

Page 1

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

3 UNITED STATES OF)
 4 AMERICA,) Deposition of:
 5 Plaintiff,) ROBERT ROWBOTHAM
 6 vs.)
) Time on record:
 7 RAPOWER-3, LLC,) 3 Hours, 31 Minutes
 INTERNATIONAL)
 8 AUTOMATED SYSTEMS,)
 INC., LTB1, LLC, R.) Case No. 2:15-cv-00828 DN
 9 GREGORY SHEPARD, ELDON)
 JOHNSON and ROGER)
 10 FREEBORN,) Judge David Nuffer
)
 11 Defendants.)

12
 13
 14
 15 August 8, 2016 * 1:13 p.m. to 5:08 p.m.
 16
 17
 18
 19 Location: United States Attorney's Office
 20 185 South State Street -- Suite 300
 21 Salt Lake City, Utah
 22
 23
 24
 25 Reporter: Denise M. Thomas, CRR/RPR

Page 3

1 A P P E A R A N C E S (Continued)
 2
 3 FOR THE WITNESS:
 4 James D. Gilson
 CALLISTER NEBEKER & McCULLOUGH
 Attorneys at Law
 5 10 East South Temple -- Suite 900
 Salt Lake City, Utah 84133
 6 Telephone: 801.530.7325
 Fax: 801.364.9127
 7 E-mail: jgilson@cnmlaw.com
 8
 9
 10 * * *
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

**Plaintiff
 Exhibit**
 695

Page 2

1 A P P E A R A N C E S
 2
 3 FOR THE PLAINTIFF:
 4 Christopher R. Moran
 Erin Healy-Gallagher
 Erin R. Hines (Telephonically)
 5 UNITED STATES DEPARTMENT OF JUSTICE
 Trial Attorneys, Tax Division
 6 P. O. Box 7328
 Washington, D. C. 20044
 7 Telephone: 202.307.0834 (Moran)
 202.353.2452 (Healy-Gallagher)
 8 Fax: 202.514.6770
 E-mail: christopher.r.moran@usdoj.gov
 erin.healygallagher@usdoj.gov
 9
 10 FOR THE DEFENDANTS RAPOWER3, LLC, INTERNATIONAL
 AUTOMATED SYSTEMS, INC., LTB1, LLC, AND NELDON
 11 JOHNSON:
 12 Justin D. Heideman
 HEIDEMAN & ASSOCIATES
 13 Attorneys at Law
 2696 No. University Avenue -- Suite 180
 14 Provo, Utah 84604
 Telephone: 801.472.7742
 15 Fax: 801.374.1724
 E-mail: jheideman@heidlaw.com
 caustin@heidlaw.com
 16 tsorenson@heidlaw.com
 17
 18 FOR THE DEFENDANTS R. GREGORY SHEPHERD AND ROGER
 19 FREEBORN:
 20 Donald S. Reay
 MILLER, REAY & ASSOCIATES
 Attorneys at Law
 43 West 9000 South -- Suite B
 21 Sandy, Utah 84070
 Telephone: 801.999.8529
 22 Fax: 801.206.0211
 E-mail: donald@reaylaw.com
 23
 24
 25

Page 4

1 I N D E X
 2
 3 ROBERT ROWBOTHAM PAGE
 4 Examination By Mr. Moran 7
 5 Examination By Mr. Gilson 173
 6 Further Examination By Mr. Moran 175
 7 Further Examination By Mr. Gilson 177
 8
 9 E X H I B I T S
 10 NUMBER DESCRIPTION PAGE
 11 Exhibit 90 7-11-12 e-mail to John Rowbotham 28
 from John Rowbotham
 12
 Exhibit 91 IAUS document printed from 46
 13 pesn.com
 14 Exhibit 92 12-28-05 Equipment Lease 53
 Agreement between International
 15 Automated Systems, Inc., and MJM
 Holding
 16
 Exhibit 93 11-10-06 e-mail to 56
 17 greg@bfsmail.com from Greg
 Shepard
 18
 Exhibit 94 12-22-06 Equipment Purchase 62
 19 Agreement between International
 Automated Systems, Inc., and MJM
 20 Holding
 21 Exhibit 95 9-30-08 Equipment Purchase 80
 Agreement between International
 22 Automated Systems, Inc., and KBR
 23 Exhibit 96 2-9-10 Invoice to Robert 83
 Rowbotham from RaPower3, LLC
 24
 25

Page 5

1	E X H I B I T S (Continued)	
2	NUMBER DESCRIPTION	PAGE
3	Exhibit 97 12-29-11 Invoice to Robert Rowbotham from RaPower3, LLC, with attached photocopies of checks	83
4		
5		
6	Exhibit 98 12-30-10 Invoice to Robert Rowbotham from RaPower 3, LLC, with attached photocopies of checks	83
7		
8	Exhibit 99 10-3-08 photocopy of \$9,000 check to International Automated Systems from KBR Investments, LC	86
9		
10	Exhibit 100 Solar Energy Industries Association Guide to Federal Tax Incentives for Solar Energy, Version 1.2	88
11		
12		
13	Exhibit 101 MJM Holding Invoice printed from RaPower3 website	97
14	Exhibit 102 7-13-16 e-mail to James D. Gilson from Dave Mantyla with attached spreadsheet	100
15		
16	Exhibit 103 12-30-08 letter to KBR Investments, LC from Neldon P. Johnson	112
17		
18	Exhibit 104 2-2-12 letter to Robert Rowbotham from Greg Shepard	112
19		
20	Exhibit 105 1-28-11 letter to Robert Rowbotham from Greg Shepard	112
21	Exhibit 106 12-30-10 Alternative Energy System Purchase Referral Fee Contract (BONUS) of Robert Rowbotham	123
22		
23		
24		
25		

Page 6

1 PROCEEDINGS

2

3 ROBERT ROWBOTHAM,

4 having been first duly sworn to tell the

5 truth, was examined and testified as follows:

6

7 MR. MORAN: Good afternoon, Mr. Rowbotham.

8 My name is Chris Moran. I'll be taking your

9 deposition today. I'm here on behalf of the

10 United States.

11 Could counsel please put your appearances

12 on the record, starting with Ms. Healy-Gallagher.

13 MS. HEALY-GALLAGHER: Erin Healy-Gallagher

14 also here on behalf of the United States.

15 MR. REAY: Donald Reay on behalf of

16 Greg Shepard and Roger Freeborn.

17 MR. HEIDEMAN: Justin Heideman on behalf

18 of the other Defendants.

19 MR. GILSON: James Gilson on behalf of the

20 witness, Mr. Rowbotham.

21 MR. MORAN: And we're also joined by

22 counsel for the United States, Ms. Erin Hines, who is

23 on the telephone.

24

25

Page 7

1 EXAMINATION

2 BY MR. MORAN:

3 Q. Mr. Rowbotham, have you ever had your

4 deposition taken before?

5 A. I have not.

6 Q. We're just going to go through some

7 preliminary things first.

8 This deposition will be taken according to

9 the Federal Rules of Civil Procedure. Mr. Rowbotham,

10 as we go through today, I'll be asking you a series

11 of questions, and I'll ask you to give me answers.

