

# UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

UNITED STATES  
V.  
RAPOWER-3, LLC, ET AL.

## UNITED STATES' WITNESS LIST

Case Number: 2:15-cv-00828 DN

PRESIDING JUDGE					PLAINTIFF'S ATTORNEY	DEFENDANT'S ATTORNEY
David Nuffer					Erin Healy Gallagher	Denver Snuffer
TRIAL DATE (S)					COURT REPORTER	COURTROOM DEPUTY
April 2-5, 19-20, 23-26						Anndrea Sullivan-Bowers
PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS* AND WITNESSES	
					<b>The United States will call the following witnesses live at trial:</b>	
					<p>Jessica Anderson. Ms. Anderson is a fact witness, and an attorney in partnership with her husband, Todd Anderson. We anticipate that Ms. Anderson will testify about what happened when she provided certain writings to Neldon Johnson in response to his questions about tax law; after learning more specific facts of the transactions Mr. Johnson proposed, Ms. Anderson told him that she could not identify a lawful way for his solar lens customers to claim the tax benefits he wanted to promote; and she fired Mr. Johnson as a client.</p>	
					<p>Todd Anderson. Mr. Anderson is a fact witness, and an attorney in in partnership with his wife, Jessica Anderson. We anticipate that Mr. Anderson will testify about what happened when Neldon Johnson asked him for information about tax law; how Mr. Anderson worked with his wife, Jessica Anderson, to deliver that information; what happened after Ms. Anderson fired Mr. Johnson; and the steps Mr. Anderson took once he learned that Mr. Johnson was using a draft letter provided by the Andersons to promote the solar energy scheme.</p>	
					<p>Kenneth Birrell. Mr. Birrell is a fact witness, and an attorney at Kirton McConkie. We anticipate that Mr. Birrell will testify about 1) his engagement with Neldon Johnson's company SOLCO I to provide a memorandum regarding tax issues relating to the sale of solar lenses; 2) what facts and information he was given to prepare the memorandum; 3) that the facts and information he was given are different from the facts he now knows about the solar lenses and transactions regarding the lenses; and 4) that when Mr. Birrell learned his memorandum to promote the solar energy scheme, he and his firm directed Defendants to stop using the memorandum.</p>	
					<p>Cody Buck. Mr. Buck is fact witness, and a CPA who used to work at the accounting firm Mantyla McReynolds. We anticipate that Mr. Buck will testify that he audits companies' financial statements. He was assigned to audit International Automated Systems' books and records, where he learned that Defendants' solar lenses were not placed in service. Because the solar lenses were not placed in service, IAS recorded the deposits it received for the lenses as "deferred income" that could not be recognized by IAS because it might need to be returned to the customers. Mr. Buck then shared his knowledge with Ken Oveson (who also worked at Mantyla McReynolds), when R. Gregory Shepard sought advice from Mr. Oveson.</p>	
					<p>Terri Eppich. Ms. Eppich is an IRS records custodian. We anticipate that she will testify about the steps she took to provide tax returns requested by counsel for the United States and will otherwise lay the foundation for the tax returns as business records under Fed. R. Evid. 803(6). We have a Fed. R. Evid. 902(11) declaration from this witness that may be used in lieu of live testimony.</p>	

\* Include a notation as to the location of any exhibit not held with the case file or not available because of size.

**Plaintiff  
Exhibit**

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**EXHIBIT AND WITNESS LIST – CONTINUATION**

