

Anderson, Todd F.

August 4, 2017

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

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UNITED STATES OF AMERICA,	)	
	)	Deposition of:
Plaintiff,	)	
	)	TODD F. ANDERSON
vs.	)	
	)	Time on record:
RAPOWER-3, LLC,	)	4 Hours 14 Minutes
INTERNATIONAL	)	
AUTOMATED SYSTEMS,	)	
INC., LTBl, LLC,	)	Case No. 2:15-cv-00828 DN
R. GREGORY SHEPARD,	)	
NELDON JOHNSON, and	)	
ROGER FREEBORN,	)	
Defendants.	)	Judge David Nuffer

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August 4, 2017 \* 8:02 a.m. to 1:36 p.m.

Location: Internal Revenue Service  
173 East 100 North  
Provo, Utah



Reporter: Denise M. Thomas, CRR/RPR

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<p>1 APPEARANCES</p> <p>2 FOR THE PLAINTIFF:</p> <p>3 Christopher R. Moran</p> <p>4 Erin Healy-Gallagher</p> <p>5 Erin R. Hines (Telephonically)</p> <p>6 UNITED STATES DEPARTMENT OF JUSTICE</p> <p>7 Trial Attorneys, Tax Division</p> <p>8 P. O. Box 7328</p> <p>9 Washington, D. C. 20044</p> <p>10 Telephone: 202.307.0834 (Moran)</p> <p>11 202.353.2452 (Healy-Gallagher)</p> <p>12 Fax: 202.514.6770</p> <p>13 E-mail: Christopher.r.moran@usdoj.gov</p> <p>14 erin.healygallagher@usdoj.gov</p> <p>15 FOR THE WITNESS TODD F. ANDERSON:</p> <p>16 Byron G. Martin</p> <p>17 STRONG &amp; HANNI</p> <p>18 Attorneys at Law</p> <p>19 102 South 200 East -- Suite 800</p> <p>20 Salt Lake City, Utah 84111</p> <p>21 Telephone: 801.532.7080</p> <p>22 Fax: 801.596.1508</p> <p>23 E-mail: bmartin@strongandhanni.com</p> <p>24</p> <p>25 Joshua Nielsen</p> <p>ANDERSON LAW CENTER</p> <p>1394 Sageberry Drive</p> <p>Santaquin, UT 84655</p> <p>Telephone: 801.633.0209</p> <p>FOR THE DEFENDANTS RAPOWER-3, LLC, INTERNATIONAL</p> <p>AUTOMATED SYSTEMS, INC., LTB1, LLC, AND NELDON</p> <p>JOHNSON:</p> <p>Steven R. Paul</p> <p>NELSON SNUFFER DAHLE &amp; POULSEN, P.C.</p> <p>Attorneys at Law</p> <p>10885 South State Street</p> <p>Sandy, Utah 84070</p> <p>Telephone: 801.576.1400</p> <p>Fax: 801.576.1960</p> <p>E-mail: spaul@nsdplaw.com</p>	<p>1 EXHIBITS (Continued)</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3 Exhibit 576 Document produced by Todd 163</p> <p>4 Anderson pursuant to Subpoena,</p> <p>5 Bates Nos. Anderson 000153-160</p> <p>6 Exhibit 577 Document produced by Todd 164</p> <p>7 Anderson pursuant to Subpoena,</p> <p>8 Bates No. Anderson 000210</p> <p>9 EXHIBITS PREVIOUSLY MARKED</p> <p>10 NUMBER DESCRIPTION PAGE</p> <p>11 Exhibit 23 8-8-12 letter to Potential 111</p> <p>12 Rapower-3 Customer, Bates Nos.</p> <p>13 US001654-1658</p> <p>14 Exhibit 480 Cease and Desist Letter to 166</p> <p>15 Neldon Johnson from Tate W.</p> <p>16 Bennett, Bates Nos.</p> <p>17 Anderson_Todd-00024-00026</p> <p>18</p> <p>19 Exhibit 548 12-1-10 Document from RaPower-3 158</p> <p>20 website, Bates Nos. Ra3</p> <p>21 011818-11820, "Confidential 0</p> <p>22 Attorneys' Eyes Only"</p> <p>23</p> <p>24 * * *</p> <p>25</p>
3	5
<p>1 INDEX</p> <p>2 TODD F. ANDERSON PAGE</p> <p>3 Examination By Mr. Moran 5</p> <p>4 Examination By Mr. Paul 183</p> <p>5 Examination By Mr. Martin 189</p> <p>6 Further Examination By Mr. Paul 190</p> <p>7</p> <p>8 EXHIBITS</p> <p>9 NUMBER DESCRIPTION PAGE</p> <p>10 Exhibit 569 10-6-10 letter to Mantyla 36</p> <p>11 McReynolds from Todd F.</p> <p>12 Anderson, Bates Nos. Anderson</p> <p>13 000240-241</p> <p>14 Exhibit 570 2-9-17 letter to Neldon Johnson 55</p> <p>15 from Todd F. Anderson, Bates</p> <p>16 Nos. Anderson 000212-220</p> <p>17 Exhibit 571 Response to Subpoena to Produce 63</p> <p>18 Documents and Claim of</p> <p>19 Privilege, Bates Nos.</p> <p>20 Anderson_Todd-00001-00008</p> <p>21 Exhibit 572 Defendants' Supplemental 73</p> <p>22 Privilege Log</p> <p>23 Exhibit 573 2-9-17 letter to To Whom it May 146</p> <p>24 Concern from Jessica L.</p> <p>25 Anderson, Bates Nos. Anderson</p> <p>000222</p> <p>Exhibit 574 10-14-10 e-mail to 160</p> <p>Neldon@iaus.com from Greg</p> <p>Shepard, Bates Nos. Anderson</p> <p>000141</p> <p>Exhibit 575 1-25-05 Remarks by Donald L. 161</p> <p>Korb, Chief Counsel for the</p> <p>Internal Revenue Service, Bates</p> <p>Nos. Anderson 000143-151</p>	<p>1 PROCEEDINGS</p> <p>2</p> <p>3 TODD F. ANDERSON,</p> <p>4 having been first duly sworn to tell the</p> <p>5 truth, was examined and testified as follows:</p> <p>6</p> <p>7 EXAMINATION</p> <p>8 BY MR. MORAN:</p> <p>9 Q. Good morning, Mr. Anderson. We're on the</p> <p>10 record in the case of United States versus RaPower-3,</p> <p>11 et al.</p> <p>12 We were introduced earlier, but I'll</p> <p>13 introduce myself again for the record. My name is</p> <p>14 Chris Moran. I'm with the United States Department</p> <p>15 of Justice Tax Division appearing on behalf of the</p> <p>16 United States.</p> <p>17 Will the other counsel in the room please</p> <p>18 make their appearances, starting with</p> <p>19 Ms. Healy-Gallagher.</p> <p>20 MS. ERIN HEALY-GALLAGHER: Erin</p> <p>21 Healy-Gallagher, United States Department of Justice</p> <p>22 Tax Division, for the United States.</p> <p>23 MR. PAUL: Steven Paul representing</p> <p>24 RaPower-3 and its entities along with Neldon Johnson.</p> <p>25 MR. NIELSON: Joshua Nielsen representing</p>

Anderson, Todd F.

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3 (Pages 6 to 9)

6

1 Todd Anderson.

2 MR. MARTIN: Byron Martin representing

3 Todd Anderson.

4 MR. MORAN: On the phone with us is Erin

5 Hines, counsel for the United States, and counsel for

6 R. Gregory Shepard and Roger Freeborn, Mr. Donald

7 Reay, is not present.

8 This deposition will be governed by the

9 Federal Rules of Civil Procedure and the local rules

10 of the District of Utah. At the end of the day,

11 we'll be leaving all the exhibits we mark with the

12 court reporter.

13 Q. (By Mr. Moran) Mr. Anderson, could you

14 please state your name and address for the record?

15 Your business address is fine.

16 A. **Todd F. Anderson, 259 North Highway 6,**

17 **Delta, Utah.**

18 Q. Mr. Anderson, have you ever been deposed

19 before?

20 A. **No.**

21 Q. Okay. Have you taken a deposition?

22 A. **Yes.**

23 Q. Okay. So you're probably familiar with

24 some of the ground rules, but I'm going to go over

25 them again. I apologize if you already know all

7

1 this.

2 In this deposition today, I'm going to be

3 asking you a series of questions. Other attorneys in

4 the room may have some questions for you as well. In

5 order to accomplish what we're trying to do here, it

6 is essential that we have a back and forth between

7 you and I where I finish my questions before you

8 begin to answer.

9 Do you understand that?

10 A. **Yes.**

11 Q. Okay. In other words, we don't want to

12 talk over each other.

13 Do you understand that?

14 A. **Yes.**

15 Q. Okay. You're doing a good job of this so

16 far, but verbal answers are essential, so no huh-uhs.

17 We need yes or nos. Similarly, shaking of the head

18 can't be recorded by the court reporter. You need to

19 speak loudly enough for the court reporter to hear

20 you.

21 Do you understand that?

22 A. **Yes.**

23 Q. When I do finish a question, I need you to

24 give full and complete answers.

25 Do you understand that obligation?

8

1 A. **Yes.**

2 Q. And for me, it's my job to ask

3 understandable questions, so if you don't understand

4 a question and you don't understand what I'm asking,

5 just tell me to rephrase, and I'll do my best to

6 clear it up for you.

7 Fair?

8 A. **Yes.**

9 Q. Okay. Today there may be other attorneys

10 in the room who place an objection on the record.

11 That's their right and obligation. They're just

12 making that note for the record, but regardless of

13 that objection, you need to answer the question,

14 unless your attorney instructs you not to answer.

15 Do you understand?

16 A. **Yes.**

17 Q. Sometimes it may happen during the course

18 of the deposition that you realize an answer you gave

19 previously wasn't completely correct or you want to

20 elaborate upon the answer you gave. That's fine.

21 Just tell me that you want to elaborate or expand

22 upon an answer, and I'll give you the time to clear

23 that up.

24 Do you understand?

25 A. **Yes.**

9

1 Q. Okay. Throughout the day we may need to

2 take a break. I'll try to stop every 90 minutes or

3 so for bathroom breaks. The room is crowded, so we

4 definitely don't want to get too close to each other.

5 So if you need to take a break, just let me know.

6 The only thing I ask is that you not take

7 a break while a question is pending.

8 Do you understand?

9 A. **Yes.**

10 Q. Similarly, if you need to talk to one of

11 your attorneys, that's fine, but I'd only ask if

12 there's a question pending, you answer the question

13 completely and truthfully before consulting with your

14 attorneys.

15 Do you understand that?

16 A. **I will make my best effort.**

17 Q. Do you understand?

18 A. **Yes.**

19 Q. Okay. Mr. Anderson, because we're here to

20 get as accurate a record as possible, I have to ask

21 you a few questions that may seem odd, but is there

22 anything that would prevent you from understanding

23 and answering my questions before we move forward

24 today?

25 A. **No.**

10	<p>1 Q. Have you had anything alcoholic to drink</p> <p>2 in the past eight hours?</p> <p>3 <b>A. No.</b></p> <p>4 Q. Are you feeling sick or unwell?</p> <p>5 <b>A. Do you want honest? Yes.</b></p> <p>6 Q. Well --</p> <p>7 <b>A. Just nerves.</b></p> <p>8 Q. Just nerves?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. Okay. I understand that.</p> <p>11 Again, is there any reason that would</p> <p>12 prevent from you answering questions?</p> <p>13 <b>A. No.</b></p> <p>14 Q. Okay. Are you currently under a doctor's</p> <p>15 care for any illness, any illness that would prevent</p> <p>16 you from answering questions truthfully?</p> <p>17 <b>A. No.</b></p> <p>18 Q. Okay. Any other reason you can think of</p> <p>19 that you will not be able to answer my questions</p> <p>20 fully and truthfully?</p> <p>21 <b>A. No.</b></p> <p>22 Q. All right. We're going to start out with</p> <p>23 some of your background to understand how you came to</p> <p>24 have some knowledge of the facts of this case.</p> <p>25 MR. PAUL: Chris, before you get into your</p>	12	<p>1 <b>A. Yes.</b></p> <p>2 Q. Do you have any children?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. How many?</p> <p>5 <b>A. Four.</b></p> <p>6 Q. Okay. Just give me their names and ages.</p> <p>7 <b>A. Danika is six, Finn is five, Will is</b></p> <p>8 <b>three, Ella is one and a half.</b></p> <p>9 Q. You mentioned you were married.</p> <p>10 What's the name of your spouse?</p> <p>11 <b>A. Jessica.</b></p> <p>12 Q. Okay. We'll talk about that in a bit.</p> <p>13 Can you walk me through your education</p> <p>14 starting with -- I assume you graduated from high</p> <p>15 school?</p> <p>16 <b>A. From high school?</b></p> <p>17 Q. From high school, yes.</p> <p>18 <b>A. I attended one year at Snow College in</b></p> <p>19 <b>Ephraim, Utah. After a semester break, I enrolled at</b></p> <p>20 <b>Utah Valley -- it was called Utah Valley State</b></p> <p>21 <b>College at the time. It's now called Utah Valley</b></p> <p>22 <b>University. Completed a business -- or a Bachelor's</b></p> <p>23 <b>degree in business management. About three years</b></p> <p>24 <b>after completing that degree, I was accepted to</b></p> <p>25 <b>Oklahoma City School of Law and received my juris</b></p>
11	<p>1 questions, I just want to emphasize on the record</p> <p>2 that there has been -- there was previously a</p> <p>3 challenge related to the attorney-client privilege.</p> <p>4 However, because the Defendants are relying on -- the</p> <p>5 defense is relying on legal counsel, there's been a</p> <p>6 hearing, and that privilege has been waived.</p> <p>7 Therefore, to the extent of the</p> <p>8 attorney-client privilege, I just want to go on the</p> <p>9 record to note that that has been waived, just for</p> <p>10 the comfort of the witness, and you have your own</p> <p>11 attorney present who can object to questions that may</p> <p>12 impact the attorney-client privilege between you and</p> <p>13 him, but as far as the Defendants' privilege related</p> <p>14 to your work product, that privilege has been waived.</p> <p>15 MR. MORAN: Thank you, Mr. Paul, for that</p> <p>16 clarification.</p> <p>17 MR. PAUL: You're welcome.</p> <p>18 Q. (By Mr. Moran) Mr. Anderson, how old are</p> <p>19 you?</p> <p>20 <b>A. Thirty-six.</b></p> <p>21 Q. Thirty-six. Okay. Are you married?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. How long have you been married?</p> <p>24 <b>A. Since 2001.</b></p> <p>25 Q. Okay. So 16 years?</p>	13	<p>1 <b>doctorate.</b></p> <p>2 Q. Let me back up a little bit.</p> <p>3 When did you get your Bachelor's?</p> <p>4 <b>A. I don't know the exact year.</b></p> <p>5 Q. Can you put it between some time frame?</p> <p>6 <b>A. 2004/2005.</b></p> <p>7 Q. Okay. And then you went straight to law</p> <p>8 school?</p> <p>9 <b>A. No.</b></p> <p>10 Q. Okay. What did you do in between getting</p> <p>11 your Bachelor's and law school?</p> <p>12 <b>A. I managed a John Deere dealership for two</b></p> <p>13 <b>to three years.</b></p> <p>14 Q. Where was that?</p> <p>15 <b>A. Delta.</b></p> <p>16 Q. Okay. When did you start law school at</p> <p>17 Oklahoma City was it?</p> <p>18 <b>A. Uh-huh (yes). I don't know.</b></p> <p>19 Q. Approximately is fine.</p> <p>20 <b>A. Yeah. I graduated 2009. I finished in</b></p> <p>21 <b>three years.</b></p> <p>22 Q. So somewhere around 2006?</p> <p>23 <b>A. Yeah.</b></p> <p>24 Q. Let's go back to one thing.</p> <p>25 Did you grow up in Delta?</p>

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5 (Pages 14 to 17)

14

1       **A. Yes.**  
2       Q. Okay. You were born there then?  
3       **A. Yes.**  
4       Q. Are your parents still there?  
5       **A. Yes.**  
6       Q. Okay. Any brothers or sisters?  
7       Do you have any brothers or sisters?  
8       **A. Yes.**  
9       Q. Okay. How many?  
10       **A. Step or biological?**  
11       Q. Biological.  
12       **A. There's eight, so I have -- well, sorry.**  
13       **One passed away two weeks ago.**  
14       Q. So sorry to hear that.  
15       **A. Thank you. So there's now six brothers**  
16       **and sisters, seven total, including me.**  
17       Q. Okay. And do most of them live around  
18       Delta?  
19       **A. Myself, a sister and two brothers.**  
20       Q. Okay. Everyone else moved away?  
21       **A. Everyone else lives in state, in Utah.**  
22       Q. Okay. Nearby Delta?  
23       **A. No.**  
24       Q. All right. You said you graduated from  
25       law school in 2009.

15

1       Did you take the Bar exam?  
2       **A. Yes.**  
3       Q. Where?  
4       **A. Utah.**  
5       Q. Okay. Did you pass?  
6       **A. Yes.**  
7       Q. Okay. So have you been a practicing  
8       attorney since 2009?  
9       **A. Yes.**  
10       Q. Okay. What was your first job out of law  
11       school?  
12       **A. Out of law school?**  
13       Q. Yes.  
14       **A. I worked for a short time continuing to**  
15       **intern in Oklahoma City. I was never licensed in**  
16       **Oklahoma, so I was just an intern. Then once I moved**  
17       **back to Utah, I started my own practice.**  
18       Q. Okay. When you were working in Oklahoma,  
19       was that at a firm?  
20       **A. Solo practitioner, small firm.**  
21       Q. What kind of work were you doing?  
22       **A. General practice.**  
23       Q. Whatever came in the door?  
24       **A. Yes.**  
25       Q. So civil and criminal?

16

1       **A. Prosecuted -- the attorney was a City**  
2       **Attorney, so I did prosecution. I didn't do any**  
3       **defense work, just civil, substantial amount of**  
4       **bankruptcies.**  
5       Q. All right. How long were you in the  
6       Oklahoma firm, Oklahoma solo practitioner?  
7       **A. Yeah. I started after my first -- no.**  
8       **Sorry. I started my second year.**  
9       Q. Okay. So you started your second year of  
10       law school, and then you worked for a period of time  
11       after you graduated?  
12       **A. I continued -- I started with this firm in**  
13       **my second year of law school and continued after**  
14       **graduation.**  
15       Q. For about how long after graduation?  
16       **A. Until I graduated. I worked through the**  
17       **summer, I worked until the next Christmas.**  
18       Q. Okay. So it sounds like somewhere around  
19       the beginning of 2010 you moved to Utah?  
20       **A. Yes. I started -- I went to work in my**  
21       **own office January of 2010.**  
22       Q. Okay. And that was in Delta?  
23       **A. Yes.**  
24       Q. Okay. So basically you moved home?  
25       **A. Yes.**

17

1       Q. All right. And you opened an office in  
2       Delta?  
3       **A. Yes.**  
4       Q. Okay. Is that the office you -- the  
5       current offices you have?  
6       **A. No.**  
7       Q. Different location?  
8       **A. Yes.**  
9       Q. What was the location you were at in 2010?  
10       **A. The address?**  
11       Q. If you can recall.  
12       **A. I don't.**  
13       Q. Okay. Do you know if it was in a certain  
14       shopping center?  
15       Delta's not a big town, right?  
16       **A. No.**  
17       Q. Okay. Is it near a certain corner?  
18       **A. I honestly don't remember.**  
19       Q. Okay.  
20       **A. It was a basement office underneath a**  
21       **dentist's office.**  
22       Q. All right. And when did you leave that  
23       location? Approximate's fine.  
24       **A. I was in that basement office for probably**  
25       **two years.**

18

1 Q. Okay. So when you started your firm, was  
2 it just you?  
3 **A. Yes.**  
4 Q. Let's back up. Did you have any focuses  
5 in law school?  
6 **A. No.**  
7 Q. Okay. Did you take any tax classes in law  
8 school?  
9 **A. No.**  
10 Q. Okay. So no concentrations in law school,  
11 nothing like that?  
12 **A. To be honest, I knew I was coming back**  
13 **to -- just trying to speed things up a little bit, I**  
14 **was coming back to Delta. That was my plan when I**  
15 **started law school. As you said, Delta is a small**  
16 **town. I knew that I had to be a general practice**  
17 **attorney. My emphasis was on learning as much, or as**  
18 **broad a swath as I could.**  
19 Q. Okay.  
20 **A. And when I sought employment to gain**  
21 **experience in Oklahoma, I also looked for a general**  
22 **practice attorney who would be doing similar types of**  
23 **things that I anticipated doing in Delta.**  
24 Q. So you said a lot of bankruptcy?  
25 **A. Just because that's what that firm -- they**

19

1 **ended up with a lot of bankruptcy, but they did a lot**  
2 **of general practice work.**  
3 Q. All right. So beginning in 2010 you came  
4 back to Delta, opened your own firm.  
5 You were a sole practitioner at that  
6 point?  
7 **A. Yes.**  
8 Q. Okay. What types of cases were you  
9 working on at that point?  
10 **A. Family law, domestic, wills and trusts,**  
11 **probates. I took a few criminal defense cases when I**  
12 **first started, but largely what walked in the door.**  
13 Q. Okay. With the exception of Mr. Paul's  
14 clients, were you involved in any tax matters?  
15 **A. No.**  
16 Q. Okay. All right. Did there come a time  
17 where you brought on any other attorneys?  
18 **A. Yes.**  
19 Q. Okay. When was that?  
20 **A. In October, actually, October of 2010.**  
21 Q. Okay. And who was that?  
22 **A. Jessica Anderson.**  
23 Q. Is that your wife?  
24 **A. Yes.**  
25 Q. How long had she been an attorney?

20

1 **A. How long had she been an attorney? She**  
2 **was sworn in in October of 2010.**  
3 Q. Okay. Where did she go to law school?  
4 **A. Oklahoma City University School of Law.**  
5 Q. Okay. So both of you went to law school  
6 together?  
7 **A. Correct.**  
8 Q. Okay. So at that point I think you  
9 probably had a few children, right?  
10 **A. No.**  
11 Q. No? Okay. So Jessica went to law school?  
12 **A. Well, Danika was -- sorry. Danika was**  
13 **born in September of 2010.**  
14 Q. Okay.  
15 **A. And that was our first child, so allow me**  
16 **to correct myself. We had one child.**  
17 Q. No problem.  
18 **A. Okay.**  
19 Q. All right. So Jessica Anderson started  
20 working at your firm.  
21 Was she a partner?  
22 **A. I don't know how to answer that question.**  
23 **I guess I need more specifics on what you define**  
24 **partner.**  
25 Q. I'll rephrase.

21

1 What were her duties at the firm when she  
2 came on in October 2010?  
3 **A. To help me.**  
4 Q. Okay. Was she a practicing attorney?  
5 **A. Her primary -- her primary job was to be**  
6 **Mom.**  
7 Q. To be a mom?  
8 **A. To be a mom, but she worked with me as**  
9 **much as possible.**  
10 Q. Do you know if she took any classes -- did  
11 she have any focuses or concentrations while she was  
12 in law school?  
13 **A. I wouldn't say it was a concentration.**  
14 Q. What are you thinking of?  
15 **A. Your question is does she have a**  
16 **concentration? The answer is no.**  
17 Q. Okay. Did she have any particular focus  
18 while she was in law school on any particular subject  
19 matter?  
20 **A. No.**  
21 Q. Okay. Did she take any tax classes?  
22 **A. Yes.**  
23 Q. Do you recall what those classes were?  
24 **A. No.**  
25 Q. Okay. Do you know how many tax classes

22	<p>1 she took?</p> <p>2 <b>A. She took -- she took -- I don't know how</b></p> <p>3 <b>many classes she took. She did take a fair amount of</b></p> <p>4 <b>tax classes.</b></p> <p>5 Q. Do you know if it was more than two?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Was it more than three?</p> <p>8 <b>A. I'm not sure.</b></p> <p>9 Q. Okay. Do you think it was less than four?</p> <p>10 <b>A. I really am not sure.</b></p> <p>11 Q. Okay. Do you know what types of tax</p> <p>12 classes they were?</p> <p>13 <b>A. No.</b></p> <p>14 Q. Okay. Are you familiar at all with the</p> <p>15 subject matter of taxation?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. You are? How did you gain that knowledge?</p> <p>18 <b>A. Business experience.</b></p> <p>19 Q. When you say "business experience," what</p> <p>20 are you referring to?</p> <p>21 <b>A. I took my undergrad in business</b></p> <p>22 <b>management. Before attending school, I co-managed</b></p> <p>23 <b>the same John Deere dealership with my father.</b></p> <p>24 <b>Obviously, tax is an issue in any business, so I</b></p> <p>25 <b>believe I have a general familiarity with tax.</b></p>
23	<p>1 Q. So you understand concepts like accounts</p> <p>2 receivable, accounts payable?</p> <p>3 <b>A. Correct. Yes.</b></p> <p>4 Q. Are you familiar with what forms of tax</p> <p>5 returns a business would be required to file?</p> <p>6 <b>A. Not specifically.</b></p> <p>7 Q. Okay. Going back to your wife's duties at</p> <p>8 the law firm, at your firm, about how many hours was</p> <p>9 she there a day, or per week? I know it's hard</p> <p>10 juggling children.</p> <p>11 <b>A. Yeah.</b></p> <p>12 MR. PAUL: What kind of time frame are you</p> <p>13 talking about? Early in 2010?</p> <p>14 MR. MORAN: I'm talking about 2010, yes.</p> <p>15 THE WITNESS: I don't remember.</p> <p>16 Q. (By Mr. Moran) My understanding is she</p> <p>17 wasn't there full time?</p> <p>18 <b>A. That's a safe -- yeah, correct, she was</b></p> <p>19 <b>not there full time.</b></p> <p>20 Q. Okay. You testified that your wife helped</p> <p>21 you at your firm. Can I ask you to get a little more</p> <p>22 specific than that.</p> <p>23 Did she meet with clients? Did she draft</p> <p>24 pleadings? Did she appear in court?</p> <p>25 <b>A. At what time frame?</b></p>
24	<p>1 Q. Say 2010 to 2011.</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. She did all those things?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. What else did she do?</p> <p>6 <b>A. That's a pretty -- that's about it.</b></p> <p>7 Q. Okay. Would she meet with clients?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Would she do all these things without you</p> <p>10 being present?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. So she was authorized to sign a firm</p> <p>13 letter?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Was there any type of cases or matters</p> <p>16 that she focused on?</p> <p>17 <b>A. A particular type of case?</b></p> <p>18 Q. Yes.</p> <p>19 <b>A. No.</b></p> <p>20 Q. Just whatever came in the door?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Whatever you needed help with?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. How much collaboration was there between</p> <p>25 the of two you?</p>
25	<p>1 <b>A. A lot.</b></p> <p>2 Q. Okay. I mean, at that point the two of</p> <p>3 you were basically new lawyers, right?</p> <p>4 <b>A. Correct.</b></p> <p>5 Q. Starting out your firm?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. So would the two of you usually know what</p> <p>8 each other was working on?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. Okay. Would your firm typically be</p> <p>11 involved with business formation?</p> <p>12 <b>A. A little.</b></p> <p>13 Q. Okay. When I say "business formation," I</p> <p>14 mean someone comes in the door and they say I want to</p> <p>15 start a business doing whatever.</p> <p>16 Would you give them advice on whether or</p> <p>17 not they should organize as an LLC or a corporation,</p> <p>18 that type of thing?</p> <p>19 <b>A. From a liability standpoint. We generally</b></p> <p>20 <b>would refer the question of which would have the</b></p> <p>21 <b>most -- best tax advantages to whatever accountant</b></p> <p>22 <b>they were working with.</b></p> <p>23 Q. Let me make sure I understand that.</p> <p>24 You would advise them on the liability</p> <p>25 part of it?</p>

26

1 **A. And the management, continued management**  
 2 **of the company, yes.**  
 3 Q. And what about the tax implications?  
 4 Did you talk to your CPA about that?  
 5 **A. Generally.**  
 6 Q. Okay. Is that because you didn't feel  
 7 like you were qualified to give that kind of advice?  
 8 **A. No.**  
 9 Q. No, you were not qualified?  
 10 **A. No, it was not because I did not feel I**  
 11 **was qualified.**  
 12 Q. Okay. What was it? Why would you refer  
 13 them to a CPA?  
 14 **A. My experience was and has been that once**  
 15 **you -- once the attorney sets up the entity, the**  
 16 **primary continued -- in a small business that we**  
 17 **generally were working with, their long-term**  
 18 **interactions and annual tax filings are done with the**  
 19 **CPA, and I don't want to cause -- counter to what the**  
 20 **CPA would ultimately have liked to have done with the**  
 21 **long-term management of that company.**  
 22 Q. Okay. So you wanted to make sure the CPA  
 23 was on board with the decision?  
 24 **A. Correct.**  
 25 Q. But do you understand the various tax

