

Page 1

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF UTAH
 3 CENTRAL DIVISION
 4 UNITED STATES OF AMERICA,)
 Plaintiff,)
 5)
 -vs-) CIVIL NO.
 6)2:15-cv-00828 DN
 RAPOWER-3, LLC, INTERNATIONAL)
 7 AUTOMATED SYSTEMS, INC., LTB1,)
 LLC, R. GREGORY SHEPARD, NELDON)
 8 JOHNSON and ROGER FREEBORN,)
 Defendants.)
 9
 10
 11 Deposition of BRIAN ZELEZNIK, taken at the
 12 instance of the Plaintiff, before Laurel A. Patkes,
 13 CSR #084-001340, on Tuesday, August 2, 2016 at the
 14 hour of 9:00 a.m., at 318 S. Sixth Street,
 15 Springfield, Illinois, pursuant to notice.
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 22
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 25

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1 A P P E A R A N C E S
 2
 3 U. S. DEPARTMENT OF JUSTICE, by
 ERIN HEALY GALLAGHER
 CHRISTOPHER R. MORAN
 4 ERIN R. HINES (present by phone)
 P.O. Box 7238
 5 Ben Franklin Station
 Washington, D.C. 20044
 6 erin.healygallagher@usdoj.gov
 (202)353-2452
 7
 appearing on behalf of the
 8 Plaintiff;
 9
 HEIDEMENT & ASSOCIATES, by
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 11 Provo, Utah 84604
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 13
 appearing on behalf of Defendants
 14 Rapower-3, LLC, International
 Automated Systems, Inc., LTB1,
 15 LLC and Neldon Johnson;
 16
 STOEL RIVES, LLP, by
 17 PAUL JONES
 4766 S. Holladay Boulevard
 Salt Lake City, Utah 84117
 18 (801)930-5101
 paul@pauljonesattorney.com
 19 appearing on behalf of the
 20 Deponent.
 21
 22
 23
 24
 25

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1 (Whereupon the witness was sworn
 2 by the reporter.)
 3 MR. MORAN: Good morning,
 4 Mr. Zeleznik.
 5 MR. ZELEZNIK: Good morning.
 6 MR. MORAN: We're on the record in
 7 the case of United States versus RaPower, et al. on
 8 August 2nd at 9 a.m. central time.
 9 My name is Chris Moran, and I'm with
 10 the U.S. Department of Justice Tax Division
 11 appearing on behalf of the United States.
 12 If all the attorneys in the room
 13 could please state their appearances on the record
 14 starting with Mr. Jones.
 15 MR. JONES: Paul Jones, the attorney
 16 for the witness.
 17 MR. HEIDEMAN: Justin Heideman here
 18 present for the other defendants other than those
 19 represented by Don Rea.
 20 MS. HEALY GALLAGHER: And Erin Healy
 21 Gallagher for the United States Department of
 22 Justice.
 23 MR. MORAN: And for the record,
 24 Mr. Donald Rea who represents defendants Greg
 25 Shepard and Roger Freeborn is not present, so on the

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1 phone is our colleague Erin Hines.
 2 For the record, this deposition will
 3 be taken in accordance with the Federal Rules of
 4 Civil Procedure.
 5 We're in the second day of
 6 depositions here in Springfield. Several exhibits
 7 were marked yesterday. Counsel for the United
 8 States has had custody of those exhibits overnight.
 9 We'll be leaving those exhibits as well as any other
 10 exhibits that we mark today with the court reporter
 11 when we conclude with the deposition transcript.
 12
 13 BRIAN ZELEZNIK
 14 called as a witness herein, having been first duly
 15 sworn on his oath, was examined and testified as
 16 follows:
 17
 18 DIRECT EXAMINATION
 19 BY MR. MORAN:
 20 Q. Mr. Zeleznik, have you ever had your
 21 deposition taken before?
 22 A. No. First time.
 23 Q. First time. All right.
 24 Then I'm going to go over some of the
 25 ground rules. Your attorney may have already gone

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1 over them with you but just a few initial matters.
 2 The court reporter is making a
 3 transcript of everything that is said today.
 4 Therefore, it's important that we both speak clearly
 5 and that we make verbal responses, so no head
 6 nodding like you're doing right now.
 7 A. Okay.
 8 Q. No uh-huhs. We need yes, no, and any
 9 verbal clarifications to answers that you want. It
 10 all needs to be recorded by the court reporter.
 11 I'm going to ask you a series of
 12 questions today. There may be objections placed on
 13 the record by the two attorneys in the room.
 14 Unless your attorney, Mr. Jones,
 15 instructs you not to answer, I'm going to ask that
 16 after they're done making their objections, you
 17 answer my question to the best of your ability.
 18 A. Okay.
 19 Q. As we go through today, if you later
 20 realize that a previous answer you've given is
 21 incorrect or you'd like to add to it or make a
 22 clarification, that's fine. Just let me know. Tell
 23 me what you're clarifying, and we'll go back and let
 24 you more fully explain your answer.
 25 A. Okay.

