

Oveson, Kenneth Wayne

February 16, 2017

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

UNITED STATES OF)	
AMERICA,)	Deposition of:
)	
Plaintiff,)	KENNETH WAYNE OVESON
)	
vs.)	Time on record: 1 Hour,
)	35 Minutes
RAPOWER3, LLC,)	
INTERNATIONAL)	Case No. 2:15-cv-00828 DN
AUTOMATED SYSTEMS,)	
)	
INC., LTB1, LLC, R.)	Judge David Nuffer
)	
GREGORY SHEPARD,)	
)	
NELDON JOHNSON and)	
)	
ROGER FREEBORN,)	
)	
)	
Defendants.)	

February 16, 2017 * 9:06 a.m.

Location: United States Attorney's Office
111 South Main Street, Suite 1800
Salt Lake City, Utah

Reporter: Dawn M. Perry, CSR

Notary Public in and for the State of Utah

**Plaintiff
Exhibit**

385

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<p style="text-align: center;">2</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>FOR THE PLAINTIFF:</p> <p>Christopher R. Moran Erin Healy Gallagher Erin R. Hines (Telephonically) United States Department of Justice Trial Attorneys, Tax Division P.O. Box 7328 Washington, D.C. 20044 (202) 307-0834 (Moran) (202) 353-2452 (Healy Gallagher) (202) 514-6770 (fax) christopher.r.moran@usdoj.gov erin.healygallagher@usdoj.gov</p> <p>FOR THE DEFENDANTS, RAPOWER3, LLC, INTERNATIONAL AUTOMATED SYSTEMS, INC., LTB1, LLC, AND NELDON JOHNSON:</p> <p>Christian D. Austin Attorney at Law Heideman & Associates 2969 No. University Avenue Suite 180 Provo, Utah 84604 (801) 472-7742 (801) 374-1724 (fax) caustin@heidlaw.com</p> <p>FOR THE WITNESS:</p> <p>Eric G. Benson Attorney at Law Ray, Quinney & Nebeker 36 South State Street Suite 1400 Salt Lake City, Utah 84111 (801) 532-1500 (801) 532-7543 (fax) ebenson@rqn.com</p>	<p style="text-align: center;">4</p> <p style="text-align: center;">P R O C E E D I N G S</p> <p>MR. MORAN: Good morning, Mr. Oveson. We are on the record in the case of United States v. RaPower3, et al.</p> <p>My name is Christopher Moran of the United States Department of Justice, Tax Division, appearing on behalf of the United States.</p> <p>Will all other counsel in the room please place their appearances on the record?</p> <p>MR. BENSON: Eric Benson, Ray, Quinney and Nebeker, appearing on behalf of Mr. Oveson.</p> <p>MR. AUSTIN: Christian Austin for RaPower3.</p> <p>MS. HEALY GALLAGHER: Erin Healy Gallagher on behalf of the United States. Also, Erin Hines on behalf of the United States is on the phone.</p> <p>KENNETH WAYNE OVESON, called as a witness, being first sworn, was examined and testified as follows:</p> <p style="text-align: center;">E X A M I N A T I O N</p> <p>BY MR. MORAN:</p> <p>Q. Mr. Oveson, have you ever had your deposition taken before?</p> <p>A. I have.</p>																						
<p style="text-align: center;">3</p> <p style="text-align: center;">I N D E X</p> <table border="0"> <tr> <td>KENNETH WAYNE OLSON</td> <td style="text-align: right;">PAGE</td> </tr> <tr> <td>Examination by Mr. Moran</td> <td style="text-align: right;">4</td> </tr> </table> <p style="text-align: center;">* * *</p> <table border="0"> <tr> <td style="text-align: center;">E X H I B I T S</td> <td></td> </tr> <tr> <td>NO.</td> <td style="text-align: right;">PAGE</td> </tr> <tr> <td>Exhibit 136 E-mail chain from August 21, 2009, through October 29, 2009</td> <td style="text-align: right;">53</td> </tr> <tr> <td>Exhibit 372 E-mails dated August 24, 2009, between Ken Oveson and Greg Shepard</td> <td style="text-align: right;">24</td> </tr> <tr> <td>Exhibit 373 E-mails dated August 25, 2009, between Ken Oveson and Whitney Wright and Ken Oveson and Greg Shepard</td> <td style="text-align: right;">48</td> </tr> <tr> <td>Exhibit 374 E-mails dated August 25, 2009, between Ken Oveson and Whitney Wright and Ken Oveson and Greg Shepard</td> <td style="text-align: right;">51</td> </tr> <tr> <td>Exhibit 375 E-mails dated November 20 and 23, 2009, between Ken Oveson and Preston Olsen</td> <td style="text-align: right;">58</td> </tr> <tr> <td>Exhibit 376 Invoices</td> <td style="text-align: right;">60</td> </tr> <tr> <td>Exhibit 377 Invoices</td> <td style="text-align: right;">64</td> </tr> </table> <p style="text-align: center;">* * *</p>	KENNETH WAYNE OLSON	PAGE	Examination by Mr. Moran	4	E X H I B I T S		NO.	PAGE	Exhibit 136 E-mail chain from August 21, 2009, through October 29, 2009	53	Exhibit 372 E-mails dated August 24, 2009, between Ken Oveson and Greg Shepard	24	Exhibit 373 E-mails dated August 25, 2009, between Ken Oveson and Whitney Wright and Ken Oveson and Greg Shepard	48	Exhibit 374 E-mails dated August 25, 2009, between Ken Oveson and Whitney Wright and Ken Oveson and Greg Shepard	51	Exhibit 375 E-mails dated November 20 and 23, 2009, between Ken Oveson and Preston Olsen	58	Exhibit 376 Invoices	60	Exhibit 377 Invoices	64	<p style="text-align: center;">5</p> <p>Q. You have. About how many times?</p> <p>A. Twice, that I recall.</p> <p>Q. Okay. So you probably know some of these rules, but I'm going to go over them again just to refresh your recollection.</p> <p>A. Okay.</p> <p>Q. The biggest thing to remember here is that the court reporter here to my left is probably the most important person in the room, because she is recording everything that is said today. And all of our goal here is to get an accurate account of your recollection of the facts of this case. So with that in mind, again, I'm just going to run through some of the ground rules.</p> <p>This deposition will be taken according to the Federal Rules of Civil Procedure and the local rules of the District of Utah.</p> <p>We will likely mark some exhibits today. At the end of the deposition the court reporter will take the exhibits. So if I give you a piece of paper that's an exhibit, I'd just ask you to keep it at the table.</p> <p>A. Okay.</p> <p>Q. I'll be asking you a series of questions today. Like I said earlier, I need you to speak</p>
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<p style="text-align: right;">6</p> <p>1 loudly enough so that the court reporter can get down</p> <p>2 your answer to my questions. To that end, please let</p> <p>3 me finish a question before you start answering.</p> <p>4 Just allow for a short pause in between and then give</p> <p>5 me the answer to the question. It's important that</p> <p>6 you give verbal responses.</p> <p>7 A. Yes.</p> <p>8 Q. No uh-huhs or head shaking. I see you're</p> <p>9 shaking your head, so I'm going to ask you, do you</p> <p>10 understand?</p> <p>11 A. Yes.</p> <p>12 Q. We also have a tendency in casual</p> <p>13 conversation to speak over one another. So, again,</p> <p>14 if I ask you a question, just let me finish the</p> <p>15 question before you answer. Do you understand?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Your obligation today is to give</p> <p>18 full and complete answers. Do you understand that</p> <p>19 obligation?</p> <p>20 A. Yes.</p> <p>21 Q. My obligation to you is to ask</p> <p>22 understandable questions. That means that if you</p> <p>23 don't understand a question or you would like some</p> <p>24 further elaboration on the question, just tell me and</p> <p>25 I will do my best to ask the question in a way that</p>	<p style="text-align: right;">8</p> <p>1 that means if you want to take a break and there is a</p> <p>2 question pending, answer the question, tell me you</p> <p>3 would like to take a break or -- the same thing goes</p> <p>4 if you would like to consult with Mr. Benson, again,</p> <p>5 just not while a question is pending. Do you</p> <p>6 understand?</p> <p>7 A. Yes.</p> <p>8 Q. Mr. Oveson, we're here today to get as</p> <p>9 accurate of a record as we can as to your</p> <p>10 recollection of the facts of this case, therefore, I</p> <p>11 have to ask you a few questions.</p> <p>12 Is there anything that would prevent you</p> <p>13 from understanding and answering my questions today?</p> <p>14 A. No.</p> <p>15 Q. Are you taking any medications or drugs</p> <p>16 that would interfere with your memory?</p> <p>17 A. No.</p> <p>18 Q. Have you had anything alcoholic to drink</p> <p>19 in the last eight hours?</p> <p>20 A. No.</p> <p>21 Q. Are you feeling sick or unwell today?</p> <p>22 A. No.</p> <p>23 Q. Is there any reason you can think of why</p> <p>24 you will not be able to answer my questions fully and</p> <p>25 accurately?</p>
<p style="text-align: right;">7</p> <p>1 you can understand and provide your response. Do you</p> <p>2 understand?</p> <p>3 A. Yes.</p> <p>4 Q. There may be some objections to my</p> <p>5 questions today. The objections are being made for</p> <p>6 purposes of the record. I'd ask you to answer the</p> <p>7 question unless your attorney sitting to your left,</p> <p>8 Mr. Benson, directs you not to answer the question.</p> <p>9 Do you understand?</p> <p>10 A. Yes.</p> <p>11 Q. Sometimes in depositions you will give an</p> <p>12 answer to a question and then later on during the day</p> <p>13 you'll realize that you didn't give as complete an</p> <p>14 answer as you would have liked or there's -- you</p> <p>15 realize that you testified incorrectly previously.</p> <p>16 If that happens, you just let me know, tell me what</p> <p>17 part of the record you would like to clarify and</p> <p>18 we'll give you an opportunity to do that. Do you</p> <p>19 understand?</p> <p>20 A. Yes.</p> <p>21 Q. We'll have the opportunity to take breaks</p> <p>22 during the deposition. If you feel the need that</p> <p>23 you'd like to take a stretch break, use the restroom,</p> <p>24 that's not a problem. The only thing I ask is that</p> <p>25 you not take a break while a question is pending. So</p>	<p style="text-align: right;">9</p> <p>1 A. No.</p> <p>2 Q. We're going to start out with a few</p> <p>3 questions about your background and how you came to</p> <p>4 have some knowledge of the facts of this case.</p> <p>5 Can you please state your name and address</p> <p>6 for the record?</p> <p>7 A. It's Kenneth Wayne Oveson. 2197 East</p> <p>8 1160 South, Sandy, Utah 84092.</p> <p>9 Q. And can you spell your name, please?</p> <p>10 A. O-v-e-s-o-n.</p> <p>11 Q. Are you married?</p> <p>12 A. Yes.</p> <p>13 Q. How long have you been married?</p> <p>14 A. Close to 44 years.</p> <p>15 Q. Okay. Any children?</p> <p>16 A. Six.</p> <p>17 Q. Okay. Are they all over the age of 18?</p> <p>18 A. Yes.</p> <p>19 Q. Can you walk me through your education,</p> <p>20 starting with the end of high school?</p> <p>21 A. I went to the University of Utah. I</p> <p>22 graduated in December of 1973 with a bachelor of arts</p> <p>23 degree in accounting. That's it.</p> <p>24 Q. Okay. That was the end of your formal</p> <p>25 education?</p>