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					<p>Richard Jameson. Mr. Jameson is a fact witness and tax return preparer. Beginning in or around 2013, Mr. Jameson was introduced to Defendants, their solar lenses, and the associated tax benefits Defendants promoted with their solar lenses. We anticipate that Mr. Jameson will testify about his 1) introduction to Defendants and their solar lenses; 2) his work as a return preparer to prepare tax returns for Defendants' customers claiming tax credits and depreciation (and other) expenses as a result of customers buying lenses; and 3) statements by Defendants regarding the purported solar energy technology and the tax benefits they promoted in connection with their purported technology. Mr. Jameson is expected to testify regarding his role in customer audits by the IRS. Defendants have designated Mr. Jameson as an "expert witness," and we expect to voir dire and cross-examine Mr. Jameson to the extent the Court allows him to testify under Fed. R. Evid. 702.</p>
					<p>Neldon Johnson. Neldon Johnson is a Defendant. We expect Mr. Johnson will testify about the entities he created, owns, and controls, and how, at his direction, they further the solar energy scheme that he created; the documents he created to further the solar energy scheme; the sales efforts he has directed to promote the solar energy scheme; the facts that he knew about the purported solar energy technology and transaction documents underlying the solar energy scheme (which he commissioned); statements he made to salespeople, customers and others regarding the purported solar energy technology and the tax benefits he promoted in connection with their purported technology; the money he and his entities have made pursuant to the solar energy scheme; the control he has over the entities' funds; and the manner in which he directs those funds. Defendants have designated Mr. Johnson as an "expert witness," and we expect to voir dire and cross-examine Mr. Johnson to the extent the Court allows him to testify under Fed. R. Evid. 702. To the extent the United States has designated Mr. Johnson's deposition testimony and the Court admits that testimony as evidence, the United States will not call Mr. Johnson to testify live on the same topics.</p>
					<p>Dr. Thomas Mancini. Dr. Mancini is the United States' expert witness on solar energy technology. We anticipate that he will testify that 1) Defendants' purported solar energy technology does not produce electricity or other useable energy from the sun and has not done so; and 2) Defendants' purported solar energy technology is not now nor will it ever be a commercial-grade dish solar system converting sunlight into electrical power or other useful energy. Dr. Mancini will also testify to the reasons for his conclusions.</p>
					<p>Preston Olsen. Mr. Olsen is a fact witness and an attorney. We anticipate that Mr. Olsen will testify that he was introduced to the solar energy scheme by Matthew Shepard, purchased solar lenses from Defendants, repeatedly over many years, and used the claimed depreciation and tax credits to reduce his federal income tax liability to \$0, or close to it. Mr. Olsen will also testify about the statements defendants, or their agents made to him regarding the purported solar energy technology and the tax benefits they promoted in connection with their purported technology.</p>
					<p>Ken Oveson. Mr. Oveson is a fact witness and a now-retired CPA from Mantyla McReynolds. We anticipate that he will testify that he was approached by Greg Shepard in 2009 to give advice and consult about the defendants' solar lenses and the purported tax benefits. Mr. Oveson will testify that he did not agree with Mr. Shepard's position on the purported tax benefits of the solar lenses because no lens was placed in service. Mr. Oveson learned about the status of the solar lenses from Cody Buck.</p>
					<p>JoAnna Perez. Ms. Perez is a paralegal specialist with the Department of Justice Tax Division. We anticipate that Ms. Perez will provide testimony summarizing voluminous tax returns and a chart showing the sum of depreciation expenses and solar tax credits claimed by a subset of Defendants' customers between 2013 and 2016 on their tax returns. Ms. Perez will also testify that she multiplied the average tax rate (as published by the IRS Statistics of Income office) to the depreciation expenses claimed for each year to arrive at an estimate of tax harm caused by the depreciation and solar energy tax credits claimed by Defendants' customers.</p>