27

1 implications of how a client decides to organize a  
 2 business?  
 3 **A. Generally.**  
 4 Q. Okay. Can you generally summarize that  
 5 for me?  
 6 MR. MARTIN: Let me just pose an  
 7 objection. It's an incomplete hypothetical, it's a  
 8 vague question.  
 9 Go ahead and answer, if you can.  
 10 THE WITNESS: Could you be more specific?  
 11 MR. MORAN: Sure.  
 12 Q. (By Mr. Moran) What are the tax  
 13 implications, very briefly, of deciding to form a  
 14 business as an LLC?  
 15 **A. I mean, the objection -- it is an**  
 16 **incomplete hypothetical, and I'll give you an example**  
 17 **as to if it's a sole member LLC, it's going to be**  
 18 **taxed as essentially a sole proprietorship, so if**  
 19 **they don't have a partner, I would recommend that**  
 20 **there would be -- they would not gain potential tax**  
 21 **advantages as filing as an LLC versus something else**  
 22 **if they don't have a partner, if it's not a multi**  
 23 **member LLC, so your question is very broad in that**  
 24 **it's -- I can't answer it with any specificity.**  
 25 Q. It was a very broad question. It was

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1 meant to be, and I'll accept your answer.  
 2 **A. Thank you.**  
 3 Q. What about securities compliance?  
 4 **A. No.**  
 5 Q. Do you have any experience in that?  
 6 **A. No.**  
 7 Q. Have you ever given legal advice on that?  
 8 I'm not asking for client identifications, but is  
 9 that part of your practice?  
 10 **A. No.**  
 11 Q. Just so we're clear, do you have any  
 12 formal education in tax?  
 13 **A. Beyond the competency that is part of a**  
 14 **juris doctorate and a member of the Utah State Bar,**  
 15 **no.**  
 16 Q. Okay. So you never took any kind of  
 17 classes?  
 18 **A. Yes. Sorry. You previously answered that**  
 19 **question -- or you previously asked that question.**  
 20 **The answer was no then, and it's still no now.**  
 21 Q. You've never taken accounting class?  
 22 **A. Oh, sorry. All right. Can I clarify?**  
 23 Q. Absolutely. Please do.  
 24 **A. I believe your question was did I take any**  
 25 **tax classes in law school.**

29

1 Q. Yes.  
 2 **A. The answer is no.**  
 3 Q. Okay.  
 4 **A. Did I take -- did I receive tax classes as**  
 5 **part of my undergraduate education?**  
 6 **I can't recall any specific tax classes,**  
 7 **but there absolutely were accounting classes, yes.**  
 8 Q. And those accounting classes probably  
 9 involved some discussion or education on general tax  
 10 concepts.  
 11 True?  
 12 **A. I can't remember the specifics of those**  
 13 **classes, but there definitely were accounting classes**  
 14 **that you would anticipate and expect in a business**  
 15 **management degree.**  
 16 Q. Sure. What about your wife, does she have  
 17 any formal tax training, except for what you've  
 18 already testified to?  
 19 **A. Jessica has the exact same degree that I**  
 20 **do from Utah Valley State College, which is a**  
 21 **Bachelor's degree in business management, and took**  
 22 **substantially similar cases -- or sorry.**  
 23 **Substantially similar classes. In fact, we were in**  
 24 **most of the same classes together.**  
 25 Q. Okay. So is it fair to say that, except



30

1 for the tax specific classes she took in law school,  
 2 her tax and accounting background is the same as  
 3 yours?  
 4 **A. Yes.**  
 5 Q. Where did she grow up?  
 6 **A. Delta.**  
 7 Q. Okay. Did the two of you know each other  
 8 before you went to college?  
 9 **A. We became -- Delta is small. I knew of**  
 10 **Jessica. I knew just about everybody I went to high**  
 11 **school with, but we became -- we started dating my**  
 12 **senior year of high school, her junior year of high**  
 13 **school.**  
 14 Q. Okay. So is she a year younger than you?  
 15 **A. Yes.**  
 16 Q. So she's about 35?  
 17 **A. Yes.**  
 18 Q. Okay. All right. I'm going to run  
 19 through a series of entities and individuals. I'd  
 20 like you to tell me whether or not you're familiar  
 21 with them and how.  
 22 Neldon Johnson?  
 23 **A. Am I familiar with him?**  
 24 Q. Yes.  
 25 **A. Yes.**

31

1 Q. How are you familiar with Mr. Johnson?  
 2 **A. He was a -- well, he was a former client,**  
 3 **and then I had involvement with him as an agent of**  
 4 **RaPower.**  
 5 Q. All right. Let's impact that a little  
 6 bit.  
 7 When is the first time you met Neldon  
 8 Johnson?  
 9 **A. 2010.**  
 10 Q. Okay. Was that the first time you had  
 11 heard his name?  
 12 **A. Yes.**  
 13 Q. Okay. Did you know -- prior to 2010, did  
 14 you know anyone else in the Johnson family?  
 15 **A. No. Well, there are lots of Johnsons in**  
 16 **Delta. I have no idea -- and I know lots of**  
 17 **Johnsons. I have no idea if Neldon is related to any**  
 18 **of those people that I know.**  
 19 Q. Okay. Do you know LeGrand Johnson?  
 20 **A. No.**  
 21 Q. Do you know Randall Johnson?  
 22 **A. No.**  
 23 Q. Also known as Randy Johnson?  
 24 **A. No.**  
 25 Q. How about Brenda Johnson?

32

1 **A. No.**  
 2 Q. Do you know Glenda Johnson?  
 3 **A. Yes.**  
 4 Q. How do you know Glenda Johnson?  
 5 **A. At the time when I had interactions with**  
 6 **Neldon, she was married to Neldon.**  
 7 Q. Okay.  
 8 **A. Well, actually -- sorry. I don't know**  
 9 **that they were married.**  
 10 Q. Okay.  
 11 **A. They held themselves out as heavily**  
 12 **involved.**  
 13 Q. Okay.  
 14 **A. I don't know if they were married.**  
 15 Q. All right. Did you ever meet or hear of  
 16 Glenda Johnson before you met Neldon Johnson?  
 17 **A. No.**  
 18 Q. Okay. Do you know where Neldon Johnson  
 19 lives?  
 20 **A. I did in 2010.**  
 21 Q. Okay. Do you know where he worked in  
 22 2010?  
 23 **A. No.**  
 24 Q. Okay. Do you know where he had any  
 25 activities, any business activities?

33

1 **A. No.**  
 2 Q. All right. You mentioned agent of  
 3 RaPower-3, LLC, when I asked you how you're familiar  
 4 with Neldon Johnson.  
 5 Do you recall that testimony?  
 6 **A. Yes.**  
 7 Q. All right. What did you mean by that?  
 8 Who is the agent of RaPower-3?  
 9 **A. Well, I did work for -- I did legal work**  
 10 **for RaPower-3 --**  
 11 Q. Okay.  
 12 **A. -- at the request of Neldon Johnson.**  
 13 Q. So was 2010 the first time you'd heard of  
 14 RaPower-3?  
 15 **A. Yes.**  
 16 Q. Okay. You said you did legal work for  
 17 RaPower-3?  
 18 **A. Yes.**  
 19 Q. Okay. Did you ever do legal work for  
 20 Neldon Johnson?  
 21 That's a yes or no question.  
 22 MR. MARTIN: You can answer that.  
 23 THE WITNESS: Yes.  
 24 Q. (By Mr. Moran) Okay. So both RaPower-3  
 25 and Neldon Johnson were clients of yours?

34	<p>1 <b>A. Yes.</b></p> <p>2 Q. Okay. Was Glenda Johnson a client?</p> <p>3 <b>A. No.</b></p> <p>4 Q. Okay. And you mentioned being an agent of</p> <p>5 RaPower-3.</p> <p>6 MR. PAUL: No. He mentioned that</p> <p>7 Neldon Johnson was an agent of RaPower-3.</p> <p>8 Q. (By Mr. Moran) Which is your testimony?</p> <p>9 <b>A. That Neldon was an agent of RaPower-3.</b></p> <p>10 Q. Okay. Thank you for clearing that up.</p> <p>11 Were you ever RaPower-3's general counsel?</p> <p>12 <b>A. No. No. I -- no. In the terms that I</b></p> <p>13 <b>would define general counsel, no.</b></p> <p>14 <b>I guess I'll clarify. I mean, there was a</b></p> <p>15 <b>very brief moment that Neldon asserted that I would</b></p> <p>16 <b>be RaPower-3's general counsel as he asked me to do</b></p> <p>17 <b>very limited and specific things for RaPower-3, but I</b></p> <p>18 <b>never reached the point that I had a general</b></p> <p>19 <b>understanding of RaPower-3 such that I could feel</b></p> <p>20 <b>like I could have represented them in a general</b></p> <p>21 <b>counsel fashion.</b></p> <p>22 Q. All right. Help me understand that.</p> <p>23 It sounds like Neldon Johnson wanted you</p> <p>24 to be RaPower-3's general counsel?</p> <p>25 <b>A. It was a we would like to consider you.</b></p>	36	<p>1 clients, but not necessarily being an employee or an</p> <p>2 officer at RaPower-3?</p> <p>3 <b>A. That is absolutely a better explanation,</b></p> <p>4 <b>yes.</b></p> <p>5 Q. Okay. You used the term you may have been</p> <p>6 RaPower-3's general counsel for a brief moment.</p> <p>7 Do you recall when that was?</p> <p>8 <b>A. It was -- it was actually I had a meeting</b></p> <p>9 <b>with Neldon where we had this brief conversation, and</b></p> <p>10 <b>I believe the word "general counsel" was used where</b></p> <p>11 <b>he asked me to assist him in responding to an</b></p> <p>12 <b>accountant, and I believe in that letter I used the</b></p> <p>13 <b>words "general counsel."</b></p> <p>14 Q. Do you recall when that meeting was?</p> <p>15 <b>A. I can review my notes.</b></p> <p>16 Q. We're going to look at a document.</p> <p>17 (EXHIBIT 569 WAS MARKED.)</p> <p>18 Q. (By Mr. Moran) Mr. Anderson, you've been</p> <p>19 given a copy of Plaintiff's Exhibit 569. I'd ask you</p> <p>20 to review it and see if that refreshes your</p> <p>21 recollection as to when you and Neldon Johnson had a</p> <p>22 meeting where you -- I believe you testified you were</p> <p>23 reviewing questions from a CPA firm.</p> <p>24 <b>A. Okay.</b></p> <p>25 <b>(Witness examining document.)</b></p>
35	<p>1 <b>It was -- I felt at the time it was almost an</b></p> <p>2 <b>interview let's try it out process.</b></p> <p>3 Q. Is that a role that you set up?</p> <p>4 <b>A. Huh?</b></p> <p>5 Q. Were you seeking out that role?</p> <p>6 <b>A. No.</b></p> <p>7 Q. Why not?</p> <p>8 <b>A. At the time I sought out work -- as we</b></p> <p>9 <b>have covered, I started the first of that year, I was</b></p> <p>10 <b>fresh out of law school. I hung out my shingle. At</b></p> <p>11 <b>that point my revenue was not very high, and I had a</b></p> <p>12 <b>family to support, so I was -- I was looking for</b></p> <p>13 <b>work.</b></p> <p>14 Q. My question was: Were you looking to be</p> <p>15 RaPower 3's general counsel? You testified no, but</p> <p>16 then you testified you were looking for work. Those</p> <p>17 two answers seem kind of inconsistent.</p> <p>18 Could you help me understand?</p> <p>19 <b>A. I needed a better understanding of the</b></p> <p>20 <b>work that I would be doing and asked to do before I</b></p> <p>21 <b>was completely on board with such a role, and also</b></p> <p>22 <b>that it wouldn't interfere with the remainder of my</b></p> <p>23 <b>practice, or the other, the rest of my practice.</b></p> <p>24 Q. So is it fair to say that you were</p> <p>25 interested in having Neldon Johnson or RaPower-3 as</p>	37	<p>1 Q. (By Mr. Moran) Does looking at</p> <p>2 Plaintiff's Exhibit 569 refresh your recollection?</p> <p>3 <b>A. Refresh my recollection as to the question</b></p> <p>4 <b>of time?</b></p> <p>5 Q. Yes.</p> <p>6 <b>A. Yes. It was -- I mean, it was end of</b></p> <p>7 <b>September/first of October. The specific date I</b></p> <p>8 <b>cannot recall.</b></p> <p>9 Q. Sure. And that's in 2010?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Okay. All right. We'll probably talk</p> <p>12 more about that in a little bit.</p> <p>13 In that time frame and in responding to</p> <p>14 that -- the CPA's questions, is that the only time</p> <p>15 you referred to yourself as RaPower-3's general</p> <p>16 counsel?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. Is it fair to say, and I'm just trying to</p> <p>19 understand your testimony, that at that time Neldon</p> <p>20 Johnson was interviewing you and trying to bring you</p> <p>21 on as RaPower-3's general counsel?</p> <p>22 <b>A. He clearly wanted something from me.</b></p> <p>23 Q. Okay. What was that something?</p> <p>24 <b>A. Don't know. Well, I mean, at the time I</b></p> <p>25 <b>didn't know. At the time that I had the meeting and</b></p>

38	<p>1 <b>he asked me to assist him with this one limited</b></p> <p>2 <b>issue, I didn't know.</b></p> <p>3 Q. Can you tell me how he approached you to</p> <p>4 deal with that one specific issue?</p> <p>5 Did he walk in the door? Did he call you?</p> <p>6 <b>A. He walked in the door.</b></p> <p>7 Q. Okay. Was that the first time you met</p> <p>8 him?</p> <p>9 <b>A. No.</b></p> <p>10 Q. Okay. When had you met him prior to that?</p> <p>11 <b>A. In September I had done some work</b></p> <p>12 <b>unrelated to RaPower-3.</b></p> <p>13 Q. Okay. Unrelated to solar lenses?</p> <p>14 <b>A. Correct.</b></p> <p>15 Q. And tax benefits?</p> <p>16 <b>A. Correct.</b></p> <p>17 Q. And that work you did for him in</p> <p>18 September -- I'm not asking what it was -- that was</p> <p>19 the first matter you dealt with him?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. Okay. And it sounds like about a month</p> <p>22 later he walked in the door and said can you help me</p> <p>23 with a CPA question?</p> <p>24 <b>A. Yes.</b></p> <p>25 MR. MARTIN: Just for clarity of the</p>	40	<p>1 walked in the door about a month later and said I've</p> <p>2 got some questions from a CPA that I need help with?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. Okay. In that September/October time</p> <p>5 frame, were there any other matters involving</p> <p>6 RaPower-3, solar lenses, tax implications of solar</p> <p>7 lenses that you advised Neldon Johnson about?</p> <p>8 <b>A. No.</b></p> <p>9 Q. If I'm understanding the sequence of</p> <p>10 events correctly, September I think was the unrelated</p> <p>11 matter, and then October 2010 there was questions</p> <p>12 from a CPA?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. About when after that did you give any --</p> <p>15 well, withdrawn. Let me rephrase.</p> <p>16 After October 2010, did there come a time</p> <p>17 when Neldon Johnson approached you about RaPower-3</p> <p>18 and solar lenses?</p> <p>19 <b>A. He approached me regarding questions</b></p> <p>20 <b>regarding tax -- principles of tax law.</b></p> <p>21 Q. Okay. And about when was that?</p> <p>22 <b>A. October.</b></p> <p>23 Q. Of 2010?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. Okay. So around the same time you were</p>
39	<p>1 record, Mr. Paul, the discussions and conversations</p> <p>2 that Neldon Johnson had with Mr. Anderson as it</p> <p>3 relates to this issue and the accounting issue and</p> <p>4 the auditor issue, are you considering that within</p> <p>5 the scope of the waiver of the privilege that you</p> <p>6 identified earlier?</p> <p>7 MR. PAUL: Yes. So long as it relates to</p> <p>8 RaPower-3 and the solar issue that this case is</p> <p>9 about, yes, it's waived.</p> <p>10 The personal representation of Mr. Johnson</p> <p>11 unrelated has not been waived.</p> <p>12 MR. MORAN: And, Mr. Anderson, I'll</p> <p>13 represent to you that you should not consider any</p> <p>14 question I ask to be asking about any personal issue</p> <p>15 that you advised Neldon Johnson on.</p> <p>16 All my questions are directed towards, as</p> <p>17 Mr. Paul said, RaPower-3, solar lenses and the tax</p> <p>18 implications and any document that has been produced</p> <p>19 to the United States.</p> <p>20 Q. (By Mr. Moran) Do you understand?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Okay. All right. So sounds like in</p> <p>23 September 2010, on completely unrelated issues --</p> <p>24 again, I'm not asking about Neldon Johnson as a</p> <p>25 client -- subsequent to that, it sounds like he</p>	41	<p>1 working on the CPA's questions?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Okay. We'll get back to that in general</p> <p>4 in a minute.</p> <p>5 So when you referred to yourself as</p> <p>6 RaPower-3's general counsel in Exhibit 569, is that</p> <p>7 the only time you referred to yourself as general</p> <p>8 counsel?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. Okay. Did you ever consider yourself to</p> <p>11 be an officer of RaPower-3?</p> <p>12 <b>A. No.</b></p> <p>13 Q. Okay. How about a director?</p> <p>14 <b>A. No.</b></p> <p>15 Q. Okay. Did you ever have a salary from</p> <p>16 RaPower-3?</p> <p>17 <b>A. No.</b></p> <p>18 Q. Would you have billed Neldon Johnson or</p> <p>19 RaPower-3 for the time that you spent on that matter?</p> <p>20 <b>A. Could you ask the question again?</b></p> <p>21 Q. Sure. Would you have sent a bill or an</p> <p>22 invoice to Neldon Johnson or RaPower-3, LLC, for the</p> <p>23 time that you spent working on that matter?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. Okay. So it was an attorney-client</p>

42	<p>1 relationship, not a general counsel relationship?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Sounds like Neldon Johnson wanted you to</p> <p>4 refer to yourself as general counsel?</p> <p>5 <b>A. I don't know.</b></p> <p>6 Q. Well, in Exhibit 569 you -- I believe</p> <p>7 you -- you refer to yourself as general counsel.</p> <p>8 <b>A. The question asked me what Neldon Johnson</b></p> <p>9 <b>wanted. I don't know what he wanted.</b></p> <p>10 Q. Okay. Well, who -- you say you currently</p> <p>11 serve as general counsel for RaPower-3. I'm looking</p> <p>12 at the first sentence in the letter in Exhibit 569.</p> <p>13 Whose idea was that?</p> <p>14 <b>A. Neldon Johnson in the meeting regarding</b></p> <p>15 <b>the questions posed from the CPA said something to</b></p> <p>16 <b>the extent, I don't remember the exact words, of we'd</b></p> <p>17 <b>like to consider having you serve or be RaPower-3's</b></p> <p>18 <b>general counsel. I probably just carried that</b></p> <p>19 <b>forward, but in word only.</b></p> <p>20 Q. Okay.</p> <p>21 <b>A. I was in no way -- I did not -- I was not</b></p> <p>22 <b>privy to the operations of RaPower-3 in such that I</b></p> <p>23 <b>would be able to advise them on general matters, only</b></p> <p>24 <b>in the information and request that they had given me</b></p> <p>25 <b>specifically including, for example, this letter to a</b></p>	44	<p>1 <b>position in this letter, this is the extent of what I</b></p> <p>2 <b>knew about International Automated Systems.</b></p> <p>3 Q. Sitting here today, what do you know about</p> <p>4 International Automated Systems?</p> <p>5 <b>A. Nothing. That's the same that I knew</b></p> <p>6 <b>then.</b></p> <p>7 Q. Okay. So any information about</p> <p>8 International Automated Systems that you put in a</p> <p>9 letter or a memo, you got that information from</p> <p>10 Neldon Johnson?</p> <p>11 <b>A. Correct.</b></p> <p>12 Q. Okay. Do you know -- withdrawn.</p> <p>13 International Automated Systems is also</p> <p>14 referred to IAS or IAUS?</p> <p>15 <b>A. Yes, I'm familiar with the IAS.</b></p> <p>16 Q. Okay. Can you just briefly give me an</p> <p>17 overview of what you know about IAS?</p> <p>18 <b>A. Nothing.</b></p> <p>19 Q. Do you know what its business is?</p> <p>20 <b>A. No.</b></p> <p>21 Q. Do you know how it's organized?</p> <p>22 <b>A. No.</b></p> <p>23 Q. Do you know who the CEO is?</p> <p>24 <b>A. No.</b></p> <p>25 Q. Do you know who owns IAS?</p>
43	<p>1 <b>CPA firm.</b></p> <p>2 Q. All right. So the information that's in</p> <p>3 Exhibit 569 relating to RaPower-3, where did you get</p> <p>4 that information from?</p> <p>5 <b>A. Neldon.</b></p> <p>6 Q. Neldon Johnson?</p> <p>7 <b>A. Neldon Johnson.</b></p> <p>8 Q. Okay. Do you have any familiarity with</p> <p>9 RaPower-3's -- or Neldon Johnson's solar lenses</p> <p>10 operations?</p> <p>11 <b>A. No.</b></p> <p>12 Q. No firsthand knowledge?</p> <p>13 <b>A. No.</b></p> <p>14 Q. Okay. So the knowledge that you received</p> <p>15 you got from who?</p> <p>16 <b>A. Neldon Johnson.</b></p> <p>17 Q. Okay. All right. We got sidetracked</p> <p>18 there with RaPower-3, but I'm going to give you a</p> <p>19 series of entities and names, and I want you to tell</p> <p>20 me whether or not you're familiar with them, how and</p> <p>21 when you became familiar.</p> <p>22 International Automated Systems, Inc.?</p> <p>23 <b>A. To the extent that I had information given</b></p> <p>24 <b>to me by Neldon limited in -- very limited in scope</b></p> <p>25 <b>to answer these questions -- to set forth his</b></p>	45	<p>1 <b>A. No.</b></p> <p>2 Q. Do you know if it's a publicly traded</p> <p>3 company?</p> <p>4 <b>A. I believe Neldon told me it was.</b></p> <p>5 Q. Okay. Do you know who owns RaPower-3?</p> <p>6 <b>A. No.</b></p> <p>7 Q. Do you know how RaPower-3 is organized?</p> <p>8 <b>A. No.</b></p> <p>9 Q. Have you ever owned IAS stock?</p> <p>10 <b>A. I don't remember. You know, I might have.</b></p> <p>11 <b>I might have.</b></p> <p>12 Q. Do you own IAS stock now?</p> <p>13 <b>A. No.</b></p> <p>14 Q. Okay. What makes you think you might</p> <p>15 have?</p> <p>16 <b>A. I remember Neldon telling me that it was a</b></p> <p>17 <b>publicly traded company. Neldon was quite the</b></p> <p>18 <b>salesman, I'm sure he still is, and I might have</b></p> <p>19 <b>looked it up, and I might have -- I had a few hundred</b></p> <p>20 <b>dollars, not very much, in a little E Trade account</b></p> <p>21 <b>that I played with, you know, and I might have bought</b></p> <p>22 <b>a little. I don't remember. If I did, it was a</b></p> <p>23 <b>nominal amount.</b></p> <p>24 <b>But that E trade account, I think it still</b></p> <p>25 <b>exists. I don't know that it's -- I think it's just</b></p>

46	<p>1 <b>sitting in a brokerage. I don't think I own any</b></p> <p>2 <b>stock currently. It's just sitting there.</b></p> <p>3 Q. All right. I'll accept for now the answer</p> <p>4 to that question is no, you don't currently own IAS</p> <p>5 stock, but I'm going to ask you to go back and check,</p> <p>6 and --</p> <p>7 <b>A. I can check. Okay.</b></p> <p>8 Q. -- if it turns out your testimony is</p> <p>9 incorrect, arrange with Mr. Martin and just let me</p> <p>10 know --</p> <p>11 <b>A. Okay.</b></p> <p>12 Q. -- okay?</p> <p>13 <b>A. To be clear, the answer is no. I only</b></p> <p>14 <b>clarify if the answer is not no; is that correct?</b></p> <p>15 Q. Exactly.</p> <p>16 <b>A. Okay.</b></p> <p>17 Q. If the answer is still no, there's no</p> <p>18 need.</p> <p>19 <b>A. Okay.</b></p> <p>20 Q. I asked you a series questions about</p> <p>21 RaPower-3 and International Automated Systems. For</p> <p>22 example, how are they organized? Who's the CEO?</p> <p>23 Do you recall those questions?</p> <p>24 <b>A. I do.</b></p> <p>25 Q. Okay. And when the answer to my question</p>	48	<p>1 <b>independent investigation.</b></p> <p>2 Q. All right. So the information contained</p> <p>3 in those documents, who did you get that information</p> <p>4 from?</p> <p>5 <b>A. Neldon Johnson.</b></p> <p>6 Q. You testified that Neldon Johnson</p> <p>7 encouraged you to buy IAS stock?</p> <p>8 <b>A. I don't know that he encouraged me. I</b></p> <p>9 <b>can't say that.</b></p> <p>10 Q. All right. But you said he was quite the</p> <p>11 salesman?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. So what do you mean by that?</p> <p>14 <b>A. He was convincing in the things that he</b></p> <p>15 <b>said.</b></p> <p>16 Q. What types of things you talking about?</p> <p>17 MR. MARTIN: Are you asking him questions</p> <p>18 about communications with Neldon Johnson as it</p> <p>19 pertains to the energy equipment, or are you talking</p> <p>20 about --</p> <p>21 MR. MORAN: Let me reask my question.</p> <p>22 Q. (By Mr. Moran) When you said that Neldon</p> <p>23 Johnson was quite the salesman, regarding IAS stock?</p> <p>24 <b>A. I did not say that.</b></p> <p>25 Q. Okay. Can you clarify?</p>
47	<p>1 was no, you didn't know, for example, how IAS was</p> <p>2 organized --</p> <p>3 <b>A. And I still don't.</b></p> <p>4 Q. Okay.</p> <p>5 <b>A. I think you asked if it was publicly</b></p> <p>6 <b>traded, and now, thinking back on it and reflecting</b></p> <p>7 <b>on that and those conversations with Neldon that I do</b></p> <p>8 <b>remember even looking up that stock, I would have to</b></p> <p>9 <b>change my answer that I believe, yes, it was a</b></p> <p>10 <b>publicly traded company.</b></p> <p>11 Q. Okay. I'm referring only to the questions</p> <p>12 you answered no to.</p> <p>13 <b>A. Okay.</b></p> <p>14 Q. Do you think there was a time that you</p> <p>15 knew the answers to those questions?</p> <p>16 <b>A. Did I know the answer? I did not know</b></p> <p>17 <b>with certainty.</b></p> <p>18 Q. Okay.</p> <p>19 <b>A. I had in my file at some point through my</b></p> <p>20 <b>brief representation of documents that asserted</b></p> <p>21 <b>entity status of those companies, and so the extent</b></p> <p>22 <b>of my knowledge would be limited to what is contained</b></p> <p>23 <b>in those documents.</b></p> <p>24 Q. Okay.</p> <p>25 <b>A. But I did not know firsthand from my own</b></p>	49	<p>1 <b>A. I said he was quite the salesman</b></p> <p>2 <b>generally. I did not say he was quite the salesman</b></p> <p>3 <b>about stock or that he --</b></p> <p>4 Q. Okay.</p> <p>5 <b>A. -- sold his stock. He as an individual</b></p> <p>6 <b>and things that he was involved in generally, he --</b></p> <p>7 <b>I'm trying to think how to word this. Sorry. Just</b></p> <p>8 <b>give me a minute.</b></p> <p>9 Q. I'm not asking for any information that</p> <p>10 was conveyed in the attorney-client relationship.</p> <p>11 <b>A. I understand that. He did not -- let's</b></p> <p>12 <b>just clarify. He did not in any way sell or</b></p> <p>13 <b>encourage me to purchase stock if I did, indeed, buy</b></p> <p>14 <b>stock.</b></p> <p>15 Q. Okay. What about the solar lens</p> <p>16 technology?</p> <p>17 Is that what you meant when you said he</p> <p>18 was convincing?</p> <p>19 <b>A. He talked about -- yes, he did talk about</b></p> <p>20 <b>the solar lens technology and that it was ground</b></p> <p>21 <b>breaking technology, revolutionary, those sort of</b></p> <p>22 <b>things.</b></p> <p>23 Q. What else did he tell you about the</p> <p>24 technology? Any specifics?</p> <p>25 <b>A. It felt specific, but thinking back, it</b></p>

