

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

UNITED STATES OF AMERICA,)	
)	Deposition of:
Plaintiff,)	JESSICA ANDERSON
)	
vs.)	
)	Case No. 2:15-cv-00828 DN
RAPOWER3, LLC, INTERNATIONAL AUTOMATED SYSTEMS,)	Judge David Nuffer
)	
INC., LTBl, LLC, R.)	
GREGORY SHEPARD,)	
NELDON JOHNSON and)	
ROGER FREEBORN,)	
)	
Defendant.)	

September 18, 2017 * 1:06 p.m.

Location: IRS Office
173 East 100 North
Provo, Utah



Reporter: Dawn M. Perry, CSR
Notary Public in and for the State of Utah

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<p>1 EXHIBITS</p> <p>2 NO. DESCRIPTION PAGE</p> <p>3</p> <p>4 Exhibit 618 E-mail dated October 15, 2010, to 45</p> <p>5 dc.monte1@yahoo.com from Greg Shepard</p> <p>6 Exhibit 619 Solar Purchase Referral Fee Contract 59</p> <p>7 Exhibit 620 RaPower3 Equipment Purchase Agreement 63</p> <p>8 Exhibit 621 RaPower3 Operation and Maintenance 66</p> <p>9 Agreement</p> <p>10 Exhibit 622 RaPower3 Operation and Maintenance 66</p> <p>11 Agreement</p> <p>12 Exhibit 623 RaPower3 Operation and Maintenance 66</p> <p>13 Agreement</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>1 PROCEEDINGS</p> <p>2</p> <p>3 MS. HEALY GALLAGHER: Hello, Miss</p> <p>4 Anderson. We are on the record today in the case of</p> <p>5 United States versus RaPower3, et al., on</p> <p>6 September 18th at a little after 1:00 p.m. mountain</p> <p>7 time.</p> <p>8 My name is Erin Healy Gallagher of the</p> <p>9 United States Department of Justice in the tax</p> <p>10 division, appearing on behalf of the United States.</p> <p>11 Counsel would you please make your</p> <p>12 appearances.</p> <p>13 MR. MARTIN: Byron Martin here</p> <p>14 representing Jessica Anderson.</p> <p>15 MR. NIELSEN: Joshua Nielsen, also</p> <p>16 representing Jessica Anderson.</p> <p>17 MR. PAUL: Steven Paul on behalf of</p> <p>18 RaPower3 and the business entities and Neldon</p> <p>19 Johnson.</p> <p>20 MS. HEALY GALLAGHER: On the phone we have</p> <p>21 Erin Hines also representing the United States.</p> <p>22 Christopher Moran is not, to my knowledge,</p> <p>23 on the phone. And not present today are R. Gregory</p> <p>24 Shepard and Roger Freeborn.</p> <p>25 We will have this deposition governed by</p>

6	<p>1 the Federal Rules of Civil Procedure and the local 2 rules of the District of Utah. 3 All exhibits today will be marked and sent 4 with the court reporter, unless something else comes 5 up today. And we'll take care of any other 6 stipulations as the need arises. 7 And, Mr. Paul, you had something you 8 wanted to say? 9 MR. PAUL: Yeah. So, first of all, we are 10 going to invoke the protective order and designate 11 this deposition as confidential under the protective 12 order. 13 Also, pursuant to stipulation of the 14 parties and order of the court, the attorney-client 15 privilege that was previously asserted on behalf of 16 Anderson Law Center, or the testimony thereof, has 17 been waived, and the defendants do not object to the 18 questions and answers related to the advice of 19 counsel defense. 20 And then, three, related to the court 21 reporter, Henderson Court Reporting. We have 22 requested and paid for the entity depositions and 23 Neldon Johnson deposition over a month ago, and we 24 still haven't received those. And so we just want to 25 make sure that that got on the record. That we've</p>	7	<p>1 called, we've e-mailed, we've done a number of things 2 to try to get those depositions without any response. 3 MR. MARTIN: Mr. Paul, just for 4 clarification. The statement regarding privilege 5 that you just put on the record, now that waiver 6 applies specifically to Jessica Anderson as well? 7 MR. PAUL: Yes, it does. However, I think 8 the exception that we put on the record before is it 9 does not extend to attorney-client privilege between 10 Jessica Anderson and her lawyers, especially those 11 lawyers that are present today. 12 MR. MARTIN: Yeah, I took your statement 13 to mean the privilege that exists between 14 Jessica Anderson and her client as it relates to the 15 subject matter of this lawsuit, not attorneys 16 representing her. 17 MR. PAUL: Absolutely. Correct. 18 MS. HEALY GALLAGHER: Just so we're all 19 clear for the record too, it doesn't have -- the 20 waiver doesn't have to do with any other 21 representation that you might have had of a client in 22 this case other than to do with RaPower3, energy 23 equipment, solar lenses and tax benefits that may or 24 may not relate to those things. 25 MS. ANDERSON: I understand.</p>
8	<p>1 MR. PAUL: Yes. 2 MS. HEALY GALLAGHER: We're all okay, on 3 the same page. 4 JESSICA ANDERSON, 5 called as a witness, being first sworn, 6 was examined and testified as follows: 7 EXAMINATION 8 BY MS. HEALY GALLAGHER: 9 Q. Okay. All right. Miss Anderson, would 10 you please say and spell your name for the record? 11 A. Jessica Lee Anderson. J-e-s-s-i-c-a, 12 L-e-e, A-n-d-e-r-s-o-n. 13 Q. And is your preference Miss Anderson or 14 Mrs. Anderson? 15 A. Miss Anderson is fine. 16 Q. Okay. Miss Anderson, in what city and 17 state do you live? 18 A. Delta, Utah. 19 Q. And where do you work? 20 A. Delta, Utah. 21 Q. And you work for the Anderson Law Center? 22 A. Yes. 23 Q. Do you have any other paid positions? 24 A. No. 25 Q. And, Miss Anderson, I understand you are</p>	9	<p>1 an attorney so you may be familiar with depositions 2 as you take them or as you've seen them taken before. 3 I'm just going to run through the ground rules just 4 so we're all on the same page here. 5 Of course, I'll ask you questions. My 6 questions and your answers will be recorded here by 7 the court reporter. So I'll ask you to speak loudly 8 enough for her to hear you and also to answer my 9 questions verbally. 10 Will you do that? 11 A. Yes. 12 Q. Perfect. 13 We have a tendency in casual conversation 14 to speak over one another, for example, to start 15 answering a question before it's finished being 16 asked. Here today for the clarity of the record I 17 would just ask that you let me finish my questions 18 before you start to answer. 19 Will you try to do that? 20 A. Yes. 21 Q. And if either of us start talking over the 22 other, I'll just take a pause and we'll make sure the 23 record is clear, okay? 24 A. Okay. 25 Q. When I do finish asking each question,</p>

10	<p>1 your task for today is to give full and complete</p> <p>2 answers.</p> <p>3 Do you understand that obligation?</p> <p>4 A. Yes.</p> <p>5 Q. My obligation is to ask understandable</p> <p>6 questions. If you don't understand my questions for</p> <p>7 any reason, please let me know, and I'll try to ask a</p> <p>8 better one.</p> <p>9 Will you do that?</p> <p>10 A. Yes.</p> <p>11 Q. And, of course, sometimes it will happen</p> <p>12 that you'll give an answer as completely as you can</p> <p>13 recall but then later you may remember some</p> <p>14 information that's a little bit different or</p> <p>15 supplemental to give a more complete answer. If that</p> <p>16 happens today, please just let me know, and we can</p> <p>17 clarify or supplement the record as we need to.</p> <p>18 Okay?</p> <p>19 A. Okay.</p> <p>20 Q. When you're answering a question, if you</p> <p>21 think that a document or multiple documents might</p> <p>22 help you remember some information, will you let me</p> <p>23 know?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. I'll try to remember to take a</p>	11	<p>1 break every 90 minutes or so, but if you do need a</p> <p>2 break at any time, please just let me know. The only</p> <p>3 thing I'll ask, that if there is a question pending</p> <p>4 that you answer the question first and then we go to</p> <p>5 a break second.</p> <p>6 A. Okay.</p> <p>7 Q. So we're here to get as accurate a record</p> <p>8 as we can of the facts of this case as you recall</p> <p>9 them. So I have to ask if there is anything that</p> <p>10 would prevent you from understanding and answering my</p> <p>11 questions with the full capacity of your recollection</p> <p>12 today.</p> <p>13 A. No.</p> <p>14 Q. Are you taking any medications that might</p> <p>15 interfere with your memory?</p> <p>16 A. No.</p> <p>17 Q. Have you had anything alcoholic to drink</p> <p>18 in the last eight hours?</p> <p>19 A. No.</p> <p>20 Q. Is there any other reason you can think of</p> <p>21 why you might not be able to answer my questions</p> <p>22 fully and accurately today?</p> <p>23 A. No.</p> <p>24 Q. All right. Miss Anderson, we got a little</p> <p>25 bit of your background from your husband Todd's</p>
12	<p>1 deposition, but I'd like to hear from you. When did</p> <p>2 you graduate from high school?</p> <p>3 A. 2000.</p> <p>4 Q. Where did you graduate from?</p> <p>5 A. Delta High School.</p> <p>6 Q. Are you from Delta originally?</p> <p>7 A. Yes.</p> <p>8 Q. What did you do immediately after you</p> <p>9 graduated high school?</p> <p>10 A. I went to college at Utah State</p> <p>11 University. Sorry. Utah Valley State University.</p> <p>12 Q. Did you get a degree from Utah Valley</p> <p>13 State?</p> <p>14 A. I got a bachelor's degree in business</p> <p>15 management.</p> <p>16 Q. When did you get that degree?</p> <p>17 A. 2004.</p> <p>18 Q. What did you do after you finished</p> <p>19 undergrad?</p> <p>20 A. We moved back to Delta and worked for two</p> <p>21 years.</p> <p>22 Q. When you say "we," do you mean you and</p> <p>23 Mr. Anderson?</p> <p>24 A. Correct.</p> <p>25 Q. Were you married at the time?</p>	13	<p>1 A. Yes.</p> <p>2 Q. When did you get married?</p> <p>3 A. 2001.</p> <p>4 Q. What did you do while you were working in</p> <p>5 Delta?</p> <p>6 A. I spent a year at the middle school as a</p> <p>7 teacher's aid. And I spent a year at the cheese</p> <p>8 plant as their office manager.</p> <p>9 Q. All right. So after two years of working</p> <p>10 in Delta, what next?</p> <p>11 A. Todd and I moved to Oklahoma City where I</p> <p>12 began working and he began law school.</p> <p>13 Q. What did you do for work when you got to</p> <p>14 Oklahoma City?</p> <p>15 A. I was an estimator for a building supply</p> <p>16 company.</p> <p>17 Q. What did you estimate?</p> <p>18 A. It was -- I sold metal building</p> <p>19 insulation. And it has to be specially cut, so they</p> <p>20 would give me their plans and I would design the</p> <p>21 insulation and send it off to be cut.</p> <p>22 Q. And did you say insulation?</p> <p>23 A. Insulation, uh-huh.</p> <p>24 Q. How long did you do that?</p> <p>25 A. Four years.</p>

14	<p>1 Q. And I understand at some point you fit in</p> <p>2 going to law school as well in Oklahoma City, right?</p> <p>3 A. Yes.</p> <p>4 Q. And when did you start law school?</p> <p>5 A. 2007.</p> <p>6 Q. So was that after working for a year?</p> <p>7 A. I worked for a year and then started law</p> <p>8 school.</p> <p>9 Q. Did you go full-time?</p> <p>10 A. The first year I was part-time and did --</p> <p>11 attended school through the summers.</p> <p>12 The second year I went full-time and then</p> <p>13 some, made up some of that time.</p> <p>14 And then the third year was -- the last</p> <p>15 semester was pretty light because I had caught up all</p> <p>16 the credits.</p> <p>17 Q. So did you work full-time each of your law</p> <p>18 school years?</p> <p>19 A. I worked full-time the first year. Cut</p> <p>20 back hours to probably 20 to 30 hours that second</p> <p>21 year. And the third year I was actually working</p> <p>22 probably 40-plus hours.</p> <p>23 Q. After you finished your third year of law</p> <p>24 school you graduated?</p> <p>25 A. Yes.</p>	15	<p>1 Q. With your JD?</p> <p>2 A. Yes.</p> <p>3 Q. What did you do after that?</p> <p>4 A. Todd had already moved back to Delta. He</p> <p>5 was a year ahead in school. So he had moved over</p> <p>6 Christmas and started to practice. I moved in May</p> <p>7 and began studying for the bar. I spent the summer</p> <p>8 studying for the bar.</p> <p>9 Q. And this is May 2010?</p> <p>10 A. Yes.</p> <p>11 Q. So you took and passed the bar that</p> <p>12 summer?</p> <p>13 A. Correct.</p> <p>14 Q. Then what did you do?</p> <p>15 A. After taking the bar, I had a baby about a</p> <p>16 month later.</p> <p>17 Q. So that was August-ish?</p> <p>18 A. First of September.</p> <p>19 Q. Was there a time you started practicing</p> <p>20 law?</p> <p>21 A. There were a few projects that -- very few</p> <p>22 projects that I did over the summer while studying</p> <p>23 for the bar. After passing the bar I was going into</p> <p>24 the office and working on projects with Todd's</p> <p>25 supervision. After passing but before being sworn</p>
16	<p>1 in.</p> <p>2 Q. So when was that? When did you find out</p> <p>3 you passed, and when did you get sworn in?</p> <p>4 A. I can't remember when I found out I</p> <p>5 passed, but I was sworn in the first part of October.</p> <p>6 Q. After you were sworn in, what, if</p> <p>7 anything, changed about your law practice?</p> <p>8 A. I could now start meeting with clients</p> <p>9 independently.</p> <p>10 Q. Since October 2010 have you been employed</p> <p>11 by any other employer than the Anderson Law Center?</p> <p>12 A. No.</p> <p>13 Q. From -- we'll take September 2010 through,</p> <p>14 say, June 2011. Can you give me an idea of about how</p> <p>15 many hours a week you worked?</p> <p>16 A. September was hard to say. We just had a</p> <p>17 new baby. I was in the office and I was bringing her</p> <p>18 with me. She was a newborn. She slept. I was</p> <p>19 probably in there -- in the office probably about the</p> <p>20 same amount of time that Todd was. Somewhat less.</p> <p>21 October was probably the same. She</p> <p>22 started getting bigger and couldn't come to the</p> <p>23 office with me as much, and so I was spending less</p> <p>24 time in the office through June.</p> <p>25 Q. So just -- and I understand this is a</p>	17	<p>1 general estimate and different weeks vary, but would</p> <p>2 you say, like, 20 hours a week in the office</p> <p>3 October to June, 10 hours, 30? And let me clarify</p> <p>4 too. When I say "in the office," like, if you worked</p> <p>5 from home too, just sort of your work in the course</p> <p>6 of a week.</p> <p>7 A. Uh-huh (affirmative). I would say</p> <p>8 September through November was 20 to 30. And then it</p> <p>9 started decreasing from there.</p> <p>10 Q. So December to June would have been in the</p> <p>11 more 10 to 20 range?</p> <p>12 A. That would probably be a good estimate.</p> <p>13 Q. All right. I'd like to back up a little</p> <p>14 bit and explore a little bit about some of your</p> <p>15 background. With your -- just to start with, your BA</p> <p>16 in business management. Curious about what, if any,</p> <p>17 tax classes you took for that degree.</p> <p>18 A. I'm not -- I don't believe that there were</p> <p>19 any direct tax classes. There were tax and</p> <p>20 accounting principles, yes, but I don't think there</p> <p>21 were specific tax classes.</p> <p>22 Q. So would those have been folded into a</p> <p>23 different class, or was there, like, a class, Tax and</p> <p>24 Accounting Principles?</p> <p>25 A. There were -- there were def -- there were</p>

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6 (Pages 18 to 21)

18	<p>1 at least two to three accounting classes. And those</p> <p>2 tax classes -- those tax principles were folded into</p> <p>3 the accounting classes.</p> <p>4 Q. Got you. So were those classes more on</p> <p>5 kind of the practical side of how to do accounting</p> <p>6 and...</p> <p>7 A. Looking at a balance sheet and those kinds</p> <p>8 of things, yes.</p> <p>9 Q. Sure. Okay. It wasn't necessarily tax</p> <p>10 return preparation?</p> <p>11 A. Correct.</p> <p>12 Q. Do you remember what you learned about</p> <p>13 taxes in your beginning program in these classes?</p> <p>14 A. Just the general knowledge that you would</p> <p>15 get with a business management degree.</p> <p>16 Q. During the time you were working in Delta,</p> <p>17 did either of your jobs there touch on federal income</p> <p>18 taxation?</p> <p>19 A. Give me a time frame, please.</p> <p>20 Q. Oh, sure. The -- when you were in Delta</p> <p>21 to teach middle school and work as the office</p> <p>22 manager.</p> <p>23 A. No.</p> <p>24 Q. While you were working as an estimator for</p> <p>25 the building supply company, did anything there have</p>	19	<p>1 to do with federal income taxes?</p> <p>2 A. No.</p> <p>3 Q. So in law school did you take any federal</p> <p>4 tax classes?</p> <p>5 A. I took individual income tax, and I took</p> <p>6 taxation of business and entities.</p> <p>7 Q. Did you take any tax procedure classes?</p> <p>8 A. Those were the only two tax classes</p> <p>9 offered at my law school.</p> <p>10 Q. Okay. What did you, in broad strokes,</p> <p>11 learn about taxation of businesses and entities?</p> <p>12 A. It was a very general class of setting up</p> <p>13 the structure, the -- setting out the different</p> <p>14 entities and generally how they would be taxed.</p> <p>15 Q. So the difference between taxation of</p> <p>16 corporations, partnerships, trusts?</p> <p>17 A. S-corps, those kinds of things, yes.</p> <p>18 Q. Okay. In either of the two classes you</p> <p>19 took at law school did either of those classes touch</p> <p>20 on actual return preparation?</p> <p>21 A. No.</p> <p>22 Q. Is federal income tax on the Utah bar?</p> <p>23 A. I don't believe that it is.</p> <p>24 Q. I guess, was it on the bar in 2010?</p> <p>25 A. No.</p>
20	<p>1 Q. By October 2010, other than the specific</p> <p>2 classes that we've talked about in your undergrad</p> <p>3 and law school education, do you have any other formal</p> <p>4 education regarding federal income tax?</p> <p>5 A. No.</p> <p>6 Q. Between October 2010 and June 2011 did you</p> <p>7 have any additional education -- formal education</p> <p>8 regarding federal income tax?</p> <p>9 A. No.</p> <p>10 Q. As you may know, this lawsuit involves an</p> <p>11 entity called RaPower3, LLC.</p> <p>12 A. Yes.</p> <p>13 Q. When did you first hear of that entity?</p> <p>14 A. I would say September, October of 2010.</p> <p>15 Q. How did you first hear about RaPower3?</p> <p>16 A. Neldon Johnson was a client. He discussed</p> <p>17 it with both Todd and I in general terms.</p> <p>18 Q. What do you recall from that first</p> <p>19 conversation, if anything?</p> <p>20 A. Can you be more specific?</p> <p>21 Q. I'm just trying to get a sense of --</p> <p>22 A. The first conversation with Neldon?</p> <p>23 Q. Correct.</p> <p>24 A. I don't know that I can pinpoint the very</p> <p>25 first conversation.</p>	21	<p>1 Q. All right. Well, you said it was in --</p> <p>2 around September, October 2010?</p> <p>3 A. Correct.</p> <p>4 Q. Do you recall what Mr. Johnson wanted?</p> <p>5 A. As far as -- in dealing with RaPower.</p> <p>6 Q. Right.</p> <p>7 A. There may have been conversations about</p> <p>8 RaPower before there was a conversation about</p> <p>9 representing. He -- I'm not sure how the subject of</p> <p>10 tax came up. The way that it was presented to me was</p> <p>11 Neldon had these questions about tax -- tax law in</p> <p>12 regards to RaPower, and Todd suggested that I would</p> <p>13 be more -- I would be better prepared to take on</p> <p>14 those questions.</p> <p>15 Q. Okay. Let's tease that out a little bit.</p> <p>16 So the first time -- correct me if I'm wrong, but it</p> <p>17 sounds like Todd Anderson came to you and said,</p> <p>18 "Neldon Johnson has these questions about tax law."</p> <p>19 Is that right?</p> <p>20 A. Todd and Neldon -- Todd said, "Neldon has</p> <p>21 been talking to me. He has these questions. I've</p> <p>22 set up a time that you guys can meet and talk about</p> <p>23 it."</p> <p>24 Q. Okay. And is that the first conversation</p> <p>25 that you had with Neldon Johnson?</p>