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<p style="text-align: right;">10</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And you said you have a bachelor of</p> <p>3 accounting?</p> <p>4 A. Yes.</p> <p>5 Q. Did you have a focus in your accounting</p> <p>6 degree?</p> <p>7 A. No.</p> <p>8 Q. Okay.</p> <p>9 A. It was just a general accounting degree.</p> <p>10 Q. Okay. And no other formal education after</p> <p>11 that?</p> <p>12 A. Just the continuing education that you</p> <p>13 have to take each year to maintain a license.</p> <p>14 Q. Okay.</p> <p>15 A. I did pass the CPA exam, and I am a</p> <p>16 certified public accountant.</p> <p>17 Q. When did you become a CPA?</p> <p>18 A. In July of 1976.</p> <p>19 Q. So it was a few years after you graduated</p> <p>20 from college?</p> <p>21 A. Yeah. You had to have two years'</p> <p>22 experience, and so it took me the time to -- to pass</p> <p>23 the exam and get the experience I needed for a</p> <p>24 license.</p> <p>25 Q. Okay. What was your first employment</p>	<p style="text-align: right;">12</p> <p>1 time to another period of time. So it will say from</p> <p>2 January 1st of this year to December 31st of this</p> <p>3 year you had sales of this much, you had expenses of</p> <p>4 this much, you had net income of this much. Those</p> <p>5 were the basic ones. There are others, but those</p> <p>6 were the ones that I was preparing at that time.</p> <p>7 Q. Okay. All right. So you said you worked</p> <p>8 for your father. Was there a time that you stopped</p> <p>9 working for your father?</p> <p>10 A. Yes. I -- I left his employ because he</p> <p>11 was not a certified public accountant and I needed to</p> <p>12 get experience with a CPA firm. So I think it was --</p> <p>13 it will be 1974, I guess -- I think around June</p> <p>14 of 1974 I started work with a local accounting firm</p> <p>15 called Johnson Erickson. And I worked with Johnson</p> <p>16 Erickson for about two and a half years, and that's</p> <p>17 where I got the experience to -- and then I passed</p> <p>18 the CPA exam, got the experience. And it was one of</p> <p>19 the partners at Johnson Erickson that signed off for</p> <p>20 me to get my CPA license.</p> <p>21 Q. Where did you go after Johnson and</p> <p>22 Erickson?</p> <p>23 A. After Johnson and Erickson, my father</p> <p>24 talked me into coming back. And so I actually</p> <p>25 established my own firm as a sole proprietor. My dad</p>
<p style="text-align: right;">11</p> <p>1 after graduating from undergrad?</p> <p>2 A. First -- first job I had was actually with</p> <p>3 my father. My father had a bookkeeping and</p> <p>4 accounting practice. He was not a CPA. But I worked</p> <p>5 for him doing bookkeeping and tax return preparation.</p> <p>6 Q. What do you mean by the term</p> <p>7 "bookkeeping"?</p> <p>8 A. Bookkeeping is mostly just taking the</p> <p>9 information that a client gives you and entering it</p> <p>10 into books. Back then it was not computerized, so it</p> <p>11 was general ledgers, sales ledgers, disbursement</p> <p>12 ledgers and just entering data into the ledgers. And</p> <p>13 then I did prepare financial statements for clients.</p> <p>14 They were mostly small business clients.</p> <p>15 Q. What's a financial statement?</p> <p>16 A. A financial statement -- there's basically</p> <p>17 two that most people use, a balance sheet and an</p> <p>18 income statement.</p> <p>19 A balance sheet is basically just a</p> <p>20 photograph of a client's business at a particular</p> <p>21 time. So it will list assets, liabilities, equity at</p> <p>22 a moment in time, usually year-end, like</p> <p>23 December 31st.</p> <p>24 An income statement is a statement that</p> <p>25 says what the business has done from one period of</p>	<p style="text-align: right;">13</p> <p>1 and I shared an office. We did keep our books</p> <p>2 separately. He had his practice, I had my practice.</p> <p>3 And so I -- I worked for about 13 years as a sole</p> <p>4 proprietor, trying to build up clientele. So for 13</p> <p>5 years I did that.</p> <p>6 Q. About when did you -- withdrawn.</p> <p>7 When you were a sole proprietor, what</p> <p>8 types of services did you provide?</p> <p>9 A. Basically, the same thing. I did tax</p> <p>10 preparation. I did also tax consulting for clients.</p> <p>11 I did accounting. Because I was a certified public</p> <p>12 accountant, I could issue reports on financial</p> <p>13 statements. So I did issue what in accounting terms</p> <p>14 are called compilations. And I did a couple of</p> <p>15 reviews. I never did any audits as a sole</p> <p>16 proprietor.</p> <p>17 Q. Okay. We're going to unpack that a little</p> <p>18 bit. When you say "tax preparation," what does that</p> <p>19 mean?</p> <p>20 A. Basically, just taking the information</p> <p>21 from clients and preparing a tax return to be filed</p> <p>22 with the federal government. A lot of our clients we</p> <p>23 did both the bookkeeping, where we took their</p> <p>24 information and summarized it in ledgers, and then</p> <p>25 transferred that information to the tax returns and</p>

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<p style="text-align: right;">14</p> <p>1 prepared the tax returns for submission to the 2 federal and state governments. 3 Q. And you said tax consulting? 4 A. Yes. I -- with my clients I would 5 sometimes work with them on different things that 6 they were doing. I did several buy, selling 7 businesses. I consulted with clients as far as what 8 would happen if they sold their business, what the 9 tax consequences would be. If they did it this way, 10 if they did it that way, which would be the best way 11 for them to -- to do that. So I guess maybe tax 12 planning, tax consulting. Just advising clients on 13 the tax consequences of whatever it was they were -- 14 they were doing. Depending on the clients -- 15 different clients had different needs. So I was 16 involved with business sale and acquisition. I was 17 involved with like-kind exchanges, capital gains, 18 just -- sale of assets, those types of things. 19 Q. Okay. And then you mentioned a portion of 20 your services was accounting? 21 A. Yes. Accounting involves bookkeeping, but 22 it also involved taking it a little further. Some 23 clients needed to have financial statements. 24 In the accounting world we have three 25 types of statements we do. We do compilations,</p>	<p style="text-align: right;">16</p> <p>1 letter to whoever it was that owed money and we would 2 say, "Does this company really owe you this much 3 money?" 4 Okay. I never did audits while I was a 5 sole proprietor. I did reviews and I did 6 compilations. And so I did issue opinions. 7 Sometimes those opinions would go to third parties, 8 such as banks, for loans and things like that. 9 So that -- that would be where accounting 10 would differ from bookkeeping. 11 Q. Why is it necessary to verify a company's 12 financial statements? 13 A. It depended on the user. Sometimes the 14 users would ask for specific things. If they were 15 planning to make a loan to the client, they'd want 16 to -- they are going to be relying on the financial 17 statements to see what condition the company is in, 18 and so they are going to want to know somebody 19 besides the company looked at this and that they can 20 rely on those financial statements, because they are 21 going to be making decisions based on what those 22 financial statements say. 23 Q. Is it necessary for a company's financial 24 statements to reflect the positions that are taken on 25 a tax return?</p>
<p style="text-align: right;">15</p> <p>1 reviews and audits. 2 Compilation is basically where we just 3 take the taxpayer -- or the client's information, put 4 it together in a balance sheet and income statement. 5 Sometimes it included a general ledger. Sometimes it 6 included a statement of changes in financial 7 position. And then we would issue an opinion, which 8 would say, basically, "We've compiled these financial 9 statements and, based on our compilation, they're 10 correct." 11 A review takes it a little further. In a 12 review you have to verify some of the information. 13 For example, reconcile the bank account and review 14 the bank statement. Possibly review the accounts 15 receivable, the accounts payable. A little more 16 assurance that the financial statements are correct 17 and state what the condition of the business is. 18 An audit goes further. An audit is where 19 you contact third-party people and verify the 20 information that's on the financial statements being 21 correct. Such as we would have to contact the bank. 22 Rather than just taking the actual bank statement, we 23 would contact the bank and say, "Is this really how 24 much money he's got in the bank?" 25 Accounts receivable, we would send a</p>	<p style="text-align: right;">17</p> <p>1 A. It -- I guess the answer to that is yes 2 and no, because financial statements, according to 3 generally-accepted account principles, can differ 4 from tax returns, just because some of the things 5 that are allowed under the generally-accepted 6 accounting principles are different from those that 7 are allowed under tax, and vice versa. Some of the 8 things that are allowed under tax are not allowed 9 under financial statements. So they can differ, yes. 10 Q. Do you have experience in determining when 11 they can differ? 12 A. Yes. 13 Q. Okay. We are going to come back to that. 14 All right. After you were a sole 15 proprietor, what did you do next? 16 A. Okay. Then I was invited to join a firm. 17 It was called Stayner, Fitzgerald, Vance and Call. I 18 was actually a friend of Fitzgerald, Ken Fitzgerald. 19 He and I grew up in the same neighborhood and -- and 20 Kent invited me to come and join their firm. And so 21 it was 1990, I believe, I left the office that my 22 father and I shared and joined Stayner -- it 23 eventually became Stayner Fitzgerald, but at the time 24 it was Stayner, Fitzgerald, Vance and Call. 25 Q. Okay.</p>