50	<p>1 <b>was pretty general.</b></p> <p>2 Q. Okay. Did he tell you what type of</p> <p>3 commercial product he was planning to create?</p> <p>4 <b>A. No.</b></p> <p>5 Q. Did he tell you how he intended to make</p> <p>6 money?</p> <p>7 <b>A. No.</b></p> <p>8 Q. Okay. What was your understanding, if you</p> <p>9 had any, of what he was planning to do with this</p> <p>10 solar technology?</p> <p>11 <b>A. I don't know. He described the basics of</b></p> <p>12 <b>how it worked, which sounded to my lay engineering</b></p> <p>13 <b>abilities as fascinating, but that's about the extent</b></p> <p>14 <b>of it.</b></p> <p>15 Q. And you just testified that he told you</p> <p>16 how it worked.</p> <p>17 What specifically about how it worked?</p> <p>18 What did he tell you?</p> <p>19 <b>A. Essentially that it was a -- harnessed the</b></p> <p>20 <b>sun to create heat to create steam to create power.</b></p> <p>21 <b>That's about the most rudimentary understanding I</b></p> <p>22 <b>had.</b></p> <p>23 Q. When you say power, do you mean</p> <p>24 electricity?</p> <p>25 <b>A. Yes, I understood it as electricity, but I</b></p>	52	<p>1 <b>my knowledge of that name. I do not know him as</b></p> <p>2 <b>person. I never -- I've seen his name, and that's</b></p> <p>3 <b>it.</b></p> <p>4 Q. So you've never met him?</p> <p>5 <b>A. No.</b></p> <p>6 Q. Never spoken to him on the phone?</p> <p>7 <b>A. No.</b></p> <p>8 Q. Never exchanged e-mails?</p> <p>9 <b>A. Not that I recall.</b></p> <p>10 Q. Okay. Do you consider him a client?</p> <p>11 <b>A. No.</b></p> <p>12 Q. Have you ever heard of a company called</p> <p>13 Black Light?</p> <p>14 <b>A. No.</b></p> <p>15 Q. Have you ever heard of a company called</p> <p>16 Black Night?</p> <p>17 <b>A. No.</b></p> <p>18 Q. Have you ever heard of a company called</p> <p>19 Starlight?</p> <p>20 <b>A. No.</b></p> <p>21 Q. How about the NPJ Family Partnership?</p> <p>22 <b>A. No.</b></p> <p>23 Q. How about SOLCO I, LLC?</p> <p>24 <b>A. No.</b></p> <p>25 Q. What about LTB, LLC?</p>
51	<p>1 <b>can't say that he said electricity. I might have</b></p> <p>2 <b>drawn that conclusion myself.</b></p> <p>3 Q. Do you know what he was going to do with</p> <p>4 that power?</p> <p>5 <b>A. No.</b></p> <p>6 Q. Did he tell you?</p> <p>7 <b>A. No.</b></p> <p>8 Q. What did he tell you about where he was at</p> <p>9 in the development process?</p> <p>10 <b>A. Didn't.</b></p> <p>11 Q. Did he tell you that it worked then?</p> <p>12 <b>A. I don't recall that he said that.</b></p> <p>13 Q. Okay. Do you recall if he said it was</p> <p>14 going to work soon?</p> <p>15 <b>A. I don't.</b></p> <p>16 Q. We're back to I'm going to give you an</p> <p>17 entity or an individual, and tell me what you know</p> <p>18 about it.</p> <p>19 LTB1, LLC?</p> <p>20 <b>A. Never heard of it.</b></p> <p>21 Q. You've never heard of LTB1, LLC?</p> <p>22 <b>A. No.</b></p> <p>23 Q. Okay. R. Gregory Shepard?</p> <p>24 <b>A. I recall seeing his name in some documents</b></p> <p>25 <b>that Neldon had given me, but that was the extent of</b></p>	53	<p>1 <b>A. No.</b></p> <p>2 Q. What about LTB L&amp;M, LLC?</p> <p>3 <b>A. No.</b></p> <p>4 Q. Any company with LTB in its name?</p> <p>5 <b>A. No.</b></p> <p>6 Q. Okay. How about Exsun Energy, LLC?</p> <p>7 <b>A. No.</b></p> <p>8 Q. How about Sun Power Associates?</p> <p>9 <b>A. No.</b></p> <p>10 Q. Okay. How about TCL16 BLT?</p> <p>11 <b>A. No.</b></p> <p>12 Q. How about Cobblestone?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. How are you familiar with Cobblestone?</p> <p>15 <b>A. I am currently and have been since 2011</b></p> <p>16 <b>the Delta City Attorney. As part of my duties as the</b></p> <p>17 <b>Delta City Attorney, I am the prosecutor for the</b></p> <p>18 <b>Delta City Justice Court prosecuting misdemeanors.</b></p> <p>19 <b>It seems that many of my defendants are</b></p> <p>20 <b>either working at or getting -- they mention</b></p> <p>21 <b>Cobblestone as their employer. I know -- that is</b></p> <p>22 <b>extent of my knowledge regarding that name, though.</b></p> <p>23 Q. About how many folks are you thinking of</p> <p>24 that list Cobblestone as an employer?</p> <p>25 <b>A. I don't know.</b></p>

54	<p>1 Q. Okay. Do you think there are more than</p> <p>2 ten?</p> <p>3 <b>A. Probably not.</b></p> <p>4 Q. Do you know who owns Cobblestone?</p> <p>5 <b>A. No.</b></p> <p>6 Q. Do you know where Cobblestone -- where its</p> <p>7 business is?</p> <p>8 <b>A. No.</b></p> <p>9 Q. Okay. Do you know where those individuals</p> <p>10 work?</p> <p>11 <b>A. No.</b></p> <p>12 Q. Do you know what Cobblestone does?</p> <p>13 <b>A. No.</b></p> <p>14 Q. All right. Did there come a time that you</p> <p>15 or your firm were approached -- I think you've</p> <p>16 already testified to this, but I'm going to ask it</p> <p>17 again.</p> <p>18 Did there come a time that you or your</p> <p>19 firm were approached to opine on the tax implications</p> <p>20 of solar lenses that RaPower-3 and Neldon Johnson</p> <p>21 were involved with?</p> <p>22 MR. MARTIN: I'll object. It's compound</p> <p>23 and lacks foundation, but go ahead.</p> <p>24 MR. MORAN: I'll rephrase.</p> <p>25 THE WITNESS: Thank you.</p>	56	<p>1 Q. Is this the same -- is this document the</p> <p>2 same as the document you just looked at to refresh</p> <p>3 your recollection?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. Okay.</p> <p>6 MR. MARTIN: Chris, if I could just for</p> <p>7 the record, this is a document that you're</p> <p>8 introducing as Exhibit --</p> <p>9 MR. MORAN: 570.</p> <p>10 MR. MARTIN: -- 570. It is a document</p> <p>11 that bears the signature block of Jessica Anderson.</p> <p>12 For clarity of record, Mr. Paul, this</p> <p>13 document does not bear the signature block of</p> <p>14 Mr. Anderson. However, my understanding of the</p> <p>15 court's orders and the stipulation that has been made</p> <p>16 is that the attorney-client privilege as it relates</p> <p>17 to the subject matter of what's been previously</p> <p>18 referred to as the Anderson matter has been waived</p> <p>19 and that Mr. Anderson is to provide testimony</p> <p>20 consistent with that waiver, so I think it's</p> <p>21 appropriate that the United States ask him questions</p> <p>22 about this document, but I want to understand from</p> <p>23 your standpoint whether the document that's been</p> <p>24 marked as Exhibit 570 is something that in your</p> <p>25 client's view is within the scope of the waiver in</p>
55	<p>1 Q. (By Mr. Moran) You testified earlier that</p> <p>2 I think in October 2010, after you'd given Neldon</p> <p>3 Johnson assistance responding to the CPA, then he</p> <p>4 approached you with another matter?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. What was that matter?</p> <p>7 <b>A. To provide summaries regarding tax</b></p> <p>8 <b>principles.</b></p> <p>9 Q. What did those tax principles involve?</p> <p>10 <b>A. The specifics?</b></p> <p>11 Q. Yes.</p> <p>12 <b>A. Can I review my notes?</b></p> <p>13 Q. Absolutely. Whatever notes you're</p> <p>14 reviewing, I'm going to ask to see them.</p> <p>15 <b>A. Okay. Material participation, passive and</b></p> <p>16 <b>active income activity, 179 considerations.</b></p> <p>17 MR. MARTIN: Why don't you just go ahead</p> <p>18 and identify for him --</p> <p>19 THE WITNESS: It's Bates No. 212.</p> <p>20 (EXHIBIT 570 WAS MARKED.)</p> <p>21 Q. (By Mr. Moran) Mr. Anderson, you've been</p> <p>22 given a copy of what's marked for identification as</p> <p>23 Plaintiff's Exhibit 570.</p> <p>24 Do you recognize this document?</p> <p>25 <b>A. Yes.</b></p>	57	<p>1 view of whose signature block is on here, and if you</p> <p>2 have a different view than I do as to what the scope</p> <p>3 of the waiver and order is, I'd just ask that you let</p> <p>4 us know and that we can address it from there.</p> <p>5 MR. PAUL: Yeah, I think this does fall</p> <p>6 within the scope of the waiver, so I don't have any</p> <p>7 objections to the witness answering questions related</p> <p>8 to it subject to proper foundation and proper</p> <p>9 personal firsthand knowledge.</p> <p>10 I would also note that the date on the</p> <p>11 letter's February 9th of 2017.</p> <p>12 MR. MORAN: I'm going to ask him some</p> <p>13 questions about that.</p> <p>14 MR. PAUL: Okay.</p> <p>15 MR. MARTIN: But to the extent there are</p> <p>16 communications --</p> <p>17 MR. PAUL: I have no objection to this</p> <p>18 witness testifying about Exhibit 570.</p> <p>19 Q. (By Mr. Moran) Mr. Anderson, you've been</p> <p>20 given a copy of what's been marked for identification</p> <p>21 as Plaintiff's Exhibit 570.</p> <p>22 Do you recognize this document?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. Is this a document that you produced to</p> <p>25 the United States -- that you or your law firm</p>

58	<p>1 produced to the United States?</p> <p>2 MR. MARTIN: Objection. Assumes facts not</p> <p>3 in evidence. Lacks foundation.</p> <p>4 MR. MORAN: I'll withdraw the question.</p> <p>5 Q. (By Mr. Moran) Mr. Anderson, do you</p> <p>6 recall getting a Subpoena for documents from the</p> <p>7 United States?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Okay. Was that about a year ago?</p> <p>10 <b>A. I don't recall.</b></p> <p>11 Q. Okay. But you do recall getting a</p> <p>12 Subpoena for documents from the United States in this</p> <p>13 case?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Okay. Did you comply with that Subpoena?</p> <p>16 <b>A. I believe so.</b></p> <p>17 Q. Okay. Can you tell me what you did to</p> <p>18 comply with the Subpoena? And I'm not asking you for</p> <p>19 any conversations you had between you and your</p> <p>20 attorney.</p> <p>21 I'm asking you specifically what did you</p> <p>22 do to procure the documents that that Subpoena</p> <p>23 requested?</p> <p>24 MR. MARTIN: I'll object. It's contrary</p> <p>25 to the court order and it lacks foundation. I'm</p>	60	<p>1 documents -- is that a fair interpretation of what</p> <p>2 documents the Subpoena requested?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. After you received that document Subpoena,</p> <p>5 what did you do? Again, I'm not asking you for any</p> <p>6 communications you had with your attorney, but what</p> <p>7 did you do to react and --</p> <p>8 <b>A. I reviewed my files and my documents that</b></p> <p>9 <b>I have that would fit the definition of the Subpoena.</b></p> <p>10 Q. Did you find documents that were</p> <p>11 responsive to the Subpoena?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Okay. And what did you do with those</p> <p>14 documents?</p> <p>15 <b>A. I assembled them and created a new file --</b></p> <p>16 Q. Okay.</p> <p>17 <b>A. -- of all those documents assembled.</b></p> <p>18 Q. Anything else?</p> <p>19 <b>A. No.</b></p> <p>20 Q. Did there come a time where you gave those</p> <p>21 documents to someone else?</p> <p>22 MR. MARTIN: You can answer.</p> <p>23 THE WITNESS: I --</p> <p>24 MR. PAUL: That's a yes or no question.</p> <p>25 THE WITNESS: Yes.</p>
59	<p>1 happy to clarify, if you'd like.</p> <p>2 MR. MORAN: Please do.</p> <p>3 MR. PAUL: I'll join in that objection.</p> <p>4 MR. MARTIN: The arrangement that was made</p> <p>5 was that the documents would not be produced by</p> <p>6 Mr. Anderson. The documents would be produced by</p> <p>7 Neldon Johnson.</p> <p>8 I believe Neldon Johnson is the one that</p> <p>9 produced to the United States the documents in</p> <p>10 question.</p> <p>11 MR. MORAN: Okay. Did you have anything</p> <p>12 to add?</p> <p>13 MR. PAUL: No. I agree with that.</p> <p>14 Q. (By Mr. Moran) Okay. Mr. Anderson, we</p> <p>15 already established that you got a document Subpoena</p> <p>16 from the United States?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. And that document Subpoena requested</p> <p>19 certain documents related to the subject matter we're</p> <p>20 discussing today that counsel's agreed is waived.</p> <p>21 Do you recall that?</p> <p>22 <b>A. Can you ask that question again?</b></p> <p>23 Q. The Subpoena requested documents related</p> <p>24 to Neldon Johnson and solar lenses.</p> <p>25 Is that a fair understanding of what</p>	61	<p>1 Q. (By Mr. Moran) Who did you give them to?</p> <p>2 <b>A. My attorney.</b></p> <p>3 Q. Okay. Do you know what your attorney did</p> <p>4 with those documents?</p> <p>5 <b>A. No.</b></p> <p>6 Q. Okay. Do you recognize Exhibit 570 as a</p> <p>7 document that you gave to your attorney that was</p> <p>8 responsive to the United States Subpoena?</p> <p>9 MR. MARTIN: You can answer.</p> <p>10 THE WITNESS: Yes.</p> <p>11 Q. (By Mr. Moran) So is it fair to say that</p> <p>12 Exhibit 570 is from your files?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Okay. How were those files maintained?</p> <p>15 MR. PAUL: Objection. Foundation.</p> <p>16 Q. (By Mr. Moran) You can answer.</p> <p>17 <b>A. I guess I need more clarification.</b></p> <p>18 Q. All right. Were they paper files that</p> <p>19 were kept in folders or were they electronically</p> <p>20 stored?</p> <p>21 MR. PAUL: I'm going to object on</p> <p>22 foundation.</p> <p>23 Which documents are you talking about?</p> <p>24 Are you talking about his original file or what was</p> <p>25 produced to --</p>



<p style="text-align: right;">62</p> <p>1 MR. MORAN: Fair. Let's ask a more 2 broader question. 3 Q. (By Mr. Moran) You said you searched your 4 files for documents in response to the Subpoena? 5 <b>A. Yes.</b> 6 Q. Where did you look? 7 <b>A. I looked in my digital files. I also 8 looked in my physical files.</b> 9 Q. Okay. So is that your standard practice 10 to keep those files digitally and in folders? 11 <b>A. Standard practice is constantly in flux in 12 my little firm.</b> 13 Q. Where did you find Exhibit 570; do you 14 recall? 15 <b>A. My digital file.</b> 16 Q. Are those on a hard drive or on a server? 17 <b>A. I'm a small enough firm that all of my 18 documents are basically on my personal computer.</b> 19 Q. So is that the same computer that you had 20 in 2010? 21 <b>A. No.</b> 22 Q. Okay. When did you get a new computer? 23 <b>A. I don't know. There's been at least two 24 replacements since then.</b> 25 Q. Okay. When you get a new computer, do you</p>	<p style="text-align: right;">64</p> <p>1 about. 2 MR. PAUL: Page 7 of this, was it produced 3 that way? 4 MR. MORAN: Yes. What we have is how it 5 was produced. 6 THE WITNESS: What's your question? 7 Q. (By Mr. Moran) Could you just explain 8 whether or not the date, which is reflected as 9 February 9, 2017, is that the date that this letter 10 was sent or not? 11 <b>A. No.</b> 12 Q. Okay. What is your understanding of when 13 Exhibit 570 -- what's the correct date for 14 Exhibit 570? 15 <b>A. October of 2010.</b> 16 Q. Okay. About October 10, 2010? 17 <b>A. I can't say with certainty what date. I 18 can limit it to October.</b> 19 Q. Of 2010? 20 <b>A. Yes.</b> 21 Q. Okay. Mr. Anderson, can you explain why 22 the date February 9, 2017, appears on Exhibit 570? 23 <b>A. This would be a Word -- Microsoft Word 24 format. It was in my files as a Microsoft Word 25 format. The date field was set to automatically</b></p>
<p style="text-align: right;">63</p> <p>1 back up the hard drive with previous files? 2 <b>A. I transfer everything to the new computer.</b> 3 Q. So you got the documents Subpoena in 2016. 4 You said you looked back through your 5 digital files? 6 <b>A. On my computer, yes.</b> 7 Q. Okay. And where did you find Exhibit 570? 8 <b>A. On my computer.</b> 9 Q. What formula was this in? 10 <b>A. I don't recall. I'd have to look at the 11 Subpoena response. I believe, judging by the date, I 12 can almost -- I can say with some certainty that this 13 was a Word file, this particular version that we're 14 looking at.</b> 15 <b>(EXHIBIT 571 WAS MARKED.)</b> 16 Q. (By Mr. Moran) Mr. Anderson, you've been 17 given a document of what's been marked for 18 identification as Plaintiff's Exhibit 571. 19 Do you recognize it? 20 <b>A. Yes.</b> 21 Q. What is it? 22 <b>A. My Subpoena response.</b> 23 Q. Okay. I'm going to ask you to review 24 Exhibit 571 and see if that refreshes your 25 recollection about the date issue you just testified</p>	<p style="text-align: right;">65</p> <p>1 <b>update, so any time and every time that the document 2 was to be pulled up, that field is going to have 3 changed to the current date that it was pulled up.</b> 4 Q. So I assume you're saying that February 9, 5 2017, is the date that you accessed this file? 6 <b>A. Pursuant to the Subpoena.</b> 7 Q. And that's why February 9, 2017, appears 8 in Exhibit 570? 9 <b>A. That is my understanding, yes.</b> 10 Q. Okay. Were you going to say something 11 else? 12 <b>A. No.</b> 13 Q. But it's your testimony that this document 14 was created and sent sometime in October 2010? 15 <b>A. Sent to who?</b> 16 Q. It's addressed to RaPower-3, Neldon 17 Johnson at 4035 South 4000 West. 18 <b>A. Yes. I believe it was sent to the 19 addressee of the letter.</b> 20 Q. I want to ask you some questions about 21 that. I'm not sure you've identified Exhibit 570. 22 Can you identify it for me? 23 <b>A. This appears to be a letter prepared by my 24 firm in or about October of 2010.</b> 25 Q. And earlier you testified that -- we</p>

<p style="text-align: right;">66</p> <p>1 started this out with the line of questioning was you  2 testified that Neldon Johnson had approached you in  3 October 2010 to help him out with some legal issues  4 related to his solar lenses.  5 <b>A. You're adding solar lenses. I am not.</b>  6 Q. Okay. Well, what did Neldon Johnson  7 approach you about?  8 <b>A. He asked me specific questions about tax</b>  9 <b>principles.</b>  10 Q. All right.  11 <b>A. Not in relation to any specific uses or</b>  12 <b>applied circumstances.</b>  13 Q. Thanks for that clarification.  14 So in Exhibit 570, next to I, II and III,  15 I see questions.  16 <b>A. Can you direct me to one? One of those</b>  17 <b>one more time, please.</b>  18 Q. I is on the first page of Exhibit 570,  19 which has been Bates stamped Anderson 000212.  20 <b>A. Correct.</b>  21 Q. There's a question:  22 "Will the Taxpayer's participation be  23 deemed 'Material Participation' as defined in  24 the Internal Revenue Code?"  25 Do you see that?</p>	<p style="text-align: right;">68</p> <p>1 letter.  2 MR. MORAN: All right.  3 Q. (By Mr. Moran) Mr. Anderson, what's the  4 purpose of your letter in Exhibit 570?  5 MR. PAUL: I think the objection goes to  6 whether it's his letter or Jessica's letter.  7 MR. MORAN: Okay.  8 Q. (By Mr. Moran) Did you have any role in  9 creating Exhibit 570?  10 <b>A. It was substantively prepared by Jessica.</b>  11 Q. Okay. Did you have any involvement?  12 <b>A. I'm sure that I reviewed it.</b>  13 Q. Okay. You had reviewed it before it went  14 out?  15 <b>A. Yes.</b>  16 Q. And who was approached by Mr. Johnson to  17 write this letter?  18 <b>A. I can't -- it was -- it probably was</b>  19 <b>initially me, and then I probably added Jessica into</b>  20 <b>it, and ultimately we were both kind of asked, but</b>  21 <b>the legal work was done primarily by Jessica.</b>  22 <b>Not the legal work. The legal research</b>  23 <b>was done primarily by Jessica.</b>  24 Q. Okay. So do you have knowledge of what  25 questions Mr. Johnson asked of your firm?</p>
<p style="text-align: right;">67</p> <p>1 <b>A. Yes.</b>  2 Q. Who asked that question?  3 <b>A. Neldon Johnson.</b>  4 Q. Okay. Then in II, on the page that's been  5 Bates stamped Anderson 000217, there's:  6 "What are the requirements for  7 depreciation and I.R.C. section 179 deductions  8 for the energy equipment?"  9 Did I read that correctly?  10 <b>A. Yes.</b>  11 Q. Who asked that question?  12 <b>A. Neldon Johnson.</b>  13 Q. Okay. And III, appearing on the page  14 that's been Bates stamped Anderson 000219, it says,  15 "How can I get a letter from the IRS  16 stating its position on material participation  17 and section 179 deductions?"  18 Did I read that correct?  19 <b>A. Yes.</b>  20 Q. Who asked that question?  21 <b>A. Neldon Johnson.</b>  22 Q. So am I to understand that Exhibit 570 is  23 a letter that you sent to Neldon Johnson attempting  24 to answer Mr. Johnson's questions?  25 MR. MARTIN: Object. Misstates the</p>	<p style="text-align: right;">69</p> <p>1 <b>A. Given the time frame, I cannot answer</b>  2 <b>specifically other than the record or the letter.</b>  3 Q. You already testified that Neldon Johnson  4 asked the questions that appear on I, II and III,  5 right?  6 <b>A. Yes. Whether those were made in writing,</b>  7 <b>whether those were made orally, I don't know</b>  8 <b>specifically.</b>  9 Q. Okay. Would it surprise you to know that  10 Neldon Johnson testified that you offered your wife's  11 services to him and that he didn't ask you for  12 anything?  13 MR. PAUL: Objection to the form of the  14 question.  15 Q. (By Mr. Moran) You can answer.  16 <b>A. Ask it one more time.</b>  17 Q. Would it surprise you to know that Neldon  18 Johnson testified that you offered your wife's  19 services to write a letter about his solar lenses?  20 <b>A. Yes, that would surprise me.</b>  21 Q. Okay. Is it your recollection that he  22 approached your firm?  23 <b>A. Yes.</b>  24 Q. Mr. Johnson used the term "tax opinion  25 letter."</p>

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1 Does that term mean anything to you?

2 **A. Not to me, no. Well, your question is**

3 **broad. Can you ask it more specifically?**

4 Q. Do you understand the difference between a

5 tax opinion letter and a memorandum?

6 **A. No.**

7 Q. No? All right. I understand that your

8 wife did the legal research that appears in

9 Exhibit 570, but you said that -- you testified that

10 you would have reviewed it?

11 **A. Yes.**

12 Q. Okay. Is that the extent of the

13 collaboration between you and Mrs. Anderson?

14 **A. At the time or generally?**

15 Q. I'm talking about with regards

16 specifically to Exhibit 570.

17 **A. I don't recall specifically.**

18 Q. Okay. Do you recall -- when was the first

19 time you were approached about this project? How did

20 it happen? Did Mr. Johnson come in and --

21 MR. PAUL: Objection to the extent it's

22 been asked and answered.

23 MR. MORAN: I'll finish the question.

24 Q. (By Mr. Moran) Did Mr. Johnson -- how

25 were you approached about this project of answering

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1 Mr. Johnson's questions? Did he call? Did he come

2 into your office?

3 **A. He routinely just walked in.**

4 Q. Okay. How many times would he drop in?

5 **A. Often.**

6 Q. Several times a week?

7 **A. A couple times a week.**

8 Q. A couple times a week?

9 Do you recall how many meetings you had

10 with him?

11 **A. No.**

12 MR. PAUL: Objection to the form of the

13 question.

14 Q. (By Mr. Moran) Do you think it was more

15 than five?

16 **A. Yes.**

17 Q. Okay. Was it more than ten?

18 MR. MARTIN: As to any case or --

19 MR. MORAN: No. I'm talking specifically

20 about the advice you gave relating to Mr. Johnson's

21 solar lenses.

22 MR. PAUL: And I'll object to the form of

23 the question.

24 MR. MARTIN: And I'll object to the extent

25 it assumes facts not in evidence, but go ahead. You

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1 can answer.

2 THE WITNESS: I ask you to ask the

3 question again.

4 MR. MORAN: Would you read back the

5 question?

6 THE COURT REPORTER: "Question: Okay.

7 Was it more than ten?"

8 THE WITNESS: To that question, the answer

9 specifically to the question of whether he came in

10 more than ten times to ask about tax issues,

11 possibly.

12 Q. (By Mr. Moran) Do you think it was more

13 than 15?

14 **A. It's hard to say.**

15 Q. Okay.

16 **A. I guess I want to clarify the question I**

17 **didn't answer and make sure it's clear I didn't**

18 **answer.**

19 **You stated solar lenses. Solar lenses was**

20 **a term really not discussed with me. It was energy**

21 **equipment or something along those lines. It was not**

22 **solar lenses.**

23 Q. Okay. And was it tax implications related

24 to the energy equipment?

25 **A. It was tax implications, not necessarily**

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1 **tax implications related to solar equipment with me.**

2 **In the conversations with me, it was basic and**

3 **general tax questions.**

4 MR. MORAN: Okay. We've been going for an

5 hour and a half. Why don't we take a break.

6 MR. MARTIN: Sure.

7 (Recess from 9:29 a.m. to 9:38 a.m.)

8 (EXHIBIT 572 WAS MARKED.)

9 MR. MORAN: We're back on the record.

10 Q. (By Mr. Moran) Mr. Anderson, you've been

11 given a copy of what's been marked as Plaintiff's

12 Exhibit 572.

13 Do you recognize this document?

14 **A. No.**

15 Q. Okay. I'll represent to you that this is

16 a document that was produced to the United States by

17 the Defendant's former attorney entitled Defendants'

18 Supplemental Privilege Log.

19 I'll also represent to you that this

20 document was prepared following several disputes in

21 litigation over whether or not -- or various

22 privilege issues relating to the documents, but my

23 understanding is that the documents that you already

24 testified about having searched for within your files

25 have been Bates stamped 1 through 241 with the prefix

Anderson, Todd F.

