

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

RAPOWER-3, LLC,)

INTERNATIONAL AUTOMATED)

SYSTEMS, INC., LTBI, LLC,)

R. GREGORY SHEPARD, NELDON)

JOHNSON and ROGER)

FREEBORN,)

Case No: 2:15-CV-828DN

Defendants,

BEFORE THE HONORABLE DAVID NUFFER

NOVEMBER 15, 2018

SHOW CAUSE HEARING

Reported by:

KELLY BROWN HICKEN, RPR, RMR

801-521-7238

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

FOR THE U.S.:

U.S. DEPARTMENT OF JUSTICE

BY: ERIN HEALY GALLAGHER

Attorney at Law

P.O. BOX 7238

BEN FRANKLIN STATION

WASHINGTON, D.C. 20044

FOR THE DEFENDANTS:

NELSON, SNUFFER, DAHLE & POULSEN

BY: STEVEN R. PAUL

Attorney at Law

10885 SOUTH STATE STREET

SANDY CITY, UTAH 84070

1 SALT LAKE CITY, UTAH, THURSDAY, NOVEMBER 15, 2018

2 * * * * *

3 THE COURT: Good morning. We're convened in
4 United States vs. RaPower. Could we ask counsel to make their
08:56:27 5 appearances for our record, please?

6 MS. HEALY-GALLAGHER: Good morning. Erin
7 Healy-Gallagher on behalf of the United States.

8 THE COURT: Thank you.

9 MR. KLEIN: Wayne Klein, the receiver.

08:56:36 10 THE COURT: Thank you.

11 MR. PAUL: Steven Paul on behalf of Greg Shepard.
12 And with me today is Greg Shepard, his wife Diana and Matthew
13 Shepard as requested by the Court.

14 THE COURT: Thank you very much.

08:56:48 15 We met a week ago, if I remember right, to discuss
16 the motion for order to show cause. And I issued an order in
17 In Re: Civil Contempt, which recited the following facts:

18 That on August 22nd of this year an order was
19 entered freezing all assets of Shepard and other parties. On
08:57:13 20 September 27th, with full knowledge of the asset freeze order
21 Mr. Shepard liquidated \$27,126.05 from an annuity contract
22 with AXA Equitable.

23 On September 28th, a motion was filed by
24 Mr. Shepard to lift the asset freeze order without a
08:57:34 25 disclosure that the funds had been liquidated. After the

1 government opposed the motion and requested an accounting
2 Mr. Shepard withdrew the motion. Mr. Shepard admitted in
3 papers filed that the funds were liquidated and spent in
4 violation of the asset freeze order.

08:57:56 5 So I ordered in that order which was docketed last
6 week that Mr. Shepard restore the funds to the receiver on or
7 before 4 o'clock p.m. Friday, November 30th; that all parties
8 and entities that benefited from payments made with the funds
9 will be jointly and severally liable with Mr. Shepard for
08:58:18 10 repayment of the funds to the extent of the benefit each had
11 received; that by noon on Tuesday of this week, 13th,
12 Mr. Shepard should file certain documents, and we're going to
13 be reviewing those today. I permitted redaction. I ordered
14 attorney's fees, and I ordered Mr. Shepard, his wife and his
08:58:44 15 son Matthew to attend court today.

16 In response to that order, Mr. Shepard filed a
17 verified response on November 13th, 2018, with many exhibits
18 outlining the expenditure of the \$27,126.05 in a 19-day period
19 between October 12th and September 31st of this year. In
08:59:19 20 large shape, that's the exhibits and the summary attached show
21 that about \$6,000 was spent for payments, debt or lease
22 payments on vehicles; \$2,000 on utilities; taxes for property
23 or the Internal Revenue Service, about 16- or \$1700; \$4,300 on
24 a mortgage; some miscellaneous amounts for food at restaurants
08:59:56 25 and groceries and entertainment; \$11,40 on credit cards; and

1 \$1208 roughly was taken out in cash.

2 I had some questions about some of those
3 disbursements and some of the transactions shown on the
4 exhibits, and I didn't know what the parties would propose for
09:00:27 5 a method of proceeding today, whether I should ask and clarify
6 some of these questions that just popped out at me as I
7 reviewed the documents or whether you wanted to proceed with
8 testimony or what.

9 Ms. Healy-Gallagher, what's your preference?

09:00:42 10 MS. HEALY-GALLAGHER: Well, Your Honor, we're
11 prepared to proceed any way, really. If you have questions
12 that will perhaps get to the heart of what you're curious
13 about, perhaps we ought to start with that with the
14 opportunity for each counsel to follow up --

09:00:57 15 THE COURT: Okay.

16 MS. HEALY-GALLAGHER: -- and flush anything out
17 that we would like or feel is appropriate.

18 THE COURT: Have you planned based on what you've
19 reviewed in the short time that you've had to review it to
09:01:08 20 examine any of these witnesses today?

21 MS. HEALY-GALLAGHER: Yes. We're prepared to
22 examine all witnesses.

23 THE COURT: Okay. All right. Good.

24 Mr. Klein, do you have any input on you how we
09:01:20 25 ought to proceed here?

1 MR. KLEIN: I have things that I would like to
2 know, but to the extent that that information comes from
3 questions from the Court or Ms. Healy-Gallagher then I can
4 play catchup and just see what questions remain.

09:01:40

5 THE COURT: I don't mean to be informal, but I
6 think that sometimes it's easier to get at specific questions
7 by asking them instead of dancing around them.

8 Mr. Paul, how do you think we ought to proceed
9 today?

09:01:51

10 MR. PAUL: Well, I think we've done what the Court
11 has asked. And so if the Court has additional questions we'll
12 do our best to respond.

09:02:06

13 THE COURT: And I do want to say that I thought you
14 did a pretty remarkable job of assembling a lot of material in
15 a very short time. And while it may not answer all the
16 questions it certainly provides a very good base for
17 understanding what happened. And while that doesn't solve the
18 problem of the missing money, it represents a significant and
19 substantial effort, and I appreciate that.

09:02:24

20 MR. PAUL: Thank you. And I will add that
21 Mr. Shepard does intend to repay the money by the deadline the
22 Court has set. He has some methods in process or some -- he's
23 attempting to borrow the money to repay that to the receiver.

09:02:50

24 THE COURT: Thank you. Let me ask these questions.
25 It appeared to me that more than a current balance due was

1 paid on the mortgage, that about three monthly payments were
2 paid; is that right?

3 MR. PAUL: Yes, Your Honor.

09:03:02

4 THE COURT: It also appeared that similarly
5 payments which were not in arrears and not due were also made
6 on all of the vehicles, some more than others.

7 MR. PAUL: I believe that's true, Your Honor.

8 THE COURT: It looked like three or four payments
9 on most of them.

09:03:18

10 MR. PAUL: I would agree without knowing the exact
11 calculations, but I know that was the intent.

12 THE COURT: That's a humanities major's
13 calculations, just so you know.

09:03:31

14 It also appeared that a significant amount of
15 \$1,000 was paid to Questar as I recall when the bill was less
16 than \$100 and there was no balance due.

17 MR. PAUL: I believe that's true.

09:03:48

18 THE COURT: The amount paid for property taxes by
19 contrast appear to be only a portion of the annual payment.
20 \$535 was paid, and the annual property taxes \$3,435.13; is
21 that correct?

09:04:08

22 MR. PAUL: I don't know the answer. I think it's
23 correct that the amount of the payment that was made as
24 reflected in the documents, but I don't know if that was a
25 full payment or partial payment.

1 THE COURT: Mr. Klein?

2 MR. KLEIN: The property tax records indicate there
3 had been a \$2600 prepayment of property taxes, so one of the
4 questions that I would have is when that prepayment was made
09:04:23 5 and the source of those funds.

6 THE COURT: Okay.

7 Can you clarify that now, Mr. Paul?

8 MR. PAUL: I cannot.

9 THE COURT: Okay. You're all going to have to
09:04:31 10 excuse me. You've probably figured out by now I've got a
11 terrible cold; right? This is not the way I like to be in
12 court, but here I am.

13 Then the statement, just for the record again, the
14 statement on the mortgage indicated that the balance on that
09:04:53 15 mortgage exceeds \$300,000.

16 MR. PAUL: Yes, that is correct.

17 THE COURT: Okay. It also looked to me like, let
18 me figure out where this runs, on the Wells Fargo card there
19 is what refers to be a super check advance of \$6,000, a cash
09:05:17 20 advance it appears to me that represented almost the entire
21 balance of the Wells Fargo card.

22 Did it look like that to you, Mr. Paul?

23 MR. PAUL: I did note there was a debit against the
24 account for \$6,000. I don't know what that was for.

09:05:32 25 THE COURT: Okay. Do you want to ask your client

1 what that was for so we can get it on the record, or would you
2 prefer that come out in examination?

3 MR. PAUL: If the Court would allow me a few
4 minutes before we go forward. It probably will be a question
09:05:47 5 for Mr. Shepard.

6 THE COURT: Okay. Why don't you ask him about that
7 one. And on the Chase account it appeared that there was a
8 \$16,000 -- \$16,861 balance transfer. I don't know where that
9 went to or from, but it looked like there was some shifting
09:06:06 10 there.

11 So maybe you can check with your client about
12 those, and we could get some information on those before we
13 proceed.

14 Mr. Klein?

09:06:14 15 MR. KLEIN: Your Honor, we would have the
16 opportunity to also get Mr. Shepard's testimony under oath as
17 to those answers rather than just counsel's representations?

18 THE COURT: Well, I'm taking these as stipulations,
19 but I'm not going to constrain your examination.

09:06:30 20 Mr. Paul, you want to go ahead?

21 MR. PAUL: Yes. Thank you.

22 THE COURT: Thanks.

23 (Whereupon, Mr. Paul and Mr. Shepard left the courtroom.)

24 THE COURT: Back on the record.

09:18:03 25 MR. PAUL: Your Honor, thank you for the time.

1 THE COURT: Yeah. Go ahead.

2 MR. PAUL: So it is my understanding from speaking
3 with Mr. Shepard that most of the money that was taken by
4 those balance transfers, both the \$6,000 on the Wells Fargo
09:18:21 5 account, the super check on October 10th, as well as the Chase
6 balance transfers, I think they were accumulative but didn't
7 reflect a specific date, of about \$16,800 were used by
8 Mr. Shepard to pay off other higher interest rate credit card
9 obligations, or he does have a large line of credit I think is
09:18:47 10 reflected with the Bank of America account that is around
11 \$60,000, to keep those accounts in good standing so he would
12 still have access to those funds. Some of the money was used
13 by Mr. Shepard and his family for living expenses. But that's
14 the gist of what I understand.

09:19:09 15 THE COURT: Okay. Am I right, then, that they were
16 cash advances, not paid to a different -- not just paid to a
17 debt?

18 MR. PAUL: I don't know the answer to that. I
19 don't think Mr. Shepard knows the answer to that --

09:19:27 20 THE COURT: Okay.

21 MR. SNUFFER: -- without further looking into the
22 documents. My understanding is that the \$6,000 super check
23 was moved from the Wells Fargo account to another credit card
24 account to pay that down. And then the \$6,000 from the
09:19:49 25 Chartway account on October 24th was used to pay the Wells

1 Fargo account back down to zero.

2 THE COURT: Okay. Thank you.

3 That concludes the questions that I had. I'm going
4 to turn to you first, Ms. Healy-Gallagher, and ask you to
09:20:08 5 proceed the way that you want.

6 MS. HEALY-GALLAGHER: Yes, Your Honor. First I
7 think -- and I apologize. We switched horses midstream here.
8 Mr. Moran had another obligation today. So I just wanted to
9 first get an idea and make sure I'm clear on what we're here
09:20:27 10 for today. And today to my understanding is to identify what
11 happened with the money, which we've already started to do;
12 and also figure out who may be jointly and severally liable
13 for different amounts --

14 THE COURT: Right.

09:20:39 15 MS. HEALY-GALLAGHER: -- along with Mr. Shepard.
16 And also I understand and appreciate from Mr. Paul the
17 representation that Mr. Shepard does plan to make the
18 November 30th deadline, but another question or perhaps some
19 information we could get today is if that does not happen
09:21:02 20 what's an appropriate response by the Court.

21 THE COURT: Yeah. I prefer -- I mean, we can talk
22 about that preliminarily, but I prefer to defer that. I was
23 going to set another hearing in the first part of December.
24 We also had the issue of attorney's fees on this issue, which
09:21:16 25 was ordered so it's not in the precise amount there. So we're

1 going to have to have a little followup.

2 But let me ask another question. In spite of the
3 fact that I signed the order freezing, I'm not as familiar
4 with it as maybe you are. Was there a restraint on incurring
09:21:36 5 additional liabilities?

6 MS. HEALY-GALLAGHER: I would need to take a look
7 at it to be sure about that.

8 THE COURT: Do you know, Mr. Klein?

9 MR. KLEIN: There is not. So the order does not
09:21:52 10 include a prohibition against liabilities for which the
11 defendants might be personally responsible so long as it did
12 not create any impairment of the receivership estate.

13 THE COURT: So they can only be liabilities that
14 were not secured by assets.

09:22:11 15 MR. KLEIN: Correct.

