

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 30, 2023
9:00 a.m.

vs.

ERIC DEAN SHEPPARD,

Defendant.

Pages 1 THROUGH 239

TRANSCRIPT OF TRIAL DAY 4
BEFORE THE HONORABLE BETH BLOOM
UNITED STATES DISTRICT JUDGE
And a Jury of 12

Appearances:

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I N D E X

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ON BEHALF OF THE GOVERNMENT: PAGE

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1 (Call to order of the Court, 9:00 a.m.)

2 THE COURT: Hi. Good morning to everyone.

3 Go ahead and have a seat for a moment.

4 Let me acknowledge the presence of the Defendant.

5 Hope everyone had a nice evening and a good morning so
6 far.

7 I do want to address a couple matters in terms of
8 scheduling. Today recall that we will end early. I have an
9 11:30 Zoom meeting, so we'll have an hour-and-a-half lunch
10 break from 11:30 to one. But we were able to reschedule a
11 hearing this afternoon so we can go until 4:30. And then at
12 4:30 I will need counsel table for a hearing. So that will be
13 the schedule today.

14 As well, I do want to readdress the issue with the
15 juror who is unable to be here tomorrow, as well as Monday
16 morning. To the extent that the parties would agree, we can
17 excuse that individual, bring in one of the alternates.
18 Otherwise, unfortunately, we will not be in session tomorrow
19 and will not be in session on Monday, December 4th, until one
20 p.m. to accommodate that juror's travel back and forth from
21 Knoxville.

22 MS. JIMENEZ: The Government has no objection to that
23 proposal, Your Honor.

24 THE COURT: To which proposal?

25 MS. JIMENEZ: Well, obviously the Court's schedule is

1 the Court's schedule. But in terms of excusing the witness --
2 I'm sorry -- the juror, and allowing one of the alternates to
3 take his place, we have no objection to that. In fact, we were
4 looking back to our notes, and I think we had raised the issue
5 of removing that juror for cause, and then --

6 MS. MARTINEZ: Due to his travel.

7 MS. JIMENEZ: -- due to his travel. And then things
8 moved so quickly, we didn't come back to that, unfortunately.

9 MS. MARTINEZ: We are looking, just to make sure that
10 we can fit in our witnesses. And we have had witnesses flying
11 in, unfortunately, and then flying back all the way to the West
12 Coast of the country, and then going to fly back -- okay. So
13 we could keep them -- so it's quite a hardship on the human
14 beings, the witnesses.

15 MS. JIMENEZ: We have had a pileup of out-of-town
16 witnesses waiting. The ACAP SME witness, Mr. Ian Zalewski, had
17 to leave yesterday evening, is unavailable today. We are -- I
18 mean, we could bring him back potentially next week.

19 We would like to incorporate the ACAP SME records.
20 They are essentially a mirror of the Northeast Bank records
21 that will come in through Mr. David Toye, the Northeast Bank
22 witness. We've asked Defense counsel to agree to allow those
23 records to come in. We have a business record certification
24 from ACAP SME. I think that there's no issue on that.

25 MR. ETRA: On the business records exception issue

1 alone, we've worked -- we think we've worked -- we've worked
2 that out.

3 THE COURT: All right. So his presence is not
4 necessary, Ian Zalewski? Is that correct, Mr. Etra?

5 MR. ETRA: For the admission of the evidence, correct,
6 Your Honor.

7 MS. JIMENEZ: We have to see whether -- whether we can
8 cover everything we need to cover with Mr. Toye. We hope to be
9 able to do that.

10 THE COURT: All right. Well, I think we're back to
11 the original issue, and that is the scheduling of this trial.

12 MS. MARTINEZ: So we have no objection to excusing
13 Juror Number 13, as we all anticipated would happen on the
14 basis of his travel.

15 THE COURT: On behalf of the Defendant?

16 MS. WEINTRAUB: Your Honor, I apologize if it's
17 causing a problem for the Court, but my client is adamant that
18 he does not want to excuse this juror. And quite candidly,
19 Your Honor, the Defense counsel agree not to excuse him. We
20 all knew this going into it, and it was agreed to.

21 MS. MARTINEZ: No. I think it was just missed. We
22 completely covered that he was going to be excused for cause,
23 and I think it just -- we went quickly and we all missed it.

24 THE COURT: All right. Well, I don't think it enures
25 to the benefit or detriment of either party, but it's a

1 decision that each party needs to make.

2 So to that extent, we will not be in session tomorrow.
3 And I will ask the courtroom deputy to make sure that this
4 juror is able to be here on Monday at one p.m., and we'll see
5 if we can fit this trial in by the anticipated date. And
6 that's really incumbent upon the length of time that the
7 parties are taking with regard to these witnesses.

8 So both sides ready to proceed?

9 MS. MARTINEZ: Yes, Your Honor.

10 MR. ETRA: Yes, Your Honor.

11 THE COURT: We have all our jurors?

12 COURT SECURITY OFFICER: All rise for the jury -- yes,
13 Your Honor.

14 MS. JIMENEZ: Oh. I'm sorry. One other issue, Your
15 Honor. Government's Composite Exhibit 17, that was put in
16 evidence by the witness Jammie Hutcheson, we're replacing it.
17 It was supposed to contain all of the PayPal records. It only
18 contained a portion. The Defense has all of the records. So I
19 think that they agreed to substitute the exhibit with the one
20 that we have now, the composite, which should contain all of
21 the records.

22 THE COURT: All right. But that's reflected in the
23 exhibit number, correct?

24 MS. JIMENEZ: Yes.

25 THE COURT: All right. Do we have Ms. Hutcheson?

1 MS. JIMENEZ: Yes.

2 THE COURT: All right. Let's bring Ms. Hutcheson
3 forward.

4 (Pause in proceedings.)

5 THE COURT: Hi. Good morning.

6 Okay. Ms. Hutcheson is present. We can bring in the
7 jury.

8 (Before the Jury, 9:05 a.m.)

9 THE COURT: Hi. Good morning, Ladies and Gentlemen.

10 Good to see you.

11 Please be seated, everyone.

12 Thank you for being so prompt, and we are ready to get
13 right back to work with the direct examination of Jammie
14 Hutcheson.

15 Ms. Hutcheson, let me remind you you were previously
16 placed under oath.

17 MS. JIMENEZ: Thank you.

18 DIRECT EXAMINATION [CONTINUED]

19 BY MS. JIMENEZ:

20 Q. Ms. Hutcheson, let me go back to just a couple of exhibits
21 relating to the first loan application submission from April of
22 2020.

23 MS. JIMENEZ: Can we pull up Exhibit 17-8, please.

24 BY MS. JIMENEZ:

25 Q. There was -- do you remember seeing 17-8 yesterday?

1 A. Yes.

2 Q. It's a payroll report. There was a second page to this
3 document. I wanted to show that to you as well. Did you
4 receive this record as well?

5 A. Yes, we did.

6 Q. All right. Now, what is the name of this report?

7 A. It is Payroll Wages Report for the period of February 2020
8 to February 2021.

9 Q. Does this report also have a withholdings column?

10 A. Yes, it does.

11 Q. All right. I also wanted to show you --

12 MS. JIMENEZ: If we can turn to the ELMO, please.

13 COURTROOM DEPUTY: Is this in evidence?

14 THE COURT: I'm sorry. The monitor is not working?

15 COURTROOM DEPUTY: In the corner?

16 But first, is this in evidence?

17 MS. JIMENEZ: It is part of Composite Exhibit --

18 THE COURT: It's in evidence.

19 So there's one monitor?

20 UNIDENTIFIED JUROR: This one's not working.

21 THE COURT: All right. If we could call.

22 COURTROOM DEPUTY: Is it on?

23 THE COURT: Can you just make sure that it's actually
24 on, the light is on.

25 Okay.

1 MS. JIMENEZ: Can we switch back -- I'm sorry -- to
2 17-8 for a moment, so the jurors could view the exhibit,
3 please.

4 BY MS. JIMENEZ:

5 Q. All right. So the -- this is Exhibit 17-8, correct,
6 Ms. Hutcheson?

7 A. Yes, it is.

8 Q. All right. There was a second page to this exhibit that we
9 did not go over yesterday. And the title of this report?

10 A. "Payroll Wages Report."

11 Q. And this record also has a column for withholdings,
12 correct?

13 A. Yes, it does.

14 Q. Okay.

15 MS. JIMENEZ: Now, if we can switch to the ELMO. This
16 is part of Composite Exhibit 17. And for the record, it is
17 Bates Stamp Number 11288 through 11293.

18 BY MS. JIMENEZ:

19 Q. Do you recognize this type of form?

20 A. Yes. This is the Paycheck Protection Program Application
21 Form, the SBA 2483.

22 Q. All right. I just want to show you this one. It has a
23 different date. Do you remember yesterday we had a 2483 that
24 was executed by Mr. Sheppard?

25 A. Yes.

1 Q. And that one had a date of May 1st, 2020?

2 A. That is correct.

3 Q. All right. So there was a second one with this date. What
4 is this date?

5 A. Through the period of the Paycheck Protection Program loan,
6 there were some adjustments to forms needed. And so we re-sent
7 the DocuSign to Mr. Sheppard in September of 2020 -- it's the
8 same documentation -- and requested an updated signature. And
9 so, when he signed again on September 20th of 2020, it executed
10 the same forms with the updated date.

11 Q. Okay. So this September 2020 signed document is for the
12 same loan application from April of 2020; is that correct?

13 A. That is correct. It's for the first round of the Paycheck
14 Protection loan for which Mr. Sheppard received funds May 1st
15 of 2020.

16 Q. Did Mr. Sheppard have to recertify that the information
17 provided and the documents provided were true and accurate in
18 all material respects?

19 A. Yes.

20 Q. All right.

21 MS. JIMENEZ: Now, if we can switch back to counsel's
22 table -- oh, I'm sorry. One additional thing with this
23 exhibit.

24 BY MS. JIMENEZ:

25 Q. On Page 11292, what is this?

1 A. This is the DocuSign Certificate of Completion.

2 Q. Is Mr. Sheppard's signature DocuSigned on this document?

3 A. Yes, it is.

4 Q. What is the date that the signature occurred?

5 A. September 20th of 2020.

6 Q. There's an IP address under the signature. What does that
7 indicate?

8 A. That indicates the IP where the DocuSign was completed.

9 Q. Where the individual --

10 A. Would have been located at the time.

11 Q. Well, where the individual would have signed the document;
12 is that right?

13 A. Correct.

14 MS. JIMENEZ: If we could turn back to counsel's
15 table, Exhibit 17-10, please.

16 BY MS. JIMENEZ:

17 Q. Ms. Hutcheson, what is this document, Exhibit 17-10?

18 A. This is a printout of our SwiftForce. It's a tool that we
19 use at PayPal which captures lead information. So it
20 encompasses all of the information from the application and
21 loan history.

22 Q. Okay.

23 MS. JIMENEZ: If you can go back to the document.

24 If you can zoom in down to the first two boxes that
25 you see.

1 BY MS. JIMENEZ:

2 Q. Okay. What is this portion of the record?

3 A. This indicates that the customer submitted a request
4 electronically through the PayPal portal requesting -- having a
5 question or requesting assistance on the loan. So it's similar
6 to like an online contact form or an email.

7 Q. What is the question?

8 A. The subject was: "Request Submitted Through Customer
9 Portal," and the applicant said: "I'm the owner of multiple
10 companies, so I need to change the application to reflect
11 self-employed with employees, and the LLC needs to be changed.
12 How do I do this?"

13 Q. What is -- what would be the category of the applicant who
14 is self-employed with employees? Is there -- could someone be
15 self-employed with employees?

16 A. Yes.

17 Q. That would be the corporation with employees or the
18 business with employees?

19 A. Correct.

20 Q. Okay. And the individual who submitted this question, who
21 was that?

22 A. It would be Eric Sheppard, since it has the contact name
23 there.

24 Q. Okay.

25 MS. JIMENEZ: If we can go back out.

1 BY MS. JIMENEZ:

2 Q. Does this record reflect whether an answer was provided?

3 A. Yes. It actually was not. Because at the point this was
4 received, we had already processed the loan application and it
5 was not applicable to change. Because we do have documentation
6 showing that the business was an LLC, it was not feasible to
7 change the type of business.

8 Q. And this loan was funded, correct?

9 A. It was.

10 Q. Okay.

11 MS. JIMENEZ: Can we go down this page -- no. I'm
12 sorry. Down to the next page.

13 Down further.

14 Okay. So if you could highlight -- yeah. The first
15 half of this document -- no. I'm sorry. Just the first half
16 of the document from the case number -- from the case number --
17 okay. That's fine.

18 BY MS. JIMENEZ:

19 Q. All right. Now, what is this portion of the document?

20 A. This is another request submitted through the customer
21 portal.

22 Q. And what is requested?

23 A. The applicant typed in the description: "I need to add
24 more documentation from my CPA to the submittal, but the site
25 will not let me. Thank you."

1 Q. Do you know what a CPA is?

2 A. Certified personal accountant [sic].

3 Q. All right. So this indicates that the individual wanted to
4 submit additional documentation from their accountant; is that
5 right?

6 A. Yes, it is.

7 Q. And typically -- well, was there additional documentation
8 from the accountant submitted with this application?

9 A. Not at this time, because we had already processed the
10 documentation that was initially received.

11 Q. Now, does this record indicate who made this request?

12 A. Contact name Eric Sheppard.

13 Q. All right. Now let's go back to the 2021 that we had
14 started to discuss yesterday. There was a second draw loan
15 application submitted for the same business, HM-UP Development
16 Alafaya Trails, correct?

17 A. Correct.

18 Q. And we were looking at Exhibit 19-3.

19 MS. JIMENEZ: Okay. Can we go back to 19-2 for a
20 moment?

21 COURTROOM DEPUTY: I'm sorry. Counsel, is this in
22 evidence?

23 MS. JIMENEZ: 19-2? Yes. All of the 19 exhibits are
24 in evidence.

25 COURTROOM DEPUTY: Thank you.

1 MS. JIMENEZ: Thank you.

2 BY MS. JIMENEZ:

3 Q. All right. We talked about this original lead information,
4 19-2. What does this reflect?

5 A. This reflects the application information submitted by
6 Mr. Sheppard at the time he applied for the second round of the
7 Paycheck Protection Program loan.

8 MS. JIMENEZ: If we can go on, I believe there was
9 another page or another document attached.

10 If we can go on to the next page.

11 BY MS. JIMENEZ:

12 Q. We discussed, I believe, that there was an industry code
13 provided by the applicant?

14 A. Correct.

15 Q. Okay. And what was that code?

16 A. It was lessors of non-residential buildings.

17 MS. JIMENEZ: We can go to the next page.

18 BY MS. JIMENEZ:

19 Q. So this is what I wanted to show you. What is this
20 document? What's the name of this document?

21 A. This is "Application Data."

22 Q. What is this?

23 A. It pulls in the information from the application at the
24 time it was submitted.

25 Q. Does this indicate who was the individual who applied for

1 this loan?

2 A. Eric Sheppard.

3 Q. All right. Does it indicate --

4 MS. JIMENEZ: If we can go up for a little bit and
5 show the -- no. I'm sorry. See the bottom of the page?

6 BY MS. JIMENEZ:

7 Q. What was the date that the application was submitted?

8 A. January 19th, 2021.

9 Q. Now, there is a different industry code here, 236220. Why
10 is that on there?

11 A. That would have been pulled in from the original
12 application.

13 Q. Okay. But for this application, it was the lessor of
14 commercial buildings?

15 A. Correct.

16 Q. So the application submitted date, what is that supposed to
17 reflect?

18 A. That's the date that the applicant submitted this
19 information online through the PayPal portal.

20 Q. And that's the date on which PayPal servers would have
21 received this information; is that right?

22 A. That's correct.

23 Q. Okay. And on this document --

24 MS. JIMENEZ: If we can go up a little bit.

25 Thank you.

1 BY MS. JIMENEZ:

2 Q. -- provides the name of Eric Sheppard. Does it provide a
3 phone number?

4 A. Yes, it does.

5 Q. Is that the same phone number we saw with the first loan
6 application?

7 A. Yes.

8 Q. It provides an email as well, correct?

9 A. Correct.

10 Q. Is that the same email we saw with the first application?

11 A. Yes.

12 Q. Now, here this business, HM-UP Development Alafaya Trails,
13 has a d/b/a. Do you see that?

14 A. I do. It's HM Management and Development.

15 Q. And so it indicated that it's doing business as HM
16 Management and Development; is that right?

17 A. Correct.

18 Q. And what are the -- how many employees are listed here?

19 A. Eighty.

20 Q. All right.

21 MS. JIMENEZ: Now can we go to Exhibit 19-3.

22 If you can -- yeah. Expand the first half of this.

23 BY MS. JIMENEZ:

24 Q. What is this record?

25 A. This is details from SwiftForce showing the application

1 information.

2 Q. Now, the left side indicates average monthly payroll. Is
3 that the information that was provided --

4 A. Yes, it is.

5 Q. -- with the application -- yes?

6 A. Yes, ma'am.

7 Q. And what was the average monthly payroll?

8 A. \$81,250.

9 Q. And what was the requested loan amount?

10 A. \$203,125.

11 Q. Now, what was the loan amount based on?

12 A. It's based on the average monthly payroll times the 2.5.

13 Q. For two and a half months of payroll?

14 A. Correct.

15 MS. JIMENEZ: Can we zoom out.

16 If you go to the bottom half -- yeah, that second
17 half.

18 BY MS. JIMENEZ:

19 Q. Does this column indicate a different set of numbers -- of
20 figures for the loan?

21 A. Yes.

22 Q. Who would have provided this information?

23 A. Mr. Sheppard -- well, some -- based off of the
24 documentation based -- from Mr. Sheppard.

25 Q. Okay.

1 MS. JIMENEZ: All right. If we can go to Exhibit
2 19-4.

3 BY MS. JIMENEZ:

4 Q. Was the applicant -- you referenced documentation. Was the
5 applicant required to submit documentation to support the loan
6 application?

7 A. Yes.

8 Q. Looking at Exhibit 19-4, what is this?

9 A. This is a copy of a Florida State driver's license. As
10 part of the required documentation, we did require a
11 state-issued photo ID or passport.

12 Q. You required a photo ID or passport from whom?

13 A. From the applicant.

14 MS. JIMENEZ: If we can go to Exhibit 19-5.

15 If you could expand the first half.

16 BY MS. JIMENEZ:

17 Q. All right. What is this document, Exhibit 19-5?

18 A. It's titled as a labor report for the period of
19 January 1st, 2020, through December 31st, 2020.

20 Q. Is there a column here for wages paid?

21 A. Yes, there is.

22 Q. If you go down the names, do you see a Martin J. Beirne?

23 A. Yes.

24 Q. Do you see a Graff, C.?

25 A. Yes, I do.

1 Q. Do you see at the bottom here Carlos Granda?

2 A. Yes.

3 Q. The bottom of this pull-out?

4 MS. JIMENEZ: Okay. Now, if we can pull up Exhibit
5 19-6, please.

6 BY MS. JIMENEZ:

7 Q. Okay. Looking at 19-6, what is this?

8 A. This is the Paycheck Protection Program Second Draw
9 Borrower Application Form. So the SBA 2438 for second-time
10 loans.

11 Q. Okay.

12 MS. JIMENEZ: If we could expand the first half of the
13 document.

14 BY MS. JIMENEZ:

15 Q. All right. Now, does it indicate -- so it indicates the
16 business name to be HM-UP Development Alafaya Trails, correct?

17 A. Yes, it does.

18 Q. And the business code or NAICS code was what?

19 A. 531120.

20 Q. Okay. And where is that industry code supposed to come
21 from?

22 A. From the tax return, per the SBA guidelines.

23 Q. And was that a new directive in 2021?

24 A. Yes, it was.

25 Q. All right. The primary contact for this application, who

1 was that?

2 A. It's Eric Sheppard.

3 Q. Now, there is a number of employees indicated on this form.

4 What is it?

5 A. Seventy-four employees.

6 Q. And the average monthly payroll was what?

7 A. \$79,275.

8 Q. And the loan amount here was what? In between the payroll
9 and the number of employees.

10 A. \$198,187.

11 Q. All right. So that was slightly less than the initial
12 application submission in January, correct?

13 A. Yes.

14 Q. The -- and the loan amount would have been based on what?

15 A. It's based on the average monthly payroll for two and a
16 half months.

17 Q. Okay. Now, for the second draw application, was there an
18 additional requirement aside from -- for a business applying as
19 a business with employees, in addition to wages, was there
20 anything that was required to receive a second draw from the
21 Paycheck Protection Program?

22 A. Yes, there was. For applicants who had already received
23 one loan, the SBA specified to receive a second loan they must
24 show a reduction in revenue or gross receipts received by the
25 business of least 25 percent.

1 Q. And that 25 percent business reduction would be for what
2 period of time?

3 A. It would be year-over-year.

4 Q. Could be year-over-year or?

5 A. Or quarter-over-quarter.

6 Q. When you say "year-over-year," what year over what year?

7 A. 2019 to 2020, showing how the coronavirus epidemic impacted
8 their business.

9 Q. Which year would you need to reflect the 25 percent revenue
10 decrease?

11 A. In 2020.

12 Q. Then, if you do a quarter-to-quarter comparison, what years
13 are we talking about?

14 A. It would be the same quarter, from 2019 to 2020. So in the
15 example here, it shows the second quarter of 2019 to the second
16 quarter of 2020 there would have to be at least a 25 percent
17 reduction in the year of 2020.

18 Q. All right. Not a first quarter 2020 to fourth quarter
19 2019, correct?

20 A. Correct.

21 MS. JIMENEZ: If we could go -- zoom back out and
22 focus on the bottom half of this from -- no. Sorry. From
23 "owner" -- here.

24 BY MS. JIMENEZ:

25 Q. Who does it list as a managing member?

1 A. Managing member is Eric Sheppard.

2 Q. And who does it list as having a 30 percent ownership in
3 addition to Eric Sheppard?

4 A. Jennifer Sheppard.

5 Q. Then -- what is that total?

6 A. Eighty-two percent.

7 Q. Now, if you -- do you have any requirements for owners to
8 be listed on the application?

9 A. Yes. Any owners with greater than 20 percent stake in the
10 business must be listed.

11 Q. So if you identify 82 percent, do you need to list anyone
12 else?

13 A. No, you would not.

14 Q. Here, the questions are answered and indicate initials that
15 are handwritten. Why is that?

16 A. The applicant filled out this form themselves and uploaded
17 it to the PayPal portal. This was not a DocuSign that PayPal
18 sent to the applicant.

19 Q. All right.

20 MS. JIMENEZ: If we can zoom back out to the document.
21 Go to the second page.

22 BY MS. JIMENEZ:

23 Q. All right. So this document -- do you see it's got the
24 initials handwritten?

25 A. Yes.

1 Q. Okay.

2 MS. JIMENEZ: If we can go to the last page.

3 BY MS. JIMENEZ:

4 Q. All right. So here --

5 MS. JIMENEZ: Can you zoom out -- sure.

6 BY MS. JIMENEZ:

7 Q. Okay. So this is not a document that you provided the
8 applicant, correct?

9 A. Correct.

10 Q. Which we saw in the first application once you -- well, how
11 did that work with the first application?

12 A. Once we have reviewed the loan and conditionally approved
13 it, then PayPal would send the DocuSign to the applicant to
14 DocuSign and send in.

15 Q. All right. So this document was submitted to you by the
16 applicant; is that right?

17 A. Correct. It was submitted before we reviewed the
18 application in full.

19 Q. And what is the date indicated on this submission?

20 A. January 24th, 2021.

21 Q. Who is the person indicated as having been the one
22 submitting it?

23 A. Eric D. Sheppard.

24 Q. All right.

25 MS. JIMENEZ: If we can go back.

1 BY MS. JIMENEZ:

2 Q. In the February 2021 time frame, did the SBA provide any
3 directive to PayPal and anyone processing Paycheck Protection
4 Programs regarding the prioritizing of certain businesses in
5 reviewing the applications?

6 A. Yes, they did. Because of the epidemic, the SBA wanted to
7 prioritize small businesses and gave the direction to all banks
8 and lenders to only process applications for businesses with 20
9 or fewer employees.

10 MS. JIMENEZ: Can we look at Exhibit 19-6, please.

11 No. That's the one we were just looking at. Sorry.

12 Can we look at Exhibit 19-12.

13 BY MS. JIMENEZ:

14 Q. Okay. What is this?

15 A. This is the Second Draw Application Form.

16 Q. Okay.

17 MS. JIMENEZ: Sorry. Go back.

18 And can we go to the last page.

19 Okay. Here. Can we stop. Can we zoom out.

20 BY MS. JIMENEZ:

21 Q. Okay. This application -- who does this document indicate
22 submitted this application?

23 A. Eric D. Sheppard.

24 Q. On what day?

25 A. February 23rd, 2021.

1 Q. Okay.

2 MS. JIMENEZ: Now let's go back to the first page.

3 Okay. Can we zoom out the first half.

4 BY MS. JIMENEZ:

5 Q. All right. This is a document you provided to
6 Mr. Sheppard, or did this come to you from him?

7 A. This came to us, and it's evident based off of different
8 types of font and such. It's not a DocuSign.

9 Q. It's also -- is it handwritten, the signature?

10 A. Yes.

11 Q. Now, here, it -- with respect to number of employees, how
12 many employees are listed here?

13 A. Nineteen.

14 Q. All right. Can we -- do you recall if this is -- if it has
15 the same average monthly payroll figures and the same amount of
16 the loan as the one we just reviewed from January 24th, 2021?

17 A. I believe so.

18 Q. All right.

19 MS. JIMENEZ: Could we show the first page of Exhibit
20 19-6 and the first page of Exhibit 19-12, please.

21 I don't know if you can focus on the top half of each
22 of them.

23 BY MS. JIMENEZ:

24 Q. All right. Do you see the --

25 MS. JIMENEZ: Okay. Squeeze.

1 BY MS. JIMENEZ:

2 Q. Does it -- do both applications indicate the same average
3 monthly payroll?

4 A. Yes, they do.

5 Q. Do they -- can you -- yeah. Do they both show the same
6 loan amount?

7 A. They do.

8 Q. Do they show the same number of employees?

9 A. No, they do not. The first one had 74 employees, and the
10 second one had 19 employees.

11 Q. And the first one, which is Exhibit 19-6, was submitted
12 January -- or has a date of January 24th, 2021, correct?

13 A. That's correct.

14 Q. The second one has a date of February 23rd, 2021, correct?

15 A. Yes.

16 Q. All right.

17 MS. JIMENEZ: Could we take a look at Exhibit 19-19.

18 BY MS. JIMENEZ:

19 Q. So starting at approximately February of 2021, did the SBA
20 prioritize businesses of a certain size?

21 A. They did. They prioritized small businesses, wanting to
22 get money into the hands of those smallest businesses hurting.
23 So they prioritized any businesses with 20 or fewer employees.

24 Q. All right.

25 MS. JIMENEZ: If we do go to Page 5 of this Exhibit

1 19-19, please.

2 The email with the date of March 2nd. It's the second
3 one -- no.

4 BY MS. JIMENEZ:

5 Q. All right. Exhibit 19-19, what is it?

6 A. This is an email copy of -- that we sent all applicants who
7 had a pending application with PayPal, which we were holding
8 because of the SBA requirement to prioritize those small
9 businesses with 20 employees or fewer.

10 Q. All right. Can you read, if you go down the page, the
11 sentence that begins: "On February 24, 2021."

12 A. "On February 24th, 2021, the SBA instituted a 14-day period
13 ending on March 10th, 2021, during which it will only accept
14 applications from businesses with fewer than 20 employees for
15 review. Your PPP loan application indicates that your business
16 or organization has 20 or more employees."

17 Q. Okay. And why was that? Did you consider the submissions
18 that were provided to you on February 23rd by the applicant
19 indicating 19 employees?

20 A. We had not yet at this time.

21 Q. All right. Now, what documentation did you require for
22 payroll?

23 A. We required a completed tax form and payroll reports.

24 MS. JIMENEZ: Can we go to -- well, in this same
25 document, Page 10, please. It's an email from February 10th,

1 which is the top.

2 BY MS. JIMENEZ:

3 Q. All right. On the same report, this exhibit -- what is
4 this exhibit generally, Exhibit 19-19?

5 A. This is an email that goes out to applicants letting them
6 know the status of their loan or what information we would need
7 to process their application.

8 Q. All right. Okay. You -- "To apply for a PPP loan" -- do
9 you see that sentence: "To apply for a PPP loan"?

10 A. Yes.

11 Q. Did you need to determine whether they were in operation as
12 of February 15th, 2020?

13 A. Yes, we did.

14 Q. All right. Now, the second sentence, can you read that.

15 A. "We are required to receive the supporting documentation
16 before we can submit a PPP application to the SBA for its
17 review."

18 Q. I'm sorry. I meant --

19 A. The second --

20 Q. The next paragraph, actually: "Based on the SBA
21 guidelines."

22 A. "Based on the SBA guidelines, and the information you
23 provided in your online application, you are required to
24 provide the following documentation: A payroll statement or
25 similar documentation from the pay period that covered

1 February 15th, 2020, to establish the business was in operation
2 and had employees on February 15th, 2020."

3 Q. And the documentation for employees was a reference to who?

4 A. For employees of the business.

5 Q. And who are employees of the business?

6 MR. ETRA: Objection, Your Honor. Speculation.

7 THE COURT: Sustained.

8 BY MS. JIMENEZ:

9 Q. What do you require -- for a business applying as a
10 business with employees, what do you require from that business
11 about the employees?

12 A. We require a payroll report, which would include anything
13 showing wages withheld for taxes, insurance, other benefits.