August 4, 2017

20 (Pages 74 to 77)

74	<p>1 Anderson Todd and Jessica Anderson.</p> <p>2 So documents that have been -- the</p> <p>3 documents that you produced, where did you find them?</p> <p>4 <b>A. The documents --</b></p> <p>5 MR. PAUL: Object to the form of the</p> <p>6 question.</p> <p>7 MR. MORAN: Let me back up.</p> <p>8 Q. (By Mr. Moran) All right, Mr. Anderson,</p> <p>9 we've already established that Exhibit 570 was</p> <p>10 prepared by your firm in October 2010; is that</p> <p>11 correct?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. I see it says sent via e-mail to</p> <p>14 neldon@iaus.com, original will follow, and I'm</p> <p>15 referencing the Bates stamped Anderson 000212.</p> <p>16 Did I read that correctly?</p> <p>17 <b>A. What was the question?</b></p> <p>18 Q. It says it was sent via e-mail to</p> <p>19 neldon@iaus.com?</p> <p>20 <b>A. It does say that, yes.</b></p> <p>21 Q. All right. What does that phrase mean to</p> <p>22 you?</p> <p>23 <b>A. To the best of my knowledge, at the time</b></p> <p>24 <b>that this document was produced by my firm, that it</b></p> <p>25 <b>was signed and sent to that e-mail address and placed</b></p>
75	<p>1 <b>in the original mail.</b></p> <p>2 Q. Is it your firm's normal practice to send</p> <p>3 documents via e-mail and through U.S. mail?</p> <p>4 <b>A. Occasionally.</b></p> <p>5 Q. Is there any reason to believe that</p> <p>6 Exhibit 570 wasn't e-mailed and sent via U.S. mail to</p> <p>7 Mr. Johnson?</p> <p>8 <b>A. No.</b></p> <p>9 Q. So it's your testimony that this document,</p> <p>10 Exhibit 570, was sent to Mr. Johnson?</p> <p>11 <b>A. To the best of my knowledge.</b></p> <p>12 Q. Was Exhibit 570 transmitted by someone who</p> <p>13 prepared it?</p> <p>14 In other words, did they have knowledge of</p> <p>15 this document that was prepared by your firm?</p> <p>16 MR. PAUL: Objection. Foundation.</p> <p>17 THE WITNESS: I don't understand the</p> <p>18 question.</p> <p>19 Q. (By Mr. Moran) All right. Exhibit 570</p> <p>20 you said was a letter that Jessica Anderson prepared,</p> <p>21 correct?</p> <p>22 <b>A. She did the substantial drafting, yes.</b></p> <p>23 Q. Okay. Would she have transmitted it?</p> <p>24 <b>A. I don't know.</b></p> <p>25 Q. Who else would have transmitted it?</p>
76	<p>1 <b>A. Me.</b></p> <p>2 Q. Okay. Was there anyone else working at</p> <p>3 your firm at that time?</p> <p>4 <b>A. No.</b></p> <p>5 Q. Okay. And you've already -- withdrawn.</p> <p>6 Was Exhibit 570 prepared in the regularly</p> <p>7 conducted -- prepared in the course of your regularly</p> <p>8 conducted activity at your business?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. Okay. Was it a regular practice of your</p> <p>11 firm to prepare letters such as Exhibit 570?</p> <p>12 <b>A. Yes. I'd like to make a distinction.</b></p> <p>13 <b>It's my belief, while I don't -- my records do not</b></p> <p>14 <b>contain a signed copy, it is my belief that this one</b></p> <p>15 <b>was signed and sent.</b></p> <p>16 Q. So is it your firm's normal practice to</p> <p>17 retain a copy of what was sent, and you testified</p> <p>18 this was a Word document --</p> <p>19 <b>A. Right.</b></p> <p>20 Q. -- but not the signed document?</p> <p>21 <b>A. At the time we were in flux as far as</b></p> <p>22 <b>building procedures as a firm, and I can't say for</b></p> <p>23 <b>sure what our procedure was at the time.</b></p> <p>24 Q. Do you have any reason to believe that the</p> <p>25 document that was sent to Neldon Johnson wasn't sent?</p>
77	<p>1 <b>A. No.</b></p> <p>2 Q. When you looked through your records to</p> <p>3 respond to the United States Subpoena, did you look</p> <p>4 for the e-mail where this document was sent?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. You did?</p> <p>7 <b>A. (Witness nodding head affirmatively.)</b></p> <p>8 Q. Did you find it?</p> <p>9 <b>A. No.</b></p> <p>10 Q. Okay. Since 2010, have you lost any</p> <p>11 e-mails along the way?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. All right. Starting on the first</p> <p>14 paragraph of Exhibit 570, it says,</p> <p>15 "Last week you had several questions</p> <p>16 regarding tax liability for members of</p> <p>17 RaPower3's multilevel marketing organization</p> <p>18 (Member) and you wanted information on how to</p> <p>19 get a private letter ruling from the IRS on the</p> <p>20 same. This letter is to provide facts on each</p> <p>21 issue as stated below."</p> <p>22 Did I read that correctly?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. You say, This information is relevant</p> <p>25 only to individuals acting as sole proprietors</p>

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1 in the multi level marketing organization of  
 2 RaPower3.  
 3 Did I read that correctly?  
 4 **A. Yes.**  
 5 MR. PAUL: I think you added marketing.  
 6 MR. MORAN: Thanks for that clarification.  
 7 MR. PAUL: Sure.  
 8 THE WITNESS: I'm sorry I didn't pay  
 9 closer attention. Thank you for catching that.  
 10 Q. (By Mr. Moran) I'm going to start with  
 11 the sentence beginning with "This information."  
 12 "This information is relevant only  
 13 to individuals acting as sole proprietors in the  
 14 multi level organization of RaPower3."  
 15 Did I read that correct?  
 16 **A. Yes.**  
 17 Q. What's your understanding of RaPower-3's  
 18 multilevel marketing organization?  
 19 **A. I don't know.**  
 20 Q. Did you know in October 2010?  
 21 **A. No.**  
 22 Q. Okay. Did Jessica Anderson know?  
 23 **A. Maybe.**  
 24 Q. Do you think you would have had -- in  
 25 2010, do you think you would have known information

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1 about RaPower-3's multilevel marketing organization?  
 2 MR. PAUL: Objection to the form of the  
 3 question.  
 4 Q. (By Mr. Moran) You can still answer.  
 5 **A. Could you ask one more time?**  
 6 MR. MORAN: Can you read the question?  
 7 THE COURT REPORTER: "Question: Do you  
 8 think you would have had -- in 2010, do you  
 9 think you would have known information about  
 10 RaPower-3's multilevel marketing organization?"  
 11 THE WITNESS: Not really.  
 12 Q. (By Mr. Moran) All right. You testified  
 13 that Mr. Johnson came into your office several times  
 14 in 2010?  
 15 **A. Yes.**  
 16 Q. And that was in preparation of writing the  
 17 letter that's Exhibit 570?  
 18 **A. I wouldn't say that.**  
 19 Q. Okay. Did you have meetings with  
 20 Mr. Johnson prior to your firm drafting Exhibit 570?  
 21 **A. Yes.**  
 22 Q. Okay. What was discussed then?  
 23 **A. I don't know.**  
 24 Q. You don't recall?  
 25 **A. I don't recall.**

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1 Q. Did you know at the time?  
 2 **A. To the extent that I was in those**  
 3 **meetings, yes.**  
 4 Q. Okay. Who were those meetings with?  
 5 **A. They were either with myself or with**  
 6 **Jessica.**  
 7 Q. Okay. Did Mr. Johnson ever have meetings  
 8 with just Jessica?  
 9 **A. Yes.**  
 10 Q. Okay. About how many?  
 11 **A. I don't know.**  
 12 Q. Do you have an idea?  
 13 **A. No.**  
 14 Q. Okay. Prior to sending out Exhibit 570,  
 15 did you discuss energy equipment with Mr. Johnson?  
 16 **A. I don't recall exactly when those**  
 17 **conversations occurred in relation to Exhibit 570, or**  
 18 **the preparation of Exhibit 570.**  
 19 Q. All right. How about in September to  
 20 November of 2010, did you discuss energy equipment  
 21 with Mr. Johnson?  
 22 **A. As I said, I can't say specifically when**  
 23 **those conversations occurred.**  
 24 Q. I'm not asking specifically. I put a  
 25 broad range on it.

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1 **A. I would say the earliest would have been**  
 2 **October that we would have discussed any energy**  
 3 **equipment.**  
 4 Q. Why do you think that?  
 5 **A. Why do I think that today is there are --**  
 6 **I mean, there are -- you're dealing with decreased**  
 7 **memory because it was so long ago --**  
 8 Q. Sure.  
 9 **A. -- combined with -- so piecing parts**  
 10 **together combined with I believe there are some**  
 11 **references to equipment in Exhibit 570.**  
 12 **So to what extent we were told the**  
 13 **information at the time of preparing Exhibit 570 and**  
 14 **what information was pieced together after preparing**  
 15 **570, I cannot answer that. I don't know.**  
 16 Q. All right. Let me restate the question.  
 17 The information that appears in  
 18 Exhibit 570, who gave you that information?  
 19 **A. Neldon Johnson.**  
 20 Q. Okay. Did you ask any questions of  
 21 Mr. Johnson?  
 22 **A. I don't recall specific questions.**  
 23 Q. Let me narrow it. In preparing  
 24 Exhibit 570, did you ask Mr. Johnson any questions?  
 25 **A. Because of the time, I can't recall if I**

82	<p>1 <b>asked questions or not.</b></p> <p>2 Q. All right. Do you recall if your wife</p> <p>3 asked any questions?</p> <p>4 <b>A. I cannot recall.</b></p> <p>5 MR. MARTIN: Chris, for the record, again,</p> <p>6 I think there's a stipulation that the</p> <p>7 attorney-client privilege has been waived with</p> <p>8 respect to the subject matter of the tax benefits and</p> <p>9 the solar energy equipment program.</p> <p>10 I also understand that the Court has</p> <p>11 ordered Mr. Anderson to give deposition testimony</p> <p>12 regarding the alleged advice that was given.</p> <p>13 It's my view that any attorney-client</p> <p>14 communications between Jessica Anderson and Neldon</p> <p>15 Johnson as representative of RaPower would</p> <p>16 necessarily be included within the scope of that</p> <p>17 waiver and the Court's order, and so I believe that</p> <p>18 Mr. Anderson is entitled to and is required to answer</p> <p>19 questions with respect to those communications, and</p> <p>20 so that is my position in reading of the stipulation</p> <p>21 and the order, but I do want to raise it.</p> <p>22 If we're getting into questions with</p> <p>23 respect to what communications may have happened</p> <p>24 between Jessica Anderson and Mr. Johnson, I state</p> <p>25 that as our position and our intent in this</p>	84	<p>1 waiver extends to firm communications, and with</p> <p>2 Jessica Anderson being a member of the firm, I see</p> <p>3 that as being a junior associate working with a</p> <p>4 partner or two partners working on the same matter</p> <p>5 together.</p> <p>6 Mr. Anderson today is the voice of that</p> <p>7 representation, and I would only limit, again, that</p> <p>8 to I don't him to speculate as to what Jessica said,</p> <p>9 did or knows apart from what he said, did or knows.</p> <p>10 MR. MARTIN: Okay.</p> <p>11 MR. MORAN: Hold on. Can we go off the</p> <p>12 record?</p> <p>13 MR. MARTIN: Sure.</p> <p>14 (Discussion held off the record.)</p> <p>15 MR. MORAN: Back on, and could you repeat</p> <p>16 the last pending question?</p> <p>17 THE COURT REPORTER: "Question: Okay.</p> <p>18 Do you recall if your wife asked any</p> <p>19 questions?"</p> <p>20 MR. PAUL: Did he answer that question</p> <p>21 already?</p> <p>22 THE COURT REPORTER: He did.</p> <p>23 MR. PAUL: What was the answer?</p> <p>24 THE COURT REPORTER: The answer is: "I</p> <p>25 cannot recall."</p>
83	<p>1 deposition and raise that to Mr. Paul's attention so</p> <p>2 that if he has any different view of the matter, he</p> <p>3 can raise it now, and we can deal with it that way.</p> <p>4 MR. PAUL: As stated earlier, I have no</p> <p>5 objection to Mr. Anderson testifying as to his</p> <p>6 knowledge and understanding of the representation and</p> <p>7 the documentation that's been produced.</p> <p>8 The only limitation I would add to that is</p> <p>9 I don't want him speculating as to what Jessica knew</p> <p>10 or thought or said or did, but he certainly as</p> <p>11 Anderson Law -- I think the scope of the waiver</p> <p>12 extends to the Anderson Law entity, so if it's firm</p> <p>13 knowledge and there is a foundation for Mr. Anderson</p> <p>14 to testify to it, I think that's within the scope of</p> <p>15 the waiver.</p> <p>16 MR. MARTIN: But you don't object to</p> <p>17 Mr. Anderson testifying to communications between</p> <p>18 Jessica Anderson and Neldon Johnson on the basis of</p> <p>19 confidentiality or attorney-client privilege; is that</p> <p>20 correct?</p> <p>21 MR. PAUL: That's correct.</p> <p>22 MR. MARTIN: That could be a foundational</p> <p>23 issue, and you may pose an objection in that regard,</p> <p>24 but not attorney-client privilege; is that correct?</p> <p>25 MR. PAUL: Certainly. I think that the</p>	85	<p>1 MR. PAUL: Thank you.</p> <p>2 Q. (By Mr. Moran) Did Mr. Johnson tell you</p> <p>3 what he was planning to do with the advice that you</p> <p>4 and -- that your firm gave him?</p> <p>5 <b>A. Not with any level of specificity.</b></p> <p>6 Q. Okay. Did you ask?</p> <p>7 <b>A. I don't recall.</b></p> <p>8 Q. What generally was your understanding of</p> <p>9 what Mr. Johnson intended to do with the advice you</p> <p>10 were giving?</p> <p>11 <b>A. I don't know.</b></p> <p>12 Q. You don't know now or you didn't know</p> <p>13 then?</p> <p>14 MR. PAUL: Objection. Compound.</p> <p>15 THE WITNESS: I really don't know.</p> <p>16 Q. (By Mr. Moran) Okay. At the time, did</p> <p>17 you know what Mr. -- do you think you knew what</p> <p>18 Mr. Johnson was planning to do with the advice?</p> <p>19 <b>A. It appeared to me to be a hypothetical</b></p> <p>20 <b>investigative stage of something, but I don't -- I</b></p> <p>21 <b>didn't feel like there was any specifics of whether</b></p> <p>22 <b>he was moving forward or in which direction he was</b></p> <p>23 <b>going to move forward with the information.</b></p> <p>24 Q. Do you know what that something was?</p> <p>25 <b>A. No.</b></p>

86	<p>1 Q. He didn't tell you?</p> <p>2 <b>A. Not specifically, no.</b></p> <p>3 Q. So all he did was ask the three questions</p> <p>4 that appear in Exhibit 570?</p> <p>5 MR. PAUL: Objection. Misstates his prior</p> <p>6 testimony. You can answer.</p> <p>7 Q. (By Mr. Moran) I'm trying to understand</p> <p>8 what you were engaged by Mr. Johnson to do when you</p> <p>9 and your firm wrote Exhibit 570?</p> <p>10 <b>A. To answer the questions posed.</b></p> <p>11 Q. Okay. And what information did</p> <p>12 Mr. Johnson give you to answer these questions, or</p> <p>13 did he just have these questions?</p> <p>14 <b>A. I don't recall.</b></p> <p>15 Q. Did he give you any information on</p> <p>16 RaPower-3's multilevel marketing organization?</p> <p>17 MR. PAUL: Objection to the extent it's</p> <p>18 been asked and answered.</p> <p>19 THE WITNESS: No, he did not.</p> <p>20 Q. (By Mr. Moran) Do you recall specifically</p> <p>21 what that little to none information was?</p> <p>22 <b>A. No.</b></p> <p>23 Q. Did you feel you had enough information</p> <p>24 for your firm to author Exhibit 570?</p> <p>25 MR. PAUL: Objection. Foundation.</p>	88	<p>1 testified that you had little to no information,</p> <p>2 right?</p> <p>3 <b>A. As to specifics.</b></p> <p>4 Q. Okay. So having had little to no</p> <p>5 information, could you give a -- or did you have</p> <p>6 enough facts to give any type of specific legal</p> <p>7 analysis?</p> <p>8 <b>A. I provided a general analysis of tax</b></p> <p>9 <b>principles based on information that I had. It was</b></p> <p>10 <b>not applied to any specific circumstances.</b></p> <p>11 Q. Okay. Thank you.</p> <p>12 <b>A. And when I say "I," I refer to Anderson</b></p> <p>13 <b>Law Center as a firm and the attorneys of that firm</b></p> <p>14 <b>that Anderson Law Center did those things.</b></p> <p>15 Q. You said that Mr. Johnson gave you little</p> <p>16 to no information.</p> <p>17 How was that information, what information</p> <p>18 you did get, conveyed to you?</p> <p>19 <b>A. Orally.</b></p> <p>20 Q. And all that information was conveyed by</p> <p>21 Neldon Johnson?</p> <p>22 <b>A. Correct.</b></p> <p>23 Q. None of it was from Glenda Johnson?</p> <p>24 <b>A. She was there at some of the meetings as a</b></p> <p>25 <b>companion, but she did not convey information --</b></p>
87	<p>1 MR. MARTIN: I'll object as vague.</p> <p>2 THE WITNESS: To the extent the general</p> <p>3 principles of tax law or questions are addressed in</p> <p>4 Exhibit 570, I felt like we had enough information to</p> <p>5 answer those general workings of these particular tax</p> <p>6 principles.</p> <p>7 Q. (By Mr. Moran) So you just characterized</p> <p>8 Exhibit 570 as a -- I'm going to use your words,</p> <p>9 general workings of tax principles?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Was it specific to any facts?</p> <p>12 <b>A. No.</b></p> <p>13 Q. Could it have been specific to any facts?</p> <p>14 MR. MARTIN: Objection. Speculation,</p> <p>15 lacks foundation.</p> <p>16 THE WITNESS: And I agree. I guess I</p> <p>17 would need a more specific question.</p> <p>18 Q. (By Mr. Moran) Based on the information</p> <p>19 that Mr. Johnson gave you, could you have given a</p> <p>20 specific opinion on tax?</p> <p>21 MR. PAUL: Objection. Foundation and</p> <p>22 speculation.</p> <p>23 THE WITNESS: I agree. I don't understand</p> <p>24 your question.</p> <p>25 Q. (By Mr. Moran) Well, you already</p>	89	<p>1 Q. Okay.</p> <p>2 <b>A. -- is my recollection.</b></p> <p>3 Q. Have you ever been to any of Neldon</p> <p>4 Johnson's facilities?</p> <p>5 <b>A. No.</b></p> <p>6 Q. And when I talk about facilities, I'm</p> <p>7 referencing where he tests and builds his energy</p> <p>8 equipment?</p> <p>9 <b>A. No.</b></p> <p>10 Q. Have you ever been to his house?</p> <p>11 <b>A. I've been to his driveway.</b></p> <p>12 Q. Why were you in his driveway?</p> <p>13 <b>A. I dropped off a Christmas present that</b></p> <p>14 <b>first or second year of my practice. I delivered a</b></p> <p>15 <b>Christmas gift. It was Lindon chocolates, the balls,</b></p> <p>16 <b>to all of my clients, including Neldon Johnson.</b></p> <p>17 Q. All right. So was that something you did</p> <p>18 to show appreciation to your customers?</p> <p>19 <b>A. Correct. It was not specific to</b></p> <p>20 <b>Mr. Johnson. It was done to -- we loaded up the car,</b></p> <p>21 <b>and I drove to every client in the area and delivered</b></p> <p>22 <b>chocolates, including Mr. Johnson.</b></p> <p>23 Q. Okay. When you dropped off the</p> <p>24 chocolates, was it Mr. Johnson you gave them to?</p> <p>25 <b>A. My wife -- I was driving. She dropped it</b></p>

Anderson, Todd F.

August 4, 2017

24 (Pages 90 to 93)

90	<p>1 <b>off, so I don't know.</b></p> <p>2 Q. Is that the only time you've been to</p> <p>3 Mr. Johnson's residence?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. Is that residence in Delta?</p> <p>6 <b>A. No.</b></p> <p>7 Q. Where is it?</p> <p>8 <b>A. Deseret.</b></p> <p>9 Q. About how far away from Delta is that?</p> <p>10 <b>A. Ten minutes.</b></p> <p>11 Q. Would it surprise you -- withdrawn.</p> <p>12 Do you know if your wife has ever been to</p> <p>13 Neldon Johnson's facilities?</p> <p>14 <b>A. I cannot say for sure, but I would say</b></p> <p>15 <b>with a great amount of certainty that she has not.</b></p> <p>16 Q. Okay. Would it surprise you to know that</p> <p>17 Neldon Johnson testified that Jessica Anderson has</p> <p>18 seen his energy equipment?</p> <p>19 <b>A. Very much so.</b></p> <p>20 Q. All right. Going back to Exhibit 570,</p> <p>21 your firm references tax liability for members of</p> <p>22 RaPower-3's multilevel marketing organization.</p> <p>23 Who is a member of RaPower-3's multilevel</p> <p>24 marketing organization?</p> <p>25 <b>A. I don't know.</b></p>	92	<p>1 MR. MARTIN: Objection. To the extent it</p> <p>2 calls for an attorney-client communication, don't</p> <p>3 answer that.</p> <p>4 Q. (By Mr. Moran) We're going to look at</p> <p>5 some documents later, and if these are documents that</p> <p>6 Neldon Johnson gave you, if I don't ask you, would</p> <p>7 you identify them as such?</p> <p>8 <b>A. I'll reserve answering that question till</b></p> <p>9 <b>later.</b></p> <p>10 Q. That's fine. You already testified you</p> <p>11 don't know anything about who was a member of</p> <p>12 RaPower-3?</p> <p>13 <b>A. I do not know.</b></p> <p>14 Q. Do you know what someone would need to do</p> <p>15 to become a member of RaPower-3?</p> <p>16 <b>A. I do not.</b></p> <p>17 Q. Do you know if a RaPower-3 member has any</p> <p>18 type of managerial authority at RaPower-3?</p> <p>19 <b>A. I do not know.</b></p> <p>20 Q. Did you know in 2010?</p> <p>21 <b>A. I did not.</b></p> <p>22 Q. Do you know if your wife knew?</p> <p>23 <b>A. I don't.</b></p> <p>24 Q. In the first paragraph of Exhibit 570, you</p> <p>25 reference sole proprietor.</p>
91	<p>1 Q. Did you know in 2010?</p> <p>2 <b>A. No, I did not.</b></p> <p>3 Q. Do you know if your wife knew?</p> <p>4 <b>A. I don't know.</b></p> <p>5 Q. Do you recall Mr. Johnson giving you any</p> <p>6 documents?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. And you produced those documents to the</p> <p>9 United States?</p> <p>10 Have you produced those documents to the</p> <p>11 United States?</p> <p>12 <b>A. I did not. I did not produce any</b></p> <p>13 <b>documents to the United States.</b></p> <p>14 Q. Okay.</p> <p>15 <b>A. Sorry. I did not -- I produced --</b></p> <p>16 <b>pursuant to the Subpoena, I produced those documents</b></p> <p>17 <b>which were indicated as being produced and included a</b></p> <p>18 <b>Privilege Log for those documents that were not</b></p> <p>19 <b>produced, and all of the documents which Neldon</b></p> <p>20 <b>Johnson provided to me were not produced by me to the</b></p> <p>21 <b>United States.</b></p> <p>22 Q. Okay. Do you know if they were produced</p> <p>23 by someone else?</p> <p>24 <b>A. I do not have firsthand knowledge of that.</b></p> <p>25 Q. Has anyone told you?</p>	93	<p>1 Do you see that?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. What caused you to use the term "sole</p> <p>4 proprietor"?</p> <p>5 MR. MARTIN: Objection. Assumes facts not</p> <p>6 in evidence.</p> <p>7 MR. PAUL: Objection. Foundation.</p> <p>8 Q. (By Mr. Moran) Do you know why the letter</p> <p>9 in Exhibit 570 says sole proprietor?</p> <p>10 <b>A. I do not.</b></p> <p>11 Q. Did you write sole proprietor?</p> <p>12 <b>A. I don't know.</b></p> <p>13 Q. Okay. If it wasn't you, would it have</p> <p>14 been your wife?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Have you ever heard Neldon Johnson use the</p> <p>17 term "sole proprietor"?</p> <p>18 <b>A. I don't recall.</b></p> <p>19 Q. If your letter, Exhibit 570, is giving</p> <p>20 information relevant only to individuals acting as</p> <p>21 sole proprietors, do you know why that is?</p> <p>22 <b>A. I don't.</b></p> <p>23 Q. If Neldon Johnson had asked you for</p> <p>24 information related to sole proprietors, could that</p> <p>25 be why?</p>



94	<p>1 <b>A. It could --</b></p> <p>2 MR. MARTIN: Objection. Speculation.</p> <p>3 Don't volunteer.</p> <p>4 THE WITNESS: Could be.</p> <p>5 Q. (By Mr. Moran) If Neldon Johnson had</p> <p>6 asked you for information, tax information that's</p> <p>7 relevant to sole proprietors, is that what you would</p> <p>8 have given him?</p> <p>9 MR. PAUL: Objection. Speculation.</p> <p>10 THE WITNESS: I don't know. The question</p> <p>11 lacks a lot of facts.</p> <p>12 Q. (By Mr. Moran) Well, I'm reading from</p> <p>13 your letter, so I want to know why you reference sole</p> <p>14 proprietors?</p> <p>15 <b>A. I don't know.</b></p> <p>16 Q. Would your wife know?</p> <p>17 <b>A. I don't know.</b></p> <p>18 Q. The next sentence says, "Different rules</p> <p>19 apply to corporations and other entities."</p> <p>20 Did I read that correctly?</p> <p>21 <b>A. You did.</b></p> <p>22 Q. Okay. Why did you write that sentence?</p> <p>23 <b>A. I don't know.</b></p> <p>24 MR. PAUL: Objection. Foundation.</p> <p>25 Q. (By Mr. Moran) Did you write that</p>	96	<p>1 of Exhibit 570, which has been Bates stamped</p> <p>2 Anderson 000214. The last paragraph beginning with:</p> <p>3 "In order for the lease of equipment from</p> <p>4 the taxpayer to IAS for marketing purposes to be</p> <p>5 considered active loss or income, the</p> <p>6 transaction would have to fit into one of the</p> <p>7 exceptions listed above."</p> <p>8 Did I read that correctly?</p> <p>9 <b>A. I believe so.</b></p> <p>10 Q. Okay. What does that phrase "lease of</p> <p>11 equipment from the taxpayer to IAS" mean to you?</p> <p>12 <b>A. I don't know.</b></p> <p>13 Q. Okay. Where would that phrase have come</p> <p>14 from?</p> <p>15 <b>A. Neldon.</b></p> <p>16 Q. Okay. In 2010, did you or your wife have</p> <p>17 any familiarity with RaPower-3's businesses?</p> <p>18 <b>A. No.</b></p> <p>19 Q. Do you know if RaPower-3 members have any</p> <p>20 managerial capacity at RaPower-3?</p> <p>21 <b>A. I don't know.</b></p> <p>22 Q. Okay. Did you ask?</p> <p>23 <b>A. I don't know.</b></p> <p>24 Q. Did Neldon Johnson tell you?</p> <p>25 <b>A. I don't know.</b></p>
95	<p>1 sentence?</p> <p>2 <b>A. I don't know.</b></p> <p>3 Q. If you didn't write that sentence, did</p> <p>4 your wife answer it?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Let me rephrase that.</p> <p>7 If you didn't write that sentence, did</p> <p>8 your wife write that sentence?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. Roman numeral I references material</p> <p>11 participation.</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Do you know what that term means as</p> <p>14 defined in the Internal Revenue Code?</p> <p>15 <b>A. My current knowledge of material</b></p> <p>16 <b>participation is essentially what is set forth in</b></p> <p>17 <b>Exhibit 570.</b></p> <p>18 Q. Who asked for legal advice on material</p> <p>19 participation?</p> <p>20 <b>A. The only person who asked for advice</b></p> <p>21 <b>regarding RaPower-3, or asked -- let me rephrase</b></p> <p>22 <b>that.</b></p> <p>23 <b>The only person who asked any questions</b></p> <p>24 <b>regarding RaPower-3 was Neldon Johnson.</b></p> <p>25 Q. I direct your attention to the third page</p>	97	<p>1 Q. Do you think you would have known in 2010?</p> <p>2 <b>A. I don't know.</b></p> <p>3 Q. Did Neldon Johnson tell you anything about</p> <p>4 RaPower-3 members?</p> <p>5 <b>A. Not that I recall.</b></p> <p>6 Q. Okay. Do you know if he told your wife</p> <p>7 anything about RaPower-3 members?</p> <p>8 <b>A. I don't know.</b></p> <p>9 Q. If Neldon Johnson had given you</p> <p>10 information about RaPower-3 members, do you think it</p> <p>11 would have been reflected in Exhibit 570?</p> <p>12 MR. MARTIN: Speculation.</p> <p>13 THE WITNESS: Would have depended on a lot</p> <p>14 of factors, and so I don't -- I can't -- I don't</p> <p>15 know.</p> <p>16 Q. (By Mr. Moran) All right. When you write</p> <p>17 down legal advice in a letter or a memorandum, would</p> <p>18 it be your habit to state the facts that you're</p> <p>19 relying on?</p> <p>20 MR. PAUL: Objection. Speculation.</p> <p>21 THE WITNESS: Ask the question one more</p> <p>22 time, please.</p> <p>23 Q. (By Mr. Moran) When you give legal advice</p> <p>24 in either a memorandum or in a letter to a client, is</p> <p>25 it your habit to state the facts that you're relying</p>

98	<p>1 on that you've been told in the letter?</p> <p>2 MR. PAUL: Also lacks foundation.</p> <p>3 THE WITNESS: Your question -- it depends</p> <p>4 on the circumstances as to what I'm going to reply</p> <p>5 within a memorandum. If a client was to ask me about</p> <p>6 the workings of a particular statute without any</p> <p>7 facts, I would apply -- I would provide an</p> <p>8 explanation as best I'm able of the statute, but if</p> <p>9 there's no facts to apply it to, I would not apply it</p> <p>10 to any facts.</p> <p>11 Q. (By Mr. Moran) If a client did give you</p> <p>12 facts and you were applying that statute to those</p> <p>13 facts, would you state the facts in a letter or the</p> <p>14 memorandum?</p> <p>15 <b>A. It would depend on the question.</b></p> <p>16 Q. Okay. If those facts were relevant to the</p> <p>17 question, would you include the facts?</p> <p>18 MR. MARTIN: I'll object to the incomplete</p> <p>19 hypothetical. Go ahead.</p> <p>20 MR. PAUL: Also lacks foundation, calls</p> <p>21 for speculation.</p> <p>22 THE WITNESS: I'm trying to remember your</p> <p>23 last question again. Sorry.</p> <p>24 Q. (By Mr. Moran) Do you ever give written</p> <p>25 legal advice to clients?</p>	100	<p>1 <b>those questions.</b></p> <p>2 Q. Okay.</p> <p>3 <b>A. There is no facts. As to why there are no</b></p> <p>4 <b>facts, I don't know.</b></p> <p>5 Q. Okay. Is it fair to say that the</p> <p>6 questions asked in Exhibit 570 don't contain any</p> <p>7 specific facts?</p> <p>8 <b>A. The memorandum as a whole does not contain</b></p> <p>9 <b>facts.</b></p> <p>10 Q. Thank you. When you say "the memorandum,"</p> <p>11 you were referring to Exhibit 570, which is the</p> <p>12 letter?</p> <p>13 <b>A. That is correct.</b></p> <p>14 Q. Are you aware of what RaPower-3 members do</p> <p>15 to become members of RaPower-3?</p> <p>16 <b>A. No.</b></p> <p>17 Q. Okay. Do you know if as part of the</p> <p>18 RaPower -- do you know if, as a RaPower-3 member,</p> <p>19 they own anything?</p> <p>20 <b>A. I do not know.</b></p> <p>21 Q. Okay. Did you know in 2010?</p> <p>22 <b>A. I did not.</b></p> <p>23 Q. Okay. Directing your attention to the</p> <p>24 page that's Bates stamped Anderson 000219 and the</p> <p>25 paragraph ending D, Property Placed In Service,</p>
99	<p>1 <b>A. Yes.</b></p> <p>2 Q. When you give written legal advice to</p> <p>3 clients and you're asked to apply a statute to</p> <p>4 specific facts, do you include those facts --</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. -- in your written analysis?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Okay. So in Exhibit 570, if Mr. Johnson</p> <p>9 had given you specific facts to apply these various</p> <p>10 statutes to, would you have stated those facts in</p> <p>11 Exhibit 570?</p> <p>12 MR. PAUL: Objection. Calls for</p> <p>13 speculation and lacks foundation.</p> <p>14 MR. MARTIN: I'll join.</p> <p>15 THE WITNESS: I don't recall the specific</p> <p>16 questions, so therefore I don't know what I would</p> <p>17 have answered -- how I would have -- I can't answer</p> <p>18 your question.</p> <p>19 Q. (By Mr. Moran) Well, you said you can't</p> <p>20 recall the specific questions. There's three</p> <p>21 questions here in Exhibit 570, and you said that's</p> <p>22 what you're responding to in Exhibit 570.</p> <p>23 <b>A. And we answered those three, and I believe</b></p> <p>24 <b>that the memorandum adequately answers those three</b></p> <p>25 <b>questions by providing a summary of applicable law to</b></p>	101	<p>1 "You place property in service when it is</p> <p>2 ready and available for a specific use."</p> <p>3 Did I read that correctly?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. Did you know what property RaPower-3</p> <p>6 members would be using?</p> <p>7 <b>A. No.</b></p> <p>8 Q. Did you know any purpose that their</p> <p>9 property would be used for?</p> <p>10 <b>A. No.</b></p> <p>11 Q. Did you know in 2010?</p> <p>12 <b>A. I recall there was discussion about using</b></p> <p>13 <b>equipment for advertising purposes.</b></p> <p>14 Q. Where did you get that information from?</p> <p>15 <b>A. Neldon. But the other uses, the energy</b></p> <p>16 <b>uses, I was not sure, did not know.</b></p> <p>17 Q. Did you ask?</p> <p>18 <b>A. I don't know. I do not recall.</b></p> <p>19 Q. You already testified you didn't know what</p> <p>20 property the members owned, right?</p> <p>21 <b>A. Right.</b></p> <p>22 Q. Okay. But this unidentified property it</p> <p>23 was your understanding would be used for advertising</p> <p>24 purposes?</p> <p>25 <b>A. I can't say specifically. I know there</b></p>

