

Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of RaPower-3, LLC (Neldon Johnson, designee) taken June 30, 2017

Plaintiff Designations – BLUE Defendant Completeness— PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness— PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
PLAINTIFF DESIGNATIONS	DEFENDANT -DESIGNATIONS			
<p>4: 1 SALT LAKE CITY, UTAH, FRIDAY, JUNE 30, 2017, 8:57 A.M. 2 * * * * *</p> <p>3 NELDON JOHNSON, 4 called as a witness herein, having been first duly sworn, 5 was examined and testified as follows: 6 MS. GALLAGHER: We're on the record. We are on the 7 record in the case of United States vs. RaPower3, et al., on 8 June 30th, 2017, at just about 9:00 a.m. My name is Erin 9 Healy Gallagher of the U.S. Department of Justice in the Tax 10 Division appearing on behalf of United States. 11 Counsel, please state their appearances. 12 MR. SNUFFER: Denver Snuffer here on behalf of the 13 Defendants RaPower, LTB, IAS and Neldon Johnson. And with 14 me from my office is Mr. Steve Paul. 15 MS. HINES: Erin Hines on</p>				

**Plaintiff
Exhibit**

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behalf of the United States. 16 MS. GALLAGHER: And not present today are Don Reay who 17 represents R. Gregory Shepard and Roger Freeborn, and Chris 18 Moran who represents the United States. Also today we have 19 in the room Mrs. Glenda Johnson.				
5: 2 EXAMINATION 3 Q. (BY MS. GALLAGHER) All right, Mr. Johnson. 4 A. Yes. I would like to -- 5 Q. Wait a second, please. 6 A. Oh. Sorry. 7 Q. This deposition today is the deposition of 8 Defendant RaPower3; is that your understanding, sir? 9 A. I thought it was LTB. 10 MR. SNUFFER: No. LTB is tomorrow. 11 THE WITNESS: Okay. 12 MR. SNUFFER: RaPower is today. 13 Q. (BY MS. GALLAGHER) So I'm handing you what's been 14 marked Plaintiff's Exhibit 487 which is the United States 15 Notice of Deposition of			487	

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Defendant RaPower3, LLC. 16 Mr. Johnson, you're here today to represent RaPower3; 17 correct? 18 A. That's correct. 19 Q. Pursuant to this Notice; yes? 20 A. Yes. 21 Q. As we go through the day today, if at any time you 22 answer questions from any source other than your own 23 personal knowledge, will you let me know? 24 A. Yes.				
12:19 Q. Mr. Johnson, when was Bill Pack a sales rep for 20 IAS? 21 A. I'm not really positive. I think we had some kind 22 of a contract, but it was around - - around 2005. 23 Q. Is he still a sales rep for IAS? 24 A. He is.				
32:16 Q. Mr. Johnson, you are the manager of RaPower3; 17 correct? 18 A. That's correct. 19 Q. Does anyone else make decisions for RaPower3 other 20 than you?				

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<p>21 A. No. 22 Q. What does RaPower3 do? 23 A. It's a marketing company that markets solar energy projects, and it can -- it can sell other products as well. 24 projects, and it can -- it can sell other products as well. 25 Q. Currently what product is RaPower3 selling? 33: 1 A. Just the solar lenses. 2 Q. Has RaPower3 ever sold any other product? 3 A. No. 4 Q. And these were the solar lenses that are on the towers that we've been discussing throughout the depositions this week; yes? 7 A. That's correct. 8 Q. How does RaPower3 sell these lenses? 9 A. It's a multi-level marketing company. 10 Q. Can you explain what your understanding of that is. 12 A. Well, we have distributors that join and become members of the RaPower multi-level marketing, and then they're able then to sell the</p>				

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products. 15 Q. What does someone have to do to become a distributor? 16 distributor? 17 A. They just have to sign up. There was no requirements. 18 requirements.				
34: 6 Q. Okay. So a person who wanted to sell a lens could sign up to be a distributor without buying any lenses, him or herself? 8 or herself? 9 A. That's correct.				
34:23 Q. So am I correct, sir, that RaPower3 issues 1099s to people who sell RaPower3 lenses? 24 to people who sell RaPower3 lenses? 25 A. That's correct. 35: 1 Q. What, if anything, does RaPower3 pay those people for? 2 for? 3 A. For a commission on a sale. 4 Q. What is the commission structure for RaPower3 distributors? 5 distributors? 6 A. For -- for the first product, and the way they market it is a 10 percent commission on the sale, and then there's a down line of 1 percent, a				

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<p>five-level down line of 9 1 percent each. The next -- the next way that they market 10 it is there's two down lines with a 7 percent commission on 11 each down line.</p>				
<p>36:14 Q. So from 2010 until that point last year, which 15 commission structure was in operation? 16 A. The one with the five, I think five levels. 17 Q. Okay. Let's take the structure that had been in 18 place from 2010 until last year. Let's start with that. 19 A. Okay. 20 Q. You just used a word down line. 21 A. That's correct. 22 Q. What does down line mean? 23 A. It means how many people that are -- that you 24 basically have sold, and then they -- they produce another 25 line, and then they produce the other line, and you get a 37: 1 piece of each line that they -- they sell it on. So that's, 2 from my understanding, that's the</p>				

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<p>down lines of an MLM 3 company. 4 Q. Greg Shepard, Mr. Johnson, is a sales 5 representative for RaPower3; correct? 6 A. That's correct. 7 Q. Okay. So let's say Greg Shepard is the first 8 level on his down line -- 9 A. That's correct. 10 Q. -- is that right? Okay. And then he makes a 11 sale. 12 A. And he would get 10 percent. 13 Q. Okay. So let's say, for example, he made a sale 14 to Robert Rowbotham. 15 A. Correct. 16 Q. Greg Shepard would get 10 percent of the sale to 17 Robert Rowbotham? 18 A. That's correct. 19 Q. And when you say 10 percent of the sale, or when 20 you say 10 percent of the sale, 10 percent of what? 21 A. 10 percent of the gross of the -- of the money 22 that is paid they will receive 10</p>				