14 Q. Okay.

15 MS. JIMENEZ: Can we look at Exhibit 19-8, please.

16 BY MS. JIMENEZ:

17 Q. What is this record?

18 A. This is the Quarterly Federal Tax Return, the 941, for
19 the -- 2020.

20 Q. For what business?

21 A. For HM-UP Development Alafaya Trails, LLC.

22 Q. All right. Now, what quarter is reflected on this first
23 page?

24 A. Quarter 4, for October through December.

25 Q. Of tax year 2020; is that right?

1 A. Correct.

2 Q. What are the number of employees who received wages that
3 are indicated on this document?

4 A. Fifty-eight.

5 Q. And how much -- how much in wages does this document
6 indicate was paid to these employees in that quarter?

7 A. \$123,699.

8 Q. And it also indicates federal income tax withheld from
9 their wages in "Other Compensation." Do you see that?

10 A. Yes. In the amount of \$11,737.

11 Q. Okay. And then --

12 MS. JIMENEZ: I'm sorry. Go back out. And then go to
13 Line 5 -- 5e.

14 BY MS. JIMENEZ:

15 Q. Does it indicate the total Social Security and Medicare
16 taxes that are owed for those wages?

17 A. It does.

18 Q. What is that amount?

19 A. \$30,662.94.

20 Q. Okay.

21 MS. JIMENEZ: Could we go to the next page.

22 All right. No. Keep going.

23 Okay. Can we zoom in on the designee and the
24 signature.

25 Yeah. The bottom half.

1 There we go.

2 BY MS. JIMENEZ:

3 Q. Does this document indicate who signed off on that Form
4 941?

5 A. Eric D. Sheppard.

6 Q. And is the document signed?

7 A. Yes, it is.

8 Q. All right.

9 MS. JIMENEZ: Can we go back.

10 Go to the next document here.

11 BY MS. JIMENEZ:

12 Q. All right. And this is third quarter of 2020, Form 941; is
13 that right?

14 A. Correct.

15 Q. For what business?

16 A. HM-UP Development Alafaya Trails, LLC.

17 Q. How many employees are listed who received wages?

18 A. Fifty-eight.

19 Q. In that quarter?

20 A. Yes. Fifty-eight.

21 Q. All right. And the amount of wages that are listed, do you
22 see that?

23 A. Yes. \$181,333.

24 Q. And there's federal income tax that was withheld from those
25 wages; is that right?

1 A. Yes.

2 Q. How much?

3 A. \$17,450.

4 Q. Okay.

5 MS. JIMENEZ: Can we go back.

6 BY MS. JIMENEZ:

7 Q. And then Line 5e, does it list -- does it indicate that
8 there are Social Security and Medicare taxes owed on those
9 wages?

10 A. Yes.

11 Q. How much?

12 A. \$27,743.65.

13 Q. Okay.

14 MS. JIMENEZ: Go back.

15 And then can you go down, please.

16 Next page.

17 And the next page.

18 And then zoom out to the bottom half.

19 BY MS. JIMENEZ:

20 Q. Is this a document -- the 941 signed?

21 A. Yes, it is.

22 Q. Does it indicate who signed it?

23 A. Eric Sheppard.

24 Q. All right.

25 MS. JIMENEZ: Can we go back.

1 Go to the next document.

2 BY MS. JIMENEZ:

3 Q. Then we have -- this is second quarter 941, for tax year
4 2020?

5 A. Correct.

6 Q. Same business?

7 A. Yes, it is.

8 Q. Now, this document is entirely handwritten; is that right?

9 A. Appears to be. Yes.

10 Q. Okay. Does it list the number of employees who received
11 wages in that quarter, second quarter of 2020?

12 A. Yes. Seventy employees.

13 Q. Okay. And we have the same -- we have wages filled in,
14 income tax filled in. And if we go down, we also have --

15 MS. JIMENEZ: I'm sorry. Go back out.

16 BY MS. JIMENEZ:

17 Q. -- we also have Social Security wages and Medicare wages
18 that were taxed. Do you see that?

19 A. Yes, I do.

20 Q. Okay.

21 MS. JIMENEZ: Go to the next page.

22 Here, this is handwritten. If we can zoom into the
23 second half.

24 BY MS. JIMENEZ:

25 Q. It lists the Defendant's -- or it lists a designee with a

1 name. Do you see that?

2 A. Yes.

3 Q. And then do you see that it's got a signature? And
4 who's -- with a printed name. Who is signing that document?

5 A. Eric Sheppard.

6 Q. All right.

7 MS. JIMENEZ: Go back.

8 Keep going.

9 BY MS. JIMENEZ:

10 Q. Now, this is --

11 MS. JIMENEZ: Okay. Zoom in the first half.

12 BY MS. JIMENEZ:

13 Q. This is first quarter for what business?

14 A. HM Management and Development.

15 Q. Is that the applicant here?

16 A. Yes.

17 Q. It's doing business as HM Management and Development?

18 A. Yes. It does not have the Alafaya Trails, LLC.

19 Q. Okay. And it also lists number of employees for this
20 quarter for HM Management. Do you see that?

21 A. Yes. Thirty-two employees.

22 Q. Okay. And it's got wages and taxes being withheld. Do you
23 see that on this form?

24 A. Yes.

25 Q. Okay.

1 MS. JIMENEZ: Let's go down.

2 Okay. Here. Zoom in the -- yeah.

3 BY MS. JIMENEZ:

4 Q. This document is signed as well, this 941, first quarter
5 2020?

6 A. Correct.

7 Q. Does it indicate who signed it?

8 A. Eric Sheppard.

9 Q. Does it indicate who the designee is?

10 A. Eric Sheppard.

11 Q. Okay.

12 MS. JIMENEZ: Let's go back.

13 Go down.

14 BY MS. JIMENEZ:

15 Q. This is for what quarter in 2020?

16 A. Quarter one.

17 Q. So two documents for quarter one 2020; is that right?

18 A. Correct.

19 Q. This is -- what is the name listed for the business here?

20 A. HM-UP Development Alafaya Trails.

21 Q. So for first quarter 2020, how many employees are listed
22 who received wages?

23 A. Sixty-eight.

24 Q. And it also indicates wages paid, income tax withheld, and
25 Social Security and Medicare withholdings; is that right?

1 A. Correct.

2 Q. Okay.

3 MS. JIMENEZ: Keep going.

4 Second page. Can we see who is indicated as the
5 signer?

6 BY MS. JIMENEZ:

7 Q. Who's indicated as the signer?

8 A. Eric Sheppard.

9 Q. And the designee?

10 A. Eric Sheppard.

11 Q. All right.

12 MS. JIMENEZ: Can we go out.

13 This is -- is this the end?

14 Okay. I want to publish for the jury Exhibit 13-5.

15 Can we zoom in at the middle of this document. This
16 is in evidence.

17 Oh. You missed the taxpayer name.

18 BY MS. JIMENEZ:

19 Q. Okay. Can you -- this is a record that is in evidence,
20 Ms. Hutcheson, Exhibit 13-5. Can you indicate the taxpayer
21 name here.

22 A. HM-UP Development Alafaya Trails, LLC.

23 Q. All right. Can you read what it says about Form 941
24 Employers Quarterly Federal Tax Return.

25 A. "As of June 26th, 2022, the Internal Revenue Service shows

1 no return filed for the following tax years pertaining to the
2 individual described above."

3 Q. And what are the -- without stating each quarter, what are
4 the tax years for which there were no Form 941s for this
5 business?

6 A. 2019, 2020, and 2021.

7 Q. Does that include the tax year for the forms that were
8 provided to PayPal?

9 A. It does.

10 Q. All right.

11 MS. JIMENEZ: Can we go to Exhibit 13-2 to publish for
12 the jury, please. It's in evidence.

13 This is a -- 13-2 is an IRS tax return.

14 BY MS. JIMENEZ:

15 Q. Can you indicate the business --

16 MS. JIMENEZ: Can you zoom out the first part.

17 BY MS. JIMENEZ:

18 Q. What is the -- whose return is this, whose document?

19 A. HM-UP Development Alafaya Trails, LLC.

20 Q. What type of tax return is this?

21 A. This would be for a partnership.

22 Q. A 1065 Partnership Return?

23 A. Correct.

24 Q. Okay.

25 MS. JIMENEZ: Can we go to Page 6 of this document.

1 Okay. Can you focus on the middle box for HM Six.

2 And this was for 2019, actually.

3 BY MS. JIMENEZ:

4 Q. For HM Six, does it indicate whether or not there were any
5 wages paid?

6 A. It does not. Line 13 has wages and salaries. And there's
7 nothing filled in, which would indicate that there's no wages
8 paid.

9 Q. Okay. All right.

10 MS. JIMENEZ: Can we go to Exhibit -- thank you. Can
11 we go to Exhibit 19-10.

12 BY MS. JIMENEZ:

13 Q. What is this document?

14 A. This was supplied by the applicant. It's just a letter
15 that they sent in with their documentation.

16 Q. Actually, let me back up for one moment. The Exhibit 19-8
17 that I showed you with those tax forms, the 941s for each
18 quarter of 2020, was that electronically submitted to PayPal?

19 A. Yes. It would have been submitted electronically through
20 our portal.

21 Q. When were those documents submitted to PayPal?

22 A. February 11th of 2021.

23 Q. All right. Let's go -- okay. So we're here. 19-10. What
24 is the date on this document?

25 A. February 15th, 2021.

1 Q. Was this submitted to PayPal electronically?

2 A. Yes, it was.

3 Q. Okay. What does it indicate about -- in Line 1 that is
4 being submitted?

5 A. They indicated: "The 1065 tax return was provided, but
6 2020 is not prepared as of today."

7 Q. That's as of February 15th, 2021?

8 A. Correct.

9 Q. Okay. And then Line 5 it indicates what?

10 A. That they provided 941s and 940s for 2020.

11 Q. Okay. What did PayPal require if someone is submitting an
12 income tax return to them to support their loan application?

13 A. We required the 2020 tax return, and the guidelines from
14 the SBA indicated that if it had not been filed yet that they
15 were to complete the tax return and sign it and submit it to
16 us.

17 Q. Complete the tax return, sign it, and submit it. And did
18 they require anything about the -- what was being submitted?

19 A. It should be reflective of the business income, wages paid,
20 et cetera. It should be accurate.

21 Q. Okay.

22 MS. JIMENEZ: Can we go to Exhibit 19-18, please --
23 actually, I'm sorry. Before we do that, can we go to Exhibit
24 19-9.

25

1 BY MS. JIMENEZ:

2 Q. Okay. Exhibit 19-9, what is this?

3 A. This is the IRS Tax Return 1065 for Partnership for the
4 year 2019.

5 Q. Was this tax return submitted to PayPal?

6 A. Yes, it was.

7 Q. Okay.

8 MS. JIMENEZ: Can we zoom out.

9 Go to Page 6.

10 BY MS. JIMENEZ:

11 Q. Okay. Can you focus on the middle box here.

12 A. Yes.

13 Q. Okay. This document -- does it indicate on Line 13 whether
14 the business HM-UP Development Alafaya Trails, for tax year
15 2019, paid any wages and salaries?

16 A. Yes. It has wages in the amount of \$717,743.

17 Q. All right.

18 MS. JIMENEZ: Can we leave this up -- or this page,
19 and pull up Exhibit 13-2, Page 6?

20 And actually, 13-2, let's go to Page 1 again just
21 briefly.

22 BY MS. JIMENEZ:

23 Q. All right. Exhibit 13-2 is the IRS exhibit. Now -- for
24 tax year 2019 for HM-UP Development Alafaya Trails.

25 MS. JIMENEZ: Can we go to Page 6 of Exhibit 13-2.

1 BY MS. JIMENEZ:

2 Q. Okay. For Exhibit 13-2, Line 13, what are the wages
3 listed?

4 A. There is nothing listed, indicating zero.

5 Q. Okay. And the one on -- the document on the left which is
6 Exhibit 19-9, that is the document that was submitted to
7 PayPal; is that correct?

8 A. Correct.

9 Q. Okay. And then does it indicate gross rents on the
10 document submitted to PayPal?

11 A. It does, Line 2.

12 Q. Is it -- and what is the amount?

13 A. \$1,414,576.

14 Q. Is that the same as the one submitted to the IRS?

15 A. It is.

16 Q. Okay.

17 MS. JIMENEZ: All right. Now can we go to Exhibit
18 19-18, please.

19 BY MS. JIMENEZ:

20 Q. Okay. What is this record, 19-18?

21 A. They are brief notes and -- by PayPal employees on what
22 actions have been taken on the loan application.

23 Q. Okay. Can you indicate the February 16 notation.

24 A. Yes. On February 16th there was a note: "Emailed BO" --
25 which stands for business owner -- "IRS Form 1065, including

1 Schedule K-1 and bank statements," initials SG of the employee
2 that worked at -- so they are essentially requesting these
3 documents from the business owner.

4 Q. And to whom was this email sent?

5 A. Sent to the applicant, Eric Sheppard.

6 MS. JIMENEZ: And if we can go back out.

7 BY MS. JIMENEZ:

8 Q. Was it sent to the email address that's listed on the
9 application?

10 A. Yes. We can only send to the email address on the
11 application.

12 Q. And now you're requesting a 1065 tax return. Now, you were
13 already provided a 1065 tax return for 2019. What were you
14 requesting?

15 A. We were requesting the tax return for the year 2020, per
16 the SBA guidelines.

17 Q. All right.

18 MS. JIMENEZ: Can we pull up Exhibit 19-13, please.

19 BY MS. JIMENEZ:

20 Q. What is Exhibit 19-13?

21 A. This is an IRS Form 1065, US Return of Partnership Income,
22 for the tax year 2020.

23 Q. This is for HM-UP Development Alafaya Trails?

24 A. Yes, it is.

25 Q. All right. By the way, the -- the business code is what?

1 What is the business code?

2 A. 531120.

3 MS. JIMENEZ: Can we go to Schedule 8825.

4 Try Page 6.

5 Can we go down.

6 Sorry. I don't have the exact page.

7 Here we are. Okay.

8 Okay. Can you zoom in on the middle.

9 BY MS. JIMENEZ:

10 Q. All right. Does this document, on Line 13, indicate how
11 much in wages that HM-UP Development Alafaya Trails paid to its
12 employees in tax year 2020?

13 A. Yes. \$815,358.

14 Q. Okay.

15 MS. JIMENEZ: Go back.

16 Okay. Let's go back to the first page of this
17 document.

18 Can we focus in on the signature.

19 BY MS. JIMENEZ:

20 Q. All right. So you indicated that you required that the tax
21 return be prepared and signed; is that right?

22 A. That is correct.

23 Q. Now, here, is there more than one signature?

24 A. Yes. There's the signature of the partner or LLC member
25 and a preparer's signature.

1 Q. So this document -- this tax return indicates that the --
2 that it has been prepared by the actual tax preparer for this
3 business; is that right?

4 A. Yes, it does.

5 Q. What is the date when the tax return was prepared by the
6 preparer?

7 A. February 9th, '21.

8 Q. Does it indicate who was the preparer of this tax return?

9 A. It indicates Neal A. Cupersmith.

10 MS. JIMENEZ: Could we go back to Schedule 8825. I
11 think it's now Page 8.

12 Okay. That middle box again.

13 BY MS. JIMENEZ:

14 Q. All right. Now, see Line 2: "Gross Rents"?

15 A. Yes.

16 Q. What is that amount?

17 A. \$1,047,653.

18 Q. And that is less than the total gross rents for 2019; isn't
19 that right?

20 A. Yes.

21 Q. Okay.

22 MS. JIMENEZ: Can we go to Exhibit 13-3 for a moment.

23 BY MS. JIMENEZ:

24 Q. This is a tax -- an IRS Record for Taxpayer. What is the
25 taxpayer?

1 A. HM-UP Development Alafaya Trails, LLC.

2 Q. Okay. Then we were just looking at a tax return submitted
3 to PayPal for tax year 2020; is that correct?

4 A. Correct.

5 Q. All right. Can you indicate what it says about the 1065
6 return for this business?

7 A. "As of June 4th, 2022, the Internal Revenue Service shows
8 no return filed for the following tax years pertaining to the
9 individual described above," period, "December 31st, 2020, and
10 December 31st, 2021."

11 Q. Okay.

12 MS. JIMENEZ: Can we look at Exhibit 19-14.

13 BY MS. JIMENEZ:

14 Q. Let me ask you another question about the tax return. You
15 indicated you required that it be signed. And you do not
16 require that in February 2021 -- that it necessarily be filed
17 at that point?

18 A. That's correct. Generally you have until at least April to
19 file the tax return with the IRS. But the SBA did require that
20 the tax return be submitted to corroborate the application in
21 2021.

22 Q. And what did -- what did you require that the tax return
23 contain with respect to the figures that are provided in the
24 tax return?

25 A. They should be true and accurate per the business

1 reporting.

2 Q. Okay. We have 19-14 -- nope. I'm sorry. One more
3 question about that 2020 tax return. When was that tax return
4 submitted to PayPal?

5 A. The 1065?

6 Q. The 1065. I'm sorry. Yes.

7 A. February 26th, 2021.

8 Q. And that was submitted electronically to PayPal; is that
9 right?

10 A. Yes. It was uploaded through our portal.

11 Q. Okay. Now, Exhibit 19-14 -- did -- what is this record?

12 A. This is a 941 for the tax year of 2020, showing Employer's
13 Quarterly Federal Tax Return.

14 Q. Were these submitted to PayPal more than once?

15 A. They were, yes. They were initially submitted
16 February 11th, and then again submitted February 26th of 2021.

17 Q. The same Form 941s; is that right?

18 A. That's correct.

19 MS. JIMENEZ: For the submission of February 26th, if
20 we can go to the bottom of this document.

21 I'm sorry. The bottom of this whole composite.

22 Okay. Now scroll up.

23 BY MS. JIMENEZ:

24 Q. These Form 941s that were --

25 MS. JIMENEZ: Okay. Stop.

1 Okay. Go up, so we get to the first page.

2 Okay. There we go.

3 BY MS. JIMENEZ:

4 Q. The submission of the Form 941s on February 26th, 2021,
5 included -- did it include this document as well?

6 A. Yes. These were all uploaded together.

7 Q. All right. And what is the title of this document?

8 A. This is a wages report for the period of January 1st, 2020,
9 through December 31st, 2020.

10 Q. For what business?

11 A. HM-UP Development Alafaya Trails, LLC.

12 Q. And then does it have a column for gross wages paid?

13 A. It does.

14 Q. Does it have a column for withholdings?

15 A. Yes.

16 Q. Okay. Do you see the name Martin Beirne on this document?

17 A. Yes.

18 Q. Do you see the name Maria Del Pilar Ataca on this document?

19 A. Yes.

20 Q. Graff, C.?

21 A. Yes.

22 Q. Okay.

23 MS. JIMENEZ: All right. Let's go to Exhibit 19-15,
24 please.

25

1 BY MS. JIMENEZ:

2 Q. What was this submission with a date of March 2nd, 2021?

3 A. This is an email submitted by the applicant to PayPal.

4 Q. Okay. And so, in Item 1, it is now providing what -- the
5 first sentence.

6 A. It's providing a detailed report for Q1 2019 versus Q1 2020
7 of gross receipts collected and the reduction of gross revenue
8 percentage and dollar amount between 2019 to 2020 for quarter
9 one.

10 Q. All right. So now it's -- is it doing a quarter-to-quarter
11 comparison in 2019 to 2020?

12 A. Yes, it is.

13 Q. Okay. And it's also providing bank statements; is that
14 right?

15 A. That's correct.

16 Q. Okay.

17 MS. JIMENEZ: Go back out.

18 If we can go to Exhibit 19-16, please.

19 BY MS. JIMENEZ:

20 Q. Did you receive this record as well?

21 A. Yes, we did.

22 Q. What is the title of this?

23 A. "Florida Department of Revenue Employer's Quarterly
24 Report."

25 Q. Does it indicate the business?

1 A. Yes.

2 Q. What's the business?

3 A. HM-UP Development Alafaya Trails Co., HM Management and
4 Development.

5 Q. All right. And is it signed?

6 A. Yes, it is.

7 Q. It doesn't indicate a printed name, but it is signed
8 nonetheless with a phone number. Is that the phone number that
9 was provided in the application for Eric Sheppard?

10 A. Yes, it is.

11 Q. All right.

12 MS. JIMENEZ: Go back.

13 If you could just scroll down this document, please.

14 Okay. Stop here.

15 BY MS. JIMENEZ:

16 Q. It lists employees with gross wages. Do you see that?

17 A. Yes.

18 Q. Okay. Okay. Including a Joseph Beirne. Do you see that?

19 A. Yes.

20 Q. Okay.

21 MS. JIMENEZ: If we can go down.

22 This page.

23 BY MS. JIMENEZ:

24 Q. And then about two-thirds down, the list of names, do you
25 see a Jeffrey Graff?

1 A. Yes, I do.

2 Q. Okay. And so this document is supposed to indicate their
3 gross wages paid and taxable wages. Do you see that?

4 A. Yes. That's correct.

5 Q. All right.

6 MS. JIMENEZ: Okay. Can we go to Exhibit 19-19 again,
7 "Activity History."

8 BY MS. JIMENEZ:

9 Q. Okay. There's an email from March 5th --

10 MS. JIMENEZ: Hold on. Page 4. Page 4.

11 BY MS. JIMENEZ:

12 Q. Now, let me ask you about this business. With the records
13 that were provided, the income tax return for tax year 2020
14 that you requested, the Form 941s that were supplied twice, was
15 that substantiation for the payroll of this business?

16 A. It was.

17 Q. Did it -- did those records indicate to you that the
18 business had that volume or was paying that amount of money to
19 its wage employees?

20 A. Yes. They reflected wages paid.

21 Q. Now, based on your experience at PayPal, and your
22 experience working on the Paycheck Protection Program for
23 PayPal, if the records submitted, instead of being 941s, were a
24 business's, say, 1099 for the contractors that it paid, would
25 that be sufficient to establish the payroll?

1 A. A business cannot submit for the Paycheck Protection
2 Program loan based on wages paid to contractors, 1099ed
3 employees. Those 1099ed employees are eligible to file for
4 their own Paycheck Protection loan.

5 Q. Well, are there those contractors -- are those payments to
6 those contractors wages, as far as you know?

7 A. No, they are not.

8 Q. And if the documents submitted -- those wage reports -- if
9 they had -- based on your experience, if they had instead
10 indicated that these are the payments that this business makes
11 to its contracted workers, its independent contractors, what
12 would happen with that application?

13 A. We would not consider those as wages paid, and so the
14 application would have been declined.

15 Q. Could you determine the loan amount for a business if it
16 submits to you a report indicating the payments that it made to
17 its contractors? Can you determine -- can you add those up and
18 determine the loan amount that they would be eligible for?

19 A. No, we cannot.

20 Q. What would -- okay.

21 Now, on March 6th, 2021, your Exhibit 19-19, Page 4,
22 what -- what did you communicate to Eric Sheppard at HM-UP
23 Development Alafaya Trails?

24 A. This is an email sent regarding the Paycheck Protection
25 Program loan request. And it indicates that: "We regret to

1 inform you that after careful consideration we were unable to
2 approve your request at this time for the following reason: We
3 do not do business with this industry type."

4 Q. What does that mean?

5 A. The SBA had requirements that only certain industries,
6 certain business types were eligible for the loan. And based
7 off of the code, the NAICS code, industry code submitted with
8 this application and on the tax form, this business was not
9 eligible for a loan.

10 Q. And so this document -- or I'm sorry -- this application
11 was not DocuSigned; is that right?

12 A. It was not.

13 Q. Why was it not DocuSigned?

14 A. Because the DocuSign is only sent after we have reviewed
15 the documents in full and conditionally approved the loan.

16 Q. All right.

17 MS. JIMENEZ: Can we pull up exhibits 19-6 and 19-12
18 again, please.

19 Can you scroll up.

20 Okay. Here. Stop. The signature page, so go up.

21 No. The other way.

22 Here. Okay. And the same -- so it's Page 3 on the
23 document.

24 BY MS. JIMENEZ:

25 Q. So these are the exhibits, 19-6 and 19-12, that we

1 previously looked at. And what did you indicate about these
2 documents?

3 A. That they were hand-filled out by the applicant and
4 submitted to PayPal by the applicant through the portal. They
5 were not DocuSigned.

6 Q. Are these the same 2483 Form that you would -- if you have
7 an approved loan, tentatively approved -- that you would
8 provide the applicant to DocuSign?

9 A. Yes. It's the standard form provided by the SBA.

10 Q. Do they contain the same certifications?

11 A. They do.

12 MS. JIMENEZ: Can we zoom in on the last two
13 paragraphs before the signature.

14 BY MS. JIMENEZ:

15 Q. The applicant indicated that they were certifying the
16 information provided in the documents submitted were true and
17 accurate in all material respects; is that right?

18 A. Correct.

19 Q. Did you -- in connection with this application that you
20 ultimately declined, did you rely -- were you relying on the
21 truthfulness and accuracy of the information provided and the
22 records supplied to you?

23 A. Yes. We require -- we rely on the documentation provided
24 by the applicant to be true.

25 Q. Did you conduct any independent investigation of this

1 business and whether or not it paid any wage employees to make
2 your determination about the loan?

3 A. We did not. We rely on the certification of the applicant.

4 Q. And in this particular case, it so happened that the
5 business industry indicated for the business did not qualify
6 for a Paycheck Protection Program loan; is that right?

7 A. That's correct.

8 Q. So did you have any information that any documents
9 submitted, such as the documents supporting wages, were false?

10 A. We did not.

11 Q. As for the 2020 loan application submitted by this business
12 that was funded, did you have any information to indicate to
13 PayPal that the figures submitted as wages paid to employees
14 were false?

15 A. No, we did not.

16 Q. Did you have any indication with respect to this 2021 loan
17 application that the tax returns submitted, the income tax
18 returns, were falsified and forged?

19 A. No, we did not.

20 MS. JIMENEZ: One moment, Your Honor.

21 THE COURT: All right.

22 (Pause in proceedings.)

23 MS. JIMENEZ: Your Honor, I don't have any other
24 questions of the witness.

25 THE COURT: All right. Ladies and Gentlemen, let's go

1 ahead and take a 10-minute recess, please.

2 COURT SECURITY OFFICER: All rise for the jury.

3 (Jury not present, 10:19 a.m.)

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

5 (Recess from 10:19 a.m. to 10:31 a.m.)

6 THE COURT: All right. Welcome back.

7 Both sides ready to continue?

8 MS. JIMENEZ: Yes, Your Honor.

9 MR. ETRA: Yes, Your Honor.

10 THE COURT: Can you see if our jurors are ready?

11 Thank you.

12 COURT SECURITY OFFICER: Remain standing for the jury.

13 (Before the Jury, 10:31 a.m.)

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

16 Please be seated.

17 And we'll begin with the cross-examination.

18 MR. ETRA: May I proceed?

19 THE COURT: Yes. Of course.

20 CROSS-EXAMINATION

21 BY MR. ETRA:

22 Q. Good morning, Ms. Hutcheson.

23 A. Good morning.

24 Q. We've never met, correct?

25 A. No, we have not.

1 Q. And you've never met my client, Mr. Sheppard, have you?

2 A. I have not.

3 Q. You've never spoken to him?

4 A. I have not.

5 Q. You've never seen how he runs his business?

6 A. I have not.

7 Q. You have no idea how his business is run?

8 A. I do not.

9 Q. You don't know who prepares forms?

10 A. No.

11 Q. You don't know who goes on the portal?

12 A. No.

13 Q. You don't know -- take a step back.

14 You have no personal knowledge about the PPP loans or
15 loan applications we've been talking about today; is that
16 correct?

17 A. Not this particular loan, no.

18 Q. The answer is correct?

19 A. Correct.

20 Q. You weren't involved in the loan applications and loan
21 you've been discussing on your direct, correct?

22 A. I was not.

23 Q. Okay. There were people at PayPal who were involved,
24 correct?

25 A. Yes, they were.

1 Q. They're not here, though, are they?

2 A. No.

3 Q. Are they even at PayPal still?

4 A. I don't know.

5 Q. Did you investigate -- when you were contacted -- at some
6 point, PayPal was contacted by the Government, correct?

7 A. Yes, we were.

8 Q. And did you investigate, see who actually worked on this
9 loan?

10 A. I see the names -- the number of different names of people
11 who worked on the loan.

12 Q. I'm going to ask you to try to answer my question yes or
13 no, if you can. Okay?

14 A. Okay.

15 Q. The question is: Did you investigate who worked on the
16 loan?

17 A. I personally did not.

18 Q. Okay. Do you know of anyone else who did?

19 A. I do not.

20 Q. Do you know the decision-making process of the people who
21 worked on the loans?

22 A. I know the guidelines which they followed.

23 Q. Do you know that they followed the guidelines?

24 A. (No verbal response.)

25 Q. In other words, you know the guidelines they're supposed to

1 follow, correct?

2 A. Yes.

3 Q. But you don't know the actual decision-making process of
4 the people involved in the loans, correct?

5 A. No. Just what we see.

6 Q. What you see. Well, let's talk what we see. You're
7 basically here to talk about general -- the policies and
8 procedures at PayPal during the relevant times, correct?

9 A. Correct.

10 Q. And you also reviewed some documents, correct?

11 A. Yes.

12 Q. And that is what you're basing your testimony on?

13 A. Yes, it is.

14 Q. And in fact, we don't have -- you didn't produce to the
15 Government a complete record of the loan applications in this
16 case, correct?

17 A. We provided all documentation requested.

18 Q. Did you provide the Government with all loan documentation
19 involving the loan applications in this case? I'd like to get
20 a yes or no answer if I can.

21 A. Yes.

22 Q. Are you sure about that?

23 A. I can't answer that.

24 Q. You don't really know if PayPal provided all of the
25 documentation about the loan applications in this case,

1 correct?

2 A. My understanding is we did.

3 Q. Based on what?

4 A. Based on the subpoena and the documentation that I've
5 reviewed.

6 Q. So you reviewed the documentation and it looked complete?

7 A. It did.

8 Q. Okay. And did you find any documentation where people are
9 making contemporaneous decision-making, where there's notations
10 of the people involved, and why they are doing -- and what the
11 thought process is?

12 A. Yes.

13 Q. What are those?

14 A. Some of the notes that we've seen are decisions made on the
15 loan applications.

16 Q. If you -- in other words, you see the decision-making:
17 "Oh. This is why we need to do this," or "This is why we need
18 to do that"?

19 A. Yes.

20 Q. Well, when we get there, hopefully I'll remember to ask and
21 you'll remember to tell me. Okay?

22 A. Okay.

23 Q. And you testified at the very beginning of your testimony
24 that you were subpoenaed to appear here, correct?

25 A. Yes.

1 Q. Since you weren't involved in the loan applications, do you
2 know why you, of all people at PayPal, were subpoenaed to
3 appear here?

4 A. Yes. I'm familiar with the Paycheck Protection Program
5 loan from its inception in 2020 through 2021 and am one of the
6 most educated and experienced people at PayPal.

7 Q. Do you work with the legal department when there are
8 inquiries from the US Attorney's Office or other enforcement
9 agencies?

10 A. Yes, I do.

11 Q. Is that a big part of your job?

12 A. Yes.

13 Q. And so basically working with the prosecutors, like the
14 prosecutors here, is a big part of what you do?

15 A. I don't want to say a big part. But yes, I did it quite
16 often in that time period.

17 Q. Part of your responsibilities?

18 A. Yes.

19 Q. There are some documents in this case that are fraudulent.
20 Do you agree with that?

21 A. I can't make a determination of fraudulency.

22 Q. I thought you did when you were asked on direct -- that the
23 tax returns were fraudulent. Did you say that on direct?

