8 A. In -- In --</p> <p>9 Q. During your audit.</p> <p>10 A. Who represented me during my audit? The</p> <p>11 federal audit?</p> <p>12 Q. Both.</p> <p>13 A. Me and Rick Jameson, and then I've talked</p> <p>14 to Paul.</p> <p>15 Q. Okay. I don't want you to tell me</p> <p>16 anything about your discussions with Mr. Jones; but</p>				

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<p>17 you mentioned Mr. Jameson. 18 A. Yes. 19 Q. Okay. Has Mr. Jameson ever sent you a 20 bill associated with representing you before either 21 the State of Oregon or the IRS? 22 A. Doing my tax returns and then doing more 23 work associated with that. 24 Q. Okay. So you paid Mr. Jameson to prepare 25 your tax returns? 132: 1 A. Correct. 2 Q. But you also testified that Mr. Jameson 3 represented you before the -- before the State of 4 Oregon as well as the IRS? 5 A. He was not present, but he helped prepare 6 the legal documents or the documents that you guys 7 get, so... 8 Q. Who did? 9 A. Rick. 10 Q. Okay. Did he send you a bill for 11 preparing those documents? 12 A. I'm not positive. I think yes.</p>				

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<p>13 Q. In addition to preparing your tax returns?</p> <p>14 A. Correct. Because it was more work on his</p> <p>15 part.</p> <p>16 Q. What about Mr. Jones? Has he ever sent</p> <p>17 you a bill?</p> <p>18 A. No.</p> <p>19 Q. And he's here representing you today?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Do you expect to get a bill from</p> <p>22 him?</p> <p>23 A. No.</p> <p>24 Q. Okay. Do you know who's paying his bill?</p> <p>25 A. I do not.</p> <p>133: 1 Q. Okay. You just know it isn't you?</p> <p>2 A. It's not me.</p> <p>3 Q. Okay. Have you ever discussed your</p> <p>4 audits, both before the State of Oregon and the IRS,</p> <p>5 with any of the defendants?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. What was the content of those</p>				

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<p>8 discussions? 9 A. What was the content? 10 Q. What -- What -- 11 A. I'm getting audited. 12 Q. Okay. What did they tell you about how 13 you should respond to the audit? 14 A. "Get everything you've got. If there's a 15 subpoena, be forthcoming." 16 Q. Okay. What was the result of your audit 17 with the department of Oregon? 18 A. I believe I failed the audit -- or I don't 19 know all the rigmarole -- but I went down and saw a 20 magistrate judge, and he made a declaration or 21 whatever they do, and then we were going to appeal. 22 But I had not paid -- the State of Oregon has -- you 23 have to pay your taxes before you can fight them, 24 fight the audit. 25 Q. Okay. 134: 1 A. So I -- we dropped the appeal.</p>				

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<p>2 Q. Do you remember what years that was for?</p> <p>3 A. No.</p> <p>4 Q. Okay. Do you have any ongoing audits with</p> <p>5 Oregon?</p> <p>6 A. I don't know. No, not at this point.</p> <p>7 I've paid all my -- I've been working on paying all</p> <p>8 my back taxes; and, as far as I know, no.</p> <p>9 Q. Okay. What's your understanding of why</p> <p>10 you owe back taxes to the State of Oregon?</p> <p>11 A. I -- Well, I'm working -- because of the</p> <p>12 RaPower-3 discrepancy on my TurboTax, there's</p> <p>13 probably some red flags there that instigated that.</p> <p>14 Q. Okay. When you say "red flags," do you</p> <p>15 mean that certain things were disallowed by the</p> <p>16 State of Oregon?</p> <p>17 A. I -- I don't know. I'm not a tax person.</p>				

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<p>18 Q. Okay. You don't intend to dispute that</p> <p>19 you owe those back taxes to the State of Oregon?</p> <p>20 A. I would like -- Well, there's a - - there's</p> <p>21 a case going right now, and I will probably -- I</p> <p>22 don't know exactly, I don't know the verbiage -- but</p> <p>23 put my case back in, now that I've paid them.</p> <p>24 Q. Okay. Do you know what the result was of</p> <p>25 your IRS audit?</p> <p>135: 1 A. I think it's like an ongoing process. I'm</p> <p>2 not -- I don't know.</p> <p>3 Q. Do you know what stage it is at right now?</p> <p>4 A. I can't say.</p> <p>5 Q. Okay. Do you know if you've filed a</p> <p>6 petition in the United States Tax Court?</p> <p>7 A. Probably.</p> <p>8 Q. But you're not positive?</p> <p>9 A. I'm not positive.</p>				
135:10 (Exhibit 324 marked.)			324	

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<p>11 Q. BY MR. MORAN: Mr. Gregg, you've been</p> <p>12 handed a copy of plaintiff's Exhibit 324, which has</p> <p>13 been labeled GREGG_P&R-001854.</p> <p>14 Do you recognize plaintiff's Exhibit 324?</p> <p>15 A. It's an e-mail from Roger Freeborn.</p> <p>16 Q. To whom?</p> <p>17 A. Peter Gregg.</p> <p>18 Q. Okay. The date on this e-mail is May 7th,</p> <p>19 2013?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Down below, there's an e-mail from</p> <p>22 May 6th of 2013, where it appears that you say:</p> <p>23 "The IRS sent me some documents, asking for more</p> <p>24 information."</p> <p>25 A. Um-hum.</p> <p>136: 1 Q. Does this refresh your recollection of</p> <p>2 about when you came under audit?</p> <p>3 A. That's probably it right there.</p>				

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136: 4 Q. So you learned you were audited somewhere 5 around May 2013? 6 A. That -- If -- Yes.				
136:10 Q. BY MR. MORAN: Mr. Gregg, you've been 11 handed a copy of what's been marked for 12 identification as plaintiff's Exhibit 325 and 13 labeled GREGG_P&R-001917 through GREGG_P&R-001918. 14 Do you recognize plaintiff's Exhibit 325? 15 A. This looks like an e-mail from Greg 16 Shepard to me, or a string of e-mails. 17 Q. And this is also dated May 2013? 18 A. Yes.			325	
137: 3 Q. Okay. The top e-mail it says: "Call me 4 at 801-699-2284." 5 Do you know whose phone number that is? 6 A. If this is from Greg Shepard, I'm assuming 7 it's him.				

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<p>8 Q. Okay. Do you recall calling Mr. Shepard? 9 A. I probably did. 10 Q. Okay. Any recollection of that 11 conversation? 12 A. No.</p>				
<p>137:16 Q. BY MR. MORAN: Mr. Gregg, you've been 17 given a copy of what's been marked for 18 identification as plaintiff's Exhibit 326 and 19 labeled GREGG_P&R-000282. 20 Do you recognize plaintiff's Exhibit 326? 21 A. It is an e-mail from Glenda to me. 22 Q. You produced plaintiff's Exhibit 326 to 23 the United States? 24 A. I did. 25 Q. Okay. Who is Glenda? 138: 1 A. I believe -- I believe she's the 2 secretary. 3 Q. Secretary where? 4 A. At RaPower-3. 5 Q. Okay. Do you know if she's related to</p>		<p>137-139: Objection. Argumentative, leading; hearsay; lack of personal knowledge; lack of foundation; compound; not relevant FRE 401-402</p>	<p>326</p>	<p>Overruled</p>

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<p>6 anyone? 7 A. I don't. 8 Q. Okay. Have you ever met Glenda Johnson? 9 A. Not that I can recall. 10 Q. Okay. But you did exchange this e-mail 11 with her? 12 A. I did. 13 Q. Okay. If you'd please look at the e-mail 14 on the bottom of the page. 15 A. Um-hum. 16 Q. In the third line down, it says: "First, 17 I need a placed-in-service letter for 2012. And, 18 second, I need a copy of my bonus contract for the 19 first two systems I bought back in 2010. And, last, 20 I need an invoice for my 26 system purchases and 21 proof of the three payments I have made on it. I 22 have been back" -- "been to the back office area of 23 RaPower-3 and it looks fine until it converts into a</p>				

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<p>24 PDF format, then the numbers get messed up. If you 25 have any questions, I can call." 139: 1 Did I read that correctly? 2 A. Yeah. 3 Q. Okay. What are you asking for here?</p>				
<p>139: 6 THE WITNESS: Documents. 7 Q. BY MR. MORAN: What did you need these 8 documents for? 9 A. The audit. 10 Q. And that's the audit with the IRS? 11 A. I believe so. 12 Q. Okay. And then in the top e- mail dated 13 May 17th, 2013, it looks like you ask for these 14 documents again; is that correct? 15 A. Yes.</p>				
<p>139:19 Q. BY MR. MORAN: Mr. Gregg, you've been 20 handed a copy of what's been marked for 21 identification as plaintiff's 327 327 and 22 labeled GREGG_P&R-004409.</p>			327	

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<p>23 What is plaintiff's Exhibit 327? 24 A. It looks like a letter to me from Greg 25 Shepard, a placed-in-service letter. 140: 1 Q. And you've testified about these -- about 2 similar documents you've received from Greg Shepard? 3 A. Correct. Yes. 4 Q. Correct? 5 A. Yes. 6 Q. Okay. The placed-in-service letter at 7 Exhibit 327 is dated May 18th, 2013; is that 8 correct? 9 A. That's what it looks like. 10 Q. Okay. And it references equipment placed 11 in service before December 31st, 2011? 12 A. Correct.</p>				
<p>141:20 Q. BY MR. MORAN: Mr. Gregg, you've been 21 handed a copy of what's been marked for 22 identification as plaintiff's Exhibit 328, labeled</p>		<p>141-142: Objection. Argumentative, leading; hearsay; lack of personal knowledge; lack of foundation; compound; calls for speculation; not relevant FRE 401-402,</p>	<p>328</p>	<p>Overruled</p>

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<p>23 GREGG_P&R-001223; and that's a four-page document</p> <p>24 that ends in GREGG_P&R-001226.</p> <p>25 Do you recognize plaintiff's Exhibit 328?</p> <p>142: 1 A. This looks like an e-mail from Greg</p> <p>2 Shepard.</p> <p>3 Q. Did you receive this e-mail?</p> <p>4 A. I'm assuming I did.</p> <p>5 Q. And did you produce it to the United</p> <p>6 States?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. The first paragraph says:</p> <p>9 "Attached is our first request for an appeal. Bryan</p> <p>10 Bolander, CPA, will handle the appeal meeting, and I</p> <p>11 will be his special witness."</p> <p>12 Did I read that correctly?</p> <p>13 A. Yes.</p> <p>14 Q. Is this referencing your audit?</p> <p>15 A. I'm not -- I don't know if this is mine or</p> <p>16 other audits.</p> <p>17 Q. Okay. In the second page --</p> <p>In the second</p>				

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<p>18 paragraph, second sentence, it says: "But delay as 19 long as possible." 20 A. Okay. 21 Q. Do you know what Mr. Shepard is referring 22 to? 23 A. I don't -- No. 24 Q. Do you know what he wants to delay as long 25 as possible?</p>				
<p>143: 3 THE WITNESS: The -- I don't know. The 4 talking with the IRS. 5 Q. BY MR. MORAN: Okay. And the last three 6 pages of Exhibit 328, who created those documents? 7 A. I don't know. And I'm assuming they were 8 sent on -- with this particular document.</p>			328	
<p>143:12 Q. BY MR. MORAN: Mr. Gregg, you've been 13 handed a copy of what's been marked for 14 identification as plaintiff's Exhibit 329, labeled 15 GREGG_P&R-002202 through GREGG_P&R-002204.</p>			329	

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16 Do you recognize it? 17 A. It looks like an e-mail. 18 Q. From who? 19 A. Looks like I sent it to Bryan Bolander. 20 Q. Who is Mr. Bolander? 21 A. He is a CPA.				
143:24 How did you come to learn about 25 Mr. Bolander? 144: 1 A. Through Greg Shepard.				
145:24 Q. Okay. Just one question on the e-mail 25 dated July 2nd, 2013, from you from -- it looks like 146: 1 it's from you to Greg Shepard; but above that, I see 2 a statement, "responses," in caps. 3 A. Hmm. 4 Q. Do you see that? 5 A. Yes. 6 Q. All right. And then -- And the e-mail 7 from you to Mr. Shepard, dated July 2nd, 2013, at 8 9:31:41, I see text in caps. Do you see that? 9 A. Text in caps? 10 Q. In capital letters. 11 A. Yes.		145-147: Objection. Argumentative, leading; hearsay; lack of personal knowledge; lack of foundation; compound; calls for speculation; not relevant FRE 401-402.		Overruled

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<p>12 Q. Okay. Whose statements appear in capital letters?</p> <p>13 letters?</p> <p>14 A. I believe that would be Greg Shepard's.</p> <p>15 Q. Okay. In the fifth sentence, in capital letters --</p> <p>16 letters --</p> <p>17 A. Fifth sentence, in capital letters. One,</p> <p>18 two, three, four, five. Um-hum.</p> <p>19 Q. It says: "We are just about ready to flip</p> <p>20 the switch."</p> <p>21 Do you know what switch Mr. Shepard is</p> <p>22 referring to?</p> <p>23 A. Flip the switch? I can't speculate on</p> <p>24 that, "flip the switch."</p> <p>25 Q. You have no idea what he's referring to?</p> <p>147: 1 A. Turning on power? I don't know.</p>				
<p>147: 5 Q. BY MR. MORAN: Mr. Gregg, you've been</p> <p>6 handed a copy of what's been marked for</p> <p>7 identification as plaintiff's Exhibit 330, which is</p>			330	

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Plaintiff Designations – BLUE Defendant Completeness— PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness— PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>8 labeled as GREGG_P&R-001465. It's a three-page 9 document ending with GREGG_P&R-001467. 10 Do you recognize plaintiff's Exhibit 330? 11 A. Looks like a string of e-mails from Greg 12 Shepard to me. 13 Q. I'd like to direct your attention to the 14 second page. 15 There's an e-mail dated July 12th, 2013, 16 at 11:40:33. Do you see that? 17 A. 11:40:33. 18 Q. It's an e-mail from Greg Shepard to you. 19 A. To me? Oh, yes. 20 Q. It says: "Peter, I recommend the 21 following," and then there's four paragraphs. Do 22 you see that? 23 A. Yes. 24 Q. Okay. What does Mr. Shepard's 25 recommendation relate to? 148: 1 A. The Oregon audit. 2 Q. Okay. I see the subject of that</p>				

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Plaintiff Designations – BLUE Defendant Completeness— PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness— PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>3 particular e-mail is actually "IRS appeal." 4 A. Okay. The subject is "Oregon Department of Treasury," is what I have on mine, but... 6 Q. And then in the text of the e-mail that we 7 were just discussing, the one from July 12th, 8 2013 -- 9 A. Oh, yes. Yes, "IRS appeal," on that 10 particular one, yes.</p>				
<p>149: 1 Q. BY MR. MORAN: Why did Mr. Shepard send 2 you this e-mail? 3 A. Because I asked for help. 4 Q. Okay. Help with what? 5 A. I was being audited. 6 Q. By who? 7 A. Oregon and the IRS.</p>			331	
<p>149:11 Q. BY MR. MORAN: Mr. Gregg, I've handed you 12 a copy of what's been marked for identification as 13 plaintiff's Exhibit 331, labeled GREGG_P&R-001986. 14 Do you recognize this document?</p>			331	

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15 A. Yes. It's me to Greg Shepard - - or 16 another string. 17 Q. You received -- or you exchanged these 18 e-mails with Mr. Shepard? 19 A. Yes.				
149:23 Q. BY MR. MORAN: Mr. Gregg, you've been 24 handed a copy of what's been marked for 25 identification as plaintiff's Exhibit 332, labeled 150: 1 GREGG_P&R-004139. 2 Do you recognize plaintiff's Exhibit 332? 3 A. It's an e-mail from me to Greg Shepard, 4 and a string from him.			332	
151: 7 Q. BY MR. MORAN: Mr. Gregg, you've been 8 handed a copy of what's marked for identification as 9 plaintiff's Exhibit 333 and labeled 10 GREGG_P&R-001354. 11 Do you recognize plaintiff's Exhibit 333? 12 A. It's an e-mail from Greg Shepard to me.			333	

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<p>13 Q. You produced this document to the United States?</p> <p>14 States?</p> <p>15 A. I did.</p> <p>16 Q. Okay. Is this e-mail where you first learned of a CPA by the name of Rick Jameson?</p> <p>17 learned of a CPA by the name of Rick Jameson?</p> <p>18 A. Possibly.</p>				
<p>151:20 Q. BY MR. MORAN: Mr. Gregg, you've been handed a copy of what's been marked for identification as plaintiff's Exhibit 334, labeled GREGG_P&R-004415.</p> <p>23 GREGG_P&R-004415.</p> <p>24 Do you recognize plaintiff's Exhibit 334?</p> <p>25 A. It's an e-mail from me to Rick Jameson.</p>			334	
<p>153:25 Q. BY MR. MORAN: Mr. Gregg, we just took a break; and, during that break, we examined -- you and your attorney examined several documents which we've marked for -- marked for identification as</p>			335	

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<p>4 plaintiff's Exhibit 335 through 343. 5 A. Yes. 6 Q. Did you produce all those documents to the 7 United States? 8 A. I did. 9 Q. The documents that appear in Exhibits 335 10 to 343, is there any reason to believe that those 11 documents are not what they purport to be? 12 A. No. 13 Q. Okay. In other words, those -- those are 14 your records and they are copies of what you have in 15 your possession? 16 A. Yes.</p>				
<p>157:15 Q. BY MR. MORAN: Mr. Gregg, you've been 16 given a copy of what's marked for identification as 17 plaintiff's Exhibit 346, labeled GREGG_P&R-003095. 18 Do you recognize plaintiff's Exhibit 346?</p>			346	

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<p>19 A. It looks like an e-mail or an e-mail 20 string from me to Greg Shepard. 21 Q. Just below the bottom half of the page, a 22 person named Jeanne is referenced? 23 A. Um-hum. 24 Q. Who's Jeanne Barker? 25 A. I have no idea. 158: 1 Q. You don't? 2 A. I don't. 3 (Reporter request.) 4 MR. MORAN: J-E-A-N-N-E. 5 Q. BY MR. MORAN: Also, below Ms. Barker's 6 name there are several numbered paragraphs. It 7 says: "Kevin is a RaPower-3 team member," in 8 paragraph 1. Do you see that? 9 A. Yep. 10 Q. Is Kevin your father? 11 A. Kevin's my father, yes.</p>				
<p>158:15 Q. BY MR. MORAN: Mr. Gregg, you've been 16 given a copy of what's marked for identification as 17 plaintiff's Exhibit 347. This document is seven</p>			347	

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<p>18 pages long, it begins on GREGG_P&R-001818 and goes 19 through GREGG_P&R-001829. 20 Do you recognize this document? 21 A. No, I don't. 22 Q. Can you look at the e-mail header and tell 23 me where it may have come from? 24 A. Greg Shepard. 25 Q. Does this look like an e-mail that you 159: 1 produced to the United States? 2 A. Again, it could have been. 3 Q. If you produced this document to the 4 United States, is there any reason to believe you 5 didn't receive it from Greg Shepard? 6 A. No.</p>				
<p>159:10 Q. BY MR. MORAN: Mr. Gregg, you've been 11 given a copy of what's marked for identification as 12 plaintiff's Exhibit 348. It's a two- page document 13 labeled GREGG_P&R-003343. 14 Do you recognize this document?</p>			348	

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<p>15 A. Looks likes an e-mail from Greg Shepard. 16 Q. Did you receive this e-mail from Greg 17 Shepard? 18 A. I'm going to say yes.</p>				
<p>160: 4 Q. BY MR. MORAN: Mr. Gregg, you've been 5 given a copy of what's been marked for 6 identification as plaintiff's Exhibit 349. It's a 7 three-page document beginning with GREGG_P&R-001807 8 and goes through GREGG_P&R-001809. 9 Do you recognize this document? 10 A. I'm sure I got it. 11 Q. Who do you believe you received it from? 12 A. I don't know. 13 Q. On the second e-mail, I see Roger 14 Freeborn's name? 15 A. Yes, I do. 16 Q. Is there any reason to believe you didn't 17 receive that e-mail from Roger Freeborn? 18 A. No.</p>			349	

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<p>161: 3 Q. BY MR. MORAN: Mr. Gregg, how do you know 4 that your solar lenses can produce electricity or 5 steam or clean water? 6 A. I've seen a video where they can produce 7 heat, and producing heat creates -- can create all 8 those other things. 9 Q. Where did you get that video? 10 A. I think it's on YouTube. 11 Q. Do you recall who published it on YouTube? 12 A. I don't. 13 Q. Okay. Can you describe for me what you 14 saw in that video? 15 A. A solar lens array with the sun coming 16 down and starting something on fire. 17 Q. Okay. Do you know what it was that caught 18 on fire? 19 A. No. 20 Q. Okay. Do you remember what individuals, 21 if any, were in that video?</p>		<p>161-164: Objection. Argumentative, leading; hearsay; lack of personal knowledge; lack of foundation; compound; calls for speculation; not relevant FRE 401-402</p>		<p>Overruled</p>

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<p>22 A. I believe Neldon Johnson. 23 Q. Okay. So you saw something burning? 24 A. Um-hum. 25 Q. Okay. Did you see anything else? 162: 1 A. No. 2 Q. Okay. Did you see steam? 3 A. Steam's only created with water. There's 4 not very much water in southern Utah. 5 Q. Okay. So did you -- 6 A. It has to be a closed system to create 7 steam. 8 Q. Did you see such a closed system? 9 A. This was an example of the heat produced; 10 so, no, I did not see the closed system on the 11 video. 12 Q. Okay. So you saw a lens which you 13 understood to be concentrating the sun's rays? 14 A. Correct. 15 Q. Okay. And you saw something catch on</p>				

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<p>16 fire? 17 A. I saw a piece of sagebrush. 18 Q. Okay. Did you see anything else that led 19 you to believe that your lenses can produce steam, 20 clean water, or electricity? 21 A. No. 22 Q. Okay. Did you research any other business 23 mechanisms through which you could generate 24 renewable energy? 25 A. Like I said, I've done a lot of research 163: 1 on that science website and there's lots of other 2 ways to produce renewable energies. 3 Q. Are you involved in any of those? 4 A. No. 5 Q. Okay. Just RaPower? 6 A. Just RaPower. 7 Q. Okay. Why did you choose RaPower and not 8 other ventures? 9 A. Why did I choose RaPower? Because I saw a</p>				

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<p>10 ground-level opportunity to be involved with a 11 business that is ground-breaking. 12 Q. Do you consider RaPower ground-breaking? 13 A. I do. 14 Q. Okay. But you haven't received any 15 revenue from it? 16 A. Nope. 17 Q. Okay. Why do you think it's 18 ground-breaking? 19 A. Do you know of any other bladeless 20 turbines out there? 21 Q. I'm not answering the questions. 22 So my question to you is: What's 23 ground-breaking on it? 24 A. It's a bladeless turbine. If used to 25 create steam or energy, it's much more efficient. 164: 1 Q. What's unique about a bladeless turbine? 2 A. It doesn't have any blades. 3 Q. And do most turbines have blades? 4 A. Yes, most turbines have blades. If you</p>				

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<p>5 look in any hydroelectric, those are bladed 6 turbines. 7 Q. Okay. Have you seen the bladeless 8 turbine? 9 A. I have. 10 Q. Have you seen it in operation? 11 A. Not in -- Well, maybe on video as well. 12 Q. Okay. So even on your tour, you didn't 13 see the bladeless turbine? 14 A. Not in motion. 15 Q. Okay. So why do you think the bladeless 16 turbine works? 17 A. Why do I think it works? It's a -- It's 18 basic physics. It's spinning. 19 Q. What causes it to spin? 20 A. Steam. 21 Q. Have you ever seen the steam turn the 22 bladeless turbine? 23 A. Like I said, in the video.</p>				
<p>165: 1 Q. BY MR. MORAN: And that's the video that 2 you saw on YouTube?</p>				

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<p>3 A. I believe it might be on YouTube.</p> <p>4 Q. Okay. But that's the video where you</p> <p>5 saw --</p> <p>6 A. That's a different -- It's probably two</p> <p>7 different videos, probably under the same area.</p> <p>8 Q. Okay. Do you know what was turning the</p> <p>9 bladeless turbine?</p> <p>10 A. Do I know? Steam.</p> <p>11 Q. Okay. Do you know where that steam is</p> <p>12 generated?</p> <p>13 A. I can't say for certain.</p> <p>14 Q. Okay. Where do you think it was</p> <p>15 generated?</p> <p>16 A. Through heat through the sun.</p> <p>17 Q. Okay. And how did you gain that</p> <p>18 understanding?</p> <p>19 A. How did I -- Rephrase the question.</p> <p>20 Q. Well, you said that you -- You testified</p> <p>21 that you saw the steam turning the turbine; right?</p>				

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<p>22 A. Correct. 23 Q. Okay. And I'm trying to understand -- And 24 then you testified that the sun's rays generated 25 that steam? 166: 1 A. That is my understanding, yes. 2 Q. Okay. And what I'm trying to understand 3 is: How did you gain that understanding that the 4 sun's rays were generating the steam? 5 A. I don't know -- I honestly don't know how 6 to answer that question.</p>				
<p>171:20 MR. MORAN: No further questions at this 21 time. Go off the record. 22 MS. HEALY GALLAGHER: Read and sign? 23 MR. JONES: Yes, please. 24 (DEPOSITION ADJOURNED AT 12:57 P.M.)</p>				
DEFENDANT COUNTER-DESIGNATIONS	PLAINTIFF COUNTER-DESIGNATIONS			

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Instructions: One form should contain all designations for a witness. Plaintiff Designations (column 1) and Defendant Designations (column 2) will show the full deposition text that the party proposes to read in its case-in-chief. Completeness designations are proposed by the other party, under Fed. R. Civ. P. 32(a)(6), to be read with the designations. Counter-designations are read following the designations and completeness designations, similar to cross examination. This form should be provided in word processing format to the other party, who then will continue to fill in the form. The form is then returned to the proposing party for review, resolution of disputes, and further editing. The parties should confer and file a final version in PDF format using the event “Notice of Filing” and also submit a final word processing copy to the court at dj.nuffer@utd.uscourts.gov, for ruling.

All objections which the objecting party intends to pursue should be listed, whether made at the deposition, as with objections as to form, or made newly in this form, if the objection is of a type that was reserved.

<p style="text-align: center;"><i>Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828</i> <i>Deposition of Robert Aulds taken March 14, 2017</i></p>				
<p>Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)</p>	<p>Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)</p>	<p>Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE</p>	<p>Exhibits</p>	<p>Ruling</p>
<p>PLAINTIFF DESIGNATIONS</p>	<p>DEFENDANT -DESIGNATIONS</p>			
<p>6: 1 P R O C E E D I N G S 2 ROBERT AULDS, 3 having been first duly sworn, testified as follows: 4 EXAMINATION 5 BY MS. HINES: 6 Q. Good morning, Mr. Aulds. I introduced myself 7 to you just a few minutes ago, but I want to go ahead 8 and do that again for the record. 9 My name is Erin R. Hines. I'm with the 10 United States Department of Justice in the tax division, 11 and I represent the United States in this matter. 12 The matter is United States versus 13 RaPower3, LLC, et al. It is March 14, 2017, at 14 9:03 a.m., Central time. 15 I'm going to go ahead and have counsel 16 state their appearances for the record, and then we'll 17 get into some more of the introductory matters. 18 MS. HEALY-GALLAGHER: Erin Healy-Gallagher</p>	<p>168:10 Q. My first question for you is, I gathered as you 11 were answering questions from counsel that you viewed 12 your business with RaPower3 as a legitimate business; is 13 that fair? 14 A. Absolutely. 15 Q. Was it ever in your mind that you were somehow 16 defrauding the government out of revenue by conducting a 17 sham transaction? 18 A. Absolutely not. 19 Q. Did you consider the business that you were 20 entering into involving RaPower3 to be something you 21 were doing just so you could claim that you qualified 22 for tax credits technically but weren't really operating 23 a genuine business? 24 A. No. I treated it as a real business because it 25 is a real business. 169: 1 Q. You still expect to hopefully generate revenue 2 in the future; is that right? 3 A. Absolutely.</p>	<p>168:10 - 169:18, Objection, Not relevant, Fed. R. Evid. 401, 402</p> <p>Defendants object to the designation of essentially the entire deposition in Plaintiff's designation. The deposition was not designated in the notice or at the time of the deposition to be a trial deposition or to preserve the specific testimony. See Defendants' objections [Doc. 295 and Doc. 347].</p> <p>6:1-7:2. Objection, not relevant, FRE 401-402.</p>		<p>Overruled</p> <p>Overruled</p>

<p style="text-align: center;"><i>Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828</i> <i>Deposition of Robert Aulds taken March 14, 2017</i></p>				
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<p>19 of the Department of Justice, also for the United States. Chris Moran, who's representing the United States, is not present today. 22 MR. AUSTIN: I'm Christian Austin. I represent RaPower3. 24 MR. JONES: Paul Jones for Bob Aulds. 25 MS. HINES: And also, for the record, 7: 1 Donald Reay, who represents Defendants R. Gregory Shepard and Roger Freeborn, is not here today.</p>	<p>4 Q. Have you ever been presented with a business opportunity where you were guaranteed to make money no matter how much you invested and no matter what happened with the company that you were investing in? 8 A. No. 9 Q. I mean, there's risk in every business proposition, isn't there? 11 A. Right. 12 Q. And the fact that you haven't become a millionaire yet based on your purchase of solar lenses, does that lead you to believe that it's all a sham and a fraud and that you were not really entitled to your tax credits and depreciation credit? 17 A. No. I know it's a real business and I believe it's a real business. 19 Q. Have you taken tax deductions or tax credits for other businesses that you've operated? 21 A. Always. 22 Q. When you decided to own or operate a business</p>			

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	<p>23 or continue owning or operating a business, have you 24 sometimes considered whether or not it would be 25 profitable in the future? 170: 1 A. Yes. 2 Q. And in determining whether or not it may or may 3 not be profitable, is one of the things you considered 4 taxes? 5 A. Sure.</p>			
<p>9: 2 Q. Mr. Aulds, we're here today to get an accurate 3 record as possible of the facts of this case as you can 4 remember them. I need to ask, is there anything today 5 that would cause you or prevent you from understanding 6 and answering my questions completely and fully to the 7 best of your ability? 8 A. No. 9 Q. Are you taking any medications or drugs that 10 may interfere with your memory? 11 A. No. 12 Q. Have you had anything alcoholic to drink in the 13 last eight hours?</p>	<p>171: 16 Q. You're a seasoned, experienced guy. You've 17 been involved in a lot of your own businesses. Has it 18 ever occurred to you that considering the tax 19 implications of any particular business structure or 20 transaction is somehow like wrong? 21 A. No. 22 Q. Have there been other business opportunities 23 that have been presented to you where the tax treatment 24 of the asset that you were purchasing or the business 25 you were investing in was a significant factor in your</p>	<p>9:2-10:1: Objection, not relevant, FRE 401-402.</p>		<p>Overruled</p>

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<p>14 A. No. 15 Q. Are you feeling sick or unwell today? 16 A. No. 17 Q. Are you currently under a doctor's care for any 18 illness? 19 A. Yes. 20 Q. Is it related to memory or any kind of -- well, 21 does it relate to anything with your memory? 22 A. No. 23 Q. Is there any reason you can think of why you 24 would not be able to answer my questions fully and 25 accurately today? 10: 1 A. No.</p>	<p>172: 1 determination of whether or not it made economic sense 2 to enter into the transaction? 3 A. Yes. 4 Q. And have there been times -- for example, with 5 a home purchase, I know there have been times when, but 6 for the mortgage interest deduction, I may not have 7 purchased a home. 8 Have there been circumstances like that for 9 you where the tax treatment was not the only 10 consideration, but it could have been a necessary 11 condition for you to enter into the transaction? Does 12 that make sense? 13 A. Yes. Yes. 14 Q. So if I understand you correctly, the fact that 15 the tax treatment of a particular business arrangement 16 is a necessary component in justifying the economic case 17 for the investment or business does not in your mind 18 mean it's a sham or a fraud? 19 A. Correct.</p>	<p>172:14 – 19, Objection, Not relevant, Fed. R. Evid. 401, 402</p>		<p>Overruled</p>

<p><i>Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828</i> <i>Deposition of Robert Aulds taken March 14, 2017</i></p>				
<p>Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)</p>	<p>Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)</p>	<p>Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE</p>	<p>Exhibits</p>	<p>Ruling</p>
	<p>20 Q. There was a lot of questions about when you 21 pay -- when you have to make additional payments in 22 relationship to when you enter into contracts to 23 purchase lenses. Do you remember those conversations 24 with counsel? 25 A. Yes. 173: 1 Q. One of the things that is identified as a 2 possible indicator of a sham or abusive transaction is 3 when the payment is contingent on whether or not the IRS 4 approves your deduction or credit. 5 Did anyone at RaPower3 say, "You're signing 6 this contract. You're going to owe the money, but, hey, 7 by the way, if the IRS doesn't allow these deductions or 8 credits, I'm going to give you a refund"? 9 MS. HINES: Objection; compound. 10 Q. (BY MR. AUSTIN) Go ahead. 11 A. No.</p>	<p>173:1 - 11, Objection, Calls for a legal conclusion, Fed. R. Evid. 602, 701; Compound, Fed. R. Evid. 611(a)</p>		<p>Overruled</p>

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<p>10: 8 Q. Mr. Aulds, can you give us your name and 9 current address, please. 10 A. Legal name is Robert Aulds, and the address is 11 1252 County Road 4699, Boyd, B-o-y-d, Texas, 76023. 12 Q. And how long have you lived at that current 13 address? 14 A. Approximately 11 years. 15 Q. Okay. Mr. Aulds, do you have any aliases? 16 A. Bob. 17 Q. What is your age? 18 A. 60. 19 Q. Are you married? 20 A. Yes. 21 Q. Any kids? 22 A. Three. 23 Q. What are their names and ages? 24 A. I have twin stepchildren that are 26. That's 25 Jordan and Alexandra Martirossian -- do you want me to 11: 1 spell that? M-a-r-t-i-r-o-s-s-i-a-n -- and then a son, 2 Joseph Aulds who's 22. 3 Q. Mr. Aulds, did you graduate from high school? 4 A. Yes.</p>	<p>173: 10 Q. (BY MR. AUSTIN) Go ahead. 11 A. No. 12 Q. In fact, would you agree with me that your 13 entire agreement or the entire agreement between 14 yourself and RaPower3 is as stated in the contracts that 15 you signed? 16 A. Yes. 17 Q. And that the entity that you were hiring to 18 maintain the lenses pursuant to the lease agreement, 19 your relationship with that entity is governed entirely 20 by the contract that you signed with them? 21 A. Yes. 22 MS. HINES: Objection; calls for a legal 23 conclusion.</p>	<p>10:8-16:1; Objection, not relevant, FRE 401-402; compound FRE 611</p> <p>173:1 - 11, Objection, Calls for a legal conclusion, Fed. R. Evid. 602, 701; Compound, Fed. R. Evid. 611(a)</p> <p>173:17 - 23, Objection, Calls for a legal conclusion, Fed. R. Evid. 602, 701</p>		<p>Overruled</p> <p>Overruled</p> <p>Overruled</p>

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<p>5 Q. When did you graduate? 6 A. '74. 7 Q. What is your education after high school? 8 A. I attended Baylor University, Dallas Institute 9 of Mortuary Science. I got my real estate license from 10 a school, and I got some insurance stuff. I don't know 11 what. I could do something with insurance. It's been 12 awhile. I don't remember the details. 13 Q. When did you attend Baylor? 14 A. In '74 and part of '75. 15 Q. And did you get a degree from Baylor? 16 A. No. 17 Q. And then you said Dallas Mortuary Science? 18 A. Dallas Institute of Mortuary Science. 19 Q. When did you attend Dallas Institute of 20 Mortuary Science? 21 A. In '77. 22 Q. How long a program was that? 23 A. It was one year, one full year. 24 Q. Did you complete it?</p>				

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<p>25 A. Yes. 12: 1 Q. Did that give you a license, a certification, a 2 degree? 3 A. I served a two-year apprenticeship. It was 4 combined. It was an embalmer's and funeral director's 5 license from the State of Texas. 6 Q. And then you said insurance. So you have like 7 some education or training in insurance? 8 A. I don't remember. I could do something with 9 insurance. I don't know what exactly I ended up 10 getting. I was selling pre-need funeral plans, and you 11 needed to have some sort of something to do that, and so 12 I did some sort of something. 13 Q. Okay. And when was that? 14 A. Sometime in the '70s or the '80s. I can't 15 really tell you. Probably in the '80s. 16 Q. And then what kind of training or education did 17 you have with real estate? 18 A. I got my real estate license sometime in the</p>				

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<p>19 '80s while I was also a funeral director.</p> <p>20 Q. Are you currently employed?</p> <p>21 A. Very much so. I've got several jobs.</p> <p>22 Q. Tell me about those jobs.</p> <p>23 A. Okay. I own the Oreck Clean Home Center here</p> <p>24 in Wichita Falls. I own Pat's Tea Shop here in Wichita</p> <p>25 Falls. My wife owns a medical practice in Decatur, and</p> <p>13: 1 I'm the CFO, and I have several network marketing</p> <p>2 businesses.</p> <p>3 Q. Okay. So let's start with the Oreck Care</p> <p>4 Center.</p> <p>5 A. Oreck Clean Home Center is the official name.</p> <p>6 Q. Okay. What is that business?</p> <p>7 A. It's a vacuum retail and repair center, and we</p> <p>8 specialize in Oreck vacuums, which is -- I forget I'm</p> <p>9 supposed to talk slow. We specialize in Oreck vacuums,</p> <p>10 and we also sell Miele, which is a German vacuum.</p> <p>11 Q. What is your role in that business?</p> <p>12 A. I am the owner.</p>				

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<p>13 Q. How much time do you spend on that particular 14 business? 15 A. Physically, whenever my manager needs a 16 vacation or a day off. Mentally -- I'm mentally there 17 more often. I worry about it, but I don't have to 18 physically be there all the time. 19 Q. What kind of responsibilities do you have? Do 20 you do accounting records? Are you doing staffing? Are 21 you doing sales? Are you doing ordering of vacuums? 22 Give me a little bit of detail. 23 A. When I'm there, I do all of the above, but my 24 manager is excellent. Most of the time he does 25 everything. 14: 1 Q. How often would you say your manager needs you 2 to come in and be physically present? 3 A. Probably two weeks out of the year is when I'm 4 up there or up here, actually. 5 Q. And you said that's up here in Wichita Falls? 6 A. Yes.</p>				

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<p>7 Q. Tell me about Pat's Tea Shop. What is that?</p> <p>8 A. That's funny. My mother is 84, and it used to</p> <p>9 be called something else, and I'm not up here anymore,</p> <p>10 and so her and my manager put together Pat's Tea Shop in</p> <p>11 what used to be called Ace Sales & Service. So I don't</p> <p>12 know. Legally it's still with the name Ace Sales &</p> <p>13 Service probably, but she advertises it as Pat's Tea</p> <p>14 Shop, and she has fun teaching people how to do art and</p> <p>15 has little kid parties and stuff like that. I own it.</p> <p>16 I don't know much about it.</p> <p>17 Q. What do you do as the owner?</p> <p>18 A. Every time I go in there, I just look around</p> <p>19 and go, "This is cool." I'm the legal owner, but she</p> <p>20 does whatever she wants. I'm not going to tell my</p> <p>21 84-year-old mother what she cannot do.</p> <p>22 Q. You mentioned you're the CFO of your wife's</p> <p>23 medical practice?</p>				

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<p>24 A. Correct. 25 Q. What kind of responsibilities do you have as 15: 1 CFO? 2 A. Anything involving money. 3 Q. Do you make the decisions as to how much people 4 could pay you, as to what supplies to buy? Give me a 5 little more detail, please. 6 A. I have my hand in all of it because my wife's 7 strength is medical and not financial, and my strength 8 is more financial. So I have input on hiring and firing 9 and what we should buy and what we should not buy. 10 Basically, anything to do -- having to do with 11 maintaining the financial integrity of the company. 12 Q. How big is the medical practice? How many 13 employees do you have? 14 A. Five. 15 Q. Does that include your wife? 16 A. Yes. 17 Q. Does that include you? 18 A. Yes. 19 Q. So three additional? 20 A. Right.</p>				

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<p>21 Q. Okay. And are those office staff? Are they 22 other medical staff? 23 A. They're basically all medical related. They're 24 like MAs, which is a medical assistant, but some of them 25 don't have that as an actual training. It's more of an 16: 1 on-the-job training. So it's, I think -- maybe two of 2 them have that, and the other one knows the work but is 3 not technically an MA. 4 Q. What type of medical practice is it? 5 A. Internal medicine. 6 Q. And then you mentioned, I think, one last 7 category. Network -- 8 A. Network marketing. 9 Q. You said several. How many is several? 10 A. RaPower obviously would be one. Stream Energy 11 is another. I'm not real active in some. I mean, some 12 of them I'm -- I've got permission to do them, but I 13 don't actively pursue them.</p>				
<p>25:23 Q. All right. So the fourth network marketing you</p>	<p>173: 24 Q. (BY MR. AUSTIN) So even though counsel has</p>			

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<p>24 mentioned is RaPower. When did you get involved in</p> <p>25 RaPower?</p> <p>26: 1 A. December -- December 18, 2011, I believe.</p> <p>2 Q. We're going to go back to RaPower in a few</p> <p>3 minutes. In a typical week what do you spend your time</p> <p>4 on out of all these businesses you mentioned? Like is</p> <p>5 there a breakdown on average of what you do during the</p> <p>6 week?</p> <p>7 A. What I want to do is spend time working on my</p> <p>8 ranch. That's my number one goal. Well, I should</p> <p>9 change that. A year ago I started -- I helped start a</p> <p>10 new church. So Wednesdays and Sundays I work almost</p> <p>11 exclusively helping that church. Usually Mondays and</p> <p>12 Tuesdays I'm playing on the farm, and Thursdays,</p> <p>13 Fridays, and Saturdays I'm trying to play on the farm.</p> <p>14 But while doing that, I also answer the phone and talk</p> <p>15 with people about various businesses, and I'm calling</p>	<p>25 tried to probe your memory with regard to, you know,</p> <p>1 conversations you may have had with this person or that</p> <p>2 person, you don't intend to suggest that any of those</p> <p>3 conversations override or change the terms of the</p> <p>4 contracts that you signed; is that fair?</p> <p>5 A. The contract is number one.</p> <p>6 Q. And as I understand it, as I read the</p> <p>7 contracts -- and tell me if your memory serves -- the</p> <p>8 way the contract is written is you make a down payment</p> <p>9 for the lenses; is that right?</p> <p>10 A. Yes.</p> <p>11 Q. And then you have an obligation to pay the full</p> <p>12 purchase price; is that true?</p> <p>13 A. Yes.</p> <p>14 Q. And you have the -- that payment is not</p> <p>15 immediately due; right?</p> <p>16 A. Correct.</p> <p>17 Q. But I presume you spoke with John or, pardon</p> <p>18 me, Mr. Howell with regard to the depreciation credit in</p>	<p>25:23-27:17: Objection, not relevant, FRE 401-402; compound FRE 611</p>		<p>Overruled</p>

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<p>16 and arguing with vendors and -- so I do a lot of what I 17 could do. I'm doing it as I'm doing farm work. So I'm 18 not in an office at any point unless I have to be 19 because of some situation. The reason I did the 20 multilevels was to get to the point where I could do 21 farm stuff, and so I finally got to that point. 22 Q. And is your farm at your residence? 23 A. Yes. 24 Q. How big of a farm is it? 25 A. 177 acres. 27: 1 Q. What do you have on the farm? Animals? Crops? 2 A. I have cows. My wife has horses, and that's 3 pretty much it. 4 Q. No crops? 5 A. No. Well, cactus. Nothing I want out there 6 except I basically have a lot of trees, and it looks 7 like a wilderness. My wife wants to live in a park. So 8 I spend all my time taking it and converting it from a 9 wilderness to a park.</p>	<p>19 particular and the -- and the accelerated depreciation 20 schedule? 21 A. Yes. 22 Q. And do you understand that even though you have 23 not yet paid the full purchase price, if you're legally 24 obligated to pay the full purchase price, then you can 25 accelerate depreciation over a shorter period than the 175: 1 amortization of the purchase price? 2 A. Yes. 3 MS. HINES: Objection; calls for a legal 4 conclusion.</p>	<p>174:22 - 175:4, Objection, Calls for a legal conclusion, Fed. R. Evid. 602, 701</p>		<p>Overruled</p>

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<p>10 Q. What kind of cows are they? Are they dairy</p> <p>11 or --</p> <p>12 A. They're Angus beef cattle.</p> <p>13 Q. How many cows?</p> <p>14 A. I have a bull, four cows, and four calves.</p> <p>15 Q. And how many horses?</p> <p>16 A. Four. She just had one die. That was my</p> <p>17 favorite one. I'm hoping they all die.</p>				
<p>27:21 Q. (BY MS. HINES) So what kind of tasks do you do</p> <p>22 on the farm?</p> <p>23 A. Everything my wife tells me to do.</p> <p>24 You can quote me on that.</p> <p>25 Basically, like the calves were all born in</p> <p>28: 1 a two-week period, and so I had to go and find the</p> <p>2 calves, make sure they were okay when they were born. I</p> <p>3 have to maintain the fencing, make sure they have hay,</p> <p>4 make sure the -- you know, there's plenty of grass and</p> <p>5 stuff, so.</p> <p>6 Q. Does anyone help you on the farm?</p>	<p>175: 8 Q. That's what your enrolled agent told you?</p> <p>9 A. Correct.</p> <p>10 Q. And you don't have any reason to doubt that; is</p> <p>11 that true?</p> <p>12 A. I trust him.</p> <p>13 Q. Okay. As I understand it, there was more than</p> <p>14 one way you could make money in your dealings with</p> <p>15 RaPower3. Let me make sure I got them correct. One way</p> <p>16 you could make money is to purchase lenses and lease</p> <p>17 them; is that right?</p> <p>18 A. Yes.</p> <p>19 Q. And you would get -- ultimately, if the lenses</p>	<p>27:21-28:18: Objection, not relevant FRE 401-401; compound FRE 611</p> <p>175:8 - 9, Objection, Hearsay, Fed. R. Evid. 801(c), 802</p>		<p>Sustained</p> <p>Overruled</p>

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<p>7 A. No, not since my kids got older.</p> <p>8 Q. And you talked about converting it into a park.</p> <p>9 What does that entail?</p> <p>10 A. Well, if you're driving from here to the</p> <p>11 airport, you'll go through Decatur, Texas, and I don't</p> <p>12 know if you can see it from there, but there's places in</p> <p>13 Texas where it looks like a wilderness, and there's</p> <p>14 vines growing in the trees, and it just looks like a</p> <p>15 jungle. So I'm cleaning out the vines and trimming up</p> <p>16 the trees and taking a front end loader on a tractor and</p> <p>17 raising up and cutting limbs, basically trying to make</p> <p>18 it look like a park.</p>	<p>20 became -- if the technology became mature enough where</p> <p>21 profits were realized by RaPower3, then you would get a</p> <p>22 percentage of the profits that were attributable to the</p> <p>23 lenses that you were leasing to them; is that right?</p> <p>24 A. Yes.</p> <p>25 Q. Another way you could make money would be for</p> <p>176: 1 you to essentially introduce the business opportunity to</p> <p>2 others, and if they chose to do business with RaPower3,</p> <p>3 you would get compensated for your efforts in that</p> <p>4 respect; is that fair?</p> <p>5 A. We were the advertising mechanism.</p> <p>6 Q. And that's kind of the thing with multilevel</p> <p>7 marketing; right? Instead of going on TV, they hijack</p> <p>8 you and all of your friends' network. You may not know</p> <p>9 this, but Utah is the capital of, you know, multilevel</p> <p>10 marketing in the United States. So I'm very familiar</p> <p>11 with the business model.</p> <p>12 A. Right.</p>			

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	<p>13 Q. And that's essentially just you saying, "Here's 14 this opportunity," and then you're inviting the person 15 to do their own research and sign a contract with 16 RaPower3 if they choose; is that fair? 17 A. Yes. 18 Q. You're not yourself reselling RaPower3 lenses; 19 is that right? 20 A. No. 21 Q. You're just spreading the word? 22 A. Yes. 23 Q. When you were talking to people about the 24 business, did you ever say, "Hey," or words to this 25 effect, "There's a great scam I've uncovered where you 177: I can pretend like you're leasing these phony lenses from 2 a fake solar power company, and then you claim to the 3 IRS that you paid an arm and a leg for them and then 4 claim the depreciation credit and you never have to pay 5 back the purchase price," with a wink and a nod, "and</p>	<p>176:13 - 17, Objection, Hearsay, Fed. R. Evid. 801(c), 802</p> <p>176:23 - 177:12, Objection, Hearsay, Fed. R. Evid. 801(c), 802</p>		<p>Overruled</p> <p>Sustained</p>

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	<p>6 that way you can pay less on taxes." Did you ever think 7 of it in those terms or ever present it to anyone else 8 anything like those terms? 9 A. Absolutely not. In fact, I told them, "If you 10 don't pay for the lenses and you show you did pay on 11 your taxes, you're defrauding the Federal government, 12 which is a crime, and you don't want to do that." 13 Q. Can you think of a way that you could 14 profitably defraud the federal government by paying the 15 full purchase price of equipment and taking a percentage 16 of that purchase price as a depreciation credit? Would 17 that ever make economic sense? 19 MS. HINES: Objection; calls for 20 speculation.</p>	<p>177:13 - 20, Objection, Speculative, Fed. R. Evid. 403, 602, 611(a)</p>		<p>Sustained</p>
<p>28:21 Q. So you also mentioned on Wednesdays and Sundays 22 you're working with a new church. Tell me what that 23 entails.</p>	<p>177: 21 Q. (BY MR. AUSTIN) Did you ever intend to do 22 that? Did you ever intend to pretend like you were 23 going to pay the full purchase price that you claimed</p>	<p>28:21-32:16: Objection, not relevant FRE 401-402, compound FRE 611, narrative.</p>		<p>Sustained as to 28:21 to 30:18 and Overruled as to 30:19 to 32:16</p>

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<p>24 A. I meet with the pastor at 2:00 o'clock on 25 Wednesdays. Actually, I meet with two pastors at 29: 1 2:00 o'clock on Wednesdays, and we have right now a book 2 we're going through, and we are just doing things that 3 we think we need to do to help the church grow. 4 Q. What kind of church is it? 5 A. It's nondenominational. 6 Q. When did you say it started? 7 A. There was an informal meeting of a few people 8 in the fall two years ago, but the official start of the 9 church was January of last year. So it's a little over 10 a year ago. 11 Q. January of 2016? 12 A. Yes, ma'am. 13 Q. Where is the church? 14 A. It meets in an elementary school in Keller, 15 Texas. 16 Q. Do you have a title or an official role with 17 the church? 18 A. No. I do have business cards, though.</p>	<p>24 for the depreciation credit and then actually never pay 25 it back just so you could get the tax credit? 178: 1 A. No. I've always known I had to pay it back.</p>			

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<p>19 Q. What does the business card say? 20 A. Because I was meeting people and I was trying 21 to tell them where the church was and the website and 22 stuff, and so the pastor said, "Well, why don't you 23 just -- he was making fun. He said, "Well, why don't we 24 just get you some business cards." I'm like, "Okay." 25 Q. What other kinds of things do you do for the 30: 1 church? 2 A. Well, I'm technically called the guest 3 relations coordinator. So I make sure that we have 4 people in the parking lot to greet and people at the 5 doors to greet and people in the different areas to 6 greet, and I help set up and help tear down because 7 we're meeting in a gymnasium, in a cafeteria, and we 8 basically go in with big trailers filled with church 9 stuff, and we convert it for that Sunday, and then we</p>				

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<p>10 tear it all down, and it's basically church in a box. 11 Q. How far is Keller, Texas, from your home? 12 A. 45 minutes, depending on traffic, but it's not 13 close. 14 Q. I know you've mentioned a lot of different 15 activities. We have the church, the farm. We have the 16 medical practice, owner of two businesses in Wichita 17 Falls, and the multilevel marketing businesses. What 18 kind of -- can you breakdown, give me a percentage of 19 how much time per month you would spend on these various 20 activities? 21 A. It depends on the month. Like two years ago, 22 for one month solid I worked almost exclusively on 23 RaPower because rumor had it, we were getting ready to 24 go on the grid, and I found a guy that wanted to run 25 with it. He was putting me on phone calls with 31: 1 everybody in his web of friends, and I literally worked</p>				

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<p>2 almost exclusively RaPower. I don't do that much 3 anymore. So it just depends on -- like some days I can 4 only work on the doctor's office because our internet is 5 down and I'm having to be on the phone. There's not a 6 typical -- well, if nothing's going real bad, I can -- I 7 can kind of give you an answer. I probably spend 8 several hours a week on the phone for the doctor's 9 office, several hours of the week on the phone for some 10 sort of multilevel. Sometimes if it's not raining, some 11 time on the farm. Sometimes helping, you know, on the 12 phone with my stores in Wichita Falls. There's really 13 not a typical week. Sometimes I work on the church a 14 whole lot more than other weeks. 15 Q. Do you keep track of what you spend your time 16 on? 17 A. I have a cell phone that if I'm doing -- like</p>				

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<p>18 when I go to the church, I'm going to count that 19 mileage, and when I go to Wichita Falls, I count that 20 mileage, and when I go to Fort Worth to talk about, you 21 know, whatever, I keep up with that mileage. So I keep 22 up with whatever I'm doing on mileage. As far as time, 23 there's no tax benefit as far as time. So I don't have 24 to keep up with all that. 25 Q. So you've given us a pretty good idea of what 32: 1 you're doing now with your time. How has that changed 2 since 2011? 3 A. In 2011 I was not involved in the doctor's 4 office. In 2011 I was probably doing the same amount of 5 farm work. Once I got in RaPower, I worked it really 6 hard for a couple of months and then more sporadically. 7 I work things in spurts. I do what I want 8 to do. On the phone end of it, I used to get people 9 calling me constantly about RaPower, and I would be on</p>				

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<p>10 the phone lots, but it's trickled down to where I don't</p> <p>11 get near as many calls as I used to.</p> <p>12 Q. You said in 2011 you were not working your</p> <p>13 wife's medical practice. When did you start working at</p> <p>14 the medical practice?</p> <p>15 A. May of 2000 -- it will be six years this May.</p> <p>16 So 2000 -- what is that, '12 or '11?</p>				
<p>32:18 A. It's 2017. So six years ago would have been</p> <p>19 2011. So it would have been May of 2011.</p> <p>20 Do you want to hear the story of why I</p> <p>21 became involved in that?</p> <p>22 Q. (BY MS. HINES) Sure.</p> <p>23 A. I'm guessing you do.</p> <p>24 I was refinancing our house, and my wife</p> <p>25 and I keep separate money, and I said, "I've got to see</p> <p>33: 1 your money because we have to get the information for</p> <p>2 refinancing the house," and I discovered the manager of</p> <p>3 the doctor's office had embezzled a bunch of money. So</p>	<p>178: 8 Q. Has it ever occurred to you that Tesla is</p> <p>9 wrongfully exploiting existing law regarding the</p> <p>10 availability of tax credits in order to induce people to</p> <p>11 buy a vehicle they don't need?</p> <p>12 MS. HINES: Objection; argumentative.</p>	<p>178:8 - 12, Objection, Argumentative, Fed. R. Evid. 611(a); Not relevant, Fed. R. Evid. 401, 402</p> <p>32:18-33:23: Objection, not relevant FRE 401-402, compound FRE 611, narrative.</p>		<p>Sustained</p> <p>Overruled</p>

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<p>4 I called my accountant, John Howell, whose name will 5 probably come up in the day, and he said, "You need to 6 get somebody in there that will protect your interest," 7 la, la, la, and that someone ended up being me. So I 8 had to learn everything about QuickBooks and all that 9 stuff because I had businesses, but I didn't know how to 10 do any of that. I basically had to learn all that 11 stuff. So it took a lot of time. 12 We signed a five-year lease that ended last 13 May. This May will be six years. It was in May of 14 2011, and then I got in RaPower -- no. I was already in 15 the doctor office. Okay. It was doctor office and then 16 RaPower. 17 Q. Both in 2011? 18 A. My son is a computer engineer which means he 19 knows math. I sit there and go, okay, now, six years. 20 I think it was 2011 because this is 2017. In May will</p>				

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<p>21 be six years. 17 minus six is one. So it should have 22 been 2011. May of 2011 was doctor's office. December, 23 2011, was RaPower.</p>				
<p>34: 7 Q. Mr. Aulds, I've handed you what has been marked 8 a copy of Exhibit 393. Do you want to take a minute or 9 two and kind of look this over before I ask any 10 questions. 11 A. I'm here on the wrong day, date and time.</p>	<p>178:13 A. No. Tesla is doing exactly what RaPower does 14 which is say, "Here's what the government has put into 15 law. Do you want to take advantage of law or do you not 16 want to take advantage of law?" 17 Q. (BY MR. AUSTIN) Right. If the purpose of 18 a -- do you know, by the way, what the name of the law 19 is that created the solar tax credit that you claimed on 20 your taxes? 21 A. It was something of 2006. I remember that. I 22 remember the year. 23 Q. Would it surprise you if it was called the ITC 24 or the incentive tax credit or the investment -- hold 25 on. Let me make sure I get it right. I may have 179: 1 forgotten. 2 Yeah, it's called the ITC. Did you know 3 that?</p>			

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	<p>4 A. I don't recognize it exactly.</p> <p>5 Q. Did you know it stands for investment tax</p> <p>6 credit?</p> <p>7 A. I did not know that that was the official name.</p> <p>8 Q. Did you know that the purpose of the credit was</p> <p>9 to encourage people to invest money in solar technology?</p> <p>10 MS. HINES: Objection; argumentative.</p> <p>11 Q. (BY MR. AUSTIN) Did you know that?</p>	<p>179:8 - 13, Objection, Argumentative, Fed. R. Evid. 611(a)</p>		Overruled
<p>34:16 Q. (BY MS. HINES) Mr. Aulds, Exhibit 393, do you</p> <p>17 recall receiving this subpoena for documents from the</p> <p>18 United States?</p> <p>19 A. Yes.</p> <p>20 Q. And do you recognize all the pages in here?</p> <p>21 Does it look familiar?</p> <p>22 A. Yeah.</p> <p>23 Q. Okay. Exhibit 393 is labeled also with Bates</p> <p>24 numbers, and it's Aulds_R&M-00697 through</p> <p>25 Aulds_R&M-00713, and I am going to represent to you that</p> <p>35: 1 the documents you produced to the United States have</p>	<p>179: 12 A. I knew that they wanted to incentivize us to</p> <p>13 put money into green energy, yes.</p> <p>14 Q. And that's what you did in your mind; is that</p> <p>15 fair?</p> <p>16 A. Absolutely.</p> <p>17 Q. You recognized that the federal government was</p> <p>18 giving you a pecuniary incentive to spend your money</p> <p>19 investing in one particular thing as opposed to the</p> <p>20 many, many other things, including gas and oil that you</p> <p>21 could otherwise invest in; is that fair?</p>	<p>34:16-38:21: Objection, not relevant FRE 401-402, compound FRE 611, narrative.</p> <p>179:8 - 13, Objection, Argumentative, Fed. R. Evid. 611(a)</p>		Overruled Overruled

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<p>2 been labeled with Bates numbers in the bottom right-hand corner of every document.</p> <p>3</p> <p>4 A. Yes.</p> <p>5 Q. If you'll turn to the page labeled</p> <p>6 Aulds_R&M-00702, there's some handwriting there in the</p> <p>7 bottom left.</p> <p>8 A. Yes.</p> <p>9 Q. Do you recognize that handwriting?</p> <p>10 A. Yes.</p> <p>11 Q. Whose handwriting is that?</p> <p>12 A. That is mine.</p> <p>13 Q. So when you received this subpoena for</p> <p>14 documents, what did you do to look for the documents</p> <p>15 that might be responsive?</p> <p>16 A. I went through all my files. I went through my</p> <p>17 e-mails. I went through everything I could think of</p> <p>18 that had anything that might -- might have to do with</p> <p>19 this business and gathered them.</p> <p>20 Q. And where do you keep these documents?</p> <p>21 A. That's part of the problem. I have areas</p>	<p>22 A. We don't use the word "invest" because we don't</p> <p>23 want to be involved with the Securities and Exchange</p> <p>24 Commission.</p> <p>25 Q. Fair enough.</p> <p>180: 1 A. We buy a lens, and that gives us the ability to</p> <p>2 take advantage of the --</p> <p>3 Q. Sure. But there are other places you can park</p> <p>4 your money; is that fair?</p> <p>5 A. Right. Sure.</p> <p>6 Q. If you had ever thought that or believed that</p> <p>7 the RaPower3 solar technology was not a legitimate, good</p> <p>8 faith solar technology that was being developed, would</p> <p>9 you ever have invested --</p> <p>10 A. I would not touch it.</p> <p>11 Q. Pardon me. Would you ever have done business</p> <p>12 with RaPower3?</p> <p>13 A. I would not have touched it with a 10-foot</p> <p>14 pole.</p> <p>15 Q. There's a famous court case where -- that kind</p> <p>16 of exemplifies the kind of abuse that the tax law that</p>	<p>180:6 - 181:2, Objection, Not relevant, Fed. R. Evid. 401, 402</p>		Sustained

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<p>22 they're supposed to be, and then I have areas where they 23 just got mixed up, but I knew in the general part of the 24 house. So I went through all my different boxes and 25 stuff. And tax, I keep tax years. So I went through 36: 1 all the tax years since 2011. I went through my 2 e-mails, everything I could think of. 3 Q. You mentioned e-mails. What e-mail addresses 4 do you have? 5 A. Bobaulds@yahoo.com. I have other e-mails, but 6 I don't think Greg Shepard ever had them. Do you need 7 the other e-mails? 8 Q. Please give them to me. 9 A. Okay. Fre, F-r-e, p-o-w-r, @yahoo.com. WF, 10 like Wichita Falls, Oreck, O-r-e- c-k, 06@yahoo.com, and 11 the same e-mail except 07@yahoo.com. 12 Q. So when looking for responsive documents to the 13 subpoena, did you go through all four of those e-mail 14 addresses?</p>	<p>17 the Department of Justice is trying to proceed under in 18 this case, and it involves -- and I'm paraphrasing, but 19 it involves me selling you like a tea kettle for 20 \$16,000, and then you take a depreciation credit on the 21 tea kettle, and that's a famous example because, of 22 course, a tea kettle does not have intrinsic value like 23 \$16,000; right? 24 A. Right. 25 Q. And probably the person who bought the tea 181: 1 kettle didn't really pay that much for it; right? 2 A. Right. 3 Q. In this case you really have -- you do consider 4 yourself legally bound to pay the full purchase price 5 that you claimed; is that right? 6 A. Correct. 7 MS. HINES: Objection; calls for a legal 8 conclusion. 9 Q. (BY MR. AUSTIN) In this case you do consider 10 the lenses that you purchased to be worth -- pardon</p>	<p>181:3 - 12, Objection, Calls for a legal conclusion, Fed. R. Evid. 602, 701</p>		Overruled

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<p>15 A. I'm not sure I went through all four because 16 the only one that Greg Shepard was aware of or RaPower 17 was aware of was the Bob Aulds and maybe the free power. 18 So the other two are Oreck. I didn't need to go through 19 those. 20 Q. To the extent you found any e-mails in the Bob 21 Aulds or free power Yahoo e-mail addresses, what did you 22 do with those e-mails? 23 A. I did whatever the instructions said to do. I 24 don't remember. I don't know if I made copies. What 25 was I instructed to do? 37: 1 Q. Do you know whether you provided those 2 documents directly to the United States or did you have 3 an attorney assist you in responding to the subpoena? 4 A. No. I did not have an attorney assist me. 5 I -- if it said to make copies of them, then I made 6 copies of them. I don't think I sent them 7 electronically.</p>	<p>11 me -- what you paid for them; is that true? 12 A. Yes.</p>			

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<p>8 What's confusing me is, I had another 9 subpoena having to do with something else about the same 10 time involving the doctor's office. I'm trying to 11 remember which one I did which with. I sent 12 electronically the doctor's office. I think these I 13 made copies of for RaPower. 14 Q. You said you did not have an attorney assist 15 you in responding to the document subpoena? 16 A. Well, I mean, I had to find the information. 17 I'm assuming that Paul may have gotten the subpoena or 18 whatever. I don't remember specifically. 19 Q. Did anyone else offer to assist you in 20 responding to the document subpoena? 21 A. There were e-mails that Greg Shepard had put 22 out that if you did -- well, no. That may have been 23 having to do with audits. I cannot recall. I cannot</p>				

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<p>24 remember if he had them -- if you were specifically --</p> <p>25 he would help you if you needed help with a subpoena. I</p> <p>38: I know he did on audits, but I didn't ever ask for his</p> <p>2 help in either one.</p> <p>3 Q. So you got the document subpoena. You gathered</p> <p>4 your documents, and to the best of your recollection you</p> <p>5 sent in copies of responsive documents; is that correct?</p> <p>6 A. Yes.</p> <p>7 Q. Was there any document that you thought was</p> <p>8 responsive that you did not provide to the United</p> <p>9 States?</p> <p>10 A. No.</p> <p>11 Q. And then if we go back really quickly to this</p> <p>12 exhibit to the page with the Bates Number</p> <p>13 Aulds_R&M-7702, that handwritten note again, just to be</p> <p>14 clear and that I can make sure I read your writing, in</p> <p>15 response to Number 13, you circled it, and the writing,</p> <p>16 "I don't have anything for number 13," that is what that</p>				

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<p>17 says; right? 18 A. Yes. 19 Q. So you mentioned that you think Mr. Jones may 20 have been assisting you. How did you come to connect 21 with Mr. Jones?</p>				
<p>38:25 A. Okay. I am being audited, and somehow -- I'm 39: 1 not really sure how -- Mr. Jones is assisting me from 2 RaPower maybe. I'm not -- I'm not sure the 3 relationship, to be honest with you. 4 Q. But Mr. Jones is here representing you today? 5 A. Yes. 6 Q. Did you personally search for Mr. Jones to 7 assist you in the audit? 8 A. No.</p>	<p>181: 9 Q. (BY MR. AUSTIN) In this case you do consider 10 the lenses that you purchased to be worth -- pardon 11 me -- what you paid for them; is that true? 12 A. Yes. 13 Q. The lenses cost far more than simply the value 14 of the tax credit in this case; is that right? 15 A. Sure. 16 MS. HINES: Objection; calls for 17 speculation.</p>	<p>181:9 - 12, Objection, Not relevant, Fed. R. Evid. 401, 402 181:13 - 17, Objection, Speculative, Fed. R. Evid. 403, 602, 611(a)</p>		<p>Overruled Overruled</p>
<p>39:12 Q. (BY MS. HINES) When did you first come in 13 contact with Mr. Jones? 14 A. I'm not sure of the dates, but some point after 15 the audit we made contact. He contacted me or RaPower 16 contacted me for him. I'm not sure of the details. I 17 did not pursue Mr. Jones.</p>	<p>181: 18 Q. (BY MR. AUSTIN) I mean, it cost you much more; 19 correct? 20 A. Correct. 21 Q. And you don't know exactly what they cost 22 RaPower3; is that fair? 23 A. Fair. 24 Q. But they do market them to everybody; correct?</p>			

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18 Q. Have you received any bills directly from 19 Mr. Jones with respect to his assistance in either the 20 audit or in this case?	25 A. Yes. 182: 1 Q. And is it your presumption that they are 2 charging what the market will bear – 3 MS. HINES: Objection. 4 Q. (BY MR. AUSTIN) -- for those lenses? 5 MS. HINES: Calls for speculation. 6 A. I was willing to pay it. There was others 7 willing to pay it, so, yes.	182:1 - 7, Objection, Speculative, Fed. R. Evid. 403, 602, 611(a)		Overruled
39:22 A. Not yet. 23 Q. (BY MS. HINES) Do you expect to receive any 24 bills from Mr. Jones?	182: 6 A. I was willing to pay it. There was others 7 willing to pay it, so, yes. 8 Q. (BY MR. AUSTIN) I presume that there's an 9 amount that would have been so high that you would not 10 have purchased them? 11 A. Right. 12 Q. And there's an amount that's so low that you 13 would have purchased everything they had or ever could 14 produce; is that right? 15 A. Correct. 16 Q. And the price in this case is neither one of 17 those extremes in your mind, is it?			