16 THE COURT: Okay.

17 MR. KLEIN: And for which the lender did not expect
18 repayment from assets of the estate.

19 THE COURT: Okay. Explain that to me. I
09:22:23 20 understand liens, but how with a lender expect payments from
21 assets without a lien? Stupid lender or what?

22 MR. KLEIN: Well, they're unsecured loans.

23 THE COURT: Okay.

24 MR. KLEIN: So to the extent that a family member
09:22:38 25 is willing to loan money or to the extent that there are --

1 well, the receivership order contemplates the existence of
2 non-receivership assets that might be owned by Mr. Shepard.

3 THE COURT: Okay.

09:22:59

4 MR. KLEIN: So we don't yet know, I don't yet know
5 if those exist.

6 THE COURT: Okay.

09:23:16

7 Mr. Paul, what can you tell us about the
8 anticipated source of funds for the repayment? And again,
9 that's a significant plan that your client has, so I don't
10 want to diminish it. But I do want to know what the source
11 is.

09:23:32

12 MR. PAUL: It would be a friend. So not any
13 affiliated party, not a receivership defendant or party
14 defendant or anyone that's associated with the party
15 defendant.

16 THE COURT: Okay.

17 MR. PAUL: Just a family friend.

18 THE COURT: Okay. And --

09:23:39

19 MR. PAUL: Your Honor, if I could just chime in on
20 the receivership. The asset freeze order and the order
21 appointing receiver, I don't think either of them speak to
22 incurring additional debt. I think Mr. Klein's assumptions
23 are maybe implied from the document, but certainly I don't
24 think it was addressed at all in the document as to what sorts
09:24:01 25 of debts could be incurred.

1 THE COURT: So you don't think there is a
2 limitation on encumbering assets of the receivership?

3 MR. PAUL: Encumbering, perhaps.

4 THE COURT: Okay.

09:24:11 5 MR. PAUL: But I don't think there's anything in
6 there about incurring additional debt or borrowing or using
7 existing lines of credit or other obligations that --

8 THE COURT: So long as they're not secured.

9 MR. PAUL: Correct. As long as it doesn't further
09:24:28 10 incumber the debt.

11 THE COURT: Okay. Are you confident enough in that
12 distinction to make a stipulation that, and I'm asking both
13 counsel, all counsel now, to say that there is no restraint on
14 unsecured debt incurred by any defendant or -- how do we refer
09:24:53 15 to them, the other parties? Receivership?

16 MS. HEALY-GALLAGHER: Receivership defendants.

17 THE COURT: Receivership defendants. But that
18 there is a restraint by -- my law clerk is telling me there is
19 a restraint on pledging any receivership property or
09:25:12 20 encumbering receivership property.

21 MR. KLEIN: And I would make I distinction between
22 the individual defendants and the entity defendants because
23 the entity defendants are now under my exclusive control.

24 THE COURT: Right. They can't incur any debt.

09:25:24 25 MR. KLEIN: Correct.

1 THE COURT: Just by virtue of that control.

2 MR. KLEIN: Yes.

09:25:34

3 THE COURT: Okay. So do you agree with my
4 statement that the asset freeze order prohibits pledging or
5 encumbering receivership property by transferring control to
6 Mr. Klein for the entities prohibits the entities from
7 incurring any debt but does not limit individual defendants
8 from incurring unsecured debt? Do you agree with that,
9 Mr. Klein?

09:25:55

10 MR. KLEIN: I do.

11 THE COURT: Ms. Healy-Gallagher?

12 MS. HEALY-GALLAGHER: I would defer to Mr. Klein.

13 THE COURT: Mr. Paul?

14 MR. PAUL: I believe that's correct, Your Honor.

09:26:02

15 THE COURT: Okay. Great. All right. Then because
16 I've obviously talk too much I'm going to let somebody else go
17 ahead. Miss Healy-Gallagher?

09:26:16

18 MS. HEALY-GALLAGHER: Okay, Your Honor. Then with
19 the understanding that we're here today to figure out who --
20 or what happened to the money and who may be jointly or
21 severally liable, and other issues will remain until the
22 hearing that you plan to set in early December.

09:26:34

23 THE COURT: And just for the record, will you
24 clarify those issues? There's an ascertainment of attorney's
25 fees; right?

1 MS. HEALY-GALLAGHER: Attorney's fees.

2 THE COURT: And?

3 MS. HEALY-GALLAGHER: And to the extent the
4 November 30th deadline is not met, what then?

09:26:45 5 THE COURT: Right. Okay. And we may add more
6 issues to that post November 30th list.

7 MS. HEALY-GALLAGHER: Sure.

8 THE COURT: Now, it appears to me that one of my
9 concerns, that is, advances on the credit cards while it may
09:27:03 10 relate to the overall accounting is not pertinent to the
11 receivership because they're apparently unsecured, and he's
12 free to do that.

13 Mr. Klein?

14 MR. KLEIN: Yes.

09:27:18 15 THE COURT: Okay.

16 MS. HEALY-GALLAGHER: I would say they're pertinent
17 to today to the extent they have to deal with the 27,000. But
18 otherwise I think that's correct.

19 THE COURT: Yeah. I'm not sure that they do. But
09:27:29 20 how would they have anything to do with the 27,000? It just
21 seems to me a major leakage, but apparently it's a leakage for
22 which I have no prohibition.

23 MS. HEALY-GALLAGHER: Simply because it looked like
24 some of the receivership funds were used to pay back that cash
09:27:48 25 advance like that \$6,000, for example.

1 THE COURT: Oh, I see.

2 MS. HEALY-GALLAGHER: That's all.

3 THE COURT: Okay. All right. Thanks.

09:27:59

4 Mr. Paul, I didn't mean to exclude you from those
5 conversations. Do you have anything to say about that little
6 exchange?

7 MR. PAUL: I don't.

8 THE COURT: Okay. Thanks.

09:28:08

9 MS. HEALY-GALLAGHER: Then the United States calls
10 Matt Shepard.

11 THE COURT: Mr. Matt Shepard, if you will come
12 forward and just pause at the podium the clerk will administer
13 an oath.

09:28:29

14 THE CLERK: Pause right there and raise your right
15 hand, sir.

16 MATTHEW SHEPARD,
17 called as a witness at the request of Plaintiff,
18 having been first duly sworn, was examined
19 and testified as follows:

09:28:36

20 THE WITNESS: I do.

21 THE CLERK: Thank you. If you'll, please, take a
22 seat, sir.

23 Mr. Shepard, will you, please, spell your name --
24 state your name and spell it for the record.

09:28:56

25 THE WITNESS: Matthew Shepard. M-A-T-T-H-E-W.

1 Last name is Shepard, S-H-E-P-A-R-D.

2 THE COURT: Go ahead.

3 DIRECT EXAMINATION

4 BY MS. HEALY-GALLAGHER:

09:29:11 5 Q. Good morning, Mr. Shepard.

6 A. Good morning.

7 Q. Would you, please, state your address for the
8 record?

9 A. 858 Clover Meadow Drive, Murray, Utah, 84123.

09:29:22 10 Q. Who lives in that house with you?

11 A. With me is my wife and three children in the
12 basement. If you're including the rest of the house that
13 would be my father and mother and grandmother.

14 Q. Who owns the house that you live in?

09:29:42 15 A. It's the family trust.

16 Q. Whose family trust?

17 A. I believe it's -- I don't know who's listed on it.

18 Q. So you don't know the name of the trust?

19 A. I don't know. I think it's Shepard Family Trust.

09:30:03 20 I'm not sure. I don't know what it's called.

21 Q. Who pays the mortgage for the house you live in?

22 A. It is my father.

23 Q. Anyone else?

24 A. I don't know.

09:30:17 25 Q. What, if any, money do you pay toward the mortgage

1 on the house that you live in?

2 A. None.

3 Q. I'm sorry?

4 A. None.

09:30:33 5 Q. What, if any, other housing expenses do you pay in
6 terms of utilities, for example?

7 A. I don't pay any.

8 Q. How long have you lived at the house?

9 A. I think it's around four years.

09:30:59 10 Q. Have you ever paid for any housing expenses during
11 those four years?

12 A. Just some house maintenance things.

13 Q. And have you paid for those or have you performed
14 maintenance?

09:31:12 15 A. I have performed a lot of maintenance, and I paid
16 for some of it. And most of it was paid for from my father.

17 Q. Do you have any idea how much you paid in terms of
18 home maintenance?

19 A. I don't know.

09:31:24 20 Q. What, if any, other expenses do you share with your
21 parents?

22 A. Can you explain the question?

23 Q. Well, let me take that back.

24 What car do you drive?

09:31:51 25 A. I drive a Volkswagen Atlas.

1 Q. A Volkswagen what? I'm sorry?

2 A. Atlas.

3 Q. What car does your wife drive?

4 A. She doesn't have a car.

09:32:11 5 Q. Do you drive any other vehicles?

6 A. No. That's my vehicle. The one that I drive is
7 the Atlas. And sometimes for different occasions I'll use my
8 mother's sometimes.

9 Q. And what's your mother's vehicle?

09:32:30 10 A. It's a Toyota Highlander.

11 Q. Who pays for the Volkswagen Atlas?

12 A. Well, it has been through Shepard Global.

13 Q. That's your father's company?

14 A. Yes.

09:33:00 15 Q. Did you pay for the Volkswagen Atlas?

16 A. No.

17 Q. How long have you driven that car?

18 A. I think since maybe December.

19 Q. December 2017?

09:33:20 20 A. Yeah. Right. 2017.

21 Q. So who paid for the Atlas on behalf of Shepard
22 Global?

23 A. It was the Shepard Global account, so it would have
24 been my father.

09:33:52 25 Q. That vehicle is leased; correct?

1 A. Yes.

2 Q. What exactly did Shepard Global require that
3 vehicle to do?

09:34:26

4 A. The vehicle was a perk of my employment as a 1099
5 for Shepard Global to be used for the business and for the
6 needs of me. So it was used for traveling a lot. You know,
7 the bigger mileage that was put on it was from going to visit
8 with clients, potential clients and for meetings and things
9 like that.

09:34:48

10 Q. About how much mileage would you say you put on
11 that vehicle for personal rather than business use?

12 A. Oh, I don't know. I'll have to -- I'll have to sit
13 down and try to do some calculations. I can -- I wouldn't be
14 very good doing it under pressure like this. I would have to
09:35:09 15 figure it out.

16 Q. So from September 1st, 2018, through November 12,
17 2018, the VW Atlas was used for your benefit; correct?

18 A. Can you repeat the dates?

19 Q. September 1st, 2018 --

09:35:31

20 A. Uh-huh (affirmative).

21 Q. -- through November 12, 2018.

22 A. Yes.

23 Q. How often did you drive the Toyota Highlander
24 during that time?

09:35:54

25 A. Maybe once a week, twice a week sometimes.

1 Q. How do your children get around and your wife?

2 A. We use the High- -- the Atlas.

3 Q. Do they ever ride in other vehicles with your
4 parents, for example?

09:36:18 5 A. The Highlander. My mother takes them places quite
6 frequently.

7 Q. About how often would you say?

8 A. Maybe once a week, twice a week sometimes.

9 Q. What other vehicles do your wife and your children
09:36:37 10 use?

11 A. That would be it.

12 THE COURT: Sorry. I couldn't understand.

13 THE WITNESS: That would be it.

14 THE COURT: Okay.

09:36:46 15 Q. BY MS. HEALY-GALLAGHER: So from September 1st,
16 2018, through November 12, 2018, you and your family also used
17 the Toyota Highlander to get around.

18 A. Yes.

19 Q. Mr. Shepard, who pays for your groceries for you
09:37:08 20 and your family?

21 A. I do.

22 Q. Anyone else?

23 A. No.

24 Q. So your parents don't share groceries with you?

09:37:21 25 A. No.

1 Q. What, if any, other expenses do your parents pay
2 for you or your family?

3 A. The last two months or -- give a timeframe, please.

4 Q. Let's start with generally.

09:37:43 5 A. Generally what it has been is my cell phone.

6 Q. About how much per month is your use of the cell
7 phone?

8 A. I'd say around \$100.

9 Q. And is your wife also included in that \$100?

09:38:03 10 A. Yes.

11 Q. So from September 1st, 2018, through November 12,
12 2018, what, if anything, in particular has -- has Greg Shepard
13 paid for for you and your family?

14 A. It would be the house, we live in the house, so the
09:38:33 15 heating and the light, electricity. And we would use the WiFi
16 sometimes with the computer. And then also I use the WiFi, my
17 family uses the WiFi and I also personally use the WiFi.

18 Q. And he also paid for your cell phones; correct?

19 A. Yes.

09:39:06 20 Q. Do you ever go out to eat with your parents?

21 A. No.

22 Q. Have you had the chance to take a look at the
23 accounting that your father filed?

24 A. No. I haven't looked at it.

09:39:18 25 Q. Since the September 1st, 2018, through November 12,

1 2018, have you observed your father paying for anything with
2 cash?

3 A. No.

4 Q. What other vehicles do your parents drive?

09:39:59 5 A. He has a Chevy Malibu, my father.

6 Q. Is there a Silverado parked at your house?

7 A. No.

8 Q. Has there been?

9 A. Yes.

09:40:18 10 Q. What happened to that vehicle?

