

*Case Name: United States v. RaPower-3, LLC, et al. Case Number: 15-cv-828
Deposition of R. Gregory Shepard taken May 22, 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			
5: 1 P R O C E E D I N G S 2 3 R. Gregory Shepard, 4 called as a witness, being first duly sworn, 5 was examined and testified as follows: 6 7 EXAMINATION 8 BY MR. MORAN: 9 Q. Good morning, Mr. Shepard. We are on the 10 record in the case United States versus RaPower3, which 11 is pending in the District of Utah. 12 My name is Chris Moran, here on behalf of 13 the United States, U.S. Department of Justice Tax 14 Division. 15 Will the other attorneys in the room 16 please put their appearances on the record. 17 MR. REAY: Donald Reay, appearing for Greg				

**Plaintiff
Exhibit**
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<p>18 Shepard. 19 MS. HEALY GALLAGHER: Erin Healy Gallagher, 20 also with the United States Department of Justice for 21 the United States. 22 MR. MORAN: Mr. Reay, you also represent 23 defendant Roger Freeborn, correct? 24 MR. REAY: No. 25 I'm sorry, yeah. I'm sorry. Correct. I 6: 1 represent Roger Freeborn also, who is clearly not 2 present. 3 MR. MORAN: Will the other individual in 4 the room please state who he is? 5 MR. JOHNSON: I'm Neldon Johnson. 6 MR. MORAN: Neldon Johnson is a defendant 7 in this case.</p>				
<p>6:19 MR. MORAN: Other attorneys who have 20 entered an appearance in the case, the Heideman Law 21 Firm, are not present. They represent Mr. Johnson,</p>				

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22 Defendant RaPower3, Defendant LTB, and Defendant 23 International Automated Systems.				
21: 1 Q. (By Mr. Moran) We are back on the record 2 in the case United States versus RaPower3 et al. We 3 are here for the deposition of Mr. Gregory Shepard. He 4 is here with his counsel, Donald Reay. 5 Counsel for United States is myself, Erin 6 Healy Gallagher, and Erin Hines is on the phone from 7 Washington DC. This deposition will be governed by the 8 Federal Rules of Civil Procedure and the local rules in 9 the District of Utah. We will be using several 10 exhibits that have already been marked in previous 11 depositions. And any exhibits that are marked today 12 will be kept by the United States to be used throughout 13 the week, and we will provide them to the court				

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<p>14 reporter at the end of the week on Friday. 15 Mr. Shepard. You remain under oath. You 16 have already been sworn in; is that correct? 17 A. Yes. 18 Q. And also for the record, Mr. Neldon 19 Johnson, defendant, has left the building after the 20 conference call with the court. 21 Mr. Shepard, have you ever been deposed 22 before? 23 A. Yes. 24 Q. You have? How many times? 25 A. Over a dozen.</p>				
<p>22: 1 Q. Over a dozen. Okay. Then you are 2 probably familiar with the ground rules. Mr. Reay has 3 probably talked to you about them but I'm going to go 4 over them again. 5 A. Okay. 6 Q. It will probably be familiar for you. I'm 7 going to be asking you several</p>				

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<p>questions today. Your 8 job is to provide complete and truthful answers. My 9 questions and your responses will be recorded by Madam 10 Court Reporter sitting to my right. You need to speak 11 loudly enough for her to hear, and answer my questions 12 verbally. Do you understand? 13 A. Yes.</p>				
<p>24: 5 Q. Mr. Shepard, we are here today to get as 6 accurate a record of your recollection of the facts of 7 this case, so I have to ask you is there anything that 8 would prevent you from giving completely truthful and 9 accurate testimony today? 10 A. No. 11 Q. Are you taking any medications or drugs 12 that interfere with your memory? 13 A. No. 14 Q. Have you had any alcoholic drinks in the 15 last eight hours? 16 A. No. 17 Q. Are you feeling well today?</p>				

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<p>18 A. I am. 19 Q. Okay. Is there any reason you can think 20 of why you cannot answer my questions truthfully and 21 accurately? 22 A. No.</p>				
<p>24:25 Exhibit 459 WAS MARKED.) 25: 1 Q. Mr. Shepard, you've been handed a copy of 2 what's been marked for identification as Plaintiff's 3 Exhibit 459. This is a list of website captures that 4 the United States prepared and Bates stamped and 5 provided to your attorneys. I understand that you 6 agree these are all authentic for purposes of Federal 7 Rule of Evidence 901 and that they are what they 8 purport to be, various website captures from some 9 websites, with the exception of U.S. 2793 to U.S. 2801. 10 Is that correct? 11 A. Yeah. What's 2801? 12 Q. It's a Bates range. 13 A. It's a what?</p>			<p>459 411</p>	

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<p>14 MR. REAY: Just the Bates numbers. 15 Q. Go to the next page. 16 A. Oh, here it is, 2801. 17 Q. Yes. 18 A. Yeah, SOLCO 1. 19 MR. REAY: He was just clarifying for the 20 record. 21 THE WITNESS: Right. 22 Q. (By Mr. Moran) So I'll ask you it again. 23 Exhibit 459 is a series of websites that lists the 24 Bates numbers for a series of website captures that 25 have been Bates stamped as indicated in Exhibit 459. 26: 1 And I understand that you agree that all of those 2 website captures are authentic under Federal Rule of 3 Evidence 901, with the exception of Bates number U.S. 4 002793 through U.S. 002801, which is a website capture 5 from SOLCO 1, LLC; is that correct? 6 A. Yes. 7 MR. MORAN: Mr. Reay, is that</p>				

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<p>correct? 8 MR. REAY: Yes. 9 Q. (By Mr. Moran) Mr. Shepard, how old are 10 you? 11 A. 74. 12 Q. 74. 13 A. 75 in July. 14 Q. We are going to start out with some 15 background information to just better understand how 16 you're coming into this case. Are you married? 17 A. Yes. 18 Q. Okay. What's your spouse's name? 19 A. Diana. 20 Q. Okay. Do you have any children? 21 A. Four. 22 Q. Four children. What are their names? 23 A. Andrea, Matt, Mark, and Shauna. 24 Q. Okay. Is Diana Shepard the only person 25 you have ever been married to? 27: 1 A. Yes. 2 Q. Can you take me through your</p>				

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<p>education, 3 very briefly, broad strokes, from when you graduated 4 high school. 5 A. Went to Oberlin College in Cleveland, Ohio 6 area, majored in music, studied for a year at Salzburg, 7 Austria at what is called the Mozart -- it's Mozarteum, 8 but in English it's the University of Mozart. 9 And then I attended some postgraduate work 10 in exercise sports medicine at Oregon State University 11 for one year and a summer. And then transferred to the 12 University of Oregon where I got a master's degree in 13 science with an emphasis on statistical analysis and 14 exercise sports science. 15 Q. Okay. 16 A. And then I have my doctorate in exercise 17 sports science from Brigham Young University. 18 Q. Okay. When did you get those degrees?</p>				

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<p>19 A. '64 from Oberlin College, '67 from the 20 University of Oregon with the master's, and the 21 doctorate was 1974. 22 Q. Okay. I understand you were a coach for a 23 period of time. 24 A. Yes. 25 Q. When was that? 28: 1 A. Started coaching at Oregon State 2 University in 1965 with the football team. 3 Q. Okay. 4 A. And then with the football team at the 5 University of Oregon Ducks. Then I coached for two 6 years at high school, Crater High School in Central 7 Point, Oregon, southern Oregon; and then for two years 8 in Bellingham, Washington, which is up north, north of 9 Seattle. And then went to BYU and was with the 10 football team there and coached weight lifting and was 11 a part-time faculty member, also.</p>				

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<p>And then I went to 12 Rexburg, Idaho as head football coach, Madison County 13 High School. Rexburg is north of Idaho Falls, 14 Pocatello. And then spent three years there, '73, 74, 15 and '75 football seasons, and then coached as a head 16 coach down here at Salt Lake City at Granger High 17 School for three football seasons. And then I 18 volunteer-coached at Hunter High School 2005, '06, '07, 19 in there. And then most recently was a volunteer track 20 coach at Summit Academy, which is about ten miles south 21 of here. 22 Q. Okay. And I also understand at one point 23 you ran your own company. 24 A. Yes. It was called Bigger, Faster, 25 Stronger. And I had that, started that in about 1978, 29: 1 and then officially sold that in 2013. 2 Q. And what did Bigger, Faster,</p>				

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<p>Stronger do 3 generally? 4 A. They do a variety of things, but it's in 5 the area of strength and conditioning and motivation, 6 character building. So there's books, videos, had a 7 manufacturing plant manufacturing all kinds of weight 8 training equipment, bench presses, squat racks. But we 9 sold everything, weights, dumbbells. And then we did 10 certification. So we would certify coaches so that 11 they could avoid legal problems if those ever arose 12 with injuries. And then knowledge of how to do things. 13 And then we would do clinics. And so we 14 would go to a high school or a college and spend all 15 day and teach them how to lift weights, but also why 16 and how to win. So basically that's it. 17 Q. Sounds like Bigger, Faster, Stronger's</p>				

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<p>18 customers were mostly college and high school athletic programs? 19 programs? 20 A. Oh, yes. It started out with football but 21 then as things evolved, it got into other sports and 22 then women's sports. 23 Q. Any other customers? 24 A. Well, yes. Because, you know, anybody 25 that wanted weight lifting equipment. So we had people 30: 1 from gyms that weren't associated with schools. 2 Q. Okay. 3 A. And they would order weight lifting 4 equipment. But that's -- some junior highs. Very 5 little pro. 6 Q. But primarily college and high school? 7 A. It was high school, college. And we were 8 equally prevalent in all fifty states. 9 Q. Okay. Have you ever been employed by 10 anyone else? Have you had any other occupations other</p>				

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<p>11 than what you have already described to me? 12 A. I mean, really early I was -- 13 Q. Well, excluding -- 14 A. I worked in a cannery when I was 21. 15 Q. Okay. 16 A. But you're probably more interested in 17 more recently. And the only thing as far as an 18 employee in that area was being a substitute teacher 19 recently. 20 Q. Okay. Where? 21 A. At a charter school in Murray. 22 Q. Okay. 23 A. I don't know if I was an employee. 24 Q. But did they pay you? 25 A. They paid me. And I paid taxes on it. 31: 1 Q. You've answered some questions in the 2 interrogatory about your e-mail address or e-mail 3 addresses you've used. So I'm going to list off a few 4 and I'd ask you to tell me, one, if</p>				

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<p>that's correct, and 5 two, at the end I'll ask you if there were any more. 6 ShepardFoundation2@Outlook.com? Is that your e-mail 7 address? 8 A. I had it briefly but I don't think I ever 9 received any e-mails on it and it's no longer active. 10 Q. Okay. But have you sent e-mail from that 11 address? 12 A. I don't believe so. I can't recall. 13 Q. Okay. Do you recall when you had the 14 e-mail address ShepardFoundation2@Outlook.com? 15 A. I can't recall. 16 Q. How about Greg@Rapower3.com? 17 A. Yes. 18 Q. How long have you had that e-mail address? 19 A. I can't exactly recall, but probably -- 20 Q. Approximately is fine. 21 A. Six or seven years.</p>				

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<p>22 Q. So about 2010?</p> <p>23 A. That's close, give or take a couple years.</p> <p>24 Q. Okay.</p> <p>25 A. Not on the low side, but probably on the</p> <p>32: 1 higher side.</p> <p>2 Q. How about Greg.Shepard@live.com?</p> <p>3 A. Yes.</p> <p>4 Q. Do you know when you used that e-mail</p> <p>5 address?</p> <p>6 A. No. I can't recall that one.</p> <p>7 I mean, I have it.</p> <p>Greg.Shepherd@live.com?</p> <p>8 I can't recall, but there is a live.com one. I don't</p> <p>9 know what was before that. I've never used it, to my</p> <p>10 recollection.</p> <p>11 Q. All right. In an interrogatory request</p> <p>12 which you signed, I'll hand you what's already been</p> <p>13 marked for identification as Plaintiff's Exhibit 411.</p> <p>14 A. Okay.</p> <p>15 Q. You identified some of these e-mail</p>				

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<p>16 addresses. 17 A. Okay. 18 Q. Is there any reason to believe that that 19 would be incorrect? 20 A. Facebook.com, I have never used. Twitter. 21 Okay. I don't know about those. I don't know about 22 Facebook. I don't know about Twitter. I don't know 23 about Rapower3.tumblr. I don't know Linked-In. I 24 don't know Google. I don't know YouTube. And I don't 25 know Pinterest. 33: 1 Q. How about what appears in red that says 2 "supplement," and it says, "Since 2005 I have also used 3 Greg@bfsmail.com, Greg.Shepard@live.com, and 4 shepardfoundation2@outlook.com." 5 A. I used Greg at bfsmail.com for a long time 6 because that was associated with the Bigger, Faster, 7 Stronger, so I received e-mails in there. And</p>				

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<p>8 Greg.Shepherd@live.com, I know that's on there some 9 place but I don't recall e-mails that I sent from this, 10 or received. I could have, but I don't recall. 11 And the same thing with Shepardfoundation. 12 That has been discontinued. I could have sent 13 something. I don't recall any e-mails being sent from 14 there or received from there. But I just don't recall. 15 The main one I use is Greg@rapower3.com. 16 That's what I use. 17 Q. That's your main e-mail address? 18 A. Yeah. That's where all my e-mails come 19 in.</p>				
<p>33:25 Q. All right. We will come back to that. 34: 1 Back to your employment. Have you ever, 2 with the exception of what you told me about your 3 coaching career, Bigger, Faster, Stronger, the cannery,</p>				

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<p>4 have you ever received compensation for any type of 5 work you've done, such as from RaPower3 or 6 International Animated Systems? 7 A. Can you be more specific? 8 Q. Sure. I understand you're a contractor or 9 you have been an independent contractor with some of 10 the defendants in this case? 11 A. "Some" meaning -- what do you mean by 12 "some"? 13 Q. Have you ever been an independent 14 contractor for RaPower3? 15 A. Yes.</p>				
<p>34:24 Q. Okay. How about RaPower3; has RaPower3 25 ever given you money? 35: 1 A. Yes. 2 Q. What have they given you money for? 3 A. For sales. 4 Q. Sales? Okay. 5 A. I have sponsored some people. 6 Q. And what did you sell? 7 A. I sold solar lenses. 8 Q. Solar lenses. Did you sell</p>				

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<p>anything else? 9 A. No. 10 Q. Okay. So RaPower3 has given you -- has 11 paid you money for selling solar lenses? 12 A. Commissions. 13 Q. So RaPower3 has paid you commissions for 14 selling solar lenses. 15 A. Uh-huh (affirmative). 16 Q. Has RaPower3 paid you money for anything 17 else? 18 A. No. 19 Q. How about International Automated Systems; 20 have they ever paid you money? 21 A. No. 22 Q. How about LTB? Has LTB ever paid you 23 money? 24 A. No. 25 Q. And when I refer to LTB, I'm referring to 36: 1 LTB that's a defendant in this case. 2 A. I understand. 3 Q. You know what company that is?</p>				

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<p>4 A. Yes. They are the operation and 5 maintenance company. 6 Q. All right. You just mentioned solar 7 lenses that you sell for RaPower3? 8 A. Yes. 9 Q. Tell me about the solar lenses. What are 10 they? 11 A. Solar lenses are made of a plastic acrylic 12 material which produce heat, and that's what they do. 13 They produce a lot of heat. 14 Q. Okay. Where do they come from? 15 A. It's my understanding they are shipped in 16 from a large plastic acrylic company called Lucite.</p>				
<p>36:23 Q. All you know is they come from a company 24 called Lucite? 25 A. That's what I understand. 37: 1 Q. How did you get -- 2 A. I don't know for sure. 3 Q. All right. How did you get that</p>				

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<p>4 understanding? 5 A. I believe through Neldon Johnson or his 6 son, Randy. 7 Q. Okay. So Neldon Johnson or Randy Johnson 8 told you that the lenses get shipped in from Lucite. 9 A. Yes. 10 Q. What happens to the lenses after they are 11 shipped in from Lucite? 12 A. They are stored at the manufacturing plant 13 in Oasis, Utah. 14 Q. When you say "the manufacturing plant," 15 the United States did a site visit about a month and a 16 half ago. Do you recall that? 17 A. Pardon me. 18 Q. About a month and a half ago, in early 19 April, the United States, Ms. Healy Gallagher and I, 20 and you were there, visited the site. We visited, I 21 think, two main sites in Delta. The first site is what 22 I understand to be the</p>				

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manufacturing facility; is that 23 correct? 24 A. Yes.				
37:25 Q. And so I just want to be clear, when you 38: 1 said "the manufacturing facility," that we are all on 2 the same page. 3 So the lenses come in from Lucite at the 4 manufacturing facility and what happens next to the 5 lenses? 6 A. They are put into a -- well, what years 7 are you talking about? 8 Q. I'm asking generally what's your 9 understanding of the lenses that you sell. 10 A. Well, they were first used for research 11 and development to see what the wind tolerance would be 12 and the cracking and how well they would stand up, and 13 what the dust would do, how often they would need to be 14 washed. If a rock chip hit it, what would the effect			411 460	

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<p>15 be. When they are put in certain kinds of frames, what 16 would happen. For example, different wind tolerances 17 or different cracking. 18 So it's my understanding -- I didn't do 19 the research and development. That was my 20 understanding that that's what was going on. But now 21 they are put in -- the solar lenses are being put into 22 solar frames at the construction site, which I have 23 seen, and I believe you saw that, too. I don't know if 24 you saw the workmen do that. And then now they are 25 being put into the solar rings. 39: 1 Q. Okay. Let's back up to the research and 2 development. Was every lens that you've sold been used 3 in research and development? 4 A. I don't know. I'm not in charge of that. 5 Q. Who is in charge of that? 6 A. I don't know. 7 Q. Well, who knows which lenses</p>				

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<p>were used in 8 research and development? 9 A. I don't know. I don't know for sure. I'm 10 an independent contractor and I don't get a lot of 11 information on that kind of stuff. 12 Exhibit 460 WAS MARKED.) 13 Q. Mr. Shepard, you have been given a copy of 14 what's been marked for identification as Plaintiff's 15 Exhibit 460. Do you recognize this? 16 A. Sure. 17 Q. What is it? 18 A. Those are solar lenses. 19 Q. And where are these solar lenses? 20 A. Those solar lenses are at the 21 manufacturing plant in Oasis, Utah. 22 Q. Okay. This is a screen shot taken of a 23 video that the United States took during the site visit 24 on April 4th. Are these the solar lenses that you 25 sold? 40: 1 A. I don't know. Be more</p>				

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<p>specific. I only 2 have a few clients. I only have about a dozen or so 3 clients throughout the years. 4 Q. Okay. 5 A. So I'm not sure. How would I know if my 6 clients' lenses are in there? Because there's stacks 7 of them at different places. 8 Q. Okay. 9 A. They could be. 10 Q. The lenses that appear in Exhibit 460, are 11 those similar to the lenses that you sold? 12 A. Yes. I would think so. 13 Q. But you don't know which lenses you sold? 14 A. I don't know if they are there in this 15 stack. 16 Q. Is there any way that you could find out? 17 A. I would assume so, but I don't know. 18 Q. If you were going to find out, what would 19 you do? 20 A. I would call -- probably call</p>				

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<p>Glenda. 21 Q. Do you think she would be able to tell 22 you? 23 A. I don't know. 24 Q. Okay. 25 A. I do know that my lenses that I bought and 41: 1 my clients' lenses have an identification code number. 2 Q. On the lens? 3 A. On the website. So if I want to look up 4 my status on the website, I can look up and see how 5 many lenses I purchased, what I owe, if anything, and 6 then there's a code number on that. 7 Q. And the code number is on the website? 8 A. Yes. 9 Q. Okay. I'm talking about the physical; 10 lens. 11 A. Not RaPower3. 12 Q. Which website? 13 A. It's a website that is maintained by 14 someone else. I don't know who maintains it.</p>				

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<p>15 Q. You don't know? 16 A. But that's RaPower-3.com, I think. 17 Q. Okay. 18 A. But that's where all clients can go to 19 look up their information. 20 Q. What information is that? 21 A. Equipment purchase contract, operation and 22 maintenance agreement, their status as far as payment, 23 and who their sponsor is, who they have sponsored. You 24 haven't seen that? 25 Q. I'm asking the questions. 42: 1 A. Well, okay. 2 Q. I want to understand more about the 3 identification number you talked about. Is that on a 4 solar lens? 5 A. I don't know.</p>				
<p>42: 8 Q. Mr. Shepard, you just mentioned a woman 9 named Glenda. What is Glenda's last name? 10 A. Johnson. 11 Q. Glenda Johnson? 12 A. Yes.</p>				

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13 Q. Is that Nelson Johnson's wife? 14 A. Yes, it is.				
43:19 Q. All right. When did you first sell solar lenses? 20 A. 2006. 22 Q. How did you hear about it? When is the 23 first time you heard of solar lenses? 24 A. I think 2001 or 2002. 25 Q. 2001 or 2002? Who did you hear about 44: 1 these solar lenses from in 2001 or 2002? 2 A. I was a shareholder at that time. I owned 3 stock in International Automated Systems. 4 Q. Okay. So when was the first time you 5 heard of International Automated Systems? 6 A. Probably 1994, around there. 7 Q. And how did you hear about it? 8 A. Through a broker here in town who worked 9 for, I think he worked for Smith				

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<p>Barney. 10 Q. Who is that broker? 11 A. Monty Hamilton. 12 Q. Okay. And what did Mr. Hamilton tell you 13 about the solar lenses? 14 A. He didn't tell me anything. 15 Q. All right. He told you about a company 16 named International Automated Systems? 17 A. Yes. 18 Q. Throughout today's deposition we might use 19 the acronym IAS. What do you understand IAS to mean? 20 A. International Automated Systems. 21 Q. What did Mr. Hamilton tell you about IAS? 22 A. I ought to look into it to buy their 23 stock. 24 Q. What did he tell you about it? 25 A. It was an up-and-coming company and that 45: 1 it might be worth a lot of money in the future. 2 Q. Did he tell you what its business was?</p>				

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<p>3 A. Yeah. At that time it was DWM. I'm not 4 sure what that acronym stands for. 5 Digital wave modulation. 6 Q. Okay. Did you do any research on 7 International Automated Systems? 8 A. No. 9 Q. When did you purchase the stock? 10 A. 1996, I believe. 11 Q. Did you do any research before you 12 purchased the stock? 13 A. Yes. 14 Q. Okay. What type of research? 15 A. I went down to, I think at that time it 16 was in Salem, American Fork, I believe. And they had 17 an operation going there. 18 Q. Okay. What was happening at that 19 operation? 20 A. I can't recall. They had people working 21 there. I think they were working on that technology. 22 Q. Do you know what the</p>				

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<p>technology was? 23 A. DWM. 24 Q. The digital wave modulation? 25 A. I think so. But they also had some other 46: 1 things. I don't know what they were working on. 2 Q. Okay. And then you testified in 2001 or 3 2002 you heard about solar lenses? 4 A. Yes, sir. 5 Q. Do you recall how you heard about it? 6 A. No. 7 Q. You just became aware that IAS had solar 8 lenses to sell? 9 A. No, they didn't have lenses to sell. 10 Q. Then what was your understanding of their 11 involvement in solar lenses? 12 A. Research and development, and they had an 13 operation R&D going with Frenell lenses in Mesquite, 14 Nevada. And they were producing electricity with the 15 Frenell lenses with the turbine.</p>				

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<p>And so I went down 16 there and looked at it in Mesquite. 17 Q. What were they doing with the electricity 18 in Mesquite? 19 A. Just to see if it would work. 20 Q. Were they selling electricity? 21 A. No. It was R&D. 22 Q. When you say R&D, you are referring to -- 23 A. Research and development to see if Frenell 24 lenses would, indeed, produce heat and if the heat 25 could heat water enough to create steam to make a 47: 1 turbine go around, which it did. And then the turbine 2 then was hooked to a generator which produced 3 electricity to turn on some lights. 4 Q. Okay. 5 A. So what I perceived from that, that this 6 technology has some merit. But they were still a long 7 ways away from -- it was a proof of concept. 8 Q. Okay.</p>				

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<p>9 A. It was the proof of concept stage at that point.</p> <p>10 point.</p> <p>11 Q. And that was in the very early 2000s?</p> <p>12 A. Yes.</p> <p>13 Q. 2001 or 2002.</p> <p>14 A. Uh-huh (affirmative).</p> <p>15 Q. Okay. And during that time you were an</p> <p>16 IAS shareholder?</p> <p>17 A. I was.</p> <p>18 Q. And you had bought some stock I think you</p> <p>19 said in '96, and then did you just hold onto that or</p> <p>20 did you buy more?</p> <p>21 A. No. I did -- I sold and bought and sold</p> <p>22 and bought.</p> <p>23 Q. Okay.</p> <p>24 A. My objective was to make money.</p> <p>25 Q. Sure. Okay.</p> <p>48: 1 A. But also to leverage to get my price per</p> <p>2 share that would be more advantageous to me.</p> <p>3 Q. Sure.</p> <p>4 A. So if I could sell at \$20 and</p>				

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<p>buy back at 5 \$15, that's a good deal for me. 6 Q. Okay. 7 A. So I'm not saying I did that. But I have 8 done things like that. 9 Q. Sure. So from 1996 through, let's say 10 2006, that ten-year period, you were buying and selling 11 IAS stock periodically. 12 A. Periodically. Not very much, but a little 13 bit, yeah. 14 Q. Just trying to make money on the market? 15 A. A little bit. 16 Q. Okay. All right. Now I think you 17 testified in 2006 that was the time you bought your 18 first lens. 19 A. Yes. 20 Q. Okay. What caused you to want to buy a 21 lens? 22 A. I had seen the turbine work dozens of 23 times successfully. I have seen the lenses produce</p>				

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<p>24 heat. 25 Q. And so you came to understand that there 49: 1 was an opportunity to purchase lenses? 2 A. Yeah. The technology was fantastic, in my 3 opinion. It was a break-through deal.</p>				
<p>49: 8 Q. No problem. You've been testifying about 9 those lenses that were being used for research and 10 development in Mesquite, Nevada. 11 A. Yes. 12 Q. And you testified that these lenses 13 produced heat and -- 14 A. No. You're skipping over a lot. 15 Q. Okay. I understand that the lenses were 16 being used to ultimately turn a turbine that you say 17 produced electricity. 18 A. You skipped over a lot. 19 Q. Well, what I want to understand is all the 20 testimony you've given about</p>				

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<p>these lenses and the 21 research and development that was being done, where did 22 you get that information from? 23 A. Okay. First of all, down in Mesquite, 24 that was a proof of concept. 25 Q. Okay. 50: 1 A. And those Frenell lenses were purchased 2 basically off the shelf. There was no invention by 3 Neldon Johnson. 4 Q. Okay. 5 A. That was my understanding. 6 Q. Go ahead. 7 A. And so with that proof of concept, it's my 8 understanding that Neldon Johnson was elated with that 9 and wanted to see if it could be explored so that we 10 could bring clean, affordable, renewable energy to our 11 country. But the Frenell lens concept was far, far too 12 expensive. Neldon Johnson, in my opinion, cares about 13 that. We know other solar companies don't, because</p>				

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<p>14 they produce electricity with no idea of making money 15 and they are going to go bankrupt. We don't want to do 16 that. 17 Q. Okay. 18 A. I would never be involved with a company 19 that did that. So what the deal was is that Neldon had 20 to figure out a way to make a Frenell lens that would 21 be affordable so that he could beat the price of coal. 22 That's what I wanted. I wanted to see that from the 23 company, okay? 24 So what happened was, long story short, 25 they went up to Canada and hired, from my 51: I understanding -- 2 Q. And who gave you that understanding? 3 A. Neldon Johnson and Randy Johnson and 4 LeGrande Johnson. 5 Q. Okay. 6 A. They went up to Canada and the guy up</p>				

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<p>7 there was supposed to be an expert, and he couldn't figure it out in a year. So Randy, who is very smart, and LeGrande came up or they had about thirty college students, it's my understanding. And after working about twenty hours a day for something like three months, they finally came up with a formula that they thought would work. Then they went down, to my understanding, to Lucite or a company like Lucite. And I don't know how they do it but they walked in as green kids without an appointment and one guy said -- this is the story I got --</p> <p>18 Q. From who?</p> <p>19 A. All three of them.</p> <p>20 Q. All three of who?</p> <p>21 A. The Johnsons: LeGrande, Nelson, and Randy.</p> <p>22 Q. Okay.</p> <p>23 A. And so they got Lucite to make a run,</p> <p>24 which is a very, very difficult</p>				

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<p>thing to do, because 25 they have to stop -- I know something about 52: 1 manufacturing because I have -- well, nothing like 2 that. But they had to stop and prepare the machinery 3 for a line of production. And lo and behold it worked 4 fair. They made some adjustments and it worked better. 5 And so those plastic acrylic lenses came 6 off the line in abundance, and very cheaply. So those 7 were the first lenses that came off. And so I bought 8 because here, in my understanding, we had lenses that 9 were extremely cheap compared to other companies and we 10 had a turbine that would work with any kind of water. 11 I know that because I saw it work on a geothermal well 12 down at Cove Fort, where all that gunk and crap went 13 through a turbine. No other turbine can do that. I 14 know that because I have</p>				

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<p> researched it. It's easy to 15 research. 16 And so that turbine -- here Neldon had a 17 turbine that was revolutionary that would work with any 18 kind of water, and nobody can do that, and we had a 19 cheap lens, solar lens that could be mass produced in 20 volumes that would eventually or could eventually 21 become extremely revolutionary for the mass production 22 part and the cost part. 23 So we have something. We have a lens 24 that's going to produce heat, which I have seen many 25 times produce heat, an extraordinary amount of heat. 53: 1 So I know if you can do heat, you can heat water, you 2 can turn the water into steam, you can make that 3 revolutionary turbine go around, you can hook it up to 4 a generator and then you can produce electricity. So I 5 bought lenses. </p>				

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<p>6 Q. Okay. And you learned all that in, it 7 sounds like in the early 2000s? 8 A. Okay. I gave you a lot of history there 9 so let's go between -- 10 Q. You gave me a lot of history but you 11 testified the first time you heard of a lens was in 12 2000 and 2001, and the first time you bought a lens was 13 in 2006. 14 A. Right. So between that time. 15 Q. That's what you -- 16 A. Most of it was 2005 -- 17 Q. Okay. 18 A. -- for that, because they had to develop 19 those lenses. They had to get all the R&D done. 20 Q. So the R&D was done in 2005? 21 A. I don't -- you'll have to -- okay. 22 Mr. Moran, when you do something that no one else in 23 the world can do, it doesn't take - - you don't snap 24 your fingers and that happens.</p>				

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And so the R&D takes a 25 lot of time. 54: 1 Q. Okay.				
55:15 Exhibit 462 WAS MARKED.) 16 Q. You just referenced the technology papers. 17 Where did you get those from? 18 A. Neldon Johnson. 19 Q. The information, the testimony that you 20 have been giving about the solar lenses and the systems 21 that you expected to come to fruition, did you get that 22 information from anyone other than Neldon Johnson? 23 A. Say that again? I'm sorry. 24 Q. The information you received about solar 25 lenses and their potential to generate electricity and 56: 1 bring clean energy to -- 2 A. Whose lenses? 3 Q. The lenses that you've been talking about, 4 IAS's lenses. 5 A. Okay. 6 Q. The information that you have been 7 testifying about that, is there			462	

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<p>anyone besides Neldon 8 Johnson that you got that information from? 9 A. Well, the Johnson family, Randy and -- 10 mostly Randy. 11 Q. Okay. 12 A. And a little bit LeGrande. 13 Q. Okay. 14 A. But it's mostly Randy and Neldon Johnson. 15 Q. Okay. So Randy and Neldon Johnson, 16 LeGrande Johnson. Anyone else? 17 A. Well, they didn't write the technology 18 papers. 19 Q. Who did? 20 A. You'll have to ask Neldon. But I 21 understand that they are highly esteemed university 22 professors at highly esteemed universities. 23 Q. But you don't know who it is? 24 A. No. 25 Q. Neldon just told you that they are highly</p>				

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<p>57: 1 esteemed?</p> <p>2 A. Yeah. I think if you depose</p> <p>Neldon and</p> <p>3 you have him give you the names,</p> <p>he might. But that's</p> <p>4 very sensitive. But that's up to</p> <p>him. I don't know</p> <p>5 who they are.</p> <p>6 Q. You don't know who they are?</p> <p>Okay.</p> <p>7 Mr. Shepard, I'd ask you to look at</p> <p>the</p> <p>8 exhibit in front of you, which is</p> <p>Plaintiff's Exhibit</p> <p>9 462 for identification. Do you</p> <p>recognize Exhibit 462?</p> <p>10 A. I do.</p> <p>11 Q. What is it?</p> <p>12 A. It's an Equipment Lease</p> <p>Agreement.</p> <p>13 Q. Who is the agreement</p> <p>between?</p> <p>14 A. It's between Greg Shepard,</p> <p>me, and</p> <p>15 International Automated</p> <p>Systems.</p> <p>16 Q. And this Equipment Lease</p> <p>Agreement is</p> <p>17 dated December 28, 2005; is that</p> <p>correct?</p>				