22	<p>1 A. No.</p> <p>2 Q. Okay. So you had had conversations with</p> <p>3 him before?</p> <p>4 A. I had, about other matters that are not</p> <p>5 party to this.</p> <p>6 Q. Right.</p> <p>7 A. Yes.</p> <p>8 Q. And so in those conversations that you had</p> <p>9 before with Neldon Johnson, did anything come up</p> <p>10 about solar energy, anything to do with tax issues</p> <p>11 related to solar energy equipment?</p> <p>12 A. No.</p> <p>13 Q. Okay. So -- okay. So Todd Anderson set</p> <p>14 up a conversation for you and Neldon Johnson?</p> <p>15 A. Correct.</p> <p>16 Q. Do you remember about when that was?</p> <p>17 A. October 2010.</p> <p>18 Q. Where did you all have that conversation?</p> <p>19 A. In our office.</p> <p>20 Q. So what happened at that particular</p> <p>21 conversation?</p> <p>22 A. Neldon presented some questions -- some</p> <p>23 specific tax questions that he wanted information on.</p> <p>24 It was my understanding at the time they were --</p> <p>25 he -- he asked these specific tax questions. I wrote</p>	23	<p>1 them down. It was my understanding that he wanted an</p> <p>2 overview of what those tax principles were.</p> <p>3 Q. So in the course of that first</p> <p>4 conversation what, if any, facts did he give you?</p> <p>5 A. Regarding the -- the tax questions?</p> <p>6 Q. Right. So I guess I'm just curious, like,</p> <p>7 so did he literally come in and say, "I have the</p> <p>8 following questions here, answer"?</p> <p>9 A. He said -- he -- we discussed RaPower.</p> <p>10 Q. Uh-huh.</p> <p>11 A. We discussed -- he talked to me about the</p> <p>12 solar -- the energy equipment. He probably gave me a</p> <p>13 rundown of what the solar equipment was as far as it</p> <p>14 harnesses energy from the sun. We -- we discussed in</p> <p>15 very general terms that the lenses itself is what</p> <p>16 made it different from a regular solar panel.</p> <p>17 He -- we talked about those questions in</p> <p>18 terms of the -- how they would relate in an MLM</p> <p>19 structure, a multilevel marketing structure, if that</p> <p>20 makes it -- he wanted to know if an MLM structure</p> <p>21 makes a difference versus any other type of business</p> <p>22 structure to the answers to those questions.</p> <p>23 And he also proposed if the equipment was</p> <p>24 being leased, if that makes a difference.</p> <p>25 Q. Okay. That's a broad range of topics. Do</p>
24	<p>1 you remember having talked about anything else with</p> <p>2 him in that first conversation that was specifically</p> <p>3 about RaPower3?</p> <p>4 A. And when I say -- those -- those</p> <p>5 conversations might have happened over multiple days</p> <p>6 and multiple times.</p> <p>7 Q. Okay.</p> <p>8 A. But that's probably the best that I can</p> <p>9 recall that was talked about until -- until I started</p> <p>10 drafting answers to those letters -- to those</p> <p>11 questions.</p> <p>12 Q. Okay. And I think, just to help us put</p> <p>13 brackets around things --</p> <p>14 A. Uh-huh (affirmative).</p> <p>15 Q. -- I understand -- and we'll take a look</p> <p>16 today at a letter that you drafted that answers</p> <p>17 specific questions, right?</p> <p>18 A. Uh-huh (affirmative).</p> <p>19 Q. That's one writing that you provided to</p> <p>20 Neldon Johnson?</p> <p>21 A. Yes. Yes.</p> <p>22 Q. And then there's a second letter that</p> <p>23 Anderson Law Center provided Mr. Johnson in or around</p> <p>24 November 2010 --</p> <p>25 A. Yes.</p>	25	<p>1 Q. -- correct? Okay.</p> <p>2 And then I understand that there may have</p> <p>3 been an e-mail or a letter in June 2011.</p> <p>4 A. Yes.</p> <p>5 Q. Right. Okay. So we can take those three</p> <p>6 writings as kind of brackets here to help sort out.</p> <p>7 So then, to your recollection, the topics</p> <p>8 that you just relayed in terms of the three</p> <p>9 questions, the overview of the solar energy</p> <p>10 equipment, questions about the multilevel marketing</p> <p>11 structure versus other business transactions, and</p> <p>12 questions about what would happen if the equipment</p> <p>13 were leased, to your recollection, all those topics</p> <p>14 were discussed before the first letter?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. Do you remember approximately how</p> <p>17 many conversations you had with Mr. Johnson between</p> <p>18 the first meeting and when you delivered the first</p> <p>19 letter?</p> <p>20 A. It's hard to say, mostly because</p> <p>21 Mr. Johnson had other matters in our office and he</p> <p>22 came in frequently. He came in to discuss those</p> <p>23 matters. He came in to discuss this matter. He came</p> <p>24 in to discuss the weather, to be honest. It's hard</p> <p>25 to say.</p>

26	<p>1 Q. Sure.</p> <p>2 Before you wrote the first letter, did he</p> <p>3 provide you with any documents?</p> <p>4 A. He provided me with -- there were</p> <p>5 documents that had drawings of the solar equipment</p> <p>6 and just a general description. It looked -- it</p> <p>7 seemed to be marketing material of some sort.</p> <p>8 Q. When you say a general description, do you</p> <p>9 mean a general description of the solar energy</p> <p>10 equipment?</p> <p>11 A. Correct.</p> <p>12 Q. Did he give you any other documents before</p> <p>13 you delivered the first letter?</p> <p>14 A. There's an article and an e-mail from</p> <p>15 Greg Shepard. I'm not sure what -- the time frame of</p> <p>16 when I received those.</p> <p>17 Q. Okay.</p> <p>18 A. It would be -- the time frame would be</p> <p>19 either before the second -- before the first or</p> <p>20 before the second.</p> <p>21 Q. Did he give you contracts?</p> <p>22 A. Possibly. I don't recall him asking me to</p> <p>23 do anything with those contracts, but he may have</p> <p>24 handed me those -- copies of those documents.</p> <p>25 Q. And, also, in the course of your</p>	27	<p>1 representation of RaPower for purposes of the solar</p> <p>2 energy equipment that we're talking about here, do</p> <p>3 you know if he might have given Todd Anderson</p> <p>4 documents but not you? Was it just sort of whoever</p> <p>5 was there, he would stand stuff?</p> <p>6 A. That's possible. I wasn't always in the</p> <p>7 office.</p> <p>8 Q. Okay. Do you know if you would have seen</p> <p>9 all of the documents that he brought in whether you</p> <p>10 received them or Todd Anderson received them?</p> <p>11 A. I can't say for sure.</p> <p>12 Q. Before you delivered the first letter, did</p> <p>13 you visit any site that was -- that had anything to</p> <p>14 do with these solar lenses or the energy equipment?</p> <p>15 A. No.</p> <p>16 Q. After you delivered the first letter, did</p> <p>17 you ever go to visit any particular site that may</p> <p>18 have had solar energy equipment on it?</p> <p>19 A. I never made any visits to any sites.</p> <p>20 Q. So correct me if I'm wrong, but</p> <p>21 Mr. Johnson may have provided you some documents</p> <p>22 before the first letter, some after?</p> <p>23 A. That's correct.</p> <p>24 Q. Okay. Do you recall in particular if he</p> <p>25 gave you any new information -- I'm sorry. Let me</p>
28	<p>1 withdraw that question.</p> <p>2 Do you recall whether he gave you any new</p> <p>3 documents after the second letter?</p> <p>4 A. I do not believe he gave me new documents</p> <p>5 after the second letter.</p> <p>6 Q. Okay. So to the extent it's possible,</p> <p>7 I'm -- I'm interested in hearing what you learned</p> <p>8 before the first letter, to the extent you can</p> <p>9 separate it out in time, to your recollection. But</p> <p>10 what -- what did Mr. Johnson tell you about this</p> <p>11 purported solar energy equipment?</p> <p>12 MR. MARTIN: Prior to?</p> <p>13 MS. HEALY GALLAGHER: The first letter.</p> <p>14 MR. MARTIN: The first letter.</p> <p>15 THE WITNESS: The first letter.</p> <p>16 He discussed that the purchasers would buy</p> <p>17 energy equipment. I don't know what the energy</p> <p>18 equipment was or any details of the purchase. And</p> <p>19 then he -- they would, in turn, lease it back to --</p> <p>20 I -- RaPower, or they would lease it back.</p> <p>21 Q. (BY MS. HEALY GALLAGHER) Okay. You</p> <p>22 mentioned energy equipment, and you said you didn't</p> <p>23 know what the energy equipment was.</p> <p>24 A. I didn't know what it looked like.</p> <p>25 Q. Did you ever come to an understanding of</p>	29	<p>1 what the energy equipment he was talking about was?</p> <p>2 A. It seemed to be a stand-alone unit, is</p> <p>3 what was being sold.</p> <p>4 Q. And a stand-alone unit of what?</p> <p>5 A. Whatever was creating -- was harnessing</p> <p>6 the sun, that it was its own unit. How or if it</p> <p>7 connected to a grid or a plant or anything broader</p> <p>8 than that, I don't know.</p> <p>9 Q. Did Mr. Johnson ever use the phrase "solar</p> <p>10 lens"?</p> <p>11 A. I don't recall that specifically being</p> <p>12 used.</p> <p>13 Q. Did he tell you -- again, before you wrote</p> <p>14 the first letter -- how the solar energy equipment</p> <p>15 was purported to work?</p> <p>16 A. Just in very broad terms, that it -- the</p> <p>17 lens somehow magnified the energy, but what happened</p> <p>18 to the energy after it was created or generated, I</p> <p>19 don't know.</p> <p>20 Q. Okay. So, to your understanding -- so --</p> <p>21 I'm just trying to tease this out a little bit. So</p> <p>22 was it your understanding that the idea was that the</p> <p>23 light and heat from the sun would be magnified by a</p> <p>24 solar lens?</p> <p>25 A. The very specifics -- I'm sure he possibly</p>

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1 talked about how it worked. The specifics of the
 2 energy equipment were not relevant to the tax
 3 questions I had been posed. I didn't take notes on
 4 it. I took notes on the tax questions.
 5 Q. Okay. Did he tell you that the energy
 6 equipment actually worked to take light and heat from
 7 the sun and turn it into some useable form of energy?
 8 **A. We did not get --**
 9 MR. PAUL: Objection. Foundation.
 10 THE WITNESS: We did not get that
 11 specific.
 12 Q. (BY MS. HEALY GALLAGHER) So, to your
 13 recollection, he did not tell you that the system
 14 actually worked?
 15 MR. PAUL: Objection. Foundation.
 16 THE WITNESS: I can't say one way or the
 17 other.
 18 Q. (BY MS. HEALY GALLAGHER) Okay. Do you
 19 recall whether you ever asked him if his system
 20 worked?
 21 MR. PAUL: Objection. Lack of foundation.
 22 THE WITNESS: At what point in time?
 23 Q. (BY MS. HEALY GALLAGHER) At any time.
 24 **A. We talked about the construction of the**
 25 **equipment and how -- how long it would take to**

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1 THE WITNESS: Can you give me a time
 2 frame?
 3 Q. (BY MS. HEALY GALLAGHER) At any time
 4 during the course of your representation.
 5 MR. PAUL: Same objections.
 6 THE WITNESS: I don't know that that was
 7 ever addressed. What we discussed was how long until
 8 it would become an energy-producing equipment, how
 9 long until it would actually produce energy.
 10 And his answer -- his response to me was
 11 "years."
 12 Q. (BY MS. HEALY GALLAGHER) So one of the
 13 things I'm curious about -- we've heard some
 14 testimony -- we have some information in this case
 15 that it might be a practice in industry to create
 16 models of energy equipment and then build prototypes
 17 or -- yeah -- models to sort of practice, for lack of
 18 a better term, to see if a system is actually going
 19 to work before it is actually constructed in -- at
 20 scale.
 21 Did Mr. Johnson talk at all about whether
 22 his system had worked in any possible testing or
 23 modeling or sampling?
 24 **A. Not that I recalled.**
 25 Q. Did he ever tell you that he had done

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1 actually produce energy, how long it would actually
 2 take to complete and be an energy-producing --
 3 something that produced energy, and the answer to
 4 that was "years."
 5 MS. HEALY GALLAGHER: Could you read back
 6 my question, please?
 7 (Record was read as follows: "Do you
 8 recall whether you ever asked him if his system
 9 worked?
 10 "MR. PAUL: Objection.
 11 "THE WITNESS: At what point in time?
 12 "Question. At any time.")
 13 THE WITNESS: I don't believe that -- it
 14 was my impression that it was not at the point where
 15 he could say it could work or not. It was in the
 16 construction phase.
 17 Q. (BY MS. HEALY GALLAGHER) Okay. So did
 18 you ever ask him whether it worked?
 19 **A. I did not.**
 20 Q. So, Miss Anderson, then, was it your
 21 understanding at the time that it was still uncertain
 22 whether the system that he proposed actually would
 23 work?
 24 MR. PAUL: Objection. Lacks foundation.
 25 It calls for speculation.

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1 those things?
 2 MR. PAUL: Objection. Lacks foundation.
 3 Asked and answered.
 4 THE WITNESS: He talked about it had
 5 been -- there was R&D invested into it. What that --
 6 the results of that were I don't know that we
 7 discussed.
 8 Q. (BY MS. HEALY GALLAGHER) So, did you ever
 9 ask him what that, quote, unquote, R&D -- and I'm
 10 taking that to mean research and development; is that
 11 your understanding?
 12 **A. Uh-huh (affirmative).**
 13 Q. Yes?
 14 **A. Yes.**
 15 Q. So did he ever talk about what the
 16 research and development had involved?
 17 **A. It's possible, but going back to the**
 18 **question -- the tax questions I had been asked, it**
 19 **wasn't pertinent to my -- he brought it -- said,**
 20 **"This is -- we're going to sell energy equipment,"**
 21 **and I took that for what it was. Okay, we've got**
 22 **energy equipment. Let's talk about the tax**
 23 **principles.**
 24 Q. So did you assume that the energy
 25 equipment would actually work?

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1 MR. PAUL: Objection. Lacks foundation.
 2 THE WITNESS: Yes.
 3 Q. (BY MS. HEALY GALLAGHER) And just to be
 4 clear for the record, because we talked a little bit
 5 about before the first letter, after the first
 6 letter. Throughout the course of your representation
 7 of RaPower3, did you assume that the solar energy
 8 equipment worked?
 9 MR. PAUL: Objection. Lacks foundation.
 10 Also lacks relevance.
 11 THE WITNESS: Yes.
 12 Q. (BY MS. HEALY GALLAGHER) All right. You
 13 mentioned that Mr. Johnson asked if the solar energy
 14 equipment was leased if that made a difference to the
 15 tax analysis.
 16 A. Correct.
 17 Q. Do you know why -- did you ever talk about
 18 why he was curious about that?
 19 A. He was trying to structure the business, I
 20 believe. It was one potential -- it was a potential
 21 way to structure the business, was what I understood
 22 at the time.
 23 Q. And you described that a little bit -- I
 24 believe a little bit later on that -- and correct me
 25 if I'm wrong -- but your recollection -- well,

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1 member of an MLM -- how does their activity count
 2 towards material participation.
 3 Q. Did you answer that question for him?
 4 A. In broad terms there's -- I gave an
 5 overview of how an MLM member can get material
 6 participation. I believe that was in the first
 7 writing.
 8 Q. When -- we've talked about whether the
 9 equipment is then leased back to RaPower3 or to some
 10 other entity. Was that an option Mr. Johnson came in
 11 with? Like, he -- did he say, "Tell me what this
 12 means if it's leased back to RaPower3 or to some
 13 other entity?"
 14 A. It was more of a general, "Tell me" --
 15 Mr. Nelson -- Mr. Neldon -- Mr. Johnson said if the
 16 purchase -- if the purchaser buys the equipment and
 17 then leases it back to RaPower or somebody else --
 18 not necessarily RaPower -- and then tell me how it's
 19 going to affect someone else. It was, "How is it
 20 going -- how does this lease fit in if it's leased
 21 back to somebody?"
 22 Q. Okay. Did he have any other ideas when he
 23 came in to you about how potentially to structure
 24 this transaction?
 25 MR. PAUL: Objection. Lack of foundation.

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1 actually, let me ask you this.
 2 You talked about Mr. Johnson told you that
 3 an idea -- perhaps the idea, but let me know -- an
 4 idea was that the purchaser would buy energy
 5 equipment from RaPower3 and then lease it back either
 6 to RaPower3 or to some other entity?
 7 A. That was my understanding.
 8 Q. And was that a structure that Mr. Johnson
 9 came in to you with?
 10 A. Yes, he presented that idea.
 11 Q. Did he present any other ideas for how to
 12 structure this transaction?
 13 A. I touched briefly on whether it was set up
 14 as an MLM. Again, I don't know how that multilevel
 15 marketing would have been structured, but if -- if
 16 the purchaser was part of an MLM, how does it affect
 17 these tax principles.
 18 Q. Okay. So we have one option with the
 19 customer purchasing the energy equipment and then
 20 leasing it back to RaPower3 or another entity. And
 21 you mentioned a question about MLM structure. How --
 22 did you ever explore that with respect to what impact
 23 a multilevel marketing structure might have on a sale
 24 leaseback?
 25 A. The specific question was how does a

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1 THE WITNESS: As far as before the first
 2 letter?
 3 Q. (BY MS. HEALY GALLAGHER) Sure.
 4 A. No. That was the extent of it.
 5 Q. Did he talk to you about any ideas he had
 6 after the first letter?
 7 MR. PAUL: Objection. Lack of foundation.
 8 THE WITNESS: Yes. Mainly he -- sorry.
 9 Mainly he elaborated more on those principles.
 10 Q. (BY MS. HEALY GALLAGHER) On the
 11 principles in your letter?
 12 A. Sorry. He elaborated on those two ideas,
 13 the MLM and the leasing back. He elaborated on them
 14 further.
 15 Q. But he didn't come in with new ideas?
 16 A. Not that I recall.
 17 Q. Okay. Did you ever propose a different
 18 structure for the transactions that he wanted to do?
 19 A. I did not.
 20 Q. Did he explain why he wanted a sale and
 21 then a lease?
 22 A. In that first -- before the first letter?
 23 Q. Sure.
 24 A. No.
 25 Q. Did he explain why after the first letter?

38	<p>1 A. Yes.</p> <p>2 Q. Why?</p> <p>3 A. The equipment wasn't ready to produce</p> <p>4 energy. So he was trying to find a way to -- to</p> <p>5 begin benefiting from those tax principles before</p> <p>6 actual energy production.</p> <p>7 Q. Tease that out a little bit. So after you</p> <p>8 delivered the first letter, Mr. Johnson came in and</p> <p>9 flushed things out for you a little bit more, from</p> <p>10 his perspective, it sounds like?</p> <p>11 A. Mr. Johnson was unhappy with the first</p> <p>12 letter. It wasn't what he had expected. And so we</p> <p>13 had a conversation about, "Okay, what did you</p> <p>14 expect?"</p> <p>15 He felt like the tone of the first letter</p> <p>16 was too technical. And he told me about using the</p> <p>17 ideas and principles that I was describing to him in</p> <p>18 marketing materials. What those marketing materials</p> <p>19 were we hadn't discussed, and we didn't -- we didn't</p> <p>20 elaborate on it much further than that. So he wanted</p> <p>21 the tone to be more user-friendly.</p> <p>22 Q. Okay. So tone is one thing, but we were</p> <p>23 talking a little bit about his explanation of why he</p> <p>24 wanted a sale and leaseback, and it sounded like</p> <p>25 you -- you heard about that "why" after the first</p>	39	<p>1 letter.</p> <p>2 A. Yes.</p> <p>3 Q. Okay. So after the first letter -- after</p> <p>4 you delivered the first letter, he told you that the</p> <p>5 equipment was not yet ready to produce energy?</p> <p>6 MR. PAUL: Objection. Lack of foundation.</p> <p>7 Misstates prior testimony.</p> <p>8 THE WITNESS: It was after the second</p> <p>9 letter.</p> <p>10 Q. (BY MS. HEALY GALLAGHER) After the second</p> <p>11 letter. Okay.</p> <p>12 Was it also after the second letter that</p> <p>13 he said that he wanted to benefit from -- he wanted</p> <p>14 to generate tax benefits before the energy equipment</p> <p>15 ever produced energy?</p> <p>16 A. Correct.</p> <p>17 Q. So -- so did he only explain why he wanted</p> <p>18 a sale and then a lease after you had delivered the</p> <p>19 second letter, or did you talk about that at all</p> <p>20 after the first letter?</p> <p>21 A. I believe it was after the second letter.</p> <p>22 Q. You mentioned that he was unhappy --</p> <p>23 Mr. Johnson was unhappy with the first letter, and</p> <p>24 you mentioned that he wanted a more user-friendly</p> <p>25 tone, among other reasons. Was there any other</p>
40	<p>1 reason -- I'm sorry, I should ask -- that he was</p> <p>2 unhappy with the first letter?</p> <p>3 A. Those were the main -- that -- the tone</p> <p>4 was -- he wanted to use it -- he wanted a more</p> <p>5 user-friendly tone, and so that's -- I went to work</p> <p>6 on the second letter.</p> <p>7 Q. So do you recall approximately when you</p> <p>8 delivered the second letter?</p> <p>9 A. I believe it was November 2010.</p> <p>10 Q. Between the first letter and the second</p> <p>11 letter, do you recall how many conversations you had</p> <p>12 with Mr. Johnson about this representation?</p> <p>13 A. I don't recall a number.</p> <p>14 Q. Was it, like, more than five, more than</p> <p>15 ten?</p> <p>16 A. Ten or less.</p> <p>17 Q. Okay. Were they all in your office?</p> <p>18 A. Yes.</p> <p>19 Q. Between -- let's see. Between the second</p> <p>20 letter and the e-mail to Mr. Johnson in June 2011,</p> <p>21 did you have in-person meetings with him?</p> <p>22 A. Yes.</p> <p>23 Q. About how many, would you say?</p> <p>24 A. Again, I can't put a number on it, but</p> <p>25 several. Probably that ten or less number again.</p>	41	<p>1 Q. Okay. We'll just start with some</p> <p>2 documents. I'm handing you what's been marked</p> <p>3 Plaintiff's Exhibit 574. Please take a look at that,</p> <p>4 and let me know when you're ready.</p> <p>5 A. I'm ready.</p> <p>6 Q. Okay. Plaintiff's 574 is Bates-marked</p> <p>7 Anderson 000141.</p> <p>8 Miss Anderson, do you remember Plaintiff's</p> <p>9 Exhibit 574?</p> <p>10 A. Something substantially similar to that,</p> <p>11 yes.</p> <p>12 Q. Okay. And this is an e-mail -- appears to</p> <p>13 be an e-mail from Greg Shepard.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. With the e-mail address of</p> <p>17 greg@bfsmail.com, right?</p> <p>18 A. Correct.</p> <p>19 Q. The "to" field says, neldon@iaus.com.</p> <p>20 Did I read that correctly?</p> <p>21 A. Yes.</p> <p>22 Q. And do you have an understanding of whose</p> <p>23 e-mail address that is?</p> <p>24 A. I believe that to be Neldon Johnson.</p> <p>25 Q. In the cc field we see the e-mail address</p>