12 To that end, it's important that we have verbal

13 responses.

14 A. Sure.

15 Q. Our conversations consist of words and not

16 nonverbal cues, such as --

17 A. I understand.

18 Q. -- head nodding.

19 A. Yeah.

20 Q. Please give yes or no answers, explain

21 your answer fully. It's important that as we go

22 through today, it might be in a more of a casual

23 conversation. When that occurs, sometimes we have a

24 tendency to speak over each other, so it's important

25 for you to let me finish asking my question --

Page 8

1 A. Okay.

2 Q. -- and then I will allow you to give a

3 complete answer before I ask another question.

4 A. Absolutely. Okay.

5 Q. Through the course of the deposition,

6 counsel may interpose objections. They're making a

7 record, and that's for the benefit of the court

8 reporter and the record. I'm going to ask you to

9 answer all of my questions unless your attorney,

10 Mr. Gilson, instructs you not to answer.

11 A. Yes, sir.

12 Q. If you realize during the course of the

13 deposition that you'd like to expand on an answer you

14 gave previously or that you gave an answer that was

15 incorrect that you'd like to correct, just let me

16 know, and we'll be happy to let you more fully

17 explain yourself on the record.

18 A. Absolutely. Okay.

19 Q. If you'd like to confer with your attorney

20 at any time during the deposition, that's fine. My

21 only request is that you do not do that while a

22 question is pending.

23 A. Okay.

24 Q. We are starting in the afternoon, and I

25 think everyone's trying to get out of here at a

Page 9

1 reasonable time, so I'm going to try and push through
 2 as best we can. If you need to take a break at any
 3 time, let me know.
 4 A. Yes, sir.
 5 Q. All right, Mr. Rowbotham, what we're
 6 trying to do here is to get an accurate, truthful
 7 accounting from you of the questions that I'm going
 8 to ask. Therefore, I'd just like to ask you a few
 9 questions.
 10 Is there anything that would preclude you
 11 from answering questions truthfully today?
 12 A. No.
 13 Q. Okay. Are you on any medications that
 14 would preclude you from recalling events of the past
 15 or answering questions truthfully?
 16 A. No.
 17 Q. Have you had any alcohol to drink in the
 18 last eight hours?
 19 A. No.
 20 Q. Are you feeling well today?
 21 A. Yes.
 22 MR. MORAN: All right. One other thing
 23 before we get started. Mr. Rowbotham has produced
 24 documents pursuant to the United States' Subpoena.
 25 His attorney produced several documents which he has

Page 10

1 designated private tax documents which he has
 2 designated confidential pursuant to the standard Utah
 3 protective order. I'm going to leave it to Mr.
 4 Gillison -- Mr. Gilson?
 5 MR. GILSON: Gilson.
 6 MR. MORAN: Gilson. If those topics come
 7 up today to make any notes on the record as to what
 8 he wishes to designate confidential.
 9 MR. GILSON: Okay.
 10 MR. MORAN: Mr. Rowbotham, you should also
 11 note that the United States has sought a release from
 12 the standard protective order, and that motion is
 13 pending before the court right now.
 14 MR. GILSON: To the extent that you're
 15 going to be marking any of those documents as
 16 exhibits to this deposition, we would ask that those
 17 exhibits be designated as confidential pursuant to
 18 that protective order.
 19 MR. MORAN: Understood.
 20 MR. GILSON: I also believe that
 21 Mr. Rowbotham produced documents prior to us being
 22 hired as counsel in this matter, so there's been two
 23 separate productions pursuant to the Subpoena.
 24 MR. MORAN: That is correct. Of course,
 25 Mr. Gilson, if any of those documents you wish to

Page 11

1 mark as confidential, please do so at the appropriate
 2 time.
 3 MR. GILSON: All right.
 4 Q. (By Mr. Moran) All right, Mr. Rowbotham,
 5 I'm just going to start with some general background
 6 questions to understand how you came to be involved
 7 in this case.
 8 Where were you born and raised?
 9 A. I was born in Noblesville, Indiana in
 10 1952.
 11 Q. Okay. How long did you live there?
 12 A. I think around nine months.
 13 Q. Okay. And then where did you move?
 14 A. I think it was either South Carolina or
 15 North Carolina. I'm not sure which.
 16 Q. All right.
 17 A. We weren't there very long either.
 18 Q. All right.
 19 A. And then from there back, or to Madison,
 20 Wisconsin.
 21 Q. Okay.
 22 A. And at age five we moved to Forest Lake,
 23 Minnesota, and that's where -- I moved from there to
 24 here.
 25 Q. When did you --

Page 12

1 A. 1983.
 2 Q. So you were about 30 years old then?
 3 A. Thirty years old, yes, sir.
 4 Q. So would it be fair to say that you spent
 5 most of your formative years in Madison, Wisconsin?
 6 A. No. In Forest Lake, Minnesota.
 7 Q. Oh, Forest Lake, Minnesota?
 8 A. Forest Lake, Minnesota.
 9 Q. Is that where you graduated from high
 10 school?
 11 A. Yes, I did.
 12 Q. What did your parents do for a living?
 13 A. My mother was a stay-at-home mom. My
 14 father worked for a company called American Breeder
 15 Service, and the headquarters are out of Madison,
 16 Wisconsin.
 17 Q. What is American Breeders Service?
 18 A. Artificial insemination.
 19 MR. GILSON: Cows?
 20 THE WITNESS: Yes, primarily beef and
 21 cattle.
 22 Q. (By Mr. Moran) And you said you graduated
 23 from high school there?
 24 A. Yes. I graduated from high school at
 25 Forest Lake, Minnesota.

Page 13

1 Q. And when did you graduate high school?
 2 A. 1970.
 3 Q. What did you do after high school?
 4 A. I went to college.
 5 Q. Where did you go to college?
 6 A. Hamline University.
 7 Q. Where is that?
 8 A. In St. Paul, Minnesota.
 9 Q. What did you major in?
 10 A. I majored in physical education and a
 11 minor in math. Physical education and health, double
 12 major, and a minor in math.
 13 Q. Any education after college?
 14 A. I got a master's degree.
 15 Q. In what?
 16 A. Education.
 17 Q. Did you do that right after college?
 18 A. No. Got it during my ten years as a
 19 teacher at Forest Lake.
 20 Q. Can you walk me through your work history
 21 after you graduated from college?
 22 A. Basically, I graduated from college when I
 23 was 21, and I secured a job at Forest Lake Junior
 24 High School, went back to my hometown, was a junior
 25 high teacher and coach, and from there moved to the

Page 14

1 high school and left the high school in 1983 to move
 2 out to Salt Lake City.
 3 Q. Okay. What did you coach?
 4 A. I coached basically everything they asked
 5 me to, so football, track, wrestling, occasionally
 6 baseball, you know, especially at the junior high.
 7 When I was at high school, it was just football and
 8 wrestling.
 9 Q. Okay. And you were there until 1983; is
 10 that correct?
 11 A. 1983, yeah.
 12 Q. Okay. And then you moved out to
 13 Salt Lake?
 14 A. That is correct.
 15 Q. Okay. Why did you move to Salt Lake?
 16 A. Moved because of a job with a company
 17 called Bigger Faster Stronger.
 18 Q. How did you learn about Bigger Faster
 19 Stronger?
 20 A. In 19 -- I believe 1979 I met Dr. Shepard
 21 at a clinic in Wisconsin, and we formed a
 22 relationship, because he was doing a lot of stuff
 23 that I was doing in terms of strength training and,
 24 you know, working in the weight room.
 25 Q. Okay. Where was Greg Shepard teaching?