24 A. I said that they did not match.

25 Q. Okay. Well, we certainly acknowledge there are fraudulent

1 documents in this case, like the tax returns and the 941s and
2 the 940s. My question for you is: Do you have any personal
3 knowledge about who created those documents?

4 A. I do not.

5 Q. Do you have any personal knowledge about whether
6 Mr. Sheppard created those documents?

7 A. I do not.

8 Q. Some of them have Mr. Sheppard's apparent signature on
9 them, correct?

10 A. Correct.

11 Q. Do you know whether he signed them?

12 A. I can't verify his signature.

13 Q. Do you know whether he signed them?

14 A. It has a signature of Eric Sheppard.

15 Q. Do you know whether he signed them?

16 MS. JIMENEZ: Asked and answered.

17 THE COURT: Overruled.

18 BY MR. ETRA:

19 Q. Do you know whether he signed them?

20 A. I do not.

21 Q. Okay. Yet, on direct, several times -- I lost count -- in
22 your response to the questions you said that's -- Eric Sheppard
23 signed these documents. Didn't you do that?

24 A. I said the name that was reflected on the documents.

25 Q. Okay. And do you know whether it's Mr. Sheppard's practice

1 to sign those kinds of forms?

2 A. I do not.

3 Q. And do you know who at Mr. Sheppard's office would prepare
4 these kinds of forms, say, the -- I'm talking -- let me take a
5 step back.

6 I'm talking about the payroll reports, 941, 940, those
7 types of filings. Okay?

8 A. No, I do not.

9 Q. You do not. And do you not know whether he relies on the
10 payroll group or office managers to prepare those?

11 A. I do not.

12 Q. And do you know in particular who he was relying on in
13 COVID?

14 A. No.

15 Q. Did you ever hear of a fellow named Jeff Vasilas?

16 A. No.

17 Q. Do you know whether Jeff Vasilas prepared some of those
18 documents?

19 A. I do not.

20 Q. Did you conduct an investigation to determine any of the
21 answers to these questions I'm asking?

22 A. No.

23 Q. Is that because you're not in law enforcement?

24 A. Correct.

25 Q. So it's not your job to find those things out?

1 A. Correct.

2 Q. Okay. And do you know whether Jeanette Gonzalez had a role
3 in preparing some of this information?

4 MS. JIMENEZ: Objection.

5 THE COURT: Basis?

6 MS. JIMENEZ: No foundation.

7 THE COURT: If the witness knows. Overruled.

8 BY MR. ETRA:

9 Q. Do you want me to ask again?

10 A. Please.

11 Q. Have you heard the -- do you know if someone named Jeanette
12 Gonzalez had a role in preparing some of this information?

13 A. I do not know.

14 Q. Do you know to -- the extent to which Mr. Sheppard relied
15 on Ms. Gonzalez for information about payroll and other types
16 of back-office functions?

17 MS. JIMENEZ: Objection, Your Honor. The witness has
18 already said she doesn't know anything about this gentleman's
19 business -- the Defendant's business.

20 THE COURT: And the witness is free to respond in that
21 manner. Overruled.

22 THE WITNESS: No, I do not.

23 BY MR. ETRA:

24 Q. Okay. Several times you've talked about Mr. Sheppard --
25 when the prosecutor asked you about documents being submitted,

1 and I think you said it was Mr. Sheppard. So I'm going to ask
2 you: Do you have any personal knowledge that Mr. Sheppard
3 submitted any of the documents in this case?

4 A. When the application was submitted, and it asked for the
5 person's name and -- it was indicated as Eric Sheppard.

6 Q. Okay. Let's start with that. When you say: "The
7 application was submitted" -- "the application" could mean a
8 lot of different things with all the papers here -- what are
9 you referring to specifically?

10 A. The initial application on the PayPal portal.

11 Q. Okay. On the portal?

12 A. Yes.

13 Q. Do you know whether Eric Sheppard actually opened up the
14 portal and put the information in or someone else did it on his
15 behalf? Do you know?

16 A. I wouldn't have a way of knowing that.

17 Q. Right. And with respect to the rest of the information and
18 documents, you don't know what Mr. Sheppard's role was and what
19 he knew about them, correct?

20 A. Correct.

21 Q. Now, I want to kind of take it from the beginning, and
22 we'll go through this. Have you heard the term "loan service
23 provider"?

24 A. Yes.

25 Q. Or LSP?

1 A. Yes.

2 Q. Is it fair to say that PayPal was a loan service provider
3 in the PPP program? Right?

4 A. Yes. That's correct.

5 Q. And it worked exclusively with the bank WebBank, right?

6 A. That's correct.

7 Q. So WebBank was the bank that the SBA allowed to issue PPP
8 funds, correct?

9 A. Yes.

10 Q. And the bank was allowed to work with loan service
11 providers, like PayPal, to do the work needed to get the
12 process approved?

13 A. That's correct.

14 Q. Okay. Great.

15 And in reality, PayPal did pretty much all the work
16 here, right?

17 A. Yes. We reviewed the applications in full.

18 Q. You did the whole thing. So basically, the bank -- WebBank
19 just issued the loans and collected the fee?

20 A. Correct.

21 Q. And as a result of collecting the fee, how did PayPal get
22 paid?

23 A. We were paid by WebBank.

24 Q. And what percentage of the fee that WebBank got did PayPal
25 get?

1 A. I don't know.

2 Q. So you don't know how much money PayPal made from the PPP
3 program?

4 A. I do not.

5 Q. Okay. Have you heard of the term "referral agent" in the
6 context of the PPP program?

7 A. I have.

8 Q. And what is a referral agent in the context of the PPP
9 program?

10 A. My understanding is that they refer people to banks or loan
11 providers.

12 Q. Who was the -- was there a referral agent in this case?

13 A. Not that I'm aware of.

14 Q. Okay. So how is it -- what was the first -- let me take a
15 step back.

16 You used the term "applicant" several times in your
17 testimony, correct?

18 A. Correct.

19 Q. Could we agree the applicant is HM-UP, the borrower -- the
20 company that applied for the loan?

21 A. The applicant is the individual representing the business.

22 Q. The applicant is the individual representing the business?
23 So who applied -- okay. Okay. Who was the borrower in the
24 HM-UP PPP loan?

25 A. The business is the borrower, but an individual has to

1 apply on behalf of the business.

2 Q. I understand. The borrower is HM-UP, correct?

3 A. Correct.

4 Q. And so the borrower is the entity that's applying for the
5 loan, correct?

6 A. Yes.

7 Q. So the borrower is the applicant on the loan; is that
8 correct?

9 A. Yes.

10 Q. Okay. So we could agree that the applicant on these loans
11 was HM-UP, correct?

12 A. Yes. There was a personal applicant and a business
13 applicant.

14 Q. Okay. So you're not agreeing with me that HM-UP was the
15 applicant?

16 A. HM-UP is the business, yes.

17 Q. Okay. All right. Mr. Sheppard was not the applicant,
18 correct?

19 A. Yes. The applicant is an individual. A business can't
20 fill out the documentation. An individual has to apply.

21 Q. And you don't know Mr. Sheppard's involvement in applying
22 for the loan, correct?

23 A. The person who submitted the documentation indicated they
24 were Eric Sheppard.

25 Q. Okay. But you don't know his involvement?

1 A. I do not.

2 Q. Okay. So can we agree to use the term "applicant" for the
3 company or are we going to have to, every time you use "the
4 applicant," figure out if you're talking about the company or
5 Eric Sheppard?

6 MS. JIMENEZ: Objection. She's answered the question.

7 THE COURT: Sustained.

8 BY MR. ETRA:

9 Q. Generally speaking, how did HM-UP first come into contact
10 with PayPal?

11 A. They went to PayPal's website and submitted the initial
12 application.

13 Q. How did HM-UP -- do you know whether PayPal actually did
14 marketing to get HM-UP to go to the website?

15 A. I do not know.

16 Q. Do you know that PayPal is fairly aggressive -- well, I
17 should take that back. Do you know that PayPal sends a lot of
18 emails out to try to gin up business, right?

19 A. Sure. We're a business. We solicit business.

20 Q. I've received one every two weeks since I've been on this
21 case. That sounds right?

22 MS. JIMENEZ: Objection.

23 THE COURT: And the basis? Is there a legal basis?

24 MS. JIMENEZ: Yes. Irrelevant -- his own personal
25 experience with PayPal.

1 THE COURT: Sustained.

2 BY MR. ETRA:

3 Q. But you're familiar with the fact that PayPal -- and
4 they're allowed to -- will send out emails to solicit business,
5 correct?

6 A. Yes.

7 Q. And did they do that in the PPP program?

8 A. Yes.

9 Q. And what did those emails say?

10 A. I don't recall exactly. It's that we are offering the
11 Paycheck Protection loan.

12 Q. You don't know what the email said about the nature of the
13 program, correct?

14 A. Not in detail. It was three years ago. I don't recall.

15 Q. So -- okay. So when I asked you about what the email said,
16 you're now saying it's three years ago, you don't recall,
17 correct?

18 A. Yeah. I can't recall exactly what they said.

19 Q. Okay. And you didn't look into that before you came today?

20 A. No.

21 Q. And do you know whether PayPal does pop-up ads? Pop-ups
22 when you're on -- let's say you're making a payment on PayPal.
23 Do you know whether they do pop-ups?

24 A. We do. I don't recall doing that for the Paycheck
25 Protection loan.

1 Q. Do you know whether they did that or not? Do you know for
2 a fact?

3 A. No, we did not.

4 Q. You sure?

5 A. Yes.

6 Q. Okay. So you don't know whether Mr. Sheppard -- excuse me.
7 You don't know whether Mr. Sheppard or someone from HM-UP went
8 on the portal on their own or was first solicited by an email?
9 You don't know?

10 A. I don't.

11 Q. Okay. And PayPal basically handles everything. Once a
12 person goes on the portal, PayPal handles everything else,
13 right? Let me strike that. Start again.

14 Once the person hits the portal, PayPal is basically
15 doing all of the requests for documents, requests for
16 information, and that whole process for WebBank, right?

17 A. Yes. That's correct.

18 Q. Okay. And after WebBank issues the loan, does PayPal
19 remain -- do they get the loan back?

20 A. PayPal remains the service provider.

21 Q. So what are the different ways that PayPal makes money on
22 the PPP loan?

23 A. Based off of the interest accrued on the loan.

24 Q. So they do all the work to get the loan ready, right?

25 A. Yes.

1 Q. And they get a fee for that, right?

2 A. I can't speak to the fee agreement between PayPal and
3 WebBank.

4 Q. But you know there's one?

5 A. Yes.

6 Q. Then when WebBank issues the loan, PayPal still stays
7 involved to make more money on the back end, correct?

8 A. I can't speak to how we make money. I don't know the
9 different points or how that's calculated.

10 Q. But you do know that PayPal does earn money on the interest
11 payments, correct?

12 A. We have an agreement with WebBank based on fees.

13 Q. Okay. And do you know how many loans -- when WebBank
14 issued a PPP loan, it means it went through you -- PayPal,
15 correct?

16 MS. JIMENEZ: What was the question?

17 THE WITNESS: PayPal was one of the service providers
18 for WebBank. They had other --

19 BY MR. ETRA:

20 Q. I apologize. Were you finished with your answer?

21 A. Yeah. Go ahead.

22 Q. Was PayPal the only service provider for WebBank?

23 A. No, we were not.

24 Q. I see. How many loans did PayPal work on during the PPP
25 program?

1 MS. JIMENEZ: Objection. Relevance.

2 THE COURT: Sustained.

3 BY MR. ETRA:

4 Q. Okay. How many loans per day did PayPal work on in the
5 program?

6 MS. JIMENEZ: Objection.

7 THE COURT: Basis?

8 MS. JIMENEZ: Relevance.

9 THE COURT: Sustained.

10 BY MR. ETRA:

11 Q. Okay. How much time did PayPal spend on each loan?

12 MS. JIMENEZ: Objection. Relevance.

13 THE COURT: Sustained.

14 BY MR. ETRA:

15 Q. I think you said that you're supposed to take all the
16 representations as true from the applicant, correct?

17 A. Correct.

18 Q. And I'm using the term "applicant" as the borrower. Okay?
19 Do you understand that?

20 A. Yes.

21 Q. Okay. And is it true that you're supposed to scrutinize
22 the information provided by the applicant?

23 A. Define "scrutinize."

24 Q. Well, it's the only word I have from a witness earlier than
25 yours. Would you describe the obligation of the bank or the

1 LSP to scrutinize the information from the borrower?

2 A. No.

3 Q. Okay. And PayPal did not scrutinize the information from
4 the borrowers, correct?

5 A. No.

6 Q. You just accepted them all as true, correct?

7 A. Correct.

8 Q. But it's different certainly for the payroll calculation,
9 correct?

10 A. We would verify the payroll calculation.

11 Q. You're required to verify the payroll calculation?

12 A. Yes.

13 Q. You're required to take the information provided by the
14 borrower and make sure it adds up and makes sense, that it fits
15 with the payroll disclosure by the borrower, correct?

16 A. Correct.

17 Q. Okay. Good.

18 Certainly, if there's information that you have, or a
19 representation or disclosure from the borrower, you're not
20 supposed to ignore it, correct?

21 A. Correct.

22 Q. And if the information is inconsistent, you don't just
23 ignore the inconsistency, correct?

24 A. Correct. If we see an inconsistency.

25 Q. Okay. Great.

1 MR. ETRA: All right. Let's go to the portal. I have
2 it as L-50, Chris.

3 (Pause in proceedings.)

4 MS. JIMENEZ: What document is this?

5 THE COURT: What exhibit number is this?

6 MR. ETRA: Your Honor, it's our L-50. It matches --
7 first of all, we have a different numbering system.

8 THE COURT: So it's not evidence. So just the
9 witness, please.

10 MS. MARTINEZ: It may be a Government exhibit --

11 MR. ETRA: It's okay with me, if it's okay with the
12 Court.

13 THE COURT: Ms. Jimenez, do you want to look at L-50
14 and see if that matches with an exhibit already in evidence?

15 And to save time, Mr. Etra, do you know, sir?

16 MR. ETRA: I believe it is.

17 THE COURT: Which exhibit number?

18 MR. ETRA: That's the problem. We don't have it. I
19 don't know.

20 MS. JIMENEZ: No objection, Your Honor.

21 THE COURT: All right. Then L-50 admitted into
22 evidence.

23 MR. ETRA: Thank you.

24 (Defendant's Exhibit L-50 received into evidence.)

25 THE COURT: You may show the jury, please.

1 MR. ETRA: Thank you.

2 BY MR. ETRA:

3 Q. Ms. Hutcheson, do you recognize L-50?

4 A. Yes.

5 Q. What is it?

6 A. It is a screenshot of the application that's done online.

7 Q. Now -- so this is the portal that was set up by PayPal, and
8 this is the first page you see when you click in the website,
9 right?

10 A. Correct.

11 Q. Okay. And it was entirely PayPal's decision about what
12 information to put here, correct?

13 A. We had information required by the SBA that would be
14 required on their forms. So we have to collect that
15 information.

16 Q. Fair. But you could have provided other information as
17 well to make sure that the -- make sure that you're getting
18 what you need from the applicant, correct?

19 A. Yes.

20 Q. Okay. I'm going to show you --

21 MR. ETRA: If I can go back to the ELMO for a moment.

22 BY MR. ETRA:

23 Q. -- Exhibit O-1 in evidence. I'm focusing on the letter H.
24 Are you able to see that?

25 A. Yes.

1 Q. This is from the Federal Regulations. And here it says:

2 "Question" -- this is from the regulations by the SBA:

3 "Question: Do independent contractors count as employees for
4 purposes of PPP loan calculations?"

5 "Answer: No. Independent contractors have the
6 ability to apply for a PPP loan on their own, so they do not
7 count for purposes of a borrower's PPP loan calculation."

8 You see that?

9 A. Yes.

10 Q. And you know that's consistent with your knowledge of how
11 the program works, correct?

12 A. Yes.

13 Q. You did not put that information anywhere on the portal,
14 correct?

15 A. No. We referred to the regulations.

16 Q. So those words, or words like that, that specifically say:
17 "Don't include an independent contractor as an employee or as
18 payroll," that is not in the portal, correct?

19 A. It is not.

20 Q. Okay.

21 MR. ETRA: And let's go back to the -- if we can, to
22 the non-ELMO system.

23 No. I want to use the -- all right.

24 BY MR. ETRA:

25 Q. So the first line you see when you go into the portal is

1 the term "Eligibility Information," correct?

2 A. Correct.

3 Q. And it's got: "Put your name," some basic information
4 down, right?

5 A. Yes.

6 Q. And it asks a few very simple questions, right?

7 COURTROOM DEPUTY: I'm sorry. Counsel, is this for
8 everybody -- to publish?

9 MR. ETRA: Yes. I apologize, Your Honor. Yes.

10 THE COURT: It should be on the jurors' screens, L-50.
11 Thank you.

12 BY MR. ETRA:

13 Q. Let me start again, Ms. Hutcheson. You -- basically, it's
14 some basic information. You put the business name, and the
15 individual, and the email address, right?

16 A. Correct.

17 Q. And then it asks simple questions like whether the -- let's
18 look at the first question. "Is the applicant or an owner of
19 the applicant suspended, debarred, or otherwise precluded from
20 working with an agency," right?

21 A. Correct.

22 Q. Now, there, how is the word -- isn't the word "applicant"
23 being used to refer to the business?

24 A. It could be the business or the owner.

25 Q. Right. Right. It says: "Applicant or the owner of the

1 applicant." Do you see that?

2 A. Right.

3 Q. Okay. So that means the applicant isn't a person because
4 no one owns another person. The applicant is the company,
5 right?

6 A. Yes.

7 Q. Okay. Great. And if we could just run through the other
8 questions briefly.

9 MR. ETRA: If we can just go down and maybe see the
10 whole page.

11 BY MR. ETRA:

12 Q. Without getting into all the wording, the next question
13 asks about whether the applicant or owner has prior loan
14 history with the SBA, right?

15 A. Correct.

16 Q. And then without --

17 MR. ETRA: Just keep it like this.

18 BY MR. ETRA:

19 Q. And then it talks about criminal history after that, right?

20 A. Yes.

21 Q. And then, after that, it asks if the owner or the applicant
22 was approved for another loan, right?

23 A. Right.

24 Q. And then you press "continue" and it goes to the next page.

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

1 BY MR. ETRA:

2 Q. And at the very top, do you see like a -- I don't know how
3 you describe that bar. Is that a term in the industry?

4 A. It's like a progress bar.

5 Q. Progress bar. It basically said: "Okay. You've already
6 entered the eligibility information." Do you see that?

7 A. Yes.

8 Q. So PayPal set this up where someone who jumps on the screen
9 and answers those questions is basically being told: "You're
10 eligible." Do you see that?

11 A. Those are the initial prequalifications per the SBA.

12 Q. Oh. And does the website -- does the portal say: "These
13 are the initial prequalifications"?

14 A. It's initial eligibility information.

15 Q. You want to go back and look? Let's go back to the first
16 page, whether it says "initial eligibility." Let's go back.
17 Tell me where it says "initial eligibility."

18 A. It says: "Enter eligibility information."

19 Q. Right. Does it say this is only initial eligibility? Yes
20 or no, if you can.

21 A. No.

22 Q. Okay. PayPal ever concerned that this was misleading
23 borrowers the way it set up the portal? Any concern at PayPal
24 over that?

25 A. No.

1 Q. Okay.

2 MR. ETRA: Next page.

3 BY MR. ETRA:

4 Q. Says: "Business Entity Type," and this is -- there's a --
5 what's the term -- draw-down?

6 A. Drop-down.

7 Q. Drop-down. And as you acknowledged, there were no
8 instructions about whether to use a tax return or not, right?

9 A. On this version in 2020 there was not.

10 Q. Right. And the information put on was the code for
11 construction; is that right?

12 A. Correct.

13 Q. Okay. And you have no information to suggest that that was
14 an inaccurate description, correct?

15 A. I do not.

16 Q. Okay. Let's go to the trade name or d/b/a.

17 Do you recall when you were first asked this question
18 by the prosecutor about what the d/b/a is, and you said it
19 could be another name for the company or another company that's
20 connected to it?

21 A. Yes.

22 Q. Okay. So even your answer in that question you acknowledge
23 that someone who is limited to what's in these boxes might put
24 the name of another actual company for the d/b/a, right?

25 A. They could.

1 Q. And in fact, the applicant put down HM Management and
2 Development, correct?

3 A. Yes.

4 Q. Was that an indication perhaps that HM-UP had an affiliate?

5 MS. JIMENEZ: I'm sorry. What was the question?

6 BY MR. ETRA:

7 Q. Was that an indication that HM-UP had an affiliate, HM
8 Management?

9 A. It's simply an indication that they are doing business as
10 that name.

11 Q. Right. Which could be a connected business, right?

12 A. Could be.

13 Q. All right. And then it says: "Number of Employees." Do
14 you see that?

15 A. Yes.

16 Q. You testified on direct that that meant W-2 or wage
17 earners, right?

18 A. Yes.

19 Q. Doesn't say that on the portal, does it?

20 A. It asks for number of employees.

21 Q. Okay. Those are the only words available to the applicant,
22 correct?

23 A. Correct.

24 Q. You didn't say -- PayPal didn't put down: "Only put W-2
25 employees," or something like that, correct?

1 A. No. It's not specified.

2 Q. Okay. And when you testified that it means W-2, that's
3 based on your own knowledge of how the program works, right?

4 A. It's based on the SBA guidelines.

5 Q. Right. Your knowledge of that, right?

6 A. Based on the published guidelines by the SBA, yes.

7 Q. Okay. Did you spend time studying the published guidelines
8 of the SBA?

9 A. I did.

10 Q. That's part of your job, right?

11 A. Yes.

12 Q. You said you were one of the most knowledgable people -- I
13 think you said you're one of the most knowledgeable people at
14 PayPal on SBA, on these guidelines, right?

15 MS. JIMENEZ: Objection.

16 MR. ETRA: I'll ask it differently.

17 THE COURT: Sustained.

18 BY MR. ETRA:

19 Q. Are you one of the most knowledgable people at PayPal of
20 how the program runs?

21 A. Yes.

22 Q. Do you expect everyone else to have as much knowledge as
23 you do?

24 MS. JIMENEZ: Objection. It's argumentative.

25 THE COURT: Sustained.

1 BY MR. ETRA:

2 Q. "Average Monthly Payroll." Do you see that?

3 A. Yes.

4 Q. Again, I think your testimony was this is only for W-2.

5 But it doesn't actually say that, right?

6 A. No.

7 Q. So there's nothing in this portal telling the applicant
8 this is only about W-2 right here, correct?

9 A. Correct.

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

11 BY MR. ETRA:

12 Q. See where it says: "What percent of the business do you
13 own?" Do you see that toward the bottom?

14 A. Yes.

15 Q. So if HM-UP is owned by a company -- do you know that
16 sometimes some companies are owned by other companies?

17 A. Yes.

18 Q. Okay. There's no place to make that clear here because
19 you're asking the person to put down how much that person owns
20 in the applicant company, correct?

21 A. Correct. This is based off of personal information.

22 Q. Okay.

23 MR. ETRA: Let's go to the 2411.

24 BY MR. ETRA:

25 Q. This is loan details. This is the different usage you can

1 make of the funds, correct?

2 A. Correct.

3 Q. Do you know whether the applicant checked these off or not?

4 A. Yes, they did.

5 Q. Okay. So that would show up in the application data form?

6 A. Yes.

7 Q. We'll hold that thought, and we'll get back and we'll see
8 when we get there.

9 MR. ETRA: Let's go to the last page, the
10 certifications. Maybe that's not the last page then. 2413.

11 BY MR. ETRA:

12 Q. You spent some time -- the prosecutor spent some time
13 asking you questions about these certifications, right?

14 A. Not on this page.

15 Q. Okay. Well, when you get to this page, right -- at some
16 point, if you answer the questions, you get to this page,
17 correct?

18 A. (No verbal response.)

19 Q. And there's a list of certifications?

20 A. Yes.

21 Q. Okay. And the prosecutor asked: "When you click on the
22 bottom, what are you acknowledging?" Do you recall that?

23 A. Yes.

24 Q. And you said when you click on the bottom you're
25 acknowledging that you read or are certifying the

1 certifications, correct?

2 A. Correct.

3 Q. It's actually not what it says on the box; am I correct?

4 A. This was the agreeing to receive legal disclosures
5 electronically and giving us permission to pull their personal
6 and business information.

7 Q. When you testified that the clicking on the bottom is a
8 certification that you're agreeing to the certifications here,
9 that's false?

10 MS. JIMENEZ: Objection. Misstates the testimony.

11 THE COURT: Overruled.

12 THE WITNESS: Above it has: "I certify that." And by
13 clicking "submit," you're making that certification.

14 BY MR. ETRA:

15 Q. I'd like you to try to answer any question yes or no and
16 then explain if you need to. Am I correct that when the person
17 clicks on these forms they're not being asked to acknowledge
18 the certifications above it or indicate that they've read it or
19 agree with it? Am I correct?

20 A. You are correct. I'd like to explain that it has the
21 certifications above.

22 Q. Right. Right. And let's look at the first certification.
23 Do you see that?

24 A. Yes.

25 Q. "I certify that the statements included in this form,

1 including the statements required by law and executive orders,
2 and I understand them." Do you see that?

3 A. Yes.

4 Q. So what this says is -- and this comes directly out of the
5 2483, right?

6 A. I believe so.

7 Q. Okay. But here, the form that you're referring to is the
8 information in the portal, correct?

9 A. Correct.

10 Q. Okay. Not necessarily -- the person looking at this
11 doesn't get -- is not looking at the 2483 application, correct?

12 A. Not at this time.

13 Q. Right. And then it says: "I read the statements included
14 in this form, including the statements required by law and
15 executive orders, and I understand them."

16 Do you see that?

17 A. Yes.

18 Q. Don't you think this suggests -- does PayPal recognize --
19 let me do that differently.

20 Doesn't this indicate to the applicant that if they
21 agree with everything they've done so far they can certify
22 this?

23 A. Yes.

24 Q. Okay. And you have no information that -- even with the
25 benefit of today, that the person submitting this

1 information -- strike that.

2 Now let's go to the original lead information. And
3 you see the name Eric Sheppard and the phone number that ends
4 5529, correct?

5 A. Correct.

6 Q. And you see an email address of ericsheppard10@gmail,
7 correct?

8 A. Yes.

9 Q. And there's an IP address at the bottom, correct?

10 A. Yes.

11 Q. This indicates that -- I think you testified -- that the
12 portal was being filled out at this IP address, correct?

13 A. Yes.

14 Q. And you understand an IP address gives a location, correct?

15 A. Correct.

16 Q. You don't know who was sitting at that location filling out
17 the information, correct?

18 A. No, I wouldn't.

19 Q. You don't know?

20 A. No.

21 Q. Okay. And do you know whether that location was a home or
22 an office?

23 A. I do not.

24 Q. Do you know whether it was a home office?

25 A. I do not.

1 Q. Some of these forms confuse me a little bit, and let me
2 show you why I say that. Maybe you can clarify this for me.

3 Do you see where on the right-hand side it says:
4 "Bankruptcy was combined as personal and business" and they
5 answer no?

6 A. Yes.

7 Q. That wasn't in the portal, was it?

8 A. No, because they didn't indicate that they had a
9 bankruptcy.

10 Q. Okay. Okay. And the number of employees, 80. Do you see
11 that?

12 A. Yes.

13 Q. And again, that's there based on the information that's in
14 the portal that we looked at about the word "employee,"
15 correct?

16 A. Correct.

17 Q. Which doesn't specify W-2, correct?

18 A. Correct.

19 Q. Now, when the person fills this out, you know -- you know
20 that the payroll data that you're going to rely upon -- this is
21 now April of 2020, correct?

22 A. Yes.

23 Q. April 15, I think you testified?

24 A. Yes.

25 Q. So you know that in April 2020, at the beginning of the

1 program, the payroll data was probably going to be from 2019,
2 right?

3 A. It was employees at the present time.

4 Q. Right. But the payroll -- okay. Let me ask that question.
5 Remember we saw the word "Portal" set at "Employees," correct?

6 A. Yes.

7 Q. Did it say: "At the present time"?

8 A. It did not.

9 Q. Did it say: "Employees over the period of time when you'll
10 be using the loan"?

11 A. It did not.

12 Q. Did it say: "Employees that you had before COVID"?

13 A. No.

14 Q. It was not clear as to the time period, right?

15 A. No.

16 Q. You agree with me?

17 A. Correct. But if I can explain, again, we relied on the
18 applicant to refer to the SBA guidelines.

19 Q. Okay. So do you say in the portal, when you're asking this
20 information each time: "Please rely on the SBA guidelines and
21 check this out"? Do you say that?

22 A. We do not each time, but it is part of those
23 certifications.

24 Q. Okay. And the reason you don't say it is it would slow
25 people down and you may not get as many applications, correct?

1 A. No. That's not correct.

2 Q. So why not say that? Why not say: "For employees, this is
3 W-2," or "Here's a link to the application," or the regulation
4 I showed you? Why not do that?

5 A. It would be extremely long and confusing to refer to the
6 guidelines for each individual item.

7 Q. Right. This is a lot simpler, right?

8 A. Yes.

9 Q. All right. We can go back to the portal, if we need to,
10 but let me ask you: The portal doesn't ask what year's payroll
11 you're going to rely upon, correct?

12 A. It does not.

13 Q. So when the person here wrote: "80," that person wasn't
14 yet informed, you know, they might be asked about payroll from
15 the previous year, correct?

16 A. No.

17 Q. You're agreeing with me?

18 A. Correct.

19 Q. Okay. All right.

20 MR. ETRA: Let's go to the application data form.

21 BY MR. ETRA:

22 Q. Is this information also populated from the portal?

23 A. Yes, it is.

24 Q. Okay. So you see the HM Management is the d/b/a, right?

25 A. Correct.

1 Q. And you see the date of April 15th, 2020?

2 A. Yes.

3 Q. Where does it show the purpose -- the use of the funds that
4 was asked in the portal?

5 A. It's not on this page.

6 Q. Is it on the original lead information?

7 MS. JIMENEZ: Your Honor, with respect to this
8 document, C-5 and L-51, which was the prior document, neither
9 one -- now, this one has not even been identified. The
10 previous one and this one, they're not in evidence. We had a
11 long discussion about them. I don't object to their
12 admissibility. But for the record, these things --

13 THE COURT: Are you seeking to introduce it into
14 evidence?

15 MR. ETRA: I am, Your Honor.

16 THE COURT: Without objection, admitted into evidence.

17 (Defendant's Exhibits C-5 and L-51 received into
18 evidence.)

