

Page 1

1 IN THE UNITED STATES DISTRICT COURT  
 2 FOR THE DISTRICT OF UTAH, CENTRAL DIVISION  
 3  
 4 UNITED STATES OF )  
 AMERICA, ) Deposition of:  
 )  
 5 Plaintiff, ) MATTHEW SHEPARD  
 )  
 6 vs. ) Time on record: 7 hours,  
 ) 6 minutes  
 7 RAPOWER3, LLC, )  
 INTERNATIONAL ) Case No. 2:15-cv-00828 DN  
 8 AUTOMATED SYSTEMS, )  
 9 INC., LTB1, LLC, R. ) Judge David Nuffer  
 10 GREGORY SHEPARD, )  
 11 NELDON JOHNSON and )  
 12 ROGER FREEBORN, )  
 13 )  
 14 Defendants. )  
 15  
 16  
 17  
 18 April 18, 2017 \* 9:07 a.m.  
 19  
 20 Location: United States Attorney's Office  
 21 111 South Main Street, Suite 1800  
 22 Salt Lake City, Utah  
 23  
 24 Reporter: Dawn M. Perry, CSR  
 25 Notary Public in and for the State of Utah

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P R O C E E D I N G S

M A T T H E W S H E P A R D,

called as a witness, being first sworn,  
was examined and testified as follows:

E X A M I N A T I O N

BY MR. MORAN:

Q. Good morning, Mr. Shepard.

A. Good morning.

Q. We're on the record in the case of United States v. RaPower3, et al., which is pending in the District of Utah.

My name is Christopher Moran, the United States Department of Justice Tax Division, appearing on behalf of the United States. With us on the phone are counsel -- are additional counsel for the United States, Erin Healy Gallagher and Erin Hines.

Will the other attorneys in the room please place their appearances on the record?

MR. REAY: Attorney Donald Reay for Matthew Shepard.

MR. AUSTIN: And Christian Austin for RaPower3 and other defendants.

MR. MORAN: And, Mr. Reay, you are also here representing Greg Shepard; is that correct?

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MR. REAY: Correct. And Roger Freeborn, if we want to cover all our bases.

MR. MORAN: Thanks for reminding me.

This deposition will be governed by the Federal Rules of Civil Procedure.

Q. Mr. Shepard, you have already been placed under oath. Would you please state your name and address for the record?

A. Matthew G. Shepard. 858 Clover Meadow Drive, Salt Lake City, Utah 84123.

Q. Okay. Mr. Shepard, have you ever been deposed before?

A. No.

Q. Okay. Have you ever been a party to a lawsuit?

A. No.

Q. Okay. Since you've never been deposed before -- your attorney already may have talked to you about this, but I'm going to go over the ground rules of the deposition.

In this deposition I'm going to ask you several questions. You are required to answer my questions unless you are instructed not to do so by your attorney, Mr. Reay.

My questions and your answers will be

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1 recorded by the court reporter. You already  
 2 mentioned you have a cold, so I'm just going to ask  
 3 you to work on speaking up. You need to speak loudly  
 4 enough for the court reporter to hear you and answer  
 5 my questions.  
 6 A. Okay.  
 7 Q. Towards that end, the court reporter  
 8 cannot record a nod or shake of the head, and words  
 9 like uh-huh are unclear in the transcript, so I'm  
 10 going to ask you that you answer my questions  
 11 verbally, with either yes or no or the further spoken  
 12 word.  
 13 A. Okay.  
 14 Q. We also have a tendency in casual  
 15 conversation to speak over one another or answer a  
 16 question before it's -- before it's done being asked.  
 17 So in a deposition, I'm going to ask you to wait  
 18 until I'm finished asking my question before you  
 19 start to answer.  
 20 A. Okay.  
 21 Q. Just because the court reporter can't take  
 22 down our words if more than one of us are talking at  
 23 a time.  
 24 Do you understand?  
 25 A. I do.