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	<p>18 A. True. 19 Q. I think with regard to Mr. Howell, did 20 Mr. Howell ever come to you and say -- did he ever 21 present the RaPower3 opportunity as something you would 22 only do as a ruse to get some kind of tax benefit? 23 A. No. 24 Q. As I understood it from your answers to 25 questions from counsel, he thought -- he understood that 183: 1 one of the points that RaPower3 made to people who were 2 interested in the opportunity was that there were, in 3 fact -- in fact, some possible tax incentives that would 4 make it more appealing to people. 5 A. Correct. 6 Q. And from -- from what I gathered from what you 7 told counsel, Mr. Howell simply told you that as someone 8 who had some expertise, he had actually investigated to</p>	<p>183:6 - 14, Objection, Misstates prior testimony, Fed. R. Evid. 403, 611(a)</p>		<p>Overruled</p>

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	<p>9 find out if that component of the opportunity seemed 10 legitimate. 11 MS. HINES: Objection.</p>			
<p>40: 1 A. I hope not. 2 Q. (BY MS. HINES) Why not?</p>	<p>183:12 Q. (BY MR. AUSTIN) Is that right? 13 A. Yes. 14 MS. HINES: Misstates prior testimony. 15 Q. (BY MR. AUSTIN) Do you think that misstates 16 anything that you told counsel? 17 A. No. 18 Q. If you did say something that could be 19 construed contrary to what you just told me, would you 20 change it at this point? 21 A. I would. 22 Q. And if you were selling Teslas at the Tesla 23 dealership, do you think you would mention to potential 24 buyers that, "Hey, one of the things that might, you 25 know, make it more appealing to you to buy a Tesla is 184: 1 that you can get this tax credit? 2 A. Absolutely. 3 Q. Did you get the feeling that that was the</p>	<p>183:6 - 14, Objection, Misstates prior testimony, Fed. R. Evid. 403, 611(a)</p> <p>183:22 - 185:8, Objection, Not relevant, Fed. R. Evid. 401, 402</p>		<p>Overruled</p> <p>Sustained as to 183:22 – 184:11; otherwise overruled</p>

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	<p>4 spirit in which the tax credit was made an issue in the</p> <p>5 RaPower3 opportunity?</p> <p>6 A. Yes.</p> <p>7 Q. Like there are guys that go around the country</p> <p>8 and market programs to like supposedly get you out of</p> <p>9 paying any Federal taxes ever, Wesley Snipes as an</p> <p>10 example; right? And they'll provide you with tax forms</p> <p>11 that you just sign and they're already all filled out.</p> <p>12 Did anybody ever present this opportunity to you as</p> <p>13 primarily a way to simply avoid one year's worth of tax</p> <p>14 liability?</p> <p>15 A. No. It's a business.</p> <p>16 Q. And you still operate it as a business?</p> <p>17 A. Yes.</p> <p>18 Q. I mean, you're a busy guy. You've done a lot</p> <p>19 of -- you've been involved in a lot of companies. You</p> <p>20 spent a fair amount of time investigating this</p> <p>21 opportunity; is that right?</p> <p>22 A. I still tell people it's the best business</p>			

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	<p>23 opportunity I've ever been part of.</p> <p>24 Q. You know, the government -</p> <p>- well, somebody</p> <p>25 could take the position, all right, that</p> <p>185: 1 these -- the -- everything must be fake because the</p> <p>2 technology itself is nonexistent. When you</p> <p>3 went -- well, let me put it to you this way. Do you</p> <p>4 have any reason to believe that that's true?</p> <p>5 A. I've known since a little kid you can take a</p> <p>6 magnifying glass and create heat, and that's basically</p> <p>7 part of the feature of this, is you're taking something</p> <p>8 really big and concentrating heat which creates energy.</p> <p>9 Q. You talked about</p> <p>conversations that you'd been</p> <p>10 involved in where there were speculation or aspirations</p> <p>11 with regard to when RaPower3 was actually going to hook</p> <p>12 up to the grid or actually have, you know, a certain</p> <p>13 number of towers built or lenses in service. Would you</p>			

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	<p>14 agree with me that that -- none of those things are 15 covered by the contract between yourself and RaPower3? 16 A. There's no dates on the contract. 17 Q. Right. I mean, the fact that that hasn't 18 happened yet doesn't lead you to believe that it could 19 never happen or that they're not in earnest about making 20 it happen; is that true? 21 A. That's true. 22 Q. Okay. Before you reached any determination 23 about whether this was real technology or phony 24 technology, would you at least want to go look at their 25 facilities as they currently exist? 186: 1 A. I was already involved before I ever went into 2 the facilities. 3 Q. But before you went out and told people that 4 it's phony, wouldn't you want to at least kind of know 5 what you were talking about, maybe talk to an expert or</p>			

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	<p>6 somebody like that who could evaluate the technology 7 before you made the allegation that it was fake? 8 A. Well, I would investigate before I made a 9 decision either way. 10 Q. That would be reasonable; right? 11 A. Right. 12 Q. There was an e-mail that counsel showed you 13 regarding RaPower3 and/or some of its principals 14 expressing a willingness to help people with audits. Do 15 you remember talking about that e-mail? 16 A. Yes. 17 Q. And I think what I gathered from it was that it 18 was primarily not literally themselves helping you, but 19 maybe financial assistance or providing expert 20 assistance. Is that -- did I get that right? 21 A. Direction. I don't know what it involved. I 22 already had John Howell -- as I think back, he</p>			

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	<p>23 was -- he's already helping me on the audit before I 24 ever saw these.</p> <p>25 Q. Yeah, because he's the guy who prepared the 187: 1 returns for you; right?</p> <p>2 A. Correct.</p> <p>3 Q. And he would be the person in the best position 4 to know why the credits or deductions were taken in your 5 case; is that fair?</p> <p>6 A. Correct.</p> <p>7 Q. But you never understood that RaPower3 or 8 frankly anyone else had a legal obligation to pay for 9 your defense of an audit; is that fair?</p> <p>10 A. No.</p> <p>11 Q. And -- and you never -- you didn't understand 12 that if for whatever reason the IRS disallowed your 13 deductions you could come demand a refund?</p> <p>14 A. No.</p> <p>15 Q. We don't have it in front of us, but I will 16 tell you that the contract and many of the marketing</p>	<p>187:15 - 188:2, Objection, Lack of foundation, Fed. R. Evid. 602, 611(a)</p>		<p>Sustained</p>

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	<p>17 materials have a statement on some of the printed 18 materials. It's at the bottom of every page that 19 essentially says this is our belief with regard to what 20 is a legitimate tax treatment but you ought to consult 21 your own tax professional and reach your own conclusion. 22 Did you always consider that that was 23 something that you needed to do before you decided to 24 take a deduction or not? 25 MS. HINES: Objection; lack of foundation. 188: 1 A. I would never have touched it if my accountant 2 had not told me to.</p>			

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<p>40: 4 A. I'm not sure how to answer the question.</p> <p>5 Q. (BY MS. HINES) Is it your understanding that</p> <p>6 you will need to pay out of pocket for Mr. Jones'</p> <p>7 services?</p>	<p>188: 1 A. I would never have touched it if my accountant</p> <p>2 had not told me to.</p> <p>3 Q. (BY MR. AUSTIN) You certainly -- you didn't</p> <p>4 rely on RaPower3 saying they thought this was something</p> <p>5 that fit within the tax rules?</p> <p>6 A. No.</p> <p>7 Q. And you would expect any reasonable person</p> <p>8 entering into this kind of an arrangement to do the same</p> <p>9 thing?</p> <p>10 A. True.</p>	<p>188:7 - 10, Objection, Not relevant, Fed. R. Evid. 401, 402</p>		Sustained
<p>40: 9 A. That has not been discussed.</p> <p>10 Q. (BY MS. HINES) Have you ever discussed payment</p> <p>11 with Mr. Jones?</p>	<p>188: 13 At one point RaPower3 hadn't -- had some</p> <p>14 information on material that included reference to an</p> <p>15 evaluation of the tax treatment that they had had</p> <p>16 prepared by an attorney. Did you ever see that document</p> <p>17 or reference to it?</p> <p>18 A. There was something on the website that had</p> <p>19 like a tax opinion, something like that.</p> <p>20 Q. Is that something that you would have felt like</p>			

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	<p>21 you personally could have relied on as the basis for 22 deciding whether or not you should claim tax credits or 23 depreciation credits on your personal tax return? 24 A. No. I went by what my accountant said. 25 Q. I mean, did you engage in this business 189: 1 arrangement for the principal purpose of evading or -- 2 evading Federal income tax? 3 A. Never. 4 Q. Did you ever form a separate corporate entity 5 for your lens leasing business? 6 A. No. I operated as an individual, and it's part 7 of two other corporations. 8 Q. Okay. Did you consider yourself actively 9 involved in that business? Sounds like you were very 10 active. 11 A. Yes. 12 Q. Just to be clear, you considered yourself 13 actively involved? 14 A. Absolutely. I would be more active if they</p>	<p>188:25 - 189:3, Objection, Not relevant, Fed. R. Evid. 401, 402</p> <p>189:8 - 16, Objection, Not relevant, Fed. R. Evid. 401, 402</p>		<p>Overruled</p> <p>Overruled</p>

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	<p>15 didn't audit all the people. It kind of slows down the 16 friendships.</p> <p>17 Q. Yeah, I mean, were you ever contacted by an IRS 18 agent about these deductions or credits?</p> <p>19 A. Not until audits.</p> <p>20 Q. And were you contacted for an audit?</p> <p>21 A. My accountant was. I mean, it was about me,</p> <p>22 but I didn't get -- well, I may have got some literature 23 directly, and then he got it also, and we discussed it.</p> <p>24 Q. They never hauled you in for an interview or 25 anything?</p> <p>190: 1 A. No.</p> <p>2 Q. If a sham transaction is a transaction that 3 never actually occurs, like where I say, "Hey, if my 4 wife asks, tell her you lent me this \$100." Right?</p> <p>5 That's a sham. You never did, but people say you did.</p> <p>6 Is this transaction with RaPower3 a sham transaction in 7 your mind?</p> <p>8 A. No.</p>	<p>190:2 - 11, Objection, Calls for a legal conclusion, Fed. R. Evid. 602, 701</p>		<p>Overruled</p>

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40:13 A. No. 14 Q. (BY MS. HINES) And is it your understanding 15 that someone other than you will be paying for 16 Mr. Jones' services?	190:11 A. It cannot be because I signed contracts. 12 Q. (BY MR. AUSTIN) Did you actually pay the down 13 payment? 14 A. Yes. 15 Q. Do you actually consider yourself the owner of 16 lenses that you lease? 17 A. Yes. 18 MS. HINES: Objection; calls for a legal 19 conclusion.	190:15 - 19, Objection, Calls for a legal conclusion, Fed. R. Evid. 602, 701		Overruled
40:18 A. I hope so. 19 Q. (BY MS. HINES) Is there anything -- what, if 20 anything, has given you the hope that someone else will 21 be paying for Mr. Jones' services?	190: 20 Q. (BY MR. AUSTIN) Do you actually consider 21 yourself bound in the future to pay the amount that you 22 financed for the lenses? 23 A. Yes. 24 Q. I think we've already discussed this, but in 25 your mind did this transaction with RaPower3 have 191: 1 significant potential economic benefits above and beyond 2 whatever tax credits you could get? 3 A. Absolutely. 4 Q. What would you say to someone who suggested	191:4 - 10, Objection, Not relevant, Fed. R. Evid. 401, 402		Overruled

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	<p>5 that you were motivated by no business purpose other 6 than obtaining tax benefits in entering into this 7 transaction? 8 A. They don't know me because I wouldn't -- I 9 wouldn't touch something that was defrauding the 10 government. 11 Q. As you sit here today -- well, let me rephrase 12 that. 13 You had some discussion with counsel about 14 how you got involved in this to begin with, and I don't 15 want to rehash all of that, but what I took away from 16 that was that certainly the validity of the tax 17 treatment component would be important for you to 18 evaluate before you decided whether or not to enter into 19 a transaction with RaPower3; is that fair? 20 A. Well, I would do the business -- because of the 21 35 years that they're going to pay me back money, I</p>			

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	<p>22 would do the business even if it didn't have a tax 23 benefit. 24 Q. Yeah, I think that's what I'm getting at. I 25 mean, if they're telling you that there's something that 192: 1 may make this appealing, you would want to know whether 2 or not it appeared to be true; right? 3 A. Right. 4 Q. And that's why you talked to Mr. Howell; right? 5 A. Right. 6 Q. But that would just be one component of your 7 decision making process, certainly not the only way that 8 it was presented to you or your understanding of the 9 only reason why it was being presented to anybody by 10 RaPower3; is that fair? Does that fairly encapsulate 11 your testimony? 12 A. Yes. 13 MS. HINES: Objection; compound.</p>	<p>192:6 - 13, Objection, Compound, Fed. R. Evid. 611(a)</p>		<p>Sustained</p>
<p>40:24 A. At some point I was told that audits created</p>	<p>192: 14 Q. (BY MR. AUSTIN) Counsel may now come back and</p>			

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<p>25 because of RaPower, we would have help from RaPower. 41: 1 Q. (BY MS. HINES) And who told you that? 2 A. I do not recall if it was an e-mail or a 3 statement on a -- I don't think it was on the website; 4 so it must have been in an e-mail. 5 Q. And who would have sent that e-mail?</p>	<p>15 try to get you to contradict what you just told me. She 16 may not like some of it. Is there anything about what 17 you've just told me that you feel uncomfortable with? 18 A. No. 19 Q. Is there anything about what you've just told 20 me that you believe should be disregarded in light of 21 anything you might have said earlier by other 22 questioning from counsel? 23 A. No.</p>			
<p>41: 7 A. RaPower. 8 Q. (BY MS. HINES) Any particular person within 9 RaPower?</p>				
<p>41:11 A. I'm not positive. I would potentially guess 12 that it would be Greg Shepard. 13 Q. (BY MS. HINES) Did you frequently receive 14 e-mails from people within RaPower? 15 A. Sometimes more than others. I mean, we'd get 16 updates. We used to get a whole lot of updates like 17 right before the end of the year, and then after the</p>				

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<p>18 first of the year it seems to slow down because it's 19 easier to do the business before the end of the year 20 than at the beginning of the year. 21 Q. Any particular individuals on behalf of RaPower 22 that send out those e-mails? 23 A. Well, I know that Greg sends most of them out. 24 I've never specifically remembered getting one from 25 Neldon. I know that I've gotten one from -- I think his 42: 1 son is Matt. I think I got e-mails from him before, and 2 I don't know if they're -- I don't read them all that 3 close. So some of them just may be sent, you know, from 4 RaPower. I don't know. 5 Q. When you say Greg, you're referring to? 6 A. Greg Shepard. 7 Q. And Matt? 8 A. Shepard. 9 Q. And Neldon? 10 A. Johnson. 11 Q. So we've talked some already about RaPower.</p>				

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<p>12 How did you first learn about RaPower? 13 A. In May or approximately May of 2010 a friend of 14 mine named Carey Hadderton, I can't remember if I 15 approached him first or he approached me first, but we 16 were both in Stream Energy. We were both doing 17 something else. I forgot that one. CieAura, that's 18 another multilevel. Get that one in there. I called 19 him I think about CieAura. He said, "I'll come see your 20 CieAura if you'll come see something I've got." 21 He had some coach flying in from somewhere, 22 and he needed his house to have people in it, and so I 23 went as a courtesy to my friend or more an acquaintance 24 and met Roger Freeborn. 25 Q. Roger Freeborn is the coach? 43: 1 A. That's the one -- that's what he told me he 2 was, was a coach. 3 Q. Where did you go see Mr. Freeborn? Where was 4 that at?</p>				

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<p>5 A. It was at a house here in Wichita Falls. I 6 can't remember if it was Carey's house or there's 7 another gentleman that's a coach here in town. I can't 8 recall his name right now. It may have been at that 9 coach's house. 10 Q. When was this? Do you remember? 11 A. May, 2010. It was -- I tell people it was 12 18 months before I joined. So May would be 13 approximately 18 months before December, 2011. So I'm 14 guessing it's around May of 2010. 15 Q. Were there other people at this house? 16 A. Yes. 17 Q. How many other people? 18 A. We were around a kitchen table, and I don't 19 remember there being many other than sitting at the 20 table, so no more than ten. 21 Q. And what happened at this meeting? 22 A. Mr. Freeborn made a business presentation that</p>				

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<p>23 went way over my head. The only thing I specifically</p> <p>24 remember about it, he kept talking about that you would</p> <p>25 get a \$6,000 bonus for doing something. I can</p> <p>44: I specifically remember that part, but the rest of it went</p> <p>2 way over my head. It had to do with solar energy and</p> <p>3 towers and depreciation and all these complicated tax</p> <p>4 terms.</p> <p>5 Q. So how did Mr. Freeborn make this presentation?</p> <p>6 Was it orally? Did he have any materials with him?</p> <p>7 A. It was orally, and he may have had some</p> <p>8 information. I don't remember any handouts or anything,</p> <p>9 but he may have had something he was pointing to. I</p> <p>10 don't recall how he exactly did it. I wasn't planning</p> <p>11 on getting in. I was just going over as a favor to a</p> <p>12 friend. So I wasn't really paying too close attention.</p> <p>13 Q. So what happened next?</p> <p>14 A. I called my accountant laughing because it had</p>				

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<p>15 to do with taxes, and I said, "You're not going to 16 believe what this meeting was about." 17 He did tell us a website. So I gave that 18 website to my accountant. I said, "There may be 19 something here. I don't know, but it's all tax stuff 20 and all this, and I don't understand it." I said, "But 21 you're my tax guy. Check it out and see if there's any 22 value here." 23 Q. You said he gave you a website. Was that 24 Mr. Freeborn? 25 A. Yes. 45: 1 Q. Who was your accountant in May of 2010? 2 A. He's an enrolled agent named John Howell, 3 H-o-w-e-l-l. 4 Q. So what happened after you called Mr. Howell? 5 A. He called me back a couple of weeks later, and 6 he was all excited. He said, "I've checked it all out. 7 You should do it. We should do it. We could make a lot</p>				

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<p>8 of money. This sounds great. I researched the tax law. 9 They have this 2006 energy tax credits and accelerated 10 depreciation, and with your skills in network marketing, 11 you could make a lot of money." And I told him, "No, 12 thank you." 13 Q. Why? 14 A. Because I didn't understand it, number one, and 15 at that time I was excited by CieAura, which is another 16 multilevel I forgot to mention earlier, and I didn't 17 want any more on my plate.</p>				
<p>46:24 Q. So you told Mr. Howell no. What happened next? 25 A. Every month or so he would call and try to talk 47: 1 me into doing it because he kept doing more research, 2 and he kept saying, "This is fantastic." He knows I was 3 his upline in -- well, I'm still his upline in Stream 4 Energy, and he knows how I am about talking to people 5 within ten feet of me. He said, "You would do</p>				

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<p>6 fantastic. You would make a lot of money. This would 7 be a great business for you." I said, "I don't 8 understand taxes," blah, blah, blah. And he said, 9 "Well, I understand taxes. So I can help you with that 10 part." 11 I just kept putting him off and putting him 12 off and putting him off. For 18 months I put him off.</p>				
<p>47:21 Q. So you told Mr. Howell you weren't interested. 22 Was there anything in particular about RaPower3 that 23 made you not interested? 24 A. One thing, I didn't understand it. It's very 25 complicated as far as -- I mean, you have to know how 48: 1 many years the thing is going to pay you and what tax 2 brackets they're in. It just -- it was more -- I was in 3 the middle of trying to get the doctor office 4 straightened out. It was just more on my plate than I 5 wanted to mess with.</p>				

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<p>6 Q. You just mentioned the tax brackets. What 7 about the RaPower program involved the tax brackets? 8 A. Well, when you purchase a lens, you purchase 9 the number based on the potential amount that you owe in 10 taxes. In other words, somebody that owes a lot in 11 taxes would need to buy more lenses than somebody that 12 didn't owe very much in taxes. So there was a formula 13 to figure out how many lenses to buy. It just -- there 14 was a lot of complications to it that I didn't want to 15 have to keep up with.</p>				
<p>48:25 Q. What exactly would buying lenses do to your 49: 1 taxes? 2 A. Well, because of the energy tax credit bill, 3 whatever the name of it is, of 2006, they created 4 accelerated depreciation and 30 percent energy tax 5 credits based on certain criteria, and as I understand 6 it, RaPower meets those criteria with these solar</p>				

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<p>7 lenses. So when you purchase lenses, you're qualifying 8 for accelerated depreciation and energy tax credit 9 established by the Federal government. 10 Q. How did you come to that understanding? 11 A. Well, because my accountant told me. 12 Q. Mr. Howell? 13 A. Mr. Howell. 14 Q. When did he tell you that? 15 A. Oh, for 18 months he -- it was a continual 16 lesson. He just kept talking about it and how good it 17 would be. He was waiting on me because I was the one 18 that told him about it. He wasn't going to do it 19 without me. He was trying to push me to do it so he 20 could get in under me. It was a respect deal. You 21 know, if I brought you Amway, you know, you wouldn't go 22 get in Amway without me because I was the one that 23 brought it to you. Because I was the one that gave him</p>				

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<p>24 the website, he felt an obligation to get involved under 25 me which would make me more money. He didn't want to do 50: 1 it without me, in other words. 2 I'm sorry. I'm talking fast. I just 3 realized that. 4 Q. So what changed your mind from May of 2010 to 5 December of 2011 when you finally -- 6 A. He wore me down. Okay. He called me and said, 7 "Look. I've waited 18 months. I'm getting in today. 8 If you're going to be my sponsor, you've got to get in 9 today." 10 And I said, "I don't want to be your 11 sponsor. I don't want to do the business." 12 He kept -- he's on the phone. I remember 13 the phone call pretty distinctly. He said, "Look. 14 You're missing out on a whole lot of money if you don't 15 do this." 16 I said, "But you understand taxes. I'm</p>				

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<p>17 going to try to involve people. I don't understand 18 taxes. I'm not going to know how to explain it to 19 them." 20 So I joked with him, and I said, "Why don't 21 you get in, and then I'll get in under you, and then you 22 have to help all the people I introduce it to, so that 23 takes me off the hook." 24 And so that's what we did. He signed up. 25 I signed up under him. Like if I were to talk to Paul 51: 1 about it and Paul asked all these complicated questions, 2 I'd say, "Hey, John Howell, who's an enrolled agent, 3 understands everything. Here's his phone. You call 4 John Howell." 5 It took the burden off of me as far as 6 understanding all this stuff. 7 Q. Why did you feel it was important to understand 8 the tax -- the tax portion of the RaPower3? 9 A. Well, okay. The way I sell -- I'm very good at</p>				

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<p>10 selling, and the way I sold like vacuums is I would 11 figure out what your needs are in the world of vacuums, 12 and I know I have the way to meet those needs. So I had 13 to understand your needs to meet those needs with my 14 vacuum. So I'd ask questions, and I'd figure out, okay, 15 you need this \$1500 system. Well, then it was just a 16 matter of helping you understand the benefits of this 17 \$1500 system. That's the way I've always done sales. 18 In order to help you understand the value 19 in RaPower, I had to understand it. Well, I didn't 20 understand it. That's the reason why I couldn't -- I 21 didn't think I could sell it because I didn't understand 22 it. I needed to understand it in order to explain why 23 you would want to be involved. 24 Q. What value did the tax benefits create through 25 RaPower? 52: 1 A. Well, the number one goal of any business is to</p>				

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<p>2 make money. So they had a structure set up that when I 3 introduced it to people, I made money, and there were 4 tax benefits also involved which make money. So it was 5 all about making money. 6 Q. How do those tax benefits make money? 7 A. When you buy a lens, you purchase an item that 8 qualifies for energy tax credits and accelerated 9 depreciation because you take that lens and lease it 10 out, and because of it being a leased entity, the 11 Federal government, through this law in 2006, allows you 12 to take those legal deductions.</p>				
<p>52:17 Q. (BY MS. HINES) What is your understanding of 18 what would happen if you claimed the deduction based on 19 your purchase from RaPower? 20 A. Well, when I bought lenses -- and this is part 21 of what made it so complicated is knowing how many to 22 buy, but if you bought the correct number of lenses and</p>				

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<p>23 leased the correct number of lenses out by placing them 24 in service, because they're placed in service, you are 25 able to take deductions based on the legal term of an 53: 1 item placed in service that's leased out. 2 Q. How does taking that deduction make you money? 3 A. Well, I pay taxes. It's just like when I put 4 solar lenses on my house. Solar lenses qualified for an 5 energy tax credit. So because I bought lenses -- excuse 6 me. Because I bought windows, the government was giving 7 a tax credit for buying windows. Well, I got X number 8 of dollars back on my taxes. 9 Well, this is a commercial lens placed in a 10 commercial operation. When my business sold -- excuse 11 me. When my business bought these lenses and then 12 leased it back to this commercial operation, that 13 qualified for energy tax credits and accelerated 14 depreciation on those lenses.</p>				

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15 Q. Which meant you paid less taxes for a 16 particular tax year? 17 A. Correct.				
53:19 Q. (BY MS. HINES) You also mentioned you would 20 make money for bringing people in to RaPower3? 21 A. Correct.				
54:15 Q. How often, say, in 2012 were you getting phone 16 calls from people that you sponsored or -- 17 A. A lot. I got lots and lots and lots and lots 18 of phone calls. 19 Q. Generally, what kind of things would you 20 discuss on these phone calls? 21 A. They usually had questions. The main question 22 usually was how many lenses do I need to purchase, and 23 there was a formula that was on the website that said 24 basically whatever your -- let's say your tax last year 25 was \$10,000. Well, if you want to have that \$10,000 55: 1 returned to you, then you buy X number of lenses;				

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<p>2 therefore, qualifying for the energy tax credit, 3 accelerated depreciation, and instead of -- and let me 4 say this. I looked at it, and the way it was set up was 5 to help the Federal government find people to put money 6 into green energy. That's the reason they wrote the law 7 in 2006. They wanted people to put money to help 8 alternative energy. So from my perspective, would I 9 want to give \$10,000 to the Federal government and they 10 spend it wherever, or did I want to help them direct 11 that \$10,000? Well, I wanted to help them direct it. 12 So the \$10,000, I'd rather help the government by doing 13 what they set up to do with the law which was 14 incentivize people like me.</p>				
<p>56:13 Q. How did you find out about this law that you 14 keep referencing, this 2006 law? 15 A. John Howell is a strange person. I mean, I 16 have hobbies. He says his hobby is reading tax code.</p>				

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<p>17 He loves reading tax code. He said, "I sit around and 18 read it like some people read novels." He knows it 19 inside and out, and he would quote me constantly, you 20 know. "In 2006 the federal government did this, and 21 this is, you know, for this reason, and you should take 22 advantage of it." And so that's what I heard for months 23 and months and months and months. 24 Q. Did you go and look for the law after 25 Mr. Howell told you about it? 57: 1 A. Not until I was already involved, and the only 2 reason I did it at that point is because people were 3 asking questions about it, and I kind of wanted to be 4 able to say more than just John told me to. So 5 I went -- I went and -- I mean, I didn't go and find the 6 actual law, but I found references to it in the 7 contracts with RaPower and stuff.</p>				

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<p>8 I trusted my accountant. I mean, I 9 don't -- I don't have to understand how my plumber does 10 my stuff when he does plumbing. I just trust him. It's 11 basically the same thing with my tax guy.</p>				
<p>57:17 Q. And you mentioned a formula on a website. What 18 website was that? 19 A. Rapower3.com. 20 Q. And how did you know that that formula was on 21 the rapower.com website? 22 A. Because I looked at the website, and 23 eventually, once I was involved, I was looking in there 24 to learn more information, and it was on the website, 25 and so that's where I got the details. 58: 1 Q. Was it publicly accessible? 2 A. Yes. 3 Q. So how was the formula presented on the 4 website? Was it on a web page? Did it open a file like 5 an Excel spreadsheet, a Word document?</p>				

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<p>6 A. It was an example. I think they had 7 categories, you know, technology and, you know, 8 whatever. I don't remember all the categories, but one 9 of them was an example of how this could help you make 10 money, and it would show -- take, for example, if 11 your amount that you paid in taxes last year was 12 \$10,000. If you wanted to have that \$10,000 be 13 redirected to where it helps green energy and you, then 14 you need to replace that \$10,000 that went to the 15 government into enough lenses to where they would give 16 it basically to you instead of to the government. So 17 the formula was .00085 times whatever your tax burden 18 was. It was not scientific. It was -- in other words, 19 it was close. You can't get real scientific apparently, 20 but it was close. 21 Q. So when these people called asking how many</p>				

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<p>22 lenses to purchase, how did you help them or did you 23 help them arrive at a number to purchase? 24 A. Well, if they specifically didn't know the 25 formula, I would direct them to the website and say, 59: 1 "Hey, it says it on the website," because a lot of 2 people they would be like I would have been, "I don't 3 want to go look at a website." But I would always try 4 to direct them to the website because there's a lot more 5 information than just the formula, and there's a lot 6 more factors than just the formula. 7 I was basically a conduit to get them, 8 "Yeah, you need to go ahead and understand it. You need 9 to go to the website, and it's under such and such." 10 Q. So what were these other factors in addition to 11 the formula? 12 A. Well, people would say, you know, "Does it</p>				

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<p>13 work? Have you seen a check? Have you seen anybody 14 that got money from this business," and just on and on 15 and on and on. In the beginning I hadn't seen checks, 16 but after I'd done it awhile, then I had my own checks. 17 Q. You said they would say, "Does it work?" Does 18 what work? 19 A. Well, does it work, the fact that you can use a 20 formula, and, lo and behold, the Federal government, 21 based on tax law, will allow you to get back some of the 22 money based on how many lenses you bought versus keeping 23 the money and disbursing it through whatever the 24 government uses money for. 25 Q. And how would you respond to that kind of a 60: 1 question? 2 A. I'm not sure what you're asking me. 3 Q. Well, what would you tell them in response if 4 they asked you does it work? 5 A. Whether it works? Well, by March I had a check</p>				

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<p>6 from the Federal government. So I said, "Well, I have a 7 check, and the Federal government gave it to me, and the 8 reason they gave it to me was because I bought lenses, 9 placed them in service, declared them on my taxes. You 10 know, based on whatever tax law is there, I got a refund 11 on my income tax." 12 Q. At this point in time, when you purchased in 13 December of 2011, did you fully understand all of how 14 the tax benefits worked? 15 A. No.</p>				
<p>65:13 Q. About how many individuals did you share 14 RaPower with? 15 A. Probably hundreds. 16 Q. And of those hundreds how many people did you 17 sponsor? 18 A. Well, some of the sharing was done for other 19 people, but personally, I've sponsored probably 30. 20 Q. And with those 30, how often do you speak with 21 them about RaPower?</p>				

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<p>22 A. Depends. Some of them are friends, and I speak</p> <p>23 to them all the time, and some of them were</p> <p>24 acquaintances, and I haven't spoken to them since I met</p> <p>25 them in the Oreck store and they bought lenses.</p> <p>66: 1 Q. Do you keep track of everyone that you have</p> <p>2 sponsored into RaPower?</p> <p>3 A. Not directly, but the website tracks them.</p>				
<p>66: 6 Q. (BY MS. HINES) Mr. Aulds, I'm going to hand</p> <p>7 you Exhibit 394. Take a moment and look at this</p> <p>8 document.</p> <p>9 (Witness reviewing document.)</p> <p>10 Q. Have you had a chance to review Exhibit 394?</p> <p>11 A. Yes.</p> <p>12 Q. Just for reference, Exhibit 394 has Bates in</p> <p>13 the bottom right, Aulds_R&M-00190 through</p> <p>14 Aulds_R&M-00196.</p> <p>15 Mr. Aulds, do you recognize this document?</p> <p>16 A. Yes.</p> <p>17 Q. And this is something that you produced to the</p>			394	

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<p>18 United States? 19 A. Yes. 20 Q. And the first page, Aulds_R&M-00190, it says: 21 My downline. Questions 2 and 4. 22 Do you see that? 23 A. Yes. 24 Q. Whose handwriting is that? 25 A. Mine. 67: 1 Q. Would this have been -- with respect to 2 questions 2 and 4, what were you referring to, if you 3 recall? 4 A. Can I look and see what questions 2 and 4 were? 5 The terms "you," "yourself," and "your" 6 refers to the person or entity responding to this 7 subpoena, and to any of your employees or agents. 8 Copies of any document you obtained from, 9 or sent to, RaPower regarding a purchase -- so this is 10 directly off the website, and then in 4 it's newsletter, 11 memorandum, or written correspondence containing</p>				

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<p>12 updates, and so I considered that as updates. So that's 13 how I came up with 2 and 4. 14 Q. When you said "the website," you're referring 15 to? 16 A. The RaPower -- well, they actually have 17 rapower3.net is where you access your information under 18 your user name and password. 19 Q. So rapower3.net is different than rapower3.com? 20 A. Yes. 21 Q. Can you explain the differences? 22 A. Well, when you go to join under -- and they've 23 changed it lately, and I don't know exactly if it's 24 still this way, but at one point, if you went to join, 25 it moved you over to the net one. It just automatically 68: 1 transferred you over there, but you could actually get 2 there by typing in the net to start with. 3 Q. And is the rapower3.net something that is 4 publicly accessible or are you required to have a user</p>				

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<p>5 name? 6 A. To enter the information I gave the government, 7 you have to have a user name and password. 8 Q. So with Exhibit 394 and the front page with the 9 Bates Aulds_R&M-00190, when you say questions 2 and 4, 10 just to be clear, you were referring back to the 11 document subpoena we issued to you which is Exhibit 393? 12 A. Correct. 13 Q. So on the second page of the exhibit, which has 14 the Bates labeling of Aulds_R&M-00191, tell me how you 15 got this document printed out to supply to the United 16 States. 17 A. This is directly off the website, and I printed 18 it. It even has a timestamp up here of 6:16 p.m. 19 on -- it doesn't have a date stamp. Anyway, this was 20 that -- the folks that I had enrolled as of that time 21 and date.</p>				

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<p>22 Q. So this page is those that you sponsored into</p> <p>23 RaPower3?</p> <p>24 A. The ones that have a 1 at the end are the ones</p> <p>25 that I personally sponsored, and then if they have a 2,</p> <p>69: 1 they're the people under them.</p> <p>2 Q. So when you say the 1 and the 2, you're looking</p> <p>3 at the column that's entitled "Level"?</p> <p>4 A. Yes.</p> <p>5 Q. In the top left-hand corner where you reference</p> <p>6 the timestamp there, there's also a word "Baylor" and</p> <p>7 then underneath it, "Robert 1234 Aulds." What are</p> <p>8 those?</p> <p>9 A. The name that I selected as my user name is</p> <p>10 Baylor, and Robert 1234 Aulds is the way RaPower</p> <p>11 referred to me.</p>				
<p>69:15 Q. In the middle of the page where it says</p> <p>16 "Immediate Units: 2231" and then "Extended Units:</p> <p>17 2468," what does that mean to you?</p>			394	

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<p>18 A. Immediate units are lenses that are in the 19 first six levels that I would make money from people 20 purchasing, and extended units would be people including 21 those I don't get paid for as far as lens purchase. 22 Q. So people who are below -- 23 A. Below my sixth level. They're actually lenses, 24 not people. It's a total of lenses. 25 Q. What other things can you find or access 70: 1 through this rapower3.net where you have to have a user 2 name and password? 3 A. It shows the date of purchases, how much is 4 owed on those purchases, if any. It shows the 5 contracts, the rental agreements. Basically anything 6 involving RaPower can be found either in that secure 7 area or the public site. 8 Q. You said purchases and how much is left to pay 9 on those purchases. Are those your personal purchases 10 or everyone that you've sponsored?</p>				

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11 A. No. My personal purchases.				
<p>70:22 Q. You also mentioned contracts. Can you access</p> <p>23 only your contracts or also</p> <p>24 people's contracts that you</p> <p>25 have sponsored into RaPower?</p> <p>25 A. Well, it's all the same contract. It's just</p> <p>71: 1 whether it's got my name on them or somebody else's</p> <p>2 name. I really have no reason to see anybody else's</p> <p>3 contract because they're going to be identical to mine</p> <p>4 except for the dates and the people's names.</p> <p>5 Q. But do you know whether you can access other</p> <p>6 people's contracts?</p> <p>7 A. I don't -- I do not believe I can.</p> <p>8 Q. Over on that left-hand column there's like a</p> <p>9 home button and then a list of other items underneath</p> <p>10 that. Do you see?</p> <p>11 A. Yes.</p> <p>12 Q. Are these all different links that you can</p> <p>13 click on to get information from the rapower3.net site?</p>			394	

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<p>14 A. Some of them were not active. In other words,</p> <p>15 they weren't highlighted, but there are some that I can</p> <p>16 get information from, like the "View Personal Purchases"</p> <p>17 and "Add New Purchase," "View as Grid," "View as Tree,"</p> <p>18 and --</p> <p>19 Q. Do you recall which of these were not active?</p> <p>20 A. I just remember there was some that were not</p> <p>21 highlighted to where you could click on them. So I</p> <p>22 figured it was something they were going to add later,</p> <p>23 whatever.</p> <p>24 Q. Have you ever clicked on the word "Contracts"?</p> <p>25 A. Yes.</p> <p>72: 1 Q. What would then populate after you clicked on</p> <p>2 that?</p> <p>3 A. The contracts involves the purchase agreements</p> <p>4 and the lease agreements and whatever else is on there.</p> <p>5 I don't specifically recall. There's more than one</p> <p>6 contract involved with contracts.</p>				

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<p>7 Q. Is that your personal contracts or blank 8 contracts? 9 A. There are blank ones, and then there are also 10 some for me. I'm not sure on that specific click if I'm 11 getting a generic one or if I'm getting mine, but it's 12 the same contracts. So it's just a matter of whose name 13 is in the blanks. 14 Q. What about that next one down there that says 15 "IRS Info," have you ever clicked on that one? 16 A. I'm not sure if I clicked on it in that area. 17 I have clicked on some in -- on the site, but I don't 18 know if it was in my -- this is called the back office. 19 I'm not sure if I clicked on it in the back office or if 20 I clicked on it on the main site. 21 Q. But you have clicked on something with respect 22 to IRS information? 23 A. Correct. 24 Q. What kind of information is contained on that?</p>				

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<p>25 A. Like I said, I do this in spurts, and I haven't 73: 1 done this in close to three years as far as actively 2 trying to deal with sponsoring people. So I cannot 3 recall exactly what's on there. 4 Q. What about the next field down, it says 5 "Media." Do you know if that was an active link? 6 A. I do not believe it was. I know there are 7 updates that they put out, but I don't remember if -- I 8 don't remember specifically what "Media" says. 9 Q. What kind of updates are you talking about? 10 A. Well, I know that Neldon started having a radio 11 show. It came out on an e-mail, and I don't know 12 details. I would assume that would be media, but I saw 13 in an e-mail that he's doing some sort of radio show or 14 something now. 15 Q. When you say Neldon, you mean -- 16 A. Neldon Johnson.</p>				

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<p>17 Q. Have you listened to that radio show? 18 A. No. 19 Q. So the next line down says "Genealogy"? 20 A. Correct. 21 Q. What is your understanding of that term? 22 A. Well, basically what you're looking at on the 23 right or the list is -- I'm not sure if that's viewed as 24 a grid or viewed as a tree, but that's how I generated 25 that, was clicking on both of those. Well, I think both 74: 1 of them actually are on here, and then on the page that 2 ends in 3, where it has it as member genealogy, that is 3 if you click on it as one or the other. I'm not sure 4 which is grid and which is tree, but one is one and one 5 is the other. 6 Q. So when you say that the page that ends in 3, 7 you're referring to the Aulds_R&M-00193? 8 A. Correct. 9 Q. So then under "Genealogy," there's a link that</p>				

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<p>10 says "Communication," and it has "My Sponsor." Have you 11 clicked on that link? 12 A. I do not recall. I know who my sponsor is; so 13 I don't -- 14 Q. Who is your sponsor again? 15 A. In this business -- let me think. The Baylor 16 business is sponsored by Freedom which is my Oreck 17 store. 18 Q. So when you say "Baylor," you're referring to 19 the user name that's in the upper left-hand corner? 20 A. Correct. 21 Q. And then when you say "Freedom is with Oreck," 22 what does that mean? 23 A. Well, in order to join RaPower you either can 24 join under your Social Security number or your tax ID 25 number, and I originally signed up my Oreck store 75: 1 directly under John Howell; so John Howell sponsors 2 Freedom, and then Freedom sponsored Baylor. 3 Q. So you purchased -- you or one of your entities</p>				

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<p>4 purchased lenses from RaPower3 under a different user 5 name? 6 A. Correct. 7 Q. So then the next -- well, actually, "My 8 sponsor," if you clicked on that, do you know whether it 9 would tell you more information other than just your 10 sponsor's name? 11 A. I don't remember. 12 Q. What about the "My Downline" link, what would 13 that populate? 14 A. I don't remember. 15 Q. And what about "RaPower3 Management"? 16 A. I don't know. 17 Q. Then under the "Finance" sub-heading where it 18 says "View Personal Purchases" -- 19 A. Yes. 20 Q. -- what would you see if you clicked on that 21 link? 22 A. It would show the date that I made purchases 23 and whether they had been paid in full or just the down 24 payment.</p>				

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<p>25 Q. If you had just made a down payment, would it 76: 1 also tell you the amount that you owed? 2 A. Yes. 3 Q. And then what about the link "Add New 4 Purchase" ? 5 A. If I wanted to buy more lenses personally, then 6 I would click that link and it would give me the option 7 of buying. 8 Q. Did that redirect you to a different site? 9 A. No. It just directed me to a different screen 10 on the same site. 11 Q. Did you ever purchase additional lenses through 12 that link? 13 A. Yes. 14 Q. How did that work? 15 A. You click on it, click on "Add New Purchase," 16 and you put in how many you wanted to buy and filled out 17 the personal information and bought more lenses. 18 Q. Did you have to pay for anything at that point? 19 A. Yes.</p>				

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<p>20 Q. How did you pay? 21 A. Back when I did the purchases, they had a way 22 where they would draft it out of your bank account. 23 Currently I think you have to mail them a check. They 24 stopped having that option. 25 Q. Was there, to your knowledge, any kind of 77: 1 approval process when you had to add a new purchase this 2 way, or if you wanted to purchase the number of lenses, 3 it was just automatically accepted? 4 A. I don't know. 5 Q. Did you ever try to purchase lenses and be told 6 from RaPower that they didn't have enough lenses? 7 A. No. 8 Q. What about that last line under "Finance," 9 "Payment Legend"? 10 A. I'm not sure what that is. 11 Q. To the best of your knowledge, is there anyone 12 not listed on these pages in Exhibit 394 that you 13 sponsored that's not listed?</p>				

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<p>14 A. Well, these are everybody as of that date that 15 was -- that was sponsored by the entity Robert 1234 16 Aulds. 17 Q. Did you also sponsor people then through -- I 18 think you referred to the user name Freedom? 19 A. Yes. 20 Q. So none of those people would be listed on 21 Exhibit 394, the ones that you sponsored through 22 Freedom? 23 A. I'm trying to think. No. They would be above 24 it. No, they would not be listed here. 25 Q. Did the user name Freedom then have a separate 78: 1 portion of the RaPower3 back office? 2 A. Yes. 3 Q. And you did not produce any documents with 4 respect to Freedom's back office? 5 A. I don't believe so. I don't think it was 6 subpoenaed. I think the subpoena was specifically 7 directed to me.</p>				

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<p>8 Q. When you sponsored someone either under Baylor</p> <p>9 or Freedom, did you get notification that those</p> <p>10 individuals had purchased lenses from RaPower?</p> <p>11 A. I used to get texts. I don't know if they</p> <p>12 still do that or if they even did it back in the</p> <p>13 beginning, but I know I have gotten texts showing people</p> <p>14 had purchased.</p> <p>15 Q. Who would send those texts?</p> <p>16 A. I'm assuming somebody with RaPower. I don't</p> <p>17 remember directly.</p> <p>18 Q. What -- what was contained within that text?</p> <p>19 A. Congratulations. It may have been an e-mail.</p> <p>20 It was a text or e-mail. It said congratulations. I</p> <p>21 think it said how many -- the person's name and how many</p> <p>22 they purchased or whatever.</p>				
<p>78:24 Q. (BY MS. HINES) Mr. Aulds, I've given you</p> <p>25 Exhibit 395, what has been marked as 395. Take a couple</p> <p>79: 1 of minutes and look at it. I know it's big. I'm going</p>			395	

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<p>2 to go ahead and identify for the record that it has 3 Bates numbering Aulds_R&M-00096 through Aulds_R&M-00189. 4 Have you had a moment to review 395? 5 A. Yes, ma'am. 6 Q. What is Exhibit 395? 7 A. When I would receive commission checks, they 8 would tell me where the money came from, and this was 9 what they sent, mailed with the check. 10 Q. When you say "they," what do you mean? 11 A. RaPower.</p>				
<p>79:24 Q. So back to Exhibit 395, you indicated these 25 came with your commission checks from RaPower. How 80: 1 often did you receive commission checks from RaPower? 2 A. Usually once a month, but if there was no 3 activity that month, then I did not do a check. 4 Q. Did you only receive the documents in 5 Exhibit 395 if you received a check? 6 A. Correct.</p>			395	

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<p>7 Q. Let's just take a look at the first one. It's 8 on Aulds_R&M-0097 of Exhibit 395. So when you received 9 this document, what information was it telling you? 10 A. Level 1 was people I personally sponsored, and 11 I get 10 percent of their purchase amount. Level 2 were 12 people in the second level that were sponsored by 13 somebody I sponsored, and I get 1 percent, and Level 3 14 was the same. 15 Q. The same as what? 16 A. The same 1 percent on their purchases. 17 Q. So on the top, it looks like there are column 18 names there. 19 A. Yes. 20 Q. Member number, what does that mean to you? 21 A. That must be a recordkeeping number that was 22 assigned by RaPower. It means nothing to me. 23 Q. Last name, first name, I think is probably 24 explanatory. Person who purchased?</p>				

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<p>25 A. Right. 81: 1 Q. "Purchase Amount," what is that, purchase 2 amount? Do you know? 3 A. That would have been the amount that was sent 4 in by the purchaser as a down payment on the lens. 5 Q. What about "Order ID" number? 6 A. That's a bookkeeping number, I'm assuming, from 7 RaPower, how they keep up with it. 8 Q. Do you know if you personally had order ID 9 numbers? 10 A. I assume I do. I don't know what they are, but 11 I imagine every order had an ID number. 12 Q. What about "Units"? 13 A. That refers to how many units were purchased. 14 Q. Units of what? 15 A. Lens. 16 Q. What about "Payable"? 17 A. That's how much that the people paid in with 18 that -- oh, no. That would have been how much they paid</p>				

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<p>19 me for that purchase. In other words, the 10 percent of 20 the purchase amount was my commission for finding the 21 people and helping them getting started and all that. 22 Q. Again, when you say "they paid you," you 23 mean -- 24 A. RaPower. 25 Q. You mentioned units. I think you said "unit of 82: 1 lenses." Is a lens a unit? 2 A. Yes. 3 Q. And so that "Payable" column, is it your 4 understanding that all of those numbers in Level 1, 2 5 and 3 are totaled in that last box that kind of looks 6 like it's highlighted? 7 A. Yes. 8 Q. Is that the amount of the check you would have 9 received with this document? 10 A. Yes. 11 Q. It also looks like there's a date maybe in the 12 top right-hand corner? 13 A. Okay. Yes. 14 Q. So the -- I guess it says "Member Activity</p>				

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<p>15 Report," April 1, 2013, through April 30, 2013. 16 A. Correct. 17 Q. So that would have just been the people 18 purchasing during that time period would have been on 19 this report? 20 A. Correct. 21 Q. Were there certain time periods during a year 22 where you might receive more commissions than others? 23 A. Yes. 24 Q. What were those time periods? 25 A. The way the plan is set up is people finish 83: 1 paying their down payment for their lenses once they've 2 received their refund check from the government. 3 Q. And when is that typically during a calendar 4 year? 5 A. Well, it depends. If they don't file an 6 extension, it would have happened, you know, by 7 April 15th. Which means they would have sent it in May</p>				

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<p>8 or June. So I would have been paid July/August, but if 9 they do an extension, it can vary, you know, later into 10 the year, even into the next year. 11 Q. Did there ever come a time where you learned 12 that someone had purchased a lens and you did not 13 receive a commission from RaPower? 14 A. Not that I'm aware of. 15 Q. Did you keep track of that? 16 A. Tried to. It's money. 17 Q. Did people that you sponsored tell you when 18 they purchased lenses? 19 A. Well, I can see on my back office when people 20 joined the business, and I can assume that they're going 21 to pay them off, but people are people, and so I'm -- 22 I'm not guaranteeing everybody paid it off when they 23 were supposed to because there was no way that I could 24 force that, and I didn't call them and say, "Hey, I see 25 you owe money," because I never looked at it.</p>				

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<p>84: 1 Q. Were you ever asked to talk to people you had 2 sponsored about paying the money for the lenses they 3 purchased? 4 A. No. 5 Q. What, if anything, would happen if someone did 6 not finish paying for their lens? 7 A. What would happen to them or happen to me or 8 happen to whom? 9 Q. Well, let's start with them, and then we can go 10 from there. 11 A. I don't really know what happens to them. I 12 mean, if somebody -- the way I understand it, if 13 somebody says that they purchased lenses and then 14 don't -- and doesn't send the money to RaPower at a 15 certain point, they're just going to drop off the list 16 because they didn't -- they didn't really purchase 17 lenses if they never send in the initial money. You 18 sign up on a website. Then they trust you to mail in</p>				

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<p>19 the money within 15 days or so. If you sign up on the 20 website and never send your money in, I don't know if 21 they fall off. I don't get paid for them obviously, but 22 they may still be on the website. I don't know. 23 Q. Did you ever have anybody that you sponsored 24 sign up on the website and not send in the check within 25 the time frame? 85: 1 A. Not that I know of. It may have happened, but 2 I don't recall. 3 Q. You mentioned that if they signed up and didn't 4 pay, you wouldn't get paid. Was there any other 5 consequence to you if that person didn't pay? 6 A. No. 7 Q. I'd like to have you go to the Bates labeling 8 on the bottom of 395 that is Aulds_R&M-00132. And so 9 this member activity report has a different name in the 10 top left. 11 A. Correct.</p>				

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<p>12 Q. And that's to Wichita Falls Floor Care Center, 13 LLC, Robert Aulds underneath that? 14 A. Correct. 15 Q. Is this member activity report with respect to 16 your Freedom account? 17 A. This was in the box where I had all my stuff, 18 and it probably should have been in the box with the 19 Wichita Falls stuff. It goes to Wichita Falls. They 20 must have sent it to me and I threw it in with the rest 21 of the stuff. 22 Q. Is this a separate account? 23 A. Yes, this is a separate business. 24 Q. In what capacity did you represent Wichita 25 Falls Floor Care Center, LLC, with RaPower3? 86: 1 A. Well, if anything happened with Wichita Falls 2 Floor Care Center, LLC, I did it. 3 Q. So anything meaning a purchase of a lens? 4 A. Sponsoring. Anything -- I was building three 5 separate businesses.</p>				

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<p>6 Q. Explain that. Three separate businesses, what 7 do you mean by that? 8 A. Well, the way the business is structured, if I 9 would have signed up one time under John Howell, he 10 would have made 10 percent on everything that that 11 business purchased, but because I knew I could sign up 12 individually and as a corporation, then I sponsored -- 13 well, the phrasing is Wichita Falls Floor Care Center, 14 LLC, directly under John Howell. So he got 10 percent 15 on that, but then I sponsored Baylor under my work 16 business, which is this one so that I got the 10 percent 17 on what I purchased, and then I sponsored Doctor. I 18 don't know what the technical term of -- my password is 19 Doctor. My user name is Doctor under this one. So I 20 had a corporation above me and a corporation below me 21 that I worked. 22 Q. You said the Wichita Falls Floor Care Center is</p>				

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<p>23 the Oreck business? 24 A. Yes. 25 Q. So through the Oreck business you purchased 87: 1 lenses underneath John Howell? 2 A. The Oreck business purchased lenses and all the 3 commission checks go to Oreck. It's completely 4 separate. It's a corporation, but I acted as the only 5 person working that business for the corporation. 6 Q. Okay. And then you personally bought lenses 7 as -- with the Oreck company as the sponsor? 8 A. Well, I used the business account to buy the 9 Wichita Falls Oreck Floor Care Center lenses, but I did 10 the work. In other words -- 11 Q. Right. But I'm saying, though, the Oreck or 12 the Floor Care Center, LLC, bought with John Howell as 13 the sponsor? 14 A. Correct. 15 Q. And then you personally purchased lenses with</p>				

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<p>16 the Oreck or Wichita Floor Care Center as the sponsor? 17 A. Correct. 18 Q. And then you mentioned this third account which 19 had a user name of "Doctor"? 20 A. Correct. 21 Q. And what entity or person purchased the lenses 22 under Doctor? 23 A. It was the -- my wife's medical, Doctor, LLC, 24 and I was the acting party that did the purchasing. 25 Q. Okay. And is that down there on the -- like 88: 1 the last line, Level 6? No. I'm sorry. It's right 2 before "Bonuses." It looks like there's an entry of 3 12/21/2011 for Meria G. Aulds, M.D.? 4 A. Yes. 5 Q. Is that the account -- 6 A. Yes. 7 Q. -- that is associated with the user name 8 Doctor? 9 A. Correct. The legal name of her corporation is 10 Meria G. Aulds, M.D.</p>				

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<p>11 Q. Did your wife have any responsibility or 12 participate in the decision to buy lenses through -- 13 A. No. 14 Q. I'm going to go ahead and finish that question. 15 Did your wife have any responsibility or 16 decision making in the decision to or participate in the 17 decision making to purchase lenses through Meria G. 18 Aulds, M.D.? 19 A. No. I'm sorry I cut you off. 20 Q. If you flip to what is Aulds_R&M-00134, this 21 member activity report also has a different name than 22 Meria G. Aulds, M.D., P.A. 23 A. That's technically the name for the doctor 24 office. 25 Q. So this would be a member activity report for 89: 1 the account with the user name Doctor? 2 A. Correct. 3 Q. And at the bottom right before the line 4 "Bonuses," there are two entries, one with a date of</p>				

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<p>5 12/29/2011 and the other January 19, 2012, under the 6 name Robert 1234 Aulds. Do you see those? 7 A. Well, maybe I'm wrong. Hang on just a second. 8 Okay. Maybe I sponsored -- maybe I told you wrong. 9 Maybe I sponsored Oreck from John Howell and then -- I 10 don't remember. Maybe Doctor sponsored me. That may be 11 what -- that's the reason that's on Level 1. So, yeah, 12 that's what it is. So Doctor -- Doctor sponsored 13 Baylor. Freedom sponsored Doctor. John Howell 14 sponsored Freedom. I told you wrong. I'm sorry. 15 Q. Okay. What was the reason that the Meria G. 16 Aulds, M.D., P.A., decided to purchase lenses? 17 A. Because I, as a businessman, would rather 18 pay -- get a 10 percent commission than a 1 percent 19 commission. So if I structured it the way I structured 20 it, then I was getting more money paid -- my</p>				

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<p>21 corporations were making money based on my effort in the</p> <p>22 lower level. So if I put my personal business on Level</p> <p>23 3 or Level 2 of Freedom than Level 1 of Doctor, then</p> <p>24 this one would get a 10 percent commission on the ones</p> <p>25 that this one sponsored, and this one would get a 10</p> <p>90: 1 percent on the ones that this one sponsored. So I was</p> <p>2 basically taking money away from my sponsor which was</p> <p>3 totally fine and legal and all that good stuff.</p> <p>4 Q. In what capacity at Meria G. Aulds, M.D., P.A.,</p> <p>5 did you make the decision to purchase lenses from</p> <p>6 RaPower?</p> <p>7 A. Chief financial officer.</p> <p>8 Q. What kind of things did you consider when</p> <p>9 making the decision to purchase lenses from RaPower for</p> <p>10 Meria G. Aulds, M.D., P.A.?</p> <p>11 A. I talked to my accountant.</p> <p>12 Q. And the accountant is?</p> <p>13 A. John Howell.</p> <p>14 Q. What did you talk about?</p>				

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<p>15 A. What reasons I would have to buy lenses.</p>				
<p>90:21 Q. (BY MS. HINES) I believe the question was: 22 What did you talk about? What did you talk about? 23 A. I mean, we talked all the time about lots of 24 stuff. Why did I specifically do it under the doctor 25 office was because I knew at some point I was going to 91: 1 sponsor myself, and if I could have had more businesses 2 to slide in there, I would have put them because the way 3 RaPower had set it up, you couldn't sponsor your wife. 4 The only people you could sponsor was business entities 5 or yourself. So I only had two technical business 6 entities. So I put them above the one I knew I was 7 going to build so I would make more money. 8 Q. That third line up, the one right above the 9 Robert 1234 right before "Bonuses" with the date of 10 12/26/2011, Patricia Aulds, does she have any</p>			<p>395</p>	

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<p>11 relationship to you? 12 A. Mother. 13 Q. Is that the same mother who runs Pat's Tea 14 Shop? 15 A. Yes, ma'am. 16 Q. What does Meria G. Aulds, M.D., P.A., have to 17 do with solar lenses? 18 A. As CFO I realize that that business could make 19 money in ways other than medical because that business 20 could sponsor people, and that business gets checks, 10 21 percent of anything that was ever purchased on what I 22 personally purchased with Robert 1234 Aulds and 1 23 percent on levels below that for five levels. So it 24 makes the doctor's office money. It's a different 25 string of income. 92: 1 Q. So how much money has Meria G. Aulds, M.D., 2 P.A., made from RaPower3? 3 A. I'm not sure, but I know that I personally 4 purchased around 250 lenses of which I paid for most of</p>				

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5 them \$1,000. So they would have made 10 percent of that 6 just on what I purchased.				
93:16 Q. How much percentage-wise would you say of the 17 medical practice, the Meria G. Aulds, M.D., P.A., how 18 much of their income percentage-wise comes from 19 RaPower3? 20 A. Less than 10 percent. I mean, I don't know 21 exactly. 22 Q. Less than 5? 23 A. Probably less than 5. 24 Q. What is the main source of income of Meria G. 25 Aulds, M.D., P.A.? 94: 1 A. Patients.		93:16-94:1: objection, not relevant FRE 401-402; hearsay FRE 802		Overruled
95:14 Q. About how much of the income from the Wichita 15 Falls Floor Care Center, the Oreck business, comes from 16 RaPower3, in a percentage? 17 A. Probably less than 5 percent. 18 Q. When we talk about these percentages of the 19 income and you're saying less than 5 percent, is that 20 money all from commissions or is there some other 21 revenue stream from RaPower?				