11 A. That is being used by my brother-in-law.

12 Q. So your wife's husband -- I'm sorry. Your wife's
13 brother?

14 A. No. My sister's brother -- I mean my sister's
09:40:39 15 husband. Sorry.

16 Q. Your sister's husband?

17 A. Yes.

18 Q. Okay. What, if any, other vehicles to your
19 knowledge does your father pay for?

09:40:53 20 A. I think he paid for a vehicle my brother was using,
21 but I don't know about that.

22 Q. What was that vehicle?

23 A. I think it's a Toyota. I don't know what the model
24 is.

09:41:21 25 Q. Does anybody in or related to your family drive a

1 Chevrolet Cruze?

2 A. Last year. I think it's been November, December of
3 last year there was one.

4 Q. What happened to that?

09:41:41 5 A. That lease ended.

6 Q. Who drove that?

7 A. I did.

8 Q. Is there any reason to your knowledge for your
9 father to continue to be paying for the Chevrolet Cruze?

09:42:05 10 A. He shouldn't be. I'm not sure.

11 I may be off on the timing when it was returned. I
12 can't remember. I thought it was around December is when the
13 transfer was made from the Cruze to the Atlas.

14 Q. From September 1st, 2018, through November 12,
09:42:56 15 2018, has your father outright given you any money?

16 A. Given me money as in cash?

17 Q. Yes. Or a transfer. Any money.

18 A. I don't believe so. September, no, there was no
19 money.

09:43:20 20 Q. Have you borrowed any money from your father during
21 that time?

22 A. Not that I recall. I don't believe so.

23 Q. So, Mr. Shepard, you've identified that your father
24 pays the mortgage for your house, the utilities, property
09:43:47 25 taxes for the house, pays for your cell phone for you and your

1 wife, pays for the car that you drive.

2 A. Uh-huh (affirmative).

3 Q. Pays for the car that typically your mother drives
4 but that you drive with some regularity and that your children
09:44:07 5 get around in. From September 1st, 2018, through November 12,
6 2018, has your father paid for any other expense for you or
7 your family?

8 A. I don't believe so.

9 Q. Mr. Shepard, do you own any bank accounts that your
09:44:47 10 father is also on?

11 A. No.

12 Q. Is your father -- does your father have signature
13 authority on any bank accounts that you own?

14 A. No.

09:44:56 15 Q. Mr. Shepard, in the filing that was made on Tuesday
16 you identified two sources of borrowed money.

17 A. Uh-huh (affirmative).

18 Q. Do you recall those instances?

19 A. I do.

09:45:35 20 Q. So one was on September 27th for \$900; correct?

21 A. Yes.

22 Q. Where did you borrow that money from?

23 A. That \$900 was from my father. And I think that was
24 from before September. It's really -- I think it was in
09:46:09 25 August, and then it was deposited then.

1 Q. Where did he get that \$900?

2 A. I don't know where he got it from.

3 Q. Because you reported it on September 27th.

4 A. Right.

09:46:25 5 Q. So that's when it got deposited in your account is
6 your recollection.

7 A. Yes.

8 Q. And how about the borrowed funds on October 19th
9 for \$1500, where did that come from?

09:46:43 10 A. That was also from my father, I believe. It was --
11 yeah, it was from my father, as well.

12 Q. Do you know where he got that money from?

13 A. I don't know where he got it from.

14 Q. Now, Mr. Shepard, you've been served --

09:47:15 15 A. Uh-huh (affirmative).

16 Q. -- with a copy of the asset freeze order; correct?

17 A. Yes.

18 Q. Do you understand that your receipt of funds means
19 that you may have violated the asset freeze order yourself?

09:47:30 20 A. I didn't understand that, no.

21 Q. Have you ever spoken with your father about the
22 asset freeze order?

23 A. Yes. I don't -- it's a big document, and for the
24 most part I've tried to go -- I'm trying to find -- I'm
09:48:02 25 working at my new job getting trained and my focus is that.

1 So I don't understand the freeze and how that works. We've
2 talked about it.

3 Q. What have you talked about with your father with
4 respect to the asset freeze order?

09:48:15 5 A. That there has been one and that I do understand
6 that his assets were all frozen. I do not understand that he
7 did take money out. That was his choice. I didn't know what
8 was going on in that. I didn't -- but he did tell me that his
9 assets were all frozen and that that did happen and that there
09:48:39 10 was the order. That's the extent of it. I don't know what he
11 was planning or his thoughts behind it other than he's really
12 scared. That's all I know about it.

13 Q. Has he talked to you about what he plans to do in
14 response to the asset freeze order?

09:49:01 15 A. He has said that he's looking at trying to borrow
16 some money from a friend.

17 Q. Actually let's take it back. When he first found
18 out about the asset freeze order when you first talked to him
19 about the asset freeze order --

09:49:16 20 A. Uh-huh (affirmative).

21 Q. -- what did he say?

22 A. What did he say? I don't recall what he said. I
23 do remember the emotions behind it, and it was a lot of fear
24 and worry. I don't remember exactly what he said. I was
09:49:43 25 really concerned about his health, about his declining health

1 and his fear. That's all I can remember from the
2 conversation.

3 Q. You all knew certainly about his heart condition
4 and his other health conditions when the asset freeze was
09:50:02 5 ordered; correct?

6 A. Yes.

7 Q. Yeah. None of the -- there's no new information
8 about his health after the asset freeze order was entered;
9 isn't that right?

09:50:11 10 A. Right.

11 Q. Did he tell you what he was planning to do to try
12 to get money after the asset freeze order was entered?

13 A. No. He did tell me that he thinks it's going to be
14 okay. But he does that a lot. He likes to try to break
09:50:44 15 things down and make it so that, you know, there's a pathway
16 forward. But I didn't know what he was going to do. He just
17 wanted to -- he did indicate that. I could tell there was a
18 fear. There's a lot different attitude in him lately. He's
19 been afraid, scared, but he said that it's -- that we'll make
09:51:07 20 it through. That's what he kept doing is go forward, and
21 we'll make it through it.

22 Q. When did you learn that he had liquidated the AXA
23 annuity?

24 A. I don't know. It was maybe three or four weeks
09:51:32 25 ago.

1 Q. So your testimony is he didn't tell you after he
2 had done it.

3 A. Yeah. I didn't -- I didn't know -- I didn't know
4 about it.

09:51:50 5 Q. Did you wonder, Mr. Shepard, how your father was
6 paying for things if his assets had been frozen?

7 A. I've been gone a lot trying to -- I haven't had a
8 lot of contact with him lately.

9 Q. Excuse me. That's not my question. Did you
09:52:06 10 wonder?

11 A. I didn't wonder, no.

12 Q. Did you ask him?

13 A. No.

14 Q. Did you ask him how he could lend you money if his
09:52:15 15 assets had been frozen?

16 A. No. I didn't ask him that.

17 Q. Why not?

18 A. At that time I don't believe his assets were
19 frozen. I'm pretty sure it was before.

09:52:38 20 Q. Mr. Shepard, these two transfers happened in late
21 September and mid October. That is smack in the middle of the
22 time that we're here about today and well after his assets had
23 been frozen.

24 A. Right.

09:52:50 25 Q. So did you ask him how he could lend you money if

1 his assets had been frozen?

2 A. Those were deposits. I'm pretty sure that the
3 money he gave me came before then. I just can't remember the
4 date on that. But I did not ask him, no. I did not ask him.

09:53:11 5 Q. Why did you only deposit those funds in late
6 September, mid October?

7 A. There were ongoing business expenses that had to be
8 taken care of out of that, so they were deposited.

9 Q. Ongoing business expenses for what?

09:53:33 10 A. To keep the websites open, to get -- that account
11 was used mostly just for gasoline expenses and for Internet
12 expenses.

13 MS. HEALY-GALLAGHER: May I have a moment, Your
14 Honor?

09:53:56 15 THE COURT: Yes.

16 (Time lapse.)

17 Q. BY MS. HEALY-GALLAGHER: Which business accounts
18 are you talking about?

19 A. It's my business. It's a consulting business that
09:54:20 20 I started, I was trying to get going after RaPower 3 was
21 basically put on hold over the last year. I started
22 Jecco (sic) to try to get consulting business on my own
23 outside of that. Part of that was there had to have been a
24 way to pay for the RaPower-3, so I had to keep that up until
09:54:49 25 we could close everything down. I don't know what you guys

1 wanted me to do with it, but I'd like to get rid of the
2 RaPower-3 website, but I've kept it open to make sure
3 everybody knew that that warning was there.

09:55:06

4 And anyway, so there's some RaPower-3 expenses on
5 that for that and also that IAUS website. Those are being
6 covered. My new business Jecco (phonetic) I'm trying to start
7 as consulting. It's paying for that because my dad has no way
8 to pay for it. I'm at a loss what to do with those websites.
9 But that is being paid for through my Jecco (phonetic) company
10 that I started.

09:55:30

11 Q. Well, we can have a conversation with Mr. Paul
12 about the websites. But for right now I want to make sure I'm
13 clear. The money that you borrowed from your father in the
14 amounts of \$1500 and \$900, that went to pay for among other
15 things, a separate business that you started and expenses
16 related to that, yes?

09:55:47

17 A. Yes.

18 Q. It went to pay for expenses for the RaPower-3 and
19 IAUS website, yes?

09:55:59

20 A. Yes.

21 Q. Anything else for those borrowed funds?

22 A. No. That's -- that would be it, yes.

23 Q. So, Mr. Shepard, understanding that you think that
24 these monies may have come from your father before
09:56:14 25 September 1st, they were deposited in your account well after

1 that date. So why haven't you repaid your father if you know
2 his assets are frozen?

3 A. I don't know.

09:56:51

4 Q. How much, if any, of the \$920 that you say you
5 received from private consulting and training fees unrelated
6 to IAUS or RaPower-3 came from your father?

7 A. Repeat the question to how much?

8 Q. I'll start it another way. So you reported that
9 you received \$920 from private consulting and training fees --

09:57:12

10 A. Uh-huh (affirmative).

11 Q. -- right?

12 A. Yeah.

13 Q. How much of that money came from your father?

09:57:20

14 A. I don't think any of that came from him. That was
15 from separate things.

16 Q. For the \$700 you reported in athletic training
17 fees --

18 A. Uh-huh (affirmative).

19 Q. -- how much of that came from your father?

09:57:29

20 A. None of that.

21 Q. Did any money from either of those two amounts come
22 from your mother?

23 A. No.

09:57:50

24 Q. Mr. Shepard, do you own any assets jointly with
25 either of your parents?

1 A. No.

2 Q. Does your wife?

3 A. No.

4 Q. To your knowledge do any of your siblings?

09:58:04 5 A. No.

6 Q. No, then don't?

7 A. No. Yeah, they would not.

8 MS. HEALY-GALLAGHER: May I have a moment?

9 (Time lapse.)

09:58:38 10 MS. HEALY-GALLAGHER: Your Honor, at this time
11 that's all I have for Mr. Shepard.

12 THE COURT: All right.

13 Mr. Klein, do you want to ask questions?

14 CROSS-EXAMINATION

09:58:45 15 BY MR. KLEIN:

16 Q. Thank you.

17 Mr. Shepard, my name is Wayne Klein. I've been
18 appointed as receiver over the assets. And let me start off
19 by apologizing. I'm late to the game and still coming up to
09:58:59 20 speed on this.

21 Going back to the home you indicated that the home
22 is owned by a family trust. Do you know who the trustees are?

23 A. I don't know who they are, no. Sorry.

24 Q. You know when the trust was created?

09:59:17 25 A. The trust was created -- I don't know. I can't

1 answer that without knowing.

2 Q. Do you know if it has been in the past year? A
3 year ago? Five years? 10 years?

09:59:35

4 A. I know the trust has been around for a long time.
5 I'd guess around 10 years. I don't know.

6 Q. Do you know when the home was put in the trust?

7 A. As far as -- I do remember that the trust -- it was
8 put in the trust a long time ago. I don't know when, though.
9 It was much longer than a year ago, though.

09:59:57

10 Q. And how old are your children?

11 A. 14, 12 and 3.

12 Q. So I assume the three-year-old has a car seat.

13 A. Yes.

14 Q. Is that -- in which car is that car seat?

10:00:10

15 A. That's in the Atlas.

16 Q. So if you're driving out on business and your wife
17 needs to take the children somewhere or go somewhere with the
18 three-year-old what does she do?

19 A. The car seat comes out.

10:00:27

20 Q. So each day if you leave for business you take the
21 car seat out?

22 A. Yes. I will -- well, sometimes. My kids are
23 home-schooled, and so there's not really a whole big need for
24 them to leave very often.

10:00:51

25 Q. Now, you use the car, the Atlas for your athletic

1 training business?

2 A. I do sometimes. I have also been borrowing a car
3 from time to time from my father-in-law. He's trying to sell
4 a car, so there's an extra car at the house. He lives up in
10:01:12 5 Idaho, so he's got the car down here, so sometimes I'll take
6 that, as well.

7 Q. And so what do you do now for Shepard Global?

8 A. I don't do anything for Shepard Global except for
9 when I'm told to change something on the website.

10:01:33 10 Q. If I recall correctly, you indicated that getting
11 the car was a perk of your employment with Shepard Global.
12 Did I hear that right?

13 A. Uh-huh (affirmative).

14 Q. So but you're not currently doing any work for
10:01:47 15 Shepard Global.

16 A. I'm doing whatever the Court tells me to do on
17 website. That's about it.

18 Q. What work do you do currently for RaPower-3?

19 A. I don't do anything for RaPower-3.

10:02:02 20 Q. How about International Automated Systems?