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1 Q. Your task today is to give full and  
 2 complete answers.  
 3 Do you understand that obligation?  
 4 A. Yes.  
 5 Q. Okay. And my obligation is to ask  
 6 understandable questions of you. So if for any  
 7 reason you don't understand a question, let me know,  
 8 and I'll try to ask a better question.  
 9 A. Okay.  
 10 Q. Occasionally, we hope, another attorney in  
 11 the room may offer an objection to a question that I  
 12 ask. That attorney is just noting his objection for  
 13 the record. Unless your attorney, Mr. Reay,  
 14 instructs you not to answer, you're going to need to  
 15 answer the pending question.  
 16 Do you understand?  
 17 A. Yes.  
 18 Q. It may happen as we go through today that  
 19 you give an answer to a question and then later  
 20 realize that you'd like to expound upon your answer  
 21 or clarify an answer. If that happens, just let me  
 22 know and I'll give you the chance to explain what you  
 23 want to clarify or correct for the record.  
 24 A. Okay.  
 25 Q. We're probably going to go a good portion

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1 of today, so I'm going to try to remember to take a  
 2 break, but I also have a tendency to just keep  
 3 plowing ahead. So if you or anyone else in the room  
 4 needs to take a break, just let me know. The only  
 5 thing I ask is that you not take a break while a  
 6 question is pending. So if you need to take a break  
 7 and there is a question pending, just answer my  
 8 question as fully and -- as fully as you can, and  
 9 after that we can take a break.  
 10 A. Okay.  
 11 Q. Similarly, if you need to talk to your  
 12 attorney, Mr. Reay, you can do that at any time; I  
 13 just ask that it not be while a question is pending.  
 14 A. Okay.  
 15 Q. Mr. Shepard, we're here today to get as  
 16 accurate a record as we can of the facts of this case  
 17 as you know them. So I have to ask, is there  
 18 anything that would prevent you from understanding  
 19 and answering my questions with the full capacity of  
 20 your recollection?  
 21 A. No.  
 22 Q. Are you taking any medications or drugs  
 23 that might interfere with your memory?  
 24 A. No.  
 25 Q. Have you had anything alcoholic to drink

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1 in the past eight hours?  
 2 A. No.  
 3 Q. Are you feeling sick or unwell, except for  
 4 your cold, and are you able to sit for this  
 5 deposition?  
 6 A. I'm okay.  
 7 Q. Okay. Is there any reason you can think  
 8 of why you will not be able to answer my questions  
 9 fully and accurately?  
 10 A. No.  
 11 Q. Thanks.  
 12 We're going to start with some questions  
 13 about your background, just so I can more fully  
 14 understand how you come to the -- come to be involved  
 15 in this case.  
 16 Where were you born?  
 17 A. Idaho.  
 18 Q. Idaho. What's your date of birth?  
 19 A. November 23rd, 1974.  
 20 Q. Okay. Did you grow up in Idaho?  
 21 A. No.  
 22 Q. When did you leave Idaho?  
 23 A. When I was a baby.  
 24 Q. Where did you go?  
 25 A. Utah.

