

*Case Name: United States v. RaPower-3, LLC, et al.**Case Number: 15-cv-828**Deposition of Neldon Johnson, vol. 2, taken October 3, 2017*

<b>Plaintiff Designations – BLUE</b> <b>Defendant Completeness—</b> <b>PURPLE</b> <b>Defendant Counter-Designations –</b> <b>RED (at end)</b>	<b>Defendant Designations – RED</b> <b>Plaintiff Completeness—</b> <b>PURPLE</b> <b>Plaintiff Counter Designations –</b> <b>BLUE (at end)</b>	<b>Defense Objections/Responses –</b> <b>RED</b> <b>Plaintiff Objections/Responses –</b> <b>BLUE</b>	<b>Exhibits</b>	<b>Ruling</b>
PLAINTIFF DESIGNATIONS	DEFENDANT -DESIGNATIONS			
<p>4: 3 NELDON JOHNSON, 4 5 called as a witness, being first sworn, 6 was examined and testified as follows: 7 8 EXAMINATION 9 BY MS. HEALY GALLAGHER: 10 Q. All right. We're on the record in the 11 case of United States versus RaPower3 on October 3rd 12 about 10 after 9:00 a.m. 13 My name is Erin Healy Gallagher of the 14 U.S. Department of Justice Tax Division, appearing on 15 behalf the United States. 16 Counsel, please make your appearance. 17 MR. SNUFFER: Yeah. Denver Snuffer here 18 on behalf of Neldon Johnson in his capacity as a 19 expert witness. 20 MS. HEALY GALLAGHER: And, Mr. Snuffer,</p>				

**Plaintiff  
Exhibit**

681

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<p>21 you also now represent all of the  22 defendants in this  23 case; is that right?  24 MR. SNUFFER: I believe that I  25 haven't yet  26 entered an appearance, but  27 people from my office have  28 entered an appearance also on  29 behalf of Shepard and  30 5: 1 the other fellow, but I don't  31 know that -- that I've  32 2 entered an appearance just yet.  33 3 MS. HEALY GALLAGHER:  34 Okay.  35 4 MR. SNUFFER: All right.  36 5 MR. MORAN: And I'm  37 Christopher Moran  38 6 appearing on behalf of the United  39 States.  40 7 And with us on the phone is Erin  41 Hines,  42 8 back in our office in Washington,  43 D.C.  44 9 MS. HEALY GALLAGHER:  45 And also in the room  46 10 is Ms. Glenda Johnson.</p>				
<p>8:11 Q. So we're here to get as  accurate a record  12 as we can of the facts of the case  as you remember</p>				

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<p>13 them. So I have to ask, is there anything that would</p> <p>14 prevent you from understanding and answering my</p> <p>15 questions with the full capacity of your</p> <p>16 recollection?</p> <p>17 A. No.</p> <p>18 Q. Are you taking medications or drugs of any</p> <p>19 kind that might interfere with your memory?</p> <p>20 A. No.</p> <p>21 Q. Have you had anything alcoholic to drink</p> <p>22 in the past eight hours?</p> <p>23 A. No.</p> <p>24 Q. Are you currently under a doctor's care</p> <p>25 for any illness that may interfere with recollection</p> <p>9: 1 or comprehension?</p> <p>2 A. No.</p> <p>3 Q. Is there any other reason you can think of</p> <p>4 why you might not be able to answer my questions</p> <p>5 fully and accurately today?</p> <p>6 A. No.</p>				
83: 1 Q. All right, Mr. Johnson. We				

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<p>will turn to  2 the purported solar energy  technology that IAS has  3 held out in just a moment, but I  want to hear from  4 you. For all the background and  experience and  5 qualifications that we've talked  about so far, has  6 there ever been a time that you  have worked  7 specifically with generating  electricity from solar  8 radiation?  9 A. Other than my own company?  10 Q. Correct.  11 A. No, I haven't. No.  12 Q. Okay. So your only  experience with that  13 is through IAS?  14 A. That is correct, yes.</p>				
<p>133:18 Q. The first sentence. It  starts with the  19 phrase, "The solar process heat."  20 Mr. Johnson, what's your  understanding of  21 solar process heat?  22 A. Well, what I understand it to  be, it's any  23 heat that can be used for a</p>				

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<p>commercial or a home heat  24 that will -- will heat -- will --  will -- will  25 substitute for any other heat  generated by any other  134: 1 source, such as -- if a -- if you  use solar energy to  2 heat your home with and you can  replace a certain  3 amount of that heat with -- that  was generated by a  4 natural gas, say, or a carbon heat  source, then that  5 would qualify, then, for the tax  credit. So process  6 heat would be something that  would replace any amount  7 of -- of other types of -- other  types of heat  8 source, whether it be bio --  biometrics -- not  9 biometrics -- bi -- anyway. Coal  or -- or -- or wood  10 or -- or any kind of heat used for  the purpose of  11 doing anything with. So the  definition would be  12 that, from my point of view.  13 Q. Any other aspect of your  understanding of</p>				