Page 15

1 You said he was doing similar things that
 2 you were. What was he doing?
 3 A. I think at that time I think he was a
 4 teacher at Granger High School here in Utah. I'm
 5 pretty sure of that. I'm not a hundred percent
 6 recollection --
 7 Q. Okay.
 8 A. -- but that's -- I think that's where it
 9 was, Granger.
 10 Q. You met him in 1978?
 11 A. I think it was '78 or '79. I can't -- we
 12 went to a clinic that he was presenting at in
 13 Wisconsin, a high school, and that's how we met him.
 14 Q. Okay. And then a few years later you
 15 moved out to Salt Lake?
 16 A. Basically, in 1983 moved out to Salt Lake
 17 after having a business relationship working with
 18 Bigger Faster Stronger, and I was a presenter. I did
 19 clinics, went to schools and presented the program to
 20 coaches and teachers. That's something we did at the
 21 beginning, yeah.
 22 Q. What was the program?
 23 A. Basically, athletic training.
 24 Q. Did you do any weight lifting?
 25 A. No. Athletic training. There's a

Page 16

1 significant difference. It would take me a long time
 2 to explain everything in detail for you to completely
 3 understand that at this stage because it is very
 4 complex.
 5 Q. Okay. So is the program something that's
 6 sold?
 7 A. Simply, if I could do it this way, it
 8 would help.
 9 Q. Go ahead.
 10 A. In the United States we have three basic
 11 classifications of training in the weight room. You
 12 have power lifting, you have body building and you
 13 have athletic weight training.
 14 Athletic weight training is different in
 15 the sense that it's a part of a practice schedule.
 16 It encompasses all training modalities, where power
 17 lifting is just lifting as much as you can for one
 18 rep. Body building you win by what a judge evaluates
 19 your body looks like, so it's a different
 20 environment. So training protocols based upon
 21 development for an athlete relative to speed and
 22 jumping power is different.
 23 Q. Thank you for that.
 24 A. Okay.
 25 Q. So in 1983 it sounds like you picked up

<p style="text-align: right;">Page 17</p> <p>1 and moved out to Salt Lake City, right?</p> <p>2 A. Right.</p> <p>3 Q. All right. And then did Greg Shepard</p> <p>4 offer you a job?</p> <p>5 A. No. We formed a -- our company, we formed</p> <p>6 a partnership.</p> <p>7 Q. Was that in --</p> <p>8 A. In 1983 it was Bigger Faster Stronger, And</p> <p>9 then in 1983 we actually -- we formed a partnership</p> <p>10 earlier than that, but in 1983 we incorporated it as</p> <p>11 a C corp.</p> <p>12 Q. Known as?</p> <p>13 A. Bigger Faster Stronger, Inc.</p> <p>14 Q. Were there any other partners?</p> <p>15 A. Rick Anderson.</p> <p>16 Q. Okay. How did you meet Mr. Anderson?</p> <p>17 A. I taught with him back in Minnesota.</p> <p>18 Q. So you and Mr. Anderson moved out here?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Was Bigger Faster Stronger, did</p> <p>21 that constitute all of your -- was it your only job?</p> <p>22 A. Yes.</p> <p>23 Q. So you didn't teach anymore?</p> <p>24 A. (Witness shaking head negatively.)</p> <p>25 Q. Have you taught since then?</p>	<p style="text-align: right;">Page 19</p> <p>1 Salt Lake you had two children?</p> <p>2 A. Yes. We had six and four.</p> <p>3 Q. Then --</p> <p>4 A. Sarah was born here, yeah.</p> <p>5 Q. Okay. So from 1983 till 2005, because</p> <p>6 that's when I started asking you questions, you ran</p> <p>7 Bigger Faster Stronger?</p> <p>8 A. Pretty much. I was the person that dealt</p> <p>9 with all the financials, and obviously our</p> <p>10 partnership in the beginning was young, and Greg was</p> <p>11 the leader at that time, you know, so it progressed</p> <p>12 over time as the job descriptions matured over that</p> <p>13 period of time.</p> <p>14 Q. Was it three partners through the whole</p> <p>15 time, you, Mr. Anderson, Mr. Shepard?</p> <p>16 A. That is correct, up until about 200 -- and</p> <p>17 forgive me on exact dates here. 2007 we finalized</p> <p>18 the lawsuit with Rick Anderson, and he -- I won't go</p> <p>19 into the details, but he was having problems, and he</p> <p>20 was legally bought out of the company.</p> <p>21 Q. Understand. So at that point as of 2007</p> <p>22 that left you and Mr. Shepard?</p> <p>23 A. That is correct, and then my son John</p> <p>24 became part of the company also.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 18</p> <p>1 A. No.</p> <p>2 Q. All right. Let's back up a little bit.</p> <p>3 Are you married?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Any children?</p> <p>6 A. I have three children, six grandchildren.</p> <p>7 Q. Congratulations.</p> <p>8 A. Thank you.</p> <p>9 Q. What's your wife's name?</p> <p>10 A. I'm sorry?</p> <p>11 Q. What's your spouse's name?</p> <p>12 A. Kris. Kristie, K-r-i-s-t-i-e.</p> <p>13 Q. How long have you been married?</p> <p>14 A. August 9th will be 41 years.</p> <p>15 Q. Congratulations again.</p> <p>16 A. Thank you.</p> <p>17 Q. And when were your children born?</p> <p>18 A. That's a good question. Oh, boy, let's</p> <p>19 see.</p> <p>20 Q. Estimates are fine. I'm not trying to</p> <p>21 trick you.</p> <p>22 A. Estimate, my oldest daughter is 38, I</p> <p>23 think, my son John is 35, and my daughter Sarah just</p> <p>24 turned 30.</p> <p>25 Q. Okay. So it sounds like when you moved to</p>	<p style="text-align: right;">Page 20</p> <p>1 A. And my son John of Bigger Faster Stronger</p> <p>2 right now is a 20 percent owner.</p> <p>3 Q. Okay. All right. Now, since -- well,</p> <p>4 since 2005, has Bigger Faster Stronger remained a</p> <p>5 C corp.?</p> <p>6 A. No, and I don't remember the exact date,</p> <p>7 and, again, this is an unfortunate situation because</p> <p>8 I'm obviously not a businessman. I am now, but I</p> <p>9 wasn't at that time.</p> <p>10 We maintained a C corp. status incorrectly</p> <p>11 for a period of time before we switched to an S</p> <p>12 corp., and I don't remember -- Dave would have that</p> <p>13 exact date that we switched. I don't recall what the</p> <p>14 date was, but we are now an S corp.</p> <p>15 Q. What does the term "S corp." mean to you?</p> <p>16 A. Basically a partnership and taxation</p> <p>17 relative to a partnership, pretty much the same as a</p> <p>18 corporation and protection for a corporation.</p> <p>19 Q. Now, you told me about the three</p> <p>20 different -- three different types of training,</p> <p>21 athletic training, in the United States.</p> <p>22 A. Uh-huh (yes).</p> <p>23 Q. How does Bigger Faster Stronger make its</p> <p>24 money?</p> <p>25 A. Obviously, like any company, selling</p>