19 BY MR. ETRA:

20 Q. The information here on C-5 -- sorry. I was asking you
21 about -- when we looked at the portal, it asked: "How are you
22 going to use the funds," correct?

23 A. Yes.

24 Q. And we didn't see that in the original lead information,
25 did we?

1 A. No.

2 Q. And we don't see that in the application data, correct?

3 A. Correct.

4 Q. So where does that show up?

5 A. It's another screen within our Salesforce system.

6 Q. Did you provide that to us?

7 A. I don't recall.

8 Q. Okay. What other information that's put in the portal is
9 not in the application data screen page or the lead -- original
10 lead information page?

11 A. I'm not aware of anything.

12 Q. Okay. How do you know that the applicant put in the
13 information for the uses of the funds?

14 A. It's a required fill.

15 Q. You wouldn't be able to get past it?

16 A. Right.

17 Q. Okay.

18 MR. ETRA: Let's go to the -- the document on building
19 the loan -- yeah, the loan calculation. Putting up
20 Government's Exhibit 17-3.

21 BY MR. ETRA:

22 Q. So after you go to the portal, you end up on this page,
23 correct?

24 A. Yes.

25 Q. Okay. So again, I want to put ourselves in the mind of the

1 person at the portal. They answer the questions and they're
2 put here, right?

3 A. Correct.

4 Q. Okay. And in this case, the person checked -- well, it
5 says: "To get started with your calculations, select a time
6 frame for the data you'll be providing which is best applicable
7 to your business," right?

8 A. Correct.

9 Q. And the person checked the first one?

10 A. Yes.

11 Q. Which is -- which is the period of 2019, right?

12 A. Yes.

13 Q. Okay. So it's only at this point, after they've entered
14 the information, like number of employees, that they see that
15 the payroll period is going to be 2019, right?

16 A. Correct.

17 Q. And then let's look at the information under Payroll Costs.
18 Item A, "Total Gross Salaries, Wages Commissions," do you see
19 that?

20 A. Yes.

21 Q. Just focusing on those words, does it say there: "Don't
22 include independent contractors"?

23 A. It does not directly, no.

24 Q. Okay. And does it actually have not just the term wages --
25 sorry. Do you have a fixed idea of the word "wages," that it

1 only means W-2?

2 A. (No verbal response.)

3 Q. Let me rephrase that.

4 The terms here of salaries, wages, and commissions
5 could apply equally to an independent contractor, correct?

6 A. It could, but I would refer to the notes.

7 Q. You would refer to the notes. When you say: "Refer to the
8 notes," what notes are they?

9 A. On the right side.

10 Q. So you would refer to the notes. And if you didn't refer
11 to the notes you wouldn't see it right here, correct?

12 A. No.

13 Q. Okay. Now let's refer to the notes. "Provide on a gross
14 basis without regard to federal taxes imposed or withheld." Do
15 you see that?

16 A. Yes.

17 Q. Do you agree that federal taxes are imposed or withheld on
18 W-2 workers? Right?

19 A. Yes.

20 Q. Or 1099ed workers, right?

21 A. 1099ed workers pay their own federal taxes.

22 Q. Okay. Does it say that you consider only W-2 workers in
23 this sentence?

24 A. No.

25 Q. Okay. It says: "Gross basis without regard to," say,

1 withholding, right?

2 A. Yes.

3 Q. That's not -- that doesn't eliminate independent
4 contractors; am I correct?

5 A. That sentence does not.

6 Q. Okay.

7 A. The next sentence explains.

8 Q. The next sentence does that?

9 A. Yes. It refers to independent contractors.

10 Q. It says: "For sole proprietors, self-employed, and
11 independent contractors, this can include earnings from
12 self-employment." Do you see that?

13 A. Yes.

14 Q. And that's referring to the type of entity the borrower is,
15 correct?

16 A. Yes.

17 Q. Okay. And I think you said -- or we'll see -- that this
18 borrower is not considered a sole proprietor, or self-employed,
19 or an independent contractor, correct?

20 A. Correct.

21 Q. It is an LLC, right?

22 A. Yes.

23 Q. So that sentence doesn't apply to the LLC that's a
24 borrower, correct?

25 A. Correct.

1 Q. Okay. So the first sentence doesn't say you don't include
2 independent contractors, and the second sentence doesn't tell
3 the LLC owner not to include independent contractors; am I
4 correct?

5 A. Yes. But I'd like to explain.

6 Q. Why don't you?

7 A. Because it calls out independent contractors, and that
8 would indicate that independent contractors would file on their
9 own. Additionally, there is a linkup above to refer to the
10 SBA's site for detailed information on appropriate calculation
11 of payroll costs.

12 Q. Let's start with the first sentence. The second -- first
13 thing you said. Sorry. The second sentence, as you suggest,
14 indicates that an independent contractor can apply on its own,
15 correct?

16 A. Yes.

17 Q. But it doesn't tell the LLC that it can't include
18 independent contractors it pays, correct?

19 A. No.

20 Q. I'm incorrect?

21 A. It doesn't directly say that. You're correct.

22 Q. I get confused sometimes when you answer my questions. Not
23 a problem.

24 Okay. So if we look at the actual words that the
25 applicant is reading -- and we've got the whole section here

1 highlighted -- not one part of it tells the LLC owner not to
2 include independent contractors? Yes or no?

3 A. Yes.

4 Q. Thank you.

5 All right. Going down -- and then going down to the
6 calculation, you've described how this becomes the average
7 monthly payroll, correct?

8 A. Yes.

9 Q. Okay.

10 MR. ETRA: Let's go to the next page -- is it the next
11 page that does the bank records?

12 BY MR. ETRA:

13 Q. Okay. Which page -- how would you describe this part of
14 the portal?

15 A. It's from that calculator. It's the second tab, which
16 would show what documentation could be supplied.

17 (Pause in proceedings.)

18 MR. ETRA: This is the -- our version. It's not in
19 evidence. We will soon get the one in evidence. So let's keep
20 this on the --

21 MR. CAVALLO: Jonathan, this is in evidence.

22 MR. ETRA: Oh. This is --

23 THE COURT: All right. It's in evidence as 17-3?

24 MS. JIMENEZ: Just for the record, 17-3 has two
25 separate tabs. This is Part 2 of 17-3. So yes, no objection.

1 THE COURT: All right. Then let's continue.

2 BY MR. ETRA:

3 Q. So this is the next part of the portal flow, correct?

4 A. Correct.

5 Q. Okay. And it's basically telling you -- well, let's look
6 at the top. "Instructions. Please indicate the type of
7 documents you are providing to support each category of payroll
8 costs," correct?

9 A. Yes.

10 Q. And that's because you don't just get to say what the
11 payroll is. You have to substantiate it, correct?

12 A. Yes.

13 Q. And let's focus on the different options here. The
14 different options are at the top; if you haven't filed your
15 2019 tax returns or if you have, correct?

16 A. Yes.

17 Q. Okay. And in this case -- unfortunately, we're not seeing
18 it -- do you recall that the bank statements part was checked?

19 A. Yes.

20 Q. Okay. And it's just not on this version, right?

21 A. Correct.

22 Q. Okay. So now that we've acknowledged that, clearly the
23 applicant checks off "bank statements," right?

24 A. Yes. Further down.

25 Q. Right. And by doing that, he's indicating he hasn't filed

1 his 2019 tax returns.

2 Okay. Now we have a different document up.

3 MR. ETRA: Okay. Which exhibit is this?

4 MR. CAVALLO: It's 17-3. There's just two versions.

5 BY MR. ETRA:

6 Q. All right. 17-3. Okay. Do you recognize that?

7 A. Yes.

8 Q. Okay. All right. Very good. So if I could just -- no. I
9 want to read the -- okay. So: "Other Information." I want to
10 look at the choices here. "Bank statements, receipts, other
11 verifiable docs." Do you see that?

12 A. Yes.

13 Q. Okay. So if you're an applicant, if you haven't filed your
14 returns, you have a choice of doing, on the left, Payroll
15 Processing Data or, on the right, Other Information, right?

16 A. Correct.

17 Q. And none of those choices say to the LLC owner -- none
18 of these -- excuse me. None of those choices would apply
19 exclusively to W-2 workers, correct?

20 A. Correct.

21 Q. Right. If you write checks to your independent contractor,
22 you could select "bank statements," correct?

23 A. You could, but that would be inaccurate based on the
24 referral to the SBA site.

25 Q. But there's nothing here in these choices that tell the

1 applicants: "Oh, my God. This is only for W-2 workers,"
2 right?

3 A. Correct.

4 Q. That's because bank statements -- you could use a bank
5 account to pay independent contractors or W-2 employees,
6 correct?

7 A. Correct.

8 Q. And the choice -- and the item clicked were "Bank
9 Statements and Other Verifiable Docs," correct?

10 A. Yes.

11 Q. And in fact, the applicant provided bank statements to
12 substantiate payroll, correct?

13 A. Yes.

14 Q. Okay. And you're not saying there's anything wrong with
15 those bank statements, are you?

16 A. No.

17 Q. Okay. So the applicant was openly disclosing actual bank
18 statements to show who he paid and how he paid them, correct?

19 A. Correct.

20 Q. And you don't see -- okay. And that information would
21 probably help you figure out if there was a W-2 or a 1099,
22 right?

23 A. A bank statement doesn't clarify if it's a W-2 or 1099.

24 Q. Oh, okay. It just shows checks.

25 A. (No verbal response.)

1 Q. But you wouldn't see checks necessarily to the IRS?

2 A. You could.

3 Q. But not necessarily?

4 A. Not necessarily.

5 Q. Okay.

6 MR. ETRA: Let's look at those bank statements.

7 Let's start with -- I have 17-5.

8 BY MR. ETRA:

9 Q. Okay. Exhibit 17-5 is on the screen. Do you recognize
10 that?

11 A. Yes.

12 Q. And I think you testified these are some of the bank
13 records that were provided by the applicant, correct?

14 A. Correct.

15 Q. Okay. I want to separate the portal information that we
16 went over from the rest of the information because we've now
17 finished what happens when the person's on the portal at the
18 beginning, correct?

19 A. Yes.

20 Q. And you have an IP address for all that information,
21 correct?

22 A. Yes.

23 Q. Including the document we just went over, right?

24 A. Correct.

25 Q. Do you have any information as to who sent in these bank

1 records?

2 A. The same person who filled out that information would have
3 had to log into the portal using the email address and
4 password.

5 Q. Okay. So to get to the portal you have to use the email
6 address and password, right?

7 A. Correct.

8 Q. Okay. Do you know who had access to the email address and
9 password?

10 A. No.

11 Q. Okay. Do you know who submitted these bank records?

12 A. I do not.

13 Q. Okay. Do you even know what IP address -- from what IP
14 address the bank records were submitted?

15 A. I do not.

16 Q. Okay. And it's just not information that PayPal kept?

17 A. Correct.

18 Q. All right. So the first bank account is CJUF Flagler, LLC.
19 Do you see that?

20 A. Yes.

21 Q. For SunTrust.

22 Now, you'll agree with me that CJUF Flagler, LLC is
23 not the same thing as HM-UP, correct?

24 A. Correct.

25 Q. Okay. So here, the -- whoever sent this is disclosing

1 affiliates, correct?

2 A. Presumably.

3 Q. Presumably. Well, you talk about how PayPal interprets
4 materials. Help me here. Does PayPal understand that when
5 it's getting payroll information, and it gets a bank account
6 from a different company, that that's an affiliate?

7 A. I don't know whether this document was considered for that.

8 Q. Why is it that in some cases you know how the documents
9 were considered and other cases you don't?

10 MS. JIMENEZ: Objection. Argumentative.

11 THE COURT: Sustained.

12 This might be a time -- Mr. Etra, I do have a matter
13 at 11:30.

14 So Ladies and Gentlemen, as I did advise, we're going
15 to take an extended lunch break, and I'll see you back here at
16 one o'clock.

17 Have a pleasant lunch. We will see you back here at
18 one p.m.

19 COURT SECURITY OFFICER: All rise for the jury.

20 (Jury not present, 11:25 a.m.)

21 THE COURT: Okay. I'll see you back here at one p.m.

22 (Recess from 11:27 a.m. to 1:00 p.m.)

23 THE COURT: Okay. Welcome back.

24 I hope everyone had a nice lunch.

25 All right. Let me acknowledge the presence of the

1 Defendant.

2 Are we ready to proceed?

3 MR. ETRA: Yes, Your Honor.

4 MS. JIMENEZ: Yes, Your Honor.

5 MS. MARTINEZ: Yes, Your Honor.

6 THE COURT: Do we have all of our jurors?

7 COURT SECURITY OFFICER: Let me check.

8 THE COURT: Okay. Appreciate it.

9 (Before the Jury, 1:01 p.m.)

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

12 Please be seated.

13 Do you know why we stand for you, the jury? Because I
14 know some of you are hesitating to sit down before all the
15 jurors come in. We stand for you, the jury, because we give
16 the same deference and respect to you, the judges of facts, as
17 we do the judges when they come into the courtroom. So
18 certainly you are free to remain standing. But once you come
19 in, obviously we remain standing until all of you are here.

20 I trust that everyone had a pleasant lunch and ready
21 to get back to work.

22 And we'll continue with the cross-examination.

23 MR. ETRA: Thank you, Your Honor.

24 If we can put up Exhibit 17-7 in evidence.

25

1 BY MR. ETRA:

2 Q. So before the lunch break, Ms. Hutcheson, we had looked at
3 the CJUF bank account. Do you recall that?

4 A. Yes.

5 Q. Okay. And that was one of the bank accounts that was
6 submitted by the applicant to substantiate payroll, right?

7 A. It was submitted by the applicant.

8 Q. Well, the applicant -- that's fair. But the applicant had
9 indicated that the way he would substantiate payroll was with
10 bank account records and other verifiable documents, correct?

11 A. Correct. It did not specify which bank account records.

12 Q. Sorry?

13 A. Correct. It did not specify which bank account records.

14 Q. Right. Right. But -- so -- but the step after that was --
15 do you agree with me that what followed next was that the
16 applicant submitted the bank accounts?

17 A. Yes.

18 Q. And we saw the first one was CJUF, right?

19 A. Correct.

20 Q. And now I'm showing you 17-7. This is an HM Management and
21 Development bank account, correct?

22 A. Yes, it is.

23 Q. Okay. And this is also another indication that HM-UP has
24 affiliates, not just CJUF but also HM Management and
25 Development, right?

1 A. I can't take that from the statement alone.

2 Q. You can't take that from the statement alone. Well, the
3 statement that's being provided to -- comes after -- well --
4 did PayPal -- let me ask you this: Did PayPal substantiate
5 payroll?

6 A. Yes.

7 Q. It was required to?

8 A. Yes.

9 Q. And it did it based on these bank accounts, correct?

10 A. Bank account and payroll documentation.

11 Q. Okay. Let's start with the bank accounts. Did it review
12 these bank accounts?

13 A. I can't say to what extent the statements were reviewed.

14 Q. Okay. So how do you know payroll substantiated payroll --
15 excuse me. How do you know PayPal substantiated payroll?

16 A. The figures used were from the payroll documentation.

17 Q. I don't understand your answer. Could you please explain
18 it.

19 A. So to substantiate the payroll, we utilized the payroll
20 statement.

21 Q. What's the payroll statement?

22 A. The statements of wages paid that we reviewed earlier.

23 Q. Oh, okay. How do you know -- okay. So let me take a
24 step -- how do you know that PayPal used that payroll report --
25 the withholdings column, that one?

1 A. Yes.

2 Q. Okay. How do you know that PayPal used that report to
3 substantiate payroll?

4 A. Based off of the amount of payroll paid, the figures
5 matching.

6 Q. What are the facts you're relying upon to prove that that's
7 the document that PayPal relied upon?

8 A. Only that the numbers would match.

9 Q. Only that the numbers match. So you're assuming that
10 PayPal relied on that document, correct?

11 A. Correct.

12 Q. Okay. And you have no personal knowledge, correct?

13 A. Correct.

14 Q. There's nothing in the payroll -- the PayPal system you
15 looked at that tells you: "Oh, we relied on that payroll
16 report to substantiate payroll," correct?

17 A. Correct.

18 Q. Not only that, you can't rely on that -- PayPal could not
19 rely on that payroll report to substantiate payroll; isn't that
20 correct?

21 A. No. That's not correct.

22 Q. The reason I say it is it's not a verifiable document.
23 It's just a piece of paper, correct?

24 A. It's verifiable in the fact that it was provided by the
25 applicant to substantiate payroll.

1 Q. Oh. So your definition of verifiable document is a piece
2 of paper from the applicant that says: "This is the payroll"?

3 MS. JIMENEZ: Objection. Argumentative.

4 THE COURT: Sustained.

5 BY MR. ETRA:

6 Q. What does "verifiable documents" mean?

7 A. It could be any provided record by the business to show
8 payroll costs.

9 Q. And how does the word "verifiable" affect the word
10 "document"? I don't understand how a piece of paper from the
11 applicant is something that's verifiable.

12 MS. JIMENEZ: Objection.

13 MR. ETRA: Your Honor --

14 THE COURT: Sustained. You stated: "I don't know,"
15 Mr. Etra.

16 MR. ETRA: I'm sorry?

17 THE COURT: You stated: "I don't know," as if that's
18 not relevant, and the objection is sustained.

19 Let's continue.

20 BY MR. ETRA:

21 Q. Are you saying that PayPal reviewed these bank records?
22 Yes or no?

23 A. We had the bank records, yes.

24 Q. Did you review -- did PayPal review the bank records? Yes
25 or no?

1 MS. JIMENEZ: Asked and answered.

2 MR. ETRA: I don't have any -- I'm not getting an
3 answer.

4 THE COURT: Does the witness understand the question?

5 THE WITNESS: Yes.

6 THE COURT: The question calls for a yes-or-no
7 response. If you need to explain your answer, you may
8 certainly do so.

9 THE WITNESS: Yes. PayPal had the bank statements
10 available for review.

11 BY MR. ETRA:

12 Q. Again, the question was: Did PayPal review the bank
13 statements? Yes or no?

14 A. I cannot personally answer that.

15 Q. Just as you cannot personally answer whether PayPal
16 reviewed the payroll report, correct?

17 A. Correct.

18 Q. Okay. You don't know if -- you don't know if it was even
19 read by someone at PayPal, correct?

20 A. I wasn't the person reviewing it. I can't say.

21 Q. Okay. All right. By the way, we talked about the concept
22 of a d/b/a before. Remember that?

23 A. Yes.

24 Q. With a d/b/a, you can have a company which has a formal
25 name and then the d/b/a is like a nickname, right?

1 A. Right.

2 Q. So like someone who's -- Samantha Smith, Inc. could be a
3 company, but Samantha's Books might be the d/b/a?

4 A. Correct.

5 Q. And the d/b/a is not a real name of the company. It's the
6 nickname, trade name?

7 A. Could be, yes.

8 Q. Which means that a d/b/a can't get a bank account in its
9 name because it's not a real company, right?

10 A. I don't know.

11 Q. So here you see -- do you know what KYC is?

12 A. Yes.

13 Q. You testified about that on direct, didn't you?

14 A. Yes.

15 Q. You know for KYC you have to have a real name of a real
16 company to get a bank account, right?

17 A. You have to have a company name.

18 Q. Right. Right. This tells you -- this bank statement tells
19 PayPal clearly that HM Management and Development is not just a
20 d/b/a, it's a separate company, correct?

21 A. The bank account is listed in the name of HM Management and
22 Development, LLC.

23 Q. Did PayPal -- what was the policy at PayPal as to
24 whether -- strike that.

25 MR. ETRA: Okay. Let's go to the -- I'm sorry -- the

1 next document -- I'm sorry.

2 BY MR. ETRA:

3 Q. The document we have on the screen is bank account 7571.

4 I'm using the last four digits. Do you see that?

5 A. Yes.

6 Q. And that's ultimately the account that the PPP funds go to,
7 correct?

8 A. Yes.

9 Q. Okay.

10 MR. ETRA: And let's go to the next document, which is
11 Exhibit 17-6.

12 BY MR. ETRA:

13 Q. And this is the third bank account -- statements from a
14 third bank account that was provided by the applicant, correct?

15 A. Correct.

16 Q. And this is also HM Management and Development, but this
17 time -- account -- excuse me -- but this time it's at Bank of
18 America, correct?

19 A. Yes.

20 Q. Okay. Just separately from the PPP program, does -- PayPal
21 is involved in lending outside of PPP, correct?

22 A. Yes.

23 Q. Okay. Small business loans, correct?

24 A. Yes.

25 Q. That's kind of a sweet spot?

1 A. (No verbal response.)

2 Q. Okay. Does it ever rely on bank account records to verify
3 information from the applicant?

4 A. Yes.

5 Q. Let's go to the payroll report, which is --

6 MR. ETRA: Turn it around.

7 Okay. This is -- Your Honor, this is Exhibit L-52.
8 It is not yet put into evidence as L-52 -- okay. Now we're
9 putting in -- sorry, Your Honor.

10 THE COURT: All right.

11 MR. ETRA: We're putting in the one in evidence, which
12 is 17-8.

13 BY MR. ETRA:

14 Q. Do you recognize that?

15 A. Yes, sir.

16 Q. By the way, going back to the bank statements, do you know
17 what date they were submitted to PayPal?

18 A. Not off the top of my head.

19 Q. Do the records you have indicate that?

20 A. Yes. They should.

21 Q. Do you know -- okay. Did you produce those records that
22 would indicate that?

23 A. I don't recall.

24 Q. Okay. And what about this payroll report? Do you know the
25 date that this was submitted to PayPal?

1 A. Not off the top of my head. It would have been after the
2 application and prior to the loan funding.

3 Q. Okay. You can't tell if it's between those two dates,
4 right?

5 A. (No verbal response.)

6 Q. Sorry. I strike the question. Your answer was clear
7 enough. Thank you.

8 And do you know who actually -- was this uploaded into
9 the system?

10 A. Yes, it was.

11 Q. Do you know who did that?

12 A. It was by somebody who logged in with the email address and
13 password.

14 Q. Okay. So you don't know who?

15 A. I don't know them.

16 Q. And you don't know from where it was submitted?

17 A. No.

18 Q. Okay. All right. So the first question I have for you on
19 this report -- the first comment is: On the upper left-hand
20 corner, do you see that there are names of two companies, HM
21 Management and CJUF?

22 A. Yes.

23 Q. Is that sort of another indication that these companies are
24 all affiliates?

25 A. Yes.

1 Q. Okay. Another disclosure by the applicant that the
2 applicant has affiliates, correct?

3 A. I can't speak to a disclosure.

4 Q. Okay. And this is for 2019, and it's got a list of names.
5 Do you see that?

6 A. Yes.

7 Q. How many names are on that list?

8 A. Eleven.

9 Q. Now, how many employees was listed by the applicant in the
10 portal?

11 A. Eighty.

12 Q. Okay. So this is inconsistent with the information from
13 the applicant in the portal, correct?

14 A. Yes.

15 Q. And how did -- what efforts did PayPal take to reconcile
16 this discrepancy?

17 A. We did not.

18 Q. So you had inconsistent information from the applicant, and
19 PayPal ignored it -- that fact, correct?

20 MS. JIMENEZ: Objection. Argumentative.

21 THE COURT: Sustained.

22 BY MR. ETRA:

23 Q. Why didn't you attempt to -- why didn't PayPal attempt to
24 reconcile the inconsistency?

25 A. We weren't required to reconcile inconsistencies. We were

1 relying on the borrowers' certifications that the information
2 was accurate.

3 Q. So I thought you said this earlier, that you're supposed to
4 rely on what the borrower says, correct?

5 A. Yes.

6 Q. But what if the information is inconsistent -- and I
7 thought you said you had to resolve that. I thought you said
8 that before the lunch break.

9 A. If it's notable.

10 Q. If it's notable. Okay.

11 Okay. So maybe no one noticed the inconsistency?

12 A. Possibly.

13 Q. Again, maybe no one ever read this report, right? You
14 don't know?

15 MS. JIMENEZ: Objection. Calls for speculation.

16 THE COURT: If the witness knows. Overruled.

17 THE WITNESS: I do not know.

18 BY MR. ETRA:

19 Q. Okay. Okay. Now, I want to understand PayPal's approach
20 to a document like this. You've saying normally when you would
21 see withholding PayPal would understand that to mean W-2,
22 correct?

23 A. Yes.

24 Q. And when they would see non-withholding, then it would
25 presumably be an independent contractor, correct?

1 A. Generally, yes.

2 Q. Okay. So if you read this report, there are two names
3 listed where there's no withholding compared to the others,
4 correct?

5 A. Correct.

6 Q. One of them is Eric Sheppard and one of them is Jeff Graff.
7 Do you see that?

8 A. Yes.

9 Q. Okay. Wouldn't -- based on PayPal's policies and
10 procedures, it shouldn't be including the dollars associated
11 with Jeff Graff in the calculation because, from the looks of
12 it, he would be an independent contractor, right?

13 A. No. They have draws listed.

14 Q. So anyone who gets a draw can include that amount in the
15 calculation?

16 A. (No verbal response.)

17 Q. Only one person gets that, right?

18 A. I don't understand the question.

19 Q. Okay. All right. Under the rules, the employees get
20 covered in payroll calculation and the boss gets covered up to
21 a hundred thousand dollars in addition, correct?

22 A. Correct.

23 Q. That's one person, not numerous bosses, correct?

24 A. There could be multiple owners.

25 Q. And you would account that for multiple owners?

1 A. Yes. Each employee could be considered for up to a hundred
2 thousand dollars in wages paid.

3 Q. Oh. So you're saying that you could include in the
4 calculation of payroll any number of owners up to a hundred
5 thousand dollars, right?

6 A. Yes.

7 Q. So you could have a PPP loan where there are no W-2s, but
8 it's a substantial loan because there's maybe like 20 owners.
9 Is that your testimony?

10 A. I can't speak to that. I'd have to review the SBA
11 guidelines.

12 Q. Isn't it a fact that you're only allowed to have one owner
13 who gets up to a hundred thousand dollars? Isn't that the
14 rule?

15 A. I would have to read the SBA guidelines.

16 Q. Okay. The final application, the 2483 that was signed --
17 DocuSigned in May -- you know what I'm talking about?

18 A. Yes.

19 Q. That has the number 80 for employees, not 10 or 11,
20 correct?

21 A. Correct.

22 Q. And where they ask about affiliates, it doesn't say "yes."
23 It says "no," even though we've seen affiliate information,
24 correct?

25 A. Correct.

1 Q. And that was because PayPal filled out the 2483
2 application, correct?

3 A. The information was prefilled out, based upon the
4 information submitted at the time of application.

5 Q. Some of the information, not all of the information, right?

6 A. Everything except for the borrower's initials and
7 certifications.

8 Q. So you're saying -- when you say "applications," do you
9 mean when they submit the information in the portal?

10 A. Yes.

11 Q. Okay. So it's what you put in the portal. But the rest of
12 the documents that get submitted don't count in how PayPal
13 fills in the 2483 application? Is that your testimony?

14 A. Can you restate the question, please?

15 Q. Sure. Is it your testimony that when PayPal fills in the
16 2483 final application they only rely on the first step where
17 the applicant goes to the portal and they ignore the rest of
18 the disclosures and information in between?

19 MS. JIMENEZ: Objection. Argumentative.

20 THE COURT: Sustained. Rephrase, please.

21 BY MR. ETRA:

22 Q. Does PayPal consider the information submitted to PayPal in
23 filling out -- other than what's in the portal, in filling out
24 the 2483 application? Yes or no?

25 A. We could.

1 Q. It's your choice?

2 A. If there's information different than what was submitted,
3 and we -- there's changes to the application.

4 Q. When you say: "Changes to the application," you mean they
5 have to go back to the portal and change it?

6 A. If the applicant told us that there was a different number
7 of employees, or we found there were different payroll costs,
8 then that could be updated in the loan application data.

9 Q. But when -- so, for example, here the applicant in so many
10 words keeps telling PayPal that it has affiliates, but it
11 doesn't get put into the 2483. How do you explain that?

12 A. We would not have changed that based off of the information
13 presented.

14 MR. ETRA: Let's go to Exhibit 17-10.

15 BY MR. ETRA:

16 Q. Do you recall going over this on direct examination?

17 A. Yes.

18 Q. Okay. And this is something that the applicant -- someone
19 from the applicant company submitted, a comment or a question
20 through the portal, correct?

21 A. Correct.

22 Q. And this is on April 22nd, correct?

23 A. Yes.

24 Q. And the description is: "I'm the owner of multiple
25 companies." I want to stop there. So, in fact, the applicant

1 is specifically telling PayPal on April 22nd that it -- he,
2 whoever is typing is, is the owner of multiple companies. Do
3 you see that?

4 A. Yes.

5 Q. And yet, in the final 2483 application that you guys filled
6 out -- PayPal filled out -- you had "no" for affiliates,
7 correct?

8 A. That's what was submitted by the applicant.

9 Q. Okay. But this information was -- is submitted -- just so
10 it's clear, what we're looking at is information submitted by
11 the applicant through the portal, correct?

12 A. Yes.

13 Q. Okay. And then he writes: "So I need to change the
14 application to reflect self-employed with employees and the LLC
15 needs to be changed." Do you see that?

16 A. Yes.

17 Q. I think you testified that it didn't make sense to make
18 that change, correct?

19 A. Correct.

20 Q. And how did you know that?

21 A. The application was already under review, and there was not
22 sufficient information here to change the loan. Ultimately,
23 that would be up for the applicant to notify us if the
24 information was incorrect before signing the 2483.

25 Q. Okay. So if I understand you correctly, when this person

1 put the information in on April 22nd, at 4:12 p.m., PayPal had
2 already sent out the 40 -- 2483 application for DocuSigning?

3 A. No, we had not.

4 Q. Okay. So what is the reason that you -- sorry. Did you
5 determine -- did you -- did PayPal know -- let me take a step
6 back.

7 Did you answer this question? Did PayPal answer this
8 response -- this question? Excuse me.

9 A. We did not.

10 Q. So the applicant asked a question and PayPal didn't
11 respond, right?

12 A. Correct.

13 Q. Because PayPal determined, for whatever reason, there was
14 no need to?

15 A. There was no need or the application had already been
16 processed.

17 Q. So if the application's already processed, and the --
18 meanwhile, the applicant is sending you potentially new and
19 different information, you're not going to look at it because
20 the application's already been processed? Is that your
21 testimony?

22 A. If it's not substantial to change.

23 Q. Oh. So PayPal has a sense of which changes are substantial
24 enough to go back and fix the application, correct?

25 A. This would not have changed the overall loan.

1 Q. Okay. So when the -- "would not change the overall loan."
2 So did PayPal make that determination at that time or are you
3 speculating?