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<p>percent as -- as 23 production to pay off the loan continues, they will then 24 continue to become -- to get 10 percent of the production. 25 Q. Okay. So let's say a lens costs \$3,500. 38: 1 A. Okay. 2 Q. And Robert Rowbotham buys one lens. 3 A. That's correct. 4 Q. But Robert Rowbotham pays a down payment of 5 \$1,050. 6 A. Correct. 7 Q. And the remainder of the 1,000 -- I'm sorry. The 8 remainder of the \$3500 is financed? 9 A. Correct. 10 Q. Would Greg Shepard receive 10 percent of \$1,500? 11 A. Correct. 12 Q. Then, as I think you just described, as payments 13 on that lens are made over time to add up to \$3,500, 14 Mr. Shepard would get 10 percent of each of those payments? 15 A. That's correct.</p>				

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<p>16 Q. Okay. So then let's say Robert Rowbotham makes a 17 sale to Roger Freeborn. 18 A. Okay. 19 Q. Robert Rowbotham gets 10 percent of that sale; 20 correct? 21 A. That's correct. 22 Q. And then Greg Shepard gets 1 percent of that sale? 23 A. That's correct. 24 Q. Then if Roger Freeborn makes a sale to Brian Zeleznik, for example, now it's Roger Freeborn who gets the 39: 1 10 percent, Robert Rowbotham gets 1 percent, and Greg Shepard gets 1 percent? 3 A. That's correct. 4 Q. And the 1 percent is also calculated on money actually paid by the purchaser? 6 A. That's correct. 7 Q. Who established this commission structure? 8 A. I did. 9 Q. Since 2010 who has kept track of which people are owed which commission?</p>				

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<p>11 A. My -- my wife, Glenda Johnson, does it for free. 12 Q. Has she done so since 2010? 13 A. She's done a good job, yes. Yeah. There's a -- 14 there's a real procedure that we don't get -- we don't have 15 anybody touching that money like we did before and stealing 16 it. So, yeah, she does a good job. 17 Q. How does Mrs. Johnson keep track of the 18 commissions? 19 A. There's a computer program that does all of that. 20 The -- when a sale comes in, it goes into the computer 21 system, it gets transferred into our bookkeeping system, 22 then she takes a photograph physically of all of the money 23 that comes in and keeps a paper copy of all the transactions 24 as well as electronic transactions. 25 Q. When you say a sale -- when a sale comes in it 40: 1 goes into the computer program, how do sales come in?</p>				

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2 A. Usually through a computer program that's on the website. 3 website. 4 Q. Which website? 5 A. I think it's Rapower.net or RaPower3.com. I 6 don't -- I'm not sure which one.				
40:18 Q. The equipment purchase agreement that RaPower3 provides to customers is available online; correct? 20 A. That's correct. 21 Q. And you directed that that contract be made available online? 22 available online? 23 A. That's correct. 24 Q. Plaintiff's Exhibit 511, Mr. Johnson, which we 25 looked at earlier, is an example of that equipment purchase agreement; right? 41: 1 agreement; right? 2 A. That's correct, yes.			511	
41:24 Q. Okay. So we talked about the first structure for 25 commission through RaPower3, and you said that last year the 42: 1 structure changed? 2 A. That's correct. 3 Q. Who made the decision to change the structure?				

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<p>4 A. I did. 5 Q. And why did you make that decision? 6 A. I just felt like that it would be easier to keep 7 track of for the distributors and it wouldn't be -- it would 8 end up for -- the ones that produced would get a better, you 9 know, a better compensation than those that did not produce. 10 Whether it works out that way I don't know. It's just 11 something we concluded. 12 Q. But you thought the changed commission structure 13 would make distributors more money? 14 A. Yes. The ones that -- the ones that were actually 15 producing, it would have made them more money than -- I 16 think that would be correct. 17 Q. Okay. So it would make more money for the more 18 productive sales folks? 19 A. I believe so, yes. But whether it does or 20 doesn't, I don't have any way of knowing.</p>				

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21 Q. But that was your goal? 22 A. Uh-huh. 23 Q. "Yes?" 24 A. Yes. 25 Q. Okay. About when last year did you change the 43: 1 commission structure? 2 A. It was close to the first of the year that we 3 decided to make those changes. It wasn't -- it was an add 4 on rather than a complete change at that time. 5 Q. Couple things there. You said we. Do you mean 6 you? 7 A. I mean myself. I apologize again.				
43:16 Q. And who, if anyone, did you tell about this 17 decision? 18 A. I told Greg Shepard and -- and a few other people. 19 Q. Who else other than Greg Shepard? 20 A. It may have been Roger Hamblin and a few other 21 sales reps. I may have discussed it with them to get their 22 opinions on how they like the				

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structure before I implemented 23 it.				
45:25 Q. Do you anticipate keeping -- I'll withdraw that. 46: 1 All right. So in or around early 2016 you started 2 introducing a new commission structure? 3 A. That is correct. 4 Q. And that new commission structure involves just 5 two down lines; yes? 6 A. That's correct. 7 Q. But any sale on either down line will generate a 7 8 percent commission? 9 A. No. 10 Q. "No." Okay. 11 A. Oh, yes. On the new structure, yes. Right. I 12 apologize. 13 Q. So let's take the example down line that we used 14 earlier. Let's say Greg Shepard sells a lens under the new 15 commission structure and he sells that lens to Robert 16 Rowbotham. Mr. Shepard will receive 7 percent of that sale; 17 correct?				

