

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

<p>Plaintiff Designations – BLUE Defendant Completeness— PURPLE Defendant Counter-Designations – RED (at end)</p>	<p>Defendant Designations – RED Plaintiff Completeness— PURPLE Plaintiff Counter Designations – BLUE (at end)</p>	<p>Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE</p>	<p>Exhibits</p>	<p>Ruling</p>
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<p>PLAINTIFF DESIGNATIONS</p>	<p>DEFENDANT -DESIGNATIONS</p>			
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<p>6: 1 P R O C E E D I N G S 2 MS. HEALY GALLAGHER: We are on the record 3 in the case of United States versus RaPower3, 4 et al., on August 23rd at approximately 8:37 Central 5 Time. My name is Erin Healy Gallagher of the 6 United States Department of Justice's tax division 7 appearing on behalf of the United States. 8 Counsel, would you please make your 9 appearances. 10 MR. TEAKELL: John Teakell for Mr. John 11 Howell. 12 MR. PAUL: Steven Paul by telephone for 13 the RaPower3 defendants. 14 MS. HEALY GALLAGHER: Erin Hines and 15 Christopher Moran, who also represent the 16 United States, are not presently on the line. And</p>				
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**Plaintiff
Exhibit**
683

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17 Donald Reay, who currently still represents R. 18 Gregory Shepard and Roger Freeborn, is also not 19 present.				
7: 1 JOHN HOWELL, 2 having been first duly sworn, testified as follows: 3 E X A M I N A T I O N 4 BY MS. HEALY GALLAGHER: 5 Q. All right. Mr. Howell, good morning. 6 A. Good morning. 7 Q. Would you please say and spell your name 8 for the record. 9 A. John Howell, J-O-H-N H-O-W-E-L-L. 10 Q. And would you please give me the city and 11 state where you live. 12 A. Wichita Falls, Texas. 13 Q. Do you work in the same place? 14 A. Yes.				
10:20 Q. All right. Because we're here to get as 21 accurate a record as we can of the facts of this 22 case as you remember them, I				

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<p>have to ask, is there 23 anything that would prevent you from understanding 24 and answering my questions today with the full 25 capacity of your recollection? 11: 1 A. No. 2 Q. Have you had anything alcoholic to drink 3 in the past eight hours? 11: 4 A. No. 5 Q. Are you taking medications or drugs of any 6 kind that might interfere with your memory? 7 A. No. 8 Q. Is there any other reason you can think of 9 why you might not be able to answer my questions 10 fully and accurately today? 11 A. No. 12 Q. Mr. Howell, what e-mail addresses have you 13 used since 2010? 14 A. Rockingh@wf.net. 15 Q. Any others? 16 A. Not that I can recall. 17 Q. Do you use that for both business and</p>				

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<p>18 personal e-mails? 19 A. Yes. 20 Q. Mr. Howell, did you graduate from high 21 school? 22 A. Yes. 23 Q. In what year? 24 A. 1973.</p>				
<p>18:16 Q. And you mentioned that you started with 17 H&R Block part time in 1974, and your first job was 18 acting as a courier? 19 A. Yeah, just picking up and delivering tax 20 returns. 21 Q. Sure. When did you start working with tax 22 returns? 23 A. I was probably doing some of that 24 probably, oh, starting in '75 after the first tax 25 classes, somewhere around there. 19: 1 Q. And when did you stop working for 2 H&R Block? 3 A. 2000. I was working with some franchises</p>				

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<p>4 up until 2003, 2004. Been awhile back.</p> <p>5 Q. Okay. Again, just for right now I'm</p> <p>6 interested in kind of broad strokes. Can you take</p> <p>7 me through the different job titles that you held</p> <p>8 with H&R Block over the course of that time?</p> <p>9 A. Let's see. Started out as a courier, then</p> <p>10 a tax preparer, then a math checker, instructor,</p> <p>11 then a theory checker and instructor.</p> <p>12 And they have different levels of tax</p> <p>13 preparers, and depending on your years of experience</p> <p>14 on whether -- I don't know if they had official</p> <p>15 titles back then. Now they do, but I'm not sure</p> <p>16 what they -- they just called us a tax preparer at</p> <p>17 that time. And then as your -- depending on your</p> <p>18 years of experience, you would do the more complex</p>				

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19 tax returns.				
21: 7 Q. So when you left H&R Block in 2003 or 8 2004, what did you do then? 9 A. I worked with my dad at his -- at our tax 10 office, Howell Tax Service. 11 Q. Since you started working at Howell Tax 12 Services, have you had any other jobs? 13 A. No. 14 Q. Have you earned income from any other 15 source than Howell Tax Services since you started 16 working there? 17 A. Yes. 18 Q. What are those sources? 19 A. Securities, insurance, network marketing 20 companies. 21 Q. Anything else? 22 A. Should -- I think that about covers it. 23 Q. When you say you have earned income from 24 securities, do you mean, for lack of a better word, 25 brokering securities?				

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<p>22: 1 A. No. Setting up clients' IRAs, rollover 2 401(k)s into IRAs, doing annuities. 3 Q. Is that on a commission basis? 4 A. Yes. 5 Q. And with respect to your income from 6 insurance, is it similar to the securities? 7 A. Yes, sell life insurance policies. 8 Q. And you get a commission for that? 9 A. Correct. 10 Q. And how about the network marketing 11 component? What network marketing companies have 12 you been part of? 13 A. Well, my security license is through 14 Primerica, which is network marketing. 15 Q. Any others? 16 A. Ignite, which is stream energy. Cierra, 17 they were a network marketing company, marketed pain 18 patches and things like that.</p>				

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<p>19 Q. Any others? 20 A. I don't remember the name. One that did 21 vitamins and stuff. Shaklee. 22 Q. Could you spell that? 23 A. S-H-A-K-L-E-Y, I believe it is. They do a 24 lot of vitamins and stuff. 25 Q. And actually could you spell Cierra? 23: 1 A. C-I-E-R-R-A, Cierra. It's a network 2 marketing company. 3 Q. Any other network marketing companies? 4 A. RaPower. 5 Q. Any others? 6 A. Briefly with Melaleuca, just very briefly 7 with them. 8 Q. Melaleuca? 9 A. Melaleuca. I can't even pronounce -- 10 can't even spell that one. 11 Q. Okay. So we have Primerica, Ignite, 12 Cierra, Shaklee, RaPower, Melaleuca. Any other 13 network marketing companies? 14 A. Not that I can recall.</p>				

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<p>15 Q. And the only additional income you've 16 received since working for Howell Tax Services is 17 from securities, insurance, and network marketing? 18 A. Yes. 19 Q. Okay. Let's talk about Howell Tax 20 Services a little bit. What kind of entity is 21 Howell Tax Service? 22 A. S corp. 23 Q. Who owns it? 24 A. My mother since my father's passed away, 25 myself, and then some of my siblings. 24: 1 Q. Are you familiar with an entity called 2 Rocking H? 3 A. That's Rocking H Enterprises, Inc., dba 4 Howell Tax Service. 5 Q. Okay. So Rocking H Enterprises, Inc., 6 does business as Howell Tax Services? 7 A. Yes. 8 Q. Does Rocking H do business</p>				

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<p>under any other 9 name? 10 A. No. 11 Q. Who's the primary decision-maker for 12 Rocking H? 13 A. Probably myself. 14 Q. How long have you been in that role? 15 A. Since my father passed away in 2013. 16 Q. When you started working for Howell Tax 17 Services in 2003 or 2004, what was your role there? 18 A. Mainly tax preparation, consulting. We do 19 payrolls for some companies. We do bookkeeping for 20 companies. 21 Q. Are those the primary services that Howell 22 Tax Services provides? 23 A. Yes. 24 Q. And are those the primary services that 25 Howell Tax Services has provided since 2003 or 2004? 25: 1 A. Yes. 2 Q. Are there any other services</p>				

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<p>that Howell 3 Tax Services has provided since 2003 or 2004? 4 A. I think that should cover it. 5 Q. When you started off working for Howell 6 Tax Services, about how many hours a week would you 7 say you worked for the company? 8 A. Forty. 9 Q. Has that been consistent to present day? 10 A. Yes. A little bit less now. 11 Q. Around when would you say you reduced your 12 schedule? 13 A. Let's see. My oldest granddaughter is -- 14 I'd say probably, oh, four or five years ago when we 15 started taking care of grandkids. So I go in late. 16 Q. About how many hours a week do you take 17 care of your grandkids? 18 A. Well, my wife takes care of them all the 19 time. I'm usually there till 9:00, 9:30, sometimes 20 10:00 before I get away.</p>				

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<p>21 Q. And then otherwise are you filling your 22 workdays with Howell Tax Services -- 23 A. Yes. 24 Q. -- tasks? Sorry. Let me finish the 25 question. Otherwise, are you filling your day with 26: 1 Howell Tax Services tasks? 2 A. Between that and then if I need to do any 3 securities or if somebody wants some insurance or if 4 I attend a meeting with one of the network marketing 5 companies, so -- 6 Q. Do your hours for Howell Tax Services go 7 up during tax preparation times? 8 A. Yes. 9 Q. About how many hours a week would you say 10 you work during tax prep season? 11 A. 60, 70 hours. 12 Q. And for you, when -- when is tax prep 13 season? 14 A. Typically starts middle of</p>				

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<p>January. 15 Starts slowing down about a little bit after 16 April 15, 16, 17. Then it'll pick back up typically 17 September, October tax -- September, October during 18 the end of tax time. 19 Q. So that's -- for September and October, 20 that's when folks are filing if they got an 21 extension, right? 22 A. Correct. 23 Q. Are you an employee of Rocking H? 24 A. Yes. 25 Q. Currently about how many other employees 27: 1 does Rocking H have? 2 A. Three. 3 Q. Who are they? 4 A. My brother, my daughter, and my mother. 5 Q. And what's your brother's name? 6 A. Daniel. 7 Q. Howell? 8 A. Howell. 9 Q. Your daughter's name?</p>				

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<p>10 A. Amber Bennett. 11 Q. And your mother's? 12 A. Jean Howell. 13 Q. Since 2010 has Rocking H had any other 14 employees? 15 A. 2010. My son-in-law, Joel Bean, off and 16 on. 17 Q. Is his last name B-E-A-N? 18 A. Bean, yes. Since 2010. I believe that's 19 all. 20 Q. And what about your father? To your 21 knowledge, was he an employee? 22 A. Yes. Ernest Howell. 23 Q. All right. So to the best of your 24 recollection, the employees that Rocking H has had 25 since 2010 are you, your father, Ernest Howell, 28: 1 Daniel Howell, Amber Bennett, Jean Howell, and off 2 and on Joel Bean. Correct? 3 A. Yes. 4 Q. Does Rocking H -- has Rocking H since 2010</p>				

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<p>5 used any contractors for accounting and tax prep 6 work? 7 A. My sister in Florida, Pam Garfinkle. 8 Q. Anyone else? 9 A. No. 10 Q. For Rocking H's employees and your sister, 11 Ms. Garfinkle, when they e-file tax returns, do 12 those tax returns say Howell Tax Service? 13 A. Yes.</p>				
<p>28:25 Q. Service. Okay. Does Howell Tax Service 29: 1 have a social media presence? 2 A. Yes. 3 Q. What forms of social media does Howell Tax 4 Service use? 5 A. Website. 6 Q. Does it have a Facebook page? 7 A. Yes.</p>				
<p>30:13 Q. And what about the Howell Tax Service 14 Facebook page? 15 A. I usually do that. Sometimes my 16 son-in-law will post something</p>				

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<p>to it. 17 Q. Who is it that started the Facebook page? 18 A. I probably did. 19 Q. Do you remember around when you started 20 it? 21 A. I really couldn't say.</p>				
<p>32:22 Q. Mr. Howell, if your son-in-law ever posted 23 something to the Howell Tax Service Facebook page 24 that you did not want to appear there, would you 25 take it off? 33: 1 A. Yes.</p>				
<p>33:16 Q. Do you -- present day are you continuing 17 to maintain the Howell Tax Service Facebook page? 18 A. Yes. 19 Q. Mr. Howell, do you have any formal 20 designations, professional designations? 21 A. EA. 22 Q. And what is an EA? 23 A. Enrolled agent with the U.S. Treasury 24 Department of Internal Revenue</p>				

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Service.				
35:18 Q. When did you take the exam? 19 A. 2001, I believe. 20 Q. Did you pass it? 21 A. Yes.				
36: 7 Q. So did you also obtain the designation in 8 2001? 9 A. Yes.				
37:18 Q. Sure. Okay. So then after you obtained 19 the EA designation, have you had that designation 20 consistently since 2001? 21 A. Yes.				
39:17 Q. Okay. Mr. Howell, so we're here today in 18 the context of the United States lawsuit against 19 RaPower3 and other folks. And you mentioned 20 RaPower3 as one of the network marketing companies 21 that you're involved in. 22 When did you first hear about RaPower3? 23 A. Believe 2010. 24 Q. How did you first hear about it?				

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<p>25 A. One of my tax clients had went to a 40: 1 seminar given by RaPower3 that she had went to and 2 they had talked about the network marketing of the 3 solar systems as well as the tax benefits. And she 4 asked me if I knew anything about it, and I said no.</p>				
<p>40:20 Q. Well, that's my next question. So what 21 did you do next after Ms. Roe came to you with the 22 first information about RaPower3? 23 A. It was probably in 2011 before I even -- 24 before I even looked at it. Then I looked at 25 their -- I believe it was somewhere in that time 41: 1 frame I looked at their website, did a PDF of their 2 contracts, information that they had on their 3 website, looked at the tax law pertaining to energy 4 credits for solar, wind, geothermal, coal, nuclear,</p>				

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<p>5 whether the new or whether it was refurbished 6 equipment, the treasury regulations for it.</p>				
<p>43: 2 Q. You identified a couple of different 3 things that you did to start investigating it. You 4 mentioned that you reviewed the website. Did you 5 mean the RaPower3 website? 6 A. Yes. 7 Q. Did you review any other websites? 8 A. IRS.gov looking up the tax laws associated 9 with solar energy, geothermal, wind, treasury 10 regulations. 11 Q. Okay. Any other websites that you recall? 12 A. No. 13 Q. You said that you reviewed contracts. 14 What contracts were those? 15 A. Their purchase agreements, operation 16 agreements. 17 Q. Did you get those contracts from the</p>				

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18 RaPower3 website? 19 A. Yes.				
44:22 Q. In 2011 what, if any, research did you do 23 on International Automated Systems, Inc.? 24 A. 2011. I don't know if it was '11 or '12 I 25 looked up IAUS. I'm not sure what year. 45: 1 Q. Okay. Well, when you first -- what did 2 you look at whenever you did look up IAUS? 3 A. I looked at their website that they had 4 up. I guess they still have it up. I haven't 5 looked at it lately. 6 Q. Is that IAUS.com? 7 A. I believe so. 8 Q. In checking out IAS, did you do anything 9 else? 10 A. Not that I recall.				
45:11 Q. In 2011 what, if any, research did you do 12 on the company LTB, LLC? 13 A. I know I looked up something on them. I'm				

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<p>14 not sure what year. It might have been '11.</p> <p>15 Because they're mentioned in the contracts.</p> <p>16 Q. Even if it wasn't in 2011, what, if any,</p> <p>17 research have you done on LTB in 2011 or since that</p> <p>18 date?</p> <p>19 A. I think I just did a Google search or</p> <p>20 something. Been awhile back.</p> <p>21 Q. Do you recall if you found anything?</p> <p>22 A. I'm sure I did. I think it showed who the</p> <p>23 officers were. I don't recall a lot of information</p> <p>24 on it.</p> <p>25 Q. Do you remember who the officers were?</p> <p>46: 1 A. I couldn't say for sure.</p> <p>2 Q. Do you remember having found anything else</p> <p>3 with respect to LTB, LLC?</p> <p>4 A. Not that I recall.</p> <p>5 Q. And just to close that loop on IAUS, at</p> <p>6 any time since 2011 have you conducted any research</p>				

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<p>7 on IAUS other than reviewing its website? 8 A. I'm sure I have. I just don't really 9 recall, but I'm sure I've looked at something on 10 them, looked up their ticker symbol to see if there 11 was a SEC filing. I think I looked at -- I'm not 12 sure when it was. 13 Q. Do you remember what, if any, information 14 you found about IAS? 15 A. It's been too long back. I don't really 16 recall a lot of that. 17 Q. Have you ever bought any shares of IAS? 18 A. Yes. 19 Q. How many shares do you own? 20 A. 10,000. It's penny stock. 21 Q. When did you buy that? 22 A. 2012, I believe. I'm not sure. 23 Q. Have you bought any stock since 2012? 24 A. I think I've bought it a couple of times. 25 Q. So have you ever sold it, sold</p>				

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any stock 47: 1 in IAS? 2 A. No. 3 Q. So to your knowledge, as of today you own 4 about 10,000 shares? 5 A. Yes.				
48: 3 Q. Are you familiar with the name Roger 4 Freeborn? 5 A. Yes. 6 Q. What do you know about Roger Freeborn? 7 A. We've talked together. 8 Q. When? 9 A. I can't give you exact times. I think I 10 met him at the RaPower convention in 2012, I think. 11 He was there. 12 Q. Did you have any communications with him 13 after the RaPower3 convention in 2012? 14 A. I'm sure I have.				
48:22 Q. And you're familiar with the name Greg 23 Shepard? 24 A. Yes. 25 Q. You've met Mr. Shepard?				

