

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,)	7 : 17 - mc - 2
)	
Plaintiff,)	
)	
v.)	(pending in the United States District
)	Court for the District of Utah, Civil No.
RAPOWER-3, LLC, INTERNATIONAL)	2:15-cv-00828-DN-EJF)
AUTOMATED SYSTEMS INC.,)	
LTB1, LLC, R. GEGORY SHEPARD,)	
NELDON JOHNSON, and)	
ROGER FREEBORN,)	
)	
Defendants.)	
_____)	

**DECLARATION OF ERIN HEALY GALLAGHER IN SUPPORT OF UNITED STATES’
MOTION TO COMPEL THE DEPOSITION OF THIRD-PARTY JOHN HOWELL**

I, Erin Healy Gallagher, declare:

1. I am employed as a Trial Attorney by the Tax Division of the United States Department of Justice.
2. I am an attorney of record in the above captioned matter, which is pending in the United States District Court for the District of Utah, Civil No. 2:15-cv-00828-DN-EJF.
3. I make this declaration in support of the United States’ Motion to Compel the deposition of third party John Howell.
4. At the United States’ direction, on August 9, 2016, a process server personally served Mr. Howell with a subpoena *duces tecum* requiring him to produce documents in the above-captioned case.

5. After serving Mr. Howell with the subpoena *duces tecum*, counsel for the United States learned that Mr. Howell had obtained counsel, John Teakell, to represent him in connection with the subpoena *duces tecum*.

6. On or about October 3, 2016, Mr. Howell produced 9,668 pages of documents in response to the United States' subpoena *duces tecum*.

7. On January 12, 2017, my co-counsel, Erin Hines, contacted Mr. Teakell by email regarding his availability for a deposition for Mr. Howell during the week of March 13, 2017 through March 17, 2017 in Wichita Falls, Texas. (Pl. Ex. 408, APPX0009.)

8. Mr. Teakell did not respond to Ms. Hines' email of January 12, 2017.

9. On February 7, 2017, a process server personally served Mr. Howell with a deposition subpoena that commanded Mr. Howell to appear for a deposition at the IRS Office in Wichita Falls, Texas on March 15, 2017 at 9:00 am. (Pl. Ex. 406, APPX0006-APPX0007; Pl. Ex.407 APPX0008.)

10. On March 13, 2017, Mr. Teakell contacted counsel for the United States stating that he was in trial in Northern District of Texas. He asked to reschedule the deposition.

11. Counsel for the United States was already in Wichita Falls to depose other third-party witnesses in *RaPower-3*. Therefore, counsel for the United States informed Mr. Teakell, in communications over March 13 and March 14, that they would be present at the scheduled location and time for Mr. Howell's deposition on March 15, 2017 and expected Mr. Howell to appear.

12. Mr. Howell did not file a motion to quash or move for a protective order with respect to his deposition.

13. On March 15, 2017 at 9:00 am, Mr. Howell appeared at the IRS office in Wichita Falls, TX without Mr. Teakell. Mr. Howell stated that he would not answer any questions because Mr. Teakell was not present. (Pl. Ex. 447, Deposition of John Howell, March 15, 2017, 5:1-8:5., APPX0011-APPX0012)

14. On March 16, 2017, I contacted Mr. Teakell by email asking him to contact counsel for the United States as soon as possible after his trial concluded so that we could discuss rescheduling Mr. Howell's deposition. Mr. Teakell did not respond to this email.

15. On March 21, 2017, I emailed Mr. Teakell again, requesting that he contact me to discuss rescheduling Mr. Howell's deposition so that the issue could be resolved without the need for court intervention. Mr. Teakell did not respond to this email.

16. In a final effort to reschedule Mr. Howell's deposition without court intervention, I emailed Mr. Teakell again on May 3, 2017. I informed him that if we could not reach agreement on a date for Mr. Howell's deposition by noon, EDT, on May 5, I would be filing a motion to compel the deposition.

17. Mr. Teakell responded to this email on May 4, inquiring about proposed dates. Also on May 4, I responded promptly with proposed dates.

18. As of the time of this filing, Mr. Teakell has not agreed to reschedule Mr. Howell's deposition.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 5th day of May, 2017 at Washington, DC.

/s/ Erin Healy Gallagher
ERIN HEALY GALLAGHER
Trial Attorney, Tax Division

From: Greg Shepard <greg@bfsmail.com>
Sent: Friday, February 10, 2012 10:12 AM
To: undisclosed-recipients
Subject: RaPower3 Update

TO ALL: A BIG WELCOME TO ALL OUR NEW RAPOWER3 TEAM MEMBERS. ALSO, I FOUND SOME VETERAN TEAM MEMBERS WHOSE E-MAILS WERE ADDED.

DELTA UPDATE: Two big steel deliveries were made last week and two more were made this week. These recent deliveries are enough for another 300 towers.

THE 2012 RAPOWER3 NATIONAL CONVENTION: It will be June 25-26-27. This was not only the date as MOST voted on, but we may make a public announcement on Tuesday the 26th of June. Tuesday is the ideal day for an announcement concerning a public stock (IAUS). The rapower3.com website will have continuing info on the convention. Go to Current Events then click CONVENTION from the drop down list.

E.H. asked, "Is there anything I can do with my 2009 taxes?"

MAYBE. YOU ARE ALLOWED TO GO BACK TWO YEARS WITH A NET OPERATING LOSS WHICH IS A RESULT OF FORM 4562 DEALING WITH THE 100% DEPRECIATION OF YOUR SYSTEMS. YOU GET A DEPRECIATION OF \$2,975 WITH EACH SYSTEM. HOWEVER, AMENDING YOUR TAXES BACK TO 2009 IS SOMETHING A CPA OR A LICENSED TAX PREPARER SHOULD DO. I WOULD NOT ATTEMPT THIS BY YOURSELF.

FYI: BRYAN BOLANDER, THE CPA THAT SO MANY OF YOU HAVE ASKED TO DO YOUR TAXES HAD A DEATH IN THE FAMILY LAST WEEK. BUT HE IS BACK AT WORK NOW AND ASSURES ME THAT EVERYONE WILL BE TAKEN CARE OF.

We do have new RaPower3 Team Member who is licensed to do your taxes in all fifty states. So this is another option. John Howell's info is below:

TAX PREPARER HELP.

Here is my info if any members need help with their tax return and your CPA is over booked. We have over 50 years in the tax business. My father, sister and myself are EA's (enrolled agents with the US Treasury Dept.) We are licensed to do tax returns in any state.

John Howell
Howell Financial and Tax Service

Howell Tax Service
4708 K Mart Dr. Ste B
Wichita Falls, TX 76308
940 766-0981 Fax 940 766-3557
www.howelltax.com
e-mail
rockingh@wf.net
jhowell@howelltax.com

HOPE THIS HELPS. REGARDS, GREG

Greg Shepard
RaPower3-Chief Director of Operations
843 W 2400 S
Salt Lake City, UT 84119
Fax 801-975-1159
www.rapower3.com

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From: Greg Shepard <greg@bfsmail.com>
Sent: Thursday, February 23, 2012 5:05 PM
To: undisclosed-recipients
Subject: Ra3 Success

First, all the tax forms needed for your tax benefits are on our website rapower3.com under TAX BENEFITS. This will allow you to do your own taxes at no cost if you so desire. Also, I went to COSTCO and found the Turbo Tax software for sale. \$50 for the Deluxe package, \$70 for the Premium package and \$80 for the Home and Office package. All three versions will work for the RaPower3 Tax Benefits. Again, you cannot go to irs.gov and have a free tax service help you. They don't have the software for that. Then, of course, you can use a CPA or licensed tax preparer. It cost more, but it will be done correctly and they have a habit of finding things to save you money that you didn't think of, plus they would be with you in the unlikely event of an audit. Our RaPower accountants are Bryan Bolander: bryan@vcb-cpa.com and John Howell: rockingham@wf.net

SUCCESS: Andrea purchased two systems for her 2010 taxes and one for her 2011 taxes. She only makes \$24,000 a year and because she's single, they take a lot out: \$2,688. Well last year she got everything back plus even more from the state. Plus, she was able to carryforward \$845 of her tax credit. She just sent in her taxes and will get all \$2,688 back plus \$565 from the state. So, between the two years, Andrea will receive back \$1,400 more in net money to spend because of RaPower3. She is one happy camper.

AND SO IT IS WITH RAPOWER3: WHETHER YOU MAKE TONS OF MONEY ARE JUST A LITTLE; EVERYONE MAKES MONEY WITH RAPOWER3 AS LONG AS THEY ARE A TAXPAYER.

Regards, Greg

Greg Shepard
RaPower3-Chief Director of Operations
843 W 2400 S
Salt Lake City, UT 84119
Fax 801-975-1159
www.rapower3.com

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AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the
District of Utah

UNITED STATES OF AMERICA

Plaintiff

v.

RAPOWER-3, LLC, et al.

Defendant

Civil Action No. 2:15-CV-00828-DN-BCW

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

John Howell

4708 K Mart Drive, Ste. B, Wichita Falls, TX 76308

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: IRS Office, 4309 Old Jacksboro Highway, Wichita Falls, TX 76302
Date and Time: 03/15/2017 9:00 am

The deposition will be recorded by this method: Stenographic

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 02/01/2017

CLERK OF COURT

OR

/s/ Erin R. Hines

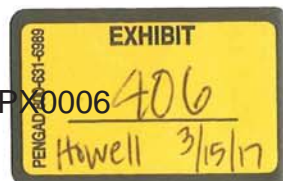
Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) United States of America, who issues or requests this subpoena, are: Erin R. Hines, U.S. Dept. of Justice, P.O. Box 7238 Washington, DC 20044; Erin.R.Hines@usdoj.gov; (202) 514-6619

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).