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<p>18 A. That is correct. 19 Q. And, still, Mr. Shepard will receive 7 percent of 20 the actual money paid by Robert Rowbotham? 21 A. That's correct. 22 Q. Then let's say Robert Rowbotham sells a lens to 23 Roger Freeborn. Will Greg Shepard get 7 percent of the sale 24 to Roger Freeborn? 25 A. That's correct. 47: 1 Q. And Robert Rowbotham will also get 7 percent? 2 A. That's correct. 3 Q. Then if Roger Freeborn sells to Brian Zeleznik in 4 this, case does Mr. Shepard get a commission? 5 A. No. 6 Q. It would just be Mr. Robotham and Mr. Freeborn? 7 A. That's correct.</p>				
<p>48: 8 Q. (BY MS. GALLAGHER) With respect to the first 9 commission structure, who, if anyone, did you tell about the 10 commission structure for RaPower3? 11 A. Well, basically the</p>				

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<p>salespeople, you know, 12 introduced them to the new -- I mean the old structure I 13 taught them, you know, basically, and then expanded from 14 there, you know, from -- as the other people started 15 selling. 16 Q. So you told the RaPower3 salespeople about the 17 original commission structure; right? 18 A. Correct. 19 Q. And then they were authorized to tell other people 20 about the commission structure; correct? 21 A. That's correct, yes. 22 Q. Included in those original salespeople were Greg 23 Shepard? 24 A. That's correct. 25 Q. And Roger Freeborn? 49: 1 A. Correct. 2 Q. Who else were among the original salespeople for 3 RaPower3? 4 A. I think Roger Hamblin and just a few other people. 5 I don't know.</p>				

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<p>6 Q. Who were the other people? 7 A. I don't -- I can't remember. Just a few friends. 8 But I don't know if I told them or Roger told them or Greg 9 told them. I -- I'm not positive. 10 Q. About how many salespeople did RaPower3 start off 11 with? 12 A. Probably about ten or so. 13 Q. About how many salespeople does RaPower3 have now? 14 A. I don't really know. A thousand. Maybe 2,000. I 15 don't know.</p>				
<p>51:11 Q. Mr. Johnson, what, if any, authority does Greg 12 Shepard have to make decisions on behalf of RaPower3? 13 A. He doesn't have any decision making power. 14 Q. But he does have authority to share information 15 about RaPower3 with other people; correct? 16 A. Every -- every member of the MLM company has a 17 right to do a website. 18 Q. That wasn't my question. 19 A. Oh. I'm sorry. Yes, okay.</p>				

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<p>20 MS. GALLAGHER: Would you read back my question, please 21 (to the reporter). 22 (The question was read as follows: 23 "Q But he does have authority to share 24 information about RaPower3 with other people; 25 correct?") 52: 1 THE WITNESS: That is correct, yes.</p>				
<p>54: 2 Q. Are there any contracts between RaPower3, LLC, and 3 Cobblestone Center, LLC? 4 A. That I don't know. I think there is, but I'm not 5 positive on that. 6 Q. All right. If there is a contract between them, 7 what do you think it involves? 8 A. It would involve giving Cobblestone the right to 9 construct the equipment that's been purchased. Build and 10 buy and manufacture and construct. 11 Q. If there is a contract between RaPower3 and 12 Cobblestone, who would have</p>				

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signed on behalf of RaPower3? 13 A. Neldon Johnson, Manager. 14 Q. And who would have signed on behalf of 15 Cobblestone? 16 A. Cobblestone? It'd be Neldon Johnson, Manager of 17 Cobblestone. 18 Q. Does Cobblestone make any payments to RaPower3? 19 A. No, they do not. 20 Q. Does RaPower3 make any payments to Cobblestone? 21 A. Yes. I believe they do. 22 Q. What, if any, payments -- what does RaPower3 pay 23 Cobblestone for? 24 A. For the construction and, you know, the building 25 and construction of the solar -- of the solar project. 55: 1 Q. What do you mean by that? 2 A. Cobblestone is -- is the manufacturing arm of the 3 operation as well as the construction of the various 4 components to create a solar energy project.				
55: 9 Q. Other than payment to Cobblestone and commission				

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<p>10 to salespeople, what, if any, other expenses does RaPower3 11 have? 12 A. Well, they may have some traveling expenses, they 13 may have some rent expenses, they may have legal expenses. 14 You know, they may have some administration expenses. You 15 know, just normal business expenses that you'd incur in a 16 business. 17 Q. To whom does RaPower3 pay rent? 18 A. Probably to Glenda Johnson.</p>				
<p>57:24 Q. What, if any, business relationship does RaPower3 25 have with LTB-LLC? 58: 1 A. They don't have any relationships with LTB, or any 2 of those operating and maintenance companies, other than 3 providing the customer an opportunity to sign an agreement 4 whether or not they want to participate with the programs 5 offered to the customers through LTB or any other management 6 corporation.</p>				
<p>61: 4 "Q And RaPower3 knows, of</p>				

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<p>course, that 5 LTB-LLC, has never operated and maintained a power 6 plant; correct?" 7 THE WITNESS: Yes. Like I said, the information from 8 LTB, their expertise has been fully disclosed to not only 9 RaPower, but also to all of the customers. 10 Q. (BY MS. GALLAGHER) And the fact, Mr. Johnson, that 11 LTB has never operated or maintained a power plant; correct? 12 A. Well, that's not -- LTB has not done that, but the 13 manager of the company may have. 14 Q. And the manager of LTB- LLC, is who? 15 A. Neldon Johnson. 16 Q. So you may have operated and maintained a power 17 plant? 18 A. Uh-huh, yes. 19 Q. When was that? 20 A. In -- when I was in Alaska with a -- with the 21 company up in Alaska, we maintained -- part of the</p>				

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<p>22 responsibility that I had in developing and working with the 23 company that was doing the early distant warning system in 24 Alaska had power plants at the site which I operated and 25 maintained as part of my duties while I was in Alaska. 62: 1 Q. What year was that? 2 A. '67, I believe. 1968. Something like that. 3 Q. And did that power plant involve converting light 4 and heat from the sun into any kind of energy? 5 A. No, but it was basically the power plant and so it 6 was the same -- same thing. 7 Q. And is that the full extent of your experience 8 operating and maintaining a power plant? 9 A. Other than the ones I developed myself and built 10 and have patents on and demonstrated by the Patent Office 11 that I understand and -- understand the technology and 12 understand how to operate and obviously then maintain that</p>				