21 A. No. I am managing the websites. So when I have to
22 put something on those two websites that's what I do or I take
23 something off. But that's been under the direction of
24 Shepard Global. So I don't -- it's like splitting hairs, I
10:02:24 25 guess. I guess I'm doing it for them. Obviously I don't get

1 paid for it now, but I'm doing it.

2 MR. KLEIN: That's all I have, Your Honor. Thank
3 you.

4 THE COURT: Thank you.

10:02:35 5 Mr. Paul?

6 MR. PAUL: No questions, Your Honor.

7 THE COURT: All right. Thanks.

8 Did you have any more redirect after Mr. Klein?

9 MS. HEALY-GALLAGHER: No. Thank you, Your Honor.

10:02:45 10 THE COURT: You can step down, Mr. Shepard.

11 Your next witness?

12 MS. HEALY-GALLAGHER: United States calls Diana
13 Shepard.

14 THE COURT: Ms. Shepard, if you'll come up and just
10:02:56 15 pause at the podium for a moment.

16 DIANA C. SHEPARD,

17 called as a witness at the request of Plaintiff,

18 having been first duly sworn, was examined

19 and testified as follows:

10:03:19 20 THE WITNESS: Yes.

21 THE CLERK: Thank you. If you'll, please, take a
22 seats, ma'am.

23 Ma'am, will you, please, state your name and spell
24 it for the record.

10:03:41 25 THE WITNESS: Diana, D-I-A-N-A, C as in cat,

1 Shepard, S-H-E-P-A-R-D.

2 THE COURT: Ms. Shepard, thank you. I was going to
3 tell you -- have you ever been a witness in court or a
4 deposition before?

10:03:58 5 THE WITNESS: No.

6 THE COURT: I would imagine it's not a normal
7 experience. I just wanted to tell you that, and it doesn't
8 sound like you're going to have any problems speaking clearly
9 and into the microphone. That's the first rule for the
10 witnesses.

11 THE WITNESS: Okay.

12 THE COURT: And the other one is to let the
13 attorney finish the questions before you give an answer, and
14 the attorney has to let you finish your answer before the next
15 question. And it's okay to pause and think about things,
16 okay?

17 THE WITNESS: Okay.

18 THE COURT: Go ahead, Miss Healy-Gallagher.

19 DIRECT EXAMINATION

10:04:28 20 BY MS. HEALY-GALLAGHER:

21 Q. Good morning, Mrs. Shepard. My name is
22 Erin Healy-Gallagher, and I represent the United States in
23 this case.

24 A. Okay.

10:04:37 25 Q. First off, Mrs. Shepard, please state your address

1 for the record.

2 A. 858 West Clover Meadow Drive, Murray, Utah, 84123.

3 Q. Who owns the home that you live in?

4 A. The family trust and myself. It was in my name

10:05:04 5 since '98, and it was in a family trust and we refinanced, and
6 now it's in the family trust.

7 Q. Who are the trustees for the family trust?

8 A. I haven't looked at that paperwork forever. I
9 don't know. Hopefully my husband remembers.

10:05:27 10 Q. Who are the beneficiaries for the family trust?

11 A. It would be our whole family, I guess.

12 Q. What, if any, other assets are in your family
13 trust?

14 A. None that I can remember.

10:05:43 15 Q. So the only thing in the trust is the house
16 according to you.

17 A. Uh-huh (affirmative).

18 Q. Yes?

19 A. I think so.

10:05:50 20 Q. That's another rule of being a witness, is that if
21 you would, please, answer verbally rather than nodding.

22 A. Oh, sorry.

23 Q. That's okay.

24 And you testified a moment ago that both you and

10:06:05 25 the family trust own the house? Could you explain that a

1 little further?

2 A. I don't remember very well. But I know in 1998
3 when we were running Bigger Faster Stronger, the house was put
4 in my name at the request of our lawyers for liability
10:06:29 5 purposes with our other company Bigger Faster Stronger. And
6 it's been there ever since. And at some point in time we put
7 it in the family trust, and I don't know when. And then we
8 refinanced a year and a half ago or somewhere in there and now
9 it's in the family trust.

10:06:54 10 Q. When you say the house was put in your name for
11 liability purposes, do you mean that the intention was that
12 Mr. Shepard's name not appear on the title to the house?

13 A. Yes.

14 Q. And that was to prevent perhaps creditors from
10:07:18 15 Bigger Faster Stronger being able to collect against the
16 house; correct?

17 A. I don't know. I just know our lawyers told us we
18 should do that. All the partners did that.

19 Q. You mentioned a refinance about a year and a half
10:07:38 20 ago. Do you remember that?

21 A. Uh-huh (affirmative).

22 Q. Whose idea was it to refinance?

23 A. I don't know. We needed to refinance because we
24 had a second on the house and it was starting to jump up in
10:08:01 25 interest rate really high, so we wanted to get rid of that.

1 Q. Mrs. Shepard, if you had been the only applicant on
2 the refinance application do you know if you would have gotten
3 the refinance you were looking for?

4 A. I have no idea.

10:08:22 5 Q. Both you and Mr. Shepard applied for the refinance;
6 correct?

7 A. I think so. I don't know. I'm not sure what
8 you're asking.

9 Q. And in the course of the refinance the house was
10:08:46 10 titled to you and Mr. Shepard for at least a short period of
11 time; isn't that right?

12 A. I have no idea. I don't know.

13 Q. Okay. Mrs. Shepard where does the money for the
14 mortgage for your house come from?

10:09:03 15 A. It was coming from our working for RaPower-3, but
16 now it's coming from our two Social Security checks.

17 Q. And I'm sorry. Did you say "our working for
18 RaPower, for RaPower-3?

19 A. Uh-huh (affirmative).

10:09:22 20 Q. Yes?

21 A. Uh-huh (affirmative).

22 Q. Say yes, please.

23 A. Yes, please -- sorry. Yes.

24 Q. And, Mrs. Shepard, what did you do for RaPower-3?

10:09:31 25 A. I did consulting, and I did secretarial work. I

1 did proofreading. I ran errands. I went to the bank. I got
2 office supplies, whatever needed to be done.

3 Q. Did you make money from RaPower-3?

4 A. Uh-huh (affirmative).

10:09:52 5 Q. Yes?

6 A. Yes.

7 Q. About how much money say in 2017 did you make from
8 RaPower-3?

9 A. Oh, goll. I don't know. It would have been till
10:10:11 10 August. It was 3-something a month. 300-something a month.
11 I can't remember the exact figure without looking at my bank.

12 Q. Okay. Since 2010, what, if any, other outside
13 employment have you had other than RaPower-3?

14 A. 2010. None. And I didn't work for them for all of
10:10:42 15 that time, either.

16 Q. Okay. I'm just trying to figure out what, if any,
17 income --

18 A. I didn't have any from 2010 until that point.

19 Q. So from 2010 to, let's say, to present day --

10:10:59 20 MR. PAUL: Your Honor, can I object? I think we're
21 getting far afield from the purpose of today's question.

22 THE COURT: Let her finish this question. Let's
23 see where she's going.

24 MS. HEALY-GALLAGHER: I'm going to wrap this up
10:11:12 25 quickly on this.

1 THE COURT: Okay.

2 Q. BY MS. HEALY-GALLAGHER: From 2010 to present day
3 other than income that you made from RaPower-3 have you had
4 any other income source?

10:11:21 5 MR. PAUL: I'll renew my objection.

6 THE WITNESS: Not that I can remember except my
7 Social Security.

8 Q. BY MS. HEALY-GALLAGHER: Mrs. Shepard, who pays for
9 the utilities for your house?

10:11:54 10 A. My husband.

11 Q. And who pays the property taxes?

12 A. My husband.

13 Q. Just to establish for the record, your husband is
14 it Greg Shepard; correct?

10:12:08 15 A. Yes.

16 Q. Who pays for things like groceries, food for you,
17 and I understand your mother lives with you, yes?

18 A. I shop for the groceries. And I either pay for
19 them out of my account or -- well, the last two months we've
10:12:31 20 been running out of money, so we've had to charge our food to
21 credit cards.

22 Q. Okay. Since September 1st, September 1st of this
23 year through November 12th, where has the money come from for
24 your living expenses?

10:12:55 25 A. Since September?

1 Q. September 1st.

2 A. His and my Social Security check.

3 Q. And where else?

4 A. Nowhere else.

10:13:03 5 Q. Mrs. Shepard, what vehicle do you drive?

6 A. The Toyota Highlander.

7 Q. Do you drive any other vehicles?

8 A. Once in a while I drive my husband's.

9 Q. And what's his?

10:13:26 10 A. The Chevrolet, is it an Impala? I can't remember
11 the make. But, anyway, the Chevrolet.

12 Q. Any others?

13 A. Huh-uh (negative).

14 Q. No?

10:13:37 15 A. No.

16 Q. What, if any, other real property do you and -- do
17 you own?

18 A. None.

19 MR. SNUFFER: Your Honor, I'm going to object. I
10:13:55 20 think that's far afield from what we're discussing here today.

21 THE COURT: Overruled.

22 Q. BY MS. HEALY-GALLAGHER: What, if any, other
23 physical assets do you own, Mrs. Shepard?

24 MR. PAUL: That's a different question so I'm going
10:14:10 25 to raise the same objection. I think that's far afield with

1 what we are here for today.

2 THE COURT: Your question was what other physical
3 assets do you own?

4 MS. HEALY-GALLAGHER: Correct.

10:14:19 5 THE COURT: Sustained.

6 Q. BY MS. HEALY-GALLAGHER: Mrs. Shepard, could you
7 identify the bank accounts that are in your name?

8 A. Only one.

9 MR. PAUL: Again, Your Honor, I'm going to object.
10:14:38 10 This is again far afield from what we're here about today.

11 THE COURT: Here we're talking about flow of funds,
12 so that objection is overruled.

13 THE WITNESS: Only one. And it's Mountain America
14 Credit Union. I think that's what it's called.

10:14:58 15 Q. BY MS. HEALY-GALLAGHER: I just missed what you
16 said at first. What was that?

17 A. Mountain America Credit Union.

18 Q. Is Mr. Shepard also an accountholder on that same
19 account?

10:15:12 20 A. No.

21 Q. Does he have any signature authority over funds in
22 that account?

23 A. No.

24 Q. When did you open that bank account?

10:15:27 25 A. I honestly don't know. It was either August or

1 September. I don't know.

2 Q. 2018?

3 A. Uh-huh (affirmative).

4 Q. Yes?

10:15:37 5 A. Uh-huh (affirmative).

6 THE COURT: I'm sorry.

7 THE WITNESS: Oh sorry. Yes.

8 THE COURT: It's that crazy thing.

9 Q. BY MS. HEALY-GALLAGHER: With what funds,
10:16:00 10 Mrs. Shepard, did you open the Mountain America Credit Union
11 account?

12 MR. PAUL: Objection, Your Honor. Same objection.
13 We're beyond the scope of today's hearing.

14 THE COURT: Overruled.

10:16:11 15 THE WITNESS: I opened it with \$20 that was in my
16 purse. And the only thing in it is our Social Security.
17 That's the only thing that's ever been in it.

18 Q. BY MS. HEALY-GALLAGHER: So the only deposits to
19 the Mountain America Credit Union account have been your
10:16:30 20 Social Security; correct?

21 A. Yes. That's all I can remember.

22 Q. And is Mr. Shepard's Social Security deposited into
23 that account?

24 A. Yes.

10:16:40 25 Q. And what about your mother's Social Security?

1 A. She has her own bank account.

2 Q. So other than the \$20 to start it off and the
3 Social Security deposits for you and Mr. Shepard have there
4 been any other deposits into the Mountain America Credit Union
10:17:06 5 accounts that you have?

6 MR. PAUL: Your Honor, I'm going to object again.
7 We're far afield. If she wants to limit it to a timeframe,
8 maybe that's more appropriate.

9 THE COURT: Well, the account was opened late this
10:17:16 10 year, so the objection is overruled.

11 THE WITNESS: I don't remember any.

12 Q. BY MS. HEALY-GALLAGHER: Mrs. Shepard, why did you
13 open the Mountain America Credit Union account in August or
14 September of this year?

10:17:36 15 A. Because before that I had a Cyprus Credit Union
16 bank account. It was in both of our names, but that was only
17 my account. I'm the only one that used it most of the time,
18 90 percent of the time. And when it was frozen we had to have
19 some way, someplace to put money. So I opened the other
10:18:02 20 credit union account.

21 Q. Because, Mrs. Shepard, you were also served with
22 the asset freeze order; correct?

23 A. Yes.

24 Q. Mrs. Shepard, when did you find out that
10:18:44 25 Mr. Shepard had liquidated the AXA annuity?

1 A. I don't remember, but I know it was after he did
2 it.

3 Q. How did you find out?

4 A. He told me.

10:19:04 5 Q. Mrs. Shepard, in light of your having been served
6 with the asset freeze order did it ever occur to you that you
7 might be violating the asset freeze order by spending money
8 that could be frozen?

9 A. What money that could be frozen? All we have is
10:19:39 10 our Social Security. Is that supposed to be frozen? Because
11 I have no idea if it is.