APPX0006

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

RETURN OF SERVICE

UNITED STATES DISTRICT COURT
N/A District of Utah

Case Number: 2:15-00828-DN-BCW

Plaintiff:
UNITED STATES OF AMERICA
vs.
Defendant:
RAPOWER-3, LLC., et al

For: Erin Hines
U.S. Department Of Justice, Tax Division

Received by LEGAL ADVOCATE SERVICES, INC. on the 2nd day of February, 2017 at 9:53 am to be served on JOHN HOWELL, 4708 K Mart Drive, Ste B, Wichita Falls, Wichita County, TX 76308. Marcia McBride do hereby affirm that on the 7 day of Feb, 2017 at 5:20 p.m., executed service by delivering a true copy of the SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION in accordance with state statutes in the manner marked below:

INDIVIDUAL SERVICE: Served the within-named person.

SUBSTITUTE SERVICE: By serving _____ as _____

POSTED SERVICE: After attempting service on ___/___ at ___ and on ___/___ at ___ to a conspicuous place on the property described herein.

NON SERVICE: For the reason detailed in the Comments below.

Military Status: () Yes or No If yes, what branch? _____

Marital Status: Married or () Single Name of Spouse 2

COMMENTS: 9/10.00 witness Fee

Age 45 Sex M F Race W Height 62 Weight 275 Hair Br Glasses Y N 2

I certify that I am over the age of 18, have no interest in the above action, and am a Process Server, in good standing, in the judicial circuit in which the process was served. Pursuant to State statutes, and under the penalty of perjury, I declare that the facts set forth in the foregoing affidavit are true and correct.

Marcia McBride

PROCESS SERVER # Sch 845
Appointed in accordance with State Statutes
AD 8/31/17

LEGAL ADVOCATE SERVICES, INC.
2465 Mercer Avenue
Suite 305
West Palm Beach, FL 33401
(561) 686-8828

Our Job Serial Number: 2017001809



Moran, Christopher R. (TAX)

From: "Hines, Erin R. (TAX)"
Sent: Thursday, January 12, 2017 4:13 PM
To: jteakell@teakelllaw.com
Cc: Healy Gallagher, Erin (TAX); Moran, Christopher R. (TAX)
Subject: U.S. v. RaPower-3, LLC, et al. 2:15-cv-00828 (D. Utah), Deposition Dates

Mr. Teakell:

We would like to depose your client, Mr. Howell, in the case of U.S. v. RaPower-3, LLC, et al., 2:15-cv-00828 (D. Utah). Please let us know if it would be impossible for you or your client to be available one day during the week of March 13-16, 2017. If there is a particular date during that week that works best, we will do our best to accommodate that date.

Once we have finalized the date, are you authorized to accept service on Mr. Howell's behalf and willing to waive service or should I send the subpoena to a process server?

If you have any questions, let me know.

Thank you,
Erin Hines

--

Erin R. Hines
Trial Attorney
U.S. Department of Justice, Tax Division
P.O. Box 7238
Washington, D.C. 20044
Phone: 202.514.6619
Fax: 202.514.6770
erin.r.hines@usdoj.gov

For overnight delivery:

555 4th St., NW, Room 8912
Washington, DC 20001



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
vs.)	Case No.:
)	2:15-cv-00828 DN
RAPOWER3, LLC,)	
INTERNATIONAL AUTOMATED)	
SYSTEMS, INC., LTBl, LLC,)	
R. GREGORY SHEPARD,)	
NELDON JOHNSON and ROGER)	
FREEBORN,)	
)	
Defendants.)	
)	

ORAL DEPOSITION OF
JOHN HOWELL
MARCH 15, 2017
VOLUME 1

ORAL DEPOSITION OF JOHN HOWELL, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on the 15th of March, 2017, from 9:03 a.m. to 9:11 a.m., before Flora Valforte, CSR in and for the State of Texas, reported by machine shorthand, at the offices of the Internal Revenue Service, 4309 Old Jacksboro Highway, Wichita Falls, Texas, 76302, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

**Plaintiff
Exhibit**
447

2	4
<p>1 APPEARANCES</p> <p>2</p> <p>3 FOR THE PLAINTIFF:</p> <p>4 MS. ERIN HEALY-GALLAGHER</p> <p>5 MS. ERIN R. HINES</p> <p>6 United States Department of Justice</p> <p>7 Trial Attorneys, Tax Division</p> <p>8 P.O. Box 7328</p> <p>9 Washington, D.C. 20044</p> <p>10 (202) 353-2452</p> <p>11 (202) 514-6770 (fax)</p> <p>12 erin.healygallagher@usdoj.gov</p> <p>13 erin.r.hines@usdoj.gov</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>FOR THE DEFENDANTS RAPOWER3, LLC; INTERNATIONAL AUTOMATED SYSTEMS, INC.; LTB1, LLC; AND NELDON JOHNSON</p> <p>MR. CHRISTIAN D. AUSTIN</p> <p>Heideman & Associates</p> <p>2696 N. University Avenue</p> <p>Suite 180</p> <p>Provo, Utah 84604</p> <p>(801) 472-7742</p> <p>(801) 374-1724 (fax)</p> <p>caustin@heidlaw.com</p>	<p>1 EXHIBIT INDEX</p> <p>2</p> <p>3 NUMBER DESCRIPTION PAGE</p> <p>4 Exhibit 406 Subpoena to Testify at a 7</p> <p>5 Deposition in a Civil Action</p> <p>6</p> <p>7 Exhibit 407 United States District Court, 7</p> <p>8 District of Utah, Return of</p> <p>9 Service</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 INDEX</p> <p>2 PAGE</p> <p>3 Appearances..... 2</p> <p>4</p> <p>5</p> <p>6</p> <p>7 JOHN HOWELL</p> <p>8 Examination by Ms. Healy-Gallagher..... 6</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14 Reporter's Certificate..... 9</p> <p>15 * * * * *</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 PROCEEDINGS</p> <p>2 JOHN HOWELL,</p> <p>3 having been first duly sworn, testified as follows:</p> <p>4 MS. HEALY-GALLAGHER: We're on the record</p> <p>5 in the case of United States versus RaPower3, LLC, et</p> <p>6 al., on March 15, 2017, at about 9:03 a.m.</p> <p>7 My name is Erin Healy-Gallagher of the</p> <p>8 United States Department of Justice in the tax division.</p> <p>9 I'm appearing on behalf of the United States.</p> <p>10 Counsel, would you please make your</p> <p>11 appearances.</p> <p>12 MS. HINES: Erin R. Hines, also for the</p> <p>13 United States Department of Justice representing the</p> <p>14 United States.</p> <p>15 Our colleague, Chris Moran, who also</p> <p>16 represents the United States, is not here today.</p> <p>17 MR. AUSTIN: Christian Austin for RaPower3.</p> <p>18 MS. HEALY-GALLAGHER: Also, Donald Reay,</p> <p>19 who represents R. Gregory Shepard and Roger Freeborn, is</p> <p>20 not here today.</p> <p>21 We will be governed here by the Federal</p> <p>22 Rules of Civil Procedure, and all exhibits today will be</p> <p>23 marked and sent with the court reporter.</p> <p>24 Any other stipulations will be addressed</p> <p>25 when the need arises.</p>

6	<p>1 EXAMINATION</p> <p>2 BY MS. HEALY-GALLAGHER:</p> <p>3 Q. Would you please say and spell your name for</p> <p>4 the record.</p> <p>5 A. John Howell, J-o-h-n, H-o-w-e-l-l.</p> <p>6 Q. And would you please give the city and state of</p> <p>7 your home address.</p> <p>8 A. Wichita Falls, Texas.</p> <p>9 Q. Mr. Howell, do you have something you would</p> <p>10 like to say this morning?</p> <p>11 A. No. Without my attorney present, I've been</p> <p>12 advised not to say anything.</p> <p>13 Q. Before we went on the record, Mr. Howell, you</p> <p>14 said that because your attorney is not able to be here</p> <p>15 today, you will not be answering questions; is that</p> <p>16 right?</p> <p>17 A. Yes, that is correct.</p> <p>18 Q. Okay.</p> <p>19 MR. AUSTIN: And before we go off the</p> <p>20 record, if it's an appropriate time for you, Erin, I'll</p> <p>21 just say that we did get advance notice that the</p> <p>22 witness' attorney was in trial and may not be able to</p> <p>23 make it.</p> <p>24 As far as I'm concerned, Mr. Howell, I'm</p> <p>25 fine with resuming your deposition when he's available.</p>	8	<p>1 MS. HEALY-GALLAGHER: With that, we're off</p> <p>2 the record.</p> <p>3 MR. AUSTIN: Okay.</p> <p>4 MS. HEALY-GALLAGHER: Thank you.</p> <p>5 (Off the record at 9:11 a.m.)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
7	<p>1 MS. HEALY-GALLAGHER: For the record, I am</p> <p>2 going to mark the next exhibit.</p> <p>3 (Exhibit 406 marked.)</p> <p>4 Q. (BY MS. HEALY-GALLAGHER) I've marked</p> <p>5 Plaintiff's Exhibit 406, the Subpoena to Testify at a</p> <p>6 Deposition in a Civil Action, addressed to you,</p> <p>7 Mr. Howell. Do you recognize that subpoena?</p> <p>8 A. Yes, I do.</p> <p>9 MR. AUSTIN: And I'll just again state,</p> <p>10 Erin, that the witness has made it clear that his</p> <p>11 attorney has asked him not to answer questions today. I</p> <p>12 don't think you should ask him any other questions.</p> <p>13 MS. HEALY-GALLAGHER: We can go off the</p> <p>14 record for a moment.</p> <p>15 (Off record, 9:06 a.m. to 9:10 a.m.)</p> <p>16 MS. HEALY-GALLAGHER: Back on the record,</p> <p>17 please.</p> <p>18 (Exhibit 407 marked.)</p> <p>19 Q. (BY MS. HEALY-GALLAGHER) I've just marked</p> <p>20 Exhibit 407. Mr. Howell, you're welcome to take a look</p> <p>21 at that.</p> <p>22 Exhibit 407 is the Affidavit of Service of</p> <p>23 the subpoena for deposition marked Exhibit 406 to</p> <p>24 Mr. Howell.</p> <p>25 MR. AUSTIN: Is there a question?</p>	9	<p>1 STATE OF TEXAS X</p> <p>2 COUNTY OF WICHITA X</p> <p>3</p> <p>4</p> <p>5 This is to certify that I, Flora</p> <p>6 Valforte, a Certified Shorthand Reporter in and for the</p> <p>7 State of Texas, reported by machine shorthand the</p> <p>8 proceedings had at the time and place set forth, and</p> <p>9 that the above and foregoing pages contain a full, true</p> <p>10 and accurate transcript of the said proceedings.</p> <p>11 CERTIFIED BY ME on this the _____ day of</p> <p>12 _____, 2017.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17 <u>FLORA VALFORTE, TEXAS CSR NO. 5894</u></p> <p>18 Expiration Date: 12/31/17</p> <p>19 Henderson Legal Services, Inc.</p> <p>20 1560 Wilson Boulevard</p> <p>21 Suite 750</p> <p>22 Arlington, Virginia 22209</p> <p>23 (877) 548-8787</p> <p>24 (202) 220-4162 (fax)</p> <p>25</p>

