

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of Roger Freeborn taken May 31, 2017

Plaintiff Designations – BLUE Defendant Completeness— PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness— PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
PLAINTIFF DESIGNATIONS	DEFENDANT -DESIGNATIONS			
<p>5: 3 ROGER FREEBORN, 4 Having been first duly sworn to tell the truth, was 5 examined and testified as follows: 6 7 MR. MORAN: Good morning, Mr. Freeborn. 8 We're on record in the case of the United 9 States versus RaPower3, et al., which is 10 pending in the District Court of Utah. 11 My name is Chris Moran with the United 12 States Department of Justice, Tax Division. 13 Before we go any further, could the other 14 counsel in the room, and then the counsel on 15 the phone, starting with the United States, 16 make their appearances. 17 MR. REAY: Attorney Donald Reay for 18 Roger Freeborn.</p>				

**Plaintiff
Exhibit**
688

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<p>19 MS. HEALY-GALLAGHER: Erin 20 Healy-Gallagher for the U.S. Department of 21 Justice, Tax Division for the United States. 22 MR. PAUL: Stephen Paul for RaPower3 and 23 all the Neldon Johnson entities. 24 MS. HINES: Erin Hines for the United 25 States as well. 6: 1 MR. MORAN: And, Mr. Paul, just for the 2 record to be clear, you also represent LTB, 3 LLC, International Automated Systems as well 4 as; is that correct? 5 MR. PAUL: Yes, that's correct. 6 MR. MORAN: Also for the report, 7 Mrs. Freeborn, Mr. Freeborn's wife, is also in 8 the room. 9 This deposition will be governed by 10 Federal Rules of Civil Procedure and the local 11 rules of Utah. Since this is the</p>				

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<p>only 12 deposition this week, the court reporter will 13 be taking the exhibits or whatever exhibits we 14 mark with us with her at the end of the day. 15 We also will be referring to several exhibits 16 that have been marked in previous depositions. 17 We'll make that clear for the record. 18 19 EXAMINATION 20 21 BY MR. MORAN: 22 Q Mr. Freeborn, could you please state 23 your name and address for the record. 24 A Roger Freeborn -- Roger A. Freeborn. 25 Mailing address, physical address? 7: 1 Q Physical address, please. 2 A 1145 Northeast Hill Way, Estacada, 3 Oregon 97023.</p>				
<p>8:12 Q When I do finish each</p>				

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<p>question, your 13 task for today is to give full and complete answers; 14 do you understand that obligation? 15 A Yes. 16 Q Okay. Similarly, it's my obligation to 17 ask understandable questions of you. So if you 18 don't understand a question, feel free to ask me to 19 rephrase it, and I'll do my best to ask a better 20 question. Do you understand? 21 A Yes.</p>				
<p>9:22 Q Mr. Freeborn, we're here today to get as 23 accurate a record as possible of your recollection 24 of the facts of the case. So I have to ask you, is 25 there anything that would prevent you from 10: 1 understanding and answering my questions today? 2 A No. 3 Q Have you had anything alcoholic to drink</p>				

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4 in the past eight hours? 5 A No.				
10: 6 Q Mr. Freeborn, do you recall getting a 7 request for production of documents from the United 8 States? The request was served -- 9 A Yes. 10 Q You do recall it? 11 A Yes.				
11: 3 Q Mr. Freeborn, do you recall where you 4 searched for documents? 5 A I put everything that I had into the 6 DropBox for Don that related to RaPower3. In 7 addition to that, I had an email address with Bigger 8 Faster Stronger, and I no longer have access to 9 those documents or that email address, so I couldn't 10 pull them up. 11 Q Okay. So when you say you put 12 everything you had relating to RaPower3 on the 13 DropBox, my question is: Where			489	

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<p>did you get 14 everything you had related to RaPower3? Where were 15 those documents located? Were they on a computer; 16 were they on a hard drive; were they stored on an 17 email server somewhere? 18 A On my computer. And I use AOL. So I 19 guess they would have everything, AOL. I don't 20 save -- I don't have a file or anything. I have a 21 gmail account, but I don't really use it. 22 Q So is your testimony that you searched 23 your AOL account for emails that related to 24 RaPower3? 25 A No. Emails I just -- you know, on my 12: 1 computer the things I had on my computer are what I 2 remember putting in the DropBox.</p>				
<p>12:11 (Exhibit 489 was marked.) 12 BY MR. MORAN: 13 Q We marked an Exhibit 489,</p>			489	

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<p>which is in 14 front of you, Mr. Freeborn; is that correct? 15 A Yes. 16 Q Exhibit 489 is a letter that I sent to 17 your attorney, Mr. Reay, on December 29th, 2016. A 18 three-page letter, and it lists several documents by 19 Bates number. These are documents that were 20 produced to the United States by various third 21 parties. We've discussed this beforehand. We 22 understand that there's no disputes that the 23 documents reflected in Exhibit 489 are authentic for 24 purposes of federal evidence 901; is that correct? 25 MR. REAY: Are you asking me? 13: 1 MR. MORAN: Well, I'm asking 2 Mr. Freeborn. I'm going to ask Mr. Reay to 3 confirm. 4 BY MR. MORAN:</p>				

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<p>5 Q Is that correct, Mr. Freeborn? 6 A Well, I don't know what 901 is. 7 Q Well, the documents that are reflected 8 here that are reflected in Exhibit 489, I understand 9 that you have reviewed those documents, and they are 10 emails and correspondence that you sent out to 11 various third parties; is that your understanding as 12 well? 13 A Yes. 14 MR. MORAN: And is that correct, 15 Mr. Reay? 16 MR. REAY: That's correct. I say that's 17 correct; we've confirmed that those are emails 18 that were sent by Roger Freeborn for purposes 19 of augmentation under Rule 901. Correct? 20 MR. MORAN: Yes.</p>				
<p>13:22 Q Mr. Freeborn, I'm going to list off a 23 couple of email addresses that we understand that</p>				

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<p>24 you have used in the past, and I'm going to confirm 25 that that's correct. Coachfreeb@aol.com? 14: 1 A Correct. 2 Q That is your email? 3 A Yes. 4 Q How about coachfreeb63@gmail.com? 5 A Yes. 6 Q Coachfreeb@rapower3.com? 7 A Yes. 8 Q And coachfreeb@bfsmail.com? 9 A Yes. 10 Q Mr. Freeborn, are you familiar with an 11 entity by the name of RaPower3? 12 A Yes. 13 Q What does RaPower3 do? 14:18 A They are, my understanding, in 19 development of a concentrated solar facility. 20 Q Are they involved in solar lenses of any 21 type? 22 A Involved in what? 23 Q Marketing of solar lenses. 24 A Yes.</p>				

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<p>25 Q What can you tell me about those solar lenses?</p> <p>15: 1 lenses?</p> <p>2 A I know that they work. They concentrate</p> <p>3 the sun's energy to a focal point that produces</p> <p>4 intense heat.</p> <p>5 Q They concentrate the sun's energy to</p> <p>6 create intense heat?</p> <p>7 A That's my understanding.</p> <p>8 Q What do they do with that heat?</p>				
<p>15:11 THE WITNESS: I don't know. As I said</p> <p>12 earlier, they are in the process of developing</p> <p>13 an energy project.</p> <p>14 BY MR. MORAN:</p> <p>15 Q What type of energy project? What's the</p> <p>16 project going to do?</p> <p>17 A Create electricity.</p> <p>18 Q Anything else?</p> <p>19 A I don't know that.</p> <p>20 Q When did you first -- withdrawn.</p> <p>21 When did you first hear of the lenses --</p> <p>22 the solar lenses that RaPower3</p>				

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<p>markets?</p> <p>23 A I don't remember an exact date.</p> <p>24 Q Can you give me a year, approximate</p> <p>25 year? A range is fine.</p> <p>16: 1 A 2009 or '10.</p> <p>2 Q How did you hear about the solar lenses?</p> <p>3 A Greg Shepard and I have had a 4 relationship since the late '70s. I wrote for his</p> <p>5 magazine on occasion, and became a BFS clinician,</p> <p>6 which is a strength and conditioning program, and</p> <p>7 did clinics around the country, and I helped develop</p> <p>8 a certification program for that company. And I</p> <p>9 heard it first -- about the project, from Greg, and</p> <p>10 he asked me to help him in the RaPower3 program.</p> <p>11 Q So you heard from Greg Shepard in 2009</p> <p>12 or 2010 about the RaPower3 program?</p> <p>13 A I believe that's true.</p> <p>14 Q And you testified about</p>				

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<p>Bigger Faster 15 Stronger. And I understand that you had a position 16 at Bigger Faster Stronger. Was the first time you 17 heard about RaPower3 in the context of Bigger Faster 18 Stronger? 19 A What do you mean by "context"? 20 Q Well, we've heard testimony from several 21 individuals who knew yourself and Greg Shepard 22 through Bigger Faster Stronger, and they first 23 learned of the lenses, like I said, through their 24 contacts with Bigger Faster Stronger. So my 25 question is: Did you hear about the lenses through 17: 1 a Bigger Faster Stronger email address or through a 2 Bigger Faster Stronger publication? 3 A I met with Greg in his office. 4 Q His office where? 5 A In Salt Lake. 6 Q Is that at the Bigger Faster</p>				

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<p>Stronger 7 office? 8 A Yes. 9 Q So you were at the Bigger Faster 10 Stronger office in Salt Lake and Greg Shepard 11 mentioned to you that he was aware of this solar 12 lens project? 13 A Correct. 14 Q What's Greg's position at Bigger Faster 15 Stronger? What was it at the time? 16 A At the time he was founder and CEO. 17 Q Of Bigger Faster Stronger? 18 A Yes. 19 Q And what was your position at Bigger 20 Faster Stronger at the time? 21 A I was a clinician. 22 Q And what did you do in your role as a 23 clinician? 24 A I would travel to schools that - - high 25 schools or junior high schools -- that would</p>				

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<p>18: 1 contract with Bigger Faster Stronger to do a clinic, 2 usually involving coaches and athletes to market the 3 Bigger Faster Stronger program to the school, and 4 they could adopt it for their strength and 5 conditioning program. 6 Q Were you ever a national director of 7 Bigger Faster Stronger? 8 A That was a title that I assumed. I had 9 a major role in the development of the certification 10 program. 11 Q The certification program at Bigger 12 Faster Stronger? 13 A Yes. So I was the main guy for a while. 14 Q The main guy at Bigger Faster Stronger? 15 A No, for certification. 16 Q You were the main guy at Bigger Faster 17 Stronger's certification program? 18 A Yeah. 19 Q Was Greg Shepard aware that</p>				