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<p style="text-align: right;">18</p> <p>1 A. And I worked there for seven years.</p> <p>2 Again, I did accounting work and tax work. I was</p> <p>3 primarily a tax accountant.</p> <p>4 Q. When you say "tax accountant," what does</p> <p>5 that mean?</p> <p>6 A. Well, CPA firms now -- firms generally</p> <p>7 divide the work that they do into audit work or</p> <p>8 assurance work and tax work. And it's just that</p> <p>9 the -- the world has become so complicated, it's kind</p> <p>10 of hard for one person to keep up on all of the</p> <p>11 issues in the audit world and all of the issues in</p> <p>12 the tax world. So we primarily kind of worked -- we</p> <p>13 either worked in the tax department of a firm or</p> <p>14 worked in the audit department of the firm.</p> <p>15 Now, Stayner Fitzgerald, they were another</p> <p>16 firm that really did not do audits. They did reviews</p> <p>17 and compilations and tax work. And so, again, at</p> <p>18 Stayner Fitzgerald I was primarily involved in the</p> <p>19 same thing, doing accounting work, preparing</p> <p>20 financial statements and preparing tax returns. My</p> <p>21 work there was primarily as a -- as a tax preparer,</p> <p>22 and that's -- that was -- I was there for about seven</p> <p>23 years.</p> <p>24 Q. Okay. Can you give me a rough idea of the</p> <p>25 percentage of your practice that was tax versus</p>	<p style="text-align: right;">20</p> <p>1 involved in the audit side. I was in the tax side.</p> <p>2 So I was -- I was a tax partner with Mantyla</p> <p>3 McReynolds.</p> <p>4 Q. So you started out as a partner?</p> <p>5 A. I -- no. The first year I was there I was</p> <p>6 just a manager. After I had been there a year, I</p> <p>7 guess after they decided I was okay, then they</p> <p>8 offered me a partnership and I was a partner after</p> <p>9 the first year.</p> <p>10 Q. Okay. Were you an equity partner?</p> <p>11 A. Yes.</p> <p>12 Q. So around 1998 you became a partner in</p> <p>13 Mantyla McReynolds?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And it sounds like your practice</p> <p>16 was exclusively on tax?</p> <p>17 A. Tax, and I still did a fair amount of</p> <p>18 accounting also. I would review the staff work, the</p> <p>19 accounting -- the financial statements the staff</p> <p>20 prepared, and then review the tax returns. But it</p> <p>21 was primarily tax work that I did.</p> <p>22 Q. When you say "accounting," what do you</p> <p>23 mean by that?</p> <p>24 A. Again, preparation of financial</p> <p>25 statements, balance sheets and income statements. A</p>
<p style="text-align: right;">19</p> <p>1 audit?</p> <p>2 A. Tax versus audit? Yeah, it was a hundred</p> <p>3 percent tax, zero percent audit.</p> <p>4 Q. When you say "tax," you mean preparing tax</p> <p>5 returns?</p> <p>6 A. Yes.</p> <p>7 Q. So now we are through 1997. Where did you</p> <p>8 go after that?</p> <p>9 A. That was when I was invited to join</p> <p>10 Mantyla McReynolds. My brother was a partner at</p> <p>11 Mantyla McReynolds. He first mentioned it to me,</p> <p>12 that that might be a good place to work. I met with</p> <p>13 Don Mantyla and Ken McReynolds, and they made an</p> <p>14 offer for me to leave Stayner Fitzgerald and join</p> <p>15 them. And so I joined them in 1997. And I retired</p> <p>16 from Mantyla McReynolds October 15th of 2014.</p> <p>17 Q. When you joined Mantyla McReynolds in '97,</p> <p>18 what was your position?</p> <p>19 A. Again, I was a tax person. Mantyla</p> <p>20 McReynolds did do audits, however, I was never</p> <p>21 involved with any audits at Mantyla McReynolds. I</p> <p>22 better restate that. I did -- there is a part of the</p> <p>23 audit where you have a tax provision in the audit,</p> <p>24 and I did review the tax provisions for some audits.</p> <p>25 But as far as actually doing an audit, I wasn't</p>	<p style="text-align: right;">21</p> <p>1 lot of the clients at Mantyla McReynolds, we did both</p> <p>2 the accounting work and the tax work.</p> <p>3 Now, sometimes when it came to accounting</p> <p>4 work, we actually took the source documents and</p> <p>5 prepared financial statements. A lot of the time</p> <p>6 that clients had in-house accountants, they would</p> <p>7 send us their financial statements, we would review</p> <p>8 those, make adjusting entries and finalize the</p> <p>9 financial statements. And then those financial</p> <p>10 statements were used to prepare the income tax</p> <p>11 returns.</p> <p>12 Q. Understood.</p> <p>13 A. But mostly it was businesses where we</p> <p>14 would prepare the business re -- business financial</p> <p>15 statements and then the business tax return.</p> <p>16 Q. Thank you.</p> <p>17 Would it be fair to characterize your time</p> <p>18 at Mantyla McReynolds as a hundred percent related to</p> <p>19 preparing financial statements and -- that were used</p> <p>20 to prepare tax returns?</p> <p>21 A. Yes. Yes, I never performed an audit --</p> <p>22 Q. Okay.</p> <p>23 A. -- at Mantyla.</p> <p>24 Q. Mr. Oveson, during your time as a partner</p> <p>25 at Mantyla McReynolds, did you ever have occasion to</p>

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<p style="text-align: right;">22</p> <p>1 represent a client before the IRS?</p> <p>2 A. Yes.</p> <p>3 Q. About how many times?</p> <p>4 A. Oh, I really don't remember. Probably one</p> <p>5 to two times a year, so maybe 25 or 30 times.</p> <p>6 Q. Okay. You are an enrolled agent?</p> <p>7 A. No.</p> <p>8 Q. Oh, you're not?</p> <p>9 A. No.</p> <p>10 Q. Were you an enrolled agent?</p> <p>11 A. No.</p> <p>12 Q. Okay. Mr. Oveson, besides the employment</p> <p>13 that you've just told me about, have you ever had any</p> <p>14 other employment?</p> <p>15 A. Yes. For about 16 years I was an adjunct</p> <p>16 professor at Westminster College.</p> <p>17 Q. And what did you teach?</p> <p>18 A. Tax.</p> <p>19 Q. Where is Westminster College located?</p> <p>20 A. Right up there on the hill. It's, like,</p> <p>21 13th East and 17th South.</p> <p>22 Q. So it's here in Salt Lake City?</p> <p>23 A. It's in here in Salt Lake, yes.</p> <p>24 MR. BENSON: The witness is pointing to</p> <p>25 the very nice view to the east that we have in this</p>	<p style="text-align: right;">24</p> <p>1 I retired I had a contract where they paid me -- they</p> <p>2 are paying for a ten-year period, which, in effect,</p> <p>3 is buying my practice. And so when BDO Seidman came</p> <p>4 in in June of last year, BDO took over those</p> <p>5 payments. So I do receive a monthly payment from</p> <p>6 BDO.</p> <p>7 Q. Okay.</p> <p>8 A. But it's as deferred compensation. It's</p> <p>9 not for current services.</p> <p>10 Q. Mr. Oveson, do you recall what Mantyla</p> <p>11 McReynolds' business address was?</p> <p>12 A. One -- Gateway Number 5. We were</p> <p>13 Suite 200, but I'm not sure of the exact address of</p> <p>14 Gateway Number 5. I don't recall.</p> <p>15 (EXHIBIT 372 WAS MARKED.)</p> <p>16 Q. Mr. Oveson, you've been given a copy of</p> <p>17 what's been marked as Plaintiff's Exhibit 372. And</p> <p>18 you'll note at the bottom right corner there is a</p> <p>19 marking MM004317. And then on the second page it's</p> <p>20 MM004318. I'll represent to you that Mantyla</p> <p>21 McReynolds produced this document to the United</p> <p>22 States pursuant to our subpoena. And both Mantyla</p> <p>23 McReynolds and the United States have affixed a Bates</p> <p>24 number to these documents to assist in</p> <p>25 identification.</p>
<p style="text-align: right;">23</p> <p>1 conference room.</p> <p>2 MR. MORAN: In Salt Lake will work.</p> <p>3 Q. Any other employment?</p> <p>4 A. No. Well, I -- I did speak at a couple of</p> <p>5 tax conferences, and I was paid for that.</p> <p>6 Q. Okay.</p> <p>7 A. That's all.</p> <p>8 Q. That's it?</p> <p>9 A. Yeah.</p> <p>10 Q. Okay. Mr. Oveson, when you were employed</p> <p>11 and a partner at Mantyla McReynolds, did you have an</p> <p>12 e-mail address?</p> <p>13 A. I did.</p> <p>14 Q. Do you recall what that was?</p> <p>15 A. Yes. It's ken@mmacpa.com.</p> <p>16 Q. Okay. Do you still have access to that</p> <p>17 e-mail address?</p> <p>18 A. No. When it became a BDO office, all of</p> <p>19 those e-mail addresses went way. So I lost access</p> <p>20 last June.</p> <p>21 Q. And are you employed by BDO Seidman now?</p> <p>22 A. No.</p> <p>23 Q. So when you retired, you retired from</p> <p>24 Mantyla McReynolds?</p> <p>25 A. I did. Now, I do receive a payment. When</p>	<p style="text-align: right;">25</p> <p>1 But I'd like right now to direct your</p> <p>2 attention to the second page. At the top there is a</p> <p>3 signature block. Do you recognize that signature</p> <p>4 block?</p> <p>5 A. Yes.</p> <p>6 Q. What is it?</p> <p>7 A. That's my signature block.</p> <p>8 Q. Okay. And would that appear on e-mails</p> <p>9 that you sent?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. We're going to come back to</p> <p>12 Exhibit 372 in a little while.</p> <p>13 A. Okay.</p> <p>14 Q. Mr. Oveson, in your tax practice at</p> <p>15 Mantyla McReynolds, did you have occasion to become</p> <p>16 familiar with a gentleman by the name of R. Gregory</p> <p>17 Shepard?</p> <p>18 A. Yes.</p> <p>19 MR. BENSON: I'd object to any questioning</p> <p>20 that relates to former clients that were represented</p> <p>21 by Mantyla McReynolds and Mr. Oveson. Yesterday</p> <p>22 there was discussion on the record about the</p> <p>23 applicability of a privilege. My understanding is</p> <p>24 that has been confined to 26 United States Code</p> <p>25 Section 7525. That is a disputed issue among the</p>

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<p style="text-align: right;">26</p> <p>1 parties. It's our understanding that former clients, 2 including Mr. Shepard, International Automated 3 Systems and any of the other defendants in this 4 action which are former clients of Mantyla 5 McReynolds, have not waived the privilege, therefore, 6 without a waiver and until a determination as to the 7 applicability of the privilege in that specific 8 federal statute is determined, I would object to the 9 line of questioning and advise my client not -- or 10 instruct my client not to answer any questions 11 relating to the representation of former clients of 12 Mantyla.</p> <p>13 MR. MORAN: And I will clean up one other 14 thing for the record as far as appearances. Counsel 15 for R. Gregory Shepard and Roger Freeborn, Mr. Donald 16 Reay, is not in attendance at this deposition.</p> <p>17 And I would also note, Mr. Benson is 18 referring to an objection that was made yesterday by 19 Mr. Austin, who is counsel for several defendants but 20 not including R. Gregory Shepard, who this question 21 pertains to.</p> <p>22 MR. AUSTIN: And I'll just clarify for the 23 record, we don't -- I don't represent Mr. Shepard in 24 his personal capacity, however, I do represent the -- 25 RaPower3 and IAUS, upon whose behalf everyone in this</p>	<p style="text-align: right;">28</p> <p>1 subpoena from the United States?</p> <p>2 A. Yes.</p> <p>3 Q. Are you familiar with a gentleman by the 4 name of Neldon Johnson?</p> <p>5 MR. BENSON: Same objection. Same 6 instruction.</p> <p>7 Q. (BY MR. MORAN) Mr. Oveson, your attorney 8 has instructed you not to answer this question. Are 9 you going to follow his advice?</p> <p>10 A. Yes, I am.</p> <p>11 MR. MORAN: Can we go off the record? 12 (Discussion off the record.)</p> <p>13 MR. MORAN: We'll go back on the record.</p> <p>14 Q. Are you familiar with an entity known as 15 International Automated Systems, Inc.?</p> <p>16 MR. BENSON: Same objection. Same 17 instruction to the witness.</p> <p>18 THE WITNESS: Based on advice from 19 counsel, I will not answer that question.</p> <p>20 Q. (BY MR. MORAN) Are you familiar with an 21 entity known as Bigger Faster Stronger?</p> <p>22 MR. BENSON: Same objection. Same 23 instruction.</p> <p>24 THE WITNESS: Based on advice from 25 counsel, I will not answer that question.</p>
<p style="text-align: right;">27</p> <p>1 case is aware Mr. Shepard, from time to time, may 2 have acted.</p> <p>3 MR. BENSON: If I could also add something 4 to the record. We have gotten no waiver from any of 5 these former clients, so we would treat them all in 6 the same fashion.</p> <p>7 Q. (BY MR. MORAN) Mr. Oveson, your attorney 8 has instructed you not to answer the question. I'm 9 going to ask you, are you going to follow his advice?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Mr. Oveson, are you familiar with 12 an entity known as RaPower3?</p> <p>13 MR. BENSON: Same objection. Same 14 instruction, to the extent that it relates to the 15 representation of Mantyla's former clients.</p> <p>16 If you are familiar with RaPower3, not a 17 former client, based on something other than your 18 employment at Mantyla, you can answer the question. 19 Otherwise, I would instruct you not to answer the 20 question.</p> <p>21 THE WITNESS: Okay. RaPower3 I did not 22 know of until this case came up. That was the first 23 time I had heard of RaPower3, when I received the 24 subpoena and the information on this case.</p> <p>25 Q. (BY MR. MORAN) You are referring to the</p>	<p style="text-align: right;">29</p> <p>1 Q. (BY MR. MORAN) Are you familiar with a 2 gentleman by the name of Robert Rowbotham?</p> <p>3 MR. BENSON: Same objection. Same 4 instruction.</p> <p>5 THE WITNESS: Based on advice from 6 counsel, I will not answer that question.</p> <p>7 Q. (BY MR. MORAN) Did there come a time when 8 Bigger Faster Stronger or any of its principals 9 became involved with a solar energy company or solar 10 lenses, to your knowledge?</p> <p>11 MR. BENSON: Objection. Foundation. And 12 the same objection -- longer objection from earlier. 13 Same instruction not to answer.</p> <p>14 THE WITNESS: And based on advice from 15 counsel, I will not answer that question.</p> <p>16 Q. (BY MR. MORAN) Do you have any knowledge 17 of a purported solar energy site in or around Delta, 18 Utah?</p> <p>19 MR. BENSON: Same objection. Same 20 instruction, to the extent it involves your 21 representation of any of these former clients we've 22 discussed.</p> <p>23 THE WITNESS: Based on advice of counsel, 24 I will not answer that question.</p> <p>25 Q. (BY MR. MORAN) Have you ever been in</p>