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1 Q. You're represented here by Mr. Jones.
 2 If you wish to consult with him at any time, that's
 3 fine. The only thing I ask is that you do not
 4 consult with him while the question is pending.
 5 A. Okay.
 6 Q. Does that make sense?
 7 A. That makes sense.
 8 Q. Okay. We're going to try to take a
 9 couple breaks here today about every 90 minutes.
 10 However, I believe all counsel is trying to get out
 11 today, and we're all trying to make flights, so
 12 we're going to try to keep this moving along.
 13 A. Okay.
 14 Q. Mr. Zeleznik, we're trying to get an
 15 accurate record of your knowledge of the facts of
 16 this case, so therefore, I have to ask you, is there
 17 anything that would preclude you from answering
 18 questions truthfully today?
 19 A. No.
 20 Q. Are you feeling well?
 21 A. Yes. Thank you.
 22 Q. Are you on any medications that would
 23 preclude you from remembering things or answering
 24 truthfully?
 25 A. No.

<p style="text-align: right;">Page 9</p> <p>1 Q. Have you had any alcohol in the last 2 eight hours? 3 A. No. 4 Q. I'd like to start out asking you a 5 few questions about your background just to 6 understand how you came to be involved in the 7 subject of this case. 8 Did you graduate from high school? 9 A. I did. 10 Q. Okay. And can you give me all the 11 formal education you've had since graduating from 12 high school? 13 A. I got my undergrad at Augustana 14 College in Rock Island, Illinois. 15 I got my masters in education 16 administration from Illinois State University in 17 2006. 18 I'm currently employed by LeRoy 19 Schools, LeRoy, Illinois. I'm the high school 20 athletic director, head football coach, head track 21 coach, and I do teach a couple of courses at the 22 high school. 23 Q. Okay. What is your major in your 24 undergrad? 25 A. My undergrad was secondary education,</p>	<p style="text-align: right;">Page 11</p> <p>1 A. I was, yeah. I was not the head 2 coach. I was an assistant coach for -- I did 3 football. I did basketball. I did baseball 4 coaching, teaching physical education at the high 5 school level. 6 Q. Where did you graduate from high 7 school? 8 A. LeRoy High School; I was born and 9 raised there. 10 Q. So you came back home? 11 A. Yeah. I'm doing exactly what my 12 father did. 13 Q. Oh, really. 14 A. A little bit of nepotism I guess you 15 could say, but yeah. 16 Q. So did you play sports at LeRoy? 17 A. I did. 18 Q. Did you play for your dad? 19 A. I did. 20 Q. What sports did you play? 21 A. Football, basketball, baseball. 22 Q. Did your dad coach all three of 23 those? 24 A. No. He just did football. 25 Q. Okay. And did he teach P.E.</p>
<p style="text-align: right;">Page 10</p> <p>1 physical education. 2 Q. And when did you graduate from 3 college? 4 A. '98. 5 Q. 98? 6 A. Yeah. 7 Q. And then your master's was in 2006? 8 A. Yes. 9 Q. When did you start teaching at LeRoy 10 Schools? 11 A. 1999. 12 Q. Okay. Is that right after you 13 graduated from college? 14 A. Yeah. I had a small stint as a 15 teacher's assistant at a junior high in Normal, but 16 my first full-time position was at LeRoy, yeah. 17 Q. Okay. When you came into LeRoy, what 18 was your -- did you start out as the athletic 19 director? 20 A. Oh, no, no. I was just a physical 21 education instructor from '99-2000 to the spring of 22 '04. So '04-05 was my first year as the athletic 23 director. 24 Q. Okay. When you started in 1999, were 25 you coaching at all?</p>	<p style="text-align: right;">Page 12</p> <p>1 A. No. He was an anatomy/physiology 2 teacher. 3 Q. Okay. 4 A. As well as the athletic director and 5 dean of students. 6 Q. And who was your father? 7 A. Jim Zeleznik. 8 Q. And when did he retire? 9 A. He retired in 2004? Yeah, he had to 10 have, 2004, because I became the AD in '04-05, so 11 yeah, his last year was '04. 12 Q. So you teach P.E., and you're a 13 coach? 14 A. Uh-huh. 15 Q. For it sounds like two sports? 16 A. Two sports. 17 Q. Football and track? 18 A. Uh-huh. I teach P.E. for one period. 19 The rest of the day I have administrative duties 20 associated with the athletic director position. 21 So I'm really 7/8 administrator, 1/8 22 in the classroom as they need me. 23 Q. And what are your duties as the AD? 24 A. I schedule all athletic events, 25 supervision of athletic events. I schedule</p>