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<p>you used the 20 title "national director" for Bigger Faster 21 Stronger? 22 A I don't know that for sure. 23 Q Did Greg Shepard ever tell you to not 24 use that title? 25 A No. 19: 1 Q Earlier in the deposition we talked 2 about the solar lenses that RaPower3 sells. 3 A Uh-huh. 4 Q Have you ever purchased any solar 5 lenses? 6 A Yes. 7 Q Would you have purchased it around the 8 same time you became aware of them in 2009 and 2010? 9 A I don't remember an exact date. 10 Q A year is fine; an approximate year is 11 fine as well. 12 A 2010 perhaps.</p>				
<p>19:16 MR. MORAN: Madam court reporter, would 17 you please read back the last</p>				

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<p>question. 18 (The reporter read back the 19 following question: "Q Would 20 you have purchased it around 21 the same time you became aware 22 of them in 2009 and 2010?") 23 THE WITNESS: Yes. 24 BY MR. MORAN: 25 Q You purchased your solar lenses in 2009 20: 1 or 2010? 2 A Yes. 3 Q When you bought your first solar lenses 4 in 2009 or 2010, you testified earlier you first 5 heard about them through Greg Shepard; right? 6 A Correct. 7 Q And what did Greg Shepard tell you about 8 the lenses you purchased? 9 A The lenses were to be used in the 10 development of the solar energy project in Delta, 11 Utah. 12 Q Are you familiar with a gentleman by the 13 name of Neldon Johnson?</p>				

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<p>14 A Yes.</p> <p>15 Q How are you familiar with Neldon Johnson?</p> <p>16 Johnson?</p> <p>17 A Neldon is the -- I believe he's the CEO</p> <p>18 for International Automated Systems.</p> <p>19 Q What is International Automated Systems?</p> <p>20 A It's a company that Neldon Johnson runs</p> <p>21 and has developed the solar lenses.</p> <p>22 Q International Automated Systems</p> <p>23 developed the solar lenses?</p> <p>24 A Yes, to my knowledge.</p> <p>25 Q When you bought your solar lenses in</p> <p>21: 1 2010, did you have any contact with Neldon Johnson?</p> <p>2 A Yes.</p> <p>3 Q How did you have that contact?</p> <p>4 A I went to Delta and toured the site and</p> <p>5 had lunch with Neldon. We discussed the progress of</p> <p>6 the project.</p> <p>7 Q What did Mr. Johnson tell you?</p>				

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<p>8 A That was a long time ago. We just 9 discussed the development of the project. At that 10 time it was a solar lens, and how it would produce 11 intense heat, which he demonstrated at the project. 12 Q This is in 2010? An approximate year is 13 fine. 14 A 2009 or 2010. 15 Q So Neldon Johnson told you it would 16 demonstrate heat -- or Neldon Johnson told you it 17 would produce intense heat. And what would be done 18 with that heat? 19 A If you can produce heat, you can heat 20 water, which can run through a turbine that would 21 produce electricity. He has a revolutionary turbine 22 which dramatically reduces the size of a turbine. 23 Q When you saw the lens produce heat, was 24 it heating any water?</p>				

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<p>25 A It was a demonstration to just show the</p> <p>22: 1 heat. So he put a 2-by-4 on a focal point. He</p> <p>2 lined up the apparatus to the sun, and he put a</p> <p>3 2-by-4 on the focal point, and in less than ten</p> <p>4 seconds it was aflame.</p> <p>5 Q Mr. Freeborn, I didn't ask you about a</p> <p>6 2-by-4, I asked about water. So my question --</p> <p>7 A Well --</p> <p>8 Q Let me finish the question. Was the</p> <p>9 heat that was being created by the solar lens -- you</p> <p>10 called it intense heat -- was that heating any</p> <p>11 water?</p> <p>12 A Not at that time.</p> <p>13 Q Have you ever seen the solar lens heat</p> <p>14 water?</p> <p>15 A I don't recall water.</p> <p>16 Q So is the answer to my question no?</p> <p>17 A No.</p> <p>18 Q Let me ask the question again.</p>				

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Have you 19 ever seen a solar lens be used to heat water? 20 A No. 21 Q Have you ever seen heat from a solar 22 lens be used to turn a turbine? 23 A No.				
23: 2 Q Mr. Freeborn, you've been handed a copy 3 of what's been marked for identification Plaintiff's 4 Exhibit 490. This is a document that you produced 5 to the United States that's been Bates stamped 6 Freeborn_Roger-00030 through Freeborn_Roger-00062. 7 Mr. Freeborn, do you recognize 8 Exhibit 490? 9 MR. MORAN: Did someone on the phone 10 just say something? 11 THE WITNESS: Did you say I produced 12 this? 13 BY MR. MORAN: 14 Q You produced this document to the United 15 States; yes?			490	

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<p>16 A I'm not the author of this, what looks like a Power Point.</p> <p>17 like a Power Point.</p> <p>18 Q Okay. Well, do you know who is the author?</p> <p>19 author?</p> <p>20 A No.</p> <p>21 Q Do you know where you got this document from?</p> <p>22 from?</p> <p>23 A This was online, Internet.</p> <p>24 Q Do you know which website you got Exhibit 490 from? Would it be the RaPower3's website?</p> <p>24: 1 website?</p> <p>2 A I believe it was -- to my knowledge, it would be RaPower3.</p> <p>3 would be RaPower3.</p> <p>4 Q So RaPower3's website or from Greg Shepard or from Neldon Johnson?</p> <p>5 Shepard or from Neldon Johnson?</p> <p>6 A I recognize some of these pages from a IAUS website.</p> <p>7 IAUS website.</p> <p>8 Q When you say "IAUS," do you mean the International Automated Systems?</p> <p>9 International Automated Systems?</p> <p>10 A Yes. And some would be from</p>				

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RaPower3. 11 Q Okay. So am I to understand that you 12 received Exhibit 490 either from RaPower3 or 13 International Automated System's website? 14 A Correct.				
24:18 Q Mr. Freeborn, we've been given a copy of 19 what's been marked for identification as Plaintiff's 20 Exhibit 491, which is Bates stamped 21 Freeborn_Roger-00074 through Freeborn_Roger-00132. 22 Do you recognize Plaintiff's 23 Exhibit 491? 24 A Yes. 25 Q What is it? 25: 1 A It's a summary of what Neldon has 2 achieved in the development of the solar energy 3 project. 4 Q So am I to understand you got the 5 information in Exhibit 491 from Neldon Johnson? 6 A Not directly.			491	

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<p>7 Q Does that mean you received it from 8 Neldon Johnson indirectly? 9 A Indirectly? What do you mean by 10 "indirectly"? 11 Q Well, are you suggesting that there was 12 someone in the middle who you received it from? 13 A Yeah. I never received this directly 14 from Neldon, no. 15 Q All right. Who would you have received 16 it from or did you create this information yourself? 17 A I did not produce this information. 18 Q Then where did you get it from? 19 A From RaPower3. 20 Q Any individual at RaPower3? 21 A Well, that would be Greg. 22 Q Greg Shepard? 23 A Shepard. 24 Q What did you do with this information 25 after Mr. Shepard gave it to you? 26: 1 A I tried to read and</p>				

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<p>understand it, which 2 is above my comprehension. It's rather technical. 3 Q So am I to understand you didn't 4 understand the information in Exhibit 491? 5 A Not all of it.</p>				
<p>26:10 Q Mr. Freeborn, I'm not asking you to go 11 line by line and then state what you didn't 12 understand. But, in summary, what did you take from 13 this document after you received it from Greg 14 Shepard? 15 A To me it was a validation of the patents 16 that Neldon has secured from the patent office on 17 aspects of what goes into the solar project, such as 18 the last page, which talks about a solar 19 concentrator, which I've seen in operation. The 20 solar lenses direct the sun's energy to the opening 21 of the solar lens at the top, and</p>				

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<p>then the solar 22 lens concentrates it down to a smaller focal point, 23 which increases the heat. So, you know, I've seen 24 that. 25 Q Is that when you saw it burn a 2-by-4? 27: 1 A It was before. The 2-by-4 was before. 2 It was just a demonstration of the lenses at that 3 time. 4 Q So what else have you seen the 5 concentrated heat do? 6 A Achieve high temperatures. 7 Q Anything else? 8 A I haven't been down there in five years. 9 Q But you haven't seen it do anything 10 then? 11 A No.</p>				
<p>27:12 Q Did you ever do anything else with 13 Exhibit 491 such as send it to any other parties? 14 Actually, let me rephrase that question. 15 Have you done anything else</p>			491	

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<p>with 16 Exhibit 491 such as send it to other people who have 17 purchased solar lenses? 18 A I don't recall. 19 Q You don't recall. Okay. 20 When you bought -- 21 A When I what? 22 Q Would you like to expand upon an answer? 23 A I was just noticing page 127, and it's a 24 chart that only an engineer would understand. 25 Q So you don't understand -- 28: 1 A I'm not an engineer. 2 Q Mr. Freeborn, I skipped going through 3 your background to keep this deposition short, but 4 am I to understand in the past your working career 5 was as a teacher and coach? 6 A That is correct. 38 years. 7 Q And, therefore, Exhibit 491, my 8 understanding is much of it's technical, and you 9 don't understand a significant portion of the data 10 that's in Exhibit 491?</p>				

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<p>11 A Right. 12 Q When you purchased your lenses, who did 13 you buy them from; was it RaPower3 or International 14 Automated Systems or someone else? 15 A RaPower3. 16 Q Okay. Are you aware of International 17 Automated Systems ever selling lenses itself? 18 A No. 19 Q And then after you purchased your 20 lens -- your lenses -- what did you do with them? 21 A As I said, the lenses were used in the 22 development of the solar project in Delta, Utah. 23 Q Have you ever seen your lenses? 24 A Yes. 25 Q You've seen the actual lenses that you 29: 1 own? 2 A Yes. 3 Q How did you know that those lenses were</p>				