42	<p>1 glendaejohnson@hotmail.com.</p> <p>2 Q. Do you -- did I read that correctly?</p> <p>3 A. Yes.</p> <p>4 Q. Do you have an understanding of who that</p> <p>5 is?</p> <p>6 A. I believe that to be Glenda Johnson,</p> <p>7 Neldon's wife.</p> <p>8 Q. That's her e-mail address, to your</p> <p>9 knowledge?</p> <p>10 A. To my knowledge.</p> <p>11 Q. Miss Anderson, did you -- did you receive</p> <p>12 this from Greg Shepard?</p> <p>13 A. I did not.</p> <p>14 Q. Did you receive it from Neldon Johnson?</p> <p>15 A. I did.</p> <p>16 Q. Okay. Have you ever spoken with</p> <p>17 Greg Shepard?</p> <p>18 A. I don't believe so.</p> <p>19 Q. Have you ever communicated with him in any</p> <p>20 fashion?</p> <p>21 A. No.</p> <p>22 Q. Did you discuss this e-mail with</p> <p>23 Neldon Johnson?</p> <p>24 A. It was delivered to me by Neldon. It</p> <p>25 said, "This is what Greg Shepard has sent to me.</p>	43	<p>1 It's something for you to consider in your review."</p> <p>2 Q. Did he say who Greg Shepard was with</p> <p>3 respect to these transactions or energy equipment?</p> <p>4 A. I knew Greg Shepard as someone that worked</p> <p>5 closely with Neldon. As far as his role in any of</p> <p>6 it, I'm unclear.</p> <p>7 Q. Did you review this e-mail in the course</p> <p>8 of your representation of RaPower3 in this matter?</p> <p>9 A. I did.</p> <p>10 Q. What, if anything, did you do with it?</p> <p>11 A. I looked closely at the material</p> <p>12 participation, as that seemed to be a question that</p> <p>13 Mr. Shepard had.</p> <p>14 Q. Okay. And that's in number two in his</p> <p>15 e-mail?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. Were these the three questions that</p> <p>18 Mr. Johnson presented to you?</p> <p>19 A. Not in this form. He presented them to me</p> <p>20 orally -- verbally.</p> <p>21 Q. Okay. Were they -- were the verbal</p> <p>22 questions to you identical to these three?</p> <p>23 A. I am not sure. I haven't read it that</p> <p>24 closely.</p> <p>25 Q. Take a look.</p>
44	<p>1 A. They seem to be on the same subjects.</p> <p>2 Q. Oh. Also, let's take a look, please, at</p> <p>3 the date this was sent. It says Thursday,</p> <p>4 10-14-2010.</p> <p>5 Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. Does that refresh your recollection of</p> <p>8 about when you might have met with Neldon Johnson?</p> <p>9 A. I believe that was probably right around</p> <p>10 the first day that we started talking about this</p> <p>11 issue.</p> <p>12 Q. Okay. Do you recall whether at that first</p> <p>13 meeting Mr. Johnson handed you this e-mail or did it</p> <p>14 come later?</p> <p>15 A. I don't recall a date.</p> <p>16 Q. Did you ever discuss with Mr. Johnson</p> <p>17 Mr. Shepard's e-mail in particular, or did you just</p> <p>18 take it under advisement?</p> <p>19 A. It was more taking it under advisement.</p> <p>20 Q. Do you recall, Miss Anderson, speaking</p> <p>21 with Mr. Johnson about websites that might be used to</p> <p>22 market the energy equipment?</p> <p>23 A. Only in the general respect that I knew</p> <p>24 that there was -- they were -- they had a website.</p> <p>25 Q. "They" being who?</p>	45	<p>1 A. RaPower3.</p> <p>2 (EXHIBIT 618 WAS MARKED.)</p> <p>3 Q. I'm handing you what's been marked</p> <p>4 Plaintiff's Exhibit 618. Please just take a look at</p> <p>5 this. Read it and let me know when you're done</p> <p>6 reading it.</p> <p>7 All right. So you've been handed what's</p> <p>8 been marked Plaintiff's Exhibit 618. There is no</p> <p>9 Bates number on this document, but the subject at the</p> <p>10 top is "Your Website."</p> <p>11 Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. This appears to be from Greg Shepard with</p> <p>14 the e-mail address greg@bfsmail.com, correct?</p> <p>15 A. Yes.</p> <p>16 Q. It's to dcmonte1@yahoo.com. Did I read</p> <p>17 that correctly?</p> <p>18 A. I believe it's dc.monte1 --</p> <p>19 Q. Oh, thank you.</p> <p>20 A. -- @yahoo.com.</p> <p>21 Q. Indeed, dc.monte1.</p> <p>22 And the date appears to be Friday</p> <p>23 October 15, 2010.</p> <p>24 Do you see that?</p> <p>25 A. I do.</p>

<p style="text-align: right;">46</p> <p>1 Q. Okay. Now, you're not on this e-mail, 2 Miss Anderson, right?</p> <p>3 A. I am not.</p> <p>4 Q. But in the e-mail Mr. Shepard tells 5 someone that "Neldon met with his attorney yesterday. 6 One of the topics was your website." 7 Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. Do you recall speaking specifically with 10 Mr. Johnson about any person's website, other than 11 RaPower3?</p> <p>12 A. I do not.</p> <p>13 Q. Okay. Do you recall any decisions being 14 made consistent with the second paragraph of this 15 e-mail?</p> <p>16 A. I was not part of that, no.</p> <p>17 Q. Okay. So if any decisions were made about 18 any website, it wasn't part of your conversation?</p> <p>19 A. Correct.</p> <p>20 Q. Do you recall having any other 21 conversations about website marketing with 22 Mr. Johnson?</p> <p>23 A. I do not.</p> <p>24 Q. Here we go. I'm handing you what's been 25 marked Plaintiff's Exhibit 577. Please read that and</p>	<p style="text-align: right;">47</p> <p>1 let me know when you're ready.</p> <p>2 For the record, Plaintiff's 577 has 3 Anderson 000210.</p> <p>4 A. Okay.</p> <p>5 Q. Do you recognize Plaintiff's Exhibit 577? 6 A. I do.</p> <p>7 Q. What is it? 8 A. These are work product notes I produced 9 during or after our meetings with Mr. Johnson.</p> <p>10 Q. Do you happen to recall if these were 11 after the first meeting or subsequent meetings? 12 A. I don't recall a date. I would -- in 13 reviewing the topics discussed, I would put it after 14 the second letter.</p> <p>15 Q. After the second letter? 16 A. Uh-huh (affirmative).</p> <p>17 Q. Okay. If that's after the second letter, 18 then we'll put that to the side for right now. 19 I'm handing you what's been marked 20 Plaintiff's Exhibit 575. Plaintiff's 575 has Bates 21 number Anderson 000143 through 151.</p> <p>22 A. I'm ready.</p> <p>23 Q. Do you recognize Plaintiff's Exhibit 575? 24 A. I recognize it as a document that was in 25 our file.</p>
<p style="text-align: right;">48</p> <p>1 Q. Do you know how it got in your file? 2 A. I believe it to be something that 3 Mr. Johnson had given me.</p> <p>4 Q. Why do you believe that? 5 A. I -- he had a habit of bringing in 6 articles or opinions to help me with my research.</p> <p>7 Q. Do you think this was one of those 8 documents? 9 A. I believe so.</p> <p>10 Q. Did you ever speak with Mr. Johnson about 11 the contents of this document? 12 A. Not specifically.</p> <p>13 Q. Generally, though? 14 A. It was a, "Here you go, go ahead and read 15 this" situation, and then I don't believe we ever 16 brought it up again.</p> <p>17 Q. Did he tell you why he was bringing you a 18 document that has to do with an IRS response to the 19 proliferation of abuse of tax shelters? 20 MR. PAUL: Objection. Lack of foundation. 21 THE WITNESS: It was, "Here's a document 22 for your review." 23 Q. (BY MS. HEALY GALLAGHER) So even if you 24 didn't, you know, discuss this document in 25 particular, did you ever speak with Mr. Johnson about</p>	<p style="text-align: right;">49</p> <p>1 economic substance doctrines and how they might 2 impact these transactions?</p> <p>3 MR. PAUL: Objection. Lack of foundation. 4 THE WITNESS: I don't believe so.</p> <p>5 Q. (BY MS. HEALY GALLAGHER) Do you recall 6 when, before first letter, after first letter, before 7 second letter, after second letter, Mr. Johnson might 8 have brought this to you? 9 A. I can't pinpoint it, no.</p> <p>10 Q. I apologize if you already answered this. 11 What, if anything, did you do with Plaintiff's 12 Exhibit 575? 13 A. I reviewed it, but I didn't see how it was 14 applying to the tax principle overviews that I was 15 providing to Mr. Johnson.</p> <p>16 Q. So after you reviewed it, did you do 17 anything else with it other than keep it in the file? 18 A. Put it in the file.</p> <p>19 Q. I'm handing you what's been marked 20 Plaintiff's Exhibit 576 with Bates numbers Anderson 21 153 through 160. 22 Do you recognize Plaintiff's Exhibit 576? 23 A. I recognize it as another document that 24 was part of our file.</p> <p>25 Q. Do you know how it got into your file?</p>

50	<p>1 A. Again, Mr. Johnson handed me these</p> <p>2 documents to help me with my research.</p> <p>3 Q. Do you recall when he did that?</p> <p>4 A. It's possible before the first letter, but</p> <p>5 for sure before the second.</p> <p>6 Q. How do you know it was for sure before the</p> <p>7 second?</p> <p>8 A. It was -- again, it was questions -- it</p> <p>9 was an article or -- he had asked the question to</p> <p>10 some website and they had given him the answer, and</p> <p>11 he felt the answer was relevant to the research I was</p> <p>12 doing.</p> <p>13 Q. Did you ever speak with Mr. Johnson about</p> <p>14 Plaintiff's Exhibit 576?</p> <p>15 A. Not particularly. It was -- I was</p> <p>16 conducting my own research, and I gave them the due</p> <p>17 deference that my client had handed it to me and I</p> <p>18 reviewed it, but I didn't -- I was conducting my own</p> <p>19 research and not relying on the articles that he was</p> <p>20 bringing me.</p> <p>21 Q. So aside from reviewing it and putting it</p> <p>22 in your file, what, if anything, did you do with</p> <p>23 Plaintiff's Exhibit 576?</p> <p>24 A. Nothing that I recall.</p> <p>25 Q. Are you familiar with NATP?</p>
51	<p>1 A. Not particularly. I -- when I received</p> <p>2 the document, I assumed it was a website where you</p> <p>3 submit questions and an attorney will give you</p> <p>4 answers to your questions.</p> <p>5 Q. Do you know if it's attorneys?</p> <p>6 A. I do not know that.</p> <p>7 Q. If we take a look at sort of the middle of</p> <p>8 the first page, where the header is "Your question</p> <p>9 was," and then there's a chunk of text underneath</p> <p>10 that, one of the sentences there is, "The</p> <p>11 manufacturer is using the machinery for advertising</p> <p>12 and paying the business rent."</p> <p>13 Do you see that sentence?</p> <p>14 A. I do.</p> <p>15 Q. Did you ever talk with Mr. Johnson about</p> <p>16 how advertising might be involved in this?</p> <p>17 A. Yes.</p> <p>18 Q. What did you talk about?</p> <p>19 A. The time period from when the energy</p> <p>20 equipment was purchased until it was actually put in</p> <p>21 service as energy equipment. He had proposed that</p> <p>22 lease agreement, and the lease was the energy unit</p> <p>23 would be leased for advertising purposes, as in come</p> <p>24 and see this model, come and see this equipment and</p> <p>25 help persuade others to purchase the equipment. He</p>
52	<p>1 called it, essentially, a billboard, "We're using the</p> <p>2 energy equipment as a billboard."</p> <p>3 Q. How, if at all, did that idea factor into</p> <p>4 your -- any analysis that you provided Mr. Johnson?</p> <p>5 A. So we had talked about -- up until --</p> <p>6 before the second letter, we had talked about the</p> <p>7 lease of the machinery. And the -- the general tone</p> <p>8 of the letters that I had provided was, "These</p> <p>9 are" -- we're talking in broad, general principles.</p> <p>10 "These are -- this is an overview of tax principles,</p> <p>11 it wasn't applied to any set of specific</p> <p>12 circumstances."</p> <p>13 After I delivered the second letter, he</p> <p>14 clarified it and said, "No, I want this applied to</p> <p>15 RaPower customers, those who are going to be</p> <p>16 purchasing the equipment."</p> <p>17 And that's when we started to discuss,</p> <p>18 okay, what does this lease look like, what is this</p> <p>19 advertising, and that's when the billboard</p> <p>20 conversation happened. How long is it going to --</p> <p>21 how long is this lease period going to be, and that's</p> <p>22 the -- the answer was "years," et cetera.</p> <p>23 Q. I just want to make sure I understand. So</p> <p>24 did I hear you correctly that to your recollection</p> <p>25 the advertising idea came up only after you delivered</p>
53	<p>1 the second letter in November 2010?</p> <p>2 A. Elaborating on the advertising idea, yeah.</p> <p>3 Q. Elaborating on it, but it had come up</p> <p>4 as --</p> <p>5 A. It's obviously here in this. I'm not sure</p> <p>6 that it was given deference in regard to the general</p> <p>7 tax principles.</p> <p>8 Q. Okay. So then what it sounds like to</p> <p>9 me -- and correct me if I'm wrong -- is that the idea</p> <p>10 about advertising may have come up before the second</p> <p>11 letter but you only ever really explored it with</p> <p>12 Mr. Johnson after the second letter?</p> <p>13 A. Yes. We had discussed a lease. We didn't</p> <p>14 really -- and I -- I termed my -- the -- the</p> <p>15 discussion of these tax principles in terms of a</p> <p>16 lease, but what that lease looked like was -- didn't</p> <p>17 get explored until after the second letter.</p> <p>18 Q. Okay. So through the time of the second</p> <p>19 letter you understood that the idea was that there</p> <p>20 would be a sale and then a lease, but is it fair to</p> <p>21 say you did not know what the lease would be for?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. So -- or just to try to understand</p> <p>24 it, did you assume that it would be leased to create</p> <p>25 energy?</p>

<p style="text-align: right;">54</p> <p>1 MR. PAUL: Objection. Lack of foundation. 2 Also objection, asks for speculation. 3 THE WITNESS: The lease -- we didn't go 4 into details, and it -- as far as answering -- as far 5 as giving an overview of those tax principles, it was 6 important that it was a lease but the terms of the 7 lease hadn't come into play yet. 8 Q. (BY MS. HEALY GALLAGHER) Did Mr. Johnson 9 ever talk about how the owner of the energy equipment 10 would make money? 11 A. At what point in time? 12 Q. Well, specifically with the lease 13 payments, who was going to pay -- 14 A. Uh-huh (affirmative). 15 Q. -- for these lenses? 16 A. So after -- when he -- when he asked that 17 those -- those principles start being applied to 18 facts, we discussed the lease in terms of the 19 purchaser is going to put out a chunk of money. They 20 are going to pay for it up front. That lease was 21 going to be given -- I -- I don't know if it was 22 RaPower or another entity, but that lease was -- they 23 were going to, in turn, lease that to another entity, 24 and they were going to pay as -- an advertising fee 25 as rent. And that was -- and that was until the</p>	<p style="text-align: right;">55</p> <p>1 equipment was ready to produce energy. 2 Q. So to be clear, these conversations 3 happened after you delivered the second letter? 4 A. Yes. 5 Q. Okay. And after the second letter -- 6 correct me if I'm wrong, but it sounds like 7 Mr. Johnson understood that the lenses would not 8 generate lease income as equipment producing energy 9 for a while. 10 A. Correct. 11 Q. So in between the time when someone 12 purchased a lens and leased it to some other entity, 13 and that entity started paying lease payments for the 14 use of that equipment as energy-producing equipment, 15 that same entity would pay the owner of the lens for 16 using the lens for advertising purposes? 17 A. Whether they were the same entity, I don't 18 know. The plan was, you purchase the equipment, you 19 lease it out for advertising. When it's ready to 20 produce energy, you lease it out for energy. Who it 21 was that was leasing to or if they were the same 22 per -- same entity, it was unknown. 23 MS. HEALY GALLAGHER: Okay. Let's take a 24 quick break. Off the record. 25 (A break was taken from 2:39 p.m. to</p>
<p style="text-align: right;">56</p> <p>1 2:45 p.m.) 2 MS. HEALY GALLAGHER: Back on the record, 3 please. 4 Q. All right. Miss Anderson, we've just come 5 back from a quick break. 6 Did you speak with anybody about the facts 7 of the case on the break? 8 A. I did not. 9 Q. Now, actually, just to revisit some 10 interim stuff. What is your professional e-mail 11 address? 12 A. Jessica@deltaattorney.com. 13 Q. Have you used any other professional 14 e-mail address since September 2010? 15 A. It's possible in those first few months I 16 was using my student e-mail address. 17 Q. Which was what? 18 A. I can't recall. I want to say anderson -- 19 anderson.stu@okcu.edu, or something to that effect. 20 Q. Okay. Since those first few months when 21 you might have been using your student e-mail 22 address, have you used any other e-mail address for 23 your professional life other than 24 jessica@deltaattorney.com? 25 A. I have an e-mail address strictly for</p>	<p style="text-align: right;">57</p> <p>1 prosecution that Todd and I both have a joint account 2 to, delta -- deltapc@gmail.com. 3 Q. Any other e-mail addresses for your 4 professional life? 5 A. No. 6 Q. At any point in the course of your 7 representation of RaPower3 in this context did 8 Neldon Johnson ever ask you about your background in 9 federal tax matters? 10 A. He didn't ask me directly. 11 Q. Did he ask you indirectly? 12 A. Todd told me that he had asked Todd 13 about -- the question that Neldon posed was, "Do you 14 guys do any tax -- any tax law?" 15 And I think -- believe Todd indicated to 16 me his response was, "Jessica has taken a few 17 classes." 18 Q. To your knowledge, was there any further 19 conversation with Neldon Johnson about your 20 background in tax? 21 A. Not between Neldon and I. And as far as 22 Todd and Neldon, I don't believe so. 23 Q. Before the break we talked about a 24 RaPower3 customer leasing a lens for advertising 25 purposes.</p>

58	<p>1 A. Energy equipment, yeah.</p> <p>2 Q. Right. A customer would lease energy</p> <p>3 equipment for advertising purposes?</p> <p>4 A. Correct.</p> <p>5 Q. Right.</p> <p>6 Do you know which entity was going to pay</p> <p>7 for the use of that energy equipment for advertising</p> <p>8 purposes?</p> <p>9 A. I don't know specifically which entity.</p> <p>10 Q. Do you know whether any RaPower3 customer</p> <p>11 has actually received lease payments for the use of</p> <p>12 energy equipment for advertising purposes?</p> <p>13 A. I --</p> <p>14 MR. PAUL: Objection. Lacks foundation.</p> <p>15 THE WITNESS: I don't know any RaPower</p> <p>16 customers or their dealings.</p> <p>17 Q. (BY MS. HEALY GALLAGHER) Did you ever</p> <p>18 hear from Neldon Johnson that any RaPower3 customer</p> <p>19 had ever been paid any lease payments for use of</p> <p>20 their energy equipment for advertising purposes?</p> <p>21 A. I didn't specifically hear about</p> <p>22 transactions between clients -- customers and</p> <p>23 RaPower.</p> <p>24 Q. So no?</p> <p>25 A. No.</p>	59	<p>1 Q. Do you know which entity was going to pay</p> <p>2 for using energy equipment as equipment to produce</p> <p>3 energy?</p> <p>4 A. I don't know who the lease was going to be</p> <p>5 between. It was -- the customer that purchased the</p> <p>6 energy equipment was going to lease it back. I -- I</p> <p>7 couldn't say with a surety what company was going to</p> <p>8 be leasing it back.</p> <p>9 Q. So do you know whether any RaPower3</p> <p>10 customer has ever received a lease payment for use of</p> <p>11 their energy equipment as energy equipment?</p> <p>12 A. I do not.</p> <p>13 (EXHIBIT 619 WAS MARKED.)</p> <p>14 Q. Miss Anderson, I've handed you what's been</p> <p>15 marked Plaintiff's Exhibit 619, Bates number Anderson</p> <p>16 000161.</p> <p>17 Do you recognize Plaintiff's Exhibit 619?</p> <p>18 A. I recognize it as a document that was in</p> <p>19 our file.</p> <p>20 Q. Plaintiff's Exhibit 619 appears to be --</p> <p>21 or has the title Solar Purchase Referral Fee</p> <p>22 Contract.</p> <p>23 Did I read that correctly?</p> <p>24 A. Yes.</p> <p>25 Q. Do you know when you received this</p>
60	<p>1 document?</p> <p>2 A. I don't.</p> <p>3 Q. Do you know who you got it from?</p> <p>4 A. Neldon Johnson.</p> <p>5 Q. Do you know who drafted Plaintiff's</p> <p>6 Exhibit 619?</p> <p>7 A. I do not.</p> <p>8 Q. Did you ever make any suggestions or</p> <p>9 changes to Plaintiff's Exhibit 619?</p> <p>10 A. I do not believe that I did.</p> <p>11 Q. What, if anything, did you do with</p> <p>12 Plaintiff's Exhibit 619 after you got it from</p> <p>13 Mr. Johnson?</p> <p>14 A. I put it in the file. It was something to</p> <p>15 review at a later date. We were working on the -- we</p> <p>16 were working on the tax principles, and this was</p> <p>17 something that we would get to later.</p> <p>18 Q. So it sounds like -- but correct me if I'm</p> <p>19 wrong -- you received Plaintiff's Exhibit 619 before</p> <p>20 you delivered the first letter to Mr. Johnson.</p> <p>21 A. I -- I'm not sure on the date. I couldn't</p> <p>22 pinpoint before -- I couldn't pinpoint -- in any of</p> <p>23 those three time frames, I couldn't pinpoint when</p> <p>24 this came into my possession.</p> <p>25 Q. Did you ever speak with Mr. Johnson about</p>	61	<p>1 Plaintiff's Exhibit 619?</p> <p>2 A. Other than it was something that he wanted</p> <p>3 -- he wanted us to review and/or make changes, but</p> <p>4 what those changes -- or in the context that we were</p> <p>5 reviewing it in, I didn't -- we didn't have a -- any</p> <p>6 details.</p> <p>7 Q. So it sounds like -- did he propose that</p> <p>8 you make changes to it, or he didn't say what he</p> <p>9 wanted those changes to be or...</p> <p>10 A. It was, "Here is a copy of what we've got.</p> <p>11 We'll come back to it. We might need to modify it.</p> <p>12 We might -- I might just need you to review it to</p> <p>13 make sure that this is a good thing, but it's not</p> <p>14 something we're going to deal with right now."</p> <p>15 Q. Okay. After -- after that conversation</p> <p>16 with Mr. Johnson, did you have occasion to revisit</p> <p>17 Plaintiff's Exhibit 619?</p> <p>18 A. It was not something we were worried about</p> <p>19 at the moment, and so it was -- I put it in the file</p> <p>20 until we brought that subject back around.</p> <p>21 Q. Did you bring that subject back around?</p> <p>22 A. I did not.</p> <p>23 Q. Did Mr. Johnson?</p> <p>24 A. No.</p> <p>25 Q. So after reviewing it, speaking a little</p>