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<p>22 A. Commissions is the only income from it. 23 Q. Have you personally gotten or either of the 24 businesses, Wichita Falls Floor Care Center or the Oreck 25 business or Meria G. Aulds, M.D., P.A., gotten other 96: 1 kinds of benefits from -- monetary benefits from 2 RaPower3? 3 A. The businesses only get bonuses or commission 4 checks, but because of us filing our taxes together, 5 there's tax benefits that are involved from RaPower that 6 goes to us. 7 Q. When you say "us," you're referring -- 8 A. We file jointly, so my wife and I. 9 Q. Have you personally or through Wichita Falls 10 Floor Care Center, the Oreck business or Meria G. Aulds, 11 M.D., P.A., received any other kind of money from 12 RaPower other than the commissions? 13 A. No.</p>				

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<p>14 Q. I think earlier you mentioned the possibility 15 of receiving bonus money from RaPower. 16 A. Correct. 17 Q. And so you said you've gotten no other income. 18 Does that mean you've not received any of this bonus 19 money? 20 A. No. 21 Q. Do you know why? 22 A. Yes. 23 Q. Why? 24 A. There are financial benchmarks that 25 RaPower -- well, actually, it's IAUS, which is the 97: 1 mother company of RaPower, International Automated 2 Systems, Inc. When they reach certain financial 3 benchmarks, they will release bonus money to people that 4 are involved with RaPower. 5 Q. How did you come to know that there were 6 financial benchmarks that had to be reached? 7 A. It's on the website, and they told us that. 8 Q. Who's "they"?</p>				

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<p>9 A. RaPower. 10 Q. And when you say "the website," you mean? 11 A. RaPower3.com. 12 Q. Is there anyone, any particular individual 13 within RaPower that has told you that? 14 A. Well, specifically I know Greg has told me, and 15 I'm assuming Neldon has told me. I can't specifically 16 think -- I've only met Neldon once, but I'm sure he 17 talked about it. 18 Q. Again, Greg is? 19 A. Greg Shepard. 20 Q. And Neldon is? 21 A. Neldon Johnson. 22 Q. What are the financial benchmarks that 23 International Automated System has to meet? 24 A. If I remember correctly, when they reach a 25 billion in sales, then they're going to release \$2,000 98: 1 per lens purchased during a certain time period. 2 Q. Have you asked anyone what the status of that 3 financial benchmark is?</p>				

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<p>4 A. Yes. 5 Q. Who have you asked? 6 A. Greg Shepard. 7 Q. What did he tell you? 8 A. Close. 9 Q. When was that discussion? 10 A. We've had it several times, but specifically 11 the first time -- well, one of the times was at the 12 convention. 13 Q. What convention? 14 A. November -- excuse me. Not November. The 15 summer of 2012. I'm not sure what month. They had a 16 convention in Salt Lake. 17 Q. Who is "they"? 18 A. RaPower. 19 Q. So you went to that? 20 A. Yes.</p>				
<p>98:22 How many other times did you have that 23 conversation with Greg Shepard? 24 A. Well, a lot of it is communicated through 25 e-mails. It's not necessarily a communication -- I 99: 1 mean, not necessarily a conversation, but there's</p>				

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<p>2 communication referring to it in the e-mails because 3 they would have it as a date that as of such and such 4 date they're still going to pay the bonus. Well, then 5 that date may come and go, and then they would reinstate 6 another date, and then say, "Okay. We're going to pay 7 it this date." It came up in e-mails for several years. 8 Q. Did any of those e-mails contain status update 9 on the financial benchmarks? 10 A. Not directly. He would send out progress 11 reports on lens -- lens tower construction and videos 12 and new innovative products that all add up to that 13 billion, but he hasn't said we're at 400,000 or 14 something. He hasn't given a dollar benchmark. 15 Q. What is the relationship between International 16 Automated Systems and RaPower? 17 A. As I understand it, International Automated</p>				

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<p>18 Systems is the mother company, and Neldon owns that</p> <p>19 company, and then he's in some sort of partnership with</p> <p>20 RaPower, and that's more of a marketing arm for the lens</p> <p>21 for IAUS.</p> <p>22 Q. How did you come to learn that?</p> <p>23 A. It's on the website, convention, e-mails.</p> <p>24 Q. And e-mails would be from?</p> <p>25 A. RaPower.</p> <p>100: 1 Q. You said that this benchmark is, to the best of</p> <p>2 your recollection, something about a billion in sales.</p> <p>3 Have you ever independently researched the sales of</p> <p>4 International Automated Systems?</p> <p>5 A. I bought stock back when I first got involved</p> <p>6 in this because I was excited about the idea that this</p> <p>7 was an up and coming company, and I thought it would do</p> <p>8 really well. So I did some minor research as far as I</p> <p>9 know that he had something to do with creating the self</p>				

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<p>10 checkout pay lanes in grocery stores and things like 11 that. 12 Q. You said "he." 13 A. Neldon Johnson. 14 Q. And you said you bought stock. You bought 15 stock of what? 16 A. IAUS. 17 Q. International Automated Systems? 18 A. Correct. 19 Q. When was that that you bought stock? 20 A. Probably the first week that I got involved 21 which would have been December, 2011. 22 Q. How much stock did you buy? 23 A. I'm not exactly sure. 24 Q. Did you use a broker? 25 A. I used like Edward Jones or something like that 101: 1 where it's -- you don't really have a broker, but they 2 make the purchase for you. 3 Q. Do you know how much you spent on the stock of 4 IAS? 5 A. I can't remember exactly. It was -- I have</p>				

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<p>6 made at least two purchases. I think I have around 7 \$10,000 worth I purchased. I'm not sure exactly the 8 amount. 9 Q. When was that second purchase? 10 A. The price dropped to below what my original 11 price was. I think it was about September of last year. 12 Q. 2016? 13 A. 2016, I think that's when it was. 14 Q. How much did you buy then in 2016? 15 A. I can't remember if it's 5,000. I think it 16 might have been 5,000 the first time and 5,000 the 17 second or it might have been more than that. I don't 18 remember exactly. 19 Q. When you say 5,000, you mean in monetary terms 20 or number of -- 21 A. Dollars. 22 Q. You said that when you first bought stock in 23 December, 2011, you did some minor research. What did 24 that consist of?</p>				

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<p>25 A. Whatever Edward Jones or whatever it was, they 102: 1 have a deal where you can click on it and it reads past 2 history, you know, that kind of stuff. So I read a 3 little bit of that, but mostly I did it because John 4 Howell said that he thought this was a great deal. He's 5 my tax guy; so I listen to him. 6 Q. John Howell recommended you buy stock in 7 International Automated Systems as well as purchase 8 lenses in RaPower? 9 A. I don't know that he necessarily said I should 10 buy stock. I just know that we discussed the aspects of 11 this as a business, and we both saw great potential for 12 this as a business, and if businesses do well, the stock 13 should do well. 14 Q. Did other people that you sponsored into 15 RaPower also purchase International Automated Systems 16 stock? 17 A. Some did, not on my recommendation because I'd</p>				

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<p>18 rather them buy lenses than stock, but some did tell me 19 that they had bought stock, and some people called and 20 asked me if this company had stock, and if they asked 21 me, I told them that it did, but I didn't encourage it 22 because I didn't make money from them buying stock. I 23 encouraged them to put money in lens or lenses. 24 Q. Do you still own all of the International 25 Automated Systems, that stock you bought in 2011 and 103: 1 2016? 2 A. Yes.</p>				
<p>103: 9 Q. Have you ever expressed displeasure at not 10 having received your bonus money yet to anybody at 11 RaPower? 12 A. Oh, yeah. 13 Q. Who have you talked to about that? 14 A. Specifically, Neldon Johnson. I'm sorry. Greg 15 Shepard. Not Neldon Johnson. 16 Q. How often have you talked to him about the</p>				

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<p>17 bonus monies that you've not received? 18 A. Well, I have not talked to him personally in 19 probably three years, but the last time I talked to him 20 would have been in September of 2000 -- what year 21 would -- I can't remember if it was three years coming 22 up or four years coming up, but he put out an e-mail 23 that it would be on the grid by the end of September of 24 whatever year he did it, and so I went out and built 25 this thing really hard for a month and then we didn't 104: 1 get on the grid; so I expressed my displeasure with 2 that. 3 Q. Did you talk to him in person? On the phone? 4 A. On the phone. Now, I know John -- John 5 regularly communicates with Greg, and so I've just 6 learned to communicate with John and I find out what 7 Greg was saying; so I don't have to talk to him myself.</p>				

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<p>8 Q. What was the substance of your conversation 9 then in that September after the e-mail where they said 10 they would be on the grid by the end of September? 11 A. I don't recall the specific conversation, but 12 the attitude behind it was, "You told me at the 13 convention we were going to be on the grid by the end of 14 the year, and that was 2012, and now it's 2000-whatever 15 year it is. Why are we not on the grid? Why are we not 16 getting our bonuses?" 17 Q. And what was his response? 18 A. "Patience." 19 Q. Did he tell you why you needed to have 20 patience? 21 A. Well, between him and John Howell -- John 22 Howell has a manufacturing background, and there is a 23 lot of research and development involved in bringing a 24 product to market, and apparently it's pretty 25 complicated because it's taking a whole lot longer than</p>				

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<p>105: 1 they said it would take. 2 Q. How long did they say it was going to take? 3 When you say "they," you mean? 4 A. Greg Shepard. 5 Q. So how long did Greg Shepard tell you it was 6 going to take? 7 A. I specifically asked at convention, "When are 8 we going to be on the grid?" And he said, "By the end 9 of this year." 10 Q. This was the convention in 2012? 11 A. Correct. 12 Q. When you say "on the grid," what exactly does 13 that mean? 14 A. The lenses are designed to create electricity, 15 and it's a complicated process, but that electricity 16 will be sold on the grid which will create money for 17 RaPower which will help them pay our lease money and our 18 bonuses. 19 Q. You mentioned lease money. What is that? 20 A. I own lenses that I've leased back to RaPower,</p>				

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<p>21 but they don't start paying the lease until they've made 22 money off the grid. 23 Q. What is RaPower doing with the lenses that you 24 leased to them? 25 A. They are finished with research and 106: 1 development, and they are installing lenses on the 2 towers on the property under the grid, under the wires 3 that run to the grid, and they sent videos out and 4 there's a lot of them. There's stuff happening. We're 5 closer than we've ever been. 6 Q. Where is that property? 7 A. Somewhere near Delta, Utah. 8 Q. Have you been to the property near Delta, Utah? 9 A. I've been to a property, but I think they've 10 moved the lens site to an area directly under the grid 11 where before it was an area that they were going to have 12 to pay a whole lot of money to get it to the grid. They 13 moved. They had more property, and they started</p>				

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<p>14 building under the grid, under the power lines. 15 Q. How do you know that they've moved the 16 property? 17 A. E-mails, website, John Howell, Greg Shepard, 18 some combination of those. 19 Q. When was it that you visited the site near 20 Delta, Utah? 21 A. The same time as the convention. It was 22 September -- not September. Summer, 2012. 23 Q. Was that part of the convention? 24 A. Yes.</p>				
<p>107:11 Q. So have you received any information that your 12 particular lenses have been put on one of these towers? 13 A. Well, according to the definition of "placed in 14 service" that the government uses, they didn't actually 15 have to be on a lens to be placed in service. They had 16 to be on site available to be on the lens, and so we met 17 that qualification from the moment they were purchased.</p>				

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<p>18 Q. Do you know where your particular lenses are</p> <p>19 right now?</p> <p>20 A. No.</p> <p>21 Q. You said something about the definition of</p> <p>22 "placed in service." How is it you've come to know what</p> <p>23 the definition of "placed in service" is?</p> <p>24 A. John Howell, Greg Shepard, e-mails, website,</p> <p>25 combination of one or all of them.</p> <p>108: 1 Q. Did you do any independent research into</p> <p>2 that --</p> <p>3 A. No.</p> <p>4 Q. -- "placed in service" term?</p> <p>5 A. No. Well, I mean, read it in contracts and</p> <p>6 stuff. So I personally read it, but I didn't go out and</p> <p>7 Google it or anything.</p> <p>8 Q. Do you know whether or not this new site where</p> <p>9 they're building towers is currently connected to the</p> <p>10 grid?</p> <p>11 A. I don't know as of right now. I know that --</p>				

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<p>12 supposedly I know that we finished research and 13 development. We have been on the grid. We've proved 14 the technology, but we have to come back off the grid 15 and then go through certain requirements to be a 16 permanent member on the grid, and we're in that process 17 of meeting whatever requirements, documents, research. 18 I don't know what all's involved. 19 Q. So how did you come to know where RaPower is in 20 that process? 21 A. Greg Shepard, e-mails, John Howell, or website, 22 a combination of all of them. 23 Q. Just to be clear, the website meaning? 24 A. RaPower3. 25 Q. And the e-mails are coming from? 109: 1 A. Usually Greg Shepard. 2 Q. You said that you were on the grid at some 3 point?</p>				
<p>109: 6 A. I have -- I have the understanding that we have 7 proven the technology by being on the grid, but to stay</p>				

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<p>8 on the grid, once you prove you can do what you're</p> <p>9 supposed to do, then you have to go back and -- I don't</p> <p>10 know. Environmental studies? I don't know what they</p> <p>11 do, but there's things that they're doing now to stay on</p> <p>12 the grid or to get back on the grid and to stay on the</p> <p>13 grid.</p> <p>14 Q. (BY MS. HINES) So what is your understanding</p> <p>15 of what it meant for RaPower to be on the grid? What</p> <p>16 was it that they were doing?</p> <p>17 A. We were using our technology to create</p> <p>18 electricity that we were able to sell on the electrical</p> <p>19 grid.</p> <p>20 Q. Did you or Meria G. Aulds, M.D., P.A., or</p> <p>21 Wichita Falls Floor Care Center, the Oreck business,</p> <p>22 receive any money from what you understood to be putting</p> <p>23 electricity on the grid?</p> <p>24 A. No.</p>				
<p>111: 7 Q. Are the documents contained in Exhibit 395 true</p>			<p>395</p> <p>396</p>	

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<p>8 and accurate copies of the documents you received from 9 RaPower? 10 A. Yes. 11 Q. Earlier today you testified that you had gone 12 to the national convention in Salt Lake City in 2012? 13 A. Correct. 14 Q. How did you come to learn about the national 15 convention? And that was of RaPower; right? 16 A. Yes. E-mail and website. 17 Q. And the website would be? 18 A. RaPower3.com. 19 Q. And who did the e-mails come from? 20 A. Probably Greg Shepard. 21 Q. Was there a cost for attending the national 22 convention? 23 A. I don't believe there was a cost other than 24 transportation and stuff to get out there. 25 Q. Did you have to sign up to attend? 112: 1 A. Yes. 2 Q. How did you sign up? 3 A. On the website.</p>				

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<p>4 Q. Did they ask for any specific information? 5 A. I don't remember. 6 Q. How long was the conference or the national 7 convention? 8 A. It was at least two days because one day was in 9 Salt Lake, and then one day was at the lens site. 10 Q. That's the site near Delta, Utah? 11 A. Correct. 12 Q. What was advertised as the activities during 13 the national convention? 14 A. Basically a tour of the website [sic] and the 15 ability to find out more how the business worked. 16 Q. You said "a tour of the website"? 17 A. I probably did say that, but I meant a tour of 18 the lens site. 19 Q. How were you going to find out more about the 20 business? 21 A. They had speakers and just interaction with 22 other attendees. 23 Q. Who were the speakers?</p>				

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<p>24 A. Neldon spoke. Greg spoke. I don't specific -- 25 I think they had some other speakers, but I don't 113: I remember their names. Maybe experts. I know they had 2 an expert in something. I don't remember what he was an 3 expert of, but he spoke. 4 Q. You said Neldon. That is Neldon? 5 A. Johnson. 6 Q. And Greg? 7 A. Shepard. 8 (Exhibit 396 marked.) 9 Q. (BY MS. HINES) This should be Exhibit 396. If 10 you want to take a minute and look this over. 11 A. It would have been a whole lot easier to answer 12 the question if I had this in front of me. 13 Q. So what is Exhibit 396, Mr. Aulds? 14 A. That is information that we received at the 15 convention. 16 Q. And this is the convention in 2012? 17 A. Correct.</p>				

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<p>18 Q. So Exhibit 396 has Bates labeled 19 Aulds_R&M-00074 through Aulds_R&M-00094. Is this a 20 document you produced to the United States in response 21 to the document subpoena? 22 A. Yes. 23 Q. There's a note on the front page which has the 24 Bates labeling Aulds_R&M-00074 with some handwriting on 25 there? 114: 1 A. Correct. 2 Q. Whose handwriting is that? 3 A. Mine. 4 Q. And it looks like, again, "Notes from 5 convention, etc. Questions 1, 2, 3, 4, 5, 6, 7, 8." 6 What questions were you referring to? 7 A. The questions in the subpoena. 8 Q. And that's the document subpoena which is 9 Exhibit 393? 10 A. Yes. 11 Q. Is this a true and accurate copy of documents 12 that you received from RaPower with the exception of</p>				

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<p>13 some handwritten notes on them?</p> <p>14 A. Yes.</p> <p>15 Q. When you looked through Exhibit 396, did you</p> <p>16 recognize all of the handwritten notes?</p> <p>17 A. I didn't look that close, but if you'll tell me</p> <p>18 what specific page to look at, I will look at them.</p> <p>19 Q. First is an Aulds_R&M-00077.</p> <p>20 A. Yes.</p> <p>21 Q. Are those all your notes?</p> <p>22 A. Yes.</p> <p>23 Q. The next is Aulds_R&M-00079.</p> <p>24 A. Yes.</p> <p>25 Q. Are those all your notes?</p> <p>115: 1 A. Yes.</p> <p>2 Q. Aulds_R&M-00081, looks like there's a date on</p> <p>3 there?</p> <p>4 A. Yes.</p> <p>5 Q. Is that your handwriting?</p> <p>6 A. Yes.</p> <p>7 Q. Aulds_R&M-00085, looks like another date?</p> <p>8 A. Yes.</p> <p>9 Q. Is that your handwriting?</p> <p>10 A. Yes.</p>				

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<p>11 Q. So other than the handwriting notes that you 12 made that we've just identified, is this a true and 13 accurate copy -- 14 A. Yes. 15 Q. -- of what you received from RaPower? 16 A. Correct. 17 Q. On page Aulds_R&M-00075, it looks like there 18 was a leadership meeting on Monday, June 25th. Did you 19 attend that meeting? 20 A. Yes. 21 Q. Who was the primary speaker at that meeting? 22 A. I don't see Greg listed, but I thought he did 23 most of the talking, but I'm not sure on that specific 24 day. Apparently he didn't. I see Roger, Randy Johnson, 25 Neldon Johnson, Neldon Johnson. So I guess Neldon 116: 1 Johnson was the main speaker that day. 2 Q. I'm sorry. Are you referring to the leadership 3 meeting on the 25th, or are you referring to the 4 schedule on the 26th?</p>				

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<p>5 A. I'm just looking at the one that's page 75 who 6 it says were the speakers. 7 Q. I'm actually, I believe, at the paragraph above 8 that. There's a bold heading that says "Leadership 9 Meeting." 10 A. Oh, okay, that meeting. That was Greg Shepard, 11 and, yes, I was at that one. That was the night before. 12 Q. Did anyone else speak at that meeting other 13 than Greg Shepard? 14 A. I do not remember. 15 Q. What did Greg Shepard talk about during the 16 leadership meeting? 17 A. I've been in so many leadership meetings about 18 network marketing, it all blends together, but 19 basically, rah, rah, go tell them about your business. 20 That's pretty much the formula for leadership meetings. 21 Q. If you turn to page Aulds_R&M-00079, is it 22 titled "Leadership Meeting"? 23 A. Yes.</p>				

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<p>24 Q. Take a moment to read that and then the two 25 pages prior which ends in 77. 117: 1 Do these two pages have an agenda that 2 would have occurred during that leadership meeting? 3 A. The leadership meeting per se was not a formal 4 meeting as I recall. I mean, a lot of it was question 5 and answer. I don't -- I mean, he spoke a little bit, 6 and then I think he mostly answered questions, and, you 7 know, we talked and stuff. So this meeting, I don't 8 think this -- I may be wrong, but I don't know that 9 that's the notes from the leadership meeting. It says 10 leadership meeting. I agree with what you're saying. I 11 don't know. This may or may not be the notes from that 12 specific what they're calling the leadership meeting. I 13 don't know. 14 Q. Would these have been notes from that 15 convention?</p>				

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<p>16 A. Yes, it was from that convention; correct. 17 Q. There is a note on the Bates label 18 Aulds_R&M-00079 down in the bottom right? 19 A. Correct. 20 Q. Does that say -- and make sure I'm reading your 21 handwriting correctly -- 120 units up and running 22 producing electricity by November 12. Is that -- 23 A. It's actually November second half, is what I 24 would assume. So I imagine he said by the middle of 25 November we would have 120 units up and running. 118: 1 Q. Who is "he"? 2 A. I'm assuming Greg Shepard. 3 Q. In the context of this note, what are 4 120 units? What's a unit? 5 A. Towers that hold lenses. 6 Q. And did, in fact, 120 towers get up and running 7 by November of 2012? 8 A. I do not know. I don't. If they did, they 9 kept them secret.</p>				

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<p>10 Q. Did you follow up in November of 2012?</p> <p>11 A. Maybe. I don't remember specifically. We got</p> <p>12 e-mails all the time; so if we would have actually been</p> <p>13 at that point in the second half of November, I would</p> <p>14 have had an e-mail talking about it, and I do not have</p> <p>15 that e-mail.</p> <p>16 Q. I'd like you to flip back a couple of pages to</p> <p>17 Aulds_R&M-00077, and above the header in the middle of</p> <p>18 the page, "The Five Power Axioms for Success," there's a</p> <p>19 handwritten note. I think this is what it says -- and</p> <p>20 please correct me if I'm not reading your handwriting</p> <p>21 correctly -- "How do we know RaPower is not a scam, us</p> <p>22 and government"?</p> <p>23 A. "How do we now RaPower is not a scam," dash,</p> <p>24 "us and government." "Bring one tough question to the</p> <p>25 meeting." Okay. So I was bringing a tough question to</p> <p>119: 1 the meeting. How do we know that RaPower is not a scam?</p>				

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<p>2 So I'm assuming I asked that question. 3 Q. Do you know if you got an answer? 4 A. Well, it doesn't say it's my question. It says 5 to bring one tough question. So I had people ask me 6 that I introduced this to, "How do we know if it's a 7 scam or not?" And I was curious to see how they 8 answered it. I had my own personal answer. I was 9 asking it as a bring one tough question to the meeting 10 and get everybody's input and the best answer. So I 11 wrote the great question, but I didn't write the great 12 answer. 13 Q. Do you recollect what the answer was?</p>				
<p>119:16 A. No, not directly. I mean, we discussed it 17 because lots of people that didn't understand tax law 18 and all that stuff, like 99.9 percent of us don't, was 19 getting that question from people when we would talk to</p>				

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<p>20 them about the business, and so as a group we were 21 trying to figure out how we help them understand this is 22 not a scam. We're actually taking tax law and applying 23 it the way we're applying it.</p>				
<p>120:15 Q. I'd like you to go now to Aulds_R&M-00081. 16 This is another copy of the agenda. Do you recall 17 any -- attending all of the sessions that were listed 18 out here in this agenda for Tuesday, June 26th? 19 A. Yes. I was at everything. 20 Q. Let's talk about some of these sessions. Who 21 would do the welcome and the introduction? 22 A. I can't specifically remember. I believe Greg 23 kind of served as master of ceremony. I mean -- not 24 Greg. Yes, Greg. It was probably Greg Shepard. 25 Q. So what about that 9:10 a.m., "Where are we at 121: 1 yet & what's been accomplished in the last year," who 2 would have led that session? 3 A. I'm not sure.</p>			<p>396</p>	

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<p>4 Q. The 9:30 a.m. session, "The Ra3 role behind the 5 scenes," would Glenda Johnson and Roger Freeborn have 6 led that session? 7 A. Yes. 8 Q. What would they have talked about during that 9 session? 10 A. I know Glenda serves as the - - kind of like the 11 treasurer, and Roger Freeborn was the main one going out 12 and showing the business, so something having to do with 13 stuff that happens behind the scenes. I mean, I 14 don't -- I don't honestly remember what was said. I can 15 be there and kind of tune out.</p>				
<p>121:20 Q. You said that you think Glenda Johnson was the 21 treasurer. How did you come to learn that she served in 22 that capacity? 23 A. Because she signs my checks.</p>				
<p>123: 9 Q. (BY MS. HINES) Do you recall if Randy Johnson 10 spoke at the convention? 11 A. I do not recall who Randy Johnson is. So I</p>				

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<p>12 don't -- I remember they talked about somebody that was 13 trying to help improve the lenses, and I think it might 14 have been Neldon's son, and it might have been Randy 15 Johnson. It could have been -- let me read here and see 16 what it's talking about. 17 It probably is his son because they spent 18 months trying to improve the lens to where it would do 19 what they needed it to do and they kept having issues, 20 and I think Randy was talking about that, so. I think 21 it's his son. 22 Q. What kind of issues was the lens having? 23 A. They would fracture based on different, you 24 know, wind or whatever, and so they were trying to 25 create a lens that would not have those issues. 124: 1 Q. How long did that process take to fix the lens? 2 A. Months and months and months because the 3 manufacturers -- they would think they had a</p>				

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<p>4 manufacturer that could get it right, and then they 5 didn't get it right, and then they were working on what 6 kind of formula to get it to be to where it doesn't 7 break, and finally they found somebody that would do it 8 correctly. 9 Q. How did you find out that there was an issue 10 with the lenses, that they went through this process to 11 fix the lenses? 12 A. Well, they told us about it, but then also, 13 when you go out to Delta, Utah, there was just lens 14 pieces laying everywhere under the towers. So you could 15 tell they had issues trying to get them to be the way 16 they need to be. 17 Q. When you say "they told us," who told you? 18 A. I don't remember specifically. It came up in 19 conversation, one of the speakers, all the speakers. 20 I'm not sure specifically who said it.</p>				

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<p>21 Q. But someone at the convention?</p> <p>22 A. Yes.</p> <p>23 Q. Did Mr. Neldon Johnson speak at the convention</p> <p>24 on the 26th?</p> <p>25 A. Yes.</p> <p>125: 1 Q. What did Mr. Johnson talk about?</p> <p>2 A. According to these notes, he talked about the</p> <p>3 turbine and different facts about that and mass</p> <p>4 production and efficiency capacities along with lower</p> <p>5 cost advantage, and then he talked about dual axis</p> <p>6 tracking and concentrators and inexpensive production of</p> <p>7 zinc batteries.</p>				
<p>126:10 Q. As part of the convention, you also went and</p> <p>11 visited the Delta site on June 27th?</p> <p>12 A. Yes.</p> <p>13 Q. What happened at the site visit?</p> <p>14 A. The thing that sticks out most, these guys</p> <p>15 showed up with guns. That was -- that was a pretty</p> <p>16 interesting time.</p>				

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<p>17 Q. Tell me about -- tell me about the site visit.</p> <p>18 A. We drive out there, and we're walking toward</p> <p>19 the manufacturing plant, and we see guys with guns, and</p> <p>20 they're telling us to stay back. It was just quite</p> <p>21 interesting.</p> <p>22 And then Greg spoke and said, "These guys</p> <p>23 are just doing their job," you know, and he worked out a</p> <p>24 deal where we could go ahead and get in the site, I</p> <p>25 think. It happened then or it happened later. I know I</p> <p>127: 1 went in the site eventually.</p> <p>2 I know we went to Neldon's house, and there</p> <p>3 was more people there with guns, and they were trying to</p> <p>4 take people's license plate numbers, all that good</p> <p>5 stuff.</p> <p>6 Q. Who were you with?</p> <p>7 A. I was with -- I know that John Howell and his</p> <p>8 family went, and then I had some people that were part</p> <p>9 of my business that went. I know two guys from Abilene</p>				

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<p>10 went that are part of my business. I'm not sure who 11 else that was specifically part of my business, but I 12 know two guys from Abilene were there, and then some of 13 the people in my upline were there and John Howell and 14 his family. 15 Q. When you say "part of my business," what do you 16 mean? 17 A. Downline, they were people that I sponsored 18 somebody who sponsored somebody who sponsored somebody. 19 Q. Did you ask anyone what was happening when the 20 men with guns arrived? 21 A. Yeah. I was quite concerned, but I was with 22 John, and John was like, you know, calm, and so I 23 figured if he's calm, I'll be calm. 24 Q. So who did you ask what was happening to? 25 A. John Howell. 128: 1 Q. And what was his response? 2 A. Eventually I found out what it was. I don't</p>				

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<p>3 remember if he specifically knew at that point, but Greg</p> <p>4 eventually told us something that -- I don't remember</p> <p>5 how he phrased it, but basically, that they were there</p> <p>6 to seize assets or something. I don't remember exactly.</p> <p>7 Q. Were you satisfied by the answer that</p> <p>8 Mr. Howell provided you?</p> <p>9 A. I kept doing the business. So, I mean, it was</p> <p>10 a bump in the road, but I figured he says the tax law</p> <p>11 says this, we're doing this; therefore, it should be</p> <p>12 legal. So I didn't have -- I mean, I was concerned, but</p> <p>13 I figured, well, it's got to -- according to what my tax</p> <p>14 guy is telling me, what we're doing is 100 percent</p> <p>15 legal, and so I don't know why they're messing with</p> <p>16 RaPower, but I don't control who they are, whoever they</p> <p>17 are. I guess they were the IRS. I don't know who</p> <p>18 exactly they were.</p> <p>19 Q. You said you were concerned. What exactly were</p>				

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<p>20 you concerned about? 21 A. People there with guns trying to close us down 22 from going into the manufacturing plant. So obviously 23 there was something going on. 24 Q. Did you later learn that that event had 25 anything to do with taxes? 129: 1 A. I don't know -- well, as far as whether it had 2 to do with taxes, I still don't know exactly what it was 3 to this day. I know it had something to do with the 4 government and RaPower. I don't know, you know, 5 specifically taxes or, you know what facet of it.</p>				
<p>130: 3 Q. What did you see at the manufacturing plant? 4 A. There was stations of different product in 5 various stages of manufacturing, and there was big, tall 6 things of lenses that had been made by Lucite that were 7 what they were going to make our lenses out of. There 8 was lenses made, and there was pieces of tower made, and</p>				

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<p>9 there was machinery to bend stuff to make towers. It</p> <p>10 was like a manufacturing plant.</p> <p>11 Q. Did someone give you a tour of the plant?</p> <p>12 A. Yes.</p> <p>13 Q. Who was that?</p> <p>14 A. It was kind of a self-guided tour, but then</p> <p>15 there would be -- in this area there might be Neldon and</p> <p>16 in this area there might be Greg, and so you could go</p> <p>17 and ask specific questions. So it was kind of a</p> <p>18 self-guided tour.</p> <p>19 Q. Were you able to see your lenses while you were</p> <p>20 visiting the site?</p> <p>21 A. The lenses have a code number on them. My lens</p> <p>22 was probably there somewhere, but I didn't go and</p> <p>23 specifically see the specific one that's mine.</p> <p>24 Q. Did you ask if you could see it?</p> <p>25 A. No.</p> <p>131: 1 Q. Were you concerned about where it might be?</p> <p>2 A. No.</p> <p>3 Q. Why not?</p>				

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<p>4 A. Well, I mean, it's my lens. This big stack of 5 whatever is some of them, and then some of them are over 6 here already in towers, and so at that point it didn't 7 matter because I wasn't going to get paid on my lens 8 until they got money from electricity. There wasn't any 9 point in looking at it. I saw there was thousands of 10 lenses there; so I assumed, you know, mine are all in 11 there. 12 Q. What did you do after you visited the 13 manufacturing plant? 14 A. I don't remember the order, whether we went to 15 the towers first or the manufacturers. I think we went 16 to the towers last and then from there we went back to 17 Salt Lake City. 18 Q. What did you see when you visited the tower 19 location? 20 A. A whole bunch of broken lenses. It looked like 21 there was quite a few towers out there, and every tower</p>				

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<p>22 had a big pile of broken lenses under it, and that was 23 proof that, yeah, it is hard to make these things to be 24 accurate to where they do what they're supposed to do, 25 but then they had some that were in there, and if you 132: 1 stick your hand under them, your hand got really hot 2 really fast. So the fact that it will create energy was 3 very obvious. 4 Q. Were you concerned that your lenses might be 5 some of the broken lenses that were all over the ground? 6 A. No, because you're insured. Our lenses have a 7 warranty and are insured for a minimum of 35 years. 8 Q. Who was given the warranty on the lens? 9 A. It's part of the contract. I don't know who 10 actually warrants it. The contracts warrant it. 11 Q. And then who insures the lenses? 12 A. I don't know, but the contract insures it. The</p>				

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<p>13 contract says that they're insured and warranted. 14 Q. You did not personally seek out insurance for 15 your lenses? 16 A. No. It's part of the process of having 17 purchased the lens. 18 Q. Well, what is your understanding of what would 19 happen if one of your lenses did break? 20 A. They would replace it at their cost.</p>				
<p>133: 3 Q. You keep saying "they" -- 4 A. The contract. 5 Q. Okay. But who, who's your contract with or 6 what's your understanding of who's going to be doing the 7 replacing and who's paying?</p>				
<p>133: 9 A. I don't know who specifically wrote the 10 contracts, and I don't know if it's specifically RaPower 11 or IAUS, but the contracts that I electronically signed 12 stated that these things would happen. It's part of 13 the -- I think it's part of the rental and purchase</p>				

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<p>14 agreement which is a separate contract. It's probably 15 in one of these stacks of papers is my guess.</p>				
<p>133:16 Q. (BY MS. HINES) So you indicated that if you 17 put your hand under the lens you'd feel heat? 18 A. Absolutely. 19 Q. Do you know what, if anything, was going to be 20 done with the heat? 21 A. Yes. I know what they say that's going to be 22 done, is they're going to use the heat to heat up the 23 magic ball, which doesn't mean anything to you, but it's 24 the way they transfer the heat to water. I think it's 25 water. It's whatever it is that transfers it to where 134: 1 it goes to the generator and it makes electricity. It 2 powers the generator. 3 Q. Did you see this magic ball -- 4 A. Yes. 5 Q. -- when you were on the site visit? 6 A. Yes. 7 Q. Was it hooked up to something to capture that</p>				

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<p>8 heat?</p> <p>9 A. It wasn't -- there wasn't a working model there</p> <p>10 because they were still in research and development. So</p> <p>11 they didn't have everything finished to have a working</p> <p>12 model. I mean, they -- now, I say that. John saw a</p> <p>13 video -- I think John saw a video. They had a house</p> <p>14 that was attached to a prototype, and the house's only</p> <p>15 source of electricity was a tower, and the lights are on</p> <p>16 in the house. So I had not personally viewed that</p> <p>17 video, but -- I can't tell you where that house is, but</p> <p>18 I remember that from some source. I don't know if it</p> <p>19 was John or Greg or e-mail or what.</p> <p>20 Q. So in 2012 when you visited, you did not see a</p> <p>21 working model?</p> <p>22 A. No.</p> <p>23 Q. Did you subsequently find out that there was a</p> <p>24 working model?</p> <p>25 A. I don't remember the exact time frame whether I</p>				

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<p>135: 1 knew about the house before the convention or after the 2 convention, but I do know that the discussion about a 3 house that's only source of electricity is a tower 4 that's got working electricity. 5 Q. But you did not see that house? 6 A. I did not see the house. 7 Q. And you don't recall exactly when you learned 8 that? 9 A. Correct. 10 Q. How did you know the tower was the only source 11 of electricity to that house? 12 A. Because there wasn't any power lines connected 13 to it other than the lines from the tower, and that's 14 what they told us. 15 Q. And who told you that? 16 A. Good question. I don't remember exactly. I 17 don't remember if it was John telling me he saw the 18 video or if somebody saw it and told me or Greg told me. 19 I don't remember the details, but I remember</p>				

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<p>20 specifically being told there is a house. There is a 21 tower. The tower runs the house, and the house has 22 electricity. 23 Q. You didn't watch the video that showed this 24 house? 25 A. I'm not even sure there's a video. I don't 136: 1 remember if it's somebody that was telling me this or 2 they say they saw the video. I'm a very trusting 3 person, and so when they told me that, I didn't need to 4 see it myself. Whoever told me that, I trusted them. I 5 can't tell you five years later if it was a video they 6 saw or the actual house or Greg just told somebody. I 7 don't remember the details. 8 Q. Did you ever get paid any money from the 9 house's use of electricity from these towers? 10 A. No. 11 Q. I think you indicated that in 2012 it was your 12 understanding that RaPower was still in research and</p>				

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Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
13 development? 14 A. Correct. 15 Q. Do you know if they have completed research and 16 development? 17 A. They say they have.				
137:13 Q. (BY MS. HINES) Mr. Aulds, I believe the 14 question that was pending before the interruption was, 15 when did you learn that RaPower3 had finished research 16 and development? 17 A. Approximately August of 2014. 18 Q. And how did you learn that R and D was 19 completed? 20 A. An e-mail. 21 Q. From? 22 A. Greg Shepard. 23 Q. What was your understanding of the next steps 24 after research and development was completed? 25 A. They were going to do whatever they needed to 138: 1 do to permanently stay on the grid. There's paperwork 2 and environmental studies, whatever they needed to do to 3 permanently stay on the grid.		137:13-138:14; objection, lack of foundation, lack of personal knowledge, hearsay		Overruled

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<p>4 Q. And is RaPower currently on the grid?</p> <p>5 A. I do not know. I hope so.</p> <p>6 Q. Have you asked?</p> <p>7 A. I've asked my accountant.</p> <p>8 Q. Mr. Howell?</p> <p>9 A. Yes.</p> <p>10 Q. And what has Mr. Howell told you?</p> <p>11 A. He doesn't know. I'm assuming we would get an</p> <p>12 e-mail if they were on the grid.</p> <p>13 Q. So after R and D was completed, has RaPower3 or</p> <p>14 anyone else produced electricity?</p>				
<p>138:16 A. They were on the grid. They proved the</p> <p>17 technology. Then they were required to come off the</p> <p>18 grid. Now, they didn't meter it supposedly and they</p> <p>19 didn't sell the electricity. They just proved it would</p> <p>20 produce it and go on there, but they did -- they did</p> <p>21 what they had to do to move to the next step which is</p> <p>22 permitting and all that to stay on the grid.</p> <p>23 Q. (BY MS. HINES) So you say they were proving.</p>		<p>138:16-24; objection, lack of foundation, lack of personal knowledge, hearsay</p>		<p>Overruled</p>

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24 Who were they proving this to?				
<p>139: 1 A. I'm assuming whoever regulates electricity on</p> <p>2 the national grid, the energy whoever. There's somebody</p> <p>3 that regulates whether you can go on the grid or not.</p> <p>4 Whoever that is -- the way I understand it, you have to</p> <p>5 prove it works. Once you prove it works, then you have</p> <p>6 to come off of it, go through the process to be</p> <p>7 permanently placed back on it, and we're in that</p> <p>8 process.</p> <p>9 Q. (BY MS. HINES) Who told you what this process</p> <p>10 was to produce electricity and get on the grid?</p> <p>11 A. I'm sure it was e-mails from Greg Shepard</p> <p>12 and/or RaPower.</p> <p>13 Q. And did Greg Shepard or anyone from RaPower</p> <p>14 tell you a specific entity or organization they were</p> <p>15 proving that this system worked to produce electricity?</p> <p>16 A. They probably did in the e-mail. I don't</p> <p>17 recall the information directly.</p>		<p>139:1-140:17; objection, lack of foundation, lack of personal knowledge, hearsay</p>		<p>Overruled</p>

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<p>140:15 Q. Mr. Aulds, how many lenses did you buy from 16 RaPower?</p> <p>17 A. Between all three entities, I bought 500.</p> <p>18 Q. How was that broken down between the three 19 entities?</p> <p>20 A. I believe I initially bought like 18 or 23 or 21 something like that from -- through the Oreck store, and 22 then I bought 200 and something for the doctor's office, 23 and then I bought the rest personally.</p> <p>24 Q. What was the price of each lens?</p> <p>25 A. It's 105 down, and then a total of 1,050 is 141: 1 what they consider the down payment, and you pay that 2 total after you get your tax return.</p> <p>3 Q. How did you know what the price was?</p> <p>4 A. What the price of the lens was?</p> <p>5 Q. Yes.</p> <p>6 A. Because it's on the -- when you sign up, it's 7 listed on the website.</p> <p>8 Q. That's the RaPower3 website?</p>				

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<p>9 A. It's there, but it's on the actual page where</p> <p>10 you say how many lenses you want. It figures it. If</p> <p>11 you say you want 20 lenses, it automatically mapped it</p> <p>12 out and told you how much your down payment was and how</p> <p>13 much you would owe and all that.</p> <p>14 Q. How much have you paid and you and your other</p> <p>15 two -- you personally and the two entities paid for the</p> <p>16 500 lenses?</p> <p>17 A. It's in here somewhere. I don't know exactly.</p> <p>18 Quite a bit.</p> <p>19 Q. You paid the 105 down for each of those 500</p> <p>20 lens?</p> <p>21 A. Yeah, I had to pay the 105 down when I</p> <p>22 initially bought. So I paid 105 times 500, and then I</p> <p>23 paid approximately \$40,000 for six years, five or six</p> <p>24 years.</p> <p>25 Q. Are you current on all of your payments for the</p> <p>142: 1 lenses?</p> <p>2 A. Yes.</p>				

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<p>3 Q. Do you know whether or not you or the entities 4 owe any money for those 500 lenses? 5 A. I haven't paid for all the lenses because I 6 haven't used them all in a tax year yet. 7 Q. Explain what that means to me. 8 A. Well, there's carry forward and carry back, and 9 you can carry back a year, and you can carry forward 10 like 20 years, and so I went back to 2010 and then did 11 '11, '12, '13, '14, '15, but one year they had not paid 12 me yet for whatever reason. They paid the year 13 afterwards and the year before, but they didn't pay that 14 specific year. 15 Q. Who is "they"? 16 A. IRS. 17 Q. When you say "pay," what are they paying you? 18 A. Well, I have tax credits and accelerated 19 depreciation to cancel out monies that I had sent in</p>				

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<p>20 with payroll and stuff like that. So to recover it, 21 when they do my taxes, he shows, you know, my lens 22 purchases and stuff, John Howell, and for whatever 23 reason that year, I don't know why they hadn't paid it 24 yet because they paid the year before and they paid the 25 year afterwards, but they didn't pay that specific year. 143: 1 That's a John Howell question. 2 Q. So how does whether or not the IRS pays you a 3 refund, how does that relate to whether or not you pay 4 RaPower for the lenses? 5 A. Because the way the contracts or the system was 6 set up is you don't owe the full balance until you've 7 received whatever the money was from that accelerated 8 depreciation and the energy tax credit. That's the way 9 it was back then. It's not that way now. Now whatever 10 lenses you buy, you have to pay for within the next tax</p>				

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<p>11 year, but when I got in, it was supposed to have been 12 five year carry forward, but John and I misunderstood 13 and thought, well, legally you can go 20 years. So I 14 bought enough to go 20 years. Greg Shepard and I will 15 have that discussion at some point. 16 Q. During what time period did you buy these 500 17 lenses between you and the two entities? 18 A. I bought them all in the first two months. 19 Q. All in -- 20 A. Two months that I joined. So it would have 21 been in December of 2012 or '11, whatever year I said. 22 Q. So January of '12? 23 A. Yeah, January of '12. 24 Q. And how did you decide to buy 500? 25 A. That's a good question. I called John, and I 144: I said, "How many lenses can I buy?" He said, "Well, you 2 can carry forward for 20 years." And so I kind of just</p>				

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<p>3 guesstimated -- I mean, honestly I didn't at that time 4 understand really how it all worked, but I figured if I 5 used, say, 20 or 30 a year, 500 just seemed like a good 6 number at the time. 7 Q. So you paid the 105 down for all 500? 8 A. Correct. 9 Q. And then you said you've made additional 10 payments on some but not all of those 500? 11 A. Correct.</p>				
<p>145:16 Q. But you do know that all 500 of the lenses 17 you've not paid the full \$1,050? 18 A. Correct. 19 Q. Has anyone at RaPower contacted you about the 20 remaining payment on those 500 lenses? 21 A. No, because it's not due. Greg understands how 22 John and I read the information, and he understands 23 why -- when Greg did his example, he said a five-year 24 example. Well, the IRS allows you to have a 20-year</p>				

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<p>25 window of carry forward. So Greg in the five-year 146: 1 example meant you need to do it in five years. We read 2 it to mean, okay, he's an example of five years, but in 3 actuality you can do 20. I didn't buy the amount I 4 needed in five years. I bought the amount that I needed 5 closer to 20. 6 Q. So how is your -- for the remaining lenses you 7 haven't made payment on, how would RaPower know that 8 your obligation is now due and that you had used some of 9 these lenses on your tax return? 10 A. Well, there is some trust factor in the idea 11 because they don't see my tax return. But like I call 12 them and tell them, "I'm getting ready to mail you a 13 check for \$40,000," blah, blah, blah, "And I wanted to 14 make sure you get it and let me know when you get it," 15 and all that. So that's -- but they don't ask to see my 16 tax returns and stuff.</p>				

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<p>17 Q. How was the price of the lens determined? 18 A. I don't know. 19 Q. Did you have the opportunity to negotiate the 20 price? 21 A. No. Well, I didn't. I might have, but I did 22 not. 23 Q. Why not? 24 A. Why did I not negotiate the price? 25 Q. Yes.</p>				
<p>147: 2 A. Didn't think of it. Didn't - - I just -- I 3 mean, I negotiate on a car, but I don't negotiate with 4 my electricity company. So there's certain things I 5 feel are negotiable and certain things that are not. 6 Q. (BY MS. HINES) Has RaPower ever offered to buy 7 back any of your lenses? 8 A. At one point I believe there was an e-mail that 9 if you wanted to sell your lenses, they would buy them 10 back at -- in a certain time frame. I don't want to 11 sell my lenses because I think this business is going to</p>				

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<p>12 eventually work. I bought them for a reason, and I want 13 it to do what I meant for it to do. 14 Q. When was that e-mail? 15 A. Two, three, three, four years ago at some 16 point. 17 Q. Do you remember who sent that e-mail? 18 A. It would have probably been Greg Shepard, but 19 it was RaPower.</p>				
<p>147:24 Q. Earlier, Mr. Aulds, you talked about -- you 25 testified it had been about three years or so since you 148: 1 actively worked RaPower? 2 A. Well, let's rephrase that. I worked it really, 3 really hard for about a month three years ago, but I 4 still -- if I'm talking to somebody, I will still talk 5 to them about RaPower, and I still carry business cards, 6 and I still in the course of my day-to-day operations 7 I'm going to mention RaPower, but I -- I was 10, 8 12 hours a day every day for about a month.</p>				

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<p>9 Q. Was there something that happened that caused 10 you to stop focusing 10 to 12 hours a day on it at that 11 point? 12 A. Well, we did not get on the grid in September 13 of 2014 like I was told we were going to, and I got 14 tired. 15 Q. You weren't making a lot of money with RaPower 16 at that point, were you?</p>				
<p>148:19 A. For the month I worked really hard, I did not 20 make the money right then that would justify working 21 that hard, but every time I sell a lens, personally I 22 get \$1,000 bonus someday and I get 35 years, 10 percent 23 on every amount of money they get for 35 years. So I 24 see a long-term benefit to working it hard at times. 25 Q. (BY MS. HINES) But to date you've not received 149: 1 any bonus money? 2 A. No.</p>				
<p>149: 5 Q. (BY MS. HINES) Mr. Aulds, when was the last</p>				

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<p>6 time you personally spoke with Greg Shepard? 7 A. Probably -- I'm trying to think if I talked to 8 him since September, 2014. I think he called -- I had a 9 friend, Don Suggs, was going up there, and Greg called 10 me to get information about Don or something or I called 11 him. So we talked somewhere, and that would have been 12 either the end of 2014 or the first half of 2015. 13 Q. So you've not talked to him since the end of 14 2014 or beginning of 2015? 15 A. Well, it may have been -- Don Suggs went to 16 Utah to see the towers, and I talked to Greg about him 17 going or he called me. I remember talking to Greg, but 18 I don't remember the exact dates. 19 Q. Is there a reason you haven't spoken with 20 Mr. Shepard since that conversation about Don Suggs? 21 A. Not really. I mean, he -- there's nothing he</p>				

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<p>22 can tell me that's any different from what he's sending</p> <p>23 out in e-mails, and I ask John. John has a better</p> <p>24 relationship with him because I get flustered talking</p> <p>25 with him. So now I ask John and John asks him, and John</p> <p>150: 1 finds out the answer.</p> <p>2 Q. Earlier you testified about leasing the lenses.</p> <p>3 I want to go through that a little bit more. What did</p> <p>4 you have to do in order to lease your lenses?</p> <p>5 A. It was all part of the same process of buying</p> <p>6 the lenses. There's several contracts involved, and I</p> <p>7 don't remember the specific names of all of them, but in</p> <p>8 the same process of buying the lenses, you are also</p> <p>9 committing to lease them back for a minimum of 35 years,</p> <p>10 and it states the terms of the lease, and it states that</p> <p>11 they're insured. It states that they're replaced if</p> <p>12 broken and all that.</p> <p>13 Q. What did you have to do with respect to the</p>				

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<p>14 lease to -- do you have responsibilities? Do you have 15 to do any management or overseeing? 16 A. No. That's all taken care of. It's part of 17 the lease agreement, that they maintain everything I pay 18 them. Instead of getting \$150 -- is it monthly or 19 quarterly? I'm trying to remember now. There's an 20 amount of money they pay us for the first five years, 21 and then starting on the sixth year they keep all but 22 \$68. Is it 68? They keep a portion of my rental money 23 to go toward insurance and maintenance and all that. 24 For 30 years it's that way. So I get money, but I don't 25 get as much for the last 30 years as I did for the first 151: 1 five. 2 Q. When does the -- when do the rental payments or 3 lease payments start coming to you? 4 A. I don't know the technical way it's worded, but</p>				

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<p>5 what was inferred to me is once RaPower has income from 6 your lens. So, in other words, getting on the grid 7 would put us there or if we were generating heat and 8 selling it, or whatever. I don't know what they could 9 do with the lens, but when they use your lens to make 10 money, that's when the lease payments start. 11 Q. Have you received any lease payments yet? 12 A. No.</p>				
<p>152: 2 Q. Do you know who you're leasing your lenses to?</p>				
<p>152: 5 A. It's part of the contract, and it states it. I 6 do not recall the entity. I don't know if it's RaPower 7 or IAUS or who. 8 Q. (BY MS. HINES) Did you get to pick the company 9 that you are leasing your lenses to?</p>				
<p>152:11 A. I'm sure I could, but I didn't try to change 12 what they already had set up. I mean, if they're 13 willing to pay me for 35 years, I'm willing to go with</p>				

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<p>14 whoever they've selected. 15 Q. (BY MS. HINES) How do you know whether the 16 company who is leasing your lenses is doing a good job?</p>				
<p>152:19 A. Because I'm guaranteed a minimum of \$150 -- I'm 20 trying to remember if it's quarterly or monthly. It's 21 in my contract, but it's -- well, it's a year. Maybe 22 it's yearly because it's a guaranteed \$750. So that 23 would be five times 150 for the first five years, and 24 then it's 68 a year for the last 30 years. So it's 25 yearly. I'm guaranteed a minimum of 150 a year per lens 153: 1 for lease agreements.</p>				
<p>153:12 Q. So you purchased your lenses in December of 13 2011 and January, 2012, and entered into the lease as 14 part of that initial purchase transaction? 15 A. Correct. 16 Q. So now it's 2017, and you have not received a 17 lease payment; correct? 18 A. Correct.</p>				

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19 Q. And you've not received a bonus? 20 A. Correct.				
154:22 Q. (BY MS. HINES) Mr. Aulds, you've just been 23 handed a copy of what has been marked as Exhibit 397. 24 Take a moment, familiarize yourself with it. 25 A. I'm pretending to look. I don't know what I'm 155: 1 looking at. Just ask questions. 2 Q. What is Exhibit 397? 3 A. It's my 2011 U.S. income tax return. 4 Q. You filed that jointly with your wife? 5 A. Correct. 6 Q. And do you know whether your RaPower3 units or 7 lenses appear on this tax return? 8 A. They do. 9 Q. And in what capacity do you know these lenses 10 are on the return? 11 A. Well, I know they create an accelerated 12 depreciation benefit for me, and I know they have a 13 30 percent tax credit. Now, how he showed it or where		154:22-155:16; objection foundation, lack of personal knowledge, relevance	397	Overruled

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14 he shows it, it looks like -- it's somewhere on here. I 15 don't have a clue where he puts them. That's what I pay 16 him for. He understands it.				
157: 1 Q. (BY MS. HINES) Exhibit 398 and 399 have been 2 marked. Mr. Aulds, these are two documents you produced 3 in response to the subpoena; is that correct? 4 A. Yes. 5 Q. And these are true and correct copies of 6 documents you printed from the RaPower3 website; 7 correct? 8 A. Correct.			398 399	
158:17 Q. (BY MS. HINES) Mr. Aulds, the 2011 tax return, 18 that was prepared by John Howell? 19 A. Yes. 20 Q. So you've now been handed a copy of what is 21 Exhibit 398. No. I'm sorry. We're on 400. Yes, 22 Exhibit 400. What is Exhibit 400? 23 A. It says 1040X, and it's for 2010. So that's			400 401 402 403 404 397	

<p style="text-align: center;"><i>Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828</i></p> <p style="text-align: center;"><i>Deposition of Robert Aulds taken March 14, 2017</i></p>				
<p>Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)</p>	<p>Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)</p>	<p>Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE</p>	<p>Exhibits</p>	<p>Ruling</p>
<p>24 the amended return for 2010 since tax law allows for</p> <p>25 carryback. The benefits were carried back to the</p> <p>159: 1 previous tax year of 2010, and this is where he filed</p> <p>2 that.</p> <p>3 Q. Who prepared this tax return?</p> <p>4 A. John Howell.</p> <p>5 (Exhibit 401 marked.)</p> <p>6 Q. (BY MS. HINES) Mr. Aulds, you've been handed a</p> <p>7 copy of what is Exhibit 401. What is Exhibit 401?</p> <p>8 A. My tax return for the year 2012.</p> <p>9 Q. And who prepared your tax return for 2012?</p> <p>10 A. John Howell.</p> <p>11 Q. I'll mark these and then ask you a couple of</p> <p>12 questions in case you were wondering.</p> <p>13 (Exhibit 402 marked.)</p> <p>14 Q. (BY MS. HINES) Mr. Aulds, you've been handed a</p> <p>15 copy of what's been marked as Exhibit 402. What is</p> <p>16 Exhibit 402?</p> <p>17 A. Our tax return for the year 2013.</p>				

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Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness—PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>18 Q. When you say "our," you mean?</p> <p>19 A. My wife and I.</p> <p>20 Q. Who prepared your 2013 tax return?</p> <p>21 A. John Howell.</p> <p>22 (Exhibit 403 marked.)</p> <p>23 Q. (BY MS. HINES) Mr. Aulds, you've been handed a</p> <p>24 copy of Exhibit 403. What is Exhibit 403?</p> <p>25 A. Our tax return for my wife and I for 2014.</p> <p>160: 1 Q. And who prepared your tax return for 2014?</p> <p>2 A. John Howell.</p> <p>3 (Exhibit 404 marked.)</p> <p>4 Q. (BY MS. HINES) Mr. Aulds, you've been handed a</p> <p>5 copy of Exhibit 404. What is Exhibit 404?</p> <p>6 A. Form 8879. I don't really know what it is.</p> <p>7 Oh, okay. It's our 2015 individual tax return and some</p> <p>8 other stuff with it, it looks like.</p> <p>9 Q. And the other stuff with it, do those appear to</p> <p>10 be other tax related forms?</p> <p>11 A. Yes.</p> <p>12 Q. Who prepared your tax return for 2015?</p>				

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<p>13 A. John Howell.</p> <p>14 Q. How is John -- does John Howell operate as a</p> <p>15 sole proprietor or does he have a business entity name?</p> <p>16 A. Howell Tax Service is the building he operates</p> <p>17 out of. He's an enrolled agent.</p> <p>18 MR. JONES: I want to put an objection on</p> <p>19 the record. It calls for speculation.</p> <p>20 Q. (BY MS. HINES) Mr. Aulds, for the six exhibits</p> <p>21 that we have now marked as Exhibit 397, 400, 401, 402,</p> <p>22 403, and 404, these are copies of your tax returns for</p> <p>23 2011 through 2015 and the amended tax return for 2010.</p> <p>24 Is it your understanding that depreciation and credits</p> <p>25 regarding your RaPower lens purchases were included on</p> <p>161: 1 all of these tax returns?</p> <p>2 A. Yes.</p> <p>3 Q. I'd like you to turn to the 2013 tax return</p> <p>4 which is Exhibit 402 and specifically to page</p> <p>5 Aulds_R&M-00273. Mr. Aulds, this is a Schedule C</p>				

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<p>6 related to Alternate Energy Systems. Do you know what 7 specific activity that you engaged in that this Schedule 8 C relates to? 9 A. I am in two different energy businesses, and he 10 may have put them both together since they're both 11 basically the same type businesses. 12 Q. And the other business is called what? 13 A. Stream Energy. 14 Q. Is that what's on Aulds_R&M-00269? 15 A. Yeah. Okay. So this one, Alternate Energy 16 Systems, I guess that's just RaPower. 17 Q. Did Mr. Howell go through the tax returns with 18 you and show you where the items relating to RaPower 19 were on your tax returns? 20 A. No. 21 Q. Did he explain -- did Mr. Howell explain to you 22 why he would include RaPower on this Schedule C and with 23 the principal business of Alternate Energy Systems?</p>				

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24 A. No.				
<p>164: 9 Q. (BY MS. HINES) Mr. Aulds, other than the 10 meeting in May, 2010, that you went to when you were 11 asked by Carey Hadderton, have you attended any other 12 local meetings with respect to RaPower?</p> <p>13 A. I've given meetings. I was the speaker. It 14 wasn't somebody else doing it. I've had meetings about 15 it.</p> <p>16 Q. How does that work?</p> <p>17 A. I call up people and tell them. Some of them 18 are already in the business. I just tell them, "Hey, 19 we're going to have a meeting at the Oreck store." They 20 show up at the store, and then I explain the business.</p> <p>21 Q. Do you provide any materials to people who come 22 to these meetings?</p> <p>23 A. I give them the website.</p>				
<p>165: 8 Q. How many people would attend these meetings?</p> <p>9 A. Probably had as many as 20. Usually I would do</p>				

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<p>10 it like me with one or two other people, but sometimes I 11 had larger meetings. 12 Q. How many of these meetings do you think you've 13 had since 2011, December, when you purchased? 14 A. Physical sit down talk about the business 15 meetings with people, 100 maybe. I don't know exactly. 16 I mean, like I said, usually I'm doing it over the 17 telephone, and usually I -- I did come to Wichita Falls 18 once a week up until maybe three years ago. So if I was 19 coming up here and being out anyway, I would have 20 meetings up here and then after I finished work, but 21 that's been three or four or five years.</p>				
<p>193: 3 Q. Mr. Aulds, you said during your testimony in 4 response to a question by Mr. Austin that we don't use 5 the term "invest." 6 A. Correct. 7 Q. Who is "we"? 8 A. We doing this business. 9 Q. Meaning RaPower?</p>		<p>193:3-194:2; objection foundation, lack of personal knowledge, relevance, hearsay</p>		<p>Overruled</p>

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<p>10 A. Anybody that's involved with this business, I 11 would teach you if you were going to be part of it, that 12 the term "invest" has legal complications because of the 13 Securities and Exchange Commissions and et cetera. So 14 we don't invest in anything. We buy a lens, and then 15 because we buy a lens, there are advantages to owning a 16 lens including the ability to depreciate it and get tax 17 credits and things like that. 18 Q. So again, you said "the business." I want to 19 clarify what business you're referring to? 20 A. RaPower. 21 Q. How did you come to learn that this term 22 "invest" has some kind of legal ramification? 23 A. Some e-mail or some website information or John 24 Howell. Somebody knows more than me about it. 25 Q. You mentioned something about the SEC. What 194: 1 did the -- what did the term "invest" have to do with</p>				

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2 the SEC?				
<p>194: 5 A. I've been part of a lot of multilevel 6 businesses, and there are rules that you follow in 7 business like paying your taxes and being honest and 8 things like that, and part of the rule that I would 9 suggest to somebody if they were going to be involved in 10 RaPower is just like the term "realtor," if you sell 11 houses, you can't call yourself a realtor unless you're 12 really a realtor even though somebody might think a 13 realtor is somebody that sells houses. 14 Well, if you say, "I want you to invest in 15 lenses," there's a legal ramification to the word 16 "investment," and that investment term can be involved 17 with what the Securities and Exchange Commission 18 regulates, and we don't want to be regulated by them. 19 So we don't use any terms that would confuse that.</p>				

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<p>20 Q. (BY MS. HINES) And again, you say, "We don't 21 want to be regulated." Who's "we"? 22 A. We as in anybody in any kind of business that's 23 not involved with it. In other words, if they're not in 24 our business, I don't want them in our business 25 including RaPower.</p>				
<p>198:22 MS. HEALY-GALLAGHER: We're just going to 23 put on the record that we'd like the witness to read and 24 sign. I'm sure there's a way we can figure that out. 25 THE WITNESS: Okay. 199: 1 THE REPORTER: We're off? 2 MS. HINES: Yes. We're off.</p>				
<p>DEFENDANT COUNTER-DESIGNATIONS</p>	<p>PLAINTIFF COUNTER-DESIGNATIONS</p>			

Instructions: One form should contain all designations for a witness. Plaintiff Designations (column 1) and Defendant Designations (column 2) will show the full deposition text that the party proposes to read in its case-in-chief. Completeness designations are proposed by the other party, under Fed. R. Civ. P. 32(a)(6), to be read with the designations. Counter-designations are read following the designations and completeness designations, similar to cross examination. This form should be provided in word processing format to the other party, who then will continue to fill in the form. The form is then returned to the proposing party for review, resolution of disputes, and further editing. The parties should confer and file a final version in PDF format using the event “Notice of Filing” and also submit a final word processing copy to the court at dj.nuffer@utd.uscourts.gov, for ruling.

All objections which the objecting party intends to pursue should be listed, whether made at the deposition, as with objections as to form, or made newly in this form, if the objection is of a type that was reserved.

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Deposition of Roger Halverson taken October 18, 2016*

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PLAINTIFF DESIGNATIONS	DEFENDANT -DESIGNATIONS			
<p>5: 2 ROGER W. HALVERSON, 3 being by me first duly sworn or affirmed to tell the 4 truth, the whole truth, and nothing but the truth, as 5 hereinafter certified, responded and testified as 6 follows: 7 THE WITNESS: I do. 8 DIRECT EXAMINATION 9 BY MS. HEALY GALLAGHER: 10 Q. Good morning, Mr. Halverson. We are on the 11 record in the case of United States v. RaPower3, et al. 12 We met a moment ago. My name is Erin Healy Gallagher 13 of the United States Department of Justice, the Tax 14 Division, appearing on behalf of the United States. We 15 have a court reporter here to record the proceedings. 16 Mr. Heideman. 17 MR. HEIDEMAN: Justin Heideman here on behalf 18 of the most of the defendants.</p>	<p>10: 17 Q. Wow. So what sort of education did you have 18 before you got your CPA license? 19 A. I had a four-year bachelor's degree from a 20 college in Northeast Iowa, Luther College. I lived in 21 Illinois. When I moved to Florida I went to work for a 22 CPA firm in Delray Beach and I didn't have all of the 23 required courses I needed to sit for the CPA exam. So 24 I went to school for two-and-a- half years before I was 25 eligible to sit in Florida Atlantic University, Palm 11: 1 Beach University which is now a community college. And 2 I took one correspondence course from the University of 3 Florida. 4 Q. And since you got your CPA license I'm 5 guessing there are continuing education requirements 6 for you?</p>	<p>Defendants object to the designation of substantially all of the deposition in Plaintiff's designation. The deposition was not designated at the time of noticing or taking the deposition to be a trial deposition or to preserve the specific testimony. See Defendants' objections [Doc. 295 and Doc. 347].</p> <p>5:2-5:21. Objection, not relevant, FRE 401-402.</p>		<p>Overruled</p> <p>Overruled</p>

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19 MS. HEALY GALLAGHER: And I'd like to note for 20 the record that Donald Reay, who represents Greg 21 Shepard and Roger Freeborn, is not here today.	7 A. Absolutely.			
8:14 Q. Mr. Halverson, were here today to get as 15 accurate a record as we can of the facts of this case 16 as you remember them. So I have to ask if there's 17 anything that would prevent you from understanding my 18 questions and answering them with the full capacity of 19 your recollection? 20 A. Well -- 21 Q. So, for example, are you taking any 22 medications that have mind altering effects? 23 A. No. 24 Q. Have you had anything alcoholic to drink in 25 the last eight hours? 9: 1 A. No. 2 Q. Are you feeling at all sick or unwell? 3 A. No.	68:22 Q. I'd like to just walk through this Schedule C 23 and the supporting documents. First off, in line G 24 which asks, Did you materially participate in the 25 operation of this business during 2009, in part, the 69: 1 box is checked "yes", correct? 2 A. Yes. 3 Q. How did you know to check yes in that box? 4 A. Well, it was set up as an equipment purchase 5 agreement in the first place, so I believe that's why 6 we just considered it -- rather than passive we 7 considered it nonpassive because it was equipment 8 purchase. 9 Q. Can you connect the dots for me? Why did it	8:14-9:7. Objection, not relevant, FRE 401-402.		Overruled

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<p>4 Q. So then is there any reason that you can think</p> <p>5 of that you might not be able to answer my questions</p> <p>6 fully?</p> <p>7 A. None.</p>	<p>10 matter that it was an equipment purchase agreement in</p> <p>11 your decision that this was not a passive activity?</p> <p>12 A. I'm not sure exactly how to answer that.</p> <p>13 Well, since she was the owner of the equipment, I</p> <p>14 think, as opposed to having an entity like a limited</p> <p>15 partnership or something like that involved in it, I</p> <p>16 think she was a direct owner of the equipment.</p> <p>69:17 Q. Did you rely on any facts other than the</p> <p>18 equipment purchase agreement in making your decision</p> <p>19 about whether she materially participated in Ilios?</p> <p>20 A. I don't remember.</p> <p>21 Q. Did you hear anything from Greg Shepard</p> <p>22 discussing material participation?</p> <p>23 A. I don't remember. I'd have to go back and</p> <p>24 look.</p>			

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<p>10: 8 Q. Mr. Halverson, let's back up a little bit. 9 I'd like to hear a little bit about you. What's your 10 current employment? 10:11 A. I'm self-employed, CPA. 12 Q. And what name do you do business under? 13 A. Roger W. Halverson, CPA Chartered. 14 Q. How long have you been a CPA? 15 A. A long time. I got my certificate in 1969, so 16 that would be 47 years. Whew.</p>	<p>77: 4 Q. And if you recall what happened with the tax 5 credits, if anything, that were claimed on the carry- 6 back for 2007? 7 A. Nothing. 8 Q. To your recollection? 9 A. I don't recall anything. I don't recall it 10 ever even coming up.</p>	<p>77:4 - 10, Objection, Not relevant, Fed. R. Evid. 401, 402</p>		<p>Overruled</p>
<p>11:12 Q. And Mr. Halverson, can you just give me the 13 city and state of your residence? 14 A. Stuart, Florida. 15 Q. Is that where you practice? 16 A. Yes. 17 Q. Can you give me an idea of your client base, 18 how many individuals, how many companies? 19 A. Sure, approximately. We have probably around 20 500 individual tax clients. We have maybe 50 to 70</p>	<p>81: 24 Q. In the course of preparing -- well, you were 25 asked if there was anything you had relied upon before 82: 1 preparing these tax returns. Did you ever review the 2 tax code before reviewing the tax returns? 3 A. Some, yeah. 4 Q. In the course of that review was there 5 anything that caused you to be uncomfortable in 6 preparing the returns the way you did?</p>			

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<p>21 businesses, corporations. I do quite a lot of estate 22 and trust returns, possibly a hundred of those. 23 Q. Anything else? 24 A. No, my firm is basically tax oriented. We do 25 some bookkeeping for some clients but that's not a 12: 1 major part of our practice. 2 Q. So can you give me a -- do you use email in 3 the course of your practice? 4 A. Yes. 5 Q. What's your email address? 6 A. Halvrca@BellSouth.net. 7 Q. Have you ever used any other email addresses 8 in the course of your CPA practice since 1969? 9 A. No. 10 Q. And you use that email address in the course 11 of your business correspondence, right? 12 A. Yes. 13 Q. Can you tell me how you first came to learn 14 about anything to do with International Automated</p>	<p>7 A. No.</p>			

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<p>15 Systems? 16 A. Yeah, I had a client that invested in that, so 17 that's when I found out about it. 18 Q. Who was your client? 19 A. Patricia Lambrecht. 20 Q. Have you ever had any other clients invest in 21 anything to do with International Automated Systems? 22 A. No. 23 Q. With respect to Ms. Lambrecht when did you 24 first start doing work for her? 25 A. 1997.</p>				
<p>13: 1 Q. And what sort of work do you do for 2 Ms. Lambrecht? 3 A. I do her tax work, tax returns.</p>				
<p>13:16 Q. So correct me if I'm wrong but it sounds like, 17 for example, someone else does a partnership return for 18 Ms. Lambrecht's partnership -- yes? 19 A. Yes. 20 Q. -- but you report the partnership impacts on 21 Ms. Lambrecht's personal returns?</p>				

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<p>22 A. That's correct. 23 Q. Is it similar for the trust? 24 A. Yes. 25 Q. So again, correct me if I am wrong, but you 14: I take the information, report it on behalf of 2 Ms. Lambrecht's business interests and put it on her 3 personal tax return? 4 A. That's correct. For instance, if she had a 5 partnership or a corporation, Subchapter S corporation 6 all she receives is the K-1 that has her personal 7 information on it that goes on her personal return.</p>				
<p>15:25 Q. So what did you learn about, what was your 16: I first conversation about with respect to International 2 Automated Systems? 3 A. Best I can recollect is they came to me and 4 said they were interested in renewable energy and that 5 this was an investment that they were going into, and</p>				

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<p>6 of course they came to me because they wanted to know 7 about the tax consequences of the investment. 8 Q. To your knowledge having done Ms. Lambrecht's 9 tax returns had she ever done anything with respect to 10 renewable energy before you heard about this? 11 MR. HEIDEMAN: Objection -- never mind. 12 A. Not that I'm aware of. 13 Q. Do you happen to know how Mr. Neff came to 14 become aware of International Automated Systems? 15 A. No, I don't. 16 Q. So in the course of Mr. Neff and Ms. Lambrecht 17 talking to you about this you said they were interested 18 in the tax consequences, right? 19 A. Yes.</p>				
<p>16:23 Q. So what happened next? 24 A. Well, they gave me a copy of the contract and 25 a copy of a couple of letters from an attorney and a</p>				

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<p>17: 1 CPA for my file, and then of course when I did the 2008 2 tax return I looked into the law, because it was 3 something fairly new apparently, when Obama took office 4 for the tax credits, et cetera, et cetera, and we did 5 the tax return for 2008, yeah. 6 Q. You mentioned you took a look at the tax law. 7 What kinds of things did you look at when you were 8 preparing her return? 9 A. Well, I have a couple of documents that I 10 brought along with me that I looked at, and one of my 11 concerns was how the investment would affect the 12 alternate minimum tax, and according to that law there 13 was a tax credit available for investment in this type 14 of equipment. 15 Q. Did you talk to anyone in the course of your 16 research, for example, anyone at IAS? 17 A. Yes.</p>				

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<p>18 Q. Who did you talk to? 19 A. Mr. Shepard. 20 Q. And did you actually speak to him or did you 21 just correspond with him in writing? 22 A. Well, I talked to him on the phone, and he 23 gave me or he steered me towards the law that I needed 24 to know about. 25 Q. How many times did you talk to Mr. Shepard? 18: 1 A. Boy, maybe twice, threes times. I don't 2 recall. 3 Q. And these conversations, do you recall when 4 they took place, for example during 2008 or after 2008 5 when you were preparing her 2008 return? 6 A. Boy, I don't remember. 7 Q. Aside from these two or three phone calls with 8 Mr. Shepard at the beginning of Ms. Lambrecht's 9 involvement with IAS, did you ever speak to him again 10 thereafter?</p>				

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<p>11 A. I don't think so. I think that I had a couple 12 of correspondences with emails but I don't recall any 13 other physical conversations.</p>				
<p>19:12 Q. Right. So back to the phone calls and the 13 initial investigation you undertook on behalf of 14 Ms. Lambrecht, do you remember about how long your 15 phone calls were with Mr. Shepard? 19:16 A. Oh my, I don't have any idea. 17 Q. Do you remember what you asked him? 18 A. Well, -- not really. I mean I remember asking 19 him about the tax consequences and where I could find 20 that information. And if I recall he gave me Internal 21 Revenue Code and that new -- the name of that new law 22 that had been put in place early in the year.</p>				
<p>21: 4 Q. After the first conversation with Mr. Neff and</p>				

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<p>5 Ms. Lambrecht did you ever talk to Ms. Lambrecht again 6 about facts that might be important for you to know in 7 preparing her return? 8 A. Not regarding the preparation of the return, 9 no. 10 Q. Did you talk to her about anything else to do 11 with International Automated Systems? 12 A. Yes. At some point later on, and I don't 13 remember exactly, maybe a year or so later, she said 14 that she hadn't heard anything, she hadn't received 15 anything and she was wondering what the status was of 16 her investment. 17 Q. So that was about a year, you said, after? 18 A. Yeah, a year or so. 19 Q. So in 2009 or so? 20 A. Yeah, 2009, or maybe 2010.</p>				
<p>22:17 Q. So, Mr. Halverson, the transaction between 18 Ms. Lambrecht -- actually, take that back.</p>				

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<p>19 You mentioned Ilios LLC? 20 A. Yes. 21 Q. What is Ilios, LLC? 22 A. Ilios, LLC is an entity that she set up here 23 in Florida, an LLC entity, and she made her investment 24 under the Ilios name, Ilios, LLC. 25 Q. Do you know when Ilios, LLC was created? 23: 1 A. I believe it was created in 2008 when she 2 signed the contract. I'm pretty sure that Ilios's name 3 is on the contract. 4 Q. To your knowledge was Ilios formed in order to 5 execute this transaction with IAS? 6 A. It was solely for that purpose. 7 Q. To your knowledge, Mr. Halverson, what does 8 Ilios, LLC do? 23: 9 A. Nothing other than hold title to that 10 investment. 11 Q. How do you know that? How do you know what 12 Ilios, LLC does? 13 A. Because there's no transactions. She doesn't</p>				

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14 have any transactions that she's ever reported to me 15 regarding Ilios.				
23:25 Q. For tax purposes what type of entity is Ilios? 24: 1 A. It is an LLC, single member. So for tax 2 purposes the IRS considers it a disregarded entity so 3 it is a Schedule C on the tax return. 4 Q. And it is a Schedule C on Ms. Lambrecht's tax 5 return, right? 6 A. Correct. 7 Q. And you prepare Ms. Lambrecht's tax return 8 which includes the Schedule C for Ilios? 9 A. Yes. 10 Q. So Mr. Halverson, the transaction between 11 Ilios or Ms. Lambrecht and IAS took place in 2008, 12 correct? 13 A. Correct. 14 Q. Was it her 2008 tax return that first claimed 15 any tax effect from that transaction?				

