IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 1:22-cr-20290-BB-1

UNITED STATES OF AMERICA,

Plaintiff, November 29, 2023
9:02 a.m.

vs.

ERIC DEAN SHEPPARD,

Defendant. Pages 1 THROUGH 244

TRANSCRIPT OF TRIAL DAY 3
BEFORE THE HONORABLE BETH BLOOM
UNITED STATES DISTRICT JUDGE
And a Jury of 12

Appearances:

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ALSO PRESENT: Special Agent Sarah Halleran

I N D E X

W I T N E S S

E X H I B I T S

(Call to order of the Court, 9:02 a.m.)

THE COURT: Good morning to everyone.

MS. MARTINEZ: Good morning, Your Honor.

THE COURT: Go ahead and have a seat.

Let me acknowledge the presence of the Defendant.

I believe we are waiting for one juror who is running a few minutes late.

Are there items we need to address this morning?

MS. JIMENEZ: Yes, Your Honor.

Good morning. Aimee Jimenez for the United States here.

I've just been provided a binder for a witness who we expect to be called today. I see documents in here like a letter not authored by this witness. I don't know how this letter comes into evidence. And I'm just starting to review the binder, so I expect I'll have objections.

MS. WEINTRAUB: May I be heard, Your Honor? Although I think it's very premature --

THE COURT: All right.

MS. WEINTRAUB: I'm sorry?

THE COURT: Ms. Weintraub, would you like to respond specifically regarding the letter?

MS. WEINTRAUB: Just for edification, I handed Ms. Jimenez, in advance of the day, a binder with potential impeachment material that -- I don't know if I'm going to use it or not, depending on what the witness says. But in the interest of trying to be candid and disclose it promptly, so that it's not disrupting the jury's presence, I handed it to Ms. Jimenez this morning.

The letter is a letter that the witness asked to be written on his behalf to his bank. I'm sure he's going to admit it.

MS. JIMENEZ: There are letters. There are records. There's articles.

MS. WEINTRAUB: As I said, it's potential impeachment.

THE COURT: So there are no issues at this point, correct? You have been provided a binder of impeachment materials. And when the issue arises, Ms. Jimenez, you can bring it to the Court's attention.

MS. JIMENEZ: All right. Thank you, Your Honor.

THE COURT: Okay?

MS. MARTINEZ: Your Honor, just to make the Court aware, I'm in the same situation just with respect to exhibits for the witness that is on the stand now. So if -- when issues come up, I'll like my objection, Your Honor. I'm going through it now.

THE COURT: Do we have that witness here?

MS. MARTINEZ: Yes, Your Honor.

(Pause in proceedings.)

MS. MARTINEZ: Your Honor, there is one issue. The paralegal is noting that you overruled the objection I believe with respect to Exhibits 15, 15-1, and 15-2, but in her notes she doesn't note it as admitted. So before cross-examination starts, I want to make sure that those are admitted.

THE COURT: All right. Then for purposes of the record 15-1 and 15-2 -- the Court did overrule the objection -- each admitted into evidence.

MS. MARTINEZ: And there's actually a 15 by itself.

THE COURT: Fifteen. The 1040?

MS. MARTINEZ: Yes.

THE COURT: 15, 15-1, 15-2 --

MS. MARTINEZ: Thank you, Your Honor.

THE COURT: -- each admitted into evidence.

(Government's Exhibits 15, 15-1, and 15-2 received into evidence.)

THE COURT: Good morning, sir.

THE WITNESS: Good morning.

THE COURT: Go ahead and have a seat.

We're just waiting for the jury.

THE WITNESS: Okay. Thank you.

(Pause in proceedings.)

THE COURT: All of the jurors are present. Are both sides ready to proceed?

MS. JIMENEZ: Yes, Your Honor.

THE COURT: On behalf of the Defendant?

MR. ETRA: Ready, Your Honor.

COURT SECURITY OFFICER: All rise for the jury, please.

(Before the Jury, 9:07 a.m.)

THE COURT: Good morning, Ladies and Gentlemen.

Please be seated, everyone. It is good to see you. Thank you for being prompt, and we are ready to get right back to work.

And continuing with the direct examination of Mr. Palmer. And, sir, let me remind you, you were previously placed under oath.

MS. MARTINEZ: Your Honor, before cross-examination begins, may I just state on the record again that you have admitted Exhibits 15, 15-1 and 2. And the reason for doing that is when the court reporter transcribes sometimes it starts from when -- the time the jury comes in. So that just makes the transcript include what we previously discussed.

THE COURT: Yes. Fifteen, 15-1, and 15-2 are each admitted into evidence.

MS. MARTINEZ: Thank you, Your Honor.

And the United States concludes its direct examination.

THE COURT: Thank you. Cross-examination.

(Pause in proceedings.)

MR. ETRA: May I proceed?

THE COURT: Yes. Of course.

CROSS-EXAMINATION

BY MR. ETRA:

Q. Good morning -- Mr. Palmer, correct?

A. Correct. Good morning.

Q. Other than exchanging pleasantries yesterday and this morning, we've never spoken, correct?

A. Correct.

Q. You're here as an expert, not as a fact witness, right?

MS. MARTINEZ: Objection, Your Honor.

THE COURT: Basis?

MS. MARTINEZ: Your Honor, the witness testified as an expert.

THE COURT: Yes. That's the question. Overruled.

MS. MARTINEZ: And Your Honor, likewise --

THE COURT: What is the legal basis for the objection, please?

MS. MARTINEZ: The legal basis is that the witness is a dual witness. Also --

THE COURT: The objection is overruled.

You may continue with your cross-examination.

MR. ETRA: Thank you.

BY MR. ETRA:

Q. Let me ask again. I'm not sure we got the answer. I'll just start again. You're here as an expert, not a fact witness; is that correct?

A. I'm here as an expert, correct.

Q. Okay. Fair enough. And by "fact witness" we mean -- fact witness is someone who has familiarity with the events that have happened in this case. You don't have, for example, dealings with Mr. Sheppard or anything like that, correct?

A. That would be correct.

Q. You've never met Mr. Sheppard; is that correct?

A. Correct.

Q. You don't know anything about Mr. Sheppard?

A. Apart from tax filings, that would be correct. Yes.

Q. Do the tax filings tell you who Mr. Sheppard is?

A. No.

Q. You've been with the IRS for about almost 20 years?

A. A little over 16, correct.

Q. You're going to be better with the math than I am, I'm sure, as well as with the taxes.

You've performed tax audits of small businesses and large businesses, correct?

A. Correct.

Q. And you've dealt with all issues, not just employment issues, especially earlier in your career, right?

A. Correct.

Q. And you've -- part of your job was to educate taxpayers on

how tax law works, correct?
A. Correct.
Q. That's in your resume that you kindly provided, correct?
A. Correct.
Q. And you have to educate taxpayers about how tax law works because some taxpayers don't know some of these things, right?
A. Correct.
Q. That's why -- it was such a big part of your job that you actually dedicated a line of your resume to the fact that part of your job was educating taxpayers, right?
A. Correct. Yes.
Q. And especially with small businesses. Some small business owners understand the tax laws well and some don't. Is that your experience?
A. That's my experience, yes.
Q. And you have no idea where Mr. Sheppard falls on that spectrum of small business owners -- how well they understand or don't understand the tax laws, right?
A. Correct.
Q. And you became an employment tax specialist in 2015 or so; is that right?
A. That's correct.
Q. That's really where you developed more of your expertise in this area of employment issues and 1099s, those kinds of issues?

A. Correct.

Q. And you actually put in your resume that you built experience interpreting and applying tax law, right?

A. That's correct.

Q. That's somewhat unique to you in the sense that the average person doesn't have that kind of experience, right?

A. Correct.

Q. And you performed employment tax examinations of large complex businesses with minimal supervision at that point in your career, right?

A. Correct.

Q. And I think you testified on direct that you have handled -- you've audited some of the most complex employment tax-related issues I guess in the country. Is that fair?

A. For this area, correct. South Florida, yes.

Q. South Florida. Thank you for correcting me. For South Florida.

And that's -- and now as of the summer you got a promotion; congratulations -- to lead employment tax specialist, right?

A. Correct.

Q. I guess that's more of a supervisor than the person who is doing the actual work day to day?

A. No. It's both.

Q. Both. Okay. You're still rolling up your sleeves and

working on audits and examinations?
A. Correct.
Q. And how many small businesses do you think you've audited over the years?
A. Hundreds.
Q. Hundreds. Okay.
Now, you had no contact or involvement with Mr. Sheppard or any of the companies that he's affiliated with in your career, correct?
A. Correct.
Q. And you were not asked by the Government to conduct an investigation into Mr. Sheppard or his companies, correct?
A. I was not asked to do an audit, correct.
Q. When I said "examination," you said "audit." What's the difference?
A. You said "investigation."
Q. You're right, and that's why I wanted to correct myself. Thank you. I said "investigation." You said "audit." Tell me how you use the term and why you answered that way.
A. An investigation would involve research, research of the tax modules, research to identify what's been filed and what hasn't. An audit would be a lot more involved. It would be speaking with Mr. Sheppard. It would be securing records, examining physical records.
Q. So you were not asked to do an audit of Mr. Sheppard or his

companies, correct?
A. Correct.
Q. And to your knowledge, Mr. Sheppard and his companies have never been audited by the IRS, right?
A. To my knowledge. Correct.
Q. Did you check before you came into court?
A. I did. Correct.
Q. And so it's correct, Mr. Sheppard and the -- the IRS has never chosen to audit Mr. Sheppard or his companies; is that correct?
A. Not any of the companies that I reviewed, or Mr. Sheppard, correct.
Q. Okay. Did the IRS audit other companies that Mr. Sheppard's involved with that you did not review?
A. I can't speak to anything that I didn't look up.
Q. Right. Which gets to another point. Mr. Sheppard is involved with other companies, and you did not look at those other companies, correct?
A. I looked at the companies associated with his Form 1040. So if they were reported on his Form 1040, I did take a look at those.
Q. So you know the Form -- okay. And so which companies did you look at?
A. I would have to go back to the schedule. I believe there were eight or so companies.

Q. And you looked at the returns for all of them?
A. I didn't look at the returns. I looked as to whether they filed returns or not.
Q. Okay. And you've testified about the ones where the IRS couldn't find returns, right?
A. Correct.
Q. And for the returns that were filed, tell me all the time you spent reviewing those returns as part of your work for the Government.
A. The exact time, I don't know, but a few days.
Q. I should have asked it differently.
You looked at returns for only some of his companies, right?
A. Correct.
Q. And you spent no time on the other companies, correct?
A. No time looking at the returns for the other companies. Correct. Yeah.
Q. Right. We didn't stop you -- we don't have the ability to stop you from examining returns filed with the IRS, right?
A. Correct.
Q. But the Government just didn't ask you to look at the other returns?
A. Correct.
Q. And you didn't tell the Government: "Look, to do this properly, I need to look at all the other returns to see how

they might relate to each other"?
A. I don't recall if we had that conversation. But again, to clarify, I did check the filings of all the entities reported on his Form 1040 to ensure that there were no other entities that could have, for example, filed employment tax returns. So I did do that.
Q. Okay. That's not my question. I'm talking about reviewing the tax filings of the companies -- of the rest of the companies that you did not review.
A. That were filed. You said: "Tax filings." Doesn't necessarily mean that they were filed. You mean if I reviewed the returns that were filed for the other companies? Is that --
Q. What's the difference between tax filings and returns? Why are you --
A. A tax filing doesn't necessarily indicate that it's been submitted to the government. It's a term we use because tax files are a requirement. It doesn't necessarily mean that they have been submitted.
Q. So if I use the term "tax returns," it will refer to all filings -- the way I use the word, and maybe more commonly used -- that were actually submitted to the government -- to the IRS, right?
A. Yes. Correct.
Q. So to be clear, you did not review the tax returns of all

the companies that Mr. Sheppard's affiliated with, right?
A. That's correct.
Q. And you didn't think it was necessary to do that for your testimony, right?
A. Correct.
Q. You seemed to hesitate. Why did you hesitate?
A. I just want to -- I was thinking over the question to make sure I understood what you're asking.
Q. Which you're, of course, allowed to do.
A. Yeah.
Q. You understand that some of his companies, the way it runs -- for example, HM Management provides services to other companies that's affiliated with Mr. Sheppard. You understand that, right?
A. I do. Yes.
Q. And therefore -- and you understand they all use an accountant named Neal Cupersmith, correct?
A. I understand the returns that I reviewed had that accountant's name on them. Yes.
Q. And did you look into who Neal Cupersmith was?
A. I did not.
Q. Did you go online to see his resume to see if he presented himself as a legitimate and capable accountant?
A. I did not.
Q. In your experience with small businesses, do you find they

sometimes rely on their accountant?
A. That's a fair statement. Yes.
Q. And you did no investigation to determine to what extent everything you talked about yesterday had to do with the advice of Neal Cupersmith versus the independent decisions of Mr. Sheppard?
MS. MARTINEZ: Objection. Counsel is testifying.
THE COURT: It's cross-examination. Overruled.
THE WITNESS: Could you repeat the question?
BY MR. ETRA:
Q. You did no investigation to determine whether everything you testified yesterday had to do with the advice and guidance and -- advice and guidance of the accountant versus the independent decisions of this small businessman sitting here?
A. That was not part of the investigation I conducted.
Q. You weren't even asked to look at that?
A. I don't believe I was.
Q. And you understand that -- did you actually understand that HM Management provided services to the other companies? Did you say you understood that?
A. Correct. Yes.
Q. Okay. So you understand there's an accountant involved, correct?
A. Correct.
Q. A CPA, certified public accountant, right?

A. Right.
Q. And notwithstanding the fact that you have tremendous expertise, you're actually not a CPA, correct?
A. That's correct.
Q. And just generally speaking, what's the extra step you have to do to become a CPA?
A. You have to take a certification test in four parts, and you take it with the state that you reside in.
Q. Takes a few years. It's a long process?
A. I would say about six to eight months of studying, and then the test. Yeah.
Q. Okay. And you understand that as part of doing tax returns, for example, wages and other costs, or wherever 1099s go -- and we'll get to that -- there could be an allocation between where the accountant decides to put those numbers between the HM Management company that provides the services and the other companies that might receive the services. You understand that, right?
A. I do.
Q. Okay. So you understand that if you want a picture of the way Mr. Sheppard's companies report to the IRS about the work they do, you have to look at all the tax returns together; isn't that correct?
A. Yes.
Q. And you did not do that, correct?

A. Again, for the years --
Q. Yes or no, if you can.
A. I don't think a yes or no would be an accurate answer to that question.
Q. Okay. Go ahead.
A. Yeah. So for the years that I reviewed, for specifically 2019 through 2021, there was no filings related to employment taxes for any of the entities. So that would give me a complete picture.
Q. Okay. Let's talk about 1099. Okay?
A. Okay.
Q. Do you know whether -- to determine how much money was spent or how much is reported to the IRS for labor, whether it's 1099 -- let's focus on 1099 -- you have to look at all of the companies together to figure out how that's reported to the IRS?
A. Correct.
Q. Because there could be allocation and overlap, and it gets complicated with a large set of companies, right?
A. Correct.
Q. So you have given no testimony in your direct about how much money was reported to the IRS for payments made to 1099ed workers, correct?
A. That's correct.
Q. Okay. Okay. So let me take a step back and go in a

different direction here. This case involves, among other things, several workers, individual workers. I'm just going to mention some names. Okay? Joe Beirne, Maria Ataca -- I'm just going to mention two. Were you given any of the names of any of the workers involved in this case to look into?
A. I can't recall.
Q. Did you do any work to investigate any of the names -- investigate for purposes of your testimony any of the names of workers in this case?
A. I did not. No.
Q. And your primary testimony I thought was going to be about the difference between how a company is supposed to treat -- how an employer is supposed to treat the W-2 people -- people for whom they -- let me start again.
Your -- first part of your testimony was how a company is supposed to -- what a company is supposed to do for those employees that it treats as a 1099 -- that files 1099 -- and those that file W-2s, correct?
A. Correct.
Q. But you skipped the first step, correct?
A. With respect to 1099s?
Q. With respect to how to treat these different people.
A. I don't believe I did, no.
Q. Doesn't the company first have to make a decision whether they are properly most likely considered an employee under the

IRS rules or most likely considered an independent contractor under IRS rules? Isn't that the first part of this process?

A. That's correct.

Q. Okay. Right. And that's a large part of the analysis of how to treat workers, whether they -- whether companies should treat them -- or file a 1099 or a W-2. That's a big part of the work you've done for the IRS, right?

A. That's correct.

Q. You go in, you look at a company, and you say: "You know" -- I'm not saying you personally, but your team or whoever -- say: "Look, I think you treated these people -- you filed 1099s. I think you misclassified them. They really should be W-2 workers," and then you have to deal with the IRS on that. Is that a short version of a lot of what you have done?

A. That's correct.

Q. Called misclassification?

A. Correct.

Q. And you understand that it can be complicated figuring out whether someone is a 1099 or a W-2, right?

A. It can be. It can be easy as well.

Q. Sometimes it's hard, sometimes it's easy, right?

And there are some times you've experienced some close calls, correct?

A. Correct.

Q. And that's because there's not one simple factor or one simple rule, like a bright-line test, to make the decision of W-2 versus 1099; is that right?
A. It's fact-intensive, yeah. It varies.
Q. And it's factor-intensive. And, you know, sometimes companies misclassify. Maybe they do it intentionally, but sometimes they might do it mistakenly. You know that from your experience, right?
A. Correct.
Q. And sometimes the person sitting atop of the company may not be even involved in those decisions, correct?
MS. MARTINEZ: Objection. Speculation.
THE COURT: Based on his experience. Overruled.
THE WITNESS: Depending on the size of the company, that's possible. Yes.
BY MR. ETRA:
Q. Certainly you've experienced -- you've audited companies where the person at the top of the company wasn't involved in that decision of W-2 versus 1099. That's happened to you, right?
A. Correct.
Q. And that's not like a once-in-a-lifetime experience. It happens with some frequency, correct?
A. It's been rare in my experience.
Q. So your experience is that the boss of the company is

always involved in making a decision whether to classify someone as W-2 or 1099?
A. Not always, no.
Q. Okay. All right. And often the accountant might be involved, right?
A. The accountant can give some advice or I've seen situations --
Q. And you've done no investigation to see whether the accountant gave that advice here?
A. Have not.
Q. Or was consulted?
A. I have not.
Q. And also, typically, these decisions at least are handled at sort of the payroll or back-office level. Are those fair terms to use?
A. Again, it depends on the size of the company, the amount of people involved, whether it's a small, large -- how far away from the day-to-day operations the owner is. So it depends.
Q. Well, does it sometimes happen that these things are dealt with in the back office? Correct?
A. I mean, I would be speculating, but I suppose yes.
Q. You've never experienced that in all of your audit work, that it's handled in the back office? Is that your testimony?
A. When you say "back office," clarify for me what you mean.
Q. Bookkeeping, payroll department, human resources

department, office manager, those types of jobs.
A. Without any interaction with upper management or the owners --
Q. Well, could be some: "Hey, by the way, this just happened." But in terms of -- where the sausage gets made is typically in those back office departments, right?
A. That's possible, yes.
Q. And you say it depends on the size. I mean, doesn't it depend on the personality and experiences of the individuals?
A. That also plays a part, yes.
Q. Right. And you don't know whether Mr. Sheppard is the kind of person who might focus on real estate development and construction and not so much on, you know: "Please fill out this form and follow this classification"? You don't know one way or the other, correct?
A. Correct.
Q. And you made no attempt at all to find out in your work before you showed up in court?
A. I didn't conduct an audit. Correct.
Q. And in this case did you determine how long Mr. Cupersmith was the accountant for Mr. Sheppard's companies?
A. I did not.
Q. You didn't like to see if he's been doing -- if Mr. Cupersmith has been advising --
MS. MARTINEZ: Objection. Counsel is about to testify

again.

THE COURT: It's a proper question on cross-examination. Overruled.

MS. MARTINEZ: There's no foundation that there's any reason that this witness would know --

THE COURT: And the witness can respond accordingly.

You may continue.

BY MR. ETRA:

Q. You made no attempt to determine whether Mr. Cupersmith's been advising Mr. Sheppard's companies for maybe 20 years?

A. My work was primarily centered around the years that I was given, which I believe was 2018 through 2021, or somewhere around there.

Q. So the answer is you didn't?

A. Correct.

Q. And in your experience with small business owners -- when they have long-time accountants, in your experience, does the accountant tend to get a little more involved or aware of what's going on in the companies?

A. Yes.

Q. Okay. Especially with small businesses, right?

A. Again, it varies. But yes.

Q. And it depends on the personality?

A. Correct.

Q. The determination about whether someone is classified as a

W-2 or it's a 1099, there's several factors, and I want to just talk a little about what they are.

The different tests -- I'm just going to say them. Tell me if it is the way you use the term too, because I took this off the IRS website -- is the behavioral test, a financial test, and a third, that I'm not finding -- oh, the relationship test. Does that sound right?

A. That's correct.

Q. And generally speaking -- and these are all different factors and you have to weigh them and balance them. There's no simple -- there's no formula, right?

A. Correct.

Q. So the behavioral test is more about the right to control, like to set hours, set expectations, that kind of thing?

A. Correct.

Q. And -- like nine to five or -- controlling the hours has a lot to do with that, right?

A. Correct.

Q. Okay. And one factor is the financial test. It's the right to the -- has to do with economic factors, shall we say, right?

A. Yes.

Q. And for example, does the person bring their own equipment versus does the company supply them?

A. Correct.

Q. Isn't it true, in particular for construction workers, IRS has published that even with that issue where typically bringing your own equipment would push you more in the 1099, that in the area of construction they tend to be more W-2 -- they tend to be considered more like employees, according to the IRS?
A. I don't recall that specifically, but again it would be based on all the factors combined. So one --
Q. Certainly if a construction worker brings --
MR. ETRA: You know what? I'd like to pull up Exhibit L-40 for impeachment and to show the witness.
MS. MARTINEZ: Your Honor, if I may ask counsel to clarify an employee of which company? The construction company, the developer?
THE COURT: The question's already been answered. Now we're on to an item that is to be shown only to the witness.
MR. ETRA: May I proceed?
THE COURT: You may.
MR. ETRA: Thank you.
BY MR. ETRA:
Q. Do you recognize Exhibit L-40 that's on your screen?
A. I do, yes.
Q. Generally speaking, what is it?
A. This is a publication -- looks like it's pulled from the IRS website -- discussing the various factors with respect to

financial control.
Q. Right. One of the three tests, right?
A. Yeah.
Q. And this one talks about -- for example, one of the issues within the factors is who brings the equipment and who supplies the equipment, right?
A. Correct.
Q. And if you look at the -- under "Significant Investment," in the second sentence, just please read that only to yourself.
A. (Witness complies.)
Q. Do you see that?
A. I do.
Q. Does that refresh your recollection that the IRS -- the IRS's position is that while you still have to consider all the factors, when a construction worker brings all their own equipment, that doesn't necessarily mean that they're independent contractors, that they're typically -- that often they are considered employees, even though they bring their own equipment? Correct?
A. Correct.
Q. Okay.
MR. ETRA: We can take that down.
BY MR. ETRA:
Q. And again, there's no magic -- and I found that from the website too -- set of factors or how to apply these factors,

right?
A. Correct.
Q. And it got more complicated in COVID, didn't it? Let me ask my question more clearly, because I don't think that was clear. Weighing the different factors and making the determination about how to classify a worker got more complicated in COVID; is that correct?
A. Some factors would have been affected by stay-at-home mandates, things of that nature.
Q. Right. So it's hard to know -- that creates another level of complication or uncertainty for whoever is making these decisions, how do you apply these factors when somebody typically comes to the office and now they're at home, right?
A. I don't know if I would say that. Because as long as the worker's status or the duties haven't changed, the location where it takes place doesn't really matter. So if you had an administrative assistant who was an administrative assistant in 2018, COVID hit, they're still an administrative assistant. I don't think it would complicate anything.
Q. Does it say that on the website?
A. No. I don't --
Q. In other words, you're giving your answer as an expert, and that's perfectly appropriate. But that doesn't mean that the small business owner necessarily understands that, correct?
A. I don't know if I can answer that.

Q. And to be clear, you're not providing any expert testimony about how these workers should have been classified, whether they're truly employees or truly independent contractors?

MS. MARTINEZ: Objection. What workers? Vague.

THE COURT: Does the witness understand the question?

THE WITNESS: I did not, Your Honor.

Can you clarify?

THE COURT: All right. Just sharpen your question, please.

MR. ETRA: Thank you.

BY MR. ETRA:

Q. You are not giving an opinion as to whether the workers that are at issue in this case are properly considered employees under the IRS rules or properly considered independent contractors under the IRS rules?

MS. MARTINEZ: I renew my objection. Vague. What workers does he consider to be at issue in this case?

THE COURT: Does the witness understand the question?

THE WITNESS: I don't understand which workers he's referring to, Your Honor.

THE COURT: All right. Then that should be the end of the inquiry with regard to that.

MR. ETRA: Okay.

BY MR. ETRA:

Q. When a company makes a decision, however they make the

decision to classify a worker, that doesn't mean they got it right, correct?
A. Correct.
Q. And the IRS doesn't rely necessarily on how the company made that decision, correct?
A. Correct.
Q. Let's talk about terminology. Okay?
A. Okay.
Q. You're an expert -- we agree, correct --
A. Correct.
Q. -- in this area. And you use terms very precisely because it's part of your expertise; is that right?
A. Correct.
Q. So when you use the term "employee," to you, you use that term only for someone that should be classified as a -- as an employee and for whom you should file W-2s, correct?
A. Correct.
Q. And when you use the term "employer," also, you're -- employer in relation to a worker, you mean only if they file a W-2, correct?
A. I use "employer" to mean the person responsible for making the wage payments and the corresponding filings for an employee. Yes.
Q. For a W-2, right?
A. For a W-2 employee.

Q. Do you also use the term "employer" to refer to -- take a step back.

Do you understand that not everyone -- let me start again.

Do you understand that small business owners may not use these terms as precisely as you do?

A. Correct.

Q. And that some small business owners might refer to their staff, the people they work with and they see every day, as their employees, whether in fact they're 1099 -- whether or not they file 1099s for them or W-2s for them. Do you understand that?

A. I do.

Q. Okay. Same concept with independent contractor -- well, let me ask you a few different questions about that.

Independent contractor can cover I would say two categories, and I'll explain and you tell me if I'm right or not. You know, a company that you hire to do stuff and they bring their own workers or just a worker for whom you classify as a 1099. Did I get that kind of right?

A. Correct.

Q. Right. And again, you don't know how -- some small business owners may refer to independent contractors: "Hey, that's the vendor. That's the company that's coming in to fix the air conditioner," versus, "Oh, you know, that's Samantha

who I work with," right, as a person? Correct?
A. Correct.
Q. Same thing with payroll and paycheck. Do you understand that small business owners sometimes refer to the payments they make to their workers, whether they're classified as W-2 or 1099, as a payroll check or a paycheck? You understand that small business owners use the term that way and not as precisely maybe as you do?
A. I have heard paycheck before, not necessarily payroll in my experience.
Q. But certainly paycheck. You've heard people use that term to refer to payments not only to W-2 folks but also to 1099 folks?
A. Correct.
Q. And you don't know, of course, Mr. Sheppard -- how he uses those terms, correct?
A. Correct.
Q. Let's focus on the term "worker." Right? To you as an expert that's not a precise term in terms of W-2 versus 1099, right?
A. Right. "Worker" is general.
Q. Right. Right. So there's language in an application that refers to retained workers. I'm just going to ask you to assume that. Right? There's a loan application that says -- that talks about retaining workers. That language "worker,"

even to an expert, could include an independent contractor, right?