4 A. I'm speculating.

5 Q. You were not the person who was dealing with this question
6 at the time, correct?

7 A. I was not.

8 Q. So you have no idea why the person -- whatever person was
9 dealing with this chose to ignore it?

10 A. No. Throughout the course of the PPP program, we received
11 many contacts that we were unable to respond to.

12 Q. See at the bottom line, it says: "The LLC needs to be
13 changed." Do you see that?

14 A. Yes.

15 Q. Now, the applicant was an LLC, correct?

16 A. Yes.

17 Q. So here the applicant is saying got to change the LLC to
18 a -- basically, the borrower to a different borrower. Do you
19 see that?

20 A. Yes.

21 Q. And yet, PayPal, for whatever reason, decided to ignore
22 that, correct?

23 A. We did not respond to this.

24 MR. ETRA: Let's go to the next message.

25 Further down.

1 BY MR. ETRA:

2 Q. And here, on April 23rd, the applicant's writing: "I
3 needed to add more documentation from my CPA to the submittal,
4 but the site would not let me. Thank you." Do you see that?

5 A. Yes.

6 Q. And in fact, this is another time where the applicant is
7 communicating in the portal about the information that it wants
8 to get to PayPal, correct?

9 A. Correct.

10 Q. And PayPal did not respond, correct?

11 A. We did not.

12 Q. PayPal proceeded with the 2483 application the way it did,
13 without the -- without the benefit of whatever information --
14 new information the applicant wanted to give; is that correct?

15 A. Correct.

16 Q. Okay.

17 MR. ETRA: All right. Let's go to -- we have a new
18 document, C-14.

19 Your Honor, C-14 is part of the overall PayPal
20 production. So we're going to offer C-14.

21 THE COURT: Is it part of the exhibits already
22 admitted into evidence?

23 MR. ETRA: Yes.

24 THE COURT: So which exhibit is it?

25 MR. ETRA: So C-14 -- and it's a part of one exhibit

1 which is a large group of PayPal documents.

2 MR. CAVALLLO: Seventeen is all PayPal exhibits in
3 evidence. This is a document within that.

4 THE COURT: Show Ms. Jimenez, so that we can make
5 sure, in fact, it is.

6 (Pause in proceedings.)

7 MS. JIMENEZ: No objection, Your Honor.

8 THE COURT: All right, then.

9 MR. ETRA: We offer C-14 in evidence.

10 THE COURT: Well, you don't need to admit it into
11 evidence since it's already part of the Government's exhibit.

12 MR. ETRA: Thank you, Your Honor.

13 THE COURT: All right.

14 BY MR. ETRA:

15 Q. Do you recognize the document on the screen?

16 A. Yes.

17 Q. Could you tell us what it is.

18 A. It's screenshots from our Salesforce system.

19 Q. The same system we were looking at in the two prior
20 documents or pages?

21 A. Correct.

22 Q. So it indicates -- on April 27th, 2020, there's a subject
23 that says: "Open opportunity already exists with email:
24 Ericsheppard10@gmail.com." Do you see that?

25 A. Yes.

1 Q. What does that indicate?

2 A. That the applicant tried to submit multiple PPP
3 applications under the same email address.

4 Q. Right. He tried to submit a new application, correct?

5 A. Yes.

6 Q. And did PayPal review the application that was submitted on
7 that date?

8 A. No. We only reviewed the first application submitted.

9 Q. So you didn't read whatever it was that the applicant
10 submitted, correct?

11 A. No.

12 Q. Do you know whether it was an attempted corrected
13 application?

14 A. I do not.

15 Q. Okay. Did PayPal observe -- well, take a step back.

16 Do you know for a fact that this was not -- whatever
17 application was submitted was not reviewed by the people at
18 PayPal?

19 A. Yes. We only reviewed the first application.

20 Q. Okay. And do you tell -- okay. Isn't it a fact -- and did
21 you -- but you did receive a new version of an application on
22 this date, correct?

23 A. Yes.

24 Q. And did you produce that to the Government?

25 A. We produced this information.

1 Q. Did you produce the application that was submitted at the
2 Eric Sheppard email address on April 27th, 2020? Yes or no?

3 A. He would not have been able to complete a full application
4 since the email address was already in the system.

5 Q. Did you produce -- let me ask it differently. Isn't it a
6 fact that whatever information was produced that resulted in
7 this message, whatever information was submitted to PayPal that
8 resulted in this message, PayPal did not produce to the
9 Government? Isn't that correct?

10 A. I can't speak to that.

11 Q. Okay. Isn't it a fact that, in fact,
12 ericsheppard10@gmail.com submitted a corrected application in
13 this process to change the LLC from HM-UP to HM Management and
14 Development? Isn't that true?

15 MS. JIMENEZ: Objection. Asked and answered.

16 THE COURT: Sustained.

17 BY MR. ETRA:

18 Q. Do you know whether at this time the person who was
19 submitting information was trying to correct information that
20 had previously been provided to PayPal?

21 MS. JIMENEZ: Objection. Calls for speculation.

22 MR. ETRA: Your Honor, it's cross-examination.

23 THE COURT: If the witness knows. Overruled.

24 THE WITNESS: I do not know. It appears to be a new
25 application.

1 BY MR. ETRA:

2 Q. So if a borrower takes out a 2483 form, fills it in at this
3 time period in this portal and submits it, you view that as a
4 new application, right?

5 A. They cannot submit a 2483 through the portal. That's sent
6 via DocuSign after the application is conditionally approved.

7 Q. Okay. Remember from your direct testimony that later on
8 someone at the applicant would like fill in their own 2438 and
9 submit it? Right?

10 A. They could, but we did not consider that nor was one
11 received in 2020.

12 Q. Is it your testimony that no -- one of those handwritten,
13 done by the applicant 2483 form -- is it your testimony that
14 none was submitted in 2020 by the applicant?

15 A. Yes.

16 Q. How do you know that?

17 A. Based on the documentation received.

18 Q. Okay. So -- okay. You still don't know what was submitted
19 that resulted in this message, correct?

20 MS. JIMENEZ: Objection. Asked and answered.
21 Argumentative.

22 MR. ETRA: Your Honor, on the one hand --

23 THE COURT: Overruled. I'll allow it.

24 You may answer the question.

25 THE WITNESS: An application was started but not

1 completed because PayPal allows only one application per
2 business per email address.

3 BY MR. ETRA:

4 Q. What is your personal knowledge as to what was submitted on
5 this date? Do you have any?

6 A. I do not.

7 Q. But whatever was submitted was not considered by PayPal for
8 purposes of the loan we're talking about; is that correct?

9 MS. JIMENEZ: Objection. Asked and answered.

10 THE COURT: Sustained.

11 (Pause in proceedings.)

12 MR. ETRA: Let's go to Exhibit 19-19 in evidence at
13 Bates Number 11515.

14 BY MR. ETRA:

15 Q. Do you recognize this email?

16 A. Yes, I do.

17 Q. What is it?

18 A. It's the approval message saying that their Paycheck
19 Protection Program loan had been approved.

20 Q. Okay. So this is sort of at the end of the process or very
21 close to the end of the process?

22 A. Yes. This is after the DocuSign.

23 Q. No. This is submitting the form for the applicant to
24 DocuSign, correct?

25 A. No. This is after the DocuSign.

1 Q. So your testimony is that the 2484 [sic] Form was already
2 DocuSigned on May 1st, 2020?

3 A. 2483. Yes, sir.

4 Q. 2483. Okay.

5 MR. ETRA: Let's go to the 2483, which is Exhibit C-6.

6 MS. JIMENEZ: C-6 is not in evidence.

7 MR. ETRA: It's in evidence from earlier in trial.

8 MS. JIMENEZ: Okay.

9 MR. ETRA: Let's go to page SHEPP 00248, and focus in
10 on the DocuSign.

11 BY MR. ETRA:

12 Q. When was this application DocuSigned?

13 A. May 1st, 2020.

14 Q. Let me do it differently. When was it first sent to the
15 Gmail email?

16 A. April 23rd, 2020.

17 Q. I see. Okay. And it was viewed on May 1st and signed on
18 May 1st?

19 A. Correct.

20 Q. Okay. And the part below indicates what, the signing below
21 that is -- is who signing?

22 A. That's the completion after PayPal and WebBank sign their
23 portion.

24 Q. Okay. So this application was sent to the Gmail email
25 about eight days before it actually got viewed by whoever was

1 looking at it, correct?

2 A. Correct.

3 Q. Okay.

4 MR. ETRA: Let's go to the first page of the document.

5 BY MR. ETRA:

6 Q. Now, if you go to the -- the application is in the name of
7 HM-UP, correct?

8 A. Yes.

9 Q. And I thought -- and the portal had HM Management and
10 Development as a d/b/a, but you did not put that here, correct?

11 A. Correct.

12 Q. Why is that?

13 A. I can't speculate.

14 Q. Okay. Are you sure that this application reflects the
15 information provided by the applicant?

16 A. Yes.

17 Q. Based on what?

18 A. That's how the information is obtained and prefilled into
19 this form.

20 Q. So you're basically answering it based on the way it's
21 supposed to be done. You can't say that's the way it was done
22 in this case, correct?

23 A. That is the way the system works.

24 Q. So no matter what, the system works that way?

25 A. Yes.

1 Q. It's perfect? Yes?

2 A. I've not seen any errors.

3 Q. Okay. And there are people involved making decisions as
4 well, correct?

5 A. Yes.

6 Q. Or is it -- I mean, is it all done by -- like, all done by
7 some kind of artificial intelligence program?

8 A. It's a computer system taking information from one place
9 and filling it into another.

10 Q. Okay. So it's possible there weren't many people involved
11 along the way, it was just done by computer?

12 A. There were people involved, but it's done by computer as
13 well.

14 Q. All right. And again, if you -- the first -- the top part
15 of the loan application you see "Number of Employees, 80." And
16 that stayed in there even though subsequent information was
17 given making it 11 or so, correct?

18 MS. JIMENEZ: Objection. That misstates the
19 testimony.

20 THE COURT: Sustained.

21 MR. ETRA: Your Honor, it's cross-examination.

22 THE COURT: Rephrase. Sustained.

23 BY MR. ETRA:

24 Q. The number 80 appears here for number of employees,
25 correct?

1 A. Yes.

2 Q. Even though some of the information given suggested that
3 the number was lower, closer to maybe 11, correct?

4 A. The information provided by the applicant indicated 80
5 employees.

6 Q. And the payroll report didn't also indicate 80 employees?

7 A. It did not.

8 Q. Okay. Let's keep going. The part we're looking at right
9 here, is there a place for the applicant to DocuSign?

10 A. Down below, yes.

11 Q. The part we're looking at right here, is there a place for
12 the applicant to DocuSign?

13 A. No. There is not a signature here.

14 Q. Let's go a little further below, in the middle where it
15 asks about affiliates, Question 3. And the answer there is:
16 "No," correct?

17 A. Correct.

18 Q. Even though the borrower had provided information
19 indicating it had affiliates, correct?

20 A. The borrower, on their application, indicated they did not
21 have affiliates.

22 Q. Right. And PayPal put in "no" even though the borrower
23 provided information indicating it had affiliates? Yes or no,
24 if you can.

25 MS. JIMENEZ: Asked and answered. Object.

1 THE COURT: Overruled.

2 You may answer the question.

3 THE WITNESS: Can you restate the question, please.

4 BY MR. ETRA:

5 Q. Sure. The final application that PayPal put together and
6 sent to the applicant had "no" for affiliates, even though the
7 applicant had provided information indicating that the
8 applicant had affiliates, correct?

9 A. Correct. It was based upon the initial application
10 submitted.

11 Q. At any point in time, did PayPal tell the applicant that
12 it's only going to focus on the initial information submitted
13 in the portal?

14 A. No.

15 Q. All right.

16 MR. ETRA: Let's go to the bottom third.

17 BY MR. ETRA:

18 Q. And this is the first place to DocuSign here, right?

19 A. Yes.

20 MR. ETRA: Let's go to the --

21 BY MR. ETRA:

22 Q. When inconsistent information is provided to PayPal, does
23 PayPal have -- does PayPal, as part of its procedures, get in
24 touch with the applicant to try to sort it out?

25 A. It depends on the situation. Generally, with the

1 processing of the PPP loans, we relied on the borrowers'
2 initial information submitted. Due to the sheer volume, we
3 couldn't contact every borrower.

4 Q. How much time did PayPal spend on this application?

5 A. I don't know.

6 Q. How many applications a day did PayPal process?

7 MS. JIMENEZ: Objection.

8 THE COURT: Sustained.

9 MR. ETRA: Go to the next page.

10 Your Honor, could I have a sidebar, please?

11 THE COURT: All right. Come on forward.

12 (At sidebar on the record.)

13 MR. ETRA: So a few issues, Your Honor, on the record.
14 I'm making a proffer. I feel the -- well, first argument, then
15 a proffer.

16 Based on the direct, it sounded like this was a loan
17 package done by a traditional loan committee or a credit
18 committee, and it was thought out -- you know, well-thought-out
19 in that way. And I'd like to establish -- in a proffer, I'd
20 like to establish that it wasn't done that way. And part of
21 the way of doing that is -- showing that is how little time was
22 spent on each application. That's point one.

23 Point two, Your Honor, is, respectfully, this is a
24 very, very, very, very difficult witness, who's an advocate.
25 And that's okay. And I should be given the latitude to fully

1 cross-examine to demonstrate that and not have to accept her
2 non-answers. And I feel like I'm not being permitted to do
3 that.

4 THE COURT: Response?

5 MS. JIMENEZ: Your Honor, this witness is answering
6 the questions to the best of her ability, with counsel
7 insisting on getting different answers that he would like. And
8 the witness is simply answering the questions, but the same
9 questions are being posed over and over again in different
10 ways.

11 This witness is not an advocate. This witness was
12 subpoenaed here. This witness is PayPal, which has absolutely
13 nothing to do with the Government. She's simply responding on
14 behalf of PayPal based on the records that she's familiar with
15 in this case. The Defense attorney simply doesn't like the
16 answers that are being provided.

17 THE COURT: Okay. I'm not permitting you to go
18 outside of -- this witness has already testified that she's had
19 no direct involvement with regard to this application. And
20 with regard to other applications, and PayPal's other work with
21 other individuals, I'm not permitting it. I'm not.

22 MS. WEINTRAUB: Judge, may I be heard just one second?

23 THE COURT: Mr. Etra made the argument. I'm not
24 permitting it.

25 MR. ETRA: Your Honor, the difficulty I have is

1 that -- is that she has given an answer. But then, when it's
2 convenient, she then steps outside that role and gives a
3 certain answer, and I'm stuck because I can't go back --

4 THE COURT: You're not stuck. You've made significant
5 points. But now it's getting to the point where other
6 applications are not relevant.

7 With regard to the time that may have been spent on
8 this application, you asked her. She didn't know. So any
9 other applications, and time spent on other applications, and
10 the number of applications during that period is just not
11 relevant.

12 MR. ETRA: One more thing, Your Honor, if I may.

13 I recognize she said she didn't know this application.
14 And I understand Your Honor's point about this application;
15 however, I can get there if I show that they typically spent
16 only so much time on an application. Then that's good evidence
17 that that's how much time they spent on this --

18 THE COURT: But that's all speculation. Because the
19 fact that certain time may have been spent, or a certain amount
20 of applications, it's just -- it's going way far afield, and
21 I'm not permitting it.

22 Let's continue.

23 (End of discussion at sidebar.)

24 BY MR. ETRA:

25 Q. Do you know whether --

1 MR. ETRA: I'm sorry. May I proceed, Your Honor?

2 THE COURT: Of course.

3 MR. ETRA: I'd like to move forward to the promissory
4 note. And I'm going to get to a specific page -- sorry -- the
5 loan agreement. And it's on Page 000252.

6 MS. JIMENEZ: Which exhibit is this?

7 MR. ETRA: C-6.

8 BY MR. ETRA:

9 Q. Are you with me, ma'am?

10 A. Yes.

11 Q. Okay. Thanks.

12 Are you familiar generally with the loan agreement
13 that was provided to PPP borrowers that were approved?

14 A. Yes.

15 Q. Is that an SBA form?

16 A. No. It's a PayPal and WebBank form.

17 Q. And you're allowed to use your own forms, as long as it's
18 not inconsistent with the SBA rules, correct?

19 A. In addition to the SBA 2483, we can use additional forms,
20 yes.

21 Q. Okay. Great. And it says: "Bank Account Information" --
22 and by the way, the bank account information under here is
23 filled out by who?

24 A. By the applicant.

25 Q. Well, let me take a step back. This package all comes

1 together with the 2483 application, and in this case on
2 April 23rd, correct?

3 A. Yes.

4 Q. So PayPal actually physically -- let's put it that way --
5 physically filled in this information, right?

6 A. No. The applicant does.

7 Q. So you're saying that when this package was sent to be
8 DocuSigned, there was a place for the applicant to type in the
9 account information?

10 A. Yes. They specify the deposit and withdrawal account.

11 Q. Okay. I'm not sure if we're having a misunderstanding or
12 not, and maybe we're not. Your testimony is the reason these
13 accounts are there is because at some point in the process the
14 applicant indicated that's the account they wanted to get the
15 money into, correct?

16 A. Yes.

17 Q. But in terms of actually putting the information into the
18 piece of paper physically, that was done by PayPal, right?

19 A. My understanding is it's done by the applicant.

20 Q. So when they get the DocuSign, there's a place to fill in
21 on that date?

22 A. Yes.

23 Q. Okay. What is that understanding based on?

24 A. The flows that I have seen when we created the experience.

25 Q. And this is account 7571 SunTrust that we saw before,

1 correct?

2 A. Yes, it is.

3 Q. And the applicant had already provided a statement from
4 that account, correct?

5 A. Correct.

6 Q. And the statement indicated that this account is held by
7 not the borrower, but by HM Management and Development,
8 correct?

9 A. Correct.

10 Q. So the borrower didn't hide the fact that it -- that the
11 money would be going into an account not in the name of the
12 borrower, correct?

13 A. That's correct.

14 Q. Did you agree with me?

15 A. Yes.

16 Q. Okay. And that's okay, right?

17 A. It's an LLC.

18 Q. But -- okay. I'm sure that's a good answer. I don't
19 understand your answer. Could you explain.

20 A. Yes. Based off of it being an LLC, that's acceptable.
21 It's the same business name.

22 Q. Well, take a step back. The business name of the applicant
23 is HM-UP, correct?

24 A. Yes.

25 Q. And the money was going to go into an account in the name

1 of HM Management and Development, correct?

2 A. Yes.

3 Q. And that's acceptable to PayPal, right?

4 A. Yes.

5 Q. And it's acceptable under the SBA rules, as understood by
6 PayPal, right?

7 A. Yes.

8 Q. Okay. And the bank account information that we looked at
9 for this account indicated that -- and we could look at it if
10 you want. But if you recall, it was a February statement.
11 Does that sound about right?

12 A. That sounds correct.

13 Q. Okay. So -- certainly the borrower didn't indicate that it
14 was putting the money in a segregated bank account, correct?

15 A. Correct.

16 Q. And PayPal didn't require that the money go in a segregated
17 bank account, correct?

18 A. That was not a requirement.

19 Q. It could go into a regular operating account, right?

20 A. Correct.

21 Q. The account that -- accounts that are used by businesses
22 for all kinds of withdrawals and deposits, right?

23 A. Yes.

24 Q. Okay. And that means the money gets commingled, right?

25 A. Yes. Yes.

1 Q. That's not a problem?

2 A. No. The only requirements are how the money is used.

3 Q. Right. So I want to just finish on the first loan and just
4 ask a few questions.

5 Am I correct that at no point in the documentation
6 provided to the borrower -- at no point did PayPal make it
7 clear that payroll cannot include payments to independent
8 contractors; am I correct?

9 A. No. I don't agree with that statement because PayPal
10 referenced the SBA guidelines that must be followed.

11 Q. Okay. Let me ask it a little differently. PayPal in no
12 point communicated in words of one syllable -- you ever hear
13 that expression?

14 A. No, I have not.

15 Q. Okay. In plain simple terms. Okay?

16 A. Okay.

17 Q. There's no part of this where PayPal, in plain simple
18 terms, communicates to the borrower to say: "Listen, you're an
19 LLC. You could pay for W-2 but not for 1099"; am I correct?

20 MS. JIMENEZ: Objection. Asked and answered.

21 THE COURT: Overruled.

22 THE WITNESS: You are correct. But I'd like to
23 clarify that we referred to the SBA guidelines.

24 BY MR. ETRA:

25 Q. Okay. And the SBA guidelines, those are like the interim

1 rules I showed you?

2 A. Yes.

3 Q. Okay. Do you know how many interim rules there are?

4 A. Not off the top of my head.

5 Q. Do you know how complicated they are?

6 A. Yes.

7 Q. I also want to understand, from all the documents we've
8 looked at for the first loan -- and if I have left out any
9 you'll please tell me -- which of the documents does PayPal
10 have an IP address for?

11 A. We obtain the IP address only at the time of the
12 application being submitted, and then with the DocuSign.

13 Q. Right. And the application being submitted, that's the
14 portal at the beginning?

15 A. Yes.

16 Q. Okay. I want to talk about forgiveness.

17 We're making progress. Okay?

18 A. Okay.

19 Q. I'm going to put up Exhibit 18-1 in evidence. Do you see
20 it, ma'am?

21 A. Yes, sir.

22 Q. Am I correct that your testimony was that the applicant
23 submitted this prematurely, something like that?

24 A. Yes. They submitted this through the portal.

25 Q. And was there something -- it sounded from your testimony

1 as I understood it that you were being a little critical of the
2 applicant in doing so. Am I incorrect?

3 A. We had not prompted the applicant to do so.

4 Q. You had not prompted the applicant to seek forgiveness?

5 A. Correct.

6 Q. How do you know that?

7 A. Because if we had prompted it, we would have asked for
8 documentation and then sent them this form from DocuSign versus
9 them uploading it themselves.

10 MR. ETRA: Let's go to Exhibit 19-19 in evidence at
11 Bates 11514, please.

12 BY MR. ETRA:

13 Q. See this email?

14 A. Yes.

15 Q. Let me take a step back. This is part of
16 something called -- this is a large document with a series of
17 communications, right?

18 A. Correct.

19 Q. What is it supposed to capture?

20 A. Emails sent to our borrowers and any other notes or case
21 history.

22 Q. It's supposed to be complete, right?

23 A. That's open to interpretation.

24 Q. Okay. Maybe you could explain what you mean.

25 A. Your definition of complete and mine may be different.

1 Q. What's yours?

2 A. It's inclusive of all emails sent.

3 Q. That's mine too. Is it inclusive of all emails sent?

4 A. Yes.

5 Q. And received?

6 A. Yes.

7 Q. Okay. All right. Fair enough. We have the same
8 definition.

9 And this is an email that's sent to the
10 ericsheppard10@gmail on May 11th, 2020, right?

11 A. Correct.

12 Q. That is shortly after the loan is -- the loan is approved
13 and signed, right?

14 A. Yeah.

15 Q. And right away PayPal writes: "We're writing to remind you
16 that" -- oops. We lost it. The first paragraph: "We're
17 writing to remind you that if you satisfy all related SBA
18 requirements your Paycheck Protection Program loan may be fully
19 forgiven," correct?

20 A. Correct.

21 Q. That's a reminder you sent -- PayPal sent to the applicant
22 a week after the funding or so, correct?

23 A. Ten days after --

24 Q. Ten days after. Okay?

25 MR. ETRA: And let's go to the next email, 11513.

1 Going the other way.

2 BY MR. ETRA:

3 Q. And then the next month and a half later you sent another
4 message that basically says the same thing, correct?

5 A. Yes.

6 Q. Okay.

7 MR. ETRA: And let's go to the next one, which is
8 11512.

9 BY MR. ETRA:

10 Q. Another message about a month later that says basically the
11 same thing, right?

12 A. Yes, sir.

13 Q. But this time you're asking your borrowers to lobby
14 Congress to make it easier to loosen up the PPP program, right?

15 A. Yes.

16 Q. Okay.

17 MR. ETRA: All right. And then the next one, last two
18 digits 11, 11511.

19 BY MR. ETRA:

20 Q. In September -- oh. This is a different message.

21 MR. ETRA: Let's put that down.

22 BY MR. ETRA:

23 Q. So am I correct that, after the loan was funded, PayPal
24 would send emails -- or did send emails to

25 ericsheppard10@gmail.com stressing -- stressing to think about

1 forgiveness? Right?

2 A. Yes, sir. Those are a series of emails we sent to all SBA
3 PPP borrowers who had been approved for a loan, based on the
4 volume of inquiries we received requesting information about
5 forgiveness.

6 Q. So are you suggesting there's something wrong for the
7 applicant to then -- to do the application -- the first one it
8 did, that was done by themselves?

9 MS. JIMENEZ: Objection. Misstates the testimony.

10 THE COURT: Sustained. Rephrase, please.

11 BY MR. ETRA:

12 Q. So is there anything wrong with Mr. Sheppard, or whoever it
13 was at the companies, submitting a forgiveness application in
14 January?

15 A. I won't say it was wrong, but we would not have accepted
16 that.

17 Q. Okay.

18 MR. ETRA: Let's go to D-1 -- D-2.

19 Your Honor, this is part of the PayPal material that's
20 already in evidence.

21 THE COURT: All right.

22 MS. JIMENEZ: No objection.

23 THE COURT: Then there's no need to admit it
24 separately, if it's already part -- you can use this document
25 certainly.

1 BY MR. ETRA:

2 Q. All right. And this was the form that was submitted by the
3 applicant, right?

4 A. Yes. This is the DocuSign version.

5 MR. ETRA: So I have the wrong document up. We're
6 going to D-1, which -- same circumstance, Your Honor. It's
7 part of what's in evidence already.

8 BY MR. ETRA:

9 Q. You see the document on the screen, D-1?

10 A. Yes, sir.

11 Q. Okay. And that's the original version that the applicant
12 submitted, you know, on his own, right?

13 A. Correct.

14 Q. And there's a place to talk about payroll schedule. Do you
15 see that?

16 A. Yes.

17 Q. It says: "Weekly" -- it's checked in weekly, biweekly, and
18 monthly, and depends on the job, correct?

19 A. Correct.

20 Q. Is there anything in these materials that tells the
21 borrower that forgiveness only applies to W-2 workers?

22 A. No.

23 Q. Okay. And in fact, the borrower wrote: "Weekly, biweekly,
24 monthly, and for some workers the pay depends on the job,"
25 right?

1 A. Yes.

2 Q. That tends to be consistent -- or inconsistent with W-2
3 employees and work assistant -- well, that tends to be
4 inconsistent with W-2 employees, correct?

5 A. Not necessarily.

6 Q. Okay.

7 A. There's employees that could be commissioned and paid
8 depending on the job.

9 Q. What -- typically, employees tend to have more regular
10 hours than independent contractors generally? Is that -- do
11 you agree with that?

12 A. I can't speculate on that.

13 MR. ETRA: I need to go back to the September
14 application.

15 (Pause in proceedings.)

16 MR. ETRA: Go to Exhibit 19-19 in evidence. And going
17 back -- unfortunately, I left something out of the first
18 application, which was the second time it got DocuSigned in
19 September.

20 (Pause in proceedings.)

21 BY MR. ETRA:

22 Q. Okay. Do you see --

23 MR. ETRA: Maybe go a little higher, so she can see at
24 the very top of the email.

25 Thank you.

1 BY MR. ETRA:

2 Q. Do you see the email on the screen from the log on
3 September 3, 2020?

4 A. Yes, sir.

5 Q. And is that an email that, based on the system, got sent
6 from PayPal to -- it says: "Eric Sheppard" because it's the
7 Sheppard Gmail account, correct?

8 A. Correct.

9 Q. Okay. And this is essentially the email where PayPal says:
10 "We've already done this loan, but there's been some changes.
11 So you can" -- essentially, there's a new version of the
12 application to sign, right?

13 A. Yes.

14 Q. Okay. And let's go to that new version -- the September
15 version of the application which is coming up.

16 (Pause in proceedings.)

17 BY MR. ETRA:

18 Q. Okay. Do you recognize this document, C-4?

19 MR. CAVALLLO: It's in evidence.

20 MR. ETRA: Okay. Which is -- sorry. It's part of the
21 bigger production. This is part of the larger PayPal
22 production that's in evidence.

23 THE COURT: Is that correct, Ms. Jimenez?

24 MS. JIMENEZ: Yes. And just for the record, it's
25 Bates Stamp Range 11288 to 11293.

1 MR. ETRA: The original version that's in evidence,
2 you mean?

3 MS. JIMENEZ: Right. Yes.

4 MR. ETRA: Got it.

5 THE COURT: All right.

6 BY MR. ETRA:

7 Q. Do you see C-4 in front of you?

8 A. Yes.

9 Q. Okay. So this is the new version of the application that
10 was submitted from PayPal to the Sheppard Gmail address in
11 September, correct?

12 A. Yes.

13 Q. This was populated -- the information here was populated by
14 PayPal, correct?

15 A. Yes. Based off of the application data.

16 Q. Right. So PayPal took all the information from the
17 May application -- from the May 2483 application, and just
18 dumped it into the September application, correct?

19 MS. JIMENEZ: Objection. Argumentative.

20 MR. ETRA: I'll restate it.

21 THE COURT: Restate it.

22 BY MR. ETRA:

23 Q. PayPal took all the information that was in the May 2020
24 2483 application, and just put it in a new application dated
25 September, and sent it out in September; is that correct?

1 A. All of the information remained the same, except for what
2 was in that email addendum.

3 Q. So when this document is sent for DocuSigning, and it says:
4 "80 employees," that's not the applicant saying: "Oh, by the
5 way, in September, I still have 80 employees." That's PayPal
6 putting 80 in there and sending it to the applicant, right?

7 A. That was filled in from the previous application.

8 Q. Right. All the information -- so it was PayPal's
9 determination to repeat all the information from the
10 May application and put it into the September application,
11 correct?

12 A. Yes. Because this is an addendum to the original
13 application.

14 Q. And what steps did PayPal make to -- strike that.

15 MR. ETRA: Put up D-3.

16 D-3 is also part of the larger PayPal production.

17 MS. JIMENEZ: What is the exhibit that's in evidence?

18 MR. ETRA: What's the large number?

19 MS. JIMENEZ: Is it 17-7?

20 MR. CAVALLO: No.

21 THE COURT: Is it 17-5 or 17-7?

22 MR. CAVALLO: I believe it's 18-2, but I'm checking.
23 It's the bank statements submitted with the -- you know, as
24 part of forgiveness.