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<p>13 particular power plant. In fact, I would be the only one 14 that would be capable of doing that with the knowledge base 15 that I have. 16 Q. And, Mr. Johnson, LTB1-LLC, has never operated and 17 maintained a power plant; correct? 18 A. The company itself has not, but the manager has. 19 Q. And that manager is you? 20 A. That's correct. 21 Q. Okay. To your knowledge, Mr. Johnson, has anyone 22 bought lenses through RaPower3 and then not signed an 23 operation and maintenance agreement with LTB? 24 A. I'm not aware of anyone that's done that. 25 However, we have offered an alternative to using our system 63: 1 where you can provide your own lens holders and focus it on 2 a vacuum tube with a liquid in it to be used to heat your 3 home or heat your hot water or heat a greenhouse. We've 4 offered that -- that -- that has that</p>				

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<p>capability. 5 Q. When you say we, who do you mean? 6 A. I mean myself has offered that. 7 Q. To whom? 8 A. To any -- anybody that wanted to know if there was 9 a way to use it in an alternative manner. There have been 10 some people that have asked that question, and I don't know 11 who. I mean, I don't remember. But that discussion has 12 come up. 13 Q. Has anyone taken you up on that offer? 14 A. As far as I know, no, but I have offered that and 15 told people that's available if that's what they choose to 16 use it for.</p>				
<p>63:24 Q. Has anyone ever paid for any energy produced by 25 such a system? 64: 1 A. No, but we have offered the system in that manner 2 and shown that it can operate in that fashion, yes. 3 Q. And no one has ever taken you up on that offer?</p>				

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4 A. Nobody's been that stupid, actually, no. But, 5 yeah, it's available.				
64:15 Q. Okay. Real quick, I'd like to show you what's 16 previously been marked Plaintiff's Exhibit 121. We did show 17 that in the earlier testimony, and my question for you, 18 Mr. Johnson, is the RaPower3 logo that's at the top of the 19 first page of Plaintiff's 121 -- 20 A. Uh-huh. 21 Q. -- that's the RaPower3 logo? 22 A. Uh-huh. 23 Q. "Yes?" 24 A. Yes. 25 Q. That's one of the logo's RaPower3 has used over 65: 1 the course of time? 2 A. Yes.			121	
66: 1 Q. So is there -- I'm simply asking about the 2 reporting requirements. So what entity owns RaPower3? 3 A. I'm not positive, but I think it's DCL16. I think 4 that's the way it goes. 5 Q. Does DCL16 have a federal tax return reporting				

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6 requirement? 7 A. No. They're a pass-through company as well. 8 Q. Who owns DCL16? 9 A. I think that I own 10 percent and I think that my 10 two sons own part of that, but it may -- it may go back to 11 the newest company. It may be Starlight or Blacknight, one 12 word, and then they are owned by myself and my two children.				
80:16 Q. The only towers that have been erected are at the 17 R&D site; correct? 18 A. That's correct, yes.				
81:25 Q. Has RaPower3 ever paid rent to any customer for 82: 1 use of a lens? 2 A. Yes. I guess they have because that one lady got 3 some money. 4 Q. Okay. So we saw that check to Patricia Lambrecht; 5 right? 6 A. Yeah. 7 Q. Has any other customer other than Patricia 8 Lambrecht been paid for rent for use of a lens?				

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<p>9 A. No, they haven't. 10 Q. Has any customer ever been paid by RaPower3 for 11 using the customer's lens for advertising purposes? 12 A. Now, see. This is a number. This is like the 13 tenth time you've asked this question from the first day, 14 yesterday, and today. The answer is still the same. No. 15 Are we just wasting my time? Are we just looking 16 for ways of dragging this thing out because you're -- you're 17 looking at how much money I can spend? Is this -- is this 18 what we're looking at here? 19 Q. Object to responsiveness after "no." 20 Mr. Johnson, has RaPower3 ever paid any customer 21 for use of its lens in research and development? 22 A. No, for about the fifteenth time. I'm asking you 23 again: Are you just doing this to waste my time being here? 24 If you have legitimate questions that you have not asked, I</p>				

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<p>25 would appreciate that you consider my time. My time is 83: 1 valuable as well as yours, and I'd like you to have it 2 considered that way. Thank you. 3 Q. Object to the responsiveness of the answer after 4 "no."</p>				
<p>83: 6 Q. (BY MS. GALLAGHER) Would you please take a look at 7 Plaintiff's Exhibit 542 and let me know when you're done. 8 A. Sure. 9 Q. For the record -- 10 A. Okay. 11 Q. -- Plaintiff's Exhibit 542 is Bates marked 12 Ra3-14137. 13 A. Okay. 14 (Peruses document.) 15 Q. Do you recognize Plaintiff's Exhibit 542? 16 A. I don't. 17 Q. I will represent that your former counsel produced 18 this to us. It appears to be a RaPower3 document. Do you 19 see that at the top? 20 A. I do. 21 Q. It says Money Transferred</p>			542	

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And Expenses For 22 International Automated Systems. Did I read that correctly? 23 A. It is. 24 Q. And here we see that RaPower3 has made savings 25 transfers to IAS. Do you see that? 84: 1 A. Okay. Yes.				
85: 1 Q. (BY MS. GALLAGHER) Showing you, sir, what's been 2 marked Plaintiff's Exhibit's 543 Bates marked Ra3-12657. Do 3 you recognize Plaintiff's 543? 4 A. I do not. 5 Q. So this appears to be another RaPower3 document 6 showing Money Transferred And Expenses For International 7 Automated Systems. Did I read that correctly? 8 A. Yes, you did. 9 Q. If we take a look down the last third of the line 10 items, or so, there's a line item that says IAS for May 18, 11 2012. Do you see that? 12 A. Okay. 13 Q. It says "Order Lenses." Do you see that?			543	