MS. MARTINEZ: Objection. He's describing a document that the witness has never seen.

THE COURT: Does the witness understand the question?

THE WITNESS: I did not, Your Honor.

THE COURT: All right. Then let's move forward.

MR. ETRA: Why don't we put up Exhibit C-6 in evidence.

MS. MARTINEZ: Your Honor, may the witness have the opportunity to see the entire document? It's hard to ask a witness a question about a document in the middle of the document --

THE COURT: Are you asking the witness if the witness -- what is it that you're asking? The witness has already stated that he was involved in no investigation relating to the Defendant.

MR. ETRA: I want to show the language in the certification and say what that means to an expert.

THE COURT: Okay. Then why don't you direct the witness to the portion of this multipage document.

MR. ETRA: I apologize.

Okay. So we're on the third page --

MS. MARTINEZ: Your Honor, I object. A witness has to know the beginning of the document, what is this document, have some opportunity to leaf through it. To be asked a question in the middle of a document --

THE COURT: I agree. The objection is sustained.

MR. ETRA: I can't ask him about this specific line in the application?

THE COURT: Why don't you ask him if he even recognizes the document that you're showing him before we --

MR. ETRA: Your Honor, as an expert, I'd like to show him a document and ask him what it means to him, and I don't know that I need to show him the whole document to do that.

MS. MARTINEZ: I object.

THE COURT: It's important to lay a predicate that he understands what you're showing him first.

MR. ETRA: Fair enough. Fair enough.

BY MR. ETRA:

Q. Okay. All right. Sir, I'm showing you a form of an application under the PPP program.

MS. MARTINEZ: Objection. Counsel is testifying.

Your Honor, to show a witness a document he has never seen --

THE COURT: I agree. The objection is sustained.

Please ask the witness if he understands and he recognizes what it is that you're showing him.

BY MR. ETRA:

Q. Let's go to the first page of the document.

Do you understand --

MS. MARTINEZ: Oh, my goodness, Your Honor. I think the jury -- the gallery -- this is open to the gallery.

THE COURT: No. This should not be shown to the gallery.

MR. ETRA: Your Honor, it's in evidence.

THE COURT: Oh. My apologies. Actually, this is in evidence. My apologies. This is not the impeachment exhibit. This is C-6.

All right. Let's continue.

BY MR. ETRA:

Q. Sir, do you see the -- what's on the screen in front of you?

A. I do.

Q. Do you recognize that document?

A. This specific document, I do not.

Q. The form?

A. The form -- I have seen the form before, yes.

Q. And what do you know it to be?

A. It's the Paycheck Protection Program Application Form.

Q. Okay.

MR. ETRA: Let's go to the second page. I want to highlight part of the document.

BY MR. ETRA:

Q. And sir, if you feel there's another part of the document you need to see to answer my question, you're always welcome to do that -- to tell me. Okay?

A. Okay.

Q. All right. Here, it says: "The funds will be used to retain workers and maintain payroll." I'm just focusing on the words "retain workers." Do you see that?

A. I see that. Yes.

Q. The word "workers," even to an expert like you, can include independent contractors, correct?

A. Not if I -- not as -- based on the statement that I read, you're asking me to exclude what's directly after the word "workers." And to me, "retain workers and maintain payroll" together would, to me, imply employees. But if you're asking me to just give you the definition of one word in the sentence, then...

Q. Right. The word "workers" by itself certainly means -- could include independent contractors, right?

A. That's correct.

MS. MARTINEZ: Is the question -- Your Honor, is the question -- I object to the question as vague because it's not clear whether he's asking --

THE COURT: Is the objection on grounds of vagueness? Is that the objection?

MS. MARTINEZ: Yes, Your Honor.

THE COURT: Does the witness understand the question?

THE WITNESS: I do, Your Honor.
THE COURT: All right. Overruled.
Let's continue.
BY MR. ETRA:
Q. The answer?
A. Could you repeat?
Q. The word "workers" includes independent contractors, right?
A. It can. Correct.
Q. And your analysis of how to read this document together is based on your expertise as an IRS expert, correct?
A. Could you repeat? Sorry.
Q. You just gave an answer as to how you interpret the word "payrolls" in the context of the statement. You're applying your expertise as an IRS agent, correct?
A. Yes and no. I just wouldn't pick out one word from a sentence and interpret it. I would read the whole sentence.
Q. So you're applying your view -- the way you interpret sentences?
A. Correct.
Q. Okay.
MR. ETRA: Let's put that down.
BY MR. ETRA:
Q. Is it common for workers to have their status changed from W-2 to 1099 from one year to the next?
A. With their duties remaining the same?

Q. Let me first ask that first question and then I'll follow up. But just generally is it common?
A. That's not been my experience. No.
Q. And especially if their duties or the nature of the control remains the same, you would expect them to stay W-2, right?
A. I would expect the employer to continue treating them as W-2.
Q. Right. Right.
Okay. And do you know whether there were workers for Mr. Sheppard's companies that were W-2 for a period of time and then it changed to 1099?
A. Changed to 1099, no.
Q. You're not saying -- you're saying you don't know the answer, right?
A. Correct.
Q. Okay. And certainly you don't -- okay.
I'm not sure if you said this in your testimony, but I have it in your report that -- I'm now on the subject of payments that the employer has to make. Okay? Now talking -- let me take a step back.
Did you say that you always use the term "employer" only to refer to the relationship that person has with a W-2 person?
A. I believe that's what I said, but I misspoke.
Q. And if that's your testimony, then I suggest to you that's

incorrect --
A. Correct.
Q. -- based on your testimony yesterday. Do you recall how you testified yesterday?
A. You would have to refresh my memory.
Q. Do you recall?
MS. MARTINEZ: Could I have a reference to the number?
MR. ETRA: Sure. Page 12, Line 20 to 24.
Your Honor, may I put up the transcript from yesterday?
THE COURT: Is there any objection to that?
MS. MARTINEZ: No, Your Honor.
THE COURT: All right.
MR. ETRA: Just for the impeachment.
Page 12.
BY MR. ETRA:
Q. Sir, we're looking at Page 12, and I want you to focus at the bottom. It's Lines 20 to 24. I'm going to ask you if this question was given and you gave the answer.
Question: "Now, with respect to independent contractors, does the employer withhold income tax?"
Answer. "No. So non-employee contractors are not subject to withholding. The employer just reports the gross amount that's paid to them for the year, the calendar year."
Did you give that testimony yesterday?

A. I did.
Q. So, in fact, the prosecutor used the term "employer" to refer to someone who pays 1099ed workers, correct?
A. Correct.
Q. And you also used the term "employer" to refer to someone who paid 1099ed workers, correct?
A. Correct.
Q. And you're the expert, correct?
A. Correct.
MR. ETRA: Take it down.
BY MR. ETRA:
Q. I'm going to talk about contributions made by the company -- employer or not, however you want to refer to it -- and I think -- tell me if I have this right, that they have to contribute 7.65 percent for Social Security and Medicare for each employee; is that correct?
A. The employer has to withhold that amount from each employee and also contribute that amount.
Q. I want to -- fair enough. But for now -- I'm going to talk about both, but I want to talk about the contribution right now, okay? Good?
A. Okay.
Q. Okay. Thank you.
So -- and I use smaller numbers. It's easier. Because I used a hundred dollars and you used a hundred

thousand. So hopefully people will make more than a hundred dollars, but could we go with a hundred dollars as a salary for now?

A. Okay.

Q. Okay. So if a company pays a W-2 worker a hundred dollars, the company has to also go out of pocket $7 and -- $7 and 60 -- $7.65 for Social Security and Medicare; is that right?

A. Correct.

Q. Okay. Now, that doesn't mean that if the same person is a 1099 that the employer saves money, correct?

A. If that same person was a 1099 non-employee, then that contribution would not be made.

Q. Right. But if you consider the whole situation --

A. Uh-huh.

Q. -- in the end of the day, it has no economic impact on the employer, correct?

A. That's not accurate. No.

Q. Let me follow this through. If the employer pays $7.65 for Social Security and Medicare, that's out-of-pocket money, right?

A. Correct.

Q. But then when they do their taxes they get to take that same $7.65 and use that as a deduction, correct?

A. Correct.

Q. So it's a wash, correct?

A. Correct.
Q. So again, to the extent a company misclassifies a worker as W-2 -- 1099 versus W-2, with respect to the contribution they have to make, it's not like the company is saving money. They still have to incur the same level of cost, correct?
A. That's correct.
Q. Because of the deduction part, right?
A. Correct. Provided they file all their required returns, yes.
Q. Well, provided they -- provided they -- provided they file their tax returns and get the deduction, correct?
A. Correct.
Q. Okay. The same thing is true for the unemployment tax payment, right? If someone is a W-2, the employer has to go out of pocket for unemployment tax, but then they get to deduct that same amount. So it's a wash economically for the company, right?
A. Correct.
Q. Now I want to talk about the withholdings obligation. Okay?
A. Uh-huh.
Q. I have this in your report -- I don't know if you said it yesterday -- that you said that W-2 employees have to withhold income tax from their -- excuse me -- employers have to withhold income tax for their W-2 employees. Did you say that?

A. I believe so. Yes.
Q. And that is not actually correct, right?
A. Again, it's a fact-intensive situation. So it can be right and it can change.
Q. Exactly. Exactly. Because the employee has to come in and fill out deductions, and those types of things, and then the company follows what the employee does, correct?
A. Correct. On Form W-4.
Q. And there may be situations sometimes where even an employer doesn't have to withhold income tax, depending on the circumstances, correct?
A. Depending on what's on that Form W-4, yes.
Q. So it's not the case that the employer always has to withhold income tax, correct?
A. Always, no.
Q. But you didn't qualify that yesterday, did you?
A. I don't recall if I did.
Q. You also testified -- well, yesterday you testified that the 1099 -- it was actually the testimony we looked at earlier -- called it the employer, but we can call them company if you like -- that the company for a 1099 does not withhold income tax. Do you recall testifying that -- and I think we read that today.
A. Could you repeat that? Sorry.
Q. Sure. Did you testify -- and I think we read it earlier --

that the company that pays a 1099 worker does not withhold income tax? Correct?
A. Correct.
Q. And that also isn't necessarily true, correct?
A. Income tax, that's correct, yes. It doesn't withhold income tax on 1099s.
Q. Never does?
A. Income tax?
Q. Yeah.
A. No. No.
Are you referring to backup withholding?
Q. If that's what I'm -- I'm asking you the questions.
A. No. So income tax, no.
Q. Okay. I want to know where you're coming out before I go to the next question.
Do you agree that sometimes the company does withhold income tax from 1099ed workers? Correct?
A. I would agree that there are situations where withholding could apply on a 1099ed worker.
Q. I just -- can you answer my question the way I asked it? If you can, please do so.
A. Okay.
Q. Do you agree that companies can sometimes -- let me start again.
Do you agree that companies can withhold income tax

for a 1099ed worker? Correct?

A. I would not classify it as income tax. No.

Q. Okay.

MR. ETRA: Let's put up L-43.

MS. MARTINEZ: If this is not in evidence, are you just showing it to the witness?

MR. ETRA: Just showing the witness.

BY MR. ETRA:

Q. Do you recognize this document or did you need to see the next page?

A. I need to see the next page.

Q. All right.

MR. ETRA: Let's go to the next page.

THE WITNESS: I do.

BY MR. ETRA:

Q. What is the document?

A. It's Form 1099-NEC, Non-Employment Compensation.

Q. Okay. NEC. I think you used that term yesterday, right?

A. Correct.

Q. What does NEC mean?

A. Non-employment or non-employee compensation.

Q. Which is another way of saying: "Samantha, who I pay to work, but is a 1099, not a W-2," correct?

A. Correct.

MR. ETRA: Your Honor, I offer Exhibit L-43.

THE COURT: Is there any objection?

MS. MARTINEZ: Your Honor, I have no objection to -- I have to see what the forms are. This is a multiple --

THE COURT: L-43. It should be identified as L-43.

MS. MARTINEZ: Right. Right. There's just multiple forms.

MR. ETRA: I'm only seeking to offer the first two pages.

THE COURT: Is there any objection?

MS. MARTINEZ: I object to the first page. I don't object to this form that's on the screen.

MR. ETRA: Then we'll just offer the page that's on the screen.

THE COURT: The first page?

MR. ETRA: Well, it's the second page of the document, but it's the form.

THE COURT: All right. So Page 2 of L-43, there's no objection?

MS. MARTINEZ: Your Honor, yes. It's a different time period, but I have no objection.

THE COURT: All right. Admitted into evidence.

(Defendant's Exhibit L-43, Page 2, received into evidence.)

MR. ETRA: Okay. Sorry.

Let me go back. We have it on the screen?

Okay. Sorry.

THE COURT: Ladies and Gentlemen, is it on your screen now?

Thank you.

BY MR. ETRA:

Q. Sir, this -- again, this is the form that the -- the company fills out -- is responsible for filling out for 1099ed workers, right?

A. Correct.

Q. It's the actual 1099 form, right?

A. Correct.

MR. ETRA: Could we take a look at Box 4, please.

BY MR. ETRA:

Q. What is Box 4?

A. "Federal Income Tax Withheld."

Q. Okay. So the IRS, in their own 1099 form, has a place for the company to fill in withholding of income tax for 1099ed workers; is that correct?

A. That's correct.

MR. ETRA: We could take this down.

BY MR. ETRA:

Q. So the fact that a worker has withholding doesn't necessarily make them -- doesn't necessarily mean that they're W-2, correct?

A. That they're a W-2 employee, correct.

Q. It doesn't necessarily mean that?
A. It doesn't necessarily mean that.
Q. Right. So you could have a list of workers where there's withholding, and those all could be 1099ed workers, correct?
A. Correct.
Q. Okay. You were shown some 940 or 941 forms, and it said the name Eric Sheppard, and there was some kind of a signature above that. Do you recall that?
A. I do.
Q. And there's a bunch of them, and I'm not going to go through them if I don't have to, if that's okay?
A. That's fine.
Q. Okay. If you need me to, we'll do it, of course.
You don't know anything about whether Eric Sheppard signed those documents, right?
A. Other than what we reviewed yesterday, other than the one I looked at, no.
Q. You don't know whether Eric Sheppard signed those documents? Yes or no?
A. If he physically signed them?
Q. You don't know whether he signed those documents? Yes or no?
A. I just know what's on the paper.
Q. Right. You don't know who signed those initials, right?
A. I didn't witness him signing it.

Q. And to the extent Mr. Sheppard did sign them, you don't know the circumstances that he signed them, correct?
A. That's correct.
Q. You don't know what he was told, correct?
A. Correct.
Q. W-2 forms are not -- get filed by the company for W-2 workers, correct?
A. Correct.
Q. But they're not filed with the IRS, correct?
A. Correct.
Q. They're filed with the Social Security Administration?
A. That's correct.
Q. I'm not going to ask why. But just we agree that that's how it's done, right?
A. Correct.
Q. Okay. So to be clear, you did not investigate the extent to which W-2s were filed for any of the workers relating to Mr. Sheppard's companies, correct?
A. That is incorrect.
Q. How is it incorrect?
A. Because when I researched our internal system for filings, I didn't see any W-2s on the system.
Q. Did you look at the -- sorry. Would your system show whether a W-2 was filed?
A. They would, yes.

Q. Okay. So the IRS could tell when a W-2 is filed?
A. Correct. They're submitted to the Social Security Administration, but they are also transmitted to us.
Q. And you searched for which years?
A. 2019 through 2021.
Q. All right. I want to go through some of the documents -- the returns that you went through yesterday. Okay?
MR. ETRA: So let's put up 12 -- oh. Let me take a step back -- actually, no. Let's continue.
Let's put up 12-4 in evidence.
BY MR. ETRA:
Q. Okay. Do you recall testifying about this document yesterday?
A. I do.
Q. Okay. And what you saw was that --
MR. ETRA: Let's just have the whole thing, because it's a little hard to do this.
BY MR. ETRA:
Q. If you need any part enlarged, sir, tell me. Okay?
All right. And this is a form that basically says as of June 4th, 2022, the IRS has not located from their search tax returns, meaning 1065s, right?
A. Uh-huh.
Q. Okay. You're nodding, so that's why I have to say that.
A. Yes.

Q. For the tax years 2018, 2020, and 2021, correct?
A. Correct.
Q. Okay. Let me first ask this question: This is about a search that the IRS does, correct?
A. Correct.
Q. And it's true during COVID there was a backup of -- sorry.
Do you know whether Mr. Sheppard files by mail or electronically?
A. I think it varies or it would vary. I don't know.
Q. And do you know whether, to the extent the companies filed by mail, that there was a problem with COVID with opening the mail and they had been backed up?
A. Specifically for the 2020 fax filing, there was a slowdown for paper-filed returns, yes.
Q. I just couldn't hear. Your voice trailed.
A. Sorry. Specifically for 2020, the 2020 calendar -- or tax year, there was a slowdown for paper-filed returns.
Q. All right. And so when the IRS does a search, that doesn't mean -- and they can't find something, it could be that they're still backed up from COVID; is that correct?
A. I don't know if that's the case today.
Q. So you don't know whether they have ever got through the backlog of opening mail from COVID. You don't know one way or the other?
A. I don't know if there's still a backlog that's present

today.

Q. So to the extent for 2020 mailings you don't know -- when the certificates talk about not finding filings in 2020, it could very well be that they are in the IRS unopened because of the backlog from COVID; is that correct?

MS. MARTINEZ: Objection. Speculation.

THE COURT: Overruled. If the witness knows.

THE WITNESS: I wouldn't be able to answer that appropriately.

BY MR. ETRA:

Q. You don't know?

A. I mean, I haven't heard of any backlogs from 2020 currently existing at this point in time. I know that there was a slowdown.

Q. Fair enough. You prepared with the prosecutor to testify today, correct -- sorry. Let me start again.

Before coming to testify, you prepared with the prosecutor, correct?

A. Correct.

Q. And you knew you would be testifying about these Certificates of Lack of Record, correct?

A. Correct.

Q. And you knew that that included filings for the tax year 2020, correct?

A. Correct.

Q. And you knew at some point there was a backlog from COVID of opening returns for 2020, correct?
A. Correct.
Q. And yet you didn't check to see the status of that backlog and how that might affect this information?
A. Based on my most recent understanding, the backlog was something that happened, again, in 2022 early. It's not something that's still existing today. So...
Q. I'm going to ask the question again.
A. Sure.
Q. And I'd ask you to answer it yes or no, if you can, okay?
A. Okay.
Q. You did not check to see the status of the backlog and whether it would affect the information you've been testifying about today before you came in to testify, correct?
Could I get a yes or no whether you checked?
A. The research that I did would have provided me an answer on whether or not there was a backlog. And so --
Q. How?
A. Because, again, a backlog would relate to the full return posting on our system, our internal system, not an indicator that a return was filed. There would have been some indication that something was potentially pending or on the way.
Q. So you're able to say with confidence, then, that the backlog of COVID had no impact on what you've been testifying

about?
A. I would say that it would have minimal to no impact.
Q. Let's stick with minimal to no.
Okay. I want to talk more about the concept of the filings of the HM Management tax returns. These -- whether they are filed or not have no impact on whether Mr. Sheppard has paid the amount of taxes he is supposed to pay; is that correct?
A. Return filings and payments are separate, yes.
Q. Right. This is an informational return, correct?
A. Form 1065 is an informational return.
Q. Because the money flows out or the income allocation flows out, correct?
A. Correct.
Q. So the fact that there may be non-filings some of these years has no impact on whether Mr. Sheppard has paid his fair share of taxes, correct?
A. The two are separate.
Q. Thank you.
Okay. And with respect to 2021 -- let's talk about 2021 in here, the year 2021 -- the tax returns first become due in April, correct?
A. Correct.
Q. And many companies --
A. Well -- sorry -- let me amend that. The Form 1065 is due

March 15th of the following year. So --
Q. When in March is it due?
A. March 15th.
Q. Okay. And some companies get extensions for later in the year, correct?
A. Correct.
Q. And you have reviewed enough returns from the companies Mr. Sheppard's associated with to know he always get extensions, right?
A. I have seen it in some instances, yes.
Q. Have you seen any where they're filed in the spring of -- in the spring?
A. No. I believe I thought your question was in reference to whether he filed an extension or not.
Q. Okay. You're right. Let me be more -- I'll start again, and I hear what you're saying.
From what you have seen, the tax returns are always filed later in -- you know, September, October, November of the year after the tax filing; is that correct?
MS. MARTINEZ: Objection to the word "always."
THE COURT: Overruled. The witness may answer the question.
THE WITNESS: With respect to his income tax filings, like the Form 1065 or his 1040, then the answer would be yes.

BY MR. ETRA:
Q. And you were able to determine that based on reviewing the tax returns you reviewed, right?
A. Correct.
Q. Okay. Now, here it says that the search was done as of June 4th, 2022, correct?
A. Correct.
Q. Before you would expect the tax 2021 tax filings to be filed, correct?
A. If he filed later in the year, then yes.
Q. If he filed like he always files, based on what you have seen, correct?
A. Correct. Yeah.
Q. Okay. Yet, you didn't go back and look again after June 4, 2022 to say: "You know what? Let me see if -- in all that time whether the 2021 tax returns were filed," right?
A. That's incorrect. I did.
Q. You did?
A. I did. Yes.
Q. Oh. So you personally checked?
A. Correct.
Q. But this certification is only through June 4th, 2022, correct?
A. Correct.
Q. But you checked personally?

A. Correct.

Q. Okay. Now, in terms of why tax returns weren't filed, you don't know why -- you don't know the reason not to file these returns?

A. The reason why the taxpayer didn't file?

Q. You don't know the reason why the returns weren't filed, correct?

A. Correct.

Q. You don't know if it had to do with legitimate issues that the taxpayer and the accountant were working out, correct?

A. That's correct.

Q. You don't know if the accountant was giving advice about that or not, right?

MS. MARTINEZ: Objection. No foundation. How would the witness know this question?

THE COURT: Sustained.

BY MR. ETRA:

Q. Okay. By the way, there's still an extension in place -- there was an extension in place for the 2021 returns, correct, by IRS because of hurricanes, correct?

A. I would have to...

Q. Are you familiar with the fact that the state of Florida received additional extensions for Hurricane Ian and Nicole?

A. Not off the top of my head, no.

Q. You don't know? Yes or no?

A. I don't know.

MR. ETRA: Let's go to Exhibit 12-4 -- sorry -- 12-1. Thank you.

BY MR. ETRA:

Q. We have up Exhibit 12-1 in evidence.

MR. ETRA: I want to go to the last page, please -- well, let me go to the first page, so you know what we're doing.

BY MR. ETRA:

Q. Let's look at the first page. Tell me when you have looked at it enough so that we can go to the back.

A. We can go.

Q. And just tell us what this document is.

A. This is a Form 1065 for HM Management and Development, LLC for 2019.

Q. Okay.

MR. ETRA: Let's go to the last page, please.

BY MR. ETRA:

Q. Do you recall going over -- testifying about this page of the return on your direct testimony?

A. I do.

MR. ETRA: And I want to focus in on the number 485,417, Chris.

BY MR. ETRA:

Q. And do you recall testifying about that number?

A. I do.
Q. And do you recall saying that -- and this is the K-1, right?
A. Correct.
Q. Do you recall generally testifying about the K-1s that these are distributions -- income distributions to the partner, in this case Mr. Sheppard or his companies? Correct?
A. Distributions, no. But this is the ordinary income that's reported to him.
Q. Okay. Do you --
(Phone ringing.)
MR. ETRA: I am very sorry, Judge. My apologies.
BY MR. ETRA:
Q. Do you recall testifying about some of these K-1s that it shows that Mr. Sheppard received that money? Do you recall testifying that way?
A. Received distributions, yes.
Q. Okay. Received distributions. Let's just clarify what that means. This tells you nothing -- this K-1 -- about any money going from the company to Mr. Sheppard, correct?
A. Correct.
Q. Okay. So it's not like these are distributions -- you can't say this distribution means that $485,000 went from the company to Mr. Sheppard, right?
A. Yeah. The ordinary income amount is not a distribution.

So...

Q. So let's talk about what it really is, right? It's an allocation of income for purposes of Mr. Sheppard's personal tax returns; is that correct?

A. That's correct.

Q. It just means that when he or whoever does -- when his returns are prepared, in calculating the taxes that Mr. Sheppard may or may not owe, they have to include this number 485,000 as income that goes through that calculation, correct?

A. Correct.

Q. You don't know whether all this money actually stayed in the company, right?

A. That's correct.

Q. Okay.

MR. ETRA: Let's go to 15-2 -- actually, let's skip that. Let's go to 14, please.

BY MR. ETRA:

Q. And this is the HM Four tax return for 2019; is that correct?

A. That's correct.

Q. Okay.

MR. ETRA: Let's go to Bates Number 34206, Chris.

(Pause in proceedings.)

MR. ETRA: Sorry, Your Honor. I had the wrong page number.

(Pause in proceedings.)

MR. ETRA: Your Honor, I'm going to use the ELMO instead. I think that would work better.

THE COURT: All right.

(Pause in proceedings.)

BY MR. ETRA:

Q. Okay. Sorry about the delay.

Do you recall testifying about this page yesterday?

A. I do.

Q. Okay. And I've highlighted the number $109,609, the distribution line. Do you recall testifying about that?

A. I do.

Q. And you referred to that as a distribution to Mr. Sheppard, correct?

A. Well, to the partner listed here, which would be Eric and Jennifer Sheppard.

Q. And by that you meant that that's how much money he actually took out, right?

A. Correct.

Q. But that's not actually accurate, is it?

A. That's my understanding. Yes.

Q. Okay. Let's look at another part of that page.

The bottom corner with the highlighting, do you recognize that portion of the same page?

A. I do.
Q. And doesn't that show -- well, it shows a few things. It shows that, for whatever reason, in the world of accounting and these companies there was a negative beginning capital account, correct?
A. Correct.
Q. I won't get into that, if that's okay with you. But what's the second line show?
A. Capital contributed during the year.
Q. What does that mean in plain English?
A. Money that the partner in question put into the business.
Q. Money that Mr. Sheppard put into the business?
A. The partner listed on the K-1. Yes.
Q. Which is Mr. Sheppard, correct?
A. I believe it's Mr. Sheppard and his wife. Yes.
Q. So he put in $203,000 that year, right?
A. Correct -- well --
Q. I know. I'm getting there. And then, when you go to the line "Withdrawals and Distributions" of 109,000, what does that show?
A. Money that was taken out.
Q. Right. So net-net, if you added it all together, did he put money in or take money out?
A. He would have contributed money.
Q. He put a hundred thousand dollars of his own net-net into

this company, correct?
A. A little bit less, but yes.
Q. Okay. And net-net, he didn't take any money out of this company, correct?
A. Not based on this K-1. Correct.
Q. And that's consistent with other documents you testified about. You skipped the other part, which showed that Mr. Sheppard actually put more money in than he took out; is that correct?
A. I didn't intentionally skip anything. I was asked about the distribution line, and I stated what was there.
Q. But you didn't clarify that if you look at the other side of the page it shows that he didn't take any money out. You didn't clarify that when the prosecutor was asking you questions, right?
A. I would have to look at each of the K-1s to know.
Q. All right. Well, let's keep going then.
MR. ETRA: Let's go to 13-2.
We're going back to the computer, Your Honor, please.
BY MR. ETRA:
Q. Do you recognize 13-2?
A. I do.
Q. And do you see that -- you see the word "distribution" on the right-hand side -- sorry. What is this document?
A. This is a Schedule K-1.