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<p style="text-align: right;">30</p> <p>1 Delta, Utah?</p> <p>2 A. Yes.</p> <p>3 Q. When were you in Delta, Utah?</p> <p>4 MR. BENSON: Same objection if it relates</p> <p>5 to your representation. If you vacationed at Delta,</p> <p>6 Utah, or you go there otherwise, I would instruct you</p> <p>7 to answer Mr. Moran's questions.</p> <p>8 THE WITNESS: I only passed through it a</p> <p>9 couple of times, and it would have been 15, 20 years</p> <p>10 ago.</p> <p>11 Q. (BY MR. MORAN) So none -- none in the</p> <p>12 last ten years?</p> <p>13 A. No.</p> <p>14 Q. Okay. Are you familiar with -- withdrawn.</p> <p>15 In your tax return preparation business at</p> <p>16 Mantyla McReynolds, are you familiar with any solar</p> <p>17 energy credits or depreciation associated with solar</p> <p>18 energy units that were taken on any of the</p> <p>19 individuals' or entities' tax returns that I've</p> <p>20 already mentioned?</p> <p>21 MR. BENSON: Same objection. Same</p> <p>22 instruction. To the extent the question seeks to</p> <p>23 elicit information as to his general familiarity with</p> <p>24 solar tax credits, I would instruct you to answer.</p> <p>25 I'm not sure as to if it was a two-part question or</p>	<p style="text-align: right;">32</p> <p>1 the State Tax Commission, and they approve that based</p> <p>2 on the information we provide and they issue it.</p> <p>3 It's not really a certificate, but it's a form that</p> <p>4 they send you that allows you to take the credit.</p> <p>5 Q. So when you put a solar energy tax credit</p> <p>6 on a client's return, you expect to receive something</p> <p>7 from -- some sort of verification?</p> <p>8 MR. AUSTIN: Objection. Vague with regard</p> <p>9 to state or federal.</p> <p>10 MR. BENSON: Answer the question.</p> <p>11 THE WITNESS: Yes, there is some</p> <p>12 verification. There is -- there is information</p> <p>13 that's required from the contractor and there is</p> <p>14 information that's required from the State.</p> <p>15 Q. (BY MR. MORAN) Would you claim a solar</p> <p>16 energy tax credit without receiving that information?</p> <p>17 MR. AUSTIN: Objection. Vague with regard</p> <p>18 to the specific credit you are speaking of.</p> <p>19 MR. BENSON: You can answer.</p> <p>20 THE WITNESS: No, I would not.</p> <p>21 Q. (BY MR. MORAN) Why not?</p> <p>22 A. There's no verification that he's</p> <p>23 entitled. And the tax rules from the federal require</p> <p>24 you to receive certain information and to put that</p> <p>25 information on the tax return. And in the state of</p>
<p style="text-align: right;">31</p> <p>1 not, but --</p> <p>2 MR. MORAN: It was a compound question,</p> <p>3 yes.</p> <p>4 THE WITNESS: Okay. I am familiar with</p> <p>5 the solar energy credit. I have -- I have deducted</p> <p>6 that on clients' tax returns. As to the clients</p> <p>7 involved in this action, I --</p> <p>8 MR. BENSON: And I would instruct you not</p> <p>9 to answer.</p> <p>10 THE WITNESS: I will not answer based on</p> <p>11 instruction from counsel.</p> <p>12 Q. (BY MR. MORAN) When a client claims solar</p> <p>13 energy tax credits, where do you get the information</p> <p>14 from?</p> <p>15 A. It comes from the client. It can come</p> <p>16 from several sources. The ones that I've been</p> <p>17 involved in, a contractor would have installed the</p> <p>18 solar energy and so they would have brought me the</p> <p>19 contract. And there's some specific forms that the</p> <p>20 contractor has to complete, stating that the system</p> <p>21 was installed and -- and the amount that it cost, and</p> <p>22 certifying that it was installed correctly and that</p> <p>23 it is operational.</p> <p>24 So -- in the state of Utah -- the State of</p> <p>25 Utah has a specific entity, I guess it would be, with</p>	<p style="text-align: right;">33</p> <p>1 Utah it's actually more strict, because you do have</p> <p>2 to submit that information to the State Tax</p> <p>3 Commission and you do have to receive the approval</p> <p>4 back before you can actually take the credit. You</p> <p>5 have to have their approval.</p> <p>6 Q. (BY MR. MORAN) When you say you submit</p> <p>7 the information to the State Tax Commission, is that</p> <p>8 information submitted with the return?</p> <p>9 A. No. It's submitted separately. You --</p> <p>10 it's generally the contractor's receipt and the</p> <p>11 contractor -- there are a number of questions that</p> <p>12 the contractor has to answer. There is a form that</p> <p>13 he fills out. And so it's that information. You</p> <p>14 can't actually file the return and claim the credit</p> <p>15 until you receive that approval back from the State.</p> <p>16 Q. Okay. So you need to get the approval</p> <p>17 before you actually file the tax return?</p> <p>18 A. Yes.</p> <p>19 Q. Have you ever had a client who claimed --</p> <p>20 withdrawn.</p> <p>21 Are you familiar with a Schedule C?</p> <p>22 A. Yes.</p> <p>23 Q. What's a Schedule C?</p> <p>24 A. Schedule C is a business return for a sole</p> <p>25 proprietor, and it's like an income statement that</p>

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<p style="text-align: right;">34</p> <p>1 just shows a sole proprietor's income and expenses 2 and the net income from the business. It's part of 3 the individual income tax return.</p> <p>4 Q. Have you ever had a client have a 5 Schedule C with respect to a solar energy business?</p> <p>6 MR. BENSON: Objection to the extent that 7 it calls for -- or seeks to elicit an answer relating 8 to these former clients.</p> <p>9 Generally, if it does not, I would 10 instruct you to answer the question.</p> <p>11 THE WITNESS: The answer is no, I 12 haven't -- haven't had solar energy with a Schedule 13 C.</p> <p>14 Q. (BY MR. MORAN) Have you ever had occasion 15 to prepare a tax return for R. Gregory Shepard?</p> <p>16 MR. BENSON: Same objection. Same 17 instruction.</p> <p>18 THE WITNESS: On advice of my counsel, I 19 will not answer that question.</p> <p>20 Q. (BY MR. MORAN) Have you ever had occasion 21 to prepare a tax return for Bigger Faster Stronger?</p> <p>22 MR. BENSON: Same objection. Same 23 instruction.</p> <p>24 THE WITNESS: On advice from counsel, I 25 will not answer that question.</p>	<p style="text-align: right;">36</p> <p>1 be asking for any information pertaining to the 2 transaction, just what it is they were planning to do 3 and how they want to do it.</p> <p>4 And then we would take that information 5 and review it, research whatever tax laws were 6 applicable, and then we would contact them and tell 7 them what our findings were.</p> <p>8 Q. To what extent would you verify the 9 information the client gave you?</p> <p>10 A. I guess it depended on the information. 11 And it would depend on the client. Some clients we 12 knew very well and felt we could trust the 13 information they were giving to us.</p> <p>14 Others that might be new, we would do a 15 review.</p> <p>16 Also, in our firm we had a client 17 acceptance committee which reviewed any new clients. 18 So if this were a new client coming in, the client 19 acceptance committee would have to review the client. 20 Sometimes we would do a background check. We would 21 do Internet searches such as that. And so the client 22 acceptance committee would have to approve us working 23 on a new client if it were a new client.</p> <p>24 Q. Why would -- withdrawn. 25 To the extent you did verify the</p>
<p style="text-align: right;">35</p> <p>1 Q. (BY MR. MORAN) Mr. Oveson, have you ever 2 had occasion to give advice on the purported purchase 3 of solar lenses that were used in alternative energy 4 systems?</p> <p>5 MR. BENSON: Same objection to the extent 6 it relates to the representation of the former 7 clients we've discussed.</p> <p>8 THE WITNESS: On advice from counsel, I 9 will not answer the question.</p> <p>10 Q. (BY MR. MORAN) Mr. Oveson, if a client -- 11 withdrawn.</p> <p>12 You testified earlier about sometimes you 13 would do tax consulting where you would give advice 14 to a client based on a prospective transaction. Do 15 you recall that testimony?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Okay. When a client -- generally 18 speaking, when a client comes to you and wants your 19 advice on a prospective transaction, what types of 20 information do you ask for?</p> <p>21 A. Well, we'll ask for, really, what the 22 transaction involves. We'll ask for any documents 23 they may have. A lot of the work that we did where 24 it was on like-kind exchanges, so we would be asking 25 for real estate, earnest money agreements. We would</p>	<p style="text-align: right;">37</p> <p>1 information that a client gave you, why would you be 2 verifying it?</p> <p>3 A. Just to make sure that it was correct and 4 complete, that there wasn't something that wasn't -- 5 that was missing. That would be the reason.</p> <p>6 Q. What would happen if you didn't do that 7 verification?</p> <p>8 MR. AUSTIN: Objection. Calls for 9 speculation.</p> <p>10 MR. BENSON: You can answer.</p> <p>11 THE WITNESS: If we didn't do that, we 12 would run the possibility of missing something. We 13 could -- and give an incorrect answer in not knowing 14 all the facts, and we would -- could give the counsel 15 that is not correct. And we needed to know really 16 what it was they were planning to do.</p> <p>17 Tax law is fairly complicated, and one 18 person would look at one thing one way and another 19 way, and we -- we wanted to make sure that we had the 20 correct answer. And tax law is such that everything 21 depends on definitions. And, unfortunately, the 22 definitions in the tax code are not always the same 23 from one code section to another. And so when it 24 came to -- that we wanted to make sure that what we 25 were -- what we were giving advice on was really the</p>