Page 21

1 product is our biggest way of making money. We sell
 2 the equipment that you need for the program,
 3 basically. So squat racks, benches, dumbbells,
 4 barbells, all kinds of speed accessories, all the
 5 training equipment we sell. That's where we make the
 6 majority of money to work the program with schools.
 7 Q. Okay. Who makes -- who makes that
 8 equipment?
 9 A. Right now we have a drop ship environment,
 10 multiple vendors. We have another company called
 11 Pro-Elite Strength Systems where we've tried to
 12 compete with overseas manufacturing. We manufacture
 13 here in Salt Lake, and we do a very good job. I'm
 14 very proud of our people.
 15 We're not big, but we make quality
 16 equipment, and that's basically -- for Bigger Faster
 17 Stronger, that's the largest percentage of a single
 18 product. Keep in mind there's a whole bunch of
 19 different products, but that's manufactured here in
 20 Salt Lake City.
 21 Q. Okay. And who owns Pro-Elite?
 22 A. I do.
 23 Q. Anyone else?
 24 A. At this point, no.
 25 Q. You said the majority of your income is

Page 22

1 from selling products?
 2 A. Yes.
 3 Q. How else do you make --
 4 A. We do service-oriented presentations based
 5 upon programming. We do clinics and certifications
 6 across the country, and basically we're hired a lot
 7 by school districts and schools -- individual schools
 8 to prepare their teachers and coaches to implement
 9 and correctly teach weight lifting techniques and
 10 athletic training techniques through the weight room.
 11 Q. Is that like a train the trainer type
 12 program?
 13 A. Absolutely, but we work with kids also.
 14 It's kind of a two-tiered thing. We'll also do, you
 15 know, a presentation to the kids. It's kind of a
 16 kick starting thing, but the program with the coaches
 17 and teachers is an eight hour day with a written test
 18 and an online learning center as the backup for
 19 ongoing education.
 20 Q. Okay.
 21 A. Then the other component that we deal with
 22 is character education, and that's a major component
 23 of what we try to teach young people in the field.
 24 Q. What's character education?
 25 A. On a scale of one to ten, I want you to be

Page 23

1 11, so you're going to try to be the best you can be
 2 and basically work out of your comfort zone.
 3 Q. Is that geared towards developing
 4 athletes?
 5 A. Well, we're geared for everybody. We do
 6 those presentations for whole schools, for athletic
 7 teams, for everybody. The reason being is that our
 8 systems right now are very negligent in terms of
 9 teaching techniques and alignment and movement, and
 10 character education goes right along with that with
 11 how you treat people.
 12 Q. How many employees do you have?
 13 A. At Bigger Faster Stronger I think I have
 14 right now, and again I'm close, 12.
 15 Q. Okay.
 16 A. And at Pro-Elite I have 19.
 17 Q. It sounds like you people -- it sounds
 18 like people from Bigger Faster Stronger travel?
 19 A. Yes.
 20 Q. Who does most of the traveling?
 21 A. Right now my son does, luckily. I do a
 22 fair amount, but I try not to do as much as I used
 23 to.
 24 Q. Okay. When did you start scaling back?
 25 A. About a year and a half ago.

Page 24

1 Q. But before that you were on the road a
 2 lot?
 3 A. Too much, yes, sir.
 4 Q. I asked you a question about how many
 5 employees you have.
 6 Do you have any independent contractors?
 7 A. Yes, sir. We work with coaches and
 8 teachers in the field. I'm not accurate on this a
 9 hundred percent. I haven't looked at it recently,
 10 but we probably have -- that are active at a good
 11 level, probably about seven, and we have probably
 12 four to five that are in training. We have a
 13 training program so they can be a presenter also, and
 14 that takes a little time to learn the process.
 15 Q. Is that a full-time job for these folks?
 16 A. No. No. Think of a teacher or a coach
 17 doing a presentation at another school. That's how
 18 we kind of spread our word. That's the word of mouth
 19 entity.
 20 Q. Understood. So your independent
 21 contractors are also teachers?
 22 A. Most of them are teachers and coaches.
 23 Some of them are retired. I have three of them
 24 that -- two of them for sure that are retired
 25 already, and they've been with me a very long time.

Page 45

1 Q. What did Mr. Shepard tell you -- he told
 2 you it was a business.
 3 How was it going to make money?
 4 A. Well, basically that it was going to
 5 change the, you know, price per megawatt hour.
 6 Again, I'm not privy to all this. I don't understand
 7 all this very well, but it was an economic way of
 8 producing energy that was a lot more profitable than
 9 current solar products.
 10 Q. Okay. Do you know what made it more
 11 profitable?
 12 A. I do not.
 13 Q. Do you know if Mr. Shepard knew?
 14 A. I'm assuming he did. I didn't question
 15 that relative to the -- there was no need for me to
 16 question that at the time.
 17 Q. Do you know how Mr. Shepard met
 18 Neldon Johnson?
 19 MR. HEIDEMAN: Objection. Lack of
 20 foundation, calls for speculation.
 21 THE WITNESS: I honestly don't know again
 22 the specifics of how he met him. There's another man
 23 that I think intro -- and I don't remember his name
 24 either, Monty -- I forget his name. This goes back.
 25 Again, that was Greg's thing. I don't -- I don't

Page 46

1 know. I honestly don't know.
 2 Q. (By Mr. Moran) But you do know that -- do
 3 you know that Mr. Shepard at one point met
 4 Mr. Johnson?
 5 A. Oh, absolutely, yup.
 6 Q. Do you know how Greg Shepard learned about
 7 the solar lens technology?
 8 MR. HEIDEMAN: Objection. Lacks
 9 foundation.
 10 Q. (By Mr. Moran) You can answer.
 11 A. No more than the fact that he had that
 12 association with Neldon Johnson. I would assume he
 13 had learned from him. That's an assumption. I don't
 14 know.
 15 MR. MORAN: Next exhibit.
 16 (EXHIBIT91 WASMARKED.)
 17 Q. (By Mr. Moran) Mr. Rowbotham, you've been
 18 given a copy of what's been marked for identification
 19 as Plaintiff's Exhibit 91.
 20 On the first page of Exhibit 91 there is a
 21 photograph --
 22 A. Yup.
 23 Q. -- of three individuals.
 24 A. Yeah. That's me, yes, sir.
 25 Q. Do you recognize the individuals in the

Page 47

1 photograph?
 2 A. Yeah.
 3 Q. Who are they?
 4 A. Greg, myself and Neldon Johnson.
 5 Q. Do you recall that photograph being taken?
 6 A. Absolutely.
 7 Q. Okay. What was the occasion of that
 8 photograph?
 9 A. I was buying solar -- actually, I think at
 10 that time that was buying IUS. It was not RaPower3
 11 at that time.
 12 Q. Okay.
 13 A. If I remember this correctly.
 14 Q. You said you were buying IUS.
 15 What does that mean?
 16 A. Well, we were buying -- it was a solar
 17 technology, and, again, the documentation I gave,
 18 that was the oldest one, I believe. I gave that --
 19 I'd have to look at it again, but that's what was
 20 bought.
 21 Q. Okay.
 22 A. I believe.
 23 Q. All right. I've got some documents for
 24 you to look at.
 25 A. Yeah. Again, that was such a long time