102	<p>1 was talk of energy production and advertising were</p> <p>2 the two kind of uses regarding this product that</p> <p>3 people would be buying, but that was the extent of</p> <p>4 the knowledge.</p> <p>5 Q. Okay. And you got that knowledge from</p> <p>6 Neldon Johnson?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Were you aware of whether that</p> <p>9 unidentified property ever was used in an advertising</p> <p>10 purpose?</p> <p>11 <b>A. I am not aware.</b></p> <p>12 Q. How about in energy production?</p> <p>13 <b>A. I am not aware.</b></p> <p>14 Q. Okay. Did you ask?</p> <p>15 <b>A. I don't recall.</b></p> <p>16 Q. Do you know if your wife asked?</p> <p>17 <b>A. I don't recall. Sorry. I don't know.</b></p> <p>18 Q. Okay.</p> <p>19 <b>A. Not that I don't recall. I don't know.</b></p> <p>20 Q. Okay. When your firm was drafting</p> <p>21 Exhibit 570, do you ever recall Neldon Johnson asking</p> <p>22 about your tax background?</p> <p>23 <b>A. No.</b></p> <p>24 Q. Do you ever recall him asking about your</p> <p>25 wife's tax background?</p>	104	<p>1 had a tax background?</p> <p>2 <b>A. When I was asking -- when I was drafting</b></p> <p>3 <b>Exhibit 570, no.</b></p> <p>4 Q. How about before then?</p> <p>5 <b>A. It was something along the lines of do you</b></p> <p>6 <b>do any tax work.</b></p> <p>7 Q. What did you tell him?</p> <p>8 <b>A. I don't recall.</b></p> <p>9 Q. At that point had you done any tax work?</p> <p>10 <b>A. No.</b></p> <p>11 Q. If at that time you hadn't done any tax</p> <p>12 work, would you have told him yes?</p> <p>13 MR. PAUL: Objection. Calls for</p> <p>14 speculation, lacks foundation.</p> <p>15 MR. MARTIN: I'll join.</p> <p>16 THE WITNESS: I don't know.</p> <p>17 Q. (By Mr. Moran) Would you lie to</p> <p>18 Mr. Johnson?</p> <p>19 <b>A. No.</b></p> <p>20 Q. Mr. Johnson was a client, right?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Would you lie to a client?</p> <p>23 <b>A. No.</b></p> <p>24 Q. Okay. But you do recall Mr. Johnson</p> <p>25 asking you if you had a tax background?</p>
103	<p>1 <b>A. Let me -- what was your first question? I</b></p> <p>2 <b>might have -- what was the question again?</b></p> <p>3 Q. The most recent question I think was --</p> <p>4 <b>A. I think I misunderstood it.</b></p> <p>5 Q. Can you read back the last question?</p> <p>6 <b>A. Well, actually, the last two questions.</b></p> <p>7 THE COURT REPORTER: "Question: When</p> <p>8 your firm was drafting Exhibit 570, do you ever</p> <p>9 recall Neldon Johnson asking about your tax</p> <p>10 background?"</p> <p>11 THE WITNESS: Could you rephrase that</p> <p>12 question? I guess I don't understand.</p> <p>13 MR. MORAN: Sure.</p> <p>14 Q. (By Mr. Moran) In the context of</p> <p>15 Exhibit 570 when that was being drafted, and you</p> <p>16 testified that Neldon Johnson came into your office</p> <p>17 and posed three questions to you, which you answered</p> <p>18 in Exhibit 570 --</p> <p>19 <b>A. Uh-huh (yes).</b></p> <p>20 Q. -- is that correct?</p> <p>21 <b>A. Uh-huh (yes).</b></p> <p>22 MR. MARTIN: Is that a yes?</p> <p>23 THE WITNESS: Yes. Sorry. Yes.</p> <p>24 Q. (By Mr. Moran) When you were drafting</p> <p>25 Exhibit 570, did Neldon Johnson ever ask you if you</p>	105	<p>1 MR. PAUL: Objection. Misstates his prior</p> <p>2 testimony.</p> <p>3 Q. (By Mr. Moran) What was your prior</p> <p>4 testimony?</p> <p>5 <b>A. He asked if I did any tax work.</b></p> <p>6 Q. Okay. Do you know if the question was had</p> <p>7 you done any tax work at that point or would you be</p> <p>8 willing to do tax work?</p> <p>9 <b>A. I don't recall the specific question.</b></p> <p>10 Q. Did he ask about your background in tax?</p> <p>11 <b>A. No.</b></p> <p>12 Q. All right. It's your testimony that he</p> <p>13 asked if you did tax work?</p> <p>14 MR. PAUL: Objection to the extent it's</p> <p>15 been asked and answered. You can still answer it</p> <p>16 again, if you want.</p> <p>17 THE WITNESS: No. I'll just refer back to</p> <p>18 my previous answer.</p> <p>19 Q. (By Mr. Moran) I'd ask you to repeat it.</p> <p>20 <b>A. It was along the lines of do you do any</b></p> <p>21 <b>tax work.</b></p> <p>22 Q. Okay.</p> <p>23 <b>A. The specifics of the question I do not</b></p> <p>24 <b>recall.</b></p> <p>25 Q. And at that point you hadn't done any tax</p>

106	<p>1 work?</p> <p>2 <b>A. No.</b></p> <p>3 Q. This was the first time you were engaged</p> <p>4 to do any tax work?</p> <p>5 <b>A. Yes. Do you recall -- sorry. You ask the</b></p> <p>6 <b>questions.</b></p> <p>7 Q. Were you going to elaborate on an answer?</p> <p>8 <b>A. No, I wasn't.</b></p> <p>9 Q. Did Mr. Johnson ask about your wife's tax</p> <p>10 background?</p> <p>11 <b>A. I don't recall.</b></p> <p>12 Q. Do you recall if you told him that she had</p> <p>13 taken tax classes in law school?</p> <p>14 <b>A. I probably did.</b></p> <p>15 Q. Okay. After you sent Exhibit 570 to</p> <p>16 Neldon Johnson, was there anything else that occurred</p> <p>17 with relation to Exhibit 570?</p> <p>18 MR. PAUL: Objection. Foundation. You</p> <p>19 can answer.</p> <p>20 THE WITNESS: I don't have firsthand</p> <p>21 knowledge, but I do recall that he came in to speak</p> <p>22 with Jessica about it.</p> <p>23 Q. (By Mr. Moran) About Exhibit 570?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. Okay. Do you recall about how long it was</p>	108	<p>1 <b>A. No.</b></p> <p>2 MR. PAUL: Objection. Misstates</p> <p>3 testimony.</p> <p>4 Q. (By Mr. Moran) Do you know what he wanted</p> <p>5 to do with it?</p> <p>6 <b>A. I don't.</b></p> <p>7 Q. Did your wife tell you anything else about</p> <p>8 what he said to her?</p> <p>9 <b>A. Not that I recall.</b></p> <p>10 Q. All right. He came in a couple days later</p> <p>11 and talked to your wife, and he expressed some</p> <p>12 dissatisfaction with Exhibit 570?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Did anything else happen with respect to</p> <p>15 Exhibit 570?</p> <p>16 <b>A. She -- I recall her telling me he slammed</b></p> <p>17 <b>it down and said, "What am I supposed to do with</b></p> <p>18 <b>this?" That's the extent of what I remember.</b></p> <p>19 Q. Okay. What was your wife's reaction to</p> <p>20 that?</p> <p>21 <b>A. I don't recall, and I don't recall if I</b></p> <p>22 <b>was -- I think I was not there when he came in. I'm</b></p> <p>23 <b>relaying what she relayed to me.</b></p> <p>24 Q. Okay. So it sounds like she was in the</p> <p>25 office alone?</p>
107	<p>1 after you sent Exhibit 570?</p> <p>2 <b>A. No.</b></p> <p>3 Q. Was it days? Weeks? Years?</p> <p>4 <b>A. Days.</b></p> <p>5 Q. And were you part of that conversation?</p> <p>6 <b>A. No.</b></p> <p>7 Q. Did your wife tell you what he came in to</p> <p>8 talk about?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. What did she tell you?</p> <p>11 <b>A. He was frustrated with it.</b></p> <p>12 Q. Why was he frustrated with it?</p> <p>13 <b>A. I don't know the specifics.</b></p> <p>14 Q. Was it that it was too general?</p> <p>15 MR. PAUL: Objection. Asked and answered.</p> <p>16 THE WITNESS: She used the words to me</p> <p>17 that I recall of him saying "What am I supposed to do</p> <p>18 with this?"</p> <p>19 Q. (By Mr. Moran) That's the general tenor</p> <p>20 of his, is it fair to say, complaint to your wife?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Do you remember anything more</p> <p>23 specifically?</p> <p>24 <b>A. No.</b></p> <p>25 Q. Do you know why he couldn't use it?</p>	109	<p>1 <b>A. I don't know.</b></p> <p>2 Q. But you weren't there?</p> <p>3 <b>A. I was not -- I was not within eyesight.</b></p> <p>4 Q. Did she relate to you after the fact that</p> <p>5 Mr. Johnson wasn't satisfied with Exhibit 570?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Okay. Do you recall about how many hours</p> <p>8 were spent in your firm preparing Exhibit 570?</p> <p>9 <b>A. I don't.</b></p> <p>10 Q. Do you think it was more than ten?</p> <p>11 <b>A. I would be speculating.</b></p> <p>12 Q. Do you think it was more than five?</p> <p>13 <b>A. I would be speculating.</b></p> <p>14 Q. Was it more than two?</p> <p>15 <b>A. I would be speculating.</b></p> <p>16 Q. Do you know if your firm sent Mr. Johnson</p> <p>17 a bill for these services in preparing Exhibit 570?</p> <p>18 <b>A. He was sent a bill. Whether it was for</b></p> <p>19 <b>preparing 570, I don't know.</b></p> <p>20 Q. Okay. Did Mr. Johnson pay bills that you</p> <p>21 sent him?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. In your reaction to Mr. Johnson's</p> <p>24 dissatisfaction to Exhibit 570, did your firm do</p> <p>25 anything else?</p>

110	<p>1 <b>A. I don't recall. I don't recall what</b></p> <p>2 <b>happened next. It wasn't the end of our</b></p> <p>3 <b>representation, but I don't recall what happened</b></p> <p>4 <b>next.</b></p> <p>5 Q. Okay. Did you prepare any additional</p> <p>6 documents for Mr. Johnson?</p> <p>7 <b>A. Yes. Well, let me take that back. We</b></p> <p>8 <b>prepared additional documents. I would not say that</b></p> <p>9 <b>they were for Mr. Johnson. They were in furtherance</b></p> <p>10 <b>of our representation of RaPower.</b></p> <p>11 Q. So Exhibit 570 was not the last document</p> <p>12 that you prepared as part of your representation of</p> <p>13 Mr. Johnson?</p> <p>14 MR. MARTIN: Objection --</p> <p>15 MR. PAUL: Objection. Misstates prior</p> <p>16 testimony.</p> <p>17 MR. MARTIN: Yes.</p> <p>18 Q. (By Mr. Moran) All right. Exhibit 570</p> <p>19 was not the last document your firm prepared in its</p> <p>20 representation of RaPower-3 and Mr. Johnson?</p> <p>21 MR. MARTIN: Objection. Assumes facts not</p> <p>22 in evidence. You can go ahead.</p> <p>23 THE WITNESS: Yeah, that was not my</p> <p>24 answer.</p> <p>25 Q. (By Mr. Moran) What was your answer?</p>	112	<p>1 Q. Okay. I'll ask you to turn to the last</p> <p>2 page of Exhibit 23, which has been Bates stamped</p> <p>3 US001658.</p> <p>4 Do you recognize that -- it purports to be</p> <p>5 an e-mail from you to neldon@iaus.com and</p> <p>6 glendaejohnson@hotmail.com?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Is it your testimony that this is a copy</p> <p>9 of an e-mail --</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. -- that you sent to Mr. Johnson?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. And Glenda Johnson?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Were the preceding pages of Exhibit 23</p> <p>16 attached to that e-mail?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. You sent that e-mail on --</p> <p>19 <b>A. Well, I want to back up. Substantially</b></p> <p>20 <b>similar to the document that was sent. It was a Word</b></p> <p>21 <b>file, and you will note that it references the</b></p> <p>22 <b>attachments on Bates 1658. It references</b></p> <p>23 <b>Operation -- no. Taxpayer Info.docx, which is an</b></p> <p>24 <b>extension for a Microsoft Word file.</b></p> <p>25 <b>Similarly, that file would have been</b></p>
111	<p>1 <b>A. It was not the last document that we</b></p> <p>2 <b>prepared in our representation of RaPower.</b></p> <p>3 Q. Okay. So there were additional documents?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. About how many?</p> <p>6 <b>A. I believe one.</b></p> <p>7 Q. Okay.</p> <p>8 <b>A. That I can recall.</b></p> <p>9 Q. Mr. Anderson, you've been given a copy of</p> <p>10 what's been marked as Plaintiff's Exhibit 23. This</p> <p>11 document was marked before this deposition and has</p> <p>12 been used in prior depositions.</p> <p>13 Do you recognize Plaintiff's Exhibit 23?</p> <p>14 <b>A. I do.</b></p> <p>15 Q. What is it?</p> <p>16 <b>A. It is a draft letter.</b></p> <p>17 Q. Just a minute ago you testified that there</p> <p>18 was one additional document that your firm prepared</p> <p>19 for its representation of RaPower-3; is that correct?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. Is this that document?</p> <p>22 <b>A. To the best of my knowledge, I believe so.</b></p> <p>23 Q. You reviewed Exhibit 23 and compared it?</p> <p>24 <b>A. Yes. I believe this in timeline followed</b></p> <p>25 <b>after Exhibit 570.</b></p>	113	<p>1 <b>modified every time that it was opened and could have</b></p> <p>2 <b>potentially been modified after, so I believe that</b></p> <p>3 <b>Exhibit 23 is substantially similar to the document</b></p> <p>4 <b>that was attached, but I cannot say that it is exact</b></p> <p>5 <b>because it would have been modified every time it was</b></p> <p>6 <b>opened.</b></p> <p>7 Q. Okay. And you already testified about</p> <p>8 using an auto fill date feature.</p> <p>9 <b>A. Correct.</b></p> <p>10 Q. Do you recall that testimony?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. So when you say it was substantially</p> <p>13 similar but may have been modified, is that what</p> <p>14 you're referring to, the date?</p> <p>15 <b>A. At a minimum, the date would have been</b></p> <p>16 <b>modified.</b></p> <p>17 Q. Okay. I will also represent that the</p> <p>18 United States Bates stamped this document with US</p> <p>19 Bates numbers and an exhibit number.</p> <p>20 Obviously, those weren't --</p> <p>21 <b>A. Those were not there, yes.</b></p> <p>22 Q. Okay. Do you want to take a minute and</p> <p>23 look at Exhibit 23 and see if anything jumps out at</p> <p>24 you right now?</p> <p>25 We're going to go through it in more</p>

114	<p>1 detail, but anything jump out at you as not being</p> <p>2 what you prepared?</p> <p>3 <b>A. No.</b></p> <p>4 MR. MARTIN: Go ahead and take a look at</p> <p>5 the exhibit.</p> <p>6 THE WITNESS: Well, yes, the one thing</p> <p>7 that I kind of noticed that did jump out at me is the</p> <p>8 fact that the signature line, it would have been</p> <p>9 contrary to my practice to move that.</p> <p>10 So the Anderson Law Center, PC, that would</p> <p>11 have been very contrary to my practice to have the</p> <p>12 typed version be a signature of any form. It always</p> <p>13 would have had adequate space, and every document</p> <p>14 that I produce would have had additional space there</p> <p>15 for me to apply a signature at a later time.</p> <p>16 I also think that -- I can't recall, but I</p> <p>17 think there's a possibility that the copy that was</p> <p>18 e-mailed might have had a name on it, and it wasn't</p> <p>19 on this copy.</p> <p>20 MR. PAUL: You mean an addressee?</p> <p>21 MR. MORAN: Hold on.</p> <p>22 THE WITNESS: No. I mean -- oh. Oh,</p> <p>23 yeah.</p> <p>24 MR. MORAN: It's my chance to ask</p> <p>25 questions.</p>
115	<p>1 MR. PAUL: Sorry. Couldn't help myself.</p> <p>2 THE WITNESS: So there's a possibility</p> <p>3 that it might have been modified, that it might have</p> <p>4 had a name, either mine or Jessica's, in the</p> <p>5 signature block. There certainly probably would have</p> <p>6 been more space there, and there might have been an</p> <p>7 addressee, but I don't recall on the addressee</p> <p>8 specifically, and I don't recall specifically on the</p> <p>9 name.</p> <p>10 Q. (By Mr. Moran) Okay. All right. You</p> <p>11 testified about the signature block, and that would</p> <p>12 have been on the page that's Bates stamped US001657?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. I just want to make sure I understand</p> <p>15 that.</p> <p>16 It would not have been your practice to</p> <p>17 sign a document Anderson Law Center, PC?</p> <p>18 <b>A. No, but let's also clarify my testimony.</b></p> <p>19 Q. Please do.</p> <p>20 <b>A. It would have also not been my practice to</b></p> <p>21 <b>not leave more space than is depicted on this</b></p> <p>22 <b>document for room for a signature.</b></p> <p>23 Q. Okay. So a document that left your office</p> <p>24 would be set up for a signature block with an</p> <p>25 attorney's name?</p>
116	<p>1 <b>A. Yes.</b></p> <p>2 Q. And that would be either you or your wife?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. And then space for your signatures on the</p> <p>5 document?</p> <p>6 <b>A. Yes, physically sign, or at that time</b></p> <p>7 <b>you'll notice -- anyways, at that time we were</b></p> <p>8 <b>starting the practice of electronically signing with</b></p> <p>9 <b>Adobe and applying -- but it still contains a</b></p> <p>10 <b>depiction of a physical signature.</b></p> <p>11 Q. I understand. What was the purpose of the</p> <p>12 document that you testified to drafting in</p> <p>13 Exhibit 23?</p> <p>14 <b>A. I don't recall. Well, I'll clarify a</b></p> <p>15 <b>little bit. I think -- I think the purpose of that</b></p> <p>16 <b>document, or what he was kind of looking for was he</b></p> <p>17 <b>was --</b></p> <p>18 Q. When you say "he," can you be specific?</p> <p>19 <b>A. Neldon Johnson was looking for something</b></p> <p>20 <b>that could -- he was looking for more summarized,</b></p> <p>21 <b>easier to understand summaries of tax principles that</b></p> <p>22 <b>he could discuss with potential customers or clients,</b></p> <p>23 <b>and my interpretation when we prepared this is that</b></p> <p>24 <b>we were kind of, yes, it's in letter format, but I</b></p> <p>25 <b>really didn't know what the end result was ever going</b></p>
117	<p>1 <b>to look like.</b></p> <p>2 Q. So is Exhibit 23 the end result?</p> <p>3 <b>A. No.</b></p> <p>4 Q. Is it fair to call Exhibit 23 a draft?</p> <p>5 <b>A. At best it's a draft.</b></p> <p>6 Q. Exhibit 570 was sent sometime in October</p> <p>7 2010?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. And Exhibit 23 was e-mailed November 15,</p> <p>10 2010?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. So that's somewhere between two weeks and</p> <p>13 six weeks?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Do you recall what happened in that</p> <p>16 intervening six weeks?</p> <p>17 <b>A. I need a more specific question.</b></p> <p>18 Q. Okay. What happened -- I'm asking you in</p> <p>19 relation to Mr. Johnson and your representation --</p> <p>20 not your representation, but the legal services you</p> <p>21 were providing Mr. Johnson related to RaPower-3 and</p> <p>22 energy equipment?</p> <p>23 MR. MARTIN: Objection. Assumes facts not</p> <p>24 in evidence. You can go ahead.</p> <p>25 THE WITNESS: And I really apologize that</p>

118	<p>1 I focus so hard on the objection that I forget the</p> <p>2 question.</p> <p>3 MR. MORAN: Okay. Read back the question.</p> <p>4 THE WITNESS: I lose the question.</p> <p>5 THE COURT REPORTER: "Question: Okay.</p> <p>6 What happened -- I'm asking you in</p> <p>7 relation to Mr. Johnson and your</p> <p>8 representation -- not your representation, but</p> <p>9 the legal services you were providing</p> <p>10 Mr. Johnson related to RaPower-3 and energy</p> <p>11 equipment?"</p> <p>12 THE WITNESS: I believe the extent of the</p> <p>13 representation between those two letters would be</p> <p>14 meetings discussing these tax questions on the first</p> <p>15 letter that are in Exhibit 570.</p> <p>16 Q. (By Mr. Moran) Okay. You testified</p> <p>17 earlier about a meeting between -- you know from your</p> <p>18 wife about a meeting between your wife and</p> <p>19 Mr. Johnson where he slammed down Exhibit 570 and</p> <p>20 said, "What am I supposed to do with this?"</p> <p>21 <b>A. There were more than that meeting.</b></p> <p>22 Q. Okay. Can you describe for me that</p> <p>23 process?</p> <p>24 <b>A. He would come in regularly, fairly</b></p> <p>25 <b>regularly, never call to make an appointment. It was</b></p>	120	<p>1 those conversations?</p> <p>2 <b>A. I'm sure she did, but I don't recall.</b></p> <p>3 Q. Okay. Do you --</p> <p>4 <b>A. I don't recall any specifics. She</b></p> <p>5 <b>certainly told me about those conversations, but the</b></p> <p>6 <b>specifics of the conversations I do not recall.</b></p> <p>7 Q. Okay. Those were all in-person meetings?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Okay.</p> <p>10 <b>A. There may have been some telephone calls,</b></p> <p>11 <b>but they were the exception, not the rule.</b></p> <p>12 Q. Do you know if Neldon Johnson gave Jessica</p> <p>13 any additional facts about transactions during that</p> <p>14 time frame?</p> <p>15 <b>A. Define transactions.</b></p> <p>16 Q. Transactions that RaPower-3 members would</p> <p>17 be engaged in?</p> <p>18 <b>A. I can say that Jessica was definitely</b></p> <p>19 <b>given more details about the contemplated business</b></p> <p>20 <b>structure than I was given. To what extent, I don't</b></p> <p>21 <b>know.</b></p> <p>22 Q. Okay. Mr. Anderson, you testified that</p> <p>23 Exhibit 23 was a Word document that was sent around</p> <p>24 November -- it was sent on November 15, 2010?</p> <p>25 <b>A. Yes.</b></p>
119	<p>1 <b>informal walk-ins.</b></p> <p>2 Q. Okay. About how many times?</p> <p>3 <b>A. My testimony would be the same as it was</b></p> <p>4 <b>last time. Between the two, I really don't know.</b></p> <p>5 Q. You testified it was more than five,</p> <p>6 though?</p> <p>7 <b>A. I would say that the bulk -- in relation</b></p> <p>8 <b>to my representation of RaPower-3, it definitely fell</b></p> <p>9 <b>between those two front time frames, and then there</b></p> <p>10 <b>was some following the November 15, 2010.</b></p> <p>11 Q. Okay. And you said those two time frames.</p> <p>12 Can you be specific about that?</p> <p>13 <b>A. The time frame that we provided</b></p> <p>14 <b>Exhibit 570, which we don't have an exact date on,</b></p> <p>15 <b>and November 15, 2010.</b></p> <p>16 Q. Okay. During that time frame, what</p> <p>17 information did Mr. Johnson convey to you?</p> <p>18 <b>A. I don't recall.</b></p> <p>19 Q. Okay. Were you part of any of those</p> <p>20 conversations?</p> <p>21 <b>A. Minimally.</b></p> <p>22 Q. Okay. Who was part of those</p> <p>23 conversations?</p> <p>24 <b>A. Jessica.</b></p> <p>25 Q. Okay. Did Jessica tell you anything about</p>	121	<p>1 Q. And while it's dated August 8, 2012, you</p> <p>2 already testified that date is incorrect?</p> <p>3 <b>A. It is incorrect.</b></p> <p>4 Q. Okay. And that was because the Word</p> <p>5 document would have had an auto fill feature?</p> <p>6 <b>A. Correct, and it was a draft. There was</b></p> <p>7 <b>never a date it was finalized.</b></p> <p>8 MR. MORAN: Take a little break?</p> <p>9 MR. MARTIN: Sure.</p> <p>10 (Recess from 10:46 a.m. to 10:55 a.m.)</p> <p>11 MR. MORAN: Back on.</p> <p>12 Q. (By Mr. Moran) Mr. Anderson, before the</p> <p>13 break, we were talking about Plaintiff's Exhibit 23.</p> <p>14 Before we go to any questions, during the</p> <p>15 break, did you talk to anyone about the substance of</p> <p>16 this case?</p> <p>17 <b>A. No.</b></p> <p>18 Q. Getting back to Exhibit 23, you said that</p> <p>19 the letter appearing in Exhibit 23 is substantially</p> <p>20 similar to a document you prepared; is that correct?</p> <p>21 <b>A. Yes. Actually, I want to clarify one</b></p> <p>22 <b>thing. The Bates stamp, US001658, I -- I did not --</b></p> <p>23 <b>this was not part of my file. I don't know where it</b></p> <p>24 <b>originated from. I don't know where it came from.</b></p> <p>25 <b>I can say that that's my e-mail address, I</b></p>