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<p style="text-align: right;">38</p> <p>1 correct issue and that we were giving a correct</p> <p>2 answer to that.</p> <p>3 Q. (BY MR. MORAN) And if you didn't</p> <p>4 receive -- if the client didn't give you correct</p> <p>5 information, is it possible that the information you</p> <p>6 give would be erroneous?</p> <p>7 A. If we didn't have complete information, we</p> <p>8 generally wouldn't even have issued a counsel. But,</p> <p>9 yeah, if the information that they gave us was</p> <p>10 incorrect, then the counsel we gave could be</p> <p>11 incorrect also.</p> <p>12 Q. Mr. Oveson, would you -- if you were going</p> <p>13 to give advice on a prospective transaction, would</p> <p>14 the firm do an engagement letter?</p> <p>15 A. Generally, yes. Not always.</p> <p>16 Q. When would you give an engagement letter,</p> <p>17 and the second part of the question is, when wouldn't</p> <p>18 you give an engagement letter?</p> <p>19 MR. AUSTIN: Objection. Calls for</p> <p>20 speculation.</p> <p>21 MR. BENSON: You can answer.</p> <p>22 THE WITNESS: Okay. We would issue an</p> <p>23 engagement letter if it was a new client that was</p> <p>24 coming in and that we were doing. Generally, we</p> <p>25 would not do an engagement letter if it were a</p>	<p style="text-align: right;">40</p> <p>1 clients each year, we would send out a letter telling</p> <p>2 them it was time to do their tax return. We would</p> <p>3 send an organizer that had their information from</p> <p>4 last year, asking them for their information for this</p> <p>5 year, and included with that would be an engagement</p> <p>6 letter that we would ask them to sign and return to</p> <p>7 us.</p> <p>8 Q. Do you recall why the AICPA recommended</p> <p>9 that you start issuing engagement letters?</p> <p>10 A. I don't want to be flippant, but I think</p> <p>11 it's probably because the attorneys advised them to</p> <p>12 do that, so...</p> <p>13 Q. Okay. And just so the record is clear,</p> <p>14 what is the AICPA?</p> <p>15 A. Oh, excuse me. The American Institute of</p> <p>16 Certified Public Accountants.</p> <p>17 Q. What is the American Institute of</p> <p>18 Certified Public Accountants?</p> <p>19 A. It's just -- it's an industry group, I</p> <p>20 guess. Most certified public accountants in public</p> <p>21 practice are members. It's not a requirement. You</p> <p>22 do not have to be a member of the American Institute</p> <p>23 of Certified Public Accountants. But it is a group</p> <p>24 that we rely on for counsel, for guidance. It is a</p> <p>25 national.</p>
<p style="text-align: right;">39</p> <p>1 continuing client that would -- someone that we had</p> <p>2 worked with on a long-term basis, so we were fairly</p> <p>3 knowledgeable about them and felt -- felt a trust in</p> <p>4 them.</p> <p>5 Engagement letters, in the accounting</p> <p>6 world, have become more and more prevalent over the</p> <p>7 last few years. And so in -- now we're issuing</p> <p>8 engagement letters -- really, on tax returns, we</p> <p>9 issue an engagement letter every year to clients. In</p> <p>10 previous years we may not have done that.</p> <p>11 Q. (BY MR. MORAN) Do you recall when you</p> <p>12 started issuing engagement letters for tax returns?</p> <p>13 Withdrawn.</p> <p>14 Do you recall when you started giving</p> <p>15 engagement letters for tax return preparation?</p> <p>16 A. Probably 2006, 2007, possibly. It may</p> <p>17 have been later than that. I don't recall. We --</p> <p>18 it -- around that period.</p> <p>19 Q. Why did the firm start issuing engagement</p> <p>20 letters more often?</p> <p>21 A. Mostly on advice from the American</p> <p>22 Institute of Certified Public Accountants and other</p> <p>23 professional groups advised us that it was good for</p> <p>24 us to do that. So we did start to do that.</p> <p>25 So when we would send out a letter to</p>	<p style="text-align: right;">41</p> <p>1 There is also a Utah Association of</p> <p>2 Certified Public Accountants, the UACPA. We were</p> <p>3 also members of that. And, again, it's a group that</p> <p>4 is there to kind of advise us of things that are</p> <p>5 going on that we should be aware of and give of us</p> <p>6 counsel as to how these things should be done.</p> <p>7 That's what it is.</p> <p>8 Q. Okay. Earlier you testified that in some</p> <p>9 situations, I think with established clients was your</p> <p>10 testimony, the firm wouldn't issue an engagement</p> <p>11 letter. Do you recall that testimony?</p> <p>12 A. I do.</p> <p>13 Q. Okay. Can you expound upon why no</p> <p>14 engagement letter would be required with those types</p> <p>15 of clients?</p> <p>16 A. Okay. Engagement letters, technically, in</p> <p>17 the accounting world, are not required for anything</p> <p>18 other than an audit client. However, we're advised</p> <p>19 to get those for accounting and for tax clients.</p> <p>20 And, again, since the AICPA began recommending that,</p> <p>21 our firm had established a practice of getting</p> <p>22 engagement letters, and we would do those annually</p> <p>23 for both accounting clients and tax clients. We</p> <p>24 actually started doing that on a pretty regular</p> <p>25 basis, but there were times when if a -- if a client</p>

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12 (Pages 42 to 45)

<p style="text-align: right;">42</p> <p>1 did not return an engagement letter, and we knew the</p> <p>2 client well enough, that we'd -- we didn't require</p> <p>3 that. But we did seek to get engagement letters on</p> <p>4 every engagement.</p> <p>5 When I left the firm in 2014, it was part</p> <p>6 of the tax checklist, I guess, to have an engagement</p> <p>7 letter, and if we didn't have it, we would send out a</p> <p>8 new one to the client and ask them to -- to do that.</p> <p>9 But that was -- more emphasis was placed on it at the</p> <p>10 end of my career than at the beginning of my career.</p> <p>11 Q. What do you mean by the term -- by the</p> <p>12 phrase "knew the client well enough"?</p> <p>13 A. Mainly, just that we had worked with them</p> <p>14 for a long time. We had clients -- I had clients</p> <p>15 that were with me actually for 35 years, and I had</p> <p>16 been working with them for a long time. And a number</p> <p>17 of clients we -- we did not have a lot of client</p> <p>18 turnover. The clients that we had, we maintained.</p> <p>19 And so a lot of the clients, we worked with them for</p> <p>20 10, 15, 20, even 30, 35 years. And so we had worked</p> <p>21 with them long enough to have developed a</p> <p>22 relationship of trust with them.</p> <p>23 Q. You just used the term "trust."</p> <p>24 A. Okay.</p> <p>25 Q. Is it fair to say that you -- if you</p>	<p style="text-align: right;">44</p> <p>1 R. Gregory Shepard before the IRS?</p> <p>2 MR. BENSON: Same objection. Same</p> <p>3 instruction.</p> <p>4 THE WITNESS: Based on advice from</p> <p>5 counsel, I won't answer that question.</p> <p>6 Q. (BY MR. MORAN) Have you ever represented</p> <p>7 International Automated Systems before the IRS?</p> <p>8 MR. BENSON: Same objection. Same</p> <p>9 instruction.</p> <p>10 THE WITNESS: Based on advice from</p> <p>11 counsel, I will not answer that question.</p> <p>12 Q. (BY MR. MORAN) Have you ever represented</p> <p>13 RaPower3 before the IRS?</p> <p>14 MR. BENSON: If you haven't represented</p> <p>15 them at all, you can answer.</p> <p>16 THE WITNESS: No.</p> <p>17 Q. (BY MR. MORAN) Have you ever represented</p> <p>18 Neldon Johnson before the IRS?</p> <p>19 MR. BENSON: Same objection. Same</p> <p>20 instruction.</p> <p>21 THE WITNESS: Based on advice from</p> <p>22 counsel, I will not answer that question.</p> <p>23 Q. (BY MR. MORAN) Mr. Oveson, has Mantyla</p> <p>24 McReynolds ever represented R. Gregory Shepard before</p> <p>25 the IRS?</p>
<p style="text-align: right;">43</p> <p>1 trusted a client, you were -- the engagement letter</p> <p>2 wasn't necessary?</p> <p>3 A. No, I wouldn't say that. It wasn't -- we</p> <p>4 did give engagement letters to all the clients.</p> <p>5 Again, that was -- the emphasis was mainly towards</p> <p>6 the end of my career than in the beginning. But it</p> <p>7 would happen -- if we did not get an engagement</p> <p>8 letter back from a client, for example, and it was --</p> <p>9 the filing deadline was there and we did not have the</p> <p>10 engagement letter, we would go ahead and file the</p> <p>11 return. But then we would still seek to get the</p> <p>12 engagement letter even after that.</p> <p>13 MR. MORAN: Okay. All right. Mr. Oveson,</p> <p>14 we've been going for an hour. How does everybody</p> <p>15 feel about a break?</p> <p>16 MR. BENSON: I feel great about a break.</p> <p>17 (A break was taken from 10:03 a.m. to</p> <p>18 10:13 a.m.)</p> <p>19 MR. MORAN: Back on the record.</p> <p>20 Q. Mr. Oveson, we are back on the record</p> <p>21 after a ten-minute break.</p> <p>22 During the break did you discuss the facts</p> <p>23 of this case with anyone?</p> <p>24 A. No, I did not.</p> <p>25 Q. Mr. Oveson, have you ever represented</p>	<p style="text-align: right;">45</p> <p>1 MR. BENSON: Same objection. Same</p> <p>2 instruction.</p> <p>3 THE WITNESS: Based on advice from</p> <p>4 counsel, I will not answer.</p> <p>5 Q. (BY MR. MORAN) Mr. Oveson, has Mantyla</p> <p>6 McReynolds ever represented RaPower3 before the IRS?</p> <p>7 MR. BENSON: You can go ahead and answer</p> <p>8 that.</p> <p>9 THE WITNESS: Not that I'm aware of.</p> <p>10 Q. (BY MR. MORAN) Has Mantyla McReynolds</p> <p>11 ever represented Neldon Johnson before the IRS?</p> <p>12 MR. BENSON: Same objection. Same</p> <p>13 instruction.</p> <p>14 THE WITNESS: Based on advice from</p> <p>15 counsel, I will not answer that question.</p> <p>16 Q. (BY MR. MORAN) Has Mantyla McReynolds</p> <p>17 ever represented Neldon Johnson before the IRS?</p> <p>18 MR. BENSON: Same objection. Same</p> <p>19 instruction.</p> <p>20 THE WITNESS: Based on advice from</p> <p>21 counsel, I will not answer that question.</p> <p>22 Q. (BY MR. MORAN) Okay. Mr. Oveson, I</p> <p>23 direct your attention to what we previously marked as</p> <p>24 Plaintiff's Exhibit 372. Do you recognize</p> <p>25 Plaintiff's Exhibit 372?</p>

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13 (Pages 46 to 49)