Page 48

1 ago, I do not -- I do know that's when I met the man
 2 and went through the process with Greg.
 3 Q. Okay. You said you met the man.
 4 Who's the man?
 5 A. Neldon.
 6 Q. Okay.
 7 A. Neldon Johnson.
 8 Q. Does Neldon Johnson appear in the
 9 photograph on the first page of Exhibit 91?
 10 A. Yes, sir.
 11 Q. And it appears you're handing Mr. Johnson
 12 something?
 13 A. I believe it's a check.
 14 Q. Do you recall giving Mr. Johnson a check?
 15 A. Obviously, I did. I can't remember how
 16 much it was at that time. I'd have to look back at
 17 my records.
 18 Q. If you could look at the second page of
 19 Exhibit 91, there's a box quotes in the upper right
 20 corner.
 21 Do you see that?
 22 A. Yes.
 23 Q. There appears to be a quotation from you
 24 that says, "I really think the IAUS Tax Credit?
 25 Program is a no-brainer. Instead of paying the

<p style="text-align: right;">Page 49</p> <p>1 IRS, I lease and sublease the IAUS solar energy 2 equipment and make a substantial profit while 3 getting a dollar for dollar tax credit. Where 4 else can you make an investment like that?" 5 Is that quote accurate? 6 A. Yes, sir. I would assume so, yeah. 7 Q. Okay. Where did you learn about the topic 8 which you discuss in that quote? 9 A. Basically from Greg. 10 Q. So what appears in that quote you learned 11 from Greg Shepard? 12 A. That statement was definitely brought 13 about by the association with Greg, yes. 14 Q. Okay. So do you recall more of what 15 Mr. Shepard told you? 16 A. In reality -- no, I don't. I don't 17 remember the specifics because, again, it was not a 18 focus of what I was trying to get done. 19 Q. What was the focus of what you were trying 20 to get done? 21 A. Run BFS. 22 Q. In the quotation you mentioned taxes. 23 A. (Witness nodding head affirmatively.) 24 Q. Do you recall if Mr. Shepard told you 25 about tax --</p>	<p style="text-align: right;">Page 51</p> <p>1 MJM Holding -- 2 A. Right. 3 Q. -- providing two \$9,000 leases. 4 A. I believe that's correct, yes. 5 Q. Okay. So do you recall that you purchased 6 leases or lenses? 7 A. Well, the leases were -- the part of the 8 lease was the lenses producing the power was my 9 understanding, something to that extent. 10 Again, I didn't focus on it that much 11 because Greg was my partner, and I believed that what 12 he was doing was correct. 13 Q. So you trusted Mr. Shepard? 14 A. I did, most certainly. 15 Q. Why did you trust Greg Shepard? 16 MR. HEIDEMAN: Objection. Calls for 17 character. 18 Q. (By Mr. Moran) You can answer. 19 A. He was a partner and a friend through 20 Bigger Faster Stronger. I'd been working with him 21 for many, many years. 22 Q. And you felt that you could trust him with 23 your money? 24 A. I did. That was our money, by the way, 25 not just my money. He was part owner of MJM.</p>
<p style="text-align: right;">Page 50</p> <p>1 A. Basically showing me the documentation on 2 IRS record of solar credits that you could take based 3 upon this kind of -- this kind of product. 4 Q. What kind of product is that? 5 A. Well, the lenses and that. Again, the 6 detail of that I am not good at. I don't totally 7 understand it, but that was what was portrayed to me 8 relative to that statement. 9 Q. Okay. And he said dollar for dollar tax 10 credit? 11 A. Basically, yes, I believe that's what he 12 told me. 13 Q. That's what Greg Shepard told you? 14 A. Yeah. 15 Q. What did Neldon Johnson tell you about all 16 this? 17 A. Pretty much the same thing, I'm assuming. 18 I honestly can't remember word for word or any of the 19 details back that far, but I'm sure it was similar 20 information. 21 Q. On the first page of Exhibit 91, the 22 caption below the photo mentions a 9K lease. 23 Do you see that? 24 A. Oh, yeah, uh-huh. 25 Q. It mentions you as a partner in</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. And MJM at the time owned what? 2 A. The building. 3 Q. The building for Bigger Faster Stronger? 4 A. That is correct. In 2005 there was three 5 people involved, Rick, Greg and myself. 6 Q. Okay. Now, prior to that Mr. Shepard had 7 been your partner in Bigger Faster Stronger, right? 8 A. In the structure of an S corp., yes. 9 Q. Yes. And Bigger Faster Stronger was 10 involved in athletic training and administering 11 programs at schools around the United States? 12 A. That is correct. 13 Q. Did Mr. Shepard have any background in 14 solar technology? 15 A. Not to my knowledge. 16 Q. Okay. Did he have any background in 17 alternative energy? 18 A. Not to my knowledge. 19 Q. Did Greg Shepard have any background in 20 taxes? 21 MR. HEIDEMAN: Objection. Lacks 22 foundation, calls for speculation. 23 Q. (By Mr. Moran) That you're aware of? 24 A. Not to my knowledge, no. 25 Q. Did he tell you that he had any --</p>