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<p>18 A. Yes.</p> <p>19 Q. And is this the first time you bought</p> <p>20 lenses?</p> <p>21 A. Yes.</p> <p>22 Q. So I think before, you said that you</p> <p>23 bought them in 2006. That was actually December 28,</p> <p>24 2005?</p> <p>25 A. Yeah. December 28th, I guess, 2005.</p> <p>58: 1 Missed it by three days.</p> <p>2 Q. No problem. It's a ways back.</p> <p>3 And the first page, there's a reference to</p> <p>4 Yermo, California.</p> <p>5 A. Yes.</p> <p>6 Q. What's in Yermo, California?</p> <p>7 A. I don't know.</p> <p>8 Q. It says that the lessor, which is</p> <p>9 International Automated Systems, "Shall furnish,</p> <p>10 deliver, install, and start up the Alternative Energy</p> <p>11 System at a site provided by Lessee at Yermo,</p> <p>12 California." Is that where your lenses were?</p> <p>13 A. No. I don't believe so.</p>				

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<p>14 Q. Why is there a reference to Yermo, 15 California in this contract? 16 A. Because it's talking about the 17 installation site that, if and when they were going to 18 be installed, that that would be -- at that time, those 19 lenses could have been installed at Yermo, California. 20 Q. Was there a site in Yermo, California that 21 the parties had in mind? 22 A. My understanding was that they had some 23 property down there in that area. 24 Q. Who is "they"? 25 A. Neldon Johnson. 59: 1 Q. And so did you get that understanding from 2 Neldon Johnson? 3 A. Yes. 4 Q. Okay. So Mr. Johnson told you he had 5 property in Yermo, California, and that's where these 6 alternative energy systems or lenses were going to be 7 produced? 8 A. Well, they could be. But</p>				

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<p>subsequently 9 there was, while further research and development was 10 being done, there was property being bought in Delta. 11 And I think there's a clause in there where they can be 12 installed at different sites. 13 Q. Okay. 14 A. So I was comfortable, as a person 15 purchasing the leases or purchasing the lenses, I was 16 comfortable that they could be put up anyplace. 17 Q. Okay. 18 A. It was my understanding I could get all 19 the credits and the rental fees. It didn't matter 20 where they were as long as they were in the United 21 States. 22 Q. And where were your lenses that you 23 bought, or that you leased?</p>				
<p>60: 2 A. My recollection is that they were shipped 3 from Lucite into Utah some place.</p>				

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<p>4 Q. Have you ever seen them?</p> <p>5 A. Yeah. They were in -- they have shifted</p> <p>6 locations. At one time they were in the town of Delta,</p> <p>7 Utah.</p> <p>8 Q. And where are they now? The lenses you</p> <p>9 bought on December 28, 2005, my question is where are</p> <p>10 those lenses now.</p> <p>11 A. At the manufacturing plant in Oasis, Utah.</p> <p>12 Q. That was the first site that we visited on</p> <p>13 April 4?</p> <p>14 A. Yes.</p> <p>15 Q. Have you seen the lenses that you bought</p> <p>16 on December 28, 2005?</p>				
<p>60: 2 A. My recollection is that they were shipped</p> <p>3 from Lucite into Utah some place.</p> <p>4 Q. Have you ever seen them?</p> <p>5 A. Yeah. They were in -- they have shifted</p> <p>6 locations. At one time they were in the town of Delta,</p> <p>7 Utah.</p> <p>8 Q. And where are they now? The</p>				

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<p>lenses you 9 bought on December 28, 2005, my question is where are 10 those lenses now. 11 A. At the manufacturing plant in Oasis, Utah. 12 Q. That was the first site that we visited on 13 April 4? 14 A. Yes. 15 Q. Have you seen the lenses that you bought 16 on December 28, 2005?</p>				
<p>61: 7 A. How do I know? 8 Q. How do you know, if you and I were down at 9 the Oasis Seed building right now and I said, 10 "Mr. Shepard, can show me the lenses you leased on 11 December 28, 2005 --" 12 A. No. 13 Q. You couldn't do that? 14 A. No. 15 Q. You would just say, "Mr. Moran, I can't do 16 that"? 17 A. Mr. Moran, I couldn't do that. 18 Q. Okay. I'm going to ask you to look at the</p>				

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<p>19 next page, paragraph 6 on Exhibit 462. 20 A. Second page? 21 Q. Second page. Paragraph 6 down at the 22 bottom. 23 A. Okay. 24 Q. It says, "If Lessor shall fail, for any 25 reason, to furnish, deliver, and start up the 62: 1 Alternative Energy System at the Installation Site, by 2 December 31, 2007, or within six months of the Permit 3 Date, whichever is earlier, hereinafter referred to as 4 the 'Refund Date,' Lessor shall refund to Lessee, 5 within ten days following the Refund Date, the Initial 6 Payment as well as the full amount of any other 7 payments made by Lessee on the Total Lease Amount." 8 Did I read that correctly? 9 A. Yes.</p>				
<p>62:12 Q. Did anything happen with your lenses on or 13 before December 31, 2007?</p>				

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<p>14 A. I don't recall. 15 Q. Did you receive any type of payment from 16 IAS regarding your lenses before December 31, 2007? 17 A. No. 18 Q. Do you know if your lenses were used to 19 generate any type of commercial product before December 20 31, 2007? 21 A. No. 22 Q. No, they were not, or no you don't know? 23 A. I don't know. I can't -- I don't know. 24 Q. Do you think you would have known if your 25 lenses were used to generate a commercial product? 63: 1 A. Yes. 2 Q. How would you have known that? 3 A. I would assume Neldon Johnson would have 4 said so. 5 Q. Okay. 6 A. And what do you mean by "commercial 7 product"?</p>				

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<p>8 Q. A product that IAS or any other entity 9 sold to someone in exchange for money. 10 A. I don't understand that at all. 11 Q. I'm saying -- 12 A. So on your previous question, I can't 13 answer. I don't know what you're saying. 14 Q. You talked about lenses that - - you bought 15 these lenses because you wanted to bring clean energy 16 to the country, right? 17 A. Exactly, yeah. 18 Q. Okay. And usually energy is bought and 19 paid for, right? 20 A. I don't understand what you're saying.</p>				
<p>63:23 Q. In this country is energy offered for 24 free? 25 A. No. 64: 1 Q. I assume you pay an electric bill every 2 month? 3 A. I do.</p>				
<p>64:11 Q. All I'm asking is do you</p>				

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<p>understand that 12 in this country electricity is not free? 13 A. I would say usually that's the case. 14 Q. Okay. That parties generate electricity 15 and then they sell it to customers, right? 16 A. I mean, utility companies or - - 17 Q. Sure. 18 A. Yeah. Utility companies generate 19 electricity and then they sell that. 20 Q. Okay. 21 A. And I pay my electric bill. 22 Q. Just like everyone else? 23 A. Like everyone else. 24 Q. Okay. And one of the reasons you bought 25 these lenses is because you want to bring renewable 65: 1 energy to the country. 2 A. Yes. 3 Q. And by "renewable energy" you mean solar 4 energy that comes from the sun?</p>				
<p>65: 7 A. Well, there's a variety of things that can</p>				

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<p>8 be done with a turbine. And so that's an -- say that 9 question again?</p>				
<p>65:13 Question: "And by 'renewable energy' you 14 mean solar energy that comes from the sun?") 15 A. Well, yeah. Solar energy comes from the 16 sun. 17 Q. And that's one of the reasons you bought 18 your lenses. 19 A. One of the reasons. Right. One of the 20 reasons. 21 Q. Okay. Well, what are the other reasons? 22 A. To produce heat. 23 Q. Why would you want to produce heat? 24 A. Really? You ask that question? Okay. 25 One of the things you can do with the heat 66: 1 is you can heat a building. You can heat water and as 2 it goes through the turbine it comes out pure, 3 distilled water, which can be used</p>				

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<p>for irrigation. You 4 don't even have to do anything with electricity. 5 I thought you read -- well, I okay. I 6 guess you're trying to -- I don't know what you're 7 trying to do. But yeah, it can be used to heat a 8 building, it can be used to heat hardened oil and 9 liquify it. And it's a very profitable thing. It can 10 be used to burn coal, the heat can, which can produce 11 electricity. It can be used to purify solid waste. It 12 can be used to -- it can use pig waste and burn that 13 and produce heat, which can be used for irrigation 14 and/or energy, solar energy. The water that can be 15 produced can be produced at hardly any cost. 16 Q. All right. 17 A. And millions and millions of gallons. 18 Four gallons per kilowatt hour, by the way. If you do</p>				

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<p>19 the math on it, you'd be pretty impressed.</p> <p>20 Q. The lenses that you bought on December 28,</p> <p>21 2005, were they ever used for any of the purposes you</p> <p>22 just listed?</p> <p>23 A. R&D had to be done. So I was willing to</p> <p>24 wait until they got all the R&D completed on that to</p> <p>25 make it economically viable.</p> <p>67: 1 Q. And did anyone pay International Automated</p> <p>2 Systems for the research and development?</p>				
<p>67: 5 A. I don't know.</p> <p>6 Q. You don't know.</p> <p>7 A. That's not my -- I'm an independent</p> <p>8 contractor, Chris. I bought lenses, so I don't know</p> <p>9 much beyond that.</p> <p>10 Q. Okay. Were you ever paid for something</p> <p>11 your lenses did?</p> <p>12 A. No.</p> <p>13 Q. Okay. Mr. Shepard, I'd ask you to flip</p> <p>14 back to page 6 of 8, particularly</p>			462	

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<p>paragraph 29. 15 A. Page 6 of this document? 16 Q. Yes. Exhibit 462. 17 A. Okay. I'm there. 18 Q. It says, "Lessor and Lessee acknowledge 19 that they each understand and expect the Alternative 20 Energy System may qualify for certain tax incentives 21 and benefits under the 2005 Energy Policy Act and other 22 statutes." 23 A. Okay. 24 Q. "Lessee acknowledges that it has reviewed 25 a tax opinion letter obtained by Lessor from Lessor's 68: 1 accountant." Did I read that correctly? 2 A. Uh-huh (affirmative). 3 Q. And the lessor is International Automated 4 Systems, right? 5 A. Yes, it is. 6 Q. Okay. Who wrote the tax opinion letter 7 that is referred to in paragraph 29? 8 A. I believe that's the Anderson tax letter.</p>				

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<p>9 Q. You are referring to Todd Anderson?</p> <p>10 A. I'm not sure what his first name is. I</p> <p>11 think that's right.</p> <p>12 Q. Well, I'll represent to you that Todd</p> <p>13 Anderson is an attorney, not an accountant. And this</p> <p>14 is talking about an accountant. So do you recall any</p> <p>15 accountant that --</p> <p>16 A. Oh, yeah. I'm not sure. I kind of recall</p> <p>17 the name Hansen Barnett.</p> <p>18 Q. Hansen Barnett & Maxwell?</p> <p>19 A. I think so.</p> <p>20 Q. So you think you --</p> <p>21 A. Long time ago now. We are twelve years</p> <p>22 ago. But yeah.</p> <p>23 Q. Do you recall reviewing a tax -- what's</p> <p>24 referred to here as a tax opinion letter from Hansen,</p> <p>25 Barnett & Maxwell?</p> <p>69: 1 A. Yes. I can't remember what it said, but</p> <p>2 yes.</p> <p>3 Q. Okay. And paragraph 29</p>				

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<p>refers to certain 4 tax incentives and benefits. Do you recall what those 5 are? 6 A. Do I recall what the -- 7 Q. Do you recall -- what is this contract 8 referring to when it says "certain tax incentives and 9 benefits"?</p>				
<p>69:12 A. Okay. So the benefits? I'm not sure what 13 the benefits said in that. I can't remember. 14 Q. Okay. 15 A. I mean, I can tell you what I think the 16 benefits are, because it's all over the internet. 17 Q. We are going to talk about that in a bit. 18 A. Okay. 19 Q. I'm talking about in the context of 20 paragraph 29 in this contract from 2005. 21 A. I can't remember what it said in that.</p>				
<p>70: 2 Mr. Shepard, we talked about a few things</p>				

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<p>3 before the break. I'm going to run through a series of 4 entities. I would like you to tell me what you know 5 about those entities. International Automated Systems 6 we have discussed. To be clear for the record, were 7 you ever employed by International Automated Systems? 8 A. No. 9 Q. Okay. What was the basis of your 10 relationship with them? 11 A. Shareholder. 12 Q. That's it? 13 A. Yes.</p>				
<p>70:15 Q. Mr. Shepard, you have been given a copy of 16 what's been marked for identification as Plaintiff's 17 Exhibit 463. What is it? 18 A. An Independent Representative Agreement. 19 Q. And I should ask you, do you recognize 20 this document? 21 A. I haven't seen it for a long time, yeah, 22 but my name is on there and it's</p>			463	

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<p>in my handwriting. 23 Q. I'll ask you to look back to the last 24 page. Does your signature appear on the last page? 25 A. Yes, it does. 71: 1 Q. Okay. This appears to be an agreement 2 between you and International Automated Systems. 3 A. Yeah. 4 Q. Okay. So I'll ask you the question -- 5 A. So I guess I made a mistake, didn't I? 6 Q. That's fine. Like you said, it's been a 7 while. I'll ask the question again. Other than as a 8 shareholder, have you had any other relationships with 9 International Automated Systems? 10 A. Yes. As an independent representative. 11 Q. Okay. And what did you do as an 12 independent representative of IAS? 13 A. Sold solar lenses. 14 Q. Okay. And is Exhibit 463 an</p>				

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<p>accurate copy 15 of your agreement with International Automated Systems? 16 A. Yes. 17 Q. Okay. And this contract, it sounds like 18 you were authorized to sell lenses for IAS? 19 A. Yes. 20 Q. Did you do anything else? 21 A. No. 22 Q. Okay. Did IAS compensate you for selling 23 lenses? 24 A. Yes. 25 Q. How was that compensation determined? 72: 1 A. It was based on ten percent of the gross 2 amount. So if somebody paid \$10,000, for example, I 3 would get \$1000. Ten percent of \$10,000 is \$1000. 4 Q. Sure. So you're saying if someone bought 5 \$10,000 -- 6 A. If they bought \$10,000 worth of lenses and 7 gave Neldon a check or IAS a check for \$10,000, I would</p>				

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<p>8 get ten percent of that. 9 Q. Okay. So you got a commission. 10 A. I got a commission. 11 Q. Okay. And you signed the agreement to be 12 an independent representative on September 26, 2005? 13 A. I would -- I'm not sure what you mean by 14 "representative." 15 Okay. Wait a minute. What does it say 16 there? 17 Q. It says "independent contractor, 18 hereinafter referred to as representative." 19 A. Okay. Then yes. 20 Q. Okay. That was a few months before you 21 bought lenses for the first time? 22 A. Yes. 23 Q. Going back to the lenses you purchased 24 December 28, 2005, we talked about these before the 25 break.</p>				
<p>73: 1 Exhibit 464 WAS MARKED.) 2 Q. I'd ask you to look at what's</p>			464	

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<p>been marked 3 as Plaintiff's Exhibit 464. Do you recognize this 4 document? 5 A. It's been a long time, but I can recognize 6 my handwriting, so yes. 7 Q. Okay. And is that your signature on the 8 second-to-the-last page, which is Bates marked 9 Ra3 000736? 10 A. Yes. 11 Q. This is entitled -- Exhibit 464 is 12 entitled Equipment Sublease Agreement. And my 13 understanding of this agreement is that you are 14 subleasing lenses to LTB; is that correct? 15 A. I'm trying to find the LTB. Was LTB in 16 here? Oh, yes, sure.</p>				
<p>73:20 Q. My understanding, I have read this 21 agreement and my understanding is that you were leasing 22 the lenses that you had leased from IAS, on the same</p>				

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<p>23 date, December 28, 2005, you had turned around and 24 subleased those to LTB; is that correct? 25 A. Yes. 74: 1 Q. That's your understanding of the contract? 2 A. That's my understanding. 3 Q. This also referred to Yermo, California; 4 is that right? 5 A. Yes. 6 Q. When is the first time you heard about 7 LTB? 8 A. On this date. 9 Q. Okay. 10 A. Or a little before. I'm not sure. 11 Q. All right. What is LTB? 12 A. I don't know. I mean, other than what it 13 says there, a Nevada limited liability company. And 14 they are authorized, I guess, to -- 15 Q. That's all you know about them? 16 A. Yes. I don't know who owns it or who runs 17 it or who -- I don't know</p>				

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anything about the entity. 18 Q. All right. Before you signed this 19 agreement to sublease your lenses to them, did you do 20 any research on LTB? 21 A. No. 22 Q. Do you know -- you don't know any of its 23 history? 24 A. No. 25 Q. Do you know if it has any expertise or 75: 1 experience in --				
75: 5 Q. -- operating and maintaining solar lenses? 6 A. I don't know.				
75:10 Q. Was the first time you heard of LTB when 11 it was on this agreement? 12 A. Yes. 13 Q. Who drafted this agreement? 14 A. I don't know. 15 Q. Who gave you this agreement, Exhibit 464? 16 A. I can't remember. 17 Q. Is there any reason to believe it wasn't 18 International Automated Systems?			464	

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<p>19 A. No. 20 Q. No, there's no reason to believe that? 21 A. They probably did, but I can't recall it. 22 It's twelve years ago. 23 Q. Okay. So the first time you ever heard of 24 LTB, LLC was when it was -- 25 A. Yes. 76: 1 Q. -- on this contract? 2 A. Yes. 3 Q. And you subleased your lenses to them. 4 A. Yes. 5 Q. Okay. Do you know what LTB did with your 6 lenses after they had been subleased? 7 A. No. 8 Q. Paragraph 1 of the agreement says or 9 mentions Yermo, California as an installation site. Do 10 you know if LTB did anything with your lenses at Yermo, 11 California? 12 A. I don't know. 13 Q. Do you think you would know if those</p>				

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<p>14 lenses had been used to generate any income? 15 A. I would if they were. I think I would. 16 Q. Go back to the last page of Exhibit 464, 17 the signature page. I see your signature. Whose 18 signature is above that? 19 A. I don't know.</p>				
<p>76:24 Q. Mr. Shepard, you have been given a copy of 25 what's been marked for identification as Plaintiff's 77: 1 465. Do you recognize this document? 2 A. I don't know. It's not signed so I'm not 3 sure. But I recognize in general the contract. 4 Q. Okay. All right. In general what is this 5 contract? 6 A. It's called a bonus fee contract. 7 Q. And what is a bonus fee contract? 8 A. It's based on -- it's a referral fee and 9 there's money that a person can get or I could get</p>			464 465	

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<p>10 based on the -- I don't know if this is the same one, 11 but -- yeah. Based on the gross sales of revenue 12 received by IAS. 13 Q. Okay. Sales of what? 14 A. It's my understanding anything. It just 15 says gross sales revenue. 16 Q. And where did you get that understanding 17 from? 18 A. From the contract right here. It says 19 gross sales of revenue.</p>				
<p>79:19 Q. MJM Holding is identified in this contract 20 as the lessee. Who is MJM Holding? 21 A. I don't know. 22 Q. You never heard of a company called MJM -- 23 A. I have heard of it, yeah. But I don't 24 know exactly what they do. I'm not an officer in the 25 company, I'm not on the board of directors, I'm not an 80: 1 employee, so I don't know.</p>			<p>94 465</p>	

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<p>2 Q. Have you ever been involved with MJM</p> <p>3 Holding?</p> <p>4 A. Let's see. MJM Holding. You better</p> <p>5 refresh my memory. I can't recall.</p> <p>6 Q. I'll hand you a copy of what's already</p> <p>7 been marked in a previous deposition as Exhibit 94. I</p> <p>8 direct your attention to the last page, sorry, the</p> <p>9 third from the last page, which is Rowbotham_R-01196.</p> <p>10 A. Okay. I was running on the wrong</p> <p>11 wavelength here. Yes. Okay. I was thinking something</p> <p>12 to do with energy.</p> <p>13 Q. Well, MJM Holding, this is an Equipment</p> <p>14 Purchase Agreement similar to the Equipment Purchase</p> <p>15 Agreement that you signed on December 28 --</p> <p>16 A. Right. MJM Holding was a business that I</p> <p>17 had a long time ago.</p> <p>18 Q. Okay. So I'll ask you again, what is MJM</p>				

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<p>19 Holding?</p> <p>20 A. I'm trying to come up with what we did</p> <p>21 with it. It was a holding company that held like a</p> <p>22 building, for example. We owned a building that we</p> <p>23 conducted the Bigger, Faster, Stronger business and the</p> <p>24 manufacturing plant. And so MJM Holding, as it went</p> <p>25 through the years, owned the building at 843 West 2400</p> <p>81: 1 South.</p> <p>2 Q. Okay. My understanding is that MJM</p> <p>3 Holding was a partnership between you and Robert</p> <p>4 Rowbotham that owned most of Bigger, Faster, Stronger</p> <p>5 assets; is that correct?</p> <p>6 A. Yeah. But I don't think that -- I think</p> <p>7 MJM Holding had a specific purpose and that was to own</p> <p>8 the building.</p> <p>9 Q. Okay.</p> <p>10 A. And then what Bigger, Faster, Stronger did</p> <p>11 is rent the building from MJM,</p>				

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<p>as I remember. That's 12 been a long time. 13 Q. Now, MJM Holding it appears bought some 14 solar lenses; is that right? 15 A. Yes. 16 Q. And you signed on behalf of MJM Holding on 17 page 6 of Exhibit 94; is that right? 18 A. I did. 19 Q. And then we also have Exhibit 465, a Solar 20 Lease Bonus Fee Contract made out to MJM Holding; is 21 that right? 22 A. Here's the equipment purchase. You mean 23 the lease agreement or the equipment purchase? 24 Q. I'm talking about Exhibit 465. 25 A. Oh, this one. Yeah, right. 82: 1 Q. So the lenses that MJM purchased December 2 22, 2006, would they have also signed a Solar Lease 3 Bonus Fee Contract? And now I'm referring to Exhibit 4 465.</p>				

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<p>5 A. Yes. MJM Holding had a bonus fee contract</p> <p>6 I believe similar to this, if not the exact same. But</p> <p>7 this isn't the original document. Doesn't appear to</p> <p>8 be.</p> <p>9 Q. Is that because it's unsigned?</p> <p>10 A. Yeah. There's no -- there's MJM Holding</p> <p>11 and there's IAS, but it's not signed.</p> <p>12 Q. Okay.</p> <p>13 A. Either by me or by IAS.</p> <p>14 Q. Now, the Solar Lease Bonus Fee Contract in</p> <p>15 Exhibit 465, is that the standard contract language?</p> <p>16 A. Yeah. But I'm expecting money from this</p> <p>17 at some point, or MJM is. In all my bonus contracts</p> <p>18 I'm expecting money from them.</p>				
<p>82:19 Q. Are all the bonus contracts drafted</p> <p>20 similarly to Exhibit 465?</p> <p>21 A. No.</p> <p>22 Q. What's different?</p> <p>23 A. I'm not sure unless I see it. I think</p>			<p>465</p> <p>94</p> <p>93</p> <p>462</p>	

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<p>24 there's some wording that's different. For one thing, 25 I think it was March of 2011 it was changed to the 83: 1 second billion dollars. Before that there was a change 2 in the amount. So the amounts of compensation have 3 changed several times. 4 Q. Have changed. Okay. But is it fair to 5 say that all the bonus contracts are -- 6 A. Basically the same. 7 Q. -- basically the same and that they will 8 pay out a percentage? 9 A. A percentage of the gross revenues from 10 IAS, and then the sponsor or the independent contractor 11 who sold the lens to that particular individual gets 12 compensated also. 13 Q. And that's gross revenue -- 14 A. Gross revenue. 15 Q. -- from whatever International Automated 16 Systems would be selling. 17 A. Yeah. To stimulate gross</p>				

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<p>sales. 18 Q. Okay. But you don't know what the source 19 of that sale is expected to be? 20 A. Now or then? I'm not sure. 21 Q. Then. 22 A. Oh, then. 23 Q. Yes. 24 A. Okay. 25 Q. And when I say "then," I'm referring to 84: 1 the 2005, 2006 time frame. 2 A. Back then I'd say several possibilities, 3 and now there's much more. So that's why, you know, 4 then and now. 5 Q. Have any of the possibilities you knew 6 about in 2005, 2006, have any of them ever been 7 realized? 8 A. No. 9 Q. The bonus program we just talked about, 10 that's the IAS bonus program? It's always been based 11 on IAS? 12 A. Yes. 13 Q. Okay. Up until today.</p>				

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<p>14 A. I don't understand that.</p> <p>15 Q. Has it ever not been -- has the bonus</p> <p>16 program ever not been based on IAS's expected gross</p> <p>17 revenue?</p> <p>18 A. No.</p> <p>19 Q. Exhibit 94, there's handwriting at the top</p> <p>20 that says "MJM Replacement Contract Number 2." Do you</p> <p>21 see that on Exhibit 94?</p> <p>22 A. Oh, here?</p> <p>23 Q. Right there.</p> <p>24 A. Okay.</p> <p>25 Q. Is that your handwriting?</p> <p>85: 1 A. It is.</p> <p>2 Q. Can you explain to me why this was a</p> <p>3 replacement contract?</p> <p>4 A. I don't recall.</p> <p>5 Q. Let me show you another document we have</p> <p>6 marked in a previous deposition. This is Exhibit 93.</p> <p>7 Do you recognize Exhibit 93?</p> <p>8 A. Just give me a minute here to read it.</p> <p>9 Yes. Okay.</p> <p>10 Q. You do recognize this</p>				

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<p>document? 11 A. Yes. 12 Q. What is it? 13 A. It is -- it's a notification of a less 14 complicated program from the lease/sublease program. 15 Q. All right. Now, I'm just trying to 16 understand the contracts. In Exhibit 462, which is 17 the -- 18 A. Do I have that one? 19 Q. You do have it, and it's the Equipment 20 Lease Agreement you signed in December of '05. 21 A. Okay. 22 Q. And you testified that was your first -- 23 that was the first time you acquired lenses. 24 A. Okay. Yeah. 25 Q. And then there's a sublease agreement. We 86: 1 talked about that. 2 A. Right. 3 Q. And Exhibit 94, which is dated December 4 22, 2006, that's characterized</p>				

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<p>differently as an 5 Equipment Purchase Agreement. 6 A. Right. 7 Q. And then I see -- and that's characterized 8 as a replacement contract. 9 A. It would appear, yeah. 10 Q. And Exhibit 93 talks about IAS 11 transitioning from a lease program to a different 12 program, and it refers to -- 13 A. Okay. 14 Q. It refers to investors buying a solar pod 15 for \$30,000. Did I read that correctly? 16 A. Yeah. And way back then the word 17 "investors" should not have been used. 18 Q. Okay. 19 A. But I did. We used the term "purchaser" 20 pretty soon after that. 21 Q. And Exhibit 93 is an e-mail from you? 22 A. The what, now? 23 Q. Exhibit 93 is an e-mail from you?</p>				

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<p>24 A. Yes. 25 Q. Do you recall who it was sent to? 87: 1 A. No. 2 Q. Robert Rowbotham produced it to us. 3 A. I can see that. 4 Q. Would Robert Rowbotham have been a 5 recipient of this e-mail? 6 A. Yes. 7 Q. Why did IAS change between a lease and a 8 purchase program? 9 A. I have no idea. You'd have to ask them. 10 Q. And when you say "them," are you referring 11 to Neldon Johnson? 12 A. I'm not sure who I'm referring to because 13 you said "them." I'm not sure. I had nothing to do 14 with that because I'm an independent contractor. So I 15 don't know who came up with the changes and why they 16 were made. 17 Q. How did you learn about the changes?</p>				

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<p>18 A. Through another contract. 19 Q. Who gave you that contract? 20 A. I think Neldon Johnson did. 21 Q. Okay. The information that you 22 communicate in Exhibit 93, where did you get the 23 information from? 24 A. I can't recall.</p>				
<p>88:14 Q. Okay. So I'll be more specific in my 15 question. The changes to IAS's program, who did you 16 learn that from? 17 A. Probably Neldon Johnson. 18 Q. Okay. Did Neldon Johnson tell you why he 19 was changing from a lease to a purchase program? 20 A. If he did, I can't recall. 21 Q. The second sentence, you say, "We now have 22 a less complicated program with more investor revenue." 23 Did I read that right? 24 A. Yes. 25 Q. What do you mean by "more investor 89: 1 revenue"? 2 A. I believe the bonus contract</p>			93	

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<p>was much more 3 lucrative. 4 Q. The bonus contracts that's based on IAS's 5 sales revenue. 6 A. Gross revenue, yes. 7 Q. When you say it was more lucrative, do you 8 mean it was a higher percentage? 9 A. Well, yeah. It was -- I would say in 10 the -- well, what happened, you can define this how you 11 want, but for example, on the -- instead of .1, or 2 12 percent, it turned out to be 6 percent; 6 and 3 13 percent. So it was quite a dynamic change in the 14 bonus. 15 Q. Percent of what? 16 A. Well, for example, if -- let me see if I 17 can remember how this worked. Yeah. So, for example 18 if -- 19 Q. I'm not asking you to do math, 20 Mr. Shepard. If you have to -- I'm really just asking</p>				

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<p>21 about your understanding of the change. 22 A. Yeah. There was a big change as far as 23 the amount of money that an independent contractor 24 could make; and not only make, but the purchaser. 25 Q. The purchaser of what? 90: 1 A. Of solar lenses. 2 Q. Okay. The last sentence of the first 3 paragraph it says, "Money continues to come in for 35 4 years. Anyway that's it in a nutshell." Did I read 5 that right? 6 A. Uh-huh (affirmative). 7 Q. Where is the money coming from? 8 A. The rental fee. 9 Q. That's the rental fee that is paid after a 10 lens starts producing revenue? 11 A. Correct. 12 Q. Has any of this money ever come in? 13 A. No. 14 Q. Mr. Shepard, we talked about your</p>				

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<p>15 agreement with IAS earlier to be an independent 16 contractor or representative. 17 A. Yes. 18 Q. All right. What is your understanding of 19 your role as an independent contractor of IAS? 20 A. At that time it was to sell lenses. 21 Q. Okay. Anything else? 22 A. No. 23 Q. When you were selling lenses for IAS, who 24 were you selling them to? 25 A. Sold them to some neighbors, and MJM, and 91: 1 Bob Rowbotham. And I think there was, like, six 2 people. Something like that. I can't remember. But I 3 put that in a deposition. 4 Q. You put what in a deposition? 5 A. Not in a deposition, but in -- 6 MR. REAY: An interrogatory. 7 A. -- an interrogatory. But I can't recall 8 the exact number. But it was a handful-plus number of 9 people.</p>				

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<p>92:17 Q. The people you did sell lenses to that you 18 put in the interrogatory, Bob Rowbotham, MJM, and 19 Lynette Williams, what did you tell them about the 20 technology? 21 A. I can't recall. 22 Q. Generally you have no idea what you told 23 them about the technology? You just say, "Here's some 24 solar lenses. Do you want to buy them?" And they said 25 yes? 93: 1 A. No. In general terms - I can't remember 2 specifically - I said, "This is something you really 3 need to take a good look at. There's three ways you 4 can make money. You can do it through tax benefits, 5 you can do it through the rental program, and you can 6 do it through the bonus program. And in addition to 7 that, if you want to sell lenses, you can make 8 commissions. So that's the deal."</p>				

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<p>9 Q. So you did tell them about the tax benefits as the first way they can make money?</p> <p>10</p> <p>11 A. Sure. I mean, tell me what solar company doesn't do that? You can't. So I did what every other solar company does, or whoever is selling the lenses.</p> <p>12</p> <p>13 They all do that. They all tell you about -- and it's encouraged by the Federal Government to do that, by the way. I know you know that.</p> <p>14</p> <p>15 Q. I think you testified to this previously but has the rental income ever been realized?</p> <p>16</p> <p>17 A. No.</p> <p>18 Q. Has the bonus program ever generated anyone any income?</p> <p>19</p> <p>20 A. No.</p> <p>21 Q. So except for the tax benefits, is there any money that anyone has ever actually made from buying a lens?</p> <p>22</p> <p>23 Q. So except for the tax benefits, is there any money that anyone has ever actually made from buying a lens?</p> <p>24</p> <p>25 94: 1 A. Sure. Oh, from buying a</p>				

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<p>lens? Yeah.</p> <p>2 Q. The three ways you just mentioned. You</p> <p>3 said tax benefits, you said rental income, and you said</p> <p>4 bonuses.</p> <p>5 A. And I said in addition to that --</p> <p>6 Q. You can get commissions, right?</p> <p>7 A. Exactly.</p> <p>8 Q. Okay. You talked about three ways of</p> <p>9 earning income from lenses.</p> <p>10 A. Right.</p> <p>11 Q. Has anyone ever made money?</p> <p>12 A. No. There has been no rental income or</p> <p>13 bonus money received yet.</p> <p>14 Q. Thank you.</p> <p>15 We talked about your independent</p> <p>16 contractor representative relationship with IAS, right?</p> <p>17 A. Yes.</p> <p>18 Q. At some point did you have a similar</p> <p>19 arrangement with RaPower3?</p> <p>20 A. Yes. I think there was a transition made,</p>				

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<p>21 not initiated by me but by IAS or Neldon, or I'm not 22 sure. Wanted to put everything into another company 23 called RaPower3. And so all my lenses that I purchased 24 were transferred over to RaPower3 and my records were 25 on RaPower3's website. And all the people that I 95: 1 sponsored. 2 Q. Okay. And how did that work? Because you 3 just said, "My lenses were transferred over to 4 RaPower3." 5 A. Right. So if I had 25 lenses here with 6 IAS, I had 25 lenses over here with RaPower3. 7 Q. So you had purchased lenses from IAS. 8 A. Sure. 9 Q. And then you leased them to LTB. 10 A. Yes. 11 Q. And then RaPower3 comes on the scene. Do 12 you recall when? 13 A. I don't. Not exactly. 2010 or</p>				

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2008? I 14 don't know.				
95:20 Q. Well, I don't understand the contract and 21 the way the lenses work, and that's what I'm trying to 22 understand. You testified, "If I had lenses with IAS, 23 now they are with RaPower3." And my question to you is 24 if you purchased them from IAS and you owned them, and 25 then you leased them to LTB, which is going to operate 96: 1 and maintain them, what does RaPower3 -- what do you 2 mean by, "Now my lenses are with RaPower3"? 3 A. Well, I think we all -- well, I'm just 4 going to speak for myself. It's my understanding that 5 the rental agreement was transferred over there, so I'm 6 going to get the same rental income when that happens, 7 and I'm going to get the same bonuses when that 8 happens. 9 Q. Your bonuses are from IAS.				