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,) Deposition of:
)
Plaintiff,) MIKE PENN
)
VS.) Time on record: 1 hour,
) 57 minutes
RAPOWER-3, LLC, INTERNATIONAL)
AUTOMATED SYSTEMS, INC., LTBI,) Case No.
LLC, R. GREGORY SHEPARD,) 7:16-CV-00056-O
NELDON JOHNSON, and ROGER)
FREEBORN,)
)
Defendants.) Judge David Nuffer

March 13, 2017 * 1:05 p.m. to 3:17 p.m.

Location: Internal Revenue Service Office
4309 Old Jacksboro Highway
Wichita Falls, Texas

Excerpts from
**Plaintiff
Exhibit**

448

Reporter: Mary A. Cantrell, CSR

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

APPX0013

2	3
<p>1 A P P E A R A N C E S</p> <p>2 FOR THE PLAINTIFF:</p> <p>3 MS. ERIN R. HINES</p> <p>4 MS. ERIN HEALY-GALLAGHER</p> <p>5 U.S. DEPARTMENT OF JUSTICE</p> <p>6 Trial Attorneys, Tax Division</p> <p>7 P. O. Box 7239</p> <p>8 Ben Franklin Station</p> <p>9 Washington, D. C. 20044</p> <p>10 Telephone: (202) 353-2452</p> <p>11 Fax: (202) 514-6770</p> <p>12 E-mail: Erin.R.Hines@usdoj.gov</p> <p>13</p> <p>14 FOR THE DEFENDANTS:</p> <p>15 MR. CHRISTIAN D. AUSTIN</p> <p>16 HEIDEMAN & ASSOCIATES</p> <p>17 2696 North University Avenue, Suite 180</p> <p>18 Provo, Utah 84604</p> <p>19 Telephone: (801) 472-7742</p> <p>20 Fax: (801) 374-1724</p> <p>21 E-mail: Caustin@heidlaw.com</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 I N D E X</p> <p>2 Examination of the Witness, MIKE PENN:</p> <p>3 Examination by Ms. Hines, Page 6</p> <p>4 Examination by Mr. Austin, Page 48</p> <p>5 Further Examination by Ms. Hines, Page 88</p> <p>6 Further Examination by Mr. Austin, 90</p> <p>7</p> <p>8 Reporter's Certification, Page 95</p> <p>9</p> <p>10 E X H I B I T S</p> <p>11 NUMBER DESCRIPTION MARKED/IDENTIFIED</p> <p>12</p> <p>13 Exhibit 387 E-mail from RaPower3 Administration</p> <p>14 To rig5s@aol.com Dated December 31,</p> <p>15 2012 at 9:39 a.m. 28/28</p> <p>16</p> <p>17 Exhibit 388 E-mail from RaPower3 Administration</p> <p>18 To rig5s@aol.com Dated December 31,</p> <p>19 2012 at 9:43 a.m. 29/29</p> <p>20</p> <p>21 Exhibit 389 2011 1040 U.S. Individual Income Tax</p> <p>22 Return of Mike W & Jann M Penn 35/35</p> <p>23 Exhibit 390 2011 1040X Amended Individual Income</p> <p>24 Tax Return of Mike W Penn and Jann</p> <p>25 M Penn 36/36</p> <p> Exhibit 391 2012 1040 U. S. Individual Income Tax</p> <p> Return of Mike W and Jann M Penn 38/38</p> <p> Exhibit 392 2013 1040 U. S. Individual Income Tax</p> <p> Return of Mike W and Jann M Penn 43/43</p>
4	5
<p>1 S T I P U L A T I O N S</p> <p>2 IT IS HEREBY STIPULATED AND AGREED by and</p> <p>3 among the attorneys for the respective parties hereto</p> <p>4 that the deposition of MIKE PENN may be taken at the</p> <p>5 instance of the Plaintiff on the 13th day of March,</p> <p>6 2017, in Wichita Falls, Texas, by Mary A. Cantrell,</p> <p>7 Certified Shorthand Reporter within and for the State of</p> <p>8 Texas, pursuant to Subpoena.</p> <p>9 IT IS FURTHER STIPULATED AND AGREED by the</p> <p>10 Attorneys for the Plaintiff and for the Defendants</p> <p>11 hereto that all objections and the format of the</p> <p>12 deposition of shall be conducted under the Federal Rules</p> <p>13 of Civil Procedure.</p> <p>14 IT IS FURTHER STIPULATED AND AGREED by and</p> <p>15 among the attorneys for the respective parties hereto</p> <p>16 that the signature of the witness is required; and, if</p> <p>17 the original transcript is not returned in a timely</p> <p>18 manner a copy may be used at the time trial.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 P R O C E E D I N G S</p> <p>2 (Witness cautioned and sworn)</p> <p>3 MIKE PENN,</p> <p>4 called as a witness after first being duly cautioned and</p> <p>5 sworn to testify to the truth, the whole truth, and</p> <p>6 nothing but the truth, testified on his oath as follows:</p> <p>7 E X A M I N A T I O N</p> <p>8 BY MS. HINES:</p> <p>9 Q. So I introduced myself to you just a few moments</p> <p>10 ago.</p> <p>11 A. Right.</p> <p>12 Q. But my name is Erin R. Hines. I'm with the</p> <p>13 United States Department of Justice, Tax Division. I'm</p> <p>14 representing the United States in this case along with</p> <p>15 my colleague and I'll have her introduce herself here in</p> <p>16 a minute. Actually why don't we do that now? Go ahead.</p> <p>17 MS. HEALY-GALLAGHER: Okay. Erin</p> <p>18 Healy-Gallagher. I am also here for the United States.</p> <p>19 Chris Moran, who also represents the United States, is</p> <p>20 not present for this deposition.</p> <p>21 A. Okay.</p> <p>22 MS. HINES: Mr. Austin?</p> <p>23 MR. AUSTIN: Christian Austin for the</p> <p>24 Defendants.</p> <p>25 MS. HINES: And let's go ahead and make a</p>

<p style="text-align: right;">6</p> <p>1 note for the record that Donald Ray who represents 2 Defendants, Gregory Shepard and Roger Freeborn, is not 3 here today. 4 A. Okay. 5 Q. (By Ms. Hines) Okay. So this deposition is 6 going to be governed as she said by the Federal Rules of 7 Civil Procedure. 8 A. Sure. 9 Q. All exhibits if we have any are going to be 10 marked and I think we decided we're going to keep them 11 until the end of the week and then go to the court 12 reporter and be made part of this deposition. 13 A. Okay. 14 Q. Okay. Have you ever been deposed before? 15 A. No. 16 Q. Okay. All right. So I'm going to go over the 17 ground rules. Basically just kind of make sure we're 18 all on the same page. I don't know if you've talked to 19 anyone about a deposition but what it is it's a way 20 to get an accurate record as possible of the facts and 21 what you remember. 22 A. Okay. 23 Q. So today I'm going to ask you questions and it's 24 my job to ask you understandable questions. So if at 25 any time I asked ask you something you don't understand</p>	<p style="text-align: right;">7</p> <p>1 please let me know and I will do my best to rephrase it. 2 Can you do that for me? 3 A. Sure. 4 Q. Okay. So as Mary said, the court reporter, she's 5 here, she's to your right. She has to take down my 6 questions and your answers today. 7 A. Okay. 8 Q. So when I ask a question she will need a verbal 9 response. She cannot record a shake of the head, a nod 10 of the head, uh-huh, huh-huh. 11 A. Okay. 12 Q. Will you do that for me? 13 A. Yes. 14 Q. Okay. Great. Also, when we're sometimes talking 15 in casual conversation we have a tendency to talk over 16 one another. So today please try to let me finish my 17 question before you say anything. That way she can get 18 a very clear record with everything. 19 A. Sure. 20 Q. Okay. All right. Since we are here to get an 21 accurate as record as possible I'm going to have to ask 22 you is there anything that you can think of today that 23 would keep from you answering my questions or inhibit 24 your memory or ability to answer my questions? 25 A. No. I'll answer to my best of my ability on</p>
<p style="text-align: right;">8</p> <p>1 memory, yes. 2 Q. Okay. Are you on any medications that may affect 3 your memory? 4 A. No. 5 Q. Okay. In the last twelve hours have you had 6 anything alcoholic to drink? 7 A. No. 8 Q. Are you feeling sick or unwell at all today? 9 A. No. Just a little nervous. 10 Q. All right. Are you currently under care for any 11 kind of illness? 12 A. No. 13 Q. All right. So today while I'm asking questions 14 and going through the answers if you need a break at all 15 at any point just let me know. 16 A. Sure. 17 Q. I would ask if there's a question pending that 18 you finish the answer before we take that break. 19 A. Uh-huh. 20 Q. Also, sometimes when we have depositions and are 21 asking questions and you may later at the time -- latere 22 than the time the question was asked remember something 23 additional or need to change your answer. So if 24 anything like that happens today just let me know and we 25 can go back and we can correct the record.</p>	<p style="text-align: right;">9</p> <p>1 A. Okay. 2 Q. All right. So today there may be objections by 3 Mr. Austin to the record. 4 A. Sure. 5 Q. Again, that is to make a record for the Court so 6 even if he objects go ahead and answer the question 7 unless -- well, just pretty much answer the question. 8 A. Okay. 9 Q. All right. Let's see. All right. Mr. Penn, 10 will you state your name and your current address? 11 A. Yes, it's Mike Wayne Penn. The address is 2208 12 Berkley Drive here in Wichita Falls Texas 76308. 13 Q. Okay. And how long have you lived at that 14 address? 15 A. Seven years I think. It's close. Maybe -- gosh, 16 I wish -- eight years -- seven or eight years. I can't 17 remember for sure. We need my wife to answer that one. 18 Q. All right. And where did you live before -- 19 A. Yeah, 1800 Victory. 20 COURT REPORTER: Y'all are talking at the 21 same time already. I didn't get the where did you live? 22 A. 2208 Berkley Drive. 23 COURT REPORTER: No, I got that part. 24 Q. (By Ms. Hines) Where did you live before? 25 A. Okay. At 1800 Victory Avenue in Wichita Falls,</p>