12 Q. Well, Mrs. Shepard, what we're here about today is
13 Mr. Shepard spending money in violation of the asset freeze
14 order.

10:19:51 15 A. Uh-huh (affirmative).

16 Q. So you've been served with the asset freeze order.
17 And all of Mr. Shepard's assets were frozen as a result of
18 that order. Did it ever occur to you that you might be
19 violating the asset freeze order by spending money that was
10:20:09 20 frozen?

21 A. I'm confused. How do you buy groceries?

22 THE COURT: The question is whether it had occurred
23 to you. There is no accusation here.

24 THE WITNESS: No, it didn't occur to me. I don't
10:20:23 25 understand the freeze. I've tried. I've read it three times.

1 I don't understand it. That's all I can say.

2 Q. BY MS. HEALY-GALLAGHER: Nonetheless, Mrs. Shepard,
3 you knew the assets had been frozen.

4 A. Yes, I did.

10:20:36 5 Q. Mrs. Shepard, for 2017, for the calendar year
6 ending 2017, did you and Mr. Shepard file a joint federal
7 income tax return?

8 MR. PAUL: Your Honor, I'm going to object. I
9 think this is beyond the scope of today's hearing.

10:21:14 10 THE COURT: Overruled.

11 THE WITNESS: Yes, we did.

12 Q. BY MS. HEALY-GALLAGHER: Were you aware that he
13 paid the IRS \$1,160 on or about October 12th, 2018?

14 A. Yes. He told me.

10:21:37 15 Q. Was that for your joint federal income tax
16 liability?

17 A. I think so.

18 Q. Mrs. Shepard, for the groceries for your house, who
19 eats those groceries?

10:22:08 20 A. My husband, my mother and myself.

21 Q. Since September 1st, 2018, through November 12,
22 2018, have you seen Mr. Shepard pay for things with cash?

23 A. Never.

24 Q. Do you have any idea what Mr. Shepard would have
10:22:33 25 spent \$1200 in cash on in mid October?

1 A. No. Not without asking him.

2 Q. Between September 1st, 2018, and November 12, 2018,
3 did you go out to meals with your husband?

10:23:17

4 A. I went out on a couple of them when we were away
5 from the house doing other things.

6 Q. Could you give me an idea of where you went?

7 A. Oh, goll.

8 Q. If you can't, that's okay.

10:23:37

9 A. No. I'd have to look at his credit card receipt or
10 something because I don't remember.

11 Q. Mrs. Shepard, in time between September 1st, 2018,
12 and November 12, 2018, what, if anything, have you paid for
13 for your grand kids?

10:24:11

14 A. For my grand kids? Nothing. I didn't even have
15 money for their birthdays. So nothing.

16 Q. And what, if anything, outside of housing and
17 groceries have you paid for for your mother?

10:24:36

18 A. Nothing. She pays her own bills. She's very
19 feeble. She's almost blind, and she's almost completely deaf.
20 But she's very smart. She still has her mind. She takes care
21 of her own accounting.

22 Q. And that was my next question. How if at all do
23 you divide up necessary expenses with your mother
24 understanding that she has her own Social Security?

10:24:54

25 A. I haven't asked my mother for a penny because she

1 put me all the way through college. And she's the most decent
2 person I know. And I will take care of her for as long as
3 she's alive. That's all. I owe her.

4 Q. Should we take a moment?

10:25:21 5 THE COURT: Let's take a recess. We'll be in
6 recess until quarter till.

7 (Recess.)

8 THE COURT: Mrs. Shepard, thank you for calling
9 and, Miss Healy-Gallagher, thank you both for getting that
10:45:11 10 break. I really needed it. Thanks.

11 Go ahead.

12 MS. HEALY-GALLAGHER: Thank you, Your Honor.

13 Q. BY MS. HEALY-GALLAGHER: So, Mrs. Shepard, in the
14 period from September 1st, 2018, through November 12, 2018,
10:45:27 15 what, if any, money did your mother contribute to the
16 household expenses?

17 A. None.

18 Q. When your mother leaves the house in a car what car
19 does she use?

10:45:48 20 A. Mine. I drive her. That's the Highlander.

21 Q. Do you have an idea of how many trips you might
22 take with her a week?

23 A. So three appointments. I take her to all of her
24 doctor appointments. Sometimes it's three, and sometimes it's
10:46:22 25 once a week. And I do her banking and I do her grocery

1 shopping when I do mine.

2 Q. Sure. So it sounds like errands that you run for
3 yourself you're also helping out your mother.

4 A. Right.

10:46:37 5 Q. Mrs. Shepard, it looked like your mother Mrs. Smith
6 has a safety deposit box; is that right?

7 A. Yes, she does.

8 Q. What, if anything, do you or Mr. Shepard keep in
9 that box?

10:46:58 10 A. Absolutely nothing. I don't even know what's in
11 it.

12 THE COURT: Could I ask you to scoot up to the
13 microphone a bit? Or you can pull it towards you because it
14 moves.

10:47:11 15 THE WITNESS: It moves? I thought it was -- okay.

16 Q. BY MS. HEALY-GALLAGHER: Mrs. Shepard, before today
17 were you aware of Mr. Shepard's plan to borrow money to pay
18 the \$27-plus-thousand to the receiver by November 30th?

19 MR. PAUL: Objection, Your Honor. Relevance.

10:47:36 20 Second, I think that's privileged if there's any communication
21 between the two of them. Third, it goes beyond the scope of
22 what we're here for today. That would only come to play after
23 the fact.

24 THE COURT: Could I have the court reporter read
10:47:49 25 back the question for me.

1 (Whereupon, the question was read back.)

2 THE COURT: As to that question, the objection is
3 overruled, so you can answer that.

10:48:10

4 THE WITNESS: I know he wants to pay it back. I do
5 not know what the plan is.

6 Q. BY MS. HEALY-GALLAGHER: Mrs. Shepard, what, if
7 any, plan do you have to pay any money to the receiver for
8 which you may be jointly and severally liable?

9 A. I don't have a plan.

10:48:48

10 MS. HEALY-GALLAGHER: At this time those are all
11 the questions I have.

12 THE COURT: Thank you.

13 Mr. Klein?

14 CROSS-EXAMINATION

10:48:53

15 BY MR. KLEIN:

16 Q. Mrs. Shepard, going back to 1998, if I understand
17 correctly, that's the time the home was put into your name;
18 correct?

19 A. Uh-huh (affirmative). Originally, yes.

10:49:11

20 Q. And before that time was it in both your and
21 Mr. Shepard's name?

22 A. I believe so.

23 Q. So at the time, then, do you remember did he just
24 sign a quit-claim deed? Do you remember how that was done?

10:49:25

25 A. I can't remember last year. I have no idea what we

1 did.

2 Q. I understand.

3 A. I'm sorry. I just don't know.

4 Q. I'm just trying to probe or jog your memory to

10:49:37 5 see --

6 A. I don't remember.

7 Q. In connection with the transfer of his half
8 interest in the home to you did you pay him any money for your
9 receiving the entire ownership of the home?

10:49:53 10 A. No, I did not.

11 Q. So is the home currently owned only by the family
12 trust?

13 A. Yes. As far as I know.

14 Q. So when you refinanced the mortgage a year and a
10:50:15 15 half ago, the home at that time was owned by the family trust;
16 correct?

17 A. As far as I remember, yes.

18 Q. So is Nationwide the mortgage lender?

19 A. It was. I think it's changed since then. You'd
10:50:36 20 have to ask my husband. He pays that bill.

21 Q. Well, all right. When you refinanced I assume, is
22 it correct to assume that the lender wanted a mortgage on the
23 home?

24 A. Yes.

10:50:52 25 Q. So who signed the papers giving the lender a

1 mortgage on the home? Was it just you or also your husband?

2 A. I remember signing. I don't know if he did. I
3 don't know.

4 Q. Do you recall who the trustees are of your family
10:51:13 5 trust?

6 A. I don't know if we have any. I don't know.

7 Q. Do you know if you're the only one who can sign on
8 behalf of the family trust?

9 A. I don't know that, either. I've never checked.

10:51:32 10 Q. And when the mortgage company is making a loan
11 based on a security interest in the home was the borrower on
12 the loan the family trust, or was the borrower you and your
13 husband?

14 A. I don't know. I'd have to go dig up the paperwork.

10:51:58 15 Q. And I understand.

16 A. I'm sorry. I just don't know.

17 Q. I understand. And I'm going to ask the question a
18 different way just to see if that jogs a memory, and if not
19 we'll move on.

10:52:08 20 A. Okay.

21 Q. So on the mortgage statements that you get from the
22 mortgage holder, do you recall if the mortgage statements are
23 in the name of the Shepard Family Trust or you and your
24 husband?

10:52:23 25 A. I don't know. I never see those bills. My husband

1 does that. We divide up the bills, and he has that one --

2 Q. Okay.

3 A. -- to pay. So....

10:52:36

4 Q. Did you review the accounting that was submitted to
5 the Court yesterday -- or on Tuesday?

6 A. Uh-huh (affirmative).

10:52:58

7 Q. So as part of that accounting, many of the -- well,
8 the money that came back from AXA Financial was put into bank
9 account at Chartway Federal Credit Union. Is that consistent
10 with your understanding?

11 A. I don't know. I don't know where it was.

12 Q. Have you had bank accounts at Chartway before?

13 A. No.

10:53:12

14 Q. Do you know if you were a signatory on the bank
15 account that Mr. Shepard had there?

16 A. I shouldn't be because I didn't know.

17 Q. A number of the transactions that were provided in
18 the accounting are debit card transactions.

19 A. Uh-huh (affirmative).

10:53:23

20 Q. Did you ever do charges on the debit card drawn on
21 the Chartway account?

22 A. I don't remember any.

23 Q. You didn't have --

24 A. I can't say for sure. I just don't remember any.

10:53:39

25 Q. So let me ask it a different way. Did you have a

1 copy of the debit card for that account in your wallet that
2 you sometimes would use?

3 A. No.

4 Q. Okay. That's all I have. Thank you.

10:53:53 5 THE COURT: Mr. Paul?

6 MR. PAUL: No questions.

7 THE COURT: All right. Thank you.

8 You can step down. Thank you very much.

9 Your next witness?

10:54:05 10 MS. HEALY-GALLAGHER: The United States calls

11 R. Gregory Shepard.

12 THE COURT: Mr. Shepard, if you'll come forward and
13 just pause there by the podium.

14 Counsel, I have a hard stop at about five to noon
10:54:21 15 for a judge's meeting, and then I probably can be back here by
16 1:15. Will that time work for a noon recess?

17 MS. HEALY-GALLAGHER: I'm hopeful we may be able to
18 finish by that time of your hard stop.

19 THE COURT: Before that?

10:54:35 20 MS. HEALY-GALLAGHER: Yeah.

21 THE COURT: That would be even better.

22 Mr. Klein, what's your schedule like after lunch?

23 MR. KLEIN: I have a conference call scheduled at
24 1 o'clock, so we'll see if we can be expeditious.

10:54:46 25 THE COURT: Okay. How long do you think that call

1 will go?

2 MR. KLEIN: 15 minutes.

3 THE COURT: Okay.

4 Mr. Paul?

10:54:53 5 MR. PAUL: I'm available.

6 THE COURT: Okay.

7 MR. PAUL: I have a hearing here at 3:00.

8 THE COURT: Here?

9 MR. PAUL: Not with you, but another judge.

10:55:01 10 THE COURT: Okay. Good, because I don't know that
11 I'm going to see you again.

12 MS. HEALY-GALLAGHER: And to be clear, I can be
13 back this afternoon, as well.

14 THE COURT: Okay.

10:55:09 15 Mr. Shepard, if you'll just come forward the clerk
16 with administer an oath.

17 THE CLERK: Raise your right hand, sir.

18 RALPH GREGORY SHEPARD,

19 called as a witness at the request of Plaintiff,

10:55:14 20 having been first duly sworn, was examined

21 and testified as follows:

22 THE WITNESS: I do.

23 THE CLERK: Thank you. If you'll, please, take a
24 seat, sir.

10:55:42 25 Sir, will you, please, state your name and spell it

1 for the record?

2 THE WITNESS: Ralph Gregory Shepard. R-A-L-P-H.
3 Gregory, G-R-E-G-O-R-Y. Shepard, S-H-E-P-A-R-D.

4 THE COURT: Thank you. Go ahead.

10:56:13

5 DIRECT EXAMINATION

6 BY MS. HEALY-GALLAGHER:

7 Q. Hello, Mr. Shepard. Would you, please, state your
8 address for the record?

10:56:27

9 A. 858 West Clover Meadow Drive, Salt Lake City, Utah,
10 84123.

11 Q. To your understanding, Mr. Shepard, who owns that
12 home?

13 A. The Diana C. Shepard Revokable Trust.

14 Q. Who are the trustees?

10:56:44

15 A. I don't know.

16 Q. Who are the beneficiaries of that trust?

17 A. I don't know.

18 Q. What, if anything, else does the Diana C. Shepard
19 Revokable Trust own?

10:56:55

20 A. I don't think it owns anything.

21 Q. What, if any, real property do you own?

22 A. None.

23 Q. What, if any, physical assets do you own?

24 A. None.

10:57:09

25 Q. Mr. Shepard, the mortgage for the home that you

1 live in comes out of your funds; correct?