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<p>10 A. That's true. So that doesn't change.</p> <p>11 Q. And your rental income --</p> <p>12 A. Doesn't change from RaPower3, because it</p> <p>13 comes from LTB.</p> <p>14 Q. So I'm trying to understand --</p> <p>15 A. But I don't get any additional tax</p> <p>16 benefits.</p> <p>17 Q. But you're not answering my question.</p> <p>18 A. Okay.</p> <p>19 Q. You testified that now your lenses are</p> <p>20 with RaPower3. I don't understand how your lenses can</p> <p>21 be with RaPower3 because you own them but you are</p> <p>22 leasing them to LTB.</p> <p>23 A. I don't, either. I can't answer that</p> <p>24 because I -- I assume Neldon would have to answer that</p> <p>25 kind of a question.</p> <p>97: 1 Q. So you don't know?</p> <p>2 A. I don't know.</p> <p>3 Q. Okay.</p> <p>4 A. I expect the same outcome.</p> <p>5 Q. Why do you expect the same</p>				

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<p>outcome? 6 A. Because Neldon Johnson is very honest and 7 I trust him, and I trust the agreements that we signed. 8 I trust all that. 9 Q. What does Neldon Johnson have to do with 10 LTB? 11 A. I don't know. 12 Q. So if your lenses are being leased to LTB, 13 why does your trust in Neldon Johnson have any effect 14 on the outcome? 15 A. I think he has something to do with that. 16 And if he does, then I would trust that that would come 17 out okay for me. 18 Q. Why do you think that Neldon Johnson has 19 something to do with LTB? 20 A. I don't know. You're trying to box me 21 into a corner and I'm just not going to go there. 22 Q. I'm trying to understand the program. 23 A. I'm trying to understand what</p>				

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<p>you are 24 trying to drive at. I don't understand it so I'm going 25 to say I don't know what you're going for. I don't 98: I understand it.</p>				
<p>98: 6 "Question: Why do you think that Neldon 7 Johnson has something to do with LTB?") 8 A. I believe that Neldon Johnson has either a 9 direct or distant ability or -- not ability, but has 10 something to do either directly or very indirectly with 11 what goes on. And I don't know, I can't define 12 directly or indirectly because I don't know that. 13 Q. Do you think that -- 14 A. I'm an independent contractor and I don't 15 have -- I'm not an officer of any of those companies. 16 I'm not on a board of directors. I'm not an employee. 17 I don't go to any meetings. I don't know what's going 18 on. So you're asking me to</p>				

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<p>speculate on things and I 19 don't know the involvement of Neldon Johnson in that or 20 the extent of direct or indirectly. 21 Q. You testified you expect the lenses you 22 leased to LTB are going to produce revenue, right? 23 A. I expect that, yeah. 24 Q. And you justified that belief on your 25 trust in Neldon Johnson, right? 99: 1 A. Yes. 2 Q. Okay. And I'm trying to understand how 3 those two are connected. 4 A. Well, I don't know. 5 Q. You don't know? 6 A. I don't know how they are connected. 7 That's not -- 8 Q. You just think they are? 9 A. I think they are. 10 Q. Has Neldon Johnson told you anything about 11 LTB? 12 A. No. 13 Q. It's just a name on a contract? 14 A. Yes.</p>				
100: 5 Exhibit 466 WAS			466	

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<p>MARKED.) 6 Q. Mr. Shepard, you have been given a copy of 7 what's been marked for identification as Plaintiff's 8 Exhibit 466. Do you recognize this document? 9 A. I do. 10 Q. What is it? 11 A. It's a placed in service -- should be a 12 placed in service letter. Yeah. Service for ten 13 lenses. I first purchased ten lenses. 14 Q. Is this the -- does this refer to your 15 first purchase from December 28, 2005? 16 A. It does. 17 Q. Okay. And this is on RaPower3 letterhead? 18 A. Yes, it is. 19 Q. Okay. And you testified -- let me ask you 20 this: Did RaPower3 exist in 2005? 21 A. No. 22 Q. Did it exist in 2006? 23 A. No.</p>				

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Plaintiff Designations – BLUE Defendant Completeness— PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness— PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>24 Q. Okay. Why would RaPower3 be giving you a 25 placed in service letter for lenses that you purchased 101: 1 in 2005 if RaPower3 didn't exist until September 2010? 2 A. I don't know. 3 Q. Would this document have to have been 4 back-dated? 5 A. I don't know. 6 Q. Do you recall when you received this 7 document? 8 A. No. 9 Q. Getting back to RaPower3, you testified 10 that you're not an officer, you're not a director; is 11 that right? 12 A. Not on the board of directors, not an 13 officer, and not an employee. I'm an independent 14 contractor. 15 Q. Do you know who owns RaPower3? 16 A. No. 17 Q. In your capacity as an independent</p>				

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<p>18 contractor for RaPower3, did you ever sign a contract</p> <p>19 with them? You testified you were an independent</p> <p>20 contractor for RaPower3, right?</p> <p>21 A. Right.</p> <p>22 Q. And previously we discussed a contract</p> <p>23 where you became an independent contractor for IAS.</p> <p>24 A. Right.</p> <p>25 Q. My question to you is did you sign a</p> <p>102: 1 similar contract when you became involved with</p> <p>2 RaPower3?</p> <p>3 A. Yeah. A distributor contract.</p> <p>4 Q. Okay.</p> <p>5 A. Which everyone who purchased solar lenses</p> <p>6 under RaPower3, there's a distributor application form.</p> <p>7 So you fill that out and you become a distributor. So</p> <p>8 I signed that.</p> <p>9 Q. You signed that?</p> <p>10 A. Uh-huh (affirmative). Electronically.</p> <p>11 Q. What about Chief Director of Operations?</p>				

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<p>12 A. What about it? 13 Q. Is that a position with RaPower3? 14 A. No. 15 Q. Have you referred to yourself as the Chief 16 Director of Operations for RaPower3? 17 A. Sometimes.</p>				
<p>104: 3 Q. Mr. Shepard, you have been given a 4 document which has been marked for identification as 5 Plaintiff's Exhibit 467. This is a document that you 6 produced to the United States. Do you recognize this 7 document? 8 A. I do. 9 Q. What is it? 10 A. It's a team memo. 11 Q. I think it's the first page of a team 12 memo; is that right? 13 A. It is. 14 Q. Up at the top it appears to be an e-mail 15 from you dated August 9, 2016 and you sent it to Glenda 16 Johnson.</p>			<p>467 463 468</p>	

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<p>17 A. I did.</p> <p>18 Q. The e-mail address GlendaEJohnson@</p> <p>19 hotmail.com, do you know whose e-mail address that is?</p> <p>20 A. It's Glenda Johnson's e-mail.</p> <p>21 Q. And that's Neldon Johnson's wife?</p> <p>22 A. Yes. Do you know why it is done that way?</p> <p>23 Q. Why it's done what way?</p> <p>24 A. Do you know why Glenda is on there? You</p> <p>25 don't, do you?</p> <p>105: 1 Q. Please enlighten me.</p> <p>2 A. I will. This kind of refers to -- I know</p> <p>3 what you're trying to do, so I need to do this.</p> <p>4 Neldon doesn't open up e-mails. So if I</p> <p>5 want to get in contact, or if anyone wants to get in</p> <p>6 contact with Neldon by e-mail, you send it to Glenda</p> <p>7 and then she passes it on. So that's why Glenda's name</p> <p>8 is on there.</p> <p>9 Q. So the normal practice to communicate with</p>				

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<p>10 Neldon via e-mail is to send it to Glenda? 11 A. That's my practice, yeah. I don't know 12 about other people, but I assume that's true. 13 Q. So you have never sent an e-mail to Neldon 14 directly? 15 A. If I did, it would have been a long time 16 ago, because I would never get a response. 17 Q. Do you know if Neldon Johnson has an 18 e-mail address? 19 A. I don't know. 20 Q. Okay. So in this e-mail you say, "Glenda 21 and Neldon, need approval on this latest memo. 22 Material taken word for word from the IAS.com website." 23 Is that right? 24 A. Yes. Yes. 25 Q. Okay. So even though you sent this e-mail 106: 1 to Glenda Johnson's e-mail address, the real person you 2 were asking for approval from</p>				

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<p>was Neldon. 3 A. Correct. 4 Q. Does Neldon Johnson approve everything you 5 send out? 6 A. No. 7 Q. Why were you asking for approval on this 8 particular team memo number 65? 9 A. I can't recall. 10 Q. So you are authorized to send out written 11 material on behalf of RaPower3 without Neldon Johnson's 12 permission? 13 A. Say that again? Authorized? 14 Q. Well, in your -- in the Independent 15 Representative Agreement, in Exhibit 463, and paragraph 16 11(a) it says, "Representative shall not use any 17 advertising materials, literature, promotional items, 18 or assigns that include IAS's names, trademarks or any 19 references to --" 20 A. Oh, yeah. Good point. 21 Q. So I understand that for IAS purposes you</p>				

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<p>22 needed permission from Neldon Johnson to make any 23 statements on behalf of IAS; is that right? 24 A. Statements on behalf of IAS? 25 Q. Well, your Independent Representative 107: 1 Agreement with IAS, it seems like you needed permission 2 to use IAS's name, trademarks, or any references to IAS 3 in written materials; is that right? 4 A. But this is when RaPower3 was in existence. 5 Q. I'm getting to that. 6 A. Okay. 7 Q. But to my understanding, with IAS you 8 needed Neldon Johnson's permission to use IAS's name; 9 is that correct? 10 A. Yes. 11 Q. Okay. And now when it comes to RaPower3, 12 I'm just trying to understand was the arrangement the 13 same or were you authorized to speak on behalf of 14 RaPower3 without Neldon Johnson's authorization?</p>				

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<p>15 A. In general terms, I was authorized to.</p> <p>16 But he didn't -- I sent out e-mails and memos without</p> <p>17 his approving every one. In fact, most of them</p> <p>18 weren't.</p> <p>19 Q. And you were authorized to do that?</p> <p>20 A. Yes.</p> <p>21 Q. But it seems like certain items required</p> <p>22 Neldon Johnson's approval?</p> <p>23 A. No. I just thought that this one was, I</p> <p>24 guess, because I don't know -- it had IAS technology in</p> <p>25 it. And I thought, well, it might be better to get him</p> <p>108: 1 to give permission to have that sent out.</p> <p>2 Q. So would you have sent that out without</p> <p>3 Neldon Johnson's authorization?</p> <p>4 A. I can't -- I don't know.</p> <p>5 Q. Do you think --</p> <p>6 A. Well, no. If he told me no, not to send</p> <p>7 it out, I wouldn't have done it. If that's what you're</p>				

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<p>8 asking. 9 Q. Okay. That's half of it. If he didn't 10 respond or if Glenda didn't respond for him, would you 11 have sent it out? 12 A. No. 13 Q. So if team memo 65 was sent out, it's 14 because Neldon Johnson authorized you to? 15 A. It's too far back. 16 Q. This is last August. 17 A. What? 18 Q. This is August of 2016. 19 A. Okay. I would assume that he did, then, 20 yes. 21 Q. So if team memo number 65 went out to 22 RaPower3 customers, it's because Neldon Johnson 23 authorized you to do so? 24 A. Yes. 25 Q. Okay. Are there any topics other than IAS 109: 1 technology that you would ask Neldon Johnson for his 2 approval for before sending it out? 3 A. Any what now?</p>				

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<p>4 Q. You testified that with respect to Exhibit 5 467, because you were talking about IAS technology, you 6 sought Neldon Johnson's approval. Do you recall that 7 testimony? 8 A. Say that again? I'm sorry. 9 Q. You testified that with respect to Exhibit 10 467 the reason you sought Neldon Johnson's approval 11 before sending it out was because it involved IAS 12 technology; is that right? 13 A. Yes. But I didn't do it all the time. 14 Q. Okay. Well, are there any other topics 15 that you would feel you needed to consult Neldon 16 Johnson on before disseminating? 17 A. I'd have to -- that's a very general, 18 broad question. I'd have to see what an exact topic 19 might be. But I give I think an extensive disclaimer 20 there that it's my opinion when</p>				

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<p>those go out. So they 21 are not like Neldon Johnson's or IAS opinions. They 22 are my opinions and my doing. So I take -- if there's 23 anything wrong or incorrect that went out, then I would 24 take responsibility for that. 25 Q. Okay. But my question was are there any 110: 1 other topics other than IAS technology that you would 2 feel the need to consult with Neldon with.</p>				
<p>110: 5 A. Yeah. It's all very general, Chris. 6 That's why I said you'd have to have -- or I would have 7 to think about what topic would you think. 8 Q. Let's go through some documents. 9 Exhibit 468 WAS MARKED.) 10 Q. Mr. Shepard, you've been given a copy of 11 what's been marked for identification as Plaintiff's 12 Exhibit 468. This is a document that you produced.</p>				

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<p>13 This appears to be an e-mail dated March 28, 2016 14 between yourself and Mike-George Robbins. Is that 15 correct? 16 A. Yes. 17 Q. And up at the top it says, "Mike, sorry, 18 but Neldon and Glenda make the decisions." Did I read 19 that correctly? 20 A. Absolutely. 21 Q. So is this an example of an area where 22 Neldon Johnson or where Neldon -- 23 A. What area are you talking about? 24 Q. Well, the topic of this e-mail. It seems 25 like someone can't pay for their lenses, and you refer 111: 1 the problem to Neldon and/or Glenda. Is that correct? 2 A. Well, I've got to read the e-mail first. 3 Q. Go ahead. 4 A. "Neldon said that he ordered the lenses. 5 We had to buy the lenses to show</p>				

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<p>that they were there. 6 All these should have been paid in full by 2013."</p>				
<p>111:10 Q. (By Mr. Moran) Okay. 11 A. Okay. This is to me from Glenda. Got 12 that. 13 Okay. So what's the question? 14 Q. My question is originally I asked a 15 question of what other topics or what other, yeah, 16 topics would you need to get authorization from Neldon 17 on except for -- 18 A. To put in a memo? 19 Q. And whatever you're -- 20 A. Well, this certainly wouldn't go in a 21 memo. 22 Q. I understand that. But there's a -- 23 A. And it certainly wouldn't go out in an 24 e-mail to anybody else. 25 Q. It seems like a customer e-mailed you and 112: 1 had an issue paying for their lenses. Isn't that 2 right?</p>				

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<p>3 A. Apparently so, yeah. 4 Q. Okay. And could you have made a decision 5 on the issues they raised in this e- mail? 6 A. Oh, no. 7 Q. Who did you refer to? 8 A. Neldon and Glenda. 9 Q. Okay. So if a RaPower3 customer has an 10 issue with paying for their lenses, who addresses that 11 problem? 12 A. Well, sometimes I do in terms of giving 13 them a heads-up. If the person hasn't paid, I would 14 say, "Hey, you need to -- you should pay." 15 Q. And what happens if they don't pay? 16 A. Then that's not my problem. I don't know 17 what to do after that. 18 Q. Whose problem is it? 19 A. I would say it would be Neldon's. And I 20 would e-mail Glenda to tell Neldon. Or if I saw him in 21 person I may say in person. But</p>				

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<p>normally I don't think 22 he does anything with people when they don't pay. But 23 I don't know. 24 Q. What do you mean by that? 25 A. Well, if a person doesn't pay for their 113: 1 lenses, he's -- 2 Q. He doesn't care? 3 A. I don't know. He doesn't seem to be too 4 forceful in trying to collect delinquent payments. I 5 know we send out invoices, like other companies, but -- 6 Q. Go ahead. 7 A. I guess I'm done.</p>				
<p>115:11 Q. Okay. Who is Roger Freeborn? 12 A. Roger Freeborn is a man I've known for a 13 long time. He started out -- 14 Q. Let's go off the record. 15 (Telephone interruption.) 16 A. So Roger Freeborn started out as wanting 17 to do business with Bigger, Faster, Stronger in the 18 form of buying equipment, having a clinic. And I think</p>			80	

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<p>19 my first contact with him was when he was coaching at 20 Green River, Wyoming. And that was probably early 21 '80s. 22 Q. Okay. 23 A. And then we maintained that relationship 24 when he went to another high school in Oregon. I did a 25 clinic for him there. And then he went to another 116: 1 school in Washington and I did a clinic for him there. 2 And I thought he did well, so I offered him a position, 3 if you will, to be a -- an offer to be a BFS clinician 4 where he could go out and teach people what I taught 5 him. 6 Q. Okay. 7 A. And so we had that relationship. 8 Now, as far as RaPower3 goes, it's that I 9 asked him if he wanted to buy some lenses, and he ended 10 up buying the lenses. Not underneath me, but</p>				

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<p>11 underneath Bob or MJM. I can't remember. And so then 12 he wanted to really put the metal -- whatever you say. 13 The metal to the floor. But he wanted to go after it, 14 and sold or had a lot of customers. A lot of RaPower3 15 customers that bought lenses. 16 Q. Are you talking about his downline? 17 A. Yes. 18 Q. Okay. And when you say downline, we are 19 referring to people who Roger Freeborn got commissions 20 from, who purchased lenses? 21 A. Right. Who, in turn, sold to people and 22 he got commissions from that. So yeah, he turned it 23 into a business. 24 Q. Okay. Do you recall when Roger Freeborn 25 got involved in selling lenses? 117: 1 A. I would probably -- this is a guess. I 2 mean, I could look it up. But I would say around 3 probably 2008 or 2009, in there.</p>				

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<p>4 Q. Before RaPower3? 5 A. Yeah, before RaPower3. I think so, yes. 6 Q. So back when IAS was running the program? 7 A. I think so. Now, I'm not sure, because I 8 don't have my records in front of me and that's not 9 something I can accurately answer. All I'm doing is 10 guessing, Chris. 11 Q. Did there come a time when Roger Freeborn 12 was no longer authorized to sell lenses? 13 A. Yes. 14 Q. I'll hand you a copy of what's already 15 been marked as Plaintiff's Exhibit 80. Do you 16 recognize Plaintiff's Exhibit 80. 17 A. Yes.</p>				
<p>117:22 Q. I'll rephrase. How did Roger Freeborn 23 learn about the solar lenses that he sold? 24 A. From me. 25 Q. Okay.</p>			80	

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<p>118: 1 A. And Bob Rowbotham. 2 Q. And where did he get information about 3 these lenses? 4 A. Who? Who is "he"? 5 Q. Roger Freeborn. 6 A. He got it from Bob Rowbotham and/or me. 7 Q. Okay. Did you talk to him about the tax 8 benefits that you claim are associated with the solar 9 lenses? 10 A. That's a long time back, but I would 11 suppose so, yes. 12 Q. Getting back to Plaintiff's Exhibit 80, 13 what is it? And I'm particularly referring to an 14 e-mail from you dated June 2, 2013, beginning in the 15 middle of the page. 16 A. Yes. 17 Q. Do you recognize that e- mail? 18 A. Yes. 19 Q. Did you write that e-mail? 20 A. Yes. 21 Q. Okay. It says, "You are</p>				

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<p>hereby terminated 22 from RaPower3 as an independent contractor." 23 A. Yes. 24 Q. Why was Roger Freeborn terminated? 25 A. I think it had to do with something in the 119: 1 relationship between Roger Freeborn and Neldon Johnson. 2 Q. Okay. 3 A. That's all I know. 4 Q. How do you know that much? 5 A. Because Neldon Johnson told me. 6 Q. What did Neldon Johnson tell you? 7 A. That there was a problem with Roger 8 Freeborn, and I don't know specifics. 9 Q. Neldon Johnson just told you, "There's a 10 problem with Roger Freeborn. I want him out"? 11 A. Yes. 12 Q. Okay. So Neldon Johnson directed that 13 Roger Freeborn be terminated? 14 A. Yes.</p>				

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<p>15 Q. Did you ever have any discussions with 16 Roger Freeborn about his relationship with Neldon 17 Johnson? 18 A. If I did, I can't remember. If there 19 were, they were very short. But I don't know. I can't 20 remember. 21 Q. Okay. Roger Freeborn was terminated in 22 June 2013. After that time did you have any contact 23 with Roger Freeborn? 24 A. Very little. Most of it was due where 25 I -- well, not most, I think all. All contact was 120: 1 about his health. He was going through some severe 2 health problems. And so he is a friend for, you know, 3 since '81 or whatever it was. And so -- he was one of 4 my clinicians. So as a friend I wanted to call him 5 and -- 6 Q. See how he was doing? 7 A. See how he was doing.</p>				

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<p>122: 6 Q. Okay. Back to Plaintiff's Exhibit 80 and 7 your June 2, 2013 e-mail. 8 That's directed to CoachFree@aol.com and I 9 understand that's Roger Freeborn. 10 A. It is. 11 Q. And you cc GlendaEJohnson and 12 neldon@iaus.com. Whose e-mail is that? 13 A. That's Neldon's but, like I said, he never 14 opens it. But I wanted to have it on record. 15 Q. So -- 16 A. I think he saw this but I don't think he 17 saw it by opening up e-mails to Neldon@iaus.com. 18 Q. He saw it because you sent it to Glenda? 19 A. Yes. Pretty sure.</p>			80	
<p>122:22 Is Neldon@iaus.com an e-mail address you 23 know to be associated with Neldon Johnson? 24 A. I think I said no before just because I</p>				

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<p>25 know he never opens it. It doesn't do any good. 123: 1 Q. Sure. But to be clear, you understand 2 that Neldon@iaus.com is Neldon Johnson's e-mail 3 address? 4 A. Yes, I do. Sorry if that was 5 misunderstood. 6 Q. No problem. Is there a reason you sent 7 Roger Freeborn's termination notice rather than Neldon 8 Johnson? 9 A. I think because I had a relationship with 10 him. But I don't know why he asked me. But if he 11 asked me to do it, I was glad to do it. 12 Q. And when you are saying "he," you are 13 referring to -- 14 A. Neldon. If Neldon asked me to do 15 something that is reasonable, I would accommodate that. 16 Q. Okay. Are you familiar with an entity 17 known as Cobblestone?</p>				

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<p>18 A. Yes, I am. 19 Q. What is Cobblestone? 20 A. I don't know. I mean, really. I think it 21 has something to do with RaPower3, I guess, but I don't 22 know what it does. Again, I'm an employee, I'm not on 23 the board of directors, I'm not -- I have nothing to do 24 with Cobblestone, and I don't even know what it does. 25 Q. You just know that it exists? 124: 1 A. I know that it exists. 2 Q. How do you know that it exists? 3 A. Because I have seen it in some references 4 and some documents. 5 Q. Okay. 6 A. I just know that it's there. 7 Q. And who did you get those references and 8 documents from? 9 A. I don't know. 10 Q. Would it have been Neldon Johnson? 11 A. It could have been. It could be on a 12 document -- I just don't know</p>				

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<p>anything about it. 13 Q. Any idea who, other than Neldon Johnson, 14 you would have heard about it from? 15 A. Yeah. There could have been Glenda. 16 Could have been LeGrande. Could have been Chris 17 Taylor, maybe. Could have been -- but I don't really 18 think I -- I didn't hear about it verbally. I just saw 19 it on a document. 20 Q. Do you recall what those documents were? 21 A. No. 22 Q. Except for the people you just mentioned, 23 the Johnson family and Chris Taylor, is there anyone 24 else you would have gotten those documents from? 25 A. No.</p>				
<p>125:18 Q. Well, I'm trying to understand the source 19 of the documents where you would have heard of 20 Cobblestone. And excluding the Johnson family and</p>				

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<p>21 Chris Taylor, is there anyone else who you could have</p> <p>22 conceivably gotten those documents from?</p> <p>23 A. No. I don't see how the -- well, unless</p> <p>24 it was from an attorney. Either you guys or --</p> <p>25 Q. You can exclude us, as well.</p> <p>126: 1 A. Okay.</p> <p>2 Q. Is there anyone else?</p> <p>3 A. No.</p>				
<p>126: 9 Q. All right. I'll give you a document that</p> <p>10 was marked in a previous deposition. And this is</p> <p>11 Plaintiff's Exhibit 439, which was marked in the</p> <p>12 deposition of Matt Shepard. The e-mail that appears on</p> <p>13 the first page, Shepard_Greg-03681, do you recognize</p> <p>14 that?</p> <p>15 A. PCC, yes. Okay.</p> <p>16 Q. Is Exhibit 439 an e-mail from you?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And you have an attachment entitled</p> <p>19 Closed-Loop System for audits?</p>			<p>439</p> <p>119</p>	

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<p>And does that exhibit 20 appear on the second page? 21 A. Yes. 22 Q. On the page marked Shepard_Greg-03682. 23 A. Okay. 24 Q. The top paragraph says, "The third party 25 engineering review was conducted by reputable engineers 127: 1 with Ph.D. and M.S. degrees in Physics, Mechanical 2 Engineering, and Nuclear Engineering from prestigious 3 universities. Did I read that correctly? 4 A. Yes. 5 Q. Earlier in your testimony you talked about 6 validations that you understood to have been done by 7 various universities. 8 A. Yes. 9 Q. Is the statement that appears on Exhibit 10 439 what you were referring to? 11 A. Yes. 12 Q. Okay. And who did you get that information 13 from?</p>				

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<p>14 A. It was in the technology reports from 15 Neldon Johnson. But I don't know the circumstances. 16 Q. And do you know the names of the reputable 17 engineers? 18 A. No. 19 Q. Okay. Neldon Johnson just told you they 20 were reputable engineers from these universities? 21 A. Yes. 22 Q. The rest of the information in the 23 attachment to Exhibit 439, the rest of the information 24 you convey there, did you take that from a white paper 25 that you obtained -- 128: 1 A. Yes. Yes. I didn't make up anything. 2 That's a cut and paste. 3 Q. From a document you obtained from Neldon 4 Johnson? 5 A. Yes. 6 Q. We already talked about the manufacturing 7 site. I think there's also been</p>				

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<p>references to an R&D 8 site. 9 A. Yes. 10 Q. All right. Is that the second site that 11 we visited during our site visit on April 4th? 12 A. Yeah. The last site. 13 Q. And that's where there were a bunch of 14 towers up in the air? 15 A. About 18, 17, yes. 16 Q. Okay. You said there's 18 or 17 towers? 17 A. Yes.</p>				
<p>128:24 The research and development site where 25 there's 17 or 18 towers, what's going on there? 129: 1 A. Research and development. 2 Q. Okay. Research and development of what?</p>				
<p>129: 5 A. Yeah. I don't have anything to do with 6 the research and development. I mean, I go down there 7 quite a bit and I see what's going on. But I don't</p>				

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<p>8 collect any data. I have never seen any data. There</p> <p>9 was a lot of research and development done on gear</p> <p>10 shifts, dual access tracking. There's been R&D done on</p> <p>11 heat exchangers, molten salt containers, solar lenses,</p> <p>12 turbines. I think I said that. The frames, the solar</p> <p>13 frames. Research and development on how fast they</p> <p>14 could put up towers.</p> <p>15 Q. Okay.</p> <p>16 A. What the drying time of concrete would be.</p> <p>17 Q. Now, on the towers that are there --</p> <p>18 A. Yes.</p> <p>19 Q. -- the 17 or 18 towers, there's several</p> <p>20 plastic lenses, right?</p> <p>21 A. Several plastic lenses?</p> <p>22 Q. There's lenses on those towers, right?</p> <p>23 A. Yeah. But more than several. There's</p> <p>24 quite a few. I don't know how many. But "several" to</p> <p>25 me implies five or six.</p>				

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<p>130: 1 Q. Okay. 2 A. I think there's a lot more than that. 3 Q. Okay. How many lenses -- 4 A. There's less than a hundred of them. But 5 I think it's more than five or six. 6 Q. Okay. You think it's between five and a 7 hundred? Probably closer to a hundred? 8 A. Well, let me see. I have to guess. I can 9 do a multiplication. 10 Q. Each tower has four rings on it, right? 11 A. Correct. 12 Q. And how many lenses are on each ring? 13 A. On each ring, there are 34. 14 Q. Okay. So there's 34 on each ring. 15 A. Right. 16 Q. And then there's four lenses on each 17 tower. 18 A. Right. So you can have 136, potentially. 19 Q. Yeah. So 136 total on each tower. So the</p>				

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<p>20 total number of lenses that are at the research and development site would be, at most, 136 times 18. 22 A. Yes. But there's not. But at most, yes.</p>				
<p>131: 7 Q. I'll rephrase it. Have you ever seen any 8 of these, at most, 2448 lenses generate what you 9 understand to be electricity? 10 A. No. 11 Q. Ever? 12 A. No. But I have heard that they have for 13 R&D purposes. I have never been there when they have 14 actually done it. 15 Q. And who have you heard that from? 16 A. Neldon. 17 Q. Anyone else? 18 A. No. 19 Q. Okay. Have you ever seen those 2448, at 20 most, lenses ever heat or cool a structure? 21 A. You mean like a building, or like a hut? 22 Q. Sure.</p>				

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<p>23 A. No. I have just seen them produce heat 24 and set boards on fire, like you saw. And I have seen 25 them hurt myself. 132: 1 Q. What do you mean, hurt yourself? 2 A. I was standing where I wasn't paying 3 attention and my shoe started smoking, so I know they 4 produce heat. I had to run fast. 5 Q. Okay. But has that heat ever been used to 6 heat a structure? 7 A. No. 8 Q. How about to cool a structure? 9 A. No. 10 Q. Okay. 11 A. I haven't seen it. I'm not saying that it 12 hasn't been done for a short period, but I have never 13 seen it. 14 Q. Has anyone ever told you that the lenses 15 were used to heat or cool a structure? 16 A. No. 17 Q. Now, you've mentioned heat</p>				

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a couple times. 18 Have the lenses ever been used -- has the heat 19 generated by the lenses ever been sold? 20 A. No.				
133:11 Q. (By Mr. Moran) Has the heat generated by 12 the lenses at the R&D site ever been sold?				
133:15 A. The lenses that are -- the R&D lenses on 16 the towers have presently been sold? 17 Q. Has the heat ever been sold. In other 18 words, has anyone ever paid money for the heat? 19 A. My understanding, yes. 20 Q. Someone did pay money for the heat? 21 A. Paid money for -- okay. I'm trying to 22 answer your question because I know that -- 23 Q. I'm just trying to understand. 24 A. Okay. It's my understanding that lenses 25 have been sold outside of RaPower3, because of where				

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<p>134: 1 the project is at and producing heat. But I don't know 2 the specifics. Neldon would know that.</p>				
<p>135:22 Q. The lenses that are at the R&D site, is it 23 your understanding that there are lenses like them 24 elsewhere? 25 A. Sure. At the manufacturing plant. 136: 1 Q. Okay. Anywhere else? 2 A. Not to my knowledge. I don't know. 3 Q. Okay. 4 A. But you do know that all I have to do is 5 send a roller to Lucite and a ton more lenses can be 6 made. You knew that, right? 400 megawatts worth, 7 which is about \$800 million worth. 8 Q. Again, I'm asking the questions. 9 A. Well, I'm telling you what can be done. 10 And also, that they are so cheap it doesn't even matter 11 if they are broken. They can be</p>				