<p style="text-align: right;">10</p> <p>1 Texas.</p> <p>2 Q. Okay. How long did you live there?</p> <p>3 A. I owned a home for 20 years. I moved out of the</p> <p>4 area in two-thousand -- no, I'm sorry. Let me rephrase</p> <p>5 that. 1994, '95 and '96. I still owned the home but I</p> <p>6 did not live in this area in those years.</p> <p>7 Q. Okay. Mr. Penn, what is your current age?</p> <p>8 A. 58.</p> <p>9 Q. So what is your current occupation?</p> <p>10 A. I work for MW Penn Well Service. I'm the sole</p> <p>11 member of -- a sole member LLC and that's my occupation.</p> <p>12 I run and operate an oil well service rig.</p> <p>13 Q. Okay. And what exactly do you do when you</p> <p>14 operate an oil service rig?</p> <p>15 A. I actually run the machine. And we clean out old</p> <p>16 oil wells and repair mechanical problems inside wells --</p> <p>17 or well failures, you know, open bore failures so --</p> <p>18 Q. How long have you been doing that?</p> <p>19 A. I started when I was 18 years old and did it -- I</p> <p>20 probably only had about six years from 1990 to '96 that</p> <p>21 I was not involved in the oil well servicing business.</p> <p>22 Q. Okay. So do you have any education after high</p> <p>23 school?</p> <p>24 A. No.</p> <p>25 Q. Okay. When you happen graduate from high school?</p>	<p style="text-align: right;">11</p> <p>1 A. 1977.</p> <p>2 Q. And do you have any kind of employment training</p> <p>3 or any kind of continuing education?</p> <p>4 A. No.</p> <p>5 Q. And what was it that you were doing during that</p> <p>6 time period in the nineties when you weren't working?</p> <p>7 A. Actually there was another time period I thought</p> <p>8 of. It would have been from -- from '98 to 2002. I</p> <p>9 worked for Carz Auto Sales. And then the other time I</p> <p>10 was entrepreneuring (sic) out in Santa Fe, New Mexico,</p> <p>11 from '94 to '96 and lived there. And that's when I was</p> <p>12 not occupying 1800 Victory.</p> <p>13 Q. And what did you do out in --</p> <p>14 A. Well, we had a -- let's see -- just a tourist</p> <p>15 business. We were renting out motorcycles. We had a</p> <p>16 bunch of Harley Davidson's. Yeah, so myself and a</p> <p>17 partner put that together and rode motorcycles for two</p> <p>18 years.</p> <p>19 Q. And what did you do at the auto sales?</p> <p>20 A. Sales. I was in sales.</p> <p>21 Q. All right. Okay. Mr. Penn, is there a time</p> <p>22 period where you came to learn about RaPower3?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Tell me about that. How did you learn</p> <p>25 about RaPower3?</p>
<p style="text-align: right;">12</p> <p>1 A. Well, the first time I was approached by my tax</p> <p>2 preparer, John Howell Tax Services here in Wichita</p> <p>3 Falls. And he mentioned it to me in passing while</p> <p>4 preparing my taxes. And that's the first time I heard</p> <p>5 about it.</p> <p>6 Q. Do you remember about what year that was?</p> <p>7 A. I would say 2010 would be the first time.</p> <p>8 October probably of 2010 because I usually have to do an</p> <p>9 extension.</p> <p>10 Q. Okay. So that would have been during a</p> <p>11 conversation with respect to your personal tax return?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And what were the circumstances</p> <p>14 surrounding that conversation?</p> <p>15 A. Well, he mentioned the units that you could</p> <p>16 purchase. And then he had a program where he had it on</p> <p>17 his computer where he could just punch it in and you</p> <p>18 could see how it reflected on your taxes, the purchase</p> <p>19 of these units, the RaPower.</p> <p>20 Q. So what were these units?</p> <p>21 A. I -- I didn't pay a lot of attention that first</p> <p>22 year or two. I just was not entered.</p> <p>23 Q. Okay. So when did you pay attention?</p> <p>24 A. The -- well, it gets kind of personal right here.</p> <p>25 I had cancer in 2012. And I missed a lot of work. And</p>	<p style="text-align: right;">13</p> <p>1 all of a sudden I wasn't going to be able to pay my</p> <p>2 taxes. And John Howell had this -- of course, you know</p> <p>3 how your tax preparer and you become close and kind of</p> <p>4 friends, you know. And he said, Mike, you really need</p> <p>5 to do this. And he plugged it in and showed me how much</p> <p>6 I could save on taxes.</p> <p>7 Q. So how did that process work? Did he ask you for</p> <p>8 information that he put into the computer program?</p> <p>9 A. Well, he had all my financial information</p> <p>10 exactly. So he showed me how it would reflect on my</p> <p>11 personal income taxes that year.</p> <p>12 Q. And what's your understanding of what the -- this</p> <p>13 RaPower3 program would do for your taxes?</p> <p>14 A. Well, it would just bring your fax liability way</p> <p>15 down from -- from what I would have to pay.</p> <p>16 Q. Okay.</p> <p>17 A. And like I said, I was afraid of my own situation</p> <p>18 at that time with the taxes.</p> <p>19 Q. Did he explain how it all worked?</p> <p>20 A. Not really. Honestly, John never talked about</p> <p>21 the business very much, you know. And, of course, I did</p> <p>22 look it up on my own on the internet at that time. And</p> <p>23 I was -- frankly was not very impressed with the</p> <p>24 business at all, you know, 'cause I've -- in the oil</p> <p>25 business we see a lot of tax-type situations with</p>