62	<p>1 bit with Mr. Johnson about it and putting it in the</p> <p>2 file, what, if anything, did you do with Plaintiff's</p> <p>3 Exhibit 619?</p> <p>4 A. Nothing.</p> <p>5 Q. What, if any, effect did Plaintiff's</p> <p>6 Exhibit 619 have on any analysis that you provided to</p> <p>7 Mr. Johnson?</p> <p>8 A. The general principles, the overall,</p> <p>9 here's how these tax principles work, in the letters</p> <p>10 that I provided, just on the basis -- general basis</p> <p>11 that it's a lease. We didn't start -- Mr. Johnson</p> <p>12 didn't want to apply those principles to a RaPower3</p> <p>13 customer until after that second letter, and so</p> <p>14 that's when we started digging into the details of,</p> <p>15 okay, what is that really going to look like, what is</p> <p>16 the business structure, what is -- what are the --</p> <p>17 what are the facts of what a RaPower customer</p> <p>18 actually is.</p> <p>19 MS. HEALY GALLAGHER: Could you read back</p> <p>20 my question, please?</p> <p>21 (Record was read as follows: "What, if</p> <p>22 any, effect did Plaintiff's Exhibit 619 have on</p> <p>23 any analysis that you provided to Mr. Johnson?")</p> <p>24 THE WITNESS: The -- the explanation of</p> <p>25 the general principles of -- of the basic tax</p>	63	<p>1 principles were termed in the basis of a lease, in</p> <p>2 general.</p> <p>3 Q. (BY MS. HEALY GALLAGHER) So it sounds</p> <p>4 like Plaintiff's Exhibit 619 did not have an impact</p> <p>5 on any analysis you provided to Mr. Johnson.</p> <p>6 A. No.</p> <p>7 Q. Is that correct?</p> <p>8 A. That would be correct.</p> <p>9 (EXHIBIT 620 WAS MARKED.)</p> <p>10 Q. All right. You've been handed Plaintiff's</p> <p>11 Exhibit 620, which is Bates marked Anderson 000163</p> <p>12 through 170.</p> <p>13 You've had a chance to take a look?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Do you recognize Plaintiff's</p> <p>16 Exhibit 620?</p> <p>17 A. This was, again, a document that we had in</p> <p>18 our file.</p> <p>19 Q. Okay. Do you know who you got it from?</p> <p>20 A. Mr. Johnson.</p> <p>21 Q. Did you draft Plaintiff's Exhibit 620?</p> <p>22 A. No.</p> <p>23 Q. And Plaintiff's Exhibit 620 appears to</p> <p>24 be -- or have the header, at any rate, RaPower3</p> <p>25 Equipment Purchase Agreement, correct?</p>
64	<p>1 A. Correct.</p> <p>2 Q. Do you recall when Mr. Johnson gave you</p> <p>3 Plaintiff's Exhibit 620?</p> <p>4 A. I don't recall which time frame it was</p> <p>5 given to me.</p> <p>6 Q. What, if anything, did you do with</p> <p>7 Plaintiff's Exhibit 620?</p> <p>8 A. I reviewed it and put it in the file.</p> <p>9 Q. Did you ever speak with Mr. Johnson about</p> <p>10 the RaPower3 Equipment Purchase Agreement?</p> <p>11 MR. PAUL: Objection. Lack of foundation.</p> <p>12 THE WITNESS: I did not.</p> <p>13 Q. (BY MS. HEALY GALLAGHER) Did you ever</p> <p>14 make any suggestions or changes to Plaintiff's</p> <p>15 Exhibit 620 or any other RaPower3 equipment purchase</p> <p>16 agreement?</p> <p>17 MR. PAUL: Objection. Lack of foundation.</p> <p>18 THE WITNESS: I did not.</p> <p>19 Q. (BY MS. HEALY GALLAGHER) Do you know if</p> <p>20 Todd Anderson made any suggestions or changes to any</p> <p>21 RaPower3 equipment purchase agreement?</p> <p>22 MR. PAUL: Objection. Lack of foundation.</p> <p>23 THE WITNESS: I do not know.</p> <p>24 Q. (BY MS. HEALY GALLAGHER) Aside from</p> <p>25 putting Plaintiff's Exhibit 620 in your file, did you</p>	65	<p>1 do anything else with it?</p> <p>2 MR. PAUL: Objection. Asked and answered.</p> <p>3 THE WITNESS: I did not.</p> <p>4 Q. (BY MS. HEALY GALLAGHER) What, if any,</p> <p>5 effect did Plaintiff's Exhibit 620 have on any</p> <p>6 analysis you provided for Mr. Johnson?</p> <p>7 A. The letters that I provided were not an</p> <p>8 analysis for RaPower3 customers, they were a</p> <p>9 overview. So I didn't provide an analysis regarding</p> <p>10 RaPower3 purchasers or the purchase agreement.</p> <p>11 Q. Okay. So I understand you weren't</p> <p>12 providing an analysis for RaPower3 customers. My</p> <p>13 question is simply, you know, you had the Plaintiff's</p> <p>14 Exhibit 620. You read it. Did what you learn by</p> <p>15 reading the equipment purchase agreement -- did that</p> <p>16 have any impact on your analysis for Mr. Johnson?</p> <p>17 A. It did not have any impact on the letters</p> <p>18 that I wrote to Mr. Johnson.</p> <p>19 Q. Did it have any other impact on any other</p> <p>20 analysis you provided him?</p> <p>21 A. It -- it provided a general -- along with,</p> <p>22 what, Exhibit 619 -- these two combined provided a</p> <p>23 clearer picture of what exactly the customer was</p> <p>24 looking like, gave more details, and it -- along with</p> <p>25 the conversations that I had with Mr. Johnson, it</p>

<p style="text-align: right;">66</p> <p>1 affected the conversations we had after the second 2 letter and the analysis that I provided at that time. 3 Q. So do you believe you received Plaintiff's 4 Exhibit 620 after the second letter? 5 A. I don't recall. 6 Q. After reading the equipment purchase 7 agreement, did you follow up with any questions about 8 any of its contents with Mr. Johnson? 9 MR. PAUL: Objection. Lack of foundation. 10 THE WITNESS: Not specific questions 11 towards this document. 12 Q. (BY MS. HEALY GALLAGHER) Any other 13 questions regarding the equipment purchase agreement? 14 MR. PAUL: Objection. Lack of foundation. 15 THE WITNESS: My questions were more 16 directed at what the customer was actually 17 purchasing -- well, let me take that back. 18 More towards the lease, and that's when we 19 discussed the advertising concept. And then also my 20 questions about the customer were geared towards how 21 were they going to have material participation. 22 MS. HEALY GALLAGHER: Let's go off for a 23 second, please. 24 (Discussion off the record.) 25 (EXHIBITS 621 THROUGH 623 WERE MARKED.)</p>	<p style="text-align: right;">67</p> <p>1 MS. HEALY GALLAGHER: So we can go back on 2 the record, please. 3 Q. All right. Miss Anderson, you've been 4 handed what has been marked Plaintiff's Exhibit 621, 5 622 and 623. 6 Plaintiff's 621 is marked Anderson 000199 7 through 208. 8 Plaintiff's Exhibit 622 is marked Anderson 9 000183 through 185. 10 And Plaintiff's 623 is marked Anderson 11 000172 through 181. 12 And the reason we're taking a look at all 13 of these together is because each of them have the 14 title on the first page, RaPower3 Operation and 15 Maintenance Agreement. 16 Do you see that? 17 A. I do. 18 Q. Okay. So, really, what I'm curious about 19 from you -- because these are from your files, 20 correct? 21 A. Correct. 22 Q. -- why there are three versions -- or 23 three different documents. And what I can do is 24 highlight some differences that I see, and then we 25 can talk about those.</p>
<p style="text-align: right;">68</p> <p>1 A. Okay. 2 Q. So on 621, for example, on page Anderson 3 203 do you see the Article 5, Compensation and 4 Payment on this page? 5 A. Yes. 6 Q. Paragraph 5.1 in typewriting says, "Rental 7 Agreement," correct? 8 A. Correct. 9 Q. And then in handwriting next to that it 10 appears to say "Power Purchase." 11 Do you see that? 12 A. I can't quite read what it says, but I do 13 say there is hand -- see there is handwriting. 14 Q. Okay. Do you happen to know whose writing 15 that is? 16 A. I happen to know that it's not my writing 17 and it's not Todd's writing. 18 Q. If it does say "Power Purchase," do you 19 have any recollection as to why that notation is on 20 this document? 21 A. I do not. 22 Q. Otherwise, do you recognize Plaintiff's 23 Exhibit 621 as a document that came out of your 24 files? 25 A. Correct.</p>	<p style="text-align: right;">69</p> <p>1 Q. Did you receive this from Neldon Johnson? 2 A. Correct. 3 Q. Do you remember approximately when he gave 4 it to you? 5 A. I do not. 6 Q. Do you know who drafted the RaPower3 7 Operation and Maintenance Agreement? 8 A. I do not. 9 Q. Generally -- not necessarily with respect 10 to 621, but generally did you discuss the RaPower3 11 Operation and Maintenance Agreement with Mr. Johnson? 12 A. I did not talk about it with Mr. Johnson. 13 Q. Do you know if Todd Anderson did? 14 A. I don't recall. 15 Q. Did you ever actually see a transaction 16 document by which a customer would have leased the 17 lenses to another entity? 18 A. Can you rephrase that? 19 Q. So we've talked about a lease -- 20 A. Correct. 21 Q. -- involved in the transaction that 22 Mr. Johnson was proposing. Did you ever see what -- 23 like, the form of a lease agreement? 24 A. I believe 619 is -- is substantially 25 similar to what you're asking.</p>

70	<p>1 Q. Okay. So, to your understanding,</p> <p>2 Plaintiff's Exhibit 619, which is the Solar Purchase</p> <p>3 Referral Fee Contract, to your recollection, this is</p> <p>4 the contract that embodied the lease?</p> <p>5 A. There was two potential leases. I believe</p> <p>6 this was what the lease for the advertising portion</p> <p>7 was going to look like.</p> <p>8 Q. Okay. So did you ever see a lease for the</p> <p>9 energy equipment being used as energy equipment?</p> <p>10 A. I did not.</p> <p>11 Q. What, if any, effect did Plaintiff's</p> <p>12 Exhibit 621 have on any analysis you provided to</p> <p>13 Mr. Johnson?</p> <p>14 A. As far as the letters that I produced,</p> <p>15 there was -- again, they were termed in -- in such a</p> <p>16 way that it was, "Here's what these tax principles</p> <p>17 are." It wasn't until Mr. Johnson asked me to say</p> <p>18 how does it apply to a RaPower customer that we</p> <p>19 started digging into details such as how the lease</p> <p>20 was going to be structured and the purchase agreement</p> <p>21 and things like that.</p> <p>22 Q. So did Plaintiff's Exhibit 621 have any</p> <p>23 effect on any analysis you provided to Mr. Johnson?</p> <p>24 A. I don't know specifically that it affected</p> <p>25 me. I believe it was more my conversations with</p>
71	<p>1 Mr. Johnson regarding, in general, what these terms</p> <p>2 probably lay out.</p> <p>3 Q. What these terms probably lay out?</p> <p>4 A. What these contracts -- the terms that are</p> <p>5 contained in these contracts.</p> <p>6 Q. Okay. So -- so -- so -- so am I hearing you</p> <p>7 right, like, you took a look at these contracts</p> <p>8 and --</p> <p>9 A. Set them aside.</p> <p>10 Q. And set them aside. Okay.</p> <p>11 Did you ever talk with Mr. Johnson about</p> <p>12 the terms of these contracts and how they might</p> <p>13 affect your analysis of tax benefits relating to</p> <p>14 these transactions?</p> <p>15 A. In the conversations that I had we didn't</p> <p>16 specifically return to these contracts. It was I</p> <p>17 questioned Mr. Johnson about things such as material</p> <p>18 participation and how -- the time frame of when it</p> <p>19 was actually going to be put into service, and how</p> <p>20 that potentially affects the energy credits that he</p> <p>21 was wanting to claim. And those were all verbal</p> <p>22 conversations, not generally related to these</p> <p>23 contracts.</p> <p>24 Q. Okay. Did you ever make any changes or</p> <p>25 comment on the RaPower3 Operation and Maintenance</p>
72	<p>1 Agreement?</p> <p>2 A. I did not.</p> <p>3 Q. Do you know if somebody else did?</p> <p>4 A. I see in Exhibit 622 there are comments.</p> <p>5 I'm not sure who made those comments.</p> <p>6 Q. Okay. Let's take a look at those. So</p> <p>7 Plaintiff's Exhibit 622, this is just a few pages of</p> <p>8 the Operation and Maintenance Agreement, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And on the page marked Anderson 184, for</p> <p>11 example, there's a track changes comment. Do you see</p> <p>12 that comment bubble?</p> <p>13 A. I do.</p> <p>14 Q. Now, I'm going to read what I think it</p> <p>15 says; you let me know if you agree.</p> <p>16 The comment bubble says, "Does this cause</p> <p>17 problems in regards to participation and/or</p> <p>18 ownership?"</p> <p>19 A. That's what I read that to say as well.</p> <p>20 Q. Okay. Do you know who made that comment?</p> <p>21 A. I am not sure. I do not know.</p> <p>22 Q. Does the Anderson Law Center use a track</p> <p>23 changes feature in Word when editing documents?</p> <p>24 A. Yes.</p> <p>25 Q. Did it use the track changes feature in</p>
73	<p>1 fall of 2010?</p> <p>2 A. Yes.</p> <p>3 Q. Is there a -- do you know how you can tell</p> <p>4 who made what comments and track changes?</p> <p>5 A. Usually there is a designation next to the</p> <p>6 comment.</p> <p>7 Q. Okay. So, for example, in this comment</p> <p>8 bubble, that could be A1.</p> <p>9 Do you see that?</p> <p>10 A. I do see that.</p> <p>11 Q. Does that look like a designation from</p> <p>12 Anderson Law Center?</p> <p>13 MR. PAUL: Objection. Lacks foundation.</p> <p>14 THE WITNESS: I can't say positively that</p> <p>15 it is.</p> <p>16 Q. (BY MS. HEALY GALLAGHER) Do you know if</p> <p>17 Todd Anderson may have made some track changes?</p> <p>18 A. I don't recall.</p> <p>19 Q. Do you recall having received a version of</p> <p>20 the RaPower3 operation and maintenance agreement with</p> <p>21 track changes already in the document?</p> <p>22 MR. PAUL: Objection. Lacks foundation.</p> <p>23 THE WITNESS: I don't recall.</p> <p>24 Q. (BY MS. HEALY GALLAGHER) Did you ever</p> <p>25 discuss the track changes in Plaintiff's Exhibit 622</p>

<p style="text-align: right;">74</p> <p>1 with Neldon Johnson?</p> <p>2 MR. PAUL: Objection. Lack of foundation.</p> <p>3 THE WITNESS: I don't recall a specific</p> <p>4 conversation where this came up, where this</p> <p>5 agreement -- he said, "Let's pull out this agreement</p> <p>6 and let's go through this agreement" -- with Neldon.</p> <p>7 That wasn't something that -- I don't recall a</p> <p>8 conversation like that happening. It's been a long</p> <p>9 time.</p> <p>10 Q. (BY MS. HEALY GALLAGHER) Indeed.</p> <p>11 So, Miss Anderson, do you recall where you</p> <p>12 got Plaintiff's Exhibit 622?</p> <p>13 MR. PAUL: Objection to the extent it's</p> <p>14 been asked and answered.</p> <p>15 THE WITNESS: I believe it came from</p> <p>16 Mr. Johnson.</p> <p>17 Q. (BY MS. HEALY GALLAGHER) Do you recall</p> <p>18 approximately when he gave it to you?</p> <p>19 A. I do not recall a time frame.</p> <p>20 Q. What, if any, effect did Plaintiff's</p> <p>21 Exhibit 622 have on any analysis you provided</p> <p>22 Mr. Johnson?</p> <p>23 A. Probably little. My -- the analysis, as</p> <p>24 it applied towards RaPower customers, was determined</p> <p>25 off of conversations with Mr. Johnson.</p>	<p style="text-align: right;">75</p> <p>1 Q. Let's take a look, please, at Plaintiff's</p> <p>2 Exhibit 623. Do you know, Miss Anderson, where you</p> <p>3 got Plaintiff's Exhibit 623?</p> <p>4 A. There seems to be three documents all</p> <p>5 substantially similar, and I believe them to have</p> <p>6 come from Mr. Johnson.</p> <p>7 Q. Let's take a look, please, if you would,</p> <p>8 at the page marked Anderson 176. And if you'd like,</p> <p>9 you can get out Plaintiff's Exhibit 621 to compare</p> <p>10 that Article 5.1.</p> <p>11 A. Okay.</p> <p>12 Q. So, to me -- correct me if I'm wrong or</p> <p>13 let me know if you disagree -- in Plaintiff's</p> <p>14 Exhibit 623, on page Anderson 176 it appears that the</p> <p>15 handwritten changes in Plaintiff's Exhibit 621 appear</p> <p>16 in typewriting here.</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. Okay. Does the change from Plaintiff's</p> <p>20 Exhibit 621 where it says "Rental Agreement" to 623</p> <p>21 where it says "Power Purchase Agreement" -- does that</p> <p>22 mean anything to you?</p> <p>23 A. It seems like semantics to me.</p> <p>24 Q. Okay. Okay. So that changed language</p> <p>25 doesn't make a difference to your analysis?</p>
<p style="text-align: right;">76</p> <p>1 A. No.</p> <p>2 Q. Okay. We're done with those. Thank you.</p> <p>3 I'm handing you what's been marked</p> <p>4 Plaintiff's Exhibit 570, Bates marked Anderson 000212</p> <p>5 through 220. Please take a look through that and let</p> <p>6 me know when you're ready.</p> <p>7 A. I'm ready.</p> <p>8 Q. Miss Anderson, do you recognize</p> <p>9 Plaintiff's Exhibit 570?</p> <p>10 A. Yes.</p> <p>11 Q. What is it?</p> <p>12 A. A letter that I drafted to Mr. Johnson.</p> <p>13 Q. And this is what we've been talking about</p> <p>14 as the first letter, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Now, the -- and you recognize the</p> <p>17 letterhead at the top of Plaintiff's Exhibit 570 as</p> <p>18 the letterhead for Anderson Law Center in or around</p> <p>19 fall 2010?</p> <p>20 A. Yes.</p> <p>21 Q. The date on Plaintiff's Exhibit 570 says</p> <p>22 February 9, 2017. Do you know why that is?</p> <p>23 A. I believe this was stored as a Word</p> <p>24 document, and that date was an auto correct -- auto</p> <p>25 fill feature.</p>	<p style="text-align: right;">77</p> <p>1 Q. Do you recall what -- when this letter was</p> <p>2 finalized and sent out?</p> <p>3 A. My best guess is October 2010.</p> <p>4 Q. Do you have a recollection as to a</p> <p>5 specific date in October?</p> <p>6 A. I do not.</p> <p>7 Q. I'm handing you what's been marked</p> <p>8 Plaintiff's Exhibit 571, Bates marked</p> <p>9 Anderson_Todd-00001 through 8.</p> <p>10 Miss Anderson, do you recognize</p> <p>11 Plaintiff's Exhibit 571?</p> <p>12 A. I've not reviewed this exhibit, no.</p> <p>13 Q. But it is the response from Todd Anderson</p> <p>14 to the United States subpoena to produce documents,</p> <p>15 right?</p> <p>16 A. That is what it says in the title.</p> <p>17 Q. Okay. So if we take a look at the page</p> <p>18 marked Anderson_Todd-00006, the entry for row N is</p> <p>19 what I'd like you to take a look at. And if you</p> <p>20 could just please read that to yourself and let me</p> <p>21 know when you're done.</p> <p>22 A. Okay.</p> <p>23 Q. And, actually, I'll revisit Plaintiff's</p> <p>24 570 for one second to say that the "re" line, the</p> <p>25 subject line, says, "Response to tax questions</p>