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replaced. 12 Q. All right. That's fine. Do you have any 13 knowledge of lenses being built by Lucite and sent 14 anywhere but the manufacturing site or the R&D site? 15 A. I have no knowledge of that, no.				
137:10 Q. Of the lenses we have been discussing that 11 are at the RaPower3 R&D site and manufacturing 12 facility, are you with me, the at most 2448 lenses. 13 A. Uh-huh (affirmative). 14 Q. Have those lenses ever generated 15 electricity that someone has paid for?				
137:18 A. I think so. 19 Q. You think someone has bought electricity 20 that's generated by lenses at the R&D site? 21 A. I think so. But I don't know for sure. 22 That would be a question for Neldon. 23 Q. All right. You think that				

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<p>happened. When 24 do you think that happened? 25 A. The last couple of years. 138: 1 Q. Who do you think purchased the electricity? 2 A. I don't know. 3 Q. Okay. Where did you get the information 4 that leads you to believe electricity was sold? 5 A. Well, there's a huge, long cable. I can't 6 ask you questions. But it was visible on your tower, 7 if you saw that. It's also on the RaPower3 website. 8 There's an electric -- there's a cord about that big 9 around that goes from the R&D site into the house that 10 we were in. 11 Q. Is it the cable that was on the ground? 12 A. Yes. And that goes to a transformer which 13 goes to a three-phase power that's right next to the 14 house, which goes into Rocky Mountain Power. 15 Q. And you think that Rocky</p>				

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<p>Mountain Power 16 paid for -- 17 A. I don't know. That's not my - - I don't 18 know. 19 Q. Well, my original question to you is has 20 anyone paid for electricity -- 21 A. I said I think so. You'd have to ask 22 Neldon. 23 MR. REAY: Let him finish. 24 Q. My question is has anyone paid for 25 electricity that those lenses have generated, and you 139: I said you think so. 2 A. Could be, yeah. 3 Q. And I said who, and it seems like you have 4 identified Rocky Mountain Power. 5 A. I don't know. No, not necessarily. 6 Q. All right. Now, if -- 7 A. Those are things that Neldon would have to 8 answer. 9 Q. If the lenses had generated power, 10 generated electricity that was</p>				

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<p>sold to someone, 11 wouldn't that have triggered rental payments? 12 A. Okay. We are --</p>				
<p>137:18 A. I think so. 19 Q. You think someone has bought electricity 20 that's generated by lenses at the R&D site? 21 A. I think so. But I don't know for sure. 22 That would be a question for Neldon. 23 Q. All right. You think that happened. When 24 do you think that happened? 25 A. The last couple of years. 138: 1 Q. Who do you think purchased the electricity? 2 A. I don't know. 3 Q. Okay. Where did you get the information 4 that leads you to believe electricity was sold? 5 A. Well, there's a huge, long cable. I can't 6 ask you questions. But it was visible on your tower, 7 if you saw that. It's also on the RaPower3 website.</p>				

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<p>8 There's an electric -- there's a cord about that big 9 around that goes from the R&D site into the house that 10 we were in. 11 Q. Is it the cable that was on the ground? 12 A. Yes. And that goes to a transformer which 13 goes to a three-phase power that's right next to the 14 house, which goes into Rocky Mountain Power. 15 Q. And you think that Rocky Mountain Power 16 paid for -- 17 A. I don't know. That's not my - I don't 18 know. 19 Q. Well, my original question to you is has 20 anyone paid for electricity -- 21 A. I said I think so. You'd have to ask 22 Neldon. 23 MR. REAY: Let him finish. 24 Q. My question is has anyone paid for 25 electricity that those lenses have generated, and you</p>				

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<p>139: 1 said you think so. 2 A. Could be, yeah. 3 Q. And I said who, and it seems like you have 4 identified Rocky Mountain Power. 5 A. I don't know. No, not necessarily. 6 Q. All right. Now, if -- 7 A. Those are things that Neldon would have to 8 answer. 9 Q. If the lenses had generated power, 10 generated electricity that was sold to someone, 11 wouldn't that have triggered rental payments? 12 A. Okay. We are --</p>				
<p>139:15 A. Yeah. What if it was a hundred bucks? 16 Are we going to distribute that? 17 Q. My understanding is that once these lenses 18 are generating revenue, that rental payments are owed; 19 isn't that right? 20 A. It is, on a continual basis, yeah. If 21 it's done for R&D purposes, no. 22 Q. Okay. So has electricity ever</p>				

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<p>been 23 generated on a continuous basis?</p>				
<p>140: 1 A. I would say no. 2 Q. Okay. Except for the cable you just 3 mentioned that goes from the R&D site to the house that 4 you think connected to Rocky Mountain Power, is there 5 anything else that forms the basis for your belief that 6 electricity has been sold? 7 A. Been sold or produced? 8 Q. Sold. 9 A. No. 10 Q. Have the lenses, the 2448 lenses at the 11 R&D site, have they ever been used to make hot water? 12 Or to heat water? 13 A. I don't know. 14 Q. Okay. 15 A. Oh, heat water? Boy, I don't know. 16 Q. You don't know? 17 A. I would say that there's a possibility of 18 that, yeah. 19 Q. If the lenses had been used to heat water,</p>				

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<p>20 do you think you would have remembered it if you had 21 seen it? 22 A. Well, I didn't see it but I think there's 23 a high -- there's a probability that Neldon did during 24 his R&D. It would have been a simple thing to do. 25 Q. Did Neldon ever tell you that he did? 141: 1 A. No.</p>				
<p>144:10 Q. Next question, has a lens, any of the 11 lenses been used to purify water? 12 A. I haven't seen it but, again, I'm not 13 privy to all the information. 14 Q. Who is privy to all the information? 15 A. Neldon Johnson. 16 Q. Okay. Has anyone ever told you that a 17 lens was used to purify water? 18 A. Was used or could be used or what? 19 Q. I'll ask it in two parts. Has anyone ever 20 told you that a lens at the R&D</p>				

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<p>site could be used or 21 has been used to purify water? 22 A. No. 23 Q. Okay. Has anyone ever told you that a 24 lens could be used to purify water? 25 A. Yes. 145: 1 Q. Who? 2 A. Neldon. 3 Q. Okay. 4 A. Neldon Johnson. 5 Q. I'll give you a document which has been 6 marked in a previous deposition. This is Plaintiff's 7 Exhibit 119 from the deposition of Preston Olsen. 8 Mr. Shepard, do you recognize Exhibit 119? 9 A. No. 10 Q. Okay. Do you recognize in general a 11 document called the RaPower3 Purchase Agreement? 12 A. Yes. 13 Q. What is the RaPower3 Purchase Agreement? 14 A. It's when a potential RaPower3 team member</p>				

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<p>15 buys solar lenses. 16 Q. Okay. 17 A. And so this is -- when that happens, then 18 this is the Equipment Purchase Agreement. 19 Q. Okay. And that Equipment Purchase 20 Agreement is available on the RaPower3 website, right? 21 A. It is. 22 Q. Does Exhibit 119 appear to be the standard 23 RaPower3 Purchase Agreement? 24 A. Yes. 25 Q. All right. And that's for Preston Olsen 146: 1 on behalf of -- 2 A. Excuse me. On the RaPower3 website there 3 is an example of this. But you have to go to another 4 website to actually buy the lenses and do that. That's 5 not my website. 6 Q. Is that Rapower3.net? 7 A. Yes. Or RaPower-3. 8 Q. Who owns that website? 9 A. I don't know. 10 Q. You have no idea?</p>				

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<p>11 A. Well, I have an idea. I mean, I have an 12 idea that Neldon oversees that. 13 Q. Neldon Johnson? 14 A. Yes. But I don't know who actually runs 15 it. 16 Q. Okay. But it's your understanding that 17 Neldon Johnson or someone who he oversees runs the 18 RaPower-3.net website? 19 A. Yeah. Where you can sign up to be an 20 independent contractor. 21 Q. Okay. And Exhibit 119 is the standard 22 Purchase Agreement? 23 A. Yes. 24 Q. Okay. 25 A. Well, it was in 2012 for a while. I think 147: 1 it's different now. 2 Q. When did it change? 3 A. I'm not sure when it changed, as far as -- 4 and I'm not saying -- it might be the same. But in 5 2016, at the end of 2016, things changed.</p>				

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<p>6 Q. Okay. And we are going to talk about that 7 in a minute. 8 A. Okay 9 Q. But in 2012, to your knowledge -- 10 A. This was it. 11 Q. Okay. And "this" is Exhibit 119? 12 A. Uh-huh (affirmative).</p>				
<p>148:21 Q. Can I see that stack of documents? 22 Mr. Shepard, I'll direct your attention to Exhibit 466. 23 A. Okay. 24 Q. This document states that the 'Alternative 25 Energy Systems' that were purchased from RaPower3, LLC 149: 1 were put into service on or before December 31, 2005. 2 "This will qualify you for the Internal Revenue Service 3 solar energy tax credit." Is that right? 4 A. Yes. 5 Q. Okay. Are you aware of similar documents 6 being sent to RaPower3 customers?</p>			<p>466 125 119</p>	

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Plaintiff Designations – BLUE Defendant Completeness— PURPLE Defendant Counter-Designations – RED (at end)	Defendant Designations – RED Plaintiff Completeness— PURPLE Plaintiff Counter Designations – BLUE (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>7 A. Oh, sure. 8 Q. Okay. As an example, Exhibit 125? 9 A. Yes. So this corresponds to possibly this 10 purchase. 11 Q. Exhibit 125 is a letter dated February 1, 12 2014 to Preston Olsen from you; is that correct? 13 A. Yes. 14 Q. Did you sign this document? 15 A. I did. 16 Q. Okay. And it's very similar to Exhibit 17 466, I think -- 18 A. Yeah. 19 Q. -- that Neldon Johnson sent to you. Is 20 that right? 21 A. Yes. 22 Q. And Exhibit 125 also says, "This will 23 qualify you for the Internal Revenue Service solar 24 energy credit." Did I read that right? 25 A. Yes. 150: 1 Q. All right. So I'll direct your attention</p>				

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<p>2 back to Exhibit 119. Down at the bottom in paragraph 3 2, "Seller shall provide to Purchaser all required 4 documentation relating to the Alternative Energy System 5 and its components as requested by Purchaser for 6 federal, state, and local review of the Alternative 7 Energy System for potential tax benefits." 8 A. Okay. 9 Q. Does the clause on paragraph 2 on the page 10 Olsen_P&E-00642 refer to the placed in service letter? 11 For example, is that Exhibit 125?</p>				
<p>150:16 A. I would assume so. 17 Q. (By Mr. Moran) Okay. All right. 18 Continuing on through Exhibit 119, directing your 19 attention to the second page, Olsen_P&E-00643, 20 paragraph 3 says, "Payment Terms. Purchaser shall pay 21 to Seller the sum of \$3500 for each Alternative Energy 22 System." Did I read that right?</p>			125 119	

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<p>23 A. Yes. 24 Q. Am I correct in understanding that the 25 price per lens is \$3500? 151: 1 A. Yes. 2 Q. And this price is on every contract? 3 A. No. 4 Q. It's not on every contract? 5 A. Not on the early ones. 6 Q. Okay. Is that because the price changed 7 between 2005 and 2006? 8 A. I think so. 9 Q. When did the price become \$3500? 10 A. I don't know. 11 Q. Okay. 12 A. But it's been -- boy, going back now. I 13 think it was \$3000 for a while. Well, I know it was. 14 Q. When was it \$3000? 15 A. In 2006, possibly '07, '08. I don't know. 16 But then it changed at least I would say 2010. I think 17 it changed to \$3500. 18 Q. And was that around the same time that</p>				

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<p>19 RaPower3 came into existence? 20 A. Yes, I think so. But I'm fuzzy on the 21 dates. I'd be happy to research that for you. I can 22 do that. 23 Q. All right. But since -- 24 A. But then I don't have anything to do with 25 the price. I just figure that Neldon Johnson can 152: 1 charge -- he can make price changes, or changes. I 2 don't have anything to do with that. I don't have any 3 input. I have never been asked any advice, "What do 4 you think we can sell it for? What do you think of the 5 Equipment Purchase Agreement? Do you have any changes 6 you want to make?" I've never had to go there. 7 Q. But it sounds like 2010, around the same 8 time RaPower3 came into the scene, the price has been 9 \$3500? 10 A. I think so. 11 Q. And on the same page it says</p>				

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<p>initial down 12 payment of \$1050. And there's various ways to pay 13 \$1050. Is that the down payment? 14 A. Yes. Yes. But it's been -- most times it 15 was that way, but earlier it was \$1020. 16 Q. And when is that down payment due? 17 A. We did go \$105 as kind of an initial 18 payment at one time. 19 Yeah. That's here on option 2. So that 20 should be -- when? Did you say when? 21 Q. Am I correct in understanding that the 22 down payment of \$1050, however it is paid, is due when? 23 A. It's due within, I think it's July 15th. 24 June 15th. I think it's July 15th. 25 Q. Well, option 2 says June 30th. 153: 1 A. Okay. June 30th. 2 Q. So after a customer has paid \$1050,</p>				

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<p>3 there's still a balance due of -- 4 A. \$2450. 5 Q. When is that due to be paid? 6 A. When is that due? 7 Q. When is the \$2450 remaining balance due? 8 A. Okay. So I'm pretty sure you know the 9 answer to it but we will go over it. That has to do 10 with the rental agreement with LTB, LLC. So those are 11 connected, and so they are supposed to generate \$150 a 12 year per lens, and there's a grace period of the first 13 five years so that the sponsor gets the full \$150. And 14 so that would be \$750 per lens for the five-year 15 period. And then after that, then the \$150 is split, 16 so LTB gets \$82. 17 Q. I thought LTB was paying. 18 A. I guess. But what I want to know is what 19 do I get? I get \$68. And that \$68 is applied to the 20 \$2450. So if you were to multiply 68 times 30, you are</p>				

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<p>21 going to come out with that number. 22 Q. All right. You just packed a lot in 23 there. LTB is the company that's operating and 24 maintaining the lenses, right? 25 A. Yeah. They are the ones that collect the 154: 1 rent, I guess. 2 Q. They collect the rent? Who are they 3 collecting the rent from? 4 A. I don't know. 5 Q. And then you testified about \$150 a 6 year -- 7 A. No, not "about." It's exactly \$150. 8 That's what the contract says. 9 Q. Yes. And you testified that \$150 is 10 payable from, is it from LTB to the lens's owner, and 11 that is divided between paying off the remaining 12 balance on the lens and paying the sponsor? Is that 13 correct? 14 A. No.</p>				

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<p>15 Q. All right. Can you restate it? 16 A. Yeah. After five years. 17 Q. After five years that the lenses have been 18 generating revenue. 19 A. Right. And the purchaser is receiving 20 \$150 per lens. 21 Q. From who? 22 A. I don't know. I think it's LTB, LLC. 23 Q. Okay. 24 A. And so they make \$750 for the five years. 25 Five times \$150 is \$750. 155: 1 Q. The lens owner is receiving -- 2 A. The lens owner is receiving that. 3 Q. \$150 times five. 4 A. Right. And then that \$150 rental fee is 5 then split -- 6 Q. After the five-year period? 7 A. After the five-year period. 8 Q. Okay. 9 A. And then \$82 is retained. 10 Q. By who? 11 A. I think by LTB, LLC. And then \$68 goes to</p>				

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<p>12 RaPower3 to pay off the balance of the \$2450. 13 Q. So the customer or the owner is going to 14 get paid for the first five years. And then after 15 that -- 16 A. Yeah. He signs a lease agreement, a 17 rental agreement. 18 Q. And now he's got \$750. 19 A. He's got \$750. 20 Q. And now he has to start paying back the 21 money he owes on the lens. 22 A. Right. At \$82 a year. 23 Q. And that goes to RaPower3? 24 A. Yes. 25 Q. And where does the -- 156: 1 A. Where does \$62 go to? Or the \$68? \$68 2 goes to the purchaser. 3 Q. Okay. So you have \$150 per year for five 4 years and then it drops down to \$68 per year. 5 A. Right. So if you multiply \$68 times 30, 6 it's a little over \$2000, plus the \$750. That's more</p>				

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<p>7 than the tax credit and the tax benefits. Good deal. 8 If Neldon and RaPower3 and this whole thing can work, 9 it's a wonderful thing for the purchaser. And if it is 10 going to work, you should buy lenses, Chris. You can 11 make money. 12 MR. REAY: When it's done. 13 A. If everything works the way we want it to 14 work, then it's a great deal for the purchaser. Going 15 to make more money -- and the bonuses will be way more 16 than the tax benefits. Tax benefits are tertiary. I 17 learned that word on the bifurcation. Tertiary. 18 Q. All right. Moving on to the third page of 19 the contract Olsen_P&E-00644. Paragraph 4, "The 20 Alternative Energy System shall be placed in operation 21 only at and operated only at the installation site." 22 Where's the installation site? 23 A. The installation site, in my</p>				

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understanding, 24 can be any place that Neldon wants it to be. 25 Q. Are there any installation sites right 157: 1 now?				
157: 4 A. Yes. 5 Q. Where? 6 A. Well, you saw them. We call it the 7 construction site. It's in -- it's west of Delta, Utah 8 and on the side of a little place called Abraham, Utah, 9 and there's 200-plus towers under construction. And 10 everything has been done now, according to my 11 understanding, the brackets have now been placed on the 12 solar rings, and the solar frames are now going into 13 the -- the frames are going into the solar rings. 14 Q. So there's 200 towers? 15 A. Over 200 trusses that have been built. 16 The trusses are the main part. And so a huge amount of 17 work has been done. And so				

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<p>now the next step is to dig 18 the holes and put the towers in. And then you get the 19 cranes and you lift the trusses on top of the tower. 20 Q. Okay. 21 A. We are about -- I would shake my head, 22 too. Because then we are off and running. 23 Q. Are there any other installation sites? 24 A. I would probably rephrase that, but it 25 would be the same. Construction sites. 158: 1 Q. Are there any other construction sites 2 where towers are being erected? 3 A. No.</p>				
<p>160:22 Q. Mr. Shepard, do you know how many lenses 23 have been sold? 24 A. No. 25 Q. You have no idea? 161: 1 A. No. 2 Q. I'll show you an exhibit that's been 3 marked in a prior deposition. This is Plaintiff's</p>			204	

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<p>4 Exhibit 204 from the deposition of Peter Gregg. This 5 appears to be an e-mail from you dated February 8, 6 2011. 7 A. Yes. 8 Q. Is that correct? Is this an e-mail from 9 you? 10 A. Yes. 11 Q. I direct your attention to the first 12 paragraph. There's a question and then it appears to 13 be an answer in caps. Are the words that appear in 14 capital letters, are those your words? 15 A. Yes. 16 Q. Okay. It says, "The 300,000 systems 17 (units) that are available is based on the number of 18 lenses that are on standby." Did I read that 19 correctly? 20 A. Yes. 21 Q. All right. So am I to understand that 22 there are at least 300,000 units</p>				

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<p>that were available at 23 one point? And when I say "units," I mean lenses? 24 A. Yeah. And I'm not even -- 25 Q. Is my understanding correct? 162: 1 A. I'm reading it. 2 Q. Okay. Let me know when you're done. 3 A. Oh, okay. Yeah. 4 Q. Am I correct in understanding that at one 5 point there were at least 300,000 units that were 6 available to be sold?</p>				
<p>162: 9 A. I was never told that. I did some of my 10 own math and came up with that. 11 Q. Well, then as of February 8, 2011 was it 12 your understanding that there were 300,000 lenses 13 available?</p>				
<p>162:17 A. Well, I did some of my own calculations. 18 I was never told that. 19 Q. Okay. Well, how did you come to 20 understand that there were 300,000 lenses that were 21 available?</p>				

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<p>22 A. I don't know. I don't know how I did</p> <p>23 that. I probably did it based on the number of</p> <p>24 megawatts that -- potential megawatts that were</p> <p>25 produced by Lucite on the first -- on the run.</p> <p>163: 1 Q. Help me understand that. My understanding</p> <p>2 is that Lucite nor Plaskolite produces lenses, right?</p> <p>3 A. Yes.</p> <p>4 Q. And you just characterized what Plaskolite</p> <p>5 and Lucite manufactures are megawatts.</p> <p>6 A. I have been told that it's around 350.</p> <p>7 350 megawatts.</p> <p>8 Q. What do you mean that the lens</p> <p>9 manufacturers generate megawatts? I don't understand,</p> <p>10 because they generate plastic lenses, right?</p> <p>11 A. Right. But those plastic lenses could do</p> <p>12 a project, a 350 megawatt project. That's my</p>				

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<p>13 understanding.</p> <p>14 Q. And how did you get that understanding?</p> <p>15 A. Through Neldon and Randy, and I have been</p> <p>16 told that.</p> <p>17 Q. By?</p> <p>18 A. I don't have anything in writing.</p> <p>19 Q. Okay. But so Neldon Johnson, Randy</p> <p>20 Johnson, anyone else?</p> <p>21 A. I can't remember.</p> <p>22 Q. Okay. And you understood that there was a</p> <p>23 certain amount of megawatts available from Lucite?</p> <p>24 A. Yes.</p> <p>25 Q. And from that information you determined</p> <p>164: 1 that there were 300,000 lenses available to be sold?</p> <p>2 A. If I did the math right. But I'm not sure</p> <p>3 I did my math right. I was going to try to check it.</p> <p>4 But anyway ...</p> <p>5 Q. You're talking to RaPower3 customers here,</p> <p>6 so I assume you wouldn't</p>				

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<p>misrepresent anything to them. 7 You're on the same team. 8 A. Not knowingly, no. 9 Q. Okay. 10 A. But you're asking me to verify that. 11 Q. My question is, what I'm trying to 12 understand is how many lenses are available. And no 13 one has ever been able to tell us that. I see this 14 here where you stated there's 300,000 lenses available, 15 and so my question to you is, is that accurate? 16 A. Okay. Give me a minute here.</p>				
<p>165: 2 THE WITNESS: Mine are in caps.</p>				
<p>165:19 A. I'm almost done. I'm trying to go faster. 20 136 times 50 is 1680? 21 Q. I had 6800. 22 A. 6800, rather. Yeah, I would say that's 23 probably pretty close. 24 Q. Okay. So there are approximately 300,000 25 lenses available. Is that fair?</p>				

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<p>166: 1 A. In 2011? 2 Q. Yes. 3 A. Yes. I don't know about now. 4 Q. Okay. Since 2011 have more lenses become 5 available? 6 A. No. 7 Q. Okay. 8 A. Not to my knowledge.</p>				
<p>166: 9 Q. Mr. Gregg -- or Mr. Shepard, I've handed 10 you Plaintiff's Exhibit 260 from the deposition of 11 Peter Gregg. I'm directing your attention to the top 12 of the first page. Gregg_P&R-002787. The first 13 sentence in the first paragraph says -- I'm sorry, the 14 second paragraph, "There are now 21,000 lenses in stock 15 at the manufacturing plant." Did I read that 16 correctly? 17 A. Yes. 18 Q. And that's dated September 30, 2012? 19 A. Uh-huh (affirmative). 20 Q. Oh, September 22, 2012; is that correct?</p>			260	

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<p>21 A. Yes. September 22, 2012.</p> <p>22 Q. That's the date for Exhibit</p> <p>260. So am I</p> <p>23 correct in understanding that</p> <p>between February 8, 2011</p> <p>24 and September 22, 2012, the</p> <p>available lenses had</p> <p>25 decreased from 300,000 to</p> <p>21,000?</p> <p>167: 1 A. No. I'm not -- you</p> <p>misunderstood the</p> <p>2 300,000 number.</p> <p>3 Q. It's your number.</p>				
<p>167: 6 A. I think what I'm saying is</p> <p>when I said</p> <p>7 "available," that means potential</p> <p>lenses that could be</p> <p>8 made. Lucite doesn't make all</p> <p>300,000 and ship them to</p> <p>9 us.</p> <p>10 Q. Okay. How many are at the</p> <p>manufacturing</p> <p>11 facility?</p> <p>12 A. I don't know. That's not my</p> <p>deal. All I</p> <p>13 can do is kind of like when I'm</p> <p>there -- I have never</p> <p>14 been told. I can count and</p> <p>estimate what's on a pallet</p> <p>15 and do some multiplication and</p>			<p>204</p> <p>260</p>	

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<p>try to figure it out, 16 but I don't ask those kinds of questions. I'm not told 17 the answers to those kinds of questions. 18 Q. So when you put the number 300,000 in 19 Exhibit 204 and the number 21,000 in Exhibit 260, where 20 did you get those numbers from? 21 A. Okay. I told you about the 300,000, did 22 some math, and based on the number of megawatts that 23 could be done from one mold, one roller, the potential 24 number is about - in my estimation, my math, never been 25 told, I could be way off - is about 300,000. But you'd 168: I be foolish to manufacture all or give Lucite an order 2 for 300,000 lenses, in my estimation. 3 Q. Okay. 4 A. So you would want to order the number of 5 lenses that would fit your pocketbook at the time, and 6 the amount of lenses that you</p>				

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<p>needed. So I looked, I 7 apparently looked -- I don't know where I got 21,000, 8 but that's a lot of lenses for RaPower3 people. 9 Q. Do you think you just made up the 21,000 10 number? 11 A. No, I didn't make it up. 12 Q. Who would you have gotten it from? 13 A. I didn't get it from anybody. I said I 14 went and did some math. When I saw the number of 15 pallets, I can estimate how many lenses are on a pallet 16 and then do some multiplication. 17 Q. So you would have counted the number of 18 lenses in the manufacturing site? 19 A. Yes. 20 Q. And then do you know how many lenses are 21 in each pallet and multiply? 22 A. You can do that, yes. That's not a hard 23 thing to do. 24 Q. Now, I still don't understand how if this</p>				

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<p>25 300,000 number comes from a mold, why is RaPower3 169: 1 limited to 300,000 per mold? 2 A. You have to ask Neldon that. 3 Q. I still don't -- 4 A. But I do give you -- I don't know if it's 5 even worth it to give you, but what happens is on a 6 mold, and this is all manufacturing molds, to my 7 understanding, it was when I had my business 8 manufacturing plant, you make a mold and it's only good 9 for so many number. It wears out. And then you've got 10 to replace it. 11 Q. Okay. 12 A. You probably didn't understand that. But 13 it's not good forever. You can't just keep running and 14 running and running it. It becomes obsolete and then 15 you have to have another roller mold and you have to 16 make that and then ship that to Lucite if you want to 17 do a second run. If you want to</p>				

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<p>do, you know, a third 18 run, fourth run, fifth run. Or you can buy more mold- 19 making machines. There's only one mold-making machine 20 now, but you can buy ten. 21 Q. So am I understanding that Neldon Johnson 22 made a mold and that mold was good for 300 megawatts of 23 lenses? 24 A. Yeah. Something like that. 25 Q. Okay. 170: 1 A. And then you have to make another mold. 2 Q. How many molds has Neldon Johnson made? 3 A. One. 4 Q. One? 5 A. That's my understanding.</p>				
<p>170:14 Q. (By Mr. Moran) Mr. Shepard, directing 15 your attention to Exhibit 204, someone named Brad asked 16 a question and you gave an answer; is that right? 17 A. Right. 18 Q. Do you know who Brad is? 19 A. I have no idea. He could be a plant. We</p>			204	

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<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>
<p>20 get those all the time, so I don't know. 21 Q. He says, "If there are 40 units per tower 22 and 300,000 units available then you would need 7500 23 towers." Do you know where he got the number 300,000 24 units? 25 A. I don't. If you project out that a tower 171: I would produce about 50 kilowatts, I don't know what 2 that would be. I came up with 6800, so he came up with 3 7500 towers. 4 Q. You came up with 6800 where? 5 A. When I did my math. 136 lenses per tower, 6 and if they produce 50 kilowatts then a megawatt would 7 be twenty times that. 8 Q. Okay. But you don't know where Brad would 9 have gotten the 300,000 available unit figure? 10 A. I might have told him that a tower 11 produces, we think, because I</p>				

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<p>have been told that, it's 12 a guesstimate of 50 kilowatts per tower. 13 Q. Who told you that? 14 A. I can't remember. 15 Q. Would it have been anyone other than 16 someone from Neldon Johnson's family? 17 A. I don't know. It could have been from a 18 worker there that -- I don't know. I would say most 19 likely came from Neldon's family, but I'm not -- or 20 Neldon's group of -- I'm not sure. 21 Q. Okay. 22 A. And it could have come from -- you know, I 23 get information from different sources. People that 24 talk with Neldon, and then they say. So a lot of times 25 it's hearsay information.</p>				
<p>172: 9 I have given you a copy of Exhibit 141 10 from the deposition of Preston Olsen. This appears to 11 be e-mail from you dated November 20, 2012.</p>			141	

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<p>12 A. Okay. 13 Q. Is that correct? 14 A. Yes. 15 Q. And in particular on the first page of 16 Exhibit 141, you say, "The manufacturing plant has 17 21,000 lenses in inventory (see photo attached), 150 18 towers ready to install, and \$15 million in the bank." 19 Did I read that correctly? 20 A. Yes. 21 Q. Where are the 150 towers ready to install? 22 A. What now? Where did that come from? 23 Q. Yeah. You say there's 150 towers ready to 24 install. Earlier I think you testified, and we saw, 25 there's only about 18 or 19 towers that were erected; 173: 1 correct? 2 A. That were erected, yeah. But ready to 3 install is a different animal. 4 Q. What's your definition of ready to 5 install?</p>				

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<p>6 A. Having the solar lenses. 7 Q. Just having the lenses? 8 A. Yeah. 9 Q. Okay. You don't need the towers to be 10 built for them to be ready to install? 11 A. Well, you would need the towers built to 12 install lenses. 13 Q. Okay. 14 A. But at that time, my thinking was that it 15 wouldn't take too long to put up 150 towers. 16 Q. This is about four and a half years ago, 17 right? 18 A. Yeah. 19 Q. Was your thinking correct? 20 A. Yes. 21 Q. You were correct in thinking that it 22 wouldn't take very long to install these towers? 23 A. Yeah. Once it's ready to go. And I 24 thought it was ready. But again, you don't accept the 25 fact that we have disruptive</p>				

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<p>technologies and we are 174: 1 doing things -- Neldon is doing things that have never 2 been done before. If we were copying other people, 3 then yeah, that would be a serious deal. But when 4 you're not copying somebody, and you have to go down 5 roads that no one else has gone down. Sometimes you go 6 down a road that you thought was correct and it wasn't. 7 Q. Okay. Your comment that there's 150 8 towers ready to install, where did you get that 9 information from? 10 A. I did it. It's mine. I came up with a 11 number of lenses and we were building solar frames or 12 lenses were going into frames and I thought, 13 personally, that we were pretty close. Unfortunately, 14 we were wrong. 15 Q. Okay. 16 A. And that happens when you have brand new</p>				

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<p>17 technology, Chris. The frames didn't work. 18 Q. Okay. 19 A. And the dual axis tracking didn't work. 20 Q. Okay. 21 A. I wish we could push a button and make 22 every correct call. 23 Q. The next question is this "15 M in the 24 bank," is that \$15 million in the bank? 25 A. Yes. 175: 1 Q. Whose bank are you referring to? 2 A. I don't know about the bank. 3 Q. All right. 4 A. The name of the bank. 5 Q. When it says 15 M, is that \$15 million? 6 A. Yes. 7 Q. And who is -- who has \$15 million in the 8 bank? 9 A. I don't know. 10 Q. Who gave you the information about \$15 11 million in the bank? 12 A. I don't know.</p>				

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<p>13 Q. Would it have been somebody other than 14 Neldon Johnson or members of his family -- 15 A. Yes. 16 Q. -- that told you about \$15 million in the 17 bank? 18 A. Yes. 19 Q. Who would that have been? 20 A. There's people that call me all the time. 21 Q. And they say, "Mr. Shepard, we have \$15 22 million in the bank"? 23 A. Well, they are people that I think are 24 pretty trustworthy. 25 Q. Who are these people? 176: 1 A. One would be Monty Hamilton. 2 Q. Okay. And he is your financial advisor? 3 A. No. 4 Q. What is he? 5 A. He is a RaPower3 team member. 6 Q. Okay. 7 A. And I sponsored him. He is one of my</p>				

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<p>8 clients. 9 Q. So you think the \$15 million in the bank 10 may be Monty Hamilton's \$15 million in the bank? 11 A. No. 12 Q. Who's got \$15 million in the bank? 13 A. I don't know. 14 Q. You don't know? 15 A. Probably some type of entity that Neldon 16 might have.</p>				
<p>179:18 Q. No further questions on that document. 19 We talked earlier about serial numbers. 20 A. Uh-huh (affirmative). 21 Q. Handing you a copy of what's been marked 22 for identification as Plaintiff's Exhibit 420. 23 Plaintiff's Exhibit 420 appears to be an e-mail from 24 you dated June 20, 2014 to undisclosed recipients. 25 A. Yes. 180: 1 Q. Is this an e-mail that you wrote? 2 A. Yes.</p>			420	