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<p>4 yours?</p> <p>5 A I was told that by Greg Shepard when I</p> <p>6 took a tour of the solar field project.</p> <p>7 Q So you were on a tour of the solar field</p> <p>8 in Delta and Shepard said to you, "Those are your</p> <p>9 lenses, Roger"?</p> <p>10 A Yes.</p> <p>11 Q How many lenses did you purchase?</p> <p>12 A Ten.</p> <p>13 Q Total?</p> <p>14 A At that time, ten.</p> <p>15 Q At that time you purchased ten lenses?</p> <p>16 A Initially.</p> <p>17 Q And there were lenses on a tower and</p> <p>18 Mr. Shepard told you that those were your lenses?</p> <p>19 A Correct.</p> <p>20 Q What were they doing, "they" being the</p> <p>21 lenses?</p> <p>22 A They were being developed, the towers in</p> <p>23 development.</p>				

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<p>24 Q What do you mean by "in development"?</p> <p>25 A As Exhibit 491 suggests, there are a lot</p> <p>30: 1 of moving parts that go into the production of the</p> <p>2 solar field; the lenses are a part of that</p> <p>3 development.</p> <p>4 Q Were your lenses heating any water?</p>				
<p>30: 6 THE WITNESS: No.</p> <p>7 BY MR. MORAN:</p> <p>8 Q I think you testified earlier they were</p> <p>9 generating heat; right?</p> <p>10 A Yes.</p> <p>11 Q Was anything being done with the heat</p> <p>12 that they were generating?</p>				
<p>30:15 THE WITNESS: I was there for a few</p> <p>16 hours.</p> <p>17 BY MR. MORAN:</p> <p>18 Q During the few hours that you were</p> <p>19 there, was the heat that was being generated being</p> <p>20 used for any purpose?</p>				

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<p>21 A In any revolutionary technology, you</p> <p>22 need proof of concepts; and if the lenses cannot</p> <p>23 generate heat, your project is not going to work.</p> <p>24 So proof of concept would be that the lenses do</p> <p>25 generate the heat, and that these other complements,</p> <p>31: 1 such as the concentrated -- solar concentrator and</p> <p>2 the turbine and the tracking device would all be</p> <p>3 added later.</p> <p>4 Q That didn't answer my question. My</p> <p>5 question is: During the few hours that you were</p> <p>6 there, were your lenses --</p> <p>7 A I thought I already answered that.</p> <p>8 Q I don't think you did. During the three</p> <p>9 hours that you were there, were your lenses being</p> <p>10 used for any purpose?</p> <p>11 A Yes.</p> <p>12 Q What purpose is that?</p> <p>13 A That they were there, and they</p>				

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<p>were 14 real. It wasn't a made-up story. So like I said, 15 proof of concept. 16 Q So your testimony is that the lenses 17 were there, and they existed, and that was the 18 purpose? 19 A And they were installed. 20 Q And they were installed? 21 A On a tower. 22 Q And they were producing heat? 23 A Whenever heat would line them up, they 24 would produce heat. 25 Q What do you mean "line them up"? 32: 1 A Each tower is to have a solar tracking 2 device that tracks the sun as it goes through the 3 sky, from dawn to dusk, to make the lenses and tower 4 more efficient than photovoltaics. 5 Q And for the few hours that you saw your 6 lenses, was that tracking device in operation?</p>				

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<p>7 A I've seen it in operation. 8 Q My question is: When you saw your 9 lenses, and you say they were producing heat, was 10 that tracking device in operation? 11 A Not on every tower. 12 Q Not the tower where your lenses were? 13 A Correct. 14 Q I still don't think you have answered my 15 question about what was happening with the heat that 16 was being generated.</p>				
<p>32:19 THE WITNESS: The intense heat, to my 20 knowledge, would be developed only if it was in 21 the right tracking of the sun, and they were 22 not lined up at the time. 23 BY MR. MORAN: 24 Q Okay. So the tracking device wasn't 25 operating on the tower that your lenses were on, 33: 1 and, therefore, there was no</p>				

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intense heat being 2 produced by your lenses; is that correct? 3 A Yes. 4 Q Have you ever seen your lenses producing 5 the intense heat that you have referred to?				
33: 8 THE WITNESS: No. 9 BY MR. MORAN: 10 Q Has anyone ever told you that your 11 lenses were being used to produce the intense heat 12 that you have referred to? 13 A No one has told me. 14 Q No one has told you that your lenses 15 have produced the intense heat that you have 16 referred to earlier in your testimony? 17 A Correct. 18 Q So I just want to make sure we're clear. 19 What purpose, other than development, has the heat 20 from your lenses ever been used for?				
33:23 THE WITNESS: What was				

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<p>the question 24 again? 25 MR. MORAN: Would you read back the 34: 1 question. 2 (The reporter read back the 3 previous question: "Q So I 4 just want to make sure we're 5 clear. What purpose, other 6 than development, has the heat 7 from your lenses ever been 8 used for?") 9 THE WITNESS: I can't answer that. 10 BY MR. MORAN: 11 Q Why can't you answer that? They are 12 your lenses. 13 A I haven't been there when they have been 14 in use. 15 Q When were they in use?</p>				
<p>34:18 THE WITNESS: I don't know. 19 BY MR. MORAN: 20 Q Do you expect that you would have been 21 told when your lenses were in use?</p>				

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22 A Well, that hinges on the definition of 23 "in use." You might have a different definition of 24 "in use" than I have a definition of "in use." 25 Q What's your definition of "in use"?				
35: 3 BY MR. MORAN: 4 Q Like I said, other than development, are 5 you aware of any other use of your solar lenses at 6 any time? 7 A No. 8 Q You testified that your lenses were used 9 in development. Who was using your lenses for 10 development purposes?				
35:13 THE WITNESS: The towers with the 14 lenses, to my knowledge, were produced by 15 Neldon Johnson, and I was --				
35:20 Your understanding is that Neldon 21 Johnson and International Automated Systems was				

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<p>22 using your lenses for development purposes? 23 A I'd have to speculate on that. 24 Q Well, I'm asking you about your lenses. 25 A Right. 36: 1 Q So to the extent that you have any 2 knowledge about your lenses, I'm not asking you to 3 speculate. If you don't have the knowledge, then 4 you can testify to that. 5 MR. REAY: In other words, it's okay to 6 say I don't know if you don't know something. 7 That's what he's saying.</p>				
<p>36: 8 (The reporter read back the 9 following question: "Q Your 10 understanding is that Neldon 11 Johnson and International 12 Automated Systems was using 13 your lenses for development 14 purposes?") 15 BY MR. MORAN: 16 Q Is that correct? 17 A I don't know for sure. 18 Q Well, who else would be using them for</p>				

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<p>19 development purposes? 20 A We bought our lenses from RaPower3. 21 Q I know you bought the lenses from 22 RaPower3. So is RaPower3 using your lenses for 23 development purposes?</p>				
<p>37: 1 THE WITNESS: I don't know for sure. 2 BY MR. MORAN: 3 Q You don't know who is using your lenses 4 for development purposes? 5 A I can't say for sure. I don't know. 6 Q You don't know? Okay. 7 Besides the fact Greg Shepard told you 8 that your lenses were in a tower, is there any 9 reason that you believe that your lenses were 10 actually in the tower? 11 A No other reason. 12 Q Okay. 13 A Except on a tour, along with Greg and 14 Neldon Johnson, they said the</p>				

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lenses were on a 15 tower. 16 Q That the lenses in the tower were your 17 lenses? 18 A Yes. 19 Q Okay. Where are your lenses today?				
37:22 THE WITNESS: I assume they are on the 23 tower. 24 BY MR. MORAN: 25 Q Why do you believe that or why do you 38: I assume that? 2 A On occasion we would travel to Salt Lake 3 for Bigger Faster Stronger, and in addition to that 4 we would go with Greg down to the Delta site, and 5 the towers were there and the lenses are installed. 6 And every time that we would go, which would be 7 perhaps once a year in the beginning, we would see 8 development every time, and I've also seen online 9 video of the installed towers.				

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<p>10 Q When was the last time you saw your lens? An approximate date is fine. 11 A 2014. 12 Q In 2014 you saw what you believed to be your lens in a tower? 13 A In a video. 14 Q Oh, in a video? 15 A Correct. 16 Q Who sent you that video? 17 A Online video. 18 Q And so you were, I assume, at your house when you saw the video? 19 A Yes. 20 Q And when you saw the video, how did you know that the lenses you saw in the video were yours? 21 A It's the same field and the same towers that had lenses in it, so I assumed. 22 Q Have you ever known the lenses in the towers to break? 23 A Yes. 24 Q Have you ever been notified</p>				

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<p>that your 7 lenses were broken? 8 A No. 9 Q So how do you know whether or not your 10 lenses were broken or were not broken?</p>				
<p>39:19 Q I just want to be clear. When was the 20 last time you saw what you know to be your lenses; 21 was it in 2014 when you saw the video? 22 A Yes. 23 Q Have you ever received any income from 24 your lenses being used for any purpose? 25 A Not yet. 40: 1 Q Do you expect that you would know if 2 there was income being generated by the use of your 3 lenses? 4 A Yes. 5 Q Where do you expect you would hear that 6 from? 7 A RaPower3.</p>				

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<p>8 Q How about Greg Shepard and Neldon Johnson?</p> <p>9 Johnson?</p> <p>10 A Well, I don't know who would inform me.</p> <p>11 Q But you've never been informed that they</p> <p>12 were generating money?</p> <p>13 A Not yet.</p> <p>14 Q And you've owned these lenses for at</p> <p>15 least seven years?</p> <p>16 A Yeah.</p> <p>17 Q In total, how many lenses did you buy?</p> <p>18 A Fourteen.</p> <p>19 Q I think you testified that you bought</p> <p>20 ten initially, and then at some point you bought</p> <p>21 four more?</p> <p>22 A Correct.</p> <p>23 Q When was that?</p> <p>24 A 2012, I believe.</p> <p>25 Q Are you aware of any purported tax</p> <p>41: 1 benefits associated with your solar lenses?</p> <p>2 A Yes.</p> <p>3 Q What are those tax benefits?</p>				

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<p>4 A Tax credits and depreciation. 5 Q Who told you about these tax benefits of 6 tax credits and depreciation? 7 A Greg Shepard. 8 Q Anyone else? 9 A A CPA in Salt Lake. 10 Q Do you recall the name of that CPA? Is 11 it Hansen and Barnett? 12 A No. 13 Q How about Mantyla McReynolds? 14 A Please? 15 Q How about Mantyla McReynolds? 16 A No. 17 Q But you believe there's a CPA in Salt 18 Lake that told you about the tax benefits? 19 A Correct. I don't recall his name. 20 Q How about any attorneys? 21 A I'm assuming you have the McConkie -- 22 Q You mean the Kirton McConkie letter? 23 A Yes. 24 Q Okay. Anyone else?</p>				