<p style="text-align: right;">14</p> <p>1 drillers and promotions and stuff like that. I've been 2 doing that my whole life. So I had no interest -- 3 that's why I had no interest until I came into a 4 personal bind and then fear got me. 5 Q. So what time period did you say that was? 6 A. That was -- that would have started -- I had 7 surgery in October of '12 right before -- we probably 8 went ahead and filed my taxes. And then -- I know we 9 did 'cause I've never filed late. And so we would have 10 -- and had that surgery maybe four or five days before 11 taxes. I can't remember the exact date. Taxes were due 12 October the 15th. I think I had that surgery on the 13 9th, 10th, or 11th. And my son's birthday is right in 14 there so I know it was within that three-day time 15 period. I don't know when exactly I had that surgery. 16 Q. So at that time period then, October of 2012, 17 what all did you do to look into the RaPower3 program? 18 A. I didn't. I didn't. He -- he presented it to me 19 and I just -- i just kind of put it on the back of my 20 mind. I wasn't really interested. And then you'll note 21 on my purchase, I mean, it actually happened on December 22 the 31st or the 30th -- the 30th 'cause that was my last 23 day to be able to do it. And so I just woke up that 24 night and punched the button the midnight deadline or 25 whatever it was to get them on that tax year.</p>	<p style="text-align: right;">15</p> <p>1 Q. So between October and December of 20 -- 2 A. I didn't do any research on that. I was fighting 3 my own battles. 4 Q. Did you speak to anyone at the company? 5 A. Huh-huh, never. 6 Q. Okay. Did you subsequently do any research on 7 the company? 8 A. I never even logged in once I bought these 9 things. 10 Q. Did you -- after you purchased in December of 11 2012 did you talk to anyone at the company? 12 A. No. 13 Q. Okay. 14 A. And there's another thing. I never paid for them 15 either. 16 Q. Okay. So explain that process. How did you go 17 online and purchase something and then not pay for it? 18 A. I was supposed to send a check in or something. 19 I can't remember the time period. I'm just trying to 20 remember right now. I was supposed to make a payment 21 and I just did not make it and never did. 22 Q. Did anything happen? 23 A. Nothing. I never got a letter from anybody. 24 Q. Did Mr. Howell talk to you at all about the 25 payment?</p>
<p style="text-align: right;">16</p> <p>1 A. In the future because I was still having some 2 troubles with, you know, missing income from surgery and 3 stuff like that and fighting my own battles, and I did 4 not make a payment. And then I think he even -- I think 5 I might have even -- excuse me just a minute 'cause I've 6 gotta think. 7 I think I even set up for some more the next year 8 and I had not paid for any of the other ones and then -- 9 then I really became nervous about the whole situation. 10 And I know when I -- see, he goes, just go ahead and 11 purchase more; it's fine, Mike; don't worry about it; 12 purchase more; and that will help your taxes again 13 'cause he -- you know, he was -- he was trying to look 14 out for my tax interest because he knew I was in a 15 financial hardship at that time. 16 And then he -- one of the things that's funny but 17 I remember he said, are you getting the Power magazine. 18 And I go, yes. And I guess the Power magazine 19 had something to do with the purchase of the -- of the 20 RaPower and it was some -- it was an industry 21 publication. It wasn't just for their company. It was 22 an industry write. In other words, a lot of different 23 companies were in this publication. 24 Q. Now, was that something that you had received 25 before your investment --</p>	<p style="text-align: right;">17</p> <p>1 A. Huh-huh. 2 Q. -- in RaPower? 3 A. Huh-huh, no. 4 Q. Okay. When did you start getting that? 5 A. Soon after the December of 2012 purchase. I 6 mean, I started getting them within February or March. 7 Q. And was that something additional that you signed 8 up for? 9 A. No. No. 10 Q. Just started coming? 11 A. Just start come, yes. 12 Q. Okay. So you said that you were getting nervous. 13 What was it -- yes. Okay. So the Power magazine was 14 that a hard copy that came in the mail or is that 15 something that came by e-mail? 16 A. No, it was a hard copy in the mail. 17 Q. Okay. 18 A. I never received any e-mails. It says in there, 19 you'll be getting e-mails and stuff. And I don't 20 remember ever seeing any e-mails. 21 Q. Okay. And so what exactly was in this Power 22 magazine? 23 A. It's a -- it's -- I'm sure you could probably get 24 it. It was an industry like solar power, you know, 25 steam -- it had -- you know, it looked like an industry</p>

<p style="text-align: right;">18</p> <p>1 magazine. I don't -- it's just something -- I guess 2 since you were an energy investor at this time you 3 needed this magazine. 4 Q. Did it have, like, articles -- 5 A. Yes. 6 Q. -- or advertisements? 7 A. Yes. And it's -- like I said, it wasn't 8 RaPower3. It looked like an industry magazine to me. I 9 still get them. 10 Q. Okay. Did you ever find anything with respect to 11 RaPower3 in any of those? 12 A. I don't remember that, no. 13 Q. Okay. And did they come monthly or -- 14 A. Yes. 15 Q. Okay. Is there a fee, a subscription fee? 16 A. Huh-huh, huh-huh. 17 MS. HEALY-GALLAGHER: No? 18 A. No. 19 MS. HEALY-GALLAGHER: You just need to 20 answer with a yes or no so if we prompt you for that, 21 that is just what we're looking for. 22 A. Sure. Got you. 23 Q. (By Ms. Hines) Okay. So earlier I think you 24 were talking about you were getting nervous. And I was 25 going to ask you, what -- what was making you nervous?</p>	<p style="text-align: right;">19</p> <p>1 A. Well, the main thing was I should have been 2 billed or I never received any billing in the mail at 3 all on these purchases and that was something I didn't 4 like. And at that time I just -- as I stated earlier I 5 was never comfortable with my tax preparer showing me 6 this as an investment. It just -- it was treated more 7 like a tax situation than an investment and I just was 8 never comfortable with that. And, therefore, you know, 9 I did it under my circumstances. I made that decision 10 at the last minute, not feeling right about it at that 11 time. And -- but then again, I did it again that next 12 fall when it was tax season was due. 13 Q. So what -- what particular things stuck out at 14 you that made you uncomfortable? 15 A. Well, at that time if you looked it up on the 16 internet it was just -- you know, it looked like a 17 couple of guys with a -- it didn't look like a 18 revenue-generating investment to me. I mean, and -- and 19 that's just my observation. It looked like very 20 simplistic. You know, there was nothing detailed about 21 their -- their work. And another thing that made me -- 22 it always was presented to me as a tax incentive versus 23 an investment and that made me nervous 'cause I had seen 24 that in the oil industry. 25 Q. Was there ever any discussion about what kind of</p>
<p style="text-align: right;">20</p> <p>1 revenue you might receive from this investment? 2 A. I don't remember a revenue. There had to be 3 though. I mean, let me think a minute. I wish I 4 wouldn't have thrown that paperwork away. I don't -- I 5 don't -- you know, I just never bought it with revenue 6 in mind to be honest. I mean, that's just the way it 7 was. I was looking at it from a tax viewpoint. 8 Q. Did you ever receive any kind of revenue? 9 A. No. 10 Q. Okay. So you have been talking about this as a 11 -- two guys on the website. Do you know what website or 12 who those people were? 13 A. No. I just remember going to the RaPower -- 14 Ra3Power, yeah, you know. And the -- I would go there 15 and it -- it was real simplistic, their investment was, 16 you know, as far as -- it looked like, you know, just 17 very -- their solar panels looked like almost made out 18 of plastic and things like that. It just didn't look 19 right to me as far as putting my money there to invest 20 in. 21 Q. And so -- 22 A. Money I did not have at that time anyway so -- 23 Q. You've also referred to I think the program as an 24 it. Can you just give me a basic understanding of how 25 that program worked? What was your understanding?</p>	<p style="text-align: right;">21</p> <p>1 A. It was a tax credit situation with some type of 2 solar deal. Supposedly it was written up in the -- in 3 the US Tax Codes that this solar electricity qualified 4 for certain tax credits. And that's -- that's where the 5 tax credit came from was that. And then it broke into a 6 dividend situation after so many years. And I'm not 7 very good to help you there. I just don't remember the 8 investment side of the deal. 9 Q. But -- so when you have been talking about the 10 deal or, you know, what you were going to put your money 11 in -- 12 A. Right. 13 Q. -- what exactly did you think you were buying or 14 putting your money in? 15 A. Well, what you are supposed to be buying at this 16 time is into a solar panel company. That was my basis 17 of what I thought this was. And I was investing in 18 these solar panels. 19 Q. Do you believe you were actually buying, like, 20 shares of the company or were you buying particular 21 parts? 22 A. No, I think it was into a particular part the 23 best I remember. And that was how your deduction was, 24 through that part that you owned. 25 Q. And so how did you come to learn or -- who was it</p>

<p style="text-align: right;">22</p> <p>1 that explained the program to you?</p> <p>2 A. John Howell was my tax preparer. I didn't pay a</p> <p>3 lot of -- I just -- he did the -- he always showed it to</p> <p>4 me from a tax credit viewpoint. And that's just the way</p> <p>5 I looked at it at that time because you've got to</p> <p>6 understand that I didn't like the idea when I was</p> <p>7 presented it two years prior to that. I was not</p> <p>8 interested.</p> <p>9 Q. And two years prior was also with Mr. Howell?</p> <p>10 A. Yes.</p> <p>11 Q. He was the one --</p> <p>12 A. Yes. Yes.</p> <p>13 Q. -- who told you about it?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. All right. So did you have discussions</p> <p>16 with anyone other than Mr. Howell?</p> <p>17 A. No.</p> <p>18 Q. Were these discussions in Mr. Howell's office?</p> <p>19 A. Yes.</p> <p>20 Q. Was there ever anyone else present?</p> <p>21 A. No. No. He just you sat there with him at his</p> <p>22 desk.</p> <p>23 Q. Did Mr. Howell ever give you any marketing</p> <p>24 materials for RaPower3?</p> <p>25 A. No.</p>	<p style="text-align: right;">23</p> <p>1 Q. Never gave you any documents or forms to look at?</p> <p>2 A. I received some. That's what I was looking for,</p> <p>3 some documents that I had. But he did not give those to</p> <p>4 me. They had to have come in the mail because I never</p> <p>5 received any documentation from him.</p> <p>6 Q. Do you know who would have sent those to you?</p> <p>7 A. No. I would have assumed it came from the</p> <p>8 company in Utah.</p> <p>9 Q. Did you ever contact the company?</p> <p>10 A. No.</p> <p>11 Q. And you're talking about the company meaning</p> <p>12 RaPower3, right?</p> <p>13 A. Yes. Yes.</p> <p>14 Q. Okay. Did you ever attend or participate in any</p> <p>15 webinars?</p> <p>16 A. No.</p> <p>17 Q. Any conference calls?</p> <p>18 A. No.</p> <p>19 Q. Did you ever -- oh, I think you said you reviewed</p> <p>20 websites, right?</p> <p>21 A. Yes.</p> <p>22 Q. And what were those websites again?</p> <p>23 A. It was the RaPower3 exactly.</p> <p>24 Q. Any other websites?</p> <p>25 A. No.</p>
<p style="text-align: right;">24</p> <p>1 Q. Were there ever any meetings that you attended?</p> <p>2 A. No.</p> <p>3 Q. Are you still part of RaPower3?</p> <p>4 A. Well, what happened -- do you want to move</p> <p>5 into --</p> <p>6 Q. Yeah, go ahead.</p> <p>7 A. -- when I got out of this?</p> <p>8 Q. Yeah.</p> <p>9 A. As I told you I was uneasy with this investment</p> <p>10 from the beginning or this purchase or tax credits,</p> <p>11 however you want to look at it, and when I was called in</p> <p>12 by the local IRS to discuss this, I was very frank and</p> <p>13 open with him and told him, you know, I didn't -- I</p> <p>14 hadn't sent them a penny 'cause I didn't believe in</p> <p>15 what we were doing, you know. And I was really kind of</p> <p>16 thankful that I was there at that point because I had</p> <p>17 not been -- I hadn't been pleased with my own personal</p> <p>18 decision. I felt like I had been caught up in</p> <p>19 something I didn't need to be a part of. I just didn't</p> <p>20 believe -- believe that -- from a taxpayer's viewpoint I</p> <p>21 just didn't like the whole thing and I was not</p> <p>22 comfortable with that.</p> <p>23 And so I told him exactly the way I felt. And we</p> <p>24 had a good discussion, probably a little over an hour</p> <p>25 here in these offices. And then he told me that he had</p>	<p style="text-align: right;">25</p> <p>1 a certain way that the IRS would look at this and then I</p> <p>2 collected all the taxes that would have had to have been</p> <p>3 paid without these credits, I took those taxes upon</p> <p>4 myself to go ahead and get rid of those taxes 'cause</p> <p>5 it's hard to fight for something you didn't believe in</p> <p>6 and I just didn't believe in what I had purchased so</p> <p>7 that's just kind of what I did.</p> <p>8 So I went ahead and when I met with the IRS I</p> <p>9 told him -- and I told him I had not made any payments,</p> <p>10 never gotten any kind of a bill in the mail or anything</p> <p>11 for any monies, so -- and he told me thank goodness</p> <p>12 because, you know, a lot of people had spent money and</p> <p>13 they're probably going to be in the same position I was</p> <p>14 in. And so -- so we cleared it up that day and I got my</p> <p>15 tax bill that day.</p> <p>16 Q. Do you recall when that was?</p> <p>17 A. I know it was in Spring of 2015 because all my</p> <p>18 equipment also went under flood waters in the Spring of</p> <p>19 2015. So once again, there I was. So I think it was --</p> <p>20 I'm trying to remember if it was before the flood or</p> <p>21 after the flood. So I think it would have been in -- it</p> <p>22 was April or May, I just can't remember for sure, of</p> <p>23 2015. That's when I met with -- and I had his name</p> <p>24 written down, but I didn't -- anyway, he's the local IRS</p> <p>25 -- he'd been with -- he's a long-time employee.</p>