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<p>3 Q. Who are the undisclosed recipients?</p> <p>4 A. RaPower3 team members.</p> <p>5 Q. Okay. About how many people are on or</p> <p>6 would be on that list?</p> <p>7 A. I think about a thousand.</p> <p>8 Q. About a thousand? So there's about a</p> <p>9 thousand people who have bought lenses from RaPower3?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. There's a series of questions and</p> <p>12 answers. I'll direct your attention to the second set</p> <p>13 of Q and A. "Are we assigned serial numbers for each</p> <p>14 one we purchase?"</p> <p>15 A. Uh-huh (affirmative).</p> <p>16 Q. Earlier you testified that there were</p> <p>17 serial numbers assigned on the RaPower3 website. Do</p> <p>18 you recall that testimony?</p> <p>19 A. I do.</p> <p>20 Q. Okay. Are the serial numbers actually on</p> <p>21 each lens?</p> <p>22 A. I don't know. If it is, they are</p>				

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<p>pretty 23 obscure. I'm not saying they can't be. 24 Q. Have you ever seen a serial number on a 25 lens? 181: 1 A. No. 2 Q. Okay. 3 A. And a serial number, probably more 4 accurate, is -- see, each time you buy a lens, whether 5 it's one or ten or a hundred, you're assigned an 6 account number. So -- 7 Q. I think you explained that in your answer 8 right here. 9 A. Okay. There it is. Yeah. 10 Q. The next Q and A says, "Also, how do I as 11 an owner know what my product is doing?" 12 And your answer is, "Through my e-mails 13 and Rapower3.com website. Your lenses are being used 14 right now by virtue of your Bonus Contract. It is our 15 goal to have your lenses</p>				

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<p>operating in a tower before 16 summer is over." Did I read that right? 17 A. Uh-huh (affirmative). 18 Q. What does "lenses operating in a tower" 19 mean? 20 A. Producing heat and/or electricity. 21 Q. All right. We already discussed that 22 there are, at most, 2400 lenses in your towers. 23 A. Not in my towers. 24 Q. In the towers at the R&D site. Is that 25 right? 182: 1 A. Uh-huh (affirmative). 2 MRS. HEALY-GALLAGHER: Yes? 3 A. Yes. Up to that.</p>				
<p>182: 4 Q. Okay. Now, RaPower3 has sold way more 5 than 2400 lenses, right? 6 A. Well, I don't know how many more above 7 that. But -- I don't know what you mean by "way more." 8 Q. Do you think RaPower3 has sold more than</p>				

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<p>9 10,000 lenses?</p>				
<p>182:12 A. I don't have access to that information. 13 Q. You have no idea? 14 A. Well, let's say you had a thousand people 15 and the average number was ten, that would be 10,000 16 lenses. 17 Q. All right. So they have sold at least 18 10,000 lenses? Can we agree on that at this point? 19 A. Yeah.</p>				
<p>182:21 A. It calls for speculation, but I would be 22 surprised if it was less than 10,000 lenses. 23 Q. Okay. You say that lenses will be -- that 24 this person who is asking this question, that their 25 lenses will be operating in a tower before the summer 183: 1 was over. 2 A. Yeah. I thought so. That was the goal. 3 I didn't say they would be. Didn't I say that was the 4 goal?</p>				

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<p>5 Q. That was the goal. Did that happen?</p> <p>6 A. No.</p> <p>7 Q. Okay.</p> <p>8 A. We missed our goal.</p>				
<p>183:14 Mr. Shepard, handing you a copy of what's</p> <p>15 been marked as Plaintiff's Exhibit 8A. This was from</p> <p>16 the deposition of Peter Gregg. Do you recognize this</p> <p>17 document?</p> <p>18 A. I do.</p> <p>19 Q. What is it?</p> <p>20 A. "History of RaPower3" by Greg Shepard.</p> <p>21 Q. You wrote this document?</p> <p>22 A. I did.</p> <p>23 Q. Where did you get the information from?</p> <p>24 Where did you get the information that appears in</p> <p>25 Exhibit 8A from?</p> <p>184: 1 A. Being involved with the company for that</p> <p>2 long. And some cut and paste.</p> <p>3 Q. Where did you cut and paste from?</p> <p>4 A. Various places. IAUS.com, and my own</p>			8A	

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<p>5 pictures. I took pictures myself. 6 Q. I see on the first page, above the words 7 "Propulsion Turbine" it says, "Most of the following 8 came from the IAS website." 9 A. There you go. 10 Q. So you got most of this information from 11 the IAS website? 12 A. Underneath that, yeah. 13 Q. And then you said you took some pictures 14 and those appear in here, as well? 15 A. Yes. 16 Q. Okay. 17 A. No, not -- yeah. 18 Q. Any other sources that you would have 19 gotten this from? 20 A. The eight-foot copper roller mold was 21 taken off the internet. It's a generic. 22 Q. It's a generic picture? 23 A. Yeah. 24 Q. Okay. Did the information come from any 25 sources other than what you have</p>				

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<p>already described? 185: 1 A. Well, you know, you've got a pretty 2 lengthy thing here. 3 Q. Do you recall using any other sources 4 to -- 5 A. I don't -- listen, give me a chance to 6 look at it. I'm on page 2. 7 Q. Okay. 8 A. Because I don't want to make a mistake and 9 I don't want to mislead you. And then my fingers don't 10 work very well, so it's hard to even turn the page. 11 There, I'm on page 3. 12 Yeah, my camera took that picture on page 13 3. That's the mold making machine. And those are 14 pallets of lenses on page 4. 15 Q. Would the text have come from anywhere 16 other than IAUS? 17 A. Yeah. On page 4 I said, "I have 18 witnessed," and that comes from Monty Hamilton. And</p>				

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<p>19 then Sterling Rigby. I'm not sure where I got that. I 20 don't think I got it from the IAUS website, but I'm not 21 sure where I got that. 22 And when I say about Lucite International, 23 I think I got that off the internet. Are you following 24 me? 25 Q. Yeah. Which one? 186: 1 A. Page 4, where it says Lucite 2 International. I don't think that -- I know that 3 wasn't taken off the IAUS website.</p>				
<p>186: 6 Q. (By Mr. Moran) Mr. Shepard, you have had 7 an opportunity to review Exhibit 8A and I'll ask the 8 same question I asked before, which is where did you 9 get the information that appears in the text of Exhibit 10 8A? 11 A. Okay. One source would have been the IAUS 12 website. Another source would be the technology</p>			8A	

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<p>13 reports. 14 Q. Whose technology reports? 15 A. The IAUS technology reports that's on the 16 website that says Technology Reports. 17 Q. Okay. 18 A. It's 53 pages, I believe. So quite a bit 19 of info on that. So the pictures are probably 90 20 percent mine that I took with my camera or had someone 21 else take with my camera. And most of the information 22 after page -- probably from the second page on, most of 23 it is mine, where I wrote after talking with various 24 people, mostly Neldon and Randy. But most of it is my 25 own observation. And I'm a writer so it comes very 187: 1 easily. So I just wrote the history because I have 2 been involved with the company so long and seen so 3 much, seen it developed. So that's what I did; I wrote 4 kind of a history from my point of</p>				

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<p>view. 5 Q. Okay. You mention getting information 6 from Neldon Johnson and Randy Johnson. 7 A. And workers. But, yeah. 8 Q. And when you say workers -- 9 A. The workers that Neldon has employed. 10 Q. Okay. Anyone else? 11 A. I don't know without looking, but the 12 preponderance is from my own -- history written from my 13 point of view.</p>				
<p>187:15 Q. Mr. Shepard, have you testified before the 16 Public Service Commission in Utah in the past? 17 A. Not -- no. Oh, wait a minute. I don't 18 know what you mean by "testified." Where are you -- 19 Q. Well, let's look at this exhibit, which 20 has been marked as Plaintiff's Exhibit 470. It's Bates 21 stamped US001123 through US001187, and I'll represent 22 that there have been pages</p>			470	

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<p>omitted to keep this exhibit 23 short. 24 My understanding, based on this hearing 25 transcript, is that you testified on June 13, 2013 188: 1 before the Utah Public Service Commission. And I'll 2 direct your attention to the page that's marked 3 US001153. You're on it right now. 4 A. Oh, there you go. I remember that now. 5 Q. Did you testify at a hearing on June 13, 6 2013? 7 A. I think it was -- yeah, it was a public 8 hearing. 9 Q. Okay. 10 A. As I remember. And then they asked if 11 anybody wanted to make comments. And I said, "Yeah, 12 I'd like to make a comment." 13 Q. Okay. 14 A. And so they said, "Well, you need to raise 15 your right hand." And I guess I</p>				

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<p> didn't understand it 16 was a hearing. But it had nothing to do with me at the 17 beginning. I just heard what people were saying and I 18 said, "Hey, I'll make a comment." So yeah. 19 Q. I'll direct your attention to the page 20 marked US001155. 21 A. Here is 54. 22 Q. Yes. One more. 23 A. Okay. 24 Q. I'll direct your attention to line 19. It 25 says, "We're doing projects right now -- in fact, we've 189: I signed, we have a verbal commitment, which is going to 2 be made public here very soon, with a large company 3 here in Salt Lake County, for 5 cents a kilowatt hour. 4 Five cents. They said we had to do it less than what 5 Rocky Mountain Power is charging. We said fine." Was 6 that your testimony? 7 A. Yes. 8 Q. And when you say "we," are </p>				

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<p>you referring 9 to Rapower? Who is the "we" you are referring to? 10 A. Yeah. RaPower3. 11 Q. International Automated Systems? 12 A. Yeah. Using International Automated 13 Systems' technology. 14 Q. Okay. What's the verbal commitment you 15 are referring to? 16 A. With, I think that was with Murray. 17 Q. Murray what? 18 A. The city of Murray. 19 Q. Okay. 20 A. They have their own utility company, by 21 the way. 22 Q. Okay. 23 A. Which is different than Rocky Mountain 24 Power. 25 Q. Murray had made a verbal commitment to 190: 1 RaPower3? 2 A. Well, I kind of thought so, because the 3 mayor, Dan Snarr, lives right</p>				

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<p>around the corner from 4 me. I live in Murray. And he went down a couple times 5 and said, "I want to do this." 6 Q. Okay. 7 A. So that was a verbal thing. 8 Q. Okay. And when the mayor said, "We want 9 to do this," what does that mean? 10 A. They want to do a project and bring some 11 solar energy and put that solar energy in our mix. 12 Murray City gets their power from seven different 13 sources. And solar is a little bit of it. Mostly it's 14 coal, some hydro. But Mayor Snarr wanted to make -- he 15 wanted a bigger mix of renewable energy and was excited 16 about our technology and came down and -- 17 Q. So did he want to buy lenses or did he -- 18 A. No. He wanted it for the city. 19 Q. So he wanted to put up towers? 20 A. For Murray, yeah. 21 Q. Did that ever happen?</p>				

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<p>22 A. Oh, no.</p> <p>23 Q. It didn't happen?</p> <p>24 A. No.</p> <p>25 Q. Okay. Why didn't it happen?</p> <p>191: 1 A. Well, basically I thought we were closer</p> <p>2 to being ready to do something like that. And I guess</p> <p>3 his underlings wanted to see a project up and running</p> <p>4 before they committed. I think that was their advice,</p> <p>5 but I can't remember.</p> <p>6 Q. Now, after you gave this testimony, did</p> <p>7 you ever go back to the Utah Public Service Commission</p> <p>8 and correct your testimony?</p> <p>9 A. No.</p> <p>10 Q. In your testimony you mentioned that you</p> <p>11 would be able to provide electricity at 5 cents a</p> <p>12 kilowatt hour. Is that a fair characterization?</p> <p>13 A. Yes. Back then. Now I'd probably ask</p> <p>14 another penny.</p> <p>15 Q. Six cents?</p> <p>16 A. Well, it would be under what</p>				

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<p>anybody else 17 is selling. 18 Q. Okay. Well, my question is how did you 19 know that you could offer electricity for five cents a 20 kilowatt hour? 21 A. Neldon Johnson made that very clear. 22 Q. He said it? 23 A. Yes. 24 Q. Did he ever tell you what he based that 25 conclusion on? 192: 1 A. For five cents? 2 Q. Yeah. 3 A. Yeah. It was to be able to undercut other 4 people by a little bit. 5 Q. How did he know he could do it for five 6 cents a kilowatt hour? 7 A. Math. 8 Q. Did he do any testing? 9 A. Yeah. He did a lot of testing. But 10 that's a question for Neldon and how he came up with 11 that. I know that the turbine is one thousandth of the</p>				

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<p>12 cost of other people's turbines, and it has a huge 13 advantage. I do know that. I have seen it work. 14 I know the lenses can be mass produced. I 15 know they produce heat. I know they don't cost very 16 much, about a thousandth of what other people have to 17 spend. And I know they don't have to be washed. You 18 saw that. You saw a lens that produced massive amounts 19 of heat in 80 seconds with a lens that had never been 20 washed for six years. Other people have to wash their 21 lenses every flipping day. And so that's a cost of 22 operation. 23 Neldon -- other people have to lease their 24 land. Wind and solar, the average price is \$500 per 25 acre per year. I think Neldon has got 4000 acres and 193: 1 that's a \$2 million cost. He doesn't have to pay that 2 because he buys his land. And the</p>				

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<p>reason he can buy 3 his land is because he can use bad water, brackish 4 water, which is in abundance in the great basin there 5 in Delta, which he can use. He doesn't have to have 6 clean water. 7 So coupled with not having to wash lenses, 8 having an extremely low cost with a turbine that 9 doesn't need maintenance like other people, no cooling 10 towers that Rocky Mountain Power has to go through. I 11 mean, the difference is incredible. So he has 12 estimated that his cost of operation would be about a 13 half a penny to a penny per kilowatt hour. If he uses 14 coal, it would be a little bit more. 15 Q. Everything you just discussed, all the 16 components that are necessary to generate electricity 17 at 5 cent a kilowatt hour, did any of that exist in 18 2013?</p>				

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<p>19 A. Any of what now? Say that again.</p> <p>20 Q. Any of the --</p> <p>21 A. Yeah, the tower, the lenses, the heat</p> <p>22 exchanger, the ability to make water. Yes, that all</p> <p>23 existed.</p> <p>24 Q. Was it making water or generating</p> <p>25 electricity in 2013?</p> <p>194: 1 A. No. It was -- okay. First of all, he</p> <p>2 bought the land.</p> <p>3 Q. I understand that.</p> <p>4 A. So he didn't have that cost. We knew he</p> <p>5 didn't have to wash the lenses. That's part of the</p> <p>6 equation, Chris.</p> <p>7 Q. Sure.</p> <p>8 A. Okay. We knew that the turbine would be</p> <p>9 very inexpensive to run and also scalable. I don't</p> <p>10 know if you know what that means, but you don't have to</p> <p>11 go buy a 50 megawatt turbine. You can get a 500</p> <p>12 kilowatt turbine and do fifty of</p>				

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<p>them. 13 Q. How many turbines existed in 2013? 14 A. I don't know. Several. That's Neldon's 15 thing. But they are easy to make and quick to make, 16 from my understanding. And so he knows the cost. 17 And so when you couple the fact that you 18 don't have cooling towers -- Rocky Mountain Power has 19 to shut their plant down, Chris, and they have to spend 20 a fortune on employees to go clean their pipes. Neldon 21 wouldn't have to do that. Their cost of operation is 22 estimated to be 5.5 to 6 cents per kilowatt hour. That 23 is according to Neldon. And I guess he got that from 24 Rocky Mountain Power. He lives right there. 25 Q. And that's why he came up with 5 cents a 195: 1 kilowatt hour, because it is slightly less -- 2 A. You can undercut Rocky</p>				

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<p>Mountain Power and 3 make a fortune. That's the deal. 4 Q. Mr. Shepard, you testified that no one has 5 ever paid for a product; is that right? No one has -- 6 A. No. People have paid for lenses. 7 Q. Except for lenses. A product generated by 8 a lens, heat, electricity, water, anything like that, 9 has anyone ever paid for a product generated by a lens?</p>				
<p>195:12 A. You'll have to ask Neldon that. I think 13 so. I think so. But you'll have to ask Neldon that. 14 And you have asked that over and over and over again. 15 And my answer is going to be the same. 16 Q. You say you think so, but you have never 17 told me why you think so. 18 A. You have to ask Neldon that. 19 Q. Neldon has told you that someone has paid 20 money for a product? 21 A. You have to ask Neldon that.</p>				

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<p>He will 22 answer that if he wants to.</p>				
<p>196: 1 Q. You've testified that you believe someone 2 has paid money for a product. I want to know -- 3 A. That's speculation. People do it all the 4 time. 5 Q. But you don't know anyone -- 6 A. I'm going to buy this and when you do 7 certain things then I'm going to pay you certain stuff. 8 You don't have to -- people put money down all the time 9 on spec. Ask Tesla. That's a car. 10 Q. I'm not talking about buying lenses. I'm 11 talking about buying a product that a lens creates. 12 A. Right. And you have to have the lenses to 13 do that. And so on speculation that the lenses are 14 going to be producing power, I think people will put up 15 money on speculation that that will happen.</p>				

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<p>16 Q. To buy power? 17 A. To buy power or water and/or water. 18 Q. And who have they put up that money to? 19 A. That's not my -- I don't know. 20 Q. What's the basis for your belief that 21 people have put up money for power or water? Why do 22 you believe that? 23 A. Neldon has told me. 24 Q. Neldon has told you. 25 A. Uh-huh (affirmative). 197: 1 Q. Is there anything else that forms the 2 basis for that belief? 3 A. No. 4 Q. Okay. Has Neldon ever told you who these 5 people are? 6 A. No. 7 Q. Has Neldon ever showed you money in a bank 8 account? 9 A. No.</p>				
<p>199:10 Exhibit 471 WAS MARKED.) 11 Q. Mr. Shepard, you've been given a copy of</p>			471	

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<p>12 what's been marked for identification as Plaintiff's</p> <p>13 Exhibit 471. Do you recognize this document?</p> <p>14 A. I do.</p> <p>15 Q. What is it?</p> <p>16 A. Well, I'm looking at it. It's an e-mail</p> <p>17 that was sent from me using Rapower3.com to Bob Tilden.</p> <p>18 Apparently he asked a question - - oh, so it's not --</p> <p>19 okay. Yeah. Okay.</p> <p>20 Q. And below that there's an e-mail that I</p> <p>21 think he is responding to you; is that correct?</p> <p>22 A. I don't know. I get a lot of e-mails.</p> <p>23 Q. And the second two pages, there's some</p> <p>24 text and then on the last page it says, "Regards,</p> <p>25 Greg."</p> <p>200: 1 A. Yes.</p> <p>2 Q. Okay. So the e-mail on page Shepard_Greg-</p> <p>3 001143 through 1144, is that e-mail written by you?</p> <p>4 A. Yes.</p>				

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<p>5 Q. Okay. Directing your attention to the 6 middle of page 1143. It says, "It is now estimated 7 that we can put up all the lenses purchased by RaPower3 8 Team Members on working towers in less than a month." 9 A. Okay. 10 Q. Does that mean all 6800 towers could be 11 installed or somewhere around 6800 towers -- 12 A. Sure. 13 Q. -- could be installed in less than a 14 month? 15 A. Could be, sure. It's just a matter of 16 math. 17 Q. Is that the plan? 18 A. I don't know what Neldon's plan is, other 19 than -- let's see. When was this written? March '16? 20 Yeah. So the idea was to see what could be done on a 21 tower an hour. 22 Q. You mean how many hours it took to put up</p>				

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<p>23 a tower? 24 A. No. Every stage, every phase in the 25 manufacturing, Neldon wanted to come up with how many 201: 1 people it would take at each station to do one tower an 2 hour. So if you were at the pipe cutting machine, for 3 example, how many people would it take to run that, and 4 how many pipes would you need to run through to cut 5 those towers to make one tower an hour? And so once 6 you have that, the question would be do we need two 7 pipe cutting machines or do we need ten. 8 Q. So it says that Neldon Johnson did that 9 estimation? 10 A. Yes. 11 Q. Okay. 12 A. But I went around and confirmed that. I 13 went around and took a video of all that. I don't know 14 if you've seen video clips, but I went around and asked</p>				

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<p>15 the workmen, I got one by the name of Walter and I took 16 a video clip of it, it is on the RaPower3 website. I 17 asked Walter, I said, "At this shearing station, how 18 many people do you need here?" He said three. Okay. 19 If he pays \$20 an hour, that's \$60 an hour to fulfill 20 one tower an hour at that station. Okay? So that's 21 the idea. 22 If we needed two shearing machines then 23 Neldon would have bought two shearing machines. But he 24 didn't have to. Some of the stations required four, 25 like the A-frame station. But all of that is done now. 202: 1 And then he had to go through the same thing with the 2 construction phase. How many people does it take to 3 put brackets on the trusses on the rings? 4 Q. And how long has that been going on? 5 A. The construction phase for</p>				

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<p>probably I 6 would say about a year. But really escalated in the 7 last four or five months. 8 Q. Okay. So why are you saying that you 9 could have all the towers installed in less than a 10 month? 11 A. Well, it's just a matter of math. 12 Q. But if it's taken you several months, why 13 are you saying here -- 14 A. You misunderstood. You can't do that, 15 Chris. You need to -- okay. So once you get all that 16 information, and I thought we would have the 17 information beforehand. This is coming from me, not 18 Neldon. But I know what Neldon's game plan was to 19 figure all that out. And there were bumps on the road 20 as far as what needed to be done and how it needed to 21 be done. 22 Because again, everything that</p>				

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<p>Neldon has 23 done had to be done from scratch. He couldn't buy -- 24 he couldn't go down to a store or manufacturing plant 25 or another solar company and say, "Let me see what 203: 1 you're doing," and then go buy that. He would have 2 loved to have done that, but he couldn't do that. 3 So now what the final outcome is, if you 4 want to do, say, 6800 lenses or whatever the RaPower3 5 is, it's just a matter of, okay, we need to hire 200 6 people. 7 Q. Okay. So what you are referring to there 8 is the cost estimates for if and when these towers are 9 put up? 10 A. No. Once you get the calculations done, 11 and they are all done on the manufacturing, so if we 12 want X, Y, Z number of lenses to fulfill all RaPower3, 13 and to get the towers done and</p>				

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<p>get all the components 14 ready, which that's done now, then we just do the math. 15 So if we need 10,000 lenses or whatever, we just do -- 16 it's just a math thing. We have 30 employees. Maybe 17 we need 60 to fulfill that. 18 Q. But none of what you just told me explains 19 why you would say, "We can put up all the towers in 20 less than a month." 21 A. Yes. So now you've got 30 days, and if 22 you work six days a week how many people do you need. 23 Q. So why didn't you put up all the towers in 24 less than a month? 25 A. Because we didn't have all the questions 204: 1 answered, Chris. We have the manufacturing questions 2 answered now. In fact, I think Neldon has a Chinese 3 manufacturing plant that can now do ten towers an hour. 4 And that could be escalated to even more.</p>				

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<p>5 Q. Okay.</p> <p>6 A. This thing is going to be big, Chris, when</p> <p>7 we get done. And then, now we have to do the</p> <p>8 construction part of it. There's two phases, right?</p> <p>9 Manufacturing and construction.</p> <p>10 Q. Okay.</p> <p>11 A. Right?</p> <p>12 Q. I think you've answered my question, so we</p> <p>13 can move on.</p> <p>14 A. Okay. Better go buy some stock.</p>				
<p>204:15 Q. I'm handing you a copy that's been marked</p> <p>16 for identification of Plaintiff's Exhibit 292. It's</p> <p>17 actually Government's Exhibit 292. This is from the</p> <p>18 deposition of Peter Gregg.</p> <p>19 I'll direct your attention to the -- well,</p> <p>20 what is Exhibit 292? Do you recognize it?</p> <p>21 A. I do. Yeah. It's team memo number 25.</p> <p>22 Q. Is this a team memo that you sent out?</p>			292	

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<p>23 A. Yes.</p> <p>24 Q. There's -- direct your attention to the</p> <p>25 first paragraph. It says Update. The second sentence</p> <p>205: 1 says, "Also, we are now in the process of negotiating a</p> <p>2 PPA for the first set of towers that will be going up."</p> <p>3 Did I read that right?</p> <p>4 A. Yes.</p> <p>5 Q. What is a PPA?</p> <p>6 A. Power Purchase Agreement.</p> <p>7 Q. What's the context they are using PPA</p> <p>8 here?</p> <p>9 A. Well, as it turns out, we don't need PPAs.</p> <p>10 So that's now obsolete. But at the time, it meant a</p> <p>11 Power Purchase Agreement. What you do with a Power</p> <p>12 Purchase Agreement is -- so a utility agrees to pay you</p> <p>13 X number of pennies per kilowatt hour, so now you take</p> <p>14 that to the bank and say, "We've got a utility company</p> <p>15 that will give us this much money. We have signed an</p>				

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<p>16 agreement, a Power Purchase Agreement, to help purchase</p> <p>17 the power." And then you take that to the bank and the</p> <p>18 bank, then, will loan you money to finish your project.</p> <p>19 Q. All right. Now, who were you negotiating</p> <p>20 a PPA with?</p> <p>21 A. I was just told that that was -- well,</p> <p>22 that didn't come from Neldon. Since 2010 I have tried</p> <p>23 to put my own projects together.</p> <p>24 Q. Your own power project?</p> <p>25 A. Uh-huh (affirmative).</p> <p>206: 1 Q. To sell power?</p> <p>2 A. Yeah. A lot of money in it, if it will</p> <p>3 work. But we just kept running into road blocks. I</p> <p>4 have talked with a lot of people about different</p> <p>5 projects.</p> <p>6 Q. Who have you negotiated power purchase</p> <p>7 agreements with?</p> <p>8 A. I haven't negotiated any yet. Never got</p> <p>9 that far. Every time I got close,</p>				

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<p>they wanted to see a 10 power project up and running. 11 Q. Yeah. 12 A. And we didn't have that running yet. 13 Q. The power purchase agreement you are 14 referring to in -- 15 A. But I'm not -- you know, I don't know. I 16 don't remember, because it was back a little over two 17 years ago. So if you can refresh my memory, I'd be 18 glad to look at it. 19 Q. I don't know. I want to know who you were 20 telling RaPower3 members that you were negotiating a 21 PPA with. 22 A. Yeah. I thought I was very close to -- I 23 thought very close to getting some kind of a deal done. 24 Q. With who? 25 A. I don't know specifically on that one. 207: 1 I'm sorry, Chris. I talk with a whole bunch of people. 2 Q. Who did you talk to?</p>				

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<p>3 A. I talked with a Mexican outfit. I talked 4 with UAMPs, Utah Association of Municipal Power. 5 Q. Did any of them sign PPAs with RaPower3? 6 A. No. 7 Q. Did any of them sign PPAs with you? 8 A. No.</p>				
<p>207:12 Mr. Shepard, I will direct your attention 13 back to Plaintiff's Exhibit 411, which is your 14 interrogatory responses. 15 A. Yeah. I don't know where you are at. 16 Q. Exhibit 411. It should be in your stack. 17 A. In this stack? 18 Q. Yes. 19 A. The memo stack? 20 Q. Yeah. The stack of exhibits right there. 21 I'll hand you another one. Mr. Shepard, I'll direct 22 your attention to Interrogatory Number 8. 23 A. What page? Under general objections?</p>			411	

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<p>24 Q. No. Interrogatory Number 8. I'll help 25 you. 208: 1 Interrogatory 8 asked you to, "Identify 2 any electricity grid access agreements, interconnection 3 agreement, or any other agreement in which you obtained 4 the right to provide electricity to any entity. Your 5 response should include the names of the entity or 6 person you entered into the agreement with, the date 7 and the items of the agreement." 8 Your response is, "I have not been part of 9 any electricity grid access agreements and have no 10 knowledge of such agreements." 11 A. Correct. 12 Q. All right. Am I to understand that you 13 claim to have negotiated with various people to provide 14 electricity, but nothing was -- 15 A. Right. Verbally. I had people tell me, 16 "Okay, we are going to do this."</p>				

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<p>17 And I said, "Well, are you the main guy?"</p> <p>18 "Yeah, I'm the main guy, and then we will</p> <p>19 do this and we will do that." And then I come to find</p> <p>20 out that they are blowing smoke.</p> <p>21 Q. Okay.</p> <p>22 A. So I haven't signed any agreement with</p> <p>23 anybody.</p> <p>24 Q. Okay. But you say that it was negotiated.</p> <p>25 A. Well, yeah. Negotiated verbally with a</p> <p>209: 1 guy that really couldn't make a decision, or with</p> <p>2 people. It's happened to me probably five times.</p> <p>3 Q. Now, after you sent this to RaPower3 team</p> <p>4 members, your own teammates, who you look out for, did</p> <p>5 you ever go back to them and say, "By the way, I told</p> <p>6 you we were negotiating with someone for a PPA, and it</p> <p>7 fell through. It didn't work out"?</p> <p>8 A. I don't think so.</p> <p>9 Q. Okay. Do you think that's</p>				

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<p>something they 10 would have liked to have known? 11 A. Yes. 12 Q. Okay. 13 A. But I don't know what Number 26 said or 27 14 said. 15 Q. Who writes the RaPower3 team memos? 16 A. I do.</p>				
<p>210:20 Exhibit 472 WAS MARKED.) 21 Q. Mr. Shepard, you have been given a copy of 22 what's been marked for identification as Plaintiff's 23 Exhibit 472. Do you recognize it? 24 A. Sure. 25 Q. What is it? 211: 1 A. It's an e-mail to Bryan Bolander. 2 Q. From you? 3 A. From me. 4 Q. Okay. I'll direct your attention to the 5 third sentence that says, "So even though people 6 purchased during the last week of</p>			<p>472 473</p>	

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<p>December, their 7 lenses had already been placed in service." 8 A. Wait a minute. What now? Where are you 9 reading? Third sentence or -- 10 MR. REAY: Third sentence. 11 A. Okay. I was looking for paragraphs. 12 Q. Sorry. "So even though people purchased 13 during the last week of December, their lenses had 14 already been placed in service." Did I read that 15 correctly? 16 A. Yes. 17 Q. What do you mean in that sentence? What 18 do you mean by "placed in service"? 19 A. They were in a state of readiness, they 20 were -- had the ability to produce heat. 21 Q. Okay. And were they producing any heat? 22 A. They had the ability. 23 Q. They had the ability to produce heat.</p>				

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<p>24 A. Right.</p> <p>25 Q. When did they get the ability to produce 212: 1 heat?</p> <p>2 A. As soon as they were made. As soon as</p> <p>3 they came off the assembly line at Lucite.</p> <p>4 Q. They were placed in service?</p> <p>5 A. They had the ability to produce heat. And</p> <p>6 in my view, that's good enough to be placed in service.</p> <p>7 Q. And when you used the term "placed in 8 service," is that synonymous with the placed in service 9 letters we discussed earlier?</p> <p>10 A. Yes. In my view, yeah.</p> <p>11 Q. The placed in service letter that was sent 12 to Preston Olsen?</p> <p>13 A. Yeah. They were in a state of readiness.</p> <p>14 They were not put on a tower and they were not 15 producing electricity or heat. Well, they were in a 16 state of readiness for producing heat. Some of them</p>				

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<p>17 produced heat. 18 Q. And you couched that as that was your 19 view. 20 A. Uh-huh (affirmative). 21 Q. How did you get that view? 22 A. Tax letters. 23 Q. From who? 24 A. Todd Anderson and Kirton McConkie, but I 25 think mostly it was Todd Anderson. 213: 1 Q. Anyone else? 2 A. I'm not sure. Possibly. 3 Q. Todd Anderson, Kirton McConkie, and you 4 think there might be some more but you're not sure? 5 A. Well, some more sources that would confirm 6 that. I do a lot of research online, so I can't -- I'm 7 not sure. 8 Exhibit 473 WAS MARKED.) 9 Q. Mr. Shepard, you have been given what's 10 been marked for identification as Plaintiff's Exhibit 11 473. Do you recognize it? 12 A. Uh-huh (affirmative).</p>				

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<p>13 Q. What is it? 14 A. This is a RaPower3 team memo number 64. 15 Q. Okay. Did you send this out to RaPower3 16 team members? 17 A. I did.</p>				
<p>214:18 Q. Well, earlier we talked about a team memo 19 that you had sent to Neldon Johnson for approval. 20 MR. REAY: Did you ask -- can you restate 21 the question? Did you say "did" or "would"? 22 Q. (By Mr. Moran) I rephrased it and said 23 before you sent out RaPower3 team memo number 64, did 24 you have Neldon Johnson approve team memo number 64? 25 A. No, I don't believe so. 215: 1 Q. Okay. And that would be different than 2 the team memo we discussed earlier? 3 A. I don't know what -- 4 Q. We talked about a team memo, and we can 5 find it if you'd like.</p>			460	