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14 A. Yes. 15 Q. And that's for \$107,000. Do you see that? 16 A. Okay. I do.				
95:24 Q. I show you what's been Plaintiff's Exhibit 70A 25 that's 70-A. For the record, it's Bates marked 96: 1 Shepard_Greg-295-296. 2 A. (Peruses document.) 3 Q. Do you recognize this document, sir? 4 A. I don't, but I assume that somebody wrote it for 5 me. I may have wrote it myself. I don't know. But go 6 ahead and ask the question. 7 Q. So take a look, please, at this document. Read it 8 quietly to yourself. 9 A. Okay. 10 (Peruses document.) 11 Okay. What can I -- 12 Q. Does Plaintiff's Exhibit 70A accurately reflect 13 RaPower3's system? 14 A. I believe it does. On the date that this was 15 issued I believe it's accurate.			70A	
96:19 Q. (BY MS. GALLAGHER)			544	

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<p>Plaintiff's Exhibit 544 is 20 marked Shepard_Greg 302. Take a look at that document, 21 please, and let me know when you're done. 22 A. Okay. 23 Q. Do you recognize Plaintiff's Exhibit 544? 24 A. No. I've never seen it before. 25 Q. The RaPower3 logo is in the lower left-hand 97: 1 corner; correct? 2 A. That's correct, yes. 3 Q. And if we look up at the top left-hand corner, the 4 header says Power To The People. Did I read that correctly? 5 A. Right. Uh-huh. 6 Q. And underneath that it says "The solar lenses used 7 in RaPower3 solar projects are all independently owned by 8 individuals or small businesses." 9 Did I read that correctly? 10 A. That's correct. 11 Q. And is that an accurate statement of your 12 understanding of the ownership for RaPower3 lenses? 13 A. That's correct.</p>				

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<p>97:17 Q. (BY MS. GALLAGHER) Okay, Mr. Johnson. Please take 18 a look at what's been handed to you marked Plaintiff's 19 Exhibit 545. 20 A. Okay. 21 Q. Bates numbers Ra3-15863 through 85. 22 A. Okay. 23 Q. Do you recognize Plaintiff's Exhibit 545? 24 A. I do not. 25 Q. If you want to take a look at the names, does this 98: 1 appear to be a list of RaPower3 customers? 2 A. It appears that. But like I said, I've never seen 3 it before, so. 4 Q. Does this look like something that would have been 5 produced from the computer program we talked about earlier? 6 A. Yes, uh-huh. 7 Q. And, in fact, the top header says "RaPower3;" 8 right? 9 A. Right. 10 Q. And then on the upper left- hand side under the</p>			545	

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<p>11 headers it says "10% Program," correct, on the first page? 12 A. Uh-huh. 13 Q. "Yes?" 14 A. Yes. 15 Q. And that sounds like the 10 percent commission 16 program we talked about earlier; right? 17 A. No. 18 Q. "No?" 19 A. No. 20 Q. What's -- what does that 10 percent mean? 21 A. That means if they put 10 percent down of their 22 down payment. 23 Q. Oh. Okay. Okay. So this list of customers -- we 24 talked about earlier that if the full price of a lens is 25 \$3,500, a person may make a down payment, an immediate down 99: 1 payment of \$1,050; correct? 2 A. That's correct. 3 Q. But there's another option that a customer could 4 take instead, isn't there? 5 A. That's correct. 6 Q. And that is in the year that they</p>				

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<p>purchase a lens, 7 a customer may pay only 10 percent of the total down 8 payment; right? 9 A. That's correct. 10 Q. So in that instance a customer would pay \$105 per 11 lens; correct? 12 A. That's correct. 13 Q. And the customer makes the remaining down payment 14 of \$945 in the subsequent year; right? 15 A. That's correct. 16 Q. And they make the remaining down payment after the 17 customer receives the tax benefits from buying the lens; 18 correct? 19 A. That's correct. 20 Q. So with the 10 percent program notion that we see 21 at the top left of page Ra3- 15863, the subsequent list of 22 names through to the very top of Ra3-15874 are people who, 23 in fact, paid that 10 percent of the down payment; correct? 24 A. I would assume that would be accurate.</p>				

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<p>25 Q. Well, take a look. 100: 1 A. I mean, I don't have any way of knowing or not 2 knowing, but I would assume you're right. 3 Q. That appears to be correct per this document; 4 right? 5 A. That is the way I'm reading it, but that doesn't 6 make it so. But, yes, I -- I agree with you that's what it 7 appears to be, okay? 8 Q. If we take a look at page Ra3-15874 -- 9 A. Okay. 10 Q. -- there's a header there that says "Time 11 Program." 12 A. Okay. 13 Q. What does that mean? 14 A. I would assume that it had to do with a payment 15 structure to pay from the 10 percent of a down payment to 16 complete the total transaction. 17 Q. So do I understand, sir, that someone could pay 10 18 percent of the down payment immediately and then pay RaPower</p>				

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<p>19 incremental payments over time in order to pay the full down 20 payment? 21 A. That's not the way the program was instituted to 22 do. I know that they have at times made an exception. 23 Q. Who's they? 24 A. Myself, where I've made a particular exception to 25 that rule. But I usually don't allow that to take place 101: 1 because of the increased workload it places upon our 2 bookkeeping system. 3 Q. So if anyone is going to change the payment 4 structure, it's you; correct? 5 A. That is correct.</p>				
<p>101:19 Q. Mr. Johnson, I believe we touched on this on 20 another day, but my question for you is it appears that 21 RaPower3 purchased IAS stock during fiscal year 2016. Is 22 that correct? 23 A. That is correct, yes. 24 Q. Why did it do that? 25 A. I felt like it would be a prudent way to -- to</p>			507	

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<p>102: 1 move the money into an account that would be more productive 2 than just sitting in a bank. 3 Q. It looks like -- and if you want to refer, I'm 4 looking at Plaintiff's Exhibit 507. 5 A. Okay. 6 Q. If you take a look at page 35. 7 A. (Witness complies.) 8 Okay. 9 Q. It looks to me, on this table, like the total 10 price RaPower3 paid for IAS stock was \$3,077,839. 11 A. Okay. 12 Q. Is that your understanding as well? 13 A. If that's what it says, that's what it was, yes. 14 Q. So that's how much RaPower3 paid to IAS for stock? 15 A. Looks like it, yes.</p>				
<p>106:11 Q. Did Mr. Shepard report to you any information 12 about customers that were being audited? 13 A. Yes. And I would turn them over to Paul Jones or 14 he would turn them over to Paul</p>				