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<p>25 A I'd have to look at my records. But 42: 1 there were other attorneys. 2 Q Does the name Todd Anderson ring a bell? 3 A I believe he's a CPA, lives in Arizona, 4 maybe. 5 Q Did you do any research on your own 6 about the tax benefits? 7 A Yes. 8 Q What research did you do? 9 A I researched the tax code. 10 Q You looked up the tax code online? 11 A Online. And the Recovery Acts passed by 12 congress, which said that they wanted to foster 13 alternate means of electricity production through 14 the use of tax credits and depreciation. 15 Q You read the Recovery Act? 16 A I've read the part that related to solar 17 tax credits. 18 Q And you understood that congress wanted</p>				

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19 to encourage electricity production? 20 A Yes. 21 Q Have your solar lenses ever generated 22 electricity?				
42:25 THE WITNESS: Not yet. 43: 1 BY MR. MORAN: 2 Q Besides reading the Recovery Act and 3 certain sections of the tax code, is there anything 4 else -- any other research you did yourself? 5 A I do my taxes with TurboTax, and they 6 had sections related to it. 7 Q Anything else? 8 A There was a report early on from -- I 9 forget the name -- but attorneys in Delta that was 10 provided. 11 Q Who provided that? 12 A Greg. 13 Q Greg Shepard? 14 A Yes. 15 Q And do you know if that's the Todd 16 Anderson lawyer?			23	

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17 A I'd have to look. 18 Q Mr. Freeborn, I'm handing you a copy of 19 what's been marked for identification as Exhibit 23. 20 Do you recognize Exhibit 23? 21 A Yes. 22 Q Is this the letter you were just 23 referring to? 24 A Yes.				
43:25 Q Exhibit 23 is a letter dated August 8th, 44: 1 2012, from the Anderson Law Center and addressed to 2 "Potential RaPower3 Customer." 3 Besides the sources you've just 4 described, is there any other research you did on 5 your own? 6 A No. 7 Q Mr. Freeborn, in the past have you ever 8 described yourself as the national director of 9 RaPower3? 10 A Perhaps.			23	
44:13 Q Mr. Freeborn, you've been handed a copy 14 of what's marked for			492	

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<p>identification as Plaintiff's 15 Exhibit 492 ANDERSON_MATT 000381 through 16 ANDERSON_MATT-000382. I believe this is a document 17 you've already stipulated as authentic. 18 A Right. 19 Q Did you send this document? 20 A Yes. 21 Q Who did you send it to? 22 A Potential RaPower3 members. 23 Q Just to lay the foundation. Have you 24 ever sold RaPower3 lenses to other people? 25 A Yes. 45: 1 Q Would it be correct to refer to those 2 people as your downline? 3 A Yes. 4 Q And directing your attention to the 5 second page of Exhibit 492, it says, "Roger 6 Freeborn, RaPower3 National Director"; do you see 7 that? 8 A I see that.</p>				

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<p>9 Q Would you commonly use the title of 10 RaPower3 National Director? 11 A Yes. 12 Q Was Greg Shepard aware that you were 13 using the title RaPower3 National Director? 14 A Yes. 15 Q Did he ever tell you not to use the 16 title RaPower3 National Director? 17 A Yes. 18 Q And we'll get to this. I understand 19 that at some point you were terminated. But up 20 until the point you were terminated from RaPower3, 21 did Greg Shepard ever tell you not to use the title 22 RaPower3 National Director? 23 A No.</p>				
<p>46: 2 Q We just discussed your downline. About 3 how many people are in your downline? 4 A The downline is six levels deep.</p>				

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I've 5 never taken the time to count them.				
46: 8 Q Mr. Freeborn, I've handed you a copy of 9 what's marked in this litigation as Plaintiff's 10 Exhibit 493, which is Bates stamped Ra3 009514 11 through Ra3 009516. 12 This purports to be -- this document was 13 produced by RaPower3, purports to be a Member 14 Activity Report for Roger Allen Freeborn. Do you 15 recognize this document? 16 A Yes. 17 Q What is it? 18 A It's a record of downline payments. 19 Q Does Exhibit 493 reflect your downline 20 as of December of 2011? 21 A It appears so. I would have to 22 obviously check my records to make sure. 23 Q Okay. Well, your attorney may have 24 discussed this with you, but you			493	

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<p>will have the 25 opportunity to review the transcript and correct any 47: 1 discrepancies, so feel free to review your records; 2 and if there's anything inaccurate in Exhibit 493, 3 there will be an opportunity for you to clear that 4 up. 5 A You said you were going to take these 6 back. 7 Q The court reporter is going to take 8 those. Your attorney has a copy of what's been 9 marked as Exhibit 493. You can look at that. 10 There's a couple names that aren't on 11 here that I'd like to ask you about. Is Peter Greg 12 in your downline? 13 A Yes. 14 Q How about Brian Zeleznik? 15 A Yes. 16 Q How about Mark Sikseh? 17 A Yes.</p>				
<p>48: 2 Q Mr. Freeborn, back on the</p>			<p>494</p>	

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<p>record after a 3 quick break. You've been given copies of what's 4 marked for identification as Plaintiff's Exhibits 5 494, 495, 496 and 497. These are documents that you 6 produced, Exhibit 494 Bates stamped 7 Freeborn_Roger-00623. 8 A I did not produce these. 9 Q You didn't produce these documents to 10 the United States? 11 A They were produced by someone else. 12 MR. REAY: I think you had given them to 13 me, and I gave them to U.S. Attorney's Office. 14 BY MR. MORAN: 15 Q I'll rephrase the question. When I say 16 "produced," you gave them to the United States. I'm 17 going to ask some questions about where you got them 18 so we can clear that up. 19 But did you give these documents to the</p>			495 496 497	

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Plaintiff Designations – BLUE Defendant Completeness— PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness— PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>20 United States pursuant to our request for production 21 of documents? 22 A Yes. 23 Q Okay. And also to clear up the record 24 what documents we're talking about, I think we 25 covered 494. 49: 1 Exhibit 495 is Bates stamped 2 Freeborn_Roger-00064. Exhibit 496 is Bates stamped 3 Freeborn_Roger-00066. Exhibit 497 is Bates stamped 4 Freeborn_Roger-00070. 5 Mr. Freeborn, you testified that you 6 produced these documents to the United States. Who 7 created them? 8 A They came from RaPower3. I have no idea 9 who created them. 10 Q Okay. How did they come to be in your 11 possession? 12 A Email from RaPower3. 13 Q Who at RaPower3 would have sent you 14 these documents via email?</p>				

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<p>15 A Greg Shepard. 16 Q So is it your testimony that you did not 17 create these documents? 18 A I did not create these documents. 19 Q Okay. What are these documents? 20 A I copied them onto my computer, saved 21 it. This was an email attachment. 22 Q These documents appear to explain 23 purported tax benefits associated with the purchase 24 of solar lenses from RaPower3; is that a fair 25 characterization? 50: 1 A That's part of it. 2 Q If that's part of it, what else is it? 3 A It explains the flow of money for a 4 1-megawatt, 18,000-lens purchase from RaPower3. 5 Q And for the record, you are referring to 6 Exhibit 494? 7 A Yes. 8 Q And there's a line on the bottom</p>				

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<p>9 left-hand corner starting with "IRS" and referring</p> <p>10 to a tax credit depreciation; is that correct?</p> <p>11 A Yes.</p> <p>12 Q Exhibit 494 refers to SOLCO1. What is</p> <p>13 SOLCO1?</p> <p>14 A To the best of my knowledge, it was a</p> <p>15 company created by RaPower3 to market large</p> <p>16 purchases.</p> <p>17 Q Since we're done with RaPower3, direct</p> <p>18 your attention to Exhibit 496.</p> <p>19 A Okay.</p> <p>20 Q This is "RaPower3: 10-lens Purchase" at</p> <p>21 the top; is that correct?</p> <p>22 A Yes.</p> <p>23 Q It's very similar to Exhibit 494 except</p> <p>24 Exhibit 496 refers to a RaPower3 purchase of 10</p> <p>25 lenses. There's also a -- the bottom left-hand</p> <p>51: 1 corner refers to the IRS, and the 2012 tax credit of</p> <p>2 \$10,500, then 2012 depreciation</p>				

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<p>\$17,850, and 2013 to 3 2017 depreciation of \$11,900. 4 What does that text mean to you? 5 A A 10-lens purchase would be a -- 6 generate a tax credit of \$10,500, and a 10-lens 7 purchase would generate depreciation as indicated. 8 Q Who came up with these numbers? 9 A RaPower3 and the federal government. 10 Q Who at RaPower3 generated these numbers? 11 A I don't know. 12 Q But you got this diagram from Greg 13 Shepard? 14 A Yes. 15 Q No further questions on these documents. 16 Oh, actually one more. Did you ever send documents, 17 such as the last four exhibits, to anyone? 18 A Yes. 19 Q Who? 20 A That was a long time ago.</p>				
52: 2 Q Let me ask a two-part			496	

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<p>question. Have 3 you ever sent these documents to other RaPower3 4 customers in your downline? 5 A I may have sent copies to downline, 6 certain members, but this was obviously documents 7 that were created to give to potential buyers. 8 Q So is your answer, yes, you sent these 9 documents to potential solar lens buyers? 10 A If it applied. Not everyone is going to 11 make an 18,000-lens purchase. 12 Q How about Exhibit 496 from RaPower3, a 13 10-lens purchase? Would this apply to anyone in 14 your downline? 15 A Yes.</p>				
<p>52:22 BY MR. MORAN: 23 Q I think the question is: Would you have 24 used, but I can rephrase it. Did you use 25 Exhibit 496 to send -- did you send Exhibit 496 to</p>			<p>496 80</p>	