Q. For?
A. For HM Four, LLC -- or HM-UP Development Alafaya Trails, LLC, for partner HM Four, LLC.
Q. Right. And HM Four is owned substantially by Mr. Sheppard and/or his wife in some respect, correct?
A. Correct.
Q. Okay. And you testified about this document yesterday, correct?
A. Correct.
MR. ETRA: And let's go to the distributions on the right-hand side of $210,000.
BY MR. ETRA:
Q. You testified, based on the questioning of the prosecutor, that HM Four took out $210,000 from HM-UP during --
MS. MARTINEZ: Are you referring to HM-UP Alafaya? Did you just say HM Four? Which one are you referring to?
MR. ETRA: I meant to say HM-UP.
THE COURT: HM-UP, which is highlighted; is that correct?
MS. MARTINEZ: Right. He just misstated HM Four --
THE COURT: He did.
MS. MARTINEZ: -- so I wanted to clarify.
What exhibit are we on?
MR. ETRA: This is 13-2.
MS. MARTINEZ: Thank you.

MR. ETRA: Let me start again, Your Honor, if I may.
THE COURT: All right.
BY MR. ETRA:
Q. You testified yesterday, in response to the questions of the prosecutor, that HM Four took $210,000 out of HM-UP in 2019, correct?
A. Correct.
Q. And that was based on this highlighted line of this K-1, correct?
A. Correct.
Q. And that is also not accurate, correct?
A. It is accurate that that was distributed to the partner, which is what I stated. Yes.
Q. Do you think that's a fair description of what's going on in federal court in a criminal trial?
A. I don't understand the question. Sorry.
Q. I'll not re-ask it.
MR. ETRA: Let's go now to the bottom left corner, same section we looked at with the other document.
BY MR. ETRA:
Q. Okay. You see that now?
A. I do.
Q. Doesn't this show, in fact, that HM Four did not take $210,000 out of HM-UP in 2019?
A. If you combine what was contributed and what was withdrawn

from the company, then no. But it does show that 210,000 was taken out. So...

Q. But if you put it all together -- look at the whole year together, HM Four invested in this case approximately $39,000 and put it into the company, to HM-UP, correct?

A. Correct.

Q. It didn't -- and net-net, it didn't take any money out of HM-UP, correct?

A. Correct.

Q. You agree that's a fairer way of describing the money flow by looking at this side of the document?

A. Correct.

Q. Okay.

THE COURT: Let me know when it might be a good time to give the jurors a comfort break.

MR. ETRA: Yeah. Sorry. Now is fine, Your Honor.

THE COURT: All right. Ladies and Gentlemen, let's go ahead and take a 10-minute recess, please.

COURT SECURITY OFFICER: All rise.

(Jury not present, 10:22 a.m.)

THE COURT: Okay. We're on a 10-minute recess.

(Recess from 10:22 a.m. to 10:34 a.m.)

THE COURT: Waiting for Mr. Sheppard?

(Pause in proceedings.)

MR. SHEPPARD: Sorry, Your Honor. I had to go to the restroom.

THE COURT: Of course.

MR. ETRA: Your Honor, could I stand up there -- start there?

THE COURT: Yes, of course.

Just waiting to see if our jurors are ready.

(Pause in proceedings.)

THE COURT: Okay. Both sides ready to proceed?

MS. MARTINEZ: Yes, Your Honor.

MR. ETRA: Yes, Your Honor.

THE COURT: All right.

COURT SECURITY OFFICER: Please remain standing for the jury.

(Before the Jury, 10:35 a.m.)

THE COURT: All right. Welcome back, Ladies and Gentlemen.

Please be seated, everyone.

And we'll continue with the cross-examination.

MR. ETRA: May I proceed, Your Honor?

THE COURT: Yes, you may.

MR. ETRA: Pull up Exhibit 13-2 in evidence.

BY MR. ETRA:

Q. Run right to the point here. Do you recognize this page or would you like to see the first page of the document?

A. I recognize it.

Q. And so, if you can, without looking at the first page, could you tell us what we're looking at?
A. This is the Designation of Partnership Representative. In this case, it's designating HM Four, LLC.
Q. And just so I understand what the concept is here, some partners for the ownership are individuals, correct?
A. Correct.
Q. So when you have an individual, the IRS knows who to talk to, right?
A. Correct.
Q. So the concept here is if a partner of a company is an entity or a company, you still have to designate a human being, right?
A. Sorry. One more time.
Q. You have to designate a person, a natural person?
A. Correct. Yes.
Q. And all it's saying is that the IRS -- the IRS is basically saying: "If a partner is a company, I need the name of a person to talk to if I have a problem, if something comes up," right?
A. Correct.
Q. And by the way, it should have the phone number there, shouldn't it?
A. It should. Yes.
Q. That's sort of the point, isn't it?

A. Well, there are other ways we can get in touch, but --

Q. I'm sure there are.

This doesn't mean that -- this doesn't mean that the person put here is responsible for the accuracy of the tax return, correct?

A. Correct.

Q. It doesn't mean that the person here -- in this case, Eric Sheppard -- understands everything in the tax return, correct?

A. Correct.

Q. It just means the IRS is saying: "Give us a human being from the company that we're going to reach out to if we have an issue," right?

A. That's right.

Q. Okay.

MR. ETRA: Let's go to -- take this down, and I have just some questions.

BY MR. ETRA:

Q. I want to talk about the -- get into accrual versus cash a little bit, but let me start with that heading. Okay?

Do you know whether these returns are done on an accrual basis?

A. I don't recall.

Q. Okay. Could you just explain what accrual is versus cash in terms of the accounting procedures, in simple terms, if we can.

A. I'm afraid I can't, no.
Q. You can't explain what the accrual method is --
A. I can explain cash, which is essentially going to be reporting expenses when they're paid. Whereas accrual you're accruing potential expenses and income as well. So it's not necessarily on a calendar year basis, for example.
Q. Right. So for example, if you're expecting payment -- say a rent payment, under the accrual system, you accrue, meaning you say: "I expect to get that revenue every month," correct?
A. Correct. Before receipt, yes.
Q. And if the returns are done on an accrual basis, then under those procedures the accountant really has to put down the amount being accrued under that system, right?
A. Correct.
Q. That doesn't necessarily tell you what cash came in, correct?
A. Correct.
Q. And the same thing with expenses. You accrue expenses under the -- the way that's done, correct?
A. Correct. Yes.
Q. But that doesn't mean that you have paid those expenses, right?
A. Correct.
Q. So you can't just look at the revenue and expenses on a tax return, if it's by accrual, and say: "That tells me cash in,

cash out," right?
A. That's correct.
Q. So for example, if you're filling out a document that has nothing to do with tax returns, say a loan application, it doesn't necessarily mean you look to the tax return for whether the information on the loan application is accurate because they may be under different systems, correct?
MS. MARTINEZ: Objection. No foundation as to asking this witness about a loan application.
THE COURT: If the witness knows. Overruled.
THE WITNESS: Could you repeat the question?
MR. ETRA: Sure.
BY MR. ETRA:
Q. So for example, if you're -- there's revenue and there's expenses and other items that are in the tax return, correct?
A. Correct.
Q. And if it's by accrual method, it's done on the accrual system, like you talked about, right?
A. Uh-huh.
Q. Which doesn't necessarily have anything to do with cash in and cash out?
A. Correct.
Q. But separately, if you're not in this world of tax accounting, right, and you're just a small business owner filling out an application, you can't necessarily say: Well,

the revenue number there is wrong," because it may be different than the tax return, correct?

MS. MARTINEZ: Objection. Vague.

THE WITNESS: Could you ask that question again?

MR. ETRA: I'm not going to ask it again.

THE COURT: All right. Let's continue.

BY MR. ETRA:

Q. I want to talk about the -- having an accountant's name or information in a return. Okay?

A. Okay.

Q. Okay. Good. And I'm talking about the name, the signature, as well as the PTIN number. Okay?

A. Okay.

Q. 940s and 941s that you have been over, correct --

A. Yes.

Q. -- the ones you looked at, was there an -- was there an accounting -- was the name of an accountant on those forms?

A. I don't recall that there was.

Q. Let me just ask it more generally.

A. Okay.

Q. The forms themselves have a place for an accountant if it's appropriate, correct?

A. They do.

Q. Okay. And the IRS accepts returns, 940s and 941s, even if there's no accountant information, correct?

A. Correct.
Q. Because you don't necessarily have to use an accountant to file a return?
A. That's correct.
Q. And the same thing is true with a 1065, correct?
A. Correct.
Q. You could have an accountant's name there or not, right?
A. Correct.
Q. And these days, certainly with like TurboTax, people can go -- even companies now can go and get a tax return done without using a tax preparer, correct?
A. That's correct.
Q. Which would mean no tax preparer was there, right?
A. Correct.
Q. And when returns are filed with the IRS, it has to have -- the actual original return that's filed with the IRS, if a tax preparer is involved, it's got to have that guy's -- or the man or woman's name on it, correct?
A. Correct.
Q. But are you familiar with the concept of taxpayers getting copies of their returns in addition to the ones they file?
A. I am. Yes.
Q. Right. Because if someone needs it they can't get back the original, right?
A. Correct.

Q. The copy doesn't have to have -- even if a tax preparer is involved, are you familiar with the concept that the copy may not -- let me start again.

Even if an accountant is preparing the tax return, right -- so his name is on the return as filed. Are you with me?

A. Yes.

Q. Okay. The copy that the taxpayer gets doesn't have to have the accountant's name on it, right?

A. The copy that's not to be filed doesn't have to, correct.

Q. Right. Okay. And -- okay.

MR. ETRA: Okay. Can I just have one moment, Your Honor?

THE COURT: All right.

(Pause in proceedings.)

MR. ETRA: No further questions.

Thank you.

THE COURT: All right. Any redirect?

MS. MARTINEZ: Yes, Your Honor.

Your Honor, may I first ask if counsel has any objection to completing his Exhibit L-43? I have had a chance now to review it, and it's just additional forms and the instructions.

MR. ETRA: No objection, Your Honor.

THE COURT: All right. Then the complete L-43 will be admitted into evidence.

(Defendant's Exhibit L-43 received into evidence.)

(Pause in proceedings.)

REDIRECT EXAMINATION

BY MS. MARTINEZ:

Q. Good morning, Mr. Palmer.

A. Good morning.

Q. First, counsel asked you about your role in this case. Just to again clarify, you did help us with a disclosure that we provided to the Defense, and that you signed, that you would be testifying as an expert within the field that we offered you and that the Court approved you for, correct?

A. Correct.

Q. Now, because in this case records have been requested from the IRS, rather than having a custodian from IRS come, you agreed to answer questions regarding the documents that would also -- that the IRS had produced to the United States and that we had provided to the Defense, correct?

MR. ETRA: Objection. Leading.

THE COURT: Sustained.

BY MS. MARTINEZ:

Q. Were you asked to do anything with respect to the records that would have otherwise been done by a custodian of records?

A. No.

Q. Were you asked to confirm the searches that had been done?

A. I was. Yes.
Q. And were you asked to review the records that had been previously produced to the United States?
A. I was. Yes.
Q. And those are the records that were admitted yesterday, correct?
A. Correct.
Q. Now, you are -- in addition, you confirmed the searches recently, correct?
A. Correct.
Q. Of each of -- each of the ones that there was a Certification for Lack of Record, correct?
A. Correct. Yes.
Q. So that means that there was still nothing there even as current as...
A. I confirmed the searches Monday morning of this week, and there was no updates or changes.
Q. And in your role at IRS, you're not a criminal investigator, correct?
A. Correct.
Q. That's a separate role for certain IRS agents, correct?
A. Correct.
Q. Your role is with respect to businesses and taxpayers and audits. Am I generally getting it right?
A. That's correct. Yes.

Q. And as part of that, as indicated in your resume, and as part of your experience, when you're auditing a taxpayer, what does it mean to help them to come into compliance?
A. It's part educational, but it's also correcting filings that were incorrect or getting them to file where they didn't.
Q. And as part of that, counsel asked you about your experience -- whether -- if there was -- possible that there were times that some taxpayer would be more knowledgeable than others, correct?
A. Correct. Yes.
Q. Now, the taxpayer is still responsible, correct?
A. Correct. Yes.
Q. And so when someone has been -- for example, an employer has had experience as an employer for a good amount of time, and has filed 941s before, would your understanding of -- that taxpayer to have an understanding that 941s are required as an employer?
MR. ETRA: Objection.
THE COURT: The basis?
MR. ETRA: No factual basis for the information that's -- itself.
THE COURT: Overruled.
THE WITNESS: Yes. That would be correct. In my experience, employers who have filed previously, submitted employment tax returns, W-2 informational returns, would have

the experience to continue doing so. Yes.

BY MS. MARTINEZ:

Q. The fact that they have filed it before would show that they know that it's required?

A. Correct.

Q. Now, I could go back to one of the exhibits in this case --

MS. MARTINEZ: Yes. Plug in.

Yes. Could you give me Exhibit 12-3.

Just to identify the top of it, could you just highlight that.

BY MS. MARTINEZ:

Q. What is this form?

A. This is Form 941 for HM Management and Development, LLC, for the first quarter of 2018.

MS. MARTINEZ: And just highlight the second box -- I mean the second part.

BY MS. MARTINEZ:

Q. And again, to clarify, this is the employer's tax return that includes the withholdings and the Medicare and Social Security that the employer has to contribute to IRS for those employees?

A. Correct. Yes.

Q. And it also has the number of employees by that company, correct?

A. Correct.

MS. MARTINEZ: Could you go to Page 2, and can you highlight the signature section.

BY MS. MARTINEZ:

Q. And whose name is indicated there as signing on behalf of HM Management?

A. Eric Sheppard, managing member.

Q. And the date printed on the return?

A. It's going to be April 13th, 2018.

Q. And as we saw for this exhibit, there were multiple quarters that were filed that year, correct?

A. Correct.

MS. MARTINEZ: Could you go to the end of the exhibit, close to the end where we have a transcript.

There we go.

BY MS. MARTINEZ:

Q. And do you recall what we saw for the last quarter of 2018 for HM Management?

A. I do. A return was filed for the final quarter ending December 31, 2018, reporting wages paid; however, there were no payments made on the taxes owed or no deposits made by the taxpayer for that quarter.

Q. And as you recall from yesterday, after that, there were no more 941s that were filed for this company, correct?

A. Correct.

Q. Or indeed for your records there was no 941s for any of the

companies that you brought records for, Alafaya, HM Four, HM Management, correct?
A. That's correct.
Q. And did you indicate on cross-examination that you had also looked at all the other companies that were on the Defendant's 1040?
A. Correct. I did. I looked at all the partnerships reported on Schedule E, again, for that same period, 2019 through 2021, and there were no employment tax filings there either.
Q. And by "employment tax filings," we mean this type of form, the Employer's Tax Return 941?
A. Correct. Yes.
Q. Going back to the signature that we had seen --
MS. MARTINEZ: And you can just go to the third quarter. There's a signature on -- on any quarter.
That's fine.
BY MS. MARTINEZ:
Q. So here we're looking at the signature from July 17th, 2018. That would be the second quarter. What's the title that it says under Eric Sheppard?
A. "Managing Member."
Q. And do you have an understanding of what that means with respect to a partnership?
A. Yeah. In my experience, managing member would refer to the person who was in charge of the majority of the business

affairs as it relates to tax as well -- tax matters.

Q. Thank you.

You were asked on cross-examination about the role of an accountant with respect to tax returns. From whom does the accountant get the information to put on the tax returns?

A. All records and documentation would be provided by the taxpayer.

Q. So in your experience, is the person who's knowledgeable about the facts, and about the company, and about the employees or independent contractors -- is that the taxpayer or the accountant in terms of the facts?

A. It would be primarily the taxpayer.

MR. ETRA: Objection. Could we get clarification of what taxpayer means in this context?

MS. MARTINEZ: I'm happy to ask the question.

THE COURT: All right.

BY MS. MARTINEZ:

Q. What do you mean by taxpayer in this context?

A. Taxpayer would be -- if it's an individual, it would be the person. In the case of a partnership or a corporation, the person with that partnership or corporation that's responsible for the filings.

MS. MARTINEZ: Can you pull up 12-1.

We're there?

Could we go to the second-to-last page.

The one before that. There's a page just before that.
First -- okay. Can you highlight that.
BY MS. MARTINEZ:
Q. Could you please read to the jury what it says on the second-to-last page -- it's Bates label SHEPP 032265.
A. There it says: "Cupersmith, Wilensky, Stempler & Company, LLP. To HM Management and Development, LLC, instructions for filing 2019 Federal Partnership Income Tax Return. We have prepared and enclosed your 2019 Form 1065 US Return of Partnership Income for HM Management and Development, LLC, for the tax year ending December 31, 2019.
"The return was prepared from information furnished to us. Please review to ensure there are no omissions or misstatements of material facts.
"The return should be signed and dated by a limited liability company member and mailed on or before September 15th, 2020. Retain the duplicate copy for your records indefinitely."
Q. Let me -- I'm go --
MS. MARTINEZ: Go ahead to the next one. Next page, and highlight the whole form.
There you go.
BY MS. MARTINEZ:
Q. Could you read to the jury what this says.
A. Sure. This is a declaration from the preparer. It says:

"We have prepared the attached tax return for the year ended December 31, 2019. We prepared the tax return based on the financial information available today, using the best information provided to us. We relied upon the information as prepared and supplied to us by the taxpayer. We did not verify or observe all of the documentation necessary to prepare this tax return.

"Once additional information is received, and if any revised information becomes available for or regarding the taxpayer that alters the tax return, an amended tax return will be filed."

Q. You were asked about sentences in loan documents and the word "payroll," and you indicated that you understood maintaining payroll as meaning something in particular. Can you explain that? What was it that you were trying to say?

A. Yeah. I believe I was explaining that payroll for me references an employee receiving wages, salary. That's what I associate payroll to mean, not independent contractors.

Q. You were also asked whether it was possible for a taxpayer to eventually deduct some of the expenses connected with payroll taxes, and by that I mean the contribution that an employer has to make for W-2 employees for things like Medicare and Social Security. With respect to the question as to whether someone can make a deduction, if a company already has many other deductions, say, because it's a company that has buildings and has assessed depreciation on those buildings that has led to numbers that reduce -- that are -- that account like a negative on the tax return, isn't it also possible that for some taxpayers this additional deduction would possibly make no difference and they would still be out of pocket the money that they paid out for the payroll?

Did you understand my question?

A. I did. That would be correct, yes. There's a situation --

Q. Could you explain that better than I did?

A. Sure. So depending on the other expenses associated with a business for a particular year, there could be a situation where the losses are of a certain level that the additional credit from those taxes that the taxpayer is required to pay would not benefit them in that year.

Q. And I'm going to ask you a question --

MS. MARTINEZ: You can remove that from there.

BY MS. MARTINEZ:

Q. I'm going to ask you a question without showing you a document. But if you need me to go back to the document that the Defense counsel showed you, let me know. But I think I can ask you -- but you let me know.

Counsel asked you about K-1s. Again, to explain to the grand jury, what is a K-1 -- I'm sorry -- to the jury. I apologize. To the jury.

A. A K-1 is an informational form that's attached to, in this case, a partnership, which shows income deduction credit items that are specific to each partner.

MS. MARTINEZ: May I just ask: Do we have this -- I'm hiding behind this podium, and I want to try to see if I can avoid that to some extent.

BY MS. MARTINEZ:

Q. So you were asked about numbers on the K-1 that were carried over from a previous year. Do you want me to show you that again or do you recall that?

A. I recall it. Yes.

Q. And those numbers were rather large. Some of them were over a million dollars negative carried over. I could go back to show you, if you would like.

A. Sure.

Q. Okay.

MS. MARTINEZ: Can you pull up 13.2.

BY MS. MARTINEZ:

Q. This is the HM-UP Development Alafaya Trails 1069 for -- I'm sorry -- 1065, US Return of Partnership Income for 2019, correct?

A. Correct.

MS. MARTINEZ: Could you go to the last page.

Now, again, just to again clarify what's here, just highlight the first two boxes so we see -- I'm sorry -- the bottom left -- I'm sorry. There you go.

No. Try again. I did not explain myself.

I would like you to highlight where it says "HM-UP Development Alafaya Trails" and then "HM Four" so we see the relationship between the two companies again, including the amount that HM Four -- there you go.

BY MS. MARTINEZ:

Q. So again, just to review, HM Four is a partner that has a -- 99 percent of HM-UP Alafaya Trails?

A. Correct.

MS. MARTINEZ: Now let's go to the little box on the bottom left.

BY MS. MARTINEZ:

Q. This is what we were talking about where it says: "Beginning capital account," and it says: "Negative 1,821,025." What do you understand that to be?

A. That's the partner's share or basis in the partnership. And that's often increased by income or losses from year to year. So the fact that there is a negative beginning bank of 1.8 million would mean that this was either losses in prior years -- well, yeah. That's what it would mean.

Q. And that could be caused by all types of accounting notations, such as depreciation of physical assets, correct?

MR. ETRA: Objection, Your Honor. Beyond the scope in terms of negative capital going forward. That was never part of the cross.

THE COURT: Overruled.

BY MS. MARTINEZ:

Q. Did you understand or do you remember the question?

A. Could you repeat it? Sorry.

Q. Sure. That large -- essentially a carryover loss from a previous time period -- that large amount could be added up from items such as large depreciation of physical assets, correct?

A. That's correct, yes.

Q. Could you explain to the jury, what is that --

MR. ETRA: Objection.

BY MS. MARTINEZ:

Q. -- depreciation of a physical asset?

MR. ETRA: Sorry. I apologize, Your Honor. The objection is that this is only for an improper purpose.

MS. MARTINEZ: Excuse me?

THE COURT: The objection is for an improper --

MR. ETRA: The objection is that the --

THE COURT: No. Overruled.

You may continue.

THE WITNESS: The easiest way to think of depreciation is in terms of the useful life of an asset. Non-residential real estate typically has a useful life of between 28 to 32 years. What that means is the business that purchases that asset gets to deduct the cost associated with that asset over the useful life.

So again -- and this is a very simplistic explanation, but if you have a $32 million building with a 32-year useful life, you would take the purchase price of the asset, 32 million, divide it by the 32 years, and you get to deduct a million each year as an expense on the return.

Q. And could you explain to the jury the concept of carrying a loss over from year to year.

A. Not all losses incurred in each year are deductible. And if they're not deductible, then in a lot of situations you're able to carry them forward to a future year where they could be deductible.

So for example, if this $1.8 million loss happened in the prior year -- and there are various tax rules regarding the deductibility. But if it wasn't allowed as a deduction in the previous year, then it's been brought forward where it could potentially be deducted this year. If not, it's carried forward again.

MS. MARTINEZ: Could you go to -- it's in the middle of the form, but I'm going to give you the SHEPP number. The Bates label is 032342. We're in 13.2 -- we're still there.

Stop.

Could you just enhance the middle of the form.

BY MS. MARTINEZ:

Q. So what does -- this is the same form we were looking at.

On Line 14, what does it indicate?
A. Depreciation expense of $475,274.
MS. MARTINEZ: And could you just highlight the top of the form, just so we could see which schedule this was.
BY MS. MARTINEZ:
Q. What type of schedule is this?
A. This is Form 8825, which is Rental Real Estate Income and Expenses of a Partnership.
Q. I'm going to take you to an exhibit that was admitted by the Defense. It's the 1099 Non-Employee Compensation form. And you wanted to explain something about backup withholding. I'm going to show you the instructions to the form for the recipient.
MS. MARTINEZ: May I switch to ELMO?
Thank you.
BY MS. MARTINEZ:
Q. I just want to show -- what I'm showing you -- this is what's been admitted into evidence as Defendant's Exhibit L-43. Seems to be from an IRS website. And this is what had been previously admitted, Copy A of the Non-Employee Compensation Form 1099 NEC. Now, this particular form is more recent than the tax year -- the tax years involved in this case. This is from 2022, I believe, from what I saw -- yes.
Here. Let me zoom. Can you see that this form was -- is as recent as January 2022?

A. That's correct. Yes.
Q. Now, there's multiple forms, correct? One for the taxpayer -- I'm sorry -- one for the person paying the money, one for the person receiving the money. For example, here, Copy A, can you see -- who is that for?
A. Yes, I can. Copy A is for the Internal Revenue Service.
Q. Copy 1?
A. Copy 1 is for the state tax department.
Q. Copy 2?
A. Copy 2 is to be filed with the recipient's state income tax return when required.
Q. Copy C?
A. Copy C is for the payer.
Q. There's instructions for the payer.
And now Copy B, for recipient, correct?
A. Correct.
Q. Now, on the instructions for the recipient, it refers to Box 4. I'll take you back to the form, so we can see. What does it say that Box 4 is?
A. Federal income tax withheld.
Q. Okay. And what do the instructions for Box 4 indicate?
A. Box 4 shows backup withholding. "A payer must backup withhold on certain payments if you did not give your TIN to the payer. See Form W-9, Request for Taxpayer Identification Number and Certification for Information on Backup Withholding.

Include this amount on your income tax return as tax withheld."

Q. Now, you were trying to explain how this type of -- even though it's called withholding, but it's very different from the withholding that we do from a wage employee. Can you explain what this is -- why is it this backup withholding is kept back? Can you explain that? How does that work?

A. Sure. So for the purposes of non-employee compensation, backup withholding is a flat tax -- tax rate, which is determined on a yearly basis. I believe that the current rate and the year that was -- and the rate that was in effect for 2019 through 2021 was 28 percent. And the only situation where tax would be withheld in these payments is if the payer was unable to get the tax ID number for the person that they were paying.

So as an example, an independent contractor is brought in to do a job, and the cost of the job is $6,000. Let's just say an amount in excess of what's required to be reported on that form. Halfway through the job, that independent contractor doesn't provide all his details, doesn't provide his address, doesn't provide his tax ID number. You as the payer are then required to withhold that amount from the payment that you make to him. So it's technically income withheld, but we refer to it as backup withholding.

Q. And again, this is done by -- according to the payment or on an annual basis. It's not a biweekly payroll?

A. It's -- correct -- well, it depends on the frequency of the payments. But the moment that the payments being made to the non-employee exceeds $600, then the withholding should be collected, whether it's a one-time payment or more frequent than that.

Q. But again, it would be when the person getting paid has not provided such as -- like a Social Security number or some kind of a company number --

A. Correct. Correct.

Q. You were also asked about whether or not there were some situations where a real employee would not -- would have elected somehow to tell the employer: "Please don't withhold from me." How could that be done?

A. Yeah. So typically, when an employee is brought on, they are required to submit a Form W-4 to their employer. That might be a paper form. It could be electronically. And that form essentially states the amount of dependents, or exemptions, or special situations that you have with respect to income withholding.

So Person A might have no dependents or exemptions, and thus needs to be taxed at the full rate. Person B might be married with two kids, a special situation, and then would be taxed at a lower rate. Another person could put that they are exempt from income tax withholding based on, again, what they would put on that form.