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<p>49: 1 A. Yes. 2 Q. When did you first meet in person? 3 A. At the convention. 4 Q. And you testified earlier that you may 5 have spoken with him in 2011 but you're not sure. 6 Is the convention the first time you definitively 7 recall having -- 8 A. Yes. 9 Q. -- spoken with him? 10 A. Yes.</p>				
<p>52:22 Q. Did you ever ask anyone about LTB, LLC's 23 experience or expertise with solar energy 24 technology? 25 A. I don't recall. 53: 1 Q. Why not? 2 A. I just don't recall if I ever did or not. 3 Long time ago. 4 Q. Sure. 5 A. Many conversations. What all the topics 6 were, I don't know. 7 Q. If you did not ask anyone about LTB, LLC's</p>				

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<p>8 background, experience, or expertise in solar energy</p> <p>9 technology, do you have any explanation for why?</p> <p>10 A. Really don't have an answer.</p> <p>11 Q. Do you know who owns LTB, LLC?</p> <p>12 A. I'd have to look it up again. I'm sure</p> <p>13 it's probably Neldon Johnson or somebody associated</p> <p>14 with him.</p> <p>15 Q. And why do you think that?</p> <p>16 A. Well, because he -- owner of the RaPower3,</p> <p>17 the IAUS, so I would assume you try to keep control</p> <p>18 of companies you're working with.</p> <p>19 Q. Okay. So to your knowledge or what you</p> <p>20 think sitting here today is that Neldon Johnson is</p> <p>21 the owner of LTB, LLC?</p> <p>22 A. Or part owner. I wouldn't say he's the</p> <p>23 total owner. I mean --</p> <p>24 Q. I'm just asking for your understanding.</p> <p>25 And also to your understanding,</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>Mr. Johnson owns 54: 1 some or all of RaPower3? 2 A. Yes. 3 Q. To your understanding, Mr. Johnson owns 4 some or all of International Automated Systems? 5 A. Yes.</p>				
<p>54: 6 Q. You mentioned, Mr. Howell, that Neldon 7 Johnson had written a white paper on solar energy 8 technology. Do you recall reading that white paper? 9 A. Yes. 10 Q. Where did you get it from? 11 A. Off of their website. 12 Q. Off the RaPower3.com website? 13 A. Yes. 14 Q. Did you understand the white paper? 15 A. No. Lot of technical.</p>				
<p>56:11 Q. Well, then how about this. Walk me 12 through how you think the solar lenses we're talking 13 about here, how they are supposed to convert energy 14 from the sun into a finished</p>				

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<p>product. 15 A. The solar lenses that are on the towers 16 are then the -- with the rotation of the towers 17 focus energy to a heat concentrator which then goes 18 to the turbines. I'm not an engineer, so I really 19 don't know how it -- how it all works. 20 And so it's -- I've seen the towers. I've 21 seen how they can focus the rays sun into a focal 22 point. They actually set a piece of wood on fire. 23 So I do know that it -- that, and I've seen how 24 they're developing the concentrator to use in part 25 of their system. 57: 1 It's like how does a computer work. I 2 couldn't tell you that. All I know is I can use it. 3 Same way with that technology. I'm not an engineer, 4 but I -- I don't know all the terminology or</p>				

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<p>5 anything on how it all works. 6 Q. Have you ever seen a lens being used in 7 any system that generates electricity? 8 A. Did I actually go and see it? No. 9 Q. Have you ever heard that a lens was used 10 in any system that ended up generating electricity? 11 A. Yes. 12 Q. Where did you hear that from? 13 A. Probably RaPower. They have a house that 14 I believe they say is -- utilizes one of their 15 systems to do their energy. 16 Q. Have you ever heard of any lens being used 17 in any system to generate electricity for use 18 anywhere other than that house? 19 A. Not that I recall. 20 Q. When you say you heard of that from 21 RaPower, who at RaPower? 22 A. I believe it was Greg Shepard had sent out</p>				

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<p>23 some pictures of the -- of the house, the -- there</p> <p>24 was -- I'm trying to remember what it all was. When</p> <p>25 the cabling -- it's been awhile back since I looked</p> <p>58: 1 at that, but I know they had a building where the</p> <p>2 energy ran into the turbine. I don't remember all</p> <p>3 of it, but they -- it's been a number -- a couple</p> <p>4 years back that they had sent it out. Then it was</p> <p>5 actually on their website too in addition to that.</p> <p>6 Q. Did you ever ask to see any documentation</p> <p>7 or other support that would show that any lens was</p> <p>8 used in a system that produced electricity for that</p> <p>9 house?</p> <p>10 A. I don't recall ever asking for anything.</p> <p>11 Q. Any particular reason you didn't ask for</p> <p>12 that?</p> <p>13 A. Didn't really think about it.</p> <p>14 Q. To your knowledge, has</p>				

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anyone ever been 15 paid for the electricity that you heard was going to 16 that house? 17 A. Not that I know of.				
59: 7 Q. Before the break we were talking about 8 whether you had heard of or seen lenses in use as 9 part of the system to produce electricity. 10 Have you ever seen any lens be used as 11 part of a system that ultimately resulted in heat 12 being provided to a structure? 13 A. No. 14 Q. Have you ever seen any lens be used as 15 part of a system to cool a structure? 16 A. No. 17 Q. Have you ever seen a lens be used as part 18 of a system that creates clean water? 19 A. No. 20 Q. Have you ever seen a lens be used as part 21 of a system that heats water?				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017

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<p>22 A. I think they produced a YouTube that</p> <p>23 showed that. I'm not positive, but I believe I saw</p> <p>24 maybe a YouTube that they had put out that showed</p> <p>25 that.</p> <p>60: 1 Q. When you say a YouTube, do you mean a</p> <p>2 video that you saw online?</p> <p>3 A. Yes.</p> <p>4 Q. And you think you've seen a video of a</p> <p>5 lens being used in a system that produced hot water?</p> <p>6 A. And it was heating the water. I just</p> <p>7 briefly -- didn't look at the whole thing. It was</p> <p>8 just a YouTube clip showing the water being heated.</p> <p>9 I didn't look at all of it. It was just</p> <p>--</p> <p>10 Q. So can you describe to me what you did see</p> <p>11 in that video?</p> <p>12 A. Just showed the -- I believe the water</p> <p>13 being heated through a solar panel.</p>				

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Deposition of John Howell taken August 23, 2017*

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<p>14 Q. A lens? 15 A. A solar panel. 16 Q. What do you mean when you say solar panel? 17 A. A lens, a solar panel. It's been awhile 18 back, so I don't recall exactly all of it in 19 context. 20 Q. How do you know -- was the -- were the 21 sun's rays going through the lens directly to water? 22 A. It was just like 15, 30 seconds, just a 23 little YouTube, and I don't exactly remember how 24 it -- something similar to that. But that's all. 25 Q. I'm just trying to understand what you 61: I saw. 2 A. It was just briefly that I saw it. It was 3 just IAUS or RaPower has a number of mini YouTube 4 videos that they've done over their technology, 5 their manufacturing process, their different</p>				

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Deposition of John Howell taken August 23, 2017*

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<p>6 components and things. It was just a brief -- so I 7 don't really remember all of it. I might have seen 8 a series of them at one time. 9 Q. So, for example, I am familiar with a 10 video where a turbine is spinning and it looks like 11 steam is coming out of the nozzles. Is that what 12 you're thinking of? 13 A. I think I've seen one of those too. It's 14 just I've probably watched 40, 50 different ones at 15 different times, so -- 16 Q. Right. And what I'm trying to understand 17 is, so the video that you recall having seen of a 18 lens being used in a system to generate hot water, 19 is that the video of the turbines spinning with 20 steam coming out of it? 21 A. I believe it was different from that. 22 Q. Okay. So what did you actually see?</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017

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<p>23 A. It was just very, very brief. And I 24 probably watched a number of different ones, so -- 25 Q. Right. And what I want to know is what 62: 1 you saw. So if you don't remember what you saw, 2 that's fine. 3 A. I really can't tell you exactly what it 4 was, you know. It's not like I kept playing it over 5 and over and over. No, I don't really recall. 6 Q. All right. So have you ever heard of any 7 lens being used in a system to generate heat for a 8 structure? 9 A. No. 10 Q. Have you ever heard of any lens being used 11 in a system to cool a structure? 12 A. I think I've already answered that 13 question. No. 14 Q. Have you ever heard of any lens being used 15 in a system to create clean</p>				

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Deposition of John Howell taken August 23, 2017

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<p>water? 16 A. I'm thinking create the steam, then that 17 would create the clean water, so -- 18 Q. So is the answer yes or no? 19 A. Going back to the brief clip I saw, it's 20 in theory that if you can heat the water, you can 21 purify it. 22 Q. Whose theory is that? 23 A. I think it's general theory of science 24 that if you can heat water, you can purify it 25 through the steam itself that comes off. It's going 63: 1 to be more pure and leave the residues down. 2 Q. So did you hear from anyone at RaPower3, 3 IAS, LTB that a lens was used in a system that 4 created purified water? 5 A. No. 6 Q. Have you ever heard of a lens being used 7 in a system to heat water? 8 A. No.</p>				

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Deposition of John Howell taken August 23, 2017*

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<p>63:16 Q. Well, let's do this. Let's say I'm 17 someone who's interested in hearing about RaPower3. 18 What would you tell me? 19 MR. TEAKELL: If you know. 20 A. Usually the first thing I tell them is to 21 check out the RaPower website and talk to them. But 22 if they're interested in the network marketing side, 23 I can tell them their commission structure is based 24 on the number of units that are sold on their 25 downline, which is typical of any network marketing 64: 1 company. 2 BY MS. HEALY GALLAGHER: 3 Q. Okay. And by downline do you mean, you 4 know, if you, for example, bring me in to RaPower3, 5 I'm in your downline? 6 A. Yes. 7 Q. And then anyone that I bring in to 8 RaPower3 would be in my downline --</p>				

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Deposition of John Howell taken August 23, 2017*

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9 A. Yes. 10 Q. -- and in your downline. 11 A. Yes.				
67:13 Q. Mr. Howell, you have purchased units from 14 RaPower3, correct? 15 A. Yes. 16 Q. Have you ever been paid any rental income? 17 A. No. 18 Q. To your knowledge, has anyone ever been 19 paid rental income for their units? 20 A. Not that I recall. 21 Q. So to your knowledge no one has been paid 22 rental income? 23 A. Right, yes. 24 Q. Mr. Howell, you mentioned bonuses. What's 25 your understanding of how someone gets a bonus? 68: 1 A. When they purchase the solar lens, then 2 each unit they were -- once IAU -- IAUS hit their 3 targeted income goals, then they would pay out 4 bonuses based on the number of				

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Deposition of John Howell taken August 23, 2017

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<p>units that you 5 purchased. 6 Q. Have you ever been paid a bonus? 7 A. No. 8 Q. To your knowledge has anyone else ever 9 been paid a bonus? 10 A. No. 11 Q. Have you ever asked anyone why you have 12 not received rental income? 13 A. No. 14 Q. Why not? 15 A. Because I know why. 16 Q. Why haven't you? 17 A. Because they're still developing the solar 18 field, and then they've got to hit their targeted 19 goals. 20 Q. You bought into this in 2011, correct? 21 A. I believe so. 22 Q. Okay. It's 2017. 23 A. I understand. 24 Q. Where's that rental income, sir? 25 A. Mm-hmm. 69: 1 Q. Where is it?</p>				

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Deposition of John Howell taken August 23, 2017

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<p>2 A. It's piling up, supposedly. 3 Q. It's piling up, you say. What do you mean 4 by that? 5 A. I don't know where it's at. 6 Q. What do you mean by -- 7 A. And to -- 8 Q. Hang on. What do you mean by it's piling 9 up? 10 A. It's piling up for my grandkids to collect 11 on. That was just being funny. 12 Q. So has anyone ever told you that you will 13 be paid back rent for your units? 14 A. I don't believe so. 15 Q. So if you bought in in 2011 and now it's 16 2017, have you ever complained to anyone that you 17 haven't received rental income? 18 A. I imagine I have -- 19 Q. To whom? 20 A. -- asked Greg Shepard what the problem is, 21 why they're not in production, and just like 22 probably lots of other people have probably asked</p>				

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<p>23 him the same question. 24 Q. Have you ever asked anyone other than Greg 25 Shepard what the problem is? 70: 1 A. I think I've talked to Neldon one time a 2 number of years back. 3 Q. When did you talk to Neldon? 4 A. 2012, '13. It's been quite awhile back. 5 Q. What did Mr. Johnson say? 6 A. That they were having some development 7 problems with some of the components. 8 Q. Did that satisfy you? 9 A. I actually saw the problem. I actually 10 was in their manufacturing plant in 2014 or '15 and 11 saw a lot of their heat concentrators that they had 12 produced but he was having to redesign because in 13 one of their field tests they didn't take the heat 14 that they had projected that they would and so he 15 was having to redesign the concentrator. And they</p>				

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Deposition of John Howell taken August 23, 2017*

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<p>16 had a whole warehouse full of them already produced. 17 Q. I want to make sure I understand. So they 18 had already produced concentrators in large 19 quantities? 20 A. Yes. 21 Q. And only after that found out that it 22 didn't work the way they wanted it to? 23 A. On an -- they had done another heat test, 24 and apparently the sun's rays were getting hotter 25 than they had originally designed for. 71: 1 MS. HEALY GALLAGHER: So I'd like you to 2 read back the question, please. 3 THE REPORTER: "Question: I want to make 4 sure I understand. So they had already produced 5 concentrators in large quantities? 6 "Answer: Yes. 7 "Question: And only after that found out 8 that it didn't work the way they</p>				

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<p>wanted it to?" 9 BY MS. HEALY GALLAGHER: 10 Q. Yes or no? 11 A. No. 12 Q. No. Okay. So what happened? 13 A. They redesigned the concentrator. 14 Q. Right. 15 A. Neldon redesigned the concentrator. 16 Q. And what I want to understand is, did he 17 redesign the concentrator before or after they had 18 produced many concentrators that did not work? 19 A. I believe it was after. 20 Q. Okay. So he -- they produced a number of 21 concentrators. Only then did they realize that 22 style of concentrator did not work? 23 A. To what I understand, yes. 24 Q. So then Mr. Johnson had to redesign the 25 concentrator? 72: 1 A. Yes. 2 Q. Did you ever ask him why they</p>				

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Deposition of John Howell taken August 23, 2017*

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<p>wasted the 3 time to produce all kinds of concentrators that 4 didn't work? 5 A. I've been in manufacturing a number of 6 years, and I have seen designs that supposedly work 7 and then didn't work and then they had to go back 8 and redo the design. And so it -- it's -- in the 9 manufacturing process, yes, it can happen. 10 Q. To your knowledge, did Mr. Johnson's 11 redesigned concentrator work? 12 A. I don't know. 13 Q. Have you ever asked? 14 A. No, I haven't. 15 Q. Why not? 16 A. I haven't ever talked to him in a number 17 of years. 18 Q. Have you asked anyone else whether the new 19 concentrator works? 20 A. I don't believe I have. 21 Q. Why not? 22 A. I wasn't thinking about that</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>any 23 particular time. 24 Q. What I'm trying to understand, Mr. Howell, 25 if you're supposed to be getting rental income from 73: 1 a unit that is in operation and it continues to not 2 be in operation, I'd like to know why you are 3 content with these answers. 4 A. It -- the whole process is a complex 5 process that I don't begin to understand all of the 6 development and everything behind it. And Neldon 7 Johnson designs everything. He tests everything. 8 Now, if they had a -- spending millions of 9 dollars on engineering, then you would expect it to 10 be solved within a short period of time. But when 11 you have one person that does everything, they do 12 the design work, they do the testing of each of the 13 components of it to maintain</p>				

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Deposition of John Howell taken August 23, 2017

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<p>cost levels down, then 14 in that environment it's going to take a lot longer 15 period of time. Then if you hire a bunch of 16 engineers, here's a problem, let's get it fixed, 17 then go. Why -- and that's their decision.</p>				
<p>75:20 Q. When did you start complaining to Greg 21 Shepard that your units were not generating rental 22 income? 23 A. Probably off and on various times. I 24 don't recall any really specific times or anything. 25 Might have a conversation and ask him what the 76: 1 progress was on the manufacturing and how things 2 were going, but I don't know if any -- and he really 3 says it's Neldon would be the one to talk to because 4 he has actually -- does the design work. He does 5 the -- Greg does the -- runs the day-to-day</p>				

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<p>6 operation, but it's up to Neldon to make sure that 7 all of the developments are done and everything. 8 And -- 9 Q. About how many times would you say you've 10 complained to Greg Shepard that you're not earning 11 any rental income? 12 A. Hard to say. 13 Q. More than ten? 14 A. Possibly. 15 Q. More than 20? 16 A. I don't know. I'm not sure of. 17 Q. And he refers you to Neldon Johnson when 18 you complain about that? 19 A. Well, he usually explains what stage that 20 they are in in their development of the solar field 21 or in the development of their -- of the circuit 22 boards or the different components in case there had 23 been a delay or something.</p>				
<p>77:18 Q. Mr. Howell, it's your understanding, 19 correct, that there are certain</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017

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federal income tax 20 benefits of buying units through RaPower3? 21 A. Yes. 22 Q. What are those? 23 A. The energy credit and the depreciation.				
78:13 Q. So we'll -- I'll keep my questions with 14 respect to visits to Utah with some connection to 15 RaPower3. So since 2010 how many visits have you 16 made to Utah in connection with RaPower3? 17 A. Two. 18 Q. Two. When were those? 19 A. 2012 and I believe 2015, '14 or '15. I'm 20 not sure exactly which year. 21 Q. All right. For the 2012 visit what did 22 you do? 23 A. That's when they had a convention. 24 Q. What did the convention involve? 25 A. We actually toured the manufacturing plant 79: 1 and we had a convention				