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14 solar process heat, or was that it? 15 A. Well, I think it's pretty clear that any 16 time you replace any other source of generating heat 17 with solar, that would be classified as process heat, 18 whether it's for residential or for a commercial 19 application.				
135:25 Q. And, Mr. Johnson, you are the manager for 136: 1 LTB O&M, LLC, correct? 2 A. Yes, I am. 3 Q. So if LTB O&M was going to undertake any 4 activity, you would either do it or know about it, 5 correct? 6 A. That is correct, yes. 7 Q. So other than conversations with 8 accountants, has LTB O&M undertaken any activity 9 since July 1st? 10 A. I don't believe so, no. 11 Q. Has the entity LTB1, LLC, undertaken any 12 activity since July 1st? 13 A. No, they haven't.				

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14 Q. Has the entity LTB, LLC, undertaken any 15 activity since July 1st? 16 A. No, they have not.				
184: 8 Q. Mr. Johnson, I'm going to ask you again -- 9 and this question has nothing to do with the IRS. 10 But for any solar energy system, efficiency is 11 maximized when heat loss in the system is minimized; 12 isn't that right? 13 A. Correct.				
202: 8 Q. Mr. Johnson, you own a portion of 9 International Automated Systems, correct? 10 A. Correct. 11 Q. And, Mr. Johnson, at least in the past, 12 International Automated Systems has paid you money, 13 correct? 14 A. Well, they may have paid me a little bit 15 of money. Not much. 16 (EXHIBIT 646 WAS MARKED.) 17 Q. I'm showing you, Mr.			646 647 648	

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<p>Johnson, what's been  18 marked Plaintiff's Exhibit 646.  19 A. Okay.  20 Q. Do you recognize Plaintiff's  Exhibit 646?  21 A. Correct.  22 Q. Yes?  23 A. Yes.  24 Q. The first -- it's a series of  checks,  25 correct?  203: 1 A. Correct.  2 Q. From International Automated  Systems?  3 A. Correct.  4 Q. And the first three checks are  to you,  5 right?  6 A. Yes.  7 Q. All from February 25th, 2005.  8 A. Okay.  9 Q. Yes?  10 A. Yes.  11 (EXHIBIT 647 WAS  MARKED.)  12 Q. Mr. Johnson, you've been  handed what's  13 been marked Plaintiff's Exhibit  647. For the record,  14 the Bates number is</p>				



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Zions_Bank-000396. 15 A. Okay. 16 Q. Do you recognize Plaintiff's Exhibit 647? 17 A. Well, I know what it is. I mean, it's a 18 check. 19 Q. It's a check from International Automated 20 Systems, Inc., correct? 21 A. That's correct. 22 Q. To the NP Johnson Family Limited 23 Partnership, right? 24 A. Correct. 25 Q. And that limited partnership was owned by 204: 1 you and members of your immediate family, right? 2 A. Correct. 3 Q. And this check is dated January 27, 2012, 4 right? 5 A. Correct. 6 Q. International Automated Systems has also 7 paid money to members of your family, right? 8 A. I think they paid wages to some members,				

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<p>9 and some members they've reimbursed for activities</p> <p>10 that they've done for the company.</p> <p>11 (EXHIBIT 648 WAS MARKED.)</p> <p>12 Q. I'm handing you what's been marked</p> <p>13 Plaintiff's Exhibit 648, Bates-marked</p> <p>14 BankofAmericanFork-000195.</p> <p>15 Mr. Johnson, Plaintiff's Exhibit 648 has</p> <p>16 four checks on it, correct?</p> <p>17 A. Yes, uh-huh.</p> <p>18 Q. The second check is to LaGrand Johnson.</p> <p>19 Do you see that?</p> <p>20 A. Uh-huh (affirmative).</p> <p>21 Q. Yes?</p> <p>22 A. Yes.</p> <p>23 Q. From International Automated Systems,</p> <p>24 dated January 17, 2005, right?</p> <p>25 A. Correct.</p> <p>205: 1 Q. And below that is a check to</p> <p>2 Glenda Johnson dated January 26th, 2005, correct?</p> <p>3 A. Yes.</p>				