<p style="text-align: right;">Page 153</p> <p>1 THE WITNESS: It would be his best 2 efforts. I put what he asked me to. 3 Q. (BY MR. MORAN) Do you read what your dad 4 sends you to put in newsletters and team memos? 5 A. Yes. 6 Q. Do you review it for accuracy? 7 MR. AUSTIN: Objection. Vague. 8 Overbroad. 9 THE WITNESS: I don't know what "accuracy" 10 means. If you mean grammatical accuracy, sometimes 11 I -- yes, I do. Sometimes I still miss grammatical 12 things. But when you're on an extreme budget, 13 meaning you don't have lots of people to hire to look 14 over things, yes, I'm kind of like a default person. 15 As I am putting it in I'll look for grammatical 16 errors. And beyond that, no. 17 Q. (BY MR. MORAN) Well, if you read text 18 like that that appears in Exhibit 423, on the second 19 page, where it says that you're available to help 20 close deals -- do you see that? 21 A. Yes. 22 Q. If your father tells you to put that in 23 there -- you just testified that you don't help close 24 deals. 25 MR. AUSTIN: Totally --</p>	<p style="text-align: right;">Page 155</p> <p>1 Q. All right. 2 A. So hopefully that cleared it up. 3 Q. So it sounds like you're available in case 4 your dad is not? 5 A. Yeah. 6 MR. AUSTIN: Objection. 7 THE WITNESS: Available to -- 8 MR. AUSTIN: Vague. 9 THE WITNESS: -- pick up a call, yes, and 10 answer certain questions that I know about. Not 11 everybody gets to go down to go visit and see the 12 progress. I get calls a lot like that -- not a lot. 13 I get calls every once in a while like that. 14 As far as closing deals, that doesn't 15 happen very often. If somebody is trying to get help 16 closing a deal, I-- in fact, I don't even recall when 17 the last time that would have happened. 18 (EXHIBIT 424 WAS MARKED.) 19 MR. REAY: Can we go off the record for a 20 second? 21 MR. MORAN: We're off the record. 22 (Discussion off the record.) 23 Q. (BY MR. MORAN) Mr. Shepard, you've been 24 given a copy of what's been marked for identification 25 as Plaintiff's Exhibit 424. Do you recognize this</p>
<p style="text-align: right;">Page 154</p> <p>1 MR. REAY: Mischaracterizes his testimony. 2 MR. AUSTIN: You're mischaracterizing his 3 testimony and you're arguing with him. 4 Q. (BY MR. MORAN) Would you tell your 5 father, "Well, I don't close deals," or do you just 6 go ahead and paste what he tells you to put in there? 7 A. Good gravy. 8 My dad has one phone number, right? 9 Sometimes he's available, sometimes he's not. 10 Sometimes I get phone calls. I'll take notes. I 11 will -- like I said, I will send the calls where they 12 need to go. 13 As far as closing deals, I will answer 14 certain questions about things that I understand from 15 my trips down. That's about my extent. Does that 16 help close a deal? Probably. It depends on your 17 definition of "closing a deal." I don't know what he 18 specifically meant by that, but do I help in some 19 way? Yes, I do. Finalizing and putting a final 20 stamp on something, I don't do that. I don't even -- 21 I don't know what my dad really does. But I do turn 22 things over -- usually over to him. 23 So I'm not -- I'm not sure what you're 24 exactly getting at, but it doesn't sound like it's 25 being representative of what I'm trying to say.</p>	<p style="text-align: right;">Page 156</p> <p>1 document? 2 A. Yes. 3 Q. What is it? 4 A. To people who responded to the KNRS radio 5 ad. 6 Q. I'm not asking you to read it. Is this an 7 e-mail from -- 8 A. Oh, it's an e-mail from my father to me. 9 Q. Okay. Is this an example of your dad 10 giving you text? 11 A. Yes. 12 Q. What were you going to do with this 13 information? 14 A. I think that was -- this would have been 15 sent out to people in a bulk mail. 16 Q. Is that one of the RaPower3 team memo? 17 A. No. It would be sent out through 18 MailChimp, because it's bulk. If you don't -- if you 19 send it -- sometimes if you send it with a big group, 20 they get bounced. So he asked me to send it through 21 MailChimp. 22 Q. All right. And you've testified earlier 23 that you take what your father gives you and you cut 24 and paste it into a document that you then send out 25 through MailChimp?</p>

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1 A. Yes.  
 2 Q. Is Exhibit 424 representative of what  
 3 usually happens when your dad wants you to send  
 4 something out?  
 5 A. Yes.  
 6 Q. Okay.  
 7 (EXHIBIT 425 WAS MARKED.)  
 8 Q. Mr. Shepard, I've given you a copy of  
 9 what's been marked for identification as Plaintiff's  
 10 Exhibit 425. Do you recognize it?  
 11 A. Yes.  
 12 Q. What is it?  
 13 A. It's an e-mail from my dad to myself.  
 14 Q. Is this another example of your dad giving  
 15 you text that would be sent out to RaPower3  
 16 customers?  
 17 A. Yes.  
 18 Q. Do you recall if this information was  
 19 communicated to RaPower3 customers?  
 20 A. I'm pretty sure it would have been.  
 21 Q. There is a reference to the construction  
 22 of large 24/7 renewable energy project in Delta --  
 23 A. Yes.  
 24 Q. -- in the first paragraph?  
 25 A. Uh-huh (affirmative).