78	<p>1 posed."</p> <p>2 Correct?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. And then if we look back at</p> <p>5 Plaintiff's Exhibit 571, at line N, the entry on this</p> <p>6 privilege log starts off by saying, "Letter re</p> <p>7 response to tax questions posed (Microsoft Word,</p> <p>8 modifiable file.)"</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And then in the description of that</p> <p>12 document it says, "Document created and subsequently</p> <p>13 modified by Jessica Anderson with the final revisions</p> <p>14 on or about 2010, October 21st."</p> <p>15 Do you see that?</p> <p>16 A. I do see that.</p> <p>17 Q. Okay. Do you have any thoughts about</p> <p>18 that? Did you contribute to this privilege log in</p> <p>19 estimating when this would have been finalized?</p> <p>20 A. Only to the extent that I agree it was on</p> <p>21 or about October 21st. That seems reasonable with</p> <p>22 the timeline that I recall.</p> <p>23 Q. Okay. Miss Anderson, Plaintiff's</p> <p>24 Exhibit 570 you described as a Microsoft Word</p> <p>25 document, and the privilege log identifies it as a</p>	79	<p>1 Word document and modifiable file.</p> <p>2 To your recollection, did a copy of</p> <p>3 Plaintiff's Exhibit 570 get sent to Neldon Johnson?</p> <p>4 A. Yes, I believe it did.</p> <p>5 Q. How did it get sent?</p> <p>6 A. It says it was sent to -- via e-mail to</p> <p>7 neldon@iaus.com and original file -- follow, which</p> <p>8 means that it was printed and put in the mail.</p> <p>9 Q. Okay. Was it your ordinary practice at</p> <p>10 Anderson Law Center, if a letter says it was sent by</p> <p>11 e-mail to a particular e-mail address, it was</p> <p>12 actually then sent?</p> <p>13 A. Correct.</p> <p>14 Q. And, similarly, if the letter says the</p> <p>15 original will follow, your ordinary practice was to</p> <p>16 print out a hard copy, sign it, I'm guessing...</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And then actually put it in the</p> <p>19 mail?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. And do you have a recollection, did</p> <p>22 you e-mail this to Neldon Johnson?</p> <p>23 A. I don't recall if it was me or Todd, but</p> <p>24 one of us did.</p> <p>25 Q. Do you recall who put it in the mail?</p>
80	<p>1 A. It would have been either me or Todd.</p> <p>2 Q. And you know Neldon Johnson received this</p> <p>3 letter, correct?</p> <p>4 A. I do.</p> <p>5 Q. Because he came into your office to talk</p> <p>6 about it, right?</p> <p>7 A. Correct.</p> <p>8 Q. Let's walk through this a little bit here.</p> <p>9 So the first sentence identifies questions regarding</p> <p>10 tax liability for members of RaPower3's multilevel</p> <p>11 marketing organization.</p> <p>12 Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. Okay. So by the time of the first letter</p> <p>15 you knew that there was a multilevel marketing</p> <p>16 component here?</p> <p>17 A. At least it was proposed, yes.</p> <p>18 Q. And did Neldon Johnson propose that?</p> <p>19 A. Yes, he did.</p> <p>20 Q. The second-to-last sentence states that</p> <p>21 the information in the letter is relevant only to</p> <p>22 individuals acting as sole proprietors in the</p> <p>23 multilevel organization of RaPower3.</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>	81	<p>1 Q. Why does the letter have only to do with</p> <p>2 sole proprietors?</p> <p>3 A. I believe it was something that I turned</p> <p>4 up in my research. He said, "See how these questions</p> <p>5 apply to an MLM."</p> <p>6 And so I termed it in -- I -- I put it in</p> <p>7 terms of we're acting as a sole proprietor, but if</p> <p>8 you've got this other -- if you've got corporations</p> <p>9 or entities, we would have a different conversation.</p> <p>10 Q. Okay. So I just wanted to understand, did</p> <p>11 Neldon Johnson say, "Apply this to sole proprietors</p> <p>12 only"?</p> <p>13 A. No.</p> <p>14 Q. Okay. Okay. If you want to take a flip</p> <p>15 through Plaintiff's Exhibit 570. I see three Roman</p> <p>16 numerals.</p> <p>17 A. Okay.</p> <p>18 Q. Are the questions next to the Roman</p> <p>19 numerals -- are those the three questions that</p> <p>20 Mr. Johnson wanted you to answer?</p> <p>21 A. Those are the questions that Mr. Johnson</p> <p>22 wanted me to answer.</p> <p>23 Q. And, you know, if we take a look at I, it</p> <p>24 says, "Will the taxpayer's participation be deemed</p> <p>25 material participation as defined in the internal</p>

82	<p>1 revenue code."</p> <p>2 Did I read that correctly?</p> <p>3 A. You did.</p> <p>4 Q. Okay. Did he actually ask you that</p> <p>5 question as it's written or was that --</p> <p>6 A. That was probably paraphrased.</p> <p>7 Q. Okay. So that was your interpretation of</p> <p>8 what he was asking you?</p> <p>9 A. Correct.</p> <p>10 Q. What did he actually ask you with respect</p> <p>11 to material participation?</p> <p>12 A. Specifically, he wanted to know how a</p> <p>13 member of an MLM could get material participation</p> <p>14 while -- while in the MLM.</p> <p>15 Q. And did he actually use the phrase</p> <p>16 "material participation" when he came into your</p> <p>17 office?</p> <p>18 A. I believe so.</p> <p>19 Q. Did he talk about why that was important</p> <p>20 to him?</p> <p>21 A. He didn't.</p> <p>22 Q. At least before the first letter?</p> <p>23 A. Correct.</p> <p>24 Q. Before you delivered this letter, did he</p> <p>25 say where he got that phrase from?</p>	83	<p>1 A. I should -- no. And I didn't ask.</p> <p>2 Q. All right. Miss Anderson, what did you do</p> <p>3 in order to answer the question in I?</p> <p>4 A. My -- I started out with research. My</p> <p>5 research was based on the tax code, the regs and IRS</p> <p>6 publications.</p> <p>7 Started with material participation. Saw</p> <p>8 that there was two parts, at least a prong test, and</p> <p>9 so discussed each -- each factor in -- in what it is</p> <p>10 that material participation is.</p> <p>11 Q. In fact, your first subhead A says,</p> <p>12 "Equipment leasing as a passive activity."</p> <p>13 Did I read that correctly?</p> <p>14 A. You did.</p> <p>15 Q. Okay. In this section -- in fact, the</p> <p>16 first sentence says, "In general, losses generated</p> <p>17 from equipment leasing are considered to be passive."</p> <p>18 A. Correct.</p> <p>19 Q. That's what you found in your research?</p> <p>20 A. That's what I found in my research.</p> <p>21 Q. And that's what you stated here in this</p> <p>22 letter?</p> <p>23 A. Correct.</p> <p>24 (Discussion off the record.)</p> <p>25 Q. So, Miss Anderson, you spend a little over</p>
84	<p>1 two pages describing how generally losses generated</p> <p>2 from equipment leasing are considered to be passive.</p> <p>3 Did you ever -- let me ask you this. After you</p> <p>4 delivered this first letter to Mr. Johnson, and</p> <p>5 before you wrote the second letter, did you speak</p> <p>6 with Mr. Johnson at all about this concept in tax</p> <p>7 law?</p> <p>8 A. I can't put a timeline on it. I believe</p> <p>9 that it was -- the conversations after the first</p> <p>10 letter and before the second letter were, "This isn't</p> <p>11 what I wanted because of the tone. Let's change the</p> <p>12 tone."</p> <p>13 And so we worked on changing -- making it</p> <p>14 more user-friendly. It wasn't until after the second</p> <p>15 letter that we started discussing how this passive</p> <p>16 activity applies to RaPower3 customers.</p> <p>17 Q. Okay. Okay. Once you did speak to</p> <p>18 Mr. Johnson about the passive nature of equipment</p> <p>19 leasing, what did you talk about?</p> <p>20 A. We talked about the specific -- there are</p> <p>21 some -- there are some situations where it cannot be</p> <p>22 passive, where it can be active, and so I tried to</p> <p>23 steer the conversation towards, "Okay, how can we</p> <p>24 make this active? Tell me more information in</p> <p>25 regards to these factors that could make it active."</p>	85	<p>1 And I didn't get any satisfactory answers</p> <p>2 as far as passive activity, but that wasn't a</p> <p>3 conver -- that wasn't a subject that we hit hard at</p> <p>4 that time. The subject that we spent most of our</p> <p>5 time on was material participation, and we could not</p> <p>6 overcome material participation.</p> <p>7 Q. Okay, but if there's equipment leasing --</p> <p>8 A. Uh-huh (affirmative).</p> <p>9 Q. -- you don't even get to the seven-factor</p> <p>10 test for material participation, right?</p> <p>11 A. If -- yes. We -- we -- we had the</p> <p>12 conversation of you have to have -- if it's leasing,</p> <p>13 but if we're -- if it's structured in such a way that</p> <p>14 it's no longer leasing, then we still have -- we</p> <p>15 still don't have material participation.</p> <p>16 Q. Okay. So let's back it up a little bit.</p> <p>17 So your recollection is you first started</p> <p>18 drilling down on the actual sort of technical tack</p> <p>19 stuff --</p> <p>20 A. Uh-huh (affirmative).</p> <p>21 Q. -- with Mr. Johnson after you delivered</p> <p>22 the second letter.</p> <p>23 A. The second draft, yeah.</p> <p>24 Q. Okay. Right, second draft.</p> <p>25 What was his reaction to your telling</p>

86	<p>1 him -- or your discussion with him that equipment</p> <p>2 leasing is, per se, passive, absent a few exceptions?</p> <p>3 A. At first he was dismissive. It was, "I --</p> <p>4 I think -- I think there is a way we can overcome</p> <p>5 this."</p> <p>6 And so I would go and I would review it</p> <p>7 again.</p> <p>8 He would -- he would come -- it was</p> <p>9 multiple -- multiple conversations, either on the</p> <p>10 phone or in person. And so I would go and review it</p> <p>11 again and say, "Neldon, I'm not sure there is any way</p> <p>12 that I can come up with as far as if we're -- if</p> <p>13 we're going forward with the lease, I don't see any</p> <p>14 way that we can come up with -- to overcome this</p> <p>15 passive activity."</p> <p>16 Or -- it was actually, we -- we landed on</p> <p>17 material participation. "I can't see any way we can</p> <p>18 overcome this material participation."</p> <p>19 And so at that point, when I said, "I</p> <p>20 don't think we can overcome that," he was -- he would</p> <p>21 come in and he would present hypotheticals. I don't</p> <p>22 remember exactly what the hypotheticals were, but it</p> <p>23 was in an effort to persuade me to change my mind.</p> <p>24 The hypothetical would be -- he would present the</p> <p>25 hypothetical, and then I would spend time telling him</p>
87	<p>1 how that hypothetical was not identical to the</p> <p>2 situation that we had, and so it didn't apply or how</p> <p>3 that hypothetical was incorrect and wouldn't get to</p> <p>4 where he wanted to go anyway.</p> <p>5 And we went back and forth several times</p> <p>6 with several different hypotheticals. He -- it was</p> <p>7 him trying to convince me to change my mind.</p> <p>8 Q. Can you give me a rough time frame? I</p> <p>9 understand it happened over the course of time. Are</p> <p>10 we talking about, like, November to June?</p> <p>11 A. So it was after the second letter. It</p> <p>12 would have been in November. I don't believe that</p> <p>13 these conversations extended out to June. I think</p> <p>14 they happened within several weeks, maybe even as far</p> <p>15 as into the first part of January.</p> <p>16 Q. January 2011?</p> <p>17 A. Correct.</p> <p>18 Q. I'd like to come back to something you</p> <p>19 said a moment ago at the beginning of one of your</p> <p>20 answers. You said that he was -- Mr. Johnson was</p> <p>21 dismissive of -- he was dismissive of what, exactly?</p> <p>22 A. So, after the second letter he asked that,</p> <p>23 okay, let's apply these principles. We've talked</p> <p>24 about them and we've talked about them, but let's</p> <p>25 apply these principles to how it's going to apply --</p>
88	<p>1 how it would affect a RaPower customer. Because up</p> <p>2 until that point it was if you have X, Y and Z, then</p> <p>3 you could potentially take these tax benefits.</p> <p>4 And he wanted -- if you purchase RaPower</p> <p>5 equipment, you can take all of these tax benefits.</p> <p>6 That's what he wanted. Okay.</p> <p>7 At that point, when I realized that's what</p> <p>8 he wants, I stepped back and I did some more reading.</p> <p>9 I did some more research to see if I could get him</p> <p>10 there.</p> <p>11 And when I came back and said, "I don't</p> <p>12 think I can get you there; I don't think that's</p> <p>13 something that I can say," he was dismissive and he</p> <p>14 asked that I try again. And so I tried again. And I</p> <p>15 still could not find a way that I could say, "If you</p> <p>16 purchase this equipment you will be able to take all</p> <p>17 of these tax benefits."</p> <p>18 Q. And which tax benefits did he want to</p> <p>19 offer his customers?</p> <p>20 A. The energy -- the energy credits,</p> <p>21 depreciation, 179 in depreciation, and -- I'm pretty</p> <p>22 sure there is a fourth. I don't recall.</p> <p>23 Q. So Mr. Johnson was dismissive of your</p> <p>24 opinion that you could not give him?</p> <p>25 A. I could not say that if you purchase</p>
89	<p>1 these -- this energy equipment that you will be able</p> <p>2 to take these tax benefits.</p> <p>3 Q. Okay. And you said you went back and</p> <p>4 reviewed it again. What did you review?</p> <p>5 A. I went -- I did -- tried to do more</p> <p>6 research to see if there was something that I had</p> <p>7 missed in the regs, in publications.</p> <p>8 I may even have read articles. I don't --</p> <p>9 just, in general, to get an understanding of what</p> <p>10 someone else is doing, and I didn't find anything</p> <p>11 that satisfied me to -- that this was something that</p> <p>12 I could put my name on.</p> <p>13 Q. Did Mr. Johnson say why he was dismissive</p> <p>14 of your position here?</p> <p>15 A. Oh, he was just confident that this was</p> <p>16 something that would work. He -- he was the one that</p> <p>17 told me about all of these tax principles, and he --</p> <p>18 he felt like all of them would apply to a purchaser</p> <p>19 of energy equipment.</p> <p>20 Q. Of all the articles he dropped off for</p> <p>21 you, and any other materials he thought would assist</p> <p>22 you in your research, did you see anything in those</p> <p>23 materials that supported what Mr. Johnson wanted you</p> <p>24 to say?</p> <p>25 MR. PAUL: Objection. Lack of foundation.</p>

90	<p>1 THE WITNESS: I didn't give a whole lot of</p> <p>2 credit to any of them. I wanted to conduct my own</p> <p>3 research. I may have found phrases or terms that I</p> <p>4 further investigated or looked up, but of the</p> <p>5 materials that he dropped off, I reviewed it and put</p> <p>6 it in a file.</p> <p>7 Q. (BY MS. HEALY GALLAGHER) Did Mr. Johnson</p> <p>8 drop off printouts of the Internal Revenue Code?</p> <p>9 A. I don't believe so.</p> <p>10 Q. Did Mr. Johnson drop off copies of</p> <p>11 treasury regulations?</p> <p>12 A. I do not believe so.</p> <p>13 Q. Did Mr. Johnson drop off case law?</p> <p>14 A. I do not believe so.</p> <p>15 Q. Did Mr. Johnson drop off IRS publications?</p> <p>16 A. I do not believe so.</p> <p>17 Q. So aside from his general confidence, did</p> <p>18 Mr. Johnson ever identify specific reasons that he</p> <p>19 disagreed with your position?</p> <p>20 A. He always phrased his comments to me in</p> <p>21 terms of the hypotheticals; well, what if this were</p> <p>22 the situation or what about in this case, wouldn't</p> <p>23 you agree that it would apply here? So if it applies</p> <p>24 here, then it must apply here.</p> <p>25 It was never, I refute that leasing</p>
92	<p>1 or energy equipment?</p> <p>2 A. The final conversation that I had --</p> <p>3 in-person conversation that I had with Mr. Johnson --</p> <p>4 I couldn't tell you the date, but I remember it was</p> <p>5 just he and I. Todd was not in the office. These --</p> <p>6 every -- the times that he would stop in and tried to</p> <p>7 persuade me he would -- he was getting more</p> <p>8 aggressive. He was getting louder. He was getting</p> <p>9 pushy and -- and these were things that I had -- I</p> <p>10 had discussed with Todd. I said, "I don't feel</p> <p>11 comfortable, and I feel like he's trying to bully me</p> <p>12 into a position that I don't feel comfortable</p> <p>13 taking."</p> <p>14 And so prior to that final meeting Todd</p> <p>15 and I had had that conversation. And he told me that</p> <p>16 if it is not within the purview of the law, then</p> <p>17 don't go there.</p> <p>18 And so not long after that conversation</p> <p>19 with Todd, Mr. Johnson came in -- it was just he and</p> <p>20 I -- again, he was being very aggressive. He was</p> <p>21 trying to be intimidating, almost. And he was</p> <p>22 bringing in a hypothetical, bringing in a scenario.</p> <p>23 And I would tell him, no, this doesn't</p> <p>24 work or it doesn't apply. And I finally said,</p> <p>25 "Neldon, no. I can't do this, and I'm not going to</p>
91	<p>1 equipment is active -- a passive activity or for</p> <p>2 these reasons, this is why it's -- it's not passive</p> <p>3 activity.</p> <p>4 Q. You mentioned that you believed these</p> <p>5 conversations with Mr. Johnson where he was trying to</p> <p>6 change your mind lasted maybe -- maybe until early</p> <p>7 January 2011, correct?</p> <p>8 A. That's my recollection.</p> <p>9 Q. Okay. Why -- why do you believe they</p> <p>10 would have stopped then?</p> <p>11 A. Why did they stop, period, or why did they</p> <p>12 stop in that time frame?</p> <p>13 Q. My question to you is why do you think it</p> <p>14 was early January that they stopped. Like, is there</p> <p>15 any event or something that triggers your</p> <p>16 recollection that it was early January that they</p> <p>17 stopped?</p> <p>18 A. As far as the time frame, I -- it did not</p> <p>19 drag out six months. It was -- it was a matter of</p> <p>20 weeks. It wasn't months.</p> <p>21 Q. After January 2010, did you --</p> <p>22 A. 2011.</p> <p>23 Q. Sorry. Thank you.</p> <p>24 After January 2011, did you have any</p> <p>25 further conversations with Mr. Johnson about RaPower3</p>
93	<p>1 do this." And, "You need to find somebody else." I</p> <p>2 ended the representation verbally there with</p> <p>3 Mr. Johnson in the office.</p> <p>4 After that encounter, when Todd came back</p> <p>5 to the office, I -- my words to him were, "I just</p> <p>6 fired Neldon Johnson." And that was a big deal for</p> <p>7 both of us. I know that Todd discussed that we were</p> <p>8 just starting out; it was a young practice. He was a</p> <p>9 good client; he was a paying client. That was a big</p> <p>10 deal. And I told him that I fired Neldon Johnson.</p> <p>11 And that was a really big deal and he -- it was -- it</p> <p>12 was our first end of representation with a client.</p> <p>13 And so he said -- he told me, "You need to</p> <p>14 put that in writing."</p> <p>15 I drafted an e-mail. I believe Todd</p> <p>16 reviewed the e-mail before I sent it out, and I sent</p> <p>17 it to Neldon. I don't know the date.</p> <p>18 Q. All right. We'll tease a couple things</p> <p>19 out of there.</p> <p>20 A. Yep.</p> <p>21 Q. So in the course of Mr. Johnson coming in</p> <p>22 to present hypotheticals to you, you said he was</p> <p>23 getting more aggressive, pushy and louder. "Louder,"</p> <p>24 he was raising his voice to you?</p> <p>25 A. Yes.</p>

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1 Q. In your opinion, was he yelling?
 2 **A. Probably not.**
 3 Q. What else was he doing to demonstrate
 4 aggression?
 5 **A. He would get in close to me. He would try**
 6 **to -- he has a very high opinion on himself, and he**
 7 **would try to say, "I really think," and "I'm a really**
 8 **smart guy, and I really think this is going to work,"**
 9 **and try to intimidate me in that way.**
 10 Q. So he was physically getting close to you?
 11 **A. Correct.**
 12 Q. And otherwise relying on his opinion of
 13 himself and his own interpretive --
 14 **A. Trying to make me feel dumb or small that**
 15 **I wasn't at the same place that he was.**
 16 Q. Okay. So in addition to a loud voice,
 17 physical closeness to you, making you feel dumb or
 18 small because you weren't in the same place that he
 19 was, what, if anything else, did he do to demonstrate
 20 aggressiveness?
 21 **A. That's probably a pretty good list.**
 22 Q. Do you have an idea of, like, the season
 23 generally when the last conversation was?
 24 **A. I don't.**
 25 Q. Okay.