2 A. Yes.

3 Q. As does the utility payments?

4 A. From what period of time?

10:57:39 5 Q. Well, let's start with ever.

6 A. You mean 1990?

7 Q. Mr. Shepard, who has paid the utilities costs for
8 your home?

9 A. Well, I pay them.

10:57:59 10 Q. Out of your funds, yes?

11 A. Out of Social Security funds.

12 Q. Are you talking about the time period between
13 September 1st, 2018, and November 12, 2018?

14 A. Yes, I am. And before. It comes out of Social
10:58:16 15 Security funds. Before that it was Shepard Global.

16 Q. Shepard Global paid the utilities for your house?

17 A. At times. Some of them like the Verizon utility,
18 Verizon bill.

19 Q. What, if any, payments for your house, for the
10:58:42 20 utilities on your house did Shepard Global make between
21 September 1st, 2018, and November 12th?

22 A. Would you state that question again?

23 Q. What, if any, payments did Shepard Global make for
24 the utilities on your house between September 1st, 2018, and
10:59:04 25 November 12, 2018?

1 A. None. Shepard Global is dissolved and all the bank
2 accounts have been closed because it has no income. It hasn't
3 had any income for months.

4 Q. Mr. Shepard, we've heard testimony that you
10:59:35 5 refinanced your home about a year and a half ago. Do you
6 recall that?

7 A. Yes. I think it was March of '17.

8 Q. And did you sign the refinance paperwork for your
9 home?

10:59:50 10 A. Yes. My wife and I did that.

11 Q. So you signed the mortgage documents, yes?

12 A. Yes. The loan was given to my wife and I.

13 Q. What, if any, consideration did the Diana C.
14 Shepard Revocable Trust pay to own the home?

11:00:13 15 MR. PAUL: Objection to the extent it calls for a
16 legal conclusion. Also I think that goes further afield than
17 what we're here for today.

18 THE COURT: Overruled.

19 THE WITNESS: I think it was a nominal amount like
11:00:25 20 \$10 or \$100, but I'm not sure. I can't recall that. It was
21 an instantaneous at closing. It went back to the Diana C.
22 Revokable Trust.

23 Q. BY MS. HEALY-GALLAGHER: After it had passed
24 through you and Mrs. Shepard; correct?

11:00:41 25 A. In about two minutes, yes.

1 Q. Mr. Shepard, what bank accounts have you opened
2 since the asset freeze order was entered?

3 A. Chartway. It's a credit union by my house.

11:02:01

4 Q. Any other bank accounts opened since the asset
5 freeze was entered?

6 A. No.

7 Q. Do you still have an account, a Chase personal
8 checking account ending in 8097?

9 A. No.

11:02:24

10 Q. When did you close that account?

11 A. I can't remember.

12 Q. Was it before or after 2018?

13 A. I can't remember.

14 Q. Do you still have a Chase premier checking account
15 ending in 3319?

11:02:46

16 A. No.

17 Q. When did you close that account?

18 A. I don't know.

19 Q. Do you recall if it was around or at the same time
20 you closed the Chase account ending in 8097?

11:02:55

21 A. Most likely.

22 Q. What about a Chase savings account ending in 6768?
23 Do you still have that account?

24 A. No.

11:03:08

25 Q. Do you recall when you closed that?

1 A. No.

2 Q. It might have been around the same time that you
3 closed the other Chase accounts?

4 A. Most likely.

11:03:19 5 Q. Do you still have an account at Cyprus Credit
6 Union, the checking account ending in 75-S5?

7 A. Yes.

8 Q. What's the balance in that account?

9 A. I don't know. That account has been frozen. I'm
11:03:51 10 sure it's less than \$1,000.

11 Q. Do you recall when the last either withdrawal of
12 any kind is that you made from that Cyprus checking account?

13 A. That I made?

14 Q. Yes.

11:04:07 15 A. It would have been months and months ago, if not
16 over a year ago. That's -- my wife uses that account. I
17 never really used that account.

18 Q. Do you still have a Cyprus savings account ending,
19 and the account number ending 75-S1?

11:04:33 20 A. I think so.

21 Q. Do you know what the balance is in that account?

22 A. \$5, 20, something like that.

23 Q. Do you recall the last time any withdrawal was made
24 from that account?

11:04:47 25 A. No.

1 Q. Do you still have a personal checking account at
2 Wells Fargo ending in 3214?

3 A. No.

4 Q. When did you close that account?

11:05:03 5 A. Four months ago.

6 Q. What was the ending balance?

7 A. I can't remember.

8 Q. Where did the money go from that account?

9 A. What account was that again?

11:05:23 10 Q. This is the Wells Fargo personal checking account
11 ending in 3214.

12 MR. PAUL: Your Honor, I'm going to object as to
13 relevance. This is outside the time period that we're
14 discussing, nor does it have anything to do with the \$27,000.

11:05:36 15 THE COURT: I think I lost track of the time period
16 that you're talking about right now. What time period are you
17 in, Miss Healy-Gallagher?

18 MS. HEALY-GALLAGHER: Mr. Shepard said that he
19 closed that account about four months ago.

11:05:48 20 THE COURT: And that would be -- well, I'm sorry,
21 but the question was what?

22 MS. HEALY-GALLAGHER: Could you read it back,
23 please?

24 Oh, the question was where the money went.

11:06:03 25 THE COURT: The objection is overruled.

1 THE WITNESS: I don't know. Pay bills.

2 Q. BY MS. HEALY-GALLAGHER: Did you withdraw it in
3 cash or transfer it to another institution?

4 A. I can't remember. I would -- those were desperate.
11:06:24 5 My income was cut to Social Security, and I had to pay bills
6 so it probably went to bills to pay.

7 Q. So then, Mr. Shepard, you closed the Wells Fargo
8 personal checking account ending in 3124 after the asset
9 freeze was entered; correct?

11:06:46 10 A. Four months ago I had no income. There was no
11 reason to keep it open.

12 Q. Do you recall whether that was before or after the
13 asset freeze order was entered?

14 A. I can't remember.

11:07:00 15 Q. What about the Wells Fargo personal savings account
16 ending in 2478, do you still have that account?

17 A. No. It was closed four months ago.

18 Q. Where did the money go from that account?

19 A. I don't know. There was very little in it.

11:07:47 20 Q. And, Mr. Shepard, what about the Wells Fargo
21 Shepard Energy checking account ending in 5361, do you still
22 have that bank account?

23 A. No.

24 Q. When did you close that bank account?

11:07:59 25 A. Same time. Four months ago.

1 Q. Do you recall how much money was in it when you
2 closed it?

3 A. I think pretty close to zero.

4 Q. Do you remember where any money from that went?

11:08:19 5 A. Yeah. That account was principally set up, Shepard
6 Global hired -- or Diana Shepard, my wife, was an employee of
7 Shepard Energy and an employee of Shepard Global, and she
8 received \$300 from Shepard Energy. So I took money out of
9 Shepard Global and put it in there so she could be paid,
11:08:47 10 roughly \$300. And she used that principally to take care of
11 herself and her mother, those funds.

12 Q. So with respect to whatever funds were left in the
13 Shepard Energy checking account ending in 5361, to your
14 recollection any money that was in there went to your wife;
11:09:08 15 correct?

16 A. That would be reflected on her W-2 form.

17 Q. Please answer my question, Mr. Shepard.

18 A. Okay.

19 Q. The money that was in the Shepard Energy checking
11:09:24 20 account ending in 5361, when you closed that account, that
21 money went to your wife; correct?

22 A. If there was any in there I probably took it. If
23 there was \$300 in there I'm not sure the accounting of it.
24 I'm sorry. I can't remember back that far. But there was
11:09:44 25 only enough money in there on every month that that account

1 was opened to take care of the \$300 that went to my wife's
2 payroll.

3 Q. In any event, that money would have gone to you or
4 your wife; correct?

11:10:03 5 A. Yes. From Shepard Global.

6 Q. All right. Moving to the Shepard Global checking
7 account ending in 1774 also at Wells Fargo, do you still have
8 that account?

9 A. No.

11:10:31 10 Q. When did you close that account?

11 A. Four months ago.

12 Q. Do you recall what the ending balance was before
13 you closed it?

14 A. Zero.

11:10:43 15 Q. So there was no money to go anywhere; correct?

16 A. Correct.

17 Q. And what about the Shepard Global savings account,
18 it's a different account, ending in 2814, also at Wells Fargo,
19 do you still have that account?

11:11:03 20 A. No.

21 Q. When did you close it?

22 A. Four months ago.

23 Q. Do you recall what the ending balance was before
24 you closed it?

11:11:09 25 A. No.

1 Q. Do you recall where the money went after you closed
2 it?

3 A. It may have gone into -- I used everything to zero
4 out to pay bills. I have no money. I have all these bills to
11:11:33 5 pay. Everything went to bills. We're in survival mode.

6 Q. So --

7 A. So I went to survive.

8 Q. So it went to pay for housing, food, utilities for
9 yourself and your family.

11:11:45 10 A. Yes.

11 Q. So we talked about a few different accounts that
12 you withdrew money from to pay expenses for yourself and
13 family when you closed them. How much of that money went to
14 prepay expenses for your family?

11:12:20 15 MR. PAUL: I'm going to object to the form of the
16 question. And again, maybe it's my misunderstanding whether
17 we're talking about the accounts that she's just talking about
18 that were closed or now we're talking about the time period.

19 THE COURT: Rephrase the question, please.

11:12:33 20 MS. HEALY-GALLAGHER: Sure.

21 Q. BY MS. HEALY-GALLAGHER: Mr. Shepard, you talked
22 about accounts that you closed.

23 A. May I get a drink of water?

24 Q. Please. Take your time.

11:13:07 25 A. Okay.

1 Q. Mr. Shepard, we just talked about accounts that you
2 closed about four months ago to go into survival mode. Do you
3 recall that?

4 A. Yes.

11:13:16 5 Q. Of the money that you took from those accounts how
6 much of that money went to prepay expenses for your family?

7 MR. PAUL: I'm going to object to that question as
8 it lacks foundation.

9 THE COURT: Overruled.

11:13:34 10 THE WITNESS: Okay. I prepaid my Murray utility
11 bill.

12 MR. PAUL: I'm going to object to the answer
13 because I think it's nonresponsive.

14 THE COURT: You can't object to answers. It's
11:13:47 15 overruled.

16 THE WITNESS: Yeah. On, for example, Murray
17 utilities, in the summertime where the air conditioning goes
18 it's very expensive in the months of July and August and
19 September. So to try to even it out to protect my cash flow
11:14:14 20 I paid in advance on a Murray utility bill, for example.

21 Q. BY MS. HEALY-GALLAGHER: Any other examples of
22 prepaying expenses for yourself and your family from the
23 closed accounts funds?

24 A. I paid -- I knew I had property taxes coming up,
11:14:45 25 and so I paid -- I think I paid that in March or April of 2018

1 because I knew that comes up in October-November. So I
2 prepaid that to whittle that down because it's not taken out
3 of my -- or our Nationwide account that's the lienholder,
4 mortgage lienholder.

11:15:17 5 Q. Mr. Shepard, we just ran through a series of
6 accounts that you had reported to the United States that you
7 had through discovery in the trial. Right now what, if any,
8 other additional accounts are in your name?

9 A. None.

11:15:41 10 Q. So the Chartway Credit Union account is no longer
11 in your name?

12 A. Correct. It's been closed.

13 Q. Okay. So right now other than a couple of frozen
14 Cyprus Credit Union accounts do you have any bank accounts?

11:16:03 15 A. No.

16 Q. Do you have a safe deposit box?

17 A. No.

18 Q. Mr. Shepard, from September 1st, 2018, through
19 November 12, how many vehicles did you make payments for?

11:16:31 20 A. Three, plus, before it was mentioned, the Cruze.
21 And the reason that was paid at \$73 because when we turned
22 that car in or when that car was turned in there was money
23 left that was owed on it, and so the leasing company then
24 said, you owe this much. And so those are monthly payments to
11:17:14 25 retire that old car lease. And then I paid -- besides the

1 three main ones that we have, I paid one lease payment for my
2 son-in-law for work that he did.

3 Q. When you say the three main cars, what are those?

4 A. The Atlas, the Highlander, and the car that I

11:17:45 5 principally drive is a Chevrolet Malibu.

6 Q. Let's talk about those three main cars first. Are
7 they all leased?

8 A. Yes, they are.

9 Q. And what about the vehicle for your son-in-law?

11:18:06 10 Can you tell me about that?

11 A. Yeah. That's in my name. That's leased, but he
12 pays the lease.

13 Q. What vehicle is that?

14 A. It's a Chevrolet Silverado pickup.

11:18:17 15 Q. You say the lease is in your name, but he pays for
16 it?

17 A. Yes.

18 Q. Why is that the arrangement?

19 A. I'm out of money. I said, I can't do it.

11:18:39 20 Q. So you were paying for the lease.

21 A. Up until I think June or July of this year. And
22 then because my assets were frozen I had no money coming in.
23 I said, Scott Black, he's my son-in-law, I said, Scott, I
24 can't do it.

11:18:59 25 Q. Why were you paying for the lease for Scott Black?

1 A. He was a RaPower-3 team member and did work for me
2 at times.

3 Q. So was that lease paid through one of your
4 entities?

11:19:14 5 A. Shepard Global.