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1 Q. What's your understanding of 24/7? What  
 2 does that mean?  
 3 A. It means being able to produce electricity  
 4 24 hours a day.  
 5 Q. Tell me this. How does -- how will the  
 6 solar lenses in Delta produce energy when it's dark?  
 7 MR. AUSTIN: Objection. Foundation.  
 8 Calls for speculation. It calls for expert testimony  
 9 beyond the scope of this witness's involvement.  
 10 THE WITNESS: As much as I understand, the  
 11 heat side can be stored in molten salt for a  
 12 substantial amount of time. So that's --  
 13 theoretically, it can run 24/7 off of that.  
 14 However, there is that, plus the aspect of  
 15 including biomass into the project as well, which  
 16 that's what I understand will be happening  
 17 eventually.  
 18 Q. (BY MR. MORAN) Okay.  
 19 A. It says "renewable energy," it doesn't say  
 20 "solar." So I would imagine that's what he's  
 21 referring to.  
 22 Q. Renewable energy being produced?  
 23 A. Yes. So I would imagine that he's  
 24 referring to solar plus biomass.  
 25 Q. All right. And directing your attention

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1 to the fourth paragraph, it says, "Now that these  
 2 stages have been completed."  
 3 A. Uh-huh. Yes.  
 4 Q. Is reference to these stages -- is that  
 5 the research and development process?  
 6 MR. AUSTIN: Objection. Foundation.  
 7 Calls for speculation.  
 8 THE WITNESS: It looks like he's referring  
 9 to the paragraph before.  
 10 Q. (BY MR. MORAN) Okay. And he calls it  
 11 main development stages; is that right?  
 12 A. Yes.  
 13 Q. So were those stages completed in 2016?  
 14 MR. AUSTIN: Objection. Foundation.  
 15 Calls for speculation.  
 16 THE WITNESS: I don't know. I'm not an  
 17 expert in that.  
 18 Q. (BY MR. MORAN) Okay. The picture at the  
 19 bottom of Exhibit 425, is that your father?  
 20 A. Yes.  
 21 Q. And, for the record, Exhibit 425 is  
 22 labeled Shepard\_Greg-01076 through  
 23 Shepard\_Greg-O1077.  
 24 (EXHIBIT 426 WAS MARKED.)  
 25 Q. Mr. Shepard, I've given you a copy of

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1 what's been marked for identification as Plaintiff's  
 2 Exhibit 426. Do you recognize this document?  
 3 A. Yes.  
 4 Q. What is it?  
 5 A. It's an e-mail from my dad to myself.  
 6 Q. It says, "Matt. Great job. No  
 7 corrections."  
 8 Is that correct?  
 9 A. Yes.  
 10 Q. All right. Is this before or after you  
 11 send out the -- the document that follows to RaPower3  
 12 customers?  
 13 MR. AUSTIN: Objection. Foundation.  
 14 Calls for speculation.  
 15 THE WITNESS: It is -- after I put  
 16 together what he sends me into the MailChimp format,  
 17 I send it to him and he looks over it, and he will  
 18 tell me if something needs to be corrected or not.  
 19 Q. (BY MR. MORAN) So is it fair to say that  
 20 Greg Shepard reviews whatever you sent out to  
 21 RaPower3 customers before you send it?  
 22 A. Yes.  
 23 Q. Okay. I have no further questions on that  
 24 document.  
 25 (EXHIBIT 427 WAS MARKED.)