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<p>53: 1 potential RaPower3 customers?</p> <p>2 A Yes, but these are 2012 tax credits.</p> <p>3 Q Okay.</p> <p>4 A So that would be figured in 2013. I was</p> <p>5 no longer employed. I was let go in 2013.</p> <p>6 Q We're getting to that.</p> <p>7 A Well, and so I would have sent this off</p> <p>8 to a few people but not very many.</p> <p>9 Q Okay.</p> <p>10 A I did not send it en masse to my</p> <p>11 downline.</p> <p>12 Q You didn't?</p> <p>13 A I don't believe so. I don't remember</p> <p>14 doing that.</p> <p>15 Q Would you have sent out exhibits like</p> <p>16 Exhibit 496 to people in your downline?</p> <p>17 A I would probably have done that to some</p> <p>18 potential buyer, yes.</p> <p>19 Q And you testified earlier that</p>				

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<p>the 20 federal government came up with the numbers that 21 appear, for example, in Exhibit 496; do you recall 22 that testimony? 23 A Yes. 24 Q Can you tell me where you saw -- 25 A Solar tax credits are in the tax code. 54: 1 Q Do you know what section? 2 A I'd have to look it up again. 3 Q Okay. Can you tell me who at the 4 federal government told you that these tax credits 5 were allowable? 6 A Who at the federal government; is that 7 what you asked? 8 Q Yes. 9 A I had no contact with anybody from the 10 federal government. 11 Q Okay. So when you say that the federal 12 government came up with the numbers in Exhibit 496 13 regarding tax credits and</p>				

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<p>depreciation, the basis 14 for your testimony is that you looked at the tax 15 code? 16 A I verified that -- this obviously was 17 given to me, as I said -- and with the Anderson 18 letter and other information that is easily 19 obtainable via TurboTax. 20 Q But my question is about people or 21 entities of the federal government. 22 A I said I had no contact with the federal 23 government other than the tax code, and who knows 24 who wrote that. 25 Q All right. Done with those documents 55: 1 for now. 2 Mr. Freeborn, I'm handing you a copy of 3 what's been marked as Plaintiff's Exhibit 80. Do 4 you recognize this document? 5 A No. 6 Q For the record, Plaintiff's</p>				

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<p>Exhibit 80 7 is from the deposition of Brian Zeleznik. It's 8 Bates stamped ZELEZ_ B&A000778. Mr. Freeborn, do 9 you recognize Exhibit 80? 10 A Yes. 11 Q What is it? 12 A It's a copy of two emails; one I 13 received, and one I sent. 14 Q Okay. I'll direct your attention to 15 the -- appears to be an email that you received on 16 June 2nd, 2013, from Greg Shepard; is that correct? 17 A Yes. 18 Q And it says that you were terminated 19 from RaPower3? 20 A Yes, correct. 21 Q Why were you terminated from RaPower3? 22 A I was never given a reason. 23 Q You have no idea why you were terminated 24 from RaPower3? 25 A As I said, I was never given a reason.</p>				
56:25 Q In this email Mr. Shepard			480	

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<p>says, "This 57: 1 email is a follow-up to yesterday's (6-1-2013) 2 termination notice by phone." 3 Did you have a phone call with 4 Mr. Shepard in June 2013? 5 A Yes. 6 Q What did Mr. Shepard tell you in that 7 phone call? 8 A I was terminated. 9 Q He didn't give you a reason? 10 A I was never given a reason.</p>			370	
<p>63:18 Q Mr. Freeborn, I'm handing you what's 19 been marked for identification as Plaintiff's 20 Exhibit 480, and I'm going to hand you a copy of 21 what's been marked for identification as Plaintiff's 22 Exhibit 370. I'll ask you to take a minute to 23 review them. Let me know once you have. 24 A (Witness complies.) 25 Q Have you had a chance to review them? 64: 1 A This is the first time I've seen it</p>			80 480 370	

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<p>2 other than the memorandum. 3 Q Well, that was going to be my first 4 question. Have you ever seen Exhibit 480 or -- 5 A No. 6 Q Okay. You haven't seen Exhibit 480. 7 How about the first two pages of Exhibit 370? 8 A No. 9 Q Exhibit 480 is entitled a "Cease and 10 Desist Letter" from Tate Bennett sent on behalf of 11 Todd Anderson. And Exhibit 370 is a letter dated 12 January 10, 2014, from Kirton McConkie. 13 Exhibit 370, at least the first two pages of Exhibit 14 370, appear to inform Mr. Johnson and Mr. Shepard 15 that the Kirton McConkie memo does not say what they 16 think it says; is that the fair description of the 17 first two pages of Exhibit 370? 18 A (Witness reading.) What was your</p>				

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<p>19 question again? 20 MR. MORAN: Would you read back the 21 question. 22 (The reporter read back the 23 previous question.) 24 THE WITNESS: Well, obviously I've never 25 seen this. This is the first time. This is 65: 1 2014. I was not involved with RaPower3 or 2 Neldon or IAUS, so I've never seen it. 3 BY MR. MORAN: 4 Q Well, my question isn't whether or not 5 you've seen it, you already said you didn't, and I 6 understand that. But, for example, the third 7 paragraph, it says, "Second, as stated on page two 8 of the Memorandum, the analysis within the 9 Memorandum only applies if, among other factors, the 10 purchasers are 'taxed as subchapter C corporations 11 for federal income tax purposes.'</p>				

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<p>The Memorandum's 12 analysis of when energy tax credits may be available 13 does not apply to any other type of taxpayer, 14 including individuals, trusts, partnerships, limited 15 liability companies taxed as partnerships or 16 corporations taxed as subchapter S corporations." 17 Do you know what a C corporation is? 18 A I'm not familiar with that. 19 Q Do you know if you own a C corporation? 20 A I do not own a C corporation. 21 Q Would you have liked to have seen the 22 first two pages of Exhibit 370 before today? 23 A I believed that the letter is 24 contradictory to the document. As it says on page 25 one of the memorandum, it says, "The solar lenses 66: 1 that buyers purchase from seller, the solar lenses 2 will qualify as energy property that is eligible for</p>				

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<p>3 the energy tax credit under Code Section 48," and 4 then they go through a calculation. 5 Q So the first two pages of Exhibit 370 6 don't mean anything to you? 7 A First time I've seen it. I find it 8 confusing. 9 Q You find the first two pages of 10 Exhibit 370 confusing? 11 A As I said, I believe that the first two 12 pages are in -- they don't agree with what the 13 memorandum states.</p>				
<p>68: 1 Q Okay. Now, the memorandum of October 2 31st, 2012, do you know where Mr. Birrell got the 3 information that he relied on in the memorandum?</p>				
<p>68: 6 THE WITNESS: Well, he cites the Code 7 Section 48(a)(3)(A)(i) or (ii). 8 Q All right. I'll direct your attention</p>				

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<p>9 to the "Factual Background." 10 A Right. That's where that is. He also 11 cites Code Section 1274. 12 Q All right. 13 A So I would believe that he refers to the 14 tax code. 15 Q I agree with you he refers to the tax 16 code, but he also talks about the solar lenses that 17 are purchased by buyers, and then a series of facts. 18 Do you know where he got those facts from? 19 A I have no idea. 20 Q Could it have been anyone other than 21 RaPower3, Neldon Johnson or Greg Shepard?</p>				
<p>68:25 Q Or International Automated Systems? 69: 1 A I don't know. 2 Q You don't know of anyone else you could 3 have gotten that information from? 4 A What information are you talking about?</p>				

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<p>5 The Reinvestment Act of 2009, that's the Recovery 6 Act. 7 Q No. I'm talking about the facts. I can 8 read them for you, if you want. But under the 9 heading "Factual Background" it says, "The solar 10 lenses will be purchased by buyers that are" -- 11 there are a series of options -- corporations or 12 LLCs, neither tax-exempt nor governmental entities, 13 and taxed as subchapter C corporations for federal 14 income tax purposes. 15 A Okay. This document refers to SOLCO1, 16 and so I really had no dealings with SOLCO1. 17 Q Well, you said that you relied on the 18 Kirton McConkie memorandum. Is there another 19 memorandum? 20 A I believe this is the memorandum that I 21 referred to.</p>				

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<p>22 Q And my only question, and then we'll be</p> <p>23 able to move on to a different document, is if the</p> <p>24 facts that appear under Factual Background, is there</p> <p>25 anyone other than Greg Shepard, Neldon Johnson or</p> <p>70: 1 another defendant in this case where that</p> <p>2 information could have come from?</p>				
<p>70: 5 THE WITNESS: I do not know.</p>				
<p>70: 7 Q Have you ever heard of one of these</p> <p>8 letters being rescinded?</p> <p>9 A I have no knowledge of these letters.</p> <p>10 Q Are you familiar with an entity called</p> <p>11 the Tiffin Charitable Foundation?</p> <p>12 A Yes.</p> <p>13 Q What is the Tiffin Charitable</p> <p>14 Foundation?</p> <p>15 A It is a foundation set up to -- it's an</p> <p>16 endowment kind of foundation for an RV park in Ohio.</p>				

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<p>17 Q How are you familiar with the Tiffin 18 Charitable Foundation? 19 A My brother is in charge of the 20 campground. 21 Q Is your brother Richard Freeborn? 22 A Yes.</p>				
<p>71: 2 Q Mr. Freeborn, you've been given a copy 3 of three documents, Exhibit 498, which is Bates 4 stamped TCF-000063; Exhibit 499, which is Bates 5 stamped TCF-000082, and Exhibit 500, which is Bates 6 stamped TCF-000083. 7 Mr. Freeborn, these last three documents 8 were produced by the Tiffin Charitable Foundation. 9 Do you recognize them? 10 A Yes. 11 Q What are they? What are these 12 documents? And you can walk through them. 13 A My brother and I were -- authored these. 14 Q You and your brother authored all three</p>			<p>498 499 500</p>	

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<p>15 of them? 16 A Yes. 17 Q Okay. I'm referring to Exhibit 498, and 18 499, and 500; correct? 19 A Yes. 20 Q The information that appears in Exhibits 21 498 and 499 and 500, where did you get that 22 information from? 23 A Can you be more specific? 24 Q Well, we can walk through each 25 statement, but in general, you make several 72: 1 statements about taxes. For example, in 2 Exhibit 498, third paragraph, you say, "The typical 3 \$5,000 a year in Federal income tax payer could make 4 well over \$180,000 in net dollars with RaPower3." 5 A Right. Okay. 6 Q And then in caps you say, "THIS IS 7 ABSOLUTELY AMAZING AND YOU HAVE THE BACKING OF THE</p>				