122	<p>1 can say that I recall sending an e-mail on or about</p> <p>2 that date, and I can say that I recall attaching</p> <p>3 those documents, but the actual document, I don't</p> <p>4 know that this is mine or where it came from.</p> <p>5 Q. Okay.</p> <p>6 <b>A. And I certainly don't recognize the</b></p> <p>7 <b>Post-it Note in any way.</b></p> <p>8 Q. Understood. And you looked back to see if</p> <p>9 you could find the e-mail you sent in November 2010,</p> <p>10 right?</p> <p>11 <b>A. I did.</b></p> <p>12 Q. And did you find it?</p> <p>13 <b>A. No.</b></p> <p>14 Q. Okay. And since 2010, have you destroyed</p> <p>15 some e-mails?</p> <p>16 <b>A. I have not destroyed.</b></p> <p>17 Q. Is it your business practice to retain all</p> <p>18 e-mails, or do you have a retention period?</p> <p>19 <b>A. We had some change in servers and</b></p> <p>20 <b>computers, and through that process some e-mails were</b></p> <p>21 <b>lost.</b></p> <p>22 Q. Okay. Do you believe that the e-mail you</p> <p>23 sent -- you believe the e-mail that you sent in</p> <p>24 November 15, 2010, is an e-mail that was lost?</p> <p>25 <b>A. Correct.</b></p>
123	<p>1 Q. Okay. And the e-mail on page US001658,</p> <p>2 does that appear to be your signature block?</p> <p>3 <b>A. So at the time -- it is my e-mail</b></p> <p>4 <b>signature block. It's basically a -- about that same</b></p> <p>5 <b>time I had designed some cards, and I basically took</b></p> <p>6 <b>a JPEG image of those cards and used that as my</b></p> <p>7 <b>signature block for e-mails, and that would have been</b></p> <p>8 <b>my practice at that time.</b></p> <p>9 Q. Is there any reason to believe that the</p> <p>10 e-mail that appears on US001658 is not a copy of the</p> <p>11 e-mail you sent?</p> <p>12 <b>A. Not at all.</b></p> <p>13 Q. Okay. The letter -- the document that you</p> <p>14 prepared that's reflected in all but the last page of</p> <p>15 Exhibit 23 --</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. -- what was the purpose of that document?</p> <p>18 MR. PAUL: Objection. It's been asked and</p> <p>19 answered.</p> <p>20 Q. (By Mr. Moran) I'm going to ask you to</p> <p>21 answer again.</p> <p>22 <b>A. I don't remember the specifics. The best</b></p> <p>23 <b>that I recall is that Neldon was -- on behalf of</b></p> <p>24 <b>RaPower was seeking summarized, easier to access and</b></p> <p>25 <b>provide information regarding particular tax</b></p>
124	<p>1 principles that could be -- may be usable in the</p> <p>2 business venture that he was either doing or</p> <p>3 contemplating or putting together, and I believe that</p> <p>4 was the purpose of that letter was to start basically</p> <p>5 the dialogue between myself and a client regarding</p> <p>6 getting to that final product.</p> <p>7 Q. All right. Was the document reflected in</p> <p>8 Exhibit 23 a final product?</p> <p>9 <b>A. No.</b></p> <p>10 Q. What was it?</p> <p>11 <b>A. A draft.</b></p> <p>12 Q. Why did you send Exhibit 23 to</p> <p>13 Mr. Johnson?</p> <p>14 <b>A. To provide him a draft and get some</b></p> <p>15 <b>feedback and continue the dialogue of what the</b></p> <p>16 <b>product was that he was looking for.</b></p> <p>17 Q. What happened after you sent Exhibit 23?</p> <p>18 <b>A. There was additional meetings between him</b></p> <p>19 <b>and Jessica.</b></p> <p>20 Q. Were there any additional documents</p> <p>21 prepared?</p> <p>22 <b>A. Not that I recall.</b></p> <p>23 Q. Okay. Do you recall what information was</p> <p>24 exchanged in those subsequent meetings?</p> <p>25 <b>A. I was definitely less involved at that</b></p>
125	<p>1 <b>point, so no.</b></p> <p>2 Q. Okay. Did your wife ever tell you what</p> <p>3 information was exchanged during those subsequent</p> <p>4 meetings?</p> <p>5 <b>A. I'm sure she did. I don't recall what</b></p> <p>6 <b>they were.</b></p> <p>7 Q. Okay. You testified that earlier, based</p> <p>8 on Exhibit 570, Mr. Johnson was not satisfied with</p> <p>9 the product.</p> <p>10 <b>A. Correct.</b></p> <p>11 Q. Were those subsequent meetings intended to</p> <p>12 ease Mr. Johnson's concerns?</p> <p>13 <b>A. I would --</b></p> <p>14 MR. MARTIN: I'll object. It lacks</p> <p>15 foundation, but you can go ahead.</p> <p>16 THE WITNESS: Can you read the question</p> <p>17 one more time?</p> <p>18 THE COURT REPORTER: "Question: Were</p> <p>19 those subsequent meetings intended to</p> <p>20 ease Mr. Johnson's concerns?"</p> <p>21 THE WITNESS: No, that's not how I would</p> <p>22 define them.</p> <p>23 Q. (By Mr. Moran) Okay. What was the</p> <p>24 purpose of the subsequent meetings?</p> <p>25 <b>A. Mr. Johnson was wanting more -- he wanted</b></p>



<p style="text-align: right;">126</p> <p>1 different information than was set out in this</p> <p>2 letter.</p> <p>3 Q. What was the different information he</p> <p>4 wanted?</p> <p>5 <b>A. I don't know specifically, more specific.</b></p> <p>6 <b>I mean, he -- I don't know specifically, other than</b></p> <p>7 <b>he wanted more specifics regarding particular</b></p> <p>8 <b>circumstances and facts he wanted those laws applied</b></p> <p>9 <b>to.</b></p> <p>10 Q. Okay. So do you know generally what he</p> <p>11 was asking for?</p> <p>12 <b>A. I think I just said that.</b></p> <p>13 Q. More specific --</p> <p>14 <b>A. He wanted -- he wanted more specifics that</b></p> <p>15 <b>these tax principles could be applied to</b></p> <p>16 <b>specifically, what a specific set of circumstances</b></p> <p>17 <b>that he was trying to implement, I think.</b></p> <p>18 Q. Okay. So did he provide those more</p> <p>19 specific circumstances?</p> <p>20 <b>A. I believe so.</b></p> <p>21 Q. Okay. Who did he provide them to?</p> <p>22 <b>A. Jessica.</b></p> <p>23 Q. Okay. Were you part of any of those</p> <p>24 conversations?</p> <p>25 <b>A. In passing at best. Generally, no.</b></p>	<p style="text-align: right;">128</p> <p>1 <b>A. Correct.</b></p> <p>2 Q. And then you also testified that,</p> <p>3 subsequent to Exhibit 23 being sent, there were more</p> <p>4 meetings?</p> <p>5 <b>A. Correct.</b></p> <p>6 Q. Okay. And then you testified that</p> <p>7 Mr. Johnson conveyed more specific -- some more</p> <p>8 specific circumstances?</p> <p>9 <b>A. I believe so.</b></p> <p>10 Q. When was that? Was that between</p> <p>11 Exhibit 570 and 23 or after Exhibit 23?</p> <p>12 <b>A. I don't know.</b></p> <p>13 Q. Okay. The specific circumstances you're</p> <p>14 talking about that were conveyed to Mr. Johnson -- or</p> <p>15 by Mr. Johnson to, I think, your wife --</p> <p>16 <b>A. Uh-huh (yes).</b></p> <p>17 Q. -- is there any document that reflects</p> <p>18 those specific circumstances and information?</p> <p>19 <b>A. Him conveying those specific circumstances</b></p> <p>20 <b>as to what he wanted to us?</b></p> <p>21 Q. Yes.</p> <p>22 <b>A. No.</b></p> <p>23 Q. Was it all done verbally?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. And you testified that in Exhibit 23 there</p>
<p style="text-align: right;">127</p> <p>1 Q. Did Jessica ever tell you what he had told</p> <p>2 her?</p> <p>3 <b>A. I'm sure, but I don't recall the</b></p> <p>4 <b>specifics.</b></p> <p>5 Q. Those more specific circumstances that he</p> <p>6 relayed to her, do you know if those appear in</p> <p>7 Exhibit 23? Take a look.</p> <p>8 <b>A. I don't know. I find this to be very</b></p> <p>9 <b>general, and I don't think it applies to specifics.</b></p> <p>10 <b>Just as we discussed in 570, I don't think it applies</b></p> <p>11 <b>these tax principles to any specifics --</b></p> <p>12 Q. Okay.</p> <p>13 <b>A. -- would be my general reading of it.</b></p> <p>14 Q. And why is that?</p> <p>15 <b>A. Because that's what the document says.</b></p> <p>16 Q. Okay. Because it doesn't have any</p> <p>17 specific facts that you can apply a statute to?</p> <p>18 <b>A. Right. It's a general summary of tax</b></p> <p>19 <b>principles, but it doesn't apply those tax principles</b></p> <p>20 <b>to any specific set of facts.</b></p> <p>21 Q. Okay. Thank you. You testified to a</p> <p>22 couple of different timelines.</p> <p>23 There were a series of meetings I</p> <p>24 understand between when Exhibit 570 was sent and when</p> <p>25 Exhibit 23 was sent?</p>	<p style="text-align: right;">129</p> <p>1 really are no specific facts or circumstances for a</p> <p>2 written analysis to be given on; right?</p> <p>3 MR. PAUL: Objection. Foundation.</p> <p>4 THE WITNESS: I believe that this is a</p> <p>5 general summary of general tax principles, and it</p> <p>6 does not apply those general tax principles to any</p> <p>7 specific set of circumstances.</p> <p>8 Q. (By Mr. Moran) And so any specific</p> <p>9 circumstances that were conveyed from Mr. Johnson to</p> <p>10 your firm, those aren't written down anywhere?</p> <p>11 <b>A. Correct.</b></p> <p>12 Q. Okay.</p> <p>13 <b>A. And there's no documentation applying</b></p> <p>14 <b>those circumstances to specific tax principles.</b></p> <p>15 Q. Okay. Why not?</p> <p>16 <b>A. Because ultimately -- the specifics of the</b></p> <p>17 <b>conversation are Jessica's, but ultimately Jessica</b></p> <p>18 <b>could not find a way to provide him the affirmative</b></p> <p>19 <b>opinion that those facts applied to the tax</b></p> <p>20 <b>principles were in conformance with law.</b></p> <p>21 Q. And did that discussion occur before or</p> <p>22 after Exhibit 23?</p> <p>23 <b>A. After.</b></p> <p>24 Q. Okay. So was Mr. Johnson satisfied with</p> <p>25 Exhibit 23?</p>

130	<p>1           <b>A. I don't know.</b></p> <p>2           Q. You just testified that your wife could</p> <p>3 not give him an analysis applying the law to the</p> <p>4 specific facts he was giving her.</p> <p>5           Is that fair?</p> <p>6           <b>A. He could -- I need you to clarify your</b></p> <p>7 <b>question. It's not that she wasn't competent to</b></p> <p>8 <b>provide an opinion. It's that she couldn't find the</b></p> <p>9 <b>specific circumstances and the tax principles that he</b></p> <p>10 <b>wanted to mesh and work, and so -- and that's</b></p> <p>11 <b>essentially when the representation started to end.</b></p> <p>12          Q. And do you know if your wife conveyed that</p> <p>13 to Mr. Johnson?</p> <p>14          <b>A. She did.</b></p> <p>15          Q. Okay. And do you know what Mr. Johnson's</p> <p>16 response was?</p> <p>17          <b>A. I don't. I know of at least one meeting</b></p> <p>18 <b>that I was there that -- I wasn't in the room, but</b></p> <p>19 <b>both voices were raised, and Mr. Johnson was becoming</b></p> <p>20 <b>upset, and I don't know that I necessarily heard</b></p> <p>21 <b>Jessica, but she can hold her own, which is why I</b></p> <p>22 <b>didn't intervene because she held her own, I'm quite</b></p> <p>23 <b>confident of it, but Mr. Johnson became upset because</b></p> <p>24 <b>essentially he could not convince Jessica of his view</b></p> <p>25 <b>of these tax principles as applied to circumstances.</b></p>
131	<p>1           Q. Is that because Mrs. Anderson, your wife,</p> <p>2 didn't agree with the legal analysis he wanted her</p> <p>3 to --</p> <p>4           <b>A. Correct.</b></p> <p>5           MR. PAUL: Objection. Calls for</p> <p>6 speculation.</p> <p>7           Q. (By Mr. Moran) Sorry. You can answer.</p> <p>8           <b>A. Notwithstanding the objection, that would</b></p> <p>9 <b>be my understanding.</b></p> <p>10          Q. Did you ever have discussions with</p> <p>11 Ms. Anderson about it?</p> <p>12          <b>A. Yes.</b></p> <p>13          Q. And what did she tell you?</p> <p>14          <b>A. Essentially that, that she couldn't make</b></p> <p>15 <b>what he was asking for work.</b></p> <p>16          Q. Because what he was asking for was not in</p> <p>17 accordance with the law?</p> <p>18          MR. PAUL: Objection. Calls for</p> <p>19 speculation --</p> <p>20          THE WITNESS: To the best --</p> <p>21          MR. PAUL: -- foundation.</p> <p>22          THE WITNESS: Sorry. Did you get them all</p> <p>23 on? To the best of my knowledge.</p> <p>24          Q. (By Mr. Moran) Do you know specifically</p> <p>25 why it didn't work?</p>
132	<p>1           In other words, why specifically did</p> <p>2 Mrs. -- did Jessica Anderson -- Jessica Anderson's</p> <p>3 legal interpretation not accord with what Mr. Johnson</p> <p>4 wanted her to say?</p> <p>5           <b>A. Can I consult my attorney?</b></p> <p>6           MR. MORAN: Yes.</p> <p>7           THE WITNESS: I understand you've asked</p> <p>8 the question, but I need to consult with my attorney,</p> <p>9 if that's okay.</p> <p>10          Q. (By Mr. Moran) Give me the answer.</p> <p>11          MR. MARTIN: Can you repeat back the</p> <p>12 question?</p> <p>13          THE COURT REPORTER: "Question: Do</p> <p>14 you know specifically why it didn't work?</p> <p>15 In other words, why specifically did</p> <p>16 Mrs. -- did Jessica Anderson -- Jessica</p> <p>17 Anderson's legal interpretation not accord with</p> <p>18 what Mr. Johnson wanted her to say?"</p> <p>19          MR. MARTIN: You can answer that.</p> <p>20          THE WITNESS: I would like to refer to</p> <p>21 something.</p> <p>22          MR. MORAN: You can refer to anything you</p> <p>23 want. I'd like to see whatever you refer to.</p> <p>24          THE WITNESS: I understand. That's why</p> <p>25 I'm consulting with my attorney.</p>
133	<p>1           MR. MARTIN: If answering the question</p> <p>2 would require you to divulge a privilege, or if it</p> <p>3 would require you to disclose attorney-client</p> <p>4 communications that have not been waived, then you</p> <p>5 should not answer the question, but otherwise --</p> <p>6          THE WITNESS: And my interpretation is</p> <p>7 it's been waived, I think.</p> <p>8          MS. HEALY-GALLAGHER: There is no</p> <p>9 objection by the privilege holder to the question.</p> <p>10          MR. PAUL: Well, to the extent that it</p> <p>11 calls for an attorney-client privilege that has not</p> <p>12 been waived, I instruct you not to answer because you</p> <p>13 have your own counsel.</p> <p>14          THE WITNESS: Right, and I understand</p> <p>15 that, but my concern is that I just would want to be</p> <p>16 absolutely sure that it fits within the parameters of</p> <p>17 that waiver. I think it does. That's why --</p> <p>18          MR. PAUL: If there's a question, I would</p> <p>19 ask that you not answer the question.</p> <p>20          THE WITNESS: Okay. Then the question</p> <p>21 generally dealt -- or the answer generally dealt with</p> <p>22 the active versus passive income and making it</p> <p>23 passive -- that the income here was passive income,</p> <p>24 and he wanted to be able to offset that on active</p> <p>25 income, so he basically wanted to make the active</p>

134	<p>1 income -- or sorry. The passive income of the</p> <p>2 process of the investment into the solar energy,</p> <p>3 or -- not solar. I'm using solar, but that's not</p> <p>4 correct. The energy equipment as an active income so</p> <p>5 that it could offset an individual's other active</p> <p>6 income, and she could not find a way to structure it</p> <p>7 that that would be plausible.</p> <p>8 The other problem was that she could not</p> <p>9 find a way to find investors or purchasers of the</p> <p>10 energy equipment as -- what's the word? There's a</p> <p>11 word. They were not involved enough. They did not</p> <p>12 have enough to satisfy the material participation.</p> <p>13 She could not find a way to structure a situation</p> <p>14 where people would be purchasing this equipment such</p> <p>15 that those two issues would be overcome.</p> <p>16 MR. MORAN: Okay.</p> <p>17 MR. MARTIN: Let's break before you ask</p> <p>18 your next question. Let me confer with Mr. Anderson.</p> <p>19 (Counsel conferring with witness outside</p> <p>20 conference room from 11:13 a.m. to 11:18 a.m.)</p> <p>21 MR. MORAN: Go back on.</p> <p>22 Mr. Anderson, just a couple of follow-up</p> <p>23 questions on the last answer you gave.</p> <p>24 Q. (By Mr. Moran) Before I ask that, during</p> <p>25 the break, did you talk with anyone about the</p>	136	<p>1 appropriately part of the record.</p> <p>2 MR. MORAN: Thank you. I just have a</p> <p>3 couple of follow-up questions on the last answer you</p> <p>4 gave.</p> <p>5 THE WITNESS: Okay.</p> <p>6 Q. (By Mr. Moran) Am I correct that your</p> <p>7 testimony is that Mr. Johnson wanted RaPower-3</p> <p>8 members' losses to offset active income?</p> <p>9 <b>A. That is my understanding from</b></p> <p>10 <b>conversations with Jessica.</b></p> <p>11 Q. Okay. And Jessica disagreed with that,</p> <p>12 correct?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. And then I think the second part of your</p> <p>15 answer was that Mr. Johnson wanted RaPower-3 members</p> <p>16 to have material participation; is that correct?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. And is it your testimony that Jessica</p> <p>19 Anderson disagreed with that interpretation?</p> <p>20 <b>A. Given the set of circumstances that</b></p> <p>21 <b>Mr. Johnson discussed with Jessica on possibility of</b></p> <p>22 <b>structuring the transactions, she could not find a</b></p> <p>23 <b>way to say that they would be material participants.</b></p> <p>24 Q. Okay. And to your knowledge, Jessica</p> <p>25 conveyed that disagreement to Mr. Johnson?</p>
135	<p>1 substance of your testimony today?</p> <p>2 <b>A. Discussed confidentiality issues.</b></p> <p>3 Q. With who?</p> <p>4 <b>A. I forget your name.</b></p> <p>5 MR. PAUL: Steven Paul.</p> <p>6 THE WITNESS: Steven Paul and my attorney.</p> <p>7 That's all.</p> <p>8 MR. PAUL: We have no further objection to</p> <p>9 the questions that were asked. That was the subject</p> <p>10 of the discussion, whether our waiver extended to the</p> <p>11 conversation that you've already had on the record.</p> <p>12 I expressed to him that I felt that it was waived.</p> <p>13 MR. MORAN: Okay.</p> <p>14 MR. PAUL: That's the extent of it.</p> <p>15 MR. MORAN: Mr. Paul, I'm going to ask you</p> <p>16 to withdraw the objection that you made -- I believe</p> <p>17 you did make an objection, then he answered.</p> <p>18 MR. PAUL: To the extent I need to, I'll</p> <p>19 withdraw it. He's already testified to it, so it's</p> <p>20 already waived on the record.</p> <p>21 MR. MORAN: Okay.</p> <p>22 MR. MARTIN: And I think Mr. Anderson gave</p> <p>23 testimony with respect to what he felt was</p> <p>24 appropriate, and I don't know that any objection was</p> <p>25 disregarded, so I think the testimony stands and is</p>	137	<p>1 <b>A. She did.</b></p> <p>2 Q. Do you know when that was?</p> <p>3 <b>A. Exactly, no.</b></p> <p>4 Q. Was it in the October/November 2010 time</p> <p>5 frame?</p> <p>6 <b>A. It could have been slightly later. Well,</b></p> <p>7 <b>it could have been into 2011.</b></p> <p>8 Q. Okay. Was it at least some time before</p> <p>9 March 2011?</p> <p>10 <b>A. No. Well, I mean, it could have been</b></p> <p>11 <b>before, but it would have been after.</b></p> <p>12 Q. What's the latest date it could have been?</p> <p>13 <b>A. Could have been -- the latest would have</b></p> <p>14 <b>been June of 2011.</b></p> <p>15 Q. Okay. Why do you think that the latest it</p> <p>16 could have been was June 2011?</p> <p>17 <b>A. It's my understanding that Jessica sent</b></p> <p>18 <b>Mr. Johnson an e-mail detailing her issues with those</b></p> <p>19 <b>two things that she could not provide, or she</b></p> <p>20 <b>couldn't make it work, and suggested that Mr. Johnson</b></p> <p>21 <b>consult with alternate counsel who maybe could help</b></p> <p>22 <b>him.</b></p> <p>23 Q. Did you look for a copy of that e-mail?</p> <p>24 <b>A. I did.</b></p> <p>25 Q. Did you find it?</p>

<p style="text-align: right;">138</p> <p>1           <b>A. I did.</b></p> <p>2           Q. You found that e-mail?</p> <p>3           <b>A. (Witness nodding head affirmatively.)</b></p> <p>4           Q. What did you do with that e-mail after you</p> <p>5 found it?</p> <p>6           <b>A. I safeguarded it pursuant to the Subpoena</b></p> <p>7 <b>and listed that e-mail on the privilege record.</b></p> <p>8           Q. I direct your attention to Exhibit 572.</p> <p>9           <b>A. I do not have a 57 -- yes, I do.</b></p> <p>10          Q. See if you can identify where that e-mail</p> <p>11 appears.</p> <p>12           (Witness examining document.)</p> <p>13           THE WITNESS: I can't identify it.</p> <p>14           MR. MARTIN: Are you having him look at</p> <p>15 both documents, 572 --</p> <p>16           MR. MORAN: I'd invite Mr. Anderson to</p> <p>17 look at both Privilege Logs, see if he can identify</p> <p>18 when it was produced. I represent that I reviewed it</p> <p>19 through production. I don't see an e-mail. I do</p> <p>20 have knowledge of a letter that sounds a little bit</p> <p>21 like that.</p> <p>22           THE WITNESS: It would be Exhibit B of</p> <p>23 those that were not turned over. Sorry.</p> <p>24           MR. MARTIN: On Exhibit 571?</p> <p>25           THE WITNESS: Huh?</p>	<p style="text-align: right;">140</p> <p>1           Privilege Log on line 19, Bates Nos. Anderson 79 to</p> <p>2 80, Description: Privilege Log ALC Reference B --</p> <p>3           Scan of e-mail sent from Jessica Anderson to Todd F.</p> <p>4           Anderson dated June 11, 2011.</p> <p>5           It's a communication from Jessica</p> <p>6           Anderson, Anderson Law Center, PC, to Neldon Johnson</p> <p>7 in his capacity as an officer of RaPower-3. It's</p> <p>8 described as investment property/income defined. It</p> <p>9 was not provided. A privilege claim was asserted,</p> <p>10 and the reason for the privilege claim was that the</p> <p>11 document contains legal advice.</p> <p>12           Based on the content of your testimony, I</p> <p>13 believe that document, one, is responsive to the</p> <p>14 United States Subpoena --</p> <p>15           <b>A. Well, first, I've got to back way up to</b></p> <p>16 <b>the start of this question. I did not say what you</b></p> <p>17 <b>are saying I said.</b></p> <p>18           Q. Okay. Please correct me.</p> <p>19           <b>A. I said I did not prepare this. I did not</b></p> <p>20 <b>identify it on Exhibit 572.</b></p> <p>21           Q. Okay.</p> <p>22           <b>A. I identified a document as Exhibit B on</b></p> <p>23 <b>the fourth page of Exhibit 571.</b></p> <p>24           MR. MORAN: Okay. I'm going to ask that</p> <p>25 that document be produced to the United States. I've</p>
<p style="text-align: right;">139</p> <p>1           MR. MARTIN: On Exhibit 571?</p> <p>2           THE WITNESS: Yes. I apologize. So if we</p> <p>3 look at Exhibit 571, on the one, two, three, fourth</p> <p>4 page, it would be Exhibit B referenced there. Yeah,</p> <p>5 571's the Amended Privilege Log.</p> <p>6           MR. MARTIN: Correct.</p> <p>7           THE WITNESS: It may be there. I just</p> <p>8 can't see it.</p> <p>9           MR. MORAN: Let's just go off the record</p> <p>10 for a minute.</p> <p>11           (Discussion held off the record.)</p> <p>12           (Recess from 11:27 a.m. to 11:35 a.m.)</p> <p>13           MR. MORAN: Go back on.</p> <p>14           Q. (By Mr. Moran) Mr. Anderson, you</p> <p>15 previously testified about an e-mail that your wife</p> <p>16 sent to Neldon Johnson.</p> <p>17           You indicated that you believed it was</p> <p>18 produced to the United States pursuant to the</p> <p>19 Subpoena?</p> <p>20           <b>A. No, I did not testify to that.</b></p> <p>21           Q. Okay. Can you correct your testimony?</p> <p>22           <b>A. I testified that it was listed on a</b></p> <p>23 <b>Privilege Log that was produced to the United States.</b></p> <p>24           Q. Okay. And you've identified that document</p> <p>25 within Exhibit 572, which is Defendants' Supplemental</p>	<p style="text-align: right;">141</p> <p>1           reviewed our records. It does not appear it was</p> <p>2 produced. I'm not sure who has a copy. Mr. Anderson</p> <p>3 acknowledged that he didn't do it.</p> <p>4           Mr. Paul?</p> <p>5           MR. PAUL: Yes, this is Mr. Paul. I will</p> <p>6 certainly review our records, and I did note and we</p> <p>7 had a discussion off the record that it was not part</p> <p>8 of the order, and that may have just been an</p> <p>9 oversight, so when I return to my office, I will look</p> <p>10 at it, confirm whether it is outside the scope of the</p> <p>11 waiver that we've provided, and if it falls within</p> <p>12 the scope of the waiver, we will send you a copy.</p> <p>13           MR. MARTIN: And for the record also, I</p> <p>14 believe the agreement that was made with the Court</p> <p>15 and the Court's instruction was that documents to be</p> <p>16 produced would, in fact, come from counsel for</p> <p>17 Mr. Johnson, and so to the extent the document gets</p> <p>18 provided, I think it would come from Mr. Paul.</p> <p>19           MR. MORAN: That's fine, and, Mr. Paul,</p> <p>20 I'll just ask that if you decide that it should</p> <p>21 remain privileged, then you will expound upon the</p> <p>22 explanation, because the explanation -- the</p> <p>23 description of those documents was inadequate in our</p> <p>24 view. So to the extent that you deem it privileged,</p> <p>25 we'd ask that you explain why.</p>

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1 MR. PAUL: I will get back to you.  
 2 MR. MORAN: Fine.  
 3 Q. (By Mr. Moran) Mr. Anderson, have you  
 4 seen that e-mail?  
 5 **A. Yes.**  
 6 Q. Okay. What does it say?  
 7 MR. PAUL: Objection to the extent it's  
 8 been asked and answered. That's how we got to this  
 9 part of the conversation.  
 10 MR. MORAN: Right.  
 11 THE WITNESS: The specifics of the e-mail  
 12 I don't recall. The generality, I've answered the  
 13 question.  
 14 Q. (By Mr. Moran) Would you repeat your  
 15 answer?  
 16 MR. PAUL: I'll object to the question.  
 17 It's been asked and answered on the record. I'd  
 18 rather not him speculate further than that he's  
 19 already testified to, but I don't have the right to  
 20 tell you not to answer.  
 21 THE WITNESS: That's true. Essentially  
 22 that Jessica's concern was is that, and had been  
 23 throughout the process, that she could not resolve  
 24 the issues of material participation and the concerns  
 25 of active and passive income in relation to the

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1 business structure that RaPower was attempting or  
 2 wanting to put together regarding energy equipment  
 3 and marketing with that energy equipment, and she  
 4 said that she couldn't overcome that concern and  
 5 referred Mr. Johnson, as the agent of RaPower, to  
 6 somebody else. She didn't give any specific names,  
 7 but suggested that he consult with other attorneys  
 8 who might be able to solve the problem.  
 9 Q. (By Mr. Moran) Okay.  
 10 **A. And there was also a reference to the fact**  
 11 **that she -- I don't know if it was she or we -- err**  
 12 **on the side of conservative, were conservative in our**  
 13 **counsel.**  
 14 Q. Okay. Did Mr. Johnson respond to that  
 15 e-mail in any way?  
 16 **A. Not that I'm aware of.**  
 17 Q. He didn't call?  
 18 **A. To the best of my knowledge, that was the**  
 19 **end of our association with Mr. Johnson or RaPower.**  
 20 Q. I'm not asking for specifics here, but did  
 21 you ever have any occasion after June of 2011 to  
 22 perform legal services for Mr. Johnson?  
 23 **A. No.**  
 24 Q. Have you spoken to Mr. Johnson since June  
 25 of 2011?

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1 **A. Yes.**  
 2 Q. When?  
 3 **A. I don't recall exactly. It was years**  
 4 **later.**  
 5 Q. And what was the context of that  
 6 conversation?  
 7 **A. The context of the conversation was along**  
 8 **the lines of you should have stuck with us, we're**  
 9 **making -- we're doing really well.**  
 10 Q. And how did you happen to come into  
 11 contact with Mr. Johnson?  
 12 **A. The area Sub For Santa -- I'm a business**  
 13 **owner, I'm the City Attorney of Delta. I was**  
 14 **participating in a tree festival where you bid on**  
 15 **trees, and the money raised goes to Sub For Santa.**  
 16 **I was at that event as a bidder to make a**  
 17 **contribution to that tree festival, and Mr. Johnson**  
 18 **was there as well.**  
 19 Q. Okay. Do you think that was more than  
 20 five years ago?  
 21 **A. Very likely.**  
 22 Q. Since you saw Mr. Johnson at the tree  
 23 festival, have you ever spoken to him?  
 24 **A. No.**  
 25 Q. How about Glenda Johnson?

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1 **A. No.**  
 2 Q. Anyone you know to be a member of  
 3 Mr. Johnson's family?  
 4 **A. No.**  
 5 Q. Back up a little bit to the time period  
 6 between November, when Exhibit 23 was sent, and June  
 7 of 2011.  
 8 You testified that there were meetings?  
 9 **A. Yes.**  
 10 Q. Were they frequent?  
 11 **A. It's hard to say. I don't know.**  
 12 Q. Okay. Did you ever participate in those  
 13 meetings?  
 14 **A. In passing.**  
 15 Q. Who handled those meetings for your firm?  
 16 **A. Jessica.**  
 17 Q. Okay. Generally can you tell me what the  
 18 substance of those meetings were?  
 19 **A. No.**  
 20 Q. Are you aware of any written  
 21 communications that occurred between November of 2010  
 22 and June of 2011?  
 23 **A. Written communications between November --**  
 24 Q. Between Exhibit 23 in November of 2010 and  
 25 when your wife sent that final e-mail?