Q. Isn't it a fact it's the most common thing that employees typically have withholding?
A. Correct. It's rare to see someone that's exempt from federal income tax.
Q. And in this case, in the forms that we reviewed now on redirect, we reviewed the 941s that had been filed in 2018 for HM-UP Alafaya Trails, signed by Mr. Sheppard -- in those forms, Mr. Sheppard told the IRS that there had been withholding, correct?
A. Correct. There was withholding from HM Development, I believe.
Q. Oh, you're so good. Thank you. You're right. HM Management. That's right?
A. Correct.
Q. I misspoke. Thank you.
And as we reviewed both in the tax returns, as well as in the declaration of the preparer, of the accountant, the tax returns that we have admitted into evidence in this case were signed by Mr. Sheppard, correct?
A. That's correct.
Q. So we just noticed that I had just misspoken, and you corrected me, correct?
A. Correct, ma'am.
Q. Thank you for doing that. Can we confirm again that I misspoke yesterday when I referred to someone who pays an

independent contractor as an employer? Because counsel asked about you -- that on cross-examination. He said: "The prosecutor said the employer of an independent contractor," and you were polite then. You didn't correct me.

MR. ETRA: Objection. Sorry.

THE COURT: What's the question, Ms. Martinez?

BY MS. MARTINEZ:

Q. The question is: Do you refer to someone who pays an independent contractor as the employer of the independent contractor?

A. Yeah. So an employer doesn't necessarily only have employees. An employer could also have independent contractors. So the accurate -- I mean, I know there was some confusion earlier. But an employer can also pay non-employees. Everyone who has workers is an employer -- not everyone. Every business that has workers is an employer.

Q. And that's in part why they have the Employer Identification Number?

A. That's correct.

Q. But just because we call the person paying an employer does not make an independent contractor a wage employee?

A. That's correct.

MS. MARTINEZ: No more questions, Your Honor.

THE COURT: All right. Is the witness excused?

MS. MARTINEZ: Yes, Your Honor.

THE COURT: On behalf of the Defendant?

MR. ETRA: Yes, Your Honor.

THE COURT: Thank you, Mr. Palmer. You are excused.

(Witness excused.)

THE COURT: And the Government's next witness.

THE WITNESS: Thank you, Your Honor.

MS. JIMENEZ: Thank you, Your Honor. The Government calls Martin Joe Beirne.

(Pause in proceedings.)

THE COURT: Hi. Good morning, sir.

THE WITNESS: Good morning.

MARTIN JOE BEIRNE, GOVERNMENT WITNESS, SWORN

COURTROOM DEPUTY: Thank you.

Have a seat.

Would you please state your name and also spell it for the record.

THE WITNESS: Martin J. Beirne, Jr.

COURTROOM DEPUTY: Get a little closer to the microphone, please.

THE WITNESS: Martin J. Beirne, Jr.

COURTROOM DEPUTY: And the spelling?

THE WITNESS: B-E-I-R-N-E.

COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MS. JIMENEZ:

Q. Good morning, Mr. Beirne.

A. Good morning.

Q. Were you served with a subpoena to come testify at this trial?

A. Yes, I was.

Q. You need to speak up.

THE COURT: Just need you to speak a little closer to the microphone.

Thank you.

THE WITNESS: Yes, I was.

BY MS. JIMENEZ:

Q. Where are you from?

A. Medina, Ohio.

Q. In what area do you live now?

A. Satellite Beach, Florida.

Q. What type of work do you do?

A. Construction developer.

Q. Do you know an individual by the name of Eric Sheppard?

A. I do.

Q. Do you see him here in the courtroom today?

A. Yes, I do.

Q. Can you please identify him by his location in the courtroom and an article of clothing.

A. He's standing over your shoulder in a black suit and tie.

MS. JIMENEZ: May the record reflect the witness has identified the Defendant?

THE COURT: I don't see anybody standing. Could we be a little bit --

MS. WEINTRAUB: Judge, we stipulate.

THE COURT: All right. It's appropriately identified.

BY MS. JIMENEZ:

Q. How long have you known the Defendant, Eric Sheppard?

A. Approximately 20 years.

Q. How do you know the Defendant?

A. I met him at a basketball game.

Q. Did you ever work for him?

A. Yes.

Q. What type of work did you do?

A. Construction.

Q. Approximately when did you go work for the Defendant?

A. 2017.

Q. And what were you hired to do at that time?

A. I was originally hired to be a project manager. Then I went on to a property manager.

Q. Now, when you were hired, where were you living at the time?

A. Medina, Ohio.

Q. And was the project going to be in Ohio or was it going to

be somewhere else?
A. Orlando, Florida.
Q. What was the project you were hired for?
A. To be a property/project manager for the Shoppes of Alafaya.
Q. And the Shoppes of Alafaya are located in Orlando, Florida?
A. Correct.
Q. And generally, what was the job offer you received?
A. It was to be a project manager on new construction.
Q. And what was the actual project?
A. We were to develop a site and put up new shops.
Q. That was at that same shopping center?
A. Correct.
Q. Now, as the project manager, to whom did you report?
A. At that point, I was directed to work with Eric directly.
Q. And what was your understanding of the Defendant's role regarding the project?
A. He was ownership.
Q. Now, what was your understanding of the compensation you were supposed to receive?
A. Ten thousand dollars a month, plus my rent and my vehicle and my cell phone to be paid.
Q. Were you also going to be covered for room and board?
A. That was part of my housing, my rent.
Q. Is that typical?

A. In the industry, I would think it would be.
Q. Now, you indicated the Defendant you understood was the owner?
A. Correct.
Q. Did you have contact with anyone else who claimed to be an owner of that property?
A. No.
Q. Do you know an individual by the name of Jennifer Sheppard?
A. Yes.
Q. And who is Jennifer Sheppard?
A. Eric's wife.
Q. Did you deal with Jennifer Sheppard at all in connection with this project?
A. No.
Q. What about Robert Kallman, K-A-L-L-M-A-N? Do you know that individual?
A. No.
Q. Did you ever deal -- well, did you ever hear that name?
A. No.
Q. Approximately how long did you work as the project manager?
A. Three or four months.
Q. And what happened?
A. Toys "R" Us had terminated the lease and Eric said: "I don't believe I could afford to keep you here at that wage." And I said I'd be willing to stay on for a lesser wage and take

care of the property management, as well as the landscaping.
Q. Let me just ask you something. You just referred to your payments as wage. Were you a wage employee, sir?
A. No.
Q. Did you ever at any point have any part of the payment that you received for this job withheld --
A. No.
Q. -- for any tax purpose, Social Security, Medicare, income tax?
A. No.
Q. So did you actually mean wages or were you just paid payments as a worker or contractor?
A. I'm referring that to a source of income.
Q. A source of income. What was your understanding of -- do you file 1099s?
A. Yes.
Q. Were you filing 1099s at that point?
A. Yes.
Q. So the term "wage" having a specific meaning as wage employees, were you a wage employee?
A. No.
Q. All right. So let's go back to the -- you were saying that the -- something happened to the Toys "R" Us. Explain what happened.
A. They defaulted on their lease. So they weren't able to pay

and they vacated the site.
Q. And where was this Toys "R" Us located?
A. It was to the north of the project.
Q. Was it at the shopping center?
A. Part of Shoppes of Alafaya.
Q. And then your position as project manager changed; is that correct?
A. That is correct.
Q. All right. So what happened after that? What tasks were given, if any?
A. I took the role on as project manager to take care of the grounds of the property, as well as work with the tenants on a daily basis.
Q. Do you mean property manager? Did you become the property manager?
A. I became the property manager, yes.
Q. And so what were your responsibilities as the property manager?
A. I would take care of landscaping and I would deal with the tenants on a daily basis.
Q. Who were the tenants?
A. There was Mattress1One. There was a Poke Bowl. There was a spa, Posh Spa. There was Batteries Plus. There was the dental -- Aspen Dental. There was DICK'S Sporting Goods. There was also the Toys "R" Us building.

Q. And these tenants you're referring to, these are retail stores located at the shopping center?
A. That's correct.
Q. All right.
MS. JIMENEZ: I'd like to show the witness Government's Exhibits 4-1, 4-2, 4-3, 4-5, 4-6, 4-7.
BY MS. JIMENEZ:
Q. All right. Let me -- so the jury is not seeing this currently, Mr. Beirne, so I want to show you Government's Exhibit 4-1. Do you recognize what this is?
A. I do. That's J-Petal --
Q. Without saying what it is, do you recognize what it is?
A. Yes.
Q. All right. Is it a fair and accurate depiction or photograph of that location?
A. It's a typical tenant. Yes.
MS. WEINTRAUB: Judge, I just want to clarify the year of the picture, time frame.
BY MS. JIMENEZ:
Q. Mr. Beirne, what period of time were you the property manager at the Shoppes at Alafaya?
A. I believe that would be 2018.
Q. 2000 --
A. Excuse me. '18. 2018.
Q. 2018 you started?

A. Correct. Yes.
Q. Yes?
A. Uh-huh.
Q. And is this -- does this photograph fairly and accurately depict that location during the time period when you were there?
A. Yes.
Q. You were there from 2018 until approximately when?
A. November 22nd of '20 -- 1920 -- 2020.
MS. JIMENEZ: Government would like to move Government's Exhibit 4-1 into evidence.
THE COURT: Any objection?
MS. WEINTRAUB: No objection, Judge.
THE COURT: Admitted into evidence.
(Government's Exhibit 4-1 received into evidence.)
BY MS. JIMENEZ:
Q. So what are we looking at, Mr. Beirne?
A. We're looking at the front of the shop of a Japanese crepe and poke bowls.
Q. This shop J-Petal, Posh Nails, Batteries and Bulbs, and Aspen Dental down the street there, where are these located?
A. This is the storefront south on the property.
Q. The Shoppes of Alafaya?
A. Correct.
MS. JIMENEZ: Can we show him Exhibit 4-2, please.

BY MS. JIMENEZ:
Q. Mr. Beirne, without saying what this is, do you recognize it?
A. Yes. This is the --
Q. I'm sorry. Just without saying what it is.
A. Yes.
Q. Okay. Is it a fair and accurate depiction of that location, of what you're looking at, from the time period when you were working for Mr. Sheppard?
A. Yes.
MS. JIMENEZ: I would like to move Government's Exhibit 4-2 into evidence.
THE COURT: Any objection?
MS. WEINTRAUB: No objection, Judge.
THE COURT: Admitted into evidence.
(Government's Exhibit 4-2 received into evidence.)
BY MS. JIMENEZ:
Q. All right. So what are we seeing?
A. Posh Nails, Battery and Bulbs, Aspen Dental.
Q. This is the same strip mall area?
A. Shoppes of Alafaya.
MS. JIMENEZ: Can we show him Government's Exhibit 4-3.
BY MS. JIMENEZ:
Q. Mr. Beirne, do you recognize it?

A. This was the Toys "R" Us building north of the property in Alafaya, Shoppes of Alafaya.
Q. All right. Is it a fair and accurate depiction of that Toys "R" Us location at the Shoppes at Alafaya?
A. Yes.
MS. JIMENEZ: Like to move Government's Exhibit 4-3 into evidence.
THE COURT: Any objection?
MS. WEINTRAUB: No, Judge.
THE COURT: Admitted into evidence.
(Government's Exhibit 4-3 received into evidence.)
BY MS. JIMENEZ:
Q. Was this the Toys "R" Us that closed down?
A. Yes.
Q. And then let's show you Government Exhibit 4-5.
Do you recognize this?
A. Yes.
Q. Exhibit 4-5, what is it generally?
A. DICK'S Sporting Goods, Shoppes of Alafaya.
Q. All right. Aside from being a little blurry, is it a fair and accurate depiction of that location?
A. Yes.
Q. All right.
MS. JIMENEZ: I would like to move Government's Exhibit 4-5 into evidence.

THE COURT: Any objection?

MS. WEINTRAUB: No, Your Honor.

THE COURT: Admitted into evidence.

(Government's Exhibit 4-5 received into evidence.)

BY MS. JIMENEZ:

Q. All right. Where was the DICK'S Sporting Goods?

A. It was in the middle of the property.

Q. The Shoppes at Alafaya?

A. Shoppes of Alafaya.

Q. All right.

MS. JIMENEZ: Could we show Government Exhibit 4-6.

BY MS. JIMENEZ:

Q. Mr. Beirne, do you recognize this photograph?

A. Yes.

Q. What is it?

A. Mattress1One at Shoppes of Alafaya.

Q. All right. So does it fairly and accurately depict the Mattress1One that was at the Shoppes of Alafaya?

A. Yes.

MS. JIMENEZ: We would like to move Government's Exhibit 4-6 into evidence.

THE COURT: Any objection?

MS. WEINTRAUB: No, Judge.

THE COURT: Admitted into evidence.

(Government's Exhibit 4-6 received into evidence.)

BY MS. JIMENEZ:

Q. And where -- relative to that part of the shopping mall that we saw earlier with the J-Petal, where is this located?

A. This is the far south property storefront, Shoppes at Alafaya.

MS. JIMENEZ: Okay. 4-7.

BY MS. JIMENEZ:

Q. Showing you Exhibit 4-7. And what is that?

A. Mattress1One.

Q. All right. Is it -- aside from, again, the blurriness of the photograph, does it fairly and accurately depict the Mattress1One that was at the Shoppes of Alafaya when you were there?

A. Yes.

MS. JIMENEZ: I'd like to move Government's Exhibit 4-7 into evidence.

THE COURT: Any objection?

MS. WEINTRAUB: No, Judge.

THE COURT: Admitted into evidence.

(Government's Exhibit 4-7 received into evidence.)

BY MS. JIMENEZ:

Q. All right. So as property manager, you -- what kinds of responsibilities did you have?

A. I maintained the grounds, the landscaping, I leased out space, and I provided daily management to the tenants.

Q. And the tenants are the retail stores; is that right?
A. Correct.
Q. To whom did you report when you were property manager for the Shoppes at Alafaya?
A. My contact was mostly with a lady by the name of Jeanette in the office.
Q. What was Jeanette's position?
A. I believe it was office manager.
Q. For whom did Jeanette work?
A. Eric Sheppard.
Q. Did you also have interaction with someone by the name of Jeff Vasilas, V-A-S-I-L-A-S?
A. Later on while I was working there I did.
Q. But not in the day-to-day as project -- I'm sorry -- as property manager?
A. Correct.
Q. All right. Now, did there come a time when a Burlington Coat Factory came to -- retailer came to that shopping center?
A. Yes.
Q. And what -- what was happening with that Burlington Coat Factory?
A. We were fortunate enough to get a lease on the property.
Q. And then did you have any responsibilities relative to the Burlington Coat Factory?
A. Yes.

Q. What were they?
A. The property manager to oversee the property. We had leased it twice to another tenant for temporary leases there.
Q. And that was -- did Burlington Coat Factory seek to occupy the space that Toys "R" Us left behind?
A. Yes.
Q. All right. And then you had tenants in between the Toys "R" Us and the Burlington arriving, correct?
A. Yes. We had a Halloween store.
Q. And then when you say you leased it out, were you the party who signed the lease agreements on behalf of the shopping center?
A. I didn't sign a lease, but I helped negotiate the lease.
Q. And so the Burlington Coat Factory, did they move in right away?
A. No.
Q. What happened?
A. There was construction that had to be made for their tenant build-out.
Q. That -- and you were property manager at that time, correct?
A. Correct.
Q. For that construction project for the retail store, was there a general contractor?
A. Yes.

Q. Did you deal with the general contractor?
A. Yes.
Q. What were your dealings with the general contractor?
A. Day-to-day operations.
Q. And was the general contractor Mr. Vasilas or somebody else?
A. No. Somebody else.
Q. Did that general contractor remain on the job until -- well, was the Burlington Coat Factory project completed at some point?

MS. WEINTRAUB: Judge, excuse me. I'm going to object. And I apologize to the Court. I'd ask for a sidebar, very brief.

THE COURT: All right. Come on forward.

(At sidebar on the record.)

THE COURT: If everyone will take a microphone, please. So you can speak into the microphone, please.

MS. WEINTRAUB: I apologize, Judge. I did not realize she was going to do this with this witness. This is one of our motions in limine that the Court said that it would consider as it's coming in.

I believe that the prosecutor is going to elicit information that the first general contractor wasn't paid, and so he left, starting a whole string of so and so -- hearsay -- so and so said they weren't paid, so they left, or he didn't pay him. He doesn't know and he doesn't have any personal knowledge.

THE COURT: All right. But to the extent that Ms. Jimenez seeks to elicit hearsay, you can object and I'll rule on it. But why do we need a sidebar for this?

MS. WEINTRAUB: Because I don't want this testimony coming in, and --

THE COURT: Are you intending to ask those questions?

MS. JIMENEZ: I'm not going to ask him: "What did the general contractor tell you?"

MR. WEINTRAUB: She's going to say: "Why did he leave?"

THE COURT: Well, what's wrong with asking why he left?

MS. WEINTRAUB: Because she knows that it's calling for a hearsay response.

THE COURT: Well, it's his reason why he left.

MS. WEINTRAUB: No. No. No, not this person.

THE COURT: Well, why would someone else leave? Are you seeking to ask about other individuals?

(Court reporter interruption.)

THE COURT: You have to speak into the microphone.

MS. JIMENEZ: I'm going to elicit from him that there was a general contractor, and what happened with the general contractor, and what he knows about it.

THE COURT: Okay. So you're not seeking to elicit hearsay. You're seeking to elicit based on his observations?

MS. JIMENEZ: Yes.

THE COURT: But the only way he would know why somebody left would be from conversations that he had, correct?

MS. JIMENEZ: Potentially.

THE COURT: Right. So why would that be permitted?

MS. JIMENEZ: Well, I would ask, and I will not elicit hearsay. In other words, I'm not going to ask him -- I'm going to ask him, you know: "What happened with the general contractor?" He's going to say: "He left the job."

THE COURT: Okay. So is that all, just: "He left the job"? Is that all you're seeking to elicit, is that he left the job?

MS. JIMENEZ: Well, he left the job, and I was going to ask him, you know: "Do you know why he left the job?"

THE COURT: Right. But the basis of his knowledge would be based on hearsay statements, right? He can observe somebody leaving the job. He can have that personal knowledge. But the reason why somebody left the job would be based on -- unless he had a conversation with Mr. Sheppard. That's a little bit different.

MS. JIMENEZ: Okay. I will ask him that.

THE COURT: Okay. Well, then that's not hearsay. I mean, it's an exception.

All right. Let's continue.

(End of discussion at sidebar.)

THE COURT: All right. Let's continue.

BY MS. JIMENEZ:

Q. Yes. Mr. Beirne, you said that there was a general contractor for the Burlington project?

A. Yes.

Q. You had dealings with that general contractor?

A. Yes.

Q. Did the general contractor remain for the duration of the project?

A. No.

Q. Did he leave?

A. Yes.

Q. Did you have any conversations with the Defendant as to why the general contractor had left?

A. I can't remember.

Q. Did someone come and replace the general contractor?

A. Yes.

Q. Who was that?

A. A gentleman by the name of Jeff Vasilas.

Q. Now, for whom did Jeff Vasilas work?

A. I believe Eric Sheppard.

Q. Was Mr. Vasilas a general contractor?

A. Not to my knowledge.

Q. So how did he perform that job?
A. Repeat the question.
Q. Yes. How -- how did he perform the job of a general contractor?
A. He would bring on subcontractors to work on the facility.
Q. Did Mr. Vasilas have a general contractor's license?
A. Not to my knowledge.
Q. Was a general contractor -- did Mr. Sheppard have someone else as a general contractor who had a license at that job?
MS. WEINTRAUB: Judge, I'm -- I'm going to object and ask to his knowledge and what would that be based on.
THE COURT: All right. Well, that would be based on his personal knowledge. You may continue.
THE WITNESS: Yes.
BY MS. JIMENEZ:
Q. Was that general contractor on the jobsite?
A. He did perform service on the site.
Q. Now, did you on a day-to-day basis, however, deal with Mr. Jeff Vasilas?
A. Yes.
Q. Was Jeff Vasilas located in Orlando or was he located somewhere else?
A. Miami area, to the best of my knowledge.
Q. How often did you see Mr. Jeff Vasilas in Orlando?
A. Approximately two to three days a week.

Q. Was that the case for the duration of the project?
A. Yes.
MS. WEINTRAUB: Excuse me, Your Honor. Could we have a time frame for these questions? He started working in 2018. We haven't heard another date.
THE COURT: I believe it was to November 2020, was his testimony.
MS. JIMENEZ: That's correct.
THE COURT: You may continue.
MS. WEINTRAUB: I apologize. I must have missed it.
BY MS. JIMENEZ:
Q. Approximately when was the Burlington Coat Factory project completed?
A. My last date was 10/22/20, date of occupancy and of Burlington taking over the premises.
Q. Did you leave your position as property manager at that point?
A. I was not the property manager at that point. I was a construction manager underneath Jeff Valeras [sic].
Q. Vasilas?
A. Vasilas.
Q. All right. So your position changed from property manager to?
A. Construction manager.
Q. Construction manager under Jeff Vasilas?

A. Correct.
Q. All right. And what type of responsibilities did you have working under Jeff Vasilas?
A. Well, he asked me for help because of my construction experience over 40 years of running the -- help him run the facility, the construction project.
Q. Was there someone else who was property manager of the shopping mall who took over?
A. Jeff eventually took over the running of the whole center.
Q. That's Jeff Vasilas?
A. Yes.
Q. So Jeff Vasilas took over the position of property manager and general contractor of sorts?
A. Yes.
Q. And you worked under him?
A. Yes.
Q. The shopping center had a number -- or did it have a number of other retail shops that were occupied when Burlington Coat Factory was under construction?
A. Yes.
Q. And under construction -- I mean, was the structure already there, it was being built out?
A. The shell of the facility was there of the Burlington Coat Factory. We built out the interior and did exterior work also.
Q. And there was electrical work to be done as well, correct?

A. Correct.
Q. All right. So going back to how you were paid, Mr. Beirne, how often were you paid?
A. As construction manager.
Q. Well, when you were property manager and then as construction manager?
A. I went from property manager to -- once a month, to once a week under Jeff Vasilas.
Q. And the -- were you paid by check, or direct deposit, or cash, or how?
A. As property manager, I was paid by direct deposit. As construction manager, I was paid by check.
Q. And as property manager, direct deposit, what entity -- what business entity paid you?
A. Repeat the question.
Q. Yeah. What company -- company name, if you recall, paid you?
A. As a project manager, I was paid by HM.
Q. Hold on. You were project manager, then property manager, then construction manager?
A. Yes.
Q. All right. So initially you were paid by HM?
A. Correct.
Q. And then did you receive payments from any other business entity?

A. As a construction manager, I was.
Q. What companies?
A. There was three or four companies that paid me.
Q. What were the names of the companies?
A. As a construction manager, I was paid for HM-UP.
Q. Is that HM-UP Development Alafaya Trails?
A. Yes. Flagler something. Diamonds Men's Club.
Q. All right.
A. That's the best of my knowledge that I can remember.
Q. So HM Management -- what was your understanding of who was the owner of HM Management?
A. Eric Sheppard.
Q. What about HM-UP Development Alafaya Trails?
A. Eric Sheppard.
Q. What about Flagler, Flagler Company?
A. Eric Sheppard.
Q. What about the Diamonds Club?
A. To the best of my knowledge, there was ownership in that.
Q. And what was the Diamonds Club?
A. It was a gentlemen's club.
Q. And when you were construction manager, you said you received checks?
A. Yes.
Q. Who was paying you those checks?
A. Jeff would hand out the checks.

Q. And the checks that came from Jeff, was it your understanding the Defendant was supplying the funds for those checks?

A. Repeat the question.

Q. Yes. The money that you were being paid, did it come -- was it Jeff's money or Eric Sheppard's money?

MS. WEINTRAUB: Objection. If he knows.

THE COURT: If the witness knows.

BY MS. JIMENEZ:

Q. If you know.

A. I don't know.

Q. So up until you were construction manager, the money came from Eric Sheppard?

A. Yes.

Q. And then you were working in the last portion as construction manager under Jeff Vasilas, correct?

A. Correct.

Q. Was it your understanding that Jeff Vasilas worked for Eric Sheppard?

A. Jeff said a lot of things.

Q. Well, did -- okay. Was it your understanding that he was working for Eric Sheppard?

A. At one time he stated he was a partner.

Q. Partner of Eric Sheppard?

A. A partner of the construction job.

Q. All right. Now -- and was that -- was he Eric Sheppard's partner?
A. That's what he claimed.
Q. All right. Now, your payments -- you indicated that you were always paid as a contractor; is that correct?
A. Yes. My whole life.
Q. Independent contractor?
A. Yes, ma'am.
Q. Was there -- did you know other people who were working at the shopping center or at that project, the Burlington project?
A. Yes.
Q. Was there a Sam Seprish?
A. Yes.
Q. Who is Sam Seprish?
A. A friend of mine.
Q. Did he do any work there?
A. Yes.
Q. What work did he do?
A. Painting, metal stud, acoustic ceiling, drywalling.
Q. Was he a contractor or a wage employee?
A. Yes.
Q. I'm sorry. Which?
A. Contractor.
Q. Did you know a Carlos Granda?
A. Yes.

Q. Who is Carlos Granda?
A. Electrical contractor.
Q. Independent contractor?
A. Yes.
Q. Did you have any discussions with the Defendant about being a contractor or a wage employee?
A. No.
Q. Now, your payments -- did there come a time when your payments were not regular?
A. Yes.
Q. What happened?
A. I continued to use my services --
MS. WEINTRAUB: Objection, Judge.
THE COURT: The basis of the objection?
MR. WEINTRAUB: For reasons previously stated, Your Honor, 403, the 404 notice.
THE COURT: Overruled.
BY MS. JIMENEZ:
Q. Mr. Beirne, were you owed money when you were working for Eric Sheppard?
A. Yes.
Q. How much money?
A. Approximately $50,000 as a property manager.
Q. And then you -- did you remain at that jobsite after you were owed $50,000?

A. Yes.
Q. And then -- is that when you became the construction manager under Mr. Vasilas?
A. That is correct.
Q. Now, you were paid by Mr. Vasilas thereafter?
A. He would hand me the check, yes.
Q. And then did there come a time when Mr. Vasilas also owed you money, sir?
A. Yes.
Q. How much did he owe you?
A. Little under 10,000.
Q. Did you try to speak to the Defendant about the payments that he owed you?
A. Yes. I asked for my subcontractor wages.
Q. Well, are they wages or are they payments that you received?
A. They are payment for my bill that I gave him --
Q. All right.
A. -- as a contractor.
Q. And did Mr. Sheppard tell you anything?
A. No.
Q. Did he respond to your inquiries about being paid?
A. Mr. Sheppard?
Q. Yes.
A. No.

Q. In 2020, you were working at the shopping center, the Burlington Coat Factory build-out, correct?
A. Correct.
Q. And were you still working there after the COVID pandemic began?
A. I don't know the date that it ended.
Q. You mean the project ended?
A. I know the date of the project. I don't know when the COVID date ended.
Q. Okay. But in 2020 were you still working there when COVID came upon us?
A. Yes.
Q. All right. Did you assist the Defendant at any point with any application for a Paycheck Protection Program loan?
A. I did.
Q. What did you do?
A. I presented a package that was given to me to a bank in Orlando.
Q. You received a package, you just said, from whom?
A. Eric.
Q. Eric Sheppard?
A. Yes.
Q. What did Eric Sheppard tell you the package was or the package was for?
A. Pertaining to a loan.