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1 **because, again, we're using energy-producing**
 2 **equipment and we're calling it a billboard and we**
 3 **want to depreciate it as energy-producing equipment.**
 4 **I wasn't -- I -- I wasn't -- I didn't know**
 5 **if the rules regarding depreciation were -- if that**
 6 **was going to work out. And it was, again, something**
 7 **that I still needed to review, but it was not**
 8 **something that -- it was -- we were going to address**
 9 **it later, simply because we couldn't get past the**
 10 **material participation.**
 11 **And we've already touched on the passive**
 12 **activity of equipment leasing. There's -- and I**
 13 **believe that even in my -- on page 214, the best**
 14 **argument you can make as a taxpayer is falling under**
 15 **this exception, and I wasn't a hundred percent**
 16 **positive that it fell under that exception.**
 17 MS. HEALY GALLAGHER: Okay. Thank you.
 18 Take five, ten?
 19 (A break was taken from 4:01 p.m. to
 20 4:10 p.m.)
 21 MS. HEALY GALLAGHER) All right.
 22 Miss Anderson, we're back on the record after a quick
 23 break.
 24 Q. Did you speak with anybody about the facts
 25 of this case on the break?

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1 MR. MARTIN: Erin, when it's a good spot,
 2 maybe we can take another five-minute break.
 3 Q. (BY MS. HEALY GALLAGHER) And I just want
 4 to make sure I understand. So the -- as you've set
 5 out in I, the real crux of the difference between
 6 your opinion and Neldon Johnson's opinion was about
 7 material participation?
 8 MR. PAUL: Objection. Lack of foundation.
 9 Misstates prior testimony.
 10 THE WITNESS: I had several questions and
 11 concerns about the tax principles that he was trying
 12 to take. I -- that's just the one that we happened
 13 to land on.
 14 Q. (BY MS. HEALY GALLAGHER) Can you give me
 15 a quick list of the other spots for disagreement, and
 16 then we can take a quick break?
 17 **A. The energy equipment -- once I figured out**
 18 **the timeline, that it wasn't going to be actually**
 19 **energy-producing equipment for several years, I**
 20 **wanted to go back and research to make sure that it**
 21 **was still going to qualify for those energy credits.**
 22 **I hadn't taken that into consideration when I first**
 23 **looked at it. I didn't go back and do that research**
 24 **because we never got to that conversation.**
 25 **The depreciation was concerning to me**

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1 **A. No, I did not.**
 2 Q. I'd like to come back quickly to the
 3 hypotheticals that Mr. Johnson brought in to discuss
 4 with you. Do you recall what those hypotheticals
 5 were?
 6 **A. I don't recall the specifics of them.**
 7 **He -- towards the end he kept relating it to farmers.**
 8 **I don't recall why he picked them, but he related it**
 9 **to farmers, maybe because we were in Delta.**
 10 Q. So then -- do you have any idea where he
 11 was getting them from?
 12 **A. I don't, no.**
 13 Q. And I just want to make sure I understand.
 14 You -- I believe you testified -- correct me if I'm
 15 wrong -- that Mr. Johnson did not seem super
 16 concerned about equipment leasing as a passive
 17 activity?
 18 MR. PAUL: Objection to the extent it
 19 misstates her prior testimony.
 20 Q. (BY MS. HEALY GALLAGHER) Or was it more
 21 that the focus was more on material participation?
 22 MR. PAUL: Same objection.
 23 THE WITNESS: He was unconcerned that I
 24 came back and had said, "I don't think we can do
 25 this."

98	<p>1 Q. (BY MS. HEALY GALLAGHER) So is that what</p> <p>2 you mean when you say he was dismissive of your</p> <p>3 conclusions?</p> <p>4 A. Yes. He felt that there was a way that we</p> <p>5 could, in fact, do this.</p> <p>6 Q. All right. And then heading B.</p> <p>7 A. Which document?</p> <p>8 Q. Of Plaintiff's Exhibit 570. That's where</p> <p>9 you laid out the information about material</p> <p>10 participation for a sole proprietorship, right?</p> <p>11 A. Correct.</p> <p>12 Q. If we take a look at page Anderson 216,</p> <p>13 you identify in the paragraph in the middle of the</p> <p>14 page that certain hours do not count in the tests for</p> <p>15 material participation.</p> <p>16 Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. Did you ever talk with Mr. Johnson about</p> <p>19 what kinds of things don't count toward material</p> <p>20 participation?</p> <p>21 A. Other than to relate it to him in -- in</p> <p>22 this letter, no.</p> <p>23 Q. Okay. So you never had conversations with</p> <p>24 him about this after you delivered this letter?</p> <p>25 A. No.</p>	99	<p>1 Q. All right. And then II. II says, "What</p> <p>2 are the requirements for depreciation and IRC</p> <p>3 Section 179 deductions for the energy equipment?"</p> <p>4 Did I read that correctly?</p> <p>5 A. Yes.</p> <p>6 Q. And is this verbatim what you heard from</p> <p>7 Mr. Johnson or a paraphrase of what he wanted to</p> <p>8 know?</p> <p>9 A. Again, it was a paraphrase.</p> <p>10 Q. But when he came into your office, did he</p> <p>11 mention the word "depreciation"?</p> <p>12 A. Yes.</p> <p>13 Q. And he mentioned IRC section 179?</p> <p>14 A. Yes.</p> <p>15 Q. If you take a look at subhead C on page</p> <p>16 Anderson 218. "Property acquired for business use."</p> <p>17 A. Yes.</p> <p>18 Q. Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. At the time you wrote Plaintiff's</p> <p>21 Exhibit 570 what, if any, information did you have</p> <p>22 about the purchaser of the lenses and what business</p> <p>23 use --</p> <p>24 A. This was --</p> <p>25 Q. -- yeah -- the energy equipment would be</p>
100	<p>1 put to?</p> <p>2 A. Okay. The energy equipment would be sold</p> <p>3 to a purchaser, and the purchaser would then lease it</p> <p>4 back. Or lease it to another entity.</p> <p>5 Q. Okay. And then for subsection D, Property</p> <p>6 Placed in Service, on page Anderson 219, did you --</p> <p>7 let me start this again.</p> <p>8 Before you delivered Plaintiff's 570 to</p> <p>9 Mr. Johnson, what, if any, facts did you have about</p> <p>10 how the energy equipment would be placed in service?</p> <p>11 A. I didn't know how it was going to be</p> <p>12 placed in service.</p> <p>13 Sorry, can you rephrase? Is that as far</p> <p>14 as energy equipment -- energy -- producing energy?</p> <p>15 Is that your question?</p> <p>16 Q. So I just want to know what you understood</p> <p>17 at the time of this letter. So of course "placed in</p> <p>18 service" is a legal term in the -- I don't know if</p> <p>19 it's tax code, but it's a legal term. And there are</p> <p>20 certain facts that would apply to any particular</p> <p>21 property that would tilt the scale on, yes, it has</p> <p>22 been placed in service or no, it hasn't. So what I'm</p> <p>23 curious from you is, when you wrote this letter, did</p> <p>24 you have any understanding of facts that might tilt</p> <p>25 the scale toward yes, placed in service or no, placed</p>	101	<p>1 in service for the energy equipment at issue?</p> <p>2 A. We discussed it as a lease. I guess that</p> <p>3 assumed that it had been -- it was -- it existed. If</p> <p>4 that makes sense.</p> <p>5 Q. That the energy equipment existed?</p> <p>6 A. Yes. If -- if we're leasing something, we</p> <p>7 have something that we're leasing. And I think that</p> <p>8 was the premise I was working with.</p> <p>9 Q. And in III. III says, "How can I get a</p> <p>10 letter from the IRS stating its position on material</p> <p>11 participation and Section 179 deductions."</p> <p>12 Did I read that correctly?</p> <p>13 A. Yes.</p> <p>14 Q. And did Mr. Johnson come in with that</p> <p>15 verbatim or was that a paraphrase of what he wanted?</p> <p>16 A. That was a paraphrase.</p> <p>17 Q. After you delivered Plaintiff's Exhibit</p> <p>18 570, did you do any additional work toward getting a</p> <p>19 private letter ruling from the IRS for RaPower3?</p> <p>20 A. No.</p> <p>21 Q. Did Mr. Johnson ask you to?</p> <p>22 A. No.</p> <p>23 Q. Did you ever talk about that again?</p> <p>24 A. It was not an issue that was brought up,</p> <p>25 no.</p>

102	<p>1 Q. Okay. After either you or Todd e-mailed</p> <p>2 Plaintiff's Exhibit 570 to Mr. Johnson, what happened</p> <p>3 next in the course of your representation about this</p> <p>4 topic with RaPower3?</p> <p>5 A. Neldon brought the letter in. He came in</p> <p>6 to the office, and he was upset. He didn't feel like</p> <p>7 I had given him what he had -- what he had asked for.</p> <p>8 So we tried to clarify what exactly was it that you</p> <p>9 were asking for.</p> <p>10 And that's where we -- we discussed the</p> <p>11 tone of the letter, that it was potentially going to</p> <p>12 be for -- used as marketing materials. Not</p> <p>13 necessarily the letter itself. It was the</p> <p>14 information that you are giving me could be used to</p> <p>15 educate salesmen and customers.</p> <p>16 Q. All right. You mentioned that Mr. Johnson</p> <p>17 brought in a physical copy of Plaintiff's</p> <p>18 Exhibit 570, right?</p> <p>19 A. Correct.</p> <p>20 Q. Did he bring in anything else with him at</p> <p>21 that time?</p> <p>22 A. I don't recall.</p> <p>23 Q. And he was upset because he felt like he</p> <p>24 didn't have what he asked for?</p> <p>25 A. That I had not -- and -- yes. Correct.</p>	103	<p>1 Q. Do you recall him slamming the letter down</p> <p>2 on the table?</p> <p>3 A. I remember him being, again, upset as --</p> <p>4 physically upset.</p> <p>5 Q. How would you describe him being</p> <p>6 physically upset?</p> <p>7 A. Talking loudly. Getting close.</p> <p>8 Q. And you mentioned that he was upset about</p> <p>9 the tone of the letter.</p> <p>10 A. He was upset about the letter, in general.</p> <p>11 And then -- so, like, "Okay, let's have a</p> <p>12 conversation. What is it that -- what did I --</p> <p>13 what -- I didn't fulfill what you wanted, so let's</p> <p>14 talk about what you want."</p> <p>15 Q. Okay. Were there any other avenues you</p> <p>16 drilled down with him about why he was upset?</p> <p>17 A. It was mostly, "This is for marketing</p> <p>18 materials. I can't -- I can't use this. It's too</p> <p>19 technical. It's too -- too clinical. It needs to be</p> <p>20 more user-friendly, easier to read." Things like</p> <p>21 that.</p> <p>22 Q. So did he discuss the content? Was he</p> <p>23 upset at all about the content?</p> <p>24 A. Felt the content was, again, just too</p> <p>25 technical.</p>
104	<p>1 Q. Do you think maybe he didn't understand</p> <p>2 what you had written?</p> <p>3 MR. PAUL: Objection. Lack of foundation.</p> <p>4 THE WITNESS: Would you like me to answer</p> <p>5 that?</p> <p>6 MR. PAUL: Argumentative.</p> <p>7 MS. HEALY GALLAGHER: You don't have to</p> <p>8 answer that.</p> <p>9 THE WITNESS: I will refrain, then.</p> <p>10 Q. (BY MS. HEALY GALLAGHER) Okay. So he</p> <p>11 wanted a more user-friendly document?</p> <p>12 A. Yes.</p> <p>13 Q. And he did specifically mention that he</p> <p>14 was interested in using it -- using something to</p> <p>15 educate salesmen and customers about RaPower3?</p> <p>16 A. About the tax benefits of purchasing</p> <p>17 energy equipment.</p> <p>18 Q. About tax benefits.</p> <p>19 A. Potential tax benefits.</p> <p>20 Q. Okay. So he wanted a more user-friendly</p> <p>21 document to help educate salesmen and customers about</p> <p>22 the potential tax benefits of buying RaPower3 energy</p> <p>23 equipment?</p> <p>24 A. Yes.</p> <p>25 Q. Was that the only conversation you had</p>	105	<p>1 with him in between the first letter and the second</p> <p>2 letter?</p> <p>3 A. I don't recall. He came in a lot, and</p> <p>4 it's hard to specify if we were talking about this or</p> <p>5 something else.</p> <p>6 Q. Okay. And I guess what I'm trying to</p> <p>7 understand is, between the time of the first letter,</p> <p>8 Plaintiff's Exhibit 570, and the second letter, which</p> <p>9 we'll take a look at in a second, did you identify</p> <p>10 any other specific reasons that he was upset with</p> <p>11 Plaintiff's Exhibit 570?</p> <p>12 A. Just wanted it more geared towards the</p> <p>13 layperson.</p> <p>14 Q. All right. So what was your next step,</p> <p>15 once you learned that he wanted something more geared</p> <p>16 towards the layperson?</p> <p>17 A. The first letter was drafted primarily by</p> <p>18 me. The second Todd and I collaborated more heavily.</p> <p>19 I said, "I need help changing the tone," and Todd</p> <p>20 helped me change the tone. He relied on the research</p> <p>21 that I had done, but we changed the tone of the</p> <p>22 letter. Made it more user-friendly. And at that</p> <p>23 point we provided a draft to Mr. Johnson.</p> <p>24 Q. And, actually, let me back up for a</p> <p>25 second.</p>

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<p>1 So when you learned that -- what</p> <p>2 Mr. Johnson wanted, did you tell him what you were</p> <p>3 going to do?</p> <p>4 A. As far as the next step?</p> <p>5 Q. Right. So, for example, did you tell him</p> <p>6 you were going to draft another document?</p> <p>7 A. It was, "Okay, let me take this back and</p> <p>8 we'll try again."</p> <p>9 Q. Okay.</p> <p>10 A. "We'll try it again."</p> <p>11 Q. I'm handing you what's been marked as</p> <p>12 Plaintiff's Exhibit 23A. Plaintiff's Exhibit 23A is</p> <p>13 Bates marked Ra3 008255 through 8258. Please take a</p> <p>14 look at this and let me know when you are done.</p> <p>15 A. Okay.</p> <p>16 Q. Miss Anderson, do you recognize</p> <p>17 Plaintiff's Exhibit 23A?</p> <p>18 A. I do.</p> <p>19 Q. What is it?</p> <p>20 A. It's a working draft of that second chance</p> <p>21 that we had with Neldon. We said we were going to --</p> <p>22 "We'll work on it," and this is the result of our</p> <p>23 first stab at that.</p> <p>24 Q. Is Plaintiff's Exhibit 23A the second</p> <p>25 letter that we've been talking about today?</p>	<p>1 A. Correct.</p> <p>2 Q. If you take a look at the first page, we</p> <p>3 see the Anderson Law Center letterhead at the top.</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. And the date at the top is November 9,</p> <p>7 2010.</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. To your recollection, is that around the</p> <p>11 time that you or Mr. Anderson would have sent the</p> <p>12 second letter to Mr. Johnson?</p> <p>13 A. I believe so.</p> <p>14 Q. And I'm using "letter" because it's in a</p> <p>15 letter format. I understand your testimony --</p> <p>16 A. We established it's a draft.</p> <p>17 Q. Your testimony is a working draft. Sure.</p> <p>18 All right. So drawing your attention to</p> <p>19 the first paragraph, you've got at the end of that</p> <p>20 sentence the phrase, "RaPower3 energy equipment."</p> <p>21 Do you see that?</p> <p>22 A. I do.</p> <p>23 Q. By the time you -- you and Mr. Anderson</p> <p>24 drafted Exhibit 23A, did you have any further</p> <p>25 understanding of what "energy equipment" meant?</p>
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<p>1 A. I believe it was -- my understanding was</p> <p>2 that -- from the beginning was it was a stand-alone</p> <p>3 unit of equipment.</p> <p>4 Q. Okay. So it was the same understanding</p> <p>5 you had before you drafted the first letter?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. When I take a look at I on page Ra3</p> <p>8 8255, it identifies the energy credit, Internal</p> <p>9 Revenue Code Sections 45 and 48.</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. I did not see a discussion of the energy</p> <p>13 credit in Plaintiff's Exhibit 570.</p> <p>14 A. Was that a question?</p> <p>15 Q. No, not really.</p> <p>16 Is there a reason that -- well, first, do</p> <p>17 you agree that there is not a discussion of the</p> <p>18 energy credit in Plaintiff's Exhibit 570?</p> <p>19 A. I do agree.</p> <p>20 Q. Okay. So is there a reason -- why is the</p> <p>21 energy credit in Plaintiff's Exhibit 23A if it's not</p> <p>22 in 570?</p> <p>23 A. I think -- I believe it was a principle</p> <p>24 that we had always discussed from the beginning. I</p> <p>25 can't say why it didn't make it into the first</p>	<p>1 letter.</p> <p>2 Q. So did Mr. Johnson come in to your office</p> <p>3 knowing that there was an energy credit?</p> <p>4 A. Yes.</p> <p>5 Q. And did he direct you to look into it as</p> <p>6 to its applicability with RaPower energy equipment?</p> <p>7 A. He directed me to Sections 45 and 48.</p> <p>8 Q. So with respect to this Roman numeral 1 in</p> <p>9 Plaintiff's Exhibit 23A, what research did you do to</p> <p>10 support this rating?</p> <p>11 A. Only that they existed. I'm -- I read</p> <p>12 those sections and essentially said verbatim that</p> <p>13 these are -- these are out there. These are options.</p> <p>14 And I believe even in the third paragraph</p> <p>15 of that section on the next page it states that you</p> <p>16 can find more information about this.</p> <p>17 Q. Okay. And you know what? Before we get</p> <p>18 too far afield of Plaintiff's Exhibit 570, I'd like</p> <p>19 to please take a look back at Plaintiff's</p> <p>20 Exhibit 577. They were the notes that you identified</p> <p>21 as yours.</p> <p>22 A. Okay.</p> <p>23 Q. I believe you testified earlier that you</p> <p>24 thought these were notes that you wrote down after a</p> <p>25 meeting with Mr. Johnson, after you had delivered</p>