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<p>8 UNITED STATES GOVERNMENT." Did I read that</p> <p>9 correctly?</p> <p>10 A Yes.</p> <p>11 Q Okay. Where did you get that</p> <p>12 information from?</p> <p>13 A Which information are you</p> <p>talking about?</p> <p>14 Q Well, for example, "you have</p> <p>the backing</p> <p>15 of the United States</p> <p>government."</p> <p>16 A When the United States built</p> <p>the</p> <p>17 transcontinental railroad they</p> <p>didn't have the money</p> <p>18 to build it, so they gave out land</p> <p>grants to the</p> <p>19 railroads that were very lucrative</p> <p>in the long run.</p> <p>20 Okay? Now, in order to foster</p> <p>renewable energy,</p> <p>21 they have energy tax credits and</p> <p>depreciation. They</p> <p>22 had energy tax credits in the</p> <p>early '70s in response</p> <p>23 to the Arab oil embargo in order</p> <p>to foster the</p> <p>24 development of more energy</p> <p>systems. And, therefore,</p>				

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<p>25 it's common knowledge that the federal government 73: 1 has -- would it be granted money to, like, giving 2 credits to the solar company in California that ran 3 through all the money and never produced anything. 4 Q Is your testimony that you think it's 5 common knowledge that these statements are correct? 6 A No. It's common knowledge that the 7 federal government has awarded grants to numerous 8 solar companies around the nation to develop 9 alternative means of energy, and that the majority 10 of those companies have gone out of business. And 11 Neldon has not taken any money from anyone, that I 12 know of, and everything is paid for, and he isn't 13 carrying a big debt, as far as I know. And the 14 question comes as to if he's developing an</p>				

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15 alternative means of energy that will change the way 16 that electricity might be generated, why are we here 17 today?				
74: 2 Q Let me ask a different question. In 3 Exhibit 498, when you're talking about renewable 4 energy systems, are you talking about the solar 5 lenses that RaPower3 sells? 6 A I'm talking about the full system of 7 which the lenses are a component. 8 Q Okay. So the systems -- and correct me 9 if I'm mischaracterizing the document, please tell 10 me -- but I understand your statements here to be 11 that the systems that include lenses, and what you 12 say are the associated tax benefits, have the 13 backing of the United States government. And my 14 question is: What do you mean by "backing of the 15 United States government"? And			498 499	

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<p>I'm not talking 16 about other entities that have gone bankrupt that 17 are not in this case. I'm asking about RaPower3 and 18 its alternative solar energy systems.</p>				
<p>74:21 THE WITNESS: It's stated on page two. 22 BY MR. MORAN: 23 Q You are referring to Exhibit 499? 24 A 499. "The solar energy that you would 25 purchase qualifies for depreciation on your tax 75: 1 return." Okay? "The program was enacted by 2 Congress to stimulate alternative energy 3 development." It's stated right in the opening 4 paragraph of the Recovery Act. 5 Q I understand that, but -- 6 A So these systems prove to be qualified. 7 Q Proved by what? 8 A Well, I would have to say that would be 9 hearsay.</p>				

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<p>10 Q You can testify to hearsay in a 11 deposition. Who told you that? 12 MR. REAY: Repeat the prior question. 13 What was that? 14 MR. MORAN: Well, he just said it would 15 be hearsay. Can you read back the last 16 question? 17 (The reporter read back the 18 following question: "Q So 19 the systems -- and correct me 20 if I'm mischaracterizing the 21 document, please tell me -- 22 but I understand your 23 statements here to be that the 24 systems that include lenses, 25 and what you say are the 76: 1 associated tax benefits, have 2 the backing of the United 3 States government. And my 4 question is: What do you mean 5 by "backing of the United 6 States government?") 7 MR. MORAN: That's the pending question, 8 and I don't think it's been answered.</p>				

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<p>76:13 THE WITNESS: We were in business for a 14 number of years prior to this letter, and quite 15 a number of people I know filed their taxes and 16 got their returns, and I had some people in the 17 tax business who -- H&R Block, for one -- 18 contacted their resources and were told that 19 the program works as stated. 20 I have a CPA in Florida -- from a 21 friend, he's a friend of one of my downline -- 22 and he -- the term he used to characterize our 23 program, he said it was "bullet proof." 24 And so, you know, I never got this 25 January 10, 2014 letter or this other letter, 77: 1 which doesn't have a date on it, from Bennett. 2 BY MR. MORAN: 3 Q All right. So I understand that there's</p>				

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<p>4 someone from H&R Block; who is that person?</p> <p>5 A I don't know who that person is. He's</p> <p>6 in Minnesota.</p> <p>7 Q Someone from H&R Block in Minnesota?</p> <p>8 A Yeah.</p> <p>9 Q Do you know --</p> <p>10 A My downline -- okay. 492 refers to H&R</p> <p>11 Block.</p> <p>12 Q Is there a name associated with H&R</p> <p>13 Block?</p> <p>14 A No.</p> <p>15 Q Okay. And you testified about a CPA in</p> <p>16 Florida?</p> <p>17 A Yeah.</p> <p>18 Q What is that CPA's name?</p> <p>19 A I don't have that name on the top of my</p> <p>20 head. I'd have to try to look it up.</p>				
<p>78: 7 You testified that several people in</p> <p>8 your downline claimed RaPower3 tax benefits on their</p> <p>9 tax returns and got refunds, and from that you</p>				

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<p>10 concluded that the RaPower3 program has the backing 11 of the United States government; is that your 12 testimony? 13 A No. They weren't RaPower3 credits, they 14 were federal tax credits -- 15 Q Okay. 16 A -- mentioned in the Recovery Act, and 17 also in the tax code, initially okayed by Kirton 18 McConkie. Why he change his mind, only he can tell 19 you that. Get him in a deposition. 20 It's logical to assume that if they want 21 alternative energy produced, and they are going to 22 foster it with tax credits that -- and they get the 23 tax credits back, or qualify for the tax credit, 24 then one would assume that until all this ruffling 25 started here in 2014, '15. 79: 1 Q Well, I've read the Kirton McConkie</p>				

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<p>2 letter, and nowhere in there does it mention backing 3 of the United States government. So I want to know 4 who told you that this system has the backing of the 5 United States government?</p>				
<p>79: 8 THE WITNESS: That would be an 9 assumption based on experience. 10 BY MR. MORAN: 11 Q Whose assumption? 12 A Our assumption, my brother and I. We 13 wrote the letter. 14 Q So you made this assumption that the 15 RaPower3 program has the backing of the United 16 States government?</p>				
<p>79:19 THE WITNESS: As I said, experience. 20 BY MR. MORAN: 21 Q Whose experience? 22 A My experience and the experience of 23 other RaPower3 buyers. 24 Q Anything else? 25 A As to what?</p>				

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<p>80: 1 Q Well, I think you testified that you</p> <p>2 based your statement regarding the backing of the</p> <p>3 United States government on an assumption and your</p> <p>4 experience; is that right?</p> <p>5 A Yeah. And the other things we said</p> <p>6 earlier about the tax code and the tax credits that</p> <p>7 are set up in the Recovery Act. And this was an</p> <p>8 example of a program that would qualify under the</p> <p>9 parameters that were established by the tax code and</p> <p>10 the Recovery Act. And in 2009, 2010, 2011, 2012,</p> <p>11 we -- you know, then I was done with it, and --</p> <p>12 Q So based on your assumption and your</p> <p>13 experience in reading the tax code, you felt</p> <p>14 comfortable saying you have the backing of the</p> <p>15 United States government?</p> <p>16 A Does the United States government stand</p>				

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17 behind the tax code?				
81: 5 Q Now that you've seen Kirton McConkie's 6 letter of January 2014, do you still believe in your 7 statement "backing of the United States government"? 8 A It's irrelevant because I didn't see it 9 in 2014.			246	
81:17 MR. MORAN: I want to know if it changed 18 his mind. 19 THE WITNESS: I'm not going to change my 20 mind.				
82:16 Q Mr. Freeborn, I'm handing you a copy of 17 what's been marked for identification as Exhibit 18 246. This is from the deposition of Peter Gregg. 19 Do you recognize Exhibit 246? 20 A Yeah. 21 Q What is it? 22 A It's an email. 23 Q From who? 24 A From me. 25 Q I'll direct your attention to the			246	

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<p>first 83: 1 paragraph that says, "One of the most asked 2 questions I field with potential clients is, 'Does 3 this work?' The answer to that is yes, the program 4 is up, operational and running." 5 My first question is: When you refer to 6 "this," what are you referring to? 7 A "This"? 8 Q Yes. It says, "Does this work?" When 9 you say "this," what are you referring to? 10 A The RaPower3 flow of money, the revenue 11 streams. 12 Q The revenue streams? 13 A That are created. 14 Q So solar energy and electricity, isn't 15 that what you are referring to? 16 A There are four revenue streams that are 17 created with the purchase of systems. Okay? The 18 first is the tax credits and depreciation</p>				

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<p>19 incentives. That's the most immediate. 20 The second are commissions paid to a 21 RaPower3 representative on a sale of systems to a 22 prospective client. 23 There's residual income that will be -- 24 this is a future revenue stream when the solar field 25 goes into operation and produces electricity which 84: 1 will generate income for a 30-year time period, 2 which is the use of the life of the solar unit. 3 And the fourth revenue stream are 4 bonuses that each system carries when they are 5 purchased. The bonus system has decreased over the 6 years, but it will kick in when the solar field goes 7 into operation, along with the residual income when 8 the electricity is produced. That's what this 9 refers to. 10 Q Okay. So you are not referring</p>				

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<p>to any 11 generation of electricity or use of the solar 12 energy, just the revenue stream; is that right? 13 A I'm talking about what happens when 14 someone purchases a system regarding revenue. 15 Q Okay. Jumping down to the second 16 paragraph it says, "At the present time the first 17 two revenue streams are fully functional." Did I 18 read that correctly? 19 A Well, I don't see -- okay. "Fully 20 functional." Yeah. 21 Q Okay. Are any revenue streams -- are 22 any other revenue streams functional now? 23 A I only know about these. 24 Q Commissions and tax credits and 25 incentives; right? 85: 1 A Correct. 2 Q So no lenses are generating any residual</p>				