Q. And what did you do with that package?
A. I brought it to one of my Bible study class bankers.
Q. What bank was that; do you recall?
A. Something Bank of Florida.
Q. Was the bank located in Miami or was the bank located in --
A. Orlando.
Q. So this was a bank in Orlando?
A. Yes.
Q. And do you know what was contained in the package?
A. No. I did not open it.
Q. And what did you do with the package?
A. Gave it to my friend of the bank.
Q. And for what purpose did you give the banker the package from Mr. Sheppard?
A. For an application for a loan.
Q. And then what was the result of that application for a loan?
A. He gave me the paperwork back and said it didn't qualify for the loan.
Q. Was this a Paycheck Protection Program loan?
A. To the best of my knowledge.
Q. Did you communicate with Mr. Sheppard after that about this loan?
A. Yes.
Q. What did you tell him?

A. I said they didn't submit the application because they said it wasn't qualifying.
Q. "They," the bank, did not submit it?
A. The bank. Correct.
Q. What did Mr. Sheppard tell you?
A. Nothing.
Q. You indicated that you stopped working there at the completion of the Burlington project.
A. That's correct.
Q. And that was approximately November of 2020, correct?
A. Yes.
Q. Did you at any point recover the money that you were owed by either Mr. Sheppard or Mr. Vasilas?
A. No.
Q. Did you attempt to make efforts to recover the money?
A. Yes.
Q. What did you do?
A. I was hoping that once Burlington got occupied and threw off a cash flow -- I was hoping that Eric would settle up with me.
Q. Have you spoken with or seen Eric Sheppard between then and today at any point?
A. Not to the best of my knowledge.
Q. Have you spoken to him on the phone or seen him in person?
A. I have not seen him on person. I might have -- speak to

him on the phone.
Q. At any point did Mr. Sheppard indicate to you that he was applying or getting Paycheck Protection Program money and was going to pay you the money that he owed you?
A. No.
MS. JIMENEZ: If I could have a moment, Your Honor.
THE COURT: All right.
(Pause in proceedings.)
BY MS. JIMENEZ:
Q. Mr. Beirne, just to clarify, at what point in time were you the construction manager under Jeff Vasilas, if you recall, approximately?
A. It was like February of 2020.
Q. So essentially the 2020 period?
A. Yes.
Q. All right.
MS. JIMENEZ: I have nothing further of the witness, Your Honor.
THE COURT: All right. Is there much cross-examination or is this a good time to take a lunch break?
MS. WEINTRAUB: This would be a great time to take a lunch break.
THE COURT: All right. Then, Ladies and Gentlemen, as you can see, it's 12:10. Let's take a one-hour recess for lunch. I'll see you back here at 1:10.

Have a pleasant lunch break.

COURT SECURITY OFFICER: All rise.

(Jury not present, 12:05 p.m.)

THE COURT: Mr. Beirne, we will see you back here at 1:10. Now, you are on the witness stand so you're not to discuss your anticipated testimony, the testimony of any individual, or any other aspect of the case. All right, sir?

We'll see you back here at 1:10. Have a pleasant lunch.

MS. WEINTRAUB: Judge, before you leave, there is -- I'm just waiting for Mr. Beirne to leave.

THE COURT: Okay. We'll see you back here at 1:10, sir.

(Pause in proceedings.)

THE COURT: Yes, Ms. Weintraub?

MS. WEINTRAUB: Judge -- thank you. There is an issue of Jencks.

THE COURT: Go ahead and have a seat.

What is the issue?

MR. WEINTRAUB: The issue is that we have a two-page 302 on this witness that never mentions anything about a PPP loan whatsoever. It was all about how -- it was all about independent contractor versus W-2.

Moreover, the prosecutor has gone out of her way -- or their way -- over the past several months to send me email disclosures, and calls it Jencks-ish, without having a 302, saying: "We interviewed this witness. We want you to know that they said this or that."

So they are aware, obviously, of their ongoing duties and obligations to furnish us with statements that are made. I had no disclosure of this whatsoever. I'm glad we're taking a lunch break.

THE COURT: Ms. Jimenez?

MS. JIMENEZ: Your Honor, I have complied with my discovery obligations. I have turned over Jencks of this witness and the other witnesses we expect to call. I have -- the only thing I referred to as Jencks-ish was something that I do not consider Jencks. It was the transcript of the testimony of Ms. Harris that she provided in another case that I had received.

I don't have any written statement of this witness. I do not have any recorded statement of this witness. I do not have any Jencks of this witness, aside from the Jencks that we provided the Defense, which was a text message the witness wrote to the agent that we preserved and turned over to the Defense.

THE COURT: All right. So you turned over an email and a 302 related to Mr. Beirne, correct?

MS. JIMENEZ: That's correct.

THE COURT: Then what's the issue?

MS. WEINTRAUB: Judge, the email was that he didn't appreciate being called by Defense counsel and that he didn't want to talk to us. That's the email. So to be clear --

THE COURT: All right. But the Government turned it over. So what is the issue?

MS. WEINTRAUB: The issue that the 302 never mentions the PPP, which was the thrust of the testimony.

MS. JIMENEZ: She could ask the witness.

MS. WEINTRAUB: I intend to.

THE COURT: Okay. I'm not certain what relief you're seeking. If the 302 doesn't mention it, then there's no further information to turn over.

MS. WEINTRAUB: That was what I was seeking, to ascertain whether or not there were any other statements.

THE COURT: Okay. All right. Have a pleasant lunch. I'll see you here at 1:10.

COURT SECURITY OFFICER: All rise.

(Recess from 12:09 p.m. to 1:10 p.m.)

THE COURT: Welcome back. I hope everyone had a nice lunch.

Are we ready to get back to work?

MS. WEINTRAUB: Yes, Your Honor.

THE COURT: We have all our jurors?

COURT SECURITY OFFICER: Yes, ma'am.

THE COURT: All right. Let's bring them in.

Thank you.

COURT SECURITY OFFICER: All rise for the jury.

(Before the Jury, 1:12 p.m.)

THE COURT: All right. Welcome back, Ladies and Gentlemen.

Please be seated, everyone.

I hope that you had a pleasant lunch and ready to get back to work.

And we will begin with the cross-examination.

Ms. Weintraub?

MS. WEINTRAUB: Thank you, Your Honor.

I think we're all height challenged, all the lawyers.

CROSS-EXAMINATION

BY MS. WEINTRAUB:

Q. Good afternoon, Mr. Beirne.

Mr. Beirne, you and I have spoken one time, right, very briefly?

A. (No verbal response.)

THE COURT: Sir, could you answer into the microphone.

THE WITNESS: I've never met you before personally.

BY MR. WEINTRAUB:

Q. I'm sorry?

A. I never met you before personally.

Q. That's correct.

I want to pick up where the prosecutor was talking to

you about Toys "R" Us. It goes out of business in 2018, and it was the anchor store at Alafaya, right, at the shopping center?
A. Yes.
Q. Created a huge gap when Toys "R" Us went out of business and the store was empty, agreed?
A. Yes.
Q. Burlington Coat Factory replaces Toys "R" Us? Yes?
A. Yes.
Q. Huge property, right?
A. Yes.
Q. And you were involved with -- from the beginning, with the demolition of Toys "R" Us to convert it to meet the specifications of Burlington Coat Factory, right?
A. Yes.
Q. You discussed the demolition and the changes with Mr. Sheppard before they were done?
A. Yes.
Q. Now, in 2020, you are inside working on the demolition, correct?
A. Yes.
Q. And there had to be new flooring put in, right?
A. Yes.
Q. New walls. The walls were 24 feet high, right?
A. Approximately.
MR. WEINTRAUB: Judge, with the Court's permission,

I'd like to show the witness M-14, which has been shown to the prosecutor. I don't know if there's an objection to the introduction of that.

MS. JIMENEZ: I'm sorry. What number?

MS. WEINTRAUB: The video.

MS. JIMENEZ: Oh, the video. No. No objection.

THE COURT: All right. No objection to its introduction into evidence?

MS. JIMENEZ: Yes, Your Honor.

THE COURT: All right. M-14.

BY MS. WEINTRAUB:

Q. I'm going to ask you, Mr. Beirne, if you can look at this video. It's --

MS. JIMENEZ: Whoa. Whoa. Hold on. I'm sorry. I thought you were going to show him to see if he identifies it. I'm sorry. No.

THE COURT: That's why I asked if there's an objection to its introduction.

MS. JIMENEZ: Yes. I'm sorry. I apologize, Your Honor. I mean, I think that I would like to witness -- so yes, I think counsel needs to lay a foundation whether the witness can identify this location.

BY MR. WEINTRAUB:

Q. Mr. Beirne, can you identify --

MR. WEINTRAUB: Can we play this for the witness and see if he can identify what this is?

THE COURT: All right. Only for the witness.

(Video played, no sound.)

THE WITNESS: It is the inside space for Toys "R" Us.

BY MR. WEINTRAUB:

Q. You can tell that already?

A. (No verbal response.)

MS. JIMENEZ: No objection.

THE COURT: All right. Admitted into evidence.

(Defendant's Exhibit M-14 received into evidence.)

MR. WEINTRAUB: Can we now go back and play it from the beginning for the jury, Your Honor?

THE COURT: Yes, we may.

(Video played, no sound.)

BY MS. WEINTRAUB:

Q. Mr. Beirne, 60,000 square feet is a huge store, a big project, right?

A. It is a big box, correct.

Q. To get done in three months?

A. Yes.

Q. Now, you were at the beginning hiring electricians to come in, correct?

A. No.

Q. You did not -- did you work with electricians?

A. Yes.

Q. Did you work and observe the AC units on the rooftop being installed?
A. I observed, yes.
Q. Did you work with Eric Sheppard on budgets and pricing out subcontractors for the jobs?
A. I can't remember.
Q. You kept a daily log in December and January -- December '19, January '20 of the tasks and work that you were doing, right?
A. Yes.
Q. And you sent the ledger to Mr. Sheppard, right?
A. Yes.
Q. Keeping him informed of all the progress as it was being done? Yes?
A. Yes.
Q. By February a lot of progress has been made? Yes?
A. Yes.
Q. And then March 18th COVID hits and the world shuts down essentially. Do you agree?
A. That's an opinion.
Q. Yes. Do you agree that -- let me ask it this way: Did the subcontractors and a lot of people working leave the site when COVID hit?
A. People worked through the epidemic.
Q. And didn't Jeff Vasilas have to hire people back and, in

fact, recruit additional people to work during the pandemic?
A. Jeff hired people to come back -- hired people to work there.
Q. And he was hiring back whatever workers he could that were already working, say, for one of the electrical companies or the plumbing companies, right, to come back to work for them?
A. There was multiple electrical contractors.
Q. Okay. You were paid during COVID, weren't you?
A. Yes.
Q. Your son worked on the jobsite as well, right?
A. Yes.
Q. You knew a lot of other workers that were working on the project during COVID, right?
A. Yes.
Q. For example, Brad Schleper was working? Yes? Do you know who he was?
A. That name does not ring a bell.
Q. What about Carlos De Leon?
A. There's a couple Carloses.
Q. Carlos Diaz. Did you know him?
A. I don't remember last names.
Q. Okay. How about Kerby Kleef?
A. Yes.
Q. How about Mercedes Fonseca? Do you know who she was?
A. I met her.

Q. Mo Wimbley. You remember him?
A. No.
Q. Rich Bank?
A. Yes.
Q. Sam Seprish? These are all people that worked during COVID on the project, right?
A. Yes.
Q. As a matter of fact, you brought Sam in?
A. Yes.
Q. Troy Bennett?
A. No.
Q. Is it fair to say that when COVID hit there was still a lot of work to be done to get Burlington delivered in May of 2020?
A. Yes.
Q. They needed -- there were over 600 lights that had to be installed?
A. I do not know the number.
Q. Wiring had to be cut down before new lights were installed, right?
A. Yes.
Q. So things had to be ripped out before they're replaced. Is that fair?
A. Correct.
Q. Same with the flooring. Had to be ripped out before it could be replaced, right?

A. Not necessarily.
Q. Wasn't it vinyl floors when it was Toys "R" Us?
A. My opinion, the floors shouldn't have been ripped out.
Q. Do you agree that a lot of jobs were created and people were paid to get this job done during COVID?
A. A lot of jobs were created.
Q. Now, you told the prosecutor -- strike that.
MR. WEINTRAUB: I meant to make it a composite exhibit. Let me bring up the pictures of M-11 as a composite exhibit. Do you have an objection, Government?
MS. JIMENEZ: He needs to identify...
THE COURT: All right. Just the witness.
How many pictures are in M-11?
MS. WEINTRAUB: Fourteen, Your Honor, as a composite exhibit.
MS. JIMENEZ: And the time period, please.
THE COURT: All right. So just lay the foundation, then, for the 14 pictures.
MR. WEINTRAUB: March 30th, 2020, approximately.
MS. MARTINEZ: No. The witness has to lay --
MS. WEINTRAUB: Oh. I thought you were asking me for the time period.
THE COURT: No. If you'll lay the foundation with the witness. Show M-11 to the witness only.

BY MS. WEINTRAUB:
Q. Mr. Beirne, do you remember being present for a strategy meeting going forward with Mr. Sheppard and Mr. Schleper on how to proceed because of COVID?
A. I don't remember.
Q. Looking at these pictures, does it look familiar to you?
A. Yes.
Q. Do they accurately depict what the site looked like in March of 2020?
A. Yes.
MR. WEINTRAUB: With that, Your Honor, I would seek to move in Composite Exhibit --
MS. JIMENEZ: He hasn't seen them all.
MS. MARTINEZ: We need to let the witness see all the pictures.
THE COURT: Okay. Hold on. One objection from one lawyer's mouth.
Let's show the witness all 14 of the pictures.
BY MS. WEINTRAUB:
Q. Do you recognize those photos, all of them?
A. To the best of my knowledge.
Q. Is this the site that you were working on?
A. Yes.
MR. WEINTRAUB: With that, Your Honor, at this time I would seek to move composite M-11 into evidence.

THE COURT: Any objection?

MS. JIMENEZ: No objection.

THE COURT: As a composite, admitted into evidence.

(Defendant's Exhibit M-11 received into evidence.)

MR. WEINTRAUB: Let's go back to the one with Jeff.

Can you zoom in on the top half of that picture or no?

BY MR. WEINTRAUB:

Q. Do you recognize the person who would be on your left as Jeff Vasilas?

A. It's fuzzy, but it looks like him on the shadow.

Q. And on the next page, do you know -- I forgot -- I'm sorry. Do you know who Brad Schleper is? Is that him, or you don't know?

A. I don't remember him.

Q. Now, you told the prosecutor --

MR. WEINTRAUB: You can take it down.

Thank you.

BY MR. WEINTRAUB:

Q. You told the prosecutor that you delivered a loan application and a package of papers to take to a bank. Do you remember that?

A. Yes.

Q. Are you sure it wasn't for a line of credit?

A. There was a discussion of a line of credit.

Q. Okay. Because at that point, when you took that batch of

papers to the bank, PPP loans had not started yet, had they, now that you think about it?
A. Papers I brought was for the PPG [sic].
Q. How do you know that? You didn't open the package, did you?
A. I did not open the package.
Q. And weren't you discussing getting a line of credit?
A. Earlier.
Q. Sorry?
A. Earlier in the year we had.
Q. Well, if you didn't open the package, and you didn't know what was in it, and you talked about a line of credit, how can you be so sure that it was after PPP was offered?
A. You said "line of credit."
Q. You don't remember having any discussions about that, and saying that you were going to take papers to a bank to try and get a line of credit?
A. That was earlier in the year. The papers I delivered was for a second round of -- application for the PPG.
Q. How do you know that, that that was for a second round? Were you there in 2021?
A. I was there because I discussed it with the bank. We didn't hit the first round of PPG that this bank was doing. We hit the second round.
Q. Okay. So let me see if I understand this. Didn't you

leave in 2020?
A. Correct.
Q. Are you aware of the fact they didn't even have a second round until 2021? I'm just trying to jog your memory, I guess, because I think it's not thinking correctly, politely, to say that there was no second round of PPP when you were doing this, was there --
A. It was the second round for the institution that I brought the paperwork to.
MS. WEINTRAUB: Could I have a moment, Judge?
THE COURT: Certainly.
(Pause in proceedings.)
BY MS. WEINTRAUB:
Q. You spoke to the FBI in this case, right?
A. Yes.
Q. And you were interviewed and what we call debriefed? Yes?
A. I was talked to, yes.
Q. And you were talked to in detail about how much money you were paid, how you were paid, right?
A. Yes.
Q. You were talked to in detail about working for Eric Sheppard, right?
A. Maybe not detail, but I was asked questions.
Q. Okay. And -- and you told them about -- first you were working for $10,000, then you were working for the $5,000,

right?
A. Yes.
Q. Now, you made the -- and then you agreed to -- when you agreed to work for the $5,000, you had been there for a few months and got 10, right?
A. Yes.
Q. Okay. Then he reduces it or you agree to the reduction, correct --
A. Yes.
Q. -- of $5,000, because it was better than nothing, right?
A. I chose to, yes.
Q. And you were still getting the car, cell phone, and housing, right?
A. No.
Q. You were not?
A. No.
Q. Do you remember signing a lease in 2019 with Tammy Roussell?
A. I don't remember.
Q. Yes?
A. I don't remember.
MR. WEINTRAUB: Can you bring up just for the witness M-15. Specifically show him the signature page on 6 of 18.
BY MR. WEINTRAUB:
Q. Is that your name as the signator right there?

A. That is my name.
Q. And who is the landlord signature? Is that Tammy Roussell? Yes?
A. I see her name there.
Q. And was this a house or an apartment building?
A. Would you state what this lease is for?
Q. Oh. Sure. 12795 Forestedge Circle in Orlando. Is that the house that you were living in?
A. I was a resident there.
Q. Sorry?
A. I was a resident there.
Q. Okay. And Tammy Roussell is the landlord and you're the tenant, right?
A. I'm assuming that. I don't remember.
Q. I'm showing you a copy of the lease. Do you remember it now?
A. I've seen a lot of leases.
Q. Did you see a lot of leases with your name on it DocuSigned?
A. Yes.
Q. Do you see a lot of leases with your name DocuSigned to a place of residence that you were a resident at that you didn't execute?
A. Repeat the question.
Q. Sure. You said you're not sure if this is a lease. But

you said you were a resident at that address, right?
A. I've signed a lot of leases in my life.
Q. Okay. But you were a resident at that address, were you not?
A. Yes.
Q. And do you sign a lot of leases for addresses where you live that you don't recognize?
A. I lived at that property. I don't remember the name of the landlord.
Q. And you don't recognize your name and DocuSign?
A. I do recognize my name.
MR. WEINTRAUB: Judge, at this time I would move M-15, the lease, into evidence.
MS. JIMENEZ: Objection, Your Honor. He doesn't recall -- I don't think -- I think the witness could be asked questions about where he lived or --
THE COURT: What's the basis of the objection?
MS. JIMENEZ: The witness doesn't recognize the lease -- the document that he's being shown.
THE COURT: He recognizes his name. He doesn't recognize the document, correct?
MS. JIMENEZ: That's correct.
THE COURT: Ms. Weintraub, the document has not been sufficiently identified. The objection is sustained.

BY MS. WEINTRAUB:
Q. So I started asking you what you were talking about with the FBI. You didn't mention to the FBI anything about a PPP loan, did you?
A. I wasn't asked the first time.
Q. And were you interviewed a second time by the FBI?
A. I talked to the FBI, yes.
Q. And you mentioned the PPP then?
A. I would only answer the question if I was asked.
Q. Okay. So we weren't there, so I'm asking you. Were you asked? Did it come up?
A. Yes.
Q. And you told the FBI agent about it?
A. Yes.
Q. Do you know the FBI agent's name?
A. I don't remember.
Q. Was it a male or female?
A. It was a female.
Q. Was it Ms. Halleran who is sitting at counsel table with the prosecutors from the FBI?
A. I don't know a Ms. Halleran.
Q. Now, you claim that you're owed $50,000, right?
A. Correct.
Q. And isn't the $50,000 that you were owed because after you were leaving, and you had taken a reduction in rent, you wanted

the original 10,000 a month, which would mean 5,000 for the 10 months, which would be $50,000?
A. That is not correct.
Q. So you said that it was from earlier. When was it from?
A. When I was a property manager.
Q. When he was paying you 10,000 a month?
A. No. I was being paid five at that time.
Q. Okay. So you're claiming that you were not paid the 5,000 a month?
A. That is correct.
Q. In fact, sir, you were paid $77,000 that year, were you not?
A. I do not know.
Q. You don't know?
A. No. I don't know.
Q. You didn't keep track of how much money you were paid?
A. Yes. I don't have it with me and I don't have it in my head.
Q. Your checks were direct deposited, right?
A. Correct.
Q. And you started having them direct deposited because you asked Jeanette Gonzalez to write a letter for you. Do you remember that?
A. I asked for direct deposit.
Q. Do you remember asking Jeanette Gonzalez to write a letter

for you? That's a yes-or-no question.
A. I can't remember.
Q. Let me see if I can refresh your recollection.
MR. WEINTRAUB: M-2. Can you show M-2 just to the witness.
MS. JIMENEZ: I'm sorry. What number?
MS. WEINTRAUB: Sorry?
MS. JIMENEZ: What number?
MS. WEINTRAUB: M-2.
BY MS. WEINTRAUB:
Q. Do you see what's on the screen?
A. Would you repeat the question?
Q. Sure. Does this now refresh your recollection that you asked Jeanette Gonzalez, the executive assistant of HM-UP Development, to write a letter to the bank confirming that you were employed at HM-UP?
A. I do not remember asking for this.
Q. You never asked for this? You think that Jeanette Gonzalez -- is that your bank that it was sent to?
A. I don't see a bank name on that paper.
Q. Do you think that Jeanette Gonzalez would write that letter in April 2018 saying that you were --
MS. JIMENEZ: Objection. The letter is offered for the witness to refresh his recollection. He says it doesn't refresh his recollection. Now she's reading the letter.

THE COURT: Sustained.

BY MS. WEINTRAUB:

Q. Mr. Beirne, do you think that Jeanette Gonzalez would have requested or communicated with your bank about your employment to give you direct deposit rights without your permission?

A. I do not see a bank name on this document.

Q. Okay. So you're saying that that wasn't done?

A. I can't remember.

(Pause in proceedings.)

MR. WEINTRAUB: I am waiting for an exhibit, Your Honor, to be pulled up.

(Pause in proceedings.)

BY MR. WEINTRAUB:

Q. Sir, now, you said you were not paid $77,000?

MS. JIMENEZ: Objection. Misstates the testimony.

MS. WEINTRAUB: Excuse me?

MS. JIMENEZ: I said: "Objection. Misstates the testimony."

THE COURT: Overruled.

BY MS. WEINTRAUB:

Q. Were you paid $77,000 by Eric Sheppard's companies?

A. I do not remember.

Q. Did you tell the FBI you were only paid 20 to 30,000 dollars?

A. By who?

Q. By Eric Sheppard's companies.
A. During what times?
Q. I'm sorry?
A. During what times was I supposedly paid 20 to 30,000 dollars?
Q. From the time you came back in 2020 through the time you left in April 2020.
A. I never left the site.
Q. You came there in 2017 and you stayed there?
A. Yes.
Q. Well, when you told the agent that you were only paid 20 to 30,000 dollars, what time period were you telling her that about?
A. What agent?
Q. The FBI agent.
A. Would you repeat the question?
Q. Sure. Do you remember telling the FBI agent that you made between 20 and 30,000 dollars?
A. I don't remember.
Q. Do you remember telling the FBI agent that you received a total between 20,000 to 30,000 in paid funds, but that Sheppard still owed you -- "owed him $50,000." Did you say that?
A. I don't remember.
Q. Would you mention 20 to 30,000 dollars if you were paid 77?
A. This is the first time I heard $77,000.

Q. Okay.

MR. WEINTRAUB: Can we pull up just for the witness as a composite exhibit...

BY MR. WEINTRAUB:

Q. I'm going to ask you to look at some checks. See if you signed the back, and if they're made out to you, and if you received them.

Is that a check made out to you with your signature on the back?

A. I'm seeing a lot of checks right now.

Q. Okay. And they're all made out to Martin Beirne, right?

MS. JIMENEZ: Can we identify the exhibit, please.

THE COURT: Exhibit number, please.

MR. CAVALLO: It's M-17.

MS. JIMENEZ: There's -- I don't know how many pages.

MS. WEINTRAUB: It's a composite exhibit.

MS. JIMENEZ: It's 50 pages -- 30 pages?

MS. WEINTRAUB: They are all checks made out to M. Beirne --

THE COURT: M-17 is a composite exhibit. So let's continue. It's being shown only to the witness.

BY MR. WEINTRAUB:

Q. Mr. Beirne, are these checks made out to you?

A. I see one check for $1,500 made out to me in front of me.

Q. Okay.

MR. WEINTRAUB: Go to the next one.

BY MR. WEINTRAUB:

Q. See that check?

A. I see one check for $900 in front of me.

MR. WEINTRAUB: And go to the next one.

THE WITNESS: I see one check for $7,400 in front of me.

BY MR. WEINTRAUB:

Q. Are these checks all made out to you, Mr. Beirne? Go through them. They say "payroll" on them?

A. Repeat the question.

Q. My question is: Do you acknowledge that these are checks that were paid to you?

A. I see checks in front of me made out to me.

Q. I'm sorry?

A. I see checks in front of me made out with my name on them.

Q. Do you acknowledge receiving them and depositing them?

A. No.

Q. This isn't your first time in court, is it?

A. Yes.

Q. It is?

A. As far as a witness.

Q. I didn't ask you that, sir. I asked you --

A. Question --

Q. I asked you if this is your first time in court. You've

been in lots of courts?
A. I've been in court before, yes.
Q. Sorry?
A. Yes, I have been in court before.
Q. You've been in court a lot, right?
MS. JIMENEZ: Objection.
THE COURT: Sustained.
BY MS. WEINTRAUB:
Q. You told the agent that you got a call from Eric Sheppard in 2019 -- that you called Sheppard in 2019 saying your business was slow and asked if he could use you to work for him, right?
A. Yes.
Q. And that was because you were not living there in Orlando at the site then in 2019. You were living back in Ohio, weren't you?
A. Yes.
Q. Okay. So when you said you didn't leave before, that wasn't true. You did leave. You came in 2017 or '18. You left, you went back to Ohio, and then you came back to Miami -- I mean to Orlando, right?
A. I can't remember.
Q. Now, when you told the agent that your business was slow, that wasn't really true either, was it?
A. I can't remember.

Q. Well, your business was pretty non-existent because you had 22 pending lawsuits at the time, didn't you?

MS. JIMENEZ: Objection.

THE COURT: The basis of the objection?

MS. JIMENEZ: It's not relevant, Your Honor.

THE COURT: Sustained.

MR. WEINTRAUB: Your Honor, under 608, I believe it is.

THE COURT: The objection is sustained.

MS. WEINTRAUB: Yes, ma'am.

BY MR. WEINTRAUB:

Q. Were you sued for fraud and misrepresentation?

MS. JIMENEZ: Objection.

THE COURT: Sustained.

BY MS. WEINTRAUB:

Q. Do you know who Patricia Irwin is?

A. Yes.

MS. JIMENEZ: Objection. Outside the scope.

THE COURT: Overruled.

BY MS. WEINTRAUB:

Q. Who is it?

A. It was an investor.

Q. An investor. And what did she invest with you?

A. In a real estate development.

MS. JIMENEZ: Objection. Outside the scope.

THE COURT: Overruled at this point.