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<p>Jones. But I never 15 contacted anybody directly or authorized anybody that wasn't 16 a tax professional to contact anybody on any subject that 17 had to do with taxes.</p>				
<p>108: 5 Q. Mr. Johnson, did you ever give Greg Shepard the 6 title of Chief Director of Operations? 7 A. No (laughing). No. 8 Q. You're aware that he has used that title? 9 A. He's used more than that. He's probably been 10 president of IAS a time or two. I don't know. 11 Q. When did you first learn that he was using the 12 title Chief Director of Operations for RaPower3? 13 A. I don't know. It's been a while ago, of course, 14 but I -- I don't know. 15 Q. Did you take any action to stop him from doing 16 that? 17 A. No. I told him that he wasn't, but I didn't do 18 anything more than that.</p>				

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108:21 Q. Roger Freeborn, I believe you said, was one of the 22 original salespeople for RaPower3. 23 A. I believe so, yes. Yeah.				
109: 2 Q. Is Roger Freeborn still a salesperson for 3 RaPower3? 4 A. I don't think so, no.				
110: 9 Q. So you don't recall asking Greg Shepard to 10 terminate Roger Freeborn? 11 A. Well, I may have -- I may have done that. That's 12 what I'm saying. That's how we severed -- maybe severed our 13 relationship. But I don't know whether it was completed or 14 whether or not they -- that whether Greg decided that he 15 would change his -- change my mind and do it without me 16 knowing it, you know, and reestablished relationships. I 17 don't know. I am -- I'm very busy and concentrated on the 18 areas that are much more important to me than that.				
110:20 Q. (BY MS. GALLAGHER) Please take a look at			546	

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<p>21 Plaintiff's Exhibit 546 and let me know when you're ready. 22 It's Bates marked Jameson-2259 through 562. 23 A. (Peruses document.) 24 Okay. 25 Q. Do you recognize Plaintiff's Exhibit 546? 111: 1 A. Yes, uh-huh. 2 Q. What -- what is it? 3 A. It is a placed-in-service letter. 4 Q. It's a few placed-in-service letters; correct? 5 A. Correct, uh-huh. 6 Q. And you signed all of these; right? 7 A. I did. 8 Q. On behalf of RaPower3? 9 A. I did.</p>				
<p>118:21 Q. Did you, Mr. Johnson, tell Mr. Shepard about your 22 understanding of what placed in service means? 23 A. I'm sure I did. There's no question about that. 24 Q. When did you first tell him about that? 25 A. The first time I got the understanding of it I may 119: 1 have told him, but I also told</p>				

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<p>him I was not an attorney. 2 Q. And when did you first talk to Mr. Shepard about 3 what placed in service might mean? 4 A. I can't remember. I wouldn't have any idea. 5 Q. Was it before or after 2010? 6 A. It was probably before 2010. 7 Q. Before or after 2005? 8 A. It'd probably be closer right around 2006-2007, 9 but I don't know for sure. But I never promoted myself as a 10 legal expert, neither a CPA or a tax preparer or an 11 attorney, tax attorney.</p>				
<p>121: 8 Q. Well, my question to you is to your knowledge, did 9 other people create marketing materials for RaPower3? 10 A. Oh, I think so. Yeah. I believe they did. 11 Q. And to your knowledge, did they do that with 12 information that you had given them? 13 A. Yes. I would hope they would. 14 Q. And that information had to</p>				

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<p>do with the sales 15 structure for RaPower3? 16 A. That's -- that's true. I'm the only one that 17 could have developed the information for them to develop and 18 me to go over that with them. 19 Q. And RaPower3 marketing materials have also 20 included information about the tax benefits from buying the 21 lens; correct? 22 A. Yes. There is certain information that we do. 23 Whether or not I had done every word in it or not, I 24 wouldn't -- I wouldn't think that'd be the case, but -- and 25 some people may have done some marketing material where they 122: 1 interjected their own interpretation of things. But, 2 clearly, I was involved in -- in the outline and the general 3 concept of the marketing material. 4 This I didn't do. I don't believe I did this one, 5 but I can't remember. I could have done it, but I don't 6 remember doing it.</p>				

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123:17 Q. Mr. Johnson, yesterday and earlier we looked at 18 Plaintiff's Exhibit 23A. Do you remember that? 19 A. (Peruses document.) 20 Okay. 21 Q. Do you remember that? 22 A. Yes, I remember it.			23A	
124:12 Q. So who, if anyone, did you share that letter with? 13 A. Well, I may have shared it with other -- with 14 people and let them read it. 15 Q. Like who? 16 A. Well, Greg and probably Roger and my kids and 17 other people, but.				
130:13 Q. Mr. Johnson, what, if anything, did you tell 14 Mr. Shepard about the 1603 Grant program? 15 A. Just what was available to me from the government. 16 Q. And what was that information? 17 A. I'm not positive what it was, but I know that I 18 told him about it, about what the government was offering. 19 Q. Did you tell him that the solar				

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energy technology 20 at issue in this case had been approved for a 1603 Grant? 21 A. I may have used those words, but -- and it was, 22 according to my understanding, as long as I -- as long as I 23 proceeded according to the documents that Dave Nelson gave 24 me, and Dave Nelson told me if I complied with the 25 information that he received, that I would be able to 131: I qualify for the continuation of the project as outlined by 2 the 1603 of the grant program.				
133: 4 Q. Sir, directing your attention to Plaintiff's 5 Exhibit 550. 6 A. I apologize. Okay. 7 Q. Please go ahead and read that email and let me 8 know, to yourself, and let me know when you're ready. 9 A. (Witness complies.) 10 Okay. 11 Q. I'm interested in the last paragraph starting "As 12 of last Friday." 13 A. Okay.			550	