<p style="text-align: right;">26</p> <p>1 Q. And what happens with RaPower3? Anything -- did 2 anything happen with them after you had this meeting 3 with the IRS? 4 A. I never have heard a word. John Howell did call 5 me to talk about my taxes and I never responded to his 6 communication. And I did not use him anymore. 7 Q. Was that after your meeting with the IRS? 8 A. Yes. Yes. 9 Q. So how long had you used Mr. Howell as a tax 10 return preparer? 11 A. You know, I was thinking about that on the way up 12 here and I looked at my file 'cause I thought I might 13 have some old messages from him. Probably over eight 14 years for sure. I mean, we had a relationship so I 15 would think -- let's say, comfortably, over five years, 16 but y'all I really think it was close to -- 17 Q. So I think -- 18 A. -- several years before, you know, this all came 19 up because in '10, you know, he was already talking to 20 me about it, but he -- that was not in his office I 21 remember when I first started with him. 22 Q. Had you been with Mr. Howell prior to 2010 when 23 you first heard -- 24 A. Yes. Yes, I was with him before that, right. 25 Q. Okay. And when did you stop using Mr. Howell?</p>	<p style="text-align: right;">27</p> <p>1 A. Well, in 2015 I did not use him for my -- I did 2 not use him for my '14 taxes. 3 Q. Okay. Did you formally give Mr. Howell notice 4 you were no longer going to use him? 5 A. No, I did not return any calls. You know, I just 6 -- personally I just didn't want to be involved anymore 7 so that's kind of the way I looked at it and -- 8 Q. When did you first hear from the IRS regarding 9 your involvement in RaPower3? 10 A. I got a -- let's see -- a certified letter and it 11 was on a pretty short term so it would have been in 12 maybe February or March of '15. It was a pretty 13 short-term letter. In other words, I needed to see him 14 within about 30, 45 days. I don't know. It was close. 15 I remember that. Might have been 60 days, but I got a 16 letter that says, you know, you need to bring all your 17 records. 18 Q. Did you contact Mr. Howell after you received 19 that letter? 20 A. No. See, you've got to understand. When I was 21 going into that letter I was just a person that didn't 22 believe in what I had done. You know, I mean, I didn't 23 feel right about it so I didn't want to fight it. I 24 didn't want to fight it with Mr. Howell. I was done and 25 I as was upset that I had gotten called in on such an</p>
<p style="text-align: right;">28</p> <p>1 issue, you know, a big tax issue. So I was just -- I 2 soloed it. I went in there by myself with all my 3 records. 4 MS. HINES: Let's go off the record and take 5 a five-minute break. 6 (Recess) 7 MS. HINES: Back on the record. 8 (Deposition Exhibit 387 marked for 9 identification) 10 Q. (By Ms. Hines) Mr. Penn, I'm going to hand you 11 what has been marked as 387. 12 A. Okay. 13 Q. Okay. Can you tell me what this is? 14 A. Yeah, this would have been an e-mail receipt I 15 would have gotten from my purchase. And that was an 16 internet -- I do remember how I did the purchase. It 17 was a -- you just pushed a button on how many units you 18 wanted to buy on their website. That's how the purchase 19 was made. 20 Q. Okay. So how did you know how many units you 21 wanted to purchase? 22 A. I was told -- John Howell had worked that out 23 with me on my taxes and he told me approximately how 24 many units I needed to buy. And you did it in two 25 separate forms. I think this one says twelve and I</p>	<p style="text-align: right;">29</p> <p>1 think you'll have another form that shows six 2 additional. And this other form looks a little 3 different because I -- at that time I guess I was 4 already a member after purchasing the first one. 5 Q. Okay. 6 A. See what I'm saying? 7 (Deposition Exhibit 388 marked for 8 identification) 9 Q. (By Ms. Hines) I'm going to go ahead and hand 10 you -- 11 A. Yes. Yes. 12 Q. -- 388 because I think that's what you are 13 pointing at. 14 A. Right, that is what I am pointing at. Right. 15 Q. So what is 388? 16 A. That's an additional six units purchased. 17 Q. All right. So you bought six -- 18 A. Twelve and six -- 19 COURT REPORTER: Y'all are talking at the 20 same time again. 21 A. -- at the same time. 22 COURT REPORTER: You're talking at the same 23 time again. 24 A. Okay. 25 Q. (By Ms. Hines) So you bought six and twelve in</p>

<p style="text-align: right;">30</p> <p>1 two separate purchases?</p> <p>2 A. Two separate purchases, yes. The best of my</p> <p>3 memory I did the twelve purchase first. And yeah, you</p> <p>4 can even see the time difference on the receipts.</p> <p>5 Because it had something to do with I needed to be a</p> <p>6 member and he wanted to do the twelve on -- to get in.</p> <p>7 And then he wanted me to purchase the six additional.</p> <p>8 It had to do with my taxes so --</p> <p>9 Q. And you're --</p> <p>10 A. Yes.</p> <p>11 Q. -- saying he --</p> <p>12 A. As in John Howell, tax preparer.</p> <p>13 Q. Okay. So did he explain to you why you needed to</p> <p>14 have two separate purchases?</p> <p>15 A. Oh, I know he did because I would have had an</p> <p>16 understanding of why to do that, but I can't remember.</p> <p>17 It had something to do with -- I could go back and trap</p> <p>18 some from an earlier year. I think that's what it -- I</p> <p>19 -- it allowed me to get some tax credit for my earlier</p> <p>20 year. In other words, it worked its way back. And</p> <p>21 that's why he wanted me to do the twelve and then the</p> <p>22 six. It had to do with prior year taxes.</p> <p>23 Q. Okay. And did Mr. Howell go through the details</p> <p>24 of how this allowed you to access prior years taxes?</p> <p>25 A. Yes, he -- he did. I didn't do it just</p>	<p style="text-align: right;">31</p> <p>1 completely blind. He would have gave me details.</p> <p>2 Q. And do you recall what he told you in terms of --</p> <p>3 A. No.</p> <p>4 Q. -- how this worked?</p> <p>5 A. No.</p> <p>6 Q. On 387 --</p> <p>7 A. Uh-huh.</p> <p>8 Q. -- 387, looks like -- the third paragraph down</p> <p>9 talks about logging into the member office.</p> <p>10 A. Yes.</p> <p>11 Q. I think earlier you may have testified that you</p> <p>12 never went on the website. Is this the website you were</p> <p>13 referring to?</p> <p>14 A. Yes.</p> <p>15 Q. Okay.</p> <p>16 A. And you know -- and I did testify that I didn't.</p> <p>17 And if what -- you asked me one question about if I ever</p> <p>18 received any documentation. And I told you I did not</p> <p>19 get any from John Howell's office. And I'm -- now that</p> <p>20 I review this again I could have -- I just wished I</p> <p>21 remembered for sure, but I may have logged in to get my</p> <p>22 certificate of purchase. In fact, I almost know I did.</p> <p>23 I didn't get it in the mail so I had to have logged in.</p> <p>24 I told you I did not, but I had to. I didn't stay on</p> <p>25 the website following my investment I guess would have</p>
<p style="text-align: right;">32</p> <p>1 been a better way to phrase that because I was -- I've</p> <p>2 been thinking ever since we asked that question about</p> <p>3 documentation. I knew that I had two -- two deals from</p> <p>4 RaPower3. They were on a green sheet of paper, you know,</p> <p>5 a green background or I mean, green lettering. And I</p> <p>6 mean, that's all I remember. And -- and I would have</p> <p>7 had to -- I think I logged in to get that.</p> <p>8 Q. So how did you know where to make your purchase</p> <p>9 like to go on the website and click a button; how did</p> <p>10 you learn --</p> <p>11 A. John Howell showed me that. In fact, he was a</p> <p>12 member to where he could allow me to go in under his</p> <p>13 membership.</p> <p>14 Q. As in like underneath him or he was a sponsor?</p> <p>15 A. A sponsor I would call him, yes.</p> <p>16 Q. Do you know whether he got any kind of commission</p> <p>17 or monies for your purchasing these --</p> <p>18 A. Not aware at all.</p> <p>19 Q. -- purchasing units I guess?</p> <p>20 A. Yeah.</p> <p>21 Q. On Exhibit 388 --</p> <p>22 A. Uh-huh.</p> <p>23 Q. -- that last line before the signature --</p> <p>24 A. Yes.</p> <p>25 Q. -- says if you have any questions you can call</p>	<p style="text-align: right;">33</p> <p>1 Chris Taylor.</p> <p>2 A. Uh-huh.</p> <p>3 Q. Do you know who Chris Taylor is?</p> <p>4 A. No.</p> <p>5 Q. Did you ever speak with Chris Taylor?</p> <p>6 A. Did not.</p> <p>7 Q. Okay. After you made these two purchases of</p> <p>8 twelve and six units did you communicate that to Mr.</p> <p>9 Howell?</p> <p>10 A. Yes, he was aware of it because he -- he took</p> <p>11 that information then and put it into my tax liabilities</p> <p>12 that I had. So, yes, he would have been aware.</p> <p>13 Q. Okay. Did -- I mean, did he become aware because</p> <p>14 you told him or from some other method?</p> <p>15 A. I think he became aware from another method.</p> <p>16 Q. Do you know --</p> <p>17 A. 'Cause he seemed to be aware of when I let him</p> <p>18 know that I had done that. He said, yes. I do remember</p> <p>19 that. He was aware that I had purchased them.</p> <p>20 Q. Do you know how he knew?</p> <p>21 A. Huh-huh. No, I do not.</p> <p>22 Q. There is -- let's go back to 387, the line right</p> <p>23 before the purchase details --</p> <p>24 A. Uh-huh.</p> <p>25 Q. -- says when referring new members they'll need</p>