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Deposition of John Howell taken August 23, 2017

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<p>meeting where Greg Shepard 2 talked, Neldon Johnson talked. And then they had a 3 CPA there from Utah that talked too. 4 Q. During your visit in 2012, did you 5 actually see towers with lenses installed? 6 A. We did the -- went to their research and 7 development site. 8 Q. The meeting, was that in Salt Lake City? 9 A. I believe it was, at the library at the 10 beginning. It was two places we went to. Trying to 11 remember where they were. Know one was at a 12 library. Another one was at a -- I don't -- might 13 have been the same area. 14 Q. You said that Greg Shepard talked at the 15 meeting. Do you remember what he talked about? 16 A. Just about RaPower. I don't really 17 remember all of the specifics or</p>				

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Deposition of John Howell taken August 23, 2017

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<p>anything. 18 Q. Do you remember what Neldon Johnson talked 19 about? 20 A. Basically the technology and the 21 development of the technology. 22 Q. Do you remember what the CPA talked about? 23 A. He was talking about the tax benefits and 24 the tax law, the energy credits, the depreciation. 25 Q. And you said you toured the manufacturing 80: 1 plant in 2012? 2 A. Yes. 3 Q. And you toured the R&D site in 2012? 4 A. Yes. 5 Q. On the R&D site, that's where there are 6 approximately 15 or 17 towers erected, correct? 7 A. Somewhere in that neighborhood. 8 Q. Right. Did you go anywhere else in 2012? 9 A. No. Yeah, I take that back. Yes, we went</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017

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<p>10 to Neldon's house. 11 Q. Why did you go to Neldon's house? 12 A. We just went by there. No particular 13 reason that I know of. That's just where the whole 14 group of us went. 15 Q. Do you remember seeing government 16 officials -- 17 A. Yes. 18 Q. -- with large weapons -- 19 A. Yes. 20 Q. -- on that 2012 visit? 21 A. Yes. 22 Q. Do you know what that was about? 23 A. They were doing a raid. 24 Q. On? 25 A. RaPower, Neldon Johnson, confiscating 81: 1 computers and everything. Yes. 2 Q. Did you ask anybody about that? 3 A. We did. We talked about it some. 4 Q. Who did you talk about it with?</p>				

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<p>5 A. Greg, Neldon. They were -- we were at 6 a -- we had stopped somewhere to -- they cooked 7 hamburgers and stuff, and so -- 8 Q. What did Neldon Johnson say about the 9 raid? 10 A. I don't really recall all of that. We 11 weren't given any specifics. 12 Q. You mean specifics? 13 A. I didn't look at any search warrants or 14 anything like that, so I didn't have the specifics. 15 Q. What did Greg Shepard say, if anything? 16 A. That's been awhile back. I'm not sure of 17 any exact things that they said. 18 Q. Do you remember generally? 19 A. Just said that the government raided 20 Neldon's house and the manufacturing plant, because 21 we had to go to the solar research and development 22 first before we could come back to the manufacturing</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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23 plant.				
98: 7 Q. So it sounds like, Mr. Howell, until a 8 court definitively rules that the RaPower3 program 9 is unlawful, you will continue to prepare tax 10 returns with RaPower3 tax benefits on them. 11 A. Probably. Because right now there's -- 12 the tax law's there. There's been other court cases 13 with similar technologies that have went in their 14 favor. There's been tax court cases that were 15 opposite. And so this is a complex issue that, you 16 know, if you want to go back to look at is it a 17 scam, then there's a lot of other industries you 18 could look at and say that they were scams. 19 But it's never -- there's no place, no 20 court has said, hey, this is, this isn't. The tax 21 law says, hey, you purchase				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>solar equipment, you're 22 entitled to these solar energy credits. When you 23 take the depreciation, you have to reduce the 24 depreciation by half of the solar energy credit to 25 get your basis for your depreciation. And so it's 99: 1 not cut and dry. 2 If I thought that, okay, I can foresee 3 RaPower is going to shut down in 2018, hey, look, 4 we've got to stop doing this, they're going out of 5 business, and so we're not going to have any basis 6 to do any of this. But we don't know what the 7 future's going to hold. They might develop their -- 8 get their solar field up and running and produce 9 electricity and tie it into the grid. And then 10 where is all of these court cases going? I don't 11 see the future. Who can? 12 Now, if I thought that this was a</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017

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<p>scam 13 against the government, yes, I would tell them they 14 couldn't take it. Somebody says they -- they got a 15 racehorse and they have a business of racehorses, 16 I'm going to tell them, no, they don't, because of 17 the -- the tax court cases that there's been on 18 racehorses per se and how they have to be set up and 19 everything. Very few people can actually show that 20 as a business. 21 And the same with farming, same with any 22 business. You can say you have a farm, but until 23 your intent is to make money with that farm, and you 24 can take losses forever, in theory, but at some 25 point in time you've got to show your intent is to 100: 1 make money, how are you going to make money, where 2 is your revenue going to be generated from. And it</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
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<p>3 doesn't say revenue has to be this year or this year 4 or this year or this year or this year. There is no 5 specific in the tax law that says you must produce 6 this amount of income to be a viable business or at 7 this certain period of time. What is your intent? 8 Is the intent there to make it a viable business? 9 There's people that -- clients that do 10 RaPower that get commission checks that pay taxes on 11 their commission checks, so they are paying taxes on 12 the network marketing side of their business. And 13 so not -- and some people have purchased them just 14 for the future revenue of rental. I have a client 15 that purchased a number of units. He doesn't need 16 them for tax purposes. He was looking at the future 17 for rental. He was just changing his will to make</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>18 sure his kids could inherit that for future income. 19 So not everybody does RaPower is for the tax 20 benefits. Network marketing people want to get it 21 because of the income side of it. Other people look 22 at the rental income, the bonus income. 23 So it's -- so, yes, I will do tax returns 24 until somebody says, hey, this is totally illegal, 25 it's against this, you're defrauding the government 101: 1 and everything, because the tax law's there. We 2 cannot dispute the tax law.</p>				
<p>101:14 Q. That's right. So, Mr. Howell, if you 15 don't understand the technology, how do you have any 16 way of predicting any rental income coming to you?</p>				
<p>101:22 A. I expect to receive rental income. 23 Q. Why? 24 A. Because I believe that what they are</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
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<p>25 doing, they're getting closer each and every day to 102: 1 getting their solar field in production. 2 Q. Why do you believe that? 3 A. By the progress that they're making. 4 Q. Who's telling you about the progress? 5 A. Greg Shepard does, and then -- and then 6 people that have been on their tours that have given 7 information back to other people on what they saw. 8 Q. Are any of those people solar energy 9 technology engineers? 10 A. I don't know. I don't know them all.</p>				
<p>102:11 Q. Let's talk about your visit in 2014 or 12 2015. What did you do on that visit? 13 A. I just toured the manufacturing plant. It 14 was -- wasn't on any of their scheduled tours or 15 anything. So I was just going through Utah on my</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017

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<p>16 way to Washington state, said I'll just drop by and</p> <p>17 see if I can get a tour of their development field.</p> <p>18 But the manager wasn't there when I got there.</p> <p>19 I wasn't on a scheduled time. I didn't</p> <p>20 tell them I was going to be there, that when I got</p> <p>21 into town I called up Greg Shepard and said, hey,</p> <p>22 look, I'm going to go out to the manufacturing</p> <p>23 plant, is anybody there that can meet me and show me</p> <p>24 around. And the manager or the person that was in</p> <p>25 charge had already -- had already left to go to</p> <p>103: 1 somewhere else. So I just toured the manufacturing</p> <p>2 plant. Talked to some of the workers.</p> <p>3 Q. This was just a self-guided tour?</p> <p>4 A. Yes.</p>				
<p>103:22 Q. What, if any, differences did you notice</p> <p>23 between your visit in 2012 and</p>				

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<p>your visit in 2014 or 24 2015? 25 A. They'd upgraded the manufacturing 104: 1 facility. They'd blown in insulation into it. They 2 had -- they had rooms that had a number of 3 components in them that they had finished 4 manufacturing, and they had done quite a bit of work 5 to the manufacturing since 2012.</p>				
<p>108: 2 Q. Have you ever heard of a company called 3 LTB1, LLC? 4 A. I vaguely recall LTB1 on something. I'm 5 not sure where it was at or anything. 6 Q. Do you have any context for it at all? 7 A. It was a -- I think it was a program that 8 they were developing, RaPower3 was developing. 9 That's -- I don't recall any details of it or 10 anything. I just remember seeing the name on</p>				

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Deposition of John Howell taken August 23, 2017

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11 something. 12 Q. Have you ever heard of an entity called 13 LTB O&M? 14 A. No.				
109: 4 Q. Going back to something we talked about a 5 little bit earlier. Have you ever used the e-mail 6 address jhowell@howelltax.com? 7 A. That was an old one. We haven't used that 8 in -- I don't remember how long ago that one was 9 used. Very, very seldom was that ever used. Never 10 sent anything through that one. It's just people 11 would mail -- it was on our website at one time. 12 Now that's all been changed. 13 Q. Okay. But at one time jhowell -- 14 A. Yeah. 15 Q. Sorry. Let me finish the question. At 16 least for a little while, jhowell@howelltax.com was 17 an e-mail address that you used? 18 A. Yes. Apparently there was			587	

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>two jhowells at 19 howelltax.com, some other Howell Tax Service up 20 north somewhere, and so our e- mails were -- so 21 forget it. I'd get theirs, they'd get mine, and I 22 dropped mine. 23 Q. Sounds reasonable. The phone number for 24 Howell Tax Service, what is that? 25 A. (940) 766-0981. 110: 1 Q. And the street address for Howell Tax 2 Service? 3 A. 4708 Kmart Drive, Suite B, Wichita Falls, 4 Texas. 5 (Exhibit 587 marked) 6 Q. Mr. Howell, you've been handed Plaintiff's 7 Exhibit 587. Please take a look through this and 8 let me know when you're done. 9 For the record, while you look, the Bates 10 numbers are Howell_John 2710 through 2742. 11 Mr. Howell, do you recognize</p>				

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Deposition of John Howell taken August 23, 2017*

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<p>the pages of 12 Plaintiff's Exhibit 587? 13 A. Yes. 14 Q. These are documents that you produced to 15 the United States? 16 A. Yes. 17 Q. All right. The first few pages through 18 Howell 2717 are invoices from RaPower3, correct? 19 A. Correct. 20 Q. These are invoices for -- well, we'll just 21 take a look real quick at Howell 2716. Are you on 22 that page? 23 A. Yes. 24 Q. All right. So this invoice has a purchase 25 date of December 31, 2011. Do you see that? 111: 1 A. Yes. 2 Q. And the units purchased is one, correct? 3 A. Correct. 4 Q. And the description is 600-watt solar 5 thermal lens. Did I read that correctly?</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>6 A. Correct. 7 Q. So here, Mr. Howell, it looks like the 8 only thing that's purchased is a lens. 9 A. On the invoice, yes. 10 Q. Do you have any understanding why the 11 invoice would say lens if something else were 12 included? 13 A. For the -- to make it simplified for 14 people to look at. 15 Q. And if you'd take a look, please, at down 16 payment, it says \$1,050. Do you see that? 17 A. Mm-hmm. 18 Q. Yes? 19 A. Yes, ma'am. 20 Q. Then it says full unit price, \$3,000. Do 21 you see that? 22 A. Yes. 23 Q. Do you have an understanding of why the 24 down payment is there? 25 A. That was how much you were going to be</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>112: 1 paying before the rental income actually paid on the 2 back end of the note. 3 Q. So would the down payment have to be paid 4 in full before any potential rental income could be 5 delivered to the owner? 6 A. Yes. 7 Q. All right. Then if we look below, we've 8 got a couple of entries under payment date. Do you 9 see that? 10 A. Yes. 11 Q. Both payments are made in 2012, correct? 12 A. Yes. 13 Q. For a total of \$1,050, right? 14 A. Correct. 15 Q. Mr. Howell, for the -- the pages marked 16 Howell_John 2710 through 2717, are these the only 17 invoices -- or I'm sorry. Do these invoices reflect 18 the only units that you purchased from RaPower3? 19 A. It looks like it. Let's see if there's</p>				

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<p>20 any might be missing. Might be some missing in '15. 21 Q. Okay. So I see in these invoices lenses 22 purchased in 2011, 2012, and 2013. 23 A. Mm-hmm. 24 Q. Yes? 25 A. Yes. 113: 1 Q. But you believe you bought additional 2 units -- 3 A. Yes. 4 Q. Sorry. Let me finish the question. You 5 believe you bought additional units in 2015? 6 A. Yes. 7 Q. Do you recall when in 2015? 8 A. No. I don't recall when it was. 9 Q. Do you know if it was closer to the 10 beginning of the year -- 11 A. Probably -- 12 Q. -- or to the end of the year? 13 A. Probably September, October. 14 Q. About how many units did you purchase in 15 2015?</p>				

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<p>16 A. Probably purchased just a couple.</p> <p>17 Q. Have you purchased any more since 2015?</p> <p>18 A. I think I purchased a couple in '16. I</p> <p>19 know I haven't done any in '17.</p> <p>20 Q. And from your testimony, then, do I</p> <p>21 correctly conclude that you did not purchase any in</p> <p>22 2014?</p> <p>23 A. I don't recall if I did that year or not.</p> <p>24 Q. Let's take a look, please, at the pages</p> <p>25 marked Howell_John 2732 through 2739.</p> <p>114: 1 A. Okay.</p> <p>2 Q. These pages are the RaPower3 equipment</p> <p>3 purchase agreement, correct?</p> <p>4 A. Correct.</p> <p>5 Q. Which is dated December 15, 2011, right?</p> <p>6 A. Correct.</p> <p>7 Q. Mr. Howell, I don't believe I saw any</p> <p>8 other equipment purchase agreements in your</p>				

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Deposition of John Howell taken August 23, 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
<p>9 production of documents other than this 10 December 2011. 11 A. That would have all been duplicates of the 12 very same thing, just different dates, but 13 everything would have been the same. 14 Q. Okay. That's just my question. The other 15 equipment purchase agreements that you signed -- let 16 me finish -- were essentially the same as this one 17 that we're looking at in Plaintiff's Exhibit 587? 18 A. Correct. And if you will read under the 19 paragraph, "Now, therefore, the parties here agree 20 as follow. System purchased. Seller hereby sells 21 to Purchaser and Purchaser hereby purchases from 22 Seller the Alternative Energy Systems. The number 23 of Alternative Energy Systems purchased by Purchaser 24 from Seller under this agreement</p>				

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Deposition of John Howell taken August 23, 2017*

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<p>shall be," and the 25 number. 115: 1 So they just call it the lens for 2 simplification on the invoice, but here's where it 3 says you are purchasing the system. 4 Q. And where, Mr. Howell, in this contract or 5 elsewhere is the term alternative energy system 6 defined? 7 A. I'm not positive if it is actually 8 defined. Says under paragraph 1 under Background, 9 "Seller is the licensee of certain proprietary 10 alternative energy technology, which" -- 11 Q. Can you slow down? The court reporter -- 12 A. Oh, I'm sorry. 13 Q. Just read it slowly if you're going to 14 read it. 15 A. "Seller is a licensee of certain 16 proprietary alternative energy technology, which 17 technology relates to solar</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>energy collection and 18 which technology is utilized for the design and 19 fabrication of certain components which are 20 identified below and which are hereinafter 21 collectively referred to as the 'Alternative Energy 22 System." 23 Q. Great. And it says that these items are 24 identified below. Where are they identified? 25 A. Don't know if they actually put down each 116: 1 of the individual items by themselves. They just 2 group it all together, related alternative energy 3 system and its components. So I guess I could have 4 made a request to give me a list of every component 5 I'm buying, nuts, bolts, wires, cables, but I 6 didn't. 7 Q. How did you know what you were buying? 8 A. My contract says I was buying</p>				

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Deposition of John Howell taken August 23, 2017*

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<p>the 9 alternative energy system. Didn't say just the lens 10 themselves. 11 Q. So how do you know what an alternative 12 energy system is? 13 A. I guess I can request them to break down 14 each and every component of that system so that I 15 can list it all, the wires, the cabling, the 16 framing, the tower, the everything. I just never 17 took the initiative to request a total breakdown of 18 everything in the system. 19 Like when I buy a computer, I don't say, 20 now, I want it broken down to how many of this is on 21 there, how many of this is on there and what makes 22 up the circuit board and I want to make sure all my 23 circuits are in my circuit board and -- 24 Q. Why didn't you ask for what you were</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>25 actually buying? 117: 1 A. I just never asked them to give me a list 2 of everything I was buying. 3 Q. Well, I guess that's my question. So you 4 identified a bunch of things in what you -- in what 5 an alternative energy system might include, but you 6 don't know exactly what it includes, do you? 7 A. Precisely, no. 8 Q. But you're willing to pay \$1,050 down 9 payment for each system? 10 A. Mm-hmm. 11 Q. Yes? 12 A. I did, yes, I did.</p>				
<p>118: 9 Q. Let's take a look at Howell 2718 10 through -- oh, excuse me real quick. Put that on 11 pause. 12 The last page of the equipment purchase 13 agreement is on page Howell_John 2739. Mr. Howell, 14 your name is typewritten on this page. Do you see</p>			587	