<p style="text-align: right;">Page 241</p> <p>1 A. That's what I was saying was from that 2 contract.</p> <p>3 Q. Okay. Where did you get this information? 4 A. From -- I saw that from my dad.</p> <p>5 Q. How about the information on the escrow 6 account? 7 A. That was in the contract.</p> <p>8 Q. Okay. That's the contract that your dad 9 got from Neldon Johnson; is that right? 10 A. Yes.</p> <p>11 Q. In the next paragraph you make a reference 12 to generating electricity. 13 Do you see that? 14 A. Yes.</p> <p>15 Q. Has that statement turned out to be true? 16 A. It has generated electricity, just not to 17 the extent that we want it to yet. He is still 18 building the -- that first -- first phase that you 19 saw down there. But it has produced electricity, but 20 not to the extent where we're trying to -- where it 21 will make a huge difference. I still expect that, 22 though.</p> <p>23 Q. All right. The electricity that it has 24 generated, has anything been done with that 25 electricity?</p>	<p style="text-align: right;">Page 243</p> <p>1 Q. What would your father have been sending 2 in the e-mail at the bottom? 3 A. In case somebody asked me about anything 4 with audits or anything like that, but I don't do 5 anything with that. So if anybody has asked about 6 that -- I think maybe over the last several years, 7 just a handful, like, a couple people, two or three 8 people, have asked me about it. So I don't know 9 any -- I don't care to know anything about it, so I 10 just refer them to my father.</p> <p>11 I did get this document. Did I put it in 12 my files? I don't think so. I don't even think I 13 did, but I -- it may be somewhere in my files.</p> <p>14 Q. So you don't know anything about the facts 15 that are in the second page? 16 A. Well, I read it when my dad sent it out.</p> <p>17 Q. Okay. Do you know who -- do you know the 18 names of the engineers that are referred to on 19 page 3682? 20 A. I do not.</p> <p>21 Q. Okay. 22 A. Although I'm -- yeah, I do not.</p> <p>23 Q. You never met these engineers? 24 A. No. 25 Q. No further questions on that document.</p>
<p style="text-align: right;">Page 242</p> <p>1 A. It was for R&amp;D purposes. 2 Q. Was that electricity sold to anyone? 3 A. I already answered that. I don't think 4 so. I don't know.</p> <p>5 Q. Okay. No further questions on that 6 document. 7 (EXHIBIT 439 WAS MARKED.)</p> <p>8 Q. Mr. Shepard, you've been given a copy of 9 what's been marked for identification as Plaintiff's 10 Exhibit 439. Do you recognize this document? 11 A. Greg Shepard...</p> <p>12 Q. I'm going to direct your attention to the 13 e-mail at the bottom. It appears to be an e-mail 14 from your father to you, dated May 11th, 2015. 15 A. Yeah. Oh, here is the -- the file.</p> <p>16 Q. You are saying, "Here is the file." 17 A. Yeah. I guess the second page is the file 18 that was attached.</p> <p>19 Q. Okay. Exhibit 439 is labeled 20 Shepard_Greg-03681 through Shepard_Greg-03682. Who 21 drafted the document on the second page, 3682? 22 A. I didn't do it, so I'm not -- I don't know 23 who did it.</p> <p>24 Q. You don't? 25 A. No.</p>	<p style="text-align: right;">Page 244</p> <p>1 (EXHIBIT 440 WAS MARKED.) 2 Q. Mr. Shepard, you've been given a copy of 3 what's been marked for identification as Plaintiff's 4 Exhibit 440. Do you recognize this? 5 A. I don't remember. I possibly saw it. I 6 know that he's referring to some updates on RaPower3. 7 Q. Who is "he"? 8 A. My dad references -- it says, "My son will 9 have some nice updates to put on rapower3.com next 10 week." But we've already talked about my involvement 11 on that website, so I'm not -- I don't know what 12 updates he's talking about.</p> <p>13 Q. You don't? 14 A. We do updates all the time, so I don't 15 know.</p> <p>16 Q. All right. Then he says, "We should have 17 something to really cheer about by the end of May." 18 Do you know when he is referring to? 19 A. May 2015. I don't know. I don't remember 20 that far back.</p> <p>21 Q. Do you remember any significant events 22 occurring around May 2015? 23 A. I don't remember. 24 (EXHIBIT 441 WAS MARKED.) 25 Q. Mr. Shepard, you've been handed a copy of</p>