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<p>16 A. Yes. 17 Q. Did you carry back any tax effect to prior 18 years? 19 A. Yes. 20 Q. To what years? 21 A. To 2007. Yeah, I'm pretty sure it was 2007. 22 Q. And then in what years after 2008 has 23 Ms. Lambrecht's personal tax return shown tax effects 24 from the 2008 transaction? 25 A. Depreciation. 25: 1 Q. I'm sorry. In what years, since 2008? 2 A. Oh. '8,'9 and '10. 3 Q. And you sort of anticipated my next question. 4 So what are the tax effects of the 2008 transaction on 5 Ms. Lambrecht's tax return? 6 A. Okay. The only effect was that there was 7 depreciation claimed on the equipment and we did 8 receive a check one year so we showed income in one 9 year. I don't remember which year that was.</p>				

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<p>10 Q. Did Ms. Lambrecht ever claim tax credits? 11 A. Yes. 12 Q. And those credits were as a result of the 2008 25:13 transaction, correct? 14 A. Yes.</p>				
<p>28: 6 Q. Mr. Halverson, I managed to locate a color 7 copier. Here is the document you provided now marked 8 with Plaintiff's Exhibit 181. Do you see that? 9 A. Yes. 10 (Exhibit 181 marked for identification) 11 Q. Mr. Halverson, what is Plaintiff's Exhibit 12 1 8 1? 13 A. It is the equipment purchase agreement. 14 Q. Who is it between? 15 A. It's between International Automated Systems 16 Inc. and Ilios LLC. 17 Q. Mr. Halverson, is this the equipment purchase 18 agreement that we have been talking about so far this 19 morning?</p>		<p>28:6-30:1021. Objection, hearsay, FRE 802; lack of personal knowledge, calls for speculation.</p>	<p>181</p>	<p>Overruled</p>

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<p>20 A. Yes, it is. 21 Q. This agreement is dated December 18, 2008, 22 correct? 23 A. Yes. 24 Q. Just for the record, Plaintiff's Exhibit 181 25 does not have Bates numbers, but it is a document of 29: 1 five pages, right? 2 A. Yes. 3 Q. Real quick, Mr. Halverson, up in the initial 4 paragraph the introduction says that Ilios, LLC has an 5 address of 3016 Southeast Dune Drive, Stuart, Florida, 6 and there's a ZIP code there? 7 A. 34996. 8 Q. 34996? 9 A. Yes. 10 Q. Is that Ms. Lambrecht's home address? 11 A. Yes, it is. 12 Q. So Mr. Halverson, this equipment purchase 13 agreement is the basis for how you prepared 14 Ms. Lambrecht's tax return for 2008, correct?</p>				

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<p>15 A. Correct. 16 Q. And what was important to you about this 17 agreement? 18 A. Okay. Well, first of all, the number of 19 units, the purchase price. 20 Q. So are you taking a look at paragraph 1? 21 A. Yes. 22 Q. You've got a highlight over the number 50, 23 correct? 29:24 A. Correct. 25 Q. So that's the number of alternative energy 30: 1 systems that were purchased via this agreement? 2 A. Yes. 3 Q. Mr. Halverson, do you know what the 4 alternative energy system is, do you know what that 5 comprises? 6 A. You mean like physically? 7 Q. Right. 8 A. No, not really. I think that they were 9 talking about lenses and stuff like that, but I don't</p>				

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<p>10 know the technical part of it.</p>				
<p>31:25 Q. At the end of that first paragraph 3 it says, 32: 1 "The purchase amount shall be paid as follows." And 2 then there are a set of terms are for payment. Do you 3 see that? 4 A. Yes. 5 Q. So if you take a look at that subparagraph A 6 you have highlighted the \$9,000 and the \$450,000. Do 7 you see that? 8 A. Yes. 9 Q. So what was your understanding of this initial 10 paragraph A, what did that mean to Ms. Lambrecht? 11 A. Well, they were \$9,000 each times 50 units, 12 that would be the 450. That was her down payment. 13 Q. Do you know, did Ms. Lambrecht in fact pay 14 \$450,000 upon execution of this agreement? 15 A. Yes, she did. 16 Q. So then you've got paragraph B almost entirely</p>		<p>31:25-33:11. Objection, hearsay, FRE 802; lack of personal knowledge, calls for speculation.</p>		<p>Overruled</p>

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<p>17 highlighted there. Would you take a read of paragraph 18 B for a second. Just read it and let me know when you 19 are finished. 20 A. Okay, I'm done. 21 Q. What does that subparagraph B mean to you? 22 A. Okay. Well, that would be the terms of paying 23 off the investment at a rate of \$700 per unit -- I 24 believe that's what it said. And it's payable from the 25 revenue received from the energy sold. 33: 1 Q. So then is the idea that the alternative 2 energy systems would create energy that would then be 3 sold to a purchaser of the energy? 4 A. Yes. 5 Q. And then revenue from the purchaser would be 6 used to make these payments identified in paragraph B? 7 A. Yes, that's the way I read that. 33: 8 Q. To your knowledge, Mr. Halverson, did</p>				

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<p>9 Ms. Lambrecht ever make any payments to IAS under this 10 subparagraph B? 11 A. She did not, not to my knowledge.</p>				
<p>35: 3 Q. So you've got pretty much the first sentence 4 of paragraph 6 highlighted. "The seller represents 5 that each alternative energy system will be installed 6 and operational no later than December 31, 2008 and in 7 sufficient time to meet IRS standards of an active 8 investment." Did I read that correctly. 9 A. Yes, you did. 10 Q. Why did you highlight that? 11 A. As I recall it had to be installed for the IRS 12 to recognize the credits, otherwise it would have 13 carried over to whenever it was installed. 14 Q. So did that mean to you that if IAS did not 15 meet this obligation Ms. Lambrecht would not have been</p>		<p>35:3-35:12. Objection, leading, hearsay, FRE 802; lack of personal knowledge, calls for speculation, lacks foundation.</p>	<p>181</p>	<p>Overruled</p>

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<p>16 able to claim the tax benefits in tax year 2008? 17 A. That's right. 18 Q. Mr. Halverson, between the date that this 19 contract was signed on December 18, 2008 and December 20 31, 2008 do you know what happened with Ms. Lambrecht's 21 alternative energy systems? 22 A. Not really. I mean, no. All we have is a 23 representation. 24 Q. Did anyone ever tell you that her systems 25 actually were installed by December 31, 2008? 36: 1 A. No, not that I recall. 2 Q. On page 5, Mr. Halverson, Patricia Lambrecht's 3 name is under the section for Purchaser Ilios, LLC. 4 Do you recognize her signature? 5 A. Yeah, I'm pretty sure. 6 Q. Do you happen to know who signed on behalf of 7 International Automated Systems? 8 A. No, I can't read it. 9 Q. Mr. Halverson, is Plaintiff's Exhibit 181, is</p>				

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10 this a true and correct copy of the equipment purchase 11 agreement that Ms. Lambrecht signed? 12 A. Yes, it is.				
37:13 (Exhibit 182 marked for identification) 14 Q. Mr. Halverson, you've been handed what's been 37:15 marked Plaintiff's Exhibit 182. 16 A. Yes. 17 Q. And for the record -- go ahead and take a look 18 at Plaintiff's Exhibit 182. For the record the Bates 19 number at the bottom of 182 is Halveson underscore 20 Roger-00076. 21 Mr. Halverson, Plaintiff's Exhibit 182 is a 22 document that you produced to the United States, 23 correct? 24 A. Yes. 25 Q. It is an email from Greg Shepard, is that 38: 1 right? 2 A. Correct. 3 Q. And it is to you at your email address, right?		37:13-38:16. Objection, leading, hearsay, FRE 802; lack of personal knowledge, calls for speculation, lacks foundation.	182	Overruled

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<p>4 A. Correct. 5 Q. The subject is "Energy Improvement and 6 Extension Act of 2008," correct? 7 A. Correct. 8 Q. And the date on that is Thursday, December 18 9 around 12:19, correct? 10 A. Correct. 11 Q. Is this one of the emails that Mr. Shepard 12 sent to you with the tax law regarding the transaction? 13 A. That's right. 14 Q. Is this a true and correct copy of the email 15 that Mr. Shepard sent to you? 16 A. It is.</p>				
<p>41:11 (Exhibit 184 marked for identification) 12 Q. Take a look please at what's been marked 13 P l a i n t i f f ' s Exhibit 184. 14 MS. HEALY GALLAGHER: For the record, 15 P l a i n t i f f ' s Exhibit 184 is Bates marked Halverson 16 Roger-00063 through 64. 17 Q. Mr. Halverson, Plaintiff's Exhibit 184 is an</p>			184	

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<p>18 email from Greg Shepard, Greg@bfsmail.com to you at 19 your email address, correct? 20 A. Correct. 21 Q. The subject is solar tax credit info, right? 22 A. Yes. 23 Q. And the date is Saturday, December 20, 2008, 24 right? 25 A. Yes. 42: 1 Q. Mr. Shepard writes, "Roger, Here is some great 2 info on solar tax credits, AMT and incentives. The 3 first part is from SEIA and the second part on bonus 42: 4 depreciation is from a website," and I honestly can't 5 read it. Can you read that? 6 A. It looks like Dsireusa.org. 7 Q. Okay. Mr. Halverson, is this a true and 8 correct copy of an email you received from Mr. Shepard? 9 A. It is. 10 Q. Did you take a look at this information and 11 rely on it in preparing Ms. Lambrecht's return?</p>				

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<p>12 A. Yes, I'm sure I did. 13 Q. Mr. Halverson, do you still have -- well, let 14 me ask a different question. If this transaction 15 occurred in 2008 but you carried back tax effects to 16 2007 did you file a Form 1040X for Ms. Lambrecht for 17 2007? 18 A. I did. 19 Q. Do you have a copy of that? 20 A. Not here. 21 Q. Do you have one at your office? 22 A. I believe I do. Well, let me qualify that. I 23 don't have her tax returns from '7 anymore, and I don't 24 have tax returns prior to 2009 anymore in my system 25 because of the crash that we had. So I do not believe 43: 1 that I have a copy of that anymore. I'm not a hundred 2 percent certain but I don't believe I do.</p>				
<p>43:22 Q. So earlier, Mr. Halverson, you testified that</p>			<p>181</p>	

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<p>23 Ms. Lambrecht came to you with questions about what was 24 happening with her investment in IAS. Do you recall 25 that testimony? 44: 1 A. Yes. 2 Q. And now that we have walked through 3 P l a i n t i f f ' s 181, the contract, do you remember 4 why she was asking questions or what her questions 5 were? 6 A. As I recall it was because she hadn't heard 7 anything or received anything and she just wondered 8 what was going on. 9 Q. And do you mean she hadn't received any money? 10 A. Right, that's part of it, I think. 11 Q. Had she not received any information about her 12 alternative energy systems? 13 A. Not that I -- no, I don't believe so, because 14 I think that's why she was concerned about what was 15 going on. 16 Q. So what happened next?</p>				

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<p>17 A. As I recall, I wrote a letter to them asking 44:18 what was going on. I think it's in there. 19 MS. HEALY GALLAGHER: Mark this 186.</p>				
<p>44:20 (Exhibit 186 marked for identification) 21 Q. Mr. Halverson, I'm handing you what's been 22 marked Plaintiff's Exhibit 186. Would you take a look 23 and read it to yourself and let me know when you're 24 done. 25 A. Okay. 45: 1 Q. For the record, Plaintiff's Exhibit 186 is 2 Halverson Roger-00007. Mr. Halverson, what is 3 Plaintiff's Exhibit 186? 4 A. It is a letter that I sent on behalf of 5 Ms. Lambrecht to IAS and asking or referring to the 6 fact that we had not received any money or any funds 7 from the sales that would be paid to the purchaser.</p>		<p>44:20-47:17. Objection, leading, hearsay, FRE 802; lack of personal knowledge, calls for speculation, lacks foundation; compound.</p>	<p>186</p>	<p>Overruled</p>

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<p>8 In other words, we hadn't, I said we have not 9 received any operations information nor proceeds from 10 any sales to date, and that was what she was concerned 11 about. She likes investments that pay returns. 12 Q. Mr. Halverson, is this the letter that you 13 recalled sending in your prior testimony? 14 A. Yes. 15 Q. And the date on this letter is September 24, 16 2010, correct? 17 A. Yes. 18 Q. And that's on or about the date that you 19 actually sent this letter? 20 A. Oh, yes. 21 Q. Is this the kind of letter that you might send 22 on behalf of your clients in the course of doing 23 business as an accountant? 24 A. I would say normally probably not, because I 25 really have very few clients that would be this</p>				

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<p>46: 1 involved in something like this. 2 Q. But in the event a client is involved in 3 something like this this is the kind of letter you 4 would send? 5 A. If they asked me I would absolutely. 6 Q. Do you know why Ms. Lambrecht asked you to 7 find this information? 8 A. I think mainly because I was the accountant 9 and also because she wasn't involved with the gentleman 10 that introduced her to this in the first place. 11 Q. Do you have any idea why she wouldn't contact 12 IAS herself? 46:13 A. Sure. She wouldn't, she just doesn't do that 14 kind of stuff. 15 Q. Mr. Halverson, as of September 24, 2010 to 16 your knowledge Ilios, LLC had not received any payments 17 from IAS, correct?</p>				

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<p>18 A. That is correct. I know we got one payment. 19 I don't remember when we got it, but there's a copy of 20 the check in my file. And I don't remember when that 21 happened but I believe it was after this. 22 Q. If you had received any money before this 23 letter do you think that you would have noted that in 24 the letter? 25 A. Probably. 47: 1 Q. And why would you have noted it in the letter? 2 A. Well, since we only got the one payment I 3 probably would have referred to the fact that we only 4 received this much to date and it was only one time -- 5 wait a minute. There might have been a second check. 6 I can't remember. The checks are there. But there was 7 one check for \$7500, I remember that one clearly, and I 8 don't remember the date. And then there was a smaller</p>				

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<p>9 one and I don't remember the amount.</p> <p>10 Q. Nonetheless, it's important to you, right, Mr.</p> <p>11 Halverson, to be accurate in the representations you</p> <p>12 make on behalf of your client?</p> <p>13 A. Oh, yes.</p> <p>14 Q. Mr. Halverson, is Plaintiff's Exhibit 186 t h e</p> <p>15 kind of document that you keep in the ordinary course</p> <p>16 of your practice as an accountant?</p> <p>17 A. Yes.</p>				
<p>48:10 Q. Mr. Halverson, do you recognize Plaintiff's</p> <p>11 Exhibit 185?</p> <p>12 A. Yes, I recall having this in my file.</p> <p>13 Q. Do you know where you got Plaintiff's Exhibit</p> <p>14 1 8 5?</p> <p>15 A. Well, obviously Ms. Lambrecht had to have sent</p> <p>16 it to me.</p> <p>17 Q. Why do you think that?</p> <p>18 A. Why do I think that?</p> <p>19 Q. I'll ask it this way. Did this Plaintiff's</p>		<p>48-49. Objection, leading, hearsay, FRE 802; lack of personal knowledge, calls for speculation, lacks foundation.</p>	<p>185</p>	<p>Overruled</p>

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<p>20 Exhibit 158 come directly to you or you think you got 21 it from Ms. Lambrecht? 22 A. I'm pretty sure I got it from her since it was 23 addressed to her. 24 Q. So Plaintiff's Exhibit 185 is addressed to 48:25 Ms. Lambrecht at Ilios, LLC, correct? 49: 1 A. Yes.</p>				
<p>49:13 Q. Would you take a look please at the last page 14 of Plaintiff's Exhibit 185. 15 A. Yes. 16 Q. The last page is entitled "Solar lease bonus 17 fee contract," correct? 18 A. Yes. 19 Q. And this contract purports to be made between 20 International Automated Systems, Inc. and Patty 21 Lambrecht/Ilios, LLC, correct? 22 A. Correct. 23 Q. The first sentence of the first full paragraph 24 there says, "In consideration for (a) the leasing by</p>		<p>49-53. Objection, leading, hearsay, FRE 802; lack of personal knowledge, calls for speculation, lacks foundation; compound.</p>	<p>185 181</p>	<p>Overruled</p>

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<p>25 leasee of IAS's solar lenses as evidenced by execution 50: 1 of the equipment lease agreement dated 3/2/2010." Did 2 I read that correctly? 3 A. Yes. 4 Q. To your knowledge, Mr. Halverson, did 5 Ms. Lambrecht ever execute an equipment lease 6 agreement? Take a look -- are you referring for 7 Plaintiff's Exhibit 181? 8 A. Yes, isn't that an equipment -- oh, purchase 9 agreement, so I don't know. Because this says lease 10 agreement, doesn't it? I don't, no. 11 Q. Did you ever see any document signed by 12 Ms. Lambrecht or Ilios entitled Equipment Lease 13 Agreement? 14 A. Not that I recall. 15 Q. Are you aware of any transaction that 16 Ms. Lambrecht entered into with IAS on March 2, 2010? 17 A. I don't recall, other than what I'm looking at</p>				

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<p>18 right here. 19 Q. Well, take a look at Halverson Roger-65 at the 20 bottom. There purports to be a signature for IAS, 21 correct? 22 A. Yes. 23 Q. But there's no signature for Ms. Lambrecht, 24 right? 25 A. Right. 51: 1 Q. Do you know, Mr. Halverson, did Ms. Lambrecht 2 ever receive any money from any sort of bonus fee? 3 A. I'm not aware of any. 4 Q. Take a look please at the second to last 5 paragraph on the first page of Plaintiff's Exhibit 185. 51: 6 It says, "As far as the system becoming profitable in 7 order to meet the IRS requirements, we implemented a 8 bonus program for all purchases made before the end of 9 2008. However, looking over our contracts somehow you 10 were not signed up for that program. We are sending</p>				

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<p>11 you a copy of the bonus program which you are entitled 12 to." Did I read that correctly? 13 A. Yes. 14 Q. Other than the last page of Plaintiff's 15 Exhibit 185, to your knowledge did Ms. Lambrecht ever 16 sign any sort of bonus fee contract? 17 A. Not to my knowledge. 18 Q. And if she had received any sort of bonus fee 19 income for purposes of Ilios, LLC, that would have been 20 important to you, right? 21 A. Oh, yes. 22 Q. Why? 23 A. Well, it would have been income that she 24 would, that we would have to include on her income tax 25 return. 52: 1 Q. At the top of the second page of Plaintiff's 2 Exhibit 185 the first paragraph says, "We are also in 3 the process of finishing the business plan for the</p>				

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<p>4 solar energy system and its economic advantages in the marketplace over other green energy systems. We hope to have the business plan completed by the end of the second quarter of 2010." Did I read that correctly?</p> <p>8 A. Yes.</p> <p>9 Q. Did you ever see any sort of business plan?</p> <p>10 A. No.</p> <p>11 Q. Do you know if Ms. Lambrecht has a business plan for Ilios, LLC?</p> <p>13 A. For Ilios in regard to this?</p> <p>14 Q. Just any business plan.</p> <p>15 A. No. No, I'm not aware of any.</p> <p>16 Q. The second paragraph there starts with, "We do have power purchase agreements tentatively in place with other companies that have agreed to purchase the power produced from the solar energy estimate once the system is placed in service." Did I read that correctly?</p> <p>22 A. Yes.</p>				

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23 Q. Do you know who those companies are? 24 A. No. 25 Q. Or were? 53: 1 A. No. 2 Q. Have you ever seen any power purchase 3 agreements signed by IAS? 4 A. No.				
53:16 Q. Mr. Halverson, is Plaintiff's Exhibit 185 a 17 true and correct copy of correspondence that you 18 received from Ms. Lambrecht? 19 A. Yes, I believe it is.			185	
54:17 (Exhibit 187 marked for identification) 18 Q. Would you please go ahead and take a look at 19 what's been marked Plaintiff's Exhibit 187, Mr. 20 Halverson. 21 A. Okay. 22 Q. Plaintiff's Exhibit 187 does not have a Bates 23 number but, Mr. Halverson, do you recognize Plaintiff's 24 Exhibit 187? 25 A. I do. 55: 1 Q. What is it?		54-55. Objection, leading, hearsay, FRE 802; lack of personal knowledge, calls for speculation, lacks foundation.	187	Overruled

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<p>2 A. It's a letter from an accounting firm I 3 believe -- well, actually it is from International 4 Automated Systems regarding their auditors conducting 5 an audit of their business, of their statements, and it 6 was asking for information regarding the liability. 7 Q. Mr. Halverson, have you seen Plaintiff's 8 Exhibit 187 before? 9 A. Yes. 10 Q. So is this a true and correct copy of a letter 11 from IAS to Ilios, LLC? 12 A. It is.</p>				
<p>55:25 (Exhibit 188 marked for identification) 56: 1 Q. Mr. Halverson, I'm handing you what's been 2 marked Plaintiff's Exhibit 188. Take a look at that 3 and look up at my weapon you are done. 4 MS. HEALY GALLAGHER: For the record, 5 Plaintiff's Exhibit 188 is Bates marked Halverson</p>		<p>56-57. Objection, leading, hearsay, FRE 802; lack of personal knowledge, calls for speculation, lacks foundation.</p>	<p>188</p>	<p>Overruled</p>

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<p>6 Roger-00066. 7 Q. Mr. Halverson, do you recognize Plaintiff's 8 Exhibit 188? 9 A. I do. 10 Q. What is it? 11 A. It's a copy of a check that Ms. Lambrecht 12 received at the end of 2010, apparently. It says 13 second quarter earnings. 14 Q. Let's take a look through the document here. 15 At the top the letterhead appears to say RaPower3 LLC.</p>				
<p>56:16 Do you see that? 17 A. I do. 18 Q. Had you ever heard of RaPower3 before this 19 date? 20 A. I don't recall. It -- 21 Q. Had you -- you were thinking of something. 22 What were you thinking of? 23 A. I was just trying to go back -- I know I 24 answered the question but I was just trying to go back 25 and it's been so long I can't remember anything.</p>		<p>56-59. Objection, leading, hearsay, FRE 802; lack of personal knowledge, calls for speculation, lacks foundation.</p>		<p>Overruled</p>

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<p>57: 1 Q. Do you have any context for RaPower3 or how it 2 was connected to Ilios or Ms. Lambrecht? 3 A. I don't recall. 4 Q. Sitting here today do you have any 5 understanding of that? 6 A. Not really. I do know that that's where the 7 check came from. And if you'd asked me that earlier I 8 wouldn't have remembered that that was the sender of 9 the check unless I looked at it. 10 Q. Did you ever ask anyone why RaPower3 was 11 paying rather than IAS? 12 A. I don't think so. I don't recall.</p>				
<p>58: 4 Q. Do you have any understanding of what the 5 "third quarters power purchase" might mean? 6 A. Not really. I know that the more important 7 thing was we got a check for \$7500. 8 Q. Why was that important to you?</p>		<p>58-59. Objection, leading, hearsay, FRE 802; lack of personal knowledge, calls for speculation, lacks foundation.</p>	<p>188 181</p>	<p>Overruled</p>

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<p>9 A. Well, it was something, it was something of a 10 return. 11 Q. So in your mind was this check in Plaintiff's 12 Exhibit 188 the payment that was owed from the 13 equipment purchase agreement paragraph 5 in Plaintiff's 14 Exhibit 181? 15 A. I don't know. I don't think we ever actually 16 understood what generated or what cause them to send 17 the check. But for Ms. Lambrecht, if she gets a check 18 that's what she's interested in. It says power 19 purchase on the note that she got. 20 Q. So then if you'll take a look at Plaintiff's 21 Exhibit 181 -- I'll strike that. 22 Actually, do please take a look at Plaintiff's 23 Exhibit 181, paragraph 3B. The equipment purchase 24 agreement says that starting after the fifth 25 anniversary of the agreement Ms. Lambrecht is supposed</p>				

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<p>59: 1 to pay money for each of these alternative energy 59: 2 systems each year. The fifth anniversary would have 3 been December 18, 2013, correct? 4 A. Right. 5 Q. Has Ms. Lambrecht ever paid any additional 6 payments to IAS on or after December 18, 2013? 7 A. Not that I'm aware of.</p>				
<p>59:25 Q. In Plaintiff's Exhibit 188, Mr. Halverson, is 60: 1 this a true and correct copy of both a note and a check 2 that you received? 3 A. Yes.</p>			188	
<p>60:15 Q. So we walked through a few documents that were 16 exchanged among folks around the time that you said 17 Ms. Lambrecht was curious about what was going on with 18 her investment in IAS, right? 19 A. Right. 20 Q. Did you personally hear from IAS in any 21 correspondence directed to you in the course of 2010? 22 A. I don't recall.</p>				

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<p>61:13 (Exhibit 189 marked for identification)</p> <p>14 Q. Please go ahead and take a look at Plaintiff's</p> <p>15 Exhibit 189 and just look up at me when you're done.</p> <p>16 MS. HEALY GALLAGHER: For the record,</p> <p>17 P l a i n t i f f ' s Exhibit 189 is Halverson Roger-00071</p> <p>18 through 73.</p> <p>19 A. Okay.</p> <p>20 Q. Mr. Halverson, do you recognize Plaintiff's</p> <p>21 Exhibit 189?</p> <p>22 A. Yeah, I do.</p> <p>23 Q. It's a series of emails, correct, between you</p> <p>24 and Greg Shepard?</p> <p>25 A. That's right.</p> <p>62: 1 Q. Mr. Halverson, is Plaintiff's Exhibit 189 a</p> <p>2 true and correct copy of this series of emails between</p> <p>3 you and Mr. Shepard?</p> <p>4 A. I believe it is.</p>			189	
<p>64:12 Q. So then back to the first page -- well, I'll</p> <p>13 ask you this. After Mr. Shepard's email on January 19</p>		<p>64-66. Objection, leading, hearsay, FRE 802; lack of personal knowledge, calls for speculation, lacks foundation; lacks relevance FRE 401-402</p>	189	Overruled

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<p>14 saying he was going to forward the email to Neldon</p> <p>15 Johnson did you hear anything from Neldon Johnson as a</p> <p>16 result?</p> <p>17 A. Not that I recall.</p> <p>18 Q. Did you ever hear back from Greg Shepard?</p> <p>19 A. I don't recall.</p> <p>20 Q. So if we look at the first page of Plaintiff's</p> <p>21 Exhibit 189, moving up the page --</p> <p>22 A. That answers the question.</p> <p>23 Q. How does it answer the question?</p> <p>24 A. "I haven't received any information from</p> <p>25 Johnson or you," and this is dated in May.</p> <p>65: 1 Q. So after Mr. Shepard's email in January you</p> <p>2 followed up with an email in May, correct?</p> <p>3 A. Apparently there is.</p> <p>4 Q. And then again at the top of the first page of</p> <p>5 Plaintiff's Exhibit 189</p> <p>there's another email from you</p> <p>6 to Mr. Shepard in June, correct?</p>				

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<p>7 A. Yes.</p> <p>8 Q. After the top email on June 2, did you ever</p> <p>9 hear back from Greg Shepard?</p> <p>10 A. I don't recall. I don't see anything else</p> <p>11 regarding this email sequence here.</p> <p>12 Q. Did you ever hear anything from Neldon</p> <p>13 Johnson?</p> <p>14 A. Not that I recall.</p> <p>15 Q. Since your June 2, 2011 email have you reached</p> <p>16 out to Greg Shepard again?</p> <p>17 A. I don't think I've revisited this since then.</p> <p>18 Q. Have you ever reached out or tried reach out</p> <p>19 to Neldon Johnson?</p> <p>20 A. No. I didn't even remember Neldon Johnson's</p> <p>21 name until I looked at this.</p> <p>22 Q. Since June 2, 2011 have you tried to make any</p> <p>23 contact with IAUS?</p> <p>24 A. Let me think. I can't recall but I think I</p> <p>25 did at some point in time again but I don't have any</p>				

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<p>66: 1 record of it. 2 Q. Do you recall whether you actually made 3 contact with anybody, if you got a 4 response to your 5 outreach? 6 A. I don't recall. 7 Q. If you had; do you think you 8 would remember? 9 A. I'm not sure. 10 Q. Have you ever reached out to 11 anyone at 12 RaPower3? 13 A. Not that I remember. 66:11 Q. Has Ms. Lambrecht, to your knowledge, reached 12 out to anyone about IAUS or this transaction in 2008? 13 A. Not that I'm aware of.</p>				
<p>68: 5 (Exhibit 191 marked for identification) 6 Q. Take a look please at Plaintiff's Exhibit 191. 7 Let me know when you're finished. 8 MS. HEALY GALLAGHER: For the record, 9 P l a i n t i f f ' s Exhibit 191 is Halverson Roger-000777 10 through 82.</p>			<p>191</p>	

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<p>11 Q. Mr. Halverson, do you recognize Plaintiff's</p> <p>12 Exhibit 191?</p> <p>13 A. I do.</p> <p>14 Q. What is it?</p> <p>15 A. It's a copy of the Schedule C from</p> <p>16 Ms. Lambrecht's 2009 income tax return. Did I send</p> <p>17 that to you?</p> <p>18 Q. We can look. I will represent to you that I</p> <p>19 received this from you and that's why it has the Bates</p> <p>20 number it has.</p> <p>21 A. Okay.</p>				
<p>69:25 Q. I know that this is not the Schedule C, it's</p> <p>70: 1 not the first Schedule C that Ilios, LLC, that was</p> <p>2 filled out for Ilios, LLC. So if you can remember can</p> <p>3 you tell me how you arrived at the number in line 13</p> <p>4 for depreciation?</p> <p>5 A. Yeah, there is a depreciation schedule, the</p> <p>6 next page to that.</p> <p>7 Q. So you are on Halverson Roger-78?</p>		<p>69-74. Objection, leading, hearsay, FRE 802; lack of personal knowledge, calls for speculation, lacks foundation; lacks relevance FRE 401-402</p>	<p>181</p> <p>191</p>	<p>Overruled</p>

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<p>8 A. That's correct. So it would have been 9 generated from this information. 10 Q. So the first line of the depreciation report 11 says "50 solar energy systems"? 12 A. Right. 13 Q. And the date acquired was 12/18/08, right? 14 A. Yes. 15 Q. And that's consistent with Plaintiff's Exhibit 16 1 8 1, the date of the equipment purchase agreement, 17 correct? 18 A. 19 That's correct. 20 Q. In the Life column there's a number 5.00? 70:21 A. Yes. 22 Q. What does that mean? 23 A. That means that it would be written off over a 24 five-year period. 25 Q. And the unadjusted cost or basis, in that 71: 1 column it is \$1,275,000, do you see that? 2 A. Yes.</p>				

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<p>3 Q. Where does that number come from?</p> <p>4 A. As I recall it was based upon the purchase</p> <p>5 price of the 50 units for a million-five less -- I</p> <p>6 can't remember, I think I reduced that by half of the</p> <p>7 tax credit that was allowable. Does that sound right?</p> <p>8 Yeah.</p> <p>9 Q. Let's walk through that, step me through that</p> <p>10 so we can get a record here. What did you start with?</p> <p>11 A. The purchase price was a million-five and she</p> <p>12 made a \$450,000 down payment. The purchase price was a</p> <p>13 million-five. The credit that was allowable for the</p> <p>14 purchase of solar equipment was \$450,000. And I</p> <p>15 deducted half of the credit against the purchase price</p> <p>16 to determine the depreciable dollar amount.</p> <p>17 Q. And the credit that was allowable you said was</p> <p>18 \$450,000?</p>				

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<p>19 A. That's right.</p> <p>20 Q. And that's the same amount that Ms. Lambrecht</p> <p>21 paid in her down payment, correct?</p> <p>22 A. It was.</p> <p>23 Q. So then to get the basis reported on the 2009</p> <p>24 depreciation report you took the total purchase price</p> <p>25 of \$1.5 million and you subtracted \$225,000, correct?</p> <p>72: 1 A. Yeah.</p> <p>2 Q. As a result of that second number being half</p> <p>3 of the amount of the \$450,000 total tax credit that was</p> <p>4 available?</p> <p>5 A. Yeah, I believe that's exactly what I did.</p> <p>6 Q. Would you look down at the bottom of the page.</p> <p>7 It is line 32A. There's an X next to the box that says</p> <p>8 "all investment is at risk." Do you see that?</p> <p>9 A. Yes, die.</p> <p>10 Q. Why is that box checked?</p> <p>11 A. Well, at that time we didn't know that it</p>				

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<p>12 wasn't. She had a liability for the purchase price, 13 so -- 14 Q. So in your mind Ms. Lambrecht was committed to 15 pay \$1.5 million? 16 A. That's correct. 17 Q. Has Ms. Almost ever paid any more than the 18 \$450,000 down payment? 19 A. Not to my knowledge. 72:20 Q. Starting on Halverson Roger-79 we see 21 Ms. Lambrecht's Form 3800, the form for general 22 business credit, correct? 23 A. That's correct. 24 Q. In line 6 there's reported a carry forward of 25 general business credit to 2009 in the amount of 73: 1 \$404,298, correct? 2 A. Yes. 3 Q. Do you recall how got to that number? 4 A. Yes. 5 Q. How did you do that? 6 A. When we did the return in 2008 we showed the</p>				

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<p>7 credit for the 450. And at that time we realized we 8 could carry back that credit to 2007. You could go 9 back one year according to the tax act. So we did that 10 and we carried it back and we actually used \$45,702 of 11 that 450 credit. So this is the difference, this is 12 the balance that was not used. 13 Q. Mr. Halverson, I think you were looking at the 14 last page of Plaintiff's Exhibit 191 -- 15 A. Yes, I was. 16 Q. -- in describing that. So does this statement 17 28 here, does this kind of explain how you got to that 18 number on line 6? 19 A. Exactly. 20 Q. And in line 2 on statement 28 the \$45,702, 21 that was used for tax year 2007, correct? 22 A. Correct. 23 Q. Since tax year 2007 have you applied any of</p>				

<p align="center"><i>Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828</i> <i>Deposition of Roger Halverson taken October 18, 2016</i></p>				
<p>Plaintiff Designations – BLUE Defendant Completeness— PURPLE Defendant Counter-Designations – RED (at end)</p>	<p>Defendant Designations – RED Plaintiff Completeness— PURPLE Plaintiff Counter Designations – BLUE (at end)</p>	<p>Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE</p>	<p>Exhibits</p>	<p>Ruling</p>
<p>24 these credits to Ms. Lambrecht's tax returns? 25 A. No. 74: 1 Q. How come? 2 A. She hasn't had any tax liability.</p>				
<p>82: 9 MS. HEALY GALLAGHER: All right, Mr. 10 Halverson. What will happen, what's going to 11 happen now is the court reporter will prepare a 12 transcript based on what we have said, and then you 13 have the opportunity to read the transcript. You 14 can make certain corrections in spelling, things 15 like that, anything that's amiss or you'd like to 16 change, and then sign it. Would you like to do 17 that or would you like to waive reading and 18 signing? 19 THE WITNESS: Gosh, what do you think I should 20 do? 82:21 MS. HEALY GALLAGHER: It's up to you.</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Roger Halverson taken October 18, 2016

Plaintiff Designations – BLUE Defendant Completeness— PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness— PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>22 THE WITNESS: What do people usually do? 23 MS. HEALY GALLAGHER: People do either. If 24 you would like to read and sign then go ahead and 25 take that opportunity. 83: 1 MR. HEIDEMAN: The transcriptionist will send 2 it. 3 MS. HEALY GALLAGHER: You'll get a copy from 4 the court reporter. 5 THE WITNESS: I'd like that. I think I should 6 look at it. 7 MS. HEALY GALLAGHER: Then we are off the 8 record today subject to reopening as needed for 9 additional documents. Thank you, Mr. Halverson. 10 (Deposition concluded at 1:18 p.m.)</p>				
DEFENDANT COUNTER-DESIGNATIONS	PLAINTIFF COUNTER-DESIGNATIONS			

Instructions: One form should contain all designations for a witness. Plaintiff Designations (column 1) and Defendant Designations (column 2) will show the full deposition text that the party proposes to read in its case-in-chief. Completeness designations are proposed by the other party, under

Fed. R. Civ. P. 32(a)(6), to be read with the designations. Counter-designations are read following the designations and completeness designations, similar to cross examination. This form should be provided in word processing format to the other party, who then will continue to fill in the form. The form is then returned to the proposing party for review, resolution of disputes, and further editing. The parties should confer and file a final version in PDF format using the event "Notice of Filing" and also submit a final word processing copy to the court at dj.nuffer@utd.uscourts.gov, for ruling.

All objections which the objecting party intends to pursue should be listed, whether made at the deposition, as with objections as to form, or made newly in this form, if the objection is of a type that was reserved.

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Brian Zeleznik taken August 2, 2016*

Plaintiff Designations – BLUE Defendant Completeness— PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness— PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
PLAINTIFF DESIGNATIONS	DEFENDANT -DESIGNATIONS			
<p>Annotation: 5: 1 (Whereupon the witness was sworn 2by the reporter.) 3 MR. MORAN: Good morning, 4 Mr. Zeleznik. 5 MR. ZELEZNIK: Good morning. 6 MR. MORAN: We're on the record in 7 the case of United States versus RaPower, et al. on 8 August 2nd at 9 a.m. central time. 9 My name is Chris Moran, and I'm with 10 the U.S. Department of Justice Tax Division 11 appearing on behalf of the United States. 12 If all the attorneys in the room 13 could please state their appearances on the record 14 starting with Mr. Jones. 15 MR. JONES: Paul Jones, the attorney 16 for the witness. 17 MR. HEIDEMAN: Justin Heideman here</p>	<p>1 Q. Have you ever been to Utah? 2 A. Yes. 3 Q. Was it connected with RaPower-3 or 4 solar lenses? 5 A. No. 6 Q. Have you ever spoken to anyone or do 7 you know anyone who has visited? 8 A. Yes. 9 Q. Who? 10 A. Frank Lunn. 11 Q. Have you discussed Mr. Lunn's visit? 12 A. Yes. 13 Q. What did he tell you? 14 A. He said that he was impressed with 15 the operation. 16 Q. Anything else? 17 A. He was confident that things were 18 moving in a positive direction.</p>	<p>Defendants object to the designation of substantially all of the deposition in Plaintiff's designation. The deposition was not designated at the time of noticing or taking the deposition to be a trial deposition or to preserve the specific testimony. See Defendants' objections [Doc. 295 and Doc. 347].</p> <p>5:2-6:19. Objection, not relevant, FRE 401-402.</p> <p>88:1 -12, Objection, Not relevant, Fed. R. Evid. 401, 402</p> <p>88:13-18, Objection, Hearsay, Fed. R. Evid. 801(c), 802</p>		<p>Overruled</p> <p>Overruled</p> <p>Overruled</p> <p>Sustained</p>

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Brian Zeleznik taken August 2, 2016*

Plaintiff Designations – BLUE Defendant Completeness— PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness— PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>18 present for the other defendants other than those 19 represented by Don Rea. 20 MS. HEALY GALLAGHER: And Erin Healy 21 Gallagher for the United States Department of 22 Justice. 23 MR. MORAN: And for the record, 24 Mr. Donald Rea who represents defendants Greg 25 Shepard and Roger Freeborn is not present, so on the 6: 1 phone is our colleague Erin Hines. 2 For the record, this deposition will 3 be taken in accordance with the Federal Rules of 4 Civil Procedure. 5 We're in the second day of 6 depositions here in Springfield. Several exhibits 7 were marked yesterday. Counsel for the United 8 States has had custody of those exhibits overnight. 9 We'll be leaving those exhibits as well as any other</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Brian Zeleznik taken August 2, 2016

Plaintiff Designations – BLUE Defendant Completeness— PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness— PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>10 exhibits that we mark today with the court reporter 11 when we conclude with the deposition transcript. 12 13 BRIAN ZELEZNIK 14 called as a witness herein, having been first duly 15 sworn on his oath, was examined and testified as 16 follows: 17 18 DIRECT EXAMINATION 19 BY MR. MORAN:</p>				
<p>8:14 Q. Mr. Zeleznik, we're trying to get an 15 accurate record of your knowledge of the facts of 16 this case, so therefore, I have to ask you, is there 17 anything that would preclude you from answering 18 questions truthfully today? 19 A. No. 20 Q. Are you feeling well? 21 A. Yes. Thank you. 22 Q. Are you on any medications that would 23 preclude you from remembering things or answering</p>	<p>139: 9 Q. Have you ever met Neldon Johnson? 10 A. No. 11 Q. Have you ever spoken to him on the 12 phone? 13 A. No. 14 Q. Where have you seen him? 15 A. In videos. 16 Q. Anywhere else? 17 A. No.</p>	<p>8:14-13:1. Objection, not relevant, FRE 401-402.</p>		<p>Overruled</p>

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Deposition of Brian Zeleznik taken August 2, 2016*

Plaintiff Designations – BLUE Defendant Completeness— PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness— PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>24 truthfully? 25 A. No. 9: 1 Q. Have you had any alcohol in the last 2 eight hours? 3 A. No. 4 Q. I'd like to start out asking you a 5 few questions about your background just to 6 understand how you came to be involved in the 7 subject of this case. 8 Did you graduate from high school? 9 A. I did. 10 Q. Okay. And can you give me all the 11 formal education you've had since graduating from 12 high school? 13 A. I got my undergrad at Augustana 14 College in Rock Island, Illinois. 15 I got my masters in education 16 administration from Illinois State University in 17 2006. 18 I'm currently employed by LeRoy</p>				

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 Deposition of Brian Zeleznik taken August 2, 2016*

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<p>19 Schools, LeRoy, Illinois. I'm the high school 20 athletic director, head football coach, head track 21 coach, and I do teach a couple of courses at the 22 high school. 23 Q. Okay. What is your major in your 24 undergrad? 25 A. My undergrad was secondary education, 10: 1 physical education. 2 Q. And when did you graduate from 3 college? 4 A. '98. 5 Q. 98? 6 A. Yeah. 7 Q. And then your master's was in 2006? 8 A. Yes. 9 Q. When did you start teaching at LeRoy 10 Schools? 11 A. 1999. 12 Q. Okay. Is that right after you 13 graduated from college? 14 A. Yeah. I had a small stint as a</p>				

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Deposition of Brian Zeleznik taken August 2, 2016*

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<p>15 teacher's assistant at a junior high in Normal, but 16 my first full-time position was at LeRoy, yeah. 17 Q. Okay. When you came into LeRoy, what 18 was your -- did you start out as the athletic 19 director? 20 A. Oh, no, no. I was just a physical 21 education instructor from '99-2000 to the spring of 22 '04. So '04-05 was my first year as the athletic 23 director. 24 Q. Okay. When you started in 1999, were 25 you coaching at all? 11: 1 A. I was, yeah. I was not the head 2 coach. I was an assistant coach for -- I did 3 football. I did basketball. I did baseball 4 coaching, teaching physical education at the high 5 school level. 6 Q. Where did you graduate from high</p>				

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Deposition of Brian Zeleznik taken August 2, 2016*

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<p>7 school? 8 A. LeRoy High School; I was born and 9 raised there. 10 Q. So you came back home? 11 A. Yeah. I'm doing exactly what my 12 father did. 13 Q. Oh, really. 14 A. A little bit of nepotism I guess you 15 could say, but yeah. 16 Q. So did you play sports at LeRoy? 17 A. I did. 18 Q. Did you play for your dad? 19 A. I did. 20 Q. What sports did you play? 21 A. Football, basketball, baseball. 22 Q. Did your dad coach all three of 23 those? 24 A. No. He just did football. 25 Q. Okay. And did he teach P.E. 12: 1 A. No. He was an anatomy/physiology 2 teacher. 3 Q. Okay.</p>				

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Deposition of Brian Zeleznik taken August 2, 2016

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<p>4 A. As well as the athletic director and 5 dean of students. 6 Q. And who was your father? 7 A. Jim Zeleznik. 8 Q. And when did he retire? 9 A. He retired in 2004? Yeah, he had to 10 have, 2004, because I became the AD in '04-05, so 11 yeah, his last year was '04. 12 Q. So you teach P.E., and you're a 13 coach? 14 A. Uh-huh. 15 Q. For it sounds like two sports? 16 A. Two sports. 17 Q. Football and track? 18 A. Uh-huh. I teach P.E. for one period. 19 The rest of the day I have administrative duties 20 associated with the athletic director position. 21 So I'm really 7/8 administrator, 1/8 22 in the classroom as they need me. 23 Q. And what are your duties as the AD?</p>				

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Plaintiff Designations – BLUE Defendant Completeness— PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness— PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>24 A. I schedule all athletic events, 25 supervision of athletic events. I schedule 13: 1 officials for athletic events. That's about 90 2 percent of it.</p> <p>3 Q. Okay. And that's all athletic events 4 for all sports at LeRoy Schools?</p> <p>5 A. Yes, that's correct.</p>				
<p>14:13 Q. About how many hours a week would you 14 spend carrying out your athletic director duties?</p> <p>15 A. Oh, I would say -- just depends. If 16 it's football season, to complete my duties, all of 17 my duties, I'm probably putting in 60 hours a week.</p> <p>18 Out of season, some of the winter, 19 it's probably closer to 45 to 50. I mean, that's a 20 rough guess. That's a rough guess.</p> <p>21 In the spring, it's probably 45 to 22 50.</p>	<p>145: 5 Q. You testified that at first you 6 looked on the International Automated Systems 7 website before there was a RaPower-3 website?</p> <p>8 A. Yeah.</p> <p>9 Q. Do you recall?</p> <p>10 A. I do recall that, yes.</p> <p>11 Q. What information do you recall being 12 on International Automated Systems website?</p> <p>13 A. I don't know. I mean, it was too 14 long ago. I couldn't tell you specifics.</p> <p>15 Q. Do you recall there being any 16 information on the technology?</p>	<p>14:13-15. Objection, not relevant, FRE 401-402.</p> <p>145:5 -25, Objection, not timely disclosed pursuant to Fed. R. Civ. P. 26(a)(3)(C) and the Trial Order (ECF Doc. No. 288; see also Defendants' designations in Defendants' pretrial disclosures (ECF Doc. No. 294).</p>		<p>Sustained</p> <p>Sustained</p>

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Plaintiff Designations – BLUE Defendant Completeness— PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness— PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
	<p>17 A. I can't recall. 18 Q. Do you recall there being any 19 information on federal income taxes? 20 A. No. 21 Q. Do you remember there being any 22 information on depreciation of lenses? 23 A. No. 24 Q. Do you recall there being any 25 information on solar tax credits?</p> <p>141: 1 A. No. 2 Q. You've testified, I believe, I don't 3 recall. 4 A. Right. 5 Q. Is that a fair characterization of 6 your testimony? 7 A. Yeah. I don't recall what was on 8 that website period. I just don't. 9 Q. Do you recall if it was similar 10 information that's now on RaPower-3 website?</p>			

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	11 A. No. 12 Q. No, you don't recall? 13 A. I don't recall what was on that 14 website.			
15: 3 Q. Any other formal education? 4 A. No. 5 Q. How about informal education? 6 A. What would that be? 7 Q. Classes you take. 8 A. No. I have not taken any more 9 classes since I've received my master's. 10 Q. In any subject? 11 A. Any subject. 12 Q. Have you had any training in tax? 13 A. T-a-x tax? 14 Q. Yes. 15 A. No. 16 Q. How about finance? 17 A. No. 18 Q. What businesses are you involved 19 with? 20 A. I have an independent business,	146: 25 Q. Before the break, we talked about how 147: 1 many lenses you purchased. 2 A. Yes. 3 Q. Did anyone help you decide how many 4 lenses to purchase? 5 A. No. 6 Q. That was all you? 7 A. Yes.			

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<p>21 Zeleznik Solar Lenses. I'm the owner of 145 solar 22 lenses. 23 Q. Any other business? 24 A. No. 25 Q. Where did you get those lenses from? 16: 1 A. I purchased those lenses from 2 RaPower. 3 Q. Mr. Zeleznik, do you recall getting a 4 subpoena from the government for documents? 5 A. I do. 6 Q. How did you get that? 7 A. A gentleman walked up to our door and 8 said, I have a subpoena, and that was it is. I 9 signed it. 10 Q. What did you do in response to that 11 subpoena? 12 A. Compiled documents and sent what was 13 asked. 14 Q. Did you talk to anyone about 15 preparing your response?</p>				

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<p>16 A. I sent an inquiry to Dr. Shepard and</p> <p>17 said I've received the subpoena.</p> <p>18 His instructions to me were to just</p> <p>19 do what it asked. He had mentioned Mr. Jones as</p> <p>20 well, but other than that, that was it.</p> <p>21 So I just followed the instructions</p> <p>22 on the subpoena and sent the information.</p> <p>23 Q. How did you communicate with</p> <p>24 Mr. Shepard about that?</p> <p>25 A. I believe I placed a phone call.</p>				
<p>17: 5 Q. Can you tell me where you looked for</p> <p>6 the documents?</p> <p>7 A. In my files and on the RaPower-3 site</p> <p>8 in my log-in member area.</p> <p>9 Q. So you have a log-in to RaPower?</p> <p>10 A. Uh-huh. Yes, yes. Sorry.</p> <p>11 Q. Can you tell me what information you</p>	<p>148: 15 Q. Did any of the defendants in this</p> <p>16 case tell you what type of business you were in?</p> <p>17 MR. JONES: I'm going to object based</p> <p>18 on vagueness of the question.</p> <p>19 A. I mean, through the process, you</p> <p>20 learn that you're in the solar lens business.</p>			

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<p>12 access there? 13 A. When I access my log-in member area 14 at RaPower, I can see the invoices for the 15 purchasing of the lenses that I bought. 16 I can also see payments made on there 17 as well, so payments I made towards the principal 18 that I owed on the lenses. They keep track of that 19 for me. 20 Q. Anything else? 21 A. I can also see the two individuals 22 that I sponsored on there as well and their 23 activity. 24 Q. What type of activity? 25 A. Lenses purchased. 18: 1 Q. How about payments made? 2 A. By them, no, no, I can't access their 3 payment information. 4 Q. And you printed out information from</p>	<p>21 I couldn't tell you a specific person 22 that came to me and said this is what you're doing 23 specifically. 24 Q. Okay. Do you recall any materials 25 you received on that? 149: 1 A. I don't.</p>			

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Plaintiff Designations – BLUE Defendant Completeness— PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness— PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>5 the RaPower-3 website and produced it to the 6 government? 7 A. I did, yes, I did. 8 Q. And you mentioned other documents you 9 had in your files? 10 A. Tax, you know, 1040s. I've got, oh, 11 what would you call them, stubs or receipts for 12 money I've received through my business so records 13 of that, of deposits, records of deposits into my 14 business savings account that I have for this. 15 There were a number of, you know, 16 operation and maintenance agreement forms for the 17 leasing of my lenses. 18 Q. Okay. And after you gathered those 19 documents, what did you do with them? 20 A. Gathered them, copied them. So I've 21 got them all on file, and then I send them off.</p>				

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<p>22 Q. Who did you send them to? 23 A. Peoria. That's where they went. 24 Q. Via... 25 A. Via -- I don't know where they were 19: 1 going from Peoria. I'm trying to think of the 2 person that was on the subpoena. I can't remember. 3 I'm sorry. Maybe D.C., but no, definitely dropped 4 them off at the circuit court or federal courthouse 5 in Peoria. 6 Q. Okay. You mentioned a, you called 7 him Dr. Shepard that you spoke to? 8 A. Yes. 9 Q. Who is Dr. Shepard? 10 A. Greg Shepard who, I've known him as 11 the...I don't know if he was the owner or what, but 12 I knew him as a part of Bigger, Faster, Stronger, 13 not personally, just by name. By being in high</p>				

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<p>14 school athletics, Bigger, Faster, Stronger is a very 15 respected business that works with interscholastic 16 athletes. 17 So that's where I knew him from, and 18 Roger Freeborn as well. Both of them were involved 19 in Bigger, Faster, Stronger, so that's where, you 20 know. Like I said, I didn't know him at all but 21 just knew the services they provided for schools 22 through training, and I also know him as a person 23 that is involved with RaPower-3. 24 Q. How is he involved with RaPower-3? 25 A. I don't know. I don't know his 20: 1 specific title. 2 Q. We'll talk more about him in a 3 minute. 4 A. Okay. 5 Q. You mentioned Bigger, Faster, 6 Stronger. 7 A. Yes.</p>				

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<p>8 Q. When did you first hear of Bigger, 9 Faster, Stronger? 10 A. Oh, I couldn't give you a specific 11 date. They've been around forever. They provide 12 training regimens for high schools and provide 13 athletic equipment. 14 Q. Do you remember Bigger, Faster, 15 Stronger from when you were a high school athlete? 16 A. Uh-huh, yes. We actually did a lot 17 of their training programs going through high 18 school. 19 Q. You used their training programs? 20 A. Uh-huh, yes, we did. 21 Q. So as far as you know, they've been 22 around for at least 25 years? 23 A. Absolutely, yeah, absolutely. 24 I can remember, not to get 25 sidetracked, I can remember watching a video on how</p>				

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<p>21: 1 to properly train in the weight room that was quite 2 entertaining that came from Bigger, Faster, Stronger 3 that Dr. Shepard, Greg Shepard, was in. 4 Q. So did you know Greg Shepard when you 5 were a high school athlete? 6 A. I knew him as the own of Bigger, 7 Faster, Stronger, if I even connected that back 8 then, yeah. That's where I had heard of him before. 9 Q. When was the first time you met 10 Mr. Shepard? 11 A. I've never met him personally. 12 Q. You've never met him? 13 A. No, I have not. 14 Q. How about Roger Freeborn, when was 15 the first time you met him? 16 A. I met Roger Freeborn in August of 17 2009. 18 Q. Okay. All right. You mentioned that</p>				

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<p>19 you became familiar with Roger Freeborn or you met 20 Roger Freeborn in August 2009? 21 A. That's correct. 22 Q. Okay. Had you ever heard that name 23 before? 24 A. I just knew he was involved with 25 Bigger, Faster, Stronger. 22: 1 Q. Do you know what his -- 2 A. Coach Freeborn, yeah. 3 Q. Do you know what his role is with 4 Bigger, Faster, Stronger? 5 A. I think he helped train and implement 6 their programs of Bigger, Faster, Stronger. 7 Q. Would high schools have to buy the 8 program from Bigger, Faster, Stronger? 9 A. I've never done it as an 10 administrator so I couldn't tell you how that 11 process worked. 12 Q. Okay. Do you know how Bigger, 13 Faster, Stronger makes money?</p>				

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<p>14 A. I do not. I know they sell athletic 15 equipment. 16 Q. What types of athletic equipment? 17 A. Weight training, weight training 18 equipment to high schools. 19 Q. So they sell weights? 20 A. Uh-huh, and racks and bars, yeah, 21 dumbbells, all those things. 22 Q. Do they manufacture them? 23 A. That I have no idea. 24 Q. Are there weights in your high 25 school? 23: 1 A. Yes. 2 Q. Are they purchased through Bigger, 3 Faster, Stronger? 4 A. No, I don't think so. 5 Q. You mentioned an entity known as 6 RaPower-3? 7 A. Yes. 8 Q. And that you purchased lenses from 9 them? 10 A. Yes.</p>				

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<p>11 Q. About when did you become familiar</p> <p>12 with RaPower-3?</p> <p>13 A. In August of 2009.</p> <p>14 Q. And did that coincide with meeting</p> <p>15 Roger Freeborn?</p> <p>16 A. It did.</p> <p>17 Q. How did that occur?</p> <p>18 A. I received an e-mail about a program</p> <p>19 to be able to potentially provide income that was</p> <p>20 sent. It looked interesting, and so I contacted</p> <p>21 Roger Freeborn and asked if he would like to explain</p> <p>22 it to me a little bit more. I thought it was a</p> <p>23 pretty cool idea, so he came and talked to me about</p> <p>24 it.</p> <p>25 Q. And who was that e-mail from?</p> <p>24: 1 A. I don't remember. I don't remember</p> <p>2 if it was Freeborn or Shepard.</p> <p>3 Q. Was it one of the two?</p> <p>4 A. I think it was but I can't remember</p>				

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<p>5 which. 6 Q. And you said it was a source of 7 income? 8 A. Yes. 9 Q. Can you tell me how that source of 10 income worked? 11 A. Well, I mean, the background behind 12 getting into setting up a business, my wife and I 13 were looking for a third source of income, so we 14 were just looking at opportunities. She looked at 15 hers and I looked at mine, and I came across this, 16 and we have our oldest child, Abraham has Fragile X 17 Syndrome which is a genetic disorder, and when we 18 received that diagnosis...he's 11...we received that 19 diagnosis around 2006, 2007, we realized that 20 Abraham is going to be living with us the rest of 21 our lives and living with someone after we're gone.</p>				

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<p>22 So it was at that point that we 23 decided that we needed a third income to be able to 24 get in a spot financially where Abraham can be taken 25 care of. 25: 1 So we set up a trust fund and just 2 made the choice that any money that we could make 3 from a third income could go into the trust fund. 4 So we then had our second child who 5 was typical developing, and then we had our third 6 child who doesn't have Fragile X but she has a birth 7 defect in her corpus callosum, so she has 8 significant motor expressive language and emotional 9 deficiencies, so she as well is going to be living 10 with us for the rest of our life and then with 11 someone after that. 12 So it became very important for two</p>				

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<p>13 reasons for us to find a third source of income. 14 One, it would be completely unfair to 15 our middle child to have the financial burden and 16 the caregiver burden of taking care of his brother 17 and sister, not that he's not going to be involved 18 but, you know, just the sole provider. 19 And two, we needed to be in a 20 situation financially where they could stay in their 21 own home, especially after my wife and I are gone, 22 where they can stay in their home and care providers 23 can take care of them. 24 So we felt like if we could find a 25 source of income to help with that over a 30 to 26: 1 40-year period and develop that fund, we wouldn't be 2 as scared. 3 Q. Understood. 4 A. I just wanted to get into the reason.</p>				

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<p>5 That's why when I saw this, given my 6 responsibilities to our school and community, and my 7 wife is a therapist, and our responsibilities at 8 home, which is very unique compared to a lot of 9 families, this was a great opportunity because it's 10 not very disruptive to all our other 11 responsibilities. It's something I can manage as a 12 side, as a small side business. 13 Q. Understood. 14 We'll talk a little bit more about 15 your business, but I'd like to backtrack a little 16 bit. I should've asked you about this in the 17 beginning. 18 You mentioned your wife? 19 A. Yes. 20 Q. So you are married? 21 A. I am married. 22 Q. What's your wife's name? 23 A. My wife's name is Amy Zeleznik.</p>				

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<p>24 Q. How long have you been married?</p> <p>25 A. We've been married since May 4, 2002.</p> <p>27: 1 Q. Where did you meet?</p> <p>2 A. We met in junior high. Then we broke</p> <p>3 up and then we dated in high school. Then we broke</p> <p>4 up and six years later, by chance, we ran into each</p> <p>5 other and we were married. It's a long story.</p> <p>6 Q. So you were married in 2002?</p> <p>7 A. Right.</p> <p>8 Q. And you mentioned three children?</p> <p>9 A. Yes.</p> <p>10 Q. What are their names?</p> <p>11 A. Abraham is the oldest, Bohdan</p> <p>12 (B-o-h-d-a-n) is the middle child, and then Aurelia</p> <p>13 (A-u-r-e-l-i-a) is our youngest.</p> <p>14 They're 11, 9 and 6.</p> <p>15 Q. And besides the health issues you</p> <p>16 just described for the oldest and the youngest, is</p>				

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<p>17 everyone else in the family healthy?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Glad to hear.</p> <p>20 A. Thank you.</p> <p>21 Q. And your parents are...</p> <p>22 A. Jim Zeleznik and Carol Zeleznik.</p> <p>23 Q. Are they both still living?</p> <p>24 A. They are. They're watching children</p> <p>25 right now in fact.</p> <p>28: 1 Q. And what does your wife do for a</p> <p>2 living?</p> <p>3 A. She's a speech language pathologist.</p> <p>4 Q. Where?</p> <p>5 A. She's the director of therapy at I</p> <p>6 think it's called Liberty Village in LeRoy, assisted</p> <p>7 living facility in LeRoy, and then she does</p> <p>8 independent home visits through a company I think.</p> <p>9 I don't know specifically the company that she works</p> <p>10 with, but she does at-home therapy services for</p>				

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<p>11 people, for elderly in Bloomington-Normal 12 specifically. 13 Q. All right. How many hours a week 14 does your wife work? 15 A. She works I would say 40 on the 16 average. 17 Q. Average? 18 A. Yeah. 19 Some weeks it's more, some weeks it's 20 less; you know, like 32 to 46. Just depends on 21 clients.</p>				
<p>29: 4 About how many hours outside of work 5 do you and your wife spend caring for your children? 6 A. Well, this time of year I'm pretty 7 much 40 hours a week because I have summers off so I 8 try to -- no, no, that's not accurate. I would say 9 30 hours a week because I try to go in about 10</p>	<p>162: 15 Q. I see the phrase "We have your back." 16 A. Yes. 17 Q. What does that mean? 18 A. That means that they are supportive 19 of us. 20 MR. JONES: Objection on that as 21 being vague. 22 Q. And then below that in capital</p>	<p>29-30. Objection, not relevant, FRE 401-402.</p>		<p>Sustained as to 29:4 – 30:12 and Overruled as to 30:13 – 30:25</p>

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<p>10 hours a week to the school. Otherwise I'd get 11 swamped. 12 During the school year, our parents 13 watch them I would say on the average from 8 a.m. 14 to -- well, no, they go to school now. 15 Jeez. Sorry. Let me do this in my 16 head. 17 When the school year begins, it just 18 depends if Aurelia goes full-time this year, so 19 you're looking at noon to 4 or 5 o'clock. 20 Q. That she's at school? 21 A. For Aurelia at home with a 22 grandparent. 23 Abraham and Bohdan will go full days 24 once school begins, so then a grandparent will pick 25 them up, and then from 3 to 4, 3 to 5, all depending 30: 1 on Amy's schedule...this is in the fall, because in</p>	<p>23 letters it says "I WILL HELP YOU IN THE FIRST 24 STAGE." 25 MR. JONES: Not a question. 163: 1 Q. My question to you is what did that 2 mean to you? 3 MR. JONES: Objection. Vague. 4 A. That they were very supportive of us 5 going through the process of being audited. 6 Q. Okay. And then in the very last 7 sentence in capital letters, it says THAT'S WHY I 8 WANT YOU TO CALL." 9 Do you see that? 10 A. Yes. 11 Q. Is that Greg Shepard telling you to 12 call him? 13 A. Yes. 14 Q. Did you call him? 15 A. I did. 16 Q. What did he tell you? 17 A. He told me to give the IRS everything 18 that they ask for. Answer every question to the</p>			

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<p>2 the fall I'll get home at probably 7 3 o'clock after 4 3 practice. 5 4 In the winter, if I don't have 6 supervision duties, then I'll pick 7 up the kids 8 6 immediately after school, and 9 we'll go home and I'll 10 7 be with them. 11 8 Q. All right. Is it fair to say that 12 9 when you and your wife aren't at 13 work, you're taking 14 10 care of your children? 15 11 A. Yes, absolutely. I mean, we 16 don't 17 12 get away much, no.</p>	<p>19 best of your knowledge and everything will be okay. 20 20 That was the extent of the 21 21 conversation. 22 22 Q. Did he send you any 23 materials? 24 23 A. I don't remember. Honestly, 25 I don't 26 24 remember if he did or not. 27 25 Q. Did Greg Shepard help you? 28 164: 1 A. During the auditing 29 process? 30 2 MR. JONES: Objection. Vague. 31 3 A. If he did, I don't remember 32 4 specifically how he helped.</p>			
<p>30:14 All right. Getting back to the 31 15 entity known as RaPower-3, you 32 already mentioned 33 16 that you purchased lenses from 34 them? 35 17 A. I did. 36 18 Q. And you became aware of 37 them in 38 19 August of 2009? 39 20 A. Of their existence, yeah, of 40 the 41 21 program. 42 22 Q. Okay.</p>	<p>214: 25 Q. A moment ago, you were asked about 215: 1 Exhibit 87. You indicated that you were told 2 specifically that you could take these tax credits. 3 Is that what was actually said to 4 you. 5 5 A. I.. 6 6 (Pause) 7 7 A. I mean, I can't say for sure if I was 8 8 told or that I was advised or...</p>			

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<p>23 A. And then the first purchase was made 24 in I want to say late 2009, early 2010, somewhere in 25 there. I'd have to double check. 31: 1 Q. And you learned of RaPower-3 from 2 Greg Shepard or Roger Freeborn? You don't recall 3 which? 4 A. Roger Freeborn. I don't know who 5 sent the original information on e-mail. Roger 6 Freeborn explained it. 7 Q. Okay. How did he explain it? 8 A. The thing I remember most first was 9 the bonus contract that was available from IAUS. If 10 you purchased lenses, they had a very generous 11 incentive that if you purchased lenses, you could 12 become part of a bonus program with IAUS as an 13 incentive to purchase. 14 And then the other part that he 15 explained in detail was the leasing piece where, you</p>	<p>9 Q. Did you ever receive any instruction 10 to consult with an independent tax preparer? 11 A. I feel like that they always provided 12 that caveat on some of their, not always but on some 13 of their information, that you still need to discuss 14 it with your CPA.</p>			

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<p>16 know, over -- and this is where everything I said 17 previously comes in. You know, over a -- you're 18 looking at an annual income from leasing your 19 equipment over a 30, 40-year period, and so that 20 kind of, you know, perked me up. Oh, wow! So this 21 is something that we could put away over time, a 22 long period of time if I can get it up and running. 23 Q. So you expected that annual income 24 from the leasing side would help support your 25 children? 32: 1 A. Absolutely, yeah, absolutely. 2 And the bonus was, that would be 3 awesome if it happened, but it was more the leasing 4 of the equipment piece. 5 Q. You mentioned the bonus contract and 6 that piqued your interest. 7 A. Uh-huh, yes.</p>				

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<p>8 Q. How did the bonus contract work?</p> <p>9 A. I knew you were going to ask that.</p> <p>10 It's a percentage of IAUS sales.</p> <p>11 So the first so many dollars of sales</p> <p>12 that they make or, you know, a certain allotment of</p> <p>13 sales that they make, a percentage of that money was</p> <p>14 going to go towards you for purchasing lenses. It</p> <p>15 was an incentive-based program that if you purchased</p> <p>16 lenses, IAUS would have this bonus contract.</p> <p>17 I know it was like they were giving</p> <p>18 out a \$6,000 bonus per lens at one point, and then</p> <p>19 it was a \$2,000 per lens bonus at one point, and now</p> <p>20 the bonus program is done. Obviously, there's only</p> <p>21 so much, you know, I would assume money that you</p> <p>22 could put towards incentive programs like that, but</p>				

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<p>23 I was able to purchase lenses under those bonus 24 programs. 25 Q. All right. You said at one point 33: 1 there was a \$6,000 bonus per lens? 2 A. Uh-huh. 3 Q. How much did you buy each lens for? 4 A. \$1,050 upfront, and then I paid the 5 rest of it over time. 6 Q. How much was the rest of it? 7 A. I want to say like 3,500 was the 8 total. 9 I'd have to look at my paperwork, so 10 yeah. 11 Q. So you would spend 1,050? 12 A. Uh-huh. 13 Q. And then the remainder, which you 14 think is about 3,500, over time? 15 A. I don't think that's the -- I think 16 that's the total cost, so you're looking at 2,500 17 roughly.</p>				

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<p>18 Q. As the remainder? 19 A. Yes, that you paid for over time. 20 Q. So you'd pay \$3,500 total? 21 A. Correct. 22 Q. And you'd get a bonus of \$6,000? 23 A. For buying into the program, yes. 24 Q. That's a pretty good return, isn't 25 it? 34: 1 A. I would say so, yes. 2 Q. When did you get that bonus? 3 A. I've not received it yet. 4 Q. Do you know why you haven't received 5 the bonus? 6 A. I would assume because they have not 7 made the allotment of money to be able to pay the 8 bonuses. 9 Q. Who's they? 10 A. IAUS who the contract is with. 11 I would love to receive that bonus. 12 Q. And you mentioned that IAUS would pay</p>				

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13 that bonus based on a portion of their sales? 14 A. Uh-huh.				
34:17 A. The way the contract reads to me is 18 that a percentage of their sales will be part of 19 that bonus program. 20 Q. Have you asked anyone why you haven't 21 received a bonus? 22 A. No. 23 Q. If you were going to ask someone, who 24 would you ask?				
35: 3 A. I don't know. That's a good 4 question. 5 Q. And your bonus is contingent on 6 IAUS's sales? 7 A. Uh-huh, yes.				
35:10 Q. What does IAUS sell?				
35:14 A. All that I am aware of is that 15 they -- I don't know specifically what they sell. 16 Q. Do you believe they sell something?				