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>15 that? 16 A. Yes. 17 Q. How did you sign this equipment purchase agreement? 18 agreement? 19 A. Digitally. 20 Q. So you went to a website? 21 A. (Witness nods head.) 22 Q. Yes? 23 A. Yes. 24 Q. Did you enter information into that website? 25 website? 119: 1 A. Yes. 2 Q. What information did you enter? 3 A. The basic equipment purchase, the invoice, 4 how many in -- how many units was being purchased, 5 and then acknowledge the equipment purchase agreement as well as the operation and maintenance agreement. 7 agreement. 8 Q. Okay. But -- 9 A. And then put in your name and sign it as a 10 digital signature. 11 Q. Okay. So let me -- I just want</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>to make 12 sure I understand. Let me slow down a little bit. 13 So what website did you go to in order to -- 14 A. RaPower3. 15 Q. Okay. And then you gave the website your 16 information, you gave it your name? Yes? 17 A. Yes. 18 Q. And your address? 19 A. Yes. 20 Q. And you put in the number of systems you 21 wanted to purchase? 22 A. Yes. 23 Q. Then what happened? 24 A. Then I pressed enter. Then this says 25 about the contracts and everything. You accept the 120: 1 contracts or equipment purchase agreement, the 2 operation and maintenance agreement. 3 Q. So at the time you put in your information 4 and then you -- did you then see the equipment</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017

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<p>5 purchase agreement? 6 A. I had already seen them. They had them on 7 their website for you to actually look at and to 8 read so that you knew what they said. 9 Q. Okay. So you had the opportunity to read 10 the equipment purchase -- 11 A. Yes. 12 Q. -- agreement? 13 A. Yes. 14 Q. And when you decided you wanted to sign 15 the equipment purchase agreement, what did you have 16 to do? 17 A. Just acknowledge that I was - - put in my 18 name that I accepted the purchase agreement. 19 Q. Okay. Did -- so anyway, you digitally 20 signed this equipment purchase agreement? 21 A. Yes. 22 Q. Yes. Okay. 23 A. Yes. 24 Q. All right. So let's take a look</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>now at 25 the operation and maintenance agreement, which is on 121: 1 pages Howell_John 2718 through 2731. And this, 2 Mr. Howell, is the operation and maintenance 3 agreement that you signed at the same time as the 4 equipment purchase agreement we just saw? 5 A. Yes. 6 Q. And to your knowledge, is the operation 7 and maintenance agreement we're looking at in 8 Plaintiff's Exhibit 587 basically the same as any 9 other operation and maintenance agreement you would 10 have signed with RaPower3? 11 A. Yes. 12 Q. Okay. So if we take a look at this 13 operation and maintenance agreement, the RaPower3 14 logo is in the upper left-hand side. Do you see 15 that? 16 A. Yes.</p>				

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Deposition of John Howell taken August 23, 2017*

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<p>17 Q. But this agreement itself is between you 18 and LTB, LLC. Do you see that? 19 A. Yes. 20 Q. And on the last page of the operation and 21 maintenance agreement, we see your digital 22 signature, correct? 23 A. Yes. 24 Q. And then underneath it says "Seller by 25 Neldon Johnson, RaPower3." Did I read that 122: 1 correctly? 2 A. Yes. 3 Q. Did you ever wonder why a contract 4 purportedly between you and LTB was signed by 5 someone on behalf of RaPower3? 6 A. If they're owners and they have the 7 authorization to do so. 8 Q. Did you ever wonder why? 9 A. Well, I had actually looked up, like I 10 said, LTB, LLC, and it showed Neldon Johnson as one</p>				

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<p>11 of the owners. 12 Q. So you didn't wonder why? 13 A. No. 14 Q. Okay. And we did talk a little bit about 15 your brief inquiry into LTB, LLC, earlier. Would it 16 surprise you to learn that LTB, LLC, has never 17 operated a solar energy power plant? 18 A. No. 19 Q. Does that raise any concern with you about 20 LTB's ability to effectively operate your solar 21 lenses? 22 A. Not necessarily. Everybody begins at some 23 point in time doing something, you know. Somebody 24 comes and wants to mow your grass. Well, how many 25 grass experience do you have? Have you mowed a 123: 1 thousand, a hundred, 20? No, you're the first one. 2 Okay. I'll give you a shot then, let's see what you 3 do.</p>				

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<p>4 Q. I'm sorry, Mr. Howell, are you 5 comparing -- 6 A. I'm just showing that -- 7 Q. Excuse me. I'm asking you a question. 8 Are you comparing the expertise it takes to mow your 9 grass with the expertise it takes -- excuse me -- 10 with the expertise it takes to operate a solar 11 energy power plant? 12 A. No. Just an example that they -- they 13 have to begin somewhere. Somebody started the first 14 of that technology at some point in time without any 15 experience. Somewhere somebody did it in almost 16 every industry. They had to be the first because 17 that technology wasn't there. Nobody had ever done 18 it before for them to learn from. 19 Q. Mr. Howell, though, you said that you had 20 looked into concentrating solar power before, 21 however, correct?</p>				

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<p>22 A. I had -- 23 Q. Correct? 24 A. Yes. 25 Q. And so you know that there are companies 124: 1 who do operate concentrating solar energy power 2 plants, right? 3 A. Yes. 4 Q. Okay. So real quick, just to backtrack, 5 this operation and maintenance agreement, to your 6 understanding, what does this contract mean? 7 A. It means that LTB, LLC, is going to 8 maintain and operate the solar systems, if there's 9 damages, everything, that they replace them, they 10 take care of them, they maintain it. 11 Q. So essentially, Mr. Howell, correct me if 12 I'm wrong, but you purchased two systems from 13 RaPower3, correct? 14 A. Yes. 15 Q. And then you believe you</p>				

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<p>leased them to 16 LTB, LLC, correct? 17 A. Correct. 18 Q. By virtue of this agreement? 19 A. Yes. 20 Q. And you're expecting your systems to 21 generate rental income for you, correct? 22 A. Yes. 23 Q. Because of LTB, LLC's operation of those 24 systems, correct? 25 A. Yes. 125: 1 Q. But it doesn't matter to you whether LTB 2 has ever operated any system successfully or not? 3 A. Somebody has to learn the game sometime. 4 Q. And you're willing to let them learn their 5 game on your dime? 6 A. Yes.</p>				
<p>125: 9 Q. Would it surprise you to learn that LTB 10 has never taken any action whatsoever? 11 A. It might. 12 Q. I'll represent to you that</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>Neldon Johnson 13 testified approximately six weeks ago that LTB, LLC, 14 has never done anything. Does that raise any 15 concerns for you? 16 A. It could be they didn't have anything 17 to -- to take over at that particular time to do 18 something with. 19 MS. HEALY GALLAGHER: Object to the 20 responsiveness of the answer. 21 Would you read back my question, please. 22 THE REPORTER: "Question: I'll represent 23 to you that Neldon Johnson testified approximately 24 six weeks ago that LTB, LLC, has never done 25 anything. Does that raise any concerns for you?" 126: 1 A. Not necessarily. 2 BY MS. HEALY GALLAGHER: 3 Q. Does it raise any concern for you that 4 LTB, LLC, doesn't even have a bank account?</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017

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<p>126: 6 A. Not necessarily. 7 BY MS. HEALY GALLAGHER: 8 Q. Why aren't you concerned about LTB not 9 having done anything? 10 A. Until the solar field is completed that 11 they are working on, then they don't turn it over to 12 LTB until that time, so -- 13 Q. Let's take a look, please, at paragraph 14 2.1 of the operation and maintenance agreement. The 15 title of the subparagraph is "Appointment," and it 16 says, "The Owner appoints the Operator and the 17 Operator accepts the appointment to perform the 18 following services subject to and in accordance with 19 the provisions of this Agreement, collectively, the 20 'Work.' 2.1.1, Routine O&M services; 2.1.2, 21 Additional services; and 2.1.3, Transition 22 services." 23 Did I read that correctly?</p>				

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<p>24 A. Yes.</p> <p>25 Q. Mr. Howell, what are routine O&M services?</p> <p>127: 1 A. Typically they check out the equipment to</p> <p>2 see if it's working properly.</p> <p>3 Q. How do you know that?</p> <p>4 A. How do I know what O&M services is? Is</p> <p>5 that the question?</p> <p>6 Q. That's the question.</p> <p>7 A. I've been in manufacturing before. We did</p> <p>8 operation and maintenance services on equipment,</p> <p>9 machinery, so I know what it is.</p> <p>10 Q. How do you know what that means with</p> <p>11 respect to solar energy systems?</p> <p>12 A. It would go into the same thing, that they</p> <p>13 would have to make sure that the equipment is</p> <p>14 operating per the guidelines that have been</p> <p>15 established for them too, and they check out the</p> <p>16 equipment.</p> <p>17 Q. Where --</p> <p>18 A. If something's broken, replace</p>				

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<p>it. 19 Q. Where, Mr. Howell, in this agreement are 20 routine O&M services defined? 21 A. As far as I know, they don't break it down 22 exactly under all the details of routine operation 23 and maintenance. 24 Q. So how could you possibly know if LTB, 25 LLC, was ever meeting its obligations under this 128: 1 contract? 2 A. As far as I know, they don't have anything 3 under the contract yet because they have not taken 4 over the solar field yet that is currently being 5 still in the production stage. 6 Q. Well, let's say they do someday take it 7 over. How will you know whether LTB, LLC, is 8 meeting its obligations to you under this contract? 9 A. I can go out there and look at it. 10 Q. How will you know whether</p>				

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<p>LTB, LLC, is 11 actually performing whatever routine O&M services 12 means? 13 A. Request maintenance logs. 14 Q. But, sir, like if you don't know what 15 exactly they're supposed to be doing -- like, what 16 have they agreed to here? 17 A. When you look at typical O&M -- 18 Q. Sir, if you don't know, just say you don't 19 know. 20 A. Under typical operation and maintenance 21 servicing, they usually give them a punch list of 22 items that they would need to be checking out. So 23 until they take over the solar field, then they 24 might have that information at that time, say, okay, 25 when we perform our operation and maintenance, this 129: 1 is what we do on a daily, a weekly, a monthly 2 schedule. Until that time, they</p>				

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<p>haven't taken over 3 yet. 4 Q. Have you ever seen such a punch list? 5 A. I've seen similar. 6 Q. No, no, no. For your solar energy 7 systems, have you seen any punch list that would be 8 the routine O&M services? 9 A. No, I haven't. I haven't requested it 10 either. 11 Q. Do you know what additional services means 12 in the course for this contract under paragraph 13 2.1.2? 14 A. No. And I've never asked for it. 15 Q. What about transition services? Do you 16 know what that means? 17 A. Under this particular agreement, have I 18 asked them what that -- how they define transition 19 services? No, I haven't. 20 Q. Does this contract define transition</p>				

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<p>21 services? 22 A. Not that I'm aware of. 23 Q. Does this contract define additional 24 services? 25 A. Not that I'm aware of. 130: 1 Q. Under paragraph 2.3, Operation and 2 Maintenance Services, there's a reference to the 3 safety and operating guidelines provided by RaPower3 4 to operator. Do you see that? 5 A. Yes. 6 Q. Have you ever seen the safety and 7 operating guidelines identified here? 8 A. No. And I've never asked for them. 9 Q. Any reason why not? 10 A. They're not in operation yet, so -- 11 Q. So here's what I'm -- 12 A. They could be developing those guidelines 13 so that when they do take over the operation that 14 they're in place, and then they can -- then I can</p>				

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Deposition of John Howell taken August 23, 2017*

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<p>15 request them. 16 Q. So here's what I'm trying to understand. 17 You purchased systems from RaPower3. Yes? 18 A. Yes. 19 Q. And then you lease them to LTB. 20 A. Yes. 21 Q. Where are they? 22 A. They're currently in production in the 23 production field -- 24 Q. Physically. 25 A. -- being put together. 131: 1 Q. No, sir. I'm sorry, sir. We missed each 2 other on that one. Physically where are they? 3 A. In the production field being put up on -- 4 on towers and such. 5 Q. Is that in Millard County, Utah? 6 A. I can't give you the exact location. I've 7 never been there. 8 Q. You don't know where your systems are? 9 A. I haven't looked to see exactly</p>				

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<p>--</p> <p>10 Q. Sir, excuse me. Not what I was looking</p> <p>11 for. Do you know where your systems are?</p> <p>12 A. Precisely, no.</p> <p>13 Q. Imprecisely?</p> <p>14 A. In Utah at their development site where</p> <p>15 they take people when they do their tours to show</p> <p>16 them the progress of it.</p> <p>17 Q. How do you know that your systems are in</p> <p>18 Utah at the development site?</p> <p>19 A. Well, I guess I can't really know until I</p> <p>20 go there and ask them which ones specifically are</p> <p>21 the ones I purchased.</p> <p>22 Q. Have you ever done that?</p> <p>23 A. No.</p> <p>24 Q. Why not?</p> <p>25 A. Because I haven't been in Utah in the last</p> <p>132: 1 year or two to take a tour for them to show me</p> <p>2 exactly where that they are putting them up and</p> <p>3 which ones are going to be mine.</p>				

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<p>4 Q. Sir, you bought systems in 2011.</p> <p>5 A. Yes, I did.</p> <p>6 Q. And you went to visit in 2012.</p> <p>7 A. Yes.</p> <p>8 Q. Why didn't you ask then?</p> <p>9 A. They had not started the production field.</p> <p>10 They were still finish doing research and</p> <p>11 development, and they had not started work yet on</p> <p>12 the production field where they were going to put up</p> <p>13 the towers.</p> <p>14 Q. So then to your understanding, Mr. Howell,</p> <p>15 did the systems you purchased in 2011 even exist in</p> <p>16 2012?</p> <p>17 A. Yes.</p> <p>18 Q. Where were they?</p> <p>19 A. Part of it was in their warehouse with the</p> <p>20 components that were being put together.</p> <p>21 Q. Were they assembled?</p> <p>22 A. Some was assembled.</p> <p>23 Q. Yours?</p> <p>24 A. I didn't go and ask them is</p>				

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Deposition of John Howell taken August 23, 2017*

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<p>this one mine, 25 is this one mine, is this one mine. 133: 1 Q. And one of the things I'm trying to 2 understand, Mr. Howell, is how you know yours even 3 exist. 4 A. How do I know my specific ones exist? 5 Q. Yes. 6 A. I don't really know because I never really 7 asked them which ones were specifically mine.</p>				
<p>133:14 Q. When you visited in 2014 or 2015, did you 15 ask Mr. Shepard, hey, how can I find out which ones 16 of these things are mine? 17 A. No. 18 Q. Why not? 19 A. Because they didn't know I was coming. I 20 just had a brief conversation with him, is there 21 going to be anybody at the plant that can show me 22 around, take me -- take me where -- anyplace, and he</p>				

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<p>23 said let me find out. 24 Q. So if you wanted to know which systems 25 were yours, who would you ask? 134: 1 A. I imagine whoever the manager is at the 2 construction site. 3 Q. Do you have any idea how that person might 4 be able to figure out which one is yours? 5 A. I'm sure they have some kind of inventory 6 or identification records in process that would 7 identify which ones they were. 8 Q. Have you ever asked them whether they have 9 such a system? 10 A. Haven't been out there to do so. 11 Q. Have you ever asked them whether they have 12 a system to track which system is yours? 13 A. No. 14 Q. Mr. Howell, did you ever negotiate the 15 price of a lens? Excuse me. Did you ever negotiate</p>				

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Deposition of John Howell taken August 23, 2017*

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<p>16 the price for a system? 17 A. No. 18 Q. Any reason why not? 19 A. Thought that the price was fair. 20 Q. Why did you think the price was fair? 21 A. Just in my mind. I'd never seen any solar 22 commercial lenses for sale. I knew that home 23 systems, you can pay a few thousand, several 24 thousand dollars for them. So, figured if it's part 25 of a commercial project, a few thousand for it could 135: 1 be a good price. 2 Q. Did you ever get any independent opinion 3 or appraisal of what the system was worth? 4 A. No. 5 Q. Did you ever do any sort of profit 6 analysis for buying the lens -- the system versus 7 not buying it? 8 A. Once they're in production, then, yes,</p>				

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Deposition of John Howell taken August 23, 2017

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<p>9 there will be substantial incomes that will be 10 generated. 11 Q. Did you ever write that analysis down, or 12 was this just in your head? 13 A. I'm sure I probably put it down somewhere. 14 Q. Have you ever done a business plan with 15 respect to your lens purchases? 16 A. No. 17 Q. Did you negotiate any terms of the 18 equipment purchase agreement? 19 A. No. 20 Q. Did you negotiate any terms of the 21 operation and maintenance agreement? 22 A. No. 23 Q. Take a look, please, at page marked 24 Howell_John 2740 through 2741. Mr. Howell, this is 25 the distributor application that you filled out, 136: 1 correct? 2 A. Yes. 3 Q. So it looks here like, sir, if you</p>				

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Deposition of John Howell taken August 23, 2017*

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<p>take a 4 look at the e-mail address, you used that 5 jhowell@howelltax.com e-mail address, right? 6 A. That was -- yes, we did. 7 Q. And in step 2 we see that it's asking for 8 your sponsor information, and that sponsor is Janet 9 Roe, correct? 10 A. Correct. 11 Q. By completing this distributor 12 application, what, if anything, did that mean for 13 you and RaPower3? 14 A. You can earn commissions is what that 15 means. 16 Q. So basically by filling this out, you then 17 got permission to sell RaPower3 systems? 18 A. Right, like in any network marketing. 19 Q. And let's just take a look at the last 20 page, which is 2742. This is an alternative energy 21 system purchase referral fee</p>				