<p style="text-align: right;">46</p> <p>1 MR. BENSON: Same objection. Same</p> <p>2 instruction.</p> <p>3 THE WITNESS: Based on advice from</p> <p>4 counsel, I will not answer that question.</p> <p>5 Q. (BY MR. MORAN) Mr. Oveson, in Plaintiff's</p> <p>6 Exhibit 372 -- I'm directing your attention towards</p> <p>7 the middle of the page -- there is an e-mail from</p> <p>8 what appears to be you, ken@mmacpa.com. Do you see</p> <p>9 that e-mail?</p> <p>10 A. Yes, I do.</p> <p>11 Q. In the first sentence -- withdrawn.</p> <p>12 Was the e-mail that appears in the middle</p> <p>13 of what's been Bates-labeled MM004317 -- is that an</p> <p>14 e-mail that you sent?</p> <p>15 MR. BENSON: Same objection. Same</p> <p>16 instruction.</p> <p>17 THE WITNESS: Based on advice from</p> <p>18 counsel, I will not answer that.</p> <p>19 Q. (BY MR. MORAN) Mr. Oveson, there is a</p> <p>20 reference to a meeting on Friday in that first</p> <p>21 sentence of the e-mail I just referred to. Do you</p> <p>22 recall a meeting?</p> <p>23 MR. BENSON: Same objection. Same</p> <p>24 instruction.</p> <p>25 THE WITNESS: Based on advice from</p>	<p style="text-align: right;">48</p> <p>1 counsel, I will not answer.</p> <p>2 MR. BENSON: Also note for the record that</p> <p>3 we would object to the admissibility of the document</p> <p>4 itself pending the determination of the privilege</p> <p>5 issue.</p> <p>6 MR. AUSTIN: And I'll just renew my</p> <p>7 objection to the same.</p> <p>8 (EXHIBIT 373 WAS MARKED.)</p> <p>9 MR. AUSTIN: I would just note for the</p> <p>10 record that there's a specific statement of</p> <p>11 confidentiality in the e-mails themselves. And</p> <p>12 privilege.</p> <p>13 MR. BENSON: Go ahead.</p> <p>14 Q. (BY MR. MORAN) Mr. Oveson, I'm handing</p> <p>15 you a copy of what's been marked as Plaintiff's</p> <p>16 Exhibit 373. Do you recognize it?</p> <p>17 A. Yes.</p> <p>18 Q. What is it?</p> <p>19 MR. BENSON: Same objection. Same</p> <p>20 instruction.</p> <p>21 THE WITNESS: Based on advice from</p> <p>22 counsel, I will not answer.</p> <p>23 Q. (BY MR. MORAN) Mr. Oveson, who is Whitney</p> <p>24 Wright?</p> <p>25 MR. BENSON: Same objection. Also, an</p>
<p style="text-align: right;">47</p> <p>1 counsel, I will not answer.</p> <p>2 Q. (BY MR. MORAN) Mr. Oveson, who did you</p> <p>3 send the e-mail to?</p> <p>4 MR. BENSON: Same objection. Same</p> <p>5 instruction.</p> <p>6 THE WITNESS: Based on advice from</p> <p>7 counsel, I will not answer.</p> <p>8 Q. (BY MR. MORAN) In the third paragraph of</p> <p>9 the e-mail I just mentioned -- in the second sentence</p> <p>10 of the third paragraph you refer to an audit</p> <p>11 department and discussing International Automated</p> <p>12 Systems. What audit department are you referring to?</p> <p>13 MR. BENSON: Same objection. Same</p> <p>14 instruction.</p> <p>15 THE WITNESS: Based on advice from</p> <p>16 counsel, I will not answer.</p> <p>17 Q. (BY MR. MORAN) In the fourth sentence of</p> <p>18 that paragraph I just referred to you, it says, "I am</p> <p>19 told by the audit department that the units being</p> <p>20 sold are not yet placed in service."</p> <p>21 What were you referring to as not being</p> <p>22 placed in service?</p> <p>23 MR. BENSON: Same objection. Same</p> <p>24 instruction.</p> <p>25 THE WITNESS: Based on advice from</p>	<p style="text-align: right;">49</p> <p>1 objection to the admissibility of the document itself</p> <p>2 and an instruction not to give substantive testimony</p> <p>3 as to any of the persons involved in this e-mail or</p> <p>4 the advice given to a former client.</p> <p>5 THE WITNESS: Based on advice from</p> <p>6 counsel, I will not answer.</p> <p>7 Q. (BY MR. MORAN) Mr. Oveson, I'm going to</p> <p>8 direct your attention to the bottom of the first page</p> <p>9 of Plaintiff's Exhibit 373, which has been Bates-</p> <p>10 labeled MM004325.</p> <p>11 Also, for the record, Plaintiff's</p> <p>12 Exhibit 373 is a two-page document which is Bates-</p> <p>13 labeled MM004325 through MM004326.</p> <p>14 Mr. Oveson, directing your attention to</p> <p>15 the e-mail at the bottom of the first page of</p> <p>16 Plaintiff's Exhibit 373, is that an e-mail that you</p> <p>17 received?</p> <p>18 MR. BENSON: Same objection. Same</p> <p>19 instruction.</p> <p>20 THE WITNESS: Based on advice from</p> <p>21 counsel, I will not answer.</p> <p>22 Q. (BY MR. MORAN) Mr. Oveson, this document</p> <p>23 appears to be sent by R. Gregory Shepard to you on</p> <p>24 August 25th, 2009, at 10:41 a.m. My question to you</p> <p>25 is, why would Greg Shepard be sending you an e-mail?</p>

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14 (Pages 50 to 53)

<p style="text-align: right;">50</p> <p>1 MR. AUSTIN: I'm going to object to the 2 extent that -- I don't know how this particular 3 document was obtained, but to the extent it was 4 marked confidential and/or given any other 5 designation pursuant to protective order, it ought 6 not to be disclosed. But go ahead. 7 MR. BENSON: My objection is the same that 8 I've made earlier. 9 MR. MORAN: I'll clear up the record. 10 This document was produced by Mantyla McReynolds 11 pursuant to the United States subpoena. 12 MR. AUSTIN: Oh, okay. Good. 13 MR. MORAN: It was marked confidential by 14 Mantyla McReynolds pursuant to the terms of the 15 protective order entered in this case. The United 16 States is permitted to show it to a party who the 17 United States believes in good faith a person had a 18 role in drafting or being a recipient of the 19 document. 20 MR. AUSTIN: Yeah, that's -- I understand 21 that. I just want to make sure -- or at least 22 clarify on the record that, as I understand it, 23 Counsel has raised an objection to actually using 24 this document, pending the resolution of the 25 privilege issue.</p>	<p style="text-align: right;">52</p> <p>1 testimony describing the purported exhibit. And the 2 same instruction not to answer. 3 THE WITNESS: Based on advice from 4 counsel, I will not answer. 5 Q. (BY MR. MORAN) Mr. Oveson, there is an 6 e-mail at the bottom of the first page of exhibit -- 7 of Plaintiff's Exhibit 374. That e-mail is dated 8 August 25th, 2009, at 11:10 a.m. It appears to be an 9 e-mail from Greg Shepard to you. Again, there is a 10 reference to a conference call. My question to you 11 is, are you familiar with the conference call that's 12 referred to here? 13 MR. BENSON: Same objection. Same 14 instruction. 15 THE WITNESS: Based on advice from 16 counsel, I will not answer. 17 Q. (BY MR. MORAN) Did you participate in the 18 conference call that's referred to here? 19 MR. BENSON: Foundation. Objection as to 20 the foundation, and my earlier objection restated and 21 the instruction not to answer. 22 THE WITNESS: Based on advice from 23 counsel, I will not answer. 24 Q. (BY MR. MORAN) Who else participated in 25 this conference call, if it occurred?</p>
<p style="text-align: right;">51</p> <p>1 THE WITNESS: Based on advice from 2 counsel, I will not answer. 3 Q. (BY MR. MORAN) Was R. Gregory Shepard a 4 client of yours in August of 2009? 5 MR. BENSON: Same objection. Same 6 instruction. 7 THE WITNESS: Based on instruction from 8 counsel, I will not answer. 9 Q. (BY MR. MORAN) In August of 2009 were you 10 retained to provide any type of tax consulting to 11 R. Gregory Shepard? 12 MR. BENSON: Same objection. Same 13 instruction. 14 THE WITNESS: Based on advice from 15 counsel, I will not answer. 16 (EXHIBIT 374 WAS MARKED.) 17 Q. (BY MR. MORAN) Mr. Oveson, you've been 18 handed a copy of what's been marked as Plaintiff's 19 Exhibit 374. Plaintiff's Exhibit 374 was labeled 20 with Bates numbers MM004327 through MM004328. 21 Do you recognize Plaintiff's Exhibit 374? 22 A. Yes. 23 Q. What is it? 24 MR. BENSON: Same objection as to both the 25 admissibility of the document itself and any</p>	<p style="text-align: right;">53</p> <p>1 MR. BENSON: Same objection. Same 2 instruction. 3 THE WITNESS: Based on advice from 4 counsel, I will not answer. 5 Q. (BY MR. MORAN) If this conference call 6 occurred, what was the purpose of the call? 7 MR. BENSON: Same objection. Same 8 instruction. 9 THE WITNESS: Based on advice from 10 counsel, I will not answer. 11 Q. (BY MR. MORAN) Did the conference call 12 referred to herein ever occur? 13 MR. BENSON: Same objection. Same 14 instruction. 15 THE WITNESS: Based on advice from 16 counsel, I will not answer. 17 Q. (BY MR. MORAN) Mr. Oveson, I'm handing 18 you a copy of an exhibit that's already been marked 19 previously with another deponent in this case. That 20 is Plaintiff's Exhibit 136. Plaintiff's Exhibit 136 21 is labeled Olsen_P&E-1338, and it's a three page 22 document that goes through Olsen_P&E-1430. 23 Mr. Oveson, I direct your attention to the 24 second page. There is an e-mail from Greg Shepard 25 with a cc to ken@mmacpa.com. I believe you testified</p>