6 Q. And you deducted expenses from Shepard Global's tax
7 returns?

8 A. That's -- my tax preparer handles that.

9 Q. Mr. Shepard, we heard some -- or Mr. Paul reported
11:20:21 10 on some information to Judge Nuffer at start of the hearing,
11 but I'd just like to run through quickly to hear from you.

12 You made a payment to Dominion Energy Gas Service
13 for \$1,000 October 12th, 2018. That represented a prepayment.

14 A. It did.

11:20:47 15 Q. And for your Discover Card payment of \$1800 or so,
16 why did you pay that amount to the Discover Card?

17 A. To round off what was owed. So I think there's
18 \$6,000 left, so it made it an even number. And there's -- the
19 interest charged on that is 5 percent, 4.99 percent. So I
11:21:37 20 wanted to get that, whittle that down. And also the monthly
21 payment requirements are higher than my other credit cards.

22 Q. So if you know, Mr. Shepard, what did that \$1800
23 pay for? Like what were the transactions you were paying for?

24 A. Well, I'm in a survival desperate mode, so
11:22:12 25 fortunately before my income was taken away I had built up

1 good credit in a number of credit cards. And so these credit
2 cards gave me the opportunity to do balance transfers at
3 zero percent interest. And so I would play one off another.
4 I would pay off one credit card where the due time was coming
11:22:40 5 and get a balance transfer from another card and pay that off.
6 And so that's what I did with the Discover Card. I paid off
7 another credit card.

8 Q. So for that approximately \$1800 payment for the
9 Discover Card, was that for living expenses for yourself, your
11:23:01 10 wife and your mother-in-law?

11 A. To pay off a credit card.

12 Q. But that was paid so that you could continue to
13 live?

14 A. Yeah. The payment would have been \$175 so I think
11:23:15 15 on that particular month, so that took away that monthly
16 payment so that I had -- I was just trying to eat and trying
17 to pay my bills.

18 Q. So making payments to your credit cards was a way
19 to provide for yourself and your family.

11:23:38 20 A. Exactly.

21 Q. Is the same true for the US Bank credit card
22 payment of \$3,000?

23 A. Yes. That was kind of a mistake on my part because
24 I didn't know -- either they put one over on me, but the
11:24:03 25 interest rate was high for that and so I got rid of that

1 higher interest rate.

2 Q. Nonetheless, that \$3,000 was paid to ensure that
3 you could continue to pay for living expenses for yourself,
4 your wife and your mother-in-law, yes?

11:24:22 5 MR. PAUL: Objection; argumentative.

6 THE COURT: Overruled.

7 THE WITNESS: Yes. Survive.

8 Q. BY MS. HEALY-GALLAGHER: Your \$1900-plus payment to
9 Toyota Financial, Mr. Shepard, that was a prepayment for one
11:24:45 10 of your vehicles; correct?

11 A. Right.

12 Q. For the Highlander?

13 A. How much?

14 Q. Well, you paid 1960.

11:24:55 15 A. Yes. That was for the Highlander.

16 Q. So you paid more than what was owed at that time;
17 correct?

18 A. Yes.

19 Q. The same thing is true for the Volkswagen credit
11:25:18 20 payment of \$1,996; correct?

21 A. Yes.

22 Q. And to GM Financial in the amount of \$1700-plus.

23 A. Yes.

24 Q. Those were prepayments for your vehicles.

11:25:33 25 A. They were.

1 Q. Mr. Shepard, you withdrew cash of about \$1200 on or
2 about October 15th, 2018. Do you remember that?

3 A. I do.

4 Q. What did that go to pay for?

11:25:52 5 A. Well, I noticed that my grand kids and Matt's wife,
6 they needed money for other household expenses, so I gave them
7 the money. I gave Matt the money. It was a pretty dire
8 circumstance.

9 Q. So you gave your son cash in addition to his house
11:26:59 10 that you paid for and the vehicles that he uses and cell phone
11 that he uses, yes?

12 A. Yeah. Either his wife or Matt did. They needed
13 money. They needed money to live on.

14 Q. So, Mr. Shepard, you said that your son-in-law
11:27:22 15 Scott Black picked up payments for the Chevrolet Silverado?

16 A. Yes.

17 Q. But I see that coming out of your bank account on
18 or about October 15th.

19 A. Yes. I already testified to that, that I paid one
11:27:35 20 payment for him for work that he did for me.

21 Q. What work?

22 A. Hauling stuff away.

23 Q. What stuff?

24 A. Household items. And we're preparing for the
11:27:49 25 worst.

1 Q. Did you sell those items?

2 A. No.

3 Q. What were they?

4 A. Old table, carpet remnants.

11:28:16 5 Q. Mr. Shepard, you paid property tax for your home on
6 or about October 16; correct?

7 A. I did.

8 Q. Was that when your property taxes are due?

9 A. Yes.

11:28:34 10 Q. And I believe you testified earlier that you had
11 prepaid a certain amount of property taxes earlier in the
12 year?

13 A. Right. I didn't know that property taxes were
14 going to go up 20 percent. So they went up 20 percent, so
11:28:47 15 that's what I owed.

16 Q. When did you make that prepayment earlier this
17 year?

18 A. I testified earlier that I thought it was March of
19 2018 or April, around there. It might have been May.

11:29:11 20 Q. And, Mr. Shepard, on about October 16th you paid
21 more than \$4,000 to Nationwide Home Mortgage; correct?

22 A. I did.

23 Q. And that included a prepayment of your mortgage;
24 right?

11:29:25 25 A. Correct.

1 Q. Because the amount that was owed was about \$1400;
2 correct?

3 A. 1434, I believe.

11:29:45

4 Q. And, Mr. Shepard, there's a check to the IRS dated
5 October 12th, for \$1,160. What was that check for?

11:30:16

6 A. I filed for an extension in April. My tax preparer
7 did that for me. So October 15th is when that extension is
8 over. I'm sure you're aware of that. And so my tax preparer
9 said that I owed \$1160. So I didn't want to be late with the
10 IRS, so I paid it.

11 Q. And when you say you owed \$1160 you mean you and
12 Mrs. Shepard owed that?

13 A. I did mean that. It was a joint return.

11:30:40

14 Q. So, Mr. Shepard, then when you paid Murray City
15 Utilities \$1,000 in October, that also represented a
16 prepayment of the utilities for your home; correct?

17 A. Right.

18 Q. Mr. Shepard, you took a cash advance from a Wells
19 Fargo MasterCard in the amount of about \$6,000; correct?

11:31:43

20 A. Right.

21 Q. What did that money go to?

22 A. Again, that's going back and forth of paying
23 obligations that I have.

24 Q. So did that cash advance go to cash or did it --

11:32:00

25 A. No. I never take -- I don't take -- you mean cash

1 cash like hundred dollar bills?

2 Q. I'm curious about where the cash advance from the
3 MasterCard went.

11:32:16

4 A. I'd have to look at my records. I'm not sure
5 exactly where that went. But that amount has been paid back.

6 Q. How did you pay that amount back?

7 A. Another balance transfer.

8 Q. From?

11:32:33

9 A. I don't know. I'd have to check my records and see
10 what account that came from.

11 Q. So your payment to Wells Fargo in the amount of
12 \$6,040 in late October, that was to be able to provide living
13 expenses for yourself, your wife and your mother-in-law;
14 correct?

11:33:08

15 A. Yeah. To pay bills and also to -- principally the
16 real reason for that is that interest rate was almost
17 14 percent, and I don't like doing that. So I traded it for a
18 zero percent card. I still owe money. I owe over \$100,000 in
19 credit cards. They're all zero percent except one, and that's
20 the Discover Card.

11:33:43

21 Q. Mr. Shepard, who do you plan to borrow from to pay
22 the \$27,000 by November 30th?

23 MR. PAUL: Objection; relevance. And I think that
24 should be privileged until it's resolved until it's done. It
25 exceeds the scope of today's hearing.

11:34:06

1 THE COURT: Counsel, can you approach? Do you know
2 the answer to the question, Mr. Paul?

3 MR. PAUL: No. I don't.

4 THE COURT: Why don't you talk to him for a minute.

11:34:23 5 MR. PAUL: At the witness stand?

6 THE COURT: Yeah, at the witness stand, and we'll
7 put on the white noise. And then, counsel, come up after that
8 conversation is concluded.

9 (Whereupon, the following proceedings were held
11:34:33 10 at the bench:)

11 THE COURT: Does he know who he's going to borrow
12 from?

13 MR. PAUL: He's working on it. He does not have a
14 firm commitment. That's why I don't think it should be
11:35:01 15 divulged because we don't want any interference by the
16 plaintiff in this case to interfere with his ability to make
17 that.

18 THE COURT: Do you know is it to be secured?

19 MR. PAUL: I know that it's not secured. That
11:35:15 20 would violate the order.

21 THE COURT: Okay. I think that's all I'm going to
22 permit unless you've got another question we really need.

23 MR. KLEIN: The nature of the relationship, maybe,
24 or --

11:35:31 25 MR. PAUL: That's what I represented, and that's

1 what I understand it to be is a neighbor.

2 MS. HEALY-GALLAGHER: So my primary concern was
3 whether it was going to be another receivership defendant or
4 what else was going on here.

11:35:42 5 THE COURT: It's not going to be another
6 receivership defendant?

7 MR. PAUL: Correct, it would not be.

8 THE COURT: Okay. We've got that on the record.
9 Many thanks.

11:35:50 10 (Whereupon, the following proceedings were
11 held in open court:)

12 THE COURT: Your next question?

13 Q. BY MS. HEALY-GALLAGHER: Mr. Shepard, you filed a
14 motion to lift the asset freeze order with respect to certain
11:36:09 15 of your assets. Do you recall that?

16 A. I do.

17 Q. And United States opposed that. Do you recall
18 that?

19 A. I do.

11:36:15 20 Q. Then you withdrew that motion.

21 A. Yes.

22 Q. Why did you withdraw the motion?

23 A. I withdrew it because I had no idea that all this
24 would be public information. And when that public information
11:36:28 25 came out I didn't want it to go any further. I didn't want to

1 put my family in jeopardy, but I obviously miscalculated.

2 Q. Mr. Shepard, you're aware that all of the spending
3 on this \$27,000 occurred after you withdrew your motion to
4 lift the asset freeze, yes?

11:36:53

5 A. Yes. I did not know about a receiver. The
6 receiver had not yet been appointed. I had no idea when that
7 receiver would be appointed. And my only income was Social
8 Security, and I had no way to pay the bills. I felt
9 desperate. My wife was in tears. My mother-in-law was scared
10 to death. Our family household was scared. And out of
11 desperation I did that. I screwed up. I should never have
12 done that, but I did.

11:37:17

13 Q. To be clear, Mr. Shepard, you liquidated the
14 annuity the day before you asked this court to lift the asset
15 freeze order; correct?

11:37:35

16 A. I don't know. There was no correlation in my mind
17 on that.

18 Q. Well, the record will reflect the order of events
19 for that. Then once you found out that your finances would
20 become public, you withdrew your motion to lift the asset
21 freeze, yes?

11:37:48

22 MR. PAUL: Objection. I think that's been asked
23 and answered.

24 THE COURT: Overruled.

11:38:02

25 THE WITNESS: Yeah. As soon as -- as soon as a

1 ruling is made within about 10 minutes it's on the Internet,
2 and I had no idea that that would happen. And I was made fun
3 of and ridiculed because of that. I didn't want to go through
4 that again. But I obviously miscalculated, and I'm going
11:38:25 5 through it now. I'm being made fun of by people that I don't
6 know where they get their information from, but in 10 minutes
7 they'd got it.

8 So my family has been put through ridicule. I have
9 been put through ridicule. I thought this might be a way of
11:38:44 10 staving that off. But I have miscalculated all through this
11 event for six years.

12 Q. BY MS. HEALY-GALLAGHER: Knowing about this court's
13 order and knowing that you were being asked to disclose all of
14 your assets did not stop you from liquidating \$27,000.

11:39:05 15 A. There was no correlation between the two, even
16 though it looks like it is. It never entered my mind.

17 MS. HEALY-GALLAGHER: Those are my questions for
18 Mr. Shepard at this time.

19 THE COURT: Thank you.

11:40:00 20 Mr. Klein?

21 CROSS-EXAMINATION

22 BY MR. KLEIN:

23 Q. Mr. Shepard, I just want to get clarification on a
24 couple points. Are you a signatory on any bank accounts in
11:40:19 25 the name of your wife?

1 A. No.

2 Q. Your son?

3 A. No.

4 Q. Anyone else?

11:40:21 5 A. No.

6 Q. Do you have any safe deposit box?

7 A. No.

8 Q. The Wells Fargo MasterCard is the one where you
9 took the \$6,000 super check; does that sound right?

11:40:39 10 A. Yes.

11 Q. Now the account statement shows that on
12 September 21st you made two payments on that account, one for
13 \$6,861 and another payment of \$3,200. Does that sound
14 familiar?

11:40:55 15 A. Yes.

16 Q. What was the source of that \$6800 and 3200?

17 A. Another balance transfer. Zero percent versus
18 14 percent.

19 Q. I think you indicated that Shepard Global is
11:41:19 20 dissolved; correct?

21 A. Yes. Officially dissolved.

22 Q. And is that the entity, though, that owns -- has
23 the lease on the Volkswagen Atlas vehicle?

24 A. No.

11:41:31 25 Q. Oh, so the Volkswagen Atlas, who is the lessee on

1 that vehicle?