BY MS. WEINTRAUB:

Q. She invested $300,000 -- her retirement fund with you, didn't get her investment, and sued you, right?

MS. JIMENEZ: Objection.

THE COURT: Sustained.

BY MR. WEINTRAUB:

Q. You were buddies with LeBron James, right?

MS. JIMENEZ: Objection.

THE COURT: Basis?

MS. JIMENEZ: Relevance.

THE COURT: Sustained.

BY MS. WEINTRAUB:

Q. You did business with LeBron James, didn't you?

MS. JIMENEZ: Same objection.

THE COURT: Sustained.

(Pause in proceedings.)

BY MS. WEINTRAUB:

Q. Now, when you were getting paid when you worked during COVID, you said that you were paid by checks from an HM company; is that right?

A. Yes.

Q. And you also mentioned a Diamonds company, right?

A. Yes.

Q. And you said that you thought that that was a gentlemen's

club?
A. Correct.
Q. Now, did you know that that was owned by Jeff Vasilas and not by Eric Sheppard?
A. No.
Q. Were you aware of the fact that Mr. Sheppard was going to buy the property, after that club closed down, from Jeff Vasilas?
A. No.
Q. Now, you were not privy to the financial arrangements between Eric Sheppard and Jeff Vasilas, were you?
A. No.
Q. And Jeff Vasilas would go down to Miami from Orlando from the job to get paychecks, and go back up to Orlando and give out the paychecks, right?
A. Yes.
Q. Now, you don't know the amount of checks or the monies that Eric Sheppard gave to Jeff Vasilas, do you?
A. Correct.
Q. And so when you got checks from Diamond something, you don't know that it was because Jeff Vasilas has already gotten money from Eric Sheppard and just didn't pay it out? You don't know that, do you?
A. Would you repeat that?
Q. Sure. You don't know that people weren't getting paid --

you don't know if Eric had already given money to Jeff Vasilas to bring back to Orlando as paycheck money. You don't know that, do you?
A. Repeat that.
Q. Do you know how much money Eric Sheppard gave Jeff Vasilas to do payroll in Orlando?
A. No.
Q. Now, initially, you thought that Jeff Vasilas was a good guy, he was doing his best, right?
A. No.
Q. You never said that?
A. Not that I can remember.
Q. You don't remember saying that initially to the FBI?
A. I said that Jeff was trying to do his job.
Q. Okay. And that was at the beginning, right?
A. Correct.
Q. But there came a point -- you knew that Jeff was under a lot of pressure, right?
A. Yes.
Q. Now, in fact, you did write a letter about money that you were owed, didn't you?
A. Yes.
Q. You sent an email to Jeff Vasilas?
A. Yes.
MR. WEINTRAUB: Can you pull up only for the witness's

sight -- no. The 9,000 handwritten.

BY MR. WEINTRAUB:

Q. Looking at M-9, do you recognize that handwriting?

A. Yes.

Q. Is that your handwriting?

A. Yes.

MS. WEINTRAUB: Your Honor, at this time I would move M-9 into evidence.

THE COURT: Any objection?

MS. JIMENEZ: Can the witness identify what it is? Can the witness identify what it is?

MS. WEINTRAUB: He just said it was his handwriting. Can it be moved into evidence and we can discuss it?

MS. MARTINEZ: What time period? I'm sorry.

THE COURT: All right. You've asked if that's his handwriting. Why don't you ask him if he can identify what it is.

MS. WEINTRAUB: Yes, Your Honor.

BY MS. WEINTRAUB:

Q. Do you see the date 10/5 at the top?

A. Yes.

Q. Does that tell you what date it was written?

A. This was an invoice.

Q. This is an invoice from you to Jeff Vasilas, right?

A. It's an invoice.

Q. Well, who's it to?
A. Doesn't say the name of who it's on.
Q. Who did you send it to?
A. I handed it to Jeff.
Q. Okay. So this is an invoice that you handed to Jeff, with your handwriting on it.

MR. WEINTRAUB: May we now move it into evidence, Your Honor?

THE COURT: Any objection?

MS. JIMENEZ: No. No objection.

THE COURT: Admitted into evidence, M-9.

(Defendant's Exhibit M-9 received into evidence.)

MR. WEINTRAUB: Can we publish this.

BY MR. WEINTRAUB:
Q. Mr. Beirne, this is something -- an invoice that you handed to Jeff Vasilas, and you said that you were owed $9,723?
A. For my contract wages, yes.
Q. And you were being paid $35 an hour?
A. That is a fee I charged for my services.
Q. Now, Jeff, you just said, was under a lot of pressure at the time, right?
A. Yes.
Q. He was stressed out because Burlington was over budget, and that's his -- on him, right, as the project manager?
A. Repeat the question.

Q. Sure. One of the reasons Jeff Vasilas was stressed out was time was ticking and they needed to get Burlington built, right?
A. We needed to get Burlington in there.
Q. And Jeff Vasilas is the one that's in charge of getting that done?
A. Yes.
Q. So he's under a lot of pressure to get it delivered by May, right?
A. Yes.
Q. Did you know that he was over budget and underfunded?
A. I knew there was a problem with funds because the subcontractors weren't getting paid.
Q. Okay. Now, you also knew that at that time Jeff was pretty desperate for money. He was owing people money, right?
A. I know he owed me money.
Q. Sorry?
A. I knew I had invoices that were unpaid.
Q. Okay. And I think you said -- and so -- I mean, have we established that Jeff was over his head, he was behind on some payments, and stressed out? Right?
A. I don't know his peace of mind. I know that he was trying hard to get the job done.
Q. Okay. And you do know that -- you could obviously see he was stressed, yes?

MS. JIMENEZ: Objection. Relevance.

THE COURT: Sustained.

BY MS. WEINTRAUB:

Q. You told the FBI agent that you could relate to that?

A. I've been in the contracting business for over 40 years.

Q. Yep. And?

MS. JIMENEZ: Objection.

BY MS. WEINTRAUB:

Q. You also declared bankruptcy, right?

THE COURT: Sustained.

MS. JIMENEZ: Objection.

THE COURT: Sustained.

(Pause in proceedings.)

BY MS. WEINTRAUB:

Q. Talking about the $50,000. So if you were owed that money from an earlier time when you came back in 2019 -- why did you come back in 2019 if you were owed $50,000 already?

A. I said I did not leave the job. I was there the whole time. You keep saying I'm coming back. I don't understand the question.

Q. Okay. In 2019, you told the FBI that you called Eric Sheppard because your business was slow and you wanted to know if he had any work for you; is that right?

A. What was that date again?

Q. The end of 2019.

A. Yes. I believe that's correct.
Q. Okay. So you call him the end of 2019 and you ask him if he has any work for you. Now, if he owed you $50,000, why aren't you saying: "Hey, Eric, where is my money?" Why aren't you sending Eric Sheppard an invoice or a bill?
A. 2019 -- would you repeat the question?
Q. If Eric Sheppard owed you $50,000, why did you continue to work for him?
A. I wanted to get the job done.
Q. Out of the goodness of your heart?
A. I was funded enough to live and survive and do what I was doing in Orlando.
Q. Can you answer the question?
A. What is the question?
Q. Question is: You didn't send Eric Sheppard an invoice, you didn't send him a bill of any kind for $50,000, did you?
A. Yes, I did.
Q. You did? Do you have it?
A. I sent it to Jeanette.
Q. Huh?
A. Yeah. I do have a copy of that somewhere.
Q. Did you give it to the FBI?
A. I wasn't asked.
Q. So you say that you came back to work for $50,000?
A. You said that.

Q. Well, did you come back to work when he was still owing you money?
A. I never left.
Q. Okay. So you continued to work, and he owed you $50,000, and you worked another two years?
A. He was back on his payments -- he was late on his payments. I was getting funds the whole time.
Q. There came a point in time when from initially you thought Jeff was doing his job to basically hating Jeff Vasilas for lying, cheating, and stealing; is that right?
A. That's a term from the fellowship of Alcoholics Anonymous that cheating can be for cheating a time. Go ahead.
Q. Did you write --
MR. WEINTRAUB: Can you pull up the email for just the witness.
This is M-8.
THE COURT: M-8?
MS. WEINTRAUB: Yes, Your Honor.
THE COURT: All right.
BY MS. WEINTRAUB:
Q. Do you recognize this email?
A. I do.
Q. You sent this email to Jeff Vasilas on March 13th, 2021?
A. Yes, I did.
Q. And this is after you wrote the $9,723 in hand that we've

already seen, right? You reference it.
A. I don't remember.
Q. Well, look at it. It's right there.
A. I remember the paper that you put in front of me. That was my invoice.
Q. No. No. No. You just identified an invoice for $9,723, right? Do you remember that a few minutes ago?
A. Yes.
Q. Okay. So what I'm telling you is that four lines up from the bottom of your email you reference that $9,000, right?
MS. JIMENEZ: It's not in evidence. Okay? Objection.
THE COURT: It's not in evidence. It's been identified.
MS. WEINTRAUB: And I'm moving -- move to admit it in evidence, Your Honor.
THE COURT: Is there any objection?
MS. JIMENEZ: Yes. Objection. Hearsay.
THE WITNESS: Overruled.
MS. WEINTRAUB: Is it in evidence, Your Honor?
THE COURT: M-8 is in evidence. You may publish to the jury.
(Defendant's Exhibit M-8 received into evidence.)
MS. WEINTRAUB: May I publish to the jury?
THE COURT: You may.

BY MS. WEINTRAUB:
Q. Can you read this email for the jury, Mr. Beirne.
A. Are you asking me the question?
Q. Yes, sir.
A. "Jeff, I have great difficulty with what you did to Rich, Sam, Mattie, and the promises that you made to me. I watched your back for almost a year and have been doing nothing but prayer for you and for you -- and to try to always build you up. Never have I tore you down. You have become a dishonest person. This is what a lier [sic], cheat, and a thief does. This is the man you have become; no honor, no principals [sic], no morals. That $9,723 was earned. My last week I didn't even put on the books. You need to look at the person you have become. Still a friend in yours of Christ, Joe."

(Pause in proceedings.)

MR. WEINTRAUB: Your Honor, I would ask at this time for a sidebar based on the Court's ruling before this -- before my examination is over.

THE COURT: All right. Is it with regard to a particular exhibit?

MS. WEINTRAUB: Yes.

THE COURT: All right. Come on forward and bring the exhibit, please.

(At sidebar on the record.)

THE COURT: Okay. Please use the microphones.

MS. WEINTRAUB: Judge, the Court stopped me on several occasions from getting into and asking him about his specific acts of fraud, lying, and cheating. And I believe not only under 608 am I entitled to do that, but under US v. Ramirez Rivera, 800 F.3d 1, 2015, specifically --

THE COURT: And those are with regard to criminal conduct, correct? You asked him about pending civil lawsuits. You asked him about lawsuits that were filed.

MS. WEINTRAUB: That's correct.

THE COURT: That was the question. And does that case say that pending civil lawsuits are admissible?

MS. WEINTRAUB: It says -- it says it's discretionary of the Court.

(Court reporter interruption.)

THE COURT: You need to use the microphone.

MS. WEINTRAUB: Sorry. And I quote: "New Federal Rule of Evidence 608(b) says, except for criminal conviction under 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. However, the rule says the court may, on cross-examination, allow the specific instances of conduct to be inquired into if they are probative of the character for truthfulness or untruthfulness of this witness. Thus, while 608 leaves the court the discretion to allow the specific instances of conduct to be probed, defendant does not have to go into the specific details."

I brought a copy for the Court.

THE COURT: Okay.

MS. WEINTRAUB: And my problem is this -- and I would like to make a proffer.

THE COURT: Okay.

MS. WEINTRAUB: Yes, Your Honor.

There were 22 civil lawsuits. There's a bankruptcy. There is -- he -- it's -- what he does is he cons people to give him money, like he did Eric -- he cons them to give him money. Then he doesn't pay them back. They sue him. He hires a lawyer, doesn't pay the lawyer. The lawyer sues him. And then what he does is he settles as it's going to trial for like 20 cents on the dollar. And he, you know, Skypes them -- whatever that word is -- the money, and keeps it.

And this went on for 10 years. He tells the FBI agent, oh, his business was slow. No. He had two court appearances.

And this is what -- and LeBron James is -- you know, he touted himself all over the news about being friends with him. He built a building for LeBron James, then it's foreclosed and LeBron James suffered whatever losses because they had to move their whole organization.

THE COURT: Okay. And once again, these are pending lawsuits and not determinations --

MS. WEINTRAUB: Now they are disposed of. I'm sorry.

THE COURT: Okay. They are disposed of in terms of a specific finding by a jury that the witness committed fraud?

MS. WEINTRAUB: No. By a settlement and by an admission.

THE COURT: And do you have that admission?

MS. WEINTRAUB: I have the settlement.

THE COURT: Well, the settlement agreement would never be admissible. So for purposes of Rule 608 -- for purposes of Rule 608, with regard to extrinsic conduct, that's extrinsic conduct where there's been a determination that this witness committed fraud.

So where would there be evidence that this witness committed fraud either of a criminal nature or a civil nature?

MS. WEINTRAUB: A complaint.

THE COURT: A complaint are only allegations.

MS. WEINTRAUB: Judge, then let him answer it. But, you know, 22 times in three years, when he claims he was working for Eric, just doesn't fly. And the Court has the discretion to permit, on cross-examination, specific acts of misconduct.

THE COURT: Acts of misconduct, what you're saying constitute lawsuits being filed on a bankruptcy?

MS. WEINTRAUB: Well, no. The bankruptcy was by 59 creditors that he had of $10 million.

THE COURT: All right. Is that the extent of the proffer, are the civil lawsuits that have been filed and the bankruptcy?

MS. WEINTRAUB: Yes.

THE COURT: All right. Response?

MS. JIMENEZ: Your Honor, the bankruptcy doesn't go to anyone having committed fraud or being untruthful or deceitful.

MS. WEINTRAUB: Well, he didn't tell the FBI about it when they were asking him about his background.

THE COURT: Anything --

MS. JIMENEZ: No -- no one has asked him if he filed for bankruptcy.

MS. WEINTRAUB: I did. You objected.

MS. JIMENEZ: No. No. No. I don't understand where you're getting information the FBI asked him about --

MS. WEINTRAUB: I gave him a certified copy of his bankruptcy.

MS. JIMENEZ: Right now?

MS. WEINTRAUB: Yeah. It's in the binder.

MS. JIMENEZ: Nobody's asked him about --

THE COURT: So Ms. Jimenez, you have no objection to the introduction of evidence of the witness's bankruptcy?

MS. JIMENEZ: I have objection to all of it. First of all, bankruptcy doesn't go to truthfulness --

THE COURT: Yeah. I must say --

MS. WEINTRAUB: I think lying to 55 to a hundred creditors --

THE COURT: There hasn't been a determination, Ms. Weintraub. I understand there have been lawsuits, and there may be hundreds of lawsuits. But unless there's been a determination under Rule 608, the request to use that for purposes of impeachment is denied.

MR. ETRA: What about the fact, if I may --

(Court reporter interruption.)

MR. ETRA: Sorry. What about the fact that -- if he says he told the FBI one thing about why he came, and these documents would tend to show that he wasn't being truthful to the FBI, but he really came to escape his creditors and his past?

THE COURT: That's collateral impeachment. And once again, the collateral impeachment relates to allegations that have been made in a civil lawsuit to which there's been no determination. We're back to where we started.

All right. Let's continue.

MS. WEINTRAUB: Judge, I'm going to also ask -- Judge, I'm going to ask for a few minutes to confer --

THE COURT: Hold on. Hold on. Hold on.

MS. WEINTRAUB: Obviously, this witness has become more than hostile, and I'm going to ask for a few minutes. I need to confer with my client because there's certain other matters that he wants me to discuss that --

THE COURT: I don't know what you're -- let's continue with the cross-examination.

MS. WEINTRAUB: Judge, I'm done. And I'm asking for five minutes to confer with my client.

THE COURT: You've been continuing -- just finish the cross-examination. If you want to confer with Mr. Sheppard right now, do it before you conclude your cross-examination.

MS. WEINTRAUB: Thank you.

(End of discussion at sidebar.)

THE COURT: Okay. Thank you for your patience, Ladies and Gentlemen. Let's continue with the cross-examination.

(Pause in proceedings.)

THE COURT: All right. Any further cross-examination?

BY MS. WEINTRAUB:

Q. Mr. Beirne, you've known Eric Sheppard for almost 20 years?

A. Approximately.

(Court reporter interruption.)

BY MR. WEINTRAUB:

Q. You've known Eric Sheppard for about 20 years?

A. Approximately.

Q. And you say prayers for him every day?

A. I do.

Q. And do you remember around the time that you were working for him in '20 and '21 that -- in '21, actually, that he was attending regularly his daughter's state championship basketball games and you would go with him?

MS. JIMENEZ: Objection. Outside the scope, relevance.

THE COURT: Sustained.

BY MS. WEINTRAUB:

Q. When the FBI was interviewing you about Mr. Sheppard, did they ask you about your background?

A. Not that I can remember.

Q. Did they ask you any questions about your business?

A. What business?

Q. Any business that you had.

A. I don't remember.

Q. I'm sorry?

A. I don't remember.

Q. The only thing that they asked you about was whether you were a 1099 or W-2 employee of Eric Sheppard?

A. That was one of the questions.

Q. Can you think of another?

MS. JIMENEZ: Objection. Vague.

THE COURT: Overruled.

(Pause in proceedings.)

THE COURT: Sir, are you able to answer the question?

THE WITNESS: I need the question repeated, please.

BY MS. WEINTRAUB:
Q. You told them all about how Eric Sheppard owed you money, right?
A. Told who?
Q. Told the FBI. We're talking about what the FBI asked you and what you said.
A. I told them there was an invoice still out there.
Q. But you didn't give it to them and they didn't ask you?
A. No.
Q. To both questions?
MR. WEINTRAUB: Sorry. I should not have asked two questions at once. I apologize to the Court.
BY MR. WEINTRAUB:
Q. They did not ask you, did they, for the invoice?
A. Not that I can remember.
Q. And they did not ask you about even your background with Eric Sheppard because you didn't tell them that you worked there in 2017 and '18, did you?
A. I can't remember.
Q. Now, we talked a lot before about the direct deposit, and I pulled up -- one of the things I pulled up was the lease agreement that you signed with the landlord. Remember that, with Tammy Roussel?
MS. JIMENEZ: Objection. He didn't identify the lease.

THE COURT: If you could identify it by its exhibit number and then please show the witness.

MR. CAVALLO: M-15.

BY MR. WEINTRAUB:

Q. And now I'm going to show you just for your eyes only M-3. It's a direct deposit setup form.

THE COURT: I'm sorry. So not M-15? Now it's M-3?

BY MS. WEINTRAUB:

Q. I asked you about M-15, and now I'm asking you about M-3. I asked you about setting up a direct deposit. Do you remember that?

A. Do you want me to look at my monitor?

THE COURT: Yes. If you'll show M-3 to the witness only.

BY MR. WEINTRAUB:

Q. You see that?

A. Yes.

Q. Is that your signature?

A. Yes.

Q. And that says "Employee Agreement," right?

A. (No verbal response.)

Q. Yes? It's highlighted for you. "Employee Agreement."

A. I do see that now, yes.

MR. WEINTRAUB: Your Honor, we would move M-3 into evidence.

THE COURT: Any objection?
MS. JIMENEZ: No objection.
THE COURT: All right. Admitted into evidence.
(Defendant's Exhibit M-3 received into evidence.)
BY MR. WEINTRAUB:
Q. Now, Burlington was supposed to be delivered May 1st, right?
A. I don't remember the exact date.
Q. But you do know it wasn't delivered May 1st, right?
A. I do know that. Yes.
Q. And you do know that there were a lot of penalties that were imposed, right?
A. I wasn't privileged to that.
Q. You do know when there -- there was a Certificate of Occupancy. You know that, right?
A. I know there was a Certificate of Occupancy, yes.
Q. As a matter of fact, did you claim that you got that?
A. I helped facilitate that.
Q. And you helped Mercedes Fonseca?
A. No.
Q. How did you help facilitate it?
A. By getting the job done.
Q. Oh. But you get the permit and you didn't get the CO, did you?
A. I facilitated the help to get the job done.

Q. Okay. Well, you didn't really get the job done because there was a 55-page punch list, wasn't there?

A. Yes. There was a punch list.

Q. Fifty-five pages worth?

A. It was a lot of pages.

Q. Do you dispute that it was 55?

A. I do not know the exact amount of pages.

Q. Okay.

MR. WEINTRAUB: Chris, that's it.

BY MR. WEINTRAUB:

Q. Do you agree that there was a large punch list of things that still had to get done for Burlington?

A. There was a punch list.

Q. Did you hear the question?

A. Repeat the question.

MS. JIMENEZ: Objection. Asked and answered.

THE COURT: The witness said there was a punch list.

MS. WEINTRAUB: Well, Judge, there's a difference between a 55-page punch list and a two-page punch list. And if I have to --

THE COURT: He stated that he didn't know the exact amount of pages.

BY MS. WEINTRAUB:

Q. Well, then we'll refresh your recollection.

MR. WEINTRAUB: Pull that up.

THE COURT: Exhibit number, and the witness only.

MR. CAVALLO: This will be Defendant's Exhibit M-18.

MS. JIMENEZ: Government has not seen this exhibit, Your Honor.

MR. CAVALLO: That's correct.

BY MS. WEINTRAUB:

Q. While we're waiting for that, what is a punch list, Mr. Beirne?

A. It is a list of things that need to be done on a big box.

Q. When you say "big box," do you mean on the jobsite of 60,000 square feet?

A. Yes.

Q. And do you agree that 60,000 square feet is the size of a football field?

A. It's big.

Q. Is that a yes that you agree?

A. Yes.

Q. So I'm showing you now a copy of the punch list. Do you agree that's the copy of the punch list?

A. I saw a punch list. I can't remember if this is the specific one.

Q. Did you see many for October 29th, 2020, for Burlington?

A. I remember seeing punch lists for Burlington.

Q. On the direct deposit form, on M-3 that we just looked at, the Employee Agreement that you signed, you signed it knowing

that you were saying you're an employee, right?
A. No. That was a form letter from the bank.
Q. Oh. So did you say: "No. I'm not an employee" and cross it off?
A. No.
Q. You just signed it?
A. That was a form letter from the bank for direct deposit.
Q. Okay. But if there was a form letter that -- maybe there's a form letter that says: "I'm not a W-2 employee. I'm a 1099ed employee." Did you ask?
A. That was a form letter from the bank for direct deposit.
Q. You're not answering my question.
A. Repeat the question.
Q. Did you ask if there's a different form?
A. No.
Q. And isn't it true that you considered yourself to be employed by Eric Sheppard's companies?
A. No.
Q. No?
A. I'm a general -- I'm a contractor. I'm not an employee.
Q. Did you work for him every day for three years?
A. I was on the site for three years, yes.
Q. Every day?
A. Pretty much.
Q. You worked for him every day for three years, and you

signed an Employee Agreement because it was given to you, and now you're saying you weren't employed by him? Is that your testimony?
A. I'm saying that this was a form letter that I signed for direct deposit.
Q. Are you saying --
MS. JIMENEZ: Objection. The question has been asked and answered.
THE COURT: Let me hear the next question and I'll be able to rule on it.
MS. WEINTRAUB: I was trying.
THE COURT: All right. What's the next question?
BY MS. WEINTRAUB:
Q. Is it your testimony that you were not an employee because you are not -- because Eric Sheppard didn't withhold taxes and you went to pay your own?
A. Repeat the question.
Q. As a 1099ed employee, you had to pay your own taxes, right?
A. I pay my own taxes, yes.
Q. And as a 1099ed employee, that's your responsibility? Yes?
A. Yes.
Q. What other difference was there aside from being a 1099 or W-2 employee, as far as you were concerned, working?
A. Repeat the question.
MR. WEINTRAUB: I have no further questions.

THE COURT: All right. Any redirect?

MS. JIMENEZ: Sure.

REDIRECT EXAMINATION

BY MS. JIMENEZ:

Q. Mr. Beirne, the form that you were shown for direct deposit, that was provided to you by the bank; is that right?

A. Yes.

Q. And in order to be paid, you needed to sign that form?

MS. WEINTRAUB: Objection. Leading.

THE COURT: Sustained.

BY MS. JIMENEZ:

Q. Did you need to sign the form in order to receive your direct deposit?

A. Correct.

Q. Is there any question in your mind whether the payments that you received was for your work as a contractor or as a W-2 employee?

MS. WEINTRAUB: Objection, Your Honor. Leading.

THE COURT: Overruled. I'll allow it.

THE WITNESS: Can you repeat that question?

BY MS. JIMENEZ:

Q. Yes, sir. Was there any question in your mind as to whether you were paid as a contractor or paid as a W-2 employee?

A. Repeat the question.

Q. Sure. Were you paid as a contractor or were you paid as a W-2 wage employee?
A. I was a contractor.
Q. And you are a contractor and a developer by trade; is that correct?
A. Yes. That's correct.
Q. Is that normally how you're paid?
A. Yes.
Q. Did Mr. Sheppard withhold any Medicare taxes from any payments you received?
A. I was not on payroll.
Q. Did Mr. Sheppard withhold any Social Security taxes from the payment you received?
A. No. No.
Q. Did he withhold at any point any income tax from the payments you received?
A. No.
Q. The letter you -- or the email that you conveyed to Mr. Vasilas, was that -- I don't know what exhibit number it was.
MS. MARTINEZ: Do you need me to find it?
MS. JIMENEZ: Yes.
BY MS. JIMENEZ:
Q. That exhibit, M-8, that was shown to you with the email you conveyed to Mr. Vasilas, where you called him a liar and a

cheat, do you recall that?
A. I do.
Q. What was the dispute that you were having with Mr. Vasilas at that time?
A. I was trying to get an invoice paid.
Q. You were trying to get yourself paid?
A. I was trying to get an invoice paid, yes.
Q. Now, were you calling him a liar and a cheat for that reason, because you were not -- because you had been promised you were going to be paid and you weren't paid?
A. Correct.
Q. And that occurred in 2020 when you were working directly under Mr. Vasilas; is that right?
MS. WEINTRAUB: Objection. Leading.
THE COURT: Sustained.
BY MS. JIMENEZ:
Q. In what year were you working directly under Mr. Vasilas when Mr. Vasilas was paying you?
A. I believe that letter was made in 2021, after I had already left the job. So it was an invoice that was due.
Q. And the work that you did under Mr. Vasilas, in what year was that?
A. 2020.
Q. And was it the case that you were paid more frequently when you went to work under Mr. Vasilas than you had been

frequently -- than you had been -- I'm sorry -- before, when you were working directly under Mr. Sheppard?

A. That was the end of the job. I also had expenses that I had put on my credit card to help get material for the job. So it was wages -- and wages is something that we base our hourly rate on through our experience.

Q. Okay. But they are not wages because they are not W-2 --

MS. WEINTRAUB: Objection, Your Honor. And we can swear counsel in, but she's testifying.

THE COURT: Is that grounds of leading?

MS. WEINTRAUB: Yes, Your Honor. Sorry.

THE COURT: Sustained.

BY MS. JIMENEZ:

Q. Mr. Beirne, were you paid W-2 wages or you were you made payments as a contractor?

A. We're paid by our experience that we have, which is -- in the construction industry, is a wage versus hourly rate. You as a client -- or you as a lawyer bill somebody your wage or your hourly rate. We call them wages, I guess, out in the construction field. So...