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<p style="text-align: right;">54</p> <p>1 earlier that that is your e-mail address. Is that 2 correct?</p> <p>3 A. Yes.</p> <p>4 Q. Mr. Shepard says that he met with a CPA 5 today by the name of Ken Oveson. 6 Do you see that text?</p> <p>7 MR. BENSON: I would object to any 8 testimony relating to communications or potentially 9 confidential communications between the former 10 client, in this case, Mr. Shepard, and anyone with my 11 client at Mantyla McReynolds. This document purports 12 to be an e-mail which looks to me like does have 13 communications not pertinent to my client's 14 representation. This objection doesn't necessarily 15 concern that. But as to the -- I guess the start of 16 the string e-mail, I would object to the 17 admissibility of the document and I would instruct 18 the witness not to offer testimony describing the 19 nature of those potentially confidential 20 communications.</p> <p>21 MR. AUSTIN: I'll also object to the 22 extent you're attempting to elicit testimony by 23 reading a statement and asking the witness to confirm 24 that it appears on the document that he has declined 25 to answer questions about.</p>	<p style="text-align: right;">56</p> <p>1 former client, Mr. Shepard, and others.</p> <p>2 THE WITNESS: Based on advice from 3 counsel, I will not answer.</p> <p>4 Q. (BY MR. MORAN) Mr. Shepard says, "I have 5 retained him" -- referring to you -- "and his firm, 6 Mantyla McReynolds," on page Olsen_P&E-01339. Were 7 you and your firm retained by Mr. Shepard during this 8 time frame?</p> <p>9 MR. BENSON: Same objection. Same 10 instruction.</p> <p>11 THE WITNESS: Based on advice from 12 counsel, I won't answer.</p> <p>13 Q. (BY MR. MORAN) The last line on page 1339 14 says, "Ken is going to research the complex AMT 15 issue, especially for those who want to amend their 16 2007 taxes."</p> <p>17 Does that accurately describe the duties 18 you -- or any services you had agreed to perform for 19 Mr. Shepard?</p> <p>20 MR. BENSON: Same objection. Same 21 instruction.</p> <p>22 THE WITNESS: Based on advice from 23 counsel, I will not answer.</p> <p>24 Q. (BY MR. MORAN) Further down on the page 25 ending 1340 it says, "Also, during the meeting we</p>
<p style="text-align: right;">55</p> <p>1 Q. (BY MR. MORAN) Mr. Oveson, I'm going to 2 ask you to read to yourself the e-mail that starts 3 halfway down on the second page of Plaintiffs 4 Exhibit 136 that appears to be an e-mail from Greg 5 Shepard to you. And let me know when you're done.</p> <p>6 MR. BENSON: Are you done?</p> <p>7 THE WITNESS: Okay.</p> <p>8 Q. (BY MR. MORAN) Mr. Oveson, I asked you to 9 read an e-mail dated August 21st, 2009. I'll give 10 you the opportunity to read the whole document if 11 you'd like. I'm going to ask you a series of 12 questions about the e-mail from Greg Shepard to you 13 on August 21st, 2009. Would you like an opportunity 14 to review the whole document?</p> <p>15 A. I've reviewed it.</p> <p>16 Q. Okay. On the e-mail dated August 21st, 17 2009, from Greg Shepard to -- cc'ing you, Mr. Shepard 18 makes some statements about you. Could you tell me 19 if any of those statements are inaccurate?</p> <p>20 MR. BENSON: Same objection. Same 21 instruction. To the extent that any of these 22 communications were published to third parties, of 23 which I don't know the evidence, I would still 24 instruct the client not to describe anything relating 25 to the entirety of the scope of representation of the</p>	<p style="text-align: right;">57</p> <p>1 talked with Neldon Johnson, IAUS CEO and president, 2 about his new plan to help with the passive/active 3 issue. Ken is nearly sure this will be fine. Again, 4 Ken will research this."</p> <p>5 Do those -- does that text accurately 6 state your services that you were retained to perform 7 for Mr. Shepard or Mr. Johnson or any other person?</p> <p>8 MR. BENSON: Same objection. Same 9 instruction.</p> <p>10 THE WITNESS: Based on advice from 11 counsel, I will not answer.</p> <p>12 Q. (BY MR. MORAN) Further down on the page 13 ending 1340 it says, "Ken is my personal CPA. I have 14 decided to let" -- "decided to have Ken handle all my 15 tax questions."</p> <p>16 Do those statements accurately reflect 17 your services that were performed for either 18 Mr. Shepard or any other entity?</p> <p>19 MR. BENSON: Same objection. Same 20 instruction.</p> <p>21 THE WITNESS: Based on advice from 22 counsel, I will not answer.</p> <p>23 Q. (BY MR. MORAN) This e-mail also refers to 24 a conference call purportedly with you on Thursday at 25 11:00 a.m. And it says, "This will be a great chance</p>

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16 (Pages 58 to 61)

<p style="text-align: right;">58</p> <p>1 for you to ask questions and to listen to Ken's</p> <p>2 explanation of tax issues as it pertains to our IAUS</p> <p>3 tax incentive program."</p> <p>4 My question to you is, were you ever</p> <p>5 retained to explain tax issues on the IAUS tax</p> <p>6 incentive program?</p> <p>7 MR. BENSON: Same objection. Same</p> <p>8 instruction.</p> <p>9 THE WITNESS: Based on advice from</p> <p>10 counsel, I will not answer.</p> <p>11 Q. (BY MR. MORAN) Mr. Oveson, has a</p> <p>12 gentleman by the name of Preston Olsen ever been a</p> <p>13 client of yours?</p> <p>14 MR. BENSON: Same objection. Same</p> <p>15 instruction.</p> <p>16 THE WITNESS: Based on advice from</p> <p>17 counsel, I will not answer.</p> <p>18 (EXHIBIT 375 WAS MARKED.)</p> <p>19 Q. Mr. Oveson, I've handed you a copy of</p> <p>20 what's been marked as Plaintiff's Exhibit 375. This</p> <p>21 is labeled Olsen_P&E-00862.</p> <p>22 I direct your attention to -- towards the</p> <p>23 top of the page there is some text that says,</p> <p>24 "Forwarded message from Ken Oveson," and then an</p> <p>25 e-mail address, ken@mmacpa.com. I would just like to</p>	<p style="text-align: right;">60</p> <p>1 instruction.</p> <p>2 THE WITNESS: Based on advice from</p> <p>3 counsel, I will not answer.</p> <p>4 Q. (BY MR. MORAN) Did you ever receive</p> <p>5 inquiries from any other persons regarding the</p> <p>6 program that you're discussing in that e-mail?</p> <p>7 MR. BENSON: Same objection. Same</p> <p>8 instruction.</p> <p>9 THE WITNESS: Based on advice from</p> <p>10 counsel, I will not answer.</p> <p>11 (EXHIBIT 376 WAS MARKED.)</p> <p>12 Q. (BY MR. MORAN) Mr. Oveson, you've been</p> <p>13 given a copy of what's been marked for identification</p> <p>14 as Plaintiff's Exhibit 376. Do you recognize</p> <p>15 Plaintiff's Exhibit 376?</p> <p>16 A. Yes.</p> <p>17 Q. What is it?</p> <p>18 MR. BENSON: Same objection. Same</p> <p>19 instruction.</p> <p>20 THE WITNESS: Based on advice from</p> <p>21 counsel, I will not answer.</p> <p>22 Q. (BY MR. MORAN) For the record,</p> <p>23 Plaintiff's Exhibit 376 is a document which has been</p> <p>24 Bates-labeled MM004391 through MM004394. This</p> <p>25 document was produced by Mantyla McReynolds.</p>
<p style="text-align: right;">59</p> <p>1 reconfirm, that is your e-mail address?</p> <p>2 A. Yes, it is.</p> <p>3 Q. Okay. That's an e-mail that was sent</p> <p>4 November 23rd, 2009, at 9:05. It appears to be that.</p> <p>5 That e-mail is to Preston Olsen.</p> <p>6 Do you recall ever speaking to Preston</p> <p>7 Olsen?</p> <p>8 MR. BENSON: Same objection. Same</p> <p>9 instruction.</p> <p>10 THE WITNESS: Based on advice from</p> <p>11 counsel, I will not answer.</p> <p>12 Q. (BY MR. MORAN) Mr. Oveson, in the e-mail</p> <p>13 dated November 23rd, 2009, your e-mail states, "We</p> <p>14 are no longer working with Greg Shepard on this</p> <p>15 program."</p> <p>16 Do you see that sentence?</p> <p>17 A. Yes.</p> <p>18 Q. Which program are you referring to?</p> <p>19 MR. BENSON: Same objection. Same</p> <p>20 instruction.</p> <p>21 THE WITNESS: Based on advice from</p> <p>22 counsel, I won't answer.</p> <p>23 Q. (BY MR. MORAN) Why weren't you working</p> <p>24 with Greg Shepard on that program?</p> <p>25 MR. BENSON: Same objection. Same</p>	<p style="text-align: right;">61</p> <p>1 Mr. Oveson, Plaintiff's Exhibit 376</p> <p>2 appears to be an invoice from Mantyla McReynolds to</p> <p>3 Bigger Faster Stronger, and refers to professional</p> <p>4 services, including research, active participation in</p> <p>5 solar energy company.</p> <p>6 Did I read that correctly?</p> <p>7 A. Yes.</p> <p>8 Q. What research did Mantyla McReynolds do</p> <p>9 for Bigger Faster Stronger that was related to a</p> <p>10 solar energy company?</p> <p>11 MR. BENSON: Same objection. Same</p> <p>12 instruction.</p> <p>13 THE WITNESS: Based on advice from</p> <p>14 counsel, I will not answer.</p> <p>15 Q. (BY MR. MORAN) Mr. Oveson, in the summary</p> <p>16 it refers to a client. Who is the client?</p> <p>17 MR. BENSON: Same objection. Same</p> <p>18 instruction.</p> <p>19 THE WITNESS: Based on advice from</p> <p>20 counsel, I will not answer.</p> <p>21 Q. (BY MR. MORAN) Mr. Oveson, please flip to</p> <p>22 the second page of Exhibit 376.</p> <p>23 A. Uh-huh (affirmative).</p> <p>24 Q. What's on the second page?</p> <p>25 MR. BENSON: Same objection. Same</p>

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17 (Pages 62 to 65)

<p style="text-align: right;">62</p> <p>1 instruction.</p> <p>2 THE WITNESS: Based on advice from</p> <p>3 counsel, I will not answer.</p> <p>4 Q. (BY MR. MORAN) The second page appears to</p> <p>5 be a billing worksheet for Wednesday, December 31st,</p> <p>6 2008. Withdrawn. A billing worksheet for July 1st,</p> <p>7 2007, through December 31st, 2008. On the first line</p> <p>8 of the summary, on the date December 11th, 2008,</p> <p>9 there is a comment, "Research active participation in</p> <p>10 solar energy company." And it says, "Staff, DDM."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Who is DDM?</p> <p>14 MR. BENSON: Same objection. Same</p> <p>15 instruction, to the extent it relates to this</p> <p>16 invoice. If you know of DDM otherwise, not related</p> <p>17 to this representation, I'll instruct you to answer</p> <p>18 his question.</p> <p>19 THE WITNESS: Based on advice from</p> <p>20 counsel, I will not answer.</p> <p>21 Q. (BY MR. MORAN) Mr. Oveson, did Mantyla</p> <p>22 McReynolds ever perform services for Greg Shepard</p> <p>23 that was billed to Bigger Faster Stronger?</p> <p>24 MR. BENSON: Same objection. Same</p> <p>25 instruction.</p>	<p style="text-align: right;">64</p> <p>1 (EXHIBIT 377 WAS MARKED.)</p> <p>2 Q. (BY MR. MORAN) Mr. Oveson, you've been</p> <p>3 given a copy of Plaintiff's Exhibit 377, which has</p> <p>4 been marked for identification as Plaintiff's</p> <p>5 Exhibit 377 and Bates-numbered MM004395 through</p> <p>6 MM004410. This is a document that was produced by</p> <p>7 Mantyla McReynolds pursuant to the United States</p> <p>8 subpoena.</p> <p>9 On the first page of Plaintiff's</p> <p>10 Exhibit 377 there is a reference to research</p> <p>11 regarding solar panel deductions/credits. Do you see</p> <p>12 that?</p> <p>13 A. Yes.</p> <p>14 Q. What solar panel deductions/credits is</p> <p>15 that referring to?</p> <p>16 MR. BENSON: Same objection and</p> <p>17 instruction.</p> <p>18 THE WITNESS: Based on advice from</p> <p>19 counsel, I will not answer.</p> <p>20 Q. (BY MR. MORAN) And also for the record,</p> <p>21 Plaintiff's Exhibit 377 appears to be an invoice from</p> <p>22 Mantyla McReynolds to Bigger Faster Stronger.</p> <p>23 Mr. Oveson, directing your attention to</p> <p>24 the third page of Plaintiff's Exhibit 377. This</p> <p>25 appears to be a billing worksheet for the period</p>
<p style="text-align: right;">63</p> <p>1 THE WITNESS: Based on advice from</p> <p>2 counsel, I will not answer.</p> <p>3 Q. (BY MR. MORAN) Mr. Oveson, directing your</p> <p>4 attention back to the first page of Plaintiff's 376.</p> <p>5 On the last line of the summary it says,</p> <p>6 "Correspondence with Greg Shepard regarding amending</p> <p>7 2007 tax returns."</p> <p>8 My question to you is, why would you be</p> <p>9 having correspondence with Greg Shepard that's billed</p> <p>10 to Bigger Faster Stronger?</p> <p>11 MR. BENSON: Same objection and</p> <p>12 instruction.</p> <p>13 THE WITNESS: Based on counsel's advice, I</p> <p>14 will not answer.</p> <p>15 Q. (BY MR. MORAN) Mr. Oveson, I'll direct</p> <p>16 your attention to the last page of Plaintiff's</p> <p>17 Exhibit 376. Sorry to jump around. This is another</p> <p>18 billing worksheet with the name Shepard, Greg and</p> <p>19 Diana. Before Shepard, Greg and Diana appears in</p> <p>20 bold, there is a notation, BIGGE100G. What does the</p> <p>21 BIGGE100G notation refer to?</p> <p>22 MR. BENSON: Same objection and</p> <p>23 instruction.</p> <p>24 THE WITNESS: Based on advice from</p> <p>25 counsel, I will not answer.</p>	<p style="text-align: right;">65</p> <p>1 July 1, 2007, through March 31st, 2009. On the first</p> <p>2 line of that billing worksheet there is a line for</p> <p>3 general, staff, DGM, and the comment is, "Consult</p> <p>4 with Ken and Dave regarding solar panel</p> <p>5 deductions/credits."</p> <p>6 My question to you is, who is Ken?</p> <p>7 MR. BENSON: Same objection. Same</p> <p>8 instruction.</p> <p>9 THE WITNESS: Based on advice from</p> <p>10 counsel, I will not answer.</p> <p>11 Q. (BY MR. MORAN) My next question is, who</p> <p>12 is Dave?</p> <p>13 MR. BENSON: Same objection and</p> <p>14 instruction.</p> <p>15 THE WITNESS: Based on advice from</p> <p>16 counsel, I will not answer.</p> <p>17 Q. (BY MR. MORAN) And my question to you</p> <p>18 is -- my next question is, what solar panel</p> <p>19 deductions and credits is this invoice referring to?</p> <p>20 MR. BENSON: Same objection and</p> <p>21 instruction.</p> <p>22 THE WITNESS: Based on advice from</p> <p>23 counsel, I will not answer.</p> <p>24 Q. (BY MR. MORAN) Mr. Oveson, I'm going to</p> <p>25 direct your attention to the page toward the back of</p>