25 MS. JIMENEZ: 18-2.

1 THE COURT: All right. Let's continue, then.

2 (Pause in proceedings.)

3 MR. ETRA: May I proceed, Your Honor?

4 THE COURT: Yes. Of course.

5 MR. ETRA: Okay. Thank you.

6 BY MR. ETRA:

7 Q. Do you recognize D-3 to be the bank records that were
8 submitted with the forgiveness application?

9 A. Yes.

10 Q. And again, here again, the applicant is HM-UP, correct --
11 or the borrower is HM-UP, right?

12 A. Yes.

13 Q. But the bank account information is HM Management, right?

14 A. Correct.

15 Q. Okay. And to what extent did PayPal review the bank
16 records to verify the payroll -- that the payroll was used --
17 excuse me -- that the money was spent on payroll according to
18 the forgiveness program?

19 A. We did not. Ultimately, the SBA ruled that for loans under
20 \$150,000 no documentation was required. That's when the 3508S
21 was introduced.

22 Q. And did you indicate that to the borrower?

23 A. Yes.

24 Q. That would be in the call log?

25 A. No, that's based off of the actual DocuSigned version of

1 the forgiveness application.

2 Q. Okay. So this is submitted before there's a DocuSigned
3 application, correct?

4 A. I don't recall the exact dates, but --

5 Q. Let me take a step back.

6 Do you have any IP address information for the
7 forgiveness application we looked at, the first one that was
8 put in by the borrower?

9 A. I do not.

10 Q. Do you have the date that it was submitted?

11 A. I don't recall off the top of my head.

12 Q. You obviously --

13 A. It was dated. We can go back and look at that.

14 Q. And you obviously don't know who actually was involved in
15 submitting it in the portal, correct?

16 A. Whoever had access to the email address and password.

17 Q. Okay. And same with the bank account information. You
18 don't have an IP address for the submission of the bank account
19 records, right?

20 A. I do not.

21 MR. ETRA: Let's go to D-4.

22 MS. JIMENEZ: What is the Government exhibit, please?

23 MR. CAVALLO: 18-3.

24 MS. JIMENEZ: Thank you.

25 MR. ETRA: In evidence as 18-3.

1 BY MR. ETRA:

2 Q. And this is the wage report that was submitted with the --
3 as part of the forgiveness application, right?

4 A. As part of the first one, yes.

5 Q. Well, there was only one -- okay. Part of the first one.
6 Fair enough. And -- meaning the one that the borrower sent in
7 on their own?

8 A. Correct.

9 Q. Do you know -- does PayPal know the IP address or any
10 details about the submission of this document?

11 A. No.

12 Q. Okay. And this document, am I correct, doesn't actually
13 say that there's withholding, right?

14 A. No.

15 Q. In fact, none of the information provided on forgiveness
16 stated that payroll -- the payroll at issue was only W-2,
17 correct?

18 A. The SBA guidelines did.

19 Q. If I can get an answer to my question, please. None of the
20 information submitted by the applicant for forgiveness stated
21 that payroll was only -- or was -- or was only W-2, correct?

22 A. Correct.

23 Q. And in the back-and-forth between the borrower and PayPal,
24 PayPal never stated in simple terms: "Make sure that when
25 you're seeking for forgiveness -- when you're seeking

1 forgiveness, you're only including W-2 wages," correct?

2 A. Correct.

3 Q. We're on the -- past forgiveness on the second -- now we're
4 on the attempted application. Okay?

5 MR. ETRA: So let's go to Exhibit 12-12 at 011500 in
6 evidence.

7 MR. CAVALLO: Sorry. What was the exhibit number?

8 MR. ETRA: 12-12. It's the log.

9 I apologize. Exhibit 19-19.

10 THE COURT: All right.

11 BY MR. ETRA:

12 Q. Okay. So I think you went over this on direct. The
13 application was ultimately rejected because it had the wrong
14 industry type, correct?

15 A. It was rejected because the SBA did not allow loans to this
16 type of industry.

17 Q. And the industry is real estate lending or real estate
18 development? That one? Which industry was it?

19 A. I forget the exact terminology.

20 Q. But it starts with a five, that one?

21 A. Yeah.

22 Q. Okay. That's fine. We can say it starts with a five.
23 That's fine with me.

24 Okay. And this is sent to the borrower on March 6th,
25 2021, correct?

1 A. Correct.

2 Q. And the way PayPal got the information that it was the
3 wrong industry was from running a credit report; is that
4 correct?

5 A. No.

6 Q. Okay.

7 A. It was based off of the information provided by the
8 applicant.

9 Q. Let me just read the -- what the email says right below:

10 "We don't do business with this industry type. Our credit
11 decision was based in whole or in part on information obtained
12 in a report from the consumer reporting agency listed below,"
13 and then it lists TransUnion. Do you recognize TransUnion to
14 be a credit report agency?

15 A. Yes.

16 Q. Okay. Isn't it a fact that, for whatever reason, it wasn't
17 until it ran a credit report that PayPal determined that the
18 applicant was in the wrong industry type because it's the one
19 with the five in front of it?

20 A. It's at this point in our process that we checked the
21 industry.

22 Q. Okay. And even though earlier the applicant, according
23 to -- let me ask this question: Isn't it true, based on your
24 testimony, the applicant had earlier disclosed that it had the
25 industry type with the five in front of it?

1 MS. JIMENEZ: I'm sorry. What was the last -- what
2 did you say?

3 MR. ETRA: I'll say it again. I'll say it again.

4 BY MR. ETRA:

5 Q. Didn't you testify in your direct that earlier, before
6 March, say, in February -- or excuse me -- January or February,
7 the applicant had already disclosed that industry type, the one
8 that begins with a five?

9 A. Correct. However, PayPal does not check the industry until
10 later in the process.

11 Q. Okay. So the borrower discloses an industry type that's
12 ineligible, but the system doesn't reject it until PayPal runs
13 the credit report. Is that it?

14 A. Correct.

15 Q. Okay.

16 MR. ETRA: I want to put up Government's Exhibit 19 --
17 or actually, that's too early. That's too early.

18 MS. JIMENEZ: Too early?

19 MR. ETRA: Okay. Please put up Exhibit 19-1.

20 BY MR. ETRA:

21 Q. This is the portal as it existed for the second round,
22 correct?

23 A. Yes, sir.

24 Q. Okay.

25 MR. ETRA: And let's go to the next page.

1 BY MR. ETRA:

2 Q. Unlike the first round -- when we saw the portal in the
3 first round, we didn't have this type of information in the
4 version that you produced, correct?

5 A. Correct. We made --

6 Q. Can you explain.

7 A. Yes. We made a more detailed version for the second round
8 because of some of the nuances and different flows based on if
9 the applicant had a previous loan or this was their second
10 loan. There were just a lot more nuances, so more detailed
11 screenshots.

12 Q. So you were making improvements in the portal -- in the
13 application through the portal, correct?

14 A. Improvements, as well as adjustments based off of the SBA
15 guidelines, yes.

16 Q. And none of those improvements or adjustments involved
17 stating in simple terms: "Don't include payroll for an
18 independent contractor," correct?

19 A. Correct. That was never an issue.

20 Q. Okay.

21 MR. ETRA: Let's go to Page 032393.

22 BY MR. ETRA:

23 Q. And here, the question that's asked is on the left-hand
24 side, correct?

25 A. Yes.

1 Q. Is that the only part that the applicant sees or does it
2 also see the discussion in the middle?

3 A. There's --

4 Q. The comments in the middle.

5 A. There's a hyperlink that would show that information.

6 Q. Okay. So I think you testified in the second round you
7 specifically didn't just ask the borrower to pick an industry.
8 You said: "Use the industry code, the NAICS code, on your tax
9 returns," correct?

10 A. Correct.

11 Q. And it cites the rule on the right-hand side, right?

12 A. Yes.

13 Q. And the -- and this comes right from the SBA guidelines,
14 right?

15 A. Yes.

16 Q. And it says: "For purposes of reporting NAICS code,
17 applicants must match the business activity code provided on
18 their IRS income tax filings, if applicable," correct?

19 A. Correct.

20 Q. So you're only supposed to provide the code from the tax
21 returns if it's applicable, right?

22 A. Yes.

23 Q. Okay. And in fact, it doesn't -- it has a hyperlink to a
24 website which lists the NAICS codes, right?

25 A. Yes.

1 Q. For those who feel that the code on their tax returns may
2 not be applicable, they could look up all the codes on the
3 Census government website, right?

4 A. I think the way you're using "applicable" may be different
5 here. So recall that not everybody had to submit a tax return
6 if it was their first draw loan.

7 Q. Does it say that explanation right here?

8 A. No.

9 MR. ETRA: Let's go to Bates Number 32400.

10 BY MR. ETRA:

11 Q. We're talking about the subject of demonstrating revenue
12 loss, correct?

13 A. Yes.

14 Q. That was a new feature for the second round, right?

15 A. Yes.

16 Q. And your portal made it clear there are two different ways
17 of showing loss and revenue, right?

18 A. It was showing a 25 percent reduction either
19 quarter-over-quarter or year-over-year.

20 Q. Right. The borrower had a choice, right?

21 A. Yes.

22 Q. Okay. So it specifically says: "Did the applicant have a
23 reduction in gross receipts of at least 25 percent in any 2020
24 quarter, as compared to a selected quarter in 2019, or when
25 comparing calendar year 2020 against calendar year 2019"; is

1 that correct?

2 A. Yes.

3 Q. So under the SBA rules, and the way PayPal applied them, it
4 was the borrower's choice to demonstrate loss of revenue either
5 by comparing quarter-over-quarter from different years or the
6 entirety of the year-over-year, correct?

7 A. Correct.

8 Q. And in this case, the applicant chose quarter-over-quarter;
9 is that correct?

10 A. Yes.

11 Q. Okay. It did not choose year-over-year, correct?

12 A. Correct.

13 Q. Let's continue with the -- and the reason that's
14 significant is because of the issue of tax returns, correct?

15 A. Tax returns would have to be provided regardless, just
16 whether they're quarterly or yearly.

17 Q. Let me -- my question was imprecise. I'm talking about the
18 1065 tax returns. Okay?

19 A. Okay.

20 Q. You only needed to provide the 1065 tax returns if you're
21 choosing to demonstrate the loss in revenue from one year to
22 the next versus from a quarter in one year to a quarter in
23 another year; is that correct?

24 A. For the 1065, yes.

25 Q. So all that testimony on your direct examination about the

1 need for the 1065 tax returns was false?

2 MS. JIMENEZ: Objection.

3 THE COURT: Basis?

4 MS. JIMENEZ: It's argumentative.

5 THE COURT: Sustained.

6 BY MR. ETRA:

7 Q. Isn't it a fact that because the borrower chose to show
8 loss in revenue from quarter to quarter, it was not obligated
9 to provide 1065 tax returns?

10 A. I would need to refresh on the SBA documentation. But my
11 recollection is that the SBA did say that if you have not yet
12 filed your 2020 tax return, fill it out and submit it.

13 Q. Only if you need to submit it, correct?

14 A. I don't have every word of the SBA guidelines memorized.

15 Q. Okay. Let me just get this straight. Are you saying for a
16 fact that the 2020 tax returns were required by PayPal on this
17 application?

18 A. Yes. We saw earlier where we requested the 2020 tax
19 return.

20 Q. And that's based on that line in that document we just
21 looked at, correct?

22 A. Yes.

23 Q. We're going to get there.

24 It's certainly not necessary to show change in
25 revenue, right?

1 A. (No verbal response.)

2 Q. Let me restate it. Because the borrower elected to show
3 loss of revenue from one quarter -- a quarter in one year to a
4 quarter in the next, there was no requirement to do -- provide
5 1065s to show loss of revenue; is that correct?

6 A. The SBA guidelines specified that the 1065 must be filled
7 out and submitted.

8 Q. Let me just say it very differently -- well, let me
9 continue. We'll get there.

10 Okay. Which guideline is that exactly?

11 A. I don't have the guideline memorized, but it's in the SBA
12 guidelines on how to calculate a loan.

13 Q. And the only place in the documents you submitted that says
14 you have to file the 1065 returns is that one line in that
15 document we saw, correct?

16 A. (No verbal response.)

17 Q. That little line in that -- do you recall that line?

18 A. That's where the caseworker made a note that we requested
19 it. We would have sent an email to the borrower requesting.

20 Q. And where is that email?

21 A. It would have been part of the email -- the whole string of
22 emails you have.

23 Q. Why don't we look for it.

24 MR. ETRA: 12-12 -- 19-19.

25 Actually, what's the date? Why don't we first pull up

1 that line, the...

2 BY MR. ETRA:

3 Q. While we're waiting, when you say that the SBA guidelines
4 required the submission of a 1065, is that in all -- is that
5 just in the second round -- let me take a step back.

6 You know, in 2021 you could apply for a second-round
7 loan if you already had one, or you could apply even if you
8 hadn't gotten one before, correct?

9 A. Correct. It was only for the second draw loans.

10 Q. It was only for the second draw loans that you required the
11 1065?

12 A. Correct.

13 Q. Okay. Do you recall in the SBA guidelines why that would
14 be?

15 A. I can't speculate to the SBA guidelines.

16 Q. No. I meant it differently. In all the SBA literature
17 that you looked at, did you ever read an explanation for this
18 regulation you say that says in the second round you need a
19 1065, but only in the second round?

20 A. Yes. It was under the heading of how to calculate the
21 eligible loan amount.

22 Q. Why would you need a 1065 to calculate the eligible loan
23 amount?

24 A. Sir, that's what's in the SBA guidelines.

25 Q. You're talking about verifying payroll?

1 A. No, sir.

2 Q. Okay. All right. Why don't we go to the third page first.
3 This is --

4 MR. ETRA: Sorry. This is C-10 and that is part of...
5 This is part of Government's 17 of the PayPal
6 production. The Government offers -- sorry. The Defense
7 offers.

8 (Pause in proceedings.)

9 MS. JIMENEZ: What's our exhibit number?

10 MR. CAVALLO: I don't have it written down. This is
11 from the PayPal production.

12 MS. JIMENEZ: But it's not one of the exhibits I
13 showed?

14 MR. ETRA: You only showed the operative page. You
15 didn't show the cover pages.

16 THE COURT: Is there any objection?

17 MS. JIMENEZ: No objection, Your Honor.

18 THE COURT: All right, then.

19 (Defendant's Exhibit C-10 received into evidence.)

20 BY MR. ETRA:

21 Q. Do you recognize -- this is now Page 3 of the exhibit. Do
22 you recognize this page?

23 A. Yes, sir.

24 Q. And is this what you were referring to before when you saw
25 an indication that PayPal asked for the 1065?

1 A. Yes.

2 Q. Okay. And let's look at the fourth line. It indicates
3 that -- entered by Satpall Gill. Do you know who Satpall Gill
4 is?

5 A. I do not know that individual.

6 Q. What?

7 A. No, I don't know that individual.

8 Q. But do you know him to be, at least at the time, a PayPal
9 worker?

10 A. Yes.

11 Q. Okay. All right. And it indicates that -- an entry of --
12 creation date of February 16th, 2020, right?

13 A. 2021.

14 Q. 2021. I'm sorry. Been a long day.

15 And this essentially is saying that Mr. Gill, on
16 February 16th, 2021, emailed the borrower, correct?

17 A. Emailed business owner.

18 Q. Business owner? Okay.

19 A. Yes.

20 Q. It says: "Emailed business owner IRS Form 1065, including
21 Schedule K-1 and bank statements," signed SG; is that correct?

22 A. Correct.

23 Q. And your interpretation of this -- well, you testified that
24 this meant that they asked for the 2020 1065. Is that your
25 testimony?

1 A. Yes.

2 Q. How do you get that from these few words?

3 A. Because we would only ask for that tax year.

4 Q. Okay. Based on your knowledge of how PayPal works?

5 A. Correct.

6 Q. And it says it's been emailed, correct?

7 A. Correct.

8 Q. Isn't it a fact that on that date Mr. Gill sent an email to
9 the Sheppard email address and asked for the 1065s of the
10 parent LLCs at HM-UP, not of HM-UP? Isn't that a fact?

11 MS. JIMENEZ: I'm sorry. Of the what of HM-UP?

12 MR. ETRA: Parent. HM Four and HM Eight.

13 THE WITNESS: The email would not have specified the
14 company name. The email went to Eric Sheppard.

15 BY MR. ETRA:

16 Q. So you don't know which 1065s were requested, correct?

17 A. No, sir.

18 Q. Sorry?

19 A. No.

20 Q. So when you testified that this line meant that the
21 business owner -- Mr. Gill emailed the business owner asking
22 for the 1065 -- sorry. Let me start again, please.

23 When you testified that this line meant that PayPal
24 requested the 2020 1065 for HM-UP, you were speculating,
25 correct?

1 A. It's for the borrower.

2 Q. Just please answer my question yes or no.

3 A. Yes, but I'd like to explain. We're not going to ask for a
4 tax return from some other random company.

5 Q. I'm not talking about a random company. I'm talking about
6 the owners of the borrower. So aren't you speculating about
7 which 1065 is being requested?

8 A. No. I don't think that's speculation.

9 Q. And your testimony, then, would be -- is it also -- well,
10 is it your view as a PayPal representative that PayPal would
11 never ask for the partners -- I mean the owners of the LLC --
12 would never ask for the owners' tax returns?

13 A. We're asking for the tax returns of the borrower.

14 Q. Is it your testimony that PayPal never asked for the tax
15 returns for the owners of the borrowers? Is that your
16 testimony?

17 A. No, sir.

18 Q. Okay. So sometimes PayPal would request 1065s from the
19 owners of the borrower, correct?

20 A. I can't say yes or no to that.

21 Q. So again, you're speculating when you say that in these few
22 words here that this shows that PayPal requested the 1065 for
23 HM-UP, correct?

24 A. The email would have been addressed to Eric Sheppard as the
25 business owner and with the borrower name.

1 Q. Could I please get an answer to my question. Are you
2 speculating or not? It's up to you to answer.

3 MS. JIMENEZ: Objection. Asked and answered.

4 THE COURT: If the witness will answer the question,
5 please. If you need to explain your answer, you can certainly
6 do so.

7 THE WITNESS: I don't think that's a speculation.

8 BY MR. ETRA:

9 Q. Okay. So it's clear to you from reading this that the
10 email from Mr. Gill was seeking the 1065 return for HM-UP and
11 for 2020, correct?

12 A. Very brief notes, yes, sir.

13 THE COURT: Please let us know when it might be a good
14 time to give the jury a well-needed break.

15 MR. ETRA: It's going to take a while to develop this
16 point, so maybe we could take one now.

17 THE COURT: All right. Ladies and Gentlemen, let's
18 take a 10-minute recess.

19 COURT SECURITY OFFICER: All rise for the jury.

20 (Jury not present, 2:30 p.m.)

21 THE COURT: Mr. Etra, how much more do you have, sir?

22 MR. ETRA: A fair amount, Your Honor.

23 THE COURT: What does that mean?

24 MR. ETRA: Over an hour, maybe two.

25 THE COURT: You have over an hour for your

1 cross-examination?

2 MR. ETRA: There's a lot to cover here.

3 THE COURT: All right. We're on a 10-minute recess.

4 MS. WEINTRAUB: Judge, can the witness be instructed,
5 please. Because upon leaving the court last time, it was
6 personally observed that there's all of the texting going on,
7 and meetings with the Government, and I'm just concerned --

8 THE COURT: I've already advised Ms. Hutcheson that
9 she's on the witness stand, she's not to discuss her testimony,
10 the testimony of any individual, or any aspect of the case.

11 MS. JIMENEZ: And Your Honor, just for the record,
12 there was absolutely no discussion with this witness at any
13 point, and I have told that to counsel --

14 THE COURT: I don't think you need to be on the
15 defensive.

16 MS. JIMENEZ: Well, I think --

17 THE COURT: The witness is well aware. She can
18 certainly use her phone and text to anyone that she wants, as
19 long as it's not about the case.

20 MS. JIMENEZ: That's correct.

21 THE COURT: All right. I'll see you back here in 10
22 minutes.

23 (Recess from 2:32 p.m. to 2:43 p.m.)

24 THE COURT: All right. Both sides ready to continue?

25 MS. MARTINEZ: Yes, Your Honor.

1 THE COURT: Could we just see if they are all in.

2 Thank you.

3 (Pause in proceedings.)

4 MS. JIMENEZ: Your Honor, I was just provided --

5 THE COURT: Ms. Jimenez...

6 (Before the Jury, 2:44 p.m.)

7 MS. JIMENEZ: Your Honor, may we approach?

8 THE COURT: Welcome back, Ladies and Gentlemen.

9 Please be seated, everyone.

10 Ms. Jimenez?

11 MS. JIMENEZ: Yes, Your Honor. Can we approach for a
12 moment?

13 THE COURT: All right. Come on forward.

14 (At sidebar on the record.)

15 MS. JIMENEZ: Yes, Your Honor. I was just handed -- I
16 was just handed a document which has a tax return attached,
17 which appears to be related. We have asked repeatedly, through
18 12 discovery productions, for reciprocal discovery in this
19 case.

20 THE COURT: What is this?

21 MR. ETRA: This is impeachment material. It's the
22 email -- we saw the line before on the document where Mr. Gill
23 said he emailed the borrower for the tax return. And I'm going
24 to show her next -- I said: "Did you produce it?" She said:
25 "It should be in that log." I'm going to show her it's not in

1 the log and she didn't produce it. And I'm going to show her
2 the email, which actually shows that it's asking for the
3 parents of -- tax return for the parents -- the partners of the
4 company. And --

5 THE COURT: Well, what is this document?

6 MR. ETRA: It's the same thing. It's an email between
7 PayPal and Mr. Sheppard. It's PayPal's records.

8 THE COURT: So then you should have received that as
9 part of the records.

10 MS. JIMENEZ: I did not receive this as part of the
11 records. I have never seen this before.

12 THE COURT: Well, then where did that come from?

13 MR. ETRA: PayPal didn't produce it, but --

14 MS. JIMENEZ: This must have come from the Defendant.

15 THE COURT: Well, if PayPal didn't produce it, then
16 there's no basis to impeach her.

17 MS. WEINTRAUB: PayPal said -- she testified that --
18 she testified that --

19 THE COURT: You have to use the microphone, please.

20 MS. WEINTRAUB: -- that she provided all of the
21 documents from PayPal. She's testified on behalf of this
22 person that was communicating with the Defendant; therefore,
23 it's impeachment to show, A, they didn't produce all the
24 documents, and B --

25 THE COURT: No. Because you're not laying the proper

1 predicate that this document was part of the packet. How do
2 you link that document to the packet?

3 MR. ETRA: Because there's two parties. It's an email
4 to Mr. Sheppard. So he gets an email from PayPal.

5 MS. JIMENEZ: This is an individual who apparently is
6 at PayPal because we've seen his name. PayPal was -- we've
7 subpoenaed records from PayPal to produce all of the records.
8 They produced their records. I've turned over our records.

9 This witness was never the individual who handled this
10 particular application -- any of the applications for this
11 business. That has been well established here. This witness
12 reviewed the records that PayPal produced in response to our
13 subpoena. How does this impeach this witness, who has never
14 seen this record, as I have never seen this record?

15 MR. ETRA: Because the witness, who claims not to know
16 anything, testified that that one line, where it said
17 Mr. Gill -- said on February 16th Mr. Gill emailed BO,
18 Borrower.

19 THE COURT: All right. And that's the email from
20 Mr. Gill?

21 MR. ETRA: Yes.

22 THE COURT: Let me see. Let me see the email.

23 MS. JIMENEZ: Well, let me say that this is --
24 how is --

25 THE COURT: This is from Eric Sheppard to Mr. Gill.

1 MR. ETRA: Well, this is the email we're referring
2 to --

3 MS. WEINTRAUB: It's in response. It goes up.

4 MR. ETRA: There's an earlier chain. I didn't want to
5 to create a fake document and --

6 THE COURT: All right. So if there is a reference in
7 the document to Gill, and if, in fact, she can identify that
8 Satpall Got -- Gill -- is part of PayPal, and this is the
9 additional record that is referenced, then you can use it for
10 impeachment purposes.

11 MS. JIMENEZ: Let me just --

12 THE COURT: Because there's an additional document
13 that she's referencing specifically in the records that were
14 provided by PayPal. So that's fair.

15 MS. JIMENEZ: She did not reference -- so --

16 THE COURT: She referred to -- not this document. She
17 referred -- yeah. Where's the one --

18 MS. JIMENEZ: So the email that the witness referred
19 to is the email message that is in the PayPal records that were
20 produced. It was an email that's -- on February 16th, 2021,
21 where the business owner is asked to produce their tax return.

22 They have previously -- before that date, they have
23 produced the HM-UP Development Alafaya Trails 2019 tax return.
24 There is this message on 2016 requesting the 1065 tax return.
25 What is in the record -- what is in the record that PayPal

1 produced is a 2020 tax return for that same business, which is
2 the tax return that we went over on direct examination.

3 The witness -- I mean, those are what the records
4 were. And so, the witness, reviewing the records, sees that
5 PayPal makes a request for an additional tax return, and there
6 is an additional tax return supplied on February 26th, which is
7 the one that was shown to the jury here, the 2020 return.

8 How does this -- first of all, the Government has
9 requested 12 times, and more in emails, all of their records
10 relating to this case. This record does not impeach this
11 witness because this record was not among the PayPal records
12 that were produced.

13 THE COURT: But this witness has already testified
14 that she's provided the complete set of PayPal records. If
15 that's another record that's part of the PayPal records, and
16 she identifies it, and it's during that time period, and it's
17 referenced specifically in the documents that were sent and
18 were produced by the Government, then it's fair game to just
19 ask her if this is the document that is referenced in the other
20 document.

21 MS. JIMENEZ: Well, that's one issue. But the other
22 issue that I'm raising is that the Government has requested
23 more than 12 times for reciprocal discovery before there
24 was a -- I don't concede that this is impeachment of this
25 witness. But before there was any issue relating to

1 impeachment, the Government requested the records that the
2 Defense had.

3 How is this supposed -- if this is truly an email from
4 PayPal, or an exchange with the Defendant, where he's
5 submitting an actual tax return or multiple tax returns -- I
6 don't know -- how is that something that --

7 THE COURT: Well, why wasn't that provided?

8 MR. ETRA: The reciprocal discovery, as we have
9 discussed at pretrial -- I think at the first pretrial
10 conference was documents we intend to use in our case in chief.
11 We were not planning to get into any of this in our case in
12 chief. We were shocked by this witness's testimony, where she
13 looked at that email, which is just a line -- which, they
14 didn't even produce this email, by the way. We didn't think
15 this email would come up.

16 THE COURT: All right. Let's -- it's fair game. If
17 that witness can identify who that individual is, it's fair
18 game.

19 MS. MARTINEZ: There's hearsay within --

20 (End of discussion at sidebar.)

21 THE COURT: Thank you, Ladies and Gentlemen, for your
22 patience.

23 And let's continue.

24 MR. ETRA: May I proceed, Your Honor?

25 THE COURT: You may.

1 MR. ETRA: So we have the portion of C-4 on the
2 screen. And let's go to the very first page of this document.

3 Sorry. Your Honor, we want to make sure C-4 is in
4 evidence. It's part of a larger production. When the
5 Government used this page, it only used sort of this page of
6 the larger document.

7 BY MR. ETRA:

8 Q. Let's look at the first page in C-10. Do you recognize
9 what's -- see the first page?

10 A. Yes.

11 Q. Do you know who Special Agent Sarah Halleran is?

12 A. Yes.

13 Q. Have you spoken to her in preparation for -- have you
14 spoken to her about this case?

15 A. Yes.

16 Q. Did she request this information from you?

17 A. It appears so.

18 Q. And are you part of PayPal Global Investigations Group?

19 A. I am not.

20 Q. Sorry?

21 A. No.

22 Q. Okay. Are you familiar with the circumstances upon which
23 the FBI asked for the document we just looked at?

24 A. Yes.

25 Q. What were the circumstances?

1 A. They were investigating a case and submitted a subpoena.

2 Q. And were they specifically asking you to try to show
3 whether 1065s were actually demand -- requested or required?

4 Correct?

5 A. I don't know what documentation they specifically
6 requested.

7 Q. Were you involved in getting this information to the FBI?

8 A. I was not.

9 Q. Okay.

10 MR. ETRA: All right. And let's go back to the third
11 page and the reference to that one email.

12 BY MR. ETRA:

13 Q. I think you said that that email from Mr. Gill on
14 February 16th to the borrower would be in the log of emails
15 that we've looked at, right?

16 A. It should be.

17 Q. It should be. Okay. Well, why don't we look.

18 MR. ETRA: Let's go to 19-19. And unfortunately it's
19 not in date order. I don't know why, and I'm not going to ask.
20 But I'm going to go through this and you stop me when you tell
21 me if you find a February 16th email in this production. Okay?

22 A. Okay.

23 Q. So first page, not there, right?

24 A. Correct.

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

1 BY MR. ETRA:

2 Q. Just tell me when we can continue.

3 A. Continue.

4 Q. Sorry?

5 A. Continue.

6 Continue.

7 Continue.

8 Continue.

9 Continue.

10 Continue.

11 It should be on this page, but this appears to be the
12 automated system emails, not the emails sent by teammates.

13 Q. Okay. So you have not -- so do you agree that you have not
14 produced that email --

15 MR. ETRA: Let's go back to C-10 --

16 BY MR. ETRA:

17 Q. From Mr. Satpall Gill to the borrower -- meaning to
18 ericsheppard10@gmail.com -- on February 16th, correct?

19 A. It did not appear in those documents you just showed me.

20 Q. Okay. And in connection with your testimony, you didn't
21 actually read that email before you came into court and
22 testified about what that email was asking for, correct?

23 A. I did not.

24 Q. You don't know?

25 A. I said I did not.

1 Q. Did not.

2 Okay. Did you attempt to look for the email?

3 A. No, sir.

4 Q. Okay. So you can't say exactly what that email asked for,
5 correct?

6 A. Correct.

7 Q. Okay. Well --

8 MR. ETRA: Only for the witness, Exhibit C-10, please.

9 BY MR. ETRA:

10 Q. I want to focus on the bottom email. Well, look at the
11 whole thing but focus on the bottom. And why don't you take a
12 moment and look at it, please.

13 A. Okay.

14 Q. Have you looked at it?

15 A. Yes.

16 Q. Do you recognize that to be the email from Mr. Gill at
17 PayPal to ericsheppard10@gmail.com, on February 16th, 2021,
18 about 1065s?