<p style="text-align: right;">Page 53</p> <p>1 A. No.</p> <p>2 Q. Let me finish it.</p> <p>3 Did he tell you that he had any background</p> <p>4 in solar technology or taxes?</p> <p>5 A. No.</p> <p>6 Q. Do you know where Mr. Shepard got his</p> <p>7 information on solar lenses and taxes from?</p> <p>8 A. I'm assuming from Neldon Johnson.</p> <p>9 Q. So why did you trust him?</p> <p>10 MR. HEIDEMAN: Objection. Asked and</p> <p>11 answered.</p> <p>12 Q. (By Mr. Moran) You can answer.</p> <p>13 A. He was a partner and friend for many</p> <p>14 years.</p> <p>15 (EXHIBIT 92 WAS MARKED.)</p> <p>16 Q. (By Mr. Moran) Mr. Rowbotham, we</p> <p>17 previously discussed that you had produced documents</p> <p>18 to the United States pursuant to a Subpoena.</p> <p>19 I'll represent to you that the</p> <p>20 United States, when they received your documents,</p> <p>21 attached what we call Bates labels, which appear down</p> <p>22 at the bottom right-hand corner. On this document,</p> <p>23 down at the bottom right-hand, you will see a</p> <p>24 Rowbotham_R-01175. The United States added those</p> <p>25 numbers when we received your documents.</p>	<p style="text-align: right;">Page 55</p> <p>1 A. Say again.</p> <p>2 Q. What is Exhibit 92?</p> <p>3 A. Lease Purchase Agreement.</p> <p>4 Q. For what?</p> <p>5 A. Equipment.</p> <p>6 Q. What type of equipment?</p> <p>7 A. Solar lenses, I believe.</p> <p>8 Q. Are these the solar lenses that you</p> <p>9 referred to previously in your testimony?</p> <p>10 A. Yes, sir.</p> <p>11 Q. When we looked at Exhibit 91, you</p> <p>12 mentioned a lease.</p> <p>13 A. Yup.</p> <p>14 Q. Is this the Lease Agreement that had been</p> <p>15 signed?</p> <p>16 A. I believe it is.</p> <p>17 MR. MORAN: No further questions on this</p> <p>18 exhibit.</p> <p>19 MR. GILSON: There's a taxpayer ID number</p> <p>20 that's on page 6 of this document, and it should be</p> <p>21 redacted consistent with the court rules if it's</p> <p>22 going to ever be filed in connection with any court</p> <p>23 document. For that reason, I think it ought to be</p> <p>24 designated as confidential. That's one of the</p> <p>25 reasons why this document should be confidential,</p>
<p style="text-align: right;">Page 54</p> <p>1 But in looking at what's been marked for</p> <p>2 identification as Plaintiff's Exhibit 92, do you</p> <p>3 recognize it?</p> <p>4 A. Yes, sir. I sent that to you.</p> <p>5 Q. Okay. So this is a document that you</p> <p>6 produced?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Okay. If you could flip back to</p> <p>9 page 1182 -- no. I'm sorry. 1181.</p> <p>10 That's a signature page?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Whose signatures appear on there?</p> <p>13 A. Yeah.</p> <p>14 Q. Whose signatures are those?</p> <p>15 A. Greg Shepard and Neldon Johnson.</p> <p>16 Q. And Mr. Shepard signed as partner of</p> <p>17 MJM Holding?</p> <p>18 A. That is correct. He was the managing</p> <p>19 partner.</p> <p>20 Q. And he was your partner?</p> <p>21 A. Yes.</p> <p>22 Q. So you received a copy of this because you</p> <p>23 were a partner in MJM Holding?</p> <p>24 A. Yes.</p> <p>25 Q. What is Exhibit 92?</p>	<p style="text-align: right;">Page 56</p> <p>1 because of that.</p> <p>2 MR. MORAN: Yes, and the Federal Rules of</p> <p>3 Civil Procedure will require anybody filing it to</p> <p>4 redact it.</p> <p>5 MR. GILSON: Right.</p> <p>6 MR. MORAN: Mr. Gilson, if this document</p> <p>7 is redacted, or the taxpayer identification number is</p> <p>8 redacted, do you still maintain the confidential</p> <p>9 nature of this document?</p> <p>10 MR. GILSON: I don't think so. I don't</p> <p>11 think it needs to be confidential otherwise.</p> <p>12 MR. MORAN: Thank you.</p> <p>13 (EXHIBIT 93 WAS MARKED.)</p> <p>14 Q. (By Mr. Moran) Mr. Rowbotham, you've been</p> <p>15 given a copy of what's been marked for identification</p> <p>16 as Plaintiff's Exhibit 93.</p> <p>17 Do you recognize this document?</p> <p>18 A. I'm sure I've seen it, but I don't</p> <p>19 remember it.</p> <p>20 Q. Okay.</p> <p>21 MR. GILSON: Take a minute to look at it</p> <p>22 before you answer questions about it.</p> <p>23 THE WITNESS: Okay.</p> <p>24 (Witness examining document.)</p> <p>25 THE WITNESS: I'm sure I saw it. I'm sure</p>

<p style="text-align: right;">Page 57</p> <p>1 I've seen it. I just honestly can't remember that I 2 have it anywhere or anything like that. 3 Q. (By Mr. Moran) What do you think 4 Exhibit 93 is? 5 A. If I remember correctly, this is when 6 RaPower3 started maybe. Again, I'm not a hundred 7 percent sure of the timeline, but there was a 8 transition between the IUS contract and the RaPower3 9 multilevel marketing plan, and I think this was about 10 that time. 11 Q. Okay. At the top of Exhibit 93, above the 12 bold line, it says Bob Rowbotham. 13 A. Yes, sir, yeah. 14 Q. Does this appear to be your e-mail 15 account? 16 A. Yes, sir. 17 Q. And below that in the From line it says 18 Greg Shepard. 19 A. Right. 20 Q. Do you recognize the e-mail address next 21 to Greg Shepard's name? 22 A. Absolutely, yup. 23 Q. Whose e-mail address is it? 24 A. Greg@bfsmail.com, that's Greg's. 25 Q. Greg Shepard?</p>	<p style="text-align: right;">Page 59</p> <p>1 was selling lenses? 2 A. I believe that's what I was -- yes, sir. 3 Q. Are you aware of any other differences? 4 A. Not technically, no. 5 Q. Okay. So as far as you know -- 6 A. Except for multilevel marketing for 7 RaPower3. 8 Q. Okay. Let me finish asking my question. 9 A. I'm sorry. 10 Q. So as far as you know, it's the same solar 11 lenses that were being sold by the same program? 12 A. Yes. 13 Q. Okay. Now, you just mentioned multilevel 14 marketing. 15 A. Yes. 16 Q. What is multilevel marketing? 17 A. Similar to the program I'm with with 18 Nu Skin. 19 Q. Okay. 20 A. I don't know. It's not the same as 21 Nu Skin, obviously. Nu Skin's been around for a long 22 time, but that's what it is. 23 Q. That's what multilevel marketing is? 24 A. I believe that's what RaPower3 has done is 25 set up a multilevel marketing business.</p>
<p style="text-align: right;">Page 58</p> <p>1 A. Greg Shepard's, yeah. 2 Q. Okay. And this is dated November 10, 3 2006. 4 A. Right. 5 Q. Okay. Where does that fall in the 6 timeline of when Mr. Shepard introduced you to the 7 solar lens program? 8 A. Well, that would coincide with the 9 documentation you've given me to this point, so I'm 10 sure that's correct relative to what I remember. 11 Q. So is this around the time frame that 12 Mr. Shepard told you about the solar lens program? 13 A. I think the solar lens program for IUS was 14 before this 2006 figure here. It was prior to that. 15 Again, I don't remember the exact timeline, but 16 that's where the transition went -- 17 Q. Okay. 18 A. -- on the timeline. 19 Q. You mentioned a transition. 20 What do you mean by that? 21 A. Well, from my understanding, it was a 22 change from the purchase with IUS as the contract and 23 then RaPower3. That was the difference. 24 Q. So do you mean that instead of IUS that -- 25 instead of IUS selling lenses, it was RaPower3 that</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. Can you describe for me how multilevel 2 marketing works? 3 A. Well, one person -- 4 MR. GILSON: Objection to the form of the 5 question. Are you talking -- I don't know if all 6 multilevel marketings run the same. 7 Q. (By Mr. Moran) Can you tell me what your 8 understanding of multilevel marketing is? 9 What does multilevel marketing mean to 10 you? 11 A. Well, I sell something to somebody, and 12 that person sells something to somebody else, and 13 depending upon what level it's at, the first person 14 that started gets a piece of the action. 15 Q. What do you mean by "a piece of the 16 action"? 17 A. Money from the point of sale. 18 Q. All right. So -- 19 A. So it's commissions some ways down the 20 line through the process of how it's set up 21 mathematically. 22 Q. Does the term "downline" have anything to 23 do with multilevel marketing? 24 A. Yes. 25 Q. What does the term "downline" mean?</p>