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<p>contract, right? 22 A. Yes. 23 Q. And it appears to be made between RaPower3 24 and you. Do you see that in the top couple of 25 lines? 137: 1 A. Yes. 2 Q. And this contract, I believe this is the 3 bonus situation you were talking about earlier? 4 A. Yes. 5 Q. Yeah. Okay. So there's no signature for 6 the RaPower3 managing partner on your copy of this 7 contract. Do you see that? 8 A. Uh-huh. 9 Q. Yes? 10 A. Yes. 11 Q. Do you have a signed copy? 12 A. I believe I do. 13 Q. So, Mr. Howell, if this contract is 14 between you and RaPower3, how does RaPower3 have any 15 claim on paying money based on International 16 Automated Systems' gross</p>				

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revenue? 17 A. Based on the ownership of the RaPower3 and 18 the common ownership of AIUS.				
138: 1 (Exhibit 588 marked) 2 Q. Handing you, sir, what's been marked 3 Plaintiff's Exhibit 588. Please take a look at that 4 and let me know when you are done. 5 For the record, Plaintiff's 588 is marked 6 Howell_John 2681. 7 Do you recognize Plaintiff's Exhibit 588? 8 A. Yes. 9 Q. What is it? 10 A. It was the placed-in-service letter. 11 Q. And this is a true and accurate copy of a 12 letter that you produced to the United States? 13 A. I believe it was. 14 Q. So this is a letter from RaPower3 to you, 15 correct? 16 A. Yes. 17 Q. And the first line of the letter			588	

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>-- I'm 18 sorry. It's dated February 2, 2012, correct? 19 A. Yes. 20 Q. The first line of the letter says, "This 21 letter is regarding the alternative energy systems 22 that you purchased from RaPower3, LLC. RaPower3 put 23 into service your equipment on or before 24 December 31, 2011. This will qualify you for the 25 Internal Revenue Services solar energy tax credit." 139: 1 Did I read that correctly? 2 A. Yes. 3 Q. Mr. Howell, what's your understanding of 4 how RaPower3 put your equipment into service? 5 A. When the items are produced and available 6 for -- to be put into the system, then they are 7 eligible for the credit and so is the components 8 that make up the system. 9 Q. So, Mr. Howell, how did</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>RaPower3 put into 10 service your equipment in 2011? 11 A. They had already produced a number of the 12 lenses, as you call them, and they were for sale to 13 people at that time and they were available to be 14 put together with other subcomponents at the time of 15 purchase. 16 Q. Mr. Howell, when you visited in 2012, 17 about how many towers did you see that had been 18 constructed? 19 A. I only went to the research and 20 development site. I didn't go to any production 21 sites. But we did see the lenses that were there. 22 We saw lenses that were framed up, cabling on the 23 lenses so that they were in the production state. 24 MS. HEALY GALLAGHER: Would you read back 25 my question, please. 140: 1 THE REPORTER:</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>"Question: Mr. Howell, 2 when you visited in 2012, about how many towers did 3 you see that had been constructed?" 4 A. None, because I did not go to the 5 construction site. We went to the research and 6 development site. 7 BY MS. HEALY GALLAGHER: 8 Q. On any place you visited personally, I 9 don't care where you didn't go, where you visited 10 how many towers did you see? 11 A. 16, 17, 18. 12 Q. And when you drove by in 2014 or 2015, how 13 many towers did you see? 14 A. It was the same place that I went to, the 15 research and development. 16 Q. How many towers did you see? 17 A. About the same. 18 Q. Did you see any other towers? 19 A. No. 20 Q. I think one of the difficulties</p>				

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<p>I'm having 21 is that we're calling these things alternative 22 energy systems and you're talking about these 23 systems being put into a system and that means that 24 they're placed in service. So I'm just trying to 25 understand what we're talking about here, so we're 141: 1 going to break this down slowly. 2 You have testified that your understanding 3 is that an alternative energy system is more than 4 just a lens. 5 A. Correct. 6 Q. Correct. Okay. So for any alternative 7 energy system, which is more than a lens, how was 8 such a system put into service?</p>				
<p>141:12 Q. On or before December 31, 2011. 13 A. This goes back to what is a system. 14 According to you, the system was just the lens,</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>15 because we don't have a component breakdown. 16 Q. Mr. Howell, I'm going to stop you there 17 because I'm using your definition. I'll go with you 18 on this. 19 A. And I -- 20 Q. I'll go with you on this. Okay. A system 21 is a lens plus. It's a lens plus. 22 To your understanding, how was a lens plus 23 that you bought in 2011 put into service in 2011? 24 A. It was placed into service --</p>				
<p>142: 3 A. Because when the lenses are produced and 4 purchased, they are available for their intended use 5 at that particular time. 6 BY MS. HEALY GALLAGHER: 7 Q. Okay. You just said -- I just want to 8 start at the beginning -- when a lens is produced 9 and purchased. Do you mean when a lens is 10 manufactured at Lucite? 11 A. And delivered to RaPower.</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>12 Q. Okay. And delivered to RaPower. So when 13 a lens has been produced by Lucite and is delivered 14 to RaPower, does that mean to you it has been put 15 into service? 16 A. According to what the code section says, 17 if it is available for its intended purpose, then it 18 is considered placed in service. Even the 19 components that are part of it are considered placed 20 in service also. That was through a tax court 21 ruling. 22 Q. Here's my question. When Lucite produces 23 plastic to RaPower3, it's in a rectangle. Right? 24 You know that, right? You saw the pallets -- 25 A. Yes. 143: 1 Q. -- at the manufacturing plant. Those 2 pallets are rectangles, are they not? 3 A. Yes.</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>4 Q. Okay. So do you know what has to happen 5 between the rectangle that arrives and the triangles 6 that are framed out? Do you know? 7 A. I didn't study it specifically, no, but 8 we -- we saw a number of them that were in their 9 frames, their cabling and everything, so they do 10 produce it. 11 Q. Mr. Howell, what I'm asking you is, how is 12 a rectangular piece of plastic put into service as a 13 lens?</p>				
<p>143:15 A. Not sure they are actually rectangular in 16 formation. They're more pie shaped instead of a 17 actual rectangular -- 18 BY MS. HEALY GALLAGHER: 19 Q. Is that how you believe they arrive from 20 Lucite, in triangles? 21 A. I saw pallets of them that were in the --</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>22 I didn't actually get out there and measure them and 23 everything, but they had pallets of them that were 24 there. Then they had some that were in the frames 25 with the cablings attached to them. 144: 1 Q. And I guess my question now, Mr. Howell, 2 is this. You've testified that a system is a lens 3 plus components. Yes? 4 A. Yes. 5 Q. So if you don't know what all the 6 components are of what makes a system, how can you 7 know whether a system has been completed such that 8 it could be put into service? 9 A. The entire system doesn't have to be put 10 together. 11 Q. So -- okay. Let me stop you there because 12 I think -- I think I've caught where we're missing 13 each other here. 14 So what you purchased right</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 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
<p>now, let's 15 call it a lens plus. Will you agree with me on 16 that? 17 A. Okay. 18 Q. Okay. The lens plus, in order for it to 19 generate electricity, needs to be placed in a 20 greater system. Do you understand that? 21 A. Yes. 22 Q. Connected with a turbine and a generator. 23 Yes? 24 A. Yes. 25 Q. So is it your testimony that the lens plus 145: 1 need not be fully assembled in order to be put into 2 service? 3 A. True. 4 Q. So -- so it's sufficient for Lucite to 5 have delivered the plastic of the lens to RaPower3 6 for a lens plus to have been placed in service? 7 A. When RaPower receives them, then they</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>8 start putting the frames and they put the components 9 on them. At what stage are the ones you actually 10 purchased at? Without you going there and saying is 11 this one mine that's got all of the cabling on it or 12 is mine out there on the table, because they are -- 13 they've had these already produced. They're already 14 putting components on them, and it says that once 15 they're available for their intended use, they are 16 available for their intended use. It doesn't say it 17 has to be a complete system as itself. It says that 18 the components still qualify also. 19 MS. HEALY GALLAGHER: Would you read back 20 my question, please. 21 THE REPORTER: "Question: So it's 22 sufficient for Lucite to have delivered the plastic 23 of the lens to RaPower3 for a lens plus to have been</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>24 placed in service?" 25 A. Possibility. Because once it's delivered, 146: 1 they -- 2 BY MS. HEALY GALLAGHER: 3 Q. Yes or no, sir? 4 A. I'll go with yes.</p>				
<p>146:15 Q. Mr. Howell, how many -- how do you decide 16 how many lenses to purchase in any given year? 17 A. I just pick -- see how many I want to 18 purchase. 19 Q. Based on what? 20 A. On what I think I can afford to get that 21 year. I don't use any precise formula or anything. 22 RaPower says you can calculate it based on this 23 formula. 24 Q. What formula is that? 25 A. They say to take your tax liability and 147: 1 determine what your tax liability is to try to 2 reduce your tax liability and then you can purchase 3 between a certain number. I think</p>			<p>588 589 590</p>	

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>it's take your 4 tax liability times .0007 and give you approximation 5 of how many units you would need if you want to 6 totally offset your tax liability or if you just 7 want to do part of it, all of it. 8 Q. Have you used the RaPower3 calculation to 9 help you decide how many lenses to purchase? 10 A. Not for myself. 11 Q. Have you used it to help other people 12 decide -- 13 A. If they ask. 14 Q. Let me finish the question. Have you used 15 the RaPower3 calculation to help other people decide 16 how many lenses to purchase? 17 A. If they asked, or I told them to go to the 18 RaPower website. It had the calculator on there for 19 them. 20 Q. So is the answer yes? 21 A. Yes. 22 Q. Very quickly back to</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017

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<p>Plaintiff's 23 Exhibit 588. The letter says that RaPower3 put your 24 equipment into service. Why RaPower3? 25 A. Because it hadn't been signed over to LTB 148: 1 yet. 2 Q. Sir, you leased your lenses to LTB. 3 A. Uh-huh. 4 Q. Yes? 5 A. Yes. 6 Q. So what does RaPower3 have to do with 7 lenses at this stage? 8 A. Common ownership. 9 Q. Okay. So in your mind it didn't matter 10 because Neldon Johnson was the owner of all these -- 11 A. Common ownership. 12 Q. Excuse me. Let me finish the question. 13 A. Yes. 14 Q. In your mind it didn't matter because 15 Neldon Johnson was the owner of all of these 16 entities?</p>				

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Deposition of John Howell taken August 23, 2017*

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<p>17 A. Yes. 18 Q. Mr. Howell, do you consider yourself to be 19 in a trade or business with respect to the solar 20 lenses that you've purchased from RaPower3? 21 A. Yes. 22 Q. What trade or business is that? 23 A. It will be the rental once the rental 24 starts coming in. 25 Q. Any other businesses? 149: 1 A. Well, the network marketing part of it 2 will receive commissions from downline purchases. 3 Q. What sort of tasks do you do, if any, to 4 further your business renting out solar lenses? 5 A. Nothing. 6 Q. Has anyone told you that you are in the 7 business of renting out solar lenses? 8 A. They do mention that. 9 Q. Who's "they"? 10 A. RaPower.</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>11 Q. Who at RaPower? 12 A. Greg Shepard. 13 Q. Why do you believe him? 14 A. Based on the contracts that you're 15 going -- that you are renting them to LTB. 16 Q. Which doesn't actually do anything. 17 A. Until they're in true operational, 18 functional, producing stage, it won't. 19 Q. So, Mr. Howell, who in your mind is 20 responsible for getting this to a functional state 21 such that it could be turned over to LTB? 22 A. It's the RaPower, Greg Shepard and his 23 team, Neldon Johnson. 24 Q. Anyone else, to your knowledge? 25 A. Not that I know of. Might have somebody 150: 1 else that's doing it. I don't know. 2 Q. Mr. Howell, in fact, you have recruited</p>				

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Deposition of John Howell taken August 23, 2017*

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<p>3 people into your downline with RaPower3, correct? 4 A. Yes. 5 Q. Do you have an idea of how many people are 6 in the first step below you in your downline? 7 A. No. 8 Q. Is it more than five? 9 A. I'm sure it is. I don't keep track of 10 them. 11 Q. Is it more than 20? 12 A. Don't know. 13 Q. Do you know how many layers your downline 14 goes? 15 A. Maximum it can go is six. 16 Q. Mr. Howell, Rocking H is also a sponsor. 17 A. Yes. 18 Q. Right? Rocking H is in your downline, 19 correct? 20 A. Yes. 21 (Exhibit 589 and Exhibit 590 marked) 22 Q. Sir, you've been handed what's been marked 23 Plaintiff's Exhibit 589 and 590.</p>				

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Deposition of John Howell taken August 23, 2017*

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<p>Please take a look 24 at those and let me know when you're ready. 25 A. Okay. 151: 1 Q. Plaintiff's Exhibit 589 is marked 2 Ra3 5959. Do you recognize Plaintiff's Exhibit 589? 3 A. No. 4 Q. Do you recognize Exhibit -- Plaintiff's 5 Exhibit 590, which is Bates marked Ra3 5952 through 6 53? 7 A. No. 8 Q. Have you ever logged into your RaPower3 9 member office or back office? 10 A. Sometimes, yes. 11 Q. Are you familiar with how to view your 12 downline? 13 A. Yes. 14 Q. Does it look like this to you? 15 A. No. 16 Q. No? Well, let's take a look, please, at 17 the names on the first section of Plaintiff's 18 Exhibit 589. Wichita Falls</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017

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<p>Floor, Stanley Mahler, 19 Susan Lesage, Chris Crutcher, Darwin Webb. Do you 20 see those names? 21 A. Yes. 22 Q. Do you recognize those folks as being in 23 your downline? 24 A. Yes. 25 Q. Then if we take a look at Plaintiff's 152: 1 Exhibit 590, those same names appear in the first 2 section there. Do you see that? 3 A. Yes. 4 Q. So they're also in the downline for 5 Rocking H. 6 A. Yes. 7 Q. Mr. Howell, the dates on Plaintiff's 8 Exhibit 589 and 590 only go into about May 2012. Do 9 you see that? 10 A. Uh-huh. 11 Q. Yes? 12 A. Yes. 13 Q. Have you sold RaPower3 systems to more 14 people than appear on these</p>				

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Deposition of John Howell taken August 23, 2017*

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exhibits since May 2012? 15 A. I'm sure I have.				
152:25 Q. Do you have -- have you developed any 153: 1 marketing materials for your RaPower3 business? 2 A. No. 3 Q. What kinds of things do you do to further 4 any business you have connected with RaPower3? 5 A. What do I do? Not a whole lot with 6 RaPower3 or some of my other network marketing. 7 Q. So when we were talking about Howell Tax 8 Service, you could list off four or five core things 9 that Howell Tax Service does. 10 A. Yes. 11 Q. Accounting, bookkeeping, payroll, things 12 like that. 13 A. Yes. 14 Q. Do you have any -- anything that you can 15 identify that you do for your RaPower3 business? 16 A. Not particularly. I mean, do I				

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Deposition of John Howell taken August 23, 2017*

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<p>maintain a 17 website for it? No, I don't do that. Do I put out 18 advertising for it? No, I do not do that. It's 19 just like my -- my Ignite business. I do maintain a 20 website for that, but other than that, I don't 21 really promote that business either particularly. 22 It's -- they just send me residual checks every 23 month, so -- I could actually do more with it, but 24 I'm busy as it is, so I don't really concentrate a 25 lot on any of the network marketing companies.</p>				
<p>154: 1 Q. Do you have an idea of how much money you 2 have made from RaPower3 since you joined? 3 A. Not exactly. Probably over the last five, 4 six years maybe 20,000. 5 Q. Do you put any income from RaPower3 on 6 Rocking H tax returns? 7 A. Yes, if they receive a</p>				

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Deposition of John Howell taken August 23, 2017*

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commission check.				
<p>154:11 Q. How many systems has Rocking H purchased 12 over time? 13 A. Maybe ten, twelve systems. 14 Q. Since 2011? 15 A. Since 2011. 16 (Exhibit 591 marked) 17 Q. Mr. Howell, you've been handed what's been 18 marked Plaintiff's Exhibit 591. Please take a look 19 at that and let me know when you're ready to answer 20 questions. 21 For the record, this is Bates numbered 22 Howell_John 2989 through 2984 (sic). 23 A. Okay. 24 Q. Do you recognize Plaintiff's Exhibit 591? 25 A. Vaguely. These were printed off off of an 155: 1 e-mail that Greg Shepard had sent out. 2 Q. So to your knowledge Plaintiff's 3 Exhibit 591 came to you from Greg Shepard?</p>			591	

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>4 A. Yes. 5 Q. And for the record, Plaintiff's 6 Exhibit 591 starts with a document called Series 1 7 Solar Lenses? 8 A. Yes. 9 Q. And then is followed by a couple of 10 different documents, all in the series, Series 1 11 through 5, correct? 12 A. Yes. 13 Q. Does this appear to be a true and accurate 14 copy of a document you produced to the 15 United States? 16 A. I believe so. This is something I printed 17 off from an e-mail that I had received. 18 Q. What, if anything, did you do with 19 Plaintiff's Exhibit 591? 20 A. I'm not sure if I even read all of them or 21 not. I just probably just glanced at them, read 22 some of it. I'm not positive I read all of it or</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 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
<p>23 not. 24 Q. Did you ever show this document to anybody 25 else? 156: 1 A. I might have. I'm not sure if I ever did. 2 Q. So a couple of these series documents have 3 dates at the top, August 28, 2012, through 4 September 8, 2012. Do you see that? 5 A. Yes. 6 Q. Is that approximately when you would have 7 received these documents?</p>				
<p>156:14 (Exhibit 592 marked) 15 Q. Showing you what's been marked Plaintiff's 16 Exhibit 592. Please take a look at that and then 17 let me know when you are ready to answer questions. 18 For the record, it's Bates numbered 19 Howell_John 2793 through 2794. 20 A. Okay. 21 Q. Do you recognize Plaintiff's Exhibit 592?</p>			592	