19 A. Yes. It appears so.

20 MR. ETRA: Your Honor, we offer C-10 -- C-1. Excuse
21 me.

22 MS. JIMENEZ: Your Honor, the Government objects. The
23 document contains hearsay of the Defendant. The document
24 references attachments that are actually not attached to this
25 email.

1 MR. ETRA: Yes, they are.

2 THE COURT: I believe that the documents are attached
3 to the email, as we observed. But you're only seeking to
4 introduce the email itself; is that correct?

5 MR. ETRA: That's not correct, Your Honor, because
6 it's the response as well that continues the communication
7 between PayPal and Mr. Sheppard in response to the request.

8 MS. JIMENEZ: Your Honor, the heading of the email --
9 of the top email references attachments of multiple documents
10 of two different entities, and what's attached refers to a
11 single entity. So the documents that presumably were submitted
12 with these emails are not included, except one of them,
13 assuming this is the document that was submitted. And the
14 email contains hearsay.

15 MR. ETRA: Your Honor, it's a business record.

16 THE COURT: I'm going to allow it. It's part of the
17 business records of PayPal.

18 With regard to the exhibits that are attached, if, in
19 fact, they are consistent with what is reflected attached to
20 the 1065 returns, as well as the other items, then certainly
21 you can introduce that as a composite. But the objection is
22 noted. It's overruled. It will be admitted and is part of the
23 PayPal records.

24 (Defendant's Exhibit C-1 received into evidence.)

25 MR. ETRA: May I publish the exhibit?

1 THE COURT: You may.

2 MR. ETRA: Okay. Now let's enlarge the bottom portion
3 of the -- enlarge the bottom portion of the email.

4 BY MR. ETRA:

5 Q. Here -- this is the email that we've been talking about,
6 correct?

7 A. Yes.

8 Q. Okay. And Mr. Gill is writing to Mr. Sheppard on
9 February 16th, 2021, about the 1065, correct?

10 A. Correct.

11 Q. And he's not asking for the 1065 of HM-UP, correct?

12 A. It does not specify.

13 Q. Okay. Well, why don't we read the email. "Can you please
14 upload the following documents of both partners of the
15 company." Do you see that?

16 A. Yes.

17 Q. Do you understand that what's being requested are documents
18 for the owners of the company?

19 A. Yes.

20 Q. Okay. And it then goes on to say: "IRS Form 1065,
21 Schedule K-1," and other things, correct?

22 A. Correct.

23 Q. So do you recognize now that, in fact, that line you looked
24 at and talked about on direct was not PayPal asking for the tax
25 returns, 1065, of HM-UP but was asking for the 1065 tax returns

1 of HM-UP's parent companies HM Four and HM Eight? Is that
2 correct?

3 MS. JIMENEZ: Objection. You're misstating the email.

4 MR. ETRA: Leading. I mean --

5 THE COURT: Overruled. The witness is free to answer
6 that way. You may answer the question.

7 THE WITNESS: Can you repeat the question, please.

8 BY MR. ETRA:

9 Q. Sure. In fact -- in fact, contrary to your testimony, here
10 Mr. Gill was seeking the 1065 tax returns not of HM-UP but of
11 HM-UP's parents, HM Four and HM Eight; isn't that correct?

12 A. It just says: "Both partners."

13 Q. Okay. So let me ask you something. When you were
14 testifying about what was in this email, you were speculating,
15 weren't you?

16 A. I had not seen this email.

17 Q. And hence, you were speculating, correct?

18 A. Correct.

19 MR. ETRA: And let's continue the chain up.

20 BY MR. ETRA:

21 Q. In response, Mr. Sheppard writes: "Hi, Satpall. Sorry.
22 Just saw your email. Will copy and upload the documents
23 requested in your email shortly. Thank you again for your
24 expeditious follow-up on documents. Sincerely, Eric."

25 Do you see that?

1 A. Yes.

2 Q. That wasn't in the PayPal log that you produced either, was
3 it?

4 A. No. Those aren't part of that log.

5 Q. So when I asked you at the beginning of the cross, or early
6 in the cross, whether PayPal produced all the documents related
7 to these loans, and you said yes, in fact, you were mistaken.
8 They did not produce all the documents related to these loans,
9 correct?

10 A. I don't consider the emails as documents relating to the
11 loan.

12 Q. Okay.

13 A. It's to get to --

14 Q. Okay. So your testimony is --

15 (Court reporter interruption.)

16 BY MR. ETRA:

17 Q. So your testimony is emails don't count as documents. Is
18 that your testimony?

19 A. They are not part of the loan application considered,
20 correct.

21 Q. Are there any other emails that PayPal has between PayPal
22 and Mr. Sheppard that PayPal did not produce?

23 A. I don't know. As I stated, I did not personally produce
24 the documentation.

25 Q. Oh. Since you personally did not produce the

1 documentation, you really can't speak to the completeness of
2 the documentation produced, correct?

3 A. Correct.

4 MR. ETRA: Let's go further a line up -- further email
5 up.

6 BY MR. ETRA:

7 Q. It's an email from Mr. Sheppard to Mr. Gill: "Hi, Satpall.
8 I was able to send the bank statements into the portal, but the
9 1065 for respective LLC interest did not have the ability to go
10 into the portal. Attached are the 1065 returns for 2019," and
11 it says other information there. Do you see that?

12 A. Yes.

13 Q. And what does it indicate on the attachments?

14 A. It indicates the attachments shown. You want me to read
15 the --

16 Q. Well, it shows "HM Four, LLC, '19 TR." Do you see that?

17 A. Yes.

18 Q. And "HM Eight, LLC, '19 TR," correct?

19 A. Correct.

20 Q. And in fact, Mr. Sheppard sent HM Four, LLC's 2019 tax
21 return, "TR," and HM Eight, LLC's 2019 tax returns, correct?

22 A. I don't know based off of that.

23 Q. Okay. Well, let's look at the next page.

24 MR. ETRA: Sorry. The first page of the attachment.

25

1 BY MR. ETRA:

2 Q. Are you able to read this document?

3 A. Yes.

4 Q. Does it appear to be the 2019 1065 tax return for HM Eight?

5 A. Yes.

6 MR. ETRA: And then let's go to the next one.

7 BY MR. ETRA:

8 Q. Let me -- by the way, let me take a step back and go to
9 what we had before. Did you testify that PayPal only accepts
10 signed tax returns? Was that your direct testimony? I may
11 have misheard you.

12 A. I believe the direction from the SBA was to fill out the
13 tax return and submit it.

14 Q. So let me just get this out of the way. Was PayPal's
15 policy when they needed tax returns to accept only signed tax
16 returns?

17 A. I don't recall.

18 Q. Okay. Then I misheard your testimony. I apologize.

19 Okay. You're not aware of any such policy, correct?

20 A. Correct.

21 Q. Okay. That was HM Eight.

22 MR. ETRA: And did you find HM Four?

23 BY MR. ETRA:

24 Q. And now do -- you see the HM Four tax return 2019 attached
25 as well, correct?

1 A. Yes.

2 Q. Okay. So do I have it correctly that Mr. Gill -- that line
3 on the document that we saw from Mr. Gill that says: "Email
4 the borrower about the tax return" was actually emailing about
5 the tax returns of the parent companies? Correct?

6 A. I can't speculate.

7 Q. All right. Well, in fact, that's what the email I showed
8 you said, the partners of the company, correct?

9 A. Correct.

10 Q. Okay. And then, in fact, Mr. Sheppard provided that which
11 was requested, the tax returns, 2019, of the partners of HM-UP,
12 correct?

13 A. For 2019, yes.

14 Q. And that's a good point. Here in this time period -- early
15 2021 this is all going on, right?

16 A. Correct.

17 Q. When Mr. Sheppard has to provide tax returns, he's
18 providing 2019 tax returns, not 2020. Do you see that?

19 A. Yes.

20 Q. Okay. And typically, 2020 returns aren't usually done by,
21 you know, February of 2020, correct -- by February of the next
22 year?

23 A. Correct. But the SBA issued the guidance to -- if you had
24 not yet filed your tax return, to fill it out and submit it.

25 Q. Am I correct there's not a single indication in this file

1 where it shows that PayPal asked for the 2020 tax returns of
2 HM-UP?

3 A. Correct.

4 Q. And there's not a single notation in the file where PayPal
5 asked for the 1065 tax returns of HM-UP for 2019?

6 A. Correct. The file did not indicate the year.

7 Q. And they were -- okay.

8 MR. ETRA: You can take that down.

9 I'm going to put up Government's Exhibit 19-2.

10 BY MR. ETRA:

11 Q. I think you testified this was the application data
12 submitted by Mr. Sheppard, or whoever it was at his Gmail, on
13 January 19th, 2021, for the second round, correct?

14 A. Correct.

15 Q. And this is based on your understanding of how the
16 documents worked, right? You're interpreting documents based
17 on your understanding of the systems and policies and
18 procedures, correct?

19 A. Yes.

20 Q. All right. And I want to show you -- also put up next to
21 it the version of the application --

22 MS. JIMENEZ: Excuse me. What exhibit number is this,
23 please?

24 MR. ETRA: The current one is 19-2, and I also want to
25 put up 17-4 next to it, both in evidence.

1 BY MR. ETRA:

2 Q. Okay. So on the right-hand side, 17-4, it has a -- is the
3 application data from the portal for the first round, correct?

4 A. Correct.

5 Q. And the left side is the -- per your testimony, the
6 application data from the portal for the second round, right?

7 A. Correct.

8 Q. Do you find it strange that they're completely identical?

9 A. Because the applications were tied and the applicant logged
10 into the portal, the information is carried forward.

11 Q. Okay. So thank you for explaining that. So for the second
12 round, it's not as if Mr. Sheppard, or whoever had access,
13 typed in the information for 2021 the way it appears on the
14 application data here. You're not saying he did that or anyone
15 at his portal did that, correct?

16 A. Correct. The lead information form has the additional
17 information.

18 Q. Okay. So the information in this application data was
19 simply something got -- a button got pressed and the -- PayPal
20 imported the information from the first round into the second
21 round, right?

22 A. Correct.

23 Q. So your testimony isn't that the second round application
24 data was newly filled in by the applicant, correct?

25 A. Correct. If there were changes, it would show on the lead

1 information.

2 Q. I had a hard time hearing you. I apologize.

3 A. Yes. That's correct. If there were changes, it would show
4 on the lead information.

5 MR. ETRA: Let's go to the lead information, then,
6 which is the first page of 19-2, and we can take down the other
7 document.

8 BY MR. ETRA:

9 Q. So here, for example, this is the lead information for the
10 second round?

11 A. Yes.

12 Q. So when it says: "Number of Employees, 80," didn't that
13 just get carried forward from the first round by PayPal?

14 A. No. This is specific to the application version SBA 2.

15 Q. Is your testimony -- I just want to make sure I understand
16 it. Is your testimony that -- strike that.

17 Isn't it true that under its system -- under PayPal's
18 system, when an applicant sought a second round, it carried
19 forth the data from the first round? Correct?

20 A. It depends on the screen. The application data is tied
21 together. The lead is a separate loan lead.

22 Q. And your testimony is -- so how did that "80" get there?

23 A. That was what was input at the time of the application.

24 Q. In the second round?

25 A. Yes.

1 Q. And what is that based on? How do you know that?

2 A. That's my understanding of how the system works.

3 Q. Are you sure that's how the system works, that one page is
4 copied from the previous year and the other page isn't?

5 MS. JIMENEZ: Objection. Argumentative.

6 THE COURT: Sustained.

7 MS. JIMENEZ: Asked and answered.

8 THE COURT: Sustained.

9 BY MR. ETRA:

10 Q. Do you know for a fact that the information here was newly
11 put in, or are you not sure?

12 MS. JIMENEZ: Asked and answered.

13 THE COURT: Sustained.

14 MR. ETRA: All right. Let's go to the second page of
15 this document.

16 BY MR. ETRA:

17 Q. This is that number we were talking about, right, the one
18 with the five?

19 A. Correct.

20 Q. Okay. So your understanding -- your testimony is that this
21 was inputted by the applicant in January of 2021, correct?

22 A. Yes.

23 Q. Okay. And PayPal had this information -- and this is an
24 ineligible code, right?

25 A. Yes.

1 Q. Okay. And PayPal had this information from January to
2 February but didn't reject the loan application for an
3 ineligible code until it ran the credit report a month and a
4 half later?

5 A. Correct.

6 Q. Okay.

7 (Pause in proceedings.)

8 BY MR. ETRA:

9 Q. Let's go to the --

10 (Pause in proceedings.)

11 MR. ETRA: Putting on the screen I-10 -- it's part of
12 Exhibit 17 from the Government --

13 THE COURT: I'm sorry. Seventeen?

14 MR. ETRA: It's part of the Government's Exhibit 17 in
15 evidence.

16 MS. JIMENEZ: Okay. But which exhibit?

17 MR. ETRA: Defense I-10.

18 MR. CAVALLO: It's 19-13 for the Government.

19 MS. JIMENEZ: Thank you.

20 THE COURT: 19-13. All right.

21 MR. ETRA: May I proceed?

22 THE COURT: Yes. Of course.

23 BY MR. ETRA:

24 Q. Do you see this -- recognize this to be the purported 2020
25 returns for HM-UP you testified about on direct?

1 A. Yes, sir.

2 Q. Okay. And I want to focus on the -- well, first, the
3 question is: Does PayPal -- I think you testified this was
4 submitted on February 26th, 2021; is that correct?

5 A. Correct.

6 Q. Okay. And -- but PayPal doesn't have information from
7 the -- of the IP address, correct?

8 A. Correct.

9 Q. Or any other way of telling who did it?

10 A. Only that it was submitted through the portal via email
11 log-in and password.

12 Q. By the way, if you -- do you know this question -- and if
13 you don't know the answer, fine, but you seem to know a lot.
14 Can someone go into a portal -- forget it. It's too much of a
15 mouthful.

16 All right. Let's focus on the signatures at the
17 bottom. Am I correct that PayPal will accept -- whenever
18 PayPal needs for the PPP program a tax return, a 1065 tax
19 return, it doesn't need the name or any information of an
20 accountant on it, correct?

21 A. Correct. It's not required to have an accountant or a
22 preparer.

23 Q. And to the extent that PayPal ever relies on tax returns
24 submitted, whether or not there's a name there, or a signature
25 there, or a PTIN number, is irrelevant, correct?

1 A. Correct.

2 Q. All right. And PayPal understands that when taxpayers
3 submit returns for any number of reasons there may be no
4 information from the -- from a tax preparer, correct?

5 A. Sure.

6 Q. Okay. All right. What are the dates of the purported
7 signatures here? You see February 9 and February 12?

8 A. Yes. The signature of the partner is February 12th, 2021,
9 and the signature from the preparer is February 9th, 2021.

10 Q. On purported 2020 tax returns of HM-UP, right?

11 A. Correct.

12 MR. ETRA: Now let's go to Government Exhibit 19-10.

13 BY MR. ETRA:

14 Q. You recall talking about this exhibit on your direct?

15 A. Yes.

16 Q. And this was submitted to PayPal, correct?

17 A. Correct.

18 Q. From that portal?

19 A. Yes.

20 Q. And you don't have a date for the submission, correct?

21 A. I don't recall.

22 Q. Okay. But it has a date on the document, correct?

23 A. Yes, sir.

24 Q. All right. Before I do that, let me just go to the
25 second-to-last paragraph which says: "The company's two main

1 bank accounts are with Wells Fargo and SunTrust Bank, which
2 both have been provided for verification of the company and
3 also the volume of wages." You see that?

4 A. Yes.

5 Q. Did PayPal understand that whoever submitted this was
6 basically saying: "If you want to verify payroll just look at
7 the bank accounts"?

8 A. Yes. That can be --

9 Q. All right. Okay. Now let's go to -- again, the date is
10 February 15th, 2021, right?

11 A. Yes.

12 Q. And I want to look at the -- Line -- actually, Line 6:
13 "Provided bank statements with copies of checks for employees
14 and schedule," right? You see that?

15 A. Yes.

16 Q. That's consistent with the other paragraph I read that
17 someone at the borrower was saying: "Here are the bank
18 records. That's how to verify payroll," right?

19 A. Correct.

20 Q. Okay.

21 MR. ETRA: Now let's go to the -- Line 2. And to be
22 fair, let's do Line 6 too. Let's do Line 5 as well, to be
23 fair.

24 BY MR. ETRA:

25 Q. It also said: "Provided 941s and 940 for 2020," correct?

1 A. Yes.

2 Q. That is -- those are the documents you use to verify
3 payroll, right?

4 A. Correct.

5 Q. Okay. And now let's go to the -- Line 2. Here, the
6 borrower is saying: "Tax returns commenced for the year. 2012
7 through 2019 were filed." You see that?

8 A. Yes.

9 Q. So on February 15th the applicant is saying: "We've filed
10 our returns through 2019," right?

11 A. Correct.

12 Q. And on Line 1, the applicant is saying: "The 1065 tax
13 return for 2019," colon. Then it said: "2020 is not prepared
14 as of today." Do you see that?

15 A. Yes.

16 Q. So what the applicant is telling PayPal is as of
17 February 15th, 2021, the applicant's returns for 2020 have not
18 been prepared, right?

19 A. Correct.

20 Q. Now let's go back to the 2020 returns. Those are dated
21 before the memo, correct?

22 A. They are.

23 Q. So the applicant is saying: "I have no returns for 2020 as
24 of February 15th," correct?

25 A. Correct.

1 Q. But somehow someone submitted these bogus tax returns that
2 are signed earlier, correct?

3 A. Correct.

4 Q. Did that cause PayPal to wonder if there's more than one
5 person submitting information?

6 A. I can't speculate to that.

7 Q. Do you know?

8 A. (No verbal response.)

9 Q. That would be speculation. You don't know. Okay.

10 Is there any -- okay. Did PayPal -- you see anything
11 in the records where PayPal made note of this and said:
12 "There's something wrong here. We have supposed tax returns
13 that are dated by February 12 or February 9 but the applicant's
14 already told us they are not prepared yet"?

15 A. No. There was nothing in the notes indicating that, but
16 that's not totally out of the ordinary either.

17 Q. What's not totally out of the ordinary?

18 A. To have date discrepancies. There was a lot of confusion
19 around what a prepared return was versus submitted.

20 Q. So it's not out of the ordinary to hear from an applicant
21 that a certain document hasn't been prepared yet, and then to
22 get that document prepared with an earlier signed date,
23 especially a tax return? That's typical? That's not out of
24 the ordinary?

25 A. In those times, yeah. Where the SBA asked for tax returns

1 that hadn't yet been filed, yeah, unfortunately, it was.

2 Q. But these are signed -- these are purportedly -- these are
3 purportedly signed documents, not purportedly draft documents,
4 right?

5 A. Sure. But we heard from customers who thought that they
6 had to actually file with the IRS and didn't understand the
7 difference between preparing and filing.

8 Q. I'm sorry. I'm not sure I understood your last answer.
9 Could you please repeat that.

10 A. There was often confusion between understanding what a
11 prepared return was versus filing with the IRS.

12 Q. Okay. Do you have any information that when the borrower
13 wrote to you on February 15 that 2019 tax returns have not been
14 prepared that the borrower was confused about those things?

15 MS. JIMENEZ: Objection. Calls for speculation.

16 THE COURT: Sustained.

17 BY MR. ETRA:

18 Q. You also were shown 2019 purported returns from HM-UP,
19 correct?

20 A. Correct.

21 Q. And is it fair to say that there's no indication that those
22 returns were requested either?

23 A. Correct.

24 Q. And you don't know who was involved in providing those
25 purported returns?

1 A. Correct.

2 Q. Does -- is there any information that would indicate -- is
3 there any evidence from PayPal that anyone at PayPal reviewed
4 the 2020 -- the purported 2020 return from HM-UP?

5 A. No, sir.

6 Q. Is there any indication that anyone at PayPal relied on
7 that purported return?

8 A. No, sir.

9 Q. You were shown various quarterly employment tax filings --
10 employment tax filings -- or I shouldn't say that -- employment
11 filings for 941, 940, RT-6, correct?

12 A. Correct.

13 Q. And notwithstanding -- the reality is you don't know
14 whether Mr. Sheppard signed where it says: "Mr. Sheppard,"
15 right?

16 A. I don't verify signatures.

17 Q. Right. Or his knowledge of what was going on on the
18 documents, correct?

19 A. Correct.

20 MR. ETRA: Let's go back to that email chain. Putting
21 back up P-1, I'm going to go to the bottom of the email chain.

22 BY MR. ETRA:

23 Q. All right. This is an additional --

24 MR. ETRA: No. The very bottom of the whole chain.

25

1 BY MR. ETRA:

2 Q. The bottom email --

3 MR. ETRA: We have to go a little higher to see the
4 date.

5 BY MR. ETRA:

6 Q. -- is a February 9th email from Mr. Gill to Eric Sheppard
7 at the Gmail address, correct?

8 A. Yes.

9 Q. Okay. And it asks for various documents. If you look
10 below, it includes the 941, correct? Let's take a look at it.

11 Do you see that?

12 A. Yes.

13 Q. And again, you don't know whether Mr. Sheppard -- what his
14 knowledge was of Form 941s, correct?

15 A. I do not.

16 MR. ETRA: Let's go further up the chain and just run
17 through this chain.

18 BY MR. ETRA:

19 Q. And then you see Mr. Sheppard's response, or whoever is
20 manning his email, to Mr. Gill on February 11. You see that?

21 A. Yes.

22 Q. Says: "I received the 941s for 2020 from our accounting
23 department and submitted them to the portal." Do you see that?

24 A. Yes.

25 Q. Okay.

1 MR. ETRA: Let's go further up.

2 BY MR. ETRA:

3 Q. And then on February 11th Gill writes back: "Hi, Eric. I
4 received your 941 Form. Can you please upload the rest of the
5 documents too. I've made space in your portal." Do you see
6 that?

7 A. Yeah.

8 Q. All that back-and-forth information, that's not reflected
9 in that other information -- in the documents you provided to
10 the Government, right?

11 A. Correct. Because these were individuals -- between two
12 individuals -- emails between two individuals, not the
13 automated emails we reviewed.

14 Q. I see. That's only the automated emails. Okay. Do you
15 know if they're -- we've covered that already.

16 MR. ETRA: Let's go further up.

17 BY MR. ETRA:

18 Q. Mr. Sheppard writes: "Hi, Satpall. What other documents
19 do you need? I think the office sent the 940, 941s, bank
20 statements, driver's license, other documents." Do you see
21 that?

22 A. Yes.

23 Q. Okay. And going further up the chain, that's when Mr. Gill
24 asked for the 1065s of the parent companies, partners of the
25 companies, correct?

1 A. Correct.

2 Q. Okay. Great.

3 MR. ETRA: You could take that down.

4 BY MR. ETRA:

5 Q. I want to talk about the quarter-to-quarter comparisons
6 for -- on revenue. Okay?

7 A. Okay.

8 MR. ETRA: 8-6 is part of the production that's in
9 evidence already.

10 MS. JIMENEZ: I'm sorry?

11 MR. ETRA: 8-6 is part of the production --

12 MS. JIMENEZ: Which Government --

13 MR. ETRA: It's the first quarter-over-quarter
14 comparison with the bank records.

15 MS. JIMENEZ: And which Government exhibit is it,
16 please?

17 MR. ETRA: It's part of 17.

18 MR. CAVALLO: I cannot tell a specific document from
19 your exhibit list. It would be part of Composite 17, the
20 PayPal production.

21 MS. MARTINEZ: Can we see the Bates label?

22 THE COURT: Is 11460 part of the Government's exhibit?

23 MS. JIMENEZ: Should be. Yes, Your Honor.

24 THE COURT: All right. Then let's continue.

25 MR. CAVALLO: Your Honor, I'm sorry. I believe it's

1 19-7. 19-7.

2 MS. JIMENEZ: Thank you.

3 THE COURT: All right. Thank you, sir.

4 BY MR. ETRA:

5 Q. Ma'am, have you had a chance to look at the document during
6 this time?

7 A. Yes.

8 Q. Great. And this is one of the documents submitted by the
9 applicant for the second round, correct?

10 A. Correct.

11 Q. And essentially what's going on here is the applicant is
12 providing analysis and backup to justify the loss in revenue
13 from a quarter in 2019 to a quarter in 2020, correct?

14 A. Correct. Q4 of 2019 to Q1 of 2020.

15 Q. Right. But he didn't do it right? Correct?

16 A. Correct.

17 Q. All right. Because you really have to do the same quarter,
18 like first quarter in one year compared to the first quarter in
19 the next year, or second quarter. But you got to be consistent
20 on the quarters; is that right?

21 A. Exactly.

22 Q. And in fact, if you saw the application, it made the same
23 mistake. It also compared the fourth quarter of 2019 to the
24 first quarter of 2020, right?

25 A. Yes. The first one did.

1 Q. Okay. Nevertheless, it's the second document where the
2 applicant is indicating that it has two choices on how to prove
3 loss of revenue. One is quarter-over-quarter, the other is
4 year-over-year, right?

5 A. Yes.

6 Q. And it's the second time the applicant is saying -- is
7 providing information going the route of quarter-over-quarter,
8 right?

9 A. Correct.

10 Q. And if we could just skim down through the documents, you
11 see he is attaching bank records, right? Let's take a look.

12 And notwithstanding the mistake of doing the quarter
13 analysis wrong, the way to substantiate the loss is through
14 bank records, right?

15 A. Yes.

16 Q. Not tax returns, right?

17 A. Well, the SBA -- the bank records can be provided in
18 addition to the tax returns.

19 Q. Okay. The way the SBA has the rule, if you're doing
20 quarter-over-quarter, you don't need tax returns; you do need
21 bank records, correct?

22 A. Sir, I'd have to read the SBA regulations again.

23 MR. ETRA: Put up Exhibit N-6 only for the witness.
24 And I'm not seeking to offer this into evidence, Your Honor.

25 THE COURT: All right.

1 BY MR. ETRA:

2 Q. Do you see Exhibit N-6?

3 A. Yes.

4 Q. Do you recognize it?

5 A. Yes.

6 Q. This is an email between you and the prosecutor,
7 Ms. Jimenez, correct?

8 A. Correct.

9 Q. September 13th, 2023?

10 A. Correct.

11 Q. And it's also copied someone named Michael Getzler.

12 A. Yes. That's PayPal's legal counsel.

13 Q. Okay. And if you look at the subject line, it's got a re
14 in it that suggests that it's a response to an email. You know
15 how it has a re in it when you're responding to an email?

16 A. Yes.

17 MR. ETRA: And could you go below and see if we have
18 that email from Ms. Jimenez.

19 Okay. I don't see it.

20 BY MR. ETRA:

21 Q. Do you know what Jimenez asked of you?

22 MS. JIMENEZ: Objection. Relevance.

23 THE COURT: Overruled. If she knows.

24 THE WITNESS: I believe it was following a meeting
25 where we were prepping for trial.

1 BY MR. ETRA:

2 Q. And in that meeting Ms. Jimenez was pressing you to try to
3 prove that PayPal required the 2020 fake tax returns for HM-UP?

4 MS. JIMENEZ: Objection. Argumentative.

5 THE COURT: Sustained.

6 MR. ETRA: Your Honor --

7 BY MR. ETRA:

8 Q. That's a meeting where Ms. Jimenez was asking you to -- if
9 PayPal could show that PayPal had required the 2020 fake HM-UP
10 tax returns?

11 A. I believe the discussion was asking why we requested the
12 2020 returns, and I referred to the SBA documentation.

13 Q. I see. So were you then laboring under the misimpression
14 at the time that PayPal had requested the 2020 HM-UP returns?

15 MS. JIMENEZ: Objection. Misstates the testimony.

16 THE COURT: Overruled.

17 THE WITNESS: I don't recall the exact conversation.
18 I recall going out and refreshing my memory on the SBA
19 guidelines at the time, because again it had been three years
20 and I needed to read the reg myself.

21 BY MR. ETRA:

22 Q. And then you basically are explaining that this has to do
23 with the reduction in revenue, correct?

24 A. This is a direct copy from the SBA.

25 Q. You wrote to Ms. Jimenez that: "In order" -- that the

1 entity, which is the borrower, "must show the 25 percent
2 reduction in gross receipts substantiated by providing 2019 and
3 2020 tax returns." That's what you wrote to Ms. Jimenez,
4 correct?

5 A. Yes. And down below is a copy from the SBA reg.

6 Q. Right. In fact, the records show -- in fact, we saw
7 already that the borrower has a choice between proving a loss
8 year-over-year or quarter-over-quarter, correct?

9 A. I don't recall that in the reg, but we can go to sba.com
10 and read it.

11 Q. It was in the portal. Remember you saw that in the portal?

12 A. They can show the reduction, but my understanding was 1065
13 was required regardless.

14 Q. Okay. Well, let's actually look at the language you have
15 here. And you quote from the regulation, correct?

16 A. Yes.

17 Q. And the language you quote basically says that the tax
18 returns are required if you're using an annual reference point,
19 correct?

20 A. Yes.

21 Q. Meaning if the borrower is trying to prove loss of revenue
22 by comparing one year to the next, correct?

23 A. Correct.

24 Q. Would you like to see the regulation?

25 A. No, sir.

1 Q. No?

2 A. No.

3 Q. Well, am I correct that the regulation says that the tax
4 returns are required to prove loss of revenue only if the
5 borrower is trying to prove loss in revenue from year to year?
6 Correct?

7 A. Yes. It says: "If using annual reference period."

8 Q. Right. And if the borrower is looking to prove loss of
9 revenue quarter-over-quarter, according to the SBA regulations,
10 you don't need to provide tax returns, correct?

11 A. Correct.

12 Q. Okay. I'm happy to show you the regulation, if you want.

13 MS. JIMENEZ: I'm sorry. What was the question?

14 THE COURT: "I'm happy to show you the regulation if
15 you want."

16 BY MR. ETRA:

17 Q. I'll rephrase it. Would you like to see the regulation in
18 order to answer the question? It's up to you.

19 A. No, sir. Based off this --

20 Q. You're confident, then, that when the application chooses a
21 reduction in revenue quarter-over-quarter -- a quarter for one
22 year, quarter for the next -- the applicant is not required to
23 provide its tax returns to demonstrate that, correct?

24 A. Correct. This indicates it's for annual.

25 Q. Right. And you know from the documents we've seen that the

1 applicant elected to prove loss of revenue only by arguing
2 quarter-over-quarter, correct?

3 A. Correct.

4 MR. ETRA: Are we doing an afternoon break, Your
5 Honor?

6 THE COURT: We had a break an hour ago.

7 MR. ETRA: Could I have a few minutes to confer with
8 my colleague?

9 THE COURT: To see if you have completed the
10 cross-examination?

11 MR. ETRA: No. I'd like to confer with my colleague.

12 THE COURT: All right. Certainly.

13 (Pause in proceedings.)