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<p>4 Q. From International Automated Systems?</p> <p>5 A. Correct.</p> <p>6 Q. LaGrand Johnson is your son?</p> <p>7 A. Correct.</p>				
<p>206: 6 Q. What, if any, employment does</p> <p>7 Randy Johnson have currently?</p> <p>8 A. None.</p> <p>9 Q. None?</p> <p>10 A. He works for the company. He works -- he</p> <p>11 did work for International Automated Systems.</p> <p>12 Q. When is the last time Randy Johnson had</p> <p>13 any employment outside of one of your businesses?</p> <p>14 A. I don't think he ever has. He has a</p> <p>15 degree in programing, though. He could have if he</p> <p>16 wanted to.</p> <p>17 Q. To your knowledge, are your businesses</p> <p>18 Randy Johnson's only source of income?</p> <p>19 A. Yes. It doesn't mean he does anything. I</p> <p>20 mean -- I shouldn't say that. I'm</p>				

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<p>just kidding.  21 That's a joke.</p>				
<p>207:10 (EXHIBIT 649 WAS  MARKED.)  11 Q. I'm handing you what's been  marked  12 Plaintiff's Exhibit 649, Bates  number WF-001470.  13 A. Uh-huh (affirmative).  14 Q. Mr. Johnson, Plaintiff's  Exhibit 649 is a  15 check from Cobblestone Center  to the Howard County  16 Tax Office.  17 Do you see that?  18 A. Sure.  19 Q. And the memo has some  numbers in there.  20 And then it says, "For Johnson  NP Family Limited  21 Partner."  22 Do you see that?  23 A. Uh-huh (affirmative).  24 Q. Yes?  25 A. Right.</p>			649	
<p>214: 7 Q. (BY MS. HEALY  GALLAGHER) In fact,  8 Cobblestone Center also makes  payments to your son,  9 LaGrand Johnson, correct?</p>			650	

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<p>10 A. Correct. He works for the company.</p> <p>11 Q. Cobblestone Center makes payments to</p> <p>12 Randy Johnson, correct?</p> <p>13 A. Correct. They work for the company.</p> <p>14 (EXHIBIT 650 WAS MARKED.)</p> <p>15 Q. Mr. Johnson, you've been handed what's</p> <p>16 been marked Plaintiff's Exhibit 650. 650 is</p> <p>17 WF-001219. This exhibit is a check from Cobblestone</p> <p>18 Center to Randy Johnson, correct?</p> <p>19 A. Yes.</p>				
<p>217:22 Q. Mr. Johnson, RaPower3 pays members of your</p> <p>23 family as well, correct?</p> <p>24 A. It's fine. It's legally, do it. If</p> <p>25 it's -- if you have a problem with it, then take it</p> <p>218: 1 up with someone else.</p> <p>2 Q. That's correct, isn't it?</p> <p>3 A. It's correct, yes.</p> <p>4 Q. RaPower3 writes checks to Glenda Johnson,</p> <p>5 right?</p>				

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<p>6 A. Yes. She works -- she does all the</p> <p>7 booking. You see her -- you see her signatures on</p> <p>8 the bottom of those checks.</p> <p>9 Q. And RaPower3 pays LaGrand Johnson.</p> <p>10 A. I'm entitled to pay him. I could pay him</p> <p>11 a million dollars a year. What difference does it</p> <p>12 make? There's not -- nothing illegal about what I</p> <p>13 pay certain people to work for me. What's the -- so</p> <p>14 what's the point?</p> <p>15 Q. RaPower3 pays Randy Johnson also, right?</p> <p>16 A. What's the point?</p> <p>17 Q. Is that correct?</p> <p>18 A. That's correct. What's the point?</p>				
<p>219: 2 Q. Object to the responsiveness of the</p> <p>3 answer.</p> <p>4 Would you please read back my question?</p> <p>5 (Record was read as follows: "And XSun</p> <p>6 Energy writes checks to your</p>				

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<p>family members  7 too.")  8 THE WITNESS: Will you object  to that  9 again?  10 MR. SNUFFER: Well, yeah.  It's not  11 related to the purpose we're here  for a deposition  12 today, the ex -- the expert report  prepared by Neldon  13 Johnson.  14 Can you anchor it somewhere in  the report,  15 somewhere in what he's written?  Because I don't see  16 the connection. We will  stipulate that members of  17 the Neldon Johnson family get  paid to do work for  18 IAS, RaPower, XSun Energy,  Cobblestone Center.  19 There's no question the family  works and incurs costs  20 and gets paid for their work and  gets reimbursed for  21 their costs. And -- and that's --  that's unrelated  22 to his report.</p>				
230: 7 MS. HEALY GALLAGHER:				





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<b>DEFENDANT COUNTER-</b> <b>DESIGNATIONS</b>	<b>PLAINTIFF COUNTER-</b> <b>DESIGNATIONS</b>			

**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](mailto: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.