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1 **A. As of today, the only written**  
 2 **communication I'm aware of is the final e-mail. I**  
 3 **mean, that's what I'm aware of.**  
 4 MR. MORAN: Mark an exhibit.  
 5 (EXHIBIT 573 WAS MARKED.)  
 6 MR. MORAN: Is this Exhibit 573?  
 7 THE COURT REPORTER: Yes.  
 8 Q. (By Mr. Moran) Mr. Anderson, you've been  
 9 given a copy of what's been marked for identification  
 10 as Plaintiff's Exhibit 573.  
 11 **A. Yes.**  
 12 Q. Do you recognize this document?  
 13 **A. I do.**  
 14 Q. What is it?  
 15 **A. It's a document that was in my file as I**  
 16 **investigated pursuant to the Subpoena.**  
 17 Q. It appears to be a letter from your firm.  
 18 It was set up for Jessica Anderson's  
 19 signature?  
 20 **A. Yes.**  
 21 Q. The date says February 9, 2017.  
 22 Do you believe that to be correct?  
 23 **A. No.**  
 24 Q. Why not?  
 25 **A. I am positive that it was a Word file, and**

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1 **almost all of our Word files have auto updating date**  
 2 **fields.**  
 3 Q. According to the two Privilege Logs, my  
 4 understanding is this document was supposed to be  
 5 dated October 14, 2010.  
 6 **A. And to the -- and I honestly can't tell**  
 7 **you why I dated that on the Privilege Log. I think**  
 8 **it might have been from review of billings.**  
 9 Q. Okay.  
 10 **A. I don't know.**  
 11 Q. Do you think it was sometime in the  
 12 late -- or fall 2010 to June 2011 time frame?  
 13 **A. Best guess, it was before 2011.**  
 14 Q. Okay. So is there any reason to believe  
 15 it wasn't sent sometime in the fall of 2010?  
 16 MR. PAUL: Objection. Foundation.  
 17 THE WITNESS: I have no -- in reviewing  
 18 the documents, and I reviewed them with Jessica, we  
 19 really have very little recollection of this  
 20 document, so I can answer -- I'll just state at the  
 21 front end anything I say about this document is  
 22 speculation because I don't remember why we drafted  
 23 the document. I don't remember if it was mailed. I  
 24 don't -- we don't remember.  
 25 Q. (By Mr. Moran) Okay. But you did find it

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1 in your files and you produced it?  
 2 **A. I produced it to my attorney, who produced**  
 3 **-- I understand it was part of the documents that**  
 4 **were produced to you by RaPower or Neldon Johnson.**  
 5 Q. And when you found it, it was a Word  
 6 document on your computer?  
 7 **A. Yes.**  
 8 Q. Exhibit 573 references a prospectus.  
 9 Do you see that?  
 10 **A. I'm reading it.**  
 11 **(Witness examining document.)**  
 12 THE WITNESS: I guess, no, I'm not seeing  
 13 it. Where --  
 14 Q. (By Mr. Moran) It's in the first  
 15 sentence. It says, "The purpose of the claims made  
 16 in the prospectus of RaPower-3."  
 17 **A. Oh, okay.**  
 18 Q. What is the term "prospectus" referring  
 19 to?  
 20 **A. I don't know.**  
 21 Q. Okay. All right.  
 22 MR. MORAN: It's a quarter to twelve.  
 23 We've been going for almost four hours. I suggest we  
 24 take 45 minutes for lunch. We can go off the record.  
 25 (Lunch break from 11:48 a.m. to 12:38 p.m.)

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1 MR. MORAN: Go back on.  
 2 Q. (By Mr. Moran) Mr. Anderson, before the  
 3 lunch break, we were talking, I think, about  
 4 Exhibit 23, and you testified that this was a draft  
 5 Word document that you sent to Mr. Neldon Johnson and  
 6 Glenda Johnson; is that correct?  
 7 **A. Yes.**  
 8 Q. I have a few questions about Exhibit 23.  
 9 Starting at the top, it says, "Dear  
 10 Potential RaPower-3 Customer."  
 11 **A. Yes.**  
 12 Q. Was that in the Word document that you  
 13 sent?  
 14 **A. I don't know.**  
 15 Q. What does the term "potential RaPower-3  
 16 customer" mean to you?  
 17 **A. I don't know.**  
 18 Q. I think earlier you testified that the  
 19 purpose of Exhibit 23 was intended to be a draft to  
 20 solicit more information from Neldon Johnson?  
 21 **A. Well, it was more -- it was moving towards**  
 22 **a product that I think he wanted for marketing or**  
 23 **education regarding his business or product, and I**  
 24 **had to start somewhere, and so I guess when I say**  
 25 **intent, would be my intent of providing it to**

150	<p>1 <b>Mr. Johnson would be to further the dialogue as to</b></p> <p>2 <b>what that end product would look like.</b></p> <p>3 Q. Okay. So in your mind, do you know if</p> <p>4 that end product might begin with "Dear Potential</p> <p>5 RaPower-3 Customer"?</p> <p>6 <b>A. It could.</b></p> <p>7 Q. It was a draft, so that was a --</p> <p>8 <b>A. Yeah. I don't know -- you know, with that</b></p> <p>9 <b>kind of a -- I mean, I remember thinking then and I</b></p> <p>10 <b>still would think it now, I believe, that I don't</b></p> <p>11 <b>know exactly what I'm doing. You know, is it a</b></p> <p>12 <b>letter? Is it a brochure? You know, what is the end</b></p> <p>13 <b>thing going to look like? I was familiar with</b></p> <p>14 <b>letters, so I started with a letter.</b></p> <p>15 Q. Okay. And your understanding is that this</p> <p>16 end product would be used to -- you said marketing</p> <p>17 purposes, right?</p> <p>18 <b>A. I'm speculating, but I think that was when</b></p> <p>19 <b>we started out the drafting of this particular</b></p> <p>20 <b>document, that was kind of where the end result was</b></p> <p>21 <b>going to be.</b></p> <p>22 Q. Okay. What was Mr. Johnson marketing?</p> <p>23 <b>A. I don't know exactly.</b></p> <p>24 Q. Okay. Exhibit 23 in this second paragraph</p> <p>25 says, "With the purchase of RaPower-3 Energy</p>
151	<p>1 Equipment."</p> <p>2 <b>A. What is energy equipment? I mean, to some</b></p> <p>3 <b>extent -- I mean, I understand what it says, and</b></p> <p>4 <b>you've correctly recited what it says, but I can't</b></p> <p>5 <b>tell you exactly what that was at the time or today.</b></p> <p>6 Q. So at the time you didn't know what</p> <p>7 RaPower-3 energy equipment was?</p> <p>8 <b>A. I did not.</b></p> <p>9 Q. Okay. And you still don't today?</p> <p>10 <b>A. I don't.</b></p> <p>11 Q. Okay. Who came up with the term</p> <p>12 "RaPower-3 energy equipment"?</p> <p>13 <b>A. I believe it was Neldon, but I don't know.</b></p> <p>14 Q. Could it have been anyone other than</p> <p>15 Neldon?</p> <p>16 <b>A. I don't think so.</b></p> <p>17 Q. Is there anything other than RaPower-3</p> <p>18 energy equipment that would have been being marketed?</p> <p>19 <b>A. I don't know.</b></p> <p>20 Q. Can you think of anything?</p> <p>21 <b>A. Again, it was a draft. It was to -- in my</b></p> <p>22 <b>view, I actually do remember this quite a bit, is</b></p> <p>23 <b>that I don't -- you know, in speaking with Jessica</b></p> <p>24 <b>and stuff, it was we need more information. We're</b></p> <p>25 <b>not really sure what we're doing, but let's summarize</b></p>
152	<p>1 <b>the tax principles and go from there, and we'll fill</b></p> <p>2 <b>in some holes later. We never reached that point.</b></p> <p>3 Q. Okay. And when you say "that point," what</p> <p>4 are you referring to?</p> <p>5 <b>A. After we have more information.</b></p> <p>6 Q. Because you never got any information?</p> <p>7 <b>A. I never got more information.</b></p> <p>8 Q. Who did you ask for that additional</p> <p>9 information from?</p> <p>10 <b>A. The only individuals that we spoke with</b></p> <p>11 <b>regarding RaPower -- I think I've said this before.</b></p> <p>12 <b>I'll say it again.</b></p> <p>13 <b>The only individuals we spoke with</b></p> <p>14 <b>regarding RaPower-3 were Neldon Johnson, and Glenda</b></p> <p>15 <b>was there but really did not participate in the</b></p> <p>16 <b>conversations.</b></p> <p>17 Q. All right. Just so I'm clear, the term</p> <p>18 "RaPower-3 energy equipment" means nothing to you?</p> <p>19 <b>A. It really doesn't.</b></p> <p>20 Q. Did it ever?</p> <p>21 <b>A. Not to me.</b></p> <p>22 Q. All right. Turning on Roman numeral I in</p> <p>23 Exhibit 23, there's a reference to energy credit and</p> <p>24 Internal Revenue Code Sections 45 and 48.</p> <p>25 Do you see that?</p>
153	<p>1 <b>A. I do.</b></p> <p>2 Q. Okay. And within that paragraph you</p> <p>3 reference a Qualified Progress Expenditure Property</p> <p>4 (QPEP).</p> <p>5 Do you see that?</p> <p>6 <b>A. I do.</b></p> <p>7 Q. Okay. Why did you include -- or what was</p> <p>8 that QPEP meant to refer to here?</p> <p>9 <b>A. I don't know.</b></p> <p>10 Q. Did you intend for the term "QPEP" to</p> <p>11 apply any analysis to RaPower 3's energy equipment?</p> <p>12 MR. PAUL: Objection. Foundation.</p> <p>13 THE WITNESS: I don't know. If I haven't</p> <p>14 made it clear regarding this document, the</p> <p>15 substantive drafting was done by Jessica, so I'm not</p> <p>16 trying to be -- I'm not trying to hide any balls. I</p> <p>17 don't know because I know essentially --</p> <p>18 conceptually, when we first talked about starting the</p> <p>19 drafting process and let's start with a letter --</p> <p>20 Q. (By Mr. Moran) Okay.</p> <p>21 <b>A. -- but the actual drafting and research</b></p> <p>22 <b>was done by Jessica.</b></p> <p>23 Q. All right. Mr. Anderson, I'll direct your</p> <p>24 attention to the page that's been Bates stamped</p> <p>25 US001656.</p>

<p style="text-align: right;">154</p> <p>1 Down at the bottom of that page, it says, 2 "Stated simply, if you do most of the work in 3 the business using the RaPower-3 energy 4 equipment, any losses associated with your 5 business will be nonpassive and can be deducted 6 without limitation." 7 Do you see that? 8 <b>A. I do.</b> 9 Q. I appreciate that you didn't draft this, 10 but if you know, who does the "you" refer to? 11 <b>A. I mean, assuming that we had to start as 12 being a RaPower-3 customer, I believe you would be a 13 general person that may be a customer, but I believe 14 the statement kind of applies to -- you know, I 15 mean --</b> 16 MR. MARTIN: Go ahead and wait for his 17 question. 18 THE WITNESS: Okay. 19 Q. (By Mr. Moran) All right. So you refer 20 to a RaPower-3 customer? 21 <b>A. I don't know.</b> 22 Q. You don't know? 23 <b>A. I don't.</b> 24 Q. Later on in that sentence you refer to a 25 business.</p>	<p style="text-align: right;">156</p> <p>1 You think either one of those words that 2 was communicated to Mr. Johnson? 3 <b>A. Those specific words, I don't know.</b> 4 Q. Okay. 5 <b>A. I believe -- I mean, I can say that I 6 believe it was conveyed. I cannot say specifically 7 how, but it was by no means a final product, and it 8 was a work in progress.</b> 9 Q. Conveyed to who? 10 <b>A. To Neldon Johnson.</b> 11 Q. Okay. Did Mr. Johnson acknowledge what 12 you told him? 13 <b>A. I don't know. I can't answer that. I 14 don't know.</b> 15 Q. Was it you or your wife, Jessica Anderson, 16 that conveyed that information to Neldon Johnson? 17 <b>A. I don't know.</b> 18 Q. But you know it was one of the two of you? 19 <b>A. Yeah. It would have -- there were only 20 two of us in the firm, and, again, we worked closely 21 and collaborated closely, and it might have been, 22 hey, call Neldon and do this or I did it. I don't 23 remember.</b> 24 Q. Okay. And Exhibit 23 was sent in 25 November.</p>
<p style="text-align: right;">155</p> <p>1 Do you see that? 2 <b>A. I do.</b> 3 Q. Whose business is that referring to? 4 <b>A. I don't know.</b> 5 Q. Okay. You've testified that Exhibit 23 6 was a draft you sent to Neldon Johnson and Glenda 7 Johnson? 8 <b>A. Correct.</b> 9 Q. Okay. How did you communicate to Mr. and 10 Mrs. Johnson that Exhibit 23 was a draft? 11 <b>A. It was a -- I mean, there was discussions, 12 and actually, you know, it was sent without cover. 13 Really, the e-mail didn't contain anything. I do 14 recall -- I can't remember who I had the phone call, 15 but it was a phone call of, hey, there's a draft. 16 Take a look at that and let's go from there, you 17 know.</b> 18 <b>I don't know that we used the words 19 "draft," but it was a, you know, here's a start, 20 because the meetings prior to that had been we're 21 working -- you know, we're working on this thing.</b> 22 Q. Okay. Who had these conversations? 23 <b>A. I don't know.</b> 24 Q. I mean, you used the word "start" and 25 "draft."</p>	<p style="text-align: right;">157</p> <p>1 Then you testified that there was a series 2 of meetings until June 2011? 3 <b>A. I cannot say how long those meetings 4 persisted or when those meetings occurred. From the 5 date that Exhibit 23 was sent to the time that 6 representation was officially terminated via e-mail, 7 I don't know when those meetings occurred. I can 8 tell that you they occurred between those times.</b> 9 Q. Okay. And during those meetings, is that 10 when it would have been conveyed that Exhibit 23 was 11 a draft? 12 <b>A. Could have been.</b> 13 Q. Would it have been any other time? 14 <b>A. It could have been a telephone call when 15 it was initially sent. Like I said, my best guess is 16 that it was sent without cover, meaning I would have 17 picked up the phone and said here it is and what it 18 is, letting him know that it was in his e-mail.</b> 19 Q. Okay. When you say "what it is," are you 20 referring to it was a draft? 21 <b>A. I don't know that I conveyed specifically 22 the words "draft." I don't know.</b> 23 Q. Would you have conveyed to him it wasn't 24 final or that effect? 25 <b>A. Take a look at it, see what you think or</b></p>



158	<p>1 something along those lines. I don't know if I would</p> <p>2 have been very specific in that it is a draft.</p> <p>3 Q. Okay.</p> <p>4 A. I believe that it was clearly conveyed to</p> <p>5 him in one way or another that it was not a final</p> <p>6 product.</p> <p>7 Q. Okay. Did you authorize Mr. Johnson to</p> <p>8 release Exhibit 23 to anyone else?</p> <p>9 A. No.</p> <p>10 Q. Okay. How did you communicate that?</p> <p>11 A. I did not -- your question is did I</p> <p>12 authorize it. The answer is no.</p> <p>13 Q. Okay. Did you ever tell him that he</p> <p>14 couldn't release it to anyone else?</p> <p>15 A. I don't recall that.</p> <p>16 Q. Okay. Did he ever ask permission to</p> <p>17 release it to any third parties?</p> <p>18 A. No.</p> <p>19 Q. Mr. Anderson, I'm handing you what's</p> <p>20 marked for identification as Plaintiff's Exhibit 548.</p> <p>21 I'm not sure that you recognize this exact</p> <p>22 document, but I'm going to ask you to direct your</p> <p>23 attention to the text beginning with December 1,</p> <p>24 2010.</p> <p>25 A. Yes.</p>
159	<p>1 Q. Do you recognize this text?</p> <p>2 A. I do.</p> <p>3 Q. What is it?</p> <p>4 A. It appears to be a document that is</p> <p>5 substantially -- the text is substantially similar to</p> <p>6 the Exhibit 23.</p> <p>7 Q. Okay. And Exhibit 548 appears to be a</p> <p>8 printout from RaPower-3.com's website.</p> <p>9 A. I would agree with that.</p> <p>10 Q. Dated January 22, 2011?</p> <p>11 A. Where are you seeing that?</p> <p>12 Q. Down at the bottom, bottom right-hand</p> <p>13 corner.</p> <p>14 A. I will agree that it signifies January 22,</p> <p>15 2011, on the bottom of the document.</p> <p>16 Q. Okay. Did you authorize the text that you</p> <p>17 said appears to be substantially similar to the text</p> <p>18 of your letter in Exhibit 23?</p> <p>19 MR. PAUL: Objection. Asked and answered.</p> <p>20 Q. (By Mr. Moran) Did you authorize that to</p> <p>21 be placed on RaPower-3.com's website?</p> <p>22 A. No.</p> <p>23 MR. PAUL: Objection to the extent it's</p> <p>24 been asked and answered.</p> <p>25 THE WITNESS: Sorry. No.</p>
160	<p>1 Q. (By Mr. Moran) Did you have anything</p> <p>2 else?</p> <p>3 A. No.</p> <p>4 MR. MORAN: Mark this.</p> <p>5 (EXHIBIT 574 WAS MARKED.)</p> <p>6 Q. (By Mr. Moran) Mr. Anderson, you've been</p> <p>7 given a copy of what's been marked for identification</p> <p>8 as Plaintiff's Exhibit 574.</p> <p>9 Do you recognize this document?</p> <p>10 A. I do.</p> <p>11 Q. What is it?</p> <p>12 A. It appears to be an e-mail from Greg</p> <p>13 Shepard to -- it's the same address that I am</p> <p>14 familiar with as Neldon Johnson's and also Glenda</p> <p>15 Johnson.</p> <p>16 Q. Okay. Is this a true and accurate copy of</p> <p>17 a document that came from your files?</p> <p>18 A. I believe so.</p> <p>19 Q. Do you have any idea how you came to be in</p> <p>20 possession of this document?</p> <p>21 A. Specifically, no. The documents that are</p> <p>22 in my file largely were produced or given to me by</p> <p>23 Neldon Johnson.</p> <p>24 Q. Okay.</p> <p>25 A. And I would assume that would be the case</p>
161	<p>1 with this e-mail as well.</p> <p>2 Q. All right. Can you think of anyone else</p> <p>3 you would have gotten Exhibit 574 from?</p> <p>4 A. No.</p> <p>5 Q. So as far as you know, it must have come</p> <p>6 from Neldon Johnson?</p> <p>7 A. To the best of my knowledge. Again, all</p> <p>8 the documents in the file, including this one, came</p> <p>9 from Neldon Johnson.</p> <p>10 Q. Unless it was a document that you</p> <p>11 prepared?</p> <p>12 A. Unless it was a document that we prepared,</p> <p>13 yes.</p> <p>14 Q. And those kinds of documents would be in</p> <p>15 your letter --</p> <p>16 A. Yes.</p> <p>17 Q. -- or e-mail?</p> <p>18 A. Yes.</p> <p>19 MR. MORAN: Mark that.</p> <p>20 (EXHIBIT 575 WAS MARKED.)</p> <p>21 Q. (By Mr. Moran) Mr. Anderson, we've handed</p> <p>22 you a copy of what's been marked as Plaintiff's</p> <p>23 Exhibit 575.</p> <p>24 Do you recognize it?</p> <p>25 A. To some extent.</p>

162	<p>1 Q. What is it?</p> <p>2 <b>A. It's a document that was in the file that</b></p> <p>3 <b>I assembled, or the documents that I investigated and</b></p> <p>4 <b>assembled pursuant to the Subpoena issued in this</b></p> <p>5 <b>case to me.</b></p> <p>6 Q. Okay. Do you recall where this document</p> <p>7 came from?</p> <p>8 <b>A. To the best of my knowledge, it was given</b></p> <p>9 <b>to me or given to our office by Neldon Johnson.</b></p> <p>10 Q. Okay. Is there anyone else it could have</p> <p>11 come from?</p> <p>12 <b>A. Not that I'm aware of.</b></p> <p>13 Q. Did you talk to Neldon Johnson at all</p> <p>14 about Exhibit 575?</p> <p>15 <b>A. No.</b></p> <p>16 Q. Do you know why he gave it to you?</p> <p>17 <b>A. No.</b></p> <p>18 Q. Do you know where he got it from?</p> <p>19 <b>A. No.</b></p> <p>20 Q. Did Jessica Anderson talk to Mr. Anderson</p> <p>21 about Exhibit 575?</p> <p>22 <b>A. I don't --</b></p> <p>23 MR. PAUL: Object on foundation.</p> <p>24 THE WITNESS: I don't know.</p> <p>25 Q. (By Mr. Moran) I again direct your</p>
163	<p>1 attention back to Exhibit 574.</p> <p>2 Have you ever spoken to Greg Shepherd?</p> <p>3 <b>A. No.</b></p> <p>4 Q. Do you know if Jessica Anderson has ever</p> <p>5 spoken to Greg Shepard?</p> <p>6 <b>A. I don't believe she did, but I don't know</b></p> <p>7 <b>for sure.</b></p> <p>8 Q. Okay. I think you testified that you</p> <p>9 never talked to Neldon Johnson about Exhibit 574?</p> <p>10 <b>A. Not specifically.</b></p> <p>11 Q. Did your wife talk to Neldon Johnson about</p> <p>12 Exhibit 574?</p> <p>13 <b>A. I don't know.</b></p> <p>14 MR. PAUL: Objection. Foundation.</p> <p>15 THE WITNESS: I don't know.</p> <p>16 (EXHIBIT 576 WAS MARKED.)</p> <p>17 Q. (By Mr. Moran) Mr. Anderson, you've been</p> <p>18 given a copy of what's been marked for identification</p> <p>19 as Plaintiff's Exhibit 576.</p> <p>20 Do you recognize this document?</p> <p>21 <b>A. To the extent there was documents that was</b></p> <p>22 <b>discovered in my research of documents in my</b></p> <p>23 <b>possession pursuant to the Subpoena issued to me in</b></p> <p>24 <b>this case.</b></p> <p>25 Q. Is Exhibit 576 a true and accurate copy of</p>
164	<p>1 the document that you found in your files?</p> <p>2 <b>A. To the best of my knowledge.</b></p> <p>3 Q. Do you know where you got Exhibit 576?</p> <p>4 <b>A. To the best of my knowledge, it was given</b></p> <p>5 <b>to my office by Neldon Johnson.</b></p> <p>6 Q. And directing your attention back to</p> <p>7 Exhibit 575, is that a true and accurate copy of the</p> <p>8 document that came from your files?</p> <p>9 <b>A. To the best of my knowledge.</b></p> <p>10 Q. That's a yes? Yes, to the best of your</p> <p>11 knowledge?</p> <p>12 <b>A. Yes, to the best of my knowledge.</b></p> <p>13 Q. Did you ever discuss Exhibit 576 with</p> <p>14 Neldon Johnson?</p> <p>15 <b>A. Not specifically.</b></p> <p>16 Q. Do you know if your wife discussed</p> <p>17 Exhibit 576 with Neldon Johnson?</p> <p>18 <b>A. I don't know.</b></p> <p>19 (EXHIBIT 577 WAS MARKED.)</p> <p>20 Q. (By Mr. Moran) Mr. Anderson, you've been</p> <p>21 given a copy of what's been marked for identification</p> <p>22 as Plaintiff's Exhibit 577.</p> <p>23 Do you recognize this document?</p> <p>24 <b>A. I do.</b></p> <p>25 Q. What is it?</p>
165	<p>1 <b>A. It's a document that was discovered by me</b></p> <p>2 <b>in my search for documents in compliance with the</b></p> <p>3 <b>Subpoena issued to me in this case.</b></p> <p>4 Q. What's the nature of this document?</p> <p>5 <b>A. To the best of my knowledge, it appears to</b></p> <p>6 <b>be notes made by an attorney at or about the time</b></p> <p>7 <b>that we were representing RaPower-3.</b></p> <p>8 Q. Do you know the identification of that</p> <p>9 attorney?</p> <p>10 <b>A. I have subsequently discussed this</b></p> <p>11 <b>document with Jessica, and she believed -- she had</b></p> <p>12 <b>conveyed to me that she believed that she made</b></p> <p>13 <b>this -- made these notes.</b></p> <p>14 Q. Was this document -- this is a Word</p> <p>15 processing document?</p> <p>16 <b>A. I believe it was, yes.</b></p> <p>17 Q. And it's notes of what?</p> <p>18 <b>A. Notes of a meeting with Neldon Johnson.</b></p> <p>19 Q. That Jessica Anderson had with Neldon</p> <p>20 Johnson?</p> <p>21 <b>A. Correct.</b></p> <p>22 Q. Okay. And according to the Privilege Log,</p> <p>23 this was on or about October 10, 2010?</p> <p>24 <b>A. Yeah.</b></p> <p>25 Q. Okay. Would this be notes from one of the</p>

166	<p>1 several meetings you testified to earlier?</p> <p>2 <b>A. Probably.</b></p> <p>3 Q. Okay.</p> <p>4 <b>A. But I want to be clear. My current</b></p> <p>5 <b>recollection is based on a current conversation with</b></p> <p>6 <b>Jessica about this specific document and that she</b></p> <p>7 <b>believed she remembered taking these notes.</b></p> <p>8 Q. I take it recently you had a conversation</p> <p>9 with Jessica Anderson --</p> <p>10 <b>A. Correct.</b></p> <p>11 Q. -- and she relayed to you --</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Let me finish the question.</p> <p>14 She relayed to you that these are her</p> <p>15 notes, not yours?</p> <p>16 <b>A. We believe, yeah. We cannot say for sure,</b></p> <p>17 <b>but we believe.</b></p> <p>18 Q. Do you have any recollection of</p> <p>19 preparing --</p> <p>20 <b>A. I do not have any recollection of</b></p> <p>21 <b>preparing these notes.</b></p> <p>22 Q. Mr. Anderson, I've given you a copy of</p> <p>23 what's been marked for identification as Plaintiff's</p> <p>24 Exhibit 480.</p> <p>25 <b>A. Yeah.</b></p>	168	<p>1 <b>prosecutor, so he represents adverse cases, defense</b></p> <p>2 <b>cases for misdemeanor crimes, and we're also just</b></p> <p>3 <b>colleagues both practicing in Millard County.</b></p> <p>4 Q. Is he somebody you know professionally?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Is he a friend of yours?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. How did Mr. Bennett come to prepare this</p> <p>9 letter in Exhibit 480?</p> <p>10 <b>A. I asked him to.</b></p> <p>11 Q. Why did you ask him to?</p> <p>12 <b>A. Because it came to my attention that the</b></p> <p>13 <b>text of Exhibit 23 was being utilized on RaPower's</b></p> <p>14 <b>website, as you had previously indicated, and that</b></p> <p>15 <b>was without my authorization or knowledge.</b></p> <p>16 Q. How did you learn that?</p> <p>17 <b>A. I was contacted by the IRS in</b></p> <p>18 <b>approximately 2013, I think, asked what I knew about</b></p> <p>19 <b>the letter and about the website. I basically said I</b></p> <p>20 <b>didn't know anything about it.</b></p> <p>21 They sent me a fax, or that IRS agent sent</p> <p>22 me a fax of what appeared to be a printout of the</p> <p>23 RaPower website with a text that was substantially</p> <p>24 similar as your Exhibit 23, but that text had been</p> <p>25 modified, in my opinion, substantially, and it was</p>
167	<p>1 Q. This was marked previously in the</p> <p>2 deposition of Gregory Shepard.</p> <p>3 Do you recognize Exhibit 480?</p> <p>4 <b>A. I do.</b></p> <p>5 Q. What is it?</p> <p>6 <b>A. Well, it's a document that was prepared by</b></p> <p>7 <b>an attorney at my request addressed to RaPower and</b></p> <p>8 <b>Neldon Johnson.</b></p> <p>9 Q. Is Exhibit 480 a document that was</p> <p>10 obtained from your files?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. And is it a true and accurate copy of the</p> <p>13 document that was in your files?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Okay. Who's the attorney you just</p> <p>16 referenced?</p> <p>17 <b>A. Tate W. Bennett.</b></p> <p>18 Q. Who's Mr. Bennett?</p> <p>19 <b>A. An attorney.</b></p> <p>20 Q. An attorney who you know?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Okay. How do you know him?</p> <p>23 <b>A. We work with -- I work with Mr. Bennett on</b></p> <p>24 <b>cases. He is currently the Millard County public</b></p> <p>25 <b>defender. As I previously mentioned, I'm a</b></p>	169	<p>1 <b>after that that I asked Mr. Bennett to send the cease</b></p> <p>2 <b>and desist letter.</b></p> <p>3 Q. Do you remember who at the IRS contacted</p> <p>4 you?</p> <p>5 <b>A. I don't.</b></p> <p>6 Q. So that was sometime in 2013?</p> <p>7 <b>A. I believe. Prior to that time I had no</b></p> <p>8 <b>knowledge.</b></p> <p>9 Q. So between June 2011 and when the IRS</p> <p>10 contacted you, did you have any contact with Neldon</p> <p>11 Johnson?</p> <p>12 <b>A. No.</b></p> <p>13 Q. Okay.</p> <p>14 <b>A. Well, other than the tree festival thing,</b></p> <p>15 <b>which I don't know when that occurred. I'm sorry. I</b></p> <p>16 <b>don't know.</b></p> <p>17 Q. Okay. How about Glenda Johnson?</p> <p>18 <b>A. No.</b></p> <p>19 Q. Okay. So as far as you were concerned, in</p> <p>20 June 2011 your wife sent Neldon Johnson an e-mail</p> <p>21 saying he needed to find a new lawyer, right?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. And then that was the end of it?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. Okay. And then sometime in 2013 the IRS</p>