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 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
22 A. Yeah, I've seen it. 23 Q. Is this a document that you created? 24 A. No. This was from an e-mail from Greg 25 Shepard. 157: 1 Q. Okay. So you got Plaintiff's Exhibit 592 2 from Greg Shepard? 3 A. Yes.				
157:12 Q. Actually before you take a look at 13 Plaintiff's Exhibit 593, is Plaintiff's Exhibit 592 14 a true and accurate copy of a document you produced 15 to the United States? 16 A. I would guess it is. 17 Q. Any reason to think it's not? 18 A. No. 19 Q. Okay. 20 A. I think it is.			593 592	
161:25 Q. Here's my question. Just because a lens 162: 1 can concentrate light and burn something on the 2 ground in the desert, why do you think it means that 3 lens can produce electricity? 4 MR. PAUL: See, that's a				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 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
different 5 question. You can answer that. 6 MR. TEAKELL: If you know. 7 A. I'm not -- I'm not a solar expert, so I 8 don't know.				
163:24 Q. Mr. Howell, how did you go about selling 25 RaPower3 systems to other people? 164: 1 A. If someone asked me about it, I told them. 2 They'd typically hear from it from somebody else, 3 then I would tell them how it worked in theory and 4 to go to the website and look at all the information 5 that was there, to print out the documents for their 6 own -- for their own use, the contracts that they 7 were signing and the operation and maintenance 8 agreements and everything. 9 Q. Did you ever seek people out to tell them 10 about it without them first having asked you? 11 A. Not particularly, because a lot				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>of us are 12 in the same network marketings. We're through 13 Ignite or Cierra or different things, and so they 14 would hear it from somebody else. Janet talked to a 15 lot of people about it. 16 Q. So, Mr. Howell, in 2011 when you first 17 purchased lenses, you were preparing taxes also at 18 Howell Tax Service. 19 A. Yes. 20 Q. Did you ever suggest to any of your tax 21 preparation customers that they may want to purchase 22 lenses? 23 A. I probably did. 24 Q. How would you do that? 25 A. I'd usually tell them to look at the 165: 1 RaPower website, see if it's something that they 2 were interested in doing through the network 3 marketing or the tax savings, either one. And most 4 of them were already in network</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>marketing, so they 5 knew the concept of how it worked. 6 Q. So even like if a customer didn't know 7 about RaPower3 and didn't know to ask you about it, 8 nonetheless, you might say to them, hey, there's 9 this thing you might want to check out? 10 A. Possibility. A lot of them I never 11 mentioned it to. 12 Q. Did people ever ask you about the tax 13 benefits? 14 A. I'm sure that they did. 15 Q. And what did you tell them? 16 A. I would tell them that the tax benefits 17 are there. It's in tax law. We don't create any 18 new laws. We just look at what the existing tax 19 laws are, and the law is there. 20 Q. Did you show customers what tax effect 21 buying lenses would have on their tax returns?</p>				

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<p>22 A. Probably.</p> <p>23 Q. Did you do that before they bought lenses?</p> <p>24 A. Probably, some.</p> <p>25 Q. Did you tell people how much the lenses</p> <p>166: 1 cost?</p> <p>2 A. I always told them to go to the RaPower</p> <p>3 website on that because I didn't look at it every</p> <p>4 day to see if the prices were the same. They</p> <p>5 usually were, but I told them, hey, you got to</p> <p>6 purchase them through them, so check with them to</p> <p>7 see what they're -- I said typically it's been</p> <p>8 \$3,000 or \$3,500, but I can't give them the price</p> <p>9 because I don't know it.</p> <p>10 Q. Right. But the tax benefits of buying any</p> <p>11 RaPower3 system are based on the price that the</p> <p>12 customer pays for each lens, correct?</p> <p>13 A. Yes. That's why I told them to always go</p>				

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<p>14 to RaPower because they set the price. 15 Q. Are you familiar with a man named Mike 16 Penn? 17 A. Mike Penn. 18 Q. One of your tax return customers? 19 A. Yes. I haven't talked to Mike in years. 20 Q. But he is one of your at least former -- 21 A. Yes. 22 Q. -- tax return preparation customers? 23 A. Yes. 24 Q. So he said that you called him into your 25 office because you wanted to illustrate the amount 167: 1 of tax savings that buying into RaPower3 would 2 provide him. 3 A. I don't recall that conversation. Because 4 he had a big tax bill. He was in oil and gas. 5 Q. Tell me about what you remember about 6 Mr. Penn's tax situation with his</p>				

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<p>big tax bill. 7 A. All I know is that he did pay a 8 substantial amount of taxes because of the business 9 he was in. He made a lot of money. And I'm sure we 10 had a conversation on trying to reduce his tax bill. 11 I probably told him to, if he was interested, to 12 look at the RaPower, see if it's something he wanted 13 to do or not. I don't know if he ever did or not. 14 Q. Well, he said that you told him about how 15 many units he should buy. 16 A. I said based on your -- we went -- 17 probably went to the website and used that to 18 calculate based on his tax information, because they 19 had an online calculator. 20 Q. Is your interaction with Mr. Penn similar 21 to other interactions you had with your customers? 22 A. Some of them probably, yeah. 23 Q. You helped other people</p>				

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<p>figure out how 24 many units they should buy? 25 A. Yeah, we usually used the RaPower 168: 1 calculator. 2 Q. Did you explain to folks about carrying 3 back unused credits? 4 A. Yes. They would ask how it would be used 5 because they could read that on the RaPower website. 6 That's where all of that information is -- is 7 listed. If they ask me about it, then I'd tell 8 them, yes, they could. 9 Q. So what would you tell them? 10 A. That if they had -- if they purchased more 11 systems than they could utilize in one year, 12 according to tax law, they could carry them back to 13 one preceding year. 14 Q. And that's something that you did for Mike 15 Penn? 16 A. I don't recall. I haven't done his in a</p>				

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<p>17 number of years, so I'm not sure. I might have. 18 Q. Do you recall having done that for other 19 customers? 20 A. I'm sure I did. 21 Q. About how many people would you say you've 22 talked to about RaPower3 in an effort to sell lenses 23 since 2011? 24 A. Fifteen, twenty people, because it's -- if 25 you do it through your network marketing, you want 169: 1 them to -- to do most of it for you, just like any 2 network marketing. You just -- you might have a 3 small team, but then that can grow quite a bit by 4 them telling other people. So you don't have to 5 show it to a lot of people. 6 Q. So do I understand you correctly that you 7 personally don't want to talk -- don't need to 8 necessarily talk to a whole ton of people because --</p>				

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<p>9 that you want your downline to do that instead? 10 A. Yeah, that's all network marketing is 11 about.</p>				
<p>169:19 (Exhibit 595 marked) 20 Q. Showing you what's been marked Plaintiff's 21 Exhibit 595. Please take a look at that and let me 22 know when you're done. 23 A. Yeah, they took that down not too long 24 after it was put up, so it shouldn't have been on 25 there. 170: 1 Q. So, Mr. Howell, Plaintiff's Exhibit 595 is 2 a screenshot of the Howell Financial -- I'm sorry, 3 the Howell Tax Service Facebook page, correct? 4 A. Mm-hmm. 5 Q. Yes? 6 A. Yes. 7 Q. The date of the post that we're looking at 8 is December 26, 2011, correct? 9 A. Yes. 10 Q. And the post says, "Here is a</p>			<p>595 596 242 243 245</p>	

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<p>great year 11 end tax planning to lower your 2011 and even a 12 refund of 2010 taxes. Go to www.RaPower3.com, 13 sponsor code rockingham, need to have it completed by 14 12/29/11." Did I read that correctly? 15 A. Yes. 16 Q. And then we see the link to RaPower3.com, 17 correct? 18 A. Right. 19 Q. Did you author this post, Mr. Howell? 20 A. I believe we did put it up. I think we 21 took -- supposed to have taken it back down. 22 MS. HEALY GALLAGHER: Object to 23 responsiveness. 24 Would you please read back my question. 25 THE REPORTER: "Question: Did you author 171: 1 this post, Mr. Howell?" 2 A. Did I alter it? 3 BY MS. HEALY GALLAGHER:</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>4 Q. Author. 5 A. Author it, yes. 6 Q. And you posted it on Facebook? 7 A. Yes. 8 (Exhibit 596 marked) 9 Q. Mr. Howell, Plaintiff's Exhibit 596 is 10 another screenshot of the Howell Tax Service 11 Facebook page, correct? 12 A. Yes. 13 Q. This post is dated December 31, 2011, 14 correct? 15 A. Yeah. Yeah, they're all posted. 16 Q. And it says, "You can still tax advantage 17 of year end tax deduction today at www.RaPower3.com, 18 sponsor code rockinoh." Did I read that correctly? 19 A. Yes. 20 Q. And then we see that there was a link to 21 the RaPower3 home page, correct? 22 A. Yes. 23 Q. Did you write this post?</p>				

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<p>24 A. I probably did. 25 Q. Any reason to believe you didn't? 172: 1 A. No. 2 Q. And you posted it to Facebook? 3 A. Yes. 4 Q. Handing you, sir, what's already been 5 marked Plaintiff's Exhibit 242. Please take a look 6 at that and let me know when you've read it. 7 A. Okay. 8 Q. Mr. Howell, do you recognize Plaintiff's 9 Exhibit 242? 10 A. Yes. 11 Q. What is it? 12 A. It was an e-mail from Greg Shepard. 13 Q. Did you receive this e-mail? 14 A. I believe so. 15 Q. So about halfway down the page Mr. Shepard 16 writes, "We do have new RaPower3 Team Member who is 17 licensed to do your taxes in all fifty states. So 18 this is another option. John</p>				

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<p>Howell's info is 19 below." Did I read that correctly? 20 A. Yes. 21 Q. And actually let's take a look real quick. 22 The date on this e-mail is February 10, 2012, 23 correct? 24 A. Yes. 25 Q. Okay. Then under the heading "Tax 173: 1 Preparer Help," it says, "Here is my info if any 2 members need help with their tax return and your CPA 3 is overbooked. We have over 50 years in the tax 4 business. My father, sister, and myself are EA's, 5 enrolled agents with the U.S. Treasury Department. 6 We are licensed to do tax returns in any state." 7 Did I read that correctly? 8 A. Yes. 9 Q. And then underneath it says "John Howell, 10 Howell Financial and Tax Service," correct?</p>				

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<p>11 A. Yes. 12 Q. And then it has Howell Tax Service contact information, right? 13 information, right? 14 A. Yes. 15 Q. So did you write that section about your 16 information? 17 A. I believe so. 18 Q. And you sent it to Greg Shepard? 19 A. I believe so. 20 Q. So that he could share it with RaPower3 21 team members across the country? 22 A. I believe so. 23 Q. Showing you what's been marked Plaintiff's 24 Exhibit 243. Please take a look at that and let me 25 know when you're done. 174: 1 A. Okay. 2 Q. Plaintiff's Exhibit 243 is an e-mail from 3 Greg Shepard, correct? 4 A. Yes. 5 Q. Dated Monday, February 20, 2012? 6 A. Yes.</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017

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<p>7 Q. Did you receive this e-mail? 8 A. I believe so. 9 Q. Mr. Shepard says, "Here is an e-mail I 10 just got from John Howell who can do your taxes. 11 John is a RaPower3 team member as well." Do you see 12 that? 13 A. Yes. 14 Q. Did you send Greg Shepard the information 15 that he has below? 16 A. Yes. 17 Q. And you expected Mr. Shepard would then 18 share that information with other RaPower3 team 19 members, right? 20 A. Yeah, that were trying to do it on their 21 own through TurboTax because that software had a 22 glitch in it. 23 Q. Showing you what's been marked Plaintiff's 24 Exhibit 245. Please take a look at that and let me 25 know when you're done. 175: 1 A. An e-mail from --</p>				

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<p>2 Q. Just let me know. 3 A. Yes. 4 Q. Okay. Plaintiff's Exhibit 245 is an 5 e-mail from Greg Shepard, correct? 6 A. Yes. 7 Q. Dated May 4, 2012? 8 A. Yes. 9 Q. The middle paragraph of Mr. Shepard's 10 e-mail says, "John Howell won our contest. 11 Congratulations, John. I will award him his 12 \$2,000 bonus contract at our national convention." 13 Did I read that correctly? 14 A. Yes. 15 Q. What contest was that? 16 A. It asked some tax questions or something, 17 and I was the one that correctly answered it. 18 Q. Could you say more about that? What 19 happened? Did Mr. Shepard -- 20 A. Yeah, he had -- he had put out a puzzle or 21 question about taxes or</p>				

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<p>something, if I remember 22 correctly, and I'd answered it correctly. I think 23 there was several of them that he had put out.</p>				
<p>176: 9 (Exhibit 597 marked) 10 Q. Handing you what's been marked Plaintiff's 11 Exhibit 597. Please take a look at that and let me 12 know when you're done. 13 A. Okay. 14 Q. Plaintiff's Exhibit 597 is Bates marked 15 Gregg_P&R 1355. Do you recognize Plaintiff's 16 Exhibit 597? 17 A. Not really, but I'm sure I might have 18 received it, just an e-mail from Greg sent out to a 19 lot of people. 20 Q. And Greg Shepard, one of his e-mail 21 addresses is greg@rapower3.com, right? 22 A. Yes. 23 Q. This e-mail is dated January 24, 2013, 24 correct?</p>			<p>597 501</p>	

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<p>25 A. Yes. 177: 1 Q. Towards the bottom of the page, second 2 paragraph up, Mr. Shepard says, "We do have a great 3 CPA in Bryan Bolander. Contact him at 4 bryan@vcb-cpa.com or John Howell at rockingh@wf.net. 5 Bryan is from Salt Lake City, Utah, and John is from 6 Wichita Falls, Texas. Both have RaPower3 clients 7 from all across the country." Did I read that 8 correctly? 9 A. Yes. 10 Q. And as of January 2013 did you have 11 RaPower3 tax preparation customers from all across 12 the country? 13 A. Yes. 14 Q. About how many customers from outside of 15 the Wichita Falls area do you have? 16 A. Is that all customers or just RaPower 17 customers?</p>				

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<p>18 Q. All first. 19 A. Well, I've got probably 50, 60. 20 Q. And of those 50 or 60, how many are 21 RaPower3 customers? 22 A. Probably 40 from various states. 23 Q. And let me ask you this. Since 20 -- 24 since 2010 how many customers from outside of the 25 Wichita Falls area has Howell Tax Service had? 178: 1 A. Outside of the Wichita Falls area? 2 Probably -- do you want to include Dallas and 3 Houston, Oklahoma? Because we've had a number of 4 those for years and years. So it would -- hundred. 5 We might have them one year and then not again or -- 6 so it'll fluctuate. 7 Q. And since 2010 how many RaPower3 customers 8 have you had from outside the Wichita Falls area? 9 A. If you total all of them</p>				

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<p>combined, 10 probably over a hundred. But might just do them one 11 year and then another do them again or I might do 12 them for two or three years, so -- 13 Q. And you're talking about tax preparation 14 customers? 15 A. Right, total, all totaled together. So we 16 might see them one year and that's the only time we 17 ever see them. 18 Q. So the number that you gave me of out 19 of -- outside of Wichita Falls area customers since 20 2010, you gave me about a hundred. 21 A. Yeah. It'll -- there -- it might -- 22 overall, because there might be a new one one year 23 and lose one or two one year, and so we -- 24 Q. I want to make sure I understand. So is 25 the total outside of Wichita Falls customers that</p>				

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<p>179: 1 you've had since 2010 200 people and 100 of those 2 are RaPower3 and 100 are non- RaPower3? 3 A. I've probably had several -- well, we've 4 always had out-of-town clients. We've had clients 5 from California to New York. Some have moved to 6 other cities, other states, and we've maintained 7 them. 8 And so how many are just RaPower3? Maybe 9 a hundred of the out-of-state ones. We might have 10 them one year, and then we might not ever hear from 11 them again. We might pick up a new one in '14, 12 might not ever hear from them. Might have one that 13 we've done them for '12, '13, '14 and '15. So it's 14 going to change year by year. A lot of them do it 15 on their TurboTax or online services or whatever. 16 Once they see how we did their</p>				

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<p>tax returns, they go 17 and do it on their own. 18 Q. Then let me ask you this. What I'm 19 curious about, Mr. Howell, is how many customers 20 you've gotten through RaPower3. 21 A. A hundred. 22 Q. Is that since 2011? 23 A. Yeah, yeah, because it'll go up and down. 24 Like I say, you might get a new one, two or three 25 new ones one year and then lose four or five of 180: 1 them. 2 Q. Showing you what's been marked Plaintiff's 3 Exhibit 501. Please take a look at this and let me 4 know when you're ready to answer questions. 5 A. Okay. 6 Q. Have you ever seen Plaintiff's Exhibit 501 7 before? 8 A. No. 9 Q. Okay. That's fine, but I would like to</p>				