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<p>3 income?</p> <p>4 A Not that I know of at the present.</p> <p>5 Q If they were generating income, do you</p> <p>6 think you would know?</p> <p>7 A Absolutely.</p> <p>8 Q Mr. Freeborn, am I correct that the</p> <p>9 price of each lens is \$3,500?</p> <p>10 A It was.</p> <p>11 Q When was it \$3,500?</p> <p>Approximate dates</p> <p>12 are fine.</p> <p>13 A Initially it was \$3,000, I believe.</p> <p>14 Q Do you recall when that was?</p> <p>15 A Do I recall what?</p> <p>16 Q When was the price \$3,000?</p> <p>17 A In the beginning.</p> <p>18 Q And when is the beginning?</p> <p>Just put an</p> <p>19 approximate time on it, that's fine.</p> <p>20 A 2009. Now it's changed to \$3,500.</p> <p>21 Q Who changed it?</p> <p>22 A RaPower3 is where you buy the lenses.</p> <p>23 Q Did you have any role in</p>				

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changing the 24 price? 25 A No. 86: 1 Q I'm sorry if you answered this. When 2 did it change to \$3,500? 3 A My guess would be 2011, '12. I'm not 4 sure on that. I'd have to look that up.				
86:10 Q Mr. Freeborn, you've been give a copy of 11 what's been marked for identification as Plaintiff's 12 Exhibit 501, and it's been Bates stamped 13 Negron_Derek-00036 through Negron_Derek-00038. 14 Do you recognize Exhibit 501? 15 A Yes. 16 Q Is it a letter that you wrote? 17 A Yep. 18 Q It refers to John Howell. 19 A Yeah. 20 Q Who is John Howell? 21 A He's an EA in Wichita Falls, Texas. 22 Q What's an EA? 23 A He is a tax preparer, but he's not a			501	

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<p>24 lawyer.</p> <p>25 Q Okay. And down at the bottom there's a</p> <p>87: 1 section of Q and A.</p> <p>2 A Uh-huh.</p> <p>3 Q Who drafted this text? It says, "Q: Do</p> <p>4 you like paying taxes? Answer: No. Who does?"</p> <p>5 And then more series of questions and answers. Who</p> <p>6 wrote that?</p> <p>7 A Well, this is Bob.</p> <p>8 Q Bob who?</p> <p>9 A Bob was at the convention. I made a</p> <p>10 practice of not including last names when we sent</p> <p>11 out information about people and their business.</p> <p>12 Q So you do not know who Bob is?</p> <p>13 A I met Bob at the convention.</p> <p>14 Q Do you recall his last name?</p> <p>15 A No. I would have to research that.</p> <p>16 Q Okay. And who came up with the practice</p> <p>17 of not including last names? You said "we."</p>				

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<p>18 A That would be Greg and I -- Shepard. 19 Q Why don't you include people's last 20 names? 21 A Privacy. 22 Q You used John Howell's name. Why would 23 you use John Howell's name and not Bob's? 24 A Because he provided his contact 25 information, as it says here in the letter, for 88: 1 people to serve as the third- party validation of the 2 RaPower3 program, and also he runs howelltax.com and 3 had people send their tax preparation to him to 4 complete and submit, so he was looking for business. 5 Q Right above the Q and A section it says, 6 "Second, Bob needs to have his 30-second icebreaker, 7 elevator speech down pat; something like:" and then 8 there's the section on the Q and A. Do you believe</p>				

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<p>9 Bob drafted this text on the Q and A?</p> <p>10 A Yes. Looks like up in paragraph two</p> <p>11 where it says, "He doesn't know how his big screen</p> <p>12 television works, but he likes to turn it on and</p> <p>13 watch it." So, you know, in salesmanship you need a</p> <p>14 30-second statement about what your business is</p> <p>15 about to share with people to pique their interests.</p>				
<p>95: 3 Q So you said Hank Zwald is frustrated</p> <p>4 that the field isn't operating, as many of us are.</p> <p>5 Are you included? Are you frustrated with Neldon</p> <p>6 Johnson?</p> <p>7 A I wish it were up and running five years</p> <p>8 ago. All right? He's run into unforeseen obstacles</p> <p>9 that he's had to deal with and eliminate in order to</p> <p>10 advance the development of the program and to</p> <p>11 completion. The individual parts</p>				

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<p>work, it's getting 12 them to work in concert. That seems to be the 13 hurdle. 14 Q And the answer you just gave, is that 15 based on your firsthand knowledge or what you've 16 been told by someone else? 17 A Well, I would say it would be my 18 observation of what has transpired over the last 19 three or four years, the development of the field 20 has slowed down, but every time that you go down 21 there there's progress being made. And sometimes 22 you go down there, and there's big progress. He has 23 purchased and developed a whole new factory down 24 there to make all the components. All right? It's 25 a big operation. 96: 1 It's now a matter of linking -- in my 2 opinion, linking all the components together so that</p>				

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<p>3 they will work right. They had things hooked up</p> <p>4 once. I do remember as an example that when they</p> <p>5 turned it on, it performed beyond expectations.</p> <p>6 Q You saw that?</p> <p>7 A I heard that.</p> <p>8 Q Who did you hear that from?</p> <p>9 A It came from Greg.</p> <p>10 Q Greg Shepard?</p> <p>11 A Yes. And that it worked beyond</p> <p>12 expectation.</p> <p>13 Q That's what Greg Shepard told you?</p> <p>14 A Yes. And they had to solve a valve</p> <p>15 problem.</p> <p>16 Q You testified that all the components</p> <p>17 work individually but not in concert. Which of the</p> <p>18 components have you yourself seen work individually?</p> <p>19 A Well, I've seen the lenses work.</p> <p>20 Q When you say "work," you mean they</p> <p>21 generated heat?</p>				

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<p>22 A Yes. 23 Q Anything else? 24 A I have seen the tracking system work on 25 a tower. I have seen the generator work. 97: 1 Q What do you mean "the generator work"? 2 What was the generator doing? 3 A Generating power. 4 Q What was turning the generator? 5 A Steam heated. 6 Q Heated by what? 7 A I don't know what -- it had heating in 8 it. 9 Q Do you think it was a lens? 10 A I don't think it was a lens at the 11 particular time. 12 Q Any other components you have seen 13 working? 14 A Well, as I said, I've seen the solar 15 concentrator work. 16 Q Is that the device under the lens? 17 A Yes.</p>				

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<p>18 Q Okay.</p> <p>19 A At the focal point.</p> <p>20 Q Anything else?</p> <p>21 A Well, I've seen the whole solar array in</p> <p>22 assembly and assembled.</p> <p>23 Q When you say "solar array," do you mean</p> <p>24 the four rings with lenses in them?</p> <p>25 A Yes. Can we speed this along a little</p> <p>98: 1 bit? I'm fading.</p>				
<p>98:10 Q Mr. Freeborn, backing up to the Tiffin</p> <p>11 Charitable Foundation, we got a little sidetracked,</p> <p>12 but what was the arrangement you had with the Tiffin</p> <p>13 Charitable Foundation with respect to --</p> <p>14 A RaPower3, they developed a fundraising</p> <p>15 program. Okay? I will go out and do a BFS clinic,</p> <p>16 and then I would, at the end of the clinic, talk to</p> <p>17 the coaches about the possibility of creating a</p> <p>18 fundraising program to raise</p>				

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<p>money for their sport. 19 And not only did we do that with the athletics, but 20 we also did it for endowment funds like to endow the 21 park, and we set that up that the commissions would 22 go to the park. 23 Q And this is from the sale of Bigger 24 Faster Stronger equipment? 25 A No. This was the sale of RaPower3 99: 1 equipment. 2 Q Oh, I thought you said it was Bigger 3 Faster Stronger. 4 A I said I did clinics, and at the end of 5 the clinics I would talk to the coaches about 6 setting up a fundraiser for their sport. 7 Q Okay. 8 A Okay? With the Tiffin Foundation I set 9 up a fundraiser for endowing the park so that they 10 would have money to operate in the future.</p>				

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<p>11 Q All right. Let me make sure I 12 understand that. You would do a Bigger Faster 13 Stronger clinic, and then at the end of the Bigger 14 Faster Stronger clinic, you would offer the 15 opportunity for a fundraiser? 16 A Yes. 17 Q And was that fundraiser by selling 18 RaPower3 solar lenses? 19 A Correct. 20 Q And now how does Tiffin Charitable 21 Foundation fit into that? Is Tiffin Charitable 22 Foundation an example -- 23 A Of fundraising. 24 Q Okay. And just explain to me how the 25 sale of solar lenses would benefit the Tiffin 100: 1 Charitable Foundation and their park? 2 A They would be established as the upline, 3 so they would get the commission. 4 Q Okay. The Tiffin Charitable</p>				

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<p>Foundation 5 would get the commission from -- 6 A The sale of lenses. 7 Q Okay. The sale of whose lenses? Whose 8 lenses -- 9 A RaPower3. 10 Q But who was selling the lenses that the 11 commission for the Tiffin Charitable Foundation 12 would get? In other words, who sold the lenses that 13 would ultimately result in a commission to the 14 Tiffin Charitable Foundation? 15 A My brother and I. 16 Q Okay. Mr. Freeborn, the income you've 17 received from your lenses, the only source of the 18 income is commissions; right? 19 A At present. 20 Q And you received 1099s for the 21 commissions that you received? 22 A Correct. 23 Q And you got those 1099s from RaPower3? 24 A Yes.</p>				

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<p>25 Q And you reported that income on your 101: 1 individual tax return?</p> <p>2 A Yes, correct.</p> <p>3 Q In 2016 it was reported to the IRS that</p> <p>4 you received \$23,453 in commissions from RaPower3;</p> <p>5 does that sound about right?</p> <p>6 A Yes.</p> <p>7 Q Is there any reason to believe that the</p> <p>8 amounts reported to the IRS are incorrect?</p> <p>9 A No.</p> <p>10 Q Do you know how much money the Tiffin</p> <p>11 Charitable Foundation received from commissions from</p> <p>12 RaPower3? An approximate number is fine.</p> <p>13 A I don't have that number. I would have</p> <p>14 to look it.</p> <p>15 Q Do you think it's more or less than</p> <p>16 20,000?</p> <p>17 A More.</p> <p>18 Q More or less than \$40,000?</p> <p>19 A Yes.</p>				