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<p>17 A. I do, I do. 18 Q. And you're expecting a bonus, to 19 receive a bonus at some point in the future? 20 A. I am. 21 Q. You mentioned leasing. 22 A. Yes. 23 Q. Can you tell me how the leasing part 24 of it works? 25 A. What I know about the leasing part is 36: 1 that there's an operation and maintenance agreement. 2 I lease my lenses to be used as a part of a 3 mechanism that will create energy of some sort, and 4 I get \$150 a year per lens to do that. 5 Q. All right. You mentioned a 6 mechanism. 7 A. Yes. 8 Q. What is that? 9 A. I couldn't explain it. 10 Q. Okay. 11 A. I own the lenses. I lease the 12 lenses. 13 Q. Who do you lease them to?</p>				

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<p>14 A. I lease them to LTB. 15 Q. And what does LTB do with the lenses? 16 A. They use them through advertising, 17 research and development, production, putting them 18 into these devices that create energy. 19 Q. Do they create energy now? 20 A. I don't know. 21 Q. Do you know if they've ever created 22 energy? 23 A. I've seen videos of the lenses 24 creating heat which could be used to create energy. 25 Q. Okay. What do you understand the 37: 1 term energy to be? 2 A. In this case as it pertains to my 3 lenses, my lenses are being used as a part of a 4 mechanism to create heat. 5 Heat is energy. What it's used for 6 I'm not that concerned about. As long as I have the 7 lease and they're using them, I want the rental</p>				

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<p>8 income for that lease. 9 Q. Have you ever seen your lenses? 10 A. Personally? 11 Q. Yes. 12 A. No, no. 13 Q. Do you know of any unique identifiers 14 for your lens such as a serial number?</p>				
<p>37:17 A. Well, what I was going to say is I 18 have 145 solar lenses but not specific lenses 19 because they have all these lenses, and I am good 20 for 145 of them, but there's not a stack that says 21 that's my 145 right there because they use all these 22 lenses for research and development so they get 23 broken and damaged. They get put up into these 24 towers used to create energy. 25 So, yo know, as lenses come and go, I 38: I have 145 that I always have to my name regardless of</p>				

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<p>2 if they go through so many lenses through research 3 and all that. 4 Q. Can you explain to me what you mean 5 by the term "good for"? 6 A. I own 145. What I mean by that is I 7 own 145 lenses. 8 Q. You've never seen them? 9 A. No. Videos; I've seen lenses in 10 videos being produced, being used to create energy. 11 Q. Do you know if the lenses you saw in 12 the videos were your lenses? 13 A. No. 14 Q. You mentioned that you'd be receiving 15 \$150 per year per lens? 16 A. Correct. 17 Q. Do you receive that? 18 A. Not yet. 19 Q. Do you know why you haven't? 20 A. Based on my understanding of it, it's 21 because it's not in full production yet.</p>				

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<p>22 Q. What do you mean full production?</p> <p>23 A. Well, they're not -- I would assume</p> <p>24 that I will receive the lease payment when they are</p> <p>25 in full production producing energy, not just in the</p> <p>39: 1 research and development phase.</p> <p>2 Q. So to your knowledge, they're in the</p> <p>3 research and development phase right now?</p> <p>4 A. And production phase, yes, based on</p> <p>5 all the information I receive monthly from RaPower-3</p> <p>6 with plenty of updates about where they're at.</p> <p>7 Q. They're in the production phase right</p> <p>8 now?</p> <p>9 A. You would have to ask them</p> <p>10 specifically.</p> <p>11 Q. What are they producing?</p> <p>12 A. Parts for their towers to be able to</p> <p>13 mass produce their towers to put them in which is I</p>				

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<p>14 guess the mechanism that my lenses would be a part 15 of to create the energy. 16 Q. And just so we're clear, when you say 17 they, who are you talking about? 18 A. RaPower. 19 Q. Anyone else? 20 A. I don't know that. I mean, you know, 21 LTB.</p>				
<p>40:10 Q. Mr. Zeleznik, you said that your 11 lenses produce heat, right? 12 A. Sure. 13 Q. And eventually you intend or you 14 believe that you'll be paid \$150 per year per lens? 15 A. Correct. 16 Q. Because those lenses are producing 17 heat? 18 A. Correct. 19 Q. How do you think the lenses are going 20 to produce income from heat?</p>				
<p>40:25 A. That they will be used in the towers</p>				

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<p>41: 1 to concentrate, concentrate as solar power which 2 will concentrate to sun's energy and produce heat, 3 and that heat then in turn will be used for whatever 4 purpose they're going to use it for, but because 5 they're using my lenses in the project, then I'm 6 leasing them to use those lenses or I'm leasing the 7 lenses for them to use, so they're going to pay me 8 for whatever they produce. 9 Q. Do you know when it is they're going 10 to produce? 11 A. I don't. 12 Q. Are you concerned about that? 13 A. I'm not. 14 Q. Are you aware of a market for heat?</p>				
<p>41:17 A. I don't know. 18 Q. You're not aware of a market for 19 heat?</p>				

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<p>20 A. It was my understanding that the heat 21 produced from the towers helps turn a turbine which 22 then creates electricity. 23 Q. Do you know how the heat turns a 24 turbine? 25 A. I do not. So that would be my 42: 1 answer. 2 Q. Thank you. 3 I believe you mentioned that you 4 believed the heat will eventually make energy. Is 5 that a fair characterization? 6 A. Well, I think the heat is energy. I 7 think it's going to be used to create other 8 energies. 9 Q. What type of energies? 10 A. Well, like I just said, I think the 11 main point of the mechanisms that my lenses are 12 going into is to produce heat to be able to turn a 13 turbine to create electricity.</p>				

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<p>14 That's the number one thing. I mean, 15 beyond that I don't know.</p>				
<p>42:18 Q. So you believe that the heat will be 19 used to turn a turbine? 20 A. Uh-huh. 21 Q. Which will generate electricity? 22 A. Correct. 23 Q. Okay. What do you believe will be 24 done with that electricity once it's generated by 25 the turbine?</p>				
<p>43: 6 A. I don't know. I do know that my 7 lenses are going to be used as a part of a mechanism 8 to produce heat that may turn a turbine to make 9 electricity, and I want to be paid, per the 10 operation and maintenance agreement, for the leasing 11 of my lenses for that process. 12 Q. And as we sit here today, you're not</p>				

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<p>13 aware of any electricity that's been produced? 14 A. I don't know. 15 Q. You've never received any income from 16 your rental of the lenses?</p>				
<p>43:20 A. I have not. 21 Q. You said that your main contact was 22 Roger Freeborn? 23 A. Yes, to begin with, yeah. 24 Q. And you got an e-mail? 25 A. Yes. 44: 1 Q. From him? 2 A. From someone. 3 Q. From someone? 4 A. Yeah, from someone, that detailed 5 this program, and Roger came and explained it. 6 Q. What do you mean he came and 7 explained it? 8 A. He came and went through the bonus 9 program, just laid out what was in the e-mail and 10 the lease. 11 Q. So he visited you?</p>				

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<p>12 A. He visited me, yes, to explain it. 13 Q. Where? 14 A. At LeRoy. 15 Q. At the school or at your house? 16 A. At the school. 17 Q. Was this in your office? 18 A. It was. 19 Q. Was anyone else there? 20 A. No. It was just Roger and I. It was 21 in August. It was still before school started. 22 Q. Did you tell anyone else about this? 23 A. I did. 24 Q. Who? 25 A. My father. 45: 1 Q. What did you tell him? 2 A. Just told him about this program. 3 Q. Did he participate? 4 A. He did, yeah. He's been subpoenaed 5 and done all that. 6 Q. Did you ever participate in any 7 webinars?</p>				

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<p>8 A. I don't know if I did. I remember 9 them having some webinars, but honestly, I don't 10 remember if I ever did any of that. 11 Q. Who organized the webinars? Who did 12 you hear about them from? 13 A. Roger Freeborn.</p>				
<p>45:17 (Plaintiff's Exhibit 54 was 18 marked for identification.) 19 Q. Mr. Zeleznik, I hand you a copy of 20 what's been marked as Exhibit 54 that's marked for 21 identification. 22 A. Okay. 23 Q. Do you recognize Exhibit 54? 24 A. It's an e-mail between Roger Freeborn 25 and I. 46: 1 Q. And I will represent to you that the 2 United States received documents from you. 3 A. Uh-huh, correct. 4 Q. And we added what we call a Bates</p>			54	

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<p>5 label down in the bottom right-hand corner.</p> <p>6 A. Okay.</p> <p>7 Q. It says ZELEZ_B&A and then a number.</p> <p>8 A. Okay.</p> <p>9 Q. Besides that number, does that look</p> <p>10 like a document you produced to the United States?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And you said that it's a</p> <p>13 series of e-mails between you and Roger Freeborn?</p> <p>14 A. Okay.</p> <p>15 Q. Well, is that correct?</p> <p>16 A. It appears to be, yes.</p> <p>17 Q. On the first page which is marked</p> <p>18 page 722 down in the bottom right-hand corner,</p> <p>19 there's an e-mail on October 9, 2009 between you and</p> <p>20 Roger Freeborn.</p> <p>21 A. Uh-huh, correct.</p> <p>22 Q. And the first sentence of that e-mail</p> <p>23 references a BFS stimulus plan?</p> <p>24 A. Yeah.</p>				

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<p>25 Q. What's your understanding of what the 47: 1 BFS stimulus plan is? 2 A. That is the RaPower-3 program at its 3 very beginning. 4 Q. At the beginning? 5 A. BFS is Bigger, Faster, Stronger. 6 Q. I understand. 7 A. And so this was sent to coaches and 8 educators as an opportunity. 9 Q. Did you understand that this was 10 being offered by Bigger, Faster, Stronger? 11 A. What I understood was it was people 12 from Bigger, Faster, Stronger that were working with 13 a group out west was my understanding of it. 14 Beyond that, I have no knowledge. 15 Q. Who's the group out west? 16 A. Like Neldon Johnson. 17 I mean, that at the very beginning of 18 it was all I really knew.</p>				

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<p>19 Q. All right. And go back to the fourth 20 page, and that's Bates number 725. 21 A. Okay. 22 Q. Was this an attachment to one of 23 those e-mails? 24 A. I couldn't remember. I wouldn't be 25 able to tell you. I'm sorry. 48: 1 Q. Do you recognize this document? 2 A. It looks like instructions to be able 3 to fill out the referral fee contract on the next 4 page. 5 Q. All right. If you could flip back to 6 page 723. 7 A. Okay. 8 Q. Up at the top, there appears to be 9 three attachments. 10 A. Okay. Yeah. 11 Q. One of those says IAUS instructions. 12 A. Okay. So that must be that.</p>				

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<p>13 Q. You think that the document on page 14 725 is the IAUS instructions?</p> <p>15 A. I'm not a hundred percent sure. I</p> <p>16 think that's a logical thought, but I couldn't tell</p> <p>17 you a hundred percent.</p> <p>18 Q. Any reason to think that the document</p> <p>19 on Bates page 725 isn't the attachment?</p>				
<p>48:21 A. I don't know.</p> <p>22 Q. All right. Just one question on page 23 725.</p> <p>24 In the middle of the page, it</p> <p>25 references a model or serial number.</p> <p>49: 1 A. Okay.</p> <p>2 Q. Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Have you ever been given a model or a</p> <p>5 serial number?</p> <p>6 A. I don't know.</p> <p>7 Q. Do you recall?</p> <p>8 A. I don't know.</p> <p>9 Q. Do you think you would recall getting</p>				

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10 a serial number?				
49:13 A. I'd have to look through my documents 14 to see on my invoices.				
51: 7 This will be Exhibit 56. 8 (Plaintiff's Exhibit 56 was 9 marked for identification.) 10 Q. Mr. Zeleznik, you've been handed a 11 copy of Exhibit 56 which is Bates labeled 12 ZELEZ_B&A000679? 13 A. Correct. 14 Q. Does this look like a document you 15 produced to the United States? 16 A. Yes. 17 Q. What does it appear to be? 18 A. This is me talking to Coach Shepard 19 about something that I came cross. 20 Q. What's your understanding of Roger 21 Freeborn's e-mail address? Do you know what it is? 22 A. I'm sorry. I don't understand. 23 Q. I see an e-mail address 24 coachfreeb@bfsmail.com.			56	

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<p>25 A. Okay. 52: 1 Q. Is that Roger Freeborn's e-mail 2 address? 3 A. It appears to be on this one. 4 Q. And so this e-mail is something you 5 received from Roger Freeborn? 6 A. Yes. 7 Q. On the second page, Bates number 8 680... 9 A. Okay. 10 Q. There's an e-mail from March 18, 11 2010. 12 A. Correct. 13 Q. Then there's Item No. 2. In the 14 second sentence it says, "They then question when I 15 will get the money and whether I will ever get it. 16 I, of course, answered again that I trust the 17 people, and I will get it at some point." 18 A. Correct. 19 Q. Is this the same money that you</p>				

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<p>20 talked about earlier that you still haven't 21 received? 22 A. Correct. 23 And I would like to just say for the 24 record that when I got involved in this, I had no 25 expectation of when I would receive funds. I mean, 53: 1 it was my understanding that it was a fledgling 2 operation that, I mean, if I saw something within 3 ten years, I was going to be happy because again, 4 for us, it was a decades long process that we were 5 looking at. 6 I mean, our purpose was for 30 to 40 7 years so, for something to take time to get going I 8 was okay with. I mean, I'm in year seven right now, 9 and I'm keeping track. I mean I'm not just, oh, 10 yeah, yeah, you know. I mean, I'm keeping track</p>				

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<p>11 but, yeah, it's year seven, and yeah, I have 12 expectations at some point to receive income, yes. 13 Q. Okay. And then on the final page, 14 Bates number 681... 15 A. Uh-huh, Yes. 16 Q. There's a series of e-mails between 17 you and Roger Freeborn. 18 A. Okay. 19 Q. If you could take a look at that 20 series of e-mails and let me know when you're done. 21 A. Yes. 22 Q. You're talking about a meeting? 23 A. Yes. 24 Q. Can you tell me about that meeting? 25 A. I had just -- boy, I'm trying to 54: I think -- just put out an e-mail to people who I 2 thought could be interested and said this gentleman 3 is going to be coming in and talking about this 4 program, and that's what it was.</p>				

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<p>5 Q. So you said back in August of 2009 6 you had met Roger Freeborn? 7 A. Correct. 8 Q. Okay. And that meeting was just 9 between the two of you? 10 A. Yes. 11 Q. Did he come back to your school? 12 A. He did for this. 13 Q. Was this the first time since 14 August 2009 that he'd been back? 15 A. I think so. 16 Q. And it sounds like you organized a 17 meeting of, is it teachers or -- 18 A. Yeah, just people within the 19 district. Just said, hey, here's a program. If 20 you're interested in looking at it come to the 21 meeting. 22 Q. Where was that meeting? 23 A. It was at the high school. 24 Q. Was this in a classroom or something? 25 A. Yes.</p>				

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<p>55: 1 Q. About how many people did you e-mail 2 about that? 3 A. I don't know. Jeez. 4 Q. Do you think it was more than five? 5 A. Oh, yes, yes. 6 Q. Do you think it was more than ten? 7 A. That I couldn't tell you. I don't 8 remember. 9 Q. So you think it was between five and 10 ten? 11 A. I would say that's probably safe to 12 say. I don't know. I'm sorry. I don't. 13 Q. Do you remember any of the names of 14 people that you e-mailed? 15 A. My father was one. Frank Lunn was 16 one. I remember those two specifically because I 17 sponsored them eventually, but beyond that, I 18 couldn't tell you.</p>				

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<p>19 Q. Were there any other times that Roger 20 Freeborn came to your school or to LeRoy, Illinois 21 that you know of? 22 A. I don't know that he came back after 23 that. I don't know. I don't recall if he came back 24 after this. I honestly don't remember. 25 Q. Okay. At the March 2010 meeting, do 56: 1 you recall how many people actually showed up? 2 A. You guys are trying my memory here. 3 I have a terrible memory. 4 It had to have been in that five to 5 ten range. 6 Q. Was Frank Lunn there? 7 A. Frank was. I remember that 8 specifically because I remember talking to Frank 9 after that meeting. That sticks out in my head, 10 that he was going to do some background checking and 11 research on it himself to make a decision whether or</p>				

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<p>12 not he felt like it was something that he wanted to 13 get involved in, so yeah. 14 Q. Mr. Zeleznik, I'm handing you a 15 document that was marked yesterday during Mr. Lunn's 16 deposition as Exhibit 41. 17 A. Okay.</p>				
<p>57:20 Q. And also Exhibit 41, does that appear 21 to be a document that you produced to the United 22 States? 23 A. Yes. No, it is not. 24 Q. You don't think you produced this 25 document? 58: 1 A. I did not produce this document 2 because I did not produce anything that wasn't 3 between Shepard, Freeborn, whoever was listed. 4 That was my understanding of the 5 subpoena, that I needed to produce documents from 6 RaPower, Shepard, Johnson, IAUS, and that was it. 7 Q. Okay.</p>			41	

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<p>8 A. I'm sorry. I don't think I provided 9 any documents between Frank and I; only the people 10 listed on the subpoena. 11 Q. Okay. If you could take another look 12 at the first page of that document. 13 A. Yeah. 14 Q. Is there an e-mail from Greg Shepard 15 down at the bottom? 16 A. It's an excerpt from an e-mail, so 17 yeah, I probably turned that in. 18 Q. Okay. 19 A. Yeah, yeah, I see, yeah. 20 So what I did was I probably cut and 21 pasted that from what Greg said and said here's 22 Greg's answers to Frank. 23 So I probably gave you that e-mail 24 from Greg Shepard. 25 Q. Okay. Can you go to the next page? 59: 1 A. Yeah.</p>				

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<p>2 Q. Tell me again, the series of e-mails 3 that appear in Exhibit 41, do those look like 4 e-mails that you produced to the United States or at 5 least to the extent that they involved Greg Shepard? 6 A. Yes. 7 Q. Did you do any research before you 8 purchased lenses from RaPower-3? 9 A. I looked at the information that was 10 provided from Coach Freeborn, the stimulus plan. I 11 knew these individuals to be successful, trusted 12 businessmen. 13 Q. Which individuals? 14 A. Shepard, Freeborn through Bigger, 15 Faster, Stronger and that entity, so, you know, it 16 wasn't like I saw a flier on a bulletin board at a 17 convenience store and said, oh, hey, this looks like</p>				

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<p>18 a great deal, next to "will you mow my lawn" type 19 thing. 20 You know, these were individuals that 21 I knew of, that I knew had a successful business. 22 While I've not worked with them personally, you 23 know, they did business with our school at some 24 point, you know, when I was in school. 25 I would not have had any part of 60: 1 those dealings, but, you know, they were known, so 2 there was a level of trust there with that, and then 3 the information that they provided, that's how I did 4 my, I guess research. 5 Q. Do you recall specifically what that 6 research -- withdraw. 7 Did you talk to anyone outside of the 8 RaPower-3 organization? 9 A. About the program? 10 Q. Yes. 11 A. No.</p>				

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<p>12 Q. How about solar energy in general?</p> <p>13 A. No, I don't believe so.</p> <p>14 Q. Did you look at any websites other</p> <p>15 than the defendants' website?</p> <p>16 A. No, because the websites I looked at</p> <p>17 were IAUS primarily, yeah.</p> <p>18 Q. All right. And you've already</p> <p>19 testified that you expected to make money through</p> <p>20 bonuses and rental income?</p> <p>21 A. Correct.</p> <p>22 Q. Are there any other ways that you</p> <p>23 expected to make money?</p> <p>24 A. No. That was it.</p> <p>25 Q. You mentioned the tax benefits.</p> <p>61: 1 A. Yeah, well, to me the tax benefits</p> <p>2 were simply an incentive from the government to be</p> <p>3 able to build your business. That was it.</p> <p>4 I mean, the tax thing was an</p> <p>5 afterthought. I mean, the tax thing was... and it's</p>				

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<p>6 ironic that it's come to dominate the entire 7 process. It really is. The fact that I'm here and 8 everything that's been going on, it's really ironic 9 because the whole process has been about the income 10 and the bonuses. 11 The tax credits were simply to help 12 fund the equipment to help get my business off the 13 ground. 14 Q. What equipment is that? 15 A. My lenses that I own. 16 Q. Did you think you had any risk in 17 purchasing the lenses? 18 A. Risk from the standpoint that, you 19 know, here you were starting a business, and you 20 don't know if it's going to work, you know. 21 I mean, yeah, you assume, you always 22 assume some risk when you're beginning something, so</p>				

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<p>23 yeah, I mean, I felt like that there was risk from 24 the standpoint of...but not from whether it would 25 eventually work. Like I felt from day one that this 62: I will go. I mean, everything that I've seen, heard, 2 looked at, they're doing some really, really cool 3 things, and I've never doubted from day one that 4 they were going to create energy in some capacity. 5 So I thought it was pretty cool to be 6 a part of that, and by that I mean the lease income. 7 So from the start, you know, I felt like, yeah. 8 Now, the bonuses, that would be 9 really nice. That would be really nice, but I'm not 10 going to hang my hat on the bonuses. It was the, 11 you know, 30 plus years of rental income. 12 Q. You mentioned really cool things. 13 A. Yeah.</p>				

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Plaintiff Designations – BLUE Defendant Completeness— PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness— PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>14 Q. What are those? 15 A. Just their -- all right. No, I'm not 16 a tech savvy guy, so bear with me. The lenses, 17 their ability to focus the sun's light. The ball, 18 the concentrator that they have that increases the 19 magnitude of the heat is pretty cool, the turbine 20 that they've created that operates at high speeds. 21 You know, it's neat to see when you 22 look through all their videos and things that they 23 post seeing these things operate, and, you know, you 24 think that they're going to do pretty good things. 25 Q. Okay. Now, when we were talking 63: 1 about risk, you said the risk was the business might 2 not work. 3 A. Right. 4 Q. Do you know how much money you've got 5 at risk?</p>				

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<p>6 A. I couldn't tell you off the top of my 7 head. I'd have to go through and look. 8 Q. Do you think it's more than \$10,000? 9 A. Yes. 10 Q. Do you think it's more than \$25,000? 11 A. Yes. 12 Q. Do you think it's more than \$50,000? 13 A. Yes. 14 Q. Do you think it's more than \$75,000? 15 A. I'd have to do some research. I'd 16 have to look through my paperwork. 17 There's no doubt in my mind though 18 that, yeah, it's over 25,000. 19 Q. Do you think it's less than a hundred 20 thousand? 21 A. I couldn't answer that without 22 looking through my paperwork. 23 Q. How much paperwork would you look at</p>				

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<p>24 to answer that question? 25 A. My invoices, the invoices of 64: 1 purchases. 2 Q. You've produced all these invoices? 3 A. It is over a hundred thousand. Doing 4 quick math off the top of my head, yeah, it would 5 have to be. 6 Q. Do you think it's less than \$150,000? 7 A. Maybe. Can I say maybe? 8 I couldn't tell you. 9 Q. What do you think the uppermost limit 10 is? 15 A. 150 would be I would say near the 16 top. I couldn't tell you. I'm sorry. 17 Q. You touched on this earlier but can 18 you tell me what the terms of payment were for each 19 lens? 20 A. 1,050, and then you pay the rest over 21 a period of time. 22 Q. What's the period of time?</p>				

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<p>23 A. I don't know that. 24 Q. Okay. When did you pay the 1,050? 25 A. At the time I purchased the lenses. 65: 1 Q. Okay. So if you purchased the lens 2 say in August of -- 3 A. Okay. So I don't know if you're -- 4 they have an upfront ten percent program. 5 Q. What's that? 6 A. You pay ten percent, and then you 7 provide the remainder to, well, it would be 150, so 8 then you'd pay the remaining by the end of the year 9 I think is what that program was. 10 Q. Okay. Did you ever participate in 11 that program? 12 A. I did. I purchased some lenses at 13 ten percent. 14 Q. Ten percent of what? 15 A. Of 1,050. 16 Q. Okay. So ten percent of 1,050 is</p>				

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<p>17 105? 18 A. Is it? I don't know. I'd have to 19 look. I'm sorry. That's not my area. 20 Q. That's all right. You're not a math 21 teacher. 22 A. No. There's people that I go to for 23 answers for that. Gotta be resourceful. 24 Q. And you've mentioned you'd pay the 25 remainder at the end of the year. 66: 1 A. I think they give you a year. 2 I have paid off -- I'm trying to 3 think. I'd have to look at my -- I own at a minimum 4 full 131 of my 145 lenses so that's where I'm at 5 right now. I own 131 in full, paid for 131 of my 6 145 lenses at 1,050. There are 14 lenses that I 7 still need to make a payment on. 8 Q. And when you say full, do you mean 9 you have paid all of the 1,050?</p>				

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<p>10 A. Yes, all of the 1,050. 11 Q. Or you paid all of the 3,500? 12 A. Yes, the 1,050. The remaining is now 13 the balance that gets paid over a period of time. 14 Q. And when are you going to pay that? 15 A. It is part of the lease fee. They 16 take it out of the lease fee. 17 Q. And that's the lease fee that you 18 haven't received yet? 19 A. Yes. 20 Q. Okay. So just so we're clear, you 21 paid a total -- withdraw. 22 You fully paid on 131 lenses? 23 A. Correct, at 1,050. 24 Q. And when you say fully paid, you mean 25 that you paid \$1,050? 67: 1 A. On 131 lenses, that's correct. 2 Q. Okay. Understood. 3 Do you know how the price per lens 4 was determined? 5 A. I do not.</p>				

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<p>6 Q. Did you have the opportunity to 7 negotiate that price? 8 A. I never chose to negotiate that 9 price. 10 Q. Did you get any type of independent 11 appraisal of what the lens was worth? 12 A. No. 13 Q. Do you know if there's a market for 14 these lenses? 15 A. Other than the one I'm in? 16 Q. Yes. 17 A. No. 18 Q. You don't know or there is no market? 19 A. I don't know. Sorry. 20 Q. Do you know if you could sell your 21 lens to someone else? 22 A. I should. I own them, yeah, so I 23 should be able to sell them if I'd like. 24 Q. So if someone came up to you and 25 said, Mr. Zeleznik, I'll give you \$10,000 for your</p>				

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<p>68: 1 lens, do you think you would be allowed to sell 2 them? 3 A. I can't say absolutely yes or no 4 on 5 that answer. It would be -- I can just give you 6 what I think in my end which is... 7 Q. That's what I'm asking. 8 A. ...which is I own them, so if I would 9 like to sell them, yes, I would sell them if there 10 was an interest for them. 11 Q. You said you've purchased 145 lenses? 12 A. Yeah, in principal. I mean, I still 13 owe the 1,050 for 14 of them.</p>				
<p>68:17 Q. BY MR. MORAN: How did you decide how 18 many lenses to purchase? 19 A. I wanted...again, going back to that 20 third income theme, so what would be in our minds 21 helpful, in the neighborhood of 20 to \$30,000 a year 22 as an income, so that lead us to, lead me I guess,</p>				

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<p>23 to the 145 lenses. 24 I've got an anticipated revenue form 25 that I submitted that spells all that out, and I 69: I think that in that 145 lens range, I'm in the 20 2 thousands for an annual income in lenses, and so 3 that was the reason why. 4 And, you know, once I got to -- I 5 didn't want to get too deep and too busy with this 6 with everything else that's going on, so I felt 7 comfortable at that spot so I kind of stopped at 8 that spot. 9 Q. You just mentioned with everything 10 else going on you didn't want to get too deep. 11 A. Right. 12 Q. What does that mean? 13 A. Disruptive to our routine as a 14 family, so as a business that I could do and 15 monitor, keep track of from home.</p>				

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<p>16 Q. Okay. Did you mean you didn't want 17 to spend a lot of time on it? 18 A. I mean a lot of time away from home.</p>				
<p>69:20 A. But yeah, I didn't want to spend a 21 lot of time away from home, and this allowed me to 22 be able to operate at home, yes.</p>				
<p>70: 8 Q. Okay. In your previous testimony, we 9 were discussing the lenses and you mentioned how you 10 expect that they will produce heat. 11 A. Okay. 12 Q. And I think you testified that at 13 this point they're still not producing heat. 14 A. They can produce heat. They've been 15 proven to produce heat. 16 To clarify that statement, they're 17 not as a part of a unit up in the air producing 18 solar heat, okay? They can produce heat.</p>				

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<p>70:21 A. They can and do produce heat. 22 Q. They can and do produce heat? 23 A. Yes. 24 Q. Do you know if your lenses are 25 producing heat right now? 71: 1 A. I couldn't tell you that. 2 Q. If your lenses were producing heat, 3 would you be expecting to receive rental income?</p>				
<p>71: 6 A. I don't know how they would -- I 7 don't know. Don't know. 8 Q. What's your understanding of when 9 you're going to receive the rental income? 10 A. At some point. 11 Q. And what has to occur before you will 12 receive the rental income? 13 A. In my mind, for the lenses to be in a 14 system up in the air producing heat from the sun.</p>				

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15 Q. Have you asked anyone why you're not 16 been receiving rental income? 17 A. No.				
71:20 Q. Your answer to that question is no? 21 A. Is no. 22 Q. Why haven't you asked anyone?				
71:24 A. I don't know. I just haven't -- I've 25 felt comfortable with the information that they've 72: 1 provided. They've provided monthly newsletters, 2 videos of everything that's been going on out there, 3 and I felt okay with the information I'd received, 4 so I've not felt the desire to have to ask. 5 Q. What information is in the monthly 6 newsletters that causes you to not ask any 7 questions? 8 A. Progress of production on site. 9 Q. What type of progress?				

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<p>10 A. Mass production of materials that 11 will be used to produce the units. 12 Q. What are the materials? 13 A. Metals, bars, different things that 14 will go in the structure. 15 Q. Which structure? 16 A. The unit that will go up to produce 17 the solar energy. 18 Q. And you believe that they're mass 19 producing metals? 20 A. Mass producing parts for these units. 21 Q. You also mentioned videos? 22 A. Yeah. 23 Q. What do videos show? 24 A. They provide videos of the different 25 parts being produced in the shop, the RaPower-3 73: 1 shop. 2 Q. And I asked you about parts, and you 3 said metals? 4 A. A lot of the parts are made of metal 5 is what I meant.</p>				

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6 Q. What's your understanding what else 7 is left to be done?				
73:10 A. I don't know. I don't know. 11 Q. Before the break, you testified that 12 you were in year seven? 13 A. Uh-huh. 14 Q. And that you were keeping track? 15 A. Yes. 16 Q. What did you mean by that?				
73:19 A. That it's been seven years since I 20 started my business and that I keep close tabs on 21 what's going on, what they're saying. 22 Q. Okay. So just taking in what they're 23 saying via newsletters and videos?				
73:25 A. Yes. 74: 1 Q. What do you do to keep track of 2 what's going on? 3 A. I follow online the monthly				

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<p>4 newsletter that they send out that has updates. 5 Q. Who sends that? 6 A. Dr. Shepard. That's the number one 7 thing is they provide these updates monthly of where 8 they're at, and a lot of times they'll have videos 9 in those newsletters that you can watch for 10 different production of parts and things. That's 11 primarily how I keep tabs on what's going on. 12 Q. So you don't ask any questions? 74:18 A. No. 19 Q. You mentioned looking at websites? 20 A. Yeah. 21 Q. Which websites? 22 A. RaPower-3 website. It's pretty 23 comprehensive. 24 Q. Any other websites? 25 A. No. At this present time, there are 75: 1 no other websites that I go to.</p>				

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<p>2 When it began, there was no RaPower-3 3 website, so the only place I could go anyplace to 4 see what was going on was IAUS. 5 I have not gone to the IAUS website 6 in, I can't even remember the last time I went to 7 IAUS website. 8 I go to the RaPower-3 website, and 9 I've been for a while now, but it's pretty 10 comprehensive. They have a lot of information. 11 Q. At the beginning of the deposition, 12 we talked about your response to the government 13 subpoena. 14 Do you remember that? 15 A. Yes. 16 Q. Can you describe for me the process 17 in which you've produced e- mails that were 18 responsive to the subpoena?</p>				
<p>75:20 A. I printed them.</p>				

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<p>21 Q. How do you keep these e-mails?</p> <p>22 A. In my account.</p> <p>23 Q. Which account is that?</p> <p>24 A. My school account.</p> <p>25 Q. Do you use like an outlook server?</p> <p>76: 1 A. I believe it's Google mail is what</p> <p>2 our school system uses.</p> <p>3 Q. Okay. Understand.</p> <p>4 And if you had an e-mail that was</p> <p>5 responsive, how did you produce it? Did you just</p> <p>6 print off that e-mail?</p>				
<p>76: 9 A. I went to the search bar, typed Greg</p> <p>10 Shepard, hit enter, they all showed up. Print,</p> <p>11 print. It was very tedious. Print, print, print.</p> <p>12 That's how I did it.</p> <p>13 Q. So you printed each individual</p> <p>14 e-mail?</p> <p>15 A. I did, yeah. I'm not tech savvy so I</p> <p>16 didn't get to put the thumb drive in and do all that</p> <p>17 so I printed them.</p>				

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<p>76:19 (Plaintiff's Exhibit 57 was 20 marked for identification.) 21 Q. Mr. Zeleznik, you've been handed by 22 the court reporter a document which has been marked 23 for identification as Plaintiff's Exhibit 57. 24 A. Okay. 25 Q. Do you recognize Plaintiff's 77: 1 Exhibit 57? 2 A. I do. 3 Q. What is it? 4 A. Placed in service letter. 5 Q. What does a placed in service letter 6 mean to you? 7 A. It informs me that my lenses are 8 being used. 9 Q. And what does being used mean to you? 10 A. In research and development, 11 advertising. 12 Q. Does it mean that they're producing 13 heat? 14 A. It could. 15 Q. Do you know if it does?</p>			<p>57 58</p>	

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<p>16 A. I've seen videos of lenses producing 17 heat. 18 Q. And you received this letter sometime 19 shortly after December 30, 2009? 20 A. Apparently. 21 Q. Is that your recollection? 22 A. That's what it looks like. 23 Q. And who's it signed by? 24 A. Neldon P. Johnson. 25 MR. MORAN: Thank you. 78: 1 (Plaintiff's Exhibit 58 was 2 marked for identification.) 3 Q. Mr. Zeleznik, you've been handed a 4 copy of what's been marked as Plaintiff's 5 Exhibit 58. 6 A. Okay. 7 Q. Do you recognize Plaintiff's 8 Exhibit 58? 9 A. Yes. 10 Q. What is it? 11 A. It's a placed in service letter, put 12 into service. 13 Q. What does the term put into service</p>				

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<p>14 mean to you? 15 A. It means it's being used in research 16 and development, testing. 17 Q. Anything else? 18 A. No. 19 Q. Do you recall receiving similar 20 letters for each lens that you purchased? 21 A. I recall receiving letters. How many 22 I don't know. 23 Q. What did you do with Exhibit 57 and 24 58 and any similar letters after you received them? 25 A. I filed them. 79: 1 Q. Okay. Did you give them to anyone? 2 A. I gave them to the CPA for tax 3 purposes. 4 Q. Okay. And it looks like Exhibit 58 5 was sent by Greg Shepard? 6 A. Correct. 7 Q. That's your understanding? 8 A. Correct.</p>				
<p>79:10 Q. Mr. Zeleznik, are you familiar with a</p>			58	

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<p>11 trust known as the Abraham Zeleznik Trust? 12 A. I am. 13 Q. Okay. I think you mentioned it 14 earlier. 15 A. Yes. 16 Q. What is it? 17 A. It's a trust fund for our son 18 Abraham, a special needs trust fund. 19 Q. Who's the beneficiary? 20 A. Well, Abraham. 21 Q. And who are the trustees? 22 A. Amy and I. 23 Q. What's the source of the trust funds? 24 A. It will be income from this business, 25 and we'll put stuff, I mean, we'll make deposits 80: 1 from time to time but, yeah, the hope is that, yeah, 2 this venture will provide quite a bit income for it. 3 Q. Any other sources of income? 4 A. For that fund? 5 Q. For the trust, yes. 6 A. Outside of my wife and I putting</p>				

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<p>7 money into it and potentially income from this</p> <p>8 business, no, not at this time, I mean, unless</p> <p>9 grandma and grandpa decide to donate.</p> <p>10 Q. Okay. You said your father bought</p> <p>11 lenses, right?</p> <p>12 A. He did.</p> <p>13 Q. Did he use the business to put money</p> <p>14 into this trust?</p> <p>15 A. He was going to take some of the</p> <p>16 bonus money.</p> <p>17 Q. And do what?</p> <p>18 A. And give to the trust, yes.</p> <p>19 Q. Does the trust own any lenses?</p> <p>20 A. No.</p> <p>21 Q. Were any of the lenses placed in the</p> <p>22 trust's name is?</p> <p>23 A. The lenses are in my name. The bonus</p> <p>24 contract is for the trust. Does that make sense?</p> <p>25 So when the bonus contract was filled</p>				

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<p>81: 1 out, the trust was to receive this amount of money 2 and the bonuses. 3 Q. So whatever the bonus is paid out, 4 that would go to the trust? 5 A. If it's specifically stated. 6 I own the lenses, not the trust. 7 Q. Does your wife own any lenses? 8 A. No, she does not. 9 Q. So you own them all in your name? 10 A. Yes.</p>				
<p>81:13 Q. Mr. Zeleznik, you've been handed a 14 copy of what's been marked for identification as 15 Plaintiff's Exhibit 59. 16 A. Correct. 17 Q. Do you recognize Exhibit 59? 18 A. I do. 19 Q. What is that? 20 A. It's Abraham's trust fund register. 21 Q. Okay. Is this a document that you 22 produced to the United States? 23 A. It is.</p>			59	

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<p>24 Q. Okay. I see several deposits on 25 this. 82: 1 A. Correct. 2 Q. What's the source of those deposits? 3 A. That's commission income from owning 4 the lenses. 5 Q. Okay. And how do you receive 6 commission income? 7 A. Through advertising and basically 8 sponsoring people to start their own business. 9 Q. Okay. 10 A. And so I receive a fee for that. 11 Q. You mentioned sponsoring people? 12 A. Yes. 13 Q. What does that mean? 14 A. That I talked to them about it so my 15 father and Frank Lunn talked to them about it. If 16 they decide to sign up, then they sign up and then</p>				

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<p>17 you get commissions on their purchases. 18 Q. Okay. 19 A. So, yeah, it's like buying and 20 selling a car. 21 Q. So were you their sponsor? 22 A. I was. 23 Q. Do you sponsor anyone else? 24 A. No, just those two. 25 Q. And you've received commissions from 83: 1 who? 2 A. RaPower. 3 Q. Okay. 4 A. I've got the receipts. I submitted 5 those, or whatever you call those. 6 Q. And you put those -- you put the 7 commissions into the Abraham Zeleznik trust? 8 A. I did. I did to a certain point, and 9 then it got to the point where I was like, well, I 10 just need to open up a business savings account so 11 that that will show all money coming in and going 12 out.</p>				

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<p>13 So I stopped...so 2013 was the last 14 time I put anything into this fund. Everything now 15 goes into that business account, business savings 16 account that I opened. 17 So any money that I will transfer 18 into this account will come from that account. 19 Does that make sense? 20 Q. It sounds like you stopped putting 21 the commission income into the trust fund account 22 and started putting it into your business account. 23 A. And it's going into a small business 24 account for Zeleznik Solar Lenses. So that's where 25 it sits currently. 84: 1 And then anything I'm going to move 2 will move from that account to this account if I 3 choose to do that. 4 Q. But right now, all your money since 5 2013 is sitting in --</p>				

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<p>6 A. Right. It's a little over 5,000. 7 Q. Is sitting in the Zeleznik Solar Lens 8 account? 9 A. Yes. 10 Q. Which is a business account? 11 A. That's correct. 12 Q. And your plan is to move that to the 13 trust account? 14 A. Not all of it, but if I were to move 15 money from that account, it will go into this 16 account or the account we'll eventually set up for 17 our daughter, same account, special needs trust. 18 Q. Who advised you to, if anyone, to 19 make a separate business account? 20 A. I made the decision myself. It just 21 made sense. 22 Q. Why did it make sense? 23 A. Because I own a business. I have 24 property I'm going to lease. I have to be able to</p>				

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<p>25 show finances associated with the business, so I 85: 1 just went ahead and opened one. 2 Q. Is there any reason you didn't do 3 that before 2013? 4 A. Because I've never been in business. 5 It just never dawned on me because when I went into 6 it, it was, okay, we're going to do this for Abe's 7 trust fund, so that was the focus. The focus was 8 Abe's trust fund going into this, and that shifted 9 to, okay, well, as this progresses, you know, I've 10 gotta have -- and I was encouraged... 11 I'm sorry. Can I go back? 12 Q. Absolutely. 13 A. I couldn't tell you why at all, but I 14 was encouraged to put it under my name, not the 15 trust fund name. 16 Q. Who encouraged that?</p>				

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<p>17 A. I couldn't tell you. It was either</p> <p>18 Roger or Greg, Roger Freeborn or Greg Shepard.</p> <p>19 Q. Do you know why they encouraged that?</p> <p>20 A. I don't. I don't know what the</p> <p>21 purpose of it was; if it was just to streamline,</p> <p>22 make things, you know, make more sense if it was in</p> <p>23 my name because it could get confusing.</p> <p>24 That's speculation.</p> <p>25 Q. Okay. But you definitely recall</p> <p>86: 1 either Greg Shepard or Roger Freeborn encouraging</p> <p>2 you to not put the money into Abraham's trust</p> <p>3 account?</p>				
<p>86: 5 A. I do, which then prompted me, I'm</p> <p>6 going to open a small business account. Then I can</p> <p>7 move funds from there to there, yes.</p> <p>8 Q. Where is that small business again?</p>				

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<p>9 A. Busey Bank in LeRoy, Illinois. 10 Q. So at this point, all of your 11 business income goes into the Busey bank account? 12 A. That's correct.</p>				
<p>86:13 Q. You mentioned that you produced 14 documents from the RaPower-3 I think you called it 15 back office or member office. 16 A. You can log into your member's area, 17 yeah, rapower3.com, and listed there are your 18 agreements and your invoices.</p>				
<p>87:17 Q. Mr. Zeleznik, have you ever visited 18 the solar site or the site at Delta, Utah? 19 A. I have not, no. 20 Q. Let me ask the question I should have 21 asked before that. 22 Where is the operation? 23 A. In Delta, Utah. 24 Q. Okay. And you've never visited it? 25 A. I've not, no.</p>				

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<p>90:23 Q. I'm going to ask you or I'm going to 24 give you a series of names and kind of a standing 25 question. If you could please tell me what your 91: 1 understanding of, one, whether or not you know the 2 individual, and two, what their role is with the 3 RaPower-3 organization. 4 A. Okay. 5 Q. Greg Shepard. 6 A. One of the guys that founded 7 RaPower-3. I know him. 8 Q. You do know him? 9 A. Well, yeah. 10 Q. And Roger Freeborn? 11 A. I know Roger. 12 Q. What's his role? 13 A. One of the guys involved with 14 beginning RaPower-3. 15 Q. Neldon Johnson? 16 A. I do not know Neldon. Owner of IAUS. 17 Q. Do you know if he owns RaPower-3? 18 A. No. 19 Q. You don't know?</p>				

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<p>20 A. No.</p> <p>21 Q. Do you know who owns RaPower-3?</p> <p>22 A. No.</p> <p>23 Q. Glenda Johnson?</p> <p>24 A. Neldon's wife. I've only seen her</p> <p>25 signature. That's all I know of her.</p> <p>92: 1 Q. What did you see her signature on?</p> <p>2 A. Pay stubs.</p> <p>3 Q. What type of pay stubs?</p> <p>4 A. Commission check pay stubs.</p> <p>5 Q. So you've seen her name on checks?</p> <p>6 A. Yes.</p> <p>7 Q. And what were those checks for?</p> <p>8 A. Commission.</p> <p>9 Q. And who are those checks from?</p> <p>10 A. I'd have to check but IAUS or</p> <p>11 RaPower-3.</p>				
<p>93:18 Q. What is LTB?</p> <p>19 A. They're a part of the operation and</p> <p>20 maintenance agreement that I have for my lenses.</p>				

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<p>21 My understanding is that LTB will be 22 the one using my lenses in the projects, in the 23 solar projects. 24 Q. Do you know who owns LTB? 25 A. I do not, no. 94: 1 Q. Have you done any research on LTB? 2 A. Only where their address is. I did 3 look them up. 4 Q. How did you look them up? 5 A. I just Googled them because I was 6 curious about where they're at. I wanted an 7 address. 8 I mean, if I was going to be doing 9 business with them, I wanted to double check. 10 Q. Do you recall what their address was? 11 A. I think it was Nevada at the time. I 12 have not rechecked. 13 Q. Do you know if there's anything at 14 that physical location?</p>				

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<p>15 A. In Nevada?</p> <p>16 Q. Yes.</p> <p>17 A. I have no idea.</p> <p>18 Q. Do you know who works at LTB?</p> <p>19 A. I do not.</p> <p>20 Q. I believe you already testified that</p> <p>21 you don't know who owns them?</p> <p>22 A. I do not.</p> <p>23 Q. Okay. Did you look up anything other</p> <p>24 than LTB's address?</p> <p>25 A. LTB, IAUS, RaPower-3. Those were the</p> <p>95: 1 three I researched, just looking up info.</p> <p>2 Q. And when you say info, what do you</p> <p>3 mean by that?</p> <p>4 A. Just where they were located and if</p> <p>5 they had a website. So I went to the IAUS website,</p> <p>6 RaPower-3 website, you know.</p> <p>7 Q. Do you remember LTB having a website?</p> <p>8 A. No.</p> <p>9 Q. You don't remember it or you know</p>				

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<p>10 that they didn't have a website? 11 A. They did not have a website that I 12 found. 13 Q. I believe you just testified that LTB 14 was going to be the entity that operated your 15 lenses? 16 A. Yes. My understanding is that 17 they're the company I leased my lenses to. 18 Q. And what was your understanding -- 19 A. And that will pay the lease fee. 20 Q. What was your understanding of what 21 they were going to do with your lenses? 22 A. I don't know all that they would use 23 it for but my main understanding is that they're 24 going to be used in solar units. 25 Q. Okay. Did you research their history 96: 1 in solar energy, whether or not they've done this</p>				

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<p>2 before? 3 A. I did not. 4 Q. Continuing with our litany of 5 entities, IAS? 6 A. Okay. Yes. 7 Q. International Automated Systems? 8 A. Correct. 9 Q. You're familiar with International 10 Automated Systems? 11 A. I am. 12 Q. Okay. What is International 13 Automated Systems? 14 A. It's a company that produces 15 technologies. 16 Q. What types of technologies? 17 A. I couldn't tell you specifics. 18 Q. Do you know of any? 19 A. No. 20 Q. You don't know of any technologies at 21 International Automated Systems? 22 A. I don't know well enough to explain 23 so I would say no. 24 Q. Do you know if International 25 Automated Systems is a corporation?</p>				

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<p>97: 1 A. I know they're traded on the stock 2 market, so my assumption would be yes, that they are 3 a corporation. 4 Q. Okay. Are you a shareholder? 5 A. I am. 6 Q. How many shares do you have? 7 A. I believe 90,300 shares of IAUS 8 stock. 9 Q. When did you purchase those? 10 A. Over the course of the last five or 11 six years. 12 Q. Do you remember which exchange you 13 purchased them in? 14 A. I just go through my brokerage 15 account, yeah. 16 Q. So you use your brokerage account 17 to -- 18 A. I do. 19 Q. Have you ever received a dividend 20 from International Automated Systems?</p>				

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<p>21 A. No, I have not, no dividends. 22 Q. Do you recall the share prices that 23 you paid? 24 A. Anywhere from 11 cents to 32 cents. 25 Yeah, I mean, it's a penny stock. 98: 1 Q. Where did you get the idea to by 2 International Automated Systems stock? 3 A. Because I had confidence in Glenda 4 Johnson, the stuff I can't speak on, the 5 technologies, but I thought that it was a company 6 that had a bright future, so I purchased stock 7 because I felt like that if they could be successful 8 in their working with RaPower-3 that it made sense, 9 so, okay, I'm going to be a lens owner and be 10 involved with RaPower-3. IAUS is related to that. 11 It made sense to me to purpose shares of IAUS.</p>				

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<p>12 Q. Did anyone suggest to you that you 13 should buy International Automated Systems stock? 14 A. Very early on in the process, they 15 made you aware that IAUS was a traded stock, and 16 they even offered stock for purchasing of lenses, 17 but they stopped that. 18 Q. And when you say they, who are you 19 talking about? 20 A. RaPower-3. 21 Q. Specifically which individuals? 22 A. Greg Shepard. 23 Q. Okay. Anyone else? 24 A. I couldn't -- no. He's the only one 25 I can remember with that.</p>				
<p>99: 8 Q. This morning we've talked about and 9 you've made reference to your business which I 10 believe is called Zeleznik Solar Lenses? 11 A. Correct. 12 Q. How is that organized?</p>				

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<p>13 A. I run it. 14 Q. Is it a sole proprietorship? 15 A. It is. 16 Q. So it's not an LLC or a corporation? 17 A. No. 18 Q. And could you describe for me in your 19 words what the business is? 20 A. I am the owner of 145 solar lenses or 21 lenses to be used as solar lenses, and I lease them 22 for use. 23 Q. So besides owning lenses, does the 24 business do anything else? 25 A. I monitor daily RaPower-3 website and 100: 1 IAUS stock price, not that that's very exciting 2 presently. 3 Q. Does your business own your 4 International Automated Systems stock? 5 A. No. 6 Q. You own that personally? 7 A. Personally. It's a personal 8 investment.</p>				

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<p>9 Q. So the extent of your business is</p> <p>10 owning 145 lenses?</p> <p>11 A. And leasing them for use, correct.</p> <p>12 Q. And leasing them for use. Okay.</p> <p>13 You said that you monitor daily?</p> <p>14 A. Yes.</p> <p>15 Q. What does that mean?</p> <p>16 A. I go to the rapower3.com website and</p> <p>17 check for any new news on progress at the site.</p> <p>18 Q. How often would you say you get news?</p> <p>19 A. They sent a newsletter out...I</p> <p>20 couldn't tell you. I feel like it's twice a month,</p> <p>21 but it might be monthly, but I still go on and check</p> <p>22 because there might be something that pops up.</p> <p>23 That's about it.</p> <p>24 Q. Do you receive the newsletter through</p> <p>25 e-mail or --</p> <p>101: 1 A. Yes, via e-mail, yes.</p> <p>2 Q. Is it posted to the website?</p> <p>3 A. Yes.</p>				

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<p>4 Q. Is that in your member area or is 5 that publicly held? 6 A. Publicly available. 7 Q. Okay. Anything else that you do in 8 your daily monitoring? 9 A. No. 10 Q. Okay. About how much time per day do 11 you spend monitoring RaPower-3 website? 12 A. An hour at most. 13 Q. On a day when there's no new news, 14 how long does that take? 15 A. I might shift or, you know, go 16 through the different news and some of their videos, 17 but yeah, not more than a half hour on a slow day. 18 I might just go in and check it and 19 look at it and get out in 30 seconds. 20 Q. So some days it's just 30 seconds? 21 A. Yeah, and it's not a full-time, it's</p>				

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<p>22 not a 40 hour a week job. It was never intended to 23 be. 24 Q. It sounds like it's usually less than 25 an hour a day.</p>				
<p>102: 2 A. Yes. 3 Q. That's fair? 4 A. On the average, that's fair. 5 Q. Do you think it's usually less than 6 half an hour a day on average? 7 A. Well, now, I mean, I couldn't tell 8 you. 9 Q. So, Mr. Zeleznik, I just want to be 10 clear. You said that your business activity 11 consists of, one, owning lenses? 12 A. Correct. 13 Q. And two, monitoring the RaPower-3 14 website? 15 A. Two, leasing lenses, and then three, 16 monitoring progress. 17 Q. So one is owning the lenses? 18 A. Correct.</p>		<p>HERE</p>		

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<p>19 Q. Two, leasing the lenses? 20 A. Correct. 21 Q. And three would be monitoring the 22 RaPower-3 website for developments in your business? 23 A. That's correct. 24 Q. Anything else? 25 A. Not presently. 103: 1 Q. You said not presently? 2 A. Correct. 3 Q. Prior to today, have there ever been 4 any other activities? 5 A. Well, the two sponsorships. 6 Q. Okay. And what did you do for those 7 sponsorships? 8 A. Talked to them about the program. 9 Q. And who is them? 10 A. Frank Lunn and my father. 11 Q. About how much time did you spend 12 talking to them? 13 A. I can't remember. 14 Q. Do you think it was more than an 15 hour? 16 A. I can't remember.</p>				

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<p>17 Q. Is there anything else that your 18 business has done in the past that you haven't 19 talked about? 20 A. No. 21 Q. Okay. So again, I just want to be 22 clear. 23 A. No, that's fine. No, I don't believe 24 so. 25 Q. So your business activities at 104: 1 Zeleznik Solar Lenses has consisted of, one, owning 2 the lenses? 3 A. Correct. 4 Q. Two, leasing the lenses? 5 A. Correct. 6 Q. Three is monitoring the RaPower-3 7 website for developments in your business? 8 A. Correct. 9 Q. And four, sponsoring two individuals, 10 your father, James Zeleznik, and Mr. Frank Lunn? 11 A. That's correct. 12 Q. Anything else?</p>				

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<p>13 A. Not at this time. 14 Q. I need to know if anything else has 15 been done in the past. 16 A. No. 17 Q. Have you ever been involved in any 18 type of solar industry or solar endeavor prior to 19 this endeavor? 20 A. No. 21 Q. Do you ever recall this business 22 being profitable? 23 A. The extent of the profit would be the 24 deposits in the trust fund and the deposits in my 25 business account. 105: 1 Q. Okay. 2 A. So that's the extent of any income 3 I've received. It is not yet profitable, no, based 4 on expenses out. 5 Q. We're going to talk about your tax 6 returns in a bit, but you never recall Zeleznik</p>				

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<p>7 Solar Lenses having a profit in any year, right? 8 A. Not yet, no. 9 Q. And you've been involved in that 10 business since 2010? 11 A. Correct. 12 Q. So we're going on six years? 13 A. Correct. 14 Q. Okay. You're employed by LeRoy 15 Schools? 16 A. I am. 17 Q. And your wife is a speech therapist? 18 A. Yes. 19 Q. Approximately what is your yearly 20 salary? 21 A. Mine personally? 22 Q. Yes. 23 A. 54,000. I couldn't tell you 24 specifically. 25 Q. That's fine. Just a ballpark is 106: 1 fine. 2 How about your wife? 3 A. It depends on how many individual 4 clients she has in a year. She fluctuates quite a</p>				

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<p>5 bit. Anywhere from 60,000 to a hundred thousand.</p> <p>6 Q. Is it fair to say that your family is</p> <p>7 supported by your employment at LeRoy Schools and</p> <p>8 your wife's speech pathology business?</p> <p>9 A. Yes.</p> <p>10 Q. That's what pays your mortgage?</p> <p>11 A. Yes.</p> <p>12 Q. Puts food on the table?</p> <p>13 A. Yes, absolutely.</p> <p>14 Q. Does your business have a business</p> <p>15 plan?</p> <p>16 A. A business plan?</p> <p>17 Q. Yes.</p> <p>18 A. The plan in my mind is I lease the</p> <p>19 lenses. I get paid a lease fee.</p> <p>20 Q. That plan is in your mind?</p> <p>21 A. That's my plan.</p> <p>22 Q. Is it written down anywhere?</p> <p>23 A. I do have a statement that I</p> <p>24 submitted, personal statement, business statement.</p> <p>25 Q. Who did you submit that to?</p>				

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<p>107: 1 A. You guys through the subpoena. 2 That also includes the anticipated 3 revenue, a spreadsheet as well. 4 Q. Okay. I think we're going to discuss 5 that statement later, but since it came up, when did 6 you write that statement? 7 A. Oh, I've written a couple of ones. 8 The latest one I wrote I want to say around '14 9 maybe, 2014. 10 Q. Okay. 11 A. I've not updated it, no. 12 Q. Did you write a business plan in 13 2010? 14 A. I don't believe so. 15 Q. Do you think you wrote one in 2011? 16 A. That was the very first one I think. 17 Q. Okay. Why did you write that? 18 A. Because I wanted to sit down and 19 really write out why I was doing this.</p>				

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<p>20 Q. What did you do with the business 21 plan? 22 A. Just kept it in my files. I 23 submitted it to CPA. 24 Q. When did you submit it to your CPA? 25 A. At tax time, documentation. 108: 1 Q. And who is your CPA? 2 A. Currently, Woodward & Associates in 3 Bloomington, Illinois. 4 Q. How about back then when you 5 submitted it? 6 A. It might have been Brian Bolander. 7 Q. Did you come up with that business 8 plan just out of your mind or did you have a model? 9 A. There was a model provided. 10 Q. Who provided it? 11 A. I think Greg Shepard as a, you know, 12 here's something to reference when you're thinking 13 through how your business works.</p>				

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<p>14 Q. Do you remember how he sent that to 15 you? 16 A. I don't. I'm assuming e-mail, and 17 I'm sure it was submitted. 18 Q. You think you submitted that to us? 19 A. Uh-huh, yes. 20 Q. Do you keep any records of the time 21 you spend on your business? 22 A. No. 23 Q. Earlier we talked about how much time 24 you spend, and that's just from your recollection 25 right now? 109: 1 A. Correct. I don't document it. 2 Q. Have you ever received any marketing 3 materials from anyone at RaPower-3? 4 A. As in like a flier or -- 5 Q. Yes. 6 A. Yeah, I think so. 7 Q. What's the intent of those materials?</p>				

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<p>109:10 A. I would speculate that those 11 materials are to be used to talk to people about the 12 program. 13 Q. What do you use them for? 14 A. What do I use them for? I just file 15 them. 16 Q. Okay. You don't give them to anyone 17 else? 18 A. No. 19 Q. What about when you sent that e-mail 20 back in -- forgive me -- 2009? 21 A. 2010. 22 Q. In 2010, you said you sent an e-mail 23 to seven individuals? 24 A. Right. That would be, okay, that 25 would be when they were used. 110: 1 I guess -- I'm just trying to think. 2 In the last -- since that time, I've not used any 3 marketing material. 4 Q. Have you ever created your own</p>				

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<p>5 marketing material? 6 A. No. 7 Q. Okay. So all material that you get 8 you receive from someone at RaPower-3? 9 A. Correct. 10 Q. All right. Does your business have a 11 website? 12 A. No. 13 Q. You said it does have a bank account? 14 A. It does. 15 Q. And that's at Busey Bank? 16 A. It is. 17 Q. Does it have an office? 18 A. No. 19 Q. Where is its address? 20 A. It would be my home address, so 21 that's the office. 22 Q. Have you ever made business cards? 23 A. No. 24 Q. Does it have its own letterhead? 25 A. I've not made a letterhead, no.</p>				

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<p>111: 1 Q. Have you had any logos made?</p> <p>2 A. No.</p> <p>3 Q. Or made logos yourself?</p> <p>4 A. No.</p> <p>5 Q. Have you registered your business</p> <p>6 with any state or local authority?</p> <p>7 A. I have not.</p> <p>8 Q. What expenses does your business</p> <p>9 incur?</p> <p>10 A. Other than the cost of the lenses.</p> <p>11 Q. Anything?</p> <p>12 A. No. Cost of the lenses is the</p> <p>13 primary expense. Gas money</p> <p>today I guess. I don't</p> <p>14 know.</p> <p>15 Q. Do you pay yourself a salary?</p> <p>16 A. I do not, no.</p> <p>17 Q. And I believe you've already</p> <p>18 testified that the only income</p> <p>you've received is</p> <p>19 from commissions?</p> <p>20 A. That's correct.</p> <p>21 Q. Have you sought advice from</p> <p>anyone on</p> <p>22 developing your business?</p>				

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<p>23 A. No. 24 Q. How about anyone at RaPower-3? 25 A. No. 112: 1 Q. And you said you always use your 2 school e-mail address? 3 A. I do. 4 Q. So your company doesn't have its own 5 e-mail domain or anything like that? 6 A. No. 7 Q. You mentioned that your CPA is 8 Jessica Woodward? 9 A. I mentioned I went to Woodward & 10 Associates. 11 Q. Okay. How long has Woodward & 12 Associates been preparing your tax returns? 13 A. Since 2013. 14 Q. Who prepared your tax returns prior 15 to that? 16 A. Brian Bolander and Ken Riter 17 (R-i-t-e-r).</p>				

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<p>18 It was Brian Bolander in 2010 and 19 2011, Ken Riter in 2012, and then '13 through '15 20 Woodward & Associates. 21 Q. Who prepared your tax return before 22 that? 23 A. 2009 I did my own taxes. 24 Q. Had you done your own taxes in 25 general prior to 2009? 113: 1 A. Yeah. 2 Q. All right. What changed in the first 3 year that you used Brian Bolander? 4 A. Because I'm not a certified tax 5 expert and so I wanted somebody who was to do the 6 tax credits and depreciation part. 7 I didn't want, I mean, there's no way 8 I would have done it myself, so I wanted to trust an 9 expert to do it. 10 Q. And how did you find Brian Bolander? 11 A. His name was provided. 12 Q. By who?</p>				

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<p>13 A. By Greg Shepard. 14 Q. What did Mr. Shepard tell you about 15 Brian Bolander? 16 A. Good guy, good accountant, 17 understands tax credits. 18 Q. What types of tax credits does he 19 understand?</p>				
<p>113:22 A. I don't know. 23 Q. Okay. Where is Brian Bolander 24 located? 25 A. I believe Utah. 114: 1 Q. Have you ever met Mr. Bolander? 2 A. I've not. 3 Q. What did you do to have him prepare 4 your tax returns? 5 A. I spoke with him over the phone. 6 Q. Do you recall the topic of 7 conversation? 8 A. Not specifically, no. 9 Q. What did you provide him with? 10 A. The usual documents that are asked 11 for at tax time.</p>			<p>57 58</p>	

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<p>12 Q. Do you recall what those documents 13 are? 14 A. I mean, are you asking like 1040s or, 15 I'm sorry, like W-2s? Yeah. 16 Q. What else? 17 A. Mortgage form, student loan, interest 18 form, and then as far as the solar business side of 19 it, any documentation of purchases I made in that 20 year or any income that I would have received. 21 Q. Okay. Would that include the 22 placement service letters that we discussed earlier? 23 A. I believe so, yes. 24 Q. Just so we're clear, those are 25 Exhibits 57 and 58? 115: 1 A. Yeah. 2 Q. Can you check? 3 (Witness nodded head up and 4 down.) 5 MR. JONES: You have to have a verbal 6 response. 7 THE WITNESS: What's that?</p>				

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<p>8 MR. JONES: You have to have a verbal 9 response instead of a head nod. 10 THE WITNESS: I'm sorry. Yes. 11 I didn't hear the question. 12 MR. MORAN: That's fine. I'll take 13 those exhibits back. 14 Q. Just so we're clear, you would give 15 Mr. Bolander copies of placed in service letters? 16 A. Yes. 17 Q. Which were similar to Exhibits 57 and 18 58? 19 A. I would. 20 Q. Do you recall giving him anything 21 else? 22 A. No. 23 Q. Did you ever talk -- you mentioned 24 Ken Riter? 25 A. Yes. 116: 1 Q. Who's Ken Riter? 2 A. A CPA. 3 Q. Where is Mr. Riter located?</p>				

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<p>4 A. I can't remember. I spoke with him 5 over the phone. 6 Q. Why did you switch? 7 A. Brian Bolander is no longer doing tax 8 returns with alternative energy credits. 9 Q. Do you know why that is? 10 A. I don't. 11 Q. Did you ask? 12 A. I asked Greg Shepard. 13 Q. What did Mr. Shepard tell you? 14 A. He said that Brian Bolander is no 15 longer doing returns with solar energy/alternative 16 energy credits.</p>				
<p>118:14 Q. Was there a time when you switched to 15 Jessica Woodward to prepare your tax returns? 16 A. Yes. 17 Q. When was that? 18 A. 2013. 19 Q. And why did you switch to Jessica 20 Woodward?</p>				

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<p>21 A. Because Ken Riter was no longer doing 22 tax returns that involved alternative energy 23 credits. 24 Q. Do you know why Mr. Riter wasn't 25 preparing tax returns that involved alternative 119: 1 energy credits? 2 A. I believe at that time I was told 3 pressure from the IRS. 4 Q. What did you discuss with 5 Ms. Woodward or Woodward & Associates? 6 A. Same thing I discussed with the other 7 two: This is my business. Here are the forms. 8 Q. Did you give her memorandums that you 9 had written? 10 A. Yeah. Like my personal business 11 statement, like what I'm doing? 12 Q. Yes. 13 A. Yes, I did. 14 Q. Did Ms. Woodward ever question the</p>				

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15 propriety of these tax credits or depreciation 16 deductions? 17 A. No. She was always real positive 18 with it. 19 Q. Was she familiar with it?				
119:23 A. I don't know. 24 Q. Do you know if she asked anyone any 25 questions about -- 120: 1 A. I don't.				
120: 4 Q. Are you aware of Ms. Woodward or 5 anyone at Woodward & Associates questioning anyone 6 at RaPower-3 about solar lenses? 7 A. I couldn't tell you specifically if 8 they did. I would like to think that they did. 9 Q. You've mentioned -- going back to 10 Mr. Riter, who referred you to Mr. Riter? 11 A. Greg Shepard. 12 Q. What did he tell you about Mr. Riter? 13 A. Good guy, good accountant.				

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<p>14 Q. Okay. And how were you referred to 15 Woodward & Associates? 16 A. I talked to Frank and asked Frank who 17 he worked with because I wanted to work with 18 somebody local. 19 After I'd gone to two people that 20 weren't local and not being able to sit down and 21 have a face-to-face conversation with them, I wanted 22 somebody close that I could go see and talk to, so 23 that's when I made the switch. 24 Q. Okay. Why did you prefer to have 25 somebody you could sit down and talk to? 121: 1 A. Just because the Bolander and Riter 2 situation just stopped, and the explanations were 3 vague, so it made sense to me to have somebody local 4 that I could work with, that I could go in and sit 5 down with and talk to. Just felt right to do it</p>				

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<p>6 that way. 7 Q. Why did you consider the explanations 8 to be vague? 9 A. Because in my opinion they were.</p>				
<p>121:20 Q. All right. You mentioned that you 21 are the sponsor for two individuals? 22 A. I am. 23 Q. Who's your sponsor? 24 A. Roger Freeborn. 25 Q. So it would be fair to say you're on 122: 1 Mr. Freeborn's down line?</p>				
<p>122: 3 A. Mr. Freeborn is my sponsor. 4 Q. Are you familiar with the term down 5 line? 6 A. Yes, I've heard it. 7 Q. What does it mean? 8 A. It means that you get people signed 9 up for something and you're their representative to 10 help them develop their business.</p>				

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<p>11 Q. Okay. Can you explain how the term 12 down line would apply to the RaPower-3 business? 13 A. In my own terms, I talked with Frank 14 and my father about it, and they liked it, and they 15 signed up, and then I got a commission for them 16 signing up. 17 Q. So would you consider them to be in 18 your down line? 19 A. I would consider myself to be their 20 sponsor. 21 Q. Just like Roger Freeborn is your 22 sponsor? 23 A. Correct. 24 Q. Can anyone join RaPower-3? 25 A. Yes. 123: 1 Q. Do you need a sponsor to join? 2 A. I don't know that. I don't know 3 that. That's a good question. 4 Q. So if an individual Googled solar</p>				

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<p>5 lenses and came onto the RaPower-3 website, do you 6 know if they'd be able to -- 7 A. If they had to have a sponsor? I 8 don't know.</p>				
<p>125: 9 (Plaintiff's Exhibit 60 was 10 marked for identification.) 11 Q. Mr. Zeleznik, you've been handed a 12 copy of what's been marked for identification as 13 Plaintiff's Exhibit 60. 14 Do you recognize Exhibit 60? 15 A. Yes. 16 Q. What is it? 17 A. Payment stubs for commissions. 18 Q. Did you produce these documents to 19 the United States? 20 A. I did. 21 Q. And that was pursuant to the United 22 States subpoena? 23 A. Yes. 24 Q. Where did you get this information 25 from?</p>			60	

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<p>126: 1 A. This was provided by RaPower-3.</p> <p>2 Q. And when you were responding to the</p> <p>3 subpoena, how did you get this information?</p> <p>4 A. I had them on file. I filed them.</p> <p>5 Q. Where was the file?</p> <p>6 A. In my possession.</p> <p>7 Q. Was it a physical file?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Do you recall how you obtained</p> <p>10 it and transferred it to paper form?</p> <p>11 A. I got this document with a check in</p> <p>12 the mail, and then I made a copy of this document</p> <p>13 for record.</p> <p>14 Q. So you're saying at least the first</p> <p>15 page, you received that in the mail?</p> <p>16 A. I did.</p> <p>17 Q. Okay. Can you flip back to -</p> <p>- I'm</p> <p>18 referring to Bates numbers. Go back to ZELEZ_B&A</p>				

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<p>19 001845. 20 A. Okay. 21 Q. What is this document? 22 A. It's another commissions invoice. 23 Q. How did you receive this? 24 A. E-mail. 25 Q. Mr. Zeleznik, if you could look 127: 1 through Exhibit 60 and tell me whether or not you 2 received each of these documents from RaPower-3. 3 A. Wait. I'm sorry. 1960 or -- 4 Q. No. I'd like you to look through all 5 of Exhibit 60 which I realize is kind of lengthy, so 6 take a minute. 7 A. Oh, I see. Yes. 8 Q. And tell me whether or not you 9 received each of these documents from RaPower-3. 10 (Pause) 11 A. To the best of my knowledge, yes. 12 Q. So it's your testimony that you</p>				

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<p>13 received all the documents in Exhibit 60 from 14 RaPower-3? 15 A. To the best of my knowledge, yes. 16 Q. Looking at the first page of 17 Exhibit 60, there's a reference to Frank Lunn, 18 Judith Elens, and Julie Zeleznik-Lohnes. 19 A. Yes. 20 Q. Who is Judith Elens? 21 A. She is someone in my father's down 22 line or that my father sponsored. 23 Q. So your father sponsored Judith 24 Elens? 25 A. Yeah. 128: 1 Q. Okay. Who sponsored or who's Julie 2 Zeleznik-Lohnes? 3 A. That is someone my father sponsored. 4 Q. And what's her relationship to you? 5 A. That's my sister. 6 Q. And then I see several earnings. 7 A. Yes.</p>				

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<p>8 Q. So were you receiving commissions 9 from their joining RaPower-3? 10 A. Yes. 11 Q. And by their, I mean Judith Elens and 12 Judith Zeleznik-Lohnes. 13 A. Yes.</p>				
<p>128:18 Q. Mr. Zeleznik, you've been handed a 19 copy of what's been marked as Plaintiff's 20 Exhibit 61. 21 A. Okay. 22 Q. Do you recognize Exhibit 61? 23 A. It appears to be an e-mail 24 communication between me and these people. 25 Q. Who are these people? 129: 1 A. Greg Conn, Tom Morse, Jeff Baughman, 2 Carol Zeleznik. 3 This would be my father's e-mail 4 because he didn't use it, and Gary Tipsord. 5 Q. And then about two-thirds of the way 6 down the page, there's an e-mail from you. It says</p>			61	

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<p>7 "See the message below." 8 A. Yes.</p>				
<p>129:21 Q. Mr. Zeleznik, we've discussed your 22 RaPower-3 member area I think is what you called it. 23 A. Correct. 24 Q. Are you familiar with a selection you 25 can make in that area on the RaPower-3 website to 130: 1 view a tree or grid? 2 A. I am, yes. 3 Q. What is that? 4 A. It shows a couple things. It shows 5 what you've purchased, and it shows people that 6 you've sponsored and how many they've purchased and 7 the people they've sponsored and how many they've 8 purchased.</p>				
<p>132: 9 Q. Mr. Zeleznik, are you kept up-to-date 10 when people on your down line make purchases? 11 A. No. I'm notified when I receive a</p>				

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<p>12 commission check for them purchasing the equipment. 13 Q. Okay. So you don't know until you 14 get a commission check? 15 A. No; well, unless it's updated in that 16 tree or grid. It will be updated there as well, so 17 I'll either find out by checking the grid if they 18 purchased another one or I'll get a commission check 19 in the mail, and I'll go, oh. Then I'll go in and 20 look and see if it's been updated, but sometimes, 21 you know, it's not updated. 22 One or the other happens first. 23 Q. Okay. Do you receive 1099s? 24 A. I do. 25 Q. What do those 1099s represent? 133: 1 A. Income received. 2 Q. And all that is from commissions? 3 A. Yes. 4 Q. Do you get any other reward for</p>				

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<p>5 bringing people into RaPower-3? 6 A. Other than commissions, you get a 7 percentage of the bonus payout. 8 Q. Have you ever received a bonus? 9 A. No. 10 Q. Have you ever tried to get someone 11 involved in RaPower-3 and had them decline? 12 A. I don't know. 13 Q. Who else have you tried to recruit? 14 A. Talked to my father and Frank 15 seriously. 16 Anybody else that would have maybe 17 attended that meeting heard Roger's explanation. 18 Beyond that, that's it. 19 Q. Okay. And Roger Freeborn would have 20 been their sponsor? 21 A. Anyone who would have attended that 22 meeting in March 2010? 23 Q. Yes. 24 A. Yes.</p>				

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<p>25 Q. You would not have been their 134: 1 sponsor? 2 A. No. 3 Q. Have you ever complained to 4 RaPower-3? 5 A. No. 6 Q. Have you ever asked them when you 7 would be receiving rental income? 8 A. No. 9 Q. Have you ever asked them about the 10 bonus? 11 A. No. 12 Q. Has RaPower-3 or any other defendant 13 in this case offered to sell you any other 14 commercial product? 15 A. No. 16 Q. Were you ever given the opportunity 17 to leave RaPower-3 or get your money back? 18 A. I never thought about it. Didn't 19 consider it.</p>				

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20 Q. Do you ever remember hearing anything 21 about that? 22 A. No. 23 Q. Do you know what would happen if you 24 did want to leave RaPower-3 or get your money back?				
135: 2 A. No. 3 Q. Have you ever heard of an offer from 4 RaPower-3 to buy back the lenses? 5 A. Not to my knowledge, no. 6 Q. Have you ever been told that your 7 lenses were in a tower? 8 A. No.				
135:11 Q. Have you ever been told that your 12 lenses or any system that they were part of were 13 connected to an electrical grid? 14 A. No. 15 Q. Are you aware of any other 16 technologies that International Automated Systems is 17 involved with? 18 (Pause) 19 A. I'll just say no.				