Q. Did you ever receive a W-2 from Mr. Sheppard?

A. No.

Q. Were you paid on a more regular basis when you were working directly under Mr. Vasilas than you were previously under Mr. Sheppard?

A. Yes.

Q. And the money that you were owed by Mr. Sheppard, had you performed work to earn that money?

A. Yes. Those were back wages for me being the property manager.

MS. WEINTRAUB: Objection, Your Honor. There's no question pending.

THE COURT: Sustained.

BY MS. JIMENEZ:

Q. You were asked questions about the Burlington project, and were asked if it was -- if it involved jobs created and people paid. Do you recall that?

A. I don't remember.

Q. And were there people who were not paid?

A. Yes.

MS. WEINTRAUB: Objection, Your Honor. It calls for a hearsay response.

THE COURT: Sustained.

BY MS. JIMENEZ:

Q. Well, you yourself were not paid; is that correct?

A. Yes.

Q. The project -- I think there were questions about whether it was over budgeted and underfunded. What was your understanding as to who owned the shopping mall where the Burlington Coat Factory was located?

MS. WEINTRAUB: Objection, Your Honor, unless I can have recross because that wasn't the question.

THE COURT: Hold on. What's the legal basis of the objection?

MS. WEINTRAUB: Beyond the scope. Misstating the evidence.

THE COURT: Overruled. Overruled.

You may continue.

THE WITNESS: Repeat the question.

BY MS. JIMENEZ:

Q. Yes. The Alafaya Trails shopping center, is that where Burlington was located?

A. Yes.

Q. What was your understanding of who owned the shopping center where Burlington was located?

A. Eric Sheppard owned the shopping center.

Q. Who would have provided the funding for that -- or who provided the funding for that Burlington build-out, if you know?

MS. WEINTRAUB: Objection, Your Honor. Outside the scope of his knowledge. Calls for hearsay.

THE COURT: If the witness knows.

MR. WEINTRAUB: And it's beyond the scope.

THE COURT: If the witness knows. Overruled.

THE WITNESS: Repeat the question.

BY MS. JIMENEZ:
Q. Yes. Who funded the Burlington Coat Factory project build-out?
A. Eric Sheppard.
Q. Now, did you send a -- some type of invoice to the Defendant to be paid?
A. Yes. To the office manager Jeanette.
Q. Did she receive it?
MS. WEINTRAUB: Objection, Your Honor.
BY MS. JIMENEZ:
Q. Do you know whether she received it?
MS. WEINTRAUB: Objection.
THE COURT: Sustained.
THE WITNESS: Repeat the question.
THE COURT: There's no need. You can ask a different question or you can let the Court know if you're done with the redirect.
BY MS. JIMENEZ:
Q. Did you follow up with Mr. Sheppard at any point to be paid?
A. Repeat the question.
Q. Did you -- did you follow up or communicate with Mr. Sheppard about being paid?
A. We talked about him getting the contract funded.
Q. What did he tell you?

MS. WEINTRAUB: Objection. Can we have a time frame?
THE COURT: Do you want to clarify in terms of if he's aware of the time frame?
BY MS. JIMENEZ:
Q. When you had -- when you talked, approximately when was that, if you remember?
A. 2020.
Q. What did he tell you?
A. He was trying to --
MS. WEINTRAUB: Excuse me. I object. I'd like some context. 2020 is a long time --
THE COURT: It was the conversation that he had. It's proper. Overruled.
THE WITNESS: Repeat the question.
THE COURT: You may answer the question.
BY MS. JIMENEZ:
Q. Well, the conversation that you had with Mr. Sheppard about being paid, what did Mr. Sheppard tell you?
A. He was trying to provide financing for the project to get it done, to get Burlington in there.
Q. What reason did he give you for not paying you?
MS. WEINTRAUB: Objection. Leading.
THE COURT: Overruled.
MS. WEINTRAUB: It's assuming facts not in evidence --
THE COURT: Overruled.

MS. WEINTRAUB: -- that he gave any explanation.

THE COURT: Overruled. You may answer the question.

THE WITNESS: I need you to repeat the question.

BY MS. JIMENEZ:

Q. Sure. What reason did Mr. Sheppard provide you for not paying you?

A. He was trying to get Burlington in to get his cash flow going.

Q. Did he tell you that he was getting PPP money?

MS. WEINTRAUB: Objection, Your Honor, whatever the rest of the sentence is.

THE COURT: And the basis?

MS. WEINTRAUB: Leading, Your Honor.

THE COURT: Sustained. All I need from everyone, if you're making an objection: "Objection," legal basis, and then I can rule.

The objection is sustained. Your next question.

BY MS. JIMENEZ:

Q. On the Paycheck Protection Program package that you provided to the bank, I think you indicated that you believed it was second round. In terms of time frame, in what year was this that you recall?

A. This was 2020.

Q. And do you know if there was funding provided more than once in 2020?

MS. WEINTRAUB: Objection, Your Honor. Leading.
MS. JIMENEZ: I'm asking the question.
THE COURT: Overruled. You may ask the question.
BY MS. JIMENEZ:
Q. Sir -- yes.
A. Can you repeat the question?
Q. Yes. I apologize. Do you know if there was funding more than once in 2020?
A. Yeah. The institution I brought him to had a second round of funding. We didn't get the application in for the first round, so we got it in for the second round.
Q. But that wasn't --
A. That particular institution.
Q. And that was in 2020?
A. That was in 2020.
Q. You testified that subcontractors were not getting paid. How do you know that?
MS. WEINTRAUB: Objection, Your Honor. Leading and assuming facts not in evidence.
THE COURT: Sustained.
BY MS. JIMENEZ:
Q. You were asked questions about going back to Ohio and coming back to South Florida. Do you recall being asked about leaving and coming back?
A. Yes.

Q. Can you explain?
A. I can't. I was -- I made a commitment to get the Burlington done and I fulfilled my obligation.
Q. Did you return to Ohio at any point to visit family or for other reasons?
A. Yes.
MS. WEINTRAUB: Judge --
MS. JIMENEZ: I have nothing further, Your Honor.
MS. WEINTRAUB: Excuse me, Ms. Jimenez. I would object. I would renew my motion at sidebar on 608, now that it's been discussed and asked by the Government just now, and I would ask for recross briefly.
THE COURT: The question called for a yes-or-no response and it's proper. Is there any further redirect?
MS. JIMENEZ: No, Your Honor.
THE COURT: All right. Thank you.
Is the witness excused, Ms. Jimenez?
MS. JIMENEZ: From the Government, yes, Your Honor.
THE COURT: On behalf of the Defendant?
MS. WEINTRAUB: May I have recross, Your Honor?
THE COURT: The request for recross is denied. Is the witness excused, Ms. Weintraub?
MS. WEINTRAUB: I'm conferring with my co-counsel, if I might, Your Honor.
(Pause in proceedings.)

MS. WEINTRAUB: Yes, Your Honor.

THE COURT: All right. Thank you, sir. You are excused.

(Witness excused.)

THE COURT: And Ladies and Gentlemen, let's take a 10-minute recess, please.

COURT SECURITY OFFICER: All rise.

(Jury not present, 2:32 p.m.)

THE COURT: All right. Thank you, sir. You are excused.

And the Government's next witness will be?

MS. JIMENEZ: Your Honor, the Government's next witness is Jammie Hutcheson.

THE COURT: All right. Is that individual here?

MS. JIMENEZ: Yes.

THE COURT: Okay. We're on a 10-minute recess.

(Recess from 2:33 p.m. to 2:47 p.m.)

THE COURT: All right. Welcome back.

Let me acknowledge the presence of the Defendant.

Both sides ready to continue?

MS. JIMENEZ: Yes, Your Honor.

THE COURT: All right. I do want to remind you that we will be adjourning at four p.m. today.

Okay. Let's bring in the jury, please.

COURT SECURITY OFFICER: Remain standing for the jury, please.

(Before the Jury, 2:48 p.m.)

THE COURT: All right. Welcome back, Ladies and Gentlemen.

Please be seated.

And the Government's next witness, please.

MS. JIMENEZ: Yes, Your Honor.

The Government calls Jammie Hutcheson.

(Pause in proceedings.)

THE COURT: Good afternoon.

COURTROOM DEPUTY: Please raise your right hand for me.

JAMMIE HUTCHESON, GOVERNMENT WITNESS, SWORN

COURTROOM DEPUTY: Thank you.

Have a seat.

Would you please state your name and also spell it for the record.

THE WITNESS: Jammie, J-A-M-M-I-E. Hutcheson, H-U-T-C-H-E-S-O-N.

COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MS. JIMENEZ:

Q. Good afternoon, Ms. Hutcheson. Were you served with a subpoena to appear at this trial?

A. Yes, I was.

Q. Where do you work?
A. I work for PayPal.
Q. What is PayPal?
A. PayPal is an online Fintech company primarily focused on sending online payments; however, we have expanded services to other services to benefit small businesses, including loan processing.
Q. You mentioned the word Fintech. What is Fintech?
A. Financial tech, technology.
Q. Can you describe briefly your work experience at PayPal. When did you join PayPal?
A. Yes. I joined PayPal in November of 2003. So I've been there for 20 years and have held a number of different roles in that time. I started in customer service, and have led many different customer service teams, account managers, sales reps. And I was customer experience manager for financial services in 2020. And then, most recently, I'm now a product operations manager.
Q. What was -- what did you do as a customer experience manager in the -- what time period did you do that in?
A. I did that from 2018 to 2022.
Q. What was that? What were your responsibilities?
A. I was in business financial services, and I oversaw the customer experience for all of PayPal loan products, understanding the customers' needs and wants, and how they use

our loan products. Also handled different complaints from customers or if a customer were to have any issues with a loan, if they filed a Better Business Bureau complaint, CFPB. Also helped customers if they were having any questions that couldn't get answered through our customer lines. And so I was like an escalated point of contact.

Q. Now, in what city and state is your office located?

A. I'm in Omaha, Nebraska.

Q. Does PayPal have offices in other locations?

A. We do.

Q. In other states?

A. Yes. In several other states, including Arizona, Delaware, Maryland.

Q. Was PayPal involved in the processing of Paycheck Protection Program loans?

A. Yes, we were.

Q. For both the first round in 2020 and also -- for the first rounds in 2020 and also in 2021?

A. Yes.

Q. Did PayPal work with any lenders in -- in the work that it did in connection with the Paycheck Protection Program?

A. Yes. PayPal was the processor and servicer of the PPP loans. WebBank was the lender.

Q. I'm sorry. Who was the lender?

A. WebBank.

Q. Where is WebBank located?
A. They're located in Utah.
Q. Now, were all of the Paycheck Protection Program loans that PayPal processed -- were they all on behalf of WebBank?
A. Yes, they were. They are our exclusive lender for PPP.
Q. Through your work at PayPal, did you become familiar with the policies and procedures that PayPal had in place to process the PPP loan applications?
A. Yes.
Q. What did PayPal do in connection with the Paycheck Protection Program?
A. We would -- we had an online portal where customers could apply for the Paycheck Protection Program loans. And customers would submit their application, along with any documentation, through our loan portal. PayPal would review those loan documents and review the -- the applicant's qualification based off of the SBA guidelines set forth. And then we would make a recommendation to the bank, to WebBank, on whether or not that loan should be funded.
Q. Was -- you said the review of the loan applications, it was based on guidance you received from the SBA. And did you have any -- was WebBank involved also in the processes that you put in place for the determinations that you made?
A. Yeah. The guidance was primarily from the SBA for the PPP loans; however, we did have a credit policy with WebBank that

was applicable to all of our loan products, which oversaw how we would verify customers' identity under Know Your Customer.

Q. Now, in this process, did WebBank undertake an independent review of the applications you submitted to them or was generally your tentative recommendation what they accepted and funded?

A. They accepted our recommendation.

Q. All right. Where were PayPal's servers located in 2020 and 2021 to receive loan application information and documentation?

A. Nevada, Arizona, and Utah.

Q. Now, where were PayPal's offices that actually processed loan applications under the PPP?

A. Arizona, Delaware, and Maryland.

Q. All right. Now, in 2020 and 2021, how would someone go about applying for a PPP loan from WebBank?

A. It was all done online through PayPal's online portal. So you could go to paypal.com/ppp. The customer would fill out the application. And as I mentioned earlier, there was a portal that they could submit documentation through.

Q. All right. Did PayPal produce records in response to a subpoena relating to a company by the name of HM-UP Development Alafaya Trails, LLC?

A. Yes, we did.

MS. JIMENEZ: Your Honor, may I approach the witness?

THE COURT: You may.

BY MS. JIMENEZ:
Q. Ms. Hutcheson, I'm showing you Government's Exhibit 17. Do you recognize that?
A. Yes, I do.
Q. Do you know what it is?
A. Yes. It's a disk containing the documents that PayPal supplied as a result of the subpoena. I reviewed the disk and documentation yesterday and initialed the disk with the date.
Q. All right.
MS. JIMENEZ: The Government moves Government's Exhibit 17 into evidence.
THE COURT: Is there any objection?
MR. ETRA: Sorry. Could I just confer briefly with counsel?
THE COURT: All right.
MR. ETRA: May I confer briefly with counsel, Your Honor?
THE COURT: Yes.
(Pause in proceedings.)
THE COURT: Any objection?
MR. ETRA: Your Honor, based on the testimony, we can't object, so we won't object.
MS. JIMENEZ: Your Honor --
THE COURT: Seventeen admitted into evidence.
(Government's Exhibit 17 received into evidence.)

MS. JIMENEZ: -- we also have a series of sub-exhibits which come from the records that were produced -- well, the sub-exhibits were also produced. The sub-exhibits are contained on the disk, and they are Exhibits 17-1 through 17-12, 18-1 through 18-6, and 19-1 through 19-20. We would like to move those into evidence.

THE COURT: And they are all part of Exhibit 17?

MS. JIMENEZ: They are.

THE COURT: Is there a need to introduce them separately once again if they are already in 17?

MS. JIMENEZ: Well, they are broken out because the -- PayPal's production is large. So they are individual documents broken out.

THE COURT: All right. Is there any objection?

MR. ETRA: No objection, Your Honor.

THE COURT: All right. All admitted into evidence.

(Government's Exhibits 17-1 through 17-12, 18-1 through 18-6, and 19-1 through 19-20 received into evidence.)

MS. JIMENEZ: All right. If we could show Government Exhibit 17-1.

Could we make that a little bigger.

Just this page -- every page.

BY MS. JIMENEZ:

Q. Showing you a portion of Government's Exhibit 17-1. Do you recognize this?

A. Yes. These are screenshots of PayPal's application process that was done online for applicants to submit for the Paycheck Protection Program loan.

Q. When someone goes into the PayPal portal to apply for a PPP loan in 2020, is this something that they would see?

A. Yes, it is.

Q. Now, to submit an application, do you have an actual form online that they fill out or are they answering questions?

A. Yes. This is the form.

Q. Well -- okay. So this is the form.

A. Yes.

MS. JIMENEZ: Can you go back to the regular screen.

BY MS. JIMENEZ:

Q. On the form on this page, generally what information are you asking the applicant to provide?

A. We're asking for the business name, the applicant's name, email address, and then down below there's a number of questions.

Q. Okay.

MS. JIMENEZ: Let's -- can we go to the next page.

BY MS. JIMENEZ:

Q. All right. Here, the first entry for the first box says what?

A. "Business Entity Type."

Q. Now, there's a little arrow next to it. Is that a drop box?

A. Yes. It's a drop box with a number of different selections that they could make to indicate the industry type.

Q. Well, this would be the business entity type. So this would be -- are they an LLC, are they a sole proprietorship? Does it have those kinds of options?

A. Yes. Exactly.

Q. And then the next box indicates trade name or d/b/a. Do you know what a d/b/a is?

A. Yes. It's "doing business as." So if a business was doing business under another name, they would indicate that here.

Q. Is a d/b/a supposed to be a reference to the same company as the business entity?

MR. ETRA: Objection. Leading.

THE COURT: Sustained.

BY MS. JIMENEZ:

Q. Explain further -- what is a d/b/a?

A. It is when a business is doing business under another name, generally the same business or connected businesses.

Q. All right. Going down to "Business Industry," on the same page, there is a drop box as well; is that right?

A. Yes, it is.

Q. Generally, what's contained in the drop box?

A. It would be the type of industry they're in. So it could be construction. It could be building. It could be photographers, landscapers.

Q. All right. And then there's a box asking for number of employees; is that right?

A. Yes, there is.

Q. And what individuals is a -- if someone is applying as a business with employees, who are the people who are supposed to be designated as their employees?

A. These would be employees of the business that they pay directly, generally considered W-2 employees where they withhold taxes, they may offer benefits, things like that.

Q. And then the Average Monthly Payroll, what is the applicant supposed to fill in?

A. They are supposed to put in the payroll for those employees.

Q. For what period of time?

A. For one month.

Q. All right.

MS. JIMENEZ: Let's go to the next page.

BY MS. JIMENEZ:

Q. Generally, on this page, it says: "Enter personal information." Whose personal information would be entered on this page?

A. This would be the applicant who would be authorized to apply for a loan on behalf of the business.

Q. So it's the person who's filling out the questionnaire for that business, right?

A. Correct.

Q. All right. Toward the bottom of the page it asks a question.

MS. JIMENEZ: Can we highlight the bottom.

Yeah.

BY MS. JIMENEZ:

Q. It asks: "Are there any other business owners with 20 percent or more ownership?"

Why do you want to know that?

A. Under the SBA guidelines, if there were other business owners with more than 20 percent ownership, they would also have to apply and be aware of the loan.

Q. All right. And then the next question is: "Are you a controlling manager of the business?"

What does that mean?

A. It means somebody with stake in the business, as in an owner greater than 20 percent or authorized business representative to apply for a loan on behalf of the business.

Q. All right.

MS. JIMENEZ: Next page.

All right. Next page.

All right. Could we expand it.

Yes.

BY MS. JIMENEZ:
Q. And then here what are you asking the applicant -- the first question?
A. We're asking for the purpose of the loan, and we ask that they select all that would apply. So under SBA guidelines, they could use the loan for things like payroll, rent, mortgage, utilities, et cetera.
Q. All right. And then the question below the franchise, what are you asking?
A. "Is the applicant or any owner of -- the applicant an owner of any other business or have common management with any other business?"
Q. What does that mean?
A. It's are they owners of other businesses.
Q. Like affiliates, related companies?
A. Yes.
Q. All right.
MS. JIMENEZ: Next page.
That's the same page.
All right. Yes. Go ahead.
Thank you.
BY MS. JIMENEZ:
Q. And what is on this page?
A. This page has a number of certifications that we ask the applicant to review and that they're agreeing to by completing

the application.

Q. Can you read the first certification.

A. "I certify that I have read the statements included in this form, including the statements required by law and executive orders, and I understand them."

Q. All right. And then the next sentence, please.

A. "The applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration implementing the Paycheck Protection Program under Division A, Title 1, of the Coronavirus Aid, Relief, and Economic Security Act."

Q. Thank you.

All right. Then just one more paragraph, the next one, please.

A. "The applicant is an independent contractor, eligible self-employed individual, or sole proprietor, or employs no greater than -- greater of 500 or -- employees or, if applicable, the size standard in number of employees established by the SBA in 13 CFR 121.201 for the applicant's industry."

Q. All right. And so was it the case that under this paragraph the applicant would be either an independent contractor, or a sole proprietor, or a business with no more than 500 employees? Is that right?

A. That is correct.
Q. All right.
MS. JIMENEZ: Is there another page?
No. No.
BY MS. JIMENEZ:
Q. All right. On this page the second -- the second sentence provides what?
A. "All SBA loan proceeds will be used only for business-related purposes, as specified in the loan application and consistent with the Paycheck Protection Program rule."
Q. All right. And so after someone answers these questions and reviews the certifications --
MS. JIMENEZ: Can you go back to the regular page.
All right. Then the very last box. Just the very last box.
BY MS. JIMENEZ:
Q. All right. So the very last paragraph they are submitting the application at this point; is that right?
A. Correct.
Q. And what are they agreeing to do?
A. They're agreeing to all of the certifications and authorizations above, as well as these two check boxes. The first is to receive legal disclosures electronically, and the second is authorizing us to pull personal and business credit reports and evaluate eligibility.

Q. All right. So they submit it for you to evaluate their eligibility; is that right?
A. Correct.
Q. So -- and this is submitted electronically to one of the PayPal servers; is that right?
A. Yes.
Q. Okay.
MS. JIMENEZ: Can we go to Exhibit 17-2, please.
BY MS. JIMENEZ:
Q. Looking at Exhibit 17-2, what is it?
A. This is lead information. So after an applicant submits --
MR. ETRA: Objection. I don't think there's a question pending.
THE COURT: That's correct.
MS. JIMENEZ: I asked --
BY MS. JIMENEZ:
Q. Well, what is -- can you explain what is in this exhibit.
A. This is a screenshot of PayPal's customer relationship management tool. This information is gathered from the application that is submitted.
Q. Now, on this -- and so is this some of the information you would see that is submitted when questions are answered in response to the form that we saw, Exhibit 17-1?
A. Yes, it is.
Q. All right. Now, here, who is the owner listed?

A. Eric Sheppard.
Q. And in what city is Eric Sheppard listed as being located?
A. Bal Harbour, Florida.
Q. What is the phone number provided?
A. (305)582-5529.
Q. What is the email address that's provided?
A. Eric.sheppard10@gmail.com.
MS. JIMENEZ: I'd like to move Government's Exhibit 69, which is AT&T records.
THE COURT: Is there any objection?
MR. ETRA: May I just have a moment, Your Honor?
THE COURT: Did you say 69?
MS. JIMENEZ: I said 69, yes.
THE COURT: Docket 126 only goes up to 56-2.
MS. MARTINEZ: It's Docket 137.
THE COURT: Okay. Thank you.
Is there any objection?
MR. ETRA: Aimee, is there a cert on this?
MS. JIMENEZ: Yes.
MR. ETRA: No objection, then.
THE COURT: All right. Admitted into evidence.
(Government's Exhibit 69 received into evidence.)
MS. JIMENEZ: Can we take a look at Exhibit 69, Page 18, please.
I'd like to move Exhibit 69 into evidence, if it's

not -- okay. It's published.

Okay. The next -- is this Page 18?

Eighteen. Page 18.

Can we go down to the User Information.

BY MS. JIMENEZ:

Q. All right. Can you please read the MSISDN number that's listed.

A. (305)582-5529.

Q. Does it indicate who the user is of this phone number?

A. The name is Eric Sheppard.

Q. All right.

MS. JIMENEZ: Go back to Exhibit 17-2. Can we -- we'd like to move in Exhibit 8, which is Google.

MR. ETRA: Which one?

MS. JIMENEZ: Google, Exhibit 8.

MR. ETRA: Eight?

MS. JIMENEZ: Yeah.

THE COURT: Is there any objection?

MR. ETRA: Your Honor, I'd like to look at it briefly, please.

(Pause in proceedings.).

MR. ETRA: All our 8s are 8 dash something.

MS. JIMENEZ: All of 8.

THE COURT: 8-1, 8-2, 8-3?

MS. JIMENEZ: It's 8-1 through 8-3, yes.

THE COURT: Any objection?

MR. ETRA: I have to open each one individually. So while normally I wouldn't have an objection if there's a certification, I just have to be able to look at it before I can say --

THE COURT: All right.

(Pause in proceedings.)

MS. JIMENEZ: Your Honor, for the record, all of these exhibits were provided with certifications and...

MR. ETRA: No objection, Your Honor.

THE COURT: All right. Admitted into evidence.

(Government's Exhibits 8-1, 8-2, and 8-3 received into evidence.)

MS. JIMENEZ: All right. Could we show Exhibit 8-1, please.

BY MS. JIMENEZ:

Q. All right. This is Google Subscriber Information. Do you see that?

A. Yes.

Q. What is the name of the subscriber?

A. Eric Sheppard.

Q. What is the email address?

A. Eric.sheppard10@gmail.com.

MS. JIMENEZ: Can we go back to Exhibit 17-2, please.

BY MS. JIMENEZ:
Q. All right. Now, this record there is -- the bottom of the left column there's something that says: "IP address." What is that?
A. That's the IP address from which the applicant application was submitted.
Q. All right. Now, for -- what is the business that is applying for this loan?
A. HM-UP Development Alafaya Trails, LLC.
Q. How many employees does this form indicate that HM-UP Development Alafaya Trails has?
A. Eighty employees.
Q. All right.
MS. JIMENEZ: Can you go down to the second page.
BY MS. JIMENEZ:
Q. There is a number, 236220. What is that?
A. That's the industry code that -- based off the industry the applicant submitted. When they were filling out the application, and there was the drop-down box for the industry, they selected Commercial and Institutional Building Construction.
Q. And that was a selection made by the applicant; is that right?
A. Correct.
Q. Okay.

MS. JIMENEZ: Can we go to Exhibit 17-4.
BY MS. JIMENEZ:
Q. What is 17-4?
A. This is application data also taken from the application that was submitted online.
Q. Does this form tell you the date on which that online information was provided?
A. Yes. Down in the lower right, there's Application Submitted Date, April 15th, 2020.
Q. Is that when the information was provided to your servers?
A. Yes, it is.
Q. All right. Now, this has some of the information that was on the other document, right, the original lead information?
A. Correct.
Q. Here, it also indicates the business ownership percentage. And what is that? Do you see that at the left side?
A. Yes. Fifty-two percent ownership.
Q. All right.
MS. JIMENEZ: Can we go to --
BY MS. JIMENEZ:
Q. And then two boxes down, it indicates: "Doing business as, d/b/a," and what was the -- what was the information provided there?
A. The d/b/a submitted at the time of application was HM Management and Development.

Q. And so, from your standpoint, what is HM Management and Development?
A. It's another name that the business is doing business under.
Q. So that is another name for HM-UP Development Alafaya Trails?
A. Correct.
Q. All right.
MS. JIMENEZ: Can we go to the spreadsheet, 17-3.
BY MS. JIMENEZ:
Q. All right. Showing you Exhibit 17-3.
MS. JIMENEZ: Is this the top?
BY MS. JIMENEZ:
Q. What is this?
A. This is a Paycheck Protection Program loan calculator. This is a form that PayPal had available to applicants when they were applying for the PPP loan to help guide them through how much of a loan they would be eligible for and what documentation would be required when applying.
Q. Is this something that the person applying for the loan would see when they are filling out the other information?
A. Yes, it is.
Q. All right. And then is this also something that the applicant submits to PayPal electronically?
A. Yes. They can. It's not required. But this was

submitted.
Q. All right. Now, what time frame -- well, what is the time frame indicated here for? What is it for?
A. I'm sorry. I'm not sure I understand the question.
Q. Sure. So there is some date ranges about the middle of the page.
A. Okay. Yeah. So this would guide the applicant towards what documentation they would be providing and how they would calculate payroll costs for that period. So if a business was active throughout all of 2019, they could submit all of the first option from January 1st through December 31st of 2019 documentation. There's other options for seasonal businesses and new businesses that may not have been active for the full calendar year of 2019.
Q. All right.
MS. JIMENEZ: Let's go down this page.
I'm sorry. Let's go back to that date range.
BY MS. JIMENEZ:
Q. And so, for this applicant, the date range selected was the calendar year 2019; is that right?
A. Yes, it is.
Q. Okay.
MS. JIMENEZ: Let's go down the page.
BY MS. JIMENEZ:
Q. What was indicated as total gross, salaries, wages, and

commissions?
A. $582,926.33.
Q. Now, the notes -- what do the notes on the right-hand side indicate about the payroll costs, Line A?
A. That this would be the total gross salaries.
Q. And so, if you're applying as a sole proprietor, then it would be your total salary; is that right?
A. Yes, it is.
Q. And sole proprietor for the PPP program, were they capped at a certain amount if it's just one person?
A. Yes.
Q. What is that amount?
A. I don't recall off the top of my head.
Q. Okay. And then, if you're an independent contractor, that is just one person?
A. Correct.
Q. All right. Now, a business with employees, they can count the wages of who?
A. Of their employees. So that would be employees which they're paying direct salaries, typically withholding taxes, maybe paying benefits.
MR. ETRA: Objection, Your Honor.
THE COURT: Basis?
MR. ETRA: The witness is giving her opinion about a document. I don't know that she is competent to do that of her

own personal knowledge. I don't understand what -- that's the basis. That's the objection.