Page 61

1 A. Those are the people that are underneath
 2 you.
 3 Q. And by "underneath you," what does that
 4 mean?
 5 A. Technically, that they've been sponsored
 6 by you.
 7 Q. Does that mean that --
 8 A. Not everybody sponsored by you, but,
 9 again, everybody under that based upon who you
 10 sponsored sponsored someone else, so on and so forth.
 11 Q. And then do you receive a portion of the
 12 revenue that those people in your downline generate?
 13 A. Yes, sir, dependent upon what level.
 14 Q. And you mentioned that RaPower3 uses
 15 multilevel marketing?
 16 A. Yes, sir.
 17 Q. And to your knowledge, that's the only
 18 difference between RaPower3 and IAUS?
 19 A. Yes, sir. Well, of course I know IUS, you
 20 know, is on the stock market.
 21 Q. Okay.
 22 A. I know that, but as far as this process,
 23 that was the change.
 24 Q. Okay. And you believe at some point
 25 RaPower3 began marketing the same solar lenses that

Page 62

1 IAUS had been marketing just using multilevel
 2 marketing?
 3 A. Yes, sir.
 4 (EXHIBIT 94 WAS MARKED.)
 5 Q. (By Mr. Moran) Mr. Rowbotham, you've been
 6 given a copy of what's been marked for identification
 7 as Plaintiff's Exhibit 94.
 8 Do you recognize this?
 9 A. Yes, sir.
 10 Q. What is it?
 11 A. Again, an Equipment Purchase Agreement.
 12 Q. Previously we looked at, I believe, a
 13 leasing agreement.
 14 Do you know what's different about this
 15 one?
 16 A. Not all the technicalities, but defined as
 17 a buying your own -- a Purchase Agreement as opposed
 18 to a Lease Agreement, and this was a replacement of
 19 the other contract.
 20 Q. Which other contract?
 21 A. At the top it says MJM Replacement
 22 Contract No. 2.
 23 Q. Okay. And when you say "replacement
 24 contract," are you referring to the contract we
 25 looked at in Exhibit 92? Feel free to look at that.

Page 63

1 A. I believe so. I believe that's what it's
 2 in reference to.
 3 Q. And you mentioned on the first page of
 4 Exhibit 94, which is page 1192, it's written in
 5 handwriting MJM Replacement Contract No. 2.
 6 A. Uh-huh (yes).
 7 Q. Do you recognize that handwriting?
 8 A. I honestly don't, no.
 9 Q. Is it your handwriting?
 10 A. No, I know it's not mine.
 11 Q. And this Equipment Purchase Agreement in
 12 Exhibit 94 references an alternative energy system?
 13 A. Uh-huh (yes).
 14 Q. What does the term "alternative energy
 15 system" mean to you?
 16 A. Well, again, at that time, you know, it
 17 was still in reference to solar to me. I really
 18 hadn't thought much more about it than that other
 19 than it was solar.
 20 Q. Okay. So a solar lens?
 21 A. Yeah.
 22 Q. What did you believe was supposed to be
 23 done with the solar lens?
 24 A. Well, as they were placed into production
 25 and produced energy, that was part of the revenue

Page 64

1 process.
 2 Q. When you say "produced energy," what do
 3 you mean by that?
 4 A. You know, once it's going to the grid, I
 5 guess, that's my understanding of what they had to do
 6 to get money out of the solar -- or, excuse me, the
 7 energy companies.
 8 Q. Okay. So you believed it was going to be
 9 connected to a grid?
 10 A. Yes. At sometime, yes, sir.
 11 Q. What do you mean by the term "grid"?
 12 A. You know, like Rocky Mountain Power,
 13 something to that effect.
 14 Q. Do you know why you believed that?
 15 A. Well, that was my assumption why they
 16 bought the land and why they were going to set up
 17 solar towers. That was the business that I
 18 understood.
 19 Q. Okay. But how did you come to the
 20 understanding that they were going to be selling
 21 electricity to the grid?
 22 A. Ultimately Greg said that's how it had to
 23 be. It had to be connected to the grid.
 24 Q. When you say Greg, you mean Greg Shepard?
 25 A. Greg Shepard, yes, sir.

<p style="text-align: right;">Page 145</p> <p>1 answered.</p> <p>2 THE WITNESS: Not really. I don't know</p> <p>3 what I'm in in that respect.</p> <p>4 Q. (By Mr. Moran) Okay. Your business is</p> <p>5 Bigger Faster Stronger?</p> <p>6 A. That is correct. That's my focus.</p> <p>7 Q. And Bigger Faster Stronger has nothing to</p> <p>8 do with solar lenses?</p> <p>9 A. Absolutely not.</p> <p>10 Q. Has it ever?</p> <p>11 A. As I mentioned before, Greg tried to get</p> <p>12 Bigger Faster Stronger to endorse it through trying</p> <p>13 to sell to people that we associate with, our</p> <p>14 customer base, and we don't do that, not done at all.</p> <p>15 Q. You've never done it?</p> <p>16 A. He might have done it a little bit that I</p> <p>17 wasn't aware of, but once I caught wind of it, it was</p> <p>18 stopped.</p> <p>19 Q. Are you aware of the term "sponsor" in the</p> <p>20 multilevel marketing --</p> <p>21 A. Yes, sir. Yes.</p> <p>22 Q. Have you sponsored anyone?</p> <p>23 A. Only by the way Greg set things up</p> <p>24 initially.</p> <p>25 Q. And how was that?</p>	<p style="text-align: right;">Page 147</p> <p>1 health problems.</p> <p>2 Q. What are they?</p> <p>3 A. Well, he's got cancer right now, so he</p> <p>4 wasn't able to travel and do the job. I mean, his</p> <p>5 age dictated that he couldn't do the job correctly in</p> <p>6 the field.</p> <p>7 Q. Which job is that?</p> <p>8 A. As a Bigger Faster Stronger rep. That was</p> <p>9 a 1099 employee.</p> <p>10 Q. I believe you testified that was in the</p> <p>11 early 2000s?</p> <p>12 A. I'd have to look to get the exact time,</p> <p>13 but, yes, somewhere around there.</p> <p>14 Q. So over ten years ago?</p> <p>15 A. Seven or eight. I don't know the exact</p> <p>16 date. I don't know the exact timeline. I'd have to</p> <p>17 look up the last 1099 that he received.</p> <p>18 Q. Whose decision was it for Roger Freeborn</p> <p>19 to leave Bigger Faster Stronger?</p> <p>20 A. It was pretty much mine.</p> <p>21 Q. Okay. So would you say that you fired</p> <p>22 him?</p> <p>23 A. I basically told him he wasn't going to do</p> <p>24 clinics anymore and represent BFS in that capacity.</p> <p>25 Q. In what capacity is that?</p>
<p style="text-align: right;">Page 146</p> <p>1 A. Because I was the first person to buy</p> <p>2 lenses and the RaPower3 transition took place, I was</p> <p>3 put at a certain position, and he put -- I believe he</p> <p>4 put Roger Freeborn under me as a -- that I sponsored</p> <p>5 him so that I would get that revenue, and that's the</p> <p>6 extent of my sponsorship relative to me knowing about</p> <p>7 anybody else who's on the downline.</p> <p>8 Q. So are you Roger Freeborn's sponsor?</p> <p>9 A. I believe I am, yes, sir.</p> <p>10 Q. So that means that anyone in</p> <p>11 Roger Freeborn's downline is in your downline?</p> <p>12 A. Yes, sir.</p> <p>13 Q. You mentioned that Roger Freeborn is no</p> <p>14 longer employed by Bigger Faster Stronger?</p> <p>15 A. That is correct.</p> <p>16 Q. And he is no longer an independent</p> <p>17 contractor?</p> <p>18 A. Nope.</p> <p>19 Q. Why is that?</p> <p>20 A. Because he chose to go a hundred percent</p> <p>21 with RaPower3.</p> <p>22 Q. Is the reason that he's no longer</p> <p>23 associated with Bigger Faster Stronger is because</p> <p>24 he's associated with RaPower3?</p> <p>25 A. One reason. Another reason is he has some</p>	<p style="text-align: right;">Page 148</p> <p>1 A. As a clinician.</p> <p>2 Q. And why was it that you fired him?</p> <p>3 A. More for health reasons, and we just</p> <p>4 couldn't have him involved with what we were doing at</p> <p>5 the time relative to how he was being paid.</p> <p>6 Q. Are you saying you couldn't afford to pay</p> <p>7 him?</p> <p>8 A. That was one reason, because he wasn't</p> <p>9 producing enough.</p> <p>10 Q. All right. What about his involvement in</p> <p>11 RaPower3, did that have any involvement in your</p> <p>12 decision to terminate him?</p> <p>13 A. Not to terminate him, no. That was his</p> <p>14 option to deal with Greg on that venture that Greg</p> <p>15 had developed, and so that's what he chose to do.</p> <p>16 Q. Okay. Let me ask you this: If you had</p> <p>17 found out that -- when he was employed by Bigger</p> <p>18 Faster Stronger, if he had gone out to a school to do</p> <p>19 a Bigger Faster Stronger presentation that he was</p> <p>20 also discussing solar lenses and RaPower3 and</p> <p>21 International Automated Systems, what would you have</p> <p>22 done?</p> <p>23 A. I'd have fired him. That -- yes, I would</p> <p>24 have fired him.</p> <p>25 Q. And why is that?</p>