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20 Q. Well, do you know of any? 21 A. No.				
136:25 Q. Have you ever seen videos of the 137: 1 lenses producing heat? 2 A. Yes. 3 Q. Can you describe those videos for me? 4 A. One video that stands out clearly is 5 of Neldon Johnson holding up something that showed 6 smoke coming off of it from the light reflecting 7 through the lens. 8 Q. Do you remember what that item was? 9 A. I don't. I'd have to go back and 10 look. 11 Q. Do you recall any other, besides the 12 videos you've just described, do you recall the 13 subject of any other videos? 14 A. Not specifically. I mean, I couldn't 15 tell you the name of the parts that were being				

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<p>16 shown, being produced in those videos. 17 I know one video was bending the 18 outside frame for the circular part of the towers 19 that the lenses would be held in. That's one 20 example of them showing that production taking 21 place. 22 Q. Do you recall any other videos 23 producing heat besides the one you already 24 mentioned? 25 A. No. 138: 1 Q. How do you know that the individual 2 in that video was Neldon Johnson? 3 A. Because it was described in the 4 heading of the video. The description of the video 5 had Neldon Johnson's name in it as the person in the 6 video. 7 Q. Okay. All right.</p>				

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<p>138:14 Q. Do you know what the difference 15 between a lens and an alternative energy system is? 16 A. No. 17 Q. Do you know that there is a 18 difference? 19 A. No. 20 Q. What does the term alternative energy 21 system mean to you? 22 A. Something that produces alternative 23 energy, a sequence or series of events that produces 24 alternative energy. 25 Q. What's alternative energy? 139: 1 A. Land, water or sun; air. Sorry. 2 Wind, water or sun. 3 Q. Wind, water or sun? 4 A. Power. 5 Q. That's used to produce energy? Is 6 that what you're talking about?</p>				
<p>139: 8 A. Yes.</p>				
<p>141:18 Q. Did anyone call you B.J. Zeleznik? 19 A. That's what I've been called my whole</p>				

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<p>20 life, yeah. 21 Q. So when we see references to B.J. 22 Zeleznik... 23 A. That's me. 24 Q. Is there anyone else in your family 25 who goes by B.J.? 142: 1 A. No. I'm it. It's a character 2 builder.</p>				
<p>142: 7 Q. Okay. I don't want you to tell me 8 anything that he told you, but when was the first 9 time you met Mr. Jones? 10 A. Today. 11 Q. Had you spoken to him on the phone 12 before? 13 A. I did. 14 Q. When was that? 15 A. A week ago. 16 Q. That was the first time you spoke to 17 him? 18 A. That was the first time I spoke to 19 him; maybe two weeks ago.</p>				

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20 Q. Are you paying Mr. Jones' fees? 21 A. I am not. 22 Q. Do you know who is? 23 A. I don't. 24 Q. You just know that you've never 25 received an invoice? 143: 1 A. I'm not getting an invoice, no.				
143: 7 You've been handed a copy of what's 8 been marked for identification as Plaintiff's 9 Exhibit 62. 10 A. Okay. 11 Q. Do you recognize Plaintiff's 12 Exhibit 62? 13 A. It looks like an e-mail between 14 myself and Roger Freeborn. 15 Q. Just a few questions on this 16 document. 17 At the top of page 573, there's a 18 reference to a band booster. 19 A. The band booster, that would have 20 been somebody...			62	
143:23 Q. The question is what does the term				

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<p>24 band booster mean in the context of this e-mail? 25 A. Okay. Band booster would be an 144: 1 individual who would have been interested in seeing 2 Roger Freeborn's presentation and interested in 3 receiving the bonus money if they became a member 4 and I would assume to donate money to that program. 5 Q. Do you recall who the band booster 6 that he's referring to is? 7 A. I have no idea. 8 Q. Do you remember anyone who was 9 involved in the band at LeRoy Schools who you talked 10 to about this program? 11 A. No, no. 12 Q. Down at the bottom of page 573, in 13 bold it says \$7,250 per hour call. 14 What does that phrase mean to you? 15 A. I don't know. I don't know. 16 Q. Okay. Now, that body of e-mail at</p>				

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<p>17 the bottom of page 573, is that an e-mail from Roger 18 Freeborn? 19 A. Yes. 20 Q. And this is a document you produced 21 to the United States? 22 A. Yes. 23 Q. Going to the next page on page 574, 24 there's a series of bullet points. I direct your 25 attention to the fourth bullet point. 145: 1 A. Okay. 2 Q. It says guaranteed government 3 program. 4 Do you see that? 5 A. I do, yes. 6 Q. What does that phrase mean to you? 7 A. The tax credits. 8 Q. Is it your testimony that that phrase 9 means that the tax credits are guaranteed by the 10 federal government?</p>				
<p>145:12 A. I don't know. 13 Q. Well, I asked you what the phrase</p>				

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<p>14 meant to you, and you said tax credits.</p> <p>15 A. Uh-huh.</p> <p>16 Q. What do you mean by that?</p> <p>17 A. When I read that, I think incentives,</p> <p>18 tax credit incentives to start an alternative energy</p> <p>19 business. That's what that means to me.</p>				
<p>145:22 Mr. Zeleznik, do you recall receiving</p> <p>23 any statements or opinions or memorandum about tax</p> <p>24 credits from the defendants?</p> <p>25 A. I do.</p> <p>146: 1 Q. Do you recall, or what documents do</p> <p>2 you recall receiving?</p> <p>3 A. I remember two documents. They're in</p> <p>4 the files. I can't remember the names of them.</p> <p>5 Like a McConkie and an Anderson are the two. I</p> <p>6 think that's accurate.</p> <p>7 Q. Is it a Kirton McConkie?</p> <p>8 A. Yes.</p>				

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<p>9 Q. Do you recall what you received from 10 Kirton McConkie? 11 A. Explanation of how the tax credits 12 apply to the business. 13 Q. And who did you get that from? 14 A. Greg Shepard. 15 Q. Then you mentioned Anderson. 16 A. Yeah.</p>				
<p>147: 8 Q. Does the term material participation 9 mean anything to you? 10 A. I've heard it before.</p>				
<p>147:13 Q. Have you ever heard Greg Shepard or 14 Roger Freeborn or Neldon Johnson or any documents 15 you've received from them reference the term 16 material participation? 17 A. I do remember the reference to 18 material participation. 19 Q. Do you remember in what context that 20 occurred? 21 A. I can't.</p>				

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22 Q. Do you know what that term means? 23 A. No. 24 Q. Do you remember the context in which 25 it was used? 148: 1 A. No.				
149:14 Q. Have you ever heard any defendant in 15 this case mention the term depreciation?				
149:18 A. Yeah, depreciation is used as a part 19 of the explanation of how the tax credit piece works 20 for this. 21 Q. Okay. What did they tell you about 22 depreciation? 23 A. I honestly don't know much about it. 24 I hand the information to the accountant, and they 25 take it from there. 150: 1 Q. Who is they that you just referred to 2 in my last question?				

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<p>3 A. I'm sorry. They as in -- like who 4 provided the explanation? 5 Q. Yes. 6 A. Greg Shepard.</p>				
<p>150:17 Q. Did any defendants in this case say 18 anything to you about tax credits?</p>				
<p>150:21 A. There was an explanation of, you 22 know, solar energy credits through your taxes that 23 you could receive. That's about it. 24 Q. And who gave that explanation? 25 A. Greg Shepard. 151: 1 Q. And what was that explanation? 2 A. I couldn't tell you specifics. I'm 3 not that familiar with it. 4 Q. As much as you remember, what did it 5 mean to you? 6 A. It meant that as someone who is an 7 owner of lenses that will produce, or help produce</p>				

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<p>8 any unit solar energy, because of that, then I 9 qualify for this tax credit, the solar energy 10 credit. 11 That was my understanding. 12 Q. And that's based on what Greg Shepard 13 told you? 14 A. That's based on the information 15 provided by Greg Shepard, RaPower-3. 16 Q. Do you recall ever seeing a tax 17 calculator on either the International Automated 18 Systems website or Rapower-3 website? 19 A. I vaguely recall there being a tax 20 calculator.</p>				
<p>152:10 (Plaintiff's Exhibit 63 was 11 marked for identification.) 12 Q. Mr. Zeleznik, you've been handed a 13 copy of what's been marked for identification as 14 Plaintiff's Exhibit 63. 15 A. Okay.</p>			63	

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<p>152:22 Q. Mr. Zeleznik, do you recognize what's 23 been marked for identification as Exhibit 63? 24 A. I do. 25 Q. What is it? 153: 1 A. It's our 2010 tax return. 2 Q. And who is "our"? 3 A. Myself and my wife's. 4 Q. And you produced this document 5 pursuant to United States subpoena? 6 A. I did. 7 MR. MORAN: This exhibit will be 64. 8 (Plaintiff's Exhibit 64 was 9 marked for identification.)</p>			64	
<p>12 Q. Mr. Zeleznik, you've been handed a 13 copy of what's been marked for identification as 14 Plaintiff's Exhibit 64. 15 Do you recognize it? 16 A. I do. 17 Q. What is it? 18 A. It is my wife and I's 2011 tax 19 return. 20 Q. Let me skip back to page 1916.</p>			64	

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<p>21 A. Okay. 22 Q. It's about four pages back. 23 A. Oh, okay. 16. Okay. Yeah. 24 Q. This is a Schedule C, is that 25 correct? 154: 1 A. Yes. 2 Q. And there's a reference to solar 3 energy? 4 A. Correct. 5 Q. Is this a part of your solar energy 6 business? 7 A. Yes. 8 Q. Then if you could flip back to page 9 1923, there is a general business credit... 10 A. Okay. 11 Q. ...on Form 3800. 12 Do you see that? 13 A. I do. 14 Q. Is that associated with your solar 15 energy business? 16 A. It is. 17 MR. MORAN: Okay. No more questions 18 on that exhibit. 19 (Plaintiff's Exhibit 65 was</p>				

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20 marked for identification.)				
155: 1 Q. Mr. Zeleznik, you've been handed a 2 copy of Plaintiff's Exhibit 65 marked for 3 identification. 4 A. Yes. 5 Q. Do you recognize Plaintiff's 6 Exhibit 65? 7 A. I do. 8 Q. What is it? 9 A. It's my wife and I's 2012 tax return. 10 Q. Once again, if you could skip back to 11 page 1943, there is a Schedule C for a solar energy 12 business. 13 Is that your solar energy business? 14 A. Yes. 15 Q. And once again, if you could skip 16 back to Form 3800 which appears on page 1950. 17 Form 3800, does that form reference 18 your solar energy business? 19 A. Yes.			65	

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20 MR. MORAN: No more questions on that 21 exhibit.				
155:24 Q. Mr. Zeleznik, you've been handed a 25 copy of what's been marked for identification as 156: 1 Plaintiff's Exhibit 66. 2 Do you recognize it? 3 A. Yes. 4 Q. What is it?			66	
156: 9 Q. Mr. Zeleznik, what is Exhibit 66? 10 A. It is my wife and I's 2013 tax 11 return. 12 Q. And going back to Schedule C which 13 appears on page 2007. 14 Do you see that? 15 A. Yes. 16 Q. What is that Schedule C for? 17 A. My solar energy business. 18 Q. If you could skip back to the Form 19 3800 which appears on page 2011, what is reflected 20 on this Form 3800? 21 A. My solar energy business.			66	
156:24 (Plaintiff's Exhibit 67 was 25 marked for identification.)			67	

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157: 1 Q. Mr. Zeleznik, you've been given a 2 copy of what's been marked for identification as 3 Plaintiff's Exhibit 67? 4 A. Yes. 5 Q. Do you recognize Plaintiff's 6 Exhibit 67? 7 A. Yes. 8 Q. What is it? 9 A. My wife and I's 2014 tax return.				
157:12 Q. If you could please look at Schedule 13 C which appears on page 2027. 14 Do you see that? 15 A. I do. 16 Q. What is it? 17 A. It refers to my solar energy 18 business. 19 Q. Thank you. 20 Now skip back to Form 3800 which 21 appears on 2082. 22 What is this Form 3800 for? 23 A. My solar energy business. 24 MR. MORAN: Thank you.				
158: 3 Q. Mr. Zeleznik, I've given you a copy			68	

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<p>4 of what's been marked for identification as 5 Plaintiff's Exhibit 68. 6 7 Do you recognize it? 8 A. Yes. 9 Q. What is it? 10 A. My wife and I's 2015 tax return.</p>				
<p>158:13 Q. Mr. Zeleznik, if you could please 14 skip back to page 2047 and the Schedule C that 15 appears there? 16 A. Yes. 17 Q. What is the Schedule C for? 18 A. In regards to my solar energy 19 business. 20 Q. Okay. And please look at page 2049, 21 Form 3800. What does that refer to? 22 A. My solar energy business. 23 Q. And, Mr. Zeleznik, in regards to the 24 exhibits we've just discussed which are your 2010 25 through 2015 federal income tax returns, you</p>			69	

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<p>159: 1 produced those documents to the United States? 2 A. I did. 3 Q. Pursuant to the subpoena of the 4 United States? 5 A. I did. 6 Q. At any time, has Greg Shepard or any 7 other defendant in this case spoken to you or 8 written to you about the possibility of your income 9 tax returns being audited by the IRS? 10 A. Yes. 11 Q. What did he tell you? 12 A. That some RaPower-3 members were 13 being audited by the IRS. 14 Q. Do you recall when that first came 15 up? 16 A. 2013. 17 Q. And what did he tell you? 18 A. I can't recall specifically. 19 Q. So just so I understand your 20 testimony, it was 2013 that you first recall hearing</p>				

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<p>21 about other RaPower-3 members being audited? 22 A. Yes. 23 Q. When did you learn about your audit? 24 A. August of 2013. 25 Q. Did there come a time when your tax 160: 1 returns were examined by the IRS? 2 A. Yes. 3 Q. And when was that? 4 A. The fall of 2013. 5 (Plaintiff's Exhibit 69 was 6 marked for identification.) 7 Q. Mr. Zeleznik, I've given you or 8 you've been handed a copy of what's been marked as 9 Plaintiff's Exhibit 69. 10 Do you recognize Exhibit 69? 11 A. I do. 12 Q. What is it? 13 A. It's an e-mail from me to Greg 14 Shepard. 15 Q. Okay. Why did you send Mr. Shepard 16 this e-mail?</p>				

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<p>17 A. Because people were being audited, 18 and I did not feel comfortable in my capacity to 19 represent myself. 20 Q. Okay. So what were you asking of 21 Mr. Shepard? 22 A. Fees in regards to representation 23 during the audit process. 24 Q. Earlier in your testimony, you said 25 that people were being audited. 161: 1 Do you recall that? 2 A. What's that? 3 Q. Earlier in your testimony, you 4 testified that you learned that people were being 5 audited? 6 A. Sure. 7 Q. And did that include you? 8 A. I can't remember the timeline of 9 whether the e-mails about auditing taking place 10 happened before me or after me. 11 I feel like from a cynical standpoint</p>				

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<p>12 they came after me, like I was in the first group 13 that got audited. 14 Beyond that, I couldn't tell you. 15 Q. All right. And below that, there's 16 an e-mail from, it appears to be from Greg Shepard 17 dated March 15, 2013. 18 Do you see that? 19 A. Yes. 20 Q. You received that e-mail from Greg 21 Shepard? 22 A. Yes. 23 Q. So that's just part of the e- mail 24 chain that you ultimately responded to? 25 A. Correct.</p>				
<p>162: 1 Q. Mr. Zeleznik, would you please skip 2 to the second page, 908? 3 A. Yes. 4 Q. There's an e-mail, it appears to be 5 from Greg Shepard to you, and it says "RESPONSES IN 6 CAPS"? 7 A. Yes.</p>				

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<p>8 Q. And then below that, there's an 9 e-mail from you to Greg Shepard dated August 6, 10 2013? 11 A. Yes. 12 Q. I see several words in caps. Whose 13 words are those? 14 A. Greg Shepard's.</p>				
<p>164:23 (Plaintiff's Exhibit 70 was 24 marked for identification.) 25 Q. Mr. Zeleznik, you've been handed a 165: 1 copy of what's been marked for identification as 2 Plaintiff's Exhibit 70. 3 Do you recognize it? 4 A. I do. 5 Q. What is it? 6 A. It's an e-mail from Greg Shepard. 7 Q. And you produced this document to the 8 United States? 9 A. I did. 10 Q. And you produced it pursuant to the 11 United States subpoena? 12 A. I did.</p>			70	

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<p>165:13 (Plaintiff's Exhibit 71 was 14 marked for identification.) 15 Q. Mr. Zeleznik, you've been handed a 16 copy of what's been marked for identification as 17 Plaintiff's Exhibit 71. 18 Do you recognize it? 19 A. Yes. 20 Q. What is it? 21 A. It's an e-mail from Greg Shepard. 22 Q. Did you receive it? 23 A. I did. 24 Q. You produced this document pursuant 25 to the United States subpoena? 166: 1 A. I did. 2 Q. Okay. I see that there's an 3 attachment to this e-mail? 4 A. Yes. 5 Q. Is that attachment entitled IRS Audit 6 Basics? 7 A. It is. 8 Q. Does that document appear in pages 9 923, 924 and 925? 10 A. It does.</p>			71	

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11 MR. MORAN: No further questions on 12 that document.				
166:13 (Plaintiff's Exhibit 72 was 14 marked for identification.) 15 Q. Mr. Zeleznik, you've been handed a 16 copy of what's been marked for identification as 17 Plaintiff's Exhibit 72. 18 A. Yes. 19 Q. Do you recognize it? 20 A. I do. 21 Q. What is it? 22 A. An e-mail from me to Greg Shepard. 23 Q. It's from you to Greg Shepard? 24 A. No, oh, no, no; from Greg Shepard to 25 me. Sorry. 167: 1 MR. MORAN: Okay. No further 2 questions on that. 3 (Plaintiff's Exhibit 73 was 4 marked for identification.) 5 Q. Mr. Zeleznik, you've been handed a 6 copy of what's been marked for identification as			72 73 74	

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<p>7 Plaintiff's Exhibit 73. 8 Do you recognize it? 9 A. Yes. 10 Q. What is it? 11 A. It's an e-mail from Greg Shepard to 12 my accountant Jessica Woodward, carbon copied me. 13 Q. So you received this e-mail as well? 14 A. I did. 15 Q. And at the top I see the words "HELLO 16 JESSICA-RESPONSES IN CAPS." 17 A. Yes. 18 Q. Is it your understanding that the 19 words that appear in capital letters are Greg 20 Shepard's writings? 21 A. Yes, it is. 22 MR. MORAN: No further questions on 23 Exhibit 73. 24 (Plaintiff's Exhibit 74 was 25 marked for identification.) 168: 1 Q. Mr. Zeleznik, you've been handed a</p>				

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<p>2 copy of what's been marked for identification as 3 Plaintiff's Exhibit 74. 4 A. Yes. 5 Q. Do you recognize Exhibit 74? 6 A. Yes. 7 Q. What is it? 8 A. An e-mail from Greg Shepard to 9 Jessica Woodward, carboned myself. 10 Q. Once again, I see the phrase 11 "RESPONSES IN CAPS" at the top of page 953. 12 A. Yes. 13 Q. Down towards the bottom of page 953, 14 I see in capital letters "THE TRUST EARNED THE 15 MONEY." 16 Do you see that? 17 A. Hold on a second. I'm sorry. 18 Yes. 19 Q. What does that mean to you? 20 A. That means to me that Greg Shepard 21 thought that Abraham's trust earned the commission 22 money.</p>				

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<p>23 Q. To your knowledge, did your son's 24 trust do anything to earn money? 25 A. No. To my knowledge, I earned the 169: 1 money, and I put it in the trust. 2 Q. And then --</p>				
<p>169: 5 Q. In capital letters about three 6 questions down it says, I THINK WE SHOULD ELIMINATE 7 THE RAPOWER3 TRUST ACCOUNT. B.J.-YOU ARE THE ONLY 8 ONE WE HAVE DONE THIS FOR. THE IRS WANTS THE TAXES 9 PAID ON THE \$715 IN COMMISSION INCOME." 10 A. Correct. 11 Q. I think you talked about this earlier 12 in your deposition. 13 A. I did. 14 Q. Can you explain to me why Greg 15 Shepard is saying this?</p>				

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<p>169:19 MR. MORAN: You can answer. 20 A. Well, my thought was to have 21 everything under my name because that made it easier 22 for check writing and for 1099s and for everything 23 associated with my solar lens business. 24 Q. Earlier in the deposition, I think I 25 recall you testifying that you were encouraged to 170: 1 move an account out of the trust name. 2 Do you recall that?</p>				
<p>170: 5 A. It was, as I just stated, you know, 6 when I first started, the income, a portion of the 7 income received would go into Abraham's trust. So 8 Abraham's trust was on bonus contracts but it was 9 still under my name. 10 I think what was getting confused was 11 were there two separate accounts, myself and the</p>				

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<p>12 trust, but really, it was all me, so it eliminated 13 that trust piece. 14 Q. Did anyone suggest to you that you 15 should eliminate the trust piece? 16 A. Greg Shepard, yes. 17 MR. MORAN: No further questions on 18 Exhibit 74.</p>				
<p>170:19 (Plaintiff's Exhibit 75 was 20 marked for identification.) 21 Q. Mr. Zeleznik, you've been handed a 22 copy of what's been marked for identification as 23 Plaintiff's Exhibit 75. 24 Do you recognize that? 25 A. Yes. 171: 1 Q. What is it? 2 A. An e-mail from Greg Shepard to 3 Jessica Woodward, carboned myself. 4 Q. You produced this document pursuant 5 to the United States subpoena to you? 6 A. I did.</p>			<p>74 75 76 77 78</p>	

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<p>7 Q. Once again, I see blocks of capital 8 letters. 9 Whose words are those? 10 A. That's Greg Shepard's. 11 MR. MORAN: Thank you. 12 (Plaintiff's Exhibit 76 was 13 marked for identification.) 14 Q. Mr. Zeleznik, you've been handed a 15 copy of what's been marked for identification as 16 Plaintiff's Exhibit 76. 17 A. Yes. 18 Q. Do you recognize Plaintiff's 19 Exhibit 76? 20 A. Yes. 21 Q. What is it? 22 A. It's an e-mail from Jessica Woodward 23 to myself and Greg Shepard. 24 Q. And you produced Exhibit 76 pursuant 25 to the United States subpoena? 172: 1 A. I did. 2 Q. Thank you. 3 If you could please skip to the third 4 page, No. 1109. 5 A. Okay.</p>				

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<p>6 Q. I see an e-mail dated January 29, 7 2014.</p> <p>8 A. Okay.</p> <p>9 Q. Is that correct?</p> <p>10 A. Correct.</p> <p>11 Q. And then the phrase "Responses in 12 Bold."</p> <p>13 A. Yes.</p> <p>14 Q. Whose words are in bold?</p> <p>15 A. Greg Shepard.</p> <p>16 MR. MORAN: No more questions on 17 Exhibit 76.</p> <p>18 (Plaintiff's Exhibit 77 was 19 marked for identification.)</p> <p>20 Q. Mr. Zeleznik, you've been handed a 21 copy of what's been marked for identification as 22 Plaintiff's Exhibit 77.</p> <p>23 Do you recognize Plaintiff's 24 Exhibit 77?</p> <p>25 A. Yes.</p> <p>173: 1 Q. What is it?</p> <p>2 A. An e-mail from myself to Greg Shepard 3 and him back to me.</p>				

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<p>4 Q. This looks like a chain of e-mails, 5 is that correct? 6 A. That's correct. 7 Q. Okay. If you'd skip to the second 8 page, 1148. 9 Do you see that? 10 A. I do. 11 Q. In the middle, it looks like there's 12 an e-mail from Greg Shepard dated February 20, 2014 13 at 9:12 p.m.? 14 A. Yes. 15 Q. In bold it says, "Contact info for 16 LTB, LLC is Neldon Johnson." 17 A. Yes. 18 Q. Do you see that? 19 A. I do. 20 Q. And whose writing that? 21 A. That's Greg Shepard. 22 MR. MORAN: Thank you. 23 (Plaintiff's Exhibit 78 was 24 marked for identification.) 25 Q. Mr. Zeleznik, you've been handed a 174: 1 copy of what's been marked for identification as</p>				

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<p>2 Exhibit 78. 3 A. Yes. 4 Q. Do you recognize Exhibit 78? 5 A. Yes. 6 Q. What is it? 7 A. It is an e-mail from Greg Shepard to 8 Paul Jones, carboned myself and Jessica Woodward. 9 Q. Directing your attention to the 10 e-mail at the top, December 26, 2015, 11:44 a.m., do 11 you see that? 12 A. I do. 13 Q. Just so I'm clear, that e-mail is all 14 Greg Shepard's writing? 15 A. I believe it is, yes. 16 MR. MORAN: No more questions on 17 Exhibit 78.</p>				
<p>182: 6 (Plaintiff's Exhibit 80 was 7 marked for identification.) 8 Q. Mr. Zeleznik, you've been given a 9 copy of what's been marked for identification as 10 Plaintiff's Exhibit 80. 11 A. Yes. 12 Q. Do you recognize it?</p>			80	

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13 A. I do. 14 Q. What is it? 15 A. It's an e-mail from Coach Freeborn to 16 undisclosed people but me. 17 Q. And when you say Coach Freeborn who 18 are you talking about? 19 A. Roger Freeborn.				
183:15 Q. Mr. Zeleznik, I'm going to give you a 16 copy of a document that was marked yesterday as 17 Plaintiff's Exhibit 47. 18 A. Okay. 19 Q. Do you recognize Exhibit 47? 20 A. Yes. 21 Q. What is it? 22 A. E-mail from Greg Shepard to me. 23 Q. And you produced that document 24 pursuant to the United States subpoena? 25 A. I did.			47	
184:18 (Plaintiff's Exhibit 81 was 19 marked for identification.) 20 Q. Mr. Zeleznik, you've been handed a			81	

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<p>21 copy of what's been marked for identification as 22 Plaintiff's Exhibit 81. 23 A. Yes. 24 Q. What is this document? 25 A. This is my personal statement for my 185: 1 solar lens business. 2 Q. Did you discuss this document earlier 3 in your deposition? 4 A. Yes. 5 Q. Okay. And I think I asked you 6 questions about your business plan. Is this what 7 you were referencing? 8 A. Yes. 9 Q. Okay. So is this your business plan? 10 A. This is an explanation of what my 11 business is, what I do. 12 Q. Okay. Who drafted this document? 13 A. This is my draft. 14 Now, I've received an example from 15 Greg Shepard of what, you know, a form letter of</p>				

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<p>16 what you could write, and so I've studied that, 17 thought about what I'm doing, and then wrote this.</p>				
<p>186: 6 Q. And you produced Exhibit 81 pursuant 7 to the United States subpoena? 8 A. I did, yes. 9 Q. A few questions on this. 10 The second paragraph, it says, "My 11 solar business generates or will generate future 12 revenues by various means." 13 A. Correct. 14 Q. What are those various means? 15 A. Commission income, police fee or 16 income, and bonus monies. 17 Q. Anything else? 18 A. No. That's it. 19 Q. Going down to the, I guess it's the 20 paragraph marked with two parentheses. Do you see 21 that towards the middle of that page on page 1882? 22 It starts with, "I have an operations and</p>			81	

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<p>23 maintenance agreement." 24 A. Yes. I'm sorry. Go ahead. 25 Q. And the third sentence says, at the 187: 1 end of the third sentence it says, "May be used to 2 produce electricity." 3 A. Yes. 4 Q. Okay. To your knowledge, has any of 5 your lenses ever produced electricity? 6 A. My lenses don't produce electricity. 7 My lenses are used to produce heat as a part of a 8 mechanism that potentially could be used to produce 9 electricity. 10 Q. Do you know if that process has ever 11 occurred? 12 A. If that's happened? I don't. 13 Q. You don't know? 14 A. I don't know.</p>				
<p>187:17 Q. The next sentence says, "This year I 18 will begin making \$150 a year per lens for the 19 initial five-year period."</p>				

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<p>20 A. Yeah. I need to update this. 21 Q. Well, did I read that correct? 22 A. Yes. 23 Q. And you say this year. What year did 24 you write this? 25 A. Boy, that's a good question. I 188: I honestly don't remember; '13 or '14. 2 Q. So you wrote this in 2013 or 2014. 3 My question is, did you begin making 4 \$150 a year per lens since then? 5 A. No, I did not. I need to update the 6 document. 7 Q. Are you planning to update the 8 document? 9 A. I should. 10 Q. So then farther down in that 11 paragraph starting the sentence "So my total rental 12 income would be 2,790 per lens," do you see that? 13 A. Yes. 14 Q. Is that accurate?</p>				

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<p>15 A. It would be over a five-year period I 16 believe. 17 Q. But have you ever earned rental 18 income of \$2,790 per lens? 19 A. No, as of yet, no. 20 Q. All right. Then down at the bottom 21 of page 1882, in the last paragraph, third sentence, 22 it says, "My participation is the only activity in 23 my business. Therefore, according to IRS 24 guidelines, I do materially participate." 25 A. There you go. 189: 1 Q. Did I read that correctly? 2 A. You did read that correctly. 3 Q. Okay. What IRS guidelines are you 4 referring to?</p>				
<p>189: 8 A. I don't know. 9 Q. But you wrote this? 10 A. Yes. 11 Q. At the time did you know what IRS 12 guidelines you were referring to?</p>				

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<p>13 A. I don't know. 14 Q. Do you know where you got that phrase 15 "IRS guidelines"? 16 A. I don't know. 17 Q. Look at the next page, 1883. You 18 have a summary and then a series of bullet points. 19 On the eighth bullet point down starting with LTB, 20 LLC, do you see that? 21 A. Yes. 22 Q. That eighth bullet point says, "LTB, 23 LLC operates and maintains my solar lenses and 24 receives payment for the heat that is generated." 25 A. Correct. 190: 1 Q. "From these payments, they may pay my 2 rental fee for the use of my lenses which produce 3 the heat." 4 A. Correct. 5 Q. Did I read that correctly? 6 A. That is correct. 7 Q. Okay. That's written in the present</p>				

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8 tense, right?				
190:11 A. Based on the operation and 12 maintenance agreement, they do. They are allowed to 13 use my lenses. 14 Q. I understand that, but I'm talking 15 about the second clause where it says for the heat 16 that is generated. 17 A. They do generate heat. 18 Q. Your lenses generate heat? 19 A. The lenses generate heat. 20 Q. How do you know that?				
190:23 A. I've seen the video that shows the 24 lenses generating heat. 25 Q. Do you know if the lenses in the 191: 1 video were your lenses? 2 A. I don't. I don't. 3 Q. There's a heading: "Some key 4 points." 5 Do you see that? 6 A. Yes. 7 Q. The first bullet point, second 8 sentence, it says, "I don't have to use LTB. It's 9 my choice."				

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<p>10 A. Yes.</p> <p>11 Q. Who else could you have used?</p> <p>12 A. I don't know honestly. I haven't</p> <p>13 researched it.</p> <p>14 Q. Did you ever look around for anyone</p> <p>15 else who could have used your lenses?</p> <p>16 A. No. I didn't research it.</p> <p>17 Q. You say it's my choice.</p> <p>18 A. Yes.</p> <p>19 Q. Who did you choose between?</p> <p>20 A. I chose to go with LTB.</p> <p>21 Q. Over who else?</p> <p>22 A. I didn't research it.</p>				
<p>192: 2 Q. I want to know who else you</p> <p>3 considered.</p> <p>4 A. I didn't consider anyone else.</p> <p>5 Q. Okay. Thank you.</p> <p>6 In the second bullet point, it says,</p> <p>7 "LTB operates and maintains solar lenses."</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. When you say operate, what do you</p>				

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<p>11 mean? 12 A. I don't know. 13 Q. Okay. We're getting to the second 14 and third pages which are labeled 1884 and 1885. 15 A. Correct. 16 Q. What are these documents? 17 A. This is my expected potential profit 18 analysis. 19 Q. You prepared this? 20 A. I did, yes. 21 Q. What did you do to prepare it? 22 A. I went into Excel and typed it out. 23 Q. Where did you get the information 24 that you put into the excel document? 25 A. Based on the contracts that I have 193: 1 with IAUS and LTB and the agreements. 2 Q. Can you explain to me in your own 3 words exactly what I'm looking at here?</p>				

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<p>4 A. The first window is bonus income from</p> <p>5 my own personal purchases and the different amounts.</p> <p>6 Q. And that assumes -- well, how did you</p> <p>7 calculate that?</p> <p>8 A. That's based off of bonus contract</p> <p>9 with IAUS.</p> <p>10 The first purchase was \$3,000 bonus</p> <p>11 per lens. The next four purchases were \$6,000</p> <p>12 bonuses per lens, and then \$2,000 bonus per lens for</p> <p>13 the remaining.</p> <p>14 Q. Okay. So the dates that I see in the</p> <p>15 farthest left-hand corner are the dates that you</p> <p>16 purchased the lens?</p> <p>17 A. Yes, that's correct.</p> <p>18 Q. And did you ever receive any of these</p> <p>19 bonuses?</p> <p>20 A. No, not yet.</p> <p>21 Q. I see a donated bonus of 27,000?</p> <p>22 A. Uh-huh.</p>				

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<p>23 Q. What is that? 24 A. The first bonus of \$27,000 I was 25 going to donate to LeRoy Schools. 194: 1 Q. Did you donate that to LeRoy Schools? 2 A. I have not received a bonus. 3 Q. Are you still planning to donate to 4 LeRoy Schools? 5 A. Yes, yes, I will. 6 Q. In the second, you called it a 7 window? 8 A. Sure. That's the rental income, so 9 145 lenses. That's rental income for the first five 10 years, and then the next 25 years for the 30-year 11 total. 12 Q. You expect to receive \$355,250? 13 A. Yes. 14 Q. Have you received any of that to 15 date? 16 A. No. 17 Q. And the next window I think is called</p>				

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<p>18 bonus income from level 1 downline purchases? 19 A. Correct. 20 Q. What's going on in that? 21 A. That represents the percentage of 22 bonus that you get when people that you sponsor 23 purchase lenses. 24 Q. And it looks like you expect to 25 receive a total of \$186,000? 195: 1 A. That's correct. 2 Q. Have you received any of that money? 3 A. I have not. 4 Q. And then the next window is entitled 5 "Ten percent rental income from level 1 downline 6 purchases." 7 A. Correct. 8 Q. What is that? 9 A. That is ten percent rental income 10 from the lenses that my two individuals that I 11 sponsor receive. 12 Q. Okay. Have you received any of that</p>				

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<p>13 income? 14 A. No, I have not. 15 Q. And then flipping to the next page, 16 1885, what's going on in the next window? 17 A. These are individuals who are 18 sponsored by the people I sponsor... 19 Q. Okay. So... 20 A. ...and their purchases, and I receive 21 a one percent rental income from their purchases. 22 Q. So those are the people that your 23 downline sponsors? 24 A. These are the people that, yeah, that 25 I sponsor. That's who they sponsor, correct. 196: 1 Q. Okay. And who are these people? 2 A. These are people that they sponsor. 3 Q. I just see first initials. 4 A. Sure. 5 Q. So I see 1F. Is that Frank Lunn?</p>				

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<p>6 A. No. This is how it's written in the 7 area where you can look at the tree. I think you 8 have Frank Lunn, Julie Lohnes. I'm going to assume 9 that's Margaret Zeleznik. 10 Q. Who's Margaret Zeleznik? 11 A. That was my grandmother. 12 Q. Did she sell it? 13 A. She's passed. 14 Q. Sorry. 15 A. Judith Elens, and then I don't know T 16 Cook and B Bauer. 17 So it's safe to say those ones I said 18 were probably sponsors of my father. 19 Q. Okay. Do you know what happened to 20 your grandmother's lenses after she passed away. 21 A. I don't. I don't know the details of 22 how that worked nor do I expect to. 23 Q. Then below that I see a total 24 expected revenue from bonuses and rental income of</p>				

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<p>25 \$972,173.50. 197: 1 A. Correct. 2 Q. Have you received any of that money? 3 A. No. 4 Q. And then in the final window, it says 5 "Purchased lenses under Abraham Zeleznik Trust 6 Account (account closed)." 7 A. Correct. 8 Q. What happened to the lenses that the 9 Abraham's trust account -- 10 A. They rolled over into those 11 individuals' accounts. 12 All the Abraham Zeleznik trust 13 account is bonus money, so you can see it down here. 14 These lenses were purchased with the understanding 15 that the purchasers would receive 3,000 in bonus 16 money. The sponsor gets 3,000 bonus money; so 17 whoever their sponsor is, and the trust account 18 would get it. 19 So they wrote in there, like I did</p>				

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Plaintiff Designations – BLUE Defendant Completeness— PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness— PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>20 for LeRoy Schools, they wrote in that 3,000 of their 21 bonus money would go towards Abe's trust fund. 22 MR. MORAN: Okay. We're done with 23 Exhibit 81.</p>				
<p>197:24 (Plaintiff's Exhibit 82 was 25 marked for identification.) 198: 1 Q. Mr. Zeleznik, you've been handed a 2 copy of what's been marked for identification as 3 Plaintiff's Exhibit 82. 4 A. Yes. 5 Q. Do you recognize it? 6 A. Yes. 7 Q. What is it? 8 A. It's an e-mail from Greg Shepard to 9 me, an e-mail string between the two of us. 10 Q. You produced this document pursuant 11 to the United States subpoena? 12 A. I did. 13 Q. Okay. In the second sentence at the 14 top e-mail it says, "In 2011, BJ has 20 lenses all</p>			<p>81 82</p>	

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<p>15 paid up." 16 A. Correct. 17 Q. My first question, BJ is you? 18 A. Yes, that's me. 19 Q. Okay. What does paid up mean? 20 A. In full. The principal is fully 21 paid. 22 Q. Does that mean the 3,500 that you 23 owe? 24 A. 1,050. 25 Q. So in your view, paying 1,050 is 199: 1 being all paid up? 2 A. Sure.</p>				
<p>199: 6 Q. Mr. Zeleznik, in your view, how much 7 do you have to pay to be all paid up?</p>				
<p>199:15 THE WITNESS: The lenses cost in the 16 3,000 -- I can't remember the exact cost. 17 For me to be able to receive lease 18 income and to pay off the remaining, I have to pay 19 1,050 per lens, yes.</p>			82	

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<p>20 Q. Mr. Zeleznik, just to be clear, to</p> <p>21 you, in your mind, paying \$1,050 means that you are</p> <p>22 all paid up for each lens?</p> <p>23 A. Paying 1,050 in my mind means that I</p> <p>24 can receive lease income for that lens. I qualify</p> <p>25 for the bonus, and that through that lease income I</p> <p>200: I pay off the remaining balance. That's what 1,050</p> <p>2 means in my mind.</p> <p>3 Q. Okay. Now, that's the lease income</p> <p>4 that you still haven't received.</p> <p>5 A. That's correct.</p> <p>6 Q. And when you used the term all paid</p> <p>7 up in Exhibit 82, that meant that you had paid</p> <p>8 \$1,050?</p> <p>9 A. That's correct.</p> <p>10 Q. And the fourth sentence, Mr. Shepard</p> <p>11 says, "That's a maximum of 204,000 to BJ and</p> <p>12 \$102,000 to the sponsor."</p> <p>13 A. Yes.</p>				

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<p>14 Q. Did I read that correct? 15 A. Yes. 16 Q. What does that mean? 17 A. I believe he's talking about the 18 bonuses from the purchases of lenses. 19 Q. You've never received any of that 20 money, right? 21 A. No. 22 Q. Mr. Zeleznik, if you would look at 23 the second e-mail on that page dated June 27, 2013, 24 it seems like you were talking about a loan? 25 A. Yes. 201: 1 Q. What's that about? 2 A. I thought about taking a loan out of 3 the bank just to pay off the remaining principal on 4 all lenses and I chose not to do that. 5 Q. Why did you choose not to do that? 6 A. Because I thought that if I wasn't</p>				

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<p>7 paid in full that I would not, when the bonuses came 8 around, that I would not receive the bonus money, 9 but then it was my understanding from talking to 10 Mr. Shepard, Dr. Shepard, that as long as I am 11 making progress toward payment that they would 12 recognize that as bonus, as qualifying for the bonus 13 contract on a specific lens. 14 Q. Was your understanding correct? 15 A. Yes. 16 Q. So it was your understanding that if 17 you weren't paid in full...and by paid in full, you 18 meant just paying the 1,050 per lens? 19 A. The 1050, correct. 20 Q. All right. It was your understanding 21 that once you had paid the 1,050 per lens that you 22 would be eligible for the bonus money? 23 A. Yes.</p>				

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<p>24 Q. And that was your concern? 25 A. That was my concern. 202: 1 Q. Okay. Now, when you were considering 2 getting a loan from a bank, what were you looking to 3 pay off? 4 A. The entirety of the remaining 5 principal that I owed. 6 Q. Is that on the 3,500? 7 A. That's on the 1,050. 8 MR. MORAN: Okay.</p>				
<p>202:10 (Plaintiff's Exhibit 83 was 11 marked for identification.) 12 Q. Mr. Zeleznik, you've been handed a 13 copy of what's been marked for identification as 14 Plaintiff's Exhibit Exhibit 83. 15 Do you recognize it? 16 A. Yes. 17 Q. What is it? 18 A. It's an e-mail from myself to Greg 19 Shepard. 20 Q. And you produced this document 21 pursuant to the United States subpoena?</p>			83	

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<p>22 A. I did.</p>				
<p>203:16 Q. In the second to last paragraph of 17 that e-mail, the second sentence, it says, "I 18 expected to receive a business credit to pay for the 19 systems." 20 A. Yes. 21 Q. What does that mean? 22 A. That means that the incentive of the 23 credit was to help pay for my equipment. 24 Q. So that you would get a credit from 25 the government? 204: 1 A. I would use an incentive, the 2 alternative energy tax credit to help pay for my 3 alternative energy equipment and lenses. 4 Q. And who were you paying for the 5 alternative energy lenses? 6 A. RaPower-3. 7 Q. So it was your understanding that you</p>			<p>83</p>	

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<p>8 would use a business credit from the government to 9 pay for the lenses that you bought from RaPower-3? 10 A. To help fund the equipment, yeah, 11 from RaPower-3, correct. 12 MR. MORAN: Okay. Thank you. No 13 further questions on Exhibit 83.</p>				
<p>204:15 (Plaintiff's Exhibit 84 was marked for identification.) 17 Q. Mr. Zeleznik, you've been handed a 18 copy of what's been marked for identification as 19 Plaintiff's Exhibit 84. 20 Do you recognize Exhibit 84? 21 A. I do. 22 Q. What is it? 23 A. It's an e-mail string between myself 24 and Greg Shepard. 25 Q. And you produced this document 205: 1 pursuant to the United States subpoena? 2 A. Yes, I did. 3 Q. Okay. We're going to go back to the</p>			84	

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<p>4 third page which is Bates numbered 824. 5 A. Yes. 6 Q. This appears to be an e-mail from 7 Greg Shepard to you? 8 A. Yes. 9 Q. And Mr. Shepard is discussing Brian 10 Bolander? 11 A. Yes. 12 Q. Is this the extent of your knowledge 13 of why Mr. Bolander no longer prepared income tax 14 returns for RaPower-3? 15 A. That's it. 16 Q. I think you talked about that earlier 17 in your testimony. 18 A. Yes. 19 Q. In the fifth paragraph down, it says, 20 "Attached is the tax attorney opinion letter from 21 Kirton McConkie it's the largest law firm in Utah. 22 The letter will refer to Solco1 which is for our</p>				

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<p>23 million dollar plus deals, but the same references 24 apply to RaPower-3. This will be a great addition 25 to your file. It will also allow you to go to many 206: 1 local CPAs who would want to do your taxes." 2 Did I read that correctly? 3 A. Yes. 4 Q. Okay. And if you flip to Bates 5 number 826 through Bates number 837, is that what 6 you know as the Kirton McConkie memo? 7 A. Yes. 8 Q. What did you do with the Kirton 9 McConkie memo? 10 A. I just put it in my file, yeah, 11 provided it to the CPA. 12 MR. MORAN: Nothing further on 13 Exhibit 84.</p>				
<p>206:14 (Plaintiff's Exhibit 85 was 15 marked for identification.) 16 Q. Mr. Zeleznik, you've been handed a</p>			<p>84 85</p>	

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<p>17 copy of what's been marked for identification as 18 Exhibit 85. 19 A. Okay. 20 Q. Do you recognize it? 21 A. It appears to be an e-mail from Roger 22 Freeborn. 23 Q. Okay. If you'd please look through 24 all four pages and verify that this is in its 25 entirety an e-mail you received from Roger Freeborn. 207: 1 A. It appears to be complete. 2 Q. And you produced this document to the 3 United States pursuant to the subpoena that we 4 issued you? 5 A. I did.</p>				
<p>208:14 (Plaintiff's Exhibit 87 was 15 marked for identification.) 16 Q. Mr. Zeleznik, you've been handed a 17 copy of what's been marked for identification as 18 Plaintiff's Exhibit 87? 19 A. Correct.</p>			87	

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<p>20 Q. Do you recognize Exhibit 87?</p> <p>21 A. I do.</p> <p>22 Q. What is it?</p> <p>23 A. It's an e-mail it looks like between</p> <p>24 me and Greg Shepard.</p> <p>25 Q. Well, I see Greg Shepard's name in</p> <p>209: 1 the middle there.</p> <p>2 A. Yeah.</p> <p>3 Q. He appears to have signed the e-mail.</p> <p>4 A. Correct.</p> <p>5 Q. So to the best of your knowledge,</p> <p>6 this is an e-mail from Greg Shepard?</p> <p>7 A. Yes.</p> <p>8 Q. Looking at the top of the page, the</p> <p>9 first sentence says, "Today, of course, is a tax</p> <p>10 filing deadline date. Hope every one of you have</p> <p>11 had the success as expected from our RaPower3 Tax</p> <p>12 Benefit Program."</p> <p>13 A. Okay.</p>				

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<p>14 Q. What is the RaPower3 Tax Benefit 15 Program? 16 A. In my mind, RaPower3 Tax Benefit 17 Program is nothing more than the RaPower3, the solar 18 lens energy credit that you get if you purchase a 19 lens. 20 Q. And who told you that you get that 21 credit? 22 A. RaPower3. 23 Q. Anyone else? 24 A. I couldn't tell you specifically. 25 Q. Okay. And you said RaPower3 told you 210: 1 that. 2 Who specifically at RaPower3? 3 A. Greg Shepard.</p>				
<p>210: 6 (Plaintiff's Exhibit 88 was 7 marked for identification.) 8 Q. Mr. Zeleznik, you've been handed a 9 copy of what's been marked for identification as 10 Plaintiff's Exhibit 88. 11 A. Yes.</p>			88	

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<p>12 Q. Do you recognize Exhibit 88?</p> <p>13 A. It appears to be information via</p> <p>14 e-mail from Greg Shepard or Roger Freeborn.</p> <p>15 Q. Do you know which one?</p> <p>16 A. Greg Shepard's name it looks like is</p> <p>17 there, so it looks like some information was sent by</p> <p>18 him and some was sent by Roger Freeborn.</p> <p>19 Q. Okay. Did you produce this document</p> <p>20 pursuant to the United States subpoena?</p> <p>21 A. I did.</p>				
<p>211: 4 Q. Mr. Zeleznik, you've been handed a</p> <p>5 copy of what's been marked for identification as</p> <p>6 Plaintiff's Exhibit 89.</p> <p>7 A. I have.</p> <p>8 Q. Do you recognize it?</p> <p>9 A. It is an e-mail from Greg Shepard.</p> <p>10 Q. And earlier in your testimony, did</p> <p>11 you reference this e-mail?</p>			<p>89</p> <p>81</p>	

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<p>12 A. I don't remember. 13 Q. Mr. Zeleznik, would you take a minute 14 and look at the pages that are attached to 15 Exhibit 89? 16 A. Okay. 17 Q. There are pages 1094 through 1097. 18 Take a minute and review that. 19 (Pause) 20 A. Okay. 21 Q. Looking at Exhibit 89, it begins with 22 an e-mail from Greg Shepard? 23 A. Yes. 24 Q. He says, "Attached is the appeal 25 letter I wrote." 212: 1 A. Yes. 2 Q. Now, earlier in your deposition we 3 discussed Exhibit 81. 4 A. Okay. 5 Q. I'll give you your Exhibit 81 back. 6 Do you recall Exhibit 81? 7 A. I do. 8 Q. Okay. And what is Exhibit 81?</p>				

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<p>9 A. It's a statement, my statement. 10 Q. Okay. And when we were discussing 11 Exhibit 81, I believe you said you'd gotten 12 something from RaPower3 about a draft of a plan? 13 A. Yes, but I feel like it was a 14 different one than this, although, I mean, there's 15 similar information but, yeah, I thought it was from 16 another form. 17 Q. All right. Could you look at page 18 1095 in Exhibit 89? 19 A. Yes. 20 Q. Looking at page 1095, in paragraph 1, 21 it says, "I'm a distributor for RaPower3 which has a 22 network marketing component. RaPower3 is registered 23 to do business in all 50 states." 24 A. Yes. 25 Q. Now, looking back at Exhibit 81, in 213: 1 the third paragraph down where it has 1) Commission 2 income...</p>				

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<p>3 A. Yes. 4 Q. ...the second sentence says, "I am a 5 distributor for RaPower3 which has a network 6 marketing component." 7 A. Correct. 8 Q. All right. Now, if you skip down to 9 the second to last sentence of that paragraph, it 10 says, "RaPower3 is registered to do business in all 11 50 states." 12 Next sentence. "I make commissions 13 which would be subject to me receiving a 1099 form 14 and thus subject to paying taxes." 15 Did I read that correctly? 16 A. That's correct. 17 Q. Now, looking back to page 1095, do 18 you see those same sentences, page 1095 of 19 Exhibit 89, do you see those same sentences in 20 Mr. Shepard's document? 21 A. Yes.</p>				

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<p>213:24 THE WITNESS: They are, yes.</p> <p>25 Q. BY MR. MORAN: Okay. Mr. Zeleznik,</p> <p>214: I do you believe now that you used words that</p> <p>2 Mr. Shepard gave you in Exhibit 89 in preparing</p> <p>3 Exhibit 81?</p> <p>4 A. Yes.</p> <p>5 Q. You referred to Greg Shepard as</p> <p>6 doctor.</p> <p>7 A. Yes.</p> <p>8 Q. What is he a doctor of, do you know?</p> <p>9 A. I have no idea.</p> <p>10 Q. Why do you call him doctor?</p> <p>11 A. Because I've seen him listed as</p> <p>12 Dr. Shepard somewhere.</p>			<p>89</p> <p>81</p>	
<p>215:18 BY MR. MORAN:</p> <p>19 Q. Mr. Zeleznik, I'm going to hand you a</p> <p>20 copy of what has been marked for identification as</p> <p>21 Plaintiff's Exhibit 57.</p> <p>22 A. Okay.</p> <p>23 Q. Could you please take a look at</p>			<p>57</p> <p>58</p>	

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<p>24 Exhibits 57 and 58? 25 A. Yes. 216: 1 Q. You want to confirm that you received 2 those documents from both RaPower3 and IAS? 3 A. I did. 4 Q. And that they are signed by Greg 5 Shepard and Neldon Johnson? 6 A. RaPower3 is signed by Greg Shepard. 7 IAS is signed by Neldon Johnson. 8 Q. All right. Do the words "This will 9 qualify you for solar tax credits" appear in those 10 documents? 11 A. Yes, it does.</p>				
<p>216:12 MR. MORAN: We have nothing further 13 at this time. 14 MR. JONES: We reserve signature. 15 MS. HEALY GALLAGHER: Anything 16 further? 17 MR. HEIDEMAN: No.</p>				
<p>216:20 (Whereupon the deposition 21 concluded at 3:00 p.m.)</p>				

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DEFENDANT COUNTER- DESIGNATIONS	PLAINTIFF COUNTER- DESIGNATIONS			

Instructions: One form should contain all designations for a witness. Plaintiff Designations (column 1) and Defendant Designations (column 2) will show the full deposition text that the party proposes to read in its case-in-chief. Completeness designations are proposed by the other party, under Fed. R. Civ. P. 32(a)(6), to be read with the designations. Counter-designations are read following the designations and completeness designations, similar to cross examination. This form should be provided in word processing format to the other party, who then will continue to fill in the form. The form is then returned to the proposing party for review, resolution of disputes, and further editing. The parties should confer and file a final version in PDF format using the event “Notice of Filing” and also submit a final word processing copy to the court at dj.nuffer@utd.uscourts.gov, for ruling.

All objections which the objecting party intends to pursue should be listed, whether made at the deposition, as with objections as to form, or made newly in this form, if the objection is of a type that was reserved.

<p align="center"><i>Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828</i></p> <p align="center"><i>Deposition of PacifiCorp taken November 15, 2016</i></p>				
<p align="center">Plaintiff Designations – BLUE Defendant Completeness— PURPLE Defendant Counter-Designations – RED (at end)</p>	<p align="center">Defendant Designations – RED Plaintiff Completeness— PURPLE Plaintiff Counter Designations – BLUE (at end)</p>	<p align="center">Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE</p>	<p align="center">Exhibits</p>	<p align="center">Ruling</p>
<p>PLAINTIFF DESIGNATIONS</p>	<p>DEFENDANT -DESIGNATIONS</p>			
<p>6: 1 TUESDAY, NOVEMBER 15, 2016; PORTLAND, OREGON 2 MS. HEALY GALLAGHER: All right. Good 3 morning, Mr. Griswold. 4 MR. GRISWOLD: Good morning. 5 MS. HEALY GALLAGHER: We are on the record 6 in the case of the United States versus Rapower-3 et 7 al., on November 15, 2016, at about 9:35 Pacific 8 time. 9 We met a moment ago, but my name is Erin 10 Healy Gallagher and I'm from the United States 11 Department of Justice, in the tax division, 12 appearing on behalf of the United States. 13 Counsel, would you please make your 14 appearances. 15 MR. REICH: Sure. Bret Reich and Patrick 16 Cannon on behalf of PacifiCorp.</p>	<p>14: 5 In the late '90s, I moved back -- moved 6 over into our wholesale side of our business. And 7 the wholesale side is really the part of the 8 business that delivers -- that generates the power, 9 delivers it to our retail side of the business, 10 which then delivers it on to our ultimate customers. 11 And that's where I began to work in the qualifying 12 facility process, which is, under the federal PURPA 13 law, it requires us to buy power from independent 14 generators. 15 So I began to work with those contracts,</p>	<p>Defendants object to the designation of essentially the entire deposition in Plaintiff's designation. The deposition was not designated in the notice or at the deposition to be a trial deposition or to preserve the specific testimony. See Defendants' objections [Doc. 295 and Doc. 347].</p> <p>6:1-8:13. Objection, not relevant, FRE 401-402.</p>	<p>193</p>	<p>Overruled.</p> <p>Overruled.</p>

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<p>17 MR. AUSTIN: And Christian Austin on 18 behalf of Rapower-3. 19 MS. HEALY GALLAGHER: And we also have 20 Christopher Moran here, also for the United States. 21 All right. This deposition will be 22 governed by the federal rules of civil procedure. 23 All exhibits that we mark today will be kept here 24 today, as we may use them in other depositions this 25 week, and then they will go with the court reporter 7: 1 here at the end of the week. Any other stipulations 2 will be addressed as the need arises. 3 BRUCE GRISWOLD, 4 called as a witness, being duly sworn on oath, was 5 examined and did testify as follows: 6 EXAMINATION 7 BY MS. HEALY GALLAGHER: 8 Q. Okay. Mr. Griswold, you've been sworn in. 9 Yes?</p>	<p>16 and that's pretty much what I've done since -- 17 except my responsibilities have expanded to, also, 18 if the company is looking to build its own asset or 19 have someone build a generating resource for us, our 20 -- the group I was in would issue a request for a 21 proposal; we'd evaluate the bids; if there's any 22 contracts, we'd negotiate the contracts for buying 23 the power from those generators. And that's where I 24 am today.</p>			

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Deposition of PacifiCorp taken November 15, 2016

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<p>10 A. Yes. 11 Q. Would you please state your name and spell 12 it for the record. 13 A. Yes. My name is Bruce Griswold. 14 B-R-U-C-E, G-R-I-S-W-O-L-D. 15 Q. And would you provide the city and state 16 of your residence. 17 A. The city where I live is Lake Oswego, 18 Oregon. 19 Q. And the city and state of your business 20 address? 21 A. Portland, Oregon. 22 Q. All right. And so -- And, Mr. Griswold, 23 are you here today to -- Well, actually, let me take 24 that back. 25 What I will do first is mark the next 8: 1 exhibit, which is 193, plaintiff's Exhibit 193. 2 (Exhibit 193 m a r k e d .) 3 Q. BY MS. HEALY GALLAGHER: Mr. Griswold, I'm</p>				

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<p>4 handing you what's been marked plaintiff's 5 Exhibit 193. 6 Plaintiff's 193 is a deposition -- 7 subpoena to testify at a deposition, that's 8 addressed to PacifiCorp; is that right? 9 A. Yes. 10 Q. And, Mr. Griswold, you're here, you've 11 been designated, correct, to testify on behalf of 12 certain topics for PacifiCorp? 13 A. Correct.</p>				
<p>11: 7 Q. Okay. All right. So we're here to get as 8 accurate a record as we can of the facts as you're 9 aware of them. 10 So I have to ask: Is there anything today 11 that would prevent you from testifying to the full 12 capacity of your intelligence and recollection? 13 A. No. 14 Q. Okay. Are you taking any medications of</p>	<p>57: 6 at is: You told Ms. Gallagher that, typically, 7 entities will come and negotiate a PPA before they 8 build a facility. 9 Did I get that right? 10 A. Yes. 11 Q. Okay. And I think I heard you say that, 12 based on your knowledge, experience, and time in the</p>			

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<p>15 any kind that might interfere with memory or 16 cognition? 17 A. No. 18 MS. HEALY GALLAGHER: Okay. Please mark 19 that as 194. 20 (Exhibit 194 m a r k e d .) 21 Q. BY MS. HEALY GALLAGHER: All right. 22 Mr. Griswold, I'm handing you what's been marked 23 p l a i n t i f f ' s Exhibit 194. 24 Do you recognize plaintiff's Exhibit 194? 25 A. I do. 12: 1 Q. What is it? 2 A. It's a brief résumé for myself. 3 Q. Okay. And I'm most interested, 4 Mr. Griswold -- Actually, first, are you aware of 5 what you've been designated to testify about on 6 behalf of PacifiCorp today? 7 A. Yes, very briefly. 8 Q. Okay. And what's your understanding of 9 those topics? 10 A. My understanding is to provide some</p>	<p>13 industry, that's because there is a value in having 14 a PPA already negotiated, in that it can be a means 15 for raising -- or it can assist the applicant in 16 raising capital to build a facility. 17 Did I get that right? 18 A. Yes. Yes. 19 Q. Okay. And if I was independently wealthy 20 and I didn't need to raise capital, there would be 21 no reason why I couldn't wait until the facility was 22 constructed to come negotiate a PPA with PacifiCorp. 23 Is that fair? 24 A. That's fair.</p>			

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<p>11 discussion and answers relating to processes for 12 qualifying facilities. 13 Q. Okay. And I see that you've been – it 12:14 says on here that you've been employed by PacifiCorp 15 for over 30 years in various positions of 16 responsibility in retail energy services, 17 engineering, marketing, and wholesale energy 18 services? 19 A. Correct. 20 Q. Thirty years is a long time, but can you 21 help me understand what -- what you've been doing 22 during that time? 23 A. When I came into the company back in '83, 24 I was working in a part of the business which was 25 conservation, so showing customers how to save 13: 1 energy. From there -- I was working there probably 2 for two years, and then the company transferred --</p>				

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<p>3 kind of evolved into trying to sell more energy, so 4 I spent a lot of time out in the field, visiting 5 with large industrial commercial customers on 6 energy, technology, better ways to use electricity. 7 That included, you know, really just the Pacific 8 Power side of the business, which is one of the 9 divisions for providing retail services. 10 In '86 or '87, somewhere in that time 11 frame, Pacific Power and Utah Power merged. And 12 Utah Power covered Washington -- or covered Utah, 13 Wyoming, and Idaho; and so I began to help with some 14 of that transition and also call on some of the 15 large customers over there, related to their 16 contracts for energy usage. That probably continued 17 for about ten years or so, so we're now in the mid</p>				

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<p>18 '90s. 19 I then moved over into the wholesale side 20 of the business -- well, I should say there was 21 about a three-year stint where I left the company, 22 worked for an environmental consulting firm, and 23 then the company hired me back. And the company, at 24 that point -- PacifiCorp, at that point, was looking 25 to expand its footprint outside of its six-state 14: 1 territory: So I worked, really, down into 2 California and other places across the country, 3 where PacifiCorp could possibly sell energy to other 4 large retail customers. 5 In the late '90s, I moved back -- moved 6 over into our wholesale side of our business. And 7 the wholesale side is really the part of the 8 business that delivers -- that generates the power,</p>				

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<p>9 delivers it to our retail side of the business, 10 which then delivers it on to our ultimate customers. 11 And that's where I began to work in the qualifying 12 facility process, which is, under the federal PURPA 14:13 law, it requires us to buy power from independent 14 generators. 15 So I began to work with those contracts, 16 and that's pretty much what I've done since -- 17 except my responsibilities have expanded to, also, 18 if the company is looking to build its own asset or 19 have someone build a generating resource for us, our 20 -- the group I was in would issue a request for a 21 proposal; we'd evaluate the bids; if there's any 22 contracts, we'd negotiate the contracts for buying 23 the power from those generators. And that's where I 24 am today.</p>				

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<p>25 Q. Okay. We're going to step through that a 15: 1 little bit to make sure that I understand. 2 A. Okay. Sure. 3 Q. Real quick, how -- how long is it that 4 you've been in the current group that you're with? 5 A. I've been in the wholesale side of our 6 business probably 20 years; and the current group 7 that I've been in, probably ten years. It's -- The 8 organization has changed its names a little bit, but 9 the group is responsible for long-term power 10 contracts, whether we're buying or selling the 11 power. 12 Q. So then I'd like to make sure I 13 understand, Bruce, as we go into the more specific 14 testimony: When I ask you a question today, if the 15 information you're drawing from does not come from</p>				

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<p>16 your personal knowledge of this, will you let me 17 know? 18 A. Yes. 19 Q. Okay. Great. Okay. So let's start with 20 PacifiCorp. 21 A. Okay. 22 Q. What is PacifiCorp? How is PacifiCorp in 23 the business of dealing with wholesale generators of 24 power? 25 A. So PacifiCorp is comprised -- Let me just 16: I give you a little bit of organizationally how it 2 sits. 3 Q. Great. 4 A. PacifiCorp has got three what's called 5 business units. They have Rocky Mountain Power, 6 which is the part of the business that delivers 7 power -- delivers and transmits the power to our 8 ultimate retail customers in Wyoming, Utah, and</p>				

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<p>9 Idaho. Then there is Pacific 10 Power, which does the 11 equivalent delivery to our 12 customers in Oregon, 13 Washington, and California. And 14 then there is 15 16:12 PacifiCorp Transmission, 16 which manages the 17 13 transmission side of the business, 18 which is the 19 14 poles and wires across our 20 system, that's -- that's 21 15 both wholesale, down to some 22 retail. 23 16 Q. Okay. 24 17 A. So now let me -- Now we've 25 kind of shown 26 18 the organization. You know, I 27 believe you asked me 28 19 a question relative to generation 29 of power. 30 20 Q. Let's leave it there for right 31 now. 32 21 A. Okay. 33 22 Q. Okay. So then which group -- 34 Within which 35 23 business unit is your group? 36 24 A. We are technically within the 37 Pacific</p>				

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<p>25 Power business unit. I think, about two years ago, 17: 1 there used to be a division called PacifiCorp 2 Energy. PacifiCorp Energy was a separate division 3 which managed all of the generating resources that 4 the company owned. That includes coal, hydro, wind, 5 solar -- you name it -- anything we owned or we were 6 buying the output from; and that could be a third 7 party that's generating and we're purchasing the 8 output. 9 That -- A couple years ago, a year or so 10 ago, that organization was disbanded and the folks 11 within it, including the management of it, was -- 12 was split apart and put into either Pacific Power or 13 Rocky Mountain Power. So it was really just -- they 14 still had the same people and they were in the same</p>				