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<p>6 A. No.</p> <p>7 Q. But there was a team memo that you sent</p> <p>8 for an approval.</p> <p>9 A. Yeah. For approval from Neldon. But I</p> <p>10 didn't do -- I'm sure I didn't do it here. I could</p> <p>11 have, but I don't recall.</p> <p>12 Q. Okay. You don't recall getting approval</p> <p>13 from Neldon Johnson for team memo number 64?</p> <p>14 A. No.</p> <p>15 Q. Okay.</p> <p>16 A. I'm not sure why I would.</p> <p>17 Q. I direct your attention to the second page</p> <p>18 and the paragraph titled Our Procedure.</p> <p>19 A. Okay.</p> <p>20 Q. "Once you've paid in full your 30 percent</p> <p>21 down payment, you are eligible to receive a 'Placed in</p> <p>22 Service' letter from the company." Did I read that</p> <p>23 correctly?</p> <p>24 A. Uh-huh (affirmative).</p> <p>25 Q. And the placed-in-service</p>				

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<p>letter that you 216: 1 are referring to here is similar to the one we looked 2 at earlier that was sent to Preston Olsen? 3 A. Correct. 4 Q. What does the 30 percent down payment have 5 to do with the placed-in-service letter?</p>				
<p>216: 8 A. If -- it has to do, in my opinion, I 9 didn't feel good about giving a placed-in-service 10 letter with no money. If you didn't abide by your 11 contract, you shouldn't get a placed-in-service letter. 12 Q. Okay. 13 A. Why -- if you sign a contract and you 14 violate the contract and you're in -- you have refused 15 to pay and honor your contract, why should we give you 16 a placed-in-service letter? 17 Q. Refused to pay who? 18 A. Who you signed the contract with:</p>				

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<p>19 RaPower3. 20 Q. So if RaPower3 hasn't gotten their money, 21 then in your view the RaPower3 team member shouldn't 22 get their placed-in-service letter? 23 A. Absolutely. Why should they? They have 24 to pay. 25 Q. And that's just 30 percent of the \$3500 217: 1 purchase price. 2 A. Right. 3 Q. Tell me this: Why don't customers have to 4 pay the full \$3500 purchase price before they get a 5 placed-in-service letter? 6 A. Why? 7 Q. Yeah. 8 A. You have to ask Neldon that. But if I 9 want to speculate on that, which is pure speculation, 10 because Neldon is in charge of what the price is and 11 the down payment is --</p>				
<p>217:14 A. Yeah. I can't answer that. 15 Q. Don't you sign the placed-in- service</p>			460	

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<p>16 letters? 17 A. I do. 18 Q. Okay. So if you sign the placed-in- 19 service letters, my question to you is why do you give 20 someone a placed-in-service letter before they have 21 paid the full purchase price? 22 A. Because they signed a contract. Everyone 23 operates that way in the solar business, and all other 24 businesses. If I buy a -- if I'm going to buy a copy 25 machine for my business, I'm probably going to sign a 218: 1 contract. That doesn't mean I can't depreciate it 2 immediately. I've signed a contract. 3 Q. And you probably have a purchase price to 4 pay for that contract, right? 5 A. Yeah. But I haven't paid the full 6 purchase price on the copy machine. I signed a 7 contract, paying \$100 a month for a copy machine. I</p>				

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<p>8 might not pay it off for three years. 9 Q. Understand. On the copy machine, are you 10 using it in your business? 11 A. In my theoretical example? 12 Q. Yes. 13 A. Yes. 14 Q. Okay. So to get the placed-in-service 15 letters, your lens doesn't have to be generating any 16 income. Is that your understanding? 17 A. Yes. 18 Q. And how did you get that understanding? 19 A. From the tax attorney opinion letter by 20 Todd Anderson and others, I guess -- 21 Q. The Kirton -- 22 A. -- that we have talked about. 23 Q. The Kirton McConkie firm? 24 A. Yeah. 25 Q. The next sentence says, "The Operation & 219: 1 Maintenance Company LTB, LLC rents your solar lenses 2 and utilizes the solar energy from</p>				

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<p>your panels for the 3 purpose of assisting IAS in research and development 4 for both agricultural and municipal solar thermal waste 5 heat reclamation and multiple non-serial array 6 concentrated photovoltaic receiver circuitry, among 7 other applications such as refinement of gearless 8 dual-access hydraulic tracking mechanisms and 9 quick-release panel stabilizers, and connections, which 10 qualify as commercial use of the solar energy." 11 A. Pretty cool. 12 Q. You say that LTB rents solar lenses. Does 13 that mean that LTB gets rental payments for the solar 14 lenses? 15 A. I don't know what the relationship between 16 LTB and whoever else. All I know is that LTB is the 17 operations and maintenance company and they sign an 18 agreement with the person who</p>				

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<p>buys the lenses, the 19 customer, and they agree to pay the customer \$150 per 20 lens per year. That's what they agree. 21 Q. I know that's the other part of the 22 contract, but here you are saying that LTB then turns 23 around and rents those solar lenses to someone else. 24 A. I probably made a typo there. 25 Q. There's an entire sentence where you talk 220: 1 about LTB renting solar lenses for all sorts of 2 purposes. 3 A. Let's read it carefully. "The Operation & 4 Maintenance Company, LTB, LLC, rents your solar 5 lenses." Isn't that what they do, they rent them? 6 Q. All right. They rent them and LTB is the 7 one doing the research and development? 8 A. LTB rents your solar lenses. 9 Q. All right. So LTB rents and you are using</p>				

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<p>10 that -- 11 A. They pay \$150 per year per lens. 12 Q. Has LTB ever paid someone \$150 per lens? 13 A. We have already discussed that. No. 14 Because, as you well know, and we have talked about -- 15 I have it marked down here seven times, and I knew you 16 were going to do this, but -- where was I? 17 Q. It sounds like LTB, and I understand -- 18 A. That's when the lenses are producing 19 revenue. So you've said that. I'm repeating what 20 you're saying and that's what the deal is. When the 21 revenue is being produced then the rental income can 22 start being paid. 23 Q. All right. 24 A. But until that point, then LTB isn't 25 obligated to pay rent. 221: 1 Q. Okay. 2 A. And the RaPower3 team</p>				

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<p>member is not 3 entitled to collect their \$150 a year until they are 4 producing revenue. 5 Q. Okay. But in your view, they are entitled 6 to claim that those lenses are placed in service. 7 A. Yes. 8 Q. Okay. And you base that view on letters 9 from Kirton McConkie and Todd Anderson? 10 A. Yes. 11 Q. Anyone else? 12 A. I don't know. Could be. 13 Q. I'm going to ask you to give me an answer 14 on that, because if there's -- 15 A. I can't recall. 16 Q. You don't recall? 17 A. No. But in my mind those are the two main 18 ones. 19 Q. All right. And then you talk about LTB 20 assisting IAS in research and development and you list 21 a series of activities. Can you tell me how that</p>				

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<p>22 works? How does LTB assist IAS --</p> <p>23 A. No, it didn't assist. You're reading</p> <p>24 stuff -- you have completely read it -- you put your</p> <p>25 own stuff in there, and you can't do that.</p> <p>222: 1 Q. Well, explain it to me, please.</p> <p>2 A. Okay. Let's read it carefully and slowly.</p> <p>3 "... rents your solar lenses and utilizes the solar</p> <p>4 energy from your panels for the purpose of assisting</p> <p>5 IAS." They don't, LTB doesn't assist. If you read it</p> <p>6 clearly, the solar panels, the energy from the solar</p> <p>7 panels, that's the purpose for assisting IAS in</p> <p>8 research.</p> <p>9 Q. All right. So the solar panels that are</p> <p>10 inside the manufacturing facility under a roof, how are</p> <p>11 they using solar energy?</p> <p>12 A. Good point. Because they are out at the</p>				

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<p>13 research and development site. 14 Q. Just by nature of their existing? 15 A. The nature of them producing heat. And 16 sometimes they have produced energy, but I don't know 17 how often. But the ultimate goal is to produce heat 18 and/or energy. 19 Q. And we can look at the exhibit, but 20 earlier we showed you a photo, on Exhibit 460, there's 21 a photo of several lenses inside a warehouse. 22 A. Right.</p>				
<p>2 Q. The lenses in Exhibit 460, have they been 3 placed in service? 4 A. Yes. 5 Q. Are they utilizing solar energy for 6 anything? 7 A. Yes. They are assisting IAS in research 8 and development. 9 Q. They are sitting inside a warehouse. 10 A. They are not all used. They</p>			460	

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<p>are used -- 11 some are used, and so because some are used and that's 12 assisting in research and development for the end 13 purpose, so that we can continue our projects.</p>				
<p>223:19 Q. The information that you conveyed here in 20 Exhibit 473, in particular the paragraph under Our 21 Procedure, where did you get that information from? 22 A. I can't recall, but I think it was from -- 23 because that's not my writing. 24 Q. You are saying you cut and pasted it from 25 somewhere? 224: 1 A. Yes. 2 Q. Okay. 3 A. But I don't know. I can't recall where. 4 But that's not my writing. 5 Q. Who, other than Neldon Johnson, could you 6 have gotten that information from? 7 A. An attorney. 8 Q. An attorney?</p>			473	

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<p>9 A. His attorney. I don't know. You have to 10 ask him, because I didn't write that. That's not my 11 writing. If I had written it, I might have written it 12 a little bit differently. I don't know. But I was 13 never consulted on that. I was just given that. 14 Q. You authored team memo 64. We already 15 talked about that. 16 A. Well, I authored the -- right above that 17 is "Line 12b Instructions." I cut and pasted that from 18 IRS.gov. Come on. 19 Q. Well, how -- 20 A. I put a team memo together using various 21 sources. One source was IRS.gov. That's word for word 22 cut and paste, 1b Instructions. And our procedure, I 23 got that from -- I'm not sure exactly where I got it 24 from, but it's not my writing. 25 Q. Okay. 225: 1 A. That's a source.</p>				

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<p>2 Q. All right. Turning the next page, 3 Shepard_Greg-3377, the first complete paragraph, the 4 second sentence says -- well, I'll read the whole 5 paragraph. "The 'Placed In Service' letter is 6 regarding the 'Alternative Energy Systems' that you 7 purchased from RaPower3 LLC. RaPower3 put into service 8 your equipment." Did I read that right? 9 A. You did. 10 Q. All right. RaPower3, to my understanding, 11 is a marketing company. 12 A. Right. And that probably should have 13 said -- I'm not sure. 14 Q. You don't know -- 15 A. I didn't write that. 16 Q. Who did write it? 17 A. I don't know. It's the same as right 18 above that. So that could have been one of Neldon's 19 attorneys. I don't know. 20 Q. Who else usually helps you</p>				

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<p>write these 21 team memos? I know your son sometimes helps you. 22 A. He does a little bit, but mostly it's me. 23 Q. Okay. So -- 24 A. Or I put it together from different 25 sources. 226: 1 Q. Okay. And -- 2 A. I can quote a whole bunch of different 3 sources. 4 Q. I really want to know who would have been 5 giving you this language that appears here. 6 A. Well, I'm sure you do, but I can't answer 7 that. 8 Q. You sent this less than a year ago. 9 A. I know. But I can't answer that. You're 10 going to -- what you're going to have to do, you are 11 going to depose LTB, you are going to depose Neldon and 12 these different entities. Put that high on your list</p>				

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<p>13 and ask them, but I don't know where I got it exactly.</p> <p>14 Q. Okay. You mentioned that attorneys may</p> <p>15 have given you the language about RaPower --</p> <p>16 A. May have, yes.</p> <p>17 Q. Which attorneys?</p> <p>18 A. I don't know.</p> <p>19 Q. Would it have been the Kirton McConkie</p> <p>20 memo?</p> <p>21 A. I doubt it. Not that part. Not that.</p> <p>22 Q. Okay. How about Todd Anderson?</p> <p>23 A. I doubt it.</p> <p>24 Q. Okay. What other attorneys -</p> <p>-</p> <p>25 A. But I don't know. You'll have to ask</p> <p>227: 1 those guys.</p> <p>2 Q. Are you aware of any attorneys other than</p> <p>3 the two I've just mentioned that advised Neldon Johnson</p> <p>4 in this matter?</p> <p>5 A. Yes.</p> <p>6 Q. Who?</p> <p>7 A. Paul Jones.</p>				

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<p>8 Q. Okay. Do you think Paul Jones wrote this?</p> <p>9 A. Could have. I don't know.</p> <p>10 Q. Okay.</p> <p>11 A. Do you know Paul Jones?</p> <p>12 Q. I met him.</p> <p>13 A. Okay.</p> <p>14 Q. What makes you think it may have come from</p> <p>15 an attorney?</p> <p>16 A. I don't know.</p> <p>17 Q. Okay.</p> <p>18 A. It sounds like it.</p> <p>19 Q. It sounds like an attorney would have</p> <p>20 written RaPower3 would have put into service --</p> <p>21 A. I don't know. I don't know. Can't answer</p> <p>22 more than that. You're going to have to ask those guys</p> <p>23 because I got it and put it in there. This is our</p> <p>24 procedure.</p> <p>25 Q. If we put this in front of LTB or RaPower</p> <p>228: 1 they're going to say, "This is from Greg Shepard. Ask</p> <p>2 Greg Shepard." Do you see my conundrum here?</p>				

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<p>3 A. No, I don't think so. I think they would 4 answer that.</p>				
<p>228:10 Q. Is it still your testimony it may have 11 come from an attorney? Because if it is, I have a 12 couple follow-up questions from that. 13 A. May have. 14 Q. Would that have been Justin Heideman or 15 Christian Austin? 16 A. I don't know. 17 Q. All right. No further questions on that 18 document.</p>				
<p>228:19 I understand that you believe lenses can 20 be placed in service when they are used for research 21 and development; is that correct? 22 A. Yes. 23 Q. And the research and development that you 24 are referring to, that's the R&D site that we visited 25 on April 4, 2017? 229: 1 A. I don't know all the research and</p>				

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<p>2 development areas that Neldon has, but I don't do the 3 research and development. I know that's one area where 4 research and development is done. I don't think it's 5 the only one. 6 Q. Okay. Where do you think there are 7 others? 8 A. In Neldon's homes. 9 Q. Neldon's homes? Were these in and around 10 Delta, Utah? 11 A. One is in Delta, one is in Payson. 12 Q. Is Payson -- how far is Payson from Delta? 13 A. An hour and a half. 14 Q. Okay. You think he does research and 15 development there? 16 A. Could, yeah. Because he's got a garage 17 and -- 18 Q. Anywhere else? 19 A. Yeah. In Delta he has a home there. 20 Q. Besides what you just told me about, is</p>				

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<p>21 there anything else? 22 A. Yeah. He could do it in the manufacturing 23 plant. 24 Q. Okay. Anywhere else? 25 A. Yes. 230: 1 Q. Where? 2 A. I think he's got other people working on 3 stuff. I don't know where. I think there's people up 4 here in Salt Lake City that work on stuff, but I don't 5 know. 6 Q. Has any RaPower3 customer ever been paid 7 for having their lenses used in a research and 8 development?</p>				
<p>230:10 A. I don't know. 11 Q. Have you ever heard of it? 12 A. No. 13 Q. If a customer were to be paid for their 14 lenses being used in research and development, how 15 would you or anyone at RaPower3 know which lens that 16 belongs to which customer was actually used in research</p>				

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17 and development?				
230:20 A. I have no idea. I wouldn't be in charge 21 of that. I wouldn't -- again, Chris, I'm an 22 independent contractor. All right?				
231: 6 Q. (By Mr. Moran) Mr. Shepard, I'm handing 7 you a copy of what's been marked for identification as 8 Plaintiff's Exhibit 28. Do you recognize this 9 document? 10 A. Yes. 11 Q. What is it? 12 A. It says "Tax Benefits for Jim." 13 Q. Did you prepare this document? 14 A. I did. 15 Q. Okay. And what did you do with it? 16 A. What did I do with it? 17 Q. Yeah. Did you send it to RaPower3 18 customers? 19 A. I can't remember. Oh, it says, "Assume 20 Jim." I thought maybe Jim was a			28	

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<p>RaPower3 client. So 21 it appears this is general stuff, to cite an example. 22 Q. Would you have sent Exhibit 28 out to 23 RaPower3 customers? 24 A. I could have, yeah.</p>				
<p>232: 5 Mr. Shepard, I'm handing you what's been marked for 6 identification as Plaintiff's Exhibit 20. I believe 7 you have already stipulated to it, but in case you 8 haven't, let me ask, do you recognize Plaintiff's 9 Exhibit 20? 10 A. Yes. 11 Q. What is it? 12 A. It is a system of calculating how much 13 lenses you need. 14 Q. And this appeared on the RaPower3 website? 15 A. It did. 16 Q. Who prepared this calculator? 17 A. The calculator? 18 Q. Yeah. 19 A. My son, Matt. 20 Q. Okay. Did you oversee him?</p>			20	

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21 A. Yes.				
232:23 Exhibit 474 WAS MARKED.) 24 Q. Mr. Shepard, I have given you a copy of 25 what's been marked for identification as Plaintiff's 233: 1 Exhibit 474. Do you recognize it? 2 A. Yes. 3 Q. What is it? 4 A. Well, let's see. I think this is screen 5 shots of number 26 lens calculator. 6 Q. My understanding is you produced this 7 document to the United States. 8 A. I did? Okay. 9 Q. The second page of that exhibit appears to 10 be quite similar to Plaintiff's Exhibit 20; is that 11 right? 12 A. Where's 20? This one? 13 Q. It is the one we just discussed. 14 A. Right. 15 Q. Who prepared the first page of Exhibit			474 20	

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<p>16 474? 17 A. Under my direction, I did. Matt may have 18 done it. But those are my calculations. 19 Q. Okay. And this is a calculator that 20 appears in the RaPower3 website -- 21 A. Yes. 22 Q. -- that informs customers how many lenses 23 they need to buy? 24 A. Yeah. To maximize their ability to help 25 the United States of America have clean, affordable, 234: 1 renewable energy. It's a wonderful thing that they 2 can -- I want them to be able to max out on how they 3 can help our nation.</p>				
<p>234: 6 Am I correct that the information that's 7 input into the calculator is information about 8 someone's tax liabilities? 9 A. Yeah. But if they want to know how much 10 they can help our country, that's</p>			<p>475 476 477 50 40 112 158 43</p>	

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<p>what we do. 11 Q. Okay. No further questions on that 12 document. 13 A. Okay. 14 Exhibit 475 WAS MARKED.) 15 Q. Mr. Shepard, I have given you a copy of 16 what has been marked for identification as Plaintiff's 17 Exhibit 475. Do you recognize it? 18 A. I do. 19 Q. What is it? 20 A. The subject, it's an e-mail, and subject 21 is Ra3, which refers to RaPower3, Warranty Info. 22 Q. And you wrote the e-mail that's dated 23 October 26, 2012. 24 A. I did. 25 Q. Okay. And the attachment to it -- the 235: 1 second page, is that the attachment to that e-mail? 2 A. Okay. Yes. 3 Q. Is that correct? 4 A. Yes. 5 Q. Okay. No further questions on</p>				

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<p>that 6 document. 7 Exhibit 476 WAS MARKED.) 8 Q. Mr. Shepard, you've been given a copy of 9 what's been marked for identification as Plaintiff's 10 Exhibit 476. Do you recognize it? 11 A. Yes. 12 Q. What is it? 13 A. It is an e-mail, the subject matter is 14 Ra3, meaning RaPower3, Wow, exclamation mark. Now 15 what, question mark. 16 Q. Did you write this e-mail? 17 A. I did. 18 Q. Okay. No further questions on that 19 document. 20 Exhibit 477 WAS MARKED.) 21 Q. Mr. Shepard, you've been given a copy of 22 what's been marked for identification as Plaintiff's 23 Exhibit 477, which is Bates stamped Bolander-Bryan-676 24 through 677. Do you recognize Exhibit 477?</p>				

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<p>25 A. Yes. 236: 1 Q. What is it? 2 A. It's a -- it appears to be a short e-mail 3 from me to a CPA. 4 Q. Okay. And the CPA is -- 5 A. Quinn Smith, CPA 6 Q. Who is Quinn Smith? 7 A. I have no idea. 8 Q. But your understanding is that Quinn Smith 9 is a CPA? 10 A. That's what it says, yeah. 11 Q. Okay. And fair to characterize this as an 12 e-mail string between you and Mr. Smith? 13 A. It's an e-mail string? 14 Q. Well, in that this exhibit is actually -- 15 A. Oh, I see what you mean. So yeah, there's 16 a series of e-mails. 17 Q. Exactly. Is that a fair characterization 18 of Exhibit 477? 19 A. Yes. 20 Q. Okay. 21 A. So he, again, the CPA apparently from</p>				

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<p>22 Jackson, Mississippi was asking 23 Bryan Bolander a bunch 23 of stuff and I responded and said, "24 He doesn't answer 24 unless you're a client." 25 Q. Okay. Mr. Smith -- 237: 1 A. Because we had a lot of people want free 2 information. So he can't sit around and give free 3 information all day. He needs to make a living. 4 Q. Bryan Bolander? 5 A. Yeah. 6 Q. Mr. Smith asked a series of questions 7 about whether the type of alternative energy that 8 RaPower3 sells actually meets the IRS requirements for 9 the tax credit. And I'm looking at paragraph 1 on the 10 second page. Do you see the question in paragraph 1 of 11 Mr. Smith's e-mail? 12 A. I do. 13 Q. He also says in paragraph 2, "There is 14 concern of the 'placed in service' date that is also</p>				

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<p>15 discussed a lot on blogs and whether the equipment has 16 truly been placed in service as one website shows 17 pictures taken from the construction sites as late as 18 March 2012 and there doesn't appear to be much 19 construction activity?" 20 A. Right. 21 Q. And was that his question? 22 A. I'm not sure he really -- he put a 23 question mark, but I'm not sure really it's a question. 24 Q. All right. My question is did I read 25 Mr. Smith's question correctly? 238: 1 A. I don't think it's a question. I think 2 it's a statement. 3 Q. Fair enough. He makes a statement. 4 A. Yeah. 5 Q. Okay. 6 A. Yes. 7 Q. In paragraph 3 he says, "Another concern 8 of mine is whether there will really ever be any income</p>				

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<p>9 generated due to the lack of construction mentioned 10 above and thus, this would be considered a 'hobby' 11 under IRS rules and any preliminary tax savings due to 12 a Schedule C loss would be thrown out. (Not to mention 13 the investors' risk of an almost certain high audit 14 percentage due to the loss for the initial years.) 15 Did I read that correctly? 16 A. Yes. 17 Q. So a CPA, Mr. Smith, makes a series of 18 statements and asks some questions. Is that a fair 19 characterization of Mr. Smith's e-mail? 20 A. Again, I think they are statements. I 21 don't think they are questions. 22 Q. Okay. And you respond and said, "At this 23 point, I'm not interested in doing business with your 24 client." Did I read that correctly? And I'm back on 25 the first page of Exhibit 477.</p>				

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<p>239: 1 A. Yes. 2 Q. Why didn't you want to do business with 3 his clients? 4 A. I think he was combative, and it wouldn't 5 go any place. It was probably going to be a waste of 6 my time. 7 Q. Why wouldn't his clients want to share in 8 bringing renewable energy to this country? 9 A. Well, they would if they understood 10 everything. But I don't think this guy was -- I'm not 11 sure how legit this guy was. I don't know who he was. 12 We have people all the time that are competitors or 13 they are trying to bring us down. So I don't have time 14 for guys like that. 15 Q. No further questions on that exhibit. 16 Handing you a copy of what's already been 17 marked for identification as Plaintiff's 40. Do you</p>				

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<p>18 recognize Plaintiff's Exhibit 40? 19 A. Yes. 20 Q. Okay. What is it? 21 A. 2011 tax benefits. A synopsis of federal 22 tax credits and depreciation. 23 Q. Did you prepare this document? 24 A. I did. 25 Q. Okay. And there are several pages that 240: 1 follow the first page. Did you attach these documents 2 to the first page? 3 A. Yes. 4 Q. I'll direct your attention to a page 5 that's labeled Lunn_F&L-00038. It's the last page. 6 A. There we go. 7 Q. This appears to be two pages of a form 8 1040 tax return, and there's some handwriting on the 9 page labeled Lunn_F&L-00038. Whose handwriting is 10 that? 11 A. I think that's mine. 12 Q. Okay. No further questions on Plaintiff's</p>				

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<p>13 40. 14 Handing you a copy of what's been marked 15 as Plaintiff's Exhibit 50. At the top there's a 16 statement, "Greg Shepard's comment in bold." 17 A. Yes. 18 Q. Am I correct in understanding that all the 19 text that appears in bold in Plaintiff's 50 is your 20 comments? 21 A. Yes. 22 Q. Okay. No further questions on that 23 document. 24 A. Do you know what that was? It's really 25 funny. 241: 1 Q. Directing your attention to Plaintiffs' 2 Exhibit 112. Do you recognize Plaintiff's Exhibit 112? 3 A. Yes. 4 Q. Is that an e-mail from you to RaPower3 5 customers dated March 2, 2011? 6 A. Yes. I don't know how many. I had</p>				

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<p>7 different lists. 8 Q. Well, as of 2011, would it have gone to 9 all RaPower3 customers, or just some? 10 A. I can't recall. 11 Q. But at least one? 12 A. Yes. 13 Q. Several? 14 A. Several. 15 Q. Okay. 16 A. Is that it for this one? 17 Q. That's it. 18 Mr. Shepard, I'll direct your attention to 19 Plaintiff's Exhibit 158. This is 158 from the 20 deposition of Preston Olsen. I'll direct your 21 attention to the page labeled Olsen_P&E-03222. 22 I can find it for you if you want. 23 A. Okay. Thank you. 24 Q. Plaintiff's Exhibit 158 is a series of 25 documents that are usually associated with a tax 242: 1 return, an individual tax return. But on page Olsen_ 2 P&E03222, this is a Profit or Loss</p>				

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<p>From Business, and 3 it refers to the name of a proprietor, Andrea -- 4 actually, let me withdraw that question. 5 Do you recognize Exhibit 158? 6 A. Yes. I mean, I don't recognize Preston 7 Olsen's stuff. 8 Q. Well, Preston Olsen produced this to the 9 United States, and he testified that he got it from 10 you. 11 A. Okay. This isn't Preston Olsen's tax 12 return. 13 Q. It is not. I see someone, and this gets 14 me back to the original question, I see someone named 15 Andrea and it says business address 858 -- 16 A. That's my address. She is my daughter. 17 Q. Okay. Now, is Andrea Shepard a RaPower3 18 customer? 19 A. Yes. 20 Q. Okay. Is there a reason you</p>				

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<p>would have 21 given your daughter's tax return to Preston Olsen? 22 A. As an example. 23 Q. Okay. Let me direct your attention to -- 24 A. And of course everything was blocked out 25 so he didn't know it was my daughter. 243: 1 Q. Okay. 2 A. You do, because you asked. 3 Q. And then I'll direct your attention to 4 Olsen_P&E-3227, and I can help you get there if you'd 5 like. 6 A. There we go. 7 Q. The handwriting that appears on 3227 -- 8 A. That's mine. 9 Q. That's you? Okay. No further questions 10 on that document. 11 Mr. Shepard, I'm handing you what's been 12 marked for identification as Plaintiff's Exhibit 43. 13 Do you recognize Plaintiff's Exhibit 43?</p>				

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<p>14 A. Yes. It's an e-mail from me. 15 Q. To RaPower3 customers? 16 A. It's undisclosed recipients, so I don't 17 recall. But it sounds like it would be. 18 Q. Do you know who Frank Lunn is? 19 A. I do. 20 Q. Frank Lunn is a RaPower3 customer? 21 A. He is. 22 Q. Frank Lunn produced this document to the 23 United States. 24 A. Okay. 25 Q. So with that information, should I 244: I understand the Plaintiff's Exhibit 43 was sent to 2 RaPower3 customers? 3 A. Yes. 4 Q. There's a paragraph labeled Depreciation. 5 A. Where are you? 6 Q. Here. 7 A. Okay. 8 Q. "This year in 2011 you may depreciate 100 9 percent of the purchase price of</p>				

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<p>your solar energy 10 systems placed in service. Depreciation is a key 11 component to being able to take all the tax benefits 12 that you are entitled to receive." Did I read that 13 correct? 14 A. Yes. 15 Q. Okay. Did there come a time in 2016 where 16 RaPower3 no longer offered depreciation credits? 17 A. Yes. Well, no. Okay, there's no 18 depreciation credit, so be careful about that. 19 Q. Okay. 20 A. "Depreciation benefits" would be a better 21 term. 22 Q. Okay. Did there come a point in 2016 23 where RaPower3 no longer offered depreciation on their 24 solar lenses? 25 A. Yes. 245: 1 Q. What led to that change? 2 A. Simplicity. Depreciation was hard for</p>				

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<p>3 people to understand. Hard for CPAs to understand. 4 And so I'm assuming that because -- and then also, 5 Neldon can make more money, I think. 6 Anyway, so the lenses are now, instead of 7 \$1050, they're \$650 as far as the down payment goes. 8 So the down payment is now \$650. The purchase price is 9 the same, \$3500. And so 30 percent of \$3500 is \$1050. 10 They get a \$1050 tax credit, based on \$650. So they 11 make \$400 pretty quickly, but they don't get the 12 depreciation. It's kind of a trade off. 13 Q. Who made the decision to no longer offer 14 depreciation? 15 A. Neldon. 16 Q. Okay. Do you know why he made that 17 decision? 18 A. I don't. You'd have to ask him. 19 Q. Okay. Did the law, the tax</p>				

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code, the tax 20 law applicable to depreciation change in 2016?				
245:23 Q. That you're aware of? 24 A. They change -- they pretty much change 25 every year. So 2011, the one that you had me read, was 246: 1 like incredibly good. But in 2012, it changed so it 2 wasn't quite so good. So it changes every -- it has 3 changed every year. It's not the same as it was in 4 2006. 2011 was different. So sometimes there was -- 5 this case was the only year they did that was a hundred 6 percent depreciation, one year. 7 Q. That's in 2011. 8 A. Yes. There was times when it was 50 9 percent bonus depreciation. 10 Q. But did anything change in 2016 in the 11 law? In other words, if depreciation was permitted in 12 2015, why would it no longer be permitted in 2016? 13 A. It was. Basically you had			43 49 421	

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<p>your choice. 14 So you could either go on the old program or the new 15 program. 16 Q. When? 17 A. 2016. 18 Q. Okay. 19 A. We gave RaPower3 team members their 20 choice. 21 Q. And what about after the change was made 22 in 2016? Could you still get depreciation? 23 A. Yeah. 24 Q. What about now; if someone bought a lens, 25 can they claim depreciation? 247: 1 A. Yeah, they can. But I discourage it. 2 Q. Why do you discourage it? 3 A. Well, it's just more money up - - I think 4 it's a better deal, in my opinion. 5 Q. But you're not aware of anything in the 6 Internal Revenue code that changed in 2016? 7 A. No. 8 Q. Okay.</p>				

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<p>9 A. So you could do either one. You could 10 take the depreciation or do the new program. It's up 11 to the RaPower3 client. 12 Q. Okay. I have given you a copy of what's 13 been marked for identification as Plaintiff's Exhibit 14 49. Do you recognize Plaintiff's Exhibit 49? 15 A. I do. 16 Q. What is it? 17 A. It is a memo that I sent out or -- I don't 18 know if it's a memo, but an e- mail. An e-mail I sent 19 out. I see Frank Lunn's name on it. So it either went 20 to Frank Lunn personally or to -- the subject is vital 21 tax info, 2013, in November. 22 Q. So there's a series of responses. Are 23 those your words? 24 A. Yes. But some of it is just cut and paste 25 from IRS.gov. 248: 1 Q. Okay. Mr. Shepard, I have given you a</p>				

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<p>2 copy of what's been marked for identification as 3 Plaintiff's Exhibit 421 from the deposition of Matt 4 Shepard. Do you recognize Exhibit 421? 5 A. I do. 6 Q. What is it? 7 A. Team memo number 73 from RaPower3.</p>				
<p>248:10 Q. Mr. Shepard, the third page of Exhibit 421 11 there's a paragraph titled New Contracts and 12 Agreements. Are you with me? 13 A. Oh, yeah. Right here. 14 Q. Yes. 15 A. Yes. 16 Q. "Neldon Johnson and Greg Shepard have 17 studied the old contracts and agreements. The 18 appropriate changes were made for the new Equipment 19 Purchase Agreement, the Operations and Maintenance 20 Agreement, etc. These changes were then taken to an 21 attorney for approval. The new</p>			<p>49 421</p>	