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					Amanda Reinken. Ms. Reinken is a paralegal specialist with the Department of Justice Tax Division. We anticipate that Ms. Reinken will testify regarding: 1) summary exhibits she created from voluminous bank records; 2) website captures and website downloads of statements and information published by Defendants in December 2017; and 3) how she converted reports Defendants provided from their customer database to a useable Excel spreadsheet and applied an Excel formula to tally the number of lenses Defendants reported having sold.
					Lamar Roulhac. Mr. Roulhac is a fact witness. We expect Mr. Roulhac will testify regarding his work collecting the Defendant's customer database on February 28, 2018, the circumstances of that collection, and his work extracting the data from the database into a more easily understandable Excel format.
					Robert Rowbotham. Mr. Rowbotham is a fact witness and R. Gregory Shepard's former business partner from when they co-managed, and owned, an entity known as "Bigger Faster, Stronger" (BFS). We expect Mr. Rowbotham to testify that BFS marketed athletic conditioning programs, and equipment nationwide, particularly to high school athletic programs across the country. Mr. Shepard used his BFS contacts to promote the solar lens scheme to teachers and coaches that were associated with BFS. Mr. Rowbotham began purchasing lenses in 2005, and was one of Defendants' earliest customers. We also expect that Mr. Rowbotham will testify about Defendants' statements regarding the purported solar energy technology and the tax benefits they promoted in connection with their purported technology.
					Matthew Shepard. Mr. Shepard is a fact witness and R. Gregory Shepard's son. He is the "Assistant Director of Operations" for RaPower-3. We anticipate that he will testify regarding statements Defendants made regarding the purported solar energy technology and the tax benefits they promoted in connection with their purported technology; directions he takes from R. Gregory Shepard; and the tasks he performs at R. Gregory Shepard's instruction, for RaPower-3's marketing efforts through the websites, email, and various social media platforms. We also expect that he will testify about solar lenses he bought and his activities selling lenses to other people.
					R. Gregory Shepard Mr. Shepard is a Defendant. We expect Mr. Shepard will testify about statements other Defendants made regarding the purported solar energy technology and the tax benefits they promoted in connection with their purported technology; the entities he created, owns, and controls, and how they further the solar energy scheme at his direction; the documents he created to further the solar energy scheme; the sales efforts he has directed to further the solar energy scheme; the facts that he knew about the purported solar energy technology and transaction documents underlying the solar energy scheme; the money he and his entities have made pursuant to the solar energy scheme; the control he has over the entities' funds; and the manner in which he directs those funds. To the extent the United States has designated Mr. Shepard's deposition testimony and the Court admits that testimony as evidence, the United States will not call Mr. Shepard to testify live on the same topics.
					Lynette Williams. Ms. Williams is a fact witness who purchased solar lenses from IAS in or around 2008. We anticipate that Ms. Williams will testify about her 1) solar lens purchase and the fact that she has not made any income from the solar lens purchase, 2) used depreciation and tax credits to reduce her federal income tax liability, and 3) about statements Defendants, or their agents made to her regarding the purported solar energy technology and the tax benefits they promoted in connection with their purported technology.

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					<b>The United States may call the following witnesses live at trial:</b>		
					Records Custodian, Bank of American Fork. We anticipate that this witness will lay the foundation for records from this bank as business records under Fed. R. Evid. 803(6). We have a Fed. R. Evid. 902(11) declaration that may be used in lieu of live testimony.		
					Records Custodian, Cyprus Credit Union We anticipate that this witness will lay the foundation for records from this bank as business records under Fed. R. Evid. 803(6). We have a Fed. R. Evid. 902(11) declaration that may be used in lieu of live testimony.		
					Records Custodian, JPMorgan Chase Bank, N.A. We anticipate that this witness will lay the foundation for records from this bank as business records under Fed. R. Evid. 803(6). We have a Fed. R. Evid. 902(11) declaration that may be used in lieu of live testimony.		
					Records Custodian, Key Bank We anticipate that this witness will lay the foundation for records from this bank as business records under Fed. R. Evid. 803(6). We have a Fed. R. Evid. 902(11) declaration that may be used in lieu of live testimony.		
					Records Custodian, Millard County Credit Union We anticipate that this witness will lay the foundation for records from this bank as business records under Fed. R. Evid. 803(6). We have a Fed. R. Evid. 902(11) declaration that may be used in lieu of live testimony.		
					Records Custodian, Wells Fargo Bank, N.A. We anticipate that this witness will lay the foundation for records from this bank as business records under Fed. R. Evid. 803(6). We have a Fed. R. Evid. 902(11) declaration that may be used in lieu of live testimony.		
					Records Custodian, Zions First National Bank We anticipate that this witness will lay the foundation for records from this bank as business records under Fed. R. Evid. 803(6). We have a Fed. R. Evid. 902(11) declaration that may be used in lieu of live testimony.		
					<b>The United States will call the following witnesses by deposition designation at trial:</b>		
					Robert Aulds. Mr. Aulds is a fact witness who resides in Boyd, TX, and is a customer of RaPower-3. He testified in deposition about how he was introduced to the solar energy scheme; statements made to him by Defendants and others regarding the purported solar energy technology and the tax benefits they promoted in connection with their purported technology; his lens purchases (for himself and for entities that he owns or controls) from RaPower-3; the tax benefits he claimed as a result of buying lenses; his activities to sell lenses for RaPower-3 and his "downline" of people who bought lenses because of his sales activities. Mr. Aulds also testified about having been audited by the IRS and statements Defendants made to him in the course of that audit.		
					Roger A. Freeborn. Mr. Freeborn, now deceased, is a former Defendant. Mr. Freeborn testified in deposition about how he was introduced to the solar energy scheme; statements made to him by other Defendants regarding the purported solar energy technology and the tax benefits they promoted in connection with their purported technology; his lens purchases from IAS and RaPower-3; the tax benefits he claimed as a result of buying lenses; his activities to sell lenses for RaPower-3 and his "downline" of people who bought lenses because of his sales activities.		