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18 (Pages 66 to 69)

<p style="text-align: right;">66</p> <p>1 377. The page is labeled MM004408. Let me know when 2 you're there.</p> <p>3 A. I'm there.</p> <p>4 Q. Okay. On page 4408 is another billing 5 worksheet for the period July 1, 2007, through 6 March 31st, 2009. There is a line item dated 7 March 12th, 2009, for general, staff, DDM, activity 8 3920. Do you see that line?</p> <p>9 A. Yes.</p> <p>10 Q. In the comment section it says, "Biller: 11 Includes prep time for meeting to review solar energy 12 credit info which was effective 10-3-08 and extended 13 through 12-31-15."</p> <p>14 Do you know which client this refers to?</p> <p>15 MR. BENSON: Same objection. Same 16 instruction.</p> <p>17 THE WITNESS: Based on advice from 18 counsel, I will not answer.</p> <p>19 Q. (BY MR. MORAN) Direct your attention to 20 the last line item on page 4408. The comment section 21 says, "Biller: Discuss solar energy credit with Don 22 and Ken."</p> <p>23 Who is Don?</p> <p>24 MR. BENSON: Same objection. Same 25 instruction.</p>	<p style="text-align: right;">68</p> <p>1 numbered MM004409. Are you with me?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. This is, again, a billing worksheet 4 for the period July 1, 2007, through March 31st, 5 2009. I direct your attention to the line item which 6 says, "Taxindiv, 1040, staff, KWO." 7 Do you see that line item?</p> <p>8 A. Yes.</p> <p>9 Q. Who is KWO?</p> <p>10 MR. BENSON: Same objection. Same 11 instruction.</p> <p>12 THE WITNESS: Based on advice from 13 counsel, I will not answer.</p> <p>14 Q. (BY MR. MORAN) Mr. Oveson, what are your 15 initials?</p> <p>16 A. KWO.</p> <p>17 Q. Okay. On that same line item there is a 18 comment, "Review problem with solar investment." 19 Do you see that comment?</p> <p>20 A. Yes.</p> <p>21 Q. What problem is this referring to with the 22 solar investment?</p> <p>23 MR. BENSON: Same objection. Same 24 instruction.</p> <p>25 THE WITNESS: Based on advice from</p>
<p style="text-align: right;">67</p> <p>1 THE WITNESS: Based on advice from 2 counsel, I will not answer.</p> <p>3 Q. (BY MR. MORAN) Who is Ken?</p> <p>4 MR. BENSON: Same objection. Same 5 instruction.</p> <p>6 THE WITNESS: Based on advice from 7 counsel, I will not answer.</p> <p>8 Q. (BY MR. MORAN) And I want to be clear, 9 this line item refers to preparation of 2008 10 individual tax returns. Did I read that correctly?</p> <p>11 A. Yes.</p> <p>12 Q. Are you familiar with Mantyla McReynolds' 13 billing practices?</p> <p>14 A. Yes.</p> <p>15 Q. Is it fair to say that the services 16 referred to in the last line of Exhibit 4408 refer to 17 the preparation of an individual's tax returns?</p> <p>18 MR. BENSON: To the extent that he's 19 commenting on an exhibit which pertains to 20 representation of a former client, same objection and 21 I would instruct not to answer.</p> <p>22 THE WITNESS: Based on instruction from 23 counsel, I will not answer.</p> <p>24 Q. (BY MR. MORAN) Mr. Oveson, I'll direct 25 your attention to the next page, which is Bates-</p>	<p style="text-align: right;">69</p> <p>1 counsel, I will not answer.</p> <p>2 MR. MORAN: We'll go off the record for a 3 minute.</p> <p>4 (A break was taken from 10:50 a.m. to 5 10:52 a.m.)</p> <p>6 MR. MORAN: Back on the record.</p> <p>7 Q. Mr. Oveson, you've answered some 8 questions today, not others. Are there any answers 9 to my questions that you wish to change or amend now?</p> <p>10 A. No.</p> <p>11 Q. Okay.</p> <p>12 MR. AUSTIN: There are some of your 13 questions I'd like to amend or change. Can I do 14 that?</p> <p>15 MR. MORAN: You are going to get a chance 16 to cross-examine.</p> <p>17 MR. AUSTIN: No, your questions.</p> <p>18 Q. (BY MR. MORAN) Are there any questions 19 you would like me to rephrase so that you could 20 understand them better that would allow you to give a 21 more complete answer?</p> <p>22 A. No.</p> <p>23 Q. Mr. Oveson, have you ever been arrested?</p> <p>24 A. No.</p> <p>25 Q. Have you ever had any type of professional</p>

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<p style="text-align: right;">70</p> <p>1 discipline?</p> <p>2 A. No.</p> <p>3 Q. Have you ever been found liable in a civil</p> <p>4 suit?</p> <p>5 A. No.</p> <p>6 MR. MORAN: All right. Mr. Oveson, we are</p> <p>7 going to hold this deposition open pending resolution</p> <p>8 of the privilege claims that have been raised here,</p> <p>9 but at this time I don't have any more questions for</p> <p>10 you. We will, in all likelihood, be calling you</p> <p>11 back. We will do that through Mr. Benson.</p> <p>12 MR. BENSON: Sure.</p> <p>13 MR. MORAN: We are -- for the record,</p> <p>14 we're going to ask that you read and sign the</p> <p>15 transcript that the court reporter has been making.</p> <p>16 She'll send a copy to you and Mr. Benson, and I just</p> <p>17 ask you to read and sign and verify that it's</p> <p>18 correct.</p> <p>19 THE WITNESS: Okay.</p> <p>20 MR. AUSTIN: And I will object, for the</p> <p>21 record, to the statement that we're holding the</p> <p>22 deposition open. I don't agree to that.</p> <p>23 MR. MORAN: All right. I have no further</p> <p>24 questions at this time. I pass the witness to</p> <p>25 Mr. Austin and Mr. Benson.</p>	<p style="text-align: right;">72</p> <p>1 REPORTER'S CERTIFICATE</p> <p>2 STATE OF UTAH)</p> <p>3) ss.</p> <p>4 COUNTY OF SALT LAKE)</p> <p>5 I, Dawn M. Perry, Certified Shorthand</p> <p>6 Reporter and Notary Public in and for the State of</p> <p>7 Utah, do hereby certify:</p> <p>8 That prior to being examined, the witness,</p> <p>9 KENNETH WAYNE OVESON, was by me duly sworn to tell</p> <p>10 the truth, the whole truth, and nothing but the</p> <p>11 truth;</p> <p>12 That said deposition was taken down by me</p> <p>13 in stenotype on February 16, 2017, at the place</p> <p>14 therein named, and was thereafter transcribed and</p> <p>15 that a true and correct transcription of said</p> <p>16 testimony is set forth in the preceding pages.</p> <p>17 I further certify that, in accordance with</p> <p>18 Rule 30(e), a request having been made to review the</p> <p>19 transcript, a reading copy was sent to the witness,</p> <p>20 for the witness to read and sign under penalty of</p> <p>21 perjury and then return to me for filing with</p> <p>22 Christopher R. Moran, Attorney at Law.</p> <p>23 I further certify that I am not kin or</p> <p>24 otherwise associated with any of the parties to said</p> <p>25 cause of action and that I am not interested in the</p> <p>outcome thereof.</p> <p>WITNESS MY HAND this 21st day of February,</p> <p>2017.</p> <p style="text-align: right;">Dawn M. Perry, CSR</p>
<p style="text-align: right;">71</p> <p>1 MR. AUSTIN: I don't have anything.</p> <p>2 MR. BENSON: No follow-up.</p> <p>3 MR. MORAN: We're done for today.</p> <p>4 (Deposition suspended at 10:55 a.m.)</p> <p>5 * * *</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">73</p> <p>1 Case: UNITED STATES OF AMERICA vs. RAPOWER3, LLC,</p> <p>2 INTERNATIONAL AUTOMATED SYSTEMS, INC., LTB1, LLC, R.</p> <p>3 GREGORY SHEPARD, NELDON JOHNSON and ROGER FREEBORN</p> <p>4 Case No.: 2:15-cv-00828 DN</p> <p>5 Reporter: Dawn M. Perry, CSR</p> <p>6 Date taken: February 16, 2017</p> <p>7</p> <p>8 ACKNOWLEDGMENT OF DEPONENT</p> <p>9</p> <p>10 I, _____, do hereby</p> <p>11 acknowledge that I have read and examined the</p> <p>12 foregoing testimony, and the same is a true, correct</p> <p>13 and complete transcription of the testimony given by</p> <p>14 me, and any corrections appear on the attached Errata</p> <p>15 Sheet signed by me.</p> <p>16</p> <p>17</p> <p>18 _____</p> <p>19 (DATE) KENNETH WAYNE OVESON</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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