<p style="text-align: right;">34</p> <p>1 your username which is spudderman. 2 A. Uh-huh. 3 Q. Is spudderman you? 4 A. Well, that's me because that's the type of oil 5 field machinery I run is referred to as a spudder. 6 Q. Okay. Did you choose that username? 7 A. I did. I'm ashamed to say. 8 Q. Did you ever refer any new members to RaPower? 9 A. No. No, that was not my deal so -- I wasn't 10 interested in that. 11 Q. Okay. So 387 and 388, these are documents you 12 produced today, right? 13 A. Yes. 14 Q. Okay. And they are from RaPower3 administration 15 at that e-mail address, admin@RaPower3.net? 16 A. That's correct. 17 Q. And you understand that to be from RaPower3? 18 A. Yes. 19 Q. Okay. And then the 2linerig5s@aol.com? 20 A. That's still my current e-mail address. 21 Q. Okay. Do you recall the -- what year your tax 22 liability was reduced with respect to these purchases, 23 your twelve and six? 24 A. Actually, I -- well, of course, it was for the 25 year '12. And I really would say that it went back to</p>	<p style="text-align: right;">35</p> <p>1 '11 for some -- I really think it went back to '11 with 2 some credits of some sort. Let me think about this a 3 minute. I'm gonna say, yes, it went back to '11 and 4 it's '12. '11 and '12 for sure. And then we carried it 5 on into '13 too because it involved three years, '11, 6 '12 and '13. I remember that when I went over that with 7 the IRS. It was a three-year span. 8 (Deposition Exhibit 389 marked for 9 identification) 10 Q. (By Ms. Hines) Okay. So this is 389. 11 A. Uh-huh. 12 Q. Mr. Penn, do you recognize this document? 13 A. Yes. 14 Q. Okay. What is this? 15 A. This would be my wife and I's tax return from 16 '11. 17 Q. Okay. From 2011? 18 A. Yes, ma'am. 19 Q. Okay. And if you turn to -- and if you look on 20 the top right-hand corner there are page numbers? 21 A. Yes. 22 Q. And if you turn to page -- Page 4 of 24, and you 23 can see the date on that. What is the date? 24 A. Shows 10/11/12. 25 Q. Okay. So that would have been when you filed</p>
<p style="text-align: right;">36</p> <p>1 your 2011 tax return? 2 A. Correct. 3 Q. The first time? 4 A. Yes. 5 Q. Okay. And I think on Page 3 you see a 6 third-party designee the name of -- at the bottom is 7 right before the signature line. 8 A. Yes, Mr. Howell. 9 Q. Okay. And so he would have been your tax 10 preparer? 11 A. Correct. 12 (Deposition Exhibit 390 marked for 13 identification) 14 Q. (By Ms. Hines) All right. I'm also going to 15 hand you a copy of Exhibit 390. Do you recognize 390? 16 Page 2 might help. 17 A. Yeah. Yes. Amended form. 18 Q. And you can feel free to look at the document 19 before I ask you questions. Let me know when you have 20 finished. 21 A. We're still on 2011, right? 22 Q. Yes. 23 A. Yeah, I think I'm familiar with all of this. 24 Q. Okay. So do you -- Exhibit 390, you said you're 25 familiar with. Have you had a chance to review 389?</p>	<p style="text-align: right;">37</p> <p>1 A. Yeah. Let me review a little more please. 2 Q. Sure. 3 A. Okay. Yeah, I'm familiar now. This is where we 4 went back, yeah. 5 Q. Okay. I'm sorry. You were pointing at Exhibit 6 390, and what do you mean when you say this is when you 7 went back? 8 A. This is where it shows the credits that we 9 purchased on this -- on this 390. 10 Q. Okay. 11 A. 'Cause it goes back and shows the -- you see it 12 in on the second page. You see the amount refunded to 13 you on Line Number 21. So this would have been our 14 amended after I purchased the RaPower3. 15 Q. Okay. 16 A. Took me a minute to familiarize myself. 17 Q. Now, did Mr. Howell go through these tax returns 18 with you after you purchased your RaPower3 units? 19 A. He did. He did, yes. 20 Q. Did he explain the changes between the original 21 2011 return, which is Exhibit 389 and the amended on 22 390. 23 A. Yes, he showed me how the tax credits work. 24 Q. And so what did he tell you, how did they work? 25 A. Well, it went back to a program where you had a</p>

<p style="text-align: right;">38</p> <p>1 tax credit from a solar power investment is the way I 2 was -- presented to me. In other words, it was a 3 program to get tax credit for solar power. 4 Q. Okay. But did he show where on your return that 5 made a difference to your taxes? 6 A. He would have. And I say he would have because I 7 don't recall exactly him pointing it out to me. 8 (Deposition Exhibit 391 marked for 9 identification) 10 Q. (By Ms. Hines) Okay. I want to hand you Exhibit 11 391. 12 A. Okay. 13 Q. Take a minute or two and look at that and make 14 sure you get familiar with it. 15 A. I'm familiar with this one too. 16 Q. Okay. And what is Exhibit 391? 17 A. This would have been my returns of 2012. 18 Q. And on Page 4 of 47, that's using the faxed page 19 numbers -- 20 A. Numbers -- 21 Q. -- in the top right-hand corner. 22 A. Yes. 23 Q. There's a date. 24 A. It's 10/11/13 -- 2013. 10/11/2013. 25 Q. Okay. So that would have been about the time</p>	<p style="text-align: right;">39</p> <p>1 this was submitted to the IRS? 2 A. Correct. Correct. 3 Q. And the paid preparer? 4 A. John Howell. 5 Q. So on Page 8 of 47 -- 6 A. Yes, I'm on Page 8. 7 Q. -- this Form 3468 regarding investment credits -- 8 A. Uh-huh. 9 Q. -- do you recall if Mr. Howell talked about this 10 form or discussed it with you? 11 A. Of course, looking at it I know what it is. It's 12 from my, you know, investment in that you can read on 13 Page 9 what it refers to is my investment in the units 14 of RaPower3 reflected in 12B. 15 Q. And -- 16 A. I -- I know he would have pointed this out to me. 17 But he would usually point it out to me on the screen 18 and we'd sit together and he'd show me -- on the 19 computer screen, he'd go through things and we'd go 20 through pretty quick and didn't spend a lot of time on 21 it. And -- and that's where I knew I was getting the 22 credits. 23 Q. Okay. So on that Line 12B on Page 9 of 47 in 24 Exhibit 391 on the left-hand side there is a number, a 25 \$63,000 number there; do you see that?</p>
<p style="text-align: right;">40</p> <p>1 A. Yes. 2 Q. What is that number; do you know? 3 A. I remember that when you purchased them you only 4 paid so much money, but it gave you a credit for -- it's 5 almost like a down payment situation and you had a 6 credit on these units. In other words, you'd have a lot 7 more value in your units than you actually paid for 8 them -- 9 Q. Okay. 10 A. -- through whatever -- however it was set up 11 accounting-wise. I mean, that's just not my deal, you 12 know, to understand that. 13 Q. So who told you that, that that was how it 14 worked? 15 A. Mr. Howell. 16 Q. Okay. Did Mr. Howell explain how he arrived at 17 \$63,000? 18 A. I wouldn't -- I just wouldn't recall how it's set 19 up. 20 Q. But you didn't pay \$63,000? 21 A. I didn't pay attention and no, I did not pay -- I 22 never paid -- I never paid a dollar to RaPower3. 23 Q. On Page 17 of 47 -- 24 A. Uh-huh. 25 Q. -- this is the Form 4562 regarding depreciation</p>	<p style="text-align: right;">41</p> <p>1 and amortization. Look at Line 6, these thermal solar 2 lenses and thermal lenses. 3 A. Uh-huh. right. 4 Q. Do you know what that entry is for? 5 A. That was part of the RaPower3 program. 6 Q. Okay. And did Mr. Howell go over this form with 7 you? 8 A. No. 9 Q. Okay. Do you know why these were included on 10 your tax return for 2012? 11 A. It would have been because of my purchase on the 12 internet of the RaPower3, correct. 13 Q. Did Mr. Howell explain anything? I know you 14 talked a lot about tax credits. But did he explain 15 anything about other types of tax deductions to you? 16 A. Well, I just, you know, basically been running a 17 small business my whole life so I'm aware of your normal 18 fuel expenses and depreciation on -- you know, when I'd 19 buy a truck or, you know, however -- however we would 20 depreciate mileage. In other words, what I would call 21 your standard business deductions, I was familiar with 22 those. I was not familiar with something like this, an 23 investment credit. 24 Q. Did Mr. Howell explain that there was 25 depreciation associated with the RaPower?</p>