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					<p>Peter C. Gregg Mr. Gregg is a fact witness who resides in Sandy, OR, and is a customer of RaPower-3. He testified in deposition about how he was introduced to the solar energy scheme; statements made to him by Defendants regarding the purported solar energy technology and the tax benefits they promoted in connection with their purported technology; his lens purchases from RaPower-3; the tax benefits he claimed as a result of buying lenses; his activities to sell lenses for RaPower-3 and his "downline" of people who bought lenses because of his sales activities. Mr. Gregg also testified about his audit, and subsequent state tax court cases arising out of the tax benefits he claimed as a result of the solar energy scheme, and his audit by the IRS.</p>	
					<p>Roger Halverson Mr. Halverson is a fact witness who resides in Stuart, FL. He testified in deposition that he is a CPA whose client bought solar lenses from IAS. He testified about statements made to him by Defendants about the solar energy scheme; his client's lens purchases from RaPower-3; the tax benefits she claimed as a result of buying lenses. Mr. Halverson also testified about his communications with Defendants after the purchase, regarding the income that his client expected to receive based on Defendants' contract documents.</p>	
					<p>John Howell Mr. Howell is a fact witness who resides in Wichita Falls, TX. Mr. Howell testified in deposition about how he was introduced to Defendants, statements by Defendants regarding the purported solar energy technology and the tax benefits they promoted in connection with their purported technology; his own solar lens purchases (on behalf of himself and an entity he owns and controls); his work as a return preparer to prepare tax returns for Defendants' customers claiming tax credits and depreciation (and other) expenses as a result of customers buying lenses; and his role in customer audits by the IRS.</p>	
					<p>International Automated Systems, Inc. IAS is a Defendant. Neldon Johnson, as the Fed. R. Civ. P. 30(b)(6) designee for IAS testified in deposition about IAS's role in the solar energy scheme; his role in initiating and organizing the solar energy scheme through IAS; his ownership, either personally or with immediate family members, of IAS; his control of IAS and other companies Mr. Johnson owns; the facts that IAS knew about the purported solar energy technology and transaction documents underlying the solar energy scheme; IAS financials; IAS relationships with other entities that Mr. Johnson owns and controls, including RaPower-3; his statements, thorough IAS, to salespeople and customers about the purported solar energy technology, its purported capacity for and likelihood of producing electricity, and the purported tax benefits he claims are connected with buying a lens; and that IAS has never paid a customer for the use of a customer's lens for any purpose.</p>	
					<p>Neldon Johnson (volumes 1 and 2). Neldon Johnson is a Defendant. At his depositions, Mr. Johnson testified about the entities he created, owns, and controls, and how, at his direction, they further the solar energy scheme that he created; the documents he created to further the solar energy scheme; the sales efforts he has directed to promote the solar energy scheme; the facts that he knew about the purported solar energy technology and transaction documents underlying the solar energy scheme (which he commissioned); statements he made to salespeople, customers and others regarding the purported solar energy technology and the tax benefits he promoted in connection with their purported technology; the money he and his entities have made pursuant to the solar energy scheme; the control he has over the entities' funds; and the manner in which he directs those funds.</p>	