<p style="text-align: right;">Page 149</p> <p>1 A. Because I didn't want anything to do with 2 RaPower3 based upon the school market. 3 Q. What do you mean "based upon the school 4 market"?</p> <p>5 A. Because the school market is what we do. 6 That's what Bigger Faster Stronger is, and I don't 7 want a representation of anything in the school 8 market, that risk based upon perception of the 9 integrity of Bigger Faster Stronger.</p> <p>10 Q. So you think that solar lenses and 11 RaPower3 and IAS would demean the reputation or the 12 integrity of Bigger Faster Stronger?</p> <p>13 A. A certain potential based upon perception, 14 yes, sir.</p> <p>15 Q. Did you ever find out that Roger Freeborn 16 was selling solar lenses --</p> <p>17 A. The way I found out -- I'm sorry.</p> <p>18 Q. Did you ever find out that Roger Freeborn 19 was selling solar lenses or promoting solar lenses at 20 Bigger Faster Stronger events?</p> <p>21 A. Not at events so much, but through his 22 e-mail is where I found out.</p> <p>23 Q. What do you mean by --</p> <p>24 A. He was using our BFS e-mail to solicit 25 sales on RaPower3.</p>	<p style="text-align: right;">Page 151</p> <p>1 the buy/sell with Rick Anderson, it was a legal 2 environment, and getting all that documentation and 3 paperwork and finances done and then started working 4 on Greg Shepard.</p> <p>5 Q. Okay. So it sounds like maybe -- when you 6 said no more association with Bigger Faster Stronger, 7 by that I mean no more solar lens association with 8 Bigger Faster Stronger, shortly after that is when 9 Roger Freeborn was terminated?</p> <p>10 A. (Witness nodding head affirmatively.)</p> <p>11 Q. Is that true?</p> <p>12 A. Pretty accurate, yeah. I would have to 13 say that's accurate, yes.</p> <p>14 Q. Okay. And then during that time frame you 15 were also buying out Mr. Anderson?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Okay. And I did I understand your 18 testimony to be at the time you didn't have the time 19 to deal with buying out Greg Shepard?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Okay. And then after that was when 22 Greg Shepard -- after Mr. Anderson had been bought 23 out, then you bought out Mr. Shepard?</p> <p>24 A. That is correct.</p> <p>25 Q. Okay. During that time frame, did you</p>
<p style="text-align: right;">Page 150</p> <p>1 Q. Okay. So do you mean that he was using 2 your mailing lists?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. And when did you discover that?</p> <p>5 A. Oh, I don't remember the exact date, but, 6 you know, that's when I went to Greg and went to 7 everybody this is stopped. No longer is this done.</p> <p>8 Q. All right. And was that shortly before 9 Roger Freeborn was terminated?</p> <p>10 A. Probably. It's in that period of time 11 somewhere, yes, sir.</p> <p>12 Q. Okay. And how close was that to 13 Greg Shepard's disassociating from Bigger Faster 14 Stronger?</p> <p>15 A. I'm sorry. I'm still guessing here. It's 16 probably three years prior to when Greg was -- you 17 know, I don't know. In that range.</p> <p>18 Q. So Greg Shepard stayed affiliated with 19 Bigger Faster Stronger for a period of time?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Okay.</p> <p>22 A. Yes, sir.</p> <p>23 Q. It was a period of years then?</p> <p>24 A. Yes, sir, And that was predicated on 25 getting all the -- because I was still dealing with</p>	<p style="text-align: right;">Page 152</p> <p>1 ever learn of Greg Shepard using Bigger Faster 2 Stronger to promote solar lenses?</p> <p>3 A. I don't know if he had used the list at 4 all. I know that when I talked to him about Roger, 5 he was very, very clear on not using the BFS list for 6 that purpose, so I don't know if he had.</p> <p>7 I didn't do any research or history checks 8 on Greg's e-mail account, so I don't know that, but I 9 can't say he didn't a hundred percent because I know 10 he sold to some people that are coaches and teachers, 11 so, again, I can't say a hundred percent that he 12 didn't, but he didn't do it with my approval.</p> <p>13 Q. Did you ever hear of -- during that time 14 frame, did you ever hear of anyone reporting back to 15 you that he was using Bigger Faster Stronger events 16 or e-mail lists to promote solar lenses?</p> <p>17 A. Again, to the best of my recollection, the 18 first account of that was Roger Freeborn, and Greg 19 may have done something. I don't know the overlap, 20 but that's where I became aware of it was when Roger 21 -- when I found out Roger Freeborn was sending out 22 e-mails on our account.</p> <p>23 Q. And that predated Roger Freeborn being 24 terminated?</p> <p>25 A. Yes. I believe it did, yes.</p>