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<p>20 Q More or less than \$75,000?</p> <p>21 A In that vicinity. It's a nonprofit</p> <p>22 organization. All right? Run by</p> <p>the county. They</p> <p>23 build shelter houses, people have</p> <p>picnics there.</p> <p>24 They have got a big swimming</p> <p>pool. All right? They</p> <p>25 have outdoor stuff for the kids.</p> <p>They have a</p> <p>102: 1 remodeled ballroom, 1930's-</p> <p>type ballroom.</p> <p>2 Beautiful. Have weddings in it.</p> <p>3 Q Okay. And you believe that</p> <p>from</p> <p>4 commissions, direct from you and</p> <p>your brother, they</p> <p>5 have got somewhere in the</p> <p>vicinity of \$75,000?</p> <p>6 A In that vicinity.</p> <p>7 Q Okay. All right. Are you paying</p> <p>8 Mr. Reay's fees?</p>				
<p>102:23 THE WITNESS: To my</p> <p>understanding, right</p> <p>24 now no one is.</p> <p>25</p> <p>103: 1 BY MR. MORAN:</p> <p>2 Q No one is paying Mr. Reay?</p> <p>3 A That's my understanding.</p> <p>4 Q All right. Let me ask you this:</p>			503	

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<p>Have 5 you paid Mr. Reay any fees? 6 A No. 7 Q Do you expect to receive a bill from 8 Mr. Reay? 9 A No. 10 Q Do you know who is going to pay 11 Mr. Reay? 12 A I believe that Neldon is paying his fees 13 when it's paid, but he's three months behind. 103:21 Q All right. Why do you think that Neldon 22 Johnson is paying? 23 A Because I was told by Greg Shepard and 24 Neldon Johnson that if it ever got this far they 25 would pay lawyer fees. 104: 1 Q What do you mean "this far"?. 2 A I've never been in a deposition before 3 with the federal government. Okay? And I've never 4 received an injunction from the DOJ. And all of</p>				

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<p>5 this material is -- except for the one email -- is 6 from prior to 2012 when I was terminated. So the 7 injunction states for me to do essentially what Greg 8 Shepard said in his email, and that is to stop doing 9 RaPower3 business, which I have done. And you're 10 asking me questions about incidents and things that 11 happened after I was no longer involved, and have no 12 knowledge of. And it's our opinion that I've 13 already abided by the injunction as stated. 14 Q All right. We'll talk about that in 15 about a minute, but my question was about the 16 arrangement for the attorney's fees. When did 17 Neldon Johnson and Greg Shepard tell you that they 18 would pay Mr. Reay's fees? 19 A They said they would get a lawyer. 20 Q When did they say that?</p>				

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<p>21 A Well, after we -- it's my opinion that 22 all three of us got the same letter from the DOJ 23 about RaPower3 might -- well, to stop conducting 24 business. 25 Q When you say "letter," do you mean the 105: 1 complaint that was filed in this case? 2 MR. REAY: Just for clarification, it 3 wasn't titled a complaint, so he might not -- 4 THE WITNESS: It was titled an 5 injunction. 6 BY MR. MORAN: 7 Q Back in November 2015, were you served 8 with a document? 9 A Yes. 10 Q And is that document the letter that you 11 are referring to? 12 A Yes. 13 Q And is the letter that you are referring 14 to a Complaint for Permanent Injunction and Other</p>				

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<p>15 Equitable Relief? 16 A I have no idea what equitable relief is. 17 Q We're talking about a document that you 18 received around November 2015, and it was probably 19 served by a process server. I'm just trying to 20 understand, is that what you referred to when you 21 say "the letter that all three of us got"? 22 A I assume all three of us got it. 23 Q Okay. 24 A You asked when I found out that I would 25 have representation, and that hit me with that 106: 1 letter. 2 Q The letter that was served on you by a 3 process server? 4 MRS. FREEBORN: And then you called 5 probably. 6 THE WITNESS: Was I served? 7 MRS. FREEBORN: I thought we just got it 8 in the mail.</p>				

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<p>9 MR. REAY: You can't ask other people 10 questions. If you are asked a question, answer 11 if you know the answer. 12 THE WITNESS: I believe it came in the 13 mail. 14 BY MR. MORAN: 15 Q All right. 16 A I don't remember it being served. 17 Q But that was sometime in November, 18 December 2015? 19 A Yeah. 20 Q And after that you talked to Neldon 21 Johnson and Greg Shepard? 22 A I was always told that if a lawyer was 23 needed, Neldon would pay the fees. 24 Q Okay. And when you say "always" -- 25 A All the way back to the beginning, 2009, 107: 1 2010. 2 Q And thus far Neldon Johnson has followed</p>				

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<p>3 through on that commitment? 4 A What? 5 Q And thus far Neldon Johnson has followed 6 through on that commitment? 7 A Yes. 8 (Exhibit 503 was marked.) 9 BY MR. MORAN: 10 Q Before we talk about 503, you said all 11 the way back Neldon Johnson assured you that he 12 would pay for a lawyer if it was needed. Why would 13 a lawyer be needed? 14 A It's my understanding that lawyers were 15 involved from the beginning of RaPower3, and that 16 the RaPower3 program was written with the help of 17 lawyers that knew the tax code and created a program 18 that would qualify under the tax code, and the 19 company would be set up properly. 20 Q Well, if that's the case, why would you 21 need a lawyer?</p>				

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<p>22 A Because I was a major -- what's the 23 right word -- a major representative for RaPower3 24 due to the relationship I had with Greg Shepard in 25 that clinic fundraiser program. That gave me -- I 108: I would set up clinics or the company would set up 2 clinics that would send me around the country. And 3 while I don't know how many people are in my 4 downline, it's a lot, and so I was a major retailer, 5 would that be the right -- major seller. 6 Q Of solar lenses? 7 A Yes. 8 Q And you believed you might need a lawyer 9 because of that? 10 A I'm a school teacher and a football 11 coach, and I don't have a business background, but 12 Neldon has been in court before and he's won his 13 case, but people have their eyes</p>				

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<p>on what he's doing, 14 and they post a lot of negative information online. 15 People are paid to regularly post nefarious 16 information about what's going on, what he's doing. 17 And it was just businesses have lawyers in order to 18 comply with the law. You aren't going to ask a 19 football coach to represent a company to comply with 20 the law. You're going to talk to me about learning 21 how to tackle. 22 Q All right. Earlier just now you 23 testified -- when I asked you about why would 24 RaPower3 need lawyers, and you said, well, they set 25 up contracts. Do you recall that testimony that the 109: 1 whole program had been set up by lawyers? 2 A Well, I don't think the whole program 3 has been set up by lawyers, but lawyers have 4 approved of what's been set up.</p>				

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<p>5 Q And then now you just testified that,</p> <p>6 yeah, you wouldn't have a football coach draft this</p> <p>7 because -- or set this up?</p> <p>8 A Right.</p> <p>9 Q So do I understand your testimony to be</p> <p>10 that you believed lawyers were necessary because you</p> <p>11 didn't have the expertise to form an opinion about,</p> <p>12 for example, tax benefits?</p> <p>13 A Me personally?</p> <p>14 Q Yes.</p> <p>15 A No. It was the information that I</p> <p>16 received from RaPower3 and -- well, primarily</p> <p>17 RaPower3.</p> <p>18 Q And when I asked you why would they need</p> <p>19 a lawyer, you said because you wouldn't hire a</p> <p>20 football coach to set this kind of thing up; right?</p> <p>21 A Correct.</p> <p>22 Q Okay. Who were those lawyers that you</p> <p>23 refer to?</p>				

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<p>24 A I don't know.</p> <p>25 Q I think you earlier testified that it</p> <p>110: 1 was Kirton McConkie and Todd Anderson?</p> <p>2 A No. These would be people that would be</p> <p>3 around in 2008 and 2009 when RaPower3 was being</p> <p>4 developed.</p> <p>5 Q Okay. Who told you that lawyers had</p> <p>6 developed the RaPower3 program?</p>				
<p>110: 9 THE WITNESS: Lawyers did not create it.</p> <p>10 They looked at it to see if it would meet the</p> <p>11 requirements of the law, the tax code, which --</p> <p>12 including McConkie initially did say that it</p> <p>13 qualified and the program would run smoothly.</p> <p>14 But the lawyers didn't create the program.</p> <p>15 BY MR. MORAN:</p> <p>16 Q You said they reviewed it, though?</p> <p>17 A I was told.</p>				

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18 Q Who told you that? 19 A Greg and Neldon. 20 Q Greg Shepard and Neldon Johnson? 21 A Correct.				
111: 2 Q I understand that you are not paying for 3 your lawyer, and someone else is. And I also 4 understand Neldon Johnson and Greg Shepard told you 5 a lawyer would be provided if it was necessary; is 6 that correct? 7 A Yes.				
112:18 Q In Exhibit 503, which is Bates stamped 19 Freeborn_Roger-00620, you stated -- and this is a 20 document that you produced. You mentioned the 21 figure \$78,000. Is that approximately the amount of 22 commissions Tiffin Charitable Foundation has 23 received? 24 A Yes.			503	
115:24 Q And you testified about the accounting 25 people at RaPower3. Who are				

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the accounting people 116: 1 at RaPower3?				
116: 4 THE WITNESS: The checks are signed by 5 Glenda Johnson. 6 BY MR. MORAN: 7 Q Is that who you are referring to when 8 you say they didn't see it that way? 9 A Yeah. 10 Q Is that a yes? 11 A Yes. Can we be done? You said 15 12 minutes 40 minutes ago.				
117: 7 MR. MORAN: All right. At this point 8 let's go off the record. 9 (Off the record.) 10 MR. MORAN: Mr. Reay, is Mr. Freeborn 11 going to read and sign the deposition? 12 MR. REAY: Yes. 13 MR. MORAN: With that, the deposition is 14 concluded. You are free to go. 15 16 (Deposition concluded at 3:11				

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p.m.)				

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DEFENDANT COUNTER-DESIGNATIONS	PLAINTIFF COUNTER-DESIGNATIONS			

Instructions: One form should contain all designations for a witness. Plaintiff Designations (column 1) and Defendant Designations (column 2) will show the full deposition text that the party proposes to read in its case-in-chief. Completeness designations are proposed by the other party, under Fed. R. Civ. P. 32(a)(6), to be read with the designations. Counter-designations are read following the designations and completeness designations, similar to cross examination. This form should be provided in word processing format to the other party, who then will continue to fill in the form. The form is then returned to the proposing party for review, resolution of disputes, and further editing. The parties should confer and file a final version in PDF format using the event “Notice of Filing” and also submit a final word processing copy to the court at dj.nuffer@utd.uscourts.gov, for ruling.

All objections which the objecting party intends to pursue should be listed, whether made at the deposition, as with objections as to form, or made newly in this form, if the objection is of a type that was reserved.