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1 Plaintiff's Exhibit 441, which is Bates-stamped  
 2 US-0017033 through US-001715. Do you recognize this  
 3 document?  
 4 A. Yes.  
 5 Q. What is it?  
 6 A. It is my Tumblr account that I keep for  
 7 RaPower3.  
 8 Q. Okay. Throughout this document it says --  
 9 there's reference to "by Matthew Shepard"?  
 10 A. Yeah.  
 11 Q. Did you write the statements that appear  
 12 here?  
 13 A. Let's see. Yes, that was an update from  
 14 my observations from a trip down to -- to Delta.  
 15 Are we going through every page?  
 16 Q. Well, I guess to save time, I can say -- I  
 17 can ask you, when it indicates that the text is by  
 18 Matthew Shepard, am I to understand that you wrote  
 19 that?  
 20 A. Yes.  
 21 Q. Okay.  
 22 A. I would have put my name, I think, on the  
 23 ones that were by myself.  
 24 Q. And --  
 25 A. Or -- well, yeah.

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1 Q. The facts that appear in this document,  
 2 where did you -- what was the source of those facts?  
 3 A. Either from the IAUS website,  
 4 Neldon Johnson's mouth, from a visit down there or  
 5 from his tech paper. I -- most of it's from his tech  
 6 papers that I would -- that I pulled out little  
 7 chunks and posted.  
 8 Q. Okay.  
 9 (EXHIBIT 442 WAS MARKED.)  
 10 Q. Mr. Shepard, you've been handed a copy of  
 11 what's been marked for identification as Plaintiff's  
 12 Exhibit 442.  
 13 A. Okay.  
 14 Q. Do you recognize this document?  
 15 A. Yes.  
 16 Q. What is it?  
 17 A. It was a survey.  
 18 Q. What was the survey about?  
 19 A. The survey was to find out how negative  
 20 press that came out of the Department of Justice  
 21 affected their solar lens business.  
 22 Q. Was it the Department of Justice or  
 23 Deseret News?  
 24 A. Oh, it was Deseret -- this one was Deseret  
 25 News. Yeah. I think you're right. Yes, it was

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1 Deseret -- I believe you are right, Deseret News.  
 2 Q. Okay. Who conducted the survey?  
 3 A. My dad asked me to put it out. He came up  
 4 with the questions and I put it to a Google survey,  
 5 and he had me e-mail that out.  
 6 Q. Okay. And then did you compile the  
 7 responses?  
 8 A. Well that's automatic, but, yes, I printed  
 9 it off for him.  
 10 Q. So Google made you an Excel spreadsheet?  
 11 A. Yes.  
 12 Q. Okay. Let me ask you another question.  
 13 Is Exhibit 442 an Excel spreadsheet?  
 14 A. No. It's a Google -- well, I don't know,  
 15 maybe it's Excel. I don't remember which one I used.  
 16 It was either the Google surveys or the Microsoft  
 17 surveys. I'm not sure. If it was the Microsoft one,  
 18 it would be in Excel or the Google equivalent. I  
 19 don't remember which it was sent out with.  
 20 Q. All right. So Google automatically  
 21 compiled it based on the results?  
 22 A. Yeah, Google or Microsoft, whichever one I  
 23 used.  
 24 Q. Okay. Why did -- do you know why  
 25 Mr. Shepard conducted the survey?

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1 A. I think it was directed by Neldon. He  
 2 wanted to understand the impact -- the negative  
 3 impact of that article.  
 4 Q. Do you know what happened to the results  
 5 of the survey?  
 6 A. I don't know. I just compiled it and gave  
 7 it to my dad. I think my dad gave it to Neldon.  
 8 Q. Did you ever hear anything about the  
 9 survey after you prepared it?  
 10 A. No. I do know that it was a voluntary  
 11 survey, though, so -- it was not compulsory.  
 12 Q. So you sent it out to the RaPower3 mailing  
 13 list?  
 14 A. Yes.  
 15 Q. Okay. And it looks like about 82 people  
 16 responded?  
 17 A. Yeah.  
 18 Q. Mr. Shepard, do you own any stock in  
 19 International Automated Systems?  
 20 A. I do.  
 21 Q. How much?  
 22 A. I think 60,000 shares.  
 23 Q. Sixty thousand shares?  
 24 A. That's penny stock, so that's really not  
 25 that much.