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<p>contracts and 22 agreements will reflect the new sales program figures 23 and will be made available ASAP through the 24 RaPower3.com website and the new order page." 25 A. Yeah. 249: 1 Q. Earlier you testified that Neldon Johnson 2 made the decision to shift or to remove depreciation as 3 an option. Here it sounds like you had something to do 4 with that decision. 5 A. No, it doesn't say that at all. It says I 6 studied it. 7 Q. You studied it. And based on your studies 8 what happened? 9 A. Well, the appropriate changes were made. 10 And I didn't have anything to do with the changes. I 11 studied them and said, "Hey, this looks good." 12 Q. And the change was to no longer offer 13 depreciation?</p>				

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<p>14 A. Yeah. As an option. They had the option 15 to do the old program, like I said. 16 Q. Okay. And it says, "These changes were 17 then taken to an attorney for approval." 18 A. That was my understanding, yeah. 19 Q. Okay. Do you know who that attorney was? 20 A. No. 21 Q. Who told you that the changes were 22 approved by an attorney? 23 A. Neldon.</p>				
<p>250: 2 Is there any physical difference in the 3 lenses that depreciation is allowed for and the lenses 4 for which depreciation is not allowed?</p>				
<p>250: 7 A. Any difference between -- 8 Q. Any physical difference. 9 A. Of the lenses? 10 Q. Yeah. 11 A. No. 12 Q. No further questions on that document. 13 Mr. Shepard, I'm handing you</p>			72	

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<p>what's marked 14 for identification as Plaintiff's Exhibit 72. This is 15 from the deposition of Bryan Zeleznik. 16 A. Uh-huh (affirmative). 17 Q. Do you recognize Plaintiff's Exhibit 72? 18 A. Yes. 19 Q. What is it? 20 A. It's an e-mail from me to all being 21 audited. So that doesn't go to -- that didn't go to 22 all RaPower3 team members. It went to the ones who 23 were being audited that I knew about. 24 Q. About how many people was that? An 25 estimate is fine. 251: 1 A. Well, it grew because the IRS wouldn't 2 give up, so they kept at it. So this was 2013, pretty 3 early. I don't know. Thirty or forty. 4 Q. Okay. And the second paragraph says, "The 5 latest RaPower3 Team Members</p>				

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<p>being audited have the 6 questions written down in their first audit letter." 7 A. Wait a minute. We are down here on the 8 third line, right? "The latest." Okay. 9 Q. "Twenty-two questions in all. Don't 10 answer these." When you say, "Don't answer these," are 11 you referring to don't answer the IRS's questions? 12 A. Yeah. I think, as I remember, just put 13 down, "Don't apply." 14 Q. Okay. All right. So just respond -- you 15 told the RaPower3 customers to just respond to the IRS 16 and say, "Do not apply"?</p>				
<p>251:19 A. Yeah, I -- 20 Q. Well, it says, "Don't answer these," and 21 before that you were talking about questions -- 22 MR. REAY: Where are you at? Oh, sorry. 23 I found it. I was looking below. 24 Q. It says, "Twenty-two</p>				

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<p>questions in all. 25 Don't answer these." 252: 1 A. Yeah. 2 Q. Are you saying don't answer the IRS's 3 questions? 4 A. No. I say you put down, "Don't apply." 5 So if they have a question and in your mind they don't 6 apply, just put down, "Don't apply." 7 Q. In whose mind? 8 A. The ones being audited. 9 Q. Okay. And then further down on that 10 paragraph, the third line from the bottom it says, "You 11 can also plead the 5th." 12 A. Where does it say that? 13 Oh. Okay. 14 Q. Are you referring to the Fifth Amendment? 15 A. Yes. 16 Q. Why would a RaPower3 team member plead -- 17 A. I don't know. I don't even know why I put 18 that in there. 19 Q. You just put it in there?</p>				

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<p>20 A. I don't know. It's back almost four years</p> <p>21 ago.</p> <p>22 Q. All right. No further questions on that</p> <p>23 document.</p>				
<p>252:24 I'm handing you what's been marked for</p> <p>25 identification as Plaintiff's Exhibit 71. Do you</p> <p>253: 1 recognize it?</p> <p>2 A. Okay. This is an e-mail that I sent out</p> <p>3 from RaPower3.com e-mail. It says Greg Shepard to Greg</p> <p>4 Shepard. I wrote it to myself?</p> <p>5 Q. Do you have a habit of writing e-mails to</p> <p>6 yourself, Mr. Shepard?</p> <p>7 A. I don't know what that is.</p> <p>8 Q. Well, let me ask you this: This document</p> <p>9 was produced in the United States by Bryan Zeleznik.</p> <p>10 A. Okay.</p> <p>11 Q. Do you know who Bryan Zeleznik is?</p> <p>12 A. Yeah.</p> <p>13 Q. Who is he?</p> <p>14 A. He is a RaPower3 team</p>			71	

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<p>member. 15 Q. If Ryan Zeleznik produced this document to 16 the United States, is there any reason to believe that 17 you didn't send this document to at least Bryan 18 Zeleznik? 19 A. No. 20 Q. And you are also talking about the audits, 21 the IRS audits in this e-mail. 22 A. Uh-huh (affirmative). 23 Q. And earlier you testified about e-mailing 24 about thirty to forty people who were being audited by 25 the IRS. 254: 1 A. At that time yeah, probably. 2 Q. And this is a similar time frame, August 3 of 2013. 4 A. Right. 5 Q. Is there any reason to believe Plaintiff's 6 Exhibit 71 wasn't sent to the same group of people who 7 were being audited by the IRS? 8 A. No.</p>				

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<p>9 Q. So in fact, you didn't just send this to 10 yourself. You probably sent it to -- 11 A. Yeah. I was just questioning why it said 12 "to." 13 Q. Okay. And my only question on this 14 document is the following three pages, are those an 15 attachment that would have been sent with the document? 16 A. Yes. Yes, I believe so. 17 Q. Did you prepare that attachment? 18 A. I did.</p>				
<p>254:21 Mr. Shepard, do you recognize Plaintiff's 22 298? 23 A. I do. 24 Q. I have given you a copy of what's been 25 marked for identification as Plaintiff's Exhibit 298. 255: 1 Do you recognize it? 2 A. I do. 3 Q. What is it? 4 A. It is an e-mail sent by me to, again, this</p>			<p>71 298</p>	

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<p>5 small group of people who are being audited, RaPower3 6 team members being audited. 7 Q. Okay. And in the first paragraph you say, 8 "Some of you may have been asked to fill out this 9 questionnaire with 11 questions." Are those eleven 10 questions from the IRS? 11 A. Yes. 12 Q. You say, "The counsel I have received on 13 this matter is not to answer these questions." Did I 14 read that correctly? 15 A. Yes.</p>				
<p>256: 3 Q. (By Mr. Moran) Okay. I'll ask the 4 question again, Mr. Shepard. Who did you get this 5 counsel from? 6 A. I can't remember. 7 Q. Do you think it was an attorney? 8 A. Yes. 9 Q. Okay. Do you think it was Kim Birrell? 10 A. No. 11 Q. Do you think it was Todd</p>				

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<p>Anderson? 12 A. No. 13 Q. Do you think it was Paul Jones? 14 A. More likely. 15 Q. Can you think of any other attorney that 16 you would have gotten that advice from? 17 A. In 2013? 18 Q. Yes. 19 A. I'm not even -- I'm not even sure if we 20 had Paul Jones on board at that time. 21 Q. All right. Well, the question I'm asking 22 you is I want to know what attorney is out there 23 telling individuals they don't have to answer the IRS's 24 questions. And that's a pretty serious question and I 25 want an answer to it.</p>				
<p>257: 2 A. Yeah. It would be, "Answer does not 3 apply." 4 Q. That's -- you're not answering my 5 question. I want to know what</p>				

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<p>attorney -- "The counsel 6 I have received on this matter is not to answer these 7 questions," and you are saying an attorney told you 8 that. And I want to know who the attorney is that is 9 telling the public -- 10 A. If Paul Jones was an active -- was part of 11 -- was the attorney at that time, it was probably Paul 12 Jones. But I can't say that for sure. 13 Q. If I notice up Paul Jones's deposition, is 14 that what he is going to tell me? 15 A. I don't know. I don't know what Paul 16 Jones is going to tell you. How would I know that? 17 Q. You are attributing something to 18 Mr. Jones, and I know Mr. Jones -- 19 A. Not for sure, because I don't know in 20 November 4, 2013 if he was part of this. I think he 21 was, but I don't know for sure.</p>				

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<p>22 Q. And you think he told you that you should</p> <p>23 tell customers not to answer the IRS's questions?</p>				
<p>258: 1 A. It was never not to answer. It was how to</p> <p>2 answer.</p> <p>3 Q. All right. No further questions on the</p> <p>4 document.</p> <p>5 Mr. Shepard, I'm giving you a copy of</p> <p>6 what's been marked for identification as Plaintiff's</p> <p>7 Exhibit 225. Do you recognize Exhibit 225?</p> <p>8 A. Yes.</p> <p>9 Q. What is it?</p> <p>10 A. It's an e-mail to -- it appears to be</p> <p>11 people who are being audited.</p> <p>12 Q. Okay. And you sent this e-mail?</p> <p>13 A. I did.</p> <p>14 Q. Okay. And then --</p> <p>15 A. And I made a mistake.</p> <p>16 Q. What is that?</p> <p>17 A. I didn't blind copy it, apparently.</p>			<p>225</p> <p>340</p>	

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<p>18 Q. There's a series of -- there appears to be 19 an attachment to this e-mail. It's about five pages 20 long. This exhibit is front and back copied, so you 21 only see two pages. Do you see the attachment? 22 A. Uh-huh (affirmative). 23 Q. Okay. Were those five pages attached to 24 the e-mail marked as 225? 25 A. I think it's four, isn't it? 259: 1 Q. Four. I stand corrected. You're right, 2 there's four. So there's four pages, starting with, 3 "Addendum: April 7, 2014," on RaPower3 letterhead. 4 A. Right. 5 Q. Who wrote the attachment? 6 A. I did. 7 Q. Okay. I'll direct your attention to the 8 third page marked Gregg_P&R-001750. 9 A. Okay. 10 Q. Third paragraph from the bottom, it says, 11 "The rental income will be</p>				

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<p>retroactive going back to 12 2010." Did I read that correctly? 13 A. You did. 14 Q. Okay. How can rental income be 15 retroactive? 16 A. And I'm not sure that it is. I don't know 17 where -- I'm not sure -- I hope it is, but I'm not sure 18 if it is anymore. 19 Q. Well, in 2014 when you wrote this addendum, 20 did you believe that rent income could be retroactive? 21 A. Yes. 22 Q. And what did you base that understanding 23 on? 24 A. It could have been -- probably something 25 Neldon said. But I may have misinterpreted what he 260: I said because that's a lot of rental income. Hope it's 2 true, because I've got a lot of rental income coming to 3 me. 4 Q. And when you say it's retroactive, what</p>				

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<p>5 does that mean? Are we going to go back in time? 6 A. Yeah. For example, I think what I meant 7 is if you bought in 2010 you might have \$150 per lens 8 coming to you for four years. 9 Q. Okay. There's been no rental income paid, 10 right? 11 A. Correct. 12 Q. And you used the term "retroactive," and 13 I'm trying to understand what you meant when you used 14 that term. 15 A. Okay. Well, when rental income is to be 16 paid, if there were revenue generated and rental income 17 started -- 18 Q. At some future point. 19 A. At some future point. 20 Q. Say 2020. 21 A. 2020. It could be retroactive. But I 22 don't know that's the case now. And I may have 23 misinterpreted what Neldon said. So I don't know if</p>				

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<p>24 that's -- I don't know if that will happen. I hope it 25 does. It would be great for our RaPower3 team members. 261: 1 Q. And your understanding that income can be 2 retroactive, you got that from Neldon Johnson? 3 A. I might have, yeah. 4 Q. Who else? 5 A. I don't know who else it would have been. 6 Q. But you think -- 7 A. If Neldon said it -- if it's not true, I 8 may have misinterpreted what he said. 9 Q. Okay. 10 A. And -- well, okay. 11 Q. If you want to finish your response, feel 12 free. 13 A. Yeah. There's nothing in writing. It 14 would be probably -- if it is true, it would be Neldon 15 Johnson's kind heart, I guess, saying that he would 16 take care of his RaPower3 team members.</p>				

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<p>17 Q. Mr. Shepard, I'm handing you a copy of</p> <p>18 what's been marked for identification as Plaintiff's</p> <p>19 Exhibit 340 from the Peter Gregg deposition.</p> <p>20 A. Okay.</p> <p>21 Q. Do you recognize this document?</p> <p>22 A. Yes.</p> <p>23 Q. What is it?</p> <p>24 A. It's an e-mail from me to -- again, I</p> <p>25 think people are being audited. Yeah. "Audit</p> <p>262: 1 Ammunition."</p> <p>2 Q. Okay. There was a series of pages that</p> <p>3 follow that e-mail. Were those all attached to the</p> <p>4 e-mail of February 20, 2015?</p> <p>5 A. Okay.</p> <p>6 Q. Is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Nothing further on that document.</p>				
<p>262: 9 Mr. Shepard, I'm handing you a copy of</p> <p>10 what's been marked for identification as Plaintiff's</p>			<p>372</p> <p>373</p> <p>375</p>	

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<p>11 Exhibit 372. Do you recognize Plaintiff's Exhibit 372?</p> <p>12 A. Wow, back to 2009. Yes.</p> <p>13 Q. What is it?</p> <p>14 A. It's an e-mail from me to Ken Oveson.</p> <p>15 Q. Who is Ken Oveson?</p> <p>16 A. I think he is a CPA for Mantyla, which is</p> <p>17 a CPA firm in Salt Lake City here.</p> <p>18 Q. Okay. And when you say he's for them, you</p> <p>19 mean he works at Mantyla McReynolds?</p> <p>20 A. Yes.</p> <p>21 Q. Was he your CPA?</p> <p>22 A. No.</p> <p>23 Q. You never had a client relationship with</p> <p>24 him?</p> <p>25 A. No.</p> <p>263: 1 Q. How about Mantyla McReynolds?</p> <p>2 A. Yes.</p> <p>3 Q. When did you have a client relationship</p> <p>4 sometime with Mantyla McReynolds?</p> <p>5 A. Bigger, Faster, Stronger did.</p>				

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<p>6 Q. Okay. In this e-mail with Ken Oveson from 7 August 24, 2009, the second paragraph says, "IAUS has 8 sent every client a letter stating that the units have 9 been placed in service. The IRS guidelines on that are 10 easy to meet. The IAUS units have done that." And it 11 says, "However, for audit purpose IAUS has a liability 12 until the units are working full time and producing 13 revenue. Therefore, until that happens, IAUS for audit 14 purposes says the units are not yet placed in service." 15 Did I read that correctly? 16 A. I think you read it correctly. I'm trying 17 to figure out what I meant by it. 18 Q. And that's my next question. Where did 19 you get this information from? 20 A. Okay. "IAUS has sent every client a 21 letter," placed in service. True. The guidelines, 22 IAUS units have done that. "For</p>				

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<p>audit purposes IAUS 23 has a liability," and I suppose I meant on that 24 liability until they are working is that they have a 25 contract they have to fulfill, producing revenue, and 264: 1 then they can pay their -- their rental fees can be 2 paid. "Therefore, until that happens," meaning working 3 and producing revenue, "IAUS for audit purposes says 4 the units are not yet placed in service." I don't know 5 where that came from. I know -- I suppose the 6 difference is looking at it from meeting the IRS -- 7 placed in service guidelines. 8 Yeah. That's me. I don't know -- that's 9 probably me being pretty naive. And I don't know where 10 I got that "not placed in service." I don't know why I 11 would have said that. Apparently I did. 12 Q. Okay. 13 A. And I might have -- I might</p>				

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<p>be -- I might 14 have made some typos, because I don't understand why I 15 wrote that. 16 Q. Well, in the e-mail below, from Ken Oveson 17 on August 24, 2009, in the bottom paragraph, it says, 18 "I am told by the audit department that the units being 19 sold are not yet placed in service." 20 A. Right. 21 Q. Okay. And he says, "From a tax 22 standpoint, 'placed in service' is a key factor in 23 taking deductions for depreciation and credits. Again 24 we need to research how this will impact those who have 25 already purchased units. Our first impression is that 265: 1 until the units are placed in service, there is no 2 deduction to be taken." Did I read that correctly? 3 A. Yes. 4 Q. Okay. "In fact, the amounts already paid</p>				

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<p>5 for units are recorded as deferred income since they 6 are not yet placed in service. There must be 7 consistency between the books of International 8 Automated Systems and the tax payer." Did I read that 9 correctly? 10 A. You did. 11 Q. And Mr. Oveson sent you that e-mail? 12 A. Yes. 13 Q. Okay. Handing you what's been marked as 14 Plaintiff's Exhibit 373. On August 25 -- do you 15 recognize Plaintiff's Exhibit 373? 16 A. I do. 17 Q. What is it? 18 A. It's from Ken Oveson. 19 Q. Okay. 20 A. The subject is "Solar Placed in Service." 21 Q. Okay. And I'm going to direct your 22 attention to the e-mails down at the bottom of the 23 first page and the second page of Exhibit 373. It</p>				

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<p>24 appears to be an e-mail from you to Ken Oveson on 25 August 25, 2009; is that right? 266: 1 A. Yes. 2 Q. You said, "Ken, this is what I sent my 3 sales team and clients. Having our solar property 4 'placed in service' with absolutely no grey areas is 5 fundamental to our selling units for our solar project 6 west of Delta. If you cannot accept this basic 7 premise, then I would quickly need to go in a different 8 direction." Did I read that correctly? 9 A. Yes. 10 Q. Why would you need to go in a different 11 direction? 12 A. To find another opinion. That's his 13 opinion. 14 Q. That's Ken Oveson's opinion? 15 A. Yeah. So he is not the only CPA or tax -- 16 he is not a tax attorney. He is a CPA. So going in a</p>				

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<p>17 different direction meant to find some other opinions. 18 Q. Another opinion that would agree with you 19 that the units are placed in service? 20 A. Yeah. Like a tax attorney opinion letter. 21 Q. You knew that -- 22 A. Yeah, I knew that he disagreed with that. 23 Q. Okay. You knew that in 2009? 24 A. I knew that Ken Oveson, a CPA, disagreed 25 with that. That doesn't mean I have to accept it. And 267: 1 I didn't. 2 Q. No further questions on Exhibit 373. 3 Handing you what's been marked for 4 identification as Plaintiff's Exhibit 375. You're not 5 on this e-mail so I don't expect that you'd recognize 6 it. But testimony we received from Preston Olsen is 7 that Ken Oveson, in November 2, 2009, stated he was no</p>				

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<p>8 longer working with Greg Shepard on this program. Do 9 you know why Ken Oveson wasn't working with you on what 10 I understand to be the RaPower3 program?</p>				
<p>267:13 A. I don't know. 14 Q. You were exchanging a series of e-mails 15 from Mr. Oveson in August of 2009? Did you have any 16 continued correspondence with Mr. Oveson? 17 A. I don't think so. I didn't like him.</p>				
<p>267:19 Exhibit 478 WAS MARKED.) 20 Q. Mr. Shepard, I've given you a copy of 21 what's been marked for identification as Plaintiff's 22 Exhibit 478. Do you recognize this document? 23 A. I do. 24 Q. What is it? 25 A. It's an e-mail sent to me -- or sent to 268: 1 Peter Gregg, and the subject is RaPower3 tax material. 2 Q. Okay. And you attach several</p>			478	

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<p>documents, 3 there's a memorandum from Kirton McConkie, and we have 4 talked about Kirton McConkie through this deposition; 5 there is a letter or memorandum, a letter from Hansen 6 Barnett & Maxwell; and a tax letter original on the 7 last four pages signed by Law Center, PC, Delta, Utah. 8 Is that correct? 9 A. I don't know yet. 10 Q. Okay. 11 A. I'm past the Hansen Barnett. So where are 12 you? What page? 662? 13 Q. The last four pages, I think. Five pages. 14 671. 15 A. 671? 16 Q. Yes. 17 A. Okay. 18 Q. The last attachment I understand is the 19 tax letter original and it's endorsed by Law Center, PC 20 in Delta, Utah? 21 A. Yes. 22 Q. Do you know who wrote the</p>				

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<p>tax letter 23 original? 24 A. I found out later. I didn't know at the 25 time. 269: 1 Q. Who? 2 A. Todd Anderson. 3 Q. Is that the same Todd Anderson whose 4 memorandum appears on the RaPower3 website? 5 A. It's not a memorandum. 6 Q. A letter? 7 A. Yes. 8 Q. Okay. So my understanding is that you 9 sent out the Kirton McConkie memorandum? 10 A. Memorandum. 11 Q. The Hansen Barnett memorandum. 12 A. I don't know. Is it called a memorandum? 13 I thought it was just a letter. I don't think a CPA 14 firm does memorandums. 15 Q. Well, my understanding is that the Hansen 16 Barnett document -- 17 A. The document.</p>				

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<p>18 Q. -- that was authored by them appears from 19 Gregg_P&R-000660 through Gregg_P&R-000670; is that 20 correct? 21 A. Right. 22 Q. And then after that, from Greg_P&R-000671 23 is what you later learned was the Todd Anderson letter. 24 A. Yes. 25 Q. Okay. And then from Greg_P&R-000646 270: 1 through Greg_P&R-000657 is the Kirton McConkie letter, 2 or the memorandum? 3 A. The memorandum, yes. 4 Q. Okay. No further questions on that 5 document.</p>				
<p>270: 6 Exhibit 479 WAS MARKED.) 7 Q. Mr. Shepard, I've given you a copy of 8 what's been marked for identification as Plaintiff's 9 Exhibit 479. Do you recognize 479? 10 A. I do. 11 Q. What is it?</p>			<p>479 370</p>	

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<p>12 A. Kirton McConkie's memorandum comments that</p> <p>13 I made.</p> <p>14 Q. You wrote this document?</p> <p>15 A. Yes, I did.</p> <p>16 Q. What did you do with it? What did you do</p> <p>17 with this document after you prepared it?</p> <p>18 A. I think it was -- well, I don't recall.</p> <p>19 But it probably went on the website and may have gone</p> <p>20 on to the RaPower3 team members.</p> <p>21 Q. Okay.</p> <p>22 A. Or those being audited. I can't remember.</p> <p>23 Q. Okay. And you wrote this based on your</p> <p>24 understanding of the Kirton McConkie memorandum.</p> <p>25 A. Yes.</p> <p>271: 1 Q. Who else did you get -- other than reading</p> <p>2 the Kirton McConkie memorandum, where else did you get</p> <p>3 the information that appears in Exhibit 479?</p>				

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<p>4 A. It's all mine.</p> <p>5 Q. It's all yours?</p> <p>6 A. Uh-huh (affirmative).</p> <p>7 Q. Okay. Mr. Shepard, I have handed you a</p> <p>8 copy of what's been marked for identification as</p> <p>9 Plaintiff's Exhibit 370 from the deposition of Ken</p> <p>10 Birrell. Do you recognize Plaintiff's Exhibit 370?</p> <p>11 A. No.</p> <p>12 Q. You have never seen it before?</p> <p>13 A. No. It was sent to Deseret, Utah. It</p> <p>14 never would have got to me.</p> <p>15 Q. Do you recognize the address that appears</p> <p>16 underneath your name?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. On KM00274?</p> <p>19 A. I do.</p> <p>20 Q. Whose address is that?</p> <p>21 A. At the time it was a home that was used as</p> <p>22 an office -- well, let's see. I'm not sure. I think</p> <p>23 at that -- well, January 2014? I can't quite remember</p>				

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<p>24 when Neldon made a switch. But it was either his home 25 or a previous home that I think he still owns. It's in 272: 1 Deseret, Utah. 2 Q. Was that the house we saw when we visited? 3 A. But I think what he did is he received 4 mail at that address for quite a while. 5 Q. Neldon Johnson received mail at that 6 address? 7 A. Uh-huh (affirmative). 8 Q. Okay. 9 MS. HEALY-GALLAGHER: Yes? 10 THE WITNESS: Yes. Thank you. 11 And my name is spelled wrong. But I never 12 saw this. 13 Q. (By Mr. Moran) You have never seen this? 14 A. No. 15 Q. The address here, is that the house that 16 we saw during the site visit? 17 A. No. It was a different one.</p>				

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<p>18 Q. Okay.</p> <p>19 A. It was a different one in Abraham, the</p> <p>20 house that you saw.</p> <p>21 Q. Have you ever heard about this letter?</p> <p>22 A. I haven't.</p>				
<p>273:10 Q. Have you ever spoken to Ken Birrell?</p> <p>11 A. Yes.</p> <p>12 Q. Let me back up a bit. Who is Ken Birrell?</p> <p>13 A. Ken Birrell, I believe, is a CPA or works</p> <p>14 for Kirton McConkie. I'm not sure of the exact</p> <p>15 capacity he is.</p> <p>16 Q. Do you think he is a CPA or a lawyer?</p> <p>17 A. I guess he is an attorney. An attorney.</p> <p>18 Q. And is he the author of the Kirton</p> <p>19 McConkie memorandum?</p> <p>20 A. I don't know.</p> <p>21 Q. Why don't you look back at Exhibit 478.</p> <p>22 A. Well, he's got his name on it, but I don't</p>			<p>478</p> <p>370</p>	

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<p>23 know if he is the complete author of it. 24 Q. Okay. 25 A. He works for a -- Kirton McConkie is a 274: 1 huge law firm. 2 Q. You have never spoken with Ken Birrell? 3 A. I have. 4 Q. You have spoken to Ken Birrell? 5 A. I have. 6 Q. When did you speak with Ken Birrell? 7 A. Soon after the Kirton McConkie memorandum 8 came out. 9 Q. Okay. And that would have been in October 10 of 2012? 11 A. Yes. 12 Q. Okay. What did you talk to him about? 13 A. Well, I went because I wanted to find out 14 information about it so that I felt more comfortable 15 with it. Or if they -- I can't remember the 16 chronological events. But they</p>				

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<p>came out and said that 17 we couldn't use it, or it wasn't -- and so I went to 18 Ken. I went to the office and said, "I want to speak 19 to somebody about this memorandum." So I waited about 20 half an hour and finally he came out and we spoke for 21 about five minutes. 22 Q. Ken Birrell came out? 23 A. Uh-huh (affirmative). 24 Q. And what did you talk about?</p>				
<p>275:11 Q. (By Mr. Moran) So Mr. Shepard, what did 12 you discuss with Mr. Birrell? 13 A. In my recollection, that he was saying 14 that for this memorandum to work, a person needed to 15 have an LLC. 16 Q. Okay. That's what Mr. Birrell told you? 17 A. Yes. So if he had a sole proprietorship, 18 that that could present a problem. 19 Q. And when you say in this arrangement, are 20 you talking about the RaPower3 sales contracts?</p>			479	

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<p>21 A. If a RaPower3 team member was -- bought 22 the lenses as a sole proprietor, that he wasn't going 23 to stand by this letter. 24 Q. Okay. And do you recall why that was? 25 A. I think he was trying to cover his rear 276: 1 end. 2 Q. Why would he be trying to cover his rear 3 end? 4 A. Well, this has been a big thorn in their 5 side for a long time. As I understand it, this law 6 firm is not in a very good position, but I don't know 7 that for sure. 8 Q. Now, you heard or you testified that you 9 heard Ken Birrell was saying that the Kirton McConkie 10 memorandum couldn't be used, and then you went down and 11 you talked to him; is that right? 12 A. Yes. 13 Q. Okay. How did you hear that Mr. Birrell</p>				

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<p>14 was saying that the memorandum couldn't be used? 15 A. From the IRS. 16 Q. Okay. And when was that? 17 A. It had to be really soon afterwards 18 because it was quite a while ago. Soon after the 19 memorandum came out. 20 Q. Okay. And the memorandum came out in 21 October 2012, right? 22 A. I think so. That sounds right. 23 Q. Is it fair to say that late 2012, early 24 2013, that's when, one, you heard Birrell saying the 25 memo couldn't be used. And then you went down there 277: 1 and talked to him? 2 A. Yes. 3 Q. That's the right time frame? 4 A. Yes. Approximately, yeah. I think I also 5 asked, "Do you stand by all of your statements in 6 there?" 7 Q. You asked who that? 8 A. Ken Birrell. I think. I think that's one</p>				

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<p>9 of the things I wanted to know. And if they were 10 valid, then why can't we use them. Why can't I use 11 them? Why can't I look up the tax law and the codes 12 that they cited? 13 Q. Okay. 14 A. Why can't I look at them and study them 15 and say, "Okay, this is pretty good"? Or why can't I 16 give it to a CPA and have them look at it and use that 17 as a reference? 18 Q. All right. Let me read from the Kirton 19 McConkie memorandum. I believe it appears on the third 20 page of Exhibit 370. 21 A. Okay. It's to SOLCO 1 from Ken Birrell? 22 Q. Yes. Dated October 31, 2012. 23 A. Yes. 24 Q. Is it your understanding this is a copy of 25 the Kirton McConkie memorandum that we have been 278: 1 talking about?</p>				

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<p>2 A. Yes.</p> <p>3 Q. And the Kirton McConkie memorandum that</p> <p>4 appears on RaPower3's website?</p> <p>5 A. I'm not sure. I'm not sure if SOLCO I is</p> <p>6 on there. I'd have to go back and look at it.</p> <p>7 Q. You are free to --</p> <p>8 A. It appears so.</p> <p>9 Q. And like I said before, if you need to</p> <p>10 correct any of this deposition testimony there will be</p> <p>11 an opportunity for that.</p> <p>12 A. Right. Because I made extensive comments</p> <p>13 on the memorandum, so yeah.</p> <p>14 Q. Okay. On the first page there's a heading</p> <p>15 Factual Background. Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. Okay. The first sentence in that</p> <p>18 paragraph says, "The Solar Lenses will be purchased by</p> <p>19 Buyers that are (i), corporations or limited liability</p> <p>20 companies organized in the</p>				

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<p>United States, (ii) neither 21 tax-exempt nor governmental entities and (iii) taxed as 22 subchapter C corporations for federal income tax 23 purposes." Did I read that correctly? 24 A. What's your point? 25 Q. I'm not making a point. I'm asking 279: 1 questions. Are you a corporation? 2 A. Yes. 3 Q. You, Greg Shepard, are a corporation? 4 A. I have an S-corp called Shepard Global. 5 Q. I know that. But my question is -- 6 A. Greg Shepard is not a corporation. 7 Q. You're an individual. 8 A. Yeah. And this was written to SOLCO I and 9 I don't even know who they are. 10 Q. I will direct your attention back to 11 Exhibit 479. This is your comments on the Kirton 12 McConkie memorandum.</p>				

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<p>13 A. Okay. Where are you? 14 Q. I draw your attention to the third page 15 labeled 3801. 16 A. Okay. 17 Q. The last paragraph on that page says, 18 "Shepard's note: The Kirton McConkie memorandum was 19 written specifically for corporations or limited 20 liability companies. While some RaPower3 Team Members 21 have purchased their Solar Lenses as an LLC, most have 22 purchased as a sole proprietor. However, Shepard 23 believes that the vast majority, if not all, of the 24 references and information contained therein also 25 applies to sole proprietor." Did I read that 280: 1 correctly? 2 A. Yeah. 3 Q. What did you base that belief on? 4 A. The tax code and tax laws that were cited 5 in there.</p>				

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<p>6 Q. Okay.</p> <p>7 A. I didn't see why an individual couldn't</p> <p>8 use those.</p> <p>9 Q. Okay. Now, you also testified that your</p> <p>10 understanding was Ken Birrell was saying it only</p> <p>11 applied to LLCs and corporations.</p> <p>12 A. Yes. But it was written for SOLCO 1 when</p> <p>13 he did that. He didn't write it with a sole proprietor</p> <p>14 in mind. He wrote it for a corporation. And that</p> <p>15 corporation was, at the time, considering buying a huge</p> <p>16 number of lenses.</p> <p>17 Q. Okay. And you believe --</p> <p>18 A. So it was written for that entity. That's</p> <p>19 my understanding. So the idea was to have that entity</p> <p>20 feel comfortable in buying tons of lenses. It had</p> <p>21 nothing to do with RaPower3.</p> <p>22 Q. All right.</p> <p>23 A. Okay?</p> <p>24 Q. Where did you get your copy</p>				

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<p>of the Kirton 25 McConkie memorandum? 281: 1 A. I don't recall. 2 Q. Well, it was written to SOLCO 1, LLC, 3 right? 4 A. Uh-huh (affirmative). 5 Q. Do you know who runs SOLCO 1, LLC? 6 A. No. 7 Q. You have no idea? 8 A. Well, it's just all -- it would be 9 speculation. I don't know the entities involved in 10 that and -- but I will tell you this: That I was -- 11 when I was looking at the possibility of doing a big 12 project, that I was given this I think by Neldon, that 13 I could use that if I was going to try to sign up a big 14 hitter, a million dollars or more or something like 15 that in lenses. 16 Q. And when you say "that," you are referring 17 to the Kirton McConkie memorandum? 18 A. Yes.</p>				