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<p>10 draw your attention to the first sentence -- I'm</p> <p>11 sorry, first paragraph, last -- well, withdraw that.</p> <p>12 Let's take a look at the first paragraph.</p> <p>13 It says, "One of the truly great benefits of</p> <p>14 attending the RaPower3 National Convention is</p> <p>15 getting to know fellow team members, linking up</p> <p>16 faces with names, and learning what techniques have</p> <p>17 proven successful for them. This year's most</p> <p>18 memorable line comes from Bob Aulds of Wichita</p> <p>19 Falls, Texas. This was Bob's first year in RaPower3</p> <p>20 and at the convention." Did I read that correctly?</p> <p>21 A. Yes.</p> <p>22 Q. And you know Mr. Aulds, right?</p> <p>23 A. Yes.</p> <p>24 Q. He's in your downline.</p> <p>25 A. Yes.</p> <p>181: 1 Q. Let's skip down to the paragraph that's</p>				

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<p>2 directly above your contact information.</p> <p>3 A. Okay.</p> <p>4 Q. Second sentence of that paragraph says,</p> <p>5 "For all those questions that deal with numbers and</p> <p>6 detailed benefits, Bob refers them to EA John Howell</p> <p>7 and so can you. John has graciously agreed to field</p> <p>8 these difficult number questions and to serve as a</p> <p>9 third party validation on the RaPower3 program."</p> <p>10 Did I read that correctly?</p> <p>11 A. Yes.</p> <p>12 Q. So, Mr. Howell, did you field specific</p> <p>13 questions, either from people referred by Bob Aulds</p> <p>14 or others?</p> <p>15 A. I did, but I didn't know that this was put</p> <p>16 out. That might be why so many called.</p> <p>17 Q. How many people called and asked?</p> <p>18 A. Don't know.</p> <p>19 Q. More than ten?</p>				

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<p>20 A. Yeah. 21 Q. More than 20? 22 A. Yes. 23 Q. More than 50? 24 A. Probably. Because it seemed like it went 25 crazy one year. I didn't know they'd put that out. 182: 1 Q. And of course your contact information 2 appears below. 3 A. Yes. 4 Q. Right? When people called, did you speak 5 with them about the RaPower3 program? 6 A. Depends on -- sometimes yes, sometimes no. 7 I mean, if I was busy, I'd say no. I didn't have 8 time, I'd just say go -- just tell them to go to 9 look at the website. And didn't get -- if they have 10 a specific question that's easy to answer, okay, but 11 if it's something detailed or on their tax return, 12 then I didn't have time to answer just lots and lots</p>				

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Deposition of John Howell taken August 23, 2017*

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<p>13 of questions. 14 Q. You said sometimes you would talk to them 15 and sometimes you wouldn't. So if you did talk to 16 them, did you tell them about RaPower3 and what it 17 could do? 18 A. Well, they had already been told by Bob or 19 somebody else about it, and they just wanted to know 20 about the -- if I could do the taxes or if they 21 could do their taxes or usually generic questions 22 about it. I said, yeah, we can do your tax return 23 if you're not comfortable doing it or you can do it 24 yourself or whoever you use now can do it. I said 25 just go to the RaPower3 website and it tells them 183: 1 the generic information is all right there.</p>				
<p>183:11 Q. Showing you what's been marked Plaintiff's 12 Exhibit 348. Please take a look at that and let me</p>			348	

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>13 know when you're done. 14 A. Okay. 15 Q. This is an e-mail from Greg Shepard, 16 correct? 17 A. Yes. 18 Q. Dated Saturday, November 9, 2013, right? 19 A. Yes. 20 Q. There's an attachment on the e-mail 21 entitled "IRS Business Activities (1).docx," 22 correct? 23 A. Yeah, right out of the IRS's publication. 24 Q. Okay. Take a look, please, right above 25 Mr. Shepard's signature. It says, "Thanks to John 184: 1 Howell, our astute tax preparer from Texas. He sent 2 me the attached business document that should help 3 you in your audit or appeal." Did I read that 4 correctly? 5 A. Yes. 6 Q. And, in fact, did you send Mr. Shepard the</p>				

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7 attachment that appears on page Gregg_P&R 3344? 8 A. Yes.				
184:24 Q. Mr. Howell, when we were looking at the 25 RaPower3 invoices, you have to pay for the systems 185: 1 that you buy, right? 2 A. Yes. 3 Q. Who do you pay? 4 A. RaPower. 5 Q. And has that been true since 2011? 6 A. Yes. 7 Q. To present day? 8 A. Yes. 9 Q. Do you have any understanding of the 10 relationship between Greg Shepard and RaPower3? 11 A. He's their operations manager as far as I 12 know. Might be another title or something else, but 13 that's all I've ever known. 14 Q. Mr. Howell, we talked about folks from 15 around the country who may have contacted you to 16 prepare their tax returns through			598	

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>RaPower3. About 17 how many people in the Wichita Falls area came to 18 you for tax preparation because they were interested 19 in RaPower3? 20 A. I'd say 30. 21 Q. Since 2011? 22 A. Yeah, it'll go up and down, like I say. I 23 mean, you take everybody that was '11, '12, '13, 24 '14, '15, '16, there might have been 50 of them but 25 some of those keep coming. Others might do one time 186: 1 and then never see them again. So, hard to say how 2 many are exactly for RaPower. 3 (Exhibit 598 marked) 4 Q. Mr. Howell, you're being handed what's 5 been marked Plaintiff's Exhibit 598. Please take a 6 look at that. Plaintiff's Exhibit 598 is Bates 7 marked Howell_John 8285 through 307, 8307. 8 Please take a look at Plaintiff's 9 Exhibit 598 and let me know</p>				

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<p>when you are ready. 10 A. Okay. 11 Q. Okay. Let's take a look, please, at -- 12 well, first off, do you recognize Plaintiff's 13 Exhibit 598? 14 A. Yes. 15 Q. What is it? 16 A. It's a tax return for Charles and Tammy 17 Knowing. 18 Q. Knowing? 19 A. Kowing. 20 Q. Kowing. And the Kowings are in 21 Burkburnett, Texas? 22 A. Yes. 23 Q. Have they been long-time customers of 24 Howell Tax Service? 25 A. Yes. 187: 1 Q. When did they start coming to you for tax 2 prep? 3 A. Really don't recall exactly when. 4 '12, '13, fourt -- no, it was about '12, '13, so a 5 number of years. They were</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
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<p>recommended by somebody 6 else. 7 Q. And this tax return is a 2014 tax return, 8 right? 9 A. Yes. 10 Q. If you'd take a look at the signature 11 lines on Howell_John 8290, the date says 12 September 19, 2016. Do you see that? 13 A. Yes. 14 Q. Is that the result of an auto- update field 15 for the date? 16 A. Most likely. 17 Q. So you would have prepared this 2014 tax 18 return sometime in 2015, right? 19 A. Yes. 20 Q. Okay. And just to close that loop, your 21 name is in the paid preparer's signature line, 22 right? 23 A. Yes. 24 Q. So you prepared this return? 25 A. Yes. 188: 1 Q. Take a look, please, at the</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>last page of 2 Plaintiff's Exhibit 598. 3 A. Okay. 4 Q. Oh, actually real quick, does Plaintiff's 5 Exhibit 598 appear to be a true and accurate copy of 6 the Kowings' tax return for 2014? 7 A. Yes. 8 Q. Take a look, please, at the last page. 9 It's a Form 4562 depreciation and amortization -- 10 A. Yes. 11 Q. -- form, right? Take a look, please, at 12 the box that says "Business or activity to which 13 this form relates." Do you see that? 14 A. Yes. 15 Q. It says "Schedule C Alternate Energy 16 Systems." Did I -- 17 A. Yes. 18 Q. -- read that correctly? Yes? 19 A. Yes. 20 Q. Does that indicate a business related to 21 RaPower3?</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017

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<p>22 A. Yes. 23 Q. Then in the description of property, line 24 6A, it says 600-watt thermal solar lens, correct? 25 A. Yes. 189: 1 Q. And in your mind does that mean the 2 system? 3 A. The system. 4 Q. The alternative energy system? 5 A. Yes. 6 Q. The cost in line 6B is \$92,225, correct? 7 A. Mm-hmm. 8 Q. Yes? 9 A. Yes, it is. 10 Q. And you entered that number, correct? 11 A. Yes. 12 Q. Take a look, please, at the page marked 13 Howell_John 8292. 14 A. Okay. 15 Q. This is a Schedule C, correct? 16 A. Yes. 17 Q. The name of the proprietor is Charles 18 Kowing, right? 19 A. Correct.</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>20 Q. And then the principal business or 21 profession identified there is Alternate Energy 22 Systems, right? 23 A. Correct. 24 Q. And that is to indicate the -- a 25 connection to RaPower3? 190: 1 A. Yes. 2 Q. Mr. Howell, when you prepared Schedule Cs 3 for customers who had bought RaPower3 systems, was 4 it your typical practice to put Alternate Energy 5 Systems in line A -- 6 A. Yes. 7 Q. -- of Schedule C? 8 A. Yes, it was. 9 Q. The business name in line C is blank. Do 10 you see that? 11 A. Yes. 12 Q. Why is that blank? 13 A. They're using their own name. "If no 14 separate business name, leave blank." 15 Q. I see. Okay. All right. Line G asks,</p>				

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<p>16 "Did you materially participate in the operation of 17 this business during 2014?" Do you see that? 18 A. Yes. 19 Q. The box "Yes" is checked at the end of 20 that line. Do you see that? 21 A. Yes.</p>				
<p>190:22 Q. Who checked that box? 23 A. Probably -- I probably did.</p>				
<p>193:22 Q. Take a look, please, at Box 32A. Box 32A 23 has an "X" checked next to the statement "All 24 investment is at risk." 25 A. Mm-hmm. 194: 1 Q. How did you know that all of the money 2 that the Kowings had put into RaPower3 was at risk? 3 A. Because if they don't pay for their units 4 or meet up to their obligation, RaPower can take 5 them all back. 6 Q. So to your understanding, because the 7 system was collateral, that meant that the</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017

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8 Kowings' -- 9 A. Yes. 10 Q. -- money was all at risk?				
194:19 Q. Take a look, please, at the depreciation, 20 line 13. It says \$96,715. Do you see that? 21 A. Yes. 22 Q. You entered that number on the line for 23 depreciation, correct? 24 A. It'll be carried directly over from the 25 4562. 195: 1 Q. Can you show me where on the 4562? 2 A. At line 22. 3 Q. Okay. And we're on page Howell_John 8307. 4 A. Yes. 5 Q. And you entered the information on Form 6 4562, correct? 7 A. Yes. 8 Q. And then line 22 on Form 4562 carried over 9 to line 13 on the Schedule C. 10 A. Correct. 11 Q. Then line 31 on the Schedule C, does that				

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Deposition of John Howell taken August 23, 2017*

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<p>12 automatically appear on line 12 of the 1040? 13 A. Yes, it does. 14 Q. And, in fact, on page Howell_John 8289, 15 the first page of the 1040, we see that number on 16 line 12. 17 A. Correct. 18 Q. Let's take a look, please, at Form 3800, 19 which is at -- the page is marked 8295 through 8298. 20 Did you complete this Form 3800? 21 A. Yes. 22 Q. So where -- let's see. So then in part 3, 23 you checked that Box A that indicates this credit is 24 a general business credit from a non-passive 25 activity. 196: 1 A. Yes. 2 Q. Where, if at all, are the credits related 3 to any systems purchased for the Kowings on this 4 Form 3800? 5 A. It's a carryover from Form</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>3468. 6 Q. Which is on what page? 7 A. 8305, line 12B. 8 Q. Thank you. All right. So Form 3468 is 9 the form for the investment credit, correct? 10 A. Correct. 11 Q. And line 12B has \$108,500 entered into it, 12 correct? 13 A. Correct. 14 Q. You entered that number? 15 A. Correct. 16 Q. And then your tax preparation program does 17 the rest? 18 A. It calculates the proper percentage. 19 Q. Is that process consistent with how you 20 prepared people's RaPower3 tax returns? 21 A. Typically, yes.</p>				
<p>196:23 (Exhibit 599 marked) 24 Take a look, please, at what's been handed 25 to you marked Plaintiff's Exhibit 599, Bates numbers 197: 1 US046188 through 46232.</p>			<p>599 23</p>	

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>2 A. Okay.</p> <p>3 Q. Are James and Jo Ann Woodson customers of 4 yours?</p> <p>5 A. Yes.</p> <p>6 Q. Well, let's just start with this.</p> <p>7 Plaintiff's Exhibit 599 is a printout of a Form 1040 8 for James and Jo Ann Woodson, correct?</p> <p>9 A. Yes.</p> <p>10 Q. You prepared this return?</p> <p>11 A. I believe so.</p> <p>12 Q. Any reason to think you didn't?</p> <p>13 A. It's just in a different format than we 14 typically do.</p> <p>15 Q. Sure. But your name is in the 16 preparer's --</p> <p>17 A. Yes.</p> <p>18 Q. -- box, correct?</p> <p>19 A. Yes, it is.</p> <p>20 Q. And your firm's EIN appears there as well?</p> <p>21 A. Yes, it does.</p> <p>22 Q. And your PTIN appears in that box as well.</p> <p>23 A. Yes, it does.</p> <p>24 Q. James and Jo Ann Woodson</p>				

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>live in Powhatan, 25 Virginia. Do you see that? 198: 1 A. Yes. 2 Q. Did they come to you through RaPower3? 3 A. Yes. 4 Q. Take a look, please, at the page that's 5 marked 46217. This is the Wood -- or James 6 Woodson's Schedule C, correct? 7 A. Yes. 8 Q. I'm curious because the -- in line A the 9 principal business or profession is Solar Energy 10 here. Do you see that? 11 A. Yes. 12 Q. Was it your practice to -- I'm sorry. 13 Well, I'll ask the question. Was it your practice 14 to put Solar Energy down when there was a Schedule C 15 related to RaPower3? 16 A. No. He could have had a prior year which 17 he most likely did, and we would have typically put 18 it in to get the historical data</p>				

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Deposition of John Howell taken August 23, 2017*

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<p>from it and then 19 automatically transferred over to the 2013. So that 20 would have transferred over what he had had in a 21 previous year. 22 Q. Okay. So let me make sure I understand 23 and it's clear for the record here. So if James 24 Woodson had filed a 2012 Schedule C and the 2012 25 Schedule C had Solar Energy as the principal 199: 1 business or profession, that information would have 2 automatically populated for 2013? 3 A. Correct. 4 Q. Okay. Nonetheless, to your knowledge, 5 this Schedule C has to do with RaPower3? 6 A. Correct. 7 Q. Mr. Howell, when you first started 8 preparing returns with RaPower3, for RaPower3 9 customers, I should say, did you always separate out 10 RaPower3 as a separate</p>				

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<p>Schedule C? 11 A. Typically we did. 12 Q. So like, for example, if someone already 13 had a Schedule C, would you create a second Schedule 14 C for RaPower3? 15 A. We tried to if it was in a -- most of the 16 time we tried to make it a separate Schedule C. 17 Q. So Mike Penn testified that you did not do 18 that with his return in the first instance. 19 A. Possibility we didn't. 20 Q. And it's possible that that happened with 21 other people as well? 22 A. It could have. It depends on how many 23 Schedule Cs they have. They have three or four or 24 five, you know, you're just getting so many 25 different ones in their tax return. And typically 200: 1 when IRS looks at them, they -- after your third 2 one, it's just going to group</p>				

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Deposition of John Howell taken August 23, 2017

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<p>everything together 3 anyways. 4 But we tried to separate it out so we 5 would know the depreciation assigned to RaPower3. 6 If they had any income from it, we associated with 7 that. Like on the Woodsons, he did have some 8 commissions that were generated through his 9 RaPower3, so they were put on his Schedule C. And 10 his wife had a separate Schedule C. 11 Q. Other tax return preparers at Howell Tax 12 Service prepared tax returns with RaPower3 13 customers, correct? 14 A. Yes. 15 Q. Who were the people who prepared those 16 returns? 17 A. It was usually my brother, Daniel. 18 Q. Anyone else? 19 A. My father and mother probably did some in</p>				

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<p>20 2011, 2012, possibly 2013. 21 Q. Mr. Howell, are you familiar with 22 something that we've been calling in this suit the 23 Anderson letter? 24 A. I believe that is what RaPower had posted 25 on their website. There was two attorney letters. 201: 1 Anderson letter I think was one, and another law 2 firm had another one. 3 Q. Kirton McConkie ring a bell? 4 A. That one, then I think there was also a 5 third one. 6 Q. Okay. I'm going to show you what's 7 previously been marked Plaintiff's Exhibit 23. Do 8 you recognize Plaintiff's Exhibit 23 as the Anderson 9 letter that was on the website? 10 A. Yes. 11 Q. Did you review the Anderson letter when 12 you were -- at any time? 13 A. Yes. 14 Q. What, if anything, did you do</p>				

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<p>with the 15 Anderson letter? 16 A. Probably looked at it, then I looked up 17 the different IRS code sections, IRC 48, the QPEP, 18 so -- and used that to do some research into what 19 they actually had in their -- in their letter. 20 Q. Would it surprise you to learn, 21 Mr. Howell, that Todd Anderson testified not long 22 ago that Plaintiff's Exhibit 23, the Anderson 23 letter, was a draft and not a finished product? 24 A. I'm not aware of any of that. 25 Q. Would it surprise you to learn that 202: 1 Mr. Anderson testified that Plaintiff's Exhibit 23 2 was an attempt to elicit more information from 3 RaPower3 because his firm did not feel like they had 4 enough facts to actually opine on the transaction? 5 A. I have no knowledge of any of</p>				