14 MR. ETRA: No further questions. Thank you, Your
15 Honor.

16 THE COURT: All right. Redirect.

17 REDIRECT EXAMINATION

18 BY MS. JIMENEZ:

19 Q. Ms. Hutcheson, you were asked in connection with the first
20 loan application by this business some questions about
21 affiliates. Do you recall?

22 A. Yes. That's correct.

23 Q. It was a while ago.

24 MS. JIMENEZ: All right. If we could pull up 17-4,
25 please.

1 Can we enlarge the middle section, please.

2 BY MS. JIMENEZ:

3 Q. What was the information you were provided about the name
4 of the business that was applying for this loan?

5 A. The legal business name was HM-UP Development Alafaya
6 Trails, LLC, doing business as HM Management and Development.

7 Q. All right.

8 MS. JIMENEZ: And then if we can pull up 17-6, please.

9 BY MR. ETRA:

10 Q. And that is -- is that -- 17-6 is a bank statement from HM
11 Management and Development, LLC?

12 A. That's correct.

13 MS. JIMENEZ: And then if we can pull up 17-5, please.

14 BY MS. JIMENEZ:

15 Q. Is that a bank statement from a business named CJUF III
16 Flagler, LLC?

17 A. Correct.

18 Q. Did you have any indication from the records that you
19 reviewed that CJUF Flagler was an affiliate of any other
20 business?

21 MR. ETRA: Objection. Leading.

22 THE COURT: Overruled.

23 THE WITNESS: I believe there was the one payroll
24 report that listed both business names.

25

1 BY MS. JIMENEZ:

2 Q. Listed both business names. Was there any statement
3 provided in the records that you received telling PayPal that
4 CJUF was an affiliate of HM-UP Development Alafaya Trails?

5 A. No, there was not.

6 Q. And when the question was asked by PayPal in its portal
7 whether the business HM-UP Development Alafaya Trails had any
8 affiliates, what was the answer that was provided?

9 A. "No."

10 Q. Now, there -- does -- why does PayPal ask -- want to know
11 whether or not there are affiliates of a business that's
12 applying for the loan?

13 A. It's requested by the SBA, as that would impact the
14 business eligibility for the loan.

15 Q. When a business applies as a business with employees, is
16 there a limit on the number of employees that the business
17 could have to qualify for a Paycheck Protection Program loan?

18 A. Yes, there is.

19 Q. In round one, it was a certain number. Do you recall what
20 that number was? Five hundred --

21 A. I was going between 300 and 500, yes.

22 Q. And then for round two, or in 2021, there was a different
23 number?

24 A. Correct.

25 Q. Three hundred; is that right?

1 A. Yes.

2 Q. And so did the SBA indicate to businesses who were applying
3 that for purposes of indicating when they were applying as a
4 business with employees, how many employees they had, that they
5 are to consider the number of employees of their affiliates?
6 Is that what the SBA indicated?

7 A. Yes.

8 Q. And then -- but for purposes of establishing the loan
9 amount, the loan amount was based on -- I think you testified
10 it was based on wages, the payroll; is that right?

11 A. Yes. Correct.

12 Q. And was the payroll or the wages of the business that was
13 applying -- was that supposed to be based on the wages of the
14 business applying or the payroll of the business and its
15 affiliates?

16 A. Based on the business applying.

17 Q. The business applying only; is that correct?

18 A. Yes. That is correct.

19 MS. JIMENEZ: Can we go to Exhibit 17-3, which is
20 somewhere else -- spreadsheet.

21 BY MS. JIMENEZ:

22 Q. Now, this is something that the applicant would see when
23 they log into the portal to apply for a PPP loan from PayPal,
24 right?

25 A. Correct.

1 Q. Was this interface -- was this page similar in round one
2 and round two, or 2020 and 2021?

3 A. It was not. This was not provided in 2021.

4 Q. This was not provided at all in 2021?

5 A. Correct.

6 Q. Okay. And in 2020 you have columns for different
7 categories on the right side. Do you see that in light blue?

8 A. Yes.

9 Q. And so a self-employed individual, or a sole
10 proprietorship, or an independent contractor is separate from
11 either an LLC or a partnership; is that right?

12 A. That is correct.

13 MS. JIMENEZ: Can we go to 17-8, please.

14 BY MS. JIMENEZ:

15 Q. All right. You were shown this document before. Was this
16 document submitted with the first loan application in April of
17 2020?

18 A. Yes, it was.

19 Q. Now, this business had indicated it was an LLC; is that
20 right?

21 A. Correct.

22 Q. And on this document, does it indicate that there is a
23 partner -- that there are partners? You see the name Eric
24 Sheppard?

25 A. No.

1 Q. If you go down to the name Eric Sheppard...

2 A. Yes.

3 Q. And then the last name on this list -- do you see a name?

4 A. Yes.

5 Q. And that is?

6 A. My apologies. Jeff Graff is listed as a partner.

7 Q. All right. Per SBA guidance, were the earnings of partners
8 allowed to be included toward the wage calculation?

9 A. (No verbal response.)

10 Q. Up to a hundred thousand dollars?

11 A. Yes.

12 Q. And so those were included here; is that right?

13 A. Correct.

14 Q. And then, in 2021 --

15 MS. JIMENEZ: If we can go to the applications that
16 were submitted by the applicant, 19-12 and 19-7.

17 If you would put those side by side.

18 Oh, no. Sorry. Wrong.

19 Is that 19-7?

20 Okay. Sorry. 19-6, I meant. Sorry. 19-6.

21 If you can go down to Page 4.

22 All right. Is that Page 4?

23 I'm sorry. Exhibit 19-12, Page 4.

24 Keep going, please.

25 All right. I've got to get my paper exhibits. Can

1 you scroll back up one page.

2 Stop.

3 Just a moment.

4 19-6 is on the left or the right?

5 The right. Okay.

6 Is that Page 4 that we're looking at?

7 Okay. Scroll up, please.

8 Okay. Here. Stop. Stop. Sorry.

9 All right. If you could hone in on this second
10 paragraph under the instructions.

11 Okay. "For purposes."

12 No. The whole paragraph.

13 BY MR. ETRA:

14 Q. Now, in 2021, there were some questions about what was
15 required for businesses to produce in terms of tax records.
16 This business -- based on the application that was submitted in
17 2021 and the tax records that were submitted in 2021, they
18 indicated that it was a partnership; is that right? The 1065s?

19 A. Correct.

20 Q. All right. And then here, on the Second Draw Borrower
21 Application Form for 2021, the business or the applicant is
22 told -- if you read the last paragraph -- I'm sorry. Not the
23 last paragraph. That would be very painful. The last sentence
24 of this paragraph for applicants that are partnerships, what
25 does it tell them they need to provide?

1 A. "For applicants that are partnerships, payroll costs are
2 computed using net earnings from self-employment of individual
3 general partners, as reported on IRS Form 1065 K-1, reduced by
4 Section 179, expense deduction claimed, unreimbursed
5 partnership expenses claimed, and depletion claimed on oil and
6 gas properties, multiplied by .9235, that is not more than
7 \$100,000, plus any eligible payroll costs for employees."

8 Q. So partnerships -- because the partners or at least general
9 partners in a partnership could provide -- could include their
10 net earnings toward the payroll calculation -- in addition to
11 the wages they pay employees, partnerships were required to
12 submit their 1065 tax returns?

13 MR. ETRA: Objection, Your Honor.

14 THE COURT: And the basis?

15 MR. ETRA: The basis is beyond the scope, a new
16 argument as to why 1065s are required that I was not able to
17 respond to on cross.

18 THE COURT: Overruled.

19 THE WITNESS: Yes. That's correct.

20 BY MS. JIMENEZ:

21 Q. Okay. In this case, in -- in the 2021 records that you
22 reviewed, there were two partnership tax returns that were
23 included with those records that you reviewed, right? A 2019
24 signed return; is that right?

25 A. Yes.

1 Q. And then a 2020 signed return, right?

2 A. Correct.

3 MS. JIMENEZ: If we can take a look at Exhibit 19 --
4 Exhibit -- the 19-13. 19-13, the 2020 return.

5 BY MS. JIMENEZ:

6 Q. That is a partnership return for this business, right, a
7 1065 partnership return?

8 A. Correct.

9 Q. You had indicated whether -- you had indicated -- well,
10 it's unclear. You had indicated that the return was required
11 to be signed or -- was that your testimony?

12 A. Although it didn't specify signed, that is kind of --
13 that's part of completing the return.

14 Q. All right.

15 MS. JIMENEZ: Can we go back to 17-3 for a moment,
16 please.

17 BY MS. JIMENEZ:

18 Q. For PayPal in 2019, did you require that tax return --
19 well, in 2019 you required -- I'm sorry -- in 2020 you required
20 them to submit 2019 returns that were actually filed; is that
21 correct?

22 A. If they were supplying a tax return, yes.

23 Q. Right. Those had to be filed.

24 Now, generally speaking, were the SBA rules in 2021
25 for the second round more stringent than they were in 2020?

1 A. Yes, they were.

2 Q. Now, in 2020 -- I'm sorry -- in 2021, with respect to tax
3 returns, if a tax return is not filed because it's the first
4 quarter of the year, did PayPal require that the return be
5 signed?

6 A. Yes.

7 Q. All right.

8 MS. JIMENEZ: Let's go back to the 2020 return and
9 let's go back to the signature block.

10 BY MS. JIMENEZ:

11 Q. The signature block for a signed tax return that PayPal
12 required is signed under penalty of perjury by the individual
13 signing the return; is that correct?

14 A. That is correct.

15 Q. And they're indicating, when they sign under penalty of
16 perjury, that all of the information is true, correct, and
17 complete; is that right?

18 A. Correct.

19 Q. Now, the attorney for the Defendant, when he first got up,
20 told you -- it was a long time ago, but he told you that there
21 were fraudulent documents supplied with this loan application.
22 Do you remember that?

23 A. I do.

24 Q. Now, when you -- when PayPal requests -- or when PayPal
25 receives an application from an applicant, there was some

1 discussion you had about what was an applicant. If you have a
2 business applying, the business information is provided,
3 correct?

4 A. Correct.

5 Q. And then you require -- or do you require that the business
6 apply through its owners or authorized representatives?

7 A. Yes, we do.

8 Q. In this case, who was the owner or authorized
9 representative of the business that applied for these loans?

10 A. Eric D. Sheppard.

11 Q. And does PayPal want to know who is sitting at a computer
12 terminal potentially doing entries and hitting a send button or
13 does PayPal want to know who is the authorized representative,
14 who is the responsible party submitting the documents on behalf
15 of this business?

16 A. We ask for the authorized party, authorized representative.

17 Q. Who was the authorized representative and the person
18 responsible for the documents that were submitted to PayPal in
19 this case?

20 MR. ETRA: Leading and asked and answered.

21 THE COURT: Sustained on the second ground.

22 BY MS. JIMENEZ:

23 Q. Was there anyone besides the name Eric Sheppard provided to
24 PayPal as the authorized representative and owner of the
25 business that was applying for this loan?

1 A. No, there was not.

2 Q. And for this loan, the Defense attorney told you there were
3 fraudulent documents submitted; is that right?

4 MR. ETRA: Objection. Asked and answered.

5 THE COURT: Sustained.

6 MS. JIMENEZ: Can we go to 17-10, please.

7 We'll come back to that.

8 17-10. Can you hone in on the email.

9 BY MS. JIMENEZ:

10 Q. Do you see the email that -- well, you reviewed a couple of
11 emails with the Defense attorney. But there were some
12 questions posed to you about whether the applicant could add
13 information to the application or make changes to the
14 application. Do you remember that?

15 A. Yes.

16 Q. Now, this email was -- I can't see -- April 22nd. Do you
17 remember when the SBA Form 2483 was DocuSigned and executed by
18 the Defendant in this case?

19 A. It was first sent to the business on April 23rd, and it was
20 signed on May 1st.

21 Q. So it was signed on May 1st. And that --

22 MS. JIMENEZ: Let's go to Exhibit 17-11, please, the
23 DocuSign page.

24 Here. Stop. Stop.

25 No. Go up.

1 Okay. The last two paragraphs and the signature.

2 BY MS. JIMENEZ:

3 Q. So at the point in time when the applicant signs this
4 document, at this point in time, are they certifying to you
5 that all the information provided is true and accurate in all
6 material respects?

7 A. Yes. They're certifying everything on this form and all
8 supporting documents are true and accurate.

9 Q. So if something important is mistaken, would that
10 certification be valid?

11 A. No, it would not.

12 MS. JIMENEZ: Could we go back into the document,
13 first page.

14 Okay. Here. The top box.

15 BY MS. JIMENEZ:

16 Q. There were some questions posed to you about number of
17 employees being 80, and could that be changed, could that not
18 be changed. At this point, May 1st, 2020, the applicant, Eric
19 Sheppard, has signed and certified this document, right?

20 MR. ETRA: Objection. Leading.

21 THE COURT: Sustained.

22 BY MS. JIMENEZ:

23 Q. Was it signed on this day?

24 A. Yes, it was.

25 Q. Was it certified on this day?

1 A. Yes.

2 Q. And so what did PayPal believe when you received this
3 DocuSigned document back that was signed and certified?

4 MR. ETRA: Objection. Personal knowledge or belief.

5 THE COURT: Sustained.

6 BY MS. JIMENEZ:

7 Q. Based on your experience at PayPal, and your participation
8 in the Paycheck Protection Program, when PayPal received
9 DocuSigned, executed 2483 forms, what was PayPal's
10 understanding about the loan process?

11 A. That all information was true and accurate.

12 Q. You were asked some questions about whether the tax returns
13 were relied on -- or you were asked that there was no
14 indication that anyone at PayPal relied on a tax return. I
15 want to ask you: Do you know -- were you -- did you
16 participate specifically in this loan -- in either the first
17 loan application that was submitted in April 2020 or the second
18 loan application that was submitted in January of 2021, did you
19 participate in reviewing the loan?

20 A. I did not. I never reviewed any documentation until 2023.

21 Q. And was there -- what you reviewed in the record was a
22 receipt of a 2019 tax return. Did you see that?

23 A. Yes.

24 MR. ETRA: Objection.

25

1 BY MS. JIMENEZ:

2 Q. And you saw -- was there a request for a 1065 return?

3 MR. ETRA: Objection. Leading.

4 THE COURT: Sustained. Rephrase.

5 BY MS. JIMENEZ:

6 Q. Yes. The -- was there a February 16th, 2021 email that you
7 reviewed?

8 A. There was.

9 Q. What did that request?

10 A. It requested a 1065 tax return.

11 Q. And then was there a 1065 tax return supplied that you
12 reviewed in the records that you had been provided that were --
13 I'm sorry. Let me try to ask a question.

14 Did you -- in the records that you were provided to
15 review, was there a tax return submitted after February 16th,
16 2021?

17 MR. ETRA: Objection. Personal knowledge. She
18 doesn't know the dates of these documents.

19 THE COURT: If the witness knows. Overruled.

20 THE WITNESS: I do recall that on February 26th of
21 2021 the applicant submitted a 2021 tax return 1065.

22 BY MS. JIMENEZ:

23 Q. Do you have records at PayPal, internal records, that tell
24 you when documents are actually uploaded into your system?

25 A. Yes. Within the Salesforce system, you can see where they

1 are uploaded. It's not necessarily time-stamped here. But
2 that is one of the things I requested personally, so that I
3 could validate the date, was a screenshot of our system.

4 Q. So from the records that you reviewed, you saw a request
5 for a tax return on February 16 and a tax return provided
6 February 26; is that right?

7 MR. ETRA: Objection. Leading.

8 THE COURT: I'll allow it. Overruled.

9 THE WITNESS: That is correct.

10 MS. JIMENEZ: Can we pull up Defense Exhibit P-1.

11 MS. MARTINEZ: I think we only got a paper copy.

12 MR. ETRA: Sorry.

13 THE COURT: Ladies and Gentlemen, how is everyone
14 doing?

15 I know we're expected to conclude at 4:30. Is anyone
16 in need of a break?

17 Okay. All right.

18 (Pause in proceedings.)

19 BY MS. JIMENEZ:

20 Q. Okay. Now, this email string and whatever is attached, was
21 this something that was provided to you to review as a part of
22 the records that PayPal produced to the Government in this
23 case?

24 A. No. I had not seen this document until today.

25 Q. Now, at the top, on sort of the left side of the screen

1 here, the attachments indicate two different companies; is that
2 right?

3 A. Yes. The names are titled HM Four, LLC and HM Eight, LLC.

4 Q. And does the attachment that you reviewed -- I don't know
5 whether you had the opportunity to review it -- did it include
6 a return or a document for HM Four, LLC?

7 A. Yes. I believe the one we reviewed earlier did.

8 MS. JIMENEZ: Well, can we go to Page -- whatever page
9 number -- Page 5 of Defense Exhibit...

10 BY MS. JIMENEZ:

11 Q. See the top there is HM Eight. Do you see that?

12 A. Yes.

13 Q. Did you see a tax return included here for HM Four?

14 A. I thought there was. I don't recall. Can we scroll down?

15 MR. ETRA: Is she asking --

16 THE COURT: She's asking to look.

17 THE WITNESS: Yes. Here's HM Four.

18 MS. JIMENEZ: I'm sorry. Is that in here?

19 (Pause in proceedings.)

20 MS. JIMENEZ: If I could just have a moment, Your
21 Honor.

22 THE COURT: All right.

23 (Pause in proceedings.)

24 MS. JIMENEZ: Could we go to Page -- whatever the K-1
25 is for HM Eight, please.

1 BY MS. JIMENEZ:

2 Q. Okay. Here, for this tax return, which obviously you
3 haven't seen before, it indicates -- well, it's unclear what it
4 indicates -- but that for the partner HM Eight, this other
5 entity owns 48 percent, right?

6 A. Correct.

7 Q. Okay.

8 MS. JIMENEZ: Now, there's -- I see HM Four now. So
9 if we can go to HM Four -- could we go to the K-1 for HM Four,
10 please.

11 Is my copy wrong?

12 I apologize, Your Honor. I was just handed this this
13 afternoon.

14 (Pause in proceedings.)

15 MS. JIMENEZ: We'll come back to this. Let's go to
16 the emails in the front.

17 All right. The next page, the third page.

18 BY MS. JIMENEZ:

19 Q. Okay. So it appears that PayPal is asking Mr. Sheppard for
20 tax records. Do you see that in the middle of the page?

21 A. Yes. That's correct.

22 Q. And -- thank you. The tax records are -- can you read
23 starting at "IRS Form 941"?

24 A. Yes. "We're requesting IRS Form 941, taxable Medicare
25 wages and tips from each quarter or equivalent payroll

1 processor records or IRS wage and tax statements" --

2 Q. Okay. Stop for a second. Based on your experience at
3 PayPal, in reviewing Paycheck Protection Program loans, are IRS
4 Form 941 records provided for independent contractors?

5 A. No.

6 Q. All right. Read the next statement, the 1120. Do you know
7 what the 1120 is?

8 A. It's a tax form.

9 Q. Is that a corporate tax return?

10 A. I believe so.

11 Q. Now, in this case, we have a partnership, right? And the
12 partnership return, is that the 1065?

13 A. Yes. We have the 2019 partnership return.

14 Q. All right. And you have the 2020 partnership return as
15 well, right?

16 A. (No verbal response.)

17 Q. Well, the February 26th submission?

18 A. Yes.

19 Q. Okay. So they're requesting the corporate tax return here;
20 is that right?

21 A. Correct.

22 Q. And then they're asking for W-2s and W-3s. Is that -- are
23 those requested of wage employees or is that requested of
24 independent contractors?

25 MR. ETRA: Objection. Leading.

1 THE COURT: Overruled.

2 THE WITNESS: If there's not a 941, we request the IRS
3 W-2 or W-3 for employees.

4 BY MS. JIMENEZ:

5 Q. And so my question is: Are W-2s and W-3s requested of wage
6 employees or of independent contractors?

7 A. Wage employees only.

8 Q. Okay.

9 MS. JIMENEZ: And then go to Page 2.

10 BY MS. JIMENEZ:

11 Q. All right. And then Mr. Sheppard, at the top of this page,
12 February 11, asks -- what does he ask?

13 A. He asks: "What other documents do you need?"

14 Q. And then what does he say?

15 A. "I think the office sent the 940, 941s, bank statements,
16 driver's license, and other documents."

17 Q. Do you know the size of Mr. Sheppard's office? Do you know
18 how many people work there?

19 A. I do not. I only know the number of employees he
20 submitted.

21 Q. Eighty?

22 A. Correct.

23 Q. Is that right?

24 Okay. Then, on the bottom of Page 2 -- this is from
25 Mr. Sheppard -- what does he indicate that he received?

1 A. He said: "I received the 941s for 2020 from our accounting
2 department and submitted them to the portal. I believe the
3 controller provided check registry and bank accounts to the
4 portal at some point."

5 Q. And then what does he say?

6 A. "If you need any tax returns or other information that I
7 can access, kindly let me know. Thank you for your help."

8 Q. "Eric Sheppard"?

9 A. Signed Eric Sheppard, CEO.

10 Q. That would be -- okay. Now, does it indicate in this email
11 that Mr. Sheppard submitted the 941s for 2020 to the portal?

12 A. Yes, it does.

13 MS. JIMENEZ: Now, can we take a look at Exhibit 19-8,
14 please.

15 BY MS. JIMENEZ:

16 Q. Do you recall seeing these documents --

17 MS. JIMENEZ: If we could scroll down, please. That
18 was fourth quarter 2020. And then please keep going.

19 BY MS. JIMENEZ:

20 Q. Signed by Eric Sheppard; is that right?

21 A. Correct.

22 Q. Okay.

23 MS. JIMENEZ: Keep going.

24 BY MS. JIMENEZ:

25 Q. And then third quarter 2020. Yes?

1 A. Yes.

2 MS. JIMENEZ: Keep going.

3 BY MS. JIMENEZ:

4 Q. Signed by Eric Sheppard?

5 MR. ETRA: Objection. Leading. No basis to say.

6 THE COURT: Overruled.

7 MS. WEINTRAUB: Contrary testimony.

8 THE WITNESS: Yes.

9 BY MS. JIMENEZ:

10 Q. And then we saw this earlier. All of the 941s for every
11 quarter of 2020 were provided, right?

12 A. That's correct.

13 Q. And an extra one for HM management as well; is that right?

14 A. Correct.

15 Q. And who were they all signed by?

16 MR. ETRA: Objection. No foundation.

17 THE COURT: Overruled.

18 THE WITNESS: They all were signed by Eric Sheppard.

19 BY MS. JIMENEZ:

20 Q. And the Defense attorney told you that there were
21 fraudulent documents submitted in this case, did he not?

22 A. He did.

23 MS. JIMENEZ: Can we go back to the emails, please --
24 oh. P-1.

25 Okay. Page 2.

1 BY MS. JIMENEZ:

2 Q. So that email we were looking at, February 11th, 2021, at
3 the bottom of this page, where he says he submitted the 941s to
4 the portal --

5 MR. ETRA: Objection. It doesn't say that in the
6 document.

7 BY MS. JIMENEZ:

8 Q. Can you read that statement, please.

9 THE COURT: The objection is sustained. Rephrase,
10 please.

11 BY MS. JIMENEZ:

12 Q. Can you read that sentence.

13 A. Yes. It says: "I received the 941s from 2020 from our
14 accounting department and submitted them to the portal."

15 Q. All right. And then what does the next sentence say?

16 A. "I believe the controller provided check registry and
17 accounts to the portal at some point. If you need any tax
18 returns or other information" --

19 Q. Okay. That's fine. So the accounting department and the
20 comptroller apparently, as indicated here, were assisting
21 Mr. Sheppard. Is that indicated here?

22 MR. ETRA: Objection. No foundation. She's
23 already --

24 THE COURT: Sustained.

25

1 BY MS. JIMENEZ:

2 Q. And again, you don't know how many people actually work in
3 Mr. Sheppard's office?

4 MR. ETRA: Asked and answered.

5 THE COURT: Sustained.

6 BY MS. JIMENEZ:

7 Q. But it could be 80; is that right?

8 MR. ETRA: Same.

9 THE COURT: Sustained.

10 MS. JIMENEZ: Can we go to Exhibit 19-6 again,
11 please -- to the second page, so she could see --

12 BY MS. JIMENEZ:

13 Q. This was 2021 --

14 MS. JIMENEZ: I'm sorry. Third page.

15 BY MS. JIMENEZ:

16 Q. This was in the second -- in the 2021 round. Do you
17 recall?

18 A. Yes.

19 Q. Okay.

20 MS. JIMENEZ: Yeah. Let's go back to the first page.

21 BY MS. JIMENEZ:

22 Q. This was a document provided to PayPal that was not
23 DocuSigned, right?

24 A. That is correct.

25 Q. Okay.

1 MS. JIMENEZ: Could we go in the middle, indicate the
2 ownership.

3 The ownership.

4 BY MS. JIMENEZ:

5 Q. All right. So what is the ownership that's provided on
6 this document?

7 MR. ETRA: Beyond the scope.

8 THE COURT: Overruled.

9 THE WITNESS: Listed Eric Sheppard as managing member
10 with 52 percent ownership and Jennifer Sheppard member with
11 30 percent ownership.

12 BY MS. JIMENEZ:

13 Q. Okay. And then if we go back to P-1 -- your P-1 -- the
14 Defense P-1. The request that was made on February 16 by
15 someone at PayPal at the bottom, what does it ask?

16 A. It says: "Can you please upload the following documents of
17 both partners of the company: IRS Form 1065, including
18 Schedule K-1. Please provide a complete bank statement. The
19 business name and address must match the information provided
20 on your application. Upload the statement of February 2020."

21 Q. So what did -- so did PayPal want to know -- PayPal wanted
22 to receive the tax returns of both partners of the business.
23 Is that fair?

24 A. Yes. That's correct.

25 Q. And the record that you have in the records that you

1 reviewed --

2 MS. JIMENEZ: Can we pull up 19-4.

3 Nope. Sorry. 19-13.

4 BY MS. JIMENEZ:

5 Q. The records that you have is that on a certain date this
6 Exhibit 19-13 was submitted to PayPal?

7 A. Correct.

8 Q. And what was the date that this tax return was submitted
9 that made it into the PayPal records?

10 MR. ETRA: Asked and answered.

11 THE COURT: Sustained.

12 MS. JIMENEZ: If I could have a moment, please.

13 THE COURT: All right.

14 MR. ETRA: Your Honor, I request permission to briefly
15 recross in light of the new theory on the 1065 that was stated
16 on redirect.

17 THE COURT: That request is denied.

18 (Pause in proceedings.)

19 MS. JIMENEZ: No other questions of this witness.

20 THE COURT: All right. Is the witness excused?

21 MS. JIMENEZ: Yes, Your Honor.

22 THE COURT: On behalf of the Defendant?

23 MR. ETRA: Yes, Your Honor.

24 THE COURT: Thank you, Ms. Hutcheson. You are
25 excused.

1 (Witness excused.)

2 THE COURT: Ladies and Gentlemen, we will adjourn for
3 the evening.

4 Recall that we will not be in session tomorrow. As
5 well, we will be in session for half a day on Monday,
6 December 4th. So I will see each of you -- if you'll be in the
7 jury room, ready to come into the courtroom right at one p.m.
8 We will not be taking a lunch break so please have lunch ahead
9 of time.

10 Please remember that as we adjourn you are not to
11 discuss this case with anyone, nor permit anyone to speak with
12 you. Everything learned about the case is learned in the
13 courtroom. You're not to conduct any independent research.

14 Have a pleasant day tomorrow, a pleasant weekend, and
15 I'll see you Monday, December 4th, at one p.m.

16 Thank you.

17 COURT SECURITY OFFICER: All rise for the jury.

18 (Jury not present, 4:27 p.m.)

19 MS. WEINTRAUB: Judge -- sorry.

20 THE COURT: All right. Have a seat for just a moment.

21 Ms. Hutcheson, thank you. You are excused.

22 And Monday, December 4th, who will be the witnesses on
23 behalf of the Government?

24 MS. JIMENEZ: Your Honor, we have witnesses who have
25 had to fly themselves back home. We still hope for Carlos

1 Granda, David Toye from Northeast Bank. We hope not to have to
2 call Ian Zalewski from ACAP.

3 THE COURT: All right. So these three witnesses you
4 think will take up the afternoon on Monday?

5 MS. JIMENEZ: Yes.

6 MS. WEINTRAUB: Granda is not -- Granda is five
7 minutes.

8 MS. JIMENEZ: We certainly hope so, yes.

9 THE COURT: All right. Do you believe --

10 MS. JIMENEZ: We have --

11 THE COURT: -- that you will be able to include more
12 witnesses other than the three?

13 MS. JIMENEZ: We would like to. Tamara Och as well.

14 THE COURT: All right. The conference rooms will
15 remain locked; however, we have a sentencing hearing right now.
16 So I am going to need you to move your items, if you will.

17 And have a nice day tomorrow, a nice weekend. And
18 I'll see everyone here on Monday, December 4th. We'll have the
19 courtroom open at 12:30.

20 MS. JIMENEZ: And Your Honor, I just want to put
21 something on the record -- and it's just for the record because
22 there was a suggestion made earlier about the PayPal witness on
23 the record. The Government has had no communication with this
24 witness while she has been testifying, and I just want the
25 record to reflect that. The witness went into one of the rooms

1 to retrieve her purse and her belongings, and then left that
2 room, and there was no communication with that witness.

3 THE COURT: All right. And I don't believe that there
4 was any insinuation. There was a comment about the witness
5 texting. And I expect the attorneys to remain officers of the
6 court, and the Court's instruction was very clear.

7 MR. ETRA: Did Your Honor say we're here 12:30 on
8 Monday?

9 THE COURT: The courtroom will be open at 12:30, and
10 we'll begin right at one p.m.

11 MR. ETRA: Thank you very much. Have a good weekend.
12 (Proceedings adjourned at 4:30 p.m.)

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1 UNITED STATES OF AMERICA)

2 ss:

3 SOUTHERN DISTRICT OF FLORIDA)

4 C E R T I F I C A T E

5 I, Yvette Hernandez, Certified Shorthand Reporter in
6 and for the United States District Court for the Southern
7 District of Florida, do hereby certify that I was present at,
8 and reported in machine shorthand, the proceedings had the 30th
9 day of November, 2023, in the above-mentioned court; and that
10 the foregoing transcript is a true, correct, and complete
11 transcript of my stenographic notes.

12 I further certify that this transcript contains pages
13 1 - 239.

14 IN WITNESS WHEREOF, I have hereunto set my hand at
15 Miami, Florida, this 25th day of February, 2025.

16
17 /s/Yvette Hernandez
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