THE COURT: Sustained.

BY MS. JIMENEZ:

Q. So in -- on this form -- and you're familiar with this form based on the work that you did related to the PPP program, correct?

A. Yes.

Q. The total gross salaries, wages, and commissions for someone applying as a business with employees, the employee information that's provided here generally consists of what?

A. Of the salaries they're paying their direct employees.

Q. Okay. And then there's Row E for employee benefits, correct?

A. Yes.

Q. All right. And so the total payroll costs for this applicant was how much?

A. Total payroll cost of 703,000 -- $703,006.

Q. All right. Now, that payroll cost, under the PPP program, you take that amount to determine what?

A. You use that to determine their eligible loan amount. So you would divide the total payroll costs by 12 to get the monthly payroll, and then take that times 2.5.

Q. All right. And so the payment -- the loan payment they're entitled to is essentially two and a half times -- I'm sorry --

two and a half months of their payroll; is that right?
A. That's correct.
Q. And for this business, what was that amount?
A. $146,460.
Q. All right.
MS. JIMENEZ: Can we go to the next tab, "Documentation Required."
BY MS. JIMENEZ:
Q. What is this?
A. This is documentation that the applicant can submit to show their eligibility for the loan. And it's broken out based off of the type of business and whether or not they had filed tax returns.
Q. All right. Now, here, the right-hand side is what type of documentation?
A. It would be payroll processing data, other --
Q. I'm sorry. The right-hand side. That's your right hand too. Yes.
Okay. Yes. The right-hand side. If you had filed your 2019 tax returns --
A. Yeah. Consider these forms of verification.
Q. So let me ask you this question: Did you have -- did you ask applicants to submit different types of documents based on whether or not they had in 2019 already filed their tax returns?

A. Yes.

Q. And if they had filed their tax returns in 2019 -- this being April of 2020 -- for an LLC, what tax documents would they provide?

A. If they had provided -- if they had filed tax returns, they would provide their IRS forms. Either IRS Form 1120, 941 or 944, or 940.

Q. And if they are a partnership and indicated they were a partnership, what tax forms would they provide?

A. IRS Form 1065, 941 or a 944, or 940.

Q. And if they had not filed their tax returns, would you, at this point in 2020, accept unfiled, unsigned tax returns?

A. We would not.

Q. So if you have not yet filed your tax returns, what did you ask them to provide?

A. We asked them to provide payroll processing data, bank statements, any receipts, or other verifiable documentation.

Q. If you're applying as a business with employees, what are the bank statements supposed to reflect?

A. It would reflect wages paid and money coming in and out of the business.

MS. JIMENEZ: Could we go down.

Okay. All right. Can we show Exhibit 17-5.

All right. 17-5, could we just highlight the top here.

BY MS. JIMENEZ:
Q. What is this?
A. This is a bank statement we received. It's from SunTrust Bank.
Q. You received this bank statement for the application of HM-UP Development Alafaya Trails, correct?
A. Yes, we did.
Q. What is the name of the business on this account?
A. CJUF III Flagler, LLC.
MS. JIMENEZ: Can we show Exhibit 17-6, please.
BY MS. JIMENEZ:
Q. What is this Exhibit 17-6?
A. It's a bank statement from Bank of America.
Q. Is this something that you received in connection with this same application?
A. Yes, it is.
Q. And the entity -- the bank account is in what entity's name?
A. HM Management and Development, LLC.
Q. Is this the entity that was represented as the d/b/a of HM-UP Development Alafaya Trails?
A. Yes, it is.
MS. JIMENEZ: Can you show 17-7, please.
BY MS. JIMENEZ:
Q. Did you also receive this for this application, this

document?
A. Yes, we did.
Q. Okay.
MS. JIMENEZ: Let's go back.
BY MS. JIMENEZ:
Q. So in those bank statements would have been various payments; is that right?
A. Yes.
MS. JIMENEZ: Can we go to 17-8, please.
BY MS. JIMENEZ:
Q. What is this?
A. This is a document supplied as part of the application, and it indicates it's a payroll report for the time period of January 1st to December 31st, 2019.
Q. You received this document with this application; is that right?
A. Correct.
Q. There's a column for withholdings on this document. Do you see it?
A. Yes.
Q. Generally, what does that indicate to you, PayPal, receiving this document?
A. That would be funds withheld from the salary, generally tax withholdings.
Q. For W-2 employees?

MR. ETRA: Objection. Leading.
THE COURT: Overruled. I'll allow it.
THE WITNESS: Yes. That's correct.
BY MS. JIMENEZ:
Q. Do you see the same Martin J. Beirne here, or Beine, B-E-I-N-E [sic]?
A. Yes, I do.
Q. Do you see the name Jeff Graff here?
A. Yes.
Q. Do you see the name Maria Del Pilar Ataca?
A. Yes.
Q. Do you see Elva Baluarte?
A. Yes.
Q. All right. And the payroll determination -- is that on this page as well, that is the payroll figures that were provided to you?
A. Yes. It has salary.
Q. And the total at the bottom is $582,000 -- I'm sorry -- $582,926; is that right?
A. Correct.
Q. That was the payroll information that was provided with the application, correct?
A. Yes, it is.
Q. Plus the insurance benefits that were provided of 120,000. Do you see that on the far right?

A. Yes.

Q. And so the total -- the two added is the roughly $700,000 of payroll from which the loan amount would be determined; is that right?

A. That's correct.

Q. Now, what would the loan amount that you would authorize be if all of these individuals were provided to you with information that they were 1099 contractors?

A. Payroll costs were not applicable for individual contractors. We would only look at payroll costs of employees, owners.

Q. And so, my question to you is: What would the loan amount be if the information for these individuals provided to PayPal included the information that they were 1099 contractors?

A. For all of them or...

Q. All of them.

A. Then we would not have issued a loan.

MS. JIMENEZ: Can we go to 17-9, please.

BY MS. JIMENEZ:

Q. What is this?

A. This is a copy of the Florida driver's license we received as part of the application and documentation.

Q. Is this something you required?

A. Yes, we did.

Q. Why did you require this?

A. To know that the person applying was, in fact, a real individual, and it's part of that Know Your Customer verifiable documentation of a state-issued ID or passport.

Q. All right. At some point, did you approve this application that was submitted?

A. Yes, it was.

Q. With these supporting documents?

A. Yes, we did.

Q. And then did you involve WebBank?

A. Yes. Once the application was approved, we sent it to WebBank for funding.

Q. Did WebBank fund this loan?

A. They did.

Q. Now, at some point, do you provide the applicant a form -- an SBA form for them to DocuSign?

A. Yes. Once we have tentatively approved the application, we would send the applicant a DocuSign package, electronic forms that -- where they would agree to -- all of the information in the application on those forms is correct and agreeing to the loan terms.

Q. That's before you would send it to WebBank for them to fund the loan; is that right?

A. Yes. The DocuSign must be completed before the loan is funded.

MS. JIMENEZ: Can we look at Exhibit 17-11, please.

BY MS. JIMENEZ:
Q. What is this?
A. This is the SBA form for Paycheck Protection Program, referred to as the SBA 2483 Form.
Q. Was that the one executed in connection with this particular loan application?
A. Yes, it is.
Q. All right. And so the loan amount in the middle box was based on the average monthly payroll, right?
A. That's correct.
Q. Okay.
MS. JIMENEZ: Let's go down -- go back out. Let's go back to the document.
All right. Let's go to the bottom set of questions, please.
All right. I'm sorry. Let's go to the next page.
Let's do the first set of certifications.
BY MS. JIMENEZ:
Q. Did the document, the 2483, contain certifications?
A. Yes. It had a number of certifications listed here in the bullet points.
Q. Would you send the loan packet to WebBank if the certifications are not initialed and signed by the applicant?
A. We would not.
Q. I'm sorry?

A. No, we would not.
Q. Okay.
MS. JIMENEZ: All right. Let's go to the bottom set of certifications.
Okay. Let's go to the bottom before the signature.
The last two before -- nope.
Sorry. The last two before the signature.
Those two. Yeah.
BY MS. JIMENEZ:
Q. All right. Now, can you read the: "I further certify" paragraph please -- or the -- I'm sorry -- the first sentence.
A. "I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects."
Q. Did PayPal rely on the certification that all of the information being provided and all of the documentation being provided was true and accurate in all material respects?
A. Yes, we did.
Q. If that item had not been initialed, would you have provided the loan packet to WebBank to fund?
A. No. This is a required fill that must be initialed before we would fund a loan.
Q. All right.
MS. JIMENEZ: Can you -- all right. Can you go back

out.

BY MS. JIMENEZ:

Q. Did -- did you independently verify the information or documents that were provided with this loan application?

A. No. We don't independently verify the documentation. We require -- we rely on the applicant to supply accurate documentation as stated.

Q. Did you go out and interview employees of the business or do any other kind of independent investigation to determine the accuracy of the information or the accuracy of the documents provided?

A. No, we did not.

Q. Why not?

A. The Paycheck Protection loan was set up by the SBA to move very quickly. And as part of that, the guidance was that you rely on the documentation provided by the applicant. And that's the reason for the certifications here, is we're relying on the applicant to submit accurate documentation, and that's what the loan is based off of.

Q. Right. Now, the bottom section --

MS. JIMENEZ: If we can zoom out again.

BY MS. JIMENEZ:

Q. -- this is -- it says: "DocuSigned." Do you see that?

A. Yes.

Q. You work for PayPal. Are you familiar with DocuSign?

A. Yes. We use it for a number of different electronic signing for various loans.
Q. And generally what would the applicant -- how would the applicant end up DocuSigning this document?
A. It's done electronically. So when DocuSign is sent, the applicant can either choose a preselected signature, or if they have a mobile device they can sign using like their finger on the screen.
Q. Okay.
MS. JIMENEZ: Let's go to the -- is there a next page here? Is there another page?
BY MS. JIMENEZ:
Q. All right. What is this?
A. This is the loan note that further describes the terms of the loan for Paycheck Protection Program.
Q. And in this case, the loan was signed on what day?
A. It was signed on May 1st.
Q. For that loan amount, correct, 146,457?
A. That's correct.
Q. All right.
MS. JIMENEZ: Let's go down.
BY MS. JIMENEZ:
Q. What were the terms of the loan?
A. It was the loan amount, one percent interest rate.
Q. Okay.

MS. JIMENEZ: Let's go down. Can we find the DocuSign? Is that on here?

BY MS. JIMENEZ:

Q. This is the signature on the note; is that right?

A. That's correct.

MS. JIMENEZ: Let's go down. I think the DocuSign is here.

All right.

BY MS. JIMENEZ:

Q. All right. So what is this document?

A. This is a Certificate of Completion. So after a DocuSign form is completed and signed, DocuSign sends this back to PayPal, so that we have electronic record of that.

Q. All right. Now, here, with -- in the middle of the page, where it has the DocuSign signature, underneath it it says: "Signature adoption drawn on device." What does that mean?

A. That's like I was describing. So if you have like a tablet or a smartphone, you can use your finger to sign on your device.

Q. So you can actually sign yourself as opposed to just selecting the style -- the preselected style; is that right?

A. That's correct.

Q. Now, there's an IP address underneath the signature. What does that mean?

A. That's the IP address that was used when submitting the

DocuSign. So it would be the IP address of the applicant that signed.

Q. All right.

MS. JIMENEZ: For the record, this is part of Exhibit 17-11.

BY MS. JIMENEZ:

Q. As part of your work with PayPal during the Paycheck Protection Program, were you involved in any forgiveness application work?

A. Yes, I was.

Q. Generally, what was required for someone to receive forgiveness for a PPP loan?

A. It depends on the loan amount. Initially, the SBA required documentation showing that they paid the loan out for wages, or mortgage, or other allowed costs.

Later, the SBA loosened guidelines and offered, for loan amounts under $150,000, that the applicant could fill out the forgiveness form and certify that they used the loan proceeds appropriately, but they did not have to provide documentation.

Q. Okay. Now, to be eligible for forgiveness, did the business need to be a business that should have been entitled to receive the loan proceeds in the first place?

A. Yes.

Q. Was the forgiveness application also submitted

electronically to PayPal?
A. Yes, it was.
MS. JIMENEZ: Can we show Exhibit 18-1, please.
BY MS. JIMENEZ:
Q. What is this, Exhibit 18-1?
A. This is the PPP Loan Forgiveness Application Form from the SBA, Form 3508EZ.
Q. All right. And here, the applicant, HM-UP Development Alafaya Trails, indicated that they had how many employees at the time they applied?
A. Eighty employees.
Q. And then how many employees at the time of forgiveness?
A. Sixty-one.
Q. Then there's below it a covered period. What is that intended to reflect?
A. That reflects the period in which they paid payroll to those employees.
Q. All right.
MS. JIMENEZ: Can we go back out.
All right. Let's go to the second half of this page.
BY MS. JIMENEZ:
Q. And then, what is this supposed to be, these numbers?
A. This shows the forgiveness amount calculation, which would include payroll costs. It could include business rent, mortgage, interest payments, utilities, et cetera.

Q. All right. And would these be eligible costs, that is costs eligible for forgiveness if you use these funds during the covered period -- or spent these funds during the covered period?
A. Yes, it would.
Q. All right.
MS. JIMENEZ: Can we go back out to the second page.
BY MS. JIMENEZ:
Q. Now, this is part of that document. And it's hand-initialed and hand-signed with a date of February 5th, 2021. Do you see that?
A. I do.
Q. Is this something that -- like the previous form that we saw, Exhibit 17-11, that you would have sent back to the borrower?
A. We did not. Because this is hand-signed, that indicates that we did not send it. It was not through DocuSign. This particular form was signed by the applicant and then uploaded into our portal.
Q. And you know what? Let me back up just for a moment. The DocuSign document that we reviewed that contained the loan application information, was that filled out by PayPal or was that filled out by the applicant?
A. It was filled out by PayPal, with the exception of the certificates, the initials.

Q. So it was filled out by PayPal based on what?
A. The information the applicant had submitted with their application and the documentation.
Q. And that document was sent back to the applicant to execute and certify; is that right?
A. Yes. They are certifying that all information on that form is correct.
Q. This one is different.
A. Correct. The applicant put in all of this information themselves.
Q. And why did the applicant at this point not just go online and fill out the forgiveness application information with PayPal?
A. PayPal's loan forgiveness was not yet open. We took the guidance of the SBA, and it took a little while to get that built out into the online portal. So we had let our customers know, you know, we're looking at applications for forgiveness but we'll open the portal at a later time. So it wasn't open yet for them to submit electronically, but some users would send in forms themselves ahead of time.
Q. All right.
MS. JIMENEZ: Can we go to Exhibit 18-3.
If we could expand the top there.
BY MS. JIMENEZ:
Q. What is this?

A. This is a document submitted along with the forgiveness application.

MS. JIMENEZ: Can you go back in and -- go down, like the first third of the page.

There. Okay.

BY MS. JIMENEZ:

Q. So this was submitted with that February 5th document?

A. Yes, it was.

Q. All right. It indicates in the fourth column -- what does it indicate?

A. Wages paid.

Q. All right. Can you see -- can you look at the second name on this list.

A. Second name, Martin J. Beirne.

Q. Martin J. Beirne. Okay.

A. And the amount, wages paid $1,395.

MS. JIMENEZ: Can you go down.

BY MS. JIMENEZ:

Q. And do you see the name Sam Seprish?

A. Yes.

Q. He, too, was paid wages according to this document; isn't that right?

A. Yes, he was.

Q. All right.

MS. JIMENEZ: Can we go to 18-4.

BY MS. JIMENEZ:
Q. What is 18-4?
A. This is another document submitted along with the forgiveness application.
Q. Does this also indicate that wages were paid?
A. Yes, it does.
Q. All right.
MS. JIMENEZ: Now let's go to 18-6.
Is there a next page?
How about 18-5?
All right. Here we are.
BY MS. JIMENEZ:
Q. What is 18-5?
A. This is the PPP Loan Forgiveness Application Form 350S [sic], Simple, Revised January 19th, 2021.
Q. All right. So is this the forgiveness application that PayPal put in place when it finally got its portal up?
A. Yes. And this is only for applications of $150,000 or less.
Q. So it was intended to be expedited; is that right?
A. Exactly.
Q. Did someone have to submit documentation to have their loan forgiven using this form?
A. No. Based on SBA guidelines, if the loan was under $150,000, they did not have to submit the documentation.

Q. Now, this business is HM-UP Development Alafaya Trails doing business as HM Management and Development, correct?
A. That's correct.
Q. All right. Let's go -- and the amount spent on payroll, according to this document, was how much?
A. $488,338.81.
Q. And that would have been during the six-month period between May and October of 2020?
A. Yes. That covered period.
Q. All right.
MS. JIMENEZ: Can we go down.
BY MS. JIMENEZ:
Q. Did this document also have a certification?
MS. JIMENEZ: Let's go down.
THE WITNESS: Yes, it did.
BY MS. JIMENEZ:
Q. What were the certifications for?
A. It's for their eligibility for forgiveness.
Q. And so the first certification says the amount of PPP loan proceeds that must be used for payroll costs, but let me back up. It asks -- it indicates that the borrower has complied with all requirements of the PPP program rules, correct?
A. It does.
Q. All right. Including the rules related to the amount of PPP loan proceeds that must be used for payroll costs; is that

correct?
A. Correct.
Q. It also says that: "The information provided in this application is true and correct in all material respects."
Do you see that?
A. Yes.
Q. Did PayPal rely on that?
A. We did.
Q. Did you conduct any independent investigation whether this business paid its wage employees any payroll during that period?
A. We did not. It was not required by the SBA.
Q. All right.
MS. JIMENEZ: Go back out.
Can we just go down to the signature.
BY MS. JIMENEZ:
Q. When was this -- who is the person indicated as having signed this?
A. Eric Sheppard.
Q. On what date?
A. May 19th, 2021.
Q. Was that loan that you -- that WebBank funded in 2020 -- was it forgiven in 2021?
A. Yes, it was.
Q. I want to go back to one thing regarding the April

application.

MS. JIMENEZ: Can we go to Exhibit 17-12, please.

BY MS. JIMENEZ:

Q. What is this record?

A. This is the Paycheck Protection Program Loan Agreement.

Q. Okay.

MS. JIMENEZ: Could we go down.

Keep going.

BY MS. JIMENEZ:

Q. All right. Here, does it indicate that loan applied for by HM-UP Development Alafaya Trails, doing business as HM Management -- to what account did it go?

A. They specified to deposit the funds to SunTrust Bank, with the routing and account number reflected there.

Q. That's account ending in 7571, correct?

A. Yes, it is.

Q. All right. Now, was there another application submitted by the same applicant, HM-UP Development Alafaya Trails, in 2021?

A. Yes. Under the second round of the Paycheck Protection Program loans offered through the SBA, there was a second application submitted.

Q. And in 2020 did there come a time when you stopped processing PPP loan applications?

A. In 2020, yes.

Q. In 2020.

A. When the funds --
Q. Do you know approximately how long after you started processing loan applications did you stop processing loan applications?
A. It was months when the funds were depleted by the SBA.
Q. A few months?
A. Yeah. I want to say like May time frame.
Q. All right. Okay. So going to 2021, you were aware that the Congress appropriated additional funds for 2021?
A. Correct.
Q. And PayPal was involved in processing loans in 2021, correct?
A. Yes, we were.
Q. And was this also on behalf of WebBank?
A. It was.
Q. Thank you.
A. PayPal was the service provider and WebBank was the lender.
Q. All right.
MS. JIMENEZ: Let's go to Exhibit 19-1.
Can you make that a little bigger?
BY MS. JIMENEZ:
Q. So looking at 19-1, generally what are we looking at?
A. These are screenshots of the application process that any applicant would go through on our website through the loan portal to apply for a loan in 2021.

Q. Was it essentially the same process or the same portal?
A. It's the same portal and same process, slightly different questions based off of the SBA guidance for this round.
Q. All right.
MS. JIMENEZ: Let's go to the next page.
All right. Let's go to the next page.
Now -- yeah. Can we expand this.
BY MS. JIMENEZ:
Q. If -- Box 9: "Has the applicant previously received a PPP loan?" Do you see that?
A. Yes.
Q. Were there certain requirements for a business that had previously received a loan in 2020?
A. Yes. If they previously received a loan in 2020, then this would be considered a second draw loan, and there's different requirements for a second draw loan.
Q. All right.
MS. JIMENEZ: Let's go to Exhibit 19-2.
BY MS. JIMENEZ:
Q. Let me ask you: In 2021, someone would go online to your portal. Were your servers still located in the states that you previously mentioned?
A. Yes, they were.
Q. All right. Looking at this document, Exhibit 19-2, what is it?

A. This is the lead information, which contains the information collected from the application submitted online through the loan portal.
Q. Now, the owner for the business was listed as whom?
A. Eric Sheppard.
Q. And this was the same address in Bal Harbour, Florida?
A. Correct.
Q. Was this the same phone number and email?
A. Yes.
Q. All right. Now -- and the business is the same, HM-UP Development Alafaya Trails. Do you see that?
A. Yes, it is.
Q. All right. And then the number of employees listed is how many?
A. Eighty employees.
Q. And at the bottom, you -- did you capture an IP address when this information was submitted?
A. Yes. This is the IP address at the time the application was submitted online.
Q. All right.
MS. JIMENEZ: Let's go to the second page here.
BY MS. JIMENEZ:
Q. All right. Now, here, the number 531120, what is that?
A. That's the industry code based off of the industry the applicant submitted at the time of application, and it

corresponds to the description of lessors of non-residential buildings.

Q. Now, was this a different industry information than was provided with the first application?

A. Yes, it is.

Q. Did the SBA provide rules regarding what the industry was supposed to have been?

A. Yes. The SBA, for this round, specified that they should use the industry code as reflected on their tax returns.

THE COURT: Ms. Jimenez, just let me know when it might be a good time to adjourn for the evening.

MS. JIMENEZ: We can stop, Your Honor.

THE COURT: All right. Ladies and Gentlemen, we are going to adjourn for the evening. Please remember that, as you leave the courthouse, you are not to discuss this case with anyone, nor permit anyone to speak with you. Everything learned about the case is learned in this courtroom. You're not to conduct any independent research.

I will see you tomorrow morning. It will be a somewhat full day. We'll begin right at nine a.m. and we will conclude at 4:30.

All right. Have a pleasant evening, and I'll see you tomorrow morning at nine a.m.

COURT SECURITY OFFICER: All rise.

(Jury not present, 4:01 p.m.)

THE COURT: Ms. Hutcheson, we'll see you tomorrow at nine a.m. Have a nice evening.

Ms. Hutcheson, let me remind you that you are on the witness stand. You're not to discuss your testimony, the testimony of any other individual, or any aspect of the case. All right?

THE WITNESS: Yes, ma'am.

THE COURT: All right. Go ahead and have a seat.

If the Government can advise, following Ms. Hutcheson, of the witnesses that it anticipates calling tomorrow.

MS. JIMENEZ: Yes, Your Honor. I'm going to be calling David Toye from Northeast Bank, Mr. Ian Zalewski from ACAP SME, Carlos Granda. I don't know how much farther we'll get.

THE COURT: Do you think that will take us through the day?

MS. JIMENEZ: This is a -- yes.

THE COURT: All right. Then if I may ask if the attorneys can confer and advise each other of the exhibits that you're going to be introducing into evidence, and the impeachment exhibits that you may be using, so that we don't take unnecessary time away from the jury to review exhibits, particularly those that are -- have been listed on the exhibit list. All right?

MS. JIMENEZ: Yes. Thank you.

THE COURT: Is there anything further that we need to address this evening?

MS. WEINTRAUB: Judge, could I just get some clarification about the impeachment exhibits? Are you ordering us to give them early?

THE COURT: When do you anticipate -- do you have impeachment exhibits for David Toye, Ian Zalewski, and Carlos Granda?

MS. WEINTRAUB: I might on Granda.

THE COURT: So when would you --

MS. WEINTRAUB: Tomorrow morning.

THE COURT: -- ordinarily give those exhibits?

MS. WEINTRAUB: You know when I got Jencks, Judge, for the witness that we had today for three hours who was interviewed by the FBI about a PPP loan we never saw? I never got it.

THE COURT: All right. Well --

MS. WEINTRAUB: And for impeachment, Judge, honestly, I don't know what the witness is going to say. I try to presume --

THE COURT: I understand that there may be unanticipated issues moving forward. I'm speaking of what you already know you're going to be using with witnesses. It just moves it along if you can -- and I'm really directing this first to the Government, since you're directing this witness.

With regard to Jammie Hutcheson, if there are additional exhibits, as well as Mr. Ploy [sic], Zalewski, and Grande [sic], just advise ahead of time so that we can address any issues ahead of time and not take time away from the jury.

MS. JIMENEZ: Yes. And I have provided -- we provided a physical copy of all of the exhibits and asked before this trial for a stipulation as to all of these records that have certifications. We were not able to obtain a stipulation for records that have certifications so we can just move them in.

MS. WEINTRAUB: And we didn't have a problem with the authentications, we didn't make them bring custodians in, and we told them before the trial, as we're doing now, we just want to understand what the admissibility is. I'm not going to stipulate, you know, the evidence in against my client just without seeing it. Sorry.

THE COURT: All right.

MS. WEINTRAUB: And as far as PayPal is concerned, Judge, just so the Court knows, Mr. Etra provided the PayPal impeachment potentially to the Government this morning. So they already have that.

MS. JIMENEZ: Two volumes of binders.

MR. ETRA: This afternoon, to be fair.

MS. WEINTRAUB: Oh. I'm sorry.

MR. ETRA: That's okay.

THE COURT: All right. Have a pleasant evening.

The courtroom will be open at 8:30 this morning -- I mean tomorrow morning. This evening, the doors will be locked. So we will not need to use the courtroom.

MS. WEINTRAUB: Thank you, Judge. Have a good night.

THE COURT: Have a nice evening.

COURT SECURITY OFFICER: All rise.

(Proceedings adjourned at 4:05 p.m.)

UNITED STATES OF AMERICA)
ss:
SOUTHERN DISTRICT OF FLORIDA)

C E R T I F I C A T E

I, Yvette Hernandez, Certified Shorthand Reporter in and for the United States District Court for the Southern District of Florida, do hereby certify that I was present at, and reported in machine shorthand, the proceedings had the 29th day of November, 2023, in the above-mentioned court; and that the foregoing transcript is a true, correct, and complete transcript of my stenographic notes.

I further certify that this transcript contains pages 1 - 244.

IN WITNESS WHEREOF, I have hereunto set my hand at Miami, Florida, this 25th day of February, 2025.

/s/Yvette Hernandez

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