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					<p><b>LTB1, LLC</b>            LTB1, LLC is a Defendant. Neldon Johnson, as the Fed. R. Civ. P. 30(b)(6) designee for LTB1 testified in deposition that LTB1 (along with all other “LTB” entities) exist only on paper and have never done anything. They do not have employees or bank accounts and have undertaken no activity. Mr. Johnson testified that no LTB entity has ever generated revenue from any source; no LTB entity has paid a customer for using a lens for any reason. Mr. Johnson testified, however, that he and others who sell solar lenses and the solar energy scheme nonetheless tell customers that they “lease out” their lenses to LTB, LLC. Mr. Johnson also testified about his control of the LTB entities; and the LTB entities’ lack of relationships with other entities that Mr. Johnson owns and controls in the solar energy scheme, including IAS and RaPower-3; his statements to others like R. Gregory Shepard about what the LTB entities would purportedly do with customers’ lenses; and the lack of operating guidelines for solar lenses.</p>	
					<p><b>Frank F. Lunn</b>            Mr. Lunn is a fact witness who resides in LeRoy, IL, and is a customer of RaPower-3. He testified in deposition about how he was introduced to the solar energy scheme; statements made to him by Defendants regarding the purported solar energy technology and the tax benefits they promoted in connection with their purported technology; his lens purchases (for himself and for entities that he owns or controls) from RaPower-3; the tax benefits he claimed as a result of buying lenses; his activities to sell lenses for RaPower-3 and his “downline” of people who bought lenses because of his sales activities. Mr. Lunn also testified about having been audited by the IRS and statements Defendants made to him in the course of that audit.</p>	
					<p><b>PacifiCorp</b>            The deposition of PacifiCorp is actually the depositions of three PacifiCorp employees who are fact witnesses, all of whom live in the Portland, OR, area: Bruce Griswold, Kristopher Bremer, and Veronica Whitesmith. Mr. Griswold testified as to his personal knowledge of PacifiCorp’s activities and how PacifiCorp is organized, including its Rocky Mountain Power business unit. Mr. Griswold also testified as to his personal knowledge of the process of obtaining a power purchase agreement from PacifiCorp, and that no Defendant in this case has a power purchase agreement with PacifiCorp. Mr. Bremer testified as to his personal knowledge of the process of obtaining a generation interconnection agreement with PacifiCorp, which would allow an electricity-producing facility to physically interconnect to PacifiCorp’s electric system. Mr. Bremer also testified as to his personal knowledge that no Defendant in this case has a generation interconnection agreement with PacifiCorp. Ms. Whitesmith testified as to her personal knowledge of the process for transmission service agreement requests to PacifiCorp, and that no Defendant in this case has a transmission service agreement with PacifiCorp.</p>	
					<p><b>Mike Penn</b>            Mr. Penn is a fact witness who resides in Wichita Falls, TX, and was a customer of RaPower-3. He testified in deposition about how he was introduced to the solar energy scheme; statements made to him regarding the purported solar energy technology and the tax benefits promoted in connection with the purported technology; his lens purchases from RaPower-3; the tax benefits he claimed as a result of buying lenses; his suspicion that the solar energy scheme was, in fact, abusive; and his agreement with the IRS’s disallowance of the tax benefits he claimed as a result of the solar energy scheme.</p>	
					<p><b>RaPower-3, LLC</b>            RaPower-3 is a Defendant. Neldon Johnson, as the Fed. R. Civ. P. 30(b)(6) designee for RaPower-3 testified in deposition about RaPower-3’s role in the solar energy scheme; his role in organizing the solar energy scheme through RaPower-3; his ownership, either personally or with immediate family members, of RaPower-3; his control of RaPower-3 and other companies Mr. Johnson owns; the facts that RaPower-3 knew about the purported solar energy technology and transaction documents underlying the solar energy scheme; RaPower-3 financials; RaPower-3 relationships with other entities that Mr. Johnson owns and controls, including IAS; his statements, thorough RaPower-3, to salespeople and customers regarding the purported solar energy technology and the tax benefits he promoted in connection with their purported technology, its purported capacity for and likelihood of producing electricity, and the purported tax benefits he claims are connected with buying a lens; and that RaPower-3 has never paid a customer for the use of a customer’s lens for any purpose.</p>	

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					<p>R. Gregory Shepard Mr. Shepard is a Defendant. At his deposition, Mr. Shepard testified about statements other Defendants made regarding the purported solar energy technology and the tax benefits they promoted in connection with their purported technology; statements he made to customers, salespeople, and others regarding the purported solar energy technology and the tax benefits he promoted in connection with their purported technology; the documents he created to further the solar energy scheme; the sales efforts he has directed to organize the solar energy scheme; and the facts that he knew about the purported solar energy technology and transaction documents underlying the solar energy scheme.</p>
					<p>Brian Zeleznik Mr. Zeleznik is a fact witness who resides in LeRoy, IL, and is a customer of RaPower-3. He testified in deposition about how he was introduced to the solar energy scheme; statements made to him by Defendants regarding the purported solar energy technology and the tax benefits they promoted in connection with their purported technology; his lens purchases from RaPower-3; the tax benefits he claimed as a result of buying lenses; his activities to sell lenses for RaPower-3 and his “downline” of people who bought lenses because of his sales activities. Mr. Zeleznik also testified about having been audited by the IRS and statements Defendants made to him in the course of that audit.</p>