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1 officials for athletic events. That's about 90
 2 percent of it.
 3 Q. Okay. And that's all athletic events
 4 for all sports at LeRoy Schools?
 5 A. Yes, that's correct.
 6 Q. And how many sports do you have?
 7 A. We have 12.
 8 Q. Boys and girls?
 9 A. Yeah.
 10 Q. So 12 boys and --
 11 A. 6 and 6.
 12 Q. 6 and 6?
 13 A. Yeah, 6 and 6.
 14 Q. And what are those sports?
 15 A. Let's see, in the fall we provide
 16 volleyball, golf and cross country for our female
 17 athletes.
 18 Our male athletes have football, golf
 19 and cross country.
 20 In the winter we have girls
 21 basketball, competitive cheerleading for the girls,
 22 and we have basketball and wrestling for the boys.
 23 In the spring, we have baseball and
 24 track for the boys, and we have softball and track
 25 for the girls.

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1 I think that's right. Is that all of
 2 them?
 3 Q. That sounds about right. I don't
 4 know though.
 5 A. Yes, I think that's about right.
 6 Q. That seems like a lot to keep
 7 straight.
 8 A. It's really, I mean, once you get
 9 into it, it's like anything. You get into the
 10 routine. You have deadlines that you have to meet,
 11 and you meet those deadlines, and you keep your
 12 public happy.
 13 Q. About how many hours a week would you
 14 spend carrying out your athletic director duties?
 15 A. Oh, I would say -- just depends. If
 16 it's football season, to complete my duties, all of
 17 my duties, I'm probably putting in 60 hours a week.
 18 Out of season, some of the winter,
 19 it's probably closer to 45 to 50. I mean, that's a
 20 rough guess. That's a rough guess.
 21 In the spring, it's probably 45 to
 22 50.
 23 Q. When does football start?
 24 A. Monday.
 25 Q. I figured.

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1 A. Yes. It starts Monday. Summer is
 2 gone again, quickly.
 3 Q. Any other formal education?
 4 A. No.
 5 Q. How about informal education?
 6 A. What would that be?
 7 Q. Classes you take.
 8 A. No. I have not taken any more
 9 classes since I've received my master's.
 10 Q. In any subject?
 11 A. Any subject.
 12 Q. Have you had any training in tax?
 13 A. T-a-x tax?
 14 Q. Yes.
 15 A. No.
 16 Q. How about finance?
 17 A. No.
 18 Q. What businesses are you involved
 19 with?
 20 A. I have an independent business,
 21 Zeleznik Solar Lenses. I'm the owner of 145 solar
 22 lenses.
 23 Q. Any other business?
 24 A. No.
 25 Q. Where did you get those lenses from?

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1 A. I purchased those lenses from
 2 RaPower.
 3 Q. Mr. Zeleznik, do you recall getting a
 4 subpoena from the government for documents?
 5 A. I do.
 6 Q. How did you get that?
 7 A. A gentleman walked up to our door and
 8 said, I have a subpoena, and that was it is. I
 9 signed it.
 10 Q. What did you do in response to that
 11 subpoena?
 12 A. Compiled documents and sent what was
 13 asked.
 14 Q. Did you talk to anyone about
 15 preparing your response?
 16 A. I sent an inquiry to Dr. Shepard and
 17 said I've received the subpoena.
 18 His instructions to me were to just
 19 do what it asked. He had mentioned Mr. Jones as
 20 well, but other than that, that was it.
 21 So I just followed the instructions
 22 on the subpoena and sent the information.
 23 Q. How did you communicate with
 24 Mr. Shepard about that?
 25 A. I believe I placed a phone call.

