

1 MS. HEALY-GALLAGHER: And you saw in notations in
2 the comment box saying, added to QuickBooks or sent to
3 QuickBooks. We don't have the QuickBooks.

4 THE COURT: Right.

14:11:02 5 MS. HEALY-GALLAGHER: So then, Your Honor, and, in
6 fact --

7 THE COURT: So what's the next category of
8 information I've got that will help me?

9 MR. HEALY-GALLAGHER: The next category of
14:11:13 10 information in particular is the bank deposits specifically to
11 RaPower3, XSun Energy, SOLCO1 and I believe Cobblestone
12 Centre. Now, we have the deposition testimony that Your Honor
13 is going to read in the break, and that deposition testimony
14 links up those entities with their deposits because it's
14:11:40 15 Mr. Johnson, who I would also note has not been here this
16 afternoon, he testified that each of those -- for each of
17 those entities they've never done anything but sell lenses.
18 So that's why it helps support the reasonable approximation
19 for the defendant's unjust enrichment that all of their
14:12:03 20 receipts are from lenses.

21 THE COURT: If I were to take those bank deposits
22 in that time period from RaPower, XSun, SOLCO and Cobblestone
23 Centre, what would I come up with?

24 MS. HEALY-GALLAGHER: I would need refer to the
14:12:22 25 charts, Your Honor.

1 THE COURT: Now surely someone on the team has that
2 number on the tip of their tongue.

3 MS. HEALY-GALLAGHER: I'm afraid we don't. Can you
4 give me a minute, please?

14:12:39 5 THE COURT: Okay. That's fine. So another method
6 is by summing bank deposits.

7 MS. HEALY-GALLAGHER: That's right.

8 THE COURT: Are there any other methods that I
9 overlooked here? There were tax returns in that summary.

14:12:50 10 MS. HEALY-GALLAGHER: There are tax returns. That,
11 Your Honor, is more to reflect to the harm to the Treasury
12 which goes to our injunction factors, so that Your Honor has a
13 visible picture of what's happened here.

14 THE COURT: So you don't claim that's a measure of
14:13:06 15 disgorgement because disgorgement reflects what the defendants
16 were doing, not what the injury is to the Treasury.

17 MS. HEALY-GALLAGHER: Right. There needs -- to be
18 an injury, there needs to be an injured party. There needs to
19 be unjust enrichment at the expense of a party. But that's
14:13:23 20 not the measure of disgorgement.

21 THE COURT: Okay. Those are the three categories
22 of evidence I heard today; right?

23 MS. HEALY-GALLAGHER: Right. And I will say, too,
24 Your Honor, the total number of lenses sold which we saw in
14:13:41 25 Plaintiff's Exhibit 742A and 742B, and really 742B is the more

1 updated version but we only got that I believe after we
2 disclosed our trial exhibits, but 742B, again, when we're
3 trying to arrive at a reasonable approximation of the
4 defendant's gross receipts because of the way the defendants
14:14:06 5 promoted the scheme they told people it was \$105 as a down
6 payment for each lens.

7 THE COURT: Right.

8 MS. HEALY-GALLAGHER: So if we take the total
9 number of lenses sold and multiply it by \$105 that's the
14:14:22 10 bottom end or a potential bottom end of the disgorgement that
11 the defendants could be liable for. And then, of course,
12 defendants also told people that they had to submit \$1,050
13 total per lens. So the top end of the disgorgement could be
14 the total number of lenses sold times \$1,050.

14:14:50 15 Now, of course, there is evidence that not
16 everybody paid for every single lens in the amount of \$1,050.
17 But again, we do not have defendant's accounting records.

18 THE COURT: Can you remind me the number of lenses
19 at the bottom of 742B?

14:15:08 20 MS. HEALY-GALLAGHER: That is 49,415.

21 THE COURT: Okay. That does not match the number
22 of lenses at the bottom of the database; right?

23 MS. HEALY-GALLAGHER: That's right. And I have no
24 explanation for that.

14:15:21 25 THE COURT: That was about 82,000?