<p style="text-align: right;">42</p> <p>1 A. Yes. Yes, I knew there was. Right. 2 Q. Okay. What did he tell you? 3 A. I -- I just don't recall. I mean, I don't so -- 4 Q. But you recall that if you purchased a unit there 5 was some kind of an associated depreciation. 6 MR. AUSTIN: Objection. Leading. 7 Q. (By Ms. Hines) You can answer. 8 A. Yes. 9 Q. Do you know where those particular line items, 10 Line 6 there, would have shown up on your return 11 elsewhere? 12 A. No. 13 Q. Okay. 14 A. That was on Page 17 of 45, right? 15 Q. Of 47. 16 A. Yeah. Okay. Yeah. 17 Q. Can you turn to Page 33 of 47? 18 A. Yes, I'm there. 19 Q. Okay. And Page 33 of 47, Schedule C, profit or 20 loss from business with respect to MW Penn Well Service, 21 LLC. 22 A. Uh-huh. 23 Q. That's -- you're sole proprietor? 24 A. Yes. 25 Q. Okay. So that Line 13, there's a depreciation</p>	<p style="text-align: right;">43</p> <p>1 expense. 2 A. Yes. 3 Q. For 54,198? 4 A. Right. 5 Q. Do you know if that number included the 6 depreciation from the solar lenses? 7 A. Yes. 8 Q. It did? 9 A. Because I would not have had that much 10 depreciation in a normal -- it had to have. 11 Q. What would a normal amount of depreciation be? 12 A. Well, I know that we ran all my vehicles on 13 mileage versus capital cost or how you'd refer to that. 14 I ran all my vehicles on mileage. And I had purchased a 15 rig in 2005, which would have been depreciated out by -- 16 I don't think he carried it that long. You know, I 17 wouldn't know. I'd have to look. In other words, 18 there's no way I had 55, 56,000 -- 54,000 and change on 19 depreciation. I do know that. 20 Q. Okay. Put that one aside. 21 A. Okay. 22 (Deposition Exhibit 392 marked for 23 identification) 24 Q. (By Ms. Hines) Hand you 392. Okay. Take a look 25 at it and let me know when you have --</p>
<p style="text-align: right;">44</p> <p>1 A. Okay. I'm ready. 2 Q. Okay. So what is Exhibit 392? 3 A. It's our -- my wife and I's 2013 tax returns. 4 Q. Okay. And then on Page 4 of 30, there's a date. 5 A. Yes, it's 10/10 of 2014. 6 Q. Okay. So it would have been prepared on or about 7 that date and submitted to the IRS? 8 A. Yes. 9 Q. Okay. And there's a paid preparer listed? 10 A. Yes, Howell Tax Service. 11 Q. Okay. So who is Howell Tax Service? 12 A. John Howell. 13 Q. Turn to Page 8 of 30 for me. And this is the 14 Form 3800 regarding the general business credits? 15 A. Uh-huh. 16 Q. I think on Line 34 of that form, which is 17 actually on Page 9, you had a carryforward? 18 A. Yes. 19 Q. Okay. And it's 12,991? 20 A. Uh-huh. 21 Q. What's your understanding of what that 22 carryforward was? 23 A. That would have been from my -- my purchase of 24 RaPower3 units. 25 Q. Okay. So the tax credits?</p>	<p style="text-align: right;">45</p> <p>1 A. Yes, tax credits. 2 Q. That hadn't been used? 3 A. That's right. 4 Q. Okay. And if you turn to Page 22 of 30 for me. 5 A. I've got it. 6 Q. So this is your Schedule C for MW Penn Well 7 Service, LLC? 8 A. Uh-huh. 9 Q. And Line 13, the depreciation is \$7,780? 10 A. (Indicates) 11 Q. Is that amount a more typical amount of 12 depreciation? 13 A. Oh, a lot more than the -- yes, than the other 14 one, right. 15 Q. Okay. So the 2011, 2012 and 2013 tax returns are 16 the only tax returns that you are aware of that had 17 items related to RaPower3 units? 18 A. Yes. 19 Q. Okay. And so in 2011 and 2013 there you 20 testified there was a carryback and a carryforward of 21 unused credits? 22 A. Right. 23 Q. Did Mr. Howell explain how that worked to you? 24 A. He would have -- he would have -- he would have 25 showed me on a screen like I've told you. But as far as</p>

<p style="text-align: right;">46</p> <p>1 accounting details, I mean, that's just -- I would have 2 just trusted him to do what needed to be done with that. 3 Q. Did he -- when he recommended you purchase twelve 4 and then have a second purchase of six units, did he 5 explain how he arrived at those numbers in terms of 6 whether or not they were including these carryback and 7 carryforward? 8 A. That -- yes. Yes, I do remember that because 9 that's why he wanted two separate purchase. 10 Q. Okay. But you don't recall exactly why you 11 needed two separate purchases? 12 A. No. 13 Q. Okay. 14 A. I made some notes at the time, but -- but I mean, 15 I just -- that's just not my deal to know those things, 16 you know, so I would have made some simple notes. I'm 17 not that trusting. I mean, I would have saw where he 18 was coming from but I did not -- I'm not an accountant. 19 Off the record, I can work real hard. 20 MS. HINES: Let's take another five-minute 21 break. 22 (Recess) 23 Q. (By Ms. Hines) Mr. Penn, I think earlier you 24 were testifying about your situation as to why you got 25 involved in RaPower3 in the first place.</p>	<p style="text-align: right;">47</p> <p>1 A. Uh-huh. 2 Q. I think you testified that Mr. Howell said it 3 would help you. Can you explain what that -- what that 4 means, what you meant by that? 5 MR. AUSTIN: Objection. Foundation. 6 A. The -- well, it had to do with how much taxes I 7 owed at that time. And he would -- showed me how the 8 credits would benefit me on a tax basis. 9 Q. (By Ms. Hines) Okay. 10 A. On purchasing the units from RaPower3. 11 Q. And what was the benefit that you understood? 12 A. The simplest one was the reduction in taxes. 13 Q. Okay. 14 A. Yeah. 15 Q. And is there anything about any of the questions 16 that I've asked you today that you thought about that 17 you need to add or change or alter? 18 MR. AUSTIN: Objection. Vague. 19 A. I'm just trying to review some of the things that 20 we talked about. I think I had made a little bit of a 21 change on one, you know, that -- how I received the 22 notes but we've already -- we've already got that 23 handled. Not the notes but the purchase certificate. 24 And there's nothing really sticking out, you know, that 25 I feel like you need to be aware of at this time that I</p>
<p style="text-align: right;">48</p> <p>1 can remember. 2 MS. HINES: Okay. All right. We'll pass 3 the witness. 4 MR. AUSTIN: My witness? 5 EXAMINATION 6 BY MR. AUSTIN: 7 Q. All right. How would you like me to address you? 8 Do you want me to call you Mr. Penn or would you -- 9 A. Mike is fine. 10 Q. Call you Mike. 11 A. Yeah, Mike is fine. Right here. 12 Q. We are in Texas. I understand it's a little less 13 formal. 14 A. Yes, exactly. 15 Q. Mike, I was just listening to your -- to your 16 testimony and I just have a few followup questions if 17 that's all right. 18 A. Sure. Sure. 19 Q. As I understand it, you never talked to anyone 20 from RaPower3 about what it would entail to purchase 21 solar lenses and qualify for a tax deduction or credit; 22 is that true? 23 A. I never talked to anyone from Ra3. 24 Q. And as I understood it you never even really 25 researched it or investigated it or got your mind around</p>	<p style="text-align: right;">49</p> <p>1 what exactly it would entail to purchase lenses and 2 qualify for tax benefits? 3 A. Ask that again. 4 Q. Yeah. As I understand it you never really did 5 any research or otherwise got your mind around what 6 exactly you would have to do in order to qualify for tax 7 credits or deductions based upon your purchase of solar 8 lenses? 9 A. Well, I did review it on the internet and was 10 aware of the website and things they had on there. And 11 I did not make the purchase after reviewing until it 12 stated when I made my purchase was the day before it was 13 out for that year. 14 Q. So -- 15 A. In other words, I researched what was in the 16 internet about RaPower. 17 Q. So you knew it was a purchase of solar lenses on 18 your -- on your part; is that right? 19 A. Well, yes. I was buying solar lenses -- 20 Q. Okay. 21 A. -- or leasing them. I can't remember how they 22 determined it. 23 Q. I mean, as you sit here today you can't remember 24 whether you were leasing them from RaPower3 or buying 25 them from RaPowe3?</p>