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1 Q. You didn't communicate via e-mail?
 2 A. About the subpoena?
 3 Q. Yes.
 4 A. I don't think I did.
 5 Q. Can you tell me where you looked for
 6 the documents?
 7 A. In my files and on the RaPower-3 site
 8 in my log-in member area.
 9 Q. So you have a log-in to RaPower?
 10 A. Uh-huh. Yes, yes. Sorry.
 11 Q. Can you tell me what information you
 12 access there?
 13 A. When I access my log-in member area
 14 at RaPower, I can see the invoices for the
 15 purchasing of the lenses that I bought.
 16 I can also see payments made on there
 17 as well, so payments I made towards the principal
 18 that I owed on the lenses. They keep track of that
 19 for me.
 20 Q. Anything else?
 21 A. I can also see the two individuals
 22 that I sponsored on there as well and their
 23 activity.
 24 Q. What type of activity?
 25 A. Lenses purchased.

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1 Q. How about payments made?
 2 A. By them, no, no, I can't access their
 3 payment information.
 4 Q. And you printed out information from
 5 the RaPower-3 website and produced it to the
 6 government?
 7 A. I did, yes, I did.
 8 Q. And you mentioned other documents you
 9 had in your files?
 10 A. Tax, you know, 1040s. I've got, oh,
 11 what would you call them, stubs or receipts for
 12 money I've received through my business so records
 13 of that, of deposits, records of deposits into my
 14 business savings account that I have for this.
 15 There were a number of, you know,
 16 operation and maintenance agreement forms for the
 17 leasing of my lenses.
 18 Q. Okay. And after you gathered those
 19 documents, what did you do with them?
 20 A. Gathered them, copied them. So I've
 21 got them all on file, and then I send them off.
 22 Q. Who did you send them to?
 23 A. Peoria. That's where they went.
 24 Q. Via...
 25 A. Via -- I don't know where they were

Page 19

1 going from Peoria. I'm trying to think of the
 2 person that was on the subpoena. I can't remember.
 3 I'm sorry. Maybe D.C., but no, definitely dropped
 4 them off at the circuit court or federal courthouse
 5 in Peoria.
 6 Q. Okay. You mentioned a, you called
 7 him Dr. Shepard that you spoke to?
 8 A. Yes.
 9 Q. Who is Dr. Shepard?
 10 A. Greg Shepard who, I've known him as
 11 the...I don't know if he was the owner or what, but
 12 I knew him as a part of Bigger, Faster, Stronger,
 13 not personally, just by name. By being in high
 14 school athletics, Bigger, Faster, Stronger is a very
 15 respected business that works with interscholastic
 16 athletes.
 17 So that's where I knew him from, and
 18 Roger Freeborn as well. Both of them were involved
 19 in Bigger, Faster, Stronger, so that's where, you
 20 know. Like I said, I didn't know him at all but
 21 just knew the services they provided for schools
 22 through training, and I also know him as a person
 23 that is involved with RaPower-3.
 24 Q. How is he involved with RaPower-3?
 25 A. I don't know. I don't know his

Page 20

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

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1 Q. What did you tell him?
 2 A. Just told him about this program.
 3 Q. Did he participate?
 4 A. He did, yeah. He's been subpoenaed
 5 and done all that.
 6 Q. Did you ever participate in any
 7 webinars?
 8 A. I don't know if I did. I remember
 9 them having some webinars, but honestly, I don't
 10 remember if I ever did any of that.
 11 Q. Who organized the webinars? Who did
 12 you hear about them from?
 13 A. Roger Freeborn.
 14 Q. How about conference calls?
 15 A. No.
 16 MR. MORAN: 54.
 17 (Plaintiff's Exhibit 54 was
 18 marked for identification.)
 19 Q. Mr. Zeleznik, I hand you a copy of
 20 what's been marked as Exhibit 54 that's marked for
 21 identification.
 22 A. Okay.
 23 Q. Do you recognize Exhibit 54?
 24 A. It's an e-mail between Roger Freeborn
 25 and I.