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<p>that.</p>				
<p>208:14 You testified earlier, though, that you 15 did recall a memorandum from Kirton McConkie on 16 RaPower3's website, right? 17 A. Yes. 18 Q. Do you remember reading that memorandum? 19 A. I believe I did. 20 Q. Did you do anything with the information 21 in that memorandum? 22 A. I probably used it in tax audits or 23 something. 24 Q. Did you ever ask anyone -- well, let me 25 back up. 209: 1 Did you have an understanding of the 2 author of the Kirton McConkie memorandum, who that 3 was? 4 A. I believe it was one of the attorneys 5 there in their law firm. 6 Q. Did you ever ask anyone where the author 7 of the memorandum got his facts</p>				

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that he stated in 8 the memo? 9 A. No.				
209:17 Q. Mr. Howell, did you ever hear about Kirton 18 McConkie rescinding its memorandum? 19 A. No. 20 Q. No one ever mentioned that to you? 21 A. No.				
210:13 Q. And to your knowledge, Mr. Howell, did you 14 prepare any tax returns with RaPower3 tax benefits 15 on C corp. tax returns? 16 A. I think some -- one we did, but he passed 17 away and so the corporation, I believe, was 18 dissolved. 19 Q. So then of your tax return preparation 20 customers who claimed tax benefits through RaPower3, 21 how were they organized? 22 A. Most of them were Schedule Cs. 23 Q. So sole proprietors? 24 A. Yes.				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017

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<p>25 Q. If they were not sole proprietors, how 211: 1 were they organized? 2 A. I don't know if we have any partnerships 3 that do it because most of them are sole 4 proprietorships. Might have been an S corp., couple 5 S corps, but 99.8 percent would have been sole 6 proprietorships.</p>				
<p>211:11 Q. We've spoken a few times, Mr. Howell, 12 about audits and appeals with the IRS with respect 13 to RaPower3 customers. When did you first learn 14 that the IRS was auditing RaPower3 customers? 15 A. 2013. 16 Q. How did you learn about that? 17 A. Clients saying they're being audited. 18 Q. Your own clients? 19 A. Some my own, some clients from other 20 areas. 21 Q. And when you say clients, do</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017

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<p>you mean that 22 they either were or became clients of yours or that 23 they were RaPower3 clients? 24 A. Some were just RaPower3 clients. I just 25 did the audit for them. 212: 1 Q. About how many people have you represented 2 before the IRS whose RaPower3 tax benefits were 3 being examined? 4 A. I don't recall really how many. There was 5 quite a few in -- few in '13. I think most of them 6 were in '14. Could be 50. 7 Q. And is that just at the examination stage 8 or also on appeal you're talking about? 9 A. Yeah, all the ones that went through 10 examinations we did appeals on.</p>				
<p>215:14 (Exhibit 601 marked) 15 Q. Mr. Howell, handing you what's been marked 16 Plaintiff's Exhibit 601 which is Bates marked 17 BT_000285. Do you recognize</p>			601 602	

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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Plaintiff's 18 Exhibit 601? 19 A. Yes. 20 Q. What is it? 21 A. It was an e-mail from Greg Shepard from 22 (sic) William Coates. 23 Q. And it's a chain of e-mails, right? 24 A. Yes. 25 Q. The topic of the e-mail is "Ra3 Audit," 216: 1 yes? 2 A. Yes. 3 Q. These e-mails are dated in June 2014. Do 4 you think that's about when you received these 5 e-mails? 6 A. Yes. 7 Q. And I'll also note for the record you are 8 cc'd on these e-mails, correct? 9 A. Yes. 10 Q. And in fact, you got these? 11 A. Yes. 12 Q. Does Plaintiff's Exhibit 601 appear to be 13 a true and accurate copy of the e-mails between Greg				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017

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<p>14 Shepard and Bill Coates? 15 A. Yes. 16 (Exhibit 602 marked) 17 Q. Handing you, Mr. Howell, what's been 18 marked as Plaintiff's Exhibit 602, Bates marked 19 Gregg_P&R 2698 through 99. Please take a look at 20 that and let me know when you're done. 21 A. Okay. 22 Q. Do you recognize Plaintiff's Exhibit 602? 23 A. I believe I've seen it. It was a mass 24 e-mail. 25 Q. The e-mail is from Greg Shepard, correct? 217: 1 A. Yes. 2 Q. Dated December 21, 2013, right? 3 A. Yes. 4 Q. And your e-mail address, rockingh@ -- 5 A. Yes. 6 Q. -- wf.net is in about the middle of the 7 address list, right? 8 A. Yes, it is.</p>				

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017

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<p>9 Q. And in fact, you received this e-mail from 10 Mr. Shepard? 11 A. I believe so. 12 Q. Okay. Does Plaintiff's Exhibit 602 appear 13 to be a true and correct copy of the e-mail from 14 Mr. Shepard? 15 A. Yes.</p>				
<p>218: 5 (Exhibit 603 marked) 6 Q. Handing you, Mr. Howell, what's been 7 marked as Plaintiff's Exhibit 603. For the record, 8 it's Bates marked Howell_John 2611 through 2613. 9 Take a look at that, please, and let me know when 10 you are done. 11 A. Okay. 12 Q. Do you recognize Plaintiff's Exhibit 603? 13 A. I've seen it somewhere. It was probably 14 in just some general information I had put in when 15 IRS was requesting a bunch of documents from me. I 16 don't -- probably didn't ever use</p>			603	

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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it in any 17 particular audits or anything. This was just some 18 general information on an e-mail that was sent out 19 to everybody.				
218:25 Q. Where did you get Plaintiff's Exhibit 603? 219: 1 A. That came from an e-mail from Greg 2 Shepard. 3 Q. So -- 4 A. It was an attachment.			603	
220: 1 Nonetheless, does Plaintiff's Exhibit 603 2 appear to be a true and accurate copy of a document 3 you received from Greg Shepard? 4 A. Yes.			603	
221:16 (Exhibit 605 marked) 17 Q. Showing you, Mr. Howell, what's been 18 marked Plaintiff's Exhibit 605, Bates number 19 Howell_John 348 through 350. Take a look at that, 20 please, and let me know when you're done. 21 A. Okay. 22 Q. Do you recognize Plaintiff's			605	

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017

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<p>Exhibit 605? 23 A. Yes. 24 Q. What is it? 25 A. It was a letter I had sent to Mr. Miller. 222: 1 Q. And Mr. Miller is at the IRS? 2 A. With the IRS, yes. 3 Q. The date at the top is July 17, 2013. Do 4 you see that? 5 A. Correct. 6 Q. Do you believe you sent this letter on or 7 about that date? 8 A. Yes. 9 Q. And this letter is with respect to the 10 Aulds' audit of their 1040 for 2010 and 2011, 11 correct? 12 A. Correct. 13 Q. That audit had to do at least in part with 14 the tax benefits from RaPower3, correct? 15 A. Yes. 16 Q. All right. So on pages 1 and 2, you sort 17 of -- you state in general terms</p>				

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<p>what the -- what 18 the objections are to the disallowance, right? 19 A. Yes. 20 Q. And then you say -- it's like the third to 21 last paragraph -- "If the information contained in 22 all correspondence is not enough support, the 23 taxpayers can provide additional evidence and expert 24 testimony from special witnesses upon appeal." 25 What evidence and testimony was that? 223: 1 A. RaPower said that they had a special 2 witness that they would utilize in appeals if it was 3 necessary. 4 Q. Who was that? 5 A. I don't know who it was. 6 Q. Did you ask? 7 A. I'm sure I did. They might have given me 8 a name. I just -- I don't recall what it was or 9 anything. 10 Q. Okay. So that's the</p>				

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testimony. What's 11 the additional evidence? 12 A. Well, the additional evidence is going to 13 come from the expert testimony on that the RaPower 14 process does work, that the solar towers can produce 15 electricity. 16 Q. So your understanding was that the special 17 witness was going to talk about the technology? 18 A. Right.				
226:11 (Exhibit 606 marked) 12 Q. Mr. Howell, handing you what's been marked 13 Plaintiff's Exhibit 606, Bates marked Riter_Kenneth 14 1066. Please take a look at that and let me know 15 when you're done. 16 A. Okay. 17 Q. Mr. Howell, do you recognize Plaintiff's 18 Exhibit 606? 19 A. I don't recall it. I'm sure it was sent 20 to me. I'm not sure if I read it or not. I get			606	

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of John Howell taken August 23, 2017*

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<p>21 lots of e-mails, so I'm sure it was sent to me. I'm 22 not sure if I read this particular one or not. 23 Q. Okay. Well, we see at the top, the top 24 e-mail is from Ken Riter -- 25 A. Yeah. 227: 1 Q. -- to Christopher Moran, so that's not -- 2 A. And I didn't know -- probably saw -- 3 Q. You weren't part of that? 4 A. -- who it was from, so I didn't know 5 anything, didn't pay any attention to it. 6 Q. But below that, right, we see an e-mail 7 from Greg Shepard, greg@rapower3.com, right? 8 A. Yeah. 9 Q. Sent November 15, 2014, correct? 10 A. Yes. 11 Q. And it's to you, John Howell. 12 A. Yes. 13 Q. And then a few other people are cc'd 14 underneath. Do you see that?</p>				

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<p>15 A. Yes. 16 Q. The subject is "IRS Tactics Against Tax 17 Preparers," right? 18 A. Yes. 19 Q. Does this look like a true and correct 20 copy of an e-mail that you received? 21 A. I'm sure it is. 22 Q. Any reason to think it's not? 23 A. No. 24 Q. Mr. Howell, did you represent any 25 taxpayers who were being audited by the State of 228: 1 Oregon? 2 A. I think there was one, I believe. Trying 3 to remember what his name was. Starts with a P, I 4 believe. 5 Q. Do you recall Mr. Shepard doing any sort 6 of coordination work with respect to the Oregon 7 appeals? 8 A. He was finding somebody there in Oregon to 9 handle the Oregon case.</p>				

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<p>10 Q. Has there been any resolution of that</p> <p>11 case?</p> <p>12 A. Not that I know of.</p> <p>13 Q. Did you do anything in that case besides</p> <p>14 send letters or anything like that?</p> <p>15 A. I think I just sent some letters. Since</p> <p>16 the IRS is -- appeal is in tax court, the state's</p> <p>17 all on hold, as far as I know. I haven't been in</p> <p>18 contact with any of that lately.</p>				
<p>229:15 (Exhibit 608 marked)</p> <p>16 Q. Let's take a look, please, at Plaintiff's</p> <p>17 Exhibit 608, which is Bates numbered Howell_John 335</p> <p>18 through 346.</p> <p>19 A. Okay.</p> <p>20 Q. Do you recognize Plaintiff's Exhibit 608?</p> <p>21 A. Yes.</p> <p>22 Q. What is it?</p> <p>23 A. It's a letter I sent to the IRS, Gaylon</p> <p>24 Berg, for the audit of Robert Aulds, Meria</p> <p>25 Gillespie-Aulds.</p>			<p>608</p> <p>609</p>	

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
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<p>230: 1 Q. The date at the top is February 26, 2016. 2 Do you see that? 3 A. Yes. 4 Q. Do you think you sent this to the IRS on 5 or about that date? 6 A. Yes. 7 Q. All right. So this is three years after 8 the 2013 letter about an Aulds audit with respect to 9 RaPower3, right? 10 A. Mm-hmm. 11 Q. Yes? 12 A. Yes. 13 Q. And Plaintiff's Exhibit 608 is also in 14 response to an audit of RaPower3 tax benefits. 15 A. Yes. 16 Q. If you take a look, please, at page 345. 17 A. Okay. 18 Q. Once again, we see the offer that the 19 taxpayers can provide additional evidence and expert 20 testimony from special witnesses. Do you see that?</p>				

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<p>21 A. On 345? 22 Q. Third paragraph from the bottom. 23 A. Yes. 24 Q. Okay. So you've known about this special 25 witness for three years now. Why didn't you submit 231: 1 that special witness's information during this audit 2 process? 3 A. Well, because this was going to the -- for 4 the appeals. 5 Q. Why didn't you submit it -- 6 A. The audit -- 7 Q. -- in the first place? 8 A. The auditor has already determined the 9 outcome of them. 10 Q. Right. And the auditor asked for 11 information, right? 12 A. Based for the tax return, yes. 13 Q. Okay. So did you ever submit this special 14 witness's testimony to anyone at the IRS? 15 A. No, because they had already determined</p>				

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<p>16 that no matter what we said or did, their outcome 17 was it was going to be denied. So we said, okay, 18 we'll go to appeals then. That's what this was for. 19 Q. And if the IRS said, yes, we do want to 20 hear from this person, what would you do? 21 A. I'd have probably found out who they were 22 and a phone number to contact them. 23 Q. But you don't have that information today, 24 do you? 25 A. No, I do not. 232: 1 (Exhibit 609 marked) 2 Q. Take a look, please, at what's been marked 3 Plaintiff's Exhibit 609. 609 is Bates marked 4 Howell_John 1559 through 1565. 5 A. Okay. 6 Q. Do you recognize Plaintiff's Exhibit 609? 7 A. Yes. 8 Q. What is it? 9 A. It's a statement of disputed</p>				

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<p>issues from 10 an audit for appeals. 11 Q. And did you draft Plaintiff's Exhibit 609? 12 A. I believe I did. 13 Q. Did you send it to the IRS? 14 A. Yes, I did. 15 Q. Did you send it on or about the date at 16 the top of the page, July 20, 2016? 17 A. Yes. 18 Q. This audit and appeal, did this have to do 19 with tax benefits related to RaPower3? 20 A. Part of it, yes. 21 Q. What part of this did not have to do with 22 RaPower3? 23 A. The logbook, charitable contributions. 24 Q. So, Mr. Howell, if we take a look at the 25 last couple of lines on page 1559 that starts "The 233: 1 first thing to remember," do you see that? 2 A. Mm-hmm. 3 Q. Yes?</p>				

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<p>4 A. Yes. 5 Q. So starting from there through the rest of 6 the letter, that all has to do with RaPower3, 7 correct? 8 A. Yes. 9 Q. Mr. Howell, were you aware that in late 10 2016 RaPower3 stopped promoting depreciation as a 11 tax benefit related to buying one of its lenses? 12 A. I had heard that. 13 Q. What did you hear about it? 14 A. That they were adjusting their -- their 15 pricing for just the energy credit and not the 16 depreciation. 17 Q. Who did you hear it from? 18 A. I believe there was a e-mail or memo or 19 something that was sent out from Greg Shepard 20 concerning it. 21 Q. Did that decision have any impact on how 22 you prepared RaPower3 customer returns for tax year</p>				

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<p>23 2016?</p> <p>24 A. Because I asked them under what</p> <p>25 presumption are they saying not to take depreciation</p> <p>234: 1 on equipment that the taxpayer has purchased.</p> <p>2 Q. So the answer is no?</p> <p>3 A. No. So the answer is no.</p> <p>4 Q. So just to make it clear for the record,</p> <p>5 for RaPower3 customers who purchased lenses in 2016,</p> <p>6 when you prepared their tax return, you claimed</p> <p>7 depreciation for those lenses?</p> <p>8 A. Most of my clients, yes, we claimed</p> <p>9 depreciation because they had bought prior to any</p> <p>10 changes.</p> <p>11 Q. What if they bought after the changes?</p> <p>12 A. I don't think I had any.</p> <p>13 Q. Okay. So have any of your customers, to</p> <p>14 your knowledge, bought lenses in 2017?</p> <p>15 A. I am sure that they have.</p> <p>None of them</p>				

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<p>16 have told me specifically that they have.</p> <p>17 Q. Do you plan to make any changes? Are you</p> <p>18 going to claim depreciation for those customers?</p> <p>19 A. If they're entitled to depreciation, yes.</p> <p>20 Q. And will you make that decision based on</p> <p>21 what RaPower3 says or based on your interpretation</p> <p>22 of the law?</p> <p>23 A. My interpretation.</p>				
<p>238: 9 EXAMINATION 10 BY MR. TEAKELL:</p>				
<p>246: 4 Q. Now, you were asked more than once about</p> <p>5 some documents that referenced additional</p> <p>6 information, additional evidence, additional</p> <p>7 testimony that you had put in correspondence</p> <p>8 regarding audits. Do you remember that?</p> <p>9 A. Yes.</p> <p>10 Q. Now, my question is, what was -- I</p> <p>11 understand you had a basis for</p>				

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<p>making those 12 statements or that statement that was repeated 13 essentially in more than one document. And again, 14 what was that, or what was that? 15 A. RaPower, usually from Greg Shepard, said 16 they had a special witness that we could -- that 17 they would use in appeals if they needed to and we 18 would just need to contact them at that time if we 19 were going to have a appeals conference call and 20 that that person would be available. 21 Q. Was there anybody else from RaPower who 22 gave you that information, or did this come from 23 Shepard? 24 A. It just came from Greg Shepard. 25 Q. So the basis -- your basis of that 247: 1 statement was Shepard directly telling you that? 2 A. Yes.</p>				

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<p>249:12 MS. HEALY GALLAGHER: All right. Then -- 13 all right. I will ask that Mr. Howell read and sign 14 his deposition. And Mr. Teakell will explain to you 15 what that means. We are off the record. Thank you 16 very much.</p>				
<p>DEFENDANT COUNTER- DESIGNATIONS</p>	<p>PLAINTIFF COUNTER- DESIGNATIONS</p>			

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.