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<p>15 location, it's just now they reported up through 16 either Pacific Power or Rocky Mountain Power. 17 The group I was in, which is really 18 related to the trading organization to balance our 19 loads and resources, remained within Pacific Power. 20 Q. Okay. And you've used the phrase 21 "resource" a couple of times. 22 By that, do you just mean the way that 23 electricity is generated? 24 A. Correct. The resource, as I said, could 25 be -- we own a number of coal plants, we own a 18: 1 number of hydro, we buy power from large wind farms 2 that somebody else owns but they sell us the power 3 on a long-term basis. 4 So there's a variety of resources that we 5 use. All of those resources are used to supply our</p>				

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<p>6 ultimate retail customers' load. So it's -- we have 7 a group here in Portland that manages those 8 resources and the output from them, literally down 9 to a 15 and five-minute interval to ensure that 10 we're always delivering and matching up to what our 18:11 customers are using. 12 Q. And when you say "customers," do you mean 13 individual households and businesses, or do you mean 14 municipalities or larger entities? 15 A. Our own -- The company's own load, based 16 on our service territory, are the retail customers, 17 whether it's residential, commercial, industrial. 18 The company, PacifiCorp, also sells power 19 to cities, we sell it to other utilities, we buy it 20 from other utilities. So it's -- because if you 21 look at the West, the transmission system in the</p>				

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<p>22 West, it's interconnected all the way down from the</p> <p>23 Rockies and north and south across the borders; so</p> <p>24 we're able to move our power in different locations,</p> <p>25 and we have contracts for -- for cities and all the</p> <p>19: 1 way down to the individual household.</p> <p>2 Q. So you mentioned earlier that Rocky</p> <p>3 Mountain Power delivers and transmits power to</p> <p>4 retail customers in Wyoming, Utah, and Idaho; right?</p> <p>5 A. Yes.</p> <p>6 Q. What do you mean by "it delivers and</p> <p>7 transmits power"?</p> <p>8 A. It manages the actual poles and wires</p> <p>9 through which the power is delivered to a customer.</p> <p>10 Q. Does Rocky Mountain Power do anything</p> <p>11 else?</p> <p>12 A. They -- I mean, they have -- when -- when</p>				

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<p>13 Pacific -- PacifiCorp Energy was realigned, some of 14 the management of various facilities are -- was 15 retained within Rocky Mountain Power. 16 Q. And by "management of facilities," do you 17 mean management of those resources you mentioned, 18 like coal plants, hydro? 19 A. Yes. But they also, I guess, for -- They 20 don't manage -- The control of the output of them is 21 managed within the PacifiCorp -- Pacific Power part 22 of the organization that I am in. What they do is 23 they -- they have folks who manage the physical 24 asset, in other words, take care of the asset and 25 make sure that, you know, O&M's being done. That's 20: 1 the kind of folks that are overseeing that. 2 Q. And when you say "manage the asset," do</p>				

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<p>3 you mean -- what do you mean by that?</p> <p>4 A. Well, they -- they are ensuring that any</p> <p>5 maintenance is -- you know, they're -- they're</p> <p>6 looking, watching the asset to make sure -- the</p> <p>7 resource, to make sure that physically it is</p> <p>8 operating the way it should be. If there's any</p> <p>9 repairs that have to be done to it, they're</p> <p>20:10 scheduling for that. There may be some -- Let's say</p> <p>11 there's some compliance that -- to deal with changes</p> <p>12 in law, et cetera, and it requires some -- some sort</p> <p>13 of new cleanup device on it. They ensure that that</p> <p>14 happens. That's what I mean by managing it.</p> <p>15 The Pacific Power folks in the trading</p> <p>16 organization that I'm associated with, they control</p> <p>17 the output of it. So they're telling it what to</p>				

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<p>18 generate. The other folks are taking care of it to 19 make sure it will generate when we ask it to 20 generate, or to back it down when we don't need its 21 generation.</p>				
<p>20:22 Q. Again, I want to make sure I understand 23 and that the record's clear. 24 So Pacific Power is -- lets Rocky Mountain 25 Power know how much power is needed at any given 21: 1 time? 2 A. That's partially correct, because they -- 3 I mean, they always are talking back and forth, and 4 each location has meters on it that -- all of that 5 information is fed into a system that -- that we can 6 access, that Pacific Power -- and the technical name 7 for that part of the business is energy supply 8 management, and they have a location here with the</p>				

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<p>9 traders. They know what the load looks like on a 10 five-minute interval from the meters and such that 11 Rocky Mountain Power is actually taking care of, and 12 so we can access that and see: Well, here's how 13 much energy is needed. What are the resources we 14 have at hand that we can supply that need?</p>				
<p>21:15 Q. Okay. And Rocky Mountain Power is the 16 sort of unit of PacifiCorp that answers that need, 17 that supplies the demand? 18 A. Correct. 19 Q. Does Rocky Mountain Power have any role in 20 buying power? 21 A. Yes. They -- They have folks in their 22 business unit that will work with a developer who 23 may be looking to sell their power, and work with 24 them to help them get a power -- power purchase</p>		<p>21-48 Objection, narrative, relevance, cumulative</p>		<p>Overruled.</p>

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<p>25 agreement with the company. They do work very 22: 1 closely with -- with Pacific Power folks. 2 Q. So if an entity wanted to connect -- I'm 3 sorry. Let me withdraw that. 4 If an entity wanted to connect a facility 5 that generates electricity into Rocky Mountain 6 Power, however that works, what would they have to 7 do? 8 A. There's -- There's two or three mechanisms 9 or processes for that. There's a process called net 10 metering, which is really for small residential 11 customers, some commercial. It's kind of got a size 12 limit for that. And what that does is allow them to 13 put -- we'll use solar panels as an example -- put 14 solar on their roof, offset their own usage, and if 15 there's any that's excess at the -- any of the</p>				

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<p>16 excess would flow into our system, into Rocky Mountain's system. Same with Pacific Power; it's no different.</p> <p>18 different.</p> <p>19 There's a process under the federal PURPA act, where the party who wants to build a resource can utilize some rate schedules in order to develop a power purchase contract with the -- with Rocky Mountain Power. Under that federal obligation, federal rule, Rocky Mountain Power is obligated to buy the output. You know, there are some very specific rules relative to that. So there is that.</p> <p>2 We also have developers who come to us, outside of any requirements, and want to sell the power to us. Under those, we really don't have any obligation. It's really about is it a good -- is it good for our customers.</p>				

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<p>7 So those are kind of the three -- three</p> <p>8 main ones.</p> <p>9 Q. We'll walk through those.</p> <p>10 So when you talk about net metering, you</p> <p>11 said this was for small customers. What does</p> <p>12 "small" mean in that context?</p> <p>13 A. I don't -- I think the limit -- I think</p> <p>14 the limit in Utah, for example, each one is -- since</p> <p>15 we have six states, every state's a little bit</p> <p>16 different. I believe, in Utah, it's 2000 kilowatts</p> <p>17 is the maximum amount. Other states, it's 25</p> <p>18 kilowatts. And I think that's what Utah is, but I</p> <p>19 wouldn't be sure until I actually looked at the net</p> <p>20 metering tariff.</p> <p>21 So that would -- to finish that: That</p> <p>22 would allow -- when I say "small," that would allow</p> <p>23 probably a commercial customer to do that if they</p>				

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<p>24 wanted to do that, if it made economic sense for 23:25 them. 24: 1 Q. So I'd actually like to step back real 2 quick because -- and I understand from the 3 information I've gotten from PacifiCorp so far, 4 there are a few different agreements that might need 5 to be in place before any electricity is generated 6 and connected to any PacifiCorp infrastructure: A 7 power purchase agreement, a transmission agreement, 8 and an interconnection agreement. 9 So I guess what I'm asking is: How does a 10 power purchase agreement fit in with those other 11 agreements? 12 A. Okay. Yes, I can explain that. 13 Q. Okay. Great. 14 A. They're done -- They're done with kind of 15 three different parts of the business.</p>				

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<p>16 The power purchase agreement is done 17 through what I'll call the merchant side of the 18 business. That's a new word, but that reflects the 19 part of the business that's responsible for the 20 generation of power. It's an industry term and it 21 would include the organization that I'm within and 22 it would also include any -- anybody in Rocky 23 Mountain Power that was doing a power purchase 24 agreement for -- for the acquisition of power. 25 That contract is then managed and 25: 1 controlled by the merchant side of the business. So 2 the merchant side would -- would take the request 3 and work with the customer to do a power -- whether 4 it's a power purchase agreement -- Net metering is a 5 much simpler arrangement, just because of the size</p>				

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<p>6 and it's not as complex. 7 So I'm just going to talk about power 8 purchase agreements. So merchant would negotiate 9 the power purchase agreement, depending on how big 10 the project is, where it's located, et cetera. Each 11 state's a little bit different. As part of our 12 requirements under the power purchase agreement, 13 they have to demonstrate that they have a physical 14 interconnection with our system. 15 Now, I need to clarify that -- and I don't 16 mean to make it more confusing - - but some 17 generators can not be connected to our system, they 18 can interconnect at another utility system, and then 19 that other utility will wheel the power or deliver 20 the power to us for PacifiCorp to purchase. So 21 that's -- that's that piece that's called the</p>				

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<p>22 transmission service in between. 23 But that's -- that kind of steps it. Most 25:24 of our projects are ones that directly interconnect 25 with us. 26: 1 So they demonstrate they have an 2 interconnection agreement, which is what they would 3 do but they do it through PacifiCorp Transmission. 4 The merchant and the transmission business units do 5 not get to talk to each other, because of standard 6 conduct, et cetera. We can't have any sort of 7 preferential knowledge of what our transmission 8 system is -- is going on -- is doing on there. So 9 the customer -- or the generator who's -- who's 10 trying to get a power purchase agreement with us has 11 to separately go through an interconnection process 12 to physically connect to our system.</p>				

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<p>13 They still have to demonstrate to us that 14 they have gotten that, and it's a separate contract 15 and we -- we require evidence that they've done 16 that. That may be the actual signed agreement with 17 PacifiCorp Transmission, it may mean that they have 18 demonstrated they're in the process to get the 19 interconnection done, but they have to demonstrate 20 it. So that's the second piece. 21 Now, the third piece is, once they've 22 interconnected and once they have a power purchase 23 agreement, then the merchant side of the business 24 has to use transmission to move that power to the 25 customer. So merchant would then go to our 27: 1 transmission business unit and request transmission 2 service from them. Once that's done, then -- and</p>				

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<p>3 the project is built and complete, then delivery</p> <p>4 starts and we know that every -- every energy unit</p> <p>5 that's generated can be delivered to our customers'</p> <p>6 load without violation of not having transmission.</p> <p>7 So those are kind of the three legs.</p> <p>8 Q. Okay. We're going to unpack that a little</p> <p>9 bit.</p> <p>10 A. I know. I --</p> <p>11 Q. No, that's --</p> <p>12 A. I apologize.</p> <p>13 Q. No. No. What you -- What you said is</p> <p>14 very helpful. Just going to walk it through, just</p> <p>15 to make sure I understand.</p> <p>16 So an entity may have an interconnection</p> <p>17 agreement with PacifiCorp or they may have an</p> <p>18 interconnection agreement with another utility;</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. But in order to get a power purchase</p>				

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<p>22 agreement, an entity has to demonstrate to 27:23 PacifiCorp that there is an interconnection 24 agreement or there will be one soon? 25 A. Correct. 28: 1 Q. Then once there's a power purchase 2 agreement in place and the entity has 3 interconnected, then the merchant side of PacifiCorp 4 needs a transmission agreement with PacifiCorp 5 Transmission? 6 A. Yes. 7 Q. Only after all of that is complete -- 8 A. Correct. 9 Q. -- will a retail customer actually 10 potentially receive power from the generating 11 entity? 12 A. Yes, that is correct. 13 Q. At what point would a generating entity 14 actually receive money from PacifiCorp for 15 electricity generated?</p>				

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<p>16 A. So within a power purchase agreement there 17 is a definition for commercial operation, and under 18 that definition are a series of documents or 19 evidence that they've met all of these requirements 20 to be deemed commercial. There are specific 21 milestones within the power purchase agreement that 22 they have to meet at the same time. But under that 23 definition, if they have provided all -- met all of 24 those requirements and they've sent it in to us, 25 they generally will ask to be declared commercial 29: 1 and here's all their evidence of it. 2 The merchant business will review those, 3 both -- both from a commercial basis and also from a 4 legal basis, to make sure that everything is -- you 5 know the I's are dotted and the T's are crossed, and</p>				

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<p>6 then we will tell them that they are deemed 7 commercial. At that point, the contract is in 8 effect to pay them the prices outlined within the 9 agreement, and in fact that's when they've met 10 everything to be deemed commercial and can start 11 receiving payment for their energy stream. 12 Q. Can you give me an example, or a few 13 examples, of milestones, for example, that an entity 14 would have to hit before they could be deemed 15 commercial? 16 A. Sure. There are milestones in there for 17 them to provide a copy of their interconnection 18 agreement. There are generally milestones in the 19 power purchase agreement for security requirements. 20 In other words, we're -- we will generally hold --</p>				

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<p>21 unless they're a creditworthy entity, and our credit 29:22 folks will review them, they've got to provide some 23 amount of security, and generally it's a letter of 24 credit or some method, that we would hold over the 25 lifetime of the PPA. They have to provide that. 30: 1 For them to be deemed commercial, there 2 are -- they have to provide a series of documents 3 that we call required facility documents, and that's 4 a list of -- we'll list them out in the power 5 purchase agreement. They'll include things like 6 permits, insurance, licenses, land leases, anything 7 that's necessary for that project to be able to 8 operate as a generating entity. 9 They have to have those signed off as part 10 of COD. They have to have them signed off by either</p>				

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<p>11 a licensed professional engineer in the state, 12 that's not financially connected to the project, or 13 from a legal -- an attorney, not connected to the 14 project, and they have to basically attest to that. 15 We also require an attestation from the project 16 itself that they have everything that they need to 17 be able to own and operate -- construct, own, and 18 operate that project. 19 I'm trying to think if there's anything 20 else. 21 The merchant side has to demonstrate that 22 we've gotten them certified as what we call a 23 network resource. And so a network resource is 24 where we've gone and requested transmission service 25 from PacifiCorp Transmission and they'll deem it to 31: 1 be a network resource, which allows us to be able to</p>				

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<p>2 use that resource to serve our retail load. So 3 that's a condition within the commercial operation, 4 that's the responsibility of the utility, and we 5 just include that in as part of that. 6 So that's, I think, a fairly good picture 7 of what a project goes through. 8 Q. It sounds like these are fairly 9 substantial requirements of any entity who's seeking 10 a power purchase agreement? 11 A. Well, I think -- I think, yes, they are 12 substantial; but if you're building a project that's 13 -- most of these projects, if they're small, are 14 still multi-million dollar projects that -- that 15 involve all of those components irregardless of 16 whether it's, you know, 50 kW or 80,000 kW. 17 So it generally covers a very wide range 18 of sizes of projects, but all the requirements are</p>				

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<p>19 pretty standard that we -- we look to have produced. 20 Q. I understand it may be different for 31:21 different projects, but can you give me an idea of 22 the timeline from when someone might contact 23 PacifiCorp to say, "I would like to have a power 24 purchase agreement with you," to the time that a 25 company is deemed commercial? 32: 1 A. So I'll break that up into kind of two -- 2 kind of two phases. 3 So from the point they -- and I'll also 4 maybe split that into big projects and small 5 projects, and I'll speak specifically to qualifying 6 facilities for an example. 7 So in the -- in the PURPA world, they have 8 what they call standard agreements and non-standard. 9 Standard agreements are ones that have the prices;</p>				

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<p>10 and, generally, the agreements are standard template 11 agreements that prices are posted, so you don't even 12 need to -- you can just go grab the prices, you can 13 fill in the contract, and get those to an execution 14 form in a very short period of time, four to six 15 months. 16 The larger projects -- and it depends on 17 the size -- The size depends on -- Standard and 18 non-standard depends the stage you're in; but if 19 you're a non-standard, then they request -- they're 20 going to request pricing first. They're going to 21 contact the company, then they'll request pricing, 22 and we'll actually model their prices for them, to 23 tell them what we would pay them. 24 At that point, then, they would request a</p>				

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<p>25 power purchase agreement. We would negotiate that. 33: 1 They would have to be producing all of the exhibits 2 and some of the documents that go into it. And 3 that's generally more like a nine to 12-month period 4 to be ready for execution. 5 Once it is executed, then, until it's 6 commercial, it could be two years -- up to two, 7 three years, because they're using the power 8 purchase agreement as the foundation to secure 9 financing to then go build the project. 10 So the total could be -- you know, the 11 longest I've seen them, without any delays, has been 12 about three, three and a half years, from first 13 contact to commercial operation. 14 Q. I'm sorry. Did you say the longest one? 15 A. The longest one has been three and a half,</p>				

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<p>16 four years, something like that, without any delays. 17 Sometimes they get into construction and there's a 18 delay; but if everything went according to plan, per 19 the milestones they've established in their power 33:20 purchase agreement, it can be up to about three and 21 a half years. 22 Q. So, then, does an entity generally reach 23 out to PacifiCorp for a power purchase agreement 24 before construction is started on the facility that 25 will generate the power? 34: 1 A. Yes. Generally, yes. The -- As I said, 2 they're using that revenue source from a power 3 purchase agreement to get -- get financing to 4 construct the project. That's the general mode. 5 There are some that are just building it and 6 hopefully finding an offtaker, but that's a very</p>				

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<p>7 small percentage. 8 Q. Can you give me an idea of the percentage? 9 A. Oh, it's less than five percent, maybe -- 10 not even -- maybe one percent. There's very few 11 projects that use their own funds to build without 12 having somebody to buy the power from them. 13 Q. I want to back up just a little bit. 14 We've used the phrase "qualifying 15 facility" in this deposition. 16 A. Yes. 17 Q. What does that mean? 18 A. Qualifying facility relates to a federal 19 act that was passed in, I think, '78, PURPA -- and 20 don't ask me to tell you what the acronym stands for 21 completely -- but it was a federal act to encourage 22 the development of independent, small generators, 23 primarily focused on renewable generators. That was</p>				

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<p>24 back in '78. It's still in place, but the 25 requirements under PURPA was -- there was three 35: 1 things; and what the federal government did was they 2 put in place and then they passed the implementation 3 to the state, so that's why each state has different 4 implementation rules. The utility is obligated to 5 buy the power from them. 6 Q. And "the utility," meaning PacifiCorp? 7 A. Or any utility who's -- any utility who's 8 got is a PURPA obligation. 9 The -- So the first one is that PacifiCorp 10 has to buy the power from them. The second one is 11 they have to interconnect with that generator; so 12 PacifiCorp Transmission has a legal obligation to 13 interconnect with them. And the third one is: The 14 utility, PacifiCorp, would have to provide station</p>				

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<p>15 service for that generator. 16 Most generators, whether they're solar or 17 wind or hydro, have other things that need 18 electricity when the generator's not operating. 35:19 When they're operating, they supply their own. When 20 they're not operating, they need power from the host 21 utility. That's a -- That's a PURPA obligation. 22 That's kind of the three legs on the stool. 23 Q. So is that the PURPA obligation of 24 PacifiCorp? 25 A. In total, yes. 36: 1 Q. Right. 2 A. The three -- three pieces, yes. We would 3 -- We would buy the power from them; we would 4 interconnect with them through PacifiCorp 5 Transmission; and then, through either Rocky 6 Mountain Power or Pacific Power, supply them station</p>				

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<p>7 service when the generator's not operating. 8 Q. And those are PacifiCorp's obligations to 9 a qualifying facility? 10 A. Yes. So back to your question about PURPA 11 and QFs, qualifying facilities: Under PURPA, the 12 federal government defined what a qualifying 13 facility was, QFs. And they're generally any what 14 they call renewable resource -- hydro, wind, solar, 15 biomass, biogas -- there's a list of them. And you 16 can self-certify with FERC, the Federal Energy 17 Regulatory Commission, and you can -- you can 18 certify with them and be deemed a QF. And that's 19 one of our requirements in our PPAs: They have to 20 provide that certification, and they just get 21 assigned a number by -- by FERC. So that -- that's 22 kind of one of the requirements.</p>				

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<p>23 There is a -- There is a process for a 24 project that is not renewable to be deemed a QF. 25 That relates more to how much energy -- Most of 37: 1 those are ones that are generating steam and 2 generating -- using that steam to supply, you know, 3 a process heat and generating power. And you can be 4 deemed a QF but you're not really -- you're not a 5 renewable project. Ninety-five percent of the 6 projects that we are involved with are renewable 7 QFs. 8 Q. So you talked about a couple of different 9 things there. 10 So if a facility has gone through the 11 process with FERC to be deemed a qualifying 12 facility, PacifiCorp requires evidence of that 13 before PacifiCorp will enter a power purchase</p>				

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<p>14 agreement? 15 A. Correct. It is one of the -- one of the 16 documents or evidence that we require to enter into 17 the power purchase agreement. 37:18 Q. And then a generating entity may not be 19 generating electricity from a renewable source, but 20 it could be deemed a qualifying facility and enter a 21 power purchase agreement with PacifiCorp? 22 A. Yes. It has -- Under -- Under FERC's 23 rules, it has to show -- It's kind of what -- It 24 determines how much thermal and electrical energy 25 are being produced, and it has a ratio that you have 38: 1 to meet in order for it to be viewed as a QF. 2 That's -- That's not the normal ones that we see. 3 It was back in the early '80s, but it's not 4 something that's typically -- that we typically see</p>				

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<p>5 as QFs nowadays. 6 Q. And when you're talking about QFs, those 7 are the only entities to which PacifiCorp has PURPA 8 obligation? 9 A. Correct. 10 Q. So, then, can you tell me a little bit 11 about what you would require of an entity to which 12 PacifiCorp had no PURPA obligation, to enter a power 13 purchase agreement with a non- QF? 14 A. Sure. Those would be what we would view 15 as bilateral negotiated agreements, and it simply 16 means that we have negotiated an agreement to buy 17 the power based on it being favorable to our 18 customers; otherwise, we wouldn't enter into any 19 sort of transaction. 20 We generally -- Because of the additional 21 scrutiny that we would get by doing a bilateral</p>				

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<p>22 deal, we generally do those through a request for 23 proposal process. So we would -- if we're looking 24 to acquire power on a non-QF basis, we generally 25 issue a request for proposal and -- with all of the 39: 1 specs that we're looking for from those resources. 2 We take them through due diligence, we take them 3 through an economic evaluation, we look at them from 4 a regulatory perspective; and then if there's one 5 that looks like it is superior value, can reduce the 6 cost of the rates of our customers, then we would 7 proceed with -- with doing that. 8 Q. Then I want to go back a little bit to you 9 talked about a QF may have a power purchase 10 agreement with standard pricing or with non-standard 11 pricing. 12 Why would -- Why would there be -- Why</p>				

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<p>13 would you go with one option rather than the other? 14 Or why would the entity go with one option rather 15 than with the other? 16 A. So the reason that PURPA put in place 39:17 standard and non-standard was they looked at the 18 standard as being really focused on the mom-and-pop 19 type developers, the ones who don't have the 20 engineering, the financial resources, the legal 21 resources, to put a project in. And back in the 22 beginning -- beginnings in the '80s and like that, 23 it was the folks who put in little hydro projects on 24 a creek that was running through their property. 25 That's just an example. And we -- PacifiCorp has a 40: 1 lot of those, and they were done way back in the 2 '80s and '90s and they're really small projects.</p>				

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<p>3 And standard just allowed them to get the power 4 purchase agreement in place without having to spend 5 a lot of money on legal, engineering, those kinds of 6 -- and viewing that those folks were not as 7 sophisticated or had those kind of resources 8 available, they said, "Well, just have standard 9 prices for those projects and provide a simplified 10 contract." They're not very big; they don't have 11 the expertise to negotiate with the big utilities. 12 So that was done. Over time, that -- depending on 13 the state, that side -- and then they put on cap on 14 how big the project could be. 15 Q. That's the very beginning? 16 A. Yeah, at the very beginning. And it was 17 back -- it was like 100 kW. That was the federal 18 kind of look-see what it should be. Over time, that</p>				

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<p>19 evolved to nowadays some states -- Oregon, for 20 example, it can be 10,000 kW. 21 So those are -- those kind of projects are 22 multi-million dollar projects, those people who are 23 developing those projects are much more 24 sophisticated; but they know they can get a price 25 that's posted there, they know they don't have to go 41: 1 through negotiations. So they - - it's an easier 2 route for them to undertake. 3 (Sotto voce remarks.) 4 Q. BY MS. HEALY GALLAGHER: So you said that 5 Utah -- what was the upper limit for standard 6 pricing? 7 A. The upper limit is 3000 kW for a -- for 8 renewable projects. That would include wind, solar. 9 If it's like a baseload type project, like hydro and 10 some of those, it's like 1000 kilowatts. So for</p>				

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<p>11 solar, wind, those are at 3000. 12 Q. Anything -- Anything above that in Utah 13 would be non-standard pricing? 14 A. Correct. 15 Q. And just for the sake of the record: 3000 41:16 kilowatts is how many megawatts? 17 A. Three. 18 Q. Is there any way for a project that is 19 above 3000 kilowatts to opt for standard pricing? 20 A. No. There's no option for them to get 21 standard pricing if that single project is greater 22 than 3000 kilowatts. We have had situations where 23 somebody will take a really large project and break 24 it up into multiple 3000 kW projects as an example. 25 They have to meet certain requirements about 42: 1 distance apart and all of that, but we have had that 2 situation. 3 (Sotto voce remarks.)</p>				

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<p>4 Q. BY MS. HEALY GALLAGHER: Just really 5 quickly, Mr. Griswold: Do you happen to know what 6 the acronym is for PURPA? 7 A. Public -- Public utility reform. 8 Q. Or, actually, how about can you just spell 9 out the acronym that you're using? 10 A. Oh, it's P-U-R-P-A. I always - - I always 11 have to go look it up. I'm sorry. 12 Q. No problem. Oh, and you mentioned that 13 the longest -- the longest time that you've seen to 14 go from interest in a PPA to an entity being deemed 15 commercial was about three, three and a half years? 16 A. Yes. That's -- That's about the range 17 that -- yeah, for longest, yeah. 18 Q. What's the shortest that you've ever seen? 19 A. Two years, somewhere in that range. I 20 think a lot of it is -- relates -- getting the power</p>				

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<p>21 purchase agreement negotiated is usually a small 22 slice of the overall time required. I mean, the 23 interconnection takes longer because there's a lot 24 more studies that go on to look at the physical 25 electrical system there. Things have to be 43: 1 constructed. So the power purchase agreement in 2 itself is a shorter time frame. 3 Q. And with that -- forgive me for reviewing 4 ground, but... 5 So you mentioned that often facilities use 6 a PPA as a way to get financing for construction; 7 but, also, in order to enter a PPA, an entity has to 8 show that there is an interconnection agreement in 9 place or that there is one being negotiated. 10 So how does that work? Like would an 11 entity reach out for an interconnection first and</p>				

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<p>12 then seek a PPA? 13 A. We encourage them to do that, only because 14 the interconnection process is generally longer in 43:15 duration than the negotiation of the power purchase 16 agreement. So if a project approaches us about 17 being a qualifying facility, we encourage them at 18 that first contact to contact PacifiCorp 19 Transmission about the interconnection -- just 20 because, the way our system is set up, you don't 21 know if you're interconnecting into an area that may 22 need a lot of work done. You know, it may have, you 23 know, a whole sort of litany of things that may be 24 going on physically and electrically that would make 25 the PPA unfeasible for them. So we do encourage 44: 1 them to go -- Likewise, a lot of them will contact</p>				

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<p>2 PacifiCorp Transmission for an interconnection, and 3 they're bounced also over to us to have discussions 4 with them about the power purchase agreement. 5 Q. And the interconnection agreement, just to 6 your knowledge, has to do with the actual physical 7 connection between a facility and the utility that 8 will receive the power that's generated? 9 A. Correct. 10 Q. So Rocky Mountain Power has a facility in 11 Millard County, Utah; correct? 12 A. Without looking at a list, I couldn't tell 13 you; but I'll accept that they do. 14 Q. Sure. 15 A. We have -- Just so you know: We have 16 almost 200 qualifying facilities, and we've had a 17 whole bunch of ones recently built in Utah; so I'll 18 -- I would accept it.</p>				

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<p>46:22 Q. So do you know, does PacifiCorp have a</p> <p>23 power purchase agreement with an entity named</p> <p>24 Rapower-3 LLC?</p> <p>25 A. Not to my knowledge, no.</p> <p>47: 1 Q. So PacifiCorp does not have a PPA?</p> <p>2 A. No.</p> <p>3 Q. Does PacifiCorp have a PPA with</p> <p>4 International Automated Systems Inc.?</p> <p>5 A. No.</p> <p>6 Q. Does PacifiCorp have a PPA with an entity</p> <p>7 called LTB1 LLC?</p> <p>8 A. No.</p> <p>9 Q. Does PacifiCorp have a PPA with an entity</p> <p>10 -- bear with me -- called DCL16BLT Inc.?</p> <p>11 A. No.</p> <p>12 Q. Does PacifiCorp have a PPA with -- Well,</p> <p>47:13 let me ask this: Does PacifiCorp enter PPAs with</p> <p>14 individuals or with business entities?</p>	<p>58: 8 THE WITNESS: From the time that we have</p> <p>9 the first touch from the developer until execution</p> <p>10 of a PPA for a standard, which we've defined based</p> <p>11 on smaller projects, those generally are four to six</p> <p>12 months.</p>		193	

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<p>15 A. We enter them with both. Generally, the 16 bulk of them are business entities -- project LLCs, 17 for example, project entities. That's the -- 85, 90 18 percent are that, yes. 19 Q. So then does PacifiCorp have a power 20 purchase agreement with R. Gregory Shepard? 21 A. No. 22 Q. Does PacifiCorp have a power purchase 23 agreement with Neldon Johnson? 24 A. No. 25 Q. Does PacifiCorp have a power purchase 48: 1 agreement with Roger Freeborn? 2 A. No. 3 Q. Does PacifiCorp have a power purchase 4 agreement with an entity named Cobblestone Center 5 LLC? 6 A. No. 7 Q. Does PacifiCorp have a power purchase</p>				

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<p>8 agreement with any of the remaining entities in 9 paragraph 7 of plaintiff's Exhibit 193? 10 A. No. 11 Q. To your knowledge, have any of these 12 people or entities reached out to PacifiCorp for 13 interest in entering a power purchase agreement? 14 A. No, not to my knowledge.</p>				
<p>48:20 Mr. Griswold, we used the acronym FERC 21 earlier in the deposition. 22 A. Um-hum. 23 Q. What is -- Can you give me the actual 24 words for the acronym? 25 A. It's Federal Energy Regulatory Commission.</p>	<p>60: 13 far: Are you aware of large-scale power production 14 facilities in the state of Utah that don't sell 15 their output to PacifiCorp? 16 A. Yes. 17 Q. Who? Give me -- Give me some examples, if 18 you could. 19 A. There's a couple of large wind farms down 20 in southern Utah that sell to utilities in 21 California. 22 Q. And so that transmission goes all the way 23 from Utah to California or through --</p>	<p>60:13 – 61:12, Objection, Not relevant, Fed. R. Evid. 401, 402</p>		<p>Overruled.</p>

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	<p>24 A. That's my understanding, yes.</p> <p>25 Q. Okay. And just so I understand: I</p> <p>61: I presume there's not one -- there's not power lines</p> <p>2 running from directly from this power facility to</p> <p>3 California. It's delivered through a series of --</p> <p>4 Well, you tell me how you understand how it's</p> <p>5 delivered.</p> <p>6 A. I don't know all of the transmission</p> <p>7 arrangements, but the power is moved to California.</p> <p>8 Q. I mean, there's a national grid, is there</p> <p>9 not?</p> <p>10 A. There's an electrical grid across the</p> <p>11 U.S., but it's not always connected across the U.S.</p> <p>12 Q. Okay. Is it unusual for consumers in one</p> <p>13 state to purchase power generated in another state?</p> <p>14 A. Yes. I mean, it's -- as long as you can</p>			

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	<p>15 move the power from one point to another, then -- 16 then it's -- it can be done. 17 Q. I mean, if I built a power generation 18 facility, conceivably there are lots and lots and 19 lots of potential purchasers of that power that I'm 20 producing. Is that fair? 21 A. That's fair.</p>			
<p>49:25 Q. BY MR. AUSTIN: But what I'm most 50: 1 interested in discerning is: In terms of your 2 answers regarding any -- well, your response in 3 paragraph 7, interconnection agreement or power 4 purchase agreement or transmission service 5 agreement, can you tell me how you determined 6 whether or not any of those documents or related 7 documents exist within the company? 50: 8 A. Yes. We -- For any of the ones that</p>	<p>62: 4 Q. BY MR. AUSTIN: I mean, if you've got a 5 power plant in southern Utah that's delivering power 6 all the way to California, there must -- I presume 7 there's some kind of network of transmission lines 8 that make that possible. 9 Is that your understanding? 10 A. Yes. 62:11 MS. HEALY GALLAGHER: Object to form.</p>	<p>62:4 - 11, Objection, leading, Fed. R. Evid. 611(c), Not relevant, Fed. R. Evid. 401, 402</p>		<p>Overruled.</p>

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<p>9 merchant would have available to them, we searched 10 our records of documents, hard copies, electronic. 11 Q. Do you have a system that enables you to 12 easily do that? 13 A. I wouldn't say "easily"; but we have a 14 system, yes. 15 Q. Okay. And in this case -- and I don't 16 want -- you know, it doesn't have to be detailed, 17 unless it turns out it's material; but can you tell 18 me just what that entailed on your end? Were you 19 the one who personally reviewed records? 20 A. I searched my own personal -- not my 21 personal, but the company, where we had files on any 22 of the QFs' projects that we dealt with. We also 23 went through our contracts file or system, which 24 would detail any contracts that had been executed</p>				

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<p>25 between any counterparties with PacifiCorp. We -- I 51: I mean, I looked back through my log of phone calls 2 and stuff that I have available. That was probably 3 the -- it kind of covered the universe of what we 4 did. 5 Q. Okay. Is it your testimony that 6 PacifiCorp or its related entities have never had 7 any contact with any of the entities or individuals 8 identified in paragraph 7 of the subpoena? 9 A. Not to my knowledge; none that I could 10 find within any of my records. 11 Now, does that mean that they didn't have 12 a call in to our company at someplace, a touch 13 point? I don't know the answer to that. I do know 14 that they never talked to me.</p>				
<p>52:15 Q. Okay. So if there's no PPA, then there's 16 no need for a transmission agreement; or, as a</p>				

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<p>17 matter of protocol, the 18 transmission agreement would 19 come after the PPA. Is that fair? 20 A. The transmission service 21 agreement, you're 22 correct on that, yes, it would -- if there's no PPA, then there would be no transmission service agreement.</p>				
<p>53: 1 What information would PacifiCorp need to 53: 2 have from an entity seeking to enter into a PPA in 3 order to negotiate that PPA? Does that make sense? 4 A. It makes sense. If it's a qualifying 5 facility, there is posted on PacifiCorp's website 6 Rocky -- I'll use Rocky Mountain Power Utah as an 7 example. There is a rate schedule 37 for standard 8 and a rate schedule 38 for non- standard. Within 9 that is a whole process with a list of items -- 10 there's about a dozen, eleven to a dozen items in</p>	<p>62: `17 Q. BY MR. AUSTIN: Is all the power delivered 18 by PacifiCorp in the state of Utah generated in the 19 state of Utah? 20 A. No.</p>	<p>53:1 – 54:19: Objection, not relevant, FRE 401, 402; hearsay, FRE 802 62:17 – 20, Objection, Not relevant, Fed. R. Evid. 401, 402</p>		<p>Overruled.</p>

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<p>11 there -- that the developer or the 12 QF would need to 13 provide to the company in order 14 to begin the process 15 of preparing a standard 16 agreement or negotiating a 17 non-standard agreement. 18 Q. I mean, wouldn't part of the 19 information 20 that would be necessary in terms 21 of finalizing a PPA 22 be some quantification of the 23 amount of power to be 24 generated? 25 A. Yes. 26 Q. And if that's an unknown, is 27 there really 28 any way to negotiate a PPA prior 29 to having at least 30 some quantification of what's 31 expected? 32 A. If I understand your question 33 right, it's 34 how can they ask for a PPA if 35 they don't know the 36 amount of energy they're going to 37 generate. Is that 38 54: 1 what you're asking? 39 Q. Yeah.</p>				

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<p>3 A. Most -- So I think the answer is: No, 4 that the QF generally has at their disposal methods 5 to determine -- to estimate the amount of power that 6 would be produced by their technology. For example, 7 wind farms will put up met towers, meteorological 8 towers, which captures the wind speed at different 9 heights. They can then plug into the curve of what 10 the turbine is expected to produce at different wind 11 speeds and tell us how much -- and if they have the 12 number of turbines, they can tell us about what 13 they're going to generate. It's going to vary. 14 Solar. There are modeling systems which 15 are based on the solar radiation in an area, that 16 has been collected over the years, that will turn 17 out the expected output based on the panels that</p>				

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18 they're expecting and inverts they're expecting to 19 use. So they can provide us an estimate.				
56: 2 Q. Yeah. I mean, if I came to you and said, 3 "Hey, I've got a really great idea for a renewable 56: 4 source of energy. I'd really like to get a PPA from 5 you, to get ahead of the game and in order to get 6 investor money. I don't really know what I think it 7 actually will do, but it could be a lot," would you 8 negotiate a PPA with me? 9 A. No. I would suggest they find somebody to 10 help them determine what their idea was.	65: 18 Q. BY MR. AUSTIN: Okay. Is it fair to say 19 that -- that although many people come to 20 PacifiCorp, in advance of constructing a project, to 21 get a PPA, there may be many reasons, business and 22 otherwise, why that may not be done? 23 A. Yes. I would agree with that.	56:2 – 10: Objection, not relevant, FRE 401, 402; calls for speculation		Overruled.
67: 6 MR. AUSTIN: Okay. That's all that I 7 have. Thank you. 8 MR. REICH: No questions. 9 MS. HEALY GALLAGHER: No questions.	66: 17 Q. Okay. And PacifiCorp's always willing to 18 negotiate a PPA with an appropriate entity once they 19 can provide the information that PacifiCorp requires 20 in order to do that? 21 A. Yes, with the caveat that if it's a QF, we			

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	22 have an obligation. If it's somebody who's just 23 wanting to negotiate a power purchase agreement, not 24 necessarily.			
68: 1 KRISTOPHER BREMER, 2 called as a witness, being duly sworn on oath, was 3 examined and did testify as follows: 4 EXAMINATION 5 BY MS. HEALY GALLAGHER: 6 Q. Hello, Mr. Bremer. I introduced myself a 7 moment ago; but, again, my name is Erin Healy 8 Gallagher and I am representing the United States in 9 the captioned matter. 10 If you would please take a look -- 11 Actually, first why don't you go ahead and please 12 say and spell your name for the record. 13 A. Yeah. Kris Bremer. It's K-R-I- S, 14 B-R-E-M-E-R. 15 Q. And would you please give the city and 16 state of your home address.	119: 4 THE WITNESS: Have we ever signed an 5 interconnection agreement with a customer that I 6 know does not have a power purchase agreement? 7 MR. AUSTIN: Yeah. 8 THE WITNESS: Is that what you're asking 9 me? 10 MR. AUSTIN: Yes. 11 THE WITNESS: Yes. 12 Q. BY MR. AUSTIN: And under what 13 circumstances? Is that typical? 14 A. I wouldn't -- I can't really say. It's -- 15 I wouldn't say it's typical, but... 16 Q. Well, so if I wanted to come to PacifiCorp 17 and I said, "Look, I don't want to sell any power to 18 you, but I do want to negotiate an interconnection		193	

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<p>17 A. Portland, Oregon. 18 Q. And the city and state of your work 19 address? 20 A. Also Portland, Oregon. 21 Q. Would you please take a look at what's 22 been marked plaintiff's Exhibit 193 that's right 23 next to you there. 24 Do you recognize plaintiff's Exhibit 193? 25 A. I do. 69: 1 Q. All right. And you've been designated by 2 PacifiCorp to provide testimony on its behalf; 3 correct? 4 A. Yes. 5 Q. And what's your understanding of what 69: 6 you're here to testify about? 7 A. Discuss the generation interconnection 8 related questions in this document.</p>	<p>19 agreement and I want to hook up to your" -- "to your 20 grid," would PacifiCorp do that? 21 A. Yes. 119:22 Q. Would there be any benefit, that you can 23 conceive of, to a business for doing that? 24 A. I don't want to speculate on what the 25 energy developers would think.</p>			
<p>71: 2 Q. Okay. Is there anything today that would 3 prevent you from understanding and answering my</p>	<p>122: 4 Q. And in those circumstances, does 5 PacifiCorp refund money that's been advanced?</p>		<p>196</p>	

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<p>4 questions to the full capacity of your recollection 5 and cognition? 6 A. No. 7 Q. Are you taking any medications or drugs 8 that might interfere with your memory? 9 A. No. 10 MS. HEALY GALLAGHER: Would you please 11 mark plaintiff's Exhibit 195. 12 (Exhibit 195 m a r k e d .) 13 MS. HEALY GALLAGHER: All right. Thank 14 you. 15 Q. BY MS. HEALY GALLAGHER: All right. 16 Mr. Bremer, I'm handing you what's been marked 17 p l a i n t i f f ' s Exhibit 195. 18 Do you recognize this exhibit? 19 A. Yes, I do. 20 Q. What is it? 21 A. It's the résumé that I provided as part of 22 this deposition. 23 Q. And there's a lot of information on here.</p>	<p>6 A. No. Well, if it's been advanced? Speak 7 more on that. You mean the financial security? 8 Q. Yeah. 9 A. It depends if we -- if we've spent any 10 money on design or procurement or construction 11 activities of that money. 12 Q. If I pay for a feasibility study, would 13 that be refunded? 14 A. No. 15 Q. If I got partway through construction of a 16 construction required by PacifiCorp in order to 17 allow an interconnection, would PacifiCorp refund me 18 what I had spent if I decided not to follow through 19 with the interconnection agreement? 20 A. Unlikely. I say that perhaps equipment 21 that was procured, if it could be used elsewhere, 22 perhaps it would be refunded; but any time, such as</p>			

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<p>24 Looks like you've done quite a bit 25 for PacifiCorp in 26 particular. 27 72: 1 Can you give me a general 28 overview of the 29 2 time that you've been working for 30 PacifiCorp and 31 3 what you've done? 32 4 A. Sure. Yes. So I started with 33 PacifiCorp 34 5 in around 2001 on the T&D 35 operations organization. 36 6 I was there for a number of years. 37 Moved on to its 38 7 asset management organization, 39 worked there for a 40 8 few years. 41 9 What is probably more relevant to 42 today's 43 10 discussion is my time at 44 PacifiCorp Transmission, 45 11 which I believe started in 2013. 46 And, specifically, 47 12 my current role is generation 48 interconnection 49 13 manager, which started in 2014. 50 14 Q. And tell me about your role as 51 generation 52 15 interconnection manager. What 53 does that mean?</p>	<p>23 engineering, things like that, would not.</p>			

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<p>16 A. Ultimately, it means I'm responsible for 17 the employees in my group, two project managers. We 18 administer the applications that we receive for – 72:19 from energy developers to interconnect generation 20 projects to PacifiCorp's grid. We're mainly in 21 charge of the administration -- administrative side 22 of that, so we're in charge of the process. 23 Q. We heard testimony earlier from 24 Mr. Griswold about just kind of the interplay of 25 agreements that an entity would have to enter with 73: 1 PacifiCorp to both connect and sell power. 2 Can you tell me what your understanding is 3 of that relationship from the interconnection 4 generation perspective? 5 A. Well, from my perspective, all that's</p>				

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<p>6 required is a generation interconnection agreement. 7 My -- My business is not concerned with whether -- 8 who the power is sold to and, frankly, how the power 9 is transmission -- transmitted through a 10 transmission service agreement. So, really, a 11 generation interconnection agreement is what is 12 required to complete my process. 13 Q. And what -- Can you tell me in lay terms, 14 what does a generation interconnection agreement do? 15 What does it allow an entity to do? 16 A. It allows them to physically connect their 17 generating facility to PacifiCorp's electric system. 18 Q. If a person or an entity wants to 19 physically connect their facility to PacifiCorp's 20 system, what do they have to do? 21 A. The first step is to submit an application</p>				

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<p>22 along with all of the additional technical 23 information and deposits that go along with the type 24 of interconnection being requested. 25 Q. After the application and all of that 74: 1 material is submitted, what's the next step? 2 A. We will schedule what is referred to as an 3 initial scoping meeting between the interconnection 4 customer and PacifiCorp's engineering staff, along 5 with my -- with my group, to discuss the specifics 6 of what the customer is proposing. 7 Q. And what's the next step? 8 A. We will -- The interconnection customer 9 has the option to choose which type of study they 10 would like us to perform, to do an analysis of what 11 it would take to allow interconnection of the 12 facility.</p>				

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<p>13 They can choose a feasibility study, which 14 is optional, that provides high-level information; 15 or they can move directly to a system impact study, 16 which provides the specific technical details of 17 what would be required to allow interconnection. 74:18 Following that is a facility study in which 19 PacifiCorp's project management organization comes 20 in and lays out the scope of work and the timing for 21 the requirements that were identified in the 22 previous study to be performed. And following that 23 is the actual execution of an interconnection 24 agreement. 25 Q. Is the facility study optional? 75: 1 A. No, under most circumstances. 2 MS. HEALY GALLAGHER: Okay. This is the 3 next exhibit, please. 4 (Exhibit 196 m a r k e d .)</p>				

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<p>5 Q. BY MS. HEALY GALLAGHER: Mr. Bremer, I'm 6 handing you what's been marked plaintiff's 7 Exhibit 196. 8 Would you take a look at that, please, and 9 look at me when you're done. 10 A. Okay. 11 Q. All right. So plaintiff's Exhibit 12 196 13 appears to be a brochure called "Connecting 14 PacifiCorp's Transmission and Distribution System, 15 Getting Started." Is that right? 16 A. Yes. 17 Q. Are you familiar with this brochure? 18 A. I am. 19 Q. How are you familiar with it? 20 A. It's a brochure that we have distributed 21 in the past to potential customers. 22 Q. And the generation and interconnection 23 section, does your group provide input for this brochure?</p>				

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<p>24 A. You know, this brochure precedes my time 25 in this, in this -- in this role, but I would assume 76: 1 yes. 2 Q. Okay. To your knowledge, does this 3 brochure accurately reflect the steps? 4 A. It does. I'm familiar with it, and it 5 does, yes. Sorry. 6 Q. Okay. Sorry. Let me just go ahead and 7 finish the question. That's all right. We'll just 8 get it clear for the record. 9 To your knowledge, does plaintiff's 10 Exhibit 196 accurately reflect, in simplified terms, 11 the procedure for generation interconnection 12 agreement? 13 A. Yes. 14 Q. And, actually, Mr. Bremer, you've been 15 designated by PacifiCorp to provide testimony on its 16 behalf; correct?</p>				

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76:17 A. Yes. 18 Q. If I ask you a question today and you are 19 answering from something other than your own 20 personal knowledge of the facts of your job, of your 21 experience, will you let me know? 22 A. Yes.				
78: 6 If we look back at plaintiff's 7 Exhibit 196 - - 8 A. Yes. 9 Q. -- do you see on the first page there's a 10 gray box to the far right? It starts with: "To 11 protect the electric reliability and safety of all 12 of our customers, we look at the big picture." 13 Do you see that? 14 A. I don't. Where are you? 15 Q. It's to the right on plaintiff's 16 Exhibit 196, this gray box. 17 A. To the left. 18 Q. That is to the left, isn't it? 19 A. Thank you. I'm with you now. 20 Q. When I'm driving, I point so I don't --	128: 18 Q. Okay. Have you ever negotiated an 19 interconnection agreement or been through the 20 process with anyone who expressed to you that they 21 intended to connect but they never intended to sell 22 power to PacifiCorp? 23 A. Yes. 128:24 Q. And do you have any knowledge regarding 25 the circumstances under which someone might do that? 129: 1 A. Yes. Such as a customer, a load customer, 2 like an industrial customer that has a huge energy 3 need, will put their own generator on the system to	78:6 – 80:2: Objection, not relevant, FRE 401, 402; hearsay, FRE 802 calls for speculation	196	Overruled.

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<p>21 A. Okay. Yes, I see the box you're referring</p> <p>22 to.</p> <p>23 Q. Okay. Is that -- Is that gray box, is</p> <p>24 that -- does that describe the concerns of the</p> <p>25 generation interconnection group, or is that</p> <p>79: 1 information perhaps from a different group?</p> <p>2 A. Well, I mean, yes. I mean, just strictly</p> <p>3 speaking from generation interconnection, the number</p> <p>4 one priority is reliability and safety.</p> <p>5 Q. So, for example, if you were evaluating a</p> <p>6 request for a generation interconnection agreement</p> <p>7 with a facility, these considerations in this gray</p> <p>8 box are considerations that would impact your</p> <p>9 decision on whether to enter that agreement?</p> <p>10 A. These would just be requirements. I mean,</p>	<p>4 offset their power every month, so like essentially</p> <p>5 a large net metering project. They're not going to</p> <p>6 put energy onto PacifiCorp's system, but the</p> <p>7 generator is physically capable of doing so.</p> <p>8 Q. Okay. So sometimes they want the option</p> <p>9 of being able to generate?</p> <p>10 A. Well, the engineering staff will call for</p> <p>11 infrastructure to -- If energy flows on -- If energy</p> <p>12 starts to flow onto the system, it will cut it off</p> <p>13 immediately; so it's physically not possible. But</p> <p>14 the generator is -- The wires are connected that it</p> <p>15 -- that it is possible.</p> <p>16 Q. Okay. So let me make sure I understand.</p> <p>17 They have a generator, the wires are</p> <p>18 connected, and what's the purpose of that</p> <p>19 connection?</p>			

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<p>11 there's really no decision. We would -- We would 12 provide the requirements necessary for the customer 13 to interconnect. 14 Q. And the customer would then have to meet 15 those requirements in order for PacifiCorp to enter 16 the agreement? 17 A. Correct. 18 Q. And, in fact, in the larger box on the, in 19 fact, right-hand side of the first page of 79:20 Exhibit 196, there's a subheader there that says: 21 "PacifiCorp's general interconnection requirements." 22 Do you see that? 23 A. I do. 24 Q. And then there are a couple of specifics 25 there. It says: "A few of the technical and 80: 1 contractual requirements for interconnection of 2 generation to the electrical grid are...."</p>	<p>20 A. Just to offset their -- the energy that 21 they're having to pay for. So it's running at the 22 same time as energy's flowing into their facility 23 for their industrial load, so it's running in 24 parallel. 25 Q. Okay. So you're talking about 130: 1 circumstances where a connection is made so that 2 energy can be procured from PacifiCorp? 3 A. Well, they're trying to lessen the amount 4 of energy they're taking from PacifiCorp by 5 generating their own on-site generation. 6 Q. But that never goes back into PacifiCorp's 7 transmission system? 8 A. Right. And, again, the infrastructure 9 will be put in place to prevent it. 130:12 Q. I gotcha. Okay. But you're not aware of</p>			

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	<p>13 anybody who has sought an interconnection agreement</p> <p>14 without circumstances like you just described, with</p> <p>15 no intent to ever send power or transmit power to</p> <p>16 PacifiCorp; is that fair?</p> <p>17 A. Yeah, that's fair.</p>			
<p>80: 5 Q. BY MS. HEALY GALLAGHER: And the first</p> <p>6 bullet point says: "You will be required to provide</p> <p>7 protection and control equipment."</p> <p>8 What does that mean?</p> <p>9 A. Well, I am not a protection and control</p> <p>10 engineer; but, generally, it is the type of</p> <p>11 equipment that monitors the generation facility to</p> <p>12 make sure that it is not impacting the reliability</p> <p>13 of the system.</p> <p>14 Q. If an entity proposing an interconnection</p> <p>15 -- a generation interconnection agreement could not</p> <p>16 demonstrate that it had protection and control</p>	<p>131:12 Q. There are established standards for</p> <p>13 performance and design that are referenced in</p> <p>14 PacifiCorp's materials, including design standards</p> <p>15 of Western Electricity Coordinating Council, North</p> <p>16 American Electrical Liability Corporation; is that</p> <p>17 right?</p> <p>18 A. Yes.</p> <p>19 Q. And PacifiCorp; right?</p> <p>20 A. Yes.</p> <p>21 Q. So if I was designing a power plant, I</p> <p>22 could, in the first instance, before even coming and</p> <p>23 submitting my plans to PacifiCorp for an</p> <p>24 interconnection agreement, have design work done</p>	<p>80:5 – 80:19: Objection, not relevant, FRE 401, 402; hearsay, FRE 802 calls for speculation; improper hypothetical</p>		<p>Overruled.</p>

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<p>17 equipment, would PacifiCorp enter a generation 18 interconnection agreement?</p>	<p>25 that would comply with these standards at least; is 132: 1 that right? 2 A. I suppose that's possible, yeah. 3 Q. I guess -- I guess what I'm getting at is: 4 It's a requirement of PacifiCorp that all applicants 5 comply with these standards as a precondition for 6 obtaining an interconnection agreement; is that 7 right? 8 A. Yes. 132: 9 Q. Okay. And in terms of the -- in terms of 10 the connection, are you aware of any reason why 11 someone couldn't build a power transmission -- or a 12 power production facility and then finalize the work 13 related to interconnection thereafter? 14 A. Could you clarify that? Are you -- Are 15 you asking, could someone build a generating</p>	<p>132:9 – 19, Objection, Hypothetical, 703</p>		<p>Overruled.</p>

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	<p>16 facility and just have it done and then -- 17 Q. And then apply -- 18 A. -- submit it? I know of no reason why you 19 couldn't. 132:20 Q. Okay. And I don't know, but maybe you can 21 tell me: Have you seen circumstances where there's 22 an existing power production facility that is 23 applying for an interconnection agreement with 24 PacifiCorp? 25 A. Not outside of some sort of contractual 133: 1 issue where maybe their current agreement is 2 terminating and they have to redo it. 3 Q. Right. So maybe they were selling to 4 somebody else and they would now want to sell to 5 PacifiCorp, for example? 6 A. Well, no. I'm talking, again, 7 specifically generation interconnection agreement,</p>			

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	<p>8 so that something would have had to exist with 9 PacifiCorp already, but in some cases perhaps it's 10 terminating and they have to reapply. 11 There are generators that were connected 12 to PacifiCorp's system prior to the open access 13 transmission tariff, many -- you know, 20, 30, 40 14 years ago, and sometimes those agreements terminate; 15 and in order to maintain the interconnection, they 16 would have to go through the process almost as a new 17 application.</p>			
<p>80:20 THE WITNESS: Well, we would identify what 21 it would have to be in order to enter the 22 interconnection agreement. We would not allow them 23 to generate if they didn't meet the requirements 24 identified in the agreement.</p>		<p>80:20-81:15: Objection, not relevant, FRE 401, 402; hearsay, FRE 802 calls for speculation; improper hypothetical</p>		<p>Overruled.</p>

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<p>25 Q. BY MS. HEALY GALLAGHER: So are there two 81: 1 different things? Is there an interconnection 2 agreement and then a separate generation agreement? 3 A. No. What I'm saying is: Before anything 4 is built, we would say in the agreement, "This is 5 what's required." But until that equipment is 6 actually installed and functioning, we would not 7 allow the generating facility to actually turn on. 8 Q. Okay. So, then, backing up: Typically, 9 when an entity comes to PacifiCorp seeking a 10 generation interconnection agreement, have they 11 already built the facility? 81:13 THE WITNESS: No. 14 Q. BY MS. HEALY GALLAGHER: Never? 15 A. Not in my experience.</p>				
<p>82: 1 Q. Sure. So then can you explain, please,</p>	<p>186: 2 Q. Do you know what -- Do you know whether</p>	<p>186:2 - 16, Objection, Not relevant, Fed. R. Evid. 401, 402</p>		<p>Sustained as to 186: lines 2-13,</p>

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<p>2 the types of things that PacifiCorp requires to 3 enter a generation interconnection agreement?</p>	<p>3 the Intermountain Power Project transmits power 4 across PacifiCorp's lines to California? 5 A. I do not know that. 6 Q. Do you know whether or not - - Pardon me. 7 Have you been involved in a transmission 8 consulting agreement for Sun Smart Solar? 9 A. No, I have not. 10 Q. Have you been involved or are you aware of 11 a transmission agreement regarding Energy Capital 12 Group LLC? 13 A. No. 14 Q. Are you aware of every planned or possible 15 solar power production facility in Utah? 16 A. No. 17 Q. I mean, 186:17 Q. I mean, you only -- you and your office 18 become involved when there's somebody who knows how 19 much power they want to transmit and where; is that</p>			<p>overruled as to 14-16</p>

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	20 fair? 21 A. From my position, yes. Once -- Yeah. 22 Q. And -- 23 A. I can't speak for my whole office, but 24 from -- 25 (Reporter request.) 187: 1 THE WITNESS: In my position, yes. I 2 can't speak for my whole office, but from what I do.			
82: 5 THE WITNESS: Really, the basics of what 6 we require are that they've gone through the study 7 process and have -- can produce site control 8 documentation that they have some sort of authority 9 to build their generating facility at the site in 10 which they say they're going to build it. 11 Q. BY MS. HEALY GALLAGHER: Can you tell me a 12 little bit more about the site control documents? 13 What do you mean by that? What are the types of	187: 11 Is an interconnection agreement a 12 prerequisite for a transmission agreement? 13 A. Not necessarily, no. 14 Q. Okay. And are there circumstances where 15 someone is permitted to enter into a transmission 16 agreement without ever entering into a 17 interconnection agreement? 18 A. Yes. Customers may request a transmission 19 service agreement. There's nothing in our tariff to 20 prohibit that without a generation interconnection			

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14 document that PacifiCorp requires?	21 request.			
82:16 THE WITNESS: There are a variety. I am 17 certainly no expert on property documents, but 18 things such as leases.				
83: 2 Q. BY MS. HEALY GALLAGHER: So if we could 3 take a look, please -- Okay. So we were talking 4 about site control documents. 5 A. Yes. 6 Q. And I understand you're not an expert in 7 whether an entity may actually in fact have leases, 8 permits, things like that; but, in your role, do you 9 need to see documentation?				
83:11 THE WITNESS: Yes. It's required under 12 our rules; and when we -- when we receive it, we 83:13 forward it to our legal team to review and to tell 14 us if it's sufficient. 15 Q. BY MS. HEALY GALLAGHER: So if an entity			196	

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<p>16 seeking a generation interconnection agreement did 17 not provide you with the kind of site control 18 documents that PacifiCorp requires, would PacifiCorp 19 then enter a generation interconnection agreement? 20 A. No. The rules do not allow us to do so, 21 although -- one caveat -- I believe our open access 22 transmission tariff does allow, under a small 23 subset, a large cash down payment in lieu of site 24 control, as a temporary way. 25 Q. And "a temporary way," what is a temporary 84: 1 way? 2 A. A temporary -- In order for us to execute 3 an interconnection agreement, I believe it's 4 \$250,000; but site control at some point, I believe, 5 still has to be established prior to energization of 6 the facility.</p>				

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<p>7 Q. Okay. So the \$250,000 deposit, is that</p> <p>8 basically to like hold the place until they can</p> <p>9 prove site control?</p> <p>10 A. Essentially, yes.</p> <p>11 Q. Okay. If you'd take a look, please, at</p> <p>12 p l a i n t i f f ' s Exhibit 196, the second page, the gray</p> <p>13 section on the right-hand side of the page, under</p> <p>14 the header "PacifiCorp's interconnection process."</p> <p>15 A. I see it.</p> <p>16 Q. Would you take a look, please, at that</p> <p>17 description. There's eight steps.</p> <p>18 A. Okay.</p> <p>19 Q. To your understanding and experience, are</p> <p>20 these eight steps the ones that are required before</p> <p>21 PacifiCorp will enter a generation interconnection</p> <p>22 agreement?</p> <p>23 A. Well, only up till step 5 is it covering</p> <p>24 prior to that; but, generally, yes, up till step 5</p>				

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<p>25 is the general process. 85: 1 Q. Fair enough. Okay. If an entity is 2 interested in getting a generation interconnection 3 agreement, where can it find information about what 4 materials it needs to submit to PacifiCorp? 5 A. Probably the best resource is our web 6 page. We have a web page that lays out all the 7 different processes for the -- for the different 8 jurisdictional interconnection applications. Also, 9 our open access transmission tariff is posted 10 publicly, that contains information on the process. 11 Q. Just generally, what is the open access 85:12 transmission tariff? 13 A. It's the -- It's the -- I mean, it's the 14 guidelines in which FERC mandates that we conduct 15 business with our transmission system.</p>				

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<p>16 Q. Is there an open access transmission</p> <p>17 tariff for PacifiCorp and there might be a different</p> <p>18 one for another utility and still a different one</p> <p>19 for a third, or is there one that governs</p> <p>20 nationwide?</p> <p>21 A. They can -- They can be different. There</p> <p>22 are certain things that are the same from FERC; but,</p> <p>23 yes, the different utilities could have different</p> <p>24 sections of their tariffs, depending on what they've</p> <p>25 gotten approved by FERC.</p> <p>86: 1 Q. The step 1 in plaintiff's Exhibit 196</p> <p>2 mentions a deposit required with an application.</p> <p>3 A. Yes.</p> <p>4 Q. How much is that deposit?</p> <p>5 A. It depends on the type of application. It</p> <p>6 can vary: For a small generating project, such as a</p> <p>7 thousand dollars, to ten thousand dollars for larger</p>				

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<p>8 projects. But PacifiCorp operates in a number of 9 different states, with different jurisdictional 10 rules; so there are a variety of deposit amounts, 11 depending on the type of project being proposed. 12 Q. In step 2 it talks about, as you 13 mentioned, the initial scoping meeting. 14 What -- What does that involve? 15 A. We will schedule a meeting, whether it's a 16 conference call or an in-person meeting, with the 17 interconnection customer and anyone they would like 18 us to include as part of their team. My team -- A 19 project manager for my team will be assigned, who 20 will run that meeting. And we, PacifiCorp, will 21 invite all of the relevant engineering staff, 22 depending on, again, the type of project and where 23 it's located, to be a part of that meeting. And</p>				

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<p>24 then we will just simply walk through what's being 25 proposed, and our engineering staff will provide 87: 1 some initial feedback as to what they think the 2 likely requirements would be. 3 Q. Is that just one meeting and then 4 everybody goes and does their thing, or are there a 5 series of meetings? 6 A. It's just a single meeting. At the end of 7 it, we will request that the customer choose which 8 type of study they would like us to proceed on. 9 Q. And that's either a feasibility study or a 10 system impact study? 87:11 A. Yes. 12 Q. Tell me about the feasibility study. 13 What's that? 14 A. So the feasibility study focuses more on 15 the high-level transmission system impacts that</p>				

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<p>16 would likely occur with this project. It doesn't 17 get into a detailed scope down at the specific 18 substation or metering level. We provide a more 19 high-level estimate. It's not a detailed scope of 20 work at that point. So it's valuable for customers 21 to get an initial feedback -- I mean an initial 22 study of the general requirements that would be -- 23 that would need to be done. 24 Q. So when you say "the general requirements 25 of what would need to be done," what do you mean by 88: 1 that? Like what is the feasibility that's being 2 evaluated? 3 A. Well, so -- I guess, to provide a little 4 more detail on that, so... And, really, it's a 5 discussion of what the difference between what a 6 feasibility study is and a system impact study.</p>				

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<p>7 So the feasibility study generally only 8 goes to a couple of the primary engineering groups, 9 our planning organization, which looks at the power 10 flow of the proposed facility and what impact it 11 would have to the larger system. And that's 12 normally where the larger issues, the likely more 13 expensive issues, are identified; whereas a system 14 impact study takes that analysis but then also 15 identifies things such as metering requirements or 16 communications requirements, things like that. So 17 it goes to a larger subset of engineering 18 disciplines, where they develop the specific scope 19 required to allow interconnection, and it provides a 20 more detailed estimate. 21 Q. So the feasibility study, is that meant to</p>	<p>88:11–95:23 Objection, not relevant, FRE 401, 402; hearsay, FRE 802 calls for speculation; improper hypothetical; narrative</p>			<p>Overruled</p>

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<p>22 provide the applicant with -- I guess I'm still not 23 understanding. 24 What information is the feasibility study 25 meant to provide the applicant? 89: 1 A. Again, it's a more high- level look at what 2 the requirements will be. It just doesn't get into 3 the specific details that are identified in the 4 system impact study, and the cost estimate is not as 5 defined. So it gives a range. 6 Q. Okay. I guess the requirements for what? 7 The requirements for PacifiCorp to enter the 8 agreement? 9 A. Of what would be required for the project 89:10 to interconnect with PacifiCorp. 11 Q. Okay. Can you give me an example of what 12 some of those requirements might be? 13 A. Sure. Perhaps a new substation would have</p>				

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Plaintiff Designations – BLUE Defendant Completeness— PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness— PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>14 to be constructed to allow interconnection of the 15 facility. The difference between the feasibility 16 study and the system impact study is a feasibility 17 study will say: "A new substation would have to be 18 constructed, period." A system impact study would 19 have to say: "Exactly what does that mean in terms 20 of the equipment that would have to be installed?" 21 Q. I see. So, then, does the feasibility 22 study -- it gives the applicant information about 23 what expenses and effort would be required before 24 PacifiCorp would enter the generation 25 interconnection agreement? 90: 1 A. Yes. I mean -- 2 Q. If that's not correct, please let me know. 3 A. It's correct. Again, the difference being 4 more detail.</p>				

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<p>5 Q. So let's say a feasibility study found 6 that a new substation would be necessary. 7 A. Okay. 8 Q. Who would pay for that new substation? 9 A. Well, the interconnection customer, in all 10 cases, is required to pay for that up front. 11 Q. So the applicant? 12 A. The applicant, yes. 13 Q. Okay. And you said that a customer can 14 choose whether to undertake a feasibility study or 15 what -- I'm sorry. And who is it that does the 16 feasibility study? 17 A. Two questions there. 18 So, yes, it is optional. And, again, not 19 to speculate on what the customers are thinking, but 20 oftentimes it's to determine precisely what it's 21 called, a feasibility study. 22 If the answer is that it's tremendously</p>				

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<p>23 expensive based on the high-level feedback, then 24 perhaps it's not feasible and they don't want to go 25 on with a more detailed study. 91: 1 So the customer, the applicant, chooses 2 which one they would like to do. PacifiCorp 3 personnel is performing this study and providing the 4 results to the applicant. 5 Q. So would an applicant do just one of the 6 two, or might an applicant do both? 7 A. Well, the system impact study is always 8 required. So they can -- Basically, they can skip 91: 9 the feasibility study and go straight to system 10 impact study. 11 Q. And you said that PacifiCorp personnel 12 does the feasibility impact study. 13 Who pays for that? Who pays for the study 14 to be done?</p>				

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<p>15 A. Yeah, the applicant, the interconnection 16 customer. 17 Q. And PacifiCorp personnel does the system 18 impact study as well? 19 A. Correct. Yes. 20 Q. And who pays for that study to be 21 completed? 22 A. The interconnection customer. 23 Q. How much, if you can give me a range, does 24 a feasibility study cost? 25 A. Generally, I see them in the range of 92: 1 maybe \$8,000 to \$10,000 as a general range. 2 Q. And about how much -- and a general range 3 is fine -- does a system impact study cost? 4 A. Yeah. Again, in my experience, maybe 5 somewhere between \$15,000 and \$20,000. 6 Q. And you also mentioned a facilities study, 7 which looks like it's also mentioned in step 4 on</p>				

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<p>8 this exhibit. 9 What is a facilities study? 10 A. A facilities study is written by 11 PacifiCorp's project construction project management 12 group. It takes all the requirements that were 13 identified in the system impact study and actually 14 lays out the scope of work: How are things going to 15 get done, who's going to do them, and on what 16 schedule. 17 So it takes it from "here are the things 18 that need to get done," to, "here's how we're going 19 to get those things done." 20 Q. And forgive me if you included this in 21 your answer: PacifiCorp's personnel conducts the 22 facilities study? 23 A. Correct. 24 Q. And who pays for the facilities study? 25 A. The interconnection customer. 93: 1 Q. About how much, in a range, does a</p>				