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

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1 BFS stimulus plan is?
 2 A. That is the RaPower-3 program at its
 3 very beginning.
 4 Q. At the beginning?
 5 A. BFS is Bigger, Faster, Stronger.
 6 Q. I understand.
 7 A. And so this was sent to coaches and
 8 educators as an opportunity.
 9 Q. Did you understand that this was
 10 being offered by Bigger, Faster, Stronger?
 11 A. What I understood was it was people
 12 from Bigger, Faster, Stronger that were working with
 13 a group out west was my understanding of it.
 14 Beyond that, I have no knowledge.
 15 Q. Who's the group out west?
 16 A. Like Neldon Johnson.
 17 I mean, that at the very beginning of
 18 it was all I really knew.
 19 Q. All right. And go back to the fourth
 20 page, and that's Bates number 725.
 21 A. Okay.
 22 Q. Was this an attachment to one of
 23 those e-mails?
 24 A. I couldn't remember. I wouldn't be
 25 able to tell you. I'm sorry.

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1 Q. Do you recognize this document?
 2 A. It looks like instructions to be able
 3 to fill out the referral fee contract on the next
 4 page.
 5 Q. All right. If you could flip back to
 6 page 723.
 7 A. Okay.
 8 Q. Up at the top, there appears to be
 9 three attachments.
 10 A. Okay. Yeah.
 11 Q. One of those says IAUS instructions.
 12 A. Okay. So that must be that.
 13 Q. You think that the document on page
 14 725 is the IAUS instructions?
 15 A. I'm not a hundred percent sure. I
 16 think that's a logical thought, but I couldn't tell
 17 you a hundred percent.
 18 Q. Any reason to think that the document
 19 on Bates page 725 isn't the attachment?
 20 MR. JONES: Objection. Leading.
 21 A. I don't know.
 22 Q. All right. Just one question on page
 23 725.
 24 In the middle of the page, it
 25 references a model or serial number.

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1 Q. Okay. So if you purchased the lens
 2 say in August of --
 3 A. Okay. So I don't know if you're --
 4 they have an upfront ten percent program.
 5 Q. What's that?
 6 A. You pay ten percent, and then you
 7 provide the remainder to, well, it would be 150, so
 8 then you'd pay the remaining by the end of the year
 9 I think is what that program was.
 10 Q. Okay. Did you ever participate in
 11 that program?
 12 A. I did. I purchased some lenses at
 13 ten percent.
 14 Q. Ten percent of what?
 15 A. Of 1,050.
 16 Q. Okay. So ten percent of 1,050 is
 17 105?
 18 A. Is it? I don't know. I'd have to
 19 look. I'm sorry. That's not my area.
 20 Q. That's all right. You're not a math
 21 teacher.
 22 A. No. There's people that I go to for
 23 answers for that. Gotta be resourceful.
 24 Q. And you've mentioned you'd pay the
 25 remainder at the end of the year.

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1 A. I think they give you a year.
 2 I have paid off -- I'm trying to
 3 think. I'd have to look at my -- I own at a minimum
 4 full 131 of my 145 lenses so that's where I'm at
 5 right now. I own 131 in full, paid for 131 of my
 6 145 lenses at 1,050. There are 14 lenses that I
 7 still need to make a payment on.
 8 Q. And when you say full, do you mean
 9 you have paid all of the 1,050?
 10 A. Yes, all of the 1,050.
 11 Q. Or you paid all of the 3,500?
 12 A. Yes, the 1,050. The remaining is now
 13 the balance that gets paid over a period of time.
 14 Q. And when are you going to pay that?
 15 A. It is part of the lease fee. They
 16 take it out of the lease fee.
 17 Q. And that's the lease fee that you
 18 haven't received yet?
 19 A. Yes.
 20 Q. Okay. So just so we're clear, you
 21 paid a total -- withdraw.
 22 You fully paid on 131 lenses?
 23 A. Correct, at 1,050.
 24 Q. And when you say fully paid, you mean
 25 that you paid \$1,050?

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1 A. On 131 lenses, that's correct.
 2 Q. Okay. Understood.
 3 Do you know how the price per lens
 4 was determined?
 5 A. I do not.
 6 Q. Did you have the opportunity to
 7 negotiate that price?
 8 A. I never chose to negotiate that
 9 price.
 10 Q. Did you get any type of independent
 11 appraisal of what the lens was worth?
 12 A. No.
 13 Q. Do you know if there's a market for
 14 these lenses?
 15 A. Other than the one I'm in?
 16 Q. Yes.
 17 A. No.
 18 Q. You don't know or there is no market?
 19 A. I don't know. Sorry.
 20 Q. Do you know if you could sell your
 21 lens to someone else?
 22 A. I should. I own them, yeah, so I
 23 should be able to sell them if I'd like.
 24 Q. So if someone came up to you and
 25 said, Mr. Zeleznik, I'll give you \$10,000 for your

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