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<p>14 Q. Is the information in this paragraph consistent 15 with information that you may have given Greg Shepard about 16 the Treasury Grant program? 17 A. Yes. He may have asked about it and I probably 18 told him that we've had -- we've developed the 600 trusses 19 and that had to be delivered to the site.</p>				
<p>140: 4 Q. All right. I'm handing you, Mr. Johnson, what's 5 been marked as Plaintiff's Exhibit 504. Please take a look 6 at Plaintiff's Exhibit 504 and let me know when you're done. 7 A. (Witness complies.) 8 Okay. 9 Q. Do you recognize Plaintiff's Exhibit 504? 10 A. No, not really. It probably is -- they probably 11 handed it to me, but I would have not ever opened it up and 12 looked at it. 13 Q. Well, let's take a walk-through. The first page 14 of 504 is an email from Greg Shepard. Do you see that?</p>			504	

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15 A. Okay. 16 Q. "Yes?" 17 A. Yes. I see it, yes. 18 Q. And then attached to that email appears to be a 19 booklet called RaPower32012 National Convention. Do you see 20 that? 21 A. I do.				
140:25 Q. Nonetheless, I believe we talked earlier that, in 141: 1 fact, RaPower3 had a national convention in 2012. 2 A. No, they didn't. This was Greg Shepard's Ra 3 convention, not RaPower-3's. He put on several conventions 4 of his own as a RaPower salesperson to develop sales, but 5 this was never authorized by RaPower3 to do. He didn't -- 6 he did it on -- he asked me to be there. The fact is I just 7 was in the hospital on that very day getting an operation 8 and I came up to the -- the next day. I can't remember 9 exactly when. 10 It was just the day before I had a major operation				

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<p>11 because of a motorcycle accident, and I was just out of the 12 hospital when he asked me to come up and address the people, 13 and I did, but I was in -- I was in terrible shape, I 14 believe. 15 Q. When did he first ask you to address the 16 convention? 17 A. I don't know that -- I don't know that's true or 18 not, but -- but it seemed like when I did -- when they had 19 this national convention, I was in -- I just came out of the 20 hospital on one of them. I don't know if this is the one. 21 But one of them I did, and I just came out of an operation, 22 so. 23 Q. So do you recall or do you not recall when 24 Mr. Shepard asked you to participate in the national 25 convention? 142: 1 A. Well, he probably asked me earlier to participate 2 in the convention, but. 3 Q. Do you think, like, a month</p>				

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<p>before, couple months 4 ago? 5 A. It could have been a month, could have been six 6 months before. 7 Q. Uh-huh. 8 A. And I didn't have any reasons why I wouldn't have 9 complied with his request. 10 Q. Did you tell him -- 11 A. But I didn't request him to do this. 12 Q. Did you tell him not to do it? 13 A. Well, no. No, I wouldn't, and I don't see 14 anything wrong with it, but it's just not something that I 15 did. I mean, I think he's good in some areas. I think he's 16 very good in some areas. That's why I like him and keep him 17 around. But some areas he's not so great. It's just like 18 everybody else. Everybody has their upsides and downsides. 19 Q. What areas do you think Mr. Shepard is good at 20 doing? 21 A. He's a great people person. I'm not. I believe.</p>				

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<p>22 I believe he's better at working with people than I am. You 23 probably noticed that yourself. And maybe I'm not the best 24 people person, you know, in the world, you know. 25 Q. Do you think he's a good salesman? 143: 1 A. Well, he's probably a lot better than I am. But 2 in some ways I'm better in some areas and I do very well in 3 some areas, but I wouldn't -- I wouldn't have ever put 4 something like this on. I never do. 5 Q. If we take a look, please, at page Greg_P&R-2664. 6 A. Okay. 7 Q. Take a look at the convention schedule there. 8 A. Okay. 9 Q. And, for example, if we look at 10:30 a.m., the 10 topic is Break-through Technology No. 3, the Turbine. 11 A. Okay. 12 Q. And your name is at the end of that section. Do 13 you see that?</p>				

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<p>14 A. Right, uh-huh. Okay. 15 Q. Right. So does that mean that you were the 16 speaker about that topic? 17 A. I believe it was, yes. 18 Q. So if we look up above, it looks like your son, 19 Randy Johnson, is the one who talked about the evolution of 20 the solar lenses. 21 A. Right. I believe he did. I believe he asked 22 Randy. He was involved with it and he was around me a lot 23 during that period of time. And he is a -- he is a much 24 better people person than I am and he's much better at 25 interacting with people than I am. And both my sons are, 144: I actually. And I'm grateful for that. I mean, I'm not 2 unhappy about that. I just wish I would have -- I would 3 have been a little bit like those people in that area. 4 Q. So let's turn, please, to the page number ending 5 in 2669. 6 A. Okay.</p>				

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<p>7 Q. This page has some text about the evolution of the 8 solar lenses. Do you see that? 9 A. Correct, uh-huh. 10 Q. Do you know where Mr. Shepard may have gotten this 11 information from? 12 A. Well, it looks like he must have got it from the 13 things that I wrote -- had written in the -- in the outlines 14 that I -- that I had done earlier. 15 Q. And if we take a walk through the pages ending in 16 2670 through 2680 -- 17 A. Okay. 18 Q. -- do you believe the same is true for that text? 19 A. I believe so. Yeah, I believe that. I think that 20 information to be pretty well in line with what I had 21 written on the subject. 22 Q. And let's take a look, please, at the page ending 23 in 2681. 24 A. (Witness complies.) 25 Q. Which has the title Manufacturing and Construction 145: 1 Plans --</p>				

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<p>2 A. Sure. 3 Q. -- For 2012. 4 A. Okay. 5 Q. Do you see that? 6 A. I do. 7 Q. Take a look at the information here and let me 8 know -- let me know when you've read it. 9 A. Okay. What is it that you want to ask me about? 10 Q. I'm just curious if this is consistent with what, 11 if any, plans you may have had during 2012. 12 A. Well, it would have been something that I would 13 have outlined to direct me to think along certain lines 14 about the -- the possibilities of -- of where I would have 15 constructed solar energy projects it looks like.</p>				
<p>163:15 Q. (BY MS. GALLAGHER) So, Mr. Johnson, I'm just 16 trying to get a simple understanding of the process that I 17 understand is more detailed, but we do have time limits 18 today. So you testified earlier</p>				