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<p>2 facilities study cost? 3 A. I'd say generally \$10,000 to \$12,000. 4 Q. Who completes the work that's identified 5 as required in the facilities study? 6 A. That can be negotiated. It depends on the 7 type of work that's required. 93: 8 Q. If there is a requirement in the 9 facilities study but an applicant does not want to 10 complete it or is unable to complete it, would 11 PacifiCorp enter a generation interconnection 12 agreement with that customer? 13 A. No, unless there was an acceptable 14 alternative. 15 Q. And you mentioned that at step 5 here, 16 that's where your involvement with this process 17 ends? 18 A. I would -- I wouldn't say that. After the 19 -- After the interconnection agreement is executed,</p>				

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<p>20 generally my team and I take a 21 less up-front role on 22 these projects. It's turned over to 23 our 24 construction project management 25 group, and our 26 engineering groups design 27 everything that's 28 necessary and actually get it 29 built. But we're 30 still involved on various things 31 throughout the 32 94: 1 process. We sometimes get 33 involved in the invoicing 34 2 that goes on, or oftentimes there 35 will be amendments 36 3 negotiated while things are being 37 constructed. 38 4 Ultimately, the communications 39 that come to actually 40 5 request to be allowed to start 41 generating come 42 6 through my group. So we play 43 more of a back-seat 44 7 role at that point. 45 8 Q. So if all -- if there are all kinds 46 of 47 9 requirements to enter a generation 48 interconnection</p>				

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<p>10 agreement and then there's construction and work to 11 be done and facilities to be built, who is it that 12 checks and makes sure that the facility that is 13 constructed is consistent with the terms of the 14 agreement? 15 A. Well, ultimately, it would be - - it would 16 be our project manager that's assigned, our 17 construction project manager who's in charge of 18 that, but with full support of PacifiCorp 19 engineering staff ensuring that the equipment that 20 we required to be installed is functioning properly. 21 Q. Okay. As manager of generation 22 interconnection, do you have a role in that quality 23 assurance process, or is that just shifted -- is 24 that really shifted over to the construction side?</p>				

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<p>25 A. Yeah, it's really the project management 95: 1 team. And, ultimately, the agreements ask for, you 2 know, my group to provide approval to the customer 3 to actually start generating; and unless I'm -- you 4 know, unless I'm told that everything is functioning 5 properly, I don't -- I won't provide that. 6 Q. Do you know, Mr. Bremer, is there any way 95: 7 for a person or entity to connect into PacifiCorp's 8 infrastructure without going through the generation 9 interconnection agreement process? 10 A. Is there a way to interconnect a generator 11 to PacifiCorp's system without going through the 12 process -- through my process? 13 Q. A generation facility. 14 A. Yes, if it's a -- if it's small enough to 15 be considered net metering. So, generically, the</p>				

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<p>16 rooftop solar on a residential house, those types of 17 projects are not required to go through the process 18 that I've described to you today. 19 Q. What do you mean by "small enough"? 20 A. Well, the size is dictated by each 21 individual state; but, generally, they're considered 22 very small compared to the projects that I typically 23 will work on.</p>				
<p>97: 1 Q. Okay. Just to revisit a little bit with 2 p l a i n t i f f ' s Exhibit 196 that we were looking at 3 before the break. 4 We got these, you know, steps 1 through 5, 5 starting with an interconnection customer submitting 6 an application and going through an executed 7 interconnection agreement. 8 In your experience, about how long does 9 that take to go from a submitted application to an</p>			<p>196 198</p>	

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<p>10 executed interconnection agreement?</p> <p>11 A. Generally -- you know, it varies based on</p> <p>12 size -- but a year.</p> <p>13 Q. Can you explain to me -- I saw on the</p> <p>14 PacifiCorp website something called a generation</p> <p>15 interconnection queue. What is that?</p> <p>16 A. The queue is the word we use for the list</p> <p>17 of applications we've received since the current</p> <p>18 process was put in place to track them.</p> <p>19 Q. Okay. And when was the current process</p> <p>20 put in place to track them?</p> <p>21 A. I don't know the specific date, but</p> <p>22 approximately the 2000-2001 time frame.</p> <p>23 MS. HEALY GALLAGHER:</p> <p>24 Okay. I would like</p> <p>25 to mark, please, the next exhibit number.</p> <p>25 (Exhibit 198 m a r k e d .)</p>		<p>97:19–98:7: Objection, not relevant, FRE 401, 402; hearsay, FRE 802 calls for speculation; improper hypothetical</p>		<p>Overruled</p>

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<p>98: 1 MS. HEALY GALLAGHER: All right. So 2 what's going to happen is we have marked a disk that 3 is plaintiff's Exhibit 198. What we're going to do 98: 4 is put that in my co-counsel's computer and then I'm 5 actually going to ask you to navigate to some 6 information on that disk. 7 THE WITNESS: Okay.</p>				

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<p>98:18 Q. BY MS. HEALY GALLAGHER: Okay. So if you 19 would please take a look at what's open on 20 co-counsel's laptop, do you see a file that is the 21 native Excel version of the generation 22 interconnection queue? 23 A. I would assume it's this one, but I can't 24 see it. 25 Q. Okay. Are you talking about the first 99: 1 file on there? 2 A. Yeah, the PacifiCorp queue. 3 Q. So that's the document named 161107 4 PacifiCorp queue.xlsx? 5 A. I believe that's it, yeah, but I'd want to 6 open it to confirm. 7 Q. Why don't you go ahead and open it. 8 A. Yes, this is PacifiCorp's generation 9 interconnection publicly posted queue. 10 Q. Okay. So let's walk through -- Sorry, I'm</p>		<p>98 – 101: Objection, not relevant, FRE 401, 402; hearsay, FRE 802 calls for speculation</p>		<p>Overruled</p>

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<p>11 going to go around you. Sorry for the -- 12 A. Pull up a chair. 13 Q. That's okay. I'm fine. Thank you. 14 Let's walk through the fields, if you 15 don't mind, on the interconnection queue. Can you 16 just take me across and help me understand what 17 information is in here? 18 A. Sure. So the first column, "queue 19 number," this is the order in which they were 20 received. You can see the -- 21 Q. I'm sorry. So the queue number is the 22 order in which the interconnection application was 23 received? 24 A. Yes. And that we -- that we received 25 everything we required in order to give it a queue 100: 1 number -- so deposit and site control, the things 2 that are required with the application.</p>				

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<p>3 Second on is the date in which we gave it 4 the queue number, in which we received all of that 5 information. 6 So you can see the first one was in 2000. 7 Excuse me. Request status is whether this is in 8 service. I'd have to look here; I can't remember 100: 9 exactly what all we have in this one. So you can 10 see the options are "deactivated," which means, for 11 one reason or another, the project was terminated. 12 "In progress" means it's anywhere from we just 13 received an application this morning to it's going 14 to be completed tomorrow; so anywhere in that range. 15 "In service" means it's generating or it's been 16 approved to generate. And "suspended" is an 17 allowance under certain interconnection agreements</p>				

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<p>18 that it has a signed interconnection agreement but 19 it's essentially delayed. 20 Q. Okay. And then could we take a look at if 21 something is in progress. 22 A. Yeah. 23 Q. Does that mean that the interconnection 24 agreement is in the process of being negotiated? 25 A. It can mean -- It can mean -- It's, again, 101: 1 either from we just received an application today to 2 it has an interconnection agreement and is being 3 constructed right now. So anywhere from fully 4 generating to just applied. 5 Q. Okay. And then how about "company name"? 6 What's in that column? 7 A. So that's the -- it's either the name of 8 the company that's on the interconnection agreement 9 or it's a PacifiCorp affiliate. Those are FERC</p>				

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<p>10 rules. If there's a PacifiCorp affiliate that</p> <p>11 applies, we have to put the name up immediately. So</p> <p>12 not necessarily meaning that there's an</p> <p>13 interconnection agreement signed, but if it's</p> <p>14 affiliate of PacifiCorp, we have to publicly notice</p> <p>15 that it's -- that there's an application. But if</p> <p>16 it's not a PacifiCorp affiliate, the name is there,</p> <p>17 that means there's a signed agreement.</p>				
<p>102:14 Q. And then let's skip over the megawatt</p> <p>15 output for now, and let's take a look at county and</p> <p>16 state.</p> <p>17 A. Okay.</p> <p>18 Q. Does that mean the location of the</p> <p>19 proposed facility to interconnect?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. So if I wanted to isolate all of</p> <p>22 the projects either in or proposed for the state of</p>		<p>102 – 106: Objection, not relevant, FRE 401, 402; hearsay, FRE 802 calls for speculation; narrative</p>		<p>Overruled</p>

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<p>23 Utah, how would I do that? 24 A. You simply filter through the state of 102:25 Utah. 103: 1 Q. Could you show me how to do that? So what 2 are we doing here? 3 A. Under state, I would deselect everything 4 except the abbreviation for Utah, UT. 5 Q. Okay. So how many results come back from 6 filtering on the state of Utah? 7 A. 342. 8 Q. Okay. And then what if I were interested 9 in finding all projects in Millard County, Utah? 10 What would I do? 11 A. Same process. Deselect all other counties 12 and filter just for Millard -- Millard. 13 Q. And how many projects -- Well, let's first 14 -- let me first ask: How many projects come back 15 when you filter for Millard County in Utah?</p>				

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<p>16 A. It looks like 21. 17 Q. Okay. And how many of those projects are 18 in service? 19 A. One. 20 Q. I see. And who -- what's the company name 21 for the project that's in service? 22 A. Pavant Solar LLC. 23 (Reporter request.) 24 THE WITNESS: P-A-V-A-N-T. 25 Q. BY MS. HEALY GALLAGHER: And can you tell, 104: 1 Mr. Bremer, until what date this spreadsheet is 2 current to? 3 A. It says right here in column H, as of 4 11/04/2016. 5 Q. So then, to your understanding, this 6 spreadsheet reflects information available to 7 PacifiCorp through November 4th, 2016? 8 A. Yes. 9 Q. There are two projects that are in 10 progress; is that right? 11 A. Yes.</p>				

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<p>12 Q. What are those? 13 A. The first one is known as Pavant Solar II, 14 and the third -- and the second one is known as 15 Pavant Solar III. 16 Q. Okay. So, according to the spreadsheet, 17 the information here is that those two entities do 18 not yet have an executed interconnection agreement? 19 A. No, they do, based on two things here: 20 One, as I stated earlier, the company name is 21 listed; and, second, if I scroll over to the right, 22 T here shows "IA signed," "IA signed," "IA signed." 23 So that means interconnection agreement executed, 104:24 essentially, and here's the date in which it was 25 executed. 105: 1 Q. Oh, okay. So just to take that piece by 2 piece for the record here: Column T on the</p>				

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<p>3 spreadsheet is entitled "request status 4 explanation." Correct? 5 A. Yes. 6 Q. And, for example, Pavant substation says: 7 "IA signed February 11, 2014." 8 Did I read that correctly? 9 A. Yes. That is for queue 450. 10 Q. Queue number. Sure. Great. 11 And so that means that the interconnection 12 agreement with Pavant substation was signed on that 13 date, February 11, 2014? 14 A. Well, Pavant substation is -- you're 15 looking at the point of interconnection. 16 Q. Oh, I'm sorry. 17 A. Pavant Solar LLC. 18 Q. Pavant Solar LLC. Okay. 19 A. Yes. 20 Q. Okay. All right. There's another company 21 name in this filtered view, and that is Long Ridge 22 Wind LLP. 23 A. Yep. 24 Q. Is that right?</p>				

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25 A. That's right. 106: 1 Q. What can you tell me -- What does this 2 spreadsheet tell me about Long Ridge Wind LLP?				
106: 4 THE WITNESS: Well, in the request status 5 explanation, you can see that the interconnection 6 agreement was executed on March 31st of 2014 and the 7 interconnection customer terminated the agreement on 8 August 9th of 2016, so the project is in the 9 deactivated status. Excuse me. 10 Q. BY MS. HEALY GALLAGHER: Could we take a 11 look, please, again at the column headings -- 12 A. Yeah. 13 Q. -- that we have here. 14 In column M, the column heading is 15 "customer requested commercial operations date." 16 What does that mean? 17 A. When an initial application is submitted		106 – 114: Objection, not relevant, FRE 401, 402; hearsay, FRE 802 calls for speculation; compound	199	Overruled

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<p>18 by the customer, on it is a field for the date in 19 which they're hopeful to have their project 106:20 commercial; so that's the date that we put on here. 21 Q. And what does it mean to have the project 22 commercial? 23 A. It's in service. They're approved for 24 generation. It's fully approved. 25 Q. And so that's after the interconnection 107: 1 agreement is signed; correct? 2 A. Yes. 3 Q. Okay. And then column N says "agreed to 4 commercial operations date." What does that mean? 5 A. That's the date that is in the actual 6 interconnection agreement. 7 Q. How about column O? What does "type" 8 mean? 9 A. That's the type of -- the primary type of 10 generation that you can see -- for example, wind,</p>				

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<p>11 solar, those types of things. That's the type of 12 generator they're using. 13 Q. So the way electricity is being generated? 14 A. Yes. Correct. 15 Q. Okay. Thank you. Would you please -- 16 Let's see. We'll navigate back to the information 17 on the disk. 18 All right. Would you please open the PDF 19 file on this disk. 20 A. Done. 21 Q. Okay. Now, this -- Adobe is telling us 22 that this file is 751 pages, so I understand -- I'm 23 not going to ask you to read the whole thing and let 24 me know when you're finished. 25 A. I appreciate that. 108: 1 Q. But, generally, can you tell me, please, 2 what -- what this document is. 3 A. This is the open access transmission 4 tariff that I mentioned earlier.</p>				

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<p>5 Q. Okay. And what, generally, does this document set forth for PacifiCorp?</p> <p>6</p> <p>7 A. It's the governing rules from FERC as to how PacifiCorp should operate its transmission system.</p> <p>8</p> <p>9</p> <p>10 Q. And what, if any, impact does this tariff have on your role as interconnection generation manager?</p> <p>11</p> <p>12</p> <p>13 A. Inside the tariff are procedures for processing both large and small projects that fall under the jurisdiction of FERC, as well as all of the agreements, the agreement templates that have been approved by FERC, that are signed during the process, including the interconnection agreements themselves.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 Q. Are those templates things that you could find easily in this large document?</p> <p>21</p>				

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<p>22 A. That I can find easily? Yes. 23 Q. Is it readily apparent to you? 24 A. Yes. 25 Q. Can you guide us through and find the -- 109: 1 A. Well, what specifically would you like to 2 find? 3 Q. Is there a section on the kinds of 4 agreements that we're talking about here, 5 interconnection, generation interconnection? 6 A. Yes. 7 Q. What section is that? 8 A. That, I don't know off the top of my head; 9 but I can find them if you give me a minute -- 10 Q. Sure. 11 A. -- if you would like me to. 12 Q. Please. 13 A. Let's see. So attachment O, page 601, 14 covers the small generator side; and attachment N, 15 page 463, covers the large generator side. So I can</p>				

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<p>16 navigate to either if you want me to, but here are 17 all the different agreements, including the large 18 generator interconnection agreement and the 19 different study agreements that they would sign. 20 Q. Okay. So you just pointed to - - and let 21 the record reflect we're on page 15 of the PDF, in 22 the table of contents. Correct? 23 A. Yes. 24 Q. And you identified attachment N, 25 appendices to LGIP? 110: 1 A. Yes. 2 Q. And then there's a series of appendices 3 all listed out there? 4 A. Yes. 5 Q. So if attachment N is the appendices to 6 the LGIP, where is the LGIP itself? 7 A. Section 5 is the small generator, SGIP; 8 and section 4, I believe it is -- yeah, section 4 is</p>				

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<p>9 the large generator interconnection procedures. 10 Q. Okay. So, again, we're on page 11 of the 11 PDF; correct? 12 A. Yes. 13 Q. And you're identifying Roman numeral four, 14 "large generation interconnection service"? 15 A. Correct. 16 Q. All right. And then on page 13 of the 17 PDF, you pointed out that Roman numeral five 110:18 identifies small generation interconnection service; 19 correct? 20 A. That's correct, yeah. 21 Q. Okay. And this open access transmission 22 tariff, this is for all FERC jurisdiction projects; 23 correct? 24 A. That's right. 25 Q. So where could I find information about 111: 1 non-FERC jurisdiction projects and how to 2 interconnect?</p>				

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<p>3 A. Again, our generation interconnection 4 procedures website is an excellent resource. We 5 have been provided procedures from the states of 6 Oregon, Utah, and Washington as to how certain 7 projects should be handled. 8 MS. HEALY GALLAGHER: All right. Thank 9 you very much. 10 (Exhibit 199 m a r k e d .) 11 Q. BY MS. HEALY GALLAGHER: Okay. 12 Mr. Bremer, you've been handed what's been marked 13 p l a i n t i f f ' s Exhibit 199. 14 Would you please take a look at that and 15 just familiarize yourself with it. 16 A. Okay. 17 Q. Mr. Bremer, what is plaintiff's 18 Exhibit 199? 19 A. This is a -- This is an interconnection 20 agreement which appears to have been amended. As 21 the cover page indicates, there was an amendment on</p>				

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<p>22 this agreement at some point. This is for a large 23 generator qualifying facility for Pavant Solar LLC. 24 Q. For the record, plaintiff's Exhibit 199 25 has been Bates numbered PAC 14 through 96. 112: 1 Okay. So, Mr. Bremer, you identified that 2 this is an agreement between PacifiCorp and Pavant 3 Solar LLC. 4 The item in parentheses after Pavant Solar 5 LLC, that queue 450, do you see that? 6 A. Yeah, I do. 7 Q. Is that the number that this entity has in 8 the queue -- 9 A. That's correct, yeah. 10 Q. -- that we just looked at? 11 Okay. Would you please turn to the page 12 that's marked PAC 29. 13 A. Okay. 14 Q. There's a definition towards the bottom of</p>				

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<p>15 the page, "point of interconnection"?</p> <p>16 A. Yes.</p> <p>112:17 Q. And there's -- there's a definition</p> <p>18 written out in this contract. I get that.</p> <p>19 Can you describe to me in kind of</p> <p>20 real-world terms, what would that actually look</p> <p>21 like? What would the point of interconnection</p> <p>22 actually look like physically?</p> <p>23 A. Well, that's the physical point on</p> <p>24 PacifiCorp's system where the customer's generating</p> <p>25 facility is actually physically connecting to</p> <p>113: 1 PacifiCorp's system.</p> <p>2 Q. And how do they actually physically</p> <p>3 connect?</p> <p>4 A. Well, I guess, typically, wires are run</p> <p>5 from the customer's facility to the point at which</p> <p>6 it interconnects through some sort of disconnecting</p>				

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<p>7 device on PacifiCorp's system. 8 Q. And you say typically it's wires, like 9 wires connect the two? 10 A. Yes. 11 Q. Okay. Any other way that they connect? 12 A. It's possible that a customer's substation 13 -- a customer built and owned substation could be 14 built right next to a PacifiCorp owned substation 15 and they're tied together like that through -- 16 through a bus bar. 17 Q. What's a bus bar? 18 A. It's essentially a metal rod that connects 19 the two, rather than a wire. 20 Q. Would you take a look, please, at the page 21 that's marked PAC 90 -- leading zeroes, but 90 is 22 the last two. 23 A. Okay. 24 Q. The header on the page is "attachment B to 25 QF LGIA scope of work." 114: 1 A. Yes.</p>				

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2 Q. Where in the course of the project -- Like 3 where does this scope of work come from? Who 4 generates this scope of work? 5 A. The specifics of the way it's laid out 6 here come during the facility study. This is where 7 our project management team identifies who needs to 8 do what and on what schedule.				
115: 4 Q. BY MS. HEALY GALLAGHER: Mr. Bremer, would 5 you take a look, please, back at plaintiff's 6 Exhibit 193. 115: 7 A. Okay. 8 Q. It's the second to the last page of the 9 exhibit. Paragraph 7, do you see that? 10 A. I do. 11 Q. And so -- Well, first I'll ask: To your 12 knowledge and experience at PacifiCorp, do 13 individuals or do entities typically apply for 14 interconnection agreements?		115 – 117: Objection, not relevant, FRE 401, 402; hearsay, FRE 802 calls for speculation; cumulative	193	Overruled

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<p>15 A. I mean, typically it's an entity name.</p> <p>16 Q. Have there been individuals?</p> <p>17 A. I can't recall.</p> <p>18 Q. Then we'll start off with this: Does</p> <p>19 PacifiCorp have an interconnection agreement with an</p> <p>20 entity called RaPower-3 LLC?</p> <p>21 A. No, not that I was able to find.</p> <p>22 Q. Does PacifiCorp have an interconnection</p> <p>23 agreement with an entity named International</p> <p>24 Automated Systems Inc.?</p> <p>25 A. No, not that I was able to find.</p> <p>116: 1 Q. Does PacifiCorp have an interconnection</p> <p>2 agreement with a company called LTB1 LLC?</p> <p>3 A. No, not that I was able to find.</p> <p>4 Q. Does PacifiCorp have an interconnection</p> <p>5 agreement with an entity called DCL16BLT Inc.?</p> <p>6 A. No, not that I was able to find.</p> <p>7 Q. Does PacifiCorp have an interconnection</p> <p>8 agreement with someone named R. Gregory Shepard?</p>				

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<p>9 A. No, not that I was able to find. 10 Q. Does PacifiCorp have an interconnection 11 agreement with anyone named Neldon Johnson? 12 A. No, not that I was able to find. 13 Q. Does PacifiCorp have an interconnection 14 agreement with any entity -- with any person named 15 Roger Freeborn? 16 A. No, not that I was able to find. 17 Q. If you take a look at the list of 18 remaining entities in paragraph 7, does PacifiCorp 19 have an interconnection agreement with any of those 20 remaining entities? 21 A. No, not -- again, not that I was able to 22 find. 23 Q. And what -- what kind of search did you 24 undertake to determine that? 25 A. Yeah. So I looked at the information that 117: 1 we keep that feeds into the queue list that we 2 looked at, the Excel version there. So every</p>				

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<p>3 interconnection application has to identify the 4 entity name and the primary contact person for that 5 entity. I was -- you know, just through searching 117: 6 the spreadsheet, I was unable to find any of these 7 names in either of those locations. 8 Q. Do you know, is there any way that 9 PacifiCorp tracks requests for information about how 10 to get an interconnection agreement, like 11 pre-application? 12 A. No. We receive frequent requests for 13 information, whether it be through e-mail or 14 frequently phone calls; but, no, we don't track 15 that. 16 MS. HEALY GALLAGHER: I will pass the 17 witness at this time.</p>				
<p>117:19 EXAMINATION 20 BY MR. AUSTIN:</p>				
<p>120: 1 Q. Could I send power to your grid if I</p>				

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<p>2 didn't have an interconnection agreement? 3 A. Well, it -- Could you send power -- I 4 mean, I guess are you saying could you -- could you 5 interconnect to it, could you put a generator on our 6 facility -- on our system -- 7 Q. Yeah. 8 A. -- without an agreement? No.</p>				
<p>123:13 Would it be possible for you -- for a 14 power plant owner to successfully work through the 15 interconnection agreement process if they did not 16 know how much energy output they would expect to 17 transmit? 18 A. No. That's a requirement of the 19 application. 20 Q. I mean, if they told you, "Well, maybe it 21 could be between 2 and 200 kilowatts" -- or, pardon 22 me -- "megawatt output," would that be an acceptable</p>				

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<p>23 range for you to go through the interconnection 24 process? 25 A. No. The requested output amount is 124: 1 required as part of the study process. 2 Q. What if I got all the way through the 124: 3 process for interconnection and everything was built 4 and I decided to double the size of my power plant? 5 Could I just rely on the original interconnection 6 agreement? 7 A. No. You would have to either withdraw 8 your original and put in a new application for the 9 amount total, or a second application with the delta 10 between the original and the increased output.</p>				
<p>127: 9 But, in any event, it's mandatory -- it's 10 essential to know whether or not entity is producing 11 below 20 megawatts or over 20 megawatts; is that</p>				

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<p>12 fair? 13 A. Yes. 14 Q. Okay. Have you ever seen an entity apply 15 for an interconnection agreement for experimental or 16 developmental solar energy production? 17 A. You'd have to define what you mean by 18 "experimental." 19 Q. I mean, has anybody ever come to you and 20 said, "We don't really know if it's going to work or 21 not, but here's what we hope to achieve. Can we 22 negotiate an interconnection agreement in advance of 23 building anything?" 24 A. To my knowledge, no, we have not had a 25 formal application for something that you're 128: 1 describing.</p>				
<p>131: 4 Q. Can you do a feasibility study if it's not 5 known how much power output there will be from an</p>				

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<p>6 applicant's power generation facility? 7 A. No. It's required. 8 Q. Can you do engineering and other studies 9 to determine what will be required, if you don't 10 have the information with regard to output? 11 A. No.</p>				
<p>136:15 FURTHER EXAMINATION 16 BY MS. HEALY GALLAGHER: 17 Q. Why is it important to know the expected 136:18 output of any facility that's proposing to 19 interconnect with PacifiCorp? 20 A. Because that's -- that's the only way to 21 model the facility to understand what impact it will 22 have on PacifiCorp's existing infrastructure, to 23 know if the wires or the equipment will be 24 overloaded with the increased generation. If we</p>				

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<p>25 don't know specifically how big it is, it's -- we 137: 1 don't know. Every -- you know, every piece of 2 infrastructure on the electrical network has 3 capability, and if you don't know the increased 4 generation that will be flowing through it, you 5 can't make a determination if upgrades are 6 necessary.</p>				
<p>137:12 MS. HEALY GALLAGHER: Mr. Bremer, thank 13 you so much for your time.</p>				
<p>138: 1 VERONICA WHITESMITH, 2 called as a witness, being duly sworn on oath, was 3 examined and did testify as follows: 4 EXAMINATION 5 BY MS. HEALY GALLAGHER: 6 Q. Hello, Ms. Whitesmith. 7 A. Hello. 8 Q. We met a moment ago; but, again, my name 9 is Erin Healy Gallagher and I'm here representing 10 the United States in this case.</p>		<p>138-141: Objection, not relevant, FRE 401, 402; hearsay, FRE 802 calls for speculation; improper hypothetical</p>	<p>193</p>	<p>Overruled</p>

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<p>11 A. Okay. 12 Q. If you would take a look, please -- We've 13 marked a number of exhibits already here today. 14 A. Oh, here. Okay. 15 Q. If you could find plaintiff's Exhibit 193 16 all the way at the bottom there. 17 A. Okay. 18 Q. Okay. Plaintiff's Exhibit 193 is the 19 subpoena to PacifiCorp; right? 20 A. Um-hum. 21 Q. Yes? 22 A. Yes. Sorry. 23 Q. That's okay. And you're here to testify 24 on behalf of PacifiCorp; correct? 25 A. Yes. 139: 1 Q. And do you have a sense of what topics you 2 are here to testify about? 3 A. Yes. 4 Q. What are those? 5 A. Transmission service requests and whether 6 we've received requests from certain customers that 7 are identified in the subpoena.</p>				

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<p>141:13 Q. Ms. Whitesmith, is there anything that 14 would prevent you from testifying to the full 15 capacity of your recollection and knowledge of the 16 facts today? 17 A. Not that I can think of. 18 Q. Okay. Are you on any medications or drugs 19 that might interfere with memory or cognition? 20 A. No. No. 21 MS. HEALY GALLAGHER: Okay. 22 (Exhibit 200 m a r k e d .) 23 Q. BY MS. HEALY GALLAGHER: Ms. Whitesmith, 24 I'm handing you what's been marked as plaintiff's 25 Exhibit 200. 142: 1 Would you take a look at that, please. 2 A. Yes. 3 Q. Oh, first, would you please tell me the 4 city and state of your home residence. 5 A. Vancouver, Washington.</p>		<p>141-165: Objection, not relevant, FRE 401, 402; hearsay, FRE 802 calls for speculation; improper hypothetical; compound</p>	<p>197 201</p>	<p>Overruled</p>

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<p>6 Q. Okay. And the city and state of your 7 place of work? 8 A. Portland, Oregon. 9 Q. Okay. Back to plaintiff's Exhibit 200. 10 A. Okay. 11 Q. Would you -- It looks like you have a long 12 time of service with PacifiCorp detailed in your 13 résumé, but would you just sort of walk me through 14 and tell me about your time there? 15 A. So I started with PacifiCorp in 1997. I 16 was an office clerk responsible for all the 17 documentation managed by our hydro -- PacifiCorp's 18 hydro resources group and the environmental services 19 group. Within that position, I worked closely with 20 hydro resources and then was then hired on to work 21 as a project coordinator in hydro relicensing. I</p>				

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<p>22 stayed there for seven years as coordinator, worked 23 on Klamath relicensing, Lewis River relicensing, and 24 then was looking for additional responsibilities and 25 at that point took a job as an analyst within the 143: 1 transmission department and that was starting in 2 2007. 3 I started as an analyst working on the 4 transmission service request queue. Over time, I 5 progressed in that position, moved to the senior 6 position, started managing the contracts as well as 7 some aspects of the transmission service requests, 8 and then in 2013 I assumed the position of the TSR 9 manager. 10 Q. And that's transmission service -- 11 A. Trans -- Yes, transmission service. And 12 then with that position, in addition to transmission</p>				

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<p>13 service requests, we managed certain WECC and FERC 14 reporting requirements. 15 Q. Okay. A couple -- couple questions in 16 there. 17 "TSR requests," that means -- 18 A. Hum-um. 19 Q. No, no. TSR means transmission service 20 request; correct? 21 A. Correct. 22 Q. Okay. And then you also said WECC? 23 A. WECC, yeah, Western Electricity 24 Coordinating Council. It's a regional entity that 25 includes PacifiCorp. We report various information, 144: 1 loads and resources, related to our network 2 customers. 3 Q. Okay. So with respect to being part of 4 the -- Well, actually, we'll start with this: Can 5 you help me understand where transmission service 6 fits into what PacifiCorp does?</p>				

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<p>7 A. Well, so transmission -- we manage the 8 wholesale transmission on the energy grid, on our 9 portions of the grid within the balancing authority. 10 In order to move -- for our customers to move their 11 energy, they need acquire transmission rights, 12 either in a wheeling capacity, like point-to-point 13 service, or as a network integration transmission 14 service, if they're actually serving load. 15 Q. Okay. You said two things there that I'm 16 going to follow up on: The wheeling capacity and 17 network integration? 18 A. Network integration trans -- Network 19 integration transmission capacity. 20 Q. What's the difference between those two 21 things? 22 A. So the wheeling is what we also refer to</p>				

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<p>23 as, and if you look at our tariff, it's referred to 24 as point-to-point service; and that's to move energy 144:25 from point A to point B. You're not dropping it off 145: 1 anywhere. You might be moving it to a different 2 customer, a different BA, someone somewhere like 3 that; but you're not syncing it to a specific load. 4 So if you're selling it to another market, you will 5 use point-to-point service. 6 Q. And how about -- What was the other one, 7 network? 8 A. Network service. That's -- We have 9 certain load-serving entities within our balancing 10 authority; they acquire network service to serve 11 their network customers. So -- 12 Q. Go ahead. 13 A. Yeah. So, through our process, they 14 designate resources, various generators, to serve</p>				

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<p>15 various loads that they have, that they also 16 designate. 17 Q. And what -- what is it that you mean by 18 "load"? 19 A. "Load," that's another customer that will 20 use that -- that load for their own purposes, for 21 their own either running of their business or 22 whatever it may be. 23 Q. So correct me if I'm wrong, but is load 24 like used energy, like that is where the energy is 25 going to power the lights in this office building? 146: 1 A. Yeah. Yeah. Yes. 2 Q. So, really quickly, how long have you been 3 specifically involved in transmission services at 4 PacifiCorp? 5 A. Since 2007. Almost ten years. 6 Q. So when I -- when I ask you a question 7 today, if you are answering from any resource other</p>				

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<p>8 than your personal knowledge, would you let me know? 9 A. Yes, I will. 10 Q. Okay. Great. Would you take a look, 11 please, at what's been marked plaintiff's 12 Exhibit 197. 13 The title at the top of plaintiff's 197 is 14 "transmission service request process." Do you see 15 that? 16 A. Yes. 17 Q. Are you familiar with this document at 18 all? 19 A. Yes. 20 Q. There's a lot of information on here 21 that's not intuitive to me. 22 A. Okay. 23 Q. So could you walk me through. What – 146:24 What is the transmission service request process? 25 A. So a transmission service request process 147: 1 is outlined in our open access transmission tariff.</p>				

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Plaintiff Designations – BLUE Defendant Completeness— PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness— PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>2 We put this together to explain that process in more 3 easier terms to understand. 4 So it consists of an initial part, which 5 is the application itself. When a customer wants to 6 request transmission service, the tariff identifies 7 three different things they need to do. One is 8 submit a request on the open access same-time 9 information system; so it's an electronic system 10 that they put a request in on. And then they need 11 to send us a written application, and that written 12 application needs to contain certain pieces of 13 information. And then, depending on the situation, 14 a deposit equal to one month's service may be 15 required. And once we receive that application -- 16 Q. Actually, can I stop you there real quick? 17 A. Oh, yes.</p>				

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<p>18 Q. So, first off, what are the kinds of</p> <p>19 things that the OASIS electronic application</p> <p>20 requires? What kind of information? What kind of</p> <p>21 documents?</p> <p>22 A. So, on OASIS, it requires, well,</p> <p>23 obviously, the customer name, the point of receipt</p> <p>24 and point of delivery, the megawatts that they're</p> <p>25 requesting, the start date and the end date, and the</p> <p>148: 1 path that it will be generated on -- or that it will</p> <p>2 be transmitted on. Sorry.</p> <p>3 Q. And how about for the written application?</p> <p>4 A. The written application is the same</p> <p>5 information as on OASIS, except there is additional</p> <p>6 information. I don't have the tariff, our tariff,</p> <p>7 with me that explains it in detail; but it gets more</p> <p>8 into what type of generator, what type of load, that</p>				

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<p>9 sort of information. 10 Q. And under what circumstances would 11 PacifiCorp require a deposit? 12 A. We require deposits of all new 13 point-to-point transmission service requests and all 14 new network customers. Existing network customers 15 are not -- We -- The tariff allows us to waive the 16 deposit requirement, and we do that with our 17 existing network customers. 18 Q. And I think you said the deposit is one 19 month's -- 20 A. One month's service. 21 Q. -- service. And so what does -- what does 22 "service" mean there? 148:23 A. So if you have -- if your request is for 24 20 megawatts, you would -- the current monthly rate, 25 I think, is around \$2600 per megawatt, so you'd 149: 1 multiply 20 times 2600 and then gross it up for</p>				

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<p>2 losses. So whatever -- I don't have a calculator, 3 but whatever that is, is the deposit amount. 4 Q. And, in that example, do you mean 20 5 megawatts would be transmitted at one time or over 6 the course of a whole month, or what do you mean? 7 A. That's what they're reserving on the line. 8 Whether they actually transmit or not, that is the 9 amount that will be available to the customer. 10 Q. In the course of one month? 11 A. In the course of one month -- or one year. 12 This -- This process is really to long-term requests 13 that are 12 months or longer, so... 14 Q. Oh, okay. 15 A. Yeah. 16 Q. So the deposit is about one month's 17 service? 18 A. Yeah. 19 Q. But any transmission service request would</p>				

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<p>20 be a request to transmit electricity for -- Sorry. 21 Is it a request to reserve space on 22 PacifiCorp's equipment for one year? 23 A. One year or longer. Usually they're 24 longer, but at least one year. 25 Q. At least one year. Okay. 150: 1 If an entity does not have an 2 interconnection agreement with PacifiCorp, is there 3 any reason that there would be a transmission 4 service request related to the entity? 5 A. Yes, occasionally. 6 Q. Okay. Can you explain that circumstance? 7 A. Yes. Sometimes customers, interconnection 8 customers, before they move -- get really far into 9 the interconnection process, want to make sure they 10 have the ability to reserve transmission. If 11 there's no transmission, they can build their</p>				

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<p>12 project but they can't get it anywhere, get the 13 energy anywhere; so they will occasionally put in a 14 transmission service request to see if it's even 15 feasible to get the -- get the energy or get the 16 transmission. 17 Q. If an entity -- Well, I'll withdraw that. 18 If an entity does not have a power 19 purchase agreement with PacifiCorp, is there any 20 reason for there to be a transmission service 21 request with respect to that entity? 150:22 A. No, but I -- Can I clarify that? 23 Q. Sure. 24 A. When a customer submits an application for 25 a resource, they have -- they -- part of that 151: 1 process is that they attest that they either own or 2 have the right to purchase the output of that</p>				

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<p>3 resource. So if they don't attest to that, then we 4 would not process their application. So I think 5 that the answer is no. 6 Q. Let's see. Let me make sure I understand. 7 A. Okay. 8 Q. We'll probably cover it later. 9 A. Okay. 10 Q. Okay. You mentioned that an entity would 11 have to submit information on the expected number of 12 megawatts -- 13 A. Yes. 14 Q. -- that it would -- it wants to transmit? 15 A. (Nods head.) 16 Q. Why is that? 17 A. Because when we look at it, we need to 18 know how much they're requesting, whether we've got 19 the available transmission capacity for it, whether 20 the local area can handle that as well. So we need 21 to know how much they're proposing to put on.</p>				

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<p>22 Q. And correct me if I'm wrong, but it</p> <p>23 sounded like, as part of the application, PacifiCorp</p> <p>24 would also need to know where the energy was going?</p> <p>25 A. Yes.</p> <p>152: 1 Q. The endpoint, I think you said?</p> <p>2 A. Point of delivery.</p> <p>3 Q. Point of delivery.</p> <p>4 A. That's the term.</p> <p>5 Q. Point of delivery. Why does PacifiCorp</p> <p>6 need to know the point of delivery?</p> <p>7 A. Well, we need to know where it's going,</p> <p>8 where -- it's entering the system, but where are you</p> <p>9 moving it to? It goes into also -- and I think it's</p> <p>10 the same answer as earlier -- do we have the</p> <p>11 transmission capability? Do we have the local area</p> <p>12 capability to handle it?</p> <p>13 Q. I may be skipping ahead a couple of boxes</p>				

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<p>14 here. But if an application was submitted that did 15 not provide a specific number of megawatts that is 16 requested for transmission, what would happen to the 17 application? 18 A. We would not be able to consider that 19 complete. 20 Q. And if an application is not complete and 152:21 is not corrected, is not made complete, what happens 22 then? 23 A. Then the customer has 30 days to correct 24 it from the time we notify them. If they don't, 25 then we deem them withdrawn; we no longer work on 153: 1 the application. 2 Q. And if a TSR application was made and 3 there was no point of delivery identified, what 4 would happen? 5 A. The same thing. We would attempt to</p>				

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<p>6 remedy it. If they didn't respond in the time we 7 gave them, then the request would be considered 8 withdrawn. 9 Q. Okay. So let's take a couple of boxes 10 over. 11 A. Okay. 12 Q. There's a gold diamond that says 13 "application complete" on the first line. Do you 14 see that? 15 A. Yes. 16 Q. And if the answer is yes, what happens? 17 A. If the answer is yes, then we review the 18 application within our transmission services group 19 to make sure that we've got the available 20 transmission capability. Regardless of whether we 21 have it or not, we also send it to our planners for 22 that particular area, have them take a look at it.</p>				

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<p>23 And, at that point, we -- they or us recommend</p> <p>24 whether or not we need to proceed with a study.</p> <p>25 Q. And is that a system impact study?</p> <p>154: 1 A. That would be a system impact study, yes.</p> <p>2 Q. What -- What can you tell me about a</p> <p>3 system impact study?</p> <p>4 A. Transmission system impact studies, the</p> <p>5 content is governed by the open access transmission</p> <p>6 tariff. They're a very high-level look at the</p> <p>7 request: One, are there any constraints in the</p> <p>8 area? Would we need to build infrastructure in</p> <p>9 order to complete -- you know, provide service for</p> <p>10 this request? And if the customer requests, we</p> <p>11 could look at redispach options and certain other</p> <p>12 options, but it doesn't get into cost or anything</p> <p>13 like that.</p>				

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<p>14 Q. And there's a question here: "Is a system 15 impact study needed?" 16 A. Um-hum. 17 Q. Why might it be needed, or why might not 18 it be needed? 19 A. It might not be needed. Occasionally, we 154:20 get requests that are very small. You have a tiny 21 -- you know, a one-megawatt project that needs to -- 22 that's coming on in an area that's not constrained. 23 We have the available transmission capacity, our 24 planners have looked at it and they say, "Yeah, the 25 system can handle it. Go ahead." So we would 155: 1 approve it at that point. 2 If any of those things are missing, if we 3 don't have the available transmission capacity 4 and/or the planners have concerns about the system 5 in that area, then we would need to do a study.</p>				

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<p>6 Q. And, actually, going along with that: Is 7 there any lower or upper limit on megawatts to be 8 transmitted? 9 A. No. 10 Q. Any number? 11 A. Any number. We see numbers all over. 12 Q. Okay. So if a system impact study is 13 indicated, what happens next? 14 A. Then we send to the customer a system 15 impact study agreement. They are required to sign 16 that within 15 calendar days and provide a deposit 17 of \$15,000. Once we receive that, then we set up a 18 scoping meeting with the customer and our planners 19 and talk about whatever the issues might be. 20 Q. And who is it that completes the system 21 impact study? 22 A. The planners do the bulk of the work, the</p>				

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<p>23 actual work. And then when it comes back to our 24 group, we review it and route it for other review if 25 necessary. We're kind of a project manager of it. 156: 1 Q. And planners, that's -- those are 2 PacifiCorp employees? 3 A. PacifiCorp planners, yeah, main grid and 4 area planning. 5 Q. And what is the \$15,000 deposit for? 6 A. That is what we use to charge our time to. 7 Q. So does that pay for the study? 8 A. Yes. It pays for it, and then if there's 9 anything left over at the end, we refund it to the 10 customer. 11 Q. Let's see. I think we left off at the 12 scoping meeting. 13 A. Yes, scoping meeting. 14 Q. Okay. Tell me about that. 15 A. So we hold a scoping meeting. It's open</p>				

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<p>16 to the customer and to anyone in PacifiCorp that may 17 have an interest in the request. We usually -- They 18 usually go in a certain format where we introduce 156:19 everybody and do a brief introduction to the request 20 and then, at that point, let PacifiCorp planners ask 21 whatever questions, clarifying questions, they have; 22 and the customer also can give additional input. 23 Q. So then does the study take place? 24 A. Yes. 25 Q. Okay. And so what -- what does a typical 157: 1 system impact study end up looking like? What is it 2 telling the customer? 3 A. It's telling the customer -- It depends on 4 the situation, you know, the nature of the request; 5 but, generally, it addresses two things: If there's 6 no available transmission capacity, it will identify</p>				

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<p>7 what is available, and it will identify the upgrades 8 required to provide the service they are looking 9 for. 10 Q. And what do you mean by "upgrades"? 11 A. Let's say they need to -- it's a vague 12 example, but we need -- in order to provide the 13 service, we have to build a new line from point A to 14 point B, a new transmission line. It would identify 15 that. Or we need to replace, you know, a ring bus 16 or something; some physical on-the-ground facilities 17 need to be in place. 18 Q. Who is it that takes on responsibility for 19 the costs and construction of any upgrades? 20 A. That is -- It depends on the nature of the 21 upgrades, whether they're what we call network 22 upgrades or direct assigned facilities. PacifiCorp</p>				

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<p>23 would take responsibility for the network upgrades 24 on the customer for the direct assigned facilities. 25 Q. Okay. Once a system impact study is 158: 1 delivered to a customer, what happens next? 2 A. Well, it depends on the results of the 3 system impact study. Occasionally, we have a 4 situation where we've done the study, the planners 5 weren't sure at the outset if we could grant it, 6 they do the study and the results come in, "Yeah, we 7 don't need to do any upgrades," so at that point we 8 would approve the request. If upgrades, genuine 9 upgrades, are required, then we would move on to the 10 facilities study phase. 11 Q. Okay. Tell me about the facilities study 12 phase. 13 A. So, process-wise, it's very similar to the</p>				

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<p>14 system impact study phase. We 15 send an agreement to 16 the customer. They have 15 days 17 to sign. The 18 deposit is \$50,000. Again, it's 19 refundable, minus 20 the actual costs. More people will 21 be involved in a 22 158:18 facilities study within 23 PacifiCorp. We'll hold a 24 scoping meeting. We usually 25 don't include the 26 customer in that, although they 27 are welcome to 28 attend if they want; but it will 29 include many more 30 engineering disciplines within 31 PacifiCorp, rather 32 than just planning -- you know, 33 metering and 34 protection and controls and 35 substation engineering. 36 And from there we'll develop a 37 scope of work and a 38 159: 1 cost estimate and schedule 39 for construction. 40 Q. Actually, I want to make sure I 41 got that 42 3 right.</p>				

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<p>4 Out of the facilities study comes cost 5 estimate, scope of work, and schedule? 6 A. Yes. 7 Q. Was there anything else? 8 A. No. Those are the primary. 9 Q. And, again, it's PacifiCorp employees who 10 are doing the facilities study? 11 A. Yes. 12 Q. What happens once PacifiCorp submits the 13 facilities study to the customer? 14 A. We usually set up a review meeting with 15 the customer to go over the results of the study; 16 and if it's favorable to the study -- to the 17 customer, if they decide they -- They can decide to 18 withdraw at any point in this process; but if, after 19 that, they decide, "Yeah, we want to move forward," 20 we'll put together a transmission service agreement 21 and a construction agreement for the customer.</p>				

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<p>22 Q. And talk about the construction agreement.</p> <p>23 A. The construction agreement is -- we have a</p> <p>24 template for it. It's pretty straightforward. It's</p> <p>25 between PacifiCorp and the customer. It outlines</p> <p>160: 1 what the request is, the work that needs to be</p> <p>2 completed, what the schedule is, what the costs are,</p> <p>3 what's direct assigned, what's network upgrades, and</p> <p>4 what the payment provisions will be. And then, as</p> <p>5 an appendix, it usually has the schedule and the</p> <p>6 actual scope of work.</p> <p>7 Q. So correct me if I'm wrong, but it sounds</p> <p>8 like some of the costs might be borne by PacifiCorp</p> <p>9 and some of the costs might be borne by the</p> <p>10 customer?</p> <p>11 A. Possibly, yes.</p> <p>12 Q. And how -- how about the transmission</p> <p>13 services agreement?</p>				

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<p>14 A. Yeah. There's two types of transmission 15 service agreements; so, depending on whether it was 16 point-to-point or network, we would develop an 160:17 agreement. For our point-to-point agreement, we 18 have a pro forma version in our tariff, and it would 19 be a matter of filling it in and sending it to the 20 customer. The network is a little - - a little more 21 free-form. We'd fill it in with the customer's 22 information, their point of delivery, what their 23 resources are, and what their loads are. 24 Q. So do you have -- Does the tariff include 25 anything for the network customer? 161: 1 A. There's a space for it but it is blank, so 2 they're conforming. 3 Q. What do you mean? I'm sorry, I'm just 4 trying --</p>				

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<p>5 A. I mean we don't have a pro forma network 6 agreement. 7 Q. Okay. So once the customer signs the 8 transmission service agreement and the 9 construction -- 10 A. The construction agreement will assign -- 11 So taking just the transmission service agreement: 12 They'll sign the transmission service agreement, 13 assuming they want to move forward with it, and 14 we'll look at the filing requirements. If it's a 15 network agreement, we will need to file it with 16 Federal Energy Regulatory Commission. And the 17 point-to-point agreement, so long as it doesn't you 18 know -- if it's in accordance with the tariff 19 agreement, we can report it on a spreadsheet report 20 that we do.</p>				

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<p>21 So there -- there's that. And then we'll 22 hold on to that until the request goes into service. 23 At the same time, when we have the construction 24 agreement, once that's signed and if there's any 25 payment provisions up front or any of the initial 162: 1 provisions are met, we'll assign it to a project 2 manager within PacifiCorp; and, at that point, I'm 3 mostly out of it. They move forward and start doing 4 the work, procuring the materials, and building the 5 facilities. 6 Q. If there is a construction agreement, the 7 work identified in the construction agreement has to 8 be completed before the customer may transmit power; 9 correct? 10 A. Correct. Yes. 11 Q. So even if a transmission service</p>				

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<p>12 agreement and a construction agreement are signed on 13 the same day, the customer might not be permitted to 14 start transmitting -- 15 A. Correct. 162:16 Q. -- immediately? 17 A. Until the facilities are in service, yes. 18 Q. And who is it that decides whether the 19 facility is good to go? 20 A. That is the project manager and his group. 21 I don't know their process. I don't know what -- 22 what the criteria are on that. 23 Q. So correct me if I'm wrong, but this 24 process that we've just walked through, Exhibit -- 25 p l a i n t i f f ' s Exhibit 197, is that for non PacifiCorp 163: 1 related entities? 2 A. It is for PacifiCorp and non PacifiCorp 3 related. 4 Q. Okay. So, to my understanding, there is a</p>				

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<p>5 component of PacifiCorp itself that may make 6 transmission service requests? 7 A. Yes. 8 Q. Can you tell me about that? 9 A. We -- Yeah, they're -- PacifiCorp Energy 10 Supply Management is their current name. They 11 are -- We treat them like -- even though they are in 12 the same company, there is a wall between us and we 13 treat them like any other customer. They're 14 affiliated with us, so we need to note that; but 15 aside from that, they follow the exact same 16 processes as any other customer, and we respond in 17 the same way. 18 Q. So why does PacifiCorp Energy Supply 19 Management exist? 20 A. Because they serve the majority of the 21 load within PacifiCorp's balancing authority area,</p>				

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<p>22 so they're a separate -- They buy and sell energy; 23 we don't. They need to procure transmission, like 24 anybody else, to move their energy. 25 Q. Do you know who they buy energy from? 164: 1 A. Many -- Not off the top of my head. Many 2 -- Many people. Many people. 3 MS. HEALY GALLAGHER: So this will be 4 next, please. 5 (Exhibit 201 m a r k e d .) 6 Q. BY MS. HEALY GALLAGHER: Handing you 7 what's been marked plaintiff's Exhibit 201. 8 Just take a look at that, please, and let 9 me know when you're done. 10 For the record, plaintiff's Exhibit 201 i s 11 Bates marked PAC 224 through 253. 12 Ms. Whitesmith, plaintiff's Exhibit 201 13 looks like it's entitled "service agreement for</p>				

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<p>14 network integration transmission service under 164:15 PacifiCorp's open access transmission tariff, volume 16 number 11." 17 Did I read that correctly? 18 A. Yes. 19 Q. What is this document? 20 A. This is a network integration transmission 21 service agreement for PacifiCorp Energy Supply 22 Management. 23 Q. So that's -- Let's see. So there are two 24 entities in paragraph 1, both called PacifiCorp as 25 far as I can see? 165: 1 A. Yes. 2 Q. So can you tell me: So which is the 3 Energy Supply Management? 4 A. So the two entities are transmission 5 function and PacifiCorp on behalf of its merchant 6 function. The merchant function is PacifiCorp 7 Energy Supply Management.</p>				

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<p>8 Q. Okay. Plaintiff's Exhibit 201. Is this 9 the kind of service agreement that another network 10 integration customer, who was not PacifiCorp's ESM, 11 the same agreement that they would enter into? 12 A. Similar. Similar form, yeah. 13 Q. Sure. And there might be different -- a 14 different scope of work -- 15 A. Right. 16 Q. -- or construction required, but -- 17 A. Yes. 18 Q. -- the general provisions are the same? 19 A. Yes.</p>				
<p>169: 2 MS. HEALY GALLAGHER: Okay. Back on the 3 record, please. 4 Q. BY MS. HEALY GALLAGHER: All right. 5 Ms. Whitesmith, what we've done is put plaintiff's 6 Exhibit 198 into a disk drive; so what you're 7 looking at right now are the files on plaintiff's</p>		<p>169-184: Objection, not relevant, FRE 401, 402; hearsay, FRE 802 calls for speculation; improper hypothetical, cumulative, compound</p>	<p>198 193</p>	<p>Overruled</p>

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<p>8 Exhibit 198. 9 Do you see a file that looks like the open 10 access transmission tariff? 11 A. Yes. 12 Q. Would you open that, please. 13 A. (Complies.) 14 Q. Oh, actually, could you read out the file 15 name for me. 16 A. Yeah. 20161005_OATT master.PDF. 169:17 Q. Great. Open that up, please. 18 A. (Complies.) 19 Q. All right. And Adobe is telling us that 20 this document is 751 pages; right? 21 A. Yes. 22 Q. Okay. Would you please find in the table 23 of contents of this document the sections that apply 24 to your work, the transmission services. 25 A. The sections that apply to my work 170: 1 directly are part 2, "point-to- point transmission</p>				

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<p>2 service." 3 Q. Just real quick: So Adobe is telling us 4 -- This is on page 7; correct? 5 A. Yes -- No, six. 6 Q. Oh, sorry. I'm looking -- I'm looking up 7 here in the upper left-hand corner. 8 A. Oh, yes. 9 Q. That's all right. Okay. So you -- 10 A. Yeah, it's page 7. 11 Q. Page 7. Got it. 12 Okay. So, nonetheless, it's Roman numeral 13 two, "point-to-point transmission service," in the 14 table of contents? 15 A. Correct. 16 Q. Okay. How about any others? 17 A. On page 9, Roman numeral three, "network 18 integration transmission service." 19 Q. Okay. Are there any others? 20 A. There are other areas in the appendices 21 and in part 1, that may or may not apply directly, 22 may not always apply. These always apply.</p>				

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<p>23 Q. Okay. Could you take a look at the list 24 of appendices. 25 A. Yes. Schedule 1 -- So on page 13 of the 171: 1 PDF, schedules 1, 2, 3 and 3A; and then on page 14 2 of the PDF, schedule 4, 5, 6, 7, 8, 9, 10, and 11 3 may apply. And -- 4 Q. Go ahead. 5 A. And also attachment A, attachment A1, 6 attachment B, attachment C to a certain extent, 7 attachment D, attachment E, and attachment F; and 8 then also on page 15 of the PDF, attachment H, 9 insomuch as it relates to transmission service; and 10 then attachment -- through attachment M. 11 Q. Okay. Let's see. And are there any -- It 12 looks like the attachment is the main document and 13 then an attachment might have appendices. Is that 14 right?</p>				

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<p>15 A. Most of them don't. I think attachment N 171:16 has appendices. 17 Q. Oh, I see. Okay. 18 A. But that doesn't apply to my work. 19 Q. Okay. So, again, in this open access 20 transmission tariff, these are the general rules 21 that apply? These are pro forma documents -- 22 A. Yes. 23 Q. -- that are used in the course of 24 transmission service requests? 25 A. Yes. 172: 1 Q. Okay. All right. You can close that. 2 A. (Complies.) 3 Q. And do you see a file name that looks like 4 it is a native Excel file for the transmission 5 service queue? 6 A. Yes. 7 Q. Which one? 8 A. The one entitled tsr_queue.xlsx. 9 Q. Okay. Would you open that, please.</p>				

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<p>10 A. (Complies.) The first -- Okay. 11 Q. Go ahead. 12 A. The first one on here, it's not clear what 13 queue it is; it just says "PacifiCorp queue," but -- 14 because this doesn't specify which queue, whether 15 it's generation or transmission. 16 Q. Okay. So now the file that you 17 double-clicked on is open; correct? 18 A. Correct. 19 Q. What's -- What's the title of this file? 20 A. "PacifiCorp Transmission Services, 21 long-term firm request queue," and the tab that I'm 22 on says "inactive requests." 23 Q. Is there another tab? 24 A. Yes. There's another tab, which is 25 "PacifiCorp Transmission Services long-term firm 173: 1 request queue, active requests." 2 Q. And the active requests, the tab name is 3 TSR queue; correct?</p>				

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<p>4 A. Correct.</p> <p>5 Q. So, if we could, could you walk me through</p> <p>6 the columns and explain to me what information is in</p> <p>7 these columns?</p> <p>8 A. Column -- Column A is titled "queue," and</p> <p>9 these are the queue numbers that have been assigned.</p> <p>10 Q. So, for example, if an entity submitted an</p> <p>11 application for transmission service request, this</p> <p>12 queue number would be assigned to that?</p> <p>13 A. Correct, yes, once the application is</p> <p>14 complete.</p> <p>173:15 Q. Aha, once the application is complete.</p> <p>16 A. Right. "OASIS A rev," this is the number</p> <p>17 that is generated on OASIS. "Company," this is who</p> <p>18 submitted the request. The date the request was</p> <p>19 received. This is what we call the completed</p>				

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<p>20 application date; it's the actual date assigned to 21 the transmission request. 22 Q. And that's in column D? 23 A. Yeah. Oh, I'm sorry. I misread. I 24 apologize. This is the OASIS request received date. 25 Q. Is in column D? 174: 1 A. Yeah, in column D. And that's the date 2 the customer submitted the request on OASIS. 3 Q. Okay. 4 A. Oops. The "written application" is the 5 date that we received the written application from 6 the customer. It may be different from the OASIS 7 request received. 8 "Control area" is column F, and that is 9 what part of the PacifiCorp system is it in: Is in 10 the east or the west? 11 Q. And what's -- I mean, aside from the 12 obvious -- 13 A. Yeah.</p>				

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<p>14 Q. -- what is east and what is west?</p> <p>15 A. So we have two balancing authority areas:</p> <p>16 We have our western balancing authority area, which</p> <p>17 encompasses PacifiCorp's area in Oregon, Washington,</p> <p>18 part of northern California, and part of Idaho; the</p> <p>19 eastern portion or the eastern balancing authority</p> <p>20 -- authority area is Utah, southern Idaho, Wyoming,</p> <p>21 and I believe that's it.</p> <p>22 Q. All right. How about the next column?</p> <p>23 A. The next column is "product." The product</p> <p>24 is what is -- the OASIS term for whether it's</p> <p>25 network or point-to-point transmission service.</p> <p>175: 1 Q. Okay. So if something says "NT," what</p> <p>2 does that mean?</p> <p>3 A. "NT," that means network.</p> <p>4 Q. And what's the entry for point-to-point?</p> <p>5 A. "PTP."</p>				

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<p>6 Q. Okay. 7 A. And then "OASIS status," this is the 8 current OASIS status as of right now. And most of 9 these say "confirmed," and that means that it's been 10 approved and is in service. 11 Q. So the transmission service request has 12 been approved? 13 A. Correct. 175:14 Q. Okay. 15 A. The next column, column I, is "POR." That 16 stands for point of receipt, and that identifies the 17 OASIS -- what the customer entered for the point of 18 receipt on OASIS. 19 Q. And what are the options in the "point of 20 receipt" column? 21 A. Yeah, there are a lot of options. They're 22 pre-identified. They're -- The customer has to 23 select from a drop-down on OASIS. So usually it's</p>				

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<p>24 kind of indicative a little bit of the area of the</p> <p>25 system. PACE is generally the Utah area. PACW is</p> <p>176: 1 the western area.</p> <p>2 Q. Could you click on the "filter" button --</p> <p>3 A. Yes.</p> <p>4 Q. -- in that column. Oh, I do see there are</p> <p>5 many there.</p> <p>6 A. There are many. There's many all across</p> <p>7 the system.</p> <p>8 Q. Oh, you can --</p> <p>9 A. Yeah, sorry.</p> <p>10 Q. No, that's fine.</p> <p>11 Is there a way that you could identify</p> <p>12 which ones are in Utah?</p> <p>13 A. Yeah -- Yes. Generally -- if you'll give</p> <p>14 me a minute.</p> <p>15 PACE is our primary Utah point of receipt</p> <p>16 or point of delivery, but there are others that may</p> <p>17 have interconnections, Glen Canyon, Four Corners,</p> <p>18 Donder Pavant.</p>				

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<p>19 (Reporter request.) 20 THE WITNESS: D-O-N-D-E-R. MDGT, 21 MWMDWP -- 22 Q. BY MS. HEALY GALLAGHER: Hang on. If you 23 could just go slowly for the court reporter. 24 A. Yeah, I'm sorry. -- and MPAC are in Utah. 25 Nutt is in Utah. Pavant, Pinto, Red Butte, and Red 177: 1 Butte load. 2 Q. And are those abbreviated in the -- 3 A. Yeah, they're abbreviated. That's how 4 they're shown in OASIS. 5 Q. So that's REDB? 6 A. REDB and REDBL. 7 Q. Okay. 8 A. I believe that's it. 9 Q. So, for all of these entries on this list, 10 what are these the names of? 11 A. They're the names of points on the system, 12 scheduling points that may cover a certain area of 177:13 the system.</p>				

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<p>14 Q. And are these points PacifiCorp 15 facilities? 16 A. Not always. Yes, they are, but they -- 17 especially if it's a point that we share with 18 another balancing authority area, like the Four 19 Corners point that I mentioned, it may also be a 20 point on someone else's system. 21 Q. So how does electricity get to one of 22 these points? 23 A. A customer will have to deliver it to that 24 point or find a way to get it delivered to that 25 point. 178: 1 Q. So might there be another utility that 2 might get it there, or could it be the customer's 3 own equipment that gets it there? 4 A. There -- There could be -- 5 Q. Either? 6 A. -- either. 7 Q. Okay. So that's point of receipt in</p>				

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<p>8 column 1; correct? 9 A. Correct. 10 Q. And then in J, "point of delivery"? 11 A. That's -- That's similar, only it's where 12 the energy is going. 13 Q. And the entries, correct -- The same names 14 will be in point of delivery that are in point of 15 entry; correct? 16 A. Correct. The same options are available 17 to the customer for point of delivery as for point 18 of receipt. 19 Q. That's a better way to say it. 20 A. I just want to make sure. 21 Q. And so, similarly, once electricity is 22 delivered to one of these points of delivery, it 23 would be up to someone else -- it would be up to 24 another entity besides PacifiCorp -- to get it to 25 its final destination, if that's not its final 179: 1 destination?</p>				

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<p>2 A. It may be PacifiCorp as well. It could be 3 another entity. It depends on what they're doing 4 with the energy. 5 Q. Okay. All right. And then how about 6 column K? 7 A. Column K is megawatts. This is where the 8 customer identifies how many megawatts they intend 9 to -- they want to transmit. 10 Q. Okay. And how about "start" and "end" 11 there? 179:12 A. "Start" is the date they're requesting 13 service to start, and "end" is the date they want it 14 to end. 15 Q. And if there is an entry on this first 16 sheet for active requests, those are currently 17 operative? 18 A. They -- Correct. 19 Q. Okay. Could you click on the archive 20 sheet.</p>				

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<p>21 A. Yes. 22 Q. Do we have the same column headers? 23 A. Yes. 24 Q. Okay. Could you go back, please, to the 25 TSR queue sheet. 180: 1 A. (Complies.) 2 Q. If I wanted to find out which company had 3 an active transmission service request, how would I 4 do that? 5 A. Which company? Well, we have the 6 companies listed here, so you'd be able to see it; 7 and you could use the filter to choose whichever 8 company you're looking for. 9 Q. Okay. And by choosing the filter, do you 10 mean the tiny gray box with the down arrow at the 11 bottom right-hand corner of the company header? 12 A. Yes. Oops. 13 Q. And if I wanted to find out -- Withdrawn.</p>				

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<p>14 Okay. We're done with that. We'll take a 15 second. 16 MR. MORAN: Yeah. Thanks, Erin. 17 Q. BY MS. HEALY GALLAGHER: Okay. Would you 18 take a look, please, back at plaintiff's 19 Exhibit 193. 20 A. Yes. 21 Q. And I'm looking at the second to last 22 page, paragraph 7. 23 There's a list of persons and entities in 24 there. Do you see that? 25 A. Yes. 181: 1 Q. Okay. I'll start off by asking: To your 2 knowledge, is there any transmission -- transmission 3 service agreement involving an entity named 4 RaPower-3 LLC? 5 A. Not to my knowledge. 6 Q. Has RaPower-3 LLC made any transmission 7 service request application? 8 A. No, not to my knowledge.</p>				

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<p>9 Q. Is there any transmission service agreement in place with respect to International Automated Systems Inc.?</p> <p>10 agreement in place with respect to International Automated Systems Inc.?</p> <p>11 A. Not to my knowledge.</p> <p>12 Q. Has International Automated Systems Inc. made any transmission service request application?</p> <p>13 A. Not to my knowledge.</p> <p>14 Q. Has LTB1 LLC made any transmission service request application?</p> <p>15 A. Not to my knowledge.</p> <p>16 Q. Is there any transmission service agreement in place with respect to LTB1 LLC?</p> <p>17 A. Not to my knowledge.</p> <p>18 Q. Is there any transmission service agreement in place with respect to DCL16BLT Inc.?</p> <p>19 A. Not to my knowledge.</p> <p>20 Q. Has an entity named DCL16BLT made a transmission service request application?</p> <p>21 A. Not to my knowledge, no.</p>				

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<p>3 Q. Has -- Is there a transmission service agreement in place with respect to R. Gregory Shepard?</p> <p>4 A. No, not that I'm aware of.</p> <p>5 Q. Has R. Gregory Shepard made any transmission service request application?</p> <p>6 A. Not that I'm aware of.</p> <p>7 Q. Is there any transmission service agreement in place with respect to Neldon Johnson?</p> <p>8 A. Not to my knowledge.</p> <p>9 Q. Has Neldon Johnson made any transmission service request application?</p> <p>10 A. Not to my knowledge.</p> <p>11 Q. Has Roger Freeborn made any transmission service request application?</p> <p>12 A. No. I'm not aware of any.</p> <p>13 Q. Is there any transmission service agreement in place with respect to Roger Freeborn?</p> <p>14 A. No.</p>				

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<p>22 Q. Would you take a look, please, at the 23 other entities identified in that paragraph 7. 24 Is there any transmission service 25 agreement in place with respect to any of those 183: 1 entities? 2 A. Not to my knowledge. I'm not aware of 3 any. 4 Q. Have any of those entities made a 5 transmission service request application? 6 A. No. 7 Q. How did you determine whether there was a 8 transmission service agreement in place with respect 9 to any of the people or entities in paragraph 7? 183:10 A. The transmission service agreement. I 11 reviewed what we call our electronic quarterly 12 report, and that's the report where we identify all 13 of our agreements, our transmission agreements. It</p>				

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<p>14 wasn't there. And I also reviewed our electronic document management system to see if there was anything under these names there, and there wasn't.</p> <p>17 Q. How did you determine that none of these people or entities had submitted TSR application?</p> <p>19 A. I reviewed the TSR queue that we looked at to see if we'd had anything. I also reviewed the electronic document management system to see if there was anything that had somehow been missed.</p> <p>23 Q. Outside of the TSR process, is there any way that a person or entity could transmit electricity on PacifiCorp equipment?</p> <p>184: 1 A. It can happen, but there will be penalties assessed. To do it legally without any penalties, they'd have to go through the transmission service</p>				

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4 request process. 5 Q. What kinds of penalties? 6 A. There's unauthorized use, and I would need 7 to look at the -- it's getting a little out of my 8 area as well, but I'd need to look at the tariff. 9 Q. But you think the information's in the 10 tariff? 11 A. Right. Unauthorized use and unreserved 12 capacity, yeah, they would be charged for that.				
188:17 MS. HEALY GALLAGHER: Then that's it. 18 Thank you very much. 19 THE WITNESS: Thank you. 20 (DEPOSITION ADJOURNED AT 3:38 P.M.)				
DEFENDANT COUNTER- DESIGNATIONS	PLAINTIFF COUNTER- DESIGNATIONS			

<p style="text-align: center;"><i>Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828</i></p> <p style="text-align: center;"><i>Deposition of PacifiCorp taken November 15, 2016</i></p>				
<p>Plaintiff Designations – BLUE Defendant Completeness— PURPLE Defendant Counter-Designations – RED (at end)</p>	<p>Defendant Designations – RED Plaintiff Completeness— PURPLE Plaintiff Counter Designations – BLUE (at end)</p>	<p>Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE</p>	<p>Exhibits</p>	<p>Ruling</p>

Instructions: One form should contain all designations for a witness. Plaintiff Designations (column 1) and Defendant Designations (column 2) will show the full deposition text that the party proposes to read in its case-in-chief. Completeness designations are proposed by the other party, under Fed. R. Civ. P. 32(a)(6), to be read with the designations. Counter-designations are read following the designations and completeness designations, similar to cross examination. This form should be provided in word processing format to the other party, who then will continue to fill in the form. The form is then returned to the proposing party for review, resolution of disputes, and further editing. The parties should confer and file a final version in PDF format using the event “Notice of Filing” and also submit a final word processing copy to the court at dj.nuffer@utd.uscourts.gov, for ruling.

All objections which the objecting party intends to pursue should be listed, whether made at the deposition, as with objections as to form, or made newly in this form, if the objection is of a type that was reserved.