<p style="text-align: right;">170</p> <p>1 reached out to you?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. What was your reaction to learning that</p> <p>4 Mr. Johnson was using text very similar to your</p> <p>5 letter?</p> <p>6 <b>A. I was upset.</b></p> <p>7 Q. Why were you upset?</p> <p>8 <b>A. I had never authorized that letter to be</b></p> <p>9 <b>used in that way. As far as I was concerned, a</b></p> <p>10 <b>termination -- or our representation had ended years</b></p> <p>11 <b>ago, and we had told him that we couldn't support</b></p> <p>12 <b>what he was trying to do, and I assumed that our</b></p> <p>13 <b>relationship had come to an end.</b></p> <p>14 Q. Did you send Mr. Johnson a final bill?</p> <p>15 <b>A. No.</b></p> <p>16 Q. Did he ever pay you for the work you did?</p> <p>17 <b>A. For what I billed, yes.</b></p> <p>18 Q. Okay. Do you remember about when you sent</p> <p>19 him the last bill?</p> <p>20 <b>A. I don't. I don't remember.</b></p> <p>21 Q. Do you think it was before or after</p> <p>22 November 2010?</p> <p>23 <b>A. There might have been one after, one or</b></p> <p>24 <b>two after.</b></p> <p>25 Q. Why didn't you send him a bill for some of</p>	<p style="text-align: right;">172</p> <p>1 a manner you didn't authorize, and then you reached</p> <p>2 out to Tate Bennett?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. What did you ask Mr. Bennett to do?</p> <p>5 MR. MARTIN: Are you asking for that</p> <p>6 communication?</p> <p>7 MR. MORAN: Hold on. I'll withdraw the</p> <p>8 last question.</p> <p>9 Q. (By Mr. Moran) What did you have</p> <p>10 Mr. Bennett -- withdrawn.</p> <p>11 Did Mr. Bennett send Exhibit 480?</p> <p>12 <b>A. To the best of my knowledge.</b></p> <p>13 Q. Okay. To the best of your knowledge, who</p> <p>14 did he send it to?</p> <p>15 <b>A. To the address listed on that Exhibit 480.</b></p> <p>16 Q. Okay. Did Mr. Bennett tell you that he</p> <p>17 had sent it?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Okay. Do you have any reason to believe</p> <p>20 that Mr. Bennett didn't send it?</p> <p>21 <b>A. No.</b></p> <p>22 Q. Okay. Is Mr. Bennett someone who is</p> <p>23 usually true to his word?</p> <p>24 <b>A. Yes.</b></p> <p>25 MR. PAUL: Objection. Foundation.</p>
<p style="text-align: right;">171</p> <p>1 the work you did subsequent to that?</p> <p>2 <b>A. Subsequent after?</b></p> <p>3 Q. Subsequent to the final bill?</p> <p>4 <b>A. Yeah. Delta's a small town, and I had an</b></p> <p>5 <b>unhappy client who was displeased with the work that</b></p> <p>6 <b>we had done, and we had not been able to accomplish</b></p> <p>7 <b>what he wanted, and generally my experience had been</b></p> <p>8 <b>running a business in a small town with my father is</b></p> <p>9 <b>that bad PR is very detrimental to your business, and</b></p> <p>10 <b>so I wanted to make that separation as painless as</b></p> <p>11 <b>possible so that I wouldn't receive bad shop talk so</b></p> <p>12 <b>to speak, and so that would be -- there was</b></p> <p>13 <b>definitely time that was spent with Mr. Johnson for</b></p> <p>14 <b>RaPower that was not billed.</b></p> <p>15 Q. Okay. But for basic business reasons you</p> <p>16 decided not to bill him for it?</p> <p>17 <b>A. Correct, yeah. We were trying to</b></p> <p>18 <b>establish a reputation -- we had just opened a</b></p> <p>19 <b>practice. We were trying to establish a reputation</b></p> <p>20 <b>as somebody who -- you know, an attorney who would</b></p> <p>21 <b>treat you fairly and honestly for work we did, would</b></p> <p>22 <b>bill you fairly, and he wasn't happy with the work</b></p> <p>23 <b>that we did, so we didn't bill him.</b></p> <p>24 Q. All right. So the IRS told you and you</p> <p>25 learned that your letter may have been being used in</p>	<p style="text-align: right;">173</p> <p>1 Q. (By Mr. Moran) Did anything happen after</p> <p>2 Mr. Bennett sent Exhibit 480?</p> <p>3 <b>A. Could you be more specific?</b></p> <p>4 Q. Was there ever a response from anyone in</p> <p>5 reaction to Exhibit 480?</p> <p>6 <b>A. No, not that I -- not that Mr. Bennett was</b></p> <p>7 <b>ever -- ever told me about.</b></p> <p>8 Q. Okay. How about directly to you?</p> <p>9 <b>A. No.</b></p> <p>10 Q. Okay. Again, I direct your attention to</p> <p>11 the last page of Exhibit 480.</p> <p>12 In the second to last paragraph, it says,</p> <p>13 "We are requesting you respond to this</p> <p>14 demand on or before the close of business on</p> <p>15 July 10, 2013."</p> <p>16 <b>A. Correct.</b></p> <p>17 Q. Exhibit 480 is undated.</p> <p>18 Sounds like you reached out to Mr. Bennett</p> <p>19 sometime in 2013?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. Do I understand this was sent some time</p> <p>22 before July 10, 2013?</p> <p>23 <b>A. I asked Mr. Bennett because --</b></p> <p>24 MR. MARTIN: I just caution you not to</p> <p>25 divulge attorney-client communication with</p>

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1 Mr. Bennett.

2 MR. PAUL: That was a yes or no question.

3 THE WITNESS: Okay. Ask the question one

4 more time.

5 MR. PAUL: Do you want to have her to read

6 it?

7 MR. MORAN: Yeah, why don't you read it

8 back.

9 THE COURT REPORTER: "Question: Do I

10 understand this was sent some time before July

11 10, 2013?"

12 THE WITNESS: I don't know what you

13 understand.

14 Q. (By Mr. Moran) Is it correct that

15 Exhibit 480 was sent some time before July 10, 2013?

16 **A. To the best of my knowledge.**

17 Q. All right. According to the Privilege Log

18 that Mr. Bennett prepared, it was dated June 30 of

19 2013.

20 Is there any reason to believe that's

21 incorrect?

22 **A. Mr. Bennett prepared that log, so I am not**

23 **aware of any reason why that's not correct.**

24 Q. You testified that the text part of your

25 letter that the IRS sent you was modified.

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1 Do you recall that testimony?

2 **A. I do.**

3 Q. Do you recall what was modified?

4 **A. I didn't go through it with a word for**

5 **word comparison, but in Exhibit 548 that you have**

6 **provided today, which is, I'm quite positive, a**

7 **different date than what the IRS had e-mailed, or**

8 **faxed to me, all reference to Anderson has been**

9 **removed from the document. So the signature block**

10 **has been modified to remove Anderson, the disclaimer**

11 **language has been modified to remove Anderson, and**

12 **those were the biggest indicators to me -- those are**

13 **what jumped out to me as the biggest modifications.**

14 **I did not go through it word for word to see if there**

15 **was other modifications.**

16 Q. Mr. Anderson, today we've talked a lot

17 about energy equipment, and that's what Exhibit 23

18 references, right?

19 **A. I believe that's the extent of the**

20 **definition that's put in 23.**

21 Q. Did Neldon Johnson ever discuss solar

22 lenses with you?

23 **A. I remember the time that he told me about**

24 **his energy -- or his solar technology. I remember**

25 **that conversation and then generally how it worked,**

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1 **but as far as when it got into the specifics of**

2 **applying it to tax application, there was never any**

3 **specificity with me regarding solar lenses.**

4 Q. And you said you recall that he told you

5 generally how it worked, right?

6 **A. Yes.**

7 Q. What did he tell you generally how it

8 worked?

9 **A. We covered this, but basically it acted**

10 **more like a magnifying glass than a panel that**

11 **collects the solar energy as a traditional solar**

12 **panel harnesses heat, creates steam to create energy.**

13 **That's my very rudimentary understanding of what he**

14 **explained.**

15 Q. And originally I asked you if he mentioned

16 solar lenses. Sounds like he did.

17 **A. In a very limited fashion.**

18 Q. Did he ever tell you who owns the lenses?

19 **A. No.**

20 Q. Did he tell you how much the lenses cost?

21 **A. No.**

22 Q. Did he tell you anything about the

23 transactions involving the lenses?

24 **A. No.**

25 Q. Okay. Did he ever tell you that the

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1 lenses were part of a system -- I guess you've

2 answered that.

3 You've described, I think you said, a

4 rudimentary system, right?

5 **A. I did not say "system."**

6 Q. You didn't?

7 **A. (Witness shaking head negatively.)**

8 Q. Okay. Did Mr. Johnson ever communicate to

9 you that the lenses were part of a system?

10 **A. No.**

11 Q. He just communicated that the lenses

12 concentrated sunlight and that produced steam and

13 ultimately power?

14 MR. PAUL: Objection to the extent it

15 misstates his prior testimony.

16 THE WITNESS: I'm not even sure that I

17 would say it's power. It creates steam, and I

18 probably drew the conclusion of what happens next.

19 He was very unspecific in the explanation of how the

20 technology worked.

21 Q. (By Mr. Moran) It sounds like you don't

22 have any understanding of what the ultimate product

23 was?

24 **A. I don't.**

25 Q. Did Mr. Johnson ever communicate to you

178	<p>1 that the lenses or anything else were producing</p> <p>2 income?</p> <p>3 <b>A. No.</b></p> <p>4 Q. Did he say how he expected to generate</p> <p>5 income?</p> <p>6 <b>A. No.</b></p> <p>7 Q. Was the potential for income ever</p> <p>8 discussed?</p> <p>9 <b>A. No, not that I can recall.</b></p> <p>10 Q. Okay.</p> <p>11 <b>A. I mean, it was -- no.</b></p> <p>12 Q. What were you told about RaPower-3</p> <p>13 customers?</p> <p>14 MR. PAUL: Objection, vague, and object to</p> <p>15 the extent it's been asked and answered.</p> <p>16 THE WITNESS: And I don't know.</p> <p>17 Q. (By Mr. Moran) Okay. You referenced</p> <p>18 Exhibit 23 and I believe Exhibit 570 in reference to</p> <p>19 RaPower-3 members.</p> <p>20 <b>A. And I don't --</b></p> <p>21 MR. MARTIN: Was that a question?</p> <p>22 Q. (By Mr. Moran) What do you know about a</p> <p>23 RaPower-3 member?</p> <p>24 <b>A. I don't.</b></p> <p>25 Q. Okay. Neldon Johnson was deposed a few</p>
179	<p>1 weeks ago, and he testified that he believes</p> <p>2 RaPower-3's solar lenses qualify for depreciation and</p> <p>3 solar energy credits, and he claims that in part that</p> <p>4 belief came from you or your firm.</p> <p>5 Do you know why that is?</p> <p>6 <b>A. I don't.</b></p> <p>7 Q. Is Mr. Johnson's belief unfounded?</p> <p>8 MR. PAUL: Objection. Calls for</p> <p>9 speculation.</p> <p>10 THE WITNESS: And I really don't have an</p> <p>11 opinion as to what Mr. Johnson thinks or doesn't</p> <p>12 think.</p> <p>13 Q. (By Mr. Moran) Did you give Mr. Johnson</p> <p>14 any reason to believe that the solar lenses that</p> <p>15 RaPower-3 sells to customers qualify for</p> <p>16 depreciation?</p> <p>17 MR. PAUL: Objection. Calls for</p> <p>18 speculation. Objection. Foundation.</p> <p>19 THE WITNESS: Would you repeat that</p> <p>20 question?</p> <p>21 THE COURT REPORTER: "Question: Did</p> <p>22 you give Mr. Johnson any reason to believe that</p> <p>23 the solar lenses that RaPower-3 sells to</p> <p>24 customers qualify for depreciation?"</p> <p>25 MR. MARTIN: Sounds like she may have</p>
180	<p>1 missed the last word. Qualify for --</p> <p>2 MR. MORAN: Depreciation.</p> <p>3 THE WITNESS: I don't think I can</p> <p>4 speculate on what Mr. Johnson believes or doesn't</p> <p>5 believe.</p> <p>6 Q. (By Mr. Moran) I'll represent to you that</p> <p>7 Mr. Johnson testified that he believes his lenses</p> <p>8 qualify for depreciation and solar energy credits.</p> <p>9 My question to you is: Did you give</p> <p>10 Mr. Johnson any reason to believe that?</p> <p>11 MR. PAUL: I reassert my objections.</p> <p>12 Calls for speculation and lack of foundation.</p> <p>13 THE WITNESS: I really don't have an</p> <p>14 opinion. I don't think I can answer your question.</p> <p>15 Q. (By Mr. Moran) Do you recall conveying</p> <p>16 any information to Mr. Johnson that would support his</p> <p>17 belief that his solar lenses qualify for depreciation</p> <p>18 or solar tax credits?</p> <p>19 <b>A. No.</b></p> <p>20 MR. PAUL: You mean beyond the exhibits</p> <p>21 that you've used today?</p> <p>22 Q. (By Mr. Moran) I'll ask you to answer.</p> <p>23 MR. MARTIN: I'll object. I think that</p> <p>24 commentary assumes facts not in evidence.</p> <p>25 THE WITNESS: I just really don't know how</p>
181	<p>1 to answer your question.</p> <p>2 Q. (By Mr. Moran) Do you recall giving</p> <p>3 Mr. Johnson any reason to believe that his solar</p> <p>4 lenses qualify for depreciation or solar energy</p> <p>5 credits? Yes or no?</p> <p>6 MR. PAUL: Objection. Lack of foundation,</p> <p>7 argumentative, assumes facts not in evidence.</p> <p>8 THE WITNESS: And with that objection,</p> <p>9 I'll answer no.</p> <p>10 Q. (By Mr. Moran) Direct your attention back</p> <p>11 to Exhibit 569. It's the first one we looked at</p> <p>12 today.</p> <p>13 I think you testified that this was a</p> <p>14 document you sent to Mantyla McReynolds?</p> <p>15 <b>A. Yeah.</b></p> <p>16 <b>MS. HEALY-GALLAGHER: Yes?</b></p> <p>17 THE WITNESS: Yes.</p> <p>18 Q. (By Mr. Moran) And my understanding is</p> <p>19 that Mr. Johnson had received questions from the</p> <p>20 Internal Revenue Service that you assisted him in</p> <p>21 responding to?</p> <p>22 MR. PAUL: Objection to the extent it's</p> <p>23 been asked and answered.</p> <p>24 THE WITNESS: Yes.</p> <p>25 Q. (By Mr. Moran) Okay. Do you know why</p>

182	<p>1 Mantyla McReynolds was asking these questions?</p> <p>2 <b>A. I don't.</b></p> <p>3 Q. Did you ever get any response from</p> <p>4 Mantyla McReynolds after sending Exhibit 569?</p> <p>5 <b>A. No. I never heard from them.</b></p> <p>6 Q. The information that you conveyed in</p> <p>7 Exhibit 569 in response to Mr. McReynolds' queries,</p> <p>8 where did you get that information?</p> <p>9 <b>A. Neldon Johnson.</b></p> <p>10 Q. Okay. You testified the last time you</p> <p>11 talked to Neldon Johnson was in June at that tree</p> <p>12 festival?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Since then you haven't spoken to him?</p> <p>15 MR. PAUL: Objection to the extent it's</p> <p>16 been asked and answered three times.</p> <p>17 THE WITNESS: The answer is still I have</p> <p>18 not talked to him.</p> <p>19 Q. (By Mr. Moran) How about anyone acting on</p> <p>20 his behalf?</p> <p>21 <b>A. No.</b></p> <p>22 MR. MORAN: I don't have any further</p> <p>23 questions. There were some reference statements, but</p> <p>24 I'll pass the witness to --</p> <p>25 MR. PAUL: I do have a few questions.</p>	184	<p>1 Q. You don't recall doing any?</p> <p>2 <b>A. Not independent, no. I don't recall.</b></p> <p>3 Q. Did you engage anybody else to do research</p> <p>4 besides either yourself or your wife?</p> <p>5 <b>A. No.</b></p> <p>6 Q. Do you believe that Exhibit 23 and</p> <p>7 Exhibit 570 were accurate when they were written?</p> <p>8 <b>A. I believe they're accurate summaries of</b></p> <p>9 <b>general tax principles, yes.</b></p> <p>10 Q. Okay. And in the drafting of that, did</p> <p>11 you and your wife try to make every effort to make it</p> <p>12 correct under the law and an honest and complete</p> <p>13 opinion?</p> <p>14 <b>A. I would not say that about 23.</b></p> <p>15 Q. What about 23 don't you think was not</p> <p>16 accurate, honest or complete?</p> <p>17 MR. MARTIN: Objection. Misstates the</p> <p>18 testimony, but go ahead. Assumes facts not in</p> <p>19 evidence. Go ahead.</p> <p>20 THE WITNESS: Because it wasn't a final</p> <p>21 document, I can't say that it was -- that it hadn't</p> <p>22 been given the full -- I can't say everything you</p> <p>23 said regarding Exhibit 23.</p> <p>24 Q. (By Mr. Paul) Because you didn't have a</p> <p>25 chance to finish it?</p>
183	<p>1 EXAMINATION</p> <p>2 BY MR. PAUL:</p> <p>3 Q. Do you know what research was done to</p> <p>4 produce the letters that have been referenced today,</p> <p>5 Exhibit 23 and Exhibit 570?</p> <p>6 <b>A. Specifically?</b></p> <p>7 Q. To the best of your recollection.</p> <p>8 <b>A. I do not. Jessica did the substantive</b></p> <p>9 <b>research and drafting of those documents.</b></p> <p>10 Q. Do you believe that she undertook</p> <p>11 sufficient legal research to make a reasoned legal</p> <p>12 analysis as set forth in those two exhibits?</p> <p>13 MR. MORAN: Objection. Assumes facts not</p> <p>14 in evidence.</p> <p>15 THE WITNESS: I don't know.</p> <p>16 Q. (By Mr. Paul) Do you believe that Jessica</p> <p>17 Anderson had sufficient time to undertake the legal</p> <p>18 research that was required to provide the analysis</p> <p>19 and opinions that are in the two exhibits that we've</p> <p>20 mentioned?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Do you recall conducting any independent</p> <p>23 legal research in support of the two exhibits that</p> <p>24 we've referenced today?</p> <p>25 <b>A. I do not.</b></p>	185	<p>1 <b>A. Correct.</b></p> <p>2 Q. And you think there may have been</p> <p>3 additional due diligence that you and/or your wife</p> <p>4 would have undertaken before it was finalized?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Was Exhibit 570 provided to the client</p> <p>7 with the expectation the client would rely on it?</p> <p>8 <b>A. I don't know. I don't know.</b></p> <p>9 Q. Is Exhibit 570 a final version?</p> <p>10 <b>A. Well, I believe so. This is not a signed</b></p> <p>11 <b>copy, but I believe it's substantially similar to a</b></p> <p>12 <b>final version.</b></p> <p>13 Q. Okay. And Exhibit 23 was sufficiently</p> <p>14 completed that you provided to the client as a work</p> <p>15 in progress?</p> <p>16 <b>A. It was provided as a work in progress.</b></p> <p>17 Q. Okay. And you had a level of confidence</p> <p>18 that the information that is included in there is</p> <p>19 legally accurate?</p> <p>20 <b>A. I don't -- I don't know.</b></p> <p>21 Q. Do you feel that before preparing</p> <p>22 Exhibit 23 and Exhibit 570 that you had sufficient</p> <p>23 opportunity to ask questions of Mr. Johnson related</p> <p>24 to the opinions that you were asked to write?</p> <p>25 <b>A. No. Well, could you --</b></p>

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1 Q. Yeah, and I'll rephrase the question.

2 **A. Would you rephrase the question for me,**

3 **please.**

4 Q. Do you feel that before you provided

5 Exhibit 570 and Exhibit 23 to Mr. Johnson, that you

6 had sufficient time to ask questions regarding the

7 opinions you were asked to render?

8 **A. I was given sufficient time to ask**

9 **questions. I wasn't given sufficient answers.**

10 Q. Do you know as we sit here today what

11 answers you were not given that you sought?

12 **A. I don't.**

13 Q. Nothing stands out in your mind as to

14 information that we felt we needed before we could

15 render a final answer?

16 **A. Not specifically.**

17 Q. As you were working on Exhibit 23 and

18 Exhibit 570 drafting and revising before it was sent

19 to the client, do you feel you were able to receive

20 sufficient clarification as needed to be fully

21 apprised of the opinions you were asked to give?

22 **A. To the extent that I provided the summary**

23 **of the tax principles discussed, yes. To the extent**

24 **that it was what the client was looking for, no.**

25 Q. And that you learned after the fact?

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1 **A. With a surety I learned after the fact,**

2 **yes.**

3 Q. And your letters, or the letters from your

4 firm were meant to be general overviews of the tax

5 benefits associated with energy equipment?

6 **A. No, I would not say that. They are**

7 **summaries regarding the specific areas of tax law**

8 **that are discussed in those documents, not**

9 **necessarily any specific equipment, because that was**

10 **the information I was lacking.**

11 Q. Okay. But you reference energy equipment

12 in both letters?

13 **A. Yeah. As a general term, yeah.**

14 Q. So you knew that those were provisions of

15 the tax code that you were giving advice on?

16 **A. It was the general arena that we were**

17 **discussing, yes.**

18 Q. You knew you weren't talking about

19 employee benefits?

20 **A. Correct.**

21 Q. And you weren't talking about Social

22 Security withholdings?

23 **A. Yes.**

24 Q. You were talking about the energy tax

25 credit and depreciation?

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1 **A. Yes, and I can -- when you put it that**

2 **way, energy tax credits and depreciation, yes, I can**

3 **answer those questions because that was clearly what**

4 **we discussed.**

5 **How that was applied to a specific set of**

6 **circumstances, I don't feel I could answer those**

7 **questions because we didn't have those circumstances.**

8 Q. Okay. So those were beyond the scope of

9 your letters?

10 **A. Yes.**

11 Q. But as far as the questions that were

12 presented to you and that you answered in the

13 letters, you believe that's an appropriate legal

14 analysis?

15 **A. Yes.**

16 Q. Okay.

17 **A. Well, as to 570. I will say that as to**

18 **507. I will not say that as to Exhibit 23.**

19 Q. Because it's a work in progress?

20 **A. Correct.**

21 Q. And in each of your letters you recommend

22 that anybody that intends to rely on the information

23 in your letters seek independent professional tax

24 advice?

25 **A. I do.**

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1 MR. PAUL: Thank you. No further

2 questions.

3 THE WITNESS: Are we done?

4 MR. PAUL: They get a chance to redirect.

5 THE WITNESS: You don't have anything.

6 MR. MORAN: Byron, do you have any?

7 MR. MARTIN: I have a quick clarification.

8 THE WITNESS: Sure.

9

10 EXAMINATION

11 BY MR. MARTIN:

12 Q. When you provided services with regards to

13 possible tax-saving benefits --

14 **A. Yes.**

15 Q. -- who was your client?

16 **A. RaPower-3.**

17 Q. Did you have any other client other than

18 RaPower-3 as it pertains to the services your firm

19 provided relating to possible tax-saving benefits?

20 **A. No.**

21 MR. MORAN: All right. I have no further

22 questions at this time.

23 However, I would note that we're going to

24 hold this deposition open pending any future

25 deposition of Jessica Anderson or documents that may



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<p style="text-align: right;">190</p> <p>1 be subsequently produced by anyone.</p> <p>2 MR. PAUL: And we don't agree to that.</p> <p>3 We'll raise that -- cross that bridge when we get to</p> <p>4 it.</p> <p>5 MR. MARTIN: And I'll certainly</p> <p>6 consider -- I hear the request and consider that as</p> <p>7 well, but I don't necessarily object to it or agree</p> <p>8 to it at this stage.</p> <p>9 MR. MORAN: I understand.</p> <p>10 MR. PAUL: I've got two more questions, if</p> <p>11 you'll indulge me, and I think they're short answer</p> <p>12 questions.</p> <p>13</p> <p>14 FURTHER EXAMINATION</p> <p>15 BY MR. PAUL:</p> <p>16 Q. Mr. Anderson, did you ever talk to</p> <p>17 Kenneth Birrell regarding this matter?</p> <p>18 <b>A. Not that I recall. I do not know that</b></p> <p>19 <b>name.</b></p> <p>20 Q. And you mentioned in response to</p> <p>21 Exhibit 569, which is the response to Mr. Buck --</p> <p>22 <b>A. Okay.</b></p> <p>23 Q. -- that those answers were provided by</p> <p>24 Mr. Johnson?</p> <p>25 <b>A. Yes.</b></p>	<p style="text-align: right;">192</p> <p>1 to order copies?</p> <p>2 MR. PAUL: Yes, Defendants do.</p> <p>3 MR. MARTIN: Yes.</p> <p>4 (Deposition concluded at 1:36 p.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;">191</p> <p>1 Q. Did you or your wife do any independent</p> <p>2 legal research in support of the answers that are</p> <p>3 contained in Exhibit 569?</p> <p>4 <b>A. It seems -- I seem to remember he brought</b></p> <p>5 <b>in some documentation to support the answers that he</b></p> <p>6 <b>had basically written for me so to speak.</b></p> <p>7 <b>You know, there was a writing, and I</b></p> <p>8 <b>believe those -- anyway, there was a writing, and I</b></p> <p>9 <b>think there was some documentation, but beyond what</b></p> <p>10 <b>he showed me, I did not do any independent</b></p> <p>11 <b>investigation.</b></p> <p>12 Q. And that was the first representation you</p> <p>13 had with Mr. Johnson relating to RaPower-3?</p> <p>14 <b>A. Yes.</b></p> <p>15 MR. PAUL: Sorry. I know that's more than</p> <p>16 two questions. Let me just make sure I don't have</p> <p>17 anything else. Nothing further. Thank you.</p> <p>18 MR. MORAN: Before we go off the record,</p> <p>19 Mr. Anderson, I'm going to ask that you read and sign</p> <p>20 your deposition. Madam Court Reporter will be</p> <p>21 providing a copy to your attorney, and he can discuss</p> <p>22 the details, but the United States is asking that you</p> <p>23 read and sign.</p> <p>24 THE WITNESS: I understand.</p> <p>25 THE COURT REPORTER: Could I ask who wants</p>	<p style="text-align: right;">193</p> <p>1 REPORTER'S CERTIFICATE</p> <p>2</p> <p>3 STATE OF UTAH )</p> <p>4 ) ss.</p> <p>5 COUNTY OF SALT LAKE )</p> <p>6 I, Denise M. Thomas, Certified Real-Time</p> <p>7 Reporter and Registered Professional Reporter in and</p> <p>8 for the State of Utah, do hereby certify:</p> <p>9</p> <p>10 That prior to being examined, the witness,</p> <p>11 TODD F. ANDERSON, was by me duly sworn to tell the</p> <p>12 truth, the whole truth, and nothing but the truth;</p> <p>13</p> <p>14 That said deposition was taken down by me</p> <p>15 in stenotype on August 4, 2017, at the place therein</p> <p>16 named, and was thereafter transcribed and that a true</p> <p>17 and correct transcription of said testimony is set</p> <p>18 forth in the preceding pages;</p> <p>19</p> <p>20 I further certify that, in accordance with</p> <p>21 Rule 30(e), a request having been made to review the</p> <p>22 transcript, a reading copy was sent to MR. MARTIN for</p> <p>23 the witness to read and sign under penalties of</p> <p>24 perjury and then return to me for filing with</p> <p>25 MR. MORAN.</p> <p>26 I further certify that I am not kin or</p> <p>27 otherwise associated with any of the parties to said</p> <p>28 cause of action and that I am not interested in the</p> <p>29 outcome thereof.</p> <p>30</p> <p>31 WITNESS MY HAND this ___ DAY day of ___ MONTH,</p> <p>32 2017.</p> <p>33</p> <p>34 <u>DENISE M. THOMAS, CRR/RPR</u></p> <p>35 Utah License No. 104113-7801</p>

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1 Case: USA vs. RaPower-3, LLC, et al.

2 Case No.: 2:15-cv-00828 DN

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4 Reporter: Denise M. Thomas

5 Date taken: August 4, 2017

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ACKNOWLEDGMENT OF DEPONENT

I, \_\_\_\_\_, do hereby  
acknowledge that I have read and examined the  
foregoing testimony, and the same is a true, correct  
and complete transcription of the testimony given by  
me, and any corrections appear on the attached Errata  
Sheet signed by me.

\_\_\_\_\_  
(DATE) TODD F. ANDERSON