<p style="text-align: right;">110</p> <p>1 Plaintiff's Exhibit 570.</p> <p>2 A. I believe it was after Exhibit 23A.</p> <p>3 Q. Okay, after 23A.</p> <p>4 Okay. All right. Back to 23A, then,</p> <p>5 please. With respect to Roman numeral 2,</p> <p>6 Depreciation, did you or Mr. Anderson do any</p> <p>7 additional research about depreciation beyond what</p> <p>8 you had taken a look at for Plaintiff's Exhibit 570?</p> <p>9 A. I do not believe so.</p> <p>10 Q. And I'll actually ask that with respect to</p> <p>11 23A, generally. Understanding that the energy credit</p> <p>12 section was not -- there was not an energy credit</p> <p>13 section in Plaintiff's Exhibit 570, with respect to</p> <p>14 the rest of Plaintiff's Exhibit 23A, to your</p> <p>15 recollection, did you or Mr. Anderson do any</p> <p>16 additional research beyond what you had done for</p> <p>17 Plaintiff's Exhibit 570?</p> <p>18 A. I believe Exhibit 570 was the basis for</p> <p>19 this second draft, and the research that it contains</p> <p>20 was converted into the second draft.</p> <p>21 Q. Into 23A?</p> <p>22 A. 23A.</p> <p>23 Q. So what I don't see in Plaintiff's</p> <p>24 Exhibit 23A is the discussion about leasing as a, per</p> <p>25 se, passive activity, with a few exceptions. Is</p>	<p style="text-align: right;">111</p> <p>1 there a reason that's not in 23A?</p> <p>2 A. I believe it was removed. This was</p> <p>3 generated under the assumption that it -- it would</p> <p>4 either fit under the exception or it was no longer</p> <p>5 going to be a lease. As a -- well, I take that back.</p> <p>6 I believe it was generated under the assumption that</p> <p>7 it would fit under the exception for leases.</p> <p>8 Q. When you say "the exception for leases,"</p> <p>9 do you mean the -- basically the best argument that</p> <p>10 you identify in Plaintiff's Exhibit 570 on page</p> <p>11 Anderson 214?</p> <p>12 A. Correct.</p> <p>13 Q. Did you have any conversations with</p> <p>14 Mr. Johnson about that?</p> <p>15 A. As far as it fitting in this exception?</p> <p>16 Q. Well, just that -- right, why that was an</p> <p>17 assumption for 23A.</p> <p>18 A. I think the easier arg -- the easier</p> <p>19 scenario was that if you could hit the material</p> <p>20 participation -- if you could qualify for that, that</p> <p>21 was -- you could overcome that hurdle. And that's</p> <p>22 probably where we left it.</p> <p>23 And -- sorry. If I can clarify.</p> <p>24 Q. Please.</p> <p>25 A. I'm looking at Section 4, Deductions and</p>
<p style="text-align: right;">112</p> <p>1 Losses.</p> <p>2 MR. PAUL: Of which exhibit?</p> <p>3 THE WITNESS: Of Exhibit 23A.</p> <p>4 Q. (BY MS. HEALY GALLAGHER) Okay, go ahead.</p> <p>5 A. Hmm. I kind of lost my train of thought</p> <p>6 where I was going with that, I guess.</p> <p>7 We discuss -- I discussed the passive</p> <p>8 losses that -- okay. Even if you don't qualify for</p> <p>9 material participation, you still have these as</p> <p>10 losses. They are just passive, and I didn't -- we --</p> <p>11 we softened that as, yeah, you can still deduct as</p> <p>12 losses; they are just passive.</p> <p>13 Q. I see. So you're taking a look at the</p> <p>14 second sentence of the first paragraph under Roman</p> <p>15 numeral 5?</p> <p>16 A. Correct.</p> <p>17 Q. Which says, "Moreover, even if the</p> <p>18 taxpayer does not materially participate, any losses</p> <p>19 may be deducted if the taxpayer has passive income</p> <p>20 from other sources to offset the passive losses."</p> <p>21 Did I read that correctly?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. All right. I'm handing you what's</p> <p>24 been marked Plaintiff's Exhibit 23. Please take a</p> <p>25 look at that and let me know when you're done.</p>	<p style="text-align: right;">113</p> <p>1 A. Okay.</p> <p>2 Q. So you are welcome to take a look through</p> <p>3 and compare 23 and 23A. My questions will have more</p> <p>4 to do with the last page of 23.</p> <p>5 A. Okay.</p> <p>6 Q. So, Plaintiff's Exhibit 23, for the</p> <p>7 record, is Bates marked US001654 through 58.</p> <p>8 Miss Anderson, do you recognize</p> <p>9 Plaintiff's Exhibit 23?</p> <p>10 A. I do.</p> <p>11 Q. What is it?</p> <p>12 A. It is a copy of an e-mail that was sent</p> <p>13 out to Neldon Johnson.</p> <p>14 Q. Okay. And you're looking in particular at</p> <p>15 the last page of Plaintiff's 23?</p> <p>16 A. That's the copy of the e-mail and the</p> <p>17 preceding part of that document is the attachment.</p> <p>18 Q. Okay. Let's take a look at the last page,</p> <p>19 which is US001658. So this does appear to be an</p> <p>20 e-mail from Todd Anderson, correct?</p> <p>21 A. Correct.</p> <p>22 Q. It's to neldon@iaus.com, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And glendaejohnson@hotmail.com, right?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">114</p> <p>1 Q. Quick question. Why e-mail 2 Glenda Johnson? 3 A. I believe that Neldon had access to that 4 e-mail address. 5 Q. Do you have any reason to believe he did 6 not have access to neldon@iaus.com? 7 A. I believe he had access to that e-mail as 8 well. 9 Q. Did he tell you to e-mail 10 glendaejohnson@hotmail.com when you wanted to 11 correspond with him? 12 A. I'm not sure how we established the 13 procedures of how to get -- which e-mail address to 14 use. 15 Q. Okay. And this e-mail is dated 16 November 15, 2010. 17 Do you see that? 18 A. I do. 19 Q. Okay. And it says that there are two 20 attachments at the top of the e-mail. To your 21 recollection, is the rest of Plaintiff's Exhibit 23 22 the attachment that says "Taxpayer Info.docx"? 23 A. I believe that to be correct. 24 Q. Do you have any understanding of why Todd 25 may have been e-mailing Operation and Maintenance</p>	<p style="text-align: right;">115</p> <p>1 Agreement.docx? 2 A. That must have been something that he was 3 working on. 4 Q. So you've testified that Plaintiff's 5 Exhibit 23A and the rest of Plaintiff's Exhibit 23 6 was a working draft. 7 A. Yes. 8 Q. How did you communicate that to 9 Mr. Johnson? 10 A. I believe this e-mail was sent out and 11 either right before or right after there was a phone 12 call that said, "Take a look at this," because it 13 was -- let's try again and so it was, "Let's -- how 14 did we do this time. Is this more what you wanted?" 15 Q. Do you know who was on that phone call? 16 A. I believe it was probably me and Neldon. 17 Q. So do you have an actual recollection that 18 you called him? 19 A. I believe that it was a very short phone 20 call, but it was talking to Neldon, saying, "I -- 21 Todd just sent this document for you to review and -- 22 and talk -- and get back with me on your notes." 23 Q. So you told him to refer back to you with 24 his notes. Did you ask for more information or just 25 comments on the letter?</p>
<p style="text-align: right;">116</p> <p>1 A. It was the beginning of a dialogue. I -- 2 I didn't feel like this was -- I wanted him to review 3 it, and we would clean it up or we would make changes 4 as we went. 5 Q. So what happened after you made that call 6 and Todd Anderson sent the working draft? 7 A. I believe Neldon came back into the 8 office. 9 Q. What happened then? 10 A. It was closer. It was closer to what he 11 wanted, but it didn't -- up until this point 12 everything we had given him had been, if you meet X, 13 Y, Z requirements, then you can take some -- you 14 can -- have the potential of taking tax benefits. He 15 wanted it more specific and more direct that if you 16 purchase RaPower energy equipment, then you can take 17 all of these tax benefits. 18 Q. He told you that? 19 A. Paraphrasing, yes. 20 Q. On the information that you had -- the 21 factual information that you had at that time, did 22 you feel like you could give him the opinion that if 23 a customer bought RaPower3 energy equipment then they 24 could take the tax benefits that you described? 25 A. No, we started flushing out more of the</p>	<p style="text-align: right;">117</p> <p>1 facts. That's when we talked about the time frame 2 of, "Is this lease for advertising purposes? How 3 long is that going to last?" 4 "Well, it's going to last until we get the 5 system in place." 6 "Well, how long -- when is the system 7 going to be -- when is it going to produce energy?" 8 And the answer to that was, "Years." 9 We talked about, okay, so material 10 participation; how are they going to materially 11 participate? Are they going to be involved in the 12 day-to-day? Are they even going to visit the site? 13 Are they going to -- are they going to be running the 14 equipment? 15 And the answer to those questions I 16 believe to be no. 17 So my question was, how are they going to 18 materially participate. And that's where he reverted 19 to the MLM structure of they are going to be getting 20 people in their downline, they are going to be 21 recruiting, they are going to essentially become 22 salesmen to sell these energy equipment units. 23 Q. Did that convince you that they would be 24 materially participating? 25 A. That did not.</p>

<p style="text-align: right;">118</p> <p>1 Q. Why not?</p> <p>2 A. I took all of the facts that I had and I</p> <p>3 said, "Let me go back and review in light of this</p> <p>4 knowledge. Let me go look back at the research."</p> <p>5 And that's when I came back and said, "I</p> <p>6 don't believe that they are going to materially</p> <p>7 participate."</p> <p>8 We discussed -- I -- I -- like I've told</p> <p>9 you, we -- I had had questions about a lot of things,</p> <p>10 but material participation was the one that we picked</p> <p>11 to talk about first. But I believe that he knew at</p> <p>12 the time that I had questions about all of it.</p> <p>13 Q. Why do you believe he knew that?</p> <p>14 A. I believe that that is something -- it may</p> <p>15 have just been -- I don't -- I don't think that -- I</p> <p>16 have questions about the depreciation. I have</p> <p>17 questions about the 179 deductions. I have questions</p> <p>18 about the energy credit, but let's start with</p> <p>19 material participation, because that's the biggest</p> <p>20 and easiest thing that we can overcome.</p> <p>21 Q. So it sounds to me like once you learned</p> <p>22 that he wanted an explicit statement that if a</p> <p>23 customer buys RaPower3 energy equipment, then they</p> <p>24 could take the tax benefits that you described in</p> <p>25 Plaintiff's Exhibit 23A, for example, that's when you</p>	<p style="text-align: right;">119</p> <p>1 started asking questions about specific facts</p> <p>2 involving the customers and the transactions and</p> <p>3 things like that?</p> <p>4 A. Correct.</p> <p>5 MR. PAUL: Objection to the extent it</p> <p>6 misstates her prior testimony.</p> <p>7 THE WITNESS: I would say that that was a</p> <p>8 correct statement.</p> <p>9 Q. (BY MS. HEALY GALLAGHER) And you told</p> <p>10 Mr. Johnson that you had questions about</p> <p>11 depreciation. I forgot the other things. You listed</p> <p>12 off a few things that you had questions about, but</p> <p>13 you picked material participation to start with</p> <p>14 first.</p> <p>15 A. I -- I don't recall the specific</p> <p>16 conversation, but generally he knew that I had -- I</p> <p>17 had problems with the whole letter as it applied to</p> <p>18 purchasers.</p> <p>19 Q. Do you remember approximately when after</p> <p>20 Mr. Anderson sent the e-mail in Plaintiff's Exhibit</p> <p>21 23A Mr. Johnson came in for these conversations?</p> <p>22 A. Within a couple days.</p> <p>23 Q. So mid-November 2010?</p> <p>24 A. Probably.</p> <p>25 Q. You identified a few questions</p>
<p style="text-align: right;">120</p> <p>1 specifically about material participation. For</p> <p>2 example, will the purchasers be involved in</p> <p>3 day-to-day operations with the lenses.</p> <p>4 Did you ask that question to</p> <p>5 Neldon Johnson?</p> <p>6 A. I did.</p> <p>7 Q. And he said?</p> <p>8 A. No, because the -- and -- we're not --</p> <p>9 we're going to lease it for advertising purposes, but</p> <p>10 we're also going to lease it out once it's producing</p> <p>11 energy equipment. It might not be the same lease.</p> <p>12 It might not even be to the same person, but it's --</p> <p>13 it's -- they're not going to be running a power</p> <p>14 plant.</p> <p>15 Q. The --</p> <p>16 A. The purchaser.</p> <p>17 Q. The energy equipment purchaser?</p> <p>18 A. Correct.</p> <p>19 Q. Right.</p> <p>20 Did you ask Neldon Johnson whether any of</p> <p>21 the purchasers would visit the site where the energy</p> <p>22 equipment was?</p> <p>23 A. I don't know if it was a -- it was in</p> <p>24 terms of are they going to be there checking up, are</p> <p>25 they going to be hands on.</p>	<p style="text-align: right;">121</p> <p>1 Q. And you asked Neldon Johnson this?</p> <p>2 A. Yes.</p> <p>3 Q. And what did he say?</p> <p>4 A. "Not likely. It was -- it was going to</p> <p>5 depend on each purchaser, but not likely.</p> <p>6 Q. And this may be part of your -- the</p> <p>7 previous question we just talked about, but you asked</p> <p>8 him whether they would be running any of the energy</p> <p>9 equipment?</p> <p>10 A. Yes.</p> <p>11 Q. What did he say?</p> <p>12 A. "Not likely."</p> <p>13 Q. Did you ask him other questions</p> <p>14 specifically regarding what the purchasers would do</p> <p>15 with respect to the lenses?</p> <p>16 A. Yeah. I believe that I pulled up my</p> <p>17 letter and there was essentially a -- we kind of went</p> <p>18 through these bullet points of what are they going to</p> <p>19 be doing.</p> <p>20 Q. So you're looking at Plaintiff's</p> <p>21 Exhibit 570?</p> <p>22 A. Correct.</p> <p>23 Q. And which bullet points are you looking</p> <p>24 at?</p> <p>25 A. I'm going to say on page 217, in the</p>

122	<p>1 middle.</p> <p>2 Q. Uh-huh. So, Miss Anderson, it's your</p> <p>3 recollection that you went through the bullet points</p> <p>4 on page Anderson 217?</p> <p>5 A. At least some of them, yeah.</p> <p>6 Q. With Mr. Johnson?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. To find out from him -- to get the</p> <p>9 facts about whether purchasers maybe could qualify</p> <p>10 for material participation?</p> <p>11 A. Correct.</p> <p>12 Q. And you -- you asked in here, but I'm</p> <p>13 curious about whether you asked Mr. Johnson. You</p> <p>14 said, "So how are they going to materially</p> <p>15 participate?"</p> <p>16 Did you ask him that?</p> <p>17 A. Yeah.</p> <p>18 Q. And that's when he said, "Well, they're in</p> <p>19 a multilevel marketing arrangement."</p> <p>20 A. Yeah. He connected those two things</p> <p>21 together, that their -- the activities that they do</p> <p>22 within the multilevel marketing unit is going to</p> <p>23 account as their active participation.</p> <p>24 Q. Did he describe what he anticipated</p> <p>25 multilevel marketing activities would involve?</p>	123	<p>1 A. Just recruiting and working on your</p> <p>2 downline.</p> <p>3 Q. Selling lenses?</p> <p>4 A. Selling.</p> <p>5 Q. Recruiting people to sell lenses?</p> <p>6 A. Yes.</p> <p>7 Q. All right. So what did -- did he say</p> <p>8 anything else about what might make a purchaser a</p> <p>9 material participant in a business involving the</p> <p>10 solar energy equipment?</p> <p>11 A. Not that I recall.</p> <p>12 Q. So you took the information about what he</p> <p>13 said about the multilevel marketing arrangement and</p> <p>14 you took that back to review, correct?</p> <p>15 A. Correct.</p> <p>16 Q. And what did you find?</p> <p>17 A. The -- you need to be participating in the</p> <p>18 business. And I found that the business was not a</p> <p>19 multilevel marketing, selling, the business is energy</p> <p>20 production. The business is -- isn't even really</p> <p>21 leasing for advertising purposes. I couldn't -- I</p> <p>22 couldn't buy off on you've got energy-producing</p> <p>23 equipment; it needs to be producing energy; and</p> <p>24 that's your business.</p> <p>25 Q. Does the concept of grouping ring a bell?</p>
124	<p>1 A. No.</p> <p>2 Q. Did you report back to Mr. Johnson what</p> <p>3 you found?</p> <p>4 A. I did.</p> <p>5 Q. Between the conversation where you asked</p> <p>6 him the questions in Plaintiff's Exhibit 570 and when</p> <p>7 you reported back to him what you found, about how</p> <p>8 long was that?</p> <p>9 A. Again, it was probably days, to a week.</p> <p>10 Q. What did you tell him?</p> <p>11 A. I -- I told him I wasn't convinced that</p> <p>12 people that -- the purchasers of the energy equipment</p> <p>13 were going to materially participate.</p> <p>14 Q. Did you explain why?</p> <p>15 A. To the extent that I just did, yes.</p> <p>16 Q. What was his response?</p> <p>17 A. That was, "I think that it does apply.</p> <p>18 Look at it again."</p> <p>19 I -- he didn't give me any additional</p> <p>20 facts or any -- any other avenue of, you should be</p> <p>21 looking at this at that time.</p> <p>22 And so I took it to Todd and I said, "Are</p> <p>23 you -- am I missing something that -- that I didn't</p> <p>24 look at the first time?"</p> <p>25 And I may have even reviewed more -- more</p>	125	<p>1 research or articles or things of that nature.</p> <p>2 Q. All right. So you reported to Mr. Johnson</p> <p>3 that you did not believe that multilevel marketing</p> <p>4 would get someone to material participation with</p> <p>5 respect to --</p> <p>6 A. Purchasing energy equipment.</p> <p>7 Q. Purchasing energy equipment and leasing</p> <p>8 it --</p> <p>9 A. Yeah.</p> <p>10 Q. -- out?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And his instruction was just to</p> <p>13 look at it again?</p> <p>14 A. It was, "I really think that this will</p> <p>15 work and all of these things will happen."</p> <p>16 Q. But he didn't give you any specific facts</p> <p>17 or citations to support his belief?</p> <p>18 A. Just another -- another, "I think the MLM</p> <p>19 structure is -- is -- will work." So I looked at it</p> <p>20 again.</p> <p>21 Q. And you spoke with Todd Anderson?</p> <p>22 A. Correct.</p> <p>23 Q. What happened after that?</p> <p>24 A. I went back and I said, "I'm still</p> <p>25 unconvinced. I've not found anything that has</p>

126	<p>1 changed my mind."</p> <p>2 And that's when he started in with the</p> <p>3 hypotheticals.</p> <p>4 Q. At any time after that conversation with</p> <p>5 Mr. Johnson did he provide you any specific facts or</p> <p>6 citations?</p> <p>7 MR. PAUL: Objection to the extent it's</p> <p>8 been asked and answered.</p> <p>9 THE WITNESS: What do you mean,</p> <p>10 "citations"?</p> <p>11 Q. (BY MS. HEALY GALLAGHER) For example,</p> <p>12 citations to a statute or regulation you hadn't seen</p> <p>13 before?</p> <p>14 A. Anything additional after I said no?</p> <p>15 Q. Yes.</p> <p>16 A. No. Only the hypotheticals.</p> <p>17 Q. Okay. Directing your attention, please,</p> <p>18 back to Plaintiff's Exhibit 577. You testified</p> <p>19 earlier that you believe Plaintiff's Exhibit 577 are</p> <p>20 notes that you took after you delivered Plaintiff's</p> <p>21 Exhibit 23A?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. So the first couple of lines go to</p> <p>24 active participation in multilevel marketing schemes,</p> <p>25 right?</p>
127	<p>1 A. Uh-huh (affirmative).</p> <p>2 Q. Were these -- this reflected questions and</p> <p>3 information that Mr. Johnson gave you?</p> <p>4 A. Yes.</p> <p>5 Q. Would you take a look at the second</p> <p>6 paragraph? It starts with, "Doesn't want the money</p> <p>7 to disappear."</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. Do you have any understanding of what this</p> <p>11 paragraph means?</p> <p>12 A. I've read it recently, and I don't. It</p> <p>13 was likely that he was talking and I was typing.</p> <p>14 Q. Would you take a look at the last phrase</p> <p>15 on Plaintiff's Exhibit 577? It says, "Opinion letter</p> <p>16 saying they can take depreciation now."</p> <p>17 Did I read that correctly?</p> <p>18 A. Correct.</p> <p>19 Q. And that was what Mr. Johnson wanted,</p> <p>20 right?</p> <p>21 A. Yep.</p> <p>22 Q. Yes?</p> <p>23 A. Yes.</p> <p>24 Q. "They" in that phrase was who?</p> <p>25 A. The purchasers of the energy equipment.</p>
128	<p>1 Q. And this opinion letter was something he</p> <p>2 wanted from you, correct?</p> <p>3 A. Correct.</p> <p>4 Q. It was not a private letter ruling from</p> <p>5 the IRS?</p> <p>6 A. It was an opinion letter from me.</p> <p>7 Q. I'm handing you what's been marked</p> <p>8 Plaintiff's Exhibit 573. It's Bates marked Anderson</p> <p>9 000222.</p> <p>10 Do you recognize Plaintiff's Exhibit 573?</p> <p>11 A. I do.</p> <p>12 Q. What is it?</p> <p>13 A. It's a document that was produced by our</p> <p>14 office.</p> <p>15 Q. Do you have any context for this document?</p> <p>16 Do you recall it at all?</p> <p>17 A. I believe it was Neldon asking for some</p> <p>18 kind of waiver language to be -- to put at the</p> <p>19 beginning of a -- it says "prospectus."</p> <p>20 Q. Did you ever see a prospectus?</p> <p>21 A. Not that I recall.</p> <p>22 Q. Did you ever send this to Mr. Johnson?</p> <p>23 A. I don't recall.</p> <p>24 Q. Okay. So you touched on, a little bit</p> <p>25 earlier, the last conversation, I think you described</p>
129	<p>1 it as, with Mr. Johnson and you where you verbally</p> <p>2 ended the representation between your firm and</p> <p>3 RaPower3.</p> <p>4 A. Yes.</p> <p>5 Q. You testified that you spoke with</p> <p>6 Mr. Anderson about that and told him what had</p> <p>7 happened?</p> <p>8 A. Afterwards, yes.</p> <p>9 Q. Afterwards. And he said to put it in</p> <p>10 writing?</p> <p>11 A. Correct.</p> <p>12 Q. What did you put in writing?</p> <p>13 A. It was essentially acknowledging that last</p> <p>14 conversation that we had, and letting him know that</p> <p>15 our representation had ended.</p> <p>16 Q. Did you do that?</p> <p>17 A. I did.</p> <p>18 Q. Let's see. And I think you testified too</p> <p>19 that you wrote an e-mail and Todd reviewed it.</p> <p>20 A. Correct.</p> <p>21 Q. And, to your recollection, in fact, you</p> <p>22 sent it to Neldon Johnson?</p> <p>23 A. Yes.</p> <p>24 Q. Do you recall how you sent it?</p> <p>25 A. I believe it was by e-mail.</p>