2 A. I'm kind of confused with -- it would be me.

3 Q. Who is the one --

4 A. I leased it. It's in my name. It's in my name.

11:41:52 5 Q. I thought your son had said that the car was leased
6 by Shepard Global.

7 A. He was incorrect. It's in my name.

8 Q. Okay.

9 A. Shepard Global paid for the lease up until June or
11:42:20 10 so until I had no money coming into that account.

11 Q. We talked about the prepayment of property taxes,
12 and I think Ms. Healy-Gallagher asked you about that, and it
13 was you believe around March. But I just want to make sure,
14 was that \$2600.

11:42:41 15 A. Yeah. It's on the invoice.

16 Q. Okay. I wanted to make sure that we all knew. We
17 were talking about the same amount.

18 A. I think I have the invoice, so whatever your date
19 says on the invoice that you've been given.

11:42:53 20 Q. Okay. Now I want to go back to the refinancing of
21 the home. If you'll walk me through that a little slower. In
22 order to get the refinancing did you have to take the home out
23 of the trust and put it back into your name and your wife's
24 name?

11:43:13 25 A. The way it was explained to me by the lender, and

1 they said that it's very common practice, and I've had that
2 double checked and triple checked, is that they don't give
3 loans generally to trusts. They need individuals. So my wife
4 and I, who incidentally my wife has better credit than I do,
11:43:41 5 her score is higher. We applied for a loan between the two of
6 us, and that loan was granted for \$315,000 or something like
7 that. And so at closing, then immediately during the closing
8 then it was put back in the trust, the Diana C. Shepard
9 Revocable Trust.

11:44:13 10 Q. And who are the people who are authorized to sign
11 on behalf the trust?

12 A. I think only Diana C. Shepard is authorized. I'm
13 positive on that.

14 Q. Now, is the \$350,000 --

11:44:28 15 A. 315.

16 Q. 315. Is that the only mortgage on the home?

17 A. Yes. I believe it's down to 306 now. 305. With
18 those prepayments I think it's 304. Excuse me.

19 Q. Now I believe you said the full name is Diana C.
11:44:52 20 Shepard Revokable Trust?

21 A. Yes.

22 Q. So revokable at your wife's election; correct?

23 A. I'd have to ask my attorney. I'm not an attorney,
24 and I don't understand that.

11:45:03 25 Q. Tell me what you do understand is meant by

1 revokable trust.

2 A. I don't know. I did know. I've looked it up, and
3 I just don't remember.

11:45:20

4 Q. When the property -- the property -- is it your
5 understanding that the property was taken out of the trust in
6 order to secure the mortgage and then put back into the trust?

7 A. For two minutes, yes. And it was in the Diana C.
8 Revokable Trust since 1998.

11:45:49

9 Q. Finally, the \$6,000 super check advance from Wells
10 Fargo, I think you indicated you did not take that out in
11 cash --

12 A. No.

13 Q. -- correct?

11:45:58

14 So was that a check that you -- was that one of
15 those checks they send you in the mail you can draw down a
16 balance on an account?

17 A. Yes. I did those every week.

18 Q. So to whom was that \$6,000 check made?

11:46:14

19 A. I'd have to go check. I'm not sure. I know it
20 seems funny, but I made -- I made all kinds of going back and
21 forth to try to survive, sir.

22 Q. Okay. Then we have the \$1200 withdrawn in cash on
23 October 15th; is that correct?

24 A. Yes.

11:46:35

25 Q. And I think you indicated you gave some of that to

1 your son Matt and his wife. How much of that --

2 A. No. I gave it all.

3 Q. So that whole 1200? Was that given to them in cash
4 or check?

11:46:48 5 A. Yes.

6 Q. In cash?

7 A. Yes.

8 Q. And was it given to Matt or his wife?

9 A. I think it was given to both of them. I can't
11:46:59 10 remember. I just know that they were desperate.

11 Q. I understand. I'm just trying to get how the
12 transaction actually occurred.

13 And so, but you handed them that money in cash?

14 A. Yes.

11:47:13 15 MR. KLEIN: That's all I have, Your Honor.

16 THE COURT: Okay. Thank you.

17 MR. KLEIN: Thank you, Mr. Shepard.

18 THE COURT: Mr. Paul?

19 MR. PAUL: No questions.

11:47:21 20 THE COURT: Anything else, Ms. Healy-Gallagher?

21 MS. HEALY-GALLAGHER: No, Your Honor.

22 THE COURT: All right. You can step down,
23 Mr. Shepard.

24 Is the government calling any more witnesses?

11:47:29 25 MS. HEALY-GALLAGHER: No, Your Honor.

1 THE COURT: Okay. Then here's what I'm proposing
2 we do, and I want you to respond to this and tell me what I'm
3 missing. First, does the plaintiff think that any production
4 of documents is necessary regarding the balance transfers in
11:47:53 5 advances or not?

6 MS. HEALY-GALLAGHER: I think it might be helpful
7 to establish who might be jointly and severally liable for
8 those amounts. That said it sounded as though that was for
9 Mr. Shepard, Mrs. Shepard and Mrs. Jane Smith. So if we
11:48:19 10 stipulate that those can generally be split among those three
11 people in terms of the benefit for whom those payments were
12 made, that would obviate a further need for production.

13 THE COURT: But if they are unsecured debts, is
14 there any claim that the asset freeze was violated as to those
11:48:45 15 amounts?

16 MS. HEALY-GALLAGHER: Well, to be clear, I'm
17 concerned about the payments, so the credit card payments for
18 the cash advance. So --

19 THE COURT: Do we have any evidence that credit
11:48:58 20 card payments have been made? I mean, have we passed the
21 billing cycle on those?

22 MS. HEALY-GALLAGHER: Well, for a few, for example,
23 the \$6,040 Wells Fargo credit card payment that did happen
24 during the time period at issue and is reflected on the
11:49:18 25 accounting, for example, from what I heard from the testimony

1 that could fairly be divided in three for the benefit -- that
2 payment was made for the benefit of the living expenses of
3 Mr. Shepard, Mrs. Shepard and Mrs. Jane Smith.

11:49:43

4 THE COURT: Okay. I think I understand that. Is
5 there any similar concern about the \$16,000 advance?

6 MS. HEALY-GALLAGHER: If it was simply advanced and
7 not paid out of the \$27,000, then no.

8 THE COURT: Okay.

9 Mr. Klein?

11:50:01

10 MR. KLEIN: Your Honor, I have a different concern
11 solely regarding the \$6,000. I would like to know who the
12 payee was of the super check because if it was used for a
13 balance transfer to pay off another credit card, that resolves
14 my concerns. If, however -- there is the possibility,
15 however, that could have been used to then go open a new bank
16 account somewhere else that we don't know about. So if I can
17 know the payee of that check and that would resolve my
18 remaining concern.

11:50:19

19 THE COURT: Mr. Paul, would you have an objection
20 to producing documents that would show the disbursement and
21 distribution of that \$6,000 advance?

22 MR. PAUL: No objection. I think we can get that.

23 THE COURT: Could you do that by the 21st of this
24 month?

11:50:51

25 MR. PAUL: I would expect so.

1 THE COURT: Okay. Then what I would propose is to
2 order that, and then also briefing from the IRS and the
3 receiver on what you claim based on this testimony the joint
4 and several amounts would be and who they are due from, the
11:51:17 5 attorney's fees that you would claim, and that that briefing
6 be due the 26th of November from plaintiff and the receiver,
7 and then a response by the 3rd of December. The deadlines of
8 each of those dates would be noon. Then I would suggest we
9 have a hearing December 6th.

11:51:46 10 What time was that going to be, Ms. Bowers? Was I
11 looking at 9:00 a.m.?

12 THE CLERK: We can do 9 o'clock.

13 THE COURT: At 9 o'clock, to wrap this up,
14 hopefully the big news will be that the \$27,000 has been
11:52:13 15 repaid, and then we don't have a big issue about joint and
16 several amounts.

17 MR. PAUL: What is the deadline for briefing from
18 the government on that?

19 THE COURT: The 26th of November at noon, and your
11:52:25 20 response is due the 3rd of December at noon.

21 MR. PAUL: May I be heard?

22 THE COURT: What's that? Yes. I'm putting it on
23 the table.

24 MR. PAUL: The concern I have is incurring
11:52:37 25 attorney's fees that my client is going to be responsible for

1 if he is going to pay the amount. If we can push those
2 briefing deadlines back a week? That allows him until the
3 time the court has given him to pay the balance so we don't
4 have to incur those additional attorney's fees. I'm trying to
11:52:58 5 help my client as much as I can so he doesn't have that
6 exposure.

7 THE COURT: So let me look at that schedule. If we
8 were to have your brief due the 3rd of December -- well, the
9 government's brief due the 3rd of December and then the
11:53:23 10 response due the 7th of December, your response due the 7th of
11 December, the response at noon, we might be able to save some
12 money you're suggesting.

13 MR. PAUL: Yes.

14 THE COURT: But even that might be too tight,
11:53:41 15 because the government's not going to know if that money is
16 paid until the 30th, and I've made their brief due the 3rd.
17 My problem is I've got hearings and potentially trials in
18 St. George the week of the 10th. And I hate to get you too
19 close to Christmas.

11:54:05 20 Let's just play with the dates here. Government's
21 brief due by the 7th, response by the 13th. Let me look at
22 the real calendar here. Just a minute.

23 That's a terrible week. What's the date we had for
24 St. George? It's the 20th or 21st, isn't it?

11:54:40 25 THE CLERK: 21st, yes.

1 THE COURT: Because I've still got bankruptcy there
2 that day, and I think that's wrong. What did I say? The 7th,
3 the 13th, and I know it's awful, but a hearing on the 20th at
4 9:00 a.m.?

11:55:08 5 MS. HEALY-GALLAGHER: I could do that.

6 THE COURT: Which family commitments are you going
7 to have to break?

8 MS. HEALY-GALLAGHER: Oh, just my in-laws. That's
9 fine.

11:55:18 10 THE COURT: Put that on the record.

11 MS. HEALY-GALLAGHER: Also I will say, Your Honor,
12 I don't have an objection necessarily to a fairly tight
13 briefing turnaround even after the 30th because we're already
14 going to be submitting a certain amount of attorney's fees
11:55:38 15 already.

16 THE COURT: Yeah.

17 MS. HEALY-GALLAGHER: So I can have things
18 generally prepped, and then it really won't take that long to
19 simply identify the joint and several.

11:55:47 20 THE COURT: So what do you want to propose for
21 dates?

22 MS. HEALY-GALLAGHER: Let's see. You said
23 something about the 7th. Or let's see.

24 THE COURT: Well, I'm proposing the 7th, 13th and
11:56:00 25 20th.

1 MS. HEALY-GALLAGHER: Okay.

2 THE COURT: You're due the 7th, response by the
3 13th, hearing on the 20th.

11:56:10

4 MS. HEALY-GALLAGHER: Right. Okay. You know what,
5 actually as I look at it, if I committed to anything earlier I
6 would actually be breaking plans with my in-laws, so maybe not
7 do that. So the 7th for our brief, their response on the 13th
8 and then a hearing on the 20th will work for me.

9 THE COURT: Okay.

11:56:29

10 MR. KLEIN: Real quickly, Your Honor. If it turns
11 out that my views are not different from the Department of
12 Justice do you have any objection to submitting a joint?

13 THE COURT: No problem.

14 MR. KLEIN: Thank you.

11:56:43

15 THE COURT: Mr. Paul?

16 MR. PAUL: And I would appreciate that, as well. I
17 know you have an order that we pay the receiver's fees. But
18 in the long run --

19 THE COURT: It comes out of the estate.

11:56:51

20 MR. PAUL: So I appreciate the accommodation. And
21 our intention is to have that paid by the end of November, and
22 we will keep the Court informed if there are any changes to
23 that.

24 THE COURT: Yeah. Okay. That's the only thing on
11:57:07 25 my news feed that I'm going to care about. Okay. Thank you.

1 MR. PAUL: Thank you.

2 THE COURT: And I want to thank all of you who have
3 served as witnesses, the Shepards, today. This is not an easy
4 thing. It's very difficult. But we made a lot of headway
5 today.

11:57:22

6 Thank you very much. We're in recess.

7 MR. PAUL: Thank you, Your Honor.

8 MS. HEALY-GALLAGHER: Thank you.

9 (Whereupon, the court proceedings were concluded.)

10 * * * * *

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF UTAH)

2) ss.

3 COUNTY OF SALT LAKE)

4 I, KELLY BROWN HICKEN, do hereby certify that I am
5 a certified court reporter for the State of Utah;

6 That as such reporter, I attended the hearing of
7 the foregoing matter on November 16, 2018, and thereat
8 reported in Stenotype all of the testimony and proceedings
9 had, and caused said notes to be transcribed into typewriting;
10 and the foregoing pages number from 3 through 94 constitute a
11 full, true and correct report of the same.

12 That I am not of kin to any of the parties and have
13 no interest in the outcome of the matter;

14 And hereby set my hand and seal, this ____ day of
15 _____ 2018.

16

17

18

19

20

KELLY BROWN HICKEN, CSR, RPR, RMR

21

22

23

24

25