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19 Q. Okay.				
281:20 Exhibit 480 WAS MARKED.) 21 Q. Mr. Shepard you have been given a copy of 22 what's been marked for identification as Plaintiff's 23 Exhibit 480. Do you recognize it? 24 A. No. 25 Q. This appears to be a cease and desist 282: 1 letter from Tate Bennett on behalf of Todd Anderson. 2 A. Okay. 3 Q. You have already testified on Todd 4 Anderson and I understand that he also wrote a letter 5 about the RaPower3 solar lenses? 6 A. He wrote a tax attorney opinion letter. 7 Q. Okay. 8 A. That's all I know about it. I didn't even 9 know this existed. 10 Q. You have never ever heard of a cease and 11 desist letter -- withdrawn. 12 Have you ever heard that Todd			480 230	

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<p>Anderson 13 didn't stand behind that letter that you referred to as 14 the Anderson letter? 15 A. No. 16 Q. You have never heard that? 17 A. No. 18 Q. Okay. 19 A. When was this written? There's no date on 20 it. But the Todd Anderson tax attorney letter no 21 longer appears on the RaPower3 website. 22 Q. When did that come down? 23 A. Last week. 24 Q. You took it down last week? 25 A. Uh-huh (affirmative). 283: 1 Q. Why did you take it down? 2 A. It no longer really applies because we are 3 selling lenses now with a straight tax credit. 4 Q. So because you no longer offer 5 depreciation, you believe that the Todd Anderson 6 letter -- 7 A. I don't think we need it, because it's</p>				

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<p>8 pretty straightforward. 9 Q. Who made the decision to take it down? 10 A. I did. 11 Q. Did you talk to anyone about that 12 decision? 13 A. No. 14 Q. You just did it? 15 A. I did. 16 Q. Okay. Mr. Shepard, I have given you a 17 copy what's been marked for identification as Exhibit 18 230. I'll direct your attention to the last sentence 19 on the first page says, "The memorandum was on our 20 RaPower3 website for members benefit." 21 A. Where are you reading? Okay. Gotcha. 22 Q. "Since the memorandum was on our RaPower3 23 website for our members benefit, they used what Birrell 24 said to them to discredit his stance in defense of 25 RaPower3." And then there's text in bold. Did you</p>				

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<p>284: 1 write the text in bold? 2 A. I did. 3 Q. Okay. 4 A. Oh, yeah. That was the word the IRS used, 5 "rescind." That Birrell rescinded the memorandum. 6 Q. But in Exhibit 230, the text in bold, 7 that's your writing, right? 8 A. In bold, yeah.</p>				
<p>284:23 Q. I'll rephrase. Mr. Shepard, have you ever 24 discussed the federal tax benefits that are associated 25 with the solar lenses with Mr. Neldon Johnson? 285: 1 A. Very limited. 2 Q. Very limited? Okay. To the extent you've 3 had limited conversations, what did you discuss? 4 A. I don't think we ever discussed tax 5 credits, but discussed some depreciation; that because 6 the lenses were being used for R&D, that the RaPower3 7 team members had a monetary interest. They were being</p>			230	

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<p>8 used for a specific purpose, and that is advertising. 9 And so because they were used for advertising and 10 RaPower3 members were going to receive a monetary 11 benefit through the bonus contracts, that depreciation 12 was -- should be allowed. 13 Q. Okay. Who first came up with that 14 position, you or Mr. Johnson? 15 A. Oh, not me. I don't know if it was 16 Mr. Johnson, either. 17 Q. But you know you discussed that with 18 Mr. Johnson? 19 A. Yes. 20 Q. Okay. Do you know where Mr. Johnson got 21 that understanding from?</p>				
<p>285:24 A. I don't know. I would assume he got it 25 from his tax attorneys. Other than that, I don't know. 286: 1 Q. Did you ever ask him where he got that 2 understanding from? 3 A. No.</p>			481	

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<p>4 Exhibit 481 WAS MARKED.) 5 Q. Mr. Shepard, I have given you a copy of 6 what's been marked for identification as Plaintiff's 7 Exhibit 481. Do you recognize this exhibit? 8 A. I do. 9 Q. What is it? 10 A. This comes from a forum that is for 11 RaPower3 and IAUS shareholders. 12 Q. And I have heard this referred to as the 13 IAUS pro boards? 14 A. Yes. But I never call it that. 15 Q. What do you call it? 16 A. Message board. 17 Q. The message board. All right. Who 18 operates this message board? 19 A. My son, Matt. 20 Q. Okay. Do you oversee him? 21 A. I do. 22 Q. Okay. 23 A. So I have responsibility over everything 24 concerning this. 25 Q. Over the message board?</p>				

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287: 1 A. Over the message board.				
287:12 Mr. Shepard, we were talking about Exhibit 13 481 and I represented to you that Exhibit 481 is a 14 sampling of the IAS message board, as you referred to 15 it, and that you had assisted the United States in 16 getting access to the message board. 17 A. Yes. Correct. 18 Q. Okay. And I didn't print off the entire 19 thing to bring today, but my question for you is the 20 format that appears in Exhibit 481, it says IAUS & 21 RaPower3 Forum at the top, and then there's a series 22 of, like you said, a message board. If a document has 23 this header at the top, IAUS & RaPower3 Forum, are we 24 to understand that that is a message board that you 25 operate? 288: 1 A. Yes. 2 Q. Okay. On Exhibit 481 there's a beginning			481	

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<p>3 post dated December 8, 2015 from Chief, senior member. 4 A. Yeah. That's me. 5 Q. And this is your picture? 6 A. It is. 7 Q. Okay. 8 A. Which one are we looking at? 9 Q. You already answered my question. 10 A. Okay. 11 Q. That's your picture. 12 A. Yes. 13 Q. And is "chief" your handle? 14 A. Yes. 15 Q. And that's how you refer to yourself on 16 the message board? 17 A. Yes. 18 Q. Okay. 19 A. I'm the chief. Okay. Just kidding. 20 Q. Do you use any other -- 21 A. No. That's it. 22 Q. Let me finish the question. Do you use 23 any other names on the message board? 24 A. No. Well, sometimes I say Greg, or Greg 25 Shepard. But not as a handle.</p>				

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<p>289: 1 Q. Okay. Well, would that also say "chief" 2 then? 3 A. Yes. 4 Q. Okay. Who else is an administrator on 5 this message board? 6 A. No one. 7 Q. You're the only administrator? 8 A. What do you mean by "administrator"? 9 Q. Who administers it? Who runs it? 10 A. Matt, my son, under my direction. 11 Q. Okay. Do you know Matt Shepard's handle? 12 A. What is his handle? It has a - - has the 13 Cheshire cat on it. 14 Q. Okay. 15 A. I can't remember right now. Sorry. 16 Q. Okay.</p>				
<p>289:17 Exhibit 482 WAS MARKED.) 18 Q. Mr. Shepard, I've given you a copy of 19 what's been marked for identification as Plaintiff's</p>			482	

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<p>20 Exhibit 482. Do you recognize this document?</p> <p>21 A. I do.</p> <p>22 Q. What is it?</p> <p>23 A. It's a summary of the fifty systems of</p> <p>24 Patty Lambrecht/Ilios, LLC, which is a Greek name, to</p> <p>25 my understanding.</p> <p>290: 1 Q. Patty Lambrecht and Ilios, LLC purchased</p> <p>2 fifty systems?</p> <p>3 A. Yes.</p> <p>4 Q. Is that on December 15, 2008?</p> <p>5 A. Yes.</p> <p>6 Q. So is that under the old system or the new</p> <p>7 system? It seems like we have gone through several</p> <p>8 iterations of the system, so forgive me if I'm</p> <p>9 confused.</p> <p>10 A. This is when they were \$9000 a system.</p> <p>11 Hence, \$9000 times 50 would be \$450,000, is what she</p> <p>12 paid.</p> <p>13 Q. Patty Lambert paid International Automated</p> <p>14 Systems \$450,000?</p>				

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<p>15 A. Yes. Because I think that was before 16 RaPower3. 17 Q. Okay. And then earlier you testified that 18 you were entitled to a 10 percent commission. 19 A. I was. But this was a split client, so 20 there was another person that was involved in this. 21 Q. Who is that person? 22 A. Ryan Davies. 23 Q. Who is Ryan Davies? 24 A. A son-in-law of Mitt Romney. 25 Q. Okay. 291: 1 A. But other than -- oh, there is Ryan 2 Davies. So yeah. So it says "split." And Ryan Davies 3 was once involved with -- he was going to build a five 4 megawatt solar plant, five or ten, I think it was five 5 megawatts in Needles, California. And he wanted to use 6 Neldon's technology. 7 Q. When is the first time you met Ryan</p>				

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<p>8 Davies? 9 A. I think in 2008. 10 Q. What were the circumstances that you met 11 him? 12 A. I can't remember. 13 Q. Was it through Neldon Johnson? 14 A. I can't remember. 15 Q. You just -- okay. Why was this a split 16 commission with Patty Lambrecht? 17 A. Because Ryan Davies wanted some of my 18 expertise and he said, "Well, if I'm going to work on 19 it, we should split it." And I said okay. 20 Q. So Ryan Davies sought you to offer your 21 expertise? 22 A. Yes. 23 Q. How did he come to hear about you? 24 A. I don't know. I can't remember. 25 Q. Did he just call you up one day? 292: 1 A. I can't remember.</p>				

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<p>2 Q. And how did you come to learn about Patty Lambrecht?</p> <p>3 Lambrecht?</p> <p>4 A. Through Ryan Davies.</p> <p>5 Q. Okay. So Ryan Davies came to you and</p> <p>6 said, "Patty Lambert wants to buy some lenses"?</p> <p>7 A. Yes.</p> <p>8 Q. And do you know how he got your contact</p> <p>9 information?</p> <p>10 A. How he got my contact information?</p> <p>11 Q. Yes.</p> <p>12 A. I can't recall.</p> <p>13 Q. Okay. So that was a split commission</p> <p>14 where the commission would have been \$45,000, because</p> <p>15 that's 10 percent of \$450,000, right?</p> <p>16 A. Yes.</p> <p>17 Q. And then you split the commission with</p> <p>18 Ryan Davies?</p> <p>19 A. Yes.</p> <p>20 Q. So you were owed \$22,500 for the Patty</p> <p>21 Lambrecht sale.</p>				

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<p>22 A. Yes. 23 Q. And then there's a reference to bonus 24 units. 25 A. Yes. Correct. 293: 1 Q. What are the bonus units? 2 A. Has to do with the bonus contract; again, 3 percentage of the gross sales of IAS. 4 Q. Okay. So your potential bonus recovery 5 increased by 24 bonus units? 6 A. Yes. 7 Q. Okay. And then it says, "One bonus unit 8 to the following," and there's a series of names. Who 9 are the people whose names appear here? 10 A. I think Rod Davies is a brother or father 11 of Ryan. Jack Edwards, I think, was an acquaintance of 12 Ryan. I'm not sure why Lou Madsen was in this. 13 Q. Who is Lou Madsen? 14 A. I don't know. I know Monty Hamilton. 15 Q. Why would Monty Hamilton</p>				

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<p>be getting bonus 16 units? 17 A. I think I was feeling generous. That's a 18 lot. So Janie Smith is my mother-in-law. We had a 19 foundation and so some was going to go to the Richard 20 K. Black Foundation, who is a relative of mine who 21 died. And then Bigger, Faster, Stronger. You know Bob 22 Rowbotham. Mark is my son. Shauna is my daughter. 23 Scott is my son-in-law. Heather is my daughter-in-law. 24 Matt is my son. Andrea is my daughter. 25 Q. So it sounds like you gave bonus units to 294: 1 these individuals, many of whom are your family? 2 A. Yes. In a sense. So if the bonus money 3 were going to come in, then I would share that with 4 them. 5 Q. Okay. 6 A. It would come to me and then I would say,</p>				

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<p>7 "Okay, here is what I'm going to give you." And Salt 8 Lake -- oh, that's a music organization, Salt Lake 9 Youth -- I don't know. It's a string quartet thing. 10 Q. My question originally was, and I don't 11 think you answered it, why would these individuals be 12 getting bonus units? 13 A. Well, each one has its -- Rod Davis, Jack 14 Edwards, Lou Madsen would be Ryan Davies' thing. Monty 15 Hamilton, since we worked together on certain things, I 16 thought he deserved one. And then the rest is my 17 family or foundation. 18 Q. Did any of those people do anything to 19 advance the sale of lenses to Patty Lambrecht? 20 A. No. 21 Q. So why would income from the bonus be 22 attributable to them and not you? 23 A. It's not all. Some of it. 24 Q. All right. Well, why would</p>				

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<p>some of the 25 income be attributable to these several individuals and 295: 1 not you? 2 A. Why would I give my daughter money? Is 3 that your question? And my sons and my son-in-laws? 4 Q. Well, are you gifting the money to them? 5 A. Yeah. 6 Q. Okay. 7 A. And Bob Rowbotham was my partner in 8 Bigger, Faster, Stronger. He could use the money. And 9 then my mother-in-law could use it. And then the two 10 foundations, or a foundation and a youth string 11 ensemble group. 12 Q. So it's your testimony that you gifted 13 these bonus units to these individuals? 14 A. Yes.</p>				
<p>295:23 Q. (By Mr. Moran) Are you saying that those 24 bonus units have no value?</p>				

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<p>25 A. Yeah. I'm really looking forward to it. 296: 1 It's a lot of money.</p>				
<p>296: 9 Q. So do those bonus units have any value? 10 A. Absolutely. 11 Q. Okay. If they have value, if these bonus 12 units each have value, where did you get these units 13 from? 14 A. Oh, that's easy. It's part of the 15 commission deal. 16 Q. Okay. And you received these units from 17 International Automated Systems? 18 A. Yes. 19 Q. Okay. Did you report the value of those 20 units on your 2008 tax return? 21 A. No. Because I haven't received any 22 bonuses yet. Any money yet. 23 Q. Do those bonus units have any value? 24 A. Yes. 25 Q. Okay. 297: 1 A. Eventually.</p>				

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2 Q. Eventually. Did they have any value in 3 2008?				
297: 6 A. Yeah, I'm not -- that would be nice, 7 wouldn't it, to have me pay \$150,000 in taxes on money 8 I haven't received. That would be pretty cool. So, I 9 don't know. 10 Q. So is it your testimony the bonus units 11 don't have any value? 12 A. I hope they do at one time, but I don't 13 know if they -- I don't know. 14 Q. All right. In 2008 did you think -- right 15 now do you think that in 2008 the bonus units had any 16 value?				
297:23 A. I don't recall what I thought in 2008. 24 Q. Okay. No further questions on Exhibit 25 482.			482	
298: 1 Mr. Shepard, I'm handing you a copy of 2 what's been marked for identification as Plaintiff's			336	

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<p>3 Exhibit 336. Do you recognize this?</p> <p>4 A. Yes.</p> <p>5 Q. Is this an e-mail you sent on April 12,</p> <p>6 2016?</p> <p>7 A. Yes.</p> <p>8 Q. Who did you send it to?</p> <p>9 A. Those being audited by the IRS.</p> <p>10 Q. Okay. You reference an intimidating</p> <p>11 letter/subpoena from the IRS/Attorney General.</p> <p>12 A. Yes.</p> <p>13 Q. Are you referring to the subpoenas that</p> <p>14 the government issued in this case?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. You offer people the opportunity to</p> <p>17 call you to discuss those?</p> <p>18 A. Yes. Because it scared the crap out of</p> <p>19 them.</p> <p>20 Q. Did anyone call you?</p> <p>21 A. Yes. But I can't remember who.</p> <p>22 Q. All right. Do you recall what</p>				

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<p>you told 23 them? 24 A. Yes. "It's not as bad as you think. We 25 will get through it." 299: 1 Q. All right. Do you recall what they asked 2 you? 3 A. No. 4 Q. Okay. And did you -- you said, "We will 5 get through it. It's not as bad as you think." Did 6 you tell them anything else, like what to do? 7 A. No. I don't recall that.</p>				
<p>299:21 Q. (By Mr. Moran) Did you ever -- the people 22 you did talk to about the IRS, excuse me, the 23 government subpoena in this cause, did you tell them to 24 call Paul Jones? 25 A. No. 300: 1 Q. No? Did you tell anyone else to call? 2 A. No. 3 Q. Okay. Did you connect them with Paul 4 Jones in any way?</p>				

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<p>5 A. Well, no. No. 6 Q. No? 7 A. But Paul Jones is handling all of the 8 IRS -- so when the IRS turns down the audit, then it's 9 appealed. When the appeal is turned down, then there's 10 a petition. You have 90 days to petition the court. 11 And Paul Jones does that. 12 Q. Okay. Does Paul Jones have any other 13 involvement in --</p>				
<p>300:17 A. I know he does that, files petitions on 18 behalf of those RaPower3 clients where their appeal has 19 been turned down. But I actually tell the RaPower3 20 clients that are being audited they can't call Paul 21 Jones. 22 Q. They can or they can't? 23 A. They cannot. I don't want them to. 24 Q. Why not? 25 A. Because every time they call, he 301: 1 charges -- I don't know what</p>				

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<p>he charges, hundreds of 2 dollars an hour. And if we had a hundred people 3 calling him all the time to find out what's going on, 4 Neldon's bill would be a million dollars. And so I'm 5 not going to have that. 6 Q. Just to be clear -- 7 A. If they have a question, call me. And if 8 I can't answer it, then I can ask Paul Jones and I will 9 relay it. I don't want to give them carte blanche to go 10 talk to RaPower3 clients.</p>				
<p>301:17 Q. You testified that Neldon Johnson's legal 18 bill would be very high if people called him. And is 19 that because Neldon Johnson is paying Mr. Jones's legal 20 bills? 21 A. I don't know if Neldon Johnson is. 22 Q. Are you paying them? 23 A. Oh, no. 24 Q. Are the RaPower3 customers paying anyone's 25 bill?</p>				

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<p>302: 3 A. No. 4 Q. Let me rephrase that question. Are 5 RaPower3 customers paying Paul Jones's bill? 6 A. No. 7 Q. Okay.</p>				
<p>302: 8 Exhibit 483 WAS MARKED.) 9 Q. Mr. Shepard, you have been given a copy of 10 Plaintiff's Exhibit 483. Do you recognize this 11 document? This document was produced by RaPower3 to 12 the government. It appears to be a copy of a document 13 that was spiral bound at some point. 14 A. What is "Dr. Sterling Rigby" on here? 15 Q. I have no idea. 16 A. I don't either. 17 Q. Have you ever seen a spiral bound document 18 that looks like Exhibit 483? 19 A. No. I didn't put this together. 20 Q. Drawing your attention to the page labeled 21 Ra3 006383. I'll help you find</p>			483	

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<p>it if you want. 22 A. I'm pretty close to being there. Here it 23 is. 24 Q. This appears to be a -- what appears at 25 page 6383? 303: 1 A. That's an outline of a convention that we 2 had in 2012. 3 Q. And who ran this convention? 4 A. I did. 5 Q. Okay. Where did it happen? 6 A. Salt Lake County Library or Salt Lake City 7 Library. 8 Q. All right. And how many of these types of 9 conventions have you had? 10 A. Of this type? 11 Q. Yeah. 12 A. One. 13 Q. Just one? 14 A. Yes. 15 Q. Now, at that convention did you hand out 16 any materials? 17 A. I think I did, yeah. 18 Q. Okay. Were they -- would any of them have</p>				

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<p>19 looked like Exhibit 483? 20 A. Not to this extent, no. I think this was 21 cut and pasted or taken off the website by Sterling 22 Rigby. And then he was trying to sell lenses, and so 23 this is his attempt to sell lenses. 24 Q. Sterling Rigby is a RaPower3 customer? 25 A. I think he is, yeah. 304: 1 Q. Okay. 2 A. I also think he died. I don't think he is 3 around anymore.</p>				
<p>304: 4 Q. Okay. Mr. Shepard, I'm handing you a copy 5 of what's been marked for identification as 6 Government's Exhibit 282. Do you recognize Exhibit 7 282? 8 A. I do. 9 Q. What is it? 10 A. It's an e-mail that I sent to people being 11 audited on January 8, 2015. 12 Q. All right. I'm going to direct your 13 attention to the paragraph 1 that</p>			282	

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<p>says, "We know this 14 whole IRS thing has been stressful. We are sorry for 15 this. We believe our technology will soon be ready and 16 be in full production. We also believe we will prevail 17 against the IRS in court." 18 "However, if you would like to part 19 company, we will refund your money and you can pay the 20 IRS and move in a different direction. You can most 21 likely get the IRS to drop the penalties. But, if you 22 decide on the refund, then you would give up all the 23 bonuses and rental fees associated with those solar 24 lenses. This offer is good until February 15, 2015." 25 Did I read that correctly? 305: 1 A. Yes. Very fair. Good. 2 Q. Sounds like that's an opportunity for 3 RaPower3 members to get out? 4 A. Sure. 5 Q. Okay. Who authorized you to send out this</p>				

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<p>6 offer? 7 A. Neldon. 8 Q. Okay. 9 A. Well, he has always had that. If you want 10 your money back, you can have it. 11 Q. All right. By January 2015, how many 12 people, about how many people were on your distribution 13 list? 14 A. About a thousand. 15 Q. About a thousand. Okay. 16 A. Oh, on this? No. Probably a hundred. 17 Q. About a hundred? These are the people who 18 are being audited? 19 A. Yeah.</p>				
<p>306: 2 Q. Sorry. I'll withdraw that. Before I ask 3 any questions about it, do you recognize this 4 Plaintiff's Exhibit 10 ? 5 A. Yes. 6 Q. What is it? 7 A. This is written on March 20, 2015 8 regarding audits. "Dear IRS</p>			10	

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<p>Agents and Appeals 9 Officers." 10 Q. Did you send this letter to anyone? 11 A. I think I put it -- I can't remember if I 12 sent that out to -- it's written to agents and appeals 13 officers. I don't know how big my list was on that. 14 Q. Did you ever have communications with IRS 15 agents and appeals officers? 16 A. I had some communication, yeah. 17 Q. Did you send this letter to them? 18 A. I can't recall. 19 Q. Okay. But you did write this letter? 20 A. I did. Yeah. Absolutely. 21 Q. Okay. And would you have put it on the 22 website, the RaPower3 website? 23 A. I could have. I think it was on the 24 website. I don't think it still is, but maybe. 25 Q. Okay. Direct your attention to the last</p>				

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<p>307: 1 page. The first paragraph, begin reading in the middle 2 of the paragraph, it says, "Our solar lenses are 3 capable of producing searing heat the moment they come 4 off the production line at the Lucite plant in 5 Tennessee. Another limitation is there must be a 6 reasonable chance of success so the process of taking 7 the tax benefits doesn't go on for years without 8 results. Our year is this year." Did I read that 9 correctly? 10 A. Yes. 11 Q. How many years have RaPower3 or 12 International Automated Systems customers been claiming 13 tax benefits?</p>				
<p>307:16 A. Well, I started taking them in 2006. 17 Q. Okay. And how many years have you been 18 sending out placed-in-service letters, telling people 19 their lenses are placed in</p>				

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<p>service? 20 A. Five or six. 21 Q. Okay. And you say, "Our year is this 22 year." What do you mean by that statement? 23 A. Yeah. I thought that this -- when is this 24 dated? Yeah. I thought in 2015 that we would be -- 25 our towers would be up and running and we would have 308: 1 some good results. 2 Q. And what do you mean by "up and running"? 3 A. That the towers would be up and they could 4 be producing electricity. 5 Q. And doing what with the electricity? 6 A. Either producing electricity or heat 7 producing water. 8 Q. Okay. Did that happen? 9 A. And I don't know -- it doesn't necessarily 10 have to mean on the grid. But - - see, a lot of our 11 RaPower3 members are also shareholders.</p>				

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<p>12 Q. Okay.</p> <p>13 A. And so if the towers are up and producing</p> <p>14 heat, that's probably going to make the stock go up.</p> <p>15 If it is producing electricity, it would go up quite a</p> <p>16 bit.</p> <p>17 Q. All right. And when you say "producing</p> <p>18 electricity" does that include selling electricity?</p> <p>19 A. Not necessarily. If people came out and</p> <p>20 saw those lenses producing electricity, it's going to</p> <p>21 be a major, major event.</p> <p>22 Q. Okay.</p> <p>23 A. And the stock would go up considerably.</p> <p>24 If they go a step further and the power or the</p> <p>25 electricity is put on the grid, even if it's like 500</p> <p>309: 1 kilowatts, it would go up even higher. There's people</p> <p>2 waiting in the wings to put down money and do projects.</p> <p>3 So yeah, that would be a big event.</p>				

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<p>4 Q. And that's --</p> <p>5 A. And if Neldon gets all 200 towers up, that</p> <p>6 will be, I think, the tenth largest concentrated solar</p> <p>7 power in the nation.</p> <p>8 Q. But when you say, "Our year is this year,"</p> <p>9 are --</p> <p>10 A. Yeah. We thought it was going to be.</p> <p>11 Q. And that was 2015.</p> <p>12 A. Yeah.</p> <p>13 Q. And this was written over two years ago?</p> <p>14 A. Yeah.</p> <p>15 Q. Are there any more towers up?</p> <p>16 A. Yeah. There's 200 plus towers that are</p> <p>17 started.</p> <p>18 Q. They are started. I said are they</p> <p>19 installed? Are they up?</p> <p>20 A. No.</p> <p>21 Q. Okay. And when you say, "Our year is this</p> <p>22 year," what --</p> <p>23 A. I thought it was going to be.</p> <p>24 Q. Okay. Let me ask you this:</p>				

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<p>Did you 25 correct this statement? 310: 1 A. Yes. 2 Q. You sent a letter? 3 A. I mean, obviously they are not up, so I 4 said, you know -- yeah. So I'm sure that was done. 5 Q. How many years do you think it's going to 6 take? 7 A. Obviously it calls for speculation, but 8 things are happening very rapidly now, so I would say 9 in my best guess that this year could be our year. 10 Q. This year, 2017, could be your year? 11 A. 2017 could be the year. 12 Q. Okay. 13 A. And the reason I say that is because the 14 manufacturing is all completed, and it wasn't in 2015. 15 And we didn't know all the pitfalls that would come. 16 And we have already explored that to death, I think. 17 And now the construction</p>				

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<p>process has all been 18 completed, and so now we are ready just to go put up 19 the towers. 20 Q. All right. 21 A. And once that happens, then we are -- you 22 know, eventually that thing will be 700 megawatts and 23 will be the largest solar concentrated project in the 24 world. 25 Q. Okay. 311: 1 A. So that's the deal.</p>				
<p>311: 2 Q. You've answered the question. Did you, at 3 any point, ever learn of a criminal investigation into 4 RaPower3 conduct? 5 A. Criminal investigation against? 6 Q. Into the solar lenses that we have been 7 talking about all day. 8 A. No. 9 Q. You have never heard -- 10 A. I heard there was a criminal investigation 11 against Neldon, but I don't know about RaPower3.</p>				

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<p>12 Q. Do you know what that criminal 13 investigation involved? 14 A. Against Neldon? 15 Q. Whatever criminal investigation you're 16 talking about. 17 A. Yeah. I think -- no, I don't know 18 specifically. I just know there was an investigation, 19 and to my knowledge that's been dropped. 20 Q. Okay. Do you know if that criminal 21 investigation involved the solar lenses in any way? 22 A. I don't know. 23 Q. Were you aware of a search warrant that 24 was executed on Neldon Johnson's property? 25 A. Yes. There was one against me. 312: 1 Q. There was a search warrant against you? 2 A. Yeah. 3 Q. When was that? 4 A. 2012, June 29th. 5 Q. Okay. What, if anything, did</p>				

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<p>you do in 6 response? 7 A. To that? 8 Q. Yeah. 9 A. Complied. 10 Q. Okay. Did it change your view of the 11 solar lenses in any way? 12 A. Oh, no. In fact, it was orchestrated 13 on -- you know, you brought that up when the convention 14 was. It was done on purpose on that day. So all the 15 people that came from all over the country came out and 16 they thought that they were going to -- 17 Q. You can continue. 18 A. Okay. I like to have eye contact when I'm 19 talking. That's just the coach in me. 20 So they thought they would discourage, and 21 the exact opposite happened. Our RaPower3 members were 22 furious. 23 Q. Did you ever ask Neldon Johnson what the</p>				

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<p>24 criminal investigation was about?</p> <p>25 A. Against him? No. It was not my business.</p> <p>313: 1 Q. Okay.</p> <p>2 A. Because I know he is innocent.</p>				
<p>313: 8 Q. (By Mr. Moran) Mr. Shepard, obviously you</p> <p>9 are aware that there was a complaint filed in this case</p> <p>10 and that's why you are here for a deposition.</p> <p>11 A. Actually, I don't know why I'm here.</p> <p>12 Q. Are you aware that the United States filed</p> <p>13 a complaint in the United States District Court of</p> <p>14 Utah?</p> <p>15 A. Yeah. But I don't know why I'm here.</p> <p>16 Q. Okay.</p> <p>17 A. And I don't know what your beef is.</p> <p>18 Q. Okay.</p> <p>19 A. I have never known.</p> <p>20 Q. You are aware that a complaint was filed,</p> <p>21 right?</p> <p>22 A. Yeah. But why?</p>				

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<p>23 Q. You can talk to your attorney about that.</p> <p>24 A. Why are you here? I don't know why you</p> <p>25 are here.</p> <p>314: 1 Q. Did the United States filing that</p> <p>2 complaint change your conduct in any way?</p> <p>3 A. Yeah.</p> <p>4 Q. How?</p> <p>5 A. I bowed my back and I'm fighting harder.</p> <p>6 Q. Okay. And what have you told -- have you</p> <p>7 had discussions about the United States complaint with</p> <p>8 anyone else, such as RaPower3 customers?</p> <p>9 A. Oh, yeah. All the time.</p> <p>10 Q. And what have you told them?</p> <p>11 A. I told them the Department of Justice</p> <p>12 people are wrong, and the IRS is wrong. They don't</p> <p>13 understand, and we are fighting hard every day to bring</p> <p>14 clean, affordable renewable energy. We have seven</p>				

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<p>15 disruptive technologies which you haven't acknowledged.</p> <p>16 You haven't got expert witnesses to verify any of that,</p> <p>17 and you need to do that if you are going to really do</p> <p>18 the thing right. But you're not. So that's ...</p> <p>19 Q. We have no further questions at this time.</p> <p>20 A. Every man, woman, and child in Utah and</p> <p>21 the United States is going to be blessed for</p> <p>22 generations to come. Even your families. It will be a</p> <p>23 really nice thing for you, Chris.</p>				
<p>319:25 Q. I'll direct your attention to the last</p> <p>320: 1 page of Exhibit 479. Take a minute and review that</p> <p>2 and see if that refreshes your recollection.</p> <p>3 A. Where are we looking? Oh, this last page?</p> <p>4 Okay. Oh, there it is. Yeah.</p> <p>5 So I think that was sent to those being</p> <p>6 audited, from the looks of the</p>			479	

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<p>people on there. 7 Q. And you -- 8 A. I don't think that was sent out in 9 general. That was sent out to people that was being 10 audited. And at that time it was probably forty 11 people. 12 Q. Okay. So the record is clear - - 13 A. That I did send it out. 14 Q. You did send out the document entitled 15 Kirton McConkie Memorandum Commence that appears -- 16 A. Yes. 17 Q. -- in Shepard_Greg-03799 through 18 Shepard_Greg-03801. 19 A. Yeah. Right. And it's doubtful that -- 20 that wouldn't have been on the website. 21 Q. Okay.</p>				
<p>320:24 Q. All right. At this point we have no 25 further questions. Mr. Shepard, we thank you for your</p>				

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<p>321: 1 time. 2 A. You're welcome. 3 Q. You're free to go. 4 MS. HEALY-GALLAGHER: Do you want to read 5 and sign? 6 MR. REAY: No. 7 MR. MORAN: So the record is clear, 8 Mr. Shepard is exercising his rights not to read and 9 sign? 10 MR. REAY: Yeah. I don't think we need 11 to, unless you want to read through all of your stuff. 12 THE WITNESS: What did he say? 13 MR. REAY: Read through this deposition 14 once you get the transcript, and sign it to confirm 15 everything that was said. 16 THE WITNESS: You want to be here another 17 hour? 18 MR. REAY: Not today. 19 THE WITNESS: I don't think so. 20 MR. MORAN: I want to be</p>				

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clear that you 21 are going to accept the deposition however Madam Court 22 Reporter here prepares it? 23 THE WITNESS: Yeah. She looks great. 24 MR. REAY: I think that's fine. 25 (The deposition concluded at 7:43 p.m.)				

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DEFENDANT COUNTER- DESIGNATIONS	PLAINTIFF COUNTER- DESIGNATIONS			

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

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