130	<p>1 Q. Were you able to find the actual e-mail</p> <p>2 you sent to Neldon Johnson?</p> <p>3 A. I was not.</p> <p>4 Q. You were able to find the e-mail that you</p> <p>5 sent to Todd Anderson, correct?</p> <p>6 A. I was able to find a copy of where I had</p> <p>7 sent it to Todd, yes.</p> <p>8 Q. I'm showing you what's been marked</p> <p>9 Plaintiff's Exhibit 582, Bates numbered Anderson</p> <p>10 000080.</p> <p>11 Do you recognize Plaintiff's Exhibit 582?</p> <p>12 A. I do.</p> <p>13 Q. Is this the e-mail -- a copy of the e-mail</p> <p>14 that you sent to Todd Anderson?</p> <p>15 A. It is a copy of the e-mail I sent to</p> <p>16 Todd Anderson, yes.</p> <p>17 Q. We see at the top your e-mail address,</p> <p>18 right, jessica@deltaattorney.com?</p> <p>19 A. Yes.</p> <p>20 Q. The date of this e-mail is June 7, 2011.</p> <p>21 Do you see that?</p> <p>22 A. I do.</p> <p>23 Q. Is that around the time that you had the</p> <p>24 conversation with Mr. Johnson?</p> <p>25 A. I believe it to have been sooner than</p>
131	<p>1 that.</p> <p>2 Q. So, like, in May?</p> <p>3 A. I believe that the conversation -- the</p> <p>4 final conversation that I had with Mr. Johnson</p> <p>5 probably occurred December, January.</p> <p>6 Q. Uh-huh. Do you recall why you sent this</p> <p>7 to Mr. Anderson on June 7th?</p> <p>8 A. I believe that I ended representation</p> <p>9 verbally and within a day or two I followed that up</p> <p>10 with an e-mail. That was December, January. I</p> <p>11 believe that -- I'm not sure why this copy to Todd is</p> <p>12 in June. I think a likely explanation is that Todd</p> <p>13 said, "Hey, did we keep a copy of that," and "Do we</p> <p>14 have a record -- a paper record of that," and so I</p> <p>15 send it to him and he made -- made it part of his</p> <p>16 file -- part of the record.</p> <p>17 Q. Okay. So I just want to make sure I</p> <p>18 understand. So your recollection is that your final</p> <p>19 conversation with Mr. Johnson occurred in</p> <p>20 December 2010 or January 2011?</p> <p>21 A. Correct.</p> <p>22 Q. And your recollection also is that you</p> <p>23 wrote this e-mail, the contents of which appear in</p> <p>24 Plaintiff's Exhibit 582 soon thereafter?</p> <p>25 A. Correct.</p>
132	<p>1 Q. And you sent that to Todd Anderson for his</p> <p>2 review in December 2010 or January 2011, after the</p> <p>3 final conversation?</p> <p>4 A. Correct.</p> <p>5 Q. And do you recall whether Todd made any</p> <p>6 changes?</p> <p>7 A. It's possible. It's our practice, even</p> <p>8 today, that communications or anything that's drafted</p> <p>9 gets another look through, and we track changes and</p> <p>10 go through and accept and collaborate in that way,</p> <p>11 and it's possible that he may have made changes.</p> <p>12 Q. It sounds like if he did make changes none</p> <p>13 of them are so substantial that you remember them</p> <p>14 today.</p> <p>15 A. If he did make changes, it wouldn't have</p> <p>16 been something that I hadn't reviewed before it went</p> <p>17 out.</p> <p>18 Q. And it's your recollection that, in fact,</p> <p>19 you sent the final e-mail memorializing the</p> <p>20 termination of representation to Neldon Johnson in</p> <p>21 December 2010 or January 2011?</p> <p>22 A. That is my recollection.</p> <p>23 Q. Do you believe the content of your e-mail</p> <p>24 to Mr. Johnson in December 2010 or January 2011 is</p> <p>25 substantially similar to, if not identical to, the</p>
133	<p>1 text that's in Plaintiff's Exhibit 582?</p> <p>2 A. I do believe that.</p> <p>3 Q. The first section of the e-mail provides</p> <p>4 definitions of investment property and investment</p> <p>5 income.</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. Why did you include that in this e-mail?</p> <p>9 A. I'm sure it was a follow-up to something</p> <p>10 that he had told me in the conversation, and I just</p> <p>11 wanted to clarify my point as we ended</p> <p>12 representation.</p> <p>13 Q. Okay. Do you recall what he may have</p> <p>14 asked or what comment he made?</p> <p>15 A. I do not.</p> <p>16 Q. What, if anything, happened after you sent</p> <p>17 the e-mail to Mr. Johnson?</p> <p>18 A. Nothing.</p> <p>19 Q. Have you ever personally heard from</p> <p>20 Mr. Johnson again after you sent the e-mail?</p> <p>21 A. I saw him at the grocery store one time.</p> <p>22 I don't think that we even acknowledged each other.</p> <p>23 Q. Other than that instance, have you seen</p> <p>24 Neldon Johnson again?</p> <p>25 A. Generally around town, but, no.</p>

134	<p>1 Q. Have you had any conversations with</p> <p>2 Neldon Johnson since you sent the e-mail in</p> <p>3 December 2010 or January 2011?</p> <p>4 A. No.</p> <p>5 Q. Did there come a time you learned that</p> <p>6 Mr. Johnson was using your rating?</p> <p>7 A. Yes.</p> <p>8 Q. When did you learn that?</p> <p>9 A. I believe it was provided by the</p> <p>10 government in a subpoena from Todd. I can't remember</p> <p>11 the circumstances, but they came to the office to get</p> <p>12 documents from Todd. I believe it was 2013.</p> <p>13 Q. What was your personal response to</p> <p>14 learning that?</p> <p>15 MR. PAUL: Objection. Relevance.</p> <p>16 THE WITNESS: I was horrified that that</p> <p>17 unfinished document, that the working draft, my work</p> <p>18 product, had been taken and had been used without</p> <p>19 permission and in a way that I felt didn't represent</p> <p>20 the purpose and the intent of what I was doing.</p> <p>21 Q. (BY MS. HEALY GALLAGHER) What effect has</p> <p>22 this situation had on your life?</p> <p>23 MR. PAUL: Objection. Relevance.</p> <p>24 MR. MARTIN: I'll object to that question</p> <p>25 as being totally irrelevant. Are you sure you want</p>	135	<p>1 to ask that question here? How is that -- how is</p> <p>2 that an appropriate question in this deposition?</p> <p>3 MS. HEALY GALLAGHER: We're going for</p> <p>4 injunction. Certain defendants have taken certain</p> <p>5 actions that have wrought harm to the public.</p> <p>6 Q. So I'm curious, Miss Anderson, if you</p> <p>7 would like to share about what effect this has had on</p> <p>8 your life.</p> <p>9 A. A general waiting for the other shoe to</p> <p>10 drop, I guess. I am concerned about what -- how my</p> <p>11 words were portrayed, and just the general</p> <p>12 ramifications that that has on other families and on</p> <p>13 my family.</p> <p>14 Q. So you're concerned about potential harm</p> <p>15 to your family, in particular?</p> <p>16 MR. PAUL: Objection. Lack of foundation.</p> <p>17 Calls for speculation.</p> <p>18 MS. HEALY GALLAGHER: I think that's about</p> <p>19 the opposite of a question that lacks foundation or</p> <p>20 would call for speculation.</p> <p>21 You can answer, please.</p> <p>22 MR. MARTIN: Let me just counsel the</p> <p>23 witness to -- not to disclose in your answer any</p> <p>24 attorney-client privileged information.</p> <p>25 To the extent you can answer the question</p>
136	<p>1 without divulging that, go ahead.</p> <p>2 THE WITNESS: It's been difficult.</p> <p>3 Q. (BY MS. HEALY GALLAGHER) I'm not trying</p> <p>4 to torture you, but I see you have tears in your eyes</p> <p>5 in response to these questions. Has this been</p> <p>6 emotionally hard for you?</p> <p>7 A. It's been difficult.</p> <p>8 Q. And I'm certainly not asking for any</p> <p>9 attorney-client privileged communications. Have</p> <p>10 there been professional repercussions for you via the</p> <p>11 Ohio State Bar or any other jurisdiction that you've</p> <p>12 been barred in as a result of this letter?</p> <p>13 MR. MARTIN: Can you read that back?</p> <p>14 (Record was read as follows: "And I'm</p> <p>15 certainly not asking for any attorney-client</p> <p>16 privileged communications. Have there been</p> <p>17 professional repercussions for you via the Ohio</p> <p>18 State Bar or any other jurisdiction that you've</p> <p>19 been barred in as a result of this letter?")</p> <p>20 MR. MARTIN: Ohio State Bar?</p> <p>21 MS. HEALY GALLAGHER: Any other state bar.</p> <p>22 MR. MARTIN: Did you say "Ohio"?</p> <p>23 THE REPORTER: I did. That's what it</p> <p>24 sounded like.</p> <p>25 THE WITNESS: We're in Utah.</p>	137	<p>1 Q. (BY MS. HEALY GALLAGHER) You're barred in</p> <p>2 Utah?</p> <p>3 A. Yes.</p> <p>4 Q. Are you barred in any other state?</p> <p>5 A. No.</p> <p>6 Q. Have there been any professional</p> <p>7 repercussions from the Ohio State Bar?</p> <p>8 MR. MARTIN: Ohio?</p> <p>9 MR. PAUL: And I object to the use of</p> <p>10 "barred in any state." I think "admitted to the bar"</p> <p>11 is -- is that what you are going for?</p> <p>12 MS. HEALY GALLAGHER: Let's go off the</p> <p>13 record for a second.</p> <p>14 (Discussion off the record.).</p> <p>15 MS. HEALY GALLAGHER: Back on the record.</p> <p>16 Q. All right. Miss Anderson, you're admitted</p> <p>17 to the bar of the state of Utah?</p> <p>18 A. Correct.</p> <p>19 Q. Are you admitted to any other bars?</p> <p>20 A. No.</p> <p>21 Q. Have you been subject to any public</p> <p>22 discipline from the Utah State Bar?</p> <p>23 A. No.</p> <p>24 Q. Have you ever been convicted of any</p> <p>25 crimes?</p>

<p style="text-align: right;">138</p> <p>1 A. No.</p> <p>2 MS. HEALY GALLAGHER: I'll pass the</p> <p>3 witness.</p> <p>4 MR. PAUL: I do have a few questions.</p> <p>5 I'll try to be brief.</p> <p>6 EXAMINATION</p> <p>7 BY MR. PAUL:</p> <p>8 Q. I'm Steven Paul. We were formally</p> <p>9 introduced before. And I just have a couple of</p> <p>10 questions on behalf of the business entities and</p> <p>11 Mr. Johnson.</p> <p>12 When -- when Mr. Johnson first came to you</p> <p>13 regarding representation of the RaPower3 unit, you</p> <p>14 knew at that time that the solar energy equipment</p> <p>15 that was being discussed was in the research and</p> <p>16 development stage, correct?</p> <p>17 A. I knew that there had been research and</p> <p>18 development for that.</p> <p>19 Q. You knew at the time when Mr. Johnson</p> <p>20 first came to discuss this issue with you that the</p> <p>21 RaPower3 energy equipment was not producing saleable</p> <p>22 energy at that time, correct?</p> <p>23 A. I did.</p> <p>24 Q. And you knew from the first letter that</p> <p>25 you drafted that the tax benefits sought were --</p>	<p style="text-align: right;">139</p> <p>1 sought were for preproduction of saleable solar</p> <p>2 energy, correct?</p> <p>3 MS. HEALY GALLAGHER: Object to the form.</p> <p>4 THE WITNESS: The form of my first letter</p> <p>5 was to provide general, overall tax principles, not</p> <p>6 specific to any facts or criteria.</p> <p>7 Q. (BY MR. PAUL) Right, but you knew when</p> <p>8 you were drafting that letter, even though it was an</p> <p>9 academic or -- or, you know, a research opinion on</p> <p>10 the law, that even at that time the -- any tax</p> <p>11 benefits sought by RaPower3 purchasers was for</p> <p>12 preproduction of saleable solar energy, not for</p> <p>13 energy that was being marketed or sold at that time?</p> <p>14 MS. HEALY GALLAGHER: Objection.</p> <p>15 Compound. Confusing.</p> <p>16 THE WITNESS: What do you mean by</p> <p>17 "preproduction"?</p> <p>18 Q. (BY MR. PAUL) Preproduction as opposed to</p> <p>19 saleable, on-the-open-market energy.</p> <p>20 A. So it was not...</p> <p>21 Q. I'm sorry. Let me try again.</p> <p>22 A. Yeah.</p> <p>23 Q. You knew at the time of the first draft</p> <p>24 letter that RaPower3 was selling solar energy</p> <p>25 equipment that was not being used at that time to</p>
<p style="text-align: right;">140</p> <p>1 produce saleable or marketable energy.</p> <p>2 A. I didn't know that they were selling the</p> <p>3 equipment. I didn't know when they had started or</p> <p>4 were going to start, just the fact that at some point</p> <p>5 we were going to have this energy equipment and we're</p> <p>6 going to start selling it, and we want to know what</p> <p>7 the -- we want to know about these tax principles.</p> <p>8 Q. Okay. But you knew at that time that they</p> <p>9 were not producing energy to be sold on the energy</p> <p>10 market?</p> <p>11 A. I believe so.</p> <p>12 Q. And you said that you did not visit the</p> <p>13 RaPower3 or International Automated Systems -- that</p> <p>14 you did not visit the RaPower3 sites at the time you</p> <p>15 were drafting these letters in 2010, right?</p> <p>16 A. I have never visited the RaPower3 sites.</p> <p>17 Q. Okay. So in 2010 you hadn't visited?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. And you've never driven past or</p> <p>20 seen the sites?</p> <p>21 A. I believe I know of the general area of</p> <p>22 where it's at, and there's a highway that goes past</p> <p>23 it. I have not driven there for the purpose of</p> <p>24 looking at it.</p> <p>25 Q. And you've never had a tour of the</p>	<p style="text-align: right;">141</p> <p>1 facility?</p> <p>2 A. No.</p> <p>3 Q. Okay. And you testified in response to</p> <p>4 counsel's questions about the research that you did</p> <p>5 to produce the letters that you wrote. Is there</p> <p>6 anything else in addition to the answers to her</p> <p>7 questions that comes to mind as to what level of</p> <p>8 research you did to come to the conclusions that you</p> <p>9 drafted in your two letters?</p> <p>10 A. I started at the basics. I started at the</p> <p>11 tax code. I started at the publications, the IRS</p> <p>12 publications and the regs.</p> <p>13 Q. Okay. Did you consult with any</p> <p>14 individuals or ask other people to review your work,</p> <p>15 other than Todd Anderson?</p> <p>16 A. I did not.</p> <p>17 Q. And you did substantially all of the</p> <p>18 drafting of the two draft letters, correct?</p> <p>19 A. Correct.</p> <p>20 Q. Do you believe that the legal analysis in</p> <p>21 the two letters was accurate when you drafted it?</p> <p>22 A. Let's start with the first letter. I</p> <p>23 believed that the -- the legal information, the</p> <p>24 information regarding those tax principles was</p> <p>25 correct, yes.</p>

<p style="text-align: right;">142</p> <p>1 Q. Okay. And you made an honest, complete 2 effort to be complete and accurate in the analysis 3 that you wrote? 4 A. It was -- it was a broad overview of those 5 principles. 6 Q. And you tried to be as accurate and honest 7 and complete in that analysis? 8 A. I was thorough in that analysis on those 9 broad topics. 10 Q. Okay. And, as far as you know, today, 11 that analysis, on those topics, is still correct? 12 A. I have not visited -- 13 MS. HEALY GALLAGHER: Objection. 14 THE WITNESS: -- this topic again since -- 15 I've not done any further research or reviewed any 16 further updates since. 17 MR. PAUL: Maybe I asked it a bad way. 18 Q. Have you come to learn anything that you 19 believe changes your legal analysis of what you 20 drafted in the two letters at issue in this case? 21 A. Again, it's not a subject that I've kept 22 up to date on, and there's not anything that I've 23 come across, because I've not kept up to date, that 24 would change what I did back in 2010. 25 Q. Okay. So the correct answer is no, you're</p>	<p style="text-align: right;">143</p> <p>1 not aware of anything that would contradict your 2 legal analysis in those two letters? 3 A. I am not aware. 4 Q. Okay. Thank you. 5 Did you consider yourself an expert in tax 6 in 2010? 7 MR. MARTIN: Let me just object. It calls 8 for a legal conclusion. 9 You can go ahead and answer. 10 THE WITNESS: A tax expert? 11 Q. (BY MR. PAUL) yes. 12 A. I would not consider myself then or now a 13 tax expert. 14 Q. Was Anderson Legal Center paid for the 15 work it did? 16 A. It was paid for the work that we billed. 17 Q. Okay. And all of the work that you billed 18 for, you were paid for? 19 A. Correct. 20 Q. Okay. Other than what you stated in 21 your -- in your two letters about who could qualify 22 under those programs, does it -- would it make a 23 difference in your research whether the purchaser of 24 solar equipment was a C-corp, an LLC or a sole 25 proprietorship?</p>
<p style="text-align: right;">144</p> <p>1 A. It would be something that I would review, 2 because I'm not sure that I looked at it in terms of 3 the different entities. 4 Q. Do you feel like you had a sufficient 5 understanding of the legal issues in 2010 to draft 6 the two letters that you did? 7 A. You mean the -- the tax principles that 8 were the basis of the letters? 9 Q. Yes. 10 A. I believe that I had thoroughly researched 11 and had an understanding to provide the information 12 that I did. 13 Q. And, as you stated, your analysis was 14 meant to be a general overview of the tax benefits 15 associated with the solar energy business and 16 depreciation, correct? 17 MR. MARTIN: Objection. Misstates 18 testimony. 19 Go ahead. 20 THE WITNESS: It was a general overview of 21 those principles. It wasn't applied to anything in 22 specific. 23 Q. (BY MR. PAUL) Okay. And even in your 24 letter, you recommended that each taxpayer should 25 seek advice from its own tax advisor?</p>	<p style="text-align: right;">145</p> <p>1 A. That was -- that was the -- the process of 2 what I thought was happening. But I would give 3 these -- these are things that you need -- that you 4 can consider and look at, and then you're going to 5 take that information and you're going to consult 6 with accountants, CPAs, lawyers, et cetera. 7 Q. Okay. So in Exhibit 570, the last page of 8 that exhibit on page Anderson 000220, in your 9 conclusion you state the recommendation that the 10 individual taxpayer consults his own lawyer and tax 11 professional if he wants professional assurances that 12 this information and this interpretation of it is 13 appropriate to his particular situation? 14 A. That is a paraphrase of what that says. 15 Q. And you drafted that language, correct? 16 A. I did. 17 Q. Okay. What would be the purpose of 18 including that language in your letter? 19 A. To let those know, that are reading this, 20 that this is not an opinion that is specific to their 21 circumstances. 22 Q. And in Exhibit 23A you have a similar 23 disclaimer on the last page of that, correct? 24 A. Correct. 25 Q. What was the purpose of including a</p>

<p style="text-align: right;">146</p> <p>1 disclaimer in Exhibit 23A?</p> <p>2 A. Again, to convey that this is not specific</p> <p>3 to any one person. This is not -- this doesn't take</p> <p>4 any one person's specific facts into account in</p> <p>5 providing this information.</p> <p>6 Q. They should seek personal tax advice for</p> <p>7 their particular situation?</p> <p>8 A. Yes.</p> <p>9 MR. PAUL: Thank you. No further</p> <p>10 questions.</p> <p>11 MR. MARTIN: I have a follow-up for you,</p> <p>12 Miss Anderson.</p> <p>13 EXAMINATION</p> <p>14 BY MR. MARTIN:</p> <p>15 Q. When you dealt with Mr. Johnson with</p> <p>16 respect to issues relating to tax benefits or</p> <p>17 potential tax benefits for solar energy equipment,</p> <p>18 who did you consider your client to be?</p> <p>19 A. RaPower3 was the client and Neldon was</p> <p>20 just the mouthpiece. He was the agent of RaPower.</p> <p>21 MR. MARTIN: Okay. That's all I have.</p> <p>22 MS. HEALY GALLAGHER: I just have a couple</p> <p>23 of follow-ups.</p> <p>24 FURTHER EXAMINATION</p> <p>25 BY MS. HEALY GALLAGHER:</p>	<p style="text-align: right;">147</p> <p>1 Q. At any time in the course of your</p> <p>2 representation of RaPower3 did you believe that they</p> <p>3 were selling the energy equipment at that time?</p> <p>4 A. I don't know that there were any sales of</p> <p>5 the energy equipment at that time.</p> <p>6 Q. Okay. Did you have a belief about whether</p> <p>7 the sales were already happening or would be</p> <p>8 happening in the future?</p> <p>9 A. I had a belief that they were gearing up</p> <p>10 to start selling, but not necessarily that they were</p> <p>11 selling currently.</p> <p>12 Q. Did Neldon Johnson ask you to visit any</p> <p>13 site that he had?</p> <p>14 A. No.</p> <p>15 Q. If he had, would you have gone?</p> <p>16 A. Probably not. I had -- I had a</p> <p>17 one-month-old baby in October of 2010, and I wasn't</p> <p>18 going out and about.</p> <p>19 Q. Do you recall how much you billed for the</p> <p>20 RaPower -- this RaPower3 representation?</p> <p>21 A. I don't recall specifically, no.</p> <p>22 Q. Do you remember it was, like, more than</p> <p>23 5,000, less than 5,000 thousand?</p> <p>24 A. I would probably characterize it as less</p> <p>25 than 5,000.</p>
<p style="text-align: right;">148</p> <p>1 Q. Less than 2,000?</p> <p>2 A. I honestly don't know.</p> <p>3 Q. Have you ever heard of the entity name</p> <p>4 XSun Energy?</p> <p>5 A. No.</p> <p>6 Q. So I'm guessing XSun Energy has never been</p> <p>7 a clients of yours?</p> <p>8 A. No.</p> <p>9 Q. All right. No, it has not been a client</p> <p>10 of yours?</p> <p>11 A. No, it has not been a client. Sorry.</p> <p>12 MS. HEALY GALLAGHER: All right, pass the</p> <p>13 witness.</p> <p>14 MR. PAUL: No questions.</p> <p>15 MR. MARTIN: One last question.</p> <p>16 FURTHER EXAMINATION</p> <p>17 BY MR. MARTIN:</p> <p>18 Q. Did you bill all of the time to RaPower</p> <p>19 that you worked on the RaPower matters with</p> <p>20 Mr. Johnson?</p> <p>21 A. I did not. There were hours spent that</p> <p>22 didn't make it to a bill.</p> <p>23 MR. MARTIN: Okay. That's all.</p> <p>24 MS. HEALY GALLAGHER: We are off the</p> <p>25 record.</p>	<p style="text-align: right;">149</p> <p>1 THE REPORTER: Mr. Paul, did you want a</p> <p>2 copy of the transcript?</p> <p>3 MR. PAUL: Yes, please.</p> <p>4 THE REPORTER: How about you, Mr. Martin?</p> <p>5 MR. MARTIN: Yeah, and we'd like</p> <p>6 Miss Anderson to have an opportunity to read the</p> <p>7 transcript and sign it.</p> <p>8 (Deposition concluded at 5:43 p.m.)</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>