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<p>that there were a few times 19 in the course of invention and development of the solar 20 energy technology at issue here you said you thought you 21 were done, and you also testified that you then learned that 22 you were not done. And is that because the system did not 23 work the way you actually wanted it to? 24 A. No. We could have complied with the regulations 25 if we would have just put out -- if we would have put ropes 164: 1 on the towers and had people track the sun. 2 Q. Object as nonresponsive. All right. What is -- 3 A. What I'm saying is, what you're asking me is, and 4 you said is it because the project didn't work. And I said 5 no, it wasn't because the project wouldn't work. 6 Q. No, sir. The way you wanted it to. So I 7 understand you wanted to keep costs very low and you wanted 8 to have more efficient</p>				

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<p>mechanisms to make your system 9 produce power at a very low cost. I understand that. And 10 my question to you is -- 11 A. I don't -- no, I don't think you understand, and 12 that's what I'm saying is that's a critical point in the 13 whole development of the system. I could have any time 14 since 2005 put power on the grid. I could have done that 15 easily. I wasn't looking -- at the time I developed my 16 system, I wasn't looking to develop a power -- a power 17 system to go out there and -- and just -- and just a quick 18 thing and make a whole bunch of money and then walk away. 19 That wasn't my -- that wasn't my goal. It was never my 20 goal. 21 I have -- I could have -- I could have had plenty 22 of money before I ever started that. I didn't need -- I 23 didn't need the project to make a living with. I had plenty 24 of money. I got plenty of</p>				

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<p>patents. I could sell -- I've 25 been -- I can sell patents -- 165: 1 Q. So, sir, what is your goal? What's your goal? 2 A. The goal is to provide clean energy at a very low 3 price, at a better price. 4 Q. And there are a few times in the course of the 5 development that you thought you would be able to do that. 6 A. That's correct. I did. 7 Q. Right. And then you learned that there was some 8 obstacle in the way of doing that; isn't that right? 9 A. Yes. But it wasn't in the obstacle of the product 10 working at that level of being equal to or better than 11 anything on the market at that time. That wasn't the issue. 12 The issue was how do I take -- I was looking at taking an 13 energy market over; okay? And obviously I didn't think it 14 was gonna take this long or I just would have said forget it 15 in the first place. 16 But I wasn't interested -- when I</p>				

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<p>started, there 17 was no tax credits, and so my interest was not that. The 18 interest is I saw an opportunity, a business opportunity 19 that I had developed a turbine that had the capacity to take 20 over a market if it was done properly. 21 Q. And has it taken over the market? 22 A. Of course not. I'm not there and I never said 23 that I -- that I was. But I still have the capacity to do 24 it if I'm careful on how I approach it. But if I approach 25 that wrong and I -- and I just go out -- and I'll make -- I 166: 1 would make a lot of money no matter what -- no matter what 2 happened with this system. No matter what you do, whether 3 you win this case or whether you don't win this case, I will 4 make a lot of money off the deal. It won't matter. There's 5 a lot of money to be made just where I'm at if I promote it. 6 Q. Why haven't you done it yet?</p>				

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<p>7 A. Because I felt like that I wanted to keep this -- 8 this lowball because I wanted to surprise the market. If I 9 would have done it the other way, I would have had 10 competitors all the way through the market system, and by 11 doing it this way I'm -- I'm now at the crest of where I'm 12 at and now I can take the market. 13 Q. Okay. 14 A. And that's -- that's a business decision. It's 15 not something that's relied upon with the -- with everybody 16 else's stuff. It isn't money I need.</p>				
<p>172:24 Q. Mr. Johnson, did you show Mr. Shepard a copy of 25 the Kirton McConkie memorandum? 173: 1 A. I'm sure I did. I didn't have a problem doing 2 that, yes. Personally I don't see anything wrong with it. 3 It's accurate. The letter's accurate, so it wasn't -- it 4 wasn't, like I said, the reason why I didn't want it out</p>				

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5 there.				
190: 5 Q. Showing you what's been marked Plaintiff's Exhibit 6 352, Bates marked US4269 -- 7 A. Okay. 8 Q. -- to 70. Mr. Johnson, you see the date up at the 9 top there; December 15, 2016? 10 A. Uh-huh. 11 Q. "Yes?" 12 A. Yes, uh-huh. 13 Q. And this appears to be a printout from 14 RaPower3.com; is that correct? 15 A. That's correct. 16 Q. Okay. Feel free to take a look at what's written 17 here. Really my question to you is this writeup does not 18 include information about depreciation. 19 A. Okay.			352	
191:12 Q. Mr. Johnson, you believe you approved the text in 13 Plaintiff's Exhibit 352? 14 A. I believe I -- I believe I did if I can read it. 15 But, yeah, I think that this one is -- this is something I 16 would have approved.			352	

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<p>17 Q. Why did you make the change taking depreciation 18 out of it? 19 A. Well, I -- I never worried about depreciation in 20 the first place, but this one here is just reflects what 21 we're doing and making sales. If they could depreciate it, 22 that's something they'll have to figure out with their CPAs. 23 And some companies will do this. Some companies, big 24 companies that will buy into this will -- will have it so 25 they can depreciate the equipment. 192: 1 Smaller people will have a more difficult time, 2 from what I understand, but I'm not -- but I don't give out 3 tax opinions, nor do I -- do I state what I think about what 4 you should and shouldn't do. I never have.</p>				
<p>199:20 MS. GALLAGHER: So we will ask that the witness read 21 and sign. 22 MR. SNUFFER: Yeah. We want him to read and sign, and</p>				

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23 I need a copy of this. 24 THE WITNESS: Okay. 25 MS. GALLAGHER: And we're off the record for today. 200: 1 (The proceedings adjourned at 4:35 p.m.)				
DEFENDANT COUNTER- DESIGNATIONS	PLAINTIFF COUNTER- DESIGNATIONS			

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

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